

MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
MONTANA STATE SENATE

April 15, 1983

The fifty-seventh meeting of the State Administration was called to order by the Chairman, Senator Pete Story at 8:00 a.m. on Friday, April 15, 1983 in room 331 of the State Capitol Building.

ROLL CALL: A quorum was noted and Senator Stimatz was the only senator absent.

The purpose of the meeting was to hear H.B. 899, H.B. 668, HJR 38, the Governor's appointees to three boards and action on H.B. 580.

CONSIDERATION OF HOUSE BILL 899:

"AN ACT AMENDING THE APPOINTMENT QUALIFICATIONS OF MEMBERS OF THE BOARD OF PERSONNEL APPEALS TO REMOVE POTENTIALLY UNCONSTITUTIONAL APPOINTMENT QUALIFICATIONS; PROVIDING FOR A TRANSITION AND APPOINTMENTS SUBJECT TO THE NEW APPOINTMENT QUALIFICATIONS; AMENDING SECTION 2-15-1705 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

REPRESENTATIVE ADDY presented this bill and said that as it is set up now it is unconstitutional. He said that a quasi-judicial board member may not have a constituent group behind them. There may be two two members with management experience and two with labor experience. As it was originally written the chairman was to have no experience but they considered this too much so they have inserted that the chairman may have labor experience.

PROPOSERS:

DAVE HUNTER, Commissioner of Labor and Industry, testified that they have checked with other boards and have found none with a similar problem. He said that there is only a constitutional effect.

ALLEN JOSELYN, Attorney, said that he was an alternate neutral on the Board and now replaces Kelly Addy. He said that he noted this problem and brought it up.

The hearing closed on H.B.899 since there were no questions.

SENATOR TOWE MOVED that H.B.899 BE CONCURRED IN.
MOTION PASSED. Senator Towe will carry this bill.

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CONSIDERATION OF HOUSE BILL NO. 668:

"AN ACT TO INCREASE THE AMOUNT AUTHORIZED FOR LODGING AND EVENING MEAL REIMBURSEMENT FOR STATE EMPLOYEES AND CERTAIN OFFICIALS ENGAGED IN STATE BUSINESS WHILE AWAY FROM THEIR DESIGNATED HEADQUARTERS BUT WITHIN THE STATE, AMENDING SECTION 2-18-501, MCA."

REPRESENTATIVE BRAND, District 28, introduced this bill to the committee and commented that this bill actually was set up to increase lodging and meals for state employees and certain officials but as it now stands it increases only the evening meal by \$1.00.

There were no proponents nor opponents and no questions of the committee so the hearing closed on H.B. 668.

ACTION ON HOUSE BILL 668:

SENATOR MANNING MOVED THAT HOUSE BILL 668 BE CONCURRED IN. MOTION PASSED. Senator Manning will carry this bill.

CONSIDERATION OF HOUSE JOINT RESOLUTION 38:

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING THE HOPE FOR LASTING FRIENDSHIP, UNDERSTANDING, AND COMMUNICATION WITH THE PEOPLE OF THE KUMAMOTO PREFECTURE.

REPRESENTATIVE BARDANOUVE, District 6, introduced the bill as a bill of peace and friendship. He said that Kumamoto is the "like of Montana" there. He said it is made up of providences.

Representative Bardanouve stated that Representative Marks, Senator Turnage and himself hosted these people while they were in this county and several have returned the visit.

Representative Bardanouve said that with the threat of nuclear war it is only good and right we establish relations besides the fact that the world is getting smaller. He said that an inscription on parchment would be presented to the president of Kumamoto. Our university in Missoula has taken an interest and asked to be included.

There was no further testimony nor questions of the committee thus the hearing closed on HJR 38.

ACTION ON HOUSE JOINT RESOLUTION 38:

SENATOR HAMMOND MOVED THAT H.J.R.38 BE CONCURRED. MOTION PASSED. Senator Turnage will carry the bill.

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REFERENCE TO H.B.889: SENATOR TOWE referred to the Arizona language in EXHIBIT 1. He said that you cannot have a representative if you have a quasi-judicial board.

