

MINUTES OF THE MEETING OF THE APPROPRIATIONS COMMITTEE
February 4, 1983

The Appropriations Committee met at 8:15 p.m. on February 4, 1983, in Room 104, with Chairman Francis Bardanouve presiding and all members were present. Judy Rippingale, Legislative Fiscal Analyst was also present. HOUSE BILLS 84, 131, 247 and 317 were heard. EXECUTIVE ACTION was taken on HOUSE BILLS 84 and 385.

(Tape 1: Track 1:336)

HOUSE BILL 317: "A BILL FOR AN ACT ENTITLED: "AN ACT TO APPROPRIATE MONEY TO THE DEPARTMENT OF LIVESTOCK TO SATISFY A FINAL JUDGMENT IN CAUSE NO. 79-14-GF, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA, GREAT FALLS DIVISION, IF THE CASE IS UPHELD ON APPEAL." was heard.

Rep. DEVLIN, the bill's chief sponsor, explained his bill. (Exhibit 1.)

Proponents:

MIKE YOUNG, Administrator of the Insurance & Legal Division of the Department of Administration, explained that their interest in this bill is one of intermediary and broker; that he was the drafter of the bill and was before the committee to explain the history of the bill. He said, "Dr. Glosser was sued personally in his individual capacity for violation of federal civil rights arising out of the revocation of the plaintiffs' brucellosis test card permits, which is a unique permit and license given by both the state and federal governments to veterinarians to test cattle for brucellosis. As I understand the facts, Dr. Glosser revoked the plaintiffs' permits without a prior hearing. The Board of Livestock arranged a post-revocation hearing and the permits were later reinstated. This revocation, according to the jury, denied the plaintiffs their civil rights and Dr. Glosser, in his quasi-public capacity, acting under color of the law - which is different from being an employee - was held liable under the federal civil rights laws. It was tendered to us under the state Tort Claims Act, which ordinarily would pick up negligent or wrongful conduct of a state employee who is acting in the course of the scope and who isn't engaged in any kind of intentional action. We examined the complaint. It was exclusively predicated upon federal liability. It is an alternative remedy and one can proceed in either direction... in either the state court remedies - in which case we pick it up - or under federal court remedies - in which case we can't. In this particular instance, we did agree to pick up Dr. Glosser's attorneys' fees and have been assisting in the defense of the case, but we did proceed to hire a lawyer of his choice to prosecute the lawsuit. The case was tried before a jury and the jury awarded a judgment of \$272,000 against both Dr. Glosser and the federal veterinarian, Dr. Houle, who was also named in this act."

Mr. YOUNG further stated, "I have had to extrapolate some of the other costs because in order to preserve our position in the case, we filed an appeal with the Ninth Circuit Court of Appeals in San

Minutes of the meeting of the Appropriations Committee
February 4, 1983.

Francisco and the defendants' brief was filed just a few days ago; and so I had to add some other items here. I've added in \$1,500 for anticipated costs, which would include things like deposition costs, witness travel and sheriff service fees, etc. I calculated interest - there is interest of 10% on these judgments from date of judgment - and I've anticipated 2 1/2 years from the date of entry, which was March 23, 1982. That may be wrong... I really don't know... I've had cases in the Ninth Circuit go longer than that and I've had cases go very fast, and I really don't know what the calendar is like these days. Also, under the federal law, attorneys' fees can be awarded in the discretion of the court and while attorneys' fees were requested and asked for in this case, they were denied by the federal District Judge. That is a cross issue, on appeal, as I understand it, and the plaintiffs are claiming attorneys' fees. We don't know what the amount would be, so I have just guessed at \$50,000, which is probably the outside limit they would go. The sum total of this bill, then, is \$391,500. The bill is predicated, at the request of the sponsors, upon the appeal being maintained and continuing for it. It is predicated upon our loss on appeal and any unexpended portions of this appropriation would revert back to the General Fund. I will be more than happy to answer any questions."

MONS TEIGEN, representing the Montana Stockgrowers' Association and the Montana Cowbells organizations, then gave his support of the bill. (Exhibit 2.)

CHANNING J. HARTELIUS, Attorney for Drs. Doran, Scott & Bailey, testified on behalf of his clients. (Exhibit 3.) He stated, "I am not going to go through the merits of the case because a jury of six people have decided that. What we want to alert this committee to is that we are desirous of ending the process at this point. We recognize the bill proposed is \$391,500, but we want to alert the committee to the fact that we have made a proposal to settle this matter fully and entirely for \$260,000. We are aware that a bill has been drafted, but has not been sponsored, so we believe it is within the power of the committee or any sponsors to amend. In the event that you do not wish to do that, then obviously at some point when we are successful - which we believe we will be - we believe we should get paid. Why do we believe that it is time now to bring this to an end rather than to continue the process? We believe it is in the interest of the Montana taxpayers, in the interest of my clients, in the interest of the State of Montana and even in the interest of the defendants. To give you a little history of how long this has been going on - so you can begin to realize some of the trauma for all parties involved - it was back in November, 1977 when the permits were removed and the request for reinstatement was made. That was denied. In May, 1978 the Board of Livestock met and ordered the permits be reinstated. Through some efforts - or some maneuvering, so to speak - the permits were never obtained. Finally, in March, 1979, after a tremendous amount of effort, a lawsuit had

Minutes of the meeting of the Appropriations Committee
February 4, 1983.

