# MINUTES OF THE MEETING LEGISLATIVE ADMINISTRATION COMMITTEE MONTANA STATE SENATE

January 25, 1983

The fifth meeting of the Legislative Administration committee was called to order by Senator Kolstad, Chairman, in Rm. 415 of the Capitol building at 11:00 a.m. on the above date.

ROLL CALL: All committee members were present except Senator Marbut who was absent.

CONSIDERATION - SENATE JOINT RESOLUTION NO. 8: Senator Kolstad placed SJR 8 before the committee for consideration and asked for proponents of the resolution.

The first proponent to speak was Senator Severson, District 46, who said that this bill delegates representatives from the state of Montana to the Western States Legislative Forestry Task Force. He told the committee that the forests play a vital role in the economic development of the western states and presented to them the attached financial report. (See Exhibit #1)

The next proponent to appear was Robert (Bob) Helding who represents the Montana Wood Products Association. He spoke briefly in support of SJR 8 and submitted the Brief History Report. (See Exhibit #2)

Senator Bob Brown, District 10, told the committee he also supported the resolution and actually echoed the previous testimony of Senator Severson and Bob Helding.

Next, Keith Olson, representing the Montana Logging Association, of Kalispell, appeared in support of SJR 8 and read the attached testimony. (See Exhibit #3)

Senator Kolstad then asked if there were any opponents to SJR 8 present. There being none present, he then asked for questions from committee members. Senator Graham asked if the dues of \$500 were too high. Senator Severson said that they weren't too high because other states such as California which has dues of \$18,000 and also Oregon have much higher dues and the reason for this is that they have permanent offices and Montana does not.

Senator Kolstad then closed the hearing on SJR 8.

CONSIDERATION - SENATE RESOLUTION NO. 3: Senator Kolstad opened the hearing on SR 3 by introducing Senator Goodover who is the co-sponsor of the bill with Senator Graham. Sen. Goodover relinquished his time in favor of Sen. Graham with the provision that he would close after Sen. Graham had given his explanation of the bill.

Legislative Administration Committee Page 2
January 25, 1983

Senator Graham, co-sponsor of Senate Resolution No. 3, told the committee that there was a court suit filed by Sen. Goodover and him which was settled in October, 1982. He said that this resolution would keep the Senate where it is now. Sen. Graham has bee in the Senate for 24 years. It was remodeled just a few years ago at which time they took out the 3-tier floor and the chandelier, and they also have installed new carpeting and a new voting machine. He said it is advantageous to have the Senate chambers close to the House because it is easy to get there to speak on bills and, since much money has been spent remodeling the Senate, it should be kept where it is now. that he felt that moving the Senate and remodeling the Senate chambers would amount to cannibalizing the state's most historic political room. He also told the committee that if the Senate was moved it would be too far away from the House for senators to help their colleagues there.

Senator Hazelbaker, Majority Leader, District 41, next spoke in behalf of Senate Resolution No. 3, saying that he liked the colorful western history and that the present Senate chambers are dear to him personally since his grandfather and father both served there. He said that he is, therefore, very much against moving the Senate chambers for personal reasons.

Senator Turnage, District 13, also spoke in support SR 3 and presented a copy of the court case and decision for the record. (See Exhibit #4) He said that the Supreme Court had given the Senate alone the right to decide where it wants to sit. He told the committee he had several reasons for not moving the Senate chambers, i.e., it would not be close enough to the House, the state should not be spending money now for the move, the paintings in the Senate are historical treasures which cannot be moved, and it defies common sense to say that only \$26,000 could be saved by not moving the Senate. He gave the committee a note saying that you can be sure that the architects would spend all of the money available. (See Exhibit #5)

The next proponent of SR 3 to speak was Senator Shaw, District 28, who was in the Senate 22 years ago with Sen. Graham. He told the committee that he also opposes the move of the Senate to the Law Library.

Senator Brown, District 10, in support of SR 3 said that he agreed with the previous testimony and reminded the committee that the Senate was the original chamber of the House, but has housed the Senate since 1909.

