ASSEMBLY ELECTIONS COMMITTEE MINUTES
MARCH 2, 1977
5:00 p.m.

MEMBERS PRESENT: Chairman Mann
Mr. Chaney
Mr. Goodman
Mr. Horn
Mr. Kosinski
Mrs. Wagner

MEMBERS ABSENT: Mr. Sena (excused)

GUESTS: Holbrook Hawes, Nevada State AFL-CIO
Harry Kaiser, Carpenters 1780
Elmer J. Laub, Carpenters 1780
Linda Johnson, League of Women Voters
Tom Moore, Clark County
Pat Gothberg, Common Cause
Daisy Talvitie, League of Women Voters
Esther Nicholson, League of Women Voters
William Swackhammer, Secretary of State
David Howard, Secretary of State's Office

Chairman Mann called the meeting to order at 5:00 p.m. for the purpose of hearing testimony on AB 136, 158, 159 and 34.

AB 136, Requires state or counties to pay cost of election recount if demanding candidate prevails.

William Swackhammer, Secretary of State, spoke on the bill. He stated that the statutes have been a little vague as to what happens if the person requesting recount prevails. Presently have to post the estimated cost for the recount.

Mr. Mann stated that the costs of recounts from the last election differed widely from county to county. He asked if there was anyway that these could be uniformed. He inquired whether the Secretary of State has any power to determine just costs. Mr. Swackhammer stated they have had a couple of instances where they have asked to have some arbitration and that they have no statutory authority to set fees.

Mr. Mann inquired whether this was a problem. Mr. Swackhammer stated that the county clerks and voter registrars in Nevada "are a pretty decent lot" and they are doing the best they can.

Mr. Mann stated that this is perhaps one of the areas that needs further work in terms of an automatic payoff, which this bill kind of addresses itself to.

Mr. Mann asked Daisy Talvitie if she would like to speak on this. She stated that they had no formal testimony but that they do support the concept however they have not analyzed it.

AB 159, Removes limitations on political candidates' campaign expenditures.

Mr. Swackhammer spoke on the bill stating that this was not one of their bills. He stated however, that it was very necessary since the campaign expenditures have been taken away by the United States Supreme Court and they have two cases in which they have held that the media portion of the statutes is unconstitutional in the State of Nevada.

Mr. Mann stated that this was part of the package from the interim committee. He asked Mr. Swackhammer if this bill restores to a constitutional format the election laws based on the decisions that have been handed down. Mr. Swackhammer stated that this was true.

Mr. Howard stated that with these exclusions that this bill will make the purpose of having Section 294A at all is a little bit meaningless because there will be nothing to report.

Mr. Mann then inquired whether the committee would be better off to just have a repealer on 294A. Mr. Swackhammer stated that they should either make it work and make it mean something or repeal it. He added that they were required to administer and enforce and it doesn't mean anything.

Mr. Swackhammer stated that what was being attempted was to keep big money out of politics so that everyone would have somewhat of an equal chance and this is not going to do it. He added that he would suggest making the report available to the public before the election not after. He stated that he could see that it has no meaning after the election. He also stated that he would like to see the reports made to the office where the person made his declaration of candidacy.

Mr. Mann stated that the local registrar of voters in Las Vegas feels very strongly on having these reports made to their office.

Mrs. Wagner stated that she has asked for these amendments to be drawn up but has not received them as yet. She stated that she would bring up the amendments at the next meeting. She added however, that she would not want to repeal all the sections listed here because in essence what this would do would be to repeal all campaign practices acts in the State.

AB 158, Removes voting machine provisions from NRS.

David Howard, Secretary of State's Office, stated that this also was part of the package of the interim committee. He stated that the overall thrust of this bill was to remove all references to voting machines in reference to mechanical standup machines that were utilized in Clark County and Wahoe County. The reason for this was that the law sometimes conflict now with the new punch card and ballot provisions. To simplify the election code it was felt that if Section 293A was removed it would make the code that much more compact and easier for the election officials.

Mr. Howard stated that in Section 6, line 3, page 3 states that each election board consists of 5 members. They would like to see this amended so that each election board consist of at least 3 members. This amendment is attached as Exhibit A and herewith made a part of this record.

The reasoning behind this amendment is that in the large counties have demonstrated that they can conduct elections with 3 members for each precinct, therefore cutting a tremondous amount of money expended for elections. Stan Colton of Las Vegas has estimated that with 5 members his costs would go up 40%. This amendment would allow those officials who wish may use more members but would not make it necessary for all.

