

MINUTES OF MEETING - ASSEMBLY COMMITTEE ON JUDICIARY, 54th Session, April 4, 1967

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

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

Absent: Hilbrecht, Dungan

SB 355: Provides additional regulations for licenses of gaming and gaming establishments and gives gaming control board and gaming commission additional powers.

HOWARD MCKISSICK: I have gone over this with the Gaming Commission and the Gaming Control Board. The first part crosses out definitions in the '59 statute and re-enacts them on page 13. Don't ask me why they did it that way in the bill drafter's office. I guess they had some good reason.

The main thing it does is tighten up some of the procedures on revocation and suspension of licenses. When the administrative board makes recommendations to the commission, the latter actually makes the revocation or suspension. The Board could close them down, temporarily, subject to review by the Commission. The bill clarifies who does what.

Page six gives the Commission absolute power and authority to do certain things. It legalizes the Bluebook, for instance. (c) is the controversial issue. It gives the Commission power to fine, up to \$100,000. This was called for by the executive. There was much discussion in the Senate about the amount of the fine. It is unprecedented in American jurisdiction to fine in this amount, but it was felt that if the fine was very low, they would just go ahead and pay the fine and continue their operation without any cleaning up of the deal.

MR. KEAN: Do you feel that a finding like this would be in order when you consider the phrase "privileged business"?

MR. MCKISSICK: I don't know what a court would fine on a judicial review of one of these sentences.

MR. SWACKHAMER: I am bitterly opposed to everything about this bill.

MR. WOOSTER: I would like to get the Gaming Commission's view on this. We will put it off until tomorrow. I think we need some background information.

SB 328: Creates Real Estate Education, Research, and Recovery Fund.

HERB MATTHEWS: Nevada Association of Realtors.

We are very much in favor of this bill. We have nothing to criticize, unless you have some questions----

MR. WOOSTER: We did have a hearing on this.

MR. MATTHEWS: With this bill we solve two problems: 1. We get rid of the \$1,000 bond and get better protection and 2. get money for further education of our members.

MR. KEAN: I like the idea but I have a question. Suppose a person is injured and gets the

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\$10,000 and the real estate salesman loses his license. Suppose he has been a licensed man for a long time. Later, to get his license back, he would have to repay the amount. Shouldn't he get credit for the amount he had put in the fund?

MR. MATTHEWS: Maybe, but he would only have \$100 in there in ten years time.

MR. LOWMAN: What does this term "real estate education" mean?

MR. MATTHEWS: Seminars, training of licensees, and so forth.

DON MCNELLY: Real Estate Administrator.

The purpose of this fund would be for the education of the now licensed people, not those intending to become licensed. It is very difficult to get people to come to these seminars who are really good for not much money. They won't work for nothing. Up to now, we have not had the means to enable our people to become more professional. This bill is designed to do this. It doesn't mean going to a University, as such.

MR. LOWMAN: How long do you anticipate it is going to take to bring your fund up to \$10,000?

MR. MCNELLY: One year. We have 1,933 members now, including active and inactive. There are another 196 eligible to renew, and we have just licensed another 60.

MR. WOOSTER: In all the years there has been only one action on this bond? Or was it two?

MR. MCNELLY: Three actions, but only two men involved. Two of the three actions were against one man. This is all the action against the bond in twenty years.

MR. WOOSTER: Will this require additional help or expenditure?

MR. MCNELLY: No. Now we have the \$1,000 bond to take care of and it is a real headache. I think we may even save half a girl by using this new fund. Now we have an average of perhaps six a day coming in. Some companies are getting off the bonds, no longer want to write them. We have only four companies that will write these bonds at all.

MR. KEAN: The important thing to me that you have left out of this bill is Omissions and Errors Insurance. How are you going to cover those things?

MR. MATTHEWS: Ted Matson told you before how hard it is to get that kind of insurance. If you want to impose that on us, that is another thing. I do not think it should affect this legislation. \$10,000 is a lot better to recover from than \$1,000. This is patterned after California.

