

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
March 18, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman, at 9:35 a.m. in Room 442 of the State Capitol Building on the above date.

ROLL CALL:

All members of the committee were present for this meeting.

WITNESSES PRESENT TO TESTIFY:

Rep. Palmer - District 96, Missoula  
Fred Root - City Attorney, Missoula  
David L. Hunter - Montana League of Cities and Towns  
Rep. John Scully - Bozeman  
Tom Honzel - County Attorneys Assn.  
Mike McGrath - Department of Justice  
Sheriff Hammermeister - Pondera County (Conrad)  
Rep. Brand - District 28, Deer Lodge  
Sgt. Stollfuss - Montana Highway Patrol  
Rep. Harper - District 30, Helena  
Gerald Neeley - Montana Medical Assn.  
John Frankino - Director, Montana Catholic Conference

CONSIDERATION OF HOUSE BILL 247:

Rep. Palmer of District 96 at Missoula, sponsor of the bill, said this is a measure intended to modify the provisions of the municipal court. He then read a prepared statement. (See Exhibit 1)

The first proponent to testify was Fred Root, the city attorney at Missoula, who said the municipal court is for the city and that the city council has set the salary for judge of that court at \$15,000 per annum to attract people to run for that office. He distributed a set of proposed amendments to the committee for their consideration and said that all city cases are filed under state law with the fines and forfeitures deposited with the city treasurer. He thinks other Montana cities are waiting to see what Missoula does in regard to this issue.

Another proponent was David L. Hunter of the Montana League of Cities and Towns who said that that organization supports this bill and that other cities may adopt this form after they see what Missoula's experience is.

There were no opponents to HB 247.

During questioning, it was brought out that the city and municipal courts in Missoula are jammed with cases. However, Fred Root said that they will be ready to open their court in May and agreed to the committee placing the effective date at May 1st for this act.

The Chairman thanked the witnesses for testifying and said that the bill would be taken under advisement.

CONSIDERATION OF HOUSE BILL <sup>498</sup>~~321~~:

Rep. Scully of Bozeman, sponsor of the bill, said that subpoena powers for county attorneys is the subject of this bill. County attorneys presently do not have subpoena powers, but legislative committees, grand juries, etc., do have them. However, he believes county attorneys should have subpoena powers, even though many states are going solely with the grand jury system, because he does not like that system. He said further that the bill had been thoroughly discussed and was approved by the Crime Control board.

Since Rep. Scully had to attend another meeting, the chairman allowed Sen. Towe to ask questions of him at this time. One of the questions was how the state could get a county attorney to not abuse the subpoena power. Rep. Scully said that this could be done by requiring the county attorneys to have testimony recorded, transcribed and signed by them. He feels that the county attorney investigative subpoena is much better than the grand jury system. At this time, he asked to be allowed to respond to any amendments the committee may propose and the Chairman, Senator Turnage, instructed the secretary to send a copy of the proposed amendments to him.

The first proponent to testify was Tom Honzel, representing the County Attorneys Assn., who said that we are beginning to have a number of cases of business and land fraud in this state and that the only way people can be made talk on these things is by subpoena power. If we had this power in Montana, we would have more success in getting at the drug pusher. He said that they at first had assumed county attorneys had this power under §95-1803, however, they do not. He does not believe this power would be abused for you do have to rely on the judges to issue the subpoenas.

The next proponent to testify was Mike McGrath from the Department of Justice who said that they strongly support this bill and that they do not think that it always substitute for the grand jury system. However, the department feels that a subpoena issued upon a signed affidavit is very important, because the main thing it is for is to take a deposition of a witness. If a person wants counsel, they can have it, and an indigent can get assistance from Montana Legal Services.

Sheriff Hammermeister of Pondera County at Conrad was the next proponent. He represents the Sheriffs & Peace Officers Assn.. He presented a poll which they had taken within their association. (See Ex. 3) Although they feel very highly of the present attorney general, they do not want to see that office have the subpoena powers. Therefore, he proposed the committee amend the bill by limiting the attorney general's subpoena powers to just the workmen's compensation investigation. Otherwise, the sheriffs do not want to see the attorney general have the subpoena powers.

