

## ASSEMBLY COMMITTEE ON JUDICIARY - 56th Session, 1971

MEETING FEBRUARY 4, 1971

The meeting was called to order at 2:25 p.m. Present: Miss Foote, Messrs. Fry, Lowman, Kean, Dreyer, Olsen, Torvinen, McKissick and May. None absent.

Mr. Torvinen presented the following bills for which he requested committee introduction:

1. Clarifies trustees' responsibilities in testamentary trusts. Mr. Kean moved the committee introduce the bill, seconded by Mr. Torvinen. Carried.
2. Exempts Senators and Assemblymen from writ of quo warranto statutes. Mr. Kean moved the committee introduce the bill, seconded by Mr. Torvinen. Carried.

Mr. Fry presented the following bill for which he requested committee introduction: A bill setting the time limit for the Supreme Court to decide a criminal appeal.

Mr. Torvinen remarked he had an Assembly Joint Resolution to be introduced which does the same thing. It is a constitutional amendment to create a court of criminal appeals, saying criminal appeals have to be decided within 90 days after they are initiated.

Mr. McKissick presented the following bills for which he requested committee introduction:

1. Provides that judges would examine prospective trial jurors in criminal cases. Mr. Torvinen questioned if this should be done by legislation or by court rule. Mr. McKissick replied this has been done in civil trials. Mr. Torvinen moved that the committee introduce the bill, seconded by Mr. Kean. Carried.
2. Prohibits the Attorney General from accepting referral cases. It was decided to wait for the attorney general's ideas on the bill.
3. Provides for juries consisting of 8 persons. Mr. Fry said he would like to see a letter from the district judges on the bill. Mr. Torvinen moved the committee introduce the bill, seconded by Mr. McKissick. Carried.
4. Requires the state to hire a chemist to analyze drugs in trials for offenses regarding drugs. Mr. Torvinen moved the committee introduce the bill and refer it to ways and means committee, seconded by Mr. Lowman. Carried.

AB 11 - Provides immunity for legislators and certain legislative witnesses. ASSEMBLYMAN JOHN HOMER addressed the committee. He stated the reason for the bill was that an action is now pending because of the statements which were made during a legislative session. He stated that legislators have no immunity from civil or criminal actions for statements made in the legislature.

Mr. Fry questioned if the legislators wanted to give carte blanche to witnesses, inasmuch as any person who cared to could come in and speak at a hearing.

Mr. Kean asked if the following wording would be sufficient in paragraph 2: "A committee shall be directed to give immunity to . . ." The committee could advise the witnesses if they had immunity or not.

Mr. Olsen suggested that in paragraph 2 the words "unless malice can be shown on the part of the witness" be added. Mr. Fry stated that malice is very difficult to prove.

Mr. Kean asked if Mr. Homer would object to committees having the power to give a witness immunity. Mr. Homer had no objections. Mr. Torvinen stated there are two kinds of liability from a statement: (1) liability from suit in libel or slander, and (2) liability from prosecution for perjury.

Mr. Torvinen stated that the Assembly has the power to place people under oath under penalties of perjury, and the Assembly by joint resolution could probably delegate that authority. Mr. Lowman stated that the Assembly has subpoena powers. Could the immunity be restricted to people who have been subpoenaed or invited?

Mr. Torvinen said that proceedings in the Senate and House in Congress are privileged. There is a statute in Nevada that court proceedings are privileged. He suggested getting rid of subsection 2 altogether, inasmuch as the committees can't take responsibility for witnesses libeling or slandering someone.

SB 26 - Restores jurisdiction of local authorities over certain traffic offenses. Mr. Kean suggested the bill should be in the roads and transportation committee.

The committee heard from MR. CURTIS BLYTH, representing Nevada Municipal Association who stated that the cities and counties have lost considerable sums of money on fines when an officer who picks up a driver does not file a report on drunk driving, which would go through the district attorney's office, but instead charges him with a local ordinance.

Mr. Kean said the state could end up with non-uniform rules from city to city. Mr. Torvinen suggested stating that ordinances could be enacted which were not inconsistent with state law. He suggested that on line 19, the word "or" be removed, subject to the bill drafter's approval, and "provided such ordinance is not inconsistent with penalty provisions of any similar state

statute" be added. Mr. Fry stated that not just the penalties, but the whole ordinance, should be consistent.

