SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

MARCH 1, 1977

The meeting was called to order at 9:00 a.m. Senator Close was in the Chair.

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

ABSENT:

AJR 27 of the 58th Session — Proposes to amend Nevada Constitution to provide for retention in or recall to service of certain judicial officers under terms and conditions set by Legislature.

The Honorable Chief Justice E. M. Gunderson informed the Committee that this was the second time around for this amendment and that it had received rather complete approval from both Houses last session. In discussing the measure he cited the following benefits: provide cheap, flexible, incorruptible judicial power; reduction in staff, facilities, etc.; lien cases that typically get bogged down in the court system could be handled by a senior judge; would help in the scheduling of vacations; in smaller counties where they don't quite need 2 full-time judges a senior judge could assis in the interim; could assist in the large district by handling routine matters such as the divorce calendar; could handle politically difficult cases by assigning a senior judge from the north to sit on a case in the south; encourages persons to take a partial retirement when they should; and would be an inducement for good people to come into the system.
The argument against this amendment was that it would take away the public's right to vote on these judges and that they would not be accountable to anyone. He responded to this by pointing out that these judges had been elected by the people many times before acquiring senior status and as far as accountability, the Chief Justice would be responsible for seeing that this worked properly and that the system was not abused.
He further informed the Committee that during the last electio the public approved a constitutional amendment that incorporated provisions for temporary recall of retired judges to perform certain services. To some extent, the court system

AJR 27 could utilize those retired judges on a temporary recall basis and pay them additionally, over and above their retirement, for those services. Typically when a judge retires from the system, they find other pursuits economically; going back into law practice or a business and he or she will be unavailable in many instances. Furthermore if they stay available and practice law there are going to be attorneys who are concerned because one day they are practicing law against them and appearing on the bench the next.
It was his feeling that AJR 27 is a much better answer in that it will allow the legislature to permit a person to remain in the judicial system, subject to all the cannons of ethics.
He further suggested that should the Committee adopt this that it be applied prospectively only to judges leaving the system after the implementing legislation.

No action was taken at this time.

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

Senator William J. Raggio informed the Committee that this bill was now on second reading on the Floor and that he had an amendment to Section 4 which he wanted to inform them of before submitting it. The amendment would give the courts some discretion in deciding how much testimony the jury would want to hear as well as to the information it would give on the law.
In response to a question concerning District Judge William P. Beko's proposed amendments (see attached Exhibit A) Senator Raggio stated that it was his feeling that this bill was not designed to be the complete answer but to make as uniform as possible the handling of the instructions and the requirement that the clerk maintain not only the given instructions but the ones that were refused with an indication that they were refused. The suggestions made by Judge Beko should best be handled through individual court rule. Each of the districts have some particular reason why they want to handle something differently and it was his feeling that they should have some latitutde in these decisions.

The Committee had no objection to Senator Raggio's proposed amendments to be made on the floor.

SB 248 Alters procedure for a change of judge in certain cases.

Senator William J. Raggio testified in support of this measure. The present law sets down a procedure for filing an affidavit if a judge has an actual bias or prejudice.

SB 248 The substance of this bill is that in any civil action or proceeding, either party may file in writing a preemptory challenge. There has also been an increase in the filing fee which will go into the district judge's traveling fund. The bill also establishes a time period in which these challenges must be filed; not less than 30 days before the trial or hearing and not less than 3 days for a pretrial.

The Honorable James J. Guinan informed the Committee that this bill does not change the present procedure, it only changes the way in which they go about it. In response to a question from Senator Ashworth, Judge Guinan stated that, as a matter of course, the preempted judge consults both parties before selecting his replacement.

Senator Sheerin expressed concern that in the smaller counties the judge may not select his replacement immediately and suggested some amendatory language be included.
Judge Guinan responded that under a new constitutional amendment, the parties could go to the Chief Justice of the Supreme Court and ask him to assign another judge.

The Committee agreed with the concept of the bill however it was their decision to withhold action until they could read it more thoroughly.

AB 18 Allows librarian of Supreme Court Law Library to determine quantity of Statutes of Nevada and Nevada Reports needed by that library for interchange purposes.

Barbara White, Supreme Court Law Librarian informed the Committee that law libraries have exchange programs whereby they send and receive statutes, court reports, attorney's general opinions and other legal materials to other state law libriaries. It was her opinion that since she was the one sending the materials, she should be the one to decide the quantity necessary for the exchange programs. She further stated that this would not be abused because there is only so much shelf space available in our library and that she would not be exchanging for material that we could not use.

Arthur J. Palmer, Director, Legislative Counsel Bureau testified on this matter. He stated that he had no opposition to allowing the Law Librarian to determine the quantity of reports necessary. He did have a problem however, with the absolute ceiling placed on the number of copies of the statutes of each Legislature that could be printed (NRS 218.510). He suggested the following amendment:
"A number of copies of the statute of each Legislature not less than 500 and sufficient in the opinion of the Director of the Legislative Counsel Bureau to meet the requirements of

AB 18 free distribution and sale."

Senator Ashworth expressed concern over the total removal of the Director of the Legislative Counsel Bureau in that he felt the Director should be the person accountable for this type of thing; he is the one that should have a handle on the publications. He would not oppose the inclusion of the librarian however he was opposed to the removal of the Director.

Following a brief discussion, Senator Ashworth moved to indefinitely postpone.
The motion was seconded and the vote was as follows:

VOTING AYE: Senator Close
Senator Bryan
Senator Dodge
Senator Foote
Senator Sheerin
Senator Ashworth

VOTING NAY: Senator Gojack

Senator Ashworth then moved to introduce a bill which would incorporate the language requested by Mr. Palmer.
Seconded by Senator Bryan.
Motion carried unanimously.

