

JOINT PUBLIC HEARING  
BEFORE

SENATE AND ASSEMBLY JUDICIARY  
COMMITTEES  
S.B.#13

February 1, 1971

Chairman Monroe called the joint hearing on S.B. 13 to order at 10:00 a.m.

Committee Members Present:     Senate - Chairman Monroe  
  Senator Close  
  Senator Dodge  
  Senator Foley  
  Senator Swobe  
  Senator Wilson  
  Senator Young

Assembly Judiciary Committee

Guests:                             George Wendell - Carson City  
  Sheriff's Office  
  Robert Gaynor Berry - Private  
  Attorney  
  Norrine Barbara - Attorney  
  General's Office  
  Jim Thompson - Chief Deputy  
  Attorney General  
  Bill Macdonald - Humboldt County  
  District Attorney  
  Mike Fondi - Carson City District  
  Attorney  
  Bob Rose - Washoe County District  
  Attorney  
  James Guinan - Board of Governors,  
  State Bar of Nevada  
  Jan McEachern - League of Women  
  Voters  
  Press

Chairman Monroe called for proponent testimony.

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Senator Young: I will be glad to speak for proponent. For a number of years there has been criticism that a conflict between those of the District Attorney's office and their deputies who are not only engaged in county or public work, but also in private practice. Same criticism rendered against the Attorney General's Office. The last accounting politically, the DA of Washoe County indicated he had reservations about the advisability of permitting private practice. I understand he had by executive action, either limited private practice or prohibited it to some extent. It is my understanding that the D.A. elect of Clark County indicated he also had reservations about the wisdom of private practice being allowed those who are serving the public.

There is a built in conflict or difficulty in separating time priority and it seems advisable to eliminate the temptation of private practice and thereby assure top priority in so far as public service is concerned. This will, of course, imply that there be an upgrading of salaries and the bill is designed to provide some time to permit this increase in salaries to occur. However, I think it would probably tend toward development of career officials in both areas, which I think would be a desirable thing. People who have served in either the D.A.'s Office or the A.G.'s Office have certainly built up certain expertise and knowledge, and I think if they were paid salaries that were commensurate with their abilities and potential, it would lend a continuity to the performance of their duties.

So far as I know, in many other states there is no private practice and in smaller states there might be. I think that legislation of this type would be desirable. It was brought up informally before the Board of Governors of the State Bar Association about a month ago and their informal consensus was that they too favored legislation of this type.

Senator Wilson: I have two questions I would like to pose: Can we get the county commissioners to up the salaries?; and, Is private practice a factor in recruiting deputies or not?

Senator Swobe: The Legislature sets the D.A.'s salaries.

Assemblyman McFry: There is a bill over in the Assembly to take all of this salary study capability away from the legislature and turn it over to the county commissioners. I think you should give some consideration to that proposal in judging this.

James Guinan: I am James Guinan of the Board of Governors for the State Bar of Nevada. In addition to what Senator Young said a few moments ago, after he left the room there was a formal vote on this subject and the Board of Governors did vote formally to support this legislation. They also, however, indicated they did not favor private practice for deputies either, whom are not mentioned in this bill. They also recommended the problem of the salary. The basic reasons, as expressed by Senator Young, are conflict of interest and because these two jobs are full-time jobs.

Bob Rose: I am Bob Rose, District Attorney for Washoe County. I am for the bill generally or for the spirit of the bill, but I do have a few very serious questions. First of all, does this apply to deputies? As this bill doesn't refer to deputies, and I think maybe implicitly it does, it should specifically say District Attorney and their deputies. It would truly be illusory if it did not apply to deputies because I could simply give whatever practice I had to my chief deputies and they could handle it for me.

