

ASSEMBLY

TAXATION COMMITTEE MINUTES
MEETING OF
APRIL 12, 1973

245

Thursday 3:10 a.m.

MEMBERS PRESENT: MESSRS. MAY HUFF BROADBENT
SMALLEY BREMNER CRADDOCK
MCNEEL FRY DEMERS

GUESTS PRESENT: MESSRS. JOE BRASWELL, PRIVATE CITIZEN
MELVIN D. THOM, WALKER RIVER PAIUTE
TRIBE, TRIBAL CHAIRMAN
RAY D. YOWELL, CHAIRMAN OF THE INTER-
TRIBAL EXECUTIVE BOARD
STEPHEN D. KING, SELF
BOB WARREN, NEV. MUNICIPAL ASSN.
JIM RATHBUN, TAX COMMISSION
BRUCE SMITH, TAX COMMISSION
JOHN J. SHEEHAN, TAX COMMISSION
WARREN EMM, INTER-TRIBAL COUNCIL

The meeting was called to order by Chairman May. SB 364 was the first item under discussion.

SB 364 Discussion

SUMMARY - Revises statutes governing distribution and taxation of cigarettes.

Mr. Jack Sheehan, Nevada State Tax Commission, spoke in favor of this measure. He explained that SB 364 is in the second reprint and is the result of efforts undertaken by the Tax Commission, tax commissions in 11 other states, industry representatives of the tobacco industry in the State of Nevada, Attorney General's office, and many interested parties. The purpose of this piece of legislation is to beef up the Nevada Tax Commission's authorities, responsibilities, and obligations under the cigarette tobacco tax laws in Nevada.

He commented that this bill has been labeled as an "anti-Indian" bill, but explained that there is no reference to Indians in the language of the bill. He explained that this legislation was started because as long as two years ago the Tax Commission was advised that other states and the federal government were experiencing problems in the transportation of contraband cigarettes. As a result of the transportation of contraband cigarettes from a low cigarette tax eastern state to a heavier taxed state, the federal government became involved and started talking about introducing some type of legislation which would prohibit the transportation of cigarettes in this fashion.

The same situation now prevails in the Western states. Mr. Sheehan stated that the Tax Commission has been looking into this problem for as long as two years. During their investigation, they found that sister states primarily in the Pacific Northwest were experiencing difficulties with the sale of unstamped cigarettes on Indian reservations. Unstamped cig-

were being shipped from Oregon into Washington for sale on Indian reservations. The State of Oregon has extended that their lost revenue is approximately \$16,000,000 per year.

He explained that there were no such sales of unstamped cigarettes in Nevada up until 10 months ago. The early development of this legislation was not started then, and it would have been started if there was an Indian problem or not. He also explained that there is an Indian retailer on an Indian reservation who is buying cigarettes, he believes, from the State of Oregon. Because Oregon must report to Nevada the quantity of cigarettes shipped the Tax Commission figures a loss of \$62,000 in the last 10 months.

The purpose of the bill is two fold. One, an effort of cooperation between 11 Western states to pass reciprocal legislation so that cigarettes do not flow freely between the various states, and two, it provides the State with some conviscation powers. The practical operation of this bill provides that peace officers, service agents of the Tax Commission, highway patrolmen have the authority to conviscate what has been defined as contraband cigarettes, cigarettes which are in the possession or destined to an individual who is not authorized by this State to possess unstamped cigarettes.

Mr. Sheehan did not feel that this could be considered an intrusion on Indian rights of commerce on the reservation where he is authorized by the Indian authorities to do commerce which are rights guaranteed by federal law. He further explained why he thought that the committee should not have serious concern about this bill because it has been characterized as an "Indian" bill. Applying himself to the only known cigarette shop in Nevada, he commented the case involved \$62,000 worth of taxes on unstamped cigarettes have been sold in a relatively small area which places that individual in an unfair favorable competitive position with surrounding merchants. It erodes the tax structure and takes away dollars from the coffers of the State. It opens the door to other commodities that could be sold on the reservation.

