

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE

Call to Order: By Chairman Gage, on April 19, 1989 at 1:00 p.m.

ROLL CALL

Members Present: Senators: Gage, VanValkenburg, Harding,
Representatives: Addy, Strizich, Gould

Also present: John Connor, representing the
Attorney General

Staff Present: Ann Glenn, Secretary

Members Absent: None

Announcements/Discussion: None

SENATE BILL 377

Chairman Gage opened the Free Conference Committee meeting on S.B.377 and requested that Senator VanValkenburg express the concerns of the Senate concerning the amendments.

Senator Valkenburg distributed copies of a document prepared by John Connor of the Department of Justice which detailed what impact the amendments would have on the bill. He said the purpose of the bill was to try and bring Montana's forfeiture law more in line with the federal forfeiture law so that when the feds made an arrest or seizure related to drugs, and there were state law enforcement officers involved, that the state could then participate in the federal forfeiture which could provide: (1) a substantial source of funds for future drug enforcement operations; and (2) an additional deterrent towards drug related activity. The House amendments do two things: (1) change the burden of proof around as regards to real property, i.e., in that the person who is being subject to forfeiture has to prove they are not subject to the requirements in the law; and (2) there was an effort in the House to limit the subject of real property forfeitures to specific portions of real property - example - if you had an isolated 5-acre plot on a larger farm operation, the only thing you could go after would be exactly where the marijuana was being grown - which make that piece of property unmarketable with limited value, and also doesn't really act as a deterrent to that property owner if he can limit his operation to a very small portion of his property. He noted that being able to participate in federal forfeitures is of

Senator VanValkenburg, cont'd

significant value to the State of Montana. Obviously, there is much more money for enforcement purposes at the federal level than there is at the state level and they had been willing to share what they have been able to pick up whenever there is a cooperative effort, but in order for that sharing to take place federal law says that you can't be forfeiting that which is not forfeitable under state law.

Representative Addy asked why the state couldn't use the information that the fed's have during their bust to exercise our forfeiture rights as a state.

John Connor answered that as far as real property is concerned the state doesn't have the vehicle to do it. The state doesn't have the real property forfeiture provisions the federal law does. The state cannot forfeiture provisions the federal law does. The state cannot forfeit real property under Montana law that is just being used for the purpose of growing dope. If a ranch was owned outright and for the purpose of growing drugs, under federal law it could have been forfeited but it could not have been under state law unless it was possible to prove that the ranch value was derived from the sale of the drugs.

Reprersentative Addy stated he didn't think it was that difficult to show that the proceeds of the drug operation was used to pay the mortgage on his property.

Mr. Connor used an example of a person making \$600 a month mortgage paymentgs on a house. He then starts growing marijuna in the basement of the house. That person is still going to continue to pay \$600 a month payments after he is busted and there is no way to prove that the proceeds of that dope operation track over to the payment of the house. With the amendments in this bill the state would be able to go in and take the equity of the house. Mr. Connor said that under current law you have to show the house derives from the proceeds of the sale of the marijuna. Under the bill as amended you could seize the house.

It was agreed under SECTION 1,(i) to strike the words THAT SPECIFIC PORTION OF.

Representative Strizich said that the problem the House Committee had with the amendment was the issue of innocent shareholders, partners or spouses.

Representative Addy stated proponents of the amendments are saying prosecutors want to be able to go into any situation and back off when you have enough evidence that satisfifies them that this was

Representative Addy, cont'd.

an innocent occurrence as far as a title owner of a house or property is concerned. Addy would not be in favor of "going in" unless there was proof that they were involved and makes it hard for him to vote for a bill that says "we are going to take your property without proving they were involved in the operation."

Senator VanValkenburg maintained the bill would not be worth it to put the burden of proof on the state - to say that the owner knew. The owner should have to come in and prove that they were not aware, or had no knowledge that the property was being used for the purpose of developing drugs. It ought to be a presumption that if the drugs are on their property, they knew what the purpose was for those drugs being there and there is no way for the state to effectively prove that that was the case without presumption.

Representative Strizich "There are lots of properties that are rented. If I am renting a house and the person who has my house gets 'nailed' for cultivation in the basement of my rental property, I have to go to court to prove that I was not knowledgeable of his cultivation operation? I don't buy that."

John Connor If you want a practical reason why this language was in the bill to begin with and why it is used federally and why it was in the original law - it is not to make the prosecutor's job easier, it is because in all these forfeiture actions you have an innocent owner involved. People who are dealing in dope know what the law is. If you are dealing dope out of a car, "mom" always owns the care, the guy who is dealing never owns the car. That is why the law was originally constructed and why the federal law has some practical value.

Senator Gage It is time to get as tough as we can on this whole situation and we should look at the worst case scenario and make sure that the innocent victims out there are protected.

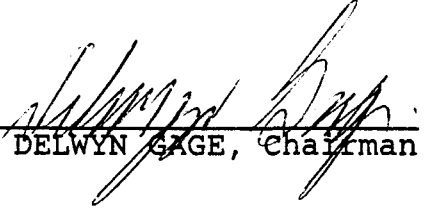
Senator Addy I vote no.

Representative Strizich It would be a mistake to let the bill go. It does more with the amendments than what is on the books right now. We should take that much and if it doesn't work we will have more experience, the language is there and we can come back in two years and go further if you can prove that is where it's going to work without taking away people's rights.

Senator Gage stated the Committee could not concur on all the amendments and moved that a new committee be appointed. The motion was seconded and passed.

ADJOURNMENT

Adjournment At: 2:00 p.m.



DELWYN GAGE, Chairman

DG/ag

Members Absent:
Members Excused:

Free Conference Committee Report
on SB 377
Report No. 1, April 21, 1989

Mr President and Mr. Speaker:

We, your Free Conference Committee on SB 377 met and considered:

The House Committee on Judiciary amendments to SB 377 (third reading copy --blue) dated March 9, 1989.

We recommend that:

The House amendments be accepted, except that the inserted language in Amendment No. 2 be stricken;

and that SB 377 (reference copy -- salmon) be amended as follows:

1. Page 3, line 8.

Strike: "THAT SPECIFIC PORTION OF"

And that this Conference Committee Report be adopted.

FOR THE SENATE

FOR THE HOUSE



Sen. Gage, Chairman



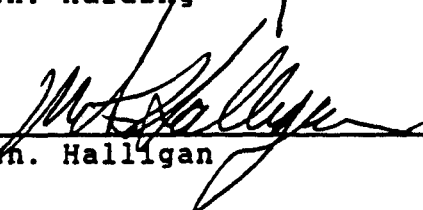
Rep. Addy, Chairman



Sen. Harding



Rep. Strizich



Sen. Halligan



Rep. Gould

ADOPT

REJECT

SB 377
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