STATE ADMINISTRATION MARCH 18, 1981 RM 436

The meeting of the House State Administration Committee was called to order at 8:00 a.m. on March 18, 1981, with Chairman Jerry Feda presiding. All members were present except Representatives Azzara and O'Connell who were absent.

SENATE JOINT RESOLUTION 8-SPONSOR, Senator Keating, introduced this resolution which requests an interim study on the use of grants and contracted services by the Departments of Fish, Wildlife, and Parks, Natural Resources and Conservation, and Health and Environmental Sciences. It further provides that a portion of the study be assigned to the Revenue Oversight Committee. He stated that the review of this department revealed that there are millions of dollars awarded through grants and contracted services in this and in some cases grants were being given for services rendered which were actually contracted services. This confusion has to be cleared up.

#### PROPONENTS

PETER JACKSON, Western Montana Trade Assoc., stated that they are in support of this bill. He said that even though they do not have anyone in mind that might be caught "red handed" there is a great deal of money involved in this and there should be a review.

#### **OPPONENTS**

There were none present.

OUESTIONS BY THE COMMITTEE

Sales: Isn't this being reviewed by the Legislative Audit Committee?

Keating: It is a "helter skelter" type thing. There is no specific direction set up for this review on a constant basis.

McBride: Why didn't you include all grants in this study?

Keating: I do not know how big a job this will be. I thought it would be better to limit it to start out and establish some type of procedure.

Senator Keating closed the hearing on SJR 8

SENATE BILL 273-SPONSOR, Senator Hazelbaker, introduced this bill to the committee. This bill outlines the specific conditions under which the Administrative Code Committee may suspend agency rules by an affirmative vote of two-thirds of its members. Within two weeks after the Committee suspends an agency rule, the Committee must poll by mail the legislature to either approve or reverse the Committee's action. Senator Hazelbaker said that he can not find in the constitution or anywhere else where a committee of the executive has the authority to legislate.

#### PROPONENTS

SENATOR JEAN TURNAGE, stated that this bill merely adds a temporary suspension of a rule. These rules, he said, do have "criminal and civil muscle". He said that this bill does not take away the right of an executive organization to promulgate those rules. This bill, he stated, was adopted after the "Wisconsin Law".

#### **OPPONENTS**

MONA JAMISON, legal council for the governor, stated that the governor is opposed to this bill mostly because it raises a question of constitutionality. Some of these arguments are: unlawful delegation of power; polling of the legislature; citizen denial of deliberation; and overall interference with the cheif executive's duties to execute and administer law.

JOHN NORTH, representing the Department of State Lands, also stated that he feels there are several constitutional questions raised by this bill. He said that if someone has a complaint about an agency rule he can go to court and challenge whether or not the agency has the authority to adopt that rule and if the agency does have that authority he can go to the legislature and try and have the law changed. There is no need, he said, for this bill when there is already this means of recourse.

DAL SMILIE, S.R.S., concurred with Mona Jamison on the constitutional issues raised by this bill.

JOY BRUCK, League of Women Voters, stated that they oppose this bill because it would give one branch of the legislature powers that should belong to the legislature as a whole. The code committee, she stated, does have other alternatives. Annual sessions would be one way to get a handle on this problem.

SB 273 (cont.)

ROBERT WOOD, Department of Business Regulations, echoed the comments of Mona Jamison and the other opponents.

#### QUESTIONS BY THE COMMITTEE

Spilker: It is my understanding from the decision of the "Judge Case" that the Supreme Court ruled that it was alright for the legislature to delegate that kind of authority to a committee of the legislature because the constitution delegates the power to the legislature. Therefore, if the constitution doesn't say anything about the issues in this bill why can't we delegate some powers to the committees.

Jamison: All I can do is give you my legal opinion. That case was centered on the constitutional authority of the legislature in terms of appropriations. It went on to say that the constitution clearly describes what each branch can do and that separation of powers should not be violated.

Spilker: Rulemaking has the effect of law so why shouldn't the legislature continue to have a say about it?

Jamison: I believe that this power does belong to the legislature, however, even though the legislature has the authority to adopt all laws, they still can not stop the executive branch from enforcing the laws that the legislature passes. A solution to this would be to specify in the rule making authority that the legislature gives to the executive branch the rules that the agency can adopt. An example, she stated, where this is accomplished is the "Public Water Supply Act". The agency is bound and limited as to what its rule making authority is.

Spilker: What if the legislature were to appeal the "Administrative Procedures Act" in such a way that the executive branch would not be granted the authority to make rules.

Jamison: In my legal opinion I think that that would be under constitutional permission. The rule making authority of the executive branch stems from the legislature.

Dussault: Is this bill saying that the legislature can act as a body when not in session?

SB 273 (cont.)

Turnage: There is nothing in the constitution that says we have to be gathered in a group at the Capitol in order to make decisions.

Sales: What if we put something in the statute that would allow the legislature to be polled?

Jamison: I believe the place you solve constitutionality questions is in constitution not the statutes.

Senator Hazelbaker closed the hearing on SB 273.

SENATE BILL 311-SPONSOR, Senator Brown, introduced this bill at the request of the Legislative Audit Committee. This bill reestablishes the Human Rights Commission for six additional years. The commission is now scheduled to terminate July 1, 1981. Senator Brown said that the Audit Committee's decision to reestablish the H.R.C. was based on the track record of the commission and also the consideration that eliminating it will not solve the employers problems because the E.E.O.C. will apply to any employer who employs 15 or more people.

#### **PROPONENTS**

PHYLLIS BOCK, Montana's Power to the People, stated support of this bill.

DAVID SEXTON, Montana Education Assoc., said that they believe the H.R.C. is one of the most valid commissions of state government because it protects the rights of the people.

JOY BRUCK, League of Women Voters, arose and stated their support of this bill.

ROBERTA FERRON, Member Montana Human Rights Commission, arose and gave testimony in support of this bill. A copy of her prepared testimony is attached and is <a href="EXHIBIT 1">EXHIBIT 1</a> of the minutes.

CAROLYN ANDERSON, Helana Women's Political Caucus, gave testimony in support of SB 311. A copy of her statement is attached and is EXHIBIT 2 of the minutes.

CYNTHIA WEVERS, President, Jeannette Rankin Chapter, submitted prepared testimony to the committee but was not present at the hearing. A copy is attached and is EXHIBIT 3 of the minutes.

SB 311 (cont.)

DAVID HUNTER, Department of Labor & Industry, concurred with other proponents and stated that existence of the H.R.C. provides some assistance to local governments in cases that deal with housing and other disputes outside of employment. Without the H.R.C. they would have to set up their own hearings and deal with these problems on their own.

ROD SAYEGUSA, Montana Inter-Tribal Board, stated that they support this bill.

LEE TOPATCH, Montana United Indian Assoc., submitted testimony in support of SB 311 in behalf of the assoc. A copy of this testimony is attached and is <a href="EXHIBIT 4">EXHIBIT 4</a> of the minutes.

SHERYL MUTL, representing herself, stated that she just finished her masters paper on the Human Rights Commission and through her research she found the commission to be a very well organized commission.

#### OPPONENTS.

JIM BURNETT, Representative Dist. 71 and newly appointed member of the Audit Committee, gave testimony in opposition to SB 311. He read sections of the report to the Legislature on the Commission for Human Rights which he said the sponsors of this bill did not point out. A copy of his testimony is attached and is <u>EXHIBITS</u> of the minutes. Several documents that he referred to in his testimony are attached to this exhibit.

#### QUESTIONS BY THE COMMITTEE

Sales: Would the penalties have to be imposed by the courts?

Brown: The H.R.C. has the right to award damages but not the power to assess criminal penalties.

Spilker: What is the E.E.O.C. and what is the relationship to the H.R.C.?

Answer: It is the Equal Employment Opportunity Commission. We work in agreement with this commission in order to avoid duplication. They give the H.R.C. a certain amount of money to handle the cases in Montana.

Senator Brown closed the hearing on SB 311.

SENATE BILL 217-SPONSOR, Senator Brown, introduced this bill at the request of the Legislative Audit Committee. This bill revises the provisions relating to the Department of Professional and Occupational Licensing. It requires the Department to assess the costs of the Department to the licensing boards on an equitable basis and to adopt standardized application, license, and other forms used by the boards. The bill also requires all applicants for licensure or renewal to report to the board any legal or disciplinary actions against them relating to their pro-In addition, the Department is required to prepare a biennial report summarizing each board's activities. Section 4 which deals with this section, is important, he stated, because next session the audit committee will recommend doing away with the automatic six year review. With this biennial report the Audit Committee can make value judgements.

#### PROPONENTS

There were no other proponents present.

#### **OPPONENTS**

There were no proponents present to testify on SB 217.

#### QUESTIONS BY THE COMMITTEE

Sales: Is a biennial report necessary?

Brown: Since the session meets biannually we will receive these reports while we are in session and be able to review them and if necessary make recommendations at that time.

Senator Brown closed the hearing on Senate Bill 217.

SENATE BILL 412-SPONSOR, Senator Steve Brown, introduced this bill requested by the Legislative Audit Committee which requires all licensing boards within the Department of Professional and Occupational Licensing to set fees reasonably related to the costs incurred in administering the program areas within their jurisdiction such as fees for application, examination, renewal, reciprocity, late renewal, and continuing education. Senator Brown said that one reason this bill is being proposed is because there is a real question as to whether or not the legislature has the necessary knowledge to set these fees. This

SB 412 (cont.)

is something that should be negotiated between the board and the professions and occupations involved. Senator Brown also said that this is one way to cut down on the number of bills considered each session.

#### **PROPONENTS**

There were no other proponents testifying.

**OPPONENTS** 

There were none present.

QUESTIONS BY THE COMMITTEE

Sales: There have been some problems in the past concerning the realtors license. This could be a real issue.

Brown: That was Senator Goodover's argument concerning this bill. I do not think as a legislator I have the authority to set these fees. This is a decision that should be between the realtors and the board.

Senator Brown closed the hearing on SB 412.

A motion was made to adjourn at 9:45 a.m.

Respectfully submitted,

G. C. "JERRY" FEDA, Chairman

Cathy Martin-Secretary

## **HUMAN RIGHTS COMMISSION**



TED SCHWINDEN, GOVERNOR

SUITE 300, 616 HELENA AVENUE

(406) 449-2884

HELENA, MONTANA 59620

March 16, 1981

The Honorable Jerry Feda House of Representatives State Capitol Helena, MT 59620

Dear Representative Feda:

Senate Bill 311, reestablishing the Montana Human Rights Commission, will be heard in Committee on Wednesday, March 18.

The Commission was thoroughly reviewed by the Sunset Committee last year. We are pleased that their report was excellent. Consequently, the Legislative Audit Committee, Senator Matt Himsl, Chairman, unanimously recommended the reestablishment of the Human Rights Commission through Senate Bill 311.

A copy of the Sunset Report is enclosed for your information.

Thank you for your time and consideration.

Sincerely,

Chair Designate

KAREN S. TOWNSEND

Chair

JF/KST:jw-

Enclosure

# REPORT TO THE HOUSE STATE ADMINISTRATION COMMITTEE ON SENATE BILL 311

March 18, 1981

Roberta Ferron, Member Montana Human Rights Commission

Raymond D. Brown, Administrator Montana Human Rights Division

#### TESTIMONY BEFORE THE HOUSE STATE ADMINISTRATION COMMITTEE

#### ON SENATE BILL 311

March 18, 1981

By Robert Ferron, Member Montana Human Rights Commission

I have been asked to address this Committee on behalf of the Montana Human Rights Commission.

The 1974 Legislature passed the Human Rights Act which prohibits discriminatory practices and created the Montana Human Rights Commission. The Commission together with its staff was designated as the agency to enforce the Human Rights Act. The basic purposes of the Act were to protect Montanans from discriminatory practices and to implement the equal dignities provision of the 1972 Constitution. Montana did not act alone in this area. Similar agencies and commissions were set up in other states. Today, 47 states, the District of Columbia, Puerto Rico, the Virgin Islands, and 42 counties or cities have agencies that administer anti-discrimination laws. The Equal Employment Opportunity Commission (EEOC) is responsible for administering and enforcing most of the federal anti-discrimination laws.

