

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING HELD

21st DAY OF MARCH, 1973

The meeting was called to order at 9:00 a.m. Senator Close in the Chair.

PRESENT: Senator Foley
 Senator Dodge
 Senator Wilson
 Senator Hecht

Judge Frank Gregory, 1st Judicial District
 Harvey Dickerson, former Attorney General
 John Koontz, former Secretary of State
 William E. Isaeff, Deputy Attorney General
 Phil Hannafin, Chairman, Gaming Control Board
 Shannon Bybee, Member, Gaming Control Board
 Les Kofed, Manager, Gaming Association of Nevada

EXCUSED: Senator Swobe
 Senator Bryan

Judge Gregory appeared before the committee to testify on the legislation proposed by Judge Waters in the meeting of March 15th (no bill number has been assigned as yet). Judge Gregory stated that he is in agreement with the idea of splitting the 1st Judicial District into two separate districts. Since he only sits in three counties, and Judge Waters sits in two counties, it is costly and risky to have to campaign and run in all five counties. The people in the two counties where Judge Waters sits do not know Judge Gregory and vice versa, yet those people are electing both judges.

The division by statute would lose some flexibility in the interchange of cases between the judges, but that loss would be minimal. This change would also limit the choice of judges available to run in the Churchill County area, but this problem must be faced now in a multi-county district.

A.B. 475 - Eliminates third judicial district.

Judge Gregory asked to testify on this bill even though it has not yet been acted on by the Assembly. He asked the committee to study this bill, if it comes before them, with great concern. Presently, they need all the judges available since they can't get judges to sit for other judges on vacations and sick leave. If the committee could see a way to keep that district, he urged them to do so.

S.B. 379 - Entitles elected state officers to be paid for annual leave on termination of service.

Mr. Harvey Dickerson read a statement he prepared concerning the constitutionality of Chapter 106 which was passed in the 1960 Legislative session. That act was discriminatory in the highest sense in that it took from the elected state officer, a member of the unclassified service under Chapter 284 of NRS, his right to be paid for accumulated annual leave upon separation from the public service, but left intact that section of law which grants such payment to the thousands of public employees in the unclassified service comprising seven elective officers.

Mr. Dickerson stated in his statement to the committee that he was concerned that Section 4 of the bill is somewhat ambiguous in that it makes no provision for the payment of accumulated annual leave for those elected state officers who were caught in the squeeze between the enactment of Chapter 106 of the 1960 statutes and the present time. He suggested amending section 4 to read: "4) All elected state officers, including those whose services have been terminated subsequent to July 1, 1960, shall be paid for accumulated annual leave as of the date of the termination of their service."

Mr. Dickerson's prepared statement is attached to these minutes.

Mr. Koontz commented that the maximum leave which could be accumulated is 30 days since anything accumulated in excess of that amount would be lost. This bill would only apply to accumulated leave at the time of termination and some officers would have used a portion of that leave before terminating. Mr. Koontz had lost many hours of leave time because the duties of his office were great and his staff small. It was impossible for him to take any great amount of time off from his duties.

Both Mr. Dickerson and Mr. Koontz felt that the attorney general's opinion relating to the accrued leave time being distributed to the former Surveyor General's heirs upon his death was inappropriate. Annual leave time should be something that is paid to an employee personally for services rendered.

Mr. Isaefff testified that the Attorney General's office has no objection to this bill as long as funds are provided out of the general fund or by special appropriation to pay for this annual leave. It is his opinion that the officers involved would have to come forward and make claim in order to receive these monies. He also briefly stated that if this applied to deceased officers, it might be a problem.

Senator Dodge moved to amend and re-refer to the Committee on Finance with a recommendation "DO PASS." Senator Hecht seconded the motion. Motion carried.

Yeas - 4

Nays - None

Absent - Bryan, Dodge, Swobe (3)

S.B. 385 -Increases authority of Nevada Gaming
Commission to revoke gaming employees'
work permits.

Mr. Phil Hannafin and Mr. Shannon Bybee testified that under the present law, there is no revocation power on work permits short of cheating. The supreme court of this state has pointed out that this was an inadequacy in the statutes that the Legislature should cure.

