

## COMMITTEE ON FEDERAL, STATE AND LOCAL GOVERNMENTS

Minutes of Meeting -- February 6, 1969

JOINT HEARING

Senate Committee on Federal, State and Local Governments  
 Assembly Committee on Government Affairs

A joint hearing of the Senate Committee on Federal, State and Local Governments and the Assembly Committee on Government Affairs was held on February 6, 1969, to consider various bills. Chairman James Gibson of the Committee on Federal, State and Local Governments called the meeting to order at 3:00 P.M.

Those in attendance were:

James I. Gibson, Chairman	)	
Marvin L. White	)	
Warren L. Monroe	)	Senate Committee on Federal, State
Vernon E. Bunker	)	and Local Governments
Chic Hecht	)	
Carl Dodge	)	
Hal Smith, Chairman	)	
Norman Hilbrecht	)	
David Branch	)	
Don Mello	)	Assembly Committee on Government
C. W. Lingenfelter	)	Affairs
Bryan Hafen	)	
Virgil Getto	)	
Joseph Dini, Jr.	)	

Also present were:

R. Guild Gray, City Manager of Boulder City  
 Nicholas G. Smith, Burrows - Smith & Co.  
 E. L. Newton, Nevada Taxpayers Association  
 Morgan J. Sweeney, Mayor, Boulder City, Nevada  
 Harold Depoah, Legislative Intern  
 Proctor R. Hug, Senator  
 M. J. Christensen, Senator  
 R. T. McAdam, Bell of Nevada  
 Curt Blyth, Nevada Municipal Association  
 Howard McKissick, Assembly  
 David Henry, Clark County Manager  
 Russell McDonald, Legislative Counsel

Press Representatives

Chairman Gibson introduced Russ McDonald of the Legislative Counsel to explain the bills before the committee for consideration.

Mr. McDonald: The genesis of the series of bills apparently under discussion and consideration goes back to the fact that Boulder City is one of two types of commission form of government authorized by code. It was a Federal City and went through a charter committee organization and became a City released from federal authority. It's charter which was voted upon by the inhabitants is not subject, except by indirection, to legislative amendment.

The charter itself as adopted by the people says that in addition to what is contained in the charter the general laws that are not in conflict with charter provisions shall apply. This infers, at least, as far as a lawyer's thinking is concerned, that therefore, you could not possibly pass a special statute that would apply to Boulder City, at least without some judicial determination.

You'll recall in 1967 that most of the municipalities, including Boulder City, were given authority under the Southern Nevada Water Project, (in which the State participated to the tune of \$10,000,000.00) and issued bonds for the construction of filtration plants to do a certain amount of local work in order to bring in the facilities in the use of the water. Under the terms of the Federal Repayment Contracts with the Colorado River Commission, each of the municipalities had to enter into certain agreements, which is usual in federal negotiations. Each of the cities then had to have their contracts validated in the District Court in Clark County.

Because of the charter limitations in Boulder City the repayment obligations, when inquired into by bond counsel, met with some difficulty. It was a question as to whether or not Boulder City itself had the authority through the council to enter into this type of activity. The City Council proceeded then to bring an original action in the Supreme Court to determine the fact that these powers did exist. This was a double gift for the State of Nevada as far as those attorneys, including myself, interested in bonding provisions were concerned. We have been bugged with the case since about 1925 when it had been determined with respect to the City of Carlin, which is also a municipal form of government -- but of a different type -- that the powers were just like a bag of wind -- you didn't know what you had. So we managed to prevail upon the Supreme Court to knock out an answer to, I suppose, 95% of the problems.

So then Boulder City proceeded to attempt to do several things -- and I understand that some of the bills I don't think are up for inquiry yet that are connected with this -- but those that are on the Agenda, one they had to enter this repayment agreement with the Federal Government for the construction of water facilities, and that includes our \_\_\_\_\_ Reservoir, certain transmission lines, this is in connection with the Bureau of Reclamation and the City. You need specific authority, and irrespective of whether you issue bonds or merely promise to pay over a period of X years, bond counsel still -- and the Federal Government -- insisted that there be some corrective legislation which would allow Boulder City to do this.

Now, most of the bills here, as I recall, are of a general nature. When I alluded to the fact that charter provisions say that the general laws apply, you get the reverse of this in probable judicial thinking that special laws then could not apply to Boulder City. So rather than take the chance that because of the problems of water particularly, these bills are drafted with

the idea that they are general in nature and would apply then to all municipalities falling within any classifications that might appear in the bills. That's the reason why they are general, and not pointed out save in actuality to Boulder City.

(End verbatim testimony.)

Chairman Gibson: I wonder if procedurally we could just start through these bill by bill. Guild, would you rather do it that way or do you have some general statements you want to make?

Senator Monroe: Would the charters of any of the cities restrict them from following the general law . . . if we should pass it? Which would take precedence, the charter or the general law?

Mr. McDonald: I will attempt to answer that, I think the charter would probably prevail. However, you have the legislative habit over the years of passing general statutes which applied both to special chartered cities and to general cities. Now there are three or four -- Mr. Blyth may correct me, general cities at the moment. The rest operate under special legislative charters. So it's hard to pin it down, Senator. I'd say probably the general laws would apply. We have suggested -- I haven't come to this committee yet -- particularly in the bonding field, in an attempt to clean up the charter as a result of the enactment of several of those security laws you passed in 1967. That's a long bill and I'm still working on it; because at that time, and I recollect that I asserted that there were just what you are alluding to -- that you've got this power and the charter should be cleaned up. That bill will be at least suggested and you will get it a little bit later.

Senator Dodge: I'd like to ask a question on this commission-type city government charter. You make the statement that the legislature couldn't alter that except by indirection. Are you saying that the legislature does not have the inherent authority to delegate these powers to political subdivisions in Nevada?

