



Montana Legislative Services Division

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Senator Trudi Schmidt
4029 6th Avenue South
Great Falls, Montana 59405

Dear Senator Schmidt:

I am writing in response to your request for information and guidance concerning public participation and decorum at an interim committee meeting. The right of individuals to observe the deliberations of public bodies is contained in the right to know provisions of Article II, section 9, of the Montana Constitution. The right of the public to participate in the operation of governmental agencies prior to a final decision is contained in Article II, section 8, of the Montana Constitution.

Section 2-3-103(1), MCA, requires each "agency" to develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures must ensure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public. That subsection also requires that the agenda for a meeting, as defined in section 2-3-202, MCA, must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the agency conducting the meeting. However, the agency may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter. Public comment received at a meeting must be incorporated into the official minutes of the meeting, as provided in section 2-3-212, MCA. Title 2, chapter 3, part 1, MCA, is designed to implement Article II, section 8, of the Montana Constitution.

Section 2-3-102(1)(a), MCA, excludes the Legislature and any branch, committee, or officer of the Legislature from the definition of agency. Each statutorily established interim committee is a committee of the Legislature. Therefore, interim committees are not subject to the provisions of Title 2, chapter 3, part 1, MCA. It is also important to remember that legislative committees are restricted to making recommendations. See Judge v. Legislative Finance Committee, 168 Mont. 470, 543 P.2d 1317 (1975). An interim committee could not take a final "agency action" as defined in section 2-3-102(2), MCA. Section 5-5-215(1)(c), MCA, provides that each interim committee has the duty to monitor the operation of assigned Executive Branch agencies with specific attention to: (1) identification of issues likely to require future legislative attention; (2) opportunities to improve existing law through the analysis of problems experienced with the application of the law by an agency; and (3) experiences of the state's citizens with the operation of an agency that may be amenable to improvement through legislative action. Interim committees have adopted the procedure for public comment as a valid means of fulfilling the public participation requirement of the Montana Constitution and the duties imposed by section 5-

Economic Affairs Committee Meeting
September 9, 2005

Exhibit #1

interim committee is not legally bound to allow comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the interim committee conducting the meeting. If an interim committee feels that the public is abusing the privilege of commenting on any public matter within the jurisdiction of the committee, the committee may legally halt the practice.

Legislative Joint Rule 60-20 provides that Mason's Manual of Legislative Procedure (2000) governs the proceedings of the Senate and the House of Representatives in all cases not covered by the Legislative Rules. Section 611(c) of Mason's provides that one of the principal duties of the chair of a committee is to maintain order and to decide all questions of order subject to appeal. Section 805 of Mason's provides that the presiding officer of a public body has the discretion or implied authority to maintain the order and dignity becoming that body. It also provides that the presiding officer has the discretion to make quick judgments as to what method to use to maintain order at emotionally charged meetings. While an interim committee may not "require" courtesy from a witness, the presiding officer could decline to recognize a disruptive party or remove a disruptive party from a meeting. Although legislative security personnel are not employed during an interim, Capitol security personnel are available at the security desk, which is located in close proximity to meeting rooms.

With regard to witnesses who want to attack an individual employee of an agency, the performance of an individual is not within the purview of an interim committee. As pointed out earlier, section 5-5-215(1)(c), MCA, provides that each interim committee has the duty to monitor the operation of assigned Executive Branch agencies and to learn of experiences of the state's citizens with the operation of an agency that may be amenable to improvement through legislative action. While individuals who administer laws are certainly subject to questioning by an interim committee and the citizens of Montana have the ability to provide information concerning the operation of an agency, allowing the public to engage in vilification or character assassination is not appropriate. Depending on the type of comment, it is possible that the comments concerning job performance could violate the individual's right of privacy. See Missouliau v. Board of Regents, 207 Mont. 513, 675 P.2d 962 (1984), Flesh v. Board of Trustees, 241 Mont. 158, 786 P.2d 4 (1990), and Goyen v. Troy, 276 Mont. 213, 915 P.2d 824 (1996).

I hope that I have adequately addressed your questions. If you have additional questions, please feel free to contact me.

Sincerely,



Gregory J. Petesch
Director of Legal Services

cc: Representative John Parker

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