MR. KEAN: If a guy practices deceit or misrepresentation he loses his license. You ask him to refund the money to the fund but now the guy can't work.

MR. MCNELLY: If he wants his license back, then first he must pay back the money somehow.

MR. TORVINEN: I should think if he were guilty of fraud or deceit he should not have his license back anyhow.

MR. WOOSTER: I don't think there will be much luck in recovering the money, not from the kind of guy that would practice deceit and fraud.

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MR. MCNELLY: It has been our experience, even with those whose licenses are suspended for six months or one year, that they never ask for their license again.

MR. LOWMAN: Does anyone know what it would cost to get Errors and Omissions insurance?

MR. MATTHEWS: Ninety percent of escrows are handled by title companies and they do have this insurance.

MR. LOWMAN: Mr. McNelly, where does your salary come from?

MR. MCNELLY: Through the Real Estate Division of the General Fund. We substantially cover our expenses by the license fee.

SB 438: Provides for written traffic citation.

MR. WOOSTER: We held this over one day to give everyone a chance to read it again carefully. I have gone through the bill in detail and I have found no objection. I think it is a good bill. Mr. Hilbrecht had one suggestion on page 1, section 2. There is an A, B, C, D, E, and F. On E and F the police officer may either make an arrest and take the person before the magistrate or he can issue a citation. On A, B, C, and D he must take the person before a magistrate. Mr. Hilbrecht thought "D" should be included in the area where a traffic citation should be issued. This involves only property damage. I should add that I disagree with Mr. Hilbrecht on this suggestion.

MR. TORVINEN: I agree with Mr. Wooster.

MR. KEAN: I agree with Mr. Hilbrecht. Why can't you leave?

MR. TORVINEN: You can keep going after you stop and give the necessary aid and information, or call the police or take other necessary action.

MR. WOOSTER: That is the breaking point on this citation thing.

MR. KEAN: Question: On "failure to give reasonable aid and assistance" are we amply covered by the Good Samaritan Act? Can you be arrested for doing it or for not doing it?

MR. TORVINEN: This is language that has been on the books for years. We are not changing that. I don't see how you could sue when a person gave aid under the compulsion of the criminal statute.

MR. WOOSTER: We could not change the word "reasonable assistance" because that is in the law and has been for years and years.

MR. SWACKHAMER: This would have nothing to do with the Good Samaritan Act. It covers an entirely different situation.

Mr. Lowman moved Do Pass SB 438

Mr. White seconded

Motion passed unanimously

SB 328: Creates Real Estate Education, Research, and Recovery Fund.

MR. TORVINEN: Errors and Omissions Insurance should be taken up in a different bill. This

bill is intended only to take the place of the \$1,000 bond. Either we are going to consider the substitution or we are not going to consider it. Errors and Omissions Insurance should be taken up separately. There is no other profession that I know of that is required to have this kind of insurance by law.

MR. SWACKHAMER: In the average instance, hardly anyone would be damaged more than \$10,000. This would be adequate where the other bond wouldn't.

The only thing I don't like is it looks like you have to sue them twice, first the agent then the Board.

MR. TORVINEN: The second isn't a suit. It is an affidavit to show you have not been able to get your money.

MR. LOWMAN: Shouldn't there be some limit on the amount they can use for education?

MR. WOOSTER: A balance of \$20,000 would be maintained in the fund. Then after that they can use it.

MR. LOWMAN: Do we want to give them a slush fund?

MR. SWACKHAMER: Why not wait a couple of years and see what they are doing with it and then if they are using it as a slush fund, we can make other provisions.

MR. TORVINEN: We can ask for a resolution asking them to report at the next session on the fund, what they have collected and how they have spent it. A reasonable fund for education is all right as long as they are paying it out of their own pockets.

Mr. Torvinen moved Do Pass SB 328  
Mr. Lowman seconded  
Motion passed unanimously

SB 66: Provides for issuance by county clerks of certificates of permission to perform marriages.

Mr. Torvinen: There have been a number of "marrying sam's" bills this session and this is the only one passed by the Senate. It may not be the best bill but it is the only one we can get passed this session.

