

MINUTES OF THE JUDICIARY COMMITTEE
February 4, 1983

The meeting of the House Judiciary Committee was called to order by Chairman Dave Brown at 7:05 a.m. in room 224A of the capitol building, Helena, Montana. All members were present, as was Brenda Desmond, Staff Attorney for the Legislative Council.

Representative Brown introduced Alice Omang, who will be the new committee secretary, replacing Maureen Richardson, who will be leaving to accept a permanent position elsewhere in the state department.

EXECUTIVE SESSION

HOUSE BILL 438

REPRESENTATIVE ADDY moved DO PASS. The motion was seconded by REPRESENTATIVE HANNAH.

REPRESENTATIVE JAN BROWN stated that she wanted to ask the attorneys about Section 4. This was explained to her. There was some further discussion and a vote was taken. The motion passed unanimously.

HOUSE BILL 440

REPRESENTATIVE ADDY moved DO NOT PASS. The motion was seconded by REPRESENTATIVE BERGENE.

REPRESENTATIVE KEYSER commented that he did not feel that they were doing anything but being fair; he said that they only have to provide some names and some lists; it is still the county attorney who has to prove beyond a reasonable doubt. He further stated that as far as taking away the rights of the defendant, there is no way this bill will take away the rights of a defendant, because that defendant still has every break in the world.

REPRESENTATIVE SPAETH stated that he was more concerned about the information on page 4, and that is where the Constitutional problem would and should arise. He made a substitute motion that the amendments on page 4 be eliminated from the bill. He clarified his motion by stating this would strike the amended language and reinsert the other language in subsection 2, page 4.

REPRESENTATIVE SPAETH explained the amendment by stating that he understood that #2 is wide open to discovery on both sides; in other words, in criminal areas they do not have a whole lot of discovery; in civil cases, they do. He expanded, saying that he thought when you are having wide-open discovery, you are placing considerable burden on the defendant to assist the prosecution. He felt that this is where the constitutional challenge comes in.

REPRESENTATIVE ADDY said that one of the rights was the right to remain silent, he did not feel that this bill could be cleaned up and he was going to vote against any amendments and against the bill.

REPRESENTATIVE RAMIREZ thought that they were striking very important language on lines 3 and 4, where it shows "for showing a good cause". He felt one thing that was most important was statements from other witnesses and he contended that some original statements that are given are really critical. He made a substitute motion that they consider the proposed amendment and also reinsert "for showing a good cause". The motion carried with REPRESENTATIVE ADDY, REPRESENTATIVE FARRIS, REPRESENTATIVE VELEBAR, REPRESENTATIVE BROWN, ALL VOTING "no" and REPRESENTATIVE SPAETH not voting.

REPRESENTATIVE RAMIREZ explained that the term "work product" refers to the notes, thoughts and sometimes investigations of the lawyer as he prepares the case for his client. He moved to amend the subsection on page 4, line 12, after the word, "prosecution" by inserting, "or the defense. The work product of the prosecution" and strike "which". REPRESENTATIVE HANNAH seconded. The motion carried with REPRESENTATIVE ADDY, REPRESENTATIVE DARKO, REPRESENTATIVE FARRIS, REPRESENTATIVE JENSEN, REPRESENTATIVE VELEBER AND REPRESENTATIVE DAVE BROWN voting no.

REPRESENTATIVE SPAETH moved to amend the bill by striking everything they have just done and return it to its original form on page 4. REPRESENTATIVE SCHYE seconded the motion. The motion failed with REPRESENTATIVE SCHYE, REPRESENTATIVE SPAETH AND REPRESENTATIVE DAVE BROWN voting yes.

REPRESENTATIVE FARRIS moved that the bill DO NOT PASS in any form. Representative Jensen seconded.

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REPRESENTATIVE RAMIREZ moved that the bill be amended in subsection (2) at the bottom of page 1 and the top of page 2. He felt that this should be changed to 10 days before trial without getting any court approval and, thereafter, they would have to show good cause. He also moved to amend the bill on page 2, line 2 by striking "intends to" and inserting "may"; and, again, on page 1, line 16, after "call" add, "or may call there". The motion was seconded by REPRESENTATIVE CURTISS, and carried with REPRESENTATIVE ADDY, REPRESENTATIVE JENSEN, REPRESENTATIVE FARRIS, REPRESENTATIVE DARKO, REPRESENTATIVE VELEBER AND REPRESENTATIVE DAVE BROWN voting no.

REPRESENTATIVE FARRIS moved that the bill be amended by striking lines 22 through 25 on page 1, and lines 1 through 7 on page 2. REPRESENTATIVE ADDY seconded the motion.

REPRESENTATIVE KEYSER exclaimed that this is the guts of the bill - that you are talking about a criminal trial and a person who is going to go to court.

REPRESENTATIVE FARRIS made a substitute motion that the bill DO NOT PASS, AS AMENDED. The motion carried with REPRESENTATIVE BERGENE, REPRESENTATIVE CURTISS, REPRESENTATIVE EUDAILY, REPRESENTATIVE HANNAH AND REPRESENTATIVE RAMIREZ voting no. The vote was 12 to 5.

HOUSE BILL 439

REPRESENTATIVE KEYSER moved DO NOT PASS. REPRESENTATIVE ADDY seconded the motion.

REPRESENTATIVE RAMIREZ stated that he thought they should kill the bill, but that there were some important points that were brought out. He contended that there is not one standard in there that tells them what to do and what not to do.

REPRESENTATIVE JENSEN thought that maybe a committee bill might be appropriate. There was further discussion and the motion carried unanimously.

HOUSE BILL 398

REPRESENTATIVE DAVE BROWN asked REPRESENTATIVE JENSEN where he was with this bill and REPRESENTATIVE JENSEN replied that he was waiting for some further information.

HOUSE BILL 389

REPRESENTATIVE JENSEN moved DO PASS. REPRESENTATIVE JAN BROWN seconded.

REPRESENTATIVE SPAETH said that he thought it was a good idea, but he did not think the committee had the time to work on it and he made a substitute motion to DO NOT PASS. The motion was seconded by REPRESENTATIVE EUDAILY.

REPRESENTATIVE JENSEN spoke against the do-not-pass motion, saying this bill and the idea that motivated this bill was never argued against, it wasn't all that radical an idea, it has been experimented with since 1915, and Representative Menahan introduced a similar bill last session.

REPRESENTATIVE SPAETH stated that he had serious reservations about the impact of this bill; he feels that the law presently discriminates; but he does not feel that the committee could solve any of these problems; and he feels that a whole lot of study has to be put into this concept.

REPRESENTATIVE SCHYE commented that there are insurance companies that do this now.

A vote was taken on the motion and the motion failed 10 to 8.

REPRESENTATIVE RAMIREZ said that, in his mind, this is really foolish - this bill makes it mandatory; he did not think that they could defend this; there would be numerous problems that they would create; it should be adequately studied and he did not feel that the committee should take the time to debate this bill.

REPRESENTATIVE CURTISS questioned the impact and stated that the insurance companies said that all forms would have to be changed.

REPRESENTATIVE EUDAILY commented that he did not think they have the slightest idea what would happen to the insurance rate and he felt that they would be doing the people of Montana a real injustice.

REPRESENTATIVE SCHYE wondered if they could start offering it and not making it mandatory.

REPRESENTATIVE RAMIREZ testified that there is another bill that will have some immediate problems and impacts and he stated that you cannot change 100 years of a particular kind of insurance just overnight and he felt that the rates would soar. He wondered if the committee should come out with a committee bill and study this for a couple of years.

REPRESENTATIVE DAVE BROWN suggested that the committee consider delaying action on this bill.

REPRESENTATIVE FARRIS made a motion to PASS FOR THE DAY. The motion carried.

The committee now went into regular hearing session.

HOUSE BILL 502

REPRESENTATIVE PAVLOVICH said that this bill was requested by the Public Service Commission and explained that it would extend the time that judicial proceedings are stayed upon transmission of additional evidence to the PSC and eliminating automatic transmission of additional evidence absent judicial ruling.

BOB NELSON, the staff attorney for the Public Service Commission, testified in favor of this bill. See EXHIBIT A.

JOHN ALKE, representing the Montana-Dakota Utilities, gave a short statement in support of this bill.

GENE PHILLIPS, representing the Pacific Power and Light Company, gave a statement in support of this bill.

There were no further proponents and no opponents. The sponsor informed the committee that on page 2, line 4, the bill should be amended to show "14" instead of "7".

REPRESENTATIVE ADDY questioned what public interest is served by these time limits. MR. NELSON replied that he did not feel that there would be any real difference in the changes, that the commission is forced in certain circumstances, to hurry the consideration of evidence of additional testimony or else request an extension from the court.

MR. PHILLIPS stated that the commission only has 15 days in which to act and he felt that if they had more time to review it, that it would be better for them.

REPRESENTATIVE HANNAH questioned if they had passed an administrative rule and MR. NELSON replied that it is not an administrative rule, it is a statutory provision that provides for adding evidence to the record after any agency has issued its decision and that this provision applies to all agencies.

There were no further questions and the hearing on this bill closed.

HOUSE BILL 468

REPRESENTATIVE SWIFT explained this bill was an act to speed the process of final criminal convictions by requiring the dismissal of felony charges not prosecuted in a timely manner. He stated that it is very critical and serious thing that he is talking about, that the committee must face the legal judicial process and is going to be faced with mandatory sentencing.

There were no proponents.

ANN WILSNACK, representing the American Civil Liberties Union, opposed this bill, stating that it was too rigid. See EXHIBIT B.

REPRESENTATIVE SWIFT closed.

REPRESENTATIVE ADDY wondered where the attorney general was on this bill and REPRESENTATIVE SWIFT answered that he did not know. REPRESENTATIVE ADDY said that this was a very important issue and he wondered if they should have a rehearing and invite Mr. Greely. REPRESENTATIVE DAVE BROWN replied, saying they allow three days' notice and this bill had six days and he suggested that Representative Addy ask them and find out.