Mr. McDonald: I think, Senator, that the inherent powers there have been exercised, but once you've granted it, it's difficult to take it away. Now, under the commission form of government under Chapter 267, as I recall, that the legislature passed around 1907 -- said that if people in an area wish to have this type of government, you may do so; but then having gone through the statutorial procedural steps of creating a charter and getting it in operation, the legislators barred themselves from getting back into that field and saying we don't like what you're doing. This has not been answered and it's only conjecture, but I don't think it has ever been attempted that you would come in to Boulder City's Charter and attempt a legislative amendment.

Senator Dodge: Well, then by indirection you mean that you could do it by placing certain restrictions upon we'll say the activities of Boulder City, notwithstanding their charter?

Mr. McDonald: I'm going back 15 years in my memory -- I drafted the Boulder City Charter through the Bureau of Reclamation. At that time the City was anticipating a surplus of monies from its public utility operations

which would be given to the city on the federal turnover. There's a question in the law as to whether or not the utilization of utilities and surplus funds could be used for general operating expenses at the expense of the consumer of the utility. It has gone one way or the other in the courts. Specifically, as I recall, the charter committee left that open. Subsequently, this legislature recognized the fact that there is a right of Boulder City to allocate those surpluses to general operating rather than to a reduction of utility cost to the consumer. So, therefore, you can partly divert surplus into operating budget. Now you see that's how you can do it by indirection, but there again you did not say Boulder City -- you said any city falling within commission category may do this. You can extend the powers, but I doubt if you can restrict one charter per se unless it would follow because of restriction within the general authorization.

Chairman Gibson: I'm not sure you all are familiar with the way Boulder City's charter was developed. It was developed by initiative petition on a local basis and so falls within that part of the constitution that guarantees us formal citizen action. So it is a peculiar form of government -- and, as Russ said, I think Carlin is the only other city in the state.

Mr. McDonald: The only distinction, Mr. Chairman, between the two cities is the fact that the one has a Mayor-Council form, the other has the Council-Manager form. Boulder City is probably the latter. The statute recognizes the two types -- substantially they are the same.

Chairman Gibson: Let's start looking at the individual bills. The first one on our list is SB-27.

SB-27 Proposed by the Committee on Federal, State and Local Governments. Authorizes incorporated cities and towns to acquire, improve, equip, operate and maintain public improvements and to issue bonds to acquire, improve and equip public improvements.

Senator Gibson: I think we have some clerical corrections on this one. Will you give us a resume of this, Russ?

Mr. McDonald: Well, the best analysis here would be adoption of the local government improvement laws -- was an attempt to go into Chapter 268, which applies to the government of all incorporated cities irrespective of their genesis of origin and, as the title of the summary says, authorizes those cities to acquire, improve, and maintain public improvements, and to issue bonds. Bond Counsel -- again Dawson, Nagel, Sherman & Howard, on discussing the format of the bill by correspondence said as follows:

"The bill is modeled after the County Bond Law" (and this is what you passed I think probably two sessions ago -- I don't think it was 1967) "and will provide comparable legislation for incorporated cities. The basic purposes of the bill is to specify a number of purposes for which such municipalities may issue bonds and give those municipalities the power to acquire, improve, operate and maintain such facilities. At present many such municipalities are authorized to issue bonds, either under the municipalities' legislative charter, or possibly a general act for 'any corporate purpose', or phrase of

"similar import. Except for that it is necessary to examine . . . to determine whether the municipality is authorized to carry on a specified activity or to acquire specified facilities for which the municipality desires to issue bonds to determine if such purpose is a proper 'corporate purpose.' If such statutes pertaining to the issuance of bonds for any corporate purpose were otherwise construed, that is as a broad general grant of power, a serious problem would exist as to whether the statute was invalid as an improper delegation of legislative power."

And the bill designates a number of different types of projects for which bonds are commonly authorized by such municipalities and by that I would refer you to the County Bond Law and the specification of the projects.

Chairman Gibson: The concept you have here does exactly parallel the County Bond Laws, the election, and so on?

Mr. McDonald: Well, yes, with respect to the elections. It doesn't parallel otherwise, Senator, because prior to the County Bond Law -- those of you who have had some previous legislative experience will recall that the counties had to come individually and ask for special legislation each time they wished to have a bond issue presented to the people for a specified project. However, the County Bond Law now does away with that and you've not got that sort of bills any more. They have got the authority under that act; whereas, prior to this proposal, as far as general obligation bonds are concerned, you go to the specific charters and find there sometimes described the projects, sometimes definitely, sometimes indefinitely, and then all of the so-called two colored bond provisions, with the exception of two special chartered cities, Sparks and Reno.

They have a referendum device which has been in the charters for years, which says that a percentage number of registered voters may propose that -- or the council on its own -- may propose the issuance of bonds for a project. These are general obligation bonds and if within a time certain the specified number of registered voters does not petition to follow an election, then the bonds may be sold and the project constructed. Now, that's generally what Sparks and Reno provide. There may be others, but it is not generally found throughout the special chartered cities. This is an exception.

(Voice: Question re/ unifying procedure?)

Mr. McDonald: This is what we are attempting to do and one of my initial remarks alluded to the huge bill, which I am going to suggest, does go through all of these and hit these charter provisions on a special assessment bond and say you do it according to local improvement district law, which is on the books now, and I know that Reno has run into some problems. You say, "which one applied?" They do business with another bond firm. So what we are attempting to do is to go back into the charters by five or six pieces of legislation. This one is built for Boulder City because of its desires, as I recall here, for a communications system. Now, this goes beyond the water project -- maybe Mayor Sweeney or Mr. Gray here can explain really why Boulder City is interested in this bill. This happens to be your telephone system isn't it?

Mayor Sweeney: Well, I would simply point out that Boulder City, of course, has its own power system, its own water system, its own sewage

system, it owns 33 square miles of land, so in effect we are faced with many problems. Now what regard to powers -- there is nothing in present legislation that permits an entity to contract or put in power systems. Now, if we were going to have a special assessment district and we were going to run in tunnels, underground tunnels, as a matter of example, carrying power cables, we would have to have something to permit us to do this, and also to place that in a special assessment district. So that has to do with the power appraisement.

