Senate

COMMITTEE ON EDUCATION

Minutes of Meeting February 22, 1973

The sixth meeting of the Committee on Education was held on February 22, 1973 at 2:40 p.m.

Committee members present:
Chairman John Foley
Senator Walker
Senator Neal
Senator Bryan
Senator Hecht
Senator Young
Senator Raggio

Witnesses:
Senator James Gibson
Dr. Neuburn, Homeside Baptist Church, Las Vegas
Dr. Marvin Picollo, Superintendent, Washoe Co. School
Robert Rose, President, Nevada State Board of Education
Mr. Rathburn, teacher from Clark County
Helen Cannon, Clark County School Board
Rosemary Clark, member, State Board of Education, Las Vegas
Earl Evans, Clark County School Board, Las Vegas
Cynthia W. Cunningham, member, State Board of Education
Mr. Petroni, Las Vegas
George E. Harris, member, State Board of Education
Bernice Mouten, Las Vegas, Equal Education Opportunity
Kate Butler, Nevada League of Women Voters
Eleanor Walker, Las Vegas
Bob Best, Nevada State School Board Association
Eddie Scott, NAACP, Reno - Sparks Branch
Mr. John Hawkins, Superintendent, Carson City
Nancy Gomes, Trustee, Washoe County School District
Ken Haller, Washoe Co. Demo. Central Committee
Gene Scarselli, Superintendent, Douglas County
Craig Black, Lyon County School
Richard Miller, former member, State Board of Education
Assemblyman Jack Schofield

Others present:
Marion Sieber, Las Vegas
Jean Skidmore, Carson City
Shirlee Wedow, State Board of Educ., Sparks
Mildred Pressman, Carson City
Grace Bordewick, Carson City
Emil Greil, Washoe Valley

Doreas P. Criteser, Carson City
Stephen C. Moss, Legislative Intern, Sparks
Charlotte Cornbread, I.T.C., Reno
Joanne Nicholson, I.T.X., Reno
Larry Gomes, Intern, Reno
Ruby Duncan, Clark County Welfare Rights, Las Vegas
Elaine Backman, Las Vegas
L. R. Sturdevant, Sparks
Dave Shonnard, Las Vegas
Ken Creighton, Legislative Intern, Reno
John Gamble, Dept. of Education, Carson City
Henry Clayton, School Board member, Carson City
Don Driggs, Supervisor of Leg. interns, Reno
Tod Carlini, Supt. of Schools, Lyon County
Ron Negel, Lyon County School Dist., Yerington
Graig Blackham, Asst. Supt., Lyon Co. School, Yerington
Harvey Dondero, Clark County School Dist., Las Vegas
Sister Carole Hurray, Comm. for Social Justice & Peace, N.L.V.
Anne Kosso, Leg. Intern, Reno
John Vergiels, Assemblyman
Gary Gray, C.C.C.T.A.
Ann Ehrenburg, L.V. Review-Journal, Las Vegas

Chairman Foley called the meeting to order at 2:40 p.m.

S.B. 170:

Senator James Gibson was first to testify on S.B. 170. S.B. 170 developed out of considerable concern expressed by several Legislators. The purpose of the bill is to spell out in specific terms the fact that the Legislature intends that the primary responsibility for the administration of public school system, rests with the local school board. The State Board of Education has only those powers which have been conveyed by the Legislature through statutory action. The bill does not do what many people have written to him. Letters from Clark County indicated that writers felt this bill would undermine the efforts made in Clark County on school desegregation. The Attorney General's ruling opinion number 100 issued Nov. 14, 1972, which related to the regulations on desegregation. (See Exhibit A). Alarm came about when it appeared that the members of the Board did not feel this was necessarily the case because they did not accede with the opinion of the Attorney General, if the report of actions are correct. It is his opinion that the Board in action voted to insist on their quality statement and regulation even though the Attorney General has given a contrary ruling.

Senator Gibson (cont'd.):

Therefore, it seemed to them that there must be some confusion in the law as far as the State Board members were concerned. It was their intention in this bill to remove this confusion. The bill touches upon - prohibits State Board from becoming involved unless the Legislature says they should. This would help us avoid a lot of the difficulties that come up because of actions beyond the scope of the State Board's responsibility. Senator Gibson quoted from a letter Senator Brown had sent to many of the people that corresponded with him. "The sponsors of this bill felt that the basic responsibility of educating our children is with the local entities, and this has been spelled out in our statutes. By the same token, if local districts that involve themselves in policy which has been assigned to the State Board of Education by the Legislature, our position would be to support the State Board."

Dr. Dan Neuburn followed in testimony. Dr. Neuburn stated that he is here on behalf of the Clark County Ministerial Association. At a meeting held on February 20, 1973, the members of the Ministerial Association adopted a resolution which states their opposition to S.B. 170. The minister's chief concern was the firm belief that as a state prepares and has a responsibility for education of the children, then it is perhaps the best body to decide on rules and regulations that will be fairest to the citizens of the State of Nevada. Within the bill there were two particular points that the ministers were concerned about. One was the prohibiting the State Board from adopting any rules pertaining to integration or desegregation. As the President of the Clark County Christian Schools, it would be to his advantage to have S.B. 170 passed, because it would dilute the powers of the State Board. He would prefer to have his operation overseen by a board which has statewide jurisdiction and is looking at a total view of education . It was the unanimous opinion of the Ministerial Association that they oppose S.B. 170.

Dr. Marvin Picollo stated that they object to the procedure that was used in adoption of this particular regulation. They also object to the content itself. It is not in the best interest of public education to hire on the quota system. This would lead to hiring non-qualified people. Local control of local schools has set American schools apart from other schools. Their objection is State Board regulating this area of segregation and integration. They are in no way opposed to the concept of integration. They

are very much for it. They are willing to cooperate. They do not feel it is not in the best interest for them to dictate to the School Board. The State School Board Association and the School Trustees Association and the Superintendent's Association can help most if they would sit down and work together.

Robert Rose stated two important factors. Importance of statewise policy-making and planning for education and constitutional requirements for equal educational opportunities. Would like to state accomplishments of State Board of Education in the last two years. They have tried working with people to assume a partnership position with the other educational entities. Would like to point out the process they went through in developing the area. One area is high school graduation requirements. The State Board did not feel that they should do this in a vacuum. They should appoint a task force to help the Board develop a new set of high school graduation requirements. The task force worked under the direction of Bert Cooper for almost a year, prior to the submission of these high school graduation requirements. This task force was made up of citizens, parents and representatives of school districts throughout the State. They are also concerned with the area of special education. They have counties in the state that are not meeting these needs. Again the State Board of Education developed a task force. They asked the NSEA to develope new certification requirements so that teachers are best qualified. His point is to show that the State Board does not work in a vacuum. Their Board in open session at the time they were discussing their legislative platform or position, did so openly with public invited. (See Exhibit B for following testimony).

Mr. Jim Rathbun was next to testify, stating that he represents a membership of 2,300 teachers who teach in Clark County. The obvious concern of the State Board is to improve the education in the classroom for the child. The teacher's involvement has produced a teacher with higher morale, and a greater willingness to make cooperative efforts in regard to the children. Mr. Rathbun stated that in his opinion, the passage of S.B. 170 would limit the many activities which occur with teachers and children.

Helen Cannon stated that the Clark County School Board has taken no definite position on S.B. 170. She does not wish the State Board of Education to come in and tell the School Boards how to run their business. If they are not doing the job, then they should come in and tell them that they really aren't doing the job.

Rosemary Clark stated that to her, S.B. 170 is a regressive and negative piece of legislation, and we do not have the time to move backward. If S.B. 170 is adopted, we would see Legislators invovled with budgets and programs of seventeen school districts. Planning for the State must be done at the State level. What is lost is integration guidelines - they were working for equal educational opportunities for all children. If this bill is passed, she feels will only put up road blocks toward achieving the basic right of all children - to have an effective, free,public education.

Earl Evans stated that he feels we need to have local control. The State Board of Education advisory capacity - if they feel that we are doing something wrong, they should come down and talk about it. Should have local control over local problems.

Cynthia Cunningham commented that they would like to leave with the Committee copies of gathered information (See Exhibits C and D). When her children were in school, the Clark County School District was in court constantly resisting desegregation. The American Association of School Administrators believes "integrated schools to be the best preparation for participation in America's multi-ethnic society". The United States Senate Sub-committee on equal educational opportunity - their report from a nearly three year study has just been released. The Committee reports finding "neither uniformity in the enforcement of our nation's civil rights laws as they affect education nor equality of educational opportunity in any of our nation's schools. For most American children, our public education system is eminently successful. We have found great progress, but we have also found that public education is failing millions of American children who are from racial and language minority groups or who are simply poor". Mrs. Cunningham stated that she was on the task force and her greatest concern was is the State Board of Education proceeding in a legal manner. Their reply from the Deputy Attorney General said that it was not only their legal prerogative but they had no other alternative than to

proceed with this, any more than the Sheriff of Clark County could fail to investigate murder.

