

MINUTES OF THE MEETING OF LOCAL GOVERNMENT COMMITTEE
March 7, 1981 -- 7:00 A.M.

The Local Government Committee met Saturday, March 7, 1981 in room 103 of the Capitol. CHAIRMAN BERTELSEN called the meeting to order and had the secretary call the roll. All members were present except REPRESENTATIVES AZZARA, HANNAH and HOLIDAY who were absent. REP. HURWITZ and WALDRON were excused. Staff Researcher LEE HEIMAN attended too.

SENATE BILL 256. Sponsored by H.W. HAMMOND

SENATOR HAMMOND from District 3 said he has a bill dealing with incorporation of a small town. The bill is being carried strictly for the benefit of Fort Peck. There are three federal towns that are going to be sold this spring, as the federal government wants to get out from under them. One is in North Dakota, one in South Dakota and Fort Peck in Montana. These towns do not have the 300 people to make it possible for them to incorporate. If they can form a legal entity, the federal government will turn the water and sewer systems, the parks and some of the city buildings over to them. The housing will be sold to the people who live in them with a preference and others will be sold at auction. Because they didn't have the 300 people, I introduced this bill lowering the figure to 200 in the city or town and 50 in each ward. I understand that there is some opposition to this bill but I hope it can be amended so these people can be given the opportunity to help themselves. I don't think there are proponents but I know there is an opponent.

CHAIRMAN BERTELSEN asked if there were any proponents and there were none. He then asked for opponents.

OPPONENTS TO SENATE BILL 256.

DAN MIZNER, Secretary of the Montana League of Cities and Towns, said he is in an awkward position. Cities are our business and incorporated cities should be. But I have to honestly appear before this committee to tell you about some problems. I've had several telephone calls relative to the area of a religious cult that is organized in an area and wants to incorporate. The cities and counties have called it to my attention and said if we pass this bill that type of thing can happen. That was one of the reasons the number of people necessary was raised a few years ago.

I have worked with the Fort Peck people and the engineers for the last few years. We should try to make some arrangement for those people to incorporate. They have used our office and we've been supplying them with information relative to incorporation.

I am not appearing here to try and kill the bill, but to point out to the committee that I've had some calls about it and to

relay them to you. I agree with the chief sponsor of the bill that perhaps we could amend the bill to take care of this and answer some of the problems that may be created. One of the things the committee has to take a look at is "What is a viable city?" Right now I have cities that are down to 46 population. At one time these cities had a population of from 800 to 1,000. Due to circumstances and economic conditions they have deteriorated down to that size town. They are really not a viable city. When you think about all the bills that go through this committee and all of the things that we argue about in behalf of trying to get the laws changed, and when you look at the impositions put on the people, a lot of them who say they want to get into incorporation don't realize what that means. When you once put that line around an area and say "now we are a city", all of these things which we've talked to the committee about fall upon their shoulders. After they get to be a city the telephone rings and they say "Why don't you get that law changed?" In some cases the number should be anywhere from 200, 500, 800 or 1,000 people before a town would have a tax base and be able to handle the things that are imposed upon incorporated cities and towns. They have to look at these things down the line.

Mr. Chairman, I did take up a lot of your time, but I did report on behalf of the people who called. I know something of their problems. I do hope we can work out something so that the federally owned ground being transferred could be incorporated under certain conditions, and if it is otherwise, it could be incorporated under other conditions.

CHAIRMAN BERTELSEN asked if there were further opponents. As there were none, the chairman asked SENATOR HAMMOND to close.

SENATOR HAMMOND said he closed, but would be happy to try and answer any questions from the committee.

QUESTIONS FROM COMMITTEE MEMBERS:

REP. SALES wondered if we had time to discuss other possibilities of how this situation might be handled?

SENATOR HAMMOND said that he did consider at one time setting this up so it could be done by application to the county commissioners, but he doesn't know if that would help the situation.

REP. SALES wondered if perhaps we could hold off on this for a week or two. This would give SENATOR HAMMOND a chance to look into it further. If he still feels this is the only route to go, perhaps the committee could then try to help you.

SENATOR HAMMOND said he's happy to do anything which will help the Fort Peck people.

REP. PISTORIA said he doesn't think the League of Cities and Towns should run the people of Montana. I think they should have their own choice. I want to do everything I can to help the situation.

