

MINUTES OF MEETING - ASSEMBLY COMMITTEE ON JUDICIARY, March 31, 1967

Meeting was called to order by Chairman Wooster at 3:10 P.M.

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

Absent: Dungan

SB 436: Requires payment for services rendered by chiropractor if covered under accident and health insurance policy.

DR. BEN EDWARDS: Speaking on behalf of the State Association of Chiropractors.

The problem that has arisen over the past years is that over 90% of insurance companies will pay costs of services rendered by a chiropractor, but about 10% will not. This doesn't affect our profession too much, because we get paid anyway, but it does affect the people who buy their insurance in good faith and then come to us for services that they need, and find the insurance won't pay for it.

The problem is that people who purchase insurance in this field do not always read the fine print, and according to our experience, about 10% of these policies state in the fine print that they will pay only for services rendered by a doctor with a regular medical degree.

The hardship does not fall on us, but it does fall on our patients, and we are here to try to take care of this.

The present Insurance Commissioner and Russ McDonald took an act from Oklahoma and suited it to the needs of Nevada. The passage of this act will assure that everyone in the state who purchases insurance in good faith will be able to go to a chiropractor if they desire. They will not be told their insurance will not pay for these services of a foot doctor. The bill is designed for the protection of the citizens of the state.

MR. TORVINEN: Is there a difference between a chiropractor and a podiatrist?

DR. EDWARDS: Chiropractor means a foot surgeon and podiatrist means a physician of the foot. Some people confuse chiropractor (which is a branch of medicine) with a chiropractor. A chiropractor is not a branch of medicine. In the definition of a chiropractor it is sometimes called a podiatrist.

MR. LOWMAN: Would this require the reprinting of insurance forms?

DR. EDWARDS: No, not at all.

MR. LOWMAN: Are chiropractors also M.D.'s?

DR. EDWARDS: We are a handmaiden of medicine, as dentists are. Our degree is Doctor of Podiatric Medicine. We require pre-medical training the same as they do in medicine. The you go to Chiropractor or Podiatric School. The difference is that the last two years we stay in the clinics and treat nothing but extremity problems.

MR. WHITE: If this is excluded, there must be some reason and I am not sure we should legislate between an insurance company and their client.

DR. EDWARDS: Practically every state has amended their insurance act so that there can be no discrimination in this. Our concern is strictly for the patient. Our services are exactly the same as would be rendered by another doctor.

MR. HILBRECHT: As I understand it, the problem is that when it says "doctor" you feel that they should not be limited to certain doctors. All doctors should be able to give the help, when the services are identical. Would this apply to an ophthalmologist?

DR. EDWARDS: An ophthalmologist has an M.D. degree. We treat the same for a foot problem as any other doctor would.

Mr. WHITE: Are the exclusions spelled out in the policy?

DR. EDWARDS: The policy usually says a "doctor of medicine". We have no trouble at all with all the major insurance companies. It is just some of the smaller companies. We are asking that legislation be put on the books for the protection of the people of Nevada.

AB 339: Provides that residence of nominator does not affect priority of person nominated to receive letters of administration.

MR. WOOSTER: This bill is now on the Chief Clerk's desk, where I put it after we got it back from the Governor. We have some people here who would like to speak on the bill.

WILLIAM W. MORRIS: Attorney, Las Vegas.

Mr. Morris's presentation is attached to the minutes.

MR. HILBRECHT: This amendment would not help the case you told us of, would it?

MR. MORRIS: No, but we will take the risk of that happening.

PHIL CUMMINGS: Public Administrator, Clark County

I wish you could actually feel the position that a person is in this job. When anyone dies, you are besieged with telephone calls. It is a seven-day a week job and people call at all hours of the night. To out-of-state people I try to present a good image for the county and for the state.

MR. HILBRECHT: This \$60,000 figure would avoid the situation that arose in the Dickerson estate.

