

Assembly

MINUTES OF MEETING - COMMITTEE ON STATE, COUNTY AND CITY AFFAIRS
54TH NEVADA ASSEMBLY SESSION - APRIL 7, 1967

Present: Hilbrecht, Smith, Dini, Bryan Hafen, Wooster, Roy Young,
Garfinkle, McKissick.

Absent: Tyson.

Chairman Hilbrecht introduced Mr. Tom Cooke, legal counsel for the State Contractor's Board, to support and explain to the committee AB 519 and SB 457.

Mr. Cooke stated the bills were originated to meet a situation which had developed within the past few weeks wherein the grounds for suspending, revoking or refusing renewal of contractor's license were questioned as to their constitutionality. Present law does not spell out these grounds and Mr. Cooke indicated that this legislation would remedy that situation. Mr. Cooke further indicated that the Board's actions could be subjected to question on constitutional grounds without supporting legislation.

Questioned by the committee, Mr. Cooke explained that he had drawn the two bills instead of one in the belief that it was the more simple way to obtain the results desired. He stated that SB 457 has passed the Senate. Questioning further developed that the guidelines sought in AB 307 were also provided in these bills although not in the same detail.

Mr. Hal Smith asked if any other state boards were subject to the same constitutional objections for lack of specific legislation. The was recognized as a good question but Mr. Cooke stated he could not answer for certain. Mr. McKissick indicated that the 1959 legislature had had to support the gaming board for this reason.

The setting up of qualifying contractor examinations was discussed and Mr. Cooke stated that the examinations were being instituted but had not been made mandatory by the legislation at this time because of the cost factor. Mr. Rowland Oakes was also present and stated he had nothing to add to Mr. Cooke's presentation.

Mr. Cooke and Mr. Oakes were thanked and excused.

Chairman Hilbrecht then stated the committee was being asked to support SB 170 authorizing counties and cities to issue revenue bonds to finance industrial development. On behalf of this bill, he introduced Assemblyman Roy Torvinen.

Mr. Torvinen stated the intent of the bill was to provide incentive for industrial development by allowing the issuance of municipal revenue bonds which would be tax exempt for the purpose of industrial development. The need to broaden the industrial base in Northern Nevada was outlined with specific reference to the void created by the removal of Stead Air Force Base, the only federal facility of any size, leaving the economy based primarily on tourism only. The incentive value of this bill would encourage certain types of large business to locate taking advantage of

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amortization and tax exempt privileges during the initial stages of development. The only incentive presently is the freeport law. Mr. Torvinen stated that this legislation was the only kind that could be accomplished without spending the taxpayers' money. It developed that 33 states have enacted similar laws and that we would only be meeting competition.

It was explained that the bill was to be amended at the suggestion of Assemblyman Tom Kean. The amendment would prohibit extending the benefits of the bill in instances where the industry seeking it would come into competition "on the local market" with another already established.

Mr. Torvinen introduced Mr. James Stewart who presented himself to the committee as a representative of the Sparks Industrial Council and also other specific groups interested in locating in the area for industrial purposes. He supported the bill and gave the committee examples of how the incentive provided would operate. He said there are natural geographical advantages to the area that would encourage locating here provided the other financial incentives prevailed also. He further presented the advantages that would accrue from an enlarged tax base, the creation of an expanded employment opportunity, and related matters. This bill is based upon a model act, and more specifically the present Colorado Act.

Mr. Jack Oakes also appeared. He is Chairman of the Ormsby County Development Committee and has been involved in industrial development for a number of years. He supported Mr. Stewart's presentation.. Also in support of the measure, Mr. Sam Harrison, Manager of the Carson City Chamber of Commerce, appeared. Both of these gentlemen have appeared before groups throughout the State and in no case had they found any opposition to the proposed bill. The committee was given copies of Senator Chic Hecht's letter supporting the bill. Mr. Stewart also provided copies of presentations made to industry by other areas based on this type of incentive to investment. Mr. Harrison stated that the Greater Reno Chamber of Commerce has indicated wholehearted support of the bill.

