MINUTES

ASSEMBLY JUDICIARY COMMITTEE
April 17, 1977

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

The meeting was called to order by Chairman Barengo at 12:04 p.m.

SB 48: Senator Hernstadt, as introducer, was first to speak on this bill. He stated that the necessity for this bill stemmed from the fact that, due to inflation, the dollar amount of the ceiling which had been on these matters was too low and outdated to be practicable in today's market. He stated that as originally proposed the bill raised the limit to $1000 and the Senate had amended the ceiling to $500, but, he really felt that the limit should be $1000 at least. He stated that there is an AJR which will come before the electorate in November of 1978 and become effective in January of 1979 and this would provide an interim measure and also a trial period for this.

Mr. Price asked Senator Hernstadt how many other states had higher limits for small claims actions. Senator Hernstadt stated that he knew many states had higher limits but he was not sure what the exact limits were. Chairman Barengo quoted Bulletin 77-3 which suggested a $5000 limit on small claims actions. The Senator said that he felt this would at least be a move in the right direction and it would give everyone a chance to see how it worked.

Mrs. Wagner asked him why the Senate committee cut the amount to $500 and the Senator stated they did not tell him why. Senator Bryan interjected at this point that they did that pending approval of the AJR on that subject. Senator Bryan also stated that there are two divisions of the justice court: 1. Small claims court which is separate and supposed to be the people's court (no lawyers), and 2. Civil court. He stated that both of these use the same monetary limits and that is why, he believed, they took the more conservatory approach to this. He also pointed out that because of the effective date of the AJR it would only be in force for about 30 days before they could act on it next session.

Mrs. Wagner asked Senator Bryan, in light of his comments, if he felt this bill was necessary. He stated that he did feel it was because there were many revisions which need to be made in the small claims court area and this bill would get them going. He stated to the committee that he also felt that appearances in small claims court should be limited to, perhaps, four times per year so that those in the collection business, etc. could not use the the system abusively as they are appearing against people who are not nearly as familiar with court procedures and customs.

SB 44: Senator Bryan then spoke on this bill, as introducer. He stated that this bill proposes to divide the crime of robbery into two categories, being: 1. with a deadly weapon, and 2. without a deadly weapon. He pointed out that past legislation had tried to introduce a double penalty for use of a deadly weapon in crimes but, this bill, he felt, takes a little different approach to the problem. He stated that this bill would provide that there would be no probation available to that person if they used a deadly weapon and that if no deadly weapon were used they would be able to be put on probation. He stated that would allow for negotiation of pleas in special cases which were decided upon by the District Attorney, the defendant and the court. He stated that this bill would be, in effect, a strong deterrent to the use of a deadly weapon and the reason for the bill was, basically, the increase recently in these types of crimes.

Chairman Barengo read a letter from Tom Beatty, Assistant District Attorney, Las Vegas, which is attached and marked Exhibit A and expresses his opposition to the bill.

Senator Bryan stated that insofar as the penalty being cut in half as Mr. Beatty stated this bill would do, you must keep in mind the fact that no one under the present system spends all the time in prison that they are sentenced to. He pointed out that under the system that those people are elligible for parole in 1/4 of the time of sentence, less good time credits and this bill would provide that they would spend all of the fifteen years mandated. He also stated that this was the way the law was prior to 1967 and allows flexibility in sentencing these people.

Senator Hernstadt spoke against this bill stating that he had also spoke against it on the floor of the Senate because he did not believe that it met the goals it had set out to do. He stated that he felt the bill was to vague in referring to "other deadly weapons" and felt there should be an amendment which would provide that it cover fire arms only. Mrs. Wagner stated she did not feel that that point was the only reason for the bill. Senator Hernstadt stated he felt that the original intent of this bill was to discourage the use of firearms and if you do not single out firearms and give their use the additional penalties, then you dilute the deterrent toward use of firearms.

Mr. Cal Dunlap, Assistant District Attorney for Washoe County and State District Attorney's Association member, stated that he was speaking on this issue representing Larry Hicks and the District Attorney's office. He stated that they agreed with Senator Bryan except that they did not feel the penalty reduction should be included in the bill. He stated that they did feel that the deadly weapons provision should be kept in the bill due to the diversity of the weapons that are being used today and he felt the courts are able to distinguish these by recent cases. He then gave the committee an example of a hypothetical second degree robbery case under this bill which could conceivably end in a one-to-ten sentence because the witnesses did not see or the police could not prove the use of a "deadly weapon", even though it was a substantial robbery so far as value taken was concerned.

He stated that due to the lengths of time for sentencing set out in the bill, this could, in effect, per this bill cut the sentencing in such cases in half.

Mrs. Wagner asked Mr. Dunlap if he did not feel the inelligibility of parole would act as a deterrent and act as a punishment in itsself and offset some of his concerns. Mr. Dunlap stated that he is primarilly concerned with the second degree robbery sections, to which that would not apply. He stated he felt these provisions as far as first degree was concerned were valid and would act as a deterrent, but pointed out that first degree could not always be proven.

Mr. Bud Campos, Department of Parole and Probation, was next to testify. He stated that currently three out of four people convicted of robbery are sent to prison and there are more people sent to prison for robbery than for any other crime. He stated that he felt this bill would lead to the reduction of sentence time for those who commit robbery.

SB 195: Mr. Bill Cozart, Nevada Association of Realtors, stated that he and his association are in favor of this bill and they feel that it will clear up some of the problems which have arisen and help to protect the rights of the consumers.

Senator Margie Foote, as introducer, was next to testify on this bill. She stated that this bill was introduced at the request of a teacher who teaches at a school for real estate and is part of the Uniform Vendor Purchaser Risk Act and she felt it would help some consumers who are not aware of some of their rights.

SB 89: Senator Neal stated that this bill would provide that those individuals who spend a short time in prison would have their rights restored to them as they are if they had elected to take parole rather than prison time. He stated that he felt this would be only fair and this would correct that particular situation. He said the three year provision which was amended into AB 199 covered this same thing and if AB 199 was passed with that amendment then this bill could be killed.

Mr. Bud Campos testified next, stating that he felt there was quite a bit of confusion existing in the area concerned with the restoration of rights after a felony conviction. He stated that though the right to vote and hold office are restored at times, some rights which are covered by federal statute, such as the firearm statutes are not restored at that time unless the department of justice exhonerates the person to whom the state's rights are being restored. They also, must still register as an ex-felon, unless otherwise stipulated. They can also still be used to impeach a witness. Some other rights are not clearly taken care of one way or the other so far as restoration is concerned. He stated that there are some rights which are never effected by the conviction, such as the right to marry, free speech, etc. He stated that the AG's office is working on a codification of which are lost and retained at this time so that it could be made clear.

He stated that the one point he and his office objected to was that the only provision which this cites as reason for not reinstating rights to an ex felon was that they had not been reconvicted within a ten year period and does not provide for what happens if the person is still involved with the criminal element or perhaps under indictment, etc. He said that that aspect bothered them more than the reduction of the length of time necessary for reinstatement. He stated that the recommendations of the Parole and Probation Department are included in the package which he gave to the committee. That package is attached and marked Exhibit B.

Cal Dunlap stated that he agreed with most of Mr. Campos' remarks and he also did not feel that the three year period was long enough. He said he felt that the five years suggested by Mr. Campos would be better. He stated he felt this type of bill would add to the litigation problem in these cases and it would also add to the financial problem of keeping up with these people by the court and the District Attorneys.

In answer to a question from Mrs. Wagner, Mr. Dunlap stated that he felt the ten year term was good and he might even suggest 15.

SB 154: Mr. Neal Humphries, Chancellor of the University of Nevada System, was first to testify on this bill stating that the reason for the bill was to make the university to the list of political subdivisions that would be authorized to use the right of immanent domain. He stated that the purpose of that was so that they could issue revenue bonds to build university buildings. This would be so that they could conform with the IRS regulations in this regard. He stated that to conform to the regulations, to qualify as a political subdivision the organization must meet two of the three following tests: 1. Taxing power, 2. Police power, and/or 3. The right of immanent domain. He stated that their bonds are municipal and classed as non-taxable and they are about to issue $1.5 million dollars worth for the extension of the student union. And the money committees are about to approve another $11 million+ issue for other projects. Therefore, all these would be awaiting approval of this piece of legislation.

In answer to a question from Chairman Barengo, Mr. Humphries stated that there is no property that they covet and they only wish to have this to comply with the IRS regulations. And, that if the legislature felt, after two years, that they were abusing that right, it could be taken away from them.

Mr. Larry Lessly stated that the IRS regulation was #103(a), section 1.103-1 and he would submit a copy to the committee. The regulation is attached and marked Exhibit C. He also provided the committee of a letter from their bond council and it is attached and marked Exhibit D.

SB 273, SB 274 and SB 275: Mr. William Isaeff, Deputy Attorney General, addressed all of these bills stating they were a package which came out of an investigation of a situation in Churchill

County regarding the Sy Cox estate and what happened in that case.

SB 273: This bill would provide that blank death certificates not be signed and that the blanks on the death certificate be filled in prior to signature of attendants and physician attesting to death.

SB 274: Mr. Isaeff stated that this provides for an inventory to be taken of the deceased's property which is on or about him/her at his/her death and prompt delivery to the county treasurer. He stated that this simply broadens the current law which is inadequate. He stated that this would also provide protection for the coroner from accusations of wrong doing.

Section two would provide for the sealing of the residence of the decendant where there is no relative to watch out and be responsible for the property and it also provides for a penalty for those who might break the seal and take the property of the deceased.

In answer to a question from Mrs. Hayes, Mr. Isaeff stated that this provision would apply to all seventeen counties and he realized that some counties already had similar provisions.

SB 275: He stated that this section would provide that the person who appraised the property could not purchase that property unless they met certain restrictions. This would provide for the purchase of unusual items such as diamonds, etc. where no other source of disposal was available. He also pointed out that if the regulations of this section were not followed that the sale would be void.

In answer to a question from Mr. Sena, Mr. Isaeff stated that he felt that the misdemeanor penalty was appropriate in this case.

In answer to a question from Mrs. Wagner, Mr. Isaeff stated that though these were based on that one case that he did not feel that it was a unique case, expecially in the rural counties of the state.

Mrs. Wagner asked Mr. Isaeff if he felt there should be a qualification in SB 274 as to who might sign with the coroner for the inventory. Mr. Isaeff stated that any responsible person on the scene would be sufficient and did not think that limiting it would preclude the possibility of coersion.

SB 273: Mr. Tom Moore stated that they felt that sealing the property sometimes lead to a "red flagging" of the property and explained that in Clark County they use a "lock out" device that was affixed to the door knobs and prevented who were unauthorized from gaining entry into the property as easily.

Chairman Barengo asked Mr. Isaeff if he objected to the addition of the lock out device to the use of seals in this type of a situation. Mr. Isaeff stated that he did not object and felt that use of either would be acceptable.

Captain Biggs also suggested amendments on page 4, line 11 and line 19, changing the word "division" to "law enforcement agency". He also suggested that on page 5, line 3 be deleted entirely. Also, on page 10, line 16, the figure "$2,000" should have been "$20,000" (this had been a misprint). Their last proposed amendment was on page 11, section 17 which would delete "Section 13" and replace it with the words "All revisions".

Chairman Barengo asked Captain Biggs about the section of the bill referred to as the "turkey law". Captain Biggs said that this was section 4 on page 2, and was an in lieu of law. He stated that that meant if someone sells something which they say is a controlled substance, such as heroine or cocaine, etc., and it turns out to be something else, such as milk sugar, etc., then that person is still subject to the same penalties as if he had sold the controlled substance. Chairman Barengo stated that he felt that this practice was unfair in many respects because of the peer pressure among the pre-teen and teenage groups. Discussion on this followed with no substantial conclusions.

Mr. Price asked Captain Biggs to comment on page 5, section 10 as to its implications concerning someone who had had a misdemeanor citation in California and then came back to Nevada and was picked up for possession of marijuana, which is a felony, if that would count so far as Nevada law enforcement was concerned as two felonies. At first, Captain Biggs stated that he did not believe it would, but on rereading the section he stated that it did, indeed, state that and that an amendment probably should be written in to take care of that situation. Mr. Price pointed out that there might be other types of offenses which might fall into a misdemeanor category in other states and be felonies in Nevada that they did not know about and this might pose a problem. Captain Biggs stated that he did not believe that a judge would take the out of state conviction of a misdemeanor and consider it as a felony conviction as a practical matter. Mr. Price stated that that discretionary power seemed very dubious to him. Captain Biggs stated that whatever language was used to amend this section it would have to be very carefully worded because you don't want people who are committing a second felony to be able to get a lighter sentence because of a loophole in the law. He stated that the language for the amendment should be to the effect that "in those states where possession of an ounce or less of marijuana is a citable offense, it would not be included as a first felony conviction, for penalties under section 10 (or whatever section it was applied to), so that the intent is well spelled out.

Mr. Price then asked Captain Biggs to comment on page 9, line 42, concerning conspiracy. Captain Biggs stated that this is primarily aimed at the high-echelon drug connection that cannot be gotten to through the normal proof of sales tactic. He stated that some of these people could never be arrested in connection with a sale because they are not involved on the street level and the only way to get to them is through a conspiracy angle. Commander McCarthy pointed out to the committee that this one of the most dangerous of types of drug arrests because of the sophistacated people involved.

