MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
MONTANA STATE SENATE

March 22, 1983

The fifty-second meeting of the Senate State Administration Committee was called to order by Senator Pete Story on March 22, 1983 at 10:00 a.m. in room 331 of the State Capitol Building in Helena, Montana.

ROLL CALL: All members were present but Senator Towe who was excused.

The meeting was held to hear House Bills 295, 580, 283 and 689.

CONSIDERATION OF HOUSE BILL 295:
"AN ACT TO ALLOW ANY REGISTERED ELECTOR TO VOTE BY ABSENTEE BALLOT; AMENDING SECTIONS 13-13-201, 13-13-203....."

REPRESENTATIVE ANDREA HEMSTAD, District 40, introduced this bill stating that it was a request of the Secretary of State to allow any registered elect to vote by absentee ballot. Striking the language in the bill would allow this. The reason for bringing this before the legislature is that many people do not know their rights and therefore do not vote. Representative Hemstad remarked that there are people who prey on the senior citizens and get them to register and get them to vote absentee ballot so that they may help or direct their voting.

PROPONENTS:

DON JUDGE, AFL-CIO, presented testimony as a proponent and submitted written testimony shown as EXHIBIT 1.

CLIFF CHRISTIAN of the Secretary of State's Office stated that in order to vote legally by absentee ballot you have to be physically incapacitated or absent from the place of residence and therefore many people actually lie in order to vote absentee. Mr. Christian presented a fact sheet on open absentee balloting shown as EXHIBIT 2. He said that he would like to see what will happen around the state. The cost is not high and there is no administrative problems.

OPPONENTS:

BILL ROMINE, representating the clerk and recorders, stated that they oppose this bill as there will be problems. He said that those people that vote absentee may on election day change their minds and this says that once you vote absentee you are stuck.

Bill Romine said that there is a bill in the governor's office that states that a voter may vote absentee 14 days prior to the election so they will be running the election for 15 solid days counting the election day. They do not know what it is going to cost but it is going to cost something. He said that you should have the right to privacy when you vote and that will not happen as they do not have the facilities in the courhouse and the clerk will have to find a place to put these people. The comment that people are lying bothers me said Mr. Romine. The senior citizen is the involved electorate and he stated in his way of thinking are the most informed.

He said that it was also brought out that working people cannot get to the polls during working hours...the polls now will be opened at 7:00 a.m. and stay open until 8:00 p.m. and that should allow them plenty of time.

Voting is a right and a privilege. If picking up absentee ballots for someone and helping them fill them out is being done, it is against the law. See EXHIBIT 3.

MARGARET DAVIS, League of Women Voters, testified as a opponent and said that some of the problems are at the local level. Written testimony was presented shown as EXHIBIT 4.

QUESTIONS OF THE COMMITTEE:

REPRESENTATIVE MARBUT asked that sponsor to respond to the opponents remarks.

REPRESENTATIVE HEMSTAD said that if there is abuse is going on there is nothing that can be done about that but those people that are abusing the election are because on election day after all the machines have been counted they go through and count the absentee ballots and those numbers are held there.

REPRESENTATIVE MARBUT remarked on the assistance from people to the voter in helping them to vote and questioned that it may be the easy thing to do for those that are confused.

REPRESENTATIVE HEMSTAD stated that she has more confindents in our voters than that.

REPRESENTATIVE HEMSTAD CLOSED by saying that this bill will insure our senior citizens to be able to vote even though their rides do not show up. We cannot put a cost on this. County clerks and recorders are taking care of the absentee voters now and their are places of privacy for them to vote and that people surley know how they are going to vote 14 days

before the election. This bill gives people the choice to vote in the style they wish and that does not always demand privacy.

CONSIDERATION OF HOUSE BILL 580:
"AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO SWIMMING POOLS AND BATHING PLACES; CLARIFYING THAT THE DEPARTMENT OF HELATH AND ENVIRONMENTAL SCIENCES MAY SET SAFETY STANDARDS FOR PUBLIC SWIMMING POOLS AND BATHING PLACES;...."

REPRESENTATIVE PAULA DARKO, District 22, stated that this bill is at the request of the Department of Health and Environment Sciences. This bill clarifies some definitions in the swimming pool laws.

PROPONENTS:

VERNON SLOULIN, Chief of the Food and Consumer Safety Bureau in the Department of Health and Environmental Sciences, presented a handout, EXHIBIT 5, that shows what the amendments will do to the existing law. When this was put together in the past it was assumed that the words "public health" also included the term "saftey" and it did not. He said that in all his education and studies "for protection of public health" included "saftey", "accident prevention" and all those other things and in the original bill it was in good faith meant to include those things. He said that it is hard to separate the word "saftey" because it is so interrelated to the aspects of the rules that might be adopted from the clarity of the water to the filters in the swimming pools.

The first section adds saftey to that portion that relates to the purpose of the regulation. Section two is for removing the definition for board. The third section relates to rules, adding saftey in two places. Section four relates to construction and there is a penalty clause in there.

There were no other proponents.

OPPONENTS: None

QUESTIONS OF THE COMMITTEE:

SENATOR HAMMOND asked what problems have they had.

MR. SLOULIN said that they did have problems with a hotel and that is where this all came up. There were questions of adequate decking, the slope of the pool and places where people could get out on all sides rather than just two sides. He stated that in reviewing the laws the attorney came onto

this. They were able to get an opinion from the attorney general but he suggested that they have consistency.

SENATOR HAMMOND asked if it will extend their authority.

MR. SLOULIN said that they have no intentions of making any additional changes.

SENATOR STORY stated that if the rule is enforceable they could put Chico out of business.

MR. SLOULIN said that they do have authority but do not believe they will work. They will have to up-date the rules.

SENATOR STORY said that you seem to counterdict youself in that you say you do not intend to change the rules and then you say you are going to up-date them. Senator Story said that he has a bill that requires a lifeguard on deck.

REPRESENTATIVE DRACO CLOSED by saying that this is a demand of the public.

CONSIDERATION OF HOUSE BILL 283:
"AN ACT REVISING THE DEFINITION OF CONTRIBUTION FOR THE PURPOSE OF CAMPAIGN PRACTICES; PLACING A LIMIT ON POLITICAL COMMITTEE CAMPAIGN CONTRIBUTIONS; ESTABLISHING VOLUNTARY EXPENDITURE LIMITS FOR CONDIDATES AND BALLOT ISSUES; AND REQUIRING THE REPORTING TO THE COMMISSIONER OF POLITICAL PRACTICES OF IN-KIND SERVICES PROVIDED BY POLITICAL COMMITTEES; AMENDING SECTIONS..."

REPRESENTATIVE WINSLOW, District 65, introduced this bill and said that it deals with campaign expenditures, PAC limitations and in-kind contributions, the three concerns of the public.

House Bill 283 accomplishes three things. People are concerned because campaigns are becoming more costly and that people without the dollars will not get involved and is there too much involvement from business and people with special interests. The other area is the in-kind contributions like MontCEL.

The three things this bill is attempting to accomplish is to put, first of all, voluntary limitations on expenditures. There are limitations on all the positions from the governor on down. The governor's race is $500,000, the House race is $4,000 and the Senate race is $8,000. These are volutary because it is not constitutionally possible to make them mandatory. The other area that it addresses is that no more than 20% should come from PAC, even at the county race level. He said they had a judgeship that spent $20,000.

The other part is a better definition of in-kind contributions. He stated that he has seem some amendments he finds acceptable and some that he feels they may have problems with.

PROPONENTS:

DENNIS REBER, Montana Association of Realtors, testified in favor of H.B.283 and said that he feels they should put in-kind contributions on the same level as cash contributions. He presented amendments, EXHIBIT 6 that are attached to an analysis of House Bill 283. Mr. Reber reviewed the amendments with the committee and made the statement that in-kind contributions have not been taken care of in the Winslow bill.

He said that he does have some problems with the bill and presented a couple of amendments that are not acceptable to the sponsor, shown as EXHIBIT 7 and it has to be with the actual contributions given by a political action committee. He said that a candidate is cutting his own throad if he does not get as many individual contributions as possible. He asked that the committee act favorable on this and then defeat the bill.

JONATHAN MOTL, Common Cause, stated that yesterday the committee received a information packet that showed the affect of PACs. This was supported by some groups and not by others but it was supported by the Democratic party and a broad coalition group that carries over into this bill. He said there is one thing that should be understood about this bill that the realtors association does not understand and that is that word "contribution" is changed in one basic way, and that is the change in the definition section changes the meaning of the word throughout the entire bill. In changing the definition of "contribution" including in-kind services you are making a fundamental change which carries far through title 13. There is one place this excludes in-kind and that is with the canidate. The canidate should be able to control their own campaign findings and what they receive from a PAC. The PAC limitations were on the PAC not the canidate. Most people thing the $1,500 is unreal because the majority of people have a hard time saving that much. He asked that the amendments be rejected.

