

Assembly

MINUTES OF MEETING - COMMITTEE ON JUDICIARY - 54th Session, February 13, 1967

Meeting was called to order at 1:45 P.M.

Present: Wooster, Lowman, Hilbrecht, Swackhamer, White, Torvinen, Dungan, Kean
Schouweiler

Mr. Wooster said that tomorrow, Feb. 14, he would like to move on the sub-committee bills.

Mr. Wooster then gave very brief summaries of what is contained in each of a number of bills that have been given to him with a request for a committee introduction.

1. Requires claimants of estates to furnish mailing addresses.

There were no objections to a committee introduction.

2. Provides that a non-resident bank or association may act as a co-fiduciary in association with a local bank or association.

There were no objections to a committee introduction.

3. Hilbrecht's bill. Allows certain tort actions between husband and wife.

There were no objections to a committee introduction.

4. Provides for admission of evidence of prior accident to show evidence of dangerous conditions.

There were no objections to a committee introduction.

5. Bases allowances for attorneys fees in civil actions upon the amount recovered.

There were no objections to a committee introduction.

6. Creates a presumption of negligence on driver of motor vehicle not involving another car.

There were no objections to a committee introduction.

7. Permits discovery, etc., of personal injury in litigation.

8. Prohibits intentional concealment of records for a certain number of years.

There were no objections to a committee introduction.

SB 28: Lame duck governor appointments prohibited.

Miss Dungan: Are you going to end his term on the day of election? He should know more about appointments than the man who just came in. I see no reason for the bill.

Mr. Wooster said this would not limit the appointments, just the length of term they can serve.

Miss Dungan said that if something like this is necessary it can be done at the next session. No damage can be done in the meantime.

Miss Dungan moved the bill be postponed indefinitely

Mr. Hilbrecht seconded

On the vote the motion carried with 6 ayes, Wooster, Swackhamer, White, Dungan and Schouweiler

Mr. Lowman, Mr. Kean and Mr. Torvinen voted no

February 13, 1967

--2--

Assembly Committee on JudiciaryAB 98 and AB 148: The wire tapping laws.

Mr. Wooster said he has not yet received the written comments from Mr. O'Brien the Clark County prosecutor.

WILLIAM RAGGIO: Any measure which deals with the general subject of wire tapping is, by reason of the fact that wide attention has been given to the subject, a delicate situation. So that I am not misunderstood, everyone agrees that indiscriminate use of wire tapping is not to be desired. We are all concerned with the so-called right of privacy that a citizen is entitled to enjoy.

Legislation adopted several years ago, in 1957, is the Nevada law as it presently exists and is a standard for the rest of the country to follow. Our present law deals with both the subject of wire tapping and eavesdropping. We must keep three things in mind in discussing this subject:

1. Emotion seems to carry everyone away and they lose sight of what they are talking about, which is the tapping of a conversation of two people by means of mechanical devices
2. Eavesdropping is overhearing by some mechanical means a private conversation.
3. Talking about monitoring or recording a conversation in which the person doing the monitoring is himself engaged in the conversation. This can be a personal conversation or a telephone conversation.

To most people any or all of these things indicate wire tapping and this is not true. We are all aware that the Federal Congress is considering some proposal in this respect which amounts to an outright ban on wire tapping, except in the national security field.

Nevada law limits wire tapping, etc. to certain specified crimes where wire tapping can be useful in the solving of these crimes. In this state, 200.660, the only crimes where this comes into play would be murder, kidnapping, extortion, bribery, narcotics, or crimes endangering national defense. These are types of crimes where it would be extremely difficult to obtain any evidence of either the crime having been committed or a situation which might enable a prevention of such offense. These crimes are, by their very nature, done in secret. The initial approach is made in private and there would be no other way to prove up a subsequent meaning unless resort was made to private conversation monitoring or wire tapping.

The new amendment would, as I read it, in addition to the eavesdropping situation, would also prevent one of the parties from such a conversation recording it or from arranging to have it recorded. I had a recent case where I proved up a case of extortion by being a party to a conversation and getting the evidence.

There may be occasions where it is impractical or impossible to get a court order. I feel very strongly that we should not impose this additional restriction that might prevent or prove an offense. It would be wise to await the enactment of Federal legislation in this area.

There should be no indiscriminate use of wire tapping or eavesdropping. To allow emotions to overcome us and ban all wire tapping and eavesdropping but doing nothing about the sale of all these mechanical devices would only handicap law enforcement

while criminals would go right on using them. I am opposed to any extension of our present law or any restrictions on it.

Page 3 requires too much detail, much more than is presently required. The present law is quite comprehensive. The idea of an affidavit instead of an application is good. It would imply that it would be under oath. The committee should give great thought before passing legislation that would prevent a person from recording his own conversation. This could very well interfere with innocuous devices in prisons and elsewhere. I suggest a great deal of consideration be given to this.

