

MINUTES

ASSEMBLY JUDICIARY COMMITTEE

March 17, 1977

Members Present: Chairman Barengo  
Assemblyman Hayes  
Assemblyman Banner  
Assemblyman Coulter  
Assemblyman Polish  
Assemblyman Price  
Assemblyman Ross  
Assemblyman Sena  
Assemblyman Wagner

Chairman Barengo called the meeting to order at 8:00 a.m.

AB 30: Assemblyman Dreyer, as introducer, spoke first regarding the first reprint of this bill. He stated this bill had been discussed in Transportation and then referred to the Judiciary committee. He pointed out the new language on page two which provides that consent to drive or take ones vehicle on one occasion does not imply consent on another occasion. He also discussed the portion of the bill on page two, section 5, subsection three which has to do with making certain actions gross misdemeanors. That concluded testimony on this bill.

AB 402: Dale Goodman, as introducer, explained that this bill provides for public representation on the board of governors of the State Bar of Nevada. He explained that this board was not included in the general review of boards covered in AB 278. He said he felt this might restore the public confidence in the State Bar.

In response to a question from Mr. Ross, Mr. Goodman stated the reason for the exclusion of members of the families of those on the board being added to the board was that he felt relatives could be swayed in their decisions.

David Hagen, State Bar Association, was next to speak to this bill. He stated that even though there are being members of the public added to those boards and commissions which affect the public, he did not think that that should include the board of governors. He said he felt the name of this board might be misleading as they do not in fact govern the actions of the profession. The attorneys are governed in fact by the Supreme Court and those delegated by the Supreme Court.

He stated that it is the recommendation of the State Bar of Nevada to the Supreme Court, by resolution, that Rule 127 and the other applicable rules be amended to provide for public members on the administrative committees. It is also a recommendation to the Supreme Court that the fee dispute committees of the state bar and the hearing panels of the fee dispute committees include public members. He then explained the differences between the "powers" of the board of governors and the investigative committees.

He also compared the board to the fee dispute committees. He did point out that the investigative and fee dispute committees have the power to investigate, find and take corrective action regarding attorneys while the board of governors do not have these powers. He said that historically the business of the state bar board of governors is public. The fifteen members of the board, with their limited powers, are exofficio members of most committees of the state bar and their existance on those committees have to do with review of existing law, encouragement of attorney continuing to gain skills, etc.

He stated he did not feel the inclusion of three lay members, which would exclude members of the law profession, would benefit the board.

In answer to a question from Mrs. Wagner, Mr. Hagen stated he did not feel lay members should be included on board and commissions which did not directly relate to the public, if they were only going to there in a symbolic manner and not be able to assist that board or commission. Mrs. Wagner stated she wasn't convinced that a lay member could not give assistance in this case. Mr. Hagen told Mrs. Wagner she would be welcome to attend the April first meeting of the board. He also felt that the placement of the lay members should be where they can make a contribution or benefit the public by being there.

In answer to a question from Mr. Price, Mr Hagen said Mr. Price was right, that the board of governors never make decisions that affect the public. And, that according to the Supreme Court, the board of governors have no power themselves to do anything other than make recommendations to the Supreme Court and those are referred to the Bar Examiners who proceed from there.

Mr. Price stated to Mr. Hagen that he felt that he found it hard to believe that the board had absolutely no affect on the public or that a lay mamber could not contribute in some way to the effectiveness of that board.

Chairman Barengo said it was his understanding that the Bar Association was an arm of, and governed by, the Supreme Court and asked if there would be a problem with regulating the judicial branch of the government. Mr. Hagen said that this, indeed, would be a problem and that Rule 39 of the court makes it clear that the power to govern lawyers is exclusively within the inherent powers of the court. And, therefore, there would be a constitutional separation of powers problem with this bill.