OPPONENT: Senator Blaylock, District 35, spoke in opposition to SR 3, telling the committee that he was glad that Sen. Graham was on the committee because he found him to be a "fair" man. He said this is a simple resolution and that the Supreme Court, in their decision, said several times that the "whole" legislature (full legislature) should decide the issue. He said that it takes 1 minute and 10 seconds to walk from the east wing of the Capitol building across to the west

Legislative Administration Committee Page 3
January 25, 1983

wing, and that a lounge for legislators midway would be a better common ground for both houses. Further, he said the Senate would have 2,000 sq. ft. more room if it moved to the old Law Library if one of every two columns could come out, and that putting the House and Senate at opposite ends of the capitols has been a pattern in America since colonial times. He said that, if the chambers are left where they are now, all the state will save is about \$26,000; and it is not going to cost the taxpayers one dime because the money will be spent from the Building Fund. (See Lounge Plan- Exh. 6)

Morris Brusett, Director of the Department of Administration, appeared as neither an opponent or proponent and told the committee that he had asked the architect how much would be saved by not moving the Senate, and the architect told him it would be around \$26,000 and that the architect's work would be complete in 3 months if the Senate is moved. However, if the Senate is not moved, it would take 4 1/2 months to complete their work. Mr. Brusett suggested that maybe it would take two resolutions instead of one to decide the issue.

At this time Senator Goodover told the committee in closing that he thought it would cost more than the \$26,000 estimate to move the Senate to the Law Library. He suggested that the \$26,000 savings by not moving the Senate could be diverted into the Long Range Building Fund and that the old Law Library be converted into committee rooms.

Senator Kolstad asked for questions from the committee members.

Senator Graham asked Phil Hauck, the state architect, if he would have to draw new plans if the Senate was left where it was, and Mr. Hauck replied that it would take longer because he would have to make more drawing for the plans. Then Sen. Graham asked if he meant to say that the committee rooms are only going to take \$26,000, and wouldn't it take more than that. Mr. Hauck said that they have estimates of \$26,288 for this purpose, and that it is a firm plan and the offices and committee rooms would be of a permanent nature. Grant Crossman, an architect, told the committee that the hallway between the House and Senate was too congested and is a hazard. Another architect, James R. MacDonald of Missoula, said that the paintings would be saved and be the ceiling of the lounge.

Senator Kolstad then closed the hearing.

ACTION - SENATE JOINT RESOLUTION NO. 8: Motion was made that SJR 8 DO PASS, duly seconded, and carried unanimously.

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January 25, 1983

At this time Senator Kolstad, Chairman, said that there would be an executive action committee meeting at 11:00 a.m. in Rm. 415 on Thursday, January 27, 1983.

There being no further business before the committee, they adjourned at 1:08 p.m.

ALLEN C. KOLSTAD, Chairman

## ROLL CALL

## LEGISLATIVE ADMINISTRATION COMMITTEE

48 th LEGISLATIVE SESSION -- 1983

Date <u>1/25/83</u>

NAME	PRESENT	ABSENT	EXCUSED
Senator Kolstad, Chairman	х		
Senator McCallum, Vice-Chairman	x		
Senator Marbut		х	
Senator Graham	х		
Senator Mazurek	x		

Exhibit 1

1/25/83

SENATE MEMBERS
PAT M. GOODOVER
CHAIRMAN
CARROLL GRAHAM
JOSEPH P. MAZUREK

JESSE O'HARA

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



# Montana Legislative Council

State Capitol Helena, MO. 59620

(406) 449-3064 January 7, 1983 DIANA S. DOWLING
EXECUTIVE DIRECTOR
CODE COMMISSIONER
ELEANOR ECK
ADMINISTRATIVE ASSISTANT
ROBERTA MOODY
DIRECTOR, LEGISLATIVE SERVICES
ROBERT PERSON
DIRECTOR, RESEARCH
SHAROLE CONNELLY
DIRECTOR, ACCOUNTING DIVISION
ROBERT C. PYFER
DIRECTOR, LEGAL SERVICES

