

MINUTES OF MEETING - ASSEMBLY COMMITTEE ON JUDICIARY, 54th Session, March 22, 1967

Meeting was called to order by Chairman Wooster at 2:50 P.M.

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

Absent: Lowman, Hilbrecht

The meeting began with a Joint Hearing with the Committee on Public Health and Public Morals and the hearing was conducted by Arthur Espinoza, Chairman of the Public Health and Public Morals Committee.

AB 118: Clarifies condition for mandatory waiver of basic sciences examination.

DR. O'BRIEN: University of Nevada, Dean of the Graduate School, Chairman Nevada Examinations Board on Basic Sciences.

My remarks will not be for or against the issue. I will just try to explain a few things. Now, the Board has discretion as to whether or not to accept a waiver from another examination. This bill will take away our discretion. If we lost this, there would be no real reason for the board's existence.

MR. ESPINOZA: Which way have you usually acted? Have you usually required an examination or not?

DR. O'BRIEN: We have waived examination for all who took the National Board Examination since 1953.

DR. WARBURTON: Chiropractic physician, Secretary of Chiropractic Board of Examiners.

At the time this bill was introduced, we supported it, to bring into this state better qualified doctors. At that time we had no active board of examiners, for chiropractors. Since the bill has been introduced, it has caused a lot of worry with the medical profession. They claim their people were having difficulty passing the examination. For the number of our people who have taken it, we have had no real trouble.

Now, we have a National Board that is more or less active. They give a very good examination which is made up by five colleges. The examination is well conducted and is a good examination. When this came out, the Basic Science Board was very friendly. We have no complaints. Two of the subjects do come up to their specifications.

It is practically impossible for 48 State Boards to write 48 examinations that are going to agree with 48 State Boards, so we will always have opposition in that respect. This puts the whole thing up to the Basic Science Board. We might have a man come in and they will not accept him, but other states might accept his qualifications.

A little earlier this year we were told the National Board Medical Examinations did not come up to the standards of the Nevada Board. They do vary back and forth.

By deleting this word "such" in this bill it is not going to take away the power of the Basic Science Board. There are a number of doctors that are needed in Nevada but they can't pass the Basic Science Test. They have graduated from medical school, established practice, and so forth, but they can't pass the test. Medical people get past this by permitting their people to come in on a six-month's permit. We do not object, but eventually

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these people will have to leave Nevada or pass this test. By deleting this word "such" it doesn't interfere with the basic examinations. They will still give them, but when a man comes through and has taken the National Board Test with 98.6, he should be accepted.

This bill has nothing to do with bringing doctors into the state who are not qualified. We do have the privilege of reexamining them in our own subjects if we want to. But we should accept the National Board of Medical Examinations and the National Board of Chiropractic Examinations.

MR. SWACKHAMER: This bill doesn't seem to change anything, as far as I can see.

MR. ESPINOZA: We have an amendment deleting lines 8 through 10 and inserting "when proof is submitted showing that applicant has passed the examination by the National Examining Board."

MR. WOOSTER: I agree with Bill. I can't see what this is trying to accomplish.

DR. HOMER: Chiropractor and Assemblyman.

I would like to give you a little more of the history on this thing. The Basic Science Law was enacted in 1951. It was meant to protect Nevadans and provide good doctors in the healing arts. Any person who obtained or attempted to obtain a license for the practice of the healing arts without presenting to the Board a valid certificate issued by the State Board in the examination section, of course was denied a license. However, this was not applied to dentists, chiropodists, and many others. Who does it leave in that it does apply to? Merely doctors, chiropractors, and osteopaths. Dentists are closely allied and so are podiatrists, but for some peculiar reason they are exempted.

Two years ago, before the Senate Judiciary Committee, Mr. Neff admitted that they excluded everybody else but the chiropractors. We have lived with this law and we have yet to introduce legislation on it, but five times the medical profession has hacked away at it. By their own admission they have doctors practicing in Nevada without this examination. The only purpose of the bill, by their own admission, is to eliminate chiropractors.

In 1966 they again came up with a waiver and again we were left out. We came to speak, and they told us they had left us one little exemption--if we had passed the National Examining Board. But they still are refusing and not letting in chiropractors who have passed this test.

We are trying to remove the words that still give them discretionary power, but we found that this bill still gives them this power so we now have an amendment to make this definite Legislation has been used to give one profession a strangle hold over another profession. A vote for this bill is a vote for a little bit of justice for a profession that is long overdue to receive it. We have gone along with this and have never tried to do anything and now all we are asking is one little "out". I believe you might judge we need it. The National Examination is not easy.

