

MINUTES OF THE MEETING OF THE LOCAL GOVERNMENT COMMITTEE
March 14, 1981

The Local Government Committee met Saturday, March 14, at 7:00 a.m. in Room 103 of the Capitol. The chairman called the meeting to order and asked the secretary to call the roll. All committee members were present with the exception of Rep. Vinger who was excused and Reps. Hurwitz, Hannah, Sales and Waldron, who were absent. Staff Researcher, Lee Heiman, also attended the meeting.

CHAIRMAN BERTELSEN introduced Senator Bob Brown, sponsor of SENATE BILL 84.

SENATOR BROWN said this is an act to increase the salary of District Court reporters. You can see on line 13, page 1, that as introduced, the bill was to increase the lower base salary from \$12,500 to \$16,000, but it was changed from the proposed \$16,000 to a lower base of \$14,000 but no more than \$20,000. The bill was amended down but the salary still went up. There are several court reporters here this morning. They hold a responsible job in our society and will present their testimony. Jim Hathaway from Miles City will explain their duties and reasons why this bill should receive our consideration.

JIM HATHAWAY said he is the court reporter in Miles City. I work for Judge Martin and I'm here in support of SB 84. I would like to give you a summary of court reporters. There are approximately 32 court reporters in the state of Montana. We are paid by the counties that we serve. I work for the 16th District which comprises 7 counties, and I'm paid by the 7 counties in proportion to the cases filed the previous year. Currently, court reporters are paid a minimum of \$12,500 and a maximum of \$18,000. That figure is set by the judge you work for. Mr. Hathaway gave a history of the salaries of court reporters. The 1975 legislature raised the court reporter's salary to a maximum of \$16,000. In the 1977 session the court reporters wanted to introduce a bill to increase their salary to offset inflation. At that time we were informed by the Supreme Court that the court reporters would be taken out of the legislature and put under the Supreme Court. The judges would then fix our salary. This did not happen, so we received no salary increase at all. In 1979 the court reporters introduced a bill in the House which carried quite well, which was what you might call a catch-up bill. The bill was to bring our salary up to what would be a competitive salary with other states. The bill was introduced at \$25,000. It passed the House and went over to the Senate. They amended it to the \$18,000 maximum, which we are currently paid. Therefore, you'll see that since 1975

we've received a \$2,000 pay raise over a period of six years, which amounts to about a 2% cost-of-living per year. As Senator Brown mentioned, SB 84 was first introduced at a minimum of \$16,000 and a maximum of \$27,500. This again was a bill introduced to bring the Montana reporters in line with what some of the other states pay. Montana is ranked about 45th in the United States as far as pay for court reporters.

Currently the status of SB 84 is a minimum of \$14,000 and a maximum of \$20,000. This again is another \$2,000 pay adjustment which is a little over the 5% cost-of-living per year. We all know that the cost of living increase was well over 20% for the years 1979 and 1980. The court reporters would like this committee to consider the following amendment. We'd like to see the bill amended to read a minimum of \$17,000 with a maximum of \$22,000. This would put us closer in line with what some of the other state reporters receive. We would like to have a 7% cost-of-living raise in the future. Federal reporters in Montana are paid \$27,900. On line 14, following "no other compensation except as provided in 3-5-604," we would like to insert the following amendment: "a court shall on or before July 1, 1982, and on or before July 1, of each year thereafter, adjust and fix the salary of a reporter for a cost-of-living increase by adding to his annual salary on July 1 an increment of not more than 70% of the last previous calendar year's consumer price index." It goes on and I'll leave this amendment with the chairman.

If the cost of living in 1981 is a 10% cost-of-living, this would give us a 7% cost-of-living where the District Judge could allow us that amount.

In closing, I can't impress upon you enough that Montana is at the bottom of the list. We are not attracting competent court reporters to replace the ones that are leaving. Of the 32 court reporters in Montana, there are 10 or 12 who could retire today or will be eligible to retire in the next five years. I don't know how we will replace these people with the salary we get now. They come from Billings, Missoula, Kalispell and so on.

CHAIRMAN BERTELSEN asked if there were further proponents. As there were none, he called for opponents.

OPPONENTS TO SB 84

REP. PISTORIA said if the court reporters hadn't asked for this amendment, he wouldn't speak against the bill. But he feels he could have been responsible for the Senate committee adopting this amendment. In the 1979 legislature the court reporters had HB 442 for salary increases in the House Administration Committee of which he was a member. He was an ardent

supporter for their increase and the salary was set at the minimum of \$12,500 to \$18,000 for the maximum. Since that session I have changed my mind. I didn't know that they were receiving money from another source and I wouldn't have given them a raise. Now in SB 84 they ask for an increase from \$12,500 to \$16,000 or a maximum of \$27,500. I think that is outrageous.

He went on to discuss the amounts the reporters are paid per folio and per page. The folio is not explained in the law. It is composed of about 100 words per folio or about 300 words per page. By having two salaries they make more than most district judges. I'll prove this. They have a real thing going for themselves which I call a monopoly, a closed corporation. Besides receiving a yearly salary, they are provided an office space, a desk, chair, filing cabinets, telephone, typewriters and some stationery. Besides taking testimony for their district judges on taxpayers' expense, they take depositions and testimonies for other attorneys and in doing this are working for the county, but they are paid by the citizen in many court cases. They then type up these depositions in their offices at taxpayers' expense.

After the 1979 session I received many telephone calls from reporters in the area who wanted to take depositions from attorneys. The court reporters kept them out. For my case, they charged me \$1,345, which involves folio items. One girl was paid \$8,004 for a transcript of a murder case and that was done mostly on taxpayers' money. Something should be done to correct the law as they do get two salaries.

CHAIRMAN BERTELSEN asked if there were any further opponents. There were none, and he asked Senator Brown if he'd like to close. Senator Brown asked that the closing time be given to Mr. Hathaway.