DON JUDGE, AFL-CIO, presented written testimony which is shown as EXHIBIT 8. He added that in each different county the public office takes on different weights and did not see why each different office is told how much they can spend for a race. He said that they support the bill but urge the amendments to be rejected because it amkes the bill something that it was not intended to be.

SENATOR DOROTHY ECK, District 39, stated she had a bill before them on spending limitations which makes it voluntary but in the most part it will encourage a candidate to plan their limitations. She felt $60,000 was adequate in a state wide race and that she would not consider local canidates at all. She also stated her concerns about the amendments.

MARGARET DAVIS, League of Women Voters, presented their testimony, EXHIBIT 9.

PAT WISE, Democratic Party, spoke a a proponents. She urged the committee not to support the amendments and asked them to please examine technical details.

OPPONENTS:

JANALLE FALLAN, Montana Chamber of Commerce, said that if they are going to limit the aggregate PAC receipts that the area of in-kind shouldn't be monetary only. It does not seem fair to limit one aspect of campaign money and not limit another. This bill incorporates H.B.356 on the limits on PACs receipts that they also oppose. She said that it was mentioned about a canidate trying to control the in-kinds that are coming into his campaigns. She said, do not confuse in-kind with independent expenditures. They dos support the inclusion of in-kind. She said that the business community has finally gotten off its' collective rears and take a lesson from labor.

QUESTIONS OF THE COMMITTEE:

SENATOR MARBUT asked how we can keep in-kind in and address what Mr. Motl and Mr. Judge has brought up.

REPRESENTATIVE WINSLOW stated first of all they have accomplished that if this bill is not amended. The definition of in-kind is established. It is difficult to list that as an expenditure. He said that he does not see a problem with putting a value on in-kind.

DON JUDGE stated that they feel H.B.356 takes a much more dramatic step toward some of these things.

MR. MOTL said that they do like some parts of H.B.283 best.

SENATOR MANNING asked, in the event they have people helping them in a campaign how do they determine what their rate is.

REPRESENTATIVE WINSLOW said that page 3(c) defines this.

REPRESENTATIVE WINSLOW CLOSED by saing the H.B.356 deals with one aspect of concern only and that is PAC limitations only and this bill addresses a couple of other concerns; that of total expenditures and the in-kind contributions, it defines it without the amendment.

One of the concerns that were brought out is that this opens the door for public financing and stated that he believes that public financing is not the way to go. He stated that he does not believe it opens the door for public financing in the future but it starts to take care of a problem that they can work with, maybe they will have to come back two years from now and make some adjustments. He said he does not claim to have all the right figures on all the various races and to the average citizen $500,000 is alot of money and maybe if it costs that much to run for governor maybe it is too much.

He said that he attempted to take the county races and the amount of visibility that they sought. He does not think it is possible to say an assessors race should be equivilant of a county commissioners race.

If you are a challanger and want to win against an encumbant you have to get an organization involved. Getting people out and knocking on doors and passing out brochures, this is not covered. He said that he does think local limitations are important.

SENATOR STORY stated, as you closed you made a statement I wish to remark on. In the case of the sheriff's race, like in Billings, with the Billings Gazzett to advertise in and 100,000 people to get to, would be totally out of porportion to Sweetgrass County with 3,000 people to. How could you possibly set a limit that would be reasonable for both of those sheriffs.

REPRESENTATIVE WINSLOW said that he does not think that people or dollars can be figured. In Billings they have alot more people that can get out and knock on doors and do other things. The disadvantage in Billings is that they have the volunteers and you do not in smaller areas.

SENATOR STORY reminded him that you have four radio stations in Billings, two TV stations and a daily paper that charges tremendous rates and in Sweetgrass they have a weekly paper.

REPRESENTATIVE WINSLOW stated that he does not believe there is a Senate or House race that spent over $8,000.

SENATOR MARBUT asked if it would be reasonable to put in a formula..so much a vote.

REPRESENTATIVE WINSLOW said it is difficult to come up with something that is equitable to everyone.

The hearing closed on House Bill 283.

CONSIDERATION OF HOUSE BILL 689:
"AN ACT CREATING A COMMISSION ON ETHICS AND POLITICAL PRACTICES TO TAKE THE PLACE OF THE COMMISSIONER OF POLITICAL PRACTICES; SPECIFYING ITS STRUCTURE AND ORGANIZATION; DEFINING ITS POWERS AND DUTIES, INCLUDING ADMINISTRATION OF LOBBYING AND CAMPAIGN PRACTICE LAWS CURRENTLY ADMINISTERED BY THE COMMISSIONER; TRANSFERRING THE ADMINISTRATION OF THE CODE OF ETHICS FROM THE SECRETARY OF STATE TO THE COMMISSION; GENERALLY REVISION AND CLARIFYING THE CODE OF ETHICS; PROVIDING PENALTIES FOR VIOLATIONS OF THE CODE OF ETHICS; AMENDING SECTIONS...."

REPRESENTATIVE WINSLOW, District 65, introduced this as a bill establishing an ethics commission in the executive branch only. There is no way under the constitution that they can enter into legislative and the judiciary have their own setup.

This bill would remove the ethics from the Secretary of State's office where it is presently. It calls for an advisory opinion functions only from county attorneys. It adds teeth to the existing statutes. It calls for grounds for recall. This bill also calls for studies of members themselves that would be appointed to the commission. It is a nonpartisan committee, three democrates and three republicans and they serve a six year term. The Campaign Practices Office would be the headquarters. This is a bill that has had one and one-half years of hearings.

PROPONENTS:

ALAN ROBERTSON, Secretary of State's Office attorney, testified that House Bill 689 is a result of an extensive development process over the past several years. There has been at least two hearings on rules, they have had a general hearing last November and they have had private meetings with Common Cause, League of Women Voters and various representatives and seators. This bill has alot of input and much joint effort. Because the bill in comprehensive it will take time.

The purpose is to provide a mechanisim to study the ethical

standards which will hold a public official accountable to and at the same time fix the mechanics now so the existing code can be used for the next two years.

He referred to a handout shown as EXHIBIT 10 regarding what the situation is right now regarding ethics and summarized it. The only penalty in the current code is for money. If a person does something and it is a conflict of interest and they profit by it then the county attorney can come after him to get the money back. He said that there is no support for non-money conflicts. There is also very limited instances where disclosure can cover you from liability. We do not have anyplace for people to go and ask questions. Mr. Robertson stated that he is willing to talk to them but must tell them that they are not in the ethics business and cannot rely on their opinions. There is no penalty for non-money conflicts and no mechanisim to support county attorneys' in taking this action. The provisions that they can sue people for money has been there for five years and has not been used once.

The other thing is the affect on the legislatures. Right now it is in the codes that there is no judicial review of behavior. We are unsure if it would stand if challanged. If a county attorney would come at you the stand that you could take is that the judiciary cannot judge me as a member of a equal body. He said that he raised that question to attorney general Greely at the hearing that they had in November and his comments are in the minutes shown as one of the exhibits.

EXHIBIT 11 is titled WHAT'S LEFT OF OUR ETHICS STATUTE and EXHIBIT 12 is the SUMMARY OF ETHICS MEETING, November 12, 1982.

Legislatures are covered in the existing code for judicial review and also covered in that they can have disclosure to your own house, everything that deals with your own house, this bill does not touch. A judge could assess the same penalty against the legislator as he could against a state employee which would be grounds for official misconduct and for recall.

Alan Robertson reviewed the bill section by section and explained the changes of the sections and subsections and referred to the handouts. He noted that sections 32 to 40 was taken out and new sections added.

He stated that there is a need for this bill. There is a conflice of interest and advise. People do want to comply and some place to go for advise. He stated that subsection (a) and (b) on page 4 and 5 can come out if their is a problem. EXHIBIT 13 is a letter from the Attorney General to J. Waltermier.

PROPONENTS:

SENATOR DOROTHY ECK stated that she has been impressed by the secretary of state's office and his staff. She is sure that everything is not covered but one of the important things is the provisions that the ethics commission that is created will review legislation and problems.

JOHN MOTL, Common Cause, stated that they participated in the process of the bill and urge a "do pass".

OPPONENTS:

MARGARET DAVIS, League of Women Voters, stated that she does not feel that this is a ethics bill but does strengthen out the mechanics under producing opinions and addressed the statement of intent. The law is not clear in this area. She said that she does not see the legislature addressing their own ethics as it has been tried and does not work. The bill as written does not require, it only allows. It is not a non-partisan committee but a bipartisan committee. SEE EXHIBIT 14.

DON JUDGE, AFL-CIO, presented written testimony, EXHIBIT 15, and stated that they spoke as proponents in the House with amendments but most of those were not accepted. He said that he shares Margaret Davis's concerns. Other areas of concern are on page 4, line 19. The county attorney has the sole descretion of requiring an advisory opinion. The criteria is more confusing.

QUESTIONS OF THE COMMITTEE:

SENATOR TOWE questioned who should request advisory opinions

DON JUDGE stated that he would open it up to anyone.

SENATOR TOWE stated, how about a public official.

DON JUDGE said that is what we do not want.

SENATOR MARBUT questioned if the fiscal note was accurate.

