

STATE ADMINISTRATION
MARCH 16, 1981
RM 436

The meeting of the House State Administration Committee was called to order at 8:00 a.m. on Monday March 16, 1981 with Chairman Jerry Feda presiding. All members were present. Representatives O'Connell, McBride, and Dussault were late and were not present for all of the hearings.

SENATE BILL 235-SPONSOR, Senator Galt, introduced this bill to the committee. Currently the attorney general is required to prepare statements of purpose and of implication for a proposed constitutional amendment, initiative, or referendum. This bill permits the Legislative Council to prepare this information. (A purpose statement consists of 100 words or less and expresses the purpose of the ballot issue; the implication statements each consist of 25 words or less and explain the meaning of a vote for and against the issue.)

PROponents

JIM ROBISCHON, attorney from Butte, representing himself, arose in support of this bill. Mr. Robischon submitted a letter to the committee that reflects the arguments he presented in favor of SB 235. The letter is addressed to Senator Galt and is dated 1/4/81. A copy of this letter is attached and is EXHIBIT 1 of the minutes.

OPponents

MARK MACKIN, Citizen's Legislative Coalition, arose in opposition to this bill. A copy of his prepared statement is attached and is EXHIBIT 2 of the minutes.

MIKE MALES, Environmental Information Center, stated that this bill is taking away authority from the people who are accountable and placing it in the hands of those who are not. He said that every other state that has the initiative process requires that the attorney general have the authority for ballot writing. He said that this bill will not change the way the title is written which he understands to be the complaint that brought about this bill. He stated that the attorney general's office has been doing the job effectively in the past and this authority should remain in the hands of an elected official, the attorney general.

SB 235 (cont.)

QUESTIONS BY THE COMMITTEE

Sales: Is there some way to leave the title writing in the hands of the attorney general and allow the Legislative Council a review process.

Galt: Why put this in the hands of two offices? The Legislative Council is better equipped to address the wording of the intent and purpose statements.

Senator Galt closed the hearing on SB 235. He said that the office of the attorney general has too much political pressure and this duty should be moved to the Legislative Council.

SENATE BILL 276-SPONSOR, Senator Galt, introduced this bill which limits the condemnation power of the Department of Fish, Wildlife, and Parks. Under this act, the Department may acquire by condemnation only lands or structures for the preservation of historical or archaeological sites that are threatened with destruction or alteration. He stated that this bill was amended in the Senate to allow archaeological and historic sites to maintain the power of condemnation. He said that other than those fragile areas there is no reason to maintain this power.

PROPOSERS

JIM FLYNN, Montana Department of Fish, Wildlife and Parks, spoke in support of SB 276. A copy of his prepared testimony is attached and is EXHIBIT 3 of the minutes.

PETER JACKSON, Western Environmental Trade Assoc., stated their support of this bill.

OPPOSERS

There were none.

QUESTIONS BY THE COMMITTEE

Phillips: What is the stricken language under section 87-1-202 and 87-1-209 refer to?

Galt: I am not sure, I believe this refers to language that has been written into different sections of this bill. Lois Menzies, researcher, can look that up.

Senator Galt closed the hearing on SB 276.

SENATE JOINT RESOLUTION 9-SPONSOR, Senator Turnage, introduced this resolution that requests the appointment of an interim committee to study a transition of the Office of the Code Commissioner from the Legislative Council to the Department of Administration. The committee will consist of four legislators and two judicial officers and will report its recommendations to the 1983 legislature. Senator Turnage said that in his opinion it is impossible for one person to do an adequate job as Code Commissioner and Legislative Council director. He also said that there is no way to segregate the cost of the codes and the council work. The council has not been printing enough copies of the codes in the past. He suggested that the cost of handling, printing and distributing the codes is much greater than the amount charged for a set of the codes. We should not, he stated, subsidize the Montana Bar and Montana with the Legislative Council budget. Senator Turnage passed out three letters that he said supported his argument that the Council does not have the time to do an adequate job in handling the codes. These documents are attached and are EXHIBITS 4, 5 & 6 of the minutes.