Mr. Petroni stated that he would only speak on the legal ramifications. Presently Clark County is still in Court. I have a petition pending before the United States Supreme Court, which has been there six months now, and have received no word on it. Mr. Petroni stated that he thinks that the Supreme Court is waiting for a decision on the Denver case to make a decision once and for all as to what the legal obligations are of school districts on desegregation in those states that have no segregation by state law to begin with. If these guidelines are allowed to be adopted now, they are much more strict than the Court's guidelines. They become regulation then of the State. This means that someone could haul us back into Court. The Civil Rights Act of 1964 regardless of what was said here before, does not apply to us, because many federal courts have said when you are under a desegregation court order of a federal court, you are not obligated to follow the guidelines of the Civil Rights of 1964. Therefore, we are accepted because we were sued under the U.S. Constitutional Equal Protection Clause not the Civil Rights Act of 1964. If this State Board will be allowed to adopt these regulations, even though they have so-called exception in the State, the problem is it still says you have to come within these regulations within a certain time, even though they accept you to begin with. It would put us in the position of being brought back into court and having more lengthy hearings and possibly more moving around of children than we already have in Clark County. His concern is the conflicting impact that the regulations could have on the present court case in Clark County.

George Harris commented that he has been in the school business in Clark County since 1929. Mr. Harris further stated that Paragraph 1 of S.B. 170 is in line with his thinking. Defends Clark County as having a good, clean slate as far as discrimination. Integration is not mentioned in the Nevada statutes at all, but there is in NRS 385.010-3 Paragraph 3, a statement that leaves to the State Board all of the functions in regulation no assigned to some other agency. At a regular meeting of the State Board of Education on February 16, 1973, a delegation from Nevada School Trustees Association appeared and caused a prepared statement to be read by Washoe Superintendent of schools. In

the statement a request was made for cooperative harmony between county school management and the State Board of Education. Mr. Harris stated that this is the attitude of the Board of Education. If S.B. 170 be passed, that we not cause more confusion by breaking up the harmonious, or possibly harmonious, cooperative action between the State Board of Education, Legislature, the county boards, teachers - we're in this to do the best for the children. Mr. Harris further stated that he is confident that they will do justice to all concerned.

Bernice Mouten stated that today is another instance - of the unfortunate circumstances that have existed since the rules and regulations regarding school integration and desegregation were adopted by the State Board. Because of lack of information, many myths that are untrue have been spread throughout the community and state, and the true intention of the policy has never been spoken. Nevada's rules and regulations are no different from the rules and regulations of most states beyond the Mason-Dixon Line. One of the major concerns was that Nevada was one of two states with nothing. Separately, in surveying states, they found that our definitions went along with the definitions in most states. The criteria which involves staffing, etc. is based on federal cases. The other thing is procedures for reporting. Those proceedings are no different and exert no extra strain on school districts because they have been doing these proceedings since 1965 in the State of Nevada, when they started receiving title funds under the Civil Rights Act of 1964. The only added one was districts who are involved with desegregation would be asked to submit a report. Clark County School District is under court order but there has not been anything giving them the freedom to not abide by the Civil Rights Act of 1964 if they have to receive the funds.

Kate Butler testified next. (See Exhibit E for testimony)

Eleanor Walker stated that she would like the present the petitions to the committee (See Exhibit F). Mrs. Walker further stated that she is representating the Las Vegas NAACP. Their concern is that this will was even proposed. Last week in the State Board meeting, the Trustees Association were represented there, there were 10 other groups representing various groups supporting the State Board of Education's stand. These Trustees were not even concerned

enough to stay and listen to what they had to say. Mrs. Walker further stated that she did not get an equal opportunity at Las Vegas when she was attending high school. There is an old quote "a little learning is a dangerous thing". The minority in the State have had a little learning, enough to know that they have nothing more to loose at this point - but if they work together and offer their support to this great body, the State Board of Education, who realized that all students need equal education opportunity, and with the local school districts and the teachers, the minorities may learn that they certainly do have something to gain after all.

Bob Best commented that he represents the Nevada State School Board Association. The Nevada State School Board Association supports S.B. 170. They do not want to give the impression that they are undermining the State Board of Education. They wish to cooperate in all matters in which they are legally authorized to operate. Mr. Best stated that he would like to support the comments made by Dr. Picollo. Nevada State School Board feels strongly regarding control and feels that public education in the State of Nevada is esentially a matter for local boards and local control. In August of 1972 the School Board Association met, it was the consensus of each speaker that the local control was being eroded and every possible action be taken. The Nevada State School Board Association upholds the opinion of the Attorney General and feels that S.B. 170 strengthens this. The manner in which the desegregation rules and regulations were passed are the chief objections the association has to that particular action. The State Board may not operate in a vacuum, but it is unfortunate that these school superintendents and school boards were not consulted on the draft of the desegregation regulations upon which the Board acted. At the August meeting of the superintendents, the request was made of a representative from the State Department Education, that the superintendents and boards had an opportunity to see the draft before it was acted upon. This was relayed to the State Board when they were first presented the final draft, this request was denied and action was taken to pass the regulations. The State School Board Association also supports the last sentence in S.B. 170. School Board wants to work in harmony with the State Board of Education.

Eddie Scott stated that Washoe County has been working with the district in setting up this inter-group, doing

some things in that direction. But today it is the black man and the Indian again. S.B. 170 is opposed by the Reno and Sparks branch of the NAACP. They feel the bill is discriminatory in that it is limiting the powers of that which has to deal with desegregation. Needless to say, this is in conflict with U.S. Supreme Court decision. Why can't the Board of Education and school districts work together. All we are talking about today is desegregation and integration. When you look at S.B. 170, where do you expect the black man to turn, if the Legislature is going to put a damper on this issue. They had hoped to work with the State Board of Education and districts; but if they do not have a Board of Education to work with on this issue, they have to turn to the Federal Courts.

Mr. John Hawkins stated that the Carson City School Board endorsed the Attorney General's Opinion No. 100. At the same time. extending to the State Department their cooperation. Mr. Hawkins would also like to state that on a local level, local Boards like State Boards, encourage involvement of citizens in making important decisions. They would like authority of conducting their own educational system policy. Would like to point out that State regulations, without fiscal responsibility, is very difficult to put together. Control of local school districts should remain as close to home as possible.

Nancy Gomes stated that she is opposed to S.B. 170. It is unconstitutional in view of the Supreme Court's decision. Regardless of the Attorney General's opinion, education has been delegated by the U.S. Constitution to the States. If local school districts are in violation of the State of Federal regulations, States must them insist on guidelines. The passage of S.B. 170 will weaken shared responsibilities that local school boards and state school boards have on all phases of quality education. Mrs. Gomes asked that the bill either stay in committee or by rewritten to affirm that Nevada will support policy of desegregation and integration on both state and local levels. Mrs. Gomes further requested the consideration of what the passage of S.B. 170 will do to Washoe County in slowing down its inability to desegregate.

Ken Haller stated that he is representing the Washoe County Democratic Central Committee. They do not feel that this is a political issue. Mr. Haller further stated that when the State Board did establish guideline of desegregation, they studied the guideline and decided that this was a guideline that was in agreement with the platform of the Washoe County Democrats. At their last meeting, they voted in opposition to S.B. 170. It is obviously a anti-integration bill.

Following the foregoing testimonies, Chairman Foley stated that any questions may be brought up.

Senator Raggio commented in regard to the statement made by Bob Best which stated that their request to review the regulations was denied. Senator Raggio stated that he would like an explanation of this denial.
Helen Cannon stated that at the August meeting of the Superintendents, they were aware of these regulations being developed. The preliminary draft would have been completed, however, they made a request of Bob Roy, Assoc. Superintendent, that he relay the message to the State Board that they be given an opportunity to review the final draft before action was taken. The final draft was not in Carson City until the same week that the State Board held the meeting. This final draft did not go out to the State Board members in their agenda, and it was presented to them at the State Board meeting. At that time, it was called to their attention that it was an information item and that the request had been made by the superintendent so that they have an opportunity to review it before action was taken. Cynthia Cunningham stated that several steps were omitted in the foregoing statement - these steps were written into Mr. Rose's testimony, which we have in writing.

Senator Raggio asked if this bill directs itself to any other area other than the issue of desegregation. Does this bill concern either State of local boards in any other area.
Gene Scarselli stated that their interest is in local control only, no matter what race.

Senator Bryan referred to Cynthia Cunningham's testimony. Is it correct that the quoto provisions that are contained in regulations for school desegregation were inserted on the advice of the Deputy Attorney General. Mrs. Cunningham replied yes. They were in the departmental task force.

Senator Neal stated that this is not a quota - it is a deviant.

Mr. Picollo replied that Senator Neal had not interpreted this in the same way they had.

Bernice Mouten stated that the Attorney General stated that it should reflect the racial and ethnic distribution of the community. All these years Nevada has had nothing. We have to take into consideration the growth - a district may have exceptions.

