MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

April 11, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Thursday, April 11, 1985 at 9:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Brown who was previously excused, and Rep. Hammond, who was counted as absent.

CONSIDERATION OF HOUSE JOINT RESOLUTION NO. 53: Rep. Rex Manuel, House District #11, chief sponsor of HJR 53, testified. HJR 53 is a joint resolution requesting an interim committee to study the Human Rights Commission and to investigate its activities as a quasi-judicial board. Rep. Manuel wanted to make it clear that his intentions are not to harm or destroy the Human Rights Commission or its staff. He said this resolution originated as a result of a case in his own county. His local school district was involved in a case before the Commission. He feels that an interim committee should study the Commission because it will allow more time for local governments and school districts to tell the interim committee their sides of the story. He pointed out that the "whereases" in the resolution were a result of the concerns expressed by numerous residents across the state. He doesn't know if these complaints are valid or not.

PROPONENTS:

Russ Andrews, Teton County Attorney, testified on behalf of HJR 53. Mr. Andrews echoed Rep. Manuel's opening comments by saying that he is not here to testify against the Human Rights Commission. The reason he is here is because in his experience, the procedures being implemented and used by the Commission lack a degree of fundamental fairness. He feels that the rules that they employ are in themselves discriminatory. They are discriminatory against the alleged offender. Under the rules of the Human Rights Commission follow, which are embodied in the Administrative Rules of Montana, the primary problem is that equal discovery is not permitted. As far as he can determine, when a complaint is filed with the Human Rights Commission, there is no subsequent or immediate attempts to verify the accusation; instead, the complaint is taken and sent to the offender along with a set of interrogatories for him to answer. Mr. Andrews said that the idea of having to give self-incriminating evidence before the person is really even apprised as to what the charges are against him lacks a fundamental fairness.

Basically, he believes the Human Rights Commission is attempting to settle the case. During the entire time period of the proceeding, after the accusation is made, the alleged offender cannot question the investigating officer as to what the other side is saying. There is no ability on the part of the alleged offender to try to find out what is going on other than the complaint itself. Mr. Andrews questions the fairness of this. He feels that the Human Rights Commission, as an administrative agency, needs to adopt the rules of civil procedure which have a built-in fairness concept. He pointed out that its sister agency, the Division of Labor Standards, does recognize the rule of civil procedure and does recognize the rules of evidence. Basically, the Human Rights Commission is without any guideposts. Those guideposts not only protect the offender but provide guides for the complainant as well. Presently, there is a tremendous backlog of cases in the Human Rights Commission. To understand why, he feels the screening process must be reviewed. In closing, Mr. Andrews said that there is a severe problem with the Commission -- not its staff. The problem deals with the operational rules.

Glen Neier, city attorney from Kalispell, testified as a proponent. He informed the committee that the city of Kalispell has been involved in a human rights action since May 25, 1983. He explained the case in greater detail and said the city of Kalispell has expended approximately $7,000 to $10,000 in the defense of this case. (A copy of that particular decision, Capes vs. City of Kalispell was submitted by Anne MacIntyre and marked Exhibit A.)

Margery H. Brown, chair of the Human Rights Commission, told the committee that the Commission welcomes the proposed interim study, but the Commission does not welcome it for the reasons expressed by the above proponents. A copy of her written testimony was marked Exhibit B and attached hereto.

Anne L. MacIntyre, administrator of the Human Rights Commission, said she would attempt to refute some of the statements made in HJR 53 concerning the staff's exercise of its investigatory powers. A copy of her written testimony was submitted and marked Exhibit C.

David E. Wanzenried, administrator for the Department of Labor and Industry, pointed out that he has a very good working relationship with the Human Rights Commission. He supports the concept of HJR 53 with the same reservations expressed by Ms. Brown and Ms. MacIntyre.

Senator Chris Christiaens, Cascade County, testified in support of HJR 53. He said that as a former member of the Human Rights Commission, he supports this resolution.

He gave the committee a brief overview of some of the problems the Commission presently faces and what it has faced in the past. He believes the Commission is one of the hardest working group of people that he has ever been associated with. He said this group takes its work very seriously by investigating those complaints that are brought before the Commission in an expedious way. He urged the committee to look very carefully at the resolution. He feels there are some very dangerous innuendos included in the resolution. He does, however, support an investigation of the Commission and the work that it is doing because he thinks that some of the results of that study will point a finger back to the Legislature. He said the greatest number of cases that are filed with the Human Rights Commission come from state employees, county and local employees and school boards. Perhaps some of the largest offenders in the areas of discrimination have been in government. He feels that some of the background behind this resolution comes from those same kinds of problems. Perhaps it is well that government and school boards look very carefully at how they work to eliminate the areas of discrimination that apparently exist in the minds of those individuals that bring the complaints before the Commission.

OPPONENTS:

Anne Brodsky, representing the Women's Lobbyist Fund, spoke in opposition to HJR 53. A copy of her complete testimony was submitted and marked Exhibit D.

Mike Meloy, appearing on behalf of himself, testified with mixed emotions. He said he represents primarily employees in employment/client litigation. The reason he has mixed emotions is that from the employees' perspective, he agrees with the kind of informal discovery that the Teton County Attorney was referring to because it would enable him to ask questions of the other party. One of the reasons this process is important is because the Human Rights Commission is designed to let people air their grievances without having to employ an attorney. The second benefit the state gets by having a Commission is that the grievance can be resolved without having to go to court. It provides a mediation process so the parties can air their disputes and resolve them before it goes to district court. Because it is an administrative process, it does have the impact of relieving discrimination lawsuits from the district court. He feels the present system is a good system for the "little" person, and he feels it ought to be left as is.

There being no further proponents or opponents, Rep. Manuel closed. He again pointed out that the reason for all the whereases was a result of the concerns expressed from various people throughout the state of Montana.

The floor was opened to questions from the committee.

Rep. Gould feels that it is vitally important that a Human Rights Commission exists due to §504. If we didn't have the Commission, we would have to deal with the Office of Civil Rights located in Denver which is really a grim situation. He asked Brenda Desmond, staff attorney, to draw up a "whereas" clause regarding this particular situation. Rep. Gould asked Rep. Manuel if he would have any problem with that, and Rep. Manuel indicated that he would not. Rep. Gould feels that the "whereas" on page 4, lines 3 to 8 is rather inflammatory. He asked Rep. Manuel if he had any objection to removing that particular language. Rep. Manuel said he would leave that to the committee's discretion.

Rep. Addy said after reading the resolution, he is not aware of any clause that asks the Legislature to look into limiting the available remedies that the grievant party might have such as limiting the amount of back pay or preventing interest from running before the Commission has ruled, or whatever. Rep. Manuel said he cannot answer that specific question -- that is one of the reasons for this study.

Rep. Kreuger asked Mr. Andrews what other agencies follow the Rules of Evidence and Rules of Civil Procedure. Mr. Andrews said the Labor Standards Division does.

Rep. Hannah had a question dealing with the appeal process. As he understands the process, if a person appeals a decision handed down by the Commission or any agency that is underneath the Administrative Procedures Act, that person is not entitled to a new fact-finding trial. Ms. MacIntyre said that is correct. Rep. Hannah asked if she thought the Commission would object to cleaning up the "whereases" and specifically dealing with the "whereas" that addresses whether or not the Human Rights Commission should act in the same way as the other agencies under the Administrative Procedures Act. His intentions were to address in the resolution whether or not the appeal process under the Administrative Procedures Act is appropriate because it encourages judicial economy. She doesn't have any objection to looking at whether it is the appropriate model for the Commission to use. As a general concept, she feels it is an appropriate model.

