WORKERS' COMPENSATION INDUSTRIAL COUNCIL

APRIL 30, 2009

Minutes of the meeting of the Workers' Compensation Industrial Council held on Thursday, April 30, 2009, at 3:00 p.m., Offices of the West Virginia Insurance Commissioner, 1124 Smith Street, Room 400, Charleston, West Virginia.

Industrial Council Members Present:
Bill Dean, Chairman
Delegate Nancy Guthrie
Kent Hartsog
Dan Marshall (via telephone)
Walter Pellish (via telephone)

1. Call to Order

Chairman Bill Dean called the meeting to order at 3:05 p.m.

2. Approval of Minutes

Chairman Bill Dean: We need the approval of the March 26, 2009, meeting minutes. Has everyone had a chance to look at the minutes? Is there a motion to approve?

Kent Hartsog made the motion to approve the minutes from the March 26, 2009, meeting. The motion was seconded by Walter Pellish and passed unanimously.

3. Office of Judges Report – Rebecca Roush, Chief Administrative Law Judge

Judge Rebecca Roush: Good afternoon, Mr. Chairman, members of the Council. I have a brief report for you today. I've passed out the statistical summary for the work currently being performed. The trends remain the same. We continue to decline in protests. For the month of March we acknowledged 531 protests, which are down from 554 protests in 2009, so it remains about the same. As of the end of March we had 4,132 protests pending, which again is another all time low for our office. April has been

a very busy month. I wanted to give you a brief update on some of the things that we are doing.

We continue to do our education and training with Dr. James Becker, the OIC's Medical Director. On Tuesday we will have a second session with Dr. Becker and the Board of Review. The topic for discussion is "Psychiatric Conditions, Treatments and Current Partial Disability Ratings."

Also, we are in the process of reviewing and perhaps limiting the number of venues that are utilized right now. We have 22 venues across the State, and as some of the practitioners here know they are pretty close in proximity. We go to Welch as well as Pineville. We go to Lewisburg, Wheeling, Weirton, Martinsburg, etc. There are quite a few of them. We also rent some of the venues in the communities that we currently utilize for hearing venues. But we are contemplating limiting the venues to six, and those would be in places where the OIC actually has office space, so we would avoid renting buildings in each of these communities where we hold hearings. We would like to limit it to six – Charleston, Fairmont, Beckley, Martinsburg, Wheeling and Elkins, which I think covers the vast majority of the State. It's a good range of coverage for the areas. The OIC has offices in all of those locations, except for Elkins. We think that by using the OIC facilities we can actually upgrade our technology and start using video conferencing. We are working with our IT director to start establishing and getting video conferencing set up. I'm told that it can be done relatively quickly and very inexpensively. We can perhaps limit travel and be more efficient in our use of time by limiting to those areas.

One of the most important things we've done in the Office of Judges since I've been there – we are actually unveiling this week and we've just discussed it with all of our staff as well as our Judges – we have shipped all of the assignments of decision writing to the Administrative Law Judges. We no longer utilize non-attorney staff members who write decisions, which I think will make a positive impact on our industry. That's probably one of the most important things we've done since I've been there.

We are also in the process of reorganizing our work flow. Right now assignments are made to the Judges at the end of the process. We would like to flip that to actually get the Judge involved in the case early on in the assignment. You would get a particular Judge assigned to your protest, and that particular Judge would work the case from beginning to end, which I think will lead to a better overall product and a better decision coming out of our office. We cannot implement that immediately because it is going to take some programming changes. It might be something to look for in the next few months.

Generally, in a nutshell, that's what we're doing. I will gladly take any questions that you may have.

Chairman Dean: Mr. Hartsog, do you have any questions?

Mr. Hartsog: I'm just curious. On page four, (G), Time Standard Compliance, what is that?

Judge Roush: That is the amount of time that it takes for us to get a decision out the door. You can see that it has decreased some over the last few months. We are not as efficient as we once were and that's because the Executive Office is taking the time to review individually all of the non-attorney decisions that are going out the door. Although it's a negative mark on the compliance, it is actually a positive thing because the right result is being made in the case.

Mr. Hartsog: Are you finding that you are changing a lot at that level?

