

JUDICIARY COMMITTEE

January 10, 1979

The regular meeting of the House Judiciary Committee was called to order by Chairman John Scully at 8:00 a.m. in room 436 of the Capitol Building on Wednesday, January 10. All members were present, however Representatives Anderson, Seifert and Teague came in late.

Bills scheduled to be heard were: House Bills 10, 12, 32, 41 and 75.

HOUSE BILL #12: Representative Lory will chair the meeting during the time necessary for Representative Scully to present his bill HB 12 to the committee.

This bill came about as a result of the feeling that legal services were being abused in and for state government. In the assessment of state legal services the subcommittee posed a number of questions for consideration. Who shall control which legal activity in the executive branch of state government. To what extent should legal talent employed by the various agencies report to the Attorney General or to the Governor? Who should handle litigation. Who should supervise attorneys working for state government. Should the Attorney General have the sole authority to appear for the state in court. Should special legal counsel litigate only if designated as a special assistant Attorney General. Should we reduce the number of attorneys working in and for state government. These were many of the major issues confronted during the study. There was no communication with regard to legal activity in the state. No way to say how much money was being spent. Another difficulty examined was the ability of the state to attract and retain outstanding attorneys. A board was created with two members from the executive branch and one from the Attorney Generals office. By reviewing requests and accounting for their total costs, the review board will go a long way toward assuming the confidence and accountability necessary for an effective system. It will save the state of Montana a great deal of money. There has never been a close check. The bill also creates a pool in the state Attorney Generals office. It will be much cheaper if the pool is used. One thing I want to point out to you. During the interim when this committee met there was no one representing the governors office. I don't think they have scrutinized the legal counsel because no action has been taken. Number 2, there is no pool in the attorney generals office to draw from. There has been objection to the statutory effect of this bill but I don't feel that it holds water.

MIKE McGRATH: I am from the Attorney Generals office and we favor this bill. I think we are approaching a crisis situation because the state is unable to retain attorneys. I don't think the state is getting its moneys worth. We are the training ground for young attorneys and then they move on. There are no career incentives.

Several questions were asked about the career potential, salaries, experience, and actual cases that were handled by the state. etc.

OPPONENT, J. C. WEINGARTNER: I am representing the Montana Bar Association. The state bar does not support this bill. I want to point out some of the problems that are in the bill. There will be a conflict with House Bill #10. That bill allows the PSC to retain lawyers and the lawyers could have a conflict. Who would they answer to. What we are going to be faced with is thousands of bills on implementation. Also, with this, the three member panel, the governor has two people he can put on there. He would have two against the one. If the Attorney General wanted to hire special counsel his request could be turned down because he only has one vote. Some of the other state agencies don't have any input into this, such as the Secretary of State or the Superintendent of Public Instruction. A lawyer cannot serve two people. He went on at some length about this. Then he said that this bill does not give a lawyer any kind of job security. I think they should be given some kind of job protection. Under this bill they do not have that. If we want them to stay with the state that is what we need. He went on to talk about political firing when new elected official takes over, such as when Attorney General Greely took office.

REPRESENTATIVE SCULLY: In answer and, in closing, on this bill I will deal with the massive repealer. We don't want to repeal the authority of anyone to hire legal counsel. On the other hand we don't want someone sitting on a \$25,000 salary. He went on to discuss this. He then went on and said that if you look in the bill there is a section that answers the attorney-client relationship. He also said, I don't want a bill that gives job security for a lawyer. This bill in no way prohibits that from being done. There will be no problem hiring legal counsel if the state agency should need it. He went on to discuss the formation of the board in section 15. My last point, there has never been a way to see what the appropriation has been for legal services. We ought to know what is being spent and we ought to be able to keep good people. I would make the Attorney Generals office the lawyer for the state of Montana. Then I would give the governor a staff of attorneys. The interim committee felt this bill would do it. I think this bill will do it. It will begin to solve some of the problems we face with legal counsel for state agencies.

REPRESENTATIVE CURTISS: I wonder if the executive override in this bill could threaten the bill.

REPRESENTATIVE SCULLY: If there is an executive override, that doesn't bother me as much as other things. There should be a centralized board and I don't think we will have that situation.

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REPRESENTATIVE CONROY: It has been implied here that the attorney general's office doesn't have expertise. Is that true, what about that murder trial. Discussion followed about the office and the expertise or lack of it in the office of the attorney general.

MR. McGRATH: Discussed the prosecution services program. We have two attorneys that assist the counties and that has worked extremely well.

REPRESENTATIVE DAILY: How many are in this pool?

REPRESENTATIVE SCULLY: I would like eight but it is possible five and will probably end up with three. I think we have to get the thing started first.

The question was asked by Representative Daily, what is a good and decent salary for an attorney.

REPRESENTATIVE SCULLY: We will recommend that it be a new class of legal counsel. I think they should be given at least \$35,000.

REPRESENTATIVE DAY: The state of Montana is involved in a major law suit, the coal tax. Do you have outside help.

MR. McGRATH: About six attorneys are working just on this. A discussion on how the bill would charge that and Mr. McGrath said that it wouldn't.