TO:

Senator Elmer Severson

FROM:

Bob Person Bot

RE:

Western States Forestry Task Force

Financial Report Dec. 31, 1982

Here is the information you requested:

	Budget	Expended	Balance
Members			
Salaries		2,877.25	
Benefits		152.50	
Travel		8,567.76	
Dues		5,500.00	
Total	20,000	17,097.51	2,902.49

Just to remind you, the appropriation proposed for the next biennium is \$25,000. That is included in the Legislative Council budget proposal.

Should you need further information please contact me or Sharole Connelly.

eg:A

#### BRIEF HISTORY OF

#### WESTERN STATES LEGISLATIVE FORESTRY TASK FORCE

The Western States Legislative Forestry Task Force was formed in 1969 by concurrent actions of the State Legislatures in Montana, Idaho, Washington, Oregon and California. Each of the Legislatures appointed two Senators and two Representatives or assemblymen to the Task Force. Creation of the Task Force reflected increasing concerns in the respective states about the management of the forest resources, particularly on Federal lands. increasing importance of the forest resources to the economy of these states and the increasing demand for forest lands for recreation and wilderness uses was becoming apparent to all of these legislative bodies. The first chairman of the Task Force was Senator Randolf Collier of California. Since that time the chairmanship has rotated among the various states with Senator Kermit Kiebert of Idaho the present reigning chairman. addition to the states above, the states of Wyoming and Alaska have since become members of the Task Force. The Task Force meets several times a year in the states represented, and on occasion of these meetings, recognized authorities present a variety of viewpoints on the various issues involving forestland Three times during its history the Task Force has journeyed to Washington, D.C., and presented its views to respective Congressional committees and Congressmen accordingly.

During this past year Montana's representation consisted of Senator Elmer Severson (R-Ravalli), Senator William Hafferman (D-Lincoln), Representative Burg Hurwitz (R-Meagher), and Representative Joe Kanduch (D-Granite). Senator Severson is the only remaining member of the Task Force since Senator Hafferman lost his bid for reelection and Representatives Hurwitz and Kanduch declined to run for reelection this past year.

The Task Force has done a tremendous job in representing the interests of the forest landowners and forest operators in the State of Montana before their colleagues at both the state levels in these seven states as well as at the Congressional level. There has been much mutual information exchanged and mutual help derived from this association.

The Task Force has a spring meeting scheduled for Big Sky in Montana to view some of the very important Federal land issues existing in that area, namely pine beetle damage and access roads problems as well as new fire techniques dealing with sage brush, etc.

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PHONE: 25/-289/	
REPRESENTING WHOM? MONTHUR MAND PROMISE ASSE	
APPEARING ON WHICH PROPOSAL: SJR 8	
OO YOU: SUPPORT? AMEND? OPPOSE?	
COMMENTS:	
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: XXITH DO LISON	DATE: <u>\- 25-83</u>
ADDRESS: P.O. Box 1716 Holispell	59901
PHONE: 755-3185	
REPRESENTING WHOM? MT. Lagging Assn.	
APPEARING ON WHICH PROPOSAL: 578 8	
DO YOU: SUPPORT? AMEND?	
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Exhibit 4
Sen. Turnage Report 1/25/83

# STATE REPORTER Box 749 Helena, Montana

VOLUME 39

NO. 82-225

PAT M. GOODOVER, STATE SENATOR AND CARROLL A. GRAHAM, STATE SENATOR,

Plaintiffs.

v.

Submitted: Sep. 9, 1982 Decided: Oct. 7, 1982

THE DEPARTMENT OF ADMINISTRATION, et al.,

Defendants.