MR. LOWMAN: Why do we have to get any bill through this session?

MR. TORVINEN: Because of the Supreme Court Decision. Now there is no control and there should be some. In Nevada, unfortunately, marriage is a business and it lends itself to abuse if there is not some control.

Page 2, line 15, I would say that the primary requirement is that the applicant's ministry is one of service to his congregation and performing marriages will be incidental to his ministry. This is the "guts" of the bill, as I see it. The clerk will investigate and see if the above requirement is met.

Mr. Torvinen then read the amendments he had prepared for the bill. The first stipulated that any minister who performs marriages cannot be the owner of a wedding chapel.

MR. KEAN: What does this do to a retired minister?

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MR. TORVINEN: He is excepted. I would not have bothered to prepare this amendment if I had not known it was absolutely necessary to amend other parts of the bill.

You will note that this becomes effective upon passage. This will leave several weeks when no minister will be able to perform marriages, so I got another amendment making the repeal of the old law effective after 30 days.

I have another amendment on page 3. The license form prescribed in this section says the Justice of the Peace can perform marriages only in his own jurisdiction. This would mean a Justice of the Peace could not take a day off. He can't now unless he can get another JP to come in and take over for him on that day. If we don't amend back to "his county" we are not giving the Justice of the Peace a day off ever, or else we are forcing people to go somewhere else to get married.

MR. WHITE: Is the bill really necessary?

MR. WOOSTER: Let's first discuss the amendments. Zel, don't you feel that we are going to have to have some kind of control?

MR. TORVINEN: If we don't, anybody can set up a chapel and we will really have a row of them.

MR. LOWMAN: If the churches have not made their impression, then what we are doing here is reacting to the clergy because they think the "marrying sams" should be done away with. This is the church's problem. Why should the legislature solve it for them?

If they have so far departed from their purpose that they don't do an adequate job of education, then it is not up to us to pull their chestnuts out of the fire. I don't think we have to license an ordained minister who has already been approved by his church.

MR. WOOSTER: We do have a responsibility to see that civil marriages can be performed by people with some sort of qualifications.

MR. LOWMAN: I see no necessity to license the clergy.

MR. SWACKHAMER: One of the hardest things in the world is to find out who is ordained and by what. This is the third time we have tried to solve this. We once had a hassle that was supposed to decide if any minister was really ordained by a real church.

MR. LOWMAN: Can't we say that any minister can perform marriages?

MR. WOOSTER: Who is a minister?

MR. TORVINEN: Anybody can get a church. For instance, the congregation of the birds that we once had.

MR. WOOSTER: Under Zel's idea you would not even have to get a congregation of birds.

MR. WHITE: Let each minister marry within his church.

MR. SWACKHAMER: What is a church? I think there was a court rule one time that you had to have one member and we had somebody who had his wife for his one member.

MR. LOWMAN: What we are trying to do is to protect people from themselves.

MR. TORVINEN: Isn't that what that whole row of NRS books is up on that shelf?

MR. LOWMAN: They are to protect us from each other.

MR. SWACKHAMER: It is necessary that you be able to prove that a marriage did take place and that it was in every way legal.

MR. WOOSTER: The state does have a legitimate interest in seeing that a marriage is properly performed. Basically that is what this bill does. Maybe there are better ways to do it if we had time to discuss them. Maybe we should have the clerk do it.

MR. LOWMAN: Why don't we just consider people married when they get their license from the county clerk?

MR. SWACKHAMER: The main thing is to get it on record that a marriage contract has been made.

MR. LOWMAN: We should not be in the business of licensing ministers and telling people how they can be married.

MR. SWACKHAMER: We always make it tough on someone when we make laws to deter wrong actions. This is the third time we have taken a crack at this. One of these days we will hit it.

Mr. Torvinen moved Do Pass SB 66 as amended

Mr. Swackhamer seconded

Motion carried, with Kean, Wooster, Swackhamer, Torvinen and Schouweiler voting Aye and Lowman and White voting No

AB 508: Provides that criminal prosecutions for embezzlement, fraudulent issue of stock by officers, employees of corporation may be commenced within 5 years after commission of offense.