Rep. Hannah requested that Ms. Brodsky submit those whereases in the bill she felt were appropriate.

There being no further questions, hearing closed on HJR 53.

CONSIDERATION OF HOUSE JOINT RESOLUTION NO. 48: Rep. Gary Spaeth, House District #84, chief sponsor of this resolution, testified on its behalf. He feels this resolution is very important because it addresses something that has been overlooked many times in the Legislature. What worries him is the fact that this resolution may not be taken as seriously as he thinks it ought to be. It addresses the problem that we face within the judiciary branch of government. It is important that we have a good judiciary and that we have a good selection process. This resolution is a requested study of the selection processes in the judiciary; it also requests a study of the compensation levels within the judiciary. He told the committee that the judicial selection has not been looked at for some time -- since the Constitutional Convention in 1972. He feels that it is important that the Legislature look at judicial compensation. Judicial races are getting out of hand, and it is time for the State Bar Association and the Legislature to take a long, hard look at the present system of electing judges. He believes there is a perception problem with the public and how the system appears to them. Rep. Spaeth stated that he is secretary-treasurer of the State Bar, and on behalf of the State Bar, he told the committee that they would be willing to do everything possible to work with and assist that particular interim study. He said the State Bar has budgeted $500 in this year to help assist in some of these studies, and he feels they would be willing to commit even more in order to help the legislative committee. Rep. Spaeth pointed out that Steve Brown, on behalf of the Judges' Association and Mike Abley on behalf of the Supreme Court did intend to testify as proponents this morning.

Pat Melby, representing the State Bar of Montana, testified in support of this resolution. He, too, feels this is a very important resolution. The Bar hasn't any preconceived ideas about how to select judges. However, there has been a great deal of criticism in the Legislature, the press, and the Bar itself about the selection process. He pointed out that the compensation for judges in this state is very low compared to other states. The State Bar feels quite strongly that it is time for the Legislature to review the selection process for judges and for the level of compensation that judges receive. He added that the Bar would be willing to assist the interim committee in this kind of review.

Jim Jensen, representing the Montana Magistrates Association, feels very strongly that an interim study is in order to study this issue; in particular, the "whereas" dealing with the independence and impartiality of an elected judiciary and the adequacy of judicial salaries.

There being no further proponents or opponents, Rep. Spaeth closed. He said he doesn't have any preconceived notions as to what is out there. The public is developing some

concern, and he feels that it is important that the Legislature take a look at this area.

The floor was opened to questions from the committee.

In response to a question asked by Rep. Gould, Mr. Melby said that the county attorney has an option of appealing that case which he feels is an erroneous decision made by the district court. He further said that the interim committee may just conclude that judges' compensation is adequate. He feels that presently, judges' compensation in Montana is at the bottom of the heap only by default -- not by deliberate action.

Rep. Keyser said he has big problems with the language on page 2, lines 19 and 20 simply because the legislators themselves, the elected officials, etc, through the many past years have never been compensated anywhere close to this. None of the recommendations made by the Salary Commission have ever been adopted. He thinks this is a bad criteria to use. Rep. Spaeth said he has no problem with deleting that particular language.

Rep. Rapp-Svrcek asked Rep. Spaeth if he felt there was any chance the electorate would support anything other than the election of judges. Rep. Spaeth said he is not sure. He said that he is primarily concerned with looking at how judges' political campaigns are financed and ran.

Rep. Cobb asked Rep. Spaeth why the State Bar can't undertake a study on its own. Rep. Spaeth responded by saying that no one paid any attention to the last study they did on this subject. He feels the Legislature must get involved in this issue.

There being no further questions, hearing closed on HJR 48.

EXECUTIVE SESSION:

ACTION ON HJR 48: Rep. Kreuger moved that HJR 48 DO PASS. The motion was seconded by Rep. Addy. Rep. Keyser further moved to amend page 2, line 19 following "increases" by striking "relative" through "Commission" on line 20. The motion was seconded by Rep. Gould and carried unanimously.

Rep. Mercer moved to amend page 1, line 20 following "Judges" by inserting "and establishes the minimum salary requirements for Justices of the Peace". Furthermore, amend page 1, line 22, following "bodies" by inserting "except for the Small Claims Court Judges, whose salaries are set by the District Judges". The motion was seconded by Rep. Darko, and it carried unanimously.

Rep. Keyser moved that HJR 48 DO PASS AS AMENDED. The motion was seconded by Rep. Gould and carried unanimously.

Chairman Hannah advised the committee that action on HJR 53 will be delayed following the hearing scheduled for tomorrow morning.

ADJOURN: On motion of Rep. Keyser, the meeting was adjourned at 11:03 a.m.

Tom Hannah

REP. TOM HANNAH, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 4/11/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)			✓
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond		✓	
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

STANDING COMMITTEE REPORT

April 11 19 85

MR. Speaker:

We, your committee on JUDICIARY

having had under consideration HOUSE JOINT RESOLUTION 48 Bill No.

First reading copy (white color)

INTERIM STUDY ON JUDICIAL SELECTION METHODS AND COMPENSATION

Respectfully report as follows: That HOUSE JOINT RESOLUTION 48 Bill No.

be amended as follows:

1. Page 1, line 20.
Following: "Judges"
Insert: "and establishes the minimum salary requirements for Justices of the Peace"

2. Page 1, line 22.
Following: "bodies"
Insert: "except for the Small Claims Court Judges, whose salaries are set by the District Judges"

3. Page 2, line 19.
Following: "increases"
Strike: "relative" through "Commission" on line 20.

AND AS AMENDED,

DO PASS

REP. TOM BAMAN Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY Marene Rm 312-3

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

BILL NO. HJR 48 (Rep. Spaeth)
HJR 53 (Rep. Manuel) DATE April 11, 1985

SPONSOR

NAME (please print)	RESIDENCE REPRESENTING	SUPPORT	OPPOSE
GLEN NEIER	City of Kalispell	HJR 53	
Mike Halloy	Supreme Court	HJR 48	
Russ Andrews	Teton County	HJR 53	
Anne Brodsky	WLF		HJR 53
Pat Melby - State Bd of Natural Resources, Helena		HJR 48	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Exhibit A
4-11-85 HJR 53

COPY

BEFORE THE HUMAN RIGHTS COMMISSION

OF THE STATE OF MONTANA

* * * * * * * * * * * *

PEGGY CAPES on behalf of LISA KIM CAPES,	)	CASE NO. SGs83-2121
Charging Party,	)	
vs.	)	
CITY OF KALISPELL,	)	
Respondent.	)	

* * * * * * * * * * * *

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

* * * * * * * * * * * *

On May 25, 1983, the Charging Party filed a complaint with the Human Rights Division in which she alleged the Respondent had unlawfully discriminated against her daughter because of her sex by permitting the use of one of its facilities in a way that sanctioned discrimination based on sex; specifically, she alleged the Respondent allowed the Kalispell Pee Wee Association to use city fields even though the Association's policy was to prohibit females from playing on Association teams and had prohibited her daughter, because she is female, from playing on an Association team. On October 14, 1983, the Division issued a REASONABLE CAUSE FINDING in which it found reasonable cause to believe the Charging Party's daughter was not permitted because of her sex to play on an Association team that used city playing fields. The Division certified this matter for hearing on December 29, 1983.

The parties and the Hearing Examiner conducted a prehearing conference on February 7, 1984; the Prehearing Order states in pertinent part:

> 1. On March 25, 1983, the Charging Party's daughter attempted to sign up to play baseball with the Kalispell Pee Wee Association.
> 2. The Kalispell Pee Wee Association, Inc. does not allow females to play baseball.