SB 254 Provides for supervision of charitable trustees.

William E. Isaeff, Deputy Attorney General testified in support of this measure. He stated that this bill was being sponsored by the Attorney General's office as a result of their growing interest and concern over the proper and adequate supervision of trustee's who hold property for charitable purposes in the state of Nevada. In addition to his office's support of this measure, the Internal Revenue Service, through the National Association of Attorneys' General, is also encouraging the office of the Attorney General to become more involved in the supervision of these trusts on a state level. The Attorney General has long been recognized as having a certain amount of common law authority in the area of regulating charities and supervising the proper administration of all types of charitable holdings.
At the present time, his office maintains files on 23 trustees who hold property for charitable purposes. Most of these are private foundations and range in size from $6,897 to well over $100 million in assets. These organizations are mandated by federal law to provide copies of forms sent to the Internal Revenue Service to the local Attorney General. The forms are the 990PF which is the annual return and the 99AR which is the annual report.

SB 254 In response to a question from Senator Close as to the necessity of this bill, Mr. Isaeff stated that without a reporting requirement, they have no idea as to what kinds of assets are being held, what purposes they are being held for or how they are being administered and without this type of information his office can't discharge any type of supervisory function. He further stated that more and ½ the states now have statutes very similar to the provisions of this measure.

Senator Dodge asked whether or not the trustees had some personal exposure if they violated the responsibilities of their trust.
Mr. Isaeff replied that with a charitable trust or private foundation, you are not dealing with a named individual beneficiary who might seek to protect his rights if the trustee was not discharging his responsibilities properly.

In response to a question from Senator Sheerin, Mr. Isaeff stated that they have not encountered any specific abuses of the situation as yet, however other states have had some rather serious problems.

Senator Dodge expressed concern over Section 18 which would make the articles of incorporation and similar instruments open to public inspection. He felt that this might be counterproductive as far as the objectives of the charitable trusts. Senator Close concurred with this and further commented that charitable foundations do not want other charities to know that they are in existence because of their many requests for donations.

Mr. Isaeff stated that it was their feeling that the public gives up a rather substantial tax benefit to an organization that becomes charitable and in exchange for that, the government should have some sort of supervisory control.
He requested to amendments to this bill. First, a change of title to "Supervision of Trustees for Charitable Purposes Act" and in Section 9, subsection 1, line 8 delete "in trust pursuant to a charitable trust" and insert "holding property for any charitable purposes."

Don Wilson Ashworth testified in opposition to this measure. He stated that his law office does approximately 60-70% of their work in the area of estate planning and that one of the problems with a bill of this type is that the majority of the people do not want their estates made public.
He felt that the filing of the 990PF and 990AR forms was more than adequate for keeping a handle on these organizations.

SB 254 Senator Close concurred with this and further commented that these forms indicate who the trustees are; they list all the assets and sources of income; they require a certain percentage of the gross assets to be paid out each year; and the entire thing is reviewed by the Internal Revenue Service every two years.

In light of the fact that there have been no problems with thi and with the filing of the IRS forms with the Attorney General Senator Ashworth moved to indefinitely postpone.
Seconded by Senator Sheerin.
Motion carried. The vote was as follows:

VOTING AYE:	Senator Close	VOTING NAY:	Senator Bryan
	Senator Dodge		Senator Foote
	Senator Sheerin		Senator Gojack
	Senator Ashworth		

ACR 11 Commends General Federation and Nevada Federation of Women's Clubs for "HANDS UP" Program against crime.

Senator Bryan moved a do pass.
Seconded by Senator Gojack.
Motion carried unanimously.

AB 25 Requires notice of application for attorneys' fees in summary administration of decedents' estates.

Senator Ashworth moved a do pass.
Seconded by Senator Gojack.
Motion carried unanimously.

BDR 54-115 which increases licensing fees; changes fund accounting and expands enforcement powers of private investigator's licening board was approved for Committee introduction.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Cheri Kinsley

Cheri Kinsley, Secretary

APPROVED:

SENATOR MELVIN D. CLOSE, JR., CHAIRMAN

WILLIAM P. BEKO
JUDGE

Fifth Judicial District Court
State of Nevada

ESMERALDA, MINERAL AND NYE COUNTIES

PLEASE RESPOND TO:
_____OFFICE

February 23, 1977

Honorable William J. Raggio
Senate Chamber
Legislative Building
Carson City, Nevada 89701

Re: SB 227

Dear Bill:

Your bill to revise and clarify jury instructions is an excellent suggestion. I would respectfully suggest some additional language to be included in section 1, as follows:

I would suggest that the copies of the jury instructions not only be numbered and indicate who tendered them, but also include, on the copies alone of course, the source of the instruction. Additionally, copies of proposed instructions should be served on opposing counsel.

In addition, I would suggest that you include a time within which all instructions should be tendered to the court. Fortunately, most attorneys bring their instructions with them at the start of the trial and this gives the court an opportunity to review them during the trial and thus not delay instructing the jury when the testimony has been concluded. However, not all attorneys are this well prepared and many times, they learn of the law only after the testimony has been concluded. I would suggest that the instructions be delivered to the court at the commencement of the trial reserving to either party the right to submit additional instructions that are made necessary by evidence which first became known to counsel during the trial and which could not have been discovered by reasonable digigence.

Best personal regards.

Very truly yours,

William P. Beko

WPB/dk

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