

## MINUTES

### MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION COMMITTEE ON STATE ADMINISTRATION

Call to Order: By CHAIRMAN ETHEL HARDING, on January 12, 1995,  
at 10:00 AM

#### ROLL CALL

##### Members Present:

Sen. Ethel M. Harding, Chairman (R)  
Sen. Kenneth "Ken" Mesaros, Vice Chairman (R)  
Sen. Mack Cole (R)  
Sen. Mike Foster (R)  
Sen. Don Hargrove (R)  
Sen. Vivian M. Brooke (D)  
Sen. Bob Pipinich (D)  
Sen. Jeff Weldon (D)

Members Excused: N/A

Members Absent: N/A

Staff Present: David Niss, Legislative Council  
Gail Moser, Committee Secretary

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

##### Committee Business Summary:

Hearing: SB72  
Executive Action: SB5 TABLED

{Tape: 1; Side: A; Approx. Counter: 61}

#### HEARING ON SB72

##### Opening Statement by Sponsor:

SEN. STEVE DOHERTY, Senate District 24, Great Falls, stated SB72 is very simple and responds to the public's call for greater accountability with campaign finances. SB72 increases the number of campaign reports required to file for state district office. SB72 would add reports on August 1, September 1, and October 1. This increased reporting will fill the gap of many months of no required reporting prior to the one report which is currently required around the end of October. SEN. DOHERTY conceded that this will mean extra work for treasurers, a position which is

usually held by a volunteer. **SEN. DOHERTY**, however, thinks the added reporting will increase the public's confidence regarding a candidate's campaign financing accountability. **SEN. DOHERTY** also suggested that three additional reports may be too much, and he would be amenable to whatever the Committee chooses to do.

Proponents' Testimony: None

Opponents' Testimony: None

Questions From Committee Members and Responses:

**SEN. VIVIAN BROOKE** asked Senator Doherty if he would be agreeable to setting a consistent due date for the reports that would include the report that is currently due at the end of October. **SEN. DOHERTY** responded that he fully agrees with Senator Brooke on the issue of uniformity and consistency since that will make it easier to comply with the law.

**SEN. MIKE FOSTER** asked Mr. Argenbright if this increase in reporting would create a substantial increase in the work load in the office of the Commissioner of Political Practices, and if there is a fiscal note for SB72. **Mr. Ed Argenbright, the Commissioner of Political Practices**, stated that a fiscal note has been prepared. **Mr. Argenbright** said SB72 would create additional work for his office. For every additional report, SB72 would require another comprehensive review which is both demanding and time sensitive. At the same time, there are requests for information from the public that need to be answered.

**SEN. JEFF WELDON** asked Mr. Argenbright if there is a section that addresses any guidelines when the report due date falls on a weekend. **Mr. Argenbright** stated that during the last session, the statute was changed that moved the due dates by 12 days to hopefully avoid weekends but that that is another potential problem to be considered.

**SEN. KEN MESAROS** asked Senator Doherty if the additional reports will answer citizens' questions on why campaigns cost so much. **SEN. DOHERTY** responded that the additional reports will contain the same information as the one report that is currently submitted. Actually, just more of the same, but to the extent that the reports tell where the money comes from and where it is spent, the reports will answer citizens' questions. **SEN. DOHERTY** said he thinks SB72 is important because there is just too big a gap between June and the end of October to find out what's going on in campaigns.

**SEN. MESAROS** commented that he respects the concept of the Legislators being a *citizen* legislature, and requiring more and more reporting creates a more *professional* type atmosphere.

**SEN. DOHERTY** responded that hopefully the day will not come when a CPA is needed as a full-time campaign treasurer.

**SEN. MACK COLE** asked about coordination between SB72 and another Bill that proposes to shorten the time between the Primary and the General. **SEN. DOHERTY** stated he was not sure how the other Bill would affect SB72, but that numerous changes will be needed if dates related to the Primary are altered.

