

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

232

April 29, 1975

The meeting was called to order at 8:10 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 555 Revises schedule of maximum fees for court-appointed counsel for indigent criminal defendants.

George Ogilvie, County Counsel for Clark County testified that the present law, NRS 7.260 is completely unrealistic. The statutory maximum is \$1,000 for any capital case; \$300 for a noncapital case; and \$200 for a misdemeanor case. This is creating a serious problem in Clark County. The judges have taken the position that the present statute is unconstitutional in that it conflicts with their inherent powers. He stated that at the present time, they have 3 or 4 threatened cases for collection of payment and that some of them are up as high as \$7,000-\$8,000. They are refusing payment of these. According to NRS 244.255 "once a claim has been considered and rejected by the Board of County Commissioners, it can never be considered again." It was his recommendation that as to those cases where there is not an accordant satisfaction, that those claims be reconsidered by the Board, notwithstanding the provisions of NRS 244.255. Presently, there is no supervision over the amount of a claim a district judge or justice of the peace approves. One of the aims of this bill is to allow unusual cases to exceed the maximum under the supervision of someone other than the appointed judge.

Mr. Ogilvie reviewed the bill section by section with the Committee and the following comments were made:

Section 1 - Mr. Ogilvie stated that in this section, they are attempting to require an attorney to represent a case all the way, even through an appeal. It would provide for much better representation for the defendant if the same attorney handles it through the stages of an appeal and it would be more economical for the county in that they would not have to pay for all the time in between a change of attorneys.

Subsection 4 delineates the fee schedule. He stated that he was not adamant about the dollar amounts listed; they were amounts he had arrived at after consultation with Judge Goldman.

Senator Wilson questioned whether the \$25 per hour was reasonable. He felt that major criminal cases would far exceed the normal workload for a case. Mr. Ogilvie agreed and pointed out that that was why he requested a provision allowing for unusual cases to exceed the maximum, under supervision.

In response to a question from Senator Sheerin, Mr. Ogilvie stated that it was not his intention to leave out paragraph (f) in subsection 4. He requested that it be included in the appropriate place.

Section 3 - Subsection 3 allows the court-appointed attorney to hire investigators or expert witnesses, exclusive of his fee and not to exceed \$300. Senator Close suggested that expenses be approved prior to being incurred.

Section 4 - Mr. Ogilvie stated that this section provides for the source of funds and that it is consistent with existing provisions. In discussing this, Senator Sheerin felt that the main question regarding direct appeals is whether it is to be paid by the county or from the statutory contingency fund. It was his opinion that it should be paid by the county.

Senator Dodge requested a clarification of the difference between a direct appeal and post-conviction relief. Senator Close replied that the direct appeal is the logical continuation of the trial and normally the public defender would handle it; on post-conviction relief (after the person has been incarcerated) a statute was passed several years ago that vested authority with the state public defender to handle these at state charge. Senator Dodge suggested incorporating something to distinguish between those two situations.

Section 5 - Mr. Ogilvie felt that this was an important section in that, after the appointment of an attorney, the defendant acquires the funds to pay for his own defense, the court would have the authority to discharge the attorney or direct the defendant to pay the attorney a reasonable fee. Senator Dodge asked about the situation where the defendant is found to be indigent, obtains a court-appointed attorney, and then makes a \$10,000 or \$20,000 bail. As a result of that, do they ever re-evaluate his status of indigency? Mr. Ogilvie responded that if they attempted to monitor that situation, they might run into some constitutional problems by either depriving the right to bail or depriving the right to counsel.

Section 6 - Companion section to section 4, it sets forth where the attorney submits his claim for services rendered; what the claim must say.

Section 7 - States that in the event a new trial is granted, the attorney is not bound by the maximum applied to the prior case.

Section 8 - Mr. Ogilvie stated that occasionally, without making any inquiry as to the availability or disqualification of the public defender's office (particularly a magistrate) has appointed a court-appointed attorney. To guard against that, this would require that he has to state the reasons for disqualification and make a finding that the public defender is disqualified.

Section 9 - NRS 252.160 leaves the compensation of a special prosecutor entirely in the hands of the appointing judge. In lieu of the fees provided for a court-appointed defender, Mr. Ogilvie felt that there was too much disparity and stated that this section would equate the special prosecutor's fees with those provided in the bill.

