

MINUTES OF THE MEETING OF THE HOUSE RULES COMMITTEE  
June 24, 1982 SPECIAL SESSION II

The meeting of the House Rules Committee was called to order at 10:55 a.m., June 24, 1982, by Chairman Fagg. Roll call was taken and all members were present except Representatives Moore and Spilker, who were excused.

REPRESENTATIVE KEMMIS told committee members that he had glanced through the court opinions contained in EXHIBIT 1. He said they do not really apply to the case at hand.

CHAIRMAN FAGG said the question of the paired votes is really a philosophical question and this committee should do what is right.

REPRESENTATIVE KEMMIS said the issue before this committee is not whether someone can vote from a ship or a foreign country but rather the issue is whether someone does not have to attend a legislative session but is allowed to vote on matters brought up during that session.

CHAIRMAN FAGG said the two representatives in question were elected to vote during the legislative session and if those representatives do not make an attempt to vote, then they are not representative of their districts.

REPRESENTATIVE KEMMIS told the committee that in 1971, Representative Harold Gerke did not come to the legislative session for the first three weeks and his vote was never paired during his absence.

REPRESENTATIVE SIVERTSEN reminded committee members that the nature of this session is that it is a special session called by the Governor. If this had been a regular legislative session, those two legislators would not have been out of the country.

REPRESENTATIVE MARKS offered the following suggestion. A legislator would be allowed to pair a vote on an issue or question that was raised during his/her absence if that legislator is briefed on the situation in advance of voting. If an issue or question is raised and there is not enough time to inform the legislator of the issue, that legislator would not be offered the opportunity to pair a vote. Representative Marks said a complete review of pairing votes would be appropriate at another time, but an agreement by the leadership that pairing be allowed in the above manner would be acceptable for this special legislative session.

REPRESENTATIVE KEMMIS said the issue is not whether the legislator is informed or not. The issue is one of setting a precedent of allowing people to not attend a session but allowing them to vote.

REPRESENTATIVE SIVERTSEN said an electorate elects responsible people and this type of situation will not be abused. This is a special session and was called not too far in advance. This is an exception that has to be recognized or considered.

REPRESENTATIVE VINCENT said there is an obligation of elected officials to attend sessions. He said all the legislators knew, two to three months ahead of time, that the special session was coming. The elected official, with the exception of family problems, has a responsibility to attend those meetings.

CHAIRMAN FAGG told the committee that Representative Conn had spoken to the President of the Senate and he had told her that pairing her votes would be an acceptable practice. Representative Conn left the country, after talking with the leadership of the legislature, thinking her votes would be paired and there would be no problem with that practice. Had she known her votes would not be counted, she would never have left the country.

CHAIRMAN FAGG said the pairing procedure has been loose in the past years and the two representatives should be allowed to have their paired votes counted. The pairing procedure can be better defined for future use after the special session is over.

REPRESENTATIVE DUSSAULT made a motion that individuals who have not answered an attendance roll call in a legislative session not be allowed to pair under the rules of the House.

The motion was voted on and FAILED because of a tie vote. A roll call vote was taken and Representatives Dussault, Kemmis, Menahan and Vincent voted "aye". Representatives Fagg, Marks, Fabrega and Sivertsen voted "no".

CHAIRMAN FAGG requested taking this issue to the Joint Rules Committee.

REPRESENTATIVE SIVERTSEN moved this issue be taken to the Joint Rules Committee.

REPRESENTATIVE MARKS said the problem before the legislature is a House problem. He asked if this committee couldn't come up with a solution to this problem today so that the issue can be taken care of. Chairman Fagg said the purpose of taking the issue to the Joint Rules Committee is because this committee cannot come to a decision.

REPRESENTATIVE MARKS asked the committee members if they couldn't try to work on the suggestion he had offered earlier in the meeting.

REPRESENTATIVE SIVERTSEN withdrew his motion.

CHAIRMAN FAGG said, to his knowledge, an informed legislator has never not been allowed to vote.

REPRESENTATIVE DUSSAULT said this legislative body can't dictate precedents to future legislative bodies. The rules indicate the presiding officer has authority over point of order. She said the presiding officer should make a ruling and then that ruling can be challenged and debated on the floor of the House.

REPRESENTATIVE SIVERTSEN asked if there is something in the rules that definitely says an individual cannot vote by pair if that individual has not attended the meeting. He was told no, there is nothing in the rules to that effect.

