

1999 SENATE JUDICIARY

SCR 4009

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SCR4009

Senate Judiciary Committee

Conference Committee

Hearing Date January 25, 1999

Tape Number	Side A	Side B	Meter #
1	x		0 - 1998
2	x		1800 - 1942
Committee Clerk Signature <i>Jackie Follman</i>			

Minutes:

SCR4009 is to study the feasibility and desirability of eliminating county states' attorneys and creating district attorneys to provide prosecutorial services for judicial districts.

SENATOR STENEHJEM opened the hearing on SCR4009 at 9:00 A.M.

All were present.

SENATOR TRAYNOR testified in support of SCR4009. I am introducing this resolution at the request of our local state's attorney. It was not my intention to eliminate county state's attorneys but we wanted a study on whether district attorneys may be desirable sometime in the future.

SENATOR NELSON asked what the difference is between a state's attorney and district attorney.

SENATOR TRAYNOR stated that in the past, states' attorneys have been outgunned by the defense and don't have the experience that is needed.

SENATOR WATNE asked how you would handle the civil and county duties if you had a district attorney.

SENATOR TRAYNOR stated these are questions that would need to be addressed in the study.

WADE ENGET, Mountrail County State's Attorney, testified in opposition of SCR4009. There are already methodologies by which local governing bodies can go forth and choose the path in which they want their prosecutorial services to take shape in the future.

SENATOR WATNE asked if Adams and Slope counties have combined to have one state's attorney together.

WADE ENGET stated that is correct.

SENATOR STENEHJEM asked if other counties are thinking about banding together.

WADE ENGET stated there are some with regard to different services. Our county shares things such as services of tax equalization director, social services, and multi-county child abuse neglect caseworker.

SENATOR STENEHJEM asked if that is because people are satisfied with the way things are or they are too difficult to actually go through the change.

WADE ENGET stated his county is satisfied.

DENNIS JOHNSON, McKenzie County State's Attorney, testified in opposition of SCR4009.

Testimony attached.

JEFF ROTERING, Adams and Slope County State's Attorney, testified in opposition of SCR4009. I am in favor of keeping control local. Most citizens would rather keep things local.

With this change, there will be less attorneys in rural areas. This would add to the decline of rural areas. The district attorney change would be a higher cost to rural people. I also feel there

would be more administrative costs with the district attorney change. I also feel the personal professional service will be lost.

SENATOR STENEHJEM asked if he was the only attorney in his county.

JEFF ROTERING stated that he has a part-time assistant in his civil practice at no cost to the county. The assistant attorney will help him if he needs some help with his state's attorney job.

MICHAEL STEFONOWITZ, Divide County State's Attorney, testified in opposition to SCR4009. I feel the local state's attorney is sensitive to county matters and are watched closely by the voters. I don't feel or sense a problem that states' attorneys are outgunned.

SENATOR LYSON asked if you need help, can you call the Attorney General's office for advice.

MICHAEL STEFONOWITZ stated that yes, and we also consult with other states' attorneys for help or advice.

JEFFREY PETERSON, ex-Burke County State's Attorney, testified in opposition of SCR4009.

I was the Burke County State's Attorney for 17 years. I feel the quality of service will deteriorate. The personal contact with our constituents are very important.

TOM HENNING, Stark County State's Attorney, testified in opposition to SCR4009.

SENATOR STENEHJEM CLOSED the hearing on SCR4009.

SENATOR NELSON made a motion for DO NOT PASS, SENATOR LYSON seconded.

Motion carried.

SENATOR NELSON will carry this bill.

Date: 1-26-99  
Roll Call Vote #: 80 1

**1999 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. SCR 4009**

Senate Judiciary Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Not Pass

Motion Made By Nelson Seconded By Lyson

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
Senator Caroloyne Nelson	X				

Total (Yes) 6 No 0

Absent \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Floor Assignment Nelson

REPORT OF STANDING COMMITTEE (410)  
January 27, 1999 7:23 a.m.

Module No: SR-17-1244  
Carrier: C. Nelson  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**SCR 4009: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SCR 4009 was placed on the Eleventh order on the calendar.

1999 TESTIMONY

SCR 4009

# MCKENZIE COUNTY STATE'S ATTORNEY

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January 22, 1999

NORTH DAKOTA STATE LEGISLATURE  
SENATE AND HOUSE

RE: Senate Concurrent Resolution No 4009

Members of the Legislature:

I regret that I can not be at this hearing in person. Duties and responsibilities of my office require my attention.

In North Dakota, there currently are two classifications for County State's Attorneys --- full time state's attorneys and part time state's attorneys. Counties with a population base of 35,000 or greater, and counties where commissioners by resolution have determined that the states attorney shall be full time, have full time states attorneys and counties with a population base of less than 35,000 have part time states attorneys. At present, I think there currently are 9 full time state's attorneys and 43 part time state's attorneys.