MR. CUMMINGS: No, it would not. There could be a previous will contest. The Supreme Court did rule that those people who nominated me did not have the right to do so because they were not residents of the state. Under this proposed bill, my nomination would have held up. In the majority of cases we have not had nominations. We have not felt it necessary. If someone else is nominated, we have no jurisdiction.

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MR. TORVINEN: The nominee has no rights until he goes to court and get his letters of administration.

MR. MORRIS: This is correct. You know that, but the nominee does not always know this.

MR. TORVINEN: You would not have to take off the seal until the nominee shows you the letter. If you are giving Mr. Cummings legal advice, tell him not to remove the seal until he sees the letters of administration.

MR. HILBRECHT: Now Cummings goes out before there is an actual petition filed and secures the property. Under this act he would not feel free to do this and there would be a period of time during which the assets of the estate would not be preserved.

MR. WHITE: Don't you have to go and seal the property until someone is appointed?

MR. CUMMINGS: It is not compulsory under the statutes to do this. If someone just comes along, we don't recognize his authority on his "say-so."

MR. MORRIS: This office should be a full-time, salaried office and money should be appropriated to take care of it.

HOWARD GRAY: Attorney, appearing as a member of the Bar of the State of Nevada.

I am not in favor of this proposed amendment, because I believe that a family should be able to take care of the estate. They should be able to designate someone, even though they are not in the state. I am in favor of the bill as it is.

JAMES GUINAN: Legislative counsel for State Bar.

The Board of Governors sponsored this bill. Until a few years ago in Nevada, it was possible for a non-resident to be an administrator in this state. The statute was amended in 1960 making it so that a non-resident could not be an administrator. It did not say that a non-resident could not be a nominator. We wish to have this clarified so that a member of the family can be a nominator, even though a non-resident.

If a public administrator is not adequately compensated, something should be done about that, but not at the expense of the rights of the family.

MR. WOOSTER: Mr. Cummings, did you appear before the Senate Judiciary Committee?

MR. CUMMINGS: Yes, I did.

AB 429: Permits Welfare Division to provide protective and social services to children in their homes.

MR. EMORY: Welfare Division.

This is intended to allow the District Courts from the State the option to ask the Welfare Department to investigate certain cases. We are amending so that the court can order the Welfare Division to provide services, primarily in cases of child neglect.

This gives the Welfare people authority to go into the home against the wishes of the parents. The bill is designed mostly for the smaller counties, since the two larger counties have their own departments. I guess in cases of overload, the judges in the larger counties could call on the Welfare, but I really don't anticipate that this will happen.

We have been doing this in some cases, but I have always protested that I did not have the authority to do this. This concerns the District Courts in juvenile cases.

MR. HILBRECHT: By how many are you going to have to expand your staff to give this additional service?

MR. EMORY: I do not anticipate having to increase it at all. We have only had two cases of this sort in the last year.

MR. HILBRECHT: Will enactment of this statute increase the volume?

MR. EMORY: It is possible, but I don't expect any trouble.

MR. LOWMAN: You would act only under orders of the court?

MR. EMORY: Yes. We thought that was the easiest way to do it.

MR. LOWMAN: Do you have discretion in your department?

MR. EMORY: We would have to be ordered by the court.

AB 502: Makes consent to adoption irrevocable.

MR. EMORY: Our counsel drew this, and I am sorry that he is not here today.

The problem is that within the past month, we have had two instances in which there has been an attempt to revoke the relinquishment of a child for adoption. In both instances, the six months period had not expired. Mr. Samuelson, our counsel, thinks a relinquishment cannot be revoked now, but he wanted it to be more specific for cases where it comes up.

The law now says that minors cannot revoke their relinquishment, but it does not say so for adults. We would like to have it so there would not be any possibility of this happening again.

MR. WOOSTER: That is the worst case. Isn't there a chance that a mother might have made a relinquishment and had a change of mind during the six months?

MR. EMORY: In most instances where the mother has proved she can provide a good home, we revoke the relinquishment and let her have the child. We believe we should have this option, rather than letting the mother have it.

MR. WOOSTER: The present law only refers to minor parents, how can you ever win a case?

MR. EMORY: This is why we would like to have this authority.