**SEN. COLE** asked Mr. Argenbright if the fiscal note for SB72 indicated what the costs would be for the office of the Commissioner of Political Practices. **Mr. Argenbright** stated that he has provided figures to the Governor's office for budget and program planning, but he was not sure if it is appropriate to discuss that information at this meeting.

**SEN. DON HARGROVE** asked Senator Doherty to describe a "generic need" for SB72. **SEN. DOHERTY** said he thinks the generic need is for the people to have information regarding a campaign's financial status in a timely fashion and to fill the gap from June until late October.

**Closing by Sponsor:**

**SEN. DOHERTY** stated he will forward the fiscal note as soon as he receives it. **SEN. DOHERTY** said while he does not want to overburden the Commissioner of Political Practices, he does want to bring more openness to the entire campaign financing process.

**CHAIRMAN ETHEL HARDING** closed the hearing on SB72.

**EXECUTIVE ACTION ON SB5**

**Motion:** **SEN. WELDON** moved that **SB5 DO PASS**.

**Discussion:** **SEN. WELDON** said that his efforts to pass SB5 are made to increase access to the voting booth. However, **SEN. WELDON** stated he was amenable to changes. For example, if the Committee would prefer a 50 or 100 foot restriction, or as long as the signature gatherers do not block doorways, or that signature gatherers don't approach a voter until after they have voted, or some other method to ensure voters are not hampered on the way to the ballot box.

**SEN. BOB PIPINICH** said he would like to cut the 200 foot restriction to 100 feet so that doorways would not be blocked but also provide that the signature gatherers would not be put outside either. **SEN. MESAROS** said that defining a specific distance will not necessarily keep the signature gatherers inside

a building. **SEN. BROOKE** stated that the current language appears to refer to the outside of the building -- "within 200 feet of the polling place or building". Therefore, unless "building" is deleted, it would be 200 feet from the outside of the building. **SEN. PIPINICH** said that something would have to be done with this particular language.

**SEN. HARGROVE** stated it is the responsibility of the election judges to see to it that people are able to vote without interference.

**SEN. COLE** suggested having the signature gatherers located someplace where they would not interfere with voters coming to vote or leaving the polling place. With such a method, it would be completely voluntary for the public to participate in the initiative process. **SEN. COLE** said he believes that voting is something people prefer to do without hindrance.

**SEN. HARGROVE** said he believes the current procedures are sufficient to address problems that arise regarding signature gathering at polling places.

**CHAIRMAN HARDING** commented that this legislature is making an attempt to cut the number of rules, and SB5 adds rules. **CHAIRMAN HARDING** said she has had numerous contacts in opposition to SB5. **CHAIRMAN HARDING** also cited the additional costs to counties to enforce new rules as another reason she will oppose SB5.

**SEN. PIPINICH** said he believes there will continue to be an increase in the number of signature gatherers at polling places, and guidelines need to be set in place. **SEN. PIPINICH** referred to a report by the Attorney General's Office stating access to the polls may not be prohibited. However, that report didn't stop the signature gatherers where he votes.

**SEN. FOSTER** said he does not believe there is a state-wide problem concerning signature gatherers at polling places. **SEN. FOSTER** also stated that gathering signatures at polling places appears to be successful because of voluntary participation by the public. **SEN. FOSTER** responded to the "electioneering" argument by stating that while a petition may be related to a current ballot issue, it is not the issue on the ballot. Otherwise, it wouldn't be on a petition; it would be on the ballot.

**SEN. MESAROS** said he has not heard of problems in his senate district, and believes the local election judges have the authority to handle the actions of signature gatherers.

**SEN. MESAROS** said he would encourage election officials to address problems at the local level.

**SEN. COLE** asked Mr. Niss what authority the election judge has that allows people to vote without interference from signature

gatherers. **Mr. Niss** answered that there is a part in Title 13, Chapter 35 devoted to election judges, but it is not very explicit as to what the authority of election judges is in this specific area.