There were no opponents to HB 498 and the hearing was closed.

CONSIDERATION OF HOUSE BILL 533:

Rep. Brand, District 28 at Deer Lodge, sponsor of the bill, told the committee that the legislation had been requested by the Montana Highway Patrol because nothing in the law defines "careless driving, negligent driving, or reckless driving".

Sgt. Stollfuss of the Montana Highway Patrol testified as a proponent saying that we do not have a careless driving act in state law now. He thought that people would plead to that rather than "reckless driving" which could take months to try under the Habitual Offender Act. He presented the committee with some pictures that brought out his testimony. (See Ex. 4)

There were no opponents to the bill.

CONSIDERATION OF HOUSE BILL 371:

Rep. Harper of District 30 in Helena, sponsor of the bill, told the committee this bill is to establish a statutory definition of death. After reading the bill, he said that we have been operating under Black's Law dictionary definition, but today we are concerned with "brain death". There are also further needs for a new definition because of transplant donations and operations. The organ donation has now emphasized the problem of malpractice which has been growing. The American Bar Assn. definition is in use in many states now. That definition will change according to the changes in medical science. When science progresses, usual and customary standards will change also. This is not an euphasia bill. There are 15 advantages of the American Bar Assn. definition. He read these to the committee and then asked for support of this definition as it is necessary because it would assure protection to the physician and the patient.

The first proponent to testify was Gerald Neeley who represents the Montana Medical Assn. and who said that they support the bill because it enhances changing medical criteria. It covers brain, heartbeat and death tests -- usual and customary standards which will change, and could eliminate the problems in transplanting. This bill would help the legal problems in this area.

John Frankino, director the Montana Catholic Conference, said that they had opposed the bill as originally introduced, but now support it as amended. He presented the committee with a paper on the research done on this subject by the Montana Catholic Conference. (See Exhibit 5)

There were no opponents present. The witnesses were thanked for their testimony and excused.

DISPOSITION OF HOUSE BILL 247:

Sen. Murray moved the proposed amendments of Fred Root of

Missoula with the exception of amendment #2 be adopted. The motion carried unanimously. He then moved that HB 247 as amended BE CONCURRED IN. The motion carried unanimously.

There being no further business, the committee adjourned at 11:10 a.m..

  
SEN. JEAN A. TURNAGE, Chairman

## JUDICIARY COMMITTEE

Date 3/18/77

[illegible]

(Ex. 1)

February 2, 1977

My name is Representative Bob Palmer from House District 96 in Missoula and I am the sponsor of H. B. 247 that is a housekeeping measure intended to modify the existing provisions of the municipal court code which was enacted by the legislature initially in 1935 and modified in 1974 to allow each city to set the salary for their municipal judge rather than continue the restriction that prevented any city from adopting the court.

The Missoula city council on November 8, 1976, voted to adopt the municipal court provisions and is now requesting that the legislature make some modifications to clear up the ambiguities in the present state statutes and make it possible for Missoula and other cities to use this option of upgrading their local court systems.

The provisions in the bill would reduce the population from 20,000 to 10,000, hold the election with the other city elective offices, reduce from five to two years the experience of an attorney required to hold the office, hold the city not the county responsible for paying for the facilities and receive the fee and fines from the court, establish the court hours, provide for a court of record that may be waived with the consent of all parties, provide for an appeal on a stipulated fact or issues, and reduce the time for answering the complaint from 20 days to 10 days.

This is a very important bill for the people of Missoula and in support of it I would like to introduce the City Attorney of Missoula, Mr. Fred Root, who will testify in support of this measure.

Thank you.

REPRESENTATIVE BOB PALMER

(42.2)

NECESSARY AMENDMENTS TO H.B. #247

Page 2 Line 10

10. ~~said~~ the municipal court ~~shall~~ is to be established, and  
shall assume continuing jurisdiction over all pending police  
court cases. The ordinance OK.

Page 3 Line 21

21. Substitute "County" where "City" appears } Out

Page 7 Line 4

4. provided by law <sup>or ordinance</sup> ~~for-justicee-justicee's-court~~, and all fees OK

Ammed. Effec. Date. OK.