GOVERNOR'S APPOINTEES TO: BOARD OF OPTOMETRISTS
 BOARD OF PUBLIC ACCOUNTANTS
 BOARD OF PROFESSIONAL ENGINEERS AND
 LANDSCAPERS (EXHIBIT 2)

ACTION:

SENATOR TOWE MOVED P.L. KATHREIN, O.D. BE RECOMMENDED AND APPROVED AS APPOINTED AS AN OPTOMETRIST WITH A TERM ENDING APRIL 3, 1987. MOTION PASSED. (Board of Optometrists)

SENATOR TOWE MOVED SARA GERTRUDE MALONE, APPOINTED AS A PUBLIC MEMBER FOR A TERM ENDING FEBRUARY 20, 1987, BE RECOMMENDED AND APPROVED. MOTION PASSED. (Board of Optometrists)

SENATOR TOWE MOVED THAT CHARLIE M. BYRNE, APPOINTED AS A PUBLIC MEMBER FOR A TERM ENDING JULY 1, 1985. MOTION PASSED. (Board of Public Accountants)

SENATOR TOWE MOVED DONALD L. PIMPERTON, REAPPOINTED AS A PUBLIC MEMBER FOR A TERM ENDING MARCH 31, 1984, BE RECOMMENDED AND APPROVED. MOTION PASSED.

ACTION ON HOUSE BILL 580 CALLED BACK FOR RECONSIDERATION.

SENATOR TOWE MOVED HOUSE BILL 580 BE CONCURRED IN. MOTION FAILED. ROLL CALL VOTE, 3 YES and 4 NO. EXHIBIT 3.

DISCUSSION BY THE COMMITTEE:

It was suggested that possibly with the amendments presented by Sonny Hason the bill would have some merit. EXHIBIT 4.

SENATOR HAMMOND expressed that they have a pool in his area that has had no problems and would not like to see them imposed upon as he feels that there is no limit to what they call "saftey"

SENATOR STORY stated that there is nothing on the books now that give the Department of Health the authority over "safety". He said that Chico had one drowning due to the fact that he was drunk and crawled over the fence and fell in the pool and record of one other drowing was due to a child being left alone.


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SENATOR MARBUT commented that all the bills in the world would not stop all the drownings.

SENATOR LEE MOVED THAT H.B. 580, BE NOT CONCURRED IN AND THAT THE FORMER VOTE BE REVERSED.
MOTION PASSED.

H.B. 580 IS A BE NOT CONCURRED IN VOTE.

There was no further business and the meeting adjourned at 9:00 a.m.



CHAIRMAN, Senator Pete Story

ROLL CALL

STATE ADMINISTRATION

COMMITTEE

47th LEGISLATIVE SESSION -- 1983

Date 4-15-83

SENATE
SEAT

#

NAME	PRESENT	ABSENT	EXCUSED
SENATOR PETE STORY, Chairman	X		
SENATOR H. W. HAMMOND, Vice Ch	X		
SENATOR REED MARBUT	X		
SENATOR LARRY TVEIT	X		
SENATOR R. MANNING	X		
SENATOR LAWRENCE STIMATZ		X	
SENATOR THOMAS TOWE	X		
SENATOR GARY LEE	X		

DATE _____

COMMITTEE ON _____

VISITORS' REGISTER

[illegible]

(Please leave unnumbered statement with Serial #)

New Ideas for Busy Lawyers

Lawyers Alert™

February 7, 1983

Volume 2, Number 8

State Agency Can Not Have "Representatives" From Groups

Where a state administrative agency is required to have representatives of both labor and management, this is unconstitutional, says the Ninth Circuit in a 2-1 decision.

This agency has "adjudicative" powers, and it must "require decisions devoid of favoritism, animosity, or personal interest."

Therefore, where this board is in charge of labor relations for farm workers, it cannot have two members appointed as representatives of agricultural employers, two as representatives of organized labor and three members as representative of the general public.

"The Board's functions include resolution of election disputes and resolution of charges of unfair labor practices. These functions are adjudicatory ..."

Even if these same persons were

appointed to the Board, they would have a much better chance of being impartial than where they are chosen to "represent" a special group of persons.

"The labor and employer representatives on the [Board] cannot live up to the high standard of impartiality. We admit that Board members with a philosophical viewpoint favoring labor or employers would be capable of sufficiently impartial decision-making, but a designated labor or employer representative will serve with more than a philosophical viewpoint. A representative is appointed with a clear mandate to serve the interests of the side he represents. It may be appropriate for a group representative to act on rulemaking matters from the perspective of a built-in bias for an interest group, but a representative cannot reasonably be expected to ignore that bias when faced with close questions of fact or law in an adjudicatory context. Even the rare representative who could forget his allegiances when deciding adjudicatory matters would have to withstand the brunt of his constituency's pressure. We conclude that a representative is incapable of providing the impartiality necessary in the context of the adjudicatory matters presented to the [Board]."