REP. GOULD asked Senator Hammond if we could set an effective date in the bill and have it expire a few days later?

SENATOR HAMMOND commented that when dealing with the federal government, this might be hard to do.

REP. GOULD said any possibilities we could come up with might be worthwhile.

REP. SWITZER asked SENATOR HAMMOND if there is any alternative? Does the government have any other alternative or will they just let the town fall to pieces?

SENATOR HAMMOND said he doesn't know that. They couldn't explain it to me either. They were told that if there was a legal entity they would be glad to turn the town over to them. I've been working with the Corps of Engineers and they were the ones who discussed it. I think if there was some other alternative, they would have presented it to me.

REP. SWITZER said we've passed new regulations to make everything from garden patches to major cities. I wonder if one of the municipal districts such as a sewer district or water district could be of sufficient legal standing to go through them?

SENATOR HAMMOND said he discussed the possibilities with Dave Wanzenreid from the Department of Community Affairs. He suggested something like this at one time but then decided it wouldn't be satisfactory.

REP. DUSSAULT asked Senator Hammond what the federal government is considering turning over to somebody as she arrived late?

SENATOR HAMMOND said they will turn over the entire area which encompasses the town of Fort Peck. It includes two parks, the water and sewer system. The only thing they will retain will be the building where the Corps of Engineers offices are. The school goes to the district. There is a hotel that will be sold. The post office will be sold to someone or released back to the postal system.

REP. DUSSAULT wondered if the county was not an appropriate body to control the town?

SENATOR HAMMOND said he doesn't think the government wants to go that way. It does have some possibilities for growth if the people are active enough because it is right on the edge of Fort Peck Lake. Perhaps some private enterprise could cause the town to grow.

REP. VINGER said they must be close to 300 as there are 96 or 98 homes.

SENATOR HAMMOND said the closest they have come is 265 but because some of the services are closing, they are afraid they'd be down to 200 by the time the transaction could take place.

REP. VINGER said he is somewhat familiar with Fort Peck too. The government is going to sell the houses back to the people that live there who have been permanent employees all of their lives. They have been permanently employed by either the Corps of Engineers, the Power Plant or the dam project. They will sell the houses to the individuals. They will set a value on the houses, subtract out the rent that they have paid as equity and the people will end up paying the difference. The government is upgrading the whole thing; the sewer and water system, the natural gas system which was government owned was full of leaks. The natural gas system is being upgraded and it too will be turned over to the people. The Federal Government would like to have the people incorporate their own town and make a little city out of it. It is a very nice little town; a beautiful location, a beautiful sight and a beautiful recreation area, so the people are quite proud of it.

REP. SWITZER asked MR. MIZNER if he'd expand a little on some of the threats that are posed by requiring incorporation by the people?

MR. MIZNER said one specific thing is a religious sect that is gathered out of Stevensville. The people in the area are concerned that if too small a figure is required to incorporate, that type of an operation could incorporate within their area as he's had two or three calls about it. He'd like to suggest that we get this bill passed, get Fort Peck incorporated and in two years can come back and raise the figure again.

REP. SWITZER wondered if a large trailer park could incorporate if they were outside of the city limits already?

MR. MIZNER said the law says if you have x number of people who are registered voters and a given amount of ground that they can petition to be incorporated. The petition signed by so many people comes before the Board of County Commissioners. The county commissioners set up a requirement for a census to determine positively that there are the required number of registered voters in the given area. They set up an election either for or against incorporation. The people vote and if they vote them down, they do not incorporate. If they vote in, then they set up an election by the county commissioners to hold one more election to elect the first officers. Those officers are then elective and the city is off and running. Colstrip had this on the ballot two months ago and the people turned it down. Absarokee just had an election and they turned down incorporation. Lincoln went through a process of turning down incorporation. They have now formed a sewer and water district and are operating. They passed a bond issue for sewer and water only.

REP. PISTORIA asked if anyone from Fort Peck is against this?

SENATOR HAMMOND replied "no".

DAN MIZNER said the League has been working with the people of Fort Peck and the Corps of Engineers out of Omaha for the last two years putting together information so they might have the opportunity of incorporating. The people in Fort Peck are interested in incorporating, and if the process can be put on the books, it is their decision to do so.

REP. GOULD asked MR. MIZNER if an election is held just for the area that is being incorporated when the county commissioners set up an election for incorporation?

