

# MINUTES OF THE MEETING

## PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE

March 9, 1979

The twenty-third meeting of the Senate Public Health, Welfare and Safety Committee was called to order in Room 410 of the State Capitol Building at 1:00 p.m. on March 9, 1979.

ROLL CALL: All Committee members were present except Senator Himsl and Senator Palmer, who arrived later in the meeting.

CONSIDERATION OF HOUSE BILL 711: House Bill 711 is an act removing the citizenship requirement for a physician's certificate to practice medicine in this state and adding the requirement of being able to communicate in English.

Representative Paul Kropp, District 5 and sponsor of House Bill 711, said this bill is an act removing the citizenship requirement for a physician practicing in this state. Section 2, starting on line 18, gives the requirements for being a doctor. Added to these requirements is the ability to communicate in the English language.

Jerry Loendorf, Montana Medical Association, said this bill was requested by the medical examiners. Citizenship isn't necessary in exercising the skills to be a doctor. The ability to communicate in the English language is necessary. In addition to that, the United States District Court for the District of Montana made some comments relating to this and said they would find the citizenship requirement unconstitutional. See Attachment "A."

Rep. Kropp closed testimony by requesting that the Committee concur in House Bill 711.

There being no questions from the Committee members, the hearing on House Bill 711 was closed at 1:05 p.m.

CONSIDERATION OF HOUSE BILL 196: House Bill 196 is an act to establish a Division of Visual Services in the Department of Social and Rehabilitation Services and provide for a Visual Services Advisory Council.

Witnesses supporting House Bill 196:

Representative Gould  
Representative Harold Gerke  
Dr. Roger Lewis, Optometrist  
Sharon Cromeens, Montana Association for the Blind  
Lelia Proctor, Montana Association for the Blind  
Phyllis Honka, Montana Association for the Blind  
Marlyn Madson, Great Falls Chapter of the Blind  
Rosemary Zion, Montana Association for the Blind

Witnesses opposing House Bill 196:

John Fitzpatrick, Office of Budget and Program Planning  
Judith Carlson, Department of Social and Rehabilitation Svcs.

Representative Ellis said that House Bill 196 is presented at the request of the blind people in the state who are asking the Legislature to put their division in a statute and establish a counsel on which they will have a majority to advise and help the Division of Visual Services.

Representative Gould said that two years ago there was a proposal brought up with the Appropriations Committee to combine the Visual Services Division with another division. He personally knows it is important for Visual Services to maintain their own identity. He has talked to people across the United States and found that the Montana Visual Services Program is excellently done and has been used as a model. With the Department of Health, Education, and Welfare funding 80 percent of these types of services, there is a bottom-line that has to be looked at. When agencies are combined you have most of the work going into the things that are going to be relatively simple cases. He feels it is very important that Visual Services be a separate division under the Department of SRS.

Representative Harold Gerke, District 62, appeared in support of House Bill 196. He said the title of the bill tells it all. On page 9 one of the most important parts is between lines 6 and 10 which reads that the division be established on a line-item basis. He realizes that having worked with the budget a number of years this isn't the usual process. However, in this case it is very necessary in order to put a fence up to keep the predators away. He wants to be sure that the money for the visual aid is always there, so these people don't have to be up here fighting to keep it.

Dr. Roger Lewis, optometrist in Helena, testified in support of House Bill 196. He said this is a very difficult type of rehabilitative work that these people do. They have been put together over a number of years, and there is now a very capable and dedicated professional staff which works together on the very difficult problems. This particular department is the only department that can help these people. He said that he can correct the eye problem as best he can; the opthamologist can make sure the problem is staying static; but this visual services department is the only one that can really help the blind people.

Sharon Cromeens, Montana Association for the Blind, testified in support of House Bill 196. He has 39 years' experience with the blind in the state of Montana. He gave the background information on what has happened to the services for the blind over the years, demonstrating how the services have been switched from one organization to another. He said that between 1921 and 1941 only 9 people in the state were rehabilitated. In 1972 they came to the Department of SRS, and by virtue of reorganization the program was developed by administrative rule. He stated that the program for the blind in Montana has been continually surrounded by uncertainty. They hope that House Bill 196 will be concurred in so that they have some assurance that they will have some security.

Lelia Proctor, Montana Association for the Blind, testified in support of House Bill 196. See Attachment "B."

Phyllis Honka, Montana Association for the Blind, testified in support of House Bill 196. She stated that it was not until she was contacted by Visual Services that she would come to grips with the fact that she was totally blind. She went through college and became an employee of the Visual Services Division as a counselor. She later married a person who was also involved in this work. She knows the problems that the division has had with being shifted around. In 1965 the division became a division. This was a pilot program, and it has proved very successful. It is a tremendous threat to have the insecurity of not knowing if they will remain a division, and they are asking that this be nailed down with a statute.

Marlyn Madson, president of the Great Falls Chapter of the Blind, testified in support of House Bill 196. See Attachment "C."

Rosemary Zion, Montana Association for the Blind, appeared in support of House Bill 196. She said that the most important thing about separate services is that when the blind is rehabilitated through separate programs the rate of rehabilitation is higher and it is less costly. She relayed information from two studies on services for the blind. See Attachment "D." She said that Montana is getting a lot of mileage for very little money through the interaction with a private association. The state could not afford to have a summer program for the blind if it didn't have a private program to work it out. All this statute does is give some security to a program that has been very successful.

See written testimony in support of House Bill 196 from Grady Watson, Attachment "E," and from Tony Persha, Attachment "F."

John Fitzpatrick, Office of Budget and Program Planning, appeared in opposition to House Bill 196. He said that Section 2-7-103 of the Code charges the governor with the responsibility of continuously studying and evaluating the organizational structure, management practices, and functions of the executive branch and of each agency. He has delegated this authority to the Office of Budgets and Program Planning. Their opposition stems from the fact that this bill is inconsistent with the principles of executive reorganization, and it is unnecessary. By executive reorganization 188 separate agencies were combined into 19 executive agencies. Section 2-14-104 of the Code stipulates the structure of the executive branch. Under current law all powers and duties are allocated to departments. All divisions are created administratively except Workmen's Comp. His office views this as an organizational matter. They don't question the services to the blind. They view this bill as precedent setting. They foresee that if this bill is enacted the next legislature will see an increasing number of bills asking for this same type of consideration, and they don't want to again have 188 separate agencies. They think this law is unnecessary. At the present time there are 7 divisions in SRS. One of the 7 line divisions is the Visual Services organization. See Attachment "G." Since these entities already exist and this bill conflicts with the statutes, they cannot see the need for this legislation. He said he is not aware of any plans to abolish the Visual Services Division.

Judith Carlson, Department of Social and Rehabilitation Services, presented written testimony in opposition to House Bill 196. See Attachment "H." She said that Mr. Fitzpatrick has very adequately stated their position.

Representative Ellis closed by saying that these people are very happy with their services and want to secure them. This is an exception, but this is a very exceptional group.

Chairman Rasmussen asked the Committee members if they have any questions. Chairman Rasmussen asked why the section relating to definition of blindness was struck from the bill. Rep. Ellis said the entire section was struck to strengthen the bill, but the definition still stands on the books. Senator Norman asked why the rest was taken out. Ms. Zion said she thinks that this was done to leave the powers and duties of SRS the same. This was to strengthen the point that this bill is not meant to change the relationship of SRS. Senator Himsl asked if the advisory council is mandated by federal law. Ms. Zion said it is not specifically mandated that there is a council, but there has to be input from the public. The state does this by the council. Senator Himsl asked if federal funds are available for this type of advisory council. Ms. Zion said that in order to receive vocational funds at all the state must have a mechanism for a public input program. Senator Himsl asked if the SRS budget includes state general fund money as well as federal money. Mr. Baumgardner, administrator of Visual Services, said there is an 80-20 match. Senator Norman asked about page 9 regarding the language on establishing a line-item basis. Ms. Zion said 15 percent of the federal vocational fund that comes into the state is allocated for visual services. Mr. Baumgardner said this is \$540,000. Senator Lensink asked Mr. Baumgardner if he is concerned about his division at the present time. He said he is not. Chairman Rasmussen asked if the composition of the advisory council changes with this bill. Ms. Zion said it does not.

The hearing on House Bill 196 was closed at 2:00 p.m.

CONSIDERATION OF HOUSE BILL 342: House Bill 342 is an act to place the law relating to preferential granting of concessions in public buildings to blind and disabled persons under the Department of Social and Rehabilitation Services.

Witnesses supporting House Bill 342:

Susan Ford, Montana Association for the Blind  
Rosemary Zion, Montana Association for the Blind  
Representative Gerke  
Judith Carlson, Department of SRS

Representative Ellis said this bill overhauls a statute that has been on the books and puts some teeth into the law. It asks the Department of Social and Rehabilitation Services to make the law work to give the blind and disabled first chance at the concessions in public buildings in the state.