PROPOSERS

J. C. WEINGARTNER, State Bar, stated that last year the codes did not come out until November which meant that the practicing bars in the state had to practice "blind" for a period of about 6 months. This he stated is not fair to the clients and also the law firms could be subjected to law suits for not complying with current law. He said that the codes used to be out by July or August. He also said that the price of the codes is going up. Senator Turnage, he stated, believes that the cost is from \$700 to \$1000 per set. We think, he said, that a study would be a good way to determine an accurate cost of these codes.

PAT MELBY, attorney, representing himself, stated that when he recently moved from one law firm to another, he left the set of codes there and could not get another complete set of codes.

OPPOSERS

There were no opposers to SJR 9.

SJR 9 (cont.)

QUESTIONS BY THE COMMITTEE

Sales: We recently passed two bills in this committee; one that would provide codes for the legislators and one that would provide codes for the libraries. The testimony given by the proponents implied that the codes cost about \$100 to \$125 per set and that they were making a little profit on the sales. You implied that the cost is about \$600 to \$1000 and that we are not carrying the cost. This concerns me.

Turnage: There is no way to accurately tell what the cost is when the whole procedure is combined with the Legislative Council operation. The Council budget was 4.1 million dollars from 1980 to 1983.

Sales: I do not understand how it is possible to run out of books.

Turnage: A government agency does not have the option of running at a profit or loss. They did not have enough money in their budget to print more books.

Representative Spilker said that from information she had received from the council, the reason that they did not have more codes printed was because the cost of the second printing was considerably more than the cost of the first printing. Also it would not be worthwhile to print more codes at the high cost when the new codes would be coming out in a couple of months.

Sales: If the cost of the codes is so much, why don't we just raise the cost of the codes.

Turnage: The Bar would be willing to pay the cost of the codes but the council will not admit the cost of the books.

Azzara: Are you suggesting that they are overstaffed, when you just stated that they are understaffed?

Turnage: I did not say they are understaffed, only in this function.

Senator Turnage closed the hearing on SJR 9.

SENATE BILL 385-SPONSOR, Senator Boylan, introduced this bill which revises the lobbyist disclosure initiative to remove the provision permitting an individual to bring in the name of the state an action against another person who is violating the disclosure law. It also reduces from seven years to one year the statute of limitations provision for the prosecution of civil suits to enforce the disclosure laws.

PROPOSERS

KEITH ANDERSON, President of the Montana Taxpayers Assoc., discussed the publication aspect of SB 385. He stated that most associations have some type of publication. The way the statute currently read, there are certain requirements as far as the contents of these publications. If for some reason these requirements are not met, someone can file a suit against you within seven years after the publication. Complying with the statute he stated, is all in the eyes of the beholder. This bill would put the decision in the hands of an elected official and not in the hands of someone who may or may not like the publication.

MONS TEIGEN, Montana Stock Growers Assoc., concurred with Mr. Anderson and also pointed out the storage problem keeping these records for seven years.

F. H. BOLES, Montana Chamber, stated that they still maintain their position that Initiative 85 is unconstitutional but they feel this bill makes it a little more realistic for compliance. He said that to keep the kind of papers that they generate in a year for a period of seven years is to the point of being ridiculous.

PETER JACKSON, concurred with other proponents and emphasized the storage problem with keeping records for a period of seven years.

OPPOSERS

MARK MACKIN, Citizens' Legislative Coalition, stated that this bill will weaken the Lobbyist Disclosure Initiative by deleting the provisions for citizen enforcement. He said that the reason it was placed in the initiative was to give citizens an avenue for enforcement only after all officials have failed to act, and the citizen believes his case is valid. He said that he is not opposed to the feature of the bill that reduces the record keeping and reduces the statute of limitations provision for prosecution. He said he would support the bill if the sticken language was put back in.

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SB 385 (cont.)

MIKE MALES, Environmental Information Center, said that the main thing this bill does is delete the citizen's enforcement of lobbyist disclosure by right of mandamus. He also said that he had no objections to the statute of limitations changes from seven to one year.

QUESTIONS BY THE COMMITTEE

Spilker: By changing the word "occurance" to "discover" on page 3, lines 10 and 11, are you not doing away with the limitations altogether.

Mackin: In a civil action you should be able to bring suit when you discover the facts that give rise to the action. In criminal proceedings it is based on a yearly limitation.

The question of who the action would be filed against with the stricken language in or out of the bill was discussed.

Mr. Anderson said that in no case would the action be filed against the organization.

