

Assembly

MINUTES OF MEETING - COMMITTEE ON JUDICIARY, 53rd Legislature, March 4, 1965

Meeting was called to order at 2:10 P.M.

Present: Close, Parsons, Olsen, Swobe, Rosaschi, Jacobsen, Knisley, Kean

Mr. Delaney present at last half of the meeting

AB 371: Amends conflict of interest statutes

Assemblyman James Wood spoke to the committee about this bill. He explained that sometimes a person becomes a legislator and then sometime during the next two years while he is in office he becomes involved in some way with a state agency. For instance, we have members in this Assembly who represent insurance companies. It is questionable whether they can operate legally in any insurance deal with any state agency. If this bill were passed they could because the insurance rates are subject to control by a state agency.

Mr. Knisley: Jim, do you operate your business as a corporation or as an individual?

Mr. Wood: As a corporation but I own more than 20% of the stock.

Mr. Close: When you say "regulated" do you mean by prices?

Mr. Wood: Yes, I mean prices, also areas of safety and insurance requirements.

Bill Hadley spoke next to the committee. He went over some proposed legislation which would have to do with the welfare fraud cases. He stated that the ADC program problems are probably the most important.

Mr. Hadley said he would like to see 425.240 amended so that the duty is placed on the department of welfare to use the Attorney General when a person has obtained funds through a fraudulent method. He can take the action. The amendment would also allow restitution to be exacted from any negligent employees of the welfare department who through negligence failed to reported monies being obtained by fraud.

Another amendment they would like is for paragraph 2 of the present NRS to be made a felony. He said a misdemeanor charge has never been brought on this. The department seeks restitution or forgets the whole thing.

Mr. Swobe asked if there was a dollar figure Mr. Hadley would care to recommend to apply to this. Mr. Hadley said \$700.00.

Mr. Hadley said that there is some fraud in old age assistance but the problems are not nearly so great. He would recommend a provision to make or permit restitution in case of fraud. Also, legislation to make it a misdemeanor if an old age recipient disposes of his property while on old age assistance.

As an example of this last thing, Mr. Hadley cited the example of an elderly gentlemen who was on old age assistance whose brother died and left him \$12,000. He divested himself of this inheritance and gave it to a nephew. The welfare

The welfare department then declared him ineligible for old age assistance. He became ill and there were several thousands of dollars of expenses which had to be paid for by the county. The welfare department then sued the assignee to get back this expense money.

Mr. Hadley suggested that 427.300 be amended to provide that if the welfare administrator became aware of a man receiving more than \$700 from other sources while on old age assistance an action could be filed by the state to recover these funds. Then he would not have to be declared ineligible. The counties would receive reimbursement from the recovered funds.

Mr. Swobe: Is there much actual fraud in ADC?

Mr. Hadley: Not too much fraud. There is collusion and hiding of the wife or the husband, etc. When there is no investigator working in the county it is hard to uncover these undeserving cases.

Mr. Knisley suggested that traditionally this legislation having to do with welfare is handled through the Ways and Means Committee because there are state funds involved.

Mr. Swobe said he would give copies to Mr. Gibson to study.

Mr. Hadley said these proposed laws are not oppressive in any respect and they bring injunctions and penalties which would be very helpful. These laws, in conjunction with the non-support bill which is in process will be most helpful.

Mr. Hadley said there is some question as to who is to try to collect unpaid county hospital bills that are not paid: Should suit be brought by the Attorney General, the County Commissioners, or the welfare people?

SB 29: Provides for selection of grand jurors by drawing names from trial juror list.

Senator Parks was present to speak to the Committee about this bill and ask them to reconsider their action of the day before in killing it.

Mr. Knisley expressed himself as liking the bill. Mr. Swobe explained to Senator Parks what had happened that the bill was killed.

Mr. Close asked if we could remedy the situation by making the provisions of the bill apply to the smaller counties only, leaving the larger counties as at present.

Mr. Olsen suggested this would create two kinds of justice, small town and large town.

Mr. Kean: Why wouldn't this be better than what we have? Why wouldn't it work in large towns?

Mr. Olsen said the jury should be selected by lot and do away with the blue ribbon juries.

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Mr. Jacobsen moved to reconsider SB 29

Mr. Kean seconded

Motion passed unanimously

Mr. Swobe: Do you want to make the grand jury the same as a petit jury?

Mr. Close asked Mr. Olsen how he felt about the situation as it exists in Clark County.