Robert Rose submitted a memo to the Senate Education Committee from Father Ben Franzinelli (See Exhibit G).

Craig Black, Lyon County School stated that his concern is distrust. Until recently the State Board has been willing with districts, to examine anything coming out of State Board, prior to adoption. State Board should determine and set guidelines. They have not had a chance recently to look at the changes until after their adoption. Mr. Black urges the passage of S.B. 170.

Richard Miller, former member of State Board of Education, stated that perhaps these regulations should have gone back to the superintendent regarding segregation and integration, but they felt that they had lagged long enough. Mr. Miller feels S.B. 170 should not go out of committee.

Robert Rose stated that they were concerned with responsibility and problems.

Chairman Foley asked that any individual or group that would like to suggest any changes, whether in amendment to S.B. 170 or other, please submit such requests.

Senator Dodge commented that he had a chance to review the school code. The present school code was written into law in the Peabody Report. This was replaced with a new code. It was obvious in that code,that the code was to allocate authority to the State Board of Education and leave residual with the local school board.

Following a brief discussion, Chairman Foley adjourned the meeting at 5:10 p.m.

Respectfully submitted,
Sharon W. Maher
Sharon W. Maher, Secretary

John Foley, Chairman

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
ROOM 341, LEGISLATIVE BUILDING
CARSON CITY 89701

ROBERT LIST
ATTORNEY GENERAL

November 14, 1972

OPINION NO. 100

State Board of Education - The regulations for school desegregation purportedly adopted by the State Board of Education on October 5, 1972, are void and unenforceable because they were adopted without due process of law and they govern a subject matter over which the State Board of Education has no jurisdiction.

The Honorable Jack Schofield
2000 Stockton Street
Las Vegas, Nevada 89105

Dear Assemblyman Schofield:

This is in reply to your request for a formal opinion concerning the validity of regulations adopted October 5, 1972, by the Nevada State Board of Education pertaining to desegregation of schools.

Question

Does the State Board of Education have legal authority to adopt regulations for the desegregation of public schools in Nevada?

Analysis

The Nevada State Board of Education was created by the Nevada Legislature. Chapter 385, Nevada Revised Statutes. Thus, it is necessary to look to the statutory powers and authority granted in order to determine the boundaries and limits of its jurisdiction. NRS 385.080, as it here pertains, reads as follows:

> "The board shall have power to adopt rules and regulations not inconsistent with the constitution and laws of the State of Nevada for its own government and which are proper or necessary for the execution of the powers and duties conferred upon it by law; . . ." (Emphasis added.)

EXHIBIT A

It is therefore clear that while the board has the power to promulgate rules and regulations, it is limited in its power to do so to those instances where such rules and regulations are proper or necessary for the execution of those responsibilities conferred by law.

Our task then becomes one of determining whether the power or duty to effect school desegregation has been conferred on the state board of education by law. In other words, the board's authority to adopt any regulations on any subject matter must be bottomed upon a statutory provision granting the board jurisdictional ingress. Without such a threshold, the board is powerless.

This principle has long been recognized by our nation's highest court, and was articulately stated in Miller v. United States, 294 U.S. 435 (1935) at page 440, where, in holding a regulation to be void and unenforceable, the Court stated:

> "The only authority conferred, or which could be conferred, by the statute is to make regulations to carry out the purposes of the act - not to amend it. [Citing authorities.]"

A state agency created by statute has only such powers as are conferred upon it by statute. Board of Higher Education of City of New York v. Carter, 228 NYS 2d 704 (1962).

A review of Title 34 of Nevada Revised Statutes, which contains our school code, reflects that many varied powers have been expressly delegated to the board by the Legislature. Examples include the power to prescribe rules and regulations or the power to govern in the following instances:

> The issuance and renewal of certificates and diplomas (NRS 385.090);
>
> The conditions under which contracts, agreements or arrangements may be made with the federal government for funds, services, commodities or equipment to be made available to the public schools (NRS 385.100);
>
> The administration of the higher education student loan program (NRS 385.106);
>
> The courses of study for the public schools of the state (NRS 385.110);

> The approval or disapproval of the list of books for use in school libraries (NRS 385.120);
>
> The exercise of substantial powers concerning the payment of public school monies (NRS 387.040); and
>
> The making of the final selection of all textbooks to be used in the public schools (NRS 390.140).

These are but a few of the many responsibilities imposed upon the state board of education, as contained in the fifteen chapters and more than five hundred pages which make up our school code.

By contrast, the Legislature has delegated distinct and different responsibilities to the local school districts. They too are creatures of the Legislature.

It has been held that there is no occasion to give one statutory creature jurisdiction over the activities of another statutory creature unless the law unmistakably so provides. St. Petersburg v. Carter, 39 So. 2d 804 (Fla. 1949). Peoples Gas System, Inc. v. City Gas Company, 167 So. 2d 577 (Fla. 1964).

It is abundantly clear that the legislative intent was to divide the powers and prerogatives between state and local officials. Perhaps the most conspicuous indication of the fact that local school districts have far greater powers than does the state board of education comes with an inspection of NRS 386.350, which provides as follows:

> "Each board of trustees is hereby given such reasonable and necessary powers, not conflicting with the constitution and the laws of the State of Nevada, as may be requisite to attain the ends for which the public schools are established and to promote the welfare of school children."

By contrast, neither the state board of education nor the state department of education has such sweeping authority for the regulation of our public schools. Further, the boards of trustees of each school district have the power to prescribe and enforce rules, so long as they are not inconsistent with the law or with valid rules prescribed by the state board of education, for the government of public schools under their charge. NRS 386.360.

An overall review of the school code leads to the compelling conclusion that the Nevada Legislature has consciously reserved broad powers within the

local school districts, while consciously limiting the role of the state board of education and the state department of education to specified fields. There is no statutory provision authorizing the state board of education to adopt regulations for school desegregation, and absent such authorization, the regulations must be deemed invalid.

It should also be noted that prior to the purported adoption of the regulations here in question, there was no notice to local school districts, interested persons, or even the members of the state board of education themselves, that the regulations were to be acted upon at the board meeting of October 5, 1972. Neither the circulated agenda nor any other advance notice of the meeting indicated that a hearing would be held or that interested persons should appear. The proposed regulations included a one-page policy statement and five pages of complex and comprehensive regulations which, had they been valid, would have had a massive impact upon children, families, school personnel and school districts throughout the state. The regulations reach beyond any requirement of the equal protection clause of the United States Constitution in that they purport to apply to school districts even without a finding of state-imposed segregation. The United States Supreme Court itself, in Swann v. Board of Education, 402 U.S. 1 (1971), clearly recognizes that in order for segregation to be constitutionally infirm, it must be state-imposed. In fact, the Court in that case stated, at page 26:

> "[I]t should be clear that the existence of some small number of one-race or virtually one-race schools within a district is not in and of itself the mark of a system that still practices segregation by law."

At page 28, the Court further added:

> "Absent a constitutional violation, there would be no basis for judicially ordering assignment of students on a racial basis. All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes."

It is apparent, therefore, that the regulations themselves might have placed unconstitutional burdens on school districts. This fact points up the necessity for compliance with procedural due process in the adoption of any administrative regulation by the state board of education. While the state board is exempt from the Administrative Procedure Act, there is no agency in Nevada that is exempt from procedural due process consistent with the Fourteenth

Amendment of the United States Constitution in the adoption of its administrative regulations. The Nevada Supreme Court, in the recent case of Checker, Inc. v. Public Service Commission, 84 Nev. 623, 446 P. 2d 981 (1968), affirmed that a state agency must provide procedural due process in promulgating regulations. The Court said, at page 631,

> "It is a well recognized principle of administrative law that notice and an opportunity to be heard must be given before such an order may be entered." (Emphasis added.)

The Court went on to say, at page 634:

> "The Commission cannot act without notice and a reasonable opportunity to be heard and must act within constitutional limits. Carroll v. Public Util. Comm'n, 207 A. 2d 278 (Conn. 1964)."

Conclusion

The regulations for school desegregation purportedly adopted by the state board of education on October 5, 1972, are void and unenforceable for two reasons: (1) they were acted upon without procedural due process, and (2) they govern a subject matter which is outside the statutory powers conferred on the state board of education.

Respectfully submitted,

ROBERT LIST
Attorney General

RL:lp

MEMBERS OF THE SENATE EDUCATION COMMITTEE:

Two significant issues must be addressed in a consideration of S.B. 170: the importance of statewide policy making and planning for education and the consitutional requirements for equal educational opportunity. But of even greater urgency is that we not lose sight of the most important people of all, the school children of Nevada. After all, it is for their well being and for the good of the State that we invest such a large share of the state's resources in their education. Those children must not be forgotten in what has become an unnecessary struggle for power between entities. Nevada education can approach the excellence we hope for only if we are working together in creative partnership. There must be an opportunity for each level of government to do those things each can do best, making every effort to complement the constructive efforts of other levels. Neither the State nor the counties have any cause to operate at the expense of the other.

