

MINUTES OF THE MEETING  
STATE ADMINISTRATION COMMITTEE  
MONTANA STATE SENATE

February 12, 1987

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

ROLL CALL: All committee members were present.

The hearing was opened on Senate Bill 287.

CONSIDERATION OF SENATE BILL 287: Senator Delwyn Gage, Senate District 5, Cut Bank, is the sponsor of this bill entitled, "AN ACT REQUIRING THE DISTRICTING AND APPORTIONMENT COMMISSION TO BASE ITS PLANS FOR REAPPORTIONMENT AND REDISTRICTING ON THE NUMBER OF LEGISLATORS DESIGNATED IN THE LEGISLATIVE SESSION BEFORE THE FEDERAL POPULATION CENSUS; AND AMENDING SECTION 5-1-101, MCA." He noted he had first looked into drafting a bill that would cut the legislature in half particularly after traveling to Colorado and visiting their legislature which is much smaller than Montana's. He had researched who had the determination on the size of the legislature here and found it appeared to be up to the reapportionment committee. This bill would simply state that the legislature would be the ones who would make the determination of size.

PROPOSERS: There were none.

OPPOSERS: There were none.

QUESTIONS ON SENATE BILL 287: Senator Harding asked if the bill would allow the legislature to set the number of legislators and the reapportionment committee would determine the boundaries of the districts. Senator Gage noted if the legislature does not address this issue that it would be an indication to the reapportionment commission that they reapportion on the basis of the number of senators and representatives that served in that session before the census. Senator Hofman asked if there was anything in law now which indicates how many senators and representatives there should be and was told by Senator Gage the constitution now states there shall be not more than 50 nor less than 40 senators and not less than 80 nor more than 100 in the House of Representatives. The leeway under present law indicates it would be left to the reapportionment commission depending on how they reapportion the districts. Senator Gage felt the legislature should make this determination themselves.

Senator Lynch noted this had been a very controversial issue in the past and did not see the need to change it again. Senator Anderson stated we would have to have a change in the constitution if there were to be less than 40 or less than 80.

Senator Rasmussen asked what the size of the legislature was in Colorado presently and was told about 22 in the Senate and perhaps 50 representatives. Senator Haffey asked just what this proposal would do. Senator Gage stated that presently the legislature could do this and so can the reapportionment commission and he would like to take the authority away from the commission. He noted that the drafters had indicated there should be mention reflected in the minutes that the intention of the legislature if this is not addressed in the session prior to a census that it was the intent of the legislature that the reapportionment be based on the number of senators and representatives that were in that session. If it is not addressed it would just remain the same. Senator Hirsch asked if Senator Gage was certain this was what was meant by the way the bill was worded.

Senator Gage then CLOSED on SENATE BILL 287.

EXECUTIVE ACTION ON SENATE BILL 287: Senator Harding MOVED THAT SENATE BILL 287 DO PASS. Senator Lynch seconded the motion. Senator Hofman wanted assurance from the researcher, Eddy McClure that the language was fine. The motion then passed unanimously.

The hearing was opened on House Bill 335.

CONSIDERATION OF HOUSE BILL 335: Representative Paul Pistoria, House District 36, Great Falls, is the sponsor of this bill entitled, "AN ACT PROHIBITING A PRIVATE PARKING SERVICE FROM IMPOUNDING A MOTOR VEHICLE; PROVIDING THAT FAILURE TO COMPLY WITH THE PARKING REGULATIONS OF A PRIVATE PARKING SERVICE RESULTS IN A CIVIL LIABILITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE." Rep. Pistoria then went through the history of the legislation dating back to his dissatisfaction with Diamond Parking Company when they were in Great Falls and enforced their parking fees by attaching a barrel with a chain to the vehicle till the fine was paid. He noted he had been involved in a lot of controversy because he had repeatedly cut the chains with bolt cutters to remove the barrels. He had done some research and found this practice had been declared unconstitutional in other states. He submitted an exhibit of his various correspondence and newspaper articles relating to this issue. (EXHIBIT 1) He noted Diamond Parking had finally left the City of Great Falls and Helena and were now operating only in Billings at the present time. The bill would just prohibit private parking services from impounding motor vehicles and force them to comply with the rules of the city government.

PROPOSERS: There were none.

Senate State Administration  
February 12, 1987  
Page Three

OPPONENTS: There were none.

QUESTIONS ON HOUSE BILL 335: Senator Lynch asked what the remedy for violating private parking fees was and was told they had to comply with whatever laws were in city government regarding parking fines. Senator Haffey noted the remedy is spelled out in the language in the bill.

EXECUTIVE SESSION ON HOUSE BILL 335: Senator Lynch MOVED THAT HOUSE BILL 335 BE CONCURRED IN. Senator Harding seconded the motion. Senator Lynch noted in most areas the remedy for parking too long is to have your car towed away at your own expense. The motion passed unanimously. Senator Manning will carry the bill on the Senate floor.

EXECUTIVE SESSION ON SENATE BILL 42: Senator Lynch MOVED THAT SENATE BILL 42 DO NOT PASS. Senator Lynch noted one good reason might be because the bill passed out of committee yesterday, SB 70, which reduces the size of committees to four members and this bill would make it a twelve member council. He felt the council is working very diligently towards making improvements in their own agencies and are working towards consolidation already. Senator Harding noted that Senator Neuman pointed out also that many of the concerns he had were already being addressed. Senator Farrell noted he had talked with leadership and they had indicated they were busy enough already without being required to be on the council committee. Senator Haffey noted that having department heads meet together to try and work out agreements was a very good sign and a good beginning. The motion passed unanimously.

cd

  
SENATOR JACK HAFFEY, Chairman

ROLL CALL

SENATE STATE ADMINISTRATION COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 2-12-87

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.

DATE \_\_\_\_\_

FEBRUARY 12, 1987

COMMITTEE ON

# VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

HA. 355

Jan. 30, 1986

Ms. Art, Mpp.  
Diamond Parking.

Enclosed is a copy of  
the Supreme Court Ruling on  
Boating Vehicles in the State  
of Louisiana.

Therefore, if I hear or  
catch your people chaining  
Barrels to Vehicles in Great Falls  
I am giving you notice  
that I will do the same.  
You know that it is un-  
constitutional to do so.

Paul G. Pistoria  
State Representative  
2421- Central Ave.  
Great Falls, Mont.  
59401

SENATE STATE ADMIN.

EXHIBIT NO. 1

DATE 2-12-87

FILE NO. 113335

Jan. 30, 1986

President  
Diamond Parking  
3161- Elliott Ave.  
Seattle, Washington 98121

Dear Sir:

Enclosed is a copy of  
the Supreme Court Ruling on  
Boating Vehicles in the State  
of Louisiana.

Therefore, if I hear or catch  
your people chaining Barrels to  
Vehicles in Great Falls I am  
giving you notice that I will  
do the same. You know that  
it is unconstitutional to do so.

Paul G. Pistoria  
State Representative  
2421- Central Ave.  
Great Falls, Mont.  
59401

FOR  
H.B. 335

DONALD A. GARRITY  
ATTORNEY AT LAW  
1313 ELEVENTH AVENUE  
HELENA, MONTANA 59601  
(406) 442-8711

LEGISLATIVE STATE OF MONTANA  
EXHIBIT NO. 1  
DATE 2-12-87  
BILL NO. HP 335

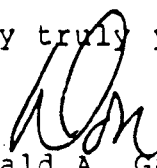
January 8, 1986 - Rec'd - Thur - Jan. 9, 1986

Paul Pistoria  
2421 Central Avenue  
Great Falls, MT 59401

Dear Paul:

Tom Keegan and I thought you might be interested in this.

Very truly yours,



Donald A. Garrity

DAG rs  
encl.



*Rec'd - Thurs - Jan. 4, 1986 Paul & Patricia*

# The United States **LAW WEEK**

A NATIONAL SURVEY OF CURRENT LAW

December 24, 1985

THE BUREAU OF NATIONAL AFFAIRS, INC., WASHINGTON, D.C.

Volume 54, No. 25

## SUMMARY AND ANALYSIS

### Notice To Subscribers

U.S. Law Week will not be published December 31. The next issue, covering material for two weeks, will appear January 7, 1986.

### \*City's Vehicle "Booting" Program Violates Due Process

Most courts that have considered the question have found no constitutional infirmity in various cities' practice of "booting" or towing motor vehicles first and considering owners' excuses later. But the Louisiana Supreme Court now declares that the procedures accompanying New Orleans' program for booting cars with excessive parking tickets fall short of due process requirements. The court faults the city's use of a private contractor with a financial interest in each car it immobilizes and the lack of pre-boot notice or opportunity to contest the propriety of the city's action. (*Wilson v. City of New Orleans*, 12/2/85)

Although the parking tickets and subsequently mailed notices warn vehicle owners that failure to pay a fine or contest a citation may result in immobilization, the court nevertheless concludes that the Fourteenth Amendment's Due Process Clause requires a final notice indicating that a vehicle is about to be booted and offering the owner a chance to lodge an informal protest. Given the risk of human and computer error, the court explains, the city must take "at least rudimentary precautions against unfair or mistaken classification" of persons and "arbitrary deprivation" of property. In balancing the administrative burden of beefed up notice requirements against the owners' interest in the use of their vehicles, the court concludes that one more notice and an informal response period will add little expense or delay.

