SENATE
GOVERNMENT AFFAIRS COMMITTEE

Minutes of Meeting - March 25, 1977

Present:

Chairman Gibson
Senator Foote
Senator Faiss
Senator Gojack
Senator Raggio
Senator Schofield

Chairman Gibson opened the twenty-sixth meeting of the Government Affairs Committee at 1:30 p.m. with six of the seven members present. See Attachment #1 for Guest Register.

AB-248
Requires board of county commissioners of certain counties to make agreement with state controller for transfer of intergovernmental payments. (BDR S-233)

Russ McDonald, representing Washoe County, stated that this bill was a partial response to a resolution of the last session of the legislature with the respect to the settlement of intergovernmental payments. Washoe County has consented to institute the pilot program to see just how far we have gone. We have had this in operation about seven months. It has effectively demonstrated with limited accounts that the program will work. The purpose is to carry it forward until October of 1978 at which time there will be a rather overhaul of the financial sections of the law in order to put this into full operation. There may also be some constitutional amendments. Mr. John Crossley, Deputy Auditor with the L.C.B. wrote Mr. McDonald and suggested they use the State Board of Finance as the State in the contract rather than the Comptroller. The county has no objection to this change.

Mr. Wilson McGowan, State Controller, stated that this bill was a fine piece of legislation. We fully endorse the bill. They also have no objection to Mr. Crossley's suggested amendment.

John Crossley, Deputy Auditor, L.C.B. stated that they have three changes to suggest. 1) On line 10, wants to change the Department of Taxation to the Legislative Auditor for reviewing. Our reasons are that it would be our function to review the procedures and it also would allow us to be intune as it affects our whole audit program. 2) On line 5 we did suggest that in line with the study the word "Controller" be bracketed out and be "payments between the State and county." 3) On page 1, line 11 - the "Controller" be taken out and just be transferred to the State. Also on Page 1, line 20 - after the word "report" some language which will include the comments of the Legislative Auditor. The report would still be prepared by the State Controller and the Board of County Commissioners but our comments as far as the accounting procedures

and transfers of the State as it affects the State on our audit program are appropriate and informative to the legislature.

Both Mr. McDonald and Mr. McGowan agreed with the amendments that Mr. Crossley suggested.

Motion of "Amend and Do Pass" by Senator Raggio, seconded by Senator Schofield. Motion carried unanimously.

SB-333
Sets out additional requirements for public meetings.(BDR 19-858)

Senator Gojack stated that the open meeting concept has been one that she has endorsed for some time. Senator Gojack asked Mr. Daykin from the Legislative Counsel Bureau to help her understand the language in Page 3. Some people are misunderstanding the intent as put forth.

Frank Daykin, L.C.B. stated that subsection 2, of Section 8, carves out an exception from the general open meeting principle. It says that the chapter does not prevent a public body from holding executive sessions to consider any of the three matters enumerated in paragraphs A through C.

Pat Gothberg, Commom Cause, read her prepared testimony to the committee. (See Attachment #2). They were in favor of SB-333 with some amendment suggestions. The amendment suggestions follow her written testimony.

Charles Zobel, reporter for the Las Vegas Review and Journal representing the Society of Professional newspersons, Sigma Delta Chi. Mr. Zobel read his testimony to the committee. (See Attachment #3) He further indicated that they unanimously support AB-437. They feel that SB-333 needs some work. Suggested two changes in the definition of the open meeting law noted in Section 2. Our language would read, "Meeting means the gathering of two or more members of a public body whether in one place or by electronic means to discuss or act upon a matter over which the body has supervision, controlled jurisdiction or advisory power. We suggest substituting the word "gathering" for "convening" to prevent public officials from evading the law simply by meeting without officially calling the meeting to order. We also propose elimination of the quorum requirement because it creates an unnecessarily large area of limited application. If the law is limited to where a quorum is present a governmental official could escape the open discussion requirement by talking to each of the members of the public body individually (in private). The public would be left unaware of what alternatives were considered in reaching a decision announced in public.

Feels that in Section 3 we need to have detailed notice to the press of emergency meetings where the public officials may not be able to give three day notification.

They also suggested that in Section 5 the burden of proof should be on the agency rather than on the public. They suggest that the language of AB-437 be replaced with regards to that Section. He noted that in AB-437 they strongly support a provision which would require the removal from office if any public official who participates in an illegal meeting.

Mr. Zobel concluded by requesting consideration of the language in the Brown Act be used for the statement of intent. They feel that this language is much more definitive.

Joe Jackson, representing secretary and member of the United Press Association. They agree with the testimony given by Mr. Zobel. Mr. Jackson had a prepared testimony with suggested amendments. (See Attachment #4)

Senator Raggio questioned the type of language that would have to be used in order to have a closed meeting, Section 8, subsection 2. Wanted to know if a person was under investigation for imbezzlement how would you word the motion in order to have this closed meeting without giving out the person's identity.

Mr. Daykin suggested that the motion would be to move that the session be closed to discuss a charge of imbezzlement which falls under the category of Allegations and General Misconduct.

Senator Gojack stated that after hearing in the Assembly the other day on AB-437 indicated that the problem was with the legislature. Mr. Daykin's opinion stated that if we put a penalty for having an illegal meeting into the statute it would have no force because of the Nevada Constitution. Due to this Senator Gojack had a resolution drawn up which will be introduced Monday regarding the way to treat that situation in the constitution.

Daisy Talvitie, President of the League of Women Voters, testified to the committee, she indicated that they were in favor of this bill and also AB-437. Supported the testimony given by Pat Gothberg for the Common Cause. The questioned the three days notice by mail, thought that five days might be more adequate. Also wanted to have a wider variety of publication. Wants notification to the newspapers. On Page 2, line 17 and 18 would prefer the record being made of the member votes on those matters decided by vote in all cases. On Page 3, line 29 asked if a grand jury always is a judicial proceeding.