He added that after discussion with the wholesale tobacco industry in Nevada, and they were in support of this bill because, of course, they do wish to protect their own markets. The bill also provides that Nevada wholesalers will not ship unstamped cigarettes into another State. The muscle placed in the bill is the conviscation power of contraband cigarettes destined to an individual who is not authorized to possess unstamped cigarettes.

Mr. Sheehan explained to the committee "constructive possession" and that other members outside the reservation in an effort to save money purchased the cigarettes from the shop but do not enjoy the privileges extended to the Indians on the reservation and had these cigarettes conviscated by the Tax Commission. Mr. McNeel questioned what charges were brought upon these people, and Mr. Sheehan explained that it is a gross misdemeanor.

Chairman May questioned the intent of lines 14, 15, & 16 that states that "the tax commission, its agents, sheriffs within their respective counties and all other peace officers of the

State of Nevada shall seize any contraband cigarettes found or located in the State of Nevada. Mr. Sheehan explained that it is an old provision whereby the federal government stated that the State can only have jurisdiction over the Indian lands which have been elected by the Tribe to fall under state jurisdiction. If not, federal law would prevail.

Chairman May noted that in Section 12, line 43, the amount of cigarettes of wholesale value in possession has been increased from \$1,000 to \$10,000, and Mr. Sheehan explained that most wholesale dealers have substantially more than that amount. Mr. Smalley wondered if Mr. Sheehan would have any objection to adding a Section 24 amendment. (copy of amendment is included in the memorandum attached as testimony for Mr. Joe Braswell) Mr. Sheehan had no objection because he interpreted SB 364 as an infringement on any rights of Indians organized under the Indian Organization nor impose on any activities of Indians under NRS 41.430. He did feel from a draftsman's point of view that the amendment would be objectionable because it refers to statutes that are federal laws and the federal laws would prevail.

Mr. Bremner questioned if the \$62,000 was anticipated to go up and was answered in the affirmative. Mr. Sheehan added the reason would be more people becoming involved. He also commented that he did not know that the cigarettes were being warehoused and inventoried in Nevada and being exported to other states which would constitute a breach of faith on Nevada's part with sister states and are going through introducing this same type of legislation.

Mr. Melvin Thom, Chairman of the Walker River Paiute Tribe stated that SB 364 was aimed at Indian reservations and the Indian operator of a smoke shop located in Schurz, Nevada. Mr. Thom believed that there was a lot of conjecture in Mr. Sheehan's testimony in regard to the purpose of the bill, the idea that other businesses might be in operation because of the sale of the cigarettes, and the dollar amount of lost tax revenue.

He further testified that nothing could be served by this piece of legislation except a lot of haggling between the Indians of Nevada and the State of Nevada. It would lead to confrontation such as legal action and will not provide for better harmony between Indians and the State of Nevada. I added that there may be a constitutionality question raised in regard to this law and directed the committee's attention to a copy of a legal opinion from Mr. Daniel H. Isreal, attorney for the Walker River Paiute Tribe. Mr. Thom further commented that it was brought out in Mr. Sheehan's testimony and testimony presented to the Senate Taxation Committee that this bill contains no reference to Indians and people were led to believe that it was only a bill for regulation of cigarettes. He felt that if it affects Indians and is directed toward them then it should state such in the bill. If it doesn't, it is unfair to the public and to Indian people. The bill would be a form of harassment in the confiscation authority and this would not be desirable to the tribe.

In reference to the revenue loss, Mr. Thom felt this was not the issue, and he also felt that the amount has been greatly exaggerated and if it were correct it would not be enough to pay for the type of policing this bill would call for. It would also cause damage to the integrity of Indian tribes and Indian individuals, however, he still felt that the revenue loss was not the issue; the issue was that Indian people have the right to live in dignity just as people of the State of Nevada have the right. Most Indian tribes are governed by federal law. Mr. Thom cited cases such Davis v. Warden, Warren Trading Post Co. v. Arizona Tax Commission, McClanahan v. Arizona State Tax Commission, and cases in other states such as Georgia which state that Indian tribes have the same rights or more so than the State. He commented that Indians intend to build on this; they are just recently becoming aware of such rights. He thought that rather than adding anything to the bill that the bill be indefinitely postponed by the committee because no good can come of it.