The court also denounces the use of a private company paid on a contingent fee basis to administer the program. Due process requires that a decision-maker not have a direct or indirect financial stake in maintaining a high level of revenue generated by his adjudicative function, the court says. (Page 2322)

### Asbestos Victim Can Sue Employer For Aggravating Job-Related Injuries

Workers' compensation statutes generally restrict employees to recovery of statutory benefits for occupational diseases related to the hazards of their employment. The New Jersey Supreme Court, however, decides that the exclusivity provision of that state's workers' compensation statute does not bar a tort action alleging that an employer and its physicians aggravated employees' occupational, asbestos-related diseases by fraudulently concealing from them the fact that they had such diseases. (*Millison v. E.I. du Pont de Nemours & Co.*, 12/10/85)

The court first notes that the legislature was aware of occupational diseases as a fact of industrial employment. Therefore, the initial resulting occupational diseases "must be considered the type of hazard of employment that the legislature anticipated would be compensable under the terms of the Compensation Act and not actionable in an additional civil suit."

However, as regards the allegation that the employer and doctors fraudulently concealed knowledge of the diseases in order to prevent employees from leaving the workforce, the court says the legislature "could not have intended to insulate such conduct from tort liability." But for the corporate strategy of concealing diseases discovered in company physical examinations, the employees would have minimized the dangers to their health, the court suggests.

The court thus allows the employees' action to proceed, cautioning, however, that the employees now face the "unenviable burden of proving a deliberate corporate strategy to conceal" their diseases. Proof that the doctors negligently misdiagnosed employees' x-rays or estimated poorly concerning the seriousness of their maladies will be insufficient to establish a cause of action outside the workers' compensation statute, the court warns. (Page 2327)

### Colorado Statute Limiting Ski Resort Liability Passes Constitutional Test

At the outset of the Western ski season, the Colorado Supreme Court upholds that state's 1979 Ski Safety Act against constitutional challenges. The stat-



Office of Workers' Compensation Programs, No. 84-1167, 12/2/85.

## Motor Vehicles

### TRAFFIC VIOLATIONS—

City's procedure for "booting" vehicles for unpaid parking tickets, which allows private contractor who receives commission for each vehicle booted rather than neutral decisionmaker to decide whether vehicle should be booted, and which gives vehicle owner neither notice that booting is imminent nor opportunity to respond informally regarding whether proper grounds for booting exist, violates Due Process Clause.

The issue is whether the Due Process Clauses of the Fourteenth Amendment and of the Louisiana Constitution are violated by a city's procedures for immobilizing vehicles for excessive parking tickets.

Under New Orleans' vehicular immobilization system, an unoccupied, legally parked vehicle may be "booted" if three or more unpaid tickets are recorded against it. The back of each ticket states that the owner may contest the violation, and that failure to pay or contest will result in added penalties or "possible immobilization" of the vehicle. If the fine is not paid or contested, two notices are mailed to the owner informing him of the ticket, demanding payment, and inviting him to contest.

The city contracts with a private company for the collection of tickets on a contingent fee basis. When an alleged parking violator fails to pay a ticket, the company mails notices, 30 and if necessary 60 days after ticketing, informing the owner of the unpaid ticket and demanding payment. The company also helps administer the immobilization operation. Using computerized data, the company prepares a list of all vehicles that city employees may search for and immobilize.

Before attaching the boot, the boot crew calls a city dispatcher with access to the latest data to assure that the vehicle status has not changed. An immobilized vehicle may be released upon payment of fines and a boot fee or the posting of a bond.

Here, the owner of a booted vehicle who had 20 unpaid parking tickets was not given prior notice of immobilization or an opportunity to question or contest the action.

The right to due process requires the government, when it acts to deprive a person of his property, to provide him with notice and some kind of hearing at a meaningful time and in a meaningful manner, and to follow a fair process of decisionmaking. *Mathews v. Eldridge*, 424 U.S. 319 (1976), set out the factors to be balanced when determining what process is due: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the

procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. Due process does not always require a trial procedure, but it does forbid resolving a question of adjudicative fact against a party without first allowing him to respond, at least informally, to a summary of adverse evidence.

The city's procedures fall short of due process requirements. A notice or ticket that the city mails to an owner or affixes to his vehicle, containing an elliptical statement that failure to pay a ticket may possibly lead to immobilization, is not reasonably calculated to apprise the owner of the pendency of an action to declare him a scofflaw and have his vehicle booted or of the availability of an opportunity to present his objections. His knowledge of his delinquency in payment of tickets is not the equivalent of such notice.

Under *Mathews*, some procedure for entertaining vehicle owner complaints prior to booting is required to afford reasonable assurance against erroneous or arbitrary deprivation of property that may be someone's sole means of transportation. The owner's interest is self-evident, and the risk of human or computer error is not insubstantial. Due process requires at least rudimentary precautions against unfair or mistaken classification. The vehicle owner should be mailed notice of a proposed immobilization order and afforded a brief period before issuance of the order within which to make an informal oral or written contesting statement. Such a requirement will add little expense or delay to the fact-finding function.

There also must be some type of neutral and detached decisionmaker. Under the existing procedure, a private company has a demonstrable financial interest in maintaining the booting program at a level favorable to collections. Due process requires that a decisionmaker not have a direct or indirect stake giving rise to a temptation to make him partisan to maintaining a high level of revenue generated by his adjudicative function. This requirement should not pose a great burden on the city; decisionmakers need not be judges, magistrates, or persons with special expertise.

The city contends that immobilization is an extraordinary situation that warrants dispensing with notice and hearing. But routine daily booting of vehicles as part of a municipal parking enforcement system does not present a "truly unusual" situation. There is no need for action so prompt as to preclude effective notice and a chance to be heard at least informally.

The cases from other jurisdictions relied upon by the city are inapposite, and none involves a private, financially interested ac-

tor exercising governmental discretion.—Dennis, J.

Blanché and Watson, JJ., concur separately.

Marcus, J., dissents.

—La Sup Ct; *Wilson v. City of New Orleans*, No. 85-C-0712, 12/2/85.

EXHIBIT NO. 1

DATE 1-12-87

Nuclear Energy HB 335

### PRACTICE AND PROCEDURE—

Jurisdiction to hear state's challenge to Secretary of Energy's procedures for selecting temporary nuclear waste storage sites pursuant to 1982 Nuclear Waste Policy Act lies originally in federal district, not appellate, courts.

In this case of first impression involving an issue of pressing national importance—the safe storage of nuclear waste—Tennessee disputes that the Department of Energy followed proper statutory procedures in identifying sites in Tennessee as candidates for the temporary storage of nuclear waste in Monitored Retrievable Storage (MRS) installations. The secretary asserts that this court lacks jurisdiction because the 1982 Nuclear Waste Policy Act vests exclusive jurisdiction in the courts of appeals to review his actions under the Act.

The focus of the waste management program articulated by the NWPA is on the development of permanent, deep repositories for nuclear waste. However, Congress also enacted Part C of Subchapter I, which deals with MRS as a "back-up" to the repository program. Section 141(h) incorporates several of the sections and subsections of Part A of Subchapter I that deal with participation of states in the selection of sites for permanent repositories.

Tennessee argues that Congress incorporated certain provisions contained within Part A of Subchapter I, relating to state participation, into the MRS subtitle of Part C by specifically citing these provisions in §141(h), and impliedly rejected the application of all other provisions of Part A to the MRS development process. The state also argues that the clear language of §119(a), which vests jurisdiction in the court of appeals, demonstrates clear congressional intent that the section applies *only* to certain actions arising "under this part" (referring to Part A of Subchapter I) and to actions arising under provisions outside of Part A of Subchapter I that are specifically enumerated in §119(a)(1)(D)-(F). The state does not challenge the jurisdiction granted the courts of appeals over actions arising under these sections; however, it relies on the language of §119(a), which does not refer to Part C of Subchapter I, concerning MRS, in vesting original and exclusive jurisdiction in the courts of appeals to exclude actions arising under Part C from the jurisdictional provision.

Criminal

continued

Municipal

And Other Government

Paul L. Pistoria

## Trend

"Hypnotically induced" testimony is inadmissible *per se*, although a witness may testify as to facts recalled prior to hypnosis, says a state Supreme Court in adopting the majority view.