Also anticipating, probably, a little into the future, we are talking about new means of communication. When Boulder City had its inception, the people granted the council permission to put in a TV translator system which we did on top of a mountain, which overlooks \_\_\_\_\_ Valley, as well as Boulder City. And then we put in something like \$5,000 to do this. As a result of this, of course, we have better reception than you might otherwise have.

But looking into the future we can also anticipate that at some future time there may be underground cable for TV transmission, and if that comes about we are merely anticipating this phase of it -- in regard to communications. Now, also as far as the telephone system is concerned, when the Government turned the City over to the people of Boulder City, they gave them everything including -- you might say -- the telephone system. But we worked out an arrangement with Central Telephone Company and alone we have a number of \_\_\_\_\_ running throughout the area. The Central Telephone Company pays us a certain amount of money for each connection that they have on our telephone system.

Now, when it comes to these underground cables or communication systems, we also would like to be permitted to have underground conduits that might even carry telephone cable, so that we could also enter into a lease arrangement or a rent arrangement with the telephone company and carry on in the same fashion that we are carrying on now. Maybe Dr. Gray would like to collaborate on what I have said.

Senator Dodge: I was going to ask a question basically about the bill. Well, is Section 36 of the bill which -- do I read this as not requiring the approval of the bond commission?

Mr. McDonald: No, I am referring to Section 32 of the bill. This is 36 is 31 and 32, Senator. One, in Section 31 it says any government bond et cetera, may acquire, improve, equip, et cetera -- the listed projects. Now, this is just the grant of power. Now, you go to Section 32 for the purpose of defraying wholly or in part the cost of acquisition, et cetera, at any time -- may issue in the manner provided in this section here referred to (and I'm subject to correction, but we can look at them) . . . I think they refer to approval by the bond commission to the double-color election bond.

Chairman Gibson: Guild, would you like to comment on this bill?

Mr. Gray: I would like to make two comments on these bills . . . One here that I think perhaps I have had a phone call from some official of every public utility in the State in connection with this taxation, is

because of one other bill -- which we'll get to in just a minute -- and I mention this because of the thing that Senator Dodge has just been discussing. I think that there is a lack of understanding of this statement. Now, this same statement exists in the law elsewhere. I was just looking at 275. In Section 29 of -- I don't have the law books here in front of me -- but this is Senate Bill 74, which you may want to get into a little bit later, but 271, 265 make exactly the same statement that's in this bill here that you've been living with. I bring that to your attention because I think probably you will be contacted, if you haven't already, by some public utility in the state relative to this. It should be clarified although this Section 31, as Mr. McDonald says, is controlled by Section 32, which is under the bonding laws of the state as far as cities' powers are concerned. Now, I think Senator Gibson, the only thing other than what's been said is that sometimes if we understand specifically the background of the need then it might be a little clearer to understand.

We have one subdivision in Boulder City, which was subdivided by the City of its own land, in individual lots sold to individuals. All of these lots have been sold. In the Sales Agreement that went with the lots -- the person signed that at such time as 80% of these lots were sold, the City would create an assessment district under the assessment laws of the State and would put in streets, water and sewer and so forth. Because Boulder City owns its own electrical distribution system, we had a hang-up on this and the Bond Counsel told us that we could not include the electrical in the assessment district. This was the first and primary reason for this bill.

Now, the communications definition and listing in here was put in as a result of looking into the future. There is no immediate need for this in Boulder City, and to the best of my knowledge, no immediate need any place in the State. But I think probably it's my fault that it's there, because I can visualize in the future, particularly with television, where in assessment districts where there are general improvements, people would want to put in cable TV as part of the assessment district, just like they would want to put in water and streets and other utilities. So that's why it's there.

The big need of Boulder City -- and we cannot complete our work on Subdivision 11 without having in the law some way for us to put the electrical distribution system in the assessment district.

Mr. Smith: Seven years ago Carson City was financing an expansion of the sewage system and bond counsel suddenly discovered that Carson City had no power to be in the sewer business. They finally, after wrestling with their conscience, approved the bonds on the gamble that no board would hold that the City couldn't be in the sewer business. But every time we come along with a bond issue to a street or whatever purpose it might be, from the garbage incinerator to the water plant, the question is what right do they have to be in that business and in the Nevada Statutes it isn't spelled out clearly. And so this is an attempt to give the powers which a city would normally exercise. Now, the Nevada Statutes -- as Russ said -- make a blanket statement that they can do anything and the bond counsel says that that's too broad. Some of the things maybe they couldn't do if they got into court. So they're trying to spell out what the cities can do. And therefore, this is of importance far beyond Boulder City if this particular Act can be settled.

Senator Dodge: Do I understand that again under this -- within the City of Boulder, that these obligation bonds for whatever areas we grant them the authority to issue the bonds, can be issued by procedures other than submitting to the vote of the people?

Mr. McDonald: Yes, if they're improvement bonds, which is traditional, if there is no election and your procedural guarantees are there with respect to the preparation of the roll, notice, hearings on the roll, hearings on the improvements. And these do not go to the bond commission for approval.

Senator Dodge: You've got, for example, here under Sec. 4 of the building project, a definition in which the city can get into all sorts of deals. And a building project as defined in Sec. 4 is then set out as one of the areas of possibility or authorization under Sec. 31. Now, all I'm asking here is -- aren't we granting an authority which is really pretty broad as far as areas where the city can undertake financing through general obligation bonds -- an obligated citizenry without ever re-submitting any of those things to the vote of the people.

Mr. Smith: It requires a vote. General obligation bonds require a vote under the Bond Act, and this act specifically ties in with the securities law.

Mr. McDonald: We're talking-- about special assessment bonds. You must first get approval of the bond commission to the election.

Senator Dodge: In other words, if the City wanted to build an art gallery under this building project definition, and they wanted to fund it by sale of the general obligation bonds, there would have to be an election.

Mr. McDonald: Right. Let's examine further the double-barrell aspect of this, Senator. On some of these projects where you might have general obligation bonds with a pledge of all or a part of revenues which might be derived -- a building project, perhaps, cemetery projects, certainly, communication projects, electrical projects, park project, possibly, recreation projects, refuse, sewage, transportation and water -- all of those might be capable of that type of an issue, and they still would require, notwithstanding pledge of anticipated revenues, an election. But we must separate the idea here that this is not talking about special assessments. Local improvement laws that you passed takes care of that.