A nation-wide study of the governance of education now underway, coordinated by Dr. Roald Campbell of Ohio State University, is focused on the state level, primarily because project directors "believe most major policy decisions for education are made at the state level. States have constitutional responsibility to establish and maintain public school systems. Governors, state legislature, state courts, state departments of education, and other state agencies are constantly occupied with the making of policy decisions consonant with that legal mandate" (The Governance of Education: A Progress Report, December 4, 1972).

Nevada statutes (NRS 387.121) declare the objective of state financial aid to public education is to insure each Nevada child a reasonably equal

EXHIBIT B

educational opportunity. And under terms of the U.S. Civil Rights Act of 1964, every chief state school officer has had to sign annual assurances that "no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance ..." (Assurance of Compliance for Title VI Program, HEW-441).[2] Lengthy litigation in Clark County would seem to question whether we in Nevada have been in compliance with the intents of the Civil Rights Act even while having to rely too heavily on Federal funding for many of our programs. Within the week ten states have been warned of loss of all Federal funds for non-compliance with the Civil Rights requirements (clippings enclosed).[3]

Federal dollars for education, whether categorical as in the past or by revenue sharing if that pattern continues, have created the need for more, not less, state influence. To again cite the preliminary report of the national governance study: "From the beginning of this nation we thought some balance between state and national influence should be established. In recent years states have seemed derelict in holding up their end of that compact. While we would not deny the importance of national action, we think states must be in the position of influencing and modifying that action. Indeed, local contol, a strong tradition in this country, can probably not be sustained without the protection of state influence. TO SAY IT OTHERWISE, WE THINK EDUCATION WILL BE GOVERNED BEST WHEN THERE IS INTERDEPENDENCE AMONG LOCAL, STATE AND NATIONAL AGENCIES. STATES NEED TO HELP PRESERVE THAT INTERDEPENDENCE" (December 4, Progress Report, pp. 4,5).

There is inevitable resentment when state or Federal courts intervene because constitutional rights have not been granted. We in Nevada have

not escaped that intervention ourselves. In May of 1971 a suit against the State Board of Education, the Attorney General, and the Clark County School Trustees on behalf of children of the poor resulted in a speeding up of the school lunch proposal the State Board had under consideration. We are now faced with a suit on behalf of certain handicapped children being denied educational opportunity commensurate with their needs. Hopefully, the legislative proposal made by another statewide task force will result in dismissal of this suit. The rather sweeping decisions resulting in a major overhaul of the finance formulas for education in several states have followed the failure of states to take leadership in providing equal educational opportunity. To limit the policy making and leadership capacity of the State Board and State Department of Education at this time in history would, then appear to be unrealistic and counterproductive.

Concern for equal opportunity for minority children in the State is not new to the State Board of Education. A 1968 policy manual states "Racial imbalance is detrimental to sound education and harmful to children of all races, because separation from others leads to ignorance of others and ignorance breeds fear and prejudice." A series of questions was designed to be circulated among the counties, reflecting the same concerns addressed in the 1972 policy statement. However, the policy was self-defeating in its cynical negative expectation, closing with a prayer attributed to an early saint, "Lord, make me chaste, but not yet."[4]

For historical perspective, it should be noted that a suit was filed against the Clark County School District on behalf of black children racially isolated in Las Vegas' Westside in 1968. The integration of the

district was finally ordered in August, 1972, by the Ninth Circuit Court of Appeals in San Francisco.

In the summer of 1971, at the request of Superintendent Burnell Larson, the state's first Equal Education Opportunities consultant prepared a new policy statement on Equal Education. However, the cabinet of the Department elected not to recommend that policy to the State Board for approval (document enclosed).[5]

In 1972 as Superintendent Larson, the Department staff, and the State Board of Education were establishing priorities, Equal Educational Opportunity emerged as one of the urgent concerns.[6] The first report to the State Board of Education from a departmental task force appears in the minutes for March 23, 1972 (enclosed).[7] At that time, August 1 was set as the date for the task force to complete its work.

Inasmuch as several references will be made to minutes of the State Board of Education, I want to point out that the minutes are circulated to all county superintendents and the office of the Attorney General. I stress this point to emphasize that at all times the Board was acting openly, in good faith, and with maximum involvement of interested citizens.

A complete list of members of the task force is included in the materials which will be left with you.[8] They included a principal and an associate superintendent from Clark County, a member of the Lyon County school Board, and representatives of the PTA, the League of Women Voters, and the National Association for the Advancement of Colored Peoples. Three members of the State Board of Education also served on the task force which met first on June 13, 1972, at the Clark County Community College.

The Deputy Attorney General assigned to the State Department of Education was given thirty minutes on the first morning's agenda (enclosed) because of the desire of the task force to proceed on firm legal footing.[9] Mr. Smith's counsel was that both the school code of the Nevada Revised Statutes and the U.S. Consititution give the prerogative, even the mandate, for the State to provide assurance of equal educational opportunity.

In light of subsequent events, two items from the minutes of the task force meeting of July 24 (page 2, enclosed)[10] are noted with irony: reference is made to a decision to "be left to legal counsel's advice" makes clear that members of the task force were aware that the draft would be submitted to the Attorney General's office for advice. And in paragraph six a member of the Board warned of "the Board's reluctance to pass any statement similar to number 3 which reflects a quota concept." The task force completed its work with the draft which is dated July 24, 1972 (enclosed).[11]

We in Nevada were neither working in a vacuum nor standing in the forefront of educational change in this endeavor. The staff of the task force and then the Deputy Attorney General studied and compared the desegregation plans of several other states. Seven are included for your information (California, Illinois, Iowa, Minnesota, New Jersey, New York, Pennsylvania, Rhode Island).[12] As will be demonstrated in a brief comparison/analysis, a numerical deviance factor based on minority population is a common element in all the plans. Similar mathematical formulas are seen in government employment and housing assurances for the same reason our legal counsel insisted on that revision to the Nevada proposal: a number

can be measured, the distance from the present to the desired condition can be seen, and progress can be charted. The goal expressed as a deviance factor not to exceed 18% in the final draft was stated as "shall reflect the racial and ethnic distribution of the total population of the community whenever possible" in the task force report.

The changes made from the task force report to the final policy statement followed extensive legal consultation. A memorandum of August 14 from R. D. Toothman, a legal intern assigned to the State Department of Education for the summer under the WICHE program (Western Interstate Compact for Higher Education) begins:

> Julian Smith and I spent several hours going over the position paper Tuesday afternoon, and we both feel there are a number of major problem areas. If the State Board adopts this statement, the Rules and Regulations will have the force of law and most certainly should be up to statutory standards which means that they must be clear and explicit in order not to violate due process and equal protection. [13]

The Board, in adopting the rules and regulations finally on October 5,[14] was persuaded that the changes made at the advice of legal counsel retained the intentions of the task force stated in more precise legal terminology.

ANALYSIS OF THE PLAN

CONCLUSION

It seems a cruel irony that in this great western state which cherishes its unique tradition of freedom that freedom of opportunity for its minority citizens might again be in jeopardy. The policy statements of almost every major Protestant, Roman Catholic and Hebrew body in the nation support the principle of desegregated education.[15] The Council of Chief State School Officers believes "that desegregation carried out with integrity and adequate financial resources provides better educational opportunities for all youth and does not result in a deterioration of the quality of that educational experience" and that "state education agencies should continue to resist all efforts to prohibit implementation of school desegregation" (1971 policies enclosed).[16] The American Association of School Administrators believes "integrated schools to be the best preparation for participation in America's multiethnic society" (1973 resolutions draft).[17]

The report from a nearly three year study of the U.S. Senate Select Subcommittee on Equal Educational Opportunity has just been released. The committee reports finding "neither uniformity in the enforcement of our Nation's civil rights laws as they affect education nor equality of educational opportunity in many of our Nation's schools. For most American children our public education system is eminently successful. We have found great progress. But we have also found that public education is failing millions of American children who are from racial and language minority groups, or who are simply poor" (p. 2). The statewide assessment program conducted by the State Department of Education in 1971-72 revealed that black students entered the third grade approximately ten months behind

non-minority children in reading and that the discrepancy increased during the year. American Indian and Spanish American students entered the year approximately six months behind in reading and were a month or two farther behind non-minority children at the end of the school year.[18]

As Senator Mondale says, "Nothing should haunt us more than the face of a child who knows he has failed." But the haunt of failure is not necessary. This tragic waste of the human mind and spirit can be ended if equal educational opportunity becomes a reality rather than a long delayed goal. To again cite the Senate Subcommittee report:

> It is among our principal conclusions -- as a result of more than 2 years of intensive study -- that quality integrated education is one of the most promising educational policies that this Nation and its school systems can pursue if we are to fulfill our commitment to equality of opportunity for our children. Indeed, it is essential, if we are to become a united society which is free of racial prejudice and discrimination. (p.3)

EDUCATION U.S.A. 145

The independent weekly report for education leaders published by National School Public Relations Association

Washington, D.C. • January 22, 1973

BUSING DEBATE 'MISLEADING,' SAYS SENATE REPORT

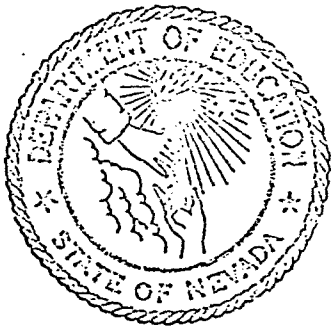
The nationwide debate on the "misleading" issues of "massive busing" and "racial balance" is jeopardizing America's commitment to equality of educational opportunity. In a 440-page report, the result of nearly three years of study, the Senate Select Subcommittee on Equal Educational Opportunity says this debate has obscured the real issues affecting poor and minority children--racial and economic isolation, discrimination within schools, unequal financing, and other factors that produce failure through low aspirations, high dropout rates and low achievement. "It is not that children fail. It is our nation that has failed them," the report concludes.