JIM HATHAWAY said in rebuttal to Mr. Pistoria's comments, he'd be brief. First of all, he mentioned the appeals and his own case in district court. The constitution provides that anyone who wants to sue someone else has to go into district court. That is the judicial process. If there was no such thing as an appeal, we wouldn't need a Supreme Court and a lot of the judicial officers. That's what the Supreme Court is for, the right to review from the district court level. Just like the JP has a right in a case, whether it be a traffic ticket or something else, you have a right to appeal from the district court or all the way to the Supreme Court. The statutes covering appeals will be covered by my colleague, Ione Daniels, from Bozeman, but I want to touch on it. There is not a court reporter in the State that wants to do an appeal. I don't. I'd just as soon not have them and I thank the Lord when my judge makes the right decision and I don't have them. They involve a lot of work. We must provide several copies to the

Supreme court and it is a real pain to get out an appeal. But it is part of our job.

As far as depositions, a deposition is taken for two reasons. One is to save the testimony of a witness that may pass away prior to the time of the trial. We have cases in my area that were filed in 1975 and they might not come to trial before 1981 or 1982. Lawyers might, in such a case, take a deposition of an elderly witness. In that six year period he may die, but his testimony is on record and can be presented to the jury whenever the case goes to trial. It is true that depositions are taken at court time, but the purpose of the court reporter is to serve the bar and the bench and that is all. That is what we are trying to do. Depositions literally save the county taxpayers thousands of dollars. Based on depositions, the attorneys make a motion to the court which is called a summary judgment. The court may rule in favor of that motion. It is taken up on appeal to the Supreme Court. The Supreme Court may uphold the district court and the case is over; there is no trial. And that motion for summary judgment is strictly on discovery work done by the attorneys of record in support of their motion for the summary judgment, which means the case is closed based on the law. That is the purpose of taking depositions.

Most of my work in depositions and appeals is done in the evening at home. If you sit in court one week, eight hours a day, it will take you three hours to transcribe for every hour in court. The judge doesn't say, "let's work this week taping this trial and then the next three weeks dictate." It doesn't work that way. The judge doesn't stop everything so you can catch up on your transcripts.

QUESTIONS FROM COMMITTEE MEMBERS

REP. ANDREASON said he has several questions for Mr. Hathaway. We are talking about the two sources of salary for the court reporter. Do you have any figures from those two sources? What is the average salary of the court reporter?

JIM HATHAWAY said he can't give a ballpark figure. The same question was asked at the Senate hearing. One of my colleagues from Kalispell indicated he made \$6,000 on appeals last year. In Miles City I made less than \$300 on appeals, so it varies with the court schedule.

REP. ANDREASON asked if you are saying that the annual salary we have listed in SB 84 is plus the \$300?

JIM HATHAWAY said yes, he made \$300 over the annual salary. The reporter at Kalispell made \$6,000. Some reporters make less, some make more, some make nothing.

REP. ANDREASON asked Mr. Hathaway if he had any idea what an average total salary could amount to?

JIM HATHAWAY said he used the above figures as an example. In some districts the reporters may make more, but some make very little.

REP. ANDREASON commented about comparisons with other states. Do you have any information that you can pass out to the committee that would give us that comparison?

JIM HATHAWAY said he has a brochure, but not enough to give one to each committee member. He gave one to the chairman but ran down the list stating that Oregon is paid a minimum of \$15,000 to a maximum of \$24,000; Nebraska \$21,000; Idaho \$24,000; South Dakota \$17,000 to \$20,000; Utah \$18,516 to \$25,236; Minnesota \$22,500 to \$26,500; Federal (Montana) \$28,741; Wyoming \$20,165; North Dakota \$22,800 and Montana \$12,500 to \$18,000. Most of these states are also in the process of trying to get the legislature to increase their salaries.

REP. ANDREASON asked if all states charge per folio and also have an annual salary?

JIM HATHAWAY replied "yes."

REP. MCBRIDE asked Mr. Hathaway the following questions. You mentioned the additional payment you get for appeals. The way the law currently reads, you also receive it for copies of proceedings. Is that right?

JIM HATHAWAY said that is for transcripts on appeals.

REP. MCBRIDE: Do you receive additional pay for any other work?

JIM HATHAWAY said yes, for deposition work. There again if you have a busy court like Missoula, they could make anywhere from \$12,000 to \$16,000, depending on the number of appeals. In eastern Montana I make anywhere from \$6,000 to \$12,000.

REP. MCBRIDE: Are you telling me that if we approve a raise from \$12,500 to \$22,000, you can make an additional \$12,000 in addition to your regular salary?

JIM HATHAWAY said there is that possibility, depending on how many cases are appealed and how many depositions are taken.

REP. MCBRIDE: Are you telling me that you work 11 hours a day every day? You mentioned 8 hours a day in court and then 3 or 4 hours in the evening.

JIM HATHAWAY: I'm not saying I do that every day. I'm saying that I'm in the office usually from 8 to 4:30 working for the judge, or bouncing in and out of court on different types of criminal areas and trials. Any transcripts on appeal I dictate at home at night because my scheduling during day does not permit me to do anything in my office. The only thing I do during my working hours is maybe take a deposition because the attorneys would not want to take depositions in the evening.

REP. MCBRIDE asked Ann Wayrynen if she could give her an idea what types of additional payment she is receiving.

ANN WAYRYNEN, a court reporter in the Second Judicial District in Butte, said she is working on her taxes now, so can give a pretty good idea of my extra compensation. Last year I made a salary of \$18,000 in the court, based on my experience as a court reporter. I also did appeals and depositions amounting to approximately \$26,000. But I want you to realize that this is not pure profit to me. I pay a typist to do my work; anywhere from 50 cents to a dollar a page. I pay to have the copies made on an appeal to the Supreme Court and that is 56 cents a page for 8 copies. So we are looking at a pretty fair amount when you start paying that kind of expenses.

The court supplies me an office and a desk. That is it. I supply my own typewriter, my own stenotype machine, all my stationery, transfer paper, bindings and so forth. I must buy everything out of the money I make from appeals and depositions.

REP. ANDREASON commented to Chairman Bertelsen that he still hasn't found out what the gross reportable taxable income, including the source of two salaries, amounts to.

