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OUTLINE OF HEARING HELD BY COMMITTEE ON STATE, COUNTY AND CITY AFFAIRS IN THE ASSEMBLY CHAMBERS, MARCH 23, 1967, 54TH NEVADA ASSEMBLY SESSION.

Chairman Hilbrecht, prior to opening the hearing at 11:00 a.m., asked the committee for action on the assembly bills parallel to SB 331 and SB 305 upon which the committee had already favorably approved.

Geraldine Tyson moved AB 404 and AB 359 indefinitely postponed. Smith seconded. Motion unanimously passed.

He then called upon Assemblyman Hal Smith for a motion that had been requested.

Smith moved AB 146 referred back to committee for reconsideration. Tyson seconded. Motion requires approval of six members and failed with four affirmative and two negative.

Roy Young requested clarification on the action and Chairman Hilbrecht explained the standing rules on a reconsideration motion and stated that further consideration of the measure could be given when floor consideration was made.

Members who were present at the hearing were: Chairman Hilbrecht, Dini, Tyson, Smith, Roy Young, Howard McKissick, Bryan Hafen, Wooster. Absent: Garfinkle.

The hearing was called open on AB 470 and the first speaker to be introduced was Mr. W. N. Campbell.

I am Managing Director of the Federated Employers of Nevada. I do not appear in that capacity but rather as spokesman for the construction industry trade associations of Southern Nevada. (To expedite the hearing he presented a list of the associations for whom he was speaking to the Chairman, copy of which is attached to this outline).

The trade associations who have authorized me to make my statement are in support of AB 470. With the permission of the committee, I should like the privilege of submitting the signed authorizations with the statement authorizing me to speak in their behalf. I should like to acknowledge the courtesy extended by this committee to us in affording us an opportunity to be heard on this particular bill. Basically, AB 470 is a rather short and concise, self-explanatory bill. It seeks to terminate the terms of office of the present members of the State Contractors Board and tenure of the secretary appointed by that board. The justification is contained in the preamble which I should like to read. (Mr. Campbell read the preamble to AB 470).

This measure has been variously categorized by the opponents as a personal piece of legislation; secondly, as a politically motivated piece of legislation; third, as an unusual and drastic piece of legislation.

With respect to the first appellation that it is personally motivated. Let me say that individuals are not an issue. We are concerned with the functions of an arm of the State government. Let me say further in response to some of the rumors that have become common throughout the halls of the Chamber that no paid executive of any trade association in Southern Nevada is seeking appointment as secretary of the State Contractors Board. Let me add, further, we would not support the candidacy or appointment of any such trade association. We have had quite enough of that. In answer to the argument that it is politically motivated legislation, let me point out the present board is composed of Republicans and Democrats, members of the various trade associations, though it is weighted heavily with general contractors. They are all of one mind. In answer to the argument that it is a drastic and unusual piece of legislation we would answer that if anyone disagrees that it is not, we would point out that this body has enacted legislation in this session to resolve conflicts of interests and further if members of the committee should characterize it as drastic it is designed to take care of a drastic situation.

It was in 1941, March 31, that the state licensing law was first enacted. I believe the associated contractors took the lead. They claim that it was the Associated General Contractors that financially supported the act. This may be. But times change. Nevada has changed. The construction industry has changed and we feel very strongly that the State Contractors Board should stand on its own and indeed we were assured by the Board when they increased renewal fees that this was their intention. We stated at that time that the industry would pay in fees and applications whatever was necessary to support a strong, efficient State Contractors Board,

This Assembly, a short time ago, demonstrated in my judgment and the people with whom I am associated that there is a massive lack of confidence in the operation of the State Contractors Board because of the close and intimate relationship between a private trade association and an arm of the State government. This association has extended from the inception of the board until the present time. It consists of two elements. The personnel of the Associated General Contractors, and approved trade associations have been used on the projects for the State Contractors Board. They have been paid by both sources. We certainly do contend validly and support the fact that there certainly has been a comingling of time. Time to contractors above all indeed is money. AB 331 which passed this morning was designed not against the Associated General Contractors but it stated the State Contractors Board should not be associated with any private organization and that the people that are charged with the administration should confine their time to the work of the board. That would apply to any of the trade associations we have named. No paid executive of any trade association should be considered for appointment to the State Contractors Board. But if AB 331 has passed, why do you need AB 470? Our answer to that is simply this. The exchange and utilization of personnel over the years since its inception, the policy making has been composed of a majority of those who are members of, subservient

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to, and dependent upon the Associated General Contractors. Today I believe that there are a majority of the board members affiliated who are members of the Associated General Contractors. We do not contend that in the State Contractors Board the A.G.C. has no place. They are entitled to proper representation. We would argue for that. We want true representation on the Board. We believe that something of a dynasty has been established in the State Contractors Board. It wasn't until too long ago that every member had been with it since it was first established. Experience is wonderful. For the number of years they have served on the State Contractors Board we believe they have had adequate opportunity to enforce and to effect the reforms that were called to their attention specifically two years ago. They have had an opportunity to effect these reforms. And we must conclude that the people that are calling the shots and making the administrative decisions are the proper people to blame for their failure to act. In our opinion the only way in which the State Contractors Board can have the confidence of the industry restored and that of the public restored is to make a complete change in the administration of this agency and that would require an opportunity to get some fresh blood, new people on the board.