MR. SCHOUWEILER: This legislation was requested by several attorneys who have been working on the Mark Twain case. The bill speaks for itself. The main reason for the five years is that they were afraid they would never be able to present the case by indictment process. In this case there has been difficulty in reaching into the problem.

MR. KEAN: What is the statute of limitation on this now?

MR. SCHOUWEILER: There isn't one specifically. We will be setting it with this. There should be some particular period of time that would be reasonable.

MR. SWACKHAMER: I thought there was a statute of limitations on everything except murder.

MR. KEAN: What you are really doing is extending the time limitation to five years.

MR. LOWMAN: This is so an attorney can get to Mark Twain?

MR. SCHOUWEILER: No. It will not apply to this but it will be helpful in cases which might come up in the future.

Mr. Wooster looked up the statutes of limitation and said that it is four years for Robbery, Arson, Rape and Forgery and three years for all other.

MR. WOOSTER: I think this bill is a good idea because this is the kind of case where things do not come to light sometimes for years. I am not sure we should have a limitation at all on this. I am wondering if 5 years is enough.

MR. SWACKHAMER: What would be the situation if we passed this and the crime has already been committed, like Mark Twain?

MR. WOOSTER: This will not affect Mark Twain. It merely brought the situation to light.

MR. KEAN: Does this affect Internal Revenue type of thing in any way?

MR. SCHOUWEILER: That is Federal jurisdiction.

Mr. Lowman moved Do Pass AB 508  
Mr. Schouweiler seconded  
Motion passed unanimously

AB 500: Limits enforcement duties of Nevada highway patrolmen.

MR. WOOSTER: Tom, didn't you have a point on this? Didn't you want to hold it or something?

MR. KEAN: The word "offender" bothered me. What is an offender? I think it should be more clearly defined.

MR. WOOSTER: Is there really a problem? What other word would you use?

MR. LOWMAN: I thought "offender" had a legal meaning.

MR. SCHOUWEILER: I think the word corresponds to the word "offenses" in the first section.

MR. WOOSTER: On page 1, line 26, they have bracketed out field agents and inspectors.

MR. KEAN: This is a police arm and they should have some powers.

MR. WOOSTER: Do you think line 26 bracketed out at the bottom should be left in?

MR. KEAN: Yes.

BOB GUINN: The amendment which would eliminate section 6 at the bottom of the page: There should be no question about that. It is a tax commission. The patrol should not be involved. I wonder, too, about the propriety of deleting diesel tax. It does seem to me that you ought to think twice before you release the Highway Patrol of anything in which they are charged with responsibility.

MR. WOOSTER: If we raised the bracket to line 6 on page 2 would that take care of it?

MR. GUINN: Yes.

MR. WOOSTER: Could we bracket out the date, too?



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MR. LOWMAN: Isn't anyone acting on this except the Highway Patrol?

MR. GUINN: Yes, the Department of Motor Vehicles, but it doesn't make sense to me to relieve the Highway Patrol of all responsibility.

MR. WOOSTER: We can amend by putting a bracket on line 2 at the end of the sentence, then after "inspectors" on line 3 and wind up after "thereafter" on line 4.

Mr. Lowman moved Do Pass with that amendment

Mr. Schouweiler seconded

Motion passed unanimously

SB 468: Authorizes Legislative Commission to distribute obsolete copies of NRS Statutes.

MR. WOOSTER: This is so Swackhamer can get copies of NRS. It rather scares me because people might be relying on something that is obsolete. I don't honestly know how obsolete they are. They may be the original '57 text.

Mr. Swackhamer moved Do Pass SB 468

Mr. White seconded

Motion passed unanimously

SB 460: Prohibits possession and discharge of tracer or incendiary ammunition under certain conditions.

Mr. Swackhamer moved to postpone indefinitely SB 460

Mr. Lowman seconded

Motion carried, with Mr. Wooster voting No

Meeting adjourned at 4:30 P.M.