Susan Ford, Montana Association for the Blind, said that in 1953 a law was passed which would give a preference to the operation of vending machines to the blind and disabled. This law was not implemented because no department was given the authority to implement it. This bill will provide the Department of Social and Rehabilitation Services to enforce this law. This will make more jobs available to the handicapped. Opening a program in state offices would open a program for training which has not been available in this state.

Rosemary Zion, Montana Association for the Blind, said the purpose of this bill is to give Montana law a chance to work. There is only one blind or disabled concession in the state. This bill gives rule-making authority to the Department of Social and Rehabilitation Services, and this supplements the efforts that are currently being undertaken in the federal law by the Randolph-Shepherd Act. See Attachment "I."

Representative Gerke spoke in support of House Bill 342. He said this would probably open a few more opportunities for the handicapped. They have demonstrated that they can handle the concessions very well.

Judith Carlson, Department of Social and Rehabilitation Services, said the department is in favor of House Bill 342.

Representative Ellis closed the testimony by thanking the Committee and asking for their support.

Chairman Rasmussen asked the Committee members if they have any questions. Senator Himsl asked why this type of vending service was cancelled in the Kalispell post office. Ms. Ford said this was a dry stand, and they have not been profitable. The vending facilities that they are trying to set up would be a larger, more profitable stand for the operator. Mr. Baumgardner said these are marginal income stands; stands that do not support an operator. Senator Himsl asked if this means that the disabled can put in banks of vending machines. Mr. Baumgardner said this will have to be defined in the rules as to what type of items would be included. He would probably be able to establish as a stand a bank of vending machines. The law as it was first intended was for concession stands.

The hearing on House Bill 342 was closed at 2:05 p.m.

CONSIDERATION OF HOUSE BILL 463: House Bill 463 is an act relating to dangerous drugs; transferring THC from Schedule I to III to allow prescriptive use; and deleting marihuana from Schedule I.

Witnesses supporting House Bill 463:

John Bartlett, Pharmacist  
Bill Kirley

Representative Gould, District 98 and sponsor of House Bill 463, said this is a very simple piece of legislation that says that if the federal government should choose to make THC available on a prescriptive basis that the state of Montana would be able to do the same thing as soon as the federal government approves it. He stated that he became blind about nine years ago, and it is common for glaucoma to set in. He took all the available medications to help with the pain and graduated to taking glycerin cocktails, which are very difficult to keep down. He described the intense pain in each eye, and his doctor suggested that the eyes be removed. He said this suggestion is a little tough because you have always got some hope as long as you have your eyes. He said that if THC is of some hope and help then it should be available on a prescription basis. He said that if the bill is not passed he understands that the Board of Pharmacists can accomplish the same thing in about two months after the FTC signs the orders. He thinks it would be more like 6 to 8 months. If this will help keep people from going through the pain that he went through, he thinks Montana should have the bill on the books.

John Bartlett, pharmacist, spoke as a proponent of House Bill 463. He said that this bill does not approve a drug by state law nor does it circumvent the scientific functions. This bill will assure that research and usage will not be impeded.

Bill Kirley testified in support of House Bill 463. He said that he worked with a program which did research on marijuana in Washington, D. C. He said that currently marijuana is a Schedule I drug. This means the drug has no medical use. This is contrary to what they now know about marijuana. He related the case of Bob Randall who went to a research center in Washington, D. C., where he obtained this drug; and the relief he obtained is documented in that research program. After the program, he was forced to obtain the drug illegally

and was arrested. The court overturned the arrest because of medical necessity. He is now allowed to have the drug to treat his condition. This bill will ensure that no state law stands in the way of a person receiving marijuana by orders of the doctor when the federal government sees fit to make it available. He would like to see the bill amended to designate that marijuana be designated to the schedule which corresponds with the federal law instead of designating it to a specific schedule in this bill.

Representative Gould closed by saying that he looked at the laws in other states which have done this (approximately 10). The states that have research facilities have a more expanded law. Montana doesn't have those facilities, so he has made the bill as simple as possible.

Chairman Rasmussen asked the Committee members if they have any questions. Senator Norman asked Representative Gould about the possibility of amending the bill to leave the schedule open until it is designated by FTC. Rep. Gould said that would be fine with him; he isn't sure why the Attorney General wanted the schedule that is designated. Chairman Rasmussen asked what is related to Schedules I, II, and III. Rep. Gould said that I is heroin and marijuana; II is opiates, cocaine, and amphetamines; and III is also controlled substances but not as tightly controlled as in Schedule II. As far as any illegal use, the penalties stay the same. Rep. Gould said he thinks with Schedule II the prescriptions can only be written for one refill or no refills and for only a certain length of time. Senator Norman said this is correct, and the doctor can't order the drug over the phone. He has to order the brand name.

The hearing on House Bill 463 was closed at 2:25 p.m.

ACTION ON HOUSE BILL 711: Senator Lensink moved that House Bill 711 BE CONCURRED IN. The motion carried by a vote of six to one. Senator Norman will carry the bill on the Senate floor.

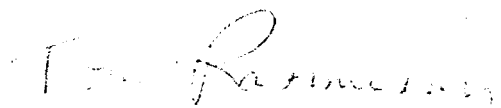
ACTION ON HOUSE BILL 463: Senator Palmer moved that House Bill 463 BE CONCURRED IN. Senator Lensink said the drug is now in Schedule I; and this bill puts it in Schedule II, which is for drugs that have high potential for abuse and accepted medical value. He prefers to leave it in Schedule II. Senator Norman asked what happens if the FTA puts it in Schedule III. Senator Lensink said he doesn't think that would make any difference because Montana could still prescribe under Schedule II. A roll call vote was taken. The motion passed by a vote of six to one. Senator Lensink will carry the bill on the Senate floor.



ACTION ON HOUSE BILL 342: Senator Ryan moved that House Bill 342 BE CONCURRED IN. Senator Norman expressed concern if this becomes profitable that the blind person could sit at home and contract out a whole fleet of concessions. He thinks that the intent of this bill is that the blind person run the concession. A discussion followed on tying up the concessions and establishing a bank of vending machines. Senator Himsl said he is concerned about the rule-making authority. Senator Norman thinks that the Committee should amend the Statement of Intent. A roll call vote was taken on the motion to concur in House Bill 342. The motion passed unanimously.

Senator Ryan moved that the Statement of Intent be adopted. A roll call vote was taken. The motion failed by a vote of six to one. Chairman Rasmussen asked Mr. Taylor to work on an amendment to the Statement of Intent.

ADJOURNMENT: There being no further business discussed, the meeting was adjourned at 2:50 p.m.

  
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SENATOR A. T. RASMUSSEN, CHAIRMAN

DATE 3-9-79

COMMITTEE ON Public Health House BILL NO. 71462

1964-342

VISITOR'S REGISTER

NAME	REPRESENTING	Check One	
		Support	Oppos
Nolly O'Carby	Nonidentifying Blind	✓	
Margaret Cronen	Mount. Assn for Blind	✓	
Mike Holman	" " "	✓	
Jim Aldrich	" " "	✓	
Delos Kelley	" " "	✓	
Harwin Garding	" " "	✓	
Barbara Wolverson	" " "	✓	
Relia Proctor	" " "	✓	
Gray Hallen	" " "	✓	
Thelma Horne	" " "	✓	
Mary Reimer	" " "	✓	
Kerman Reimer	" " "	✓	
Louise Beach	" " "	✓	
Susan Ford	" " "	✓	
Ruth Meadows	" " "	✓	
Sharon Pakeman	" " "	✓	
Sharon Cromer	" " "	✓	
Bill Kirby	Self	463	
Marlyn Madson	" " "	✓	
Harold Leigland	" " "	✓	
John H. ...	SRS	176	
Rosemary ...	Mount. Assn Blind	126-299-1461-342	
John ...		126-299-1461-342	

SENATE COMMITTEE PUBLIC HEALTH, WELFARE & SAFETY

Date 3-9-79 House Bill No. 711 Time 3:25 p.m.

NAME	YES	NO
Senator Matt V. Himsl	✓	
Senator Everett R. Lensink	✓	
Senator Bill Norman	✓	
Senator Bob Palmer	✓	
Senator Patrick Ryan	✓	
Senator S. A. Olson, Vice-Chairman		✓
Senator A. T. Rasmussen, Chairman	✓	

Gayle L. Olson  
Secretary

Tom Rasmussen  
Chairman

Motion: HB 711 Be Concurred In

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE PUBLIC HEALTH, WELFARE & SAFETY

Date 3-9-79 HOUSE Bill No. 462 Time 2:30 p.m.

NAME	YES	NO
Senator Matt V. Himsl	✓	
Senator Everett R. Lensink	✓	
Senator Bill Norman	✓	
Senator Bob Palmer	✓	
Senator Patrick Ryan		✓
Senator S. A. Olson, Vice-Chairman	✓	
Senator A. T. Rasmussen, Chairman	✓	

Judy L. Olson  
Secretary

Tom Rasmussen  
Chairman

Motion: HB 462 Be Concurred In

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE PUBLIC HEALTH, WELFARE & SAFETY

Date 3-9-19 House Bill No. 342 Time 2:40 p.m.

