

MINUTES OF MEETING - ASSEMBLY COMMITTEE ON JUDICIARY, 54th Session, March 20, 1967

The Meeting was called to order by Chairman Clinton E. Wooster at 3:15 P.M.

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

Absent: Swackhamer (excused), Kean

AB 438: Provides for issuance of certificates of public convenience and necessity to community antenna television companies.

Mr. Wooster explained that, although this bill was given a Do Pass by the Committee on last Friday, there are two gentlemen here to give additional information that they think is important.

PAUL A. RICHARDS: Attorney representing H & B Communications Company in Reno, T.V. Pix, Inc., Wells T.V. and a T.V. Company in Las Vegas.

We have a suit presently before the Supreme Court of the United States. It has been in litigation for over a year. We filed an action to prevent the Public Service Commission from taking any action over the CATV. We have appealed this action.

AB 438 presents some problems to us, not only to the State of Nevada but to the TV industry as a whole. It has to be determined whether we have erred, whether the doctrine of Federal intervention is applicable, whether the application of this act would involve Federal law, whether Nevada can regulate the TV industry as a public utility.

If this bill is passed, we have two problems that affect not only the industry, but also the state. We would have to request an amendment of our complaint in the Supreme Court to include this statute, or we would have to request and move the Supreme Court to send our appeal back to the District Court so it could be heard again under an amended complaint. (Mr. Richards then read a letter from the Public Service Commission.)

The letter was written by Mr. Carlsen.

We have refused to recognize the jurisdiction of the Public Service Commission. The letter just read to you says they will take no further action until this matter is determined. In March, 1966, we obtained a temporary restraining order to keep them from further action until the case was resolved.

February 9, 1967, we had a hearing with the Public Service Commission. At that time the indicated they would take no further action at this time.

Problems in this area have been presented on the Federal level. There are two bills before Congress right now to classify CATV as a common carrier. This is because CATV is a customer of a microwave signal. Frankly, our companies come under your grandfather clause. We are quite pleased because we are under that clause.

The telephone company is carrying a message. Their lines come under interstate commerce. When a new TV station comes in they cannot duplicate a signal. We are being considered by the Federal Government as to how this particular business is going to be brought into the scheme of things. The copyright bill just passed would force TV people, before they could handle any program, to go back to the original copyrighter. They want to foster individual programs out of individual areas and protect the sponsor type program that we have today.

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We know we are going to have to be regulated, but by whom? Can you produce the ends you are trying to produce with this bill? There is no protection because you happen to be licensed by the Federal Government. The Federal Government defines the CATV as a facility which receives and amplifies the signals broadcast by one station and rebroadcasts them to another station. Your definition in the bill is different from this. In the bill you are including transistor units which are under Federal Communications jurisdiction.

The Federal Government has taken this under consideration. They have several ideas for handling this. We have invested a great deal in bringing this matter to a trial hearing before the Supreme Court. It will still be another six months if not longer before our case comes up. The answer that the industry wants, as well as the state, will be stated when this is heard before the Supreme Court. Then you can draft a law that will be satisfactory to all concerned.

We are going down a new road without any guidelines. This bill is premature and would put us in a position where our hearing before the Supreme Court, toward which we have worked for more than a year, might be denied under the new statute. Or, we might have to amend our appeal and have it heard before the District Court.

GEORGE PLUNKETT: District Manager of CATV which includes Elko.

I operated the system in Elko and I still do. It was put in in 1955. One of the things that brought up this legislation is complaints about poor service in that area. This did exist. The micro-wave system gave us a very poor micro-wave and we could not do anything about it. We went to the city and they wrote to the FCC insisting that something be done.

The Public Service Commission got complaints about us, and I told them by letter and in person what our problems were. We had many problems in this area because it is a new industry. We are most interested in satisfying the people, because without them we would not exist.

Mr. Richards has covered our U.S. situation very well, and we would hope that you will consider this before passing on this type of legislation, and giving the industry a chance to clean up and give them an opportunity to govern our activities, because they are going to anyway. This is untimely legislation.

MR. HILBRECHT: Are your rates regulated by the City of Elko?

MR. PLUNKETT: Our rates were accepted by them and there has never been any change.

MR. HILBRECHT: I have had several phone calls on this, and it seems that the testimony we heard from the Public Service Commission is not exactly right. These TV companies are not submitting to the Public Service Commission.

Mr. Hilbrecht moved to reconsider AB 438  
Mr. White seconded

MISS DUNGAN: Why not put it on the Chief Clerk's desk?

MR. LOWMAN: How are we going to get other people in here to be heard?

MR. HILBRECHT: I will call the people who contacted me. Maybe we have not got all the facts

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MR. LOWMAN: It appears to me we could spend all summer listening to people who want to be heard. It seems to me they would have a remedy in the Senate. Why shouldn't they go in there and let us get on with our work?