Mr. Fry questioned the type of confrontation that would be encountered, and Mr. Thom commented that there could be legal action or people travelling through Schurz might be stopped and charged with a gross misdemeanor which would not make for good public relations for the town..

Mr. Smalley pointed out that the tribes are like cities and towns and a tax could be imposed by the tribe to create revenue.

Mr. Joe Braswell, private citizen, spoke in opposition to this measure. He didn't wish to speak in relation to the situation at Schurz, but to the erosion of rights of Indian people. He distributed copies of his prepared statement but did not think it was necessary to read it verbatim. Although he did wish to make some pertinent remarks. He commented on Mr. Sheehan's remark that it would be superfluous to take into consideration the proposed amendment and, therefore, NRS 372.265 is already superfluous because it does not make specific provision of the exemption of sales and use tax which the state has prohibited from taxing under the constitution and laws of the United States. He believed that the Tax Commission, on the basis of this statute, made a policy statement stating that a sale made from a retailers place of business located within the outer limits of an Indian reservation shall be exempt from a sales tax. It is still in the same category as a sales tax. (Mr. Braswell's testimony is attached at #1) He added that the amendment would not encroach on the rights of the State in any way, but does provide that the State of Nevada recognize the inherent rights of Indians guaranteed to them by the Nevada Constitution and the Constitution of the United States.

He also cited in Section 8, line 19-21 the intent would make a lot of people who travel out of state on business for a considerable length of time guilty of a gross misdemeanor because the statute makes no as to the quantity of cigarettes to be in possession without a Nevada tax stamp on it.

Mr. Raymond Yowell, Executive Board Chairman of the Nevada Inter-Tribal Council, spoke in opposition to this measure. He wished

to support the statements of Mr. Thom and Mr. Braswell. Mr. Yowell stated that he felt the only body that has the authority to regulate taxes on the reservation or to change the statute is the Congress of the United States. He concurred with the point brought out by Mr. Smalley concerning the tribes establishing taxes on these cigarettes to provide revenue for themselves. The tribes are a separate unit and are able to impose taxes the same as states and cities which can not interfere with imposition of taxes in their separate entities. He, too, felt that that right has always been there, but Indian people are just becoming aware of such rights and venture into different businesses. Indian tribes see industrial development and economic development as a means of helping Indian people on the reservation, who now have a very high rate of unemployment, raise the standard of living. Economic development has been one of the goals of the Inter-Tribal Council.

Mr. Warren Emm, resident of Schurz and investigator for the I.T.C., also spoke in opposition to this measure. He commented that the sovereignty points have been adequately presented. He explained that a similar problem was encountered during the period of tugboats being used for interstate commerce. The taxes began to impair with interstate commerce so much that they were finally declared unconstitutional. This legislation, even though it does not mention Indians, was specifically designed to interrupt the economic development and the programs of Indians. He also felt that Mr. Sheehan commented that other items may be taxed in the future and this may be feasible. Any municipality that is considered a sovereign should be able to tax. The State of Nevada does this. He stated that as the reservations start growing and becoming aware of the revenue that can be derived from taxation more items will be included.

In relation to the cigarette tax, reciprocal agreements are held between other states and it might be wise to establish such agreements between the State of Nevada and the Indian tribes. Also there are many utilities that run across the reservations, and if a reciprocal agreement could be established whereby the money would be returned to the tribe would be a very good step in the right direction. These utilities are presently providing no revenue to the tribes although they have crossed the reservations for many many years. He further pointed out that on nearly all of the reservations in Nevada, 95% of commodities that are purchased are bought off the reservations. A reciprocal agreement could be established here also so that the sales tax that is charged on these items that are used on the reservation could be used as a use tax to provide revenue. He doubts, however, that the Tax Commission would establish such agreements. Mr. Emm felt that the ultimate issue was state interference with Indian tribes.

