



Montana Districting and Apportionment Commission

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MINUTES

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of documents.**

Second Meeting of Interim
Room 102, State Capitol
April 18, 2001

COMMITTEE MEMBERS PRESENT

Janine Pease Pretty On Top, Presiding Officer
Joe Lamson
Jack D. Rehberg
Sheila Rice
Elaine Sliter

STAFF PRESENT

Susan Byorth Fox, Research Analyst
John MacMaster, Attorney
Lois O'Connor, Secretary

VISITORS

Visitors' list (ATTACHMENT #1)

COMMITTEE ACTION

- Approved the minutes from the November 16, 2000, meeting
- Adopted the state of Montana in its entirety as the U.S. Congressional District for the state
- Approved that the Commission's 2000 round of redistricting begin in the area at issue under the Old Person litigation; move in a clockwise sweep around the state, placing Cascade County in Region 2; and authorize staff to set the remainder of the Commission's redistricting schedule accordingly. (Proceed along the Hi-Line, including Cascade County, to eastern Montana. Following the completion of eastern Montana, proceed west through south central Montana, then north through the western third of the state)

- Postponed the decision to join the Old Person litigation until a conference call could be held on May 5, 2001

CALL TO ORDER AND APPROVAL OF MINUTES

The meeting was called to order by Commissioner Pretty On Top, Chair, at 1:10 p.m. Roll call was noted; all Commissioners were present. (ATTACHMENT #2)

Commissioner Rehberg **moved** that the minutes from the November 16, 2000, meeting be approved. Motion passed unanimously.

OLD PERSON V. COONEY UPDATE

Mike McGrath, Attorney General, stated the following:

- The Governor and the Secretary of State have been named as defendants in a federal action brought under the 1964 Voting Rights Act challenging the work of the 1990 Districting and Apportionment Commission.
- The plaintiffs in Old Person v. Cooney must prove that the political processes in Montana are not equally open to participation by American Indians in that Indians have less opportunity than others to participate and elect representatives of their choice.
- The case was filed in 1996; went to trial in 1998; and, for the most part, Federal District Court Judge Paul Hatfield ruled in favor of the state.
- The plaintiffs appealed Judge Hatfield's ruling to the 9th Circuit of Appeals who upheld most of Judge Hatfield's findings but reversed some back to the Federal District Court.
- The issues subject to appeal are proportionality and the creation of two House districts and one Senate district that would have a majority of voters who would be of American Indian decent. The proposed district contemplates combining House District 85 with House District 73. **(EXHIBIT #1—A map of the proposed House and Senate districts.)**
- The Attorney General's Office has argued that the state is entitled to a new hearing, to the use of the 2000 Census figures, and to submit the results of the 1996 and 1998 elections.
- The plaintiffs asked to enter an order based on the record that was presented at the trial and they have filed a motion to join the 2000 Districting and Apportionment Commission as a party to the lawsuit. The Attorney General's office is opposed to this motion.
- The plaintiffs offered to settle the case, but, to date, no agreement has been made.
- If the case is decided and if it did not affect the 2000 Commission, there is the potential for litigation all over again.

It was Attorney General McGrath's opinion that the state would not prevail in the litigation and would have to draw the additional districts similar to the proposed districts offered by the plaintiffs. He was concerned that if the Court orders the defendants to redistrict for the 2002 election, it would be a "hurry up plan" causing a ripple effect on numerous other districts and the Commission would then have to redraw the districts for the 2004 election. Another concern is the question of attorney fees and costs and

under the Voting Rights Act, the prevailing party is entitled to those costs which could be substantial. Attorney General McGrath requested that the Commission consider joining the litigation.

Commissioner Rehberg asked if the Ninth Circuit Court should be allowed to gerrymander for the Commission. Attorney General McGrath said no, however, under the Voting Rights Act, the Court had the authority to gerrymander and that was the reason he wanted the Commission to join the litigation. Commissioner Rehberg said that he was not convinced that the state would lose the litigation and he was not of the opinion that the Ninth Circuit Court was going to tell the Commission what to do.

Commissioner Lamson said that according to the Canby decision, while there was no intent to discriminate when drawing district lines, it did result in voter dilution of the Native American population in Montana and they are entitled to another Senate district. His concern was joining the 2000 Commission as a party to the litigation because the litigation is based upon the action of another Commission. He asked if there was a “middle ground” that could be reached with the plaintiffs short of joining as an official party, such as to start the redistricting process at the area in question so that the plaintiffs could see by the Commission’s actions that it is trying to make sure that everyone gets a district in proportion to their numbers. Attorney General McGrath said that it could be a possibility.

