1980

Montana Human Rights Commission.

Sheryl Motl

The University of Montana

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THE MONTANA HUMAN RIGHTS COMMISSION

By

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B.Sc. University of Minnesota, 1976

Presented in partial fulfillment of the requirements for the degree of

Master of Public Administration

UNIVERSITY OF MONTANA

1980

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INTRODUCTION

The 1979 legislative session found the Montana Human Rights Commission embroiled in a controversy over the proper location and authority of the agency. The focus of the controversy centered on the degree of autonomy a quasi-judicial agency dealing with human rights should be granted within Montana state government. By a one-vote margin, full operating autonomy for the Commission was preserved. The purpose of this professional paper is to examine that controversy and to establish the proper location and authority for the Montana Human Rights Commission.

In order to meet this goal of prescribing the proper location and authority of the Commission, several objectives will be pursued throughout the paper. The first objective will be to determine the mission, function, and structure of the organization. In order to make these determinations, the background of the human rights movement, the passage of the Human Rights Act, the legislative intent of that Act, the establishment of the organization, and the operations and functions of the organization will be examined.

The second objective will be to understand the causes and ramifications of the 1979 controversy. To do this, a brief examination of the history of the Human Rights Commission will be made with the intention of understanding the events and circumstances of the 1978-79 budget process, culminating with the 1979 legislature.

With this background, the basic goal of the paper will be examined. Two questions will be raised: Where should the Montana
Human Rights Commission be located within state government and what degree of autonomy should the organization be granted. The paper will conclude with an evaluation and recommendation addressed to these questions.
THE PASSAGE OF THE HUMAN RIGHTS ACT

The Background

Equality and discrimination in governmental action have been widely debated issues since the birth of our nation in 1776. The Declaration of Independence proclaimed that "all men are created equal," but the slaveholders who signed that document obviously did not have their human chattles or wives in mind. In 1861 a war was fought because of the diverse interpretation of equality throughout the nation. In the ten years following the close of the Civil War, constitutional amendments and a series of Civil Rights and Enforcement Acts sought to abolish slavery and racial discrimination. In 1920 the basic premise of American government -- "all men are created equal" -- was expanded to cover women, making them equal in voting rights.

At each revision of the meaning of equality, majority sentiments have strongly resisted changes in the treatment and condition of those affected by the expanded interpretation. Yet the government continued in various forms to implement the civil rights of its people.

Prior to the Civil Rights Act of 1964, legislation designed to implement civil rights was directed mainly to the protection of minorities as customers of business institutions. The law did not protect women, minorities, or the handicapped against discrimination in employment, housing, urban activities, governmental facilities, and many other areas. Moreover, this legislation was enforceable primarily through criminal adjudication and private suits for damages. It was
generally conceded that judicial enforcement of this early form of civil rights legislation was a dismal failure.

In 1964, after a 20 year struggle by civil rights advocates, another major step was taken in the further clarification of "equality." The Civil Rights Act of 1964 directed the states to provide statutes to strengthen their civil rights laws and set up affirmative action guidelines which, if followed, would assure the states of federal funds to help implement the law. Title VII of the Civil Rights Act, as amended by the Equal Opportunity Act of 1972, further defined the issue by requiring equality of employment opportunity in the private sector.

By 1968, 32 states had established human relations commissions to enforce prohibitions against discrimination directed toward minority and other disadvantaged groups. The principal tool used by the state commissions for eliminating discrimination was the case-by-case processing of individual charges of discriminatory practices over which they had jurisdiction. By 1976, 43 states were processing discrimination cases brought before the Equal Employment Opportunity Commission (EEOC) of the federal government on a contract basis.

Today, federal acts and regulations continue to be passed in attempt to further clarify the meaning of "equality" and to secure equality for its citizens.

In Montana, legislative action over the last 25 years has followed a similar evolution in clarifying the meaning of equality. In 1955, the first discrimination law was passed, "banning discrimination" on the grounds of race, color, or creed in places of public accommodations or amusements. Ten years later, following on the heels of the federal
Civil Rights Act, the Montana Legislature enacted a bill entitled "Freedom From Discrimination." This Act recognized the right to be free from discrimination as a basic civil right. The Act, in addition to providing for the right to public accommodation, also allowed for the attainment and holding of employment without discrimination and extended protection to discrimination on the basis of national origin. Additionally, the 1965 Act made it a misdemeanor offense for anyone to abridge the rights of a person as provided for in the Act.

Neither of these bills did much in the way of actually "banning discrimination." Little protection from discrimination was offered to Montana citizens in that there was no mechanism for enforcing or monitoring the law and no means for redress by an injured party. This was, though, as discussed earlier, the general state of civil rights legislation at the federal level, at least prior to 1964. The notable difference between the Montana law and the existing state of civil rights legislation was the lack of any enforcement mechanism in Montana that would have allowed the state to follow the mandate of the Civil Rights Act of 1964. As mentioned earlier, by 1968 32 states had mechanisms in place for the enforcement of their civil rights laws. New York had pioneered the establishment of a state level administrative agency to deal with employment discrimination in 1945.

As part of the Civil Rights Act, the federal government began establishing state advisory commissions on civil rights. Each state with such a commission was to investigate and report to the U.S. Civil Rights Commission specific cases of discrimination within their state.
In 1966, at the behest of the President, the Montana Advisory Commission on U.S. Civil Rights was established. The advisory commission conducted surveys, hearings, and investigations in order to determine the extent of discrimination within Montana.

In addition to its investigations, the Montana Advisory Commission also reviewed human rights laws from other states. It was from this study that the members of the Commission realized the inadequacy of Montana's human rights protection as it compared to the protection offered by other states to its citizens. The Advisory Commission realized that Montana had no existing mechanism to handle complaints of discrimination. Complaints were scattered among numerous agencies and subsequently not resolved for lack of information. Numerous cases went into the courts. After 1972, any cases dealing with employment had to go to the regional Equal Employment Opportunity Commission (EEOC) office in Denver or an EEOC investigator had to come to Montana. In all situations, the process was cumbersome and expensive.

In 1972, Montana officials contacted the EEOC to investigate the possibility of becoming a "706 agency" or a contracting deferral agency of the EEOC. The term "706 agency" refers to that section of the Civil Rights Act which covers agencies who have contractual agreements with the EEOC. Under this arrangement, the 706 agency agrees to investigate complaints of employment discrimination in areas covered by the federal law. The contracting agency is then reimbursed at approximately $350 per case.
The reply of the EEOC was that the existing Montana law was not comparable in scope to Title VII of the Civil Rights Act. With no enforcement mechanism to provide a remedy for a violation and its victim other than the misdemeanor penalty, the existing law did not meet the Title VII requirement that the contracting agency be able to provide "relief."

With language borrowed from several midwestern states, the Advisory Commission began drafting a bill to strengthen Montana's discrimination laws and provide a mechanism for the monitoring and enforcement of those laws. In 1973 the bill was introduced into the 43rd Legislature by Representative Polly Holmes (D-Billings) as House Bill 542. The bill was entitled "An Act to prevent discrimination in employment, public accommodations, education and real property transactions; to establish a Commission on Human Rights; to authorize creation of local Commissions and to make uniform the law with reference thereto and for other purposes."

The Passage of the Bill

The 43rd session of the Montana Legislature was on several counts an unusual session. It was Montana's first experience with an annual session. It was also the first time since 1953 that one party (the Democrats) had control of both houses and the Governor's Office. Additionally, and most significantly, it was the first legislative session after the 1972 state Constitutional Convention. It was in this setting that Representative Holmes introduced the bill to strengthen Montana's
discrimination laws, establish a procedure for the enforcement of the law, and a means of monitoring that enforcement.

The bill passed quickly through the House the first session and was returned the second session in a revised and condensed form. By the end of the second session, a greatly strengthened human rights bill was passed having moved easily through the House and Senate.

The concept of a Human Rights Act was new, and, as House sponsor, Polly Holmes explained, some members of the Legislature were, at least at the onset of the session, unaware of the implications of the bill that had slipped by them. Proponents of a Human Rights Commission had argued that it was necessary to provide an orderly process for handling complaints and to further clarify the meaning of discrimination and equality in Montana. Furthermore, they pointed out that passing a new law would qualify Montana for funding from Title VII of the Civil Rights Act, as amended, and result in federal assistance in funding the Commission. Other proponents suggested that if Montana passed this Human Rights bill, the state would not have to pass the Equal Rights Amendment.

In addition, the human rights bill had unusual momentum that session. Since it was the first legislative session following the Constitutional Convention, numerous bills resulting from the new Constitution were being introduced and passed. Riding the tide of the Constitutional Convention, the bill sponsors argued that the Constitution's equal protection clause necessitated that a method of providing that protection be established. It is in this respect that the unique
setting of the 43rd Legislature played its biggest role in the passage of the Human Rights Act.

Establishment of the Human Rights Commission (HRC)

Throughout the legislative process, the emphasis of the debates on the human rights bill were primarily over the areas of discrimination to be covered. Little debate or immediate consideration was given to the actual structure and function of the commission the bill was to establish. The process by which the commission would handle complaints and its powers to do so were seldom discussed during the sessions. The final bill designated the Commission as a quasi-judicial board which was to be attached to the Department of Labor and Industry for administrative purposes only. Quasi-judicial, according to Montana law, means an adjudicatory function that is exercised by an agency, involving the exercise of judgment and discretion in making determinations in controversies.\(^3\) If an agency is attached for administrative purposes only, the department to which the agency is attached directs and supervises the budget and recordkeeping, submits the agency's budget with the department budget, collects all revenues for the agency, and provides a staff for the agency. The agency within the department functions independently though without formal control or approval of the principal department.\(^4\)

Shortly after the establishment of the agency a problem arose, which was not unexpected by the drafters of the original bill. The problem involved the relationship of the HRC to the Department of Labor and Industry. As just described the HRC, as a quasi-judicial
agency, was attached for administrative purposes only to the Department of Labor and Industry (DLI). According to the original Bureau Chief of the Human Rights staff, there were widespread interpretations of the degree of influence in the cases and policies of the HRC that the attached for administrative purposes status could produce. The proper role of the HRC and the Department of Labor and Industry in setting policy and directing the staff was the prime source of conflict. The Commissioner of Labor wanted the Commission to act simply as a review board for the staff decisions. In contrast, the Commission had anticipated taking a much more active role in setting policy and supervising what they considered their staff.