IONE DANIELS, court reporter from District 2 in Bozeman, said her taxes are also being worked on at this time, so she has some figures for last year. She has been an official court reporter for two years and her basic salary has been \$17,300 a year. But don't forget, that salary begins in July, so for any given year you are splitting that. Last year I didn't make \$18,000 for a base. I made the average of half of \$17,300 and half of \$18,000 for my base. My freelance income for the last year was approximately \$5,000 of which \$3,000 was from depositions and \$2,000 was for appeals. On my freelance income of \$5,000 I have an overhead of 30%. I own a \$1,200 typewriter that I furnish to my transcriber. I own my own stenotype machine which last year cost me \$600. I furnish all the paper and ribbons. If you take my income of \$5,000 and reduce that by 1/3, that is the figure that you may add to my basic salary for my 1980 income, which would have been in an area of \$22,000 to \$23,000. The year

before that I made \$2,000 more than that so you could take that \$2,000 and again apply the 1/3 figure which would give my adjusted gross for 1979, and that is how long as I've been in business.

REP. ANDREASON asked Mr. Hathaway if he would consider a 30% overhead as being typical.

JIM HATHAWAY answered definitely. Deposition work involving court reporters is a sideline business called freelance business. It would be no different than the District Judge running cattle on the side. The problem arises because taking a deposition is so closely related to our normal work. I don't think the legislature when they consider fixing any other salary considers what the people have going on the side. You might take depositions during normal hours, but 90% of the work is done on off hours in the evenings. If you try to remember that, it may help.

REP. DUSSAULT had a question for Jim Hathaway. There is another way which is common for us to look at salary increases and that is on a percentage basis. Very often you hear the figure of 9% through 12%. If you start at the base salary of \$12,500 and go to what is in the bill of \$14,000, that is a 12% increase on the base. If you go to a \$16,000 salary originally in the bill, that is a 28% increase, and if you go to the \$17,000 you are requesting, that is a 36% increase in the base. If you take the maximum, which is \$18,000 which is currently in the statutes and go to \$20,000, that is an 11% increase; if you go to the \$22,000 that is a 22% increase; and if you go to the \$27,000 you are requesting, that amounts to a 52% increase. I feel this is way out of line.

JIM HATHAWAY said I understand that, but you must remember that is for a two year period. Our last pay raise was in July of 1979. The next raise would not be effective until July of 1981. That is two years.

REP. DUSSAULT commented to Jim Hathaway that if he remembers, she carried the bill for them last session. I know the problems with it and one of them is that the judges are setting salaries and setting them at the maximum. You don't have any place to go. They can set your salaries at different increments each year, but I suspect you are all pushing up against the top regardless of whether you've been in the business two or three years or 10 to 20 years. That is something we can't be responsible for when we set a spread. If your judges intend to set you all at that high level and hold you there for two years, I don't think that is our responsibility.

JIM HATHAWAY said he's getting the maximum salary, but I feel I've earned that for all the years I've been in the business. I feel that any reporter who has been in the business two years has probably recorded all types of cases and is a pretty experienced reporter.

REP. MATSKO said he has been involved in court cases for a number of years. Many times a court reporter is called in, especially when there is a late trial or the trial runs over, a verdict may come at midnight. When a reporter stays over and puts in that overtime, is there any additional salary for that work?

JIM HATHAWAY replied no. I get paid the same whether I put in 20 hours a week or 60 hours a week. There have been times when I've waited up until 2 a.m. to wait for a jury to come back in after being in court all day.

CHAIRMAN BERTELSEN said if there are no further questions, this ends the hearing on SB 84.

SENATE BILL 175 - sponsored by Senator Don Ochsner

SEN. OCHSNER said SB 175 is an act to revise the cost of copies of court proceedings. It is a short bill. There is one change in it. The court reporters have been getting 7 and 1/2 cents per folio. They have asked for 17 cents per folio. It was amended in the Senate to 10 cents. In the past, they had to make 5 copies of each one, and this would be about 3 folios to the page. Now it has been cut down to 3, so they are not getting the total amount they did before. This change will have to be left up to this committee. I'll call on Miss Daniels from Bozeman and the rest of the proponents for this bill.

PROPONENTS FOR SB 175

IONE DANIELS, court reporter from Bozeman, said she will try to keep her remarks short. I feel this is a mysterious bill and that the folio rates are what confuse everyone. It is my goal that when you leave here this morning, you won't have any more questions as to how court reporters do their job and earn their living.

The outcome of SB 175 in the Senate was to raise the folio rate to 10 cents, which means an equivalent of 30 cents per page. This was fine until the Supreme Court decided to cut back the number of copies of transcripts from 6 to 3. If you'd like to look at Exhibit A, you can see the effect of the Supreme Court's order on our transcript rates. At the top you'll see

the old formula at 7 and 1/2 cents per folio - 22 and 1/2 cents per page. But you'll see that the Supreme Court has reduced the copies. They now need 3 copies, and 2 copies are required for the other side, giving us a total of \$1.80. Now, even though we have received an increase from you of 10 cents per folio and this amounts to 30 cents per page, three copies cost \$.90 for the Supreme Court and 2 copies for the other side cost \$.60. We end up actually taking a \$.30 per page decrease. We understand that the Supreme Court adopted this order with the thought in mind that they would decrease the cost to the appellant. I did speak to Justice Haswell and he explained that. I understand the reason for the change. However, it isn't fair to make us absorb the total saving to the appellants. There are other costs in the appeal process that have skyrocketed, whereas our costs have remained constant for 18 years. That is really true. If you appealed in Gallatin County today, what you paid for your transcript from the court reporter in 1963 would be exactly the same. While that was a good salary for us then with the unexpected inflation, the appeal process for us has become practically a service rather than a source of income as it was intended by you when you gave us this amount in 1963. Look for a moment at the other costs. For example, attorney fees in 1963 were probably \$20 an hour. In Bozeman, attorney fees are running from \$70 to \$100 an hour for court trials. When you look at the costs which have contributed to making the appeal process expensive, it is not the transcript of the court reporter who makes the profits, but the attorney fees and other associated costs. We feel this is unfair.

I'd like to explain how our rates compare to other states. We are always at the bottom of the staff. The neighboring states of North and South Dakota and Idaho have actually abandoned the folio system and have actually gone to a per page basis, which makes a lot more sense. Their rate for the original copy has gone to \$2 a page.

