MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON RULES

Call to Order: By **CHAIRMAN JON ELLINGSON**, on March 8, 2005 at 1:40 P.M., in Room 335 Capitol.

ROLL CALL

Members Present:
Sen. Jon Ellingson, Chairman (D)
Sen. Vicki Cocchiarella (D)
Sen. Jim Elliott (D)
Sen. Steven Gallus (D)
Sen. Kelly Gebhardt (R)
Sen. Kim Gillan (D)
Sen. Duane Grimes (R)
Sen. Dan Harrington (D)
Sen. Bob Keenan (R)
Sen. Jesse Laslovich (D)
Sen. Dan McGee (R)
Sen. Corey Stapleton (R)
Sen. Bob Story Jr. (R)
Sen. Jon Tester (D)

Members Excused: None.

Members Absent: None.

Staff Present: Annie Glover, Committee Secretary
Greg Petesch, Legislative Branch

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

Committee Business Summary:
Hearing & Date Posted: None.
Executive Action: None.

SEN. ELLINGSON explained that the Rules Committee had been called to order at the request of **SEN. BALYEAT** to determine if there had been a violation of Senate rules. He asked **SEN. BALYEAT** to explain the rule the he believed had been violated.

SEN. BALYEAT clarified that **SEN. STAPLETON** had made the formal request to bring this issue to the Rules Committee. He spoke with the Code Commissioner, and he was directed to Mason's Rules since it is not specifically addressed in Senate Rules. Mason Section 226 addresses rising on a question of privilege of the Senate. The Code Commissioner said that if reading a portion of a definition to the body did not present a true picture to the body, then not providing it when available raises it to a level of privilege. **SEN. BALYEAT** asked if the Code Commissioner could elaborate.

SEN. ELLINGSON explained that raising a question of Senatorial privilege is quite a different thing than alleging that there has been a violation of Senate Rules. The only thing that the Rules Committee can do is consider if the allegation of conduct constitutes a violation of Senate Rules. In order to proceed, **SEN. BALYEAT** must declare that there has indeed been a violation of these rules.

SEN. BALYEAT understood that if there is to be an investigation, then it has to come through the Rules Committee. **SEN. BALYEAT** deferred to **SEN. STAPLETON** since he was the one who formally requested to take this issue to the Rules Committee.

SEN. STAPLETON recognized that his motion may not have been the right motion. Neither **SEN. WHEAT** nor **SEN. BALYEAT** said the word "ethics," but he saw it as an ethics issue. He looked in the rules, and saw that a question of ethics would need to be heard first in the Rules Committee. **SEN. STAPLETON** referred to p. 34 in the 2005 Senate Rules on decorum. He thought that this was a better place to discuss this issue than the public forum of the Senate Floor.

SEN. ELLIOT stated that there has to be a specific charge as to what rules have been violated. If this is merely a better forum, then there must be a definite issue to speak to. **SEN. ELLIOT** agreed that the Senate Floor was an inappropriate place to address this issue. **SEN. ELLIOT** asked **SEN. STAPLETON** if there was a specific violation of the rules that needed to be discussed.

SEN. STAPLETON stated that he did not have a particular rule, he just did not want to discuss this issue on the Senate Floor. As leader of the Republican Caucus, he sensed some "spiraling."

After speaking with **PRES. TESTER,** he decided that this should be moved off the floor. **SEN. STAPLETON** emphasized that he does not take issue personally with **SEN. WHEAT,** he just knew that a charge of ethics needs to come through the Rules Committee.

SEN. MCGEE asked **SEN. BALYEAT** if he was making an accusation against **SEN. WHEAT** at this time.

SEN. BALYEAT responded that he was not making an ethics violation accusation. He rose on a question of privilege based on his discussions with the Code Commissioner. His concern arose when he asked **SEN. WHEAT** to read the definition of "neglect" on the Senate Floor, he felt that **SEN. WHEAT** had deliberately left out a key portion of the definition. He felt this had occurred at the time and after reviewing the video and written record of the debate.