Mr. Kosinski inquired if on page 4, lines 27 and 28, if there was any other system being used other then punch cards and printed ballots. Mr. Howard stated that automatic voting machines are also authorized which are being excluded. He stated that several counties are going from paper ballots to new systems probably punch cards.

Mr. Mann stated that he had had a conversation with Mr. Demers and that Mr. Demers had stated that they needed this section because during the interim they have come up with some new and different kinds of machines and they feel it is necessary to have this language in law so that if they wanted to switch they could go to the Secretary of State and get automatic approval. Under present statutes they were wired into only using these two kinds.

Mr. Kosinski stated that on page 5, section 13 this portion was also taken care of in another bill. Mr. Howard stated this was also in AB 157 regarding assistance to handicapped. Mr. Kosinski stated that he would suggest that one of these be held up so as to not to have any conflicts. Mr. Howard stated he would like to state there was change between the two bills in this particular section.

Mr. Howard stated an earlier bill discussed, AB 132, was also covered by an interim study. Mr. Mann presented the committee with copies of a letter from the Secretary of State regarding AB 132. This letter is attached as Exhibit B to these minutes and herewith made a part of this record.

Mr. Horn stated that he has complied some information and made some studies on this random selection on AB 132 and that when this information is available he will have it for all the committee to see. Mr. Howard stated that consideration of this bill should be made because without it next year's election could very possibly be subject to court action at a very inappropriate time. He stated that it will cost no additional money but in the long run may save the State a considerable amount of money.

Mr. Mann stated that this is not the last hearing that AB 132 will have with this committee. AB 132 will having another hearing and be discussed openingly by the committee.

AB 34, Creates additional single-member senatorial districts

Mr. Mann began by stating that many people have been desirous of having single seat Senate districts for a long time. He stated that they are using AB 34 as the vehicle for testimony and hearing on the Assembly side. If they are fortunate enough to get this legislation the vehicle for passage in the bodies will be the Senate version out of courtesy to their House. He added that he had been assured by Senator Gibson that they will hear a districting bill this session and that he is 100% support of single seat Senate districts. He ended by saying that the Senate version will probably come late in the Session and with holding hearings at this time the Assembly would be able to act upon it quite fast.

Mrs. Wagner, sponsor of AB 34, presented the committee with copies of campaign contributions and expenditures that were expended by major Senate candidates in the recent election. This is attached as Exhibit C and herewith made a part of this record.

Mrs. Wagner stated that this had some bearing on this bill. She stated that she was only addressing herself at this time to expenditures. Mrs. Wagner added that senate seats should

be single for two very significant reasons. The first is because of the enormous expenditures by some candidates during the election of 1976. She used District 3 as an example and that the top 6 candidates spent the following starting with the most spent: $66,822.92, $57,876.26, $57,655.32, $48,361.01, $44,786.18 and $21,796.55. The top four amounts did win the election. The other reason is that with spending limitations ruled unconstitutional there is presently no effective way to curtail campaign expenditures. She stated that she feels that both of these problems can be addressed by breaking up the large multi-membered districts thus making money less of a factor. It is obvious in the district of 200,000 people the candidate must rely heavily on the media to get the message across to the perspective voter. This bill would make the candidate and the voter more accessible to one another.

Mrs. Wagner stated that this would only divide Washoe and Clark County into single-seat districts. The alignments for these can be found on pages 3-6. In addition on page 2 lines 2-23, are listed the number of Senate districts that would be up for re-election in 1978 and those in 1980.

Mr. Mann stated that he had a great many inquiries on the matching of Assembly districts to make up a Senate district. He said that in order to be fair to everyone he was appointing a subcommittee to study these. The subcommittee will consist of Mr. Goodman as Chairman, with Mr. Chaney and Mr. Horn as members.

Mrs. Wagner stated that she had arrived at the alignments based on the 2 bills passed last session dealing with County Commission districts and School Boards seats. These were based on the same premise of 2 Assembly seats for each. This would make sense in that the each voter would know that the Commissioner, School Board member, Senator and Assemblyman represented approximately the same boundary lines. These would represent the same basic geographic area. She stated that this was true of Washoe County but that for Clark County she had to take the alignments from bill that had been previously introduced.

She stated that in the Senate bill proposed on this same subject there has been provision made for two individuals to happen to reside in the same district to serve at large until 1980 and then wait out two years if this became law and then they would pick up on the single seat district.

Mr. Kosinski asked if that bill had been introduced. Mrs. Wagner stated that the bill had not been introduced but it has been drafted for some time.

