

MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
50TH LEGISLATIVE SESSION

February 5, 1987

The meeting of the Business and Labor Committee was called to order by Chairman Les Kitselman on February 5, 1987 at 8:00 a.m. in Room 312-F of the State Capitol.

ROLL CALL: All members were present.

HOUSE BILL NO. 432 - Impounded Pet Act, sponsored by Rep. Hal Harper, House District No. 44, Helena. Rep. Harper stated that this bill is about animals and what kind and when they could be used for experimental testing. He said the amendments he had submitted removes the following references from the bill: any animals that are under the supervision of physicians and veterinarians that are licensed and practicing in the state of Montana; wild animals because the Department of Fish, Wildlife, and Parks has wild animals which they try to replace on forest lands, but if they can't, and there is no place to put them, they are given to research facilities for some sort of testing; and removes out of state pound animals.

Rep. Harper commented that this bill provides that animal shelters in this state are to either have domestic animals adopted by qualified people or to euthanize them, and prohibits any kind of laboratory connection to the shelter. He said the purpose is that if a person takes a pet to the Humane Society, they should know if the animal will be placed in a home, euthanized, or sold to a laboratory for testing and experimentation. Exhibit No. 1.

PROPOSERS

Barbara Dahlgren, President of the Federated Humane Societies of Montana, Missoula, submitted written testimony. Exhibit No. 2.

Judith Fenton, Secretary Treasurer of the Federated Humane Societies of Montana, submitted written testimony. Exhibit No. 3.

Susan Edwards, Director of Education, Humane Society, Helena. Ms. Edwards stated that her testimony was a letter from Mikal Kellner, Director of the Animal Shelter who could not be present at the hearing. Exhibit No. 4.

Jan Davidson, Cascade County Director, Humane Society, Great Falls. Ms. Davidson showed the committee a picture of where

the animals would go and what happens to them. She stated that the University people would probably express their need for these animals for research, but in Great Britain where practice surgery on live animals by medical students has not been allowed for over a century, the physicians and veterinarians are as competent as any of those in the United States.

OPPONENTS

John Jutila, Vice President for Research, Montana State University. Mr. Jutila submitted written testimony. Exhibit No. 5.

Dr. Warren Frost, Director, Animal Resource Center, Montana State University. Dr. Frost submitted written testimony. Exhibit No. 6.

Dr. James McMillan, Associate Professor of Physiology, Montana State University. Dr. McMillan stated he wanted to focus on one aspect of the issue which is the benefits to society derived from using pound animals. He submitted written testimony. Exhibit No. 7.

Ken Kelly, representing the Montana Veterinary Medical Association. Mr. Kelly stated that in concert with guidelines promulgated by the American Veterinary Medical Association, they acknowledge that laws and regulations governing the use of animals in biomedical research are adequate, but have not been sufficiently funded, consistently enforced and fully implemented to ensure humane care and treatment of animals. He said that the Montana Veterinary Medical Association and AVMA acknowledges that the prudent and humane use of random source of abandoned, stray and unidentified dogs and cats, in veterinary medical education and biomedical research is justified, and that the careful use of such animals contributes to improving the health and welfare of both animals and humans.

Mons Teigen, representing Montana Stockgrowers Association, Montana Wool Growers Association, and Montana Association of Cattlewomen. Mr. Teigen stated they object to this legislation for the main reason of the implications it contains for the future. He said if this type of legislation is passed, soon our animals will be impacted on the ranges of the state. He added that most of the pounds are operated either by the Humane Society or with close scrutiny by them, and if they do not want to sell animals to be used for research, they are protected without the legislation.

Dr. Lee Harrison, physician, Helena. Dr. Harrison stated her father has had coronary bypass surgery, and due to the

techniques developed on the laboratory animals, excellence of the surgery was achieved. She said that the use of laboratory animals was essential for that type of surgery, pediatric cases and other heart surgeries.

Georgia Medvit, Board of American Diabetes Association, and Helena Diabetic Support Group Leader. Ms. Medvit presented a statement from the officers of the Montana Affiliate American Diabetes Association. Exhibit No. 8.

QUESTIONS

Rep. Simon asked what research facilities in the state of Montana use cats and dogs. Dr. McMillan responded that he was the only person in the state that uses pound animals on a semi regular basis, and because they are respecting the wishes of the humane societies that they have contacted, they are not presently getting the pound animals from Montana.

CLOSING

Rep. Harper stated that the bill did not prohibit the use of animals in research, and did not affect anyone in the state of Montana. He said the bill protects the owners of pets in knowing how their pets will be disposed of and in the manner they want. He reiterated the position of the American Veterinarian Medical Association that their organization acknowledges that laws and regulations regarding the use of animals in biomedical research are adequate, but have not been sufficiently funded, consistently enforced, and fully implemented to ensure humane care and treatment of animals.

HOUSE BILL NO. 425 - Revise Experience and Education Requirements for Engineer License, sponsored by Rep. Dick Corne, House District No. 77, Bozeman. Rep. Corne asked that, since the proponents did not wish to pursue the bill, the committee table or kill the bill.

EXECUTIVE ACTION

Rep. Thomas moved to TABLE House Bill No. 425. The motion carried unanimously.

HOUSE BILL NO. 443 - Revising Laws Relating To Practice and Licensure of Psychology, sponsored by Rep. Dick Corne, House District No. 77, Bozeman. Rep. Corne stated that this bill was at the request of the Montana Board of Psychologists which clarifies the law, and he reviewed the changes that would occur.

PROPONENTS

Arthur Beaman, Chairman, Board of Psychologists, and on the faculty of Department of Psychology, University of Montana. Dr. Beaman submitted written testimony. He also submitted amendments proposed by the Board of Psychologists. Exhibit Nos. 9 and 10.

Dr. Richard Emery, Clinical Psychologist, and member of Board of Psychologists. Dr. Emery stated that passage of this bill would help clarify the practice of psychology and clarify the educational requirements for licensure of psychology, thereby protecting the public by ensuring that only qualified persons are licensed. He said this would also protect psychologists who report in good faith ethical violations by their colleagues to the board.

OPPONENTS

None.

QUESTIONS

None.

CLOSING

Rep. Corne asked the committee to consider the amendment he proposed and favorable action on the bill.

HOUSE BILL NO. 437 - Authority for Cease and Desist Orders by Insurance Commissioner, sponsored by Rep. Charles Swysgood, House District No. 73, Dillon. Rep. Swysgood stated that this bill is an act to create a cease and desist authority for the Commissioner of Insurance. He stated the bill would be a primary tool by which the Montana Securities Department enforces the securities acts of Montana, and presently, the Commissioner of Insurance does not have that authority. He said the only enforcement available is administrative action which may result in a fine but does not cease the violation. He distributed and explained the amendments. Exhibit No. 11.

PROPONENTS

Andrea Bennett, State Auditor. Ms. Bennett cited an example with the Life of Montana Insurance Company of Bozeman, that they have been in litigation with over its financial condition and other related problems. She said these problems provide a clear example of how the use of the cease and desist provisions could prevent some serious problems for the insurance consumer. She said their options in stopping these deceptive practices were limited; they could take administrative action against the company and fine them if

the hearing upheld allegations; or revoke or suspend the license completely; or a court order which was sure to be repealed as well. She submitted a letter as an example of the case where a letter was sent regarding the violations of the company. Exhibit No. 12 (a).

She said in the above case, knowing that the company would ignore her and continue the unlawful practices meant the only alternative was to alert the public of these problems, and issued a press release. Exhibit No. 12 (b).

She stated the insurance company then filed a demand for a hearing and automatic stay against the letter. Exhibit No. 12 (c).

In this case, cease and desist orders could have been issued to prohibit the company from continuing to engage in its deceptive marketing actions. She said the provisions of the bill present an opportunity for a full hearing; due process is fully protected and only a particular action is targeted. She stated that the legislation provides both effective and fair enforcement methods that allows consumer protection and fair treatment of the violator.

Roger McGlenn, Executive Director, Independent Insurance Agents Association of Montana. Mr. McGlenn stated he supports the bill and the amendments.

OPPONENTS

None.

QUESTIONS

None.

CLOSING

Rep. Swysgood made no further comments.

HOUSE BILL NO. 417 - Provide Preference to Bidders With Montana Made Goods in Awarding Contracts, sponsored by Rep. Jan Brown, House District No. 46, Helena. Rep. Brown stated that this bill is Montana preference bill, and that Pat Melby would explain the bill.

PROPONENTS

Pat Melby, representing Columbia Paint Company, Helena. Mr. Melby reviewed the bill and stated that it clarifies the application of the preference for a resident bidder with a Montana made product, and in asking for the clarification,

they were willing to give up what they interpret as having a 6% preference over a nonresident bidder for a 5% preference. He submitted a copy of the present preference statute. Exhibit No. 13.

Mr. Melby further commented that the bill assumes that every contract will include a nonresident bidder, will go to the resident bidder with the Montana made products, and will be 5% higher than a nonresident bid. He stated if a New York distributor of Montana made goods is bidding on a Montana contract and will supply Montana made goods, the distributor would be considered a resident for the purposes of this act. He submitted a list of examples of how the preference law is applied under the current law under the attorney general's interpretation, under their interpretation, and how it would be applied if this bill passed. Exhibit No. 14.

Mr. Melby said that this bill would help Montana businesses to encourage producers of Montana made products to get involved in bidding on contracts. He added that in the long run whatever small percentage or additional price that public agencies will have to pay for the products will be returned through the state through increased tax dollars.

Eric Shindler, Financial Administrative Vice President, Columbia Pain Company, Helena. Mr. Shindler stated that they annually bid on Montana traffic paint contract, and annually run into an occurrence where out of state bidders approach another Montana business who does not manufacture paint, but in the course of business, use paint and are able to get the same preference as his company. He said the idea behind the preference is if labor is involved within the preference, it increases the flow of dollars within the community and that is what a preference should be.

Ken Kelly, representing Dairy Industry Processors. Mr. Kelly stated that the milk board sets the minimum prices that everyone pays for the milk, and the price is not on the bids anymore. He added that the names are drawn for the winner of the contract bid, and the purchasing department is uncomfortable with that type of arrangement.

Mr. Kelly also commented that recently on a bid in Great Falls one of the dairies was eliminated from consideration because the corporate headquarters was out of state. He said the dairy qualified under section 18-1-103, but were eliminated under 18-1-113, and if that decision is left to stand, it will eliminate 65 percent of the dairy farmers in Montana from participating in a state contract because they sell to a corporation whose headquarters are outside Montana, and this should be corrected.

Gene Fenderson, Montana State Building and Construction Trade Workers. Mr. Fenderson stated they support the bill and believe it gives clarification to the law and puts the producers of goods produced in Montana on a fair footing with other states and is good for the Montana workers.

Jim Hodge, President, Owner, Columbia Chemical. Mr. Hodge stated this is an important piece of legislation because it affects them on a day to day basis. He said the intent of the bill was to support Montana manufacturers, and listed examples of out of state companies getting bids and having the same preference.

OPPONENTS

Pat McKelvey, McKelvey Paint and Distributor. Mr. McKelvey stated that this bill will take a majority of Montana vendors of building supplies to government purchasers and construction out of the public agency markets. He said the bill suggests that only one product or brand name is acceptable, and there are all kinds of dealers statewide that do not sell that line. He said this bill does not help the majority of Montana's businesses, but takes the greater majority out of the public bidding process. He added that if this bill passed it would provide bad legislation and something that could be challenged in the court as a restraintive trade action, and a manufacturer in Montana should have a competitive advantage over a manufacturing facility outside the state based on economic considerations.

QUESTIONS

Rep. Glaser asked if a building was built partially with Montana products, how would this be handled if only 15% of the building was made with Montana products, as this bill obviously gives a preference on 15% of the products. Mr. Melby replied the preference on Montana made products has been in effect since 1969 and is present now in any bid.

Rep. Glaser asked whether this had been changed previous to that. He said industry as a whole has never considered that they had a Montana made preference on a portion of a building, and is obvious to him that Montana products involved in a public building do have a preference. Mr. Melby replied that was correct and that law has been on the books for a number of years, but has not really been enforced.

Mike Muszkiewicz, Administrator, Purchasing Division, expanded on the point being made. He said the fiscal note was based on two commodities because they were the only ones significant enough to affect the state, and they were food and paint. He added if a state has a preference against the

product made in their state, when Montana goes to sell paint in another state, that state might have a reciprocal preference so there is a 5% added penalty against the state that has the original preference.

CLOSING

Rep. Brown made no further comments.

HOUSE BILL NO. 569 - Expand Applicability of Residency Definition Used in Preference Laws, sponsored by Rep. Edward Grady, House District No. 47, Canyon Creek. Rep. Grady stated this bill is an act that expands the applicability of the residency definition used in the preference laws concerning the awarding of public contracts.

PROPOSERS

Ken Kelly, representing Dairy Industry Processors. Mr. Kelly submitted written testimony. Exhibit No. 15.

Edward McHugh, Clover Leaf Dairy, Helena. Mr. McHugh stated that Meadow Gold Dairy, for example, should be allowed to have the 3% preferential for a Montana product, which would allow them to have the same price bid as a Montana corporation. He said this should be allowed as long as the product is produced and processed in Montana.

Pat Melby, representing Columbia Paint Company, Helena. Mr. Melby discussed the bill. He said this bill expands the applicability of the residency definition and amending the current law.

Larry Kaufman, President, Montana Dairymen's Association. Mr. Kaufman submitted written testimony. Exhibit No. 16.

OPPOSERS

None.

QUESTIONS.

None.

CLOSING

Rep. Grady stated he hoped the committee would consider this bill so that preference to Montana products will be given.

EXECUTIVE ACTION

ACTION ON HOUSE BILL NO. 417 AND NO. 569

Chairman Kitselman referred House Bill No. 417 and House Bill No. 569 to a subcommittee composed of Rep. Glaser, Rep. Driscoll and Rep. Brandewie, with Rep. Glaser as chairman.

COMMITTEE BILL REQUEST

Mary Westwood, staff attorney, for the Montana Sulphur and Chemical Company of Billings stated that they are seeking support for a bill to be drafted by the Business and Labor Committee. Ms. Westwood commented that many small businesses have faced difficult decisions recently concerning liability insurance. She stated the Montana Sulphur and Chemical Company is the primary pollution control plant for Exxon and Conoco, and the largest producers of purified hydrogen sulphite in the United States. She said they have problems because they produce purified hydrogen sulphite which is considered a hazardous material. She said that because of having such difficulty in obtaining liability insurance at a reasonable price, they began setting aside funds from the company assets to form a self insurance fund; funds such as this are not authorized by legislation. In order to lighten the tax burden, she added, they have been putting the money into tax exempt bonds.

Ms. Westwood stated that this bill would allow small businesses to establish these independent liability funds and to receive the same kind of tax treatment that insurance companies receive. She said they have drafted a bill after conversations with the Insurance Commissioner, which provides for oversight of the funds by the Insurance Commissioner. She added that the bill would provide that there be a policy set in case of termination of the funds. Also, she said the fund would work like a pension plan; the tax on the funds would be deferred until such a time that the money is taken out because there would be no further liability. She said that many small businesses in Montana do not have any insurance, and in case of a catastrophic liability incident and the business goes out of business, there would be no funds available for the person who might be injured. She feels that this bill would protect the public. Exhibit No. 17.

