

MINUTES OF MEETING - ASSEMBLY COMMITTEE ON JUDICIARY, Special Session, February 7, 1968

Meeting was called to order by Chairman Marvin White at 10:20 A.M.

Present: White, Lowman, Dungan, Hilbrecht, Torvinen, Schouweiler, Kean, Petrini, Swackhamer

Absent: None

Visitors: Frank Dakin, Guy Shipler, Mr. May, Mrs. Foote, Mr. Dini, Mr. Getto, Mr. Frank Young, Senator Dodge

Mr. White read the Rules for Procedure for the Committee on Judiciary for the 1967 regular session and asked that they be adopted for the special session.

Mr. Torvinen moved the adoption

Mr. Kean seconded

Motion passed unanimously

Mr. Lowman asked that a copy of the Rules for Procedure be obtained for each member of the committee.

✓ AB 6: Extends limitation of liability for recreational use. No cost to State or any public agency.

Mr. Dakin gave a legal interpretation of the bill. He said the reason the amendments are needed is that the irrigation districts are not deemed to be a political sub-division of the state. There is established case law on this and the amount they may be sued for is very substantial. The legislature passed a bill which permitted cooperative agreements making reservoirs available for public recreation which had not been so before. There is no limit on the liability of these districts and they do not enjoy sovereign immunity. The combination of the two bills makes for a serious situation. These amendments seek to put the irrigation districts in the same position as other public bodies whose waters are used for public recreation. They will apply to any action pending at the date of passage which has not been reduced to final judgment.

The courts have held that you may limit liability. The only conflict in decided cases is what constitutes final judgment. Some cases have held that if a decision may be reversed or remanded, this prevents finality from attaching until the court of last resort has acted upon it. We do not undertake in this bill to resolve that question because it is not a legislative question. The question of where you can make a final cut-off is a constitutional question.

There is only one action now against the irrigation district and one standing at appeal. It should be left to the courts to decide what is final judgment. Litigation will be pursued in the courts no matter how the legislature decides.

Mr. Getto said that the pending case involves a quarter of a million dollars plus loss of wages and medical costs, etc.

Mr. Torvinen asked if there is no clear-cut decision as to what a final judgment is and Mr. Dakin replied that there is no set final judgment for purposes of appeal.

Mr. Kean asked Mr. Dakin to comment on the thought that perhaps the legislation could apply

to the two cases now pending and then dropped later. Mr. Dakin replied that that is exactly what we are doing. Section 2 will not go into NRS and we are limiting it to all future use.

MR. WHITE: Can we just eliminate these two cases?

MR. DAKIN: No

MR. GETTO explained that the irrigation district is primarily engaged in irrigation, not recreation. They were forced into doing something about the recreational phase. Five years ago they charged \$5 for the use of boats. They do not really want any part of it. Churchill and Lyon County formed a recreational facility. They each put up some money and received some monies from the state. This has been in operation for two years. It is since then that they have had these accidents. It is a peculiar situation. During floods logs flow down the river and so on. A person may be drinking. Water skiing is very hazardous any way.

This is a very important issue. It is going to set a precedent. All irrigation districts are very concerned. The Truckee-Carson is the largest and best able to afford enough insurance to protect themselves against such accidents. Although the smaller districts could not afford such protection, they might be faced with similar suits. There are two suits already. If judgment is rendered, then more will sue and soon the districts will not be able to get any insurance at all. They have \$250,000 now.

MR. TORVINEN: Referring to section 2 of the act, line 21: if we struck out the word "final" and the rest of the sentence, would that amendment have the effect of allowing the judgment which is on appeal to stand and limit any further actions pending?

MR. DAKIN: Yes, I believe that it would.

MR. HILBRECHT: I am inclined to go along with Mr. White. Really, what we want to do is to help the irrigation district out of a problem with respect to adequate insurance coverage. I don't see what business we have meddling with the previous contract between the private corporation, the insurance company, and these injured people. The premium has been paid and they should be protected.

MR. DAKIN: How can you guarantee that a judgment that might be rendered would not exceed the limit of insurance coverage? How do you know that other districts are protected up to that amount?

MR. HILBRECHT: We could see that they are all covered up to \$250,000.

MR. WHITE: Have you had any indication from the insurance people that the insurance will be canceled? Especially with continued liability exposure?

MR. GETTO: It is hard to get any insurance at all. Lloyd's of London is the only one that will insure them under the present law.

MR. WHITE: Is there any other litigation in other districts?

MR. GETTO: No.

MISS DUNGAN: Do you know if other districts carry any insurance?

MR. DINI said he didn't know and that he didn't know of any other suits pending.

MR. SWACKHAMER said that the Pershing district is insured but they are very concerned about the situation. Premiums are getting very steep. They are going to have to close out the districts for recreation. No pending suits against that district.

Mr. WHITE: The \$25,000 limit would be no trouble to the districts?

Mr. Swackhamer and Mr. Dini said they did not think so. Mr. Dini added that until the last few days they were not able to get any company in the world to go over \$250,000. Now he understands that Lloyd's of London has made a commitment.