WOOSTER: What about AB 148?

RAGGIO: I have no comments to make on that.

KEAN: This was not the result of a national emergency. Say one person got an innocent party on the other end of the line and trapped him into saying things. This could be used in divorce cases. You could get somebody into real trouble. It might be well to ask Mr. Daykin to plug this hole.

RAGGIO: I don't recognize that as a wire tapping situation. Apparently the husband in this case did, in fact, say these things. I am not going to condone perjury.

What if the call is to bribe you as a public official? What if it is a follow-up call to prove a bribery attempt?

DUNGAN: On page 2, new addition line 25, are you asking for "other" to be inserted there?

RAGGIO: "b" and "c" should be the same as "a".

DUNGAN: Does insertion of the word "other" allow for the taking of a conversation in which you yourself are a party?

RAGGIO: This doesn't apply to a telephone conversation. 200.650 refers to a private conversation.

KEAN: You have to read into this the attempt to try to prevent blackmail.

RAGGIO: This is kind, but the harm that would come out of it is much greater than the good that would come from it.

HILLBRECHT: You indicate general approval of present law. You would not, then, object to the enforcement of these laws?

RAGGIO: Absolutely not. I have no objection to 148.

DUNGAN: You used the term "any innocuous monitoring devices". What did you mean? *

RAGGIO: Jail cells, hospitals, businesses, etc. I think with this bill you are making it illegal for a guy with a hearing aid to turn it up and listen to another conversation

FONDI: I agree with Raggio. We have no objection to 148. I also agree with him, almost in whole, on the present law and the present bill. I should think very seriously before changing the law on this. You have already passed AB 92 which provides penalties

February 13, 1967

Assembly Committee on Judiciary

for threatening phone calls, etc. From a practical point of view, to prosecute under AB 92 with AB 98 passed would be very difficult. I agree with Mr. Raggio that this is an over-reaction. I would question the advisability of passing law which anyone of us in this room might violate at any time. For instance, a businessman might wish to record orders that are placed with him by phone.

If you pass the bill as is, it would be most difficult to determine what is reasonable notice to the public. Would you publish it in the newspapers, or what?

Section 4. It would appear that spelling out some of the information contained in the affidavit might be impossible. You don't always know who you are talking to. How can you fill out the affidavit?

RAGGIO: I would like to add something on the question of the nuisance phone calls, foul mouthed language, breathing heavy, etc. This is a real big problem and getting worse. I agree with Fondi. This is the only way you could ever prove up on this type of situation.

ROBERT GALLI: President of Nevada Peace Officers Association. I agree with the D.A. Association and with Mr. Raggio. "Bugging" is not prevalently done. First, the equipment is very expensive and most of us cannot afford it. In a narcotics investigation, in order to keep track of a man and preserve his life, we must place some sort of device upon him. In the case of anonymous phone calls, there is no other way to gather evidence. We would have a law which we could not enforce.

We must use these devices in jails to reduce the manpower and salaries which are saved thereby to the general public. We think the present statute is quite adequate. To actually enforce this law that is being presented, there is no way other than using techniques which you would prohibit us from using. We just could not get affidavits. It would be impossible.

The greatest concern both emotional and otherwise from "bugging" is not from law enforcement as much as from industrial and private detectives.

You might strengthen 148 by giving authority to the companies to confiscate any devices that they may find upon their lines and giving them instructions to turn these over to law enforcement agencies to act on.

KEAN: With reference to monitoring jail cells: Would you have any objections to letting the inmates know that they are being "bugged"?

GALLI: No. We are presently recording interviews with those arrested by TV and recorders to make sure that the man's civil rights are being observed. In order to protect us, this individual recording should be allowed.

DUNGAN: If there is listening device or recording made in the belief that a crime has been committed and in the process another different crime is committed, what then?

RAGGIO: This would be the same as a search warrant. If it is valid and while using it you discover other crimes than the one you are looking for it is legal to go ahead and use it on the other crime.

ROBERT MCADAM: Bell Telephone Company. I have a number of suggested amendments. We have many requests each year from people who think their line is tapped. We always investigate these, with no cost to the individual. If we find a tap, we do

Assembly Committee on Judiciary

66

touch it. Photographs are taken, and the matter is then turned over to the proper law enforcement in the area.

No physical wire tap has been discovered by anybody in our company in six years, with one exception. This was a university student tap to get free use of a telephone. What we have found is electronic eavesdropping devices. You need only to put one near the wire and it will pick up by induction. We have picked up a number of these and informed the proper law enforcement agencies.

