

HOUSE OF REPRESENTATIVES  
JUDICIARY COMMITTEE  
February 14, 1979

The regular meeting of the Judiciary Committee was called to order by Representative Scully at 8:00 a.m. in room 436 of the Capitol Building on Wednesday, February 14, 1979. All members were present with the exception of Representatives Day, Daily, Keedy, Seifert and Holmes who came in later. Representative Uhde was absent.

Bills scheduled for hearing were House Bills 641, 652, 666, 668, 673 and House

Joint Resolution 31.

HOUSE BILL NO. 641:

Representative Reichert. This is an act to improve the code of ethics. It has a section on state employees. She went through the bill and explained the changes and new sections. She discussed her relationship to fireman's pensions, mentioned that after her husband's death and if she had been in the legislature at that time she would have abstained from voting. She discussed this conflict of interest at some length. She read the new sections in the bill, and explained that on page 6, line 5, it would have to be modified.

SENATOR ED SMITH:

I am here in support of House Bill #641. I want to give one example of how some areas are being abused. He went on to talk about a breach of ethics in one of the agencies.

Because Senator Smith had to leave the room for another hearing, Chairman Scully asked the committee members if they wished to ask questions of him at this time. Representative Roth wondered if on page 2, the rules of conflict, wouldn't it be pretty hard to not have a conflict of interest. There was some discussion about this and Representative Conroy added some comments.

PAUL RICHARDS:

Common Cause, state director. I feel this bill is definitely a step in the right direction. He read an article on enforcement. I want to suggest an amendment. I feel a fail-safe mechanism should be built into the bill. On page 6, line 19, I see no conflict. He went on to express the need for the bill. Laurice Sullivan from Common Cause is also here to answer questions.

JACK RAMIREZ, OPPONENT:

Representative from Billings. This is a bill I worked on last session. The problem we have with this is the problem we have with all bills of this kind. You can't relate to California here in Montana. We have to be very careful about what we do. The problem is that nothing is defined. Everything is so vague that I can't figure out what it means.

I want definite rules. On Page 5 it is very vague. It places an impossible burden on anyone coming here. I hope the committee will take a good look at the definitions in here.

REPRESENTATIVE REICHERT: We are doing precisely what he is objecting to, in the current language. On page 5, line 19. she discussed what was meant by class. There were a number of questions pertaining to this. As a final statement I want to say, I do not think it is strong enough.

Representative Lory asked how you could enforce the statement on line 11, page 5.

MIKE MELOY: As I was looking through the bill I noticed the section that you are concerned about. 2-2-201 was placed in the code after the code of ethics. There is no sanction that we know of.

Representative Curtiss asked for further clarification of an entire class.

REPRESENTATIVE RAMIREZ: It is pretty tough to have any legislation that would not affect a whole class.

Representative Keyser asked what the words mean on line 3, page 5, "presents a substantial threat to the independence of his judgment."

MIKE MELOY: This new language has been added to the section about public trust.

When asked the same question, Mr. Richards said, "that phraseology is a mystery to me."

Representative Eudaily, on page 5, line 9, you have taken out the word "disclosing". A person could be in a quandary about who he is representing. There was general discussion as to why it was eliminated.

After further discussion about class and how this would affect them, the hearing closed on House Bill 641.

HOUSE JOINT RESOLUTION NO. 31: Representative Fedá. This bill is asking for a study of alternate no-fault reparations plans, and recommending the feasibility of implementing a no-fault motor vehicle plan in Montana. We recognize that the citizens of Montana are interested in a form of no-fault insurance.

BOYCE CLARK:

Independent Insurance Agents of Montana.  
He gave copy of written testimony, (copy

attached)

REPRESENTATIVE REICHERT:

I think the study would be a good idea.  
I would be in support of this study.

Representative Anderson asked if the  
title was broad enough to cover liability.

Mr. Feda answered that he thought that would become confusing because  
they are two different kinds of insurance.

Representative Seifert asked if Mr. Feda  
was aware that there had already been

a study, and Mr. Feda said "no".

Representative Rosenthal asked Represent-  
ative Reichert if she would support

this bill if hers did not make it. Representative Reichert said that  
she would, but that she felt the whole business needs an airing.

There was no further discussion and  
the hearing closed on HJR 31.

