

## MINUTES

### MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on February 1, 1991,  
at 10:00 a.m.

#### ROLL CALL

**Members Present:**

Dick Pinsoneault, Chairman (D)  
Bill Yellowtail, Vice Chairman (D)  
Robert Brown (R)  
Bruce Crippen (R)  
Steve Doherty (D)  
Lorents Grosfield (R)  
Mike Halligan (D)  
John Harp (R)  
Joseph Mazurek (D)  
David Rye (R)  
Paul Svrcek (D)  
Thomas Towe (D)

**Members Excused:** none

**Staff Present:** Valencia Lane (Legislative Council).

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Announcements/Discussion:** Chairman Pinsoneault announced that Vice Chairman Yellowtail would be chair for the day.

#### HEARING ON SENATE BILL 154

#### Presentation and Opening Statement by Sponsor:

Senator Dennis Nathe, District 10, said SB 154 attempts to clarify who has legislative immunity and who does not. He advised the Committee the first major change is on page 1, line 19 which deletes "includes" and inserts "means", and defines a legislative body. He said line 24 defines what a legislative act means, and page 2, subsection (b) covers impeachment powers of the Montana Legislature, further defining what is not included. Senator Nathe explained that lines 7-10 further define "legislative body" and section 3 contains a retroactivity clause.

Senator Nathe stated that Mary Fitzpatrick's case in Anaconda was publicized last week after the most recent Supreme Court ruling

on legislative immunity. He said Chief Justice Turnage summed the decision up on page 33 of the Court's opinion, "The Legislature, and not the courts, has the proper forum to decide who has legislative immunity".

Senator Nathe told the Committee section 2 has a substantiability clause addressing the woman with tuberculosis who moved into the state, and because nothing was done, infected 30 other people. He said those residents received compensation and were made whole, and that it strikes him as grossly unfair that Mary Fitzpatrick was denied any compensation even though she was most severely damaged.

### Proponents' Testimony:

Noni Aki-Linder, Missoula, told the Committee that until today she was only a statistic. She explained that in 1979 a tuberculosis carrier came into Missoula, and that she was one of 30 exposed people who were put on medication. Ms. Linder said she became very ill from the medication and had to be hospitalized. She stated that doctors again administered the medication and she became so ill that she suffered permanent central nervous system damage.

Ms. Linder advised the Committee she is a Hawaiian by birth, and had learned from birth to help herself. She said she complied with all of the doctors, the state, and the county, doing all that was asked of her. Ms. Linder stated she pushed herself to the point of passing out with pain, and now wears back and leg braces. She explained that administration of an anesthetic during a November 1990 visit to the dentist caused her to go into anaphylactic shock, and said she can no longer take any medication of any kind. Ms. Linder added that she carries syringes with her to counteract shock.

Ms. Linder told the Committee that until July 1990 she worked with the county and the state to provide all of her medical records going back to age 24. She stated she did not want to be the way she is, and that it was a great effort to even come to Helena to testify. Ms. Linder said she could not believe the immunity injunction when all other claims were paid.

Ms. Linder commented that she has been in Montana since 1961, and has learned that when Montanans are wrong they admit it. She stated she wants "her day in court" and believes only the Legislature can do that. Ms. Linder said that as a former Health and Social Services Administrator for the State of Alaska, she learned about the attitudes of people. She said she was asking for fairness for all concerned, and that in 1985 she wrote the entire Legislature regarding the responsibility of people who injure others. Ms. Linder stated she is very angry because she has been pursued by bill collectors and had to stop therapy because the therapist was concerned about getting paid. She told the committee she is one of 50,000 remaining one-half to pure Hawaiians, and that

she had to sell her small piece of land in Hawaii to pay medical bills.

Monte Beck, Bozeman attorney, told the Committee he has represented people injured by negligent acts. He stated that 2-9-101, MCA, has prevented injured parties from redress, and said it is unfair and disturbing to all citizens across Montana. Mr. Beck provided an article from the Bozeman Chronicle in which the last paragraph says the Legislature should look at clarifying legislative immunity and at making workers responsible for their actions (Exhibit #1). He said the high court has gone too far.

Mr. Beck said SB 154 clarifies what the Legislature decided years ago. He stated that last session legislators were given copies of who was intended to be protected, and said no one disputes that the Legislature should be immune. He added that this was changed in the 1988 Supreme Court decision.

Mr. Beck stated SB 154 declares the difference between a legislative and an administrative act. He provide an example of a school disaster, and asked if parents should have to pay medical costs for their children. Mr. Beck asked if government were not supposed to be the type of citizen a private citizen should look to. He stated he hoped the Committee would consider retroactivity in the past part of the bill, and said people have been harmed in the past three years who could still be viable.

Mr. Beck asked the Committee to recognize section 18 of the Montana Constitution, and read from prepared testimony (Exhibit #1a).

Phil Campbell, Montana Education Association, said he believes the bill should pass, and return original intent to the law. He advised the Committee there is a problem with school boards who say, "You can't sue us, we're immune.", and now the Supreme Court decision says one can sue if the party being sued has insurance. He urged the Committee to favorably consider the bill.

Carl Hatch, Helena attorney, stated his support of the bill, and said he believes the issue has divided the Supreme Court. He advised the Committee the Helena landfill has leached harmful substances into the land of adjacent property owners who have no remedy for damages.

Theresa Bird, Montana Federation of Teachers, said she echoed statements made by Phil Campbell in support of SB 154.

Ben Everett, Anaconda attorney, representing Mary Fitzpatrick against the school district, said he believes the law must be clarified.

Jim Jensen, Montana Environmental Information Center, referring to the testimony of Carl Hatch, said a lot of bills have been introduced dealing with landfill issues. He stated this is a

very serious problem and people need to know who is responsible. He suggested that retroactivity as addressed on page 3, line 4, be amended to clarify what "reduced to judgement" means.

Mike Sherwood, Montana Trial Lawyers Association, stated that the retroactivity portion of the bill could be passed and not "blow the doors wide open" (Exhibit #2).

Mary Fitzpatrick, Anaconda, read from prepared testimony in support of SB 154 (Exhibit # 3).

### Opponents' Testimony:

Alec Hansen, Montana League of Cities and Towns, and General Manager, Montana Municipal Insurance Authority, stated that language clarifying legislative immunity is desperately needed. He stated that the Authority operates on the basis of paying fairly on claims, but he believes there are areas where it is impossible to control liability exposure.

Mr. Hansen proposed amending the bill by excluding monetary damages where remedy is available (zoning or building permits, for example); immunity for defects in public buildings when they are known, but dollars are not available to maintain those public facilities; and immunity from acts arising out of 911 emergency services, except for gross negligence. Mr. Hansen said he was not proposing blanket immunity, and that he believes there is an answer. He told the Committee he hopes they can find that answer.

Bruce Moerer, Montana School Boards Association, told the Committee he did not advocate negligence by employees. He said the schools do not have legislative authority and their policies are unique to each district. He stated he would appreciate clarification of school board policy.

Senator Dick Pinsoneault, provided a copy of a letter from Home Insurance Company, and said that he was Chairman of School District 28 when a matter arose, and that later on each member of the Board was named individually in the suit. Senator Pinsoneault read the third paragraph from the Home Insurance Company letter which stated that any amount in excess of \$1 million would be the responsibility of each individual. (Exhibit #4).

Senator Pinsoneault stated it is unethical for an attorney not to pursue for return to wholeness. He stated that as a proponent, he believes the two women who testified should be made whole. Senator Pinsoneault commented that the fear is in how to make compensation. He said that in the early days the king was immune, and that if retroactivity were applied on a broad base, it might be a hollow victory if limits apply.