Mr. Douglas Hackett, Clark County Medical Society, stated that he felt that SB 273 was poorly written insofar as some of the death certificates are partially filled in only at the time that the doctor signs them and this bill would call out for a completed form. He pointed out that there are times that not all of the spaces on the form can be filled out immediately and he felt that the language of the bill should recognize that aspect. He did state that he was in favor of the idea if those changes or clarifications were made.

SB 386: There was no one present to testify on this bill.

SB 268: Metro Police Commander, John McCarthy of Las Vegas was first to address the committee on this bill. His outlined statement is attached and marked Exhibit E. This statement includes many of the statistics which he cited in his testimony. At the end of Commander McCarthy's statement he introduced to the committee Captain Tom Biggs who was formerly in charge of the Narcotics Section of the Metro Police Department.

Mrs. Wagner asked the gentlemen if they would explain what was meant in Section 6, page 3, beginning at line 16, regarding the penalty for simply entering a room in which drugs are being used and not leaving that room when you become aware of the use of drugs. Captain Biggs stated that this provides that being in a room where drugs are being used is a misdemeanor and that now when a place is raided for drug use all the people are taken in on felonies. He stated that, in effect, this would reduce the charge. Discussion folowed on the vagueness of this section and the ways that it might be applied that the committee did not feel were right. In conclusion, Commander McCarthy stated that he felt this would be applied judiciously and that they felt it would help them. They also pointed out to the committee they felt this would perhaps save some of the people who are introduced to drugs at the kinds of places where drugs are being used by being able to charge them with this misdemeanor and having their presence there brought to the attention of of their parents, perhaps. Mrs. Wagner stated that she felt there might be a constitutional question as to whether this restricted their freedom, since they were simply entering a room in which drugs were being used. Discussion on these points followed breifly with no conclusions.

The committee and those testifying had a short discussion on if giving away drugs was the same as sale and Mr. Ross pointed out the law defines it. Captain Biggs stated that even though the statutes define give away as a sale, that it impossible to prove a sale unless money actually changed hands. Mr. Ross stated that because of the difinition of sale already existing in statute, that lines 17 and 18 of page 3 and lines 18 and 19 of page 5 were redundant. Captain Biggs agreed that they were.

Captain Biggs proposed an amendment on page 4, section 8, lines 6 through 8, stating that this would only apply to a kilogram of marijuana, not other controlled substances.

AB 518 and AB 527: Mr. Ed Bowers, Gaming Industry Association, began by referring to his comments and those of Mr. Cahill at the April 6 meeting on polygraphs. He then read to the committee a letter from the Nevada Resort Association opposing these two bills. The letter is attached and marked Exhibit F. Mr. Price asked if their objection would be withdrawn if they excluded the people who handle the money in the gaming indudstry. Mr. Bowers stated that it would, if the if the industry had the same authority as the board with regard to the use of polygraphs. Mr. Ross asked him if he felt there might be other businesses which would fall under this exclusion. Mr. Bowers stated that he felt banking and perhaps jewelry trades might be included as well as some others possibly.

Mr. Russ Jones, Nevada Polygraph Association, was next to speak on this bill. He stated that they have appearing before the committee in the past and they had stated at that time that they would try to police their own industry. And, since 1975 the Nevada Polygraph Association and it is made up of approximately 25 examiners throughout the state. He stated that they have formed rules and bylaws for the association to help in directing their people.

He proposed an amendment, on behalf of the NPA, on page 6, which would delete lines 4 through 9. Mrs. Wagner pointed out that at prior hearings this language had been proposed and she remembered that there had been no objection at that time. Mr. Jones stated that subsequent to that meeting they had a meeting of the association and as a whole they had decided that that section might create a jeopardizing situation and they felt it should be deleted from the bill. He stated he thought that might be a function of the new board as to the determination that the person who had been tested was mentally and physically up to the testing. He stated this would include the pregnancy aspect of the physical condition.

Mr. Jones also stated that page 6, lines 19 through 22, regarding sexual activity, he stated that they do not ask questions regarding this subject unless it is specifically germane to the issue of the examination. And, that it was they would propose as an amendment, "unless it is germane to the issue". He said this was necessary because there are instances where that information is the particular aspect in question, such as child molestation, etc. Mrs. Wagner asked if this amendment would apply only to the sexual portion of the section. Mr. Jones stated that that was their intention. Mr. Ross asked if the amendment could be that they could not ask questions realtive to sexual activity "without the consent of the examinee". Mr. Jones stated that they would have no objection to that language; however, they wanted to make it clear that they had no inclination to inquire into these people's sexual activity without it being directly related to the examination. He also pointed out that they now get both verbal and written permission from the person being tested before giving them the test.

In answer to a question from Mr. Price, Mr. Jones stated that when they report back to the person who requested the test they do indicate to them if the person being tested refused to answer questions which were relevant to the issue he was being tested on.

Mr. Jones also stated that they suggest that section 37, page 7, be entirely deleted because they felt this too was a board function. He also stated that he felt in section 38 that the words "with the same questions" should be deleted because they often administer tests which have differing control questions. He stated that these changes are agreed upon by both the northern and southern sections of the state.

Mr. Coulter asked Mr. Jones if he felt that in section 33 the amendment could read both that the questions were germane and there be permission of the examinee. Mr. Jones stated that he would have no objection and felt the other examiners would not object either.

Mr. Jones presented to the committee a letter from the Nevada Trial Lawyers Association in favor of AB 527 and it is attached and marked Exhibit G.

Mr. Putnam, who testified on this subject in the April 6 meeting, was next to testify stating that in his previous testimony he had stated that this bill had the support of the Washoe County Sheriff's Department and that when he had subsequently tried to get a letter from Sheriff Galli on the subject, he was unable to do so because of the provision in the bill which required licensing of examiners who were in law enforcement. Chairman Barengo then introduced a letter, which is attached and marked Exhibit H, from Sheriff Galli's office which opposes passage of AB 518 and any other bills concerning the polygraph being used in employment purposes.

Mr. James Lambert next addressed AB 518 and stated that he was generally in support of the concepts of the bill. He pointed out he had questions on subsection 1 regarding the use of the polygraph on a present employee and applicants as provided in subsection 2 which applies only to applicants and he stated that he felt subsection 2 should be broadened to include present employees. He said that this is a needed option in investigation situations for both applicants and current employees in law enforcement.

Captain Ken Pulver, Reno Police Department, stated that he was opposed to AB 527 He is also a member of the Private investigator's Licensing Board and stated that he felt since the polygraph examiners were regulated by that board it should continue to be regulated by them as there had been no complaints to date and they had been doing a good job. He said that he felt the structuring of a new board to cover polygraph examiners would lead to additional costs and eventually state subsidy of that board because of the difficulty of bringing in enough revenue to pay the expenses of the board. He pointed out that there is no provision for funding in the bill and they find that is there most pressing problem with the current board.

In regard to AB 518, Captain Pulver spoke in oppostion to it and presented to the committee a copy of the Journal on this subject which is attached and marked Exhibit I, which he read from. He stated he felt that there were many types of crimes and problems which were related to sex and that those questions needed to

asked. Mrs. Wagner asked Captain Pulver if he did not think that the fees set out in the bill would cover the expenses of the board. Captain Pulver stated that he did not feel that those fees would be sufficient to sustain the board.

Mr. Coulter asked Captain Pulver if he felt the proposed amendments to section 33 would take care of his doubts in that area. Captain Pulver stated that he had not heard all the testimony on that section but that he felt it would have to be done very carefully because you are not concerned with simply asking the person if they had committed sex crimes, but allowing an employer to ask those questions. He pointed out an example of a nursery, whose business is taking care of small children, being able to ask a prospective employee those types of questions.

SB 183: Senator Raggio as introducer stated that subsection 4 is the main thrust of the bill. He explained that the current law on corporate stock subscriptions is very sketchy and this bill would make it more specific. He stated that in order to raise capital and sell stock some corporations have indicated to prospective buyers that someone of influence or prominence has bought stock in the corporation and used this as an inducement to get the others to buy the stock and then after other stock purchases have been made, the prominent or influential person sells his stock back to the corporation, if indeed he really owned it in the first place thus making the circumstances surrounding the sale suspect. This bill would provide that any subscription for shares of a stock in a corporation is irrevocable for six months unless otherwise provided for in the subscription agreement or all the subscribers consent. He stated that this is important in Nevada because of the state's promotion of corporate organizations.

He stated that the remainder of the bill simply broadens the existing law and sets out standards and provides for a uniform call on stocks. He concluded by stating that there was no opposition to this bill when it was heard before the Senate committee.

SB 187: Chairman Barengo pointed out that this bill was one of those which came of the Medical Malpractice Package and has been revised.

Mr. Peter Neumann, President of the Nevada Trial Lawyers Association, was the first to testify on this bill and his remarks followed closely those which he made at the February 15, Joint Hearing on medical malpractice and therefore only his comments in reference to specific questions will be set out in these minutes.

Mrs. Wagner asked Mr. Neumann if he had the decisions of courts in other states which had to deal with the constitutionality question of this type of legislation. Mr. Neumann stated that he did have that information available, but not with him and he would supply the committee with copies. That is attached and marked Exhibit J.

Mrs. Wagner also aked Mr. Neumann if he would elaborate on the

current value of the award in comparison with the inflation rate. Mr. Neumann stated that these problems are very complex and economists are often brought into the courts to project the costs that will be needed by the injured party and so far as the interest factor is concerned, he stated that some economists state that it is offset by the inflation factor and results in a wash-out.

Dr. W. K. Stephan, past President of the Nevada Medical Association was next to testify and his remarks were the same in content to those previously given at the Joint Hearing on medical malpractice on February 14 and therefore only his comments in reference to specific questions will be set out in these minutes.

He pointed out in his testimony that it was unfortunate that both the doctors and attorneys who testify on this question have a vested interest in the outcome of the bill as it makes the testimony of both suspect by the committee. He said that it should be thought of in the light of citizens and patients only.

Mrs. Wagner asked Dr. Stephan if he had any information as to the success ratio in those states that had instituted this type of legislation. He referred her to a listing of the states which had adopted similar laws, which is included in the minutes of the March second meeting as attachment C, and stated that it has been too soon to know for certain the outcome of the enactment of this type of legislation.

Dr. Stephan also pointed out that according to the legal department of the AMA they know of no state that has had a constitutional problem with this type of legislation and he would appreciate if Mr. Neumann could supply him with that information also.

There was a discussion between Mr. Ross and Dr. Stephan regarding the windfall aspect of this legislation which was also covered in prior hearings.

Dr. Stephan stated that the reason for the bill was that medical malpractice insurance would continue to be available in the state and he felt that without some type of legislation that it would ultimately get to the point that the doctors of Nevada would be forced to go bare of insurance of this type. Mr. Ross asked if it was the intent of this bill to allow more doctors to be able to have this insurance and reduce the premiums. Dr. Stephan said that he did not feel it would end in lower premiums. He did say that he felt that from an actuarial aspect the structured payment type settlement in this bill would make it easier for insurers to spread out their liability over a longer period of time and not be "wiped out" by two or three large lump sum settlements.

In answer to a question from Mrs. Hayes, Dr. Stephan stated that his insurance rates have not gone down in the last two years, in fact, in the last quarter alone his rates had increases by 16% and almost 40% in the last year.

Dr. Dick Rottman, Insurance Commissioner, stated that there were a couple of things for the committee to consider on this measure. He said that had the ACR 21 package not passed last session a chaotic situation would have developed in the insurance industry within the state and he did not feel anyone would still be writing malpractice insurance in this state. He stated that though it is important for the cosumers of the state to know that malpractice insurance is funded, he would not say that SB 187 in particular would have any great effect on the rate structure for insurance rather it would provide for the carriers that are still writing these policies to continue to do so on a somewhat reasonable basis.

He stated that due to those reasons and the fact that this would help to prevent a great number of physicians from going bare, he would support this bill. In answer to a question from Mrs. Hayes, Dr. Rottman stated that he did not have the exact figures, however, he thought that the number of physicians now going bare was around 25%. Mrs. Hayes asked for a comment from one of the gentlemen as to their thoughts on requiring physicians to carry this type of insurance in order to practice. Dr. Stephan explained that this type of law is considered to be unconstitutional in at least two states, Hawaii and Kentucky.

Dr. Rottman pointed out to the committee that even though this bill is watered down from the original bill he felt that it was important legislation becuase he felt that without it eventually the state would have to get into the act of writing liability policies because the insurance companies would no longer do so. And, he stated that that would only lead to state subsidies of the fund.

Mr. Ross asked Dr. Rottman if he felt an actuarial nightmare would develop if the jury awarded the injured party a settlement which would simply take care of his costs as they were incurred. Dr. Rottman stated that he was not sure that that would cause an actuarial nightmare and, indeed, could be workable and feasible. And, he added, socially it would probably meet the desires of most people. Mr. Ross asked then what would happen if it were provided that the case could be reopened at a later date. Dr. Rottman stated that he felt that would cause problems and be very difficult to handle because it would make it, in effect, something with no maximum responsibility and that would be a completely different ballgame altogether and it would prolong litigation indefinitely. A brief discussion of this topic followed with no conclusions.

