

## MINUTES OF MEETING

April 11, 1975

The meeting was called to order at 8:35 a.m. Senator Close was in the Chair.

Present: Senator Close, Chairman  
Senator Wilson  
Senator Bryan  
Senator Sheerin  
Senator Dodge  
Senator Foote  
Senator Hilbrecht

SB 375 Permits Secretary of State as administrator to prohibit security transactions.

SB 416 Requires investment advisers and transfer agents to register with Secretary of State.

SB 417 Provides for regulation of bullion dealers and strengthens laws regulating sellers of securities.

William Swackhammer, Secretary of State told the Committee that there is a definite need for stronger securities regulation in the State of Nevada. In drafting these pieces of legislation, his office has met with people from the Securities Exchange Commission; the National Association of Securities Dealers; people involved in the broker's business; and have derived portions from the Illinois law, which has probably been litigated word for word. Mr. Swackhammer feels that if these peices of legislation are enacted, they will be able to give the State of Nevada a better securities administration and be able to better prevent some of the securities fraud perpetrated against the people of this State.

Vernon B. Willis, Resident Manager of Blythe, Eastman, Dillon and Company in Las Vegas, told the Committee that the common purpose of these peices of legislation was to get some assistance in NRS 90 to tighten up on the securities regulations. They need regulation not only by registration with the Secretary of State, but also with policing the issuance of securities. They are not overly concerned with the creation of new corporations but rather the selling of common equity and debts of the organization; especially in the area of intra-state corporations, investment advisors, bullion dealers and transfer agents. Mr. Willis gave the Committee a brief summation of the problem they are encountering with intra-state corporations. Generally speaking, intra-state securities cannot be traded across state lines; they have no market vaule outside of the State. Additionally, with the initial commission paid to the salesman, you have an automatic reduction, albeit indirectly, of at least 15-20%. Therefore, even though the company may still be in existance and fully funded, there is still the 15-20% taken off the top for the sales commission which leaves the company with only 80% funding to work with. If you tighten up on the sales of these issues, the public will be less likely to be taken in.

Senator Dodge asked Mr. Swackhammer how many corporations his office qualifies each year in order to set the record straight on the volumnne they are talking about; to keep the discussion in perspective. Mr. Swackhammer replied that they only qualify about 3 a year out of 9 applications. Mr. Willis further commented that the problem they are facing is that many of these investments that were made several years ago are now just beginning to surface and it makes the volume seem higher than it normally would be.

Senator Dodge was also concerned about the effect this would have on mining corporations. He felt that everyone in the State, even before the State was a state, knew they were a

long shot; that they were not marketable unless the mine paid out. He stated that if they were talking about the mining situation, he would not be in sympathy with trying to discourage that; it is part of the heritage of Nevada.

In line with that, Senator Close asked whether these acts were designed as full disclosure acts or as acts that would permit the Secretary of State to restrict an offer of securities. He felt that there was a big difference between the two.

Russell Button, Deputy Securities Administrator, Secretary of State, responded to those comments. He stated that there is nothing in the existing law or anything in the proposed statutes that would restrict or give the Secretary of State the right to make any value judgments as to what the offeror wants to do. The things that they are trying to correct with these bills are: 1) upgrade the caliber of person who is offering to the public; and 2) have some authority to put a stop to the person who would go out on the street without registration at all. At the present time, the statute does not allow them to restrict the sale of unregistered securities.

Gerald Bolts, Regional Administrator of the SEC in Los Angeles stated that what they are really talking about, in terms of even having a securities law, is the ability of businesses to be able to raise capital for new ventures and for existing business expansion. In order to do that, you have to have two things. First of all, you have to have confidence in the people who are potential buyers of the securities or stock; that they will buy in large numbers so that the capital can be raised. Secondly, you have to have liquidity; resale value (similar to what Mr. Willis was talking about earlier). In Section 5 of SB 417, he felt that the 80% figure should be raised to 100%. What the sales men are doing is only selling enough to get their sales commission and then forgetting to sell the issue. In effect, it is not really a distribution of securities. It does two things: 1) works as a fraud against the people who buy these securities; and 2) works as a fraud upon the company that probably desperately needs that money for their venture.

Senator Dodge asked if, with the escrow account and an increase to 100%, whether or not it would make the provisions so tight that a corporation would not be able to obtain the sales services needed to get the job done.

Mr. Bolts replied that line 20 of Section 5 would put some limits on that. It says that "such funds shall be retained in trust until the number of securities is sold, as specified by the administration prior to the registration of the offering, sufficient to finance the stated objectives of the offering." As an example, if a company says they are trying to raise one-half million dollars, but they only raise \$100,000, that would still be of help to them. Then, as soon as they raise the \$100,000, it will be out of escrow. It is up to the company to decide if they even want to put a limit in.