QUESTIONS

Chairman Kitselman asked Ms. Westwood if the problem was that there were no means to find an environmental type of insurance coverage in case of a chemical spill. Ms. Westwood replied that they were offered policies, but they have an exclusion in them called a pollution exclusion. She

said that the minute a chemical escaped from a tank car, it becomes a pollutant under the definitions applied by insurance companies. She added that under the old policies coverage was available for sudden and accidental pollution, but the new insurance policies do not provide that.

Rep. Driscoll asked if the bill would in any way limit the liability, and Ms. Westwood replied it would not.

Kathy Irigoin, Staff Attorney, State Auditor. Ms. Irigoin stated that the State Auditor's office supported the legislation. She said the draft bill is geared toward small businesses who have had difficulty in obtaining insurance and seems like an interesting concept and something that deserves study.

Rep. Cohen asked if there was a system in place for a company to be self insured at present. Ms. Irigoin responded that there is a law that permits governmental entities to self insure but that hasn't been interpreted to include regular businesses. She said the State Auditor has taken the position that a nongovernmental entity cannot self insure under that provision.

Rep. Swysgood said he thought there were companies that operate in or through Montana at present that are self insured such as Consolidated Freightways. Ms. Irigoin stated that she was not aware of the self insured companies, or regulating them, and this bill would allow the Insurance Commissioner to look at the reserve and the way the self insurance fund is set up.

Rep. Cohen asked if, as a transporter of these materials, they had any requirements set on them by the Public Service Commission. Ms. Westwood replied they did not have any by the Public Service Commission, but they do have a \$5 million limit set on them by the Department of Transportation, and that is why they have included in the bill draft that they be allowed to go to a legally required limit.

ADJOURNMENT

The meeting adjourned at 11:05 a.m.



REP. LES KITSELMAN, Chairman

DAILY ROLL CALL
 BUSINESS & LABOR COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date February 5, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. LES KITSELMAN, CHAIRMAN	✓		
REP. FRED THOMAS, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. RAY BRANDEWIE	✓		
REP. JAN BROWN	✓		
REP. BEN COHEN	✓		
REP. JERRY DRISCOLL	✓		
REP. WILLIAM GLASER	✓		
REP. LARRY GRINDE	✓		
REP. STELLA JEAN HANSEN	✓		
REP. TOM JONES	✓		
REP. LLOYD MCCORMICK	✓		
REP. GERALD NISBET	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CLYDE SMITH	✓		
REP. CHARLES SWYSGOOD	✓		
REP. NORM WALLIN	✓		

AMENDMENTS TO HOUSE BILL 432 - HARPER

1. Page 1, line 12, following: "the"
Strike: "importation and"
2. Page 1, line 18, following: "all"
Insert: "domesticated"
3. Page 3, lines 11 & 12, following: line 10
Strike: lines 11 and 12 through "country"
4. Page 3, lines 15 & 16, following: "state"
Strike: remaining language on lines 15 and 16
5. Page 4, line 9, following: "transported"
Strike: "into or"
6. Page 4, lines 10, 11 & 12, following: "state"
Strike: "or in any other state, territory, the District of Columbia, or foreign country"
7. Page 5, following line 5:
Insert new: "Section 10. Exemptions. Operations and procedures under the supervision of practicing veterinarians or physicians who are licensed to practice medicine in this state are exempt from the provisions of this act."

Federated Humane Societies of Montana

HB 432

February 5, 1987

TESTAMONY BY BARBARA DAHLGREN
PRESIDENT OF THE FEDERATED HUMANE SOCIETIES OF MONTANA

HOUSE BUSINESS AND LABOR COMMITTEE

DEAR CHAIRMAN AND COMMITTEE MEMBERS,

We are most appreciative of the fact that this committee will hear our testimony regarding HB 432. We intend to be as brief and concise as possible.

As President of the Federated Humane Societies of Montana, I cannot condone pound seizure or pound release in Montana. For years our organization has gone to great lengths to educate the public, sterilize animals, encourage animal control laws, and provide havens for homeless animals. As a state-wide organization we receive information from around the state about many aspects of animal welfare. At various times it has been reported that people are coming through the state picking up dogs. It can be assumed that these people may be dealers gathering animals to sell to research labs. As an example, I've attached a Special Alert sent out by the Federation a few years ago concerning such an incident in the Helena area.

Animal welfare advocates realize that some animal experimentation is necessary. We do not however believe that pound and shelter animals should be utilized for that purpose. Researchers seem to think that once an animal leaves the confines of a home they cease to be "pets." Actually a pet should be defined from the perspective of the animal, with consideration given to affection, socialization and expectations. Only multiple generation, feral animals are not pets. We feel that it is much more traumatic for pets that have once been considered and treated as a member of a human family to end up being subjected to laboratory conditions. Often they must endure cruel experiments without anesthesia or post operative care. We are fully aware that animals in shelters must die, but it is important how they die. Surely animals that have been pets are entitled to a humane death in payment for their faith and trust.

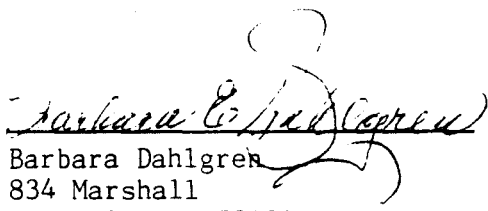
Some states and cities and counties have tried giving those who must give up pets, for whatever reason, the option of turning their pets over for experimentation. They infer at the time, "that their pet would do a good turn for animal and human welfare." A small percentage of people agree to sign the release, or are confused about what they are signing. In many cases they have tried to retract that decision once they got home and thought about it.

The problem of using pound animals has reached national attention. In 1986 bills to prohibit their use were introduced in Congress. A case in point is HR# 4871. introduced by R. J. Mrazek of New York.

As of January 1st this year the City of Memphis, Tenn. terminated it's practice of turning unadopted animals from the city pound over to the University of Tennessee. Mayor Hackett of that city declared that the program was no longer worthwhile. In 1985, the city sold 538 dogs @ \$24.00 each and 109 cats @ \$15.00 each, while in 1984 1783 dogs and 1741 cats had been sold. Opponents of pound seizure say the sharp decline was partly because citizens stopped turning in unwanted animals and strays for fear that they would end up in a laboratory.

The King County Seattle Washington Animal Pound has sold animals to dealers and research labs for years. Beginning in 1975, animal welfare groups began urging that a referendum be adopted to put pound seizure on the ballot. The end result of more than 10 years of controversy, and more than 1600 animals a year being turned over to dealers and research labs, was that a motion to prohibit the practice finally passed the full County Council. Most of the revenue generated for King County from selling these animals simply paid the administrative costs of the program. The ordinance finally goes before the King County voters in September of 1987.

It is ludicrous that we, as animal control and welfare people, who protect and care for these creatures should ever have to release them to animal dealers and research labs. Our entire philosophy is to relocate as many as possible into new, suitable home, especially those that have been spayed or neutered. The only alternative for an animal that cannot be adopted should be humane euthanasia. The old and sick, and those that we determine to be unsuitable for adoption should be humanely euthanized to prevent further pain and stress to them.



Barbara Dahlgren
834 Marshall
Missoula, MT 59801

FEDERATED HUMANE SOCIETIES OF MONTANA

SPECIAL ALERT

Saturday, June 2nd, 1984 it was reported from several sources that a green pick-up was going around the Helena valley with a Humane Society sign on its side and red and white flashing light on its top. A tall, slim man wearing a cowboy hat was observed picking up dogs, one right out of a yard.

The Lewis & Clark Humane Society has no vehicle and never picks up animals. This person also had no connection with our local City or County Animal Control.

Last Saturday our shelter received an excessive number of mostly purebred dogs reported missing.

Also it was reported to us that at least one country home received a call Saturday evening from someone claiming to represent the Humane Society. This nice sounding person called herself Kathy _____. She asked if the family's dogs were altered, and she indicated that if they were not that the Humane Society might do it. The Lewis & Clark Humane Society had no connection with this call.

Please let us know if anything similar to this has taken place recently in your local community.

Judy Fenton, Sec./Treasurer
Federated Humane Societies of Montana
C/O P.O. Box 274
Helena, MT 59624

DATE _____
HB _____

Federated Humane Societies of Montana



Judith Fenton, Secretary/Treasurer
Federated Humane Societies of Montana

February 5, 1987

Testamony on HB 432
Montana House Business & Labor Committee

ANIMALS FOR RESEARCH LABS

The Federal Laboratory Animal Welfare Act was passed in 1966 in response to public outrage at the illegal trade in pets to research labs. It required the registration and inspection of dealers of dogs and cats. Government entities such as cities aren't required to register. This Act was later amended and became our present Animal Welfare Act. Two major classes of animal suppliers are recognized. Class "A" dealers maintain their own breeding colonies. Class "B" dealers acquire and sell animals without breeding them. Such animals are called "random source" because nothing is known about their medical histories, genetic makeup, or environmental background. These animals fetch only modest prices from labs. Thus Class "B" dealers must keep their costs low and deal in high volume to make a profit. They are under pressure to obtain animals by any means. They are in the business for a profit and their animals are viewed as a commodity. The legislation in question here today applies only to "random-source" type animals, and only to the disposition of those that become impounded in a "shelter" or "pound".

The US Department of Agriculture's Animal and Plant Health Inspection Services (APHIS) has been given the responsibility under the Animal Welfare Act to insure the humane treatment of the dogs and cats handled by animal dealers. Dealers are required to maintain acquisition records which reflect the source of each of their animals, and they must make these records available for USDA inspection. Research facilities are also registered with USDA, except for US government agencies. New federal regulations also require that an animal care committee be set up and it must include one layperson. This all sounds good except that there are no laws (local, state, or federal) to protect an animal during research. These animals may be legally burned, tramatized, irradiated, or operated on repeatedly. The law does not require the use of anesthesia or painkillers. The merit of each experiment is not considered. Daily observation by a vet is not required, and physical methods of euthanasia such as decapitation are not prohibited. When violations of the Animal Welfare Act do occur, it is often local law enforcement officials who are willing to investigate and prosecute dealers on the basis of local and state animal cruelty laws. Nationally USDA has been ineffective in enforcing the AWA, due to insufficient funding.

The lawful taking of dogs and cats from animal shelters or pounds for use in research labs, is commonly called "pound seizure or release". Pound seizure is bad from many perspectives: animal control, scientific, ecomomic, and ethical.

EFFECT OF POUND SEIZURE ON ANIMAL CONTROL AND ANIMAL WELFARE WORK

Animal control professionals around the country are opposed to pound seizure because it makes their job more difficult and expensive. Pound seizure or release tarnishes the general public's image of animal control. This leads to poor public cooperation. Rather than taking a stray or unwanted litter of pups or kittens to the shelter, people abandon the animals at large, hoping someone else will take them in. More abandoned animals results in more wandering strays, more feral cats, and more work and added costs for animal control. Returning lost pets is another function of the animal pound or shelter. If the general public will not turn in the strays they find, many lost pets are never returned. Also if a shelter, public or private, has lost the good will of the public, it risks the loss of valuable volunteer labor and financial support.

EFFECT OF POUND SEIZURE ON SCIENTIFIC EXPERIMENTATION

Research organizations themselves have spelled out the disadvantages of using random-source animals. In a recent legislative battle in California, 730 professionals with doctorate degrees (M.D.s, D.V.M.s, Ph.D.s, etc.) signed a statement reading, "Pound seizure is detrimental to sound research... is damaging to the good name of science... perpetuates inferior research." The use of random-source animals in research introduces unknown variables which jeopardize the validity and reliability of the research data. To make up for this it is often necessary to use greater numbers of animals. The pharmaceutical industry phased out the use of pound animals beginning in the 1960's. The National Institutes of Health (NIH), the world's largest funder of biomedical research has not used pound animals in their own research for over a decade.

Passage of this bill will not harm any research. To date 11 states and many US cities and counties have passed legislation to ban pound release. Plus it is banned in 4 Western European Countries. Nowhere has important research been stopped. For example, Harvard University continues to conduct some of the most significant research being done in the world although Massachusetts has banned pound release. Nationally only approximately 1% of the total animals used in research are from shelters. Banning their use would have little effect on research, but it would save 300,000 pet dogs and cats per year from experimentation.

EFFECT OF POUND SEIZURE ON ECONOMIC COST OF EXPERIMENTATION

If pound release ended, random-source animals from other sources and purpose-bred animals will still be available or research facilities could always breed their own animals. Purpose-bred animals may actually be cheaper in the long run. Switching to purpose-bred animals would add less than one percent of added cost to most research budgets. Pound release animals come with hidden costs to research. They may be in poor health and need to be conditioned. Also as already mentioned, because of their variable backgrounds researchers need to use many more of them for a valid result. This adds labor costs to the research budget, which is a major factor.

It seems to be true that if something is cheap it will be wasted and used with less consideration than something more expensive. The cost of lab animals is small compared to the total cost of research. Even if having to use purpose-bred animals did increase costs, researchers would have an incentive to use fewer of them and then after more thorough planning. Researchers might even direct more effort toward non-animal approaches to research, and instructors might begin making better use of non-animal teaching methods.

ETHICS OF POUND SEIZURE

One often heard argument is "These dogs and cats are going to die anyway. They might as well be put to some good." They aren't necessarily going to die anyway. When demand is high some animals are sold to research without having an opportunity to be adopted from shelters. Researchers are looking for friendly, healthy, well-behaved, easily handled dogs and cats. These are the same traits adopters are looking for. Researchers and adopters often compete for the same animals. Too often the researchers win and the animals lose.

While a person might choose to endure discomfort in order to be of use to society, this concept has no meaning to an animal in a research lab. It is exploitative to use an abandoned pet for research on the basis of doing good for mankind. Just as it would be unethical to subject a death row prisoner to experimentation because of his impending death. The same is true of animals in shelters. It is far more humane to end an animals life without pain than to subject it to repeated relocation, institutionalized handling, and frightening, painful experiments before death.

Our animal shelters must not become warehouses for cheap raw materials for research laboratories. Research does not need access to these innocent victims of human irresponsibility.



Judith Fenton
Blue Sky Heights #26
Clancy, MT 59634
(406) 933-5922



HB 432

Animal Shelter: 1712 East Custer Ave.
P.O. Box 274
Helena, Montana 59624
(406) 442-1660

February 3, 1987

Rep. Les Kitselman, Chairman
Business and Labor Committee
State Capitol
Helena, MT 59601

Dear Representative Kitselman:

The Lewis & Clark Humane Society supports the passage of House Bill 432, which is an important step in preventing unnecessary and prolonged cruelty to animals in experimental laboratories by forbidding pound seizure.