to be filed. Before the lawsuit was filed, there was an offer that the plaintiffs made to settle the matter for \$20,000. Of course, that was rejected." Rep. BARDANOUE inquired who rejected the offer? Mr. HARTELIUS replied, "The defendants, on behalf of Dr. Glosser and Dr. Houle, rejected the offer of \$20,000. In March, 1982 the matter finally came to trial. Prior to trial, we made an offer at that time of \$90,000. That represented what we believed and calculated was much less than the actual damages, but in any lawsuit you attempt to minimize additional costs and risks, so at this point and prior to the trial, the offer on the table was \$90,000. It was rejected again. Plaintiffs, according to the defendants, didn't have any recourse, didn't have any rights, and they didn't have a good lawsuit. The jury came back and they said, '\$272,000.' Now, in February, 1983 we have, at least two or three months ago, submitted an offer of \$260,000, which is less than what the jury awarded back in March, 1982. We have offered to waive any interest; we have offered to waive any potential attorneys' fees - which we believe we are entitled to - and we suggest at this point, when we compare the risk the state and the taxpayer has and the additional trauma for Drs. Glosser and Houle and, in fact, even my clients, that it is much more advisable to attempt to get the matter settled now than to continue the process. What are the risks? What are the potential costs? On behalf of Dr. Glosser alone, the state has paid over \$60,000 in attorneys' fees. If this matter continues to go on, it is more than likely that the attorneys' fees are going to exceed an additional \$10,000 or \$20,000 through appeal. If, for some reason - which we do not believe is likely - the Court of Appeals were to reverse the decision, we're going to take it up to the United States Supreme Court. If we have to re-try it again, the State of Montana, even on Dr. Glosser's defense alone, is looking at easily another \$60,000 to \$100,000 in attorneys' fees. The attorneys, let me make clear at this point, are not the ones who are supposed to benefit the most out of this thing, and the plaintiffs' attorneys are not getting paid an hourly fee. The most important point and the plaintiffs' attorneys point is that we believe our clients have been damaged, the jury found they have been damaged and we would like, at this point, to make sure the committee is aware of the fact that we believe it is the state taking the risk of not only the attorneys' fees, but the additional interest, and the additional judgment, which could easily exceed the \$391,500 figure."

CURTIS HANSEN, registered lobbyist for the Montana Veterinary Medical Association, supported the bill. (Exhibit 4.)

Rep. SWITZER supported the bill.

Rep. RYAN supported the bill.

GREG MORGAN, trial lawyer in Bozeman, who tried the case, testified

Minutes of the meeting of the Appropriations Committee
February 4, 1983.

in favor of the bill. He was co-counsel with Mr. Hartelius. He stated, "Somebody advised Dr. Glosser, when we attempted to get the matter settled in administrative proceedings, and I think Dr. Glosser rightly took that advice - unfortunately it was bad advice - and the case didn't get settled. Somebody advised Dr. Glosser when the suit was filed that he had done no wrong, and he took that advice, as he should have, and it was bad advice again." Rep. BARDANOUE asked if that was a lawyer's advice? Mr. Morgan replied, "I wouldn't know. I'm sure it wasn't Dr. Glosser's decision and he didn't do it without asking a lot of people's opinion. In any event, we made some efforts to settle the case at that point, and again, we met a stone wall. Finally, about two weeks before trial we made another desperate effort to settle the case and, again, somebody advised Dr. Glosser and the state that there couldn't be a loss, that nothing would happen at the trial. The judge on this case was Paul Hatfield. As a result of that trial, six people sat down and deliberated from about 10:00 in the morning until about 3:00 in the afternoon and came back with the unanimous verdict that Dr. Glosser had committed a violation of law and should pay a total amount of \$272,000 for that violation. Now, someone is advising that this case ought to be continued on appeal to the Ninth Circuit and that you should put \$390,000 of the state's money on the line on the chance that when it goes to the Ninth Circuit Court of Appeals - I think those same people are still giving him advice that they are going to win the case when it comes back. What we're saying to you right now is if you will settle the case, if you will make the decision that nobody has had the nerve to do up to this point, I think I can save you \$140,000 right here, if we can get another bill drafted and get it through the Legislature."

Rep. DONALDSON testified in favor of the bill. He stated, "When the judgment was rendered, I asked Mr. Young to help draft two bills... one for \$260,000, or something in the vicinity of that figure, and the other for this bill, HB 317. After considerable discussion with a number of people, including members of this committee, the Board of Livestock, the principals in the case, I talked with Rep. Devlin and decided this was the proper bill to bring forth. It was a precedent-setting case and it appears it's probably proper that we see it through the appeal process, and in talking to all those people, they were not unanimous. I think there were only one or two who indicated anything different, and this is why we have this bill. I have a companion-type bill that was heard in judicial committee last week which basically defines more closely the responsibility of the state to various employees and I am hopeful that bill will be brought before the House very soon and we can discuss this principle a little further. I recommend the committee give a "do pass" to this bill.

Opponents. None.

Rep. DEVLIN gave a closing statement in favor of a "do pass" on the bill.

Minutes of the meeting of the Appropriations Committee
February 4, 1983.