Mr. Kosinski commented that the Supreme Court has upheld that multi-district seats are constitutional.

Mrs. Wagner stated that she felt single seat senate districts would bring government closer to the people by making the members more accountible and more accessible.

Mr. Mann stated that he felt that was just one of many reasons and that with multi-seat you are excluding many of the electorate from holding office as very few can successfully challenge incumbent because of the amount of money necessary to run a successful campaign.

Mr. Horn stated that the question that has been raised here is that when running at large only those that can raise large sums of money can run and so the "little guy" who does not have the funds can not run but if there were only two Assembly districts to cover he could very well stage a very good campaign and have a very good chance of winning. He stated that this type of legislation is long over due and badly needed.

Mrs. Wagner stated that the basic objection by the Senate in the past has been that one house should deal with its own problems in their own way.

Mr. Chaney stated that he supports this concept not only because it allows everyone the same chance but also because at the present time if a person wants to talk to a Senator from his district about a local problem or any problem, his first problem is determining which Senator is his.

Mrs. Gomes, Assemblyman, stated that she was very much in favor of AB 34 but that she did have some questions regarding the alignments included in the bill. She stated that when they submitted the alignment for the School Board in the last session she had thought that the alignment would have been different. She stated that her district and Mrs. Wagner's districts were different in that Mrs. Wagner's district had a larger number of registered voters. She further cited the situation where Mr. BArengo's district has even fewer registered voters. With this alignment, Mrs. Gomes stated that she felt it would be a long time before North Reno would have a Senator from that area. She added that the School Board members are all from Southwest Reno.

Mr. Mann stated that this would be one of the questions that the subcommittee should address itself to where a district has a large population and a candidate could win from just the vote in that district and ignore the other Assembly district.

Another question the subcommittee should consider is the socio-economics of the areas.

A general discussion ensued regarding the various problems that the alignment must consider. Mr. Kosinski brought up whether or not it would be necessary for these districts to have a common boundary. Mr. Howard stated that he really did not know but that the Assembly districts must remain intact. He stated that personally he would feel that it would be confusing not to have them have a common boundary.

Assemblyman Murphy then spoke in favor of the bill. He stated that he had been the sponsor of a similar bill in the last session. He stated that the whole concept of single seat is one that he supports in terms of people understanding who represents them in government. He stated that he did not really buy the argument that when you have multi-seat districts you have several Senators that you can go to to talk to. A person running from a single seat district has got to be more attentive to those people he represents. People should be able to get a grasp on who their representatives are.

Mr. Murphy stated that any person who qualifies should be able to run for office. Single seat senate districts would bring it down to a level of one to one instead of a public relations campaign. Also, with single seat districts you would find the people spending more time in their districts and going door to door.

Mr. Horn inquired how Mr. Murphy matched up the districts in his bill last session. Mr. Murphy stated that the ones from Clark County were his from last session and based on information gathered from speaking with people from Clark County. In Washoe County these matchings came from the bill proposed by Mr. Weise in the last session regarding the school board members.

Linda Johnson, League of Women Voters, presented a statement in favor of AB 34. The statement is attached as Exhibit D and herewith made a part of this record.

Robert Weise, Assemblyman, asked Mrs. Johnson if the League of Women Voters would support a common district whereby a commissioner, school board member, assemblyman and senator represented a common area rather then cross over where you would have a mixture. Mrs. Johnson that it would be easier for the voter if the districts were consolidated and aligned.

Mr. Weise cited that they had the situation in Washoe Coutny where people living next and one living across the street could elect three different school board members and three different assemblyman. Since the bills passed last session the ballots required went from 38-11. Mr. Weise stated that if you break the alignment up you are going back to more ballots and more voter confusion.

Mr. Weise stated that this was not put together haphazardly. He explained briefly the alignments that were put together. He added that last session they came up with this plan whereby only one of seven school board members had any conflict and he retired. There were no conflicts with County Commissioners. If you break away from Assembly districts you are destroying the whole concept as to why you should have single seat districts.

Daisy Talvitie, League of Women Voters, stated that as a constituent from a multi-seat Senate district she would very much favor single seat districts. She stated that she felt that multi-seat districts in essence have the effect of destroying a lot of citizen vote in that in order to insure that you favorite candidate wins a person votes for only one instead of the number allowed.

Pat Gothberg, Common Cause, spoke in favor of AB 34. She presented a statement of their support which is attached to these minutes as Exhibit E and herewith made a part of this record.

