ASSEMBLY COMMITTEE ON JUDICIARY - 56th Session, 1971

MEETING MARCH 11, 1971

The meeting was called to order at 3:25 p.m. Present: Miss Foote, Messrs. Fry, Lowman, Kean, Torvinen, McKissick, May, Olsen and Dreyer. None absent.

AB 90 - Gives school security officers status of peace officers.

MR. VERNON BURKE stated that by obtaining this status his security officers can be trained effectively. They are often forced to deal with elements of the population who are not prone to follow laws. It is sometimes necessary to apprehend them and hold them for later booking, and in order to do so without being subject to charges of false arrest, peace officers status is necessary. They are as involved with security and investigation at night as they are with students during the day.
The retirement relating to school districts is satisfactory, and they are not seeking a lower retirement age.

Mr. Kean noted that with peace officers at schools, city policement sheriff's deputies and highway patrolmen all in one city, the citizens would be likely to be confused, and asked about having one central police station and assigning officers from that station to university and schools.

Mr. Burke answered this was pursued in Clark County and it was desired that two officers be present in the schools, with the school district paying for their services.

AB 144 - Expands motor vehicle liability insurance coverage.

AB 244 - Repeals provisions barring recovery for injury to or death of guests in vehicles or aircraft.

AB 245 - Requires medical insurance policy before action may be brought under guest statute.

Mr. McKissick explained the provisions of each of the above bills.

Mr. McKissick read amendments he had prepared to AB 144 as follows: Everything on page 1 is stricken; on page 2, lines 1-3 are stricken, and lines 7-45 are stricken. The remaining portion of the bill consists of page 2, lines 4, 5 and 6.

Mr. McKissick read the laws from the States of New Hampshire, Colorado and Minnesota regarding the provisions of the bills under discussion.

The bill is further amended on page 2, section 2, by deleting lines 5 and 6 and inserting "for injury or death as provided in coverage purchased by the policy holder."

LEE ROSE, ESQ., Las Vegas, representing STATE FARM INSURANCE:

Mr. Rose noted the bill was now different from the original presentation. He stated he would have no objection to section 2 as it exists in the bill, and said companies do offer amounts of insurance in excess of the financial responsibility law. It should be available on a voluntary basis on the part of the insured and the insuror.

Miss Foote asked if Mr. Rose would be opposed to the bill if everything is deleted except lines 4, 5 and 6 on page 2. Mr. Rose said that is correct, and the bill basically doesn't change anything existing in the law right now.

MR. VIRGIL ANDERSON, AAA INSURANCE, stated that regarding section 2 on page 2, the present language saying coverage shall be in limits for bodily injury as in the responsibility act precludes a carrier from selling uninsured motorist coverage in excess of financial responsibility limits. His company would go along with the bill if it is made permissible to offer the coverage. If it is mandatory at the option of the insured it would be self-defeating because a carrier could refuse to write public liability limits as well. This might diminish the protection in that area.

GENE WAITE, ESQ., Reno, agreed with Mr. Anderson that the language would authorize a carrier to issue uninsured motorist coverage at his option but it doesn't make it mandatory.

Mr. McKissick said he prefers AB 244 to AB 245.

Regarding AB 245, Mr. McKissick presented the following amendments: Strike lines 1-25 on page 1; strike lines 4-31 on page 2. Insert beginning on line 4, "except to the extent of financial responsibility required to be shown pursuant to chapter 485 of NRS."

Mr. Rose said State Farm had made a study on this, and found it would cost an extra amount for policy holders to have this on their policies. The study was made in the Las Vegas area, where State Farm has 30,000 policy holders, and covered a five-month period of time. The study noted 39 cases which would have been covered had the guest statute been repealed, and a cost value was placed on the claims ratio. Average individual

cost per case was $2,081, for the claims, and this would have come over a year's period to $200,000 spent on guest cases in Clark County. It would add to each individual policy premium a basic rate of $7, and with additional administration costs, underwriting and selling costs, would be $10 per year to each policyholder. Mr. Rose opposes the bill.