Mr. Fry said that Mr. Valentine had suggested that on lines 14 and 15 the words "operation of unregistered vehicles" should be deleted. Mr. Kean noted there are many farm vehicles, car dealers' vehicles, etc. that are allowed to be operated without registration.

AB 110: Provides for protection of children in divorce actions. Mr. Olsen stated he is chairman of the Clark County Juvenile Welfare Board, and they approve it, as does Judge Mendoza, the juvenile judge. The purpose is to slow down the quickie divorce and make sure the children of the marriage receive ample consideration and care and are properly provided for. In Clark County they had 9,000 cases before the juvenile court and between 35-40% of these were a result of broken homes.

Mr. Torvinen noted there should be some provision as to who pays the attorneys who are appointed, and suggested the wording, "the court may award the attorney's fee to either parent at its discretion". Mr. Olsen said the subject of attorney's fees hadn't been considered, but he took the position that it was an inherent power of the court to appoint the attorneys and provide the fees. Mr. May questioned whether one attorney would serve as counsel for the children if both parties had children, or if there would be two attorneys. Mr. Olsen stated that one attorney would probably represent all the children.

Mr. Torvinen stated the court has the power to order the county welfare department to make an investigation in these cases and they can investigate and make a recommendation to the judge. Mr. Olsen stated that the word "may" is used.

Mr. McKissick stated that a family counselor at the present time has no certification, and he feels that there should be some requirements before a person can set himself up as a family counselor.

AB 30: Permits real estate agents to receive customary commissions for sales of property from decedents' estates. The committee heard from ASSEMBLYMAN LINGENFELTER. He stated this bill removes the 5% statutory limit that the court can pay for the sale of property in estates. He felt it should be removed because: (1) a lot of those estates are not getting the services they should have, and would have if the commissions were the same as those for private property; (2) an estate sale is more time consuming and requires more effort. He stated that the courts now can pay less than 5%, and recommended passage of the bill.

Mr. McKissick stated that the 5% limitation was imposed in 1941, and Mr. Lingenfelter said that agents started collecting 6% on homes in 1964-65.

AB 110. Mr. Olsen suggested the bill be held until a similar bill in the Senate comes to the committee, and they can be considered together. Seconded by Mr. McKissick.

AB 146: Extends power to modify orders for care, custody, education, maintenance and support of minor children in divorce actions. Mr. McKissick said there is no way to allow a defendant to open a divorce action for modification after six months, if his default had been entered in the action. Mr. Olsen suggested adding the words "provided the court has the children within the jurisdiction." Mr. Torvinen suggested an amendment removing the words "the court on its own motion" and say, "when the children are in the jurisdiction of the State of Nevada." Mr. Fry did not agree with the necessity of having the children in the state.

Mr. Olsen asked if the age of minority varies from state to state, and how that would apply to this chapter. Mr. Fry stated it would refer to the age of majority in Nevada, i.e., 18 for girls and 21 for boys.

Mr. McKissick moved the bill be amended as suggested, and that the committee recommend "Do Pass as Amended". Mr. Torvinen said he would like to look at the amendments first.

AB 134: Repeals requirement that justices of the peace disperse riotous assemblages. Miss Foote moved "Do Pass", seconded by Mr. Kean. Carried.

AB 135: Eliminates requirement that judges, justice of the peace prevent duels. Miss Foote moved "Do Pass", seconded by Mr. Kean. Carried.

AB 111: Provides additional requirements for summary administration of estates. ASSEMBLYMAN RICHARD BRYAN addressed the committee.

Mr. Torvinen stated that Sec. 145.020 specifies what shall be contained in a petition for letters of administration in summary estates: ~~It asks that the executor do both things, first list every-~~ thing in the petition and then file an inventory and appraisement. Mr. Bryan pointed out that their three probate judges each construe the section differently.

Mr. Torvinen suggested that the bill could state that the inventory and appraisement in a summary estate need not be filed unless there was real property. Mr. Bryan stated there is a conflict right now, and he thinks it is preferable to have an inventory and appraisement. The judge always has the power to inquire at the time of distribution. He said he had no objection if the inventory and appraisement were not required, but the statutes should be harmonious.

AB 133: Abolishes joinder of parties in challenge for cause and limits peremptory challenges allowed to several parties. Mr. Fry questioned if this bill went too far in allowing numerous challenges. Mr. Torvinen stated that if this many challenges were allowed, a larger panel would have to be drawn from which to choose jurors, and it would be more costly. Mr. Fry said he would invite Dick Waite to speak on the bill, and Mr. Torvinen said he would check the notes in the bill drafter's office to see if the bill conformed with what he had intended.

