

**MINUTES OF THE
POLITICAL SUBDIVISIONS INTERIM COMMITTEE**
Wednesday, July 21, 1999 - 9:00 a.m. - Room 414 State Capitol

Members Present:

Sen. R. Mont Evans, Senate Chair
Rep. Joseph G. Murray, House Chair
Sen. Scott N. Howell
Sen. L. Alma "Al" Mansell
Sen. Pete Suazo
Sen. Michael G. Waddoups
Rep. Eli H. Anderson
Rep. Loretta Baca
Rep. DeMar "Bud" Bowman
Rep. Greg J. Curtis
Rep. Marda Dillree
Rep. David L. Gladwell
Rep. Raymond W. Short
Rep. Richard M. Siddoway
Rep. Glenn L. Way

Members Absent:

Rep. Craig W. Buttars

Staff Present:

Mr. Joseph Wade,
Research Analyst
Mr. Robert H. Rees,
Associate General Counsel
Ms. Joy L. Miller,
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** - Rep. Murray called the meeting to order at 9:10 a.m.

2. **Status Report - Title 17 (counties) Recodification** - Mr. Gavin Anderson, Deputy Salt Lake County Attorney, distributed a summary of the recodification process undertaken by a committee assigned by the Utah Association of Counties (UAC) to study the issue. The committee has determined that in addition to making basic housekeeping changes, more significant problems will require separation of legislative and executive powers, correcting contradictions of administrative activities, and possibly separating the supervision and investigation powers. Mr. Anderson stated they will be proposing a fairly significant restructuring of Chapters 4 and 5 of Title 17. Recommendations will include: 1) moving county powers from Chapter 5 to Chapter 4; 2) including language found in SJR 5 (1998) to help clarify, define, and limit the general powers of counties in Utah; 3) reorganizing Chapter 5; and 4) modifying Chapter 35a to retroactively validate the optional forms of government adopted by Morgan and Grand Counties by permitting an optional form allowing for more than three county commissioners or allowing the election of county commissioners by district. Mr. Anderson indicated the committee hopes to have UAC review and approve suggested legislative changes prior to the 2000 General Session.

3. Optional Forms of County Government - Mr. Rees distributed a summary of policy issues relating to optional forms of county government. Currently, statutes provide for five optional forms of county government: 1) county commissioner (default form), 2) executive and chief administrative officer-council, 3) county executive and council, 4) council-manager, and 5) council and county administrative officer. Mr. Rees pointed out that the fundamental issue is to what degree should the determination of a particular issue be made by the Legislature in statute or left to the plan proponents and voters.

Rep. Gladwell expressed concern that if the Legislature allows too many choices on a local level it will result in a constant legal battle among government entities concerning their roles. He suggested that the statutes remain as uniform as possible.

4. Citizen Participation in Government - Sen. Evans explained that he filed legislation during the last general session to address lawsuits known as SLAPPs (Strategic Lawsuits Against Public Participation). Developers in many parts of the country are filing lawsuits against citizens who have been participating in the hearing process. This has had the effect of minimizing participation in local planning and zoning issues. Generally, after the developer has been allowed to move forward with the development, the lawsuit is dropped.

Mr. Rees stated 1st Substitute S.B. 27, Citizen Participation in Government, did not pass and was referred to interim study. The intended purpose of the bill was to provide a defendant (citizen) with a quick way out of the lawsuit if the defendant could show the motivation for the lawsuit was to stifle participation in the process of government. He noted it does not prevent a suit from being filed.

Ms. Lynette Jones, former board member of the Neighborhood Association of Corner Canyon, said she resigned from her position on the board due to the possibility of a SLAPP lawsuit. She explained that a developer who is notorious for lawsuits began to attend their board meetings with his attorney. They met frequently with one of the board members who indicated to the rest of the board that if they did not approve the subdivision that the developer was asking for, the board would be sued. Homes already built in the area have experienced cracked and sliding foundations. Basic city services are already compromised and by adding the proposed subdivision basic city services would be further compromised.

Ms. Janalee Tobias, concerned citizen, said she is also a victim of a SLAPP lawsuit which is very stressful and expensive. Citizens should not have to worry about being sued simply because they speak out at a public meeting. Ms. Tobias said the bill would send a strong message to developers.

Ms. Judy Feld, concerned citizen, indicated she was six weeks into opposing a large

project in South Jordan in an effort to save a city park and possibly put in a childrens' nature center when she received her first lawsuit threat. She said they have been unable to get any neighbors to attend a city council meeting with them because they are afraid they will be sued.

