

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 22, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman at 9:35 a.m. on the above date in Room 415 of the State Capitol Building.

ROLL CALL:

All committee members present except Senators Warden and Roberts who were excused to attend other meetings.

WITNESSES PRESENT TO TESTIFY:

Elizabeth Clark - Youth Court, Bozeman
Rep. Meloy - District 29, Helena
Glen Drake - League of Cities and Towns
Rep. Vincent - District 78, Bozeman
Mike McGrath - Department of Justice
Dick Disney - administrator of Community Affairs Division
Harold Pitts - Helena
Greg Morgan - Montana Bar Assn.
Jim Beck - attorney, Department of Highways
Rob Smith - attorney, Public Service Commission
Rep. South - District 51, Miles City
Dan Mizner - executive director, League of Cities & Towns

CONSIDERATION OF HOUSE BILL 654:

Elizabeth Clark from the Youth Court in Bozeman, brought a group of the girls to the legislature today so that they could see how things are done and so she could testify on this bill. However, the bill was not scheduled for hearing this day, but the Chairman did allow her to testify at this time. She told the committee that the youth they deal with are the type that need to have a personal experience so that they can understand. They cannot just be told that something is wrong. They have to find out for themselves. She said further that the 45-day evaluation in an institution is of real value to their Youth Court and that they can use it as a punishment threat. They do not want to have shorter evaluation periods. She said the youths will take that evaluation involuntarily when it is ordered by the youth court and that it is not in the best interests of the youths if the courts dealing with them are impotent.

CONSIDERATION OF HOUSE BILL 718:

Rep. Meloy of District 29 in Helena, sponsor of the bill, said that this is a general revision of the Citizen Participation Law of 1975. This bill provides that people have input into decisions before they are made. He said that page 3 clarifies the language of the old law and that page 2 has a substantive change. Some agencies are exempt from the Montana Administrative Procedures Act. The declaratory rulings are generally an interpretation of the law.

They are usually subject to review under the Administrative Procedures Act. There is not really a definition of state agency. Whatever is adopted on page 2 should be also adopted on page 4.

Glen Drake, representing the League of Cities and Towns, said that he was not really an opponent as such but that they oppose the amendment that Rep. Meloy has proposed.

There were no other proponents or opponents present. After questions by committee members, the Chairman asked if the committee was ready to act on the bill.

Sen. Towe moved to strike "agency" and insert "board, bureau, commission, department, authority, agency, or office of the state" on page 2, line 11, and on page 4, line 7. The motion carried unanimously. He then moved that HB 718 as amended BE CONCURRED IN. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 457:

Rep. Vincent of District 78 at Bozeman said that a representative from the office of the Attorney General, Mike McGrath, would carry the bill for him as he had introduced it at their request.

Mike McGrath, a staff attorney in the Attorney General's office, said that this bill amends the unfair and deceptive trade practices act. It gives the Attorney General the same authority that the county attorneys have, as sometimes the Attorney General's office has to assist them in the area with which this bill deals. He said that they are not interested in taking over the Department of Public Regulations, but they are interested in working with them. There has been some lack of understanding during the meetings.

Dick Disney, administrator of the Community Affairs Division, said that they are talking about a duplication of effort here. By putting another function into the office of the Attorney General, it is going to create confusion among the county attorneys.

Harold Pitts, testifying as a private system, said that he has a great deal of interest in the Department of Business Regulations as he was administrator of that department for the last four years until he resigned. He said that they worked very hard to develop the program and that one of the first statements the new Attorney General made when he took office was that he was going to have this under his department. They were going to educate the public in consumer protection work and about deceptive advertising practices. It is not necessary for two departments to handle this program.

Rep. Vincent said at this time that he did not want to get involved in the Attorney General part of this. His only interest is in doing the best for the people of Montana, and that he can see that the county attorneys and the Attorney General's office is the way to go in some fraud cases. Montana needs to have an active effort for consumer protection.

CONSIDERATION OF HOUSE BILL 633:

Rep. Vincent, District 78 at Bozeman, sponsor of this bill also, said that this bill is an "idea" bill because the "idea" is to provide an incentive to middle and low income persons to go into court. There is a great deal of doubt among practicing attorneys as to whether this bill will accomplish the thing that Rep. Vincent believes it will. This bill might provide an incentive for people to go to court because there is a probability that a person might be awarded reasonable attorney fees and expert witness fees.

Greg Morgan, representing the Montana Bar Assn., said that they support the bill in its present form and consider the bill as an alternative to clients to get around the contingency fee.

The only opponent present to testify was Jim Beck, an attorney for the Department of Highways. He said that he was really not an opponent but proposed that section 4 (Chap. 99, title 3) be amended. (See Exhibit 1)

Since there were no questions, the Chairman told the witnesses that the committee would take the bill under advisement.

CONSIDERATION OF HOUSE BILL 238:

Rob Smith, an attorney from the Public Service Commission, testified as a proponent of this bill. He said that there is no time limit on the appeal of rates. However, they think that there should be a limit in the time during which users could make their appeals, and that 90 days should be satisfactory.

Senator Regan arrived at 10:30 a.m.. Sen. Roberts arrived at 10:35 a.m. during testimony on H.B. 238, and Senator Towe was excused at 10:10 a.m. to attend another hearing.

