

MINUTES OF THE MEETING
LOCAL GOVERNMENT COMMITTEE
MONTANA STATE SENATE

February 6, 1979

The meeting of the Local Government Committee was called to order by Chairman, George McCallum on February 6, 1979, at 12:30 in Room 405 of the State Capitol Building.

ROLL CALL: All members were present with the exception of Senator Lockrem who was excused.

Dennis Taylor, Staff Researcher, was also present.

Several visitors were also in attendance. (See attachment.)

CONSIDERATION OF SENATE BILL 257: Senator Cornie R. Thiessen, of Senate District 27, chief sponsor of Senate Bill 257, gave a brief resume of the bill. This bill is an act to provide that a board of county commissioners may allocate to the county road fund 50% of the proceeds from leases by the county of oil and gas interests. Senator Thiessen stated that this bill is very unique in the fact that it does not increase the taxes. He asked the Committee to take up to 50% for the road fund.

Andrew Peterson, Jr., Richland County Commission, stated his support of the bill and commented that their road fund is small. They received \$100,000 in revenue sharing money last year. When the gas and oil royalties run out, so would the money.

Ben G. Nordell, mayor of Sidney, stood in support of Senate Bill 257, and asked the Committee to please pass this bill.

Mike Stephen, representing the Montana Association of Counties, stated that in many oil and gas counties, road levies are at a maximum. Oil and gas activities are a heavy burden on county roads, bridges and right of ways. Additional funds are necessary to keep roadways in good repair from the use of such heavy equipment. Senate Bill 257 would also assist in reducing the number of emergency funds from civil defense. (See attachment.)

Virgil Boehler, publisher of the Sidney newspaper, stated his support of the bill.

With no further proponents, Chairman McCallum called on the opponent. Hearing no opponent, Senator Theissen made the closing remarks. Senator Thiessen again commented on the unique thing about this bill; that it will not require any additional

taxes. The overall royalty money in 1977-1978 was \$180,000.00. The royalty money so far this year is \$46,000.00.

DISPOSITION OF SENATE BILL 257: A motion was made by Senator Watt and seconded by Senator Thomas that Senate Bill 257 be given a "DO PASS" recommendation from the Committee. Motion carried unanimously.

CONSIDERATION OF SENATE BILL 267: Senator William Lowe, of Senate District 33, sponsor of the bill, gave a brief resume. This bill is an act to revise and clarify the code of ethics relating to local government officers and employees. This bill is one of 12 bills being introduced which will correct problems in our laws relating to bond sales.

Tom Harrison, representing the D. A. Davidson Company, stated that he felt a code of ethics was necessary. He was definitely in support of the bill.

Bruce MacKenzie, legal counsel for D. A. Davidson, stated that this proposed legislation is seen as a cure for the problem in that it will allow an exemption from those statutes which would void or make a contract voidable where an official has a conflict of interest; provided, the official has disclosed the nature of the conflict in accordance with Montana's ethics statutes. (See attachment.)

Chairman McCallum called on the opponents, hearing none, he opened the meeting to a question and answer period from the Committee. Discussion was held.

DISPOSITION OF SENATE BILL 267: A motion was made by Senator Story that Senate Bill 267 receive a "DO PASS" recommendation from the Committee. Motion carried unanimously.

DISPOSITION OF SENATE BILL 269: This bill is regarding procedure for issuance of certain bonds.

Bruce MacKenzie, legal counsel for D. A. Davidson, stated this bill is just a simplified procedure.

Tom Harrison, representing the D. A. Davidson Company, commented that this bill will just expedite the processes.

Senator McCallum stated that he feels it is better to have the people involved.

A motion was made by Senator Story that Senate Bill 269 be given a "DO NOT PASS" recommendation by the Committee. Motion failed. (See attachment.)

A motion was made by Senator Story that Senate Bill 269 be tabled. Motion failed. (See attachment.)

A motion was made by Senator O'Hara that Senate Bill 269 be given a "DO PASS" recommendation from the Committee. Motion failed. (See attachment.)

DISPOSITION OF SENATE BILL 106: Dennis Taylor, staff researcher, handed out proposed amendments to Senate Bill 106.

Senator McCallum explained the amendments and what they would do.

A motion was made by Senator Watt that the proposed amendments be adopted for Senate Bill 106. Motion carried.

