

SENATE JUDICIARY COMMITTEE

MINUTES

February 24, 1971

Chairman Monroe called the meeting to order at 9:25 a.m.

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

Others present: Mr. James Guinan, Nevada State Bar Association  
Mr. Richard G. Edwards, Deputy Attorney General,  
Department of Highways  
Mr. Robert F. Guinn, Managing Director, Nevada  
Motor Transportation Association, Inc.  
Mr. Daryl E. Capurro, Assistant Manager, Nevada  
Motor Transport Association, Inc.  
Press

S.B. #127 - Clarifies provisions for expert witness fees  
Committee on Judiciary

Jim Guinan explained that S.B. 127 was designed to clarify a provision which is not clear in the statute which presently provides that the court may allow the prevailing party the fees for expert witnesses in an amount not to exceed \$250. It does not say \$250 per witness or \$250 to divide among the witnesses. We have suggested it be changed to read "the fees of not more than three expert witnesses in an amount not to exceed \$250 for each witness". It is a fact today that you can't get an expert witness for less than that amount and most of them will not testify for \$250.

Senator Wilson asked why there is a limitation of three.

Mr. Guinan replied that the board felt that there should be some limit. This doesn't say you can't put on more witnesses, only that you are allowed fees for three. This language is now being construed differently in different district courts.

Senator Dodge felt that the language is not ambiguous, but that it means you can allow \$250 for the total number of witnesses. Mr. Guinan said that if that's what it means, its inadequate. The least a professional man would take is \$250.

Senator Close made a motion to "do pass". Senator Foley second the motion. Motion carried.

) - 210

S.B. #143 - Permits landlord to have lien on tenant or guest's property located in rented houses, multiple dwelling units, or commercial units, and to sell such property at public auction.  
Committee on Judiciary

Mr. Guinan explained that we presently have a statute which allows a lien for innkeepers on furnished or unfurnished apartment houses and furnished bungalow courts. The proposal here would extend the innkeepers lien to all landlords, whether of rented housing, apartments, or commercial property. He didn't think the question is whether we should have landlords liens or not, but if we have them, why should they be limited to one particular area. This bill would extend the landlord's lien to all types of rental property.

Senator Foley asked what course the tenant had for release. Mr. Guinan felt that if there were a legitimate dispute, they would go to court.

Senator Wilson made a motion to "do pass." Senator Close second the motion. Motion carried.

S.B. # 176 - Limits garnishment and execution on earnings.  
Committee on Judiciary

Mr. Guinan explained that this bill is designed to correct an error made during the last session in incorporating the requirement of the federal law into the state law. Instead of using 75% of disposable earnings, they used 25%. This conforms it to the federal law. It has to be that way before we put it into our statutes. This same limitation has to be placed in the chapter on garhishment.

He was not sure the problem has been completely solved because of an inconsistency. He will check on it and advise the committee at a later date.

Senator Close felt that Line 20, Page 1, is difficult to interpret: Is it \$1000 over and above the mortgage or loan on the car, or is it \$1000 value? It would be to everyone's advantage if you have it \$1000 value, or if it's too low, maybe \$1200.

Senator Dodge felt that the question is at what value are you going to let the guy keep the car and not attach it where it's necessary to his occupation or profession and you don't need to get into equity to solve that. Senator Foley didn't think that is realistic and that we should hear from the finance companies and people in the bankruptcy field. He wondered about the policy of taking a man's car away from him when a car is such an essential part of one's life, and he would need it to get to work. This bill is only limited to occupation or profession, but the wage earner needs his car to get to work and make a living just as much as say a professional man. Senator Close suggested we amend it to read "One vehicle not exceeding \$1,000 in gross value." No final action was taken.

S.B. #182 - Grants immunity in licensing and disciplinary proceedings of professions and occupations  
Committee on Judiciary

Mr. Guinan explained that this bill would cover the attorneys under Chapter 7 of NRS and other professions under Chapter 233B, for allowing immunity to persons

making a complaint or giving testimony in disciplinary proceedings when acting in good faith. They have had problems in disciplinary proceedings of getting witnesses to participate for fear they would suffer consequences. Senator Dodge felt this was consistent with good public policy, and made a motion to "do pass". Senator Wilson second the motion. Motion carried.

