

MINUTES OF THE MEETING OF THE JOINT APPROPRIATIONS SUBCOMMITTEE
FOR INSTITUTIONS

January 30, 1981

Office of Civil Rights Investigators

JACK K. MOORE, CHAIRMAN called the meeting to order at 1:15 p.m. All committee members were present except for Rep. Ernst (Excused) and Senator Johnson (Excused).

Testimony was given by Daniel G. Dix, Office for Civil Rights DHHS, and Jimmy D. Lovato, Office of Civil Rights DHHS.

THE CHAIRMAN asked to have a brief updating from the Office of Civil Rights investigators present with permission from their supervisor Mrs. Holmes. He stated the Committee wanted to know what precipitated your office involvement with Warm Springs State Hospital.

MR. DIX stated that it was basically a routine compliance review. The national office came up with priority issues that as an office they want to look at. In 1980 and 1981 there were 8 priority issues, one of which was mental health center and mental health hospital practices under Title 6 and under Section 504 of the Rehabilitation Act of 1973. There are 10 regions, region 8 which is in Denver and covers six states, and these regions are asked to look at the issues and send back some recommendations on areas we might want to look at. Under each of these items were nursing homes, hospitals, mental health centers, mental hospitals. The regions then picks 6 or 8 within the region and sends them back to be looked at.

THE CHAIRMAN asked if these are arbitrarily selected.

MR. DIX stated in a sense it is arbitrary. Some of the considerations are have they been looked at before, have there been any discrimination charges, what is their minority percentages included in their patient list. He noted the Denver makes a list and sends them on to Washington. Washington goes through them and takes one or two that fit the priority issues they want to look at. He stated in his region, Washington picked two, Montana State Hospital and Fort Logan in Colorado. Washington sends this list back with the authority to schedule a review of the agencies picked.

THE CHAIRMAN asked what is the exact intent of the Office of Civil Rights.

MR. DIX stated he wasn't quite sure what is meant by intent, but he explained the Office of Civil Rights is the enforcement arm in terms of Civil Rights for the Department of Health and Human Services. Our role is to monitor all the agencies and institutions that receive money through the Department to see that they are in compliance with the Civil Rights Laws. The Office of Civil Rights for Education monitors the civil rights compliance of education, and that is Dr. Gilbert Roman in Denver.

THE CHAIRMAN asked what is their entrance procedure when you enter the state.

MR. DIX stated once they have an issue and an institution they want to look at his department states putting information together, regarding Medicare, state health plan, policies anything helpful for background.

He noted they then write a letter of interrogatory, stating this is the type of information our office wants.

THE CHAIRMAN asked what time this letter was sent out, because the Director of the Department was unaware of your arrival.

MR. DIX stated the letter was sent last October. He apologized to Dr. Blouke for this. He stated what happened was that Warm Springs wrote his office and said they were tied up with putting together the budget and asked to postpone the review. His department said yes. It was set up for the first week in December, it was scheduled and plane tickets were bought; but Washington called and said there was no money for anything. After January when there was money, he called the institution and asked to come on January 26, and it was scheduled. Then Dr. Blouke called and we discussed whether it was a good time to come due to legislation, but I told him there wouldn't be much problem in our taking staff time. We wanted to come on site and look at policies, file records and interview unit supervisors. Mr. Blouke stated that would be fine and sent a letter to that respect.

THE CHAIRMAN asked Mr. Dix to tell the details of the briefing this morning at the institution.

MR. DIX stated he explained to the group at Warm Springs the process how we handle things regarding how they were picked, and we had not received any complaint. We were just making sure that all the rules and regulations were being followed. Everything went very smoothly. I explained our procedure that we will now take the information and go back to Denver. There it is put together and an investigation report is made. On that report we deliver a letter of findings that has to be cleared with our Department and with our attorney. He has to be sure he could take anything into court, if necessary. After the attorney clears it, it is then signed by our regional director and mailed to the institution. That part is to be done within 90 days of the on site program. There is another 90 days, after the letter has been mailed, for negotiations to meet with compliance. The agency has a chance to come back and have a plan that is acceptable. Once the plan is gone over and the review is over. We tell them fine we will monitor you and will expect in 6 months or a year for you to tell us what you say you have done. If the agency or institution says we disagree with you, or we are not going to remedy this, then at the end of the second 90 days we turn it over to our Washington office. Washington has two alternatives, they can issue an order to show cause and set the matter for an administrative hearing, or they can turn it over the Department of Justice and take it into federal court. Usually it goes administrative hearing first.

THE CHAIRMAN asked if this same procedure is followed by the Department of Civil Rights regardless of the department.

MR. DIX state yes it was.

THE CHAIRMAN asked what units at Warm Springs did you investigate?

MR. DIX stated they investigated the 7 units at Warm Springs.