Judge Roush: Absolutely. . .which was also one of the reasons why we decided to change the process and immediately give all the assignments to the Administrative Law Judges. It is important that we get the people with the experience and the expertise making the decisions in these cases. Like I've said over and over in the past, these cases are becoming more complex with all the changes in the law that we've had in 2003, 2005; all the rules that we have. Rule 20 is rather complex in and of itself. Although they were very talented, motivated employees they really just did not have the skill set to do decision writing. While that worked in the past when we had high volume – 30,000 cases – you can't really process 30,000 cases with 16 Judges. They served their purpose and served a function. But because we have a decrease in the volume, it was time to get them to a role where they can be a benefit to our Judges rather than us going back and cleaning up behind them.

Mary Jane Pickens (General Counsel, OIC): Even though it has dropped down, once you get through the changes and get everything to an Administrative Law Judge, would you expect that number to go back up?

Judge Roush: Yes.

Chairman Dean: Mr. Pellish, do you have questions or comments for Judge Roush?

Walter Pellish: No questions.

Chairman Dean: Mr. Marshall?

Dan Marshall: I do have one question for Judge Roush. Judge, when you were running down the list of venues under your new system, I didn't hear Parkersburg. And I'm curious as to where you would intend to place the hearings that would originate from claimants in this area?

Judge Roush: From Parkersburg we thought Charleston was a close enough proximity. I think it is 45 minutes. That's where we intended to have it.

Mr. Marshall: Actually from my office to the Insurance Commissioner's office, it is a good hour and fifteen minutes, and I'm familiar with the route, so. . .

Judge Roush: I am too. I actually live in that direction. I drive that route every day. I will gladly take the issue back to Commissioner Cline. These were actually the choices that she made with regard to the limitations. And, again, it was mainly because we have offices in all of those locations. It's not a problem to reconsider them, and I will take that issue back to her.

Mr. Marshall: I understand. I appreciate you answer.

Chairman Dean: Anything else, Mr. Marshall?

Mr. Marshall: No, Mr. Chairman.

4. General Public Comments

Chairman Dean: Does the general public have any comments today?

Steve White (Affiliated Construction Trades Foundation): At the last meeting [March], which I was unable to attend, I asked a staff person to come to talk about some compliance issues and to recap on that issue. There was a company that was bidding on State contracts which we felt should have been blocked because the owner of the company was also an owner of a company that owes $2 million dollars plus of workers' comp. Since that time, "thanks" to the Insurance Commissioner, and specifically Mary Jane [Pickens], in a letter that she wrote – which was a great letter – to the Purchasing Department. They have withdrawn consideration of the bid of that contractor, which is

very important to us. I appreciate the work done here. When we see these "repeat violators," they shut down one company and they just start up another company. There are some things in place to stop that, but sometimes you have to make sure those measures are followed through. I just want to thank the Commission for following through. Thank you.

Chairman Dean: Does anybody else from the general public have a comment?

5. Old Business

Ryan Sims (Associate Counsel, OIC): In regard to the situation, as Steve White (ACT Foundation) pointed out, their bid was disqualified because the owner owed money to the State. I was also asked to follow-up with what we are doing. We have established contact with the Department of Administration and Purchasing to make sure that the provisions regarding a "debtor not being able to bid on a contract" is enforced properly. After looking at the issues, we decided what needed to be done to help the situation would be to work on some of the language in the affidavit. That was one of the things that Lesly [Messina] mentioned last month when she talked about the situation – specifically to have more detail in the affidavit as to what they [owners/officers] are swearing to. Not only are they swearing that nobody [owners/officers] has any interest in another company that owes money to the State, but they are also saying that they are not related to anybody that does. It's actually a very broad statute. We're going to work on making sure that there is more detail in the affidavit, and that would create a situation where if they did lie they could be subject to criminal liability and that type of thing. I am currently in the process of working on giving Purchasing some suggested language to beef up their affidavit. Then, of course, it would ultimately be up to them and their legal counsel to decide exactly how they want their affidavit to read. We are working on that with them.

Chairman Dean: Very good. Mr. Hartsog, any questions for Ryan?

Mr. Hartsog: You said, "Anyone related to them. . ." If I had a cousin that had not paid workers' comp, that would keep me from getting a bid?

Mr. Sims: No. Actually the way the statute reads is anyone related. . .I think it is limited to just spouse, parents or children, something like that. And it's only if they are related to any of the owners or officers of the company – somebody that owns a substantial portion of the company. It is very broad. I don't think cousins or extended family would count.

Chairman Dean: Any other questions Mr. Hartsog?

Mr. Hartsog: No.

Chairman Dean: Mr. Pellish, do you have questions or comments for Ryan on that?