Jim Wysocki, City of Bozeman, said the Committee needs to find a way to balance this situation, and suggested that they look at Alec Hansen's amendment in order to establish fairness.

David Hull, City Attorney, Helena, said this is a policy decision to be weighed, and that he is concerned whether there are enough dollars to go around. He stated Helena does not have the money to fix its sewers, and asked if the City would be sued. He commented that if the bill is fully retroactive it will open a Pandora's box. Mr. Hull agreed that, "These people may need redress through the Legislature" (Exhibit #5).

Jesse Long, School Administrators of Montana, said he did not condone the negligence of school personnel, but was concerned as to how school board policy fits into the act.

Questions From Committee Members:

Senator Svrcek asked Senator Nathe if he were serious about the retroactivity clause, and, if so, why. Senator Nathe replied he was, and said people who have been severely damaged have no compensation. He commented that if the language could be tightened up, it would be fine with him, but Noni Linder and Mary Fitzpatrick need to be helped. He stated it was not his intent to open "the whole liability insurance thing".

Senator Crippen asked Alec Hansen to repeat the amendments he proposed during his testimony. Mr. Hansen replied that immunity would apply to unknown defects in public buildings and to those which could not be repaired because of competing financial demands. He stated that the Municipal Insurance Authority "owns two houses because every time it rains they flood, and the City of Helena can't pay to fix them".

Senator Crippen commented that under the proposed amendments, there won't be enough money to pay for damages such as those to Mary Fitzpatrick. He stated he believed there would clearly be negligence in that case. Alec Hansen replied he was not sure this amendment would apply in the Fitzpatrick case.

Senator Crippen further commented that the way the amendment reads is "pretty bad". Alec Hansen replied he is interested in legitimacy, and was talking about not being able to fix all the streets in a given city in one year.

Senator Mazurek asked how the bill would focus on retroactivity, and what the rationale is for going back to 1977. Mike Sherwood replied his written testimony "lays out that it is not the intent to open the doors of 1977". He stated that in looking at the Attorney General's opinion (attached to testimony), he believes that it is "in effect talking 1988".

Senator Mazurek asked if a clause may need to be drafted to address claims spoken of during this hearing, creating a "window of opportunity". Mike Sherwood replied he would have no objection to language concerning 1988, but it would be redundant to the Attorney General's opinion. He said Noni Linder's attorney came believe the Crowell v School District #7 of Gallatin County decision may save

her claim. He added that Mary Fitzpatrick came believing there was no way to save her claim.

Senator Pinsoneault asked Ben Everett if the Legislation has a cap, and if the Committee would be "falling into a trap where they may lose the war in the end". Mr. Everett replied that at least being able to partially recover would be better than nothing.

Senator Towe asked if "legislative" should have been put before "act" on page 2, line 8 of the bill. Alec Hansen replied it is a proposed exclusion on monetary damages when their is remedy of action through monetary appeal. He said that if the District Court turns the decision of a zoning board around, people would not be entitled to monetary damages.

Senator Towe asked why what's good enough for the state is not good enough for cities and towns (2-9-305, MCA). Alec Hansen replied he was not in a good position to answer such a specific question.

Senator Svrcek asked Ben Everett if even with this legislative proposal, it would still not be a legislative act, if the front door of the gymnasium were not used. Mr. Everett replied he did not know if the amendment proposed would do this.

Senator Svrcek asked where the fault does lie if this scenario were adopted.

Senator Yellowtail noted that a fax was received from the Ravalli County Commissioners in opposition to SB 154 (Exhibit #6).

#### Closing by Sponsor:

Senator Nathe stated the bill leaves the responsibility to the Legislature. He said that in pages 31-33 of the most recent Supreme Court decision, the Chief Justice said the Legislature is the forum to set forth the rule of law. Senator Nathe added that this bill is an issue of fairness.

### HEARING ON SENATE BILL 196

#### Presentation and Opening Statement by Sponsor:

Senator Tom Beck, District 24, told the Committee that in Summer 1989, the prison director asked the Department of Institutions (DOI) Director, Curt Chisholm, not to send any more prisoners to Deer Lodge. Senator Beck stated Mr. Chisholm had no legal authority to put this cap on, and that the bill would provide authority to temporarily withhold admission to the prison.

Senator Beck explained that as soon as an individual is sentenced, he or she becomes a ward of DOI, and thus DOI will

reimburse costs of county incarceration for prisoners who cannot be sent to Deer Lodge.

Proponents' Testimony:

Representative Bob Thoft, Stevensville, said he has been involved with the prison since 1983. He told the Committee here has been a devoted effort to find alternatives, but still the flow of prisoners can't be handled. He said overcrowding creates an unsafe condition, and that SB 196 is good legislative relieve until more facilities can be built.

Dan Russell, Director of Corrections provided a letter from the Flathead County Attorney in support of SB 196 (Exhibit #7). Mr. Russell said there are 1127 inmates this date, and that both the mens' and womens' prisons are overcrowded, and that the number of female inmates has tripled since 1980. He said access to Warm Springs facilities' meets emergency needs, and asked the Committee to support SB 196.

Jim DuPont, Flathead County Sheriff, said he supported the bill with a minor amendment that in the event a county's jail is over maximum, a prisoner can go to another jurisdiction. He said the amendment would include medical costs being paid by the state.

Ed Hall, Administrator, Montana Board of Crime Control, said he knows the prison it out of balance with the justice system right now. He stated that SB 196 helps maintain that balance, and addresses flexibility. Mr. Hall explained this is not too different from legislation on juvenile detention (HB 300), and that the concept of SB 58 is also embodied by this bill.

Sheriff Bob Petorovich, Butte, said he was concerned with the medical aspect of the bill, as discuss during earlier testimony.

Opponents' Testimony:

There were no opponents of SB 196.

Questions From Committee Members:

Senator Grosfield asked about lines 5-7 on page 2, and what would happen if two jurisdictions did not come to mutual agreement. Senator Beck replied that if they did not agree, a different jail would have to be found.

Senator Mazurek asked Dan Russell if the law for early release, passed several years ago, were not enough. Mr. Russell replied that early parole eligibility will be amended this session, but is still in effect. He said that during the past six years 112 persons were released yearly, and that 5 are pending now.

Senator Towe reiterated Senator Grosfield's question. Dan Russell replied that when a cap was imposed they had to pay daily

charges from \$10 to \$65, and that if they are unable to arrive at a mutual decision they may have to pay a rate set by the Legislature. He said that rate is now \$38 per day, and that he was concerned with unjust enrichment for some counties.

Senator Towe asked Dan Russell if he objected to the state paying medical expenses. Mr. Russell replied he had no problem with it, and would get together with Senator Towe right away.

Closing by Sponsor:

Senator Beck advised the Committee an interim committee looked at every possible avenue to deal with the prison before invoking this emergency measure. He said he is willing to try all other means, and that he would see to the amendment.

HEARING ON HOUSE BILL 114

Presentation and Opening Statement by Sponsor:

Representative Dave Brown, District 72, said HB 114 is a straight-forward bill requiring institutions to notify certain law enforcement personnel of escapees from institutions. He explained that page 1, lines 16-18 adds language to ensure mental health confidentiality. He said "and" was changed to "or" on page 2, line 7, and that page 2, lines 10-13 were suggested by DOI during hearing in the House. Representative Brown advised the Committee subsection 3 on page 2, line 17 was added by Representative Clark on the floor, and that he was proposing an amendment to subsection (e) on page 2, lines 14-16 (Exhibit #9 ).

