

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

SUBCOMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN SENATOR LORENTS GROSFIELD**, on
February 13, 1995, at 11:20 AM

ROLL CALL

Members Present:

Sen. Lorents Grosfield Chair (R)
Sen. Larry L. Baer (R)
Sen. Sue Bartlett (D)
Sen. Al Bishop, (R)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Greg Petesch, Legislative Council
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Subcommittee Business Summary:

Meeting: SB 115, SB 136

CHAIRMAN GROSFIELD stated that the committee had discussed having advisory opinions handled within the agencies. **SENATOR BARTLETT** was uncomfortable with that and would like an appeal to a nonpartisan commission. If a commission were set up, should it be in the Commissioner's Office?

SENATOR BARTLETT stated nothing quite fits. SB 115 proposed that it be attached to the Secretary of State's Office. She has concerns about that in light of the bill to make the Lieutenant Governor effectively the Secretary of State. At this point, the Commissioner's Office would be the most neutral ground remaining. The Attorney General's Office is another option; however, there have been attorney generals who use it politically to a greater or lesser extent.

SENATOR NELSON asked if the Commission would be made of local people or people from around the state.

SENATOR BARTLETT stated she would prefer the procedure written in SB 115. They would be like other quasi-judicial boards.

SENATOR NELSON commented they just set up a commission in the game farm bill where they are not even compensated expenses. You can't expect people to travel without some compensation.

SENATOR BARTLETT commented she would not like to see it restricted out of those kinds of considerations to people within a two hour drive from Helena, for example. There would have to be expenses.

SENATOR BAER stated he had talked with **Mr. Argenbright** earlier and his major concern is to have legislation which is definitive and nonambiguous, which is what we are doing in creating this new bill. He asked **Mr. Argenbright** for his input into having people refer to him for informal advisory opinions.

Mr. Argenbright commented that the specific nature of the language would be helpful. He worries about getting requests for advisory opinions from all the various state agencies. This will generate a large amount of extra work. When dealing with employees there would be personality problems, etc., and they could be career makers or breakers.

SENATOR BAER stated they covered the situation where an employee could approach a department head who should have a basic knowledge of the ethical procedures inasmuch as an educational program and handout would be provided. He thought that 95% of the questions could be handled by department heads or someone in that department who was knowledgeable enough to answer these questions. That would leave only the difficult ones to be referred to the Commissioner.

SENATOR NELSON stated she could see the need for a special advisory group but she knows it would be heavy duty in **Mr. Argenbright's** department.

CHAIRMAN GROSFIELD asked **SENATOR BAER** how he felt about having a commission backing up **Mr. Argenbright**.

SENATOR BAER commented he was very worried about spending money on a commission. It would be a very expensive proposition.

CHAIRMAN GROSFIELD stated that a commission would have to be on call. They would need to meet very timely in some instances.

SENATOR BARTLETT asked why they would need to be on call.

CHAIRMAN GROSFIELD answered that a tricky question may come up which needs an answer within a few days. They would have to make themselves available on short notice.

SENATOR BARTLETT suggested that be handled through a conference call or interactive video.

CHAIRMAN GROSFIELD stated that an advisory opinion would not need to be public so a conference call would work. Someone would then have to write the opinion.

Mr. Argenbright stated he has two employees. They contract for attorney services with Jim Scheier in the Attorney General's Office. They would need someone to write the opinion. If they did not have to deal with state employees they might be able to handle the workload.

CHAIRMAN GROSFIELD commented they were just talking about public officers.

SENATOR BARTLETT stated it would include statewide elected officials, department directors, and a public employee who had a problem which could not be resolved internally.

CHAIRMAN GROSFIELD stated that if he was the director of an agency and he sensed a possible ethics problem after speaking to the attorneys in the agency and was uncomfortable with the situation, he could then talk to the governor's attorney. If there was still a problem, he then would go to the Commissioner's Office and ask for his input into the problem. The Commissioner would then talk to his attorney in the Attorney General's Office. If he is still not comfortable, the Commission could be convened to give him an off the record answer.

SENATOR BARTLETT commented she would limit it for statewide elected officers and department directors to get their answers from the Commission in all cases. That is a very limited number of people.

SENATOR NELSON asked what the course of action would be if an employee had a problem with the director.

SENATOR BAER stated they might think about a gratuitous advisory group which could work through the Commissioner's Office. Their duties would be very limited.

SENATOR NELSON stated she believes the Waste, Fraud and Abuse Hotline addresses some of this. If the concern is a state employee, they can call the Legislative Auditor's Office.

Mr. Petesch commented that the ethical questions are the ones which the auditor has been unable to resolve through the hotline. They are reported there and the auditor can forward the information to an agency.

CHAIRMAN GROSFIELD commented one option is to go ahead without a commission and hope that the education angle will take care of the situation. The other option is that there may be a few

things which slip through the cracks and thus some sort of appeal would be needed. Someone would be authorized to appoint an advisory counsel to the Commissioner's Office who would only get expenses and would try to deal with the tough questions and provide a written opinion. If the person decided to go ahead with the action in question, he could use the written opinion. If he decided not to go ahead with it, there would be no written opinion.

Mr. Petesch commented that SB 115 provided that the advisory opinion be written in such a way that names of individuals be left out. There will be circumstances where someone could be readily identified. Names and other identifying information would be left out.

