

# Land & Water Law Review

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Volume 22  
Issue 1 *Special Focus: Protecting the National  
Parks from External Threats*

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Article 15

1987

## Minutes of the Annual Meeting of the Wyoming State Bar

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### Recommended Citation

Senkewicz, Mary Elizabeth (1987) "Minutes of the Annual Meeting of the Wyoming State Bar," *Land & Water Law Review*: Vol. 22 : Iss. 1 , pp. 237 - 246.

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# LAND AND WATER LAW REVIEW

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VOLUME XXII

1987

NUMBER 1

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## Minutes of the Annual Meeting Of The Wyoming State Bar

*September 17, 18, 19, 1986*

*Riverton, Wyoming*

The 71st Annual Meeting of the Wyoming Bar Association and the 45th Annual Meeting of the Integrated Bar of the State of Wyoming was called to order by President James L. Hettinger at 9:00 a.m. on September 19, 1986 in the Amphitheatre on the Central Wyoming College campus in Riverton.

Mr. Hettinger opened the meeting by explaining the voting procedure for the contested office of Vice-President for the upcoming year. Voting had been taking place at all times during the convention, and would be closed shortly so the Election Committee could count the ballots.

Mr. Hettinger asked for a motion from the floor to dispense with the reading of last year's minutes. Mr. Howell McDaniel moved, which motion was seconded, that the minutes as published in the *Land and Water Law Review* be approved. The motion passed.

### Report of The President

Mr. Hettinger reported that the Bar had moved to new headquarters in Cheyenne. He also reported that the Bar had spent approximately \$20,000.00 to buy updated computer equipment and word processing equipment for the Bar. Mr. Hettinger reported that this expenditure was necessary to keep the Bar functioning, even though the Board was concerned about money. Mr. Hettinger noted that it was ludicrous for the Bar's office to be operating without word processing equipment.

Mr. Hettinger reported that he was disappointed in the action of the Dean Search Committee which had received in excess of fifty applications for the post of Dean of the University of Wyoming College of Law. Mr. Hettinger noted that the Committee was composed mainly of university and law school people, with a law school student and himself also on the

committee. He noted that whomever is selected as the new Dean must have the stamp of approval of the law school faculty.

Mr. Hettinger indicated that a new Dean Search Committee had been formed, and that President-Elect William S. Bon represents the Bar on this new committee. He indicated that he would hope it would receive a broader spectrum of applications, particularly fewer applications from academicians.

Mr. Hettinger noted the the issue of malpractice insurance had been troublesome for the Bar in the past year. He stated that everyone had received bigger bills with no explanation for the increase. He indicated it was his understanding that the increase in premium was based on statistical studies which were never made available to the Wyoming State Bar.

Mr. Hettinger indicated that Mr. Jack Stanfield, and then Mr. Glenn Smith, have been active on behalf of the Bar with respect to this problem. Through their efforts, the Bar was able to reduce the premiums at least for this year. However, Mr. Hettinger noted that if the Home Company is true to form, it will come back in about a year with substantially increased premiums.

Mr. Hettinger noted that experts are stating that eventually lawyers will pay \$10,000.00 each for liability insurance.

Mr. Hettinger indicated that the Bar had explored the formation of a multistate captive company. However, after the feasibility study was performed, the next step was the contribution of \$40,000.00 by each state bar towards formation of the captive. Mr. Hettinger indicated that this cooled the interest of the Board of Commissioners and consequently the Wyoming State Bar backed out of the venture.

Mr. Hettinger made a note of thanking Mr. Jack Stanfield for the great amount of time and effort he had contributed in this area.

Mr. Hettinger indicated that the liability insurance problem was unresolved at this time, but that he had confidence in the Officers and Commissioners to get the problem resolved.

Mr. Hettinger then turned to the issue of tort reform. He stated that it had been a "hot" topic throughout the country, and that lawyers were being blamed for a lot of things. He stated that insurance companies engage people who buy ink by the barrel and every time one sees something in print, the lawyers are the object of derision. He noted that in Arizona, the legislature almost passed a statute fixing a maximum hourly rate for attorneys. Mr. Hettinger stated that the Bar should come up with an intelligent approach to the problem.

