

SENATE JUDICIARY COMMITTEE
PUBLIC HEARING ON S.J.R. #8 & S.B. #3

February 8, 1971

Chairman Monroe called the public hearing to order
at 10:05 a.m.

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

Guests: S.J.R. #8 - Senator Chic Hecht
Roy Woofter - Clark County District
Attorney
S.B. #3 - Senator Helen Herr
Ben Roscoe - Horizon Corporation

S.J.R. #8 - Proposes constitutional amendment to deny
bail to persons charged with felony while
admitted to bail on separate charge.
Senators Hecht and Lamb.

Chairman Monroe: Senator Chic Hecht is with us and will explain
the purpose and thrust of this bill.

Senator Hecht: This bill was requested over a year ago by then
District Attorney of Clark County, George Franklin. He had
complained many times that people are out on bail for a felony,
they come back and commit the same felony while out on bail
and there's been nothing he can do about it.

We researched it, and in the last general election in
Arizona they passed a bill similar to this which gives the
judge the right to deny an individual bail for a felony if
he had been convicted and is already out on bail for a
felony. We had the bill drafted and gave it to the present
District Attorney in Clark County, Roy Woofter, and he is
100% in back of it. Also, many law enforcement people are
in back of it.

What we did is just give you a very simple type of skeleton bill so that you could look at it and decide how you want to draft it. Feel free to make any changes you think are necessary, but give the judge the power to deny bail to a second offender.

Senator Close: This bill is drafted in a way that the judge could not give bail under any circumstances if the individual had been admitted to bail at the present time, is that what you intended? You leave no discretion to the judge whatsoever.

Senator Hecht: The bill, like I said, will have to be redone if you like the concept and want to draft it.

Chairman Monroe: Mr. Woofter, would you like to say a few words on this bill?

Roy Woofter: Yes sir. This caught me by surprise that it would be on this soon for a hearing. Mr. Hecht talked to me when I was up here last Monday and I told him I would whole-heartedly support the passage of this amendment. It's been my experience as a justice of the peace in Las Vegas, as well as working in the public defender's office and now being the District Attorney in Clark County, that the majority of these criminal cases that are filed, felony in particular which we are speaking of, are done by repeaters. We estimate there will be 3,000 felony cases filed this year alone in Clark County, and I would estimate at least half of these will be repeaters. I was in hopes of having facts and figures compiled to present to the committee regarding the number of repeaters that come before us that have been out on bail for maybe one, two, or three different felony charges. When I have these compiled, I will send them up to you.

I've found also that the majority of these burglaries, grand larcenies, etc., are committed by individuals who are out on bail, more or less to pay the bondsman for the bail he was released on for the original felony charge, and also to insure a release in the future. A lot of these bondsmen go along with a retainer type system. In other words, they might give so much down when they're released, and then they pay him off after they're on bond.

Senator Wilson: Isn't that against the law?

Roy Woofter: It's being done even though its against the law.

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Senator Wilson: What is the law on this? Is it relevant that the cost of bail is a motive for going out and committing another felony while on bail? Is the bondsman regulated like the insurance companies? Are they required by law to have the premium paid before the bond is admitted?

Roy Woofter: Yes sir. When I contacted the insurance commissioners and checked the NRS, that's supposed to be the way it is. But this is another field, and I've contacted certain legislators regarding the regulation of bail bondsmen. There are loopholes in the present laws regulating them in that there are two different sections in our statutes; one a regular bail bondsman, another what is called a professional bondsman. My feeling is that to catch them is the problem. They'll show in the books where the premium has been paid. This is done by a front. In other words, another individual will pay the premium to the bondsman, then when the defendant is out on bail, he pays off the remainder through this front.

If we pass this amendment, its going to save the taxpayers a lot of dollars and cents. No only in time consumed in the court by these repeaters while they're out on bail, but the defense prosecution as well. The only ones reaping the harvest off of the present system, are the bondsman and the defendant.