The clash of interpretations culminated within a few months of the establishment of the organization by the firing of the Bureau Chief of the Human Rights Bureau by the Commissioner of Labor and Industry. The Human Rights Commission was completely unaware of the decision prior to its occurrence. Consequently, the Commission felt their authority as a Commission had been thwarted. Numerous such incidents continued to occur. The language of the law could not clarify the situation.

The clash of interpretations of a Commission role in an administratively attached agency became apparent. Within a few months of the creation of the agency the Governor's Office requested that a bill be drafted to provide the agency with full operating autonomy. According to the attorney that drafted the bill, the Governor's Office had realized that the Commission had been created without sufficient powers to do the job it was established to do. Once the autonomy bill was
drafted, the Governor's Office sought out and enlisted the sponsorship of several legislators.

The Amendments to the Bill

The sponsors and supporters of the bill to amend the 1974 Human Rights Act intended to alleviate what they perceived as an inherent conflict of interest. The HRC, they felt, must by its nature be free to investigate complaints of discrimination against state agencies. They questioned whether this freedom was possible given the administrative role of the Department of Labor and Industry in HRC affairs. Since the majority of the complaints against the state were employment related, the Department of Labor and Industry was thus involved. It seemed clear that staffing and budget authority should not stay with the Department of Labor and Industry for fear of a possible conflict of interest. Further, because any department of state government might be subject to a complaint of discrimination, the potential for a conflict of interest could exist in whichever department the HRC was located. On this basis, the bill sponsors' first goal was to remove the HRC from the Department of Labor and Industry. In doing so, their second goal was to move the HRC to a location as far as possible from political influence.

Seeking to minimize potential conflict of interest situations, the bill sponsors first sought to place the agency in the Department of Justice and later in the Department of Intergovernmental Relations. Both departments rejected the proposed association, not wanting to have such a potentially controversial program in its midst. It was
then decided to leave the HRC within the Department of Labor and Industry, but to seek full operating autonomy for it.

During the hearings on the question of autonomy, the issue was argued on generally two counts. A representative of the Governor's Office argued for the need of autonomy for the HRC in order to operate effectively in carrying out the intent of the law of preventing and eliminating discrimination. Opponents, on the other hand, argued that this would create an absence of the traditional check and balance system that governed other Montana agencies. Under the Executive Reorganization Act adopted in 1971, each of the units within the 20 principal departments are to be directly accountable to the head of a department. Heads of the departments are then either directly accountable to the Governor or accountable to the public through election. Full operating autonomy would allow the HRC to be outside of the direct accountability to the Commissioner of Labor and Industry.

What eventually passed was a bill (HB 602) providing the HRC with a location within the Department of Labor and Industry, but with clearly spelled out operating autonomy. Under HB 602, the HRC was authorized to hire its own staff, seek and receive private and federal funds in its own name, and make all policy decisions concerning its budget. The only remaining attachment to the Department of Labor and Industry was of a housekeeping nature (e.g., sharing accounting services). Under HB 602, the Human Rights Bureau became the Human Rights Division (HRD).

Also of significance for the HRC in the 44th Legislature were two additional bills that considerably strengthened the HRC. The first bill
general revised and delineated in more detail the laws relating to discrimination and gave rule making powers to the Commission.

Also during the 44th session, a second bill (HB 8) entitled the "Governmental Code of Fair Practices" was introduced. The purpose of the Code was to assure that the human rights implication of any governmental decision or activity would be considered and that all governmental activities at both the state and local level would be carried out in a way which assured protection from discriminatory purposes or impact. The Act covered such governmental activities as employment, delivery of services, distribution of funds, licensing, regulation, and letting of contracts. The HRC was charged with the responsibility of assuring that the state and local governmental agencies meet their responsibilities under the Code of Fair Practices, a task involving both education and enforcement efforts. Unfortunately, the new responsibilities given to the HRC were never funded. Consequently, the law has not been strictly enforced.

By the end of the 44th legislative session, after three sessions of bills, amendments and classifications, the enabling legislation had been passed and the Human Rights Commission established.

**Legislative Intent: 43rd Session**

Thus far, it had been established that the function of the HRC was to be quasi-judicial. The enabling legislation established this role and the record shows no legislative debate over making the Commission anything other than quasi-judicial. There was, however, controversy...
and debate over the question of independence for the HRC. The initial legislation implied that the HRC would be semi-independent since it was located within the Department of Labor and Industry for administrative purposes only. This raises two questions that will be addressed: why was the HRC placed in the Labor Department in the first place and, secondly, why was it attached in the fashion it was?

According to the language of the Executive Reorganization Act, all executive and administrative offices, boards, bureaus, commissions, and agencies have to be allocated among one of 20 principal departments. Therefore, to comply with the law, the HRC had to be located within one of these departments. Within state government there are 15 other boards and commissions with quasi-judicial powers. Each is located in a department most orientated towards its concerns; for example, the Board of Milk Control in the Department of Business Regulation; the Board of Investments in the Department of Administration. Since a majority of HRC cases deal with employment related issues, the Labor Department seemed a logical host agency for the HRC. Furthermore, the majority of Human Rights Agencies in other states, if not a separate department, are located within a labor department.

Aside from the employment related focus of the HRC, there are also political considerations that help explain the HRC's presence in the Department of Labor and Industry. One of the original drafters of the legislation claims that the HRC was placed in Labor and Industry as a compromise with the bill's opponents. In order to gather sufficient support for the establishment of a HRC, the agency had to be
placed in Labor and Industry. The placement of the agency within the Department of Labor and Industry, it was claimed, was a move to insure that opponents of the Human Rights Act, which were primarily labor unions, would be able to closely monitor the activities of the Commission. With shared interest in labor concerns and alleged political ties to the Department of Labor and Industry, the bill's opponents could possibly influence the Department of Labor and Industry's administrative control over the Commission. These two factors, the requirements of the Executive Reorganization act, and political considerations, offer explanation for the HRC's original presence in the Department of Labor and Industry.

The second question that must be raised is why the HRC was attached for administrative purposes only to the Department. The decision to do so was based on the rationale established in the Executive Reorganization Act. Within this Act, boards and commissions can be attached in one of four ways. First, the board could exist as a regular part of the Department, as the Board of Health and Environmental Sciences within the Department of Health and Environmental Sciences. An alternative to this is that the board could be attached for administrative purposes only to the Department--granting a degree of independence, yet attached in the ways discussed earlier. A third method is for the board simply to be its own department--as is the Public Service Commission. The fourth option is for a board to be a temporary advisory board.

Of the 15 quasi-judicial boards within state government, 13 are attached to their department for administrative purposes only. Two
are located within the departments. On this basis, it can be determined that precedence was a deciding factor in the decision to allocate the HRC to the Department of Labor and Industry. Aside from being the head of its own department, this option gave the HRC the greatest possible degree of independence.

There are, of course, exceptions to how boards and commissions are attached. Presently, seven out of nearly seventy boards and commissions are not exactly within the confines of the four methods. An example is the Board of Pardons which is attached to the Department of Institutions, but has the exception of being able to hire its own staff. A second example is the Board of Oil and Gas Conservation which is attached to the Department of Natural Resources and Conservation, but can hire its own staff and prescribe their salaries and duties. (See Appendix A for a complete listing and location for all the boards and commissions.)

**Legislative Intent: 44th Session**

The 43rd legislative session established the HRC and designated it a quasi-judicial board. As described earlier, problems arose with that designation and resulted in the granting of autonomy in the 44th session. The creation of a structure for the HRC unique to Montana state government was the most significant element of the autonomy bill and perhaps the most direct indication of the legislative intent. Of the nearly 70 existing boards and commissions within the state, the HRC is the only quasi-judicial commission to be granted full operating autonomy. With the passage of HB 602, the HRC was exempted from
the provisions of Montana law that describe an administratively attached agency. The closest that any of the other boards and commissions come to this (aside from the Board of Livestock and the Public Service Commission which are the heads of their departments) is the ability of seven boards to hire their own staffs.

The Human Rights Act was amended in the 44th session to grant the HRC special status within state government. No other board had been granted such status, nor, as discussed earlier, had the Executive Office supported such an exception to the Executive Reorganization Act. The problems with HRC experienced without autonomy during its first few months of operation had demanded a solution. It was at this point that both the legislature and the Executive Office supported the greatest possible degree of independence for the Commission.

By 1975 the Human Rights Commission had settled into its basic legal framework. Legislation had been passed creating the Commission and granting it authority in 1974, and a session later new legislation had clarified, amended, and strengthened that authority. The task now was for the Commission to establish its role in the elimination of discrimination and its place in Montana state government.
1 Phone interview with Representative Polly Holmes, 6-9-80.

2 Article II, Section 4 of the Montana Constitution. That section, in part, provides:

"Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas."

"The intention of the delegates to the Constitutional Convention in approving this language was to provide 'an impetus for the eradication of public and private discrimination. . . .' (Constitutional Convention Proceedings on page 5059).


4 MCA Section 2-15-121 (1979).

5 Phone interview with Kathy McGee, 6-9-80.

6 Interview with Rosemary Zion, 8-14-80.

7 MCA Section 2-15-101 (1979), Article VI, Section 7 of the Montana Constitution.

8 To establish this, all legislative records or the original bill were examined. Additionally, Representative Holmes, Senator Tom Towe, and Jerome Cate of the State Advisory Commission on Civil Rights confirmed the lack of debate over the matter.


11 Representative Barb Bennetts in testimony before the Senate Judiciary Committee, 2-21-75.

12 Phone interview with Senator Tom Towe, 6-13-80. Phone Interview with Jerome Cate 6-10-80.

The enabling legislation for the Human Rights Commission became effective July 1, 1974. Five Commissioners were appointed by the Governor and a staff was hired. The first order of business and consuming task of the Commissioners was to acquaint themselves with the new Human Rights Act and its relationship to the Equal Opportunity Act of the federal government.

In the midst of familiarizing themselves with the laws they were to administer, the Commissioners were also involved in delegating tasks and responsibilities to their staff. The staff, then known as the Human Rights Bureau and later as the Division, was delegated responsibilities for investigating complaints of discrimination, presenting cases before the Commission, and acting for the Commission to implement the policy of the state against discrimination. Eventually administrative rules were established, precedents set, and routines developed from which an identity for the HRC evolved.