Senator Thomas stated that perhaps a maximum salary should be placed on this bill.

Senator Watt stated that if there were only one county involved with each probation officer it would be easy to set the salaries.

Senator O'Hara suggested perhaps the salaries could be set on a percentage basis.

Senator Rasmussen suggested perhaps the Committee could put limits on the bill. He suggested putting \$16,000 on the bottom and \$19,500 on the top.

A motion was made by Senator Conover to use the figures of \$16,000 on the bottom and \$18,500 on the top. Motion withdrawn.

A motion was made by Senator Watt that Senate Bill 106 be amended with \$15,000 on the bottom and \$19,500 on the top. Motion carried unanimously.

Discussion was held regarding sub-section 2.

A motion was made by Senator O'Hara that Dennis Taylor do whatever is necessary to make the bill read correctly. Motion carried.

A motion was made by Senator Watt that Senate Bill 106 receive a "DO PASS, as amended" recommendation. Motion carried unanimously.

DISCUSSION ON SENATE BILL 229: It was suggested to perhaps use the figure of 5% instead of 7% on the schedule.

Senator Rasmussen stated that he did not feel this would

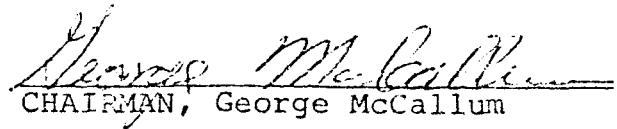
be enough money in view of the cost of living.

A straw vote was taken as to which was better, 5% or 7%; seven percent (7%) was favored.

Senator Rasmussen suggested perhaps give everybody a 7% increase.

A motion was made by Senator Rasmussen that Senate Bill 229 be amended to allow for a 7-7% increase in wages during the next biennium, straight across the board. Motion carried. Dennis Taylor was directed to draft the appropriate amendments and bring them back to the Committee on February 13, for their viewing.

ADJOURN: With no further business, the meeting was adjourned at 2:30 with the next meeting to be held on Wednesday evening at 7:00 p.m. to consider the recodification bills.



George McCallum
CHAIRMAN, George McCallum

SENATE

COMMITTEE

BILL

VISITORS' REGISTER

DATE

Please note bill no.

(check one)

ROLL CALL

LOCAL GOVERNMENT COMMITTEE

46th LEGISLATIVE SESSION - 1979

Each Day Attach to Minutes.

STANDING COMMITTEE REPORT

February 6 1979

MR. President:

We, your committee on Senate Local Government

having had under consideration Senate Bill No. 106

Respectfully report as follows: That Senate Bill No. 106,

introduced bill was unanimously passed as amended.

1. Page 1, line 14.

Following: "salary"

Insert: ", not to be less than \$15,000 or more than \$19,500 depending on the formal training and experience of each respective officer."

2. Page 1, line 16.

Following: line 15

Strike: line 16 through 19 in their entirety

3. Page 1, line 20.

Following: line 19

Strike: "each officer"

xDQ-PASSX

Continued

February 6, 1979
Senate Local Government
Page Two
Senate Bill 106

4. Page 2, line 1.
Following: "for"
Strike: "necessary"
Insert: "authorized"

5. Page 2, line 4.
Following: "reimbursed"
Strike: remainder of lines 4 and 5 in their entirety
Insert: "as provided in 15-18-501 through 15-18-503."

And, as so amended: DO PASS

Senator George McCallum

Chairman.

STANDING COMMITTEE REPORT

.....February 6.....19....79.

MR.President:.....

We, your committee on.....Local Government.....

having had under considerationSenate..... Bill No.257.....

Respectfully report as follows: That.....Senate..... Bill No.257.....

DO PASS

STANDING COMMITTEE REPORT

..... February 5..... 19 73.....

MR. President:.....

We, your committee on Local Government.....

having had under consideration Senate..... Bill No. 267.....

Respectfully report as follows: That Senate..... Bill No. 267.....

