

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 2, 1999 at 9:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 237, 1/30/1999
Executive Action: None

HEARING ON SB 237

Sponsor: SEN. MIGNON WATERMAN, SD 26, Helena

Proponents: Jane Jelinski, Montana Association of Counties
Tim Burton, Chief Administrative Officer for Lewis
and Clark County
Gloria Paladickuk, Richland County Commissioners

**Sharon Gaughan, Montana Court Reporters
Association
Charles Brooks, Yellowstone County Commissioners**

Opponents: None

Opening Statement by Sponsor:

SEN. MIGNON WATERMAN, SD 26, Helena, introduced SB 237. She related that this legislation is to clarify the status of court reporters. Court reporters are not necessarily county employees, court employees, state employees or independent contractors. This bill attempts to clarify their status by making them part of the judiciary system at the state level. The original fiscal note contains a technical note that the District Court Criminal Reimbursement Funds were not being used for a portion of the costs. An amendment has been requested to clarify that these funds are part of the funding. The District Court Criminal Reimbursement Fund has been a source of funding for criminal cases and this should continue. The General Fund impact on the proposal would be approximately \$1 million a year.

Page 3, line 19, of the bill strikes the upper income limit. This should be set by the judges as part of the state pay schedule. If this is a concern, she asked that rather than reinserting a minimum and maximum amount that a grade level be used instead. It would therefore not be necessary to revisit the legislation every time there was a change in salary.

Proponents' Testimony:

Jane Jelinski, Montana Association of Counties, explained that there are separate statutes that set the salaries of court reports and assures that they are hired by the district judges. The district court judges are state employees but the court reporters that they hire and supervise are on the county payroll. Other county employees are governed by very strict work policies. If a county employee leaves for lunch 15 minutes early, this is accounted for in their payroll sheet. Holidays and sick time are also strictly governed. These employees observe court reporters coming and going at odd times simply because jury trials can go well into the night or weekend. Courts do not operate in the same manner as the administrative offices of the counties operate. If a court reporter were to sue for wrongful discharge or other employee practice, they will sue the county which makes the counties liable for decisions made by a district court judge.

Tim Burton, Chief Administrative Officer for Lewis and Clark County, remarked that this issue has been going on for 25 years.

This is a legal issue with the Board of County Commissioners and how they comply with existing Attorney General Opinions, Fair Labor Standards Laws, and other employment practices that govern their actions. Under state law court reporters are hired at will by the judges and they can be either independent contractors or county employees. The Attorney General holds that if they receive a county check, they are county employees subject to all personnel policies and procedures that apply to that governing body. The Commissioners are the only body that can create personnel policies and procedures which require a 40 hour work week. Defining court reporters as court employees solves the legal definition relative to employment status. Under Montana law, the judge can set the salary of a court reporter between \$28,000 and \$35,000. The statute specifically states "no other compensation". The judges set the salary at \$35,000 plus issue a court order that the county provides vacation, sick leave, and health insurance. If the \$1 million is too high for the legislature to authorize, then we need to make sure that they are either independent contractors or county employees subject to all personnel policies and procedures defined under current law.

Gloria Paladickuk, Richland County Commissioners, stated that because of the oil boom and influx of people in Richland County, they have their own judge. The judge gave an order to the County Commissioners for his own court reporter rather than using the court reporter from Glendive. One year the Commissioners froze county salaries and shortly thereafter received a court order from the judge ordering a substantial salary increase for the court reporter. Their county attorney advised the Commissioners that they could go to jail for disobeying a court order. Their court reporter uses county equipment, supplies and county time for her benefit transcribing depositions. She is paid a salary for recording the proceedings. If the proceedings need to be transcribed, she is paid an additional amount per page. Due to current technology it is only necessary to press a button for copies.

Sharon Gaughan, Montana Court Reporters Association, rose in support of SB 237.

Charles Brooks, Yellowstone County Commissioners, maintained that the issue needs to be resolved as to who controls the court reporters.

Opponents' Testimony: None.

{Tape : 1; Side : A; Approx. Time Counter : 9.24}

Questions from Committee Members and Responses:

SEN. JABS questioned whether this transfer in funds would include any additional funds for taxpayers. **Mr. Burton** explained that the current \$1 million is being raised through district court mill levy funds at the county level.

Pat Chenovick, Montana Supreme Court, explained that the \$1 million would be coming from the General Fund. The salaries would remain the same whether the county or the state paid the funds.

CHAIRMAN GROSFIELD questioned what would happen to the \$1 million currently being raised by the counties. **SEN. WATERMAN** explained that this would be a savings for the counties.

