

MINUTES OF THE MEETING  
STATE ADMINISTRATION COMMITTEE  
MONTANA STATE  
HOUSE OF REPRESENTATIVES

March 21, 1985

The meeting of the State Administration Committee was called to order by Chairman Sales at 9:00 a.m. on the above date in Room 317, State Capitol.

ROLL CALL: Sixteen members were present with Reps. Garcia and Moore excused.

CONSIDERATION OF SENATE BILL NO. 341: Sen. Jack Haffey, Senate District #33, sponsor, said that the bill as introduced in the Senate proposed to amend the section of State law that addresses specifically the working hours of prison employees and defined a day's work as eight hours in any 24 hour period. There is already an attorney general's opinion relative to another part of State law that says, State, county and municipal employees and employers can define a day's work as other than 8 hours such as four 10 hour days, etc. This bill would be more efficient, more productive and would give more latitude. The Senate was going to amend this but the other alternative was to simply repeal that section of law.

PROPOSERS: Tom Schneider, Montana Public Employees' Association, said that all the bill does is repeal the section of the law that deals with prison employees and puts them under the section of law that covers other employees. The present law precludes prison employees from working overtime unless it is strictly an emergency and situations do arise where overtime is necessary and is not an emergency.

Curt Chisholm, Department of Institutions, said that they were first intending to amend this restriction in State law and then after seeing the amendments they decided to suggest to the Committee to repeal the entire section. The present law precludes them from working any prison employee beyond 40 hours per week. They have gone around this for years and would be more comfortable with repealing the section and said there are no restrictions anywhere else in the Department.

OPPOSERS: There were no opposers.

DISCUSSION OF SENATE BILL NO. 341: Rep. Smith asked what happened with overtime on a 10 hour day in a 40 hour week. Mr. Schneider said that with 10 hour days they are straight 10 hours. Overtime would only be anything over 40 hours per week.

There being no further questions, Sen. Haffey closed and told Chairman Sales that Rep. Campbell would carry the bill.

CONSIDERATION OF SENATE BILL NO. 315: Sen. Dorothy Eck, Senate District #40, sponsor, said this would be a very modest increase in retirement for teachers who retired before 1971. She did not think it did enough for this group of retirees but it would be a modest increase. Some of these people are presently receiving \$315 per month. This bill would increase the base pay to \$400 per month. Those retiring after July 1, 1971 are under a different system. These early retirees do not have social security as their systems had the choice of whether or not to join the system. This will not impact any one district much and the cost to the state agencies is minimal.

PROPOSERS: Phil Campbell, Montana Education Association, spoke in support of SB 315. He said it addresses the problem for those who retired a long time ago. With no cost of living adjustment this is the only way to increase those benefits for those people retiring prior to 1971 and the impact to the general fund would be minimal.

Tom Ryan, representing the Teachers' Retirement Board, said that these are the same people that perhaps taught some of the members of the Committee. Many of these people have been existing on minimum or no social security and very little from their retirement systems. These are the people who started the retirement system and he said that those in the profession now owe them something. He urged a do pass on SB 315.

Bob Johnson, Administrator of the Teachers' Retirement System, spoke in support of HB 632 which would benefit more people than SB 315, but if HB 632 should not pass then they would definitely support SB 315.

Jess Long, School Administrators of Montana, also supported SB 315.

OPPONENTS: There were no opponents.

DISCUSSION OF SENATE BILL NO. 315: Rep. Cody asked Sen. Eck what would happen if both HB 632 and SB 315 should pass. Sen. Eck said they both had the same base. If HB 632 passes, this one would not have to pass. The other bill would provide the increase to more retirees, in other words, it would cover additional people.

Rep. Smith stated that this bill will guarantee all those teachers that they would get a minimum of at least \$400 per month.

Mr. Johnson said that the employers are assessed the cost to finance the increase. The expenditures will go down and the revenues will increase because of deaths throughout the years.

Chairman Sales asked if there was any minimum benefit for these people at the present time. Mr. Johnson said that the minimum

of \$350 with 30 years of service was deleted in 1981 and there is really no need for a minimum benefit because salaries are so much higher. This increase addresses only those teachers with 30 or more years of service with the system.