There were no further questions and the hearing on this bill closed.

HOUSE BILL 496

REPRESENTATIVE ELLISON explained the bill which would require clerks of district courts to issue passports in accordance with federal law and to establish and collect fees and deposit them in the county general fund. He offered some substantial amendments to this bill. See EXHIBIT C.

REPRESENTATIVE JAN BROWN, District 32, Helena, stated that she was listed as a sponsor on this bill; she said that she had seen a clipping in the Great Falls Tribune stating that clerks are allowed to keep this fee; and she felt that they probably should not be allowed to do so. She said that there are a lot of problems with the bill and she does not know if the amendments take care of the problems.

BARBARA EVANS, Chairman of the Board of County Commissioners, offered testimony in support of this bill. See EXHIBIT D.

DORIS SHEPHERD, representing the Montana Association of Counties, testified in support of this bill. See EXHIBIT E.

There were no further proponents.

Kathryn Humphrey, Clerk of the Court, Judith Basin County, offered testimony in opposition to this bill. See EXHIBIT F.

MARYHELEN HABEGGER, Clerk of the District Court in Havre, passed out to the committee information showing what the procedure is for issuing a passport. See EXHIBIT G.

CLARA GILREATH, Clerk of the District Court, Helena, testified that they are not obligated to do this, that they do it as a courtesy to the federal government and that they take the fee for doing it. She stated that most post offices refuse to do it.

MARGARET SHAW, Clerk of the District Court in Dillon, said that from the fee they have to pay out postage and other costs and they retain very little of it. She showed the committee what the Passport Application looks like. See EXHIBIT H. See EXHIBIT I.

FLORENCE MCGIBONEY, Clerk of the District Court, Cascade, Montana gave a statement opposing the bill.

MARY McKEE, Clerk of the Court, Deer Lodge, went on record opposing the bill.

TRUMAN BRANDFORD, a judge from Cascade County, gave a statement opposing this bill.

REPRESENTATIVE ELLISON made a closing statement.

REPRESENTATIVE CURTISS asked the clerks if they were aware of the amendments that have been proposed and how did they feel about them. REPRESENTATIVE DAVE BROWN replied that these just clarify the bill - they do not affect the bill substantially.

REPRESENTATIVE KEYSER questioned MARGARET SHAW that if Beaverhead County did not want to issue these passports, that she would not have to and she replied that she would not have to. He further questioned her asking if they pass this law then they would be forcing all counties in the state of Montana to do this and she replied in the affirmative. He further questioned her about the money they take in, saying that he understood that some clerks use this for pocket money and some put it in an office fund and she replied that she puts it in an office fund and she further said that they make about \$2.15 out of each passport.

There was further questioning by the committee and the hearing on this bill closed.

The committee took a break at 9:07 and returned at 9:20.

HOUSE BILL 483

REPRESENTATIVE SPAETH explained the bill which provides that an action brought in city court for violation of a state law may be brought in the name of the city or town. He distributed to the committee copies of the Orders in the cases of the State of Montana versus Kirk S. Nelson, (See EXHIBIT K) and the State of Montana versus Ronald W. Nelson (See EXHIBIT L).

MARCEL TURCOTT, representing the Montana Magistrates Association spoke in support of this bill.

There were no opponents and REPRESENTATIVE SPAETH closed by stating that he was available for questions.

REPRESENTATIVE HANNAH stated that the way he understood this was that you can't write a ticket in the city - that the codes are not the same as the state. REPRESENTATIVE SPAETH replied that no, you can write a ticket in the city - they have a choice of being under city codes or in violation of the state law.

There were no further questions and the hearing closed.

HOUSE BILL 467

REPRESENTATIVE JIM JENSEN, District 66, Billings, explained the bill stating that it dealt with the coroner's inquest, amending inquest statutes. He informed the committee that there are many deaths in jails or penal institutions and that an inquest is often performed before the family has an opportunity to be present and to have some input, and he felt that juries should be allowed to ask questions in such cases.

CHARLES GRAVELY, appearing on behalf of the County Coroners' Association, said that they do not support the bill in its present form but offered some amendments. See EXHIBIT M.

MICKEY NELSON, coroner of Lewis and Clark County and representing the Montana Coroners' Association gave a detailed explanation of the objectives of an inquest and a history of the progression of inquests. He stated that an inquest is to find out if there was a crime committed and that is the main thing they are looking at.

There were no further proponents.

JOHN SCULLY, representing the Montana Sheriff and Police Officers' Association testified that the bill with amendments does one thing, but as stated before, does something quite different. He stated that on page 1, lines 14, 15 and 16, it takes discretion from the county attorney and puts it in the coroner's office and in doing so, it substantially changes the whole process. He further thought that in lines 20 to 24, this would set up an adversary position.

MARC RACICOT, Prosecution Coordinator for the Attorney General's office, agreed that it would transfer discretion from the county attorneys to the coroners.

There were no further opponents. REPRESENTATIVE JENSEN closed.

REPRESENTATIVE KEYSER said that the existing language states, "an inquest is a formal inquiry into the causes of and circumstances surrounding the death", it does not talk about investigation, etc., and he wondered if he was attempting to set investigative procedures into the process of the coroner's inquest. REPRESENTATIVE HANNAH answered that no,

that is not correct - that he would agree that this is an inquiry, but an inquiry, by its very nature, must investigate to some degree to get facts.

REPRESENTATIVE KEYSER asked JOHN SCULLY that if we attempted Section 3, did he not think that they would set up an investigative and almost a jury-type situation which now does not exist. JOHN SCULLY replied that he thought there was little doubt that once you start using this language, that you start this process. He stated that he never saw a juror who wanted to ask a question who did not get an opportunity to ask one.

REPRESENTATIVE DAILY questioned if there were really any serious problems with the law the way it is currently written. MR. NELSON answered yes, there have been cases where there have been police officers involved, a verdict has come back that there was a crime committed and nothing was done.

REPRESENTATIVE DAILY asked if this bill would force the county attorney to file charges in a situation like you are talking about. MR. NELSON answered that it definitely would not, but he did think it would be helpful to the community to know how they feel.

MR. GRAVELY stated that there are a few cases that occur where the jury will come back with a verdict that an individual died as a result of criminal means but he wanted to emphasize that that verdict was advisory only. He further said that then there must be a determination made by the prosecutor as to whether there were sufficient facts.

REPRESENTATIVE ADDY asked MR. NELSON to explain his statement that an inquest is a search for the truth and not an investigation. MR. NELSON answered that they basically are not taking scientific evidence and weighing it - they ask questions, under oath, and believe that they are telling the truth. He stated that it is a search for the truth without scientific aids.

There was a series of questions between REPRESENTATIVE ADDY and MR. RACICOT.

REPRESENTATIVE SPAETH questioned REPRESENTATIVE JENSEN as to why the bill seemed to be concerned about the estate

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and relatives of the deceased. REPRESENTATIVE JENSEN cited a case he was involved in wherein a migrant farm worker was found hanging in the county jail. He stated that there were questionable circumstances surrounding this case and there were a number of questions that begged to be asked; and the jurors in that county were not allowed to ask questions.

REPRESENTATIVE SPAETH commented that he understood that grand juries were not a very popular thing in this state, the least of which was cost.

There were further questions and comments on grand juries.

The hearing on this bill closed.

EXECUTIVE SESSION

HOUSE BILL 502

REPRESENTATIVE DAILY moved that the bill DO PASS. The motion was seconded by REPRESENTATIVE DARKO.

REPRESENTATIVE DAILY moved the amendments on page 2, line 4 and line 9, by striking "7" and inserting "14". REPRESENTATIVE KEYSER seconded. The motion carried unanimously.

REPRESENTATIVE DAILY made a motion that the bill DO PASS, AS AMENDED. The motion carried unanimously.

HOUSE BILL 496

REPRESENTATIVE KEYSER moved that the bill DO NOT PASS and this was seconded by REPRESENTATIVE JENSEN. The motion carried with REPRESENTATIVE FARRIS voting no.

HOUSE BILL 483

REPRESENTATIVE SPAETH moved DO PASS. REPRESENTATIVE KEYSER seconded. The motion carried unanimously.

HOUSE BILL 467

REPRESENTATIVE JENSEN moved that the bill DO PASS. REPRESENTATIVE FARRIS seconded.

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REPRESENTATIVE JENSEN moved the amendments offered by CHARLES GRAVELY. See EXHIBIT M. REPRESENTATIVE BERGENE seconded.

REPRESENTATIVE HANNAH made a substitute motion of DO NOT PASS. This motion was seconded by REPRESENTATIVE RAMIREZ.

REPRESENTATIVE ADDY said that there were two things the bill does that I like - one is it disqualifies a peace officer in certain situations from acting as a coroner and on page 3, at the bottom if we were to strike out "any attorney representing the estate or representing any interested heir or devisee of the decedent" and insert "and the county attorney and any juror", this would allow the jurors to ask questions at the inquest.

REPRESENTATIVE DAVE BROWN suggested that the language on the bottom of page 1 and the top of page 2 through line 10 be stricken and by striking subsection 2 on page 3 at the bottom of the page. He felt it would take two amendments to make this a good bill.

REPRESENTATIVE HANNAH withdrew his motion.

REPRESENTATIVE JENSEN withdrew his motion.

REPRESENTATIVE ADDY moved to strike subsection 3 on the bottom of page 1 and through the lines on page 2, and on page 3, line 21, strike line 21 in its entirety through "decedent" on line 22 and insert "juror". REPRESENTATIVE JENSEN seconded the motion. The motion carried unanimously.

REPRESENTATIVE JENSEN moved that the bill DO PASS, AS AMENDED. REPRESENTATIVE BERGENE seconded.

