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MINUTES OF MEETING - ASSEMBLY COMMITTEE ON JUDICIARY, 55th Session
March 6, 1969

Meeting was called to order at 2:30 by Chairman Torvinen.

PRESENT: Torvinen, Lowman, Schouweiler, Swackhamer, Kean, Bryan, Fry
Reid, Prince.

MR. TORVINEN: This is the time set for a hearing on AB 399 which is a complete revision of the guardianship code and procedures. It repeals 459 NRS.

We have three people here today to go over this with us. Judge Pat Mann James Guinan from the Bar Association and James McGhee from the First National Bank Trust Department.

JUDGE MANN: I guess I am here because the committee that drafted this was from Elko and I was there when we first worked on it. Getting a new guardianship statute has been talked of for some time.

I will preface my remarks by pointing out that in most instances where a person has planned for death and has a will drawn up usually the problems are quite standard. The need for guardianship arises from a death where there is no will and no provisions made ahead of time. They may end up with one-quarter interest in a car and so on. These things can be quite troublesome.

We used the Oregon law as a starting point for our revision and then ended up changing it quite a lot. The present law was passed in 1899 and there has been no substantive change since. There is not enough in it to serve as guide lines for attorneys and courts who have to decide these things.

Some of the provisions have not been changed, a lot have been changed, and some are completely new. For instance, section 13 provides for guardianship for a minor, an incompetent and a non-resident. There is the same type of notice for all.

Judge Mann then went over the new guardianship bill section by section with the committee, and a few changes were determined.

MR. TORVINEN: On behalf of the committee, if not the whole Legislature, I want to express our appreciation of the able work done by yourself and the other members of the committee in the preparation of AB 399.

MR. BRYAN: Does this represent a concensus of opinion or do we need to get others in to hear their ideas?

JUDGE MANN: There was pretty much agreement. We had some discussions on issuing petitions and summons. We all generally decided that in some cases a summons would be better.

MR. GUINAN: The Board of Governors was unanimous in endorsing this. We have one suggestion however. If we can't get this passed let's repeal the old law and rely on case law. It would be better.

MR. MCGHEE: I am representing the Bankers' Association. I sent copies to all of them but there wasn't enough time to hear from them, so maybe I should say I am speaking for myself, really.

I am extremely impressed with this bill. I have been through so many situations where I really had to fumble my way through. Here, these things are delineated. From the bankers' standpoint, this would be just wonderful.

On section 54, page 12 I would like to make one suggestion for the committee's consideration, that there be added to that section the Prudent Man Rule which is NRS 164.050. This is on the control of investing trust funds. This is based on experience. If a private guardian under bond, or a corporate guardian exempt from bond, were to go astray, they would at least be covered if they had this authority. You can go to court and get this authority but it can be quite inconvenient and time-consuming. I remember one time I had to go clear to Austin to get permission to invest \$5,000. I would like you to consider this as one of the things the guardian could do.

Section 91, subparagraph 1: Perhaps this would not be up to our Legislature to handle, but I do have this particular problem right now. It is distribution to a minor in California and the California law is different from ours.

MR. TORVINEN: I had a reason to research that and I came to the rather firm conclusion that a minor reaches majority in the place of his residence.

MR. BRYAN: Is there any harm in including some new language there?

MR. TORVINEN: I don't think so. AB 581 is a bill we have in on trusts and references. Mr. McGhee might be interested in that.

MR. REID: This is the bill they have in North Carolina. It enables you to put all these things in by reference.

MR. MCGHEE: It has been recommended that we put in the Uniform Act but that has not been done.

MR. BRYAN: It has to be adopted by the states.

MR. MCGHEE: Eight or states have done so I am sure.

MR. KEAN: What happens when it is revised?

MR. BRYAN: Are you speaking of a will?

MR. GUINAN: You incorporate as it was on the day you incorporated. You know what you are adopting at that time.

MR. LOWMAN: Would you have a copy of this Uniform Act?