This bill, we fear, would impede our operation and cause us internal problems. We do observe our business office by means of mechanical devices and we use these in correcting telephone troubles. Within a few weeks we will probably have a national bill in this area. We understand it may be quite restrictive and put us under a severe handicap. We do record every request we have. Any wire tap established by our company, and there have been very few of them, have been under a control order.

HILBRECHT: Has your company had any occasion to day to be concerned with 148?

MCADAM: No. I would like to suggest two amendments to 98. One would distinguish between private phone conversations and private personal conversations. The other would make these things not applicable to telephone companies when they are doing construction or repair work.

Mr. Wooster asked to have copies of these proposed amendments furnished to all members of the committee. Mr. Raggio said he had some he would like to submit in writing also.

SWACKHAMER: I have gathered that law enforcement people like the present law better than the proposed bill.

RAGGIO: The scope of the present law is most adequate and should not be curtailed or done away with. Not many amendments are needed to our present law.

LOWMAN: May I suggest to Mr. Raggio that he give us his suggestions in two different forms: 1. If we do adopt this bill, what changes would you suggest? 2. What amendments would you suggest for the present law if we do not adopt this new bill?

Mr. Raggio said he would be glad to furnish this information.

AB 129: Extends protection afforded owners and encumbrancers of vehicles left stored or parked.

Mr. Kean said that the original intent of the bill is not covered by the bill and he had this morning introduced an amendment which would take care of what they really wanted to do with the bill.

John Pazak, from the Reno Police Department, was present to be heard on this bill and he asked Mr. Wooster if he would read the amendment, which he did.

PAZAK: Here is where we are having trouble. Last week we had two automobiles reported that had been stored over 60 days. Both were stolen. We are trying to recover these automobiles and get them back to their owners. These are supposed to be paid for on a 30-day period, but there is no teeth in the law and nobody pays any attention to it. California has a law saying 5 days. They don't have to be reported stolen. As a

matter of information, when we receive a call on an abandoned vehicle, if it is from New York, we contact New York to find out who last owned it and if it has been reported stolen. Then we ask them to contact the last owner. We are taking on responsibility which is not in the book. I can't see why cars have to sit there so many days accumulating storage and costing insurance people thousands of dollars, and also depriving people of the use of their automobiles.

ARNIE HERZ: As chief of the division of Motor Vehicles, I notice that it is a part of our responsibility to notify the various states of these vehicles. If we do this, we will have to have additional personnel. We are required to do this under the present law but we are now getting so many of them that if this is to continue we will have to have additional personnel.

PAZAK: There are approximately 1100 of these automobiles in Reno each month.

KEAN: The houses that finance these cars are subject to unscrupulous treatment by backyard garages and others who will keep cars left with them until they have acquired a \$300 storage bill and of course this bill is subject to a first lien on the automobile. It is not stolen automobiles as much as the garage rackets that we are concerned with.

WOOSTER: The aim is for us to consider reducing the period before notification is required.

PAZAK: Yes, and clarifying who is to take the responsibility of trying to track down the owner of the car.

GWYNN: Automobile Dealers. I want to emphasize what Mr. Herz has said. If you will clear up that language by shortening the time or clarifying the language, it will double or triple the number of reports reaching the bureau of motor vehicles and this will greatly aggravate their problem. In my judgment, you are getting on rather shaky ground to use highway funds for this sort of thing. I have no quarrel with a system that will clear up these large storage bills which come off the top for the financial companies. I do take a dim view of having to notify someone after only 5 days. There should be some leeway in there and the notification period should have some relation to the amount of time it takes for the repairs.

PAZAK: The 1100 automobiles are cars left at private parking lots, garages, etc. Surely we don't need 30 days.

SWACKHAMER: How extensive is this notification that you people have to give?

PAZAK: Our process is strictly to law enforcement agencies, by teletype.

JOHN CIARDELLA: The cheapest way is by mail but that takes too long.

SWACKHAMER: You have form letters. How long would it take a clerk to fill this out and send it?

CIARDELLA: We could not do it even now if it weren't for the help of the Police Department.

LOWMAN: In other words, we have two agencies responsible for the same job.

HERZ: We furnish all the information asked for about Nevada cars.

GWYNN: The mail thing just doesn't function quickly enough to protect the financial institutions.

Assembly Committee on Judiciary

AB 162: Clarifies police power of field agents and inspectors of State Department of Agriculture.

Mr. Swackhamer said the bill has been studied and approved by the Nevada Cattlemen's Association.

Mr. Torvinen suggested that we add the words "temporarily stop" to the bill.

Mr. Kean moved Do Pass as amended

Mr. Torvinen seconded

Motion passed unanimously

AB 163: Authorizes Executive Director of State Department of Agriculture to issue and District Court to enforce subpoenas.