Hawaii Supreme Court. Honolulu, HI 96813. Tel.: 808-548-7431. *Hawaii v. Moreno*, No. 9143. November 8, 1985. Lawyers Alert No. 104-22 (4 pages).

## Family

### How To Keep "Child-Snatching" In Federal Court

The message of this case is clear: if you want to keep a child-snatching claim in federal court, do not also ask for a change in custody or visitation rights.

Where a mother's suit against her ex-husband for child-snatching also included a request that his parental and visitation rights be terminated, a federal court does not have jurisdiction, says the Fifth Circuit in affirming a U.S. District Court's dismissal of a diversity case.

The mother sought damages against the father for the "unlawful taking" of the child, for "civil conspiracy" (since he and his relatives kept the child hidden), and for emotional distress. She also sought a modification of an earlier state court custody order, asking that the father's visitation and parental rights be terminated. The U.S. District Court refused to hear the case under the "domestic relations" exception to federal diversity jurisdiction, and the Fifth Circuit affirmed.

"Unlike the claims allowed in [previous child-snatching cases, the mother's] damage claim involves more than the enforcement of a private contract to pay money or arrearages calculable according to state court records. . . . It requires the involvement of a federal court in domestic issues which the domestic relations exception to federal diversity jurisdiction precludes."

U.S. Court of Appeals, 5th Circuit. New Orleans, LA 70130. Tel.: 504-589-6514. *Goins v. Goins*, No. 84-4801. December 10, 1985. Lawyers Alert No. 104-34 (8 pages).

## What Does Diamond Parking Think of This? "Booting" Cars Is Unconstitutional

### U.S. Constitution

A city's procedure for "booting" cars that have accumulated three or more unpaid parking tickets violates Due Process under the state and federal constitutions, says a state Supreme Court.

The court pointed to two major defects in the system:

(1) Car owners were given no notice that a booting order might soon be carried out against their cars and had no opportunity to question or contest the pending order. (Although each parking ticket and nonpayment notice warns that failure to pay may lead to booting, this is not enough to apprise an owner that a booting order is pending.)

(2) The city contracted with a private company—on a contingent fee basis—to collect the fines from tickets and to help in administering the booting operation. (The com-

pany prepared for the city's "boot crew" a list of all vehicles that have earned the booting treatment.)

The fact that this private company had a financial stake in the booting procedure offended Due Process, which requires that the decision to deprive someone of property be made by a neutral and detached entity.

The court added that sending car owners a notice that their car will soon be booted, and giving them a brief period in which to contest the pending action, would not unduly burden the city, nor would it be too difficult for it to hand over the booting decision-making process to a non-financially interested party. (Such decision-makers need not be judges, magistrates, or persons with any special expertise in this area.)

Louisiana Supreme Court. New Orleans, LA 70112. Tel.: 504-568-5707. *Wilson v. City of New Orleans*, No. 85-C-0712. December 2, 1985. Lawyers Alert No. 104-4 (26 pages).

### Ban On Write-In Voting Struck Down

#### U.S. Constitution

Can a city prohibit "write-in" voting in municipal elections (and say that voters must vote for someone on the ballot, or for no one at all)?

"No," says a state Supreme Court, in striking down such an ordinance as violating both the federal and state constitutions.

The city argued that the ban was needed to "assure that candidates meet charter qualifications and display a willingness to serve." But the court said that a total ban on write-in voting "is far too crude and imprecise" to meet these objectives, and impermissibly restricts the right to vote and the right to seek public office.

California Supreme Court. San Francisco, CA 94101. Tel.: 415-557-1579. *Canaan v. Abdelnour*, No. L.A. 32013. December 30, 1985. Lawyers Alert No. 104-39 (55 pages).

### School Cannot Test Students For Drugs

Can a public school force its students to undergo urine testing for drugs, as part of their annual school physicals?

"No," says a state trial court.

This policy violates the students' Fourth Amendment rights, their right to Due Process, and their "legitimate expectation of privacy and personal security."

#### Unreasonable

The school board, arguing that there is nothing constitutionally wrong with the testing, pointed out that the primary purpose of the urinalysis was to detect "any physical defects, illnesses or communicable diseases." It said that a student who tests positively for drugs is not subject to any civil or criminal sanctions, but is merely referred to counselors. The board also stressed that no "individual suspicion"

A Prominent  
Att. in Great Falls  
mailed me this. I have much support.  
Paul L. Pistoria

3620 Quimet Circle  
Billings, MT 59106  
June 1, 1984

Rec'd - Tues - Feb. 12/1985

Rep. Paul H. Heston

Al Thelen  
City Manager  
City Hall  
Billings, MT 59101

LEGISLATIVE STATE ADMIN.

EXHIBIT NO. 1

DATE 2-12-85

BILL NO. HB 335

Dear Al:

Jake's Restaurant, for several years, has provided courtesy parking at the Diamond Parking Lot adjacent to the restaurant. A large sign notified the public of the privilege. Recently, Jake's discontinued this courtesy without notice to its customers.

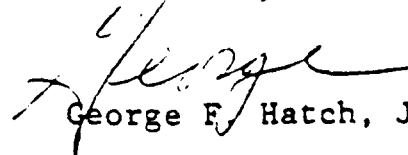
On May 26, 1984, I had the unfortunate experience of taking out-of-town guests to Jake's for a pleasant dinner, only to find on returning to our automobiles that the vehicles had been "impounded" for failure to pay one dollar into the parking meter. We were forced to pay a total of \$42.00 to have a huge barrel removed from the bumper of each automobile. At least three cars were similarly "impounded". The young attendant smirkingly remarked that this happens nightly and "we make more on fines than we do on parking fees". The manager of Jake's confirmed that this happens to their customers nightly, yet did not feel that it was Jake's responsibility to notify the public of a change in their parking policy. She pointed out that a small, inconspicuous sign, "she did not expect anyone to see", had been posted in the parking lot, but no notice has been displayed in the restaurant.

Is this the type image citizens of Billings want for our city - a restaurant that renounces any responsibility to its customers and a parking lot that gleefully impounds automobiles of unsuspecting citizens and visitors to our city in order to extract a heavy fine? As the lot attendant states, "we make more in fines than in parking fees". Therefore, why display a conspicuous sign?

Unquestionably, this type of action reflects poorly on our citizens, merchants, and city.

Acknowledgement of receipt of this letter would be appreciated. I trust this matter will receive your prompt attention.

Yours, truly,



George F. Hatch, Jr., M.D.

GFH/sr

COPY

year period.

John Lawton, central support services director, will present his cost-cutting plans to the City Council during a committee-of-the-whole meeting at 8:30 p.m. on Monday.

"The intent is to do everything possible to reduce some of those high interest charges, short of changing state law," Lawton said Friday.

In a paper he prepared for the council, Lawton said the collapse of the municipal bond market in 1980 caused problems for the city and property owners.

First, increased interest rates "have caused SID payments to become more burdensome." Also, the paper said, higher interest rates have squeezed profits for bond underwriters.

Prohibited by state law from pur-

worse, it often takes up to 18 months to get SID charges on the tax rolls, making property owners liable for interest accumulated during that period, Lawton said. He said first payments can be four or five times more than later ones.

Lawton referred to an SID for a park in a West End subdivision. The owner of a 7,000-square-foot lot had a \$321.75 assessment, \$266.18 of that interest and \$55.57 in principal, for the initial Nov. 1, 1983-Dec. 31, 1984 period. Later six-month assessments gradually dropped from \$136.34 to \$58.66.

Remedies Lawton will recommend include forbidding the use of the B coupons, and reducing the contingency fund on future SID projects from 10 percent to 7 percent of construction costs.

He also will recommend re-

He estimates homeowners annually on Montana law states.

He suggests of serial bonds a staggered term life, or amortized mortgage, in term arrangements are called at the

He also suggests to be sold at a price that would allow them to be refinanced at a lower rate.

Another possibility is to permit construction instead of having a long-term bond issue begin.

## Montana Briefs



### Legislator wins approval of parking-penalty limit

HELENA (AP) — Rep. Paul Pistoria, D-Great Falls, succeeded Saturday in advancing his longtime crusade against the operators of Diamond Parking Co. lots in his home town.

\* Pistoria persuaded the Montana House to approve, 92-6, a bill making penalties for overtime parking in private lots conform to government parking ordinances.

\* Pistoria proudly admitted that he has freed many a car from barrels chained to overturn vehicles by Diamond attendants. He displayed a large bolt cutter he said he used until he was charged with destruction of property, charges which he said were dropped as unconstitutional.

The practice was defended by Rep. Toni Bergene, R-Great Falls, who said the owner of Diamond Parking was her constituent. She said cars are not chained unless they have been left in a lot for at least 24 hours and the overtime parking is the second offense.

accident was of the truck showing — w Saturday by crew.

Barthule ries from the ing.

The death traffic toll to at this time.

### Cowboy to save

GREAT bers of the ciation, atic vention here trouble.