Proponents' Testimony:

Sheriff Bob Petorovich, Butte, read from prepared testimony in support of HB 114 (Exhibit #10), and said he supported the amendment.

Opponents' Testimony:

There were no opponents of HB 114.

Questions From Committee Members:

Senator Towe asked Representative Brown what the amendment is that is not already in the language of the bill. Representative Brown replied that a criminal is not normally sentenced to an institution. He said subsection (e) further restricts and requires a judge to let a facility know that he wants to be notified.

Senator Towe asked if that were "conjunctive and not disjunctive". Representative Brown replied it was.

Senator Mazurek asked if this were necessary in view of bail hearings.

Senator Doherty asked Representative Brown if he meant to include people who have served their time. Representative Brown replied he did, but he was less concerned with individuals at Montana State Prison, as communities are notified when felons get out. He said the bill tries to protect families and/or communities by forewarning them.

Senator Doherty asked if subsection 3 would be an excessive delegation of power to a neighborhood watch group, for instance. Representative Brown replied that Billings and Great Falls are good examples, as their jails are in residential districts, and that this was the reason for Representative Clark's amendment.

Senator Towe asked Sheriff Petorovich if that were a slight to sheriff's. Sheriff Petorovich replied the language was added for the purpose of protecting victims, but he could live without it.

#### Closing by Sponsor:

Representative Brown advised the Committee he would not oppose elimination of subsection 3 of the bill. He said Senator Lynch would carry HB 114.

### EXECUTIVE ACTION ON SENATE BILL 51

#### Motion:

#### Discussion:

John Connor, Department of Justice, said his department had no problems with the DOI amendments.

Valencia Lane reported that the DOI amendment returns that section of law to existing language.

#### Amendments, Discussion, and Votes:

Senator Mazurek made a motion that the DOI amendments to SB 51 be approved. The motion carried unanimously.

John Connor proposed striking section 63 on page 47 of the bill, and said it would have the effect of leaving the present law as it is.

Senator Towe made a motion that section 63 be deleted. The motion carried unanimously.

Senator Pinsoneault made a motion that the counties assume the cost of autopsies on page 14, section 11, subsection 4, lines 6-12. John Connor explained that the proposed amendment would remove the impact of the fiscal note, and said when the Commission was working on this issue it did not discuss cost. The motion made by Senator Pinsoneault carried unanimously.

John Connor suggested striking lines 9-10, subsection 4, in section 174, on page 156 of the bill. He explained it would read, "is admissible". He said the existing language is essentially contrary to federal law if used for involuntarily obtained confession for impeachment purposes.

Senator Towe made a motion that the section referred to by John Connor be returned to its original language. John Connor added that he thought striking the entire subsection would leave the issue up to case law rather than addressing it statutorily. The motion carried unanimously.

John Connor advised the Committee that lines 11-13, section 227, on page 200, now allow filing of petitions for post-conviction relief at anytime. He said language in the bill provides a period of five years, and that this is impossible for defense as well as prosecution. John Connor stated that county attorneys had HB 198 reduced from five years to one year, and then tabled the bill in order to deal with the issue in this bill. He said he believes it is better to leave the language as it is in the law now, and advised the Committee that Jennifer Anderson, Office of the Attorney General, is on the "habeas corpus" task force.

Senator Pinsoneault said he knew of no one who has suffered from this provision being in the law. John Connor added that cases go on and on, and said he was concerned that matters could go on interminably. He said that if not reduced to one year, it will remain at five years.

Senator Mazurek made a motion that existing stricken language be reinserted on line 13, section 227, page 200. Randi Hood stated she did not believe five years is inappropriate, as most petitions are against defense lawyers. The motion made by Senator Mazurek carried unanimously.

**Recommendation and Vote:**

Senator Mazurek made a motion that SB 51 DO PASS AS AMENDED.

Senator Crippen commented that there is substantial expansion of the ability of a spouse to testify, on page 175, section 198. John Connor replied that is a change, but it is consistent with the majority of states. He explained there are exceptions, such as

confidential communication, and that this is followed in about 50 percent of the states.

Senator Crippen further commented that it "stands in my mind the spouse cannot testify against a spouse". Jennifer Anderson, Office of the Attorney General, replied there is a significant expansion and that the amendment provides a spouse may testify and makes Montana law consistent with the majority of states. She said the language tries to address situations when a spouse is charged with a crime against the other spouse, and added that no state puts a prohibition on absolute spousal communication.

Senator Towe stated he was concerned from a societal matter in limited protection. He asked if the bill were not saying a spouse could be forced to testify with regard to what happened, and not what was said. Senator Towe commented that he would like to change this language.

Senator Pineseault commented the he liked how the bill was written. John Connor stated that spousal privilege is established by common law and case law to protect communications between spouses and to preserve the sanctity of the marriage. He said the Commission view that a crime does not go with the sanctity of the marriage.

Mike Sherwood told the Committee he was a member of the Commission, and said there was a lot of give and take in the bill. He stated he did not believe the language in the bill now is radical, but if a marriage were broken up and charges were made by the wife of abuse against children, he would allow the wife to testify. Mr. Sherwood said he believes that exception is in statute now.

Senator Towe stated he was worried about where the county attorney brings the spouse in by subpoena and asks about something that is not a crime.

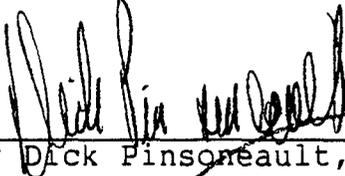
Senator Pineseault suggested that the bill be amended on the floor. He commented that a Commission worked on the bill, and said that since no one likes the bill it must be pretty good. Senator Crippen agreed with Senator Pineseault.

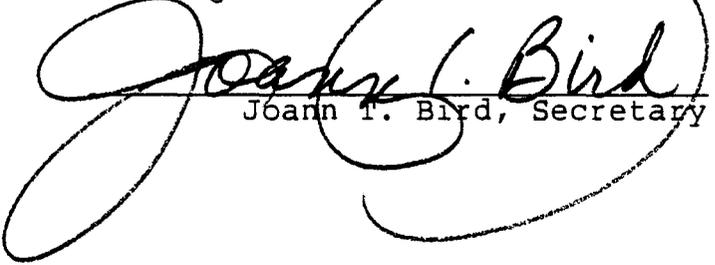
Senator Mazurek asked what kind of printing problem would be created if the bill were amended on the floor. Valencia Lane replied there would be substantial printing costs because of the size of the bill.

Senator Rye suggested passing on the bill for the day. Senator Mazurek withdrew his motion.

ADJOURNMENT

Adjournment At: 12:22 p.m.

  
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Senator Dick Pinsonneault, Chairman

  
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Joann T. Bird, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY COMMITTEE

52<sup>nd</sup> LEGISLATIVE SESSION -- 1989

Date 1 Feb 91

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NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsonneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.



EX #1  
SB 154

2-1-91

**OUR OPINION**

# The king can do wrong

## *High court has gone too far in granting government immunity*

**M**ontana government — from school boards up to the governor's office — is perfect and can do no wrong to the people of the state.

At least that's how the courts increasingly are treating various government boards and agencies in dismissing lawsuits filed by aggrieved citizens.

Government immunity from lawsuits stems from a 1985 Montana Supreme Court ruling that absolved the Gallatin County Commission in a civil dispute over subdivision regulations.

From that fairly minor case has sprung a multitude of decisions granting government immunity from lawsuits filed by fired employees, injured public school students, citizens who fell on city sidewalks, and businesses in contract disputes.