On Exhibit B, you'll see a great discrepancy exists between the rates paid at the Federal level and the rates paid at the District level. At the federal level the appellant orders the original transcript and pays \$2 per page. He buys one copy at 50 cents a page and the other side has the option of ordering or not ordering. The minimum that the court reporter would make at the minimum level is \$2.50 a page and it could go as high as \$3. At the present time we are making \$1.80 per page and you are now proposing that we take a cut to \$1.50. We are not doing something different. We have the same job description as any other state. In all states court reporters receive a basic salary. We are 45th in line, about 7th from the bottom. In addition to the basic salary, reporters

receive transcripts and the cost of those transcripts is to be borne by the litigant. This is the logical process since, if the recorders had to do appeals free or if it was included in our basic salary, there would be nothing from preventing everybody from appealing every decisions a district judge made and the Supreme Court would be flooded. The costs are a necessary deterrent to keep things in line so the litigant can measure the cost of appealing against what the district judge has decided and see if it's worth it to them to pursue the matter further.

The split of our job is a completely typical aspect of court reporting across the country. Mr. Pistoria wants to make it seem like we are sneaking or doing something which we shouldn't do. That is absolutely not true. As my Justice explained to me, this is a contract job. I'm paid my salary to take the minutes of that court. If we start at 7:30 in the morning, and I've been there until 11:30 at night taking the minutes for a verdict, I don't get extra pay. In fact, I have to ask permission to be sick. The Judge's don't say, "when would you like your vacation?" We take our breaks when the judges say we can. If the court is in session, we are there. If the court isn't in session, we are free to do other things. But the appeal system is not the lucrative thing that Mr. Pistoria suggests that it is.

In Bozeman we have a lot of appeal work. Therefore, this bill is very dear to us because we spend a lot of time doing appeals. The reason we are here today is to ask you if you will consider amending Senate Bill 175 as requested in EXHIBIT A to 14 cents per folio. This would work out to \$2.10 a page, about a 30% increase and the first we have had since 1963. In the area of restraints, we hope you would consider amending it to at least 12 cents which will put it where we were and we won't lose 30 cents a page.

ANN WAYRYNEN from the Second Judicial District in Butte, said she wants to point out that she pays for everything. I do not make the \$2,000 or whatever I receive on a transcript because very high expenses come out of it. If the amount that we are allowing to charge on an appeal is reduced by 30 cents, I'm going to be paying that out of my pocket, which is not fair.

TIM THANE, the Court Reporter from Helena, said he has been here for six years. Before this amount was reduced, and I understand it is heading that way now, the other court reporter and I figured we were making between 40 and 50 cents an hour at night and on weekends, which isn't much. The way it looks now, I might end up paying money out of my pocket for an appeal, which doesn't make any sense.

OPPONENTS TO SENATE BILL 175

REP. PISTORIA commented he knows we must have appeals in our system. But you heard why I was against the bill. All of this is at the taxpayer's expense. The reporters are away from their court, and that is what bothers me. I don't want to deprive them of the right salary, but you can see they are getting two salaries. I think the Senate did a fine job in amending the present bill. I wouldn't have testified against either one if they had not asked for the amendments. They have asked for an increase from .075 to 17 cents per folio. I admire the fine Senate members for bringing it down to 10 cents. That is why I oppose the bill.

CHAIRMAN BERTELSEN asked if there were further opponents. As there were none, he asked Senator Ochsner if he'd like to close.

SENATOR OCHSNER closed. I seem to have made a false statement here too. I said 5 and they say it is 6 to 3 copies on the folios. I think the committee is capable of making their own decision.

QUESTIONS FROM COMMITTEE MEMBERS

REP. McBRIDE asked Miss Daniels to reply to a question. The change from 6 copies to 3 copies indicates to me that your expenses will decrease. How many copies did you need before and explain how it affects your expenses?

MISS DANIELS: Taking the same example of a gross income of \$360, the only expense that would vary under the new Supreme Court rule would be the number of copies, which reduces my income by \$40. Under the new formula of giving us \$1.50 a page rather than \$1.80, the gross income now becomes \$300 instead of \$360 and the expenses decline to \$250, giving us a net profit of \$50.

REP. McBRIDE: As you've reduced the number of copies which is a part of your expenses, it is conceivable that instead of losing .30¢ you may be making .05¢ more. I'm not sure as I don't know how much the copying adds to your expenses.

MISS DANIELS: You take what you'll be making per page, which is \$1.50 per page. You multiply it by the total number of copies you have. In this case that would be talking about 1,000 pages at a reduction of 4 cents per page or \$40.

REP. MATSKO asked "What is your cost per page rate and the cost per page under the old rate?" Would you please work that out and drop it off to the committee. I'd also like to know some of the costs in some of the more notorious cases, such as the Duncan-MacKenzie case.

JIM HATHAWAY said you mentioned the Duncan MacKenzie case. I reported the Dewey Coleman case which was a one month trial in Billings. It was appealed to the Supreme Court and I'm still preparing transcripts on that case. Every time there is a hearing there is a transcript. The trial transcript of the trial in Billings was 2,900 pages. I made an original and 8 copies. It took me one year to get that transcript out.

REP. MATSKO: I'd like to know the copy expense and also the charges for that. I'd like to find out what one of these big, long drawn out cases would run as to costs.

JIM HATHAWAY said this was an indigent defendant so he had to bill the county. This is the only time the county gets stuck with the bill. I believe my total bill for the county was about \$6,000 for the transcript of 2,900 pages. I typed that case myself. Some of the work was done during working hours and some was done at home. The only expense I had out of that was for the copies. I needed the original and 5 copies for the Supreme Court, the county attorney received a copy; the attorney general received a copy and the defendant received a copy, so I had 8 copies of each page. At that time I think I was paying 7 cents a copy, or .56 a page for the copies. The binding included approximately 11 volumes. Each Supreme Court Justice had 11 volumes and the binding cost about \$300 for the complete original and three copies. My transcript paper figures about a cent and a half per sheet. I've just been asked to prepare an additional transcript in the Coleman case.

CHAIRMAN BERTELSEN asked if there were further questions. As there were none, he closed the hearing on Senate Bill 175.

SENATE BILL 215 - sponsored by Senator Joe Mazurek.

