

## ASSEMBLY COMMITTEE ON JUDICIARY - 56TH SESSION, 1971

MEETING MARCH 3, 1971

The meeting began at 3:00 p.m. Present: Miss Foote, Messrs. Fry, Lowman, Dreyer, Torvinen, May, Olsen, Kean and McKissick. None absent.

AB 359 - Establishes new requirements and restrictions for construction contracts. Testimony from LEE BURNHAM, Deputy Director, DEPARTMENT OF EMPLOYMENT SECURITY, and also representing STAN JONES, STATE LABOR COMMISSIONER:

The influence of the construction industry is strong in the overall economy of the entire state. If the contractor's financial obligations aren't met every phase of the economy is affected.

From the standpoint of the Labor Commissioner's Office, there is a relationship between the percentage of people employed in the construction industry and the number of claimants for non-payment of salary. It would appear there is a failure in the construction industry for employers to pay salaries.

The Employment Security Department would like to see an amendment to the bill stating not only does the prime contractor have to post money with a financial institution for their subcontractors and employees, but also for those state agencies that suffer because of non-payment of claims and contributions. Any uncollectible item costs the legitimate employer in Nevada more money.

BEDE ROGERS, NEVADA SUBCONTRACTORS ASSOCIATION: She presented an opinion on the bill written by the association's attorney, ROBERT SANTA CRUZ.

Mr. Fry asked what areas of regulation the cases cited in the opinion concern. Mr. Santa Cruz said the Supreme Court considered the right to contract and impairment of right to contract in these cases, and also class legislation. The question is considered if the restriction is arbitrary or reasonable, if it creates class legislation or applies to the general public. In an Attorney General's opinion in 1955 the question of impairment of obligation of contract is gone into in the question of limiting the hours of women to work.

The lien law does not assure the proper protection to see the people get paid. Many people working on short capital can't wait for litigation to be finalized to get the money owed them.

Mr. May stated an 11-point program has been developed with regard to the construction industry in separate bills. Russell McDonald has said the provisions cannot stand separately. Each subject in AB 359 is important to the construction industry.

Mr. Fry asked if it is possible to get a bond under the provisions of Paragraph 5 of Section 2. Mr. Santa Cruz stated he had no information regarding that.

Miss Rogers presented letters to the committee from various businesses in Southern Nevada indicating that the economy of the construction industry was important to the economy of the area.

Mr. Fry asked if this type of legislation is in effect in any other state. Miss Rogers said it is in Delaware.

MR. JOE MIDMORE, Builders' Association of Northern Nevada stated the vast majority of contract businesses pay their debts and have no problems. He agreed with a statement made by Mr. Torvinen that the contractor should investigate those he deals with as to solvency.

Mr. Midmore said a representative of one of the largest banks in the state is upset about the possibilities of the bill and suggested that a bank would not want to get involved in this kind of business.

JAMES GUINAN, representing Board of Governors, State Bar of Nevada, stated he is authorized to take a position on the bill consistent with the position of the Bar on similar prior legislation, and stated if this type of protection is extended to this group, there is no logic to denying it to all other businessmen.

Mr. Guinan, also speaking on behalf of the LAS VEGAS VALLEY WATER DISTRICT, stated the district believes the bill would make their construction operations more costly and would be entirely unnecessary as to a public agency which would also come under the provisions of the bill.

MR. BRIAN FIRTH objected to the bill, stating it is a piece of legislation to advantage creditors over debtors.

Speaking in regard to AB 236 - Clarifies various provisions of law relating to contractors; and AB 297 - Provides for contracting limits on contractors' licenses and regulates fees:

TOM COOKE, Attorney for STATE CONTRACTORS BOARD, recommended AB 236 for housekeeping purposes of the board. He said AB 12 fits in with the board's philosophy. AB 236 is a necessary measure to clarify the present statutes.

The Board opposes AB 297 as unworkable. The bill was prepared without consultation with any members of the board and has no merits.

ROBERT STOKER, SECRETARY, STATE CONTRACTORS BOARD:

The requirements in AB 297 would take the Board a year to get renewals out, if the bond limit had to be re-established each time. There is nothing in the bill that has any meaning, and it is simply a revenue bill.

Regarding AB 236, Mr. Midmore said his organization supports the stand taken by the State Contractors Board that it is a good housekeeping measure, and AB 297 is impossible to live with. It would legislate the board's decision-making powers and would put a lot of people out of business.

AB 253 - Redefines obscenity and other related terms.