Mr. Fry exhibited proposed amendment to AB 47. Mr. Kean asked that it not be limited to rubber stamps, but provide that the words could be printed or typed on the deed. Mr. Torvinen pointed out that the tax should be "transfer" tax, not tax on sale. He also pointed out that it didn't make any difference if the property was within a city or unincorporated area. Mr. Fry suggested that the IRS valuation space be stricken.

AB 11: Mr. Lowman moved "Do Pass" with second section amended out. Seconded by Mr. Kean. JAMES GUINAN, Legislative Representative from State Bar, stated he thought the legislators already had immunity, but giving it to witnesses invites people to slander others. Mr. Torvinen moved the bill be given a "Do Pass as Amended". Mr. Fry moved that the title also be amended to indicate that the immunity is to apply to civil and criminal actions. Seconded by Mr. Kean. Carried.

SB 26: Mr. Lowman moved the committee amend the bill to provide that ordinances shall not be inconsistent with state law, and recommend "Do Pass as Amended", seconded by Mr. Dreyer. Carried.

AB 30: Mr. Kean moved "Do Pass", seconded by Mr. Olsen. Carried.

AB 146: Mr. Fry suggested an amendment deleting "the court may make such an order on its own motion" and also provide that the defaulting party shall appear in the action and submit himself to the jurisdiction of the court for all purposes of the action. Mr. Torvinen moved "Do Pass as Amended", seconded by Mr. McKissick. Carried.

AB 111: Mr. Guinan stated a bill was going to be introduced raising the limits of value on a summary estate proceeding. Mr. Torvinen moved that AB 111 be amended by inserting after the word "notice" on line 3, the words "including the inventory and appraisement as provided in Chapter 144 of NRS." Seconded by Mr. Lowman. Carried.

Messrs. Lowman and Olsen discussed the bills introduced regarding use of credit cards. Mr. May will get a copy of a new Federal act that has been passed regarding credit cards.

There being no further business, the meeting was adjourned at 4:45 p.m.

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ASSEMBLY

AGENDA FOR COMMITTEE ON JUDICIARY

Date February 4 Time p.m. adjournment Room 240

Bills or Resolutions to be considered

Subject

Counsel requested\*

<u>Senate Bill 26</u>	<u>Restores jurisdiction of local authorities over certain traffic offenses</u>	<u></u>
<u>ASSEMBLY BILL 110</u>	<u>Provides for protection of children in divorce actions</u>	<u></u>
<u>ASSEMBLY BILL 111</u>	<u>Provides additional requirements for summary administration of estates.</u>	<u></u>
<u>ASSEMBLY BILL 133</u>	<u>Abolishes joinder of parties in challenge for cause and limits peremptory challenges allowed to several parties.</u>	<u></u>
<u>ASSEMBLY BILL 135</u>	<u>Eliminates requirement that judges, justice of the peace prevent duels.</u>	<u></u>

\*Please do not ask for counsel unless necessary.

HEARINGS PENDING

Date February 4 Time p.m. adjournment Room 240  
Subject AB 11 - Grants immunity to legislators and legislative witnesses for certain statements.

Date February 4 Time p.m. adjour Room 240  
Subject ment  
AB 30 - Permits real estate agents to receive customary commissions for sales of property from decedents' estates.

ADDITIONAL

AGENDA FOR COMMITTEE ON JUDICIARY

p.m.

Date February 4 Time adjournment Room 240

Bills or Resolutions to be considered

Subject

Counsel requested\*

AB 124

Increases rights of limited partners and excludes limited partnerships from filing certificate of assumed or fictitious name.

AB 134

Repeals requirement that justices of the peace disperse riotous assemblages.

AB 138

Gives public administrators additional duties in certain counties.

AB 146

Extends power to modify orders for care, custody, education, maintenance and support of minor children in divorce actions.

\*Please do not ask for counsel unless necessary.

HEARINGS PENDING

Date \_\_\_\_\_ Time \_\_\_\_\_ Room \_\_\_\_\_
Subject \_\_\_\_\_

Date \_\_\_\_\_ Time \_\_\_\_\_ Room \_\_\_\_\_
Subject \_\_\_\_\_