"The [Board] has not questioned the conclusion that the labor and employer representatives are partial. They have argued, rather, that the Board as a whole is impartial because the partiality of the employer representatives is evenly balanced by the partiality of the labor representatives. We conclude, however, that the impartiality required of adjudicatory decisionmakers cannot tolerate the presence of unconstitutionally biased members, even if biases are bal-

Dissent

The court has taken over the legislative process, according to the dissent. "Administrative law, with its emphasis on speed, informality and low cost, has been a burgeoning area of experimentation for the last forty years. For the last decade various states have been attempting to deal with a newly organized agricultural work force. It is not surprising that a number of them should have extended administrative experimentation with investigation, arbitration,

rule making and adjudication into the farm labor area. [citation]

"[This] legislature has tried a reasonable experiment. It has combined a number of tasks in one body so that state policy in the agricultural employment area can develop rapidly and uniformly. By representation of competing groups it attempts to have these decisions made by knowledgeable people, thus reducing the risk of erroneous, unwise or uninformed decisions which might otherwise so easily be made in this complicated area which profoundly affects so many. By balancing these groups it attempts to control the board for bias. Whether the overall statute is the best that could have been devised is not for us to say ... We sit only to determine whether the legislation is constitutional. The formulation is sufficiently fair to withstand attack."

U.S. Court of Appeals, Ninth Circuit, San Francisco, CA 94101. Tel: 415-556-2388. United Farm Workers of America v. Arizona Agricultural Employment Relations Board, No. 80-5777, January 24, 1983. Lawyers Alert No. 32-53 (14 pages).

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FEB 22 1983

BOARD OF PERSONNEL APPEALS

8015
544H1/20/83
213 683 3-463
5749

State of Montana
Office of the Governor
Helena, Montana 59620

TED SCHWINDEN
GOVERNOR

April 14, 1983

The Honorable Pete Story, Chairman
State Administration Committee
Montana State Senate
Capitol Building
Helena, Montana 59620

Dear Senator Story:

I am submitting to you biographical information on appointments recently made by Governor Schwinden.

DEPARTMENT OF COMMERCE

As a member of the BOARD OF OPTOMETRISTS in accordance with
Section 2-15-1846, MCA.

P.L. Kathrein, O.D., Great Falls. - Kathrein was born and raised in North Dakota. He received a bachelor's degree in 1966 from the University of North Dakota, a Doctor of Optometry degree in 1969 from Pacific University College of Optometry, and in 1979 received certification in Diagnostic Pharmaceuticals from the University of California School of Optometry and the Montana State Board of Medical Examiners. Kathrein is a member of the Montana and American Optometric Associations, served as president of the Montana Optometric Association in 1981, and was selected as the Optometrist of the Year by the Montana Optometric Association in 1983.

He is appointed to succeed J.R. Crabtree of Choteau on the Board as one of three registered optometrists. He will serve a term ending April 3, 1987.

Sara Gertrude Malone, Bigfork. - Malone is a retired nurse who is currently residing on the East Shore of Flathead Lake. She received a nursing diploma from Methodist-Kahler School of Nursing, Rochester, Minnesota in 1942, a bachelor's degree from the University of Montana in 1954, and a master's degree in nursing from Montana State University in 1964. She is a member of the Montana Nurses Association, the board of directors of the Lake County Unit of the American Red Cross, and the Montanan's for Children, Youth, and Families, Inc.

Malone is appointed to succeed Teresa McKeon of Malta as the public member on the board.

She will serve a term ending February 20, 1987.

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As a member of the BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS in accordance with Section 2-15-1873, MCA.

Donald S. Pimperton, Fort Benton. - Pimperton was born in Choteau, raised in Fort Benton, and graduated from Fort Benton High School. He attended Oklahoma State University and graduated in 1955 with a bachelor of science degree. Pimperton is currently operating a ranch east of Fort Benton.

He is re-appointed to the Board as one of two public members and will serve a term ending March 31, 1987.

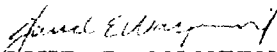
As a member of the BOARD OF PUBLIC ACCOUNTANTS in accordance with section 2-15-1866 MCA.

Charlie M. Byrne, Great Falls. - Byrne was born in Shelby and graduated from North Toole High School in 1973. He received a bachelor's degree in business from Eastern Montana College in 1977. He was employed by Vannoy Heating and Air Conditioning of Billings from 1978 to 1980 and is currently employed by Buchanan Enterprises as a property supervisor.

Byrne is appointed to replace Steve Smith of Billings as the boards public member.

He will serve a term ending July 1, 1985.

Respectfully submitted,



DAVID E. WANZENRIED
Executive Assistant

ROLL CALL VOTE

SENATE COMMITTEE STATE ADMINISTRATION

Date 4/15/83 HOUSE Bill No. 580 Time 8:00 a.m.