Mr. May questioned who the owner of the shop was, and Mr. Emm explained that Mr. Steve King is leasing the premises from the tribe. The land is held in trust by the U.S. government for the tribe. He pays a rental and the tribe is proposing to make a tax on these cigarettes.

It was decided to temporarily suspend testimony of this measure and return for a five minute rebuttal on each side.

SJR 15 Discussion

SUMMARY - Proposes constitutional amendment to permit assessment of owner-occupied dwellings and land at lower rate.

This measure was discussed previously with a light committee and unsuccessful motions were made to Do Pass and Indefinitely Postpone this measure.

Mr. Bob Warren, Nevada Municipal Association, reported to the committee that he had done a telephone poll of the four larger cities in Nevada and they wished for him to relate that they were concerned with providing the Legislature to lower the tax rate. They felt that it could add to the deductions taking place on the cities revenues and it might further erode the power to provide services to them.

Mr. Demers made a motion to "TEMPORARILY SUSPEND THE RULES OF THE COMMITTEE".

Mr. Smalley seconded the motion.
The motion was carried unanimously.

Mr. Smalley made a motion to "INDEFINITELY POSTPONE SJR 15".

Mr. Bremner seconded the motion.
Voting results were as follows:

<u>Voting Yea</u>	<u>Voting Nay</u>
Smalley, Bremner Craddock, May	Demers, McNeel Fry, Broadbent, Huff

The motion failed.

Mr. Demers made a motion to " DO PASS SJR 15".

Mr. McNeel seconded the motion.
Voting results were as follows:

<u>Voting Yea</u>	<u>Voting Nay</u>	<u>Not Voting</u>
Huff, Demers, McNeel Broadbent, Fry, Craddock	May Smalley	Bremner

The motion was carried.

Mr. Smalley made a motion to "INDEFINITELY POSTPONE AJR 34".

Mr. Craddock seconded the motion.
Voting results are as follows:

<u>Voting Yea</u>	<u>Voting Nay</u>
Bremner, Craddock Fry, May, Smalley	Huff, Demers, Broadbent McNeel

The motion was carried.

SB 396 Discussion

251

SUMMARY - Imposes excise taxes and a use tax to augment the State Highway Fund.

Mr. Grant Bastian, Nevada Highway Department, spoke in favor of this measure. He explained that it primarily would just make it automatic that any of the federal gas or special use taxes our abolished for any reason then the State would pick them up in the Nevada Highway trust fund. He did have a question as to whether Congress would release these funds but regardless the state would be impounded. He also explained that an administrative bill on the Highway act would provide more money. 30 states are donor states. Mr. Demers questioned if we receive the same portion as is paid, and Mr. Bastian explained that it is about even.

Mr. Demers made a motion to "DO PASS SB 396".

Mr. Bremner seconded the motion.

The motion was carried unanimously.

Dr. Broadbent made a motion to "RECONSIDER AJR 34", withdrew the motion.

AJR 27 Discussion

SUMMARY - Proposes to amend the Nevada constitution to restrict the power of the legislature to tax property in excess of 35 percent of its current market value or appraisal value.

Mr. Demers explained to the committee that he felt the largest investment a person makes during his lifetime is the purchase of his home. This bill would provide meaningful reform in the tax structure of the State without giving an exemption and is similar to SJR 15. This bill sets the limitation at 35%. Previous testimony has been heard on this measure. Mr. Demers stated that an amendment to include just the "owner occupied dwellings" language in SJR 15 to AJR 27 would be satisfactory.

Mr. Huff made a motion to "DO PASS AS AMENDED AJR 27".

Mr. Demers seconded the motion.

Discussion:

Mr. Craddock felt that since constitutional limitation is often trying to be removed and this limitation should not be put on, but Mr. Demers explained that there is a hipocritical situation in the State Constitution and this would correct it.

Voting results are as follows:

Votine Yea

May, Demers, Bremner
Broadbent, McNeel

Voting Nay

Smalley, Fry,
Craddock

The motion was carried and Mr. Demers was directed to obtain the amendment.