CONSTITUTIONAL LAW, Action for Declaratory Judgment that House Bill 872 dealing with Capitol Renovation violates the Montana Constitution, Whether the Power delegated to the Committee violates the Constitution, Whether the Department of Administration has Authority to allocate space for the Legislative Branch of Government, Whether the Legislature sufficiently approved the Renovation program so that any Unconstitutional Delegation of Authority to the Committee would be Moot--JUDGMENT, DECLARATORY

ORIGINAL PROCEEDING.

For Plaintiffs: John W. Larson, Helena

For Defendants: Michael Young, Helena

Mr. Larson argued the case orally for Plaintiffs; Mr. Young for Defendants.

Opinion by Justice Morrison; Justices Harrison, Daly, Shea and Sheehy concurred. Chief Justice Haswell and Justice Weber dissented.

Declaratory Judgment granted.

651P.2d 1005

Goodover, Plaintiff, v. Dept. of Administration, Defendant 39 St. Rep. 1975

Mr. Justice Morrison delivered the Opinion of the Court.

In this original proceeding, petitioning State Senators seek a declaratory judgment that House Bill 872 (amending sections 5-17-101 and 5-17-102, MCA, dealing with the Capitol renovation program) violates the Montana Constitution and several Montana statutes. Defendants denied all statutory and constitutional violations and moved for a summary judgment in their behalf. We grant the prayer of petitioners for a declaratory judgment and issue an injunction against further proceedings with respect to the Capitol remodeling, until the consent of the legislature as a whole has been obtained for relocation of the State Senate chambers.

On May 1, 1981, Governor Schwinden approved House Bill 872 (now codified as section 5-17-101, MCA), which doubled the membership on the Capitol Building and Planning Committee and provided that the committee was to serve as the legislature's representative in planning the remodeling of the Capitol. The bill gave the committee the right to "decide. . .the allocation and use of space in the capitol, including without limitation the location of legislative chambers. . " (section 5-17-102(4), MCA; emphasis added).

The controversy surrounds a proposed move of the Senate chambers from its present location to the space now occupied by the law library. The committee has authorized a move. Petitioners, who seek to block the move, have raised several issues on appeal. They are:

- (1) Does the power delegated to the committee violate Art. III, Sec. 1, or Art. V, Sec. 9, of the Montana Constitution or Montana statutes?
- (2) Does the Department of Administration have authority under section 2-17-101, MCA, to allocate space for the legislative branch of government?
- (3) Did the legislature sufficiently approve the renovation program so that any unconstitutional delegation of authority to the committee would be moot?

We will dispose of the third issue first. Defendants contend that legislative consent under section 18-2-102, MCA, may take two forms: a joint resolution when a money appropriation is not required; a legislative appropriation when funds are required. Defendants argue that the legislature consented to the proposed move of the Senate chambers by appropriating the money and authorizing the sale of long-range bonds. Petitioners argue that the legislature did not sufficiently approve the renovation program and that it was the Senate's intent to consider the matter further in January, 1983.

Section 18-2-102(1), MCA, provides in pertinent part:

"Authority to construct buildings. (1). . .a building costing more than \$25,000 may not be constructed without the consent of the legis-

Goodover, Plaintiff, v. Dept. of Administration, Defendant 39 St. Rep. 1975

lative appropriation of moneys, such consent may be in the form of a joint resolution."

"Construction" is defined in section 18-2-101(3), MCA, as including the remodeling of a building. We interpret the above statute to require legislative consent of a remodeling project to cost in excess of \$25,000 and that such legislative consent may take the form of an appropriation of money or a joint resolution. Here there was an appropriation for the remodeling project. However, we must determine whether, by such appropriation, the legislature intended to approve relocation of the Senate chambers.

Section 5-17-102(4), MCA, gave the Capitol Building and Planning Committee a directive to decide the location of legislative chambers. This directive to "decide" Senate situs belies defendants' contention that the legislature had consented to relocation of the chambers through passage of an appropriation for remodeling. Therefore, we find that the whole legislature has not, at this time, consented to relocation of the Senate chambers.

