

**MINUTES OF THE  
LEGISLATIVE MANAGEMENT COMMITTEE**

August 20, 2002 – 3:00 p.m. – Room 303 State Capitol

**Members Present:**

Speaker Martin R. Stephens, Chair  
President Al Mansell, Vice-Chair  
Sen. Karen Hale  
Sen. Mike Dmitrich  
Sen. Peter C. Knudson  
Sen. John L. Valentine  
Rep. Patrice M. Arent  
Rep. Ralph Becker  
Rep. Jackie Biskupski  
Rep. Greg J. Curtis  
Rep. Tom Hatch  
Rep. Brad King  
Rep. David Ure

**Members Absent:**

Sen. Ron Allen  
Sen. Gene Davis  
Sen. L. Steven Poulton

**Staff Present:**

Mr. Michael E. Christensen, Director  
Ms. M. Gay Taylor, General Counsel  
Ms. Beverlee LeCheminant, 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 Office of Legislative Research and General Counsel.

**1. Committee Business**

Chair Stephens called the meeting to order at 3:30 p.m.

**Approval of the minutes of the May 21 and the August 5, 2002 Meetings**

**MOTION:** Sen. Mansell moved to approve the minutes of the May 21 and the August 5, 2002 meetings. The motion passed unanimously. Rep. Biskupski, Rep. Curtis, and Rep. Ure were absent for the vote.

**2. Interim Committee Requests**

Mr. Christensen reviewed letters from each of the committees listed on the agenda, with the exception of the Commerce and Revenue Appropriations Subcommittee which withdrew its letter, and the following actions were taken:

**MOTION:** Sen. Valentine moved that the Workforce Services and Community and Economic Development Interim Committee's request for per diem for four committee members of the High Tech Business Development Subcommittee be approved. The motion passed unanimously. Rep. Biskupski, Rep. Curtis, and Rep. Ure were absent for the vote.

Mr. Christensen noted that the Judiciary Interim Committee has indicated that it does not wish to pursue its request to establish a subcommittee to study the procedures of the Judicial Conduct Commission, but wants to let LMC (Legislative Management Committee) know that it will be requesting the creation of a

task force in the 2003 legislative session which will review the activities and responsibilities of the Judicial Conduct Commission.

Ms. Taylor indicated that she and Jerry Howe attended the first meeting of the newly constituted Judicial Conduct Commission and highlighted for the Commission the legislative request to do a legislative audit under the constitutional authority granted the legislative auditor that gives the auditor authority to audit any public fund, function, and account in any entity of state government. Ms. Taylor noted there is a statutory provision that governs the Judicial Conduct Commission and provides that complaints, papers, and testimony taken in connection with confidential hearings are required to be maintained as confidential unless otherwise ordered by the Utah Supreme Court, the judge requests it, or it is in connection with a civil or criminal offense. The Commission was concerned that this statute may narrow its ability to release the information to the legislative auditor, but was supportive of the audit. The Commission resolved by motion to request through letter to the Utah Supreme Court that they enter an order approving the request for a legislative audit.

**MOTION:** Rep. Arent moved approval of the Political Subdivisions Interim Committee's request to recreate the Special Districts Subcommittee to hold four meetings with per diem for five members. The motion passed unanimously. Rep. Biskupski, Rep. Curtis, and Rep. Ure were absent for the vote.

**MOTION:** Sen. Valentine moved approval of the Executive Offices and Criminal Justice Appropriations Subcommittee's request to hold an additional meeting on September 17, 2002. The motion passed unanimously. Rep. Biskupski, Rep. Curtis, and Rep. Ure were absent for the vote.

**MOTION:** Rep. Becker moved approval of the Capital Facilities and Administrative Services Appropriations Subcommittee's request to hold a field trip for its second committee meeting on September 12. The motion passed unanimously. Rep. Curtis and Rep. Ure were absent for the vote.

### **3. State Equal Employment Opportunity Plan**

Ms. Jean Mills-Barber, Human Resource Director, Department of Human Resource Management (Department) indicated that a few months ago the State Equal Employment Opportunity Plan (Plan) was presented to President Mansell and Speaker Stephens in accordance with Utah Code Section 67-19-16(3), which indicates that the Legislature needs to review the Plan before it is published. Both the President and the Speaker felt that the Plan should be presented to LMC for review and questions. Ms. Mills-Barber stated that the items that are listed in the plan are not items that are new and different or over and above what has been taking place in the past. She said that the Department has the endorsement of the Governor's Office on this draft and has also received an endorsement of the Department's Executive Director, Karen Suzuki-Okabe.

Speaker Stephens said that there is some sensitivity to the word "diversity" and what that means when the State encourages diversity. He suggested that rather than using the word "diversity" to say that "we provide equal employment opportunity for all applicants."

Rep. Arent asked if staff has had a chance to review the Plan. Ms. Taylor noted that she and Mr. Christensen have reviewed the Plan and it is consistent with federal guidelines. She indicated that staff has no specific issues to raise and she feels that the speaker's point is worthwhile in light of what has

happened at the University of Utah Medical School.