In order to familiarize the reader with the operations and procedures established by the HRC, the four broad functions assigned to the Commission will be discussed briefly. These functions as established by legislation are:

--Receive, investigate, conciliate, and, when necessary, hold hearings and issue orders on discrimination complaints.

--Issue declaratory rulings which clarify the coverage of the Human Rights Act;

--Develop public education programs to help prevent violations through ignorance of the law; and
Discrimination Complaints

The Human Rights Act directs the Commission to enforce the anti-discrimination provisions of the act. In the course of four legislative sessions, the act had been amended to cover nearly every form of discrimination. Any person claiming to be aggrieved by a discriminatory practice may file a complaint with the Commission. In addition, any person, agency, or organization may file a complaint on behalf of a person claimed to be aggrieved. The first table identifies those areas in which a person may file a complaint. Employment, with 79.7 percent of the cases, represents the most common area of discrimination.

TABLE ONE: AREAS OF DISCRIMINATION

<table>
<thead>
<tr>
<th>AREAS</th>
<th>PERCENT OF CASES</th>
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<tbody>
<tr>
<td>Employment</td>
<td>79.7</td>
</tr>
<tr>
<td>Training/Education</td>
<td>4.0</td>
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<tr>
<td>Retaliation</td>
<td>3.9</td>
</tr>
<tr>
<td>Government Services</td>
<td>3.5</td>
</tr>
<tr>
<td>Other</td>
<td>2.5</td>
</tr>
<tr>
<td>Housing</td>
<td>2.4</td>
</tr>
<tr>
<td>Financing</td>
<td>2.3</td>
</tr>
<tr>
<td>Public Accommodations</td>
<td>1.7</td>
</tr>
</tbody>
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The HRC processes cases brought before it on the basis of several alleged causes of discrimination. Table Two shows the seven primary causes of discrimination with the allegation of sex discrimination constituting 45 percent of the cases.

**TABLE TWO**

<table>
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<th>CAUSES OF DISCRIMINATION</th>
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<tr>
<td>PERCENT OF CASES</td>
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<tr>
<td>50</td>
</tr>
<tr>
<td>45.0</td>
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<tr>
<td>40</td>
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<td>15</td>
</tr>
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<td>15.9</td>
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<td>9</td>
</tr>
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<td>11.7</td>
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<td>1.7</td>
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**SOURCE:** Sunset Review of the Commission for Human Rights Office of Legislative Auditor.
The actual complaint process begins with an intake procedure. At this stage, a staff person answers verbal or written requests for information on discriminatory practices. If the complaint appears well founded, the person is mailed a preliminary inquiry form.

On the basis of the information returned by the complainant, a determination is made by the staff whether a formal complaint should be drafted. It is this stage of the process that determines the number of cases actually filed with the Commission. For example, although approximately 2,000 inquiries were processed for fiscal year 1979-80, only 240 of those resulted in formal complaints being filed.

Once it has been determined that a complaint establishes a prima facie case of discrimination, a formal complaint is filed. At this point, the investigative stage of the process begins. Cases are assigned to staff investigators who carry out the complaint investigation, primarily by telephone and use of correspondence. Investigative powers granted to the staff include the power to subpoena witnesses, take the testimony of a person under oath, administer oaths, and require the production of tangible evidence relating to the case.

When the investigation is complete, the process of resolving the complaint begins. The first attempt to resolve the complaint is made in a fact-finding conference. At this stage both parties mutually agree to meet in conference to resolve the complaint informally. A staff member acts as mediator and attempts to negotiate a no-fault settlement. If no settlement can be reached, the investigator will analyze the information and draft a finding that there is or is not
reasonable cause to credit the allegations of the complaint. The division attorney and the administrator must concur in a finding of reasonable cause before it becomes effective.

If a finding of no cause is made by the staff, then notice is given to all parties. Charging parties can appeal that decision before the administrator and, if necessary, before the Commission. All no-cause findings must be affirmed by the Commission.

In the case of a finding of reasonable cause, the staff attempts to obtain a formal conciliation agreement between the two parties. Once confirmed by the Commission, the conciliation agreement becomes binding. If at this stage it appears a conciliated settlement is not reasonably possible, the case is referred to the Commission for hearing.

Generally the contested case hearings are heard before a hearing examiner. The role of the hearing examiner is to hear testimony by all parties and collect all tangible evidence. At the conclusion of the hearing, the hearing examiner will write a proposed order, including findings of fact and conclusions of law. All of the persons affected by the proposed order have an opportunity to file exceptions, present briefs, and to make oral arguments before the Commission.

After reviewing the hearing examiner's proposed order and any additional information supplied by the parties, the Commission issues a final decision. If the order does not dismiss the complaint, the Commission may require measures to correct the discriminatory practice, prescribe conditions of the respondent's future conduct and/or require a report on the manner of compliance. In some cases backpay may be
awarded, but not payment of punitive damages. Either party can appeal the Commission's final order to district court.

The vast majority of cases never reach the hearing stage. Since the creation of the Commission, only 31 of the 1,001 closed cases have gone through a hearing. The following table portrays that the percent of informal and conciliated settlements have been increasing since 1976. This increase is partially due to more emphasis being placed on those types of settlements, which are both more timely and less costly.

<table>
<thead>
<tr>
<th>PERCENT OF CASES RECEIVING CONCILIATED OR INFORMAL SETTLEMENTS FOR FISCAL YEARS</th>
<th>1974-75 TO 1979-80</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>16.8</td>
</tr>
</tbody>
</table>


The increase in informal and conciliated settlements has also contributed to a reduction in the average cost per completed case as shown in the following table.
<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Expenditures</th>
<th>Cases Completed</th>
<th>Average Cost/Completed Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>1974-75</td>
<td>$ 67,123</td>
<td>51</td>
<td>$1,316</td>
</tr>
<tr>
<td>1975-76</td>
<td>136,815*</td>
<td>87</td>
<td>1,573</td>
</tr>
<tr>
<td>1976-77</td>
<td>181,760*</td>
<td>136</td>
<td>1,336</td>
</tr>
<tr>
<td>1977-78</td>
<td>194,536**</td>
<td>268</td>
<td>726</td>
</tr>
<tr>
<td>1978-79</td>
<td>213,384*</td>
<td>211</td>
<td>1,011</td>
</tr>
<tr>
<td>1979-80</td>
<td>173,734</td>
<td>248</td>
<td>701</td>
</tr>
</tbody>
</table>

* Includes CETA funds.

**Division had 4 VISTA personnel at no cost.


The remainder of cases not resolved by hearing, informal or conciliated settlement are either closed for lack of jurisdiction, withdrawn by the complainant, administratively closed, referred to the EEOC, or found to be "no cause" cases. Table Five summarizes the status of the HRC caseload.
### TABLE FIVE
#### SUMMARY OF STATUS OF HRC CASES

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases Opened</td>
<td>102</td>
<td>202</td>
<td>252</td>
<td>308</td>
<td>264</td>
<td>240</td>
</tr>
<tr>
<td>Total Cases of FY Closed as of 3/31/80</td>
<td>101</td>
<td>185</td>
<td>221</td>
<td>247</td>
<td>132</td>
<td>98</td>
</tr>
<tr>
<td>Cases Completed in Each Fiscal Year</td>
<td>51</td>
<td>87</td>
<td>136</td>
<td>268</td>
<td>211</td>
<td>248</td>
</tr>
<tr>
<td>No Jurisdiction</td>
<td>12</td>
<td>4</td>
<td>21</td>
<td>31</td>
<td>8</td>
<td>6</td>
</tr>
<tr>
<td>Withdrawn With Settlement</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>12</td>
<td>8</td>
<td>4</td>
</tr>
<tr>
<td>Withdrawn</td>
<td>12</td>
<td>22</td>
<td>30</td>
<td>28</td>
<td>9</td>
<td>5</td>
</tr>
<tr>
<td>Administrative Closure</td>
<td>9</td>
<td>41</td>
<td>62</td>
<td>56</td>
<td>9</td>
<td>1</td>
</tr>
<tr>
<td>No Cause</td>
<td>50</td>
<td>65</td>
<td>55</td>
<td>66</td>
<td>56</td>
<td>14</td>
</tr>
<tr>
<td>Conciliated</td>
<td>17</td>
<td>43</td>
<td>33</td>
<td>47</td>
<td>37</td>
<td>22</td>
</tr>
<tr>
<td>Commission Decision</td>
<td>1</td>
<td>7</td>
<td>17</td>
<td>3</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Pending</td>
<td>1</td>
<td>17</td>
<td>31</td>
<td>61</td>
<td>132</td>
<td>137</td>
</tr>
</tbody>
</table>

**SOURCE:** HRC Case Status Report.

**Declaratory Rulings**

The second function of the Commission is to issue declaratory rulings. A party may petition for a ruling on the applicability of a statute or regulation to the affected person's activity or proposed activity. Generally, the petitioner is seeking an exemption from one
or more of the provisions which prohibit discriminatory practices. A hearing similar to a contested case hearing is held by the Commission prior to the issuance of its ruling. To date, the Commission has issued four declaratory rulings.

**Education and Outreach Programs**

In an attempt to inform Montana citizens of the existing civil rights laws and Commission activities, an education and outreach program was developed on a limited basis by the Commission. The program is carried out through public service announcements, speeches, workshops, and seminars. In addition, a Business Rights hotline was instituted so that employers can call the staff requesting information on discriminatory employment practices.

**Governmental Code of Fair Practices Act**

As mentioned earlier, the Code of Fair Practices was passed in 1975. This act required the Commission to:

- Adopt regulations for inclusion in the Administrative Rules of Montana;
- Develop programs for the purpose of broadening the base of job recruitment by governmental agencies;
- Provide enforcement and educational programs for state and local governmental agencies; and
- Process complaints of violations of this act.

