SENATE JUDICIARY COMMITTEE

MINUTES

Meeting called to order on April 11, 1969 at 9:15 a. m. by Chairman Monroe.

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

Legislative Counsel: Frank Daykin

Guests: Sidney W. Robinson, Attorney, Reno, Nevada
Frank Cassas, Attorney, Reno, Nevada
Ray Knisley, Camp Richardson, Lake Tahoe.

Assemblyman Harry Reid.

Chairman Monroe read several amendments made by the Assembly on SB 34, SB 139, SB 230 and SB 437. Amendments were accepted. By accepting amendment for SB 139 it would not be necessary to process AB 485 as they had the same content. Motion made, seconded and carried to kill AB 485.

SB 519 - Provides for limitation of applications for rezoning.

Mr. Sidney Robinson thanked the committee for the opportunity to make his presentation. He felt this should be considered as the "Eagle Thrifty Bill" as it was a specialized piece of legislation and aimed at one situation. He stated he had great confidence in the court system and his confidence was justified as the Supreme Court reversed its decision on the case Eagle Thrigty Drugs and Markets, Inc., v. Hunter Lake Parent Teachers Association and ruled the changed conditions rule is not to be adopted for Nevada. If SB 519 was passed the constitutional validity might be questioned when it came before the court.

The first paragraph of the bill "The governing body may, by ordinance, establish conditions upon applications for changes in land use classification in those instances where prior applications for such changes have been denied." He stated the governing body is the city council or county representatives. This is a question to be solved at a local level. He felt the bill was specialized when it would be made retroactive. If it was passed, he felt it should apply only to future applications.

These restrictions are not controlled by state legislation in any other state. Courts are never permitted to substitute their judgment as to matters of zoning for that is the authority on a local level. It crowded the courts and but a burden on them. The municipal governing body does act in a legislative capacity.

Records are not kept as accurate in a planning commission office as they are in the County Recorders. It would be almost impossible to go back and find how many times a piece of land had been before the planning commission for rezoning. This would prohibit three applications for rezoning the same property. That means that an owner of the property is burdened with the applications of his predecessors in title, regardless of their merit. The owner of a property could be denied the opportunity to even apply regardless of the merits of his request. Many times a zoning change is for the betterment of the community. A State which is expanding and growing as fast as Nevada should not be hindered by placing a straight jacket on its local zoning authorities.

Mr. Robinson remarked that Senator Young was in favor of this for personal reasons as he was involved in an action concerning re-zoning and had been "shot-down" and was using the legislature to "pull his chestnuts out of the fire". He also mentioned that Senator Hug would be in favor of this as he was connected with the Washoe County school system for many years.

Mr. Robinson gave each member of the committee a memo with his remarks on SB 519.

Senator Dodge asked if Mr. Robinson felt there should be no limit as to the number of times a person could file for a rezoning change without a change in conditions.

Mr. Robinson felt there should be an inspection by the planning commission and have a complete finding of the facts for each hearing. He felt there should be a change of circumstances before a new hearing or filing could be made.

Senator Swobe asked that this hearing be continued on Monday. Two members of the Planning Commission from Reno would like to testify however they were not able to be present today and they would be here Monday.

Senator Young objected to the delay. He stated it was a device to kill the bill and he felt the bill had merit. He mentioned that Mr. Robinson had tried to make it a personal matter with him, but it was not a personal matter and he felt it was a very serious matter and did not feel it should be delayed.

Senator Bunker remarked he was having a lot of pressure placed upon him from Las Vegas and he would like to hear more testimony before making a final decision.

Mr. Robinson suggested Senators Bunker and Christensen contact the Planning Commission in Las Vegas and find how they felt about this bill.

Mr. Ray Knisley stated he was not familiar with the Eagle Thrifty case. He also said that he was sure Senator Young or Senator Hug had nothing to do with this bill personally. He was bothered about the retroactive provision and felt this should be applied to the future only. He felt this would effect the values of property and no one could purchase property with any confidence as to what he can do with it.

He suggested rezoning requests be recorded so an owner buying the property can be aware of what has been done about the rezoning in the past. This should become part of the title.

Senator Dodge remarked this bill was not introduced until four days ago and felt it was far to important to rush through. He felt they should take time to hear others on it if they wished to testify. He did favor some restrictions and limitations on the city level rather than go to the courts.

Senator Young moved to amend in accordance with Mr. Knisleys suggestion making recording mandatory and then consider further testimony on Monday.

Senator Dodge felt there should be something put in that there had to be shown there was a change of conditions to warrant rezoning.

Senator Hug felt the safety of the school children should also be considered.

Mr. Daykin is to draw up suggested amendments and they will be discussed later.

AB 456 - Provides for expungement of certain criminal records.

Chairman Monroe read a letter from Wm. Raggio in opposition to this bill. (Copy Attached)

Senator Swobe felt they shoold only go so far in expungement.

Senator Dodge moved to "Bucket".
Senator Christensen seconded the motion.
Motion carried.