They als thinning ranch farm plan to do

Former bona fide owners, the membership an interest boy's image

MCA se

### Rural-unity rally planned Wednesday in Helena

A "Unity for Rural Montana" rally on the Capitol steps in Helena is scheduled for 11:30 a.m. Wednesday, according to a Winifred rancher.

"It is strictly peaceful and moderate," said Ed Butcher, president of Montana's National Farmers Organization.

"It is a get-together to let the little town merchant, as well as farmers and ranchers, know they are not alone," he said.

Most major farm organizations and state ag officials will be present, Butcher said.

### Tractor overturns, killing rancher

ST. IGNATIUS (AP) — A rancher who was found dead Saturday near his home northwest of here was identified Sunday as Mel McDowell, 64.

# TRIBUNE

Our  
**100th**  
Year  
**Sunday**

## Great Falls

SENATE STATE ADMIN.

EXHIBIT NO. 1

DATE 2-12-85

BILL NO. HP 335

February 10, 1985

Great Falls, Montana

*H.B. 532-84 PISTORIA*

## Montana House passes legislation to ban attaching barrels to autos

By CHARLES S. JOHNSON 2ND  
Tribune Capitol Bureau **READING**

HELENA — By a 92-6 vote, the House Saturday approved Rep. Paul Pistoria's bill aimed at stopping Diamond Parking Inc. from attaching 55-gallon barrels to illegally parked cars in private parking lots.

Under the Great Falls Democrat's bill, private parking companies could not impose any greater penalties than the local government could. It also prohibits private companies from impounding cars, even if local governments do.

His House Bill 532 faces a final vote in the House before advancing to the Senate.

Pistoria has been fighting with Diamond Parking for several years over the company's practice of attaching the barrels to cars. He maintains the practice is unconstitutional, and he has offered to cut the barrels

off for anyone who calls him.

He said the company not only attaches the barrel but charges an overdue parker \$20 and places a large sticker on the windshield.

During the House debate, Pistoria told how he took care of the situation as he held up his bolt cutters: "I, Paul G. Pistoria, a one-armed guy, got these bolt cutters."

To the amusement of the legislators, Pistoria told how he had cut off 40 or 50 barrels for people over the years.

Last summer, Pistoria was cited for criminal mischief for allegedly cutting a Diamond Parking barrel off a car, but the company dropped the complaint the next day.

Pistoria drew support from Rep. Jack Moore, R-Great Falls, who called the barrel-attaching practice "absolutely ridiculous."

Moore said he has seen situations

where people have been in important meetings all day and are unable to leave to pay for additional parking time. When they leave the meeting late in the day, they sometimes find barrels attached to their vehicles, he said.

Opposing the bill was Rep. Toni Bergene, R-Great Falls, who said Diamond Parking's manager, Larry Ort, is one of her constituents.

Because of Pistoria's actions, she said, Diamond has changed its practices and won't attach the barrels until a second offense. On a third offense, the company will tow away the car, she said.

The company doesn't go after car owners unless the vehicle has been left in the parking lot for 24 hours, she said.

Diamond Parking is important to Great Falls, which doesn't have much parking space, she said.

*Passed 3rd Reading  
in the House 87-5 11*

For H.B. 532

TRIBUNE

METRO/MONTANA

# First day of the Legislature yields some personal glimpses

By CHARLES S. JOHNSON  
and SUE O'CONNELL  
Tribune Capitol Bureau

HELENA — Everyone was dressed up for the opening of the 1985 Legislature as family members gathered near to photograph the occasion.

And then there was Rep. Walter Sales, R-Manhattan, a devoted fan of the Montana State University Bobcat athletic teams. The veteran lawmaker greeted fellow House members on the floor by wearing a blue T-shirt over his regular shirt and a blue and gold cap saluting the MSU Bobcats as the NCAA Division I-AA national football champions.

Sales, whose vehicle sports personalized license plates that say "GO CATS," took the floor of the House and addressed the body as "House members and fellow Bobcats," a remark that drew a rejoinder from some University of Montana Grizzly backers.

**PARKING SPACE IS AT A PREMIUM** around the Capitol, and legislators are assigned reserved spots. House Speaker John Vincent, D-Bozeman, reminded legislators to park in their own assigned spots and not the wrong ways to deal with people who park their cars illegally, including attaching barrels to the cars.

Rep. Paul Pistonia, D-Great Falls, said he had to park in Vincent's spot but, since someone had parked in his place.

House Republican Leader Bob Marks of Clancy told Pistonia there are ways to deal with people who park their cars illegally, including attaching barrels to the cars.

The Great Falls legislator replied that he has a bill being drafted to prohibit companies from tying barrels to vehicles overparked in private lots.

Pistonia was cited for criminal mischief in Great Falls in August for allegedly cutting a Diamond Parking Inc. barrel off an illegally parked car with bolt cutters, although the company dropped the complaint the next day.

Pistonia denied the charge but had said he would cut the barrels off for anyone who calls him. He maintains that attaching the 35-gallon barrels as a way to keep non-payers from leaving is illegal.

**HOUSE REPUBLICAN WHIP KERRY KEYSER, R-ENNIS,** announced a meeting of freshman Republican legislators and drew laughs when he told Rep. Jack Moore, R-Great Falls: "Jack, we expect you to be there, too."

Although technically a freshman, Moore served four consecutive terms in the House from 1975 to 1981 until his loss in 1982 to Democrat Carol Farris. Moore beat Farris in the 1984 rematch.

The House Democrats also have a freshman with plenty of past legislative experience. She is Rep. Dorothy Bradley of Bozeman, who served from 1971 through 1977. She gave up her House seat for an unsuccessful race for Congress, finishing second to Pat Williams in the six-candidate Democratic primary election in 1978.

**AS EXPECTED, THE VOTE FOR SPEAKER** of the House wound up tied

## Reporters' notebook

50 to 50 between Democrat Vincent and Republican Marks, but it wasn't a straight party line vote as might have been expected.

In a bipartisan gesture, Marks voted for Vincent and Vincent voted for Marks. Otherwise, every Republican voted for Marks and each Democrat cast a vote for Vincent.

But Vincent was elected speaker because of a state law that gives the speaker's job to the candidate from the party of the governor in the event of a tie.

Republican Secretary of State Jim Waltermire, who presided in the House until the speaker was elected, announced the tie vote. He drew laughs, especially from the GOP side of the aisle, when he volunteered "to exercise my privilege as chairman and break the tie." Tempting as that was, Waltermire said he wouldn't do so because that wasn't a medic available in the House to treat Vincent for the likely shock.

**THE OPENING DAY OF THE LEGISLATURE** is filled with tradition and ceremony. Among the traditions is that the House and Senate dispatch committees to notify the other house, the governor and the Supreme Court that they have convened and are ready to do business.

The House committee dispatched to the governor's office during the noon hour reported finding that Gov. Ted Schwenden was out to lunch.

And the House committee directed to notify the Supreme Court tried to do so by telephone rather than take the one-block walk over to the Justice Building. But they got a busy signal when they tried to call the court.

**THE SUPREME COURT HAD ITS OWN CEREMONIES** earlier in the day when its two new members, Chief Justice Jean Turnage and Associate Justice Bill Hunt, were sworn in.

Turnage, a former state senator from Polson, was given a special gavel from Douglas Wold, a Polson attorney, on behalf of local lawyers. The gavel and matching striking plate were made out of wood from a cherry tree from a spot along Flathead Lake within view of Turnage's home.

"While you can't go back (to Polson), you can take a little bit of it with you," Wold told Turnage.

**A STANDING-ROOM-ONLY CROWD WATCHED** the new justices and two district judges be sworn in. Hunt brought laughter from the crowd in the chambers when he said he hadn't seen such a gathering "since I was inaugurated mayor of Chester."

Hunt noted that he was filling the same justice's seat whose last three oc-

cupants had been liberal Daniel Shea, conservative Wesley Castles and for merit Democratic Gov. Forrest H. Anderson.

"If that is a pattern of some kind, I haven't been able to discern it," said Hunt, who had been an active Democrat.

Shea read a biography of Hunt and then ad libbed: "I'm sure there is one less case on our calendar as a result of his election."

He was referring to Hunt's lawsuit against Gov. Ted Schwenden. Schwenden didn't reappoint Hunt as workers' compensation judge in 1981, and Hunt sued, claiming he was entitled to the post because of the state law giving veterans a hiring preference.

**MONTANA'S LONGEST-SERVING LEGISLATOR**, Democrat Sen. Dave Manning of Haysden, presided over the Senate until it elected officers Monday. But he almost didn't give the Republicans a chance to nominate their choice for Senate president.

After a motion was made to give Democrat Sen. Bill Norman of Missoula that post, he was ready to call for a vote. Until told that Republican Sen. Stan Stephens was waiting to make another nomination.