MR. MIZNER said yes. After the lines are drawn to identify the boundaries of the city, they identify the voters within that boundary and they register for that special election. They are the only ones who can vote. There is another part of the law that says they cannot incorporate if they are within three miles of an incorporated city unless they get consent from that city that they will not annex.

REP. VINGER asked MR. MIZNER if they don't have to meet a lot of obligations? Don't they need city water, a sewer system and a garbage system before they can incorporate?

MR. MIZNER said no. These things come after you incorporate. You can create a water or sewer district without incorporation. But if you incorporate, the law does not specifically say you must have a sewer or water system.

CHAIRMAN BERTELSEN asked if there were further questions. As there were none, he closed the hearing on SENATE BILL 256.

SENATE BILL 236 - Sponsored by SENATOR MAX CONOVER

SENATOR CONOVER introduced the bill. This is a bill to clarify the laws that relate to the forming of joint city-county planning boards, as well as consolidated planning boards. It authorizes any governing body which has the power to form such a board to do so. He explained the bill, stating it would save both the city and county a lot of money. Senator Conover submitted his written testimony which is attached to and made a part of these minutes. He said he hoped the committee would concur in Senate Bill 236.

PROPONENTS FOR SENATE BILL 236

AL THELEN, CITY ADMINISTRATOR OF BILLINGS, said they support Senate Bill 236 and said Billings asked SENATOR CONOVER to submit it to the legislature because of a problem they had last year. We tried to solve it through an interlocal agreement and change some existing things in our joint city-county planning operation. We patterned an interlocal agreement similar to one

that had been approved in January of 1980 by the attorney general in the Kalispell-Flathead area. In this instance, they decided we could not do what we wanted to do through an interlocal even though it was the same thing. Our attorney didn't agree with that and we were faced with either the issue of trying the case by law or coming in and trying to get the law changed. The attorneys in DCA who had not reviewed the interlocal agreements in Missoula or Kalispell felt there was a flaw in the law. They had not been asked to review the previous agreements and so had not done it in those particular instances. Thus, we are trying to change this by legislation.

The other approach we could have taken was to disband all our planning operations and start over. That was the suggestion of the attorney general. This would have taken 6 or 7 months. The county did not want to do that and feared some loss of strength of the planning board if they went back and recreated that. The bill has been reviewed by the DCA and they did add an amendment to it before it went to the Senate which is specifically what the city and county wanted to do.

ROSE LEAVITT represented the League of Women Voters of Montana. She said the League supports Senate Bill 236. Her written testimony is attached to and made a part of these minutes.

DAN MIZNER represented the League of Cities and Towns and he said they support Senate Bill 236.

CHAIRMAN BERTELSEN asked if there were any further proponents. As there were none, he asked if there were any opponents. As there were no opponents, he asked SENATOR CONOVER if he'd like to close.

SENATOR CONOVER said "I close."

QUESTIONS FROM COMMITTEE MEMBERS

REP. KITSELMAN commented to AL THELEN that he was familiar with the situation. We have a city planning board and a joint city-county planning board. The city is responsible under the city group and the administration of the Council. The county and the zoning commission is responsible under the county zoning commission. We have the autonomous city-county planning board which has worked quite well. He asked Al Thelen if this came out of the strike in Billings as to who was responsible for George?

AL THELEN answered no.

REP. KITSELMAN commented it is the board who hires and fires. All personnel were there and they take care of those matters

through GEORGE FREEMAN, the planning board director.

AL THELEN said he thinks it is important to distinguish between zoning and planning. The two zoning commissions operate independently. The joint planning board is responsible for the planning operation and primarily hear subdivision review and things related to that. They have the authority to hire the staff of about 15 people. There is an executive committee of that joint city-county planning board that has that function. The concern of the Billings people was that function had nothing to do with the strike. When I came here a year and a half ago, the city and county commission felt that that was their number one priority.

REP. KITSELMAN commented that one of the things against being part of that is one of the protections that works well with that is the fact that they are not under the thumb of either the city or the county and are not unduly influenced by either one of them.

AL THELEN said he thinks the legislation disagrees with whether that works well or not. I guess the legislation would allow them to change that since they are the ones really responsible. My personal concern is that I feel there is enough concern by the elected officials that we could lose that planning operation if they are not able to get control. I feel the elected officials should have that control.