Mr. Pellish: No questions or comments.

Chairman Dean: Mr. Marshall?

Mr. Marshall: None, Mr. Chairman.

Chairman Dean: Does anybody else have anything under old business they would like to discuss today?

6. New Business

Chairman Dean: We'll move onto new business. Does anybody have anything under new business they would like to discuss? Mary Jane, I know you want to speak on the Session.

Mary Jane Pickens (General Counsel, OIC): I assumed that everyone wanted to hear a little bit about what happened during the Session. I am going to run through Senate Bill 537, and I'll try to do it reasonably quickly.

Senate Bill 537 was the Insurance Commissioner's Workers' Compensation Bill. It completed legislative action on the 11th of April and it is effective 90 days from passage, unlike last year where people tried to do us favors and made it effective from passage, which caused some issues and some difficulties implementing it that quickly. So this time we got 90 days. The effective date of the Bill is going to be July 10, 2009. We do have a little time to think about the changes and figure out how they need to be implemented. This is the Bill that a few meetings ago we talked about so now you're going to see what finally came out of it. It's pretty much the same with a few notable exceptions.

The first section in the Bill is §23-2-1d, Prime Contractors and Subcontractors Liability. This restores the concept to the Code that if you're a prime contractor and you

invite subcontractors onto your property you have a duty to get proof of "certification of coverage" – some proof that they've got coverage in place. If the prime contractor fails to take those actions, then an injured worker of the uninsured sub can file his claim against the prime's carrier and it would have responsibility for that. This is something that we are mentioning because I don't know if there is any confusion out there. There were some amendments on the floor of the Senate, and I don't know where they came from, but I mention it because we don't want people to be confused by this. There were some changes in part of that section that applies to just the Old Fund. It doesn't apply to the new situation with prime/sub responsibility going forward after the effective date of the Bill. But it has some sections in there that talk about the length of time of the contract. It used to say "30 days." It was amended to "60 days." There's reference to the old Executive Director of the old Workers' Compensation Commission, which no longer exists any more, providing some notice to the prime contractor by. . .I think it might have said "mail" and it was amended to say "certified mail." And all of that is fine, but it has nothing to do with the new law. I am just throwing that out there because I'm afraid people might be thinking that that is somehow relevant to these new business relationships, and it isn't. It is very clear in that Code section. Those sections that those amendments were made in apply only to debt incurred prior to December 31, 2005, to the Old Fund.

There is some other language in that section about liability for claims that get into the Uninsured Fund. Essentially if a claim gets into the Uninsured Fund, then we as the administrators of that Fund or our TPA has made a determination that the prime contractor is not responsible. So we would not be collecting against the prime contractor if the claim truly and correctly got into the Uninsured Fund. There may be some collection activity against the prime if the Uninsured Fund accepted the claim conditionally pending some investigation to determine if there was true responsibility of the prime contractor. But for the most part that language about collection activity and the Uninsured Employer Fund where this prime/sub change has been made is not as alarming as some people thought it was.

The next section is §23-2A-1, Subrogation. The amendments to this section hopefully clarify the confusing nature of it as it existed before this. It clarified the date on which subrogation may be sought on indemnity as well as medical benefits with a January 1, 2006, date as when that change is made. It clarified also something that I think was inadvertently done maybe in the 2005 amendments – clarifying that for any recovery arising out of a cause of action prior to July 1, 2003, any money recovered by the Insurance Commissioner or self-insured employer for medical benefits may not exceed 50% of the amount received by the injured worker, which reinstates the law in

effect from 1991 through the 2005 amendments. There is at least a reasonable interpretation that that changed in the 2005 amendments.

We also made sure that it was clear that the Insurance Commissioner has the right of statutory subrogation for indemnity and medical benefits paid from the Uninsured Employer Fund regardless of the date when the cause of action arose. It now says that the Insurance Commissioner as well as other folks can negotiate subrogation amounts. So we think that all of this is going to improve that Code section and make it a lot easier to understand.

The Uninsured Employer Fund – or the UEF as we call it – the only change to this Section is internal/administrative. It has to do with the taking of a claim into the Uninsured Fund. It gives the Office of Judges jurisdiction to hear any disputes with that decision. As it currently exists, it is sort of a two-part approach where the Insurance Commissioner, using a designated hearing examiner, makes the initial determination; and then compensability and everything from then on is litigated before the Office of Judges. It just wasn't working very well. This will take everything to the Office of Judges, and it will make a lot more sense for everybody. And you're going to end up with a claim that's handled in the proper venue regardless of the issue.

