

SENATE JUDICIARY COMMITTEE

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MINUTES OF MEETING HELD

2nd DAY OF MARCH, 1973

The meeting was called to order at 9:45 a.m. Senator Close in the Chair.

PRESENT: Senator Foley
Senator Bryan
Senator Dodge
Senator Hecht
Senator Swobe
Senator Wilson
Senator Bill Raggio
Mr. Jim Lambert, Nevada Highway Patrol
Mr. Kermit Waters, Assistant City Attorney,
Las Vegas
Mr. Larry Struve, Washoe County District
Attorney's Office
Mr. Keith Henrikson, Peace Officers &
Fire Fighters
Mr. John Meder, Carson City County Commissioners

S.B. 310 - Applies forgery and counterfeiting provisions to travelers checks and money orders.

Chairman Close asked Senator Raggio if travelers checks and money orders are not presently included in the definitions for forgery and counterfeiting. Senator Raggio replied that it is subject to interpretation. Rather than leaving it to argument, it should be made clear that these types of instruments, which are becoming more increasingly used, should be included. This is probably one of the most abused areas of forgery and counterfeiting.

Senator Bryan moved to "DO PASS." Motion was seconded by Senator Foley. Motion carried.

A.B. 68 - Broadens authority of peace officers to issue misdemeanor citations in lieu of making arrest.

Senator Raggio was concerned over the procedure followed in this bill for issuance of formal charges since it would eliminate the right of review by the prosecutor before the charges are initiated. Presently, before the arresting officer files charges the prosecutor reviews the evidence and on occasion finds that the charges are not necessarily proper.

There has been a measure passed in the Senate which allows cities to adopt all state misdemeanors by ordinance. This would enlarge the areas in which this type of citation can be issued.

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From the offender standpoint it might be more palatable, and a lot easier for the police officer to handle, but wondered whether the element of review and control is of sufficient import to negate the other advantages.

Senator Bryan expressed his concern that police officers tend to go a little slower when making arrests which require physical detention and this bill would allow them more indiscriminate issuance of citations.

Senator Raggio replied that it is probably a true analysis. The more detail involved the less the officer would be inclined to issue a formal charge. Yet it might work the other way since we could presently be preventing charges that should be filed by requiring all the detail involved.

Kermit Waters testified that he felt this is a good bill which the city could live with. Senator Dodge asked him what the present review procedures are. Mr. Waters replied that if a police officer issues a citation, it is not finally reviewed until it is time to prosecute and the accused pleads not guilty.

For nontraffic offenses, in most cases, the accused is arrested, where in a citizens complaint they issue a summons for him to appear and plead.

S.B. 159 - Creates the crime of careless driving.

Mr. Lambert testified that he felt the committee is hung up on this bill because they are not clear that any violation of a traffic ordinance is a criminal misdemeanor. Senator Bryan again stated his objection to delegating the authority to make a simple act of negligence a criminal offense.

After further discussion, Senator Bryan asked the committee if it had appetite to propose a resolution to study the feasibility of decriminalizing simple traffic violations, particularly in light of a a supreme court decision which required appointment of counsel for misdemeanors where a sentence of imprisonment is likely. The committee discussed this proposal and felt that removing the lesser traffic violations from criminal prosecutions, unless the accused pleads not guilty and is entitled to a trial, was in order. A resolution to this effect will be requested.

Senator Bryan moved to indefinitely postpone action on this bill. Motion seconded by Senator Hecht.

Yeas - 5.
Nays - Close and Dodge. 2.
Motion carried.

S.B. 203 - Expands definition of public nuisances and enlarges powers of district attorney and board of county commissioners to abate them.

Mr. Larry Struve argued that this bill was necessary because there is presently no authority for the District Attorney to act on his own in abating various types of nuisances now existing in the county without going through a hearing by the county commissioners.

There was much discussion concerning the effect of this bill. Mr. Struve submitted two proposals for amendments which would clarify the bill further and possibly remove some of the problems. (Proposals are attached hereto.) The second proposal seemed more acceptable to the committee. It provided a new section which stated that the District Attorney could file civil action to abate a continuing violation of an ordinance designated or constituting a public nuisance.

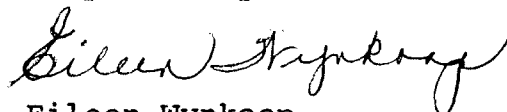
Mr. Keith Henrikson then suggested an amendment which would simplify the bill even further by adding to the existing language on Page 2 Line 30, that the commissioners may fix a date for hearing or direct the District Attorney to proceed without a hearing.