Judges are applying the high court ruling broadly — so broadly that citizens with legitimate beefs against government are being denied their day in court.

Supreme Court judges, said frequently dissenting Justice John C. Sheehy, "have not only excused the king; they have excused the king's men, his feudal lords and all their vassals."

State legislators, wrestling with the rising cost and difficulty of buying liability insurance for government, passed a law that government entities should be immune from suits unless there is damage resulting from use of a vehicle.

The law is being interpreted to let government officers and work-

ers, from legislators to janitors, off the hook when their actions damage someone.

Limited immunity from suits is necessary for government to be able to function. Elected government officials must have some protection from lawsuits or they will never be able to make tough decisions and set policy. They can't be looking over their backs for a trial lawyer coming at them every time they vote.

With liability insurance premiums soaring — some towns have had trouble even finding an insurance company to cover them — some steps were necessary to help state and local government.

But the courts are going beyond the Legislature's intent on government immunity. So-called "frivolous" lawsuits are being tossed out along with serious complaints, such as those alleging personal injury and wrongful discharge.

Government carries liability insurance to cover just such situations. But immunity decisions let insurance companies off the hook. Ironically, taxpayers who foot the bill for insurance premiums cannot collect when they are damaged by government.

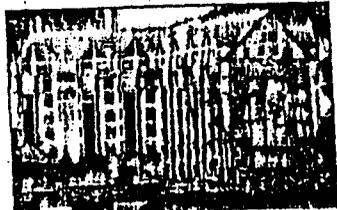
The problem seems to result from the lack of distinction between "legislative acts" that set policy and "administrative acts" that carry out the policies.

The next Legislature should look at clarifying government immunity laws to protect officials who vote on policies, but make government administrators and employees who hire workers, coach athletics or plow sidewalks responsible for their actions.

As everybody knows — except perhaps the courts — government is not perfect.

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building on track charges workers



page 31



'High stress' or no, new mothers overjoyed with their new 'jobs'

page 17

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Bozeman Daily

# CHRONICLE

SUNDAY, MAY 10, 1992 BOZEMAN, MONTANA

## You can't sue the government

### Montana Supreme Court finding agencies immune from liability

By NATALIE K. PHILLIPS  
Chronicle Staff Writer

Right now, government employees can be fired, someone traipsing across county or state property can be injured and students can be hurt on faulty public school playground equipment and they probably are not going to get their day in court.

"It is open season on people," Bozeman attorney Monte Beck said sarcastically of the latest batch of decisions by the Montana Supreme Court regarding government agencies' liability.

"If you are a government entity, go ahead and ignore safety," said Beck, who filed an appeal Friday in an injury case involving a school district. "There is no reason to pay insurance premiums anymore...We are back to the era of 'the king can do no wrong.'"

"It's a hot issue spawning a whole new debate about the immunity issue," said Gallatin County Attorney Mike Salvagni.

An untold and rapidly increasing number of lawsuits against school districts and city and county governments across the state are being tossed out as District Court judges follow the latest thinking espoused by the state's high court.

It started in 1985 and has snowballed in

(The justices) have not only excused the king; they have excused the king's men, his feudal lords and all their vassals."

— Justice Sheehy in dissent.

the past six months to where the Supreme Court has been upholding near blanket immunity for government agencies.

The law states that a government entity, its members, officers or any of its agents should be immune from lawsuits unless there is damage resulting from the use of a vehicle.

The Supreme Court is interpreting that to mean that everybody from legislators, city council members all the way down to janitors cannot be sued.

That was not the intent of the Legislature, counters attorney Beck. The intent was to protect elected officials who have to draft policies for the good of the community as a whole.

(More on Immunity, page 8)

Ex #1  
SB154  
2-1-91

8 BOZEMAN DAILY CHRONICLE, Sunday, May 13, 1990

# Injured-student case appealed to high court

By NATALIE K. PHILLIPS  
Chronicle Staff Writer

Pointing out that Bozeman School District carried liability insurance in 1983 to cover accidental injuries, a Bozeman attorney is taking his fight to recoup compensation for an injured student to the Montana Supreme Court.

Attorney Monte Beck filed an appeal Friday hoping to overturn a February decision by District Court Judge Thomas Olson that the school district, being a governmental entity, is immune from tort lawsuits.

Attorney Gig Tollefsen, who represents the school district, said that he had not yet seen the appeal, but he will file a response within the required 30 days. "I expect we will see a decision on this by the end of the summer," Tollefsen said.

Bush / from page 1

specifically covered physical education and swimming instructors. "I say that is a waiver," Beck said. "Our claim is well within that \$500,000 insurance limits."

Also, according to Beck, depositions from school board members at the time show that they carried the insurance for this type of accident and that they feel some duty to compensate someone if they are injured due to negligence on the part of the school.

Terry Crowell was 15 years old on March 1, 1984, and taking part in a mandatory physical education course when she was injured, according to her lawsuit. During a gymnastic ring exercise, Terry fell while trying to dismount. Her lawsuit states that she had no experience with the stunts she was told to do and the gymnastic instructor failed to have anyone spot her.

She fell and landed on her shoulders and neck. She smashed a vertebrae, Beck said. "It is a permanent injury, it can't be fixed." As she gets older, Crowell could be come humpback as a result of the injury, Beck said. The suit did not ask for a specific amount of damages.

# Immunity / from page 1

That does not mean government entities do not have to worry about how sloppily or carefully its employees perform, he added.

The law appears to distinguish between "legislative acts" and "administrative acts," according to Beck. Beck defines "legislative acts" as policy setting and "administrative acts" as the carrying out of the policies. The administrative acts should not be immune from lawsuits, Beck contends. But the Supreme Court is not distinguishing between the two, according to Beck.

"I think the Supreme Court has gone beyond what the Legislature intended," said Rep. John Mercer, R-Polson. On the other hand, Mercer added, "There are some sound public policy reasons to think that their interpretation is good... (such as) government is for benefit of all people and is also regulated by democratic institutions, therefore it is wise to keep costs as low as possible."

"It is a two-sided issue," said Gallatin County Commissioner Dave Pruitt. "With all immunity removed you have frivolous lawsuits." "The other side is if government does do something totally wrong, it should not be immune... I think we found with total immunity removed, that that wasn't right. So the Supreme Court is putting some back. Who knows where it is going to end up."

But it is too early to start canceling liability insurance coverage, he added. "I just don't think it is stable enough to drop the insurance yet."

Rep. Dorothy Bradley, D-Bozeman, said, "You should not have a double standard. The idea of negligence in the public sector is not any different than the private sector."

"What is the difference between a privately owned building and a city building not being built properly and collapsing on someone?" she said. "Is it right that in one case you can have your day in court and the other you can't?" All lawyers and lawmakers asked where the issue was headed, predicted the same: back to the hands of the legislators.

"I think the statute could be clearer," added Rep. Mercer, who is an attorney. "The way it is now, it can be interpreted either way." "I don't think it is a legal issue," said County Attorney Sahravnig. "I think it is a political issue. It is a matter of policy to be set by the Legislature. Legally, I agree with the court's interpretation."

IN THE LAST three months, at least three suits naming the City of Bozeman, Gallatin County and Bozeman Senior High School have been dismissed as a result of the high court's ruling. In a city case dismissed last month by District Court Judge Thomas Olson, a woman sued the city of Bozeman and the Medical Arts Building after she fell on an icy sidewalk.

Judge Olson reluctantly dismissed the city from the suit pointing to the Supreme Court rulings but also noting that there is case law that suggests the city could be liable. In Gallatin County this week, a half-dozen other motions for dismissal leaning on the immunity issue

are pending, according to Sahravnig and Bozeman City Attorney Bruce Becker, both pointing out that they are in positions where, if it works as a defense, they are going to use it.

