

SENATE JUDICIARY COMMITTEE

373

MINUTES OF MEETING HELD

5th DAY OF APRIL, 1973

The meeting was called to order at 7:05 p.m. Senator Close in the Chair.

PRESENT: Senator Bryan
Senator Dodge
Senator Hecht
Senator Wilson

Mr. Russ Button, Deputy Secretary of State,
Securities Division
Mr. William Swackhamer, Secretary of State
Mr. Bill Adams, Nevada Municipal Association
Mr. Jim Brooke, Board of Governors, State Bar
Association

EXCUSED: Senator Foley
Senator Swobe

S.B. 599 - Permits cities to determine whether ordinance violation imposes civil liability.

Mr. Bill Adams testified that this bill would make it permissive for cities to enact ordinances which would allow them to impose civil liabilities rather than jail sentence and fine. As an example, this would be applicable to contractor violations. Mr. Adams stated that the cities would like to experiment with this procedure in certain ordinances that they have studied. Senator Dodge noted that this was part of an interim study which recommended removing the ministerial levying of fines from the criminal concept to relieve the court congestion.

Senator Dodge remarked that he is in favor of making fines for ordinance violations a ministerial function, but felt that if the defendant felt he was not guilty and wanted to contest the fine, it would revert to the courts for a criminal determination.

Senator Wilson suggested amending the bill to proscribe that the amounts of the fine shall not be more than..., or less than..., as is applicable in criminal cases.

Although Senator Bryan envisioned some serious procedural changes that would have to be made, he agreed to give the cities the opportunity for this experimentation. He cautioned Mr. Adams to be sure the cities set forth the needed procedures very carefully since the legality of those procedures would be tested in court. Senator Dodge also cautioned that this should only apply on clear cut cases where proof of intent is not a matter of the crime.

Senator Close felt the best way to handle this would be to have an interim study committee review all other types of violations which could be handled civilly and revise the whole concept if necessary during the next session. Senators Wilson and Dodge felt that the experience gained under this bill would be of more value than an interim study.

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

S.B. 572 - Strengthens state regulation of securities and corporations.

Mr. Swackhamer testified that Section 4 of the bill, which was to be amended out after the afternoon meeting on this date, was very important to him because he is presently required to keep files on ancient corporations whose charters were revoked up to 100 years ago. Any citizen can come in and revive those corporations so the Secretary of State is responsible for keeping the files. However, the fire marshall has asked Mr. Swackhamer to remove some of those files because they are a fire hazard. Mr. Swackhamer has transferred most of the information contained in the files to microfilm and the Archivist will keep any documents which have historical value.

Mr. Swackhamer commented that persons are reviving these old corporations and begin selling stock to the public when in reality there is nothing behind it but an old corporate shell with or without assets. In Nevada alone there have been 95 of these old corporations revived.

Mr. Button stated that the Secretary of State's office will not object to the other amendment which would delete Sections 2 and 3 of the bill in order to get the essential authority in the law. He felt the more essential parts of the bill were the registration of transfer agents and investment advisors.

The committee then reviewed the amendments proposed by the Secretary of State which were attached to the minutes of the 8:00 a.m. meeting. The first 4 proposed amendments are exceptions to the registration requirements. Senator Bryan felt that since this legislation is charting a new course, they should not be locked into these exemptions. He could foresee that during the course of administering this registration procedure they could find themselves in the middle of a nightmare. He suggested including a catch-all phrase indicating that the Secretary of State could determine by regulation such other persons who would be exempt.

The next amendment would regulate corporations from issuing promotional stock and having the principal in the corporations sell

that promotional stock. The committee argued that setting these type of standards is awkward legislation. Senators Wilson and Dodge suggested giving the Secretary of State the authority to review these public offerings to determine what amount of stock is fair and equitable.

The committee felt that Section 12, subsection 2b) would be more properly handled in a bill dealing with Planned Unit Developments which is presently before the committee on Federal, State and Local Governments.

Mr. Swackhamer asked that the bill be effective on passage and approval. The committee agreed to amend the bill to that effect.

S.B. 533 - Prohibits deficiency judgments
on purchase money obligations
and provides cause of action
for waste.

Senator Close stated that the bill was not drafted as he intended it. Senator Dodge felt that the area of deficiency judgments is a complicated one and should be looked into carefully, if at all. He also stated that the biggest abuse in this area has been solved since, as Senator Bryan testified, purchase money mortgages can no longer be bid in for less than the obligation.

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

S.B. 544 - Provides for equal rights of
management and control of com-
munity property between husband
and wife.

Mr. Jim Brooke, representing the Board of Governors of the State Bar Association, spoke in opposition to the bill. He stated that the Board of Governors is not opposed to the theory of equality of men and women, but is opposed to a piece-meal attempt to equalize marriage and community property and divorce.

Senator Dodge commented that since questions have been raised about estate situations and Mr. Brooke raised the question of gift tax being applicable when one spouse gives the other the authority to use the entire earnings, the committee should consider amending NRS 123.230 to provide that the husband and wife shall have equal management and studying the other applicable statutes through the Board of Governors or the Legislative Committee. Senator Dodge did ask the committee to incorporate the concept that either spouse can not transfer any community property or any instrument affecting

the title to community property without both being joined on the instrument. The committee agreed.