THE CHAIRMAN stated he realized you have to go back to Denver and correlate this with your legal people, but is there anything radically wrong over at the hospital.

MR. DIX stated radically no. There are some things we need to discuss when we get back. He stated they never try to make a statement as to what is wrong or in violation without consulting the attorney. One of the things we will want to take a look at is the self-evaluation. Warm Springs was to take a look at themselves and come up with a transition plan. The material on that had been sent to the Department of Institutions. I have not seen this plan and will have to request to see it.

THE CHAIRMAN asked if the problem at the Children's Unit would be alleviated if it were located other than Warm Springs State Hospital.

MR. DIX stated the location is not necessarily the problem. They have a waiting list, and that shouldn't be.

THE CHAIRMAN asked if the children's rights were infringed upon when they were put into the institution.

MR. DIX stated he was not sure of that legal aspect, and would prefer not to get into that.

THE CHAIRMAN stated they are an inspection team, and he realized they do not have their legal counsel, but he asked at what point in time does the state's rights preclude the federal involvement in matters of Civil Rights.

MR. DIX stated he hasn't had this brought up before, but he would say when the state doesn't take any federal dollars. He noted there are two elements of jurisdiction, one is the laws themselves, and the other element is the receipt of federal money.

THE CHAIRMAN asked if there were no federal monies, then there would be no investigative procedures of the Office of Civil Rights.

MR. DIX stated probably not as it is, it would go over to the Department of Justice and they would follow through under the statutes.

THE CHAIRMAN asked Mr. Dix his concerns were with medical needs, and another department is concerned with educational needs. Do the medical needs take precedence over the educational needs.

MR. DIX stated he didn't think they took precedence, it was more like hand and glove. There is a regulation as to what happens in an institutional setting, and also a regulation for an educational setting.

THE CHAIRMAN stated going back to 1974, we were faced with some extensive complaints on the part of the Department of Justice in regard to all our institutions. As a consequence, we increased our appropriations throughout the Department by a considerable amount. I know that in the 75 biennium, the total expenditures were increased from \$57 million to \$87 million to satisfy the Justice Department's complaint. It was finally settled and we wound up spending a great deal of money for a state of our size. I find it difficult to understand why the Department of Health and the Department of Education now turn to Montana. I don't find this going on too much in the other states. I assume that Mrs. Holmes will notify this state around the middle of April, and we will be out of session and that puts us at a disadvantage. I would appreciate it if you could expedite this as soon as possible, and I will write Mrs. Kyle Holmes to see if we can get some indication on this before this legislature goes home.

REP. LUND stated this is evidently a new team, and haven't caused any problems yet. Our concern is with the education team and are they out of the same office.

MR. DIX stated last year the Department of Education was set up. At one time it was the same, but actually 2/3 of the office went to education and 1/3 went to Health and Human Services. We are entirely separate.

REP. LUND stated our concern is that we don't have the right department here. Our main concern deals with Boulder where the Office of Civil Rights came in and investigated. They told us we were not educating our children properly, and to meet the qualifications set forth by that office, it would cost us close to \$55,000 a year. These kids have an IQ of 20. We don't know where to go. We wish we could find the answer. Does anybody have the answers.

MR. DIX stated I don't. It is a problem obviously, particularly when the legislature is trying to come up with money for many things. Each department sets up their programs rules and regulations. I know of Boulder, but know nothing of the case itself. You could find the status of the case from Dr. Gilbert Roman.

THE CHAIRMAN stated the complaint has been filed in federal court already, we are trying to find the specifics.

MR. DIX stated if the complaint has been filed in court, they should all be laid out there.

MR. LOVATO asked Rep. Moore, if this complaint was filed by an individual, or was it through a compliance review.

THE CHAIRMAN stated the complaint was filed by an individual.

MR. LOVATO stated the law forces the Office of Civil Rights to investigate if there is an individual complaint.

THE CHAIRMAN stated a part of their complaint involved "least restrictive environment", and we don't know what they are talking about and are looking for an answer.

REP. LUND stated our concern is how far do we go. It appears to me that we don't hear of these things going on in other states, only Montana.

MR. DIX stated there are a lot of things going on in other states. A state that might feel put upon is North Dakota, who is having two reviews this year.

REP. CONROY asked how many years back do you do your review.

MR. DIX stated they are present oriented. We look at what is happening now and what would it take to bring it into compliance.

REP. CONROY asked how many states does Region 8 have jurisdiction over.

MR. DIX stated six states, Montana, Colorado, Utah, Wyoming, North Dakota and South Dakota.

MR. HOFFMAN asked Mr. Dix, one of the criteria for reviewing a facility was the federal participation within that facility, do you realize the Warm Springs State Hospital only has \$63,000 in 82 and if that is the case the review might cost more money than the participation.

