

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
January 26, 1979

The regular meeting was called to order by Chairman Scully at 8:15 a.m. in room 436 of the Capitol Building on Friday, January 26, 1979. All members were present.

Bills scheduled for hearing were:
House Bills 258, 311, 322, 332,
335 and 338.

HOUSE BILL NO. 338: Representative Kemmis, sponsor of the bill stated that this bill was introduced to set up a procedure so that a search warrant could be obtained, in inspections required or authorized by a state or local building code, such as fire, plumbing, electrical, zoning, ordinances and things such as that. It was the result of an Osha inspection. He explained the bill further and then said that he would have Chris Tweeten go through it more thoroughly.

CHRIS TWEETEN: Attorney General's office: Mr. Tweeten went through the bill one section at a time explaining the content and what it would do. He said some sections are self-explanatory, but there are several sections that are in conflict. The title is not what we intended when we drafted this bill. We intend to have people be free of unwarranted search and inspection.

Section 1 follows the procedure that must be followed in supreme court cases. This section codifies that distinction. It defines criminal search warrants. Section 3 states when they are authorized. It states that consent must be given. An inspection warrant may be issued only for cause. He gave some examples of situations not covered, such as liquor or firearms and the expectation of privacy in a business pervasively regulated. Some inspections need not be done under a warrant. It does contemplate that consent will be the rule rather than the exception. He talked of the supreme court rulings in some cases.

Section 7 sets forth the content of the warrant. Section 8 says it must be a reasonable time and if no time is set forth then the warrant expires in 14 days. Section 10 is concerned with forcible entry, and section 12 is the enforcement provision. It provides that any evidence secured by illegal search to be suppressible.

Section 13 outlines the criminal penalty and section 14 keys into bill section 1. It sets forth the distinction in the inspection warrant search category and the criminal search category.

MAE NAN ELLINGSON:

Deputy City Attorney of Missoula.

This came to our attention with zoning complaints violations in the City of Missoula when there were six people residing in one house in a single family area. I wrote to Attorney General Greely and Missoula is now in the position that if our building inspector or fire inspector finds discrepancies, any evidence obtained may not be admissible. She went on at length and stated in closing that what we are doing is not constitutionally permissible. It is incumbent upon you to pass this bill.

OPPONENT: MIKE YOUNG:

Department of Administration. We are responsible for all building

codes, electrical plumbing and fire and safety codes for the State of Montana, outside the major cities. The major cities have their own building districts. I fully appreciate the reason for this bill. We have been watching the Osha case and its effect on our department. I am concerned with what this will cost. Right now we handle 50,000 inspections a year. Assuming that only 15% refuse entrance that still leaves some 5,000 search warrants. There is no way that I can appear in every JP court in Montana. I recognize the constitutional limitations here. I feel more comfortable working within the confines of arguing on a case by case basis. I just think this bill should be looked at for its fiscal impact. Possibly a fiscal note would be in order here to see what this is going to cost.

Another thing to consider is the

14 days. Most of the construction

projects go two or three years. What you are going to be doing is make more appearances in front of the judge. It will greatly affect the building codes in the State of Montana and actively so.

OPPONENT: DAN HICKEY:

City of Billings. I agree with the statement of the Department of Ad-

ministration Mr. Young, on building codes. I think the bill is unworkable. We have a staff of 9 inspectors. I think we would have most of our inspectors spending most of their time in front of the judge trying to get these warrants. I am not opposed to the idea so much as the bill itself. I feel that if this bill was passed it would require that the City of Billings hire an attorney to handle these things.

REPRESENTATIVE KEMMIS:

In closing I think there is some confusion about how the law reads.

There has been several opinions that if we pass this bill we will make it illegal for them to go in. It is illegal for them to do that now. If they are doing it now they are doing it illegally and if they come across any evidence now, that evidence is almost certain to be suppressed. He stated some points he felt were necessary and said that he felt the hassle of getting a warrant had been significantly overstated. We have to remember that these searches without a warrant are illegal now.

Representative Daily questioned the statement about the title. Mr. Tweeten said he thought it was misleading. It seems to me that it is unfortunate that it is stated so. Representative Daily asked what happens if the person says no. Mr. young said that if they have been turned away they doint inspect those few. We are afraid of the cost. He continued, the time and the procedure involved is going to be very expensive.

There followed general discussion about building codes, owners and contractors, grain elevator inspections and city inspections, and the number of inspections outside of major cities. The question was raised as to how many people might withhold consent. There was also discussion about illegal searches. The comment was made, in answer to a question, that it was \$50 per year per man lift for grain elevator inspections.

There was no further discussion and no further questions and the hearing closed on House Bill No. 338.

HOUSE BILL NO. 258:

Representative Robbins, as the chief sponsor of this bill I want to say, you have heard of a simple bill, well this bill is a simple bill. He stated what the bill consisted of.