§23-2C-15. Mandatory Coverage – This is a section that says all State and governmental bodies. . .currently they are required to purchase their workers' comp insurance from BrickStreet, and this is part of the 2005 legislation. They have been required to purchase their coverage from BrickStreet until 2012. And this amends that to say that on June 30, 2010, these entities can, if they choose to do so, get coverage with another carrier. But BrickStreet can't cancel or refuse to renew them on BrickStreet's initiative, unless they don't pay premium, until July 1, 2011. So it's a modification of that 2012 date.

The next section is §23-2C-17, Administration of a Competitive System. Most of the amendments here are technical cleanup and some clarification that if a self-insured employer or an insurance carrier enters into a relationship with a third party administrator, that third party administrator is subject to Chapter 33, Article 46, which is our TPA Act. This was an amendment from last year, but in hindsight it wasn't as clear as it probably could have been.

§23-2C-21. This again was some clarification. We wanted to make sure that there was no doubt that the Insurance Commissioner has all of her regulatory authority over insurance companies, even if the violation arises out of Chapter 23. We put in a

reference to Chapter 33 so that it was clear her powers extended throughout those two chapters of our Code.

§23-4-1c. Payment of Temporary Total Disability Benefits – This is a section that was not in our original Bill and it got added in. You've got to really hunt for the substantive change. There is a part of that Code section that talks about "expedited hearings before the Office of Judges." One of the circumstances is when there is a timely protest to a denial of initial temporary total disability. The word "initial" has been struck, meaning that it's not just the initial or denial of initial. It is broader than that now, and that's for expedited hearings.

Another change that we wanted – and since we were in that Code section anyway – this apparently is the only place in Chapter 23 that references a method of benefit delivery. And it talks specifically about mailing checks for TTD benefits. We've had some requests from the insurance industry about whether there is an opportunity here to use more modern methods of delivering benefits – electronic methods and things of that nature. We've even begun drafting an informational letter. Some people may want to make use of newer methods, and we want to make sure that there are some protections afforded claimants. We are probably going to publish this info letter and it will talk about those types of things. So now this Code section says that the private carrier, Insurance Commissioner, or self-insured employer will "deliver" rather than "mail" "amounts due" rather than "checks." Now we think this really does open it up and shows some legislative intent with this amendment to specifically allow benefits to be delivered in more modern, hopefully more convenient methods.

§23-4-6b. Occupational Hearing Loss – Most of this section has technical cleanup. It is one of those one word changes you have to look for. This is a section that used to say, "The allocation of hearing loss claims among chargeable employers shall be done by the Commission." I'm sure everybody here knows in the beginning of January of 2006 the Insurance Commissioner issued a notice saying we weren't going to allocate disease type claims in our State. And so this really did need to be addressed. So now it is like the OP and the occupational disease sections where it's permissive as opposed to mandatory, and right now we have no intentions to change the January 2006 notice regarding allocation of claims among chargeable employers.

§23-4-8. Physical Examination of Claimant – This is another section that wasn't in the Bill as introduced. But there was another Bill running, as Delegate Guthrie knows, and we were able to work with some of the drafting of the language and it addresses travel reimbursement. The Code section has been substantially rewritten, but it addresses reimbursement of travel expenses in different situations, both ordered travel

and treatment related travel. I guess the most meaningful part – the thing that has been debated on prior occasions before the Industrial Council – is the mileage reimbursement for treatment related travel, which is now at the same rate that applies to State employees for State authorized business travel; which is what the rate had been for ordered travel in worker's comp claims before. Of course we will now have to amend Rule 1 again to reflect these new legislative changes.

§23-4-8c. Occupational Pneumoconiosis Board – The amendments to this section are primarily technical cleanup. Everyone will recall that last year the Legislature changed the protest periods from "30 days" to "60 days," and there were a few of these lingering ones around. And that's how these sections got into the Bill. They weren't in there as it was introduced either, but we were told if we really wanted to do it right we needed to bring them in. Again, it has been our interpretation that since the 2008 amendments all of these periods have changed to 60 days, but this clears up any possible confusion.

§23-4-8d. This is a new section and it was in our introduced Bill, and it's a very short to the point section. It says that OP claims don't close for medical benefits.