Mr. Torvinen said he agreed with Mr. Hilbrecht about contractual arrangements. He added that we might suggest an effective date of April 1 so that the law would be on the books for a couple of months under present insurance deals.

Mr. Dakin said that would invite a flood of suits and claims.

SENATOR DODGE said he is not going to fight a hard battle over the case presently in the courts. The final judgment language doesn't influence that case. He does think we should include any action that has not gone to final judgment. He suggested some insurance people be invited in to discuss the situation with the committee. He has been told by an attorney in Reno that it is going to be a rough deal for the districts to provide even the \$25,000 insurance maximum. He added that he has not explored this but thinks we are making a mistake when we try to analyze solely on whether someone has enough insurance coverage so as not to be out of pocket themselves. Recreational use of these facilities is inherently a dangerous thing.

He said we have here a decision on public policy about the use of these places for recreational purposes. These districts have no obligation to operate these things for recreation. He said the people he has talked to feel that people who use these places must take certain risks upon themselves and not expect the owner of the reservoir to stand behind an injury. The \$25,000 limit is to cover the medical costs, etc. We had better find out what this will do to rates in the future, these cases that have happened. This \$500,000 judgment has become well known. At Lake Tahoe and Meade we do not have this problem because of federal immunity.

MR. WHITE: The consideration of this committee is to look this situation straight in the face, also the constitutionality of the thing. Are we permitted to pass a bill that will affect something which has already happened and is in litigation?

SENATOR DODGE: I checked with Mr. Dakin and he says we can.

MR. TORVINEN said that theoretically people do things on the basis of law as it exists at the time they do it. We have to refer to this for consistency. People are assumed to know the law. He doesn't see how we could pass this law without taking this into consideration. It will make no difference to T.C.I.D. The main basis for this \$500,000 suit was that the man had paid a fee thing on the water. If he had not then there would not be a case. He said he understands the T.C.I.D. is in charge now, so the basis of this particular suit no longer exists.

SENATOR DODGE told of the meeting which was held in Churchill County after the judgment. Everyone was all shook up. There was \$250,000 insurance coverage and a \$500,000 judgment. Officials from Lyon were there because part of the lake is near Silver Springs which is in Lyon. Several Federal people were there because of general interest in recreation. The

T.C.I.D. board was there and the Bi-County Recreational Committee.

Instead of a boat fee, a user fee is now charged no matter what the person paying it might be planning to do on the water. This was the only way they knew to raise a little money to keep the place sanitary, etc. As a result of the meeting, it was decided to keep the place open for the time being. Later it was decided that it would be closed January 1, 1968. When the governor agreed to put it on the agenda for the special session they decided to keep it open.

MR. GETTO: The bill states that any public or quasi-public corporation will be just as liable as T.C.I.D. This will end the Bi-County Recreational Committee. Whoever is operating the thing will have the responsibility.

MR. WHITE: We all see the need for the legislation. The question is what do we do about limiting pending legislation.

MISS DUNGAN: How about if we let it stand as is except limiting action to \$250,000?

MR. DAKIN: You would still have to accept judgment set as final by the courts.

MISS DUNGAN: This would not harm the other districts in any way?

MR. DAKIN: I can't say. I don't know what insurance other districts have.

MISS DUNGAN: If accidents occurred during the time insurance was in force, why deprive the people injured of their rights?

MR. HILBRECHT: Rates of insurance have to do with judgments and judgment exposure. That judgment is already in with respect to whatever the claim is in the pending litigation. The whole purpose of the \$25,000 limitation is to modify the results already in. We did not anticipate the problem before it happened. This should be a judicial consideration rather than a legislative.

SENATOR DODGE: The question is a public policy question--how far your exposure is going to mushroom the rates and this high rate money could be used for development or maintenance. There ought to be a definite cut-off when the legislation is enacted.

MR. HILBRECHT: The people of the State of Nevada and of those irrigation districts have paid a price for certain coverage that existed at the time of the injury. The law indicates that unless we are to change it, the person injured prior to the effective date of this legislation will have two years to initiate action. What you are saying, in essence, is that these people are not entitled to their insurance protection?

SENATOR DODGE: Insofar as there may be additional judgments, it will affect these rights in the future even of the \$25,000 limit. The irrigation district has no inherent responsibility to operate the recreational facilities in the first place. If they do, it should not place burdens on them.

MR. HILBRECHT: The only one to benefit from what you are suggesting is the insurance company. I don't think this is necessary.

SENATOR DODGE: The insurance man I contacted said this will still be a real problem, even with the \$25,000 limitation.

MR. SWACKHAMER: Don't we agree the first section is necessary and needed?

The committee agreed this is so.

MR. SWACKHAMER: The second section is the only question. If we set liability at \$25,000 I would like to make a long distance call concerning it.

SENATOR DODGE: I am not going to fight this provision too hard. It applies only to this case. If you will just salvage the basic part of the legislation I will go along with you.

MR. KEAN: To simplify: A solution boils down to this: 1. limit \$25,000 on passage and approval. 2. limit all prior actions to \$250,000.

MR. WHITE: What about the half million dollar judgment already passed? If we pass this are we not subrogating the court?