N. S. (Sonny) HANSON:

I am representing the land surveyors. We support this bill.

JOHN BELL:

I am representing the Montana Association of County Clerks and Recorders. We support this bill. It sometimes does harm to turn in a document to be recorded and have it turned down. He went on at great length about the cases he was aware of and what could and often did happen concerning signatures and whether they were considered legal.

Representative Scully asked Mr. Robbins "Can we ask that the typing go with the writing." Would you object to that and Herschel said "no" he had no objection.

There was no further discussion and the hearing closed on House Bill 258.

HOUSE BILL NO. 311:

Representative Ramirez gave an explanation and brief history of the bill. He went into some detail about scheduling, mainly departments. They would like to have it changed so that they can commence the trial at the time set. This bill would permit them to start the

trials on schedule.

JIM JENSON:

Montana Magistrates Association.
I would con with Mr. Ramirez and

the comments he has made.

JANET JENSON:

Justice of the Peace of Missoula.
I concur.

With no discussion and no questions
the hearing closed on HB 311.

HOUSE BILL NO. 335:

Representative Ramirez said this bill provided for a custody hearing upon the death of a custodial parent. He went on and explained. It will make a significant change to the people who are affected. If a parent who has custody of a child dies then the custody would go to the natural parent, even though that may not be in the best interests of the child. This would change that absolute custody. Sometimes it should be someone other than the natural parent. He gave examples of cases. This was the reason for this bill being proposed.

There were no other proponents,
no opponents and no questions from
the committee. The hearing closed on House Bill 335.

HOUSE BILL NO. 332:

Representative Keyser said this bill would permit the application for a search warrant to be made by a sworn telephonic statement and recorded. This bill is at the request of the Sheriffs and Peace Officers Association. He explained how the warrant would be issued and that the judge would issue a warrant but that it would be much faster.

JOHN BELL:

Montana Sheriff and Peace Officers
Association. I support this bill.

John Moe, the former sheriff of Missoula, heartily endorses this bill. He gave examples of cases he was familiar with.

JIM BURNS:

Under Sheriff of Cascade County.

This bill is modeled after state laws in California and Washington. I know of many cases where this bill would have helped. Sometimes the distance from the courthouse can have a definite influence on the outcome of an arrest. We feel that this proposed legislation properly controlled by the judge, and then the conversation is reduced to writing immediately after and is a part of the court record, would be a distinct advantage in a case

TOM HONZEL:

County Attorneys Association. We helped in the drafting of this bill. We are in support of this legislation and urge you to support it. In cases of major crime something like this would be a great benefit. This would be a great tool for the law enforcement organizations. There were no opponents.

REPRESENTATIVE LORY:

If someone came to my door, how would I know if he had an official search warrant.

Representative Keyser said that he would have a piece of paper, it would not be verbal.

Representative Daily asked what type of a device would be used, and the answer was, a simple tape recorder.

Representative Anderson asked, is there some kind of a sophisticated way to identify the voice patterns. Mr. Burns said yes, but that would not be used because it would be much too expensive, but that they would probably have a code of some kind to assure correct identification. Our proposal would be that the affidavit would be filled out before the search and it would be served on the people involved.

There was discussion about an incident at Townsend and the ways the order would be recorded. Representative Keedy wondered if there was a reason that the bill was limited to search warrants rather than arrest warrants as well, and the answer was that there has not been the problem with the arrest warrants.

There was no further discussion and the hearing closed on House Bill 332.

HOUSE BILL NO. 322:

Representative Daily explained that Representative Harrington was gone and that he would be explaining the bill to the committee, with the assistance of Bill Romine. He said it was just a wrecked vehicles law.

BILL ROMINE:

Montana Automotive Dismantlers and Recyclers Association. This bill would permit a licensed wrecking facility to make the required search for the owner of an abandoned vehicle. In most instances the police officer does not take possession, it's usually done by a wrecker. They must send notices to the person whose vehicle is

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involved. In most areas the sheriffs office does this but in some remote areas there is no one to do this. It must be done in 90 days. What this bill does, it still keeps the procedure of the sheriffs sale, but it allows the person who has the actual possession to make a reasonable effort to ascertain the name and address of the owner. Then when all of these procedural points are taken care of then they still have the sheriffs sale. The peace officers think this is a good bill. We tried to give protection for the owner of the vehicle. I don't see any problems in the bill.

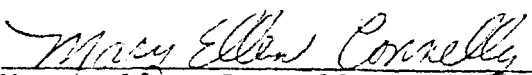
Representative Eudaily asked if there was a provision about the wrecking facilities expense, and the answer was, that the costs are provided to be deducted at the time of the sale. About the only cost would be for mailing the notices.

There was no further discussion and no further questions and the hearing closed on House Bill No. 322.

The meeting adjourned at 9:30 a.m. and the committee went into executive session to take action on pending bills.



John P. Scully, Chairman



Mary Ellen Connelly, Secretary