

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

FEBRUARY 24, 1977

The meeting was called to order at 9:03 a.m. Senator Close was in the chair.

PRESENT: Senator Close
Senator Bryan
Senator Ashworth
Senator Dodge
Senator Foote
Senator Gojack
Senator Sheerin

ABSENT: None

SB 224 Provides for writ of garnishment in aid of writ of execution.

Testimony was presented before the Committee by the following:

Senator William Raggio stated that this is an attempt to put into the statute what is probably an existing practice, but the present statutes are silent. Where personal property is attached, a writ of garnishment has to be issued for the sheriff to attach personal property in the possession of a third person. The writ of execution itself is issued by the court and that has to be done before the sheriff can pursue the property. It requires a writ of garnishment issued by the sheriff against the third person in possession and all this does is put it into the statute so there isn't any doubt about it, and I feel this is the proper way. Somebody asked why it was limited to the sheriff and didn't say constable. He stated he hadn't checked on this, but he assumes if the sheriff can issue a writ of garnishment then the constable could as well. He stated he would have no objection if an appropriate kind of amendment was made to cover this.

Senator Bryan asked if he were saying here that the plaintiff has secured a judgment, a writ of execution has been obtained pursuant to that and we are talking about a writ of garnishment in aid of execution?

Senator Raggio stated that the statute is silent. After the writ of execution is delivered to the sheriff there is nothing in the statute. This then would clarify that the sheriff then issues a writ of garnishment against the third party

After further discussion by the Committee Senator Dodge moved amend and "do pass".

Seconded by Senator Ashworth.
The motion carried unanimously.

SB 225 Limits preemptive rights of corporate shareholders.

Senator Raggio stated this was an attempt to specify for, not only corporations in existence or to be formed, persons who come to this State for various reasons and in this particular area we ought to make our statute clear as to just what preemptive rights are available unless otherwise provided in the respective articles of incorporation. This attempt comes from the Model Corporation Code dealing with this subject. This language provides in this draft that unless it is limited by this particular section, or by the articles. There is always the right under the articles to do whatever you want, but the shareholders have a preemptive right as to unissued shares or treasury shares or convertible securities of the company. Sub-section 2, unless it is provided in the articles, clearly states the situation where preemptive right does not exist and they are rather self-apparent as to what they ought to be. For example: bonus shares issued for bonus or shares issued for services or something other than cash, where obviously a preemptive right shouldn't exist, and where the shareholders should know that these situations can occur and their preemptive rights do not apply.

Russell McDonald, Washoe County stated he had drafted a proposed bill and the request was in Mr. Daykin's office. What it purports to do is an attempt to limit corporate stockholders to purchase new stock if the sale was registered pursuant to the Securities Exchange Act, in other words publicly traded stock. So he would endorse what Senator Raggio says. He has proposed an amendment to the Committee by adding in paragraph 5 lines 22 and 23 which in effect would follow the pattern of the bill as drafted to say; "to acquire any shares then registered pursuant to Section 12 of the Securities Exchange Act of 1934".

Cassy Blotten stated he was speaking in favor of the amendment. Preemptive rights is an exception throughout the states, not the general rule. Nevada has tried to create a favorable corporate climate. These rights are a protection for the minority shareholder against dilution of his interest. In a publicly traded corporation an individual can maintain his relative percentage in the corporation by purchase of shares on the open market. He stated that a publicly traded company is one with over 300 shareholders or a million dollars in assets.

Senator Ashworth moved amend and "do pass".
Senator Dodge seconded the motion.
The motion carried unanimously.

Senator Bryan stated that Judge Thompson would be in to-morrow and perhaps they could get some input from him on this. It was the consensus of the Committee that they would hear further testimony on this tomorrow from Judge Thompson.

SB 226

Authorizes sheriffs to break open building or enclosure to take possession of property.

Testimony was presented before the Committee by the following:

Senator William Raggio stated that this merely gives the sheriff the authority in the area of attachments as he already has in the area of executions. He stated that under a writ of attachment if the alleged debtor refuses to deliver, then this give him the right to acquire the property.

Capt. Glen Vogler, Washoe County Sheriffs Office stated there were two areas they had some concern over. The first was in 3A. Since this is a prejudgment writ this is not allowing for an eviction process, and in order to take an occupied mobile home you would have to evict. The second objection was in section 5. They feel it is placing too much liability on the sheriff. Once you pick up personal property, third party claim-ents start coming forth, and to destroy property to get into it and then have a third party claim it, would place the liability on the sheriff.