Smith continued his testimony by saying that cities usually issue their orders and, if they feel it is not what it should be, the commission can modify them. Our people that do handle municipal water rates have good relations with the people who handle them for the city. In the bill drafted by the PSC they said there would not be refunds because the cost of process would probably be more than the refund. The PSC would like to retain the system where they receive annual reports for the municipal water systems. There may be a conflict in that regard. The complaint procedure is already in the act. It is a very extraordinary case when they do not receive at least one complaint. The rates go into effect, under the present procedure, if there are no complaints. If customers want to appeal, the municipality should have the burden of the appeal on their rates. He told the committee that the definition of a public utility should include sewer, especially because of two recent cases -- one in Great Falls and one in Helena. Helena was able to put the increase for water rates in the sewer rates.

Rep. South said that the Public Service Commission is behind on their decisions and that he thinks the division on water should be taken away from them. He told the committee that S.B. 360 had been tabled in the Local Government Committee. (See Exhibit 2) That bill would have included sewage service in the definition of a public utility and it provided that the PSC hear appeals of municipal sewer rates. He said that there is definitely a problem here which has to be addressed this session.

There were no questions by committee members on this bill.

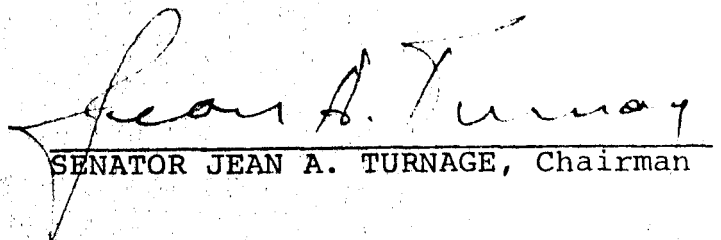
CONSIDERATION OF HOUSE BILL 238:

Rep. South of Miles City carried this bill for Rep. Robbins who had sponsored it but was attending another hearing. He said that it would allow the water and sewer rates to be set by the city council and that they could be appealed to the district court. However, the appeal procedure has been changed considerably since it had been that a person could file a complaint with the Public Service Commission, and it was then up to them to decide on the rates.

The first proponent of this bill was Dan Mizner, executive director of the League of Cities and Towns. He told the committee that this is one of the bills they had introduced this session and that, although it is amended, they still support it. He gave the background as to why they introduced it to support the cities setting the rates with review through the PSC. He said that the Board of Health gave them deadlines regarding water and the E.P.A. gave them regulations to meet under the Clean Water Act, and that they are fined for each day they go past the deadlines. They are also subject to suit by citizens. The people in a city have the right to vote on city water, but those outside the city do not. However, if water is delivered outside the city to one person, they have to deliver to others. The cost has to be considered and the rates set accordingly. The bonding company requires them to increase their rates so that they can take care of their bonds. They have waited for as long as 15 months for a decision from the PSC on a request for rate increase. This bill asks for a simplified method which would protect the water user.

There were no other proponents to testify, so the opponents were allowed to present their side of the issue. However, the only opponent was Rob Smith from the Public Service Commission and he simply gave the committee a copy of a bill they had drafted.

There being no further business, the committee adjourned at 11:00 a.m..


SENATOR JEAN A. TURNAGE, Chairman

COMMITTEE

Date 2-22-77

[illegible]

(Ex. 1)
Jim Beck - Highway

Section 4. This act shall not apply to actions brought under the provisions of Chapter 99 of Title 93.

INTRODUCED BY

SENATOR BILL NO. 360

24294117

A BILL FOR AN ACT ENTITLED: "AN ACT TO INCLUDE SEWERAGE SERVICE IN THE DEFINITION OF PUBLIC UTILITY AND TO PROVIDE FOR PETITION OF THE PUBLIC SERVICE COMMISSION TO HEAR APPEALS OF MUNICIPAL SEWERAGE RATES; AMENDING SECTION 70-103, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 70-103, R.C.M. 1947, is amended to read as follows:

"70-103. "Public utility" defined. The term "public utility," within the meaning of this act, shall embrace every corporation, both public and private, company, individual, association of individuals, their lessees, trustees or receivers appointed by any court whatsoever, that now or hereafter may own, operate, or control any plant or equipment, or any part of a plant or equipment, within the state, for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal, whether within the limits of municipalities or towns or elsewhere; heat; street-railway service; light; power in any form or by any agency; sewerage service; water for business, manufacturing,

household use, or sewerage service; whether within the limits of municipalities or towns or elsewhere; or telephone or telegraph service; and the public service commission is hereby invested with full power of supervision, regulation, and control of such utilities, subject to the provisions of this act, and to the exclusion of the jurisdiction, regulation, and control of such utilities by any municipality, town, or village."

Section 2. There is a new R.C.M. section that reads as follows:

Water and sewer rates. (1) Rates for providing water and receiving sewage, or both, in the case of utilities owned by a municipality of the state may be set by the municipality.

(2) The rates may be challenged by petition signed by 10% of the subscribers of a utility of a municipality or by 25 subscribers, whichever number is the greater. Upon receipt of a petition the commission shall proceed to hearing in order to determine whether the challenged rates meet the requirements of 70-105. The burden of proof at such hearing is on the municipality. Prior to submission of a petition to the commission, the clerk of the affected municipality shall certify that the petition contains the requisite number of signatures and that the signing parties subscribe to the particular utility service for which rates

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1 are challenged.

2 (3) Any petition challenging municipal utility rates
3 shall be filed with the commission within 90 days of the
4 effective date of the rate ordinance.

5 (4) Following hearing the commission shall enter an
6 order approving or modifying the challenged rate schedules.

7 (5) Should rates be reduced by the commission's final
8 order, there is no liability for refunds.

9 (6) Nothing in this section relieves municipalities of
10 the requirement of filing all rate schedules and annual
11 reports with the commission. The jurisdiction of the
12 commission over other facets of municipal utility operations
13 remains unimpaired.

-End-