Mr. Willis informed the Committee that when they originally discussed this, they considered the situation where the corporation or issuer pays the salesman a draw against his commission. It was their proposal that to avoid the situation that Mr. Bolts was talking about, the issuer should pay the salesman in advance for his services and then receive that back out of the total money that is in escrow. This suggestion was missing from the bill when it appeared in written form. He also told the Committee about the approach to this type of problem on the federal level. They give the administrator the authority to require escrow of the funds until the issuer notifies the administrator that the offering is closed out; whether he has raised all the money he wanted to or not. When he decides he has sold all he wants to sell ("he" being the issuer), then he closes the issue out and the funds are released from escrow. This is not done in all cases; only in those instances where, in the discretion of the administrator, by looking at the documents or the type of contract between the underwriter and the issuer or what he knows about the underwriter, he feels it warrants it.

It was the general consensus of the Committee to go with this type of procedure.

In regard to SB 416, Mr. Willis made the following comments. Section 5 handles the situation where an individual is found to be engaging in business without being registered but there is no standard in the bill for denying or revoking someone who is currently an investment counselor and may have violated the law or may have committed a fraud. Some procedure needs to be added to take care of that situation. Section 6 talks about certain things that have to be disclosed when registering and under 6 (d), one of them is when he has been enjoined or convicted. Under federal law, when a person has been enjoined or convicted, that is a basis for refusing or revoking his registration. As the bill presently stands, the administrator has no power to revoke or refuse a registration.

Mr. Alexander H. Walker, Jr., President and owner of Nevada Agency and Trust Company in Reno informed the Committee that the function of a transfer agent is to transfer ownership from one company to another. He stated that one problem is that many transfer agents don't know the difference between restricted and nonrestricted securities and this is where the abuses come in.

Senator Close suggested that the Committee review each bill section by section, beginning with SB 375.

Section 2 - Delete the word "inequitable." The purpose being, to try to prevent a prior restraint or judgment being exercised by the Secretary of State. Mr. Bolts stated that the federal law reads "that would operate as a fraud" and talks about kinds of fraudulent activity: 1) engaging in a scheme or artifice to defraud; 2) the making of misrepresentations of fact or material omissions; and 3) engaging in a course of business which operates as a fraud. (this language is taken from Section 17 of the Securities Act of 1933)

Section 3 - In subsection 4, Mr. Swackhammer suggested adding "by certified mail" in the event that the administrator is unable to give notice of the hearing telegraphically. This would provide his office with an alternative method. In line 17 of page 2, Senator Close pointed out that the term "appropriate action" may be too vague and suggested stipulating either a fine, suspension or revocation as the penalty. Senator Bryan concurred and further remarked that the statute should stipulate the amount of the fine and suggested \$1,000 for each violation.

Section 4 - Senator Sheerin stated that there should be some provisions for an appeal of a judgment. He suggested adding a section indicating that an issuer can appeal the findings of the Secretary of State pursuant to the provisions of Chapter 233b.

Section 5 - No change.

Senator Bryan moved to amend and rerefer; seconded by Senator Hilbrecht; motion carried unanimously. Senators Foote and Sheerin were absent from the vote.

#### SB 416

Section 2 - paragraph 4, Senator Hilbrecht suggested inserting after "bona fide newspaper" the term "of general circulation" and deleting the remaining language. He stated that "of general circulation" is an accepted term of art and has been established in Nevada case law.

paragraph 6, Senator Close felt that this was too vague and poorly worded. Senator Hilbrecht suggested deleting line 23 and inserting "such other persons."

Section 3 - Mr. Walker pointed out that "publicly held corporation" needs to be defined and that it should be defined in accordance with Rule 146 of the SEC. He suggested that it could be defined as one whose stock is held beneficially by 25 persons or more.

Senator Hilbrecht felt that could be done but that some means would have to be found to "grandfather" in all of the old mining corporations that were established years ago and that would not fit that description. He pointed out, however, that this could create a considerable loop hole in the statute.

After further discussion, it was the decision of the Committee to delete "publicly held corporation."

Section 4 - In response to a question from Senator Dodge, Mr. Swackhammer stated that they have many people setting themselves up as intrastate investment advisors that are not registering with the Secretary of State's office. Senator Close pointed out that under Section 5, these transfer agents will have to comply with the registration procedures of NRS 90.130.

The Committee further decided to insert a new section establishing a registration revocation procedure for transfer agents, broker-dealers, investment advisers; an omnibus coverage of persons in these fields.

Senator Bryan informed the Committee that the Illinois Act has a number of provisions as far as revocation of registration: conviction of a felony; any misdemeanor in which fraud is an essential element; violation of any provisions of the chapter; material misrepresentation or omission of facts; etc. He felt that this might be appropriate language for this new section.

Mr. Swackhammer pointed out that there were a few conflicts between SB 416 and SB 417. Page 3, lines 16 and 19 of SB 416 calls for a \$10,000 surety bond with a net capital of \$25,000 while in SB 417, lines 25 and 29 requires a \$25,000 surety bond with a net capital of \$75,000. Additionally, page 3, line 10 of SB 416 requires only a \$50 filing fee for a broker-dealer whereas in line 20, page 4 of SB 417 it calls for a filing fee of \$100. He stated that, for the protection of the public, he would prefer the higher figures in both cases. The committee concurred with that suggestion.