Senator Dodge asked if they ran into this situation very often where you are attempting to serve a writ on somebody or attempting to enter to attach certain property and he locks the door on you?

Capt. Vogler stated that if you are after personal property at somebody's residence it is very seldom they will invite you in. Also there have been a large amount of judgments that have been entered against people who have property in mini-warehouses, and in those cases you would have to destroy a lock to get in.

Senator Raggio stated that this was what the bill was aimed at. He questioned why they were opposed to having the authority, after making a demand, to go in and get the property?

Capt. Vogler stated that their attorney has advised them that if anything were to go wrong in the removal of the property their office would be liable. If they were to be sued and didn't have it under their control they felt they would definitely lose if it should go to court.

Senator Close asked Russ McDonald if there was a provision in the law on executions which permits the sheriff to enter a building, by force if necessary, and take possession of property?

Mr. McDonald stated he didn't think so. Once the writ is issued and has to be executed, there are no specific provisions that spell that out. There are preceding supplementary ways of execution. He can obtain a judgment and if that cannot be satisfied he can go back to the judge and get an order for his arrest. There is supplemental judicial proceedings to assist in getting the judgment satisfied.

After some discussion by the Committee Senator Ashworth moved they indefinitely postpone.

Seconded by Senator Bryan.

The motion carried the voting was as follows:

AYES:	Senator Bryan	NAYS:	Senator Close
	Senator Ashworth		
	Senator Dodge		
	Senator Foote		
	Senator Gojack		
	Senator Sheerin		

SB 227 Revises and clarifies procedure and instructions in jury trials.

Testimony was presented before the Committee by the following:

Senator William Raggio stated this was an attempt to clarify as clearly as possible the procedure for handling instructions to juries in courts throughout the state. The second thrust of the bill is to require the clerk of the court to retain the jury instructions as part of the proceeding and to preserve them. Also, it specifically requires that the instructions to the jury be given only in writing unless the parties agreed otherwise and the instructions be only as to the law of the case. He feels that many times judges give gratuitous remarks, which aren't to the law, and they are oral and neither party has agreed to such an instruction. Also this bill specifies the number of the copies of instructions; the numbering and tendering

of the copies indicating that it requires the judge to write on the margin or someplace as to refused or given and to indicate that for purposes of appeal; requires the way they are to be maintained and kept; and the main concern of the bill is that the clerk of the court will preserve the original of the instructions and that either they have been given, modified or refused.

Senator Close stated he thought the language was very confusing in that if it states "only in writing" that is what it means and does not mandate the reading of the instructions.

Senator Dodge said that perhaps it should say "a written record of the instructions".

Senator Close stated he did not like the language in lines 23 thru 15 either. If a judge even made some comment that wasn't agreed upon before and was not contained in original instructions, there could be grounds for an appeal because he would then be violating the statutes.

Senator Raggio stated that judges are only supposed to instruct the jury on matters of fact of the law, and this is what this bill is aimed at.

Joe Kay, Attorney from Reno stated he is representing the Nevada Trial Lawyers Association. They generally support this bill as it is pretty much the procedure that has been followed in Washoe County. They agree that all instructions should be read but do not feel that this bill precludes this. He feels it could be a little clearer that once the jury goes into a jury room no judge, even in writing, should send any answer to an inquiry without conferring with counsel on both sides.

Senator Dodge moved amend and "do pass".
Seconded by Senator Bryan.
Motion carried unanimously.
Senator Gojack was absent for the vote.

SB 202

Provides minimum salaries for justices of the peace and police judges.

See minutes of February 22, 1977 for further testimony.

Testimony was presented before the Committee by the following:

Russ McDonald stated that in Washoe County they have 5

townships. The salary in Reno is about \$25,000 which is the top figure on the proposed scale. The Washoe County Commissioners have not allowed a fee arrangement but have granted a salary. He stated it was hard to get statistics in the smaller courts but felt the JP's and Constables were pretty much in line. He said two things alarmed him, without solidification of a state wide justice system. First was to take the power away from the county commissioners to determine salaries, or at least allow the Supreme Court to measure what the percentage of time is and then have the county pay the bill. Second, in a small township that handles only an occasional traffic ticket or a fish and game violation, a \$5,000 minimum is excessive.

Robert Broadbent, Clark County stated that the Nevada Association of County Commissioners unanimously adopted a position against this bill. They feel it would be a "make work" deal for the JP's. In some of these little tiny townships, even under the \$2,500 that was suggested, they wouldn't be able to handle that and that could do away with those courts. Also, they do not believe the automatic 5% for longevity would be in the best interest of the small counties either.

