

Minutes of the Joint Legislative Oversight Committee
January 29, 1998
Gold Room, Statehouse
Boise, Idaho

Co-chair Senator Bruce Sweeney called the meeting to order at 3:10 p.m. Committee members Senators Grant Ipsen and Lin Whitworth, and Representatives Robert C. Geddes and June Judd were in attendance. Staff members Nancy Van Maren, Ned Parrish, Catherine Larson, and Margaret Campbell also were present.

Co-chair Sweeney opened the meeting with a review of the minutes. **Representative Geddes moved to approve the minutes of the December 16 meeting and Senator Ipsen seconded the motion. The motion passed unanimously by voice vote.**

REPORT RELEASE: *PUBLIC SCHOOL USE OF TOBACCO TAX FUNDS*

Ms. Van Maren, Director, and Mr. Ned Parrish, Performance Evaluator, reviewed the findings and recommendations of the report and responded to questions from the committee. Dr. Anne C. Fox, Superintendent of Public Instruction, Mr. Tom Farley, Bureau Chief, Instructional Services, and Ms. Claudia Hasselquist, Safe and Drug-Free Schools Coordinator, commented on the report and responded to committee questions.

Co-chair Representative Bruce Newcomb, Senator Atwell Parry, and Representative Larry C. Watson joined the meeting in progress.

Dr. Fox began her remarks by saying that schools have an impact on whether students abuse alcohol and drugs, but that it is hard to measure school program impact. According to a State Department survey of district personnel, substance use incidents on school grounds have decreased since the tobacco tax funds became available.

Mr. Farley cautioned that the impact of prevention programs takes years to measure. In the meantime, the SDE would continue to improve data collection efforts to better address legislative concerns and school district accountability. He said that "comprehensive" programs reach all children, because all children are at risk. In addition, Mr. Farley said the department was working on streamlining the paperwork/data requirements.

In response to committee questions whether small school districts received enough substance abuse prevention funds to have effective programs, Ms. Hasselquist said SDE was working with the Legislative Services Office, Budget and Policy Analysis, to (1) adjust legislative intent language and (2) possibly adjust the allocation of tobacco tax funds so that smaller districts did receive a larger percentage without significantly impacting larger districts.

The committee asked how the State Department of Education intended to make up for lower tobacco tax revenue in their FY 1999 request for substance abuse prevention program funding. Mr. Farley said Dr. Fox would address JFAC the next day with her ideas.

The committee also asked about the effectiveness of certain curricula and extra-curricular activities and whether there was consistency in the incident reporting data gathered by SDE. Ms. Hasselquist said information requested and district personnel filling out the surveys remained largely the same each year. She said SDE had conducted a substance use survey of students, with the approval of the local school boards, and would be doing another next year. Ms. Hasselquist would provide Senator Ipsen a copy of the survey questions sent to students.

The committee also asked how SDE intended to use the \$100,000 appropriated for program administration, since none of it went for salaries. Dr. Fox responded that SDE intended to use the funds and that they really needed another half-time person to assist in administering the prevention program.

After further questions, Representative Geddes moved to accept the OPE report and refer it to the germane Education committees for further review. Senator Whitworth seconded the motion and it passed unanimously by voice vote.

RELEASE OF BACKGROUND PAPER: *THE BOARD OF TAX APPEALS*

Mr. Tom Gostas, Performance Evaluator, reviewed the background paper on the Board of Tax Appeals and responded to questions from the committee. Representative Newcomb asked that OPE prepare for the next meeting a breakdown of appeals by state region.

Co-chair Sweeney called upon Eileen Peterson, Executive Director of the Board of Tax Appeals, to respond to committee questions. Ms. Peterson said the time required to issue a decision after a hearing and the dollar value involved varied by case; board staff did not keep track of cases by dollar value. Some committee members told Ms. Peterson it was their impression that board members were overwhelmed at the prospect of hearing cases such as St. Luke's tax exemption that was currently before them. Were members qualified to hear such cases? Ms. Peterson said board members were not equipped to handle cases that involved such complex legal matters. She thought the board needed a full-time hearing officer to assist in matters of law and build a body of consistent knowledge; the \$1,000 per year appropriated for attorney general fees was grossly inadequate. Ms. Peterson agreed to provide the committee a copy of a case she cited as providing insight into why the number of cases was increasing.

Senator Parry moved that the OPE not pursue an evaluation at this time. Rather, due to the immediacy of the concerns raised, the committee should forward the background paper to the Senate and House revenue and taxation committees, with the co-chairs requesting that the committee chairs give these concerns "top priority," so that the germane committees could provide guidance to JFAC before it set the board's FY 1999 budget. Senator Ipsen seconded the motion.

Senator Parry said the background paper had uncovered concerns that would require policy decisions as well as financial decisions. He said that, if necessary, the setting of the Board of Tax Appeals budget could be postponed for a few days until the germane committees provided needed direction. He asked that OPE staff be available to respond to germane committee questions about this background information.

The motion passed unanimously by voice vote. Co-chair Sweeney said the co-chairs would speak with the Senate and House germane committee chairmen and send the referral letter right away.

JLOC'S USE OF ATTORNEY-CLIENT PRIVILEGE

Mr. Lawrence Wasden, Chief of Staff, Office of the Attorney General, outlined the law regarding attorney-client privilege. In summary, a strong argument could be made that there was an attorney-client privilege in a government setting. Further, the Legislature was a public entity and could thereby act as a client. As such, the Office of the Attorney General was required to maintain the client's confidentiality unless the client waived that privilege.

Ms. Wasden said the professional rules of conduct for attorneys provided that when an attorney faced a situation where there was disagreement among members of the client as to who held the privilege, the attorney was to appeal to the client to seek a higher authority. As a result, Mr. Wasden said, it was up to the Legislature to determine who was the client when JLOC requested opinions of the AG's office.

The co-chairs sought direction from the committee in reviewing the current policy of retaining the attorney-client privilege on all guidance received from the Office of the Attorney General. After lengthy discussion, including a review of the differences between attorney general opinions, memoranda, and letters, by unanimous consent it was decided the new policy would be to waive the privilege on opinions sought in the conduct of a performance evaluation. As such, these opinions would be part of the workpapers that become public once an evaluation is released and would be numbered and published with the AG's compilation of opinions at the end of each year. The privilege would be reviewed on a case by case basis in regards to less formal guidance received from the Attorney General in regards to a performance evaluation.

Senator Parry moved that the meeting adjourn. Senator Ipsen seconded the motion and it passed unanimously by voice vote.

The meeting adjourned at 5:30 p.m.