Mr. Smalley made a motion to "CONSIDER VOTING FOR SJR 9".
Mr. McNeel seconded the motion.
Voting results were as follows:

<u>Voting Yea</u>	<u>Voting Nay</u>
Broadbent, Craddock McNeel, May, Smalley Huff, Demers	Bremner, Fry

The motion carried.

Dr. Broadbent made a motion to "INDEFINITELY POSTPONE SJR 9".
Mr. Craddock seconded the motion, but withdrew his second.
Mr. Fry then seconded the motion.
Voting results were as follows:

<u>Voting Yea</u>	<u>Voting Nay</u>
Fry, Broadbent	Bremner, May, Demers, McNeel, Craddock, Huff Smalley

The motion failed.

Mr. McNeel made a motion to "DO PASS SJR 9".
Mr. Craddock seconded the motion.
Voting results were as follows:

<u>Voting Yea</u>	<u>Voting Nay</u>	<u>Not Voting</u>	<u>Absent</u>
McNeel, Smalley Huff, Craddock	Bremner, Demers Broadbent	May	Fry

The motion failed

Mr. Bremner moved to return under the committee rules; committee concurred.

Mr. Sheehan stated that this bill was not introduced to prohibit any Indian tribe from imposing a tax and does not effect any of the rights of Indians on the reservations. He stated that as long as he is in the Tax Commission under this act no provisions will be made to enter into the reservations to enforce any provisions of this act. The operative portion of this bill is off the Indian land and reservations and is directed solely to property of the State of Nevada which is not on an Indian reservations.

Dr. Broadbent wondered where the cigarettes stamps are afixed, and Mr. Sheehan explained that the wholesaler stamps the cigarettes and then delivers them to the retailers. Only the wholesalers are authorized to purchase from the manufacturers.

Mr. Thom spoke briefly in rebuttal to Mr. Sheehan's remarks and called upon the committee to Indefinitely Postpone SB 364.

However, he added that and amendment be added to prevent interference from the State into Indian trade. The amendment would be attached to the end of Mr. Braswell's proposed amendment to read as follows:

Delete the "." and insert following NRS 41.430:
This act will in no way interfere with or restrict trade with Indians or Indian tribes."

Mr. Sheehan proposed adding "on Indian reservations", but Mr. Emm felt that this would create a boycotting effect.

Chairman May indicated to the committee that he had received a letter from the Mason Valley Organization at Yerington expressing support of this measure.

Mr. McNeel made a motion to "INDEFINITELY POSTPONE SB 364".
Mr. Huff seconded the motion.

Discussion:

Dr. Broadbent stated that he does have compassion for the Tax Commission because they are charged with the responsibility of protecting the people of the State. He doesn't feel the committee will be acting in favor of the honest retailers around the reservations.

Mr. Craddock made a motion to "AMEND MR. MCNEEL'S MOTION TO INDEFINITELY POSTPONE AND ADD THAT IT BE CONSIDERED FURTHER AT TUESDAY'S, APRIL 17th, MEETING."

Mr. Fry seconded the motion.

The motion was carried unanimously.

AB 877 Discussion

SUMMARY - Provides county option tax on sand and gravel operations.

Chairman May indicated to the committee that this measure would provide a county option tax on sand and gravel operations, and it was of primary interest in Lyon County. It would take six votes to re-consider this measure. Mr. Leroy Ward spoke in support and wanted the committee to reconsider.

Mr. Huff indicated that he had been contacted by many people who felt that if this measure was successful it could put them out of business. It was decided to not re-consider this measure.

Mr. McNeel made a motion to adjourn.

Mr. Bremner seconded the motion.

The motion carried unanimously.

The meeting was adjourned at 9:40 a.m.

Respectfully submitted,

Cindy Benjamin

MEMORANDUM

TO: The Honorable Paul W. May, Chairman, and Members of the Assembly
Committee on Taxation

FROM: Joe Braswell

SUBJECT: SB 364

It is requested that SB 364 be amended by adding a new section, to be numbered section 24, to begin on page 6, line 4, to read as follows:

"Nothing in this act shall be construed to abridge the rights of any Indian, individual or tribe, or to infringe upon the sovereignty of any Indian tribe, organized under the Indian Reorganization Act (25 U.S.C. § 476 et. seq.), and the State of Nevada has not assumed civil and criminal jurisdiction over such tribe as provided for in NRS 41.430."