The Act was never funded and, consequently, the Commission has completed minimal work in this area.
By performing these functions, the HRC established a political and practical identity for itself. Clientel groups, state officials, legislators, business people, federal officials, and taxpayers each held perceptions of the HRC and the work they were doing. Yet those perceptions, by the very nature of the groups holding them, varied tremendously. Some clientel groups were viewing the HRC as an advocate and protector of vital human rights. Other groups were feeling persecuted, annoyed, and frustrated by its presence. Nevertheless, an identity had been established—established to the point that the HRC could not become a political target. The full implication of having a human rights organization within state government, impacting both the private and public sector, was by 1978 being realized. Original legislative and administrative decisions about the location, organization, and authority of the HRC were being questioned. Those questions produced a year of controversy for the HRC.
Information in this section is taken from the Sunset Review of the Commission for Human Rights, a Report to the Legislature by the Office of the Legislative Auditor, September 1980.
"The budget," states Aaron Wildavsky in The Politics of the Budgetary Process, "lies at the heart of the political process." Appearing within it, he contends, "lie the victories and defeats, the compromises and the bargains, the reality of agreement and the sphere of conflict of the role of government in our society."\(^1\)

With few exceptions, the budgetary process of Montana is similarly a tool used by Montana politicians. With that tool agencies live or die, are shaped or refined, distorted or devastated. In the spring of 1978, the HRC entered the budget process for the 1980-81 biennium. That process proved to be a tremendous challenge to the young agency. The budget process was to produce a year of controversy that thrust the agency into the political arena. In order to understand what produced the controversy that called into question the location and authority of the agency, the 1978-79 HRC budget process will be examined.

In the Beginning

The following is an excerpt from Governor Judge's State of the State address in February 1978:

The Montana Human Rights Commission has worked diligently to insure that equal opportunity becomes a reality. I will continue to work toward that goal. In state government, I am committed to immediate measurable progress in increasing the number of women, minority and handicapped in the state's most desirable jobs.
Additionally, the 1978 Democratic Party Platform included:

The Montana Human Rights Act was passed to assure Montanans that the right to be free from discrimination is a civil right. The Democratic Party reaffirms its support of the Human Rights Act and urges the 1979 legislature to provide adequate funding for the administration of the Act. . . . . We commend and further support the Human Rights Division in its effort to discourage discrimination.

To even the casual observer, the support of the Governor and the Democrat-controlled legislature was evident. For the HRC, the messages were a good note on which to begin preparation for the Executive Planning Process (EPP). For four months, the Governor's Office of Budget and Program Planning (OBPP) would meet regularly with the HRC in the preliminary planning stages of the budget process. By the time the process was completed, both the agency and the budget office would have arrived at mutual understandings of what would be considered for inclusion on the final budget document.

Within a few months of the Governor's address, the Executive Planning Process was complete. The Governor had placed "high priority" on the addition of two more staff positions for the HRC, as well as pledged his support for a fully funded agency. The HRC seemed to have every reason to assume that all was well on the budget front and that the coming biennium held promise of growth and stability for the agency.

The Bond Proposal

In the early fall of 1978, the Governor's Office of Budget and Program Planning organized the General Government Task Force on
Balanced Growth. Its stated purpose was to seek ways in which to trim government spending and to boost the state's economy. By September, the balanced growth project, composed of a number of top level government officials, gave the Governor a proposal entitled "Determining the Feasibility of Deterrents to Minimize Claims Against the State." (See Appendix B for membership of the Task Force.) The proposal itself best describes its purpose:

The purpose of this project is to determine the feasibility of proposing legislation that requires claimants in litigation against the state to reimburse the state for costs incurred if the courts rule in favor of the state. Specifically, this paper examines the feasibility of implementing a deterrent to minimize complaints being filed with the Montana Human Rights Commission . . . the purpose of the deterrents would be to eliminate or reduce crank complaints whose sole purpose is arbitrary harrassment by disgruntled persons.

There were two means proposed by the task force to deter such complaints. First, the report recommended the requirement of a surety bond of not more than $200 by the charging party upon filing a HRC complaint. In addition, "the bond would be forfeited if the case were found to have no reasonable cause."² The alternative suggested to a bond posting was a process whereby the charging party in a "no cause" case would be assessed a fee plus the actual costs incurred in the case. (A "no cause" finding means that the case lacked sufficient evidence to show "probable cause" of discrimination. It does not mean that there was no genuine injury.)

The balanced growth proposals were strongly opposed by HRC supporters. A letter from the HRC chairperson to the HRC administrator summarizes the HRC reaction to the bond proposal.³ She wrote as follows:
... If this proposal were applied to other agencies which investigate complaints from citizens it would mean that a victim of a robbery or a rape who complains to law enforcement would be required to post a bond prior to any investigation and that bond would be forfeited if no charges were brought. As a prosecutor, I find such a proposal an insult. Investigation agencies such as police, sheriff's, Human Rights, Consumer Protection, etc., have legal obligations to make factual determinations after being informed of a possible violation of the law... Such a policy would allow countless violations of the law to go forward because the victim was unable to come up with the cost of the investigation... It is interesting to note that the committee has not considered a proposal requiring that a bond be posted by Respondents which would be forfeited if a Cause determination is made. Clearly Respondents would claim that such a plan is unfair yet it could be argued that requiring a bond would force Respondents to take the investigations more seriously and would serve as a deterrent to purposeful discriminatory conduct.

Terse letters were exchanged by the agency and the task force. Shortly thereafter, the press picked up the issue and published articles and editorials citing the unconstitutionality and discriminatory nature of the proposal. As the tension mounted the balanced growth task force became more adamant in its claims for the desirability of such a proposal, while the HRC and its clientel groups reacted in greater outrage. When the dust settled a few weeks later, the bond proposal had been abandoned as a result of the adverse publicity and the obvious constitutional problems.

The intent of the bond proposal raises several questions. Why was the proposal only designed to cover cases filed against the state? If "crank complaints" were such a financial drain on the state government with its in-house attorneys, would not the small business person who has to hire an attorney to defend himself against a "crank complaint" also need this coverage?
Secondly, assuming that the task force had at least some familiarity with the HRC, why did it propose a measure that inevitably would have led to a termination of the EEOC-HRC contract and subsequent loss of funding for the HRC? Shortly after its establishment in 1975, the HRC had become a "706 agency" of the EEOC. EEOC has jurisdiction over all private concerns that employ 15 or more persons, including state and local governments. Because the bond proposal planned to deter claims against the state, EEOC jurisdiction would be similarly affected. Any such deterrence would be in violation of the EEOC-HRC deferral contract. HRC proponents pointed out that $36,000 or 25-30 percent of the total budget would be lost by the EEOC contract termination, whereas the bond proposal projected a cost savings of $10,437 for the state.

Thirdly, why had the task force neglected to seek out any involvement of the HRC in writing its proposal? Not until the proposal was in its second draft and scheduled to be completed in nine days did the HRC, at its persistent request, receive a copy of the measure. As a consequence of this omission, the report contained numerous misstatements of fact and law that did not reflect the procedures or problems of the HRC. Nor was basic information ever sought, such as how the HRC currently screened complaints for "crank" or obviously groundless complaints.

Several explanations were offered as to the reason for this proposal.\(^4\) All explanations though included the general comment that state officials were simply irritated by the number of cases against the state. At the time of the drafting of the proposal, 150 complaints had
been filed against the state, 24 of which were against the Department of Labor and Industry.

Although the bond proposal was dropped, the controversy seems to have precipitated or at least foreshadowed a battle between the Executive Office and the HRC which was to last for the next six months.

The Loss of the CETA Contract

In the fall of 1977, the HRC subcontracted with the Employment Training Division of the Department of Labor and Industry for one year $31,500 CETA grant to monitor affirmative action compliance in hiring procedures in state programs utilizing CETA employees. A year later in mid-October, following on the heels of the bond proposal, the CETA contract was withdrawn from the HRC by the Department of Labor and Industry.

The withdrawal of the contract stemmed from a difference of opinion as to the use of the information gathered during the compliance review. The HRC could not agree with the contract language requesting that any of the information gathered by the compliance check would not be used in later HRC case investigations.

On the contrary, the Department of Labor and Industry wanted the information gathered by the HRC to be turned over to it for its own investigation. It also wanted the information collected by the HRC-CETA staff to be disallowed as evidence in any subsequent complaints filed against the program operators. As mentioned earlier, 150 claims against the state had been filed, 24 of which were against the
Department of Labor and Industry. The compliance review, it was claimed, had precipitated a number of these complaints. After the clash over the use of the information, the contract was not renewed with the HRC. The result was a loss of two staff positions and an additional contributing factor in the continued deterioration of relations with the Commissioner of Labor and Industry and the Governor's Office.

The ACLU Lawsuit

At the time of the loss of the CETA contract, the Governor's Budget and Program Planning Office (OBPP) was in the final stages of preparing the budget. In early November, the Director of OBPP was invited to appear before a meeting of the Human Rights Commission in the hope that he could answer questions about the OBPP's forthcoming HRC budget recommendation. Much to their surprise, the Budget Director told the Commissioners at the meeting that the OBPP had proposed a 75 percent general fund staff reduction for their agency. (At that time, four staff positions out of ten were funded with general fund monies. The OBPP proposal would reduce that to one.) Additionally, the Commission was informed that the Budget Director and the Commissioner of Labor and Industry, were, at the request of the Governor, developing an alternative to their present organizational plan that would result in a less severe impact on the HRC due to the budget cuts. The meeting in November was the first indication beyond rumor to the Commissioners that the results of the Executive
Planning Process had been nullified and that the agency was to be reorganized without any prior involvement of their staff or themselves. 7

For the next two hours after his announcement, the Commissioners questioned the Budget Director on the details on the recommended budget, the drastic staff reduction, and the "alternative being worked out." They asked for explanations as to why the Commissioners had not been involved in any way in the reorganization plans. Their questioning was to no avail; the Budget Director stated that he could not reveal any details of the budget nor answer any questions directly about the origins or the impact of the reorganization.

Present at the Commissioners meeting on November 16 was an attorney for the American Civil Liberties Union of Montana (ACLU). Fearing the potential impact of the reorganization and budget cuts on the human rights efforts in Montana, the attorney sent a letter to the Budget Director requesting all documents concerning the proposed budget cuts and reorganization plans. In his testimony before the HRC, the Budget Director stated that information existed on the budget recommendation and was in fact ready to go to the printers, but he was not obligated to provide the exact figures of the recommendation, citing a Montana statute that prohibited from disclosing any information or materials concerning the preliminary executive budget. 8 The Budget Director responded in the same fashion to the ACLU letter.