SENATOR JOE MAZUREK said he is the Senator from District 16 in Helena. I sponsored Senate Bill 215 which seeks to increase the fees charged by the county sheriff for processing certain documents and to provide a fee for the holding, cancellation, or postponement of a sheriff's sale. The sheriff of Lewis and Clark County came to me sometime ago after he had talked with the local bar association seeking an increase for service fees. The bill was drafted and I gave it to the Legislative Council. It increased the service fees for serving a summons for a lawsuit from \$2 to \$10. At first I felt that was a huge increase and

couldn't understand why it was necessary . I was about to send it back to the Council and ask them to cut it down. Then my sheriff brought me the exhibit which I'm passing around which showed that in 1980 it cost the sheriff of Lewis and Clark County in terms of staff time and personnel and administrative expense \$10.08 for every service and process made by him. He was receiving from the parties involved \$2. That meant the general taxpayer in Lewis and Clark County was paying the other \$8.08. They were essentially paying for a lawsuit initiated by a private party. So I submitted the bill with the \$10 figure. This was presented to the Senate Local Government Committee and we went over the bill together. Senator Van Valkenburg raised the point that he feels it is appropriate that we maintain the courts for everyone and think it is appropriate that a portion of the cost should be borne by the general property taxpayer. I think that is one reason plus the percentage increase involved that the Senate Local Government Committee reduced the requested amount in half and raised the service fee from \$2 to \$5 and increased the fees across the board in that respect.

The purpose of the bill as originally proposed, points out a significant problem. The people who are coming to court, using it and using the sheriff to serve the summons and perform these other services are not paying the appropriate share of the costs. Presently they are paying about 20% of the costs. This will make them pay approximately 50% of the costs. There was a bill in the last session to do the same thing and I think the figure was \$5 then too. That bill was defeated, principally because of another feature of the bill which has now been changed. The bill in 1979 provided that the increase in funds would have gone to the sheriff's auxiliary which funds other activities of the sheriff's department. It didn't really address the problem that it was costing more to operate vehicles and maintain personnel and therefore the bill was changed this time to provide that the money that is paid goes to the general fund, but is credited to the sheriff's budget. It would go to actually repay the cost of operation of the sheriff's budget in performing these services. This is a necessary change and I urge your concurrence in Senate Bill 215.

UNDERSHERIFF BURNES of Great Falls said he has been a member of the Department for 32 years and is a past president of the Montana Sheriffs and Peace Officers Association. He said they heartily endorse the passage of this bill as recommended by the proponents. I want to specifically point out that the sheriff does not get these fees. The county gets the fees. The sheriff is performing a statutory duty in serving these papers. The figures given to you this morning represent the total amount of papers to be processed and served by the sheriff and his officers in Cascade County. In our county the papers included more than 7,000 while in Lewis and Clark County they were over 5,000. The reasoning behind this is to let the users pick up more of the tab. There are specific users, not only law firms, (that is their right - their bread and butter) but many collection agencies use

the services of the sheriff and they inundate a lot of sheriff's departments around the state with 40 and 50 papers a day. Not that there is anything wrong with that, but I tie up four people every day, two clerks and two sworn officers, who do nothing but handle civil process. My point is that we are supporting these fees and now asking that they be increased so that the counties general fund will receive more money to help defray the defense of this statutory obligation of the sheriff.

ROSE LEAVITT said she would like to speak as an individual. I was in the Senate hearing when this bill was heard originally. I was pleased to see this piece of legislation from an individual taxpayer's standpoint. It seems to me that it is grossly unfair after sitting and listening to the other two bills that more and more of the burden of the judicial system falls on the taxpayers. I really believe that we should take a long look at what is being done here and give consideration to passing this bill. I personally would like to see it back to the original amount of \$10.

CHAIRMAN BERTELSEN said since there is no one else in the room, it is evident there are no further opponents. He opened the hearing to questions from the committee.

SENATOR MAZUREK said he has nothing to add in closing. Sheriff O'Reilly was out of town so could not testify. He said on one of the sheets he passed out, he had written in the lefthand margin that there are 3 people in Lewis and Clark County who do nothing but serve notices and they also rely on the sheriff's auxiliary to help. They also have to pull officers off of enforcement duties to assist because they are so overburdened.

REP. PISTORIA asked Senator Mazurek if he is for this bill.

SENATOR MAZUREK said he supposes he is a realist. I would hate to lose the bill completely. I don't think the \$10 would go over, so I wouldn't resist your efforts to amend it down to \$4 if the bill won't pass without doing this. For this reason I'm not opposing any amendments the committee might make.

CHAIRMAN BERTELSEN said since there are no further questions, he'd close the hearing on Senate Bill 215.

EXECUTIVE COMMITTEE ACTION

SENATE BILL 215

REP. DUSSAULT moved that SENATE BILL 215 BE CONCURRED IN.

CHAIRMAN BERTELSEN said when an individual wants the sheriff to serve a suit on somebody, the individual pays the fee charged. The balance of the charge is picked up by the county.

REP. SWITZER said the only thing he has had any experience in is with quiet title actions. When the summons is sent out, it is sent to the county clerk, who in turn has the service made. The person who is filing the suit is billed for the fee.

CHAIRMAN BERTELSEN asked if there was any further discussion. As there were no further questions, the question was called for. Chairman Bertelsen said all in favor of Senate Bill 215 say "aye". All voted aye and the motion carried. SENATE BILL 215 received a BE CONCURRED IN recommendation. We'll ask REP. MATSKO to carry the bill.

SENATE BILL 236

The CHAIRMAN said this bill has to do with clarifying 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 and reserve to itself certain powers and duties.

REP. NEUMAN asked if a county could conceivably consolidate the staffs who reported in matters to the county board and to the city board?

REP. KITSELMAN said this particular bill comes out of Billings. He has difficulty in finding any necessity for the bill from the standpoint that his district currently has a joint city-county planning board. A single staff that handles it. Some of the duties on the city side are handled by the city staff person and some people on the county side take care of the county business. They coordinate but don't duplicate. The problem here is that they are the only autonomous board anywhere. The duties are handled by a lay board as planning board members. The executive committee will appoint, fire and handle personnel matters. There are a couple new appointees to the city-county planning board that got involved with a squabble. These are the two council people and they say they don't feel they should be involved with personnel matters of the planning staff. These are done with the recommendation of the chief person. I have some very difficult reservations of putting this under either the county or under the city jurisdiction. They did try to come up with an interlocal agreement. The county and the city could not agree. This is only one incident so again I have some difficulty legislating statewide something that should be handled on a local matter. The city is threatening and saying they will withdraw all support of planning operations and the county said they will do the same. But I think this is something that can be handled under interlocal agreement by the powers to be, the elected officials on the city side and on the county side.

