SENATE JUDICIARY COMMITTEE

MINUTES

March 4, 1971

Chairman Monroe called the meeting to order at 9:15 A.M.

Committee Members Present:	Chairman Monroe
	Senator Close
	Senator Swobe
	Senator Young
Absent:	Senator Foley
	Senator Dodge
	Senator Wilson
Others Present:	Senator Lee Walker
	Russ McDonald - Legislative Counsel Bureau
	Grant Davis
	Stanley Brown
	Dale Murphy
	Jack McAuliffe
	Press

S.B. #221 - Reduces number of commissioner-of-civil-marriage townships.

Senator Lee Walker explained that as he understood this bill, it would exclude Carson City from the marriage commissioner townships after 1973. It was originally intended to cover Carson City only.

A problem has arisen in North Las Vegas and Sparks because the way the law presently reads both these towns are commissioner townships. The justices of the peace can not perform marriages and yet the county clerks in neither of those counties have provided a commissioner to perform marriages. This means there is no civil authority in either Sparks or North Las Vegas. He talked to the county clerk in North Las Vegas and she has neither the money nor the inclination to provide a commissioner in North Las Vegas.

I have proposed the bill be amended to raise that 8,000 figure to 15,000 which would get to the bulk of the problem and delete Section 2.

Senator Swobe made a motion to amend and "do pass." Senator Young second the motion. Motion carried.

S.B. #217 - Exempts Nevada nonprofit professional dental service corporations from Nonprofit Hospital and Medical Service Corporation Law.

Russ McDonald explained that this bill proposes to delete the requirement on Page 2, Line 42, to require a non-profit professional dental service corporation in this state to comply with Chapter 696 which is a Chapter in the present

insurance code. The history of this statute goes to the last session in which the advocates of a dental service corporation had introduced a bill which in its initial form said non-profit corporations would qualify with Chapter 81 of NRS which is the non-profit section. Then, at his suggestion to the requestor, the amendments of the dental practice act were suggested because of the definition of unprofessional conduct, the question of fee splitting might come in. So this is just a matter of protecting the individual licensee if he goes into one of these and happens to share by agreement so that he isn't on the hook professionally. It got passed the Senate much in the form it was introduced, but the Assembly amended it to state that a non-profit dental service corporation formed under the non-profit law and Chapter 696, which is the Blue Cross or the Medical and Hospital Service Corporation. The bill was signed by the governor, became law, and then a group of dentists attempted to create a non-profit corporation and found themselves in the hands of the Commissioner of Insurance. The Deputy Attorney General advising that department stated that not withstanding the provisions of 696 weren't amended, this language here in the 69 law said you had to comply with the insurance commissioners requirements. So it came back attempting to revert to the 69 original bill.

He pointed out that AB #416, is the Insurance Code and Chapter 32 is entitled Non-Profit Hospital, Medical and Dental Service Corporations. Whatever the committees movement on S.B. #217, it is contingent only for that period of time assuming enactment and effectiveness of the new insurance code a year from now. But if the insurance code would pass, then a non-profit dental service or any other type of professional-medical corporation would be bound by the provisions of that code.

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

S.B. #32 - Permits expunging records of juveniles in certain circumstances.

Grant Davis said that a juvenile probation officer brought up a point that the juveniles are fingerprinted and those fingerprints are sent to the FBI and CII. These is no way of sealing those records at all. An amendment was drawn to require the sheriff or chief of police to get an order from the district court before he can send the fingerprints out. Senator Close felt that was not very logical. He may be a hardened criminal and they would have to wait for an order from the court before they could send fingerprints out.

Barbara Morgan of the League of Women Voter's said that the Justice of the Peace and Probation officer in Carson told her that there is only one set of fingerprints taken; that's the difference between being booked as a juvenile and as an adult. They are kept on a local level only, not sent to California or Washington.

Senator Young felt that it would only be judicial expungement and we would be creating problems in trying to physically erase all records.

Grant Davis will prepare amendements covering the "sealing" and another amendment stating the record can be opened when a co-defendent is involved.

S.B. #126 - Limits jurisdiction of medical board in industrial insurance proceedings.

Chairman Monroe reminded the committee that Keith Mount was very much

against this bill and stated that he thought it is a pretty poor sounding bill himself. The only final authority the NIC has now rests with the medical review board. If you take that away you leave a can of worms with the lid off, and might never get a claim settled. He felt that they have to reach a conclusion someplace so that the client can take what they give him or go to court. The final question is to the extent of injury or recovery. Whatever the board finds ought to be final as far as the NIC is concerned, from there the client has to appeal to the courts.