Mr. Olsen replied that he couldn't honestly say that he thought this bill will make an improvement in Clark County but can't see where it would hurt anything.

Mr. Knisley said he would like a grand jury more representative and less subject to control of the judge and the district attorney.

Mr. Swobe moved to amend the bill so that it applied only to small counties and not to counties with more than one judge.

Mr. Jacobsen seconded this motion

Mr. Kean moved to amend Mr. Swobe's motion and make it apply to all counties

Mr. Olsen seconded

Motion passed with committee majority

Mr. Jacobsen and Mr. Swobe voted no

At this point Mr. Kean asked to be excused and expressed his views on the Civil Rights bill, AB 404, so that the committee would know what they were. He said he didn't want to pass anything stronger than the federal law.

Mr. Knisley said that Mr. Kean should know, or be on notice, that the committee cannot accept his comments as a vote. Mr. Kean decided to stay.

AB 428: Prohibits gas and electrical companies from making promotional offers to customers.

A hearing was held on this bill.

Clifton Young, attorney representing the Oil Heating Institute of Northern Nevada, spoke in favor of the bill. He said he was going to speak on two points: The feeling that the practices of the South West gas company are grossly unfair to many small businessmen of the state; and, this forum is the only hope of restoring the balance in this field.

Mr. Young then related the history of the various meetings held by his group with the PSC, beginning March 18, 1964 and ending Dec. 29, 1964, in which they have been unable to get any action whatsoever. He also passed out photostated copies showing the "give-away" advertising of South West Gas Company.

Mr. Young passed around a letter written over the signature of John L. Holleran, financial vice president of S.W. Gas, in which they stated that they had, following the conference with PSC and the oil industry, re-evaluated their program and free gas lights would no longer be offered. What happened? They kept right on

with their usual "give-away" advertising and announced, or indicated they would spend in a 12-month period \$1,200,000 to expand their business in Western and Northern Nevada.

This money has to come from somewhere. Past, present, and future customers of South West must pay the cost for buying future customers. Once you change from oil to gas, it is very expensive to change back and this customer no longer has to be courted.

Dec. 29, 1964, a hearing was held with the PSC. The Holleran letter was read into the record. Later it developed S. W. was continuing their advertising of free gifts. They indicated then that they were spending about \$100,000 a month on this advertising program. The impact on the small business man in the oil business has been chaotic.

Mr. Young stated that S.W. denies that PSC has authority to do anything about this situation. Perhaps they do not have the staff to take adequate action.

One oil man in Reno lost 40 out of his 43 customers because of this advertising. One oil dealer was contacted 7 times himself by S.W. in an attempt to get him to change from oil to gas.

Why not let the superior product they claim they have compete on the merits of its performance? Many other industries, such as carriers, have to do this. S.W. has a tremendous advantage because no other gas company will be allowed to come in. What assurance is there that they will not ask for an increase in rates? Right now it is a question of brute strength and if it continues on this way there can be only one result. Why give them the advantage of competing on an unfair basis? They have a built-in advantage. If it turns out that gas is superior and can win customers by merit, then there is no quarrel.

Mr. Young concluded by sincerely urging that some action be taken to curb an action which threatens so many oil dealers and will have to be paid for by S.W. investors.

George Basta, manager and part owner of a fuel oil company in Reno said that if this policy is allowed to continue it will eliminate 80% of the people in the fuel oil business. He added that if Sierra Pacific keep on with its similar program it will have the same effect. He asked the Committee to please give this some thought in their deliberations.

Al Catron, manager of the Keystone Fuel business which has been in business for 60 years, spoke next. He said that S.W. tries to bring out that they are doing the public a favor by making gas available. When you analyze it, it is about 15 to 20% higher in residences and light industry. This is based on the present rates. When they get a sufficient piece of the market, they will ask for higher rates and the public will be hurt materially. The oil business asks only that they be given a fair chance in competing with natural gas.

John Baker, owner of Baker Electric in Carson City, spoke next for the bill. He said that he doesn't sell any fuel but that his firm has felt the impact of the S.W. program to the end that they have nearly been put out of business. He said his firm used to order water heaters by the carload and now they order them one at a time because they are not a big enough firm to give them away for nothing.

Mr. Guild said that the gas company is up against rate setting but the oil distributors are not up against anything except competition. The ultimate most important person is the customer.