MR. JIM LORIGAN, FARMERS INSURANCE GROUP, stated Mr. McKissick had oversimplified the difficulty in overcoming "gross negligence". The Supreme Court has held that speed can be considered gross negligence. It isn't all that difficult to overcome our existing guest statute. He noted there is a "no fault" bill now in the Senate to revamp the whole system.

Regarding costs without the guest statute, Mr. Lorigan gave a review of Northern Nevada involving 12 cases.

Mr. May asked what rate of speed was considered gross negligence in the Supreme Court case to which Mr. Lorigan had referred.

GEORGE VARGAS, ESQ. answered the case is Kuzer v. Raymond, in which the Court stated that speed alone, under certain circumstances, may constitute gross negligence.

Mr. McKissick stated the case of Johns v. McAteer said there has to be speed plus some other element.

Virgil Anderson stated eliminating defense statute will cost policyholders more money. His company had also made an evaluation of potential guest cases. The cost would be $5 to each policy holder plus adding other expenses, to bring it to a cost of $8-$10 per policy holder. He said these cases also involve an element of double recovery, and repeal of the guest statute would duplicate recovery of medical expenses.

AB 303 - Limits time for bringing actions against professional persons.

AB 411 - Relieves doctors of liability under certain circumstances and establishes procedure for requiring cost bond of plaintiff in certain malpractice cases.

GENE WAITE, ESQ. stated his practice deals mainly with trial of personal injury lawsuits which would include claims as provided in AB 303. This is a good bill and merits favorable consideration. At the present time a doctor is exposed to suit for an indefinite period of time after he gives treatment. This requires the doctor to pay an excessive malpractice insurance premium. The costs of the liability insurance are ultimately

passed on to the patient in higher doctor's fees. California has adopted the same provision as in AB 303.

Mr. Lowman asked why the limit is four years. Mr. Waite stated four years is a reasonable limitation. In answer to a question from Mr. Dreyer, Mr. Waite stated the premium rate would be lowered if the risk is limited to four years.

Regarding the time limit of one year after discovery, Mr. Torvinen asked if Mr. Waite would object to an amendment making the time two years, since after discovery of the ailment, the investigative process before suit is time-consuming. Mr. Waite stated two years would be a reasonable limit.

Mr. Fry stated Neil Galatz had communicated his concern regarding line 7 of the bill. Mr. Waite stated this would give hospital employees, nurses, and physical therapists the same statute of limitations, and is reasonable.

V. A. SALVADORINI, M.D., Reno, said the State Medical Association is in favor of the legislation because of raises in costs of medical care, stating that high insurance premiums are a factor in the costs. He wondered about the interpretation of the last sentence.

Mr. Fry explains this means the four year period of time does not begin to run in the case of a doctor knowing he has committed an error which he did not reveal to the patient. If the doctor explains the mistake to the patient at the time it happens, the patient would be under the four-year limitation.

JIM LORIGAN, whose insurance company insures physicians, stated lines 17-20 would "take the meat out of the law" because the doctor or hospital would have to reveal all the facts of the treatment to the patient. Many times it is not in the patient's best interests to have this revealed. He would like the wording changed from "has failed to disclose" to "has concealed."

MRS. HENRY MICHEL spoke against the bill, and stated the time for suit should be extended, not limited, since many years might elapse before a patient discovers there has been malpractice. She felt the legislature should protect the interests of the patient as well as the doctor.

MR. HENRY MICHEL supported her remarks.

Regarding AB 411, Dr. Salvadorini stated this would relieve the rise in cost of malpractice insurance and would slow down the nuisance suits if the plaintiff had to post a bond. Even though suits may be spurious and no judgment is rendered, the fact that suit was filed tends to increase the doctor's insurance premiums.

Mr. Torvinen questioned the provisions of section 2 releasing hospital employees and doctors from liability resulting from emergency treatment.

Dr. Salvadorini stated this is the "good Samaritan" bill for hospitals. Doctors can be subject to suit in emergency situations even if there is no negligence, and the doctors need this protection.