This amendment is requested upon the following bases:

The Act of Congress (1861) Organizing the Territory of Nevada provides, "That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory;".

The Nevada Constitution, in Article 17, Section 1, says, "That no inconvenience may arise by reason of a change from a Territorial to a permanent State Government, it is declared that all rights, actions, prosecutions, judgements, /, / Claims and Contracts, as well of individuals, as of bodies corporate, including counties, towns and cities, shall continue as if no change had taken place;".

I submit that the sovereign rights, of those tribes who remain under federal and tribal jurisdiction, have never been extinguished by treaty with the United States nor by act of Congress. I further submit that these tribal rights are guaranteed under Article 17 of the Constitution of the State of Nevada.

Also, there have been numerous court decisions which have upheld the inherent sovereignty of Indian tribes. Among these are the following:

Iron Crow v. Oglala Sioux Tribe of Pine Ridge Reservation, S.D., C.A. S.D. 1956, 231 F. 2d 89.

The courts have also held that full powers of internal sovereignty are vested in an Indian tribe as duly constituted organs of government subject only to limitation by treaty or express legislation by Congress. Barnes v. U.S., D.C. Mont. 1962, 205 F. Supp. 97.

It has also been judicially determined that the power to levy taxes is an inherent attribute of tribal sovereignty continuing until withdrawn or limited by treaty or act of Congress. It has been further held that an Indian tribe had capacity to sue in federal district court for collection of tax validly imposed on non members.

MEMORANDUM

Page 2

SB 364

Oglala Sioux Tribe of Pine Ridge Reservation, S.D.V. Barta, D.C.S.D. 1956, 146 F. Supp. 917.

It has also been held that until an Indian tribe would elect to place themselves under operation of state statutes under which state agreed to assume jurisdiction of civil causes and criminal offenses or until Legislature would unconditionally assume jurisdiction therein as authorized by federal statute, state courts could have no jurisdiction over Indians living on reservation beyond that expressly granted by Congress. State ex rel. Adams v. Superior Court for Okanogan County, Juvenile Court Session, Wash. 1960, 356 P. 2d 985, 57 Wash. 2d 181.

In October, 1972, the U. S. District Court, Southern District of California, in the case of the Quechan Tribe of Indians, Yuma, Arizona v. Raymond Rowe, Sheriff of Imperial County and certain of his staff, civil no. 72-56-GT, found in favor of the tribe. In the decision, the court cited 18 U.S.C. § 1152 which provides that federal criminal laws apply to Indian lands except where otherwise expressly provided by law. The decision also contained the statement, "If Congress has given the Indians authority to enact certain laws, and those laws conflict with state laws, the Indian laws prevail." The decision also stated, "The Supreme Court recognized that state laws which conflict with valid federal laws or Indian laws validly adopted pursuant to federal statutes, treaties, or agreements are unenforceable."

It is submitted that the proposed statute, SB 364, if not amended, could be challenged on the basis of infringement of tribal sovereignty, should enforcement be attempted on Indian lands under total jurisdiction of the tribe and the federal government. An opinion from the Field Solicitor of the Bureau of Indian Affairs says, "States may not impose taxes on sales made to Indians on reservations as Congress has broadly occupied the field of trading with Indians on reservations by all-inclusive regulations and statutes. Warren Trading Post Co. v. Arizona Tax Commission, 380 U.S. 685 (1965); Solicitor's Opinion, 58 I.D. 562 (1943); Solicitor's Opinion 57 I.D. 124 (1940); Federal Indian Law, pp. 867-873.

NRS 372.265 provides for exemption of sales and use taxes which the state is prohibited from taxing under the Constitution or laws of the United States. It is assumed that this statute is the basis for the policy adopted by the Nevada Tax Commission on May 4, 1971, "A sale made from the retailer's place of business located within the outer limits of an Indian reservation shall be exempt from sales tax." It is submitted that the same Constitutional and U. S. statutory provisions would be applicable to the cigarette tax statute, as it relates to Indian reservations.