DO PASS

NAME: Ben G. Nordelt DATE: 3/6/79

ADDRESS: Box 753

PHONE: 482-3212

REPRESENTING WHOM? Richard County

APPEARING ON WHICH PROPOSAL: Senate Bill 257

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: _____

NAME: John Michael Goss Jr. DATE: 2/6/77

DATE: 2/6/77

ADDRESS: 6811 67th 287

PHONE: 2192-3582

REPRESENTING WHOM? ALFRED (FRED) BROWN

APPEARING ON WHICH PROPOSAL: _____

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Thelma DATE: _____

ADDRESS: Sequoia

PHONE: _____

REPRESENTING WHOM? _____

APPEARING ON WHICH PROPOSAL: SB 251

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? _____

COMMENTS: Thelma

NAME: Nichal Stephen DATE: 2-6-79

ADDRESS: 1802 11th Ave Helena

PHONE: 442-5209

REPRESENTING WHOM? MT Assoc. of Counties

APPEARING ON WHICH PROPOSAL: Senate Bill 257

DO YOU: SUPPORT? AMEND? _____ OPPOSE? _____

COMMENTS: In many of the oil and gas
Counties road levies ^{are} not a
maximum. Oil and gas activities
are a heavy burden on county
roads, bridges and right of ways.
Additional funds are necessary to
keep the roadway in good repair
from the use of such heavy
equipment.

It would also assist in reducing
the number of fatal emergency trips from
oil and gas areas.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Bruce A. Blakely DATE: 2/6/79

ADDRESS: 16 Third St. No

PHONE: 727-4200

REPRESENTING WHOM? D. A. D. Anderson, Jr.

APPEARING ON WHICH PROPOSAL: 56 267

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: _____

Suggested amendments - SB 106 (Senator Bob Brown)

1. Page 1, line 14.

Following: "salary"

Insert: "which may not be less than \$16,500"

2. Page 1, line 16.

Strike: "of \$22,500"

3. Page 1, line 17.

Following: "based"

Strike: remainder of lines 17 and 18 in their entirety

4. Page 1, line 19.

Following: line 18

Strike: "Labor each year and"



February 5, 1979

Summary of Testimony

TO: SENATE LOCAL GOVERNMENT COMMITTEE

FROM: BRUCE A. MACKENZIE
CORPORATE COUNSEL - D. A. DAVIDSON & CO.

RE: SENATE BILL 267

Montana Code Annotated, Section 2-2-103 imposes liability upon an elected official of the State or any of its political subdivisions for deviation from his fiduciary duties. This liability is identical to that imposed upon a trust officer for breach of his fiduciary duty to a beneficiary of a trust and exposes the official to financial loss in the event of a breach being found. M.C.A., Section 2-2-125 enumerates certain acts which are considered per se breaches of fiduciary duty. One of the acts enumerated as improper is the performance of an official act which directly and substantially affects beneficially the economical standing of a business in which the official has either a substantial financial interest or is engaged as a representative or agent. An official act may be one of action or inaction which involves discretionary authority. Court interpretations have held that an official act includes attendance at a meeting for purposes of making up a quorum or any other act which is necessary to enable the political body to act. Montana statutes are clear in allowing an official to act for these purposes, however, even where he may have a conflict of interest, provided the official voluntarily discloses the nature of the private interest which impinges upon his fiduciary duty. Disclosure must be in writing to the Secretary of State describing the nature of the financial interest and the extent and duration of the services to be rendered. In addition, when the official act is performed the official must state for the record the facts of his interest.

Unfortunately, the Code of Ethics fail to recognize that there are other provisions within the Montana Code which also speak of public officials conflict of interest. The fact that a public official in Montana follows the disclosure requirements of 2-2-131 does not obviate the effect of the other Montana provisions which are referenced in this proposed legislation. These sections provide that in the event an official has a conflict of interest the contract or project approved by the governing body is void or voidable. This creates definite problems with obtaining legal opinions on bond issues where an official of a political subdivision issuing

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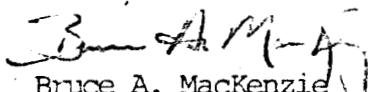
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Exchange Inc.

bonds may have a pecuniary interest that may occur to him as a result of a business he owns or participates in obtaining some benefit from the bond issue. This would be the case under present Montana law even though the official had disclosed this conflict of interest to the Secretary of State and at the public proceedings involving the issuance of the bonds and abstained from all official acts other than being present for a quorum.

This proposed legislation is seen as a cure for this problem in that it will allow an exemption from those statutes which would void or make a contract voidable where an official has a conflict of interest; provided, the official has disclosed the nature of the conflict in accordance with Montana's ethics statutes.

Respectfully submitted,



Bruce A. MacKenzie
Corporate Counsel