Discussion:

Rep. WALDRON said that he was a little confused and asked just exactly what it was that Dr. Glosser did? Mr. YOUNG stated, "The basic thing that happened was that Dr. Doran's brucellosis test card permit was revoked, based on some information Dr. Glosser had received that some brucellosis infected cattle had been shipped out of state. There was no hearing granted prior to revoking the permit. The deputy state veterinarians are allowed to go into the auction yards and do these state and federal tests with this permit card and that generates a considerable spin-off business and other fees for other treatment because they have to be right on the premises and that's what you're seeing here as the basis for this kind of an award. It isn't so much the card permit itself, in fact I believe they have to do the brucellosis test free, but what it does is put a veterinarian in a situation where he almost has a monopoly on the veterinary services in that yard. I've questioned this practice right from the start... that anybody be in the position to get that kind of spin-off benefit as opposed to everyone else. I'm not certain whether I'm one of the mysterious persons doing the advising... I'm really not... but there's a thing I'd like to clarify. There were two settlement offers that came to me specifically and one of them was for \$60,000 a few months before the trial... Mr. Morgan came in one day... and the condition that you didn't hear was that the payment had to be immediate. After the judgment came down, the \$260,000 was negotiated and again the payment had to be immediate. The problem we had was that this is not a liability of the State of Montana - the State of Montana cannot be named in one of these cases - and I was simply not free to just write a state check and have it all done without the consent of the Legislature. In fact, I'm probably out on a limb for having put up the attorneys' fees for it under the Tort Claims Act." Rep. BARDANOUVE said, "You probably are." Mr. Young continued by saying, "Our position all the way through this is that while this could be brought under the Tort Claims Act and was an alternative remedy available to the plaintiffs, they didn't choose it... they decided to go against the man individually and we brokered the case, but we simply couldn't pay. We're not at all at liberty to pay federal judgments against state officers in their personal capacity. So, we have no choice but to file an appeal."

Rep. BARDANOUVE said he had one question which hasn't been answered and he thought it is the key to this whole thing. "At what point was it determined that the Livestock Board - Dr. Glosser as an employee of the Board - was not responsible?" Mr. YOUNG replied, "When the case came to us, we treated it like an insurance company would treat a non-covered situation. The duty to defend is broader than the duty to pay, but when a complaint comes in and alleges all of these horrible, nasty things, we don't know whether it's true or not. So what we do is send the individual - and we've written a number of department directors these kinds of letters - we

Minutes of the meeting of the Appropriations Committee
February 4, 1983.

send a 'reservation of rights' letter to the effect that, 'We're not going to pay, it's individual, we can't pay, we won't pay; if there's a judgment against you, you're on your own; we don't want a conflict of interest... we're not even going to represent you, but we'll hire you someone of your choice that we approve of.' That's the kind of letter Dr. Glosser got. He got that about the first we knew this was going on and Mr. Morgan was well aware of that and we were put in a real anomalous position because after this got started, the Board of Livestock, acting under a state statute, passed a resolution to the effect that he was acting in the course and scope of his employment, which put me right behind the eight ball. I had a Board on one hand saying, 'Yes, he was.' and I had the plaintiffs and a federal jury saying, on the other hand, 'He wasn't.' So, we decided our best position was that if there is an individual judgment, it should come to the Legislature by way of indemnity or by way of an appropriations bill to pay the judgment and we would defend under a 'reservation of rights' and that's how we got here."

Rep. BARDANOUE said he was not clear yet on when the decision was made that Montana and the Board of Livestock was not responsible. He asked, "Who made that determination?" Mr. YOUNG said, "That's federal law. Under Section 1983, which is the Civil Rights Act, the individual officer acting under color of law is individually responsible. The U.S. Supreme Court has held that 1983 does not apply to states and states cannot be sued - they cannot be liable - nor can they be made party, and that has been eroded somewhat in the last year or so. They are now allowing these kinds of cases against corporate municipalities, but the U.S. Supreme Court is very consistent in holding that the states are not persons - they are not subject to acting under this statute and it's an individual remedy. I would like to point out one additional thing. This problem has become so widespread - there are about 150 of these kinds of cases winding their way through state government right now - and we've had three settlements and this judgment over the years made by individual departments and I'm not familiar with the terms of those other settlements. We took a survey last summer of all state agencies because we're thinking about trying to self-insure this risk if the Legislature will go along with it and that's the bill Rep. Donaldson is alluding to tonight, House Bill 357, which should avoid this scene in the future. It's an indemnification statute for these kinds of losses. It has restrictions and conditions under which they can be indemnified. It was heard in House Judiciary last Wednesday, and hopefully, if we can get it passed and start assessing a premium, we won't ever have to be in here on these kinds of special appropriations."

Rep. PECK asked, "What is a card permit?" Mr. YOUNG replied, "It is an authorization issued by the federal Department of Agriculture that has to be agreed to by the corresponding state under a state-

Minutes of the meeting of the Appropriations Committee
February 4, 1983.

federal agreement to give a veterinarian authority to act as a Deputy State and Federal Veterinarian to test cattle for brucellosis in the stockyards prior to interstate shipment."

Rep. PECK then asked, "If, when the permit was suspended, was that action taken unilaterally by Dr. Glosser or does he have a Board who approves that action?" Mr. YOUNG replied, "The action was taken independently, based also upon knowledge of prior violations or what the State Veterinarian thought was a prior violation, and the Board of Livestock then ratified his actions subsequently." Rep. PECK said, "If the Legislature were to appropriate this money, are you saying that the case then would be dropped or are you saying that you intend to pursue it?" Mr. YOUNG said, "The case is on appeal and the bill is contingent upon Dr. Glosser still losing this case on appeal. He could prevail and get a new trial." Rep. PECK asked Mr. Young to comment on the precedent this may set for future problems of this nature if the Legislature were to approve the bill. Mr. YOUNG said, "Every Legislature and every appropriations committee is free to act on its own and I think the committee could weigh each case on its individual merit, session by session, and you are not obligated to do any one thing. A number of years ago, the Board of Regents indemnified a number of University officials criminally charged." Rep. PECK asked if the State of Montana has any insurance to cover this type of case? Mr. YOUNG replied, "There is no insurance to cover anything like this and most insurance companies can't write this type of coverage."

