

GOVERNMENT AFFAIRS COMMITTEE

MINUTES OF THE MEETING

MAY 14, 1975

MEMBERS PRESENT:

CHAIRMAN DINI  
VICE-CHAIRMAN MURPHY  
ASSEMBLYMAN CRADDOCK  
ASSEMBLYMAN HARMON  
ASSEMBLYMAN MAY  
ASSEMBLYMAN MOODY  
ASSEMBLYMAN SCHOFIELD  
ASSEMBLYMAN FORD  
ASSEMBLYMAN YOUNG

ALSO PRESENT:

Gene Phelps, Highway Department  
Ned Solomon, Clark County Juvenile Ct.  
Robert Maples, Washoe County School District  
Bob Gagnier, SNEA

(The following bills were discussed: S.B. 100, S.B. 186, S.J.R. 18, S.B. 573, S.B. 267, S.B. 468, A.B. 711 and A.B. 789).

Mr. Dini called the meeting to order at 8:00 A.M. The first bill on the agenda to be discussed was S.B. 100, which makes provisions on fair employment practices applicable to school districts and district departments.

Mr. Phelps testified. He stated that the purpose of the amendment was to bring Nevada law into line with federal law.

The state personnel division supports this. The Highway Department has approved this. They have not extended employment. This is a good tool that state agencies have for reducing some overhead. They feel that legislation like this is essential. He further stated that somewhere between 30 and 35 people have been retired. One of the problems is that Highway Maintenance is a high risk occupation. The risk of injury goes up as time goes on. The law now has no limit.

Mr. Bob Gagnier testified. He stated that he opposes S.B. 100. It is a double standard. Local government provides for fiscal review. That is unfair to public employment. They have had an amendment printed that would make it equal between state and government employees. Page 1 would apply to all employees. The way the bill is written now is discriminatory.

They would like to leave it to the discretion of the agency whether or not a person is competent to continue in his work. If not, they should be retired regardless of age.

Mr. Gagnier stated that state employees should be added to the group.

Mr. Dini asked if we needed the bill at all. Mr. Gagnier replied no.

Mr. Maples testified. He stated that the School District favors page 1 of the bill. There should be no arbitrary age.

There was no testimony with regard to S.B. 573, which expands definition of "peace officer" to include bailiffs of district courts and deputy constables. There being no testimony, Mr. Dini moved for a do pass which was seconded by Mr. Craddock. Mr. Dini then withdrew his motion. Mr. Young then moved for indefinite postponement after the committee had discussed the possibility of this bill enabling early retirement. Mr. Dini moved that he be able to check out early retirement, which was seconded by Mr. May.

The committee then discussed S.B. 186. Mrs. Ford referred to the amendments on this bill.

The next bill on the agenda to be discussed was S.J.R. 18. Mr. Dini moved for a do pass which was seconded by Mr. Young. Mr. May stated that he would like to amend the motion and refer this bill to the Judiciary Committee.

Mr. Ned Solomon testified next. He stated that he was with the Clark County Juvenile Court. He presented a letter that was sent to Senator Gibson, a copy of which is attached to the minutes of the meeting and made a part hereof. He stated that it appears unnecessary to amend the constitution.

Mr. Henry Etchemendy testified. He stated that he felt that it is important that local government have total responsibility without question. He passed out a copy of a Supreme Court decision a copy of which is attached to the minutes of this meeting and made a part hereof. He then discussed the decision with the committee.

Mr. Broadbent testified. He stated that by statute the Board of County Commissioners are charged with the responsibility of administering the budget of the county agency. There is a penalty if they do not stay within the budget. It is their feeling that if they have that penalty imposed on them, they should have some control over the budget expenditures.

Mrs. Ford asked if anyone had recommended that the cost of the judiciary be a state responsibility.

Mr. Broadbent replied that the state had not seen fit to do it. He indicated that that may not solve it at all. He stated that if it did not work out in two years that it did not have to be adopted.

4- 1512  
Mr. May stated that this was not the way to solve it. He referred to judicial form. He feels that it is a slap in the face to one form of government. The state should have the say over this.