§23-4-15b. Determination of Nonmedical Questions – This is the same thing on the "30 days" to "60 days." It wasn't in our introduced Bill, but it got drawn in because we thought it was advisable to clean up those lingering references to 30 days.

§23-5-1. Notice by Commission or Self-Insured Employer of Decision – This is the Code section that talks about judicial review, review by the Office of Judges of protests to claims decisions. Last year the Legislature amended that to account for the fact that now you've got an open market; you can have different carriers responsible for claims; and you could have a claimant that maybe thinks he's suffered a new injury, so he files a claim with his employer and present carrier; and after investigation they think it's really a re-opening or an aggravation or progression of some prior injury; and what happens to the claimant in that process. And there was a 2008 amendment that put forth a process for conditional payments and gave the Office of Judges jurisdiction to handle those types of disputes between possible responsible parties. This really expands that a little bit. Before, the law said this provision would apply when the only controversy relating to compensability is whether the application was properly filed as a new claim or a re-opening of an old claim. Now with this amendment it will say that when there is an issue as to whether it was properly filed then the procedure will apply for conditional payments and OOJ determination of liability. It's not going to be as specific and narrow as it was in the past. This section has also been re-numbered to clarify that the Office of Judges has jurisdiction generally to designate a new application as a re-opening

application or vice versa or to reassign a claim among possible parties. I think we probably still need to talk to the Office of Judges about. . .procedurally how you get those issues before the Office of Judges and things of that nature.

§23-5-3. Refusal to Reopen Claim – More changes from 30 days to 60 days.

§23-5-16. Fees of Attorney for Claimant – This is the attorney fee section. This was not in our Bill as it was introduced. It adds a new subsection (b) and re-numbers what was already there, subsection (a), and it provides that in a final settlement, an attorney can charge a fee that may not exceed 20% of the total value of medical and indemnity benefits. And the amendment further limits the attorney's fee by stating that that fee, when combined with any fees previously charged or received by that attorney for permanent partial disability or permanent total disability, may not exceed 20% of an award of benefits to be paid during a period of 208 weeks. We had to actually sit down and come up with some scenarios to help me work through all that. This was sort of a compromise, as I understand it, among the claimant bar. There was a lot of talk about attorney fees and a lot of different approaches, but this is what ended up being passed. We'll see how all that works out.

The last section in the Bill is §33-2-22, in Chapter 33. This was a section that already gave the Insurance Commissioner some. . .it has to do with employers in default to the worker's comp funds and injunctions against defaulting employers and things of that nature. It gives the Insurance Commissioner the ability to settle claims from monies due to the Old Fund or premium tax liability. It requires us to file a report annually with the President of the Senate, the Speaker of the House of Delegates and the Legislative Auditor that summarizes the settlements. We had a meeting earlier this week that wasn't really about this, but it kind of turned into a meeting about this – talking about what that report ought to look like and how we can explain. . .we really have some different types of categories of people that pop up every now and then owing the Old Fund. So we are starting to give some thought to that report – what it ought to look like. We will be making some progress on that in the next few months. This new provision also says that this information is subject to the Freedom of Information Act requests. If anybody has any questions, I'll be happy to try to answer them.

Chairman Dean: Mr. Hartsog, do you have any questions? Delegate Guthrie?

Mr. Hartsog: No.

Delegate Guthrie: No.

Chairman Dean: Mr. Pellish, do you have any questions?

Mr. Pellish: Mary Jane, on the mileage rate, I'm not clear. Was the rate increased?

Ms. Pickens: It was.

Mr. Pellish: Beyond what we had done before?

Ms. Pickens: Yes. This was in the rule when it came to the Insurance Commissioner. The rule had a 15 cent per mile reimbursement rate for treatment related travel. That's like travel back and forth to your treating physician or other routine treatment related travel. It had the higher rate for ordered travel, like an IME or if you are ordered to go to a doctor for a specific purpose.

Mr. Pellish: Right.

Ms. Pickens: This Bill will take it to the same rate, the same higher rate, which is based off of the State reimbursement rate.

Mr. Pellish: We have a potential significant cost impact here.

Ms. Pickens: We had concerns about that. We talked to NCCI, and I don't have my notes with me right now. The actuary that's been appointed to West Virginia went through a number of different scenarios making different assumptions about how many office visits the typical claimant is going to go to with their treating physician; the average distance to the treating physician; and all of those types of things that actuaries do. They felt that it would be material in the sense that it needs to be tracked by NCCI and there is the potential for. . .I mean it is going to get into the loss costs. There is potential for some increased premiums, but they felt that it was not significant, and their definition of significance was like 5%. They felt that, depending on how often people go to the doctor, it could be anywhere from a half percent to one and a half percent increase in loss costs.