REPRESENTATIVE EUDAILY moved that they change "law enforcement" to "peace officer". REPRESENTATIVE KEYSER seconded the motion. The motion carried unanimously.

REPRESENTATIVE JENSEN moved that the bill DO PASS, AS AMENDED. REPRESENTATIVE BERGENE seconded. The motion carried unanimously.

HOUSE BILL 355

REPRESENTATIVE JENSEN moved that the bill DO PASS. REPRESENTATIVE SPAETH seconded. The motion carried unanimously.

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HOUSE BILL 357

REPRESENTATIVE HANNAH made a motion that this bill DO PASS. The motion was seconded by REPRESENTATIVE IVERSON.

REPRESENTATIVE EUDAILY moved that the bill be amended on page 3, lines 3 and 4 by deleting "or is unable". The motion failed with REPRESENTATIVE EUDAILY AND REPRESENTATIVE JENSEN voting yes.

REPRESENTATIVE EUDAILY moved that the bill be amended on page 4, line 19, by changing (b) to (c) and insert a new (b). The motion failed with REPRESENTATIVE EUDAILY voting yes.

REPRESENTATIVE EUDAILY moved that the bill be amended on page 4, line 20, by striking the "or" and inserting "(c) the employee compromised or settled the claim without the consent of the government entity employer; or". The motion carried unanimously.

REPRESENTATIVE EUDAILY moved that the bill be amended on page 5, line 7, by inserting "(8) If the plaintiff fails to prove actionable conduct by the employer or employee and the Court determines the allegations are frivolous, malicious or made in bad faith, the Court may award attorney fees against the plaintiff and in favor of the defendant." The motion failed with REPRESENTATIVE KENNERLY, REPRESENTATIVE EUDAILY, REPRESENTATIVE BROWN AND REPRESENTATIVE SPAETH voting yes.

REPRESENTATIVE ADDY moved that on page 1, line 18, strike "for damages" and on page 3, line 10, strike "for damages" and on page 4, line 10, strike "for damages" and on page 3, lines 18 and 19, put back in "or is an intentional tort or felonious act of the employee". The motion was seconded by REPRESENTATIVE JENSEN.

REPRESENTATIVE ADDY made a substitute motion to just amend the bill by striking "for damages". The motion carried unanimously.

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REPRESENTATIVE RAMIREZ made a motion that the bill be amended on page 4, line 8, by striking the language "unless the claim constitutes an exclusion provided in subsection (c)," REPRESENTATIVE KEYSER seconded the motion and it carried unanimously.

REPRESENTATIVE JENSEN made a motion that they strike the language on page 2, line 2, "be made a party defendant to the action, and". REPRESENTATIVE JENSEN seconded. The motion carried unanimously.

REPRESENTATIVE HANNAH moved that the bill DO PASS, AS AMENDED. REPRESENTATIVE RAMIREZ seconded and the motion carried unanimously.

The meeting adjourned at 11:32 a.m.



DAVE BROWN, Chairman



Alice Omang, Secretary

STANDING COMMITTEE REPORT

February 4, 1983

MR. SPEAKER

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 438

first reading copy (white)
color

**A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE CRIMINAL
OFFENSES OF NEGLIGENT ASSAULT, NEGLIGENT VEHICULAR ASSAULT,
AND NEGLIGENT ENDANGERMENT; DELETING FROM THE ASSAULT LAW
A PRESUMPTION AS TO ASSAILANT'S PURPOSE; AMENDING SECTION
45-5-201, MCA."**

Respectfully report as follows: That HOUSE Bill No. 438

~~DO PASS~~

STANDING COMMITTEE REPORT

February 5,

19 **83**

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **448**

First reading copy (**white**)
color

**A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR MUTUAL AND
RECIPROCAL DISCOVERY IN CRIMINAL CASES; AMENDING SECTIONS
46-15-301 AND 46-15-302 TO READ: "CA."**

Respectfully report as follows: That **HOUSE** Bill No. **448**

BE AMENDED AS FOLLOWS:

1. Page 2, line 2,
Following: **"defendant"**
Strike: **"intends to"**
Insert: **"may"**

2. Page 4, line 4.
Following: **"cause,"**
Insert: **", upon a showing of good cause,"**

3. Page 4, line 12.
Following: **"prosecution"**
Strike: **", which"**
Insert: **"or the defense. The work product of the prosecution"**

AND AS AMENDED, DO NOT PASS

DO PASS

STANDING COMMITTEE REPORT

February 4, 19 83

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **439**

First reading copy (**white**)
color

**A BILL FOR AN ACT ENTITLED: "AN ACT TO ABOLISH THE SENTENCE
REVIEW DIVISION OF THE MONTANA SUPREME COURT; REPEALING SEC-
TIONS 46-18-901 THROUGH 46-18-905, MCA."**

Respectfully report as follows: That **HOUSE** Bill No. **439**

DO NOT PASS

DO PASS

STANDING COMMITTEE REPORT

February 4,

1983

MR. **SPRANKER:**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **502**

First reading copy (**white**)
color

**A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING THE TIME THAT
JUDICIAL PROCEEDINGS ARE STAYED UPON TRANSMISSION OF ADDITIONAL
EVIDENCE TO THE PUBLIC SERVICE COMMISSION AND ELIMINATING AUTO-
MATIC TRANSMISSION OF ADDITIONAL EVIDENCE ABSENT JUDICIAL RULING;
AMENDING SECTION 69-3-404, MCA."**

Respectfully report as follows: That **HOUSE** Bill No. **502**

BE AMENDED AS FOLLOWS:

1. Page 2, line 4.
Following: "within"
Strike: "7"
Insert: "14"

2. Page 2, line 9.
Following: "such"
Strike: "7"
Insert: "14"

DO PASS AS AMENDED

STANDING COMMITTEE REPORT

February 4, 1983

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **496**

First reading copy (**white**)
color

**A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING CLERKS OF DISTRICT
COURTS TO ISSUE PASSPORTS IN ACCORDANCE WITH FEDERAL LAW AND TO
ESTABLISH AND COLLECT FEES FOR ISSUING PASSPORTS; REQUIRING
THAT PASSPORT FEES BE DEPOSITED IN THE COUNTY GENERAL FUND;
AMENDING SECTION 25-1-201, MCA."**

Respectfully report as follows: That **HOUSE** Bill No. **496**

DO NO PASS

~~XXXXXX~~
DO PASS

STANDING COMMITTEE REPORT

2/4/83

* February 8, 19 83

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **483**

First reading copy (**white**)
color

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT AN ACTION
BROUGHT IN CITY COURT FOR VIOLATION OF A STATE LAW MAY BE
BROUGHT IN THE NAME OF THE CITY OR TOWN; AMENDING SECTION
3-11-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Respectfully report as follows: That **HOUSE** Bill No. **483**

DO PASS

STANDING COMMITTEE REPORT

February 14, 19 83

MR. ~~SPEAKER~~:We, your committee on JUDICIARYhaving had under consideration HOUSE Bill No. 467~~First~~ reading copy (white)
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
INQUEST STATUTES; AMENDING SECTIONS 46-201, 46-4-202, AND
46-4-204, MCA."

Respectfully report as follows: That HOUSE Bill No. 467

BE AMENDED AS FOLLOWS:

1. Page 1, line 23 through page 2, line 10.
Strike: Subsection (3) in its entirety
Renumber subsequent subsections.

2. Page 2, line 15.
Following: "as a"
Strike: "law enforcement"
Insert: "peace"

3. Page 2, line 19.
Following: "of a"
Strike: "law enforcement"
Insert: "peace"

DO NOT

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4. Page 2, line 21.

Following: "by a"

Strike: "law enforcement"

Insert: "peace"

5. Page 2, line 23.

Following: "request"

Strike: "the"

Insert: "a qualified"

6. Page 3, line 20.

Following: "attorney"

Strike: "and" on line 20 through "decadent" on line 22.

AND AS AMENDED
DO PASS

STANDING COMMITTEE REPORT

February 4, 1983

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **355**

reading copy ()
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO EVIDENCE; AMENDING SECTIONS 26-1-101, 26-1-102, 26-1-201 THROUGH 26-1-203, 26-1-302, 26-1-303, 26-1-401, 26-1-402, 26-1-501, 26-1-601, 26-1-602, 26-1-607, 26-1-622, 26-1-623, 26-1-805, 26-2-104, 26-2-302, AND 26-2-404, MCA; REPEALING SECTIONS 26-1-107, 26-1-108, AND 26-1-621, MCA."

Respectfully report as follows: That **HOUSE** Bill No. **355**

DO PASS

February 5, 19 83

MR. ~~SPAKER~~:

JUDICIARY

We, your committee on

having had under consideration ~~HOUSE~~ Bill No. ~~357~~

First reading copy (white
color)

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS RELATING
TO IMMUNIZATION AND INDEMNIFICATION OF GOVERNMENTAL EMPLOYEES;
AMENDING SECTION 2-9-305, MCA; AND PROVIDING AN EFFECTIVE DATE."

Respectfully report as follows: That ~~HOUSE~~ Bill No. ~~357~~

BE AMENDED AS FOLLOWS:

1. Page 1, line 18.

Strike: "for damages"

2. Page 2, line 1.

Following: "shall"

Strike: ":(a) be made a party defendant to the action; and
(b)"

3. Page 3, line 10.

Strike: "for damages"

4. Page 4, line 10.

Strike: "for damages"

DAVE BROWN,

Chairman.

February 5, 1983

5. Page 4, line 20.

Strike: "or"

Insert: "(c) the employee compromised or settled the claim
without the consent of the government entity
employer; or"

Renumber subsequent subsection.