Senator Close said Jim Guinan testified for this bill but as I recall he didn't know where the language came from on Line 13 and was surprised by it. He mostly wanted Lines 9 - 11. Senator Young suggested striking out Lines 13 and keeping 9 - 11 and restoring the original language of "shall be final".

Senator Close moved to amend and "do pass". Senator Swobe second the motion. Motion carried.

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

Senator Close reviewed the amendment on this bill. That is that there can be attorneys' fees only when they go to court and the award is 10% more than offered by the highway department, and that the basis for the fee is limited to the difference between the award by the jury and the offer by the highway department. He also thought it should be effective upon passage and approval.

Senator Swobe made a motion to amend and "do pass". Senator Close second the motion. Motion carried.

S.B. #325 - Provides additional grounds for writ of habeas corpus.

The committee heard the following testimony on S.B. #325.

STANLEY BROWN, RENO ATTORNEY AND MEMBER OF THE BAR ASSOCIATION

There is a field that is not clear in the law relative to habeas corpus that in our opinion should be clarified. Especially in light of recent decisions of the supreme court of this state. Proposed legislation clarifies the right of a person incarcerated to a writ of habeas corpus if he is held by municipal authorities for a misdemeanor. It also includes a new section to be added under the proposed amendment, Section 8.

I do not feel this proposed legislation goes far enough. I would suggest an amendment be added to Section 8 after the word "unconstitutional","or if constitutional on its face, is unconstitutional in its application." I invite the committee's attention to one of the most historic cases in constitutional law and that case is Yik Woo vs. Hopkins. They had a constitutional ordinance in S.F. that provided that laundries may be operated only in fireproof stone or or brick buildings. However, because of the pressure put on the authorities by other laundry operators, they enforced the ordinance only against the Chinese. The supreme court of the U. S. held it was a denial of equal protection. This ordinance was tried by habeus corpus. I don't think any judges in light of recent supreme court decisions would grant such a writ today.

We often times have a situation where a defendent is incarcerated by municipal authorities, for instance for violation of an ordinance, and he can't make bail. Under recent decisions of the supreme court, he is not entitled to a writ of habeus corpus. He must remain incarcerated until he has a trial in the municipal court, then he has a trial denoble in the district court. For defendents who can not make bail, this is a tremendous hardship.

I think that instead of clarifying the law by recent decision, the law has been somewhat clouded. The decisions tend to militate against the man who can not make bail and they tend to prolong the trying of constitutional issues or issues of probable cause. They could be more readily tried in an hour in the district court than they can by this recent decision.

I think some judges take the attitude this bill would cause congestion. I don't think that is a valid argument against the right of a defendant to have his case tried on probable cause under a writ of habeas corpus. This is one of the most sacred writs in our history and I think if it is enlarged, it will speed the criminal practice.

Senator Young said he has never been able to square the courts decision with NRS 34.360.

Stanley Brown stated that he has never been able to square that either. We use the writ of habeus corpus for instance in child custody proceedings. Why should we be permitted to use it in child custody proceedings and the man incarcerated in the city jail is not entitled to the same writ. I think it might be a question of fear of certain members of the judiciary of congestion in the courts, but I don't feel the fear is justified.

DALE MURPHY, RENO ATTORNEY

It is the desire of all people involved in the administration of criminal justice to expedite the proceedings as much as possible. Many things have been developed to assist in this regard. In the public defenders office in Washoe frequently we use such things as a motion to supress and writs of habeus corpus, to test certain issues that are material to the case long prior to trial. The determination of those issues may avoid the necessity of trial altogether. Certainly it does take a portion of the courts time to hear those matters, but it is far less time than it would take during a trial before a jury.

When Mr. Brown discussed this bill with me I became interested because there are several cases coming down now out of the United States Supreme Court attempting to determine at what area the defendant has the right to counsel and what area he does not. At the present time they are assessing such things as the difference between a minor offense and a petty offense, whether or not the defendant should get 6 months and $600, or 3 months and $400. Once they determine that the person is entitled to defense, and attempt to establish a guideline predicated upon the amount of time to be served at the city jail or the amount of the fine, that too will be stricken by the courts as not being a proper criteria because its using a money amount to determine whether or not a man has a constitutional guarantee. The upshot of this is going to be ultimately that each person charged with an offense of any gravity whatsoever which leads to any type of incarceration, is going to be given a right to counsel. If this occurs, and I believe its going to occur, then every implement that is possible in handling these matters to speed them without the

necessity of full-blown trials, is going to be absolutely necessary or our courts won't be able to function.