The Supreme Court votes have been mostly 5-2 or 4-3, according to Justice John C. Sheehy, who has consistently been one of the dissenting voices. In one of his dissenting opinions, Justice Sheehy wrote that "the justices) have not only excused the king, they have excused the king's men, his feudal lords and all their vassals."

IN 1972, THE state of Montana became the first in the nation to enact a constitutional provision requiring full governmental tort liability, thus eliminating the state's sovereign immunity, according to John A. Kutuzman, a second year University of Montana law student. Kutuzman has just written a Montana Law Review article called, "The King's Resurrection: Sovereign Immunity Returns to Montana," which criticizes recent Supreme Court decisions. It will appear in the spring edition of the law review due out in a couple of months.

In 1974, voters gave back a bit of immunity by passing a bill that allows the Legislature to make exceptions with a two-thirds majority in each house. Three years later, lawmakers cited skyrocketing insurance costs and passed an immunity package that set some damage caps and stated that "legislative bodies" that is a member, officer or agent of a legislative body, is immune from lawsuits if the suit stems from them just trying to do their job. There is no language defining what is an "agent."

The first chance the high court got at interpreting that language sprang out of Gallatin County. In 1985, W.D. Construction the suit claiming the county been negligent when it deviated from its own subdivision plat approval procedures.

The court ruled that the commissioners were immune from the suit because they were acting as a "legislative body" when they made that decision.

Three years later, the county upheld a dismissal in a Broadway County case where a county commissioner fired a county worker named James Bieber allegedly damaging county equipment. The two other commissioners later ratified Bieber's firing. Bieber sued for wrongful discharge.

The Supreme Court ruled that the firing was a "legislative act" since the decision was made by the board. Last year, the Supreme Court upheld a District Court decision involving the firing of Great Falls school janitor Yekki Peterson. She was fired by a district employee for refusing to empty 55-gallon trash cans into a dumpster claiming would create an unsafe workplace and violate public policy.

The district employee's action were later ratified by the school board. Like Bieber, Peterson sued for wrongful discharge. And like the Bieber case, the Supreme Court ruled the decision of the board was "legislative act," therefore the school district was immune from the suit.

Decisions in these cases, attorney Beck said, are what point a return to the time of "the king can do no wrong."

RECEIVED

JAN 1 1991

MONTANA LEGISLATIVE

Cx#1a  
SB 154  
1 Feb 91

ROSSBACH & WHISTON, P.C.  
ATTORNEYS AT LAW

*William A. Rossbach  
John B. Whiston  
401 North Washington Street  
P. O. Box 8988, Hellgate Station  
Missoula, Montana 59807*

(406) 543-5156

January 3, 1991

Valencia Lane  
Legislative Council  
Capitol Station  
Helena, MT 59620

RE: Bill Drafting Request (Legislative Immunity)  
LC0414

Dear Ms. Lane:

I understand from Karl Englund that he had the chance to chat with you briefly about the retroactivity concerns that have cropped up for the above-referenced bill drafting request. I have been able to do a substantial amount of legal research on this question and it is my conclusion that a bill amending and clarifying the legislative immunity granted by MCA 2-9-111 can be retroactive.

The basic principle in Montana law is that retroactivity is not implied. "No law contained in any of the statutes of Montana is retroactive unless expressly so declared." MCA 1-2-109. However, the Montana Supreme Court has stated that this only applies to substantive amendments. Procedural amendments, that is those affecting the remedy rather than the right can be retroactively applied without the express language in the legislative enactment.

A substantive law may be applied retroactively only when it is expressly so declared by the Legislature. Boehm v. Alanon Club, 222 Mont. 373, 378, 722 P.2d 1160 (1986); Pendrod v. Hoskinson, 170 Mont. 277, 552 P.2d 325 (1976). The implication is that there is no bar to retroactive application of a substantive law except on constitutional grounds.

There has been some concern expressed over the application of Article XIII Section 1, Subsection 3 of the Montana Constitution. It does not appear to me that this language would render the

Ex 1a  
SB 154  
1 Feb 91

retroactive application of the proposed legislation unconstitutional. First, by its very language, this section implicates to nonmunicipal corporations, that is business entities. The language of subsection 3 refers to transactions that would be the likely activities of such a corporation. The tenor of the Supreme Court decisions interpreting this section and its predecessor have all referred to "impairment of contracts" analyses. The proposed retroactivity of this bill drafting request would not impair any contracts.

In fact, it is more consistent to view this amendment as a procedural clarification rather than a change in the substantive law. The Missouri Supreme Court addressed an identical issue in Wilkes v. Missouri Highway and Transportation Commission, 762 S.W.2d 27 (Mo. 1988) (En. Banc). I am enclosing a copy of that decision for your review.

Briefly, the Missouri court held that an act abrogating sovereign immunity does not create a new cause of action, but rather only provides a remedy for a pre-existing case of action. It is thus procedural and may be retroactively enforced even without a legislative expression to that effect.

In sum, there is no constitutional or statutory bar to the retroactive application of clarifications to the legislative immunity section. I would suggest the following applicability language: "[this act] is effective on passage and approval and applies retroactively to all causes of action." As I said before, I have looked into this in some depth. If I can provide any additional information to assist you in this bill drafting request, please let me know.

Very truly yours,



John Whiston

JBW/ms

encl.

CXNID, T # 2  
1 Feb 91  
SB154

Testimony of Michael J. Sherwood  
Montana Trial Lawyers Association  
Supporting Senate Bill 154

We support this bill for the reasons set forth by the other proponents. I would like to confine my testimony to two issues:

1. Can the legislature pass this bill retroactively?
2. What is the effect of retroactivity upon those cases that have gone to final judgment and those claims now barred by the statute of limitations.

Attached to this testimony is a copy of a memorandum prepared by John Whiston, counsel for Nani Linder, to Valencia Lane, staff counsel for this committee. That memorandum sets forth the propriety of enacting this legislation retroactively. In short, it states that the legislature has the power to do so.

Retroactive application would mean, however, that all cases previously filed and reduced to final judgment would not be resurrected. The language contained in the retroactive application clause specifically states this. In addition, all cases upon which the statute of limitations has run would likewise not be resurrected. See Opinions of the Montana Attorney General, Volume 42, Opinion No. 99 and the authority cited therein. The retroactive passage of legislation does not revive a cause of action to which the bar of the statute of limitations has attached.

Please vote "do pass" on Senate Bill 154, and please preserve the retroactive application clause contained therein.

M. Stenmark  
1 Feb 91  
Exhibit # 2a  
SB 154

January 31, 1991

Senator Richard Pinsoneault, Chairman  
Senate Judiciary Committee

Re: Senate Bill No. 154 - Clarification of  
Legislative Immunity

---

Dear Senator Pinsoneault:

This is to advise you and the other members of the Judiciary Committee of my support for Senate Bill No. 154.

As the former chief legal counsel of the State Tort Claims Division, and its predecessor agency the Insurance and Legal Division, I was instrumental in the drafting and administration of the Montana Tort Claims Act from the passage of the new constitution until 1985. This included that section of the Tort Claims Act codified as 2-9-111 which provides immunity from legislative acts and omissions.