Rep. BARDANOUVE stated, "There will not be a decision made on this bill tonight. The outcome of this particular case may be opening a 'Pandora's box' that will haunt us all. Is Montana willing to stand behind it's elected and appointed officials? It's a matter of public concern. The other side of the coin is that it lays Montana open to an unlimited number of claims of officials who may wrongfully perform their duties. I will have to have a lot of research done on this bill. It has almost been a cardinal rule of the House and Senate that they never pay court cases that are on appeal."

The hearing closed at 9:20 p.m.

(Tape 1: Track 1:585)

HOUSE BILL 131:

Rep. MENAHAN called on Sen. HAFLEY to present the bill.

Sen. HAFLEY explained the history of the case: "On February 6, 1977 Michael Jacques had his legs blown off. The case went through the court in Anaconda and the jury awarded, in May, 1981, about \$1,390,000 and the Supreme Court upheld that verdict in August, 1982. It is now six years since the accident. The case is not on appeal. The question is that there is a remaining obligation, unmet by the

Minutes of the meeting of the Appropriations Committee
February 4, 1983.

insurance company to the state, to Mr. Jacques and that obligation is being presented to the state through this committee."

Proponents:

Gen. JIM DUFFEY, Department Head of the Department of Military Affairs testified in support of the bill.

Rep. BARDANOUVE asked, "Is this all General Fund or is there any federal obligation?" Gen. DUFFEY replied that in this particular case, the case was against the State of Montana and not the federal government. Rep. BARDANOUVE asked, "Why was the federal government not named as co-defendant?" Gen. DUFFEY said, "The plaintiffs chose to sue the State of Montana and not the federal government." Rep. BARDANOUVE said, "I would like to have an answer to this because we have another case of which you are well aware in which the federal government has picked up a big part of the tab and I don't see why the state should be the fall guy for the whole claim."

Mr. YOUNG stated, "This is strictly a negligence action under state law that arose prior to the 1977 sovereign immunity limits of \$300,000/\$1,000,000 per occurrence. This was a case tried by our preceeding insurance company which handled this sort of thing before the state became self-insured on July 1, 1977. The reason this is here is because our prior carrier, Glacier General, wrote the policy for \$1,000,000 per occurrence, but on true coverage provisions - one for medical malpractice and the other for errors and omissions, which are of a professional nature, such as breach of professional duties by engineers, lawyers, etc. - they put a \$1,000,000 aggregate liability on the policy that year, but this was back in that time when none of the insurance companies wanted to take the state's business and this was the best deal we could get. So, what we had was a \$1,000,000 per occurrence on all claims except medical malpractice, which was a \$1,000,000 subject to a \$1,000,000 aggregate. The federal government cannot be sued for this type of claim. This bill is for \$1,043,524.61, which is considerably less than the judgment itself, which was \$1,390,000. Our insurance company has refused to pay any more than \$348,347.59 on the grounds that the mine sweeping and land clearing activities involved in by an army unit is a 'professionally known' and they have aggregated all of the states cases against it and that portion of the policy and included \$300,000 and some odd dollars in defense costs as well, which we contend are due under the supplemental payments portion and not under the liability limits and they have tendered what they consider the difference to the plaintiffs... that \$348 thousand and some odd dollars. There was an additional cost bill attached to the judgment of \$1,872.20, which I added on to the difference, and that gives you the balance you see here of \$1,043,524.61. This is the final judgment and there are no more appeals. This is not a General Fund obligation. This appropriation would come from the Insurance Revolving Account." Rep. BARDANOUVE said he

Minutes of the meeting of the Appropriations Committee
February 4, 1983.

would have to differ with Mr. Young in that the money all comes from the General Fund paid by various agencies, so indirectly, it's all General Fund money. Mr. Young replied, "There is no question about it, it's state money." Mr. Young stated, "The balance of the self-insurance reserve fund right now is \$9,600,000. There were about \$3,500,000 outstanding in other claims prior to this judgment and if you take this out, we'll be down just \$1,000,000 more. Unlike the prior bill, this does not have the kind of remedy problems. There are substantial differences between this bill and the cases which were settled last week. There is a discretionary fund that Congress has given the Secretary of the Air Force and they operate under what they call the 'Service Claims Act' (or the 'National Guard Claims Act') and they can spend up to \$25,000 at the discretion of the Secretary of the Air Force to pay claims for National Guard units. Under the rules and regulations of the Secretary of the Air Force, if there is a state remedy available and the state is not immune, they won't pay. You have to exhaust the state remedy first. The Patacini case and the F-106 crash was something that didn't follow any of the rules of the book. If the Air Force wants to contribute more than \$25,000, it has to be appropriated by Congress and go through the General Accounting Office and Congress has to approve this. In the bill before you tonight, these people elected to come against the state and the jury has the final word and the Supreme Court has upheld the case."

Opponents: None.

Sen. HAFLEY closed and asked the committee to expedite this case because it has been six years since the beginning of the case.

Discussion:

Rep. PECK asked Mr. Young if the committee had any alternative? Mr. YOUNG replied, "We are in the process of suing the insurance carrier; there is no alternative to paying the claim, but we can possibly recover some of this money if the courts will buy the interpretation, but there is no reason to delay this bill."