Chairman Sales asked Sen. Eck if all teachers retirement systems weren't put into the county equalization levy so this wouldn't be an impact to the school districts but to the county-wide equalization levy.

Rep. Nelson introduced Mr. Mel Ogren to the Committee, a retired teacher who retired in 1965, and asked him what his retirement benefit was at the present time. Mr. Ogren said his benefit is \$328.23 per month. Mr. Johnson said he had mistated the minimum as being \$350 in 1981 when it was actually \$300. Rep. O'Connell said it was impossible to live on this kind of income and these people would have to be put on welfare or food stamps or something. Rep. Jenkins asked about the people with less than 30 years of service that would be getting less than \$300. Mr. Johnson said this would not affect those people.

Rep. Jenkins asked if these people received social security. Chairman Sales said at that time it was up to the district to decide whether their employees would go on social security or not. Mr. Johnson said that most have social security coverage now as it is a local option by a vote of the teachers. There would be some that would have it but they wouldn't have paid in for very many years.

There being no further questions, Sen. Eck closed, and said that the situation for these few teachers is especially desperate. She said she hoped that we would do something more effective in dealing with cost of living adjustments in the retirement systems and that we need to look at a system where both employer and employee would pay for increases. She said that pensions are a very complex matter and the State does very well in making those systems sound.

CONSIDERATION OF SENATE BILL NO. 380: Sen. Gene Thayer, Sen. District #19, sponsor, said that 1989 will be the centennial celebration of statehood and this would provide an opportunity for a fund raising project to help obtain the staff that is needed to put on the statewide celebration. As the former mayor of Great Falls, he said they established a centennial committee three years in advance of their celebration and that is none too soon. This would provide an opportunity for the State to receive one or more acres, by perhaps donation, that would be sold by the square inch so this would have the ability to raise a considerable amount of money and also the ability to do something for tourism in the state.

PROPOSERS: The Hon. George Turman, Lt. Governor of the State of Montana, appeared as a proponent of SB 380. He told the Committee that SJR 21 in the 1983 session gave the Governor the power to implement plans for the state centennial. SB 380 is one of two bills to implement that process; the other is Rep. Fritz' HB 873. He said with the tight budget crunch at this time they felt it was not possible to draw upon the general fund and this gives the opportunity to draw on some other sources. The fiscal note states that 1 million deeds would be for sale. One million deeds would be 1,000 deeds sold per day for four years! This is just a guess of expected revenue and would be subject to legislative review in 1987.

Jim Flynn, Director of the Department of Fish, Wildlife and Parks, was also in support of SB 380 and presented prepared testimony, Exhibit #2.

John Delano, Montana Railroad Association on behalf of Burlington Northern said they have been working with the department of fish, wildlife and parks to find suitable land for this project.

Bob Kiesling, The Nature Conservancy, commented that this is a good device for raising money and commended the State for getting a good jump on the celebration. The Conservancy has offered sites around the state from their many acres for this purpose and would be delighted to make any of the acreages available for this project.

OPPOSERS: There were no opposers.

DISCUSSION OF SENATE BILL NO. 380: Rep. Smith asked Lt. Gov. Turman how many square inches are in an acre and Mr. Turman replied roughly 6,272,640.

There being no further questions, Sen. Thayer closed and said that Rep. Fritz would carry the bill. He also gave the Chairman a letter from Brenda Schye, Montana Arts Advocacy, who was unable to stay and testify.

The Committee then went into executive session on the three bills.

DISPOSITION OF SENATE BILL NO. 380: Rep. Smith moved that SB 380 BE CONCURRED IN, seconded by Rep. Harbin.

Lois Menzies, Staff Researcher, suggested that the blank spaces in the bill referring to the other bill, HB 873, be amended to include the bill number. Rep. Smith moved ADOPTION OF THE AMENDMENTS, seconded by Rep. Jenkins. The motion CARRIED UNANIMOUSLY.

The original motion Be Concurred In As Amended, CARRIED

UNANIMOUSLY. Rep. Fritz will carry the bill.

DISPOSITION OF SENATE BILL NO. 341: Rep. Cody moved that SB 341 BE CONCURRED IN, seconded by Rep. Campbell.