Frank responded by stating that a grand jury is not, strictly speaking, a judicial proceeding. Its an investigative proceeding, whether or not it results in the return of an indictment. However, the secrecy of a grand jury proceeding is guaranteed in other statutes.

Ms. Talvitie had other questions on the bill regarding the intent or the meaning to which Frank Daykin responded, clearing up the problems that the League of Women Voters had with the bill.

Warren LeRude, Executive Editor of the Reno Gazette and Journal testified in favor of this bill to the committee. Mr. LeRude agreed with Mr. Jackson's and Mr. Zobel's statements and supported their amendment changes. (See Attachment #5)

Senator Gojack asked Mr. Daykin what he thought the legislative body should be included in SB-333.

Mr. Daykin responded by stating that keeping the legislative body in the NRS you are keeping something in the statutes that really isn't the law. Feels that this could be misconstrued at some time and then be unconstitutional.

Mr. LeRude agreed with Mr. Daykin's opinion and felt that a way around it would be a statement that the legislature encourages by its own desire to follow this legislation.

Senator Gojack then asked Mr. Daykin where this language could be placed in the bill.

Mr. Daykin stated that you could only add this language by amending the Declaration of Policy. It would be purely a matter of policy rather than having a binding force of law. You would amend NRS. 241.010 to indicate that the spirit of the law applies to the legislature.

Pam Wilcox, citizen from Lemmen Valley, Nevada. Ms. Wilcox stated that she likes this bill and feels good that our legislature is setting a good example for the rest of the public serving agencies throughout the state. Ms. Wilcox agreed that the 3 days notice by mail was not enough time. Her suggestion was a full week's notice and three days for a special meeting or changed meeting. In subsection 3, line 7 wants it to state three other prominent "public" places. Also agrees that the newspaper should be one of the places for notification. Ms. Wilcox wants Section 8, subsection 2 to be reworded to make the meaning clearer.

Senator Foote questioned her suggestion of three prominent "public" places. Thought the committee should consider language that would be precise and get the desired results.

Mr. Bill Isaeff, Deputy Attorney General, gave written testimony to the committee on the Attorney General's opinion. (See Attachment #6)

There was no further testimony taken on SB-333 and the committee did not take action during the meeting.

SB-295
Enlarges duties of constables and deputies.(BDR 20-182)

Mr. Louis A. Tabat, North Las Vegas Township, Constable. The reason for the drafting of this bill is that we would like to have sheriff,

constable or another peace officer serve the five day notice, 15 day notices and 30 day notices. Too many landlords have been serving their own papers and there is not sufficient proof that the tennant has received sufficient notice or any notice at all. This will provide the proof necessary when it comes time for the constable to evict the tennant. Notices that in Section 3, page three there is no provision for a constable to have deputies. Would like to have this provided for in the bill. Also on lines 26 through 35 on Page 4 - they prefer the original language and would like those lines deleted from the bill. On line 43, wants the "shall" changed to "may". They would like to be able to serve all papers whether it is the justice court or the district court.

Frank Schenk, Deputy Constable, Dayton's Constable office, had some suggestions to the bill. (See Attachment #7)

Mr. Schenk feels that the constable is an important part of civil law. With the increase in the duties of the sheriff and police the constable can be an important aid to the civil duties that are constantly coming up and this is one of the reasons that we feel on page 4, lines 46 and 47 the language should be optional.

Russ McDonald introduced Mr. Jay Hughes, Chief Deputy with the Washoe County Sheriff's Department. Russ McDonald stated that he objected to the bill and asked if a letter from the Constable's Administration Service Bureau could be entered into the records. (See Attachment #9)

Mr. Hughes stated that they were opposed to several sections of the bill. One main reason is financial, seeks to take the civil process away from the Sheriff which would amount to some $50,000 per year. We serve some six thousand papers free every year for the county agencies. This burden the constable is not willing to assume. The Sheriff does assume this task and we feel that this is another $60,000 which the tax payers would have to pay. I have also been asked by Assistant Sheriff Jacka, Las Vegas Metropolital Police, to voice his objection to the bill for much the same reasons as I have expressed. The impact on his office and the civil papers run in excess of $75,000. per year to the county general fund. (See Attachment #10)

With no further business to discuss the meeting was adjourned at 3:45 P.M.

Respectfully submitted,

Janice Peck

Janice M. Peck
Committee Secretary

Approved:

James H. Gibson

Chairman

SENATE GOVERNMENT AFFAIRS COMMITTEE

GUEST REGISTER

DATE 3-25

PLEASE SIGN - EVEN IF YOU ARE NOT HERE TO TESTIFY.....

NAME	WILL YOU TESTIFY	BILL NO	REPRESENTING
Charles Zobell	yes	SB333	Sigma Delta Chi
Frank A. Schenk	Yes	SB295	Dayton Constables office
Louis A. TABAT	Yes	SB295	N. Las Vegas Township
A. J. Marshall	yes	SB295	N. Las Vegas Township
D. J. Grosser	No		N. L. V. Deputy Constable
Pam Wilcox	YES	SB 333	self
John C. DeGraff	Yes	SB 333	Supreme Court
KEITH NEUMAN	Yes	SB 333	SIERRA ESTATES GEN. IMP. DIST
LUTHER D. BOLLER	YES	SB-333	SIERRA ESTATES GEN. IMP. DIST.
Carol Menger	No	AB 248	Controllers Office
Wilson McGowen		AB 248	Controller Reno
D. M. Ebaugh	Yes	AB	Lafayette, Armstrong, Ebaugh & Co CPA's
PAT GOTHBERG	YES	SB 333	COMMON CAUSE
Ronnie Donaldson	Yes	SB 295 AB 248	Washoe County
Bill ISAEFF	YES	S.B. 333	NEV. A.G.
Joe Jackson	Yes	SB 333	Nevada State Press Assn.
Daisy Talatie	yes	SB333	League of Women Voters
Bob Warren	Yes	"	New League of Cities
GEORGE BENNETT	YES	SB 333	STATE B.D. OF PHARMACY
HEBER P. HARDY	yes	SB 333	P. S. C.
Warren Ca Reid	yes	SB333	

common cause NEVADA

March 25, 1977
Testimony before the Senate Government Affairs Committee
Re: SB 333 / Open Meetings
From: Pat Gothberg, CC / Nevada

Common Cause supports efforts to strengthen Nevada's open meeting law. If citizens are to understand and have confidence in governmental decisions, they must be allowed to observe the processes by which decisions are made. As is stated in California's Brown Act, "The people of this state do not yeild their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so they may retain control over the instruments they have created."