Commissioner Pretty On Top asked if the 2000 Commission inherits the actions of the former Commission. Attorney General McGrath said that the 2000 Commission is an autonomous group, is not a party to the litigation, and is not responsible for the 1990 Commission’s actions. Commissioner Pretty On Top asked if the Commission would know about the decision in the case in a timely manner. Attorney General McGrath said that the litigation will either be resolved or become moot long before the Commission makes its final report to the 2003 Legislature. On the other hand, the Commission will have to be looking over its shoulders about the issue. If the litigation proceeds and ultimately becomes moot, it would be too late to provide a remedy because the Commission would be too far into the process for the 2002 election. In addition, if the plaintiff’s believed that there was voter dilution based upon the district lines adopted by the 2000 Commission, the Commission can anticipate being sued.

Commissioner Lamson said that reaching a settlement is appealing because the Commission avoids the possibility of having to draw lines for the 2002 election and redraw the lines again for the 2004 election.

Commissioner Rice asked how the Commission could avoid future litigation. Attorney General McGrath said that it is always possible that someone will challenge any decision that the Commission makes. However, if the Commission follows the criteria set forth by the Ninth Circuit Court of Appeals and the

criteria that it generally considers, such as compactness and communities of interest, the Commission should not be subject to a lawsuit under the Voting Rights Act.

John MacMaster, Staff Attorney, Legislative Services Division, provided a memorandum regarding the proposed settlement along with a copy of the proposed settlement. **(EXHIBIT #2)**

Commissioner Lamson **moved** that the Commission postpone the decision to join the litigation until a conference call can be held in first week in May. Motion passed unanimously.

Commissioner Sliter asked if the legislators who will be affected by the proposed settlement will be notified. Attorney General McGrath said yes.

DISCUSSION OF WORK SCHEDULE

Susan Byorth Fox, Research Analyst, Legislative Services Division, discussed the procedures for legislative Redistricting and the guidelines and criteria adopted by the Commission for congressional and legislative redistricting. **(EXHIBITS #3 and #4 respectively)**

Commissioner Sliter pointed out that one of the discretionary criteria rejected by the Commission was the preservation of existing district lines.

Commissioner Lamson commented that the Commission did not adopt the discretionary criteria of preserving existing district lines because of the Montana electorates' desire to impose term limits. Commission members who voted to reject the preservation of existing line believed that because of the decision to support term limits, preserving existing district lines and legislators had a lesser priority.

Commissioner Rehberg asked if there was any partisan discussion when the opinion was made and whether the Commission members who voted to reject the preservation of existing district line were thinking that they were not going to protect Republican districts and hoping to fix the district lines up enough to get more Democratic districts. Commissioner Lamson said that it was his intention to draw as fair a plan as possible in which all voices in Montana would be heard. Montana citizens have seen the folly of when one particular side dominates and how the state can get itself into some peculiar situations in terms of state policy. It is far better when everyone in the state has an equal chance to participate.

PUBLIC COMMENT

Sen. Glen Roush, Senate District 43, said that the Commission had a tremendous responsibility ahead of them and that the final results would probably not please everyone. He asked if the Commission had taken action to retain the current 100 House Districts and the 50 Senate Districts. He also asked about the plaintiff's settlement position.

Ms. Fox said that Article V, section 2 of the Montana Constitution allows the legislature to be between 40 and 50 senate districts and between 80 and 100 house districts. Statutes regarding the Commission state that the plans for redistricting and reapportioning legislative districts must be based on the number of members in the House of Representatives and the Senate to be determined in the legislative session before the census. During the 1990 round, there was a battle between the Legislature and the Commission as to who gets to decide the number of house and senate districts. During the 1999 Legislative Session, it was determined that there would be 100 house districts and 50 senate districts. The 2000 Commission has gone on that assumption.

Mr. MacMaster said that the issue of who selects the number of house and senate seats was discussed extensively by staff and the 1990 Commission. The Commission decided against getting involved because the issue was too hot.

Commissioner Lamson added that the Montana Legislature is one of the last remaining citizen legislatures and having 100 districts in the House and 50 districts in the Senate makes it possible for anyone with enough shoe leather to get elected. He felt that 100 house districts and 50 senate districts was a nice figure to deal with.

Rep. Linda Holden, House District 86, was unsure how the proposal would effect her house district. She asked if the proposed senate district would become one of the current 50 senate districts if the Commission accepted the proposed settlement.