Mr. Bybee stated that this bill would give the industry additional grounds necessary to effectively control work cards. Mr. Hannafin continued, saying that a person could be convicted of swindling, bunko steering, bogus cards, bad dice, etc., and the Gaming Control Board would not have the authority to revoke his work permit. There are many other kinds of behavior which could reflect poorly on the industry.

Senator Dodge asked Mr. Hannafin why this matter had not been brought to light previously. Mr. Hannafin replied that the work permit section has very seldom been enforced by state authorities because they felt the whole scheme of work permits was tenuous and perhaps had constitutional problems, and it reflected on a lack of convictions. They deliberately took one issue to the supreme court level to see where they would stand under this law.

Senator Close asked Mr. Hannafin if this law would apply to all gaming employees, including food service personnel. Mr. Hannafin replied that it is limited to those gaming employees defined in NRS 463.335, which specifically excludes bartenders, cocktail waitresses or other persons engaged in preparing or serving food or beverages.

Chairman Close suggested amending the bill as follows: Subsection 2 d) on Page 2 "conceal or refuse to disclose any material facts in investigation of gaming by the Board." Page 1, Line 20: Add the word "knowingly" before possessed. Page 1, Line 23: Replace the word crime with "public offense" and delete traffic violations. Mr. Hannafin concurred in all three amendments.

Mr. Hannafin and Mr. Bybee assured the committee that the passage of this bill would not jeopardize "due process" provisions of the constitution. It would incorporate into the work card revocation process the procedures which are presently included in the revocation of a gaming license: That is, the Board processes a complaint as the prosecuting body, the Commission makes a determination of whether or not to revoke, and the determination can be reviewed by the district court and appealed to the Supreme Court. If the court did not feel that the revocation reflected upon the gaming industry, the court would not sustain the revocation.

Mr. Les Kofed testified that the Nevada Gaming Association is in favor and urges passage of this bill.

Senator Wilson moved to amend and "DO PASS." Motion seconded by Senator Hecht.

Yeas - 4
Nays - None
Absent - Bryan, Dodge, Swobe (3)

Motion carried.

S.B. 37 -- ~~Makes technical correction in grand jury selection law.~~

Chairman Close asked to entertain a motion on this bill since the grand jury selection system is being considered under S.B. 244.

Senator Hecht moved to indefinitely postpone action on the bill. Motion seconded by Senator Foley.

Yeas - 4
Nays - None
Absent - Bryan, Dodge, Swobe (3)

Motion carried.

S.B. 57 - Eliminates need for custodians of public records to use presented copies in preparing certifications.

Chairman Close informed the committee that he had contacted the County Recorder of Washoe County who stated that he was in favor of this legislation. He stated that the recorder presently has the power to determine the cost for copying, and if enacted, they would charge \$1.00 for the first copy and \$.50 for each additional copy.

Senator Hecht moved "DO PASS." Motion seconded by Senator Wilson.

Yeas - 4
Nays - None
Absent - Bryan, Dodge, Swobe (3)

Motion carried.

S.B. 58 - Eliminates requirement for county recorders to index name of trustee in deed of trust or reconveyance.

Chairman Close informed the committee that the County Recorder's office presently handles the indexing in this manner. The county recorders throughout the state are in favor of this legislation.

Senator Hecht moved "DO PASS." Motion seconded by Senator Wilson.

Yeas - 4
Nays - None
Absent - Bryan, Dodge, Swobe (3)

Motion carried.

S.B. 249 - Provides for interlocutory license suspensions under Nevada Administrative Procedure Act.

Chairman Close read the amendment to this bill which was prepared by Senator Bryan.

Senator Wilson moved to amend and "DO PASS." Motion seconded by Senator Hecht.

Yeas - 4
Nays - None
Absent - Bryan, Dodge, Swobe (3)

Motion carried.

S.B. 244 - Provides for random selection of grand jurors by county clerk or jury commissioner.