NAME	YES	NO
Senator Matt V. Himsl	✓	
Senator Everett R. Lensink	✓	
Senator Bill Norman	✓	
Senator Bob Palmer	✓	
Senator Patrick Ryan	✓	
Senator S. A. Olson, Vice-Chairman	✓	
Senator A. T. Rasmussen, Chairman	✓	

Eric J. Olson  
Secretary

Tom Rasmussen  
Chairman

Motion: H.B. 342 Be Concurred In

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE PUBLIC HEALTH, WELFARE & SAFETY

Date 2-7-79 House Bill No. 342 Time 2:15 p.m.

NAME	YES	NO
Senator Matt V. Himsl		✓
Senator Everett R. Lensink		✓
Senator Bill Norman		✓
Senator Bob Palmer		✓
Senator Patrick Ryan	✓	
Senator S. A. Olson, Vice-Chairman		✓
Senator A. T. Rasmussen, Chairman		✓

Gregory A. Olson  
Secretary

Tom Rasmussen  
Chairman

Motion: HB 342 Statement of Intent  
Be Adopted

(include enough information on motion--put with yellow copy of committee report.)

## PUBLIC HEALTH COMMITTEE

Date 3.9.79

[illegible]

NAME: Sharon Crowe DATE: March 9, 1979

ADDRESS: 923 Missoula Ave., Helena, Mt. 59601

PHONE: 442-7473

REPRESENTING WHOM? Montana Assn for the Blind

APPEARING ON WHICH PROPOSAL: H.B. 196 and H.B. 342

DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_

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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



NAME: Lelia Prout DATE: Nov 9 1979

ADDRESS: PO Box 536

PHONE: Kaliapill, Mont

REPRESENTING WHOM? Mont Assn for Blind

APPEARING ON WHICH PROPOSAL: 196

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: \_\_\_\_\_

Verbal Statement

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NAME: Phyllis Hinkle DATE: May 9 1979

ADDRESS: 1007 Townsend Ave Helena

PHONE: 442-1798

REPRESENTING WHOM? Montana Association of L.R. Bling

APPEARING ON WHICH PROPOSAL: 196

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: \_\_\_\_\_

Verbal testimony

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Marilyn Madison DATE: 3-9-79

ADDRESS: 521 Riverview Drive, N.E. Mt. Falls, N.H.

PHONE: 453-0700

REPRESENTING WHOM? Mont. Assn. for Blind

APPEARING ON WHICH PROPOSAL: H.B. 196 and H.B. 342

DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Rosemary B. B. B. DATE: 3/9/79

ADDRESS: P.O. Box 3121 (201 Penn Bldg, Helder

PHONE: 212-3261

REPRESENTING WHOM? Mont Allen - Bird

APPEARING ON WHICH PROPOSAL: AB 146 HQ 712

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: See within testimony

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Bill Kirley DATE: 3/9/89

ADDRESS: Townsend MT

PHONE: (406) 266-3373

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: HB 463

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: \_\_\_\_\_

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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

FILED

IN THE UNITED STATES DISTRICT COURT

NOV 17 1977

FOR THE DISTRICT OF MONTANA

JOHN E. PEDERSON, CLERK

BILLINGS DIVISION  
HELENA DIVISIONBy \_\_\_\_\_  
Deputy Clerk-----  
ANTONIO MUINA, M.D., )

Plaintiff, )

-vs- )

CV-77-122-BLG

COMMUNITY MEMORIAL HOSPITAL OF )  
RICHLAND COUNTY, DEPARTMENT OF )  
PROFESSIONAL LICENSING, ED CARNEY, )  
Director, BOARD OF MEDICAL EXAMINERS, )  
ALLAN GOULDING, M.D., President, )Defendants. )  
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ANTONIO MUINA, M.D., )

CV-77-69-H

Plaintiff, )

-vs- )

STATE OF MONTANA, DEPARTMENT )  
OF PROFESSIONAL LICENSING, )  
ED CARNEY, Director, BOARD OF )  
MEDICAL EXAMINERS, ALLAN )  
GOULDING, M.D., President, )Defendants. )  
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There are presently pending in these actions motions to dismiss filed on behalf of the various defendants. The motions were argued to the Court on November 16, 1977. At the same time, the Court entertained argument on the plaintiff's request for preliminary injunctions. No evidence was presented by way of testimony or documentary proof in support of the plaintiff's request for injunctive relief.<sup>1</sup>

The Court having considered the various motions finds that the motions to dismiss are well taken and that the plaintiff

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<sup>1</sup>These lawsuits are fraught with threshold problems. The plaintiff initially failed to effectuate proper service of process. Subsequently, the myriad affidavits and briefs propounded by the plaintiff, some showing a certificate of service, have not been served upon any of the defendants. As such, the cases could properly be dismissed under Rule 41(b) of the Federal Rules of Civil Procedure. See, Van Bronkhorst vs. Safeco Corp., 529 F.2d 943 (9th Cir. 1976).

has failed to meet the burden imposed on him when seeking to invoke the equitable powers of the Court. A Quaker Action Group vs. Hickel, 421 F.2d 1111 (D.C. Cir. 1969).

For an action to exist under 42 U.S.C. § 1983, there must be some action by a "person" acting under color of state law. The hospital is not a person within the meaning of that section, nor is it acting under color of state law. Downs vs. Department of Public Welfare, 368 F.Supp. 454 (E.D. Pa. 1973).

With respect to the remaining defendants, the action must be dismissed because there has been no showing, other than the bald assertion of plaintiff's counsel, that the defendants have denied the plaintiff any right guaranteed him by the Constitution of the United States. The plaintiff has a license to practice medicine in the State of Montana, albeit a temporary license, which cannot be revoked until there has been a hearing on the allegations made against him. Section 82-4215, Revised Codes of Montana, 1947. Absent any ex parte action by the State to stop the plaintiff from practicing medicine, it is evident from the complaints that there is simply no case or controversy within the meaning of Article III of the United States Constitution presented by these actions. Flast vs. Cohen, 392 U.S. 83 (1968). The case or controversy requirement is jurisdictional. Invariably, if the state administrative proceeding is already in progress, Dr. Muina will be deprived of nothing until the completion of that proceeding, even through the review of the administrative proceedings by the state courts if that be necessary. See, Preiser vs. Rodriguez, 411 U.S. 475 (1973)(dicta).

Finally, the Court notes that in a proper case, the plaintiff's contentions with respect to the requirements of citizenship for permanent licensure to practice medicine would appear to be well taken. In Re Griffith, 413 U.S. 717 (1973); Examining Board of Engineers vs. Flores de Otero, 426 U.S. 572 (1976). Therefore,

IT IS ORDERED that the motion to dismiss filed on behalf of the Community Memorial Hospital of Richland County be, and the same hereby is, granted, without prejudice.


IT IS FURTHER ORDERED that the motion to dismiss filed on behalf of the remaining defendants be, and the same hereby is granted, without prejudice.

IT IS FURTHER ORDERED that the plaintiff's motion for a preliminary injunction be, and the same hereby is, denied.

The Clerk is directed to enter, by separate document, a judgment dismissing the above-entitled actions without prejudice.

The Clerk is directed to notify the parties of the entry of this order.

Done and dated this 17<sup>th</sup> day of November, 1977.

  
United States District Judge





## MONTANA ASSOCIATION FOR THE BLIND, INC.

an Affiliate of the National Federation of the Blind

Box 536

Kalispell, Montana 59901

March 9, 1979

Mr. Chairman and Committee Members:

I am Lelia Proctor, Secretary-Treasurer of the Montana Association for the Blind, a position I have held since 1960.

The MAB is an organization of visually handicapped people for the most part, who banded together because of mutual concerns. We have 11 chapters scattered across the state. We are a consumer organization but also provide certain services to members and our fellow blind.

Since the MAB was founded in 1946 we have worked with the State Services for the blind in providing the best possible services to the visually handicapped of Montana. In working closely together we understand each other's limitations and, therefore, one of us is generally able to provide a service when the other cannot. There is no duplication of services and both state and private money are used to the best advantage.

The Association has conducted the annual 5-week Summer Orientation Program for the Blind since 1948. For many years it was called the Summer School for the Adult Blind. It was and still is a co-operative endeavor with Visual Services. While not as adequate as a year-round orientation center would be, it is fulfilling a definite need and provides training for many blind people who would not get any otherwise, or the State would pay thousands of extra dollars to send them out of state for such training.

The Association in employing a part-time home teacher for the home-bound and newly blinded, demonstrated the need for such a service. As a result, Visual Services incorporated the rehabilitation teaching program into their services. We contributed financially toward the support of this program for three years after the Division took it over.

From time to time the MAB has given specific assistance to students and others; Visual Services clients have been the recipients of our annual scholarship award. We often lend equipment and provide money for materials for projects carried on by Visual Services staff. During the past 11 months we have dispensed over \$2800 to Visual Services clients in emergency loans to enable them to keep medical appointments or continue their training without interruption pending the arrival of their rehabilitation checks.