AND AS AMENDED
DO PASS

	Date: 2/4 No: HB 440 Ramirez Amendment	Date: 2/4 No: HB 440 Ferris Amendment	Date: 2/4 No: HB 440 Do Not Pass	Date: 2/4 No: HB 389 Do Not Pass	Date: 2/4 No: HB 398 Pass For Day	Date No:	Date: No:
BROWN, Dave	no	yes	yes	no	yes		
ADDY, Kelly	no	yes	yes	no	yes		
BERGENE, Toni	yes	yes	no	yes	no		
BROWN, Jan	yes	yes	yes	no	yes		
CURTISS, Aubyn	yes	no	no	yes	no		
DAILY, Fritz	—	—	—	no	no		
DARKO, Paula	no	yes	yes	no	yes		
EUDAILY, Ralph	yes	no	no	yes	no		
FARRIS, Carol	no	yes	yes	no	yes		
HANNAH, Tom	yes	no	no	yes	no		
IVERSON, Dennis	—	no	yes	yes	yes		
JENSEN, James	no	yes	yes	no	yes		
KENNERLY, Roland	yes	no	yes	no	yes		
KEYSER, Kerry	yes	no	yes	yes	no		
RAMIREZ, Jack	yes	no	no	yes	no		
SCHYE, Ted	yes	yes	yes	no	yes		
SEIFERT, Carl	—	—	—	—	—		
SPAETH, Gary	yes	yes	yes	yes	yes		
VELEBER, Dennis	no	yes	yes	no	yes		
	10-yes 6-no	10-yes 7-no	12-yes 5-no	10-no 8-yes	11-yes 7-no		

JUDICIARY

COMMITTEE

DATE 2/4/83

SPONSOR Rep. Pavlovich

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

PUBLIC SERVICE COMMISSION 1227 11th Avenue • Helena, Montana 59620
Telephone: (406) 449-3007 or 449-3008

Exhibit A
HB 502
2/4/83

Gordon E. Bollinger, Chairman
John B. Driscoll
Howard L. Ellis
Clyde Jarvis
Thomas J. Schneider

MEMORANDUM

TO: Representative Robert J. Pavlovich
FROM: Bob Nelson, PSC Staff Attorney *BN*
DATE: February 3, 1983
RE: HB 502

The Commission requests the changes proposed in HB 502 in order to make the judicial review procedures set forth there more meaningful and in conformance with the Montana Administrative Procedure Act.

When a Commission decision is appealed to district court, the law currently provides that the court's review must be confined to the administrative record, except in two special circumstances. In the second circumstance, the party seeking review must show "good reason" for failing to present the additional evidence in the original proceeding before the agency. If the court does not act within 7 days from the introduction of new evidence, it is assumed that the court has found "good reason", and the Commission is then given 10 days to consider the new evidence and report to the court.

HB 502 makes two changes in this procedure. First, the court is presumed not to have found "good reason" unless it specifically orders otherwise. This will ensure that a written order, rather than silence, imposes additional obligations on the Commission, and will bring this special provision into conformance with the general "additional evidence" provision which applies to all agencies in the Administrative Procedure Act (§2-4-703, MCA.) Second, the Commission is given 30 days, rather than 20, to consider and act upon the additional evidence. This is desirable due to the amount of evidence occasionally remanded and the fact that five Commissioners and several staff members must review the material in technically complicated cases.

HB 502 also extends the time that judicial proceedings are stayed from 25 to 35 days, in order to conform with the 10 day change described above. The Commission is aware that an amendment will be proposed to change "7" days to "14" days in lines 4 and 9, page 2. This would extend the time allowed for the court's consideration, and the Commission has no objection to such an amendment.

Consumer Complaints (406) 449-4672

"AN EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER"

E. D. A.

WITNESS STATEMENT

Name Bill Opitz Committee On _____
Address Helena Date 2/4/83
Representing PSC Support X
Bill No. HB-502 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. *Support the prefiled testimony of content of
Bob Nelson memo to Rep Pavlovich*
- 2.
- 3.
- 4.

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

WITNESS STATEMENT

Name Bob Nelson Committee On Judiciary
Address 1227 1/4th Ave, Helena Date 2/4/83
Representing PSC Support ✓
Bill No. HB 502 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. The Commission supports HB 502 in order to make Commission review of additional evidence
2. more meaningful by providing sufficient time for such review.
3. HB 502 would also ensure that extraordinary obligations are imposed on the Commission by written
4. order, rather than silence.

Finally, the special provision relating to the Commission would be more consistent with the general Montana Administrative Procedure Act provision relating to all agencies

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

WITNESS STATEMENT

Name John Alke Committee On _____
Address 701 S Hammond Date _____
Representing MBY Support X
Bill No. 502 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

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

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL House Bill 468

DATE 2/4/83

SPONSOR Rep. Swift

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Exhibit B
HB 468
2/4/83

ACLU OF MONTANA

AMERICAN CIVIL LIBERTIES UNION

. O . B O X 3 0 1 2 • B I L L I N G S , M O N T A N A 5 9 1 0 3 • (4 0 6) 2 4 8 - 1 0 8 6

The A.C.L.U. of Montana is opposed to HB 468 because it is too rigid on a speedy trial basis.

The four requirements that prevail on a speedy trial are:

1. Length of delay
2. Cause of the delay
3. Whether rights are asserted in a timely fashion
4. Whether there is prejudice

The present individualized approach takes approximately 200 days and seems fair. The restrictions involved with this bill do not take into account how one is going through the judicial process.

Section 46-21-105: We see no reason to strike this section out. By striking this section out - you are taking the Supreme Courts discretion away to grant equitable relief in situations where the petitioner has justifiable grounds for relief - where for one reason or another he couldn't raise it in the original petition. Certainly, the U.S. Supreme Court case of Wingo and the Petition of Swam in U.S. District Court in Missoula - 82 has already spoken on this issue.

Thank you Mr. Chairman and members of the committee.

VISITOR'S REGISTER

HOUSE JUDICIARY

COMMITTEE

BILL House Bill 496

DATE 2/4/83

SPONSOR Rep. Ellison

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

AMENDMENTS TO HOUSE BILL 496
(Introduced Copy)

Exhibit C
HB496
2/4/83

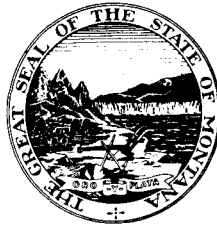
1. Title, line 5.
Following: "COURTS"
Strike: "TO ISSUE PASSPORTS IN ACCORDANCE WITH
FEDERAL LAW AND"
2. Title, line 6.
Following: "TO"
Strike: "ESTABLISH AND"
Following: "FOR"
Strike: "ISSUING PASSPORTS"
Insert: "EXECUTING PASSPORT APPLICATIONS"
3. Title, line 7.
Following: "THAT PASSPORT"
Insert: "EXECUTION"
4. Page 3, line 4 and 5.
Following: "shall"
Strike: "issue passports"
Insert: "take passport applications"
5. Page 3, line 5.
Following: "law and"
Strike: "establish and"
6. Page 3, line 6.
Following: "for the"
Strike: "issuance"
Insert: "execution"
Following: "passport"
Strike: ", not to exceed the actual cost of issuance"
Insert: "application"
7. Page 3, line 7.
Following: "for"
Strike: "issuance"
Insert: "execution"
8. Page 3, line 8.
Strike: "passports"
Insert: "passport application"

SENATE MEMBERS

HAT M. GOODOVER
CHAIRMAN
CARROLL GRAHAM
JOSEPH P. MAZUREK
JESSE O'HARA

HOUSE MEMBERS

JOHN VINCENT
VICE CHAIRMAN
BURT L. HURWITZ
REX MANUEL
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Montana Legislative Council

State Capitol
Helena, MT. 59620

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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

January 31, 1983

TO: Representative Orval Ellison and
Representative Jan Brown

FROM: Dave Bohyer *Dave*

RE: Passport Fees; HB 496

I researched the bill on passport fees a bit further and came up with the following:

Title 22, chapter 4, section 214 of the United States Codes provides for the U.S. Secretary of State by regulation "to authorize State officials to collect and retain the execution fee". The execution fee is currently \$4.

Title 22, chapter I, subpart B, §51.21, Code of Federal Regulations authorizes "A clerk of any State court of record or a judge or clerk of any probate court", among others, to process passport applications.

Subpart D, §51.61 provides that the fee for executing a passport is \$4 which "may be collected and retained by any State official before whom an application is executed".

None of the federal codes or regulations requires that a clerk keep the execution fee.

Section 25-1-201, MCA, provides for other fees or portions thereof collected by clerks of district courts to be deposited in the county general fund.

I also checked with Greg Petesch, a staff attorney, about any potential conflict between Montana law and federal law and regulations with respect to fees for passports. He felt there was no conflict.

A copy of the federal statute and regulations is attached.

DB:rm

TITLE 22—FOREIGN RELATIONS AND INTERCOURSE

Chap.		Sec.
20A.	Mutual Defense Assistance Control Program [Omitted].....	1611
47.	Nuclear Non-Proliferation [New]	3201
48.	Taiwan Relations [New].....	3301
49.	Support of Peace Treaty Between Egypt and Israel [New].....	3401
50.	Institute for Scientific and Technological Cooperation [New].....	3501
51.	Panama Canal [New].....	3601
52.	Foreign Service [New].....	3901

CHAPTER 1—DIPLOMATIC AND CONSULAR SERVICE GENERALLY

§ 99. Transferred

CODIFICATION

Section, Apr. 5, 1906, ch. 1366, § 8, 34 Stat. 101; Feb. 5, 1915, ch. 23, §§ 3, 6, 38 Stat. 805, 806; May 24, 1924, ch. 182, § 11, 43 Stat. 142; Aug. 13, 1946, ch. 957, title XI, § 1131(26), 60 Stat. 1037, which related to the general duty to account for fees, was transferred to section 4223 of this title.

