

MINUTES

Assembly Judiciary Committee  
March 31, 1977  
8:30 a.m.

Members Present: Chairman Barengo  
Vice Chairman Hayes  
Mr. Price  
Mr. Coulter  
Mrs. Wagner  
Mr. Sena  
Mr. Ross  
Mr. Polish  
Mr. Banner

Chairman Barengo brought this meeting to order at 8:30 a.m. and swore in all those in the hearing room who wished to testify today.

Senate Bill 66:

Mr. Fred Little, Director of Department of Motor Vehicles, having been sworn in, testified on this bill, along with Kathy Weise, Esq., attorney for the Department of Motor Vehicles who was also sworn in. Mr. Little mentioned several amendments that their department wanted on this bill, referencing, page 1, lines 17 through 20; page 2, lines 19 through 22; page 2, lines 31 and 32. At this point the committee asked for some testimony of a legal nature from Mrs. Weise. Chairman Barengo asked with regard to page 2, lines 31 and 32, where the department has the power to use subpoenas now. Mrs. Weise stated that under this provision, no authority has been given to the director to subpoena witnesses or administer oaths. They come voluntarily and she feels that this would strengthen the administrative hearings by providing and compelling witnesses attendance and production of documents. Mrs. Weise further explained that the first section of the bill is under 233b which would govern all administrative hearings by all agencies and the remainder of the sections in the bill dealing, starting with section 2, only specifically with administrative hearings in the Department of Motor Vehicles. It would not effect other agencies. She further detailed this for the committee. Mr. Little continued to specify certain sections of the bill, noting Section 3, page 2, lines 39 and 40. Mr. Barengo stated that the people from Motor Transport are very upset with this portion of the bill, dealing with trial de novo. Mrs. Weise explained that what this bill provides for is rather than making it a mandatory trial de novo at the district court level which would burden the courts, this would provide at the court's discretion, may order a trial de novo. That is an appeal could be had either on an administrative direction at the administrative hearing or the court could order a trial de novo if it feels it is mandated. Upon request of Chairman Barengo, Mrs. Weise explained in detail to the committee what a trial de novo actually is and Assemblyman Banner asked that this be noted in the record verbatim:

Mrs. Kathy Weise: 233b is the administrative procedures act, generally. When there is an administrative hearing that is provided by law elsewhere and a determination is not favorable to the appealing party, the party may go to the district court level based on a record which is usually a transcript of the testimony and documentary evidence received before the administrative tribunal or the administrative hearing officer. 233b provides an alternative method for

review; it does not limit a trial de novo where a trial de novo may be provided by law elsewhere. In 233b if a review is taken pursuant to that chapter, the Court is limited in its review of the record, it is limited to 5 or 6 issues, abuse in discretion, the agency has taken action in excess of its authority, that it is contrary to law, that the decision is not based on substantial evidence and there are perhaps a few more that do not come to mind. But, it is limited to about 4 or 5 provisions for review under 233b. A trial de novo, on the other hand . . . and where these 5 provisions for reversing the administrative hearing, if none of them are met, then the Court will be bound by the administrative decision. A trial de novo, on the other hand, provides that the Court must take witnesses testimony, evidence, documentary evidence, it is a full fledged adversary proceeding before the Court. as if no decision and no hearing had been held at a lower level. At that time, the Court has the right to make its own determination on the facts presented to us; it is not bound by anybody else's determination and it is not bound by substantial evidence rule as it effects the administrative hearings officers of hearing boards decisions below. So, it is a full-fledged new hearing is a trial de novo and the court has the right and obligation to decide the facts and law as it sees it, rather than having been prior determined.

Chairman Barengo asked Mrs. Weise who holds these hearings at the administrative level and Mrs. Weise advised the hearing board or the hearing officer. By their rules and regulations that are filed with the Secretary of State, a hearing board consists of anywhere from one to three members appointed by the director. There was much discussion and questioning by the committee members of Mrs. Weise. Chairman Barengo asked Mrs. Weise if she ever knew of any instances where the Department of Motor Vehicles had a decision that the hearing officer overturned because of administrative policies. Mrs. Weise answered, "no", that she did not know of any since she has been there. Mr. Little continued with his testimony regarding Section 5, wherein Chapter 483 of NRS has been amended to add sections 6 through 9. Mrs. Weise explained in detail the provisions of these sections for the committee and again, discussion followed. Thereafter, upon a question from Chairman Barengo regarding Section 11, Mrs. Weise explained to the committee why they need NRS 483.420 repealed and considerable questioning and discussion followed. Chairman Barengo added at the conclusion of Mrs. Weise's testimony that he feels she has done an excellent job for the Department of Motor Vehicles as he has been an adversary of hers on numerous occasions.