Manning gave Stephens the floor to nominate Sen. George McCallum, R-Nataville, for the post, but not before drawing a laugh when he quipped: "I thought it was all Democratic here."

"I know with you in the chair, this will all be very democratic," Stephens replied.

Norman won the post, with Democrats in the majority in the Senate for the first time since 1975.

**MONTANA SUPREME COURT CHIEF JUSTICE** Jean Turnage received a particularly warm welcome from state senators when he came to administer their oaths of office Monday.

Turnage, who served in the Senate nearly 20 years before making his successful bid for the Supreme Court position, received a long round of applause from his former colleagues.

After swearing in the new senators, he told the body he had wanted to begin his short speech with "fellow senators."

"It miss being with you," he added, "but I'm only two blocks east of this building."

The senators also gave Turnage a standing ovation as he left.

**STATE SEN. R.J. "DICK" PINSTONEAULT, D-St. Ignace,** said he's already learned a lesson in politics.

During his introduction in the Senate, he noted that he had won his race on a recount. "So," he told his colleagues, "I know what the value of a vote is."

**THE REV. ROBERT NOONAN COVERED ALL BASES** during the invocation on the Montana Senate's opening day. Twice he called on "God our Father and Mother."



# THE GOOD TIMES

RED ROBIN  
RESTAURANT & BAR

No. 12

Jake's • Billings  
259-9475

• Boise  
336-1670

• Great Falls  
727-1033

• Idaho Falls  
524-5240

• Pocatello  
234-8252

The Red Robin • Boise  
444-7471

April-May 1985

## Happy Birthday, Red Robin

Was it three years ago?

Amazing.

It seems like only 1,095 days ago the Red Robin welcomed everyone into his humble nest on the lake in ParkCenter.

Since that time, the bird and his gourmet burgers have winged their way into the hearts of thousands. And ParkCenter, once familiar only to corporate birds, is now considered a mecca for anyone hungry for great food and good times.

Naturally, we cannot let this time pass without a celebration befitting a landmark event such as this. And who better to be honored than our customers?

So, beginning Monday, April 29, through Sunday, May 5, the Red Robin is offering 30% off of any purchase when you present the coupon included in this newsletter.

We hope you'll come to our party. We'll give you a chance to say "Thanks." Plus, you'll have a chance to see our new, expanded menu.

## Dear Mom,

I know that there have been times we've tried your patience. Like the time I was 16 and you wouldn't let me go camping with the guys because you were afraid we'd get into trouble. I teased at you and told you I wish you weren't my mom. And I told you I never talk to you again for as long as I lived. Do you remember that, Mom?

Well, Mom, now that I'm 47, I think it's time to bury the hatchet. I've decided to start talking with you again.

What do you say to a Mother's Day dinner at Jake's? I know it's your favorite place. I let the air out of your tires a couple of times. Jake's is open on Mother's Day from noon until 8:00, so we can go any time it's convenient for you. I hear Jake's is giving all moms their choice of any dessert free. (My favorite is Mud Pie, but that doesn't mean you have to order it... just don't order the cheapest thing. If it's free, you might as well get the one at its most expensive.)

What do you say, Mom? Will you join me for Mother's Day at Jake's? Your grandchildren can't wait to meet you. The way, I got married about 14 years ago. We have three kids. None of them can stand me.

Love,

Your Son

## Price On London Broil Falling Down

Whoever loves a "two-for-one" dinner at Jake's, raise your hand.

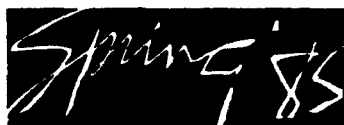
One, two, three, four, five, six... O.K.! It's plain to see that a majority of you love a great dinner deal. Those of you who didn't raise a hand may be excused to search the yellow pages for a good psychiatrist. The rest of you may read on to learn about Jake's latest endeavor to win the love and loyalty of their customers.

In the past year, Jake's has been pleased to offer some of their most popular dinner entrees at super savings: Tenderloin Tail, Ribs, Rib-Eye, Steak and Seafood Combos — just to mention a few. In keeping with this obvious tradition of excellence, Jake's is proud to present their World Famous London Broil at "two-for-one" savings with the coupon in this newsletter.

Jake's is famous for London Broil because we select only the very finest flank steak and marinate it in a special mixture (see Recipe, Issue No. 2, May-June '85) for at least 24 hours.

The result of this char-broiled feast is an incredibly flavorful cut of meat. It's no wonder that around here, most everyone agrees, for London Broil — there's no place like Jake's.

So, get a friend and join us for a London Broil dinner and "two-for-one" savings, April 22-27 at Jake's.



## Free Meal If You Got Barrelled In Billings

Last year, parking in the lot just north of Jake's in downtown Billings became a nightmare for several of Jake's customers. Innocently returning to their vehicles after a nice dinner at Jake's, they were shocked to find their transportation chained to a disgusting barrel. The removal of which could only be accomplished by paying a removal fee.

But now, after weeks of negotiations, Jake's is delighted to announce that Jake's customers are exempt from the "Barrells of Billings."



## Enjoy Rib-Eye & Seafood Combo

We're not going to try to tell you that a seafood dinner at Jake's is better than a trip to the ocean. That would be foolish. No one would believe it.

And if we told you that you could order most of Jake's great seafoods along with our Rib-Eye steak for just \$10.95, you'd probably have trouble believing that too. Sorry, but this time you're wrong. For a limited time, you can add on oysters, shrimp, scallops or seafood saute when you order a Rib-Eye steak.

It may not be a trip to the ocean, but we do promise you won't get sand in your shorts. Plus, if you like, a couple guys in the kitchen will be happy to do some great sound effects of the ocean for you.

Cut out the coupon in this newsletter. We'll look forward to seeing you at the beach... I mean Jake's.

USE FOR  
H.B. 53

For those customers who were inconvenienced prior to the adoption of the new policy, Jake's invites you to present your receipt or cancelled check from the payment of the removal of the barrel and receive a dinner on us.

Jake's reminds its Billings customers that we can validate your parking for up to two hours when you use the parking garage directly across the street east of Jake's.

Paul & Pistoria  
1985-Passion

COUPON NO. 1  
PURCH. NO. 2-12-87  
BILL NO. HB 335

PAUL'S CUTTERS

It seems our parking lots  
Are the cause of verbal shots  
The the' nuts and bolts of life  
End up with bolt cutters and strife.  
What brought this crime on  
And who answered the call  
The villian was Diamond  
And the hero was Paul.

*an unknown person wrote  
up this poem & mailed it to me*



# Unchained melody on Pistoria's lips

Paul Pistoria declared himself the bane of barrels in Great Falls during Tuesday's city commission meeting, telling city fathers he would cut the chain attaching an overtime parking barrel to his car in any off-street parking area operated by Diamond Parking, Inc.

Pistoria, leader of the Save Great Falls Club and recently elected a state representative, said the attachment of 55-gallon drums to cars that park overtime in the privately operated off-street lots "is the silliest thing I ever heard of."

Pistoria, who is one-armed, said he had tested a recently purchased set of bolt cutters and found he can easily cut chains with them — and will do so if a barrel ever is attached to his car for inadvertent overparking.

Moreover, he said, he would go to jail rather than pay any fine attached to such an infraction.

City Commissioner Bill Scott

said humorously, "They wouldn't bother with your car anyway, Paul," referring to Pistoria's older-model Rambler.

"I know it's identifiable," Pistoria replied.

Prompting Pistoria's remarks was a recent city commission action to turn over enforcement of on-street parking regulations to Diamond as well as operation of the off-street lots.

The city's cost of enforcing on-street regulations costs about \$90,000, Pistoria said, and Diamond had offered to take over the service for about \$68,000.

"Who owns the City of Great Falls, anyway?" Pistoria asked aloud. "All of us do," he said.

The city installs the parking meters and provides and maintains the streets, he said, so why should the parking regulations be enforced by an out-of-state firm which will take the profits out of the state as well.

PAUL PISTORIA

2-12-57

H B 335

# **VIOLATOR IMPOUNDED IN PLACE**

 DO NOT MOVE CAR  
DAMAGE WILL OCCUR 

**ALL PARKING MUST BE PAID IN ADVANCE**

Service Charge \$20.00 Plus Parking

CALL 761-6111 FOR RELEASE



REP. PAUL G. PISTORIA  
DISTRICT NO. 39  
2421 CENTRAL AVE.  
GREAT FALLS, MONTANA 59401

# MONTANA STATE HOUSE OF REPRESENTATIVES

Aug. 1, 1984

SENATE STATE ADMIN.

EXHIBIT NO. 1

*The Big Sky Country* DATE 2-12-84

BILL NO. HB 335

COMMITTEES:  
LOCAL GOVERNMENT  
EDUCATION  
STATE ADMINISTRATION

Mike Greeley, Atty General  
Justice Center  
215 - North Sanders  
Helena, Mont.