Senator Bryan said that there is compensation provided to elected county officials by a certain legislative classification, and would that approach be any more palatable in approaching the processing of this bill?

Mr. McDonald stated he no objection as long as you looked at the case load everyone does. He also felt that population couldn't be the whole criteria either. Some of the small places such as Verdi or Mesquite or even Overton, because of geographic location, may be smaller than some other place and yet do more business.

Senator Dodge said he felt that if we start fooling around this this on a state level; because the county not only sets the JP salary but establishes the township; that if you try to get this raised to \$2,500 first thing they will try to abolish the township.

After further discussion by the Committee, Senator Ashworth moved for an indefinite postponement. Seconded by Senator Dodge. The motion carried unanimously, Senator Gojack was absent for the vote.

SB 211

Provides for informing jury of any workmen's compensation benefits and proper relationship of benefits and damage awards.

See minutes of February 23, 1977 for more testimony on this bill.

Senator Dodge stated he had asked to make a few inquiries on this bill. He had, and found that there was no objection to this bill by NIC or anyone else as far as he could determine.

Senator Raggio said he would like to state that he felt this was a good bill that would state it clearly, by statute.

Senator Dodge moved a "do pass".
Seconded by Senator Bryan.
The motion carrier unanimously, Senator Gojack was absent from the vote.

SB 220 Provides conditions for imposition of capital punishment.

See minutes of February 23, 1977 for further testimony.

Senator Close stated he had received notification from the attorney generals office that the bill would go to the assembly.

Senator Dodge stated that they had asked Larry Hicks to review this bill in light of some observations made by the Deputy AG, and come back to us with some suggestions for a little refinement on the bill.

Senator Raggio stated that he had some expertise and a great deal of personal concern, because he has had an opportunity to watch the law on capital punishment go full circle and come around to this point. This bill was worked on to reach all of the concerns expressed by the U.S. Supreme Court. The necessity for a bifurcated hearing; the necessity for criteria including aggravating and mitigating circumstances; that is the reason he submitted to the Committee yesterday, so you could analyze this further. He feels we must go back to where we were on first degree and this ought to be subject to the death penalty, let the jury then decide.

SB 89 Reduces time convicted person must wait to apply for restoration of civil rights.

See minutes of January 31, 1977 for further testimony.

Senator Close stated he had talked to Jan Wilson and she said that the recommendation from Bud Campos was inconsistent. The language goes too far beyond what the thrust of the bill is.

Senator Ashworth stated then what we want to do is to let the bill go with just the 3 year provision and not put in any new language.

Senator Bryan moved they reconsider SB 89, amend and do pass with the 3 year provision.
Seconded by Senator Ashworth.
The motion passed unanimously, Senator Gojack was absent for the vote.

SB 207

Guarantees employment of jurors following term of service.

See minutes of meeting of February 18, 1977 for further testimony.

Senator Close stated that David Hagen had prepared an amendment. On line 6 the "or" would be stricken. On the very last line the language would be "the employee, agent or officer of the employer vested with the powers to terminate or recommend termination of employment". Line 7 would be deleted. Lines 10 and 11 would delete starting with "for who---" down to "juror" on line 11.

Senator Dodge stated he thought we should take out subsection one and rely on subsection 2. This says he can file a civil action to recover his lost wages and benefits and an order to reinstate him without a loss of position, seniority or benefits.

Senator Bryan stated he felt this cast the burden on the dismissed employee.

Senator Dodge stated it was on him anyway. All we are trying to do is create a gross misdemeanor out of the situation. He thought it should be restructured so if a person is called on a venire, and somebody tells him he is fired, all you have to do is go to a judge and get an order directed to that employer so he cannot be discharged, as a matter of public policy.

Senator Bryan stated he felt that if this happened to coincide with the employee being fired anyway, this could raise serious problems.

Senator Ashworth stated he could see no reason at all for this bill. It would probably never happen and if so it would be a single remote action somewhere. He stated he would like to hear from some of the jury commissioners to see what the problem seems to be.

Senator Close stated that as Judge Thompson would be here tomorrow, we would defer any further discussion

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until then.

There being no further business, the meeting was
adjourned at 10:51 a.m.

Respectfully submitted,


Virginia C. Letts, Secretary

APPROVED:

MELVIN D. CLOSE, JR., CHAIRMAN