REPRESENTATIVE WINSLOW said it was as far as he knows.

SENATOR TOWE asked what they are trying to do on page 4.. "the change in the law".. are you intending to expand the responsibility? It might well do this.

SENATOR TOWE questioned the bottom of page 8 regarding impartial panel of citizens. The answer was that they are trying to encourage an opinion.

REPRESENTATIVE WINSLOW CLOSED on H.B.689 and stated that there are similar commissions in 29 states.

The hearing closed on H.B.689.

The meeting adjourned at 12:00, noon.

Pete Story

CHAIRMAN, Senator Pete Story

ROLL CALL

STATE ADMINISTRATION COMMITTEE

48th LEGISLATIVE SESSION -- 1983 Date 3-22

NAME	PRESENT	ABSENT	EXCUSED	SENATE SEAT #
SENATOR PETE STORY, Chairman	X			45
SENATOR H. W. HAMMOND, Vice Ch	X			34
SENATOR REED MARBUT	X			44
SENATOR LARRY TVEIT	X			33
SENATOR R. MANNING	X			48
SENATOR LAWRENCE STIMATZ	X			7
SENATOR THOMAS TOWE				26
SENATOR GARY LEE	X			11

Each day attach to minutes.

DATE ____________________

COMMITTEE ON ____

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One Support	Check One Oppose
Janelle Fallan	Mont Chamber	HB283		X
"	"	HB689	X	
Bill Romine	[illegible]	HB295		X
[illegible]	[illegible]	HB580	X	
Margaret S Davis	LWV of MT	HB295		X
" "	" " "	HB283	X	
Pat Wise	MT Demo Party	HB283	X	
Don Judge	MT STATE AFL-CIO	HB 283	Amend	
" "	" " " "	HB 295	X	
Don Judge	" " " "	HB689		X
[illegible]	[illegible]	[illegible]	[illegible]	
Jonathan Motl	Common Cause	HB689	X	
Jonathan Motl	Common Cause	HB283	X	

MONTANA STATE AFL-CIO
APRIL 29 1956

Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59624
406/442-1708

TESTIMONY OF DON JUDGE ON HOUSE BILL 295, HEARINGS OF THE SENATE STATE ADMINISTRATION COMMITTEE, MARCH 22, 1983

I am Don Judge, representing the Montana State AFL-CIO, speaking in favor of House Bill 295, which would allow any voter to vote by absentee ballot. Currently only those who know they will be absent, or physically incapacitated on election day may vote absentee.

Absentee ballots are a big help to those who are out of town or incapacitated on election day, but not everyone knows far enough in advance if one of these situations will occur. For almost anyone, there is almost always the possibility that they may be out of town, but it is not known for sure if that will be the case ahead of time. It is also possible that voters, especially older people, may be unexpectedly incapacitated when election day rolls around. Some people are chronically ill and never know from one day to the next whether they will be well enough to go out. Other voters may be neither out of town or physically incapacitated on election day but may have other reasons to believe they will not be able to make it to the polls, such as a job which requires frequent overtime hours or other responsibilities that cannot be left.

We can all remember that in the last election, many people in the larger counties had to wait in line for up to two hours to vote. Under this bill, the more people who vote absentee, fewer may have to wait in line on election day.

The Montana State AFL-CIO has traditionally supported any measure that would help increase public involvement and voter turnout. Although Montana's turnout of 74% is higher than in many states, any measure that would increase the number of people voting is a good one.

House Bill 295 would do just that, and we hope you will support it. Thank you.

EXHIBIT 2
State Admin
March 22, 1983

HB 295 FACT SHEET ON OPEN ABSENTEE BALLOTING

The following states presently allow for absentee balloting by registered electors within the state. These states do not have any restrictions on voting absentee.

- States with OPEN ABSENTEE BALLOTING

  California
  Hawaii
  Missouri
  Iowa
  New Jersey

- Comments from the states on Open Absentee Balloting

California - 1982 was the first year for Open Absentee Balloting. Record high request for absentee ballot. Republicans and Labor did mass mailing to educate the voters on how to register for absentee ballots. Over 10 million registered voters in California and the secretary of state's office has not received one complaint on the new absentee balloting procedures.

Hawaii - Overturned court case in 1980 made it possible for voters to vote open absentee in 1982 elections. According to the Lieutenant Governor's office in charge of elections, there were no problems with the new absentee balloting measure.

Missouri - Over 10 years of open absentee balloting has been in effect. The secretary of state's office has not had any problems with abuse. Open absentee balloting works very well in this state.

Iowa - The state has allowed open balloting since 1924. This system of voting has been working very well for the state for some 59 years according to the secretary of state's office, and no complaints have been registered in recent memory.

New Jersey - Request for absentee ballots from the counties are not denied. There never has been a problem or a scandal in the 10 years of open absentee balloting. The electorate is very happy with the system as well as the election administrators.

EXHIBIT 3
State Admin
March 22, 1983

WITNESS STATEMENT

NAME Bill Romine BILL No. H.B. 295

ADDRESS Helena DATE 3-22-83

WHOM DO YOU REPRESENT Clerks & Recorders

SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: This bill would result in an election that would run for two weeks. The clerks of this state are not set up to handle such a procedure. All kinds of problems concerning the security of the ballot will arise. People will be voting in the same area where the clerk is carrying on regular business.

FORM CS-34
1-81

EXHIBIT 4
State Admin
March 22, 1983

League of Women Voters of Montana
917 Harrison, Helena, Montana 59601

Margaret S. Davis

22 March 83

Senate State Administration Committee

OPPOSE

HB 295 Allowing any registered voter to vote by absentee ballot

The purpose of having one election day is very important to the election process. Though the American electorate is conditioned to sophisticated polls which measure its political "temperature" weekly on any number of issues and candidates; it is only at the polls on election day that these matters are officially settled. Historically election day was important enough to be considered a holiday. Perhaps some of that former respect needs to be restored.

Encouraging absentee voting as a "convenience" and not a "necessity" ill serves the entire political process. The League knows that the present law is often honored in the breach, but feels we must look elsewhere for the causes and solutions. A Billings legislator testified in the House that 40% or approximately 1000 voters voted absentee in his precinct. We submit that this may be a symptom of voter dissatisfaction with how elections are run in their area. For example the precincts may be too large, or the number of machines and/or personnel insufficient.

Passage of this bill could considerably change the method and costs of political campaigning in Montana. Candidates would be required to reach and sustain a peak at least three weeks before election day. (SB 141 sets 21 days as the minimum time that absentee ballots must be available.) Campaign costs would be forced to escalate.

The fiscal impacts of this bill on county election administrators could be significant. The League believes that most election administrators are not equipped to handle voting by large numbers of people over an extended period of time. There are not enough adequate safeguards for absolutely assuring the maximum amount of voter privacy and public scrutiny that citizens deserve and respect. Quality control is the foundation of the system. This place would place a heavy burden on even the most conscientious and well-organized election administrator.

We in the western United States have seen the dampening effects on voter turnout due to predictions based on exit polling. Large scale absentee balloting would exacerbate this problem.

HB 152 which would repeal 13-13-204 (1) (page 2, beginning on line 10) except in cases of ballot error or damage, presents a major conflict with HB 295. Traditionally the last weeks of a campaign are the most active and the public responds actively to pre-election information. If both these bills are enacted, all voters would not have the opportunity to act on the basis of the same information; which, if one thinks about it, is the underlaying concept behind the election process.

We urge that this legislation not be concurred in.

Margaret S. Davis

Margaret S. Davis, president

EXHIBIT 5
State Admin
March 22, 1983

INFORMATION RELATIVE TO BILL NO. 580

Safety has been a major portion of the swimming pool program in Montana since 1967 when the law was adopted. The law was drafted with safety included in some sections and not included in others. In the sections where the terms "safety" or "safe" were not used the terms "to protect public health" were utilized.

Rules were adopted pursuant to the law and both safety and sanitation rules were addressed.

The purpose of this bill is therefore to clarify those sections where the terms "to protect public health" are utilized instead of the terms "safe" or "safety" to make those sections consistent with the rest of the law where safety is specifically addressed.

The bill will affect the following sections of the law in the following ways:

Section 1 Section 50-53-101, MCA is amended to read:

50-53-101 Purpose of Regulation. It is the public policy of this State to regulate public swimming pools and public bathing places to protect public health and safety. (The term "safety" is added to law.)

Section 2 Section 50-53-102, MCA is amended to read:

50-53-102 Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) ~~"Board" means the board of Health & Environmental Sciences, provided for in 2-15-2104.~~ (This definition is being deleted as the term "Board" is no longer used.)

Section 3 Section 50-53-103, MCA is amended to read:

50-53-103 ~~"Duties of Department"~~ Rules

(1) The department shall adopt rules setting standards to insure for sanitation and safety in public swimming pools and public bathing places to protect public health and safety.

("Duties of department" is changed to read "Rules". "Setting standards to insure" "and safety" have been added.)
(To protect public health and safety.) Term "and safety" added.