MR. DAKIN: I don't feel we reach that case at all. My own belief is that our Supreme Court would hold that judgment of the district court was the final judgment unless remanded for new trial.

MISS DUNGAN: He would still have a chance to get the \$250,000.

SENATOR DODGE: I still think you should get some insurance people and study the effect on future rates for the benefit of the smaller districts.

MR. TORVINEN: If we allow suits under present coverage it will affect future rates?

SENATOR DODGE: Yes. I personally feel that we should establish a date as we did when we waived sovereign immunity in the state.

MR. SWACKHAMER: Senator Dodge is worried that if we accept Mr. Kean's suggestion and there are recoveries on other cases it will affect future rates. I think the chances of getting involved in the next two-three weeks are pretty meager.

SENATOR DODGE: I am very concerned about future situations with no cut-off date.

MISS DUNGAN: How about "anything that happens up to the date of passage and approval?"

SENATOR DODGE: I thought you were leaving the door open for retroactively affecting accidents happening before passage and approval.

MR. GETTO: This is going to definitely affect future rates. Assume more law suits are filed. Let's say two years from now judgments are made. It will have an effect on insurance rates from then on.

SENATOR DODGE: If you do not desire to make a cut-off date on passage and approval and you are going to leave the door open, then I would request a hearing for the irrigation districts that are involved in this.

MR. TORVINEN: I would like to have a representative of the Independent Insurance Association in before the committee.

MR. SWACKHAMER: If we don't do something there will be no liability because the districts will close the areas for recreation.

MR. DINI: The insurance companies may cancel before we get this bill passed. This is what worries me.

MR. LOWMAN: I don't want to see a Pandora's box opened. We have no way of reading people's minds and knowing whether they are going to file suit.

MR. WHITE: If the rates are raised the recreation will be closed.

MR. GETTO: The farmers are strapped and are going to close the doors if there is no relief given.

SENATOR DODGE: This bill never asked that these districts be placed in the same category as public schools and so on. The districts must still keep the insurance coverage on things they had previously. They are only asking that we help to make available this facility for recreational use.

MR. SWACKHAMER: One concern is a person who might have an accident between now and when the bill becomes effective. The probability of this happening is pretty remote. There is only a short time to worry about.

MR. HILBRECHT: There may be another suit filed? This means that the insurance company may now be negotiating with someone. Someone may be in the hospital. Will he be justly treated?

MR. SWACKHAMER: Any man planning to file will be alerted that his time is running out.

SENATOR DODGE: There is a lot of publicity about this legislation and has been since September or October. It seems from that standpoint people will know that this legislation has been requested and is on the agenda.

MR. WHITE: Can we establish then that the \$25,000 limit is agreeable upon passage of the act with provision that actions that are now pending be limited to \$250,000?

SENATOR DODGE: There is no question of constitutionality involved in this.

MR. WHITE: We have now heard the proper testimony. Those who are not members of the committee may be excused.

MR. WHITE: What is the difference between accident and action?

MR. DAKIN: A person involved in an accident resulting from negligence of the district has cause of action. Action does not arise until he files suit in the courthouse. The higher limit would apply to one who has filed action prior to the passage of the bill.

MR. HILBRECHT: This rewards the person who files action immediately. Lots of people do not file suit until they find they have a situation they can't cope with or can't negotiate any further. People are not on notice that we are planning to change the policy of the State of Nevada which is a two-year statute of limitations. I am unwilling to give to a businessman who has already been paid for services the right to go scot free for anything over \$25,000. This is giving the insurance company the windfall.

MR. KEAN: I concur with Mr. Hilbrecht.

MR. LOWMAN: You are unduly complicating the law to strain at a gnat.

MR. DAKIN: Liability of the insurance company, if any, has already attached. If T.C.I.D. was covered by X insurance policies and someone was hurt that someone can bring action and have the benefit of the policy regardless of this legislation.

MISS DUNCAN: By including section 2 and putting \$250,000 limit we are giving more assistance to the district.

MR. KEAN: We are helping the insurance company by putting the limit at \$250,000.

Mr. Swackhamer reported that he was unable to get the man he wanted to talk to on the phone and so could not obtain the figures he was seeking.

Mr. Kean had a question about line 8 "rising from any recreational activity, etc". He felt this did not limit to recreation.

Mr. Dakin: said this was not so, that the word "recreation" limits it.

MR. HILBRECHT: Could we say "rising from the use of land or water for recreational activities?"

MR. DAKIN: If it bothers you, go to "recreational activities" or "recreational uses".

Mr. Kean moved to adjourn until such time as Mr. Swackhamer could report his information.

Mr. Lowman suggested that someone be assigned to find out the limits of all the districts. This assignment Mr. White gave to Joe Dini.

Mr. Dakin said there is no way that he knows of that the committee can be sure they have a complete list of the irrigation districts.

Mr. White said that AB 7 is in the Judiciary Committee and that he would like the committee to discuss it during the afternoon immediately after PM adjournment. He added that he will have the authors of the bill present and will set up further hearings or discussions.

Meeting was adjourned at 11:45 A.M.