Let's take the divisor of the quest of five acres for park purposes to the city of Boulder City. Have they got the right to acquire and the right to operate? There is nothing in here that says that they have the right or should or could issue bonds for that purpose. This is a grant of general power.

Mr. Hilbrecht: In Sec. 32, Subsection 1, where you say you are protected by 350.001 or 0101, et cetera, the section set forth in which you indicate that it entails reference to the bond commission in appropriate cases. But as I read Subsection 2, if the charter of the city, and it happens to be one of these peculiar ducks like Carlin and Boulder City, -- in its charter -- provides a short circuit around the bond commission it would not go



to the bond commission. Now, I ask you does Boulder City or Carlin have such a provision? 144

Mr. McDonald: Not to my knowledge, no.

Mr. Hilbrecht: Could they amend the charter without the legislature's approval?

Mr. McDonald: Yes, this Subsection 2 refers specifically to Elko, Sparks, and Reno -- to the procedures that I outlined, and those of you from Washoe County will remember that the Moana Swimming Pool was built under those very circumstances. Sparks, I think, certain of their projects in the last two years were constructed by that method in the charters. The allusion here is to protect those legislative rights granted to those three cities. Now, whether it's good or bad is a matter of opinion, and whether you want to leave it in the charter. But you have to recognize that law, and somebody else makes that determination, but this draft does recognize it.

Senator Gibson: What about North Las Vegas?

Senator White: I was going to say if it was limited to these three cities you're probably all right. This thing really opens the doors, in my opinion.

Mr. McDonald: Well, not to my knowledge, Senator, does the City of North Las Vegas' charter provide this referendum method. Now, in order to give that authority to the City of North Las Vegas, you have to amend the city charter or come into the general law and say this procedure would apply to all special \_\_\_\_\_ districts.

Mr. Smith: We could continue to operate as we have in the past years without this law; but this law does contain some important clarifications, but it does not open the door in any respect to doing things which we cannot now do. As a matter of fact, I believe Reno shut the door, as I remember, when they increased their debt limit and they took away the power to issue bonds under the referendum procedure. So we've got to cross Reno off that list now.

At the moment they've got to go to the elector. In those cities that don't have to go to a bond election this makes no change. All of these cities have to go to a bond election now, as they always have. The only thing this does is spell out the purposes for which bonds can be issued, and the purposes for which a city may be involved in a corporate business.

In other words, in cities now there is no question they can be in the picture gallery business or the auditorium business, or fire fighting, or these other things, which are now not spelled out in the law. If we don't want them in the picture gallery business then we ought to cross out picture gallery. But it's well to have the authority spelled out under which they can operate. So if you find any of this too broad, then simply take it out, but I think the act is a necessary act.

Assemblyman Hilbrecht: Mr. Smith, while you're standing there, may I ask you a question? If I understood Mr. McDonald correctly

there was some question with the bond counsel about the corporate purpose language. Now, isn't that cured by Sec. 31, without going back into the bonding authorities, which already exists in the statutes? Well, if that's the case, then why do we have all this language that's raising questions here which appears in Sec. 32 and thereafter.

Mr. McDonald: Maybe I can answer that, Nick. You haven't got the whole picture, Mr. Hilbrecht. I allude to the 125 page correction bill which I intend to offer, which will go into the charters. And there again, for example, in the City of Henderson, no determination was made, but when you are putting a focus on those provisions, you will then be given an opportunity to say shall we take the bill for consideration. I put everybody on notice when we went -- this has been a mess for the last 50 years, and with my personal experience in 20 years, of trying to achieve uniformity. The first step was the enactment of the County Bond Law. Second, would be the goal here, and this City Bond Law achieves -- at least has as its purpose here -- to take care of Boulder City's needs because it must be general in its nature, and secondly, to set out the format and the charters will be corrected in the Securities Housekeeping Bill, as we call it.

Assemblyman Hilbrecht: What you're saying is that as long as Boulder City needed it, to use that as an opportunity to clean up the whole thing?

Mr. McDonald: Well, yes, in fact they even objected to Mr. Gray's coming back and making me re-do the bill to add the communications project. But, nonetheless, this would have been my suggestion to the legislature when we undertook a complete survey in the last two years of the bond problem.

Senator Dodge: I'd like to ask if there's a policy determination involved here and the extent to which we want to put cities into proprietary operations. Now, I understand what Boulder City's situation is and I know the background -- turned over to the people there from a federal city and where the utilities works were being operated by the Federal Government, why, they fell heir to them; so I'm not talking about their situation as much as I am whether we ought to be writing as general legislation authorities for cities to, for example, get into the electrical distribution business or operate a telephone system, or something like this. Obviously, we do have situations in Nevada where cities are doing it. But does this involve policy decisions or does it not? The extent to which we are going to authorize this as general law?

Mr. McDonald: Well, I'd say, Senator, to some examination, that every one of these 17 projects listed here, that all or some are engaged in by every municipality in operation today.

Senator Dodge: Well, obviously I'm not talking about trying to remove or forbid cities that are in these businesses for some historical reason to force them to sell them -- that isn't what I'm talking about; but I'm just talking about the idea of having these sort of avenues open to cities in the future. I don't know whether it's a good idea or not.

Mr. Smith: Senator Dodge, if a disaster struck town, a hurricane or tornado moved all the power lines down, if it were necessary to issue a bond to put those back, we'd have a problem, I think.

Assemblyman Hafen: Mr. Chairman, you mentioned power -- and whatever the other one was -- well, telephone. Say that I personally, or a city wanted to go into this business today, I don't think you can get into them anyway. Especially the telephone business. I don't see that this is a real problem to take these out.

Mr. McDonald: It's not a problem to take them out, Mr. Hafen, but by taking them out, it seems to me you sort of undo Boulder City, who's here on behalf of these two items.