(67.3)

TO THE SENATE JUDICIARY COMMITTEE  
of the Montana Legislature

The results of a pole conducted by telephone on HB- 498  
by Sheriffs Buzz Davis, Murdo McClean, John Onstead, Jack Songer,  
Dale Dye and deputy sheriff Jim Burns.

Beaverhead	Co. Atty. O.K. Against Atty. Gen having Full subpoena power
- Big Horn	Leave the bill Alone
Blaine	County Attorney O.K., don't think Atty. Gen. needs it.
- Broadwater	Leave the bill Alone
Carbon	
Carter	
✓ Cascade	Leave bill as is <del>except do have some question of Atty. Gen.</del>
Chouteau	<del>getting subp. pw.</del>
Custer	Co. Atty. O.K., AGAINST the Atty. Gen. having subpoena power
Daniels	
Dawson	
Deer Lodge	
Fallon	
Fergus	AGAINST the Atty. Gen. having subpoena power
Flathead	AGAINST THE BILL
Gallatin	AGAINST THE BILL, it upsets the balance of authority
Garfield	AGAINST THE BILL
Glacier	AGAINST THE BILL
Golden Valley	does not know, no comment.
Granite	Co. Atty. O.K., but not particularly for the Atty. Gen.
- Hill	APPROVES OF THE COMPLETE BILL
Judith Basin	AGAINST THE BILL
Jefferson	
Lake	Co. Atty. O.K., but not for the Atty. Gen.
Lewis & Clark	AGAINST THE BILL
Liberty	AGAINST THE BILL
Lincoln	with more safeguards written in the bill, then it will be O.K.
Madison	
McCone	Co. Atty. O.K., AGAINST the Atty. Gen. having subpoena power
Meagher	Co. Atty. O.K., AGAINST the Atty. Gen. having subpoena power
Mineral	Co. Atty. O.K. AGAINST the Atty. Gen. Having subpoena power
✓ Missoula	YES as written do now want to <del>XXXXXXXX</del> allienate the Atty. Gen.
Musselshell	Co. Atty. O.K. AGAINST the Atty. Gen. having subpoena power
Park	Co. Atty. O.K. AGAINST the Atty. Gen. having subpoena power
Petroleum	
Phillips	Co. Atty. O.K. Against the Atty. Gen. having subpoena power
Pondera	AGAINST THE BILL sets up another investigative agency
Powder River	Co. Atty. O.K. Against the Atty. Gen. having subpoena power
Powell	Co. Atty. O.K. AGAINST the Atty. Gen. having subpoena power
Prairie	
✓ Ravalli	YES should not become involved
Richland	AGAINST THE BILL
Roosevelt	AGAINST THE BILL
Rosebud	AGAINST THE BILL
✓ Sanders	YES FOR WHOLE BILL
Sheridan	AGAINST THE BILL
✓ SilverBow	YES FOR WHOLE BILL
Stillwater	AGAINST THE BILL
Sweetgrass	
Teton	Co. Atty. O.K. he has reservation of the Atty. Gen. getting
Toole	Co. Atty. O.K., AGAINST the Atty. Gen. having subpoena power
Treasure	Co. Atty. O.K., AGAINST the Atty. Gen. having subpoena power
Valley	
Wheatland	Co. Atty. O.K., AGAINST THE Atty. Gen. having subpoena power
Wibaux	Co. Atty. O.K. AGAINST the Atty. Gen. having subpeena power
Yellowstone	Co. Atty. O.K. Against the Atty. Gen. having subpoena power with apprehension of not to allienate the A.G.

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Respectfully submitted.  
W. L. Hammermeister  
Pondera Co. Sheriff  
for the Mont. Sheriffs & Peace Officers Assn.



