

MINUTES OF THE MEETING OF THE APPROPRIATIONS COMMITTEE
February 16, 1983

The Appropriations Committee met at 4:40 p.m. on February 16, 1983, in Room 104, with Chairman Francis Bardanouve presiding and all members were present except Representatives BENGTON and ROUSH who were absent. Judy Ripplingale, Legislative Fiscal Analyst, was also present. EXECUTIVE ACTION was taken on HOUSE BILLS 131, 247, and 317.

(Tape 2; Track 1:000)

Chairman BARDANOUE said Speaker Kemmis came by just a few minutes ago and said, "If you have any bills in your committee you can act upon, you'll have a few minutes to have a meeting." So Rep. BARDANOUE said he called the meeting rather hurriedly and the committee would take up bills already heard by the committee.

***EXECUTIVE ACTION:

HOUSE BILL 131: "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."

Rep. MANUEL made a motion that the bill do pass. The motion was seconded and passed unanimously.

HOUSE BILL 247: "A BILL FOR AN ACT ENTITLED: "AN ACT TO APPROPRIATE \$21,554 FROM THE STATE EQUALIZATION AID ACCOUNT TO REIMBURSE PETROLEUM COUNTY SCHOOL DISTRICTS FOR STATE EQUALIZATION AID TO WHICH THE DISTRICTS WERE ENTITLED IN THE 1981-82 SCHOOL FISCAL YEAR: AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Rep. BARDANOUE said, "I asked the OPI to send up their fiscal man and he assured me everything was on the level with this bill and he supports the bill." He then said, "For a little background on what happened, they had a new county clerk down there and there are 4 or 5 mill levies - a 25 mill through the elementary, there's a 15 mill high school levy, there's an elementary county-wide retirement, a county and high school retirement, and a county-wide high school transportation. This new clerk lumped all 5 levies into 2 levies which made it appear the county was very wealthy. So by this error, he short-changed the county."

Rep. MANUEL made a motion that the bill do pass. The motion was seconded by Rep. SHONTZ and passed unanimously.

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."

Rep. BARDANOUE said he asked the Attorney General's office to review this and give him - not necessarily an 'official opinion', but an unofficial opinion. Mr. Driscoll told him they took the Minutes of

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the meeting we had in committee and they reviewed other aspects of the case and they feel the Legislature has the right to determine this was in line with Dr. Glosser's duty - that he did this as an employee of Montana... it was part of his job - and it is also their opinion that he was acting within the scope of his job. He feels there is no legal concern about paying this claim.

Rep. DONALDSON said, "There are a couple of things a little unique about this. First, the suit is still in process of appeal and this particular piece of legislation is asking that the appeal be carried forth. If the appeal is settled against the State Veterinarian and, in effect, a judgment were rendered against him as a personal judgment, and we do not appropriate money until after the appeal process goes through - if we don't appropriate it 'up front' - then, in effect, they'll come back and take his home and everything."

Rep. LORY asked, "Did the Board of Livestock approve his action so that it was made official?" Rep. DONALDSON said he happened to be on the Board of Livestock at that time, so he would not vote on this issue. He then said, "It was the removal of a federal right to use this card test. We had a hearing on it and decided that the process had not been carried out to the fullest and asked Dr. Glosser to give the permit back. He tried to and the federal government wouldn't let him, so he was caught in a 'catch 22'."

Rep. HEMSTAD asked if \$391,500 is also in case Dr. Doran would win this suit? Rep. DONALDSON replied, "Assuming the appeal is carried down - Mike Young has anticipated these costs - it would be assuming the attorneys' fees and the interest... that's the total. I think right now the suit is for around \$260,000. But this is saying we are going to carry the appeal clear through."

Rep. QUILICI said, "I've got a hunch we could even negotiate with them and I'd guess we could settle for less than that, but I think to keep it above board, I think we ought to move on this. I hate to see a state employee or anybody lose his home for doing his job."