(2) ~~The department shall supervise the sanitation of public pools and public bathing places.~~ (Being deleted as the intent is not clear.)

Section 4 Section 50-53-108, MCA, is amended to read:

50-53-108. Unauthorized construction or operation a public nuisance. The construction or operation of a public swimming pool or bathing place contrary to other provisions of this chapter or rules adopted by the department under the provisions of this chapter is a public nuisance and dangerous to public health "and safety." (Term "and safety" added to section.)

Historically, safety has been a major portion of a total swimming pool program.

Some of the items which would be covered under the "safety" heading are as follows: improper bottom slope, inadequate depth for diving, absence of shallow end, lighting, underwater protrusions, no pool decking, warning signs or other life saving apparatus, depth markings, fencing, pool water clarity, etc.

In many cases safety and sanitation aspects of swimming pool design, maintenance and operation are interrelated. For example, water clarity is maintained by proper balancing of water chemistry (chlorine, pH, etc.) which in turn inhibits bacterial growth and the transmission or spread of disease.

Swimming pool safety rules are supported and recommended by the swimming pool industry and expected by the general public.

EXHIBIT 6a
State Administrat
March 22, 1983

HOUSE BILL 283
ANALYSIS with attached amendments included

HOUSE BILL 283 ADDRESSES THE FOLLOWING CENTRAL ISSUES IN THE AREA OF CAMPAIGN FINANCING AND CONTRIBUTIONS.

1) DEFINES CONTRIBUTIONS TO INCLUDE:
(A) LOANS, GIFTS, AND IN-KIND SERVICES SUCH AS GOODS, FACILITIES, EQUIPMENT, PERSONNEL, ADVERTISING SERVICES, CONSULTING SERVICES, AND ETC. (PAGES 2&3, PARTS (A),(B)&(C)

2) DEFINES VOLUNTEER SERVICES SO THAT THERE IS NO CONFUSION OVER WHAT CONSTITUTES IN-KIND CONTRIBUTIONS OR VOLUNTEER EFFORTS. THE DEFINITION READS: "VOLUNTEER SERVICES INCLUDES THOSE SERVICES TO A CANDIDATE OR POLITICAL COMMITTEE PROVIDED BY A PERSON WHO IS [redacted]

3) PLACES LIMITS ON PAC CAMPAIGN CONTRIBUTIONS: "AT NO TIME MAY THE AGGREGATE AMOUNT OF MONETARY AND IN-KIND CONTRIBUTIONS RECEIVED FROM ALL PACS FOR ANY CANDIDATE EXCEED 20% OF VOLUNTARY CAMPAIGN EXPENDITURE LIMITS" (PAGE 10, LINES 1-14)

4) REQUIRES THAT IN-KIND CONTRIBUTIONS BE INCLUDED IN COMPUTATION OF CAMPAIGN CONTRIBUTIONS AND EXPENDITURES (PAGE 10,LINES 12-14) AND PROVIDES FOR VALUATION OF IN-KIND GOODS AND SERVICES. (PAGE LINES 5-16)

5) REQUIRES FULL DISCLOSURE OF ALL IN-KIND CONTRIBUTIONS PROVIDED BY A PAC ADVOCATING OR OPPOSING A CANDIDATE OR BALLOT ISSUE (PAGE 13, LINES 20-25)

6) SETS VOLUNTARY CAMPAIGN AND BALLOT ISSUE EXPENDITURE LIMITS BY OFFICE AND ISSUE (PAGE 10, LINES 15-25, PAGES 11 - 12)

EXHIBIT 6b
State Admin
March 22, 1983

PROPOSED AMENDMENTS
HB 283

PAGE 2, LINE 1
FOLLOWING: "CODE"
INSERT: "OR SERVICES"

PAGE 3, LINE 2
FOLLOWING: "SERVICES,"
INSERT: "CONSULTING,"

PAGE 3, LINE 8
FOLLOWING: "CHARGE"
STRIKE: "(OTHER THAN VOLUNTEER SERVICES)"

PAGE 3, FOLLOWING LINE 14
INSERT: "(6) VOLUNTEER SERVICES INCLUDES THOSE SERVICES TO A CANDIDATE OR POLITICAL COMMITTEE PROVIDED BY A PERSON WHO IS NOT PAID, EITHER DIRECTLY OR INDIRECTLY FROM A CANDIDATE OR POLITICAL ACTION COMMITTEE."

PAGE 4, LINE 3
FOLLOWING: "PORTION"
STRIKE: "OR ALL"

PAGE 10, LINE 2
FOLLOWING: "MONETARY"
INSERT: "AND IN-KIND"

PAGE 10, LINE 7
FOLLOWING: "(4)"
INSERT: "(a) THE TIME PERIOD FOR FILING THE POST-ELECTION REPORT"

PAGE 10, LINE 11
FOLLOWING: "REPRESENTATIVES"
INSERT: "THE FOREGOING LIMITATIONS SHALL BE MULTIPLIED BY THE INFLATION, AS DEFINED IN 15-30-101 (8), FOR THE YEAR IN WHICH GENERAL ELECTIONS ARE HELD AFTER 1984. THE COMMISSIONER SHALL PUBLISH THE REVISED LIMITATIONS AS A RULE."

PAGE 10, LINE 12
FOLLOWING: "CONTRIBUTIONS"
STRIKE: "MAY NOT"
INSERT: "SHALL"

EXHIBIT 7
State Admin
March 22, 1983

Proposed Amendments
HOUSE BILL 283
Third reading copy

page 10, line 3
Following: "exceed"
Strike: "20%"
Insert: "35%"

Page 10, line 10
Following: "exceed"
Strike:"$1,000 or $600"
Insert: "$2,500 or $1,500"

EXHIBIT 8a
State Admin
March 22, 1983

MONTANA STATE AFL-CIO
APRIL 29 1956

Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59624
406/442-1708

TESTIMONY OF DON JUDGE BEFORE THE SENATE STATE ADMINISTRATION COMMITTEE, MARCH 22, 1983, ON HOUSE BILL 283

Mr. Chairman, members of the committee, my name is Don Judge, and I'm here today representing the Montana State AFL-CIO in support of House Bill 283.

The Montana State AFL-CIO has appeared before this committee before on several bills, which we believe are all central to the issue of campaign reform. Some of those bills were heard yesterday in this room.

House Bill 283 is probably the most extensive of the campaign reform bills yet to be transmitted from one House to the other. It provides for definitions of the terms "loan", "money", "anything of value", and clearing up what the term "contribution" does not mean.

In addition, House Bill 283 provides for two very sweeping reforms in campaign practices. One is to limit the total aggregate contributions a legislative candidate may receive from political "action" committees. This is a much needed reform in light of the ever increasing influence of PAC money in Montana's electorial process. House Bill 356, heard yesterday in this committee, does the same thing.

The second sweeping reform in House Bill 283 is really more of a door-opener for an even more dramatic type of reform we expect to see in 1985. This "door-opener" is the provision in Section 2 of the bill (page 8) calling for VOLUNTARY LIMITATIONS ON EXPENDITURES of candidates for political office in Montana.

Although we don't believe that voluntary campaign spending limitations without the accompanying carrot of adequate public financing will work, we are encouraged that by putting this law on the books, we can use its failure to demonstrate the need for true "public financing" reform in 1985. This result

may not be the same as is being advocated by the sponsor, but on the issue of campaign reform we are in agreement.

History shows us in Montana, that public financing of political campaigns cannot work without providing an adequate source of public funding. House Bill 283 does not provide such funding, but in establishing voluntary spending limitations we set the stage for demonstrating the tremendous power and influence of money in Montana's political process. We fully expect that many of the limitations will not be adhered to by the candidates, nor is there any real incentive for doing so. However, we must begin somewhere and House Bill 283 provides us this starting point.

With regards to the spending limitations set forth in the bill, we would like to make the following observations:

(1) The limitations for Governor and Lieutenant Governor of $500,000 is considerably less than was actually spent in 1980, and may provide an advantage to the incumbancy.

(2) We see no reason for the limitations on the offices of Secretary of State, Attorney General, State Auditor, and Superintendant of Public Instruction to be established at different levels. They are all statewide elective offices.

(3) The discrepancies in the limitations for county wide offices confuse us in two ways. The first is to question the reason why the limitations established for County Attorney, County Sheriff, County Clerk and Recorder, County Commissioner, County Treasurer, County Superintendant of Schools, and County Assessor and County Coroner are all set at different levels. All of these offices are county-wide elective offices and candidates are

required to run in the same geographic and media-market areas. The limitations range from $2,000 to a high of $15,000. The committee may want to equalize these discrepancies.

The second question I have regarding the county wide office spending limitations is to compare these limitations with the limitations set forth for legislative candidates. The question that comes to mind is how we can justify setting, in some cases, relatively low limits for county wide candidates while at the same time allowing for higher limitations on candidates for legislative office whose districts may be less than 1/10 of the size of the county-wide offices. This discrepancy also exists in the limitations set for county offices whose limitations are higher than legislative offices, but not proportionaltely enough to reflect the magnitude of the differences of the size of the respective districts.

