

**MINUTES OF THE  
LEGISLATIVE MANAGEMENT COMMITTEE**  
September 17, 2002 – 3:00 p.m. – Room 303 State Capitol

**Members Present:**

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

**Members Absent:**

Sen. Ron Allen  
Rep. Tom Hatch

**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 3:10 p.m.

**MOTION:** President Mansell moved to approve the minutes of the August 20, 2002 meeting. The motion passed unanimously with Sen. Davis, Rep. Biskupski, and Rep. Curtis absent for the vote.

**2. Interim Committee Requests**

Mr. Michael Christensen, reviewed requests from the Government Operations Interim Committee, the Health and Human Services Appropriations Subcommittee, and the Joint Public Education Appropriations Subcommittee. The Government Operations Interim Committee requested permission to study the oversight of state agency operations, especially the Division of Radiation Control. The other two committees requested permission to hold an additional interim committee meeting.

Speaker Stephens noted that the Executive Appropriations Committee from today's meeting requested that Legislative Management Committee (LMC) refer the Driver's Education Class issue to both the Business and Labor Interim Committee and the Transportation Interim Committee.

**MOTION:** Rep. Ure moved that these interim committee and appropriations subcommittee requests be approved. The motion passed with Rep. King voting in the negative and Sen. Davis, Rep. Biskupski, and Rep. King absent for the vote.

**3. Legislative Web Site - Kid's Page**

Ms. Shelley Day, Information Consultant, Legislative Research and General Counsel, told committee members about the creation of a Kid's Page on the Legislative Seb Site. She explained that the site is designed to provide users with tools to draw the youth's interest in state government. She stated that currently there are 11 states with legislative civic education web sites and Utah will be the 12th.

Ms. Day stated that the Kid's Page was introduced to aid civic education efforts in Utah and she has received suggestions from the Legislative Automation Committee, the state's congressional offices, civic education coordinators, and students from Holbrook Elementary School in Bountiful and Fiddlers Canyon Elementary School in Cedar City. Ms. Day gave a brief overview of the Kid's Page and demonstrated its features and links.

**MOTION:** Sen. Poulton moved to add the Kid's Page to the Legislative web page. The motion passed unanimously.

#### **4. Update on *Gallivan v. Walker***

Ms. Gay Taylor gave an update on the *Gallivan v. Walker* case by saying that the Office of Legislative Research and General Counsel (OLRGC) became involved as an amicus in the lawsuit at the direction of LMC. OLRGC argued that the statute was constitutional and that the 10 percent vote requirement should not be severed from the multi-county requirement because it would violate legislative intent. OLRGC filed that argument with the Utah Supreme Court on August 6, and the Utah Supreme Court granted OLRGC's motion to join as an amicus on August 7. On August 6, OLRGC's director, Michael Christensen was also sued with a petition for extraordinary writ in the Utah Supreme Court because OLRGC had chosen not to write the ballot title or the impartial analysis on the initiative petition because the initiative petition had not yet been certified by either the Lieutenant Governor or the Utah Supreme Court for the ballot.

Ms. Taylor said that the Utah Supreme Court consolidated the two petitions and issued one opinion on August 26 in which it determined that under uniform operation of laws that the multi-county provision was unconstitutional. It held that the right to file an initiative is a fundamental or critical right and, with that test, the multi-county requirement failed. The court also reviewed severability and although noting that the Legislature's amicus had suggested that it should not be severable, the court nevertheless stated that it is "certain the Legislature, had it known of the unconstitutionality of the multi-county signature requirement, would have met its constitutional responsibility by enacting the initiative enabling statute without the unconstitutional subsection." Therefore, the court determined the statute to be severable. The court also stated that the statutory deadlines established in the initiative enabling statute have been rendered inoperable. OLRGC had a statutory obligation to write the ballot title and impartial analysis, but the court said the statutory deadlines had been rendered inoperable by the instant litigation and the only operable time frame, in this case, is November 5, 2002. Therefore, all that is required in this case is for the Lieutenant Governor to ensure the initiative is on the ballot by that date. Deadlines established in the enabling statutes otherwise remain effective for future proposed initiatives.

Ms. Taylor said that it was OLRGC's assumption since it had been a consolidated motion to order

OLRGC to write the ballot title and impartial analysis and since there had not been an order to that effect that OLRGC was, in fact, not required to do it because the court held that other statutory time frames had been rendered inoperable. She stated that she called the court clerk to confirm her observation. The court clerk said she thought Ms. Taylor was right, but asked if she could talk with members of the Utah Supreme Court and then get back with her. The next day OLRGC had an order from the Utah Supreme Court under Justice Russon's signature granting that the petition for extraordinary writ requiring OLRGC to "forthwith" prepare the ballot title and impartial analysis. OLRGC drafted the ballot title and the impartial analysis in about 48 hours with help from the Office of Legislative Fiscal Analyst. Ms. Taylor said it is clear in reading the court's opinion that it views that what the Legislature does with regard to writing initiative statutes as facilitating and that it would never be an appropriate gesture on the part of the Legislature to in any way dampen or make more difficult the initiative process.