Pound seizure, one way in which animals are obtained for experimental laboratories, permits dealers and researchers to both capitalize on and help perpetuate our nation's pet overpopulation disgrace. Pounds that release pets to dealers are simply "revolving door" operations handling greater numbers of surplus pets every year, making no effort to reduce the numbers of unwanted animals in their jurisdictions.

Dealers and researchers want only well-socialized, friendly, easy to handle, healthy pets. They do not want the majority of pound dogs and cats who must be euthanized because they are too sickly or emotionally maladjusted from ordeals of neglect, abuse, being lost or abandoned. Therefore, the animals generally seized are not those "doomed to die anyway," but rather those pets who are adoptable but have that chance denied them by pounds which practice pound-release.

Animal experimentation is an old practice--one which, in our high-tech society, is unnecessary. Anyone who says it is necessary is simply uninformed. Some of the existing alternative research includes genetic engineering, cell tissue cultures, computer models and other state-of-the-art techniques that are more sophisticated and more reliable than animal experimentation.

According to the American Antivivisectionist Society, 60 million defenseless animals are killed in experimental labs every year. Most are not given anesthesia or pain relievers, and many are "recycled" through a series of experiments before death finally releases them. They are force fed, injected, sprayed with lethal substances. Some are actually roasted alive with acetylene torches. Many are used for repeated experiments even when the results are already known.

The use of pound dogs and cats for experimentation and research is a callous, unconscionable betrayal of our most loyal animal companions. To use animals that

have learned to trust humans who then turn on them by subjecting them to cruel and unnecessary experimentation is a moral travesty that must stop.

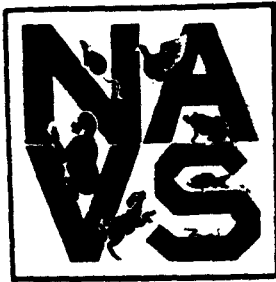
House Bill 432 forbidding pound seizure and providing penalties for violators will be an important first step in eliminating the cruelty and abuse of live animals in research laboratories and will encourage the use of other more precise, reliable and sophisticated methods.

We urge passage of House Bill 432.

Sincerely,

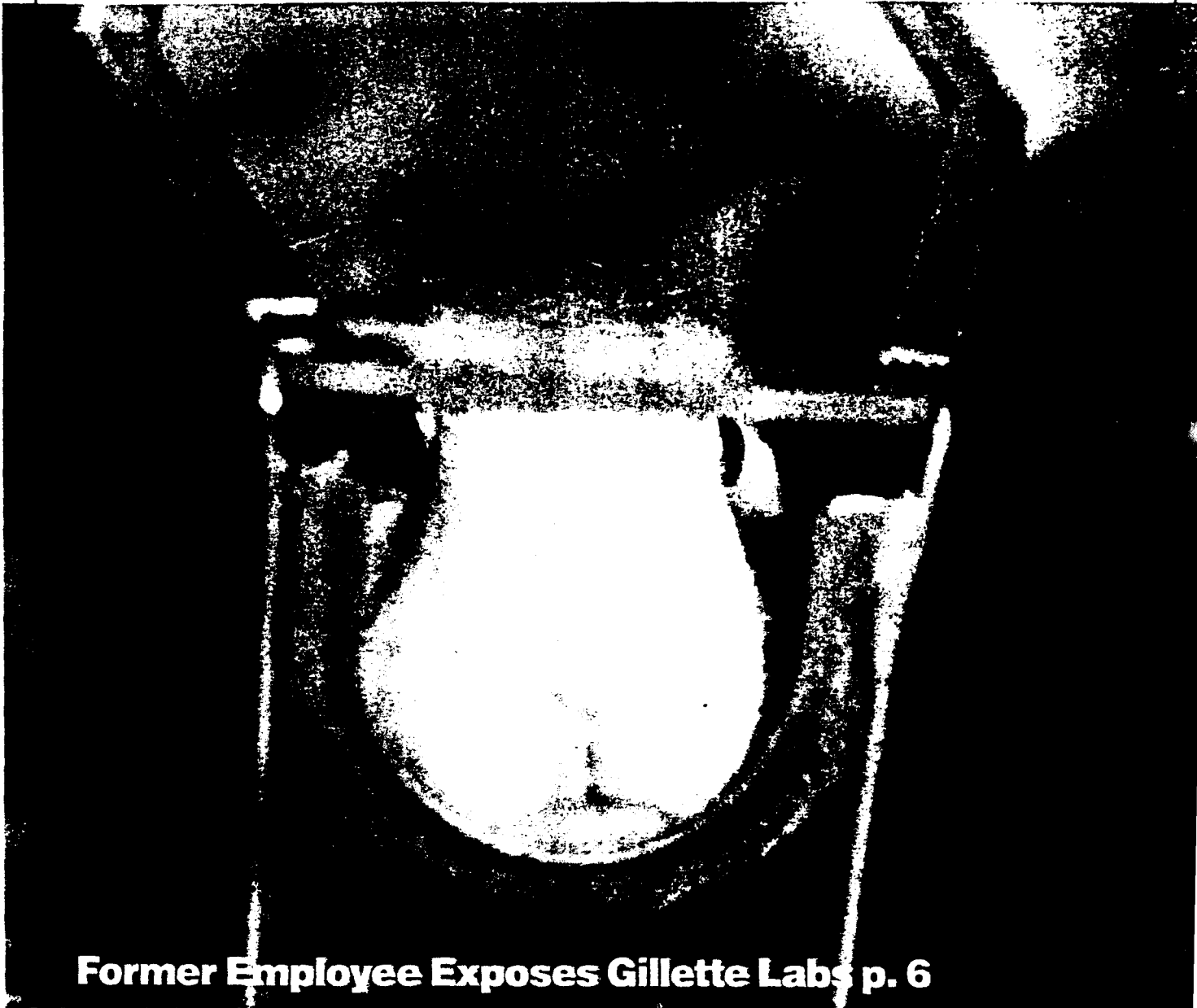
A handwritten signature in cursive script that reads "Mikal Kellner". The signature is written in dark ink and is positioned above the printed name.

Mikal Kellner, Director



BULLETIN

The National Anti-Vivisection Society



Former Employee Exposes Gillette Labs p. 6

**Number 3
1986**

NAVS

GILLETTE ACCUSED OF ANIMAL CRUELTY

Excerpts from Leslie Fain's Journal

"...The technicians abused the animals. I saw technicians carrying rabbits by the ears. Swinging them. Kicking rabbits that were struggling. Hitting rabbits. Banging on the cages to try and get the animals to stop panicking and struggling – and banging on the cages only made the situation worse. Technicians yelled at animals to stop the screaming. They laughed as animals screeched in pain... One technician's favorite pastime was taunting and scaring the monkeys.

"...Before I worked in a lab, I always thought the people involved in research were all professionals and I had a general respect for them. I was completely shocked by how unscientific and inhumane the people who worked at Gillette were. For example, when I asked the study director, John Morley, how to euthanize rats, he told me to 'kill them by hitting them over the head with a rod'. He said injecting them was too much trouble, 'so now we just hit them'.

"...Once I came across a rabbit with peeling, blistered skin laying (sic) in agony in his cage, unable to walk. And I overheard two lab technicians complaining that all the test substances they'd been getting lately were boring. They said they wanted something more exciting like carbonic acid.

"...Another time, I was walking through the eye room and saw one technician grab a rabbit who had pus draining out of his swollen eye and force the eye open to examine it under bright light. I'd heard rabbits scream there before, but never like that... and I've heard that rabbit scream over and over again in my mind.

"...Once, when I asked one technician what was wrong with a group of white rats that were dying in a pile, she told me 'the sleazy little bastards will piss on each other and be dead by morning.' The rats had been force-fed shampoo in a death test.

"...It seems like I was the one who always had to point out that the animals

were suffering. I remember so many instances when animals appeared to have broken necks and backs. Many times rabbits had collars wedged in their mouths; sometimes I found animals twisted around in the restraining devices or dehydrated and barely able to move. Every time I pointed these things out, I was teased about being so sensitive. But I was supposed to have been there caring for animals – I was an animal caretaker."

"Blood was coming out of some of their mouths. Others were convulsing and having spasms. It got to the point where I couldn't stand to watch their suffering and asked to give them a second shot. At this point I became ill. I ran to the bathroom and cried."

—Leslie Fain

Leslie Fain, 28, went home and emotionally scribbled her sense of horror and pain in this diary entry on October 9, 1984.

But eventually, even the written word failed to capture her perception of routine brutality in animal testing conducted at the Gillette Medical Evaluation Laboratory in Rockville, Maryland. So Fain, then an animal technician for Gillette, decided to reinforce her words with graphic testimonies. First, with secretly-taken photographs. Later, when she felt she could no longer endure the daily litany of prescribed pain and death in the laboratory, with film also taken in secrecy and internal memos procured from the company's files.

With diary, photographs, film and documents in hand, Leslie Fain decided to make her private outrage a matter of public record. She walked away from her job and presented her evidence of unfeeling cruelty to ARK II, an international animal rights organization based in Toronto, Canada and Washington, D.C.

The lab "will haunt me for the rest of my life," said Fain, in a September 25 press conference in Washington, D.C., with a similar media event held in Toronto. Lori Gruen, director of ARK II-

"What is notable about the publicity generated by ARK II's allegations is not that the procedures inflicted on these animals are a shocking case of extreme cruelty, but that it vividly illustrates the accepted standards that are typical of the...industry."

U.S., simultaneously announced her organization's intention to boycott Gillette products until the company stops using animals for testing. These products include Foamy Shaving Creme, Right Guard Deodorant, Liquid Paper, Trac II razors and Flair pens. "The disposable attitude promoted by Gillette applies to more than just razors and Flair pens," she said. "Behind all the flashy advertising lies untold animal agony, and the animals are forced to suffer for no reason. Noted scientists have testified that product testing with animals is invalid, unreliable, expensive, cruel, and it is not required by law."

Information packets compiled by ARK II provided documentation of the allegations, including photographs, correspondence and internal memos from Gillette. The videotapes recorded by Leslie Fain were also made available to the media.

● As is common with many large corporations who use animals in testing, Gillette repeatedly defends its methods of testing and the estimates of the numbers of animals actually used. In a reply to a customer inquiry, Gillette wrote, "In the period from 1976 to 1982, the number of dogs, guinea pigs, hamsters, rabbits, monkeys and rats...was reduced in total by 35 percent...the use of rabbits has been reduced by 67 percent over the period."

But Gruen claims the exact opposite to be true. "While statistics are unavailable for 1976, there was an overall increase of 40 percent in the number of animals Gillette used during the rest of that period; and from 1977 to 1984 Gillette increased the number of rabbits

"Regardless of the accuracy or falsity of ARK II's allegations, Gillette and the rest of the industry...must realize that product safety can be assured without the mindless sacrifice of millions of animals in slightly modified but traditional testing protocols."

used by 119 percent." Gillette Vice President for Public Relations David A. Fausch explained that these figures include animals used in biomedical research, not only for the purposes of testing. In addition, Fausch said, the company is constrained to using additional animals when a new product line is created, which demands more testing to protect the public safety.

- ARK II also accused Gillette of lying when the company claimed in 1983 to have discontinued using monkeys, since it approved a "Cardiac Sensitization Evaluation" on monkeys in 1984. In this case, ARK II points out that Gillette also may have misrepresented its primate research to the federal government. According to ARK II, although the U.S. Department of Agriculture (USDA) records show Gillette using four monkeys in both 1983 and 1984, the Cardiac Sensitization evaluation requires 15 monkeys. Moreover, Gillette's Animal Care Committee minutes of October 1985 refer to "...the last 12 monkeys within the facility...donated to the Bowman State School of Medicine in September."

- ARK II also considers disgraceful Gillette's public claims that "every means is already taken to ensure that animals used in testing are treated humanely." As evidence that the contrary is true, the animal rights organization points to

Leslie Fain's film footage and written documentation.

ARK II also claims that Gillette routinely ignores minimal standards of care even when anesthetics are given. As evidence, the animal rights group points to an internal Gillette memo, stating that "the anesthetic administered at test initiation did little to mitigate the suffering of these animals."

- ARK II also claims that the company has deliberately attempted to conceal its continued use of LD50 testing into the 1980s, after it stated its discontinuance since 1977. Embedded within the confiscated minutes of a July 1985 meeting of Gillette's Institutional Laboratory Animal Care Committee was the following statement: "...Messrs. Kenney and DiPasquale again raised the issue of modifying internal documentation and other communications vehicles to eliminate any references to the use of the term LD50. This issue relates to the correspondence with which the Company is responding to animal rights activists and saying Gillette no longer employs the use of the subject test."

Gillette spokesman David Fausch claims that this statement is taken out of context, since the company only uses a statistically acquired LD50 value based on the Limit Test, which in turn uses far fewer animals than the classical LD50. According to Fausch, the memo referred to a need for a more descriptive reference for their animal test, rather than one that was traditional and inaccurate.

- ARK II also accused Gillette of routinely deceiving its concerned consumers by publicly stating that it participates in developing non-animal alternatives in product testing. According to ARK II, Gillette's contribution of \$1,000 for alternative programs is embarrassingly insignificant compared to the company's 1985 sales of over \$2.5 billion.

- The huge numbers of animals used at Gillette alone compounds the tragedy. According to ARK II's compilation of official USDA annual reports for 1984, Gillette used 434 guinea pigs, 2,170 hamsters, 1,600 rabbits and 4 primates. Doubtless thousands of mice and rats were also used as research "tools."

Well beyond the accuracy of ARK II's allegations, it remains a sorry fact that the Gillette Medical Evaluation Laboratory continues to abuse its animals

with testing methodology the company readily admits to using. Unfortunately, the corporate bottom line of maximizing profits and minimizing costs in a conservative legal arena causes a great deal of corporate foot-dragging in the search and validation of new and better non-animal testing technologies. It is an equally sorry fact that uninformed and apathetic consumers continue to support these passive companies in the marketplace.

Therefore, ARK II's strong allegations and Leslie Fain's courage have served to focus the attention of the concerned public on Gillette's animal testing methodology and philosophy. What is notable about the publicity generated by ARK II's allegations is not that the procedures inflicted on these animals are a shocking case of extreme cruelty, but that it vividly illustrates the accepted standards that are *typical* of the product testing industry. Unfortunately, while Gillette feels that its present testing methodologies are responsible and progressive, these methods remain entrenched in traditional animal usage. Regardless of the accuracy or falsity of ARK II's allegations, Gillette and the rest of industry actively performing product testing using animals must realize that product safety can be assured without the mindless sacrifice of millions of animals in slightly modified but traditional testing protocols.

But the corporate conscience is created in the marketplace. And corporate morality in the use of animals in product testing is too often a function of the profit/loss column in quarterly reports. Therefore, pressure from a well-informed, concerned public demanding safe products not dependent on traditional animal testing will be the catalyst for social change.

The NAVS urges its members to support companies that do not use animal testing to market its products. For example, the NAVS has published "Personal Care with Principle" that lists a number of alternative products already available. Also, we urge our membership to write to Gillette and other companies that use animal tests, voicing your objections, concerns, and a consumer's demand that these companies responsibly participate in ethical change.

