

MINUTES OF THE MEETING OF THE HOUSE EDUCATION COMMITTEE
January 21, 1981

The Education Committee met at 12:30 p.m., on January 21, 1981, in Room 129 of the Capitol Building, with Chairman Ralph S. Eudaily presiding and all members present except Reps. Teague and Vincent, who were excused.

Chairman Eudaily opened the meeting to a hearing on the following bill: HB 198.

HOUSE BILL 198

REPRESENTATIVE JOE BRAND, District 28, chief sponsor, said this bill prohibits inmates from the prison from using public funds to attend the University System. He mentioned the incident of a student inmate stabbing a teacher, who is suing the state of Montana. He mentioned another inmate who brought contraband to his room and distributed it. He said these people pose problems to our colleges and he didn't feel we should be subjected to that type of thing and then have to pay for it. Rep. Brand said what we do within the prison to help rehabilitate is valid. He said the Department of Labor has an amendment to add to the bill to change the educational furlough program.

DAN RUSSELL, Corrections Division, Department of Institutions, said they can support parts of the bill, but must stand in opposition to other parts. He said the existing statutes provide for the department to be responsible for some furloughees but they are not funded for that program. He wondered if the bill would exclude all public funds - even federal. He said Senator Valkenberg has a bill in that will exclude furloughees from being paid by the Department of Institutions. He said another problem is the university extension program they have going for about 60 inmates within the prison. The cost is \$10,000 a year and this comes to about \$50 per inmate. He hoped the committee would oppose that part of the bill.

TONI McOMBER, Montana Education Association, said they are concerned about the language of the bill. She felt it did not clarify distinctly enough that it involved only funding for inmates attending the University System. She feared as written it might affect the prison school as well. She said if the concern of the committee is the safety and well being of students and teachers on the campuses, then educate the prisoners in the prison. She said they would like to see the prisoners have every opportunity for education.

RONALD D. HAVERLANDT, Great Falls, representing self, said he was an instructor in Sociology at the College of Great Falls. He said he opposed this legislation because the tenor of the language seems to be a punishing rather than a rehabilitating policy. He said he had been chaplain at the Pine Hills School for three years and he said many of these young men expect to

graduate to the state prison. He said it costs \$32 a day to keep a prisoner, which is a cost to the taxpayer of \$11,160 a year. The university extension program mentioned by Mr. Russell costs \$10,000, and so if it helps to rehabilitate just one man the state will have saved \$1,160.

ELINOR KARNES, Carroll College, representing self, said this bill is a taxpayers' double jeopardy. It is costing more to keep these people in prison, and there will be more going with mandatory sentencing, and if we could rehabilitate them they would be taxpaying citizens. She said her research has indicated that many are of above average intelligence. She compared it to the free education given the World War II vets and how the country profited many times more than it paid out.

ROBERT GOPHER, Great Falls, representing self as a citizen of Montana, said he totally opposes this bill on the grounds that as Montanans we should be seeking to strengthen the rehabilitation program for the prisoners.

Lee Heiman, staff attorney, at the request of Chairman Eudaily, responded to a question raised earlier by Toni McComber as to whether this would affect all educational funds - in prison and out. He said the end of subsection 3 on page 2 is quite specific. However, whether it would be paid off campus is not answered.

Rep. Brand in closing said he didn't feel this could be compared to the vets of World War II. He said he wholeheartedly approves of rehabilitating these people, but can't see going beyond the scope and educating them at the university system. He said when they get out of prison they could take it upon themselves and enter the university system of their choice.

Questions were asked by the committee. Rep. Azzara asked if Rep. Brand could document the problems occurring on the campuses. Rep. Brand said one case is problem enough. He said the state is responsible for the actions of the prisoners. Mr. Russell responded to a question that the only money they pay in connection with university education is the \$10,000 for the extension course within the prison. He said he knew of one educational furlough. Rep. Hannah asked if the funding available for these inmates is also available to other people. Rep. Andreason asked what proportion of the prisoners taking the extension course graduate. The reply was six have received an Associate of Arts degree. He didn't have the percentage who have taken the course or have graduated. Rep. O'Hara asked if there is a policy of paying for prisoners who attend the university system outside the prison. Mr. Russell said by state statute the state has an obligation to help furloughees if they are unable to pay but no funding. He said to the best of his knowledge the department has never paid for a furlougee. Rep. Kitselman asked of the furloughees - those who have a sponsor - how many are returned to prison. Mr. Russell didn't have that information. Mr. Russell responded to a question of funding by saying they would be eligible for Basic Education Opportunity Grants, some would have vet benefits, the CETA program

helps some. Rep. Dussault said as she understood it the state currently has no obligation to fund the educational costs of a parolee or a probationer that might be enrolled in one of the colleges of the university system, and it is not being done. While there is statutory authority for the department to pay the educational costs of an educational furlougher it has never been done. The Department of Institutions has never paid those costs. Mr. Driscoll added they have a prerelease program in Billings. In this an eligible prisoner would have access to the community and to the college, but the college education is not paid for by the state. Rep. Azzara asked Rep. Brand if he was suggesting that prisoners constitute a special class of people who were to be disallowed from using all public funds at the university level - even federal funds. Rep. Brand said all public funds.