In a finding that puts the committee at odds with Pres. Nixon, the study says compensatory education is most likely to produce gains in an integrated setting. The President has viewed compensatory aid as a way to help "racially isolated" schools improve their learning programs. The report sought to answer critics who say blacks do not get a better education simply by sitting in a classroom with whites. "It is not that minority-group children can only learn alongside nonminority children; it is that disadvantaged children tend to benefit from a stable, advantaged classroom environment." The report also says that studies which show little academic benefit from integration appear to have concentrated on high schools, while gains appear more likely when integration begins in elementary school. Other studies, it says, appear not to have distinguished between purely racial desegregation and integration which is economic as well. "The evidence, taken as a whole, strongly supports the value of integrated education, sensitively conducted, as improving academic achievement of disadvantaged children." The report also notes that contrary to media reports, on-site studies of five recently desegregated school districts, including Pontiac, Mich., and Charlotte, N.C., show that desegregation was conducted, despite some opposition, "in an atmosphere of relative peace, harmony and efficiency."

The committee, headed by Sen. Walter Mondale, D-Minn., concluded that there are six basic elements common to successful school integration programs: broad community participation to insure public support; schools which are economically as well as racially integrated and contain a "majority of educationally advantaged children"; integration at the earliest possible level, to maximize academic gains and racial harmony; an absolute minimum of segregation by classroom, sometimes needed for effective teaching; assurance that an integrated setting provides ethnic children with bilingual and bicultural programs; and a "warm and supportive environment," which can be fostered by teacher sensitivity training, reduced pupil-teacher ratios and relevant, unbiased course content. The committee also urged voluntary metropolitan integration, a gradual $8.5 billion increase in federal aid to education, and integrated housing, but recommended against either a constitutional amendment or legislation to limit busing.

Seven of 15 committee members sharply disputed some of the study's conclusions, pointing up congressional divisions. Four Democrats, all from Southern and border states, flatly disputed the report's position on busing, and three Republicans surprised some by coming out for greater federal spending on schools, but in a form different from the majority proposal. The report, Toward Equal Educational Opportunity, is available from the U.S. Govt. Printing Office (Washington, D.C. 20402; $2.75).

EXHIBIT C



REGULATIONS

FOR

SCHOOL DESEGREGATION

Nevada State Department of Education

October 5, 1972

EXHIBIT D

I. POLICY STATEMENT

In view of the basic justice of equality of opportunity and the urgent need for social harmony, the Nevada State Board of Education hereby endorses desegregation of schools as a positive good. The Board cites a series of court decisions which have followed the historic 1954 decision of the United States Supreme Court which held unanimously that "separate educational facilities are inherently unequal," and a violation of the Fourteenth Amendment. Further, the Board holds that segregation of students on the basis of race is harmful to all involved; hence, any student who is a victim of racial isolation is a disadvantaged student.

Any action, direct or indirect, overt or covert, which fosters ethnic and racial segregation or prevents integration in the public schools is against the public interest, and such action shall not be taken by any public school authority. Such actions, past or present, adversely affect public education. It is the responsibility of public school authorities to correct them.

The stability of our social order depends, in large measure, on the understanding and respect derived from a common educational experience shared by diverse racial, social and economic groups. The primary guiding principle of the Nevada State Board of Education is to provide equal educational opportunity to all students. The Board pledges to do all within its power to achieve racial desegregation and integration in the public schools of Nevada and adopts the following affirmative regulations for implementation of that goal.

II. DEFINITIONS

A. Desegregation: an affirmative act of a school authority which assures that public schools, classrooms, and staff, certificated and non-certificated, reflect the community's racial and ethnic mix with a deviance factor of 18% either way.

B. Racial Segregation: a public school whose proportion of White, Black, Spanish-speaking, American Indian, and Oriental pupils or administrative, faculty, and staff personnel, fails to reflect, within eighteen (18%) percent, either way, population as a whole at the grade levels maintained. (Persons considered by themselves, by the school authority, or by the community as members of the aforementioned groups shall be so considered.)

C. School Authority: all state and local authorities, bodies, and individuals charged with the governance or administration of public schools or school systems.

D. Community: a community consists of a geographic area in which groups of people live in close proximity. Example: Reno-Sparks, Metropolitan Las Vegas, Henderson, Boulder City, Yomba, Carson City.

III. REPORTING REQUIREMENTS

Each local school district will submit to the Superintendent of Public Instruction by November 1 of each year the following:

A. Annual Civil Rights Survey required by the USOE under the Civil Rights Act of 1964.

B. A status of desegregation report from local school districts.

C. A projection of future site selections of local school districts for the next five years.

D. Such other information the Board may require.

IV. CRITERIA FOR DESEGREGATION

After November 1 of each year, the Superintendent of Public Instruction will review the data submitted by the local school districts, as required by the Nevada State Board of Education. If a school district falls below any of the criteria listed below, they shall be notified by the Superintendent of Public Instruction of such deficiency and shall submit a plan of desegregation.

A. Staffing of certificated and non-certificated personnel shall not reflect racial segregation.

B. Public schools and classrooms shall not reflect racial segregation.

C. School site selection processes shall not reflect racial segregation practices.

V. PROCEDURES FOR DESEGREGATION PLAN ADOPTION

A. Whenever the Superintendent of Public Instruction finds that a school district does not meet the criteria (referred to under IV) he will notify in writing the school board and Superintendent having jurisdiction of said

school district of the specific deficiencies existing in the school district, and of the requirement to submit a desegregation plan.

B. After notification of the requirement to submit a desegregation plan, the school district shall prepare a plan to correct the deficiencies noted by the Superintendent of Public Instruction within 90 days of said notification of non-compliance.

C. Upon receipt of said desegregation plan the Superintendent will notify the school district within 30 days as to whether the proposed desegregation plan is acceptable. If a local district does not receive notification of acceptability by the Superintendent of Public Instruction within 30 days after a plan is submitted, it can be assumed that the plan was accepted. (Such acceptability will be determined on the basis of the desegregation plan requirements.)

VI. REQUIREMENTS OF DESEGREGATION PLANS

A. School authorities shall not adopt nor maintain pupil grouping or classification practices which result in racial segregation of pupils within schools for more than 75% of the normal school day. When it is necessary for students to be grouped for compensatory education such grouping shall not persist for the entire day of classroom instruction.

B. The school district shall develop curriculum designed to include history and culture of ethnic and racial groups, the pluralistic nature of American society in the subject matter disciplines, and programs of instruction designed to meet the educational needs of minority students.

C. The school district shall design and provide for orientation and in-service programs regarding the transition from segregated to desegregated schools. All certificated and non-certificated personnel shall be included in such training programs.

D. The district board of trustees shall adopt and make public a positive policy statement of school desegregation.

E. The district shall provide procedures for continuing evaluation of its desegregation plan and modifications for needed changes.

F. The districts' plan of desegregation shall insure that inconveniences or burdens occasioned by desegregation shall be shared proportionately by the racial and ethnic groups involved in the desegregation process.

G. The districts' plan should not compound the inequities resulting from existing patterns of economic segregation by pairing low income segregated schools.

H. Representatives of the entire community shall be utilized in the development, implementation and continuing evaluation of desegregation plans.

VII. EXCEPTIONS

A. A school district may apply for exceptions to any of the requirements previously listed. The State Board of Education may grant exception to any of the requirements at their sole discretion.

B. The local school district, in requesting exceptions to the established requirements, must submit:

1. Rationale for the exception request.

2. The effect that the exception will have on the proposed plan.

3. A time table indicating when the district will come into total compliance with the requirement or requirements for which the exception is requested.

4. Such other information the Board may require.

VIII. ENFORCEMENT

If a district fails to implement an approved plan or fails to submit a plan that meets the criteria by which plans are judged within 180 days after notification by the Superintendent of Public Instruction that racial segregation exists in that school district, then the State Board of Education shall take any steps they may deem necessary to guarantee compliance by local districts.