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

S.B. 603 - Provides new method for selecting and impaneling grand jurors and places conditions on issuance of certain reports.

The committee reviewed the bill as drafted from the recommendations and determinations of the hearing on S.B. 244.

Four minor amendments were made. To clarify the provision of how the judges will select, amended language will read: "select one name from the venire." The provision where the clerk would continue to select names at random until a panel of 50 willing persons was established would be increased to 100 willing persons. The preparation of the venire would be mandated by allowing for any judge to notify the county commissioners, rather than leaving the notification for preparation to the presiding judge. Another minor amendment would provide that the chief judge rather than the presiding judge would prepare the questionnaire.

The major amendment made to the original bill was to the provision that the jury make no comment without indicting. Senator Wilson objected that with the wording in the original bill, the jury would not be able to comment on the operational procedures of a governmental entity without being able to indict. The committee agreed that the language was not the intent of the committee. The intent of the committee was to allow the grand jury to criticize without indicting if the criticism did not constitute malfeasance in office or an indictable crime. Senator Bryan suggested the language: "No report issued shall single out any person or persons which directly, or by innuendo, imputation or otherwise accuses such person of wrongdoing which if true would constitute an indictable offense unless such report is accompanied by a presentment or indictment of such person." The committee also agreed to mandate the presiding judge to instruct the jury of this charge.

Senator Bryan moved to amend and "DO PASS." Motion seconded by Senator Dodge.

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

Motion carried.

S.B. 560 - Provides for removal or suspension of members of State Gaming Control Board and revises investigative hearing procedure.

The committee agreed to delete several of the changes which were made in this bill and retain the present law. All references to the hearing officer would be deleted so the Board would have their own hearings as is presently done. There was further discussion on whether the hearings for removal should be conducted by the Governor or the commission. The committee agreed to have the Governor conduct the hearings as is done with the Public Service Commission.

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

S.J.R. 19 -Proposes to amend State Constitution by permitting appointment of temporary district court judges.

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

S.J.R. 20 -Proposes to amend State Constitution by designating the chief justice as administrative head of the court system.

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

A.J.R. 10 -Proposes to amend Nevada Constitution to permit Supreme Court to hear oral argument outside of Carson City.

The language of the constitution unduly restricts the Supreme Court from hearing oral arguments in other locations in the state. The Assembly amended the bill to apply to Clark County. The committee amended the bill back to its original form.

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

A.J.R. 19 -Memorializes Congress to amend 1934 Gold Reserve Act.

Senator Hecht moved the resolution be adopted. Motion seconded by Senator Dodge. Motion carried.

A.B. 110 - Obviates certain divorced parents' child support payments upon death.

This bill would terminate the obligation to pay further child support payments upon death, unless an agreement obligates the estate.

Senator Dodge moved "DO PASS." Seconded by Senator Wilson. Motion carried. Senator Hecht remarked that he would withhold his judgment.

A.B. 211 - Makes voting twice at the same election a felony.

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

A.B. 347 - Requires compliance with provisions for letting of contracts although the governing body has approved application for federal grant to be expended pursuant to such contract.

Chairman Close explained that this would make categorical grants subject to the Local Government Purchasing Act and actually helps protect tax monies used for federal grants.

Senator Wilson moved "DO PASS." Motion seconded by Senator Dodge. Motion carried.

A.B. 389 - Relaxes certain requirements for service of arrest warrants by telegraph.

The committee felt that the word "served" is incorrectly used since a peace officer would have to serve a warrant of arrest. They amended the bill to provide that "a warrant of arrest may be transmitted by telegraph."

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

A.B. 391 - Clarifies right of peace officers to compel detained person to identify himself.

Senator Close explained that this would compel a detained person to identify himself, but he would not be compelled to answer any other inquiries. Senator Bryan mentioned that this is part of

the "stop and frisk" law. Senator Wilson remarked that if the person detained refused to identify himself, it would provide a separately punishable crime.

A.B. 442 - Reduces time court exhibits and depositions must be retained by clerk of district court prior to disposal.

This would reduce the time required before disposal of exhibits and depositions in civil actions from 5 years to 2 years after the time for appeal has expired.

Senator Dodge moved "DO PASS." Motion seconded by Senator Wilson. Motion carried.

A.B. 536 - Reduces number of appraisers required in probate and guardianship proceedings.

The bill would allow the court to appoint more appraisers if more than one were necessary. Senator Wilson remarked that this is a long over-due reform.

Senator Bryan moved "DO PASS." Senator Dodge seconded the motion. Motion carried.


A.B. 681 - Specifies procedures for removal of justices of the peace.

Presently justices of the peace are not included in impeachment procedures or procedures for removal by the grand jury for malfeasance or malpractice.

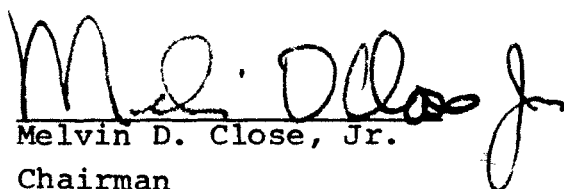
Senator Dodge moved "DO PASS." Motion seconded by Senator Wilson. Motion carried.

The meeting was adjourned at 10:50 p.m.

Respectfully submitted,


Eileen Wynkoop
Secretary

APPROVED:


Melvin D. Close, Jr.
Chairman