

**MINUTES OF THE
UTAH CONSTITUTIONAL REVISION COMMISSION**

June 4, 1999 - 9:00 a.m. - Room 405 - State Capitol

Members Present:

Mr. Alan L. Sullivan, Chair
Dr. Jean Bickmore White, Vice Chair
Ms. Diana Allison
Rep. Afton B. Bradshaw
Sen. Mike Dmitrich
Justice Christine Durham
Rep. David M. Jones
Mr. Morris Linton
Sen. Howard C. Nielson
Speaker Martin R. Stephens
Mr. Richard V. Strong
Mr. Kevin Worthen

Members Excused:

Mr. Gayle McKeachnie
President Lane Beattie
Mr. W. Craig Jones
Mr. Dallin W. Jensen

Staff Present:

Mr. Jerry D. Howe,
Research Analyst
Mr. Robert H. Rees,
Associate General Counsel
Ms. Angela D. Kelley,
Legislative Secretary

Note: A list of others present and a copy of materials distributed in the meeting are on file in the Office of Legislative Research and General Counsel.

1. Call to Order - Chair Sullivan called the meeting to order at 9:08 a.m. Chair Sullivan explained that Gayle was unable to attend the meeting today and that the commission will, at a later date, extend its appreciation to his service.

MOTION: Mr. Linton moved to approve the minutes of the May 14, 1999 meeting. The motion passed unanimously.

2. Judicial Article overview with emphasis on the article's unique history concerning the selection, retention, discipline, and removal of judges - Mr. Rees summarized issues relating to judicial selection, retention, discipline, and removal. He distributed handouts titled "Utah Constitutional and Statutory Provisions Relating to the Selection and Retention of Judges" and "Utah Constitutional and Statutory Provisions Relating to Discipline and Removal of Judges," and discussed the contents of each handout.

Speaker Stephens asked what rationale was behind the Chief Justice sitting on the Judicial Nominating Commissions. Justice Durham answered that without the presence of the Chief Justice, there would be no judges on the commissions. She said that the concern was that the commissions have someone with inside knowledge of the judiciary. She said that it is her understanding that the Chief Justice serves as a non-voting member to ensure that proper procedures are followed.

Mr. Dan Becker, Administrative Office of the Courts, said that the State Bar appoints two members to the Judicial Nominating Commission. He also said that the State Bar deliver the names of six attorneys to the governor and that the governor appoints two from that list. He said that the governor has the option to select up to four attorneys, two from the list that the State Bar sent and two from the general public.

The commission discussed the general membership of the judicial nominating commissions, noting that of the recent amendments to the nominating commissions, the membership has undergone substantial revision.

Mr. Howe discussed the material in the packet relating to the nominating process that was mailed to the commission members prior to the meeting.

Mr. Doxey said that the Governor's Office is satisfied with the recent rounds of nominees from the Judicial Nominating Commission.

3. Discussion of the effectiveness of judicial retention elections

Rep. A. Lamont Tyler, House of Representatives, explained that the reason he had asked the commission to examine the retention elections is that many legislators believe the retention elections are not the meaningful exercise that they were intended to be. He said that the voting public does not have the information it needs to make informed decisions about the retention of judges and this results in extremely high affirmative votes for judges. Appealing to the commission for direction, he said that the legislature has proposed increasing the percentage of votes to retain a judge from a majority up to sixty-five percent. Whether this is the solution is under debate, he explained, but as chair of the Judiciary Interim Committee, he said that it is his desire to have a more meaningful retention election. To this end, he asked the commission to use its talents to suggest improvements to the current retention election system.

Sen. Nielson argued that the reason that the commission did not recommend the bill sponsored by Rep. Bryson was because it had not studied the issue enough to be comfortable recommending it. He said that the idea of improving retention elections so that judges have some accountability to the public has support in the legislature.

Mr. Gary Doxey, General Counsel to the Governor, said that the governor does not have strong feelings about the retention election. He indicated that judicial accountability and judicial independence are difficult principles to balance. One good tool in that regard is a strong Judicial Conduct Commission, which Utah is fortunate to have, he said.