REP. PISTORIA said he is not speaking for or against the bill. I am familiar with city-county planning boards and there are laws governing them. When you have that, you have a four and one half mile radius. Then we have the county planning board and of course they operate outside of this zone. They have worked well. The thing that concerns me is if they did combine, would it be possible that the city-county board might be more powerful than the county residents outside of this area and they wouldn't get any appointments? Would that be possible?

AL THELEN said the city and county commission under this bill could organize how they wanted, but both sides would have to agree before that took place. I think it might have some effect in the Great Falls area but it would have to be agreed upon separately between the cities and the counties.

CHAIRMAN BERTELSEN closed the hearing on Senate Bill 236.

SENATE BILL 328 - Sponsored by SENATOR BILL THOMAS.

SENATOR FRED VAN VALKENBURG from District 50 said with the committee's permission, he'd like to present Senate Bill 328. This bill was introduced by SENATOR THOMAS at my request. That is why I'm doing the work on it and carrying the bill. Senate

Bill 328 would simply say that a vacancy in a municipal office would be on the same grounds as a vacancy in a state office. The present law which was written a long time ago with respect to municipal offices is somewhat vague and unclear. It has presented some difficulty in interpretation. This bill was drafted for that reason so it would make municipal offices subject to the same kinds of definition for vacancy as you or I serving as state legislators.

The particular situation that arose from Missoula involved a city councilman who suffered a heart attack and was unable to do anything for virtually a year. His constituents went unrepresented for that time because no one could agree whether the office was vacant or not. He is now back on the city council. This is not intended to go back at him in any fashion but it is intended for the future to make a little more clear whether a vacancy in an office exists. It simply puts city officers on the same basis as you or I.

PROPOSERS FOR SENATE BILL 328

DAN MIZNER said he represents the Montana League of Cities and Towns. This does give us a law that we can follow. We do know that these things can happen in a city. This gives the city a ruling to fill the vacancy.

CHAIRMAN BERTELSEN asked if there were further proponents. There were none, so he asked if there were any opponents. There were none. He asked SENATOR VAN VALKENBURG if he wished to close.

SENATOR VAN VALKENBURG said "I close."

QUESTIONS FROM THE COMMITTEE

REP. ANDREASON commented this is apparently something which has been in the law for a while. He asked Senator Van Valkenburg why the 10 day limit on line 24?

SENATOR VAN VALKENBURG said he didn't know and referred the question to LEE HEIMAN.

LEE HEIMAN said it is tradition.

REP. KESSLER asked if the 10 days refers to a state official too?

LEE HEIMAN said it is from general law which includes state officers and anyone where there is no specific rule.

REP. KESSLER asked Lee if there is a limited time state legislators can be gone?

LEE HEIMAN answered yes.

REP. BERTELSEN said yes, there is a limit if you are out of the state for a certain length of time.

REP. ANDREASON wondered what the provisions are for mental health as mentioned on line 20, page 1?

SENATOR VAN VALKENBURG said basically in current law a determination can be made by a District Court Judge that an individual is seriously mentally ill. This is defined in the statutes as having to do with a mental disorder and whether the individual is a danger to himself or others.

REP. PISTORIA asked what would happen in the case where a person has a nervous breakdown from overwork? Normally this type of thing allows the person to return to work. Would this affect a fellow like that?

SENATOR VAN VALKENBURG said that lines 8 through 11, page 2, provide that if you are unable to discharge the duties of office for three months, except when prevented by illness, your office can be considered vacated, after the three months, but I think if you have a traditional illness, rather than a mental illness, you continue to hold the office.

REP. SWITZER commented that county commissioners do not have permission to leave the county.

CHAIRMAN BERTELSEN said there is a restriction that you need permission from fellow board members.

CHAIRMAN BERTELSEN asked if there were any further questions. As there were none, he closed the hearing on SENATE BILL 328.

REP. VINGER asked Lee if he would work up a couple of amendments on Senate Bill 328, and he said he would do so.

The meeting adjourned at 8:30 a.m.


VERNER L. BERTELSEN, Chairman

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VISITORS' REGISTER

HOUSE LOCAL GOVERNMENT COMMITTEE

TITLE SENATE BILL 236
SPONSOR Max Conover

Sat.
Date March 7, 7 A.M.