S.B. #185 - Eliminates necessity of seal on corporate documents  
Committee on Judiciary

Mr. Guinan explained that this bill would provide that a corporate seal is not necessary for the legality of a document, but would give them the preference of using one if they so desire. Senator Wilson made a motion to "do pass." Senator Swobe second the motion. Motion carried.

S.B. #252 - Provides for allowance of attorney's fees in civil actions  
Committee on Judiciary

Mr. Guinan explained that this bill would make the allowance for attorneys' fees to any party discretionary and would add the word "reasonable" before attorneys' fees. Senator Dodge asked to check into other states' statutes before taking any final action.

S.B. #139 - Allows attorneys' fees in eminent domain proceedings.  
Senator Young

Mr. Guinan explained that this bill would allow for attorneys' fees when a condemnee had to go to court to get what he felt he was entitled to for his condemned property. The main argument against this bill has been that by awarding attorneys' fees, you encourage litigation in that the man has nothing to lose since he will always get the amount the property was originally appraised for.

Senator Close felt that if the condemnee went to court and didn't get 10% over the original appraisal, he should not be entitled to attorneys' fees. Senator Dodge pointed out that if the offer turns out to be fair, the governmental entity would be put to additional costs.

Mr. Richard Evans from the Department of Highways stated that they are in opposition to the bill. From their viewpoint, this would force them into court in every case because the condemnee has nothing to lose. They have to deposit, based on an appraisal, which in the majority of cases is reviewed and approved by the FHA before the condemnee will agree to participation. The condemnee is permitted to remove that deposit and use that money if he wants to contest the case.

As far as a compromise position, there should be something in the bill which provides for a 10% or 15% award above the deposit before the condemnee is entitled to consideration for attorneys' fees. Senator Wilson stated that what troubles him about the significance of the 10% compromise situation is that if he's entitled to 10% he should receive it. If he doesn't exceed that percentage, he has to pay it out of his own pocket and didn't enjoy full compensation. Senator Dodge felt that it is an arbitrary level, but you have to look at it if the offer was substantially proper. It's unfair to the subdivision to say that because the award is 5% more, that they were so badly out of the ballpark that there ought

1-26

to be additional costs assessed. Another thing Senator Dodge wondered about is if you are going to allow the attorneys' fees, how about basing it on the differential that might be awarded.

Senator Young asked how many cases actually go on to trial, and of that amount, how many would the award be 10% higher than the offered amount? Mr. Edwards replied that about 15% go on to trial, and 30% to 40% of those get more than 10% higher than we offered. So were talking about 7% of our cases. Senator Young made a motion to amend to base the award on 10% more than the FHA appraisal and to include that it be based at the differential, and Senator Dodge asked if that would "do pass" be satisfactory to Mr. Edwards and he replied that it would be a help. Mr. Robert F. Guinn stated that the committee hadn't asked if that's satisfactory to the taxpayers. He represents a group that will come up with about 45% of the taxes collected.

Mr. Guinn informed the committee that based on the new law in Oregon, they went from a higher settlement record down to a very nominal one. But he felt that 10% is not enough. It meets some of the objection and coupled with the premise that the judge is going to take into consideration the differential to determine what the attorney's entitled to, the amendment proposed is a reasonable approach.

The motion to amend and "do pass" having already been made, Senator Swobe second the motion. Motion carried.

S.B. # 181 - Enacts disclosure law for members of public agencies, boards, councils, commissions or corporations.  
Senator Wilson

Chairman Monroe asked for the amendment submitted by Grant Davis to be read. The written copy was hard to read, so Grant Davis will have it typed for the meeting tomorrow.

Senator Dodge stated that he had thought more about the bill and developed more misgivings about it. Particularly as far as the necessity for it in small communities since there are very few merchants to deal with, and you have to deal with them because they are the only people who are there. Since the disclosure procedure does not actually require them to abstain but leaves it to the dictates of his own conscience, he wondered if you could provide for abstaining from voting on any action. Senator Wilson felt he would rather put a population limit to exclude these small towns, than leave it the man's conscience.

Chairman Monroe stated that he is kind of against the filing with the D.A. if you file with a county clerk, there wouldn't be that implication of criminal significance as is with the D.A. and Senator Wilson agreed with that.

Grant Davis will draft suggested amendments for further action.

Meeting adjourned at 10:50 a.m.

Respectfully submitted,

  
Eileen Wynkoop, Secretary

Approved: \_\_\_\_\_