President Mansell said he was under the impression that affirmative action is something the state does not do. Ms. Mills-Barber said that it is done because it is a statutory requirement. The code is quite specific, however, that the Plan not include anything in terms of focus. President Mansell asked if this is the proper terminology. Ms. Mills-Barber said that most organizations call them Equal Employment Opportunity Plans, but that there are still organizations that call them Affirmative Action Plans. Mr. Jim Grant, Division Director, said that the Department has chosen to call it an Equal Employment Opportunity Plan, but it can be changed to an Affirmative Action Plan without changing the code. President Mansell said that the Department should use the most current terminology. Ms. Taylor suggested referring this issue to the Government Operations Interim Committee to take a look at updating the statutory provision.

**MOTION:** Sen. Valentine moved that the Committee refer the Equal Opportunity Employment Plan to the Government Operations Interim Committee for its review and recommendations as far as it complies with our statute, and to have staff look specifically at the statute's use of the phrase Affirmative Action Plan to see if the Government Operations Interim Committee may want to make a statutory change there. He asked that the Government Operations Interim Committee report its action back to LMC. The motion passed unanimously. Rep. Ure was absent for the vote.

#### **4. Parking on Capitol Hill**

Mr. Dave Hart, Executive Director, Capitol Preservation Board, distributed a letter providing an update on parking on Capitol Hill and indicated that one of the things the Board has been looking at is how to better use East Capitol Boulevard. He said the Board has done some investigating with UDOT (the Department of Transportation) and UDOT has said it will allow parking at a 45 degree angle as long as cars are not backing out into traffic. The Board had hoped that it could do a double-loaded row of parking and pick up a number of additional parking stalls, but has found that it will only be able to do a single-loaded row of parking with a barrier separating the drive lane from the traffic lane with one traffic lane going up to the East Capitol neighborhood and one traffic lane coming down with a turn lane. By doing this, any parking on the west side of East Capitol Boulevard would be eliminated and an extra 40 parking stalls would be picked up.

Rep. Arent said that on interim days and during session there is not enough parking for the public to be able to attend the meetings. She asked Mr. Hart if there is anything that can be done in obtaining a parking lot somewhere else and shuttling people to the capitol. Mr. Hart indicated that the Board has looked at this and has called those in charge of the Delta Center Parking lot. They will lease the parking lot on a monthly basis for \$30 a month per car. They also have an agreement with the State Fair Park and have asked employees in the past to park there and ride the bus into town. Mr. Hart said it would cost \$27,000 for 300 parking stalls for employees down by the Delta Center for the legislative session, but short of that, there are not a lot of other parking lots that are available.

Mr. Hart stated that prior to the 2003 legislative session, the Board has worked out an arrangement with the contractor that 115 stalls in the underground parking structure will become available. DFCM will have the striping done in the parking structure by the end of September and by the middle of October, it should be open for use. The parking structure will be available through March and then it will be given back to

the contractor to finish it up and will be available for the 2004 legislative session.

Mr. Hart said the Board's plan is to have the legislators park in the underground parking structure and have the public park where the legislators have been parking in the west parking lot. The problem with this is that as soon as public parking is opened up, employees will begin parking there also. The public lot can either be metered, or the Highway Patrol can mark tires and then ticket or tow.

Rep. Arent stated that some of the public spends as much time at the Capitol as the employees during the session so limiting the time a person can be in a public parking lot is not a good idea. Mr. Hart said that is another problem with the plan so the Board will continue to look at options.

President Mansell asked if the 40 extra parking stalls will be beneficial for the session. Mr. Hart said the benefit of the 40 extra parking stalls is to create a safe area for people to get in and out of their cars. President Mansell asked if the costs of installing the 40 extra stalls will be worth it and if it would be more dangerous because the street will have been narrowed.

Mr. Hart said it is technically still a three-lane road with a turn lane and two drive lanes, but the question in his mind is if the cost to pick up 40 extra parking stalls will exceed the benefit.

#### **5. Judicial Conduct Commission v. Joseph Anderson Decision -**

Ms. Taylor noted that LMC, at its May meeting, authorized OLRGC to file an amicus brief with the Utah Supreme Court regarding the authority of the Judicial Conduct Commission to hear interlocutory appeals. This was the Judge Joseph Anderson case and OLRGC, at LMC's directive filed an amicus. On June 25, the Utah Supreme Court issued its order agreeing entirely with the Legislature's position that they did not have authority to hear interlocutory appeals regarding the Judicial Conduct Commission.

#### **6. Gallivan v. Walker Case Update**

Ms. Taylor indicated that Gallivan filed a petition for extraordinary writ against Olene Walker before the Utah Supreme Court on July 16. On July 26 the Utah Supreme Court, in a four-to-one decision, determined that under the statute the petitioners did not have standing to challenge the constitutionality of the geographic distribution requirement, but under the court's extraordinary writ power, it was going to take additional written arguments and determine the constitutionality of the multi-county requirement and decided whether or not to qualify the initiative by August 30.