Dear Mike:

Enclosed 3 articles & a copy of Diamond Parking Violations, used on vehicles for over parking (all on me against them).

Unfriendly against "Diamond" "Parking" since 1976 here in Great Falls due to their right policies.

The City of Great Falls used to operate the Private parking lots themselves on a percentage basis (receiving approx \$20,000 to \$150,000 Revenue per yr, but they got rid of them & the Private parking lots. Instead the Private owners gave them to Diamond Parking a Seattle firm, the City did make a mistake.

The City then entered into an agreement with "APOCA" to handle the parking on Avenues, Streets & City owned parking lots with city police powers to ticket vehicles because they weren't satisfied with Diamond in 1977. In fact Helena got rid of

2.12.87

Diamond parking & run it themselves & receive all of the revenue. Great Falls should do the same.

It now looks like the City of Great Falls are looking into it because they lost much revenue & has hurt the City's PR & his satisfaction of Diamond's policies.

But, during all these years, Diamond have a policy of attaching a 55 gal barrel to the rear end of a vehicle with a chain or cable by using a lock.

They place a violation card on windshield of the vehicle as shown in the enclosed copy. A \$20.00 service charge plus a parking fee of \$5.00 up to \$14.00 or total of \$25. or \$34 must be paid before they unlock the chain or cable from the vehicle, which has caused much confusion & dissent. Note - also on placard it doesn't mention Diamond.

You can see from the enclosed articles I have been after them for sometime. Actually they can't prosecute anyone. No policing powers. In fact the City or the County attorney will not prosecute anyone. No one has never been prosecuted. It's just a terrible harassment & scare. Yes, I have removed several barrels mostly for women.

no one pursues who receives the violations money for over parking, whether it's "Diamond" or Private owners. This is terrible.

If the City would again take over the Private Parking spaces, the whole problem would

be solved.

On Thursday - July 26, 1984 I attended the City Parking Commission Meeting, expressing my views against Diamond Parking they were sympathetic to me & agreed with me, also suggested an Ordinance can be adopted for Diamond Parking to meet the same rules & prices as the City uses, I am sure this can be done. But, they decided to receive an opinion from your office, the article marked (3) explains enclosed.

The Articles enclosed are self explanatory.

I thought by sending this material & my views might help you in making your decision.

Thank you.

Sincerely yours,

Paul L. Astoria  
State Representative.

STATE  
OF  
MONTANA  
**ATTORNEY GENERAL  
MIKE GREELY**

JUSTICE BUILDING, 215 N. SANDERS, HELENA, MONTANA 59620  
TELEPHONE (406) 444-2026

27 August 1984

Representative Paul Pistoria  
2421 Central Avenue  
Great Falls MT 59401


Dear Paul:

Thank you for your letter and attached newspaper articles concerning the dispute over procedures followed by Diamond Parking officials when ticketing and immobilizing vehicles whose parking fees are overdue.

The Great Falls City Attorney's Office has not yet requested my opinion on this matter. I will keep your letter and attachments on file for future reference should questions on this matter be submitted for my consideration.

I appreciate your taking the time to share your views with me on this matter.

Very truly yours,

  
MIKE GREELY  
Attorney General

FOR - THUR - AUG. 23, 1984 - 8:30 AM. PARKING  
COMMISSION MEETING AT THE CIVIC CENTER:

BRING UP THE FOLLOWING 3. RECOMMENDATIONS

- ① - By removing parking meters or leave on a trial basis - try 2 hr. parking - chalk tires, no & everything that it takes to believe that the meters does cause bad down town business. This would help down town business, it scares people.

No doubt you would lose some revenue. But, it is the only way to create better down town business climate. Help save down town.

- ② - I still urge that the City try and begin as before take over the Private Parking lots. The City Commissioners & Chris cherches mgr couldn't see no further than their nose, when they gave up the Private Parking lots. They then were using Diamond Parking. The City lost 120,000 to 150,000 per year revenue. It didn't make sense & was a waste. If the City continued you wouldn't have the Barrel Problem.

Naturally by the City taking over the Private lots again on percentage basis the Barrel Problem would be solved.

Even at your July 26<sup>th</sup> meeting Bob Lutz, Public Works Director stated they were pursuing it. Action speaks louder than words. Go & do it. Diamond Parking has given the City of Great Falls a black eye. The City should receive the needed revenue. No DIAMOND Parking. The Profits leave Great Falls & goes to Seattle, Wash.

- ③ - I still urge the City of Great Falls to at least (I request the City go to the Attorney for an opinion) if the City can

DATE 2-12-87BILL NO. H B 335 ②

adopt an ORDINANCE whereby Diamond Parking comply with the same city rule violations as the city has to charge on over parking. This would also eliminate the barrels & quit scaring & harassing car owners.

This will also start bringing down <sup>town</sup> business, again. Definitely so.

I will never give up on Diamond Parking (drive them out of town) until the city does something to correct this terrible unconstitutional problem. You in the hell can you they do what they want to scare & harass the car owners? Let's stopped it.

I will keep it up until a solution is found as I have suggested. I don't think you will stop me as long as I am constructive.

Many have approached me to start a petition <sup>drive</sup> against Diamond Parking. But I feel this can be resolved once & for all by keeping talking.

Thank you

Sincerely,  
Paul G. Pastore  
State Representative.



*Let - June 21, 1984*  
Juen 21, 1984

*Rec'd - June 26, 1984 8:30 AM*  
*at City Council Parking*  
*C.M. Meeting*  
*from Jerry Freizer*

Ken Eichner, Vice President  
Diamond Parking, Inc.  
3161 Elliot  
Seattle, WA 98121

Dear Mr. Eichner:

Our Downtown Business Council has a great deal of concern about parking facilities in downtown Great Falls. We have a committee which deals specifically with parking and with government related issues. When members of that committee became aware that I had a barrall chained to my car, albeit an error, the members asked that I write selectively to you about a question they have.

It has been the position of the City Attorney here that Montana State law does not permit impoundage with less than five days notice for any vehicle parked where it has become unwelcome, shall we say. Our committee has long felt that a faster response time is required to be effective in parking control downtown. Has your company had an attorney research that question in Montana? We would love to have your comments on the situation.

Diamond manages so many lots in downtown Great Falls that another question has arisen as to who has the clean-up responsibility for privately held lots whose owners have contracted with Diamond for management. There is not a lot of problem with clean-up, but occasionally we are aware of one or more lots ~~being~~ allowed to remain littered and we would like to know with whom we should be talking.

Thank you for all your assistance.

Yours sincerely,

Kay L. Malonev  
Executive Director

When you are in Great Falls, you would be most welcome to meet with our committee or to attend the full membership meetings.

INTER-OFFICE MEMORANDUM

CITY OF GREAT FALLS, MONTANA

DATE 3-15-87 (a)  
Nov. 15, 1988

HP 345  
Rec'd. from Al.  
Jensen, Mayor  
Nov. 15, 1988  
at Study meeting

TO: City Commission

DATE November 8, 1988

FROM: David Slika, City Attorney

REPLY REQUESTED ON OR BEFORE:

SUBJECT: "Booting" of Vehicles on Private Lots

The question has been raised as to the propriety of "booting" vehicles on private lots where there has been a failure to pay the parking fee.

In the past, the issue has been raised with regard to enforcement of parking on public lots. At that time, our review of the law determined that "booting" would violate the basic concepts of due process under the Fourteenth Amendment. That conclusion is drawn from a number of U. S. Supreme Court decisions as follows: The Fourteenth Amendment places procedural constraints on government action that works a deprivation of property interest. Memphis Light, Gas and Water Division vs. Kraft, 436 U.S. 1, 9 (1978). Due process requirements must be satisfied even for temporary deprivations of property. Fuentes vs. Chevin, 407 U.S. 67, 86 (1972). The possession and use of the motor vehicle is a property interest. Stupmann vs. City and County of San Francisco, 557 Fed 2nd 1338, 3rd Circuit (1977); Harr vs. Carson, 462 F Supp 884, 886 (1978).

Essential to the concept of due process under the Fourteenth Amendment is the requirement of notice and an opportunity to be heard prior to effecting any confiscation or restriction of use by the State, i.e., the City. A "boot" placed on a vehicle found to be parked without payment of parking charges does not pass constitutional muster since the owner of the vehicle is not given notice or an opportunity to be heard prior to the restriction of use of his vehicle. However, it must be pointed out that the constitutional protection under the Fourteenth Amendment is directed toward "State" action (City action) and is not directed toward individual private parties.

In this case, the action taken by the owners of the private lots are not subject to the limitations imposed by the Fourteenth Amendment. On the other hand, they may be liable for civil trespass or a misdemeanor charge of criminal mischief which could be brought by the owners of the "booted" vehicles.

In any event, the private parking lots, privately owned and operated, do not fall within the jurisdiction of the City's public streets, ways or grounds. Therefore, the City has no authority to interfere with the operation of such private enterprises and could well be subject to legal liability if any intervention was attempted.