Mr. Banner commented that this situation, judges and lawyers having singular control over the judicial branch bothers him. Mr. Hagen stated that it is for that reason that the Nevada State Bar have been working on a survey with respect to matters, including public membership on committees, where the public interest is involved and that is the reason why they have recommended to the Supreme Court that public members be placed on the local administrative committees who deal with attorneys and the fee dispute

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committees.

Mrs. Wagner asked if there were other states that have lay members on the board of governors. Mr. Hagen stated there were. He stated California includes lay members on this board, however, there constitutional set up is apparently different from the one here in Nevada and that other states have recently begun using lay members in the disciplinary boards and commissions. And, the American Bar Association survey currently appears to be going the direction of a recommendation of public members on those committees, rather than on the board.

In answer to a comment by Mrs. Wagner Mr. Hagen stated that if the legislature did have thoughts in this area that he felt, as she did, that it should be submitted to the Supreme Court in the form of a resolution. And, perhaps, this should include the use of lay members on the administrative and fee dispute committees.

Mr. Banner asked, if there is a conflict, then how is it attorneys could serve within the legislature. Mr. Hagen stated there are cases in progress right now that allege that it is a conflict.

AB 227: Mr. Sena briefly explained the situation in Clark County which this bill is addressing. They are experiencing extreme difficulty just getting their public administrator to file a once a year report and they cannot get in to audit his records.

AB 377: Mrs. Hayes pointed out that she did have a witness on this bill coming up from Las Vegas, however, he could not be present at this meeting and will come to testify at a later date.

William Isaef, Deputy Attorney General, testified next on behalf of the Attorney General's office on those sections of the bill that effect that office. He stated this bill was not sought by the Attorney General and has asked that he not be made the responsible supervising authority under this legislation. He stated that the Attorney General is charged with representing the state of Nevada as a lawyer and this bill would attempt to make the Attorney General an administrative agency or officer and would place on that office administrative responsibilities which go far beyond that which he should be engaged in as the state's chief law enforcement officer and lawyer. He does not feel the Attorney General's office should be involved in this, other than being legal advisor, as he is to other agencies. And, many of the duties which would be placed upon the office would not be compatible with the office of Attorney General and perhaps the Superintendent of Banking or some other division within the Department of Commerce might be a more appropriate agency, perhaps even, the Department of Taxation might more properly administer this.

He did note, also, that if the legislature does intend that the Attorney General should be the administering authority under this statute, then there should be an amendment to section 31 to give the Attorney General the investigative subpoena power which

would be necessary to acquire the records which they would need.

Additionally, he urged that this responsibility be on an appropriate state administrative officer, not on the state's chief legal officer. He said that if the Attorney General did act in accordance with the bill as proposed, that there might ultimately be lawsuits brought about that in order to defend, he would have to go outside his office to legal help. And, this would be a very tenable position for him.

He said that in looking at the bill, his office had found no other objections to this bill. He also pointed out there is a bill coming to this committee, SB 163, which deals with public guardians and the committee might like to refer to it.

He also added that the fiscal impact shown on the bill was none. However, it was the contention of their office that there would indeed, be a large fiscal impact if this were to become law.

Mr. L. J. McGee was next to testify, he is a member of the Trust Committee of the Nevada Banker's Association and was speaking on their behalf in regard to this bill. He explained that they had gone over this bill and he would like to make the following suggestion to the committee. He stated they felt that rather than trustee, the term fiduciary should be used in this bill. He stated he felt that it is a very sweeping bill and that the committee should proceed slowly on it and perhaps there should be a study made on it as to need. He stated that one of their primary concerns was with the public trustee and how that would affect the trust departments within banking institutions. They were concerned with the competitive factor as well as the additional cost to the state to handle this area.

He said that with the present difficulty of getting the people who really need trust to talk about these trusts, he wondered how the public would accept this sort of thing with the state agency acting as the trustee.