Common Cause encourages your favorable action on this bill with only a few changes. There are some major principles which go into making a sensible and effective open meeting law. Our present law is lacking in certain areas, and SB 333 gets right to the point of correcting those short-comings.

1. No meeting is truly open to the public if the public has no advance knowledge that a meeting is to take place. Section 3 addresses this situation and rightly provides for enough of an advance notice (3 days or 72 hours) so that interested members of the public can arrange their business schedules, arrange to get baby sitters, arrange for transportation, etc.. The more specifics that are outlined in the law, the less likely for non-compliance with the law. SB 333 specifically outlines what is minimum public notice. This is a problem which was discussed during the hearing on AB 437 last week, and we feel that there may be further room for discussion in this area, but at least an attempt has been made to be specific. Also, there will probably be an interest in establishing the language in this section to provide for an exception to the advance notice requirement. We would caution that if an exception is made for so-called emergency meetings, a clear-cut definition of what constitutes an emergency meeting should be included.

2. We endorse, heartily, Section 4 which requires the keeping of minutes of all meetings. The requirement that the substance of all matters proposed, discussed or decided be kept is reasonable as opposed to requiring verbatim transcripts be kept. It is also important that when votes are taken, provision is made for a record of which people voted which way. We can't think of any additional suggestions for this section on minutes; It specifically covers the areas that Common Cause thinks are important.

common cause / NEVADA

3. We are pleased to see a voidability clause in SB 333. Common Cause prefers this language as compared to that in AB 437. We would suggest that the 90 days might be too short of a time during which a suit may be filed.

Our present law needs stronger sanctions, and the provision for commencement of a suit in section 6 is a good addition to our law. This section could be additionally strengthened if wording similar to that in section 5 of AB 437 were included providing for the forfeiture of office of each member of a public body who attends a meeting, knowingly, where action is taken against the provisions of the law.

4. One weak area in our present law is that meetings may be closed for personnel sessions. Common Cause has always recognized that there are reasons for having closed meetings; We do, however, feel that the circumstances under which meetings can be closed should be specifically outlined in the law. This is better for everyone involved. Not only is there less opportunity for misusing the closed meeting exception, but just as importantly, public officials have the assurance of specific language built right into the law. If I were a public official, I would prefer to have as specific an outline as possible for my use in determining if a meeting should be closed, especially if actions of that meeting could be voidable or I could forfeit my office if I closed a meeting against the law. The "personnel session" term is too vague.

Common Cause finds SB 333 to be well written and encourages your favorable action.

SB 333 -- STATEMENT OF THE LAS VEGAS CHAPTER OF THE SOCIETY OF PROFESSIONAL JOURNALISTS - SIGMA DELTA CHI

My names in Charles Zobell. I am a reporter for the Las Vegas Review-Journal, but today I speak on behalf of the Las Vegas Chapter of the Society of Professional Journalists - Sigma Delta Chi.

As professional news persons, we are committed not only to accurate and objective reporting, but also to constant and vigorous defense of the people's Constitutional right to know.

We firmly believe that the success of a representative democracy requires an educated electorate; that to make wise decisions, the voters must know what their elected and appointed officials are doing with their government.

The responsibility of informing the public is ours, but we cannot fulfill that responsibility when the public's business is conducted behind closed doors.

Our rationale for supporting a strong, comprehensive open meeting law is basic.

First, the people do not give up their sovereignty to the government that serves them.

Second, the people, in delegating their authority, do not give their public servants the right to decide what is good for them to know and what is not good for them to know.

And third, the people's right to remain informed, must be protected so that they may retain control over the government they have created.

842 #3

Some may say that we already have an open meeting law and ask why we need to change it.

Our experience in reporting the activities of government, particularly at the local level, gives us a clear answer to that question.

The law is vague and that vagueness has encouraged numerous violations.

~~Just last week, for example, the district court~~

Just three weeks ago, for example, the Eighth District Court ruled that the North Las Vegas City Council violated the law when it met in secret last year to fire several administrative officials.

And last month, Attorney General Robert List issued an opinion stating that the Las Vegas City Commission violated the law when it met behind closed doors in December to discuss a personnel reclassification study.

The Clark County Commission often meets in secret, under the guise of a personnel session, to discuss the public's business. The commission also evades the open meeting law by simply calling special meetings without notifying the press.

Many local officials argue the law does not require them to deliberate in public and they object when the statute is interpreted strictly to prevent even their discussions of public matters in social gatherings.

Government leaders, I'm sure, will agree that the present law is inadequate because it does not define meeting and because it is not entirely clear on what governmental bodies are covered.

Our chapter of Sigma Delta Chi, which represents Southern Nevada journalists in both the print and electronic media, met two weeks ago to discuss the numerous bills that propose changes in the Open Meeting Law. After considering each proposal section by section, we voted unanimously to support Assembly Bill 437.

We do, however, find many positive provisions in Senate Bill 333, and urge passage of the measure with certain amendments.

Section 2 of the bill contains a clear definition of "meeting" which requires both discussion and action to be done in public. To further protect against violations of the law, however, we suggest two changes in the definition.

Our langauge would read: "'Meeting' means the gathering of two or more members of a public body, whether in one place or by electronic means, to discuss or act upon a matter over which the body has supervision, control, jurisdiction or advisory power."

First we suggest substituting the word "gathering" for "convening" to prevent public officials from evading the law simply by meeting together without officially calling the meeting to order.