Rep. BARDANOUVE stated that Mr. Young has done a really fine job in pursuing claims and has really been an outstanding public servant for Montana and has saved Montana a lot of money over the years and that he valued his judgment very highly.

Rep. BANDANOUVE said the committee would not take action on this bill tonight.

The hearing closed at 9:37 p.m.

(Tape 1: Track 1:682)

HOUSE BILL 247:

Rep. RYAN, the bill's chief sponsor, explained his bill. He read

Minutes of the meeting of the Appropriations Committee
February 4, 1983.

the letter from the Office of Public Instruction (OPI). (Exhibit 5.)

Proponents:

Rep. ERNST stated he had correspondence with the Petroleum County Commissioners on this bill and he supported the bill.

Rep. BARDANOUVE asked if this was Foundation Program money? Rep. ERNST replied, "As far as I understand, it is." Rep. BARDANOUVE said he would check with OPI on this.

Rep. RYAN closed by saying that Petroleum County really needed this money.

Rep. MANUEL stated that the amount was about \$80,000 at one time and the school board finally got back \$60,000, but they didn't get the \$21,000 back.

Rep. WALDRON asked Rep. Ryan if the school district has already eaten these costs? Rep. RYAN replied, "The money reverted back to the General Fund due to the mistake in bookkeeping. That was in fiscal year 1981/82." Rep. BARDANOUVE said they used their reserves. Rep. RYAN said they were having a terrible time making their '83 budget. Rep. PECK said he had some correspondence on it and money they were really entitled to reverted and it is a just claim. Rep. BARDANOUVE said he did not doubt it, but that they would have to verify it.

The hearing closed at 9:45 p.m.

(Tape 1: Track 1:721)

HOUSE BILL 84:

Rep. LORY, the bill's chief sponsor, asked Mr. Bill Opitz, Director of the Department of Public Service Regulation, Public Service Commission, to explain the bill.

Rep. BARDANOUVE asked if this bill had been heard in subcommittee? Rep. MANUEL replied that it had been heard in his subcommittee and the bill has been amended. Mr. OPITZ said he would now offer the amendment of the subcommittee: AMENDMENT: First page, line 15. Strike: "\$30,000". Insert: "\$25,000". First page, line 18. Following: "employees". Strike: ".". Insert: ", and other necessary operating expenses."

Mr. OPITZ presented correspondence to Dave Lewis, Director of OBPP and from Dave Lewis. (Exhibit 6.) He stated, "They reverted \$53,000 to the General Fund in the 1982 fiscal year. We're asking for \$25,000 for fiscal year 1983. There is another \$20,000 we are asking for in the Governor's bill, but we wanted to separate this \$25,000 out because it deals with the salaries of the Public Service Commission. \$15,000 is for salaries and \$10,000 is for court

Minutes of the meeting of the Appropriations Committee
February 4, 1983.

reporter recordings."

Opponents: None.

Rep. LORY made a closing statement on his bill.

Discussion:

Rep. MANUEL said his subcommittee had spent a lot of time on this bill. Between the Fiscal Analyst and the Budget Office they finally came down to \$25,000 and the subcommittee recommends this.

Rep. BARDANOUVE said he was not planning to take any Executive Action on these bills tonight, but this was one bill that seems to be very clear cut. He said he had another bill on which he wanted to take Executive Action on tonight, but if anyone wanted to move this bill, go ahead.

(Tape 1: Track 1:759)

***EXECUTIVE ACTION:

HOUSE BILL 84:

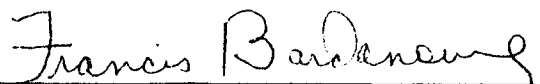
Rep. QUILICI made a motion that HB 84 as amended do pass. The motion was seconded by Rep. MENAHAN and passed unanimously.

HOUSE BILL 385:

Rep. BARDANOUVE stated, "Rep. Shultz, earlier before the session, was under the impression there was certain support for a Fish, Wildlife & Parks development of Ft. McGinnis in the Lewistown area and he introduced a bill to appropriate money to help preserve Ft. McGinnis. Since then, Rep. Shultz has run into a hornet's nest over there and all those ranchers very definitely do not want anything done with Ft. McGinnis. In order to preserve Rep. Shultz's integrity and reputation as a true representative of that area, he would like to have us kill this bill so the hornets will get off his back."

Rep. MANAHAN made a motion that HB 385 do not pass. The motion was seconded by Rep. QUILICI and passed unanimously.

The meeting adjourned at 9:55 p.m.



FRANCIS BARDANOUVE, Chairman

jc

TESTIMONY -- GERRY DEVLIN

H.B. 317

SUPPORT OF BILL

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

FOR THE RECORD, I AM GERRY DEVLIN, HOUSE DISTRICT #52. I BRING TO THIS COMMITTEE H.B. 317.

H.B. 317 ASKS THIS COMMITTEE TO APPROVE AN APPROPRIATION TO THE DEPARTMENT OF LIVESTOCK OF \$391,500 TO PAY IN FULL ALL OBLIGATIONS AND JUDGEMENTS AGAINST THE DEFENDANTS IN CASE #78-14-GF, U.S. DISTRICT COURT.

I WISH TO MAKE THE DISTINCTION NOW BETWEEN DR. JAMES W. GLOSSER, STATE VETERINARIAN, DEPARTMENT OF LIVESTOCK ANIMAL HEALTH DIVISION AND JIM GLOSSER, LEWIS AND CLARK COUNTY RESIDENT, PROPERTY OWNER, AND GOOD CITIZEN.