He pointed out the following problems he felt the committee should consider in discussing this bill. First, he stated he felt there would be considerable difficulty in recruiting qualified people in this field as it is a long and difficult learning process to become versed in this field. Secondly, he pointed out the reference in the bill to a common trust fund for the investment of funds which are going into guardianships and trusts. He stated that from his experience with common trust funds in the past, this is an extremely complex, complicated and difficult thing to manage. Thirdly, he stated that section 37 through 54 created a trust instrument which, as he saw it, was totally inflexible. And, this would cause problems, he stated, because no two trusts are alike and must be considered on their own merits. He stated that in section 40, the conditions seemed to be inflexible and he did not think this was probably the intent. He felt there should be some leeway as to where the money goes. He stated, also, that the \$60,000 limitation was posing somewhat of a problem as this deals

with this sum on creation of the trust and he wanted to know what would happen, in the event of a testamentary trust, if over a period of time that amount appreciated considerably. In this same vein, he stated that subsection 2 of section 38, page 8, caused some problems of administration from their point of view. The investments concepts also are a problem for them, he said, because they seem to be inflexible in section 29, page 6. He said this did not take into consideration the tax consequences or the income producing benefits of a piece of property and that, based on this section, those things would have to be liquidated. He said there did not seem to be any provision in the bill as written for the retention of proper assets in a trust or a guardianship.

He said that one section which did not concern them directly, but that they questioned, was section 17, page 3 having to do with delay of payment of fees. He stated he felt if the estate were liquid, there should be no delay in this payment.

He also pointed out that in subsection three of section 26, page 5, regarding administrators, there seems to be a conflict between that and NRS 139.040 which appears, with a small amendment, on page 12, line 20.

Larry Hicks, Washoe County District Attorney, was next to testify. He stated that the main concern his office had with this bill is subsection 2 of section 18, page 4. He stated that saying that their office can be utilized by the trustee, etc., may sound unimportant in this bill. However it will have a great impact financially and timewise on that office and its staff and he said he felt it would impact the Clark County office that way also. He stated these matters are going to require a tremendous amount of legal services and their offices are having quite a time keeping up with the work load they have now and this will add to that especially if the person who becomes the trustee is a lay person. He said currently the administrator uses the services of various attorneys within the community and they are compensated through the estate procedures and this system seems to be working well in Washoe County at this time.

In addition to the time and workload factors, he stated that the problem of available space in his office was important, simply because the space is not available for anymore people and he was sure that if this section was enacted they would need at least one more person on staff, in a full-time position probably, in his office and probably two more in Clark County.

Mr. Dick Mayne, Chief Deputy Coroner of Clark County, spoke next on this bill. His testimony regarding proposed amendments to this bill are attached and marked Exhibit A. He also presented to the committee remarks concerning AB 377 from the Clark County Social Services Department, stating their position, and it is attached and marked Exhibit B.

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Mr. T. A. Nigro, member Nevada Bankers Association, Trust Committee was next to speak. He is also in charge of the Trust Department of Security National Bank. He stated that Mr. McGee expressed the position of their institution regarding this bill. He stated that he wanted to emphasize the need to proceed cautiously on this and to consider the ramifications of the costs this would impose on the counties and agencies involved.

Mr. Fran Breen, Nevada Banking Association, addressed this bill next stating that they did not, at this time, have a position on this bill as to whether this type of office should be created or not. He stated that what he did want to do was to point out some very serious problems in the bill, as it is drafted. He commented that he had heard testimony that there were offices of this type in California, but though he had been a member of the California Bar since 1947 and has a large part of his practice in the neighboring counties in California, he has never encountered that office in his handling of estates in those counties. He stated he would look into this for the committee and report back to them.