Mr. Torvinen observed people go to emergency rooms for competent medical treatment and this provision says they don't have to receive competent medical treatment if they happen to be in an emergency room.

Mr. May requested the Judiciary Committee ask a member of the Commerce Committee to testify on the bill.

AB 141 - Grants justices' and municipal courts original jurisdiction for juvenile trafficeoffenses.

JAMES SANTINI, JUSTICE OF THE PEACE, LAS VEGAS, stated the bill represents potential chaos on the congested court calendars. There were 7,053 moving traffic violations of juveniles in Clark County last year.

Judge Santini submitted opinions on the bill from Supreme Court Justice David Zenoff, former District Judge Alvin N. Wartman, and District Judge William Compton . He stated in his survey of judicial persons regarding the bill, only the Justice of Peace of Henderson did not object, since he would have time to set aside a day to hear these violations. The District Attorney opposed the bill in terms of lack of ability to handle case load transfer, and the Justice of the Peace of Reno and Reno City Attorney also opposed the bill.

Judge Santini is concerned in the area of sentencing, which is a concern of anyone in the area of trafficeoffenses. The Justice of the Peace could only order a fine. He felt juvenile traffic offenders would take advantage of this. There is no coordination of record system, so one justice court would not know if an offender had been before a different Justice Court for a violation.

Courts in Clark County are crowded and congested and the juvenile offenders wouldn't get the necessary time spent on their cases. Another handicap in a justice court is not being able to call in parents and advise them to take charge of the child. This wouldn't solve a problem, but would create one.

Mr. Lowman asked how the situation is handled now. Judge Santini replied the juvenile offender goes before the Juvenile Traffic Judge.

Mr. Torvinen asked if Judge Santini had authority under the present law to suspend a license, and Judge Santini answered he did not in this area.

AB 398 - Increases jurisdiction of University of Nevada System police department.

BRIAN WHALEN, UNIVERSITY OF NEVADA POLICE, supports the bill, and detailed the problems the University policemen have when they are working with other police agencies on areas away from campus, where they have no jurisdiction.

Mr. Dreyer noted the bill would give the University policemen broader jurisdiction than city policemen and sheriff's officers have. Mr. Whalen stated they control university property at other locations than the main campus. Mr. Dreyer felt the words "main jurisdiction would be on university property" should be added.

Mr. Fry agreed with Mr. Dreyer, and observed that school districts are asking that their security officers be peace officers, and he would anticipate they would ask for jurisdiction throughout the state. He noted further that the title "peace officer" is getting expansive, including state brand inspector and gaming personnel.

BOB MALONE, CHIEF OF POLICE, UNIVERSITY OF NEVADA, agreed with the remarks of Mr. Whalen, and stated that police in other jurisdictions are not interested in handling University student problems, on or off the campus. He stated his people are trained, and have worked with narcotics officers and other peace officers. He stated Police Chiefs Briscoe and Galli in Washoe County agree with the bill. He added that under the present law, if the University Police are injured off campus while investigating, the NIC doesn't cover them.

AB 379 - Provides for allowance of attorneys' fees in civil actions.

Mr. Waite stated the bill would allow the judge to give the losing attorney a fee as a balm.

Mr. Fry suggested the addition of the words "any prevailing party".

Mr. Waite stated anything that applies to the plaintiff should apply to the defendant. The court should be compelled to allow attorneys' fees to the prevailing party. He suggested the wording, "The Court shall make an allowance to the prevailing party for good cause", and spell out good cause.

Mr. Torvinen suggested the word "recover" be changed to "sought". He stated it applies to contract cases as well as tort.

Mr. Anderson said another point to consider is that this would also be applicable to condemnation cases and could add to the cost of public works projects and highway department condemnation.

Mr. McKissick stated the bill as drafted is improper to clean up the existing law. He stated further that when the plaintiff is treated differently than the defendant, some district judges have ruled this is unconstitutional.

Mr. McKissick suggested amendments as follows: In line 21, change "may" to "shall", and in line 28 change the wording to "any prevailing party for good cause."

AB 378 - Increases time for bringing suit after denial of claim against estate of deceased person.