On November 29, the attorney for the ACLU filed a civil suit against the Budget Director and the Governor. The attorney argued
that the "public's right to know" set forth in the Constitution had been denied by her inability to obtain information concerning the Montana HRC. As evidence of the importance of the release of the documents, the attorney referred to the 1977 legislative session. The budget in 1977 was released January 6, and the HRC scheduled to appear before the Joint Finance Subcommittee on January 10. On January 12 the only public hearing on the matter was held. The time frame for any preparation by interested parties was extremely limited. The attorney argued that any delay, therefore, in releasing the documents infringed on the plaintiff's ability to participate in the legislative process effectively.\(^9\)

On December 5, a District Court Judge ruled in favor of the ACLU stating that there was a conflict between the statute cited by the Budget Director and the Constitution; therefore, the Constitution must prevail.\(^10\) The Executive Office did not contest the ruling and by the fourteenth of December the attorney received the documents she sought.

Throughout the period of the lawsuit, the ACLU and the HRC argued that in order to prepare effectively for the coming legislative session, then only 28 days away, they needed to be aware of the proposed changes for the agency. Had the information not been released by court order, the governor's budget would have been made public on January 3, the first day of the legislative session. At this time the appropriations bills would be sent directly to the subcommittees and scheduled for public hearing. Without the release of the
documents, the HRC administrator would have gone before the subcommittee completely unfamiliar with the proposed budget for his agency. Nor would clientel groups of the agency have had an opportunity to prepare testimony for the proposed changes. As the ACLU attorney argued, with the rapidly approaching legislative session "justice delayed in these circumstances was truly justice denied." ¹¹

If there is such a thing as the "last straw," the ACLU lawsuit and the publicity it generated indeed reflected the final fall of the HRC from executive graces. The Executive Office claimed that the HRC had asked the ACLU to carry out the lawsuit against the Budget Director and the Governor. ¹² At the same time, the HRC claimed that the Executive Office was intentionally putting shackles on the agency by withholding vital information the Budget Office knew the agency would need to counter their proposal. ¹³ Unfortunately, these attitudes were brought to the legislative stage as the session began.

Two observations must be made at this point concerning the proposed executive budget cuts. Conclusions can be drawn that the budget proposal was not a result of the Executive Planning Process at any stage. The governor's summary of the EPP showed a possible budget modification increasing the staff of the HRC, but it did not show any decrease. The EPP Governor's Summary of Proposed Legislation showed that there was no recommendation or discussion in the planning stages concerning the restructuring of the HRC. ¹⁴

Secondly, an inescapable observation is that this proposal came to light just after the bond proposal discussed earlier. Less than three weeks after the bond proposal was dropped, the Budget Director
requested the Commissioner of Labor and Industry to "present a plan which would be able to reasonably absorb the current human rights effort." 15

Communications had obviously broken down. The results of the Executive Planning Process had been negated with the supposed sharing and solicitation of information between the executive and agency ending in a lawsuit. Two proposals which would have radically affected the HRC were drawn up and revised without agency involvement.

Somewhere in the process of the budget preparation, the attitude of the Executive Office toward the HRC had changed dramatically. The Department of Labor and Industry was frustrated over the HRC's refusal to comply with their conditions for the use of information gathered in their CETA contract monitoring. 16 The Executive Office was frustrated by the HRC and the newspaper coverage of their bond proposal. 17 Additionally, the Executive Office was frustrated by the ACLU lawsuit and the subsequent press coverage it received. Further complicating the tension was that several extremely controversial discrimination cases against the state were pending at that time. The budget had become the tip of a political iceberg. The result of the controversy culminated in the legislative battle over SB 110.

The Legislative Battle: HB 602 Revisited

The legislative session in which the autonomy issue was to be debated a second time was not the same political atmosphere as the session four years earlier. The 46th session found the Republicans
with a two-member majority in the Senate and a reduced Democrat majority in the House. Riding in on a wave of economy-in-government fervor stemming from California's Proposition 13 tax cut, Montana Republicans seized the initiative by proposing a package of tax cuts and spending limits. In keeping with the mood of the state, Governor Judge submitted what he called a "bottom line budget." The result of the session was a $40 million tax cut for the biennium.

As part of the economy-in-government movement, Governor Judge submitted a budget proposal for a 53 percent reduction in funding for the HRC. In order to help facilitate the budget reduction, the Governor's Office drafted a bill (SB 110) to reorganize the HRC.

The essence of the bill would place the HRC back under the direct control of the Department of Labor and Industry by removing the exceptions granted to it in 1975 by HB 602 (the right to hire their own staff, seek and receive funds in their own name, and set all policy over its budget). SB 110 would transfer all authority for staffing and administrative functions to the Department of Labor and Industry once again.

Arguments for SB 110

Throughout the hearing and floor debates on SB 110, proponents of the bill argued in generally one of two ways. The first and most prevalent argument heard was that the placement of the HRC directly under the Department of Labor and Industry would make it more efficient and effective. The reorganization plan presented to the legislature by the Commissioner of Labor and Industry described the
HRC as sharing staff with the Personnel Appeals Division for hearings and Labor Standards for investigations. This sharing would result in a total staff of 6.5 full-time employees. By the Commissioner of Labor and Industry's estimate, the new staff could handle 60 investigations and 150 inquiries. Inconsistent with his proposal was that in 1978 alone the Human Rights staff handled 1,300 inquiries which resulted in 308 formalized complaints.

The Commissioner of Labor and Industry argued that the employees of Labor Standards and Personnel Appeals Division within the Department of Labor and Industry already performed work similar to the work of the HRC. The employees, he claimed, had extensive experience with the investigations and hearings and therefore would easily be able to integrate the function of the HRC staff with other functions. Through joining the three staffs within the Department, the entire operation would be more efficient and effective and, therefore, cost saving. The Commissioner of Labor and Industry estimated the cost saving of the plan would be $70,000. Inconsistent with the Commissioner's proposal was that if the plan was carried out as he proposed, the average cost per HRC case would be $1,277. The average cost per case in fiscal year 1978 under the existing system was $723. In fiscal year 1979, that cost was $701.

The second line of argument was the one most strongly advocated by the staff of the Governor's Office. The Executive Reorganization Act passed in 1971 mandated that there be no more than 20 departments and that all boards, bureaus, and commissions must fall into line
with one of the existing departments. Allowing the HRC to be autonomous was contrary to the Act's orderly arrangement. According to a legislative aide for Governor Judge, allowing the HRC to be autonomous was an administrative "sore thumb" and a dangerous precedent. Other agencies, it was assumed, would argue for similar status. Additionally, the aide argued, an autonomous agency was removed from the checks and balances on which government was based and therefore lacked accountability to the people of Montana.20

Thus, on the basis of these two primary arguments, efficiency and effectiveness and the mandate of the Executive Reorganization Act, the Governor's Office and the bill's supporters lobbied for its passage. It must be noted at this point that the bill to remove the autonomy of the HRC originated in the Governor's Office. Ironically, just four years prior, during the 44th legislative session, the bill to grant the HRC autonomy originated in the Governor's Office. Even more ironic was that the main argument for SB 110 coming from the Governor's Office in 1979 was that it thwarted Executive Reorganization. Yet in 1975, four years after the legislature had adopted the Executive Reorganization Act, the Governor's Office found sufficient cause to argue that the HRC should be an exception to that Act.

Aside from the motivating factors of economy and reorganization, there seems to have been an additional element which also influenced the drafters of SB 110. That element appears to have been a political desire to reduce the impact of the HRC on state government and private business. Two situations give evidence to this. First, the bond proposal cited earlier stated that its goals was to minimize claims.

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against the state. In an effort to reduce what the task force perceived to be "crank" complaints, the two forms of deterrents were proposed. As already discussed, cost savings did not seem to be a motivating factor in prompting the proposal. Second, the documents received by the ACLU attorney as a result of the lawsuit implied that the reorganization was designed to reduce the ability of the HRC to pursue complaints against private business. In a memo from the Director of OBPP to the Governor, the following is excerpted:

... by having Dave's staff (Commissioner of Labor and Industry) perform the human rights plus other jobs we can realize economics plus less anguish to private business.

In a conversation between the Budget Director and the Commissioners at the November meeting, the following was recorded by the Helena based Independent Record:

Topash: (Commission member) "The Governor's proposal to reduce the budget of the HRC sounds like one which was made because someone was upset because the Commission caught them in a discriminatory activity."

Bousliman: (Director of OBPP) "While the Governor approves of the Commission function, he has heard from many in Montana who are not enthused about your function."

Storm: (Commission chair) "Now we are getting to the nitty-gritty of this."

In a memo to the Governor, the Budget Director concluded by recommending "that the budget recommendation remain as it is so as not to offend a lot of Montanans who aren't in the first place sympathetic to the role of the Commission."
It seems apparent that the Budget Director's recommendation for the budget cuts and reorganization were motivated by factors, at least in part, beyond the explanation of reorganization and economics.

**Arguments Against SB 110**

The arguments against SB 110 centered on one issue—the necessity of autonomy for a human rights program. Of the 20 submitted testimonies, each focused on the same general issue—the conflict of interest generated if the HRC ever had to investigate complaints against the department it was placed under. Conceivably, without full operating autonomy for the HRC, that department would have employment and budgetary authority over its own discrimination investigation. More problems, it was argued, would be created than any the reorganization plan proposed to eliminate. By being placed directly within the Department of Labor and Industry, the HRC would be subject to political influences that could, opponents argued, conceivably slight the human rights effort in Montana.

A wide variety of people testified in opposition to SB 110, generally reflecting the clientel groups served by the HRC. Representatives from Indian, women's, handicap, minority, and low income groups testified and lobbied in opposition to SB 110. Two of the Commissioners had earlier resigned in protest to the proposals.

After an extensive floor debate, SB 110 was defeated by a 24-25 non-partisan vote. The defeat came only after an adverse report from the Senate Labor Committee and four attempts to pass the bill on the floor.
A point to be noted here is SB 110's striking resemblance to HB 602 four years earlier. The arguments were approximately the same on both sides of the issue each time. Indeed, the Senate vote on HB 602, granting the HRC its autonomy, was 25-23. A one-vote margin in SB 110 preserved its autonomy, while a two-vote margin in the Senate granted its autonomy in 1975.