In answer to a question from Mrs. Wagner, Dr. Rottman stated that he did not feel that passage of this legislation or any other could guarantee that those doctors who are going bare now would become covered again with this insurance. But, he stated, he felt this bill would help to contribute to keeping those who do have insurance insured. Mrs. Wagner asked if he would comment on the possibility of a "no fault" type system, similar to that on vehicles. He stated that regarding auto insurance there was a very clear precedent in this area across the nation and he stated that speak- for himself only he would not feel that it would be totally out of line to require every doctor to carry minimum amounts as a condition on licensure.

Mr. Coulter asked what effect the increase of premiums for this insurance is having of the cost of medical service to the patient. Dr. Rottman stated that he really did not know, but that he did know that many of the doctors who are not carrying insurance have not reduced their own charges, in fact some have raised them even though they are not paying for these insurance premiums.

SB 190: Dr. Rottman addressed this bill next and stated to the committee that he strongly urged passage of it because they need this as a tool for investigation of closed medical claims in regard to the possibility of malpractice.

Mr. Peter Neumann asked that he be allowed to briefly address the committee on some of the points he felt had been brought out to the detriment of the trial lawyers. He stated that he did not believe that lawyers would turn clients away if there were no longer a structured settlement award simply because of the lack of a large fee. He also stated that he did not think the "blood from a turnip" analogy applied to doctors. In conclusion he asked the committee if they felt that it was so socially desirable to have medical malpractice insurance that they are given medical malpractice insurance at any expense to them. He also stated that he felt it was the prerogative of the individual doctor whether or not to carry liability insurance and it should not be "shoved down their throats".

In answer to a question from Mr. Price, Mr. Neumann stated that he did not think that passing a law to prevent the bringing of nuisance cases would solve the problem because only a minute portion of the cases for medical malpractice are brought on a nuisance basis now. Dr. Rottman pointed out that he represents the Insurance Division for the people of the state of Nevada who are consumers. And, he stated that one of the principal purposes for passing the laws last session setting up the Medical-Legal Screening Panel was to cut down on the nuisance suits and because of that panel a lot of those suits are never going to court.

Chairman Barengo stated that those bills which were on the agenda and had not been heard this morning would be continued to Monday's agenda and would be heard at that time. That concluded the testimony on this morning's bills.

Committee Action:

SB 190: Mrs. Wagner moved for a Do Pass. Mrs. Hayes seconded the motion and it carried unanimously.

All those testifying at this hearing were sworn in before testifying.

There being no further business the meeting was adjourned at 4:00.

Respectfully submitted,

Linda Chandler

Linda Chandler, Secretary

4/17

GUEST LIST

NAME (Please print)	REPRESENTING	WISH TO SPEAK Yes	No
Bill Hemmert	SB-48	✓	
Ed Campos			
Ed Jumble	SB 44	✓	
"	SB 368	✓	
Bill Cook	SB 195	✓	
Margee Tate	SB 195	✓	
Randy D Reese	SB-154		
Tom Moore	SB-274		
Ken Tulwa	518 & 527	✓	
W K Stephan	SB-187	✓	
James L. Lambert	N.H.P AB 518	✓	
John P McCarthy	L V Metro Police AB-268	✓	
Mike Briggs	L V Metro Police SB268	✓	
Tom Jones	D.E 527	✓	
Ron Rhodes	AB 527	✓	✓

EXHIBIT A

Office of the District Attorney

CLARK COUNTY COURTHOUSE
LAS VEGAS, NEVADA 89101
(702) 386-4011

GEORGE HOLT
DISTRICT ATTORNEY

THOMAS D. BEATTY
ASSISTANT DISTRICT ATTORNEY

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COUNTY COUNSEL

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LAWRENCE R. LEAVITT
H. LEON SIMON
JOEL M. COOPER

JOE PARKER
CHIEF INVESTIGATOR

KELLY W. ISOM
ADMINISTRATIVE OFFICER

April 4, 1977

Assemblyman Robert Barengo, Chairman
Assembly Judiciary Committee
Carson City, Nevada

Re: Senate Bill 44

Dear Bob:

This bill will cut in half the penalty for Armed Robbery.

It will, it is true, make robbery non-probationable but at a cost of making the maximum penalty fifteen years in prison rather than the present thirty years.

The conclusion is straight forward: under 193.165 when a deadly weapon is used in the commission of a crime a consecutive and equal sentence to that imposed for the primary offense must be given. That section does not apply where the use of a weapon is an element of the offense itself. By creating a new category of Armed Robbery and calling it First Degree Robbery, we have made the use of a weapon a mandatory element of the offense. Therefore, no double penalty will be allowed.

In addition, the fact that robbery is non-probationable will most likely lead to costly jury trials in all cases since there would seem to be little likelihood the defendant would ever plead guilty to a charge knowing he has no choice but prison. Therefore, it would seem that a fiscal note is required for the additional cost of the local government. Indeed, since the goal is apparently to put more persons in prison then are presently there, it would seem that it needs a State fiscal note as well. (Note, that since the term would be shorter than the term now given, there may be a "wash" in terms of expense to the State.)

Prosecutors generally argue for prison terms for all Armed Robberies so we are not generally opposed if we have the resources, to the concept of robbery being non-probationable, even though non-probationable robbery was tried and failed a scant nine years ago. We are, however, vitally concerned about cutting the penalty in half.

Regards,

Thomas D. Beatty
Assistant District Attorney

TDB/ch

EXHIBIT B

SUGGESTED MODIFICATION OF SENATE BILL 89

SUBMITTED BY A. A. CAMPOS, CHIEF, DEPARTMENT OF PAROLE AND PROBATION

FEBRUARY 9, 1977

AN ACT relating to persons convicted of crime; reducing the interval after which they may apply for restoration of civil rights; and providing other matters properly relating thereto.

SECTION 1. NRS213.155 is hereby amended to read as follows:

213.155 1. The board [shall have the power to] *may* restore a paroled prisoner to citizenship, such restoration to citizenship to take effect at the expiration of parole.

2. In any case where a convicted person has completed his parole without immediate restoration of citizenship and has not been convicted of any offense greater than a traffic violation within [10 years of such] *5 years after* completion of parole, such person may apply to the state board of parole commissioners for restoration of citizenship and release from penalties and disabilities which resulted from the offense or crime of which he was convicted. *The Chief Parole and Probation Officer shall submit a report of investigation to the Board containing a specific recommendation. The report of the investigation shall contain such information about the characteristics of the applicant, including current associations, employment and such other information as may be required by the Board.* If, after investigation, the board determines that the applicant meets the requirements of this subsection, it shall restore such person to citizenship and release [such person] *him* from all penalties and disabilities resulting from the offense or crime of which he was convicted. If the board refuses to grant such restoration and release, the applicant may, after notice to the board, petition the district court in which the conviction was obtained for an order d

recting the board to grant such restoration and release.

3. The board may make [rules and] regulations necessary or convenient for the purposes of this section.

SEC. 2. NRS 213.157 is hereby amended to read as follows:

213.157 In any case where a person convicted of a felony in the State of Nevada has served his sentence and been released from prison, and has not been convicted of any offense greater than a traffic violation within [10 years of] *5 years after* such release, such person may apply to the department of parole and probation requesting restoration to civil rights and release from all penalties and disabilities which resulted from the offense or crime of which he was convicted. *The Chief Parole and Probation Officer shall submit a report of investigation to the Board containing a specific recommendation. The report of the investigation shall contain such information about the characteristics of the applicant, including current associations, employment and such other information as may be required by the Board*. If, after investigation, the department determines that the applicant meets the requirements of this section, it shall petition the district court in which the conviction was obtained for an order granting such restoration and release. If the department refuses to submit such petition, the applicant may, after notice to the department, petition such court directly for the restoration of civil rights and release from all penalties and disabilities which resulted from the offense or crime of which he was convicted.

"wife", see section 7701(a) (17) and the regulations thereunder.

Added T.D. 6500, Nov. 26, 1960, 25 F.R. 11402.

§ 1.101–6 Effective date

(a) Except as otherwise provided in paragraph (h) (4) of § 1.101–4, the provisions of section 101 of the Internal Revenue Code of 1954 and §§ 1.101–1, 1.101–2, 1.101–3, 1.101–4, and 1.101–5 are applicable only with respect to amounts received by reason of the death of an insured or an employee occurring after August 16, 1954. In the case of such amounts, these sections are applicable even though the receipt of such amounts occurred in a taxable year beginning before January 1, 1954, to which the Internal Revenue Code of 1939 applies.

(b) Section 22(b) (1) of the Internal Revenue Code of 1939 and the regulations pertaining thereto shall apply to amounts received by reason of the death of an insured or an employee occurring before August 17, 1954, regardless of the date of receipt.

Added T.D. 6500, Nov. 26, 1960, 25 F.R. 11402, and amended T.D. 6577, Oct. 28, 1961, 26 F.R. 10127.

§ 1.102 [Comprises Code section 102, see 26 U.S.C.A. (I.R.C. 1954) § 102]

§ 1.102–1 Gifts and inheritances

(a) **General rule.** Property received as a gift, or received under a will or under statutes of descent and distribution, is not includible in gross income, although the income from such property is includible in gross income. An amount of principal paid under a marriage settlement is a gift. However, see section 71 and the regulations thereunder for rules relating to alimony or allowances paid upon divorce or separation. Section 102 does not apply to prizes and awards (see section 74 and § 1.74–1) nor to scholarships and fellowship grants (see section 117 and the regulations thereunder).

(b) **Income from gifts and inheritances.** The income from any property received as a gift, or under a will or statute of descent and distribution shall not be excluded from gross income under paragraph (a) of this section.

(c) **Gifts and inheritances of income.** If the gift, bequest, devise, or inheritance is of income from property, it shall not be excluded from gross income under paragraph (a) of this section. Section 102 provides a special rule for the treatment of certain gifts, bequests, devises, or inheritances which by their terms are to be paid, credited, or distributed at intervals. Except as provided in section 663 (a) (1) and paragraph (d) of this section, to the extent any such gift, bequest, devise, or inheritance is paid, credited, or to be distributed out of income from property, it shall be considered a gift, bequest, devise, or inheritance of income from property. Section 102 provides the same treatment for amounts of income from property which is paid, credited, or to be distributed under a gift or bequest whether the gift or bequest is in terms of a right to payments at intervals (regardless of income) or is in terms of a right to income. To the extent the amounts in either case are paid, credited, or to be distributed at intervals out of income, they are not to be excluded under section 102 from the taxpayer's gross income.

(d) **Effect of subchapter J.** Any amount required to be included in the gross income of a beneficiary under sections 652, 662, or 668 shall be treated for purposes of this section as a gift, bequest, devise, or inheritance of income from property. On the other hand, any amount excluded from the gross income of a beneficiary under section 663 (a) (1) shall be treated for purposes of this section as property acquired by gift, bequest, devise, or inheritance.

(e) **Income taxed to grantor or assignor.** Section 102 is not intended to tax a donee upon the same income which is taxed to the grantor of a trust or assignor of income under section 61 or sections 671 through 677, inclusive.

Added T.D. 6500, Nov. 26, 1960, 25 F.R. 11402.

§ 1.103 [Comprises Code section 103, see 26 U.S.C.A. (I.R.C. 1954) § 103]

§ 1.103–1 Interest upon obligations of a State, territory, etc.

(a) Interest upon obligations of a State, territory, a possession of the United States, the District of Columbia, or any political subdivision thereof (hereinafter collectively or individually referred to as "State or local governmental unit") is not includable in gross income, except as provided under section 103(c) and (d) and the regulations thereunder.

(b) Obligations issued by or on behalf of any State or local governmental unit by constituted authorities empowered to issue such obligations are the obligations of such a unit. However, section 103(a) (1) and this section do not apply to industrial development bonds except as otherwise provided in section 103(c). See section 103(c) and §§ 1.103–7 through 1.103–12 for the rules concerning interest paid on industrial development bonds. See section 103(d) for rules concerning interest paid on arbitrage bonds. Certificates issued by a political subdivision for public improvements (such as sewers, sidewalks, streets, etc.) which are evidence of special assessments against specific property, which assessments become a lien against such property and which the political subdivision is required to enforce, are, for purposes of this section, obligations of the political subdivision even though the obligations are to be satisfied out of special funds and not out of general funds or taxes. The term "political subdivision", for purposes of this section denotes any division of any State or local governmental unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the unit. As thus defined, a political subdivision of any State or local governmental unit may or may not, for purposes of this section, include special assessment districts so created, such as road, water, sewer, gas, light, reclamation, drainage, irrigation, levee, school, harbor, port improvement, and similar districts and divisions of any such unit.

T.D. 6500, Nov. 26, 1960, 25 F.R. 11402, and amended T.D. 7199, Aug. 3, 1972, 37 F.R. 15486.