He also indicated that the Wyoming State Bar has chosen not to be as politically active as some members would like. He stated that it had been suggested that the Bar spend more time in the political arena, lobbying on certain issues. He stated that the Wyoming State Bar had de-

clined to get more involved after studying and hashing out the issues over many Board meetings. He indicated that the officers and commissioners have not been sitting on their hands but have discussed these issues at great length. He indicated that there are some who would want to drastically change the structure of the Wyoming State Bar, but he suggested that the way to effect a change is through the election of officers and commissioners.

He noted that the passing of legislation in Wyoming creating a Medical Review Panel. Although this legislation was ostensibly based on Montana legislation, one significant difference between the Wyoming legislation and the Montana legislation is that the funding of the bureaucracy necessary to effectuate the legislation in Wyoming is funded by the state, while in Montana it is funded by the doctors. He indicated that it was proposed by certain individuals that the Wyoming State Bar challenge the constitutionality of the legislation. He indicated that the Wyoming State Bar declined to take such a position.

Much of the Bar's decision not to become more politically involved rests on the fact that the Wyoming State Bar is an integrated bar, and therefore represents the diverse interests of all attorneys within the Wyoming State Bar, including the interests of both plaintiffs' and defense lawyers.

Mr. Hettinger indicated that while the Wyoming State Bar still has a significant amount of money in cash reserve, it was not substantial and was declining each year. Mr. Hettinger indicated that if the Bar did have excess funds, he would suggest that they be devoted to the acquisition of a building, wherever, so that the Bar could have a piece of real estate for its headquarters.

Mr. Hettinger then noted that it had been a great honor and privilege to serve as the President of the Wyoming State Bar for the past year.

Mr. Hettinger then called on Mr. George L. Simonton to give the report of the Secretary-Treasurer. Mr. Simonton indicated that he had been the Secretary-Treasurer since 1976, but was now stepping down and not running for re-election. He indicated he would like to see the trend reversed of less attorneys attending the Convention.

Mr. Simonton reported that there were 1,455 paid members of the Wyoming State Bar, with 1,150 active members. He indicated that there were approximately \$215,000.00 in funds presently in various accounts in the name of the Wyoming State Bar. He also noted that the expenditures of the Grievance Committee had risen in the last year with the advent of the hiring of a part-time investigator.

Mr. Hettinger then recognized Mr. Howell McDaniel. Mr. McDaniel indicated that he would suggest that the amount in the Clients' Security Fund be increased. Mr. Hettinger indicated that he would bring this matter to the attention of the Officers and Commissioners.

Mr. Hettinger then recognized Mr. William R. Jones. Mr. Jones moved that the minutes reflect that the Bar recognizes and appreciates the efforts of Mr. Simonton as Secretary-Treasurer for the last ten years. The motion was duly seconded. After discussion, the motion carried.

Mr. Hettinger then called upon various members of the Bar to give various Committee reports, which reports are attached hereto and made part of these minutes.

Mr. Hettinger then announced that the voting for Vice-President would be closed in five minutes, and the ballots turned over to the Election Committee for tabulation.

After the voting had closed, Mr. Hettinger called on the Chief Justice of the Wyoming Supreme Court, the Honorable Richard V. Thomas, to give a report on the state of the judiciary.

### Address of the Chief Justice

Chief Justice Thomas indicated that he had been very proud and honored to be the Chief Justice of the best Supreme Court, the best court system and the best bar in the United States.

The Chief Justice conveyed the official greetings of the Court, and also of the Wyoming Judicial Conference.

The Chief Justice indicated that he thought that we as a bar and a judiciary may need to do more with respect to communication among ourselves and to others. He wondered whether it might be a good idea to create a lawyers' division with the Judicial Council. He indicated that it might serve as a way to structure additional avenues of communication between the bench and the bar and address common concerns. He envisioned periodic meetings in the various districts. He indicated he would like to hear from members of the Bar regarding this proposal; that is, whether they thought it was a good idea or not and if they did think it was a good idea, what kind of structure should it take.

Chief Justice Thomas urged support of a statewide county court system. He stated that the system as it exists, that is, with both county courts and justice of the peace courts, has an inherent irrationality. He cited as an example that an individual charged with vehicular homicide in a county where a county court judge exists will appear before the county court judge, while in another county without a county court system, that individual would appear before a district court judge. He also indicated that he has been told by district court judges in counties where county courts exist that they can perceive a difference in the court docket now as opposed to before the existence of the county court system. Some district judges have expressed gratitude for the system and have indicated that perhaps even having the county courts have kept the districts from needing another district court judge. He indicated that this was primarily a matter of funding for the legislature and that there was some concern regarding the capacity of the state to meet those funding needs.

