

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

February 25, 1975

The meeting was called to order at 9:10 a.m. Senator Close was in the Chair.

SB 155 Authorizes licensed process server to enter on private property to serve legal papers.

Marshall L. "Smokey" Stover, licensed process server, testified on behalf of this measure. He stated at times it has been necessary for him, as a professional process server, to resort to tactics which demean the court; which do not lend to the dignity of the court, simply to effect service of process. He cited several instances where it was virtually impossible to serve a process because of guard dogs, security guards (such as the ones found in many of the new condomiums), electric fences, etc.

He made two suggestions that would improve the situation:

- 1) Substitute service can be made by posting the legal document on the front door or as close to is as possible and then mail a copy to that person. The process server's affidavit would reflect those actions - posting and mailing. He stated this was already in effect in Nevada with regard to Notices of Quit; and
- 2) Increase availability of sources of information as to the place where a person can be served.

No action was taken at this time.

SB 47 Clarifies and expands provisions of the Nevada Gaming Control Act.

Philip Hannafin, Chairman of Gaming Control Board and Bud Hicks, Deputy Attorney General reviewed with the Committee the amendments made during the meeting of February 20, 1975. The following additional amendments were made:

Section 6, subsection 9, paragraph (b) - Senator Close stated that "may be terminated" should be "shall be terminated." He also pointed out that the condition should be included in the agreement by reference. He stated that if they were to use "deemed to include" as suggested by Senator Bryan, they would have to broaden it a bit and raise the specific exceptions by stating what is included. Senator Bryan replied that that was the law now but that they wanted to include the double protection by stating it in the statute. Senator Wilson pointed out that they had only been talking about this in the context where the licensee is the lessor, and asked how the situation would be handled if the licensee were the leasee. Mr. Hannafin informed him that the approach they would probably take would be to take the landlord up on a finding of suitability as a landlord, which is an optional process already provided by statute.

In line with this, Senator Hilbrecht felt that the language of this section ought to be enlarged to make it clear that if a lessor is going to lease to a licensed gaming establishment, that there would be certain conditions implicit in the lease.

Section 6, subsection 9, paragraph (c) - Senator Hilbrecht felt there was a problem with the phrase "to enjoin or otherwise by appropriate order restrain the continued operation of the unsuitable business." He pointed out that the "unsuitable business" is not, by definition, a gaming business and expressed concern that the gaming authority may be attempting regulation in areas outside the regulation of licensee or employees or agencies of licensees. Senator Sheerin suggested deleting the last four lines as they are the ones that give the authority to go against a third party.

Mr. Hannafin concurred with this by saying that he did not like the injunctive process. Extraordinary writs are precluded in the Gaming Control Act and he felt that it would create greater problems if they were to put in in there.

Section 11, subsection 4, paragraph (e) - Mr. Hicks pointed out a technical amendment. Beginning with "for subsequent violations ... in the general fund." should be made into a separate paragraph (f) in that it should modify all the preceding paragraphs, not just (e).

No action was taken at this time.

SB 173 Enacts the Nevada Anti-Trust Act.

Jim Thompson, Chief Deputy Attorney General and Donald Klasic, Deputy Attorney General testified in support of this bill. Mr. Thompson made a statement to the Committee as to why Nevada needs an anti-trust law. The federal anti-trust enforcement division is on top of things to a certain extent, however, there are two basic limitations to the full prosecution of the federal anti-trust statute:

- 1) the requirement that the violation substantially affect interstate commerce or have some measurable effect on it. Many cases are lost because of their failure to establish this substantial affect; and
- 2) there are limitations of manpower in the federal anti-trust division which prevents from the pursuing more than a fraction of the cases brought to their attention. They cannot cope with all of the local situations that develop. It is also geared to handle the large cases such as mergers, monopolies and price-fixing on a national sales dimension. He informed the Committee that federal anti-trust laws do not preempt state anti-trust activity. Thirteen states had their own anti-trust act before the Sherman Act was enacted in 1890. The federal act was designed to supplement state acts, not supplant them. However, after the enactment of the federal laws, most state anti-trust laws were discontinued for varying reasons: lack of public interest; opposition from the business community; ingergovernmental friction over funding and sta-f; and because of prolonged constitutional challenges.