MR. TORVINEN: Is it correct to say that Chapter 629 requires that Chiropractors take the same basic examination that an applicant for a physician and surgeon takes?

DR. HOMER: Yes.

MR. KEAN: How many National Examining Boards are there?

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DR. HOMER: I only know of two, the National Medical Examining Board and the National Examining Board of Chiropractors. They admitted that this basic science law was keeping out even medical doctors.

MISS DUNGAN: The examination in the basic sciences: Is it the same for all the healing art

MR. TORVINEN: Not the National Examining Board, but the Nevada examination is the same for all.

DR. HOMER: We thought this took care of our problem, but the word "such" still gives them that hammer over our heads. We are qualifying in everything they want us to do.

MR. SWACKHAMER: How can they tell you that your proof that you passed a National Examination was not acceptable?

MR. WOOSTER: The Attorney General did this. He said that "such" an examination refers back to "substantial equivalent examination" in the previous section. So they still have discretion to determine whether this is substantially equivalent.

MR. SWACKHAMER: And they can hang their hat on this?

DR. O'BRIEN: All members of our board, who are experts in their field, have gone over the examination sent to us by the National Board of Chiropractors Examiners and the test is not equivalent to ours.

They use 75% as a passing grade. They take raw scores and convert, mark them on a curve. Only one person in a thousand got a grade less than 70.

MR. TORVINEN: Is it correct that dentists and chiropidists are exempt from this? If we are going to put chiropractors out of business, we should do it through the front door, not the back door.

DR. HOMER: If you put the examination for a competitive trade in the hands of their opposition to grade, would you expect them to get a fair judgment? By their standards? Is this a fair means of doing things? I submit that if we had an average of 98% the board could very easily say that this test is not the equivalent. This power within their hands is what we are talking about, not grades or any one examination. Nothing makes any difference as long as he has this strangle hold on us.

MISS DUNGAN: Is your profession allowed to dispense drugs?

DR. HOMER: No.

MISS DUNGAN: Are dentists and chiropodists allowed to dispense drugs?

DR. HOMER: Yes.

MR. MAY: Would you please give me the requirements for taking the National Chiropractic Examination and for the State?

DR. WARBURTON: Four years of college and then the four years of Chiropractic College in most states. Three years of college in some states. In Nevada it is now two years of college and four years of Chiropractic but this will automatically go to four years of college and four years of Chiropractic in 1970. It was set this way so that those already in Chiropractic College would not have to drop out and go back to regular college.

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DR. O'BRIEN (Read the requirements for examination for Chiropractors.) They can take the first section at the end of two years and the second when within six months of graduation.

MR. WHITE: Are there any chiropractors on the State Board of Medical Examiners?

DR. WARBURTON: No. All members are from the University.

DR. O'BRIEN: By statute, Chiropractors cannot be members of the board.

MR. TORVINEN: Are there any other states that require chiropractors to pass the same test as the medical doctors? Physicians and surgeons?

DR. HOMER: It runs about 50%. This law is passed in all states which have it for the same purpose as it was passed here.

Mr. Swackhamer moved Amend and Do Pass for our committee

Mr. Kean seconded

Motion passed unanimously

MEL CLOSE: As a matter of information, we considered this during the special session so that the National Board Examination could be taken and there would be no discretion. We did not intend for the State Medical Board to have this discretion.

At this point the Committee on Public Health and Public Morals left the joint hearing.

MR. CLOSE: I am here with Mr. Don Brown on that bill we wanted this committee to introduce.

MR. BROWN: I would like to make a position statement. It was at my request that this bill was drawn up. The bill asks for the abolishment of State Police. A State Highway Patrol man has only the same power as you or any ordinary citizen. This is an unreasonable position to put an officer in. They have many occasions where they need it. On these occasions he will take action, but he should have the power to do it as a policeman.

MR. TORVINEN: Didn't we list highway patrolmen as peace officers in the new Criminal Code?

MR. BROWN: Yes, when exercising the duties of a highway patrolman along the highways.

MR. TORVINEN: This should be done in 81.

MR. WOOSTER: This is a bill to define enforcement duties of Nevada Highway Patrolmen. This committee has not yet agreed as to whether or not we should introduce the bill.

MR. CLOSE: Someone robs a bank in Reno and it is not in the presence of a highway patrolman he can't arrest him?

MR. BROWN: He is a fleeing fugitive. We do chase them.

MR. TORVINEN: When a patrolman is not on the highway, he cannot arrest someone. A private citizen has to know a crime has been committed before he can make an arrest. A policeman doesn't have to know. This is the basic difference.