MR. MCGHEE: Not with me. The Uniform Trust Powers Act is being recommended to the Legislature. Scotty Gladstone did his thesis on the Trust Powers Act. It does have all this boiler business.

Senator Swobe has introduced a principal and interest bill. I don't know yet just what that is.

MR. REID: You think this is in the Uniform Act?

MR. FRY: If it is from North Carolina it is not Uniform.

MR. MCGHEE: We feel that this act would be good from our standpoint. It would be very helpful in administering a will where things are left out or forgotten. However, the Uniform Act does have a great deal of merit.

MR. TORVINEN: We have on my desk a report of the Legislative Commission Uniform Law Committee.

MR. LOWMAN: There were only three Uniform Acts recommended this year and this was not one of them.

MR. KEAN: One general question: Where you have to get court orders etc. how long does it take to get those?

JUDGE MANN: 10 days is the minimum time you can take. Most come on for hearing soon after the ten days.

MR. TORVINEN: In Washoe County the judge hears these things every morning at 10:30 no matter what. I don't know what they do in the outlying districts.

There is no problem on the court calendar on these. They take only a few minutes and the court reserves time for them.

JUDGE MANN: I would like to say something on this traffic violations by juveniles. In our area I don't mind handling these traffic things. We go through the whole bit, including the robe, and it is quite a thing for these youngsters. They get their first picture of the legal process. If sent to Justice Court, the kid many times pays the fine and his parents never know anything about it. We make the parents come in with their kids.

MR. TORVINEN: Is any real hardship involved with the parents having to take the day off and come in with the kids?

JUDGE MANN: It hasn't seemed to be any real hardship.

MR. TORVINEN: How about when they have to come 100 to 150 miles?

JUDGE MANN: I have had them come further than that, even from Pahrump. I think it is good.

MR. TORVINEN: Have you had occasion to talk to Judge Wilks or some of the others with your same experience?

JUDGE MANN: No, I have not.

MR. SWACKHAMER: Question: Section 36 requires an annual report and then at such other times, etc. If the guardian was really going sour how would the court become aware of it and make him file more often?

MR. TORVINEN: A neighbor might telephone the Welfare Department and they would get the information to the judge.

MR. SWACKHAMER: The reason for an annual filing of the report: Is it because of the cumbersome nature of making him file more often?

JUDGE MANN: Yes.

MR. SWACKHAMER: Section 44: It seems like an unscrupulous person could take advantage and take the person just by declaring he was incompetent and then making a few transactions and then having them voided.

MR. TORVINEN: This is common law. If they do void, they have to return any gain or any consideration. He would have to return anything that was not a necessity.

MR. SWACKHAMER: What does "ad litem" mean?

MR. TORVINEN: Temporary. It is used for special purposes to defend or prosecute a lawsuit.

MR. SWACKHAMER: I could, just as an individual, make the court aware of something I know about the guardian and how he is doing? (answer was Yes).

The three visitors were excused at 4:05.

MR. SWACKHAMER: George Franklin wrote the Legislature and suggested some things that would be beneficial to the district attorneys and I would like the Judiciary Committee to introduce them.

MR. KEAN: Before everybody gets away I would like to make a comment on a phone call I made today. The Bureau of Narcotics in Washington, D.C. It was from the Chief Counsel for Dangerous Drugs under the Dept. of Justice.

He will be in Las Vegas Sunday and Monday and Tuesday he will come to Reno. They are in the midst of revampint the whole law. He would like to have the Committee furnish transportation for him from Reno to Carson City and I said I would take care of that.

MR. TORVINEN: We will talk to him on Tuesday.

MR. SCHOUWEILER read the proposed bills from George Franklin and the Committee decided to introduce BDR 14-1695, BDR 14-1694, BDR 20-1698 and BDR 14-1693.

They decided NOT TO INTRODUCE BDR 14-1692, BDR 14-1699, BDR 14-1691 and BDR 14-1697.

MR. REID: I move we adjourn.

MR. BRYAN: I second
MOTION CARRIED UNANIMOUSLY.

Meeting was adjourned at 4:30 P.M.