

MINUTES OF THE MEETING OF
HOUSE APPROPRIATIONS SUBCOMMITTEE OF ELECTED OFFICIALS
MONTANA HOUSE OF REPRESENTATIVES

February 4, 1977

8:15 a.m.

Supreme Court Chambers
State Capitol Building

The meeting was called to order by Chairman Lynch with Senator Lockrem excused and all others present. The subject for the hearing: Judicial Branch.

Mr. Gosnell explained that Ray Stewart, the Court Administrator, has submitted a revised budget, which all committee members have and which is slightly higher than the original budget. The Governor's office recommended a budget a little higher than the department's; but the budget requested by the Court Administrator would be adequate. While the analysts did not thoroughly review this budget as others, Mr. Dave Lewis of the Budget Office pointed out that there was a \$30,000 error in this budget from his office which was corrected. They basically took the current level plus some expansions.

There was a brief discussion of Senate Bill 71, which will raise the salaries of all elected officials, including judges. The Salary Commission puts the Chief Justice at \$42,000; the S.B. 71, \$40,000. Associate Justices are at \$41,500 by the Salary Commission and at \$39,000 by S.B. 71. District Judges are at \$40,000 by the Salary Commission and at \$35,000 under S.B. 71.

Patrick McKittrick, attorney from Great Falls and lobbyist for the Montana Judges Association, testified on behalf of the judiciary. He distributed a memorandum after his testimony; the following comments were not included in that memorandum: He emphasized the importance of preserving the integrity of the judicial branch of government and look at it as the independent entity that it is. In discussing the proposal to raise the filing fee from the present \$10 to about \$35, he said, for comparison, that Oregon's filing fee is \$90. The funds generated by the increased fee would more than cover the increase in salaries proposed by the Salary Commission. In response to a question by Senator Regan, Mr. McKittrick stated that an individual would not be precluded from filing if he could not afford the fee because he would be able under the law to file an affidavit in forma pauperis.

On behalf of the Teamsters Joint Council 23, Mr. McKittrick reported that they support the upgrading of salaries for the judiciary.

John Cavan, attorney from Billings and lobbyist for the Montana Judges Association, testified on behalf of the judiciary. The following comments are also supplemental to the memorandum. He asked the committee members to carefully consider the duties and responsibilities

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of the office; there is no public servant that has as much impact on our lives as a judge. He feels it is vital that we at least afford a pool of qualified people to assume that position. Government is in a real sense in competition with our economy in attracting qualified people. He reported that about 300 attorneys (1/3 of the attorneys in the state) earn in excess of \$45,000 a year; about 100 to 150 make in excess of \$60,000 a year. Every lawyer realizes that there are certain honors and powers that go along with being a judge and it isn't the salary that motivates someone toward this position. We want to get individuals at the time in their lives when they will be of the most service to the state. This would be someone who has been in practice for about 20 years, earning his highest at about that time in his life and also has the greatest responsibilities to his family; therefore, salary does become of great importance at that point. He felt the state has been extremely fortunate in the judges we have had, and wants to ensure that we continue to have the best qualified people possible in the judiciary. He emphasized that there is no criticism to be inferred from his remarks. The committee should keep in mind what would be in the best interest of the state, which he felt would be raising the salaries of the judges to the level of the Salary Commission's request.

Jim Murry, Executive Secretary of the Montana AFL-CIO, presented a prepared statement to the committee.

Chief Justice Paul Hatfield addressed the committee next. He reported that there are 13 judges currently who are over 60 years of age; they don't have to retire at 70 years of age, but will lose retirement benefits if they don't. Judges are replaced at an average rate of 1 1/2 per year. The rules they work under are absolute. If a mistake is made, that is the end of it at that point. The only resolution is to have the best, most competent and vigorous judges possible so mistakes are not made. Last year the crime control programs changed and judges were given even more responsibilities. They are working on re-vamping the criminal justice system and for the last two years have been working on the standards and goals for improving the system and cutting down the costs at the same time.

Mr. Stewart reported that the work of the district courts is always increasing. Last year they counted more than 23,000 cases filed; 60% (14,400 cases) were civil matters, 20% were probate, 10% criminal, 9% youth, and 1% all others. Civil and probate cases are revenue generator, and it brought in about \$100,000 less than what was brought in by the liquor taxes. Senator Regan retorted that the court system should not be evaluated as to its worthiness on the amount of money it generates; to which Mr. Stewart responded by commenting on how the funds are distributed between the county and the state. HB 499 would change this.

