

South Dakota Veterans Commission Meeting
May 18-19, 2010
Conference Room – Wagner Community Memorial Hospital

The meeting of the South Dakota Veterans Commission was called to order at 10:00 am (CT) on Tuesday, May 18, 2010, by Chairman Hubbard. with the Pledge of Allegiance.

Chairman Hubbard noted that all legal requirements as outlined in SDCL 1-25-1 and 1-25-1.1 were met with regard to this meeting.

Roll Call - Chairman Hubbard asked staff to take roll call. Roll call indicated a quorum was present. Commissioners present were: Mike Birnbaum, Wade Hubbard, Bill Locken, Gene Murphy, John Noyes and Don Loudner.

Staff: Deputy Secretary Steve Harding, Division Director Charles Claussen, Public Information Officer Audry Ricketts, and Director of Finance Connie Hohn.

Review of Agenda – Chairman Hubbard asked if there were any additions or changes for the proposed agenda. Deputy Secretary Harding noted that Kris Breitag would not be present for the meeting. The agenda slot was filled with a report by Sarah Bierman from the U.S. Department Labor. A motion was made by Commissioner Murphy, seconded by Commissioner Birnbaum, to approve the agenda with the amendments noted. Motion carried.

Consideration of Minutes – Chairman Hubbard asked the Commission how they wished to handle the March 15, 2010, Commission meeting minutes. A motion was made by Commissioner Locken, seconded by Commissioner Noyes, to approve the March 15, 2010, Commission meeting minutes as presented. Motion carried.

Recognition of Paul Evenson – Chairman Hubbard asked the Commission to join him in recognizing Paul Evenson. Commissioner Gene Murphy read the Commission's commendation. Commissioners thanked Paul and extended their best wishes. Mr. Evenson congratulated Noyes on his appointment to the Commission and thanked the Commission for this recognition and noted he cherished his time on the Commission.

County Veterans Service Officers Association Report – Chairman Hubbard called on Roy Farabee, VSO for Charles Mix and Gregory Counties. Farabee welcomed the Commission to Charles Mix County and thanked the Commission for their role in assisting Veterans. Farabee then provided an update for the South Dakota Veterans Service Officers Association. He noted that the VSOA would like to be included in all events that focus on the veterans issues. Jack Soulek (past county commissioner for Charles Mix County) thanked Roy for the job he has done for the veterans of Charles Mix County. Soulek thanked Commissioners Loudner and Murphy for their efforts to secure

DAV transportation for the veterans in Charles Mix County. He also thanked Commissioner Loudner for his efforts in securing the Wagner CBOC.

Veterans Service Organizations Reports – Chairman Hubbard opened the floor for reports from the Veterans Service Organizations.

Paul Evenson provided the report on behalf of the South Dakota American Legion. He noted that staff and the Commander had prior commitments and could not be in attendance at this meeting. Evenson reported on the membership drive, the national commander's visit to South Dakota, and the upcoming state convention June 17-20 in Spearfish. Evenson shared the Legion's concern with federal government not adhering to veteran hiring preferences. He noted that it is the American Legion's position that claims should be worked by veterans. He shared concerns with how pension maintenance claims are being handled in St Paul and that they are being brokered out because St Paul can't handle them. Evenson noted that the Sioux Falls regional office does an excellent job and should be handling the pension maintenance claims. Evenson encouraged the state to hire veterans as well. Commissioner Locken asked the Congressional staff to note that the PMC issue needs to be fixed. He noted that claims are now taking over a year to get action and that Congress needs to put pressure on the PMC. Claims need to be adjudicated and handled in one location and in a timely manner. A question arose whether South Dakota claims are being handled in Sioux Falls. Commissioner Birnbaum thanked Rod Martens for his term in office and his presence at Commission meetings - Commissioner Hubbard echoed the recognition.

DAV – Commissioner Murphy updated the Commission on their recent convention and the new slate of officers elected. Murphy noted that the DAV has purchased a new van for Rapid City. Murphy noted support that the DAV has received from the congressional offices. He concluded his report by briefing the Commission on the "Salute to the Troops" program.

PVA – Commissioner Murphy briefed the Commission on PVA activities, including their appreciation luncheon, annual bowling event, walleye tournament, and upcoming pheasant and big game hunts.