Rep. Harbin wondered why they could not find out when this was put in the statute for the prison employees and Rep. Fritz said it was perhaps when the prison was privately operated.

The motion CARRIED UNANIMOUSLY. Rep. Campbell will carry the bill.

DISPOSITION OF SENATE BILL NO. 315: Rep. Nelson moved that SB 315 BE CONCURRED IN, seconded by Rep. Cody.

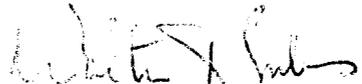
Rep. Harbin said he thought this bill ought to be passed as a stopgap and compared the differences between HB 632 and SB 315. He said that the passage of HB 632 could be very limited and felt that this bill should be passed.

Rep. Smith remarked that HB 632 would have a greater impact although it would include more retired teachers and was afraid if this bill, SB 315, isn't passed that would force the passage of HB 632.

Rep. Cody said that \$400 per month for these people is unbelievable as they cannot live on that amount. Rep. Campbell and several other members of the Committee, however, remarked that these retirement benefits - of any retirement system, including social security - were intended to supplement the individual's savings or other income planned for old age. They were never intended to be the sole income of a retired person. However, Rep. O'Connell said it was impossible to save any money at the time prior to retirement and this is all the income some people have. Rep. Jenkins also remarked that inflation has eaten up a lot of savings.

The motion Be Concurred In CARRIED with Chairman Sales voting "no". Rep. Nelson will carry the bill.

There being no further business the meeting adjourned at 10:05 a.m.

  
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WALTER R. SALES, Chairman

(Type in committee members' names and have 50 printed to start).

DAILY ROLL CALL

State Administration COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/21/85

NAME	PRESENT	ABSENT	EXCUSED
Chairman Walter Sales	/		
V-Chairman Helen O'Connell	/		
Campbell, Bud	/		
Compton, Duane	/		
Cody, Dorothy	/		
Fritz, Harry	/		
Garcia, Rodney	/		
Hayne, Harriet	/		
Harbin, Raymond	/		
Holliday, Gay	/		
Jenkins, Loren	/		
Kennerly, Roland	/		
Moore, Janet			/
Nelson, Richard	/		
Peterson, Mary Lou	/		
Phillips, John	/		
Pistoria, Paul	/		
Smith, Clyde	/		

Please excuse  
Janet Moore as she  
is sick - per Speaker's  
office.

Thank you.

# STANDING COMMITTEE REPORT

March 21

19 95

MR. SPEAKER

We, your committee on State Administration

having had under consideration Senate Bill No. 341

Third reading copy ( Blue )  
color

## AUTHORIZES CHANGE IN WORKING HOURS OF PRISON EMPLOYERS

Respectfully report as follows: That Senate Bill No. 341

BE CONCURRED IN

DO:PASS:

# STANDING COMMITTEE REPORT

March 21

19 35

MR. SPEAKER

We, your committee on State Administration

having had under consideration Senate Bill No. 390

Third reading copy (Blue color)

**"CENTENNIAL ACRE" - SALE OF DEEDS TO SQUARE INCHES FOR CENTENNIAL FUNDING**

Respectfully report as follows: That Senate Bill No. 390

**BE AMENDED AS FOLLOWS:**

1) Page 2, lines 4 and 5.  
Following: "3," on line 4  
Strike: "\_\_\_\_\_" through ")" on line 5  
Insert: "House Bill No. 373"

2) Page 4, line 3.  
Page 4, line 25  
Page 5, line 8  
Following: "7,"  
Strike: "\_\_\_\_\_" through ")"  
Insert: "House Bill No. 373"

3) Page 8, lines 9 and 10.  
Strike: "\_\_\_\_\_" on line 9 through ")" on line 10  
Insert: "House Bill No. 373"