Wisconsin Dealer Charged with Cruelty

by Susan J. Anderson
and
Pamela J. Johnson

Pain suffered in the laboratory is only the final trauma for many former pets who end up as experimental subjects. On the road to research they may suffer extreme deprivation and abuse within the very system which purports to protect them.

This tragic reality was again confirmed in early July, 1986 in a series of copyrighted articles in the *Appleton Post-Crescent* which revealed dogs and cats being kept in deplorable conditions by a federally-licensed animal dealer near Kaukauna, Wisconsin. The reporter, Jim Flasch, used the Freedom of Information Act to obtain copies of the United States Department of Agriculture (USDA) inspection reports of the kennel of Ervin Stebane.

As a licensed animal dealer, Stebane buys and sells dogs and cats, primarily for use in experimentation. Stebane acts as the pound for a number of local municipalities, and obtains additional animals from a variety of sources. He has been licensed as a "Class B" dealer under the federal Animal Welfare Act (AWA) since it was enacted in 1966. As such, he has been inspected and licensed annually since then by the Animal and Plant Health Inspection Service (APHIS) of the USDA, the agency charged with enforcing the AWA.

Since 1972, Stebane has earned over \$230,000 by selling more than 20,000 dogs and cats, mainly to research laboratories. His clients include Appleton Medical Center, Fromm Laboratory, Madison Area Technical College, and the University of Wisconsin (which obtains 80-85 percent of the dogs and cats it uses from Stebane).

The inspection reports, which cover the years 1980 through early 1986, document serious and repeated violations of the AWA, including:

- 27 counts of failure to provide proper and adequate housing for the animals;
- 17 counts of failure to provide palatable, wholesome and adequate food and water, and proper food

storage;

- 11 counts of inadequate cleaning, sanitation and waste disposal;
- 5 counts of inadequate and incomplete animal identification and record keeping;
- 3 counts of failure to provide adequate veterinary care and supervision.

Specific conditions described in the inspection reports include:

- dead dogs left in pen with live animals;
- old, emaciated and dehydrated dog left in cage with other dogs;
- dog caught in broken wires between cages;
- kittens left outside, tied in a feed sack;
- dogs and cats kept in outside cages, winter and summer, with no protection from freezing temperatures, snow, rain, or sun;
- whole, dead calves thrown into pens as the only food for dogs;
- dogs infested with parasites, possible distemper;
- sick, wounded or diseased animals not separated and not treated;
- water in bowls frozen or contaminated with old food and feces;
- chunks of frozen or blackened/unpalatable meat and ground-up bones as the only food available;
- no food pans, food on ground and contaminated with urine and feces;
- more than 12 dogs crowded together in one cage;
- animals not properly identified with tags, records incomplete-information on source and disposal of animals missing.

Additional allegations of cruelty and illegal activities by Stebane reported in the *Appleton Post-Crescent* included eye-witness accounts by two former employees who "told of seeing him throw a newborn puppy into a garbage can, hit a sheep on the head with a hammer, castrate a dog and let it bleed to death, and beat a goat with a shovel". They also told of dead dogs being left in

pens and being devoured by the other dogs. Mentioned in the articles were a number of complaints and allegations by local people concerning stolen dogs which implicated Stebane. A sheriff's department investigation during 1981 revealed at least one individual who was "adopting" pets from "free to good home" advertisements in the newspaper under an assumed name and taking them to Stebane.

Public response to these articles led to an even more grotesque discovery: 26 years ago, in March 1960, a local newspaper had run an article with the headline "Shocking Filth, Frozen Death Found At Nearby 'Dog Farm'," which detailed conditions found at the Stebane farm at that time. Observers were quoted as reporting "piles of dead puppies", "half-gnawed carcasses of Holstein calves", "the half-eaten body of a cat", and "the frozen bodies of three raccoons". "Children of the tenant farmer living on the site told of the dog dealer destroying 'sluggish' puppies by beating them to death against the barn walls while the children watched." "... (in) a coop built on the top (of a wooden farm wagon) were eight to ten large mongrels... Also inside the coop were three half-eaten calves' carcasses on which the dogs were gnawing and fighting. With carcasses and entrails on the floor of the wagon, there was no place for the dogs to lie." "... the farmer (Stebane) threatened to shoot Welfare and humane society officials who sought to investigate."

Despite the flagrant and chronic nature of these violations, the USDA continues to re-license Stebane, with the only negative action taken against him during the years covered by the available inspection reports being a letter of warning sent in April, 1985. Not until July 11, 1986 did the USDA file a complaint against him alleging specific violations of the AWA which occurred on May 2, August 2, October 7, and November 7 of 1985.

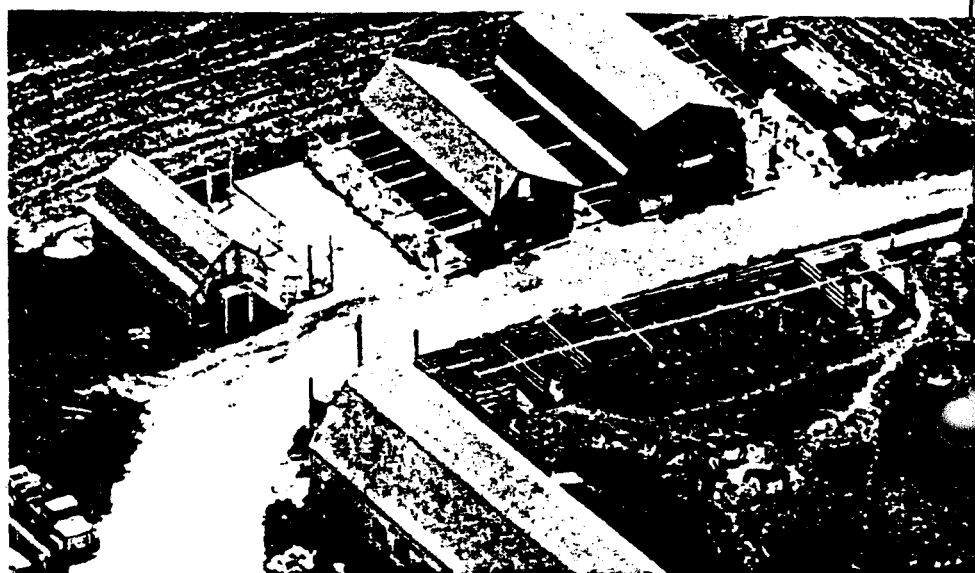
A coalition of animal protection

groups in Wisconsin has been formed to alert the public to this situation, and to urge the USDA to take the strongest action possible. The coalition, comprised of Alliance for Animals, Outagamie County Humane Society, and Wisconsin Federated Humane Societies, is working throughout the state and with The National Anti-Vivisection Society and other national animal protection organizations in hopes of generating enough public pressure to force the USDA to permanently revoke Ervin Stebane's license. NAVS has supported this campaign from the beginning and will continue to provide important resources for reaching concerned individuals throughout the country.

Stebane has requested an oral hearing to answer the USDA's charges. According to coalition coordinator, Susan Anderson of Alliance for Animals, the USDA may deal very leniently with Stebane, if it acts as it has done historically. Typically, sanctions against violators in the past have been limited to minimal fines or, at most, temporary suspension of their licenses for only a few weeks or months. For instance, another federally licensed dealer in Wisconsin was charged in 1984 by the USDA for numerous violations of the AWA. Last April, the recommended \$2,000 civil penalty and 120-day license suspension reduced to a mere \$100 fine. In fact, nationally, only one dealer has had his license permanently revoked in recent years (There are approximately 3,500 licensed dealers nationwide, 56 of them in Wisconsin).

"Unless we exert tremendous public pressure," says Anderson, "it is very likely that the USDA will simply 'slap Stebane's wrist' and let him continue to operate. We need the help of NAVS members to see that this doesn't happen. People should write to their Congressional representatives and ask them to direct the Secretary of Agriculture to permanently revoke Stebane's license. It would also be a good idea to ask them to co-sponsor and actively support H.R. 4535. This federal legislation would allow animal protection groups and private citizens to sue the USDA for failure to enforce the AWA. Currently such private parties do not have the legal standing necessary to bring such suit."

The real tragedy is that Ervin Stebane is not "the rotten apple in the barrel". It is the entire animal dealer system



which is rotten. The federal system of dealer procurement of pet animals for use in experimentation currently permitted by law (and subsidized by tax monies) is impossible to adequately regulate to protect the animals involved. This system of the sale and resale of pet animals is conducive not only to the institutionalized abuse and neglect of animals, but to other illegal activities such as pet stealing.

The fact that this situation has been allowed to exist in Wisconsin for 20 years under the Animal Welfare Act is an indictment not just of Stebane as a dealer, but of the Animal Welfare Act and the USDA's animal welfare enforcement activities under the Act. In short, there is no effective protection for the animals who fall into the hands of disreputable dealers.

Alliance for Animals, Inc., based in Madison, Wisconsin, was formed in

1983 to work on a state wide level to protect the rights and well-being of non-human animals, and to encourage empathy and respect for animals. Through public education campaigns, legislation, litigation, and non-violent direct action, the volunteers at The Alliance seek to end animal abuse and exploitation in vivisection, hunting and trapping, intensive confinement "factory" farming, rodeos, roadside zoos and circuses. Susan J. Anderson and Pamela J. Johnson are co-founders and members of the Board of Directors of Alliance for Animals. Both have been involved in animal protection for over 10 years.

For more information please contact the Alliance at:

636 West Washington
Madison, Wisconsin 53703
Telephone: (608)257-6333

Testimony
on
House Bill No. 432

"An Act Regulating the Transfer of Impounded Animals from Shelters and Pounds to Dealers or Research Facilities."

John W. Jutila, Vice President for Research
Montana State University

Mr. Chairman and Members of the Committee:

Montana State University opposes House Bill 432 in its current form because it (a) generally places unnecessary and expensive restrictions on the use of animals in biomedical and agriculture research, and (b) virtually prohibits the use of animals important to the conduct of certain kinds of research. We view our program to be properly organized and highly regulated to meet the concern or requirements of any special interest group. The facts to be considered are as follows.

1. MSU has one of the finest programs in the U.S. for the care and use of animals in research.
2. MSU's animal resource program is administered by the Office of the Vice President for Research and consists of three major components to meet the requirements of animal care guidelines and policies administered by the National Institutes of Health and U. S. Department of Agriculture.
 - a. The first component, the Animal Resource Center, constructed with funds (\$2.4 million) appropriated by the 1981 legislature, provides first class animal care and research techniques that assure humane treatment of experimental animals.
 - b. The second component, the Institutional Animal Care and Use Committee (IACUC), consisting of veterinarians and scientists, serves as the campus watchdog for all programs and projects in which animals are employed.
 - c. The third component, inspections by U.S.D.A. and N.I.H. veterinarians, assure us that we meet national standards.
 - d. In sum, the animal program at MSU is highly regulated and humanely managed by well-trained veterinarians and scientists.
3. You must be made aware that passage of this legislation may be followed by the introduction of even more restrictive legislation by groups who apparently intend to restrict animal use, including their use for food and fiber. By doing so, our ability to study infections, cancer, nutrition, behavior and genetic diseases, as well as anatomical and physiological systems that enhance our understanding of the humans species, will be impaired.
4. To provide you with more specific details of our concern, I wish to introduce you to the Director of MSU's animal resource program, Dr. Jack

Frost who will, following his presentation, introduce other speakers concerned with the proposed legislation.

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Testimony
on
House Bill No. 432

"An Act Regulating the Transfer of Impounded Animals from Shelters and
Pounds to Dealers or Research Facilities."

3-7

Dr. Warren W. Frost, Director
Animal Resources Center
Montana State University

Mr. Chairman and members of the Committee. My name is Warren Frost. I am a veterinarian board-certified in the specialty of laboratory animal medicine and the present Director of Animal Resources at Montana State University.

As a veterinarian, and a long-time pet owner, I share the concern of the general public regarding the unnecessary death of a treasured family pet after the animal has been impounded in a private shelter or municipal pound. All shelters and pounds, however, have established holding periods of at least three days and in some cases as long as 10 days following the time that the animal is initially impounded. During this time, pounds and shelters encourage owners to reclaim their animal. It is only following this prescribed holding period that animals may be released to a biomedical research facility.

Unfortunately there are over 10 million animals killed each year in the United States by pounds or shelters because they are unwanted or have not been claimed. Between 40 and 80% of all animals in pounds or shelters are placed there by their former owners because either they could no longer care for the animal or simply wished to be relieved of the responsibilities of pet ownership. Biomedical research facilities use an extremely small percentage of these animals, less than 2%, and it is important to realize that had these relatively few animals not been released to a teaching or research institution, they would have been immediately killed by the pound or shelter. Passage of this legislation would, therefore, not save the life of a single dog or cat. Instead, it would require that small numbers of unwanted animals normally used in a humane manner for the betterment of human and animal health would be needlessly put to death in the pound or shelter.

I would like to emphasize that our use of pound animals at Montana State University is extremely small in terms of our overall use of laboratory animals. For instance, during the past year, we used 15 cats in biomedical research as compared with 8408 specially bred or wild rodents, 531 rabbits, 384 cattle, 1400 sheep, 440 pigs, and 4,000 chickens. Pound animals therefore accounted for approximately 1/10 of 1% of all animals used at this institution. No dogs have been used in over three years and all cats are legally purchased from a pound in Denver, examined by a practicing veterinarian, and flown to Bozeman. Despite this small use of pound animals, Montana State University, remains opposed to this proposed act for the following reasons:

- a) Pound cats represent a small but irreplaceable resource because they are more similar to man with respect to their neurological system than any other animal, and their random genetic makeup resembles the diverse genetic makeup you find in the human population of the United States. Federal funding is provided for this study which requires the use of pound cats, but continued funding could be jeopardized if we can no longer use such animals.
- b) The proposed legislation would prohibit USDA licensed biomedical research facilities in Montana from obtaining unwanted animals from any pounds, shelters or licensed dealers who legally obtain animals from pounds or shelters for the purpose of resale. The act would apply to other states, territories, the District of Columbia and foreign countries, as well as Montana. Since the cost of purchasing colony-bred animals would be prohibitive and, from a genetic standpoint, not as satisfactory, passage of this legislation would

essentially halt present and future research which might depend on the use of such animals.