LT. J. O. SMITH, LAS VEGAS POLICE DEPARTMENT had given a written statement to the committee to be included in the minutes.

MR. BRIAN FIRTH spoke against the bill as being against the republican form of government.

AB 200 - Prohibits deficiency judgments on purchase money obligations and provides cause of action for waste.

JIM GUINAN stated the Bar is in favor of the bill. It is the California approach, and limits the recovery to the value of the property on which a loan is made.

Mr. Fry feels there are existing statutes on anti-deficiency judgments. Mr. Guinan said the bill would allow deficiency judgments in other cases, but no interest money. Mr. Fry questioned if it applies retroactively, and Mr. Guinan said it doesn't.

AB 195 - Requires sales of estate property directed by will to follow appraisement and hearing requirements of private sales.

Mr. GUINAN stated the Bar questions if the provisions in the bill would interfere with the right of a testator to dispose of his property in a will any way he wants to. The Bar thinks he should be able to do so, as he is now. In the case where the will doesn't indicate how the property is to be disposed of, the other provisions apply as they do if there is no will.

Mr. Torvinen stated this need became apparent during the sale of the Whittell property when the judge indicated he could not interfere if the testator had indicated only that the property should be sold, and indicated no restrictions as to price or appraisement.

Mr. Guinan suggested it would be better to require appraisal and bidding where the judge thought it was necessary to determine the fair value of the property. In small estates it seems unnecessary to go through the other procedure.

Mr. Torvinen said the bill isn't critical, but might clear up the requirements.

Mr. Fry mentioned he has a bill being drafted which would require just the contrary, in intestate estates.

AB 231 - Allows certain claims to be filed in estates after time provided in notice to creditors and also clarifies duties of special administrators.

Mr. Guinan stated the Bar has some questions that it will hold estates open unnecessarily. There should be a cutoff time in the bill. Time for all creditors should be extended, or the provisions should be left as they are, but this exception should not be made. A claim can be amended later if the amount is undetermined at the time of making the claim.

Mr. Fry appointed Mr. Lowman to consider together AB 373, AB 374, and AB 375, and to request amendments to take care of the problems in the bills.

Mr. Dreyer moved "Do Pass" on SB 276. Seconded by Mr. Torvinen. Carried.

Mr. Kean moved that AB 504 be amended to delete lines 3-13 on page 1, and the committee recommend "Do Pass as Amended". Seconded by Mr. Fry. Carried.

Mr. Kean moved that AB 387 be indefinitely postponed. Seconded by Mr. Dreyer. Carried, with Mr. Lowman voting "No."

Mr. Kean moved "Do Pass" on AB 236. Seconded by Miss Foote. Carried.

Mr. Kean moved that AB 394 be indefinitely postponed. Seconded by Mr. Torvinen. Carried, with Messrs. Dreyer and Lowman voting "No."

Mr. Lowman moved that AB 14 be indefinitely postponed. Seconded by Mr. Fry. Carried.

Mr. McKissick moved "Do Pass" on AB 200. Seconded by Mr. Lowman. Carried.

Mr. Fry moved that AB 425 be indefinitely postponed. Seconded by Mr. Lowman. Carried.

Mr. Kean moved that AB 110 be indefinitely postponed. Seconded by Mr. Fry. Carried.

AB 478 - Mr. Torvinen stated the Legislative Counsel Bureau researched to see if the added language had been left out of the statutes as an oversight, and their research indicated that was so.

Mr. May moved "Do Pass" AB 478, seconded by Mr. Fry. Carried.

Mr. May moved that AB 145 be indefinitely postponed. Seconded by Mr. Fry. Carried.

AB 262 - Prohibits later employment of certain board or commission members by those who appeared before or were regulated by such board or commission.

ASSEMBLYMAN RICHARD BRYAN said the Governor asked for this in his message dealing with conflict of interest. Public esteem for elected officials is at a low point because of conflict of interest. Mr. Bryan explained the provisions of the bill and stated it would keep representatives of boards from giving special consideration to a particular industry and then reaping the benefits by his employment with the industry when the term on the board expired.

Mr. Fry questioned what happens when the board membership is required to be composed of members of a particular industry. Mr. Bryan stated the trend is to eliminate these requirements for board membership.

Mr. Dreyer stated he felt it interfered with an individual's right to work. Mr. Fry re-stated his previous objection, and cited the dairy board as an example. Mr. Bryan replied the statute requiring the dairy commission to be members of the industry would have to be amended, or this bill would have to be amended to exclude the dairy commission. Mr. Fry said there may be many other boards and commissions having similar requirements.