Mr. Burton added that the funds were raised from the 6 mills allowed by law for county governments to levy for the court system. Lewis and Clark County has three court reporters at a total salary of \$105,000. With transcription costs, this amount is about \$120,000. This would be transferred to the state under this legislation and would equate to 1.4 mills.

CHAIRMAN GROSFIELD questioned if the county mills would be reduced by that amount. **Mr. Burton** stated that would be the intent.

Ms. Jelinski clarified that the court levy is capped at 6 mills on a statewide basis. Several sessions ago a local option motor vehicle tax was granted primarily to address the deficit funds for district courts. Five years ago, every district court in the state was over budget. While counties try to reduce mills when they can, most of the district courts are supplemented by federal revenue sharing funds, the local option vehicle tax, or other county general funds.

SEN. BARTLETT remarked that an amendment had been requested to continue court reporter salaries and expenses as a part of the reimbursement that would go to counties for criminal cases. Her understanding of the reimbursement program is that this is an effort on the part of the state to help fund district courts in their criminal functions because those cases are brought on behalf of the state. If court reporters became state employees and were paid entirely from the state and their expenses were covered by the state, how can we justify continuing them as a part of the district court criminal reimbursement program?

Mr. Chenovick explained that the money could simply follow the court reporters for payment of that portion of criminal activities. The court reporter salaries would be paid as a state

responsibility versus a reimbursement to the counties for that criminal portion of their salary.

SEN. BARTLETT remarked that the portion for the court reporter salary would not go to the county in the reimbursement program but instead it would go to the General Fund.

Mr. Chenovick added that there is some state special revenue money that also funds SB 237. The reimbursement would be paid into a state special revenue fund.

SEN. BARTLETT asked the source of these funds. **Mr. Chenovick** responded that the source of the funds was the 2% of the 7% on vehicle licenses.

SEN. BARTLETT questioned whether the court reporters were considered county employees if they received a paycheck from the county or whether they would be considered county employees if they received any check from the county. **Mr. Burton** clarified that if they received a check from Lewis and Clark County which was for services rendered, the Attorney General's Opinion considers them county employees unless there is an independent contractor's contract in place which meets the FSLA guidelines.

SEN. BARTLETT stated that it was then her understanding that if there was an independent contractor's agreement in effect and they were paid as independent contractors, they would not be considered a county employee even though they would be receiving a county check. **Mr. Burton** agreed.

SEN. BARTLETT believed that the sticking points seem to be the fees that court reporters receive for transcripts and the fact that they buy their own equipment. It appears that they are functioning as independent contractors rather than employees. She questioned what objections court reporters would have to making that formal and being treated as independent contractors. This would allow court reporters to continue producing and charging for transcripts.

Ms. Gaughan stated that in the area of transcript production they operate as a small business. They have two roles as an official court reporter. One role is the official taking and making of the record in court. As they are requested to produce transcripts, either at the end of the day or as needed on a demand basis, they produce the transcripts on evenings and weekends. They are paid by the page. They are under an oral contract with the person ordering the transcript whether this is with the county, an attorney or pro se litigant. The Federal Fair Labor Standards Act has exempted court reporters from any

overtime pay in producing those transcripts. On an as-needed basis, they provide the transcripts as part of their official job.

SEN. BARTLETT questioned whether court reporters would object to having the services rendered in court treated as independent contractor services. **Ms. Gaughan** responded that these determinations have been handled by each individual judge. There are some court reporters who are independent contractors. If a court reporter is an employee, they are always on call. The Court Reporters Association has not addressed the issue of being independent contractors.

SEN. BARTLETT further remarked that the court reporters could be approved as state employees and their transcript functions could be treated as part of their regular duties and any charges for those transcripts could then go to the General Fund. She questioned whether the court reporters would oppose that change. **Ms. Gaughan** stated they would oppose that change due to the costs and expenses of the equipment to produce transcripts along with additional charges of support staff, copying, etc. Education and training is also very costly. Those costs are covered by their transcript fees.

SEN. BARTLETT clarified that if the fees became revenue to the General Fund the state would be responsible for absorbing all of the costs of producing the transcript. This would increase the fiscal note. **Ms. Gaughan** stated there would still be a problem for court reporters in funding seminars, education, and professional fees that are currently paid from transcript fees.

SEN. JABS questioned whether court reporters also worked for justice courts. **Ms. Gaughan** explained that she is assigned to the district court judge. She also works for special masters but does not do any work for justice courts.