Senator Foley: In your experience, could you catagorize the repeaters? Do they fall in certain catagories of certain crimes?

Roy Woofter: They definitely do. Robberies, burglaries, grand larcenies, all these crimes against property, and the narcotic violator. The pushers, not the big ones, but I'm talking about the middle man who is selling to kids in the teenage bracket.

Senator Foley: Within the framework of our existing constitution, could we pass legislation regarding these particular catagories to have the amount of the bonds increased, maybe not eliminated completely, so that it would not be worthwhile for the bondsman to deal on a premium or down payment basis.

Roy Woofter: I don't know. When I was justice of the peace, setting a high bail on these repeaters was knocked down so to speak when the defense attorney raised the constitutional question.

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Senator Dodge: I talked with Mike Evans, President of the District Attorneys Association over the weekend. He tells me that this is one of the proposals that is supported by the Association. I asked him if there were other areas that should be included in this as long as we were amending the constitution, and he said that he was afraid we might run afoul with the Federal Constitution if we tried to go too far. Further than that, he did mention states where there were similar provisions in their state constitutions, and wondered whether the other states had done research.

We should try to research any other states that have separate provisions and see if there have been any decisions that would clear us of any Federal constitution problems.

Roy Woofter: This is what I wanted to have before the committee this morning. I would appreciate your holding off until we can get that information.

I'm interested in what Senator Foley has to say about possibly passing legislation other than changing the constitution, but so far in our research no state has been able to do this and have it upheld by the U.S. Supreme Court.

I might add that if you hear con on this bill from the defense attorneys, the main argument they'll have is the feeling that the law enforcement might abuse this in respect to what defense attorneys call a "roust arrest," where several individuals are picked up without any probable cause in the first place, and one just might be on bail for a felony charge. If it was passed, that would mean he would have to remain in custody until the first charge was disposed of.

Senator Wilson: They could get a habeas corpus release.

Roy Woofter: I was going to bring that out. Naturally they have a right for filing a writ. I've created a position in Las Vegas where as we receive these complaints, we approve or deny the complaint where there is no probable cause for arrest and the man is eventually kicked loose from custody. But, he would still suffer a one, two, or three day delay before they'd be back on the street.

Chairman Monroe: What about the effect of this on the expense of operating county jail. To have all these characters suddenly brought back into the jail as permanent residents would have some effect on the operation.

Roy Woofter: Yes, this is another concern.

Chairman Monroe: Thank you for your testimony, Mr. Woofter.

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S.B. #3 - Provides for investigation by real estate advisory commission of out-of-state subdivisions before being offered for sale or lease in this state.
Senator Herr

Chairman Monroe: Senator Herr is here to explain the purpose and thrust of this bill.

Senator Herr: The reason why I introduced this bill is to rid us of illegitimate land promoters. This bill is modeled after the California act, although not as strict. All the bill will do is require these people, the legitimate operator, to apply to the real estate commission and pay for two members of their commission to go to see the land and see if they are as represented.

Senator Close: This bill deals only with selling land outside the state. What about selling land within Nevada?

Senator Herr: It is primarily aimed at stopping the out-of-state promoters. They've been chased out of California and are coming into Nevada.

I've asked Mr. Ben Roscoe, a legitimate land promoter, to speak to you on this bill.

Ben Roscoe: I am with Horizon Corporation, which is an international company. We operate in 67 cities, 35 states, and internationally. We are under the Federal Interstate Land Act. When our salesmen approach anyone, and it is done on appointment basis only, they have to show a Federal Land Report, and that report has to show everything about that land; whether undeveloped, pre-developed, or developed.

There are two very important points here for the State of Nevada. On one the County of Clark has taken some action on this past weekend. They call it the Unit Broker regulation. I feel they use the word improperly and they said they will define what a Unit Broker is. I call them up-suppliers or body suppliers. If we can regulate against them making promises and using names of hotels, free meals, and free this and that, then you will eliminate the illegitimate companies that could not operate without them. They pay them so much a head to bring people into a presentation or party.

