

April 18, 1980

LB 991

SENATOR CULLAN: Mr. President, members of the Legislature, I have looked at it and asked constitutional law professors in whom I have great respect to look at it and I believe, as do the other individuals that this is unconstitutional in certain respects.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, I would like to address myself just for a couple of minutes, if I can, to the Parma case which is the case that is cited in Senator Nichol's memo that he sent around to you and was referenced by Senator DeCamp indicating that the law was constitutional. Well that is not the whole story by any means. There are two sections of...

PRESIDENT: Senator Venditte, for what purpose do you object?

SENATOR VENDITTE: Mr. Chairman, I think you gave him permission only to extend his time to ask the question to the attorneys that remained. I believe that question has been answered...(interruption)

SENATOR BEUTLER: Is the truth of the matter not to be out, Senator Venditte?

PRESIDENT: I just gave him an extension of time. He said a couple of minutes. That is all he said.

SENATOR BEUTLER: Just one more minute, Mr. Speaker.

PRESIDENT: One minute, all right. There will be one minute.

SENATOR BEUTLER: The Parma ordinance was declared unconstitutional in two respects and those two items are in our bill and one of them is word for word and the other is about as close to word for word as you can get and those provisions are on page four of our bill, section 11, which in determining whether an item is drug paraphernalia says you can consider whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community such as the licensed distributor or dealer of tobacco products. The federal district court has said already that is unconstitutional. The other provision is on page five, section 2 which says in declaring when you determine...it says it shall be unlawful for any person to deliver, possess with intent to deliver or manufacture with intent to deliver drug paraphernalia knowing or under circumstances where one reasonably should know that it will be used for a certain purpose. That language has already been declared unconstitutional and I will read you from the Parma case on that particular point.

10387