I am Kate Butler, speaking to you today on behalf of the Nevada League of Women Voters. I appear before you in opposition to SB 170 and urge you to seriously consider the hazardous consequences of this proposed legislation. SB 170 is unconstitutional. Its curtailment of certain powers of the State Board of Education makes it impossible for the State to fulfill mandated educational responsibilities. It is also contradictory to the great historical tradition of public education in Nevada.

Although the contents of the legislation relate to powers and authorities of the State in several areas, the thrust of the bill is to curtail Board authority in the area of desegregation and integration. It is primarily in relation to this authority that we address or remarks today.

In order to put education in Nevada into perspective, a brief review of past events is appropriate. As shown in Governor Mike O'Callaghan's State School Study and the review of the development of the State Department of Education authored by Harold N.Brown, significant happenings in Nevada education have been:

1. The provision for schools in the Constitution of 1864, whereby the constitutional convention recognized the importance of education and the State's responsibility by providing " a uniform system of common schools, by which a school shall be established and maintained in each school district at least six months in every year". It is interesting to note, also, that in as many as three sections of the Constitution, mention is made of the fact that no sectarian instruction shall be imparted or tolerated in any public school. "All religions and all sects of any religion are respected in Nevada's public schools. None is taught."

2. The discontinuance of Rate Bills in 1874 which provided for free education for every child in Nevada.

3. The reorganization Act of 1907 which provided for centralized authority in a State Board of Education.

4. The 1953 Peabody Study which influenced the Legislature of 1956 to establish the county as the basic unit of school organization. This consolidation resulted in the disappearance of most of Nevada's one teacher schools and improved the educational opportunities of rural children previously attending schools with very limited facilities. At the end of this period, it became evident that the State Board would determine who should teach and what should be taught. It would select the chief state school executive and regulate the school year. These powers stand out as significant, making the State Board the most important agency for education in Nevada.

5. The Nevada Plan whereby the Legislature adopted a new formula for disbursement of state aid funds to school districts.

6.The 1969 and 1970 educational program assessments required of the State Board under Title III of the Elementary and Secondary Education Act of 1965, and made in order to determine the imperative educational needs of the State. The data revealed that the quality of education in the State of Nevada can be rated on a descending scale from urban areas, rural areas to remote rural areas.

7. And finally, the Governor's study which comes to you this Session with its recommendations

for clarification of realistic educational goals, accountability, communication within the school system, interactions between the districts and the communities they serve, career education, improving classroom instruction, and other matters.

The history of public education in Nevada has been one of increasing the State's authority and responsibility in educational matters so that Nevada children, whether they live in Elko, Carson City, Sonoma Heights, Caliente or Boulder City would have an opportunity for the kind of education that would allow them to succeed in the real world of today. Where educational and geographical deficiencies were indicated, Legislatures before you have authorized and mandated the State Board to find remedies.

SB170 which curtails the ability of the State Board to seek remedies along these same lines of providing equal educational opportunities, is a direct break with Nevada tradition and is an extremely hazardous and illegal course for this Legislature to be taking.

At the time of our Nevada Peabody Study, the Supreme Court of the United States, as you know, made an important decision in the case of Brown vs. Board of Education, which, simply stated, is that separate education is not equal education. The decision has been refined over the past twenty years, and subsequent opinions of the Court have continued to expand the responsibilities of educational authorities and the meaning of equality. However, the Court's comment in Brown is even truer today:

"In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the State has undertaken to provide it, is a right which must be made available to all on equal terms."

One of the most obvious causes of unequal education stemmed from the existence of State laws designed either to sanction dual school systems or avoid the establishment of unitary school systems. As shown in the Report of the Select Committee On Equal Educational Opportunity of the United States Senate, published December 1972, before Brown, schools were segregated by State law and accepted as public policy. These laws were held to violate the Federal Constitution in 1954. However, in many States, Legislatures enacted statutes designed to sanction segregated schools and to thwart execution of the Court's decisions. These efforts culminated with the enactment of antibusing laws which prohibited the assignment of students on account of race for purposes of desegregation. Dual legal devices have now all been declared unconstitutional. I think that we can be proud of our Legislative history in Nevada. Before the Brown decision, all but six States at one time legally sanctioned some form of racial separation by State constitution, statute, or judicial decision. Along with Maine, Hawaii, New Hampshire, Vermont, and Washington, Nevada was one of these six States that never placed legal sanction against equal education.

Across the country today and over the past twenty years since Brown, State educational authorities have by Court order or by voluntary action begun to reassess the kind of education provided and to reform along lines of greater equality. Illinois developed State Desegregation Regulations; Massachusetts passed its State Racial Balance Law. In Pennsylvania, by a vote of 6 to 1, the Commonwealth Court ruled that the State Human Relations Commission "has the authority to order busing to correct defacto segregation". In Connecticut, the City of Hartford filed suit against the State because

the State school-district policy failed to promote racial and socio-economic desegregation and placed a disproportionately heavy tax burden on the City. In March 1972, the California Legislature created and Governor Reagon signed into law a mandate that "school districts shall prevent and eliminate racial and ethnic imbalance in pupil enrollment; and required the California State Board to adopt rules and regulations." In New York, the State Board of Regents declared:"To say that public authorities may mandate attendance zones as a concomitant to school consolidation but may not mandate attendance zones to achieve socially and educationally desirable goals of racial and cultural integration, seems to the Regents unsupportable".

In the view of the League, the State Board of Education last year took a long-overdue look at what was happening in Clark County and around the nation, and wisely began to prepare a policy that would help districts provide a more nearly equal education for all Nevada children. There were many Nevada indicators of the need to do so. The years of litigation in Clark County, and subsequent confusion, cost, and public polarization was a lesson to be avoided elsewhere in the State. The program assessments that indicated inequality in geographical areas and among minority children. The views of the citizens regarding their schools, documented in the Governor's school study, which show that minority parents and parents of low income were much less satisfied with the job that schools were doing for their children in Nevada than others of greater affluence and majority race Nevadans. The Civil Rights Survey of pupil enrollment and staffing, which in 1971 showed that there is one white teacher for every 20 white Nevada students, one Black teacher for every 55 Black students, one Spanish-surnamed teacher for every 72 students, one Oriental teacher for every 90 Oriental students, and one Indian teacher for every 280 Indian students. These were the kinds of indicators that point out the deficiences in ~~public~~ providing equal education for all children.

The State Board, then, with the aid of citizens and community groups, districts, principals and teachers developed a policy that would ask Nevada districts to look at themselves in terms of providing equal education, and where lacking, to develop new curriculum, to reform staffing, provide teacher training, revise zoning or do whatever needed to be done in their districts. The policy asked the districts to do this job with the assistance of the communities they serve. The Board allowed for necessary variances within the broad regulations provided.

The reaction of District authcrities in ppposition to this policy, we believe, is another clear indicator of the need for this Legislature to continue to vest primary responsibility for equal education in the Nevada State Board.

In closing, we would like to direct your attention again to the Governor's school study and the views of the citizens of Nevada. When they were asked what it was that schools should do for their children, the hgihest ratings were given to the following six priorities:

1. learning the rights and duties of citizens
2. developing an inquiring mind
3. learning the habit of figuring things out for themselves
4. developing a sense of right and wrong
5. learning the basic skills...the three R's
6. aquiring the ability to live and work with others.

Where we have failed to confront the realities of racism and school failure and to provide the human resources necessary to support people involved in this process of racial and educational change, we must now do so. Where we have missed the opportunity to counter racism by developing a curriculum and instructional materials that are more than "white, we must now focus on race and racial collaboration as a content of learning; where we need teacher training, it must be provided; where community input has been minimal, we must allow for greater participation; and in all areas, we need educator accountability. [There is no reason why people who are serving a community should not be accountable to that public for what they do with their most precious resources, their children.]

If we are going to do these things, and if we are going to help black and white and brown students in the classroom learn how to work together, then we must use every available tool. One of these tools is State responsibility for desegregation and school integration.

We urge you to vote"No" on 170.

PETITION TO DEFEAT SENATE BILL 170

WE, THE UNDERSIGNED CITIZENS OF THE STATE OF NEVADA, DO HEREBY PETITION THE MEMBERS OF THE NEVADA STATE LEGISLATURE TO VOTE AGAINST SENATE BILL 170.

IT IS UNDERSTOOD THAT THE U.S. CONSTITUTION GIVES THE RIGHTS TO THE STATE BOARDS OF EDUCATION TO SUPERVISE AND CONTROL THE EDUCATIONAL SYSTEM OF EACH STATE, THEREFORE LEAVING THE STATE WITH THE RESPONSIBILITY. WE FEEL THAT THE STATE BOARD SHOULD BE LAUDED FOR ITS ACTIONS IN TAKING ON THE TASK OF PROVIDING EQUAL EDUCATIONAL OPPORTUNITIES FOR ITS MINORITIES. IT HAS BEEN THE FAILURE OF THE STATE TO ACCEPT ITS RESPONSIBILITY THAT NECESSITATED THE SUPREME COURT DECISION OF 1954.