§ 1.103–2 Dividends from shares and stock of Federal agencies or instrumentalities

(a) **Issued before March 28, 1942.** (1) Section 26 of the Federal Farm Loan Act of July 17, 1916 (12 U.S.C. 931), provides that Federal land banks and Federal land bank associations, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from taxation, except taxes upon real estate. Section 7 of the Federal Reserve Act of December 23, 1913 (12 U.S.C. 531), provides that Federal reserve banks, including the capital stock and surplus therein and the income derived therefrom, shall be exempt from taxation, except taxes upon real estate. Section 13 of the Federal Home Loan Bank Act (12 U.S.C. 1433) provides that the Federal Home Loan Bank including its franchise, its capital, reserves, and surplus, its advances, and its income shall be exempt from all taxation, except taxes upon real estate. Section 5(h) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(h)) provides that shares of Federal savings and loan associations shall, both as to their value and the income therefrom, be exempt from all taxation (except surtaxes, estate, inheritance, and gift taxes) imposed by the United States. Under the above-mentioned provisions, income consisting of dividends on stock of Federal land banks, Federal land bank associations, Federal home loan banks, and Federal reserve banks is not, in the case of stock issued before March 28, 1942, includible in gross income. Income consisting of dividends on share accounts of Federal savings and loan associations is includible in gross income but, in the case of shares issued before March 28, 1942, is not subject to the normal tax on income. For taxability of such income in the case of such stock or shares issued on or after March 28, 1942, see section 6 of the Public Debt Act of 1942 (31 U.S.C. 742a) and paragraph (b) of this section. For the time at which a stock or share is issued within the meaning of this section, see paragraph (b) of this section.

(2) Regardless of the exemption from income tax of dividends paid on the stock of Federal reserve banks, dividends paid by member banks are treated like dividends of ordinary corporations.

(3) Dividends on the stock of the central bank for cooperatives, the production credit corporations, production credit associations, and banks for cooperatives, organized under the provisions of the Farm Credit Act of 1933 (12 U.S.C. 1138), constitute income to the recipients, subject to both the nor-

EXHIBIT C

1707

EXHIBIT D

RECEIVED
1976
Chancellor's Office

DAWSON, NAGEL, SHERMAN & HOWARD
ATTORNEYS AT LAW

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May 21, 1976

Mr. Neil D. Humphrey
Chancellor
University of Nevada
405 Marsh Avenue
Reno, NV 89502

Dear Sir:

REVENUE RULING REQUEST - BACKGROUND

This letter confirms the telephone conversation between you and the writer of this letter on May 20th concerning the revenue ruling request which we made by letter dated February 10th to the Commissioner of Internal Revenue as to the exemption from Federal income taxation under § 103(a), Internal Revenue Code of 1954, as amended (herein the "Code") of interest on the proposed revenue bonds to be issued by the University of Nevada (herein "University") under ch. 200, Statutes of Nevada 1975, in an aggregate principal amount of not exceeding $10,000,000.00, to defray the cost of constructing, otherwise acquiring and equiping buildings on the University's Las Vegas campus which are suitable for laboratory, classroom, and office use, and all engineering, financing and other incidental costs relating thereto. The buildings are to be leased for use for research purposes to the Environmental Protection Agency (herein "EPA") for a period of 10 years with an option to renew for one additional period of 10 years. Upon the termination of the lease, the buildings, which will have a useful life of about 50 years, will be used by the University for classroom, office, and laboratory purposes. The debt service of the bonds is to be paid from the net rentals derived from the EPA lease, and the bonds are to be redeemed from rentals paid over the first 10 year lease period.

The ruling request was felt necessary because of increasing opposition to treating as tax exempt interest on municipal bonds when the payment of their debt service was secured by or based upon contract obligations of a Federal agency. In

Rev. Rul. 75-516, 1973-2 C.B. 23, the Internal Revenue Service (herein "IRS") held that interest on bonds issued by a political subdivision of a state to finance the construction of buildings for installment sale to a U. S. government agency is not excludable from the gross income of bondholders.

Thus, when ch. 200 was a bill before the state legislature at its regular session in 1975 we raised the problem of tax exemption. On June 26, 1975, in a private ruling the IRS, in connection with a ruling request pertaining to the Colorado School of Mines and proposed bonds for an office building and research laboratory for lease (but no transfer of title at any time) to the U. S. Geological Survey, held that the interest on the bonds was not exempt from Federal income taxation. When that ruling came to our attention, we immediately brought it to your attention and noted the fact situation paralleled to your proposal.

On March 9, Mr. Steven Riemer of the IRS, among other matters, indicated by telephone that he was questioning and had under study the problem whether the University is a political subdivision. We had no doubts thereabout, and my partner, Tom Faxon, replied that we would send to him additional material addressed to this point, as well as indicating considerable surprise that the point was in question. Such additional material was provided. In Rev. Rul. 73-563, the IRS held that interest on bonds of a transit authority encompassing several participating counties was exempt from Federal income taxation, as the authority qualified as a political subdivision. The ruling notes that the 3 generally recognized sovereign powers of states are the police power, the power to tax, and the power of eminent domain. The authority had the power to set rates, determine routes, and enforce its regulations by maintaining a security force; but the authority had neither the power of eminent domain nor the power to tax. The participating counties, however, were empowered to exercise condemnation powers for the benefit of the authority and were levying and collecting retail sales and use taxes the proceeds from which were to be used to finance the operation of the transit system.

UNIVERSITY'S POWERS

Art. 11, Nevada Constitution, provides in relevant part:

> "Sec: 4. Establishment of state university; control by board of regents. The Legislature shall provide for the establishment of a State University which shall embrace

departments for Agriculture, Mechanic Arts, and Mining to be controlled by a Board of Regents whose duties shall be prescribed by Law.

"Sec: 5. Establishment of normal schools, grade schools; oath of teachers, professors. The Legislature shall have power to establis [establish] Normal schools, and such different grades of schools, from the primary department to the University, as in their discretion they may deem necessary, and all Professors in said University, or Teachers in said Schools of whatever grade, shall be required to take and subscribe to the oath as prescribed in Article Fifteenth of this Constitution. No Professor or Teacher who fails to comply with the provisions of any law framed in accordance with the provisions of this Section, shall be entitled to receive any portion of the public monies set apart for school purposes.

"Section 6. Support of university, common schools by direct legislative appropriation. In addition to other means provided for the support and maintenance of said university and common schools, the legislature shall provide for their support and maintenance by direct legislative appropriation from the general fund, upon the presentation of budgets in the manner required by law.

"Sec: 7. Board of regents: Election and duties. The Governor, Secretary of State, and Superintendent of Public Instruction, shall for the first Four Years and until their successors are elected and qualified constitute a Board of Regents to control and manage the affairs of the University and the funds of the same under such regulations as may be provided by law. But the Legislature shall at its regular session next preceding the expiration of the term of Office of said Board of Regents provide for the election of a new Board of Regents and define their duties.

"Sec: 8. Immediate organization, maintenance of state university. The Board of Regents shall, from the interest accruing from the first funds which come under their control, immediately organize and maintain the said Mining department in such manner as to make it most effective and useful. Provided, that all the proceeds of the public lands donated by Act of Congress approved July second AD.

> Eighteen hundred and sixty Two. for a college for the benefit of Agriculture[,] the Mechanics Arts, and including Military tactics shall be invested by the said Board of Regents in a separate fund to be appropriated exclusively for the benefit of the first named departments to the University as set forth in Section Four above; And the Legislature shall provide that if through neglect or any other contingency, any portion of the fund so set apart, shall be lost or misappropriated, the State of Nevada shall replace said amount so lost or misappropriated in said fund so that the principal of said fund shall remain forever undiminished[.]"

The Nevada Supreme Court has opined that the University has sovereign governmental powers:

1. King v. Board of Regents, 65 Nev. 533, 200 P.2d 221, 236 (1948):

> The right of the regents to control the University, in their constitutional executive and administrative capacity, is exclusive of such right in any other department of the government save only the right of the legislature to prescribe duties and other well recognized legislative rights not here in question.

2. Richardson v. Board of Regents, 70 Nev. 144, 261 P.2d 515, 518 (1953):

> Section 7728, N.C.L., 1929 (now cited as NRS 396.110), fixing the powers and duties of the board of regents and authorizing the board "To prescribe rules for their own government, and for the government of the university", wisely delegated to the regents the authority in their discretion to establish such rules as the tenure rule described in the case. In the court's opinion this rule, having been duly established, has the force and effect of statute.

3. Adamian v. University of Nevada System, 359 F. Supp. 825, 829 (D. Nev. 1973) rev'd on other grounds, 523 F.2d 929 (9th Cir. 1975):

> The defendants admit that the University Code is given the effect of law in the State of Nevada... In the instant ease, the section of the University Code under scrutiny has the effect of a statute.

4. Winterberg v. University of Nevada System, 89 Nev. 358, 513 P.2d 1248 (1973):

> In the University of Nevada System, the regulations regarding tenure are contained in chapter IV of the University Code, which has the effect of law in the State of Nevada. See State ex rel. Richardson v. Board of Regents, 70 Nev. 144, 261 P.2d 515 (1953).

The University possess sufficient police power to be held to exercise a portion of the sovereign power of the State.

A. The power (NRS 396.110) to prescribe regulations for universities (which has been delegated in whole to the Board of Regents in Nevada) is itself based on, and a part of, the State's police power. 14 C.J.S. Colleges and Universities § 22. Such regulations have been held to have the force of statutory law in Nevada. Richardson v. Board of Regents, 70 Nev. 144, 261 P.2d 515, 518 (1953); Adamian v. Univ. of Nevada System, 359 F. Supp. 825, 829 (D.Nev. 1973) rev'd on other grds, 523 F.2d 929 (9th Cir. 1975).

B. Cases holding that university regulations and procedures (NRS 396.110) take precedence in the event of a conflict with local municipal ordinances also show that universities generally are perceived to exercise a significant portion of State police power. City of Newark v. Univ. of Delaware, 304 A.2d 347 (Del. Ch. 1973); Rutgers State University v. Piluso, 60 N.J. 142, 286 A.2d 697 (1972). Cf. City of Boulder v. Regents of Univ. of Colo., 501 P.2d 123 (Colo. 1972).

C. Even as to parietal regulations, such as a requirement that all students under 21 live in dorms (NRS 396.110), courts have recently recognized that "in loco parentis" is not the sole basis for such regulations--that other police power reasons (such as providing for repayment of bonded indebtedness) may justify such parietal regulations. Prostrollo v. Univ of S. Dakota, 507 F.2d 775, 779 n. 6 (8th

Cir. 1974), cert. denied, 421 U.S. 952 (1975); Poynter v. Drevdahl, 359 F. Supp. 1137 (N.D. Ill. 1973). Moreover, police power (NRS 396.110) is clearly the primary basis for special regulations affecting minors, (as it is for other dependents); while one authority refers to the family as having primary responsibility for control and protection of minors, it nevertheless identifies the police power as the basis for restrictive regulations enacted by state authority. Freund, Police Power at 246 (1904).

D. The following are non-parietal areas of regulation by the Nevada Board of Regents (contained either in the University Code ("UC") or in the Board's Policy Codification ("PC")) which are clearly within the ambit of traditionally defined "police power":

(1) The power to create and maintain a police department (NRS 396.325), the members of which have authority to patrol and arrest within a certain territory is clearly a delegation of police power. Freund, Police Power at §§ 86-87 (1904).

(2) Regulations (PC Chapter 19) of traffic, motor vehicles, speed limits, and parking ordinances and providing for the enforcement thereof by citations, fines, and other penalties (NRS 396.435) are well-established examples of the exercise of police power. 7 E. McQuillin, Municipal Corporations §§ 24.597-651; 61 C.J.S. Municipal Corporations § 145. (You indicated at the conference that the board of regents, the chancellor, the presidents of the University of Nevada, Las Vegas, and the University of Nevada, Reno, the director of the desert research institute, and director of the community college division have subpena powers and try persons who violate regulations and convict them of misdemeanors, that the University Police, Nevada, have and exercise powers of a police power, including to the center line of streets adjacent to a campus, and that city police will not cross any such center line absent a request of the University Police, Nevada. NRS 396.325, 396.327 and 396.435.)

(3) Regulation and prohibition (PC, Chap. 12, § 4) of the use of alcoholic beverages on University-owned or supervised property (NRS 396.110) is unquestionably an exercise of state police power. 6 E. McQuillin, Municipal Corporations § 24.161; Freund, Police Power § 220 (1904).

(4) Rules and disciplinary procedures (UC, Chap. 5) applying to all members of university community, and prohibiting a wide variety of acts threatening to the peace and order of the community, and enforcement thereof through various academic sanctions (NRS 396.110) is recognized as legitimate exercise of police power (6 E. McQuillin, Municipal Corporations § 24.98), even though the same offenses may be punishable by state statute. 62 C.J.S. Municipal Corporations, § 145.

(5) Regulations (PC, Chap. 3, §§ 2 and 3) providing for management and investment of University endowment and capital funds (NRS 396.330 to 396.390, incl.) are "within the police power." 6 E. McQuillin, Municipal Corporations § 24.47.

(6) Regulations (PC, Chap. 6) providing the terms of UN System professional employee collective bargaining and prohibitng strikes (NRS 396.290, 396.311, 396.315, and 396.323) are exercises of the police power extending to the labor area. 7 E. McQuillin, Municipal Corporations § 24.431 and § 24.438.

(7) Regulations (PC, Chap. 15) setting forth standards of accuracy and editorial responsibility for student publications rest upon "police power reasonably to control and regulate expression of opinion [and] communication of information." 7 E. McQuillin, Municipal Corporations § 24.444.