In 1977, the 45th Legislature passed the "sunset bill." That law provides that the Commission for Human Rights will automatically terminate on July 1, 1981 unless reenactment legislation is approved by the 47th Legislature. That law further provides that the Legislative Audit Committee is to conduct performance reviews prior to termination. Such a review was conducted by the staff of the Legislative Auditor approximately one year ago and is culminated in the Report that you have before you. That report was reviewed by the Legislative Audit Committee at a public hearing in September of 1980. The Committee then voted unanimously to recommend to the 47th Legislature that the Commission be reestablished. Senate Bill 311 is the concrete form of that recommendation.

We have prepared a Report which is before you. If you would please turn to page 2, there is some basic information that I would like to review with you.

This committee and ultimately the 47th Legislature must decide whether or not to continue the Human Rights Commission. The Legislative Audit Committee has unanimously recommended that the Commission be reestablished. Pages 35-67 of the Sunset Report discuss the effect of Commission termination. The bottom line of that report is:

"There is no reason to believe that disbursing the Commission's functions among other state agencies would provide better service or cost savings to the state."

The Montana Human Rights Commission is an effective and efficient mechanism for the enforcement of the Montana Human Rights Act.

#### BASIC CONSIDERATIONS

- SB 311 A bill for an act entitled: "AN ACT TO REESTABLISH THE COMMISSION FOR HUMAN RIGHTS UNDER EXISTING STATUTORY AUTHORITY AND RULES; AMENDING SECTION 2-8-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
- I. Does Montana need a Human Rights Act?
  - A. Equality is guaranteed by the Federal and State Constitutions.
  - B. The Human Rights Act is the legislative interpretation of how equality should be achieved.
  - C. Based on the Montana Constitution, Montana's law is more comprehensive than the federal law.

Answer: Yes, Montana does need a Human Rights Act.

II. Is the Montana Human Rights Commission the best mechanism for enforcing the Human Rights Act?

#### A. Alternatives:

- 1. Other state agencies or combination thereof.
  "There is no reason to believe that disbursing the Commission's functions among other state agencies would provide better service or cost savings for the state." (Sunset Report, p. 37)
- 2. Judicial. Under an informal administrative system, more cases can be more quickly and economically resolved than through the courts. Less than I percent of actual complaints (1480) and one-tenth of I percent of all inquiries (7859) received by the Human Rights Commission have been appealed to the court system (13), resulting in cost and efficiency benefits to all parties.
- B. The Montana Human Rights Commission.
  - 1. The Legislative Audit Committee, after review of a thorough study conducted by the Office of the Legislative Auditor, unanimously recommended the reestablishment of the Human Rights Commission. The Committee's report is before you in SB 311.
  - 2. In the absence of a state enforcement agency, the federal government will investigate discrimination complaints in Montana.

<u>Summary</u>: The Legislative Audit Committee is presenting SB 311 for the reestablishment of the Montana Human Rights Commission. The Commission is in agreement with SB 311 and requests this Committee to recommend that SB 311 Do Pass.

#### MONTANA HUMAN RIGHTS COMMISSION

#### Basic Information

#### I. ORGANIZATION

The Montana Human Rights Commission is a 5-member citizen Commission (not state employees) appointed by the Governor and confirmed by the Senate. Their staff is the Montana Human Rights Division, presently 6.75 FTEs. (For respective roles of the Commission and Staff, see flow chart.)

#### II. OBJECTIVITY

A basic guiding principle of the American judicial system is that a person is innocent until proven guilty (Exhibit A). As a quasi-judicial agency, the Montana Human Rights Commission is sworn to uphold the law. The Commission must be objective. A review of determinations made by the Division for Commission review shows that 371 have been found No Cause, 343 have been found Reasonable Cause, and 193 have been settled prior to finding.

#### III. ACCOUNTABILITY

The decisions, policies, budget and funding of the Human Rights Commission are continually being scrutinized. Indeed, it may fairly be stated that the Human Rights Commission is subject to more accountability and scrutiny than most agencies of state government. Not only does the Commission answer to the three branches of government (legislative, executive, and judicial), but further to the Equal Employment Opportunity Commission (EEOC), client groups, and the business community.

#### IV. PERFORMANCE

Montana ranks fourth in the nation for the number of cases closed per employee (34), the average closure 21.4 (Exhibit B). The Rapid Charge Process has resulted in an increase of informal and conciliated settlements which "speed up the complaint process and provide more timely resolutions." (Sunset Review, p. 16) New cases are being processed within an average of 126 days.

Montana's cost per case is \$701, less than one-half the national average of \$1,404.31 (Exhibit C). With a small staff and immense geographical distances, this is a remarkable achievement. You will also note that the Division received an "exceptional" performance rating in processing Title VII complaints from the Region VIII office of the Equal Employment Opportunity Commission (Exhibit G).

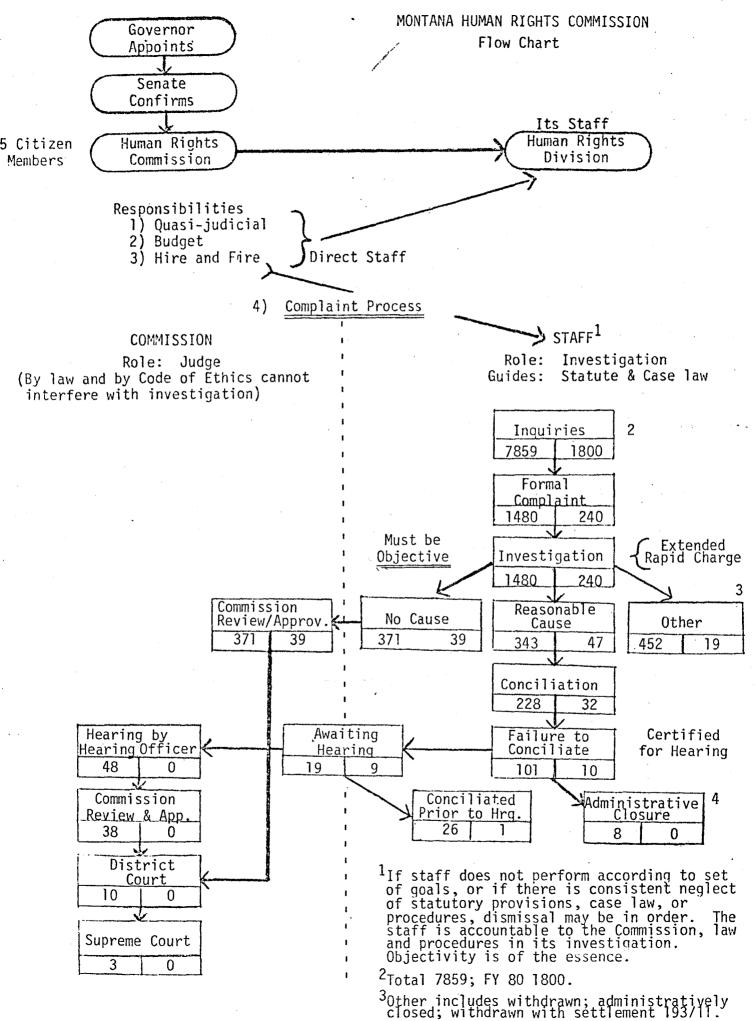
#### V. OUTREACH

Some 20 seminars and workshops have been conducted in FY 80 for the business community. Approximately 1,000 persons total have been in attendance. (N.B. This is more than twice the number of presentations for "client" groups.) Some 10 workshops and conferences were conducted for client groups. Approximately 300 persons total were in attendance (Exhibit D).

#### VI. SUMMARY

In FY 80, the Montana Human Rights Commission underwent an extensive Sunset Review. The review was as positive as an objective audit could possibly be. "There is no reason to believe that disbursing the Commission's functions among other state agencies would provide better service or cost savings to the state." (Sunset Review, p. 37) As a result of the review, the Legislative Audit Committee unanimously recommended the reestablishment of the Montana Human Rights Commission. Such diverse groups as the Montana Federation of Business and Professional Women and the Montana United Indian Association have indicated their support for the reestablishment of the Commission (Exhibits E and F).

The Montana Human Rights Commission is an effective and efficient mechanism for the enforcement of the Montana Human Rights Act.



#### PROCESS (SUNSET REPORT PGS. 11-20)

The following procedures are followed by the staff and the Commission in processing complaints.

- 1.) Inquiry All inquiries are handled by the staff's intake officer. The intake officer screens out frivolous complaints and accepts no case for further treatment unless the person calling can present sufficient facts to establish a prima facie case. Last year 1800 inquiries were made and only 240 cases accepted and opened. Although inquiries are increasing rapidly, this screening process has resulted in a decrease in the actual numbers of complaints opened. Once a formal complaint is filed, the Respondent is notified.
- 2.) Investigation One of the 2.75 investigators is assigned the case once a formal complaint is opened. This person begins an investigation to see if there are facts to substantiate the complaint. This person can and will examine documents, speak to potential witnesses who can shed light on the allegations and also ask for the Respondent's side and speak to persons who can shed light on those statements.
- 3.) Fact-Finding Conference If the fact situation is simple and if both sides agree, the investigator will set up a fact finding conference. The investigator acts as mediator, each side presents the facts as he or she sees them and a proposed solution. The Conference is designed as a "no-fault" solution to quickly resolve the problem. There is no determination of whether or not discrimination occurred there is only an attempt to reach a mutually satisfactory solution. Approximatley 50% of our cases are handled in this matter.
- Finding If no mutually agreeable solution can be reached at the fact finding conference or if no conference is held, the investigator must next prepare a finding. That finding is either that there is or is not reasonable cause to beleive that a discriminatory act took place. Sometimes more facts must be gathered before that determination can be made. The investigator's proposed finding must be concurred in by the staff attorney and the staff administrator. That finding must be objective. Last year, out of 240 cases opened, 105 of those have moved through the investigation stage. Cause was found in 47 of those 105 cases or 47%. No cause was found in 39 of those 105

- cases or 3.%. Settlements before finding were made in 11 of those 105 cases or 10%. The rest (8) have been closed for other reasons. 135 cases are still under investigation. All no cause findings and settlements must be approved by the Commission.
- 5.) Concilliation If there has been a finding of reasonable cause, the staff must attempt to concilliate the matter. Concilliations are reached frequently. Out of the 240 cases filed last year, with reasonable cause found in 47 of those cases, concilliations have been reached in 32 of those 47 cases or 68%. In 10 of those 47 cases it has been determined that no concilliation is possible. In 5 cases there are still attempts being made to consilliate.
- 6.) Contested Case Hearing If there is no concilliation the case is certified for hearing and one of the hearing officers is appointed and assigned the case. The parties are still free to settle the case prior to hearing and many do. If the hearing is conducted, the rules of evidence are followed and the burden is on the complaintant to prove that discrimination took place. Hearing officers take testimony and receive exhibits and draft a proposed Order for the Commission. Either side may contest the proposed order in an appeal to the Commission.
- 7.) Commission Review If one party wishes to contest the proposed Order, written objections and briefs are filed with the Commission and a hearing is provided if requested with the opportunity given each side to present oral arguments. After the hearing the Commission issued a final Order in the case. If the Commission finds that discrimination occurred, monetary damages can be awarded. If they find no discrimination took place, the case is dismissed. As of June 30, 1980, 31 orders have been issued. In 14, the Commission found in favor of the complainant. Monetary damages were awarded in 13 of those cases In 17 cases, the Commission found in favor of the Respondent and the case was dismissed.
- 8.) District and Supreme Court Review The final Commission Order can be appealed to the district court. Four cases which have been decided by the Commission have been appealed to district court in which the Merits of the cases have been at issue. In one of those cases the Commissions decision that there was no discrimination was reversed. In another case, the Commission's decision that there was discrimination and the monetary award was reversed. That case is presently on appeal to the Montana Supreme Court. In the two other cases, the Commissions decision was affirmed. In one of those two cases, the Commission found discrimination and awarded damages, in the other we dismissed the complaint.