The committee again reviewed the progress made on the grand jury selection system. Chairman Close felt that a distinction should be made between the venire of 100 selected in the first random selection and the number of names the judges would have to select the final jury of 17 from. The committee agreed that the random selection process should continue until there were 50 names of people who were willing to serve from which the judges could nominate their final selection.

In the smaller counties, Senator Dodge suggested that there would be less likelihood of people who could not serve for one reason or another because most grand juries convene in the evening after working hours. He felt that a judge might have people he feels would be qualified to serve out of the original venire of 50 names after several were disqualified, yet would have to draw another increment of 50. The committee agreed that in the smaller counties the final selection should be made from not less than 36 names.

The committee agreed to leave the pay for grand jurors at \$15.00

per day.

The committee will ask the Counsel Bureau to research the charge given to the federal grand jury by the judge and incorporate that same type of language into the statute. This charge would provide the grand jury with guidelines and limit their comments, but would not limit the areas they could review.

S.B. 334 - Makes shoplifters or parents or guardians of minor shoplifters civilly liable to merchants.

The committee considered the amendments suggested on this bill. Section 2 line 4 would be changed to refer to "retail value" rather than "market value." Line 5 would limit the amount of liability to "not less than \$100, nor more than \$250." The language of "detaining a person for purposes of recovery" used in Section 4 should also be included in Section 3.

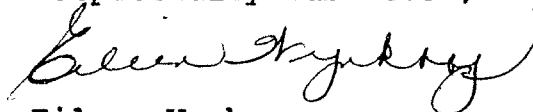
Senator Wilson moved to Amend and "DO PASS." Motion seconded by Senator Foley.

Yeas - 5
Nays - None
Absent - Bryan, Swobe (2)

Motion carried.

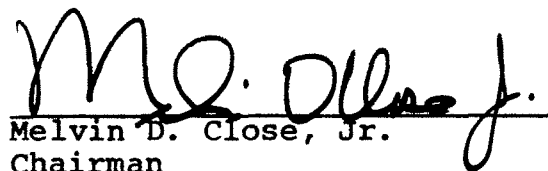
The meeting was adjourned at 10:30 a.m.

Respectfully submitted,



Eileen Wynkoop
Secretary

APPROVED:



Melvin D. Close, Jr.
Chairman

1 GENTLEMEN: AS A FORMER STATE ELECTED OFFICER AND AS A FORMER
2 MEMBER OF THE UNCLASSIFIED SERVICE OF THIS STATE, I WOULD ~~287~~
3 LIKE TO DISCUSS S. B. 379.

4 TO BEGIN WITH THE STATE PERSONNEL ACT, AS ORIGINALLY
5 INTRODUCED IN 1953 CONTAINED THE PROVISION FOR PAYMENT FOR
6 ACCUMULATED ANNUAL LEAVE FOR ALL PERSONS IN THE CLASSIFIED
7 AND UNCLASSIFIED SERVICE. THIS ACT, NOW KNOWN AS CHAPTER
8 284 OF THE NEVADA REVISED STATUTES DESIGNATES ELECTED STATE
9 OFFICERS AS MEMBERS OF THE UNCLASSIFIED SERVICE. (NRS 284.140.1)

10 UNDER CHAPTER 284 JUDGES AND LEGISLATIVE OFFICERS WERE
11 EXEMPTED FROM THE PROVISIONS OF THE PERSONNEL ACT FOR THE
12 REASON THAT THESE SEGMENTS OF STATE GOVERNMENT HAVE THEIR
13 OWN RETIREMENT PLANS.

14 FROM THE INCEPTION OF THE ACT IN 1953 TO THE ENACTMENT
15 OF CHAPTER 106 OF THE 1960 STATUTES OF NEVADA, ALL ELECTED
16 STATE OFFICERS RECEIVED PAYMENT FOR ACCUMULATED ANNUAL LEAVE
17 UPON TERMINATION OF SERVICE.

18 THEN POLITICS ENTERED INTO THE PICTURE. A DEMOCRATIC
19 LEGISLATOR PIQUED AT THE PAYMENT OF ACCUMULATED ANNUAL LEAVE
20 TO A REPUBLICAN GOVERNOR, INTRODUCED THE BILL WHICH PASSED AS
21 CHAPTER 106 OF THE 1960 SESSION.