Make no mistake, Mr. Chairman, members of the committee, we support House Bill 283 as a vehicle to promote true public financing of campaigns in Montana. But at the same time, we encourage you to make this bill more workable by revising the spending limitations to more adequately reflect the jurisdictions of the offices being sought, and to remove any advantage which may be accorded incumbency.

Thank you.

EXHIBIT 9
State Admin
March 22, 1983

League of Women Voters of Montana
917 Harrison, Helena, Montana 59601

22 March 83

Margaret S. Davis

SUPPORT

HB 283 - revising the definitions of contributions to political campaigns and establishing voluntary expenditure limits for candidates and ballot issues

The League believes that voluntary guidelines for campaign spending limitations may prove valuable in curbing the trend towards more and more costly election races. We are concerned that candidates, particularly those whose personal financial resources are limited, may not be able to compete equitably for office especially against well-heeled or incumbent candidates.

The limits proposed seem consistent with full discussion of the issues and adequate exposure of the candidates.

The League supports the reporting and disclosure of in-kind services as defined in HB 283.

Margaret S. Davis

Margaret S. Davis, president

EXHIBIT 10
State Admin
March 22, 1983

House Bill 689 as amended
Winslow et al

For answers on technical questions call:
Alan D. Robertson
Legal Counsel
Secretary of State
449-4732

FACTS ABOUT ETHICS BILL

- Legislature excluded -- can establish own procedures
- Judiciary excluded -- procedures already in place
- Constitutional mandate satisfied (Art. 13, Sec. 4)
- Ethics function removed from Secretary of State's Office
- Advisory Opinion function fixed
  - No hearings or investigations
  - Confidentiality maintained
- Teeth to existing ethics statutes
  - Mandatory disclosure
  - Increased penalties (these would apply to legislators too)
    - Civil liabilities up to triple damages
    - Grounds for official misconduct
    - Grounds for recall
- Consolidates in one place all four areas generally considered under ethics umbrella
  - Conflicts of interest
  - Campaign finances and practices
  - Financial disclosure of elected officials
  - Lobbyist Regulation
- Study
  - Standards need study and commission can do that.
  - No guarantee that interim legislative study will be funded even if resolution passes.
  - Study resolution was passed in 1981 but secret poll of legislature failed to rank ethics high enough priority to receive funding.
  - Had previous study been funded, results would be ready for action now.
  - Study not essential before taking action to fix mechanics or provide some teeth for existing statutes.
  - Much study has already occurred.
    - Public hearings held in June '81, Dec. '81, and Nov. '82.
    - Administrative Code Committee has reviewed area twice by reviewing proposed rules.
    - Secretary of State's office has reviewed whole area extensively and considered proposals from many angles.
    - Many organizations and individuals have studied area and made proposals
- Independence and non-partisanship maintained
  - Three appointed by Democrats -- three by Republicans
  - Budget independence
- Limitations on Commissioner retained on Commission
  - One six year term
  - Can't be a candidate for office for three years.
  - Appointment confirmed by Senate.

OVER

- Current Commissioner does not loose her job
  - Can assume position of executive director to the commission
  - job duties not diminished

- Funding
  - Additional funding needed but not essential
    - Benefit still accrues without increased funding
    - Analogous to Lobbyist Disclosure situation I-80.
  - Only essential funding is salary and per diem for six people to attend six meeting a year.
  - Funding commission at minimial level will take no more than funding an interim study by the legislature would take.
  - What should the price tag be on good ethics administration
    - We have already funded in Montana numerous other boards and advisory councils
    - Their functions are no more important than this
    - And in many cases their price tags are greater
  - Either the legislature is going to do something or nothing
    - Doing nothing is unacceptable
    - If they're going to do something then the options appear to be:
      - authorize and fund a study
      - or pass this bill for a commission

- Why a commission
  - All parties providing input seem to agree that
    - Power shouldn't be vested in any one person
    - When judgment calls are required, better it's the judgment of more than one person
  - Compare proposals by others
    - 1981 - Rep. Bardanouve proposed commission for fair ballot issue practices
    - 1979 - Rep. Harrington proposed commission to arbitrate disputes regarding fair campaign practices

- Commission structure
  - Six members, six year terms -- staggered
  - Chair and vice chair elected from members
    - Not from same party
    - Term of office one year
    - Limited to one term as chairman so each member will serve as chairman for one year during term
  - Modeled after Federal Election Commission

- Commission salary
  - Same as any other quasi-judicial board member or advisory council member
  - Only essential to fund six meetings

- Commission meetings
  - Must comply with open meeting laws
  - Only six times per year
  - Other times only if budget allows on call of the chairman

- Commission power
  - No greater than commissioner already has in existing areas

EXHIBIT 11a
State Admin
March 22, 1983

WHAT'S LEFT OF OUR ETHICS STATUTE?

The court has ruled that the Legislature acted improperly in establishing an Advisory Opinion process, for ethics. But that's the only portion of the Act which was invalidated. The balance of the Act remains intact. Criminal prosecutions are possible, though none has ever been attempted. And the voluntary disclosure provisions are still available, though not frequently used.

The questions remain, however, are these enough? Do they meet the constitutional mandate? Does the public want and deserve more? To answer those questions, it is important to first understand what is left of the ethics statute and how it works.

Purpose of the Statute. Article XIII, Section 4 of the Montana Constitution provides:

> "The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees."

The only section of Montana law currently satisfying this constitutional mandate is 2-2-101, et. seq., MCA.

At the outset, let me say that any attempt to explain our current Code of Ethics is likely to be very confusing and cumbersome. That's so because the truth is that our Code of Ethics is very confusing and cumbersome. I urge the reader to review the statute itself whenever my words confuse you, and see if you get greater clarity from the statutes themselves.

Operation of the Statute. There is no doubt that the Act purports to prohibit all conflicts. It limits enforcement, however, to only those conflicts which amount to a departure from an official's "fiduciary duty". The prohibition mandated by the Constitution is provided for exclusively in Section 2-2-103. That Section, in effect, prohibits public officers, legislators, or employees from departing from their fiduciary duty. The penalty for such departure is civil liability and enforcement can be had via appropriate judicial proceedings initiated by the county attorney of the county where the trust is violated.

The balance of the Act is devoted to defining what constitutes a breach of fiduciary duty for each of three classes of people having a public duty -- legislators, state officers and employees, and local government officers and employees. Four sections specify actions which are conflicts "per se"; 104 covers everybody, 111 governs legislators, 121 controls state officers and state employees and 125 is for local government officers and employees.

For each of those sections, proof of commission of one of the listed acts is automatic proof that the actor has breached his fiduciary duty. In this way the code removes some of the uncertainty from an otherwise ambiguous concept like fiduciary duty. Commission of any one of the acts specified is presumed to be a breach of duty regardless of the circumstances, even though whether a prohibited act has been committed still must be established from the specific facts.

The statement of purpose further provides:

> "The provisions of this part recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances."

The "per se" conflicts are clearly those enumerated in the sections noted above and are given the common designation of "Rules of Conduct".

The Code of Ethics also deals with the "depending upon the surrounding circumstances" conflicts by setting forth "ethical principles". Section 112 is for legislators and Section 105 covers public officers and employees on both the state and local level. These sections talk in terms of "should not" and "should" rather than "must not" and "must". These sections are referred to as "guidelines".

It is my reading of the statute, however, that the legislature clearly intended that doing (or not doing) something enumerated in these sections could be every bit as much of a breach of fiduciary duty as any of the acts specified in the "Rules of Conduct" sections. The only difference being that acts covered by any of the "Rules" sections constituted a breach "per se" whereas acts covered by the "Ethical Principles" sections were only a breach depending on the circumstances. Commission of a "Rules" act creates liability, period. Commission of a "Principles" act creates liability only if done in such circumstances as to constitute a breach of fiduciary duty.

Regardless of which kind of act, or which class of actor you are dealing with, the offense remains the same -- departure from fiduciary duty. And the penalty remains the same -- civil liability to the people of the State. And the officer to prosecute the offense remains the same -- the county attorney of the county where the trust is violated. And the manner in which any offense is to be determined and any penalty assessed remains the same -- any "appropriate judicial proceedings".

Fiduciary Duty. My reading of the statute is that Section 2-2-103 is not limited to the acts specified in the remainder of the Code of Ethics. Rather, my view is that the penalties contained therein would apply to any departure from a fiduciary duty.

Our whole Code of Ethics, as it currently reads, is based not in whether someone has a conflict of interest , but whether an official's actions violated their fiduciary duty. The problem is, fiduciary duty is a very technical legal term.

