



Law and Justice Interim Committee
62nd Montana Legislature

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LEGAL MEMORANDUM

TO: Law and Justice Interim Committee
FROM: David S. Niss, Staff Attorney
RE: Legislative Jurisdiction of the Committee Over Allegations or Offenses Arising From Lake County
DATE: January 4, 2012

I
INTRODUCTION

At the meeting of the Law and Justice Interim Committee (Committee) on Friday, December 16, 2011, the Committee voted to hear testimony on a situation involving several law enforcement agencies in Lake County. The presiding officer of the Committee, Senator Jim Shockley, had earlier sent by e-mail a hypertext link to an article in the Missoula Independent concerning the situation in Lake County. Also at the same meeting, Senator Gallus asked the presiding officer whether the situation in Lake County was within the jurisdiction of the Committee and the presiding officer responded that he believed it was. However, Senator Gallus requested that the Code Commissioner review the issue of the Committee's jurisdiction and provide him with an opinion, which Senator Shockley later requested be addressed to the entire committee. This Memorandum is in response to those previous requests.

II
DISCUSSION

The principal statutes defining the jurisdiction of the Committee are sections 5-5-215 and 5-5-226, MCA. Those sections provide as follows:

5-5-215. Duties of interim committees. (1) Each interim committee shall:

- (a) review administrative rules within its jurisdiction;
- (b) subject to 5-5-217(3), conduct interim studies as assigned;

(c) monitor the operation of assigned executive branch agencies with specific attention to the following:

(i) identification of issues likely to require future legislative attention;

(ii) opportunities to improve existing law through the analysis of problems experienced with the application of the law by an agency; and

(iii) experiences of the state's citizens with the operation of an agency that may be amenable to improvement through legislative action;

(d) review statutorily established advisory councils and required reports of assigned agencies to make recommendations to the next legislature on retention or elimination of any advisory council or required reports pursuant to 5-11-210;

(e) review proposed legislation of assigned agencies or entities as provided in the joint legislative rules; and

(f) accumulate, compile, analyze, and furnish information bearing upon its assignment and relevant to existing or prospective legislation as it determines, on its own initiative, to be pertinent to the adequate completion of its work.

(2) Each interim committee shall prepare bills and resolutions that, in its opinion, the welfare of the state may require for presentation to the next regular session of the legislature.

(3) The legislative services division shall keep accurate records of the activities and proceedings of each interim committee. (Emphasis added).

5-5-226. Law and justice interim committee. The law and justice interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the office of state public defender, the department of corrections, and the department of justice and the entities attached to the departments for administrative purposes. The committee shall act as a liaison with the judiciary.

Taken together, these two sections mean that the Committee has monitoring and other duties (not powers) specified in section 5-5-215(1)(c), (1)(f), and (2), MCA, and the authority for those functions provided in section 5-5-226, MCA, with regard to the Department of Justice (DOJ) and the Montana Public Safety Officer Standards and Training (POST) Council. From a reading of these two sections, what seems most important is that the duty of monitoring of assigned agency operations contained in section 5-5-215(1)(c), MCA, does not, by use of the phrase "with specific attention to the following", exclude any issues that arise as part of the monitoring function of the two agencies. The Committee has a duty to monitor all of the "operation" and has the authority to evaluate every "program" of the DOJ and the POST Council. Whether any of the incidents in Lake County are within the jurisdiction of the Committee therefore depends upon the scope of the "operation" or a "program" of the DOJ and the POST Council, as provided in law. Sections of the MCA involving the "operation" or programs

of these two state agencies that I've reviewed for the purposes this opinion are 2-15-501 (general duties of the Attorney General), 2-15-2029 (creation and general duties of the Montana Public Safety Officer Standards and Training Council), 44-4-403 (specific duties of the POST Council), and 87-1-105 (duty of the Attorney General and county attorneys to enforce fish and game laws), MCA. Concerning the last citation to 87-1-105, MCA, while the Department of Fish, Wildlife, and Parks is not one of the agencies enumerated in section 5-5-226, MCA, over which the Committee has legislative jurisdiction, the enforcement of fish and game laws in Montana is specifically granted to both the Attorney General and county attorneys by section 87-1-105, MCA, and the enforcement of Title 87 statutes is therefore within the jurisdiction of the Committee.

In order to determine whether there is any subject within the scope of the operation of the Attorney General or the POST Council, or both, involving the situation in Lake County, I've turned to the following four newspaper articles that are available online concerning the Lake County situation: (1) the story by Matthew Frank appearing in the December 1, 2011, Missoula Independent ("Above the Law"); (2) the story by Myers Reece appearing in the Flathead Beacon on November 23, 2011, ("Misguided Brotherhood"); (3) another article by Matthew Frank appearing in the December 10, 2011, edition of the Missoula Independent ("More on the Misconduct in Lake County"); and (4) a story in the Beacon by Kellyn Brown, appearing in the December 9, 2011, edition ("An Unusual Raid").

It's difficult to list here in detail all of the subjects, allegations, potential criminal offenses, and other matters contained in these four newspaper articles. However, it's clear that the subjects of the four stories directly involve the operation or programs of the DOJ and the POST Council, including, generally, the investigation and prosecution by the DOJ of persons committing criminal offenses within Montana and the investigation and disciplinary actions taken or to be taken by the POST Council against law enforcement officers. Those two major operations or programs of the DOJ and the POST Council include the following more specific subjects, as taken from the above-cited newspaper articles: (1) statutes of limitations applicable to certain criminal offenses that may have been committed in Lake County or elsewhere that can be prosecuted by the Attorney General; (2) the investigative and disciplinary functions and jurisdiction of the POST Council concerning any of the alleged or potential offenses in Lake County or elsewhere; (3) investigation and prosecution of alleged violation of Title 87 and the investigation and prosecution of alleged or potential violations of statutes in Title 45, chapter 7, MCA, concerning the administration of justice, occurring in Lake County or elsewhere; (4) investigation by agents of one law enforcement agency of the agents of another law enforcement agency in Lake County or elsewhere; and (5) the supervisory authority of the Attorney General in Lake County or elsewhere.

III CONCLUSION

Based upon the language of the two sections of law included above and the scope of agency operations or programs as provided in other sections of law cited above, I conclude that the five subject areas listed above, taken from the cited newspaper articles, are within the statutory jurisdiction of the LJIC. However, as several of the subsections of section 5-5-215, MCA, make clear, the purpose of any testimony and documents taken or gathered by the Committee and the purpose of discussion and action by the Committee must be for the purposes set forth in subsections (1)(c)(i) through (1)(c)(iii), (1)(f), or (2) of section 5-5-215, MCA, and for the purposes of the “draft legislation review, program evaluation, and monitoring functions” specified in section 5-5-226, MCA, as those purposes concern the agencies over which the Committee has legislative jurisdiction.

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