CHAIRMAN GROSFIELD stated they would have expenses and a small counsel to be used infrequently which would be there for the public officers and directors only through the Commissioner's Office.

Mr. Petesch stated that one member of each party in each house could pick one and then they pick another.

SENATOR BARTLETT commented that the language in SB 115 states that a member of the Commission may not be a public official; public employee, except as the fifth member, who must be chosen by consensus of the other members; candidate; lobbyist or lobbyist's principal; or member of the immediate family of an individual listed . . .

CHAIRMAN GROSFIELD in referring to gifts, stated that "thing of value" is in 2-2-102(2). He suggested an additional sentence which would state "thing of value does not include".

Mr. Petesch commented the phrase is also found in 2-2-104(b) which states "accept a gift of substantial value or a substantial economic benefit tantamount to a gift;".

CHAIRMAN GROSFIELD stated (i) and (ii) ties gifts to public duty and something perceived as a reward for an official action. What does substantial value mean? SB 115 states anything of value does not include a gift which is not used or is returned. He prefers the language "would tend to improperly influence". He asked the committee if they wished to use the \$25 limitation.

SENATOR BAER commented the \$25 limitation was set in 1980 and that should be raised to at least \$50.

CHAIRMAN GROSFIELD stated that legislators need information on difficult issues and it is sometimes hard to determine whether a lobbyist is "tending to improperly influence".

SENATOR BARTLETT commented the rationale for \$25 is that is the amount the lobbyists report.

SENATOR NELSON stated she does not see a difference between someone taking her out individually to dinner to influence her in comparison to the large groups who take all the legislators out to dinner. The large groups have more money to spend.

CHAIRMAN GROSFIELD suggested using current law language for gifts with the exception of adding in \$50 as the definition of substantial value. He also suggested making an exception for educational activities which do not place or appear to place the recipient under obligation and clearly serve the public interest and are not lavish or extravagant. "Thing of value" would be changed to read "thing of substantial value". He recapped that SB 136, Sections 1, 4 and 5 were adopted with some changes. Sections 2 and 3 needed to be addressed further.

Mr. Petesch commented the 6 month and 12 month provisions apply to different situations. The 12 month provision deals with insider trading. The 6 month provision deals with employment, contracting with the state or local government. There are civil penalties provided for certain actions but not others. In the contractual matters, the penalty is voiding the contract. Disciplinary actions are taken by the agency. The civil penalty is provided for in some instances is the informal contested case procedure with the Commissioner's Office and then appeal to district court if necessary. In the legislative body, the penalties would be censure or reprimand by the body. There is no penalty under 2-2-104 which is the rules of conduct for everyone. This would include gifts. Double dipping is prohibited but there is no penalty. The law would require that you give up one salary. There is also the prohibition on being registered as a lobbyist. The only area which has no penalty is accepting gifts.

SENATOR BAER, referring to gifts, stated the penalty could be providing for restitution of the value of the gift accepted and then add the penalty clause. The embarrassment of restitution could be sufficient as well as expensive.

SENATOR BARTLETT questioned whether Section 2 of SB 136 was adopted.

Mr. Petesch commented this section is included in the present draft. Restitution would go to the general fund of the entity employing the individual.

SENATOR BISHOP suggested treble restitution.

SENATOR BAER commented it would be a good deterrent and could get expensive.

SENATOR BARTLETT wanted to see it stay at the cost and if there was a problem with that it could be changed later. It is the

public exposure and embarrassment which would be as big a deterrent as the dollar amount.

SENATOR GROSFIELD stated the last issue is the vehicle to be used.

Mr. Petesch recommended a substitute bill. The procedure is to choose one of the bills and strike everything after the enacting clause, amend the title and put in the language decided upon.

SENATOR BISHOP suggested that they use SB 136.

SENATOR BAER stated he would be comfortable with that procedure. The committee is modifying existing statute which is what his bill does. SB 115 repeals existing statute. Quite a bit of SB 115 has been incorporated into the substitute bill.

SENATOR BARTLETT commented they might look at using two sections from SB 115. One which prohibited political activity by commission members and one which prohibited lobbying activity by commission members. This would be page 21, Sections 24 and 25. Another concern would be 105(3) which addresses the 12 month prohibition.

SENATOR BAER commented that the committee does not intend to overreach into areas which would be unreasonable to apply 105(3).

SENATOR BARTLETT suggested in the full committee there be some language to modify this section without broadening it so much that it would be meaningless.

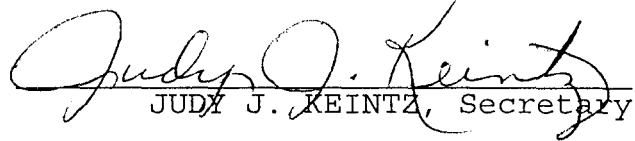
Mr. Petesch commented he would like the opportunity to give each member of the subcommittee a copy of the draft before it is submitted as the report to make sure that he has accurately reflected the committee's decisions.

ADJOURNMENT

Adjournment: The meeting adjourned at 12:14 p.m.



SENATOR LORENTS GROSFIELD, Chairman



JUDY J. KEINTZ, Secretary

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EE DATE 2/13/95

ETHICS SB 115 SB 136

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Attach to each day's minutes