MISS DUNGAN: Will this bill jeopardize their case with the Supreme Court?

MR. TORVINEN: I can't imagine the Supreme Court deciding this issue we are legislating.

MR. LOWMAN: I read that the state has to take definitive action. That is what this bill is supposed to spell out for them.

MR. WOOSTER: I have no personal objection to reconsidering this bill, but I would like to abide by the committee rules in doing so.

The motion to reconsider the bill failed, with 4 members voting Aye and 3 members voting No.

SB 258: Provides that bonds of public officers run only for benefit of State or political subdivision damaged by acts of such officers.

MR. WOOSTER: The committee instructed me to have this bill amended by adding "fidelity" bonds, but when I went to Russ about this he told me there were impossible difficulties in amending this bill. I have asked him to come and explain this matter to you.

MR. MCDONALD: This bill was prepared for the Senate Banking Committee at the request of George Franklin, District Attorney for Clark County. (Mr. McDonald then read the original bill drafter's request). It alludes to an action that was taken against the sheriff in Clark County.

We found only one section that had to do with a county code. The request was to change from "all persons" to "the state or the political subdivision as the case may be". To add the word "fidelity" would cause property owners bond to go out the window. The more I played with it, the more I could not see where an amendment was necessary.

MR. TORVINEN: Aren't there some bonds that run to the benefit of the litigant?

MR. MCDONALD: His official bond which qualifies him for office.

MR. TORVINEN: We are not taking away a bond that is specifically designed for the protection of the public, are we?

MR. HILBRECHT: The sheriff has a \$50,000 bond and it is inconceivable that he would handle more than this would cover.

MR. MCDONALD: Let's go back to the history of this. In Nye County a few years ago there was a roadblock. Some farmer with his small child came driving down the road and plowed right through the block. The sheriff shoots and nails the child. There was a suit. In this case, there were no flares to mark the roadblock and the farmer went on through.

MISS DUNGAN: There would be no recourse for the father in this case would there, if we passed this bill?

MR. MCDONALD: Many counties do buy protection for the public. You could go through and see what each bond is there for, to protect the city or county or people.

MR. TORVINEN: What do you do when property is released and it should not have been released?

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MR. MCDONALD: In the case of the suit filed against Sheriff Lamb, the insurance companies will not write any more insurance.

We did the best we could with this bill, but we could not check against every little detail

MISS DUNGAN: There is a case against the sheriff from someone who had an accounting office. There were attachments and the sheriff locked the office. The people could not get in to get their records. The records belonged to the accountant. They went in without an order and got the records. Everything in the office disappeared. There is a suit now. The sheriff should not be protected in a case like this.

Mr. HILBRECHT: I am opposed to changing it. If you take this bond away, who do you go to for compensation?

Miss Dungan moved to reconsider action taken on SB 258  
Mr. Torvinen seconded

MR. WOOSTER: I am still holding the bill with instruction to amend it.

The motion to reconsider SB 258 passed unanimously

Mr. Hilbrecht moved to postpone indefinitely SB 258  
Miss Dungan seconded

MR. LOWMAN: The question is who gets the money in cases of defalcation.

MR. MCDONALD: The bond is where the money is to make you whole.

MR. LOWMAN: Is there no way to do what we have been asked to do by Sheriff Lamb?

MR. TORVINEN: There are two kinds of public officers, one like the State Treasurer who handles state funds, and another kind like the sheriff who attaches your property and lets it get destroyed or lost. This bill does not differentiate between these two kinds of needs.

MR. LOWMAN: Would you achieve this with two different bills?

MISS DUNGAN: We don't need it. The wording takes care of this.

MR. MCDONALD: Performance bonds: Some bonds specifically conditioned to not stealing the money. It all depends on what you say when you write the bond what the conditions are. You can't limit it because then you have a question of the insufficiency of the bond. This is traditionally to exact this type of bond from an officer.

MR. HILBRECHT: Even with somebody like an auditor who has few contacts with the public, there might be an occasion for an action. The bond should run both to the public and to the state.

MR. MCDONALD: What about the intoxicated assessor who injures you while in the performance of his duties? Many times you don't look at the bond because many times counties provide insurance for these contingencies.

Mr. Hilbrecht's motion to indefinitely postpone SB 258 passed unanimously.

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AB 222: Creates presumption of negligence of operator of motor vehicle who dies in accident not involving another vehicle.

MR. WOOSTER: This bill is now on the Chief Clerk's desk. The bill has been substantially amended. We have two gentlemen here who would like to be heard on the bill.

GEORGE VARGAS: Paid representative of American Insurance Companies.

The proposed amendment would strike out everything on the original bill and substitute a new act and a new theory. This would cut out all applications of the Dead Man's Statute to personal injury cases.