Mr. Becker, Administrative Office of the Court, distributed a handout titled "Developments in Judicial Evaluation," and discussed its contents. He said that the important

issue is that the retention process include a meaningful performance evaluation component. He explained that Utah are judges are subject to extensive performance evaluations compiled by attorneys and others. The results of these evaluations are influential in changing poor performance and the results are reported in the voter information pamphlet for voters to review prior to retention elections. Mr. Becker explained that some judges have opted not to stand for retention based on the results of these surveys. He concluded that the retention election may appear on its face not to remove judges, but the truth is that some judges have decided to retire rather than face a retention election when a survey is unfavorable.

Speaker Stephens said that it is important to assure voters that they have a significant role in the process and that under the current process the public is not participating in a meaningful way.

Sen. Demitrich argued that the Judicial Conduct Commission should be responsible for administering data concerning judicial evaluations. This is the only group that can distinguish between real issues of judicial performance and false accusations against judges. He stated that the Judicial Conduct Commission should inform the public more about individual judicial performance.

Speaker Stephens asked how the Judicial Conduct Commission is notified if a judge is alleged to have made biased remarks. Chair Sullivan answered that there would be a complaint filed with the Judicial Conduct Commission by whomever was offended, and it would proceed the same as a lawsuit. He said that the judge would be notified of the complaint, given a copy, and after the judge's response, a hearing would take place regarding the complaint. He explained that if there was not a complaint, no action would be taken by the commission even if the judged had violated some judicial cannon because the conduct commission cannot act on its own authority. A complaint must be filed in order for the commission to act, he said.

4. Discussion of the constitutional status of senior judges - Mr. Becker said that 19 senior judges are active. He said that last year there were 347 days that senior judges were called upon to hear cases. He explained that a senior judge has to handle at least two cases a year in order to be an active senior judge. He indicated that not all senior judges serve on a regular basis. In fact, a few of the active judges handle a majority of the case load, he said.

Sen. Dmitrich asked if a judge would have to apply or if they are considered a senior judge upon retirement. Mr. Becker said that each individual would have to apply for the position. If given senior judge status by the Chief Judge, the senior judge must refrain from practicing law and hear at least two cases per year, he said.

Vice Chair White asked if a senior judge was a judge pro-tempore. Justice Durham answered that a senior judge is not technically a judge pro-tempore since a pro-tempore judge is usually appointed for a specific case or a very limited period of time. She said that one of the justifications for senior judges is to enable the courts to have judges available for a term of office of three years to be assigned as needed throughout the state. This is different than having a judge pro-tempore assigned to a single case, she said.

Speaker Stephens requested that staff bring more information to the commission regarding how long the average senior judge serves.

Justice Durham said she would be uncomfortable amending the retention election provisions. She said that when the structure was established in 1985, the retention was an important part of the selection and removal process. To consider the retention issues in a vacuum would not be in accordance with the overriding principles of the judicial article, she said.

Sen. Nielson suggested that the commission study the judicial retention issue further because there is some question as to whether the retention process, as explained by Justice Oaks in the debates upon the adoption of the Judicial Article, has delivered on its promises. The commission decided that it will continue discussion of the retention election process.

Speaker Stephens requested that the commission receive more information on the 1999 general election. He also requested that Rep. Bryson be contacted to see if her intent is to re-file her bill, and if so, that she be allowed the opportunity to present it to the commission. Chair Sullivan suggested that the commission consider other alternatives in solving these important issues as well.

5. Other Business -

Mr. Rees gave a brief overview on the membership of the constitutional revision commission. He explained that Mr. Linton and Justice Durham's terms expire on June 30, 1999, but both have indicated a desire to be reappointed. He said that President Beattie's term also expires on June 30, 1999, and that he reappointed himself to the commission. He explained that Mr. McKeachnie was a governor appointment and that the governor is working on appointing another person.

Chair Sullivan presented questions to the commission regarding tax issues. He explained that the tax article deserves the commission's attention.

6. Adjourn -

MOTION: Sen. Nielson moved to adjourn the meeting. The motion passed unanimously, with Rep. Jones and Mr. Strong absent for the vote. The meeting adjourned at 11:52 a.m.

