

MINUTES OF THE LOCAL GOVERNMENT COMMITTEE
March 3, 1981

The Local Government Committee meeting was called to order at 12:30 p.m. by CHAIRMAN VERNER BERTELSEN. The secretary called the roll and found all members present except REPS. GOULD and SALES who were excused and REPS. HURWITZ, MCBRIDE, NEUMAN and WALDRON who were absent. Staff Researcher Lee Heiman also attended the meeting.

SENATE BILL 28

CHAIRMAN BERTELSEN introduced Senator Joe Mazurek, sponsor of SB 28 and he briefly discussed the bill.

SENATOR JOE MAZUREK said this is really a housekeeping bill. It is an act to revise the procedure for declaring an office forfeited by reason of cash shortage found in an audit by the Department of Community Affairs. In 1915 the statute in the bill, where the language is stricken, was passed. It gave the State Examiner authority to conduct audits and verify cash accounts by public officers and it established the procedure for these audits. Basically, the procedure provides for audits and a preliminary report of the audit, and if a cash shortage is found in that officer's account, he is suspended. When it is finalized, the office is forfeited. The statute then says the officer can appeal the forfeiture.

In 1975 the Montana Supreme Court heard a case out of Great Falls called Ryan vs. Norden where a police judge lost his office because of a cash shortage and appealed. The Montana Supreme Court said you can't forfeit a person's office by reason of a cash shortage without having first given notice to that officer when they found the cash shortage and give him an opportunity to at least review the findings and verify the account. Although it was included in the language, it was in language you hear about a lot in due process of law. The report of that case appeared in the old RCM's as an annotation saying that this statute is unconstitutional and you must first give notice to the officer that a cash shortage was found to exist.

When we recodified, that annotation was missed. As a result of that, there have been a couple instances where local governments relied on the old statute and have gone through the process of forfeiting an office. The result of that could be civil liability against the local government entity which relied on the statute. So the purpose of this bill is to bring the statute into conformance with the 1945 Montana Supreme Court decision. This bill provides a means for local government from relying on that unconstitutional statute. We propose an amendment which would set up the following procedure. The audits would still be

conducted and a preliminary audit, and if there is a cash shortage found as a result of that audit, the officer would be suspended from his office. The report would be finalized and within ten days after filing of that final report, notice must be given to the officer setting a hearing to determine the accuracy of the audit. At that hearing the officer will have an opportunity to present any testimony or evidence to verify that the account was correct. If the audit was found to be accurate and there was a cash shortage, he would then lose his office. There was some question in the Senate as to whether that isn't a rather harsh procedure. It is, but it has been on the books since 1915 and the only thing we are doing now that was not done before and which the Supreme Court says we must do, is give notice to that officer before the report becomes final. I have one proponent, Dan Diemert, who drafted the bill. He is the staff attorney from the Department of Community Affairs.

PROPOSERS TO SENATE BILL 28

DAN DIERMERT said he didn't have anything to add in the way of explanation but I will be available for questions in the way of specifics.

DAN MIZNER, Executive Director of the League of Cities and Towns, said they support the bill.

SENATOR MAZUREK closed, He said there was only one thing he failed to mention. The main concern is so a local government would not rely on the old procedure and then incur some civil liability as a result of having done so improperly.

QUESTIONS FROM COMMITTEE MEMBERS:

REP. ANDREASON: I have one question about the word "omission" on page 3 "that the officer suspended is, by act or omission, responsible for the shortage."

SENATOR MAZUREK replied the act would obviously be the act of embezzling money or spending money somewhere it should not have been spent. I believe an omission would be a failure to supervise or control the money, perhaps just not following proper accounting procedures, not keeping track of the clerk who was responsible for the money as opposed to doing something wrong such as failure to perform a duty which was imposed upon him which would be an omission.

REP. ANDREASON stated he wondered how far we could extend that to say that anything could be an omission.

SENATOR MAZUREK said he supposes that if a person is charged with the responsibility of supervising those funds and failed to do so, whether by delegation or some other means, that person who was elected is responsible for those funds. If he fails to take proper supervisory control over them, as the original statute was written, it was intended to impose that possible forfeiture on him.