MR. HILBRECHT: Is it the intent of the law that the relinquishment can be broken?

MR. TORVINEN: I am sure that the intent of the law is that a relinquishment is a relinquishment and should not be revocable. It can cause ridiculous heart-break.

MR. HILBRECHT: I am talking about the time between the relinquishment and the legal adoption. I am sure you could not attack it after that.

MR. TORVINEN: There are two kinds of relinquishments: One, where the mother or father is re-marrying and want to make it possible for the new mate to adopt the child; the other is relinquishment to the court. This is the kind where the natural mother never knows where the child went.

MR. HILBRECHT: What about the step-father thing? What if they become estranged in this six months time? Shouldn't she be able to revoke her consent?

MR. TORVINEN: In that case, the adoption procedure will be dropped and the whole thing would be off.

SB 436: Requires payment for services rendered by chiroprapist if covered under accident and health insurance policy.

MR. LOWMAN: Are there other exemptions in these policies? If we are amending it for the 10% shouldn't we aim at the rest that are exempted?

MR. TORVINEN: The only question I would have: Are traumatic injuries that might require dental assistance taken care of with these insurance policies?

MR. LOWMAN: Wouldn't that be considered dental surgery?

MR. TORVINEN: Dr. Edwards hit the nail on the head when he said people do not read the fine print.

MR. WHITE: You attorneys would not like it if the legislature changed your contracts with your clients.

MR. TORVINEN: They do all the time.

MR. HILBRECHT: The Uniform Criminal Code has changed everything.

Mr. Hilbrecht moved Do Pass SB 436

Mr. Torvinen seconded

Motion passed unanimously

AB 502: Makes consent to adoption irrevocable.

Mr. Lowman moved Do Pass AB 502

Mr. Torvinen seconded

Motion passed unanimously

MR. TORVINEN: You should make a distinction between foster homes and adoptive homes.

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A natural mother could go through the adoptive procedure and square things if it became necessary. The mother is the only one we are talking about relinquishing the child.

MR. LOWMAN: Either parent can do this, and both parents have to if it is a married couple giving up the child.

AB 339: Provides that residence of nominator does not affect priority of person nominated to receive letters of administration.

MR. WOOSTER: Russ has no further information as to why the governor turned this down.

MR. WHITE: These small estates seem to me to be the areas where we need a public administrator.

MR. WOOSTER: This bill does not say that a public administrator cannot be appointed. It just says that a non-resident can nominate an administrator.

MR. HILBRECHT: \$60,000 seems to be way over what we need. I think the beef is that you are taking all the cream away now. The small estates are a burden to him. He doesn't care for the higher estates, either, but the middle ones are the ones he would like to handle.

If they are very small estates, maybe it does make sense. We ought to balance this out with the family's interests. Maybe we should keep it down around five or six thousand dollars.

MR. TORVINEN: In Washoe County this is not a full-time job and the ideal person to do this is an accountant. Public Accountant and Public Administrator work together perfectly.

MR. LOWMAN: Is this good law as it went downstairs?

MR. WOOSTER: My opinion is that it is good law.

MR. LOWMAN: Why don't we hold up and see if the governor is going to change his mind? If we start changing it at this late date, we may lose it.

MR. WOOSTER: I think we ought to put it back as it is.

MR. WHITE: Why don't we have a subcommittee meet with the governor and learn his objections? If it is good law, why should we have a cut-off point?

MR. HILBRECHT: In my experience with the cases I have handled for Phil in the past, I have not made much of a fee and I don't care if I never handle another one.

This is a benefit to the local creditors. For instance, the guy with the \$94,000: If the public administrator had not come in, one of the other bums could have taken the whole amount before somebody from the outside could have come in and got letters of administration.

MR. KEAN: There is an interval of time before an out-of-state nominator can get in and get something going. This interval is not taken care of at all. Maybe we could solve

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this by making him public administrator for a temporary time.

MR. TORVINEN: There is already a law that does this. The undertakers usually report the cases. Any creditor can go into court the day of the death and have himself appointed a special administrator.