Voice: Well, for example, to go into the telephone business or the power business -- I just don't think they can go into this business.

Mr. McDonald: Churchhill County is in the telephone business though, rather heavily.

Senator Gibson: Mineral County is in the power business.

Senator Monroe: I don't think you could keep any incorporated city from going into any kind of a business that they wanted to go into.

Mr. McDonald: I think, Senator, what Senator Dodge is talking about is the distinction between a governmental function and a proprietary function, and the question of a corporate purpose which bond counsel mentioned. It has to be related in some respects or it falls. The electrical project as compared to a public utility in competition, -- this subject is his concern. Yes, these things seem to me on the face, even if they are shortly described, that they do have a public or governmental purpose.

Senator Monroe: Well, yes, but if we got in a fight with the power company and wanted to put in our own power system in Elko, we could do it.

Mr. McDonald: Yes, right under your present charter, you have the right to acquire, conduct, operate public utilities of all kinds. This has been traditional in all special charters since 1865.

Mr. Gray: I wanted to make a half statement and half question. This is just a matter of political philosophy, I think, -- This is the question: Does the county bonding law list all these things, except those two? Now, shouldn't a city have the same right as the county as far as these actions are concerned? If so, if we settle that philosophically, that the city should have the same rights as the county -- and you've already given the counties all these rights -- with the exception of the two listed -- communication system and an electrical distribution system. We really, if it's a matter of separating what you think a city could be able to do and what a county should be able to do, then that makes you look at this entirely differently, but if you look at them as both should have the same type of rights to do these things,

then I think we're down to just these two points -- should we add to the cities, providing for these communications projects and electrical distribution projects?

Chairman Gibson: Yes, Mr. Getto?

Assemblyman Getto: Mr. Gray stated that the counties do not at the present time have the authority to be in the communication system. Well, the telephone is listed under communication system -- Churchill County presently owns a telephone system.

Mr. McDonald: That authority comes under an Act passed about 1904, Mr. Getto. It's found in Title 58 on utilities. It's a special county telephone act, general in nature, but apparently an act for special purposes and that's how you get your telephone system there. Of course, you're actually in the electrical business and the TV business too, because of your transmitters, aren't you.

Mr. Smith: Mr. Chairman, may I ask a question on that Sec. 35 -- what interest would the PSC have to establishing rates and what not?

Mr. McDonald: The only Public Service Commission interest, as I recall, is that they are not interested in any municipal rates per se. They are in the act with respect to local improvement districts under Chapter 318 in water and sewer and electricity.

Mr. Newton: One, we are particularly concerned about the opportunity which this gives cities and which is also given to counties in the other Act. To get into a project so deeply before financing is scheduled, places sort of a \_\_\_\_\_ choice situation to the people, when the bonds are actually proposed and to be voted on. Mr. McDonald mentioned that somebody gave the City 5,000 acres for a park. The City ought to have the opportunity to accept it, which seems reasonable on it's face, unless it was a 5,000 acre park which costs five or six million dollars to develop and operate. The City would have to go to bond or other financing in order to finance the operation of that apparently generous gift.

We feel that there ought to be some brake on any local government, either county or city. As far as the entry upon a project, which is known at the time, is going to require some sort of long-term financing. We envision projects which are started in a burst of enthusiasm, without the financing worked out, or projects which are deliberately begun, knowing that at some future time people are going to be presented with a situation where you either lose the several hundred thousand dollars you had invested from current revenues -- or you approve a bond issue to complete the project -- complete and operate the project.

Mr. McDonald: May I ask a question, Mr. Chairman, of Mr. Newton? Mr. Newton, I take it by your remark, that you're concerned about the present provisions in all the special charters, which I think is uniform in the right of a government body to accept bequests and devises. Of course, the council, as I see it, would have the right to announce anything, just as an individual beneficiary or legatee would under a Will. So I think that

your thrust is not to this particular bill, but to grant of legislative power, which has existed to all cities for the hundred years in the state. You have to go back to the charter to really nail that, even if this bill were rejected. Because that authority exists in every special charter without limitation, as I recall. (Question: What is the purpose of this bill?) The purpose of this bill is to clean up. Again, I allude to the housekeeping bill, which will take out all of these sections, long sections in each charter, and you operate then under the City Bond Bill. So you are only looking to one piece of legislation, which is uniform then for all cities operating in the state.

Senator White: Will the uniform bond bill provide the same provisions as outlined in this bill?

Senator Gibson: The bill he's talking about will come along and repeal certain sections of the charter of Reno, the charter of North Las Vegas, the charter of Las Vegas, the charter of Henderson, the charter of Sparks. This will be the uniform law, if it's accepted.

Assemblyman McKissick: If they want to put five million dollars worth of improvement on this land that was given to them, under existing law either under charter provisions or some other of these frivolous or extra special assessments -- they could put it to the people -- do you want to spend five million dollars? Under existing law. Under this law it would just be one neat package, and all that garbage taken out of all the special laws.

Mr. McDonald: Well, I'm not saying that this law would answer Mr. Newton's problem and the concern of his association for some council running off and improving either by the issuance of interim or emergency loans, money to take on the project, because that's found in your charters. Whatever is done, is not proposed to repeal the special charters. The right to accept gifts, devise and operate for the general benefit of the city will remain under these charters.

Assemblyman Hilbrecht: What you're saying is that at least SB-27 in no way enlarges, or makes more permissive, the jurisdiction of the cities to engage in these activities, other than to specify activities as included.

Mr. McDonald: This was our intention in drafting it. If it lops over, again you're dealing with 17 chessman here in an attempt to analyze these charters; but there again, it seems to me if any specific project is objectionable, as noted by Senator Dodge, either take it out or you'll limit it in it's application. But, alluding again to Mr. Newton saying "the horse before the cart" or vice versa, this bill was introduced because of Boulder City's immediate problems. It should have come in with the housekeeping bill, which I'm still working on because we found some bugs in it. I would suggest that you not take immediate action. This bill should be ready for introduction on Monday and you can get a look at it, so you'll see what the whole program is. There are a series of four or five bills that will clean house as you are suggesting.