22 THERE HAS NEVER BEEN ANY DOUBT IN THE MINDS OF SUCCEEDING
23 ATTORNEYS GENERAL THAT THE ACT WAS UNCONSTITUTIONAL. IT WAS
24 DISCRIMINATORY IN THE HIGHEST SENSE IN THAT IT TOOK FROM THE
25 ELECTED STATE OFFICER, A MEMBER OF THE UNCLASSIFIED SERVICE
26 UNDER THE ACT, HIS RIGHT TO BE PAID FOR ACCUMULATED ANNUAL
27 LEAVE UPON SEPARATION FROM THE PUBLIC SERVICE, BUT LEFT INTACT
28 THAT SECTION OF THE LAW WHICH GRANTS SUCH PAYMENT TO THE
29 THOUSANDS OF PUBLIC EMPLOYEES IN THE UNCLASSIFIED SERVICE OF
30 THE STATE: UNIFORM OPERATION OF THE LAW, AS WELL AS EQUAL
31 PROTECTION OF THE LAW, WERE DENIED TO A SEGMENT OF THE
32 UNCLASSIFIED SERVICE COMPRISING SEVEN ELECTIVE OFFICES.

Attorney General

1 UNIFORMITY OF OPERATION AND EQUAL PROTECTION MEAN,
2 ACCORDING TO PEOPLE V. ENGLAND, 35 P 2d 565, THAT EQUAL RIGHTS 288
3 SHALL BE SECURED TO HIM IN THE SAME MANNER AND TO THE SAME
4 EXTENT AS SAME OR SIMILAR RIGHTS ARE ACCORDED TO ALL OTHER
5 PERSONS UNDER SIMILAR CIRCUMSTANCES.

6 IN ORDER THAT A STATUTE SHALL BE VALID WHICH CONTAINS
7 A CLASSIFICATION OF PERSONS OR THINGS FOR THE PURPOSE OF
8 LEGISLATION, SUCH CLASSIFICATION MUST BE A REASONABLE ONE,
9 AND MUST BE BASED ON REAL DISTINCTIONS IN THE SUBJECT MATTER
10 WHICH BEAR SOME RELATION TO THE OBJECT SOUGHT TO BE ACCOM-
11 PLISHED BY THE STATUTE. CITING FROM THE CASE OF ATCHISON,
12 TOPEKA AND SANTA FE RAILWAY CO. V. MATHEWS, THE SUPREME
13 COURT OF THE UNITED STATES HAD THIS TO SAY: "THE EQUAL
14 PROTECTION GUARANTEED BY THE CONSTITUTION FORBIDS THE LEGIS-
15 LATURE TO SELECT A PERSON, NATURAL OR ARTIFICIAL, AND IMPOSE
16 UPON HIM BURDENS AND LIABILITIES WHICH ARE NOT CAST UPON
17 OTHERS SIMILARLY SITUATED. NEITHER CAN IT MAKE A CLASSIFI-
18 CATION OF INDIVIDUALS OR CORPORATIONS WHICH IS PURELY ARBI-
19 TRARY, OR IMPOSE UPON SUCH CLASS SPECIAL BURDENS AND
20 LIABILITIES. (SEE PEOPLE V. GILDAY, 93 P. 2d 660).

21 THE SUPREME COURT OF CALIFORNIA IN RE BLOIS, 176 P. 449,
22 STATES: "THIS LATTER SECTION OF THE CONSTITUTION (ART. XIV,
23 SEC. 1. PRIVILEGES AND IMMUNITIES) HAS BEEN GIVEN DIRECT
24 APPLICATION TO STATUTRS AND ORDINANCES WHICH HAVE BEEN ENACTED
25 AND SOUGHT TO BE ENFORCED EITHER BY THE STATE OR BY POLITICAL
26 SUBDIVISIONS THEREOF, AND IN WHICH ATTEMPTS HAVE BEEN MADE
27 TO DISCRIMINATE IN FAVOR OF OR AGAINST PARTICULAR PERSONS OR
28 CLASSES OF PERSONS AS TO WHOM NO REASONABLE BASIS OF DISCRIM-
29 INATION CAN BE SEEN TO EXIST, AND IN ALL SUCH CASES THE
30 COURTS OF THIS STATE HAVE UNIFORMLY HELD SUCH ATTEMPTED 289
31 LEGISLATION TO BE VOID.
32