- c) If the principle concern of the proponents of this legislation is to prevent the death of cherished family pets, we contend that such mechanisms are already in existence and do not require an act of the state legislature. Most responsible pet owners are well aware of the holding period at local pounds and shelters and once a family pet is missing, contact or visit these pounds and reclaim their animal long before the holding period has lapsed. In addition, we hold any animal that we receive from a pound for a minimum of five days before it would be used for any purpose and it is our policy to allow the rightful owner to reclaim their animal within this additional time period.
- (d) We are concerned that the primary purpose of this legislation may be to impede and, by increasingly restrictive legislation, eventually halt progress in biomedical and agricultural research made through humane and judicious use of animals in research. Such tactics have been advocated by members of some national "animal rights" groups which have pronounced the "pound issue" as their first legislative priority with more restrictive state legislation to follow. If taken to the extreme, which is advocated by some members of this movement, every aspect of man's relationship to animals, including their use for food and fiber, could be impacted. To better explain our concern and that of others in the State of Montana regarding this issue, I would like to enter as part of my testimony, a copy of an article that was reprinted in a February 1986 issue of the Montana Stockgrower titled The Immorality of Animal Rights. In addition, I also offer for your review a copy of a videotape produced by the Foundation for Biomedical Research titled Will I be Alright, Doctor? I believe this videotape provides further evidence of the continued need for the use of laboratory animals in biomedical research while emphasizing the moral obligations and responsibilities that are incumbent with such use.

In addition to these moral obligations, however, institutions utilizing research animals have a very substantial legal obligation which has been brought about by several federal laws, policies and guidelines. Five of these documents are presented for your review and include the Animal Welfare Act, 1985 revision of the NIH Guide for the Care and Use of Laboratory Animals, the Public Health Service Policy on Humane Care and Use of Laboratory Animals, the Health Research Extension Act, and its "Animals in Research" provisions and the Improved Standards for Laboratory Animals Act which, as part of the Farm Bill, became law on December 23, 1985.

These laws, policies and guidelines have many similar provisions which mandate the establishment of an Institutional Committee to oversee the care and use of laboratory animals. Committee membership must include at least one veterinarian and one member from the public sector who has no affiliation with the institution. In addition to this committee's responsibility for review of animal-related protocols and at least semi-annual inspections of all research areas where animals are housed or used, the committee has the responsibility and authority to require modifications of a study or to suspend an activity

involving animals which is not in accordance with provisions of any of these laws, policies or guidelines. The details of these provisions are quite specific and too voluminous to cover in this testimony, but cover such items as proper veterinary care, anesthesia and analgesia, living conditions for the animals and many other aspects concerned with appropriate animal care and use.

To ensure that individual institutions are in compliance with these regulations, unannounced site visits are conducted each year by veterinarians from the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture. In addition, we are subject to unannounced site visits from representatives of the National Institutes of Health at any time. The latter organization, which provides federal funds for much of the animal-related biomedical research has not hesitated to withdraw such support from institutions that were not in full compliance with established guidelines. Such prestigious institutions as Columbia University, the University of Pennsylvania, the City of Hope National Medical Center and the University of California at Berkeley have had funds withheld over the past two years because they failed to meet one or more of the requirements of established guidelines.

Over the past ten years I have served as a consultant to both the National Institutes of Health and the American Association for the Accreditation of Laboratory Animal Care (AAALAC) and site visited over 120 animal care programs nationwide. I can therefore assure you that Montana State University presently has one of the finest programs in the nation for the care and use of laboratory animals and I extend an invitation to any member of the legislature to view for themselves how we care for and use laboratory animals at this institution. The principal area of animal care and use is the Animal Resources Center which was completed in 1984 through funds supplied by the Montana legislature. Please feel free to visit us at any time, announced or unannounced. I believe that this high quality program that we have established at M.S.U. meets or exceeds the requirements of existing laws, policies and guidelines and will serve to attract young innovative investigators to our faculty. If the proposed legislation is passed, however, it will deter recruitment or retention of such faculty if they do not have reasonable access to unwanted pound animals that might be required for their research.

I thank you for allowing me to testify in opposition to this bill. I hope you will carefully consider the many aspects of this issue and I also urge you to vote against its passage.

BUSINESS AND LABOR COMMITTEE

HB 432 - IMPOUNDED PET ACT

February 5, 1987

TESTIMONY PRESENTED BY

James A. McMillan
Associate Professor of Physiology
Montana State Universtiy

Mr. Chairman and members of the Committee. My name is James McMillan. I am an Associate Professor of Physiology in the Biology Department and the WAMI Program at Montana State University. My testimony today will focus on just one aspect of the issue under debate: the benefits to society derived from research using pound animals. It is my strong conviction that the use of any animals by a civilized society, whether it be for food, fiber or health care, should be done as humanely and reverently as possible. But I also contend that such use of animals is essential for the maintenance and improvement of quality of life, for both humans and animals, in our society. This philosophy is not only endorsed by the mainstream of the scientific community and governmental agencies, but it is also actively endorsed by religious organizations such as the Roman Catholic, LDS and Seventh Day Adventist churches, who sponsor animal experimentation in their parochial universities.

The use of animals in biomedical research has its greatest impact on the identification of causes and development of treatments for diseases. An estimated 22,000 Montanans take medication for diabetes. This includes 2,200 for whom insulin is necessary for sustaining life. The discovery of insulin came from research using dogs. Approximately 8000 Montanans are now under medication to control epileptic seizures, medications which were developed and tested on animals before they were used on patients. In Billings alone, almost 600 cardiac bypass surgeries are performed each year to prolong and improve the quality of life for the patients, including friends and relatives of all of us here. These surgical procedures were all developed on animals. The polio epidemic of the late 1940's and early 1950's struck 30,000, and killed 2,500, Americans each year and touched virtually every family in Montana. The polio vaccine that has kept us and our children free from that disease was developed using cats.

While we celebrate our victories over diabetes, epilepsy, coronary artery disease and polio, there are still many diseases for which no cause and/or control is known. Examples are hardening of the arteries, arthritis, hypertension, multiple sclerosis, retinal degeneration, Lou Gehrig's Disease, Alzheimer's Disease, AIDS and fetal alcohol syndrome. Even with our technological advances, computer models can rarely provide the kinds of answers needed to attack these diseases. Not only is animal experimentation vital in such studies, in many instances it is necessary to use cats or dogs, which are the species most impacted by this bill. For example, of all non-primate species, the nervous system of the cat most closely resembles that of humans. This makes the cat the most appropriate animal for many studies of the brain and spinal cord. Likewise, the cardiovascular system of dogs is most similar to that of humans, making dogs the most appropriate animal model for studies of cardiovascular disorders.

It is also important to keep in mind that experimentation using pound animals has had a positive impact on the health and well-being of companion animals as well as humans. Responsible owners

can now immunize their pets against a myriad of diseases because of past research and testing on pound animals. Examples are rabies, distemper, leptospirosis, canine hepatitis and parvovirus in dogs and panleucopenia, feline leukemia and a host of respiratory viral diseases in cats. In some cases, such as rabies, there would undoubtedly be very stringent restrictions on the ability to even keep dogs and cats as pets if vaccines were not available to protect pets from diseases which represent a very real public health hazard.

There is one more consideration in this debate that rarely comes to light: the need for surgeons, both medical and veterinary, to practice and perfect their surgical skills on animals before performing them on patients. Again, the use of pound animals, especially, dogs, is essential in such training.

In summary, both humans and companion animals in our society enjoy a quality of life never before known, most of which has resulted from research involving pound animals. More important, there are many life-threatening diseases for which there is currently no known cause or cure, and for which the most efficient and effective approach is research and testing on pound animals. Considering that pound animals represent less than one-half of one percent of all experimental animals used in the United States, and that only one to two percent of all animals brought to pounds throughout the country are released for research, I contend that the prudent and humane use of pound animals is more than justified in terms of providing benefits to society that would otherwise be unattainable. I thank you for the opportunity to testify in opposition of this bill and I encourage you to vote against its passage.



**American
Diabetes
Association**

MONTANA AFFILIATE, INC.

HB

600 Central Plaza

Box 2411

Great Falls, Montana 59403

406 761-0908

February 5, 1987

Mr. Chairman and Members of the Committee.....

The officers of the American Diabetes Association, Montana Affiliate, would like to present the following statement on behalf of the American Diabetes Association.

The American Diabetes Association takes the position that the responsible use of animals is essential to bio-medical research and education in the treatment and ultimate cure and prevention of diabetes.

ADA grantee institutions must meet standards equivalent to those of the US Public Health regarding care and use of animals. All grant applications submitted to the ADA which propose to use animals must be reviewed and approved by an institutional animal care and use committee prior to review by an ADA research review committee.

Accreditation by the American Association for Accreditation of Laboratory Animal care and or other verifiable assurances also must be provided to be certain that animal facilities meet appropriate standards.

Personnel at accredited facilities must be carried out by veterinarians trained in lab animal needs. Any research proposals submitted to the ADA should use alternate methods to live animals when appropriate.

Anesthesia must be employed for surgical intervention and experiments should be designed to yield absolutely necessary information. Post procedural care must be minimized or relieve discomfort and unnecessary suffering should be avoided.

Experiments must terminate if continuation results in unnecessary pain or fear and animals must be put to sleep by currently acceptable methods.

All facilities must be in compliance with current federal, state, local, requirement and guidelines. All institutional review committee's must consist of non-scientist and public members in addition to the scientific community.

We feel that the use of pound animals is critical to bio-medical research. Present developments in islet cell transplantation vitally depends on the use of animals for research. The discovery of insulin depended on animal research in a major way. Most medical research in the past 50 years has depended on the use of animals.

We like other responsible organizations abhor cruelty and unnecessary treatment of animals and propose that the above guidelines will eliminate any possibility of this kind of treatment.

The use of pound animals was prohibited in Great Britain in 1962 with the result being the complete end to research in neuro science in Britain. At the time of this prohibition, Great Britain was the leading country in the ~~work~~ in this type of research.

WORLD

We urge you to sincerely consider the ramifications to the health of people in this country suffering from chronic illness when you consider the end to the use of pound animals for research

In closing and on a personal note.....I would like to speak for myself and the 22,000 Montanans who have Type 1 diabetes and must depend on insulin for life, that if it were not for bio-medical research with animals, I would not be standing here speaking to you this morning.

Thank You.

Tim Culliton, President, Great Falls

Dan Sturdevant, President Elect, Helena

Michael Barsotti, M.D., Vice President, Great Falls

Jane Mart, Secratary, Great Falls

Kevin Lee, CPA., Treasurer, Great Falls

Marilyn Moore, Past President, Cascade

Georgia Medvit, Board Member, Helena

Phyllis M. Doe
105 Yellowstone, #5
Billings, mt. 59101
Ph: 248-1817

Honorable Chairman Les Kittelman,
Business & Labor Committee, Room 312F

Dear Sir:

Before you is House Bill # 432 introduced by Hal Nager & others. It deals with the transfer of impounded animals from animal shelters and pounds to dealers, pet shops or research facilities.

In my opinion, this bill should have been passed 20 years ago. Why?

In the City of Billings, if your pet dog or cat disappears from its yard - one of these things happens to it:

1.) Found by neighbor and returned to owner by way of Lost/Found Ad or neighbor turns animal into Local Shelter/Board.

2.) Animal missing because a PERSON STOLE IT ON PURPOSE for Live Research.

3.) Picked up by Shelter/Board and taken to holding pen for 3 days only - if not claimed then put up for adoption - if not adopted - put to sleep. Total time: 6 days

4.) Found by Humane Society and held for at least 3 weeks before placing for adoption with shots.

In this City, the Council wants each department to be as self-sufficient as possible for the fiscal year. To make money on animals, you must sell them - to

If I'm beginning to sound "depressed" in this letter - it's because I've been tracking these animals for the past 4 years and 3 years ago, had many waves of action & inc. here to talk to the press and Sen. Baucus, Melcher and Rep. Maloney. It was very impressive.

At this time, we have 15 dogs missing a day, 7 days a week - and, if we're lucky, 1 will get back to its owner. How many do you think end up at our local shelter / Pound - to make money on? What do I tell an owner of a beautiful Labrador - Field & Trial Champion - valued & insured for \$200,000, that it was found at Hamilton, Mt. Federal Research Lab for Cardiac Studies?

Please consider this Bill most carefully. Let's put Montana on the map with animal owners / taxpayers / voters with a good piece of legislation to be proud of.

Sincerely,
Chyllian Rae

P.S. Essential pages in Booklet, "Problems of Pound Release and Sales."

Pgs. ① ② ③ ④ ⑤, 8, 11, 12, 14, 15, 17, 18, 26, 27, 28, 29, 31, 32, 36, 37, 38, 39, ④⑩ 44, 45, 47, 48, ⑤② ⑤①, 52, ⑥① ⑥② ⑥③ ⑦② ⑦③ and ⑧①

I can send extra copies - if needed.
Please, let me know.

Sunday, February 1, 1987

Dear Members of the House Business and Labor Committee,

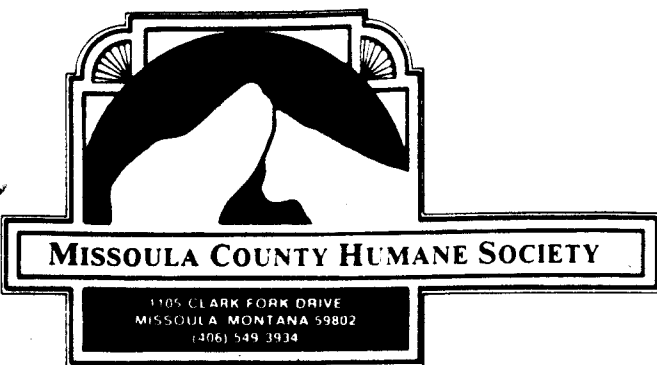
I am writing in support of a bill you are considering that would prevent the transfer of impounded animals to dealers and research facilities (House Bill No. 432).

I feel this bill is a step in the right direction in answering three of my (and the public's) concerns:

1. An Animal that was once someone's pet - which at one time felt the gentle touch of a human hand - can now, through no fault of its own, be subjected to treatment that is nothing more than a betrayal of the trust the animal had in humans.
2. I personally know of an instance where an animal was fraudulently adopted from a shelter, used to demonstrate a new medical device, and then was killed. I was horrified to learn that no crime was committed. I worry as to how many similar "non-crimes" are occurring. If we agree that this behavior is wrong, then we need the legislation in order to prevent and punish such actions.
3. Historically, we have seen where out-of-state interests have come to Montana to obtain what they could not legally obtain in their own states. As of now, eleven states have enacted similar legislation to HB 432. I am sure that dealers of animal research facilities do not care where their "merchandise" comes from. Please do not let Montana be used that way again.

Thank you,

Francis Weigand
Francis Weigand
c/o Dept. of Physics
University of Montana 59



February 1, 1987

Dear Legislator:

The Missoula County Humane Society is pleased by the introduction of HB 432 preventing "pound seizure" in the state of Montana. We strongly urge your support of this bill to prevent the reprehensible practice of allowing or requiring shelters to sell pets to research facilities.

Animal shelters were established as refuges for animals. A concept synonymous with sanctuary; shelters provide important and specific functions: to offer temporary homes for lost and abandoned animals, to reunite lost pets with their owners, to adopt unclaimed animals into new homes and, as a last resort, to offer humane euthanasia. Shelters should not be warehouses for laboratories. Pound seizure alters the basic rationale for the existence of animal shelters.

