

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
January 9, 1981

Page 1.

The third meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 24:

AN ACT TO ELIMINATE EXEMPTIONS FROM  
JURY SERVICE AND CLARIFY WHEN A JUROR  
MAY BE EXCUSED.

Senator Bill Hafferman, of Lincoln County, representing District 11, introduced the bill, and read letters of support from District Judge Robert M. Holter (Exhibit A), and County Attorney for Lincoln County, William A. Douglas (Exhibit B). These letters are attached to the minutes. Senator Hafferman then spoke in favor of the bill himself. There were no opponents.

Senator Olson opened questioning by referring to the legitimacy of a doctor's asking to be excused from jury duty. Senator Crippen added that he felt the bill as proposed went too far in limiting the discretion of the judge to excuse potential jurors. Senator S. Brown said that, in light of Senator Crippen's remarks perhaps an introductory phrase should be added, stating that if a potential juror satisfies certain criteria he could be exempt, but exemption would not be mandatory because of his profession.

Senator Anderson stated that this bill should not repeal Section 3-15-314, which states that if a person has great hardship, an affidavit would provide the means to get before the court.

J. C. Weingartner, representing Montana's State Bar Association, stated that although a separate bill brought by the clerks of court would change the duties of the clerks of court somewhat, the exemptions in Sections 3-15-311 would be left intact. Senator Hafferman said that he would leave it to this committee to establish whether the other bill under consideration would adequately address the matter he brought up in Senate Bill 24.

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CONSIDERATION OF SENATE BILL 40:

AN ACT TO REQUIRE PLAINTIFFS WHO  
RESIDE OUTSIDE OF MONTANA TO BEAR  
JURORS' COSTS WITHOUT RECOVERY IN  
ACTIONS WHICH COULD HAVE BEEN PURSUED  
OUTSIDE MONTANA.

Senator Bill Hafferman read a letter of support on this bill from District Judge Holter (Exhibit C), which is attached to these minutes. Other than the testimonial letter, Senator Hafferman had no remarks on the bill other than to say that as a taxpayer he would appreciate passage of it.

Mike Steven, Executive Director of the Association of Counties, stated that his organization was very much in favor of the bill because of the tax dollars it would return to the counties.

J. C. Weingartner said that the State Bar neither supports nor opposes the bill, but feels that it might be unconstitutional.

There were no opponents to the bill.

Discussion among the committeemen centered around the specific problems arising which might dictate a need for this bill, and whether or not the bill was really needed. In response to a suggestion from Senator B. Brown, Senator Hafferman agreed to do further research into why a need exists for the bill.

CONSIDERATION OF SENATE BILL 14:

AN ACT PROVIDING FOR FINES AND ASSESSMENT  
OF COSTS IN FELONY CRIMINAL CASES;  
ALLOWING COMMUNITY SERVICE AS A CONDITION  
OF DEFERRED OR SUSPENDED SENTENCES.

Senator Tom Towe, of Billings, took the committee through each section briefly and summarized the effect it would have.

Tom Honzel, of the County Attorney's office, spoke in favor of the bill. He pointed out that in some situations the victim of a crime does not want the defendant to go to prison. In those instances the judge is left with deferring or suspending sentence. He feels that this bill would make the sentencing process more meaningful. He also suggested that there should perhaps be a maximum amount of fine specified in the bill.

Mike Steven stated that the Association of Counties

supports this bill because of the option it gives the justice system, and because it saves the taxpayers money if a defendant were to pay a fine rather than go to jail. He pointed out that the cost to the county of keeping an individual in jail runs as high as sixteen to thirty dollars per day. In addition, the county would realize some reimbursement from the fines levied.

Senators Mazurek and Towe agreed that the crime of sexual assault should also be an exemption to the imposition of a fine in lieu of or in addition to a sentence.

Karen Mikota, representing the League of Women Voters, stated that the League also supports this bill.

There being no opponents to the bill, or further discussion, the meeting was adjourned at 10:57.

