

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JOINT RULES

Call to Order: By Senator Greg Jergeson, on February 17, 1993,
at 5 p.m.

ROLL CALL

Senate Members Present:

Sen. Greg Jergeson, Chair (D)
Sen. Fred Van Valkenburg, Vice Chair (D)
Sen. Bruce Crippen (R)
Sen. Steve Doherty (D)
Sen. Delwyn Gage (R)
Sen. John Harp (R)
Sen. Judy Jacobson (D)
Sen. J.D. Lynch (D)

House Members Present:

Rep. Larry Grinde, Chair (R)
Rep. Jim Rice, Vice Chair (R)
Rep. Jerry Driscoll (D)
Rep. Mike Foster (R)
Rep. Bob Gilbert (R)
Rep. John Mercer (R)
Rep. Ted Schye (D)
Rep. Bill Strizich (D)

Members Excused:

Rep. Dave Brown (D)
Rep. Marian Hanson (R)
Rep. Hal Harper (D)
Rep. Harriet Hayne (R)

Members Absent:

Staff Present: Lynn Staley, Committee Secretary

Senator Greg Jergeson opened the Joint Rules Committee stating it was a continuation on the subject of the meeting last week on the James Jensen suspension. Since that meeting and the President of the Senate and the Speaker of the House having accepted our recommendation and the suspension of Jim Jensen having been continued for a week, suit has been filed against Senator Van Valkenburg and Rep. Mercer over the issue. We are gathered here today to see where we go from here. The President and Speaker are going to be required to respond in the case, so a determination on the course of action must be made.

Senator Van Valkenburg said he specifically asked the chairman of the Rules Committee to convene this meeting so the Speaker and himself would have a chance to advise the committee of their intended course of action with respect to the filing of this law suit. Speaker Mercer and I have conferred upon having been served with the summons, complaint and order to show cause in the case. We both believe, and John will want to speak for himself also, but this is very important that we defend the Legislature's action, the presiding officers' action in this case; that this law suit is a further intrusion on the integrity of the Legislature and the ability to control its own proceedings and that we need a vigorous defense of this action. We have conferred with the Attorney General with respect to his willingness and ability to represent the presiding officers in this case. The Attorney General has essentially advised us that he thinks it is appropriate that we be represented by his staff but that he further advises that we fall into the same category basically as any other entity that would need representation by the Attorney General; that he would be inclined to assign the matter to the agency's legal services for defense and that he would be billing the legislature at an hourly rate for the time of representation in that regard. There are, I suppose, other options; they would include employing legislative counsel legal staff to represent the presiding officers in this law suit, or employing outside counsel. My preference, and I think Speaker Mercer's preference is that we accept the Attorney General's offer and have the agency legal services bureau people represent us in this matter. I do think it may be possible for the legislature to recover attorney fees against the petitioners in this matter before it is over and that we will be able to recover any costs we incur in the defense of this law suit.

Speaker Mercer said he would echo the remarks made by the President. Something is troubling me about this whole thing because, essentially what occurred here is a direct attack on the people of the state of Montana through their legislative branch. Anytime someone is intimidating a member of the Legislature, it is not just impacting that individual, it is also impacting the people because it starts to interfere with the decisions that are made for the benefit of the people. There was no question that Mr. Jensen did that. He admitted to it and even admits to it in his complaint. I felt that the decision recommended by the Rules Committee was really actually a very minor penalty for the action that had occurred and here we have this additional law suit which is another effort to intimidate the Legislature as well because if the leaders, in their job, are going to try to protect the integrity of the process and are going to be drug into court then leaders had better watch out if they are going to try to protect members. I feel I don't care if someone is going to try to take us to court, we are going to do everything we can to preserve the integrity of the Legislature and protect the members. It bothers me that this gentlemen is throwing, what I think is sort of a tantrum, when he was clearly in the wrong, at a time when the Legislature is so busy trying to deal with many, many difficult

problems. I would hope this is not a burden for either the President or myself or the rest of the legislators and if we could pass this off to competent counsel, that I believe the Attorney General's office can provide, it would be a great assistance to myself and I am sure, Senator Van Valkenburg.

Senator Van Valkenburg said he has asked the Attorney General's staff to be present at this meeting who represent the agency legal services bureau. Mr. Chris Tweeten and Mr. Clyde Peterson from that staff are present and would be available to answer any questions if anyone has any.

Senator Jergeson asked if there were any further comments by members of the committee, or any questions.

Senator Gage asked if it has been investigated further what you brought to the attention of the attorney at the hearing; the fact that these things may have over tones of criminal actions, realizing that is much more serious than perhaps what we are doing in some respects, but as you pointed out, those are rules. Has anyone looked into that further?

Senator Van Valkenburg said he had not and didn't know if anyone has.

Senator Jergeson asked if there were any other comments or questions from the committee.

Motion: Senator Lynch said he would move that Rules Committee endorse the suggestion of the leadership of both Houses, that we go on record as obtaining the services of the Attorney General's staff to defend the leadership in this frivolous suit.

Senator Jergeson asked if there was any discussion. You have heard the motion of Senator Lynch that the Rules Committee recommend that we utilize the Attorney General's staff to defend the leadership in this suit.

Vote: The motion Carried unanimously.

Senator Van Valkenburg said he didn't know what the ultimate cost of this might be. It is his understanding that the agency legal services is now billing approximately \$53 per hour for its services. It depends, obviously, on the length and complexity of this suit. The legislature has not spent a substantial amount of money from the previous feed bill. There would be some money that you could draw from out of the current bill that might otherwise be used from pre-session expenses in the 1995 session, if necessary and maybe Mr. Person would indicate. Senator Van Valkenburg said he would anticipate off hand that we would probably be looking at something in the neighborhood of \$5,000 or less for the cost of the defense of this suit.

Chris Tweeten said he certainly thought that would be in the

window of terms of total cost if the case goes the way they anticipate. While we can't obviously predict how the course of litigation would be with a degree of certainty, they would anticipate they would attend a show cause hearing that is scheduled for next week. The case may in fact be resolved as a result of that hearing. If not, and further proceedings are required, additional time would be spent, but he thinks that is certainly a reasonable figure of what the cost would be.

Senator Van Valkenburg asked Mr. Person if he would anticipate that we would be able to draw on an existing appropriation to that extent and if necessary, consider that matter further later in the session with a general appropriations bill or a subsequent feed bill.

Mr. Person said that shouldn't be a problem at all.

Senator Jergeson asked if there were any other items to come before the Joint Rules Committee.

ADJOURNMENT

Adjournment: Meeting adjourned at 5:20 p.m.


SENATOR GREG JERGESON, Chair


LYNN STALEY, Secretary

GJ/ljs

House

ROLL CALL

SENATE COMMITTEE HOUSE RULES

DATE 2/17

NAME	PRESENT	ABSENT	EXCUSED
REP. GRINDE, CHAIRMAN	✓		
REP. RICE, VICE CHAIRMAN	✓		
REP. DAVE BROWN			✓
REP. DRISCOLL	✓		
REP. MIKE FOSTER	✓		
REP. GILBERT	✓		
REP. MARIAN HANSON			✓
REP. HARPER			✓
REP. HARRIET HAYNE			✓
REP. MERCER	✓		
REP. SCHYE	✓		
REP. STRIZICH	✓		

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Attach to each day's minutes