CHAPTER 4—PASSPORTS

§ 211a. Authority to grant, issue, and verify passports

The Secretary of State may grant and issue passports, and cause passports to be granted, issued, and verified in foreign countries by diplomatic representatives of the United States, and by such consul generals, consuls, or vice consuls when in charge, as the Secretary of State may designate, and by the chief or other executive officer of the insular possessions of the United States, under such rules as the President shall designate and prescribe for and on behalf of the United States, and no other person shall grant, issue, or verify such passports. Unless authorized by law, a passport may not be designated as restricted for travel to or for use in any country other than a country with which the United States is at war, where armed hostilities are in progress, or where there is imminent danger to the public health or the physical safety of United States travelers.

(As amended Oct. 7, 1978, Pub. L. 95-426, title I, § 124, 92 Stat. 971.)

AMENDMENTS

1978—Pub. L. 95-426 added provision prohibiting passport restrictions except for countries with which the United States is at war, where armed hostilities are in progress or there is imminent danger to the public health or physical safety of United States travelers.

PERSONS ENTITLED TO DIPLOMATIC OR OFFICIAL UNITED STATES PASSPORT

Section 125 of Pub. L. 95-426 provided that: "It is the sense of the Congress that a diplomatic or official United States passport should be issued only to, and used only by, a person who holds a diplomatic or other official position in the United States Government or who is otherwise eligible for such a passport under conditions specifically authorized by law."

§ 214. Fees for execution and issuance of passports; persons excused from payment

There shall be collected and paid into the Treasury of the United States quarterly a fee of \$10 for each passport issued and a fee in an amount prescribed by the Secretary of State by regulation for executing each application for a passport. Nothing contained in this section shall be construed to limit the right of the Secretary of State by regulation (1) to authorize State officials to collect and retain the execution fee, or (2) to transfer to the United States Postal Service the execution fee for each application accepted by that Service. No passport fee shall be collected from an officer or employee of the United States proceeding abroad in the discharge of official duties, or from members of his immediate family; from an American seaman who requires a passport in connection with his duties aboard an American flag-vessel; or from a widow, child, parent, brother, or sister of a deceased member of the Armed Forces proceeding abroad to visit the grave of such member. No execution fee shall be collected for an application made before a Federal official by a person excused from payment of the passport fee under this section.

[See main edition for credits]

CODIFICATION

Section is set out in this supplement to correct a typographical error in the main edition.

§ 215. Omitted

CODIFICATION

Section, act June 4, 1920, ch. 223, § 2, 41 Stat. 750, provided for fees of \$1 for each application for a visa and \$9 for each visa. It was superseded by sections 2(h) and 7(h) of the Immigration Act of 1924 (act May 26, 1924, ch. 190, 43 Stat. 154, 157) which provided for fees in the same amounts. The 1924 Act was repealed by section 403(a)(23) of the Immigration and Nationality Act (act June 27, 1952, ch. 477, 66 Stat. 279). See section 1351 of Title 8, Aliens and Nationality, and section 483a of Title 31, Money and Finance.

to the Department upon the termination of the bearer's official status.

(d) *Period of validity of a diplomatic passport.* A diplomatic passport issued on or after January 1, 1977 is valid for a period of five (5) years or so long as the bearer maintains his/her diplomatic status, whichever is shorter. A diplomatic passport which has not expired must be returned to the Department upon the termination of the bearer's diplomatic status or at such other time as the Secretary shall determine. Any outstanding diplomatic passport issued before January 1, 1977 will expire effective December 31, 1977.

(e) *Limitation and extension of validity.* The period of validity of any passport may be limited by the Secretary to less than the normal 5-year validity period. Applications for extensions of passports limited to less than the full validity period must be made in writing and must be submitted to a Passport Issuing Office. In no event may a passport be extended beyond the normal period of validity.

[Dept. Reg. 108.541, 31 FR 13540, Oct. 20, 1956, as amended by Dept. Reg. 108.594, 33 FR 12042, Aug. 24, 1968; Dept. Reg. 108.734, 42 FR 17869, Apr. 4, 1977]

§ 51.5 [Reserved]

§ 51.6 Mutilation and alteration of passports.

Any passport which has been materially changed in physical appearance or composition, or which includes unauthorized changes, obliterations, entries or photographs may be invalidated.

§ 51.7 Verification of passports.

When required by the officials of a foreign government, an American Foreign Service office may verify a U.S. passport at the request of the bearer or of the foreign government.

§ 51.8 Cancellation of previously issued passport.

(a) Upon applying for a new passport, an applicant shall submit for cancellation any previous passport still valid or potentially valid.

(b) If an applicant is unable to produce such a passport for cancellation, he shall submit a signed statement set-

ting forth the circumstances surrounding the disposition of the passport and if it is claimed to have been lost, the efforts made to recover it. A determination will then be made whether to issue a new passport and whether such passport shall be limited as to place and periods of validity.

[Dept. Reg. 108.541, 31 FR 13540, Oct. 20, 1966, as amended at 31 FR 14521, Nov. 11, 1966]

§ 51.9 Passport property of the U.S. Government.

A passport shall at all times remain the property of the United States and shall be returned to the Government upon demand.

Subpart B—Application

§ 51.20 General.

An application for a passport or for an amendment of a passport shall be completed upon such forms as may be prescribed by the Department. The passport applicant shall truthfully answer all questions, and shall state each and every material matter of fact, pertaining to his eligibility for a passport. All information and evidence submitted in connection with an application shall be considered a part thereof.

[Dept. Reg. 108.594, 33 FR 12043, Aug. 24, 1968]

§ 51.21 Execution of passport application.

(a) *First-time applicants or persons who have not been issued a passport within 8 years of the date of a new application.* A person who has never been issued a passport in his or her own name, or who has not been issued a passport in his or her own name within 8 years of the date of a new application, shall appear in person, verify the application by oath or affirmation before a person authorized by the Secretary to give oaths, and pay the established fees.

(b) *Persons authorized by the Secretary to give oaths.* The following persons are authorized by the Secretary to give oaths for passport purposes:

- (1) A passport agent;
- (2) A clerk of any Federal court;

Chapter I—Department of State

(3) A clerk of any State court of record or a judge or clerk of any probate court;

(4) A postal employee designated by the postmaster at a post office which has been selected to accept passport applications;

(5) A diplomatic or consular officer abroad; or

(6) Any other persons specifically designated by the Secretary.

(c) *Persons in the United States who have been issued a passport within 8 years of the date of a new application.* A person in the United States who has been issued a passport in his or her own name within 8 years of the date of a new application may obtain a new passport by filling out and mailing a specially prescribed application together with his or her previous passport, two signed recent photographs and the established fee to the nearest U.S. Passport Agency or to the Passport Office in Washington, D.C., provided:

(1) The previous passport was issued when the applicant was 18 years of age or older; and

(2) The previous passport is submitted with the new application.

If the applicant is unable to meet any of the requirements of paragraph (c) he or she must follow the procedures set forth in paragraph (a) of this section.

(d) *Persons outside of the United States who have been issued a passport within 8 years of the date of the application.* In a foreign country in which a U.S. consular district has been designated by the Secretary to receive such passport applications, a person who has been issued a passport in his or her own name within 8 years of the date of the new application may obtain a new passport by filling out a specially prescribed application and sending it (by mail or another person as prescribed by the Secretary), together with his or her previous passport, two signed recent photographs and the established fee to the consular office in the consular district in which he or she is present (if that consular district is designated for this purpose by the Secretary), provided he or she meets the following requirements:

(1) The previous passport must have been issued when the applicant was 18 years of age or older; and

(2) The previous passport must be submitted with the new application.

If the applicant is unable to meet the above requirements he or she must follow the procedures set forth in paragraph (a) of this section.

[44 FR 19393, Apr. 3, 1979, as amended by SD-165, 46 FR 2343, Jan. 9, 1981; Dept. Reg. 108.804, 46 FR 16257, Mar. 12, 1981]

§ 51.22 [Reserved]

§ 51.23 Name of applicant to be used in passport.

The passport application shall contain the full name of the applicant. The applicant shall explain any material discrepancies between the name to be placed in the passport and the name recited in the evidence of citizenship and identity submitted. The passport issuing office may require documentary evidence or affidavits of persons having knowledge of the facts to support the explanation of the discrepancies.

[SD-165, 46 FR 2343, Jan. 9, 1981]

§ 51.24 Change of name.

An applicant whose name has been changed by court order or decree shall submit with his application a certified copy of the order or decree. An applicant who has changed his name by the adoption of a new name without formal court proceedings shall submit with his application evidence that he has publicly and exclusively used the adopted name over a long period of time.

§ 51.25 Photographs.

(a) *Photographs of bearer.* The applicant shall submit with his application duplicate photographs of the size specified in the application. The photographs should be sufficiently recent to be a good likeness of and satisfactorily identify the applicant. The photographs shall be signed in the same manner and form as required in the application.

(b) *Photographs of uniformed personnel.* Only applicants who are in the

(c) *Derivative citizenship subsequent to birth.* (1) An applicant who claims U.S. citizenship by virtue of the naturalization of his parent or parents subsequent to his birth may submit his own certificate of citizenship.

(2) In lieu of a certificate of citizenship the applicant may submit the naturalization certificate of the parent or parents through whom he claims U.S. citizenship. In this case, he must also show that he resided in the United States during minority as required by the law under which he claims citizenship.

(3) If an applicant claims citizenship through a mother who resumed citizenship or parent who was repatriated, he must submit evidence thereof. The applicant must establish also that he resided in the United States for the period prescribed by law.

MARRIED WOMEN

§ 51.45 Marriage to an alien prior to March 2, 1907.

A woman citizen of the United States who married an alien prior to March 2, 1907, did not lose her U.S. citizenship unless she acquired as a result of the marriage the nationality of her husband and thereafter took up a permanent residence abroad prior to September 22, 1922.

§ 51.46 Marriage to an alien between March 2, 1907, and September 22, 1922.