Mr. Waite said it is a good bill.

Mr. Torvinen suggested that 30 days is too short and felt a period of time between 60-90 days would be better. Mr. Kean suggested 45 days.

Mr. Dreyer moved for reconsideration of the action whereby AB 38 was indefinitely postponed. Seconded by Mr. May. After discussion, Mr. May withdrew his second, and Mr. Dreyer withdrew his motion.

Mr. Dreyer emphasized his intent of requiring that a minimum sentence be served under the bill, instead of allowing a judge to suspend a sentence.

Mr. Fry announced that the committee would meet the following day at 10:00 a.m.

There being no further business, the meeting was adjourned at 5:48 p.m.

sg

ASSEMBLY

AGENDA FOR COMMITTEE ON JUDICIARY

Date March 11 Time p.m. adjournment Room 240

Bills or Resolutions to be considered	Subject	Counsel requested*
AB 141	Grants justices' and municipal courts original jurisdiction for juvenile traffic offenses.	
AB 144	Expands motor vehicle liability insurance coverage.	
AB 244	Repeals provision barring recovery for injury to or death of guests in vehicles or aircraft.	
AB 245	Requires medical insurance policy before action may be brought under guest statute.	
AB 299	Provides for accusatory and investigative grand juries	
AB 303	Limits time for bringing actions against professional persons.	
AB 352	Creates family court in certain counties	
AB 378	Increases time for bringing suit after denial of claim against estate of deceased person.	
AB 379	Provides for allowance of attorneys' fees in civil cases.	
AB 411	Relieves doctors of liability under certain circumstances and establishes procedure for requiring cost bond of plaintiff in certain malpractice cases.	

*Please do not ask for counsel unless necessary.

HEARINGS PENDING

Date Time Room
Subject

Date Time Room
Subject

SAMUEL S. LIONEL
GRANT SAWYER
JON R. COLLINS
ALVIN N. WARTMAN
ROBERT M. BUCKALEW
GEORGE C. ABERNATHY

STEPHEN L. MORRIS
TAYLOR H. WINES
RAYMOND AVANSINO, JR.
SHANNON L. BYBEE, JR.
JEFFREY N. SHEEHAN
WILLIAM R. URGA

LIONEL SAWYER COLLINS & WARTMAN
ATTORNEYS AT LAW
SUITE 800 FIRST NATIONAL BANK BUILDING
302 EAST CARSON AVENUE
LAS VEGAS, NEVADA 89101

AREA CODE 702
TELEPHONE 385-2158

February 26, 1971

Honorable James Santini
Justice of the Peace
Las Vegas Township
Clark County Courthouse
Las Vegas, Nevada

Dear Judge Santini:

This letter is pursuant to your request by telephone of yesterday with regard to my opinion with respect to the proposal now pending before the Legislature which would return the juvenile traffic offender to the various city and county courts rather than have him handled by the Juvenile Traffic Court under the administration of the Juvenile Judge, who is a District Judge.

This proposal is not a new or novel one but has been made before. In fact, this was the former state of the law until sometime in the early 1960's when the present system was instituted. I believe the beginnings of it were initiated by then Judge Zenoff during his tenure as Juvenile Judge here in Clark County. However, the actual passage of the legislation, I believe, came during the tenure of Judge Compton, and he, more or less, led the actual fight which accomplished the passage of the so-called Juvenile Traffic Court bill.

You indicated you were interested in knowing if Judge Compton had changed his position in the matter. I informed you that I was certain he hadn't. I discussed the matter with him at some length today, and he is extremely determined, voluble and definite that he has not changed his opinion in any way, shape or form.

Now, for my opinions in the matter. At the

outset let me say that I agree with Justice Zenoff and Judge Compton. My reasons are as follows (these are my reasons; they may or may not coincide with the reasons of Justice Zenoff and Judge Compton, and I do not represent them to be their opinions):

1. Under the old system we had 15 justices of the peace and four municipalities administering Juvenile Traffic Court matters. Obviously, there could not be any uniform application of principle with respect to treatment and penalty.