Black's Law Dictionary, Revised Fourth Edition, defines "Fiduciary" and "Fiduciary Relations" as follows:

> "FIDUCIARY. The term is derived from the Roman law, and means (as a noun) a person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires. Svanoe v. Jurgens, 144 Ill. 507, 33 N.E. 955; Stoll v. King, 8 How. Prac., N.Y., 299. A person having duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking. Haluka v. Baker, 66 Ohio App. 308, 34 N.E. 2d 68, 70. As an adjective it means of the nature of a trust; having the characteristics of a trust; analogous to a trust; relating to or founded upon a trust or confidence."
>
> "FIDUCIARY RELATION. An expression including both technical fiduciary relations and those informal relations which exist whenever one man trusts and relies upon another. Peckham v. Johnson, Tex.Civ.App., 98 S.W. 2d 408, 416. It exists where there is special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to interests of one reposing the confidence. Neagle v. McMullen, 334 Ill. 168, 165 N.E. 605, 608. A relation subsisting between two persons in regard to a business, contract, or piece of property, or in regard to the general business or estate of one of them, of such a character that each must repose trust and confidence in the other and must exercise a corresponding degree of fairness and good faith."

It would seem appropriate to have a more clearly defined set of standards. With only the notion of "fiduciary duty" to go by, neither the public nor the officials can tell precisely what is expected.

The Constitution appears to me to require a prohibition of all conflicts between private interest and public duty. Yet, our current Code limits this prohibition to only actions which violate one's fiduciary duty. Eyebrows might be raised if an official accepted a plane ride to a conference from someone he/she was supposed to be regulating. But is that activity prohibited?

Penalties. Not only does the current Code limit the prohibition, but it also limits the penalty. Section 2-2-103(2) MCA provides:

> "A public officer, legislator, or employee whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property, is liable to a beneficiary under 72-20-203(2), and shall suffer such other

liabilities as a private fiduciary would suffer for abuse of his trust. The county attorney of the county where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the aggrieved agency."

Section 72-20-203(2) provides:

"A trustee who uses or disposes of the trust property contrary to subsection (1) may, at the option of the beneficiary, be required to account for all profits so made or to pay the value of its use and, if he has disposed thereof, to replace it with its fruits or to account for its proceeds with interest."

Basically, what this amounts to is that, if an official breaches his fiduciary duty and the result is a financial loss to government or a gain to himself, then he may be required to make up the loss or forfeit the gain.

The first thing to be said about this is that it is still very confusing to nearly everyone but lawyers. What's more, what about actions which may be a conflict of interest but don't involve either financial loss to the state or gain to the individual -- like for example, an official granting a certificate of need to one hospital over another because his brother-in-law is on the Board of Directors of one.

To examine how our current Code of Ethics operates, consider how it could be employed to stop a police officer from operating a security business in his spare time. Or a government appraiser from using his spare time to do professional appraisals. Or an appraiser from doing the government appraisal on his neighbors house.

Rather than placing the burden on officials to act appropriately, our current statutes seem to place the burden on the public and/or county attorneys to discover when they've been cheated and chase after the money.

Our Code seems to prohibit officials from going into businesss with those employees he's supposed to supervise (2-2-121(2)(b)). But what's the penalty if this is done at no financial loss to government and without the use of any public facilities?

Remedies. The question must at least be raised, whether civil action brought by a county attorney is an adequate remedy. It currently is the only avenue available to a citizen who suspects questionable behavior on the part of an official.

Our current Code of Ethics went into effect in July of 1977. Over five years have passed and not a single action has been brought under the Act. Montana either has extremely "clean" government officials, or the remedy provided is not adequate.

Voluntary Disclosure. The Code of Ethics further provides for voluntary disclosure of potential conflicts. It sets forth the manner in which a disclosure is to be made, what is to be disclosed and that the disclosure should be made to the Secretary fo State. This section only covers public officers or employees who are distinguished from legislators by definition. Legislators are to make any disclosures they elect to make in the manner provided in the joint rules of the legislature.

I can find nothing in the current rules whereby the legislature has provided for the manner of disclosure. Rule 9-2 does provide:

> "A member who has a personal or private interest in any measure or bill proposed or pending before the legislature shall disclose the fact to the house of which he is a member." Rules of the Montana Legislature, 47th Legislature, 1981.

Although it doesn't specifically speak of disclosure, Joint Rule 1-9 may control in the absence of more. I am not aware whether any disclosures have been made under these rules.

In the case of some state or local officials or employees, making a voluntary disclosure can absolve the official of potential liability in certain limited cases. (See, 2-2-121(3) and 2-2-125(3)).

Some Basic Problems with the Ethics Statutes

1. There is some serious doubt whether section 2-2-101 et. seq. satisfies the requirements of Article XIII, Section 4 of the Constitution.

   a. The Constitutional mandate requires a prohibition of conflicts between public duty and private interest. The implication is that all conflict be prohibited.

   b. The statutes only "prohibit" those acts which would breach an official's "fiduciary duty"

   c. The penalty used to create the prohibition only applies to acts where financial gain to the official or loss to the state is involved. Thus there is no effective prohibition, (because there is no penalty or remedy), for conflicts where there is no financial loss to the state or gain to the official (e.g. the passing of inside information to friends which inures to their personal financial gain).

2. Distinctions between conflicts "per se" and conflicts depending upon the surrounding circumstances are confusing to the public and difficult to understand.

3. Specific acts prohibited are very few, especially for legislators.

4. Discrepancies between prohibited acts are difficult to rationalize. Compare sections 111 for the legislature, 121 for state officials and employees and 125 for local government officials and employees.

5. a. The ethical principles or "should nots" list is very short.

b. The "should nots" list for legislators is nonexistent. Compare 105 to 112.

6. As a practical matter, the whole code of ethics for legislators consists of the two "may nots" contained in 2-2-111

(1) except a fee for passing or opposing legislation.

(2) use office to solicit jobs or contracts.

7. Legislators frequently suggest that their "part-time" stature, by necessity, justifies their not being prohibited from too many acts. However, there are part-time council, board, and commission members too, and they are still covered. Notice that state officials and employees are prohibited from using state time, facilities or equipment for their private purposes. It is difficult to justify not extending this same prohibition to legislators simply because they are part-time.

8. The Code provides for handling some of the "part-time" problems for state and local officials by relieving them of liability if specific disclosures are made in a specified manner. Why couldn't the same procedure be used for the legislature?

9. There is some substantial judicial authority -- namely in the form of decisions of the United States Supreme Court regarding a former congressman from New York -- that only the legislature may judge the qualifications and behavior of its members. Given this, there is serious doubt in my mind whether the judicial remedy provided in the statute is constitutional as to legislators. If it is not, then in effect, there currently is no mechanism for citizens to lodge ethical complaints against legislators.

10. The concept of "fiduciary duty" is a complicated legal principle and the public deserves a more straightforward standard against which to measure their officials.

11. At the two public hearings we held on this issue previously, there was substantial comment about the desirablity of having somewhere for a citizen to go, other than the courts, if they had a question about the propriety of a particular official's actions.

EXHIBIT 12a
State Admin
March 22, 1983

SUMMARY OF ETHICS MEETING

Secretary of State Jim Waltermire opened the meeting at 1:30 p.m. on November 12, 1982 in Room 437 of the Capitol. In attendance were Jim Waltermire, Secretary of State; Alan D. Robertson, Chief Counsel to the Secretary of State; Jane Hudson of Billings; Frank Steyaert of Great Falls; Wanda Alsaker of Missoula; Jack King of Billings; W. S. Murfitt of Helena; Attorney General Mike Greely; Lonn Hoklin, Executive Assistant to the Attorney General; Barbara Curry of Helena; Don Curry of Helena; Rev. Joseph Finnegan of Butte; Lowell Hildreth of Dillon; Sara J. Davis of Helena; Sen. Dorothy Eck of Bozeman; Mrs. Helen Kerr of Bozeman; Forrest Boles of the Montana Chamber of Commerce; and Margaret Davis of the League of Women Voters of Montana.

Mr. Waltermire began the meeting with a brief explanation of why he had called the meeting. He said that the purpose of the meeting was basically to discuss the current Code of Ethics -- whether it's adequate, any problems with it, and any areas for improvement. He said the goal was to get a concensus, if possible, of whether people want to see the Code modified and how. If a concensus can be achieved, Waltermire said he would work with interested persons or groups to develop legislation and work for its passage.

Waltermire said he was doing this because he believed that Judge Bennett's ruling should not be the end of the matter. Rather, he felt it should be the beginning of a review of the whole area. He noted that the Judge's ruling had ended a year and a half of effort. On balance, he said, it was a very positive period. He noted that the current Code of Ethics was passed in 1977 but added that it was never scrutinized or studied for four years. Even worse, according to Waltermire, the Code was rarely used. Waltermire added that in March, 1981, shortly after he took office, everyone -- press, legislators, public officials and his office -- pulled it out and began to look it over closely. Waltermire noted that a lot of study and thought went into the whole ethics area by a lot of people in that year and a half. He said he felt that was the most positive thing about it. And, he added, the only tragedy would be if we didn't build on that experience.

Finally, Waltermire said, he wanted to explain how he viewed his role in this process. He said he intended to function only as a facilitator for the wishes of concerned citizens. He said he really didn't have any preconceived notions or secret agenda. He said that if the concensus here today is that our current Code of Ethics is adequate, then we'll leave it alone.