~~UNLESS  
DO PASS~~

AND AS AMENDED  
BE CONCURRED IN

# STANDING COMMITTEE REPORT

March 21

19 35

MR. SPEAKER

We, your committee on State Administration

having had under consideration Senate Bill No. 315

Third reading copy ( Blue )  
color

## MEM. MONTHLY RETIREMENT ALLOWANCE FOR CERTAIN RETIRED TEACHERS

Respectfully report as follows: That Senate Bill No. 315

BE CONCURRED IN

DO PASS

VISITORS' REGISTER

COMMITTEE

BILL NO. SB 315  
 SPONSOR FOK

DATE 3/21/85

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Tom Pryor	Helena	✓	
Robert Johnson	Teacher Pittman		
Will Lyons	Helena, Teacher (Ret)		
Genevieve Adair	Helena Teacher Ret	✓	
Virginia Walton	Helena - Retired Teacher	✓	
Larry Marshall	Helena	✓	
Uve Thomas	Helena	✓	
Jean Long	Helena	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.  
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



## PUBLIC

## EMPLOYEES

## ASSOCIATION

### SENATE BILL 341

As originally drafted, SB 341 was intended to allow management and the employees to look at alternate work schedules, which would be agreeable to both. Local government employees and all other state employees currently have that right but Section 53-30-103 specified that prison employees would be covered separately.

In testifying, the Department of Institutions even pointed out that it was questionable as to whether they could ask employees to work overtime.

During the hearing the suggestion was made to simply delete this section of law and then the prison employees would be covered by the state statutes that all other state employees are. That being agreed to by all parties the Senate Labor Committee amended the bill to simply repeal Section 53-30-103.



supplying retail establishments with goods; and all persons employed in delivering goods to retail establishments from such wholesale warehouses.

(2) The provisions of this section shall not apply to registered pharmacists or assistant pharmacists.

(3) Any person, corporation, agent, manager, or employer who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$50 or more than \$600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment.

History: (1)En. Sec. 1, Ch. 8, Ex. L. 1933; re-en. Sec. 3073.1, R.C.M. 1935; Sec. 41-1113, R.C.M. 1947; (2)En. Sec. 3, Ch. 8, Ex. L. 1933; re-en. Sec. 3073.3, R.C.M. 1935; Sec. 41-1115, R.C.M. 1947; (3)En. Sec. 2, Ch. 8, Ex. L. 1933; re-en. Sec. 3073.2, R.C.M. 1935; Sec. 41-1114, R.C.M. 1947; R.C.M. 1947, 41-1113, 41-1114, 41-1115.

#### Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

**39-4-106. Telephone operators.** (1) On all lines of public telephones operated in whole or in part within this state, it shall hereafter be unlawful for any owner, lessee, company, or corporation to hire or employ any operator or operators, other person or persons to run or operate a telephone board or boards for more than 9 hours in 24 hours in cities or towns having a population of 3,000 inhabitants or over.

(2) The provisions of this section shall not apply to any person or persons, operator or operators operating any telephone board or boards more than 9 hours in each 24 for the purpose of relieving another employee in case of sickness or other unforeseen cause or causes.

(3) Any owner, lessee, company, or corporation who shall violate any of the provisions of this section shall upon conviction be punished by a fine of not less than \$100 or more than \$500. Each and every day that such owner, lessee, company, or corporation may continue to violate any of the provisions of this section shall be considered a separate and distinct offense and shall be punished as such.

History: (1), (2)En. Sec. 1, Ch. 75, L. 1909; re-en. Sec. 3074, R.C.M. 1921; re-en. Sec. 3074, R.C.M. 1935; Sec. 41-1116, R.C.M. 1947; (3)En. Sec. 2, Ch. 75, L. 1909; re-en. Sec. 3075, R.C.M. 1921; re-en. Sec. 3075, R.C.M. 1935; Sec. 41-1117, R.C.M. 1947; R.C.M. 1947, 41-1116, 41-1117.

#### Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

**39-4-107. State and municipal governments, school districts, mines, mills, and smelters.** (1) A period of 8 hours constitutes a day's work in all works and undertakings carried on or aided by any municipal or county government, the state government, or a first-class school district, and on all contracts let by them, and for all janitors (except in courthouses of sixth- and seventh-class counties), engineers, firefighters, caretakers, custodians, and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by such municipal, county, or state government or first-class school district. A period of 8 hours constitutes a day's work in mills and smelters for the treatment of ores, in underground mines, and in the washing, reducing, and treatment of coal. This subsection does not apply in the event of an emergency when life or property is in imminent danger or to the situations specified in subsections (3) and (4).