TRIBUNE - Sat. Dec. 27, 1984 - Page 1-B

# Diamond eases its barreling policy

By RICHARD ECKE  
Tribune Staff Writer

Diamond Parking has relaxed its parking enforcement rules in private parking lots downtown, local manager Larry Ort said Friday.

Ort said the parking enforcement firm has decided not to attach barrels to violators' cars until a second or third offense. In the past, barrels were attached for a first offense.

Fines will be reduced as well, he reported.

In the past, a first-offense ticket from Diamond Parking cost \$3 plus the unpaid parking fee. That's been reduced to \$1 plus the fee, Ort said.

"The new moves are an 'experimental deal,' and may be only temporary if the firm encounters too many enforcement problems. But if customers cooperate, the new rules should stick, he indicated.

Diamond's peace offering comes after some heated debate over the firm's practice of attaching barrels to cars. The city, which has five downtown parking lots of its own, does not use barrels on advice of the city attorney.

But city officials say they can do nothing about how a private firm en-

forces its parking.

Diamond officials explained earlier that the barrels are an alternative to vehicles being towed, a procedure that would cost a violator even more money than the barrel method.

In any case, the new relaxed policies have already sharply reduced the number of barrels being attached to vehicles by Diamond, Ort said.

Diamond attached barrels to some 70 vehicles in September, but this month has only attached barrels to five or six vehicles that were habitual violators, he said. As a last resort, the firm has a car towed away, Ort reported.

Diamond is hired by downtown property owners to police private parking lots. Diamond handles 22 private self-parking lots downtown, Ort said.

"We're not here to try and fight with anybody," Ort said.

Barrels remained on the minds of city parking commissioners Thursday at the group's monthly meeting.

The topic arose as proposed new signs for the city's off-street downtown parking lots were unveiled. Small blue signs would point the way

to the five downtown city lots, while larger blue signs would feature a map showing the city-owned lots.

Commission member Ardis Jerome joked that the city should add the words "no-barrel parking" to the signs.

Commission member Dan Short said most people don't understand that the city owns just five off-street parking lots downtown, and residents often complain about the numerous private parking lots over which the city has no control.

"I think the city is suffering mightily," Short said.

"The heat should be on the individual that owns the lot," commission Chairman Jim Purdy said, referring to the barrel controversy.

Duty said placing signs on the city lots should help identify which lots are owned by the city. Total costs of materials for the signs will be \$1,500, city parking official Mike Wyatt said.

The signs may be posted by Thanksgiving, Duty said.

Wyatt noted Diamond's new relaxed policies at the commission meeting.

SENATE STAFF ADMIN.

EXHIBIT NO. 1

DATE

2-12-57

BILL NO.

HB 335

## TRIBUNE - Wed - Aug. 29, 1984 - FRONT-PAGE

# Complaint against Pistoria dropped

By FRED MILLER III  
Tribune Staff Writer

Rep. Paul Pistoria, D-Great Falls, was cited for criminal mischief Monday after allegedly cutting a Diamond Parking Inc. barrel off a car with bolt cutters, although Diamond dropped the complaint Tuesday.

No charges will be filed.

Pistoria, who has said the practice of attaching 55-gallon barrels to illegally parked cars on Diamond lots is "terrible" and "unconstitutional," denied he cut the barrel.

"I didn't do it, someone else did," he said. "I didn't cut no barrel off a car. I was with somebody, a man who owns a store downtown, who had a barrel on his car. I was with him."

Pistoria has said he would cut the barrels off for anyone who calls him.

According to police, a Diamond employee attached a barrel to an overdue car on a lot at 520 1st Ave. N. about 9:47 a.m. Saturday. Around noon, that employee told police she

saw Pistoria and the man cut the lock off the cable attaching the barrel to the car.

Police received the report Monday and issued a notice to appear, citing Pistoria with criminal mischief by destroying private property. However, local Diamond manager Larry Ort withdrew the complaint Tuesday after consulting with Diamond's Seattle headquarters.

"We don't want to make an issue out of this," said Ken Eichner, Diamond vice president in Seattle. "The owner of the car has paid us for the lock and paid the parking he owed. Our issue has been settled."

Pistoria claims state law doesn't allow the impounding of vehicles without five days' notice. He requested an attorney general's opinion at a July 26 parking commission meeting.

However, an opinion issued in 1977 still stands, according to City Attorney Dave Gliko. That opinion said "there are no Montana statutes

which grant local governmental units authority to regulate parking on private property."

Eichner said attaching the barrels is less expensive than towing vehicles away, and that any increase in costs would be eventually passed to the consumers.

"As a responsibility to private owners of the lots, we have to collect fees," Eichner said. "We believe the best thing is for the public to pay for the parking in advance. If they don't, there has to be some recourse for property owners, and we don't want to tow cars away because it's so expensive."

However, Pistoria has said he will not quit.

"I will never give up on Diamond Parking until the city does something to correct this terrible, unconstitutional problem," he told an Aug. 23 parking commission meeting. "How can they do what they want to scare and harass car owners? I will keep this up until a solution is found."

# Library to change parking operation

By GWINN DYRLAND

Tribune Staff Writer

The Great Falls Public Library board has decided to try to get "out of the parking business" by joining a city contract with APCOA Parking to run its patrons' parking lot.

In other business at its recent monthly meeting, the board voted to close the library Monday, Christmas Eve day, but keep it open until 5 p.m. on New Year's Eve. The New Year's Eve closing time is three hours earlier than the normal Monday closing time of 8 p.m. The library will be closed Christmas Day and New Year's Day, both Tuesdays.

Board members at the December board meeting voted to send notice to Diamond Parking, its current library lot manager, that the library

intends to join the city's contract. APCOA officials have said the library could be included at little or no cost to it, Library Director Richard Gercken told the board.

Gercken referred to the change as an attempt to get the library "out of the parking business."

"The board has felt all along we should be a part of the city" in its parking management, library board chairman Jean Koppang said during the meeting. She said she believes being part of the city contract will help secure good ice-removal and other winter maintenance of the lot, something that concerned the board last winter.

"It's a city library and it's city property," board member and Great Falls Mayor Bob Worthington said,

adding "when people park on the lot they should be treated the same way as any other (city) lot."

Worthington's motion to switch from Diamond to APCOA failed for sending a letter to Diamond with 90-day notice of the library board's intent.

State Rep. Paul Pistoria, D-Great Falls, had urged the board to make the parking-management change at its November meeting. He has criticized Diamond for a policy of attaching barrels to some over-parked cars. Pistoria said at that meeting that Diamond staff had said they were easing up on the use of barrels.

No board members at the December meeting described Pistoria's complaint as the reason for their decision to switch lot managers.

IN OTHER BUSINESS, Gercken told the board of proposed administrative rule changes suggested by State Library staff in Helena.

One rule change would limit library federations to "existing political boundaries" — potentially barring federations from offering library contracted services to part of one county, Gercken said.

Gercken commented he "would like to see ... some flexible arrangement," that would allow potential cooperative arrangements among Montana library federations. Such arrangements could be used, for example, to bring bookmobile services to a community near the boundary of a federation that it doesn't belong to, he said.

R-12-87

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*IMPORTANT* *dated with me*  
 Sunday, November 20, 1983 Great Falls Tribune 3-B

# City attorney says private lots may 'boot' overparked cars

By PETER JOHNSON  
 Tribune Staff Writer

While U.S. Supreme Court rulings apparently make it illegal for city government to attach barrels to cars overparked in parking lots, City Attorney Dave Gliko said last week that such rulings do not necessarily apply to privately owned parking lots.

Gliko advised the City Commission in a legal memorandum not to take any action to interfere with this "booting" practice being performed at some privately owned downtown lots by Diamond Parking, which enforces parking regulations on the lots for their owners. APCOA, which enforces regulations for the city's on-street meters and off-street lots, does not boot cars.

(Technically, the term "boot" applies to a specific device that immobilizes a vehicle by locking an axle. It is more sophisticated than Diamond's barrels, but its effect is the same.)

City commissioners agreed not to intervene, to the irritation of state Rep. Paul Pistoria, D-Great Falls, who has attacked the booting practice. Pistoria vowed to introduce a bill in the state Legislature making

booting illegal for both private and public lots.

In his memo, Gliko said the city decided a number of years ago to stop booting cars because of U.S. Supreme Court rulings determining that the practice violates the basic concepts of "due process" under the Fourteenth Amendment to the U.S. Constitution.

The Fourteenth Amendment places constraints on what actions government may take to deprive people of their property interest, he said. Court rulings have found that use of a car is a property interest and that due process steps must be followed by the government if a person is even temporarily deprived of property.

Gliko said a boot placed on a car for failure to pay parking fees "does not pass constitutional muster" since the owner is not notified or given a chance to be heard before his or her car is booted.