Mr. John Meder objected to the bill as it is presently drafted because the commissioners in smaller counties are opposed to the District Attorney abating nuisances on his own without going through the commissioners.

Senator Wilson will work with Mr. Struve to draft an amendment considering all the testimony obtained thus far.

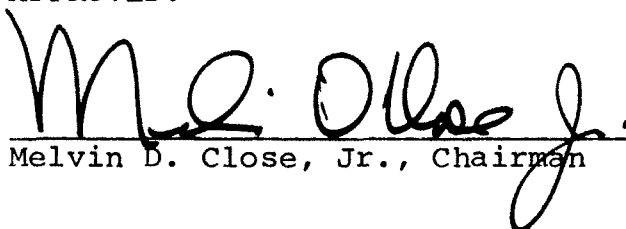
The meeting was adjourned at 10:55 a.m.

Respectfully submitted,



Eileen Wynkoop
Secretary

APPROVED:



Melvin D. Close, Jr., Chairman



Washoe County

Courthouse
Reno, Nevada 89505

Robert E. Rose
District Attorney

March 1, 1973

Nevada State Senate Judiciary Committee
Nevada State Legislative Building
Carson City, Nevada

Re: S.B. 203

Gentlemen:


At the request of the secretary of your Committee, I have been asked to discuss the above bill pending before your Committee, for the purpose of reviewing possible alternatives to the language now appearing in this bill to meet some of the objections previously voiced at the recent public hearing on this legislation. In order to provide your committee with some ideas in this regard, I am attaching some alternate proposals to the language now contained in some of the objectionable provisions of S.B. 203. You will note that these alternatives suggest various approaches to the problem, so your committee can look at the purposes to be accomplished by S.B. 203 from different perspectives. I have discussed these alternatives with the staff in this Office, and we feel any of the enclosed alternatives would accomplish our purpose of clarifying the abatement powers of a district attorney in the area of nuisances.

I trust if you have any questions they will be discussed during the hearing on this bill.

Very truly yours,

ROBERT E. ROSE
District Attorney

By


LARRY D. STRUVE
Deputy District Attorney

LDS:ph

Encls.

In view of your Committee's reluctance to enlarge the scope of public nuisances subject to misdemeanor penalties, this first proposal would narrowly restrict the expansion of the definition of public nuisances in NRS 202.450 to include only violations of local ordinances or regulations having the effect of law and would exclude any reference to the types of nuisances referred to in NRS 40.140. In addition, the elements necessary to establish the commission of a crime pursuant to NRS 202.470 is clarified, so that a district attorney can bring an action to abate a public nuisance without being forced to file a criminal action concurrently therewith. Finally, the amendment to NRS 202.480 separates the civil abatement procedures from the criminal abatement procedures, so that a district attorney can abate a public nuisance even though a crime may not have been committed.

Accordingly, the following changes are suggested in the language now appearing in S.B. 203:

1. Section 1 of this bill should be changed, so that the new proposed Section 4 (on Page 2, lines 4-12) would read as follows:

"4. Any violation of any ordinance of any local governmental entity, or rule or regulation or uniform code having the effect of law of any such entity, the violation of which is designated as a nuisance in such ordinance, rule, regulation, or uniform code, or, in the absence of such designation, the violation of which would constitute a public nuisance at common law,
shall be a public nuisance."

2. A new section should be added to S.B. 203, which I have entitled Section 1A, which would read as follows:

"Section 1A.

202.470. 1. It is unlawful for any person:

"1) To permit or to maintain a public nuisance after receiving notice to abate same within a reasonable period of time from any public official or entity charged by law with the responsibility of removing or abating public nuisances; or

2) To willfully omit or refuse to perform any legal duty relating to the removal of a public nuisance upon receiving notice to abate same within a reasonable period of time from any public official or entity charged by law with the responsibility of removing or abating such nuisances; or

3) To let, or permit to be used, any building, premises, or both, or portions thereof, knowing that it is intended to be, or is being used, for committing or maintaining any public nuisance; or 4) To knowingly and willfully commit any act which establishes, creates, or forms or directly leads to the establishment, creation, or formation of a public nuisance." 191

3. Section 2 of S.B. 203 should be amended as follows:

"Section 2. NRS 202.480 is hereby amended by deleting the language now appearing therein and adding the following:

202.480. Penalties and abatement of public nuisances. 1. Any person who knowingly and willfully violates the provisions of NRS 202.470 shall be guilty of a misdemeanor.