Senate Bill 133:

Mr. Winston W. Richard, Chief of the Motor Carrier Division of the Department of Motor Vehicles, and Mr. Walter Hall, Inspector for the Carrier Enforcement Section of the Motor Carrier Division, Department of Motor Vehicles, having both been sworn in, testified on this bill. Mr. Richard stated that originally when the Motor Carrier Division submitted this bill, their intent was for gaining some additional powers to carry out the enforcement of their division. He explained that at the present time they have 27 officers in their division and they do have full police powers under 365,366, 482, 483, 484 and 487. Their attempt here is to be able to handle emergency situations when they are on the highways and this basically would give them powers to apprehend in pursuit of offenders or suspected offenders in making arrests of crimes that were committed in the presence of the Motor Carrier Division. He then gave an example to the committee. He further stated that they were in support of this bill as amended by the Senate Judiciary Committee. After further questioning from Chairman Barengo, it was brought out that they did have a further amendment to the new

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bill which they would like the committee to consider. In this amendment, they are requesting new language to have the powers of police officers under all other laws of the state while in pursuit of offenders of suspected offenders. They want to delete the wording in there as they did find that they had a problem with "under all other laws of the state". (b) would be "making arrests for crimes committed in their presence or upon or adjacent to the highways of the state" and making arrest pursuant to a warrant as there are many times when they have to serve warrants in the enforcement of the trucking industry. There was considerable discussion and further explanation from Mr. Hall. Chairman Barengo advised that they can get regulatory powers and do have such powers without this new bill. Mr. Hall answered yes, that it would be through the Highway Patrol. There continued questioning and discussion from the committee of these two testifiers. In perusing this bill, Chairman Barengo pointed out that regarding section 6, the term "regulatory agency" is not used anywhere in this statute (NRS 484.787) other than that one place. Mr. Richards explained that it would come back in under NRS 706.

Senate Bill 85:

Mr. Bud Campos, Department of Probation and Parole, having been sworn in testified on this bill stating that it is an attempt to clarify kidnapping in terms of whether or not the crime is probatable. The law did simply read "kidnapping" as being nonprobatable. As a result of that the Courts throughout the state, as well as, the District Attorneys throughout the state disagreed as to whether or not that included both first and second degree kidnapping. Upon questioning, Mr. Campos explained to the committee the differences of kidnapping of different degrees.

Senate Bill 131:

Mr. Bud Campos, Department of Probation and Parole, having been sworn in testified on this bill. He stated that in 1973, part of the law that they are now trying to change, was passed, however, he never understood why it was passed. The intent of the bill is to make a persons' expiration of prison sentence the same from prison as it is from parole. He further explained this for the committee. In summation, the problem is that they really don't have jurisdiction over a person once their prison term has expired. They are in support of this bill as written.

Senate Bill 81:

Mr. John Ray, Special Master of Juvenile Court, Carson City, Nevada, having been sworn in, testified in support of this bill. However, he did point out that he thought the summary title was a bit erroneous. All they are asking in this amendment is to let the small counties operate under the same concept that Clark County does operate. They feel that the chief administrative officer of any juvenile service should have the same authority to disseminate information needed to program the youth as the administrative officer of Clark County. They feel an exchange of information is necessary in most cases for the best interests of the child. After lengthy questioning and discussion on this measure, Chairman Barengo asked if Mr. Ray could assure him that there will never be a special master or master who is a member of the Probation Department. Mr. Ray stated that he could not give the committee such assurance.

Mr. Norm Scoggin, Vice Principal Carson High School, testified on this bill, having been sworn in. He stated that they are very interested in this bill also from a different point of view from Juvenile Probation. They feel that

their hands are somewhat ties as far as the protection goes of the entire Student Body. They are not looking at this from the punitive side. They would like to have access to certain information on those individuals which might bear watching, particularly relating to sex offenses and dope pushers for the protection of the other students. The juvenile laws that exist right now prohibit them gaining this information.

Senator Gary Sheerin testified on this bill, having been sworn in stating that this bill was created from a meeting between himself and the Carson City school authorities and the Carson City juvenile people. He explained that when the bill came before Senate Judiciary the juvenile people felt that perhaps it should be broader than just saying, schools, that they should be able to deal with other agencies if there was a need. Therefore, the bill was amended by changing the section from 62.270 back to 62.120. That is how it originated and that is why the change came about. He feels that there is a need to know in some of these circumstances and at least the Master should have the ability to confer with other agencies for the protection of either the child involved or the entity involved.

Senate Bill 74:

Senator Gary Sheerin, testified on this bill, having been sworn in advising the committee first of the bill's history. He stated that the banking institute testified against this bill and it was a rebuttable presumption instead of a conclusive presumption that it would create more problems than it would cure. Another area of concern which is the main thrust of this bill was brought out in committee hearing, he stated. Many parents have children who are put on the joint tenancy accounts. Theoretically the children have immediate rights to the money and could go in and obtain it. The intent of the parent is to have the children or the other signator on the account not to have the money until death. Therefore, this is something that is done all the time, the bill is to allow it to continue in more of a firm structure.

Senate Bill 82:

Senator Gary Sheerin, testified on this bill, having been sworn in stating that this concerns summary eviction of commercial tenants. He explained that there are two procedures to remove a non-commercial tenant should he not be paying rent. The commercial landlord does not have the same procedure available to him, therefore, the thrust of this bill is to give the landlord the ability of summary eviction of the non-paying tenant.