MR. BROWN: Some people are afraid that if we are given police powers we will become state

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policemen. We do not want to be unqualified peace officers. We want to have this limited to define our duties to arrests when crimes are committed in our presence.

MR. TORVINEN: I am afraid this will cause confusion among judges and lawyers.

MR. WOOSTER: You are taking out the duties to the tax commission?

MR. BROWN: Yes, but I have no objection to putting it back in if they want us to keep it.

MR. SWACKHAMER: When I introduced this original bill 20 years ago, the original intent was to provide you with general police powers and provide you with funds.

MR. BROWN: Yes, and section 2 says we do have but only under the governor's declaration. You have to pass laws to amend laws and it just doesn't come out right always.

MR. SWACKHAMER: What are we trying to do here really?

MR. WOOSTER: Give State Highway Patrolmen authority to make arrests for crimes committed in their presence.

MR. BROWN: We would like to know we are on safe ground and not just thinking we are.

Mr. Torvinen moved to introduce the bill

Mr. White seconded

Motion passed unanimously

MR. TORVINEN: I want to talk to Mr. Gwynn about this to see if is going to have objections to diversion of gasoline highway funds on this. I would like to see the provisions of this bill put in 81.

SB 344: Provides for escheat of unclaimed corporate dividends.

SENATOR DODGE: I introduced this bill at Russ's request. He has a deal where somebody is holding \$1700 from an old corporation. We have other provisions in our law about escheat of money and that is all this is. You have a defunct corporation and you cannot trace any of the stockholders. Tom Cook is holding \$1700 and all they can figure out to do with it is escheat it to the state.

SB 386: Provides time limit for action on parole or probation violations.

SENATOR DODGE: I introduced this legislation at the request of Paul Toland. We have the situation where somebody is taken back into custody, a person on probation, and there is no time limit given for you to revoke the probation, whether he be freed in 48 hours, or be held.

What this bill says is that if you take him back into custody, you have 15 days to investigate the violation of the probation. If the court is outside the state you have 30 days. It seemed to us that this was reasonable. All he was asking for was sufficient time to investigate the situation.

MISS DUNGAN: This says the parole board shall take action in 15 days. How often does the board meet?

SENATOR DODGE: I'm not sure if it once every three months or not, but we would have to see

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that they meet oftener if necessary.

SB 387: Repeals portion of general improvement districts law relating to annual audits of district accounts.

SENATOR DODGE: This language was negated when we passed the Local Government Budget Act. It no longer has effect but we failed to repeal it.

MR. SWACKHAMER: How come we have to have this when we put on the closing paragraph "repealing all other actions."

MR. TORVINEN: Russ isn't going to jerk it out unless we repeal it specifically.

MR. SWACKHAMER: Wouldn't it be a good idea for some of us to suggest that when they are repealing things they list all the NRS's that are affected?

SJR 14: Proposes to authorize legislative amendment of referred measures.

SENATOR DODGE: This says that a referendum to the people is only frozen for five years. Lou Paley agitated about this, thinking it would affect the sales tax. That would have to be done by constitutional amendment. This still preserves that procedure, if we want to do it, of submitting taxation referendums to the people. The freezing aspect, however, shall not be extended beyond five years.

The concensus of our committee was that the bill ought to be put out. If the time should be longer, that can be considered. Our committee thought five years was all right.

MR. SWACKHAMER: Do the people get any discretion to have a tax measure initiated by referendum? Did you have reason for not wanting to go on the initiative?

SENATOR DODGE: We thought this was a fair compromise on that part.

MR. KEAN: Does California have a law against initiative petition for taxation?

MR. SWACKHAMER: They do now. They just passed it. This initiative is a real dangerous thing. A few years ago the people got a thing through on this on bounties for coyote pelts that would have bankrupted the state within a few months. Fortunately, the Supreme Court threw it out because it did not provide for the stamp.

SENATOR DODGE: We did discuss this thing on initiative but some of the dangers of this were pointed out to us. We have tightened it up some. Any proposal that could stand the regulations now would have to be something more than just correcting a procedure. California had such easy rules for qualifying initiative petition they were really in danger. Even intelligent voters couldn't decide properly on all these things.

MISS DUNGAN: What chance do you think this has of getting through an election?

SENATOR DODGE: I don't know. If people identify it with the sales tax, it will go down. But I think it will have a reasonable chance if it's properly explained to the people.

MISS DUNGAN: It does cover the sales tax thing, doesn't it?

SENATOR DODGE: Yes, it does. I still feel there are a lot of people who have sufficient faith in decisions being made by the legislative body that would support it.

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AB 443: Adopts 1964 amendments to Uniform State Food, Drug, and Cosmetic Act.

