

**MINUTES OF THE
UTAH CONSTITUTIONAL REVISION COMMISSION**

Thursday, October 8, 2009 – 9:00 a.m. – Room 450 State Capitol

Members Present:

Judge Jon M. Memmott, Chair
Mr. Roger Tew, Vice-Chair
Sen. Peter C. Knudson
Rep. Sheryl L. Allen
Ms. Lisa Watts Baskin
Mr. Byron L. Harward
Mr. Kirk Jowers
Mr. John T. Nielsen

Members Absent:

Sen. Scott D. McCoy
Sen. John L. Valentine
Rep. Brian S. King
Rep. Ronda Rudd Menlove
Dr. Michael Petersen
Mr. Robin L. Riggs

Staff Present:

Mr. Jerry D. Howe, Policy Analyst
Mr. Robert H. Rees, Associate General Counsel
Ms. Amanda K. Majers, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Chair Memmott called the meeting to order at 9:08 a.m. Sen Valentine, Rep. King, Rep. Menlove, Dr. Petersen, and Mr. Riggs were excused from the meeting.

MOTION: Mr. Nielsen moved to approve the minutes of the August 13, 2009 meeting. The motion passed unanimously.

2. Update on Resolution of Post-conviction Remedies Issue

Chair Memmott stated that significant action has been taken on the post-conviction remedies issue through a committee organized by Utah Attorney General, Mark Shurtleff, to solve the problem of delays in death penalty cases without a constitutional amendment.

Rep. Kay L. McIff, a member of the committee organized by Attorney General Shurtleff, discussed 2010 General Session draft legislation, "Post Conviction Remedies Amendments," and "Rule 65C. Post-conviction relief," which were distributed to the Commission prior to the meeting. He reported on his involvement in the resolution of the post-conviction remedies issue and stated that the draft legislation and the change to court rules achieve the desired outcome without the difficulty of a constitutional amendment. Rep. McIff explained the change to court rules achieves two objectives; one, it clarifies that the Utah Supreme Court embraces the Post-conviction Remedies Act as the controlling law governing post-conviction petitions and, two, it clarifies that judges must be silent on merits review or ensure that their commentary does not undermine the Post-conviction Remedies Act. He pointed out the advisory note in the court rule states that the restrictions on post-conviction petitions in the Post-Conviction Remedies Act do not amount to a suspension of the writ of habeas corpus.

Rep. McIff answered questions from the Commission.

Chair Memmott recognized Attorney General Shurtleff, Mr. Fred Voros, and Mr. Thomas Brunker for their work on the resolution of the post-conviction remedies issue.

Mr. Thomas Brunker, Chief of the Post-Conviction Division, Utah Office of the Attorney General (Office), expressed the Office's support of the resolution of the post-conviction remedies issue and explained the Office's role in the solution of the issue. He clarified that the Office will not abandon the proposed constitutional amendment until the proposed "Rule 65C. Post-conviction relief" is adopted by the Court. Mr. Brunker also stated that the Office is preparing a written response to Mr. Monroe Freedman's statements at the last meeting of the Commission that will be submitted to the Commission at a future meeting.

Mr. Brunker and Attorney General Shurtleff answered questions from the Commission.

Chair Memmott stated that the Commission should table the post-conviction remedies discussion to await the outcome of the proposed court rule and the draft legislation. He expressed a desire for the Commission to provide a written endorsement of the proposed solution to advise the Legislature.

MOTION: Mr. Tew moved to commend the efforts of the study group on post-conviction remedies amendments and to approve its solution to the post-conviction remedies issue through changes in statute and court rule. The motion passed unanimously.

3. Joint Resolution Amending Provision on Municipal Water Rights

Rep. Kay L. McIff discussed 2010 General Session draft legislation, "Joint Resolution Amending Provision on Municipal Water Rights," which was distributed to the Commission prior to the meeting. He stated that the proposed amendment authorizes a municipality to lease water rights owned or controlled by the municipality, but it may not lease water rights outside of the state and the lease may not exceed a seven-year period. Rep. McIff explained the proposed amendment is needed because of a former statutory change that allows municipalities to acquire water rights sufficient for their projected water needs over forty years. This results in a situation where a municipality may acquire water rights for future use but have no current use for the water. The amendment would allow the municipality to lease those water rights for a short term and still have those rights available for future municipal use.

Rep. McIff answered questions from the Commission.

Mr. Fred W. Finlinson, Utah Water Coalition, spoke in favor of the proposed amendment.

Mr. Finlinson and Rep. McIff answered questions from the Commission.

Mr. Tew encouraged the Commission to study alienation of water rights at a future meeting.

MOTION: Mr. Harward moved to recommend favorably 2010 General Session draft legislation, "Joint Resolution Amending Provision on Municipal Water Rights." The motion passed with Ms. Watts Baskin voting in opposition.

4. Tax Exempt Status of Private Water Suppliers

Rep. Patrick Painter distributed and discussed "Water Coalition: Water Exemption Draft Proposal - Prepared for Rep. Painter by Fred W. Finlinson, October 6, 2009." He explained that the proposed amendment would extend the same property tax exemption given to municipalities, water districts, and agricultural facilities to water infrastructure owned by private or share-owned entities that deliver water to the public.

Rep. Painter and Mr. Finlinson answered questions from the Commission.

Mr. Christopher E. Bramhall, Kirton and McConkie, spoke in favor of the proposed amendment. He answered questions from the Commission.

Mr. Scott Martin, Snow, Christensen and Martineau, spoke in favor of the proposed amendment. He answered questions from the Commission.

MOTION: Ms. Watts Baskin moved to support the proposed amendment "Water Exemptions" in concept with necessary changes agreed upon by all involved parties. The motion passed unanimously.

Chair Memmott placed this item on the agenda for the next commission meeting scheduled for November 12, 2009 at 9:00 a.m. Chair Memmott asked commission members to consider issues they want to recommend for further study to the Legislature.

Mr. Howe distributed documents drafted by Mr. Monroe Freedman, "The Professional Obligation to Raise Frivolous Issues in Death Penalty Cases" and "Lecture: An Ethical Manifesto for Public Defenders."

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

Chair Memmott adjourned the meeting at 11:25 a.m.