REP. PISTORIA said he has never been involved on a Planning Board but has been involved on the city council years ago. You have a choice of a City-County Planning Board to be established by law within a 4 and 1/2 mile radius of the city. The county itself has the option of having their own rural county planning board. That is the case within Cascade County. It has worked very well. The thing that bothers me about this bill is if they are going to consolidate, who is going to appoint the County Planning Board members and is the city going to appoint the City Planning Board members within the 4 and 1/2 mile radius.

REP. KITSELMAN said that in Billings they have a 13-member board, six of which are appointed by the city and must live in the city; six must live in the 4 and 1/2 mile jurisdiction but within the county and not within the city, and then 1 at large appointed by the Board itself. These are rotated so the term is a two year term and is staggered to have a constant influx of people. I've been reappointed for three years. I've served six years on one and am working on my seventh. I just resigned because of this session. You can't miss more than 4 meetings in a row, otherwise you vacate. It works very well. Now there are two elected council officials on the board; two councilman and one county commissioner on the board at all times so you have representation from the elected officials and the appointees.

This is a problem that stems out of the strike and that is who is responsible for personnel matters and direction. The reason it was set up as an autonomous board is so it wouldn't be unduly influenced by the city or the county. The people work very hard and handle matters in a very efficient manner. The Planning Board director takes care of his shop for consolidating hiring and firing processes. If there are any personnel problems, the executive committee meets monthly to discuss them.

REP. BERGENE asked if she understands correctly that it is permissive?

REP. KITSELMAN said yes.

REP. BERGENE said she thinks every city would vary, especially where the staff works with the Planning Board. Some cities must run by recommendations of a city manager and some don't. This might give them the impetus to change and make it much more uniform within the city.

REP. KITSELMAN said the way it works now the City-County Planning Board hears all the public input and data and does all platt review and this type of thing in the various committees. Any

recommendation by the Board then goes to the appropriate body. If it is a city zoning matter or a change matter, then it has to be approved by the city. If it is a county matter, then it must be approved by the county. We are the lead agency to handle all 895 review processes and do the whole entire planning process with impetus from both sides of the fence, but the final approval comes from either the city council or the county commissioners.

REP. DUSSAULT wondered if the bill, on page 2, lines 4 and 5, shouldn't make more specific what the interlocal agreements should contain. It seems to me this is a pretty important issue.

MR. HEIMAN said he thinks Rep. Dussault is correct.

REP. DUSSAULT said she doesn't understand the new section 4 at all, lines 10 through 12.

MR. HEIMAN said his interpretation is that in setting it up, they can withhold powers that presently have to be granted. They can withhold any power that they wish.

REP. KITSELMAN said right now this is a totally autonomous board, and has all powers granted by state statute now for that board to exist in planning matters. We are appointed. There is a full staff and where the problem lies is Al Thelen and the city council want to have jurisdiction over the personnel. On the other side, the county commissioners want to have jurisdiction over the planning staff personnel. They tried to come together with an interlocal agreement and could not, so now the city is coming in and saying, "We will say what is in the interlocal agreement and assign the powers of the planning board to one faction or another." What makes it work well is that you are allowed to operate freely without undue pressure from either side of the fence. I'm afraid if you do have one person taking care of personnel matters, it could unduly influence one side or the other.

REP. DUSSAULT asked if the new section 4 is designed to let either the city or the county assume responsibility for personnel matters.

REP. KITSELMAN said that the real basis behind that is to assume the responsibilities of the planning staff personnel and the director.

CHAIRMAN BERTELSEN asked Rep. Kitselman if it was his fear that it begins to put the planning board under the direct pressure from the county commission or the city council?

REP. KITSELMAN said yes, that is correct. Right now this can exist. If you want this other interlocal agreement, they say they have to "reorganize and strip the one board," but by statute this is the one that has been working well.

REP. NEUMAN said he still hasn't received an exact answer to his question. But he doesn't know if it relates directly to this bill. Can a county that has a County Planning Board and a City-County Planning Board combine staffs, or do you have to have two separate staffs? If there are matters pertaining to the county outside of the 4 and 1/2 mile limit, do they report to the County Planning Board, and matters within the 4 and 1/2 mile limit report to the City-County Planning Board?

LEE HEIMAN said he doesn't know.

REP. DUSSAULT moved that SB 236 be NOT CONCURRED IN.

QUESTION; The chairman asked for a roll call vote, which resulted in 8 committee members voting yes for a DO NOT PASS and 5 voting against a DO NOT PASS. Motion carried and SB 236 failed and received a BE NOT CONCURRED IN recommendation.

SENATE BILL 328 - Chairman Bertelsen said this is an act to revise the provisions on municipal vacancy in office to include the same grounds applicable to vacancy in state offices. The bill was to clear up the question as to when some of the offices can be declared vacant.

REP. MCBRIDE moved that SENATE BILL 438 BE CONCURRED IN.

REP. DUSSAULT said one of the questions that arose regarded absence from a city or town continuously for 10 days. She moved that the time limit be amended to 30 days.

REP. SWITZER opposed the motion. It has been that way for generations and I've never heard of any problem with it.

REP. ANDREASON said he'd like to support the motion. I think this is an antiquated thing. Sometimes it is hard to get consent to be gone longer than 10 days. It seems to me 10 days is too short a time. There are other provisions in the bill for neglect which takes care of most things.

REP. KITSELMAN said he would support that because with national guard duty, he's gone 30 days, or at least 14 days. Ten days is a loop hole as far as I'm concerned.

REP. DUSSAULT said she recognizes that the 30 days means a person could be absent from the city council for four weeks, but it seems that was put in there long ago. Transportation wasn't what it is today and they wouldn't be gone for more than 10 days.