The Chief Justice also indicated that he was supporting computerized management of the county court system. Presently, the state was utilizing grants from the Federal Highway Commission to computerize. He indicated that it makes sense to use computers to manage the county courts due to the high volume of cases. Also, of course, the Federal Highway Commission was concerned with drunk drivers, and a computerized county court system would help management in this area.

The Chief Justice indicated that in Wyoming, misdemeanor court costs are one-half the national average. If these costs were increased to \$20.00 this would provide approximately one million dollars a year in additional revenue which would be more than enough to pay for the system. Such an increase might also be used for a fund for victims of crime. He asked for the support of the Bar on these matters in that it will allow the county court to function effectively and efficiently for the foreseeable future.

With respect to the constitutional amendment to have all county court judges' salaries increased at the same time, the Chief Justice questioned the justness of the present situation. He also noted that the more experienced county court judges under the present system will be waiting longer than the younger, more inexperienced judges for their pay raises. He indicated that there was a danger with the constitutional amendment getting passed because there was no glamour to it. If the public is not informed on that particular issue, he indicated they will not be inclined to vote on that issue.

The Chief Justice then noted that he had appointed an Ad Hoc Committee to deal with contingent fees and discovery abuses. He indicated that this Committee had the potential for doing more for the benefit of the legal profession than any other. He noted that the regulation of contingent fees was not a popular notion with members of the Bar, but that it was a popular notion with lots of other people. He asked whether we as a profession were going to address the issue or whether we were going to be manipulated by others. He predicted that if we as a profession did nothing, a bill would be introduced in the legislature, which would probably pass, which would be far more restrictive than what the Ad Hoc Committee might propose.

The Chief Justice then turned the topic of his discussion to discovery practice. He indicated that lawyers have come to overutilize the discovery rules in litigation, and that a clear reform in this area will make a difference in how our profession is perceived. He indicated that alternative dispute resolution may be a way to spell help for the legal profession and that we should be looking at arbitration and mediation as ways to resolve conflicts outside of traditional jurisprudence. He also indicated that elsewhere, the hire-a-judge program has become very popular, and that judges are leaving the bench to partake in this practice because they make more money. People who have participated in this system say that it disposes of problems more quickly and maybe even costs less than a traditional resolution. He believes that delay is caused by the way attorneys abuse the discovery process.

With respect to the Supreme Court, the Chief Justice indicated that filings are three times greater than when he first was appointed to the bench and that the Court will reach 400 filings per year in the very near future. He indicated that filings in appellate courts double every ten years.

The Chief Justice said he has been persuaded, and has submitted to the Permanent Rules Committee, a two docket system. One would be a no argument docket, and this would account for approximately 40-50 cases per year. The Committee would have to endeavor to design objective criteria to select cases for that docket. He indicated that in Utah, when a case is submitted on briefs it matures approximately 4-5 years later for oral argument, and that he is trying to avoid this situation in Wyoming. With respect to a no argument case, it might warrant a per curiam opinion or memorandum opinion. By using this procedure, there would not be as much time or effort invested in these less important cases by members of the Court.

He also indicated that the Court was tightening its procedures and rules of practice because one way to address volume is to strictly enforce the rules regarding timeliness of appeals.

Last, the Chief Justice indicated that the upcoming Bicentennial of the United States Constitution was an opportunity that he hopes the Bar would not let slip by to engender some good public relations for the profession. Wyoming has a State Bicentennial Commission, and Justice Brown represents the Court. He urged the members of the Bar to support the efforts in any way possible.

Mr. Hettinger then recognized Professor Ted Lauer, who would give a short report regarding the Law School in the absence of Dean Peter Maxfield, who had airplane problems in Laramie that morning and had been unable to attend.

Professor Lauer indicated that Professor Jack Battle is the Chairman of the Dean Search Committee. He noted that the Committee is composed primarily of law faculty members and that is as it should be.

He indicated that Professor Mike Braunstein had left the faculty, and that Sid Moller, a University of Wyoming College of Law graduate, had been hired on the faculty and would be teaching Gift and Estate Taxation and Property.

Professor Lauer indicated that there were 200 students at the law school this year, and that enrollment was slightly down with respect to numbers of students in the freshman class. He indicated that competition for qualified law students is more intense, and that less out-of-state students actually enrolled. He did recognize that it was easier to get into law school today than it had been in the past.