Senator Dodge testified next. He stated that it was pointed out by a law suit in Pershing. He then referred to the case. He indicated that the Judiciary branch needs to share and share alike with other branches. The only way to enunciate this is in the constitution. This is a valid approach. He stated that Judiciary could battle with the other entities as far as participation in the \$5.00 rate goes.

Mr. May stated that we have not given the Supreme Court a fair chance.

Mr. May referred to the interim study by the legislature. He stated that the state may wish to undertake the funding of the courts. He prefers an interim study. We are forcing them to take the budget apart.

Senator Dodge stated that there is nothing in the federal constitution which inhibits this approach.

Assemblyman Getto testified next. He stated that the legislature has the power to appropriate money for administrative branch of government. We will lose that power. The people can turn this down. It still has to go through another session of the legislature.

Chairman Murphy stated that there was a motion made for a do pass on S.J.R. 18, which had been seconded. The secretary called the roll. The result of the vote was as follows: Mr. Schofield - no vote; Mr. Craddock - no; Mr. May - no; Mr. Dini - yes; Mr. Murphy - no; Mrs. Ford - no; Mr. Young - yes; Mr. Moody - yes. The tally on the vote was yes - 3 votes; no - 4 votes; 1 - no vote; The motion did not carry and no action was taken on the bill.

The committee then discussed the bill again. Mr. Young moved the previous question. Mr. May stated that it was amend and re-refer to Judiciary.

The next bill to be discussed was S.B. 100. Mr. Petroni testified. He stated that this was a method by which you can evaluate employees. Most states have a cut-off date between 40 and 65. The Supreme Court has upheld this.

He referred to line 17 of the bill and stated that the words "hire and" should be deleted. Mr. Dini stated that he felt that these words should be deleted.

Mr. Schofield moved for an amend and do pass which was seconded by Mr. May. The motion carried unanimously.

Mr. Young then moved for indefinite postponement of S.B. 573, which was seconded by Mr. May. The motion carried unanimously. Mr. Schofield voted no. Mr. Murphy and Mr. Harmon were not present

ASSEMBLY GOVERNMENT AFFAIRS  
COMMITTEE MINUTES

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May 14, 1975

at the time of the vote.

The next bill to be discussed was S.B. 267. Mr. Dini stated that he had met last night with the people from the public utilities and with the PSC. They negotiated an amendment for this bill which they can all live with. He stated that this bill had some problems, but that it has protection for the people. A problem which exists is when the rates have to be changed because of increased because of increased capital investment. There are plenty of safeguards in the bill.

Mr. May moved for an amend and do pass which was seconded by Mr. Young. The motion carried unanimously. Mr. Harmon and Mr. Craddock were not present at the time of the vote.

The committee next discussed S.B. 468. Mrs. Ford moved for a do pass. Mr. May moved for an amend and do pass on the original motion which would delete lines 19 through 30 on page 3. Mr. Dini stated that the original motion was do pass. The motion carried unanimously. The vote was 8-1 for a do pass. Mr. May voted no.

The committee discussed S.B. 186. Assemblyman Jeffrey testified. He stated that there was a five man board and that he did not anticipate any changes. Mrs. Ford referred to an amendment which Senator Dodge had given her. The committee discussed the amendment and Mrs. Ford withdrew the amendment from Senator Dodge. The committee then decided to reamend the bill with regard to an "individual"

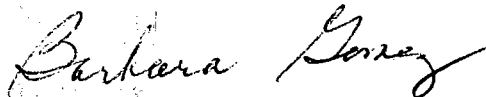
Mrs. Ford moved for an an amend and do pass which was seconded by Mr. Harmon. The motion carried unanimously. Mr. May was not present at the time of the vote.

The committee next discussed A.B. 711. Mr. Schofield moved for a do pass which was seconded by Mr. Harmon. The motion carried. Mr. Craddock, Mrs. Ford and Mr. Young voted no. Mr. Dini, Mr. Murphy, Mr. Moody, Mr. Schofield and Mr. Harmon voted yes. Mr. May was not present at the time of the vote.