HOUSE BILL NO. 668:

Representative Ramirez. This bill would  
provide a standard of due diligence in

locating defendants within the state for purposes of service of summons.  
The law says that the summons must be served personally upon the  
defendant if within the state. Sometimes it is difficult to determine  
if he is or is not within the state. He discussed the language in  
the bill and explained what was meant by due diligence. Theoretically  
the court knows what due diligence means. There are plenty of  
safeguards in the bill.

WALTER JUKIH:

Montana Landlords Association. We are  
in full support of the bill, and your

assistance would be appreciated.

There was no further discussion and  
the hearing closed on House Bill 668.

HOUSE BILL NO. 652:

Representative Harper. This bill would  
amend the definitions used in the statute

on sexual crimes. He explained what the bill does.

TOM HENZEL:

County Attorneys Association. I think  
Representative Harper did a good job

explaining what the bill does. 503 is the rape section and 505 is  
the deviate sexual conduct. The bill corrects an oversight that has  
caused some problems. In subsection 3 we have run into some problem  
in defining cases because of what appears to be a big hole in the  
statute. I think it should be defined clearly throughout and this  
would fill that hole.

There was no further discussion and the hearing closed on House Bill 652.

HOUSE BILL NO. 666:

Representative Conroy. This bill is to allow the National Park Service to have concurrent jurisdiction over crimes in the following areas. The Big Horn Canyon, Grant-Kohrs, Big Hole Battlefield, Fort Union trading post, but it does not cover Custer Battlefield. He went on to tell about a case in the park and that the local police and the sheriff could not go in to help out. The jurisdiction for federal lands such as Custer Battlefield would be included in another section.

Representative Keyser said he could see some tremendous problems with this bill. Representative Scully stated that they could have concurrent jurisdiction at their request right now, in the National Parks. We could agree to go in if they asked. He explained this further.

There was some discussion and the hearing closed on House Bill 666.

HOUSE BILL NO. 673:

Representative Keedy. This bill will place probation officers under the state employee classification on the plan at specific grades. It has been four years since they had an increase in salary. Their salaries would float with some discretion from biennium to biennium with the state plan.

GLEN HUFSTETLER:

Montana Probation Officers Association. I have been a probation officer for about 8 and 1/2 years. There are 86 across the state, and of those 74% have Bachelors Degrees and 14% have Masters. We should have 41% more in the field with Masters by this summer. Mostly we are looking for talent. We are real happy with the calibre of people we have but we are concerned with keeping them. We have had the same salary since 1974 without a cost of living raise. The second area we are concerned with is our responsibility to the people. We have acted on your request to upgrade our profession.

JEREMIAH JOHNSON:

Probation Officer, 4th District and President of Montana Probation Officers Association. I do want to point out one concern that we have. What we are attempting to do is come up with some sort of a salary matrix so we don't have to come back every session of the Legislature. In Senate Bill 106 our concern was to set a limit with a cost of living structure. The Senate eliminated the cost of living section out of the bill. The elimination puts us right back with the same problem that we started out with. We are judicial district employees and the Judges do the hiring and firing. I receive 5 different salary

checks and this causes some difficulty.

GARY LOSHESKY:

Montana Probation Officers Association.  
We are very much in support of this bill.

Representative Lory. We have no problem with this but they are usually county employees, so what would happen by putting them in a state system.

MR. JOHNSON:

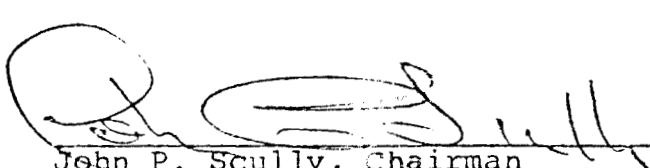
The money would still come out of each of the individual counties within the district. Then followed a discussion about the salary. Mr. Johnson commented that he was making \$16,000 four years ago and that he was still making \$16,000. Then followed discussion about the County Commissioners and how they budget salaries.

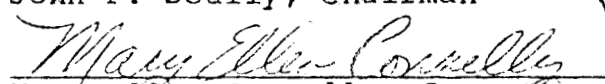
Representative Daily asked who determines where they would come on the pay scale. Representative Kemmis said that would be determined by the personnel department. There was general discussion about the pay plan and how this would work.

Representative Holmes commented that she thought this was a very good bill.

Then followed discussion about the rates and the steps and how that would work in the counties of a district. There was no further discussion and the hearing closed on House Bill No. 673.

The meeting adjourned at 9:30 and following a short break went into executive session to take action on bills pending.

  
John P. Scully, Chairman

  
Mary Ellen Connelly, Secretary