A few years ago there was opposition to some of the gaming operators giving away gifts to attract business. This was also brought to the legislature by some of the smaller gaming operators against the larger outfits. S.W. could suggest that you do away with oil but we don't do that at all. We just suggest that we be allowed to continue to market gas.

Mr. Guild called the committee's attention to the fact that Sierra Pacific is not a franchise holder of South West Gas, just a customer.

Mr. Knisley: We are all interested in seeing that all segments of the fuel industry stay highly competitive. The point of the controversy seems to me to be to what extent may a regulated industry use give-aways to obtain a market and in turn charge the cost of these give-aways back to the customer? At one time we had to prevent Standard Oil from buying the entire market with give-aways in the gas business. Obviously the small competitor did not have a chance. What is the objection to the competition stopping at the meter? The objection of these gentlemen is that the competition is not stopping at the meter. I would be reluctant to take part in any legislation against competition.

Mr. Guild said that in reference to a remark made about a "captive market", there is no "captive market" as such. These gentlemen would lead you to believe that because a gas line runs down the street everybody is going to use gas. This is not true. It is not a captive market. What inducement would there be to try something new if there was not something given to get the customer to convert?

Mr. Guild explained a little further about the give-aways. He said the water heater was given and installed, the gas range was given to the customer at cost and financed at low interest and yard light was thrown in. These are to persuade the customer to try the new product.

Mr. Young said we can't tell for sure what the PSC will do but there is a straw in the wind. S.W. agreed to stop their advertising but they went full speed ahead and nothing was done about it. No cease and desist.

Mr. Young said further that you can't compare oil and gas. It is like comparing apples and oranges. The very essence of competition would be to let the energies stand on their own merit. Gas, as a regulated industry, has "fair return". Oil does not have this. We would have no objection to regular advertising. It is the give-away gimmick that we object to. He pointed out that the same freedom of choice does not exist with these two fuels as does exist in the automobile business. In changing automobiles there is no expensive conversion costs.

Mr. Young said if S.W. has \$1,200,000 to use why not go in and cut down the rate to people who are using gas.

Mr. Young added that S.W. fails to take into consideration the economic impact on the many people in Nevada who are in the oil business. He thinks the anti-trust laws would prevent the oil distributors from pooling together to effectively compete with the gas industry. Couldn't the gas industry compete with a conventional type of advertising?

Dick Nettleton of Capitol Propane Co., Carson City, said they have felt the impact of this advertising campaign for some time but it is now getting closer and closer. He said they have cut their employees from 11 to 8 and will shortly have to reduce even further because they cannot hold their own with this type of promotion.

Paul Phillips, Nevada Furnace Supply Company, Reno, Nevada, said that when a certificate was first issued to S.W. in Yerrington, Bob and he discussed how Bob could stay in business. As a result of this discussion Bob decided that by expanding sales efforts in appliances and furnaces he could still survive. But when S.W. went into the appliance business it totally destroyed this idea.

Mr. Barney Peterson, Carson Ready Mix Fuel, added testimony in the same vein. Also, Jack Lyons. Earl McClanahan of Reno added his views that it was high time we stopped this type of competition.

Don Clare, Desert Sheet Metal, Carson City, said they had felt the effects of S.W.'s program.

Mr. Young reiterated that the legislature was their only hope.

Mr. Close: Are the power companies involved in give-away programs?

Mr. Young: The only one I know of is Sierra Pacific. They are renting for \$1.95 a month an installation that would ordinarily cost \$250 to \$300.

Mr. Close: What is the status of the PSC relating to your complaints? Have they turned you down? Are you having continued hearings?

Mr. Young: We have heard nothing of any action whatsoever.

Clark Guild, Jr., from Reno, an attorney, spoke against the bill. He said that he wanted to clarify two points: The vigorous opposition that S.W. has to the PSC jurisdiction arose from the failure of Young and these people to comply with regulations. They objected to the methods used to get their matter before the PSC. Secondly, the Oil Heat Institute, a non-regulated institute, should not be asking for regulation of another, similar group. This is one element of the business community opposing another element of the business community, and all directed at one company. He said it is unfortunate that the investors of S.W. have to defend themselves before this body.

Mr. Guild said that the only way these people got gas was because S.W. got a firm commitment and contract from Sierra Pacific. The necessity of living up to S.W.'s commitment with El Paso makes it necessary to use any methods of marketing that are sound. It is necessary to sell as much gas as possible in order to maintain commitment with El Paso and the investors in S.W. He added that this bill is unfair to S.W. because they are in a competitive, non-regulated business.