The Final Budget

Occurring simultaneously with the executive budget preparation is the Legislative Fiscal Analyst's (LFA) budget process. The LFA follows a process similar to that of the Executive Planning Process. Using a set of criteria different from the OBPP, the LFA evaluates agency requests and makes recommendations to the Legislature.

On the basis of this information, the LFA recommended a budget of $333,343 for the coming biennium for the HRC. (The Governor had recommended $225,000.) This recommendation was $94,754 lower than the HRC had been appropriated in 1978-79, but $125,753 higher than what the LFA had recommended the previous biennium. The difference of the recommendations resulted for two reasons. First, the budget was lower than appropriated in 1978-79 because of the loss of two CETA positions previously mentioned. Second, during the LFA analysis for 1978-79, the LFA had underestimated the number of complaints that would be handled by the HRC. Consequently, for the 1980-81 biennium the LFA raised its recommendation.
The Governor’s budget and the LFA budget were $108,343 apart. For an agency the size of the HRC, the amount would make a tremendous difference in its operations. When the appropriation bill finally passed the legislature, the HRC had been appropriated $330,182, just slightly below what the LFA had recommended.

From the appearance of the final appropriations bill, it would seem that the Human Rights Commission was a qualified victor in the six-month battle with the Executive Office. Its status as an autonomous agency had been retained, the bond proposal defeated, and the HRC budget only shy $3,162 of that recommended by the LFA. But the appearance of the victory must be qualified. Two factors emerged from the legislative session that taint that image of victory.

The first factor involved the final appropriation bill. Upon close examination, it can be noted that although the HRC was authorized 8.0 full-time positions by the legislature, it was provided funds for only 6.75. This reduction in full-time positions occurred because the final appropriation bill, while fully funding the personnel item, allocated an amount for operating expenses which was short of what was necessary. In effect then, in order to pay their fixed operating costs the number of staff positions had to be reduced. The result of this was to reduce the number of staff positions by 1.25.

The second factor to influence the outcome of the final HRC budget was a short clause attached to the appropriations bill. The bill included a special reversion clause which only applied to the HRC. The effect of the clause was that if the HRC managed to secure any additional federal funds other than what was authorized, the amount of
the general fund appropriation would be equally reduced. The legislative purpose of the clause was to prevent the HRC from accepting any additional money from the federal EEOC or grant programs that had not been authorized by the appropriations bill.\textsuperscript{22} The net effect of the reversion clause was the removal of any incentive for the HRC to seek additional federal funds to make up the staff positions just lost or to apply for agency improvement funds for special projects.

The final result of the 1978-79 budget process for the HRC was the reduction of their staff size from ten full-time positions in fiscal year 1978-79 to 6.75 positions in fiscal year 1980-81. It is interesting at this point to review the HRC budget from the time it was established in fiscal year 1975 to the fiscal year 1980 allocation. Table Six illustrates the funding level over that period.

\begin{center}
\textbf{TABLE SIX}
\textbf{FUNDING LEVELS}
\end{center}

\begin{center}
\begin{tabular}{lcccccccc}
\hline
\text{T} & \text{H} & \text{O} & \text{U} & \text{S} & \text{A} & \text{N} & \text{D} & \text{S} \\
\hline
\text{FY} 75 & 76 & 77 & 78 & 79 & 80 \\
\hline
General Fund & & & & & & & & \\
$225$ & $200$ & $175$ & $150$ & $125$ & $100$ & $75$ & $50$ \\
Total Funds (including federal funds) & & & & & & & & \\
$225$ & $200$ & $175$ & $150$ & $125$ & $100$ & $75$ & $50$ \\
\hline
\end{tabular}
\end{center}

\textbf{SOURCE:} Human Rights Division

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The general fund allocation in 1975 for the HRC was $62,000. For 1980, the general fund allocation was $67,000. In light of the increased caseload and inflation, it hardly represents a great increase. While the caseload has nearly tripled in a five-year period, the funding level has remained relatively stable.

Table Seven illustrates the increase in cases since 1975. To date, 367 are in backlog.

<table>
<thead>
<tr>
<th>Year</th>
<th>Received</th>
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<tr>
<td>75</td>
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</tr>
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<td>76</td>
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</table>

**TABLE SEVEN**

**HRC CASELOAD**

The Impact of the Budget Process

In sum, although the HRC met the various onslaughts of the politics of the 1978-79 budgetary process with almost remarkable resiliency, the process was not without its adverse side effects. For the 1980-81 biennium, the HRC was short 2.75 staff members without a corresponding reduction in work load.
The impact of the 1979 legislative process continues to be felt within the HRC. The most significant impact of the budget cuts crystallized in mid-May of the 1980 fiscal year. Since 1975, the HRC had been a contracting "706 agency" under Title VII of the 1964 Civil Rights Act, as amended. Under this arrangement, the 706 agency agrees to investigate complaints of employment discrimination in areas covered by the federal law. The contracting agency is then reimbursed at approximately $350 per case. Part of the contract agreement is that the 706 agency will complete a certain number of cases in order to receive its funding. In fiscal year 1980, 60 percent of the HRC budget was being supplied by EEOC contract. Because of the reduction of staff just discussed, the EEOC cases were not being completed at a rate sufficient to meet EEOC requirements. The HRC was notified in April of 1980 that they faced stiff funding reductions unless more EEOC complaints were completed. In order to avert a further funding cut, the Commission approved a plan to make all EEOC cases a priority for their staff. The implication of this move was to handle all EEOC employment cases as quickly as possible. Cases of employment discrimination protected by Montana law involving age, physical or mental handicap, marital status, political belief, or cases dealing with employers with less than 15 employees would not be immediately processed. This is particularly significant in that a Department of Labor and Industry report indicated that approximately 80 percent of private employers in Montana had nine or less employees in March 1979. In addition, cases involving discrimination in education and training
services, retaliation, governmental services, housing, public accommodations, or credit and financial transactions were for the time being put on the "back burner." Ironically, the strengths in Montana law which afforded its citizens more widespread protection than the federal government or many states were the very categories of cases not being processed. A Catch-22 situation had resulted, leaving the Commissioners unable to give timely attention to complaints stemming from Montana law. The HRC found itself pressed into giving priority to receiving and investigating employment cases covered under the federal law in order to preserve what funding base it had. Until sufficient state funding is available, discrimination cases covered solely by Montana law will not receive timely investigations.

Yet the impact of the budgetary process does not end there. Although the Division and the Commission have adapted and made improvements to expedite case processing, the case backlog continues to grow. In 1980, 367 complaints are unresolved. The Commission is unable, therefore, to fulfill its legislative mandate in a timely manner. Additionally, no funding exists currently to cover the cases already certified for hearing by the Commission. The possible impact on respondents of a delayed hearing may be tremendous, particularly in cases where accrued backpay is awarded. Furthermore, the Commission has not been able to establish educational and information programs for the public sector as required by the Governmental Code of Fair Practices, due to inadequate funding support.
It will be argued later that the success of the HRC is dependent on its being placed in a proper location within state government. Yet, while success in its quasi-judicial function is impacted by its location, under the circumstances just described the proper location for the HRC perhaps becomes a moot point.

In recent years the HRC has become more efficient in its operations. More cases are being completed each year. Whereas HRC staff handled 9-12 cases in 1975, staff are now handling 35-40 cases per year. As indicated in Table Three, the number of informal and conciliated cases are increasing. Improved intake procedures and staff experience have contributed to this increase. Consequently, the costs of operation for the HRC are being reduced (Table Four).

An overriding factor to be considered though is the continual increase in the backlog of cases occurring simultaneously with the increase in HRC efficiency (Table Five). Staffing levels are not adequate to meet the needs of Montana citizens. Questions must be raised as to the possible number of people not pursuing discrimination complaints because of the length of time the administrative process requires due to the backlog. Discriminatory situations may be allowed to continue as the charging party awaits relief. Respondents may be forced to make unnecessarily large back payments because of the delay in settlements. In sum, the impact of the budgetary process in reducing the funds available for the HRC may produce consequences for the citizens of Montana far beyond those experienced by a lack of autonomy.
CHAPTER THREE FOOTNOTES


4 Information gathered from interview with Ray Brown, May 6; Rosemary Zion, August 14; John Fitzpatrick, May 7; and Laurie Ekanger, May 13.

5 Interview with Laurie Ekanger, Employment and Training Division, Department of Labor and Industry, May 13, 1980.

6 Letter from David Fuller, Commissioner of Labor and Industry to George Bousliman, Director of Budget and Program Planning Office, November 1, 1978.

7 Information gathered from interviews with Karen Townsend, Chairperson of the Human Rights Commission May 7; Rosemary Zion, attorney for the ACLU, August 14; and Ray Brown, August 14, 1980.

8 According to George Bousliman, Director of OBPP, a bill was introduced during the 1979 legislature to change the wording of the statute. The bill would have dropped from the statute the clause, ". . . on a confidential basis . . ." The removal of this clause would prevent further question over the question of whether or not the preliminary budget may be revealed prior to the legislative session. The bill did not pass.


10 Ibid.

11 Letter from Rosemary Zion to Jess Ferris, President of ACLU, 12-29-78.

12 Interview with John Fitzpatrick, May 7, 1980.

13 Interviews with Raymond Brown and Rosemary Zion, August 8, 1980.

14 Documents cited by the attorney (Zion) in letter to ACLU. Document cited was from the lawsuit requesting the release of all budget documents.

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CHAPTER THREE FOOTNOTES (Continued)

15 Letter from David Fuller to George Bousliman, November 1, 1978.

16 Interview with Laurie Ekanger, May 13, 1980.

17 Interview with John Fitzpatrick, May 7, 1980.

18 Ibid.

19 Letter from David Fuller to George Bousliman, November 1, 1978.

20 Interview with Jim Flynn, Legislative Aide to Governor Judge, May 13, 1980.

21 Letter from George Bousliman to Governor Judge, November 21, 1978.


THE ISSUES REVISITED

Certainly the budgetary process which involved the HRC reflects the victories and defeats, the compromises and bargains, the reality of agreement and the sphere of conflict which Wildavsky discussed in his book, *The Politics of the Budgetary Process*. And certainly the victories for some, defeat for others, compromise, conflict and agreement are all parts of the squeaky, noisy machine of democracy that runs our government.