The gentlemen were thanked for the presentation and excused.

In the absence of Geraldine Tyson, Mr. Smith reported back on SB 300 stating that research had developed that the bill had possible dangers that far outweighed any advantages it might have.

Smith moved SB 300 be indefinitely postponed.
McKissick seconded.
Motion unanimously passed.

Mr. Cooke's presentation on SB 457 and AB 519 was discussed.

Dini moved Do Pass SB 457 and AB 519.
Smith seconded.
Motion unanimously passed.

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The committee agreed to give further consideration to SB 170 next week when the amendment has been prepared.

Chairman Hilbrecht called attention to ACR 21 which directs the Legislative Commission to study the problems of public printing.

McKissick moved that the Committee recommend approval of ACR 21.
Smith seconded.

Motion unanimously passed.

SCR 26 implementing study of Nevada statewide information system and establishment of single-shared computer facility was discussed.

McKissick moved the Committee recommend approval of SCR 26.
Smith seconded.

Motion unanimously passed.

Meeting adjourned.

MEMORANDUM RE A. B. 519 AND S. B. 457.

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3 Delegation of power.

4 "One of the most important tests of whether
5 particular laws amount to an invalid delegation
6 of legislative power is found in the completeness
7 of the statute as it appears when it leaves the
8 hands of the legislature. The generally recognized
9 principle is that a law must be so complete in all
10 its terms and provisions when it leaves the legis-
11 lative branch of the government that nothing is
12 left to the judgment of the electors or other appointee
13 or delegate of the legislature. The rights, duties,
14 privileges or obligations granted or imposed must
15 be definitely fixed or determined, or the rules by
16 which they are to be fixed and determined must be
17 clearly and definitely established, when the act is
18 passed by the legislature and approved by the governor.
19 The law must be perfect, final and decisive in all its
20 parts, and the discretion which is given must relate
21 only to execution. One court has laid down the rule
22 that in considering whether a section of a statute
23 is complete or incomplete, the test is whether the
24 provision is sufficiently definite and certain to
25 enable one reading it to know his rights and obligations
26 thereunder.

27 "A statute will be held unconstitutional as an
28 improper delegation of legislative power if it is
incomplete as legislation and authorizes an executive
board to decide what shall and what shall not be in-
fringement of the law, because any statute which
leaves the authority to a ministerial officer to

1 define the thing to which the statute is to be
2 applied, is invalid."

3 16 Am. Jur. 2d, sec. 257, page 506

4 Provisions of a statute empowering a public service
5 commission to attach to the permit of a contract motor carrier
6 upon the highways "such terms and conditions as it may deem
7 proper for the best interests of the public" were construed to
8 permit the insertion of conditions other than those entirely
9 within the purview of explicit provisions of the statute and
10 held to involve an unconstitutional delegation of legislative
11 power.

12 See Public Service Commission v. Grimshaw (Wyo.)
13 53 P.2d 1.

14 Delegation of powers by the legislature unconstitutional.

15 See 16 Am. Jur. 2d, sec. 240, et seq., page 491

16 See Annotation 76 A.L.R. 1055; 79 L. Ed. 476.

17 "An unconstitutional delegation of power
18 is not brought within the limits of permissible
19 delegation by the establishment of procedural
20 safeguards, the right to judicial review, or by
21 the assumption of the officer and will act for the
22 public good."

23 1 Am. Jur. 2d, 898, sec. 101.