The next item on the agenda was resolutions, and Mr. Hettinger recognized Mr. Jack Stanfield to present his resolution. Mr. Stanfield then read the following resolution:

WHEREAS, "lawyer bashing" has been a popular pastime since at least the time of Shakespeare; and

WHEREAS, the current campaign for "tort reform" has resulted in intensified and increased criticism of lawyers and the legal profession; and

WHEREAS, various members of the Wyoming State Bar disagree as to the extent to which an integrated bar association can, or should, deal with public issues relating to lawyers and the legal system and the extent to which the Bar should become involved in the defense of the interests of the legal profession; and

WHEREAS, various members of the Wyoming State Bar disagree as to whether some of the past or present policies and philosophies of the said Bar should be modified or changed, and

WHEREAS, there is a need to ascertain and obtain the opinions of all Wyoming lawyers on the various issues which are of interest or concern to the profession and to individual Wyoming lawyers; and

WHEREAS, it is impractical to obtain a reliable assessment of the opinions of the members of the said Bar except by means of a poll similar to the one designed to obtain the opinions of members of the Bar relating to the judiciary.

NOW, THEREFORE, be it resolved by the the members of the Wyoming State Bar at the 1986 Annual Meeting in Riverton as follows:

1. That the officers of the said Bar are directed to conduct a poll similar to the recent one relating to the judiciary and designed to seek and obtain the opinions of all members of the Wyoming State Bar as to issues of concern and interest to the profession and the members.

2. That the said poll shall seek opinions from all said members concerning general subjects or issues such as the following: Should current fiscal policies of the said Bar be changed; should current policies relating to the annual meetings of the Bar and the selection and compensation of speakers at said meetings be revised or modified; are current continuing legal education policies satisfactory or should they be changed; should the Bar become involved in public issues or as to those issues which concern some, but not all, of the members of the said Bar; in what areas of public interest or public service should the Bar become involved; what role should be taken by the Bar in regard to legislative or political issues; can the present relationship between the Bar and the judiciary be improved and how; is the integrated bar concept practical in the 1980s, in view of the need for lawyers to deal with the many problems in the legislative and political arenas and the limited financial resources available for such activities; by what methods can



the public image of the legal profession and lawyers be defended or improved; to what extent should the Bar become involved in programs designed to ensure the availability of lawyers' professional liability insurance; and other issues of concern to the legal profession and Wyoming lawyers.

3. That the results of the said poll should be published by the said Bar and disseminated to all members of the said Bar by no later than May 1, 1987.

Mr. Stanfield indicated that the resolution was designed for a single purpose: to find out what our members think regarding the issues of particular importance to our profession. He indicated that many of us agreed that problems today are different from what they were 20 years ago, particularly the public image problem. He noted the attempt to create an entirely new system of alternative dispute resolution. Mr. Stanfield thinks that there is an attempt to do away with the legal profession entirely. He indicated that these are all significant issues facing the Bar, and he wants to know what a majority of the members of the Wyoming State Bar think regarding what the role of the Wyoming State Bar ought to be regarding these issues.

Mr. Stanfield indicated that he had no desire to destroy the Wyoming State Bar but rather wanted to change it so that for the money you pay you get something in return.

Mr. Stanfield then moved the adoption of his resolution, which motion was seconded by Mr. Jack Speight. Mr. Stanfield indicated that under the rules governing the Wyoming State Bar he understood that this was not a mandate by the membership but he hoped that the officers and commissioners would look at the resolution if a majority of the members wanted something done. He indicated that he would like to see some sort of survey done every year.

Mr. Hettinger then recognized Mr. Cameron Walker. Mr. Walker indicated that the Wyoming State Bar has conducted polls when it has thought necessary to do so. He indicated that the "Stanfieldian" prose in the resolution is terrific, but he had some problems with the underlying assumptions. He stated that lawyers have let the Legislature know what they think on these various issues. Mr. Walker questioned who decides what issues are significant enough to poll. He also indicated that he was disturbed by what he sees in the background as a movement to disintegrate the Wyoming State Bar.

Mr. Hettinger then recognized Mr. Eric Alden. Mr. Alden questioned the language within the resolution indicating that the poll should be as in the nature of the judicial poll. Mr. Alden indicated that the poll was one for which the Wyoming State Bar paid a significant amount of money to have an outside person conduct so that it would be statistically accurate. He wondered whether a more sociological poll would be acceptable to Mr. Stanfield. He also questioned whether a poll was the only way to find out what the members think.