Second, we propose elimination of the quorum requirement because it creates an unnecessarily large area of limited application.

If the law is limited to meetings where a quorum is present, a governmental official could escape the open discussion requirements by talking to each of the members of the public body individually in private. The public would be left unaware of what alternatives were considered in reaching a decision announced in public.

We support Section 3, which requires advanced notice of all meetings. No longer could public officials say "Well, the door was open. Can we help it if you don't know about the meeting?"

The section does, however, need a specific and detailed provision for notice to the press of emergency meetings where the public officials may not be able to give three-day notification.

~~Section 5 makes any violation of the open meeting law "voidable" by a district court.~~

~~We believe AB 437, which "voids~~"

Section 5 makes any action taken in violation of the open meeting law "voidable" by a district court. This places the burden of proof on the public instead of on the agency where it should rest. We suggest, instead, the language of AB 437, which would automatically void any action taken in violation of the law.

A structural problem exists in Section 8, which details the exceptions to the open meeting law. It is not clear if subsection 2, which calls for a two-thirds vote of a public body to close a meeting, applies to any meeting or only to the exceptions to the law.

The concept is good, but it must apply only to the three

circumstances under which a public body can close its meetings.

And finally, we question if SB 333 retains the misdemeanor penalty for anyone who violates the Open Meeting Law.

We strongly support a provision of AB 437, which would require the removal from office of any public official who participates in an illegal meeting.

Removal from office may seem like a harsh price to pay, but public officials are going to continue to violate the open meeting law if there is not a provision strong enough to keep them from closing the doors.

In summary, we urge you to protect the people's right to know by giving SB 333 a "do pass" recommendation with the amendments we have suggested. Thank you.

also - statement of legis intent
at first of ~~bill~~ law.
- suggest Brown Act language

Sigma Delta Chi
UNIVERSITY OF NEVADA CHAPTER
DEPARTMENT OF JOURNALISM
RENO, NEVADA 89507

The University of Nevada, Reno chapter of the Society of Professional Journalists, Sigma Delta Chi, has voted unanimously to endorse SB 333. We believe this bill will both protect the public's right to know and allow the government to operate without being crippled.

However, our chapter wishes to request one amendment to the bill. As written, the bill does not include the student governments at the schools in the University of Nevada system. The student governments act in advisory roles to the regents and are responsible for most of the activities and programming on campus. The governments on the UNR and UNLV campuses both have annual budgets of over $300,000 to spend.

In 1967, the Brown Act in California was amended to include student governments when it was discovered that the act was not applicable to them.

We respectfully request the committee to include the student governments in the University of Nevada system in this bill.

We suggest language be added to Section 2, Subsection 2 (Page 1, Line 16) such as:

The official student governments of the University of Nevada system, and any of their subdivisions, shall be considered a public body.

We thank the committee for the opportunity to present this request.

Sigma Delta Chi
UNIVERSITY OF NEVADA CHAPTER
DEPARTMENT OF JOURNALISM
RENO, NEVADA 89507

The University of Nevada, Reno chapter of the Society of Professional Journalists, Sigma Delta Chi, has voted unanimously to endorse SB 333. We believe this bill will both protect the public's right to know and allow the government to operate without being crippled.

However, our chapter wishes to request one amendment to the bill. As written, the bill does not include the student governments at the schools in the University of Nevada system. The student governments act in advisory roles to the regents and are responsible for most of the activities and programming on campus. The governments on the UNR and UNLV campuses both have annual budgets of over $300,000 to spend.

In 1967, the Brown Act in California was amended to include student governments when it was discovered that the act was not applicable to them.

We respectfully request the committee to include the student governments in the University of Nevada system in this bill.

We suggest language be added to Section 2, Subsection 2 (Page 1, Line 16) such as:

The official student governments of the University of Nevada system, and any of their subdivisions, shall be considered a public body.

We thank the committee for the opportunity to present this request.

COMMENTS by Nevada State Press Association before Senate ~~Judiciary~~ GOVERNMENT AFFAIRS
Committee re Senate Bill 333, March 25, 1977

IN PRINCIPLE

Senate Bill 333 has the hearty endorsement of the Nevada State Press Association with ~~the exception of~~ a few suggested changes. The bill must be regarded as the most significant piece of openmeeting legislation ever offered in this state and that includes the first open meeting bill presented by then Elko Assemblyman Gene Evans.

At the outset, let it be noted that the Nevada State Press Association is basically opposed to permitting any public body to close a public meeting of any kind, even personnel sessions. We believe the bill offered by Mr. Evans erred when it permitted this exception, because the provision has been abused many times and if left intact, will continue to be abused. But we also believe that there's no way any bill can be passed without some sort of personnel session provision, and so we support SB 333 because it attacks this problem by limiting closed sessions to an absolute minimum. A public body is not required to hold a closed meeting, and the person who is the subject of consideration may request that it be conducted at a public meeting; nothing in this bill requires that such a request be granted, however, and perhaps an amendment nailing this down might be considered. NSPA is supportive of the provision that it takes a two-thirds vote of the members of a public body to close a meeting. Such a vote must be taken at an open meeting, and the subject to be considered must be specified in the closure motion. The provision that the appointment of a public officer or public body cannot be discussed at a closed meeting is also supported.

The subsection nailing down the meaning of meeting, public body and quorum also has our support. So does Section 3, requiring ... each public body give written notice of its schedule of meetings at the start of each calendar year, and give written public notice of regular, special or rescheduled meetings no later than 3 days before the meeting including the time, place and agenda. NSPA believes the written notices at the start of the calendar year should be inserted in the newspapers as paid public notices and earnestly requests that such notices be given consideration in preparing any possible amendments to the bill. It might be of even more importance to insert the notices of regular, special or rescheduled meetings in the newspapers as paid public notices, insuring wider notification.

