

**MINUTES OF THE
UTAH CONSTITUTIONAL REVISION COMMISSION**
Friday, June 14, 2002 – 9:00 a.m. – Room 405 State Capitol

Members Present:

Mr. Alan L. Sullivan, Chair
Mr. Kevin J. Worthen, Vice Chair
Rep. Patrice M. Arent
Mr. Michael E. Christensen
Sen. David L. Gladwell
Mr. Byron L. Harward
Mr. Morris D. Linton
Mr. Robin Riggs
Speaker Martin R. Stephens

Members Absent:

Rep. Greg J. Curtis
Chief Justice Christine Durham
Sen. Mike Dmitrich
Judge Jon M. Memmott
Dr. Michael Petersen
Ms. Kristine Strachan
Sen. John L. Valentine

Staff Present:

Mr. Jerry D. Howe, Research Analyst
Mr. Robert H. Rees, Associate General Counsel
Ms. Cassandra N. Bauman, Legislative Secretary

Note: A list of others present and a copy of materials can be found at <http://www.image.le.state.ut.us/imaging/history.asp> or by contacting the committee secretary at 538-1032.

1. Committee Business

Chair Sullivan called the meeting to order at 9:10 a.m. Sen. Dmitrich, Chief Justice Durham, and Dr. Peterson were excused from the meeting.

Chair Sullivan summarized the Commission studies as approved in the May 10 meeting.

MOTION: Mr. Harward moved to approve the minutes of the May 10, 2002 meeting. The motion passed unanimously.

2. Article IX, Legislative Apportionment

Mr. Howe explained that Rep. Karen Morgan and Rep. Ron Bigelow had each proposed draft legislation during the 2002 General Session to create redistricting commissions. He indicated that when the Commission had reviewed these bill drafts it was decided further study of redistricting commissions was needed before making a recommendation to the Legislature.

Speaker Stephens suggested that it might be helpful to have an understanding of other state redistricting practices.

Mr. Howard Nielson, former United States Congressman and former State Legislator, provided his perspective of the redistricting process. The United States Supreme Court, he said, has specified that districts must be compact, contiguous, and of equal population. He indicated that Utah adopted a principle of maintaining communities of interest and that an independent redistricting commission will experience the same problems, and be subject to the same criticism as the Legislature. He expressed the opinion that

it might be helpful if Utah adopted statutes detailing some redistricting principles, but the redistricting process should continue to be done by the Legislature, he said.

Ms. Megan Holbrook, Chair, Utah State Democratic Party, indicated that redistricting by the Legislature for the legislative districts allows legislators to choose their voters, instead of voters choosing their legislators. She indicated that Rep. Karen Morgan's bill, or some similar legislation would be advocated by the democratic party. She stated that the 2001 redistricting process was seemingly the most unfair in Utah's redistricting history.

Mr. Todd Taylor, Executive Director, Utah State Democratic Party, distributed "Written Supplement for testimony of the Utah State Democratic Party regarding redistricting." He stated that the purpose of the Supreme Court one person, one vote principle was to encourage population equality in the districts. He indicated that no matter what criteria may be specified, the political concerns tend to be highlighted in the process. He stated that confusing voters and packing or fracturing districts are two primary examples of how majorities abuse redistricting power. He expressed the view that redistricting principles ought to be established in the Utah Constitution so that both parties, regardless of who is in the majority, would follow the same principles during redistricting.

Ms. Cassie Dippo, Common Cause of Utah, distributed a written statement published by Common Cause in 1977 regarding the creation of an independent organization to establish criteria and to draw district boundaries. She explained that the criteria recommended by Common Cause in 1977 would have been extensive enough to avoid any possible conflicts of interest. She reiterated the importance of redistricting in future political races and explained the view that principles of fairness should govern the process.

Congressman Joseph Cannon, Chair, Utah State Republican Party, explained that politics cannot be removed from the redistricting process. He said that redistricting is a political process and that removing legislative control will not change this fact. He said that the courts have established redistricting standards. If any legal principles are violated, the aggrieved party can seek redress in the Courts, which happens quite regularly across this country after redistricting. Although not everyone is pleased with how districts are redrawn, this will always be the case, regardless if the districts are drawn by the Legislature or by a Redistricting Commission, he said. Congressman Cannon then expressed the opinion that complaints about the redistricting process serve to improve the process and he noted that it would seem prudent to base any recommendation in support of taking the redistricting power away from the legislature on reasonable evidence that a different entity would actually improve the process.