In my capacity as one of the attorneys submitting this legislation to the legislature on behalf of the executive branch, it was clearly our intention that immunity be given to local government legislative bodies only for their legislative acts. In particular, the thinking at the time was that this involved all efforts in the preparation, drafting, debate, and passage of ordinances by city councils, as well as resolutions by boards of county commissioners. At no time during the debate on this legislation, or during the work by the joint senate and house judiciary subcommittee which examined the issue from 1975 to 1977, was there ever any discussion that executive actions of local government boards would be subject to immunity.

Indeed, given the Montana Supreme Court decisions during the past three years that have conferred sovereign immunity on virtually every type of executive action of a local governing board, we now see a resurrection of the very same dilemmas that gave rise to the constitutional debate concerning abolition of sovereign immunity in the first instance. For example, cheerleaders and students who might be hurt by defective facilities or negligent crowd control at a local school district sporting event have no right of recovery, while the very same injuries

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2-1-91  
SB 154

To: Senator Pinsoneault - 2 -

January 31, 1991

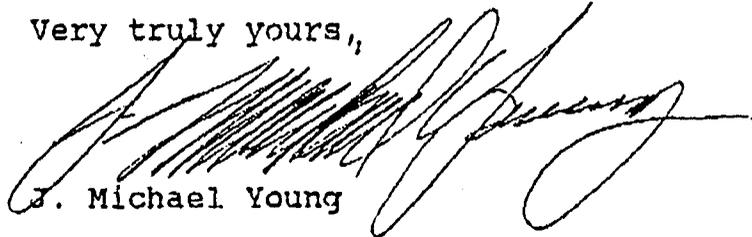
Re: Senate Bill No. 154

occurring at a unit of the Montana University system will allow full recovery. The same is true for any claims that arise out of premises maintenance or the actions of staff in carrying out the executive functions of the board. Surely, neither the members of the legislature or the constitutional convention delegates would agree that the recovery for injuries sustained by our citizens should be dependent on whether one was injured by a county employee or a state employee!

In my opinion, if one were to poll the members of the joint House and Senate Judiciary subcommittee who thoroughly examined these issues between the 1975 and 1977 sessions of the legislature, I doubt that you could find one participant who foresaw this dichotomy in our law.

For these reasons I urge you and the other members of the committee to pass Senate Bill No. 154.

Very truly yours,



J. Michael Young

JMY/pes

EXHIBIT 5  
1 February 91  
SB 154

STATEMENT OF MARY FITZPATRICK

Re: Senate Bill 154

My name is **MARY FITZPATRICK**. On March 4, 1985, I went to the Memorial Gymnasium in Anaconda, Montana, to pick up my son from wrestling. My son was involved in the AAU Wrestling program. When I went to pick up my son, it was dark and it was a typical winter night. It had snowed that morning. One of the conditions for allowing the AAU wrestlers to use the Memorial Gymnasium for practice was that the alley entrance to the gymnasium be used. Parents and participants were directed by school authorities not to use the well lighted and well maintained front or side entrances. The alley entrance to the gymnasium was poorly lighted and maintained. In order to gain access to the gymnasium, I had to walk down a very steep set of concrete stairs. The stairs were cracked, chipped and rounded. The janitor had yet to clean the stairs of accumulated ice and snow despite the passage of several hours of time. I fell down those stairs that night. My injuries were severe. I have had to have surgery for the removal of two of my discs in my low back. I have suffered severe pain, incurred tremendous medical expenses and I have been unable to return to work since my injuries. My condition is permanent. I brought an action against the School District so that I could pay my medical expenses and receive compensation for

EX. 3  
2/1/91  
SB 154

some of the losses that I suffered. The School District had a million dollars of insurance coverage. My lawsuit was dismissed because the District Court and the Montana Supreme Court said that the Schood District was immune from suit. They said that the failure to maintain the stairway, the failure to provide lighting, the failure to clean the stairs and the failure to allow me to use the front entrance was a legislative act. I don't understand. Our schools and gymnasium are for use by the public. The public is invited to activities in these buildings. If someone is injured as a result of negligence, the School District, or its insurance carrier, should be responsible. My husband and I are struggling to pay the enormous medical expenses we have incurred. Without my income, we are barely able to make ends meet. My entire life has changed as a result of my injuries. Yet, an insurance company was able to walk away from its responsibility and laugh all the way to the Bank. Please do not allow this to happen to anyone else.

DATED this 1st day of February, 1991.

  
\_\_\_\_\_  
MARY FITZPATRICK

THE HOME  
INSURANCE  
COMPANY

MAR 02 1990



EXHIBIT #4  
1 Feb 91

SB154

6000 GREENWOOD PLAZA BLVD.  
GREENWOOD VILLAGE, CO 80111

303-740-1900

February 26, 1990

R.J. Pinsoneault  
Attorney at Law  
P.O. Box 250  
St. Ignatius, MT 59865

RE: Claim #: 441-L-708191/151  
Insured: School District No. 28  
Claimant: Morigeau  
Date of Occurrence: 1/11/86

Dear Mr. Pinsoneault:

We have received the Summons and Complaint in the lawsuit of Morigeau et al v. School District No. 28 et al.

The case has been referred to Jim Vidal and John Gordon of Murray, Kaufman, Vidal & Gordon, P.O. Box 728, Kalispell, Montana, 59403. Their phone number is 406-755-5700.

The Complaint prays for an unspecified amount of damages. The policy of insurance with The Home Insurance Company is for \$1,000,000 combined single limit. If damages should be awarded in excess of the policy limits, Home Insurance would not be liable for the excess that would be your responsibility.

We invite your attention to this so that you can consider whether you wish to retain an attorney at your own expense to join in representing you. If so, we would be glad to have your attorney work with Mr. Vidal and Mr. Gordon in preparing and defending this lawsuit. Your representation by Mr. Vidal and Mr. Gordon is limited to preparation for and defense of the case at trial. The matter of settlement remains within the discretion of Home Insurance pursuant to the policy provisions. It is possible that you may disagree with the approach taken by Home Insurance. If so, you or your personal attorney should communicate directly with me.

The attorney appearing for you will require your assistance from time to time. If the case goes to trial he will meet with you in advance for a detailed discussion. In the interim you should not discuss this case except with your attorneys or an authorized representatives of The Home Insurance Company.

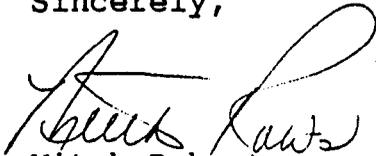
Exhibit 4

2-1-91

SB 154

If new information concerning the case should come to your attention, please contact your attorneys and Home Insurance Company immediately.

Sincerely,



Mitch Roberts  
Claims Dept.

MR/ht132

cc Harold McPherson  
School District No. 28  
St. Ignatius, MT 59865

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John R. Gordon  
MURRAY, KAUFMAN, VIDAL & GORDON & OGLE, P.C.  
Office and Post Office Address:  
22 Second Avenue West, Suite 4000  
P. O. Box 728  
Kalispell, Montana 59903-0728

Telephone: (406) 755-5700

Attorneys for Defendants

MONTANA TWENTIETH JUDICIAL DISTRICT COURT, LAKE COUNTY

JEREMIAH MORIGEAU, a minor, )  
by JACKIE SPIDEL and CHARLES )  
MORIGEAU, as his parents and )  
general guardians, and JACKIE )  
SPIDEL and CHARLES MORIGEAU, )  
Individually, )

Case No. DV-89-13

Plaintiffs, )

vs. )

LAKE COUNTY SCHOOL DISTRICT )  
NO. 28 OF ST. IGNATIUS, )  
MONTANA, AND THE BOARD OF )  
TRUSTEES OF LAKE COUNTY )  
SCHOOL DISTRICT NO. 28 OF )  
ST. IGNATIUS, and RICHARD )  
PINSONEAULT, JOHN McCLURE, )  
JR., RANDALL CORDIS, LOIS )  
DELANEY and THERIN "BUD" )  
MAHLE, individually and as )  
members of the Board of )  
Trustees, HAROLD McPHERSON, )  
Superintendent of Lake County )  
School District No. 28, )  
DOUGLAS REISIG, Principal of )  
Lake County School District )  
No. 28, and GLEN CATES, as )  
Custodian/Employee of the )  
St. Ignatius High School, )

ANSWER

NOTE: DATE OF INCIDENT WAS  
JANUARY 11, 1986.