Mr. Guild said that if the legislative body says you can't give something away to entice business you are going against what has been done and has been done for years in America. He said it is now within S.W.'s jurisdiction to decide or bring about a decision by the PSC.

Mr. Guild said he wanted to make two comments: He was sure that people are glad that "gas" is in here and; they are not seeking sympathy, all they want is to be left alone.

Mr. Jacobsen: How many instances do you know of lately where the PSC has reduced the rate on a public utility?

Mr. Guild: Bell Telephone reduced the rates on certain types of classified calls. That is the only one I know of.

Mr. Olsen: Did you say that PSC has no law to govern this situation?

Mr. Young: They said they do not have authority to consider this type of marketing practice.

Mr. Olsen: I am sure this condition must exist in other states. What is the attitude of the PSC in other states?

Mr. Young: Some have gone to the legislature. In one state such promotion was held to be undesirable. However, it was upheld in other states.

Mr. Guild: There is similar legislation in Oregon this year. Our type of advertising was upheld in the state of New York.

Mr. Olsen: Does your corporation have subsidiary companies that handle appliances and financing?

Mr. Guild: The Utilities Financing but it has nothing to do with this program.

Mr. Olsen: Do they give secondary money if they use gas?

Mr. Guild: No instances to my knowledge where they have given secondary money.

Mr. Jacobsen: Does South West offer these enticements all over the state?

Mr. Guild: Only in the eight northern counties, as you very well know.

AB 404: Civil Rights Bill

Mr. Close said he feels some changes should be made in the bill. For instance, the court should be determined by the type of action. This has to do with line 40 on page 2.

Mr. Jacobsen said he is concerned with the \$250 in the criminal section. This begins line 22, page 2. He is afraid someone might decide that here is a good easy way to get \$250.

Mr. Close suggested the Committee get all comments out and then vote on all, rather than vote on each part is the bill is gone through.

Mr. Olsen said that the Governor is not opposed to the bill as presently constituted. Mr. Olsen added that he personally is not opposed either, but

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there may be some things that could be done to better it.

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Mr. Kean: What in this bill is in excess of the federal law?

Mr. Close: Sections 4, 5, 6, 7, 8, and 9 probably would not be included in the federal bill. This is something peculiar to Nevada.

Mr. Knisley asked a point of information page 2 lines 22 through 25. He says a man goes to be tried on a civil damage. Is he also going to get money?

Mr. Jacobsen: Who is stuck for the court costs?

Mr. Close: In a criminal prosecution there are no court costs. The State is the aggrieved party and penalties go to the state. Here the individual is the aggrieved party. Therefore the penalty goes to him.

Mr. Close called attention to the definition of the word "person" on page 3, line 39. Right here he proposes to add "State of Nevada and its political subdivisions" and the following categories of organizations: trusts, trustees, bankruptcies, trusts, or receivers, partnerships, etc.

Mr. Olsen: What about churches?

Mr. Close: Churches are specifically excluded in the bill.

Mr. Close called attention to section 8 page 3. He suggested some change is needed here. Might strike out "the court may receive new evidence".

Mr. Olsen said that where you have a commission they are not always aware of what is good testimony and let in hear-say and exclude factual testimony.

Mr. Close: True, but they have assigned to them an attorney general deputy to work with them.

Mr. Knisley asked a question about striking "receive new evidence or" and Mr. Close explained that what this means is that both sides must present their full cases to the commission. They cannot bolster their case later.

Mr. Knisley: In California you can take your appeal from your county to the district court but you cannot present any evidence not presented at the county court.

Mr. Kean asked that an informal poll be taken to see if the majority of the committee agreed with him that we should not exceed the federal law, in order to speed up consideration of the bill. A poll was taken and Jacobsen, Rosaschi, and Swobe were in agreement with Mr. Kean. This left five members in favor of 404, with amendments.

Mr. Olsen: I Can't see where we are doing anything if we don't get more than the federal act. Now comes an area of compromise. How much more?

Mr. Delaney said he did not want just a federal bill. Should have something

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to take care of our state.

Mr. Knisley said he would prefer coming out with a bill which would not be identical with the federal act. He would prefer to see if we can do something to 404 to make it reasonable and acceptable to all the members of the committee. 113

Mrs. Parsons said she would not mind a few exceptions from the federal law.

Mr. Swobe said that starting close to the federal law would be the best way.