THIS SUIT WAS NOT FILED BECAUSE JAMES GLOSSER WAS A PROPERTY OWNER AND GOOD CITIZEN, BUT BECAUSE DR. JAMES W. GLOSSER IS THE HEAD OF THE ANIMAL HEALTH DIVISION AND MADE A DECISION IN THAT CAPACITY THAT BROUGHT THIS JUDGEMENT AGAINST JIM GLOSSER, PROPERTY OWNER.

THE QUESTION THAT THIS BILL ADDRESSES IS WHERE DOES PUBLIC LIABILITY END AND WHERE DOES PERSONAL LIABILITY BEGIN. WHEN ELECTED PUBLIC OFFICIALS OR APPOINTED PUBLIC OFFICIALS MAKE DECISIONS IN THE COURSE OF THEIR DUTIES, ARE THEY ACTING IN BEHALF OF THE STATE OF MONTANA, OR ARE THEY ACTING IN MATTERS OF PERSONAL CONCERN.

IF THEY ARE ACTING ON BEHALF OF THE STATE OF MONTANA, SHOULD THEY THEN BE HELD PERSONALLY LIABLE FOR THE DECISIONS REACHED?

IN THIS CASE A PUBLIC OFFICIAL, DR. JAMES GLOSSER, STATE VETERINARIAN, MADE A DECISION WITHIN THE SCOPE OF HIS ADMINISTRATIVE DUTIES, ACTING IN THE BEST INTERESTS OF THE STATE OF MONTANA. HE HAD NO PERSONAL INTEREST IN THE CASE; HE WAS ACTING WITHIN THE SCOPE OF HIS DUTIES AS ADMINISTRATOR OF THE ANIMAL HEALTH DIVISION OF THE DEPARTMENT OF LIVESTOCK.

HOWEVER, THE STATE OF MONTANA WAS NOT HELD LIABLE FOR THIS ACTION. DR. GLOSSER WAS HELD PERSONALLY ACCOUNTABLE. HOW MANY OF US, AS ELECTED PUBLIC OFFICIALS, COULD AFFORD TO BE HELD PERSONALLY ACCOUNTABLE FOR THE DECISIONS WE MAKE THAT WE BELIEVE ARE IN THE BEST INTERESTS OF THE STATE OF MONTANA. DR. GLOSSER MAY LOSE EVERYTHING HE HAS ACQUIRED AS A PRIVATE PERSON BECAUSE OF A DECISION HE MADE AS A PUBLIC OFFICIAL, ACTING IN THE INTERESTS OF THE STATE OF MONTANA.

IF WE, AS ELECTED OFFICIALS, WERE TO BE HELD PERSONALLY LIABLE FOR EVERY DECISION THAT WE MAKE, HOW MANY OF US WOULD CHOOSE TO SERVE? WE ALL KNOW HOW IMPORTANT IT IS TO GET THE BEST QUALIFIED PERSONS TO SERVE THE STATE EITHER AS ELECTED OFFICIALS OR APPOINTED OFFICIALS. THE OUTCOME OF THIS PARTICULAR CASE MAY BE OPENING A PANDORA'S BOX THAT WILL HAUNT US ALL. IS MONTANA WILLING TO STAND BEHIND ITS ELECTED AND APPOINTED OFFICIALS IN MATTERS OF PUBLIC CONCERN? IF NO, LADIES AND GENTLEMEN OF THE COMMITTEE, I FEAR FOR THE FUTURE.

WHAT MESSAGE ARE WE GOING TO SEND TO OTHER DEPARTMENT HEADS?
ARE WE GOING TO SAY WE RESPECT THEIR JUDGEMENT AS OFFICIALS OF
THE STATE OF MONTANA? OR ARE WE GOING TO SAY, "HEY, BUDDY,
YOU'RE ON YOUR OWN."

NOW, MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, IT IS UP TO YOU
IF THE STATE OF MONTANA WILL BACK THE DECISIONS OF ELECTED AND
APPOINTED PUBLIC OFFICIALS. BY VOTING "YES" ON THIS BILL, YOU
WILL INSURE THAT THE STATE WILL CONTINUE TO HAVE QUALIFIED AND
DEDICATED SERVANTS WHO WILL BE ABLE TO MAKE DIFFICULT DECISIONS
IN THEIR PUBLIC LIFE WITHOUT FEAR OF REPRISAL AND LOSS IN THEIR
PERSONAL LIFE.

WITNESS STATEMENT

Name Mons Teigen Committee On Appropriations
Address Helena Date 2/4/83
Representing Mont. Stockgrowers Support X
Bill No. HB 317 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Dr. Glosser should not be held personally liable for his decision re Dr. Doran. Montana's livestock industry is proud of the reputation our state has in the animal health field. This has been possible due to the firm position Dr. Glosser and staff have taken in matters of animal health. To hold him personally responsible will lead to a lack of decisive judgment on the part of other state officials similarly situated.
- We urge the passage of HB 317

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name CHARVING J. HARTSHORN Committee On _____
Address 600 CENTRAL PHASE Date _____
Representing Downsott, Bailey Support _____
Bill No. 317 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Gov't should be of the people, by the people and for the people, not to abuse the people -
2. Numerous REFFORTS to SETTLE, all rejected
Substantial cost to the state -
- ✓ 3. Would propose the STATE SETTLE for 260,000
- 4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

BEFORE THE HOUSE APPROPRIATIONS COMMITTEE

IN SUPPORT OF - HOUSE BILL NO. 317

My name is Curtis Hansen, I am the registered lobbyist for the Montana Veterinary Medical Association.