AB 765 - Makes permissive justices' quarterly financial statements.

Senator Dodge felt if it was made permissive some may never file a

report.

Senator Young moved to "Hold".
Senator Hug seconded.
Motion carried.

AB 766 - Increases duration of support for illegitimate children.

Senator Swobe felt this had merit.

Senator Dodge pointed out this was the age for support on legitimate childre.

Senator Swobe moved "Do Pass".
Senator Dodge seconded.
Motion carried.

AB 772 - Provides for confidentiality of gaming informants and requires waiting period in certain transfers of gaming property.

Mr. Ed Bowers will be asked to come in on this.

AB 449 - Provides right of contribution for joint tortfeasors.

Mr. Daykin had one of his assistants research this and found under the present law you can not bring in another tortfeasor as a defendent. It is allowed under the California law. The right to demand contribution is even very limited. He felt legislation to correct this was needed.

Senator Dodge felt there was a flaw in the present Nevada law and this should be remedied.

Senator Young would like to study the bill further before final action is taken.

AB 384 - Requires appointment of director of court services in certain judicial districts; requires director of court services to perform administrative duties in certain juvenile courts.

Mr. Reed explained in Las Vegas a District Court Judge serves as the head of the juvenile court services. He hires, fires and has all control over the juvenile court services, even to hiring the janitor. This used to require one day a week, however it now takes more time and a District Court Judge does not have the time to take care of it properly. A judge should be ruling on the laws and not have to spend time hiring and firing employees. This would appoint a director to take care of these services. In does not create a new position or require any more financial output.

Senator Dodge stated in the court study it was noticed the judges were performing functions for the juvenile courts and it was recommended they be relieved of this job.

Senator Swobe moved "do pass".
Senator Dodge seconded the motion.
Motion carried.

The meeting adjourned at 11:00 a. m.

William J. Raggio
District Attorney

Washoe County
Courthouse
Reno, Nevada 89505

April 10, 1969

Honorable Warren Monroe
Chairman, Senate Judiciary Committee
Nevada State Legislature
Carson City, Nevada

Re: A. B. 456

Dear Snowy:

I, together with other law enforcement officers, are genuinely concerned about the provisions of A. B. 456, which would serve to expunge certain criminal records.

I originally appeared before the Assembly Judiciary Committee in connection with their consideration of this measure, and at that time suggested that this type of proposal should be given some critical study before enactment. Apparently, however, the Committee determined to pass it out, and the measure is now before you for consideration.

I know that Assemblyman Thomas Kean is genuinely interested in this measure, and at his request I undertook to determine the impact such a law has had in other jurisdictions. I find no law in any jurisdiction which goes to the extent of the Nevada proposal. I am enclosing a copy of the pertinent provision of the California Penal Code, which contains provisions similar to the change of plea authorized by our present law. In addition, provision is made in California for sealing records of conviction in misdemeanor cases where the person was under twenty-one.

It is to be noted that dismissals of felonies under applicable California statutes still carry with it certain restrictions, such as the right to carry concealed weapons, etc.

I would earnestly suggest that this proposal not be enacted at this session, but that in the interim before the next session a study be made to create a proposal that will not have these objectionable portions. To enact the proposal could have serious

OFFICE OF THE
DISTRICT ATTORNEY
COUNTY OF WASHOE

implications insofar as background studies, modus operandi files, recidivism studies, impeachment proceedings, to mention only a few.

It should be further noted that this proposal, even if enacted, would not accomplish the purpose intended. There is no way, for example, to wipe out fingerprint records pertaining to arrests which are filed with the Federal Bureau of Investigation, California Bureau of Investigation and Identification, and other like agencies.

Sincerely,

WILLIAM J. RAGGIO
District Attorney

WJR:le
cc:
Hon. Thomas Kean
Elmer Briscoe
C. W. Young
Hon. Paul Laxalt

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MEMORANDUM RE: SENATE BILL NO. 519

Senate Bill 519 will limit applications for zoning reclassifications to three, and thereafter, only after a Court order that a change of circumstances exists. By adopting the changed circumstances rule, this legislation severely restricts the zoning powers of local municipal authorities. Zoning is purely a local matter, and every community must have the opportunity to determine for itself the merits of contemplated changes in zoning classifications. All cities vary in zoning philosophy and living patterns, and what justifies a change in one community may not in another. These basic principles are threatened by SB 519.

A. The Concept Of Changed Conditions.

The concept of "changed circumstances" has had a long history in the Courts. The principle is simply that once a particular area is zoned, there can be no change in that zoning classification unless there is a change in the character of the immediate or surrounding neighborhood. The legal question which arises in this context is whether a zoning authority may validly rezone in the absence of a showing of changed conditions. Of the jurisdictions that have considered this question only Maryland, Oregon, Illinois and possibly Colorado adhere to the rule. The vast majority of States hold that a municipal zoning authority is neither restricted nor limited in its rezoning power to a prerequisite finding of changed conditions. The following is a representative sampling of jurisdictions and authorities.