3. The Kalispell Pee Wee Association uses and maintains the Respondent-owned fields on a regular basis. All teams used all of the fields for the purpose of the tournament. The Respondent makes its baseball playing fields available for public use.

4. The Respondent made its baseball playing fields available for use by the Kalispell Pee Wee Association, Inc.

5. The Respondent does not participate in the organization or policy making functions of the Kalispell Pee Wee Association, Inc.

6. Respondent allows the Pee Wee Association and the Girls' Softball Association to use its baseball playing fields.

. . . .

Issues of Law

Whether the Respondent's arrangement with the Kalispell Pee Wee Association, Inc., under the terms of which the Pee Wee Association is allowed to use the Respondent's baseball playing fields is an arrangement under the terms of which, a local facility is used in furtherance of a discriminatory practice OR has the effect of sanctioning a discriminatory practice.

Whether Lisa Kimberly Capes' rights have been violated.

On March 7, 1984, the Respondent filed its MOTION in which it moved to dismiss this matter on the grounds that (1) the Charging Party had failed to state a claim on which relief could be granted, (2) that her charge was moot and (3) she had failed to charge an indispensable party. In an Order dated April 9, 1984, the Hearing Examiner denied the motion for the reasons set forth in the order.

Prior to the Respondent calling its first witness in its case in chief, the Charging Party in anticipation of a certain line of testimony, objected, pursuant to A.R.M. 24.9.234(4), to any testimony about the residential boundaries that establish eligibility for membership on an Association team if the testimony differed from the Respondent's allegation in its Second Defense in its Answer dated January 24, 1984. The Hearing Examiner informed the Charging Party he would allow the testimony subject to her objection, treat the objection as a motion to strike and rule on the motion after the parties had briefed it in their post hearing briefs. The ruling appears in Conclusion of Law No. 2.

The hearing in the above-entitled matter was held on April 18, 1984, in Kalispell, Montana. The Charging Party was represented by Ann C. German, KELLER and GERMAN, Libby, MT. Respondent was represented by Glen Neier, attorney for City of Kalispell. The parties introduced evidence and examined and cross-examined witnesses in support of their respective positions.

The Hearing Examiner issued findings of fact, conclusions of law and proposed order on August 24, 1984. The Respondent filed exceptions to the Hearing Examiner's findings, conclusions and proposed order on September 7, 1984. The Respondent filed a memorandum in support of its exceptions on October 17, 1984. The Charging Party filed objections and memorandum in opposition to Respondent's exceptions on November 6, 1984. The Commission heard oral arguments on Respondent's exceptions on November 30, 1984.

Having considered the hearing examiner's proposed order, the exceptions and briefs of the parties, oral arguments and the complete record including the transcript and exhibits, the Commission now makes the following:

RULING ON EXCEPTIONS

The Montana Human Rights Act requires that all hearings and subsequent proceedings under the Act be held in accordance with the Montana Administrative Procedure Act. §49-2-505(2), MCA. The Montana Administrative Procedure Act sets forth the requirements to be followed by the Commission when a hearing examiner has been appointed in §2-4-621(3), MCA, which states:

> The agency may adopt the proposal for decision as the agency's final order. The agency in its final order may reject or modify the conclusions of law and interpretation of administrative rules in the proposal for decision but may not reject or modify the findings of fact unless the agency first determines from a review of the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept or reduce the recommended penalty in a proposal for decision but may not increase it without a review of the complete record.

(Emphasis added.)

Applying this standard of review, the Commission overrules the Respondent's exceptions to paragraphs 12 and 13 of the Hearing Examiner's findings of fact because those findings and the remaining findings of fact of the Hearing Examiner are based upon competent substantial evidence.

The Respondent's other exceptions to the Hearing Examiner's findings are framed as exceptions to the Hearing Examiner's failure to make findings in accordance with the Respondent's proposed findings and those exceptions are overruled.

The Commission overrules Respondent's exceptions to conclusions of law nos. 1, 2, and 3 as being without merit.

The Commission affirms the Hearing Examiner's rulings on Respondent's Motion to Dismiss, Respondent's Amended Answer filed May 2, 1984 and exclusion of evidence in regard to the Montana High School Association and other groups.

Based upon the foregoing rulings on exceptions, the Commission now makes the following:

FINDINGS OF FACT

1. The agreed facts are found as facts.

Kalispell Pee Wee Association

2. During the 1983 baseball season, the Kalispell Pee Wee Association was organized under one charter and divided into a city league with approximately 21 teams, and a rural league with approximately 29 teams, and each league had its own advisory board. Testimony of Terry Richmond.

3. The city league used the Respondent's fields on a regular basis and the rural league (which included the Helena Flats team) used other fields on a regular basis. Id.

4. During the 1983 preseason practice, rural and city teams used each other's fields; during the 1983 post season tournament, city and rural teams used the Respondent's fields. Id.

5. In 1983 and previous years, the Respondent assigned use of its baseball playing fields to the Association; to use the fields, the Respondent required the Association to (1) request use of the fields, (2) provide the Respondent with a list of the teams and each team's roster, (3) provide the Respondent with a schedule of the dates and times the Association intended to use the fields and (4) provide the Respondent with proof of the Association's liability insurance. The Respondent would not permit the Association to use its fields unless it complied with all four steps. Id.; Testimony of Peter Drendt.

6. The teams played hardball. Testimony of Terry Richmond.

Lisa Capes

7. Lisa Capes is the Charging Party's daughter. Testimony of Charging Party.

8. In March, 1983, Lisa was 8 years old when, while at her elementary school, she heard that a registration would be conducted at the school for persons wanting to play organized baseball. The organizer was the Kalispell Pee Wee Association. Testimony of Lisa Capes and Terry Richmond.

9. On the date and at the time for the sign up, Lisa arrived and told the woman registering the children that she wanted to register to play on the (rural league) Helena Flats team. The woman told her girls were not allowed to play on the teams. Testimony of Lisa Capes.

10. In 1982, she had played hardball on a team in Hot Springs, Montana; she enjoyed playing hardball because it was fun. She was unable to play hardball in 1983. Id.

11. Lisa thought it was unfair that she was not allowed to participate in 1983 simply because she was a girl.

12. Since her complaint has been filed, other people have teased her about the case. Id. A minor change has been made to this finding to more accurately reflect the record.

13. Although she was able in 1984 to join an organized hardball team where she lives, she does not play as well as she did in 1982 because she was unable to play in 1983. Her mother was not able to coach or practice with Lisa in 1983 because Lisa's mother had polio as a child and associated leg problems that prevented her from learning to play baseball. Id.; Testimony of Charging Party.

14. The Hearing Examiner found Lisa to be a very credible witness. Testimony of Lisa Capes.

Based upon the foregoing rulings and findings of fact the Commission now makes the following:

CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this matter pursuant to MCA §§49-3-101 et seq. (1983).

2. The Charging Party's Motion to Strike is denied. Under A.R.M. 24.9.234 (5), an answer may be amended in accordance with Mont. Civ. Pro. R. 15. Under Rule 15(a), a party may amend a pleading by leave of the court "and leave shall be freely given when justice so requires." The defense as originally stated relates to the Charging Party's residence and the Association's residential boundaries; the testimony in question is in principle the same as the allegation in the defense. The only difference is that the testimony establishes some children who reside outside Kalispell's city limits do regularly play in the Association on city fields. As regards the team on which the Charging Party's daughter would play and her use of city fields, the testimony changes nothing; therefore, she is not prejudiced by the testimony, and she cannot claim surprise because in principle the testimony raises the same defense as appears in the Second Defense of the Answer.

3. The Respondent unlawfully discriminated against the Charging Party by allowing the Kalispell Pee Wee Association to

use its baseball playing fields and thereby sanctioning the Association's unlawful discriminatory practice.