These are some examples of cooperation between two specialized agencies that make for maximum use of funding. Because both are relatively small, service is personalized and problems can be handled quickly. Were Visual Services Division to be merged with other rehabilitation services, such cooperation would almost certainly cease to exist. There just wouldn't be the interaction between groups that is possible with smaller, more specialized agencies.

Thank you for your time and the blind of Montana do urge that you give HB196 a do-pass recommendation.



# MONTANA ASSOCIATION FOR THE BLIND, INC.

an Affiliate of the National Federation of the Blind

To Members of the Public Health Committee:

I'd like to go back about two years ago. I first came into contact with the Visual Services through my doctor. After being contacted by the Visual Service I was then contacted by the M.A.B.

At this time I still had hope that I would recover my sight and yet at the same time I was scared to death that I wouldn't. Members of the Visual Services along with members of the M.A.B. started to give me counseling. The two were working together to give me encouragement although at the time I was not aware of it. They finally convinced me that I should attend the 1977 Summer Orientation Program for the Blind in Bozeman. I went to Bozeman somewhat reluctantly. I could only think how am I going to take care of myself, how am I going to get by, even though I still had some vision. After being in Bozeman about a week I found that I was overcoming these fears and gaining confidence in myself. I began to think not about how I could cope with things, but how I could help other cope. I found that I was not the only one with a serious problem and that others had the same problems, and worse. It was then that I really discovered what the Visual Services and the M.A.B. were trying to accomplish. The various skills such as cooking, personal management, leathercraft, ceramics, typing, braille, home repair, and mobility gave me a chance to prove to myself that I could still learn to things even without sight. Being with and working with people who had the same visual handicaps. some of them more severe than mine, gave me more of an incentive to do things. I believe this first year in the Summer School Program helped me



# MONTANA ASSOCIATION FOR THE BLIND, INC.

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to adjust somewhat to my problems but not completely, because I still felt with surgery I would regain my sight. After having surgery which was not successful I was told that I would eventually be totally blind. This realization left me in a deep depression. Again, the Visual Services people and members of the M.A.B. came to my assistance. If it had not been for their help, I doubt very much that I would be here to give testimony.

Again the Visual Services talked to me about Summer School. This time although I was totally blind I knew what I was capable of doing when I arrived there and how I could help the other students to make the adjustment. I feel that the second year of Summer School gave me a chance to really put the polish on the skills that had training the previous year. The mobility instruction that I received the second year was terrific. This was taught to me by mobility instructor from the State Visual Services Dept. The instructor was there for the entire session and she was able to instruct the people so much better by being there for the entire session as it is hard to give that concentrated instruction when she had to cover the entire state. There were other Mobility instructors to help her. I cannot find the words to express my feelings for what the Visual service and the M.A.B. did for me at the Summer School as well as the follow up and counseling etc that I received at home from them both. I find myself now, thinking not of things I can no longer do, but of things I can learn to do and still do. I feel that now my life is like an open book, that



# MONTANA ASSOCIATION FOR THE BLIND, INC.

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seems my life now is like a new chapter. Hopefully, I will be returning to Bozeman this year not as a student, but as an instructor. Without the help that I received jointly from the Visuak Service and the M.A.B. this would not be possibel.

Also, the next fall school term I plan to return to college to further increase my knowledge in several different fields that I feel I would be qualified at.

I would like to ask you support of House Bill 196. With your support you will help us, the blind of Montana, to regain and maintain a useful and productive role in society.

Thank You  
*Marlyn Madson*

Marlyn(DODDY) Madson

President of the Great Falls  
Chapter of the Blind

## MONTANA ASSOCIATION FOR THE BLIND, INC.

an Affiliate of the National Federation of the Blind

P.O. Box 536

Kalispell, Montana 59901

## THE CASE FOR SEPARATE SERVICES FOR THE BLIND -- A Summary of the Position of the Montana Association for the Blind on House Bill No. 196

The Montana Association for the Blind supports H.B. 196, a bill to provide by statute for the existence of the Visual Services Division within the Department of Social and Rehabilitation Services. The association believes that it is important to assure that rehabilitative services to the blind continue to be provided through a separate and distinct division within the department.

Experience has shown that the blind receive more effective services when those services are provided through a separate rehabilitative agency for the blind than when they are provided through a more general rehabilitative agency. Experience has also shown that the tendency within agencies to seek to consolidate, restructure and reorganize rehabilitative services is strong, particularly in times of tight finances. Consolidation of rehabilitative services inevitably occurs at the expense of adequate services for the blind.

## SEPARATE SERVICES FOR THE BLIND ARE MORE EFFECTIVE

Two national studies have confirmed the fact that separate services for the blind are more effective. One study was conducted in 1966 by the executive director of the Texas Commission for the Blind. The other, which involved all 50 states, was conducted by Management Services Associates, a research and consulting firm, in 1975. Both studies confirm that when the blind are served by a separate rehabilitative agency they receive more effective programs, have a higher rate of successful rehabilitations, and receive services more cost effectively. In combined programs, the rate of rehabilitations is reduced; satisfaction with the program is reduced, and administrative costs are increased.

The states of Idaho and Washington have in recent years changed over from a combined rehabilitation program to separate services for the blind. In both states there has been a dramatic increase in the effectiveness of services to the blind. In the first 10 years of separate services, Idaho has seen its rate of successful rehabilitations of the blind increase by 1333%. The program in Washington has been in effect for a little over a year. Already there has been a large increase in the number of referrals to the agency and a 36% increase in the rate of successful rehabilitations.

In addition to the other advantages of separate services for the blind, separate programs will be able to benefit more fully from the 1978 amendments to the Vocational Rehabilitation Act of 1973, particularly in regard to reader services, programs for the older blind, and programs directed at blind persons for whom a purely vocational program of rehabilitation is inappropriate.

## A STATUTE IS NECESSARY TO PROTECT THE SEPARATE DELIVERY OF VISUAL SERVICES

The present Visual Services Division is doing an excellent job of serving the blind in Montana. It has been highly praised by HEW for its performance. In addition, the cooperation between the Division and the Association for the Blind has made a broader range of services available to blind Montanans. Yet consolidation of the Visual Services Division with other programs within SRS has been discussed and considered in the past. In 1977 the then director of SRS admitted that he had considered such a move. The initial report of the Human Services Committee made such a recommendation. With talk in the executive branch of "executive sunset" being applied to administrative agencies,

## GENERAL INFORMATION

The Montana Association for the Blind is a private, nonprofit, charitable organization, an affiliate of the National Federation of the Blind. Organized in 1946, the Association now has an active membership of over 1,000, the majority of whom are visually handicapped.

There are ten chapters scattered across the state of Montana: Great Falls, Bozeman, Butte, Glendive, Helena, Kalispell, Lewistown, Livingston and Missoula. Not all chapters are in the formative stages at Glasgow. Not all members belong to the state organization.

Between annual conventions the Association is governed by an elected seven-member Board of Directors which meets at least three times during the year. Because of Montana's sparse population, the Association is strongly centralized with most functions and activities carried out on the state level by committees drawn from the entire membership.

A monthly newsletter (available in print, braille or cassette) attempts to keep members informed on all matters concerning the Association and the blind.

The Association is financed by membership dues, fund-raising, white cane drives, letter solicitation, interest-free sales, and dividends realized from bequests, Montana University Campus Charities, and by United Way grants in Billings, Cascade, Missoula and Flathead counties.

## ADVICE PROGRAMS

In addition to the annual Summer Orientation Program, the Association is involved in a variety of other projects designed to assist the visually handicapped in achieving social and economic improvement and to educate the public as to the needs, problems and capabilities of the blind.

The Emil A. Honka Scholarship Fund, established in 1976, is helping visually handicapped students to further their educational goals. Other financial assistance has been given to individuals as needs arise and other resources have not been available.

Since diabetes is a leading cause of blindness, the MAB occasionally contributes to the support of diabetic education programs.

The Association maintains a Memorial Fund from which interest-free loans may be made to members for any worthwhile purpose.

The newly established, independently operated Low Vision Service, located in the Eagles Penkay Manor in Helena, is receiving substantial financial support from the Association. Through this service some persons will learn how to make better use of very limited eyesight with special visual aids.

In an effort to educate the public about blindness, the MAB sponsors displays, seminars and work shops throughout the state from time to time.

Laws affecting the blind are of real concern to the visually handicapped. Therefore, the organization is frequently involved in promoting, supporting and opposing relevant legislation.

The Association also serves as a clearing house for information such as where special aids and equipment may be purchased, where to apply for specific help, etc.

Inquiries and requests for additional information should be directed to the:

MONTANA ASSOCIATION FOR THE BLIND

Box 536

Kalispell, Montana 59901

Phone: 755-6913



Sponsored and Directed by the  
**MONTANA ASSOCIATION FOR THE  
BLIND, INC.**

BOX 536

KALISPELL, MONTANA 59901

PHONE 755-6913

## THE SUMMER ORIENTATION PROGRAM

This orientation and adjustment training program is designed to meet the needs of the newly blinded and those with failing eyesight. Students range in age from 16 to 90 and represent a cross section of today's world.