I appear here today for the Montana Veterinary Medical Association and its members in strong support of House Bill No. 317.

We are convinced that to survive and be vitalized in this time, we must have effective, active, well qualified administrators within the governing and related state departments that relate to our (or any) profession.

If those administrators are not given the type of support, protection and backing that is provided by this bill - we will find it difficult if not impossible to find such dedicated individuals that would be willing to serve in any administrative capacity.

Even if such an individual could be found that would be willing to serve - he would be ineffective and restrained when required to make any important decisions based on information obtained or provided to him.

To be effective such an administrator must be willing and able to make and carry out administrative decisions and actions.

Without backing there would always be fear of reprisal and/or reactions that could, without merit, destroy or damage that individuals personal and professional life. As a result the decisions would be made, at least in part, based on the possibility, probability and ability of those affected to bring about such reprisal and not solely based on the facts and circumstances that require definitive decisions or actions.

Living with such fears results, in most cases, in an administrator taking the easy way out and that is ineffective, useless, or meaningless penalties OR deferring such decisions until agreement or support can be obtained from colleagues or boards.

The knowledge of swift, fair, impartial and meaningful penalties is the best deterrent and ways and means of eliminating the necessity of such actions. Should we not provide such backing and protections as provided by this bill, we would be undermining the human ability to function adequately as an administrator.

The Montana Veterinary Medical Association feels very fortunate to have had the services and abilities of Dr. James W. Glosser as State Veterinarian. We feel he has been fair, honest and effective. We would hate to see him penalized for doing his job, that has been done in the best interests of our profession.

We would strongly support a "DO PASS" recommendation on House Bill No. 317.



OFFICE OF PUBLIC INSTRUCTION

STATE CAPITOL
HELENA, MONTANA 59620
(406) 449-3095

Ed Argenbright
Superintendent

February 4, 1983

To: Francis Bardanouve
Chairman
House Appropriation Committee

From: Gary W. Steuerwald
Assistant Superintendent
Administrative Services

Re: HB 247

The reason for this bill is that the county officials of Petroleum County, not realizing the problem or effect, combined the cash reappropriated in the five county-wide school levies and placed the total under the common school funds. This resulted in the Office of Public Instruction using this larger figure in calculating the entitlement of State Equalization Aid. The effect of this was a reduction in State Aid.

Unfortunately, this error by the county officials was not discovered during the fiscal year in which it occurred. The legal staff of the Office of Public Instruction did not feel that the office could make payment at this late date. It was his feeling that the fiscal year had lapsed and thus the Superintendent of Public Instruction did not have the authority to make payment.

The Office of Public Instruction has varified this figure and will attest to the amount.

GWS:dg

PUBLIC SERVICE COMMISSION 1227 11th Avenue • Helena, Montana 59602
Telephone: (406) 449-3307 or 449-3308

December 9, 1982

James J. Schindler, Chairman
James J. Schindler
James J. Schindler
James J. Schindler
James J. Schindler

Mr. Dave Lewis, Director
Office of Budget & Program Planning
State Capitol
Helena, Montana, 59620

Dear Dave:

As you are aware, the PSC plans to approach the forty-eighth session of the Legislature for a supplemental appropriation for FY83. The amount of the request will be in the area of \$50,000. Three events have necessitated this unavoidable course of action, namely, a shortfall in money for salaries and benefits, the divestiture of the Bell Operating Companies (BOC's) from American Telephone and Telegraph (AT&T) and a potentially expensive (to ratepayers) reorganization of the Montana Dakota Utilities' (MDU) natural gas operations.

Shortly after the 47th session adjourned, Troy McGee held a meeting to explain your office's approach to the pay plan allocation under House Bill 840 for the fiscal years 1982 and 1983. At that time, we expressed our concern that the proposed allocation would place a serious burden on our 1983 budget, unless money saved from vacancy savings in 1982 were transferred to the 1983 budget at the outset of the allocation of pay plan increases.

The Commission was in the unique situation of having received five new PTE's during the session. It appeared to us the only reasonable solution (to make ends meet for both years) was to postpone the hiring of the new PTE's until the needed vacancy savings for the biennium was accrued, and then allocate the pay plan shortfall for the 1983 year from the 1982 budget. I personally discussed this option with members of your staff as well as Judy Rippingale. It was suggested to them that if they had a different solution that we would welcome their input. None was forthcoming.

Since the pay plan increases were not allocated as we suggested at the outset, we now must approach the legislature for a supplemental appropriation to cover the wage increases experienced by this agency. I would like to point out that we reverted over

Mr. Dave Lewis

-2-

December 9, 1982


\$59,000 to the general fund at the end of FY82. Your office has approved a transfer of \$5,950 of this amount to our FY83 budget, and we understand how this amount was calculated. Had this methodology been utilized to make up our 83 shortfall, we would have had to keep one-third of our staff off the payroll for the entire 1982 fiscal year! Hardly a reasonable approach for an agency which had been evaluated as understaffed by the Legislature. Our estimate is that we will be \$30,000 short of meeting a full payroll for 1983, after taking into consideration the transfer of the \$5,950 from FY82 into FY83.

The Commission has entered into a contract with other Western states to have our interests represented before Judge Green in the AT&T-Justice Department anti-trust lawsuit. The cost has been projected to be \$10,000 and the Commission feels the potential benefits of this representation may result in millions of dollars of savings to future telephone ratepayers in Montana.