He stated that he is aware of the problems in Clark County and that if this bill had been in effect before, there would be more problems involved than there are now. He stated, as it is drawn, this bill creates a tremendous amount of power for the public trustee, particularly if he wants to misuse it. He pointed out the following problems in the bill, as he saw it:

1. On page 5, section 27, line 40 this makes it mandatory that the public trustee shall investigate certain things regarding whether there is a qualified relative or friend who is willing and able to serve as guardian, etc. And, in connection with the next page he can demand information from those involved regarding records, otherwise confidential, which may be needed to evaluate eligibility. He said he felt this was an enormous amount of power to give to the trustee and this would be extremely vulnerable when in the hands of a person who had tendencies to misuse this power.
2. On page 6, section 30, line 28 regarding escheatability. He said he felt the use of the word "capable" was important as he did not feel he thought it would be the intent of the bill to allow this if there was an heir who, perhaps, was incompetent or incapacitated in some fashion. He said that he felt they wanted to indicate what would happen if there were no heir. He stated he felt this should be deleted from the bill.
3. On page 7, section 32, line 3. He said he felt this would create one of the most confusing situations imaginable and make it easy for someone to misappropriate funds because of the pooling of all the funds into one joint fund. One of the largest book-keeping problems involved in a situation like this, he said, was the separation of returns on investments in high-yield securities versus those which do not.
4. On page 8, section 36, line 1. He said he did not feel that this section should remain in the bill. He said the way this is written, it could even mean that the trustee would not be liable for losses resulting from embezzlement or gross mismanagement of the assets of the estate.

5. On page 10, section 50, line 38. He stated he did not feel there was any way to put the terms of an inter vivos trust in a bill. He stated that this was leaving the disbursement of funds to the trustee without any guidelines for him to follow.

In response to a question from Mrs. Hayes, Mr. Breen stated that as a lawyer he felt the bill was a beauty. However, as a practical matter, for the good of the people involved, he felt the bill creates more problems than it would ever solve.

Chairman Barengo asked Mr. Isaefff if he had discussed this matter with Joe Feutsch. Mr. Isaefff stated that he had briefly and Mr. Feutsch had indicated to him that this would necessitate a substantial increase in his staff and related expenses if he had to be trustee, and guardian, in addition to his duties as administrator. He stated this might also provide for him to be trustee over individuals as well as estates, as is now the case.

AB 227: Mr. Bob Broadbent, Clark County Public Administrator, reiterated Mr. Sena's summation of the problem in Clark County and said that he hoped that the legislature would pass some sort of bill along these lines. He also added that he felt there should be an amendment added to it to require the public administrator to open his books for audit at least on a yearly basis. Discussion in this area followed briefly.

This concluded the public testimony on today's bills.

AB 402: The committee discussed this bill. It was the consensus of the committee that the bill was either in need of amendments or that it should be put into resolution form. Chairman Barengo pointed out, for the record, that the Elko County Bar Association does not endorse this bill. Mr. Ross pointed out that he felt that any member of the Judiciary committee, who were not lawyers, would be highly qualified to sit on the board of governors. Chairman Barengo stated that the Washoe County Bar is adding lay people to their organization.

Mr. Ross recommended that there be a resolution drafted which would add two lay members to the board of governors and lay people representation on the fee dispute committee and the the investigative committees consistent with the American Bar Association's review of procedures on lay people.

Chairman Barengo put this motion to the committee and it carried unanimously. (Mr. Sena was not in the room at this time.) Chairman Barengo stated he would discuss this with Mr. Hagen and have something drafted on it.

Chairman Barengo asked that a copy of the fiscal note on AB 160 submitted to record on March 16, be sent to Mr. Henry Gardner, lobbyist for the Manufacturers, for his information.

The meeting was adjourned at 10:07 a.m.

Respectfully submitted,

  
Linda Chandler, Secretary

EXPERIENCE HAS SHOWN US THAT AB 377, IS INDEED MUCH NEEDED LEGISLATION CONSOLIDATING ~~THE~~ <sup>these</sup> FUNCTIONS OF GOVERNMENT THAT ~~HAS~~ <sup>has</sup> PRIOR TO THIS TIME BEEN GIVEN LITTLE, OR NO ATTENTION.

AB 377 APPEARS TO HAVE BEEN WELL AND CAREFULLY DRAFTED AND WE COMPLIMENT THE AUTHORS OF THIS BILL.