Native American Indian Veterans – Don Loudner updated the Commission on national issues relating to Native American Veterans and federal legislative activities. Commissioner Loudner briefed the Commission on the VA's adoption and approval of the headstone medallion. Commissioner Loudner shared his concerns with the eligibility date restrictions for the medallion. As it stands the medallion would be furnished in lieu of a traditional government headstone or marker for all deceased honorably discharged Veterans that died on or after November 1, 1990, and whose grave in a private cemetery is marked with a privately purchased headstone or marker. Commissioner Loudner requested that the Commission pass a resolution requesting that the date requirements be stricken from the criteria.

Congressional Reports – Chairmran Hubbard called on staff from the congressional offices to give their respective reports. Karen Kunse (Senator Johnson’s office), Benjamin Ready (Senator Thune’s office) and Eric Lahammer (Representative Herseth Sandlin’s office) briefed the commission on legislative issues that have been introduced and the status of respective legislation. Karen Kunse also briefed the Commission on the report to congress with regard to the feasibility of a new national veteran’s cemetery in southeastern South Dakota (copies of this report can be found on the SDDMVA website). Commissioner Loudner expressed his concerns with the report and noted that Veterans served for this country, not a state and not a region, and that cemetery logistics should not be based on population of a specific region. Commissioner Murphy expressed concerns with the ongoing backlog for processing benefits and encouraged all of them to work with their bosses on this issue. Commissioner Murphy thanked the congressional delegation and their staff for all that they have done for South Dakota’s veterans.

Department of Labor Report – Chairman Hubbard called on Sarah Bierman, Acting Director for the U.S. Department of Labor, Veterans’ Employment and Training Service. Bierman reported on the Jobs for Veterans State Grant, Disabled Veterans Outreach Program, Local Veterans Employment Representatives, Transition Assistance Program, Uniformed Services Employment and Reemployment Rights Act, Employer Support of the Guard and Reserve, Jobs for Veterans State Grants and Homeless Veterans Reintegration Program. Commissioner Murphy thanked Bierman for the DOL homeless grant funds. This report can be found on the SDDMVA website.

The Commission recessed for lunch at 12:00 noon.

The Commission meeting was called back to order at 1:07 pm.

Department Report - Chairman Hubbard called on Steven Harding, Deputy Secretary for the South Dakota Department of Military and Veterans Affairs. Harding introduced Department staff in attendance at the meeting, as well as Dale Bertsch from the Governor’s office. Harding then reviewed a written report that had been provided by Kris Breitag of the SFVAMC with regard to the Medical Foster Home Program. Concern has been expressed with South Dakota statutes with regard to the Foster Home program. Harding then asked the Commission to consider reviewing and amending SDCL 33-16-6 with regard to the number of Commission meetings per year. The Commission discussed budget concerns and meeting expenses, number of meetings needed and telephonic meetings. Deputy Secretary Harding then reviewed the written report from the South Dakota Department of Labor. This report can be found on the SDDMVA website.

Deputy Secretary Harding provided the Commission with a recap of the 2010 South Dakota Legislative Session with regard to legislation impacting and/or benefiting Veterans. Harding noted that the Executive Committee did not assign a summer interim committee to study the creation of a Department of Veterans Affairs as a cabinet-level department. However, the Executive Committee did direct LRC to write a white paper on the issue. This paper will be submitted to the Legislative Executive Committee for their review and consideration.

Harding then updated the Commission on the status of the Veterans homes for eastern and western South Dakota and the upcoming Veterans Summit on July 13.

Harding then introduced Charles Claussen, Division Director. Claussen briefed the Commission on the status of staffing levels, number of claims processed this month, and bonus monies distributed this month. Commissioner Murphy questioned if positions in the Claims Office could be filled from within without advertising.

Chairman Hubbard commended the South Dakota Department of Military and Veterans Affairs staff for their recent recognition for contributions to United Way.