MR. WOOSTER: You may be talking about something that is very valid, but it is not what this bill is all about.

Let's leave the bill as it is and Mr. Torvinen and I will go down and talk with the Governor. Is everyone in favor of this approach?

MR. HILBRECHT: It is no answer to me to have an undertaker doing this informally. I certainly would prefer a law which said that a public official would come in and do it.

MR. LOWMAN: I think that should be another bill.

MR. TORVINEN: There are plenty of towns in California that are only an hour or two away from Reno. Look at the situation that could result if a woman died in Reno and the public administrator took over before her son could drive from Susanville. This is one reason this law has never been passed before.

Mr. Lowman moved to leave the bill as it is and have Mr. Wooster and Mr. Torvinen call on the governor for a consultation on AB 339 to find out what his feelings would be if the bill were sent back to him intact.

Mr. Kean seconded the motion
Motion passed with Mr. Hilbrecht voting No

SB 58: Extends time within which notice of right to claim mechanic's lien must be given.

Mr. Wooster went over the proposed amendments with the committee.

1. Line 4 would delete 45 and insert 31.
2. Delete lines 6 and 7 and insert "contractor delivered in person or by certified mail to
3. Line 15 would delete "can be enforced" and insert "notifies".
4. Lines 20 through 24 add "this is not a notice that the undersigned has not been or does not expect to be paid."
5. Page 2 insert between lines 6 and 7 "no notice is required pursuant to this section with respect to materials purchased directly by the owner or work or service performed at his direct request."

Mr. Hilbrecht moved to strike everything after the word "materials."
Mr. Kean seconded
Motion passed unanimously

6. Owner does not include any person, corporation or firm whose only interest in the property is as a grantee.

Mr. Wooster asked if the word "holder" would not be better than "grantee."

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MR. HILBRECHT: I thought we were going to say "does not include security interests."

MR. KEAN: I like that language better. Lumberyard people will understand it better.

MR. WOOSTER: How about striking "as grantee."

MR. TORVINEN: It would be clear if you change it that way.

Mr. Torvinen moved to strike "as grantee"

Mr. Kean seconded

Motion passed unanimously

Mr. Hilbrecht moved Do Pass SB 58 as amended

Mr. Lowman seconded

Motion passed unanimously

MR. TORVINEN: Mr. Rhodes stopped me in the hall and said the Lt. Governor said it would be a better bill if the general contractor is notified also.

MR. KEAN: You asked me to look into AB 113 with Mel Close. He could not remember the suggestions that were given for an amendment. He thinks it is all right as it is.

MR. HILBRECHT: I do remember what the amendment was to be. It was to amend to make it reciprocal so that the tenant could also give 5 days notice.

MR. KEAN: Where do you put that in? I think we ought to do something.

MR. HILBRECHT: You would have to have a whole new section.

MR. WOOSTER: Will you get the amendment, Mr. Kean?

AB 192: Standardizes fee for registration of watercraft and provides for impounding watercraft under certain circumstances.

MR. WOOSTER: Tom, you referred this to our committee on the floor. Why did you do that?

MR. KEAN: I thought I smelled something ratty and I pulled it off so we could take a look at it.

Mr. Torvinen moved to indefinitely postpone AB 192

Mr. Kean seconded

Motion passed unanimously

MR. HILBRECHT: Does anybody know what the bill is all about? What is the purpose of it? What are you remedying with a stolen boat?

MR. WOOSTER: If stolen, it would be grand larceny, a felony, and you can arrest if you have reason to believe that a felony has been committed.

MR. HILBRECHT: I am not trying to be difficult but I would like to know what this bill is all about.

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MR. TORVINEN: I think this bill came about because one man went to court to prove he did not have to get a license for his own boat on his own lake.

AJR 21: Proposes constitutional amendment confirming right to bear arms.

MR. LOWMAN: I have back the amendment that was suggested by Hilbrecht to exempt felons. Without this amendment, it would blanket them in. It is proposed that after word "person" we insert "except a felon whose civil rights have not been restored."