2. With all of these various courts handling juveniles there could be no central method of keeping track of what happened to a juvenile within the same county. In other words, a juvenile could have, theoretically speaking, half a dozen drunk driving charges wending their way through various courts in the county and no one would know a thing about it in any other court, other than the one concerned with each charge.

3. There was no procedure whereby the Juvenile Probation Department, who might have the traffic offender on probation, ever knew of his traffic record which might have become serious enough to justify revocation of probation or modification thereof.

4. The Juvenile Judges, in attempting to administer the Juvenile Traffic Court program, have utilized, because of the county-wide nature of their administration, numerous innovative steps in treating the problem, such as:

A. Cash fines to be paid by the juvenile and not by his parents;

B. Revocation of licenses by taking them into physical possession or by stamping them with a restriction;

C. Juvenile probation under the supervision of Juvenile Probation officers (completely unavailable to city and J.P. Courts);

D. Sanctions against parents;

E. Compulsory traffic survival school attendance;

F. Compulsory safety school attendance; and

G. Traffic demerit programs.

Other than perhaps the City of Las Vegas and the Las Vegas Township Justice Court, I seriously doubt if any individual court's budget could stand the addition of the necessary personnel to carry out these various programs.

5. I do agree at the present time that the Juvenile Traffic Court set up as now constituted is not perfect. However, I think that some modifications of the system can be accomplished which would render it more effective. I think if it had a somewhat increased budget and wasn't the stepchild to some extent in the Juvenile Court setup, it could do a better job. I think there have been times when, perhaps, the personnel have not been of the best. These are all administrative matters which should not cause a return to what I consider a totally unworkable program.

6. The only thought I have heard advanced that seems to merit the change back to the old system is that thereby the various cities and the County of Clark would augment their revenues by the fines collected in the various courts. This does not sound like a meritorious argument as to why we would change what has been a basically successful program in treating one aspect of juvenile delinquency. In the first place if this is the only meritorious idea behind the proposal, it can be accomplished without changing the system. In other words, the revenues received through the Juvenile Traffic Court can be allocated on the basis of where the offense occurred and distributed by the county treasurer, as collected. This would take a legislative enactment at this time. I would think that the cities would be ecstatic over this real, blunt approach since they would receive the revenue but would have to do nothing to earn it.

This, more or less, sums up my views in the matter. In our conversation the other afternoon I may have had some additional thoughts but they escape me at the moment.

Very truly yours,

LIONEL SAWYER COLLINS & WARTMAN

ALVIN N. WARTMAN

ANW/nwp

SUPREME COURT OF NEVADA

DAVID ZENOFF, CHIEF JUSTICE

CARSON CITY, NEVADA

February 22, 1971

James D. Santini
Justice of the Peace
Clark County Courthouse
200 East Carson
Las Vegas, Nevada 89101

Dear Jim:

You ask my opinion concerning Assembly Bill No. 141 which seeks to transfer jurisdiction for juvenile traffic offenders into the Municipal and Justice Courts.

Several years ago when I was Juvenile Court Judge in Clark County I undertook a survey of national authorities on the subject because it appeared to me that we were accomplishing nothing by allowing juveniles to pay their traffic fines out of their pockets without the parents even knowing the kids were being charged. Payment of a fine worked no hardship or inconvenience whatsoever. The national authorities, namely, the National Council of Juvenile Court Judges and the National Council on Crime and Delinquency, advised me that it was considered poor handling and control to take juvenile traffic offenders out of the juvenile court jurisdiction.

We instituted practices that cannot legally be accomplished in the municipal and justice courts, such as, compelling the attendance of a parent together with the child, not accepting fines, suspending driver's license and imposing other penalties that would come within the jurisdiction of only the juvenile court. We were successful over the opposition of the Chief of Police and the City Court at that time. At no time

February 22, 1971

since then have I ever had occasion to regret removing the juvenile traffic offenders from the municipal or justice courts nor do I now.

I strongly believe that jurisdiction for juvenile matters should remain in the juvenile court where they are competently being processed.

Best regards,

David Zenoff

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