There is also a question of constitutionality under the U. S. Constitution. Article 1, Section 8 provides that Congress shall regulate commerce with Indian tribes, as well as between states. Application of the proposed statute to interfere with trade on a reservation under federal and tribal jurisdiction, or to interfere with interstate shipment of commodities from outside Nevada to such reservation, would appear to be a violation of the constitutional prerogatives of Congress and the rights of the Indians residing on such reservation.

MEMORANDUM

Page 3

SB 364

I wish to make it clear that this proposed amendment to this bill in no way encroache on the right of the State of Nevada to make any enforcement efforts off tribal trust land not under State jurisdiction. It offers no protection to any non-Indian who lives off the reservations involved, and I can see no way in which it could prove detrimental to the best interest of the State. What it does is acknowledge that the State of Nevada recognizes the inherent rights of Indians, which I submit are guaranteed to them under both the Nevada Constitution and the Constitution of the United States.

In closing I would like to also point out that one section of the bill is going to make law breakers out of a large number of people. Section 8 on page 2, beginning on line 19, if it is applied to the letter of the law, says that if I purchase a pack of cigarettes, while on one of my frequent out of state business trips, and bring them with me on my return to Nevada, I am guilty of a gross misdemeanor. Out of state tourists who bring their own cigarettes with them when they come to Nevada would also be guilty of a violation. I do not believe this to be the intent of the law, but that is what it says.

Respectfully submitted,


Joe Braswell

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2 April 1973

Assemblyman Paul Maye
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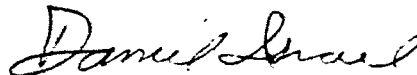
Dear Assemblyman Maye:

Senator Melan Brown of the Senate Tax Committee and I discussed Senate Bill No. 364 by telephone today. I represent the Walker River Paiute Tribe in Nevada and understand that Senate Bill No. 364 if passed, would have the effect of imposing a state cigarette tax on cigarettes sold on the Walker River Paiute Reservation. I suggested to Senator Brown that traditional Indian tax law prohibited states from imposing any tax on transactions taking place within an Indian reservation. I indicated to him that that principle had been reaffirmed last week by the United States Supreme Court in McClanahan v. Arizona State Tax Commission.

At Senator Brown's suggestion, I am enclosing for your review a copy of the United States Supreme Court Opinion in McClanahan v. Arizona State Tax Commission. My analysis of that recent opinion indicates that the attempt to tax cigarettes on Indian reservations by the state of Nevada, as proposed by Senate Bill No. 364, is constitutionally impermissible.

If you have any questions about this matter, please feel free to contact me.

Sincerely,



Daniel H. Israel

DHI/mcp

Enclosure

ROBERT D. STITSER, LTD.

ATTORNEY AT LAW
575 MILL STREET
RENO, NEVADA 89502
TELEPHONE 323-5095

258

April 10, 1973

Mr. Steve King
P.O. Box 67
Walker River Indian Reservation
Schurz, Nevada 89427

Re: Legal opinion as to the right of the State of Nevada to tax products sold in your store on the Walker River Indian Reservation, including without limitation, cigarettes

Dear Mr. King:

This will confirm the request you made of me to give you a legal opinion as to the right of the State of Nevada to tax the products sold in your store, including cigarettes, or to tax you as an individual.

First, this opinion is given on the following premises:

1. You are an Indian of a Federally recognized Tribe who conducts your business and makes your income entirely within the boundaries of the Walker River Indian Reservation.
2. The cigarettes which you sell in your store are secured through interstate commerce and not from a distribution point located in the State of Nevada.

First, the Nevada Supreme Court on August 15, 1972, upheld the constitutional validity of N.R.S. 41.430 relating to the assumption of Federal Public Law 280, criminal and civil jurisdiction over Indians and their activities on Indian Reservations located in Nevada.

Davis v. Warden, Nevada State Prison,
No. 6745, Nevada Supreme Court, August
15, 1972.

