

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE  
February 14, 1981

The meeting of the House Judiciary Committee was called to order by Vice-Chairman Carl Seifert at 7:30 a.m. in Room 437 of the Capitol. Rep. Keyser was excused. Rep. Iverson and Rep. Daily were absent. Jim Lear, Legislative Council, was present.

HOUSE BILL 658 REP. ABRAMS moved do pass.

The committee was reminded that the amendment of the 2/13/81 meeting to have the judge live in Sidney failed.

REP. BENNETT stated the senior judge of the district would place the new judge where he wanted him. REP. HUENNEKENS stated not necessarily. REP. TEAGUE replied the county Sidney is in, is willing to pay the cost for the judge to reside there. REP. HANNAH stated if the judge was to be located in Sidney he could not move with the population of the district. REP. MATSKO stated a new judge is needed in that district and not necessarily in that particular city. REP. HUENNEKENS said most of the trials would occur in Sidney. REP. HANNAH stated if all the people in Sidney vote for a judge to be there, he will be in Sidney. REP. HUENNEKENS stated he might be in Glendive.

REP. ANDERSON stated two years ago in Missoula two judges were added. This allowed flexibility so that the judges could spread out and take care of the caseload. REP. SEIFERT stated adding an extra judge in Missoula has not helped Lake County or Sanders County. Sometimes the judges are disqualified from a case.

REP. KEEDY stated a subcommittee should be appointed to discuss the district lines. REP. HANNAH agreed 100%. It was stated that the interim report was a study on this. REP. HANNAH moved a substitute motion that a subcommittee consider the remapping of the districts.

REP. EUDAILY stated this is a more serious problem than the committee could do. An interim study should be requested. He does not see how the committee could do justice to this. The cases, type of cases, etc. would have to be studied. REP. SHELDEN agreed. Lincoln County district happened because there was enough work to support one judge. REP. SHELDEN felt the study should be updated but the committee was not capable of doing it. REP. ANDERSON did not feel 7-8 days was adequate time before transmittal date to have a full-proof plan.

REP. HUENNEKENS asked how the temporary situation in Libby works. REP. SHELDEN stated it works just fine.

The substitute motion to have a subcommittee look into remapping the districts failed. The only yes votes were HANNAH, CURTISS,

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KEEDY and MATSKO.

REP. BENNETT stated he spoke with the sponsor. The sponsor of the bill indicated it makes no difference if Sidney was indicated in the bill or not. That is where he will go if the bill passes. REP. HUENNEKENS withdrew his objections.

JIM LEAR stated there is nothing in the statutes to say who has the authority to place the judge. REP. YARDLEY stated the Supreme Court is trying to make administrative rules for this type of thing. They have supervisory control.

A roll call vote resulted on the motion of do pass. Those voting yes were: BENNETT, CONN, CURTISS, EUDAILY, MATSKO, ABRAMS, HUENNEKENS, SHELDEN, TEAGUE, YARDLEY and BROWN. Those voting no were: SEIFERT, HANNAH, MCLANE, ANDERSON, and KEEDY. House Bill 658 passed 11 to 5.

REP. HANNAH felt this situation could not continue to go on. As population increases each district will need more and more judges. REP. YARDLEY stated a resolution should be sent to the Supreme Court. REP. ANDERSON made a motion to have MIKE ABLEY look into the situation of redistricting and caseloads. The motion passed unanimously.

HOUSE BILL 626 REP. KEEDY moved do pass. The exclusionary rule is not working except for the criminals.

REP. MATSKO stated there is a problem with not acting in good faith. How do you prove an officer was acting in good faith. Once the charge is raised the officer has to go to court away from his regular duties.

REP. HUENNEKENS stated there was a consitutional question with the last section of the bill whether evidence obtained in a raid may be used in another case. REP. CURTISS stated even if an officer finds evidence it does not make a person less guilty. REP. KEEDY stated no.

REP. BENNETT stated there should be penalties in the bill. The first time an officer breaks the rule he should be suspended. REP. KEEDY stated there is two different types of pressure on the bill; one to go hard, the other to go easy. REP. KEEDY feels this is a balanced approach down the center.

REP. HANNAH moved willful be placed throughout the bill in the various spots. REP. KEEDY stated if willful is inserted it would not be the intent of the bill. A police officer will not be individually liable if he has acted under supervision. If he has not he might be liable. REP. HANNAH withdrew his motion.

REP. EUDAILY asked if a police officer would have to prove this. REP. KEEDY stated it is the plaintiff who would have the burden of proof. Under the exclusionary rule the police officer is brought into court anyway.

REP. MATSKO moved liability of the individual officer acting in good faith be removed so he would not be liable unless he did the act willfully in violation.

REP. CURTISS asked if the police officer could have the same type of protection the county attorney has. REP. CONN did not think that was possible and protect the individual whose rights have been offended.

JIM LEAR stated county attorneys have prosecutorial immunity.


REP. MATSKO stated on line 5, page 3 continuing to line 6 following agency insert a "." and delete the rest of the line. REP. MATSKO stated he likes the bill but feels too much openness is included for the police. If some kind of limitation to finding prior to the hearing that it was acted in good faith was included, he could get along with the bill. Many times it is the officers own time that he has to go to court. REP. MATSKO withdrew his motion.

REP. MATSKO made a motion to have language drafted stating upon finding of good faith an officer would be severed prior to trial. REP. KEEDY felt that was available now. REP. MATSKO withdrew the motion.

JIM LEAR stated in trying to place the burden of proof on the plaintiff against the individual, two sections would have to be set up, one against the state and one against the employee.

REP. EUDAILY made a substitute motion of do not pass. A roll call vote resulted. Those voting yes were: BENNETT, EUDAILY, HUENNEKENS, SHELDEN, YARDLEY, and BROWN. Those voting no were: SEIFERT, CONN, CURTISS, HANNAH, MATSKO, MCLANE, ANDERSON, ABRAMS, KEEDY, and TEAGUE. The motion failed 10 to 6. REP. MATSKO moved to reverse the vote. Those voting yes for do pass were: SEIFERT, CONN, CURTISS, HANNAH, MATSKO, MCLANE, ANDERSON, ABRAMS, KEEDY and TEAGUE. Those voting no were: BENNETT, EUDAILY, HUENNEKENS, SHELDEN, YARDLEY and BROWN. House Bill 626 passed 10 to 6.

The meeting adjourned at 9:00 a.m.

  
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CARL SEIFERT, VICE-CHAIRMAN