Then you come into the problem of compensating the deputies. I talked with my staff and they have limited private practice but they can make \$5,000 to \$8,000 on the side. They don't feel it takes that much time from their private duties. I think it is inconsistent with their public duties, and that there are present in some private business conflict of interest problems with their public duties. So I think it should be eliminated but your question is when you take something away you have to give something back. The unfortunate problem here is that this body, the legislature, will be eliminating private practice but it is not the group that is going to increase the salaries of the deputies; that is the county commissioners. And it could well happen that this group would abolish private practice and the county commissioners would not approve salary increases. I think it would have to be done in unison with the county commissioners.

Senator Wilson: Would you recommend a structure where we would place a limitation on private practice. That limitation would apply until a deputy reaches X number of dollars, after that time private practice would be prohibited.

Bob Rose: Then all deputies making X and above would be funneling it down to the new guys and you'd find one or two fellows in your office handling all private practice. I think you would have to make one decision for the entire office.

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Senator Young: What salary do you pay starting lawyers now?

Bob Rose: They start at \$12,000. That's a good starting salary. Spike, you asked about recruiting, I don't have an d I don't think in Clark County you will have problems of recruiting. The problem is the incentive to keep someone there after he's been there for a few years. On the county increases, after three or four years when he is truly a valuable person to the county, he is making \$13,000 or \$14,000 and he's not going to stay because he has trial experience and he can go out into private practice and make \$15,000 or \$16,000 to start, and raised from there if he's a good competent attorney.

Senator Foley: What's the top pay in this office.

Bob Rose: They can go up to \$19,500 after 7 or 8 years.

Senator Dodge: If you couldn't keep staff, don't you think that it wouldn't be very long before the county commissioners had to adjust to realities.

Bob Rose: I think they would adjust to the realities somewhat, but the problem you have is that they would say well you still have a staff; and you probably would have if the salaries remain the same and you didn't have private practice. But it would be a second rate staff. I can always hire attorneys at whatever salary you give me, the question is are they the type of people you want to represent the State of Nevada.

Senator Dodge: Is there anything that precludes a man from doing some legal work for a client on his own time?

Bob Rose: If you eliminated private practice Senator, I think it would.

Assemblyman May: Perhaps give some thought to the line this be permissive for the determination to be made in the office itself whether private practice be allowed, either on a carte blanche basis or a basis where employees are restricted for a length of time.

Bob Rose: I think you really can't leave that decision to the D.A. I can regulate the time and what they take in private practice, but do not have the power to increase their salary. I would like to see the county commissioners abolish private practice, and then since they were taking the action, have the responsibility to come forth and increase the salaries.

Senator Dodge: Maybe we could get some understanding with county commissioners.

Chairman Monroe: Even if we did, there would be a whole new set of commissioners in 1975.

Senator Wilson: Are you in effect asking us to consider both this bill and the bill before the Assembly to transfer jurisdiction to the county commissioners to set the salaries for deputies and district attorneys?

Bob Rose: Yes, I think you should at least have some contact with them and get a better feel of how they feel about the problem and what they will be able to do in the way of salaries. While there will be new county commissioners in 1975, some of them will be hanging over.

Assemblyman Keen: What percentage of county time are your deputies using for private practice?

Bob Rose: I could not give you an actual percentage since we work a 50 hour work week, but I would guess about 10%.

Assemblyman McKissick: I believe we had a bill prohibiting the Attorney General and District Attorney from private practice, but they could form private law firms and whatever came in would be distributed among the deputies. Is it still in effect?

Bob Rose: In those offices, the top man is permitted private practice.

Assemblyman McKissick: Do any of your deputies have private practice?

Bob Rose: Yes, one or two.

Senator Foley: Do they have outside offices.

Bob Rose: No. Let me say in closing, that I am in agreement with what you want to do, the question is how to do it. How can we work in harmony with the county commissioners.

Roy Woofter: I am Roy Woofter, District Attorney for Clark County. I would like to add a few words. This bill would cover two D.A.'s and the Attorney General. On paper it looks like its getting to the point, but it is not because it should include the deputies.

I have not had private practice since I took office, and our salary structure leaves much to be desired. I have 35 attorneys in my office, and one makes more than I do, one makes

makes the same. They have appointive positions and in four years will be making more than me. My campaign pledge was was not to take on private practice because I have no time, and because it looks damaging to go to court for civil cases.