MCA §49-3-205(2) (1983) provides:

> No state or local facility may be used in the furtherance of any discriminatory practice, nor may a state or local governmental agency become a party to an agreement, arrangement, or plan which has the effect of sanctioning discriminatory practices.

The legislature has not specifically defined the terms "furtherance", "effect" or "sanctioning" or the phrase "become a party to an agreement, arrangement or plan" as they are used in MCA §49-3-205(2) (1983).

> [The Court's] function in construing and applying statutes is to effect legislative intent. The primary tool for ascertaining intent is the plain meaning of the words used.

Dorn v. Bd. of Trustees of Billings School Dist. No. 2, _____ Mont. _____, 661 P.2d 426, 430 (1983).

> Laws can be expressed only in words and such words must be reasonably and logically interpreted according to grammatical and statutory rules.

State Bar of Montana v. Krivec, _____ Mont. _____, 632 P. 2d 707, 710 (1981).

> furtherance: 1. A helping forward; promotion, advancement.
>
> effect: 1. that which is produced by an operating agent or cause; a result or consequence. . . .
>
> sanction: to give sanction to; specifically, (a) to authorize; to ratify; to confirm; (b) to approve; to encourage; to support.
>
> become: 1. to pass from one state to another; to enter into some state or condition, by a change from another state or condition. . . .
>
> party: 2. a group of people working together to establish, promote, or gain acceptance for. . . .
>
> agreement: 4. an understanding or arrangement. . . .
>
> arrangement: 4. a settlement or adjustment by agreement. . . .
>
> plan: 3. a scheme for making, doing or arranging something. . . .

Webster's New Twentieth Century Dictionary (unabridged) (2nd ed., 1979) at 38, 103, 164, 577, 744, 1308, 1372, 1603.

The Respondent made its baseball playing fields available for the Association to use after it complied with its notification and insurance requirements for use of the fields; had it not so complied, the Respondent would not have allowed the Association to use its fields. Knowledge of the Association's policy of not allowing females to join and to play must be imputed to the Respondent because from the record it appears the policy was notorious and fundamentally different from the non-discriminatory practices of the National Little League Baseball Association with which the Kalispell Pee Wee Association was not affiliated and because under MCA §49-3-205(3) (1983) the Respondent had a duty to inform itself of the policies of the organizations that used its facilities. Therefore, the Respondent's fields were used in furtherance (i.e., in helping forward) of discriminatory practice prohibited by MCA §49-3-205(1) (1983) and the Respondent entered into an agreement that had resulted in ratification and support of an unlawful discriminatory practice. The City of Kalispell willingly gave the control of its fields to the Kalispell Pee Wee Association. The Association as the "gatekeeper" "locked" Lisa Capes out because she was female. But for her sex, she would have been able to play Pee Wee baseball and had the use of the Respondent's fields in the same way the rural league male Pee Wee players did.

It makes no difference whether the Helena Flats team in fact played another Association team on a city field during the 1983 season, although the Respondent concedes in agreed Fact No. 3 that the Helena Flats team did. The purpose and policy behind MCA §49-3-205 (1983) is to ensure that no citizen will be denied equal access because of sex to any public facility where the public gathers for recreation and amusement. MCA §49-1-102 (1983); In re Clark's Estate, _____ Mont. _____, 74 P.2d 401, 405 (1937).

(Statutes relating to the same subject must be read in pari materia).

4. Damages

The Charging Party has requested nominal damages and cites MCA §27-1-204 (1983) in support of her request. The Commission has the remedial power to "require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against." MCA §49-3-309(1)(b) (1983).

The Charging Party's daughter is entitled to be made whole for the injury she suffered. Dolan v. School Dist. No. 10, _____ Mont. _____, 636 P.2d 825 (1981). The Commission has adopted the position that it has the remedial power to compensate a person, who has been unlawfully discriminated against, for mental anguish and suffering that have resulted from unlawful discrimination. Cobell v. Box Elder School, Commission Case No. RGs7-480, decided May 16, 1983.

While the exact amount of damages Lisa suffered as a result of the Respondent's conduct is difficult to compute exactly, it remains measurable. The guiding principle is to make Lisa whole; any award of damages is insufficient if it does not (1) remove the humiliation attached to the stigma of second class citizenship with which the Respondent's conduct has labeled her, and (2) demonstrate to her and her peers that her complaint was well founded and that she merits their respect and admiration for remedying a wrong inflicted on her directly and, indirectly on the community. Because the Charging Party filed this claim on behalf of her daughter, Lisa became the butt of teasing. The hearing examiner, having observed Lisa's demeanor while on the witness stand and hearing her testimony, was absolutely convinced that no less a sum than $10,000.00 could make Lisa whole for the

delayed skill development, humiliation, anguish and suffering the Respondent's conduct has caused.

The Commission may accept or reduce the recommended penalty in a proposal for decision. §2-4-621(3), MCA. Under §49-3-309, MCA the Commission may in its order, upon finding discrimination, rectify any harm to the person discriminated against.

The Hearing Examiner's proposed order awarding Charging Party the amount of $10,000.00 included an unspecified amount to "cover the cost of remedial coaching." The Commission's review of the complete record in this case revealed no evidence from which an amount for the "cost of remedial coaching" could be determined.

The Commission reviewed its award of damages in Cobell v. Box Elder School, Case No. RGs7-480 (1983). In Cobell, the Commission awarded damages for mental anguish and suffering to the victims of racial discrimination. The Commission agrees that Lisa Capes was damaged as a result of Respondent's furtherance of the discriminatory policy of the Kalispell Pee Wee Association. The Commission finds an award of $10,000 for compensation of Charging Party's damages to be excessive.

The Commission cannot award punitive damages. The Commission, therefore, reduces the award of compensatory damages from $10,000.00 to $750.00. The Commission's award seeks to rectify the harm Lisa Capes suffered in being denied the opportunity, on the basis of her sex, to participate in a sport and to use city playing fields for organized hard ball competition and to further develop her baseball skills. The hearing examiner found that Lisa Capes had been teased about her complaint of discrimination.

5. Standing

The Respondent argues that the Charging Party lacks standing to bring her complaint. The Montana Supreme Court has defined the general concept of standing.

> The concept of standing arises from two different doctrines: (1) Discretionary doctrines aimed at prudently managing judicial review of the legality of public acts, 13 Wright, Miller & Cooper, Federal Practice & Procedure: Jurisdiction §3531 at 176; and (2) doctrines of constitutional limitation in the federal courts drawn from the "cases and controversies" definition of federal judicial power in Article III, United States Constitution and in the Montana courts drawn from the "cases at law and in equity" definition of state judicial power in Article VII, 1972 Montana Constitution.
>
> . . . .
>
> From these cases we synthesize that the issue presented for review must represent a "case" or "controversy" within the judicial cognizance of the state sovereignty. Additionally, the following minimum criteria are necessary to establish standing to sue a governmental entity: (1) The complaining party must clearly allege past, present or threatened injury to a property or civil right; and (2) the alleged injury must be distinguishable from the injury to the public generally, but the injury need not be exclusive to the complaining party.

Stewart v. Bd. of County Comm. Big Horn County, _____ Mont. _____ 573 P.2d 184, 186 (1977), cited with approval and expanded in Grossman v. State of Montana, _____ Mont. _____, 41 St. Rptr. 804, 805 (1984).