SB 333 is commendable in going beyond the bare provision that actions taken at an invalid meeting are void. SB 333 provides that such actions are voidable, but leaves it up to the district court to decide... This is a very important provision. To provide that an action is void is all very well, but the matter should be authenticized by a court of competent jurisdiction. Making the attorney general the enforcer lends more weight to the open meeting concept; someone should be required to keep an eye on public bodies and the attorney general seems to be the logical official who is in the best position to take action. Section 5 requires a suit seeking to void an action must be commenced within 90 days after the action was taken. This provision seems reasonable. We wonder if it would be possible to ammend the section to provide that court suits could be brought later if the invalidity of a meeting was in fact not discovered until after the expiration of the 90 days limit -- maybe this would open the door to all sorts of problems.

NSPA heartily endorses the provision in subsection 3 of Section 4 allowing all or any part of any public meeting to be recorded on audio tape so long as this doesn't interefere with the conduct of the meeting. Reporters have been taping committee meetings since this legislative session started and

849 #4

ave disturbed no one. Use of the recorders has resulted in clearer, more oncise reporting to the benefit of everybody. It seems ridiculous in this electronic age that some public bodies refuse to allow tape recordings of their meetings, but some do. Spelling out what the minutes of meetings must say and making the minutes available for public inspection within a reasonable time is also commendable.

SB 333 is a good bill. NSPA believes it could be made stronger by amending in some of the provisions of Assembly Bill 437, on which hearings were held last week before the Assembly Government Affairs Committee. AB 437 addresses NRS 241.010 expressing intent of the Legislature that all public bodies exist to aid in conduct of the public's business and their meetings should be open. SB 333 does not concern itself with this section. Presumably 241.010 would still be in the public meeting law. Section 5 of AB 437 requires that each member of a public body who attends a meeting of that public body where action was taken in violation of any provisions of this chapter with knowledge of the violation is guilty of a misdemeanor and forfeits his office. Amending SB 333 to include this provision would give it real clout although the word "knowingly" provides too broad an avenue for escape. During the Assembly hearing considerable interest was shown in amending the phrase "public body does not include the Legislature" to read "public body includes the Legislature." Frank Daykin told the committee this couldn't be done, or if done would have no meaning because the state Constitution permits executive sessions of the Senate. Two bills providing for consitutional changes requiring ll meetings to be opened have appeared in the Assembly this session. JR 32 was killed last week because it was deemed toosevere and all-mbracive. A hearing will be held March 28 on AJR 15 seeking a vote of the people on whether executive sessions of the Senate should be disallowed and meetings of any committee of either house should be open.

One more provision which could strengthen this bill would be the insertion in Section 8 after line 38 on Page 3 of language prohibiting binding action during a closed personnel session, such as "No binding action shall be taken during closed or executive sessions and such sessions shall not be used as a subterfuge to defeat the purposes of this act." There are those who haven't been following the spirit of the law and the NSPA would urge the Nevada State Legislature to say to them "we want you to follow the spirit of the law as well as the legality." We feel the law can only be as good as those citizens who are willing to challenge those who aren't following the law.

Respectfully submitted

Joe Jackson

Joe Jackson
Secretary-Manager
Nevada State Press Association

say he/she here late wants to testify.

Reno Newspapers, Inc.

Publishers of RENO EVENING GAZETTE and NEVADA STATE JOURNAL (Morning and Sunday)

P. O. Box 280
RENO, NEVADA
89504

March 30, 1977

Nevada Senate
Government Affairs Committee

Committee Members:

We endorse SB 333 as one of the more sincere efforts to bring government more into the public view. We believe SB 333 contains several desirable provisions to improve Nevadans' open meeting law.

Among the provisions we specifically endorse are those which include advisory boards as public bodies, an important addition in these days of expanding government; the improved terms of what a meeting is, including by electronic means; the requirement to give written notice of meetings; the specific terms of where those notices are to be posted; the requirement to keep minutes for public records; and the process to void action taken at illegal meetings.

We suggest the 90-day limit for bringing suit to void illegal actions be changed to start the time from the date the closed meeting is discovered rather than from the date the meeting was held.

Although we are against any closed meeting, and the provision allowing "executive sessions" has been abused over the years, we salute the paragraph bringing discussion of appointment of persons to public posts into the public view.

As we did in our thoughts to the Assembly members considering an open meeting bill, we urge a review of the ideas suggested in the "other house". We especially recommend consideration of the penalty provision outlined in AB 437.

Hopefully members from the Senate and the Assembly will consider the best from all open meeting bills to produce the best legislation in the highest interest of the public.

Sincerely yours,

Warren L. Lerude
Executive editor
Reno Evening Gazette and
Nevada State Journal

S.B. 333

Sec. 2 (1) "meeting" - requires validity of meetings by electronic means

Sec. 3 (1) many entities covered by this bill do not meet regularly - suggest bill be amended to read "Each public body required by law to meet regularly shall give written public notice ..."

(1) requiring the annual notice to specify time & place as much as a year in advance of a meeting seems a bit unreasonable & unnecessary when additional notice required by (2)

Sec. 3 (2) 3 day notice requirement — no provision for emergency meetings when circumstances require — example: prison riot & governor wishes to convene Bd of Prison Commissioners — suggest 24 hours notice w/ waiver of any notice for emergencies

Sec. 4 (2), line 25: insert after NRS 241.032 "or any other statute applicable to a particular public body" — to be consistent with exception contained in sec. 7 of S.B. 333

#6

Sec 5 - an excellent & proper way to handle the question of the validity of acts taken in violation of the law

Sec 6. - unclear what type of enforcement action by A.G. is expected here suggest more specificity as to what you want A.G. to do + power of A.G. to do it. - what local gov't units are involved should this be a state - C.C. draft says "gov

Sec. 7 - purports to prohibit any private meetings by gov't agencies unless a statute specifically authorizes a private meeting -

(1) Committee should take care to insure that all subjects which should properly be handled in executive session are included in exemptions - ex: school disciplinary hearings involving juveniles similar to juvenile court proceedings

(2) privilege of gov't agency to meet w/ its legal counsel to discuss threatened or pending claims & litigation seems to both the public interest & the public treasury if should legal discussions must be public - while private parties meet in private - gov't agencies should not be

required to telegraph their strategies & tactics to their opponents in litigation — can't see this type of private discussion not as much as exceptions to open meeting laws, but as a corollary rule of law which is harmonious with the spirit & intent of open meeting laws — Fla. probably has strongest "sunshine law" of any state & it expressly contemplates privilege of attorney-client extending to gov't agencies - their counsel - also Minnesota.