Bob Broadbent, representing Clark County, testified on the bill. His concern was that there were some situations where there is not a conflict and yet they still appoint court-appointed counsel.

Senator Close told him that that situation would be taken care of in Section 8. Mr. Broadbent further stated that at the last meeting of the Nevada Association of County Commissioners, although they recognize that there is a problem with the present fee schedule, they do not agree with the recommendations of Judge Goldman. They do not feel these would be fail in all areas of the state in that they are a little higher than what some of the smaller communities would be able to afford. In view of the provision for allowing an increase of the fee in unusual cases, he suggested setting a smaller maximum.

No action was taken at this time.

SB 428 Requires restitution to victim by person convicted of issuing fraudulent instrument and provides other liability.

Fran Breen, Nevada Banker's Association appeared at the request of the Committee to discuss paragraph 4 on the question of prima facie evidence of bad checks. He brought with him Carl Burrow, Executive Vice President of First National Bank, who set up the second computer system in the world for banks.

Mr. Burrow explained to the Committee how the check system works in regard to exception items (checks that do not go through the computer for one reason or another). In response to the Committee's main concern - the notation of "refer to maker" - Mr. Burrow stated that there are various reasons for it: the possibility that there is a deposit in the mail that the bank has not yet received; the maker of the item may have made a mistake in bookkeeping; a check deposited in his account may have been returned that he is not aware of, etc. Senator Sheerin pointed out that regardless of the reason, the fact remains that there are insufficient funds in the account. Mr. Burrow replied that they feel it is in the interest of the customer to give everyone a fair chance in the event there are extenuating circumstances.

Senator Hilbrecht asked what the bank would do if they were to delete "because of insufficient funds." He stated that they were trying to limit it to only those cases where there are insufficient funds. He further stated that if the bank is unwilling or unable to differentiate between those cases, then perhaps the best remedy would be for the law to shift the burden to the maker of the check to explain why it is being returned.

Mr. Breen suggested the following procedure. When a check is returned to the payee, he can take it to any officer of the bank from which it was drawn and have that officer examine the account to determine what the problem is. If it is because of insufficient funds, the officer will change the notation from "refer to maker" to "insufficient funds." He stated that this procedure is done quite often. However, it was pointed out that this is only done in the situation where the case has gone to court or a police officer is investigating the problem.

Senator Dodge replied that they are not at the point of going to a police officer yet. They are still trying to make collection on the check; they are attempting to build a case to go to the police with. He further stated, by way of example, that in the rural areas it would not be feasible to go to the bank. In his business, he receives checks from all over the state and he would not be able to go to each bank to determine why a check was returned.

It was the decision of the Committee to amend the bill according to Senator Hilbrecht's suggestion by deleting the term "because of insufficient funds." He also suggested deleting paragraph 7. He pointed out that it would not be necessary to mandate restitution because of the statute requiring restitution in criminal proceedings. The Committee concurred with this.

Senator Hilbrecht moved to amend and do pass; seconded by Senator Dodge; motion carried unanimously. Senator Bryan was absent from the vote.

Senator Sheerin felt that the record should reflect, from an ERA standpoint, that Senator Dodge is finally coming around in that he referred to himself as a "business-person."

AB 150 Expands peace officer powers of field inspectors of vehicle compliance and enforcement section of Registration Division of Motor Vehicles and provides for their early retirement.

E. J. Silva, Department of Motor Vehicles testified before the Committee on this measure. He stated that the purpose of the bill is to expand already existing peace officer powers to 6 investigators in the Registration Division. He read to the Committee a letter to Assemblyman Alan Glover from Larry Hicks, Washoe District Attorney expressing his support for AB 150.

In explaining the problem, Mr. Silva stated that last year they conducted over 3,000 investigations, 20% of which involved felonies. Under the present statute, felonious crimes are not covered in their powers. The difficulty with calling in other agencies to assist is not only that they do not have sufficient manpower to loan, but that they lack the expertise in this field. At the present time, if they cannot obtain help from another agency, the investigator acts as a private citizen and effects a citizen's arrest. In response to a question from Senator Bryan, Mr. Silva stated that one of the requirements for becoming an investigator is 5 years minimum experience with a law enforcement agency. He further commented that, in the event this legislation is passed, they have an arrangement whereby additional training will be required.

He informed the Committee that the problem in the Assembly had been over the early retirement provision.