The Charging Party's right to access to and use of a local facility without regard to her sex is guaranteed by the Montana Constitution and by statute. Mont. Const. Art. II, §4; MCA §49-1-102, 3-205 (1983). As such, it is a civil right. Moran v. School Dist. No. 7, 350 F. Supp. 1180, 1182 (D. Mont. 1972). The Charging Party has alleged a past injury to a civil right. Because the injury was borne by herself and could only be borne by a female of a certain age, it is distinguishable from an injury to the public generally. Therefore, the Charging Party has standing.

The Respondent has argued, in relation to the issue of standing, that the Charging Party has not shown a "nexus . . . between the City of Kalispell and the action of the Kalispell Pee Wee Association." Respondent's MEMORANDUM at 8. The Respondent claims it allows all organizations to use its facilities regardless of sex, race or any other criteria as long as the

organization follows the four step procedure in Finding of Fact No. 5. Therefore, the argument goes, it has done all the law requires.

MCA §49-3-205(3) (1983) provides:

> Each state or local governmental agency shall analyze all of its operations to ascertain possible instances of non compliance with the policy of this chapter and shall initiate comprehensive programs to remedy any defect found to exist.

This statute places an affirmative duty on the Respondent to investigate, identify and root out unlawful discriminatory practices in the use of its facilities - not just in the application procedure. The Respondent cannot turn a blind eye toward organizations that properly comply with the application procedure and then unlawfully discriminate in their use of the city's facilities. The Respondent's argument if adopted would allow it to authorize an "Apartheid Baseball Association" that properly applied to use its fields to exclude persons from its teams on the basis of race, - the very same persons whose tax money very possibly went toward the establishment, upkeep and (police and fire) protection of those fields. Surely such a situation would undeniably be in furtherance of an unlawful discriminatory practice. State v. Midland Minerals Co., ____ Mont. ____, 662 P.2d 1322, 1325, (1983) (interpretation of statute must be reasonable to avoid absurd results).

6. Excluded Evidence

The Respondent argues that the hearing examiner wrongfully excluded evidence that would show "that the Montana High School Association and various other groups sanctioned team sports based on gender." Respondent's MEMORANDUM at 4. This appears to be a "me too" defense. The issue is not what others do or have done; it is whether the Respondent's conduct violates the law. The Commission concludes that the Respondent's conduct violates the law.

7. Cases Distinguished

The Respondent cites Bucha v. Illinois High School Assoc., 351 F. Supp 69 (N.D. Ill. E.D., 1972) and O'Connor v. Bd. of Ed. of School Dist. No. 23, 645 F.2d 578 (7th Cir. 1981) for the proposition that neither the United States Constitution, the Montana Constitution nor the law of the State of Montana guarantees a person an opportunity to participate in organized sports. In Bucha, the plaintiffs, relying on the federal constitution and federal law, challenged as unlawfully discriminatory on the basis of sex the by-laws of the Illinois High School Association. Bucha, 351 F. Supp at 71. In O'Connor, the appellee based her sex discrimination claim on state and federal constitutional rights and federal statutes. O'Connor, 645 F.2d at 582.

Lisa's claim is based on a Montana statute; the cited cases offer no help in interpreting it. The facts in these cases can be distinguished and Lisa is claiming a right to be free from sex discrimination in the way in which the Respondent makes its playing fields available for organized (hardball) baseball.

Counsel for both parties submitted many proposed Findings of Fact that in essence are comments on the relative weight they would give the evidence in this matter; they also submitted many proposed Conclusions of Law. The proposed Findings not found are rejected as either irrelevant or not supported by the evidence. The proposed Conclusions not found are rejected as erroneous.

ORDER

1. The Respondent is hereby ordered to pay the Charging Party $750.00.

2. The Respondent is hereby ordered to cease entering into any agreement with the Kalispell Pee Wee Association whereby the Association is permitted to use Respondent's baseball fields or any other facilities for as long as the Association continues to

discriminate on the basis of sex.

3. The Respondent is hereby ordered to cease using any of its facilities in the furtherance of any unlawful discriminatory arrangements or plans which have the effect of sanctioning unlawful discriminatory practices.

4. The Respondent is hereby ordered to analyze within 90 days of the date of the Commission's Final Order its programs under which it makes its facilities available to ascertain possible instances of non-compliance with the policy of Title 49, Chapter 3; the Respondent is hereby ordered to initiate within 30 days of the completion of the analysis comprehensive programs to remedy any non-compliance found to exist.

5. The Respondent is hereby ordered to notify in writing the Commission within 15 days of the completion of its analysis the possible instances of non compliance with the policy of Title 49, Chapter 3 and to submit to the Commission a written report of each comprehensive program it has or intends to initiate to remedy any non compliance it has found to exist.

6. The Commission reserves the right to conduct an inspection of the City's policies and procedures to determine compliance with this order. §49-3-309(3) MCA.

DATED this 18th day of January, 1985.

HUMAN RIGHTS COMMISSION

By: _____
Margery H. Brown
Chair

3 Members Concur
1 Member Concurs with the decision, but dissents with respect to the award of monetary damages

NOTICE OF RIGHT TO APPEAL

You are entitled to judicial review of this Final Order in accordance with Section 2-1-702, 703, and 704, MCA. Judicial review may be obtained by filing a petition in district court

within thirty days after service of this Final Order.

CERTIFICATE OF SERVICE

I, Dorothy Rylander, Secretary for the Human Rights Division, certify that I mailed a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER to the following by U.S. Mail, postage prepaid on this 17th day of January, 1985.

Ann C. German
P.O. Box AT
Libby, MT 59923

Glen Neier
P.O. Box 1035
Kalispell, MT 59901-1035

Dorothy Rylander

EXHIBIT B
4/11/85
HJR 53

Testimony of Margery H. Brown, Chair, Montana Human Rights Commission re: HJR 53 before the House Judiciary Committee, April 11, 1985

Chairman Hannah, members of the Committee

I am Margery Brown, Chair of the Human Rights Commission. I have been a member of the Commission for the past four years and was recently reappointed to a second four year term.

The Commission was established by the Legislature to enforce Montana's laws prohibiting discrimination on the basis of race, national origin, color, sex, age, handicap, marital status, religion, creed, and political belief in the areas of employment, housing, finance, public accommodations, education, and government services. The members of the Commission are appointed by the Governor and confirmed by the Senate.

Due to the short notice between the introduction of this resolution and this hearing, we regret that the other members of the Commission were unable to be here today. For the record, the other Commissioners are Ed Lien, Wolf Point; Jack McLean, Great Falls; Dennis Limberhand, Lame Deer; and Angie Cormier, Billings.

The Commission does not oppose any interim study of its operations. We take strong exception, however, to the preamble of this resolution as the rationale for such a study. The preamble contains numerous misleading and false assertions and innuendos about the operations of the Commission and its staff. We find these assertions to be irresponsible and totally unacceptable. We are confident that a study would demonstrate these contentions to be baseless and we would welcome

a study as an opportunity to demonstrate this. My purpose in addressing the committee today is merely to try to set the record straight.

Initially, please note that many of the problems identified in the resolution can be characterized as generic complaints about administrative enforcement. The Human Rights Commission is not the only administrative agency with quasi judicial powers, nor is it the only agency whose decisions are subjected to limited judicial review. If the sponsors of HJR #53 are concerned about the use of the administrative enforcement model, it may be well to expand the scope of this proposed study to all quasi judicial boards, commissions, and agencies within state government.