REP. SWITZER said he agrees with Ann Mary's last statement. It was probably put in the bill when transportation was poor and 10 days was adequate when it took 3 days to go a hundred miles, but now you can cross the county in half a day. When you accept public office, you should be available to fulfill the duties

of a public office and these are one of the restrictions. To be absent 30 days with no obligations is quite a long time. County commissioners operate on the same basis. If there has been a disagreement on the board, two of the men could absent themselves with no restriction whatever and tie local government in knots. I think the restriction has its purpose and those who aspire to public office can give it that consideration before they run or accept.

REP. DUSSAULT asked if you'd go for 20 days.

REP. SWITZER said no.

REP. MATSKO said he has the same reservation. If this was changed to 30 days, the person could take off for three or four weeks at a time, come back into town for a day or two, and then leave again for an unlimited time and never be there except to touch base occasionally. I realize he would be a good candidate for nonelection the next time it comes around, but in the case of some of these people, I think this might be a necessary thing. Maybe 15 days to take in a normal vacation would be more reasonable. 30 days is a long time to be gone whenever you feel like it.

REP. ANDREASON said from the other extreme, sometimes people can use this short 10 day limit as a means of getting someone out of an office, and if they are gone for more than 10 days without consent, their position is automatically vacant. They are out. If they are gone without consent, that could be a good way of getting someone out if the consent were not a written agreement.

REP. GOULD said he doesn't feel we should amend somebody's bill without giving him an opportunity to state the reasons for doing so.

REP. DUSSAULT said this was discussed at the hearing and the sponsor didn't have any objections to our amending it. If this has not been abused, perhaps we should leave it alone.

REP. GOULD said that after the sponsor introduced the bill, even he decided it wasn't going to do what he wanted it to do.

REP. DUSSAULT agreed that the sponsor said it didn't really solve the situation.

QUESTION ON THE AMENDMENT TO CHANGE from 10 to 30 days on line 24. A roll call vote was taken, resulting in a 3 to 9

vote against the amendment. Motion failed and the amendment did not pass for Senate Bill 328.

REP. MCBRIDE asked if there had ever been occasions when someone had to be out of town and the council refused to give permission, so by having to be gone more than 10 days, he essentially is in violation. Has anyone lost an office in such a case?

CHAIRMAN BERTELSEN replied that in a great number of cases the law is simply ignored. I would imagine that a large number of city council members would pay no attention to it. Perhaps where no problem arises and no one contests it, there is no question. But there would be a question if they couldn't get permission or they did it without consent. It is in the law and could be used.

REP. KITSELMAN said Jan Eschler, a Billings JP, took a trip to Australia last year and a big issue was made of it because she was gone three weeks, without written permission, and theoretically that vacated the office. There was considerable flack raised. She is still in office but that gray area needs to be addressed. With today's trend of 3 weeks for vacation rather than two weeks, this needs to be addressed.

CHAIRMAN BERTELSEN asked if the group was ready for the question.

QUESTION ON SENATE BILL 328 for DO CONCUR. All in favor say aye. Of the 12 committee members present, 10 voted aye and 2 voted no. Those voting no were Reps. Gould and Kitseلمان. Motion carried and SENATE BILL 328 received a DO CONCUR recommendation.

SENATE BILL 368

CHAIRMAN BERTELSEN said this is the bill requiring certification by the county treasurer that there are no delinquent taxes outstanding on property proposed to be subdivided.

REP. MATSO moved that SENATE BILL 368 BE CONCURRED IN.

QUESTION: The chairman said all in favor of SB 368 say aye. All voted aye and the motion carried. SENATE BILL 368 received a BE CONCURRED IN recommendation.

SENATE BILL 256

CHAIRMAN BERTELSEN said this is the bill which will give Fort Peck the opportunity to deal with the federal government as a city or incorporated town.

REP. SWITZER moved that we DO CONCUR IN SENATE BILL 256.

CHAIRMAN BERTELSEN said the problem we were faced with was that many of the people felt in discussing the bill and reducing the numbers on the bill and making them applicable to all communities created some problem in establishing unnecessary and uneconomical units in the state. We asked our council to come up with some amendments which would simply make this piece of legislation apply in this particular case.

LEE HEIMAN went over the following amendments for the benefit of the committee:

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 8
Insert: "(b) the community was a townsite owned and built by the U.S. Government prior to [the effective date of this act];"

REP. KITSELMAN moved that on page 1, line 22, we strike "50" and return it to "150."

MR. HEIMAN suggested striking section 1 of the bill.

REP. DUSSAULT wondered if there was any other method besides petition because on line 13, there is permissive language of "may apply."

MR. HEIMAN said "no," that this is archaic as it is.

CHAIRMAN BERTELSEN asked that we clarify what we are going to amend.

REP. DUSSAULT said it is quite easy as we are back to the original amendments.

QUESTION ON AMENDMENTS TO SENATE BILL 256: All in favor of the original amendments reply "aye." All voted in favor of the amendments and motion carried by unanimous vote.

REP. KITSELMAN moved that SENATE BILL 256 BE CONCURRED IN AS AMENDED. The Chairman asked that all in favor say "aye." The 12 members present voted as follows: 11 voted "aye," 1 abstained. One voted "aye" by proxy. Motion carried and SENATE BILL 256 received a BE CONCURRED IN AS AMENDED recommendation.

SENATE BILL 353 came up for consideration. However, REP. KITSELMAN said he has a problem on it from people in his community. He hasn't heard from them yet and said he told them it would be considered on Tuesday. No action taken.

REP. BERTELSEN asked that committee members take a close look at several of the other bills before the next meeting, namely 133 and 399. There are several suggested amendments and we have a good many letters from people expressing views, copies of which are filed behind the bills.

The meeting adjourned at 9:30 a.m.


VERNER L. BERTELSEN, Chairman

hbm

COMMITTEE

Date 3-14-81

7:00 a.m.