Jim Blodgett, Acting Warden, in reply to a question from Rep. Andreason, said the requirement for a degree in the extension program is the same as at the university. He said they have strict requirements for entering as there is a long waiting list - approximately 70 people last quarter and only 15 were admitted. Rep. Yardley asked Rep. Brand if he intended to include the extension program and Rep. Brand said yes.

Chairman Eudaily closed the hearing and opened the meeting to consideration of the following bills:

EXECUTIVE SESSION

HOUSE BILL 174 - Rep. Dussault moved Mr. Campbell's amendment, EXHIBIT 10 of the January 19 minutes, minus the words "at least" (so they wouldn't be required to pay anything above that). She also moved an amendment to the title by striking "high school" on line 6 and inserting "and 20-5-303". The motion to amend passed unanimously with those present (Reps. Teague and Vincent excused). Rep. Andreason moved HB 174 DO PASS AS AMENDED and this motion carried unanimously with those present.

HOUSE BILL 170 - Rep. Dussault said Rep. Teague had amendments he wished to speak for and he is ill and not present. Rep. Lory moved the bill be passed for the day until Rep. Teague returns. Chairman Eudaily said to honor that request was a courtesy he felt should be extended. The motion carried unanimously with those present.

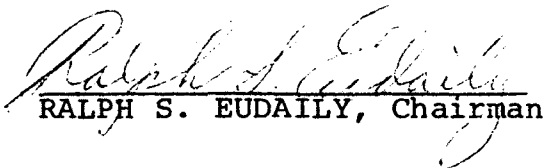
HOUSE BILL 135 - Chairman Eudaily said Mr. Frankino had submitted some information on this bill. A copy of it was provided for each committee member and is EXHIBIT 1 of the minutes. Mr. Heiman, the staff attorney, had also done research on the bill and a copy of his research and the code page applicable is EXHIBIT 2 of the minutes. Mr. Heiman passed copies to the members and discussed the contents. Rep. Lory moved to amend

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on page 1, line 6 and line 11 to remove "instate"; and in line 15 to remove "in Montana"; and on page 3, line 7, to remove "instate" - this was to take care of a problem mentioned by Mr. Johnson of the Teacher Retirement Board to open it to all private school teachers instate and out of state. Rep. Lory said they can only buy 5 years and have to pay both sides plus interest so he didn't see how it could hurt the retirement system. A vote was taken and passed unanimously with those present on the motion to adopt the amendments. Rep. Lory then moved DO PASS AS AMENDED and this motion carried with Reps. Hanson, Anderson and Eudaily voting no and Reps. Teague and Vincent absent.

A motion to adjourn was made. The meeting adjourned at 2:20 p.m.

Respectfully submitted,


RALPH S. EUDAILY, Chairman

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Sending written testimony was Dr. Eaner P. Higgins, Kalispell, and a copy of it is EXHIBIT 3 of the minutes.

EX 6

MEMO

FROM: JOHN FRANKINO

RE: HOUSE BILL 135

During the public hearing on House Bill 135 several questions surfaced that might warrant further discussion. I hope the following observations will be helpful to the members of the House Education Committee.

CHURCH/STATE QUESTION

House Bill 135 does not violate the first ammendment of the U.S. Constitution or the provisions of the Montana Constitution relating to aid to private schools.

The principle argument relates to the suit filed by Robert Sullivan against the State Teacher Retirement Board. Sullivan applied for retirement qualifications for the years he taught in an out-of-state private institution. The Retirement Board refused and a suit was filed. The issue ended up in the Montana Supreme Court and the Supreme Court ruled that Sullivan should be allowed to purchase credits for the years he served in a private institution out-of-the-state.

The ruling of the court indicates that they did not feel that there was a constitutional violation. It now stands that public school teachers who have taught in an out-of-state private school may get credit for these years. The only difference between this situation and House Bill 135 is that House Bill 135 would allow public school teachers to receive credit for years spent teaching in private schools in the State of Montana.

A private school, whether it be in the State of Montana or in some other state, is still a private school and thus the Supreme Court would not raise the constitutional question of separation of Church and State any differently than it would have in the Sullivan case.

It should be noted that House Bill 135 in no way is aid to a private or religious institution. The bill directs itself toward individual public school teachers. The money that would be used to purchase credits in the Retirement system would be the teacher's money. Under the present law the public school teacher would pay the equivalent of not only the employee share but also that portion of the employer's share. No state funds would be used in the purchase of the credits.