Waltermire said he had no predisposition toward the creation of an Ethics Commission. He added that it was just another option. He noted that of the 29 states which attempt to regulate conflicts of interest, 25 of them use some form of commission or board.

Waltermire said he also had no predisposition to having the ethics function being performed by the Secretary of State. He said he felt there were some good arguments for putting it in his office -- mainly the experience they have had in the last year and a half. He

Also noted that all the states which do not have a commission, give the duty to the Secretary of State. He added, however, that there are also good arguments for putting the function elsewhere.

Waltermire said that the most important thing, in his view, was not to let who will do it get in the way of improvement. He said he was willing to do the job if it were assigned to him, but that he was equally willing for it to go somewhere else. He added that he might even prefer that. He said that the old adage of "it's a tough job but somebody's got to do it" certainly applies here.

Waltermire then asked his legal counsel, Alan Robertson, to review his interpretation of what is left of our ethics statute.

Robertson began by explaining that there are four separate areas which frequently come under the heading of ethics. They are: 1) conflicts of interest; 2) financial disclosure by elected officials; 3) campaign finance; and 4) lobbyist regulation. He said that the only one we would be dealing with today was conflicts of interest. He next reviewed the handout "What's Left of our Ethics Statute?", a copy of which is attached.

Waltermire then opened the meeting to any questions people had for Robertson.

First to speak was Frank Steyaert, County Commissioner from Escade County and a former Ethics Commission member. Mr. Steyaert asked about the many county officials in small counties who are part-time also. Robertson responded that they are governed by the same rules as fulltime officials under the Code of Ethics.

Jack King, also a former Ethics Commission member, then asked what Judge Bennett had said in his ruling. Robertson answered by saying that Bennett ruled that Section 2-2-132 is too broad, that there are not enough guidelines to express legislative intent. Now, he pointed out, when the legislature grants rulemaking authority, it also puts a statement of intent on the bill. In 1977 that was not a rule so there was no statement of intent set forth.

Mr. Lowell Hildreth asked what guidelines it would take to make the statute legal. Robertson said the guidelines would need to cover such things as who can get an opinion, when they can ask for an opinion, for what kinds of acts, whether the question can be hypothetical, and what the Secretary of State is to base his decision on, are a few of the guidelines needed. Also needed would be guidelines for any rules to be adopted. Mr. Hildreth asked whether, the more guidelines there are, the broader the Code becomes; Robertson answered that could happen but also pointed out that the Legislature could use the guidelines to make the Code very narrow. Robertson pointed out that guidelines would only cure the defect in the advisory opinion process, they would not cure the other problems with the statutes.

Father Finnegan asked, "Does this mean that we scrap the whole thing and go back to square one because there aren't enough teeth in the current Code?" Senator Dorothy Eck added that as to the teeth

in the current Code, that once a person had paid back the money to the state or county, that the person was "off the hook". She felt there should be an increase in the penalties.

Mr. Forrest Boles thought that it is impossible to prohibit all conflicts of interest. And that the Legislature was correct in trying to limit the conflicts to fiduciary duty. He added that maybe we need something besides "fiduciary duty" but the mandate in the Constitution was not to prohibit all conflicts. Senator Eck added that she had noticed that, in looking at the ethical principles wording in the original bill, that it had been changed by the time the bill was passed and she wasn't sure why.

Waltermire then opened the meeting to comments from the floor and asked Attorney General Mike Greely if he wanted to speak first. Mr. Greely had a prepared statement which he read. A copy is appended to these minutes.

When he finished speaking, there was a question and answer period for Mr. Greely. Jim Waltermire began the questioning and asked how broad a coverage Mr. Greely was proposing. Greely responded that his view was mandatory reporting of any conflict of interest. Waltermire then asked how Greely proposed that the state deal with a person who didn't benefit financially from the conflict -- what kind of penalty did Greely have in mind. Greely said he was proposing to have the disclosure previous to the conflict for all potential conflicts. Waltermire asked how Greely thought we would enforce the disclosures; and Greely answered that he hadn't prepared all the details but that there would need to be some enforcement procedures for the mandatory disclosure. He said he felt that more study may be needed. The important thing he felt was the previous disclosure.

Senator Eck added that the Campaign Commissioner could be used to receive the disclosures. She felt that it should be simple to make the disclosure.

Jane Hudson asked Greely why he thought the Legislature would respond any differently this time to ethics legislation. She pointed out that bills were introduced in 1979 and 1981 to clarify the situation but they were killed. Greely answered that in 1977 an attempt was made to implement the constitutional mandate. The responsibility for implementation still has to be with the Legislature. The only other way would be with an initiative. Greely added that some conflicts get blown out of proportion but that if the conflict is declared in advance, then it is all out in the open. Greely felt that Montana needed to look at other states to see what they are doing in the ethics area. He said he wouldn't predict what the Legislature would do.

Robertson asked Greely if he saw any role for the advisory opinion process and whether one person or a group should make the decisions. Greely responded that the advisory opinion makes sense, especially for the hypothetical question. He also favored a group to decide but was concerned as to who should be on any commission. He also felt that the Legislature would be reluctant to establish a bureaucracy to enforce the Code of Ethics so one person would probably have to do it.

Robertson then asked if Greely felt the ethics function should go to someone like the Campaign Commissioner. Greely responded that the function definitely should not be left to an elected official and that the Campaign Commissioner would be a good place for ethics to go, but that there must be some guidelines from the Legislature and the authority would have to be limited.

Next, Robertson asked whether Greely agreed with his interpretation that only the Legislature could deal with the ethics of its members. Greely said that this was probably the case, and noted he had recommended separate provisions for the legislative and executive branches. Robertson then asked, "since only the Legislature can judge the qualifications and behavior of its members, and given that our current Code establishes a judicial review process for legislative behavior, which is probably invalid, do we have any Code of Ethics right now dealing the Legislators?" Greely allowed that we probably do not. Robertson then asked, "Doesn't the Legislature have to do something with its own ethics situation this session because of the Constitutional mandate?" Greely responded that the Constitution says there has to be a Code of Ethics for legislators but it doesn't say when. He said there really isn't much we can do about it -- there could be an initiative but we can't put them all in jail. That was all of the questions for Mr. Greely, and he had to leave the meeting.

Next to comment was Frank Steyaert who raised the question of what happens when you leave office, are you then off scot free for anything you did while in office?

Waltermire then asked for other comments. Jane Hudson, who chaired the former Ethics Commission spoke first. Hudson said her experience with the Code of Ethics had been one of frustration and confusion. She noted that there is a Constitutional mandate and felt that people do have the right to get opinions on actions, past or future. Also, that the people have a right to a Code to follow what is fair and in the public interest. Right now, she added, we don't have one. The Code needs to be clarified for public officials and the public in general.

Frank Steyaert spoke next, saying that we need either an ethics operation or perhaps a grand jury procedure for Montana. There is currently a real problem, he said, if a person takes an ethics complaint to a county attorney and he doesn't want to prosecute. Does the person then go to the Attorney General? And what if the Attorney General doesn't want to prosecute either?

Next Wanda Alsaker spoke. She seconded what Hudson had said and added that there needs to be a place for citizens to go other than the courts. She very strongly feels that there are unethical situations which do not involve monetary gain.

Jack King spoke next and said that he cringed at the thought that the responsibility for the Code of Ethics would be turned back over to the Legislature. We need something now he said, not more study and delay. He also felt it shouldn't just deal with financial conflicts.

Next there were questions for members of the former Commission. Robertson asked if, from their experience, they felt the function should be performed by a group or by an individual. All responded that they felt it should absolutely be given to a group. Members of the former Commission noted that they frequently had spirited discussions over what was considered ethical or not, that it varied from person to person, and for that reason should not be left to any one individual.

Senator Eck asked whether the former members felt that any future commission would need investigatory powers. She added that if you don't have safeguards for people, then courts might eventually throw out the findings of the commission. Frank Steyaert commented that he would not personally want to be involved in any future effort that included investigation. He just felt that was too much. Robertson pointed out that investigation powers were not necessary if requests were limited to employees seeking advice about their own behavior. You don't need to give investigatory powers if you limit requests to future acts and only on the request of the official themselves, he said. Investigatory powers are needed only when third party requests are allowed. For example, when a member of the public asks for a determination about the past behavior of a particular official. Then, he said, you either need to take the request at face value and issue your opinion only on that, or you need to seek additional information through investigation. Senator Eck added that no investigatory powers are needed to handle hypothetical questions. Robertson agreed but added that hypothetical questions get real difficult to handle because you have to make so many assumptions.

Senator Eck further commented that she felt the new Mansfield Center for Ethics in public affairs at the University of Montana might be a good place to get some help once it starts up. She also felt that it was very important to begin getting public officials "sensitized" to ethics. Perhaps, she said, a commission or study group could put together some standards of ethical behavior. Although, Senator Eck added, it might be difficult to get the Legislature to authorize a new commission. There's no desire in the Legislature to tackle ethics, she pointed out. She added that an initiative would be very difficult without study groups to educate the public. Senator Eck said that she and Rep. McBride had studied the matter thoroughly but that they felt unable to write legislation to handle ethics. Also, that they would prefer that ethics be transferred to the Commissioner of Campaign Practices. She felt that public disclosures would be of some help but the real need is to "sensitize the public officials" and that what is inappropriate is not necessarily unethical. It is the appearance of evil that undermines the public confidence, she noted. We can't just get a list of what's unethical she added.