Turning to the budget as presented on the materials distributed by the department. Mr. Gosnell and Mr. Lewis both said there was very little analysis made of the budget. Mr. Stewart pointed out that

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positions #12, #20 and #25 are new positions under the Supreme Court Operations Program. The employees listed as part time are generally charged to another program, to make them full time employees but under two different programs. Position #26 it was explained was for a study done in the prior fiscal year, but they do not anticipate this need again. Under the contracted services, it was explained that printing is done by a contracted company after bidding and then provides the service for ten years according to statutes. They are checking into the procedures used for the printing contracting. Chief Justice Hatfield did state that the materials printed are the most important set of books a lawyer uses and must be sure the printing service does the best job possible on them.

Mr. Stewart handed out a packet of information relating to the archival materials and microfilming requests.

The sound system within the Supreme Court was described; they are requesting funds for an improved system. It was recommended that they not acquire a system like the one in the Senate Chambers, which some felt was inadequate.

Funds are also requested for the purpose of making audits of the court system. Both Mr. Stewart and Chief Justice Hatfield expressed the needs for this process. It is the responsibility of the court to make audits of the courts within the system. The audit accomplished last year by the legislative auditors was the first one done in ten years. They feel audits should be completed more often and should be done as a contracted service. Funds were lacking in the past for this.

Under the Judicial Commissions program, Mr. Stewart explained that the responsibilities under this program require alot of time and work. The Probate section has been straightened out and now should be kept current. Under the section for Practices, they spent \$12,000 last year but have spent over \$21,000 this year. This is still very low in comparison to neighboring states. Funds have not been provided in the past to accomplish the work that is needed and required, the Chief Justice explained in requesting that the programs be funded adequately to get the job done. Federal funds come in, but generally last only about two-thirds of the year. There have been revisions made under the boards and commissions funding to give a more accurate picture of the expenses in this area.

Senator Regan brought up the issue of travel reimbursement for judges using their own cars. She brought it up with Judge Harrison at the hearing yesterday and then had Mr. Gosnell do some research for her on this issue. The judges are claiming 19 cents per mile for their traveling, other state employees are allowed 15 cents a mile and she feels that all employees should be allowed one rate. The old court ruled that the "actual and necessary expenses" meant 19 cents a mile; but the I.R.S. has indicated a 15 cent per mile allowance is the actual expense. She feels that there should be conformity; and if there isn't, the state will soon have to pay all employees 19 cents per mile for traveling in their privately owned vehicle. Judges travel an average of 9,500

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miles a year, meaning they get a great deal of funding for this traveling. The Chief Justice responded that while he was not involved in the decision establishing this rate, the constitution does say they shall receive "actual expenses" for their traveling. The new court will be looking at this issue. Their prime concern is to make the court system more uniform and this will be discussed when looking at uniformity. He did indicate that possibly too much driving is being done by the judges, and maybe other means of transportation (flying) should be used and may be more economical in terms of time and money.

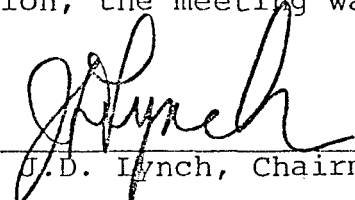
Under the budget request for the District Court Operations program the department is requesting funds for ancillary services. One of the main requests is for funding for summer law interns. The interns are extremely helpful for the judges and make the system much more efficient. In the past they received interns on a fund matching program through the university; however the crime board grants have been cut back and the university has requested that the court match funds for two interns and fund two interns. The judges strongly support the request for interns and asked the Court Administrator to approach the legislature on this matter. Chief Justice Hatfield feels that this supplemental help greatly increases the efficiency of the court. Mr. Gosnell wondered if this shouldn't be funded on local levels depending on where the interns are assigned; however, the counties have been complaining to Mr. Stewart that their funding is such that they cannot assist any further in this matter. Chief Justice Hatfield said they would like to have funding now to work on a program for two years to develop an efficient program.

There is a problem for the counties when they have to incur all expenses for the criminal trials held in their county. One criminal trial going on now is costing the county \$10,000. Justice Hatfield feels that an exception must be made to provide sufficient funding for these counties so they won't go bankrupt over a trial on behalf of the state.

In the budget relating to trial referees, \$30,000 was inadvertently left off the revision. Mr. Stewart explained how trial referees are utilized by the court system and that in Kalispell the use of the referees since Judge Keller resigned has enabled Judge Sikes to serve the needs of the community without hiring another judge right now and without requiring judges from other parts of the state to travel there.

Chairman Lynch, in discussing S.B. 71, said that he feels there is too much disparity in the proposed salaries of \$35,000, \$39,000 and \$40,000 and wondered why it was not set at \$35,000, \$37,000 and \$40,000. Senator Regan will check into this for him.

There being no further questions or discussion, the meeting was adjourned at 9:40 a.m.



J.D. Lynch, Chairman