I have advised our County Commissioners and various county boards on a full range of legal issues for over 16 years; I have prosecuted everything from NSF check violations to AA Felony Murder violations; and as County State's Attorney, I sued the Federal Government over a property dispute which resulted in the recovery of millions of dollars for McKenzie County and two neighboring counties. I am classified as a part-time state's attorney.

I send this letter voicing my objection to Concurrent Resolution No. 4009.

The underlying reason behind Concurrent Resolution No. 4009 appears to be that a few (and I emphasize a few) full time state's attorneys in this State want to become full time STATE EMPLOYEES. They reason that if they are employees of the State they will receive better pay and better benefits much like the County Judges of old. They want the State to spend its precious resources studying a way to put more people on the State's payroll. Rather than look for ways to save the State money, they are looking for ways to profit with State money.

Why does North Dakota need county state's attorneys? There are many reasons, and here are a few:



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1. County State's Attorneys are currently county employees and as such financial responsibility rests with the County;
2. County law enforcement receives immediate, personal attention at any time day or night.
3. Local constituents receive immediate, personal attention on issues ranging from fence line disputes to burglary and NSF checks to murder.
4. County States Attorneys are necessary:
  - a. So that at 2:45 A.M. Saturday morning the Highway Patrol has someone to call with legal expertise to come to a very rural, fatality accident scene and view evidence first hand which will assist the County State's Attorney in making the decision whether to prosecute or not; and if to prosecute, the State's Attorney is intimately familiar with the crime scene.
  - b. So that at 3:00 A.M. on Sunday morning when a rural citizen has a family member who is having a mental breakdown and is in danger of committing suicide or is a danger and capable of causing harm to himself or others, the family has someone with legal expertise to call and prepare a mental health commitment petition to take before the Judge so that the person can be taken to a treatment facility; perhaps saving that person's life and possibility the lives of other family members or community members.
  - c. So that Monday morning when someone has been sitting in jail since Friday night and has not been able to post bond, the County State's Attorney can arrange for and obtain a judge for a bond hearing and then prosecute criminal defendants in the afternoon. Then meet with Social Services to discuss a welfare fraud case.
  - d. So that Tuesday morning when the Register of Deeds has a question about whether a document should be recorded and what the effect will be, she can call the County State's Attorney and get an answer. Then later that day, the County States Attorney can meet with a group of citizens about dog problems in their neighborhood.
  - e. So that Wednesday afternoon when the local merchant has a handful of bad checks, he has a local place to take the checks and

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have the County State's Attorney track down and prosecute the bad check artist.

- f. So that on Thursday afternoon, the County Commissioners can get the assistance of their County State's Attorney to help them in a road and bridge project getting the appropriate easements and initiating condemnation proceedings if necessary.
- g. So that on Friday afternoon the County State's Attorney can appear in District Court on a child abuse and neglect case and assist Social Services to provide legally safe shelter for a child in danger.

As a part time State's Attorney and a former defense attorney, I can say without a doubt that one of the most effective and efficient offices anywhere in the state of North Dakota is a part time state's attorneys' office.

County State's Attorneys, especially part time State's Attorneys, care about their community and people. And, County State's Attorney will stand up and selflessly do what is right for the people of the county because they are all part of that same community, rather than selfishly do what is right politically. A County State's Attorney knows his or her people in the County and is directly answerable to the constituents and the County Commissioners.

As a part time State's Attorney, I want to go on the record that I do not want any State's Attorney, part time or full time, to be a State Employee. Whether the workload is light or heavy, the County Commissioners are in a position to adjust the County State's Attorney's budget accordingly. And, if the County State's Attorney is lazy or just not doing the job, the County Commissioner's can address the problem, and the voters can be the voice of change at the next election.

We have enough state employees. We do not need more state employees classified as District Attorneys. If County State's Attorneys are replaced with District Attorneys, there will be no local check and balance. Leave the County State's Attorneys, part time and full time, answerable to the local public that they serve.

The old cliché "if it ain't broke don't fix it" is heard often these days. My thought is that "if it ain't broke and it's not an expense to the state, leave it alone." There is no need for the Legislative Council to study this issue.

# MCKENZIE COUNTY STATE'S ATTORNEY

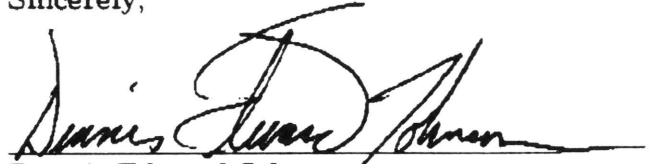
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Thank you for your consideration.

Sincerely,



Dennis Edward Johnson  
McKenzie County State's Attorney

DEJ:Resolution 4009