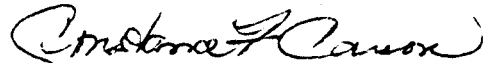
All of Montana's shelters depend on some kind of public support. Our own organization is entirely dependent on the support of its membership, donations and the animal adoption program. Selling animals to research facilities undermines public trust. This leads to increased animal abandonment which in turn creates a menace to public health, livestock and wildlife. The end result is greater costs to local or county governments for animal control.

As "random source" research subjects, (I.E. nothing is known about the animal's medical, genetic, or environmental background) shelter animals add undesirable variability to scientific experiments. In a recent attempt to end pound seizure in California more than 730 physicians, veterinarians and PhD professionals signed a statement reading "Pound seizure is an ill-conceived practice, damaging to the good name of science and to its quality. The use of animals from shelters for experimentation is detrimental to sound research... Pound seizure perpetuates inferior research." Moreover, the National Institutes of Health (NIH), the largest biomedical research entity in the world, prohibits the use of shelter animals in its own extensive research programs and has done so for over ten years.

Overall, it should be recognized that the pet overpopulation problem is a tragedy created by human irresponsibility. As a society we have an obligation to solve the problem through public education, pet sterilization and enforcement of animal control laws. Treating the tragedy as a convenient "resource" to be exploited by the research community is inexcusable. Capitalizing on the problem only compounds the tragedy.

We are proud to know you are working to prevent pound seizure in our state. We urge a unanimous vote in favor of this bill in the committee hearings and its passage by the entire legislation. Thank you for your concern and your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Constance F. Carson".

Constance F. Carson, Director
Missoula County Humane Society



**BITTER ROOT
HUMANE ASSOCIATION**

P.O. BOX 57 • Hamilton, MT. 59840

February 2, 1987

Chairman
Business and Labor Commission
Helena, Mt.

Dear Sirs:

This letter is to voice our support of House Bill 432 regarding the use of shelter and pound animals in experimentation.

We especially deplore the use of household pets taken from shelters. The trauma for these animals is extremely great.

If animals were not used for research, other avenues would be found. Much animal research is unnecessary duplication and is always inhumane.

We are asking you as a committee to support us by supporting this bill. Thank you.

Sincerely,

Betty Cook

Board of Directors
Bitter Root Humane Assoc.
Betty Cook, President

2/5/87

Chairman, Business & Labor Commission.

I support House Bill 432 which addresses the issue of obtaining animals from shelters for their use in research.

Please, give your support to this most important issue for the humane treatment of animals.

Sarahana R. Hamerton
380 Blodgett Camp Rd
Hamerton, IN 46840

-1-
2/5/87

Chairman, Business Labor Commission

I hereby support House Bill 432, which opposes the practice of individuals obtaining animals for the purpose of selling them to research labs.

Deborah S. Shaffer
515 Davidson Lane
Corvallis, Montana 59828

Montana Veterinary Medical Association

B.F. Newcomb, D.V.M.

Sec. - Tres.

4925 Hart Lane Helena, Montana 59601 (406) 227-5172

The Montana Veterinary Medical Association must go on record in opposition to House Bill 432.

In concert with guidelines promulgated by the American Veterinary Medical Association we acknowledge " that laws and regulations governing the use of animals in biomedical research are adequate, but have not been sufficiently funded, consistently enforced, and fully implemented to insure humane care and treatment of animals, AVMA supports adequate funding for improved enforcement of these regulations."

AVMA and The Montana VMA recognize " the central and essential role of animals in research, experimentation and testing for continued improvement in the health and welfare of all animals including man." We "also recognize that humane care of animals used in teaching, research and testing is an integral part of these activities and that a high level of animal care already exists in many research institutions throughout the country. The importance of excellent animal care is recognized via the establishment of the National Institutes of Health "Guide for the Care and Use of Laboratory Animals", the establishment of laboratory animal care programs under the USDA/APHIS, and the voluntary commitment to effective standards in housing and laboratory animal care under the guidelines and monitoring program of the American Association for Accreditation of Laboratory Animal Care (AAALAC)."

The Montana VMA and AVMA encourage efforts to improve humane care of animals in governmental, industrial, and other institutions, and non-institutional sectors of society (i.e., private ownership). Continued efforts by organizations concerned with the responsibilities of private ownership of animals will improve public knowledge on proper animal care practice."

The Montana VMA and AVMA "acknowledge that the prudent and humane use of random-source (unowned, abandoned, stray, and unidentified dogs and cats) animals in veterinary medical education and biomedical research is justified and that the carefully controlled use of such animals contributes greatly to improving the health and welfare of both animals and humans."

From "the Veterinarians Role in Companion
Animal Welfare"

Published by American Veterinary Medical Association

HB 432
2/5/87

ACTION  INC.



PROBLEMS of POUND RELEASE and SALES

Feb 5, 1987

ARTHUR L. BEAMAN, Ph.D.

HB-3

443

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Mr. Chairman, members of the committee my name is Dr. Arthur Beaman. I am the Chair of the Board of Psychologists and am on the faculty in the Department of Psychology at the University of Montana. This is my third year on the board and, as you know, the board is concerned with the protection of the public. When a person represents herself or himself as a psychologist the public has a right to know that the title implies some minimal level of training and competence. Additionally the board must evaluate credentials, administer the national licensing exam, and process complaints made against licensed psychologists.

The proposed revision in our law ~~also~~ follows advice from our lawyer ^{to produce consistency} ~~so that we~~ are ~~consistent~~ with other ^{Montana} licensing laws. Also protection is ~~provided~~ provided so complainants are protected from liability ^{facilitating} ~~an objective and fair~~ disposition of ethical complaints.

The revisions also represents an attempt by the board to assist and facilitate the licensed professionals by updating the section of the practice of psychology. The changes produces consistency with other state laws by adopting the national suggested statement of the practice of psychology. The change maintains currency in the description of contemporary psychology^{practice}. The statement reflects activities that psychologists now do - activities ~~from~~^{pertaining to} other professional group are unaffected and no extensions beyond current endeavors are made. ~~Maintaining possible licensure in other states by reciprocity is facilitated~~ here also. This change also keeps Montana abreast of ~~some~~ national considerations ~~and~~ so our licensed psychologists may benefit ^{qualifying for licensure by} by reciprocity ~~laws~~ in other states.

2/5/87

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Ever since the first licensing bill for psychologists in the early 1970's there has been ambiguities in interpreting the educational requirements. For example I am a social psychologist and am not trained to provide clinical

mental health services to the public. ^{I publish research in the areas of social and personal} Yet ~~am trained to provide a variety of activities~~ 1978 when I wanted to do some private consulting services. For example I am currently consulting of a nature for which I am trained ~~evaluate the effectiveness of a bilingual~~ I wanted to be licensed, ~~been~~ ~~program~~.

Yet I needed to ~~be~~ become ~~was~~ licensed in

1978 in order to perform a consulting job for which I was qualified. ^{because our law seemed to apply to all psychologists} We on

the board spend a large amount of time evaluating credentials and corresponding with persons who wonder whether they qualify for licensure. We wish to improve the clarity of our law to remove some ambiguity while maintaining the current standards and the current spirit of the law.

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The subspeciality in psychology that trains persons to provide therapeutic services is called Clinical psychology. The change in our law maintains the educational level at the doctoral level but more clearly indicates that it pertains to clinical psychology. As research provides new knowledge and new techniques the American Psychological Association updates requirements which training programs must meet in order to be approved. Our bill refers to these APA standards thus ~~preventing~~ ~~or~~ avoiding the necessity of revising our bill every time ~~changes~~ improvements in the field require alterations in educational programs.

Since our ^{current} bill became law APA has clearly ~~stated~~ stated methods whereby a doctoral level non-clinical psychologist may be retrained in clinical psychology. We have included in our proposed revision a section incorporating this so ^{that} persons ~~so~~

2/5/87

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so trained ~~a~~ will be able to take the examination for licensure.

Lastly persons who have appropriate training but have received that training in a non-traditional program or a program in the process of being approved by APA may be ~~licensed~~ qualify for licensure by demonstrating they have the educational preparation specified by the board.

The board strongly feels that passing this bill will profit potential applicants by adding clarity, will reduce unnecessary effects ~~of the board~~ made by the board in attempting to clarify the requirements on a case by case basis.

Of most importance is maintain maintaining standards so the public will be protected and may be assured that anyone representing him or herself as a psychologist

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The board wishes to amend section 37-17-302(d)(ii) to read:

(ii) has received a doctoral degree in psychology from an accredited college or university and has successfully completed formal clinical graduate retraining in a program approved by the American psychological association.

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2/5/87
437

EXPLANATION OF AMENDMENTS
HOUSE BILL 437

Subsection (1)(a) of the House Bill 437, as introduced, permits the commissioner to take two actions: (1) issue a cease and desist order after notice and hearing; or (2) issue a temporary cease and desist order. Amendments 1 through 3 break up subsection (1)(a) into two parts--(1)(a) and (1)(b)--to distinguish between the two kinds of cease and desist orders.

Amendment 4 clarifies that the temporary order referred to is a temporary cease and desist order.

Amendment 5 provides that, if a temporary cease and desist order is issued, the respondent must request a hearing in writing within 15 days of receiving the order. It also guarantees a prompt hearing by requiring the commissioner to hold a hearing within 20 days of receiving a request for a hearing. It clarifies that a temporary cease and desist order becomes final if the respondent does not request a hearing within 15 days of receiving the order.

Amendment 6 simply changes subsection (b) into subsection (c) to correspond with the changes made in amendments 1 through 3.

Amendment 7 deletes the language permitting the commissioner to receive reasonable attorney fees if she prevails in a district court action for an injunction. It is unfair to permit one prevailing party to receive attorney fees without granting the same right to the other party, if he prevails.

Amendment 8 spells out an expedited hearing process for each cease and desist order, whether it is temporary or not.

PROPOSED AMENDMENTS
HOUSE BILL 437

1. Page 1, line 16.
Following: "hearing"
Insert: ";

2. Page 1, lines 16 through 17.
Strike: ". Pending the hearing, the commissioner may"

3. Page 1, line 17.
Following: "may"
Insert: "(b)"

4. Page 1, line 17.
Following: "temporary"
Insert: "cease and desist"

5. Page 1, lines 19 through 21.
Strike: lines 19 through 21.
Insert: "If the commissioner issues a temporary cease and desist order, the respondent shall have 15 days from receipt of the order to make a written request for a hearing on the allegations contained in the order. The hearing must then be held within 20 days of the commissioner's receipt of the hearing request, unless the time is extended by agreement of the parties. If the respondent does not request a hearing within fifteen 15 days of receipt of the order and the commissioner does not order a hearing, the order becomes final."

6. Page 1, line 22.
Strike: "(b)"
Insert: "(c)"

7. Page 2, lines 5 through 7.
Strike: "If the commissioner prevails, he is entitled to reasonable attorney fees as fixed by the court."

8. Page 2, lines 8 through 13.
Strike: subsection (2) in its entirety
Insert: "(2) If a hearing is held on a cease and desist order, both parties shall have 20 days from the date the hearing is concluded, or from the date a transcript of the hearing is filed if one is requested, to submit proposed findings of fact, conclusions of law, orders, and supporting briefs to the hearing examiner. The parties shall then have an additional 10 days within which to submit comments on the opposing party's proposed findings of fact, conclusions of law, order, and briefs. A final order shall issue within 30 days of the submission of the comments."

July 31, 1985

Al Ambs, President
American Plan Life Insurance Co.
P. O. Box 9000
Bozeman, MT 59715

Dear Mr. Ambs:

A number of issues concerning American Plan Life Insurance Company (APLIC) have come to my attention. These issues concern APLIC contacting policyholders with various offers of settlement. It is my feeling that these offers only make a difficult situation worse and hamper our attempts to resolve the litigation. The following paragraphs outline my specific concerns and I am requesting your immediate action.

Policyholders contacted by APLIC report to us they feel they're being pressured to revoke their surrender requests or not receive interest they may be owed. The applicable time and amount of interest that will be paid on surrendered policies has not been resolved. This is a matter for the court to decide. It is not a decision to be made by APLIC alone. You are requested to cease the practice of telling policyholders they will not receive interest.

APLIC is offering policyholders single premium deferred annuities at 10.6% annual return. This office is having a difficult time reconciling the fact that APLIC is not able to pay policies which have been surrendered yet is now able to offer a 10.6% return. You are requested to submit to me documentation which supports the promise of a 10.6% return. This should include specific identification of assets which will support this liability.

Further, APLIC seems to be ignoring valid assignments of their policies executed by their policyholders. For example, if an APLIC policyholder wishes to change his coverage to another insurer, that insurer may accept an assignment of the old policy in lieu of payment by the individual. The new insurer then surrenders the policy to APLIC and replaces the coverage with its own policy. The original APLIC policyholder no longer has the right to the APLIC policy and does not have authority to sign the APLIC Special Option Letter. The surrender request can only be changed by the insurer holding the assignment.

July 31, 1985

Finally, and of great concern, is that APLIC is indicating to policyholders that decisions by this office and the court are the reasons it is not paying surrenders. This is misleading and false. If APLIC has sufficient funds to pay surrendered policies, we would allow it do so. It is also misleading to tell policyholders that this office is holding the reserve which would permit surrender values to be paid. The amount of the reserve is insignificant when compared with the total amount of surrender requests that have been made. In any case, the reserve is held as a condition of APLIC doing business in this state (the same as is required of other insurance companies). Without this reserve APLIC would not be allowed to do business in Montana. You are to cease immediately from intimating that this office or the court are delaying surrender of payments.

I have made my concerns clear. I believe such actions by APLIC are not in the best interests of policyholders. Misleading and false statements only create a more difficult climate in which to resolve the problems faced by American Plan.

With best personal regards, I am

Very truly yours,

Andrea "Andy" Bennett
State Auditor and
Commissioner of Insurance

AAE:cal:3M-D11,12

STATE AUDITOR
STATE OF MONTANA

12(2)
2/5/87
HB 437

Andrea "Andy" Bennett
STATE AUDITOR



COMMISSIONER OF INSURANCE
COMMISSIONER OF SECURITIES

NEWSRELEASE

-For Immediate Release-

July 31, 1985

In a letter to Al Ambs, President of American Plan Life Insurance Company (APLIC) of Bozeman, State Auditor and Insurance Commissioner Andy Bennett demanded immediate changes in information considered to be misleading that is being supplied to APLIC's Montana policyholders.

The Montana Insurance Department, under former State Auditor E.V. "Sonny" Omholt, placed American Plan (formerly Life of Montana) under supervision on in the fall of 1984. This action was taken because of the alleged evidence that the company did not have the financial assets required in Montana to support the Company's potential claims and policy surrenders.

Commissioner Bennett requested that APLIC cease pressuring policyholders to revoke their surrender requests by implying they might not receive interest they may be owed on their policies. "Whether interest is to be paid is not a decision of American Plan

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Life Insurance Company," said Bennett, "its financial affairs are now in the hands of the court and it is the court that will set the time and amounts of interest payments if it deems them appropriate."

