

MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
MONTANA STATE SENATE

January 12, 1987

The third meeting of the State Administration Committee was called to order by Chairman Jack Haffey on January 12, 1987 at 10:00 a.m. in Room 331 of the State Capitol.

ROLL CALL: All committee members were present.

The hearing was opened on Senate Joint Resolution 4.

CONSIDERATION OF SENATE JOINT RESOLUTION 4: Senator Thomas Keating, Senate District 44, sponsored this resolution entitled, "A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RATIFYING A PROPOSED AMENDMENT TO THE UNITED STATES CONSTITUTION CONCERNING PAY INCREASES FOR MEMBERS OF CONGRESS. He noted at the first meeting of Congress there were 12 amendments and ten of these were ratified to become the Bill of Rights and two were not ratified. One of these has now been resurrected regarding the increase of compensation for members of Congress not taking effect until an election of representatives shall have intervened. A few states ratified it over the years and now 20 states need to ratify this in order to complete this process. He noted the State of Montana has such a measure in its own constitution.

PROPONENTS: There were none.

OPPONENTS: There were none.

QUESTIONS ON SENATE JOINT RESOLUTION 4: Senator Haffey asked if any other states had been asked to do this and refused and Senator Keating responded none that he was aware of.

Senator Keating CLOSED on SJR 4.

CONSIDERATION OF SENATE BILL 7: Senate Bill 7 is sponsored by Senator William Farrell, Senate District 31, which is a bill entitled, "AN ACT INCREASING ATTORNEYS' LICENSE TAX; AMENDING SECTIONS 37-61-211, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE." He noted this would be a radical change from the present system and compared the fee to a use fee concept, (those that use the courts should pay for that usage) similar to highways. The bill would raise \$4.6 million to be put into the general fund. He explained the bill would help support those counties that are having difficulty now with court costs. He noted the fee has been in effect since 1917 and never been adjusted. An increase to \$2000 would average out about \$1.40 per hour based on an average of about 1440 hours per year per lawyer. He did state there were some who had told him this would be unconstitutional but felt since this was already in place it seemed unrealistic that it would be unconstitutional.

PROPOSERS: There were none.

OPPOSERS: Kim Wilson, a local Helena attorney, stated he felt the people that would be most affected by this bill's passage would be those who are the least able to afford legal assistance because those who now offer discounts or fees for such individuals would no longer be able to do so. He stated he felt the \$2000 fee was too expensive for a beginning attorney. Another area of work that would be affected would be those who do public interest or environmental work because they would be hesitant to do so because of the extra fee. Tom Butler, an attorney for the Department of State Lands, but representing himself agreed. The ones he felt would be most negatively impacted would be young beginning attorneys, law clerks and governmental attorneys. He felt there had to be another method of raising funds that would be more equitable and fair. Kathleen McBride, an attorney for Montana Legal Services, but also representing herself, stated as a beginning attorney you are not always in a position to be able to pass along costs. When you are paid a set salary, you cannot generate another income she said. She felt even if public service people were to be exempted it still would not cover a person like herself who works for a private concern. She felt singling out attorneys was discriminatory and felt other professions should be looked at also. If this were to be a revenue generating measure, she felt there could be another means perhaps through personal income tax. Kimberly Kradolfer, Assistant Attorney General, representing herself and on behalf of the Public Law Section of the State Bar Association, pointed out there are several attorneys who are employed by governmental entities and in public service who are paid a flat fee and the increased fee would be very difficult for them to pay. She felt many would go into private practice if this bill were to become law. She questioned the constitutionality of the bill and felt it could very well end up in litigation later. Pat Melby, a Helena attorney, representing the State Bar Association of Montana, stated this is an organization that every lawyer practicing in the state must belong to in order to practice law. He noted this is a quasi-governmental agency. They now pay \$120 per year to belong and also pay the \$10 license fee to the Clerk of Courts. Regarding this being a user fee, he stated they do not use the courts, their clients do and felt there was no rational basis for singling out attorneys to raise revenue for the general fund. He was also concerned about the constitutionality of the bill. Bob Anderson, Executive Director from the Montana School Board Association, felt the money to pay the fee would have to come out of their budget (which is made up of dollars collected from school districts) and would amount to quite an increase if it were to pass. Doug Olson, a local Helena attorney, who is currently inactive noted he must still pay a \$50 fee to the State Bar and the \$10 license fee to the Clerk of Courts. He felt it might fall on the employer's to pay the fee and felt this was not very reasonable. (Exhibit 1)