But, Gliko stressed, the Fourteenth Amendment protections apply only to booting by government agencies, not private companies. On the other hand, he said, persons whose cars are booted on private lots may be liable for civil trespass suits or

misdemeanor charges of criminal mischief that would have to be filed individually by the owners.

Since the private parking lots do not fall within the city's jurisdiction, the city has no authority to intervene, Gliko said, and it could be sued itself if it tried.

Pistoria contended the city has a right to stop booting in any lot, and called it "a terrible thing" that individuals have to go to court personally to settle a dispute over booting.

Diamond Parking manager Rich Modic has said the company doesn't boot cars until they're found to be in violation a second time. Vehicle owners are charged \$20 to have the barrels removed. Some people have cut the barrels from their vehicles, he said, but in the future may be confronted with misdemeanor charges of destruction of private property and theft of services.

In another parking matter, commissioners Shirley Kuntz, John St. Jermain and Lee Nelson said they may favor extending the length of time visitors go without receiving parking tickets from a half-hour to two hours. The commissioners suggested the Parking Commission study the question.

# Foutz proposes nuclear waste plant in Great Falls

taken off. He questioned the legality of the barrels and said the city has an obligation to do something to stop the practice.

Commissioner Bob Worthington and others were initially skeptical. Worthington said city intervention in operation of the private parking lots would be similar to the city telling a clothing store how much it can charge for its suits. **Note**

X City Attorney Dave Gliko said court cases have challenged the legality of the barrels, which is why the city no longer uses them at its parking lots.

City Manager Al Johnson said city staff will check whether the city can do anything.

Rich Modic, Diamond Parking's local manager, said in a later interview that the company does not immobilize a vehicle the first time its owner fails to put money into the slot or overstays the allotted period. But the firm takes the position that an owner involved in a second offense has in effect been gambling he can park on private property without getting caught. Parking-lot signs and ticket warnings advise motorists that failure to pay can result in their vehicles being immobilized or towed away, he added.

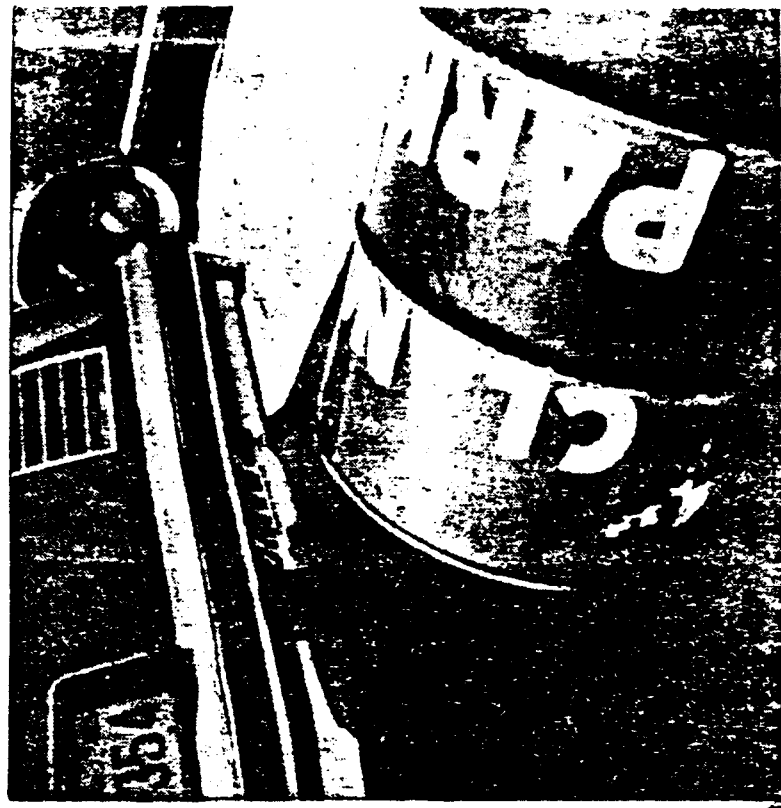
The firm has recently started writing more tickets on vehicles parking in its lots at nights, when payment is still required, he said.

Immobilizing involves attaching a 55-gallon barrel to the vehicles with a cable and a padlock, he said. Modic, who's been at his job for just a

Pistoria, a state legislator and former member of the old city council, has appeared before the commission for years on numerous topics. Tuesday he returned to a familiar one: opposition to Diamond Parking's policy of "immobilizing" vehicles overparked in the parking lots it regulates by attaching large barrels to them.

In the mid-'70s, when Diamond Parking was regulating parking at city lots, Pistoria objected to the use of the barrels. Though he lost an arm in an industrial accident many years previous, Pistoria bragged then he was still able to cut the cables attaching the barrels with bolt-cutters.

Diamond no longer regulates the city lots, but is using the barrels at the privately owned lots it regulates, Pistoria said. He called it "outrageous" that Diamond can immobilize a car for a violation and require the owner to pay \$20 to have the barrel



Rep. Paul Pistoria complained about barrels like this one attached to the car of a delinquent parker. (Paul Pistoria Photo)

month, had no figures of how many vehicles have been immobilized. He said the company sometimes goes days without having to attach barrels to any cars, then might have a period where it immobilizes a car a day for several days.

Modic said three people have cut the barrels from their vehicles and one even took the barrel. Though Diamond has not yet asked Court Attorney J. Fred Bourdeau to prosecute violators, Modic said, the company may soon do so.

The charges could involve destruction of private property, breaking the cable, and theft of services, for not paying to park, he said.

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\* Me - Fri - July 27, 1984 - Page 1-C.

## Parking board asks for ruling

By FRED MILLER III  
Tribune Staff Writer

The Great Falls Parking Commission has decided to seek an attorney general's ruling on whether Diamond parking lots can legally attach barrels to vehicles whose fees are overdue.

State law doesn't allow the impounding of vehicles without five days notice, according to parking commission member Jerry Fraser.

"We'd like to get an attorney general's opinion on whether state law applies to private lots," Fraser said. "If they are operating outside of the law, I'd like to know it."

The commission was spurred to action by state Rep. Paul Pistoria, D-Great Falls, who said he recently cut a barrel off the car of a pregnant woman. "I cut the barrels off and I'd do it for anyone who'd call me," Pistoria said, explaining that he carries a pair of bolt cutters in his car. "I'm telling you it's unconstitutional, it's vindictive, it's ridiculous. It's got to be stopped."

"If I had the money I'd take them to court so we could get those rats."

Fraser said a member of the Downtown Business Council sent a letter to Diamond's headquarters in Seattle, stating that Montana law doesn't allow impounding of vehicles without five days' notice.

"We have not had a reply back from Diamond," he said. "They have been evasive and they have not answered our letters."

Pistoria urged the parking commission to recommend that the city pass an ordinance requiring private parking lots to "follow the same rules adopted on city lots for parking violations."

Pistoria also asked that the city look into taking control of the private parking lots now operated by APCOA, Inc. and Diamond Parking.

Bob Duty, director of public works, said the city used to operate the lots. He said he and City Manager Al Johnson have been discussing the possibility of returning the lots to the city's control, but that no decisions have been made.



A barrel, which is attached to bumpers of overtime cars, stands alongside an entrance to a downtown parking lot. (Tribune Photo)

DATE 2-12-87  
FILE #1335



# STANDING COMMITTEE REPORT

FEBRUARY 12

87

..... 19.....

MR. PRESIDENT

## SENATE STATE ADMINISTRATION

We, your committee on .....

SENATE BILL 42

having had under consideration..... No.....

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**REVISE MEMBERSHIP AND DUTIES OF LEGISLATIVE COUNCIL**

**Neuman**

SENATE BILL 42

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

~~XXXXXX~~  
DO PASS

~~DO NOT PASS~~

SENATOR JACK HAFLEY.....

Chairman.

# STANDING COMMITTEE REPORT

FEBRUARY 12

87

19.....

MR. PRESIDENT

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

having had under consideration..... **SENATE BILL** No. **287**

**first** reading copy ( **white** )  
color

**REAPPORTIONMENT TO BE BASED ON NUMBER OF LEGISLATORS DECIDED  
BY LEGISLATURE Gage**

Respectfully report as follows: That..... **SENATE BILL** No. **287**

~~DO PASS~~

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

.....  
Chairman.

# STANDING COMMITTEE REPORT

FEBRUARY 12

19 37

MR. PRESIDENT

SENATE STATE ADMINISTRATION

We, your committee on .....

having had under consideration..... HOUSE BILL No. 335

third reading copy ( blue )  
color

PROHIBIT PRIVATE PARKING SERVICE FROM IMPOUNDING MOTOR VEHICLE  
Pistoria (Manning)

HOUSE BILL

335

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

BE CONCURRED IN

~~XXXXX~~  
DO PASS

~~XXXXXXXXXX~~  
DO NOT PASS

.....  
Chairman.