The politics of the budgetary process, as traced through the last chapter, demonstrates that any discussion of the functions and powers of an independent quasi-judicial agency is incomplete unless it considers the controls imposed from nonjudicial sources. A quasi-judicial agency remains subject to certain political authority lodged in the legislature and executive branch. A proposed budget of an independent agency must go through the same process as any other agency. It is made part of the governor's package to the legislature, and either the governor or the legislature can change the proposed figures and restrict the specific use of the final appropriation. At best, an autonomous agency is protected in their operations from excessive executive and legislative influence, but it is never removed from this influence. Because of these nonjudicial controls over the HRC, the two questions addressed in this paper become concerns. Where should the HRC be located within the state government, and what degree of autonomy should the organization be granted? Each question will be addressed in the following pages.
Autonomy

Within Montana the issue of autonomy has been raised and debated in two legislative sessions—the first took up granting the HRC autonomy and the second attempted to remove that autonomy. The question has not been resolved. People directly associated with the HRC generally feel the issue has been laid to rest. Yet, according to the chief legislative aide to Governor Judge, the autonomy issue will continue to resurface. Because of the Executive Reorganization Act, the issue, the aide argues, is simply one of good administration and management. Without the direct accountability of the HRC to a department head, the essence of the Executive Reorganization Act will continue to be thwarted. Governor Judge expressed this attitude when vetoing a bill to grant an element of independence to the Board of Classification Appeals during the 46th session. Judge said, in part:

Earlier this session I supported SB 110 which would have placed the Human Rights Commission under the Department of Labor and Industry. It was my belief then and it remains my belief now, that no entity of state government should be autonomous from the rest.

Two legislators directly associated with the autonomy issue disagree with the aide's assessment. One Senator suggests that the HRC is the "living embodiment of the problems with Executive Reorganization." While praising the principles of Executive Reorganization, the Senator argued that there must be exceptions to those principles and "the HRC is certainly an exception." Similarly, the original sponsor of the Human Rights Act argues that from the beginning it was intended that the HRC be completely
free and independent, an exception to Executive Reorganization. In reference to the aide's earlier cited comments on the HRC being an "administrative sore thumb," the legislator replied that "by its nature, it has to be . . . the HRC has to stick out, it has to be able to look at state government."

Autonomy has become the Achilles tendon of the HRC. The narrow margin of Senate votes indicate that the issue of autonomy may not have been permanently resolved by the legislative branch of government. Nor has the issue been resolved within the executive branch. On this basis, the issue of autonomy will undoubtedly resurface again and once more a resolution will be sought.

From an examination of the HRC thus far, the intent of this paper is to propose that the most meritorious answer to the question of autonomy lies in full operating autonomy for the Human Rights Commission. This resolution is proposed for several reasons, each of which will be addressed separately.

**Accountability**

An issue that is raised in every autonomy debate is the apparent lack of accountability of the Human Rights Commission. The argument that is offered focuses on the Executive Reorganization Act. As discussed earlier, every board and commission must be responsible to a department head. The only exception to this is the elected offices. Complete autonomy for an agency is not possible under the Reorganization Act. Yet, the 44th legislature granted the HRC an exception to that Act. Originally the Governor's Office supported that exception.
On this basis it can be argued that the legislative and executive intent in 1975 was to make the HRC an exception to the Act. The legislature qualified that exception by granting the HRC full operating autonomy while remaining administratively attached to the Department of Labor and Industry. The 46th legislature affirmed this exception.

Granting the HRC full operating autonomy does not mean that the Commission has any less accountability than any other state agency. From an examination of the HRC functions, the following lines of accountability can be traced:

--The enabling legislation for the HRC subjects all decisions to judicial review.

--The Executive Planning Process of the Governor's Office approves the HRC budget and any program modifications. The Governor appoints all members of the Commission and designates a chairperson. The Governor may also remove the Commission members for cause.

--The Equal Employment Opportunity Commission (EEOC) has the authority to review all decisions of its deferral agencies. In addition, the deferral agency must meet certain criteria to obtain and maintain EEOC funding.

--Clientel groups provide indirect support of HRC policies by their willingness to use the service of the agency and demonstrate their support in hearings and legislative proceedings.

--The Legislature subjects the HRC to sunset review every six years. In addition, the legislature defines the jurisdiction of the HRC (age, handicap, political belief), provides a check on all administrative rules passed by the Commission, and approves all budget amendments and final appropriations for the agency. Furthermore, all appointments to the Commission are subject to Senate approval.

--The public indirectly supports and checks the HRC through their elected officials.

The following diagram illustrates these lines of accountability.
TABLE EIGHT
OVERSIGHT OF THE HRC

-Review decisions

EEOC
-Funding
-Review decision

CLIENTEL

ACCOUNTABILITY
HUMAN RIGHTS COMMISSION
HUMAN RIGHTS DIVISION

PUBLIC
GOVERNOR
-Appointments
-Review decisions

LEGISLATURE
-Sunset
-Confirm appointments
-Jurisdiction
-Approve rules
-Budget
As demonstrated, the decisions, policies, budget and funding of the HRC are continually being scrutinized. Three branches of state government, as well as a federal agency and the public, all provide a check and balance system for the HRC, even though it exists with operating autonomy. In this context, the Executive Office's argument that the HRC lacks accountability to the people of Montana is valid only if accountability is very narrowly construed.

The Potential for Conflict of Interest

As argued by the opponents of SB 110, the potential for a conflict of interest exists when a quasi-judicial agency dealing with human rights is directly responsible to a department head. The problems that led to the original granting of autonomy in 1975 and the politics of the 1978-79 budgetary process involving the Department of Labor and Industry verify that a conflict of interest can exist. Any department head that could have possible budgetary and staffing authority over their own investigation by the HRC faces an unavoidable conflict of interest.

On a national basis, 63 percent of the human rights agencies are autonomous in order to circumvent this potential conflict.\(^6\) Of the 31 percent that are dependent on a parent agency, only 5 percent in a national survey indicated no dissatisfaction with their status.\(^7\) Staff being pirated off to other projects, planned use of funds being overruled, and interference with case investigations were the commonly
cited problems. This type of potential for a conflict of interest provides an additional argument for the necessity of full operating autonomy for the HRC.

The Expectation of Independence

A quasi-judicial function, as opposed to a quasi-legislative function, involves the exercise of judgment and discretion in matters that directly affect named parties. The HRC was designated a quasi-judicial agency because its job is to enable it to investigate complaints of discrimination. Therefore, a further argument for full operating autonomy is that the quasi-judicial function and the subject of human rights by definition imply an expectation of independence from the political pressures for the HRC.

Montana law does not specify that agencies with a quasi-judicial function should be insulated from political pressures. Yet the combination of quasi-judicial functions and the area of human rights implies this expectation of independence. Supreme Court Justice Jackson expressed this sentiment in 1943 in delivering the opinion of the Court in the case of West Virginia State Board of Education v. Barnette. Justice Jackson said in part:

The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no election.
For the purpose of this paper, this exception of independence provides a further reason for the necessity of full operating autonomy for the Human Rights Commission.

For the reasons just discussed, full operating autonomy is vital for the HRC. Legally, the due process of the complainant would not appear to be infringed upon by a lack of autonomy. Administratively, the agency could be designated either with or without autonomy without being unduly cumbersome to the parent department. Yet, the overriding factor in the issue of autonomy is that, politically, the lack of autonomy would simply be unwise. The neutrality inherent in a quasi-judicial function could potentially be continually subject to political influence. On this basis, the full operating autonomy for the Human Rights Commission must remain.

The Proper Location

In examining the question of the proper location for the HRC in Montana government, four possible options must be considered:

--Movement of the HRC into the Governor's Office;
--The HRC could become the 20th department in state government;
--The HRC could become part of the 20th department in state government; or
--The HRC could be moved to a department other than Labor and Industry.

Each option will be considered separately.
There is an argument to be made that the HRC should be placed in the Governor's Office. Placement in this office would conceivably yield more visibility of the HRC for the public. Citizens seeking HRC services could more readily locate its offices. Additionally, this visibility could aid citizens in their watchdog efforts to assure HRC independence. Furthermore, some agencies have sought placement in the Governor's Office in an effort to receive more objective supervision or in hopes of having greater influence on the Executive Office. Currently, the following agencies are within the Governor's Office: Mental Disabilities Board of Visitors, Reserved Water Rights Compact Commission, the Office of Commerce and Small Business Development, and the Citizen's Advocate Office.

The Executive Reorganization Act excepts the Governor's Office from placing all state and administrative functions in one of twenty departments. Yet, an argument can be made that each of those boards, with the exception perhaps of the Citizen's Advocate, should be placed in the department with which it shares a common function: the Board of Visitors within the Department of Institutions, the Water Rights Commission within the Department of Natural Resources and Conservation. The location of these boards within the Governor's Office is, according to the drafter of the Executive Reorganization Act, contrary to the Act. All agencies, the drafter of the legislation argues, want to be in the Governor's Office for reason of influence or protection.
Placement of the HRC within the Governor's Office would make it a further exception to Executive Reorganization. The intent of Executive Reorganization was to have all administrative and executive agencies grouped by function within 20 principal departments. Consequently, this additional exception would make the Commission even more vulnerable to political opponents. Its two-step removal from the intent of Executive Reorganization could be used by HRC opponents as a continuing rationale for reorganizing the Commission. For this reason, placement within the Governor's Office would not be recommended.

A second argument against the placement of the HRC within the Governor's Office is that, in the case of the HRC, this placement could result in excessive executive influence. With the agency in this location, disgruntled persons and political opponents could directly pressure the Governor's Office to respond to their complaints regarding HRC policies. With the agency under direct executive supervision, the Governor's Office would be placed in the position of explaining the HRC policies.

The controversy during the 1978-79 budget process produced just such ad hoc pressures on the Governor's Office. In the two memos from the Budget Director to the Governor cited earlier, references were made to the consideration of "a lot of Montanans who aren't sympathetic to the role of the Commission." It is feasible to assume that similar informal pressures would be placed on the Executive Office in its supervisory role of the HRC. The result could bring conflicts equal to the location of the non-autonomous HRC within the Department
of Labor and Industry. For these reasons, placement of the HRC within the Governor's Office would not be in the best interest of the quasi-judicial function of the HRC and the people it serves.