SEN. HALLIGAN asked for clarification of the funds involved in the criminal reimbursement program. **Mr. Chenovick** clarified that on an annual basis the district court criminal reimbursement program provides about \$5.1 million of funds to the counties. Approximately \$3.5 million goes for direct costs of criminal prosecution and indigent defense. An amendment two sessions ago provided \$500,000 to the Department of Corrections for youth and juvenile services. In the last fiscal year, the Department of Corrections did not use that \$500,000. All the remaining funds go back to counties in grant applications that is determined on millage and how the millage was spent. The funds are 2% of the 7% on light vehicles.

SEN. HALLIGAN questioned whether the Board of Crime Control was involved in the grants process. **Mr. Chenovick** responded that they were not involved.

SEN. HOLDEN asked how salaries for court reporters were set. **Ms. Gaughan** explained that salaries were set by each individual state judge.

SEN. HOLDEN questioned why everyone mentioned a \$35,000 salary for court reporters. **Ms. Gaughan** responded that every reporter is not receiving \$35,000. She did not have a breakdown on salaries.

{Tape : 1; Side : B; Approx. Time Counter : 9.50}

SEN. HOLDEN maintained that if the cap on salaries were taken out, judges would have a tendency to raise court reporter salaries. **Ms. Gaughan** responded that court reporters have received salary increases every six to ten years and this amounts to about a 2% per year increase. Currently Montana court reporters rank 50th on a nationwide basis. Most of the court reporters who are receiving \$35,000 have been long time employees.

SEN. HOLDEN questioned whether court reporters also had side businesses of taking depositions. **Ms. Gaughan** explained that in larger counties, the court reporters did not have time to take depositions. In rural areas, court reporters do take depositions because they are the only reporter in the area to help with discovery work.

SEN. HOLDEN remarked that if court reporters wanted to be state employees, the state should purchase their equipment and supplies. He believed there were too many loose ends in the bill to allow for passage of the bill. Court reporters have not decided as a group whether they want to be state employees or independent contractors. He hasn't heard from any court reporters whether they support or oppose the bill.

Ms. Gaughan explained that the **Court Reporters Association** did not propose the legislation. They are supporting the bill because it clarifies their status in the system. They are working for a state judge and therefore should be state employees. They would receive a salary for making the record. The independent contractor status is an additional part of their official role. Since they are salaried employees at the demand of the transcript production, they are paid by the page to produce the transcript on their own time and use the fees to purchase the equipment. The state could supply the equipment.

However, each reporter currently has their own system and this varies widely across the state. Transcript income is used to repurchase and update their equipment approximately every three to five years.

SEN. MCNUTT inquired whether court reporters received benefits from the state or county. **Ms. Gaughan** stated that each county negotiates benefits with the judge that sets the salary. Most reporters are receiving retirement and health insurance benefits. The benefits are provided by the counties.

SEN. HALLIGAN asked the court reporters in the audience to identify themselves and acknowledge whether or not they supported the legislation.

Vicki Pratt, Lewis and Clark County, rose in support of SB 237.

Penny Martin, Lewis and Clark County, rose in support of SB 237.

Doug Christenson, Hill County, rose in support of SB 237.

CHAIRMAN GROSFIELD commented that the fiscal note was for 37 court reporters. He questioned how many were independent contractors. **Ms. Gaughan** responded that she could only speak for her area and that Ravalli County contracted with a freelance firm. Lake County had an independent contractor but has switched back to an employee status for their court reporter.

Mr. Burton stated that the legislature provides that court reporters are either independent contractors or county employees. Since they do not follow personnel policies and procedures and do not work on site for 40 hours, they are not county employees. The judges in Lewis and Clark County issued a court order requiring a \$35,000 salary for each court employee whether they had six months or 24 years experience. The County is also required to pay health insurance, retirement, vacation and sick leave. Based upon the court order, they would like to make court reporters independent contractors. The court order will not allow for independent contractors.

SEN. JABS questioned how many court reporters could be assigned to a county. **Mr. Chenovick** explained that by statute each district court judge is allowed one court reporter.

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 10.03}

SEN. WATERMAN clarified that this legislation is brought at the request of the local court reporters. She provided a copy of the Lewis and Clark County court order, **EXHIBIT(jus26a01)**. This problem will not go away. Lewis and Clark County intends to pursue this issue before the Supreme Court. The legislature needs to come up with a solution. This includes a number of individuals who are employed in a variety of different ways. They are considered independent contractors in some courts, part-time employees in some courts, and full-time employees in some courts.

ADJOURNMENT

Adjournment: 10:15 A.M.

SEN. LORENTS GROSFIELD, Chairman

JUDY KEINTZ, Secretary

LG/JK

EXHIBIT (jus26aad)