CHAIRMAN FAGG asked the committee if this issue could be given to the Attorney General's office for a legal opinion. The committee felt that would not be a proper thing to do.

REPRESENTATIVE SIVERTSEN moved that this question of vote pairing go to the Joint Rules Committee.

The motion was voted on and PASSED with all committee members voting "aye" except Representatives Kemmis and Menahan.

The meeting was adjourned at 11:40 a.m.



---

HARRISON FAGG, Chairman



SENATE MEMBERS  
PAT M. GOODOVER  
CHAIRMAN  
CARROLL GRAHAM  
JOSEPH P. MAZUREK  
JESSE O'HARA

HOUSE MEMBERS  
JOHN VINCENT  
VICE CHAIRMAN  
BURT L. HURWITZ  
REX MANUEL  
BOBBY SPILKER



## Montana Legislative Council

State Capitol  
Helena, MT. 59620

(406) 449-3064

DIANA S. DOWLING  
EXECUTIVE DIRECTOR  
CODE COMMISSIONER  
ELEANOR ECK  
ADMINISTRATIVE ASSISTANT  
ROBERTA MOODY  
DIRECTOR, LEGISLATIVE SERVICES  
ROBERT PERSON  
DIRECTOR, RESEARCH  
SHAROLE CONNELLY  
DIRECTOR, ACCOUNTING DIVISION  
ROBERT C. PYFER  
DIRECTOR, LEGAL SERVICES

June 24, 1982

TO: Rep. Bob Marks  
FROM: Cort Harrington, Staff Attorney  
RE: Paired votes

Question: Is the practice of "pairing" constitutionally permissible?

Short Answer The effect of "pairing" is to treat both the legislature who is present and agrees to "pair" votes with an absent legislator and the absent legislator as not participating in the proceeding. "Pairing" is permissible if neither of the "paired" votes is counted in the final tally but is probably constitutionally impermissible if both votes are counted in the final tally.

Discussion No cases could be found that directly address the question of the legality of pairing. There is, however, a discussion of pairing in

In re Opinion of the Justices 228 Ala. 140, 152 S. 901 (1934). That case involved a special session of the Alabama legislature called by the Governor. The Alabama Constitution required the approval of 2/3 of each house of the legislature before a bill not within the governor's call could be considered. A bill not within the call was brought before the senate. The vote on the bill was 22 yes votes and 11 nay votes, and one member announced that he and an absent member were paired and he would vote nay and the absent member would vote yes. If neither paired vote counted the bill would be approved by 2/3 vote (11 to 22). If both of the paired votes were counted the bill would fail (12 to 23) and if only the paired vote of the member present were counted the bill would also fail (12 to 22). Faced with this uncertainty the Governor of Alabama requested an opinion of the Alabama Supreme Court concerning whether the bill passed. The Alabama Supreme Court found that the senator who was present but who agreed

with an absent senator to pair their votes is treated as if he were absent for that vote. Since both senators were absent or treated as though he were absent neither vote counted and the bill passed by the necessary 2/3 majority, 22 to 11.

The case suggests that pairing is permissible but it also holds that paired votes do not count in the final tally. In effect the legislator who is present and paired agrees not to vote.

This case is not a Montana case and therefore is not primary authority on what the law is in Montana. A reading of Montana's Constitution and the transcripts of the Montana Constitutional convention suggest, however, that a similar result would be reached in Montana. The relevant provision of the Montana Constitution is Article V §11(1) which provides in part "No bill shall become law except by a vote of the majority of all members present and voting." This language suggests that the paired vote of an absent member cannot be included for purposes of establishing a majority. The transcripts of the Montana Constitutional Convention (Vol IV pp. 672,673) support this interpretation.

Paired votes are probably constitutionally permissible if neither vote is counted. In instances where a simple majority is required not counting paired votes would have the same effect as counting them.

As the Alabama case indicates, where more than a simple majority is required the results may be different depending on whether the paired votes are counted or not. In recognition of this, rule 9-8 of the Joint Rules of the Montana Legislature requires that on votes requiring a two-thirds vote for adoption three members may pair, with two members for the measure and one member against. In Montana, the outcome of a vote requiring two-thirds vote would be the same regardless of whether the vote were counted or not, assuming of course that two of the three paired votes were from legislators who were present.