A.B. 789. Mr. Harmon moved for a do pass which was seconded by Mr. Schofield. The motion carried unanimously.

Therebeing no further business to come before the meeting, the meeting adjourned.

Respectfully submitted,



Barbara Gomez,  
Committee Secretary

JOSEPH E. DINI, JR.  
ASSEMBLYMAN  
MAJORITY LEADER  
DISTRICT NO. 38  
P.O. BOX 968  
YERINGTON, NEVADA 89447  
TELEPHONE  
BUSINESS 463-2868  
HOME 463-2669



4- 1508

COMMITTEES  
CHAIRMAN  
GOVERNMENT AFFAIRS  
MEMBER  
TRANSPORTATION

# Nevada Legislature

## FIFTY-EIGHTH SESSION

May 14, 1975

TO: ALL GOVERNMENT AFFAIRS COMMITTEE MEMBERS  
FROM: JOE DINI

Our committee will meet at 8:00 A.M. on Thursday,  
May 15, 1975.

Joseph E. Dini

bg

ASSEMBLY

AGENDA FOR COMMITTEE ON GOVERNMENT AFFAIRS  
 WEDNESDAY,  
 Date May 14, 1975 Time 8:00 A.M. Room 214

4-1509

Bills or Resolutions to be considered	Subject	Counsel requested*
S.B. 100	Makes provisions on fair employment practices applicable to school districts and district departments.	
S.B. 6	Provides that local governments may by ordinance make solid waste disposal fees a lien against property served.	
S.B. 573	Expands definition of "peace officer" to include bailiffs of district courts and deputy constables.	
A.B. 709	Requires applicant or his partner or officer to take examination for contractor's license.	
S.B. 186	Amends various provisions relating to trusts for furtherance of public functions.	

\*Please do not ask for counsel unless necessary.



# Juvenile Court Services

Clark County

John F. Mendoza  
Judge

Jack E. Butler  
Chief Referee

James P. Carmany  
Director

Associate Directors:

Ned B. Solomon  
Staff Services

Richard B. Vincent  
Institutional Services

Donald E. Wilson  
Community Based Programs

3401 EAST BONANZA

LAS VEGAS, NEVADA 89101 • (702) 649-3611

29 April 1975

Senator James Gibson, Chairman  
Senate Committee on Government Affairs  
Nevada State Senate  
Carson City, Nevada

Dear Senator Gibson:

During testimony presented before your Committee last Wednesday, April 23, 1975, on Senate Bill 502, Clark County Commissioner Robert Broadbent made inference to the effect that the administration of the Juvenile Court in Clark County had not been fiscally responsible. He cited as his argument the fact that we had received supplemental appropriations each year for the last four years. The fact is, the only budgetary supplements which have been received by the Clark County Juvenile Court have been a direct result of action which has been taken by the Board of County Commissioners of Clark County.

We have, with the assistance of the Clark County Comptroller's Office, reviewed our Court's ending balance for each fiscal year since 1969/1970 and present the following to you for your review and consideration.

Fiscal Year 1969/1970: Ending Balance \$65,248.21.  
There was, at the conclusion of Fiscal Year 1969/1970, a supplemental appropriation of \$10,000.00 provided to the Spring Mountain Youth Camp budget. This was the result of County Commission action which was occasioned by the flood at Spring Mountain Youth Camp in February of 1970 and the necessary clean-up as well as searching for a new Camp location.

Fiscal Year 1970/1971: Ending Balance \$65,641.47.  
There were no supplemental appropriations during this fiscal year.

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29 April 1975  
Senator James Gibson

Fiscal Year 1971/1972: Ending Balance \$6,802.90. During the 1969 session of the State Legislature there was appropriated \$250,000.00 to assist Clark County in the relocation and renovation of Spring Mountain Youth Camp to Angel Peak Air Force Base. At the end of Fiscal Year 1971/1972, there was a supplemental appropriation of \$175,000.00 of this money provided to the Juvenile Court budget. The entire renovation program at Angel Peak was handled by the Special Project's Director for Clark County and all expenditures in regard to this renovation were approved by the Board of County Commissioners.