The HRC as a Department

At one time it was suggested that the HRC become the 20th department of Montana State Government. While it is common for other human rights agencies around the nation to be within its own department, it is not feasible for Montana. With the Constitution mandating no more than 20 departments and the current occupation of 19 of those, the remaining department is an indispensable aspect future flexibility for Montana government. Currently, such a movement is afoot to use the remaining department for a Department of Energy and Environment. Additionally, the placement of an agency the size of the HRC within its own department is simply not practical. For these reasons making the HRC its own department would not be politically feasible.

The HRC Within the 20th Department

The third possible option for location of the HRC is one which has received only a small amount of discussion. The essence of the idea would be to take all agencies and boards associated with citizen advocacy or an ombudsman role and place them jointly in a 20th department. Under this plan agencies such as the Board of Visitors, the Indian Affairs Bureau, Developmental Disabilities Planning and Advisory Council, the Citizen's Advocate, Women's Bureau, and the
Human Rights Commission would compose the divisions of the new department. Inherent in this plan would be the assumption of a commitment to the ombudsman role by the department director, therefore negating the possibility of excessive political influence on the director.

While this option appears to be the brightest for the role of a human rights agency, it unfortunately, like the previous option, appears politically unfeasible. Taking existing functions from other departments to place them in a new 20th department would limit the possibility of Montana government to adjust to future demands placed upon it. Because of the Constitutional limitation on the number of departments, the creation of an ombudsman department from existing departments would, again, be politically unfeasible.  

Movement of the HRC to a Different Department

The final option in considering a location for the HRC would be to move the HRC to a department other than its present location in the Department of Labor and Industry. This option was explored in 1975 in conjunction with the move to make the HRC autonomous. As discussed earlier, two departments were approached as possible host departments for the HRC. Neither of the departments were supportive of the idea. The result was that the HRC was left in the Department of Labor and Industry and made autonomous.

From each of the options explored, the existing location of the HRC seems to be the best option at this time. If the full operating autonomy for the agency remains intact, the possible problems of being located within the Department of Labor and Industry are minimal. As
discussed earlier, full operating autonomy protects the quasi-judicial function of the HRC to the greatest degree possible under Montana law.

In summary, the existing location of the Human Rights Commission within the Department of Labor and Industry is the most proper and feasible location for the agency. Yet, as described earlier, this is possible only because the HRC was granted full operating autonomy. If in later legislative sessions that autonomy is removed, different options would have to be explored for the proper location of the HRC as a quasi-judicial agency.
CHAPTER FOUR FOOTNOTES

1 Interview with Jim Flynn, May 13, 1980.

2 As recorded in Senate Journal, Volume Three, 1979, in vetoing SB 321.

3 Interview with Senator Tom Towe, June 11, 1980.

4 Interview with Representative Polly Holmes, June 9, 1980.


7 Ibid.

8 Interview with George Bousliman, October 23, 1980.

9 Ibid.

10 Letter from George Bousliman to Governor Judge, November 21, 1978.


13 The idea of the ombudsman department was brought to the legislature by Senator Tom Towe and has been picked up and advocated by James Zion, cooperating counsel for the ACLU.

14 Politically unfeasible at this time because of the prevalence of the movement to make the 20th department a Department of Energy and Environment.
In Closing

The role that a healthy, effective human rights effort needs to play in the continued protection of Montana citizens is indispensable. To quote Chief Justice John Marshall:

The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection.

-Marbury v. Madison
1803

The state government of Montana needs to provide its leadership for that protection of its citizens. A Human Rights Commission with full operating autonomy and sufficient funding to carry out its legislative mandate is the best possible mechanism to carry out that role.
APPENDIX A

ORGANIZATION OF BOARDS AND COMMISSIONS

IN MONTANA STATE GOVERNMENT

Attached for administrative purposes only and quasi-judicial

- Board of Housing (Admin.)
- Board of Aeronautics (Comm. Affairs)
- Board of Labor Appeals (Labor)
- Board of Personnel Appeals (Labor)
- Board of Milk Control (Bus. Reg.)
- Board of Social and Rehabilitation Appeals (SRS)
- Board of Eugenics (Insti.)
- Board of Natural Resources and Conservation (DNRC)
- Highway Commission (Highways)
- Mental Disabilities Board of Visitors (Gov. Off.)

Attached for administrative purposes only, but can hire own staff

- Merit System Council (Admin.)
- Teachers' Retirement Board (Admin.)
- Board of Crime Control (Justice)
- Board of Veterans' Affairs (SRS)

Within Department and quasi-judicial

- Board of Health and Environmental Sciences (DHES)
- Fish and Game Commission

Quasi-judicial, for administrative purposes only and can hire own staff

- Board of Pardons (Insti.)
- Board of Oil and Gas Conservation (can also prescribe the duties and salaries of four staff) (DNRC)
- Board of Investments (can also prescribe the duties and salary of two staff members) (Admin.)

Administrative purposes only, quasi-judicial, can hire own staff, seek and receive funds in its own name, determine all matters of policy over its budget

- Human Rights Commission
Attached for administrative purposes only

Water Rights Commission (Gov. Off.)
Board of State Canvessers (Sec. of State)
Board of Examiners (Admin.)
Public Employees' Retirement Board (Admin.)
Board of County Printing (DCA)
Coal Board (DCA)
State Banking Board (Bus. Reg.)
Board of Wastewater and Water Operators (DHES)
Montana Wheat Research and Marketing Committee (Agric.)
Board of Hail Insurance (Agric.)
Montana Pork Research and Marketing Committee (Livestock)
Rangeland Resource Committee (DNRC)
33 Department of Professional and Occupational Licensing Boards

Boards which are the heads of departments

Public Service Commission (Public Serv. Reg.)
Board of Livestock (Dpt. of Livestock)
Board of Regents (Dpt. of Education)
APPENDIX B

MEMBERS OF THE TASK FORCE ON BALANCED GOVERNMENT

<table>
<thead>
<tr>
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<td>George Bousliman</td>
<td>Budget Director, Chairman of Task Force</td>
</tr>
<tr>
<td>Laury Lewis</td>
<td>Revenue Director</td>
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<tr>
<td>Dave Lewis</td>
<td>Department of Administration Director</td>
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<td>John Womack</td>
<td>Adjutant General</td>
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<td>Sonny Omholt</td>
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<tr>
<td>Len Larson</td>
<td>Secretary of State's Office</td>
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<tr>
<td>Lonn Hoklin</td>
<td>Attorney General's Staff</td>
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BIBLIOGRAPHY

BOOKS


State Agencies and Their Role in Federal Civil Rights Enforcement, *Center for National Policy Review, Catholic University School of Law*, 1977


Witherspoon, Joseph, *Administrative Implementation of Civil Rights*, University of Texas, Austin, 1968
REPORTS

City of Seattle, Department of Human Rights, *Annual Report* 1979

Montana Legislative Council, Interim Study by the Subcommittee on Judiciary *Equality of the Sexes*, December 1974


Research and Analysis Section, Department of Labor and Industry, *Labor Market Information for Affirmative Action Programs in Montana*, 1977-78

State of Minnesota, Minnesota Department of Human Rights, *1977-78 Biennial Report*


Thomas Judge, *Governor's Annual Report FY '76*

UNPUBLISHED THESIS


GOVERNMENT DOCUMENTS

Numerous inter-office, intra-office memorandums
Governor Judge's State of State Address 1978
Democratic Party Platform 1978
Legislative Fiscal Analyst Budget Documents
Executive Office Budget Documents
1979 Legislative Budget Documents
Transcripts of Hearings on SB 110
Balanced Growth Project Proposal
Governor's Annual Report - FY'76
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<thead>
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<tr>
<td>Curt Nichols</td>
<td>Legislative Fiscal Analyst, May 7, 1980</td>
</tr>
<tr>
<td>Ed Eaton</td>
<td>Office of Budget and Program Planning, May 7, 14, 1980</td>
</tr>
<tr>
<td>Raymond Brown</td>
<td>Administrator of the HRC, May 6, 14, 15, 16; June 12; August 8, 25; and October 27, 31, 1980</td>
</tr>
<tr>
<td>John Fitzpatrick</td>
<td>Office of Budget and Program Planning, May 7, 1980</td>
</tr>
<tr>
<td>George Bousliman</td>
<td>Director of the OBPP, October 23, 30, 1980</td>
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<tr>
<td>David Fuller</td>
<td>Commissioner of Labor and Industry, November 3, 1980</td>
</tr>
<tr>
<td>William Salisbury</td>
<td>Fiscal Agent, Department of Labor, May 7, 13, 1980</td>
</tr>
<tr>
<td>Mike Dahlem</td>
<td>UM Lobbyist, May 8, 1980</td>
</tr>
<tr>
<td>Karen Townsend</td>
<td>Human Rights Commission Chairperson, November 21, 30, 1979; May 14, 15 1980</td>
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<tr>
<td>Jim Flynn</td>
<td>Governor's Chief Legislative Aide, May 13, 1980</td>
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<tr>
<td>Rick Sherwood</td>
<td>HRC Attorney, May 13, 1980</td>
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<tr>
<td>Laurie Ekanger</td>
<td>Employment and Training Division, Department of Labor, May 13, 1980</td>
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<tr>
<td>Rosemary Zion</td>
<td>Attorney, August 14, 15, 1980</td>
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<tr>
<td>Polly Holmes</td>
<td>Representative - Billings, June 9, 1980</td>
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<tr>
<td>Kathy McGee</td>
<td>HRC Bureau Chief, June 10, 1980</td>
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<tr>
<td>Jerome Cate</td>
<td>Department of Justice, June 10, 1980</td>
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<tr>
<td>Elsie McGarvey</td>
<td>HRC Chairperson, June 10, 1980</td>
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<tr>
<td>Lee Topash</td>
<td>HRC Commissioner, June 11, 1980</td>
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<tr>
<td>Tom Towe</td>
<td>Senator - Billings, June 11, 1980</td>
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<tr>
<td>James Nelson</td>
<td>Legislative Auditor's Office, September 8, 9, 1980</td>
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