Defendants. )

Defendants allege:

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FIRST DEFENSE

1. The complaint fails to state a claim against defendants upon which relief can be granted.

SECOND DEFENSE

2. As to the allegations of paragraph I of the complaint, defendants admit that Lake County School District No. 28 of St. Ignatius Montana, and The Board of Trustees of Lake County School District No. 28 of St. Ignatius, are governmental entities with their principal place of business in Lake County, Montana. Defendants further admit that each of the individual defendants are residents of Lake County, Montana.

3. As to the allegations of paragraph II-1. of the complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore deny the same.

4. As to the allegations of paragraph II-2. of the complaint, defendants Lake County School District No. 28 of St. Ignatius and The Board of Trustees of Lake County School District No. 28 admit that prior to the alleged accident certain boards were removed from the bleachers in the St. Ignatius High School gymnasium; allege the removal was a part of customary and standard maintenance procedure, and deny each and every other allegation contained in paragraph II-2; all of the other defendants deny each and every allegation contained in paragraph II-2.

5. As to the allegations of paragraph II-3. of the complaint, defendants Lake County School District No. 28 of St. Ignatius and The Board of Trustees of Lake County School District

ex. 4  
2-1-91  
SB154

1 No. 28 admit they had a duty to provide safe seating in its  
2 gymnasium, and deny each and every other allegation contained in  
3 said paragraph II-3.; all of the other defendants deny each and  
4 every allegation contained in paragraph II-3.

5 6. As to the allegations of paragraph II-4. of the  
6 complaint, defendants are without knowledge or information  
7 sufficient to form a belief as to the truth of the allegations  
8 contained therein and therefore deny the same.

9 7. As to the allegations of paragraphs II-5, 6, 7, 8, and  
10 9 of the complaint, defendants deny each any every one.

11 8. As to the allegations of paragraphs III-1, 2, 3, and 4,  
12 of the complaint, defendants are without knowledge or information  
13 sufficient to form a belief as to the truth of the allegations  
14 contained therein and therefore deny the same.

15 9. As to the allegations of paragraph III-5 of the  
16 complaint, defendants Lake County School District No. 28 of St.  
17 Ignatius and The Board of Trustees of Lake County School District  
18 No. 28 admit they had a duty to provide safe seating in its  
19 gymnasium, and deny each and every other allegation contained in  
20 said paragraph III-5; all of the other defendants deny each and  
21 every allegation contained in paragraph III-5..

22 10. Defendants deny each and every allegation contained in  
23 paragraphs III-6, 7, 8, 9, 10, and 11 of the complaint.

24 FIRST AFFIRMATIVE DEFENSE  
25 (Contributory Negligence)

26 11. Defendants affirmatively allege that the injuries, if  
27 any, mental and physical pain and suffering, if any, and economic  
28 loss, both past, present and future, if any, sustained by

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plaintiffs, are solely and proximately the result of the negligence of plaintiffs and that such negligence exceeds in all respects any negligence attributed to defendants.

SECOND AFFIRMATIVE DEFENSE  
(Intervening cause)

12. Plaintiffs' injuries and damages, if any, were not proximately caused by any act or omission, if any, of defendants and further, any such injuries and damages were solely caused by the superseding and intervening negligence of persons or entities other than these defendants, and therefore these defendants are not liable to plaintiffs.

THIRD AFFIRMATIVE DEFENSE  
(Statutory Immunity)

13. At all times material to the allegations of the complaint, the defendants Lake County School District No. 28 of St. Ignatius and The Board of Trustees of Lake County School District No. 28 were and are now a school district created and established under the laws of the State of Montana; that all of remaining individual defendants are either members of the Board of Trustees or officers, agents or employees of said school district or board who were acting with the scope and course of that status; that as such each of the defendants is immune from suit for any act or omission of the said school district, its members, officers or agents pursuant to Section 2-9-111, M.C.A.

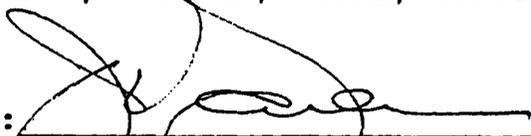
WHEREFORE, having fully answered the complaint, defendants pray that judgment be entered in favor of said defendants and against plaintiffs and that said defendants have and recover their

2x. 4  
2-1-91  
SB154

1 costs incurred herein, together with such other relief as to the  
2 court may seem just.

3 Dated April 4<sup>th</sup>, 1990.

4 MURRAY, KAUFMAN, VIDAL, GORDON & OGLE, P.C.

5  
6 By:   
7 John R. Gordon  
8 Attorneys for Defendants

9 CERTIFICATE OF MAILING

10 I, Connie J. Walsh, one of the legal secretaries of the law  
11 firm of MURRAY, KAUFMAN, VIDAL, GORDON & OGLE, P.C., do hereby  
12 certify that on April 4, 1990, I mailed a true and correct copy  
13 of the foregoing document, first class postage prepaid, to:

14 Rebecca T. Dupuis  
15 Attorney at Law  
16 P. O. Box 249  
17 Polson, Montana 59860

18 Teresa Melcher Thompson  
19 Attorney at Law  
20 210 No. Higgins, Suite 326  
21 Missoula, MT 59802

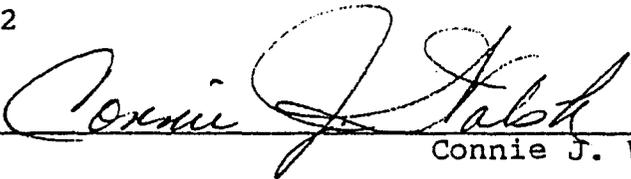
22   
23 Connie J. Walsh  
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Exhibit #5  
SB 154  
2-1-91

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 1<sup>st</sup> day of February, 1991.

Name: David N. Hull

Address: P.O. Box 534  
Helena, Mt 59624

Telephone Number: ~~City of Helena~~ 443-6030

Representing whom?  
City of Helena

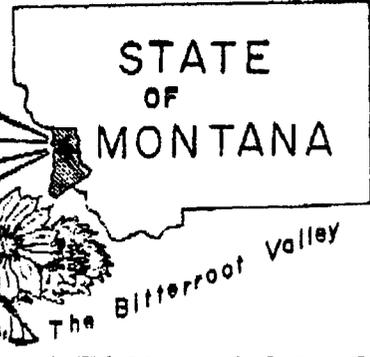
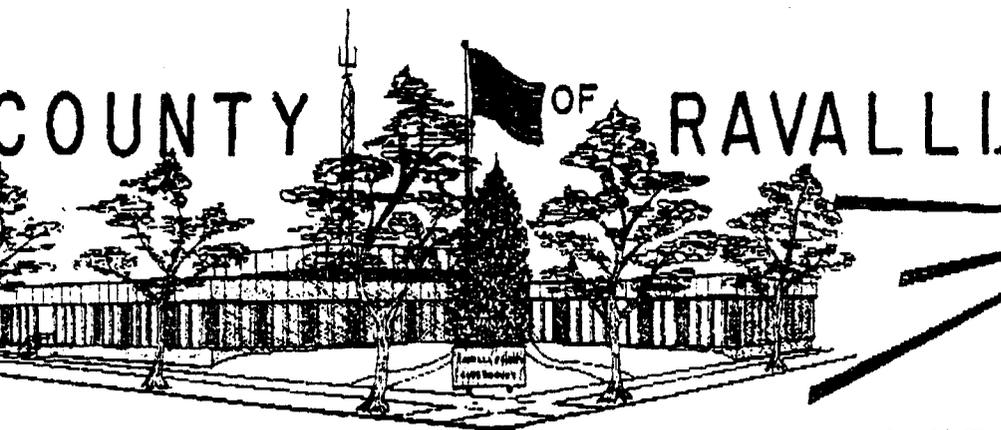
Appearing on which proposal?  
SB 154