A handwritten signature in cursive script, appearing to read "Nick Anderson", is written over a horizontal line.

Senator Anderson  
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date January 9, 1981

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NAME	PRESENT	ABSENT	EXCUSED
<del>Anderson, Mike, Chr. (R)</del>	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

SENATE JUDICIARY COMMITTEE

BILL SB 14

VISITORS' REGISTER

DATE 1/09/81

SB 24

SB 40

Please note bill no.

(check one)

SUPPORT OPPO

NAME

REPRESENTING

BILL #

Keith A. Kirkpatrick Don't Tom Lowe

14

☒

JEFF GINALIAS

SEN Bob Brown

JIM FERRON

SECRETARY OF THE SENATE

TOM HOWZEL

County Attorney

14

☒

Sharon Goodaf

League of Women Voters

14-211

Karen Mikota

" "

(14) support

J.C. WINGGATWEN

State Bar of NY

40

Robert Melgaard

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

(3)

1-9-81

HELFA

443-5557

County Attorney

SB 14

**OPPOSE?**

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

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# *Nineteenth Judicial District*

*Lincoln County*

ROBERT M. HOLTER  
DISTRICT JUDGE

COURT REPORTER

January 6, 1981

Senator William F. Hafferman  
Montana Senate  
Capitol Station  
Helena, Montana 59601

Dear Senator Hafferman:

There are two bills currently pending in the Senate in regard to the selection and exemption from service of jurors. The bill which you proposed eliminates the exemptions under MCA-3-15-311 and makes other changes in regard to excuses from service.

The second bill was proposed by the Clerks of Court of Montana and similarly repeals the exemption statute, but then goes on to change the process of selection by appointing the Clerk of Court the "Jury Commissioner". I have inspected both bills quite carefully and heartily endorse both. However, I would urge that the Clerk of Court's bill be passed by the Legislature because it encompasses your bill and puts in reform needed in the larger counties.

I would first like to address the question of jury exemptions. If you look at the history of the bill, you will see that most of the exemption statutes were passed in earlier times. The main concern was the taking of a person vital to community life from the community for a considerable period of time in jury service. Transportation was slow and the trip to the county seat might involve several days in itself. The automobile now makes such plea irrelevant.

About the only other plea that the persons who now claim exemptions can really make is "I don't want to be bothered" or "I don't want to get involved". Far too often a judge hears that as the real reason that some person who claims an exemption under the present code does not want to serve. While these people claim to be too busy to partake in their civic duties, we frequently find them occupying ski hills, golf courses, taking extended vacations and the like. Such activities which really show that the real reason they want out of jury duty is as stated above.

A careful perusal of the exemptions listed will show that the people exempted are the very ones who ought to

*Exhibit A*

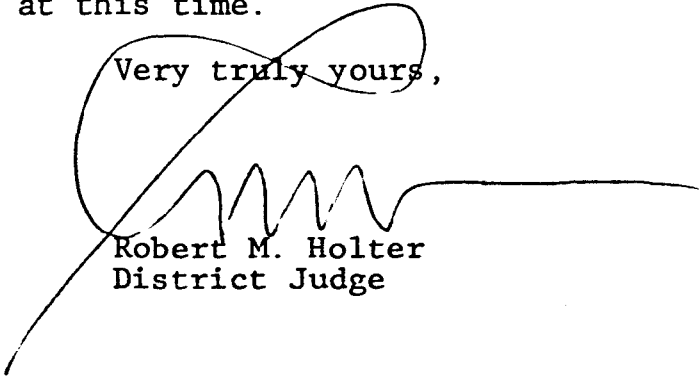
*3*

to serve on juries. The Legislature every session is in one manner or another approached by persons who wish to limit liability to themselves or their groups. All professional groups these days talk of "malpractice" yet these are the same ones who claim exemptions! Needless to say, it is ironic that the persons who claim to be targets of lawsuits do not want to serve on juries. In the smaller communities, these persons also represent the ones who have had better educational opportunities, greater exposure to the more complicated problems of life and as a result thereof are probably better informed. While they do not want to put aside their daily labors, I must remind you that their daily pay is no more important to them than a person who does not have the exemption. Nay, the person with less education probably sacrifices more by missing a few days of work.