A common thread running through HJR #53 is a concern for uncontrolled discretion and overly broad powers. The preamble contends, for example, that the Commission has a dangerous combination of powers in that it may receive and file complaints, investigate complaints, prepare and present complaints, and adjudicate complaints. The resolution fails to acknowledge that these powers are allocated by statute between the Commission and its staff. Of those listed, the only powers of the Commission are to receive and adjudicate complaints. The other functions are allocated to the Commission staff. The resolution also fails to acknowledge the judicious manner in which the Commission and its staff have exercised their respective powers. For example, while the Commission staff has the power to file complaints, not a single complaint has been filed by the Commission staff in the entire time I have been a member of the Commission. The same holds true for the presentation of cases before the Commission. Neither the Commission nor its staff assumes the role of accuser, advocate, or prosecutor in the

normal course of our operations. We do not initiate proceedings or pick and choose respondents. Every complaint brought to the Commission within our experience has been filed by an actual individual claiming to be aggrieved.

It is simply untrue that the Commission is vested with uncontrolled discretion. The limits of the Commission's authority are defined in the statues it enforces. A considerable body of case law has grown up in the federal courts and the courts of Montana which guide the Commission where statutory interpretation is necessary. The Commission is required to follow the Administrative Procedure Act and the Rules of Evidence. The Commission relies on other statutory and case law to determine a proper award of damages in a given case and is statutorily prohibited from awarding punitive damages. In addition, if the Commission acts in excess of its authority, it may be restrained by the courts through the use of extraordinary writs.

Furthermore, while the decisions of the Commission are subjected to judicial review on the record made before the Commission rather than to a new trial, the courts have not abdicated their role of determining whether the Commission acted properly. It is not true that a presumption of regularity supports any decision of the Commission. Rather, a party who appeals a Commission decision has the burden of proof to show that the Commission erred. It is not true that the standards of judicial review established in §2-4-704, MCA, removes from the courts the power to declare and interpret the law. Rather, the courts give deference to the legal interpretations of administrative agencies acting in their fields of expertise. The Administrative Procedure Act clearly gives courts the authority to reverse or modify

Commission decisions which incorrectly interpret the law. It is worthy of note that most Commission decisions appealed to the Montana Supreme Court have been upheld. I believe this is ample evidence that the Commission correctly interpreted the law in these cases.

I take strong exception to the contention that the Commission's decisions are tainted by a demonstrable bias. The Commission is a neutral and impartial body and has maintained its neutrality during all of my tenure on the Commission. I am distributing two documents for your information on this point. One is a memo prepared for Tom Gomez of the Legislative Council staff. It contains a list of all cases decided by the Commission during 1983 and 1984. It shows that of the 22 actual Commission decisions of that time period, 10 were decided in favor of the complainant and 12 were decided in favor of the respondent. The second is a chart showing all cases closed by the Commission and its staff during fiscal year '84. This chart was prepared for the Commission budget hearing before the Health and Human Services Joint Subcommittee. It shows first that 171 cases were resolved by the Commission staff through activities such as mediation and conciliation without any determination on the merits of the cases. Of the cases which were closed after investigation but without hearing, 116 were closed based upon staff findings of no reasonable cause to believe discrimination occurred. Forty-five (45) were closed after a staff finding of reasonable cause. In light of this, it is hard to imagine what is the basis for the contention that our decisions are tainted by a discernible bias.

Finally, the clause at page 7, lines 4-5 is a completely erroneous characterization of the Commission decision in the case of Capes v. City

of Kalispell. This case is presently on judicial review and I am hesitant to discuss it in detail because of that litigation. Suffice it to say that the Commission held that the City, in allowing its fields to be used by an organization which discriminates on the basis of sex by refusing to allow girls to play baseball, violated §49-3-205(2), MCA. That section provides:

> No state or local facility may be used in the furtherance of any discriminatory practice, nor may a state or local governmental agency become a party to an agreement, arrangement, or plan which has the effect of sanctioning discriminatory practices.

The Commission's order clearly sets forth this rationale. I have copies of the order available if the committee members would be interested in seeing them.

In closing, I would note that while the Commission is composed of lay members, it has always had a substantial representation of individuals trained in the law. The Commission's small staff is composed of professionals, including three attorneys. The work of the Commission has been and continues to be steeped in our own commitment to fairness and due process. We are aware of the seriousness of our work and place a high premium on doing a good job. In doing this work, we as commissioners place our own reputations on the line. Our reputations mean a great deal to us, as does carrying out Montana's clear statutory and constitutional mandate that discrimination is illegal.

The Montana Human Rights Act was enacted in 1974 to implement Article II, section 4 of the 1972 Montana Constitution. Given the passage of time, it may well be that a study of the manner of the

enforcement of these laws is in order. Again, we would welcome a study of that nature.

EXHIBIT C
4/11/85
HJR 53

Testimony of Anne L. MacIntyre, Administrator, Human Rights Division
Re: HJR 53 before the House Judiciary Committee, April 11, 1985

Chairman Hannah, members of the Committee, I am Anne MacIntyre, administrator of the Human Rights Division. The Division is the Commission staff and is responsible under the statute for investigating complaints of discrimination. I will attempt to refute some of the statements made in HJR 53 concerning the staff's exercise of its investigatory powers.

One of the more troubling clauses in the preamble of this resolution is at page 4, lines 3 - 8. This clause suggests that the staff should conduct an investigation to determine if the staff should conduct an investigation. The purpose of the investigation now provided for by statute is to determine whether the allegations of the complaint are supported by substantial evidence. The resolution suggests that we should be able to prevent individuals from filing complaints until reasonable or probable cause is established. This notion runs counter to the principles of due process and fundamental fairness underlying our entire civil justice system. In the courts as well as before agencies, any person may file a complaint against any other person, regardless of whether the complaint is based upon unfounded allegations. Despite the imperfections associated with this system, I am not yet ready to exchange it for a system of justice in which government officials determine which complaints may be filed.

As a practical matter, the Commission staff behaves responsibly and makes every effort to screen out unfounded complaints. The flow chart distributed by Margery Brown is illustrative of this. The first page shows the number of

inquiries we received in FY84 and how many of those resulted in actual complaints being filed. Even when an unfounded complaint is filed, it is not uncommon for such a complaint to be withdrawn after the initial investigation. Further, when the result of the investigation is a finding of no cause to believe discrimination occurred, the majority of complaints are not pursued beyond that stage.

It is not true that the Commission staff conducts investigations without a clear allegation or without revealing the identity of a person aggrieved. The statute requires a complaint to state in writing the particulars of the alleged discriminatory practice. The Commission staff never commences an investigation until a copy of the complaint has been served on the respondent. I am aware of no instance in which the filed complaint did not state the name of the person aggrieved.

The Commission staff does not engage in general, roving investigations or fishing expeditions and does not subpoena material in order to satisfy "official curiosity." I can assure you that a court would not enforce a Commission subpoena issued for such a purpose. The Commission staff has neither the time nor the inclination to waste taxpayers' monies in such a manner.

Neither is it true that the Commission staff fails to perform an informal investigation before proceeding with formal, trial-type procedures. The problem here is no doubt with the use of the word "interrogatories," a word which means nothing more than written questions. It is true that the staff utilizes written questions, which we call interrogatories, in the early stages

of each investigation. I do not believe these interrogatories could be labelled "formal" or "extensive" by anyone's standards. I am handing out a typical set of interrogatories used by the staff. The staff utilizes written questions as a tool because they are informal and we have found them to be efficient as well as cost effective. At the same time, the staff utilizes other investigative techniques such as witness interviews and inspection of documents and records. The Commission staff also makes wide use of informal fact-finding conferences.

The staff's use of interrogatories does not infringe on the constitutional privilege against self-incrimination. In the first place, the privilege is a personal privilege available only to individuals. The majority of respondents in Commission proceedings are not individual persons but are other types of entities such as corporations, partnerships, government entities, and so on. If the respondent is an individual, there is nothing to prevent that respondent from asserting his right to be free from self-incrimination. The staff cannot compel answers to interrogatories without the aid of the courts and the privilege against self-incrimination can certainly be raised in any subpoena enforcement proceeding.