Mr. Worthen questioned whether a redistricting commission could be improved by having its members elected rather than appointed. Mr. Cannon indicated that an elected redistricting commission, outside the Legislature, could be problematic because redistricting is inherently a partisan activity. If the elections were partisan perhaps it could work, but if the elections were nonpartisan it would not work, he said.

Ms. Liesa Manuel, LWV (Utah League of Women Voters), distributed "LWV Position on Reapportionment and Redistricting (1980)" and indicated that redistricting must preserve the principle of one person, one vote. She stated that the basic criteria for redistricting are the standards of each citizen's right to vote. She explained that the LWV supports an amendment to the Constitution requiring balanced

legislative districts, establishing a bipartisan commission that would serve in an advisory capacity to the Legislature, and that the final plan would be subject to review by the courts.

Sen. Michael G. Waddoups, Chair, Redistricting Committee, indicated that the results of redistricting in Utah has been favorable. He indicated that compared to other states, Utah's redistricting process is pure as the driven snow, he said. Utah, he said, does not have a history of law suits. That is because the process is done by the rules. Certainly, he explained, some legislators feel that the new districts were not drawn to their advantage. But if asked, most legislators would have drawn their district differently. The difficulty of redistricting, he said, is drawing plans that are equally unfair to everyone. He acknowledged that the public was initially stirred up after redistricting, but that feeling is decreasing, he said. Once the elections are completed, he expressed the opinion that the public, not the current legislators, will be most pleased with the redistricting. Overall, he recommended no change to the redistricting process, although he acknowledged that there may be some value in establishing redistricting criteria in statute, depending, of course, he said, on the criteria established.

Rep. Gerry A. Adair, Chair, Redistricting Committee, stated that there are no permanent friends, no permanent enemies, only permanent self-interest. He acknowledged that the difficulty of redistricting is that it is not possible to redraw legislative districts as all legislators would prefer. The pressures of chairing the redistricting committee are enormous, he said. And this process will not change if legislators are removed and a redistricting commission is created. In fact, he said it would be worse because the pressures of redistricting are so intense that it would be silly to intentionally remove accountability from that process. The other flaw with a redistricting commission is that of deciding who will appoint its members: the governor, the legislature, legislative leaders, or political parties. And how is party affiliation to be determined, he asked: proportional to representation in the Legislature or on some other basis. Utah's redistricting budget is substantially less than other states because of how we use our staff, he said, and physical location and staffing are important principles to consider. He further explained, that one cannot hope to remove partisan politics from redistricting, nor can one hope that the plans of a redistricting commission will quell public criticism. He expressed the opinion that the best government is the government closest to the people, and that removing accountability through the creation of an independent commission would not improve the redistricting process. Redistricting is hard, we have no choice but to do it, and no one comes out satisfied, he explained. He expressed the opinion that the redistricting process can only be as good as the criteria that governs its activities so it is important for the redistricting committee to establish well thought through criteria.

Commission discussion followed.

3. Article VI, Section 29, Lending Public Credit

Chair Sullivan indicated that Article VI, Section 29 has two prohibitions (1) lending of the state credit and (2) state subscription to stock.

Mr. Gary Doxey, General Counsel to the Governor, Governor's Office, distributed "Art. VI, Sec. 29. [Lending public credit forbidden - Exception]." He stated that the State should not be in a position where it can become a debtor. He explained that the problem with state subscription to stock boils down to a

decision who will be the beneficiary of the state's investment. The intent of this proposed amendment, he said, is to aid private enterprise in its emerging stages. Mr. Doxey indicated that the amendment proposes a safe harbor for limited state investment in emerging enterprises whose essence is intellectual property which has been developed in part by the state.

MOTION: Mr. Harward moved that the Commission recommend the amendment to the Legislature.

Ms. Betsy Ross, Special Assistant Attorney General, State Auditor/State Treasurer's Office, expressed the opinion that the language of this amendment should ensure that the state could not play favorites when deciding what private enterprise to invest in.

After Commission discussion, Mr. Harward withdrew the motion.

MOTION: Mr. Harward moved that staff review the legislation to ensure that adequate limitations are provided.

Chair Sullivan requested that staff also review the legislation with the Attorney General's Office.

The motion passed unanimously.

4. Other Items / Adjourn

The next meeting is tentatively scheduled for Friday, July 12, 2002 at 9:00 a.m. in room 405.

Chair Sullivan adjourned the meeting at 11:57 a.m.