SIGNATURE	ADDRESS
Lula I Knighten	1200 Doolittle ave
Audrey Hawkins	205 Frederick
Barbara Lowery	1112 Eleanor ave
LaVerne Powell	2720 Jarst Pl. N.L.V.
Geo. E. Eddie	1112 Eleanor ave
Earnest Douglas	2737 Englestad St.
Houston Hall	2105 Bulgar
Nellie Levi	1309 "D" St
Irene Breen	1309 "D" Street
Roy Nusco	1412 Jimmy
Mabel Stuart	1141 Hart Ave - L.V. Nev
Doris Rembert	312 Mike Circle
John Broadway	510 Van Buren 648-4491
Mamie Wilkins	2204 Carter ... 648-1342
Sylvester Rogers	801 Dugan ... N.L.V. Nev.
James Jones Jr	1404 Jimmy Ave. L.V.N.
Clara Ann Brooks	510 Van Buren L.V.N.
Bertha Banks	1624 "L" St. Las Vegas
Charlie [illegible] Banks	1624 "L" St. Las Vegas Nev
Daisy M. Dupree	1412 Jimmy ave

EXHIBIT F

PETITION TO DEFEAT SENATE BILL 170

WE, THE UNDERSIGNED CITIZENS OF THE STATE OF NEVADA, DO HEREBY PETITION THE MEMBERS OF THE NEVADA STATE LEGISLATURE TO VOTE AGAINST SENATE BILL 170.

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Amos Knight	1200 Doolittle ave
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Joseph C. [illegible]	735 Oakmont Ave. #206 L.V. Nev.
Willie McGlothen	501 [illegible] Cir. No. Las Vegas, Nev.
Beulah Williams	500 [illegible] " " "
Donald Kirkland	309 Elliott St., L.V., Nev.
Saranne Knight	2313 La Harve LV
[illegible]	1812 Ludwig LV
Bobbie [illegible]	1233 [illegible] Ave LV, Nev.
Grace McGlothen	2515 Royal St, N Las Vegas, Nev
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[illegible]	419 Desert Inn Road Las Vegas, Nev. 89109
Noel McFarlane	1201 Vaughn Ave LV NEV
Connie Riley	1001 [illegible]
Annie E. Bildred	1125 Lisbon #M

PETITION TO DEFEAT SENATE BILL 170

WE, THE UNDERSIGNED CITIZENS OF THE STATE OF NEVADA, DO HEREBY PETITION THE MEMBERS OF THE NEVADA STATE LEGISLATURE TO VOTE AGAINST SENATE BILL 170.

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SIGNATURE	ADDRESS
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Eva L. Simmons	709 [illegible] Ave, N.L.V.
Helen M Hall	1013 N. "F" St Las Vegas Nev
[illegible] Williams	801 Lillis NLV
Ruby Christensen	1213 Leonard Ave.
Barbara A Jasper	3170 Greendale St L.V.
[illegible] McCain	801 Lillis NLV, Nev.
[illegible]	892 [illegible] Ave LV N
[illegible] Harris Jr	516 Jefferson Ave L.V. NV
Brenda Harris	516 Jefferson ave LVN
Jacquelyn Harris	516 Jefferson Ave LV N.V.
[illegible] M. [illegible]	2712 Royal St N.L.
Carol Ann Meyers	3821 San Angelo L.V.
Judi [illegible]	4213 San Angelo LV
Laura Butler	4612 Edgeford Place
Alfreda [illegible]	4312 San Angelo
Marie Nelson	2728 [illegible] Pl. 41 L.V.

11

Dina Bartlett

PETITION TO DEFEAT SENATE BILL 170

160

WE, THE UNDERSIGNED CITIZENS OF THE STATE OF NEVADA, DO HEREBY PETITION THE MEMBERS OF THE NEVADA STATE LEGISLATURE TO VOTE AGAINST SENATE BILL 170.

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SIGNATURE	ADDRESS
Joe Anderson	3301 Civic Center Dr
Verna Junes	2228 Reno St
Donald Junes	2228 Reno St.
James A. Gatto	1740 Goldhill
Frank Matthews	203 Evans Ave
Betty L. Tatum	201 Goldhill Ave. L.V. Nev.
Lenwood Reid	617 Monica No L.V. Nev
Eddie & Phyllis Nutts	2309 Kelly
Mary McKinney	1204 Main
Ray Etta Anderson	1804 W. McDonald. No Las Vegas
Tony Jackson	3234 Judd
Eva Lee Stanton	1225 Goldave.
Beatrice Jackson	3234 Judd N.L.V.
Lucie Rogers	704 Monica N.L.V.

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SIGNATURE	ADDRESS
Elizabeth Daniel	
Brenda Mason	321 E Tonopah #205 NLV
Thomas Davis	809 D Cartier St.
Sarah Langston	2820 Fort Sumter Dr.
Willie Green	2169 Constance ave NLV. Nev.
Mary Miller	2715 [illegible] N.L.V.
Rufina Hawkins Rose	501 Freeman St
Earlene Green	2741 Clayton St NLV
Alex Owen	916 W. Lake Mead Bld. L.V.
Mamie Jackson	400 Jasper St - S. V. Nev
Jessie Jackson	" "
Isabel O'Neil	893 Blankenship Las Vegas, Nev
Minnie B. Harper	121 Frederick Ave NLV
Eddie Washington	1226 Washington Downing NLV.
Williams Jones	201 Frederick Ave. NLV
Virginia McDonald	2548 West St APT D Las Vegas
Rev. A.D. Addison	1304 Wyatt St Las Vegas
Georgia Kline	2027 Henderson Circle N.L.V.
Florence Jenson	1409 "J" St. Las Vegas Nev
Mr. Mrs Andrew Clemons	1824 W. McDonald N.L.V.
Rev G. Joseph Newman	2108 Carver St Las Vegas

Baptist

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SIGNATURE	ADDRESS
Mrs. Dorothy Williams	513 Freeman Ave, 89106
Mr. Johnny Williams Sr.	513 Freeman Ave, 89106
Carol J Williams	1312 Van Buren L.V. Nev 89106
Doris Williams	1615 Brooks N L V
Pearl Robinson	2133 Iris St. N L V
Mrs. Margaret Coleman	301 West Duke No. L.V.
[illegible]	3828 Gold Mist Ave NLV
Jimmie	Fuller
Mr & Mrs Wyatt Coleman	
James Anderson	5509 Maby St No Las Vegas
Paul Harris	1008 Wyatt St
Maggie Lee Bates	525 W. Rossmoyne N. L.V.
Henry C Reid	617 Veronica ave No L.V.
Thos. W. Wilson Sr.	416 Adams Ave. Las Vegas, Nev. 89106
Emma Wilson	313 Van Buren Ave. Las Vegas Nevada 89106
Effie L. Bruce	952 W Lake Mead Blvd LV Nev. 89106
Flora Johnson	832 W Blankenship
Veronetta Anderson	1804 W. McDonald ave

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SIGNATURE	ADDRESS
Mary J Randolph	1731 Hellen St
JoAnn Powe	2501 Tonopah Dr.
Gloria Cardenas	1116 W. Hassell Ave.
Jose' A. Cardenas	496 Calcattera Cir Apt G.
Boyle G McDaniel	1961 Leona
Shirley J. McDaniel	1961 Leona St.
[illegible]	709 Veronica ave
[illegible]	636 Veronica Ave
Margaret Bennett	2101 Washington Ave
[illegible] Bailey	1313 N. Hewitt St.
[illegible] Bailey	1313 N. Hewitt St
Gwendolyn L. Bennett	1911 Goldhill Ave.
Barbara [illegible]	309 Elliott St.
[illegible]	408 Rossmoyne [illegible]
William Hughs	2720 Royal Street
John [illegible]	408 Rocco Ave. N.L.V.
Lloyd [illegible]	313 Van Buren, Apt. D. L.V.
[illegible] Savage	2640 Royal St N.L.V.