Senator Boylan closed the hearing on SB 385. He said that if the committee wanted to take some time and improve on the bill he would not object. He said that his main concern is that the seven years be changed to one year.

SENATE BILL 442-SPONSOR, Senator Steve Brown, introduced this bill at the request of the Legislative Audit Committee. This bill prohibits a person from sponsoring or promoting a prizefight or public sparring, boxing, or wrestling match without a permit. It also authorizes local governments to permit and regulate these matches and requires the local governments to adopt rules governing these events. A local government may also collect fees and taxes on matches and exhibitions. The bill also provides penalties for violating these provisions. Senator Brown said that there would be no problem with these events being sanctioned. He stated that MACO and the League of Cities & Towns supported this bill in the Senate.

SCOTT SEACAT, Legislative Auditors Office, said that there would be no problem with WBA rates in regard to the WBC. Any organization responsible for regulating these events can belong to the WBC.

OPPONENTS SB 442

There were none.

QUESTIONS BY THE COMMITTEE

McBride: Does the Board of Athletics have the authority to acquire a surety bond?

Brown: It is my opinion that they do but we found many events in which no surety bond was ever posted. There was no protection for the participants or the public.

Senator Brown closed the hearing on Senate Bill 442. (See minutes of March 17, 1981 for further discussion on SB 442)

EXECUTIVE SESSION

All members were present.

SENATE BILL 276

BE CONCURRED IN

Representative Sales moved that SB 276 BE CONCURRED IN. A vote was taken and carried unanimously. Representative McBride abstained because she did not hear the testimony.

SENATE BILL 385

TABLED

Representative Spilker said that she would like the committee to wait until the Supreme Court decision on I-85 before taking action on this bill.

Representative Azzara said that he did not think it was clear in the bill, who the action was to be brought against. He would like to talk to an attorney about the intent of the bill.

Representative Dussault made a motion to TABLE SB 385. A vote was taken and carried with 10 YES and 9 NO. See roll call vote sheet for vote.

EXECUTIVE SESSION (cont.)

SENATE JOINT RESOLUTION 9

BE NOT CONCURRED

Representative Sales made a motion that SJR 9 BE CONCURRED IN. Discussion followed.

Representative Spilker said that the reason the cost can not be separated is because it is all part of the legislative system that we deal with all of the time. It is all one integral process. If we move the administration of the codes to a different department they would have to duplicate much of what is being done in the legislature.

Representative Azzara said that Senator Turnage raised some legitimate concerns but he feels there is some unspoken objectives involved.

Representative Sales said that he was concerned about the cost because it seems to be much more than we were told by proponents of the two bills that would give copies of the codes to the libraries and the legislators. This cost has to be segregated.

Representative Spilker said that this is only the second session in which there has been a complete reprinting of the codes. The Legislative Council needs time to work out the economics.

Representative Dussault made a substitute motion that SJR BE NOT CONCURRED IN.

Lois Menzies, researcher, said that the bill should be amended to remove the contingency clause at the end of the bill in case it is brought back on the floor. A motion was made to amend the bill and carried unanimously.

A vote was taken on the motion BE NOT CONCURRED AS AMENDED and carried with 10 YES and 9 NO

SENATE BILL 294 /hearing 3/13/81

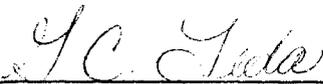
RECONSIDERED

Representative Kanduch made a motion to reconsider action taken on SB 294 on March 13, 1981. Discussion followed. A vote was taken on the motion and carried with 14 YES, 4 NO and 1 member not voting. No further action was taken on SB 294.

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A motion was made and seconded to adjourn at 10:00 a.m.

Respectfully submitted,



G. C. "JERRY" FEDA, Chairman

Cathy Martin-Secretary

James A. Robischon
1341 HARRISON AVENUE • BUTTE, MONTANA 59701

January 4, 1981

3/14
Honorable Jack E. Galt
Senator
Montana Legislature
Capitol Building
Helena, MT 59601

Re: Proposed Legislation
- Ballot Issues-

Dear Senator Galt:

I am writing to express my interest in a legislative proposal for a revision of the statutes relating to Ballot Issues and particularly the Initiative Process.

The Legislature should consider amending the provisions of Section 13-27-312, MCA relating to the preparation of the statements of implication and purpose by the Attorney General.