DAN DIEMERT said the language was not drafted by him. The Council deleted the language he suggested. It was explained to him this is the language now preferred, over what is now antiquated language, when they recited malfeasance in office. This term is to include all the things earlier described by the use of misfeasance and malfeasance of office.

REP. BERTELSEN stated he has a question. 'Don't you feel that inclusion in here extends the law in any way?

DAN DIEMERT: No, I don't feel it extends the law in any way by broadening the scope of activities which earlier could have given rise to forfeiture of office.

CHAIRMAN BERTELSEN asked if there were any further questions. As there were none, he closed the hearing on Senate Bill 28.

EXECUTIVE SESSION OF SENATE BILL 28

REP. PISTORIA moved that Senate Bill 28 be concurred in.

Staff Researcher HEIMAN said he didn't draft the bill, but he does agree with the person who changed the words. The word "omission" is well used. Particularly when you are talking about an accounting practice. I think they are looking at an accounting practice and whether there was an omission as far as the handling of the funds. I think you'd have problems with vagueness as far as a criminal act that was involved where you needed some kind of intent, but I think with this, with the old malfeasance type of language, where there is an accounting principle involved, there should be no problem.

REP. ANDREASON: It seems to me that the word "omission" means any time there is a cash shortage the person is automatically in jeopardy and it depends on the governing body whether that person stays or not.

MR. HEIMAN said he thinks that is the whole idea of the bill; to provide a real jeopardy. I think it is meant to be a very harsh bill.

REP. SWITZER: I have no problem with it. I agree with Lee that is what they mean. If there is any omission, you are in trouble.

THE CHAIRMAN asked if we're ready for the question?

QUESTION was called for on the motion that SENATE BILL 28 be concurred in. All said "aye" and the motion carried.

CHAIRMAN BERTELSEN said all bills have been submitted by the Senate and we should not be getting any further bills.

SENATE BILL 69

CHAIRMAN BERTELSEN said this bill would now be introduced by sponsor, Senator Tom Hager.

SENATOR TOM HAGER said this bill was introduced at the request of the County Water District of Billings Heights. It is an act to increase the compensation of members of the Board of Directors of County Water and Sewer Districts. These people have received the same rate of pay since 1967 and that rate was \$20 a meeting. They are having a real problem in getting that amount. Frankly, it is tough getting anyone to run for the Board. There are a lot of errands which have to be run for the Board so they want to raise their pay to a monthly salary rather than \$20 per meeting. This is enabling legislation that will allow them to raise it to the schedule of \$100 if the districts have a population of more than 5,000 persons. The present Boards would have to take board action to raise their pay; this is not automatic. The Senate added an amendment which struck subsection 2 and the reason for that was the question of "what are expenses?" It was discovered that this is covered by another part of law so the reference to subsection 2 was stricken.

SENATOR HAGER said he talked with the people who were responsible for submitting this bill and they were asked to appear as proponents, but as the bill was moved up two days prior to when it was originally scheduled and as there isn't a great deal of money to spend, I hope you will treat this bill kindly.

PROPOSERS TO SENATE BILL 69

REP. KITSELMAN said he is a proponent of this bill, and just wanted to reiterate everything. They need the money and I support the bill.

THE CHAIRMAN asked if there were further proponents and there were none. He then asked if there were any opponents. As there were none, he asked Senator Hager to close.

SENATOR HAGER said he wanted to reiterate that this is the type of job you take because you are a good citizen. You aren't going to make any money on it. I hope you will take positive action on the bill.

QUESTIONS FROM COMMITTEE MEMBERS:

REP. HANNAH: Can we repeal this bill since it is a Senate Bill? Seriously, is it necessary to come to the legislature every few years to raise the fees for the Board of Directors of the Water Board from \$10 to \$20, from \$20 to \$30 and so on? Are there areas where this was abused to the point where people who are elected by a Water District cannot raise their salary?

SENATOR HAGER explained that this Water District is buying water from the City of Billings and reselling it to people who live in the Heights. The fact is that they are a taxing authority and probably need at least some control on what they can do.

REP. AZZARA asked Senator Hager if there could be other expenses if we strike section 2? Could you tell me what section of the code the other references to compensation are contained in?