Rep. PECK said, "Mr. Chairman, you've been around here a long time... do you normally appropriate the money before the lawsuit is settled?" Rep. BARDANOUVE said, "We never have made final settlement while any case was in the Supreme Court or Court of Appeals." Rep. DONALDSON said this case was unique because, "I think it is the first one we've ever had against an individual. There is HB 357 which went through the House last week, which in effect would clarify these types of situations so we wouldn't have to go through this process everytime."

Rep. STOBIE said he thought we should pass the bill because he would hate to see Dr. Glosser lose his home or take bankruptcy.

Rep. STOBIE made a motion that the bill do pass.

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Rep. BARDANOUE said, "If this case were decided before the end of the session, I think I would like to hold this bill; but I doubt the Legislature will be in session when the court hands down an opinion and then we'd be in a very difficult position." He then said, "I do not like to vote on this bill personally in the situation it is now in - I feel badly about it - and I would not put a public servant into bankruptcy court because it would inhibit public servants all the way across Montana from ever making any kind of judgmental decision on measures he may later be sued for."

Rep. PECK said one thing that bothered him about this case is the appropriation before the fact. Another thing is that we can have public officials who misuse and abuse their position in office and he asked, "Are we establishing a precedent that we are going to cover all those kinds of activities?" Rep. BARDANOUE said this is a question he raised with the Attorney General's office. He said he wasn't comfortable, but felt he is almost forced to vote for the bill.

Rep. PECK said, "Well, Gene, you were sitting on the Board at that time, do you feel he was authorized to take this action?" Rep. DONALDSON said, "There is no question about it." He said, "The federal government has what is called a 'card test', where you test the blood of animals and you can detect brucellosis. The federal government in the regulation to us - which I, frankly, with the members of the Board, wasn't too happy with - said you couldn't use it in different areas... you had to use it in the markets and this type of thing. Now in the background of this individual, his card was pulled on other occasions prior to this time... there was a precedent for saying this was, in effect, a tool the federal government allowed us to use throughout the state Livestock Department. So Dr. Glosser was just doing what his predecessors had done. During the court case I think the ruling was that it was a 'property right' and none of us ever assumed it was a property right and that's why he got in trouble... but his predecessors had done it, it had been done down through the years, and there is no question but that he was acting in the best interests of the livestock industry and there is numerous correspondence to that. It's just a case of being 'caught in the middle'. When we had the hearing in Billings, we voted 6 to 1 saying, 'O.K., give the card test back to those people.'; but the federal government, who had the ownership of it, wouldn't allow it to happen."

Rep. BARDANOUE asked, "What is the situation of the other federal veterinarian?" Rep. DONALDSON said, "He is named in the suit. When they agreed to settle the suit, they wanted to settle with our employee and not with the federal one and I insisted 'If we are going to settle it, we settle it all.' I believe this bill would do that. Once the suit is settled on appeal, it may be resolved. Mike Young is working on the aspect of what the federal liability should be on this thing."

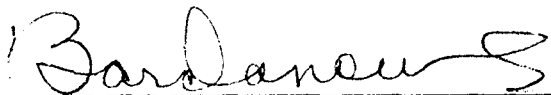
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Rep. HEMSTAD asked, "Will we stop if Dr. Glosser loses in the Court of Appeals?" Rep. BARDANOUE said, "If the Court of Appeals would reverse the opinion, there would be no liability." Rep. HEMSTAD then asked, "What if they do not?" Rep. BARDANOUE said, "We're liable."

Rep. DONALDSON said, "This is kind of a landmark case... as a matter of fact, I think last week the federal veterinarian may have been back in Congress testifying to some changes the federal people may be making in these areas."

The motion was seconded by Rep. LORY and a roll call vote was taken. Rep. DONALDSON again said he would abstain from voting because he had been a member of the Board of Livestock. The vote for passage of the bill was: 12 "Yes"; Representatives SHONTZ and PECK voted "No"; Rep. DONALDSON abstained; Representatives BENGTON and ROUSH were absent... accounting for 17 members of the committee.

The meeting adjourned at 5:07 p.m.



FRANCIS BARDANOUE

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