Fiscal Year 1972/1973: Ending Balance \$31,723.10. There was a supplemental appropriation of \$71,938.60 provided to the Juvenile Court's budget during this fiscal year which was the direct result of County Commission action authorizing the Juvenile Court additional staff which had not been provided for in the approved budget.

Fiscal Year 1973/1974: Ending Balance - Zero. There was a supplemental appropriation of \$65,000.00 provided as a result of County Commission action taken on September 20, 1973. This action authorized a complete reorganization of the Juvenile Court's administrative structure and authorized the hiring of fifteen additional persons who had not been originally budgeted for.

Fiscal Year 1974/1975: We presently hold \$81,000.00 in reserve from this year's budget and project an ending balance in excess of \$50,000.00.

It has been County procedure since I have been the Administrator of the Juvenile Court to forward to any County Department who is in budgetary trouble a letter of probation which in essence limits further spending without direct authorization of the County Administrator or Board of County Commissioners. During the time that I have been the Administrator of the Clark County Juvenile Court under the direction of District Court Judges Wartman, Wendell and Mendoza, the Juvenile Court of Clark County has not received such a letter. I understand the last letter we received was in 1966/1967.

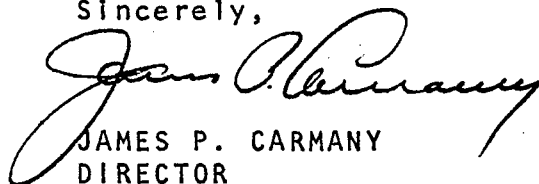
29 April 1975  
Senator James Gibson

The above is presented in order that you may be fully aware of the fact that we do our best to stay within any budget guidelines and/or controls that are necessary for the efficient and economical operation of County government.

I would remind you that the Commissioners of Clark County have been extremely open and willing to supplement programs for youth in this jurisdiction and this has been accomplished each year through the process of budget negotiations.

I sincerely hope that you will not permit what is a very serious issue of separation of power conflict to result in the lowering of the effectiveness of service to children. I am concerned that this would happen if you transfer our programs and our personnel to the Boards of County Commissioners in this state. I say this not because I find the Commissioners unconcerned; I do, however, find them a lot less informed than the Judges of our state. This, I am sure, is because the Judges must daily deal with the children and their problems and know best the programs needed to assist them.

Sincerely,

  
JAMES P. CARMANY  
DIRECTOR

JPC:mu

cc: Senator Carl F. Dodge  
Senator Margie Foot  
Senator Mary L. GoJack  
Senator Norman Ty Hilbrecht  
Senator Jack Schofield  
Senator Lee Walker  
Judge John F. Mendoza ✓  
Bryn Armstrong, Chairman Probation Committee

4/1517

District Judicial District Court

County of Clark, Nevada

State of Nevada

February 6, 1975

4/ 1518

Post Office Box 100  
Crescent City, Nevada 89001

MEMORANDUM

To: Mayor Scrivner, the Honorable Board of City Supervisors  
and Henry Etchemendy, City Manager

From: Frank B. Gregory - District Judge

Enclosed for your perusal are copies of a recent decision handed down by the Nevada Supreme Court. This decision outlines the separation of the powers between the Executive and Judicial branches of government.

The opinion is very definitive and I do hope that it leads to a better understanding between the two branches.

IN THE SUPREME COURT OF THE STATE OF NEVADA

LLEWELLYN A. YOUNG, District Judge )  
of the Sixth Judicial District Court )  
of the State of Nevada, )  
Petitioner, )

No. 7727

-vs-

THE BOARD OF COUNTY COMMISSIONERS )  
OF PERSHING COUNTY, NEVADA, and )  
DANIEL MILICH, CHARLES CARPENTER )  
and ARTHUR JOHNSON, constituting )  
the members of said Board, )  
Respondents. )

FILED  
JAN 29 1974  
C. R. DAVENPORT  
CLERK OF SUPREME COURT  
DEPUTY CLERK

Original proceeding in mandamus.