In addition to her concern over the pressure policyholders have reported getting from APLIC, Bennett also requested justification for the 10.6% interest return offered policyholders on single premium deferred annuities. In her letter to Ambs, the Insurance Commissioner said, "This office is having a difficult time reconciling the fact that APLIC is not able to pay policies which have been surrendered yet is now able to offer a 10.6% return. You are requested to submit to me documentation which supports the promise of a 10.6% return and include specific identification of assets which will support this liability."

Commissioner Bennett also pointed out that APLIC was ignoring the changes of coverage to alternative insurance carriers some policyholders have chosen. APLIC has been offering these policyholders special options (like the single premium deferred annuity) for their policies. As Bennett pointed out to Mr. Ambs, any assignment of an insurance policy to another company automatically places that company in the position of authority over any decision affecting the option choices. "Rather than addressing the policyholder who has made an assignment of their policy, you are legally required to address the new insurance company," said Bennett.

In her final instruction to Ambs, Bennett required an immediate halt to his or his company's statements intimating that either the Montana Insurance Department or the District Court were -----

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responsible for delays in the payment of policy surrenders. It is false and misleading to tell policyholders that this office is holding a reserve which would permit surrenders to be paid. You know as well as any insurance agent in this state that a reserve is required of every insurance company doing business in Montana. Without this reserve, APLIC would not be allowed to do business here."

"One of the main points I sought to make with Mr. Ambs," Bennett explained, "is that this office does hold APLIC's reserve on deposit, but that reserve is not readily convertible to cash and would not therefore permit all policyholders to be paid immediately, as they contend. The sale of the assets on deposit with the Montana Insurance Department would result in a loss to APLIC which would further reduce the company's net worth."

In a final statement to Ambs, Bennett said, "I have made my concerns clear. I believe the actions I've described are not in the best interest of policyholders. Misleading and false statements only create a more difficult climate in which to resolve the problems faced by American Plan Life Insurance Company."

AAB/cal:A23, 24, 25

BEFORE THE INSURANCE DEPARTMENT
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF)
)
AMERICAN PLAN LIFE INSURANCE)
COMPANY)

DEMAND FOR HEARING AND AUTOMATIC STAY
OF EFFECTIVENESS OF ORDER

Comes Now American Plan Life Insurance Company (here-
after referred to as APLIC), a Montana domestic insurer,
and states the following:

1. On or about August 1, 1985, APLIC received a let-
ter Commissioner Bennett dated July 31, 1985, a copy of
which is attached hereto.

2. It appears to APLIC that said letter is suscepti-
ble to being interpreted as an "order" within the meaning
of the Montana Insurance Code and is therefore treated as
such for purposes of this filing.

3. If said letter be interpreted to be an "order"
then it unlawfully infringes upon APLIC's right to conduct
its business in the following respects:

(a) It requests APLIC to "cease the practice of tel-
ling policyholders they will not receive interest"; and

(b) It requires APLIC to "cease immediately from
intimating" the Department of Insurance is delaying the
payment of valid surrenders by refusing to release assets

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STATE CLERK
OFFICE

AUG 9 4 30 PM '85
HILLENBURG

on deposit with that Department .

1 4. Said letter infringes upon APLIC's efforts to
2 conserve its business and APLIC is therefore aggrieved by
3 said letter.

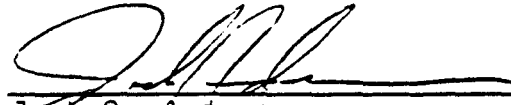
4 5. If said letter be deemed an "order" then said
5 order is based on incorrect facts, incorrect interpreta-
6 tion of law, and incorrect application of fact to law.

7 WHEREFORE, APLIC does hereby demand a hearing as pro-
8 vided for in Section 33-1-701, MCA, and does hereby re-
9 quest that said "order" be rescinded.

10 APLIC does hereby further invoke its right to an
11 automatic stay of the effect of said "order" as provided
12 for in Section 33-1-702, MCA.

13 Dated this 9 day of August, 1985.

14 GOUGH, SHANAHAN, JOHNSON & WATERMAN

15 

16 Jack O. Anderson
17 P.O. Box 1715
18 Helena, MT 59624

19 A. Bob Jordan
20 Brookline North Office Park, Suite 130
21 6051 North Brookline
22 Oklahoma City, OK 73112

23 Attorneys for American Plan Life
24 Insurance Company

25 16303

STATE AUDITOR
STATE OF MONTANA



Andrea "Andy" Bennett
STATE AUDITOR

COMMISSIONER OF INSURANCE
COMMISSIONER OF SECURITIES

July 31, 1985

Al Ambs, President
American Plan Life Insurance Co.
P. O. Box 9000
Bozeman, MT 59715

Dear Mr. Ambs:

A number of issues concerning American Plan Life Insurance Company (APLIC) have come to my attention. These issues concern APLIC contacting policyholders with various offers of settlement. It is my feeling that these offers only make a difficult situation worse and hamper our attempts to resolve the litigation. The following paragraphs outline my specific concerns and I am requesting your immediate action.

Policyholders contacted by APLIC report to us they feel they're being pressured to revoke their surrender requests or not receive interest they may be owed. The applicable time and amount of interest that will be paid on surrendered policies has not been resolved. This is a matter for the court to decide. It is not a decision to be made by APLIC alone. You are requested to cease the practice of telling policyholders they will not receive interest.

APLIC is offering policyholders single premium deferred annuities at 10.6% annual return. This office is having a difficult time reconciling the fact that APLIC is not able to pay policies which have been surrendered yet is now able to offer a 10.6% return. You are requested to submit to me documentation which supports the promise of a 10.6% return. This should include specific identification of assets which will support this liability.

Further, APLIC seems to be ignoring valid assignments of their policies executed by their policyholders. For example, if an APLIC policyholder wishes to change his coverage to another insurer, that insurer may accept an assignment of the old policy in lieu of payment by the individual. The new insurer then surrenders the policy to APLIC and replaces the coverage with its own policy. The original APLIC policyholder no longer has the right to the APLIC policy and does not have authority to sign the APLIC Special Option Letter. The surrender request can only be changed by the insurer holding the assignment.

Al Ambs, President
Page Two

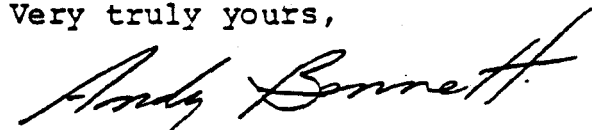
July 31, 1985

Finally, and of great concern, is that APLIC is indicating to policyholders that decisions by this office and the court are the reasons it is not paying surrenders. This is misleading and false. If APLIC has sufficient funds to pay surrendered policies, we would allow it do so. It is also misleading to tell policyholders that this office is holding the reserve which would permit surrender values to be paid. The amount of the reserve is insignificant when compared with the total amount of surrender requests that have been made. In any case, the reserve is held as a condition of APLIC doing business in this state (the same as is required of other insurance companies). Without this reserve APLIC would not be allowed to do business in Montana. You are to cease immediately from intimating that this office or the court are delaying surrender of payments.

I have made my concerns clear. I believe such actions by APLIC are not in the best interests of policyholders. Misleading and false statements only create a more difficult climate in which to resolve the problems faced by American Plan.

With best personal regards, I am

Very truly yours,



Andrea "Andy" Bennett
State Auditor and
Commissioner of Insurance

AAB:cal:3M-D11,12

18-1-102. State contracts to lowest resident bidder. (1) In order to provide for an orderly administration of the business of the state of Montana in awarding contracts for materials, supplies, equipment, construction, repair, and public works of all kinds, it shall be the duty of each board, commission, officer, or individual charged by law with the responsibility for the execution of the contract on behalf of the state, board, commission, political subdivision, agency, school district, or a public corporation of the state of Montana to award such contract to the lowest responsible bidder who is a resident of the state of Montana and whose bid is not more than 3% higher than that of the lowest responsible bidder who is a nonresident of this state.

(2) In awarding contracts for purchase of products, materials, supplies, or equipment, such board, commission, officer, or individual shall award the contract to any such resident whose offered materials, supplies, or equipment are manufactured or produced in this state by Montana industry and labor and whose bid is not more than 3% higher than that of the lowest responsible resident bidder whose offered materials, supplies, or equipment are not so manufactured or produced, provided that such products, materials, supplies, and equipment are comparable in quality and performance.

(3) In awarding contracts for construction, repair, and public works of all kinds, bids received from nonresident bidders are subject to the 3% preference, or that percent that applies to a Montana bidder in the award of public contracts in the nonresident bidder's state of residence, whichever is greater.

(4) This requirement shall prevail whether the law requires advertisement for bids or does not require advertisement for bids, and it shall apply to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant thereto.

HOUSE BILL 417

The following are examples of how the current preference law effects the awarding of contracts for the purchase of goods by public agencies and how the changes in the preference law proposed in House Bill 417 would effect the awarding of those contracts.

For illustrative purposes:

Montana Widget is a resident bidder with Montana Made goods;
ABC Distributing is a resident bidder with non-Montana made goods;
Out-of-State, Inc., is a nonresident bidder.

EXAMPLE 1: Current Law*

Montana Widget	\$103.00
ABC Distributing	100.00

Difference in bids - 3%: Contract to Montana Widget.

EXAMPLE 2: Current Law*

ABC Distributing	\$103.00
Out-of-State, Inc.	100.00

Difference in bids - 3%: Contract to ABC Distributing

EXAMPLE 3: Current Law*

Montana Widget	\$103.00
Out-of-State, Inc.	100.00

Difference in bids - 3%: contract to Montana Widget.

EXAMPLE 4: Current Law - Attorney General's interpretation

Montana Widget	\$102.00
ABC Distributing	101.00
Out-of-State, Inc.	100.00

Difference in bids of Montana Widget and ABC Distributing - .9%

Difference in bids of Montana Widget and Out-of-State, Inc. - 2%

Difference in bids of ABC Distributing and Out-of-State, Inc. - 1%

Contract goes to ABC Distributing: Under Attorney general's opinion Montana Widget does not get a 3% preference over ABC Distributing when Out-of-State, Inc., is also bidding.

* Under House Bill 417, these examples would be the same.

EXAMPLE 5: Current Law - Our interpretation

Montana Widget	\$106.00
ABC Distributing	103.00
Out-of-State, Inc.	100.00

Difference in bids of Montana Widget and ABC Distributing - 3%
Difference in bids of Montana Widget and Out-of-State, Inc. - 6%
Difference in bids of of ABC Distributing and Out-of-State, Inc. - 3%

Contract to Montana Widget: ABC Distributing has a preference over Out-of-State, Inc., as its bid is not more than 3% higher, so Out-of-State, inc., is out and Montana Widget has a 3% preference over ABC distributing.

EXAMPLE 6: House Bill 417

Montana Widget	\$105.00
ABC Distributing	103.00
Out-of-State, Inc.	100.00

Difference in bids of Montana Widget and ABC Distributing - 1.9%
Difference in bids of Montana Widget and Out-of-State, Inc. - 5%
Difference in bids of ABC Distributing and Out-of-State, Inc. - 3%

Contract to Montana Widget: Montana Widget's bid is not more than 3 % higher than ABC Distributing's nor more than 5% higher than Out-of-State, Inc.'s.

EXAMPLE 7: House Bill 417

Montana Widget	\$105.10
ABC Distributing	103.00
Out-of-State, Inc.	100.00

Difference in bids of Montana Widget and ABC Distributing - 2.04%
Difference in bids of Montana Widget and Out-of-State, Inc. - 5.1%
Difference in bids of ABC Distributing and Out-of-State, Inc. - 3%

Contract to ABC Distributing: While Montana Widget's bid is not more than 3% higher than ABC Distributing's, it is more than 5% higher than Out-of-State, Inc.'s.

EXAMPLE 8: House Bill 417

Montana Widget	\$105.00
ABC Distributing	101.00
Out-of State, Inc.	100.00

Difference in bids of Montana Widget and ABC Distributing - 3.9%.

Difference in bids of Montana Widget and Out-of-State, Inc. - 5%

Difference in bids of ABC Distributing and Out-of-State, Inc. - 1%

Contract to ABC Distributing: While Montana Widget's bid is not more than 5% higher than Out-of-State, Inc.'s, it is more than 3% higher than ABC Distributing's.

SUMMARY OUTLINE - H.B. 569

I. INTRODUCTION

A. Scope of H.B. 569

1. H.B. 569 amends 18-1-103 by adding 18-1-111 to the list of bid preference statutes to which the current definition of "resident bidder" applies;
2. H.B. 569 also grants rule-making authority to the Department of Administration and provides for an immediate effective date;
3. H.B. 569 does not change the current definition of "resident bidder"; nor does it change how bid preferences are determined, or enlarge or narrow the scope of preference provisions in 18-1-102, 18-1-103, and 18-1-112.

B. Background

1. H.B. 569 corrects an incongruity in the general bid preference statutes by applying a uniform definition of "resident bidder" to all such statutes;

2. The incongruity was first "discovered" in December, 1986, by the Purchasing Division of the Department of Administration;
 - a. the Purchasing Division was examining bids for a particular state institution [School for the Deaf and Blind] milk supply contract;
 - b. the bids were the same, because the state's milk price control scheme dictated the bid price;
 - c. the Purchasing Division invoked 18-1-111 as a "tie-breaker", and rejected the bid from Meadow Gold Dairy of Great Falls on the ground that the parent company, Beatrice Dairy Products, Inc., was a "nonresident" for purposes of 18-1-111.
3. Prior to this agency determination, for about 20 years, state institution milk supply contracts typically had been awarded by drawing one bidder from a hat;

- a. this method had been developed
to avoid chaotic and disruptive
bid practices affecting the milk
industry in state milk supply
contracting;
- b. the method was well-suited to
this situation precisely because
milk price controls set up by
the state ruled out truly
competitive bidding on milk
supply contracts.

II. EFFECTS OF AGENCY INTERPRETATION

A. Producer Effects

- 1. Roughly 165 Montana milk producers, or about 65%
of all producers in the state, sell their milk to
Beatrice facilities located in Billings, Great
Falls, Kalispell, and Missoula;
- 2. Given the Purchasing Division's present
interpretation of Beatrice's status under
18-1-111, the state institution milk market is
closed off to those producers;

- a. the milk price control scheme virtually guarantees that Beatrice's milk supply bids will be the same as bids from other distributors;
 - b. the Purchasing Division will not award milk supply contracts to Beatrice if 18-1-111 is used as a tie-breaker, so long as Beatrice is treated as a non-resident under that statute.
3. Beatrice cannot replace the state institution milk market, especially in a stagnant economy;
4. Without that market, a reduced percentage of the producers' milk will have higher-class usage, which means that the producers will get a lower price for their raw milk.

B. Milk Industry Effects

1. Locking out some 65% of Montana's dairy producers from a significant and irreplaceable market invites chaos;

- a. those producers, and the distributors dealing with them, will be forced to pursue any available means to reacquire access to the State institution market;
 - b. legal challenges to the Purchasing Division's new interpretation would have to be considered;
 - c. informal understandings as to who may bid on state milk supply contracts might have to be disregarded.
2. No milk producers or distributors will gain in the long run if the present situation is not corrected.