As there was no further testimony to be heard, Chairman Mann adjourned the meeting.

Respectfully submitted,

Sandra Gagnier

Sandra Gagnier
Assembly Attache

Also attached to these minutes as Exhibit F and herewith made a part of this record is a letter from the Office of the Attorney General in support of AB 159.

WM. D. SWACKHAMER
SECRETARY OF STATE

STATE OF NEVADA
DEPARTMENT OF STATE

(MRS.) BOBBIE HOWARD
CHIEF DEPUTY
RUSSEL W. BUTTON
DEPUTY

CARSON CITY, NEVADA 89701

AMENDMENT

AB 158

Amend section 6, page 3, line 3, delete the word "five" and insert:

"at least three (3)"

WM. D. SWACKHAMER
SECRETARY OF STATE

STATE OF NEVADA
DEPARTMENT OF STATE

(MRS.) BOBBIE HOWARD
CHIEF DEPUTY
RUSSEL W. BUTTON
DEPUTY

Exhibit B

Sandy Place This in the record Floyd

CARSON CITY, NEVADA 89701

February 17, 1977

Honorable Lloyd Mann, Chairman
Assembly Election Committee
1977 Nevada State Legislature
Carson City, Nev.

Dear Sir:

To explicitly express this office's position on AB 132, may I offer the following for your consideration:

(1) Recent court rulings in nearby California (Gould vs Grubb 14 Col 3d 661) and Arizona (Kautenberger vs Jackson 333 P 2d 293) have held that the traditional placement of candidates' names alphabetically on election ballots as unconstitutional.

(2) Discussion with a representative from the Attorney General's Office indicates that Nevada could very well find itself in serious litigation concerning this issue and losing.

(3) Litigation that would result probably during the critical period of preparation for the 1978 Primary and General elections could be disasterous.

(4) Ballots could be ordered reprinted at tremendous costs to the state and counties.

Of even greater consequence,

(5) The timing of such a suit could subject the entire election process of 1978 to the courts thereby possibly invalidating the entire process.

Exhibit B

Therefore, it is the opinion of this office that AB 132, as precautionary legislation, is necessary to safeguard the integrity of Nevada's future elections.

Very truly yours,

David L. Howard
Chief Deputy

DLH:mg
encl.

ROOM 77, 9TH AND L BLDG.
SACRAMENTO, CA 95814
TELEPHONES: (916) 445-1760
(916) 445-8430

California Legislature

Exhibit B

JOINT COMMITTEE FOR THE REVISION
OF THE ELECTIONS CODE

ASSEMBLYMAN JIM KEYSOR
CHAIRMAN

October 15, 1975

Mr. Wm. D. Swackhamer
Secretary of State
State Capitol
Carson City, Nevada 89701

Dear Mr. Swackhamer:

For several months the California Legislature has been struggling with a problem created by a California State Supreme Court ruling affecting the order in which candidates' names can be listed on the ballots. A solution was finally arrived at and enacted into law on September 30. I recognize that election procedures vary greatly from state to state and that California's experience may be inapplicable to your state. However, our experience just might be applicable and therefore of use to you. For that reason I am directing this letter to you and to the chief elections officer of every other state. Since California State Supreme Court decisions have a tendency to carry weight in the courts of other states, you might be faced with this problem sooner than you think.

Except in statewide elections and certain other offices where there was a provision for the rotation of non-incumbent candidates' names by state Assembly district, until the end of 1974 California required, for the most part, that incumbents be listed first on the ballot followed by all other candidates in alphabetical order. The State Supreme Court, in Gould v. Grubb, 14 Cal.3d 661, in July held that this was unconstitutional as a violation of the equal protection clause of the federal and state constitutions. This decision, coupled with a similar decision by the Arizona Supreme Court in 1958, Kautenberger v. Jackson, 333 P.2d 293, obviously will strengthen the hand of those who wish to challenge practices in other states which guarantee the best position on the ballot, i.e., top spot, to certain classes of candidates.