#### **APPENDIX**

- Exhibit A

  Memorandum to John Frankino from Raymond D. Brown
- Exhibit B
  Comparison of Numbers of Cases Closed
- Exhibit C
  Cost Per Case Per Total Revenue
- Exhibit D
  Letter from Personnel Systems Inc.
  Letter from Job Service Office, Helena, MT
  Letter from Mountain View School
  Letter from Skaggs Companies, Inc. (Respondent)
  Letter from Kathleen Barron (Charging Party)
- Exhibit E
  Position Statement from Montana Federation of Business and Professional Women's Clubs
- Exhibit F
  Press Release from Montana United Indian Association
- Exhibit G
  Letter from the Denver District Office of the EEOC

#### January 31, 1981

#### MEMORANDUM

TO: John Frankino

FROM: Raymond D. Brown

Legislative Objections

OBJECTION: The Montana Human Rights Commission/Division presumes a Respondent guilty until

proven innocent.

ANSWER:

RE:

A basic philosophical principle in the American judicial system is that a person is innocent until proven guilty. As a quasi judicial agency, the Montana Human Rights Commission is sworn to uphold the law. If it were to adopt a contrary philosophical or legal stance, a complaint might be dismissed by an appeal court for technical reasons, i.e. lack of due process. The process is designed to protect both parties.

a. How accomplished: Complaints are screened. They must pass the "prima facietest": MacDonald Douglas v. Green, U.S. S. Ct., frivolous complaints are weeded out. The test includes:

- 1. Must be a member of a protected class.
- 2. Must be qualified for the job in question
- 3. Must be a job
- 4. The candidate must be rejected.

In other words a charging party cannot make "wild" accusations that a Respondent discriminates.

If the basic test is met, the complaint is accepted and a copy mailed to the Respondent. The Respondent is given the opportunity to give his or her side or in the words of the U.S. Supreme Court to "articulate a legitimate non-discriminatory reason for his action." (Note: the burden of proof is still on the Charging Party for discrimination. The above merely moves the case forward.)

The Charging Party has the opportunity to show that the Respondent's non-discriminatory reasons were pretextual. Again, note the burden is on the Charging Party.

The Division must make a decision whether or not it is "reasonable" (different than "guilty") to believe some discrimination occurred.

If no cause to believe discrimination occurred, sent to Commission for review. If reasonable to believe some discrimination did occur, conciliation attempted If the conciliation fails, the case is set for hearing (de novo). Both parties submit evidence.

The process and all steps must be impartial and objective.

#### COMMISSION FOR HUMAN DEVELOPMENT COMPARISON OF NUMBERS OF CASES CLOSED STATE CIVIL RIGHTS AGENCIES FISCAL YEAR 1978-79

		Number of	Staff	Closure Rate
Rank	State	Closures	Size	Per Employee
1	Arizona	<b>77</b> 8	20	38.9
2	Nebraska	1,280	33	38.8
3	Colorado	1,435	40	35.9
4	Montana	238	7	34.0
5	New York*	7,418	244	30.4
6	New Hampshire	118	4	29.5
7	Georgia	404	14	28.9
8	Delaware	284	10	28.4
9	Wisconsin	2,004	73	27.5
10	New Jersey	2,807	108	26.0
11	South Dakota	123	5	24.6
12	Idaho	143	7	20.4
13	Wyoming	59	3	19.7
14	Michigan	5,254	277	19.0
15	Ohio	3,648	200	18.2
16	Alaska	427	24	17.8
17	Missouri	894	52	17.2
18	Kansas	580	43	15.8
19	Rhode Island	225	15	15.0
20	Connecticut	1,417	116	12.2
21	Florida	368	37	9.9
22	Tennessee	189	24	7.9
23	Kentucky	300	40	7.5
24	South Carolina	100	42	2.4
Averag	21.4			

<sup>\*</sup>Figures are for fiscal year 1979-80.

Source: Division of State Audit survey.

\*\*Excerpt from Program Evaluation on the Tennessee Commission for Human Development, January 1981, State of Tennessee, Comptroller of the Treasury, Department of Audit.

#### COST PER CASE PER TOTAL REVENUE\*\*

Rank State		Number of Closures	Total Revenue	Cost Per Case
1	Nebraska	1280	\$ 598,502	\$ 467.50
	Delaware	284	140,000	492.95
2 3	New Hampshire	118	58,217	493.36
4	Colorado	1435	814,164	567.36
5	Arizona	778	501,460	644.55
6	New Jersey	2807	1,828,772	651.50
4 5 6 7 8 9	Montana	238	167,000	701.68
8	South Dakota	123	98,278	<b>7</b> 99.01
9	New York	7418	5,970,500	804.86
10	Georgia	404	338,287	837.34
11	Missouri	894	750,902	839.93
12	Wisconsin	2004	1,798,157	897.28
13	Ohio	3648	3,850,000	1,055.37
14	Rhode Island	225	241,297	1,072.43
15	Connecticut	1417	1,567,959	1,106.53
16	Idaho	143	175,150	1,224.82
17	Wyoming	59	77,792	1,318.50
18	Tennessee	189	301,638	1,595.96
19	Michigan	5254	8,703,400	1,656.52
20	Kansas	580	1,049,446	1,809.38
21	Florida	<b>3</b> 68	926,045	2,516.42
22	Kentucky	300	769,700	2,565.66
23	Alaska	427	1,228,500	2,877.04
24	South Carolina	100	670,769	6,707.69
	Average Cost Per	Case from State	s Responding:	\$1,404.31
	Average Cost Per	\$1,124.83		

<sup>\*\*</sup>Figures compiled from <u>Program Evaluation on the Tennessee Commission for Human Development</u>, January 1981, State of Tennessee, Comptroller of the Treasury, Department of Audit, pp. 21-22.

Suite 204 — Glacier Bldg. 111 North Higgins Missoula, Mont. 59801 Phone: (406) 543-8308

REGEIVED

DEC 4 1980

HUMAN RIGHTS DIVISION

December 3, 1980

Raymond D. Brown, Administrator Human Rights Division 616 Helena Avenue, Suite 300 Helena, MT 59601

Dear Ray:

A special note of thanks and appreciation should have been forthcoming to you and Joyce a long time ago. The program was most worthwhile, and the time and effort which you both put forth was greatly appreciated. A number commented on how much they got from the program, and how worthwhile they felt it had been.

If time can be found, and your schedule permits, it may be worthwhile to see if we could schedule a similar program for early next spring.

Best wishes for the holiday season.

Sincerely,

William M. Chase Vice President

WMC/jw

# EXHIBIT D

#### E.E.O. Workshop 9:45 A.M. - 3:00 P.M. November 18, 1980 Chamber of Commerce Meeting Room Missoula, Montana

Jointly sponsored by Missoula Chamber and Personnel Systems, Inc.

#### Workshop Leaders

Raymond D. Brown -- Administrator, Montana Human Rights Division

Joyce F. Brown -- E.E.O. Coordinator, State of Montana

	Agenda
9:45	Registration
10:00	Discrimination: Fact or Fancy Recent Court Actions and Directions
10:30	Laws Affecting Employees and Employers 1) Title VII 2) Montana Human Rights Act 3) Rehabilitation Act 1973 4) Equal Pay (comparable worth) 5) Montana Maternity Leave Act 6) ADEA
11:15	Theories of Discrimination
11:30	Questions and Answers
12:00	Lunch
1:00	Preventing Discrimination  1) Applications  2) Referrals  3) Screening  4) Interviewing  5) Selection
	Record Keeping Employers Guide
2:30	Questions and Answers
3:00	Adjourn

The charge for the Workshop is \$5.00, which includes lunch. The workshop will be limited to 40 participants, so reservations are necessary. They can be made by calling The Chamber 543-6623 or Personnel Systems, Inc. 543-8308.



## C TIBIHX3

State of Montana Dept. of Labor & Industry

Employment Security Division

DEC 2 7 1979 HUMAN RIGHTS DIVISION

715 Front Street Helena, Montana

December 21, 1979

Ray Brown, Administrator Human Rights Division 7 W. 6th Avenue Helena, Montana

Dear Ray,

We would like to thank you for being our guest speaker at our JSIP luncheon last week. Both the employers and the Job Service staff found it most pertinent, informative and helpful.

We would also like to extend our Season's Greetings and wish you a Happy Holiday Season.

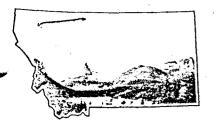
Thank you, again.

Sincerely,

Bob Botterbusch, Co-Chairperson

John, Lowney, Co-Chairperson

Gene Severson, Manager Helena Local Office



# EXHIBIT D

STATE OF MONTANA

## MOUNTAIN VIEW SCHOOL

2260 SIERRA ROAD EAST HELENA, MONTANA 59601 OCT 6 1980

HUMAN RIGHTS DIVISION

Lawrence Zanto

October 3, 1980

DONALD P. ROBEL - - SUPERINTENDENT

Montana Human Rights Division Raymond D. Brown, Administrator Suite #300, Steamboat Block Annex Helena, Montana 59601

Dear Mr. Brown,

"Thank you" for speaking to our student body on September 30, 1980.

We were delighted to have such a knowledgeable source to draw upon to educate our students in career awareness.

Our faculty reports indicated that the students were very interested in, and gained much from your presentation. We were particularly impressed with your ability to field questions from a skeptical audience.

If possible we would like to draw upon your experience and expertise in the future. Thank you again.

Sincerely,

Jack Oberweiser

Field Learning Coordinator

Jo ann Skinwood

JoAnne Sherwood

Field Learning Coordinator

JO/jajs

## SKAGGS COMPANIES, INC.

EXHIBIT D

P. O. BOX 30658, 310 BEARCAT DRIVE, SALT LAKE CITY, UTAH 84125, (801) 487-4531

October 3, 1980

REGENTA

00T 8 1980

HUMAN RIGHTS DIVISION

Mr. Raymond D. Brown Administrator Human Rights Division State of Montana Suite 300, 616 Helena Avenue Helena, Montana 59601

> Case No. SAE80-1323 Nelson vs. Skaggs Drug Store

Dear Mr. Brown:

We acknowledge receipt of your letter of September 26, 1980, advising that the Human Rights Commission has affirmed the No Cause determination of the Division Staff in the matter of the complaint brought by Bertha Nelson against our Company.

We again wish to express our appreciation for the service of your office in conducting the review of this complaint.

Very truly yours

R. Que Coray Vice President

Employee Benefits

RQC:vs

cc: Tom Curran Joe Bowman Mike Tilton



## EXHIBIT D

27 October, BEGENED

OCT 31 1980

HUMAN RIGHTS DIVISION

Ray Brown, Director Human Rights Commission State of Montana Suite 300, 616 Helena Ave. Helena, Montana 59601

Dear Mr. Brown,

I want to thank you and the staff of the Human Rights Commission for the diligent and successful work towards the completion of my case against School District No. 1 of Butte, Montana. In particular, Rick Sherwood, who represented me, was always helpful, informative, and concerned. It has been very reassuring to have competent people working with me over the past four years.

It is my hope that your agency will continue as long as there are needs for your services. Any time you or your clients need a vote of confidence, I have one ready.

Thank you again.

Sincerely,

Kathleen Barron (Ms.)

Oldfields School

Glencoe, Maryland

#### MONTANA FEDERATION OF BUSINESS AND PROFESSIONAL WOMEN'S CLUBS

1980-81 Legislative Platform

#### ACTION ITEMS

#### Constitutional Amendment

Actively work to retain Montana's ratification of the Equal Rights Amendment and support the ratification process in unratified States.

#### Legislation

Support and seek implementation of State legislation that will:

Item 1. Effect, on a State level, Action Items 1, 2, 3 and 4 of the National Federation's Legislative Platform. Thos items are:

#### Item 1

Secure equal treatment for women in all areas of employment including the Congress of the United States and the armed services.

#### Item 2

Reform laws governing Social Security and pension programs to achieve equity and adequacy for women.