State Veterans Home Report – Chairman Hubbard called on Superintendent Larry Wilcox for the State Veterans Home report. Superintendent Wilcox updated the Commission on the status of the Veterans Home. Wilcox shared his concerns with the current per diem rate. He noted that the VA formula for payment each year is not keeping up with Veteran Home costs. Specialized rehabilitative services such as, but not limited to, physical therapy, speech therapy, occupational therapy, and mental health services, pharmaceutical, physicians, dietary services and transportation costs have gone up 103.2% in the last ten years. Wilcox also noted that the State Veterans Home only receives per diem for Veterans and not for the spouses. He concluded by noting that the VA needs to meet its obligations and that the authority is there; the VA just needs to amend the rule.

Wilcox then reviewed a resolution with regard to per diem costs and asked for the Commission's support on this issue.

A motion was made by Commissioner Murphy, seconded by Commissioner Birnbaum, to support the resolution submitted by Superintendent Wilcox. Motion carried.

WHEREAS, State Veterans Homes were founded for soldiers and sailors following the American Civil War, and have ably served veterans for nearly 150 years; and

WHEREAS, under Title 38, United States Code, the Department of Veterans Affairs (VA) is authorized to make aid payments to States maintaining State Veterans Homes; and

WHEREAS, currently there are 140 State Veterans Homes as member institutions of the National Association of State Veterans Homes (NASVH), in all States and in Puerto Rico, on a daily basis providing hospital, skilled nursing, rehabilitation, long-term care, dementia and Alzheimer's care, domiciliary care, respite care, end of life care, and adult day health care, to 28,500 veterans and their dependents; and

WHEREAS, Title 38, United State Code, authorizes VA to make per diem payments to the States for Veterans residing in State Veterans Homes, and the State Veterans Home program is recognized as the lowest-cost among all nursing care alternatives used by VA; and

WHEREAS, Title 38, United States Code, authorizes VA to pay a per diem payment up to 50 percent of the national average cost of care in State Veterans Homes; and

WHEREAS, recognizing the growing long-term health care needs of older veterans, the State Veterans Home program will increasingly serve a vital purpose and will continue to provide the lowest cost alternative for veterans needing long-term care in the future.

NOW, THEREFORE, BE IT RESOLVED, that the South Dakota Veterans Commission supports a VA per diem payment of not more than 50 percent of the national average cost of providing care in a State Veterans Home, as authorized by law.

Wilcox then reviewed SDCL 33-18 with the Commission and recommended suggested changes for this chapter.

Continued Review of South Dakota Codified Law – Chairman Hubbard requested that the Commission continue with their review of South Dakota Codified Law. After considerable discussion; the Commission suggested the following changes be made. Strikethroughs are deletes and underlined verbiage is new language to insert.

33-18-4. Local management of home by superintendent--Nominees--Duties--Qualifications of superintendent. The Department of Military and Veterans Affairs shall provide for the local management of the State Veterans' Home by the appointment of a superintendent. The Veterans' Commission shall provide to the adjutant general a minimum of two nominees ~~but not more than five nominees~~ for appointment to the position superintendent of the State Veterans' Home to be appointed pursuant to § 33-1-15. At the adjutant general's discretion, the adjutant general may consider one or more additional candidates for the position of superintendent. The adjutant general shall appoint a nominee or a candidate to the position of superintendent at the adjutant general's discretion. The superintendent shall be the executive head of the veterans' home ~~and shall devote full time to the duties of such office.~~ The superintendent shall be a citizen of the United States, a resident of South Dakota and an honorably discharged veteran as defined in § 33-17-1.

33-18-6. Appointment of subordinate employees (Repeal)

33-18-10. Contributions by pensioned members--Maximum contribution required. ~~Any~~ Every member of the State Veterans' Home who receives a pension, compensation, or gratuity from the United States government or sufficient funds from any source of more than fifty dollars a month above contributions toward the care of any dependents, shall be required to contribute to the member's maintenance, care, or support while a member of the home. The contributions shall be determined on such basis as ~~by~~ the secretary of military and veterans affairs may decide, including consideration of the members net worth and may not exceed the cost of support of members at the home as determined by the secretary of military and veterans affairs. Payment of these amounts shall be made first to the fullest extent possible from sources of income other than pensions or compensation paid by the Veterans Administration.