SEN. MCGEE asked **SEN. BALYEAT** again if he was making an ethical accusation against **SEN. WHEAT** at this time.

SEN. BALYEAT stated that he asked **SEN. WHEAT** to respond to the issue on the Senate Floor directly because he wanted him to be able to explain the situation himself, short of an ethics investigation. **SEN. BALYEAT** stated that an ethics investigation was not his intent.

SEN. MCGEE stated that the reason for convening the Rules Committee would be to investigate an ethics issue, then to refer that issue to the Ethics Committee. If there is no ethical accusation, then there is no reason to continue the meeting. **SEN. MCGEE** asked **SEN. BALYEAT** again if he was making an allegation of ethical violation against **SEN. WHEAT.**

SEN. BALYEAT stated that he was not requesting an ethics investigation.

Motion: **SEN. MCGEE moved TO ADJOURN.**

SEN. ELLINGSON did not recognize **SEN. MCGEE'S** motion.

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SEN. STORY stated that it was difficult to hear one Senator say that another had misled the body and not hear an ethics accusation. If there is no charge of ethics, then the statement must be retracted. He stated that the Rules Committee should not adjourn without resolving that issue.

SEN. ELLINGSON agreed, and he asked **SEN. BALYEAT** if he wished to withdraw his allegation.

SEN. BALYEAT stated that he had "concern that a Senator deliberately misled the body." His intent was to get **SEN. WHEAT'S** response as to why he left out part of the definition. Even after **SEN. ESSMANN** asked him to read part of the definition that **SEN. WHEAT** had omitted, **SEN. WHEAT** did not explain the situation. **SEN. BALYEAT** hoped that **SEN. WHEAT** would explain his actions on the floor.

SEN. ELLINGSON read from the transcript of the debate. He highlighted where **SEN. WHEAT** stated that there was more to the definition, but that he had read the main idea of the definition. **SEN. ELLINGSON** said that he interpreted that to mean that **SEN. WHEAT** identified that he did not read the whole definition, and he understood that he had reflected the main crux of the meaning to the body. He also made it clear that the he did not read the whole definition word-for-word, but members of the Body could investigate further if need be. He then highlighted the interchange between **SEN. ESSMANN** and **SEN. WHEAT**, where **SEN. WHEAT** gave the opportunity to the body to look at the definition, and where **SEN. WHEAT** left the issue open to interpretation. **SEN. WHEAT** merely shared with the Senate his own interpretation of the issue. He did not see any intentional misrepresentation in the discussion.

SEN. BALYEAT stated that he understood **SEN. ELLINGSON'S** reading of the discussion, and he tried to see it that way as well. However, **SEN. WHEAT** did not read the part of the definition of "neglect" that describes a person that has voluntarily assumed the role of caretaker.

SEN. COCCHIARELLA objected to further discussion. She referred to the discussion as an embarrassment for the Senate.

SEN. GALLUS gave a comparison to this situation where he felt **SEN. BALYEAT** had misled the body. Shortly after transmittal, **SEN. BALYEAT** sponsored a bill and presented a newspaper article from 2003 in support of the bill. The article did not have the date on it, and **SEN. BALYEAT** had circled, on the article, a statement that **Brad Martin** supported the bill. **SEN. BALYEAT** did not clarify the origin or meaning of the article in his opening. **SEN. BALYEAT** then sat and listened to **Mr. Martin's** testimony opposing the bill. **SEN. BALYEAT** touted his bill as bipartisan. **SEN. GALLUS** asked **SEN. BALYEAT** how he justified making this allegation against **SEN. WHEAT** on the floor when he had himself committed a much worse violation.