WEBSTER B. HUNTER: Commissioner of food and drug for the State of Nevada.

The purpose of this bill is to update our food, drug and cosmetic act. Mr. Jim Pearson made a survey at our request of our food and drug division. It was his recommendation that we do something about updating our statutes.

This amendment is a standard State's Food, Drug and Cosmetic act. It was gotten out as a model bill to give to the states by Dr. Goddard and his people in Washington. It upgrades our act immeasurably, and we feel it will help us very much.

MR. KEAN: On page 3 you use the words "pesticide chemical". We just had another revision of statutes that had another name for these things to standardize them. Shouldn't they be the same? Lee Burge would know about this.

MR. HUNTER: Yes, they should be the same terms for the same things.

MR. KEAN: I think he selected the words "economic poisons". Shouldn't we use the same wording throughout the statutes?

MR. WOOSTER: Section 23, page 10, says "pesticide chemical is an economic poison within the meaning of this----

MR. KEAN: My suggestion is to have Hunter and Lee Burge get together and check this out.

MR. WOOSTER: Certainly it is well worth checking with him.

MR. KEAN: You use the word drugs without differentiating between drugs and dangerous drugs. Does this cover the pharmacy people?

MR. HUNTER: No, it does not. They have their own board.

MR. KEAN: How about chemical companies?

MR. HUNTER: In Nevada the Agriculture Department handles the regulation and policing of these things.

MR. WOOSTER: I would appreciate it if you would check with Mr. Burge and advise us as to whether this can be amended to read "economic poisons" or if this is a specialized term within economic poisons.

SB 209: Increases renewal fees for licensing of certain private schools; makes changes in exemptions of other schools from supervision by State Department of Education.

E. G. HAGLUND: State Department of Education.

This bill was requested by the Department for the very definite reason of effecting some technical changes. In 1963 Chapter 394 was amended by adding an entirely new section that has proved to be excellent legislation. Specifically referred to privately owned schools and colleges and correspondence schools, those in the state must offer a bond of \$5,000 and those out-of-state must receive a permit and be bonded.

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We receive many inquiries from out-of-state correspondence schools and as soon as a copy of these regulations and requirements are sent to them, that does it. We never again hear from them.

The amended bill is in conflict with the old bill and we are trying to take care of this. We would like to have the old section pertain to privately owned elementary schools and colleges and higher education. As the old chapter reads, it appears that any religious organization, regardless of how far it might be, could come in and establish an educational institution of any kind it desired.

This, then, would support elimination of any spurious diploma mills or institutions. Chapter 394 was originally put in to eliminate these undesirable diploma schools. Believe it or not, about three months ago I received a letter from Douglas Aircraft asking if we knew anything about the school at Searchlight. All I could say was that the man got his diploma the easy way.

The new section eliminates any possible conflict. Page two is covered by the new amended section. We are talking about amendments added in 1963.

MR. WOOSTER: These are technical amendments to bring in line with what you did in 1963?

MR. HAGLUND: Yes.

MR. WOOSTER: Aren't you prohibiting religious institutions from coming in and establishing any kind of school?

MR. HAGLUND: We are not eliminating elementary or secondary. We don't want any school like the Holy Rollers might come in and establish.

MR. SWACKHAMER: Why do you have to raise the fees?

MR. HAGLUND: Inflation probably. The money goes into the General Fund.

MR. SWACKHAMER: I object to raising fees all the time. Do you object to sending this back to \$10--this renewal fee for a three-year term?

Miss Dungan moved to lower the fees to where they were and Do Pass

Mr. Swackhamer seconded

Motion passed unanimously

MR. HAGLUND: There is considerable agitation from nursery schools which are currently under the jurisdiction of the Welfare Department to come under Chapter 394, but the Superintendent said the Department of Education is not concerned with anything under the kindergarten. Anything under that should come under the Welfare Department. They would like to be recognized as institutions of early childhood education.

After Mr. Haglund had gone, the committee was reminded not to make any motions while witnesses are present.

SB 344: Provides for escheat of unclaimed corporate dividends.

Mr. Swackhamer moved Do Pass

Mr. White seconded

Motion passed unanimously



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SB 386: Provides time limit for action on parole or probation violations.

MISS DUNGAN: Under parole, you don't have any legal rights.

MR. WOOSTER: Maybe we should check with Paul Toland on this before we take any action.

SB 387: Repeals portion of general improvement districts law relating to annual audits of district accounts.

MR. WOOSTER: This audit is something quite different. I will check on it and bring it up again tomorrow.

MR. SWACKHAMER: They are screaming at the cost of the audits on the county level.

SJR 14: Proposes to authorize legislative amendment of referred measures.