In answer to the criticism of the measure that perhaps it is going to upset completely the State Contractors Board processes and work, we would answer that they seem to be pretty well upset now. There has been a great deal of criticism of the Board and its administration in that they have shown very little imagination to acquaint the public with the fact that contractors must be licensed because this would be a direct benefit to the public and to the industry as a whole. If more funds are necessary the industry will come up with them. If this will disorganize the board maybe that is a good thing. It will give a new look to the Board. We don't believe that this industry is so bereft of talent that it cannot do an adequate job of administering.

This concludes my presentation. It is our position, the position of the associations for whom I am speaking that we urge the State, County and City Affairs Committee of this Assembly to give this bill a Do Pass recommendation.

Chairman Hilbrecht asked the members if they wished to question Mr. Campbell. Mr. Dini asked if any of the terms of the board members would expire soon. Mr. Campbell stated he did not know.

The next speaker introduced was Mr. Wayne Dennis.

Mr. Dennis introduced himself as President of the Builders Association of Northern Nevada. He stated that his group was here to support AB 470. He said he felt that Mr. Campbell had done such a fine job going over the points that he would not add anything or take further time. He said he wanted to reaffirm two points. It appears absolutely necessary for AB 470 to be supported and approved if we are to have the effectiveness of AB 331 that was approved today. We could not have a change and separation if we do not change the structure of the Board. One would be ineffective without the other.

He said his industry was completely willing to pay the fees to support a complete separation of the Board. We would like to go on record in complete support of AB 470.

Mr. Tom Cook introduced himself to the committee as the lawyer for the present Board. He said he was speaking in opposition to the proposed legislation. In commenting upon Mr. Campbell's comment that the bill was politically motivated, he said he did not know whether it was or not but that he did know it was the first time this had ever happened in the State. He referred to a speech he had recently made in which he mentioned that one of the most important things about the Board was that it was not involved in politics and that the members of the Board had been reappointed by successive Governors. Now the seven members of the Board are being "Cashiered out". That is hard to explain to the seven men who have been serving so long. It is drastic. There is no precedent for it. This would set a blanket precedent for subjecting future boards to political interference. You do not subject men with proved integrity to the same action you would in giving a "dishonorable discharge" from the service. He quoted one of the early founders of the Board, C. V. Isbell, as saying if this bill were passed 26 years of work will have gone down the drain. This would be legislating men out of office.

Mr. Cook proceeded to present a concise sketch of the background of each of the present board members emphasizing their high standing in their respective communities, within the industry, and as men whose integrity had been well established over the years. He stated that this bill had hurt them. He said he was sorry this bill was ever introduced but that he was not sorry to tell the committee how much he admired them. Mr. Cook stated that he had prepared a brief he intended to submit to the effect the proposed bill is unconstitutional. (Copy of this brief is attached).

Mr. Rowland Oakes, present Secretary of the State Contractors Board, was introduced. He said that the proponents of the bill, none of them, had attempted to find out the facts. Only two members of the present board belong to the A.G.C. Some of them are opposed to increases in the license fees and last Fall the failure of some of them to pay the fees resulted in the loss of \$5,000 which could have been well used by the Board. The corrections sought by the proponents do not belong in the legislature. It belongs in the industry. He said he was speaking for the contractors of Nevada who have put in place 75% of all construction in the State. They are opposed to AB 470 and they put in place 75% of all the construction in the State. He cited two of the largest of them as being the builder of Frontier Hotel in Las Vegas, the largest single contract in Las Vegas and the builder of the new municipal coliseum in Reno, the downtown convention center. He stated that the general contractors are the responsible parties. He cited some of the leaders of the trade associations from Southern Nevada who were appearing at this hearing.

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One of them has his main office in Portland, Oregon. Another of them has his main office in Great Falls, Montana. He stated their main affiliations being out of state their complaints should be directed to the area of their main office sites. He listed General Contractors who had placed 85% of all the state's projects who were opposed to AB 470 and they speak o for the construction industry.