Senator White: We've heard comments and testimony all week and looking at the ways to take away some of the powers of the city councils in their approaches to bonding and so forth, and then we're coming back in at this stage and saying, in effect, that you've got Clark County \_\_\_\_\_ to do whatever you want to do. So I think you can take a look at your house-keeping bill and we ought to be able to clean the whole thing up, and answer the problems.

Mr. McDonald: This goes back into cost, which probably some people are interested -- that with the differences in your statutes and procedural aspects on publication and what not -- this attempts to define uniformity and this was the suggestion when you adopted both the University Securities Laws, the State's Security Law, and the County Bond Law, -- that you then could reduce even the size of the bills that you must consider. Go back and remember when you had to consider the County Bond Bill four years ago, you've got a 30 or 40 page document. Today you don't even get it, but those to consider on the state level are less than a page long -- before they were 40 pages long to issue a four million dollar issue, and that costs money.

Mr. McAdam: This particular procedure is peculiar to Boulder City. I know no other city that would be interested in any way, whatsoever with running any telephone company. So as far as the communications aspect of this particular legislation is concerned, I think I speak for the telephone industry when I say we have no problem.

Senator Gibson: Senate Bill-28. I don't know if this is a logical sequence, but it's the way they were introduced, so we will go on that way.

SB-28 Proposed by Committee on Federal, State and Local Governments.  
Authorizes powers, instruments and acts of state and political subdivisions to be judicially confirmed.

Mr. McDonald: Well, to give you a short background and Dr. Gray can enlarge -- This again alludes to my remarks about the repayment contract between Boulder City and the Bureau of Reclamation for construction monies advanced for the construction or enlargement of the reservoir and installation of transmission lines. There again, we probably could have gone two ways if we'd been able to employ a special act. By saying that Boulder City could go and get the proceedings judicially confirmed -- and this arose again out of the Southern Nevada Water Project -- but there's no question as to confirmation proceedings there.

So, faced with this, Dr. Gray went to San Francisco and met with bond counsel, banking firms, representatives of engineering, when they were starting last summer in this problem. And this bill proposes to give enabling legislation pertaining to the proposed federal repayment contract between Boulder City and the United States of America, acting through the Department of Interior, and pertaining to the judicial confirmation repayment contract to which I've alluded.

Senator Gibson: I'd like you to take this in conjunction with 29, -- I think 29 is the authority to enter into the contract with the

Federal Government, and 28 -- they can be considered together, actually. Go ahead with the rest of it.

Mr. McDonald: So again, we are faced with having to have general legislation. There again, when you read it, it really provides the judicial procedure to go in and get confirmation of this type of contract. We have attempted to avoid the separation of powers problem by directing the court in any way to do anything. You will notice an early judicial examination is pleaded for, et cetera, and the heart of the bill gets into --(we're looking at 28) -- judicial confirmation -- And right at Sec. 3, Subsection 1: "An early judicial examination into . . . the validity of any power, instrument, act or project of any municipality promotes the health . . ." and then details the method in which you get into court. This is, for those of you who are attorneys, a declaratory judgment act with respect to municipalities. Here again, I think the general provisions in the law -- we've done it time and again -- nobody objected in the other cities, special cities in Clark County -- when the contracts were validated with the use of the Declaratory Judgment Act.

But again, we must cure what Boulder City has already done and entered into the contract; as I understand, the volition of the contract is held up pending a judicial determination, which bond counsel says you don't have the power to seek at the moment under your charter, is that correct?

Mr. Gray: Pardon me, Mr. McDonald. Boulder City has entered into a contract with the Federal Government, which -- on water and power distribution, but not relative to that section of the contract which says that Federal Government may, in the future, loan to the city, monies for the distribution system. This part of the contract has never been consummated, so really it amounts to two contracts. Just for clarification, one contract has been signed, the other has pending some action here.

Mr. McDonald: I might point out in answer to the question of Mr. Hilbrecht's, since he's the only attorney present, that I think that this bill skirts pretty closely, and it's about the best we can do. One, under the Declaratory Judgment Act, you must have the justisble controversy to give the court jurisdiction, as I recall. Now, there is a fact that you could use the provisions of that uniform act to get such a determination. It was done, but the question was never raised which I just posed. This also includes -- if you read Sec. 7 -- "Governing body means: the state commission or state board responsible for the exercise of a power . . ." And here again, this includes at the moment, the Colorado River Commission, operating on behalf of the State pursuant to the Southern Nevada Water Project. And there I refer to the fact that we, in the Legislative Counsel's office, have to go into the Supreme Court in order to validate the ten million dollar federal bond issue that was sold last year, pursuant to the statutes. And there again, we used an extraordinary Writ and Mickie Mouse device and sought the ear of the court. Now this would still be available, it seems to us, if anybody raised the question as to the constitutionality.

Again, you don't have in your constitution here what you have in the Common Law states like Massachusetts, Virginia -- the right to seek an opinion of the Justices -- which determines a question such as we are trying to seek here.

So irrespective of Boulder City's need in this case, I think this is a good piece of proposed legislation for the very reason stated.

Senator Gibson: Well, the fact that the Federal Government requires such a procedure -- Wouldn't that give you access to the court?

Mr. McDonald: I don't think so, Senator, if you've got a dissident. If you have no controversy, which happened in three of the four validated cases in Clark County last year where nobody complained. But here again, let's take the water contract. If this contract now with the Indian interest is signed and we go into the validation proceeding, I would anticipate procedurally, if I represented the adverse interest here, of raising the very question which I described to keep us out of court. With this we might have the device, because you see most of these test cases are done by arrangement. We get some public officer to say he won't do it, and the court, sort of with it's tongue in it's cheek, takes it on, because of the state-wide interest. But without those things, you might have a difficult time getting into court under the existing statutes.

SB-29 Proposed by Committee on Federal, State and Local Governments.  
Authorizes cities to acquire, improve and equip certain facilities  
and to contract with Federal Government therefor.