33-18-10.1. Definition and application of net worth. As used above and throughout this Chapter, unless the context otherwise plainly requires, the term “net worth” means the net value of the assets of the veteran and his or her surviving spouse or dependents. It includes such assets as bank accounts, stocks, bonds, mutual funds and any property other than the veteran’s residence and a reasonable lot area. There is no set limit on how much net worth a veteran and his or her dependents can have. The decision as to whether a member’s net worth is excessive depends on the facts of each individual case. All net worth should be reported and the Superintendent will determine if the assets are sufficiently large that housing the veteran at the State Veterans’ Home is not warranted or that the member could pay a higher rate of rent, but no more than actual cost of care. Department of Military and Veteran Affairs needs-based programs for the Michael J. Fitzmaurice South Dakota Veterans Home are not intended to protect substantial assets or build up an estate for the benefit of heirs.

33-18-11. ~~Payment of monthly charges by certain members with specified assets.~~ If a member of the State Veterans' Home accumulates more than ten thousand dollars in cash assets or the member’s net worth substantially increases while a resident at the state home, the member shall pay a monthly charge determined by the secretary of military and veterans affairs.

33-18-12. Payment by member and spouse with specified combined assets. If any veteran and spouse accumulate more than fifteen thousand dollars in cash assets or the member’s net worth substantially increases while both are in residency at the State Veterans' Home, they shall pay a monthly charge determined by the secretary of military and veterans affairs.

33-18-20. Apportionment of member's income to dependents. Any member of the State Veterans' Home who ~~receives a pension or compensation and who~~ has a dependent spouse or minor children ~~shall deposit with the superintendent immediately on receipt of the pension or compensation check one half of the amount~~ living outside of the Home shall be required to provide one-half of their income from pension or compensation for the support of the member’s dependents. The amount deposited with the superintendent shall be sent at once to the spouse if the spouse is ~~The spouse or minor children will be considered dependent if they are dependent upon the spouse's own labor or others for support, or, if there is no spouse, to the conservator of the minor children if dependent upon others for support and the spouse’s own income is less than 150% of the current Federal Poverty Level.~~ The spouse or minor children will be considered dependent if they are dependent upon the spouse's own labor or others for support, or, if there is no spouse, to the conservator of the minor children if dependent upon others for support and the spouse’s own income is less than 150% of the current Federal Poverty Level. The superintendent, if satisfied that the member's spouse has deserted the member, or is of bad character, or is not dependent upon others for support, may pay the money deposited as provided in this section to the guardian or conservator of the dependent minor children. The amount provided for dependent’s support will be deducted monthly before the member’s maintenance rent is calculated.

33-18-22.1. Admission of Eligible Veterans. A veteran who is eligible as provided in 33-18-22 is not guaranteed admission to the State Veterans’ Home. The Superintendent may decline admission after considering the availability of rooms and the

criminal history.

33-18-29. Admission of veterans with sufficient means. The superintendent may, if there is room for all dependent applicants and members, admit and allow to remain in the State Veterans' Home, persons who have substantial net worth or sufficient means for their own support, care, and maintenance, but are otherwise eligible to become members of the home, on payment of the cost of their support.

~~33-18-30. Denial of admission to mentally ill, inebriate, or addicted person. No person may be received or retained in the State Veterans' Home who is mentally ill, is an inebriate, or is addicted to the use of drugs.~~

Superintendent Wilcox suggested the SDCL 33-18-15 and 33-18-16 be repealed. After considerable discussion, Chairman Hubbard asked that no action be taken on this until he can research this issue.

The Commission then reviewed definitions of "Veteran" and "Wartime Veteran". The Commission directed Chairman Hubbard to utilize language from the Idaho and North Dakota examples and draft language for the Commission's consideration at the October Commission meeting.

The Commission reviewed some of the miscellaneous statutes and had no suggestive changes.

Chairman Hubbard then briefed the Commission on how to proceed with compiling the suggestive changes, informing interested parties, accepting comments, taking final action and drafting the legislation.

Commission recessed at 5:30 pm.

The Commission meeting reconvened at 8:00 am on Wednesday, May 19, 2010, and opened with the Pledge of Allegiance.

Chairman Hubbard asked staff to take the roll. Roll call indicated a quorum was present --Commissioners in attendance were: Gene Murphy, Don Loudner, Bill Locken, Mike Birnbaum, John Noyes and Wade Hubbard.