#### Item 3

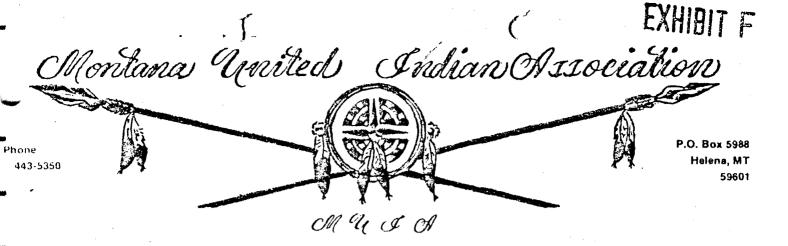
Bring about equal treatment of women and men, regardless of marital status, in all phases of economic life, with special emphasis on reforming the income tax system and elimination of discrimination in insurance.

#### Item 4

Promote research on and prevention of all types of family violence, violence against women, and provision of services to victims of such violence.

- Item 2. Assure the continuance of, and provide funding for, the Montana Human Rights Commission as a separate State Agency. (Under the so-called Sunset Law, many State boards and commissions were terminated effective at the end of fiscal 1981. The Human Rights Commission is included. It must be recreated and funded by the 1981 Legislature or go out of business.)
- Item 3. Keep in tact Montana's 30% Coal Severance Tax by opposing Congressional action to limit State coal severance taxes to 12%.

Adopted by the Montana Business and Professional Women's Clubs at the Meeting of the Board of Directors November 16, 1980, Butte, Montana



PRESS RELEASE FOR IMMEDIATE RELEASE NOVEMBER 15, 1980

The goal of the Montana United Indian Association is to improve the social and economic self sufficiency of the Off-reservation Indian people in the state of Montana, although we are deeply concerned with the preservation of all inherent rights of all Indian people as guaranteed in treaties with the United States Government.

The Montana United Indian Association wishes to go on record in support of issues that are of concern to us and the Indian people of Montana.

- 1. The Montana United Indian Association strongly supports the continuation of the Montana Human Rights Commission as an autonomous agency with adequate funding for sufficient staff to carry out the full intent of the law.
- 2. Full dedication to a good and effective affirmative action plan to be developed by the State.
- 3. We support the freedom of self determination by the Indian people of this great state in areas of, but not limited to; Water rights, Tribal land acquisition, Religion, particularly in the transportation of eagle feathers for religious purposes.
- 4. The Montana United Indian Association supports the idea of a "concerns coalition" to meet the unmet needs of apparent powerless groups of people.

ANACONDA, MONTANA



#### **EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

DENVER DISTRICT OFFICE 1531 Stout Street, 6th Floor Denver, Colorado 80202 303/837-2771

September 16, 1980

Mr. Raymond D. Brown Administrator Montana Human Rights Division 616 Helena Avenue Suite 300 Helena, Montana 59601

Dear Mr. Brown:

This is to congratulate the Montana Human Rights Commission on its fine performance during Fiscal Year 1980. Your outstanding performance is evidenced by a 10% increase during the Fiscal Year 1981 contract period for meeting four of four quality Federal performance standards.

Your Agency gives every indication of completing its Fiscal Year 1980 contract goal of 175 charge resolutions and is currently performing at a 96% acceptance rate. In addition, you have agreed to initially process dual filed charges in the State of Montana.

You are to be truly commended for your effectiveness in Title VII enforcement in an efficient and timely manner. We look forward to your continued performance in the upcoming contractual year.

With respect to the Montana Department of Labor processing pregnancy discrimination charges, this Commission cannot give substantial weight or review that department's findings. Again, as I have expressed, this Commission's position in the past, the Equal Employment Opportunity Commission will not fund a new 706 Agency within a State where there exists a working designated State 706 Agency such as the Montana Human Rights Commission.

Sincerely,

Donald P. Burris

Supervisor, State & Local

malel P. Bunner

DPB:d1

Testimony of Helena Women's Political Caucus on SB 311

The Helena Women's Political Caucus recognizes the need for the continuing existence of the Human Rights Division as the enforcer of the Montana Human Rights Act, an essential law, and as the agent for the federal Equal Employment Opportunity Commission. In addition, we support adequate funding and administrative independence for the agency to carry out its duties.

Nearly 80% of the complaints brought to the Commission have involved discrimination in employment—and out of those, 78% involved women. Now more than ever, the women in Montana's workforce need the protection, advice, and service of the Commission.

But the Commission does not address the needs of working women exclusively. Well over one third of its cases have involved charges of discrimination because of creed, physical or mental handicap, age, marital status, or political belief. No other state or federal agency can address the broad spectrum of problems that the Commission can. We urge you to sustain its positive contribution to Montana's social and political environment.



#### MONTANA CHAPTER

#### JEANNETTE RANKIN CHAPTER HELENA, MONTANA

State Administration Committee House of Representatives Hearing: Senate Bill 311 March 18, 1981

#### Committee Members:

The Montana Constitution and laws, citizens rights, clearly prohibit descrimination against a person in the employment process because of that person's sex, age, race, color, creed, marital status, religion, national origin, or physical or mental handicap. Unfortunately, current attitudes and practices are still descriminatory against many who seek good jobs, equal pay, and promotions.

The Human Rights Commission, since its creation as an autonomous body, has become a vehicle to which individuals may turn for objective investigation of complaints. An agency able to prescribe and enforce a remedy for the descrimination, if it is found to exist.

I am here as a woman, and as a member of the National Organization for Women, who is interested in equal oportunity and the continued ability, for all people, to assert their civil rights. I believe that, in the past, the Human Rights Commission has fulfilled its obligation to the citizens of Montana to objectively, and without bias, investigate and determine descrimination claims within the framework of our Montana State Constitution.

I urge you to support the passage of Senate Bill 311, the reinstatement of the Human Rights Commission. Thank you.

Sincerely,

Cynthia L. Wevers

President, Jeannette Rankin Chapter



March 18, 1981

House State Administration Committee State Capitol Helena, Montana 59601

Dear Committee Members:

The Montana United Indian Association wishes to thank the Committee for providing us the opportunity to present our testimony regarding Senate Bill 311.

On behalf of the Montana United Indian Association representing the urban Indian constituency in Montana, we strongly urge the Montana Human Rights Commission be recognized and retained in its entirety. We go on record supporting the passage of Senate Bill 311, which re-establishes the Commission for Human Rights.

The goal of the Montana United Indian Association is to improve the social and economic self sufficiency of all Montana Indians. We are also concerned with the basic rights of all as guaranteed under the laws of Montana. The State of Montana has one of the finest Human Rights laws protecting its people, and the Division is to be complimented in carrying it out. Our association with Human Rights Division has been very positive.

Time has matured the Human Rights Division and its laws, and strong support is vital if we are to continue in a positive manner of protecting our future rights as Montana citizens. This goal can only be assured with the continuation of the Human Rights Division which must remain autonomous to insure equality to all.

Serious consideration must be given if the rights of all Montanans are to be protected. We urge the passage of Senate Bill 311.

Thank you.

Ben Bushyhead Executive Director

BB/bls

-MUIA IS AN EQUAL OPPORTUNITY EMPLOYER-

LINGS AMERICAN INDIAN COUNCIL

NORTH AMERICAN INDIAN ALLIANCE BUTTE, MONTANA

GREAT FALLS INDIAN EDUCATION CENTER GREAT FALLS, MONTANA

HELENA INDIAN ALLIANCE

MISSOULA QUA-QUI CORPORATION
MISSOULA, MONTANA

HI-LINE INDIAN ALLIANCE HAVRE, MONTANA

NORTH AMERICAN INDIAN LEAGUE DEER LODGE, MONTANA

ANACONDA INDIAN ALLIANCE ANACONDA MONTANA

NATIONAL ASSOCIATION OF BLACKFEET INDIANS



## State of Montana

## REPORT TO THE LEGISLATURE

Sunset Review

# COMMISSION FOR HUMAN RIGHTS

The 1977 Sunset Law terminates the Commission on July 1, 1981. This review provides information to assist the Legislature in making the decision to continue or modify the Commission.

This report presents eight areas for Legislative consideration (page 35) including:

- Effect of commission termination
- Overlapping authority and potential con-
- Low priority functions
- Increasing pending cases
- Agreements with federal agencies

Office of the Legislative Auditor Room 135, State Capitol Helena, Montana 59601

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Start 76-81 - Sex # 5000 -10,000

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(Membership in thousands)

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Based on reports from 135 national unions and estimates for 40, and reports from 33 employee associations and estimates for 2. Also ined are local unions directly affiliated with the AFL-CIO and members in gle-firm and local unaffiliated unions.

Membership of circulations.

NOTE: Because of rounding, sums of individual items may not equal totals.

Membership of single-firm and local unaffiliated unions derived from a 1977 survey by the Bureau of Labor Statistics.

<sup>&</sup>lt;sup>3</sup> Has right-to-work law.

Less than 500 members.

Includes local unions directly affiliated with the AFL-CIO.

## **HUMAN RIGHTS COMMISSION**





TED SCHWINDEN GOVERNOR

SUITE 300, 616 HELENA AVENUE

(406) 449-2884

March 2, 1981

HELENA, MONTANA 59620

#### MEMORANDUM

TO:

Art Lund, Chairman

House Appropriations Committee

FROM: Montana Human Rights Commission, Karen S. Townsend,

RE:

Sub-Committee recommended budget, Human Rights Commission,

FY 82 and 83, Operating, Contracted Services 2102

It is our understanding that the Sub-Committee on Human Services is recommending approval to the House Appropriations Committee of the LFA's Budget for Contracted Services in the amount of \$11,868 for FY 82 and \$12,817 for FY 83. Contracted Services, 2100, is primarily for hearings. The main recipient of these contracts for hearings is the Agency Legal Services Bureau, Department of Justice. would ask that the full Appropriations Committee consider increasing the Sub-Committee's recommendation by \$12,500 per annum, the amount recommended in the Executive Budget. It is our concern that without the additional monies, inevitable delays will result in the hearing process. The Commission does attempt to handle all cases in a timely fashion. In particular we would not want cases coming before a hearing officer to be delayed any longer than absolutely necessary.

Our rationale for this request is:

- In FY 80 fourteen cases were heard for some \$12,258. To date in FY 81, fourteen cases have been heard for some \$12,500 already expending the monies allocated for hearings. Fifteen more cases are already certified for hearing. The Commission is now faced with the prospect of holding no more hearings for the remainder of FY 81 thus backlogging the fifteen cases presently certified for hearing, as well as any new cases, into FY 82 and 83.
- Proposed allocations for FY 82 and 83 are less than was expended for hearings in FY 80 and less than has been spent for the first eight months of FY 81 although even more hearings are projected for the next biennium.

MEMORANDUM
PAGE NO. TWO
March 2, 1981

A review of the cases that are presently certified for hearing show that in eleven of the fifteen cases there is a request for back wages. These back wages total some \$13,000 monthly. These wages will continue to accrue until the date of the hearing. Thus with each month the hearing is delayed the potential liability for the respondent increases. If in only 50% of these cases, the charging party prevails, there is a potential liability of some \$6,000 per month for employers for each month the hearing is delayed. a six month delay in the hearing process could mean a \$36,000 cost to employers, a twelve month delay, \$72,000. The \$12,500 request seems cost effective in these terms.

We may not have made our point clear enough at the Sub-Committee hearing. We feel it is important that you do understand the consequences and ramifications of delaying timely administrative hearings.

We would be happy to answer any questions.

Thank you very much for your consideration.



#### THE MONTANA HUMAN RIGHTS COMMISSION: A TIME FOR DECISION

"I had been working for my employer for approximately one month when I discovered I was pregnant. After that date, the Manager made aggressive sexual advances to which I did not respond," stated a female cashier and bookkeeper. Shortly thereafter, the woman was terminated. The Montana Human Rights Commission found evidence to support the Charging Party's allegation of sexual harassment. The complaint was settled for \$3,000. A divorced woman, salesperson, was terminated because she would not go to bed with her boss. This complaint was settled by the Commission for \$2,500. A 65-year-old man was forced to retire from his job because of a mandatory retirement polilcy. The Division settled this complaint for a back pay award of some \$12,000 plus a policy change. A handicapped person, deaf, was dismissed from his job as a painter. Back pay was ordered. A Black man was awarded \$14,000 because of discriminatory termination. A Native American was restored to his position after discriminatory treatment. Montana State University in Bozeman paid some \$402,000 to women who had not been paid equally for the same work as men. A woman was recently awarded \$192,000 in a Title VII suit against the State of Montana, Department of Institutions.