Sec. 8 - line 13 - missing commas

(1) from Common Cause draft bill - items must discuss physical or mental health of people at a public meeting - is this your intent?

again, as the committee sees it has included all the areas that properly should be closed to the public in the interest of personal privacy.

Sec. 8 is a substantial departure from present law

(2) since subsection 1 is not the only authority for closed meeting —

lines 21-22 of page 3 should be amended to read: "which specifies the subject of consideration and the authority under which the meeting will be conducted."

(3) possible conflict between lines 13-14 & 37-38

Wisc. Stats. Ann.

body, during a recess in such meeting or immediately after such meeting for parent governmental body shall publicly announce the time, place and subject the purpose of discussing or acting upon a matter which was the subject of that meeting of the parent governmental body. The presiding officer of the matter of the meeting of the subunit in advance at the meeting of the parent body.

Source:
L.1975, c. 426, § 1, eff. July 2, 1976.

19.85 Exemptions

(1) Any meeting of a governmental body, upon motion duly made and carried, may be convened in closed session under one or more of the exemptions provided in this section. The motion shall be carried by a majority vote in such manner that the vote of each member is ascertained and recorded in the minutes. No motion to convene in closed session may be adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under this subsection by which such closed session is claimed to be authorized. Such announcement shall become part of the record of the meeting. No business may be taken up at any closed session except that which relates to matters contained in the chief presiding officer's announcement of the closed session. A closed session may be held for any of the following purposes:

(a) Deliberating after any judicial or quasi-judicial trial or hearing.

(b) Considering dismissal, demotion, licensing or discipline of any public employe or person licensed by a board or commission or the investigation of charges against such person, or considering the grant or denial of tenure for a university faculty member, and the taking of formal action on any such matter: provided that the faculty member or other public employe or person licensed is given actual notice of any evidentiary hearing which may be held prior to final action being taken and of any meeting at which final action may be taken. The notice shall contain a statement that the person has the right to demand that the evidentiary hearing or meeting be held in open session. This paragraph and par. (f) do not apply to any such evidentiary hearing or meeting where the employe or person licensed requests than an open session be held.

(c) Considering employment, promotion, compensation or performance evaluation data of any public employe over which the governmental body has jurisdiction or exercises responsibility.

(d) Considering specific applications of probation or parole, or considering strategy for crime detection or prevention.

(e) Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.

(f) Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par. (b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.

(g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.

(h) Consideration of requests for confidential written advice from the ethics board under s. 19.46(2), or from any local government ethics board.

(2) No governmental body may commence a meeting, subsequently convene in closed session and thereafter reconvene again in open session within 12 hours after completion of the closed session, unless public notice of such subsequent open session was given at the same time and in the same manner as the public notice of the meeting convened prior to the closed session.

(3) Nothing in this subchapter shall be construed to authorize a governmental body to consider at a meeting in closed session the final ratification or approval of a collective bargaining agreement under subch. IV or V of ch. 111 which has been negotiated by such body or on its behalf.

Source:
L.1975, c. 426, § 1, eff. July 2, 1976.

19.86 Notice of collective bargaining negotiations

Notwithstanding s. 19.82(1), where notice has been given by either party to a collective bargaining agreement under subch. IV or V of ch. 111 to reopen such agreement at its expiration date, the employer shall give notice of such contract reopening as provided in s. 19.84(1)(b). If the employer is not a governmental body, notice shall be given by the employer's chief officer or such person's designee.

Source:
L.1975, c. 426, § 1, eff. July 2, 1976.

19.87 Legislative meetings

This subchapter shall apply to all meetings of the senate and assembly and the committees, subcommittees and other subunits thereof, except that:

(1) Section 19.84 shall not apply to any meeting of the legislature or a subunit thereof called solely for the purpose of scheduling business before the legislative body; or adopting resolutions of which the sole purpose is scheduling business before the senate or the assembly.

(2) No provision of this subchapter which conflicts with a rule of the senate or assembly or joint rule of the legislature shall apply to a meeting conducted in compliance with such rule.

(3) No provision of this subchapter shall apply to any partisan caucus of the senate or any partisan caucus of the assembly, except as provided by legislative rule.

Source:
L.1975, c. 426, § 1, eff. July 2, 1976.

19.88 Ballots, votes and records

(1) Unless otherwise specifically provided by statute, no secret ballot may be utilized to determine any election or other decision of a governmental body except the election of the officers of such body in any meeting.

(2) Except as provided in sub. (1) in the case of officers, any member of a governmental body may require that a vote be taken at any meeting in such manner that the vote of each member is ascertained and recorded.

(3) The motions and roll call votes of each meeting of a governmental body shall be recorded, preserved and open to public inspection to the extent prescribed in s. 19.21.

Source:
L.1975, c. 426, § 1, eff. July 2, 1976.

19.89 Exclusion of members

No duly elected or appointed member of a governmental body may be excluded from any meeting of such body. Unless the rules of a governmental body provide to the contrary, no member of the body may be excluded from any meeting of a subunit of that governmental body.

Source:
L.1975, c. 426, § 1, eff. July 2, 1976.

SB-295

CIVIL PROCESS

ERIOD I

I INTRODUCTION

Often a call will come to a city policeman " Meet a sheriff's officer " or " Disturbance over a repossession " producing a reluctant response by a confused patrolman , who considers the situation " a civil matter ". Little attention to " civil matters " involving service of process is given during in service training and policemen have developed an erroneous folklore from rumor and instinct.