24 It has been held, for instance, the power to declare what
25 shall constitute a crime; the power to establish municipal
26 corporations, the fixing of wages of municipal employees, the
27 power to establish zones or zone boundaries, and fixing the
28 rate to be assessed for the license tax on municipal service,
) are legislative and can't be delegated. The legislature may
) not delegate to administrative agencies the determination of
L what the law shall be, to whom it may be applied, or what acts
) are necessary to effectuate it. The legislature must perform

1 the function of declaring a policy and if the enactment fails
 2 to define a policy, the enactment is invalid and violates the
 3 prohibition against delegation of legislative power. Where
 4 discretion is given an administrative agency, the legislature
 5 must also fix the primary standard to guide such discretion or
 6 limit or confine the authority conferred. Generally speaking,
 7 attainment of the ends, including how and by what means they
 8 are to be achieved, may constitutionally be left in the hands of
 9 others.

10 See 1 Am. Jur. 2d. 902, 903, sec. 104.

11 See Nelson v. Dean (Cal.) 168 P. 2d. 16, 168 A. L. R.
 12 467.

13 The legislature thus may not confer a discretion as to what
 14 the law shall be but it may confer discretion in the execution
 15 or administration of the law. Too, the legislature must declare
 16 a policy and fix a standard in enacting a statute conferring
 17 discretionary power upon an administrative agency, but the agency
 18 may be authorized to fill up the details in promoting the pur-
 19 poses of the legislation and carrying it into effect.

20 See 1 Am. Jur. 2d. 903, sec. 105.

21 It is pointed out in 1 Am. Jur. 2nd. sec 108, page 907,
 22 that as a fundamental rule of our system, rights of men are
 23 determined by the law and not by administrative agencies and
 24 arbitrary powers therefore may not be conferred on administra-
 25 tive agencies even though courts may be authorized to review
 26 the exercises of power. However, the fact that a statute gives
 27 powers in an administrative officer and provides for judicial
 28 review of the powers, this has weight in determining that the
 powers bestowed are not arbitrary.

"A statute or ordinance which in effect
 reposes an absolute, unregulated, and undefined
 discretion in an administrative agency bestows

1 arbitrary powers and is an unlawful delegation of
2 legislative powers."

3 1 Am. Jur. 2d. 907, 908, sec. 108.

4 "The provision of standards and limits to
5 authority and discretion is the cardinal principle
6 to be observed by legislatures in the grant of
7 authority to administrative agencies, since the
8 objection to delegation of power is not that it
9 commits something to the discretion of the admini-
10 strative agency, but that it fails to provide any
11 proper standards or rules by which the exercise of
12 that discretion must be guided and limited. The
13 agency must not be permitted to range at large and
14 determine for itself the conditions under which a
15 law should exist and pass the law it thinks appro-
16 priate. If no standards are set up to guide the
17 agency in the exercise of the functions conferred
18 on it by the legislature, the legislation passes
19 beyond the legitimate bounds of delegation of
20 legislative power and effects a surrender and ab-
21 dication to an alien body of a power which the
22 constitution confers on the legislature alone.
23 If the legislature fails to prescribe with reason-
24 able clarity the limits of the power delegated, or
25 if those limits are too broad, the legislation is
26 void and the attempt to delegate is a nullity."

27 1 Am. Jur. 2d. sec. 114, page 915.

28 One of the tests in determining whether standards are
9 necessary is where a personnel of a board might vary with each
0 other with each case, there is even a greater need for specific
1 standards than otherwise.

2 "Among the situations in which the necessity for

1 setting standards and limits for the exercise of
2 authority and discretion conferred upon administrative
3 agencies is most frequently stated, and the absence
4 of such standards is regarded as unconstitutionally
5 conferring arbitrary power, or an unfettered and un-
6 restricted discretion, are statutes and ordinances
7 relating to the grant or refusal or revocation of
8 licenses in areas involving constitutionally pro-
9 tected rights and zoning statutes and ordinances
10 relating to the uses of real property.

11 "The generally accepted rule is that a statute
12 or ordinance with less than arbitrary discretion in
13 administrative agencies with reference to the right
14 or property of individuals or an ordinarily lawful
15 business or occupation without prescribing a uniform
16 rule of action, making the employment of such rights
17 depend upon arbitrary choice of the agency without
18 reference to all persons of the class to which the
19 statute or ordinance is intended to be applicable,
20 and without furnishing any definite standard for the
21 control of the agency, is unconstitutional and void."