Senator Bryan pointed out that this bill would give them the power to seize the car but not the individual; it is directed against the vehicle not the person. Senator Wilson asked whether or not they can arrest a person incident to seizure of the automobile. John Ciardella, Department of Motor Vehicles responded that if they had reasonable cause to believe that the vehicle was in violation of any of the registration provisions, that at that stage, they would have the power to arrest. Senator Bryan disagreed and stated that the bill, in its present form, does not give them that power.

In further discussion, Senator Close stated that the bill in its original form accomplished what they are asking for.

It was the decision of the Committee to talk to Chairman Barengo of the Assembly Judiciary Committee before taking any action.

AB 186 Extends jurisdiction of Nevada Commission on Equal Rights to handicapped persons and prohibits certain discriminatory practices.

Senator Hilbrecht informed the Committee that Health and Welfare has reported SB 98 (clarifies rights of handicapped persons) out of Committee. The bill was amended to provide expressly that it does not create a cause of action for civil damages, the idea being that this Committee would enact something like AB 186 that would provide administrative remedies through the Equal Rights Commission. He further recommended that it be made a condition precedent to any judicial undertaking.

Father Larry Dunphy testified in favor of the bill. He stated that it was a very important piece of legislation in that handicapped persons have a very difficult time getting a job. This puts them in a double bind in that handicapped does not mean you are disabled under the law, according to the definition applied by the Social Security Division.

No action was taken at this time.

AB 437 Provides for criminal penalty for bribing electors.

Donald Klasic, Deputy Attorney General informed the Committee that Nevada has no bribery statute at all.

Senator Dodge stated that he was not in disagreement with the idea of a bribery statute, however, he felt that there was a problem in distinguishing the difference between a campaign platform and bribery. There was considerable discussion among the Committee on this point.

Mr. Klasic read to the Committee the language he had originally requested. It was taken from the bribery statute that had been on the books in Nevada but had been taken off for one reason or another.

It was the decision of the Committee to go with that language.

Senator Foote moved to amend and do pass; seconded by Senator Hilbrecht; motion carried unanimously. Senator Bryan was absent from the vote.

SB 458 Provides indemnity for public officers and employees in certain cases.

Senator Dodge informed the Committee that he had talked to George Vargas about this matter and that it was his opinion that the employees could be covered in one of two ways: 1) they could be named as an original insurer along with the school district; or 2) they could be insured under an additional insured rider.

Frank Daykin, Statute Reviser appeared at the request of the Committee to review this bill. Senator Dodge told Mr. Daykin that the problem was a result of the Supreme Court decision on the school board members. What the Committee was looking for was language that would expand this to include the members of public boards or commissions in the performance of their duties.

Mr. Daykin stated that the political subdivision to which they pertain would have to be the ones that would insure them.

Senator Dodge pointed out that it was not so much a question of who would be the insuring authority as much as the enabling authorization to someone to permit them to cover these people.

Senator Hilbrecht stated that he felt it should be mandated in that it is a new area of tort. He further commented that the State owes an obligation to the people who are charged with the responsibility of making decisions that may be subject to court review.

Mr. Daykin observed that the bill imposes the obligation of indemnity and then is permissive with respect to insurance. What you are talking about is mandatory coverage under NRS 41.038; but make it mandatory only with respect to the new paragraph covering state, bi-state, local and interlocal boards and commissions as to their discretionary functions. Senator Wilson suggested amending it further by mandating defense by the Attorney General or District Attorney.

Senator Wilson moved to amend and do pass; seconded by Senator Dodge; motion carried unanimously. Senator Bryan was absent from the vote.

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

It was the decision of the Committee to incorporate this bill into SB 417 (provides for regulation of bullion dealers and strengthens laws relating to sellers of securities).

Senator Hilbrecht moved to indefinitely postpone; seconded by Senator Wilson; motion carried unanimously. Senator Bryan was absent from the vote.

SB 53 Clarifies the definition of marijuana.


Senator Close informed the Committee that the Assembly Judiciary Committee had amended the bill by deleting "stalks" and inserting "stems." It was the decision of this Committee to concur in that amendment.

There being no further business, the meeting was adjourned.

Respectfully submitted,


Cheri Kinsley, Secretary

APPROVED:


SENATOR MELVIN D. CLOSE, JR., CHAIRMAN