Mr. Knisley said he would like to hear the rest of Mr. Close's suggestions and see where we might be arriving. He said he didn't particularly like paragraph 2 of section 5. If we leave in the \$250 lets have the money go to the state. The judge can think of enough things to do to an individual without putting any new ideas in his mind.

Mr. Jacobsen: I would buy that.

The rest of the committee agreed.

Mr. Close said that he knows of no case where there is a criminal penalty and sum of money to the aggrieved party.

The Committee seemed to be in agreement that section 5 would be all right if the \$250 were taken out.

Mr. Knisley said it would be more acceptable if make the \$250 go to the court.

Mr. Jacobsen: I am opposed to the fine. Period.

Mr. Close: Any other objections to section 5? None given.

Mr. Kean: I understand that if we pass a law as strong as the federal, jurisdiction will pass to the state. Are we weakening the act with the changes in section 1 & 2?

Mr. Close: No. It broadens it if anything.

Mr. Close: Any objection to section 2? None given

Mr. Close: Section 3 excludes private clubs. Any objection to section 3? None given.

Mr. Close: Section 6 is basically the same as section 5. It concerns action that a person can bring in district court rather than having the D.A. do it. He felt that this should be any court that a person could substantiate his claim in.

Mr. Swobe said he objected to the \$250 civil damages in this section also,

Mr. Close said that section 5 has criminal penalty. Section 6 does not.

Mr. Close explained that section 7 differs from the federal law. It provides that if there is a criminal prosecution person cannot be prosecuted twice. He asked if there were any objections to section 7. None given.

Section 8: Mr. Knisley said he would like to strike "receive new evidence or".

Mr. Kean asked if there is a time limit in which the aggrieved can file the complaint. The federal law specifies that the man bring his complaint within 90 days and the matter be resolved within 120 days. Mr. Kean suggested a time limit be added to 404 to bring action.

Mr. Close asked if there were any other objections to section 8. None given.

Section 10 starts the employment section of the bill. Line 21 has been changed from 25 employees to 5.

Mr. Jacobsen: I would like to see that increased to 10.

Mr. Kean: 25 in the federal is too many but 5 is too few. I would like to see that increased.

Mr. Knisley: I have no objection to 5. I object to 25.

Mr. Close: Will put down 10.

Mr. Knisley: Does the bill refer anywhere to this apprenticeship program?

Mr. Close: That is one thing I absolutely forgot about.

Mr. Close reminded the Committee that is a section where we should add trusts, trustees, state of Nevada, etc. Then he said that sections from here to section 21 are the same as the federal law.

Mr. Close: Any objection to section 21? None given.

Mr. Knisley: Are you going to make a special section for the 90 day time limit?

Mr. Close said it should be in a special section along toward the front. He pointed out that the same language will be stricken out of paragraph 2 in this section "the court may receive new evidence or".

Section 22: Mr. Close explained that this is the present Civil Law in the state as it now exists, except lines 31-39. He asked if there were any objections to lines 31-39. None given.

Mr. Close said that there should be a saving clause so that if one part is cut out the whole thing will not go down the drain.

Mr. Close: When we had a hearing on this several people testified that the apprenticeship program in Nevada is going along fairly well and they should be allowed to solve their own problems. They felt that they could solve problems within 30 days after they were brought to their attention.

Mr. Kean said he feels strongly about the apprenticeship program. He doesn't believe there is more than one negro who has been through the apprenticeship program in ten years, in the old standardized programs such as the building

industry.

Mr. Knisley said that we are accustomed to treating everyone very nearly the same in Nevada except in the field of apprenticeship. He added that the federal government is working in this area and he doesn't know just how far we can legislate.

Mr. Close called attention to page 4, lines 23-28. He said this is pretty much the federal law. Also, this is where the labor commissions want to have the right to solve their own problems.

Mr. Knisley: I don't think they have any more right to solve their own problems than in any other field.

Mr. Close: This is one more change that can be talked about.

Mr. Swobe: This is not sufficient to take care of the apprenticeship program.

Mr. Close: No.

Mr. Kean: Time limits should be put in all sections.

Mr. Close: We will review all areas of disagreement with the act as it now is.

Mr. Swobe: Do we want a commission or don't we? I don't think it is required.

Mr. Knisley: Let's get this act out tomorrow.

It was found that neither Mr. Close nor Mr. Swobe would be present on Monday so it was decided to work on the act again on Tuesday.

Meeting adjourned at 6:05 P.M.