MR. DIX state there is another part to that. The institution is directly under the Department of Institutions itself. In fact they have even more control, than I was aware of. We can look at the Department of Institutions in terms of whether they can be responsible to what is happening.

MR. HOFFMAN asked if they not only looked at the federal money going into a facility, but also the federal participation within the state.

MR. DIX stated no. We don't look at anything outside the Department of Institutions, and money that comes from the Department of Health and Human Services. Each department is to monitor the flow of the funds through that department.

REP. BARDANOUVE stated his comments should not be aimed at these particular gentlemen. I was somewhat disturbed at the person who sat here in December. I tore this article out of one of the Montana papers in January. This is the appropriation dollars put out since '61. In 1961 Montana was at \$75 million. In 1980 we are now at \$574 million plus federal dollars. It bothers me that we in Montana are probably spending more money for institutions than anywhere in the West. We have one of the highest cost institutions I can find at Boulder. I find two institutions in South Dakota comparable to Boulder, spend \$11,000 and \$15,000 a year. In North Dakota \$19,000 and \$25,000 a year. There are 11 institutions in

California and there is an average of 8,800 people in the retarded units, and their appropriation is \$31,000. I compared the figures I have given you now to Montana in the last fiscal year which is \$33,000, and the 1981 fiscal year is \$39,000. The proposed budget we are now working on is for \$46,000 and \$51,000. There is no institution that comes within a mile of it and we are put in court almost like a criminal. The budget for the whole state of Montana when I came here is less than the institutions now receive. There were 940 residents at Boulder, when I came, there are 234 today. At Warm Springs there were 1900 residents. We are now paying more for 300 and the other institutions are proportionately down, except the prison. There are less in the total institutions today than in Warm Springs then, and we are budgeting more than the total Montana budget then. I feel in Boulder we are unjustly treated. What are they doing in North Dakota and South Dakota. What are we supposed to do. We have one of the model retarded institutions in America and we are hauled into federal court like we are barbarians.

REP. CONROY asked if the reviews originate in Washington.

MR. DIX stated yes. There are 8 priority issues.

REP. CONROY asked how you determine who is going to be checked, is that from Washington.

MR. DIX stated Washington picks the issue and sends them out. They say here are the issues make some recommendation in terms of mental hospitals, mental health centers, Title XX etc. We in the regions usually pick 6 or 8 agencies and send them back to Washington. Washington goes through our recommendations and selects the one or two in each category they want us to look at. This year we will be conducting on site 10 reviews. Every state will be hit once or twice on major reviews, in addition every time we get a complaint, we have to move on that and investigate that.

REP. CONROY asked if it could be that their office is singling out Montana to get some background for your own data, so that you can go to other states and tell them what we have done.

MR. DIX stated no. I do not know why Montana was picked. All the six states will be having reviews in some area this year.

REP. CONROY asked what happens when they are doing the review, and find something being done above and beyond the call of duty.

MR. DIX stated it will be indicated on their review sheet those items that are in compliance, and those that are out of compliance. If we see something we see good we tell the institution we like it.

MR. LOVATO stated if we do find something not in compliance, we will negotiate with you to see how we can bring this into compliance. We try and work with the institution.

THE CHAIRMAN asked the investigators to copy some numbers down. The cost per resident at Warm Springs in 1980 is \$32,011 per resident, and our projected cost in 1981 is \$37,138. The Legislative Fiscal Analyst recommended cost in 1982 is \$38,750 and FY 83 is \$42,201. This makes our cost in 4 years \$10,000 increase. I would like to have you meet the Director of the Institutions, Mr. South.

MR. SOUTH stated he was very encouraged to hear you state that the Department does run Warm Springs. The correspondence between the offices was that you were going directly to Warm Springs and by-passing the Department entirely.

THE CHAIRMAN stated our primary problem is Dr. Roman, and his office. Our correspondence is rather vague, and we cannot operate on vagueness, we need specifics.

REP. BARDANOUVE stated he wasn't sure Mr. Roman realizes that at Boulder these children are profoundly and severely retarded. Their maximum attention span is about 10 minutes.

THE CHAIRMAN asked if they run into Dr. Roman, we would like to see him come up and see us. He and one of his attorneys were here in November, and we did not appreciate his parting remarks. We are still trying to find the exact nature of the complaints and how we can remedy them. We want to thank you for coming before us and we would like to know what is happening now, and if we can we will do everything in our power to remedy it.

MR. DIX stated we will try to get this out early.

REP. BARDANOUVE stated there is a priority request for a new treatment center for children by the Governor.

THE CHAIRMAN stated we have discussed the staffing to take care of 42 children and these will be discussed next week. We are not sure of the outcome at this time.

There being no further discussion or comments, the meeting was adjourned at 2:10 p.m.



JACK K. MOORE, CHAIRMAN