It is the duty of the sheriff and his deputies in 49 states to serve all process to them directed and delivered from courts of record, usually a District, Circuit , or Superior Court. In 44 states the Constable has simular duty to the Justices of the Peace, or Magistrates in courts not of record . United States Marshals and their deputies perform like functions for the federal Courts. In many states private persons , usually called " process servers " are authorized by statute to execute these functions respecting certain classes of process and possess the same authority as regular officers of the court, and are peace officers respecting the service of judicial process.

It may appear to the arriving policeman that a conflict of office arises. Normally this is not true. Civil officers are usually fully sworn peace officers like the policeman but are also executive officers of the court and obtain extraordinary powers from the process they possess. The judicial process is a precept of the court, and is superior to the usual restriction of " keeping the peace ", invasion of privacy and trespass. A civil officer armed with a judicial process, while not an invitee of the recipient, is not a trespasser, but a licensee - that is, one authorized by law and protected by the process to perform acts which might otherwise constitute trespass, larceny or more serious crimes.

A civil officer possessing process " valid on its face " , that is free from patent defects, is afforded immunity for his acts , and may call to his aid all adult citizens to assist him in executing his precept - including the policeman who was called to investigate " a disturbance". Penal provisions sanction a citizen or policeman who fails to assist a civil officer, and who willfully refuses to act as his posse comitatus.

A policeman who interferes wrongfully with the service of judicial process is amenable to arrest for obstructing justice , liable for contempt of the court that tested the writ, and answerable in civil damages to the party that sued out the process.

SB 295

WASHOE COUNTY

"To Protect and To Serve"

1205 MILL STREET
POST OFFICE BOX 11130
RENO, NEVADA 89510
PHONE: (702) 785-4179

OFFICE OF THE COUNTY MANAGER

March 16, 1977

Mr. Russell W. McDonald
Special Assistant to the
Washoe County Commissioners
Post Office Box 11130
Reno, Nevada 89510

Dear Russ:

At the Washoe County Board of Commissioners' meeting of March 15, 1977, Chief Deputy Sheriff Jay Hughes appeared before the Board in reference to Senate Bill 295. Among other matters, SB 295 on Page 4, Section 5, beginning at Line 36, amends existing NRS 258.030 to provide that Constables and any Deputy Constables shall "serve all mesne and final process issued by a Justice of the Peace in any action or proceeding, or by a District Court in any civil action or proceeding for service in his township."

The Board discussed the matter thoroughly and based upon information provided by Chief Deputy Sheriff Hughes, adopted a position in opposition to SB 295. The Board further requested that this information be made known to you and that you be instructed to appear at the hearing scheduled for March 16, 1977 in connection with this bill, and state the County's position in opposition to SB 295.

While other points of SB 295 were discussed, such as the provision which deletes the ability of Boards of County Commissioners to abolish the office of Constable, the basic position of the Board was developed based upon the provisions contained in paragraph one of this letter.

If you should have further questions concerning this matter, do not hesitate to contact me directly.

Sincerely,

John A. MacIntyre
Washoe County Manager

JAM/rl
cc: Washoe County Commissioners

859

MEMORANDUM

March 16, 1977

TO: Robert J. Galli, Sheriff

FROM: Jay S. Hughes, Chief

SUBJ: Senate Bill 295

Senate Bill number 295, by its nature, is contradictory in some areas where it gives additional powers, or duties, to the Sheriff or Constable, and then attempts to take away the power of the Sheriffs in the service of civil process in both the Justice and District Courts.

It would appear that this act would be putting Constables into the criminal area by making all Deputy Constables peace officers at a time when the legislature is attempting to reduce this early retirement category.

Since territorial times the Sheriffs in the counties of Nevada have enforced the laws of Nevada and acted as the enforcement arm of the Justice and District Courts. The fees collected by the Sheriffs are turned over to the County Treasurer to be deposited in the County General Fund.

On the other hand Constables and Deputy Constables are paid on a fee basis received from the service of civil process and monies so received are retained by the Constable's office. This bill proposes to take the service of the civil process away from the Sheriff and in the case of Washoe County would amount to a loss of approximately $50,000. per year in fees.

I would strongly oppose the creation of another law enforcement body within the State, who for the most part would not be properly trained or equipped to perform the law enforcement functions without a substantial expenditure of public funds to create <u>another</u> duplicate service.

By Jay S. Hughes
Chief, Administrative Service Bureau

JOHN J. HART
Constable of Reno Township
Washoe County Courthouse
P. O. BOX 11130
RENO, NEVADA 89510
785-4221

March 15, 1977.

To: Captain Glenn Vogler, Washoe County Sheriff Dept.

From: John J. Hart, Constable, Reno Township

Subject: Senate Bill 295

This office has two objections to place before the Senate Committee on Government Affairs pertaining to SB 295.
Number one would pertain to the section that would exclude the Sheriff serving civil matters out of the District Courts. This could diminish the quality of service if either the Sheriff or the Constable was excluded from this function.

We strongly object to the section giving the County Commissioners the power to abolish the office of Constable in any County having a population of more than 200,000 or less than 100,000. This would especially effect Reno and Sparks in Washoe County, where both of these offices are important to the community and are extremely busy carrying out their daily duties.

The one section of SB 295 that we DO FAVOR is the section that would require the Sheriff or the Constable to serve all 5 day (quit) and Termination notices pertaining to non-payment of rent. served
There have been some cases where the landlords have not the 5 day Quit notices according to law.

As to the other matters contained in the bill, I have no comment, either for or against.