Mr. Hilbrecht suggested that on page 2, line 13, the word "may" be substituted for the word "shall".

Mr. Lowman moved Do Pass as amended

Mr. Hilbrecht seconded

Motion passed unanimously

AB 175: Exempts certain articles from the liens of innkeepers and apartment keepers, and extends right of lien.

Mr. Wooster said the way he remembered it the committee is hung up on the "unfurnished apartment" bit.

Mr. Swackhamer said why should we not let the landlord proceed and get his dough?

Mr. Hilbrecht said that we have a very liberal attachment law here. We don't rely so much on the landlords lien. We simply file action for the rent and attach. By attaching you can actually send the sheriff in to get the stuff. He said he thinks we have extended it enough when we go to furnished apartments. This is far afield from the original innkeepers bill. If the renter has already moved you can't do anything anyway. He said he is against giving this guy such an extraordinary remedy. Why doesn't he sue like you or I would?

Mr. Hilbrecht moved to amend by eliminating "unfurnished" and Do Pass

Mr. Lowman seconded

Motion passed unanimously

AB 183: Provides for regular sessions of Supreme Court.

Mr. Swackhamer moved Do Pass

Mr. Kean seconded

Motion passed unanimously

AB 7: Prohibits discrimination in employment on the basis of sex.

Mr. Wooster passed out copies of Mr. McDonald's report on whether this bill would create conflict with the matters Lou Paley had brought up.

Mr. Lowman moved Do Pass

Mr. Schouweiler seconded

Motion passed unanimously

February 13, 1967

Assembly Committee on Judiciary

-8-

SB 40: Deletes reference to group insurance premium fund for state employees.

DAYKIN: This is a bill which is bringing the statutes up to date. It provides that the state's share of the insurance premiums should be budgeted as other state expenses are budgeted.

Mr. Swackhamer moved Do Pass
Mr. Kean seconded
Motion passed unanimously

SB 101: Amends filing fees and allows pre-filing under Uniform Commercial Code.

Mr. Daykin explained that this is an outgrowth of what happened to AB 32 in the Senate. AB 32 is a group of amendments relating to the Uniform Commercial Code. In the Senate they began arguing about it and, in order not to hold up the filing provisions, they introduced SB 101 which contains certain key sections of AB 32 so these could go into effect while they were arguing about the other sections.

Mr. Kean asked Mr. Daykin if he is familiar with the filing fee (uniform) that Russ has been working on. Mr. Kean wanted to know if SB 101 conflicted in any way with that bill. Mr. Daykin said it did not.

Mr. Swackhamer asked what the Senate is arguing about in AB 32. Mr. Daykin said it was nothing in this bill. It was over some transaction not covered by the Code. They are now drafting amendments to cover any transactions not covered by the Commercial Code. Mr. Daykin said he thought AB 32 would get out of the Senate about the time SB gets out of the Assembly but he still thought it would be a good idea to get SB 101 out and to the governor. He said that, without any authority under the law, the Secretary of State is now accepting these applications for pre-filing.

Mr. Swackhamer moved Do Pass
Mr. Torvinen seconded
Motion passed unanimously

Mr. Kean asked Mr. Daykin to give a little background on the drafting of the wire tapping bill, AB 98. Mr. Daykin said it was taken from a legislative draft put out by the Harvard Legislative Drafting Service and was designed to cover those areas which are open to states to legislate in, as opposed to those areas preempted by the Federal Government. It is meant to be as comprehensive a statute as can be enacted under state law without running afoul of the various government restrictions.

Mr. Wooster said that any discussion of the act would be more meaningful after we have received the written comments from Mr. Raggio and McAdam.

Mr. Daykin said the words from "or knowledge" were thrown in from the standpoint that if both parties know that it is being taped they can govern their conversation accordingly.

Mr. Wooster said he could foresee a lot of problems with this bill. He then announced that tomorrow the committee will consider:

AB 94
SB 21
AB 173

February 13, 1967 70

Assembly Committee on Judiciary

AB 187
SB 48

Mr. Wooster said he had consulted with Senator Monroe and it had been decided to call in the prison warden to be heard on this idea of indeterminate sentencing

Mr. Lowman asked if the group would get a chance to visit the prison. Mr. Wooster said he, personally, would like to go along and that he has made arrangements with the Committee on Institutions to go along with them. He has asked Mr. White to let him know when they are going.

Mr. Kean said he had talked with Judges Zenoff and Collins and they had made the suggestion that a resolution be passed appointing an Interim Committee to study the formation of Juvenile Courts. They suggested one of these courts in Reno and one in Las Vegas. What about the rest of the state?

Mr. Torvinen said there is a bill asking for a study of the whole court structure. Where is it? Mr. Daykin said it is now being drafted.

Meeting was adjourned at 4:30 P.M.