Students learn new ways of performing the tasks they once did with eyesight. Courses in daily living skills, personal grooming and public speaking help in building self-confidence. With proper training a blind person can go just about anywhere he wishes with the aid of a white or metal cane. Typewriting, handwriting and braille put the visually handicapped person back in touch with friends and relatives and provide means for keeping records, notes, etc. Lessons in cooking and sewing, with special emphasis on safety methods, can turn the housewife to her role as mother and homemaker. Handicrafts of various kinds help to develop the sense of touch, stimulate interest in hobbies and may provide a source of income to the proficient worker. In general, the training is intended to make the individual independent and self-reliant as his own ability will permit.



## TIME AND PLACE OF SESSION

Since 1948 the annual Summer Orientation Program has been conducted on the campus of Montana State University in Bozeman. The time and place of the next session will be announced in January.

Generally, the Summer Program will begin no earlier than June 10 and end no later than August 20. The program usually covers a five-week period.

## HOW TO ENROLL

Any visually handicapped resident of Montana who feels that he can benefit from attending the Summer Orientation Program is urged to apply for enrollment. If determined eligible, his expenses will be paid through the Vocational Rehabilitation Program or by the Montana Association for the Blind, Inc.

Applications for enrollment may be obtained from the Montana Association for the Blind, Box 536, Kalispell, Montana 59901, the Visual Services Division, D.S.R.S., Box 4210, Helena, Montana 59601, or from any of the Division's District Counselors.

Rates for out-of-state applicants will be quoted upon request.

## HEALTH AND NURSING SERVICES

Applicants for enrollment should be in reasonably good health and able to engage in normal activities. A nurse is available to give insulin shots and attend to other medical needs of students. Special diets are given careful attention.

## RECREATION AND CHURCH

Summer Program students enjoy a variety of recreational activities, including band concerts, plays, dancing, bowling and swimming.

The churches of Bozeman provide transportation for those who wish to attend Sunday services.

The school hostess is always concerned with the comfort and happiness of every student. She makes certain that individual needs are met and that all have an opportunity to participate in recreational and social activities.

## COURSES AVAILABLE

### ORIENTATION

**Cane Travel** - learning to travel safely and independently with the use of the white cane.

**Daily Living** - solving everyday problems through class discussion, lectures and personal counseling.

**Personal Development** - covering every phase of good grooming and the development of a pleasant personality.

**Public Speaking** - acquiring self-confidence in group situation and overcoming mannerisms that set one apart.

### COMMUNICATIONS

**Typewriting**

**Braille** - reading and writing

**Hand Writing** - using guides and special techniques in letter and signature writing.

### HOMEMAKER TRAINING

**Cooking** - 'cooking without looking' with the use of special gadgets.

**Sewing** - hand and machine with special aids.

**Home Nursing** - giving first aid and caring for injuries.

### MAN-OF-THE-HOUSE SKILLS

**Shop** - learning to use standard and special tools for household repair and maintenance.

**Small Appliance Repair**

### CRAFTS

**Ceramics**

**Leathercraft**

**Loom and Hand Weaving**

**Knitting and Crocheting**

**Other Small Crafts**

**Macramé**

## IT SERVICES ARE AVAILABLE?

**HT CONSERVATION:** Financial assistance with eye surgery and treatment.

**VALUATION:** Necessary diagnostic exams and personal assessment studies determine need for additional services.

**ABILITIES TEACHING:** Individual home training or class instruction communication, homemaking and daily living skills.

**ATIONAL REHABILITATION:** Extensive services beyond evaluation and employment services are available for those who can possibly return to work.

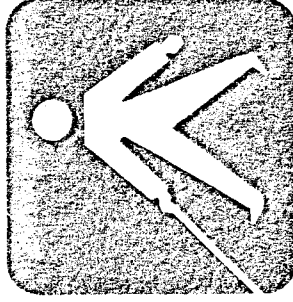
**FORMATION:** Basic information on other services, resources and benefits such as library, child education, aids and appliances, etc.

**UNSELING:** Therapeutic, vocational and employment counseling and guidance services.

**EMPLOYMENT:** Counseling toward job choice, training, and placement with focus on small business enterprise opportunities.

**LL TRAINING:** Orientation and mobility training for safe independent travel.

ALWAYS REMEMBER THAT A  
BLIND PERSON IS  
FIRST AND FOREMOST  
A PERSON  
AND SECONDLY A PERSON  
WHO DOES NOT SEE.



Prepared by the Visual Services Division  
Montana Department of Social and

# STATE

# ERIGEE

FOR  
THE  
BLIND  
AND  
VISUALLY  
HANDICAPPED

# VISUAL

VISUAL SERVICES DIVISION

Department of  
Social & Rehabilitation Services  
P.O. Box No. 4210  
Helena, Montana 59601



**WHO MAY BE ELIGIBLE FOR SERVICES?**

VISUAL SERVICES DIVISION of STATE DEPARTMENT OF SOCIAL REHABILITATION SERVICES has available certain services for any individual, regardless of age, sex, race, color, creed or national origin, who:

HAS AN EYE CONDITION THAT COULD CAUSE BLINDNESS OR DEFECTIVE VISION IF MEDICAL TREATMENT IS NOT PROVIDED AND FOR WHOM

MEDICAL TREATMENT IS NOT POSSIBLE WITHOUT FINANCIAL ASSISTANCE, OR

HAS A VISUAL AND EMPLOYMENT HANDICAP, BUT BY RECEIVING SPECIAL SERVICES COULD POSSIBLY BECOME EMPLOYED.

**WHY ARE SERVICES AVAILABLE?**

- TO RESTORE SIGHT
- TO PREVENT BLINDNESS
- TO REHABILITATE VISUALLY HANDICAPPED INDIVIDUALS TO ENABLE PERSONAL INDEPENDENCE AND EQUAL EMPLOYMENT OPPORTUNITY.

**WHERE MAY ONE APPLY FOR SERVICES?**

At: The Nearest District Office:

Or: Write to:

**VISUAL SERVICES DIVISION**  
Dept. of Social & Rehabilitation Services  
P.O. Box No. 4210  
Helena, Montana 59601

**HOW CAN ONE HELP BLIND PEOPLE?**

IF YOU WALK WITH HIM, let him use your arm. Don't push him! The motion of your body will tell him what to expect.

IF YOU EAT WITH HIM, read the menu and prices to him. If he WANTS help, fix his meat, fix his coffee, etc. Tell him the position of the various foods on his plate.

IF HE HAS A DOG, remember that the dog is a working dog, not a pet! Don't divert the dog's attention or touch it — its main life depends on the dog's alertness.

IF HE IS ALONE in a room, always identify yourself when entering. Don't play "guess who" games.

IF YOU LIVE OR WORK WITH HIM, never leave the door ajar! Keep corridors and hallways free of clutter. Tell him if furniture is moved.

IF YOU TALK WITH HIM, remember that a blind person can hear as well as you, sometimes better. Always talk directly to him through his companion.

IF YOU SEAT HIM, show him to the chair and put his hand on the back. He will be able to seat himself easily.

IF YOU DIRECT HIM, give directions clearly as possible — left or right according to the way he is facing.

ATTACHMENT "E"

P. O. Box 4081  
Helena, Mt. 59601

Hon. Tom Rasmussen  
Vice Chairman of Health and Safety Comm.  
Montana Senate  
Capitol Bldg.  
Helena, Mt. 59601

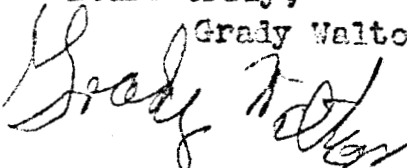
Dear Sir:

Your help toward the passage of HB 196 transmitted to the Senate will be greatly appreciated. While the Division of Visual Services has been in existence since 1935, the passage of this bill will give guaranteed legislative structure so that the Division can gain needed stability and provide services without facing the danger of being wiped out by administrative order.

Please note that no additional funds are being requested.

Yours truly,

Grady Walton



Dist. 1 Representative of  
Montana Assoc. for the Blind  
and  
President of Capital City  
Chapter of MAB

## Statement by MAB President

Ladies and gentlemen of the Public Health Committee:

I am Tony Persha and as president of the Montana Association for the Blind, I represent over 250 members, most of whom are visually handicapped.

Resolutions adopted at our 1977 and 1978 state conventions urged our Board of Directors to work to preserve the separate identity of Visual Services Division or, if deemed necessary, to work for a completely separate agency for the blind. Although we definitely prefer the idea of a completely separate agency serving the blind, knowing that it is more effective in every way, after much thoughtful deliberation, we concluded that it would be more realistic to ask only for a legislative guarantee that Visual Services Division will remain a separate, identifiable division in the D.S.R.S. In other words, we made a great concession before this bill was even drafted. This is as far as we are prepared to go toward compromise.

We are not at all convinced that written administrative regulations to preserve the separateness of the Division would mean all that much. Government agencies have a way of manipulating regulations they write to suit their own purposes. They often fail in giving sufficient notice of public hearings, for one thing.