It is my recommendation that the Office of the Legislative Council should replace the Attorney General as the author of these statements. The Office of the Attorney General has become so politicized that it is subject to considerable political pressure in the drafting of the statements that are so critical to the success or failure of the Initiative Petition.

In Cause No. 45,498, First Judicial District (Lewis and Clark County), William M. Dimich vs. Frank Murray, Secretary of State, the statements of implication and purpose of the Attorney General with reference to Initiative No. 87, "The Montana Litter Control and Recycling Act" were challenged after the Petition had qualified and before the election.

During the Initiative Petition circulating process the affirmative of the statement of implication was expressed as follows:

James A. Robischon

1341 HARRISON AVENUE • BUTTE, MONTANA 59701

"_____ FOR establishing goals to recycle and refill beverage containers, and prohibiting the sale of 'throwaway' (non-recyclable) beverage containers and detachable pull-tabs."

As a result of the pre-election litigation, the Attorney General (and the proponents of the Initiative) agreed to a revision of the statement of implication as follows:

"_____ FOR-refundable deposits on beverage containers unless private voluntary programs recycle most beverage containers, and prohibiting non-refillable beverage bottles, non-recyclable beverage cans, and detachable pull-tabs."

You may recall, that the Initiative Petition was very successful in obtaining well in excess of the number of signatures required by law. When the issue was revised to properly state its implication, it was resoundingly defeated at the polls.

The Petitions For Initiative are invariably stated in the most euphemistic terms in order to solicit the number of signatures required. This defect in the process will not change by increasing the number of signatures required, or by otherwise testing the qualifications of the persons signing.

The Montana Legislature must assume the responsibility for the statements of implication and purpose as is the case with the legislative title of any other legislative enactment. The Legislative Council is available to exercise this function in the interim and, in my opinion, would be considerably less influenced by the advocacy of the Proponents of the issue.

For a more complete discussion of the problem I recommend a review of the Briefs that were filed by the parties to Cause No. 45,498.

Yours Very Truly,


James A. Robischon



CITIZEN'S LEGISLATIVE COALITION

P.O. Box 4071
Butte, Montana 59701

2-9-80

MARK MACKIN

TESTIMONY ON SB235

Mr. Chairman, members of the committee, I am lobbyist for Citizens' Legislative Coalition. I rise in opposition to SB 235.

The argument that SB235 takes the initiative ballot title writing responsibility out of a partisan office and places it in a non-partisan office is a seductive one.

But there are better reasons to leave the ballot title writing process where it is.

1) SB235 places an important part of the initiative process in the hands of the legislature. This is contrary to the purpose of the initiative process. X If the legislature can control the process or get involved in any way, then the initiative process becomes a tool of the legislature. It must remain out of the hands of the legislature in order to accomplish what it was designed to do. It was designed to provide the people of MT with a direct method of law-making free from legislative, special interest, or lobbyist influence.

2) The Opinion of the Attorney General carries weight with the man on the street. He is the chief legal officer of the state and well known to be so. The Legislative Council is relatively unknown outside of Helena. The average person will have more confidence in a ballot title written by the Attorney General, and can hold him directly accountable at the ballot box for its' accuracy.

PRESENTED BY: James W. Flynn, Director
Dept. of Fish, Wildlife and Parks

March 16, 1981

SB 276

Mr. Chairman, members of the committee, my name is Jim Flynn. I appear today on behalf of the Montana Department of Fish, Wildlife and Parks. I am speaking in support of SB 276.

SB 276, as introduced in the Senate, removed the power of condemnation from the Department of Fish, Wildlife and Parks for its acquisition of parks land or wildlife, fishery, or other habitat acquisition purposes. In reviewing the department's past activities in this area, I find that the power of condemnation has been utilized only once in the history of the department. That one time was at the direction of the 1971 Legislature for the protection of a historic landmark which, had the power not been exercised, would have been reduced to rubble. That monument is now Beaverhead Rock State Monument, located a few miles north of Dillon. This purchase was directed by the legislature in the 1971 session by Senate Joint Resolution 16. The department paid for that condemnation, some \$72,500 plus \$17,700 in attorney's fees to the defendant in the matter.