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

NAME Rose Leavitt Bill No. SB 236
ADDRESS 318 Harrison - Helena DATE 3/7/81
WHOM DO YOU REPRESENT League of Women Voters of MT
SUPPORT ☒ OPPOSE ☐ AMEND ☐

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The LwV supports orderly growth of communities through innovative land use planning. We believe this bill clarifies Sec 76-1-112 MCA and permits governing bodies to create consolidated planning boards. League, as a result of their study of state-local government relations, promoted a framework of state laws pertaining to local governments which is both flexible and comprehensive. For these reasons we wish to go on record in support of SB 236. Thank you.

SENATE BILL 236

Senate Bill 236 clarifies the laws that relate to the forming of joint city-county planning boards, as well as consolidated planning boards, and authorizes any governing body which has the power to form such a board to do so.

The importance of having a planning board that can plan for an entire area cannot be underestimated. Montana is a growing state, and with the further development of our resources, more growth cannot help but take place. Montana is also a state that is affected by urban sprawl, with the large cities exceeding their boundaries, going out into the county, and extending what were city problems out into the county.

Under these circumstances, cooperation between the city and county governments, especially in the planning areas, is essential. Growth affects all areas of government. The special districts, water, school, fire, sewer, sanitation, etc., are all affected by growth. Urban sprawl causes these same problems for the county. Through joint or consolidated boards, this growth can be controlled and planned, and the economic and administrative impact can be distributed in a better manner, taking into consideration the resources of the governing bodies. Joint and consolidated planning boards can also reduce per capita costs, bring about economics of scale in capital investments (school, etc.) and equity in tax and service boundaries.

This amendment, of course, does not bring about a joint planning board. What it does do is clarify the law and hopefully make it easier for these boards to be formed. Given the importance of this process, I hope that you will concur favorably with Senate Bill 236.

VISITORS' REGISTER

HOUSE LOCAL GOVERNMENT COMMITTEE

PILL SENATE BILL 328

Date Saturday
MARCH 7 at 7 A.M.

SPONSOR SENATOR BILL THOMAS

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STANDING COMMITTEE REPORT

APRIL 14, 1961

MR. SPRAKER

We, your committee on LOCAL GOVERNMENT

having had under consideration SENATE Bill No. 256

A BILL FOR AN ACT ENTITLED: "AN ACT TO REDUCE THE
POPULATION PREREQUISITE FOR MUNICIPAL INCORPORATION;
AMENDING SECTION 7-2-6103, MCA; AND PROVIDING AN IMMEDIATE
RETROACTIVE DATE."

Respectfully report as follows: That SENATE Bill No. 256

Amend Senate Bill 256, 3rd reading (blue) copy, as follows:

1. Title, line 4.
Following: "ACT TO"
Strike: "REDUCE"
Insert: "CHANGE"

2. Page 2, line 8.
Following: "(1)"
Insert: "(a)"
Following: "300"
Strike: "200"
Insert: "300"
Following: "upwards,"
Insert: "or"

3. Page 2,
Following: line 3
Insert: "(b) the community was a townsite owned and built by the
U.S. Government prior to [the effective date of this act]."

AS AMENDED BY CONCURRENT LE

STANDING COMMITTEE REPORT

March 14, 1931

MR. SPEAKER

We, your committee on LOCAL GOVERNMENT

having had under consideration SENATE Bill No. 328

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE PROVISIONS ON MUNICIPAL VACANCY IN OFFICE TO INCLUDE THE SAME GROUNDS APPLICABLE TO VACANCY IN STATE OFFICES; AMENDING SECTION 7-4-4111, MCA."

Respectfully report as follows: That SENATE Bill No. 328

BE CONCURRED IN

~~DO PASS~~

Verner L. Bertelsen
Verner L. Bertelsen

Chairman.

STANDING COMMITTEE REPORT

March 14,

1921

MR. SPEAKER

We, your committee on LOCAL GOVERNMENT

having had under consideration SENATE Bill No. 236

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE LAW
RELATING TO JOINT AND CONSOLIDATED PLANNING BOARDS AND TO
AUTHORIZE ANY GOVERNING BODY WHICH HAS THE POWER TO CREATE A
PLANNING BOARD TO FORM A JOINT OR CONSOLIDATED BOARD;
AMENDING SECTION 76-1-112, MCA."

Respectfully report as follows: That SENATE Bill No. 236

BE NOT CONCURRED IN

~~DO PASS~~

Vernor L. Bertelsen

Chairman.