Writ granted.

Beckley, Singleton, Delanoy &  
Jemison, Chartered, of Las Vegas,  
for Petitioner.

Robert List, Attorney General,  
Donald F. Klasic, Deputy Attorney  
General, Carson City,  
for Respondents.

O P I N I O N

By the Court, BATJER, J.:

This original proceeding was commenced by the Honorable Llewellyn A. Young, district judge, hereinafter referred to as "petitioner," who seeks a mandate to compel the Board of County Commissioners of Pershing County, Nevada, hereinafter referred to as the "board" or "respondents," to accede to certain budgetary requests for the budget year 1974.

This court appointed the Honorable Noel E. Hanoukian,

district judge, special master to hear and resolve factual disputes; however, by stipulation prior to a hearing, the parties resolved all disputed matters.

Respondents reduced petitioner's budgetary requests for : (a) the probation officer's salary, from \$750.00 to \$712.00 per month; (b) office equipment for the probation department from \$750.00 for the budgetary year to \$318.00; (c) the salary of a part-time secretary, from \$400.00 to \$236.00 per month; and (d) additions to the law library, from \$7,000.00 to \$5,000.00 for the budgetary year.

It was stipulated that (1) respondents suffer no budgetary shortage or financial problems which would render them unable to meet petitioner's request; (2) the budgetary requests by petitioner were necessary for the effective administration of his court; (3) the parties have each acted reasonably in carrying out the responsibilities of office.

1. By virtue of his position as district judge, and pursuant to the authorization of NRS 62.110(1), petitioner appointed a juvenile probation officer. When he set the salary of that officer at \$750.00 per month, the board refused to approve that salary and recommended a lower one, basing their action on the "consent" requirement of NRS 62.110(3).<sup>1</sup> Since both parties have stipulated to the reasonableness of their respective actions the first issue to be determined on appeal is whether the "consent" requirement of NRS 62.110(3) extends to a board of county commissioners the power to veto the reasonable budgetary requests of a district judge. It does not.

<sup>1</sup>

NRS 62.110(3): "The salaries of the probation officer, detention home personnel and other employees shall be fixed by the judge with the advice of the probation committee and consent of the board or boards of county commissioners."

Article 6, § 6 of the Nevada Constitution grants to the district courts original jurisdiction in all cases in equity. The juvenile statutes are a codification of the ancient equitable jurisdiction over infants under the doctrine of parens patriae. *People v. Leonard*, 112 N.E.2d 697 (Ill., 1953). Pursuant to legislative enactment of the Juvenile Court Act, NRS Chapter 62, the district courts are specifically empowered to administer juvenile justice. Juvenile probation services were made a part of the duties assumed by the district courts under NRS Chapter 62. The district judge enjoys the power to choose the probation committee for the county, which in turn advises him in his choice of probation officers. NRS 62.100 and NRS 62.110. The judge supervises, and the probation committee advises the probation officers in their work, including their financial and clerical work. NRS 62.120.

NRS 62.120(3) provides: "Every effort shall be made by the various counties throughout the state to provide sufficient personnel for the probation department to uphold the concept of separation of powers in the court process." This statute is a clear expression by the legislature of its intent that the district courts enjoy preeminent authority over juvenile probation services.

We reject respondents' contention that the word "consent" found in NRS 62.110 is a delegation of discretionary legislative appropriation power to the board of county commissioners.<sup>2</sup> Reviewing statutory language substantially similar to

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Respondents bolster their position with the theory that, since NRS 354.588 gives county commissioners the right to prepare and fix a budget for county officers and agencies, the "consent" of the board under NRS 62.110 must be a part of that budgetary function.

But nowhere in NRS 354.470 to NRS 354.626, the section on local government budgets, is there a reference to the Juvenile Court Act. NRS 354.588, by its terms applies only to the govern-

NRS 62.110(3). The Texas Court of Civil Appeals refused to find a veto power in the board. Disposing of an issue on appeal identical to the one before us, the Texas court reasoned that the "consent" requirement meant only that the judge should consult with the commissioners to be apprised factually of the financial status of the county. Commissioner's Court of Lubbock County v. Martin, 471 S.W.2d 100 (1971). A similar result was reached in In Re Salaries For Probation Officers Of Bergen Co., 273 A.2d 417 (N.J. 1971).