In regard to the Jury Commissioner as suggested by the Clerks of Court of Montana. This is another jury service reform which will be very helpful. Under the present usage, it takes a great deal of the District Judge's time to comply with the jury selection requirements. Under the Clerk's bill, the Clerk would be substituted for the judge and would take over the judge's duties. The Clerk would be bound by the same stringent rules which guide the judge. Statewide, this bill will result in the saving of a great deal of the District Court Judge's time, freeing him for duties which are judicial other than simply administrative as the jury selection process is.

You have the right to utilize these observations for any purpose you wish in regard to the pending legislation. I wish I could spare the time to present them in person, but find it impossible to do at this time.

Very truly yours,



Robert M. Holter  
District Judge

RMH:jr

*Exhibit B*

LINCOLN COUNTY ATTORNEY

512 CALIFORNIA AVENUE  
LIBBY, MONTANA 59923

6 January 1981

P.O. BOX 795  
(406) 293-6268

WILLIAM A. DOUGLAS  
COUNTY ATTORNEY  
SHAUN R. THOMPSON  
DEPUTY

State Senator Wm. Hafferman  
Capitol Building  
Helena, Montana 59601

Re: Jury Duty exemptions

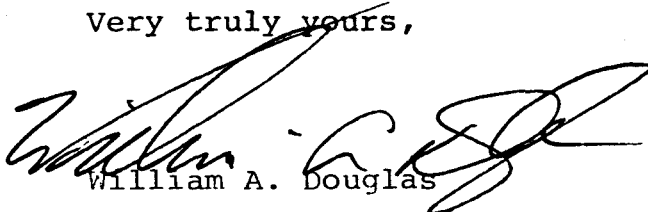
Dear Senator Hafferman:

I have been contacted by Judge Robert M. Holter respecting a bill which you are sponsoring which eliminates trial juror exemptions.

The purpose of this letter is to voice my complete support for a bill which eliminates the exemptions which currently exists under our Montana statutes. The reasoning behind the exemptions which currently exist is archaic under present day conditions. We may very well encounter a situation whereunder a party litigant, particularly a criminal defendant, may successfully challenge a jury verdict by reason of having been deprived of a panel from which the jurors were selected that contained teachers, doctors, nurses, lawyers, and other persons who are currently exempt. I understand that this has been done successfully in other states, and it is only a matter of time that it happens to us in Montana.

Again, I voice my enthusiastic support for that bill mentioned.

Very truly yours,

  
William A. Douglas

WAD:bn

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# Nineteenth Judicial District

Lincoln County

ROBERT M. HOLTER  
DISTRICT JUDGE

COURT REPORTER

January 6, 1981

Senator William F. Hafferman  
Montana State Senate  
Capitol Station  
Helena, Montana 59601

Dear Senator Hafferman:

I would like to make some observations to you in regard to the bill on assessing court costs to a plaintiff coming in from another state whose case could be heard in that other state.

This is not a common situation, but occurs often enough to be of some concern. The situation which usually happens is that some person from another state files an action in Montana against a business entity which does business in the state where that person resides as well as in Montana. Under certain circumstances, this is completely within the law and it is the right of the plaintiff to do so.

However, the small counties sometimes end up with rather large bills because they are required to provide juries for such trial. This bill would simply put the cost of jury service upon the plaintiff in such actions.

It might be argued that this bill is unconstitutional because it differentiates between the resident and nonresident. My own reaction is that it does not. It is carefully drawn to recite that it only applies to a plaintiff who could have brought the same suit at home but for reasons of his own chooses to put it in Montana and subject the State of Montana to the expense that should be born by his state. On the defendant in his home state, the bill would not apply.

Very truly yours,

Robert M. Holter  
District Judge

RMH:jr

*Exhibit C*

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