Mr. Pellish: Would it be possible for you to report on those actuarial findings at next month's meeting?

Ms. Pickens: Sure. I'd be happy to.

Mr. Pellish: I'm very uncomfortable with this.

Ms. Pickens: Well, the Legislature has passed it.

Mr. Pellish: I understand that. We need to apprise everybody of it.

Ms. Pickens: Okay. I agree.

Chairman Dean: Mr. Marshall, do you have any questions?

Mr. Marshall: No, Mr. Chairman.

Mr. Hartsog: On the same topic he was on, does that change with regard to. . . kind of invoke the State's travel policy guidelines in total, or is it just the mileage rate from the State policy guidelines? I've kind of heard that both ways with regard to whether or not hotel reimbursements, etc., gets in at whatever the State travel guidelines are now, and whatever that mileage rate reimbursement is. I think the State rate is based upon deducting commute miles, stuff like that.

Ms. Pickens: The Bill says that, "The claimant's traveling expenses include, at a minimum, reimbursement for meals, lodging and mileage. Reimbursement for travel in a personal motor vehicle shall be at the mileage reimbursement rate contained in the Department of Administration's Purchasing Division travel rules as authorized by. . ." [the Code section that authorizes them]. But Rule 1 already said that regardless of whether its treatment travel or ordered travel the claimant is entitled to meals, lodging and mileage. So that is not a change from what the rule has already been. It's in Code now, but that's what the rule has been, and that's what I think people should have been doing before now.

Mr. Hartsog: Does it place the limitations on that the way the State travel guidelines place the limitations?

Ms. Pickens: The rule I think. . .and we just looked at it here today. I don't have it in front of me. I think it has also always said that those would be a guide – and I'm looking at Ryan because he has been working on it. The regulation, even with regard to travel and lodging. . .

Mr. Sims: I believe the rule says that adjustors should look to the State travel guides for parameters as to how to reimburse for everything. That's my recollection.

Ms. Pickens: I think you're right.

Chairman Dean: Any other questions? Mary Jane, I e-mailed you a law in Utah. Have you had a chance to look at that?

Ms. Pickens: Yes, I did. We didn't look at it for a long time because it really is new. I had Sarah Chapman (Paralegal with OIC) find the decision online, and she made sure to point out to me that it's not the official published decision of their Supreme Court. So it's subject to additional change, but probably things like typos. The Supreme Court in Utah in the case of Nathan H. Merrill v. Utah Labor Commission; Vermax of Florida, Inc., dba Dakota Cabinets; Workers' Compensation Fund; and Wausau Business Insurance – the decision was filed April 24, 2009. It addressed a Code section that we used to have, no longer have, that provided an offset reducing the amount of benefits for individuals receiving both workers' comp benefits and Social Security retirement benefits. Under their specific law, when an individual qualified for both Social Security retirement benefits and workers' comp benefits, and when the individual had received 312 weeks of workers' comp benefits, then their comp benefits are reduced by 50% percent of the amount the individual is receiving in Social Security retirement benefits. They looked at that under their Uniform Operation of Law Guarantee of their Constitution, which is equal protection. And they felt that it did not withstand that scrutiny and they determined that it was unconstitutional. They relied very heavily on a decision from our Supreme Court of Appeals in the Latta Boan case, which was a decision that came out of our court in 1996 [State ex rel. Boan v. Richardson, 198 W. Va. 545 (W. Va. 1996)]. We had a very similar law, and our court looked at that statute as well under constitutional equal protection types of concepts and also found that it violated equal protection and that our law was unconstitutional as well. They cited the Boan case a number of times in the Utah case. So this is an issue that has already been in our State and has already been addressed.

Chairman Dean: Very good. Does the Council have anything else under new business?

7. Next Meeting

The next meeting will be on Thursday, June 4, at 3:00 p.m. here. Is that okay with you, Mr. Pellish? Mr. Marshall?

Mr. Pellish: Yes.

Mr. Marshall: Yes. I'll be there.

8. Adjourn

Mr. Hartsog made a motion to adjourn the meeting. The motion was seconded by Mr. Marshall and passed unanimously.

There being no further business the meeting adjourned at 3:47 p.m.