MR. HILBRECHT: I would prefer to see this put in at the tail end. If it is put in where it is suggested, it would make a man think he could keep guns at his house and the law says he cannot have one, period.

MR. WOOSTER: What if some time the courts wanted to limit people guilty of ^{gross} misdemeanors from carrying or possessing weapons in some circumstances?

MR. KEAN: Couldn't the judge make this a condition of probation on a gross misdemeanor?

MR. TORVINEN: Why do we need this resolution in the first place?

MR. LOWMAN: It has been construed to mean only the militia. The reason that 70% of the states have this is that people who want to have an anti-gun law claim the constitution gives the right only to the militia. I have a page from a magazine which explains some of this and will be glad to reproduce it for the committee if you would like me to.

MR. WOOSTER: I have no objection to what you are trying to get at basically. My only fear is locking this into the constitution. This might restrict law enforcement.

MR. KEAN: Why don't you leave it as a statute instead of locking it into the constitution?

MR. WOOSTER: You can put things into the constitution but it is awfully hard to get them out.

MR. LOWMAN: Whatever you want to do with it is all right with me.

MR. WOOSTER: I would have no objection to doing it as a regular bill. But I don't actually know how you would word it.

The resolution was referred back to Mr. Lowman for further study.

Meeting was adjourned at 5:00 P.M.

STATEMENT OF WILLIAM W. MORRIS OF THE
LAW FIRM OF BELL, MORRIS & LITTLE,
319 SOUTH THIRD STREET, LAS VEGAS, NEVADA

RE: AB 339 (A bill providing that residence of nominator does not affect priority of person nominated to receive letters of administration.)

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I thank you for the honor and privilege of appearing before you this afternoon on behalf of my client, PHIL CUMMINGS, the Public Administrator of Clark County, Nevada.

In order to show to this Committee the consequences and ramifications of this legislation, I feel that it is important to touch upon the duties of the Public Administrator. First, under the category of

PROTECTION OF ASSETS OF DECEASED:

1. The Public Administrator immediately takes possession of the premises of the deceased and all valuables located therein and secures the same pending arrival of next of kin. The premises are posted notifying the public that the Public Administrator has sealed the premises. All jewelry, monies and valuables are placed in the safety deposit box of the Public Administrator.

2. When required, the Public Administrator impounds automobiles in his own impound yard. Also, he warehouses furniture and furnishings at his own facility. He does not charge anything for such storage, thereby avoiding the prospect of storage charges exceeding the value of the property stored.

UNDER THE CATEGORY OF PROTECTION OF CREDITORS:

1. The Public Administrator permits the next of kin to take whatever personal belongings or property they so desire provided they sign a stipulation to pay any creditors claims against such property taken.

2. Immediately upon the issuance of letters of administration, notice to creditors (known at that time) are sent out. A change of address for the deceased is immediately made. Thus, all correspondence and bills are received by the Public Administrator and any later discovered creditors are immediately advised of the death and sent the appropriate claim forms.

UNDER THE CATEGORY OF INFORMATION-RECORDS:

1. The Public Administrator provides a centralized information center on the status of estates for all creditors (commencing with ambulance, hospitals, doctors, mortuaries, mortgage companies, merchants and credit bureaus), and for next of kin, Internal Revenue, Employment Security, Social Security, County Assessor, etc.

2. All information, records and files are preserved in a centralized location for inquiries, some of which result years after the estate is closed.

UNDER THE CATEGORY OF EXTRAORDINARY SERVICES:

1. The Public Administrator provides extraordinary services such as immediate care of pets, return of leased or borrowed property (for example, sewing machines, library books, etc.); care of children pending official custody by child welfare or next of kin.

UNDER THE CATEGORY OF OTHER DUTIES:

1. The Public Administrator is called in on practically every death until a determination is made as to whether there is: a. A will, b. Tourist, c. Indigent, etc.

2. In these instances the Public Administrator notifies the next of kin and takes possession of valuables until the next of kin arrives. He also provides other miscellaneous services such as answering inquiries and referring such inquiries to the appropriate person, attorney or bank.