Senator Close said at the present time a misdemeanant has no right to counsel. If they are in jail and can't make bail on the misdemeanor, they surely can't hire an attorney. The bail on a misdemeanor is minimal, usually $25 or $30. I do see whereby it would cause congestion in the courts. If misdemeanors are tried by writ of habeus corpus and they lose, they can go back and try it in municipal court, and if they lose there have a trial denoble in the district court, so they have three shots at it.

Dale Murphy said he wouldn't represent that there aren't instances where an attorney, to satisfy the clients desires or extend his fees, will try all these avenues even without justification. Attornies in my office are not desirous of filing petitions simply to flood the courts with paperwork. Many of these cases do have merit and in those instances they are filed because they save time. If we grant this writ to the person charged with a gross misdemeanor or the person charged with a felony, the same thing should be applicable to the person charged with a misdemeanor because he is going to be entitled to the same rights of counsel shortly.

Stanley Brown didn't think we have a writ that is not abused, but the fact that there are abuses that do occur is not sufficient reason to deny the right to those that are entitled to it.

Senator Close felt that if this pertained to a person who was incarcerated he might go along with it. Under this procedure the person charged has three shots at it and he might win because by the time it's heard the third time, a year or so has elapsed or the points have gone by the wayside.

Stanley Brown said in his opinion, this simply does what the Supreme Court of the United States is going to do anyway.

JACK MC AULIFFE, RENO ATTORNEY AND MEMBER OF THE BAR ASSOCIATION

I came over to support this proposal also. There are several things I'd like to speak on and one is the question of bond. It has been my experience in Reno anytime there is an arrest by municipal police you pretty rarely find a $25.00 bond. Normally you find 4 or 5 different charges arising out of the same incident and each one of those charges will carry a separate bond. I've seen bonds in Reno Municipal Courts set as high as $5000. Secondly, as far as retrying of these things is concerned, speaking only for myself, this is the kind of proceeding that I would get into only very rarely. I don't think a habeus corpus in misdemeanors is going to be used to test the facts, its going to be used to test legal or constitutional issues.

Chairman Monroe thanked Messrs. Brown, Murphy and McAuliffe for coming and asked for the committees' pleasure.

Senator Close suggested limiting it to preclude issues for traffic violations and there were no objections.

Senator Young made a motion to amend the bill to exclude traffic offenses and to include the provision in Section 8. by Mr. Brown.

Chairman Monroe suggested drafting the amendments and hold it for further discussion and when the rest of the committee is present.

S.B. #236 - Makes injury to highway control-of-access fences a crime.

Chairman Monroe explained that this bill would solve the problem of motorcylists cutting fences and cows getting on to the highway causing accidents.

Senator Young felt that under the law for malicious mischief and vandalism they have a provision for almost everything this bill contains.

Grant Davis read Section 206.060 of malicious mischief statute which says in part any person who shall willfully pull down any fence shall be guilty of a public offense proportionate to the loss resulting there from. Apparently if it is over $100 it is a felony.

Senator Swobe didn't see anything wrong with making a gross misdemeanor out of it.

Senator Young was a little worried about the size of the penalty and suggested making it a misdemeanor. There were no objections.

Senator Young made a motion to amend and "do pass". Senator Swobe second the motion. Motion carried.

S.B. #237 - Permits peace officers to release certain arrested persons from custody.

This bill was discussed very briefly.

Senator Close said that he thought if a peace officer is satisfied that there's no grounds for making a formal complaint, he should not have made an arrest in the first place rather than turn the person lose. Then he pointed out that the words "any peace officer", would not have to mean the arresting officer, it could mean that the jailer could turn him lose. He didn't think that was very logical.

No final action was taken.

The meeting adjourned at 10:50 a.m.

Respectfully submitted,

Eileen Wynkoop

Eileen Wynkoop, Secretary

Approved: _____

SENATE JUDICIARY COMMITTEE

MARCH 5, 1971

NO MEETING HELD TODAY BECAUSE THEY LACKED A QUORUM.