On August 5, LMC directed OLRGC to file an amicus brief asserting the Legislature's position in this matter. OLRGC prepared a brief asserting that the initiative statute is constitutional and, alternatively, if the court declares part of the initiative statute unconstitutional, it should not sever the vote requirement from the multi-county requirement, but should refer the statute to the Legislature for amendment and not certify the petition. Separating the geographic distribution requirement violates the legislative intent and rewriting the initiative statute by severing this potentially unconstitutional provision undermines the constitutional mandate that the Legislature determines the numbers, conditions, manner, and time by statute of any initiative legislation. The Utah Supreme Court granted the Legislature's motion to file an

amicus brief on August 7.

On August 6, the day OLRGC filed the amicus brief, Mike Christensen, the director, was sued by the petitioners under a petition for extraordinary writ before the Utah Supreme Court, asking the court to order OLRGC to write an impartial analysis and ballot title. OLRGC filed a response asserting that it is only required to write the ballot title and impartial analysis for initiatives that have qualified for the ballot and that the Lieutenant Governor had not certified this one nor has the Utah Supreme Court. Therefore, it would be inappropriate for OLRGC to do it without a legal directive, and doing so could subject OLRGC to legal challenge either by the opponents or proponents. OLRGC asked the court if it ordered OLRGC to write the ballot title and impartial analysis, that it also write new time lines for challenging the ballot title for the Supreme Court, revise the time lines for printing the official ballot, set new time lines for pro and con arguments, and responses and rebuttals. OLRGC asserted that if the Utah Supreme Court ordered OLRGC to write the impartial analysis and ballot title, these are only one part of many time lines under the current statutory scheme. To date, OLRGC has not heard from the Supreme Court, but expect to have a response from them by August 30.

#### **7. Policy and Statute on Use of Legislative General Counsel in Litigation**

Ms. Taylor indicated that LMC, in its May meeting, asked staff to review its policy on the use of Legislative General Counsel in litigation from page 35 of LMC policies. The main provision LMC asked her to insert is "if a legislative client is sought to be made a party to, or is subpoenaed to be a witness in a case or controversy," then it follows that a defense by OLRGC is automatically invoked in terms of being their counsel and representing them. Ms. Taylor said that in looking at the statute that corresponds to this policy, she determined that there could be some question as to whether OLRGC has clear responsibility to represent individual legislators and their staff offices. She would recommend a statutory change that states clearly OLRGC does have authority to represent not just the majority and minority leadership, the legislative committees and subcommittees and legislative staff, but also individual legislators and the legislature's staff offices. She stated that there are other minor technical changes in both the policy and statute. She noted the statute has an immediate effective date.

**MOTION:** Rep. Ure moved to adopt the changes to the policies on page 35 and 36. The motion passed unanimously.

**MOTION:** Sen. Dmitrich moved to adopt the legislation "Responsibilities of Legislative General Counsel" which modifies the statute and enlarges the legislative client represented by the legislative general counsel in cases and controversies. The motion passed unanimously.

#### **8. Reappointment of Legislative General Counsel**

Mr. Christensen indicated that as the director of OLRGC, he has the option to suggest the selection of the General Counsel to the Legislature which appointment is then subject to the approval of the Legislature. He said that in the year and a half he has been the director of OLRGC, there has been no other person more important to him in making the office run effectively and efficiently than Gay Taylor. He strongly

recommended that the resolution reappointing General Counsel be adopted.

**MOTION:** Rep. Arent moved to approve the resolution reappointing M. Gay Taylor as General Counsel for a period of six years. The motion passed unanimously.

## **9. Consideration of the APPLE Initiative**

Speaker Stephens asked for LMC's support of a resolution of support for the APPLE Initiative (Initiative). He indicated all of the groups that are participating in the Initiative are writing resolutions of support. He indicated that he would like LMC to have a resolution in support of the Initiative that could be put in a packet that will be mailed to the other western states to see if they can get them to replicate this effort in their states and build momentum to receive more funding from the federal government for the education system in the western states.

**MOTION:** Senator Valentine moved that LMC adopt the APPLE resolution.

Rep. Arent said they have had very little notice regarding this initiative and it might make more sense to approve this at the next meeting after all of the members have had a chance to review it.

Speaker Stephens said he met with Rep. King and Rep. Becker and they have tried to get the information to party leaders.

After some Committee discussion, Sen. Dmitrich said this Initiative is long overdue and he feels that it will take the entire coalition of the western states to get it approved. He said that he does not feel that the caucuses would have a problem with it, and it is a resolution of LMC.

The motion passed unanimously.

## **10. NCSL Award to Office of Legislative Research and General Counsel**

Mr. Christensen indicated that at the NCSL meeting in Denver, OLRGC received the 2002 Notable Document Award for its "Energy Policy Issues" report it provided for the Legislature last summer. He read a letter from NCSL regarding the award.

Rep. Becker stated that the publication was excellent, and the award was well deserved.

Sen. Valentine said he also read the publication and said it was terrific.

## **11. Other Business**

Rep. Arent said that regarding the Legislative Management Committee meeting that was called on August 5, she was in Southern Utah when the meeting was first discussed and was on her way back when the meeting took place. She said she had tried to call in ahead of time to say she was unavailable.

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President Mansell moved to adjourn the meeting at 4:30 p.m. The motion passed unanimously.