Compiled by
Secretary of State

CAMPAIGN CONTRIBUTIONS & EXPENDITURES 1976

Exhibit C

[X] PRIMARY ELECTION
[ ] GENERAL ELECTION

LEGISLATIVE DISTRICT
Assembly [ ]
Senate [X]

[X] STATEWIDE
[X] COUNTY MULTIPLE
City
District
Township

OFFICE and CANDIDATE	TOTAL EXPENDITURE	CONTRIBUTION	Over $500	TOTAL
CENTRAL NEVADA				
Blakemore, Richard E.(D)	$3,821.84	$4,150.00	-	$4,150.00
Crafts, Dale (R)	$ 306.88	$ 310.00	-	$ 310.00
Seevers, Donald F. (D)	$1,953.01	$ 900.00	-	$ 900.00
Springer, Mildred P. (R)	20.00	—		-
NORTHERN NEVADA				
Glaser, Norman D. (D)	$ 3,840.38	$4,935.00	-	$4,935.00
Horton, David (D)	$1,233.01	$ 436.00	-	$ 436.00
Polkinghorne, Jim (R)	576.66	585.00		585.00
CLARK COUNTY				
DIST. #2				
Faiss, Wilbur (D)	$10,754.84	$8,828.98	$2,747.98	$8,828.98
Higgins, Carol L. (L)	-	-	-	-
Walker, Lee E. (D)	$11,558.59	$14,235.00	$3,800.00	$14,235.0
DIST. #3				
Ashworth, Keith (D)	$28,709.42	$27,991.15	$13,700.00	$27,991.1
Bryan, Richard H. (D)	$21,995.00	$28,853.00	$3,752.00	$28,853.0
Castle, Roy V. (D)				
Clark, David L., Jr.(R)	NONE	$30.00	-	$30.00
Duncan, Don B. (L)	$45.00	-	-	-
Ford, Imogene E. (R)	$16,034.95	$22,596.55	$4,450.00	$22,596.5
Hernstadt, William H.(D)	$25,244.73	$26,404.00	$23,000.00	$26,404.0
Herr, Helen E. (D)	$7,947.45	$8,575.00	$1,000.00	$8,575.00
Hilkert, William D.(R)				
Lamb, Floyd R. (D)	$28,668.21	$48,865.00	$25,500.00	$48,865.00
LaVoie, Joseph T. (D)	$ 976.00	-	-	-

Compiled by
Secretary of State

CAMPAIGN CONTRIBUTIONS & EXPENDITURES Exhibit C 1976

/X/ PRIMARY ELECTION
/ / GENERAL ELECTION

LEGISLATIVE DISTRICT
Assembly / /
Senate /X/

/X/ STATEWIDE
/X/ COUNTY MULTIPLE
City
District
Township

OFFICE and CANDIDATE	TOTAL EXPENDITURE	CONTRIBUTION	Over $500	TOTAL
LARK CO. DIST. #3 con't.				
Lowman, Zelvin D. (R)	$6,555.12	$7,570.00	$650.00	$7,570.00
Moser, Norman L. (L)	$ 30.00	-	-	-
Shipp, John H. (R)	$ 1.72	-	-	-
Smoke, Andrew (IA)	-	-	-	-
Watkins, Alison H. (L)	-	-	-	-
White, Lewis R. (L)	-	-	-	-
IST. #4				
Bailey, William H. (D)				
Neal, Joe (D)	$1,516.00	$2,100.00	-	$2,100.00
ASHOE COUNTY				
IST. #1				
Bouvier, Marshall A. (D)	$ 30.00	-	-	-
Hemenway, Bob (L)	$ 30.00	$30.00	-	$30.00
Myers, Dennis C. (D)	$ 138.22	$245.25	--	$ 245.25
Raggio, William J. (R)	$1,938.33	$2,777.64	-	$2,777.64
Secord, Reed (D)	$143.50	$69.75	-	$69.75
Young, Cliff (R)	$1,686.48	$3,182.59	$1,000.00	$3,182.59

Compiled by
Secretary of State

CAMPAIGN CONTRIBUTIONS & EXPENDITURES

1976

Exhibit C

[ ] PRIMARY ELECTION

[XX] GENERAL ELECTION

LEGISLATIVE DISTRICT

Assembly [ ]
Senate [X]

[X] STATEWIDE

[X] COUNTY MULTIPLE
City
District
Township

OFFICE and CANDIDATE	TOTAL EXPENDITURE	CONTRIBUTION	Over $500	TOTAL
DIST. #4				
Bailey, William H. (D)	$11,679.95	$12,470.00	$3,500.00	$12,470.(
Neal, Joe (D)	$7,207.09	$9,095.00	$6,000.00	$9,095.00
WASHOE COUNTY				
DIST.#1				
Bouvier, Marshall A. (D)	$775.00	$600.00	-	$600.00
Hemenway, Bob (L)	$39.00	None	-	None
Myers, Dennis C. (D)	$1,122.35	$1,070.00	-	$1,070.0(
Raggio, William J. (R)	$9,240.49	$11,934.00	-	$11,934.(
Young, Cliff (R)	$9,586.98	$6,897.00	$1,000.00	$6,897.00

Exhibit D

March 2, 1977

The League of Women Voters of Nevada supports single seat districts for the following reasons:

1. The multiple seat senate district requires that large sums of money be spent on campaigns. In some cases $30,000 or more has been spent to be elected to the Nevada Senate. This limits the people who can run for the Senate to those who have great personal wealth and those who have contacts to raise large sums of money. In some cases, the politician who has had to depend on large contributions during the campaign can be in a difficult position when special interest legislation comes to a vote.