Not considering the Title VII complaint against Montana State University or the Department of Institutions, the Montana Human Rights Commission has made settlements in annualized amounts of some \$600,000. Including those two settlements, the total comes to some \$1.2 million.

One can well argue the ethical reasons for civil rights laws. Practical reasons may also be offered. Whatever argument one wishes to take, the fact remains that discrimination does exist in our society. Women, minorities, and the handicapped are the victims. The cost, not only in monetary terms but in social costs, are enormous. The social costs may perhaps be impossible to calculate. When one considers the difficulty that women, minorities, and the handicapped have in finding suitable employment, the necessity to eliminate discrimination becomes readily apparent. Disrupted family lives, growing welfare rolls, unemployment, and alcoholism have been traced to discrimination. In many instances, the frustration and the inability to compete equally because of a dominant white society erupts in a "Miami." It could well happen Further, and perhaps more importantly, it is not right that all citizens of this state do not have equal opportunity. It was these reasons and many more that in 1974, Montana's Legislature passed the Montana Human Rights Act and a year later; in 1975, the Governmental Code of Fair Practices. This legislation comprises some of the most progressive civil rights laws in the country. They become meaningless without proper implementation. As a result, the aged, the handicapped, women, and minorities will continue to suffer because of stereotypic concepts manifested in discriminatory treatment.

## 5

#### How Did the Human Rights Commission Come About?

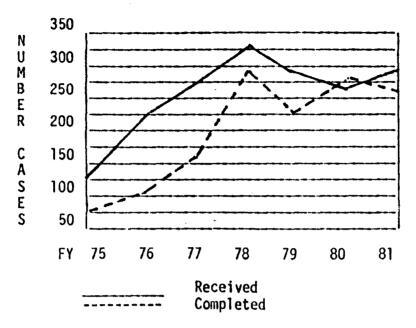
During the Forty-Third Legislative Assembly in 1974, Senate Bill No. 697 was introduced by Senators Gilfeather and Siderius. It was an act "to prevent discrimination in employment, public accommodations, education, and real property transactions, to establish a Commission on Human Rights." This bill prevented discrimination on the basis of race, religion, color or national origin, or because of age, physical handicap, or sex. The Division was assigned to the Department of Labor and Industry. In the Forty-Fourth Legislative Assembly in 1975, House Bill No. 633 was passed which amended the earlier law to include marital status discrimination and to bring the law into compliance with House Bill No. 602 which was also passed during that session. House Bill No. 602 essentially gave authority to the Montana Human Rights Commission to have authority over its own staff and budget, thereby making the Montana Human Rights Commission an autonomous agency attached to the Department of Labor and Industry for administrative purposes only. Also during the 1975 session, Representatives Gail Stoltz and Dan Yardley introduced House Bill No. 8, "an act to be known as the 'Montana Code of Fair Practices' relating to the nonparticipation of the government of the State of Montana in discrimination on the basis of race, color, religion or creed, sex, age, national origin, or ancestory." With few minor modifications, these bills remained the basis for civil rights enforcement within the state of Montana. An attempt was made in 1979, through Senate Bill No. 110, to remove the autonomy of the Commission and place the Commission back under the Department of Labor and Industry. This attempt failed.

Although Montana does have an extremely strong civil rights law, funding has not been proportional. The Governmental Code of Fair Practices has never been funded. The budget for the Montana Human Rights Act was \$61,000 from General Fund monies and for Fiscal Year 1980, General Fund allocations were \$67,000. This is hardly a great increase, particularly in light of the increased caseload and inflation (see Tables 1 and 2).

T \$250 Н 0 \$200 U S \$150 Α N \$100 D S \$50 FY 75 76 77 78 79 80 81 General Funds Total funds (including federal funds)

Table 1: Annual Budgets of the Human Rights Commission

Table 2: The Number of Cases Received and Completed



The Commission has managed to survive through the use of limited PSE personnel, VISTA volunteers, limited federal funding, and dedication by the Commission and staff. The 1979 Legislature authorized 8 FTEs for the Human Rights Commission but did not fund the Commission adequately for these positions. The present staff consists of 6.75 FTEs -- one administrator, one attorney, 2.75 investigators, one intake person, and one clerical person. Backlog continues to increase. The staff has made many adaptions and improvements to expedite case processing, but limitations have nearly been reached. Employee efficiency has climbed from a ratio of 12.75 cases per employee per year to 36.42 cases per employee per year (see Table 3). Cost per case has dropped from \$1,316 to \$712 (see Table 4).

Table 3: Case Loads

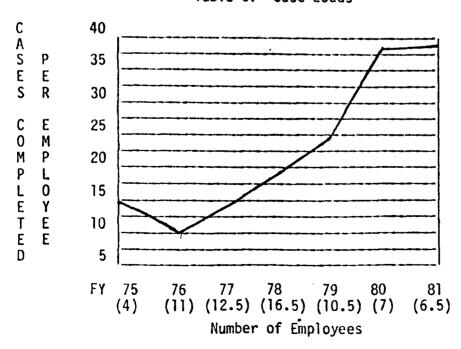
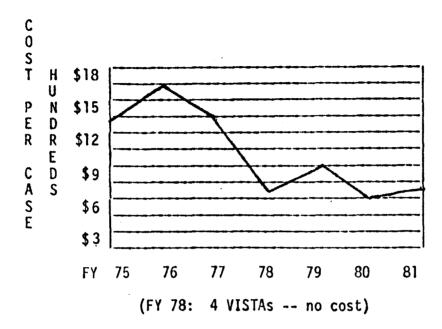


Table 4: Cost of Cases



Although the Division and Commission have expedited methods of case processing, case backlog does continue to grow. Presently, some 356 complaints are unresolved (Table 2). The Commission is unable to fulfill the legislative mandates placed upon it in a timely manner. Hearings before the Montana Human Rights Commission are continuing to increase. Seven hearings were held in 1978; 20 in 1979; and 50 in 1980 (slow start-up in 1980 was a result of contractual obligations). Nine cases are already scheduled for Fiscal Year 1981. The Commission is contracting with the Agency Legal Services Bureau for hearings officers to issue proposed findings. There will not be enough funds in Fiscal Year 1981 to hear all cases that are certified for hearing.

There is little outreach being done with client groups, the business communities, and others who may be affected by the Montana Human Rights Act. Those in protective class groups may not be aware of the protection entitled them under the law. If the citizens of this state knew as they should, that the Montana Human Rights Commission were a viable Commission, more complaints would be filed. Indeed, it has been related to the Division that some women are not filing with the Commission because of their workload and backlog. The business community may not be aware of the laws governing them. The Commission has not established educational and informational programs for the public sector as required by the Governmental Code of Fair Practices.

The caseload has stabilized during the past two years at approximately 250 cases. Part of the reason for this stabilization is a result of a professional intake system which is able to eliminate many frivolous complaints or refer other complaints to agencies which do have the proper jurisdiction (see Table 2). With proper outreach, more persons would utilize the services of the Montana Human Rights Commission, a process guaranteed to them by the Legislature.

The Montana Human Rights Commission is a "706" agency under Title VII of the 1964 Civil Rights Act, as amended. Part of the funding for the Commission comes through a contractual agreement with the Equal Employment Opportunity Commission. The Division does investigate complaints filed with both the State and EEOC. The continuation of these monies involves meeting our contractual obligations. The EEOC deals only with employment complaints in the areas of race, sex, national origin, creed or religion. It does not cover housing, financing, and other areas. In order to make contract with the EEOC, the Human Rights Commission directed that EEOC cases be given priority. This means that until proper state funding is available, cases dealing with the handicapped, the aged (with certain exceptions), and other areas not in employment will not receive timely investigation due to inadequate general funding and staffing by the State.

Title VIII of the 1968 Civil Rights Act prohibits discrimination in housing based on race, sex, national origin, and color. A provision under Title VIII does allow a similar agreement between state agencies and the federal government which have "substantially equivalent" laws. A minor change in the Montana Human Rights Act would bring the state law into equivalency with federal law. The change deals with newspaper advertisements, i.e., disclaimors. No change is necessary in enforcement powers. Such a change would allow the Montana Human Rights Commission an additional \$20,000 from the federal government to process housing discrimination complaints and also assist in other civil rights work.

The EEOC has recently been given authority to implement the Age Discrimination in Employment Act, the federal Equal Pay Act, and the authority over sex complaints in employment dealing with pregnancy. As a 706 agency, these complaints may only be deferred to the Montana Human Rights Commission for processing. EEOC does not contemplate establishing other 706 agencies within a geographical area if there is presently a statewide 706 agency already processing these charges. The Human Rights Commission in the State of Montana has this authority. However, there is some confusion, unfair to both charging parties and respondents, over the implementation of the Montana Maternity Leave Act. The feasibility of one agency processing these charges should be studied.

#### How is the Human Rights Commission Effected by the Montana Sunset Law?

Montana's Sunset Law was passed in 1977 which schedules the Montana Human Rights Commission for termination June 30, 1981. The Commission has undergone a thorough scrutiny by the Legislative Auditor whose report will be presented to the Legislative Audit Committee. A public hearing will be held on the fate of the Commission during mid September of 1980.

The Democratic Party has traditionally supported the rights of minorities, women, and the handicapped. The Montana Human Rights Commission is the main enforcement and educational agency in the State of Montana. It has never been properly funded. It exists as a mere token in a fight against invidious discrimination. If the rights of persons within Montana are to be timely and properly protected as the 43rd and 44th Legislatures so directed, it becomes

imperative that the Montana Human Rights Commission be established with a substantial increase and funding for adequate staff which will allow timely case processing, outreach, and technical assistance. The termination of the Commission would be a devastating blow to the equal opportunity and civil rights of many persons within this state. Limited employment discrimination complaints might be handled by the Equal Employment Opportunity Commission, but in no way could they be done on a timely nor cost-efficient basis. Further, without an administrative agency to process these complaints, an additinal burden would be put on the court system. The Commission must continue. Their staff, the Human Rights Division, must receive a substantial increase in funding for the adequate enforcement and education of the Montana human rights laws. It is interesting to note that there are presently fewer employees funded by the State of Montana than there were in Fiscal Year 1975.

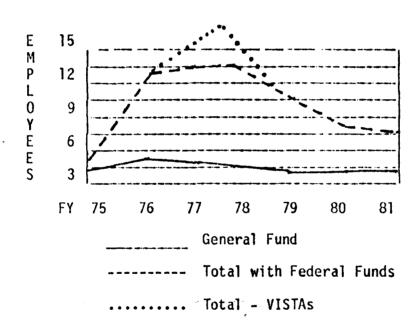


Table 5: Funding of the Human Rights Commission

It has been some 20 years since the turbulant racial unrest of the Sixties that led to the passage of the Civil Rights Acts. It was the dream of many that by the decade of the Eighties, racial injustice, sexual inequality, and the warehousing of the aged and handicapped would be far behind us. Unfortunately, such is not the case. The late Seventies and 1980 have brought increased activity in neofacism, the Ku Klux Klan, militant anti-ERA supporters, and an extreme Right-wing conservatism. The State of Montana, in its hiring practices, actually has fewer Native Americans in its employ than it did five years ago. Wages are still not equal for women. The handicapped are still not much in evidence in the workplace or other public accommodations. (It is difficult, if not impossible, to go to the theatre, dinner, publicly owned buildings, when there is no place to go to the bathroom if you happen to be confined to a

wheelchair.) Racial violence continues to taunt our land not only in the South but throughout the country. Native Americans are assailed for merely asking that the United States Government fulfill its treaty obligations. Women are subject to sexual harassment in the workplace. There are very few women in any management positions in either the public or private sector in Montana. The freedom dream of Martin Luther King and many others has not come to pass. Laws passed by concerned Democrats and others to insure that the equality promised in our Constitution and through subsequent laws becomes a reality in our country have been inadequately enforced, and indeed many in the public and private sphere wish they would simply disappear.