Next, we must determine whether the legislature could constitutionally delegate to the Capitol Building and Planning Committee, the authority to "decide" location of legislative chambers. Petitioners argue that section 5-17-102(4), MCA, violates the separation of powers provision (Art. III, Sec. 1) and section 5-17-102(3), MCA, because the power given the entirelegislature is being delegated to the committee which has power to make substantive decisions. Defendants contend that the delegation of power to the committee is only to "recommend."

Section 5-17-102(4), MCA, gave the committee power to "decide... the allocation and use of space in the capitol, including without limitation the location of legislative chambers..." We must here determine the meaning of "decide...location of legislative chambers

In looking for legislative intent, we honor the presumption that the statute is constitutional. In T & W Chevrolet v. Darvial (1982), \_\_\_\_\_ Mont. \_\_\_\_, 641 P.2d 1368, 39 St. Rep. 112, we said: ". . . every intendment in its [constitutionality of a statute] favor will be made unless its unconstitutionality appears beyond a reasonable doubt." 641 P.2d at 1370.

The Montana State Senate, a distinguished, honorable, and independent arm of the legislative body, has the right to determine where it will sit. Pursuant to section 5-17-101, MCA, a long-range building committee was established consisting of six members of the House of Representatives, six members of the Senate, the Director of the Department of Administration, the Administrator of the Architectural Engineering Division of the Department of Administration, a representative of the Governor's office designated by the Governor, and the Director of the Lewis and Clark Area-Wide Planning Organization, who serves as a non-voting member. By enacting section 5-17-102, MCA, the legislature

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granted this committee, consisting in part of persons who were not members of the legislature, the right to make a decision on location of legislative chambers. However, section 5-17-103, MCA, requires that the decision be reported back to the legislature. That statute provides in part: "The committee shall prepare a written report of its activities and recommendations and present the report to the legislature at each regular session." (Emphasis added.) Certainly this statute does not mandate a useless act. It must anticipate legislative confirmation. If that is true, then the legislature must have intended, in granting the right to "decide," to set forth committee responsibility and not to bind the legislature to the committee's decision. Only this interpretation is consistent with the mandate expressed in section 5-17-103, MCA.

In this case, the committee has, pursuant to section 5-17-102(4), MCA, decided that the Senate chambers shall be moved. The committee now must, pursuant to 5-17-103, MCA, report its decision to the full legislature for approval. At this point, the requisite approval, as heretofore shown, is lacking.

Since we have determined that the legislature intended for the committee's decision to be ratified by the whole legislature, there has been no unconstitutional delegation of authority. Section 5-17-102(4) and 5-17-103, MCA, are, by this result, harmonized.

Defendants finally argue that the Department of Administration has authority, pursuant to section 2-17-101, MCA, to allocate space for the legislative branch of government. Defendants argue that pursuant to a recommendation of the committee, the Department of Administration has validly made such an allocation.

Section 2-17-101, MCA, provides:

"Allocation of office space. The department of administration shall periodically survey the needs of state agencies located in Helena and shall assign space in state office buildings to such agencies. No state agency shall lease, rent, or purchase property for guarters in Helena without prior approval of the department."

We hold that the legislature is not a "state agency." The Department of Administration can allocate space for the legislative branch of government, but the legislature, being an independent body, has the right to determine where it will sit. As previously noted, the full legislature has not approved the decision of the Capitol Building and Planning Committee for removal of the Senate chambers. Until such approval has been granted by the legislature, the Department of Administration is powerless to allocate space for the Senate chambers.

In accordance with this opinion we grant declaratory judgment to petitioners and issue an injunction against relocation of the Senate chambers until consent has been obtained from the legislature.

Goodover, Plaintiff, v. Dept. of Administration, Defendant 39 St. Rep. 1975

Mr. Chief Justice Haswell, dissenting:

I dissent. I would hold that the procedures followed by the committee and legislature in this case were sufficient to pass constitutional muster and that the consent statute was fully complied with.

