

SENATE JUDICIARY COMMITTEE

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The meeting was called to order on February 26, 1969 at 10:20 a. m. by Chairman Monroe.

Committee members present: Chairman Monroe
Senator Young
Senator Hug
Senator Christensen
Senator Swobe
Senator Bunker
Senator Dodge

Guests: Mr. James Guinan, Attorney

Mr. Tom Cooke, Vice President of the Board of Governors of the State Bar

Chairman Monroe asked Mr. Cooke if all of the amendments on SB 5 had been prepared.

Mr. Cooke advised they had taken out line 28 on page 2 as it was discovered this was covered by an existing statute and they did not want a conflict. The amendments have been completed and the bill should be printed soon with the amendments.

Chairman Monroe stated they would wait until the reprinted copy was received and would then consider it.

Chairman Monroe introduced Mr. James Guinan who was present to speak on SJR 5, the Court revision bill.

MR. GUINAN: The Board of Governors met recently in Carson City. This Board is composed of fifteen members but due to the bad weather there were not enough members at the meeting for a quorum. There were questions circulated to the members with the following result: Seven were in favor of the proposed legislation without any reservations, six members had suggested a few minor changes, one proposed a medium important change and one abstained from voting.

One of the proposed changes was the Discipline Committee should have its powers spelled out. Another was opposed to the substitution of the magistrate or justice court. Everyone was in agreement that something had to be done about the present court system and felt this was a big step forward.

MR. COOKE: I won't go into detail on this as you all heard me speak at the big hearing. The lawyers are in unanimous agreement about the basic changes. All are in favor of a general court reform.

None objected to the committee report but some did have some questions. The conditions have changed greatly since 1964 and there is need for changes in the judicial system. 183

I personally am concerned with the selection of the judges and their removal. The only way now we have to discipline a judge is to impeach him. There will be a much more effective control over the judicial system. We cannot stop a judge from running for election for another term but this will put a lot more control on him.

There were other members of the Board of Governors that would have liked to be heretoday, however most of them had previous commitments.

SENATOR DODGE: I might say that I have known Mr. Guinan over a period of years. He has been a bill drafter for the Legislative Counsel and a visitor many times and he has taken more than a normal interest in the court revisions. I was wondering if he might have something to add from a personal stand point.

MR. GUINAN: I would like to refresh your memory on the background of this. When I was in Russ McDonald's office in 1959 I drafted something to give this a start. The request came from the Senate Judiciary Committee as they wanted to have more control over the District Judges and was primarily interested in tenure. The California plan had not been drafted. Hard work and much thought over a period of years has produced a plan that seems to be very satisfactory and there are three major changes. The Supreme Court and District Judge systems, the removal provision and the Missouri Plan tenure. I am convinced this package, with a few minor changes in detail, is the result of not two but ten years of hard work and certainly will give us a better Judicial system.

Some of the objections from the lawyers can be overcome by amendments. Some of these suggestions are:

1. Failure of the draft to state clearly what the alternatives of the legislature are.
2. The election of the District Judges was one of the major objections.
3. There are now too autonomous.

I am sure with a little more work this can become an ideal piece of legislation.

SENATOR DODGE: One thing that I mentioned at the last hearing that is concerning me is the best way to get rid of trial de nova.

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You could make the magistrate court or the justice court a court of record and then could appeal it to the district court. One other way we talked about would be to have a summary proceeding in the lower court but have no appeal. He would have to accept the decision of that court and it would not be a court of record.

SENATOR YOUNG: How big a problem is the trial de nova. I checked but could not find any records. If you made a justice court a court of record it would be too expensive for the small counties. If it is a civil action with no bail you would have to bring a judge and witnesses from a small outlying community into a larger area for court trial. This would be expensive too.

SENATOR DODGE: The main problem in a trial de nova would be with a criminal action, not a civil action.

MR. GUINAN: If you pass this as it is in another five years you will have to amend it but by then you would know what the particular problems would be. You could set up the systems in the larger areas, as Reno and Las Vegas and leave the justice courts in the rural areas.

SENATOR DODGE: Do we have the authority to have different systems in the towns and in the rural areas?

MR. GUINAN: There would have to be provisions made to change the procedure, but not the system.

SENATOR DODGE: I think we should have the legislature appropriate the money and set up an administrator and get that on the way, then the problems could be presented by him.

CHAIRMAN MONROE: Then we should pass SB 85 and get it on to the Finance Committee.

MR. GUINAN: If you do pass this and the Administrator goes to work you will have all the information you will need in five years and will know how to proceed then. I would suggest that you amend the draft to set out just what the legislative controls are.

SENATOR DODGE: We have to preserve the independence of the courts. There is flexibility allowed in the districting and it wouldn't be politically controlled.

SENATOR YOUNG: I think that the legislature should set up the districts and not have the courts set them up.

SENATOR DODGE: The administrator would have all of the information as to the work load and the courts could be set up where they are needed.

SENATOR YOUNG: I think the power should be with the legislature, you could have the administrator report to the legislature.

SENATOR DODGE: I discussed the Missouri Tenure Plan with a judge from Missouri and there were only a couple of cases when the judge ran against his record.

SENATOR YOUNG: Don't they split it in California? Aren't some elected and some appointed?

MR. GUINAN: Yes, that is the way it is at the present time, however they are trying to do away with it.

SENATOR YOUNG: When they are appointed they get into an ivory tower and loose contact with the people. When they are elected they at least have to contact the people during election.

SENATOR DODGE: There is another consideration at the Supreme Court level. Most of the population is concentrated in the Las Vegas and Reno areas and if elected, the judges would come from those areas. There are a lot of qualified men in the smaller places but they would not have a chance to be a Supreme Court Judge.

MR. GUINAN: I don't think there is a legitimate argument in electing vs. appointment, I have changed my mind.

It would be better to rotate the Chief Justice and a person could pass the appointment if he wanted too. We should keep the Justice off of the removal committee if he is on the appointive committee.

There being no more time, Chairman Monroe thanked Mr. Guinan and Mr. Cooke for being present and the meeting was adjourned at 11:10 a. m.

Respectfully submitted,

Jeanne M. Smith, Secretary

Approved: _____