The "consent" function of a board of commissioners under NRS 62.110 is limited to determining whether, in light of the current fiscal status of the county, the salary request of a district judge is unreasonable or arbitrary. Had the commissioners so found and predicated refusal to "consent" on that basis and had the district judge seen fit to challenge their determination, then this court would have been constrained to undertake final resolution of that fundamentally factual issue. Here, however, there is a stipulation of reasonableness, and therefore mandamus clearly must issue to compel approval by the board of the petitioner's request for a probation officer's salary.

2. Along with the salary request, petitioner asks this court to compel, through mandamus, the board's compliance with his budgetary requests regarding office equipment for the probation officer, a part-time secretary for the court, and additions to the court's law library. Each of these requests was reduced by the board, upon its review, and it directed the treasurer of Pershing County not to honor any vouchers for such submitted by petitioner.

Although there is no explicit statutory authorization for a district court's budgetary requests, we believe that such

ing bodies, officers and employees of every local government. NRS 354.536 defines "governing body" as "the board . . . in which the general legislative and fiscal powers of the local government are vested." The entire section deals only with the local legislative function, not the judicial.

authority flows from the inherent power of the court. In State Ex Rel. Kitzmeyer v. Davis, 26 Nev. 373, 63 P. 639 (1902), this court recognized inherent power, and in part depended upon it, when it mandated the state controller to pay for the court's furnishings over the objection of the Board of Capitol Commissioners. Relying on a statute which gave that board control over appropriations for the furnishing of state building, it claimed absolute control over expenditures requested by this court. After construing the statute as granting less than absolute control to the board, the court then vindicated its expenditures on the theory of inherent power. "To assume that the legislature did confer any such absolute power upon the board is to assume that the legislature possesses unlimited power of legislation in that matter - that it could by hostile legislation destroy the judicial department of the government of this state." Id at 379.

Respondents argue that petitioner's budgetary requests are a ministerial function derived from the basic legislative power of appropriation and rely on Galloway v. Truesdell, 83 Nev. 13, 422 P.2d 237 (1967) to challenge the inherent power theory as violative of separation of powers. Although in Galloway this court did hold that judicial powers cannot include a power or function that is derived from the basic legislative or executive powers, it went on to make it clear that in the area of ministerial functions of each branch of government there frequently occurs an overlapping which can be entirely valid if it can logically trace its function back to the basic source of power.

If budgetary requests are reasonable and necessary to carry out a district court's powers and duties in the administration of justice, they are within its inherent powers. See Commonwealth Ex Rel. Carroll v. Tate, 274 A.2d 193 (Pa. 1971); Judges For Third Judicial Cir. v. County of Wayne, 172 N.W.2d 436 (Mich. 1969); Smith v. Miller, 384 P.2d 738 (Colo. 1963); and Noble County Council v. State, 125 N.E.2d 709 (Ind. 1955).



Respondents' assertion that mandamus will not lie to compel an officer or board to perform a discretionary act is correct, but it is not apposite to this case. Mandamus is appropriate to compel an act which the law especially enjoins as a duty of office. NRS 34.160. When the petitioner's budgetary requests were stipulated as being reasonable, the board's consent became a duty.

Petitioner was required to retain counsel and there are no budgetary funds available for him to meet the costs of this suit. The special master found that petitioner was entitled to reasonable attorneys fees of \$1,800.00 plus costs. Respondents registered no objection to this award, and we hereby approve and order it.

It is ordered that a writ of mandate issue to compel the Board of County Commissioners of Pershing County, Nevada, to approve petitioner's budgetary requests for the year 1974.

Batjer, J.  
Batjer

We concur:  
Gunderson, C.J.  
Gunderson  
Zenoff, J.  
Zenoff  
Mowbray, J.  
Mowbray  
Thompson, J.  
Thompson