(2) The provisions of subsection (1) do not apply to miners who are working a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative.

(3) In counties where regular road and bridge departments are maintained, the county commissioners may, with the approval of the employees or their duly constituted representative, establish a 40-hour workweek consisting of 4 consecutive 10-hour days. No employee may be required to work in excess of 8 hours in any one workday if he prefers not to.

(4) In municipal and county governments, the employer and employee may agree to a workday of more than 8 hours and to a 7-day, 40-hour work period:

(a) through a collective bargaining agreement when a collective bargaining unit represents the employee; or

(b) by the mutual agreement of the employer and employee when no bargaining unit is recognized.

History: (1) thru (3)En. Sec. 1, Ch. 50, L. 1905; amd. Sec. 1, Ch. 108, L. 1907; re-en. Sec. 1739, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1917; re-en. Sec. 3079, R.C.M. 1921; Cal. Pol. C. Secs. 3244, 3245; amd. Sec. 2, Ch. 116, L. 1929; re-en. Sec. 3079, R.C.M. 1935; amd. Sec. 1, Ch. 135, L. 1943; Sec. 1, Ch. 244, L. 1957; amd. Sec. 1, Ch. 395, L. 1975; Sec. 41-1121, R.C.M. 1947; (4)En. Sec. 2, Ch. 50, L. 1905; amd. Sec. 2, Ch. 108, L. 1907; re-en. Sec. 1740, Rev. C. 1907; re-en. Sec. 3080, R.C.M. 1921; amd. Sec. 3, Ch. 116, L. 1929; re-en. Sec. 3080, R.C.M. 1935; Sec. 41-1122, R.C.M. 1947; R.C.M. 1947, 41-1121, 41-1122; amd. Sec. 22, Ch. 397, L. 1979; amd. Sec. 2, Ch. 375, L. 1983; amd. Sec. 2, Ch. 640, L. 1983.

#### Compiler's Comments

1983 Amendments: Chapter 375 substituted (2) for "For firefighters in cities of the first and second class, a workweek consists of a maximum of 40 hours during a 5-day week."

Chapter 640 substituted last sentence of (1) for former last sentence, which read: "In cases of emergency when life or property is in imminent danger this subsection does not apply."; and substituted existing (4) for former (4), which read: "Every person, corporation, stock company, or association of persons who violates

any of the provisions of this section is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$100 or more than \$600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment."

#### Cross-References

Labor — hours of employment, Art. XII, sec. 2, Mont. Const.

**39-4-108. Repealed.** Sec. 1, Ch. 381, L. 1979.

History: (1), (2)En. Sec. 1, Ch. 5, L. 1907; Sec. 1741, Rev. C. 1907; re-en. Sec. 3081, R.C.M. 1921; re-en. Sec. 3081, R.C.M. 1935; amd. Sec. 1, Ch. 206, L. 1969; Sec. 41-1123, R.C.M. 1947; (3)En. Sec. 1, Ch. 5, L. 1907; Sec. 1743, Rev. C. 1907; re-en. Sec. 3083, R.C.M. 1921; re-en. Sec. 3083, R.C.M. 1935; Sec. 41-1125, R.C.M. 1947; (4), (5)En. Sec. 2, Ch. 5, L. 1907; Sec. 1742, Rev. C. 1907; re-en. Sec. 3082, R.C.M. 1921; re-en. Sec. 3082, R.C.M. 1935; Sec. 41-1124, R.C.M. 1947; R.C.M. 1947, 41-1123, 41-1124, 41-1125; amd. Sec. 23, Ch. 397, L. 1979.

**39-4-109. Cement plants, quarries, and hydroelectric dams.** (1) A period of 8 hours shall constitute a day's work, except in cases of emergency where life and property are in imminent danger, for all persons employed in or about cement plants and at quarries and hydroelectric dams.

(2) Any person, corporation, agent, manager, or employer who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$50 or more than \$600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment.

History: (1)En. Sec. 1, Ch. 77, L. 1933; re-en. Sec. 3083.1, R.C.M. 1935; Sec. 41-1126, R.C.M. 1947; (2)En. Sec. 2, Ch. 77, L. 1933; re-en. Sec. 3083.2, R.C.M. 1935; Sec. 41-1127, R.C.M. 1947; R.C.M. 1947, 41-1126, 41-1127.

