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# Utah Advisory Council on Intergovernmental Relations

Representative Ray Nielsen, Chairman  
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Mayor Carole Scott, Second Vice

Michael E. Christensen, Executive Director

## 1990 Utah ACIR Summit Conference

### MANDATES AND COOPERATION: THE SPECTRUM OF OPTIONS IN OUR FEDERAL SYSTEM

August 16, 1990

Salt Lake County Government Center  
North Building, Main Floor, Commission Chambers  
2001 South State, Salt Lake City, Utah

#### **WELCOME - Ray Nielsen, State Representative District #69 and Chairman UACIR**

Representative Ray Nielsen, Chairman, welcomed everyone. He explained that ACIR is a commission with legislators, mayors, county commissioners, state officials and a citizen; who advise the governor and other agencies. Representative Nielsen introduced the topic of the conference and turned to Michael Christensen to introduce our keynote speaker.

Michael E. Christensen introduced Dr. John Kincaid, the Executive Director of the National ACIR located in Washington, DC.

#### **KEYNOTE ADDRESS - John Kincaid, Executive Director National ACIR**

There are presently 29 states that have an ACIR organization. Mandates from Federal to State and State to Local is an important issue. A new era in the Federal system began in the 1970s. In the past it was assistance oriented, now it is coercive. Federal Government has turned to regulatory tools as well as states.

Trends in the intergovernmental systems:

- Federal aid from 26.5% to 18% today
- Shift in grant in aid from places to persons (i.e. welfare and medicaid)
- Rise in conditions - cross cutting/cross over sanction (i.e. 55 mph speed limit)

There has been a rise in Federal court orders. Since 1789, Congress has enacted about 351 explicit preemption statutes. Some 187 of these have been enacted only since 1969. In other words, 53% of explicit preemption has occurred in the last 10% of our constitutional history. Preempt authority establishes standards and mandates states.

There are four different definitions of mandates:

- direct order
- prohibition
- action that limits or places requirements
- cost to one government induced on another government

Sources of mandates include: constitution, statutes, court decisions, administrative mandates. Why is there such a rise of mandates? Federal and state governments are facing fiscal constraints. Another source is judicial activism of federal and state courts. Supreme court decisions (i.e. Garcia v. San Antonio on transportation and South Carolina v. Baker)

Individual Rights Revolution. Public supports many of the new mandates by its concepts and support for such issues as individual rights.

Burdensome mandates: restrict local revenue raising authority, unfunded mandate, replace state priority with local, processes (administrative process) instead of result oriented, and are ambiguous or unclear.

Cooperative mandating policy should include:

- comprehensive inventory and be kept up to date
- mandate review program to monitor and repeal unnecessary or outdated mandates for example, Massachusetts auditor can recommend repeal
- Make sure it is clear
- Emphasize results not the process (allow for local flexibility)
- Sunset provision
- Local officials involved
- Appeals process
- Use state ACIR as forum
- Mandate as a last resort
- Fiscal notes process on impact of local government (prepared early before legislative process)

Unfunded mandates and question of reimbursement. Constitutional is better than statute. Voter initiated is better than statute.

### **Response - Howard Nielson, U.S. Congressman 3rd District**

One of the first resolutions when I was a state representative that we sent to congress was that we prefer block grants to categorical grants. The block grant gives us the amount and what the results should be. The categorical grant has strings attached and tells exact detail of what we have to do. The Federal Government wants to give exact details. They want to hold onto the purse strings.

Secretary Bell cut out 33 categorical grants and put them as block grants. He fired the directors of the categorical grants. The Federal Government told him he could not do that. They should wait two years to see if the local governments liked it. They kept 33 people on for two years, basically doing nothing.

We start off labelling products. There are mandates that Alaska cannot sell oil to Japan. Several states can't do offshore drilling.

Welfare reform - Utah had a single parent program. The Federal Government said they have to do the same with two parent families. Utah felt that if there were two parents, one could go out and earn a living. Utah was forced to change their formula.

Fixed site amusement parks - The Federal Government regulates traveling carnivals, which they should because of them crossing state lines. But fixed sites should be regulated by the states. Currently, fixed sites are attached to the "consumer product safety" bill.

CUP has mandates. It started off as a federal project for irrigation and drainage. Now calls for 35% cost share. The state has to come up with some money now.

Attitude in congress has been: "We pay the bills, therefore, we should control." The fact is they can't pay their bills. It runs deficits, prints extra money, raises indirect tax in form of inflation.

**- Norman H. Bangerter, Governor**

I believe strongly in cooperative approaches to government. Last April, I met with State agency managers and directed them to work together and to develop partnerships with all appropriate federal, local and private entities to increase effectiveness in serving the public.

Issues of Concern in Federal State-Relations include Federal Mandate Problems: Medicaid - Over the past two years the federal government has legislated increased services through the state/federal cooperative program of Medicaid. Although the federal government pays a sizeable share of the cost, these additional mandates have forced states to come up with significant new funds to pay for priorities established solely at the federal level. Utah's cost in new state dollars for these two years has been \$10.3 million. We also must fund another \$5 million in new state dollars every year just to keep up with mandatory increases in inflation and usage by those eligible for the program. Transportation - Utah, like other states, heavily relies upon the Federal Highway Trust Funds to preserve and expand the interstate and other state highways. We strongly argue that the Federal Highway Trust Funds, which are primarily generated by fuel taxes, should be dedicated solely to the support of highway programs. Proposals are before Congress to use an increase in the Federal Gasoline Tax to reduce the national deficit. Increasing this federal tax for deficit relief would reduce the ability of states to generate needed transportation funds through their motor fuel tax.