(a) A woman citizen of the United States who married an alien between March 2, 1907, and September 22, 1922, lost her U.S. citizenship, except as provided in paragraph (b) of this section. At the termination of the marital relation she could resume her U.S. citizenship, if abroad, by registering as a U.S. citizen within 1 year with a Consul of the United States, or by returning to reside in the United States, or, if resident in the United States, by continuing to reside therein. (Section 3 of the Act of March 2, 1907.)

(b) A woman citizen of the United States who married an alien between April 6, 1917, and July 2, 1921, did not lose her citizenship, if the marriage terminated by death or divorce prior to July 2, 1921, or if her husband

became a U.S. citizen prior to that date. She may establish her citizenship by proving her U.S. citizenship prior to marriage and the termination of the marriage or acquisition of U.S. citizenship by her husband prior to July 2, 1921.

§ 51.47 Marriage prior to September 22, 1922, to an alien who acquired U.S. citizenship by naturalization prior to September 22, 1922.

A woman citizen of the United States who lost her citizenship by virtue of her marriage to an alien between March 2, 1907, and September 22, 1922, and who reacquired U.S. citizenship through the naturalization of her husband prior to September 22, 1922, may establish her U.S. citizenship by submitting her husband's certificate of naturalization.

§ 51.48 Marriage between September 22, 1922, and March 3, 1931, to an alien ineligible to citizenship.

A woman citizen of the United States who lost her U.S. citizenship by virtue of her marriage to an alien ineligible to citizenship between September 22, 1922, and March 3, 1931, but who reacquired her citizenship by naturalization in accordance with applicable law shall submit with her application her certificate of naturalization (sec. 3 of the Act of Mar. 3, 1931).

§ 51.49 Marriage on or after September 22, 1922, to an alien eligible to naturalization.

A woman citizen of the United States who on or after September 22, 1922, married an alien eligible for naturalization did not thereby lose her U.S. citizenship and need only submit evidence of her own citizenship before a passport issuing office.

§ 51.50 Alien born woman—marriage to citizen prior to September 22, 1922.

An alien woman who acquired U.S. citizenship by virtue of her marriage to a citizen of the United States prior to September 22, 1922, shall submit with her application evidence of her husband's citizenship and of the marriage. (Section 1994 of the Revised Statutes.)

CITIZENSHIP BY ACT OF CONGRESS OR TREATY

§ 51.51 Former nationals of Spain or Denmark.

Former nationals of Spain or Denmark who acquired nationality or citizenship of the United States under an act of Congress or treaty by virtue of residence in territory under the sovereignty of the United States shall submit evidence of their former nationality and of their residence in such territory.

§ 51.52 Citizenship by birth in territory under sovereignty of the United States.

A person claiming nationality or citizenship of the United States under an act of Congress or treaty by virtue of his birth in territory under the sovereignty of the United States shall submit evidence of his birth in such territory.

§ 51.53 Proof of resumption of U.S. citizenship.

An applicant who claims that he resumed U.S. citizenship or was repatriated under any of the nationality laws of the United States shall submit with the application a certificate of naturalization, a certificate of repatriation or evidence of the fact that he took an oath of allegiance in accordance with the applicable provisions of the law. (Act of June 29, 1906, as amended by Act of May 9, 1918; Act of June 25, 1936, as amended by Act of July 2, 1940, sections 317(b) and 323 of the Nationality Act of 1940 as amended by Acts of April 2, 1942, and August 7, 1946; Act of August 16, 1951, as amended by section 402(j) of the Immigration and Nationality Act of 1952; sections 324 and 327 of the Immigration and Nationality Act of 1952; Act of July 20, 1954.)

§ 51.54 Requirement of additional evidence of U.S. citizenship.

Nothing contained in §§ 51.43 through 51.53 shall prohibit the Department from requiring an applicant to submit other evidence deemed necessary to establish his U.S. citizenship or nationality.

§ 51.55 Return or retention of evidence of citizenship.

The passport issuing office will generally return to the applicant evidence submitted in connection with an application for passport facilities. However, the passport issuing office may retain evidence when it deems necessary.

Subpart D—Fees

§ 51.60 Form of remittance.

Passport fees in the United States shall be paid in U.S. currency or by draft, check, or money order payable to the Department of State or the Passport Office. Passport fees abroad shall be paid in U.S. currency, travelers checks, money order, or the equivalent value of the fees in local currency.

[31 FR 14522, Nov. 11, 1966]

§ 51.61 Statutory fees.

Except as provided in § 51.63, (a) the fee for a U.S. passport is \$10; (b) the execution fee for a U.S. passport is \$4, which shall be remitted to the U.S. Treasury where an application is executed before a Federal official but which may be collected and retained by any State official before whom an application is executed; (c) the passport fee of \$10 shall be paid by all applicants for a passport. The execution fee of \$4 shall be paid only when an application is executed under oath or affirmation before an official designated by the Secretary for such purpose.

[44 FR 25631, May 2, 1979]

§ 51.62 Regulatory fees.

The Secretary may authorize the collection of additional fees in connection with passport services. Upon publication of the fees in the FEDERAL REGISTER, the passport issuing office may collect them in the same manner as statutory fees.

§ 51.63 Exemption from payment of passport or execution fee.

(a) The following persons are exempt from the payment of passport fees:



MISSOULA COUNTY

BOARD OF COUNTY COMMISSIONERS

• Missoula County Courthouse • Missoula, Montana 59802
(406) 721-5700

Exhibit D
HB 496
2/4/83

February 2, 1983
BCC-83-59

The Honorable Dave Brown, Chairman
House Judiciary Committee

Mr. Chairman and members of the committee.

My name is Barbara Evans. I am Chairman of the Board of County Commissioners from Missoula. I would like to testify today in regards to HB #496.

First some background. As I understand it the Federal government allows Clerks of Court to ~~issue~~ ^{Process} passports. A portion of that fee is presently going into the pocket of the individual Clerks of Court.

Clerks of Court receive a specified salary from the taxpayers and they charge \$7.00 per passport over and above that salary. In November of 1982 in Missoula the amount collected was \$250. Assuming that as an average figure, the total for the year would be approximately \$3,000.

In addition to that, there is nothing that makes it mandatory for the Clerk alone to ~~issue~~ ^{Process} the passport. That makes it logical to assume that other county employees on county time might be issuing passports and accepting this fee to put in the clerk's pocket.

In this kind of situation, we have a public official making a substantially higher income than the legislature intended due to these fees. Why should I not tell a taxpayer who wants help with any function of County Government that I will be glad to do it for them for a fee of \$7.00? I fail to see any difference and I believe it is totally wrong.

I ask the committee to pass this bill correcting the situation.

Thank you.

HB 496

Laris Shepherd representing The Montana Association of Counties. MACo supports this bill. We believe it serves as a matter of correction and clarification. Fees collected by elected officials of a county should go to that county (section 7-4-2503 MCA). County officials are elected to serve their county. Collection of fees is part of the service & their duty. We believe it has always been the intent of the law to have passport processing fees go to the county general fund and not to the clerks personally.

Concerning the intent of the law I refer to a 1979 AG opinion:

#38 AG 46 (1979)

"The fact that a state official performs a function under federal rather than state law does not necessarily mean that he or she is not rendering an official service. When the individual is permitted to perform the function solely because of his or her official status, he or she renders an official service, regardless of whether the service is authorized by state or federal law."

The clerks collect the fees under color of their office. Absent a statute specifically allowing clerks to retain the fees, the fees should be turned over to the county treasurer. When the clerks took office they did so on the assumption that their compensation was governed by sec. 7-4-2503 MCA. This statute does not permit the clerks to also collect compensation in the

form of passport fees.

Exhibit F
HB 496
2/4/83

RE: House Bill 496; Feb. 4, 1983,

Honorable Members of the House Judiciary Committee:

Mr. Chairman and Members of the Committee. Kathryn Humphrey Clerk of Court, Judith Basin County, Stanford, opposes House Bill 496.

Clerks of District Courts have been able to assist with Passport Applications for many years. There have been several Attorney Generals Opinions upholding the Clerks right to retain the fee we are allowed to charge. Couple years ago there was an Opinion which ruled against our retaining the fees. Just last Fall the Supreme Court Ordered that we could keep the fees. As Clerks we are tired of the hassle, especially since J.P.'s keep fees for marriages and Sheriffs keep cattle inspection fees. Both public services done on County time. We feel Passport information is just one of the many services we provide to the public that doesn't have a direct bearing on our job as Clerks. We are public servants and when the public asks a question we try to answer it.

One of the main reasons the Federal Government appreciates the service we do for them is the ever increasing number of attempts to obtain fraudulent passports by the criminal element in this Country. The Applications are mailed to the very few Passport Agencies throughout the United States that issue Passports. Each Agency receives hundreds of applications every day. They must rely on the expertise of the designated Agent who inspected the proofs of identification which were presented by the applicant. In the many small Counties in this State we know nearly everybody personally or discover a mutual friend so we are sure the applicant is the person they purport to be.

The Passport Agent from Seattle attends our annual Association meetings. He informs us of any new methods of fraud that have been attempted, what we should look for, and any new changes in the application requirements and regulations. These annual seminars assist the Clerks in the larger Counties in their determination of proper identity. If we have

F / 1 / 5

page 2: House Bill 496.

any doubt or suspicion about proper identity, we still give the oath and sign the ^{APPLICATION ON} passport, but we inform the Agency when we submit the application. On that one application they can investigate further with all the resources available to the Federal Government.

I grant you that in doing this service we may, at times, take up a small amount of County time. However, our offices do not provide for over-time so most any extra time that is put in is done by the Clerks. I don't know of any jury trial we have ever had where the jury reached a verdict before 5 p.m., the last trial I got home at 2 a.m. That extra 9 hours alone will compensate my County for any office time I spend on Passports for several years.

I hope you will consider all the testimony you have received from Clerks and will recommend that this Bill not be passed.