VOLUME NO. 38

OPINION NO. 83

PUBLIC EMPLOYEES - Hours of work;  
MONTANA CODE ANNOTATED - Sections 7-32-2111, 39-3-405,  
39-4-107.

HELD: Local law enforcement agencies may, with the consent of the affected employees, schedule a forty-hour work week consisting of four consecutive ten-hour days.

26 June 1980

Harold Hanser, Esq.  
Yellowstone County Attorney  
Yellowstone County Courthouse  
Billings, Montana 59101

Dear Mr. Hanser:

You have requested my opinion on the following question:

May local law enforcement agencies, with the consent of their employees, schedule a forty-hour workweek consisting of four consecutive ten-hour days?

Your question involves the application of section 39-4-107, MCA, which provides:

- (1) A period of 8 hours constitutes a day's work in all works and undertakings carried on or aided by any municipal or county government, [or] the state government.... In cases of emergency when life or property is in imminent danger this subsection does not apply.
- (2) For firefighters in cities of the first and second class, a workweek consists of a maximum of 40 hours during a 5-day week.
- (3) In counties where regular road and bridge departments are maintained, the county commissioners may, with the approval of the employees ..., establish a 40-hour workweek consisting of four consecutive 10-hour days.
- (4) Every person, corporation, stock company, or association of persons who violates any of the provisions of this section is guilty of a misdemeanor....

Early cases held that this section constituted an absolute penal prohibition against any work in excess of eight-hours in one day. Melville v. Butte Balaclava Copper Co., 47 Mont. 1, 130 P. 441 (1913); State v. Hughes, 38 Mont. 468, 100 P. 610 (1909); State v. Livingston Concrete Building and Manufacturing Co., 34 Mont. 570, 87 P. 980 (1906). The question is whether this turn-of-the-century interpretation of the statute survives more recent court decisions, legislative pronouncements, and modern policy consideration.

Two decisions of the Montana Supreme Court cast doubt on the continuing validity of the construction of the predecessor of section 39-4-107, MCA, adopted in these early cases. In Butte Miner's Union v. Anaconda Copper Mining Co., 112 Mont. 418, 118 P.2d 148 (1941), the Court considered the interpretation of the eight-hour, workday statute and the overtime provisions of the federal Fair Labor Standards Act (FLSA). The FLSA established a forty-hour maximum workweek and provided for the payment of overtime. The Montana Supreme Court held that there was no inconsistency between the maximum hour and overtime provisions of the FLSA and the eight-hour day provisions of the then-existing version of section 39-4-107, MCA. This holding implicitly recognizes that the eight-hour day statute does not bar an employee from working more than eight hours in a day if he is compensated for the excess under an applicable overtime statute. In Glick v. Department of Institutions, 162 Mont. 82, 509 P.2d 1 (1973), the Court reiterated the view expressed in Butte Miner's Union by recognizing that certain state employees within the purview of the eight-hour day statute could work in excess of eight hours and be compensated under the overtime provisions of the FLSA.

The FLSA no longer applies to state, county, or municipal employees. National League of Cities v. Usery, 426 U.S. 833 (1976). In 37 Op. Att'y Gen. No. 16 (1977), I held that applicable statutes and administrative regulations require payment of overtime for hours in excess of forty worked in any week, relying on Glick, section 39-3-405, MCA, and the regulations codified at 24-3.14BII(38)-S14290 of the Administrative Rules of Montana. I continue to adhere to this holding. See also § 7-32-211, MCA. The cited opinion also holds that counties may not schedule employees other than bridge and road maintenance workers to work a forty-hour week consisting of four consecutive ten-hour days. I have reconsidered this holding and find it to be incorrect. In Glick and Butte Miner's the Montana Supreme Court implicitly held that section 39-4-107, MCA, is not an

absolute prohibition against working more than eight hours in one day, but rather is merely descriptive of the length of a work-day under normal conditions. The cases recognize that an employee may work more than eight hours per day if he is compensated for hours in excess of forty worked in any week under section 39-3-405, MCA. These holdings appear to nullify the plain meaning of the eight-hour day statute. However, they constitute the definitive construction of the statute by the Montana Supreme Court, and I am therefore bound to follow them.