Finally, the Commission has also determined that the State must be represented before the Federal Energy Regulatory Commission (FERC) in a docket involving a proposed reorganization of MDU. In this case, MDU is proposing to make its natural gas transmission system a wholly-owned subsidiary of MDU. This subsidiary would then be subject to FERC regulation, thus escaping the historical regulatory scheme of things where these facilities were under the State's jurisdiction. Appropriate backup materials have been provided to our budget analyst for these latter two contracts, but we stand ready to provide any additional documentation that might be needed.

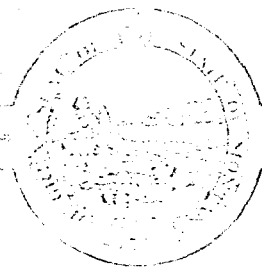
Dave, we realize that for uniformity's sake, your office dealt with all agencies on an equal basis. We only hope you can appreciate the dilemma with which we find ourselves confronted, and can now lend your support to our request for a supplemental appropriation.

Sincerely,


William J. Opitz,
Executive Director

WJO:imb

OFFICE OF THE GOVERNOR
BUDGET AND PROGRAM PLANNING



TED SCHWINDEN GOVERNOR

CAPITOL BUILDING

STATE OF MONTANA

(406) 429-3515

1000 N. BOULEVARD

RECEIVED

DEC 15 1982

MONT. P. S. COMMISSION

December 14, 1982

Admins _____

Mr. William J. Opitz, Director
Department of Public Service Regulation
Public Service Commission
1227 Eleventh Avenue
Helena, Montana 59620

Dear Bill:

We have no problem with you pursuing a supplemental appropriation from the Legislature. It is clear that this is your only alternative. We do not have the authority to transfer vacancy savings from FY 82 to FY 83. Only the Legislature can increase your base FY 83 appropriation. I assume you intend to take your case directly to the appropriations committee. We will not appear in opposition to your request.

Sincerely,

Dave Lewis

DAVE LEWIS
Budget Director

DAVE1:S/1

COMMITTEE

BILL HOUSE BILL 131

SPONSOR MENAHAN

Date

2/4/83

APPROPRIATING MONEY TO DEPT. OF MILITARY
AFFAIRS TO SATISFY FINAL JUDGMENT IN
CAUSE NO. 81-440, MONT. SUPREME COURT.

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE APPROPRIATIONS COMMITTEE

BILL HOUSE BILL 247

SPONSOR RYAN

Note: ✓

Date 2/4/83

APPROPRIATING \$21,554 FROM STATE EQUALI-
ZATION AID ACCT. TO REIMBURSE PETROLEUM
COUNTY SCHOOL DIST. FOR STATE EQUALI-
ZATION AID ENTITLED TO IN 1981-82.

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE APPROPRIATIONS COMMITTEE

BILL HOUSE BILL 84

SPONSOR LORY

Note: 2

Date 2/4/83

APPROPRIATING MONEY TO PUBLIC SERVICE
COMMISSION FOR FISCAL YEAR ENDING 6/30/83.

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STANDING COMMITTEE REPORT

February 4,

19 83

MR. **SPEAKER**

We, your committee on **APPROPRIATIONS**

having had under consideration **HOUSE** Bill No. **84**

FIRST reading copy (**WHITE**)
color

**A BILL FOR AN ACT ENTITLED: "AN ACT APPROPRIATING MONEY TO THE
PUBLIC SERVICE COMMISSION FOR THE FISCAL YEAR ENDING JUNE 30, 1983;
AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."**

Respectfully report as follows: That **HOUSE** Bill No. **84**

BE AMENDED AS FOLLOWS:

1. Page 1, line 15.

Strike: "\$30,000"

Insert: "\$25,000"

2. Page 1, line 18.

Following: "employees"

Insert: ", and other necessary operating expenses "

AND AS AMENDED

DO PASS

STANDING COMMITTEE REPORT

FEBRUARY 16,

19 83

MR. Speaker

Appropriations

We, your committee on

House

131

having had under consideration Bill No.

First

reading copy (White)
Color

A BILL FOR AN ACT ENTITLED: "AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF MILITARY AFFAIRS TO SATISFY THE FINAL JUDGMENT IN CAUSE NO. 81-440, MONTANA SUPREME COURT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Respectfully report as follows: That..... House Bill No. 131

DO PASS

STANDING COMMITTEE REPORT

FEBRUARY 16,

19 83

SPEAKER

MR.

APPROPRIATIONS

We, your committee on

having had under consideration House Bill No. 317

First reading copy (**white**)

A BILL FOR AN ACT ENTITLED: ^{color} "AN ACT TO APPROPRIATE MONEY TO THE
DEPARTMENT OF LIVESTOCK TO SATISFY A FINAL JUDGMENT IN CAUSE NO.
79-14-GF, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA,
GREAT FALLS DIVISION, IF THE CASE IS UPHOLD ON APPEAL."

Respectfully report as follows: That House Bill No. 317

DO PASS

STANDING COMMITTEE REPORT

February 4, 19 83

SPEAKER

MR.

APPROPRIATIONS

We, your committee on

HOUSE

having had under consideration Bill No. **385**

First reading copy (**White**)
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO APPROPRIATE \$35,000 TO THE DEPARTMENT OF ADMINISTRATION FOR LAND ACQUISITION AND DEVELOPMENT AT FORT MAGINNIS STATE MONUMENT LOCATED NORTHEAST OF LEWISTOWN."

HOUSE

Respectfully report as follows: That Bill No. **385**

DO NOT PASS

DO PASS