Senator Dodge moved to amend and do pass; seconded by Senator Wilson, motion carried unanimously. Senators Foote and Sheerin were absent from the vote.

#### SB 417

Section 11 - paragraph (c) James Resh, Director of National Association of Securities Dealers in Los Angeles spoke to the Committee briefly about his organization and the testing of security dealers. He stated that the intent of the organization is to upgrade and professionalize the quality of persons dealing in securities.

Paragraph (d), Senator Hilbrecht felt that the stipulation of "certified" in regard to public accountants would be a discriminatory practice. He suggested "licensed public accountants" be used instead.

No action was taken on the bill at this time.

SB 413 Expands list of dangerous weapons prohibited from being manufactured, imported, sold or possessed.

Senator Hilbrecht requested that his comments be entered into the record to clarify his action taken on the floor of the Senate on April 10, 1975. The point in question was the proposed amendment by Senator Neal made on the floor. Senator Hilbrecht:

"Neal indicated that his amendment was proffered the second time he made the presentation on the floor - I realize there were two of them and I didn't respond to the first one - on the ground that he felt it was a racial slur at the black community. I do not believe that his amendment fairly poses that question because his amendment has the ringer in it that the handgun is to be included. I simply said that I would have to oppose it on the

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ground of the handgun and I would resent that characterization of being a racist kind of position I was taking. I suggested that if he were in good faith and wanted to raise the issue, that the appropriate way was to limit it to that matter that apparently he found objectionable."

SB 455 Provides that the district attorney and sheriff of each county serve on the county license board.

The following comments were made in regard to the discussion of and testimony received during the meeting of April 10:

Senator Dodge: I thought the testimony supported the sheriff yesterday, but one thing I want to find out here on this bill before we take action, and I told Bill Adams that if he is going to expect us to not approve this bill, he had better get some councilmen up here. The only thing I would like to ask you to do is find out from him whether he intends to bring anybody else in; if not, I'm ready to vote.

Senator Hilbrecht: In the same connection, I will say I am very disturbed at the position that apparently some of the county commissioners have taken. They have taken me aside and indicated serious objections to the measure. Now all of them, or virtually all of them, were up here yesterday. I spoke with 3 of them and asked them to see you, Mel. Jack Petitti told me he was going to.

Senator Wilson: I think more important than the city people, Carl, are the county commissioners.

Senator Dodge: Right, but the only opposition that was raised was the resolution of the city council so I wanted to find out, if in fact it warranted us to consider the opposition to the bill and whether it was based on something substantive.

Senator Hilbrecht: I talked to Tom Wiesner last night and told him that he had told 2 or 3 people in my presence, that he opposed the measure. I informed him that we had heard some evidence yesterday morning and that we were looking for him to testify. He said they were all over on the hospital or something else and I said fine - but are you going to ask to make a presentation? He said he hadn't known about the hearing. I told him that our record will reflect that his representative, Dick Bunker, according to our Chairman, was informed and that everyone was aware of it. Whereupon he said "Well, I sure wish we had gotten a letter inviting us to testify."

Senator Close: You don't have to be invited to your own funeral or your own marriage.

Senator Bryan: Do you want to hold it until Monday, Carl?

Senator Dodge: Well, I am ready to vote if the city is not coming in with any more testimony.

Senator Bryan: Alright, but there is another question that has never been raised by any of the testimony and that is, do the district attorneys come back on.

Senator Hilbrecht: I received a call during this meeting from a fellow who was representing the sheriff's interest on the bill and I asked him if the DA still wants in this; because the rumor I hear now is that he doesn't want to get involved. I am a little reticent because the DA is allegedly presenting a case at the same time; does he really want a vote, too? He said he did not know but that he would call me back.

Senator Wilson: I think what Carl is really saying, is that this thing is going to be decided on the record.

Senator Dodge: We have a resolution of opposition but on the other hand, I thought the sheriff made a good case.

Senator Close: It is the Committee's decision then, to not consider the bill at this time?

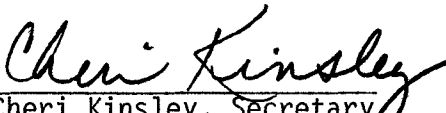
Senator Hilbrecht: In the first place, I have not received my answer back on whether or not we should delete the district attorney. There was no presentation concerning the DAs.

Senator Bryan: This affects not only the DAs in Clark County. If we pass 455 as is, we are putting every district attorney in the entire state on the board.

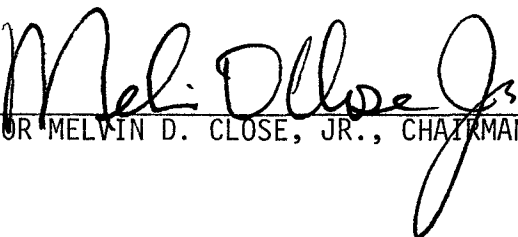
No action was taken at this time.

There being no further business, the meeting was adjourned.

Respectfully submitted,

  
Cheri Kinsley, Secretary

APPROVED:

  
SENATOR MELVIN D. CLOSE, JR., CHAIRMAN