Next was a period of questions for Senator Eck. Waltermire asked for her feelings about conflicts outside the realm of fiduciary duty, and did she feel that disclosure is enough. She responded that disclosure was a good start, and that the disclosures should be reviewed by the public. To another question she responded that there should be a process to get an opinion as to whether an action was ethical. Regarding whether she favored a group or one person to give the opinion, she

felt that at least one staff person would be needed to do the research, and that she preferred a group rather than a single individual to make the determinations.

Frank Steyaert commented that county officials have to operate in the gray areas of ethics because there is no clarity, and that he doesn't like it. Senator Eck agreed, saying that some people have problems operating in gray areas but for some it causes no concern. She feels that Legislators need a list of examples of what is ethical, local officials more so and officials of small counties even more so because in small towns local government is so involved in what goes on in the town.

Robertson noted that he had a lot of information from other states including some material from the Hasting Center which has studied the matter at length and even has put together a model act. There is a lot of information available, he said, it isn't as though we have to wait for the University of Montana group to study it.

Boles commented that he felt that an advisory group was crucial. Mandatory prior disclosure of every possible conflict could be a real problem, he felt, and might discourage people from serving on public boards and commissions as well as running for public office.

Father Finnegan asked if voluntary disclosure absolved the official from liability. Robertson explained that the law was very limited as to who was absolved and that it only covered members of the governing body at a local level and department heads or board members if their vote was needed at the state level.

Sara Davis, a concerned citizen from Helena, spoke next and said she didn't see anyone coming up with recourse for non-monetary breaches of ethical duty. She didn't know what to do but wants to have a place to go when she has a problem.

Father Finnegan commented that it falls on the citizen to pursue the wrongdoer and that the citizen can end up fighting a state agency or a county attorney. He said that's a lot of burden to put on the citizens of Montana. Robertson said that was an excellent point -- that a county attorney might say "prove it" to the citizen when he made his accusation. Senator Eck added that we also need to protect state government from being harrassed.

Lowell Hildreth spoke next and pointed out that the citizens of Montana need to be protected from being maligned and smeared too. He felt that a group of citizens like an ethics commission was the proper approach and that they should decide what's ethical or not -- not the Legislature.

Maggie Davis next commented that hypothetical versus real conflicts was critical. She felt that the Attorney General's recommendations didn't emphasize enforcement enough and that the Legislature was reluctant to act on enforcement. Also, she felt that the emphasis on disclosure was a good first step. She pointed out that the people have enforcement power at the ballot box and in the press.

Waltermire then asked if she favored an individual or commission for ethics and Davis said a group for factual questions and an individual for hypothetical questions. Wlatermire next asked for any preferences as to who should appoint the commission. Davis said that the Legislature could specify how it would be done but that it should be a bipartisan committee and added that she hadn't thought much about this. Robertson said that at one time Davis had testified for the League in favor of opinions dealing with real situations as opposed to just hypothetical situations. He asked if the League still favored them. Davis said that there are good arguments for public access, but she would have to see the proposed legislation.

Waltermire then asked if anyone else had any comments regarding who should appoint. King commented that it was difficult not to be political when talking about appointments. He felt that the Attorney General shouldn't make the appointments since he supervises the county attorneys. Steyaert suggested that the Supreme Court appoint the ethics commission. Robertson commented that in many states the Governor appoints the commission. He added that many other states have a mixed appointment process. Steyaert said that to him it didn't matter who appointed the commission as long as there was one. Hudson asked how the Campaign Commissioner is appointed, and Robertson responded that the Governor made that appointment.

Waltermire asked if there were any final comments. Hudson asked what happens if the Legislature doesn't act but leaves Montana stuck with no real ethics code. Waltermire pointed out that there was always the initiative process.

There were no further comments, so Waltermire concluded the meeting. He indicated his office would be looking at possible legislation and would mail whatever they came up with to interested parties. He thanked everyone for their comments and for attending.

EXHIBIT 13
State Admin
March 22, 1983

STATE
OF
MONTANA
ATTORNEY GENERAL
MIKE GREELY

12 November 1982

Jim Waltermire, Secretary of State
Capitol Building
Helena, Montana 59620

I'm grateful for the opportunity to employ this forum to make a brief statement concerning the critical need for new ethics legislation in Montana.

There is no question in my mind that we need new legislation --strong legislation, with teeth in it--to ensure a high standard of ethical conduct among Montana's office holders and public employees. My staff and I have had discussions with several interested legislators on this subject, and we intend to propose a workable and effective law to the Legislature. We have not determined, however, whether we should ask the Legislature to enact such a law in the forthcoming session, quite simply because we recognize a need for comprehensive study and analysis in every aspect of the ethics issue. We have, however, arrived at some conclusions that we can make public today.

First of all, any new ethics legislation should have two parts--one that deals with the legislative branch exclusively, and another that deals with the executive branch exclusively. Because the judicial branch already operates according to a strict canon of ethics, we should concern ourselves only with the legislative and the executive.

The new law should establish an ethics committee of the Legislature--perhaps one for each house--to examine complaints about the ethical conduct of legislators. The committee or committees should have the authority to reprimand any member it has found to have violated the standards of ethical conduct. The legislative ethics committee should also have authority to submit resolutions of censure or expulsion of a member to one or both houses. Needed first, however, is a realistic and workable set of ethical standards for legislators; this is the area in which we need study and analysis.

Secondly, we need an ethics law that deals exclusively with members of the executive branch and public employees. The

cornerstone of that law should be mandatory disclosure of any conflict of interest. In other words, a public employee or executive should be required to disclose any conflict of interest to the state Commissioner of Political Practices. That disclosure would than be public record, available to the news media and all others. A citizen who suspects that an employee or executive has not disclosed a conflict could inquire of the Commissioner who would then make his or her own inquiry, all of which would be a matter of public record. If it becomes apparent that an employee or executive has misused his or her position in a non-criminal way in order to profit financially, the county attorney should have authority to sue that person for triple the amount of the profits he or she derived.

As one can readily see, the proposal for executive branch ethics emphasizes disclosure, the purifying light of public knowledge and opinion. It also emphasizes the ability of county attorneys to recover triple the amount of profits derived from unethical behavior. But needed now is a realistic set of ethical standards of conduct for executives and public employees. In this area we need study and analysis. In my view, the place for that study and analysis is the Legislature.

Past experience has taught us a painful lesson: an inadequate ethics law can be twisted and abused; it can be used as an excuse to smear honest and effective state employees and officers; it can be a device employed to shatter well-placed public trust in government. We don't need McCarthy-esque investigative commissions or tribunals to investigate and accuse. Rather, we need reasonableness, public disclosure and civil remedies for extreme abuse. But first we need study and analysis by the Legislature.

Very truly yours,

MIKE GREELY
Attorney General

EXHIBIT 14 19
State Admin
March 23, 1983

(This sheet to be used by those testifying on a bill.)

NAME: Margaret S Davis DATE: 22 March 83

ADDRESS: Helena

PHONE: 443-3487

REPRESENTING WHOM? League of Women Voters of Mt

APPEARING ON WHICH PROPOSAL: HB 689

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X (in part)

COMMENT: The Statement of intent seems to go far beyond the language of the statutes in ethics. How can the penalties apply to all public officials (not just executive) but the ethical provisions (standards, disclosure requirements - mechanics) are limited to Executive Branch employees. Actually this is not so much an ethics bill as it is one which changes the administration of campaign practices and lobby disclosure laws. While detracting from the ethics area, the commission would take on the broad powers of the present Commissioner.

The Commission would not be non-partisan but rather bi-partisan. The two major parties would enforce laws affecting minor parties and ballot issue committees and other political committees.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

EXHIBIT 15
State Admin
March 22, 1983

(This sheet to be used by those testifying on a bill.)

NAME: Don Judge DATE: 3/22/83

ADDRESS: Helena

PHONE: 442-1708

REPRESENTING WHOM? MT STATE AFL-CIO

APPEARING ON WHICH PROPOSAL: HB 689

DO YOU: SUPPORT? _____ AMEND? X OPPOSE? X

COMMENT: The Montana state AFL-CIO originally supported HB 689 and proposed amendments to make it a workable piece of legislation. Some of those amendments have been adopted, and the legislation was improved accordingly. However, the bill passed the house without the most important amendment, and consequently, we are in the position of opposing HB 689. That amendment, we felt, was necessary to provide public access to the commission in order to obtain rulings. There currently is no direct public access, without elected official concurrence, to advisory opinions. Our second objection lies in the fact that all this hoopla only results in "advisory" opinions. Multiply such "advisory" opinions by 56 different county attorneys and you end up with a fine kettle of fish. We suggest you study the issue further and kill HB 689.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.