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QUESTIONS ON SENATE BILL 7: Senator Lynch asked Senator Farrell if he had been advised from other attorneys on this bill and Senator Farrell indicated several had told him they would be able to afford the fee increase. Senator Anderson asked when the \$120 fee to the State Bar was integrated and was told it was 1975. Senator Anderson asked if some increase was fair. Mr. Melby stated the fee is usually for raising the revenue necessary to let the board perform its functions. He also noted they may be facing an increase of another \$50 to the State Bar very soon in addition to the \$120 they now pay. He indicated his own firm would be able to pay the increase but felt there was no basis for this increase other than as a revenue generating measure. Senator Hofman had asked several attorneys what they felt would be a fair increase and had received answers of \$25 to \$500. Mr. Melby stated he felt the fee they now pay the State Bar was fair and that an increase from the current \$10 license fee was not necessary. Senator Rasmussen compared the State Bar fee to an association fee. He noted others such as optometrists pay a license fee to practice and an association fee should they choose to belong to a state association. Mr. Melby again noted the State Bar is a mandatory organization the attorneys must belong to in order to practice. Their guidelines are set by the Supreme Court. Senator Hofman wondered why they felt they should not have some increase in the license tax. A brief history of why the license tax was enacted in the beginning was given by Mr. Melby. Senator Farrell felt this request was fair and that those that use the system should help pay for the system. He felt the user fee concept applied equitably as low income persons don't pay the tax anyway. He was agreeable that those who have a set salary such as governmental attorneys might possibly be exempted or have a lower fee. He felt this was a way to help fund the court system. Senator Farrell then CLOSED on SENATE BILL 7.

EXECUTIVE ACTION ON SENATE BILL 7: After a brief discussion it was decided to defer action on SB 7 until committee members had time to consult their constituents.

EXECUTIVE ACTION ON SENATE JOINT RESOLUTION 4: Senator Hirsch made a MOTION that SJR 4 DO PASS. Senator Harding seconded. The motion passed unanimously.

The meeting adjourned at 11:10 a.m.

cd


SENATOR JACK HAFFEY, Chairman

ROLL CALL

SENATE STATE ADMINISTRATION COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 1/12/87

NAME	PRESENT	ABSENT	EXCUSED
SENATOR JACK HAFHEY	X		
SENATOR WILLIAM FARRELL	X		
SENATOR LES HIRSCH	X		
SENATOR JOHN ANDERSON	X		
SENATOR J. D. LYNCH	X		
SENATOR ETHEL HARDING	X		
SENATOR ELEANOR VAUGHN	X		
SENATOR SAM HOFMAN	X		
SENATOR HUBERT ABRAMS	X		
SENATOR TOM RASMUSSEN	X		

Each day attach to minutes.

NAME: Douglas Olson DATE: 1-12-87

ADDRESS: P.O. Box 1695 Helena

PHONE: 443-0207

REPRESENTING WHOM? self

APPEARING ON WHICH PROPOSAL: SB 7

DO YOU: SUPPORT? AMEND? OPPOSE? ✓

COMMENTS: SB 7 is an arbitrary increase in the licensing fee for attorneys. The licensing fee exists for the purpose of covering the costs incurred by the Supreme Court clerk to maintain a file on each attorney who wishes to practice law. Coupled with the State Bar of Montana fees attorneys pay (\$60.00/yr. inactive dues) and (\$130.00/yr. active fees). If the purpose of the bill is to subsidize state court costs, then the legislature should look to increasing court filing fees. If the bill passes, many public attorneys and those working for non-profit corporations will seek reimbursement from their employers who in many cases are the government and the taxpayers end up paying more money in the long run. As an attorney who does not actively practice law, but works for a church, I would not be able to remain an attorney in the State of Montana.

~~PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.~~

STANDING COMMITTEE REPORT

JANUARY 12

87

19.....

MR. PRESIDENT

We, your committee on..... **SENATE STATE ADMINISTRATION**

having had under consideration..... **SENATE JOINT RESOLUTION** No. **4**
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JOINT RESOLUTION - RATIFY AMENDMENT CONCERNING CONGRESSIONAL PAY INCREASE

SENATE JOINT RESOLUTION

4

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

~~DO PASS~~

~~XXXXXXXXXX~~
~~DO NOT PASS~~

.....
SENATOR JACK HAFBY Chairman.