NAME	YES	NO
SENATOR H.W. HAMMOND		X
SENATOR REED MARBITT		X
SENATOR LARRY TVEIT		X
SENATOR R. MANNING	X	
SENATOR LAWRENCE STIMATZ		
SENATOR THOMAS TOWE	X	
SENATOR PETE STORY	X	
SENATOR GARY LEE		X


Secretary, Leona Williams


Chairman, SENATOR PETE STORY

Motion: (1) MOTION BY SENATOR TOWE THAT H.B.580 BE CONCURRED IN
FAILED..

(2) VOTE BY SENATOR LEE TO BE NOT CONCURRED IN. MOTION PASSED
VOTE ABOVE WAS REVERSED.

(include enough information on motion--put with yellow copy of
committee report.)

Proposed Amendments HB-580

STATEMENT OF INTENT

Page 1 line 8
Following: "For"
Insert: "THE OPERATION OF"

Page 1 Line 22
Following: "Adopt"
Insert: "OPERATING"

Page 1 Line 23
Following: "places"
Strike: "including construction specifications and operational requirements".

House Bill - 580

Page 1 Line 9
Title
Following: "FOR"
Insert: "The operation of"

Page 1 Line 17
Following: "Regulate"
Insert: "the operation of"

Page 2 Line 20
Following: "in"
Insert: "the operation of"

STANDING COMMITTEE REPORT

April 15 19 83

PRESIDENT

MR.

STATE ADMINISTRATION

We, your committee on

having had under consideration **HOUSE** Bill No. **899**

Addy (Towe)

Respectfully report as follows: That **HOUSE** Bill No. **899**

BE CONCURRED IN

USPAX

u.l.c.

STANDING COMMITTEE REPORT

April 15 19 83

MR. **PRESIDENT**

We, your committee on **STATE ADMINISTRATION**

having had under consideration **HOUSE** Bill No. **580**

Dakko (Story)

Respectfully report as follows: That **HOUSE** Bill No. **580**

BE NOT CONCURRED IN

SENATE

W.C.

STANDING COMMITTEE REPORT

April 15 1983

PRESIDENT

MR.

STATE ADMINISTRATION

We, your committee on

HOUSE

having had under consideration Bill No. 668

Brand (Manning)

HOUSE

Respectfully report as follows: That Bill No. 668

BE CONCURRED IN

~~DOUBT~~

STANDING COMMITTEE REPORT

April 15 19 83

MR. **PRESIDENT**

We, your committee on **STATE ADMINISTRATION**

having had under consideration **HOUSE JOINT RESOLUTION** ~~XXX~~ **38**
Bill No.

BARDANOUE (TURNAGE)

Respectfully report as follows: That **HOUSE JOINT RESOLUTION** ~~XX~~ **38**
No.

BE CONCURRED IN

DECREASE

STANDING COMMITTEE REPORT

April 15 19 83

MR. **PRESIDENT**

We, your committee on **STATE ADMINISTRATION**

having had under consideration Bill No.

communication of the Governor dated April 14, 1983, wherein the names of:

P.L., KATHREIN, O.D., Great Falls, Montana, appointed as an optometrist with a term ending April 3, 1987.

Sara Gertrude Malone, Big Fork, Montana, appointed as a public member for a term ending February 20, 1987;

we submitted as appointments to the:

Board of Optometrists

Respectfully report as follows: That Bill No.

said appointments be concurred in and confirmed by the Senate, and that the attached resolution be adopted by the Senate.

~~DEPXXXX~~

BE CONCURRED IN AND CONFIRMED

STANDING COMMITTEE REPORT

April 15 19 83

MR. **PRESIDENT**

We, your committee on **STATE ADMINISTRATION**

having had under consideration Bill No.

communication of the Governor dated April 14, 1983, wherein the name of:

CHARLIE M. BYRNE, Great Falls, Montana, appointed as a public member for a term ending July 1, 1985;

**we submitted as an appointment to the:
Board of Public Accountants**

Respectfully report as follows: That Bill No.

said appointment be concurred in and confirmed by the Senate, and that the attached resolution be adopted by the Senate.

DEPAXX

BE CONCURRED IN AND CONFIRMED

..... **Senator Pete Story**

Chairman.

STANDING COMMITTEE REPORT

April 15 19 83

MR. **PRESIDENT**

We, your committee on **STATE ADMINISTRATION**

having had under consideration Bill No.

communication of the Governor dated April 14, 1983, wherein the
name of:

**DONALD L. PIMPERTON, Fort Benton, Montana, reappointed as a
public member for a term ending March 31, 1984;**

was submitted as a reappointment to the:

Board of Professional Engineers and Landscapers

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

**said appointment be concurred in and confirmed by the Senate, and
that the attached resolution be adopted by the Senate.**

~~DOXKASX~~

BE CONCURRED IN AND CONFIRMED

W.C.