My hope is the same as Bob's; to keep the District Attorney's Office on a professional staff basis.

Another campaign pledge I made was not to continue to make the Clark County D.A.'s office the graduate school after law school. We have a very heavy turnover where employees leave after they get court experience. I would like to see the salaries on a comparable level so the good attorneys would not leave after gaining their court experience.

Senator Dodge: What present regulations do you have about private practice by deputies?

Roy Woofter: I would hope that if their business in our office became second hand to their private practice, they would submit their resignation. I have set a practice that they spend no more than half a day in court on civil matters. I also changed the policy for several deputies who had outside law offices. They had to give them up and come into the building and practice through the D.A.'s office.

Senator Wilson: If the privilege of limiting private practice is important in keeping competent attorneys, should we leave it along or amend the bill to include deputies?

Roy Woofter: I'm saying the bill is beautiful on paper, but doesn't correct the problem since the big shots do not have private practice; deputies have private practice. If they are not compensated and lose the privilege of private practice, we would lose our deputies.

Assemblyman Olsen: In behalf of the taxpayers, I have served in the D.A.'s office and County Commissioners Office, and have seen hundreds of thousands of dollars going down the drain because of not having full-time competent counsel.

Senator Wilson: If we passed the bill as it is, it would put a great pressure on you. You would have to work it out with the County Commissioners to raise the pay scales. Could you live with that pressure?

Roy Woofter: If we had to go to the county commissioners next month in Clark County because of losing private practice, we would not get the increase in salaries needed, and would lose good help. Of course, we have four years and maybe it could be worked out. But in the near future, we would lose quite a few deputies.

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Jim Thompson: I am Jim Thompson, Chief Deputy Attorney General. The Attorney General is not opposed to the bill. He favors enactment of the bill, if there is an appropriation for higher salaries that would attract and keep good men.

Besides the money aspect of private practice, there are other considerations of importance: Such as social security coverage. The average lawyer is not in the merit system at all. Where private practice is permitted, he would come under the merit system. There are other considerations not monetary in dollars sense. Private practice would enable small business deduction on income tax and retirement provisions

Some of the other comments made by the Attorney General are:

He favors having outside offices for private practice, because it makes a bad impression on the public to use public facilities to receive civil cases.

Any court appearances should be made when on annual leave or leave without pay.

He would discourage the use of state personnel during office hours.

This bill does not cover deputies as well as himself.

Robert Gaynor Berry: I am Robert Gaynor Berry, a private attorney in Washoe County, and I am opposed to this bill as it stands. I enjoyed private practice while in the D.A.'s office. We never found any conflicts. It was obvious that we could not take a job which conflicted with public interest, and worked on our private practice on weekends and after hours. I was deeply in debt when I got out of law school, and needed the money that private practice afforded me.

The difficulty is that the bill does not take care of the real problem, it assumes the problem will be taken care of by 1975. The problem is that the legislature sets the salary of the D.A., and the county commissioners sets the salaries for the deputies. The deputy D.A. is a professional and should be considered so when considering his salary. I think its ludicrous that DA is not considered as a senior partner in a law firm. If commensurate with private industry, he should be getting \$35,000 to \$40,000.

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The idea expressed in the bill is a good idea. That is that the district attorney or deputy should be a deputy or district attorney and in his efforts devoted solely to that activity. But, there are serious problems incident to this bill; the salary problems, competition with outside industry, etc. as expressed by every district attorney who has testified, that should be taken care of before it is passed. It seems to me that its approaching the problem in essentially a backward fashion to pass the bill and then assume that the other problems will be taken care of; and if the other problems aren't taken care of, then you do something with the bill five years from now.

In the meantime I submit that there are adequate protections through the profession itself, through the Board of Governors, the local administrative committee, and other entities, to protect the public against these conflict of interest problems that may or may not exist. I also submit to you that the problems **relative to a full time job** and that coming into it, can adequately be handled on an executive level between the D.A. and his staff to insure that that elected officials body is performing its proper function. I think these things are adequate safeguards in the interim, and until these other problems are solved on a long range basis, S.B. 13 should not be passed.