The Montana Association for the Blind definitely wants and feels that we must have a statute that will guarantee the separate status of Visual Services Division. Thank you.

Tony Persha, President



# MONTANA ASSOCIATION FOR THE BLIND, INC.

an Affiliate of the National Federation of the Blind

## SEPARATE SERVICES FOR THE BLIND

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The Case for a Statute Assuring the Continuance of the  
Visual Services Division Within the Department of Social  
and Rehabilitation Services

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A Position Paper of the Montana Association for the Blind,  
Tony Persha, President.

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## 1. INTRODUCTION

There are over 1500 blind persons in Montana and over 6000 persons with serious visual impairment. The rehabilitation needs of these Montanans are met through the Visual Services Division of the Department of Social and Rehabilitation Services. The Visual Services Division provides evaluation, assistance with surgery and treatment for sight conservation, rehabilitation in daily living skills, vocational rehabilitation, counselling, employment assistance, and training in the basic skills of orientation and mobility needed for independent living. This complex of services enables blind persons in Montana to become self-sufficient, independent people employed throughout the economy, maintaining homes, raising families and contributing to the public life of this state.

The Visual Services Division exists at the present time by administrative rule, as a result of an executive decision. There is no statute which requires the Division to exist as a separate entity within SRS. Nor is there a statute which requires that the complex of services provided by the Visual Services Division be provided as part of one coordinated program. There is no law which would prevent the absorption of the Visual Services Division into another division of the Department of Social and Rehabilitation Services or the dispersion of some of these functions among various programs and agencies within the department.

The Montana Association for the Blind believes that it is essential to the rehabilitation needs of blind people in Montana to assure that visual services continue to be provided through a separate division established for that purpose. This belief is based upon the experience of blind people in Montana and throughout the country. In providing rehabilitation to the blind, research, government figures and the experience of blind people have shown that separate services are better services. Separate programs for the blind achieve higher rates of rehabilitation, make better use of moneys allocated to the blind and provide more effective programs for the blind than more general rehabilitation programs serving the blind together with other handicapped groups.

H. B. 196, a bill to provide by statute for the Visual Services Division, has been proposed to assure that no subsequent change of administrative policy within the Department of Social and Rehabilitation Services or reorganization of services initiated strictly by the executive branch could dismantle the Visual Services Division and reallocate its functions to some other entity within the agency. The Montana Association for the Blind believes that this

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bill will serve to insure the continued high quality and effectiveness of visual services in Montana. This position paper will describe in greater detail the reasons why the Association is convinced that this legislation is necessary.

## 2. WHAT IS THE MONTANA ASSOCIATION FOR THE BLIND

The Montana Association for the Blind is a private, non-profit organization of blind and visually handicapped persons (and friends). The association provides a number of services directly to blind and visually handicapped persons and works closely with the Visual Services Division to assure that a broad spectrum of habilitative programs are available. The Association is an affiliate of the National Federation of the Blind.

This position paper will discuss in a later section the many ways in which the close working relationship between the Visual Services Division and the Montana Association for the Blind has fostered the development of innovative services for Montana's blind and visually impaired people and has allowed the state to make effective use of state and Federal funds in programs to assist and habilitate the blind. The Association is convinced that the maintenance of the Visual Services Division as a distinct entity is essential to preserve this important cooperative effort.

## 3. THE BLIND AND VISUALLY IMPAIRED CAN BE BETTER SERVED BY A PROGRAM OF SEPARATE VISUAL SERVICES THAN BY A GENERAL, MULTI-HANDICAP REHABILITATION PROGRAM.

Behind the interest of the Montana Association for the Blind in preserving a separate Visual Services Division through statute is the conviction, born of experience, that separate habilitative services for the blind and visually handicapped are preferable to services provided by an umbrella-type rehabilitation agency. This conclusion is born out by experiences of blind people in state after state and by the research of recognized authorities.

Blindness is a devastating, life-altering handicap. A person who becomes blind as an adult must reestablish contact with the world before any meaningful rehabilitation can take place. Rehabilitation of blind persons must begin with reestablishing this contact with the world -- learning to dress, to be well-groomed, to find clothes, household objects, to cook and clean without seeing, to become mobile, to manage streets and sidewalks through touch and sound.

Because so many aspects of life are involved, rehabilitation

page three

of the blind is an expensive process. Under the best of circumstances, rehabilitation of a blind person is about one and a half times as expensive as an average "general" rehabilitation case, comparable to the most complex of other handicaps. When rehabilitative services to the blind are provided by a general rehabilitation agency dealing with all kinds of handicaps, the needs of the blind are too often overlooked. Counsellors may be insufficiently trained in the particular rehabilitation needs of the blind. The general structure may discourage taking advantage of special programs and services which could benefit the blind. More importantly, the expensive, time consuming nature of rehabilitation services for the blind may cause a general agency to spend more time on other handicap types, whose rehabilitation can be accomplished in less time at less cost. This approach produces better statistics of cases "closed" by the agency, but it can leave the blind largely unserved.

a. The Results of National Studies

There have been two national studies in recent years concerning provision of rehabilitation services to the blind. Both of these studies confirm the fact that services to the blind are more effective in the context of a separately-administered visual services program. The most comprehensive of these studies was conducted in 1975 by Aris A. Mallas for Management Services Associates, a research organization from Austin, Texas. The Mallas study involved an evaluation of services to the blind in all fifty states. The study was completed over an 18 month period. It involved the efforts of key researchers with over 30 years experience in research and programs for the blind. The study involved intensive client interviews and program analyses.

The results of the Mallas study were clear:

"The strongest, most effective and most dynamic system (of services for the blind) are those in separate agency status." (Mallas study, page 22)

The report found that where services to the blind were reorganized into larger agencies serving greater varieties of clients, there were a number of negative results such as loss of skilled, knowledgeable professionals, failure to develop and utilize financial resources, alienation of the clients being served. In other words -- poorer services with no savings.

The Montana Association for the Blind has been in contact with Mr. Mallas since the study to obtain further clarifications of his findings. Mr. Mallas stated that in the course of his study he discovered that about one third of the states in this country have such poor programs for the blind "that I would move from the state if I had a blind person in my family." The finest programs were all in states with separate agencies -- Oregon, Texas, Iowa, New Jersey.



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The Mallas study found that general rehabilitation agencies not only serve the blind less well, but less economically. In fact the cost of rehabilitation the blind is 20% higher in a general rehabilitation agency than in a separate agency for the blind. Mr. Mallas identified Kentucky, Arkansas and California as examples of states which had impaired their programs for the blind by diluting them. He pointed to Washington State as an outstanding example of a state which has improved its services to the blind by establishing a separate program.

An earlier study of rehabilitation services for the blind also concluded that separate programs are more effective. This study was completed in 1966 by Burt L. Risley, Executive Director of the Texas Commission for the Blind. Mr. Risley looked at programs in six states with large enough population to permit in depth statistical analysis. Two of these states served the blind through general rehabilitation agencies. Four states provided separate services for the blind. The Risley study found that states with separate programs had a significantly higher rate of rehabilitations of blind persons than did the states with combined programs. (3.02 rehabilitations per 100,000 population for the separate agency states, 1.56 rehabilitations per 100,000 population for the combined agency states).

Mr. Risley observed that in the course of his study he visited a number of vocational rehabilitation workshops to discover what services were provided to the blind. He found:

- "In the general type workshops, I would ask the question, 'Could you serve the blind?' The answer was invariably, 'Yes.' The next question was, 'Do you serve the blind?' This answer was invariably, 'No, we are not equipped to handle the blind.' My point is, it is not important what they 'could' do, but what they are doing."  
(Risley study, page 5).

In other words, the needs of the blind were generally overlooked in rehabilitation programs which were not particularly directed at the blind.

#### b. Examples From Other States

One way to assess the value of separate services for the blind is to observe the change in performance in states which have recently adopted separate services for the blind.

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Two western states have created separate programs in the past several years and data is now available to show the improvement in services which the separate programs are able to achieve.

The state of Idaho changed over to a separate program to rehabilitate the blind in 1967. Data gathered by the Department of Health, Education and Welfare reveal that from 1968, when the separate program was just started, the number of rehabilitations of blind and visually impaired person annually in Idaho increased by 1,333 per year. The most striking increase in rehabilitations of the visually impaired achieved by any state in the nation.

The state of Washington now has a separate program for the blind. The Washington Commission for the Blind was established in October of 1977. In that year the number of rehabilitations for the blind increased from 493 the previous year to 669, the first year of separate existence. The number of fully rehabilitated increased by 36% in that first year. At the same time there was a significant drop in the number of partially rehabilitated.

The experience of these two states demonstrates that separate services for the blind are both cost effective and efficient.

c. The Impact of the 1978 Amendments to the Rehabilitation Act of 1973

The advantages inherent in separate programs for the blind have been increased by the recent amendments by Congress to the Vocational Rehabilitation Act. The amendments provide for programs particularly designed to meet the rehabilitation needs of the blind. Two particularly new programs created by the amendments are grants for independent living services for the blind and grants for independent living for older blind persons. The program for the older blind is particularly important. This group often does not participate in vocational rehabilitation programs because their primary objective is employment. However people who become blind in later years clearly need a full range of rehabilitation services to reestablish themselves in their homes and communities. In addition, the amendments provide for special provisions to improve rehabilitation services to the severely and profoundly disabled, including the blind.