2. Any court or magistrate before whom a criminal proceeding is pending for violation of NRS 202.470 shall, in addition to any criminal penalties which it may impose for such violation, order such nuisance abated, and all property unlawfully used and the maintenance thereof may be destroyed by the sheriff at the cost of the defendant upon order of said court or magistrate.

3. Notwithstanding the provisions of subsections 1 and 2 above, the district attorney of any county in this State may file a civil action in any court of competent jurisdiction to enjoin, abate or restrain the creation, maintenance, or commission of any act leading to the creation or existence of a public nuisance, which proceeding shall be governed by the Nevada Rules of Civil Procedure relating to injunctive actions."

4. Section 3 of S.B. 203 generally appears satisfactory in its present form. However, I have been informed that your committee wishes to remove the five day notice requirement appearing on line 18 of page 3. Accordingly, subsection 5 of proposed NRS 244.360 would read as follows:

"5. As an alternative to the procedure set forth in subsections 1, 2, 3 and 4 of this section, the board of county commissioners, upon receipt from the county clerk of notice of the filing of a complaint alleging the existence of a nuisance, may direct the district attorney to notify the person responsible for such nuisance to abate it, and if such notice is not obeyed within a reasonable time after service thereof, to bring legal

proceedings for abatement of the nuisance,
and for recovery of compensatory^{and}/exemplary
damages and costs of suit. Such proceedings
shall be under the control of the board of
county commissioners in the same manner as
other suits to which the county is a party."

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5. Section 4. of S.B. 203 appears satisfactory in its
proposed form.

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SECOND PROPOSAL

This proposal has been drafted in view of your Committee's reluctance to expand the definition of public nuisances in Chapter 202.450 of the Nevada Statutes, which amounts to an expansion of the criminal law in this area. Accordingly, this alternative involves an amendment to NRS 244.360, to incorporate the civil abatement powers of a district attorney that are found in NRS 202.480 in the First Proposal. Accordingly, under this proposal the proposed revisions to S.B. 203 are as follows:

1. Section 1. in its present form would be deleted.
2. Section 2. in its present form would be deleted.
3. Section 3. would become Section 1. of S.B. 203 and would read as follows:

"Section 1. NRS 244.360 is hereby amended to read as follows:

1. [Same as appears on lines 26-38 of Page 2 of S.B. 203 in its present form.]
2. [Same as present form.]
3. [Same as present form.]
4. [Same as present form.]
5. As an alternative to the procedures set forth in subsections 1, 2, 3 and 4 of this section, the board of county commissioners, upon receipt from the county clerk of notice of the filing of a complaint alleging the existence of a nuisance, may direct the district attorney to notify the person responsible for such nuisance to abate it, and if such notice is not abated within a reasonable time after service thereof, to bring legal proceedings for abatement of the nuisance, and for recovery of compensatory and exemplary damages and costs of suit. Such proceedings shall be under the control of the board of county commissioners in the same manner as other suits to which the county is a party.
6. [New] Notwithstanding the abatement procedures of the preceding subsections, the district attorney may file a civil action in any court of competent jurisdiction to enjoin, abate or restrain the continued violation of any ordinance of any local governmental entity, or rule or regulation or uniform code having the effect of law of any

such entity, the violation of which is designated as a nuisance in such ordinance, rule, regulation, or uniform code, or, in the absence of such designation, the violation of which would constitute a public nuisance at common law. Such civil actions shall be instituted by the filing of a complaint in the name of the county where such violations or public nuisances exist and shall be governed by the Nevada Rules of Civil Procedure relating to injunctive actions.

4. Section 4. now appearing in S.B. 203 should probably be amended as follows:

"Section 4. NRS 252.110 is hereby amended to read as follows:

252.110 The district attorney shall:

- 1. [Same]
- 2. [Same]
- 3. [Same]
- 4. [Same]

5. Bring all actions on behalf of the county or state, or both, for abatement of nuisances pursuant to NRS 202.480 or 244.360 at the request of any public official or entity charged with the responsibility by law of abating nuisances, including actions for injunction, as well as for recovery of compensatory and exemplary damages and costs of suit, and, in the discretion of the district attorney, to bring any such action for the abatement of public nuisances at common law.

- 6. [Same]."