Mr. Torvinen said the opposite would be true of conflict of interest, and that a person on a board may be encouraged to grant special treatment to the industry with which he was formerly associated.

Mr. Bryan felt the dangers of conflict were greater if the person left the board for employment with the industry.

Mr. Olsen said he felt the bill was designed for conflict of interest problems on the Gaming Commission, State Gaming Control Board, and Public Service Commission.

Mr. Dreyer observed this provision would keep good men from serving on public boards because they would have no employment when they left the board. Mr. Bryan stated this would be a factor the individual would have to consider in accepting the appointment.

Miss Foote observed the bill amends Chapter 281, and the boards mentioned by the members of the committee aren't in that chapter.

Mr. Bryan asked that the bill be held for further consideration and he will look into amendments.

There being no further business, the meeting was adjourned at 5:00 p.m.

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ASSEMBLY BILL No. 253

LT. J. O. SMITH  
LAS VEGAS POLICE DEPARTMENT

The redefinition of OBSCENITY, as proposed, is both well done and timely. It is with Section 1-C, Subsection 3, that I am greatly concerned.

It is the opinion of some that "Utterly Without Redeeming Social Value" is a prerequisite for Obscenity. This is not true. In the Supreme Court's Landmark Decision in the 1957 ROTH vs. UNITED STATES<sup>(1)</sup> the court held that "Obscenity is not within the area of constitutionally protected speech or press"<sup>(1)</sup>. The Court went on to state that material is obscene when "To the average person, applying contemporary community standards, the dominant theme of the material, taken as a whole, appeals to prurient interest"<sup>(1)</sup>. What the Court did say in this regard was: "Implicit in the history of the First Amendment is the rejection of Obscenity as utterly without redeeming social importance"<sup>(1)</sup>. This is clearly NOT a part of the Court's definition of Obscenity.

The President's Commission on Obscenity and Pornography used this misinterpretation to recommend the legalization of Pornography. The U. S. Senate on October 13, 1970<sup>(2)</sup> rejected the Commission Report and recommendations by a vote of 60 to 5<sup>(2)</sup>.

(1) ROTH vs. U.S. 354, U.S. 476 77 S. Ct. 1304 L.Ed. 1498

(2) Las Vegas Review Journal Oct. 17, 1970

The Senate promptly issued a resolution repudiating the report on two points: A. "The findings and recommendations are not supported by the evidence" and B. "The Commission has not complied with the mandates of Congress".<sup>(3)</sup>

In a 1964 Case<sup>(4)</sup> the Supreme Court upheld Virginia's definition of Obscenity even though the statute left off the "Utterly Without Redeeming Social Value". In a 1970 Case<sup>(5)</sup> the Supreme Court used "Utterly Without Redeeming Social Value" but in its opinion and NOT as a definition.

"Utterly Without Redeeming Social Value" could and, in this writer's opinion, will have far reaching effects. It is possible to project this to infinity. A case of Obscenity, clearly showing the rape of a six year old girl by a gorilla, might possibly be thrown out if Brahm's Lullaby were used for background music.

Since the current flood of Pornography began in the early 1960's, sex crimes have multiplied. In spite of counter claims from purveyors of smut the facts remain that from 1960 through 1969, reported rapes increased 116%, arrests for rape went up 56.6%, and arrests for prostitution and commercialized vice shot up 60%.<sup>(6)</sup> This appears to reflect some "significant" relationship between crime and pornography.

(3) Readers Digest, January, 1971

(4) Grove Press, Inc. vs. Evans, 306 F. Supp. 1084 (1964)

(5) Pallading vs. McBrine, 310 F. Supp. 308 (1970)

(6) Charles H. Keating, Jr., Minority Member; "Commission on Obscenity and Pornography"



## 3.

Denmark, which seems to be the place most referred to as a shining example of how hardcore pornography can help a nation, is currently experiencing the worst epidemic of venereal disease among young people of any nation in the world. (7)

Chief of Police of Copenhagen, Closter Christionsen, pointed out that violent sex crimes of forcible rape and assault had NOT decreased in that city since legalization of obscenity. The much bally-hoed 31% STATISTICAL decrease in sex crimes is the fact that what was previously considered a crime is either now ignored or legal. (7)

I recommend that the phrase "Utterly Without Redeeming Social Value" be omitted from Proposed Assembly Bill No. 253, realizing fully that several long, time and money-consuming court cases will surely result. On the other hand it seems better than leaving the door open to having Pornography forced down our throats because some warped mind elected to camouflage Pornography under a reproduction of the Mona Lisa.