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While the 1978 amendments do not require that special project grants for the blind be awarded only to separate agencies the legislative history of the amendments makes clear that separate programs for the blind are particularly favored. Separate agencies will be able to provide the direct accountability called for by the rehabilitation act.

The importance of the new programs authorized by the 1978 amendments is that they will enable programs for the blind to reach out to the many blind persons for whom vocational rehabilitation is not appropriate. This new emphasis will be particularly beneficial for the older blind, for homemakers who may not be immediately seeking employment outside the home. It is important that state programs for the blind be separately maintained to make the best use of these important new resources as they become available.

4. THE CONTINUED PROVISION OF QUALITY VISUAL, SERVICES TO THE BLIND AND VISUALLY IMPAIRED IN MONTANA WILL BEST BE SERVED BY A STATUTE ASSURING THE CONTINUED EXISTENCE OF THE VISUAL SERVICES DIVISION.

The Montana Association for the Blind believes that the best way to assure that Montana's blind and visually handicapped citizens receive adequate habilitation services is to assure the continued existence of the Visual Services Division as a distinct entity within the Department of Social and Rehabilitation Services.

#### a. The Present Efforts of the Visual Services Division

The Visual Services Division is currently doing an excellent job in providing a variety of rehabilitative services to the blind and visually impaired in Montana. A recent evaluation of the program by the Department of Health, Education and Welfare found that the agency showed the highest rate of rehabilitations of visually handicapped and the severely visually handicapped of any agency in this region (Region VIII). The division achieved 79 complete rehabilitations. Over 45 per cent of all clients rehabilitated were classified as severely disabled. This is a rate of rehabilitation per 100,000 which far exceeds the national average for rehabilitation of the blind and visually impaired.

At the same time, Montana has certain problems in the provision of visual services which are typical of large states with low population density. Aris Mallas, in commenting to the association on his study (see above) noted:

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- "With your huge size and spread-out population you have a very severe problem in developing effective services for the blind at the preschool -- school -- vocational and job placement levels." (Letter of Mr. Mallas, 1/2/'79).

Despite these problems, the Visual Services Division has an impressive record of job placements for its blind and visually impaired clients. The Division has rehabilitated clients into positions as teachers, a rehabilitation counsellor, a rancher, craftsmen, small businessmen. One visually impaired client has become an attorney. A number of blind and visually impaired clients have been able to return to their homes as homemakers.

One reason why the Visual Services Division has been able to achieve such striking results given the limitations of geography and funding is the close working relationship between the Visual Services Division and the Montana Association for the Blind. The Division and the Association work together on many programs for the blind. Some programs now maintained by the Division were originally undertaken by the Association.

The Association maintains a Summer Orientation Program for the Blind at the MSU campus in Bozeman, training the newly blind to learn to perform basic tasks of living without reliance upon sight. Most persons making use of the program are clients of the Visual Services Division, referred by the Division as part of its services. In addition to maintaining this program, the Association has contributed money to the maintenance of the program to be matched with Federal funds.

The Association also initiated a program to provide a home teacher to work with visually handicapped persons in their homes. This program has been adopted by the Visual Services Division, although for a number of years the Association contributed substantial funds to the Division program. The Association also pioneered the concept of short-term, intensive, mini-orientation programs for the newly blind. This program has also been adopted by the Visual Services Division. In addition, the Association has on occasion provided financial assistance to clients of the Visual Services Division who had needs for which no public program was available.

The importance of describing the Association's activities over the years is that the close cooperation between the Visual Services Division and the Montana Association for the blind has resulted in more services being available at less cost to the visually handicapped in Montana. In addition, this cooperation has resulted in the initiation of new programs, now maintained by the Division, which might otherwise not have been developed.

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This-beneficial close cooperation between the state agency and the consumers of the agency's service would not be possible if visual services were provided as part of the over-all program of a larger, multi-purpose division. The blind receivers of services would not be as able to make their voices heard in a more comprehensive agency. As a result, a great deal of creativity in the provision of services would be lost. In a large state like Montana, whose low population density produces fairly minimal Federal grants, the sharing of resources and ideas by the Division and the Association produces a far greater spectrum of services than would otherwise be possible.

b. The Insecurity of the Present Structure of the Visual Services Division

Although it is clear to the Association that separate services for the visually handicapped are more effective than services provided by a general rehabilitation agency, this belief is not necessarily universal.

In 1977, during appropriations hearings before the Montana Legislature, the association learned from the then Director of the Department of Social and Rehabilitation Services that he had considered integrating the Visual Services Division into the Rehabilitation Services Division, although no final decision on the plan was ever made. In addition, considerable delays have been encountered in the Department's establishment of an advisory council for visual services to provide the consultation with consumers and professionals required under the Federal rehabilitation laws.

The recent Interim Committee on Human Services originally recommended absorption of the Division into a Rehabilitative Services Division. This proposal was eventually abandoned. In addition, the experience in other states suggests that there is a strong tendency in rehabilitation agencies to seek to absorb visual services programs (and dollars) into general rehabilitation programs. This tendency becomes particularly strong in times of economic retrenchment, when a mistaken belief that consolidation means economy tends to grow in executive agencies.

The Governor recently completed a Balanced Growth Project, a series of studies conducted within the executive branch, to ascertain various ways in which governmental economies could be realized.

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A task force report of the General Government Task Force recommended that the Governor apply a concept of "executive sunset" to various agencies of state government. Under executive sunset, the Governor, through his staff, would examine all the current agencies within the state government to determine which of them could be eliminated, combined, restructured, etc. The report suggested:

"Such a process could facilitate government reform by requiring all types of agencies to justify their existence and operating procedures at regular intervals or face termination."

The important thing to remember is that the executive sunset policy can be implemented by the governor under his existing powers. If this policy were applied to visual services programs by persons who do not understand what is involved in providing effective services to the blind, it could result in the loss of separate status for the Visual Services Division.

The Department of Social and Rehabilitation Services maintains that it has no present plans to eliminate the Visual Services Division. However, even if this is true at this time, there is no guarantee that the present position of the Department will be sustained over the coming biennium or that any individual currently speaking for the department will continue to be associated with the department over this period. It is clear that in the past, the elimination of the Visual Services Division has been considered. The only way to assure that no such unfortunate policy is implemented is to provide by statute for the continued existence of the Division.

5. HOUSE BILL NO. 196 DOES NOT INTERFERE WITH THE STRUCTURE OR OPERATION OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES.

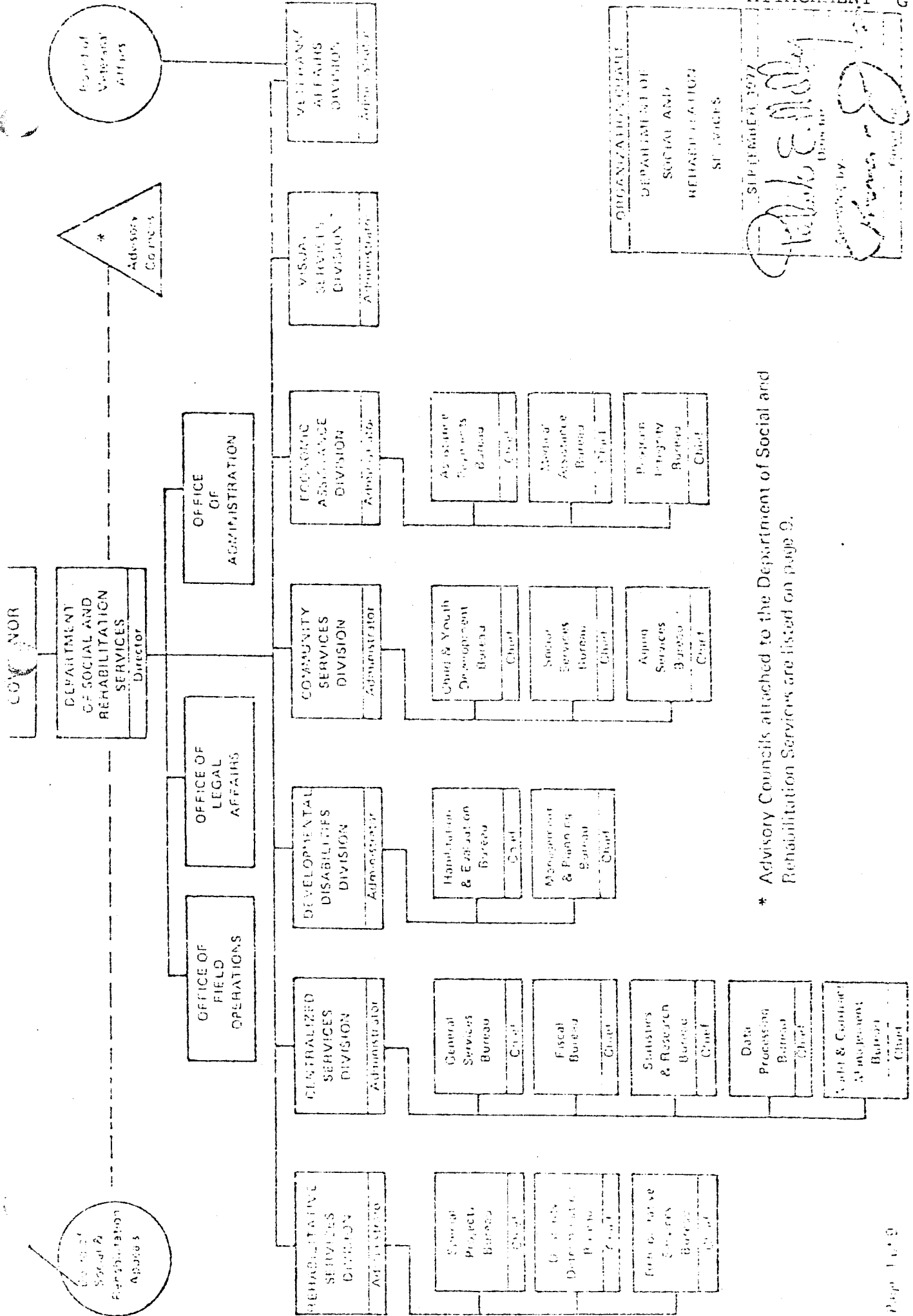
House Bill No. 196 does not propose any change in the present structure of the Department of Social and Rehabilitation Services. It does not create any administrative unit which is not already in existence. It does not propose any change in the way in which personnel are hired or in lines of authority within the department. The Division Administrator would still be hired by the Department Director (subject, of course, to any merit system or classification requirements which apply). The Division would still be within the Department for all purposes. The Advisory Council described in the bill already exists with essentially the same composition prescribed in the bill.