SEN. BALYEAT stated that **SEN. GALLUS** raised that question on the Senate Floor regarding **SB 390. PRES. TESTER** approved handing that article out to the body. **SEN. BALYEAT** stated that he recognized, in his closing, that the article was from 2003. He stated that when he talked about the article in his opening, he clarified that the article referred to a House Bill that he carried in 2003. He also apologized in his closing. The article also referred to **SEN. BALYEAT** as **REP. BALYEAT**, and it referred to the bill as **HB 523.** He felt it was clear that the article was from 2003.

SEN. GALLUS noted that **SEN. BALYEAT** did not answer his question at all. He stated that he went directly to **SEN. ELLINGSON** and then **SEN. BALYEAT** privately because it was not an issue to take to the Rules Committee. **SEN. GALLUS** emphasized that **SEN. BALYEAT'S** conduct with **SB 390** was far more egregious than **SEN. BALYEAT'S** accusations against **SEN. WHEAT.**

SEN. ELLINGSON confirmed that **SEN. GALLUS** brought the issue to him, and **SEN. ELLINGSON** gave **SEN. BALYEAT** the benefit of the doubt. **SEN. ELLINGSON** stated that he believed that any perceived misconduct on the floor by **SEN. WHEAT** was unintentional.

SEN. GRIMES stated that it was important to point out that no final action had been taken on this bill. Even if there had been a real concern, it could have been cleared up in further debate. This type of thing happens often due to the stress and amount of information that Senators handle everyday. **SEN. GRIMES** did rise on a point of personal privilege on this bill, and **SEN. WHEAT** responded very appropriately. **SEN. GRIMES** expressed that he wanted to give him credit for that.

SEN. ELLINGSON agreed with **SEN. GRIMES.** He stated that he found that there was no ethical violation alleged, and that there was no specific rule alleged to have been violated. He stated that he would entertain a motion to adjourn.

SEN. COCCHIARELLA commented that the whole integrity of the Senate has been questioned in front of the constituents of Montana. This is unprecedented. **SEN. COCCHIARELLA** stated that if there is a question of privilege, it is the question of whether **SEN. BALYEAT** has improved the circumstance of the Senators as citizen legislators. **SEN. WHEAT**, and all Senators, deserve respect for the work that they do for Montana. She stated that in the end, this personal insult affronted every Senator.

{Tape: 1; Side: A; Approx. Time Counter: 43.8 - 53.1}

Motion: SEN. COCCHIARELLA moved that THE COMMITTEE TAKE A POSITIVE VOTE TO REJECT A QUESTION OF PRIVILEGE BY SEN. BALYEAT.

SEN. COCCHIARELLA CALLED THE QUESTION ON HER MOTION.

SEN. MCGEE reminded the committee that the question of privilege was called on the Senate Floor. He asked **SEN. COCCHIARELLA** to clarify.

SEN. LASLOVICH stated that every Senator has a right to stand up on a question of privilege. A better motion from **SEN. COCCHIARELLA** may be to say that this committee take positive action as to whether it was a deliberate misrepresentation on the part of **SEN. WHEAT.** The Rules Committee should determine whether or not there was a deliberate misrepresentation.

SEN. ELLIOT stated that there has not been a formal charge on a violation of ethics. He stated that **SEN. BALYEAT** "chose to impugn the integrity" of a fellow Senator. He expressed concern that he did not know what action the committee could take to correct this insult to the Senate. He cautioned **SEN. BALYEAT** to first discuss future action of this type with his leadership in order to protect the dignity of the Body.

SEN. COCCHIARELLA stated that she was adamant on rejecting the reason that the committee had been called, but she was open to rewording her motion.

SEN. ELLINGSON suggested that the Committee find that there is no basis upon which to conclude that **SEN. WHEAT** has created an ethical violation of Senate Rules.

SEN. COCCHIARELLA accepted that as a substitute motion.

Vote: Motion carried 13-1 by voice vote with SEN. KEENAN voting no.

ADJOURNMENT

Adjournment: 2:35 P.M.

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SEN. JON ELLINGSON, Chairman

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ANNIE GLOVER, Secretary

JE/ag

Additional Exhibits:

EXHIBIT(rus51aad0.PDF)