2. The multiple seat district prohibits door-to-door campaigns. This limits the amount of personal communication the candidate has with the voters during the campaigns and limits discussion of the issues. It means that the candidate must turn to an expensive media campaign.

3. In large districts there are multiple communities of interest. Often times there is little representation for the minorities in the district - the aging, the poor.

4. Single seat districts would allow for better voter understanding of who is representing them. The present situation is confusing to the voter when they want to address their concerns to their legislator via letter, telegram or telephone call.

5. It appears that the U.S. Supreme Court is interpreting the one-man one-vote concept to mean that each voter should belong to a single-seat district. In the recent South Dakota decision, the court said no U.S. District Court can order multiple member districts in re-apportionment cases.

The League of Women Voters of Nevada feels single member districts will allow better representation, better government and improve the legislative process.

Exhibit E

common cause / NEVADA

March 2, 1977
Testimony before the Assembly Elections Committee
by Pat Gothberg, CC / Nevada
Re: AB 34

The support of Common Cause for changing the law to require single seat senate ~~seats~~ districts falls into two categories:

1. It is our firm belief that elected officials are not elected in order to serve their own interests; they are elected to represent the interests of the people who elected them. Our repeatedly calling for accountability of elected officials may sound redundant to some who have listened over the past few years to the demands of a disillusioned public, but those demands represent a public sentiment that is growing.

The smaller senate district would serve a valuable function in making the elected official more responsive to those who elected him. The single seat senate district would represent to the people of Nevada that our senators recognize that they are representing a group of Nevadans who are not represented by any other state Senator. The people, in turn, would have the assurance that at least one senator represents only those from their part of town. The argument that senators from multi-seat districts represent a larger broad base of people only holds water if the senators in multi-seat districts all reside in different areas of town. As I'm sure you are aware, more often than not, the senators in multi-seat districts all live in close proximity to one another, and in actuality, the residents who live in the senator's part of town are represented, but those on the other side of town are not.

2. The adoption of single seat Senate districts is a campaign reform measure whose time is long overdue. Common Cause has placed on its list of priorities the run-away problem of campaign finance. It is short-sighted to blame legislators for accepting large special interest contributions when no alternative is offered of a way to win elections with less money. This bill offers an alternative for state Senate candidates.

In the 1976 election, the average winner in the Senate spent $17,522.36. The average winner in the Assembly spent $3,446.51. It does appear that candidates would be able to spend less if their races were in smaller districts.

Common Cause urges your support of this bill.

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
CAPITOL COMPLEX
SUPREME COURT BUILDING
CARSON CITY 89710

ROBERT LIST
ATTORNEY GENERAL

February 8, 1977

Honorable Lloyd W. Mann
Nevada State Assemblyman
Committee on Elections
Legislative Building
Carson City, Nevada 89710

Re: A.B. 159

Dear Assemblyman Mann:

This Office wishes to make known its support of AB 159. In our opinion, the enactment of this statute, making certain changes in the Nevada Campaign Practices Act, is necessary in light of the United States Supreme Court decision in the case of Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612 (1976).

As you are aware, as part of its political reform package, the Nevada State Legislature enacted legislation in 1975 imposing limitations upon political campaign expenditures and requiring political candidates to file campaign contribution and expenditure reports. NRS 294A.030 imposes limitations upon the campaign expenditures of all political candidates in the State of Nevada except federal candidates and state legislators. Campaign expenditure limitations are also placed upon state legislators through NRS 218.032. Federal candidates, of course, are regulated by federal law.

NRS 294A.010, which applies to all candidates, including state legislators but excluding federal candidates, requires such candidates to file campaign contribution reports on all political contributions exceeding $500. NRS 294A.020 likewise applies to all candidates, including state legislators but excluding federal candidates, and requires such candidates to file reports detailing their campaign expenditures.