Commissioner Lamson said that the settlement would not effect the 2002 Legislature but would effect the 2004 election. If it did come to pass that the Commission would be ordered to draw district lines similar to the proposed settlement map, the new senate district would combine House District 85 with House District 73. Sen. Roush would be assigned to the adjoining senate district which is part of the ripple effect.

Betty Lou Kasten, Former Legislator, felt that the rural voters in Montana were fast becoming the minority, particularly in eastern Montana where a typical district is between 200 and 250 miles across. In the past, the cities have grown in their representation and the rural areas have been ignored because of the lack of population. Since there should be input from all of the state, the Commission must worry about what is happening to the rural people in the rural areas. She added that it is very difficult to get a Senator to come to the rural meetings; and neither do the state policy meetings take place in the rural areas. She requested that when the Commission redraws the districts, that it split up some of the cities and incorporate the people who serve in the cities to the rural areas so they have to listen to the rural people as well as the city people. She said that in the past, circles have been put around the cities of Sidney, Glendive, and Miles City, for instance, and Billings has more representation than the whole of eastern Montana. Yet, eastern Montana has the natural resources that Montana is going to be dependent upon and it needs to be in the circle when the district lines are drawn.

Bob Brown, Secretary of State, offered to work with Commission staff and the county Clerks and Recorders who will advise the Commission on how to readjust precinct boundaries to align with legislative district boundaries.

Rep. Jeff Pattison, House District 95, said he has the third largest district in the state. He expressed his concerns about redistricting and the fact that some of the districts across the state were getting larger.

Commissioner Rehberg said that the Commission is a body that very few people knows exists. It gets very little publicity and very little interest from the people who should be interested. He hoped that as time went on that the legislators across the state become actively involved and interested in what the Commission is doing.

Rep. Monica Lindeen, House District 7, said when the 1990 Commission drew the district lines, people who live in an area south of Huntley and west of Pryor Creek Road were drawn out of HD 7. No one in Yellowstone County realized it and for two election cycles, the people that lived in the area were voting in House District 7. When the problem was discovered and months before the election cycle, the people were told that they could not vote for anyone in HD 7 and that they had to vote for someone in a different district that they knew nothing about. Because the residents are also school district voters, she requested that when the Commission redraws the district lines, that it be done in such a way that those residents be drawn back in the district that includes the Huntley Project area.

Rep. Keith Bales, House District 1, said that his district contains four counties, has four sets of County Commissioners with four sets of problems, and is 300 miles across. He expressed his concern about eastern Montana losing more representation in the Legislature in the future, while at the same time, if Montana goes forward with energy production as proposed, there will be an influx of people bringing increased problems and not enough representation to express those problems to the rest of the Legislature. He also expressed concerns about the fact that most of the eastern Montana districts are along county lines and he questioned how the Commission could take districts out while at the same time keep it along county lines. If the Commission contemplates splitting counties, he said, it needs to receive a great deal of input from the people who live in those areas.

Bob Ream, Chairman, Montana Democratic Party, said that in the next six weeks the county Central Committees will be holding their elections and there will be many changes occurring.

Duane Winslow, Election Administrator, Yellowstone County, encouraged the Commission to speak with the county Clerk and Recorders and Election Administrators as it goes forward.

CONGRESSIONAL DISTRICT ADOPTION

Letter to Secretary of State, Bob Brown (**EXHIBIT #5**)

Certificate of Entitlement (**EXHIBIT #6**)

Commission Sliter **moved** that the Commission accept the Certificate of Entitlement and adopt the state of Montana in its entirety as the U.S. Congressional District for the state. Motion passed unanimously.

2000 CENSUS DATA ISSUES

Ms. Fox provided a packet of information that included the following:

- A map containing Montana's County Population percent changes (**EXHIBIT #7**)
- Census 2000 Redistricting Race Data Quick Table (**EXHIBIT #8**)
- Census 2000 Redistricting Race Data Detailed Table (**EXHIBIT #9**)
- Race Aggregation Table (**EXHIBIT #10**)
- Race and Ethnicity - Consolidated Table (**EXHIBIT #11**)
- Two maps and tables showing 1990 House Districts with 2000 Population (**EXHIBITS #12, #13, #14, and #15** respectively)
- OMB Bulletin No. 00-02 (**EXHIBIT #16**)

Ms. Fox stated the following:

- One operational guideline that the Commission did not consider was the adjusted versus unadjusted Census data. The Executive Steering Committee for the Accuracy and Coverage

Evaluation (ACE) Policy (ESCAP) recommended that unadjusted census data be released as the Census Bureau's official redistricting data (PL 94-171 data).