While in some instances the department's activities have been controversial, they have also been supported by sportsmen, recreationists, and others throughout the state. The authority for condemnation has been on the books throughout that entire period. Except for Beaverhead Rock, at no time has the commission or the department exercised, or even attempted to exercise, that authority.



STATE BAR OF MONTANA

EXHIBIT 4

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ABA DELEGATE
Robert Carowitz
P. O. Box 2269
Great Falls, Montana 59403
***Executive Committee**

January 12, 1981

MEMORANDUM

TO: Hon. Jean A. Turnage, Montana State Senate
FROM: Kent M. Parcell, Executive Director
SUBJECT: Board of Trustees Resolution **RE:** Montana Codes Annotated

The following is a resolution passed by the Board of Trustees of the State Bar of Montana at its regularly quarterly meeting on Friday, December 12, 1980.

It was moved and seconded to demand quality service in the publishing and the availability of Montana Codes Annotated, and urge if necessary a creation of another State Agency to prepare Montana Codes Annotated. Motion Passed.

I Kent Parcell, Executive Director of the State Bar of Montana, do certify that the above is the exact wording extracted from the minutes of the December 12, 1980 Board of Trustee meeting.

Sincerely:

Kent M. Parcell
Executive Director

KMP/dw

Image
5

MARRA, WENZ, JOHNSON & HOPKINS
ATTORNEYS AT LAW
414 DAVIDSON BUILDING
GREAT FALLS, MONTANA
59401

EXHIBIT 5

JOSEPH R. MARRA, P.C.
WARREN C. WENZ
CHARLES R. JOHNSON
DAVID A. HOPKINS
NEAL G. JENSEN
DAVID E. BAUER

TELEPHONE 454-1384
AREA CODE 406

February 12, 1981

Senator Jean Turnage
Montana State Capitol Building
Helena, Montana 59601

Re: Senate Bill 315
Publication of Montana Code Annotated

Dear Senator Turnage:

I am a member of the Board of Trustees of the State Bar of Montana from Area C (Great Falls, Fort Benton). I am also a member of the Executive Committee of the Board of Trustees. I have received numerous comments from the members of the State Bar from my area and from other areas of the State of Montana to the effect that they are very disappointed with both the lack of progress and the poor quality of the work which has been performed to date with respect to the recodification efforts. Recently it has also come to our attention that the Montana Legislative Council did not print sufficient copies of the MCA so that recent law school graduates were not able to obtain copies of the official statutes of the State of Montana.

Many attorneys have advised me that it is their opinion that a governmental agency will not be able to complete this recodification effort in a quality and timely manner. These individuals recommend that the project be turned over to a private printer such as West Publications. This would allow the indexing system to be compatible with the key number indexing system already used in many states.

It is obvious that the Legislative Council has viewed recodification of the Montana statutes as one of their secondary functions rather than as their primary function.

Something needs to be done to remedy this deplorable situation. Transfer of the project to the Department of Administration or a private publisher would hopefully be the answer, unless the Legislative Council can rearrange its priorities. However, the Legislature should see to it that the work to complete the

Senator Jean Turnage
February 12, 1981
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recodification project proceeds so that the entire Code with annotations is completed within the next fiscal year.

Very truly yours,

MARRA, WENZ, JOHNSON & HOPKINS


Charles R. Johnson

CRJ:fm

cc: State Bar of Montana

Wmagg SSR9



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DIRECTOR, ACCOUNTING DIVISION
ROBERT C. PYFER
DIRECTOR, LEGAL SERVICES

January 2, 1981

TO: 1981 Legislators
FROM: Diana S. Dowling, Executive Director
RE: Availability of Codes

Diana

A complete set of the 1979 Montana Code (statute text) has been delivered to each committee room, to the leadership, to the Chief Clerk of the House, and Secretary of the Senate. In addition, we have delivered eight sets of the Code to the Chief Clerk for use on the House floor and four sets to the Secretary of the Senate for use on the Senate floor.

There are no additional complete sets of the 1979 Code available. We have sold all of volumes 8, 9, and 10. We have extra copies of the other volumes. If a committee or legislator would like extra copies of certain volumes still in stock, please contact Kay Roos in the Council office (phone 449-3064) and she'll check them out.

You may be interested in House Bill 88 by John Vincent providing for a free set of the Codes to legislators and reserving 50 sets for use by the committees.

Have a good session!

DSD:ee