**SEN. BROOKE** said in Missoula County, there are a lot of new voters and a large population of young voters. The election officials had placed a "greeter" at the door of the polling place for information purposes, to direct voters to their precinct, etc., but there appeared to be confusion between the greeter and the petitioners. **SEN. BROOKE** said she believes there is a need to ensure clear access to the voting booth and SB5 is a definitive way to do that. **SEN. BROOKE** also stated that even though a petition issue is not on the current ballot, it can still have an impact, especially in cases of very heated campaigns between candidates. **CHAIRMAN HARDING** commented that it would be dangerous for a candidate to state their position on a petition issue at the same time they are on the current ballot. **SEN. BROOKE** commented that there were candidates in Montana's General election who very clearly stated they were for CI66 and 67. **CHAIRMAN HARDING** agreed, but questioned whether stating their position on CI66 and 67 benefited those candidates.

**SEN. PIPINICH** handed out a 3-page paper on Opinions of the Attorney General (**EXHIBIT 1**). **SEN. PIPINICH** asked why, if people cannot hand out buttons or badges at the polling place on election day, can signatures be gathered on petitions.

**SEN. MESAROS** noted that in Exhibit 1, the amendment to section 13-35-218 (5) seems to cover the problem of access to the voting place or other interference with the election process.

**SEN. PIPINICH** stated that the problem in his voting place was that the signature gatherers were in the hallway, not in the room where voting was taking place.

**CHAIRMAN HARDING** stated the appropriate thing to do in problem situations would be to call the county attorney or the sheriff. **SEN. PIPINICH** stated that gathering of signatures did not used to be as popular as it is today, and some guidelines are needed. Participation in the petition process should be voluntary.

**SEN. COLE** said that if section 13-35-218 (5) (**Exhibit 1**) were changed from "polling place" to "in the area" it may address Senator Pipinich's concerns.

**SEN. WELDON** stated the two main points he wanted to make with SB5 are access to the polling place and the consideration of electioneering. **SEN. WELDON** said, concerning the issue of access, we could likely address any problems through voluntary guidelines or statute revisions to clarify the authority of the election judges. Concerning the issue of electioneering, **SEN. WELDON** said we should recognize signature gathering at the polling place as politicking. **SEN. WELDON** asked if, given the

other restrictions on electioneering, we want this sort of politicking within the polling place. **SEN. WELDON** noted that the Opinions of the Attorney General (Exhibit 1) refer to constitutional provisions. **SEN. WELDON** stated that in the context of constitutional law and fundamental rights to restrict or alter a fundamental right (such as the initiative process), the state needs to demonstrate a compelling interest. **SEN. WELDON** said he would argue that the state has a compelling interest to protect the balloting box from politicking.

**Vote:** The **MOTION FAILED 5-3** on roll call vote.

**Motion/Vote:** **SEN. WELDON** moved that **SB5 BE TABLED**.  
The **MOTION CARRIED 5-3** on roll call vote.

*{Tape: 1; Side: B; Approx. Counter: 12.8}*

#### **EXECUTIVE ACTION ON SB24**

**Motion:** **SEN. MESAROS** moved that **SB24 DO PASS**.

**Discussion:** **CHAIRMAN HARDING** said she has not heard from any election administrators objecting to SB24.

**SEN. BROOKE** stated that she contacted Missoula County to find out how many absentee ballots are sent out and at what cost. She was told that 5,000 absentee ballots had been prepared but only 3,500 were actually mailed. The Missoula County election administrator then weighed the packet that would go in the mail. The postage for the packet would be \$2.12 each. Previously, the cost of mailing the packet was about \$1.11. Therefore, SB24 would cause an increase of about \$7,000 for Missoula County. **SEN. BROOKE** said she then asked the Secretary of State's Office how many total absentee ballots were sent state-wide. She was told that that information is not tracked, but the estimate is that approximately 15% of all ballots are absentee. **SEN. BROOKE** said a quick calculation indicates SB24 would produce about a \$114,000 unfunded mandate to the local level. **SEN. BROOKE** said, however, that she intends to support SB24 because of the importance of providing the voter information to absentee voters.