Many states, through their attorney general, are again assuming an active role in anti-trust. There are several reasons for this renewed interest in anti-trust:

- 1) a belief that the federal government cannot and should not bear the sole responsibility in this area;
- 2) a growing recognition of the attorney general's role as the "people's advocate";
- 3) great growth of public procurement. The fact that the state, its political subdivisions and local governmental agencies are now major purchasers of most items;
- 4) the deterrent effect of an active enforcement program; and
- 5) increased awareness that anti-trust efforts are necessary to detect increased organized criminal activity in the economy and business organizations.

Senator Close asked if there were any real areas of anti-trust going on in Nevada. Mr. Thompson replied that two years ago there was a problem with price-fixing in bread and bakery items and another with rendering (collecting meat for rendering purposes) and that there was nothing his office could do about it.

Mr. Thompson read to the Committee a statement from Mr. Desmond, Chief Enforcement Attorney for the San Francisco office of the federal anti-trust division. Mr. Desmond noted that an anti-trust law for Nevada would be of great assistance in helping out his division; it would take some of the work load off the shoulders of his staff. In addition, he felt with anti-trust activities being concentrated solely in the hands of the federal authorities, many complaints in Nevada went unheard; citizens were unaware that they could turn to the San Francisco office for assistance. On the other hand, he felt that the State Attorney General was a conspicuous figure, readily accessible to any Nevada citizen. He felt that a State anti-trust bill would encourage Nevada citizens to report violations of anti-trust laws. He also commented on the frequent problem of whether the particular activity is in interstate commerce. This is a necessary jurisdictional requirement for the

prosecution of federal anti-trust cases. He noted that many attorneys and judges cannot resolve this problem or, at least, exhibit confusion over the question. The presence of a state anti-trust act would eliminate this problem.

Robert Guinn, representing the Nevada Motor Transport Association and the Franchised Auto Dealers stated that they were not opposed to the institution of this type of legislation in Nevada. He hoped that the Committee realized what a major step it was in that this bill tries to include all the legislation involving anti-trust into one act. He further stated, with respect to some of the provisions of the bill that deal with monopolistic practices, that in small states like Nevada, a monopoly is a common thing. He also felt there may be a possibility of dual prosecution by federal and state laws; a pyramiding of penalties.

Mr. Guinn requested an amendment and stated that he had talked to the attorney general's office about it and they had had no objections. On page 3, line 14 there is excluded "conduct which is expressly authorized, regulated or approved by a statute of the State or the United States." The Nevada Motor Transport Association engages in collective rate-making. There is nothing in Chapter 706 that specifically authorizes this and they are asking that it be incorporated into it.

In conclusion, Mr. Guinn questioned the exemption of labor unions from the anti-trust act. He stated that he could not stand here, as a representative of businesses that have been confronted with the ability of labor unions to act collectively in areas that people in business would be thrown in jail for, and not voice an objection.

Fran Breen, Nevada Banker's Association stated that they were not opposed to a State anti-trust act but that they were concerned that the language is so broad that it would cover banks and banking activities; particularly lending activities and the setting of the prime rate. They were also concerned that it would create great competitive inequality between state banks and national banks. He was particularly concerned that the exclusion clause in Section 8, subsection 3 was not broad enough because it exempts certain activities as cited by Mr. Guinn. He stated that there are several activities that banks do that are not expressly authorized, regulated or approved such as the setting of prime rates. Since Section 23 provides for private action and treble damages, it would open the door for individual actions against banks in general because they all set their prime rates at the same time.

The Committee requested Mr. Klastic to check out the problems raised by Mr. Guinn and Mr. Breen regarding dual prosecution, regulation of labor unions and setting of prime rates. He will report back to the Committee March 4th with his findings. No action was taken at this time.

There being no further business, the meeting was adjourned.

Respectfully submitted,

  
Cheri Kinsley, Secretary

APPROVED:

SENATOR MELVIN D. CLOSE, JR., CHAIRMAN