Senate Bill 132:

Mr. Pete Kelly, Nevada Rural Electric Association, having been sworn in testified on this bill elaborating on their proposed amendment to this bill. He stated that they are seeking a change in the law concerning non-profit corporations. He detailed at length for the committee this proposed amendment. He stated that for the bylaws to be amended or repealed that it takes a two-thirds written consent of its members and Valley Electric Association and the Nevada Rural Electric Assoc. would like to see changed to a simple majority and he explained the reasoning as pointed out in the letter from Nevada Rural Electric Association.

Senator Mel Close, having been sworn in, testified on this bill stating

that the Attorney General's office testified on this bill before the Senate Judiciary Committee. He stated that they felt it was appropriate, especially in section 4, whereby they took out specific religious corporations from his examination. He felt that at one point there was an interference of church and state by having a religious corporation examined by the Attorney General, therefore, they took that out. Senator Raggio testified in favor of the bill also, Senator Close stated, indicating that for some reason there could not be a religious corporation filed in the state of Nevada.

Senate Bill 192:

Senator Mel Close, having been sworn in, testified on this bill in order to advise the committee as to what they heard in Senate Judiciary. He stated that they thought that they had passed this bill two years ago. It was recommended by the bankruptcy court judge and he believes he has been doing this for the past two years, not realizing that the bill had been killed in the Assembly last session. He explained what the intent of this bill is to the committee. He said he thought this was fair for the creditor, as well as the debtor.

Senate Joint Resolution 16:

Senator Mel Close, having been sworn in, testified on this bill advising the committee that this was part of a study they performed two years ago relative to the equal rights situation. They are modifying the Constitution. The Constitution now provides that only the wife's separate property has to be listed separately with the County Recorder and they felt that either person should have the same right the wife would have to list certain separate property and, therefore, have it exempt from execution by creditors of the other spouse. Also, in cases of divorce, it will be of assistance in determining who has what property rights by requiring each spouse to list with the County Recorder, the separate property that each one of them has.

Senate Bill 185:

Mr. Bill Isaef, Attorney General's Office, having been sworn in testified on this bill stating that now, after the amendments drawn by the Senate Judiciary Committee, the Attorney General's Office is in support of this bill. He stated that there had been a mistake in the bill drafter's office which was referenced to Chairman Barengo in a memorandum from Andrew P. Grose dated March 16, 1977 which he read to the committee. He explained the proposed amendment stating that the only thing this amendment would do would be on page 2, it would delete entirely line 5 and in line 6, the words "of malpractice or professional incompetence".

Senate Bill 187:

Mr. Jim Wadhams of the Nevada Department of Insurance Commissioners, having been sworn in, testified on this bill stating that this bill was amended on the Senate side. He wanted to point on a problem that has been created by the amendments, starting at lines 19 through 24 and lines 17 and 18. He explained these problems in detail stating that it now requires the commissioner to allocate interest on the security; the judgment debtor is going to be extremely unhappy when the insurance commissioner attempts to draw down, say the

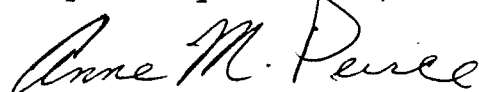
first 1/10th after the end of the first year of a 10 year judgment. He will say that he has a right to that judgment and not to take it down. The judgment creditor will say that he has put that money up in good faith, that they don't need that anymore, send it back. It creates a problem, therefore, he made two suggestions. First, because this deposit in the insurance commissioners hands is security and not the cash out of which the payments are being made, the interest should be the property of the debtor. Secondly, for the same reason that the deposit is security that the payments are not coming out of the security, whether interest is due and owing on the outstanding balance of the periodic payments that that be left to an award by the judge or jury. In summation, the language that he would propose would be to strike lines 19 through 24 in their entirety

Senate Bill 132:

Senator Bryan, having been sworn in, testified on this bill, first giving its genesis. He stated that the Church of Christ is a Protestant religious faith and unlike the Catholic or Episcopal churches in which title to real property by those are held as they were at common law by a corporation sole. The charitable statute did not and does not include religious organizations. Therefore, the amendment would include religious organizations. He stated that the Attorney General was concerned and there was an amended bill wherein the language which Frank Daykin had inserted in the original bill which the requestor had not included, would seem to limit the authority of the Attorney General to review and make inquiry and require periodic examinations. There was considerable discussion and questioning regarding this bill.

There being no further business to discuss, this meeting was adjourned at 11:05 a.m.

Respectfully submitted,



Anne M. Peirce

GUEST LIST

<u>NAME</u>	<u>REPRESENTING</u>	<u>IF YOU WISH TO SPEAK</u>	
		<u>Pro</u>	<u>Con</u>
(Please print)			
Wayle Sunkler	New Trial Lawyers	✓	
John W. ...	...	✓	
<b>Bud Campos</b>	Parole Prob SB 131-85	✓	
Norm Scoppio	Corson High School		
John RAY	SPEC. MASTER - JUV. COURT C.C.	✓	