The Davis case held that the Governor of the State of Nevada could properly exclude certain Indian Reservations from the State's jurisdiction. The Davis case concerned specifically the Pyramid Lake Paiute Indian Reservation, but, the Bureau of Indian Affairs has informed me by their

letter of July 26, 1972, that other Reservation were excluded from State jurisdiction, including the Walker River Paiute Indian Reservation on which you reside and on which your business is located. Therefore, the State of Nevada has no criminal or civil jurisdiction over the Indians or their activities within the Walker River Paiute Indian Reservation, absent the specific consent of the Walker River Paiute Tribal Council to allow such jurisdiction.

Secondly, in 1968, the United States Congress passed what is known as the "Indian Bill of Rights Act".

25 U.S.C. §§ 1301, et seq.

This Federal Act, which pre-empts all State legislation following the 1968 date of its enactment, specifies that no State that has not already assumed jurisdiction over Indians and their activities upon an Indian Reservation can now assume such civil or criminal jurisdiction without the specific consent of the governing body of the Tribe involved.

25 U.S.C. §§ 1321, 1322.

This includes taxation.

It is my understanding that the Walker River Paiute Tribal Council has not given the State of Nevada the necessary consent to allow them to assert any jurisdiction over the Indians or their activities on the Walker River Indian Reservation.

Finally, the United States Supreme Court has just very strongly re-asserted the strong rule of law that Indians and their activities shall be free from State taxation.

McClanahan v. Arizona State Tax Commission,
No. 71-834, March 27, 1973, U.S. Supreme Court.

Therefore, Mr. King, if the Nevada Legislature passes the taxation bill, No. SB 364, which you have described to me, I would suggest that we file a suit in the Federal Court against the State of Nevada and its Tax Commission and move for summary judgment together with the appropriate documentation and assess costs and fees against the State of Nevada and hold their new taxation law invalid as to your situation.

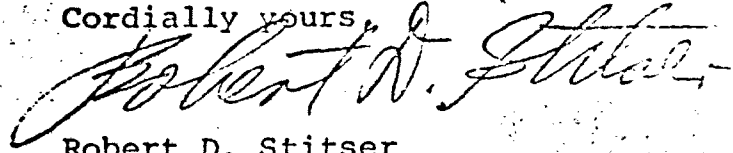
Of course, if the State has the audacity to come onto your property and harrass you or seize or attempt to seize any of your property, then, it may very well be that you would have an excellent claim under the Federal Civil Rights Acts such as:

42 U.S.C. §1983.

In the latter event, you would have substantial claims for both punitive and compensatory damages, however, I think you should tell the State

authorities who would be involved well in advance of any precipitous action that they may take of the consequences of their action, as outlined in this letter, so that there will be no question that they didn't fully understand your rights before they took such action.

Cordially yours,



Robert D. Stitser

RDS:ht

cc: Mr. Melvin Thom
Mr. Mervin Wright
Mr. Jose A. Zuni

ASSEMBLYAGENDA FOR COMMITTEE ON TAXATIONDate APRIL 12, 1973 Time 8:00 a.m. Room 222

<u>Bills or Resolutions to be considered</u>	<u>Subject</u>	<u>Counsel requested*</u>
SUMMARY:		
SJR 15	Proposes constitutional amendment to permit assessment of owner-occupied dwellings and land at lower rate.	
AJR 34	Proposes constitutional amendment to allow legislature to exempt any personal property from taxation.	
AJR 27	Proposes to amend the Nevada Constitution to restrict the power of the Legislature to tax property in excess of 35 percent of its current market value of appraisal value.	
AB 931	Provides for submission at next general election of question proposing amendment to exclude equity value offered as trade-in on another motor vehicle from definition in sales and use taxes and local school support tax.	

*Please do not ask for counsel unless necessary.

AGENDA FOR COMMITTEE ON TAXATION

Date APRIL 12, 1973 Time 8:00 a.m. Room 222

Bills or Resolutions
to be considered

Subject

Counsel
requested*

SUMMARY:

SB 364

Revises statutes governing distribution
and taxation of cigarettes.