

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 27, 2024

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Foreman, Senators Lee, Anthon, Ricks, Hart, Hartgen, Shea (Ruchti)

ABSENT/ EXCUSED: Senator Wintrow

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lakey** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:00 p.m.

GUBERNATORIAL APPOINTMENT: **COMMITTEE CONSIDERATION** of the Gubernatorial Appointment of Monty Prow to the Sexual Offender Management Board to serve a term commencing February 27, 2024 and expiring January 1, 2027. **Mr. Prow** stated he was a native Idahoan and had served for the last 21 years in the active and reserve military. The past 20 years Mr. Prow worked in the juvenile justice system. This employment helped him to learn to understand the risks and needs of juvenile sex offenders. More importantly, he had experience working with providers, treatment professionals, and psychosexual evaluators who supported this population.

VOTE ON GUBERNATORIAL APPOINTMENT: **Senator Lee** moved to send the Gubernatorial Appointment of Monty Prow to the Sexual Offender Management Board to the floor with a recommendation that he be confirmed by the Senate. **Senator Foreman** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Foreman** moved to approve the Minutes of March 13, 2024. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.
Senator Foreman moved to approve the Minutes of March 18, 2024. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

PRESENTATION: **Farm Bureau & Law Enforcement; Open Fields and Search and Seizure Discussion. No action to be taken.** **Russ Hendricks**, representing statewide members of the Idaho Farm Bureau Federation. **Mr. Hendricks** explained that the concerns of the Idaho Farm Bureau stemmed from an incident in Tennessee. Fish and Game officers entered private property without a warrant and placed game cameras to look for poaching activity. The landowners took the officers to court. It was determined that in Tennessee it was unconstitutional because it was a warrantless search.

The U.S. Supreme Court had been inconsistent in their interpretations of the law. There was a decision made that the special protection given by the Fourth Amendment to people in their persons, houses, papers, and effects was not extended to the open fields. The implication was that since fields were not in the text of the amendment, it meant they were not covered. Over time the courts expanded the protections to include additional places not listed in the amendment.

Mr. Hendricks stated the Farm Bureau members were concerned about the inconsistent language used to interpret the Fourth Amendment by the U.S. Supreme Court. States such as Montana, Oregon, and Washington had already investigated their own constitutions with nearly identical language. They had gone through their Supreme Courts to determine that land beyond curtilage was protected against warrantless search and they extended those protections.

Mr. Hendricks added they had been assured there was no law similar to the Tennessee law that authorized Fish and Game to enter private property. Farm Bureau members had experienced Fish and Game entering private property without a warrant in many areas in Idaho. There was a desire to clarify what role the issue played in Idaho.

Mr. Hendricks continued there was a disagreement between different authorities as to what the law actually stated relating to its interpretation. The first attempt to draft legislation was a cut/paste of South Dakota's successful legislation. Prosecutors indicated there could be some potential unintended consequences with that bill. **S 1404** was introduced to correct those concerns and it implemented what most citizens already believe their rights were under the Constitution.

Courts in some states determined that legislatures had the authority to determine what the extent of property rights were. Idahoans believed citizens of the United States and Idaho should not be subjected to these searches.

Mr. Hendricks stated the open fields were "businesses" and should be afforded the same Fourth Amendment protections as other businesses. He explained there was a concern that the protection would make it more difficult for law enforcement to do their job. The Farm Bureau disagreed. Idaho lands were 70 percent public land. Only 30 percent was privately owned. That would give law enforcement authority over 70 percent. In addition, the Farm Bureau believed many private owners would gladly open their property up to law enforcement.

Mr. Hendricks acknowledged the concerns regarding drug-related activities. He stated they did not believe the solution was a declaration of martial law that reduced the warrant requirement to an easily discarded technicality. The ruling brought the practice of law enforcement into compliance with fundamental law which empowered the judiciary to work through the warrant process.

Mr. Hendricks reiterated the prosecutors said protections already existed and there was no need for this legislation. The Farm Bureau proposed they be recognized with the same protections that exist for open lands. He added they would like a clear statement in the code that lets the members know what their rights were and when they could or could not legally exclude law enforcement from their property.

Chairman Lakey asked for input relating to any potential differences between Fish and Game law enforcement and regular law enforcement.

Jeff Nye, Chief, Criminal Law Division, Idaho Attorney General's Office, **Mr. Nye** informed the Committee that his office was neither for or against the legislation. He only provided education.

Mr. Nye explained that Fish and Game officers were certified police officers in the State of Idaho. The Fourth Amendment applied the same to them as it would to a Boise police officer.

Mr. Nye felt it was important to understand that court doctrine related to the Fourth Amendment set a floor, not a ceiling. For example, this Legislature could not pass a law that said officers could go into anyone's home without a warrant. It could pass a law that said the Legislature wanted increased rights for its citizens. The U.S. Supreme Court had developed a doctrine within the Fourth Amendment jurisprudence called the Open Field Doctrine. It meant the Fourth Amendment protections were not the same and did not apply once outside the curtilage of someone's home, business, dwelling, or developed or occupied land. Open fields were undeveloped and unoccupied land that was outside of the curtilage. A line could not be drawn to fit every case. The judge who presided over that case was required to study all of the facts and circumstances relating to the situation. If it was an unoccupied, undeveloped land that was outside of the curtilage, then under the U.S. Supreme Court's precedent, the Fourth Amendment would not prevent an officer from going onto the land.

Chairman Lakey asked if there was a field that was cultivated or fenced, would it qualify as developed, preventing peace officers from entering without probable cause. **Mr. Nye** responded they would be able to go on that land. Developed land referred to land where crops were planted. The U.S. Supreme Court precedent allowed them to go on the land under the Open Fields Doctrine.

Vice Chairman Foreman cautioned differences in opinion were not good reasons to rewrite the law. He felt the existing laws were good, sound, and based on Supreme Court rulings. They worked and functioned operationally. He recommended getting the invested parties involved to talk about the concerns.

Vice Chairman Foreman added that any new legislation would affect all law enforcement officers in Idaho, and the Legislature must be cognizant of the way new laws affected everyone.

Chairman Lakey suggested it would be important to see what circumstances were happening in Idaho. Were they contrary to the Constitution or case law? If they were, they needed to be fixed. If not, he wanted to protect private property rights and give law enforcement officers the tools to do their jobs effectively.

Senator Anthon added that in his meetings with law enforcement and prosecutors, he had been aware of some confusion relating to what the legal authority was. He suggested working more on the legislation in preparation for next year.

ADJOURNED:

There being no further business, **Chairman Lakey** adjourned the meeting at 1:35 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary