

Senate
COMMITTEE ON HEALTH, WELFARE AND STATE INSTITUTIONS
MINUTES OF MEETING

FEBRUARY 16, 1973

The meeting was called to order at 9:00 a.m.

Senator Walker in the Chair.

PRESENT: Senator Swobe
Senator Herr
Senator Drakulich

Mr. Gene Clock, Divisional Director, Environmental
Health, Washoe Co. Health Dept.

Mr. John Sullivan, State Registrar, Div. of Vital
Statistics

Dr. Winibow, Washoe County Health Department

Dr. Howard Clodfelter, Washoe Co. Health Dept.

Mr. Larry Struve, Deputy District Attorney

Mr. Robert A. Grayson, Attorney at Law

Ann Ehrenburg, Las Vegas Review Journal

S.B. 191: (NRS 439.410) - Expands regulatory authority of
district health boards, and permits injunctive
relief for health violations in general. (BDR 40-239)

Mr. Larry Struve, Deputy District Attorney spoke as
first witness. He asked that the committee refer to
his letter of February 7, 1973, hereto attached as
Exhibit A.

In brief summary, Mr. Struve explained the problems
inherent in S.B. 191 as it is now written. He pointed
out the lack of clarity as far as which Health Boards,
local or State, had legal authority to establish rules
and regulations needed to cover the scope now imposed
by an ever increasing population. He sighted several
examples of problems which the local boards are now
dealing with, and asked that these boards be permitted
to adopt rules and regulations which would "protect
and promote the public health generally in the
geographical area subject to the jurisdiction of
their particular district."

Senator Walker inquired if this would present any
problems or contradictions with the Administrative
Procedure Act.

Mr. Struve replied that he had indirectly referred this
question to the Attorney General's office, but did not

request a formal opinion. He noted however, that the substance of S.B. 191 had been presented to the State Board of Health at a recent meeting and had received their tacit approval of this proposal and encouraged said Board to "press this matter in the current legislative session."

Senator Walker suggested that this bill be referred to the Legislative Council Bureau to make certain there was no conflict with the Administrative Procedure Act.

Mr. Struve added that if the Council decided addition of a provision would eliminate conflict, that this committee add the necessary provision rather than have this bill defeated.

Mr. Struve then turned the witness chair over to Mr. Bob Grayson, representing the Clark County District Health Department. Mr. Grayson explained that Clark County did not use the District Attorney's office, but had its' own counsel, and in lieu of this, suggested the following changes pertaining to injunctive relief.

- #1. Page 2, line 17: "the attorney general or any district attorney..."
He suggested that following the word "or" the phrase "or any legal counsel retained by a Health District" be added.

He explained that this would allow any in-house counsel to prosecute in areas where the District Attorney's office was not available.

- #2. Page 2, Line 20 & 21: "...or his deputy, or any member of the state board of health, or of any local board of health."

Mr. Grayson suggested inserting a period after the word "health.", and striking out "or of any local board of health." (Line 21.)

He explained that this would eliminate any danger of any one individual having the right to exercise undue power.

Senator Swobe moved for "Do Pass", and Senator Herr seconded the motion, pending approval of the Legislative Council Bureau.

S.B. 190 (NRS 440.280) Requires name of father of child born out of wedlock to appear on birth certificate and be used as surname of child under certain conditions. (BDR 40-240)

Mr. Struve spoke as witness. He asked that the committee refer to his letter of February 2, 1973, hereto attached as Exhibit B.

Mr. Struve explained that passage of this bill as written would not accomplish the Legislature's intent of removing stigma or notations of legitimacy from a child born out of wedlock. Further, that this intent is only defeated by current policy, since it is the mother's prerogative to choose whatever name she desires. Thus it is possible under present law for the illegitimate child to have one surname, the mother another surname, and the father a third.

He suggested that under no circumstances should an illegitimate child be given the surname of the father (re: subparagraph 4). He then asked the question, "what if there is no father?". He maintained that the names on birth certificates should be kept consistent, to alleviate the stigma of illegitimacy.

Senator Herr maintained that it should be the mother's prerogative, and noted that the word "shall" page 2, line 12, should be deleted, and changed to the word "may". Senator Drakulich was in agreement with Senator Herr.

Mr. Struve stated that he hoped it was realized that by permitting the mother to choose the surname of the child, situations would still occur which would continue to mark the child as illegitimate. His main concern was that this committee establish a consistent policy, and not so much as to the policy itself.

Senator Walker asked for further witness, at which time Mr. Sullivan took the chair and made three suggestions.

- #1. Page 2, line 11: suggested that the spelling of the word "birth" be corrected.
- #2. Page 2, line 12: that an addition following "provisions of this chapter." be made which reads "The original affidavits executed in pursuant to this subsection shall be forwarded to the State Registrar who shall maintain them in a permanent sealed file, to be opened only by order of a court of competent jurisdiction or upon demand of either affiant."
- #3. Page 2, line 21 & 22: "...as recommended by the United States Bureau of Census,..." be changed to read "...as recommended by the National Center of Health Statistics of the United States Public Health Service."

Mr. Gene Clock spoke was the next witness. He described the difficulty in filling requests for affidavits of illegitimate children, under NRS 441.70, and urged the committee to vote favorably on Mr. Struve and Mr. Sullivan's proposals.

Senator Swobe moved "Do Pass" providing the established rights of the mother were not endangered. Senator Drakulich seconded. The motion was so carried.

The meeting adjourned at 10:35 a.m.

Respectfully submitted,

Jo Ann N. Hughes, Secretary

APPROVED:


Lee E. Walker, Chairman

EXHIBIT A



Washoe County

Courthouse
Reno, Nevada 89505

Robert E. Rose
District Attorney

February 7, 1973

State Senator Spike Wilson
Nevada State Senate
Nevada State Legislative Building
Carson City, Nevada 89701

State Senator Coe Swobe
Nevada State Senate
Nevada State Legislative Building
Carson City, Nevada 89701

State Senator Cliff Young
Nevada State Senate
Nevada State Legislative Building
Carson City, Nevada 89701

Re: BDR 40-239 (Expanding Regulatory Authority of District
Boards of Health and Providing for Injunctive
Relief for Health Violations in General)

Dear Spike, Coe, and Cliff:

Howard Clodfelter of our local District Health Department has asked me to write you and set down in writing the reasons why our local Board of Health would appreciate your sponsoring and pushing for the above legislation (which was requested by Spike Wilson prior to the beginning of the legislative session.)

Basically, the rule making power of local boards of health in the State of Nevada are set forth in NRS 439.370 - 439.410. A careful reading of these statutes will quickly indicate that local boards of health have very restricted rule making powers. Essentially, they have the power to oversee sanitary conditions within the health district and the power to adopt rules and regulations for the control of contagious or infectious diseases. Though this power may seem relatively broad to you, our local Board of Health has become involved in ever expanding areas of public health, which have nothing to do with contagious or infectious diseases per se. Examples would include the licensing and regulation of tattoo parlors, the regulation and licensing of ambulance services, the control of water, air, and solid waste pollution, and the promulgation of comprehensive regulations concerning industrial hygiene.

State Senator Spike Wilson
State Senator Coe Swobe
State Senator Cliff Young
February 7, 1973
Page Two

By contrast, the rule making powers of the Nevada State Board of Health are much broader than those now conferred on local boards of health. The exact powers of the State Board of Health are set forth in NRS 439.200, and include the power to adopt reasonable rules and regulations "to protect and promote the public health generally." This broad grant of rule making power to the State Board of Health by the Legislature has enabled the State Board to involve itself in a wide range of preventive health measures, which have generally promoted and protected the public health of this State.

In spite of the commendable efforts by the State Board of Health, the rapid population growth in Washoe and Clark Counties has confronted local boards of health in these counties with the ever increasing need to adopt rules and regulations of a preventive nature to protect the public health in these localities before the State Board of Health or its staff has had an opportunity to consider and act upon the problem.

Unfortunately, because of the restrictive language concerning the rule making power of a local board of health contained in NRS 439.370 - 439.410, a serious legal question exists whether or not local boards of health can enact any rules or regulations not directly concerned with suppressing and controlling contagious or infectious diseases. This is particularly important when a local Board of Health desires to establish certain procedures by which a health permit or license can be obtained, including the right to seek a variance from the application of any applicable health regulations or to appeal any decision by any member of the staff of a local Health Department to the Board of Health. Obviously, the legality of these procedures will be directly dependent on the rule making power of the local Board of Health.

You will note in BDR 40-239 that no local rules or regulations concerning public health shall have the force and effect of law until they are approved by the State Board of Health. Our local Board of Health supports this policy, which should enable the Nevada State Board of Health to retain its supremacy in all non-administrative health matters. However, by permitting local boards of health to adopt rules and regulations that "protect and promote the public health generally in the geographical area subject to the jurisdiction of the health district," the Nevada Legislature will clearly indicate its intent that local boards of health should continue in their efforts to adopt and enforce regulations of a preventative nature, generally designed to promote the public health of their respective local health districts.

BDR 40-239 also clearly indicates the legislative intention that health authorities may seek injunctive relief to enforce health regulations, which is not clear under current language contained in Chapter 439 of the Nevada Revised Statutes.

State Senator Spike Wilson
State Senator Coe Swobe
State Senator Cliff Young
February 7, 1973
Page Three

At a recent State Board of Health meeting, the substance of BDR 40-239 was presented to the members of said Board. They indicated their tacit approval of this proposal of the Washoe County District Board of Health and encouraged said Board to press this matter in the current legislative session.

Accordingly, I hope the three of you will sponsor and push for this legislation, and after it is assigned to committee, representatives from our local Board of Health will be happy to testify in its behalf. Should any of you have any questions on the above, please advise immediately.

Very truly yours,

ROBERT E. ROSE
District Attorney

By 

LARRY D. STRUVE
Deputy District Attorney

LDS:ph

cc: Mr. Howard Clodfelter, District Health Department
William E. Winikow, M.D., District Health Officer
R. C. Sheretz, M.D., Chairman, District Board of Health
Chan Griswold, Chief Civil Deputy District Attorney

EXHIBIT B

February 2, 1973

State Senator Coe Swobe
Nevada State Senate
Nevada State Legislative Building
Carson City, Nevada 89701

State Senator Spike Wilson
Nevada State Senate
Nevada State Legislative Building
Carson City, Nevada 89701

Re: Proposed Birth Registration Statutes of
District Health Department

Dear Coe and Spike:

Gene Clock of our local Health Department was concerned that during his conference with you on February 1, 1973, he did not clearly explain the need for the introduction and passage of BDR 40-240, which would require the name of a father of a child born out of wedlock to appear on a birth certificate and to be used as the surname of the child under certain conditions. As I indicated to Coe by telephone on February 2, 1973, this statute is necessary to clarify the procedure now followed by many local hospitals concerning the completion of birth certificates of illegitimate children.

If you will look at NRS 440.280(4), you will note that the language of this statute indicates that the name of the father of an illegitimate child may be entered on the birth certificate IF HE GIVES HIS WRITTEN CONSENT TO BE NAMED AS THE FATHER or paternity has been determined by a court of competent jurisdiction. The problem to which BDR 40-240 is addressed is confined only to those circumstances where a father has given his written consent or otherwise executed an affidavit of paternity to be named as father of an illegitimate child on the birth certificate PRIOR TO THE TIME SAID CERTIFICATE IS FORWARDED TO THE STATE REGISTRAR FOR REGISTRATION. Obviously,

State Senator Coe Swobe
State Senator Spike Wilson
February 2, 1973
Page Two

if an affidavit of paternity is executed after an original certificate of birth of an illegitimate child is recorded in the State Registrar's Office, the provisions of NRS 440.325 would apply.

As I indicated to Coe, a number of bizarre possibilities exist under current Nevada laws concerning the surname that can be given to an illegitimate child. The Attorney General's Office has rendered an opinion that it is the policy of the State Health Division to give an illegitimate child the same surname as the maiden name of the mother, even though the mother may have a different legal name appearing on the birth certificate. In addition, the Attorney General has indicated that even after an affidavit of paternity or written consent is executed by the father of an illegitimate child, the mother is free to decide what surname to give the child. Accordingly, the legislative intent of removing all notations of legitimacy on a birth certificate is defeated by current policy, since it is possible under present law for the illegitimate child to have one surname, the mother another surname, and the father of such child a third surname.

On top of the above confusion, there is the added problem that local registrars will not accept written consents of fathers of illegitimate children after such children are born, even though the original certificate of birth has not yet been forwarded to the State Registrar. Thus, to remove the stigma of illegitimacy caused by a blank space where the father's name should be, the parents of illegitimate children are faced with a bureaucratic hassle of getting a new certificate of birth prepared, and oftentimes this hassle discourages them from making the effort.

Finally, Gene Clock indicated to me that you were concerned about the legal effect of putting an illegitimate father's name on a birth certificate or giving an illegitimate child the surname of his father. I believe you will find that there is a dearth of Nevada law on the issue of when legitimation of a child occurs and what the ramifications of legitimation are. It is my feeling that this is an area that should be thoroughly reviewed by the Legislative Council's Office for possible legislation. However, since current Nevada law permits the placement of the father's name of an illegitimate child on the birth certificate, BDR 40-240 adds nothing to the confusion caused by this problem that is not already present. However, it does clarify the procedure to be followed in these circumstances

State Senator Coe Swobe
State Senator Spike Wilson
February 2, 1973
Page Three

which at least would eliminate many procedural problems now being experienced at the local level in birth registration.

In view of the above, I hope you will proceed to introduce BDR 40-240 and assign it to committee for further hearings. I will be happy to testify at such hearings and elaborate on what I have discussed above. Should you have any questions please do not hesitate to so advise.

Very truly yours,

ROBERT E. ROSE
District Attorney

By _____
LARRY D. STRUVE
Deputy District Attorney

LDS/dh
cc: Gene Clock
Dr. William E. Winikow