Thank you,

Kathryn A. Humphrey
Clerk of District Court
Judith Basin County
Box 307
Stanford, Mt. 59479

Exhibit G

2/4/83

HB 496

PASSPORT INFORMATION

The following procedure is used in the issuance of a passport.*application*

- A. Request if applicant has all necessary documents for completion of application.
- B. Give application to applicant to fill out in their own hand writing.
- C. Check application and check current ID
- D. Give oath to applicant
- E. Applicant signs the form and the Clerks notarize their signatures.
- F. Clerk mails application & accompanying documents to the Seattle Passport Agency for issuance.

DEPARTMENT OF STATE PASSPORT APPLICATION

SEE INSTRUCTIONS—TYPE/PRINT IN INK IN WHITE AREAS

Exhibit H

2/4/83

HB496

IDENTIFYING INFORMATION

NAME

FIRST/MIDDLE

LAST

MAILING ADDRESS (In Care Of if applicable, Street, City, State, ZIP Code)

SEX

PLACE OF BIRTH

R D O OP Endorsement

DATE OF BIRTH

SOCIAL SECURITY NUMBER

Male Female

City, State or Province, Country

HEIGHT

COLOR OF HAIR

COLOR OF EYES

(Area Code)

HOME PHONE

(Not Mandatory)

(Area Code)

BUSINESS PHONE

Feet Inches

PERMANENT ADDRESS (Street, City, State, ZIP Code)

OCCUPATION

DEPARTURE DATE

FATHER'S FULL NAME

FATHER'S BIRTHPLACE AND FATHER'S BIRTH DATE (Mo., Day, Yr.)

FATHER U.S. CITIZEN?

Yes No

MOTHER'S FULL MAIDEN NAME

MOTHER'S BIRTHPLACE AND MOTHER'S BIRTH DATE (Mo., Day, Yr.)

MOTHER U.S. CITIZEN?

Yes No

PREVIOUS PASSPORT INFORMATION

HAVE YOU EVER BEEN ISSUED OR INCLUDED IN A U.S. PASSPORT?

Yes No

IF YES, COMPLETE NEXT LINE REGARDING MOST RECENT PASSPORT. SUBMIT PASSPORT IF AVAILABLE

NAME IN WHICH ISSUED

PASSPORT NUMBER

ISSUE DATE

DISPOSITION OF PASSPORT

Month Day Year

(Submitted, Lost, etc.)

MARRIAGE INFORMATION

HAVE YOU EVER BEEN MARRIED?

Yes No

IF YES:

DATE OF MOST RECENT MARRIAGE

TO:

WIFE'S FULL MAIDEN NAME/HUSBAND'S FULL LEGAL NAME

SPOUSE'S PLACE OF BIRTH

SPOUSE'S DATE OF BIRTH

U.S. CITIZEN?

IF WIDOWED/DIVORCED, CHECK BELOW AND GIVE DATE

WIDOWED

DIVORCED

Month Day Year

City, State or Province, Country

Month Day Year Yes No

PROPOSED TRAVEL PLANS AND EMERGENCY ADDRESS (Not Mandatory)

LENGTH OF STAY

COUNTRIES TO BE VISITED

PERSON TO NOTIFY IN CASE OF EMERGENCY ABROAD (Not Traveling With You)

NAME IN FULL

ADDRESS

PHONE NUMBER

(Area Code)

RELATIONSHIP

DO NOT SIGN APPLICATION UNTIL REQUESTED TO DO SO BY ACCEPTANCE AGENT

I have not, since acquiring United States citizenship, performed any of the acts listed under "Acts or Conditions" on the reverse of this application form (unless explanatory statement is attached). I solemnly swear (or affirm) that the statements made on this application are true and the photograph attached is a true likeness of me.

Subscribed and sworn to (affirmed) before me this

Day of

19

(SEAL)

(To be signed by addressee in presence of acceptance agent)

(Signature of person authorized to accept application)

Clerk of the

Postal Employee/
Passport Agent at

FOR PASSPORT SERVICES USE ONLY

☐ Birth Cert.

SR

CR

City

☐ Passport

☐ Naturalization/Citizenship Cert.

No.

Filed/Issued:

Place:

Bearer's Name:

Other:

Seen & Returned

Examiner Name

☐ Attached

Office, Date

FEE

EXEC

POST

Exhibit H

**DEPARTMENT OF STATE
PASSPORT APPLICATION**

HOW TO APPLY FOR A U.S. PASSPORT. U.S. passports are issued only to U.S. citizens or nationals. Each person must obtain his or her own passport.

IF YOU ARE A FIRST-TIME APPLICANT, please complete and submit this application personally with: (1) **PROOF OF U.S. CITIZENSHIP;** (2) **PROOF OF IDENTITY;** (3) **TWO PHOTOGRAPHS;** (4) **FEES** (as explained below) to one of the following acceptance agents: a clerk of any Federal or State court of record or a judge or clerk of any probate court, accepting applications; a designated postal employee at a selected post office; or an agent at a Passport Agency in Boston, Chicago, Honolulu, Houston, Los Angeles, Miami, New Orleans, New York, Philadelphia, San Francisco, Seattle, Stamford, or Washington, D.C.

IF YOU HAVE HAD A PREVIOUS PASSPORT, inquire about eligibility to use Form DSP-82 (mail-in application).

Address requests for passport amendment, extension of validity, or additional visa pages to a Passport Agency or a U.S. consulate or Embassy abroad. Check visa requirements with consular officials of countries to be visited.

(1) PROOF OF U.S. CITIZENSHIP

(a) APPLICANTS BORN IN THE UNITED STATES. Submit: previous U.S. passport; or, birth certificate. A birth certificate must include your given name and surname, date and place of birth, date the birth record was filed, and seal or other certification of the official custodian of such records. A record filed more than 1 year after birth is acceptable if it was supported by evidence described in the next paragraph.

IF NO BIRTH RECORD EXISTS, submit registrar's notice to that effect. Also submit an early baptismal or circumcision certificate, hospital birth record, early census, school, or family bible records, newspaper or insurance files, or notarized affidavits of persons having knowledge of your birth (preferably with at least one record listed above). Evidence should include your given name and surname, date and place of birth, and seal or other certification of office (if customary) and signature of issuing official.

(b) APPLICANTS BORN OUTSIDE OF THE UNITED STATES. Submit: previous U.S. passport; or Certificate of Naturalization; or Certificate of Citizenship; or evidence described below:

IF YOU CLAIM CITIZENSHIP THROUGH NATURALIZATION OF PARENT(S), submit your parent(s) Certificate(s) of Naturalization, your foreign birth certificate, and proof of your admission to the United States for permanent residence.

IF YOU CLAIM CITIZENSHIP THROUGH BIRTH ABROAD TO U.S. CITIZEN PARENT(S), submit a Consular Report of Birth (Form

FS-240) or Certification of Birth (Form DS-1350 or FS-545) or your foreign birth certificate, parents' marriage certificate, proof of parent(s) citizenship and affidavit of U.S. citizen parent(s) showing all periods and places of residence/physical presence in the United States and abroad before your birth.

(2) PROOF OF IDENTITY. If you are not personally known to the acceptance agent, submit one of the following items containing your signature AND physical description or photograph which is a good likeness of you: previous U.S. passport; Certificate of Naturalization or of Citizenship; driver's license (not temporary or learner's license); or Governmental (Federal, State, municipal) identification card or pass. Temporary or altered documents are not acceptable.

IF YOU CANNOT PROVE YOUR IDENTITY as stated above you must appear with an **IDENTIFYING WITNESS**, a U.S. citizen or permanent resident alien who has known you for at least 2 years. Your witness must prove his or her identity and complete and sign an "Affidavit of Identifying Witness" (Form DSP-71) before the acceptance agent. You must also submit some identification of your own.

(3) TWO PHOTOGRAPHS. Submit two identical photographs of you alone, sufficiently recent to be a good likeness (normally taken within the last 6 months), 2 x 2 inches in size, with an image size from bottom of chin to top of head (including hair) of between 1 and 1 3/8 inches. Photographs must be clear, front view, full face, taken in normal street attire without a hat or dark glasses, and printed on thin paper with a plain light (white or off-white) background. They may be in black and white or color. They must be capable of withstanding a mounting temperature of 225 degrees Fahrenheit (107 degrees Celsius). Photographs retouched so that your appearance is changed are unacceptable. Snapshots, most vending machine prints, and magazine or full-length photographs are unacceptable.

(4) FEES. Consult acceptance agent regarding amount of fees. Pay the passport and execution fees in one of the following forms: bank draft or cashier's check; check (certified, personal, travelers); money order (United States Postal, international currency exchange, bank); currency.

Make passport and execution fee payable to Passport Services (except if applying at a State court, pay execution fee as the State court requires). No fee is charged to applicants with U.S. Government or military authorization for No-Fee passports (except State courts may collect the execution fee). Pay special postage if applicable.

PRIVACY ACT STATEMENT

The information solicited on this form is authorized by, but not limited to, those statutes codified in Titles 8, 18, and 22, United States Code, and all predecessor statutes whether or not codified, and all regulations issued pursuant to Executive Order 11295 of August 3, 1966. The primary purpose for soliciting the information is to establish citizenship, identity, and entitlement to issuance of a United States Passport or related facility, and to properly administer and enforce the laws pertaining thereto.

The information is made available as a routine use on a need-to-know basis to personnel of the Department of State and other government agencies having statutory or other lawful authority to maintain such information in the performance of their official duties; pursuant to a subpoena or court order; and, as set forth in Part 6a, Title 22, Code of Federal Regulations (See Federal Register Volume 40, pages 45755, 45756, 47419, and 47420).

Failure to provide the information requested on this form may result in the denial of a United States Passport, related document, or service to the individual seeking such passport, document, or service.