Legislative consent may take the form of a money appropriation or joint resolution. Section 18-2-102(1), MCA. The majority concedes that here there was an appropriation but then goes beyond the clear language of the statute to examine another statute, section 5-17-102, MCA. The sole controlling statute on the question of legislative consent is section 18-2-102(1), MCA, which provides in pertinent part:

"(1) . . . a building costing more than \$25,000 may not be constructed without the consent of the legislature. When a building costing more than \$25,000 is to be financed in such a manner as not to require legislative appropriation of moneys, such consent may be in the form of a joint resolution."

As is apparent from reading section 18-2-102, MCA, the legislature may consent by either a money appropriation or a joint resolution. The majority's action flies in the face of the unambiguous words of that statute. It does not require that any other statute be consulted to determine whether legislative consent has been given and the office of a judge is not to insert what he thinks has been omitted in a statute, section 1-2-101, MCA. Also, legislative consent in the past has taken the form of an appropriation of funds, e.g., the appropriation of money for the New Justice Building.

The legislature here gave its informed consent to moving the senate chambers to the location presently occupied by the law library, as is born out by the following facts. Between the 1979 and 1981 legislatures, the Department of Administration gave presentations regarding the Capitol renovation plan to a number of committees including the legislative finance committee, revenue oversight committee, legislative energy forecast committee, legislative audit committee, and the environmental quality council. Moreover, during the 1981 legislature, a packet of materials was placed on each legislator's desk dealing with this plan. Included in each presentation and in the legislators' packets was a proposed floor plan of the third floor of the Capitol, showing the senate occupying the space presently occupied by the law library. On the front page of the materials distributed to the legislators, the fifth paragraph begins with this "The Senate chambers would be moved from its existing location to the area presently occupied by the law library." The 1981 legislature ratified the decision to move the senate chambers to the law library by appropriating six and three-quarter million dollars for the Capitol renovation project and by authorizing the issuance and sale of five million dollars of long-range building program

Goodover, Plaintiff, v. Dept. of Administration, Defendant 39 St. Rep. 1975

bonds to finance the improvement costs.

Petitioners next argue that section 5-17-102(4), MCA, violates the separation of powers provision (Art. III, Sec 1) and section 5-17-102(3), MCA, because the power given the entire legislature is being delegated to the committee which has the power to make substantive decisions. The majority reasons that since section 5-17-103, MCA, requires the committee to report to the legislature and because this has not happened yet, there has been no unconstitutional delegation of authority.

However, in my view, we need not decide the abstract question of whether this statute violates the separation of powers doctrine in view of the procedure followed by the committee in treating its decision as a recommendation only and in not attempting to exercise full authority to independently render a binding decision. As such, such action was also in conformance with section 5-17-102(3), MCA.

The majority does not address petitioners' next argument, i.e., that Art. V., Sec. 9, of the Montana Constitution is being violated because the legislators are holding civil offices on the committee and members of the executive branch are holding legislative offices on the committee.