In 37 Op. Att'y Gen. No. 16 I held that a county could not schedule four ten-hour days for all employees on the basis of a 1975 amendment which explicitly permitted counties to schedule road and bridge workers on a four-day week consisting of ten-hour days, reasoning that the express mention of such authority only for road and bridge crews necessarily excluded such authority for all other state workers. See Stephens v. City of Great Falls, 119 Mont. 368, 175 P.2d 408 (1946). This result is flatly inconsistent with the Court's reasoning in Glick, which implicitly recognized that the Department of Institutions had the authority to structure working hours for its employees in schedules other than the traditional work week consisting of five eight-hour days. If the rule of construction applied in my prior opinions was the correct one, the result in Glick could not have been reached. I can only conclude that under Glick state agencies and local governments may permit their workers to work four ten-hour days per week. 37 Op. Att'y Gen. No. 16 is overruled to the extent it is inconsistent with this opinion.

It would be appropriate for the Legislature to amend the strict language of section 39-4-107, MCA, to make it compatible with current employment practices and court interpretations.

THEREFORE, IT IS MY OPINION:

Local law enforcement agencies may, with the consent of the affected employees, schedule a forty-hour work week consisting of four consecutive ten-hour days.

Very truly yours,

MIKE GREELY  
Attorney General

EL #2  
SB-380  
3/21/85

SENATE BILL 380

Presented by James W. Flynn, Department of Fish, Wildlife and Parks

March 21, 1985

The Department supports the passage of Senate Bill 380 as amended.

We would be proud to have the State Park System associated with the celebration of Montana's centennial as prescribed by the legislation. We have the expertise and the resources to help select the Centennial Acre and to manage it up to and beyond the centennial year.

Criteria being considered for selecting an appropriate parcel should include:

- A strong association with Montana's history;
- Qualities which reflect Montana's rich, natural heritage; and
- Accessibility.

If a parcel was selected in or adjacent to an existing State Park System site, proper maintenance would be assured without significant extra costs. Visitors would have a rich and varied experience and be provided with convenience facilities such as restrooms, picnic areas, campgrounds, and fishing or boating opportunities, for example.

A parcel has not been selected but the Missouri Headwaters State Park near Three Forks meets this criteria as would other sites.

Costs may be significantly greater if an isolated single acre were selected. In that case, perhaps additional road access and a parking area, as well as fencing, and other improvements might be necessary.

In summary, we believe this innovative legislation is an appropriate way to raise money in support of Montana's Centennial celebration. It offers an exciting opportunity for people across the country to participate in that celebration and acquire something unique--a symbolic share in Montana and its history.

Thank you, Mr. Chairman.

# *Montana Arts Advocacy*

*committee of the Montana Institute of the Arts Foundation*

TESTIMONY OF BRENDA SCHYE ON SB 380  
March 21, 1985  
HOUSE STATE ADMINISTRATION COMMITTEE

I represent the Montana Arts Advocacy, a cross-section of Montanans who are committed to the development of our state's cultural resources.

Montana has a rich multi-cultural heritage of which her residents are very proud. Marking the 100th birthday of our statehood will certainly be cause for celebration, and this bill provides a creative vehicle for financing that observance. At the same time, it provides an opportunity for us to share pride of ownership with our friends in other states, giving them a vested interest in the future of this great state.

Although the specific activities which would be funded are not yet determined, we have confidence that once the centennial planning is set in motion, the citizens of Montana will generate a multitude of innovative ideas for celebrating our heritage.

We urge your support of SB 380.

K. Paul Stahl—Helena  
James Poor—Great Falls  
Mary Hudspeth—Glendive  
Charles Tooley—Billings  
Eric Myhre—Helena

Donna Gray—Pray  
B.J. Hawkins—White Sulphur Springs  
Claudette Morton—Helena  
Reed Robinson—Missoula  
Deborah Schlesinger—Helena

Sydney Sonneborn—Miles City  
C. Karen Stanton—Hardin  
J.D. Holmes—Helena  
John Koch—Miles City  
Joan Hendricks—Executive Secretary-Billings