OPPC

X

X

X

✓

X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

NAME Ione Daniels BILL No. SB 84
SB 175
ADDRESS 818 So 6th DATE Mar 14, 1981
WHOM DO YOU REPRESENT Montana Court Reporters
SUPPORT X OPPOSE _____ AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME Jim Hathaway BILL No. SB 175 + SB 54
ADDRESS Mills City, Ind. DATE 3-14-51
WHOM DO YOU REPRESENT Circuit Reporters
SUPPORT X OPPOSE _____ AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

HOUSE

Local Govt

COMMITTEE

BILL SB 175

Date 3-14-81

TENSOR

7:00 a.m.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

EXHIBIT A
SB175
March 14, 1981

from Gene Brown
SB 175

EFFECT OF SUPREME COURT'S NEW ORDER

OLD FORMULA

7½¢ per folio = 22½¢ per page.

6 copies for SS	=	\$1.35
2 copies for pts	=	<u>.45</u>
TOTAL PER PAGE		\$1.80

NEW FORMULA

10¢ per folio = 30¢ per page.

3 copies for SS	=	\$.90
2 copies for pts	=	<u>.60</u>
TOTAL PER PAGE		\$1.50

REQUESTED AMENDMENT

14¢ per folio = 42¢ per page.

3 copies for SS	=	\$ 1.26
2 copies for pts	=	<u>.84</u>
TOTAL PER PAGE		\$ 2.10

CONVERTING OLD RATE TO CONFORM WITH NEW SUPREME COURT ORDER

12¢ per folio = 36¢ per page.

3 copies for SS	=	\$1.08
2 copies for pts	=	<u>.72</u>
TOTAL PER PAGE		\$1.80

EXHIBIT B
SB175
March 14, 1981

From Gene Barlow
S-B 175

MONTANA FEDERAL APPEAL RATES

In federal court, appellant pays only for the original transcript plus his own copy. Other parties may or may not purchase their own copy of the transcript.

In district court, appellant must pay for copies to all parties.

Original transcript	=	\$2.00 per page.	1 copy for SS	=	\$2.00
Copy to appellant		.50	1 copy for applt.		<u>.50</u>
Copy optional to					\$2.50
other party			(Optional)		<u>.50</u>
			TOTAL PER PAGE		\$3.00

NAME Jim Rogers BILL No. SB 215
ADDRESS 4213 Clark St. E. Portland DATE 3/14/81
WHOM DO YOU REPRESENT Mont. Sen. & Rep. Offices
SUPPORT ✓ OPPOSE ✓ AMEND ✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME Rose Leavitt BILL No. SB 215.
ADDRESS 318 Harrison DATE 3-14-81
WHOM DO YOU REPRESENT self on this bill
SUPPORT ✓ OPPOSE ✓ AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Each year the number of civil processes received and served increases.

The examples used herein are taken from records kept by the Civil Bureau, Lewis and Clark County Sheriff's Department, Helena, Montana.

During 1976 the department received 3,354 processes for service.

"	1977	"	"	"	3,946	"	"	"
"	1978	"	"	"	4,413	"	"	"
"	1979	"	"	"	4,928	"	"	"

Processes for 1980 will be well over 5,000.

The year 1977 the budget for operating the Civil Bureau was \$37,035 . Dividing this by 3,946 the number of processes received, equals \$9.39 the cost for each service. During 1977 the Civil Bureau collected and remitted to the County General Fund the sum of \$7,390 for service of process. Divide \$7,390 (amount collected) by 3,946 (papers received) equals \$1.87 (average collected for each service). When this latter figure, \$1.87 is subtracted from the cost of service, \$9.39 we arrive at a cost of \$7.52 per service that is paid by the tax-payers. This amounts to \$29,673.92 for the year that the tax-payers of Lewis and Clark County have put forth for the service of civil process ; representing a burdon that should be rightfully placed on the parties so involved with the civil actions.

Using this same method for the years following:

1978 Budget-\$38,882 ; processes received 4,413 ; cost = \$8.80
collected-\$9,141 ; average collected per service = \$2.07
Tax-payer cost per service=\$6.73 Total = \$29,699.49

1979 Budget-\$46,658 ; Processes received 4,928 ; cost = \$9.47
collected-\$11,396; average collected per service = \$2.31
Tax-payer cost per service=\$7.16 Total = \$35,284.48

1980 Budget-\$52,000 ; Processes received as of 11-30-1980 equal 4,728 . 11/12ths of budget = \$47,666 ; divided by processes received to date (4,728) = cost per service of \$10.08 ,
collected to date = \$15,055 ; average collected per service = \$3.18
Tax-payer cost per service = \$6.90 Total = \$32,623.20

The purpose and intent of the Amendment to Increase the Fees of the Sheriff for service of Civil processes is not to line the coffers of the counties, but rather to relieve the burden now imposed on County Tax-payers.

STANDING COMMITTEE REPORT

March 27, 1931

MR. SPEAKER

We, your committee on LOCAL GOVERNMENT

having had under consideration SENATE Bill No. 84

A BILL FOR AN ACT ENTITLED: "AN ACT TO INCREASE THE SALARY OF DISTRICT COURT REPORTERS AND TO CLARIFY THE PAYABLE EXPENSES AND THE METHOD OF PAYMENT OF SALARIES BY THE COUNTIES; AMENDING SECTION 3-5-602, MCA."

Respectfully report as follows: That SENATE Bill No. 84

BE CONCURRED IN
DO. PASSER

STANDING COMMITTEE REPORT

March 27, 19 81

MR. SPEAKER

We, your committee on LOCAL GOVERNMENT

having had under consideration SENATE Bill No. 175

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE COST OF COPIES OF COURT PROCEEDINGS; AMENDING SECTION 3-5-604, MCA."

Respectfully report as follows: That SENATE Bill No. 175

BE CONCURRED IN

DO PASS

STANDING COMMITTEE REPORT

March 11, 1931

MR. SPARKER

We, your committee on LOCAL GOVERNMENT

SENATE
having had under consideration Bill No. 215

A BILL FOR AN ACT ENTITLED: "AN ACT TO INCREASE THE FEES CHARGED BY THE COUNTY SHERIFF FOR SERVICE OF CERTAIN DOCUMENTS AND TO PROVIDE A FEE FOR THE HOLDING, CANCELLATION, OR POSTPONEMENT OF A SHERIFF'S SALE; AMENDING SECTION 7-32-2141, MCA."

SENATE
Respectfully report as follows: That Bill No. 215

BE CONSIDERED IN

DOIPASSE

Verner L. Bertelsen

Chairman.