UNDER THE CATEGORY OF TYPES OF ESTATES:

1. The Public Administrator is involved in an average of 100 deaths per month. Of these, approximately one out of every twenty deaths he obtains an estate which requires his services.

2. The classification of these estates are as follows:

a. 40% are under \$3,000.00 and are closed without probate.

b. 35% are over \$3,000.00 and under \$5,000.00 and are processed by summary proceedings.

c. 25% are over \$5,000.00 and under \$15,000.00.

d. 2% are over \$15,000.00

UNDER THE CATEGORY OF OPERATION OF OFFICE:

1. The nature of the Public Administrator's office is such that the operation costs are defrayed only by fees taken in on estates.

2. During the first term as Public Administrator, Mr. Cummings obtained the following fees from estates:

1963	\$226.00
1964	Approximately \$10,000.00
1965	Approximately \$10,000.00
1966	Approximately \$ 8,000.00

3. From these fees, the Public Administrator defrays all costs of stationery, telephone costs, office space, storage space, automobile maintenance, etc.

THE NECESSITY FOR AMENDING AB 339

It is difficult and often embarrassing to look over another shoulder and second guess as to the consequences of legislation. The second guessing started with the Nevada Supreme Court in the case of Jacqueline M. Dickerson, Petitioner, vs. the Eighth Judicial District Court of the State of Nevada in and for the County of Clark, wherein the Court determined that:

" the right of one to nominate an administrator of an estate is subject to the same qualifications governing the right to administer an estate."

This Supreme Court decision undoubtedly prompted the necessity to rectify an apparent wrong, to-wit, depriving the nonresident next of kin an opportunity to appoint an administrator of his choice.

It is regrettable that the legislation did not initially grant to a nonresident next of kin such a right in estates in excess of a certain dollar value. The necessity for this suggested qualifying language is emphasized by the reoccurrence of estates in Clark County involving nonresident next of kin. This reoccurrence is understandably due to the tremendous influx of new residents to Clark County. In many instances, the only person the nonresident next of kin knows is a friend or next door neighbor of the deceased. Thus, it is realistic to expect the nomination of a neighbor or friend as the administrator. Due to the lack of knowledge and experience of such persons in probate matters, you can realistically expect certain detrimental consequences to result from the failure to immediately protect the assets of the deceased, to notify creditors and to perform other duties which come second nature to an experienced Public Administrator.

In many instances, after the designation of such an inexperienced person, the next of kin, upon their arrival on the scene, will indiscriminately remove jewelry, furniture and other valuables, and even automobiles from the jurisdiction of the state without previously determining if there is an unpaid balance on such personalty. This, of course, works to the detriment of local merchants and creditors.

Another detrimental consequence would be the deterioration of a centralized information and records center.

The bill as it is presently drafted has a retrospective affect in that it drastically curtails the potential fees for operation of the office. In contrast, the pending legislation eliminating marriage fees for Justices of the Peace is effective after the termination of the existing term of office of the incumbent J.P.'s. AB 339 provides that the act shall become effective upon the passage and approval. This provision likewise raises a legal complication concerning pending estates wherein the nonresident next of kin may desire to have the Public Administrator removed as administrator of said estate. Thus, in order to avoid this possible complication, it is my belief the legislation should not be effective as to present existing estates in excess of \$60,000.00 wherein the Public Administrator is acting as administrator.

The rationale for having this legislation effective only as to estates in excess of \$60,000.00 is that the administration of an estate does not become complex insofar as estate tax problems are concerned in estates smaller than \$60,000.00. In estates exceeding \$60,000.00 in value, the Public Administrator would welcome the assistance of tax experts from the Trust Departments of various banks.

In conclusion, I respectfully urge the bill to be amended by adding a new subparagraph to Section 1, as follows:

"3. Provisions of paragraph 2 in this section shall apply only if the value of the estate is in excess of \$60,000.00."

Respectfully submitted,

William W. Morris