SENATOR HAGER: The section is 7-13-2273. He said he received information from Ann Brodsky of the Legislative Council and the term "compensation" means two different things. In 7-13-2273 it read the term "no other compensation" is unclear and it could be interpreted to include traveling expenses.

REP. AZZARA: Are we talking about the possibility of people on this Board making \$300 a month from a maximum of three meetings a month?

SENATOR HAGER: No, the former language is \$20 per meeting with a limit of three meetings a month. That would go to a monthly salary of no more than \$100.

REP PISTORIA commented to Senator Hager that he sees nothing wrong with this bill.

CHAIRMAN BERTELSEN asked if there were any further questions. As there were none, he closed the hearing on Senate Bill 69.

REP. KITSELMAN moved that we concur in Senate Bill 69.

REP. HANNAH asked what makes this enabling legislation as opposed to mandatory?

CHAIRMAN BERTELSEN said they don't have to go to the ceiling.

QUESTION was called for on the motion that SB 69 be concurred in. Of the 13 committee members present, 11 responded "aye". REP. SALES voted "no" by proxy, and REPS. ANDREASON and HANNAH were also opposed. MOTION CARRIED and SB 69 was concurred in by majority vote.

SENATE BILL 35

CHAIRMAN BERTELSEN had waited for Senator Steve Brown, sponsor of this bill, to introduce it, but since he did not show, he felt perhaps the witnesses could testify so they wouldn't have to return at a later date.

PROPOSERS FOR SENATE BILL 35

MARGARET DAVIS represented the Montana League of Women Voters. She said they support this bill for clarification purposes.

NEIL WETSCH said he represents the Montana Home Builders' Association. This is a small step, but one in the right direction and we support SB 35.

SENATOR BROWN will be asked to attend a future meeting and discuss said bill.

The meeting was adjourned at 1:15 p.m.



Verner L. Bertelsen, Chairman

VISITORS' REGISTER

HOUSE LOCAL GOVERNMENT COMMITTEE

ROLL SENATE BILL 28

Date March 3 - 12:30 p.m.

SPONSOR SEN. JOE MAZUREK

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE LOCAL GOVERNMENT COMMITTEE

BILL SENATE BILL 35

Date March 3, 12:30 p.m.

SPONSOR SENATOR STEVE BROWN

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STANDING COMMITTEE REPORT

March 4, 1901

MR. SPEAKER.....

We, your committee on.....LOCAL GOVERNMENT.....

having had under consideration.....SENATE..... Bill No. 28.....

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE PROCEDURE FOR DECLARING AN OFFICE FORFEITED BY REASON OF CASH SHORTAGE FOUND IN AN AUDIT BY THE DEPARTMENT OF COMMUNITY AFFAIRS; AMENDING SECTION 2-7-511, MCA."

Respectfully report as follows: That.....SENATE..... Bill No. 26.....

BE CONCURRED IN
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Vernor L. Bortelach
Vernor L. Bortelach Chairman.

STANDING COMMITTEE REPORT

March 6 1931

MR. SPEAKER

We, your committee on LOCAL GOVERNMENT

having had under consideration SENATE Bill No. 35

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE MONTANA
SUBDIVISION AND PLATTING ACT TO PROVIDE FOR JOINT HEARINGS
AND COORDINATION OF REQUIREMENTS FOR ANNEXATION WHENEVER
POSSIBLE; AMENDING SECTIONS 76-3-601 AND 76-3-605, MCA."

Respectfully report as follows: That SENATE Bill No. 35

BE CONCURRED IN

DO PASS:

STANDING COMMITTEE REPORT

March 4,

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MR. SPEAKER

We, your committee on LOCAL GOVERNMENT

having had under consideration SENATE Bill No. 69

A BILL FOR AN ACT ENTITLED: "AN ACT TO INCREASE THE
COMPENSATION OF THE MEMBERS OF THE BOARD OF DIRECTORS OF
COUNTY WATER AND SEWER DISTRICTS; AMENDING SECTION
7-13-2272, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Respectfully report as follows: That SENATE Bill No. 69

BE CONCURRED IN

UNGRASSY

Verner L. Bertelsen
Verner L. Bertelsen

Chairman.