Mr. Hettinger then recognized Mr. Richard Honaker who spoke in favor of the resolution. He indicated that the Chief Justice had told us that we need to get involved in the legislative process, and in order to do so, we need to find out what the members think. He questioned whether there was anything wrong with merely gathering information. He indicated that what to do with the information afterwards is another question. Mr. Honaker indicated that he had full faith in the officers and commissioners and in the executive director to formulate a fair and effective poll.

Mr. Hettinger then recognized Mr. Stuart Healy. Mr. Healy also spoke in favor of the resolution. He indicated that since there were only approximately 150 members of the Wyoming State Bar present at the Annual Meeting, there was not adequate representation here to find out what most of the membership thought.

Mr. Hettinger then recognized Mr. Jerry Housel. Mr. Housel stated that he thought that Mr. Stanfield had brought some viable questions to the attention of the Bar; however, he indicated that the resolution raised a panoply of questions. Mr. Housel indicated that he would move that more research be done regarding who was to conduct the poll, how much money should be spent on the poll, and what questions should be asked. The parliamentarian, Mr. Dave Carmichael, ruled that the motion was out of order since a motion was already on the floor.

The question was called. The motion carried, and the resolution was adopted.

Mr. Carmichael noted that one thing to keep in mind was that the tax-exempt status of an organization could be in jeopardy when the organization gets involved in lobbying.

Mr. Hettinger then called on Mr. R. Stanley Lowe to present his resolution regarding the county court system. Mr. Lowe then read the following resolution:

**RESOLVED**, that the Wyoming State Bar reaffirms its earlier endorsements of the county court system and its expansion statewide and urges that the system be implemented in the remaining 11 counties of the state, either through actions of the boards of county commissioners in conformity with existing law or by legislation expanding the system statewide and changing the name to more properly characterize the system as being part of the judicial system of the State of Wyoming, and

**RESOLVED, FURTHER**, that the Wyoming State Bar hereby endorses and urges the support of all of its members at the forthcoming general election in November, 1986, for the ratification of a proposed amendment to Article 5, Section 17, of the Constitution of the State of Wyoming, designated on the ballot as Amendment No. 5, to provide that if an increase or decrease in judicial salaries becomes effective for a judge of the supreme

court, district courts, county courts, or other courts of record, it becomes effective for all other judges of courts of that category.

It was moved and seconded that the resolution be adopted. After discussion, the motion carried.

Mr. Hettinger then recognized Mr. Howell McDaniel. Mr. McDaniel moved that the Bar thank the Officers and Commissioners of the Bar and the officials of the City of Riverton for hosting a wonderful convention. The motion was duly seconded and passed.

Mr. Hettinger then indicated that he would nominate Mr. R. Stanley Lowe as the Wyoming State Bar delegate to the American Bar Association. The motion was duly seconded and passed.

Mr. Hettinger then recognized Mr. Harry L. Harris to give the report of the Election Committee. Mr. Harris reported that the election for the Judicial Nominating Commission had been won by Mr. David A. Scott, and that the election for Vice-President of the Wyoming State Bar had been won by Mr. John M. Daly.

Mr. Howell McDaniel moved, and Mr. J. Patrick Hand seconded, that the report of the Election Committee be adopted, and that the unopposed nomination of Mr. David H. Carmichael to President-Elect and the unopposed nomination of Mr. Eric M. Alden to the office of Secretary-Treasurer be adopted as well. The motion carried.

Mr. David H. Carmichael then moved that the following resolution be adopted:

BE IT RESOLVED that the members of the Wyoming State Bar deeply thank Mr. James L. Hettinger for his untiring work over the past year as President of the Wyoming State Bar, and deeply appreciate his commitment to the task.

The motion was duly seconded and passed.

Mr. Hettinger then introduced the new Officers of the Wyoming State Bar to the membership: Mr. William S. Bon, President, Casper; Mr. David H. Carmichael, President-Elect, Cheyenne; Mr. John M. Daly, Vice-President, Gillette; and Mr. Eric M. Alden, Secretary-Treasurer, Wheatland.

There being no further business before the Bar, the meeting was adjourned at approximately 12:15 p.m.

Respectfully submitted,  
MARY ELIZABETH SENKEWICZ  
Executive Director