The fact is equal opportunity laws are not going to go away. They will continue to be enforced, if not at the state level then by the federal government. Executive reorganization of civil rights agencies will mean more federal enforcement of Title VI, Title VII, Title VIII, and civil rights laws governing funding for state and public agencies. This is as it should be. Public monies should not be spent in a discriminatory manner. Problems remain.

The State Employee Relations Bureau does offer technical assistance through the various affirmative action offices within each state department. The Office of Public Instruction offers some assistance to its school districts throughout the state. The Employment Security Division is able to offer limited technical assistance to employers. However, there is no technical assistance being offered to political subdivisions of the State of Montana. The law requires the Montana Human Rights Commission to do this. To date, it has not been done. The reason is simple: it has not been funded. This lack of assistance to many political subdivisions of the State of Montana may well result not only in their losing federal funding, but equally important, the public sector has an ethical obligation to lead in the elimination of discrimination within the State of Montana. They have not done so.

The inadequate funding of the Montana Human Rights Commission puts an unnecessary burden on respondents as well as charging parties. The lack of speedy resolutions costs businessmen money. If the Legislature does pass such comprehensive laws that subject employers and others to penalties, the private sector as well as the public sector does have the right to demand a speedy resolution to their charges. This cannot be done with inadequate and token staffing.

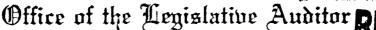
Yes, the Montana Human Rights Commission is under Sunset. If the Commission should not be reestablished, equal opportunity laws will continue to exist on both the federal and state levels. The resolution of discrimination complaints would place a heavy burden on the court system. Administrative agencies have a responsibility to settle these complaints in a less formal and less costly method.

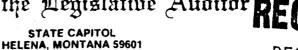
Discrimination is an invidious evil. Civil rights laws are controversial laws. However, laws cannot change the way people think, but they can change the way persons behave one towards another in a civilized society. It is indeed unfortunate that public mandate laws such as civil rights laws are necessary. Until we are able to accept one another regardless of the pigmentation of our skin, our gender, or handicaps, it is essential that these rights be guaranteed in a society that proclaims free and equal opportunity to all persons.



It is essential that the Democratic Party carefully review the needs of the Montana Human Rights Commission. It is essential that the Montana Human Rights Commission be adequately staffed and funded so that persons may have equal opportunity in the State of Montana, an opportunity provided by our Federal Constitution, the State Constitution, and Montana human rights laws. Hopefully the day may come when the Montana Human Rights Commission and other equal opportunity commissions are no longer needed. That day will be when the dream of equal opportunity becomes a reality.







DEC 5 1980

HUMAN RIGHTS DIVISION

ELLEN FEAVER, C.P.A.

DÉPUTY LEGISLATIVE AUBITOR

JOHN W. NORTHEY
STAFF LEGAL COUNSEL



MORRIS L. BRUSETT, C.P.A.
LEGISLATIVE AUDITOR

December 4, 1980

406/449-3122

Raymond D. Brown, Administrator Human Rights Division Steamboat Block 616 Helena Avenue Helena, Montana 59601

As you know, the Legislative Audit Committee has been conducting performance audits of a number of regulatory boards under the "sunset" law. This law requires upon completion of the performance audit, that the Audit Committee make a report and submit a proposed bill to the next legislative session. The committee has completed its review of the Commission for Human Rights, and enclosed is a copy of the draft bill incorporating the committee recommendations.

As you are interested in this area of regulation, we are furnishing you a copy of the draft bill for comment and any suggestions you may have. These comments and suggestions will be considered by the Audit Committee prior to finalizing the draft bill. Please furnish any comments you may have to this office in writing as soon as possible. If you have any questions, please advise.

Sincerely,

Morris L. Brusett Legislative Auditor

Manis J. Breselt.

MLB/d33o

Enclosures

#### TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE



February 9, 1981

By Karen S. Townsend, Chair Montana Commission For Human Rights

#### INTRODUCTION

In 1977, the Montana State Legislature passed the "sunset bill" That law provides that the Commission for Human Rights automatically terminates July 1, 1981 unless reenactment legislation is approved by the 47th Legislature. That law further provides that the Legislative Audit Committee is to conduct performance reviews prior to termination. Such a review was conducted by the staff of the Legislative Auditor. It began approximately a year ago and culminated in the Report that you have before you. That staff report was reviewed by the Legislative Audit Commitee at a public hearing last September. The Committee then voted unanimously to recommend to the 47th Legislature that the Commission be reestablished. SB 311 is the concrete form of that recommendation.

The 1974 Legislature passed the Human Rights Act which prohibited discriminatory practices and created the Montana Commission for Human Rights. The Commission together with its staff was designated as the enforcement agency in the Human Rights Act. The basic purposes of the Human Rights Act were to protect Montanans from discriminatory practices and to implement the equal dignities provision of the 1972 Constitution. Montana did not act alone in this area. Similar agencies and commissions were set up in other states. Today 47 states, the District of Columbia, Puerto Rico, the Virgin Islands and 42 counties or cities have agencies that administer anti-discrimination laws. The Equal Employment Opportunity Commission (EEOC) is responsible for administering and enforcing most of the federal anti-discrimination laws.

#### STRUCTURE (SUNSET REPORT PG. 4-5)

The Commission itself is composed of 5 citizen volunteers appointed by the Governor. Because the Commission is a quasi-judicial board, one of those 5 must be an attorney licensed to practice in the Montana. I have served in that capacity for the last 4 years. Members of the Commission are not state employees. All but one of us was employed full time in other capacities. Those of us who work for the state or a political subdivision of the state receive no compensation for the time we put in on Commission business. Two of us have been in that category for the past 2 years. The other members of the Commission receive our travel expenses up to the limits of state per diem. The Commission must meet 4 times per year. We have usually met every other month in order to conduct commission business. We have frequently conducted some additional meetings by conference call in order to save travel expenses.

The Commission is authorized by the Human Rights Act to employ a staff. Our staff is known as the Human Rights Division. The individuals who work there are state employees. Although we are authorized for 8 FTE's, budgetary constriants have forced us to reduce personnel to 6.75 FTE. We also have contracts with 4 attorneys to serve as hearings officers. Two of those attorneys are members of the Attorney General's staff in the Agency Legal Scrvices Bureau. One is a private attorney in Billings and one is a private attorney here in Helena. His contract is for 1 case only and was required because the Agency Legal Services attorneys are defending one of the Respondents in that case.

#### FUNDING (SUNSET REPORT PGS. 5-7, 25)

The Commission is funded by appropriations from the State General Fund and contract funds from the EEOC. The Commission has an agreement with EEOC and is known as a "706" Agency. Many of the areas and causes of discrimination under Montana law are also illegal under Title 7 of the 1964 Civil Rights Act, the major federal anti-discrimination act. Thus I investigation can determine the facts for both the state and the federal agency. A 706 agency receives federal money for investigating these cases and the EEOC must give "substantial weight" to our final determination. Commission receives \$350.00 for each Title 7 case we complete. A complete case is one where a final deterination has been made. That determination can be either there was discrimination or just as importantly, there was not. To date we have completed approximately 800 cases. Our findings have been accepted by EEOC in all but 3 cases. Our acceptance rate this past year was 100%. In 1979-80 we completed a total of 248 cases at an average cost/case of \$701.00. In 175 of those cases, violations of both state and federal laws were claimed. We received \$350.00 for each of those 175 cases from EEOC because their case was considered completed at the same time our state case was completed. This 706 funding not only subsidizes the cost of state investigations, but allows Montanans to deal with local people and not the federal agency that is located in Denver.

#### PROCESS (SUNSET REPORT PGS. 11-20)

The following procedures are followed by the staff and the Commission in processing complaints.

1.) Inquiry - All inquiries are handled by the staff's intake officer. The intake officer screens out frivolous complaints and accepts no case for further treatment unless the person calling can present sufficient facts to establish a prima facie case. Last year 1800 inquiries were made and only 240 cases accepted and opened. Although inquiries are increasing rapidly, this screening process has resulted in a decrease in the actual numbers of complaints opened. Once a formal complaint is filed, the Respondent is notified.

- 2.) Investigation One of the 2.75 investigators is assigned the case once a formal complaint is opened. This person begins an investigation to see if there are facts to substantiate the complaint. This person can and will examine documents, speak to potential witnesses who can shed light on the allegations and also ask for the Respondent's side and speak to persons who can shed light on those statements.
- 3.) Fact-Finding Conference If the fact situation is simple and if both sides agree, the investigator will set up a fact finding conference. The investigator acts as mediator, each side presents the facts as he or she sees them and a proposed solution. The Conference is designed as a "no-fault" solution to quickly resolve the problem. There is no determination of whether or not discrimination occurred there is only an attempt to reach a mutually satisfactory solution. Approximatley 50% of our cases are handled in this matter.
- If no mutually agreeable solution can be 4.) reached at the fact finding conference or if no conference is held, the investigator must next prepare a finding. That finding is either that there is or is not reasonable cause to beleive that a discriminatory act took place. Sometimes more facts must be gathered before that determination can be made. The investigator's proposed finding must be concurred in by the staff attorney and the staff administrator. That finding must be objective. Last year, out of 240 cases opened, 105 of those have moved through the investigation stage. Cause was found in 47 of those 105 cases or 47%. No cause was found in 39 of those 105 cases or 37%. Settlements before finding were made in 11 of those 105 cases or 10%. The rest (8) have been closed for other reasons. 135 cases are still under investigation. All no cause findings and settlements must be approved by the Commission.
- 5.) Concilliation If there has been a finding of reasonable cause, the staff must attempt to concilliate the matter. Concilliations are reached frequently. Out of the 240 cases filed last year, with reasonable cause found in 47 of those cases, concilliations have been reached in 32 of those 47 cases or 68%. In 10 of those 47 cases it has been determined that no concilliation is possible. In 5 cases there are still attempts being made to consilliate.
- 6.) Contested Case Hearing If there is no concilliation the case is certified for hearing and one of the hearing officers is appointed and assigned the case. The parties are still free to settle the case prior to hearing and many do. If the hearing is conducted, the

rules of evidence are followed and the burden is on the complaintant to prove that discrimination took place. Hearing officers take testimony and receive exhibits and draft a proposed Order for the Commission. Either side may contest the proposed order in an appeal to the Commission.

- 7.) Commission Review If one party wishes to contest the proposed Order, written objections and briefs are filed with the Commission and a hearing is provided if requested with the opportunity given each side to present oral arguments. After the hearing the Commission issued a final Order in the case. If the Commission finds that discrimination occurred, monetary damages can be awarded. If they find no discrimination took place, the case is dismissed. As of June 30, 1980, 31 orders have been issued. In 14, the Commission found in favor of the complainant. Monetary damages were awarded in 13 of those cases In 17 cases, the Commission found in favor of the Respondent and the case was dismissed.
- 8.) District and Supreme Court Review The final Commission Order can be appealed to the district court. Four cases which have been decided by the Commission have been appealed to district court in which the Merits of the cases have been at issue. In one of those cases the Commissions decision that there was no discrimination was reversed. In another case, the Commission's decision that there was discrimination and the monetary award was reversed. That case is presently on appeal to the Montana Supreme Court. In the two other cases, the Commissions decision was affirmed. In one of those two cases, the Commission found discrimination and awarded damages, in the other we dismissed the complaint.

#### CONCLUSION

This Committee and ultimately the 47th Legislatuce must decide whether or not to continue the Commission for Human Rights. The Legislative Audit Committee has unanimously recommended that the Commission continue. Pages 35-37 of the Sunset Report discusses the effect of Commission termination. The bottom line of that report is, and I quote:

"There is no reason to believe that disbursing the Commission's functions among other state agencies would provide better service or cost savings to the state."

Let's examine briefly the areas of service and cost savings.

EEOC would continue to handle many of the cases we now handle for them -- but parties would be forced to deal with federal employees in Denver who do not always understand local problems and who are not required to come to the local community to hold hearings. Title VII does not, however, cover all that Montana's law does. Any employee of an organization of less than 15 is not covered. The Labor Department estimates that 80 percent of private employers are in that category. Title VII does not cover marital status cases, age cases for those under 45 years of age, political belief cases, or handicap cases -- about 30 percent of our cases. These parties would have to resort to our overcrowded court system for redress or have no place to go. The Report suggests that internal grievance procedures or the Personnel Appeals Division might be able to take state agency complaints, but without major legislative changes, no monetary damages or reinstatement orders could be given in those cases where the complainant prevails. Such increased work on these agencies would no doubt require increased funding without the benefit of EEOC contract assistance to offset the cost of the state's investigation.

The Commission and its staff have experienced numerous growing pains as we have evolved from our beginning in 1974. Our efficiency has increased dramatically. The Sunset Report on page 18 shows that the number of cases completed per year has increased 5 times while the average cost of completing a case has been cut in half. Continued emphasis has been given by the Commission to its staff that we are an agency of state government that is designed to be a neutral, investigative agency and not an advocacy agency. Staff members who do not reflect that position do not remain on the staff. Members of the Commission have actively sought out criticisms of our operating procedures and personnel in an attempt to improve what we do and in order to properly exercise our responsibility to this state.

Members of the Judiciary Committee, on behalf of John Frankino, the incoming Chair of the Commission, and the other members of the Commission who have just completed service or who will continue, and the staff of the Division, I u ge that you concur with the Audit Committee and that a recommendation of "do pass" be given to SB 311.

Submitted on behalf of the Human Rights Commission, John Frankino, Chair Designee, by Karen S. Townsend, outgoing Chair.



# REPORT TO THE SENATE JUDICIARY COMMITTEE ON SENATE BILL 311

February 9, 1981

Karen S. Townsend, Chair Montana Human Rights Commission

Raymond D. Brown, Administrator Montana Human Rights Division

#### Contents of Report

Basic Considerations	•	•	•	•	•	•	]
Basic Information .				•		•	2
Flow Chart	•	•		•		•	4
Appendix							

#### BASIC CONSIDERATIONS

- A bill for an act entitled: "AN ACT TO REESTABLISH THE COMMISSION FOR HUMAN RIGHTS UNDER EXISTING STATUTORY AUTHORITY AND RULES; AMENDING SECTION 2-8-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
- I. Does Montana need a Human Rights Act?
  - A. Equality is guaranteed by the Federal and State Constitutions.
  - B. The Human Rights Act is the legislative interpretation of how equality should be achieved.
  - C. Based on the Montana Constitution, Montana's law is more comprehensive than the federal law.

Answer: Yes, Montana does need a Human Rights Act.

- II. Is the Montana Human Rights Commission the best mechanism for enforcing the Human Rights Act?
  - A. Alternatives:
    - Other state agencies or combination thereof.
       "There is no reason to believe that disbursing the Commission's functions among other state agencies would provide better service or cost savings for the state." (Sunset Report, p. 37)
    - 2. Judicial. Under an informal administrative system, more cases can be more quickly and economically resolved than through the courts. Less than I percent of actual complaints (1480) and one-tenth of I percent of all inquiries (7859) received by the Human Rights Commission have been appealed to the court system (13), resulting in cost and efficiency benefits to all parties.
  - B. The Montana Human Rights Commission.
    - 1. The Legislative Audit Committee, after review of a thorough study conducted by the Office of the Legislative Auditor, unanimously recommended the reestablishment of the Human Rights Commission. The Committee's report is before you in SB 311.
    - 2. In the absence of a state enforcement agency, the federal government will investigate discrimination complaints in Montana.

Summary: The Legislative Audit Committee is presenting SB 311 for the reestablishment of the Montana Human Rights Commission. The Commission is in agreement with SB 311 and requests this Committee to recommend that SB 311 Do Pass.

#### MONTANA HUMAN RIGHTS COMMISSION

#### Basic Information

#### I. ORGANIZATION

The Montana Human Rights Commission is a 5-member citizen Commission (not state employees) appointed by the Governor and confirmed by the Senate. Their staff is the Montana Human Rights Division, presently 6.75 FTEs. (For respective roles of the Commission and Staff, see flow chart.)

#### II. OBJECTIVITY

A basic guiding principle of the American judicial system is that a person is innocent until proven guilty (Exhibit A). As a quasi-judicial agency, the Montana Human Rights Commission is sworn to uphold the law. The Commission must be objective. A review of determinations made by the Division for Commission review shows that 371 have been found No Cause, 343 have been found Reasonable Cause, and 193 have been settled prior to finding.

#### III. ACCOUNTABILITY

The decisions, policies, budget and funding of the Human Rights Commission are continually being scrutinized. Indeed, it may fairly be stated that the Human Rights Commission is subject to more accountability and scrutiny than most agencies of state government. Not only does the Commission answer to the three branches of government (legislative, executive, and judicial), but further to the Equal Employment Opportunity Commission (EEOC), client groups, and the business community.

#### IV. PERFORMANCE

Montana ranks fourth in the nation for the number of cases closed per employee (34), the average closure 21.4 (Exhibit B). The Rapid Charge Process has resulted in an increase of informal and conciliated settlements which "speed up the complaint process and provide more timely resolutions." (Sunset Review, p. 16) New cases are being processed within an average of 126 days.

Montana's cost per case is \$701, less than one-half the national average of \$1,404.31 (Exhibit C). With a small staff and immense geographical distances, this is a remarkable achievement.

#### V. OUTREACH

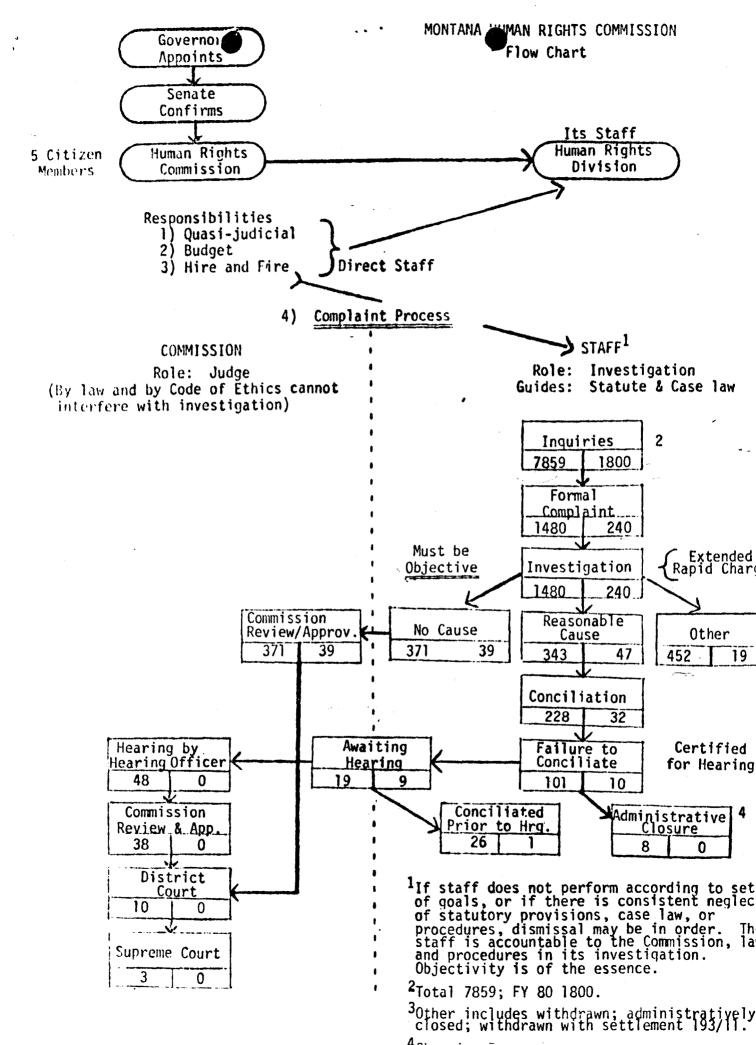
Some 20 seminars and workshops have been conducted in FY 80 for the business community. Approximately 1,000 persons total have been in attendance. (N.B. This is more than twice the number of presentations for "client" groups.) Some 10 workshops and conferences were conducted for client groups. Approximately 300 persons total were in attendance (Exhibit D).

#### VI. SUMMARY

In FY 80, the Montana Human Rights Commission underwent an extensive Sunset Review. The review was as positive as an objective audit could possibly be. "There is no reason to believe that disbursing the Commission's functions among other state agencies would provide better service or cost savings to the state." (Sunset Review, p. 37) As a result of the review, the Legislative Audit Committee unanimously recommended the reestablishment of the Montana Human Rights Commission. Such diverse groups as the Montana Federation of Business and Professional Women and the Montana United Indian Association have indicated their support for the reestablishment of the Commission (Exhibits E and F).

The Montana Human Rights Commission is an effective and efficient mechanism for the enforcement of the Montana Human Rights Act.

2/9/81



#### **APPENDIX**

- Exhibit A

  Memorandum to John Frankino from Raymond D. Brown
- Exhibit B
  Comparison of Numbers of Cases Closed
- Exhibit C
  Cost Per Case Per Total Revenue
- Exhibit D
  Letter from Personnel Systems Inc.
  Letter from Job Service Office, Helena, MT
  Letter from Mountain View School
  Letter from Skaggs Companies, Inc. (Respondent)
  Letter from Kathleen Barron (Charging Party)
  Letter from EEOC
- Exhibit E
  Position Statement from Montana Federation of Business and
  Professional Women's Clubs
- Exhibit F
  Press Release from Montana United Indian Association

#### MEMORANDUM

RE:

ANSWER:

John Frankino TO:

FROM: Raymond D. Brown EXHIBIT A

Legislative Objections

The Montana Human Rights Commission/Division presumes a Respondent guilty until OBJECTION:

proven innocent.

A basic philosophical principle in the American judicial system is that a person is innocent until proven guilty. As a quasi judicial agency, the Montana Human Rights Commission is sworn to uphold the law. If it were to adopt a contrary philosophical or legal stance, a complaint might be dismissed by an appeal court for technical reasons, i.e. lack of due process. The process is designed to protect both parties.

How accomplished: Complaints are screened. They must pass the "prima facie test": MacDonald Douglas v. Green, U.S. S. Ct., frivolous complaints are weeded out. The test includes:

- Must be a member of a protected class.
- 2. Must be qualified for the job in question
- 3. Must be a job
- The candidate must be rejected.

In other words a charging party cannot make "wild" accusations that a Respondent discriminates.

If the basic test is met, the complaint is accepted and a copy mailed to the Respondent. The Respondent is given the opportunity to give his or her side or in the words of the U.S. Supreme Court to "articulate a legitimate non-discriminatory reason for his action." (Note: the burden of proof is still on the Charging Party for discrimination. The above merely moves the case forward.)

The Charging Party has the opportunity to show that the Respondent's nondiscriminatory reasons were pretextual. Again, note the burden is on the Charging Party.

The Division must make a decision whether or not it is "reasonable" (different than "guilty") to believe some discrimination occurred.

If no cause to believe discrimination occurred, sent to Commission for review. If reasonable to believe some discrimination did occur, conciliation attempted If the conciliation fails, the case is set for hearing (de novo). Both parties submit evidence.

The process and all steps must be impartial and objective.

#### EXHIBIT 12\*\*

#### COMMISSION FOR HUMAN DEVELOPMENT COMPARISON OF NUMBERS OF CASES CLOSED STATE CIVIL RIGHTS AGENCIES FISCAL YEAR 1978-79

EXHIBIT 8

		Number of	Staff	Closure Rate
Rank	State	Closures	Size	Per Employee
1	Arizona	778	20	38.9
2	Nebraska	1,280	<b>3</b> 3	38.8
3	Colorado	1,435	40	35.9
1	Montana	238	7	34.0
-5	New York*	7,418	244	30.4
ti	New Hampshire	- 118	4	29.5
7	Georgia	404	14	28.9
8	Delaware	284	10	28.4
9	Wisconsin	2,004	73	27.5
10	New Jersey	2,807	108	26.0
11	South Dakota	123	5	24.6
12	kiaho	143	7	20.4
13	Wyoming	59	3	19.7
14	Michigan	5,254	<b>277</b>	19.0
15	Ohio	3,648	200	18.2
16	Alaska	427	24	17.8
17	Missou <b>ri</b>	894	52	17.2
18	Kansas	580	43	15.8
19	Rhode Island	225	15	15.0
20	Connecticut	1,417	116	12.2
21	Florida	368	37	9.9
22	Tennessee	189	24	<b>7.</b> 9
$2\overline{3}$	Kentucky	300	40	7.5
24	South Carolina	100	42	2.4
Averag	e Closure per Employee	(All States Responding	<u>;</u> )	21.4

<sup>\*</sup>Figures are for fiscal year 1979-80.