22 1 Am. Jur. 2d. 916, sec. 114.

23 See annotation 58 A. L. R. 2d. 1099, 12 A. L. R. 1436,
24 54 A. L. R. 1104, 92 A. L. R. 401, 78 A. L. R. 2d. 1316.

25 Of course this was the doctrine established clearly in the
26 case of Schechter Poultry Corporation against United States,
27 79 L. Ed. 1570, in which the NRA was declared unconstitutional
28 because it allowed improper delegation of legislative powers.

In one case, the statute authorizing a dry cleaners' board to promulgate rules and regulations as it deemed necessary to control and regulate the business, constituted invalid delegation of powers. There was no specific policy or fixed standard

1 to direct and guide the board.

2 See Chapel v. Commonwealth (Va.) 89 SE 2d. 337.

3 The standard or limit governing the authority and
4 discretion of the agency must be found in the law itself,
5 since the legislature is the only one that can create the stan-
6 dards and limits. However, the standard may not necessarily
7 be expressly stated in all cases and may be implied.

8 "The standard to guide a particular act
9 which in terms is not limited by any specific
10 standard may be found within the framework of the
11 statute under which the act is to be performed, or
12 may inhere in its subject matter or purpose, and
13 a clearly defined field of action may implicitly
14 contain the criteria which must govern the action.
15 Also, a standard may be found in other pertinent
16 legislation, or an executive order, or in the field
17 of law governing the operation of the agency. The
18 courts will not impute to the legislature an attempt
19 to enact an unconstitutional law, and will construe
20 the act, when reasonably possible to do so, as
21 vesting powers which may be lawfully exercised.
22 In determining whether legislative power has been
23 delegated without standards to guide the agency,
24 the entire statute is to be looked to and the mean-
25 ing of the words determined by their surroundings
26 and connections."

27 1 Am. Jur. 2d. 920, sec. 116.

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~~In People (Klemmer) v. Federal Surety Co. (Ill.) 168 NE 401,~~
92 A. L. R. 404, the court held that there were inadequate
standards and unconstitutional delegation of legislative authority
where a statute provided that no person should sell securities

1 in the state unless registered by the secretary of state who
2 should pass on the conditions of registry, but the statute left
3 the situation such that the amount of the bond required for the
4 license as a dealer and broker in securities or conditions which
5 it should contain unascertainable until the secretary of state
6 had fixed the amount and terms. There were no rules in the
7 section which he could follow in determining these questions.

8 An ordinance which vested in a commission or a public
9 works the discretion to determine the application for a permit
10 to construct driveways whether the proposed driveway would
11 "unduly obstruct public travel or be dangerous to the public"
12 uncontrolled by any limitations, definitions, or standards and
13 not providing for any review, was held unconstitutional.

14 R. G. Lydy v. Chicago (Ill.) 190 NE 273, 92 A. L. R. 404,
15 where the legislature did not lay down a code of ethics, rules
16 or regulations, the violation of which would be cause for
17 license revocation of a physician, the court held it an un-
18 warranted delegation of authority.

19 See Schireson v. Walsh (Ill.) 187 NE 921,
20 92 A. L. R. 404.

21 If the act leaves it to ministerial officers as to the
22 definition of the thing to which the act is to be applied, the
23 definition not being commonly known, it is invalid as an un-
24 warranted and void delegation of legislative power.

25 See People v. Younger (Ill.) 184 NE 228, 92 A.L.R. 404.

26 It has been said in respect to applications for permits
27 that the test in respect to whether or not the conferring of
28 discretion to refuse an application is valid is whether the
29 applicant can determine beforehand from the contents of the
statute or ordinance all the necessary requirements therefor.

See San Antonio v. Zogheib (Tex.) 70 SW 2d. 333,
92 A. L. R. 404.