Mr. Allen Hillis was introduced. He said he wished to commend Mr. Rowland Oakes. He said that the industry had had to make two different requests to the Board and that the changes requested have been studiously avoided. We disagree that there is no need for a change. We have had ample opportunity. He said that the subcontractors of the State assume over 60% of the risk factor that is done by the general contractors. We do not wish nor do we attempt to deal in personalities. We simply feel that if we do not have a separation that the construction industry will suffer as it has in the past. The Board is not functioning in the best interests of the construction industry. We ask for a change. If it is drastic, so be it.

The hearing was concluded at 12:15 p.m.

Statement of Position

On A.B. 470
before
State, County and City Affairs Committee.

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In order to expedite the hearing on the above referenced bill, the following trade associations, through action of their respective Boards of Directors have authorized the statement and support the position of W.N. Campbell before the State County and City Affairs Committee of the Assembly.

We respectfully urge passage of A.B. 470 out of committee with a Do Pass recommendation.

Las Vegas Builder's Exchange

By Ted Schmidt

Associated Plumbing & Air Conditioning Contractors of Nevada, Inc.

By Frank Helling

National Electrical Contractors Association, Inc. Southern Nevada Chapter

By Albert D. Miller

Painters & Decorators Joint Committee, Inc.

By C.E. Cochran

Southern Nevada General Contractors Association

By John

Southern Nevada Home Builders Association, Inc.

By George J. Kell

Southern Nevada Air Conditioning & Sheet Metal Contractors Association, Inc.

By Max Christiansen

Floor Covering Contractors Association of Southern Nevada

By Ed. Jensen

Southern Nevada Lath & Plaster Institute

By Whitey Newton

1 MEMORANDUM RE: A. B. 470.

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3 NRS 624.060 provides:

4 TERMS OF MEMBERS: VACANCIES.

5 1. The terms of the members of the board shall be for
6 4 years each. Each member shall hold office after the
7 expiration of his term until his successor has been
8 duly appointed and qualified.

9 2. Vacancies arising for any reason shall be filled
10 by the governor by appointment for the unexpired term.

11
12 A statute which legislates a public official out of office
13 before the expiration of his term, is unconstitutional.

14 See 43 Am. Jur 36, section 190.

15
16 When the legislature passed a statute reducing the salary
17 of a constable of a single township from \$1,800 to \$5 per year,
18 the Supreme Court held it unconstitutional, saying:

19 "The deduction to be drawn from the case
20 mentioned and those reviewed by it is that the
21 legislature may reduce the salary of a legislative
22 officer when it is done in good faith, for the public
23 welfare, but not when the sole purpose is to legislate
24 an officer out of office, and that a statute enacted
25 for that purpose is void."

26 Moore v. Humboldt County, 46 Nev. 220, 210 P 401,402.

27
28 While the legislature may abolish an office created by it,
29 the power to fill the office created is executive, and the
30 legislature has no power to summarily remove a member of the
31 state road commission who was appointed by the governor for a
32 fixed term. See State ex rel Hammond v. Maxfield (Utah) 132 P.2d

1 660, 663. See annotations 4 A. L. R. 205, 172 A. L. R. 1366.

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3 The power to remove public officers is in its nature executive
4 and may not be exercised by the legislature.

5 See 16 C.J.S. 550, section 131, citing McGinley v.
6 Scott (Pa.) 164 A.2d 424.

7

8 In re Opinion of the Justices (Mass.) 19 NE.2d 807,
9 21 NE 2d 551.

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11 Nor can the tenure of office or civil service laws be
12 avoided by a sham or pretended abolishment of an office where
13 the legislature merely establishes a new office with a different
14 title but with the same duties.

15 See 172 A.L.R. 1372, 1375.

16 Rexstrew v. Huntington Park (Cal.)
17 128 P.2d 23.

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19 The members of the state contractors board were appointed
20 for a definite 4 year term which does not expire until 1969.
21 There is no provision in the contractors' law for their removal.

22 The rule is that where tenure of a public officer is fixed
23 by law, he can be removed only after notice of the charges
24 against him and a hearing in order that he may have an opportunity
25 to defend himself.

26 See 43 Am. Jur 50, section 212.

27 Annotations 99 A. L. R. 363 - 380.

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29 "But on the other hand, where the appointment
30 or election is made for a definite term, or during
31 good behavior, and the removal is to be for cause,
32 it is now clearly established by the great weight of

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authority that the power of removal cannot, except by clear statutory authority, be exercised without notice and hearing, but the existence of the cause for which the power is to be exercised must first be determined, after notice has been given to the officer of the charges made against him, and he has been given an opportunity to be heard in his defense."

Mechem, Law of Public Offices and Officers, Section 454.

See also State v. Board of Regents (Nev.) 261 P.2d 515.

Therefore, removal of the members of the state contractors board must be governed by NRS 283. The legislature has no power to create a vacancy in a public office in the manner provided by A. B. 470.

See NRS 283.040.