It should be underlined that years of service in private schools out of state qualify whereas years of service in in-state private schools do not. This discriminates against Montana teachers, and House Bill 135 would eliminate this inequity in the law.

The issue of aid to students in private schools is a completely different issue and does not enter into the discussion of House Bill 135. It should be noted, however, that most states in the Union with constitutional provisions similar to Montanas do grant state aid in some forms to the students of private schools. Montana does not at the present time, although the United States Supreme Court has ruled that some forms of state aid are constitutional. This is a legislative question and the Montana legislature could, if it wished, grant benefits such as

busing, text books, auxiliary services, etc, to students in private schools. The question of aid to students in private schools however should not be confused with House Bill 135 since they are two completely different things.

ACCREDITATION

In past years private secondary schools that wished to be accredited by the State of Montana applied to the Office of the Superintendent of Public Instruction and went through the Accreditation process. Most of the long standing secondary private schools in Montana received this accreditation from the state, although there was no specific authority given in the Montana statutes.

In 1978 the State Board of Public Education asked the Attorney General to rule on several questions related to private schools. One of the questions was with regard to the accreditation of secondary schools. The attorney general ruled that the State Office of Public Instruction did not have statutory authority to accredit private schools and thus could not do so. The 1979 legislature granted this authority and thus secondary private schools that wish to be accredited may request this of the State Department of Public Instruction. Most of the private secondary schools in Montana are accredited both by the State Department of Public Instruction and the Northwest Accrediting Agency.

HOW THE TEACHER RETIREMENT SYSTEM DETERMINES LEGITIMATE YEARS OF ELIGIBILITY FOR FORMER PRIVATE SCHOOL TEACHERS.

The first thing to be noted is that the Teacher Retirement Board must now allow teachers who taught outside of Montana in private schools the opportunity to buy back those years of out-of-state private school teaching. In order to do this the Board has the responsibility to determine a method for verifying the legitimacy of the claims. Whether the teacher has out-of-state private school teaching years or in state private school teaching years the same qualifying regulations of the Teacher Retirement Board can be used. House Bill 135 presents no additional problems or burdens over and above those that the Retirement Board already has.

If the House Education Committee is not satisfied with the rules and regulations presently being used for qualifying years of service by out of state teachers than it seems it would be in order to request the Teacher Retirement Board to adjust their qualification standards. It seems that it would be much easier to set up qualification standards for in state service private school teachers since the statutes in Montana are specific with regard to every schools responsibility to have teachers with proper credentials and that each school satisfy the basic instructional program as outlined by the State Board of Public Education.

Setting up qualifications to keep people from attempting to qualify years of teaching in non-qualifying Montana private schools should not cloud the real issue dealt with in House Bill 135 and that is to allow Montana teachers the same benefits that are now mandated for out of state teachers.

I hope these observations will be helpful when you discuss HB 135 in Executive Session.

Ex. 2

TO: The Chairman and Members of the House Education Committee

FROM: Lee Heiman, Staff Counsel

RE: Summary of House Bill 135

DATE: January 19, 1981

1. Background of section. Section 1 of this bill is modeled after 19-4-402, MCA, which sets the provisions for out-of-state employment creditable service. The contribution rates and time frames are exact replicas. Because of this the administrative implementation of the act would not present mechanical problems, and should not present actuarial problems.

2. Out of state public vs. instate private service. Section 75-2705(9), RCM 1947, the predecessor to 19-4-402, MCA, was interpreted by the Montana Supreme Court to allow creditable service for both public and private teaching. (State ex rel. Sullivan v. State, 174 M. 482, 571 P2d. 793 (1977)). As dicta the court mentioned that a disparity in allowing out-of-state private service credits but not instate private credit was within the legislature's power and may have related to a policy to attract out-of-state teachers to Montana.

The court also impliedly stated that the present law does not apply to private out-of-state service. This bill, by authorizing instate private service credit and not out-of-state service, could also be defended on the grounds of a legislative intent and policy to attract or reward teachers from the private sector in Montana.

3. Problems. Section 19-4-402, MCA, which provides for creditable out-of-state service, allows for out-of-state creditable service if such service "would have been acceptable under this chapter if such service had been performed in the state of Montana." House Bill 135, section 1, page 1, lines 13 through 15, provides service may be creditable if performed "in a private elementary, secondary, or postsecondary educational institution in Montana." Read together it would appear that passage of this bill would make out-of-state private service creditable because such service instate is creditable.

There must be an amendment to the title if the committee wishes to provide blanket private service as creditable. If not, section 19-4-402 should be added to the bill and amended to avoid blanket private service credit.