Senator Dodge: Do you think it might be in order for the state to adopt some general policy on private practice and enunciate it in the statute about the fact that there be no private practice during the normal work hours of the employee.

Robert Berry: No, I don't, and I'll tell you why. Here are the areas of private practice that a deputy D.A. is engaged in: Dealing with a \$200 or \$250 uncontested divorce, or an uncontested probate. Now of course he can only process those cases when the courts are open. If you put that kind of restriction on him, he simply can not operate.

Mike Fondi: I'm Mike Fondi, District Attorney for Carson City. I would like to speak in opposition to the bill in its present form.

The greatest concern I have is the population limitation, the breakoff point as to where the bill becomes effective and where it doesn't -- the 30,000 population particularly. Carson City ten years ago was about 5,000 people, as of the last census we're over 15,000. The bill could influence Carson City much sooner than would otherwise be anticipated. I would encourage at least the amendment to raise the population limitation to something a little more substantial.



My reason is simply this, Carson City is faced with a peculiar problem that Clark County and Washoe County aren't in recruitment of deputies. We are in competition with the Attorney General. Very frankly, the Attorney General is capable of paying much higher salaries than the City of Carson. His starting salary is tops for my deputies. The Legislature set my salary at \$14,600 a year, for the next four years. If you are going to encourage professionalism in the D.A.'s office, I'm saying the same thing as Mr. Rose and Mr. Woofter, you are going to have to compensate individuals accordingly. I don't think you can consider a bill of this nature solely by itself without considering these other factors.

Frankly, I hope that if the question comes up before the committee on setting salaries of elected officials, I would encourage return to the salary range system rather than specified salary for a given period of time. My reason is simply this, you have in effect the legislature setting the salary for approximately 18 months, prior to a man taking office. In that period of time, you don't know if the present office holder will be a candidate for election or if he is not going to seek re-election and somebody new and inexperienced is going to take over. So you have one man's work product going to help set the salary for someone who has no experience in the job. I think this would be better left, at least within a given range, to the county commissioners to try to standardize or set what they feel is adequate salary for an office holder rather than the legislature who deals with the problem every two years rather than on a continuous basis. However, I would encourage you to keep control of salary range rather than completely abandon it by constitutional amendment to the county commissioners.

Assemblyman Manning: Carson City is one of a kind in the state in so far as definition goes. Would you categorize it as a county or would you consider it, because of its uniqueness, as a city? According to the bill, particularly the use of the word counties, would you be exempt from this policy as the bill is read in its present form?

Mike Fondi: I wouldn't say we're exempt. We are categorized as Carson City Municipal Government. This bill specifies District Attorney. I'm a District Attorney not a city attorney.

Bill Macdonald: I'm Bill Macdonald, District Attorney in Humboldt County.

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In the National District Attorney's Association proceedings this gets consideration quite frequently. Of course, there are different ways of handling the question of salaries and question of private practice in each different state. There are some studies made by the National Association that can be made available to you which might be of interest.

There was some comment about deputies making more than the principal. This is not unusual situation, either in Nevada or in other states.

Since salary schedule has been brought up here, it should be considered that some counties find it impossible to obtain a deputy D.A. at all, even though it had money budgeted. In a county where the salary is set at, say \$9,960 and the D.A. is able to have a deputy, the D.A. is going to be able to enjoy more time to devote to private practice than his neighbor, who also makes \$9,960 and has never been able to recruit a deputy. If you are considering looking at county officials and how the criteria should be set, you might consider a sliding basis for whether or not the D.A. has a deputy, or can even obtain a deputy.

Of course, this bill does not apply to my county or any smaller counties until we approach the 30,000 limit.

Chairman Monroe: Thank you all for coming and for your testimony.

Public Hearing adjourned at 12:00 a.m.