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We have been fighting for real strong legislation based on the Federal Interstate Land Sales Act. We want the real estate commission and anyone else to go to our property and inspect it at our expense.

In the state of ~~Minnesota~~ we have to present the ~~Minnesota~~ Land Act before we even talk to the people. We also have to present the Federal Interstate Land Act and they have to read it and initial they have read it on the deposit. If the initials are not there, it is refused by the sales manager's office or refused in Tucson, our home office.

This is a new industry -- the land industry, not the real estate industry. We had a meeting in Las Vegas with the Better Business Bureau and I suggest this committee get a copy of the Better Business Bureau's files, I think you would be amazed at what's going on in this state and hurting its reputation

If we do not show our license in states like Minnesota and other states where they have a land act, Nevada does not have one, we could lose our license in all 50 states, directed by the U.S. Government. If you had a land act like this it would also help inter-state sales.

There are 6 or 7 bills to be presented to the Assembly. One is coming in this afternoon, which you have the narrative of. It is based on the same figures that Senator Herr has plus the Federal Interstate Land Act which does control and does give the state some control. It also states that your real estate commission has to go and inspect properties at our expense.

Chairman Monroe: The legislation that's coming up in the Assembly, does it duplicate this?

Ben Roscoe: Ours is a little more lengthy than Senator Herr's. It covers more on the interstate land act.

Chairman Monroe: Do you suggest we act on the Assembly bill and hold this one?

Ben Roscoe: I would like to see both houses meet and come up with one bill. There is one over there that is 6 or 7 years old called the Uniform Land Act. This act was put into effect in three states prior to the Federal Interstate Land Act. Since then, the Federal Interstate Land Act has gone into effect.

Chairman Monroe: Thank you for your testimony, Mr. Roscoe.

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Narrative of proposed Nevada Land Sales Act & Sub Div plus hearing for representatives
 - Full presentation was given to Mr Mc Comb State Bill drafts ready prior to start of Legislative Session in Carson City. This from good home front Honzom's knowledge of all State & Federal Land Acts.

LEGISLATION IS NEEDED IN NEVADA FOR THE REGULATION OF CERTAIN TYPES OF LAND SALES: THE PRESENT REAL ESTATE LICENSING ACT DOES NOT APPLY TO, NOR DOES THE TERM "REAL ESTATE BROKER" AND "REAL ESTATE SALESMAN" INCLUDE A CORPORATION WHICH AS OWNER SELLS ITS PROPERTIES THROUGH ITS REGULAR EMPLOYEES WHEN SUCH SALE IS IN THE REGULAR COURSE OR IS AN INCIDENT TO THE MANAGEMENT OF SUCH PROPERTIES.

II

NEVADA DOES NOT HAVE AN IN-STATE SUBDIVISION SALES CONTROL ACT, WHICH LEAVES THE STATE WITHOUT REGULATION IN A LIMITED AREA OF IN-STATE LAND SALES. THE PRESENT REGULATION OF LAND SUBDIVISIONS BY THE NEVADA REAL ESTATE COMMISSION IS LIMITED TO THE PROVISIONS CONTAINED IN §645.215 N.R.S. WHICH PERTAIN TO FRAUD, DECEIT OR FALSE ADVERTISING IN CONNECTION WITH THE SALE OF VACANT OR UNIMPROVED LANDS OR SUBDIVISIONS.

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1. Legislation is needed in Nevada for the regulation of certain types of land sales. The present real estate licensing act does not apply to, nor does the term "real estate broker" and "real estate salesman" include a corporation which as owner sells its

properties through its regular employees when such sale is in the regular course or is an incident to the management of such properties.

Under the present state of the law the land developer and its regular employees are not required to be licensed in any respect. This same situation appears to be true for the home builder who constructs homes in subdivisions and then offers them for sale.