Other Federal sources suggest that the University Board of Regents comes within any reasonable definition of "political subdivision."

E. Congressional history of 1913 Internal Revenue Act (and subsequent debates, hearings on exemption)--suggest the term was intended in broadest sense, to embrace "municipal corporations," "instrumentalities," and "agencies" of the States. We found no congressional history whatsoever stating that the term "political subdivision" was limited to entities possessing tax, condemnation, and police powers. Rather, the principal relevant debate on the term suggests that supporters of the Act envisaged it as cutting off any need for constitutional litigation on the extent of Congress' power to tax obligations of states or any instrumentalities thereof. See Remarks of Messrs. Hull and

Barlett, 50 Cong. Rec. at 508. This broad view of the scope of the term "political subdivision" was adopted by the court in Comm'r v. Shamberg's Estate, 144 F.2d 998, 1003-4 (2d Cir. 1944).

F. The meaning of the term "political subdivision" as used in § 103, Code, was determined by the court in Shamberg and in Comm'r v. White's Estate, 144 F.2d 1019 (2d Cir. 1944) to embrace any entity (1) created under state law, (2) which engages in "traditional and primary" or "customary governmental activity." 144 F.2d at 1004 and 1021. The court in both cases rejected a narrow approach based on the possession of a specific power (i.e., taxation) in favor of a test based on whether the entity in question was performing a recognized state governmental function. (Thus, the court in White held a bridge authority to constitute a subdivision of the state, despite the dissenting judge's observation that the authority had not been "vested with any significant part of the sovereign power of the State." 144 F.2d at 1021.) Since the operation of a state university is universally conceded to be a "customary governmental activity," Shamberg and White compel the conclusion that the University of Nevada is a "political subdivision" within the meaning of § 103, Code.

G. Federal courts defining "political subdivision" in other areas have not viewed Shamberg and White as establishing a three-prong test (based on taxing, condemnation, or police powers), but rather have focused on whether the entity was created by state law and was delegated customary governmental functions in defining "political subdivision."

(1) Abad v. Puerto Rico Communication Authority, 88 F. Supp. 34 (D.P.R. 1950)--under the Fair Labor Standards Act found the authority to constitute a "political subdivision" because its task (operation of telegraph services) was "an essential, traditional, and customary governmental function," without regard to whether the authority possessed any powers of taxation, condemnation, or police. 88 F. Supp. at 35.

(2) Seagram Corp. v. C.I.R., 38 T.C. 247 (1962), found a volunteer fire department not a "political subdivision" under Shamberg and White because it was not created by any law and not invested with any sovereign functions.

(3) NLRB v. Natchez Trace Electric Power Assn., 476 F.2d 1042 (5th Cir. 1973), held a nonprofit corporation not a "political subdivision" exempt from National Labor Relations Act where it was not created by state law, or administered by individuals responsible to public officials or to the general electorate. Here, of course, the Board of Regents is directly responsible to the general electorate.

(4) NLRB v. Natural Gas Utility District, 402 U.S. 600, 91 S. Ct. 1746 (1971), held a utility district created under state law to be a "political subdivision" under the NLRA and (in dicta) under 26 USCA § 103. Among the factors emphasized by the Court were the following (all also true of the UN System):

(a) Entity's administration responsible to general public. 402 U.S. at 607. (The Nevada Board is directly elected by the citizens of Nevada.)

(b) Entity created pursuant to state law. 402 U.S. at 605. (See Nevada Constitution, Article 11, § 6. Also see §§ 3, 4, 7, 8, 9, & 10.)

(c) Powers of eminent domain were delegated to entity. 402 U.S. at 606. (The Board may have such power under the Nevada Constitution, and has several specific legislative grants of eminent domain power. § 4 (3) of each chs. 387 and 499, Statutes of Nevada 1965, and chs. 7 and 17, Statutes of Nevada 1966.) The Board, however, has never found it necessary to exercise the power.

(d) Entity declared by statute to be a "public corporation . . . a body politic and corporate" and was operated on nonprofit basis. (Here, the University and the Board are expressly declared to be "political subdivisions." NRS 396.838 & 396.813).

(e) The property, revenue, and bonds of the entity were exempt from state, county, and municipal taxes. 402 U.S. at 606.

(f) The commissioners of the entity were empowered to subpoena witnesses and administer oaths in the scope of its business. 402 U.S. at 608. (The University's Board is given similar powers in disciplinary hearings. NRS 396.323.)

(g) The entity was given a broad grant of "powers necessary and requisite for accomplishment of [its purposes]" 402 U.S. at 608. (The Board is effectively granted all its powers by the Nevada Constitution. King v. Board of Regents, supra.)

(h) The entity's commissioners were entitled only to nominal compensation, 402 U.S. at 608. (The Nevada Board and its chairman are not entitled to any compensation. NRS 396.070 & 396.080.)

(i) The entity was required to have public hearings and its records were open for public inspection. 402 U.S. at 608. (The same is true of the Nevada Board's records and meetings. NRS 396.100.)

H. Under the Supreme Court's decision in Monroe v. Pape, 365 U.S. 167 (1961), to the effect that municipalities and other political subdivisions are not "persons" subject to suit under § 1983 of the Civil Rights Act, courts have held governing bodies of state universities to be "political subdivisions" and hence not subject to suit under that act. Anthony v. Cleveland, 355 F. Supp. 789 (D. Hawaii 1973); Taliaferro v. State Council of Higher Education, 372 F. Supp. 1378 (E.D. Va. 1974).

CURRENT DEVELOPMENTS

On May 20, Mr. Stephen Riemer of the IRS informed the writer of this letter by telephone that interest on the proposed bonds of the University under ch. 200, Statutes of Nevada 1975, is not exempt from Federal income taxation for each of 2 reasons:

I. As the bonds are payable solely from and are secured by a pledge of net rentals due during the bond term under the proposed lease between the University and the Federal Government (EPA), they are not obligations of a political subdivision under § 103 (a), Code, and § 1.103-1 thereunder, but are obligations of the Federal Government which are not tax exempt under § 103 (b), Code, and the regulations thereunder; and

II. While it is a "close question," the University does not have sufficient attributes of the State's sovereignty evidenced by the power to tax, the power of eminent domain, and the police power to qualify as a

"political subdivision" under § 103 (a), Code, and § 1.103-1 of the regulations thereunder.

(Particularly in view of Rev. Rul. 73-563 concerning the transit authority and discussed above, the second conclusion is surprising; but you may recall the statement at the April 28 conference of Mr. Riemer's superior, Mr. Mitchell J. Bragin, that the ruling is too liberal. His statement, in our view, is quite surprising. A transit authority is performing a typical governmental activity as a governmental entity. Further in the Congressional debates there is nothing to indicate the term political subdivision or governmental agency was used in a narrow sense. In any event the University has extensive police powers, perhaps as broad as any university in the United States. Further, it has been granted minimal eminent domain powers. (It is my recollection that you indicated at the conference that there were one or 2 other instances not involving bond financing, in which the University had been granted such condemnation powers. But we understand the University has never exercised such power.)

Mr. Riemer reiterated that the University could issue bonds "on behalf of" the State on a tax exempt basis (but without any Federal lease like that authorized by ch. 200, Statutes of Nevada 1975). We restated our concern as to the possible adoption of proposed amendment of regulation (herein "Prop. Reg.") § 1.103-1 published (41 F.R. 4829) on February 2, 1976, a copy of which is enclosed.

PROPOSED RULE RE CONSTITUTED AUTHORITIES

Paragraphs (a) and (b) of § 1.103-1, Prop. Reg. are modified somewhat, but the revisions are not too extensive. No purpose is served by any further comment herein thereon.

Paragraph (c), however, of § 1.103-1, Prop. Reg., is new. In order for an entity which is not a political subdivision itself to issue tax exempt obligations, i.e. obligations the interest on which is exempt from Federal income taxation, the entity must be a "constituted authority" under ¶ (c), the obligations of which are issued "on behalf of" a "local governmental unit," or a "unit," including, without limitation, the State.

Parenthetically we note that subparagraph (1) of ¶ (c) is not relevant to the University in providing that "[a]n issuer is not such a constituted authority if it issues obligations for more than one unit," i.e. "local government unit"

or "political subdivision" of a state. The IRS apparently is opening a broad frontal assault upon many cooperative enterprises performing governmental activities to deny them the benefit of tax exempt financing, e.g. the transit authority which is the subject of Rev. Rul 73-563. (This statement is premised upon the fact that the transit authority's police powers are materially narrower than the police powers of the University, that the authority had no grant of the power of eminent domain whereas the University has had grants of such powers, albeit relatively minimal, and that the grants of "sovereign powers" to the cooperating counties in Rev. Rul. 73-563 by the state in which they are located can not exceed the sovereign powers of a state itself, including, Nevada. There is no logical reason to believe the authority can justify tax exemption in the future on the ground it is a political subdivision of a state.)

Subparagraph (1) of ¶ (c) requires, in effect, that a constituted authority must meet the requirements of subparagraph (2) if it is an issuer which can issue tax exempt municipal bonds. We are concerned whether the University and/or the State can meet these requirements.

The first requirement of division (i), subparagraph (2), ¶ (c), is that the constituted authority is specifically authorized pursuant to State law to issue obligations to accomplish a public purpose or purposes of the unit, here the State. The State legislature "shall have power to [establish] *** the University" (art. 11, § 5, State Const.), and "in addition to other means provided for the support and maintenance of said university and common schools, the legislature shall provide for their support and maintenance by direct legislative appropriation from the general fund, upon the presentation of budgets in the manner required by law" (art. 11, § 6, State Const.); but the "Legislature shall provide for the establishment of a State University *** to be controlled by a Board of Regents whose duties shall be prescribed by Law" (art. 11, § 4, State Const.), and, except for the first board which is constitutionally created, "the legislature shall at its regular session next preceding the expiration of the term of office of said board of regents, provide for the election of a new board of regents, and define their duties" (art. 11, § 7, State Const.). The State legislature can and is required to provide for the support and maintenance of the University and may prescribe duties for the Board to perform, but the Board

controls and manages the affairs of the University and the funds of the same. The legislature may not limit the powers of the Board which are constitutionally granted. Nevertheless we assume that the specific authority to issue bonds for a specific project is, in the absence of objection by the Board, a State law to issue obligations to accomplish a public purpose or purposes of the State. Thus, apparently the first requirement of subparagraph (2), ¶ (c), is met, but we have some misgivings thereabout.

The second requirement is that "[s]uch specific authorization [i.e. State law authorizing the University to issue bonds to accomplish a public purpose or purposes of the State] must either create the [constituted] authority [i.e. the University] or provide that the unit [i.e. the State] may create the authority. There can be no compliance with this requirement by the State or the University. The University can not be created by such a State law. The University was created shortly after the adoption of the State Constitution and the admission of the Territory of Nevada as a State into the Union in 1864. Neither the State nor the University can meet this second requirement.

The third requirement can be met as the specific bond act can specify the purpose or purposes for which the bonds are authorized to be issued.

The fourth requirement pertaining to a State, among others, can be met by setting forth "such authorization in a State statute."

The fifth requirement pertains to a unit which is a political subdivision or the District of Columbia, and is irrelevant.

The sixth requirement, in division (ii) of ¶ (c)(2), is that the unit [i.e. the State] controls the governing body of the authority [i.e. the board of regents of the University] in one of 3 ways, one of which is the election of members of the authority's governing body in its entirety by the voters of the unit [i.e. State]. This requirement can be and is being met.

The (seventh and eighth) requirements in the second paragraph of division (ii) are irrelevant as the members of the board of regents are elected by State voters, including, without limitation, the organizational control requirement in ¶ (c) (2)(iii)(B). Thus, we are ignoring in this letter the

the conditions which must exist for there to be "organizational control" under subdivision (B).

In ¶ (c)(2)(iii)(C) are stated the requirements for there to be "supervisory control." In our view there could not be a compliance with the first 3 such requirements, but there could be a compliance with the fourt and fifth requirements. The first five, supervisory control requirements are inapplicable, however, because the members board of regents are elected by the voters of the State.

The sixth, supervisory control requirement is that in the event of default with respect to obligations issued to finance the acquisition of property, the unit has the exclusive option to purchase such property for the amount required to discharge such obligations and is provided a reasonable time to exercise such option. In our view the Nevada Supreme Court will uphold a bond contract provision for the benefit of bondholders for a receiver to take possession of income-producing properties revenues from the operation of which are pledged for the payment of defaulted bonds for a sufficient period to cure the default. But we have substantial doubts about the validity of any mortgage or other lien upon any University property (other than moneys) to secure the payment of any such bonds or the validity of any option exercisable by the State or any other person to transfer title thereto in case of a default. Thus, we seriously question whether there can be a compliance with this requirement.

The seventh, supervisory control requirement is for an agreement by the unit [State], in conjunction with the issuance of the obligations, to accept full legal title to any tangible personal or real property financed by such obligations upon the retirement of such obligations, free of encumbrances created subsequent to the acquisition of the property by the authority. Such property must have significant value at the time such property is conveyed to the unit. (Such a factor is difficult to mandate by regulation. Perhaps the proper construction is that such a transfer of title is not required unless the property has such a value.) Instruments conveying title must be placed in escrow in conjunction with the issuance of the obligations. The University is constitutionally mandated to control the State University and by necessary implication (?) is required to carry on the function of higher education in the State. We assume that the many parcels of land of the University are subject to "encumbrances" as to character of use, e.g. "providing a site for a community college," "for educational and research purposes," or in perpetuity as

"a natural wild life area." But even if title to any such property was so conveyed by the Board to the State, we question whether there would be a compliance with the seventh, supervisory control requirement, as the State would hold such title subject to control by the Board, not the converse.

Division (iv) of ¶ (c)(2) provides that "[a]ny net earnings of such authority (beyond that necessary for retirement of the indebtedness or to implement the public purpose or purposes or program of the unit) may not inure to the benefit of any person other than the unit." Regardless of whether higher education is a public purpose or program of the State, in our opinion the Nevada Courts will hold that any such net earnings are constitutionally required to inure to the benefit of the University. Thus, there can be no compliance with the requirement of ¶ (c)(2)(iv).

Division (v) of ¶ (c)(2) provides that "[u]pon dissolution of the authority, title to all property owned by such authority will vest in the unit." Under existing State constitutional provisions the University can not be dissolved. The first phase quoted in this paragraph is ambiguous. Does it mean an authority must ultimately be dissolved or merely mean if it is dissolved? If the former construction is correct, division (iv) is inapplicable; but if the latter construction is correct, there can not be a compliance therewith.

Division (vi) of ¶ (c)(2) provides that "[t]he authority must be created and operated solely to accomplish one or more of the purposes of the unit specified in the authorization described in ¶ (c)(2)(i) of this section" [§ 1.103-1]. Such authorization is the act (or other instrument) specifically authorizing the issuance of obligations to accomplish a public purpose or purposes of the unit. But the University was created over 100 years ago. A special bond act will authorize the issuance of bonds by the University, acting by and through the board, for a particular purpose, e.g. to construct and equip a building to be used for classrooms, offices, and research. But that act can not provide for the University's organization, when it was created over a century ago. Thus, the meaning of division (vi) of ¶ (c)(2) is obscure in its application to the University, but we assume there can be no compliance with division (vi).

In summary, if the proposed regulation published is adopted without modification or is adopted in modified form but with many of the "control provisions" required therein of

a unit [here the State], under ¶ (c)(4) of proposed § 1.103-1 obligations issued by the University on or after 180 days after the adoption of ¶ (c) by a Treasury decision, can not be issued on a tax exempt basis. (Because of the length of this letter, we are deferring any discussion of problems pertaining to the issuance of taxable obligations by a political subdivision without State consent.)

In view of the wide protest which the media indicates was filed pertaining to the proposed regulation, we think it is likely that a number of provisions will be modified; but we are not optomistic that the regulations will be modified to such an extent to remove all the "control provisions" which prevent the University from complying with the regulation.

Under the circumstances we feel compelled to urge that the University has no choice but to treat some or all of the presently proposed regulations as remaining indefinitely in effect after their effective date.

ALTERNATIVES OF ACTION

So far as the lease with the Federal Government is concerned, we reconfirm our suggestion that we prepare a bill for an act whereby the State consents to the issuance of bonds or other securities by the State or any political subdivision or other governmental entity thereof the interest on which securities is not exempt from Federal income taxation, if the governing body or other body authorizing the issuance of the issuer's securities finds that the additional economic burden of issuing taxable rather than tax exempt securities in economic substance is not borne by the issuer, e.g. because of a Federal subsidy or another underlying agreement with the Federal Government, e.g. a lease thereby of facilities financed wholly or in part with proceeds of such securities, or otherwise. For policy reasons we do not recommend the adoption of such a bill without any such condition and finding by such body.

In the alternative any financing of facilities with such an issuer's securities proceeds can, if necessary, be abandoned.

So far as the IRS's position that the University is not a political subdivision we suggest for your consideration a 2-pronged attack.

Firstly, we suggest that you authorize us to comment upon the proposed regulations to the Internal Revenue Service,

much as we have in parts of this letter, and explain our failure to do so by March 18, 1976, by the fact until we were told on May 20, 1976, that the IRS would rule the University (and presumably every other state university) was not a political subdivision, it never occurred to us that an University's securities could be tax exempt only if they complied with regulations pertaining to "on behalf of financing."

Secondly, we suggest the preparation of a simple amendment to § 103(a), Code, and a political campaign therefor. In our view the Department of Treasury and the IRS have gone far too far in their interference with the Federal System and the activities of the states of the Union and their political subdivisions thereunder. We surmise that there would be considerable support for such an amendment.

Also, if the States so react to arbitrary action by Treasury and the IRS, they may be less likely in the future to be so arbitrary.

Of course, we are not in a position to evaluate any political problems which you may have in the State and have not attempted to do so.

MISCELLANEOUS

Please excuse the length of this letter. The matter is complex. We have rather fully commented upon it herein, so that anyone reading the letter without your knowledge and background can still understand the points which we are attempting to make.

If we may assist you in any further way at this time, please so inform us.

Yours truly,

Robert M. Johnson

Robert M. Johnson

RMJ/pas
Enclosure

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INTEREST UPON OBLIGATIONS OF A STATE, TERRITORY, ETC.

Income Tax Regulations

Notice is hereby given that the regulations set forth in tentative form in the attached appendix are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by March 18, 1976. Pursuant to 26 CFR 601.601(b), designations of material as confidential or not to be disclosed, contained in such comments, will not be accepted. Thus, persons submitting written comments should not include therein material that they consider to be confidential or inappropriate for disclosure to the public. It will be presumed by the Internal Revenue Service that every written comment submitted to it in response to this notice of proposed rule making is intended by the person submitting it to be subject in its entirety to public inspection and copying in accordance with the procedures of 26 CFR 601.702(d)(9). Any person submitting written comments who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit a request, in writing, to the Commissioner by March 18, 1976. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER, unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the Federal Register.

(Sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Preamble. This document contains a proposed amendment to the Income Tax Regulations (26 CFR Part 1) to revise the regulations under section 103(a) of the Internal Revenue Code of 1954, relating to interest upon obligations of a State, a territory, or a possession of the United States, or any political subdivision thereof, or the District of Columbia.

Section 1.103–1(b) of the proposed regulations provides rules relating to obligations issued directly by a State or local governmental unit.

Section 1.103–1(c) of the proposed regulations provides rules to determine whether obligations are issued on behalf of a State or local governmental unit. Paragraph (c) supercedes prior revenue rulings such as Rev. Rul. 57–187, 1957–1 C.B. 65, Rev. Rul. 60–248, 1960–2 C.B. 35, and Rev. Rul. 63–20, 1963–1 C.B. 24 relating to entities issuing obligations on behalf of a State or local governmental unit.

In general, the proposed amendment provides that only a constituted authority of a State or local governmental unit may issue obligations on behalf of the unit. The authority must be specifically authorized pursuant to State law to issue obligations on behalf of the unit to accomplish a public purpose of the unit. The authorization must specify the public purpose of the governmental unit on behalf of which the authority is authorized to issue obligations and also must create the authority or provide that the governmental unit may create the authority. The authority must be created and operated solely to accomplish a public purpose of the governmental unit.

The proposed amendment requires a close connection between the authority and the governmental unit including control of the authority's board and organizational or supervisory control over the authority by the governmental unit.

Proposed amendments to the regulations. To provide rules to determine whether obligations are the obligations of a State, a territory, or a possession of the United States, or any political subdivision of the foregoing, or of the District of Columbia, the Income Tax Regulation (26 CFR Part 1) under section 103(a) of the Internal Revenue Code of 1954 are amended as follows:

1. Section 1.103–1 is amended by revising paragraphs (a) and (b) and by adding a new paragraph (c). These revised and added provisions read as follows:

§ 1.103–1 Interest upon obligations of a State, territory, etc.

(a) *In general.* Interest upon obligations of a State, a territory, or a possession of the United States, or any political subdivision thereof or the District of Columbia (hereinafter collectively or individually referred to as "State or local governmental unit") is not includible in gross income except as provided under section 103 (c) and (d) and the regulations thereunder. Section 103(a)(1) does not apply to industrial development bonds or to arbitrage bonds except as otherwise provided in section 103 (c) and (d). See section 103(c) and §§ 1.103–7 through 1.103–12 for rules concerning interest paid on industrial development bonds. See section 103(d) for rules concerning interest paid on arbitrage bonds. See pargarph (b)(2) of this section for the definition of the term "political subdivision".

(b) *Obligations of a State or local governmental unit.* (1) Obligations issued by or on behalf of any State or local governmental unit by constituted authorities empowered to issue such obligations are the obligations of such unit. See paragraph (c) of this section for rules relating to obligations which are not issued directly by a State or local governmental unit but are issued by a constituted authority of a State or local governmental unit.

(2) For purposes of this section, the term "political subdivision" denotes any division of any State, territory or possession of the United States which is a municipal corporation or to which has been delegated the right to exercise part of the sovereign power of such State, territory or possession. Such term also denotes any unit which is a political subdivision of more than one State, territory, possession of the United States, or political subdivision (as described in the preceding sentence), *i.e.*, is a municipal corporation of, or a unit to which has been delegated the right to exercise part of the sovereign power of, each of the several participating State or local governmental units. As thus defined, a political subdivision may, for purposes of this section, include special assessment districts so created, such as road, water, sewer, gas, light, reclamation, drainage, irrigation, levee, school, harbor, port improvement, and similar districts and divisions of any such unit.

(3) Certificates issued by a political subdivision for public improvements (such as sewers, sidewalks, streets, etc.) which are evidence of special assessments against specific property, which assessments become a lien against such property and which the political subdivision is required to enforce, are, for purposes of this section, obligations of the political subdivision even though the obligations are to be satisfied out of special funds and not out of general funds or taxes.

(c) *Constituted authorities*—(1) *In general.* This paragraph provides rules to determine whether obligations that are not issued directly by a State or local governmental unit (hereinafter in this paragraph referred to as the "unit") are nonetheless considered to be the obligations of such unit because issued by a constituted authority of such unit empowered to issue such obligations on behalf of such unit. An issuer is such a con-

authority only if the requirements of paragraph (c)(2) of this section are satisfied. Such a constituted authority may be organized as a corporation, trust, or other entity. An issuer is not such a constituted authority if it issues obligations for more than one unit. The determination that an issuer is a constituted authority under paragraph (c)(2) of this section is solely for purposes of this section and is not determinative of whether the issuer is an authority, agency, or instrumentality under any other section of this title. See paragraph (a) of this section for a definition of the term "State or local governmental unit" and see paragraph (b) of this section for a definition of the term "political subdivision".

(2) *Requirements to be a constituted authority.* The requirements of this subparagraph are satisfied if—

(i) The authority is specifically authorized pursuant to State law to issue obligations to accomplish a public purpose or purposes of the unit. Such specific authorization must either create the authority or provide that the unit may create the authority. Furthermore, such authorization must specify the public purpose or purposes of the unit for the accomplishment of which such authority is empowered to issue obligations. If the unit is a State, territory, or possession of the United States, such authorization must be specifically set forth in the Constitution, charter or other organic act creating or providing for the unit's government, or in a statute of such unit. If the unit is a political subdivision or is the District of Columbia, such authorization must be specifically set forth in its charter or other organic act creating the unit, or in the Constitution or a statute of a State, territory or possession of which the unit is a part (including, in the case of the District of Columbia, a statute of the United States) and such authorization must also provide that the unit is authorized to utilize the authority to issue obligations to accomplish a public purpose or purposes of the unit.

(ii) The unit controls the governing board of the authority. To satisfy this requirement, the governing board of the authority must be composed in its entirety of—

(A) Public officials of the unit as members ex-officio,

(B) Persons elected by the voters of such unit for a specified term, or

(C) Persons appointed by the unit or by other members of the governing board described in (c)(2)(ii) (A) or (B) of this section if such other members comprise a majority of the board.

In addition, if the unit does not have organizational control over the authority described in paragraph (c)(2)(iii)(B) of this section, a majority of the members of the governing body of the authority must be members described in (c)(2)(ii)(A) or (B) of this section. Members described in (c)(2)(ii)(C) of this section must be removable for cause or at will and must not be appointed for a term in excess of 6 years. The term of any member of the governing board described in (c)(2)(ii)(A) of this section shall not exceed the period for which such member will be a public official of the unit.

(iii)(A) The unit has either the organizational control over the authority, described in (c)(2)(iii)(B) of this section, or the supervisory control over the activities of the authority, described in (c)(2)(iii)(C) of this section.

(B) A unit has organizational control over an authority if—

(1) The authority is created by or organized under a constitution, statute, or charter or other organic act creating or providing for the unit's government, which either creates the authority or provides that only a unit may create or organize an authority,

(2) The constitution, statute, or charter or other organic act itself provides for the organization, structure, and powers of the authority, and the authority is organized under such constitution, statute, or charter or other organic act and not under a statute providing generally for the organization of entities, such as a statute providing for the organization of nonprofit corporations, and

(3) The unit may, at its sole discretion, and at any time, alter or change the the structure, organization, programs, or activities of the authority (including the power to terminate the authority), subject to any limitation on the impairment of contracts entered into by such authority.

If the unit is a political subdivision or is the District of Columbia, the power to alter or change described in paragraph (c)(2)(iii)(B)(3) of this section must be specifically set forth in the authorization described in paragraph (c)(2)(i) of this section.

(C) Supervisory control by a unit over an authority ordinarily includes (1) except to the extent otherwise fixed by the terms of the authorization described in paragraph (c)(2)(i) of this section, approval by the unit of the provisions of the governing instrument and bylaws of the authority and power to amend the same; (2) annual approval by the unit of the projected programs and projected expenditures of the authority and annual post-review of the programs and expenditures; (3) approval by the unit of each issue of obligations of the authority not more than 60 days prior to the date of issue, except that where obligations are to be issued in series at prescribed intervals over a period not exceeding 5 years, all obligations in such series may be approved at one time within 60 days prior to the date of the first issue in such series; (4) annual review of the authority's annual financial statements (including a statement of income and expenditures) by the unit; (5) access by the unit at any time to all books and records of the authority; (6) in the event of default with respect to obligations issued to finance the acquisition of property, the unit has the exclusive option to purchase such property for the amount required to discharge such obligations and is provided a reasonable time to exercise such option; and

(7) agreement by the unit, in conjunction with the issuance of the obligations, to accept title to any tangible personal or real property financed by such obligations upon the retirement of such obligations. Such property must have significant value at the time that such property is conveyed to the unit. Instruments conveying title to such property must, in conjunction with the issuance of such obligations, be placed in escrow with instructions that the escrow agent deliver such instruments of title to such unit upon the retirement of the obligations. Such unit must obtain, upon retirement of the obligations, full legal title to the property with respect to which the indebtedness is incurred free of encumbrances created subsequent to the acquisition of the property by the authority. Examples of title encumbrances are options, leases which continue beyond the date of the retirement of the obligations, lease renewals or lease extensions exercisable by any person other than such unit. The requirements of paragraph (c)(2)(iii)(C) (1) through (5) of this section shall not apply if the governing board of the authority is composed in its entirety of public officials or elected persons (or both) described in paragraph (c)(2)(ii) (A) and (B) of this section.

(iv) Any net earnings of such authority (beyond that necessary for retirement of the indebtedness or to implement the public purpose or purposes or program of the unit) may not inure to the benefit of any person other than the unit.

(v) Upon dissolution of the authority, title to all property owned by such authority will vest in the unit.

(vi) The authority must be created and operated solely to accomplish one or more of the public purposes of the unit specified in the authorization described in paragraph (c)(2)(i) of this section.

The requirements of paragraph (c)(2)(i) of this section must be satisfied at the time of issuance of the obligations and the requirements of paragraph (c)(2)(ii) through (vi) of this section must be satisfied at all times during the period beginning on the date of issuance of the obligations and ending on the date of dissolution of the authority or on the date that title to all property owned by the authority is conveyed to the unit, whichever is earlier. In applying paragraph (c)(2)(ii) through (v) of this section to an authority of a political subdivision the term "unit" shall include any State, territory or possession of which the political subdivision is a part. Except as provided in paragraph (c)(2)(iii)(B) of this section, if the requirements of paragraph (c)(2)(ii) through (vi) of this section are not provided for in the authorization described in paragraph (c)(2)(i), they must be stated in the governing instruments of the entity.

(3) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). The Education Act of state A provides in part:

Section 100. *Student Loan Authorities.* (a) *Purpose.* An incorporated municipality of the State is hereby authorized to issue obligations for the purpose of creating and maintaining a loan fund to provide loans to further the education of any resident of such municipality in accordance with the provisions of section 102 of this Act. Obligations issued pursuant to this section may be issued directly by a municipality or by a student loan authority of such municipality.

(b) *Authority.* A student loan authority of the municipality may be created by the municipality under the not-for-profit corporation act for the sole purpose of obtaining and loaning funds for the purpose described in subsection (a). Such authority is hereby authorized to issue obligations on behalf of the municipality for such purpose. An authority organized under this Act shall be governed by a board of directors comprised of elected officials of the municipality or persons appointed by the municipal council.

Pursuant to the Education Act, city B took the formal action necessary to create a corporation under the State not-for-profit corporation law for the sole purpose of having the corporation act as a student loan authority and to issue specified obligations for such purpose on behalf of the city. The formal action also provided that the authority shall be governed by a board of directors consisting of seven members, four of whom were designated elected officials serving as members ex offico and three of whom were appointed by the city council for a term not in excess of 2 years. The appointed members of the board can be removed at will by the city council. The formal action further provided that the city must approve the governing instrument and the bylaws (and any amendment thereof) of the authority, may amend the governing instrument and bylaws, must approve, in advance, each issue of obligations, and both review and approve annually the projected programs and projected expenditures of the authority, as well as annually post-reviewing program and expenditures. Also, annual financial statements (including a statement of income and expenditures) were required to be reviewed by the city council, and the city council was provided access to all books and records of the authority. Pursuant to the formal action, the city B student loan authority was incorporated. The articles of incorporation of the authority, in addition to providing for the supervisory authority of the city, described above, state that the authority is not organized for profit and that any of the authority's net earnings will inure only to the benefit of the city. The articles of incorporation state further that upon dissolution of the authority, title to all property owned by the authority will vest in city B. The bond resolution for the obligations issued by the authority provides that in the event of default with respect to obligations issued to finance the acquisition of the student loan notes, the city has the exclusive option to purchase the loan notes and is provided a reasonable time to exercise such option and to finance such purchase. The city B student loan authority meets the requirements of paragraph (c)(2) of this section and the obligations issued by the authority qualify under this paragraph as obligations issued on behalf of a State or local governmental unit if prior to the issuance of any such obligations the obligations are approved by the city council or voters of city B.

Example (2). The S Corporation, incorporated under the nonprofit corporation law of State T was organized for the purpose of financing and operating a hospital located in city U, a municipality of state T. S Corporation's articles of incorporation state that the corporation is not organized for profit and that none of its net earnings will inure to the benefit of any private person. The board of directors of the corporation consists of representatives of private business groups in city U elected by the members of S Corporation and approved by city U. S Corporation issued obligations to finance the construction of a new wing for the hospital. In conjunction with the issuance of the obligations, a deed conveying title to the new wing was placed in escrow by S Corporation with the instructions that the escrow agent deliver the deed to city U upon retirement of the obligations. Also, S Corporation granted city U the right at any time to purchase the new wing for an amount sufficient to retire the outstanding indebtedness on such obligations. City U, prior to the issuance of obligations by S Corporation, approved S Corporation and the issue of obligations issued by S Corporation. City U also agreed to accept title to the new wing upon retirement of the obligations. The obligations issued by S Corporation are not issued "on behalf of" city U since the following requirements for an "on behalf of" issuer have not been met:

(i) There was no specific authorization, as described in paragraph (c)(2)(i) of this section.

(ii) S Corporation was not created by such specific authorization or by city U, pursuant to any such specific authorization, as required by paragraph (c)(2)(i) of this section.

(iii) City U does not control S Corporation, within the meaning of paragraph (c)(2)(ii) of this section.

(iv) City U does not have organizational control or supervisory control over S Corporation, as required by paragraph (c)(2)(iii) of this section.

Example (3). City C, a municipal corporation located in state D, was incorporated pursuant to a statute of state D which provides in part that "municipalities incorporated under this Act may issue obligations to provide funds for any purpose related to the general welfare of the residents of such municipality". The city C Airport Agency was incorporated under state D's not-for-profit corporation law for the purpose of constructing a municipal airport with the proceeds of obligations issued by the corporation "on behalf of" city C. Neither the state statute under which city C was incorporated nor any other statute of state D provides the specific authorization described in paragraph (c)(2)(i) of this section. Thus, obligations issued by the city C airport agency will not qualify under this section as obligations issued "on behalf of" city C.

Example (4). Assume the same facts as in Example (3) except that the State statute provides as follows:

"Except as limited by express provision or necessary implication of general law, a municipality may take all action necessary or convenient for the government of its local affairs."

Neither the state statute under which city C was incorporated nor any other statute of state D provides the specific authorization described in paragraph (c)(2)(i) of this section. Thus, obligations issued by the city C airport agency will not qualify under this section as obligations issued "on behalf of" city C.

Example (5). A statute of state E provides that any incorporated municipality of the state is authorized to utilize an authority to issue obligations for a public purpose of the municipality. The Municipal Parking Act of state E provides that any incorporated municipality may create an authority under the Act for the purpose of utilizing the authority to issue obligations to provide a municipal parking garage. The Act provides that the authority is to be created under provisions of the Act which govern the structure, creation, and powers of the authority. In addition the Act provides that the municipality creating the authority may alter or change the structure, organization, program, or activities of the authority and may terminate the authority. City F creates a Municipal Parking Authority under the provisions of the Act. The charter of the authority provides that the sole purpose of the authority is to construct and operate a municipal parking garage, that any net earnings of the authority will be paid to city F, that title to all property owned by the authority at the time of its dissolution will vest in city F, and that all members of the authority are to be appointed by the mayor of city F. The authority satisfies the requirements of paragraph (c)(2) of this section, and obligations issued by the authority qualify under this section as obligations issued on behalf of a State or local governmental unit.

(4) *Effective date.* The provisions of this paragraph apply to obligations issued on or after 180 days after the adoption of this paragraph by a Treasury decision, or, at the option of the State or local governmental unit, to obligations issued on or after February 2, 1976.

[FR Doc.76-3027 Filed 1-28-76;4:05 pm]

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[43 CFR Parts 3500 and 3520]

COAL LEASES

Diligent Development and Continuous Operations; Extension of Comment Period

Notice was published in the FEDERAL REGISTER on Wednesday, December 31, 1975 (40 FR 60070, 60071) inviting interested parties to submit written comments to the Director, Bureau of Land Management on proposed regulations which would define the terms "logical mining unit," "logical mining unit reserves," "diligent development," and "continuous operation." The proposed regulations would also modify the existing regulations relating to the duration

EXHIBIT E

MR. CHAIRMAN - MEMBER OF THE SENATE JUD. COMM.

Commander McCarthy

SB-268

GENERAL RECAP OF BACKGRAND AND LAW ENF. EXPERIANCE IN NARCO. ENFORC.

FIRST ASSIGNED TO NARCO 1964

TRANSFERED → 1968

ASSIGNED CMDR of J.N.V. BUR. 1974

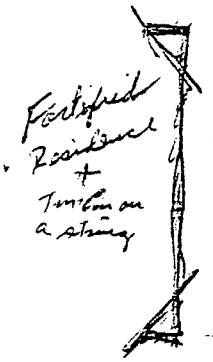
SEPT. 21 YRS

PRIOR ATTEMPTS TO OBTAIN LEGISLATION TO FACILLITAE NARCO. ENF.

TRIPLICATE PRESCRIPTION SYSTEM (CALIF)

PREVENTS DIVERSION OF LEGIT. DRUGS

BY DOCTORS + PHARMACISTS + NURSES



NALLINE PROGRAM (CALIF)

BEEN DISCONTINUED

ESTAB. A STATE NARCO. ENF. AGENCY

NOW EXISTS AS THE STATE DIV. OF INV. & NARCO

ADDRESS THE TREMENDOUS INCRESE IN THE DRUG PROBLEM IN THE PAST 10-12 YRS.

MAY 1965	RENO - FBN	ONE POUND	HEROIN
	(LARGEST SEIZURE IN STATE TO THAT DATE)		
OCT. 1965	SBO - CAL. BUR. OF NARCO.	1 OZ 6 OZ	HEROIN COCAINE
DEC 1965	SAN LUIS CA. US CUSTOMS	165 LBS	MARIJ.

MAR. 1966	LAS VEGAS CCSO		62 LB MARIJ
APRIL 1966	ST. LOUIS MO. (LURES.)	FBN	1/2 LB HEROIN
SAME SUSP. AS OCT. 65 APRIL 1966	SAN DIEGO	FBN	4 OZ HEROIN
SEPT. 1966	CALEXICO	BUR. OF CUSTOMS	2 OZ HEROIN

ACCORDING TO ESTIMATES BY US BUR. OF CUSTOMS SEIZURES REPRESENT ONLY ABOUT 10% OF AMOUNT ENTERING THE COUNTRY

RECENTLY COMPLETED LVMPD ANNUAL REPORT FOR 1976 -

THESE FIGURES REPRESENT DRUGS PURCHASED IN UNDERCOVER SITUATIONS AND SEIZURES BY THE NARCO. SECTION ONLY - MOST RELIABLE

COCAINE	2¼ LBS.	1125. gm
DANG. DRUGS	49,196 PILLS	
HALLUCINOGENS	1592 D/U	
MARIJUANA	902.133 LBS.	410.01 K
HEROIN	31.18 LBS.	13.968 K

THIS COMPARES TO THE PREVIOUSLY MENTION 1 AND 1/2 YRS OF RECORDED SIGNIFICANT SEIZURES

MARIJ.	4 TIMES
COCAINE	6 TIMES
HEROIN	15 TIMES

DURING 1976 SALE OF CONT. SUB CASES MADE

COCAINE	82
DANG. D.	26
HALLUC.	30
MARIJ.	47
HEROIN	222

JULY 1976 COMPLETED 2 YRS OF FEDERAL FUNDING (FY 73-74)—(FY 74-75)
$150,000 $85,000

WE HAD ACCESS TO ALMOST UNLIMITED SUMS OF MONEY

EQUIPMENT
TRAVEL
INFORMANT FEES

THINGS WE USE TO FANTASIZED ABOUT IN 1965

A LOT OF MAJOR VIOLATORS WERE ARRESTED
A LOT WERE CONVICTED
AS IN THE PAST MANY WERE GIVEN PROBATION OR REAL STRICT SUSPENDED SENTENCES

WE ARE NOW WORKING SOME OF THE SAME SUSPECTS THAT WE WORKED 10 YRS AGO.

THE AVAILABILITY OF FED. FUNDING FOR 2YRS MADE NO SIGNIFICANT IMPACT ON THE OVERALL DRUG PROBLEM.

FUTURE EXPECTATIONS

EXPECT TO SEE A MOVE IN THE NEAR FUTURE TO REDUCE PENALTIES ON COCAINE

THERE IS PRESENTLY A NATIONAL PUSH ON TO LEGALIZE ALL DRUGS INCLUDING HEROIN

THE PROPONANTS OF THESE IDEALOGIES EMBRACE THE "PERSONAL CHOICE" APPROACH.

THE EXERCISE OF THE FREEDOM OF PERSONAL CHOICE MAY BE CARRIED ON AS TO INCLUDE CHILDREN

HOWEVER IF WE NOW PROTECT CHILDREN FROM BUYING GUNS, DRUGS AND OTHER DANGEROUS ITEMS — WHY NOT PROTECT ADULTS WHO ARE GROSSLY IMMATURE AND SEEK A HEDONISTIC EXISTANCE

IF ALL DRUGS ARE TO BE LEALIZED IN THE FUTURE WE CAN EXPECT

1. THERE WILL BE NO INCENTIVE TO REHABILITATE

2. ADDICTS TRY TO CREATE MORE ADDICTS
   MISSIONARY EFFECT
   HARDLY A FAMILY EXISTS NOW THAT HAS NOT HAD A DRUG PROBLEM WITH ONE OF ITS MEMBERS.

3. IT IS A CHARACTERISTIC OF ADDICTING OR HABITUATING DRUGS TO INCRESE THE DOSE AS THE INDIVIDUALS TOLLERANCE BUILDS.

OUR PROPOSED LEGIS. ADVOCATES HEAVY PENALTIES

THE VALUE OF STRICT ENF. AND STRONG PENALTIES IS EXEMPLIFIED BY THE FOLLOWING

PRIOR TO THE ENACTMENT OF THE HARRISON NARCO. ACT OF 1914 – ONE IN EVERY 4100 PERSONS IN THE US WERE ADDICTED TO LAUDENUM AND OTHER PREPARATIONS SOLD OVER THE COUNTER.

CIVIL WAR – ARMY SICKNESS – MORPHINE

SINCE ENACTMENT – ONE IN EVERY 4000 UP TO THE 1960's

WE ARE STILL FEELING THE IMPACT OF THE 60's AND EARLY 70's

REFERED TO AS

DRUG ORIENTED – COUNTER CULTURE YEARS

HARDLY A FAMILY EXISTS ANYMORE THAT HAS NOT HAD ONE OF THEIR MEMBERS INVOLVED IN DRUGS.

FOR MANY YEARS NOW PEOPLE IN LAW ENFORCEMENT HAVE ADVOCATED A TWO PRONG ATTACK ON THE DRUG PROBLEM

1. STRICT ENFORCEMENT OF VIOLATORS
2. SUPPORT FOR THE REHABILITAION OF DRUG DEPENDANT PERSONS.

THE SO. NEV. DRUG ABUSE COUNCIL AND OTHER SIMILIAR ORGANIZATIONS HAVE FLOURISHED THROUGH OUT THE COUNTRY

S.N.D.A.C. PRESENTLY HAS ABOUT 225 ADDICTS UNDER METHADON TREATMENT IN CLARK COUNTY OUTOF AN ESTIMATED 5900 DRUG ADDICTS

SNDAC IS ALSO THE UMBRELLA ORGAN. FOR OTHER REHABILITATIVE AGENCIS SUCHAS
FITZSIMMONS HOUSE
U.S. INC.
OPERATION BRIDGE

SNDAC FUND RAISING CAMPAINE FOR 1975 FELL FAR SHORT OF ITS GOAL

1976 THE CAMPAINE WAS A TOTAL FAILURE

CONSEQUENTLY THE DEPENDANT AGENCIES ARE IN A FINANCIAL CRISIS

OPERATION BRIDGE (MEMBER OF BOARD OF DIR.)
WILL CLOSE ITS OPERATION APRIL 1, 1977
142 KIDS WILL HAVE NO GUIDEANCE OR COUNCILING
PERSONAL CRISIS HOT LINE - VALUABLE SERVICE
DECISION TO CLOSE MADE AFTER
WROTE 2000 LETTERS TO PROMINANT PEOPLE
RECEIVED $140.00 - WILL BE RETURNED.

THE BOTTOM LINE ON ALL THIS IS:

THERE IS EVERY REASON TO BELIEVE THAT THE OVERALL DRUG PICTURE WILL WORSEN IN THE NEXT 10-15 YRS.

THE RELATIONSHIP BETWEEN CRIME AND DRUGS IS ACADEMIC.
THE ADDICT THEFT REQUIRMENT INCREASES PROPORTIONATELY WITH INFLATION AND THE NUMBER OF DRUG DEPENDANT PEOPLE

AS LONG AS A DEMAND FOR DRUGS EXISTS THERE WILL BE PEOPLE WILLING TO TAKE THE RISKS INVOLVED TO CREATE A SUPPLY

BECAUSE OF THE LACK OF COMMUNITY SUPPORT FOR THE PRE-EXISTING DRUG REHABILITATION PROGRAMS - THERE IMPACT IS DEMINISHING RAPPIDLY

IT NOW BECOMES IMPERITIVE TO RELY SOLEY ON THE ENFORCEMENT ABILITES TO CONTAIN ILLICIT DRUG TRAFFIC

IN KEEPING WITH THIS WE HAVE DEVELOPED AMMENDMENTS TO NRS 453. IN THE FORM OF S.B. 268 FOR YOUR CONSIDERATION

HERE TO PRESENT THE PARTICULARS OF THIS BILL TO YOU IS LT. TOM BIGGS OF METRO'S NARCOTICS SECTION - WHO WILL RESPOND TO SPECIFIC QUESTIONS REGARDING THE PROPOSED LEGIS.

ANY QUESTIONS.

EXHIBIT F

Nevada Resort Association

932 E. SAHARA · LAS VEGAS, NEVADA 89105 · PHONE 735-2611

April 17, 1977

Honorable Robert Barengo
Chairman, Assembly Judiciary Committee

Dear Mr. Barengo:

Although we are unable to be present for your committee's hearing today, we want to go on record as opposing Section 33 and any other portions of AB 527 which would preclude members of the Gaming Industry from requiring employees in sensitive positions to submit to examinations by polygraph or any other form of lie detection equipment.

Our objections are identical to those presented previously when AB 518 was under consideration .

We do not object to the creation of a Polygraph Examiners Board, if that is deemed necessary.

We do emphasize, however, that the large amounts of cash involved in gaming transactions create an unusual risk situation for employers. It is our firm belief they should not be precluded from using lie detection equipment when necessary to resolve unexplained losses.

Sincerely,

Robbins Cahill

Frank Johnson

EXHIBIT 9 Mr. Jones

Gayle Smookler, Executive Director
100 North Arlington, Reno, Nevada 89501, Phone [702] 786-1858

April 15, 1977

Hon. Robert Barengo
Nevada State Assembly
Carson City, Nevada

Re: A.B. 527
(Regulates polygraph examiners)

Dear Mr. Barengo:

This is to lend the support of the Nevada Trial Lawyers Association to the enactment of AB 527, a bill which provides for the regulation of polygraph examiners.

Although the bill is somewhat complex, we are in favor with the principle of such regulation. There may be some details in the language of the bill which your committee will want to modify, but in general, we feel this bill embodies an idea which is appropriate and necessary: the regulation of a new and fast-developing technical field.

Thank you.

Sincerely yours,

Peter Chase Neumann
President, NTLA

PCN/np
cc: Gayle Smookler

WASHOE COUNTY SHERIFF'S DEPARTMENT

P. O. Box 2915
RENO, NEVADA 89505
Phone: (Area 702) 785-6220

ROBERT J. GALLI
SHERIFF

VINCENT G. SWINNEY
UNDERSHERIFF

THOMAS F. BENHAM
CHIEF, INVESTIGATIVE SERVICE BUREAU

RUSSELL T. SCHOOLEY
CHIEF, OPERATIONAL SERVICE BUREAU

JAY S. HUGHES
CHIEF, ADMINISTRATIVE SERVICE BUREAU

April 5, 1977

Mr. Bob Barengo
Chairman
Assembly Judiciary Committee
Nevada State Legislature
Carson City, Nevada 89710

Re: Assembly Bill No. 518

Dear Assemblyman Barengo:

It is felt by this department that all bills pertaining to polygraph examinations which encompass pre-screening or employment-oriented examinations are too restrictive. It would appear that the current crop of bills presume gestapo tactics or violations on the part of employers or employing agencies.

The truth lies basically on the other side. The vast majority of job-related polygraphs is utilized to clear the suspected employee. In the area of pre-employment polygraph, the use is specifically to obtain the best available candidate and one who is not trying to hide a specific sinister action in his background.

In this light we wish to go on record as being against A.B. 518 and also the other assembly bills which restrict the polygraph relative to employment purposes.

Very truly yours,

ROBERT J. GALLI, SHERIFF

By V. G. Swinney
Vincent G. Swinney
Undersheriff

VGS/rl

1739

EXHIBIT I

Lie Detectors:

Use by State in Hiring and Firing of Employes Debated

By CY RYAN

CARSON CITY (UPI) — A controversy is being waged within several State government agencies over the use of lie detector tests in hiring and firing of employes.

"Right now an administrator can put anybody on the box," says State personnel administrator James Wittenberg. "We are drawing up guidelines to prevent this."

The guidelines, to be presented to the State Personnel Advisory Commission Friday, would provide polygraph examinations could be given to only peace officers in State government and would prohibit lie detector tests being used on an applicant for a job.

Using a polygraph examination in interviewing prospective employes is "improper," according to Wittenberg. "The polygraph has uses in the criminal area but not in the administrative area. You don't start screening citizens out who are trying to get jobs and things like that.

"There are too many questions about its validity and its reliability. I think when you boil it all down, from the standpoint of use as a screening device, your accuracy is the same as a flip of a coin," says the personnel director.

Wittenberg says, "You've got all kinds of physiologicals — high blood pressure, hypertension, heart conditions, respiratory conditions — all of these things will contribute to the results. Something like 25 per cent of the population has one of these afflictions. You have pathological liars who can fake this thing out and then you have the variable of the degree of the skill of the operator. All qualified operators do not have the same degree of skill as another."

Despite Wittenberg's views, some law enforcement agencies want the right to use it for screening of prospective employes. Vern Calhoun of the State Division of Investigation and Narcotics, would like to be able to use it for employment interviews. And so would the State Highway Patrol.

Barney Dehl, deputy State Highway Patrol superintendent, says his agency depends on good background investigations of an applicant for a job. But where there are conflicting statements, he said the polygraph can be useful. For instance there may be a charge that an applicant has been fired from his previous employment because of dishonesty.

"The polygraph gives them the opportunity to refute the allegations," said Dehl. And the results have come out both ways.

Dehl also questions why the polygraph examinations should be restricted to peace officers only. "I don't think every state employe should have this thing hanging over his head but we've got some people in government who have direct control over State funds. And we have white collar crime where they are writing into computer programs. I think they should be included with us."

The issue arose in the firing over a narcotics agent who refused to take a lie detector test. He was reinstated because the agency failed to follow any guidelines, such as giving him written notice he could lose his job by his refusal.

The new guidelines allow disciplinary action against peace officers who refuse to take polygraph examinations. But Wittenberg says the new guidelines also provide that the polygraph operator must be qualified; that the questions must be standardized and the examination can't be used as a "fishing expedition."

The questions must be confined to answer concrete allegations from a responsible party, Wittenberg says.

Robert Gagnier, executive director of the State of Nevada Employes Association, isn't keen on State workers submitting to lie detector tests. Gagnier says, "I do not believe in this electronic biological method of truth intelligence. It is more important, based upon our surveys, as to the operator of the equipment rather than the equipment itself. Based on that we will have some amendments. [illegible]on't believe in the equipment and [illegible]n we have to think who is operating [illegible]agnier, whose association represents most of the State employes, says there is a case pending where one agency, while investigating another State department, attempted to force polygraph examinations on two clerical employes.

"We objected. Now they're telling us they will only demand polygraphs for police officers. When we challenged them on that, they said they never do that for clerical employes. And yet I had two purely clerical employes, come to me in tears, under the threat of dismissal if they did not take the polygraph examination."

Gagnier refused to identify the agencies involved.

Wittenberg says his guidelines will improve the present conditions considerably, restricting the use of polygraphs to certain employes, under certain conditions and only in certain circumstances, after they have been hired.

EXHIBIT J IS MISSING FROM BOTH THE ORIGINAL MINUTES AND THE MICROFICHE.