MR. SWACKHAMER: I think this has merit. We should never lock up anything because we are not brilliant enough in this generation to lock up future generations.

MR. KEAN: If we open this, the sales tax will be hacked to pieces.

MR. TORVINEN: We have been relying for years on the Attorney General's opinion that you can't repeal the sales tax without the vote of the people because they put it on. I think there is a valid argument that you can't put it on, but this has never been tested in a court.

MISS DUNGAN: A service tax probably could be imposed without a vote of the people.

MR. SWACKHAMER: I agree with Mr. Kean on the sales tax but I feel strongly that one group of citizens living at one time should not limit a future group as to what they can do.

MR. KEAN: I like these safeguards, even to having to change the constitution in such a cumbersome way. It causes a lot of hare-brained ideas to go down the drain.

Mr. Torvinen moved to defer SJR 14 for further study.

Mr. Kean seconded

Motion passed unanimously

MR. KEAN: I have a suspicion in my mind that this might be a power grab battle between the Department of Agriculture and the Department of Food and Drugs.

MR. WOOSTER: This is just a standard bill.

MR. SWACKHAMER: Most of what I read referred to food.

MR. KEAN: This may be a good bill but I don't think we should be rushing on it.

MR. WOOSTER: We will hold the bill until Monday and Mr. Kean can look into it.

SB 192: Nevada Administrative Procedure Act.

MR. WOOSTER: We have been requested by the telephone company to add an amendment so that if

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the provisions of this chapter conflict with chapter 704, the 704 chapter will govern.

We have also had a request from the Employment Security Department that they simply be excluded from the provisions of the bill.

MR. SWACKHAMER: Why should they be exempted? What is the need for this bill anyhow?

MR. WOOSTER: There is no procedure for these cases now.

MR. TORVINEN: One commissioner may be the only one to hear a case and may make the decision solely on his own findings and thinking. This bill provides that if only one commissioner hears a case, before his order becomes final, you get to submit objections to the order to the other commissioners who did not hear the case. You can request that they read certain sections of the hearing, etc.

This makes the procedures uniform throughout all the state agencies.

I would like to be told if there is a conflict in Chapter 12. You can't be the prosecutor and judge. In the Unemployment Department the investigator does sometimes make a decision.

MISS DUNGAN: Just the first one, then it goes to a board.

MR. TORVINEN: Maybe we can make the same suggestion as the telephone company did on 704. If 612 comes into conflict with this statute, then 612 prevails. This should avoid any real big problems.

MR. WOOSTER: Would you like to make a motion on these two amendments? So I will know how to proceed.

Mr. Torvinen so moved

Mr. Schouweiler seconded

MR. KEAN: I think that many cases are not very involved and I would rather these were handled around a table in a very informal manner, rather than going through all this lengthy process.

MR. WOOSTER: On page 204 it says unless precluded by law, informal proceedings can take care of these situations.

On page 3, "g" right at the top of the page: The contractors Board said some of their staff memoranda is confidential and they would not be furnishing this type of information, if it is going to be made a matter of public record.

MISS DUNGAN: Doesn't the tax commission make this same type of information available?

MR. WOOSTER: They are excluded from this act.

MR. TORVINEN: Licenses and names are recorded.

I think the objection of the contractor's board is valid.

MR. WOOSTER: Could we just delete "g"?

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MR. TORVINEN: I will go along with that. If a lawyer and his staff get together and discuss how they are going to handle a case, it shouldn't be part of the record.

MR. WOOSTER: On page 3, about line 41: We have a suggestion to add "within 20 days". I think it is a good suggestion.

Lines 22 through 28 should not be the way they are in the bill. Shall we leave as is?

MR. TORVINEN: Yes.

MR. WOOSTER: Most comment was about the definition of "contested case".

MR. KEAN: What it really applied to was when a person failed to pass a test.

MR. TORVINEN: Did they have some suggested wording to take care of this?

MISS DUNGAN: They were mostly inquiring whether examination cases come under the definition of "contested case".

MR. TORVINEN: This only applies when there is an opportunity for a hearing. They were afraid it applied to examinations.

MISS DUNGAN: Why can't we just say "does not include original examinations"?

MR. TORVINEN: Why can't we put an adversary procedure back in it?

MR. WOOSTER: They are trying to get away from that. How about "this does not apply to licensing procedures for which a hearing is not requested"?

Let me ask Guinan to earn his salary and come up with clarifying amendments. I will go ahead and have the amendments drawn.

Miss Dungan suggested that the Friday meeting be held at an earlier hour and Mr. Wooster said we might be able to do that.

Meeting adjourned at 5:10 P.M.