Senator Dodge: On -- I guess we consider these two bills together -- SB-29 on page 4, Sec. 16, as I read the legislative validation of prior actions. What I'd like to know in this connection, is whether there is other language in this bill that ties this down to Boulder City? Or are we just blanketly validating everything that's going on for the last hundred years?

Mr. McDonald: Well, I can't answer that -- Maybe Guild knows, Senator, I don't know whether there are any contracts other than this repayment contract now existing in any other city today. This might be a question that Mr. Blyth could answer by developing the information for you.

Senator Dodge: Well, is there anything in the act itself, which by another section ties this specifically to or restricts it to Boulder City?

Mr. McDonald: No, this is general in nature, for the reason I explained. This one and the other bill provides a procedure for court validation, which is required by the terms of the repayment contract with the Department of Interior. This one does give legislation validation to these provisions described with respect to federal contracts, and this is what I said. Maybe Mr. Blyth could say, or could find out through his association -- are there any birds of this same nest floating around that we're not aware of?

Mr. Blyth: I'm not aware of any at all.

Senator Dodge: I don't read this as limiting it to some federal situation. It defines a project under Sec. 10 as the acquisition,



improvement and equipment of a drainage project, sewerage project or water project, or any combination. Now, in Sec. 16 it refers to "preliminary to or in the undertaking of the project . . ." Now, "project" -- goes back to the definition in Sec. 10 and is not tied to a federal project necessarily.

Mr. McDonald: But look at Sec. 13, I think starts the trigger. The governing body may request the Federal Government to undertake any project for the municipality. This alludes again specifically to the contracts in existence with Boulder City and the Bureau, and then it goes on in 14, on contracts designated in Sec. 13, you may do these things. Going along all these subsections are held within that. 16, "All outstanding contracts, documents and other instruments pertaining to any project, and all acts and proceedings had or taken prior to the effective date of this act . . . on behalf of a municipality preliminary to . . ." et cetera, are validated. Now, possibly your question is directed to the broadness of this section, by saying that possibly we should suggest an amendment saying federal contracts of federal projects.

Senator Dodge: What I asked you was restricted to this particular area, or whether it was a blanket validation of anything you might have?

Mr. McDonald: Well, I would say this then, that without hurting Boulder City's chances and scuttling the bill, that we could work out some modifying language that would nail it down. Assuming that there are no contracts at the moment in other cities, Boulder City's problem is unique -- it could still stay on the books as a general law. The validation thing takes care of it up to that point, and then in the future they would operate merely with the power of the cities to enter into these federal contracts.

Mr. Gray: Senator, and gentlemen, your indulgence in this particular bill -- I would like to speak of it in two directions. One, Boulder City's interest in it itself -- and I don't think it has been said, probably quite as specifically as it might for clarification -- specifically, the problem is this: The Bureau of Reclamation entered into a contract with Boulder City for assistance in the construction of a reservoir, which will take Boulder City's share of the water from the Southern Nevada Water Supply Project. The figure is \$629,000, which the city may repay to the Federal Government over a period of 40 years. The immediacy of the problem is really twofold. One is that under existing statute Bond Counsel questions a 40-year contract. So that's one of the things. No. 2, the Federal Government requires that this contract be approved by the judiciary -- what's the word, McDonald?

Mr. McDonald: By judicial confirmation.

Mr. Gray: By judicial confirmation. Now, these are the two things that these two bills would do for Boulder City. Now, I would like to suggest to you that you give this very careful consideration for the good of the whole state. These federal programs, federal loans -- and I've been involved in them now for a number of years -- we don't know what's coming up, and this might keep us from delaying a very worthwhile project in the future, if we don't have this kind of legislation on the books.

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Mayor Sweeney: When Boulder City was separated from government control by a law of Congress \_\_\_\_\_ . And in this specific law, they granted to Boulder City 3650 gallons of water per minute. And they provided the system that was put into Boulder City, BUT in the bill it stated that any future time the City of Boulder City wished to augment the water system, all they had to do was to return to the Secretary of the Interior, and make a request, and added facilities would be granted to Boulder City provided that Boulder City would enter into a contract and pay back the amount of money that would be involved over -- as Dr. Gray has stated -- a 40-year period. And looking at the interest situation as of today, I don't think that I'm uncovering anything, but in the bill it says a three per cent interest. Now, we have the opportunity of borrowing \$629,000.00 from the United States Government over a period of 40 years at three per cent interest, and in order to take the water that not only the government is providing to us, but what we are already contracting for with the Southern Nevada Water Project, this is a part of the program that we must have.

Now, what has been said about whether or not the people have a voice in this. According to our charter, we cannot enter into any contract of any size at all without going to a referendum. And so the people vote on everything. Now, they have voted to approve this request from the United States Government for \$629,000.00. In addition to that, they have also voted to approve another loan which we are going to get from the Housing Urban Development. Boulder City, as I have stated, owns 32 square miles of land; they own their own power system; their own water system; their own sewage disposal system. We haven't got one penny of indebtedness. To the present time we probably have enough money to enter into this contract before the government is able to come forth with their money. So as far as apprehension is concerned for the people of Boulder City, through these bills, I don't think there need be any.

Mr. Hilbrecht: Mr. Chairman, for us I only have one question: I have difficulty seeing why a general law which applied throughout the state to that class of city to which Boulder City belongs, would not suffice, rather than making it a general law applicable to all cities whether they are incorporated under the constitutional provision here or by special act of the legislature.

Mr. McDonald: Well, maybe I don't agree with bond counsel, but again to attempt to achieve the purpose here without their approval, which we're faced with every time, (it's like when you talk to representatives of Health, Education and Welfare), you do it their way. This could be one device. Again, we've explored this type for six months, and I'm still stuck, if we could come up with some special legislation, we all wouldn't be sitting here, because if it were purely a Boulder City problem, as explained by Mayor Sweeney, we'd be out of here and I'd be back to work. But it doesn't fit that pattern, and I couldn't get over it and I knew this was going to come up, and this was the only way that they would package it. As I say, I think we could probably go back and by some devious amendments limit some of these things, but it takes some time to work out the language and I certainly wouldn't let you buy the amendments I draft, without bond counsel's approval, because we shoot them out of the window, maybe, if you buy it.