1 I AM HAPPY THAT THIS BILL HAS BEEN INTRODUCED. IF PASSED
2 IT WILL CURE A DEFINITE INJUSTICE. I HAVE READ THE BILL AND
3 APPROVE OF IT. HOWEVER I AM CONCERNED THAT SECTION 4 OF THE
4 BILL AS AMENDED IS SOMEWHAT AMBIGUOUS IN THAT IT MAKES NO
5 PROVISION FOR THE PAYMENT OF ACCUMULATED ANNUAL LEAVE FOR
6 THOSE ELECTED STATE OFFICERS WHO WERE CAUGHT IN THE SQUEEZE
7 BETWEEN THE ENACTMENT OF CHAPTER 106 OF THE 1960 STATUTES,
8 AND THE PRESENT TIME.

9 THE SERVICE OF SIX MEN WHO ARE STILL LIVING AND WHOSE
10 SERVICES WERE TERMINATED DURING THIS PERIOD WERE NEVER PAID
11 THEIR ACCUMULATED ANNUAL LEAVE, WITH ONE EXCEPTION. THOSE
12 MEN ARE GOVERNORS SAWYER AND LAXALT, STATE CONTROLLER KEITH
13 LEE, LIEUTENANT GOVERNOR ED. FIKE, ATTORNEY GENERAL HARVEY
14 DICKERSON AND SECRETARY OF STATE JOHN KOONTZ. THE STATE, ON
15 THE TERMINATION OF JOHN KOONTZ' LONG AND VALUED SERVICE PAID
16 HIM HIS ACCUMULATED ANNUAL LEAVE. UPON THE DEATH OF MERVIN
17 GALLAGHER THE NOW SERVING ATTORNEY GENERAL ADVISED THAT THE
18 PAYMENT OF ACCUMULATED ANNUAL LEAVE TO THE FAMILY OF THE
19 SURVEYOR GENERAL WAS IN THE NATURE OF A DEATH BENEFIT AND DID
20 NOT VIOLATE THE LAW.

21 I MIGHT MENTION, MR. CHAIRMAN, THAT THE GOVERNOR, THE
22 ATTORNEY GENERAL, AND THE SECRETARY OF STATE HAVE DUTIES WHICH
23 MAKE IT IMPOSSIBLE FOR THEM TO BE ABSENT ON LEAVE, OR OTHER-
24 WISE, FROM THE DAILY TASKS WHICH THE LAW IMPOSES ON THEM,
25 FOR MORE THAN A FEW SHORT DAYS AT A TIME. THAT THIS IS TRUE
26 SHOULD NOT DEPRIVE THEM OF BENEFITS AFFORDED OTHERS IN THE
27 SAME BRANCH OF SERVICE UNDER THE PERSONNEL ACT.

28 I MIGHT SUGGEST, MR. CHAIRMAN, THAT THE PRESENT BILL
29 MIGHT BE AMENDED IN SECTION 4, BY THE FOLLOWING LANGUAGE,
30 OR SUCH SIMILAR LANGUAGE AS THIS COMMITTEE MIGHT DECIDE: 300

31 ~~'AN ELECTED STATE OFFICER, WHOSE SERVICE HAS BEEN~~
32 ~~TERMINATED SUBSEQUENT TO JULY 1, 1960, AND ELECTED STATE~~

~~OFFICERS NOW IN OFFICE AND ELECTED STATE OFFICERS HEREAFTER
ELECTED, SHALL BE PAID FOR ACCUMULATED ANNUAL LEAVE AS OF THE 290
DATE OF THE TERMINATION OF THEIR SERVICE FROM PUBLIC EMPLOYMENT.~~

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