Since the Federal Election Campaign Act of 1971 contained provisions requiring campaign expenditure and contribution reports and also imposed campaign expenditure limitations, the decision of the United States Supreme Court in the Buckley case has a direct bearing on the above-mentioned Nevada laws. It should be noted that the Federal Election Campaign Act of 1971 also contained a provision which placed a limitation on the amount of political contributions that a person could give to a candidate. This particular provision was upheld by United States Supreme Court but since Nevada does not have a similar provision, it will not be discussed in this letter.

In ruling on the constitutionality of limitations upon campaign expenditures in the Federal Election Campaign Act of 1971, the United States Supreme Court started with the basic premise that the First Amendment does give protection to political expression. This is because the ability to make an informed choice of candidates is essential and such an informed choice can only be made through freedom of association and freedom of communication. However, the court noted that not all First Amendment freedoms were unrestricted. Certain compelling governmental interests were necessary although constituting hinderances upon such freedoms. In this case, the proponents of expenditure limitations argued that they were necessary in order to equalize the ability of candidates to affect the outcome of elections. In other words, rich candidates should not have an ability to affect elections based primarily on their superior access to funds.

However, the Supreme Court held that this was an insufficient basis for hindering basic First Amendment freedoms. The court reasoned that limits on campaign expenditures directly and substantially restrained the quantity of political expression by individuals, political candidates and groups. In effect, campaign expenditure limitations prevent or hinder all persons, except the press, from a significant use of constitutionally protected means of communication. Buckley, supra, at 39-59.

The Supreme Court in particular found that the provisions of the Federal Election Campaign Act of 1971, which placed campaign expenditure limitations on individuals other than the candidate, to be particularly reprehensible. The court found that the fault of this provision was that it

prevented advocacy for a candidate by persons totally independent of the candidate and the candidate's campaign. The First Amendment burden of this provision outweighed the supposed advantage of the expenditure limitation. Buckley, supra, at 47-51.

The Supreme Court also pointed out that expenditure limitations were not necessary to meet the purposes of the Act in preventing corruption and the appearance of corruption. The Court concluded that, "Extensive reporting, auditing and disclosure requirements applicable to both contributions and expenditures by political campaigns are designed to facilitate the detection of illegal contributions." These reporting and disclosure provisions, therefore, were sufficient to meet the purposes of the Act without also requiring expenditure limitations. Buckley, supra, at 56.

The Court concluded that the Act's interest in equalizing the financial resources of candidates was not a convincing justification for restricting the scope of campaigning. As the Court said,

> "There is nothing invidious, improper or unhealthy in permitting such funds to be spent to carry the candidate's message to the electorate." Buckley, supra, at 56.

The Court went on to say that the increase in the cost of campaigning also was not a sufficient justification for the restrictions on the quantity of campaign spending and the resulting limits on the scope of campaigning. As the Court pointed out:

> "The First Amendment denied the government the power to determine that spending to promote one's political views is wasteful, excessive or unwise." Buckley, supra, at 56.

Accordingly, the Court concluded that all the campaign expenditure limitations contained in the Act were unconstitutional as a direct hindrance and burden on an individual's freedom of expression. Buckley, supra, at 58-59.

For state court cases holding campaign expenditure limitations unconstitutional on First Amendment grounds, see Advisory Opinion On Constitutionality Of 1975 P. A. 227, 396 Mich 465, 242 N.W.2d 3 (1976); Deras v. Myers, 535 P.2d 541 (Ore. 1975); Bare v. Gorton, 84 Wash.2d 380, 526 P.2d 379 (1974).

The Federal Election Campaign Act of 1971 also required candidates and political parties or political committees to make disclosure reports on all contributors and expenditures. The Court noted that such compelled disclosure can possibly infringe upon privacy of association. However, if the government can demonstrate a relevant correlation or substantial relation between the governmental interest asserted and the information sought, then a First Amendment infringement would be outweighed by a governmental interest concerning the free functioning of our national institutions. Buckley, supra, at 64-68.

The Court noted that there were three governmental interests asserted by the disclosure provisions of the Act. First, disclosure provides the electorate with information as to where political campaign money comes from and how it is spent by the candidates. This alerts the voter as to the special interests to which a candidate is most likely to be responsive and thus facilitates predictions of his future performance in office. Second, disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. A public armed with information about a candidate's most generous supporters is generally able to detect any post-election special favors that may be given in return. Third, record-keeping and reporting is an essential means of gathering the data necessary to detect any possible violations of the law. Buckley, supra, at 66-68.