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SIGNATURE	ADDRESS
Amos Knight	1700 Doolittle
Richard Minyard	3370 Athens #4
Laura Harris	1687 N. E St.
Theron H. Haynes	704 Veronica Ave. NLV
Ruby A. Garland	2433 Stats St. N.L.V.
Verda M. Davis	2128 Revere No. Las Vegas 89030
JAMES W TYNER	3371 ATHENS #4 LV. 89109
Jennie A. Crawford	2215 Matheson NLV 89030
Ray E. Wilks	3900 Silver Dollar L.V.
Harry Jones	1650 Riviera Dr Reno
Richard E. Muller	6205 RR1 CARSON CITY
Ellie Vitt	1029 N. VA St Reno
Dorcas C. Cutler	1206 No Nevada Carson City
Emil [illegible]	Box 385 Carson City
Grace Bordewich	214 N. Curry Carson City
Mildred B. Pressman	602 S. Plaza " "

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SIGNATURE	ADDRESS
[illegible]	111 [illegible]
[illegible]	1309 [illegible]
[illegible]	411 [illegible]
Peggy J. Parks	1309 Rye St.
Richard Parks	1309 Rye St.
Cassie Bridges	1108 [illegible]
Dorothy Scott	713 E Sahara # 117
Yolanda L Walker	2200 Matteson N.L.V.
Paulette Evans	4884 Monterey Ave
James Evans	4884 Monterey Ave
Jennifer Lee	1000 Monroe Bldg 5 #3
Anthony P. Williams	2109 W. Washington #2
Faye A Sykes	3301 Civic Center Dr #3E N.L.V.
Romeo Martin	508 N. 13th #D
Annie L Washington	1353 Lawry St N.L.V. Nev.

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SIGNATURE	ADDRESS
Mrs Carrie Green	1104 Jimmy Ave.
Mr. Warden Green	1104 Jimmy Ave.
Mrs. Lucille Hulbert	2121 Washington #3
James Walker	2016 Pembroke
Barbara Crear	1505 Tonopah Dr
Lucretia White	2037 12th Street
Mary McGhee	1367 Van Buren
Dr Vivian Lloyd	2037 12th Street

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SIGNATURE	ADDRESS
Deorod Williams	2721 Ahed st
[illegible]	2200 [illegible] N.L.V. Nev.
[illegible]	417 Rosamoyo N.L.V.
Woodrow Wilson	625 Lufereuk Ave. L.V.
[illegible]	2208 N. Matheson N. L.V. Nev.
[illegible]	419 D.I. Rd. Apt. 440 Las Vegas Nev.
Joyce James	5921 Alta Dr Las Vegas NV 89107
[illegible] E. Walk	2016 Denby Ave. LV 89106

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SIGNATURE	ADDRESS
Billy R. Chapman	671 Desert Ln # L.V., Nev
Carol A Chapman	671 Desert Ln # L.V. Nev
Chris Shiflos	705 Monroe St (5th) L.V. Nv.
Clyde Mitchell	700 Monroe ST (D) L.V. Nv
Ida Mae Lee	1707 Cameron Way L.V.
Roosevelt Foston	1928 W. Lake Mead Blvd #3 L.V.
Leon Hodgson	1500 N Mezquite L V Nev
Robert D Gillett	324 Lance pl. N L V
Marie W. Brown	1112 Jimmy Ave Las Vegas Nev
Minnie Carley	1114 Jimmy Ave Las Vegas Nev

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SIGNATURE	ADDRESS
Mrs Elmola Mayfield	1005 No. J. St
Mrs. Cheryl Harris	2801 Samantha Ct.
Elder M. L. Saunders	1215 Jefferson St.
Mr Franklin Edwards	1325 W Van Buren ave
Mr Leutila Benjamin	2717 Royal St
~~[illegible]~~	~~[illegible]~~
Patricia L. Bass	800 Monroe 7#
Robert Bass Jr.	800 Monroe 7#
Marjorie Fancher	1005 J St.
Alma Hodges	2140 Comstock Dr
Judy S. Bluefer	2805 Tulane Cir.
Lloyd D. Mayfield	1005 No J city

TO: SENATE EDUCATION COMMITTEE, SENATOR JOHN FOLEY, CHAIRMAN
FROM: FATHER BEN FRANZINELLI, MEMBER STATE BOARD OF EDUCATION
CONCERNING SENATE HEARING S.B.170

Funeral services today for Father Francis MacKay and Monsignor John Ryan prevent me from offering personal testimony to the Legislative Committee hearing on S.B. 170.

I take issue with the intent and content of S.B. 170. If S.B. 170 intends to clarify and delineate responsibility, the intent is obscure and content misleading. This suggested legislation is in intent and content prohibitive and vindictive. It not only curtails and limits the effectiveness, leadership, and service of the State Board of Education, but, by innuendo, slaps the hand of the SBE for its untimely prescriptive guideline for equal educational opportunities. I submit that when all the facts have been received and evaluated, S.B. 170 would be like throwing out the baby with the bath water, or cutting off your nose to spite your face.

Looking back to see how this piece of legislation came to be, I offer these reflections:

1) It appears that there exists current ambiguity in the meaning of the terms POLICY and CONTROLS, or POLICY-MAKER and CONTROLLER, also the terms GOVERN, RULE, ADMINISTER, as well as the terms INTEGRATION and DESEGREGATION. Much of the ambiguity is honestly caused by implied meanings which presume exercise of authority. Caution must be exercised in the use of either terms and, when used, clarification of intent must be precise.

...2

EXHIBIT G

2) Last June 8 and June 22, I received phone calls Februar from Mr. Ben Norris of the Federal Office of Education, Equal Educational Opportunities Division, who sampled my opinion concerning community attitudes toward desegration. The State of Nevada was extremely slow in complying with the federal directives concerning desegregation of the schools. Just a few months after I received the calls, Judge Bruce Thompson's secree substantiated the certain obstinancy to comply. There was no substantive state policy guideline. A local district had to go before the Federal Court fending for itself. The then comment was, "It is not the State's problem, it is Clark County's". It was indeed unfortunate that the now questionable state policy on desegregation was so very long overdue. If strong policy were in effect long before, a costly court action to which Clark County was party would have been averted and good reason to infer that the district would not have had to suffer the traumatic experience of forced compliance; unprepared. It delayed school beginning and intensified defiance of the law by emotionally distraught parents. The shame of it also is that our children were victimized by bad example.

3) It further appears, in my opinion, that the State Board of Education, trying to make up for lost time, discovered itself in a very unpopular position andstill does, because of the untimely action taken to make a policy for desegregation. It was like pouring salt on an obviously irritated ego-wound. A school district just a month previous was forced by federal court decree to comply with desegregation rules. The question as I see it was, we were not ready to accept the reality that desegregation is a positive means of achieving equal educational

opportunities in a multi-ethnic community. Whether we like it or not, the social inequities created by ghetto isolation and its by products make desegregation a way of life. Parents should be enlightened that there is no guarantee or legal right that their children will be enrolled, or will continue to be enrolled in a neighborhood school.

S.B. 170 isnot trying to delineate responsibility, but rather frustrates any intended attempt to assist districts to resolve human problems concerning acceptance of desegregation as a means to equal educational opportunities. In the hope of resolving present misunderstanding, I suggest a bridge considering the following:

1) That the general and specific intent of desegregation policies be clearly spelled out, buth by the State Boardand each district.

2) That the present policies approved October 5, 1972, be amended to affirm with greater clarity their purpose and intent.

3) That alternative ways and means of achieving equal educational opportunities for each child be researched and evaluated.

4) That the amended policies include alternative ways and means of achieving the objectives of equal educational opportunities.

We all can understand the axiom that the way to hell is paved with good intentions. Legislation is needed to resolve governmental inaction. I would suggest that the Senate Committee on Education accept suggested legislation B.D.R. 34-168 requested by the State Department of Education, which would amend and clarify authority and responsibility of the State Board pertaining to equal educational opportunities as expressed by the equal protection clause of the 14th amendment of the Constitution of the United States.

STATE OF NEVADA

Department of Education

CARSON CITY, NEVADA 89701

KENNETH H. HANSEN
SUPERINTENDENT OF
PUBLIC INSTRUCTION

February 21, 1973

MEMORANDUM

TO: The Honorable John Foley, Chairman
Senate Education Committee

FROM: Kenneth H. Hansen, Superintendent of Public Instruction

SUBJ: S.B. 170

As I have indicated to you, a previous commitment of long-standing will take me out of town at the time of your committee hearing regarding S.B. 170, so I would like to leave this brief statement with you.

A strong state board of education, elected by the people of the state and responsible to them, provides our best assurance that Nevada's interest in the education of its children and youth will be protected and advanced.

The primacy of the state's interest in and responsibility for education is made explicit in the Nevada Constitution. The legislature has wisely delegated much of this responsibility to local district boards, but education is ultimately a state function.

The state mandates education; the state invests heavily in schools; the state as a whole benefits from good education--and, conversely, suffers from poor education.

Thus, the state legislature appropriately sets major social policies and priorities which are to be achieved through education. The state department of education helps to translate these legislative policies and priorities into broad educational programs which reflect the needs of the state and its citizens. Local districts are charged with adopting these state programs to specific local needs.

We have developed in Nevada, as in most of the other states, a three-level division of power and responsibility in education:

(1) the legislature responsible for determining general educational policies;
(2) the state education agency responsible for translating these policies into broad educational programs;
(3) the local districts responsible for program operation within these policies.

EXHIBIT H

This three-level partnership of shared power and shared responsibility is in the finest tradition of American federalism. It provides maximum freedom consistent with essential accountability to the public. The strength of the state board and state department of education can be diminished, I submit, only to the detriment of all of the partners in the educational enterprise.

KHH:ms