Chairman Hubbard requested that a letter of heartfelt thanks be forwarded to the Wagner Community Memorial Hospital for their outstanding hospitality extended during the Commission meeting.

Veterans Affairs Reports – Chairman Hubbard called on Peter Henry, Director of VA Black Hills Health Care System. Henry updated the Commission on staffing issues, budget, equipment purchases, program updates and initiatives, primary and surgical care

trends, extended care, rehab, neurology services, home based care, mental health services, OEF/OIF veterans, women veterans and outreach activities.

Chairman Hubbard then called on Paul Bockelman, Director of the Sioux Falls VA Medical Center. Bockelman updated the Commission on staffing issues, budget, equipment purchases, program updates and initiatives, primary and surgical care trends, extended care, rehab, neurology services, home based care, mental health services, OEF/OIF veterans, women veterans, outreach activities, telephone care, dental care and the CBOCs.

Chairman Hubbard called on Candice Cummings from the Sioux Falls VA Medical Center. Candice briefed the Commission on the VA's homeless programs, Justice Outreach, transitional housing, use of vouchers and incarceration.

Old Business – Chairman Hubbard asked the Commission if they had any old business to bring before the Commission. There being no old business, the commission moved on.

New Business – Chairman Hubbard asked the Commission if they had any new business. Chairman Hubbard reviewed a request he had received from Paul Gremse with regard to supporting legislation on benefits for certain incarcerated veterans. After considerable discussion, a motion was made by Commissioner Locken, seconded by Commissioner Murphy, to adopt the following resolution in support of legislation on benefits for certain incarcerated veterans. Motion carried.

WHEREAS, veterans are presently denied their VA medical benefits while in custody of a county in a detention facility awaiting trial; and

WHEREAS, the U.S. Department of Veterans Affairs interprets a 1976 Supreme Court decision as authorizing it to suspend health benefits for these veterans and such a VA policy completely violates the presumption of innocence until proven guilty; and

WHEREAS, the fifth amendment of the United States Constitution guarantees every American shall not be deprived of life, liberty, or property, without due process of law; and

WHEREAS, this VA policy costs counties across the nation millions of dollars for the medical care of such not yet convicted veterans who have earned these health benefits through their service to our nation; and

WHEREAS, the National Association of Counties has drafted federal legislation compelling the VA to change its policy and extend benefits to veterans who are arrested, but not yet convicted of a crime.

NOW, THEREFORE BE IT RESOLVED that the South Dakota Veterans Commission, assembled in Wagner, South Dakota on May 19, 2010, goes on record as supporting the federal legislation cited above to change VA policy to guarantee every veteran is afforded all benefits to include medical while confined by a local government but not yet convicted of a crime. The South Dakota Veterans Commission strongly encourages Senators Johnson and Thune

to co-sponsor the applicable drafted legislation located below and Congresswoman Herseth-Sandlin is encouraged to sponsor a companion bill in the House. The delegation is then encouraged to support said legislation on the floor of the United States Congress. Furthermore, the commission urges the Veterans of Foreign Wars and American Legion's Departments of South Dakota to pass a similar resolution at their annual state conventions held in June 2010.

A motion was made by Commissioner Murphy, seconded by Commissioner Birnbaum, to support the "Medallion Memorial" program, but to request removal of date specific language from the requirements. Commissioner Loudner removed himself from the vote due to conflict of interest. Motion carried.

CBOC Tour – Chairman Hubbard called on Dennis Rucker, Yankton Sioux Tribal Veterans Service Officer. Rucker welcomed the Commission to Wagner and walked the Commission through the process it took to get the Wagner CBOC completed. During this process the VA worked with HIS, Tribal leaders, VSOs, Veteran's Organizations, congressional delegation and local leaders. Paul Bockelman thanked Rucker for his dedicated efforts to this CBOC project. Commissioner Birnbaum thanked Rucker for his dedication.

Commissioner Murphy made a motion, seconded by Commissioner Noyes, to adjourn. Motion carried and the meeting adjourned at 10:30 am, and the Commissioners and staff toured the Wagner CBOC.

Wade Hubbard, Chairman