The BLM and the state, have recently adopted a more cooperative process of coordination. An example is the Slickrock Resource Management Plan for an area outside of Moab. The City of Moab, Grand County, and the State of Utah have joined with BLM and the University of Utah to pursue a National Outdoor Theater project by developing a unique Arts and Recreation Area.

Areas in State-Local Relations where cooperation should be noted: Local Government Budget Hearings - This past year my budget office worked with the counties in allowing them to present a detailed budget request on their health and human service issues. The counties were given a hearing equal to any of my state agencies in order to allow them to explain their needs. Reducing the transfers out of the Transportation Fund - One of the great concerns of local government during my administration has been the using of Transportation fund revenues for purposes other than direct transportation expenditures. The transfers have been reduced from over \$31 million in 1987 to about \$19 million in 1991. On a percentage basis the reduction has gone from 20% of revenue to 10% of revenue.

Opposing the sales tax on food - I have let the citizens of the state know where I stand on the sales tax on food issue. This is a tax reduction that would hurt local governments.

ACIR and Earthquake Coordination - I have asked our own ACIR to look at and coordinate the study of earthquake legislation so that both state and local government can have meaningful earthquake legislation at a reasonable cost.

In conclusion I would hope that this meeting can provide some indication of the areas of greatest concern for local governments. We must realize, however, that we will never solve all our problems. Nor will we please everybody with any particular solution.

**- Bruce King, Cache County Executive**

Mr. King compared the state as a parent and counties and cities as offspring. Counties are the least favored child. They have one source of revenue, the property tax; and cities have three sources: property, sales, utilities taxes. Inequities need to be recognized.

Mr. King recommended two proposed actions: 1) Legislature - require state mandates to provide revenues so the cost of the mandate is borne by the entity that creates the mandate, and 2) diversification of county resources. Counties need to be given more flexibility in dealing with their revenue problems.

Mr. King appreciates ACIR taking up this challenge.

**- Joe Jenkins, Mayor Provo City**

Mayor Jenkins mentioned some of the problems that cities have to take care of i.e. sewer, dog bites, roads.

Mayor Jenkins gave an example of one recent mandate the state imposed this year - Underground Storage Tank Act. Underground storage tanks are not just a problem with service stations but cities and counties. Also, it will cost Provo over \$200,000 just to get into compliance.

Another example of mandates have to do with water and groundwater which has to be tested for 100 different elements. The number of elements will double in a year.

The problem is legislators look at intended results but don't step back to look at intended consequences. The League of Cities and Towns is asking for a task force to study funding for local government. This study should help look at the funding problem which is part of the mandates issue.

**Panel Discussion with Speakers**

Question by Governor Bangerter - What is cost of state mandates to local governments? Michael Christensen stated that nobody has a good answer to that. Governor Bangerter asked if we could find that out. Michael Christensen stated that ACIR could look at the possibility of getting such a study done.

Question by Commissioner Pete Coleman - Federal Highway reauthorization emphasis is on population. Seems like public land states should try to get public land money back in the formula. Response by Congressman Nielson - House attempts to put on population basis. Senate has been able to stop the bills. The area most directly affected should get the most say.

Statement by Mayor Carole Scott - Thanks to the state for what they do right: like the CDBG water resources, sewer lagoon program. With their money and expertise, they give help with local governments, especially small local governments a great deal. Thanks also to ACIR for what it is doing in the area of cooperation and coordination.

Bruce King asked John Kincaid to elaborate on blanket revenue sharing he mentioned in his speech. John Kincaid stated that New York moved to general state aid as well as general revenue sharing. Also Virginia has fiscal equalization program. California has a mandate reimbursement program.

Senator Fordham stated that from a legislators point of view, if ACIR, League of Cities and Towns, and Utah Association of Counties would work together to come to legislature, there would be more impact than when they come individually.

Michael Christensen concluded that the most important idea coming out of the panel discussion was the suggestion by Governor Bangerter to study the mandates issue and document the number, kind and costs of state mandates on local governments. ACIR will have to take a look at the issue.

**The meeting was adjourned for lunch.**

### **UTAH EARTHQUAKE LEGISLATION**

The afternoon session was called to order at 1:10 p.m.

Michael Christensen stated the draft earthquake legislation is not ready, will review in September.

Lee Allison distributed "Utah's State Earthquake Program: ACIR Earthquake Task Force" dated August 16, 1990. The task force will meet next Monday, August 20th. He also distributed "California at Risk: Steps to Earthquake Safety for Local Government".

Representative Ray Nielsen stated that the task force will organize, review recommendations from the Legislative State and Local Affairs Committee. Then they will give further instructions.

Commissioner Pete Coleman moved the council adjourn. Mayor Carole Scott seconded the motion. The meeting was adjourned at 2:00 p.m.

  
Orella Smith Carver, Secretary