Connecticut: Winslow v. Zoning Board of City of Stamford, 122 A.2d 789 (Conn. 1956); Wade v. Town Plan & Zoning Com'n of Town of Hamden, 145 A.2d 597 (Conn. 1958).

Massachusetts: Cohen v. City of Lynn, 132 N.E. 2d 664 (Mass. 1956); Raymond v. Commissioner of Public Works of Lowell, 131 N.E. 2d 189 (Mass. 1956)

Kentucky: Leutenmayer v. Mathis, 333 S.W. 2d 774 (Ky. 1960); Shemuell v. Speck, 265 S.W. 2d 468 (Ky. 1954)

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Texas: Reichert v. City of Hunter's Creek Village, 345 S.W. 2d 838 (Tex. 1961).

Florida: Sarasota County v. Walker, 144 So. 2d 345 (Fla. 1962).

New York: McCalevtown of Oyster Bay, 217 N.Y.S. 2d 163 (N.Y. 1958)

Kansas: Miller v. Kansas City, 358 S.W. 2d 100 (Kan. 1962)

Rhode Island: Cianciarulov Tarro, 168 A.2d 719 (R.I. 1961)

See Also, MacDonald v. Board of County Commissioners, 210 A.2d 325 (Md. 1965)(Barnes J., Dissenting)

These authorities reject the changed conditions rule as a prerequisite to the validity of a zoning change because the rule is simply too narrow and inflexible in dealing with the dramatic growth and development of modern communities.

This rule is based on the singular premise that once a zoning plan is enacted it should never be changed, altered or amended without a physical change in the immediate area. There are many reasons which warrant a change in zoning, the last of which is a change in conditions. There may have been a mistake in the original zoning ordinance or a particular zoning ordinance may become unreasonably burdensome. Many times a whole community or a large segment thereof may substantially change without a change being reflected in any particular locality of the city. Also, a change in one part of the community may be felt with tremendous impact in another part in many different ways other than a noticeable difference in the immediate vicinity of the affected area. A zoning change may be necessary so that there is conformity with a new comprehensive plan. Many times a zoning change is for the betterment of the community taking into consideration changing ideas of zoning philosophy and living patterns.

The changed conditions rule presupposes that the only good ideas about zoning a community exist at the time the original zoning ordinance is enacted. No consideration is given to changes in zoning concepts or philosophy. The legislation now under consideration will create an archaic rule which will do nothing but impede the progress of modern zoning. A State which is expanding, growing and changing as fast as Nevada will not benefit by this strait-jacket on its local zoning authorities.

B. SB 519 Will Overrule The Nevada Supreme Court.

Senate Bill 519 is a direct attack upon the judicial wisdom of the Nevada Supreme Court and attempts to overrule a decision of that Court.

The Nevada Supreme Court has heretofore had the opportunity to consider the changed conditions rule and all its ramifications. This question has twice been before the Court in the same case. In Eagle Thrifty Drugs & Markets, Inc., v. Hunter Lake Parent Teachers Assoc., et al, No. 5454, the Court in an opinion filed July 17, 1968, specifically held:

> "We hold that relief by injunction may be granted to restrain the making or pursuit of an application for rezoning where such application has repeatedly been denied on its merits and no change in circumstances has intervened."

On rehearing the same case, in the decision filed March 18, 1969, the Court overruled and reversed this holding.

It is readily apparent that our Supreme Court has reviewed this question at some length and determined that the changed conditions rule is not to be adopted for the State of Nevada. In light of this decision, there is no compelling reason to upset this judicial determination. In any event, if SB 519 becomes Law, its legal and constitutional validity may very well be questioned when it comes before the Court.

C. SB 519 Creates More Problems Than It Solves.

Senate Bill 519 if enacted and allowed to become Law will upset the narrow balance of authority between municipal zoning authorities and the State Courts. It has long been recognized that the Courts are limited to a judicial determination of whether a zoning ordinance, once enacted, is discriminatory or an abuse of discretion. Courts are never permitted to substitute their judgment as to matters of zoning for that of the proper municipal authority. Senate Bill 519 alters this delicate balance by requiring the Courts to make the determination that a change of conditions does or does not exist. And if a Court does determine that a change in circumstances exists will this be binding on the zoning body? If it will, then possibly zoning applications will be commenced in the Courts rather than zoning bodies.

Senate Bill 519 would also prohibit three applications for rezoning concerning the "same property". This means that an owner of

property is burdened with the applications of his predecessors in title, regardless of their merit or reason. What may have been a reason or grounds to request a zoning change twenty-five years ago may be different today. However, in this event, the owner of property is denied the opportunity to even apply regardless of the merits of his request. Clearly an incident to the ownership of property is the right to ask that it be zoned for the highest and best use.

These questions are but a few that will be created by this legislation. If a problem exists, it is merely a local one, and should be solved by each community as it deems best.

Respectfully submitted,