WE DO, HOWEVER, SUGGEST THE FOLLOWING AMENDMENTS WHICH IN OUR OPINION WILL RECTIFY SOME EXIXTING ILLS WITH THE PRESENT ~~SITUATION IN CLARK COUNTY~~ <sup>System</sup> THAT WE ARE SURE YOU ARE AWARE OF AND FURTHER PRECLUDE THE POSSIBILITY OF ANOTHER INSTANCE SUCH AS OCCURRED IN CHURCHILL COUNTY TWO OR THREE YEARS AGO.

① PAGE 2 LINE 12: AMEND SHALL TO READ (MAY):

THIS ACTION WOULD ALLOW THOSE COUNTIES HAVING A POPULATION OF 100,000 OR MORE TO APPOINTMENT BY THE BOARD OF COUNTY COMMISSIONERS THE PUBLIC TRUSTEE.

② PAGE 2 LINE 21: EXPAND TO FOLLOW DA'S ARE EX-OFFICO OF THEIR RESPECTIVE COUNTIES:

ADD: IN COUNTIES WITH A POPULATION OF 100,000 OR MORE WHERE THE PUBLIC TRUSTEE IS APPOINTED RATHER THAN ELECTED, THE BOARD OF COUNTY COMMISSIONERS SHALL HAVE THE AUTHORITY TO ESTABLISH MINIMUM QUALIFICATIONS FOR THE PERSON APPOINTED TO SAID OFFICE.

③ PAGE 3 LINE 16: EXPAND AFTER END OF PRESENT PARAGRAPH TO READ:

IN COUNTIES WHERE THE PUBLIC TRUSTEE IS APPOINTED ALL SUCH BONDS SHALL BE PROVIDED BY THAT COUNTY.

④ PAGE 3 LINE 9: EXPAND SECTION 19 TO INCLUDE SUB SECTION 3:

IN COUNTIES WITH A POPULATION OF 100,000 OR MORE, WHERE THE PUBLIC TRUSTEE IS APPOINTED. THAT COUNTY SHALL PROVIDE ADEQUATE OFFICE FACILITIES, SECURED STORAGE FACILITIES AND ANY EQUIPMENT NECESSARY FOR THE PRESERVATION OF THE PERSON, OR HIS ESTATE.



# Clark County Social Service

651 SHADOW LANE  
LAS VEGAS, NEVADA 89106

BARBARA J. BRADY  
Social Service Director

(702) 386-4011

March 15, 1977

GEORGE F. OGILVIE  
County Administrator

TO: Mr. Tom Moore

SUBJECT: AB 377

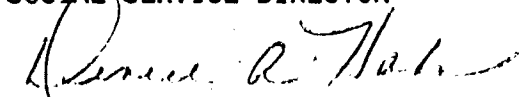
AB 377 provides the framework of a desperately needed public trustee position. Clark County Social Service has experienced numerous problems that this bill would correct:

1. The public trustee would be a County Department Head. Selection and adequacy of staff would be funded and governed by established County hiring and merit personnel system procedures. This should provide a continuity of services when a change occurs in the person holding the position of public trustee.
2. Small estates not presently being handled by the Public Administrator cost the taxpayers, if burial or other debts remain unpaid due to no estate manager.
3. Assets of incompetent persons are often mishandled or not handled at all. Incompetent persons who have small estates and also may qualify for pensions have been victims of our present insufficient services. There is usually little fee for service available in these situations and therefore, no one acts as trustee. Pension benefits are often withheld if a responsible payee cannot be located.
4. Records of estates and potential estates have presented some problems that a County position of public trustee would relieve. Accessibility of information and scrutiny of records would be required if this were to become a County office.

We do suggest that the public trustee be appointed by the County Commission rather than elected. In this manner the qualifications for the position would be established and commensurate with the responsibilities of the position.

Sincerely,

BARBARA J. BRADY, ACSW  
SOCIAL SERVICE DIRECTOR



(Mrs.) Denell A. Hahn  
Chief of Eligibility & Payments

DAH:baw