As a practical matter, most respondents cooperate with the staff investigation and willingly provide answers to interrogatories. It is interesting to note that this issue was once litigated by several Gallatin County school districts. The school districts brought an action for writ of prohibition to prohibit the Commission staff from investigating complaints arising in Gallatin County on the grounds that the school districts were being denied the privilege against self-incrimination. Virtually the same arguments

as are set forth in this resolution were presented in that proceeding. The arguments were ultimately rejected by District Judge Nat Allen in 1979 and the school districts did not appeal his decision.

It is also noteworthy that the Commission has no authority to initiate criminal prosecutions under §49-2-601, MCA. I am unaware of any prosecutions ever having been brought under that section.

In closing, I have worked for the Human Rights Commission for three years and have been the administrator for two years. My experience in that time has been that we are in the position of being able to upset at least 50% of the people 100% of the time. In every case there will be a winner and a loser and in my opinion, this resolution represents nothing more that the frustrations of several groups who have been unwilling to accept the fact that their employment practices are subject to the law and who have refused to conform their behavior accordingly. While I believe a study of the Commission could provide the Legislature with valuable information for fashioning public policy in the future, I strongly object to having a study based on the false and misleading allegations contained in this resolution. I would encourage the committee to fashion a study resolution which reflects some positive purpose.

HUMAN RIGHTS COMMISSION
STATE OF MONTANA

TED SCHWINDEN, GOVERNOR
(406) 444-2884

ROOM C-317, COGSWELL BUILDING
HELENA, MONTANA 59620

March 27, 1985

Memo to: Tom Gomez, Legislative Council

From: Anne L. MacIntyre, Administrator
Human Rights Division

Re: Human Rights Commission Case Activity
Involving Public Employers

The following table illustrates the case activity of the Human Rights Commission:

	FY 83	FY 84	FY 85 (to date)
Total cases filed	234	317	236
Cases filed against school districts	5	15	25*
Cases filed against other public entities	52	65	33**

*This figure includes 10 cases by 10 individuals against one school district with each individual alleging essentially the same violation.

**This figure includes 5 cases by 5 individuals against one county with each individual alleging essentially the same violation.

On December 31, 1984, the Commission had 33 cases in the hearing process. Of these, three were against school districts and six were against other public entities.

During 1983 and 1984, the Commission issued final orders after full contested case hearings in 22 cases. The Commission found in favor of the complainant in the following cases (the Commission's damage award is listed with each case):

Case No. MsE9-894, Haddow v. European Health Spa, $7,489.81 (January 21, 1983). Commission order affirmed by Supreme Court.

Case No. AE81-1634, Clark v. Billings Toyota, $7,464.84 (March 31, 1983). Commission order affirmed by District Court.

Case No. AE81-81-1446, Meierding v. Champion International Corporation, ordered adjustments to Champion's retirement plan and to Meirding's accrued pension benefit (March 31, 1983). State law and Commission order as applied to pension plan held to be pre-empted by federal law in federal courts.

Case No. MsE6-107, Johnson v. Bozeman School District No. 7, $22,428.00 (April 2, 1983)

Case No. RGs7-480, Cobell v. Box Elder School, $1,500.00 (May 16, 1983)

Case No. RPa80-1185, Shelby v. Flipper's Billiards, $5,000.00 (July 25, 1983)

Case No. AE82-1796, Longan v. Milwaukee Station Restaurant, $7,608.43 (November 23, 1983)

Case No. SMsHpE82-1683, Fullerton v. Flathead County, $28,366.53 (December 28, 1983)

Case No. SE80-1184, McKay v. Edgewater Restaurant, exact dollar award not specified (January 31, 1984). Commission order as to liability affirmed by District Court.

Case No. SE82-1686, Wagner v. Billings Neon, $45,749.43 (September 28, 1984)

The Commission found in favor of the Respondent in the following cases:

Case No. HpE81-1580, Blatter v. General Mills, Inc. (March 31, 1983)

Case No. RAE81-1557, Ornellas v. Town of Stevensville (July 29, 1983). Commission order affirmed by District Court

Case No. HpmE81-1452, Rafferty v. Easter Seals Society Adult Training Center (July 29, 1983)

Case No. SMsE81-1418, Melody Brown v. Business Machines Co. (July 29, 1983)

Case No. SHmE83-2072, Gueningsman v. KRTV Television (October 4, 1983)

Case AHpE81-1590, Snyder v. Gallatin Farmers Co. (April 24, 1984)

Case No. SE82-1872, Masiak v. City of Helena (June 19, 1984)

Case No. RRtE81-1582, Maya v. Burlington Northern Railroad (June 25, 1984)

Case No. RAE83-2009, Bell v. Intermountain Deaconess Home for Children (July 26, 1984)

Case No. ReAE80-1252, Laib v. Long Construction Co. (August 13, 1984)

Case No. SE83-1930, Elizabeth Brown v. Montana Power Co. (August 31, 1984)

Case No. HpE80-1235, Amstutz v. Mountain Bell (September 18, 1984)

It should be noted that the Commission has no authority to award damages to the respondent. If the Commission finds the complainant was not discriminated against, the statute provides it should dismiss the case.

Further, it should be noted that the vast majority of cases filed do not go to hearing before the Commission. Many respondents, public as well as private, have paid damages pursuant to settlement agreements entered into after the Commission staff made a finding after investigation of reasonable cause to believe discrimination occurred. Other cases have been settled through the mediation efforts of the Commission staff prior to any determination on the merits. Still other cases have been removed to district court after the Commission staff completed its investigation and conciliation efforts. The Commission staff is not a party to these cases and does not track their disposition after the completion of the administrative process. The list of Commission decisions does not reflect any resolutions or other damage awards except those that actually were ordered by the full Commission.

Please let me know if I can be of further assistance in this matter.