Speaker Stephens said he feels that the court has made some assumptions that are inaccurate regarding the Legislature by saying that the Legislature, had it known of the unconstitutionality of the multi-county signature requirement, would have met its constitutional responsibility by enacting the initiative enabling statute without the unconstitutional subsection. He stated that there are only about half of the states in the nation that have the initiative process so if the Supreme Court is arguing that the right to an initiative petition is a fundamental right, it is arguing that in more than half of the states in the nation the citizens are being denied a fundamental right.

Ms. Taylor noted that there are only 23 states that have an initiative process and that 13 of those have a multi-county signature requirement. She said that she knows of no other state in which the right to initiate legislation by the citizenry is a fundamental right.

President Mansell asked if this would indicate that Utah's court is out of step with every other court in the nation. Ms. Taylor said it indicates that Utah's court has a unique view.

Rep. Curtis followed up on this issue by saying that on page 11 of the court's opinion, the court highlights the United States Supreme Court's definition of a fundamental right. It says "It is a constitutionally guaranteed right that 'form[s] an implicit part of the life of a free citizen in a free society.'" The court is using the United States Supreme Court decisions in defining that the right to initiate legislation is a fundamental right in the life of a free citizen and a free society. In actuality, the states that allow it are in the western part of the United States and in population would probably make up only 25% of the population of the country, so three-fourths of the citizens are denied this fundamental right of a free citizen and a free society according to three of the justices on the Supreme Court. He indicated that what is disturbing to him is that when the argument was presented, he understood the equal protection argument on a legal basis and would not have been surprised if the court would have ruled against the statute based on that, but the court has gone above and beyond determining the constitutionality of that and has decided to create further law and establish it based upon an unprecedented analysis.

Sen. Valentine said from his analysis that any kind of impediment to the initiative process would run afoul of the reasoning of this act. Ms. Taylor said it appears that the court may allow some reasonable requirements, but what those would be and how severe the test is under this new heightened scrutiny she is not sure. She feels that the Legislature will need to be careful in drafting any statutory response to this case.

Speaker Stephens said it appears to him based on the language on page 43 of the case that the court is

only looking for two options, either you have the multi-county signature requirement or you have nothing. He feels that if the Legislature had known the multi-county signature requirement was unconstitutional, it would have done some other type of requirement that would have been constitutional, but that would have taken into account the rural residents of the state. Speaker Stephens questioned whether the Utah Supreme Court had been correct in the assessment of legislative intent. He asked members of LMC to indicate by raise of hands how many of them would have enacted the initiative law without the multi-county provision. No one raised their hand.

Ms. Taylor said the court uses the one person one vote kind of analogy so the house district or senate district would have escaped, in some measure, that problem in terms of being uniform.

**MOTION:** Rep. Curtis moved that the Constitutional Revision Commission and the Government Operations Interim Committee review the Utah Supreme Court's decision in *Gallivan v. Walker* and recommend constitutional and statutory changes that might address the court's invalidation of the multi-county statute.

Rep. Becker said he feels that the court is sending a clear message that they do not want the Legislature to undermine the initiative process. He said it is a balancing act for the Legislature to provide for the process and, at the same time, not make this a process that is subject to abuse.

Sen. Dmitrich said he favors Rep. Curtis's motion and plans on introducing legislation so that rural Utah is not left out of this process. He asked if there will be a constitutional note on every bill that deals with this issue.

Ms. Taylor said every bill will have a constitutional note on it because this is a strict scrutiny test now that Utah's court will apply. She said that depending on the numbers that are chosen for senatorial districts, the legislation proposed may be a very plausible and potentially reasonable accommodation that the Supreme Court might uphold. Because the court has given such a narrow interpretation and strict scrutiny test to it, almost anything the Legislature tries to do in this area is subject to challenge.

The motion passed unanimously. Rep. Arent was absent for the vote.

## **5. Other Business**

Ms. Taylor stated that the Legislature and staff offices have been using Corel software to support drafting bills, amendments, and committee reports for many years. In September of 2001, the Legislature's staff offices became aware that the contract had expired so they contacted ITS in September of last year and told them that they were interested in renewing that contract immediately. They have had correspondence with ITS that it would be taken care of and it has never happened. Last year during the session, Ms. Taylor indicated the legislative staff offices worked "without a net." There were no upgrades or software support so if anything broke, the Legislature would have to pay top dollar to get assistance. Ms. Taylor showed the committee a letter she has drafted that expresses the Legislature and its staff offices' frustration with the delay of this renewal and demands that ITS get a contract with Corel by October 15. If there is not a favorable response from ITS, the Legislature may look at how it funds and structures ITS so that all the branches get the appropriate service they need.

Speaker Stephens said it is the president's and speaker's intent to sign this letter unless there is an objection by the LMC. Sen. Valentine said he is in support of the letter and he expressed a concern that if

this contract is not renewed, the public will not have access to bills, committee minutes, etc.

Speaker Stephens indicated that the chairs will sign this letter.

## **6. Adjournment**

**MOTION:** Sen. Knudson moved to adjourn the meeting. The motion passed unanimously.

Speaker Stephens adjourned the meeting at 4:00 p.m.