Do you: Support?      Amend? ✓ Oppose? ✓

Comments:

The city should not be placed  
in a position of being sued - and using  
taxpayer dollars to respond to the suit -  
for actions that may occur as a result  
of the financial constraints placed upon  
the city by CI-105 or increasing Federal  
& State imposed duties. I support the  
amendments as proposed by  
Olec Hanson

1 Feb 91



HAMILTON, MONTANA 59840

Courthouse Box 5001  
February 1, 1991

Judiciary Committee  
Room 325  
State of Montana  
Capitol Station  
Helena, MT 59621

RE: SB 154 Clarify Legislative Immunity  
Hearing Room 325 10 AM

To Whom It May Concern:

For the record, the members of the BOARD OF COUNTY COMMISSIONERS, and the Ravalli County Attorney, Ravalli County, Montana would like to submit the following testimony regarding the above referenced bill. We unanimously OPPOSE SB 154 regarding the Clarification of Legislative Immunity. Please DO NOT PASS this bill.

Sincerely,  
BOARD OF COUNTY COMMISSIONERS  
Ravalli County, Montana

*Jerry L. Allen*  
Jerry L. Allen, Chairman

absent  
Steven D. Powell, Member

*Allen C. Horsfall, Jr.*  
Allen C. Horsfall, Jr., Member

SB 154  
2-1-91

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 7<sup>th</sup> day of Feb., 1991.

Name: Carl Hatch

Address: 39 Neill Ave.  
Helena mt. 59601

Telephone Number: 442-7830

Representing whom?  
Self - James & Kathy Sanders

Appearing on which proposal?  
SB 154

Do you: Support?  Amend?  Oppose?

Comments:  
my clients were not able to sue for  
long term damage to their real property  
which was damaged when pollutants from  
a landfill dump contaminated their water  
supply. The landfill was ruled to be  
an alter-ego of the County - Commission  
because all matters had to be authorized  
by the commissioners. They controlled what  
the landfill operators did or had the power  
to control, hence agency.

Office of the County Attorney  
Flathead County

EXHIBIT # 8  
SB 196  
Feb 9/

Kalispell, Montana 59903-1516

January 31, 1991

P.O. Box 1516  
Second Floor  
Justice Center  
(406)752-5300 - Ext. 241  
or (406)756-5618

TED O. LYMPUS, County Attorney  
JONATHAN B. SMITH, Chief Deputy  
DENNIS J. HESTER, Deputy  
RANDY K. SCHWICKERT, Deputy  
THOMAS J. ESCH, Deputy  
EDWARD CORRIGAN, Deputy

TO WHOM IT MAY CONCERN:

RE: PROPOSED LEGISLATION (DEPARTMENT OF INSTITUTIONS)

Please accept the following as a brief testimony in support of both an as yet unnumbered House Bill for an act entitled: "An act to revise the law relating to the sentencing of offenders to a correctional institution and sentencing offenders to the corrections authority of the Department of Institutions," and for Senate Bill 196 for an act entitled: "An act to provide for the confinement of persons committed to the Department of Institutions when a departmental correctional institution or system exceeds its emergency capacity." Having now served as a Montana prosecutor for over 15 years, I am well familiar with the corrections circumstances addressed by these two proposed pieces of legislation.

First, with respect to the proposed House bill and recognizing both the individuality of each convicted person and the nature of his or her criminal behavior as well as the sophistication of today's correctional institutions, it seems imminently reasonable that the offender be committed to the Department of Institutions, rather than to a particular institution within the Department, in order that the professionals within the Department might then be able to determine in the best interest of both the State and the defendant, where he or she ought properly to be actually placed.

As in the past, the sentencing court would, I am sure, make recommendations as to placement (as is often done now with respect to various matters such as chemical dependency treatment) and I am confident that, also as in the past, the Department would give due consideration thereto in its institutional placement process.

Concerning Senate Bill 196, I would submit that it provides an excellent workable mechanism to address a circumstance of temporary overpopulation at a correctional institution (and particularly at the men's prison) which history shows can and does occasionally occur and, as with the above-referenced House bill, I would urge its favorable consideration.

Ex. 8  
SB 196  
2-1-91

January 31, 1991  
Page Two

I appreciate this opportunity to be heard and thank you for your attention. If I can be of any additional information, please feel free to call upon me.



---

Ted O. Lympus  
Flathead County Attorney

Exhibit #9

BB 114

2-1-91

Amendment to House Bill 114  
Third Reading

Prepared by Department of Institutions, Corrections Division  
February 1, 1991

Page 2, Lines 14, 15, 16

Delete: "ANY JUDGE OR JUSTICE BEFORE WHOM THE PERSON APPEARED FOR ANY REASON IN RELATION TO A CHARGE OF HAVING COMMITTED A CRIMINAL OFFENSE."

Add: "A DISTRICT COURT WHICH SENTENCED OR COMMITTED THE PERSON FOR THE CRIMINAL OFFENSE OR WHO COMMITTED THE PERSON TO A HOSPITAL OR MENTAL HEALTH FACILITY AND WHICH COURT HAS REQUESTED THAT THE COURT BE NOTIFIED IN THE EVENT OF A RELEASE OR ESCAPE OF THE PERSON."

DATE 2-1-91

COMMITTEE ON Sen JUDICIARY

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Nani Linder		<del>513</del> 154	✓	
RON LINDER		154	✓	
Monte Beck	self	154	✓	
BEN EVERETT	self	154	✓	
MARY FITZPATRICK	self	154	✓	
David Hull	City of Helena	154		✓
MARK Richardson	City of Miles City	154		✓
Jim Wysocki	City of Bozeman	<del>513</del> 154		X
Gene Vuckovich	Anseonda/Deer Lodge Co	154		✓
Jim Jensen	MEIC	154	✓	
Ed Hill	MBCC	196	✓	
Dale Buttrick	M.S.P.O.A	196	✓	
Dale Buttrick	M.S.P.O.A	114	✓	
Jim Duroy	FLATHEAD SHERIFF	196	✓	
Dan Kusser	Corcoran Co	196	✓	
TOM FRANK	FLATHEAD Co SHERIFF & MSPDA	196	✓	
Phil Campbell	Mont. Ed. Assoc.	154	✓	
Teresa Reardon	MFT	154	✓	
Joe W Long	School Adm of MT	154		X
Bruce W. Moorer	M.S.B.A	154		X
Stan Bradshaw	Self	154	✓	
Carol Guter	Self + clients	154	✓	
Gordon Morris	MACO	154	196	154 X
Michael Sherwood	MTLA	154	✓	
Mardene Mallen	MMIA	154		✓
JAMES Tillotson	City of Billings	154		✓
		114	✓	