This is an old statute. It goes back as long as I can remember. Briefly, the theory and reason for the Dead Man's Statute is there are two parties to a transaction and one party dies. The one left cannot testify but any person who was there and was not directly involved can testify.

This amendment proposes to carve out all personal injuries and regulate death actions. I spoke to Mr. Swackhamer and he said he was advised this was to protect a person against something he can't protect himself for in advance. This, however, is specious and is not our main concern.

Personal injury actions fill the courts now. There are millions under litigation today so this is a big field of action. If you take these out of the Dead Man's Rule, you have cleared the way for one party to come in and give any story he wants. It will have the biggest effect of any piece of legislation, unless you repeal the Dead Man's Statute entirel

Let's say you have \$50,000 of insurance on which you are depending for the care of your wife and family if something should happen to you. You get killed. Your mouth is sealed and an uncontrolled testimony causes all this to go down the drain. There is no one to tell your side of the story. When the one party is allowed to come in with no opposition, this is a very serious thing. If a person cannot have protection by his insurance, he is wide open.

This is an extremely serious thing and I requested to be heard because of the method whereby this legislation has crept in.

MR. HILBRECHT: Wasn't the original intent of the Dead Man's Statute to apply it to contracts?

MR. VARGAS: I have not traced the history, because I have not had time. This statute was in Nevada in 1911, however.

MR. HILBRECHT: Isn't it true, under old English law, that both parties were prohibited from testifying?

MR. VARGAS: I have not gone back into that and you may be right under the old common law. But there were no automobiles then.

WILLIAM COLES: Paid representative for Pacific Mutual Insurance Alliance.

We would like to lend support to the remarks made by Mr. Vargas. I got to see the amend-

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ments to the bill only a few minutes ago. Even from the beginning it was a poor bill and now it is proposed to take all the protective terminology out of it. If the time has come when we are going to emasculate the Dead Man's Statute to this extent, we might as well disregard it altogether.

I will not belabor the situation. I am sure the committee is aware of how the insurance companies feel about it. It will increase litigation, and if the committee feels that is what our people want, then that is what the committee will do.

Put yourself in the place of the party that is going to be injured by the legislation.

MR. HILBRECHT: In most cases where there is a death, there is a lawsuit filed usually anyway. I am not sure there would be an increase in the number of law suits.

MR. COLES: There will be a great many more because they will be easier for the plaintiff to win.

MR. HILBRECHT: Don't we also have to examine the position of the poor guy who is injured and can't now do anything about it? They have to live with this. Wouldn't that be worse?

MR. COLES: I have never found it too difficult to establish prima facie evidence anyway.

MR. VARGAS: I had another situation, two fellows in one car, one killed and one injured. They both raised a suit. A party in either suit could testify for the other side, according to the rule of the judge.

MR. WOOSTER: How long has the Dead Man's Rule been used, in your knowledge?

MR. VARGAS: Ever since 1934 when I have been practicing. I am not sure for how long before that.

The personal injury suit is flourishing today. My son was killed in an auto accident and just a few days later I got a call from a man who said he had picture of the accident and would get a good California lawyer for me.

When you enact out the Dead Man's Statute, you open the doors for so many things. This type of case offers the most gains and there are many people who want to see these cases increased.

MR. HILBRECHT: You would be able to utilize living defendants in regular death actions.

MR. VARGAS: The insurance companies are not going to sue.

MR. HILBRECHT: You are as much a personal injury lawyer when you are defending.

MR. VARGAS: Yes. I will not take an action suing because I am not in agreement with my brothers in what they are doing on this.

After the two gentlemen had left, Mr. Wooster inquired if any member of the committee wanted to take any action on the bill after hearing the remarks. No one did.

AB 210: Includes deeds of trust in single action rule for foreclosure proceedings, establishes procedure for determining amount of deficiency judgment and forbids deficiency judgment for purchase money.

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Mr. Wooster went over the proposed amendments to the bill. The first one is in section 1, page 2, line 18. This gives the plaintiff a cause of action for waste.

The other amendment would be adding a new action 4 and it voids the right for acceleration of payments.

Mr. Lowman moved Do Pass with the two amendments  
Miss Dungan seconded  
Motion passed unanimously

AB 439: Deletes provisions allowing a state prisoner time off for passive good behavior.

Mr. White suggested that he would like to have Mr. Hocker come in and tell the committee his reaction to this bill.

Miss Dungan said that most of the guys sitting out there on their fannies are there because there are no jobs for them.

MR. Hilbrecht said the bill would be held to see if the committee can have Mr. Hocker in.

AB 463: Authorizes Board of Regents of University of Nevada to acquire certain land by condemnation.

Miss Dungan moved Do Pass  
Mr. Lowman seconded  
Motion passed unanimously

For lack of a quorum, the meeting was adjourned at 4:40.