Mr. Steve Erickson, Utah Citizens Education Project, explained that in developing the legislation there was little opposition to the concept. The issue is how it will fit with the rules of civil procedure and whether or not its passage would conflict or have unintended consequences in the way the courts handle these types of cases. He suggested that the technical details be worked out with the legislation and it be moved forward.

Mr. Brent Foutz, concerned citizen, said he was the chief proponent of two ballot initiatives in South Jordan City. The required signatures were gathered and validated by the county clerk. A few days later he was served with two lawsuits for a total of almost \$2 million. He was told by third parties that if he would drop the ballot initiatives, the lawsuits would be dropped. Now he faces the prospect of \$50,000-\$100,000 worth of legal bills to defend himself.

Mr. Taz Biesinger, Utah Homebuilders Association, commented that the original draft of the bill created a tremendous amount of concern for them. As issues were discussed, they came closer to agreeing with the legislation. However, some technical problems still need to be worked out. The Homebuilders Association is concerned that the issue is dealing more with a very small number of developers that are the driving cause of the issue.

MOTION: Rep. Dillree moved to adopt the legislation as a committee bill.

SUBSTITUTE MOTION: Rep. Gladwell moved to refer the issue to the Judicial Rules Review Committee and the Supreme Court Rules Committee for further review. These committees would report their findings and recommendations to the interim committee in October 1999. The motion passed with Sen. Waddoups and Reps. Murray, Baca, Bowman, and Dillree voting in opposition. Sens. Howell, Mansell, and Suazo, and Rep Curtis were absent during the vote.

Sen. Evans asked to make a clarification in the June minutes on the motion he made found on Page 4. He indicated that on the third line after "the" the word "public" should be inserted.

MOTION: Rep. Bowman moved to adopt the minutes with the proposed change. The motion passed unanimously. Reps. Dillree, Short, and Way were absent during the vote.

5. Legislative Audit on Central Utah Water Conservancy District - Ms. Janice Coleman, Office of Legislative Auditor General, pointed out the audit was initiated in response to a request for follow up of the 1989 audit on the Central Utah Water Conservancy District. The objectives

were to determine if the district's financial management is sound, determine if the district's administrative controls are adequate, and identify possible concerns surrounding the rescoping of the former Spanish Fork/Nephi (SFN) irrigation system. Overall they believe the financial management of the district is inconsistent. For example, the federal debt prepayment created a major savings, however, CUPCA cash management is poor. Ms. Coleman also indicated that the district tax rate is not based on need. District records indicate they have collected at least \$7.2 million more in property taxes and water sales than necessary.

Ms. Coleman stated that district financial participation with board members should be avoided, district control of expenditures needs tightening, and motor vehicle controls need improvement. Ms. Coleman explained that the SFN irrigation system was discontinued by the Department of the Interior in July of 1998 because of significant problems with the draft Environmental Impact Statement. The discontinuation requires that a new plan must be developed. Salt Lake and northern and southern Utah counties are getting less water than they are projected to need, while Juab is receiving far more than it's projected need. Given the importance of the issue and the board's prior level of commitment to the previous plan, they feel an open independent analysis is needed. They believe the Legislature should form a task force to study the issue and add its voice to the scoping process.

Mr. Don Christiansen, General Manager, Central Utah Water Conservancy District, stated that many, if not all, of the recommendations have been adopted. He explained the district had to work with Congress over a long period of time to receive the authorization that allowed them to prepay, at a discounted rate, their original obligation to the federal government. Some of that has been paid and they have saved approximately \$117 million over the life of the project. There is about \$100 million left of the local cost share. Between the prepayment and keeping the tax rate near 0.0004 will allow them, through the construction period, to pay the cost share up front.

Mr. Robert Weyher, Vice Chairman, Central Utah Water Conservancy District, responded to questions concerning district contracts with board members. He said they followed their attorney's advise and complied with the requirements of the State Ethics Act.

Mr. Christiansen explained that all contracts, prior to approval, were given to their attorney to obtain his opinion. After approval of the contracts by the attorney, he recommended them to the board. He added that he was not sure the auditor's recommendation for a task force would be the best use of resources at this time.

Sen. Evans indicated discussion of the issue would continue at the next meeting.

MOTION: Sen. Waddoups moved to adjourn. The motion passed unanimously. Chair Evans adjourned the meeting at 12:15 p.m.