TO THE SENATE JUDICIARY COMMITTEE  
of the Montana Legislature

The results of a telephone "pole" conducted by Sheriffs Pete Howard, Pat Hage, and undersheriffs Glenn Frame, Jerry Dell and Bob Scherer and sheriff Jack Songer. As too there thoughts of HB- 326

Beaverhead	acceptable with Sheriffs amendments.
Big Horn	KILL or else the sheriffs amendments are acceptable
Blaine	acceptable with Sheriffs amendments
Broadwater	KILL or else the she riffs amendments are acceptable
Carbon	acceptable with the sheriffs amendments or else KILL
Carter	acceptable with the amendments
Cascade	acceptable with Sheriffs amendments
Chouteau	
Custer	acceptabme with Sheriffs amendments or else KILL
Daniels	acceptable with She iffs amendments or else KILL
Dawson	KILL
Deer Lodge	acceptable with sheriffs amendments or else KILL
Fallon	acceptable with the amendments
Fergus	KILL or the sheriffs amendments are acceptable
Flathead	amendments are fine as presented by the sheriffs
Gallatin	ACCEPTALBE with Sheriffs amendments or else KILL
Garfield	
Glacier	acceptalbe with she riffs amendments or else KILL
Golden Valley	
Granite	
Hall	KILL or as an alternative the Sheriffs amendments are ac
Judith Basin	ceptat
Jefferson	
Lake	acceptable with the amendments or else KILL
Lewis & Clark	
Liberty	
Lincoln	acceptable with the sheriff amendments(definately need 1 Yr.
Madison	acceptable with the sheriffs amendments
McCone	AMENDMENTS Are fine
Meagher	acceptable with Sheriffs amendments or else KILL
* Mineral	AMENDMENTS OR KILL (he sat on the task force & told them this)
Missoula	KILL (doesn't like being told who to hire, he is elected to do
Musselshell	KILL or else the amendments are acceptable that)
Park	KILL or else the Sheriffs amendments are acceptable
Petroleum	
Phillips	acceptable with Sheriffs amendments or else KILL
Pondera	acceptalbe with She iffs amendments or else KILL
Powder River	KILL or else the Sheriffs amendments are accept able
Powell	KILL or else the Sheriffs amendments are acceptable
Prairie	the sheriff amendments are acceptable or else KILL
Ravalli	Acceptable with Sheriffs amendments, or else KILL
Richland	ACCEptable with Sheriffs amendments or else KILL
Roosevelt	acceptable with the sheriffs amendments or else KILL
Rosebud	acceptable with the sheriffs amendments or else KILL
Sanders	AMENDMENTS are fine
Sheridan	acceptable with the sheriffs amendments or else KILL
Silver Bow	
Stillwater	acceptable with the sheriffs amendments or else KILL
Sweetgrass	acceptable with the she iffs amendments or else KILL
Teton	acceptable with the sheriffs amendments or else KILL
* Toole	acceptable with the sheriffs amendment <sup>not complete as the</sup> <del>the task force accep</del>
Treasure	acceptable with the sheriffs amendments or else KILL
Valley	acceptable with the sheriffs amendments or else KILL
Wheatland	acceptable with the sheriffs amendments or else KILL
Wibaux	acceptable with the she iffs amendments or else KILL
Yellowstone	acceptable with the sheriffs amendments or else KILL

the sheriffs were asked if they prefered to leave the HB 326 as it passed the house, or if the amendments the Sheriffs association proposed were allright or if they prefered just to kill the bill.

*Respectfully Submitted.*  
*W. L. Hammermeister*  
*Pondera Co. Sheriff*  
*for the Mont. Sheriffs & Peace Officers*  
*Assn.*