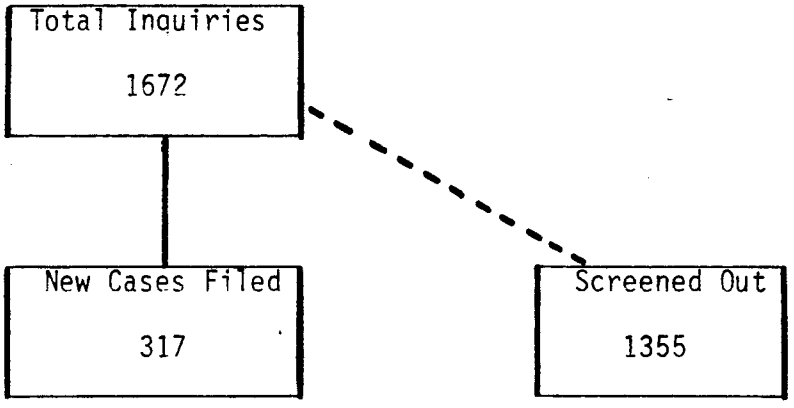
dr

MONTANA HUMAN RIGHTS COMMISSION

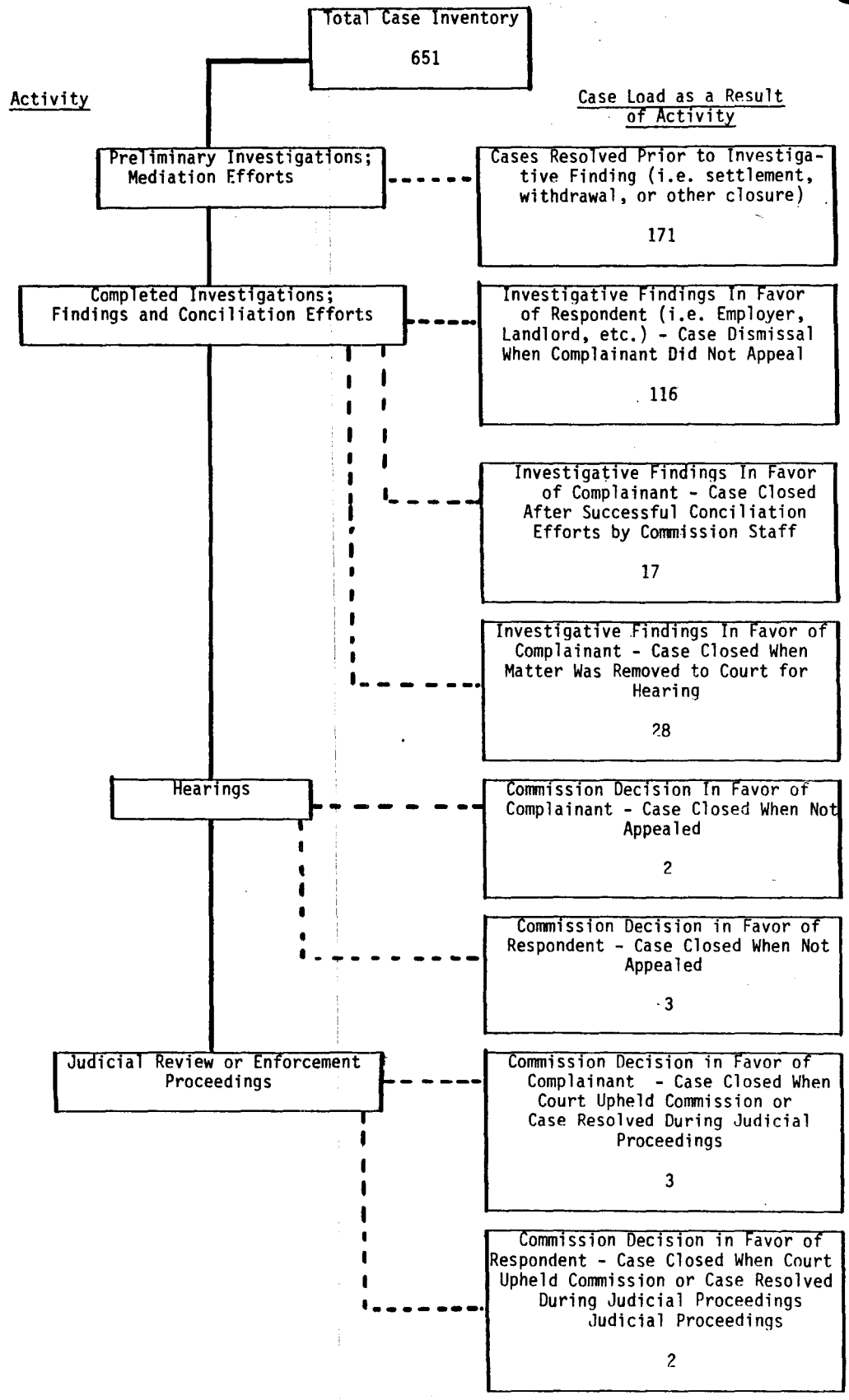
FY 84 Activity

I. Open Cases on July 1, 1983 - 334

II. New Cases Filed July 1, 1983 - June 30, 1984 - 317



III. Case Activity July 1, 1983 - June 30, 1984



Total Case Completions
During FY 84

342

IV. Open Cases On July 1, 1984 - 309

MONTANA HUMAN RIGHTS COMMISSION
Failure to Hire Interrogatories

Case No. _____

_____ v. _____

1. State the name, address, telephone number and title of the individual from whom further information concerning the subject matter of this interrogatory may be obtained and who would be authorized to enter into a binding settlement agreement should one be reached.

2. Provide the following information for the Respondent:

   a. the type of business or other activity engaged in by the Respondent;
   b. the number of employees in the Respondent's business;
   c. the name of the owner or owners of the Respondent's business (if different from the Respondent's own name);
   d. the form of organization of the Respondent's business (i.e. whether the business is conducted as a sole proprietorship, partnership, or corporation); and
   e. if the Respondent's business is conducted as partnership, the names of all partners.

3. State the following information for the position in question:

   a. job title
   b. full or part time
   c. starting rate of pay
   d. duties (if available, attach job description)
   e. minimum qualifications.

4. Attach a copy of the application and/or resume of the Charging Party and the person(s) hired for the position in question. Specify the (e.g. sex) of the person(s) hired and the date(s) of hire.

5. State the specific reason(s) why the Charging Party was not hired and how the person(s) hired were better qualified.

6. State the following information for each person who participated in the decision to fill the position in question:

   a. name, title and phone number
   b. role

7. Submit signed witness statements of anyone you feel would have information regarding this matter.

Make any additional comments you wish concerning this matter.

The answers to the above questions are complete and true to the best of my knowledge and belief. (Note: please sign and notarize your answers to the above questions.)

_____

Sworn to and subscribed before me this
____ day of _____, 19__.

_____
Notary Public
Residing at _____
My Commission Expires _____

EXHIBIT D
4/11/85

WOMEN'S LOBBYIST FUND

Box 1099
Helena, MT 59624
449-7917

April 11, 1985

Mr. Chairman and Members of the House Judiciary Committee:

My name is Anne Brodsky and I am here on behalf of the Women's Lobbyist Fund to speak in opposition to HJR 53. As you know, the Human Rights Act provides the statutory implementation and relief for our constitution's prohibition on discrimination. Over one half of the cases filed with the Human Rights Commission are cases involving sex discrimination, primarily in employment. The WLF, whose fundamental purpose is to promote equality of treatment to individuals, particularly on account of their sex, is naturally protective of the Human Rights Act. On the other hand, HJR 53 clearly presents an attack on, rather than protection of, the Human Rights Act and Commission.

To begin with, the resolution contains 34 "whereas" clauses in its first 7 pages, of which only 10 could be considered factual. The remainder of the whereas clauses are accusatory, presumptuous, and in some cases inflammatory, as for example, the assertion that "under its own administrative rules, the Human Rights Commission may conduct a general, roving investigation" or the proclamation that the "Human Rights Commission generally has failed to follow statutory law." These are serious allegations and, although contained in the preamble to the resolution, provide the legislative purpose for which the study is requested.

But not only is the preamble of the resolution biased against the Human Rights Commission. Worse is that the language of the resolution that defines the contents of the study is prejudiced before the study has even been conducted. For example, the resolution instructs the study committee to "determine the nature and extent of uncontrolled discretion exercised by the Human Rights Commission." It assumes that the Human Rights Commission is not already guided by "an appropriate policy and purpose." It seeks to "limit discretion in the award of damages by the Human Rights Commission." It instructs the study committee not to examine but to "scrutinize" the decisions of the Commission. And it implies that the Human Rights Commission and its staff are "biased" in the conduct of their proceedings.

The Human Rights Commission is guilty under HJR 53 before the study has even been conducted. On what grounds is it guilty? I submit it is guilty based on the allegations presented in the preamble of the bill, and that these allegations are biased and unfounded in fact.

An agency performing the duties of enforcing the state's non-discrimination laws will most likely never cease to create enemies. Charges of discrimination are neither pleasant for the complainant to bring nor for the respondent to receive. In many, if not most cases, one "side" will probably be unhappy with the outcome of the Commission's decision. Yet underlying the Commission's work is the sound public policy decision, first aired in our state constitution, and then implemented by statute, that discrimination is wrong and those who have been discriminated against shall be able to redress those wrongs.

(OVER)