- The unadjusted data was more accurate for counties of less than 100,000 population and it may have been more accurate as it relates to Montana.
- The population undercount was estimated to be 1.4% in this Census round and is estimated to be higher in rural areas and reservations (closer to 4%).
- The Commission adopted two mandatory legislative redistricting criteria and one operational guideline related to race: (1) protection of minority voting rights and compliance with the Voting Rights Act; and (2) race cannot be the predominant factor to which the traditional discretionary criteria are subordinated. The Hunt v. Cromartie decision discusses the correlation between race and a political party and states what the Supreme Court reviews to see if a district is race-based or if a district respects all traditional criteria.
- Only three race categories in Montana exceed the 1% of total population (American Indian or Alaska Native, White, and American Indian/Alaska Native and White.) As the Commission travels the state, it should keep in mind the potential pockets of races.
- The federal OMB (Office of Management and Budget) Guidelines assist the Commission in finding ways to aggregate and allocate data on race for use in civil rights monitoring and enforcement.
- The Commission should consider voting age population because it is important in the application of the Voting Rights Act. The voting age population is the more critical variable to consider and the percentage is lower in the minority categories which is one of the three reasons that in creating a majority-minority district requires more than a simple majority (65%). Other variables to consider are lower voter registration and voter turnout.
- In the OMB Guideline for allocation purposes, the “other single race” categories are not allocated. She proposed consolidating those categories for Commission deliberations.
- The bulk of the American Indian and Alaska Native and other category is American Indian/Alaska Native and White at 90%. American Indian/Alaska Native and other single race (including white) is 97%. The remainder represent 21 of the 30 categories of possible race configurations that include American Indian/Alaska Native. Two percent of Montanans marked that they are Hispanic/Latino, which is considered an ethnicity that can be of any race.
- The state population percentage change on average was 12.9%.
- The greatest numeric change was Gallatin County (17,368 persons).
- The greatest percentage change was Ravalli County at 44.22%.
- The greatest numeric loss was Rosebud County (1,122 persons).
- The greatest percentage loss was Garfield County at 19.51%.
- General trend of population was loss in the east and gain in the west .
- There were some pockets of loss in the west, namely Deer Lodge County (9.07% or 939 persons). Although Silver Bow County did not lose population, it had a relative loss because it only grew by 1.96%.
- On the eastern front, Toole, Teton, Cascade, Meagher, Judith Basin, Wheatland Counties all had relative losses because they were at less than average growth. Pondera County experienced an actual loss.

- Custer County is almost even but still had relative loss compared to the state average.
- Dawson and Roosevelt Counties had less than 5% loss while Blaine County had over 4% growth.
- Flathead, Lake, Missoula, Ravalli, Jefferson, Broadwater, Gallatin, and Stillwater Counties had well over average growth.
- Lincoln, Sanders, Mineral, Granite, Powell, Lewis & Clark, Glacier, Chouteau, Golden Valley, Musselshell, Park, Beaverhead, Madison, Sweet Grass, Carbon Yellowstone, and Big Horn Counties experienced growth but some are still below average (Lincoln, Powell, Granite, Beaverhead, Glacier Park, and Musselshell Counties).
- It will be difficult to preserve many existing district lines.
- Existing district lines are not a criterion, but it is the method to determine malapportionment.
- Phillips, Garfield, Rosebud, Powder River, Carter, Fallon, Wibaux, Prairie, McCone, Richland, Daniels, and Sheridan Counties are well within what the Courts have determined to be part of the equality of population. The Commission must add population to any district over a negative 5%.
- “Donut” districts, such as Lewistown, Miles City, and Livingston, are problematic because inner districts need population from outer district and outer districts need population from neighboring districts. The same is true in "urban" areas.
- Movement to suburbs or sprawl is evident in most communities.
- Butte's four districts will need all of the counties population and the 5th district will recede from Silver Bow County.
- Both of Bozeman's city districts will need additional population.
- Four Missoula districts need more population and the districts to the west have more than ample population.
- Kalispell's city district is right at 1.1% population and it is stable.
- Six of Cascade County's districts in Great Falls lost population and will need to expand to have sufficient population.
- Helena has one district that needs population, two that could be closer to ideal, and one district that is significantly over population.
- Billings has seven districts that are under population and will need to expand but the surrounding districts have significant growth to absorb the necessary changes.
- Region 1 will lose two house districts (one north and one south of the Missouri River).
- Region 2 will lose one house district.
- Region 3 will gain one house district probably closer to Gallatin County.
- Region 4 remains status quo—the same number of districts but the district will most likely shift and the Cascade County districts will get larger and the Lewis and County districts will contract.
- Region 5 will gain one house district and the vast majority of the new district will be located in Ravalli County.
- Region 6 will gain one house district between Flathead and Lake Counties. The Commission should keep this in mind when it discusses linking a house district on one side of the Divide with a house district on the other side. A house district will be lost in Region 2 and Region 6 is gaining one.
- Region 7 will remain status quo with the same number of districts. However, Libby lost population which will have to be mitigated by moving the districts around.