The Court concluded that these were compelling governmental reasons which outweighed any infringement upon privacy and, therefore, the Supreme Court upheld the campaign reporting and disclosure provisions as constitutionally valid. Buckley, supra, at 84.

In applying the rationale of the Buckley case to the Nevada Campaign Practices Act let us first look at the requirements for campaign expenditure limitations contained

in NRS 281.032 and NRS 294A.030. It would appear, in view of the rationale of the Buckley case that campaign expenditure limitations violated First Amendment rights without any compelling government interest existing in return, that these two Nevada statutes would possibly be considered unconstitutional as directly affecting First Amendment freedom of expression. As with the federal campaign expenditure limitations declared unconstitutional, these two Nevada statutes impose limitations upon the quantity of a candidate's political expression. In fact, the Eighth Judicial District Court of the State of Nevada has already declared NRS 218.032 unconstitutional in Hernstadt v. Holt, Case No. A/162322.

Three companion pieces of legislation would also appear to be affected by this burden of unconstitutionality. NRS 218.038 and NRS 294A.050 provides that no newspaper, radio broadcasting station, outdoor advertising company, television broadcasting station, direct mail advertising company, printer or other person or group of persons shall accept, broadcast, disseminate, print or publish any advertisement during a political campaign whose permissible campaign expenditures are limited by law, unless the advertisement is authorized in writing by the candidate or a member of his personal campaign committee or his authorized representative. In addition, NRS 294A.040 provides that no person or group of persons other than the candidate or his personal campaign committee, may make any expenditure, directly or indirectly, for political purposes for a candidate otherwise then through the candidate or his personal campaign committee. These laws directly prohibit the right of persons other than the candidate to engage in political expression on behalf of candidates. Therefore, according to the rationale of the Buckley case, it may be argued that these three statutes would also be unconstitutional. In fact, these statutes have been declared unconstitutional by the Fourth Judicial District Court of the State of Nevada in the case of In The Matter Of The Application Of Mel Steninger, Case No. 141.

A different conclusion would result with regard to NRS 294A.010 and NRS 294A.020, which require campaign contribution and expenditure reports. These statutes would appear to fit the rationale used by the Supreme Court in Buckley to uphold federal provisions for campaign contribution and expenditure reports. They meet the three-fold criteria of showing a compelling governmental interest which properly outweighs any First Amendment infringements, i.e. they provide the electorate with information regarding the source

of campaign money, they deter actual or apparent corruption and they are a means of gathering data necessary to detect violations of the law. Therefore, it would appear that these two statutes would be considered constitutional in light of the Buckley case.

In summary, then, AB 159 would accomplish the following:

First, it would repeal the legislative candidate expenditure limitation provisions of NRS 218.032, and it would eliminate restrictions on the right of persons other than the legislative candidates to place political advertising by repealing NRS 218.038. 1/ A procedural statute, NRS 218.036, would also be repealed.

Second, it would retain NRS 294A.010 and NRS 294A.020 requiring campaign contribution and expenditure reports, while also retaining NRS 294A.060 through 294A.080, which are procedural statutes enforcing the Nevada Campaign Practices Act.

Third, it would repeal the candidate expenditure limitation provisions of NRS 294A.030, and it would eliminate restrictions on the right of persons other than the candidates to place political advertising by repealing NRS 294A.040.

Finally, it would amend NRS 294A.050 by eliminating restrictions on the right of newspapers, broadcast media and etc. from accepting political advertisements from persons other than candidates unless the candidates first authorize the placing of the advertisements. Instead, NRS 294A.050 would be amended to merely require that the newspapers and broadcast media maintain separate records of political advertising at their offices. 2/

1/. Repeal of NRS 218.038 would also eliminate the anomaly of requiring newspapers and broadcast media to file reports on political advertising for legislative candidates with the Secretary of State, while NRS 294A.050 merely requires newspapers and broadcast media to maintain separate records of political advertising for non-legislative candidates at the offices of the newspapers or broadcast media.

2/. The First Amendment does not forbid any record keeping regulation which ends in no restraint upon expression. Oklahoma Press Publishing Co. v. Walling, 327 U.S. 186, 193 (1946).

The enactment of AB 159 would, in the opinion of this Office, resolve constitutional questions concerning the Nevada Campaign Practices Act which have been raised by federal and Nevada court cases. Accordingly, this Office supports AB 159.

Sincerely,

ROBERT LIST
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Deputy Attorney General

DK/ema

cc: Honorable Nash M. Sena
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