Source: Division of State Audit survey.

\*\*Excerpt from Program Evaluation on the Tennessee Commission for Human Development, January 1981, State of Tennessee, Comptroller of the Treasury, Department of Audit.

#### COST PER CASE PER TOTAL REVENUE\*\*

## EXHIBIT C

Rank	State	Number of Closures	Total Revenue	Cost Per <u>Case</u>
1	Nebraska	1280	\$ 598,502	\$ 467.50
2	Delaw <b>are</b>	284	140,000	492.95
3	New Hampshire	118	58,217	493.36
4	Colorado	1435	814,164	567.36
5	Arizona	<b>7</b> 78	501,460	644.55
5 6 <b>7</b>	New Jersey	2807	1,828,772	651.50
	Montana	<b>2</b> 38	167.000	701.68
8	South Dakota	123	98,278	799.01
9	New York	7418	5,970,500	804.86
10	Georgia	404	338,287	837 <b>.34</b>
11	Mis <b>souri</b>	894	<b>7</b> 50 <b>,9</b> 02	839.93
12	Wisconsin	2004	1,798,157	897.28
13	Ohio	3648	3,850,000	1,055.37
14	Rhode Island	225	241,297	1,072.43
15	Connecticut	1417	1,567,959	1,106.53
16	Idaho 💉	143	175,150	1,224.82
17	Wyoming	59	77,792	1,318.50
18	Tennessee	189	301.638	1,595.96
19	Michigan	5254	8,703,400	1,656.52
20	Kansas	580	1,049,446	1,809.38
21	Florida	368	926,045	2,516.42
22	Kentucky	300	769,700	2,565.66
23	Alaska	427	1,228,500	2,877.04
24	South Carolina	100	670,769	6,707.69
	-		•	
	Average Cost Per	Case from States	Responding:	\$1,404.31
	Average Cost Per	Case Without Sou	ıth Carolina:	\$1,124.83

<sup>\*\*</sup>Figures compiled from Program Evaluation on the Tennessee Commission for Human Development, January 1981, State of Tennessee, Comptroller of the Treasury, Department of Audit, pp. 21-22.

## EXHIBIT D

Suite 204 — Glacier Bldg. 111 North Higgins Missoula, Mont. 59801 Phone: (406) 543-8308

RECEIVED

DEC 4 1980 HUMAN RIGHTS DIVISION

December 3, 1980

Raymond D. Brown, Administrator Human Rights Division 616 Helena Avenue, Suite 300 Helena, MT 59601 -

#### Dear Ray:

A special note of thanks and appreciation should have been forthcoming to you and Joyce a long time ago. The program was most worthwhile, and the time and effort which you both put forth was greatly appreciated. A number commented on how much they got from the program, and how worthwhile they felt it had been.

If time can be found, and your schedule permits, it may be worthwhile to see if we could schedule a similar program for early next spring.

Best wishes for the holiday season.

Sincerely,

William M. Chase Vice President

WMC/jw

# E.E.O. Workshop 9:45 A.M. - 3:00 P.M. November 18, 1980 Chamber of Commerce Meeting Room Missoula, Montana

## EXHIBIT O

Jointly sponsored by Missoula Chamber and Personnel Systems, Inc.

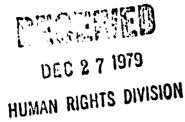
#### Workshop Leaders

Raymond D. Brown -- Administrator, Montana Human Rights Division

Joyce F. Brown -- E.E.O. Coordinator, State of Montana

	Agenda
9:45	Registration
10:00	Discrimination: Fact or Fancy Recent Court Actions and Directions
10:30	Laws Affecting Employees and Employers 1) Title VII 2) Montana Human Rights Act 3) Rehabilitation Act 1973 4) Equal Pay (comparable worth) 5) Montana Maternity Leave Act 6) ADEA
11:15	Theories of Discrimination
11:30	Questions and Answers
12:00	Lunch
1:00	Preventing Discrimination  1) Applications  2) Referrals  3) Screening  4) Interviewing  5) Selection
	Record Keeping Employers Guide
2:30	Questions and Answers
3:00	Adjourn

The charge for the Workshop is \$5.00, which includes lunch. The workshop will be limited to 40 participants, so reservations are necessary. They can be made by calling The Chamber 543-6623 or Personnel Systems, Inc. 543-8308.



JOB SERVICE AND

State of Montana
Dept. of Labor & Industry
Employment

Security Division

715 Front Street Helena, Montana

December 21, 1979

Ray Brown, Administrator Human Rights Division 7 W. 6th Avenue Helena, Montana

EXHIBIT D

Dear Ray,

We would like to thank you for being our guest speaker at our JSIP luncheon last week. Both the employers and the Job Service staff found it most pertinent, informative and helpful.

We would also like to extend our Season's Greetings and wish you a Happy Holiday Season.

Thank you, again.

Sincerely,

Bob Botterbusch, Co-Chairperson

John, Lowney, Co-Chairperson

Gene Severson, Manager Helena Local Office



STATE OF MONTANA

### MOUNTAIN VIEW SCHOOL

2260 SIERRA ROAD EAST HELENA, MONTANA 59601

00T 6 1980

HUMAN RIGHTS DIVISION

XXXXXXXXXXXXXXXXX -- DIRECTOR OF INSTITUTIONS

Lawrence Manto

October 3, 1980

DONALD P. ROBEL . . SUPERINTENDENT

EXHIBIT D

Montana Human Rights Division
Raymond D. Brown, Administrator
Suite #300, Steamboat Block Annex
Helena, Montana 59601

Dear Mr. Brown,

"Thank you" for speaking to our student body on September 30, 1980.

We were delighted to have such a knowledgeable source to draw upon to educate our students in career awareness.

Our faculty reports indicated that the students were very interested in, and gained much from your presentation. We were particularly impressed with your ability to field questions from a skeptical audience.

If possible we would like to draw upon your experience and expertise in the future. Thank you again.

Sincercly,

Jack Oberweiser

Field Learning Coordinator

Johnne Sherwood

Field Learning Coordinator

All mount

JO/jajs

## EXHIBIT D

27 October,

RECEIVED

OCT 31 1980

HUMAN RIGHTS DIVISION

Ray Brown, Director Human Rights Commission State of Montana Suite 300, 616 Helena Ave. Helena, Montana 59601

Dear Mr. Brown,

I want to thank you and the staff of the Human Rights Commission for the diligent and successful work towards the completion of my case against School District No. 1 of Butte, Montana. In particular, Rick Sherwood, who represented me, was always helpful, informative, and concerned. It has been very reassuring to have competent people working with me over the past four years.

It is my hope that your agency will continue as long as there are needs for your services. Any time you or your clients need a vote of confidence, I have one ready.

Thank you again.

Sincerely,

Kathleen Barron (Ms.)

Oldfields School

hleen Da

Glencoe, Maryland 21152



#### **EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

DENVER DISTRICT OFFICE 1531 Stout Street, 6th Floor Denver, Colorado 80202 303/837-2771

EXHIBIT D

September 16, 1980

Mr. Raymond D. Brown
Administrator
Montana Human Rights Division
616 Helena Avenue
Suite 300
Helena, Montana 59601

Dear Mr. Brown:

This is to congratulate the Montana Human Rights Commission on its fine performance during Fiscal Year 1980. Your outstanding performance is evidenced by a 10% increase during the Fiscal Year 1981 contract period for meeting four of four quality Federal performance standards.

Your Agency gives every indication of completing its Fiscal Year 1980 contract goal of 175 charge resolutions and is currently performing at a 96% acceptance rate. In addition, you have agreed to initially process dual filed charges in the State of Montana.

You are to be truly commended for your effectiveness in Title VII enforcement in an efficient and timely manner. We look forward to your continued performance in the upcoming contractual year.

With respect to the Montana Department of Labor processing pregnancy discrimination charges, this Commission cannot give substantial weight or review that department's findings. Again, as I have expressed, this Commission's position in the past, the Equal Employment Opportunity Commission will not fund a new 706 Agency within a State where there exists a working designated State 706 Agency such as the Montana Human Rights Commission.

Sincerely,

Donald P. Burris

Supervisor, State & Local

on ald PBunned

DPB:d1

#### MONTANA FEDERATION OF BUSINESS AND PROFESSIONAL WOMEN'S CLUBS

1980-81 Legislative Platform

#### ACTION ITEMS

#### Constitutional Amendment

Actively work to retain Montana's ratification of the Equal Rights Amendment and support the ratification process in unratified States.

#### Legislation

Support and seek implementation of State legislation that will:

Item 1. Effect, on a State level, Action Items 1, 2, 3 and 4 of the National Federation's Legislative Platform. Thos items are:

#### Item 1

Secure equal treatment for women in all areas of employment including the Congress of the United States and the armed services.

#### Item 2

Reform laws governing Social Security and pension programs to achieve equity and adequacy for women.

#### Item 3

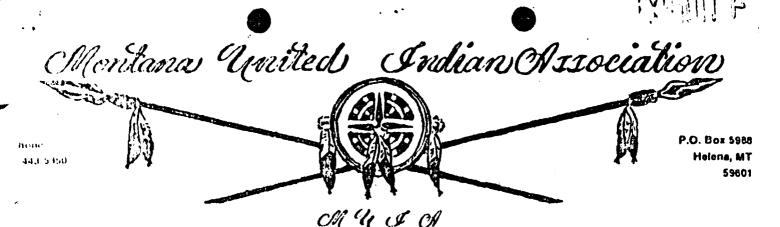
Bring about equal treatment of women and men, regardless of marital status, in all phases of economic life, with special emphasis on reforming the income tax system and elimination of discrimination in insurance.

#### Item 4

Promote research on and prevention of all types of family violence, violence against women, and provision of services to victims of such violence.

- Item 2. Assure the continuance of, and provide funding for, the Montana Iluman Rights Commission as a separate State Agency. (Under the so-called Sunset Law, many State boards and commissions were terminated effective at the end of fiscal 1981. The Human Rights Commission is included. It must be recreated and funded by the 1981 Legislature or go out of business.)
- Item 3. Keep in tact Montana's 30% Coal Severance Tax by opposing Congressional action to limit State coal severance taxes to 12%.

Adopted by the Montana Business and Professional Women's Clubs at the Meeting of the Board of Directors November 16, 1980, Butte, Montana



PRESS RELEASE FOR IMMEDIATE RELEASE NOVEMBER 15, 1980

The goal of the Montana United Indian Association is to improve the social and economic self sufficiency of the Off-reservation Indian people in the state of Montana, although we are deeply concerned with the preservation of all inherent rights of all Indian people as guaranteed in treaties with the United States Government.

The Montana United Indian Association wishes to go on record in support of issues that are of concern to us and the Indian people of Montana.

- 1. The Montana United Indian Association strongly supports the continuation of the Montana Human Rights Commission as an autonomous agency with adequate funding for sufficient staff to carry out the full intent of the law.
- Full dedication to a good and effective affirmative action plan to be developed by the State.
- We support the freedom of self determination by the Indian people of this great state in areas of, but not limited to; Water rights, Tribal land acquisition, Religion, particularly in the transportation of eagle feathers for religious purposes.
- The Montana United Indian Association supports the idea of a "concerns coalition" to meet the unmet needs of apparent powerless groups of people.

ALIA LABOR.

#### VISITORS' REGISTER

	HOUS	SE STATE	ADMINISTRATION	COMMITTEE			
BILL_	SB 273			Date	3/18		
SPONSOR	HAZELBAKE	R					
N	A ME	DECIDE	NCE	DEDDECEMEINC		CIID.	O.D.

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NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
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IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

#### VISITORS' REGISTER

*		HOUSE_	STATE	ADMINISTRATIO	ON	COMMIT	TEE
BILL	SB	311				Date_	3/18
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