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The bill would do nothing more than to assure that the Visual Services Division continues to exist as the entity within the department providing rehabilitation services to the blind. Thus its status would be comparable to the Employment Security Division within the Department of Labor and Industry which exists by statute but which is subject to the Commissioner of Labor and Industry.

The Visual Services Division is doing an excellent job of providing services to the blind and visually impaired in Montana. The Division is subject, however, to the many pressures within the Executive Branch which favor consolidation, restructuring and reorganization. The Association believes that consolidation of visual services with other rehabilitation programs would be a tragic mistake for Montana. Yet there is no reliable assurance that such a mistake will not be made over the coming biennium. It has been considered before, and could very well be viewed in the future as an economy measure.

H. B. 196 does not go as far as many other states have gone, or as far as many experts in the field of services for the blind recommend. The proposal merely seeks to assure that the Visual Services Division cannot fall victim to executive restructuring of the department between legislative sessions. It is necessary legislation to assure the continued vitality of this important human service program.



\* Advisory Councils attached to the Department of Social and Rehabilitation Services are listed on page 9.

ORGANIZATION CHART  
DEPARTMENT OF  
SOCIAL AND  
REHABILITATION  
SERVICES

SEPTEMBER 1977

*Robert E. Miller*  
Director

*James P. ...*  
Assistant Director



TESTIMONY BEFORE THE SENATE PUBLIC HEALTH COMMITTEE  
1:00 P.M., MARCH 9, 1979

H.B. 196 - A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A DIVISION OF VISUAL SERVICES IN THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES PROVIDING FOR A VISUAL SERVICES ADVISORY COUNCIL; SPECIFYING THE RESPONSIBILITIES AND POWERS OF THE DIVISION OF VISUAL SERVICES AND OF THE VISUAL SERVICES ADVISORY COUNCIL."

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, SRS OPPOSES PASSAGE OF H.B. 196. H.B. 196 WOULD STATUTORILY MANDATE A DIVISION OF VISUAL SERVICES WITHIN THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES. IT WOULD STATUTORILY MANDATE AN ADVISORY COUNCIL TO BE ATTACHED TO THE DEPARTMENT FOR ADMINISTRATIVE PURPOSES ONLY. IT WOULD STATUTORILY MANDATE A LINE ITEM FOR THE VISUAL SERVICES DIVISION BUDGET. IT WOULD STATUTORILY MANDATE THE PREPARATION OF A STATE PLAN FOR THE PROVISION OF SERVICES TO BLIND PERSONS.

AS YOU KNOW, THE DEPARTMENT HAS TRADITIONALLY HAD A DIVISION OF VISUAL SERVICES. WE HAVE TRADITIONALLY HAD AN ADVISORY COUNCIL. WE HAVE BUDGETED FOR THE VISUAL SERVICES DIVISION PERCENTAGE-WISE ON A HIGHER LEVEL THAN FOR OTHER HANDICAPPING SERVICES THROUGH VOCATIONAL REHABILITATION. WE ARE REQUIRED BY THE FEDERAL GOVERNMENT TO HAVE A STATE PLAN TO RECEIVE OUR ALLOTMENT OF FEDERAL FUNDS. THEREFORE, THIS BILL WOULD DO NOTHING THAT IS NOT PRESENTLY BEING DONE.

THE MOTIVATION FOR PASSAGE OF THIS BILL IS UNDERSTANDABLE. THE BLIND ARE WORRIED THAT SOMETHING WILL BE TAKEN AWAY FROM

THEM. HOWEVER, THE RECORD SHOWS THAT BOTH THE LEGISLATIVE AND EXECUTIVE BRANCHES ARE COMMITTED TO THE TREATMENT AND REHABILITATION OF THE BLIND AND VISUALLY HANDICAPPED. WE ARE OPPOSED, HOWEVER, TO THE PASSAGE OF THIS BILL BECAUSE IT WOULD CREATE BY STATUTE THOSE THINGS WHICH ARE NORMALLY CONSIDERED THE RESPONSIBILITY OF THE EXECUTIVE. STATUTORY PROVISIONS WOULD TAKE AWAY THE ABILITY OF THE DEPARTMENT DIRECTOR TO MAKE CHANGES AS HE THINKS NECESSARY IN ORDER TO RESPOND TO CHANGING NEEDS AND CHANGING CONDITIONS. BY THIS, I DO NOT MEAN IN ANY WAY TO INFER THAT ANY CHANGES ARE NOW BEING CONTEMPLATED. HOWEVER, THIS BILL WOULD MAKE MANAGEMENT DECISIONS WHICH SHOULD BE THE RESPONSIBILITY OF THE DIRECTOR AND INVOLVE THE LEGISLATURE IN ADMINISTRATION RATHER THAN POLICY-SETTING.

*Joseph H. Cannon*  
SR5



## MONTANA ASSOCIATION FOR THE BLIND, INC.

an Affiliate of the National Federation of the Blind

P.O. Box 536

Kalispell, Montana 59901

### THE NEED FOR REGULATIONS TO ENFORCE THE "LITTLE RANDOLPH-SHEPHERD ACT" The Position of the Montana Association for the Blind in Support of H.B. 342

The Randolph-Shepherd Act is a federal law which gives a preference to the blind in managing food concessions and vending stands in public buildings. Montana has a similar law which provides that blind and physically disabled persons shall have a preference in managing or maintaining vending stands or similar commercial enterprises in public buildings in Montana.

Unlike the federal law, Montana's "Little Randolph-Shepherd Act" has no enabling regulations to assure its enforcement. No agency has the power to develop such enabling regulations because Montana law requires that the power to make substantive rules must be specifically granted by statute. As a result, Montana's law is essentially unenforced. The Association is aware of only one state-owned building with a blind or physically handicapped concessionaire.

When the vending concessions for public buildings are let, there is no procedure which must be followed to assure that the provisions of Montana's "Little Randolph-Shepherd Act" are complied with. Once the concession is let, the concessionaire has a property interest in his right to do business in the building which would be difficult to challenge at that point. Clearly, the time to assure that the preference for the blind and physically handicapped is honored is at the time that bids are taken and vending rights given.

The Montana Association for the Blind believes that the Department of Social and Rehabilitation Services should have the responsibility for assuring that Montana's "Little Randolph-Shepherd Act" is complied with whenever concessions for public buildings are let. Originally the Association felt that rulemaking and enforcement authority should be given to the Visual Services Division alone, since the Division enforces the Federal Randolph-Shepherd Act in Montana. However, after consultation with the Department of Social and Rehabilitation Services, the Association agrees that since the Montana law applies both to the blind and the physically handicapped, enforcement authority should rest with the Department. The Department has assured representatives of the Association that any rulemaking and enforcement of the act will involve the Visual Services Division as well as any other appropriate entities within the Department. The Association would recommend that the statement of legislative intent accompanying the bill should clarify this fact.

The most important thing about the "Little Randolph-Shepherd Act" is not who enforces it, but that it be enforced. The Montana Association for the Blind believes that H.B. 342 is necessary to assure that this law has some meaning and effect for the blind and physically handicapped in Montana. We urge that the bill do pass.