The activities involved in the sale by a corporation of its own properties through regular employees, and the land developer through its regular employees, are unique and require some special legislation. Merely requiring such persons to be licensed under the present Real Estate Licensing Act would not accomplish the purpose envisioned here. The marketing of land of a land developer is in fact the sale of real estate, but it is in a very limited and narrow field. The developer provides his salesman with a fixed contract form, with a firm land description, a price book, a monthly term book, and strict guidelines in which he may operate. The land developer salesman does not negotiate for easements, financing, alternate approaches to a closing. He does not seek his own facts involving the land in question, independent of those furnished by his employer, nor does he need to ascertain taxes, tax rates, assessments, assessment amounts, water rights, and other information incident to land or land ownership, as all of this already is provided for him by the developer. The land developer salesman is not in direct competition with the regular real estate broker or salesman.

The present Nevada act obviously is framed for licensing of people who must necessarily, in the course of their regular business, do all of the things which the land developer salesman is not required to do. The act requires Nevada residency for six months prior to the filing of the application, and it ordinarily takes up to a period of one year before the application is granted. It requires expertise far beyond the responsibilities assumed by a land developer salesman. Thus it would appear that a separate and distinct license for land developer salesmen would be appropriate.

The attached proposed limited licensing act, coupled with a land registration act attached, provides regulation of the developer by registration, plus the requirement of qualification of a limited broker, together with the registration of land developer salesmen, and should be more than adequate to provide the necessary regulation and control in these areas.

- 2. Nevada does not have an in-state subdivision sales control act, which leaves the state without regulation in a limited area of in-state land sales. The present regulation of land subdivisions by the Nevada Real Estate Commission is limited to the provisions contained in §645.215 N.R.S. which pertain to fraud, deceit or false advertising in connection with the sale of vacant or unimproved lands or subdivisions.

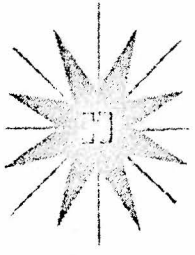
The respective United States vary in their approach to regulation of subdivisions, from the requirement

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of recording the plat together with instruments of acquisition and encumbrance with the probate judge of the county (Alabama), to the treatment of out-of-state lands as a security, with registration under a Securities Act (Ohio, Missouri, Kansas, Tennessee, etc.), to price control under the fair, just and equitable theory (California), to the exemption provided the registration with the Office of Interstate Land Sales Registration (HUD) is effective (Connecticut), to the Full Disclosure Acts (Arizona, Alaska, etc.), to the reliance upon the Office of Interstate Land Sales registration (Maryland). Within the last ten years many states have undertaken in some manner to regulate subdivision sales, both in-state and out-of-state, and in 1968 the United States Congress enacted the Interstate Land Sales Full Disclosure Act, which concerned itself with interstate land sales.

The proposed Nevada Land Sales Act attached regulates both the in-state subdivision as well as the out-of-state subdivision and permits the latter to qualify by use of the effective Statement of Record and Federal Property Report resulting from qualification of the subdivision with the Office of Interstate Land Sales Registration. The proposed act defining "subdivision" and the required information and documentation to be furnished by the applicant, is similar to that required by the Federal Act. In order to avoid duplication of filing by the developer, the proposed act permits the developer to qualify his property by furnishing a copy of the Federal Statement of Record and Federal Property Report,

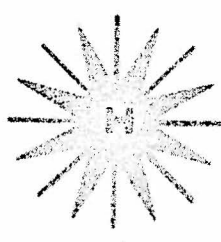
together with an appropriate filing fee. This approach is that used by the State of Connecticut and is under study in a great many other states, and is not unlike the exemptions granted by the various states where a security has been registered with the Securities and Exchange Commission. It is basically a combination of the Illinois act and the Connecticut act and the proposed act of the State of Washington, and contains the most current regulatory approach regarding land sales. The proposed act goes further than the Federal Act in that it requires that all advertising proposed to be used in such activities be first filed with the administrator.



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