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(2) The creditable service of a member includes the following:

(a) each year of service for which contributions to the retirement system were deducted from his compensation under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, this chapter, and their subsequent amendments, except that no credit may be awarded for those years of service for which the contributions have been withdrawn and not replaced;

(b) any service awarded by a prior service certificate issued under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, and their subsequent amendments or under the provisions of 19-4-406;

(c) any out-of-state employment service awarded by the retirement board under the provisions of 19-4-402;

(d) any service awarded for employment while on leave under 19-4-403; and

(e) any service in the military, red cross, or merchant marine awarded by the retirement board under 19-4-404.

(3) The retirement board's determination of creditable service under this section is final and conclusive for the purposes of the retirement system unless, at any time, the board discovers an error or fraud in the establishment of creditable service, in which case the board shall redetermine the creditable service.

History: En. 75-6212 by Sec. 107, Ch. 5, L. 1971; amd. Sec. 5, Ch. 507, L. 1973; amd. Sec. 8, Ch. 127, L. 1977; amd. Sec. 7, Ch. 331, L. 1977; R.C.M. 1947, 75-6212(2) thru (4).

19-4-402. Creditable service for out-of-state employment. A person applying for membership may also apply for creditable service in the retirement system for out-of-state employment service that would have been acceptable under the provisions of this chapter if such service had been performed in the state of Montana. The person shall be awarded creditable service, conditional upon his completing 5 years of active membership in Montana, for the number of years, not exceeding 5, that the retirement board determines to be creditable service, if he contributes to the retirement system an amount equal to the combined employer and employee contribution for his first full year's teaching salary earned in Montana after his out-of-state service for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon the completion of 5 years of membership service in Montana. The contribution rate shall be that rate in effect at the time he is eligible for such service. The contributions may be made in a lump-sum payment or in installments as agreed between the person and the retirement board.

History: En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(1); amd. Sec. 1, Ch. 295, L. 1979.

19-4-403. Creditable service for employment while on leave. A person applying for membership may also apply for creditable service in the retirement system for employment while on leave. The person shall be awarded creditable service, conditional upon his having been a member prior to his leave and upon his completing 5 years of active membership in Montana subsequent to his return, if his employment while on leave enhanced his teaching experience as determined by the board. The person shall be awarded creditable service as determined by the board in an amount not

Eaner P. Higgins, M.D.
128 Charlotte Ave.
Kalispell, Montana 59901

Ex. 3

1-22-81

Representative Joe Brand
House of Representatives, Capitol Bldg.
Helena, Montana 59601

HB/98

Dear Joe,

Enclosed is an article from the "Spokesman
- Review" (Spokane) concerning your bill on restricting
funds for education of prisoners. I support
the intent of the measure although unaware of
the full bill.

- Disturbing to me is the tone of the oppo-
sition quoted in this article. The student at
Corroll College is not "dry behind the ears"
in her statement the majority of prison in-
mates are above average intelligence. From
my experience as well as other physicians
who personally treated these people, the
reverse was quite evident - the inability
to comprehend simple instructions and problems.
The general consensus of people directly in-
- volved with inmates was that a major problem
in treatment and rehabilitation was the
obvious lower intelligence level of the inmates.
It is true that some of the "profession-
- als" are intelligent and perhaps above
average. I suspect that these few were
the ones interviewed in these so-called studies.

Unfortunately the sociologists are forming their conclusions upon such partial criteria other than the total picture. It is time for a change from this philosophy to a practical, down-to-earth position. We should quit lumping together all inmates, attempt to rehabilitate the ones who actually admit their mistakes and have the incentive to "go straight" but to a limited degree of adequate opportunity. The repeated offender, the true "cons" who likewise are "conning" the well-meaning but impractical sociologist-type, should be incarcerated for definite, fixed terms and isolated from those who could be rehabilitated or at least given that opportunity.

Our primary mission at Galen particularly with alcoholics and other drug patients was toward that goal. I believe those of us at the basic working level are more informed than the theorists who have been "running the show" for so long a time.

In this regard I would recommend a close look at those agencies which are reviewing alleged infractions particularly institutions. Too many use the so-called adversary approach in a cursory fashion and academic viewpoint. Repeatedly I had expressed a willingness to listen to constructive criticism which should be the purpose of such agencies. Unless this approach is taken I would suggest "sunsetting" any such body. Primarily I felt this way

-about the Board of Visitors which
agency I believe should be terminated.

I apologize for my sometimes
illegible "printing" but have no secretary.
You are welcome to transmit my views
to any other legislators including your
Republican counterparts and the few with
whom I was acquainted particularly Sena-
tor Towne and Representative Vardley. If I
can help, count me in. Personal regards.

Respectfully,
Lew Hyatt.

Copies to:

Senator Himel

Representative Keeley