Discussion followed about the grade and pay scale, etc., the turnover of talent in the state government and the fact that it was not a good career opportunity, and that most attorneys would only stay two years or so.

Representative Kemmis stated that he had heard that if the bill passed the Governor would veto it, and he was curious as to why the office was not represented at the hearing.

Representative Scully said that the Governor's office had had every opportunity to attend and state their view and that he would try to override a veto if it should occur. Much discussion followed this statement. Representative Kemmis felt that the office should be notified so that they could have a representative at the hearing. Most of the committee felt that there had been plenty of notice and that no special notification should be necessary to the Governor's office.

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There was general discussion about the problems of the bill and legal counsel, how the pool would work, etc.

REPRESENTATIVE DAILY: I would like to follow up on what Representative Kemmis asked. Can we request the Governor's office send a representative.

Representative Teague asked about job protection and whether the attorneys in the pool would be covered in the pay plan.

MR. WEINGARTNER: When Greely took over as attorney general he fired every attorney there. Even with the pool what would keep a new attorney general from firing them. Much discussion about this.

REPRESENTATIVE EUDAILY: Isn't it true that this bill deals mostly with special legal services. Would this take care of the people on retainers.

After more general discussion the hearing closed on HB #12.

HOUSE BILL NO. 75: Representative Kanduch, sponsor of the bill, stated that this bill was a request by the Attorney General's office. This bill is for the purpose of determining the number of convictions, and to clarify a second or subsequent conviction, and the penalty for same.

DWAYNE TOOLEY: MONTANA HIGHWAY PATROL representative said that this bill would resolve the conflict between the drivers license statute and the penalty or conviction statute. It has led to lots of misunderstanding by the public. We would like to see it straightened out so that both sides of the law are the same.

There were no other proponents and no opponents.

REPRESENTATIVE KANDUCH: He summed up his statement. It is very confusing to go to court at the present time, but if both sides had the same meaning it would help simplify this.

Discussion about possible problems with the bill, and what the intent of the bill is. Representative Kemmis commented that what this bill does is define the word conviction and we must go through and see if this will apply.

Representative Lory asked what the average bond is and discussion that it is around \$250.

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REPRESENTATIVE KEMMIS: The bill appears to do more than counting of bails and forfeitures. Whereupon Mr. Tooley said that in the criminal act they are not allowed to count on the conviction side. The question was raised that they might be causing a problem somewhere down the line if the was passed.

Hearing closed on HB #75.

HOUSE BILL NO. 10: Larry Weinberg of the legislative counsel presented the bill. This is a code bill to revise and clarify the laws concerning state lands. This is in the same context as the other code commissioner bills. It is intended to clean up the archaic language and grammar. It went through the bill and explained the various changes.

LEO BARRY: Department of State Lands. I am just here to answer questions. Some parts of the bill were a rewrite of a present law to make it more understandable.

Representative Day raised the question of sections and parcels on page 6, section 7, line 9. At the present time there are portions of land that are not sections. He asked if this had created any problems at any time for the department.

MR. BARRY: We have not encountered this problem but it could come up and could create difficulties.

Having no further discussion the hearing closed on HB #10.

HOUSE BILL NO. 41: Bob Pyfer, from the Legislative Counsel. This bill is to clean up the language and revise the laws relating to estates, trusts, and fiduciary relationships. Some of the clause was not of the uniform probate code. I would like to go through the repealer very briefly and the RCM sections. He mentioned that part of section 27 was in conflict with another section where they are allowable. The repealer sections are meaningless and should be taken off the books.

Representative Eudaily questioned parts of page 16 and 17. After no further discussion the hearing closed on House Bill #41.

HOUSE BILL NO. 32: Representative Quilici as sponsor of the bill stated that this bill relates to crime victims compensation and to try to make state statutes comply with federal requirements. I would like to introduce Mr. Norma

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Grosfield, from the division of Workmen's Compensation. I also have some fact sheets, which I will pass out, with proposed amendments.

JOHN FRANKINO: I represent the Montana Catholic Conference and we hope you will concur in the bill. We are in full support of it.

REPRESENTATIVE QUILICI: The members who were here the last session will remember the bill. These amendments just enhance the bill.

REPRESENTATIVE KEYSER: What kind of an investigation is your department going to do?

MR. GROSFIELD: We will have a detailed investigation, with complete reports. We can make a pretty good judgment.

A discussion followed about claims for compensation, benefits for disability, health care benefits, and offenses relating to automobiles. Discussion about the law requiring that the department must issue findings of fact, and also if some of the wording should be changed, on page 4, line 2. Discussion about informing citizens that they would be included under the law and whether or not they should be so informed. Mr. Grosfield mentioned that the department decided to remove automobile activity completely from the act, and he gave several examples of cases.

There was no further discussion and the hearing closed on HB #32.

The committee discussed the stand the governor's office had apparently taken on House Bill 12. Some members felt the office should be sent a notice that they wanted a representative from the office. It was decided that they should not receive any special notice and that they had been duly informed.

The meeting adjourned at 10:30.


John P. Scully, Chairman

Mary Ellen Connelly, Secretary