ACTS OR CONDITIONS

(If any of the below-mentioned acts or conditions has been performed by or applies to the applicant, the portion which applies should be lined out, and a supplementary explanatory statement under oath (or affirmation) by the applicant should be attached and made a part of this application.)

I have not, since acquiring United States citizenship, been naturalized as a citizen of a foreign state; taken an oath or made an affirmation or other formal declaration of allegiance to a foreign state; entered or served in the armed forces of a foreign state; accepted or performed the duties of any office, post, or employment under the government of a foreign state or political subdivision thereof; made a formal renunciation of nationality either in the United States or before a diplomatic or consular officer of the United States in a foreign state; or been convicted by a court or court martial of competent jurisdiction of committing any act of treason against, or attempting by force to overthrow, or bearing arms against, the United States, or conspiring to overthrow, put down, or to destroy by force, the Government of the United States.

WARNING: False statements made knowingly and willfully in passport applications or in affidavits or other supporting documents submitted therewith are punishable by fine and/or imprisonment under the provisions of 18 USC 1001 and/or 18 USC 1542. Alteration or mutilation of a passport issued pursuant to this application is punishable by fine and/or imprisonment under the provisions of 18 USC 1543. The use of a passport in violation of the restrictions contained therein or of the passport regulations is punishable by fine and/or imprisonment under 18 USC 1544. All statements and documents submitted are subject to verification.

FOR ACCEPTANCE AGENT'S USE ONLY (Applicant's Identifying Documents)

<input type="checkbox"/> PASSPORT	<input type="checkbox"/> CERTIFICATE OF NATURALIZATION OR CITIZENSHIP	<input type="checkbox"/> DRIVER'S LICENSE	<input type="checkbox"/> OTHER (Specify) _____	ISSUE DATE		
				<input type="text"/>	<input type="text"/>	<input type="text"/>
				Month	Day	Year
EXPIRATION DATE		NUMBER		PLACE OF ISSUE		ISSUED IN THE NAME OF
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Month	Day	Year				

Exhibit I
HB496
2/4/83

OFFICE OF
CLERK OF DISTRICT COURT
BEAVERHEAD COUNTY
DILLON, MONTANA

MARGARET S ~~x7722~~ Shaw

Re: H.B. 496

Mr. Chairman and Members of Committee:

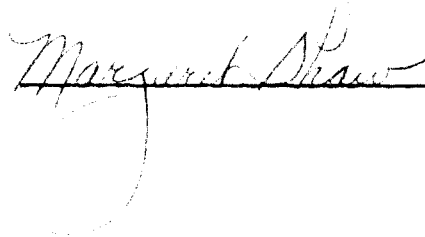
I am an opponent on H.B. 496

Not to be repetitious most of my comments have been covered by Maryhelen Habeger.

Very little of County time is taken up with issuing passports.

The Certified postage and money order charges to the Passport Agency is paid out of the Execution fee and the minimal balance is unselfish use of the remainder for the benefit of the office.

We Clerks would appreciage your consideration in NOT passing HB 496.

_____

JUDICIARY

COMMITTEE

DATE 2/4/83

SPONSOR Rep. Spaeth

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Exhibit K
HB 483
2/4/83

IN THE DISTRICT COURT OF THE THIRTEENTH
JUDICIAL DISTRICT OF THE STATE OF MONTANA
IN AND FOR THE COUNTY OF CARBON

STATE OF MONTANA,)
Plaintiff,)
v.)
KIRK S. NELSON,)
Defendant.)

No. DC 79-07

ORDER

Sally M. Johnson, attorney for the defendant, filed
Motions to Dismiss on the grounds that:

1. The City of Red Lodge, Montana, had no jurisdiction to enforce state penal codes.
2. That the proper prosecuting authority was the county attorney, not the city attorney.
3. That the caption of the case incorrectly cited the City of Red Lodge as the plaintiff.
4. That the proceedings and purported trial in the city court were heard without proper notice to the defendant and in his absence.
5. That the defendant was denied his right to speedy trial.

Having considered briefs and arguments submitted by Sally M. Johnson, City Attorney Michael G. Alterowitz, and County Attorney Pablo Perhacs, the court rules as follows:

1. The City Court of Red Lodge, Montana has concurrent jurisdiction with the Justice Court of Carbon County, Montana to hear prosecutions for violations of state penal codes. 3-11-102, MCA 1979; Vol 37, No. 42, Attorney General Opinions, July 1, 1977.
2. Prosecutions for violation of city ordinances are conducted by the city attorney. 3-11-301, MCA 1979. The county

1 attorney is required to prosecute all public offenses on behalf of
2 the state. 7-4-2716, MCA 1979.

3 Prosecutions for violations of local ordi-
4 nances must be conducted in the name of the
municipality, by its prosecuting officer.
5 Criminal cases arising under state laws
must be prosecuted in the name of the state
6 and by the county attorney. State ex rel
Streit v. Justice Court of Chinook, 45 Mont.
7 375, 123 P. 405 (1912).

8 3. All cases prosecuted for violation of city ordinance
9 shall be brought in the name of the city. Cases prosecuted under
10 state penal code shall be prosecuted in the name of the State of
Montana. 3-11-302, MCA 1979.

11 4. The defendant has a constitutional right to confront
12 his accusers and be present at trial. Absent a written waiver,
13 trial may not proceed without the defendant being present. Because
14 the case presently is a trial de novo, the defect in the city court
15 trial does not vitiate this district court proceeding.

16 IT IS THEREFORE ORDERED that the defendant's Motion to
17 Dismiss on the above grounds be denied. It is also ordered that
18 the caption of this case be changed to read State of Montana v.
19 Kirk S. Nelson, and that the case proceed as a trial de novo with
20 the county attorney as the prosecuting authority. It is also
21 ordered that an evidentiary hearing as to the speedy trial issue
22 be held at _____ o'clock on May ___, 1980 in the Carbon
23 County Courthouse, Red Lodge, Montana.

24 ORDERED this 14 day of May, 1980.

25
26 WILLIAM J. SPEARE
27 WILLIAM J. SPEARE
DISTRICT JUDGE

28 cc:

29 Sally M. Johnson
30 Michael G. Alterowitz
31 Pablo Perhacs
32

Exhibit L
HB 486 483
2/4/83

IN THE DISTRICT COURT OF THE THIRTEENTH
JUDICIAL DISTRICT OF THE STATE OF MONTANA
IN AND FOR THE COUNTY OF CARBON

STATE OF MONTANA,)
Plaintiff,)
v.)
RONALD W. NELSON,)
Defendant.)

No. DC 79-06

ORDER

Sally M. Johnson, attorney for the defendant, filed
Motions to Dismiss on the grounds that:

1. The City of Red Lodge, Montana, had no jurisdiction to enforce state penal codes.
2. That the proper prosecuting authority was the county attorney, not the city attorney.
3. That the caption of the case incorrectly cited the City of Red Lodge as the plaintiff.

Having considered briefs and arguments submitted by Sally M. Johnson, City Attorney Michael G. Alterowitz, and County Attorney Pablo Perhacs, the court rules as follows:

1. The City Court of Red Lodge, Montana has concurrent jurisdiction with the Justice Court of Carbon County, Montana to hear prosecutions for violations of state penal codes. 3-11-102 MCA 1979; Vol 37, No. 42, Attorney General Opinions, July 1, 1979.
2. Prosecutions for violation of city ordinances are conducted by the city attorney. 3-11-301, MCA 1979. The county attorney is required to prosecute all public offenses on behalf of the state. 7-4-2716, MCA 1979.

Prosecutions for violations of local ordinances must be conducted in the name of the municipality, by its prosecuting officer. Criminal cases arising under state laws must be prosecuted in the name of the state

1 and by the county attorney.
2 State ex rel. Streit v. Justice Court
3 of Chinook, 45 Mont. 375, 123 P. 405
4 (1912).

5 3. All cases prosecuted for violation of city ordinance
6 shall be brought in the name of the city. Cases prosecuted under
7 state penal code shall be prosecuted in the name of the State of
8 Montana. 3-11-302, MCA 1979.

9 IT IS THEREFORE ORDERED that the defendant's Motion to
10 Dismiss on the above grounds be denied. It is also ordered that
11 the caption of this case be changed to read State of Montana v.
12 Ronald W. Nelson, and that the case proceed as a trial de novo with
13 the county attorney as the prosecuting authority.

14 DATED this 19 day of May, 1980.

15 WILLIAM J. SPEARE
16 WILLIAM J. SPEARE
17 DISTRICT JUDGE

18 cc:

19 Sally M. Johnson
20 Michael G. Alterowitz
21 Pablo Perhacs
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VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL House Bill 467

DATE 2/4/83

SPONSOR Rep. J. JENSEN

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

PROPOSED AMENDMENTS TO
HB 467

- Page 1, line 14 - Delete - shall hold an inquest only if
line 15 - Delete
line 16 - Delete
line 17 - Delete - in which the acts or events causing death
occured.
- Page 1, line 14 - Add after coroner "who has jurisdiction may hold
an inquest into any death if the circumstances of
the death warrant, except where criminal charges have
been or will be filed."
- Page 2, line 5 - Delete - If the estate or any interested heir or
line 6 - Delete
line 7 - Delete
line 8 - Delete
line 9 - Delete
line 10 - Delete
line 15 - Delete - law enforcement
line 15 - Insert "peace"
line 19 - Delete - law enforcement
line 19 - Insert "peace"
line 21 - Delete - law enforcement
line 21 - Insert "peace"
line 23 - Insert after request "a qualified"
line 23 - Delete - the (after request)
- Page 3, line 12 - Delete
line 20 - Delete - and any
line 21 - Delete
line 22 - Delete - interested heir or devisee of the decedent

line 22 - Insert - " Any attorney representing the estate or
representing any interested heir or devisee of the
decedent may submit written questions to the county
attorney which he may use as part of his examination
of the witness."