Senator Gibson: You'll notice the reluctance of the committees who are involved now in this North Las Vegas thing. We see there what happens with, let's say, liberal interpretation of the various authorities that are granted. I think before we finish here, we're going to try to apply more strict interpretation to these particular areas, and so there is, I think, an apprehension on the general extension of these various authorities, even though specific authority in certain charters may exist. I think it's healthy for us to explore these possibilities as we go through this whole problem.

Mr. Gray: I don't know how many of you have had experience working with federal bureaucracy on federal funds. But believe me, it is something. I want to appeal to you before casting aside these two bills, that you think about them a long time. Let me just give you an example. Another part of this water project, we are getting a nine hundred thousand dollar grant from Housing and Urban Development, and then if our bonds come in for more than  $4\frac{1}{2}\%$ , which they will under present costs, we'll get a loan from Housing and Urban Development for \$750,000.00. Now, we had our application in, I think Mayor, about a year ago, or maybe a little longer. The interest rate has gone up since then from  $4\frac{1}{2}$  to 5, but we're grandfathered on the  $4\frac{1}{2}$ , if we get this job done this fiscal year. So you see the urgency -- and I'm not just talking about Boulder City.

Senator Dodge: Some of the reservations -- the growing reservations, in my opinion, in the legislature about these kind of bills, and that's the feeling that whether it's bond counsel in Denver or somewhere else, or whether it's the fiscal agents seeking to do the best job they can for the subdivisions of government in the sale of their bonds, -- it seems to us we get more and more with all-encompassing type pieces of legislation that have as their main thrust the lowest possible interest rate and the least possible question that can be raised, legally or otherwise, by anybody with regard to the sale and the validity of these bond issues. Along with the consideration of getting the best rate we can for the subdivisions, we've got to at the same time be careful that we don't make the procedure so easy and so foolproof that we may ultimately be working to the disadvantage of the guy whose nailed with the ultimate responsibility to retire the bond -- and that's the local taxpayer.

Mr. McDonald: Along those lines, I compliment Boulder City for coming out with this low interest rate with a grandfather. But the contracts that I've seen proposed since then is with the general federal funding -- that on the date that the contract is executed, you pay the interest rate as of the day before they sold the money or sold their certificates in order to loan you the money. So if you're getting the bills at  $6\frac{1}{4}$ , you back into this sometimes. You have to look at each piece of federal enabling legislation to see just where you stand.

Senator White: Could I ask this: I'm not sure how much I understand on this judicial confirmation bill on Sec. 14 and 15 about petitions. Would you mind explaining that?

Mr. McDonald: This is again the right of any interested person to appear and as it says, to move to dismiss or answer the petition.

In other words, you come in there not with any really named defendant. You may have some protestors in the community that wish to protest, and this is giving them an opportunity, together with the notice provisions, to come in and file as an intervenor or protestor, so that it doesn't whitewash the proceeding. That's the purpose.

SB-47 Proposed by the Committee on Federal, State and Local Governments. Amends provisions concerning electric light and power, sanitary sewers and water in unincorporated cities, towns.

Mr. McDonald: Might I say this, Senator -- I suggest that you defer this until you get the housekeeping bill. I don't think that Boulder City has any interest in this bill. It's a companion to the other one, which I'll present to you.

SB-73 Proposed by Committee on Federal, State and Local Governments. Authorizes the city of Boulder City to acquire within a specified project area a telephone project, to levy special assessments therefor, and to issue special assessment bonds therefor.

Mr. McDonald: I've had a series of correspondence with bond counsel, and Dr. Gray, and in this case you will notice that this, in fact, is a special bill. And this relates to a project designated as Special Assessment District No. 11, and the conduit for the telephone company. Now, this I felt we possibly could skirt around on and try to avoid getting into the general law here. I don't know how successful we'll be. There again, since everybody seems to be happy in Boulder City, I doubt if there will be any local complaints. Guild, you might explain what you are trying to do here.

Mr. Gray: Here again we are in a little different position than most of the other cities in the state. Mayor Sweeney has mentioned to you that we own a large tract of land around a built-up portion of the city. The city has developed a subdivision, sold the lots; they want to go to an underground utilities. The one utility that we can't control is the Central Telephone Company. The Central Telephone Company has a franchise to telephones in Boulder City. Nobody has any objection to that. But the telephone company has a policy which we can't break -- that is where they go to an underground system, they will only pay the subdivider, whether it's a political subdivider, such as Boulder City, or a private subdivider, that portion of the telephone distribution system which it would cost them to put in a pole system. In this subdivision, we want it underground, and we felt that the property owners should assist in payment of the conduit through which the telephone company would draw their wires, and this would be accessible to the property. Again, because it was not listed among those areas where would it be included in the assessment district, we needed special legislation. Now, there was a question on the part of bond counsel, and I think probably on the part of Mr. McDonald, that we are getting into an area here where the city is developing something for a private utility, and there might be some constitutional question. So we acquiesce to the suggestion of counsel that we go ahead with this as special legislation, and then if we get our judicial confirmation act, we can move quickly on including this into an assessment district, and if we can't, then we'll just have to work out something else with the telephone company.

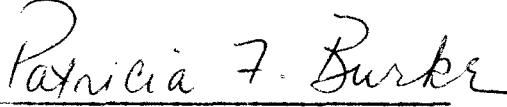
Following this, there was inter-committee discussion and questions directed to the interested principals. Mr. McAdam stated that there was no objection in his area to SB-73.

At the end of the meeting, Mr. Smith made note of several other pending bills and drew attention to AB-172 (gasoline tax -- suggesting an amendment), SB-131 from the Education Committee, AB-149 and SJR-1, SB-70.

Mr. Guild Gray and Mayor Sweeney thanked the Joint Committee for the opportunity to speak on these bills.

There being no further business, the meeting was adjourned.

Respectfully submitted,

  
Patricia F. Burke  
Patricia F. Burke,  
Committee Secretary