**CHAIRMAN HARDING** clarified with Senator Brooke that the additional cost for Missoula County would be \$3,500 rather than \$7,000 since the absentee packet would be mailed at the \$1.11 rate anyway. The increase would be \$1.00 per packet, not the entire new cost of \$2.12 per packet.

**SEN. HARGROVE** stated that he agrees with Senator Brooke on both unfunded mandates and the right to be an informed voter.

**SEN. HARGROVE** then asked if it would be appropriate to ask for a better defined fiscal statement.

**CHAIRMAN HARDING** asked the Committee how to get a more defined fiscal note without going county by county.

**SEN. BROOKE** stated that she spoke with Gordon Morris who said he is also interested in finding out more about the costs and effects SB24 would have on counties.

**Mr. David Niss** stated there may not be a mechanism to determine the cost impact for the local governments.

**SEN. FOSTER** said that while he would be comfortable voting in favor of SB24 at this time, perhaps Senator Mesaros would withdraw his motion so that the Committee could obtain information from various counties concerning the number of absentee ballots involved.

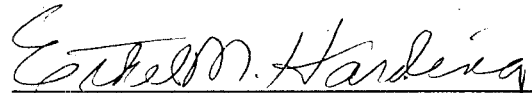
**SEN. WELDON** said he agrees with Senator Foster, and believes more information would be helpful when considering the costs associated with SB24.

**SEN. MESAROS** agreed that it would be prudent to more closely review the issues involved with SB24. **SEN. MESAROS withdrew his motion for SB24 DO PASS.**

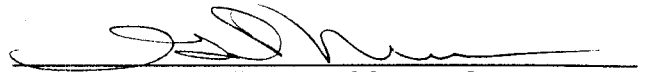
**CHAIRMAN HARDING** said SB24 would be held until next Thursday. During the week, Mr. Niss will contact the Montana Association of Clerk & Recorders and election administrators to get cost estimates on the increase of postage if voter information pamphlets are included in the mailing of absentee ballots.

ADJOURNMENT

Adjournment: 11:00 AM



ETHEL M. HARDING, Chairman



GAIL MOSER, Secretary

EMH/gem



MONTANA SENATE  
1995 LEGISLATURE  
STATE ADMINISTRATION COMMITTEE

ROLL CALL

DATE \_\_\_\_\_

01-12-95

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MONTANA SENATE  
1995 LEGISLATURE  
STATE ADMINISTRATION COMMITTEE  
ROLL CALL VOTE

DATE 01-12-95 BILL NO. SBS NUMBER \_\_\_\_\_

MOTION: DO PASS (SENATOR WELDON)

FA 450

[illegible]

MONTANA SENATE  
1995 LEGISLATURE  
STATE ADMINISTRATION COMMITTEE  
ROLL CALL VOTE

DATE 01-12-95 BILL NO. 585 NUMBER                     

MOTION: TABLE BILL (SENATOR FOSTER)

Charles

[illegible]

STATE OF MONTANA  
EXHIBIT NO. 1  
DATE 01-12-85  
BILL NO. SB5

OPINIONS OF THE ATTORNEY GENERAL

298-99 (1906). In 37 Op. Att'y Gen. No. 32 at 145, I said that the word "permanently" "must be construed as contemplating a more drastic and broader remedy" than statutes using the unmodified term "forfeit," which have been narrowly construed. Nothing in this opinion should be interpreted as negating that statement or the holding of that opinion.

THEREFORE, IT IS MY OPINION:

A person who is no longer under state supervision is not disqualified as a candidate for justice of the peace by a conviction for official misconduct during a previous term in that office.