Commissioner Rehberg requested that staff provide an interpretation of the Hunt v. Cromartie case relating to how it might effect the decisions of the Commission. He also asked if the “pie” effect would alleviate some of the problems with “donut” districts. Using Miles City as an example, Ms. Fox said that there are approximately 8,000 people in Miles City and 8,000 people in the surrounding donut. The 1990 Commission choose the donut district because it retained the rural-urban idea that the people residing in town have common interests and the people residing out of town have common interests. However, when 11% population on the whole of the donut is lost, the only place left to go is the donut. At some point, the donut disappears and the districts become pieces.

Ms. Fox gave a presentation of the Commission’s website.

Commissioner Rehberg requested that staff send a letter to the legislator in the districts, that includes the website address, stating that this round of redistricting is going to be important to them.

Commissioner Pretty On Top asked if eastern Montana was going to take another “whammy” like it did in 1990. Commissioner Rehberg said yes, adding it is a tough spot for the Commission to be in but it was a matter of reality. He also did not believe that the “donut” districts would work in eastern Montana. Ms. Fox added that people in Pondera County are very upset, and have been for 20 years, because Pondera County was split in the 1980 redistricting and because the city of Conrad was split in the 1990 redistricting round. The Commission may be facing the same thing in Sidney and Glendive so that the districts can be made smaller and more manageable. However, the flip side is that Conrad is in two house districts and two senate districts. When issues come before the Legislature that effect Conrad, it has four voices. Commissioner Pretty On Top asked if there were any case studies available on the effects of the “pie” versus the “donut” methods. Ms. Fox said that by not using the preservation of existing boundaries, it gives the Commission leeway to make those comparisons.

Commissioner Pretty On Top asked if it were possible to send one Commissioner to some of the remoter locations or did all Commissioners have to be present to conduct a hearing. Commissioner Rehberg said that it was more helpful if all Commissioners were present, otherwise the information would be hearsay. In addition, areas like having all of the Commissioners attend. He asked if the Commission’s budget would allow for more public hearings in some of the remoter areas of Montana. Ms. Fox said that in the past, the Legislature has been more than generous when appropriating the Commission’s budget, so more public hearings are quite possible. In addition, when staff makes its visits to the regions, a Commissioner may join her to talk with the various election officials.

Commissioner Sliter said that radio station talk shows were methods of outreach that she uses in her region to get the Commission's message out.

Commissioner Pretty On Top said that it was also a mystery in terms of what the Commission intended to bring to the public -- is it the primer or is it cases that were reviewed in the past? She said that there needed to be a list of talking points because it is an advantage for the Commission to be available and make its presents known.

Commissioner Sliter agreed that more public hearings were needed, adding that as an individual Commissioner, she would be happy to meet and speak even more with people in her geographic area even though it cannot be considered a public meeting of the Commission. She added that a staff members should also be present wherever possible. Commission members agreed. Ms. Fox said that if the Commission could adopt a starting point to get a general sense of direction as to where the Commission will be going around the state, she could begin setting up those meetings and give people some expectation as to when the Commission will be in the various areas.

Commissioner Lamson said that there might be some advantage for the Commission to have as its starting point the area at issue under the Old Person litigation so that the plaintiffs in the case would see some action on the part of the Commission rather than verbal discussion.

Commission Rice **moved** that the Commission's 2000 round of redistricting begin in the area at issue under the Old Person litigation; move in a clockwise sweep around the state, leaving Cascade County in Region 2, and authorize staff to set the remainder of the Commission's redistricting schedule accordingly. (Proceed along the Hi-Line to eastern Montana. Following the completion of eastern Montana, proceed west through south central Montana and north through the western third of the state). Motion passed unanimously.

The Commission also agreed upon a May 4, 2001, conference call to discuss its joining the Old Person litigation.

There being no further business, the meeting adjourned at 4:50 p.m.

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