III. LEGISLATIVE HISTORY OF AFFECTED STATUTES

A. Section 18-1-111

- 1. 18-1-111 was enacted in 1923 as part of a broad scheme governing state property;

2. The 1923 Act had one preference provision [what is now 18-1-111], which had a narrow scope:

a. "where both bids and quality of the goods are the same, preference shall be given to articles of local and domestic production and manufacture and ... to resident bidders over nonresident bidders";

b. that is, no preference existed unless goods and bids were equal and, where that was the case, the state could look to either where the goods were produced, or where the bidders resided, to break the tie.

3. 18-1-111 has remained substantially unchanged since 1923.

B. Section 18-1-103

1. 18-1-103 was enacted in 1961, along with what are now sections 18-1-102 and 18-1-112;

2. Together, these provisions instituted a specific preference for resident bidders over non-resident bidders; and extended to contracts awarded by political subdivisions of the state as well as the state itself;

3. 18-1-103 was amended in 1969:

a. the preference was increased from 2% to 3% on the price of supplies; and

b. the definition of "resident bidder" was expanded to include bidders whose products are manufactured by Montana industry and labor, regardless of the bidder's ownership and regardless of whether the bidder was technically a foreign or domestic corporation.

C. Recodification

1. In 1979, the bid preference statutes were recodified into Montana Code Annotated;

2. Through recodification, the first part of the first sentence of what is now 18-1-103 was changed from: "For the purposes of this Act ..."
to: "For the purposes of 18-1-102, 18-1-103,
and 18-1-112 ...";

a. "this Act" referred to the 1961
Act;

b. 18-1-111 predated the 1961 Act
by nearly 40 years.

D. Agency Regulations

1. For regulating state procurement activities, the Department of Administration has adopted regulations including:

a. A.R.M. 2.5.201(13) "Resident means any person, firm, partnership, or corporation whose domicile or offered materials, supplies, or equipment meets the requirements of 18-1-103 MCA";

b. A.R.M. 2.5.403(1): "The Department determines eligibility of vendors for bidding preferences authorized by 18-1-101 through 18-1-113 MCA";

c. A.R.M. 2.5.601(10): authorizes drawing lots to award contracts in tie-bid situations not resolved by 18-1-111.

2. Agency regulations suggest that the "resident bidder" definition in 18-1-103 applies throughout.

3. Until December of 1986, the Department followed this line by recognizing Beatrice as a "resident bidder" and including its bids in the group from which lots would be drawn.

IV. COMPARISON WITH H.B. 417

A. H.B. 417 Scope

1. H.B. 417 overhauls the bid preference scheme, amending six separate statutes and repealing one;

2. 18-1-111 is the statute that would be repealed, apparently on the theory it has become obsolete.

B. H.B. 417 Effects On Milk Supply Contracts

1. If enacted in its present form, H.B. 417 would not cause Beatrice to lose its present status as a "resident bidder" for general application bid preference provisions;
2. By repealing 18-1-111, which applies narrowly to tie bids for state institution supply contracts, H.B. 417 would eliminate the problem that arose when the Purchasing Division began using the statute to reject Beatrice bids;
3. H.B. 417 would place Beatrice's dairy producers on an equal footing with their counterparts.

V. CONCLUSION

A. The existing situation is intolerable for a large number of Montana's dairy producers.

1. 18-1-111 should be harmonized with more modern bid preference provisions, to ensure "Montana status"

for a product which:

- a. originates on Montana farms, and is
- b. processed in Montana facilities by
- c. Montana labor, and
- d. transported by Montana trucks with
Montana drivers for
- e. consumption at Montana institutions.

DATE 2/5/87
RE 569

LARRY KAUFMAN - PRESIDENT OF
THE MONTANA DAIRYMEN'S ASSOCIATION

GOOD MORNING:

My name is Larry Kaufman. As a Montana dairy producer and as President of the Montana Dairymen's Association, I strongly urge this Committee to recommend House Bill No. 569 for passage by the Legislature.

House Bill No. 569 is critical to the Montana Dairy Industry because as explained earlier by Mr. Kelly and Representative Grady, the present change in the interpretation given to Montana's Public Bidding Statutes effectively excludes 65% of every Montana dairy farmer's milk produced for consumption in this State from being used to supply the milk needs of Montana institutions. It is a fact that in Montana, of the some 250 active producers of raw milk, 65% of all of these producers - of which I am one - sell their raw milk to processing plants located in Montana which are operated by Beatrice Dairy Products, Inc. These Beatrice Dairy Products, Inc. processing plants utilize

Montana labor to process only the raw milk as furnished by Montana dairy farmers like me into milk products which are then sold for consumption in Montana.

Until just recently, these milk products as manufactured by Beatrice's Montana plants using Montana dairy farmer produced milk were allowed to be sold on a bid basis to State institutions such as the University of Montana and Montana State University. Now, because of the recent interpretation given to Montana's existing Public Bidding Statutes - which makes no sense to me - milk products manufactured by Montana labor and using only Montana dairy farmers' milk can't be considered for use by State institutions because for purposes of Section 18-1-111, when bid quotations are equal, which is always the case in the Montana milk industry given Montana's minimum pricing rules, Beatrice Dairy Products, Inc. is somehow treated as a non-resident.

In a state like Montana where agriculture has been one of the backbones of Montana industry, for the life of me I can't see

why or rationalize in any manner an interpretation which treats me as well as 65% of all other dairy farmers producing milk in the State of Montana as if I lived in California or New York. I am a native Montanan, born and raised in Montana, and frankly proud of the fact that I produce high quality milk which is virtually all consumed by other Montanans. I don't believe there is any fairness at all for my own State and the state of residence for 65% of all other dairy farmers producing milk in this State to essentially refuse to use my milk for its institutions.

If House Bill No. 569 is not passed by the Legislature, the impact upon me and the other 65% like me who make their living out of milking cows is immediate financial detriment.

As earlier stated by Mr. Ken Kelly, the value of milk supply contracts for State institutions is no small amount. The amount of the milk supply contract for the University of Montana alone is close to \$350,000.00 a year.

If the processor to which 65% of all Montana dairy farmers sell their milk to can't be considered as a source of supply for State institutions, then we dairy farmers will suffer as well. In particular, if our processor, Beatrice, is excluded from consideration as a bidder upon state institutional supply contracts, such as for the University of Montana, then the impact upon those dairy farmers who furnish their milk to the Beatrice processing plant in Missoula, which furnishes milk to the University of Montana is to take an immediate pay cut of around \$400.00 per month. And, for those dairy farmers who furnish their milk to processing plants of Beatrice here in Montana which bid upon State supply contracts for Montana State University, Northern Montana College, and the School for the Deaf and Blind, the impact is to consider a permanent pay cut of around \$275.00 per month.

I don't know the occupations which each of you on this Committee are engaged in. However, I am confident that none of

you would like the idea of taking a pay cut or reduction in your salary of \$300.00 to \$400.00 each month with little or no prospect of ever getting it back.

That prospect is very real for the majority of Montana dairy farmers. In a State like Montana which is likely decreasing in population and experiencing very little, if any, economic growth, it is very difficult to create or find new markets to replace a \$350,000.00 a year account like the University of Montana and a \$100,000.00 account like Montana State University.

I respectfully ask this Committee as well as Montana's Legislature to treat me, my fellow 65% of all dairy farmers in Montana, and our processing plant for what we really are-residents of the State of Montana. Passage of House Bill No. 569 accomplishes this and I urge you to do so.

Thank you for your time and attention.

EXHIBIT 11
DATE 2/5/87
HB Committee Bill
2/4/87 MEW

MONTANA SULPHUR & CHEMICAL COMPANY

POST OFFICE BOX 31118
BILLINGS, MONTANA 59107

INTRODUC

MARY E. WESTWOOD
STAFF ATTORNEY

406-252-9324

BY REQUEST OF _____

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH INDEPENDENT LIABILITY FUNDS FOR THE PROTECTION OF THE PUBLIC AND FOR SMALL BUSINESSES IN THE STATE OF MONTANA, AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the current crisis in the liability insurance industry has made it increasingly difficult, and often prohibitively expensive, for many small businesses in Montana to obtain comprehensive and adequate liability insurance, and

WHEREAS, some small businesses have found it impossible, in the current insurance market, to obtain coverage for their major areas of risk, particularly in connection with product liability and extra hazardous risks, and

WHEREAS, many small businesses have had no choice but to purchase inadequate insurance or to go without insurance and, therefore, have indiscriminately exposed themselves and all of their business assets to liability, and

WHEREAS, the general public would benefit from a system that would assure that monies or assets are available to answer any justifiable claims made against small businesses in Montana, and

WHEREAS, the general public would benefit from a system that would encourage each small business within the State of Montana to minimize its exposure to liability claims.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. Sections 1 through 18 may be cited as the "Independent Liability Fund Act of 1987."

NEW SECTION. Section 2. Purpose. The purpose of sections 1 through 18 is to create a means by which small businesses operating in the State of Montana may establish independent liability funds to set aside assets and/or make investments to meet any liability claims which might be made against said small businesses by third parties.

NEW SECTION. Section 3. Definitions. As used in Sections 1 through 17, the following definitions apply:

(1) "Commissioner" means the Insurance Commissioner of the State of Montana or her designated agents or employees.

(2) "Fiscal year" means the 12-month period used by a particular small business in preparing and filing its state income tax returns.

(3) "Independent liability fund" means the collection of monies, assets and investments which has been set aside by a small business to meet the needs of any liability claims brought against it by third parties.

(4) "Liability claim" means any legal or extralegal action by a third party asserting a right to compensation for a wrong done to it by a small business with an independent liability fund.

(5) "Small business" means any commercial or nonprofit enterprise qualified to do business in the State of Montana and qualified as a small business under the criteria established from

time to time by the Small Business Administration of the United States Government.

(6) "Third party" means any person or persons other than the employees and management of a small business or of a subsidiary or closely-related enterprise of a small business.

NEW SECTION. Section 4. Right to establish independent liability fund. Any small business operating in the State of Montana may establish an independent liability fund to provide for defense, settlement and/or payment of any liability claims against it by a third party.

NEW SECTION. Section 5. Establishment of independent liability fund. A small business may declare its intention to establish an independent liability fund by declaring said intention on a form to be supplied by the commissioner and fully and clearly designating the monies, assets or investments it is setting aside for its independent liability fund.

NEW SECTION. Section 6. Additions to independent liability fund. A small business may make such additions to its independent liability fund as it deems appropriate from time to time, within the limits provided in section 7 below.

NEW SECTION. Section 7. Limit on the amount of each fund. The size of any small business's independent liability fund must be limited by the larger of the following:

- (1) The total of all legally required liability insurance;
- or
- (2) Five times the small business's gross sales in its most recent fiscal year.

NEW SECTION. Section 8. Composition of independent liability fund. The monies, assets, and investments contributed to an independent liability fund must meet the criteria established for investments by an insurance company in Title 33, chapter 2, part 8, and shall be valued as such assets and investments would be valued.

NEW SECTION. Section 9. Tax deductibility. The amount of any contributions made by a small business to its independent liability fund must be deductible to that small business on its Montana income tax return in the fiscal year that the contribution is made to the fund.

NEW SECTION. Section 10. Treatment of income on contents of independent liability fund. Income on the monies, assets and investments that make up an independent liability fund may be contributed to the fund, but if it is not so contributed, it is taxable in accordance with the revenue laws of the State of Montana.

NEW SECTION. Section 11. Inviolability of fund. Once monies, assets or investments have been contributed to an independent liability fund, they may not be used or removed from the fund except in the manner prescribed by sections 12 and 14 below.

NEW SECTION. Section 12. Deduction of costs.

(1) The actual costs of administering a small business's independent liability fund must be deducted from the fund or from income arising out of the monies, assets, and investments included in the fund. These costs must include the cost of

defending against and/or negotiating a settlement of any liability claim, as well as the full amount of any claim paid. Those costs must also be deductible on the firm's Montana State income tax return in the fiscal year in which they are paid or accrued.

(2) A small business must not deduct the cost of any in-house administration of its independent liability fund. The commissioner may review any third-party arrangement for administration of an independent liability fund to ascertain that those costs are deductible under this section.

NEW SECTION. Section 13. Taxation of independent liability fund contributions. The net value of independent liability fund contributions for any given fiscal year shall be taxed in accordance with 33-2-705(2).

NEW SECTION. Section 14. Termination of independent liability fund. When a small business with an independent liability fund ceases its operations either voluntarily or involuntarily, it must provide a trust to administer any principal remaining in its fund and to pay any outstanding claims for the longer of the following applicable periods:

- (1) any statute of limitations applicable to a small business's operations; or
- (2) any legally required period of insurance coverage; or
- (3) fifteen (15) years.

The principal of an independent liability fund shall remain inviolate, except as it is needed to pay just claims, for the full applicable termination period. However, income from the

principal not needed for administrative costs may be paid during the termination period to the person or persons who are designated to ultimately receive the principal of the fund, and income is taxable to that person or persons.

NEW SECTION. Section 15. Rules.

(1) The commissioner is hereby directed and is hereby given authority to implement sections 1 through 18 and to make any rules and regulations required to carry out the purposes of this statute.

(2) The commissioner shall by rule establish criteria for ascertaining the inviolability and health of each independent liability fund and shall initiate sanctions against those funds which are not secure or viable.

NEW SECTION. Section 16. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 17. Codification instruction. Sections 1 through 18 are intended to be codified as an integral part of Title 33.

NEW SECTION. Section 17. Effective date. Sections 1 through 17 and this section are effective on passage and approval.

VISITORS' REGISTER

BUSINESS AND LABOR

COMMITTEE

BILL NO. House Bill No. 432

DATE February 5, 1987

SPONSOR Rep. Hal Harper

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
IAN DAVIDSON	Humane Society of County	✓	✓
Georgina Medvitt	Amer. Diabetes Assoc.	✓	✓
K.M. Kelly	Mont. Nat. Hist. Assoc.		✓
Alma Tegen	Mont. Stockgrowers & Breeders Assn.		✓
Fred Olson	Medical community		✓
James McMillen	Montana State Univ.		✓
Lee Harrison	medical community		✓
Walter Frost	Montana State Univ.		✓
John Tuttle	MSU		✓
Judith Fortin	Elmwood Humane Soc. of PA	✓	
Grace Hubbard	Elmwood Humane Soc. of PA	✓	
Rob Spence	OLA		
Jan T. [unclear]	OLA		✓

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

BUSINESS AND LABOR

BILL NO. House Bill No. 425

SPONSOR Rep. Dick Corne

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

CS-33

COMMITTEE

SPONSOR Rep. Dick Corne

CS-33

BUSINESS AND LABOR

BILL NO. House Bill No. 437

DATE February 5, 1987

SPONSOR Rep. Charles Swysgood

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

CS-33

VISITORS' REGISTER

BUSINESS AND LABOR

COMMITTEE

BILL NO. House Bill No. 417

DATE February 5, 1987

SPONSOR Rep. Jan Brown

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

COMMITTEE

DATE February 5, 1987

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.