Very truly yours,

MIKE GREELY  
Attorney General

VOLUME NO. 39

OPINION NO. 62

ELECTIONS - Ballot measures, gathering petition signatures at polling place;  
ELECTIONS - Duty of election administrator regarding obstructions at polling place;  
INITIATIVE AND REFERENDUM - Petitions, gathering signatures at polling place;  
MONTANA CODE ANNOTATED - Sections 13-13-122, 13-35-211, 13-35-218;  
MONTANA CONSTITUTION - Article II, section 6; article II, section 7; article III, section 4; article V, section 1.

HELD: Orderly gathering of initiative petition signatures at a polling place which does not interfere with the election process or obstruct voter access to the polls may not be prohibited.

4 June 1982

Robert L. Deschamps, III, Esq.  
Missoula County Attorney  
Missoula County Courthouse  
Missoula, Montana 59801

OPINIONS OF THE ATTORNEY GENERAL

Dear Mr. Deschamps:

You have requested my opinion regarding the collection of initiative petition signatures at polling places during the primary election. There are no provisions of Montana law that prohibit gathering signatures at the polling place.

Section 13-35-211, MCA, provides:

Electioneering. (1) No person may do any electioneering on election day within any polling place or any building in which an election is being held or within 200 feet thereof, which aids or promotes the success or defeat of any candidate or ballot issue to be voted upon at the election.

(2) No person may buy, sell, give, wear, or display at or about the polls on an election day any badge, button, or other insignia which is designed or tends to aid or promote the success or defeat of any candidate or ballot issue to be voted upon at the election.

This statute prohibits political activity which aids or promotes a ballot issue to be voted upon at the election. The gathering of signatures for initiatives proposed for future elections does not violate the provisions of section 13-35-211, MCA.

During the 1981 legislative session two bills were introduced which would have banned the collection of petition signatures at a polling place. One of the bills, Senate Bill 87, did not pass; the other was significantly modified before passage. 1981 Mont. Laws, ch. 561. Chapter 561 amended section 13-35-218, MCA, which now provides:

(5) No person on election day may obstruct the doors or entries of any polling place or engage in any solicitation of a voter within the room where votes are being cast or elsewhere in any manner which in any way interferes with the election process or obstructs the access of voters to or from the polling place.

OPINIONS OF THE ATTORNEY GENERAL

[Emphasis added.] Section 13-13-122, MCA, allows local election administrators to prevent obstructions. Thus local election administrators have the authority to limit the collection of signatures if that activity creates an obstruction at a specific polling place. However, in my opinion, orderly signature gathering which does not interfere with the election process may not be prohibited.

Your inquiry has constitutional implications. The United States Supreme Court has held that states may require shopping centers to allow citizens to distribute handbills and gather signatures. Pruneyard Shopping Center v. Robins, 447 U.S. 74 (1980). The Supreme Court held that it would defer to each state's interpretation of its own constitution in this field.

Montana's Constitution contains a number of provisions that guarantee an open initiative process. Article III, section 4, specifically grants the people the right to enact laws by initiative. Article V, section 1, provides that the powers of initiative and referendum are reserved to the people. These provisions, coupled with the provisions of our constitution ensuring freedom of speech, art. II, § 7, and the right to petition for grievances, art. II, § 6, demonstrate a strong commitment by the framers of our constitution to the initiative process. Any interference with the initiative process must be narrowly construed in light of those constitutional provisions.

THEREFORE, IT IS MY OPINION:

Orderly gathering of initiative petition signatures at a polling place which does not interfere with the election process or obstruct voter access to the polls may not be prohibited.

Very truly yours,

MIKE GREELY  
Attorney General

DATE : 01-12-95

SENATE COMMITTEE ON STATE ADMINISTRATION

BILLS BEING HEARD TODAY: SB 72

EXEC ACTION: SPS - SB 24 - SB 30

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
Ed Argenbright	Com. of Pol Practices			

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY