

SENATE
COMMERCE & LABOR

Minutes of Meeting
Wednesday, February 9, 1977

The meeting of the Commerce and Labor Committee was held on February 9, 1977, in Room 213 at 1:40 P.M.

Senator Thomas Wilson was in the chair.

PRESENT: Chairman Wilson
Vice Chairman Blakemore
Senator Ashworth
Senator Bryan
Senator Hernstadt
Senator Young

ALSO PRESENT: See Attached List

Chairman Wilson advised that no action would be taken during this meeting on the bills under consideration.

S. B. 59 LIMITS POWER OF LOCAL GOVERNMENTS TO ISSUE CONTRACTOR'S
LICENSES (BDR 54-477)

The first witness was Mr. R. M. James, Executive Director of the Painting Contractors Assn. of Nevada. Mr. James submitted material for the committee's review (copy attached).

He stated Bill 62 was not enforceable, and that the only way the Cities of Reno and Sparks could do so was to seek a legal opinion from the Attorney General's Office. Further, the City of Reno has for many years been signing up contractors who do not hold valid State Contractor's Licenses.

He confirmed that the procedure for obtaining a State Contractor's License is simple: make application and have an interview reviewing background and experience.

Mr. Russ McDonald in response to SENATOR WILSON'S query regarding the wording of this bill advised the language is total. The basic requirements seem to have been met on the State level, he believes. That it is in the power, as the law now reads, for city councils or commissioners to pass an ordinance which could add additional licensing requirements, based on this general language of reasonable and necessary for the protection of the people.

He indicated that to his knowledge Washoe County has not done this. That without the revenue sources,

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which the amendment points up clearly, that gives the governing body the authority within the limitations specified to add additional qualifications in that community, and then, of course, the ordinance would have to run its constitutional test.

The thrust, it seems to him, is to limit the authority of the governing body to enact an ordinance to set a license fee, but does not give the right to involve itself in what is the State Contractor's or Legislature's business in setting out criteria or qualifications for licensing on a State level.

SENATOR ASHWORTH stated he personally does not want to make the cities and counties responsible for policing a State act.

Mr. Bob Warren, Director of Nevada's League of Cities was the next to testify. He expressed concern over the wording of the bill and stated that because of lack of understanding, had not been given proper direction. SENATOR WILSON instructed him to return to his group for direction and advise the committee.

Mr. Jack Kenney of Southern Nevada Home Builders informed the committee that Clark County has artificial barriers that exist in the form of city and county ordinances that require Master Plumber and Master Electrician certificates and he can find no basis for this in State law. He indicated the only way persons can get this qualification is if they come from a union.

He told the committee he would like to see an amendment to this bill for light residential construction allowing a person to pass no more than the requirements of the journey electrician or plumber.

When asked by SENATOR ASHWORTH the number of subdivisions that have requirements greater than those of the general norm, Mr. Kenny stated his experience was only in Las Vegas and Clark County.

AT THIS POINT SENATOR WILSON WAS CALLED AWAY AND SENATOR BLAKEMORE ASSUMED THE CHAIRMANSHIP.

Mr. Kenny advised that he did not know how many people would be denied a license within a year; further, he stated that the Southern Nevada Home Builders would like to see these people become licensed contractors.

The next witness to appear was SENATOR GOJACK. The committee advised they had been asked to retain this bill until a later date and she voiced no objection.

S. B. 121 PROVIDES FOR EXTENSION OF UNEMPLOYMENT COMPENSATION BENEFITS TO PUBLIC EMPLOYEES (BDR 53-599)

Mr. Larry McCracken, Director of Employment Security, stated that this bill is akin to that which was legislated by national action in October. Since that passage they have prepared a bill (BDR 53-692) which he believes answers more completely the issues that S.B. 121 is trying to address. He asked to delay action until both bills can be reviewed and evaluated.

SENATOR ASHWORTH moved that the committee comply with Mr. McCracken's request. The motion was seconded by SENATOR YOUNG. Vote: Unanimous.

S. B. 123 AUTHORIZES DIRECTOR OF COMMERCE TO APPOINT HEARING OFFICERS (BDR 18-225)

Mr. Mike Melner, State Commerce Director, stated the purpose of S.B. 123 was to legitimize something that the Department has been doing over the last few years, and that is, having other than Department Division Chiefs conduct hearings.

Some divisions are very small and you sometimes have the division chief becoming involved in investigations and then serving later as the hearing officer. He stated the bill draft is more than he had asked for, as he needed a very general kind of legislation so that if a division chief felt he had a problem, he could request the director to appoint a hearings officer.

He thought this bill would suffice if it stopped at line 2 on page 2. He also called attention to page 1, line 22: "the director may at the request of the division chief or the chairman of the commission conducting a hearing, appoint qualified officers or employees of the department to act as hearing officers". SENATOR ASHWORTH stated that an employee of the department may not be a qualified hearings officer.

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SENATOR BLAKEMORE asked that Mr. Melner furnish the committee with his suggestions on language. He indicated that the language must be carried throughout the statutes.

SENATOR BRYAN brought the committee's attention to the Barengo proposal for a hearing officer cadre. Mr. Melner during testimony indicated that his group wouldn't be opposed as long as there was a degree of technical expertise in the hearing officer cadre.

The next witnesses were Messrs. Bill Cozart and Gene Milligan, of the Nevada Association of Realtors.

Mr. Cozart indicated they understood the basic intent of the bill and had no disagreement, however, the real estate division has an advisory commission of 5 members, appointed by the governor, who hears complaints regarding violations of 645 and rules and regulations thereof. They do not, he stated, feel a need for a hearing officer for themselves and for that reason would like to delete reference to 645 and lines 3-7 in that bill.

Mr. Cozart advised there are 2300 realtors in Nevada with approximately 5,000 licensees. The commission meets every other month, and the 5 commissioners are all brokers who have been in the business for at least 3 years. They have representation from the Attorney General's office, and the division who presents the case is also represented by legal counsel. He further related that the commission does not feel overworked and does not want a hearing officer doing something that they feel they can do adequately.

SENATOR BRYAN asked if they were concerned by the fact that in these hearings one deputy attorney general appears on the behalf of the division and another deputy attorney general advises the commission. - Mr. Cozart indicated it had been an area of discussion but he had no answer to the situation.

Mr. Milligan stated that they are beginning to look at the roll of the commission, indicating that if you substitute a hearing officer you are re-defining the role of the commission apparently.

SENATOR YOUNG asked if a hearing officer at a disciplinary hearing made certain findings, would the commission determine the penalty or fine. Mr. Milligan responded that that was his assumption.

Mr. Daryl E. Capurro of the Nevada Motor Transport Assn. and the Nevada Franchised Auto Dealers Assn. advised that he was neither in favor or opposed to this bill. He said a bill has been introduced in the Assembly providing for the creation of a hearing division within the Dept. of Administration, (A.B. 251), and should be considered.

S. B. 128 AMENDS CITIZENSHIP REQUIREMENTS FOR PROFESSIONAL LICENSES TO INCLUDE PERSONS LEGALLY ENTITLED TO WORK IN UNITED STATES (BDR 54-337)

No witnesses - no discussion.

S. B. 170 REVISES PROVISIONS ON OCCUPATIONAL SAFETY AND HEALTH (BDR 53-221)

The first witness was Mr. Ralph Langley, Director of the Department of Occupational Safety and Health. He stated the first section of S.B. 170 is a change to NRS 512 which is the Inspector of Mines' portion. Mr. Earl Hill, an attorney for the Labor & Management Board had requested that the portion of the regulations be placed in law so that it is more visible to both attorneys and people coming in from out of state.

SENATOR BRYAN discussed the fact that the board is actually the Labor and Management Advisory Board and has no legal status.

SENATOR BLAKEMORE indicated that his understanding of Section 1, starting with lines 10-17 complies with federal legislation or legislation not clearly spelled out.

Section 2 according to Mr. Langley, was inserted by the bill drafter and speaks to another NRS, the liquified petroleum and gas board statutes. He substituted "shall have power" to "may".

Sections 3 and 4 are bill drafter wording.

Section 5, paragraph 2, is a department recommendation to align qualifications and experience of personnel with current requirements of the Personnel Division. Section 5, paragraph 4 is a bill drafter change.

Section 6 - title in paragraph 1 - this change was made at the request of the U.S. Department of Labor in order to close the gap between the department's jurisdiction and those areas excluded under NRS 618.315. It is the U.S. Dept. of Labor's contention that any working condition not subject to the jurisdiction of the inclusions under 618.315 is included under this

act. The remainder of changes in Section 6 were written by the bill drafter.

Section 7's change is a result of Nevada's previous occupational safety and health federal evaluation and will further protect the confidentiality of the employees filing complaint notices with the department, or making statements, in writing, to the department concerning an employer. Suggested by the Department of Labor was the word "statements", as well as complaints,

There was considerable concern expressed over the fact that an employee may not be told at the time he makes a confidential statement that his name and statement may come out in any future court action.

SENATOR BLAKEMORE requested that Mr. Langley provide the committee with more information on the entire section.

Sections 8, 9, 11 and 12 are basically rewrites of variance procedures, and are also a Federal recommendation. A temporary variance can be granted from a standard that is not yet adopted. A permanent variance would be granted to a standard that has been adopted and is in force.

Section 10 is another rewrite from the Federal law, allowing a variance to an employer in the event he wants to participate in some kind of experimental design or demonstration of a new safety device, etc.

Mr. Langley indicated that much of this does not effect Nevada, but is a requirement for our State Plan. The mandatory three year developmental period under OSHA ends for Nevada in July, 1977. A list of recommendations is attached for your study.

There are a total of 6 Federal people in the State - 4 in Carson City and 2 in Las Vegas. Only 2 states have been fully certified at this time.

SENATOR BLAKEMORE asked what happens to the Nevada Plan if it is not approved and the Legislature has gone out of session. Mr. Langley responded that he has had almost daily contact with San Francisco to be sure that does not happen. He indicated that there is a way they could grant certification excluding one portion of our State plan in the event it did not involve too much enforcement, etc.

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Mr. Langley advised that this month we have entered into the health inspection area, which is the portion of the inspection that we had to complete. He stated we are basically applying Federal standards on a State level.

Mr. Jack Kenney, So. Nevada Home Builders Association, expressed concern over: (1) wording of "director" granting a variance - suggested "director or his designee", and (2) actual experience covered in Section 5.

The next witness was Mr. Riley Beckett, General Counsel with Nevada Industrial Commission, who informed the committee that Mr. Dan Tehan of the Solicitor General's Office in San Francisco had been contacted regarding protecting the confidentiality of employees when they file complaints (not necessarily those who file complaints but those who volunteer information when they investigate). They felt under this law, as presently worded, if an employee complained and the other employees were candid and told about dangers, the confidentiality of those employees could be disclosed under the statutes. He stated he felt it should be held confidential and had submitted it to the Attorney General's Office for an opinion. The Deputy Attorney General responded that the law, as presently worded, would not protect the subsequent employees who informed the inspector at that time.

Further, he advised the employer is entitled to access of files, however, the name of the employee is marked out. Should it become necessary to prosecute an action, then the employee would have to be brought in, his identity made know, and the employer would have full rights of cross examination.

When asked what would happen if an employee is suing and could not get access to information another employee had given, Mr. Langley replied that he didn't know - they would have to have a test on it.

Mr. Langley asked the committee if we have a freedom of information act in Nevada, similar to the Federal law. The response was negative.

Mr. Beckett was asked if the employee when questioned was told that he might be called in and lose his confidentiality, and responded that he was unaware of this.

SENATOR YOUNG suggested Mr. Riley check the Federal law to see what the minimum requirement is, and come up with some suggestive language that might provide a method of releasing information for court approval.

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MEETING ADJOURNED 4:10 P.M.

Respectfully submitted,


Lyndl Lee Payne, Secretary

APPROVED BY:


Senator Blakemore, Acting Chairman

SENATE
HEARING

COMMITTEE ON..... COMMERCE AND LABOR
Wednesday
Date Feb. 9, 1977 Time 1:30 p.m. Room 213

Bill or Resolution
to be considered

Subject

REVISED

- S.B. 59 Limites power of local governments to issue contractor's licenses. (BDR 54-477)
- S.B. 121 Provides for extension of unemployment compensation benefits to public employees. (BDR 53-599)
- S.B. 123 Authorizes director of commerce to appoint hearing officers. (BDR 18-225)
- S.B. 128 Amends citizenship requirements for professional licenses to include persons legally entitled to work in United States. (BDR 54-337)
- S.B. 170 Revises provisions on occupational safety and health. (BDR 53-221)

GUEST REGISTER

COMMITTEE

DATE: 9 February 1977

THOSE WISHING TO TESTIFY SHOULD IDENTIFY THEMSELVES BEFORE GIVING TESTIMONY.....

NAME	DO YOU WISH TO TESTIFY	BILL NO.	REPRESENTING
✓ R. M. Jones	Yes	SB 59	Painting & Decorating Cont Assoc
John Johnson	no.	SB 59	
✓ Ralph Taylor	yes	SB 170	Dept of Occ Safety & Health
Michael W. Edwards	no	-	City of Reno
Ken Kettinging	yes	SB 121	City of Reno
Bob Hagner	yes	SB 121	SNEA
JACK KENNEY	YES	SB 59	SO NEVADA HOME BLDRS
✓ Bill Cozart	YES	123	NEV. ASSN. OF REALTORS
Bob Scott	NO	SB 121	Humb. Co. School Dist.
Bob Best	No	SB 121	New State School Boards Assn
Warren Scott	No	SB 121	New State School Bds Assn.
Marvin Piccolo	No	SB 121	WASHOE Co. School Dist
JOHN REISER	NO	SB 170	NIC
Faryl E. Capurro	YES ?	SB 121 SB 123	NEVADA MOTOR TRANSPORT ASSOCIATION NEVADA FRANCHISED AUTO DEALERS ASSOC
Robert F. Quinn	?	-	-
MIKE MELNER	yes	SB 123	STATE COMMERCE DEPT.
Joanne Hancefin	no	SB 123	NV Real Estate Div
Bob Mordant	Yes	SB 121 SB 59	Washoe County
Bob W. Warren	yes	59	New League of Cities
Diane M. Mason	yes	123	New Assoc of Realtors
Paul M. Beckett	yes	170	Re. - Land Comm. 222

PAINTING AND DECORATING CONTRACTORS OF CALIFORNIA AND NEVADA, INC

RENO CHAPTER



RE: SB59

Copies to - Committee on Commerce & Labor

For many years, the cities of Reno and Sparks, through their business licensing procedures have been licensing "contractors" in many fields of endeavor that do not hold a valid State of Nevada Contractors license and in doing so have circumvented State law, which denies any individual the right to sell his services to the public until he secures a document that proves his ability to perform what he proposes to sell. This we believe was the intent of the law as written.

Implementation of this law is something else. I have documentation to show that it took some ten months to convince the entities that the procedures they were following were not commensurate to State statutes.

The reason for their procrastination we are informed was, that the only way to implement this law was that these entities through council, seek a legal opinion from the Attorney Generals office. It is left to the imagination to consider what would be the State of Nevada position, if the City of Reno had opted not to seek such an opinion.

The ramifications caused by neglect of enforcement are detrimental to those in the business sector, whose livelihood is dependent on fair and equal competition for survival.

Appeals for relief have been addressed to the State of Nevada, through the Nevada State Board of Contractors, the Attorney Generals office, the business license divisions of the Cities of Reno, Sparks, and Washoe County, and the local newspapers, who through the media of classified adds have permitted and promoted the illegal activities of those who choose to operate outside the law that governs the business activities in the field of contracting and selling a service to the public.

We in the business sector do not seek special dispensation in any form, but we do request that corrective measures be adopted and applied, that will make this law applicable to all who come under its jurisdiction.

Respectfully submitted,

PAINTING & DECORATING CONTRACTORS
ASSOCIATION OF CALIFORNIA & NEVADA

R. M. James
Executive Director

PAINTING AND DECORATING CONTRACTORS OF CALIFORNIA AND NEVADA, INC.

RENO CHAPTER



1060 TELEGRAPH ST
RENO NEV 89502

March 29, 1976

The Honorable Robert List
Attorney General
Supreme Court Building
Carson City, Nevada 89710

Dear Mr List:

Because we are in the process of negotiations with the City of Reno for certain changes in their business license law as it pertains to contractors, we need a clarification of intent of NRS624.350 as it pertains to political subdivisions.

Is it the prerogative of political subdivisions to issue business licenses to applicants, who wish to contract, but do not hold a valid state contractors license?

The local entities of Reno and Sparks are not equipped for testing the qualifications of contractor applicants, other than those of the electrical trade.

The procedures and practices of the cities of Reno and Sparks leave much to be desired. A gullible and unsuspecting public is afforded no protection by a system of licensing that requires no credentials other than the ability to pay the required license fee. Such policy invites and encourages unknowledgeable and unethical individuals to take unfair advantage of an unsuspecting public, and at the same time, create unequal competition with the legitimate business man.

Our industry representative has, in the past three months, had several meetings with the City of Reno License Commission, both collectively and individually, and they do not appear reluctant to change.

Because the State of Nevada is involved in this matter, (via the State Board of Contractors), and because of the implied political impropriety we are experiencing in the Reno area, we have elected to seek relief from your office before proceeding further. Please advise.

Respectfully,

R. N. James
Business Representative

RH/mj



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

ROBERT LIST
ATTORNEY GENERAL

March 29, 1976

Mr. R. M. James
Painting and Decorating
Contractors of
Northern Nevada
1060 Telegraph Street
Reno, Nevada 89502

Dear Mr. James:

You have contacted this office on several occasions regarding a problem involving the Business License Division of the City of Reno. You have indicated that the Business License Division has been in the practice of issuing business licenses to persons or firms for the business of painting when such persons or firms were not, in fact, licensed contractors under the State Contractor's Law.

As I indicated to you during one of our telephone conversations, I was delayed in getting back to you on this problem because I wished to contact Robert Stoker, Secretary of the Contractors' Board, in order to determine whether his office had ever received an opinion from former Attorney General Harvey Dickerson on this question. After contacting Mr. Stoker, it was determined that Mr. Dickerson had not, in fact, rendered such an opinion. Accordingly, I did some research on the problem.

NRS 624.230 makes it unlawful for any person, firm, etc. from engaging in the business or acting in the capacity of a contractor in the State of Nevada without having a contractor's license issued by the State Contractors' Board. NRS 624.020 defines a contractor as any person, except a licensed architect or registered professional engineer or any person who acts as an employee of another, who constructs, alters, repairs, adds to, subtracts from, improves, moves, wrecks or demolishes any building, highway, road, railroad, excavation or other structure, project, development or improvement.

Mr. R. M. James
March 29, 1976
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As can be seen, the definition of a contractor is extremely broad. It is, therefore, apparent that the Legislature intended to preempt the field of licensing contractors in the State of Nevada through passage of Chapter 624 of NRS.

Cities and counties in the State generally have the right to enact business license ordinances. Such business licenses are for revenue purposes only. Cf., Attorney General's Opinion No. 626 (10-29-69). Although, once the State Contractors' Board has given a license to a person to be a contractor, a city may require that person to also obtain a city business license for revenue purposes (AGO 626, supra), a different situation would appear to arise when the Contractors' Board has not issued a contractor's license to a person.

A city business license, though revenue producing in nature only, does permit a person to carry on a business when it is issued. But the city may not permit a person to carry on a business as a contractor when that person has not been licensed as a contractor by the State. The State has preempted the field and the city may not be permitted to enact legislation, or apply it in such a way, as to oust the State from its regulatory activities. Kelly v. Clark County, 61 Nev. 293, 299, 127 P.2d 221 (1942).

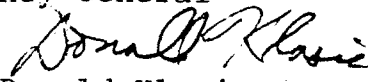
Therefore, since the state has preempted the field, it would not be proper for local government entities to grant business licenses to persons who have not previously been licensed by the State Contractors' Board as contractors.

The Attorney General is authorized to render formal and official opinions to officers and departments of the State government and certain local government officials. Necessarily, therefore, the foregoing is not to be considered a formal opinion of the Attorney General, but is an informal and unofficial expression of view given with the desire to be helpful to you.

Sincerely,

ROBERT LIST
Attorney General

By:


Donald Klasic
Deputy Attorney General

DK:rms

cc: Mr. Robert Stoker

MIKE O'CALLAGHAN
GOVERNOR

MEMBERS

WAYNE T. DONNELLS, RENO
M. D. HANCOCK, RENO
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R. L. MENDENHALL, LAS VEGAS
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STUART J. MASON, LAS VEGAS

STATE OF NEVADA
STATE CONTRACTORS BOARD



M. D. HANCOCK, CHAIRMAN
M. D. HANCOCK, TREASURER
ROBERT L. STOKER, SECRETARY
THOMAS A. COOKE, BOARD ATTORNEY

328 SOUTH WELLS AVENUE, RENO, NEVADA 89502
1800 INDUSTRIAL ROAD, LAS VEGAS, NEVADA 89102

July 14, 1976

*Received
7/20/76
Mason*

Mr. Robert List
Attorney General
State of Nevada
Capitol Complex
Carson City, Nevada 89710

Dear Mr. List:

I am enclosing a copy of a letter from your office over the signature of Donald Klasic for your information addressed to R. M. James, representing the Painting and Decorating Contractors of Northern Nevada.

The State Contractors Board would appreciate your formal, official, written opinion should you concur with your deputy in this matter.

We assume this opinion would apply to any act of contracting.

Very truly yours,

Robert L. Stoker,
Secretary

RLS:mc
Encl:

Xerox: James Hardesty, Esq.
1 East First Street, Suite 1405
Reno, Nevada 89501 (with copy of 3/29/76 letter)

✓ Mr. R. M. James
Painting & Decorating Contrs. of No. Nevada
1060 Telegraph Street
Reno, Nevada 89502



STATE OF NEVADA
 OFFICE OF THE ATTORNEY GENERAL
 SUPREME COURT BUILDING
 CARSON CITY 89701

ROBERT LIST
 ATTORNEY GENERAL

October 5, 1976

OPINION NO. 208

State Contractors' Licenses --
 The State has preempted the field of licensing contractors in the State of Nevada and, therefore, it would be illegal for local government entities to grant business licenses to persons as contractors when such persons have not previously been licensed by the State Contractors' Board.

Mr. Robert L. Stoker,
 Secretary
 State Contractors' Board
 328 South Wells Avenue
 Reno, Nevada 89502

RECEIVED

OCT 7 1976

State Contractors Board

Dear Mr. Stoker:

You have requested a formal, official opinion regarding the following question.

QUESTION

May a city or county business license division issue business licenses to persons or firms acting as contractors when such persons or firms are not, in fact, licensed contractors under the State Contractors' Law?

ANALYSIS

NRS 624.230 makes it unlawful for any person, firm, etc. to engage in the business or act in the capacity of a contractor in the State of Nevada without having a contractor's license issued by the State Contractors' Board. NRS 624.020 defines a contractor as any person, except a licensed architect or registered professional

Mr. Robert L. Stoker
October 5, 1976
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engineer or any person who acts as an employee of another, who constructs, alters, repairs, adds to, subtracts from, improves, moves, wrecks or demolishes any building, highway, road, railroad, excavation or other structure, project, development or improvement.

As can be seen, the definition of a contractor is extremely broad. It is, therefore, apparent that the Legislature intended to preempt the field of licensing contractors in the State of Nevada through passage of Chapter 624 of NRS.

Cities and counties in the State generally have the right to enact business license ordinances. Such business licenses are for revenue purposes only. cf. Attorney General's Opinion No. 626 (10-29-1969). Although once the State Contractors' Board has given a license to a person to be a contractor, a city or county may require that person to also obtain a business license for revenue purposes (A.G.O. 626, supra). A different situation would appear to arise where the Contractors' Board had not issued a contractor's license to any person or firm.

A city or county business license, though revenue producing in nature only, does permit a person to carry on a business when it is issued, but the city or county may not permit a person to carry on a business as a contractor when that person has not been licensed as a contractor by the State. The State has preempted the field, and the city or county may not enact legislation, or apply it in such a way, as to oust the State from its regulatory activities. Kelly v. Clark County, 61 Nev. 293, 299, 127 P.2d 221 (1942).

CONCLUSION

Therefore, since the State has preempted the field, it is the opinion of this office that it would be illegal for local government entities to grant business licenses to persons to act as contractors when such persons have not previously been licensed by the State Contractors' Board.

Sincerely,

ROBERT LIST
Attorney General

Painting and Decorating Contractors of California, Inc.

CALIFORNIA AND NORTHERN NEVADA

Legislative action
by Nevada
Affiliated with the Painting and Decorating Contractors of America

OFFICE OF THE EXECUTIVE DIRECTOR
1900 Point West Way, Suite 198, Sacramento, California 95815
Phone (916) 929-5207

August 31, 1976

BULLETIN #45

TO: ALL CHAPTER SECRETARIES

SUBJECT: Unlicensed Contractors

Gentlemen:

A continuing problem in our industry is the unlicensed contractor. In order for these contractors to be in business, they must purchase material and supplies. Through the efforts of this Association and the CILC, Section 128 of the Business and Professions Code was amended to make it unlawful to sell materials and/or supplies to these persons. The passage of this legislation has evidently had little effect upon the paint dealers who sell to the unlicensed contractor. It is entirely possible that it is a problem of communications.

To be absolutely certain that all paint, wallcoverings and equipment manufacturers, suppliers and dealers are made aware of this law, we have prepared a flyer for distribution to these companies. Will you please indicate at the bottom of this page how many flyers you will need for distribution to all of the above mentioned companies doing business in your area. A supply will be mailed to you immediately upon receipt of your order.

This project, together with the use of the steps outlined in our article, "How to Stop Non-Licensed Contractors" in our June issue of the Council "News" will go a long way in eliminating this statewide problem.

Very respectfully yours,

Carl R. Burg
Carl R. Burg
Executive Director

CRB:jc
cc: Executive Committee

Chapter

No. of Flyers Needed

76-#45

WHO CAN DO IT?

Services Listed in Alphabetical Order



Place an Ad in This Directory for as Low as \$29.50 for 30 Days

Call Classified 786-2525

<p>AAA Marine Motor Repair</p> <p>SEARS, Elgin, Seaking outboard motor, expert tune-up & repair. Crown Marine. 359-9583.</p>	<p>Dentures</p> <p>SIERRA DENTURE SERVICE. Dentures, repairs, relines, partials. Denture \$150; Reline \$40; repair \$10; partial \$50; 322-7146.</p>	<p>House Doctor</p> <p>PAINTING, PAPERING, Carpentry, Electrical. 358-1650.</p>	<p>Sauna & Massage</p> <p>MARY MACHLEIT Health Center, 249 West Truckee River Lane, 786-6480.</p>
<p>Acoustic & Sheet Rock</p> <p>TAPING FINISHING, acoustic ceilings, resprays, no job too small. Contract license 3551) Roseman's Drywall 329-1547.</p>	<p>Excavating</p> <p>FOOTINGS, SEWAGE System, Trenching, Top Soil, Decomposed Granite. Lic. 62328) Mornings, evenings 673-1546.</p>	<p>Install Carpet or Lino</p> <p>ALSO REPAIRS. From \$5.00. 17 years experience. Work guaranteed. 359-6267.</p>	<p>Septic Tank Service</p> <p>SEPTIC TANKS, pumped & cleaned since 1945. Washoe Septic Tank Service. 359-6206.</p>
<p>Appliances</p> <p>SERVICE ALL MAKES Washer-Dryers, Rent to Own!! Sargent's Maytag 358-4246.</p>	<p>Firewood</p> <p>QUALITY FIREWOOD Keeping you warm and cheery since 1960. JOY'S WOOD, 329-9839.</p>	<p>Mobile Home Service</p> <p>STU'S Mobile Home Service. Gas Tests. Pipes Thawed. Electrical. 358-0432.</p>	<p>Screen/Glass Repair</p> <p>SCREENS CUSTOM made and repaired, storm doors & windows. Tub enclosures. 358-7829.</p>
<p>Bookkeeping</p> <p>FULL CHARGE Bookkeeping. Call 747-1659.</p>	<p>CONVECT-O-HEATER Increases Fireplace Output 600%. Special Discount Prices. 322-5190.</p>	<p>Moving & Hauling</p> <p>FURNITURE MOVING, trash hauling & cleanup. Reasonable. Free estimates. Gary 358-8089, 972-6525.</p>	<p>Tractor Work</p> <p>YARD & Lot grading & clean-up, 30 years experience 322-3674.</p>
<p>Carpentry</p> <p>ONE MAN CREW. General Building Contractor #12364. Bud, 322-7133.</p>	<p>GLASS MOUNTAIN Block's "Unitized" quality firewood. A full measurable 4'x4'x4' Unitized Package for simple delivery and handling. 515 Kietzke Lane, Reno, 329-4636.</p>	<p>Oakwood</p> <p>SEASONED, Split, immediate delivery. Pine available, summer prices. 826-7341.</p>	<p>Tree Service</p> <p>TREE, Shrub & fruit trees, trimming, pruning, topping & removal. 883-4170.</p>
<p>Catering Service</p> <p>HAVING A PARTY? Call Handy Annie for our Rent-a-Maid Service. 786-0179.</p>	<p>Furnace Repair</p> <p>BOB'S HEATING Service. Fast response and efficient services. 329-0441 anytime.</p>	<p>Office Services</p> <p>SECRETARIAL, Notary, payroll, F/C Bookkeeping, income tax. Low rates. 825-8508.</p>	<p>TV Repair Service</p> <p>FOR EXPERT TV Service, ced for testing. Doing Service for 32 years. Lusetti's Home Appliance & Repair. 743 S. Virginia, 322-4460.</p>
<p>Clarinet Lessons</p> <p>BEGINNERS AND ADVANCED. MARY AMUNDSON 786-7199.</p>	<p>General Contractor</p> <p>CUSTOM BUILDING and remodeling. Excellent quality service. Free Estimates. Olen Wilford Construction 747-0725.</p>	<p>Painting</p> <p>METICULOUS & REASONABLE Painter, top references. Free Estimates, Call evenings. 826-0186.</p>	<p>HARNAGEL ELECTRONICS, 1450 E. 2nd, 322-7670. Qualified Television, Stereo, Radio Repair Technician.</p>
<p>Cleaning</p> <p>BUSINESS/INDUSTRY/Homes. Reasonable, thorough. Andersen Janitorial, 825-3999 or 359-2717.</p>	<p>Handyman</p> <p>CAN DO Plumbing, electrical, carpentry, painting, paperhanging, welding. 673-2352.</p>	<p>QUALITY PAINTING at reasonable prices. Residential & commercial. Phone 359-3428 at your convenience. Lee's Painting Service, Lic. #13044.</p>	<p>Upholstery</p> <p>MIL-DON UPHOLSTERY. Free estimates & pickup. Wholesale & retail. 315 Claremont. 322-4655.</p>
<p>Coin Op Dry Cleaning</p> <p>8 Pounds, \$2.50. Open 24 hours. Valu-Tash, 1567 South Virginia, at Raley.</p>	<p>ALL HOME REPAIRS 358-9546</p> <p>A JACK-OF-ALL Trades. Carpentry, plumbing, electrical, painting, rain gutters, remodeling & repairing. 323-8011.</p>	<p>PAINTING BY THE hour or job, experienced int. or ext. Call anytime 329-0931.</p>	<p>Wallpapering</p> <p>FOR QUALITY wallpapering and painting, call dependable Emil 345-0466.</p>
<p>Complete Auto Service</p> <p>TUNE-UPS, Brakes, valves. Downtown Reno. 148 1/2 West St. Alley behind Parkers. 786-1965.</p>	<p>Health Problems</p> <p>DEEP MASSAGE Therapy, sauna, 249 West Truckee River Lane, 786-6480 Mary Machleit Health Center.</p>	<p>Remodel Specialists</p> <p>ADDITIONS, REMODELING free plans, estimate, terms. Contractors License #9260) McGinley Construction, 358-5678.</p>	<p>Washer-Dryer</p> <p>RENT-TO-BUY. SARGENT'S Maytag, 1190 No. Rock Blvd. 358-4246.</p>
<p>Concrete Construction</p> <p>FOUNDATIONS, SLABS, Concrete, remodeling, room additions (state licensed). Quality work. 329-2372.</p>	<p>Home Cleaning</p> <p>DOMESTIC SERVICES, general house cleaning. 826-5330 or 786-8353.</p>	<p>Remodeling Res & Comm'l</p> <p>BUILDING & REMODELING Plans available. Free estimates. Terms. 972-0508, license #9936A.</p>	<p>Weight Loss</p> <p>LOSE WEIGHT NUTRITIONALLY 10 to 29 pounds per month. Moneyback guarantee. No chemicals, shots or drugs. Call for consultation, 826-5521.</p>
<p>Custom Dressmaking</p> <p>TOO BIG Here, Too Small There? Expert custom dressmaking, alterations reasonable 323-2842.</p>	<p>Home Services</p> <p>CLEANING, CARPETS, walls w/dows, floors painting Reno Home Service, 972-1018.</p>	<p>Rental Equipment</p> <p>MELROE BOBCAT for rent Day week or month 826-6868.</p>	<p>Weil Drilling</p> <p>PUMPS. Serving Reno area from same location since 1958. Experienced personnel, quality equipment, Nevada license 5307. Reno Pump & Supply, 825-1486.</p>

TO: Senator Thomas R.C. Wilson

Memo

FROM: Michael L. Melner, Director
Department of Commerce

DATE February 14, 1977

SUBJECT: S.B. 123

As a result of the hearings on S.B. 123 by the Senate Commerce and Labor Committee on February 9th, I would propose the following amendments be made to that bill:

Page 1, Line 22

After the word, "appoint", the following should be inserted: At the request of the division chief whose agency is conducting hearings, or at the request of the commission which is conducting the hearings...

Page 2, Line 7

After the word, "director", the following should be inserted: At the request of the commission which is conducting hearings...

Line 30

After the word, "director", the following should be inserted: At the request of the commissioner...

Line 48

After the word, "director", the following should be inserted: At the request of the superintendent...

I would note that although the bill drafter has specifically made reference to the Real Estate Advisory Commission, the Commissioner of Savings Associations, the Superintendent of Banks, and the Insurance Commissioner, the proposed legislation does not include reference to the Fire Marshal, the Commissioner of Credit Unions, and the Housing Administrator, nor does it refer to the Real Estate Division's hearing authority under Chapter 119.

MLM/JK

10/10 Langley
SB170

SUMMARY OF MAJOR RECOMMENDATIONS

Following is a list of the recommendations which are considered most important. All are contained in the main body of this text.

A. Enforcement

No major recommendations during this evaluation period.

B. Discrimination Complaints

It is recommended that, upon receipt of this report, Nevada develop an internal administrative procedure to provide employees with the opportunity to appeal discrimination complaint decisions within the NIC.

C. Public Employee Program

1. It is recommended that, within the next six months, the State pursue the implementation of a self-inspection program in all the State's public sector agencies.
2. It is recommended that DOSH develop a monitoring and reporting system that will show not just that an agency has a program but what this program is accomplishing. This monitoring and reporting system should be a follow-up to the surveys currently being conducted and should be implemented before the next evaluation.

D. Variances

1. It is recommended that, in accordance with the State statute, in all future variance requests, employees affected are notified by the application for a variance and are notified when the variances are granted.
2. It is recommended that Nevada revise the State's statute (NRS Chapter 618) to include provisions similar to Sections 6(a) 6(A) and 6(a) 6(C) of the Federal OSH Act. These amendments should be submitted for approval to the 1977 legislature.

E. Voluntary Compliance

1. In order to assure employers of the separation of the enforcement and the consultation functions of the State's program, it is strongly recommended that, commencing immediately, the District Supervisors, who sign the enforcement citations, do not sign consultation advisory letters.
2. It is recommended that, upon receipt of this report, a clear and concise definition of consultation and training be communicated to DOSH staff so that reporting can be more accurate and consistent on the DOSH 1D form.

F. Management Information System

It is suggested that Nevada closely analyze the need or usefulness of the various sub-systems that it committed itself to develop in the change supplement of July 22, 1975.

It is recommended that DOSH concentrate its efforts on the completion of the data gathering system to produce OSHA's Quarterly Compliance Activity Report. Any revision in MIS goals should be submitted as a revision to the change supplement on the MIS.

**NOTICE OF REQUEST FOR VARIANCE FROM A STANDARD OF THE
NEVADA OCCUPATIONAL SAFETY AND HEALTH ACT**

EMPLOYER: Fill out four copies of this form, mail original to address below; post second copy in normal employee posting area; furnish third copy to employee/representative, and retain fourth copy for your records.

NAME/ADDRESS
OF EMPLOYER.....

NAME/ADDRESS
PRIMARY EMPLOYEE
REPRESENTATIVE.....

Standard that variance is requested to exempt.....

Is request for a permanent or temporary variance:

Permanent Temporary How long?.....

Reason a variance is required.....

Steps taken to protect employees from the hazard covered by standard, if request is temporary. If request is permanent, explain action being taken which is "as effective as" standard:

Steps taken to attempt to comply with standard.....

Certify by signature employees have been informed of this application and a copy of this form has been posted for employees. Employees may request a hearing or provide written input on the variance by notifying the Director, DOSH, at the address below within 7 days.

.....
Signature of employer
or his representative

.....
Date signed

.....
Signature of employee or representative
and his affiliation

MAIL TO: Ralph Langley, Director, Department of Occupational Safety and Health, Nevada Industrial Commission, 515 East Musser Street, Carson City, Nevada 89714.

D.O.S.H - N.I.C

1977 Fiscal

PERSONNEL-43 BUDGET-\$1,052,328 (\$663,835, NIC; \$388,493, Federal)

GRANT PERSONNEL \$740,281 (\$370,140, Federal Funds; \$370,141, NIC)
19 Professional
19 Clerical

MECHANICAL DIVISION \$100,510 (Total NIC Funds)
5 Professional
1 Rehab Client (Expenses paid through Rehab Department)
1 Clerical

BLS SURVEY \$36,707 (\$18,353, Federal Funds; \$18,354, NIC)
1 Professional
(1/2 time)
1 Clerical

TRAINING & CONSULTA-\$174,830 (Total NIC Funds)
TION SECTION
6 Professional


TO Spike Wilson, Chairman Senate Commerce and Labor Committee ACCOUNT NO. _____
FROM Ralph Langley, Director, Department of Occupational Safety and Health CLAIM NO. _____
SUBJECT Federal OSHA Proposed Changes to NRS 618.367 DATE February 22, 1977

Additional information has been received today from Federal OSHA regarding proposed changes to NRS 618.367 included as part of SB170.

I would refer you to pages 4, 5, 6 of the enclosed report as marked.

I have, as a result of these comments, redrafted 618.367 to conform to federal requirements.

In addition, as a result of comments, memorandum dated February 2, 1977, NRS 618.315 should include: line 36, 37, "has authority over working conditions affected by safety and health standards in all places of employment except"



Ralph Langley, Director

RL:sd



Sec.7. NRS 618.367 is hereby amended to read as follows:

618.367 Each employer is entitled to access to any records in the possession of the department which concern such employer. If any such records contain the names of employees who have submitted complaint notices or made statements to the department concerning such employer, the department shall protect the identity of such employees.

U. S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION
SAN FRANCISCO REGIONAL OFFICE
450 GOLDEN GATE AVENUE, BOX 36017
SAN FRANCISCO, CALIFORNIA 94102

TELEPHONE 556-0584

February 17, 1977

NOTED



Mr. Ralph Langley
Director
Department of Occupational Safety
and Health
515 East Musser Street
Carson City, Nevada 89701

Dear Mr. Langley:

We are forwarding to you comments received from OSHA's Office of Federal Compliance and State Programs regarding your plan change supplements and the proposed amendments to your legislation.

We recommend that, if at all possible, you incorporate the suggested statutory changes in the proposed amendments to the State statute.

We request that you respond to the comments made regarding your plan change supplements and submit the appropriate changes. We do not think that approval will be given to your plan change supplements until such changes are received.

Sincerely yours,

Kenneth C. Holland
Kenneth C. Holland
Assistant Regional Administrator

Attachment

RECEIVED

FEB 21 1977

Department of Occupational
Safety and Health

U.S. DEPARTMENT OF LABOR
Occupational Safety and Health Administration
WASHINGTON, D.C. 20210



FEB 10 1977

MEMORANDUM FOR GABRIEL GILLOTTI

FROM:  RICHARD P. WILSON

Subject: Nevada Plan Changes

This office and the Solicitor's office have reviewed Nevada's response to our comments on changes 3, 4, and 5 (by Nevada's system, numbers 4, 5, and 6) and subsequent change submissions. We have the following comments:

Change 3.

1. Compliance Manual. The manual should include the provision that repeat violations for employers with no fixed establishments will be cited Statewide. The State should utilize this procedure whenever possible.

2. Public Employee Program. Our problems here do not concern the implementation of the program, which is evaluated through monitoring, but the authority and procedures underlying the program. The plan must clearly state that the designee has authority to conduct random inspections of public workplaces, investigate fatalities and catastrophes, and respond to employee complaints. The State should describe the means used to compel abatement of hazards and the methods used by the designee to monitor agencies' self-inspection programs. In addition, the designee must provide protection against discrimination, and a guarantee of the right to file CASPA's must be included.

3. Review Commission Rules of Procedure. The State did not respond to the comment in my August 2, 1976, memorandum (page 4, item 4) concerning rule 62.050. Does the State intend to revise this section to provide for employee notice for petitions for modification of abatement dates?

4. Legislation. Although the State's response to our comments did not include a commitment to amend the legislation, we were pleased to learn that the State is planning to revise its legislation to expand the section on variances and to clarify the jurisdictional exemption.

Change 4.

Since the State has now decided to cover health and not to include an automated Management Information System as a developmental step, this change is now moot.

Change 5.

As stated before, this change is approvable.

Change 6.

Approval of this poster is contingent on a satisfactory response to the above questions concerning the public employee program. The poster should include protection from discrimination for exercising rights under the Nevada Act, rather than the agency's program, and should include procedures and an address for filing discrimination complaints. In addition, the poster should include the right to file complaints with the designee, the right to file CASPA's and the address of the OSHA Regional Office.

Change 8.

This change would be acceptable with one revision. Page 3 states that under the consultation program, action will be taken to achieve abatement of imminent danger situations. Under Program Directive #76-3, action must be taken in response to conditions which could result in death or serious physical harm. The State should amend its procedure accordingly.

Change 9.

1. Affirmative Action Plan. This plan should be reviewed by the Civil Service Commission in the Region. Please send us a copy of their comments.
2. Legislative Amendments. Since these are proposed amendments, we are considering them as a request for an advisory opinion rather than a proposed change. The enclosed memorandum from the Solicitor discusses the amendments included in Change 9; that office is preparing additional comments on the legislative amendments which you sent to us on December 8, 1976. The section discussed in this memorandum (618.357) is the same in both submissions. The Solicitor's office recommends that subsection 2 of N.R.S. 618-367 be deleted to ensure protection of the identity of employees who make statements.

3. Recordkeeping Regulations. BLS has found the regulations approvable for the private sector but in need of some changes for the public sector. The regulations should state that the State will process requests for recordkeeping variances from public employers and should include a definition for public sector establishments. (Please see the enclosed memorandum from Mr. Golanka.)

4. The participation in the BLS survey and the new dates for health enforcement are approvable.

Change 10.

The deletion of an automated MIS as a developmental step is approvable.

Change 11.

We have sent this change to the reviewing offices but have not yet received any comments. This office is concerned by the provision that enforcement personnel also conduct consultation visits. Because of the geographical distribution, there is a great likelihood that the same person would perform both consultation and enforcement functions at the same establishment. It is hard to imagine how information concerning these visits could be kept separate.

Changes 5 through 10 do not require public comment. A notice requesting public comment on Change 11 will be published shortly.

We look forward to receiving Nevada's response to these comments.

Enclosures

U.S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON, D.C. 20210



JAN 24 1977

MEMORANDUM FOR: RICHARD P. WILSON, ACTING DIRECTOR, FEDERAL COMPLIANCE AND STATE PROGRAMS

ATTENTION: Margie Sauber

FROM: Margaret Pallansch
Counsel for State Plans *Margaret Pallansch*

SUBJECT: Solicitor's Office Comments on Nevada Plan Changes

This Office has reviewed State plan changes submitted by the State of Nevada, including the State's response to our May 14, 1976 comments on changes 3, 4, and 5.

For the sake of clarity, this memo will first address the State's response to our earlier comments. This was contained in an August 24, 1976 letter to Kenneth Holland from Ralph Langley. (Note: Nevada numbers these changes 4, 5, and 6).

STATE RESPONSE:

Change 3(a) NEVADA FIELD OPERATIONS MANUAL:

The State has indicated that it would make all changes necessary to correct the problems noted, but that it was unable to cite repeated violations State-wide due to an inability to coordinate data from the State's two District Offices. The Federal F.O.M. requires State-wide coverage for repeat violations. It is important that the State provide for State-wide coverage in their manual so that the practice can be followed whenever possible. When all the changes are incorporated in the State manual we recommend that the complete manual be finally reviewed at one time.

REGULATIONS FOR THE NEVADA PUBLIC EMPLOYEE PROGRAM:

The State's response to our comments and those of the National OSHA Office do not address all issues raised. Of primary importance among these is the requirement of section 18(c)(1) and (c)(4) for retention of final authority in the designee, who must have the authority to conduct random inspections of public worksites, investigate fatalities and catastrophes, achieve abatement, and respond to employee complaints. In addition, under Nevada law, the designee, through the Labor Commissioner, must provide protection to public, as well as private, employees from discrimination for the exercise of rights under the Act. Of these, only employee complaints are addressed in the State's response. The State must satisfactorily respond to the remaining comments before approval of the public employee plan can be given.

REVIEW COMMISSION RULES OF PROCEDURE

The State has not responded to this comment.

CHANGE 3(b) LEGISLATIVE AMENDMENTS:

3. Revised

The State has indicated that it does not intend to make legislative changes involving variances, and that they further do not intend to adopt regulations equivalent to 29 CFR 1905. This is not acceptable. The State's current statutory provisions for variances is obviously deficient in that a major portion of the language from the Federal Act has been omitted. This has been mentioned to the State before, but remains unremedied. In fact, their Field Operations Manual only repeats the incomplete statutory provisions. 29 CFR 1902.4(b)(2)(iv) requires that all states have authority to grant variances which correspond to Federal authority. The State has clearly not met this criteria.

In addition, the State is committed to the adoption of Legislative amendments to correct jurisdictional problems identified in the original plan submission and discussed in the plan approval notice.

OTHER: The State's response to the remainder of our comments is acceptable.

NEW CHANGES:

The State's new change submissions consist of the following:

CHANGE 6: PUBLIC EMPLOYEE POSTER

NO CHANGE 7

CHANGE 8: Staff Reduction and Establishment of Special Emphasis Consultation Program.

CHANGE 9A: Enforcement of Health Standards (Cancels Change 4c)

CHANGE 9B: Affirmative Action Plan

CHANGE 9C: Legislative Changes

CHANGE 9D: State's Participation in BLS Survey

CHANGE 10: Manual MIS (Amends Change 4)

Our Review Follows:

CHANGE 6: PUBLIC EMPLOYEE POSTER

The Nevada poster meets some of the requirements for state posters as set out in 29 CFR 1952.10. One problem is that the State public employer program must provide a program "as effective as" standards applicable to private employment, and not merely "consistent", and approval of this poster is dependent upon approval of the public employee program (see comments above). Employees also must have the right to file complaints with the designee, as well as with the agencies. Other problems involve the discrimination provisions. What is meant by the limitation to "your agency's job safety and health program"? What protection is provided? Does the designee provide this protection as provided in NRS, Ch. 618, section 73? In addition, the right to file complaints with OSHA about State program administration is not specified, nor is the address of the OSHA Regional Office.

CHANGE 8: STAFF REDUCTION AND ESTABLISHMENT OF SPECIAL EMPHASIS CONSULTATION PROGRAM

The Staff reduction for enforcement and consultation is approvable and the new level will still be in excess of the current Federal benchmark, but the state should be reminded of their obligation to increase their staff level as the Federal benchmark increases. The Special Emphasis Consultation Program, since it will operate independantly of the plan and will receive no Federal funds, is also acceptable. It should be noted however, that the narrative for the plan consultation program, on page 3 of the change, states that action will be taken in imminent danger situations. This is not consistent with the requirements of Program Directive 76-3. If this is the current State procedure, the State must amend its consultation program to comply with the Directive.

CHANGE 9A: ENFORCEMENT OF HEALTH STANDARDS

This change, which cancels Change 4C which withdrew health enforcement from plan coverage is acceptable. The actual plan for health enforcement will be reviewed after its submission.

CHANGE 9B: AFFIRMATIVE ACTION PLAN

This change should be reviewed by the regional offices of OSHA and the Civil Service Commission. We submit no comments.

CHANGE 9C: LEGISLATIVE CHANGES

The first change involving the deletion of a four year experience requirement for State compliance personnel is acceptable. We agree that such criteria are best included in job descriptions rather than in the Act itself. The second change involves the addition of employee statements to N.R.S. section 618.367. This section provides for employer access to any records held by the department which concern such employer. The addition is intended to permit the department to protect the identity of those employees who give statements, in addition to those who file complaints.

The need for such protection became evident as a result of actual operations under the program. We feel that the problem addressed by the amendment is a critical one, but the proposed new language may not be sufficient. Provision for anonymity in employee complaints is set out in N.R.S. 618.425 in a manner comparable to the Federal Act, and both Acts have similar discrimination provisions, but there is no Federal counterpart to N.R.S. 618.367, which provides for employer access to departmental records. The problem with the language as proposed is that, under subsection 2 of N.R.S. 618.367, employees must request that their identity be protected. This presents no problem with regard to employee complaints as the section of the Nevada Act which provides for employee complaints (N.R.S. 618.425) is essentially identical to the corresponding Federal provision, and the State poster specifically notifies employees that they must request anonymity when filing complaints. But under the amendment as written, employees would not know that they must request protection, in spite of the fact that the Act permits their questioning in private.

A similar situation has been addressed by this office in the approval of rules of procedure for the California Occupational Safety and Health Appeals Board (40 FR 54425, November 24, 1975). Here the State's discovery provisions permitted disclosure of the identity of employees who made statements. The State was required to modify its procedures to allow for anonymity, develop and distribute a brochure describing these employee rights, and revise the State poster and inspection forms.

Nevada must therefore, either by revising its proposed amendments, or thru the initiation of procedures such as those described above, provide protection for employees who make statements. It is our opinion, that the most practical solution would be to amend subsection 1 of N.R.S. 618.367 as proposed, and delete subsection 2 entirely, thereby providing for the protection of the identity of all employees who make statements.

Note: We interpret "protection of identity" to mean more than merely the excision of names. Time, place, location or other factors contained in the statement or report could serve to identify an individual, and we assume that such factors are ~~taken~~ into consideration by the State.

CHANGE 9D: STATE PARTICIPATION IN BLS SURVEY

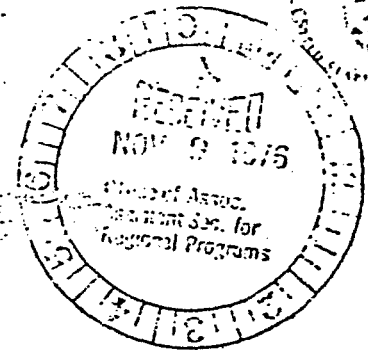
This change, strongly encouraged by this Office and OSHA, is acceptable and welcome.

CHANGE 10: MANUAL MIS

This change amends CHANGE 4 to reflect the state's decision to use a manual rather than an automated Management Information System, and is acceptable, if approved by OSHA.

U.S. DEPARTMENT OF LABOR

BUREAU OF LABOR STATISTICS
WASHINGTON, D.C. 20212



DATE: November 8, 1976
REPLY TO:
ATTN OF: BH

SUBJECT: OSHS - Nevada's Private Sector Recordkeeping
and Reporting Regulations
TO: Mr. Barry White, OSHA
ATTN: Ms. Margie Sauber

We have reviewed the draft of the Nevada private sector recordkeeping and reporting regulations you recently sent us. These regulations are the same as Federal Part 1904 and are acceptable to BLS.

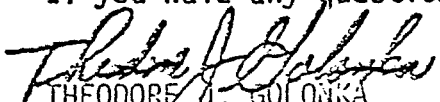
The accompanying memorandum indicated that these regulations would also apply to the public sector. If this is the case, the regulations must be modified.

The variance procedure for recordkeeping requirements in the public sector differs from that in the private sector. BLS is not involved in the decision making process. The regulations should be revised to indicate that the State agency will process all requests for variances from State and local governments. Also, Part 67.170 titled "Duties of employers" should mention the specific form to be used by employers.

The general definition of an establishment differs in the public sector from that applicable to the private sector. The State should be advised to adopt a definition similar to the following:

"Establishment" for public agencies is either
(a) a single physical location where a specific governmental function is performed; or (b) that location which is the lowest level where attendance or payroll records are kept for a group of employees who perform the same governmental function, or who are in the same specific organizational unit, even though the activities are carried on at more than a single physical location.

If you have any questions, please contact Herb Schaffer.


THEODORE J. GOLONKA
Assistant Commissioner
for Occupational Safety
and Health Statistics

U.S. DEPARTMENT OF LABOR
Occupational Safety and Health Administration
WASHINGTON, D.C. 20210



FEB 9 1977

MEMORANDUM FOR GABRIEL GILLOTTI

Subject: Nevada's Proposed Legislation

Enclosed are comments from the Solicitor's Office on Nevada's proposed legislation. These comments were discussed with Maria Barcos on February 4. In reference to item 3, the State should either include a direct reference in section 618.315 to regulations and standards affecting occupational safety and health or provide us with its interpretation that the section implies that exempted working conditions are those over which the other agency enforces regulations concerning occupational safety and health.

Richard P. Wilson

Richard P. Wilson
Deputy Director, Federal Compliance
and State Programs

Enclosure

U.S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON, D.C. 20210



FEB 2 1977

MEMORANDUM FOR: IRVING WEISBLATT, DIRECTOR, OFFICE OF STATE PROGRAMS

ATTENTION: Margie Sauber

FROM: Margaret Pallansch
Counsel for State Plans

Margaret Pallansch

SUBJECT: Solicitor's Office Comments on Proposed Nevada Legislation

This Office has reviewed legislative amendments to the Nevada Act. The amendments were contained in a December 6, 1976, memorandum from Ralph Langley to Maria Barcos.

The amendments:

1. Eliminate the exemption for household domestic service.

This is acceptable;

2. Eliminate the 4 year experience requirement for CSHOS.

See our prior comments on change 9c;

3. Change the jurisdictional limitations with regard to other agencies.

There still appear to be problems with this language. The new language refers to working conditions which are regulated pursuant to various other Acts, as does the Federal Act, but the Federal Act specifies that preemption will take place only when the exercise of the other agencies' authority takes the form of regulations or standards affecting occupational safety and health. Since the State Act does not reference occupational safety and health standards or regulations,

TTT
OSP

it is therefore possible that the language could be interpreted to require preemption whenever another agency had regulations regarding working conditions, even if the regulations had no relation to occupational safety and health;

4. Add employee statements to those activities subject to protection under the Act's ~~employer~~ access to reports provisions.

See our prior comments on change 9C;

5. Change the State's variance procedures to parallel those under the Federal Act.

The new language is acceptable;

6. Empower the Review Board to administer oaths, take depositions, certify official acts, and issue subpoenas.

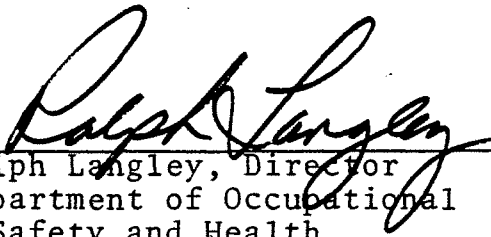
This is acceptable;

7. Make various other changes of a housekeeping nature, which are also acceptable.

TO SENATOR SPIKE WILSON
FROM M. RALPH LANGLEY, DIRECTOR, DOSH/NIC
SUBJECT S.B. 170

ACCOUNT NO.
CLAIM NO.
DATE FEBRUARY 14, 1977

Attached is the response to your questions during last week's hearing on S.B. 170. This information has been gathered by Mr. Riley Beckett, NIC General Counsel, and he has addressed your questions in his cover letter.


Ralph Langley, Director
Department of Occupational
Safety and Health

RL:d11

NEVADA INDUSTRIAL COMMISSION



ADDRESS ALL CORRESPONDENCE TO
NEVADA INDUSTRIAL COMMISSION

LAUDE EVANS
COMMISSIONER REPRESENTING LABOR
JAMES S. LORIGAN
COMMISSIONER REPRESENTING INDUSTRY

W. J. CROWELL
LEGAL ADVISOR

RILEY M. BECKETT
GENERAL COUNSEL

FRANK A. (SKIP) KING
GENERAL COUNSEL

LEGAL DEPARTMENT

February 10, 1977

REPLY TO

515 E. Musser Street
Carson City, Nevada
89714

Senator Spike Wilson
Chairman of the Senate Judiciary Committee
Legislative Counsel Bur. Building
401 South Carson Street
Carson City, Nevada 89701

Re: S.B. 170
concerning the Department of Occupational Safety
and Health - Confidentiality of Statements.

Dear Senator Wilson:

This is in response to the committee's request for additional information concerning the above proposed amendment to NRS Chapter 618. The committee is mainly concerned about the confidentiality of statements aspect of the bill, and the federal mandate regarding same. I am enclosing a letter from Mr. Dan Teehan from the Solicitor's Office of the U. S. Department of Labor, dated February 17, 1976, together with attachments; my letter of November 5, 1975 to Chief Deputy Attorney General Jim Thompson; and Deputy Attorney General Pat Dolan's reply of March 17, 1976. The basic concept that the solicitor's office is concerned about under the OSHA State Plan (NRS Chapter 618), is protecting the confidentiality of informants and those making statements to the safety inspectors. The rationale for this has two aspects:

- (1) To protect the free dissemination of possible safety violations and prevent the drying up of source information regarding safety violations.
- (2) To prevent retaliation by employees who either complain or make statements concerning unsafe conditions.

Senators Bryant and Young were concerned about the aspect that if the person making the statement would be used at the review board hearing (assuming that the employer appeals his citation) that at some point in time the employee's identity must be made available to the employer, and what the federal position is regarding same. I contacted Mr. Dan Teehan this morning in San Francisco and discussed this matter at length. He indicated that the procedure followed by Federal OSHA is:

Senator Spike Wilson
Re: SB 170
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- (1) A complaint is filed, and investigation is subsequently made with the investigator getting statements of all witnesses relative to either the injury or alleged unsafe working conditions.
- (2) A citation would be issued if appropriate. Mr. Teehan indicated that as far as Federal OSHA is concerned in his area, approximately 1 out of every 100 citations is contested.
- (3) If the citation is contested, approximately 2 to 6 weeks prior to the OSHA administrative hearing regarding same, the witness list is disclosed to opposing counsel. This list just merely identifies all potential witnesses to be called. No information is disclosed as to whether that witness made any statements to the OSHA inspector.
- (4) Approximately 2 weeks to several days before the hearing, if it is determined that a witness who made statements will be used at the hearing, his statements are made available to the opposing counsel so that opposing counsel may adequately cross-examine the witness and determine if his testimony is consistent with his prior statements.

Mr. Teehan indicated that the vast majority view concerning witnesses disclosures of these statements is that they don't have to be revealed until on or about the time that the witness is called to testify at the hearing. Like any matter there are cases to the contrary, and he indicated that the Ninth Circuit is not as strong on this view as the majority view.

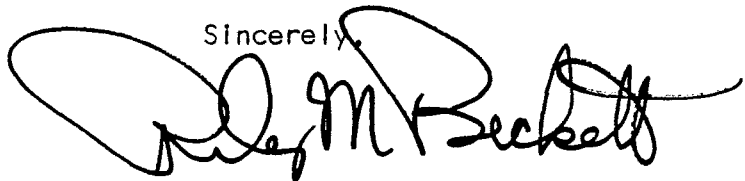
As I indicated to the committee, this proposed amendment to the law concerning the confidentiality of statements made to investigators is prompted by the Federal Government and specifically the Solicitor's Office of the U. S. Department of Labor. Mr. Teehan indicated that his office is strongly concerned about this specifically in light of his opinion that the current law as it exists does not protect the confidentiality of informants. It is clear that the present law does protect complainants but there is no provision concerning those who subsequently informed the investigator usually at the investigation cite. Incidentally the committee should be aware that when our investigator does that is termed his

Senator Spike Wilson
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"walk-around" inspection, a representative of the employer is requested to be present during the inspection.

I hope that this adequately explains the federal position on this matter, and if additional information is needed, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Riley M. Beckett". The signature is fluid and cursive, with a large initial "R" and "M".

RILEY M. BECKETT
General Counsel

RMB:ss

Enclosure

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SOLICITOR
450 GOLDEN GATE AVENUE, BOX 36017
ROOM 10404 FEDERAL BUILDING

SAN FRANCISCO, CALIFORNIA 94102



February 17, 1976

Mr. Riley M. Beckett
General Counsel
Nevada Industrial Commission
515 East Musser Street
Carson City, Nevada 89701

Dear Mr. Beckett:

Enclosed are some materials pertaining to disclosure which we trust will answer some of your questions in this regard.

Very truly yours,

Altero D'Agostini
Regional Solicitor

Altero D'Agostini
By

Daniel W. Teehan

Enclosures:

FOM 1755-56

CFR 29, Part 70, §70.21 thru 70.31

257

FEB 18 1976

1. Purpose

To provide guidelines on the responsibilities, duties and procedures for OSHA Disclosure Officers under the Freedom of Information Act (FOIA).

2. Policy

The Department's policy regarding the disclosure of documents in investigation and other files is governed by the Freedom of Information Act and the Department's regulations in implementation thereof (Title 29 CFR Part 70). Specific guidelines for the application of this policy to OSHA files are set forth in the following paragraphs. It should be emphasized that our policy is to disclose all documents to which the public is entitled under the Freedom of Information Act and the regulations; at the same time, great care should be taken to assure that documents which are not disclosable are kept confidential, since disclosure of such documents may seriously prejudice the prosecution of cases and the OSHA program.

3. Background

a. On November 21, 1974, an amended Freedom of Information Act was enacted by Congress. It became effective on February 19, 1975. The Department of Labor issued revised regulations (29 CFR Part 70) implementing that Act on February 19, 1975. Since the revised 29 CFR Part 70 made the 29 CFR Part 1913 (which had provided supplementary regulations for the OSHA) duplicative, 29 CFR Part 1913 was rescinded on April 8, 1975. Accordingly, the applicable regulations for OSHA are now found in 29 CFR Part 70.

4. Procedures

Each Disclosure Officer will perform the duties described below in accordance with procedures described in 29 CFR Part 70 as indicated:

- (a) Screen each request for information promptly to determine if it should be forwarded to another Disclosure Officer. See 29 CFR 70.47(b).
 - (1) If the request is for records held by another Disclosure Officer, promptly send the request to that Disclosure Officer. Notify the requester in writing that you have forwarded the request, providing the name and address of the Disclosure Officer to whom it was sent.
 - (2) If the request is for records held outside OSHA, promptly locate the proper Disclosure Officer and send the request to that Officer. Notify the requester in writing that you have forwarded the request and state to whom you forwarded it.
 - (3) Promptly forward all requests for GPO published items to the Disclosure Officer, Office Management Data Systems, who will respond in accordance with the provisions of 29 CFR 70.5 and 70.6 and guidelines of the Joint Committee on Printing.
- (b) Estimate search and copy fees and proceed accordingly. (See 29 CFR 70.47(c) and 29 CFR 70, Subpart B.)
- (c) Stamp the incoming request-letter with the date and time the request was received and notify the requester that the request was received on that date. (See 29 CFR 70.47(a).)
- (d) Determine the disclosability of the requested information. (See 29 CFR 70.11 through 70.31.)

- (e) Within ten (10) working days of receipt of request, approve, partially approve, or deny the request. (See 29 CFR 70.48, 70.49 and 70.53.)
- (f) Extend response time only in accordance with 29 CFR 70.55.
- (g) Upon request, provide the Disclosure Management Officer with a list of materials in the Disclosure Officer's custody that must be indexed.
- (h) Provide the Disclosure Management Officer with information required for performance reporting.
 - (1) Send to the Disclosure Management Officer a copy of each letter dated January 1, 1975 or later which either grants or denies a request for information or which shows fees paid by the requester.
 - (2) Report any known case of appeal and/or of disciplinary action taken under the provisions of the Act to the Disclosure Management Officer.
 - (3) Maintain a log and report quarterly to the Disclosure Management Officer the unreimbursed manhours used to respond to requests for information which are processed in accordance with 29 CFR Part 70. Routine requests for information which do not state that they are made in accordance with the FOIA or implementing regulations *and* which do not require reference to the FOIA or implementing regulations to determine disclosability or processing procedure should not be included.

5. *Specific Guidelines*

Generally, the disclosability of records must be determined on a case-by-case basis by referring to the departmental regulations of 29 CFR Part 70. However, there are certain records, such as OSHA directives, the Field Operations Manual, and the OSHA Subscription Service, which are clearly disclosable in full to the public upon request. As to those items, therefore, there is no need to consult 29 CFR Part 70. In addition to these documents, the following records are also disclosable to the public, in full, upon request after they have been received by the employer:

- (1) All citations which have been issued to employers for alleged violations;
- (2) Notices of de minimis violations which have been issued pursuant to section 9(a) of the Williams-Steiger Occupational Safety and Health Act;
- (3) Notification of any proposed penalty issued to employers;
- (4) Notification of failure to correct violation and of any proposed additional penalty which has been issued to an employer;
- (5) Notices issued to employers for an alleged imminent danger situation.

In accordance with the guidelines as set out in 29 CFR Part 70, requests for records shall be granted, partially denied or denied. The Regional Solicitor should be consulted if there are any questions as to whether the requested records or parts thereof are disclosable.

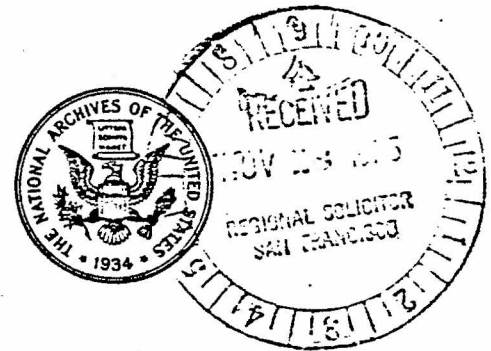
code of federal regulations

29

Labor

PARTS 0 TO 499

Revised as of July 1, 1975



(2) Drive tractors to move materials, draw implements, pull out objects imbedded in ground, or pull cable of winch to raise, lower, or load heavy materials or equipment.

Typists, Lesser Skilled

Type straight-copy material, such as letters, reports, stencils, and addresses, from draft or corrected copy. Not required to prepare materials involving the understanding of complicated technical terminology, the arrangement and setting of complex tabular detail or similar problems. Typing speed in English does not exceed 52 words per minute on a manual typewriter and/or 60 words per minute on an electric typewriter and the error rate reaches 12 or more for a 5 minute typing period on representative business correspondence.

Ushers (Recreation and Amusement)

Assist patrons at entertainment events in finding seats, searching for lost articles, and locating facilities.

Warehousemen

Receive, store, ship, and distribute materials, tools, equipment, and products within establishments as directed by others.

PART 70—EXAMINATION AND COPYING OF DEPARTMENT OF LABOR RECORDS

Subpart A—General

INTRODUCTORY

Sec.

- 70.1 Purpose and scope of this part.
- 70.2 Definitions.

AVAILABILITY OF PUBLISHED INFORMATION

- 70.5 Information published in the FEDERAL REGISTER.
- 70.6 Information in Department of Labor publications.
- 70.7 Published indexes.

INFORMATION AVAILABLE ON REQUEST

- 70.11 Policy of disclosure.
- 70.12 Records of administrative proceedings.
- 70.13 Evaluation reports on external programs.
- 70.14 Policy statements and interpretations.
- 70.15 Staff manuals and instructions.
- 70.16 Indexes to certain records.

RESTRICTIONS ON DISCLOSURE

- 70.21 Records not disclosable.
- 70.22 Records disclosure of which may be refused.
- 70.23 Internal rules and practices.
- 70.24 Trade secrets and privileged or confidential information.
- 70.25 Inter-agency and intra-agency memoranda and letters.
- 70.26 Personnel, medical, and similar files.

Sec.

- 70.27 Investigatory records compiled for law enforcement purposes.
- 70.28 Well information.
- 70.29 Partial disclosure.
- 70.30 Withdrawal of originals.
- 70.31 Record of concern to more than one agency.

FACILITIES FOR DISCLOSURE

- 70.35 Where information may be obtained.
- 70.36. Titles and addresses of the responsible officials of various agencies.

PROCEDURE FOR DISCLOSURE

- 70.41 Applicability of procedures.
- 70.42 Submittal of requests for access to records.
- 70.43 To whom to direct requests.
- 70.44 Description of information requested.
- 70.45 Deficient descriptions.
- 70.46 Requests for categories of records.
- 70.47 Receipt by agency of request; acknowledgment.
- 70.48 Action on request.
- 70.49 Form of denials.
- 70.50 Appeals from denial of requests.
- 70.51 Receipt by Solicitor of appeal; acknowledgment.
- 70.52 Action on appeals.

TIME LIMITATIONS FOR ACTION ON REQUESTS AND APPEALS

- 70.53 Period within which action on request shall be taken.
- 70.54 Period within which action on appeal shall be taken.
- 70.55 Extension of period for taking action on request or appeal.

Subpart B—Copies of Records and Fees for Services

SPECIAL SEARCHING AND COPYING SERVICES

- 70.61 Charges for services, generally.
- 70.62 Search and copying charges.
- 70.63 Computerized records.
- 70.64 Payment of fees.
- 70.65 Standard fees not charged in certain circumstances.
- 70.66 Services performed without charge.
- 70.67 Waiver or reduction of fees by disclosure officer.

AUTHENTICATION; SPECIAL STUDIES AND COMPILATIONS

- 70.68 Authentication of copies.
- 70.69 Special studies and compilations.

Subpart C—Special Rules Applicable to Certain Specific Records

- 70.71 Authority of agency officials in Department of Labor.
- 70.72 Supplementary regulations currently in force.
- 70.73 Bureau of Labor Statistics.
- 70.74 Employment Standards Administration.
- 70.75 Labor—Management Services Administration.

tribunals. The criteria for staff engaged in such projects with respect to such matters as handling, defense, prosecution, settlement of cases, operational tolerances, investigation techniques and strategies, traditionally and necessarily of a sensitive nature, as is recognized in the history of the Freedom of Information Act, and are subject to the provisions of 5 U.S.C. which restrict the disclosure rights by the exemptions explained in the following sections of this part. Any provisions for access to administrative manuals and instructions relating to specific programs may be found by reference to Subpart C.

Indexes to certain records.

Current indexes identifying final orders and orders in adjudicated cases (12(b)), statements of policy and actions adopted by the agency published in the FEDERAL REGISTER (14), and administrative staff manuals and instructions (see § 70.15), have been issued, adopted, or amended after July 4, 1967, are not available to the public in published form provided in § 70.7. Such indexes, whether published or not published, are made available for inspection and copying on request. Republished copies of a particular index at any time not available or the index has been determined to be unnecessary and impractical for publication in the FEDERAL REGISTER, copies thereof will be furnished upon payment of the direct cost of duplication as provided in § 70.11.

To effectuate the provisions of 5 U.S.C. 552(a)(2), § 70.7 of this part and paragraph (a) of this section, each office identified in § 70.35 and § 70.36 shall make available for public inspection and copying, and provide for the publication of current indexes of materials in his custody which are subject to the indexing and publication requirements of 5 U.S.C. 552(a)(2). Each office shall forward a copy of each index to the Office of Information Publications, Main Labor Building, 1400 Constitution Avenue NW., Washington, D.C. 20210, which shall provide a repository for, and make available for public inspection, all such indexes

and supplements thereto compiled by such officers, and shall provide for distribution of the published indexes and supplements.

RESTRICTIONS ON DISCLOSURE

§ 70.21 Records not disclosable.

(a) Pursuant to the provisions of 5 U.S.C. 1905, every officer and employee of the Department of Labor is prohibited from publishing, divulging, disclosing, or making known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with the Department or any agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association. No officer or employee of the Department of Labor shall disclose records in violation of this provision of law.

(b) No records of the Department of Labor with respect to matters specifically required by statute to be kept secret shall be made available for inspection or copying under the provisions of this part. By virtue of the exclusionary language in 5 U.S.C. 552(b)(3) the disclosure requirements of the Freedom of Information Act do not apply to or authorize the disclosure of records with respect to any matters specifically exempted from disclosure by statute.

(c) No records of the Department of Labor with respect to matters specifically authorized under criteria established by Executive order to be kept secret in the interest of the national defense or foreign policy and properly classified pursuant to such order shall be made available for inspection or copying under the provisions of this part. Records concerning such matters are expressly excluded from the application of the disclosure requirements of the Freedom of Information Act by the provisions of 5 U.S.C. 552(b)(1).

§ 70.22 Records disclosure of which may be refused.

(a) *Records exempt from statutory disclosure requirements.* The Freedom of Information Act, as codified in 5 U.S.C. 552, lists nine categories of records

(in 5 U.S.C. 552(b)) to which the disclosure requirements of the statute do not apply. The first and third of these relate to the records described in § 70.21 which are not disclosable because protected from disclosure by the express provisions of a statute or a secret classification authorized by Executive order in the interest of national defense or foreign policy. The other seven categories of records excluded from the statutory disclosure requirements are set forth in §§ 70.23 through 70.28, inclusive. Information from records in these seven categories may, however, be made available for inspection and copying as provided in paragraph (b) of this section.

(b) *Disclosure of protected records; conditions precedent.* Although the Department of Labor is not required by the Freedom of Information Act to make available for inspection or copying any materials or documents included in its records which are within the categories described in 5 U.S.C. 552(b)(2), (4), (5), (6), (7), (8), or (9) (see §§ 70.23-70.28), under the Department's disclosure policy set forth in § 70.11 particular records requested which come within these categories, or portions thereof, shall nevertheless be made available to the extent, but only to the extent, that the appropriate officer authorized to disclose information from Department records determines that the disclosure will further the public interest and will not impede the discharge of any of the functions of the Department of Labor. Such a determination shall be made with due regard not only to the public interest in accessibility to the people of information regarding operations of their Government but also to the public interest in protecting citizens from impairment of their rights to privacy or from harassment, injury, or the dissemination of information concerning them which is privileged or has been submitted by them to the Government on a confidential basis. In determining whether access to such records will be permitted, due consideration shall also be given to the public interest in preventing disclosure of information which would handicap, obstruct, or jeopardize effective performance of the Department's functions under statutes or Executive orders, including its duties with respect to law enforcement.

§ 70.23 Internal rules and practices.

(a) Pursuant to exemption (2) set forth in 5 U.S.C. 552(b), and as provided

vided in § 70.22, the disclosure from Department of Labor records of matters that are related solely to the internal personnel rules and internal practices of the Department may be refused. The records protected by this exemption include memoranda pertaining to personnel matters such as staffing policies and policies and procedures for the hiring, training, promotion, demotion, and discharge of employees. Also included are records concerning operating rules, practices, guidelines, and procedures for departmental investigators, inspectors, compliance officers, examiners, and attorneys, the release of which would substantially impair the effective performance of their duties.

(b) The purposes of exemption (2) include the protection from public disclosure of any record that is designed only for the guidance of Department personnel, including internal rules and practices that cannot be disclosed to the public without substantial prejudice to the effective performance of a significant Department function. A negotiator cannot bargain effectively if his instructions and limitations are known to the person with whom he is negotiating. Similarly, the effectiveness of an authorized but unannounced inspection or audit would be destroyed if the circumstances under which that inspection or audit is to be held become public knowledge.

(c) Although access to particular records concerning matters within the purview of exemption (2) may be permitted as provided in § 70.22 if the officer authorized to disclose records determines that the disclosure would serve the public interest and not impede the discharge of any function of the Department, such a determination ordinarily cannot be made in the case of internal rules and instructions relating to investigations and enforcement activities concerned with questions of compliance with or violations of provisions of law.

§ 70.24 Trade secrets and privileged or confidential information.

(a) Pursuant to exemption (4) set forth in 5 U.S.C. 552(b), and as provided in § 70.22, the disclosure from Department of Labor records of matters that are trade secrets, and of commercial and financial information obtained from a person and privileged or confidential, may be refused. Legal requirements of secrecy and prohibitions of disclosure

may apply to such records as set forth in § 70.21. Disclosure shall be refused where these mandatory restrictions apply to the records sought. Even where denial of access is not required by these restrictions, access to records exempted from the disclosure requirements by exemption (4) cannot be granted under the policy expressed in §§ 70.11 and 70.22 unless the disclosure officer, in balancing the right of the public to know how the Government operates against the need of the Government to keep information in confidence and the right of the person from whom it was obtained to have privileges and confidences respected, is able to determine that disclosure will serve the public interest and not impede the discharge of any function of the Department of Labor.

(b) The intent of the exemption set forth in paragraph (a) of this section to protect privileged or confidential information is, according to the committee reports in both Houses of Congress, not restricted to the trade secrets and commercial or financial information specifically mentioned in the statute. Information the disclosure of which may be refused pursuant to this exemption is, according to the legislative history, intended to include information customarily subject to a doctor-patient, lawyer-client, or other such privilege.

(c) Information "obtained from any person" would include information obtained from a person inside as well as outside the Government. The applicability of this exemption does not depend on whether the record contains information obtained from the public at large from a particular person, from within the Department, or from another agency. While information which is confidential in the hands of one agency retains its protected character in the hands of agencies to which it is subsequently furnished, the exemption does not sanction the rendering of documents confidential by the expedient of transferring them among agencies.

(d) Except as otherwise provided in this part (e.g., § 70.13), disclosure in certain circumstances may be refused of material such as formulae, designs, drawings, research data, and the like which are significant not as records but as items of valuable property. These may have been developed by or for the Government for its use and at its expense. Nothing in the legislative history suggests that the Freedom of Information

to such records as set forth in paragraph (a) of this section. Disclosure shall be refused if mandatory restrictions apply. Even where denial is not required by these restrictions, records exempted from requirements by exemption (4) shall not be granted under the policy in §§ 70.11 and 70.22 unless the officer, in balancing the right of the public to know how the Government operates against the need of the Government to keep information in confidence, the right of the person from whom the information was obtained to have privileges and immunities respected, is able to determine that disclosure will serve the public interest and not impede the discharge of any function of the Department of Labor.

The intent of the exemption set forth in paragraph (a) of this section is to protect information which is privileged or confidential in character, according to the committee reports to both Houses of Congress, and to the trade secrets and confidential financial information specified in the statute. Information of which disclosure would be injurious to the national defense, or of which disclosure would be injurious to the legislative history, include information customarily obtained from a doctor-patient relationship, or other such privilege. Information "obtained from any person inside as well as outside the Government. The application of this exemption does not depend on whether the record contains information from the public at large, a particular person, from within the Government, or from another agency. Information which is confidential in character if one agency retains its character in the hands of the person to which it is subsequently disclosed, the exemption does not survive the transferring of documents confidential in character to another agency. The application of this exemption to records transferred to other agencies.

Except as otherwise provided in paragraph (e.g., § 70.13), disclosure of information in circumstances may be refused if such as formulae, designs, research data, and the like are of significant value as records of valuable property. These materials developed by or for the Government for its use and at its expense in the legislative history submitted to the Freedom of Information

Act was intended to give away such valuable property to any person willing to pay the price of making a copy. Where similar property in private hands would be held in confidence, the public interest would appear to require that such property in the hands of an agency should be protected under exemption (4).

(e) This exemption is further intended to extend protection to other information in Government records which has been furnished and accepted in confidence and which would not customarily be released to the public by the person from whom the Government obtained it. See, for example, the House Report (H. Rept. 1497, 89th Cong., 2d Sess.) and the President's signing statement. Accordingly, the exemption assures the confidentiality of information thus obtained by the Department of Labor through questionnaires and required reports to the extent that the information would not customarily be made public by the person from whom it was obtained. Nothing in the Freedom of Information Act necessitates a disregard of the right of individuals or groups to rely in good faith on an understanding of confidentiality for which a Government agency has reasonably afforded a basis. Maintenance of citizens' respect for governmental fairness requires that such understandings be given due consideration. At the same time, Department representatives should be alert to discourage the development of such understandings where not clearly warranted by departmental responsibilities.

(f) Pursuant to exemption (8) set forth in 5 U.S.C. 552(b), and as provided in § 70.22, the disclosure from Department of Labor records of any matter contained in, or related to, examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, may be refused. Exemption (8) emphasizes the application to financial institutions of the protection from disclosure afforded by the exemption set forth in paragraph (a) of this section, and makes plain the intent to protect information relating to such institutions which may be prepared for or used by any agency responsible for the regulation or supervision of such institutions. Access to any such information in records of the Labor Department will be refused where disclosure is not legally permitted or where a determina-

tion to disclose is inappropriate for reasons discussed in paragraph (a) of this section. In cases where another agency is concerned with information protected by exemption (8) in 5 U.S.C. 552(b) which is sought from records of the Department, the provisions of § 70.31 are also applicable.

§ 70.25 Inter-agency and intra-agency memoranda and letters.

(a) Pursuant to exemption (5) set forth in 5 U.S.C. 552(b), and as provided in § 70.22, the disclosure from Department of Labor records of matters in inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than the agency in litigation with the agency may be refused. The exemption is intended essentially to protect the full and frank exchange in writing of ideas, views, and opinions necessary for the effective functioning of the Government and the making of informed decisions by its officers.

(b) The protection from disclosure afforded by exemption (5) to the internal records of the Government described in paragraph (a) of this section is limited to those communications which, in litigation with a Government agency, would not be routinely available by law to another party to the proceeding. The legislative history and decisions of the courts make it clear that this provision is intended to insure that memoranda or letters not protected from disclosure by some other exemption would be available to the general public for inspection and copying if they "would routinely be disclosed" to such a party "through the discovery process" in such litigation. (See H. Rept. 1497, 89th Cong., 2d Sess.) The internal memoranda and letters protected from disclosure by exemption (5) are accordingly those which would not be released as a matter of course in litigation where discovery is sought by a party other than the agency under the Federal Rules of Civil Procedure. Since the granting of discovery of internal documents is typically a very extraordinary step, not normally a "routine" one, it is only in a limited category of situations that such documents would be routinely available by law to another party in litigation with the agency.

(c) Examples of the type of record information protected from disclosure by the exemption set forth in paragraph (a)

of this section include opinions, advice, deliberations, or recommendations made in the course of developing official action by the Department of Labor or any of its component units, and other internal communications which would not be routinely available through the discovery process to a party in litigation with the Government.

(d) In the case of inter-agency memoranda and letters protected by this exemption, the officer authorized to disclose records shall not make a determination to allow access to such matters under the policy set forth in §§ 70.11 and 70.22 if to do so would conflict with the provisions of § 70.31.

§ 70.26 Personnel, medical, and similar files.

(a) Pursuant to exemption (6) set forth in 5 U.S.C. 552(b), and as provided in § 70.22, the disclosure from Department of Labor records of matters in "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" may be refused. In view of the congressional concern expressed in the legislative history regarding the protection of individuals' privacy, each disclosure officer of the Department shall apply the disclosure policy set forth in §§ 70.11 and 70.22 with due regard to the apparent intent of the statutory language to characterize the invasion of personal privacy typically involved in disclosure of personnel and medical files as "clearly unwarranted." "Similar files" for which protection is provided under this exemption appear to refer to any files the disclosure of which would invade personal privacy to such a degree that the disclosure would be as "clearly unwarranted" as the disclosure of personnel or medical files.

(b) Among the records in Department files protected from disclosure by the exemption set forth in paragraph (a) of this section are (1) personnel and background records personal to any officer or employee of the Department, including his home address and telephone number; (2) medical histories and medical records concerning individuals; (3) any other detailed record containing personal information identifiable with a particular individual where it appears that such person's right to have such information protected from public dissemination is clear; and (4) private or personal information in other files which, if disclosed to the

public, would amount to a clearly unwarranted invasion of the privacy of any person, including members of the family of the person to whom the information pertains. The disclosure of information about a person to that same person is not, of course, an invasion of such person's privacy.

(c) Related regulations implementing this part and the application of this exemption to personal and medical information in the files of the Employment Standards Administration relating to claims of injured employees for workmen's compensation benefits are referred to in Subpart C.

§ 70.27 Investigatory records compiled for law enforcement purposes.

(a) *Restrictions on public access authorized.* Pursuant to the provisions of exemption (7) set forth in 5 U.S.C. 552 (b), as amended by Pub. L. 93-502, 88 Stat. 1563, effective February 19, 1975, the disclosure from Department of Labor records of matters that are "investigatory records compiled for law enforcement purposes" and to which access by the public would be detrimental to such purposes or to rights of privacy as specified in the statute, may be refused. Access to such records may be refused for any one or more of several specific reasons. Thus, exemption (7) protects from the public access requirements of the Freedom of Information Act investigatory records compiled for law enforcement purposes whenever their disclosure to any person requesting them would—

- (1) Interfere with enforcement proceedings; and/or
- (2) Deprive a person of a right to a fair trial or an impartial adjudication; and/or
- (3) Constitute an unwarranted invasion of personal privacy; and/or
- (4) Disclose (i) the identity of a confidential source and (ii), in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source; and/or
- (5) Disclose investigative techniques and procedures; and/or
- (6) Endanger the life or physical safety of law enforcement personnel.

Where one or more of the foregoing consequences would ensue from the dis-

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related regulations implementing and the application of this to personal and medical information in the files of the Employment Administration relating to injured employees for work compensation benefits are referred to in part C.

Investigatory records compiled for law enforcement purposes.

Restrictions on public access. Pursuant to the provisions of section (7) set forth in 5 U.S.C. 552 amended by Pub. L. 93-502, 84 Stat. 1703, effective February 19, 1975, disclosure from Department of Labor records of matters that are "investigatory records compiled for law enforcement purposes" and to which access to the public would be detrimental to national defense, to the rights of privacy protected in the statute, may be refused. Access to such records may be denied for any one or more of several reasons. Thus, exemption (7) is provided from the public access requirements of the Freedom of Information Act for investigatory records compiled for law enforcement purposes whenever disclosure would be detrimental to national defense, to the rights of privacy protected in the statute, or to the rights of any person requesting such records.

interfere with enforcement proceedings; and/or deprive a person of a right to a fair trial or an impartial adjudication.

constitute an unwarranted invasion of personal privacy; and/or disclose (i) the identity of a confidential source and (ii), in the case of records compiled by a criminal law enforcement authority in the course of an investigation, or by an agency conducting a lawful national security investigation, confidential information furnished only by the confidential source; and/or disclose investigative techniques, procedures; and/or endanger the life or physical safety of law enforcement personnel; or one or more of the foregoing consequences would ensue from the disclosure of such records.

closure of particular records to any person requesting access to investigatory records compiled for law enforcement purposes, no determination to grant access to such records may be made by the disclosure officer under the disclosure policy set forth in §§ 70.11 and 70.22 in the ordinary case because in such circumstances it would not ordinarily be possible to determine that disclosure would serve the public interest and would not impede any of the functions of the Labor Department.

(b) "Law enforcement purposes." The exemption set forth in paragraph (a) of this section expresses the public interest in preventing disclosure detrimental to the enforcement, whether civil or criminal in nature, of applicable laws and in assuring, to this end, that such enforcement will not be jeopardized by disclosing information which would be harmful to citizens who aid the Government in law enforcement investigations and prosecutions, would endanger the persons or handicap the essential enforcement activities of investigators and prosecutors, would violate the rights of persons who may be charged with violations, or would otherwise interfere with investigations and other proceedings to enforce the laws. "Law enforcement" as used in the statute, according to the legislative history, is used in the broadest sense to include the enforcement not only of criminal statutes, but of all laws establishing rules of conduct, whether by statute or by Executive order or by a duly promulgated regulation having the force and effect of law. Moreover, "enforcement" is not limited to enforcement by adversary proceedings, and includes other types of Government law enforcement activities as well; the work of a policeman or a compliance officer is law enforcement even if he does not participate in adversary proceedings. On the other hand, "enforcement" does not include all activities conducted in order to carry out the laws, but only those intended to counteract past, present, or future violations.

(c) "Investigatory" records. The protection afforded investigatory records under the exemption set forth in paragraph (a) of this section also extends, according to the legislative history, to those files related to the investigation which are prepared in connection with related Government litigation and adjudicative proceedings. One of the purposes of the exemption is to preserve the

position of the Government in litigation or potential litigation, in accordance with the rules governing discovery in cases before courts and administrative agencies. It ensures that the litigant is not given any earlier or greater access to investigatory material than he would have directly in litigation or other enforcement proceedings.

(d) Records "compiled" for law enforcement purposes. Whenever the disclosure of investigatory records requested by any person would have any of the consequences specified in the exemption set forth in paragraph (a) of this section, access to such records may be refused if the records have been "compiled" for law enforcement purposes, irrespective of the nature of the action, if any, to carry out such purposes which may have been contemplated at the time of their compilation or may have been taken thereafter as a result of the compilation. Investigatory records shown to have been compiled for law enforcement purposes retain their status as such and continue to be protected from disclosure in the specified circumstances as provided in this exemption whether or not enforcement proceedings are contemplated at the time of investigation or are instituted thereafter or, if brought, have been completed before the request is made for the records. None of these factors negate the need, in the public interest and in the interest of persons who have been the subject of or who have furnished information to help the law enforcement activities of the Government, for continued protection against a prejudicial disclosure from such records of information which may still constitute an unwarranted invasion of personal privacy or may reveal the identity of a confidential source. The subject of an investigation which has been closed because charges of law violation could not be substantiated is entitled to protection from the opprobrium which might follow public disclosure of the record of the charges without opportunity to demonstrate their falsity in an adjudicatory proceeding. An informant whose identity as the source of confidential information furnished in aid of law enforcement activities is made public by disclosure of investigative records may be made subject to retaliatory action by others and in any event may not inform without assurance that private persons will not, through access to the agency's records, be able to identify the informant as the source of the in-

formation furnished. Even years after enforcement proceedings are concluded, the public interest may require protection of investigatory records which would identify a confidential source or would reasonably lead to such a disclosure. Any disclosure of such records would soon become a matter of common knowledge and few individuals, if any, would come forth to embroil themselves in controversy or possible recrimination by notifying the Government of something which might justify investigation. Even more important in view of the increasing concern today over the conflict between a citizen's right of privacy and the need of the Government to investigate, it is unthinkable that rights of privacy, whether of subjects or confidential sources, should be jeopardized. In addition, the disclosure of investigatory records may reveal investigative techniques and procedures or endanger the life or physical safety of law enforcement personnel. In either case, the ability of the Government to carry out its law enforcement functions effectively would be seriously impaired.

§ 70.28 Well information.

Pursuant to exemption (9) set forth in 5 U.S.C. 552(b), and as provided in § 70.22, the disclosure from Department of Labor records of matters consisting of geological and geophysical information and data, including maps, concerning wells, may be refused. This exemption supplements the exemption set forth in § 70.23 by removing any doubt that disclosure of this specific type of information is protected under the Act.

§ 70.29 Partial disclosure.

(a) *Deletions to protect personal privacy.* To the extent required to prevent a clearly unwarranted invasion of personal privacy, the officer authorized to disclose information from a record may delete identifying details when he makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction, provided that in every case the justification for the deletion is fully explained in writing.

(b) *Records containing both disclosable and nondisclosable information.* If a requested record or document contains some materials which are protected from disclosure and other materials which are not so protected, identifying details or protected matters shall be deleted whenever analysis indicates that

such deletions are feasible. Any reasonably segregable portion of a record or document shall be provided after deletion of protected matter.

(c) *Deletions to protect identity of requester.* Where the identity of an applicant, or other identifying details related to a request, would constitute an unwarranted invasion of personal privacy if made generally available, as in the case of a request to examine one's own medical files, identifying details shall be deleted from copies of the request and written responses to it that are made available to requesting members of the public.

§ 70.30 Withdrawal of originals.

No document or record in the custody of the Department of Labor, or of any agency or officer thereof, shall on any occasion be taken or withdrawn by any agent, attorney, or any other person not officially connected with the Department; no exception will be made without the written consent of the Secretary or the Solicitor of Labor.

§ 70.31 Record of concern to more than one agency.

If the release of a record in custody of the Department of Labor would be of concern not only to the Department but also to another Federal agency, the record will be made available by the Department only if its interest in the record is the primary interest and only after coordination with the other interested agency. If the interest of the Department in the record is not primary, the request will be transferred promptly to the agency having the primary interest, and the applicant will be so notified. The release of information received from another agency and the release to another agency of information collected from persons outside the Government shall be subject to the conditions and restrictions imposed by 44 U.S.C. 3508.

FACILITIES FOR DISCLOSURE

§ 70.35 Where information may be obtained.

(a) Any person desiring to examine or copy records of the Department of Labor known to be situated in any office of the Department and providing information adequate to permit identification of the records sought may obtain from the head of such office information as to the availability of the derived records. Such person will be advised

NEVADA INDUSTRIAL COMMISSION



LAUDE EVANS
COMMISSIONER REPRESENTING LABOR
JAMES S. LORIGAN
COMMISSIONER REPRESENTING INDUSTRY

ADDRESS ALL CORRESPONDENCE TO
NEVADA INDUSTRIAL COMMISSION

WM. J. CROWELL
LEGAL ADVISOR
LARRY G. BETTIS
GENERAL COUNSEL
P. A. KING
LEGAL COUNSEL

LEGAL DEPARTMENT

REPLY TO

515 E. Musser Street
Carson City, Nevada
89701

November 5, 1975

The Honorable Robert List
Attorney General - St. of Nevada
Supreme Court Building
Carson City, Nevada 89710

Attn: James H. Thompson
Deputy Attorney General

Dear Jim:

The Nevada Industrial Commission instructed me in June of 1975 to request an opinion concerning whether payments made under the state longevity incentive plan are subject to consideration in determining the amount of NIC assessments that must be paid by state and public agencies. On July 17, 1975, I sent a letter to the Honorable Robert List with a carbon copy to Pat Dolan requesting such an opinion. I am including a copy of the letter together with the attachments for your perusal. The NIC is requesting an opinion concerning these payments.

The Department of Occupational Safety and Health (DOSH) is a division under the NIC. This department was formed under NRS Chapter 618 pursuant to Nevada adopting a state plan under the federal occupational safety and health laws. Nevada's state plan for two years is conditional upon its meeting all of the federal criteria. In the six month evaluation, January to June of 1975, the Department of Labor, Occupational Safety and Health Administrative Office, reviewed our safety laws and noted a problem area regarding the confidentiality of names of employees in A.B. 403, Section 31. Section 31 states:

Each employer is entitled to access to any records in the possession of the department which concern such employer. If any such records contain the names of employees who have:

1. Submitted complaint notices to the department concerning such employer; and
2. Requested that their names remain confidential, the department shall protect the identity of such employees.

The Honorable Robert List
Attn: James H. Thompson
November 5, 1975
Page Two

The Occupational Safety and Health Administration is concerned about the confidentiality of named employees who do not file an OSHA grievance, but who give witness statements or other types of testimony regarding an alleged safety violation. The Office of the Solicitor, U. S. Department of Labor, has contacted me and indicated that a broad interpretation of Section 31 should be given. In reviewing this matter I came to the same conclusion as the U. S. Solicitor. I am enclosing copies of the first and second pages of the semi-annual evaluation report of our state program, as well as pages 23 and 24, which addresses itself to this problem.

The NIC is respectively requesting an Attorney General's opinion hopefully giving a broad interpretation of Section 31 of A.B. 403. If you have any questions in this area, please feel free to contact me.

Sincerely,

RILEY M. BECKETT
General Counsel

RMB:ss



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENTS OF ADMINISTRATION AND GENERAL SERVICES
BLASDEL BUILDING
CARSON CITY 89701
March 17, 1976

ROBERT LIST
ATTORNEY GENERAL

PATRICK D. DOLAN
DEPUTY ATTORNEY GENERAL

Mr. Riley Beckett
General Counsel
Nevada Industrial Commission
515 E. Musser Street
Carson City, Nevada 89701

Dear Mr. Beckett:

You have requested the opinion of this Office as to providing a broad interpretation of NRS 618.367 in order to protect the identity of non-complaining employees who furnish statements or testimony concerning alleged OSHA violations by employers.

Your request is prompted by the recommendation of the United States Department of Labor in its "Semi-Annual Evaluation Report of the Occupational Safety and Health Program of the State of Nevada (January-June 1975)."

Pursuant to Section 18(h) of the Williams-Steiger Occupational Safety and Health Act of 1970, certain aspects of the federal jurisdiction over occupational safety and health issues may be deferred to state jurisdictions by agreement with the Secretary of Labor. By delegation to the Assistant Secretary for Occupational Safety and Health, See Secretary's Order No. 12-71, 36 F.R. 8754, May 17, 1971, the Assistant Secretary is empowered to approve or reject state jurisdictional plans.

As set forth in 29 C.F.R. §1902.2, "[t]he Assistant Secretary will approve a State plan which provides for an occupational safety and health program with respect to covered issues that in his judgment meets or will meet the criteria set forth in §1902.3."

In 29 C.F.R. §1902.3(a) it is provided that "[a] State plan must meet the specific criteria set forth in this section." This broad, undefined general requirement is elaborated upon for our purposes in §1902.3(d)(1) wherein it is stated:

March 17, 1976

"The State plan shall provide a program for the enforcement of the state standards which is, or will be, at least as effective as that provided in the Act**** Indices of the effectiveness of a State's enforcement plan against which the Assistant Secretary will measure the State plan in determining whether it is approvable are set forth in §1902.4(c)."

In §1902.4(c) it is stated that "[t]he indices for measurement of a state plan with regard to enforcement follow in subparagraph (2) of this paragraph." For our purposes, subparagraph (2)(V) sets forth the enforcement indice for confidentiality as follows:

"Provides necessary and appropriate protection to an employee against discharge or discrimination in terms and conditions of employment because he has filed a complaint, testified, or otherwise acted to exercise rights under the Act for himself or others, by such means as providing for appropriate sanctions against the employer for such actions and by providing for the withholding, upon request, of the names of complainants from the employer."

The 1975 Nevada Legislature amended NRS Chapter 618 by adding NRS 618.367, which states:

"Each employer is entitled to access to any records in the possession of the department which concern such employer. If any such records contain the names of employees who have:

- "1. Submitted complaint notices to the department concerning such employer; and
- "2. Requested that their names remain confidential, the department shall protect the identity of such employees."

Comparison of the language contained in the Williams-Steiger Occupational Safety and Health Act of 1970, 29 C.F.R. §1902.4(c)(2)(V) and NRS 618.367 illustrates that the Nevada law as currently written fully complies with federal requirements.

Any attempt to broadly construe the equivalent language contained in NRS 618.367 to include non-complainants would clash with the general legal definition of complainant and the wording distinction set forth in the above-referenced statutory and regulatory language.

As stated in Black's Law Dictionary, (Rev.'d Fourth Edition 1968) at p. 356:

"In practice. One who applies to the courts for legal redress; one who exhibits a bill of complaint****

"One who instigates prosecution or who prefers accusation against suspected person." [citation omitted]

March 17, 1976

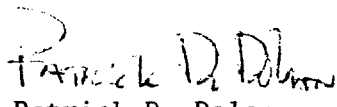
The legal definition is echoed by that commonly ascribed by laymen. See Webster's New Encyclopedic Dictionary of the English Language (1971) at 169.

In addition to the definitional difficulties of giving a broad interpretation to NRS 618.367, the language of 29 C.F.R. §1902.4(c)(2)(V) within the subparagraph distinguishes between an employee who has "filed a complaint, testified, or otherwise acted to exercise rights under the act****" See NRS 618.445(1). It would be presumptuous to determine that the legislature did not intend thereby to differentiate between "complainants" and those who "testified or otherwise acted." Likewise, and in contrast thereto, it would be reasonable to distinguish and provide protection to informers while not similarly shielding those required to bear administrative witness as to facts pertinent to a determination of the employer's compliance with OSHA standards.

In conclusion, it is the opinion of this Office that the protection afforded by NRS 618.367 does not extend to non-complainants who testify or otherwise act in exercise of rights afforded. These excluded individuals are amply protected by virtue of the provisions contained in NRS 618.445.

Very truly yours,

ROBERT LIST
Attorney General


Patrick D. Dolan
Deputy Attorney General

PDD:akb

cc.: Robert List, Attorney General

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Nevada Bell

645 E. Plumb Lane
Reno, Nevada 89505
Phone (702) 789-6102

E. S. Warren
Administration Manager
Public Affairs

February 15, 1977

Senator Thomas R. C. Wilson
Legislative Building
Carson City, Nevada 89710

Dear Senator Wilson:

Senate Bill 170, dealing with OSHA, was referred to your Commerce Committee for consideration on February 1, 1977. Your Committee held a hearing on it on February 9, 1977, and I have now learned of the impact of this legislation on Nevada Bell if passed in its present form. I am very sorry for this delay, but would like to be on record as opposing it in its present form.

In spite of the fact this legislation seems to be directed at the mining industry, it could have an effect on my Company and many others, for that matter. The deletion of Paragraph 2, 618.415, Section 8 removes the employers right to request a temporary variance from an adopted effective standard. None of the new language re-establishes this right.

We feel employers need the right to request a temporary variance from an adopted effective standard when made necessary by such things as remodeling, modifications, design, material procurement or for any other reason which could temporarily prevent compliance with the standard.

For these reasons, I would like to propose that your Committee consider the attached amendment to S.B. 170.

Thank you for your consideration. If you have any questions, I would appreciate the opportunity to answer them.

Yours truly,

Administration Manager

Attachment

AMENDMENT TO NEVADA SENATE BILL NO. 170

Amendment No. 1

On page 5 of the printed bill, line 10 after "chapter" strikeout "but has not become effective"

Amendment No. 2

On page 5, line 14 after "standard" strikeout "by its effective" and on line 15 strikeout "date"

Amendment No. 3

On page 5, line 17 after "completed by" strikeout "that date" and insert "a future date"

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