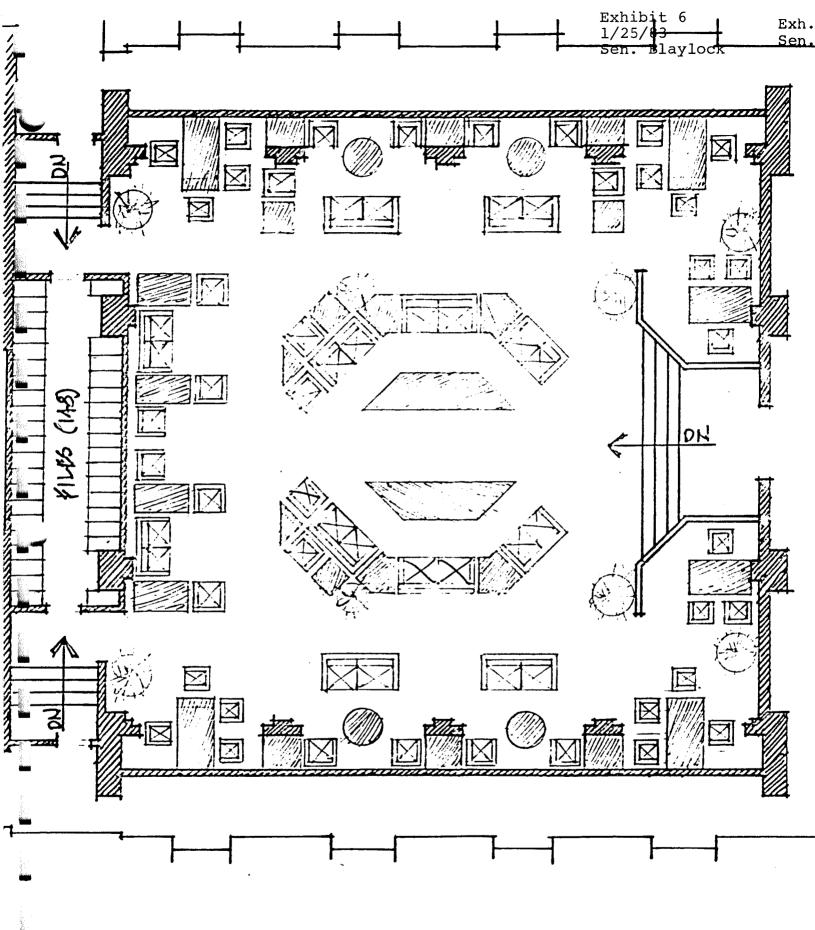
Art. V, Sec. 9, provides:

"Disqualification. No member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or the militia) under the United States or this state, shall be a member of the legislature during his continuance in office."

To constitute a "civil office," the office must, among other things, possess a delegation of a portion of the sovereign power of government to be exercised for the benefit of the public, State ex rel. Barney v. Hawkins (1927), 79 Mont. 506, 257 P. 411, 53 ALR 583. Fact-finding and recommendation-making, as happened here, do not constitute the exercise of sovereign powers. State ex rel. James v. Aronson (1957), 132 Mont. 120, 314 P. 2d 849. I would, therefore, hold that since there has been no exercise of sovereign power of government here, the legislators are not holding a civil office in contravention of Article V. Section 9 and similarly find that, by virtue of the recommendation-making action only, executive branch personnel are not acting as legislators violating Article V, Section 9.

The focus of the third issue is whether the Department of Administration has authority under section 2-17-101, MCA, to allocate space for the legislature. The majority finds that the legislature is not a state agency and that the legislature, being an independent body, has the right to determine where it will sit. I do not quibble with the premise that the legislature has the right to select its meeting place, but that question was not raised by the pleadings and

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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

TE	Jan.	25,	1983

COMMITTEE ON LEGISLATIVE ADMINISTRATION BILL NO. 5.75

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NAME	REPRESENTING	Support	Oppose
Frant Crossman	Gresman - Whitney- Guffin		
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James B. Brown	Crossman. Whitney Griffin F.		
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COMMITTEE ON LEGISLATIVE ADMINISTRATION BILL NO. 35188

VISITOR'S REGISTER Check One NAME REPRESENTING Support Oppose

### SIMMUND COMMITTEE VELOVE

	January 25, 19 83	
MR. PRESIDENT:		
We, your committee onLEG	ISLATIVE ADMINISTRATION	
cespectfully report as follows:		
	he Senate be employed as of 1:00 p.m.	
Staci Graham	Page	
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DO PASS		
STATE PUB. CO. Helena, Mont.	ALLEN C. KOLSTAD, Chairman.	0 .

### STANDING COMMITTEE REPURT

	January 25,	19 <b>83</b>
	January 25,	
MR. PRESIDENT:		
We, your committee on LEGISLATIVE	ADMINISTRATION	
having had under consideration SENATE SINT 2	esolution	8
Respectfully report as follows: That SENATE JOINT	RESOLUTION	8



ALLEN C. KOLSTAD, C

Chairman.

HC.