John J. Hart

John J. Hart
Constable, Reno Township

RALPH LAMB, *Sheriff*

JOHN T. MORAN, *Undersheriff*

Las Vegas Metropolitan Police Department

400 East Stewart Avenue
LAS VEGAS, NEVADA 89101
Phone 702/385-4711

Reference

March 23, 1977

Senator James Gibson, Chairman
Senate Government Affairs Committee
Nevada State Legislature
Carson City, Nevada 89701

Dear Senator Gibson:

Your Committee is scheduled to hear testimony, Friday, March 25, 1977, regarding SB 295. The purpose of this correspondence is to indicate to you this Officer's inability to attend this hearing, due to labor negotiations previously scheduled in the Las Vegas area. It might be noted, this Officer was in fact in attendance for testimony when said bill was originally scheduled.

Sheriff Ralph Lamb has indicated his disapproval of the concept outlined in SB 295, which extends the authority of the Constables and their Deputies in the service of Civil Process.

The Office of the Sheriff, as originally constituted in 1864, clearly assumed the responsibility statutorily for the service of all legal process emanating from District Court. This legislation proposes to take this responsibility away from the Office of the Sheriff and transmit it to the Constable.

As outlined in the attached memorandum, dated March 7, 1977, from Mr. Beverly Perkins, Director, Clark County Sheriff's Civil Bureau, this legislation would in fact create a monetary loss to Clark County specifically, but all counties in general.

As oftentimes noted, Sheriff's personnel are specifically selected and trained extensively to carry out their responsibilities, whether said responsibilities are civil or criminal in nature. Experience has shown that, in some instances, personnel employed by Constables do not receive the type of training necessary to assume such broad responsibilities as suggested in SB 295.

Senator James Gibson

The views of the Clark County Sheriff are shared equally by the Washoe County Sheriff. In some instances the Sheriffs in other counties throughout the state are designated as ex-officio constables, so many of the conflicts noted in SB 295 do not arise.

In past sessions of the Legislature, consideration has been given to eliminating the office of the Constable where no specific need was shown. It is this Officer's belief that, rather than enhancing the responsibilities of the Constables and their Deputies, a continued review as to their present responsibilities might be in order.

Very truly yours,

RALPH LAMB, SHERIFF

By: Barton Jacka
Assistant Sheriff

RL/BJ/gm

RALPH LAMB
Sheriff

OFFICE OF THE SHERIFF
COUNTY OF CLARK
Las Vegas, Nevada 89101
386-4011 Ext. 237

B. W. PERKINS
Director
Civil Bureau

MARCH 7, 1977

TO : BARTON JACKA
ASSISTANT SHERIFF

FROM : BEVERLY W PERKINS
DIRECTOR, SHERIFF'S CIVIL BUREAU

SUBJECT : SENATE BILL NUMBER 295

SENATE BILL NUMBER 295 DATED MARCH 2, 1977, INTRODUCED TO NEVADA STATE SENATE BY SENATORS SCHOFIELD, ECHOLS, FAISS AND JOE NEAL HAS A PRIMARY PURPOSE OF GIVING ADDITIONAL POWERS TO CONSTABLES AND TAKING AWAY POWERS OF THE SHERIFF OF A COUNTY. THE BILL AS INTRODUCED WOULD GIVE THE CONSTABLES COMPLETE AUTHORITY CONCERNING ALL CIVIL MATTERS AND PROCESS IN JUSTICE AND DISTRICT COURTS. THE AMENDMENTS TO NRS 258.070 GIVES CONSTABLES COMPLETE AUTHORITY CONCERNING BOTH CIVIL AND SOME CRIMINAL MATTERS. ALL OF PARAGRAPH 2 OF SECTION 6,WHICH GIVES SHERIFFS CERTAIN POWERS WOULD BE DELETED. ALL OF NRS 248.250 IS REPEALED BY SENATE BILL NUMBER 295.

THE BILL AS INTRODUCED WOULD IN EFFECT MAKE THE CONSTABLES THE LAW ENFORCEMENT ARM OF DISTRICT COURTS AS WELL AS JUSTICE COURTS. IT IS AIMED AT TAKING AWAY THE INHERENT POWERS OF COUNTY SHERIFFS THAT HAVE BEEN EFFECT SINCE 1864.

AT THE PRESENT TIME, FEES IN THE APPROX. AMOUNT OF $75,000.00 EACH YEAR ARE EARNED AND PLACED IN THE ACCOUNT OF THE CLARK COUNTY TREASURER BY THE CLARK COUNTY SHERIFF'S CIVIL BUREAU. THIS AMOUNT OF MONEY WOULD NOT BE AVAILABLE WITH THE PASSAGE OF SENATE BILL NUMBER 295. CONSTABLES AND DEPUTY CONSTABLES SALARIES ARE PAID ON A FEE BASIS AND MONEY MADE BY SERVICE OF PROCESS IS RETAINED BY THE CONSTABLES OFFICE.

ANOTHER QUESTION POSSIBLY WOULD ARISE WITH THE PASSAGE OF SENATE BILL NUMBER 295. THIS ENVOLVES THE COUNTLESS NUMBERS OF STATE OF NEVADA CASES OF A CIVIL NATURE IN BOTH JUSTICE AND DISTRICT COURTS. THIS TYPE OF PROCESS IN MOST INSTANCES IS SERVED BY SHERIFF$ AND DEPUTY SHERIFFS OF ALL 17 COUNTIES AND NO FEES ARE PAID FOR SERVICE BY THE STATE OF NEVADA. IF THE CONSTABLE IS GIVEN COMPLETE AUTHORITY REGARDS ALL PROCEEDINGS IN BOTH JUSTICE AND DISTRICT COURTS, DO THEY ASSUME THE DUTY OF SERVING ALL NO FEE PROCESS ALSO?.

IN CONCLUSION, MANY RAMIFICATIONS AND UNCERTAINTIES POSSIBLY WOULD BE CREATED BY PASSAGE OF SENATE BILL NUMBER 295. IT WOULD APPEAR THAT CERTAIN INDIVIDUALS DESIRE PASSAGE OF THE BILL FOR PERSONAL REASONS.

Beverly W Perkins
BEVERLY W PERKINS
DIRECTOR, SHERIFF'S CIVIL BUREAU