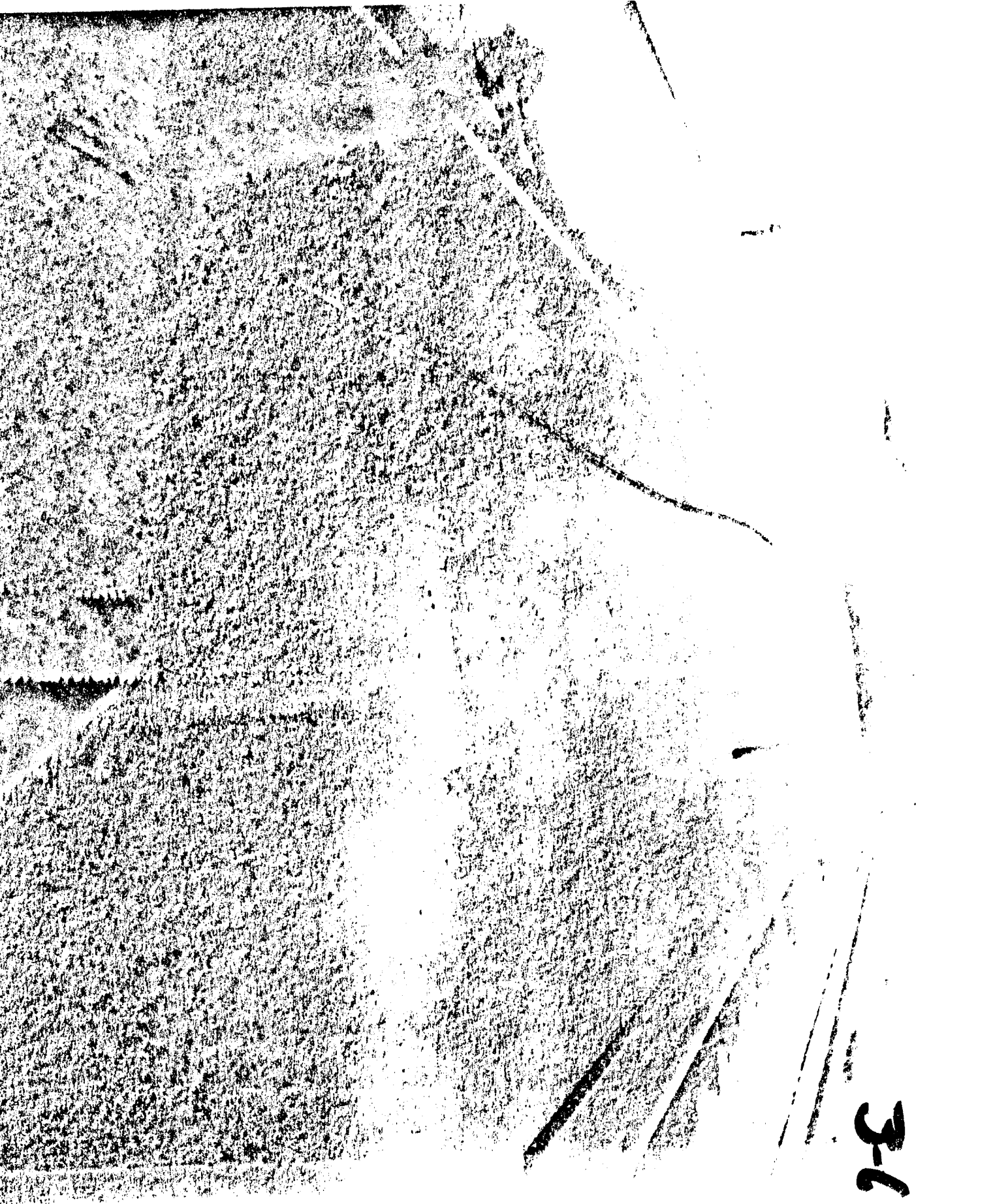


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2-1-2



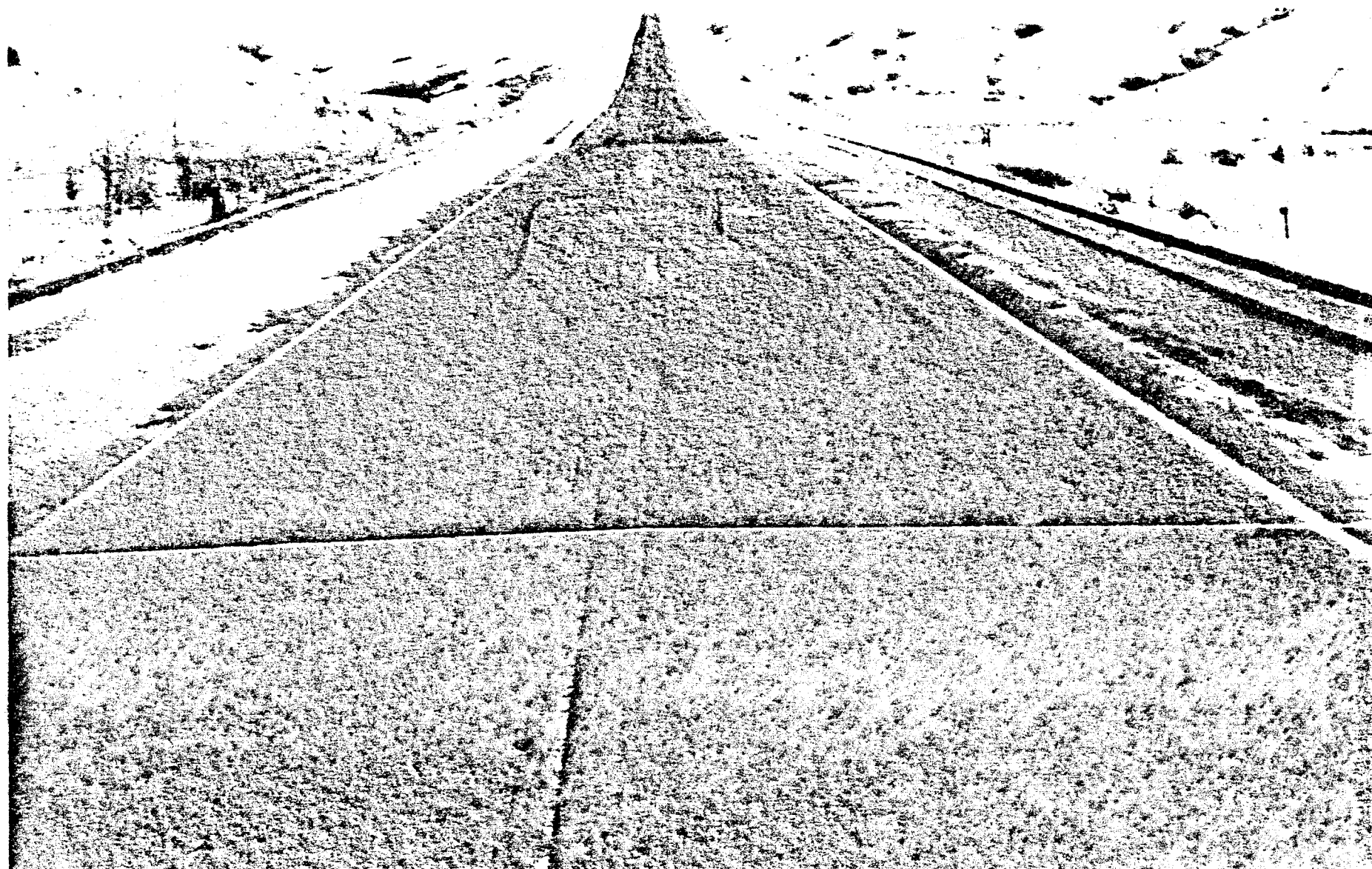






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# MONTANA CATHOLIC CONFERENCE

P. O. BOX 404 530 N. EWING  
HELENA, MONTANA 59601

March 16, 1977

TO: Senator Jean Turnage, Chairman  
Senate Judiciary Committee

FROM: John Frankino, Executive Director  
Montana Catholic Conference

RE: HB 371, Definition of Death  
Judiciary Hearing March 18, 1977

Enclosed is a research paper concerning the Definition of Death.  
I hope it will be of value to you as you consider HB 371.

In your hearing on SB 75, the Natural Death Act, Dr. McCarthy DeMere of Memphis, Tennessee addressed the question of the need for a solid definition of death law. The original House Bill has been amended to conform to the definition advocated by Dr. DeMere.

The Montana Medical Association Legislative Committee reviewed HB 371, as amended, and spoke in favor of it at the House Committee hearing. We concur with the position of the MMA, inasmuch as the ABA definition appears to answer the questions we raised in the enclosed position paper.

*John Frankino*



# **DEFINITION OF DEATH**

**by Cindy Scott**

**Research Analyst**

**Montana Catholic Conference**

