SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

APRIL 13, 1977

The meeting was called to order at 8:10 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 452 Changes penalty for wrongfully refusing inspection of corporate records.

Barlane Eichbaum stated he requested this bill to modify NRS 78.257, the rights of stockholders to inspect and audit financial records and other corporate records and transactions. He stated this came about as he was a minority stockholder with 20% of the stock, and now has a third attorney trying to secure those records, and over a two year period. Presently the Secretary of State is also trying to have them show him the records and this still has not been done. And now, he has been served with a summons from this particular corporation suing me and saying I don't have rights to my stock. So I am now faced with additional time and costs and still no access to the records. He also feels that the fine of $25 is too low and puts the legal burden on the stockholder. Also if it is determined that the stockholder has a right to see the books, he should be compensated or at least allowed the legal costs after going through this ordeal. In response to a question by Senator Gojack he stated that he was the original designer of the unit this corporation manufactures and put up the first money. The person that holds 51% of the stock tried to get half of his stock, when he discovered that checks were going out of the corporation that should not have been and that was why he wanted to look over the books to begin with.

Senator Bryan stated that if you are going to go with this bill and have the plaintiff able to obtain legas fees and costs, should he prevail, it seems it should work both ways.

Senator Dodge stated he felt they ought to discourage harassment and not have the guy coming in with no monetary obligation. He just feels it should be a two way street. He moved an amend and do pass.

Seconded by Senator Foote.

Motion carried unanimously, Senator Gojack absent from the vote.

AB 24 Revocation or modification of parole from juvenile correctional institutions.

Orv Wahrenbrock, Chief Assistant to Director of Department of Human Resources stated that this was a departmental bill. In essence it is to provide for a due process for revokation of paroles from girls and boys from Elko and Caliente. The current statutes provide that a parole may be revoked by the Superintendent unilaterally, at his will and for any purpose that he chooses. We do not feel that this has been abused, but it has been found to be unconstitutional in recent Supreme Court decisions. This bill would clean up our laws and make us somewhat conform with a due process. When a local jurisdiction believes a parolee is in violation of the conditions of his parole, they will then have a judicial review. With an opportunity for a hearing, the parolee may bring in witnesses if they choose, may present a defense, and then the findings of the master would be transmitted to the Superintendent and the parole could either be modified, revoked or suspended. The original printing of this bill allowed for an administrative hearing as well as a judicial hearing and this was opposed by the court in Clark County as they felt that it should be judicial. We have no objections to a judicial hearing, we just thought that the courts are so overburdened now that perhaps the administrative hearing possibility would relieve this somewhat.

Senator Close asked why the language stated "may hold a hearing", shouldn't that be mandatory?

Mr. Barengo stated that he felt that this was the language that was submitted to the Assembly and felt it inadvertently got left in there. They would have no obejction to changing it to "shall". He feels that perhaps this language goes to where it states, "the hearing may be held by a judge or a master", and does not go to if the hearing is to be held.

Senator Dodge moved amend and do pass, changing may to shall. Seconded by Senator Bryan.
Motion carried unanimously, Senator Gojack was absent from the vote.

AB 375 Regulates foreign gaming, changes composition of gaming policy committee and reduces requirements for commission to override board recommendations.

Jeffrey Silver, member of the Gaming Control Board stated that their position is that the bill was sufficiently cleaned up of objectionable items, so the board would have no objection to the bill the way it stands. Essentially the foreign gaming conforms with the proposed regulation that the gaming control board worked out with the industry in

executive session. We have no objections to the changes on the gaming policy committee in that the amended bill does contain provision for the chairmen of the board and commission to remain in an advisory position.

Senator Ashworth stated that the way he reads the bill it does not specify the chairmen.

Phil Hannafin stated that what it says is that the chairman will appoint a member to be on the policy board that will represent the board and the commission. He does not feel that represents a problem because where the law is silent it assumes, therefore the board and commission can chose the members to serve and it could be the chairman.

Frank Johnson, Vice-President of Hilton Hotels Corporation stated that they are in general approval of the bill, but would like to disagree with the deletion of the section which was originally in the bill, which allowed a four member vote of the commission. He feels on the initial license application a unanious vote to overturn is absolutely correct. On any other matters however a four member vote is much more preferable.

Senator Close asked what other kinds of things he was talking about.

Mr. Johnson stated that would be foreign gaming or something as simple as loans. If one person on the commission happened to have tunnel vision on a subject he could close it off right there.

Mr. Hannafin stated that on loans specifically, there is no requirement of a majority vote of approval or disapproval. Loans are provided for in the law as the board or commission taking exception to loans. Any member may take exception and would thereby require an linvestigation of the loan and then formal action by the commission or by the board itself. The only time they have problems with the loan is if the money is coming from an unsuitable party. So the foreign gaming is correct, but not the loans.

Mr. Silver stated that the way this gets back to judicial form is if the licensee does not agree with the decision to reverse the loan and refuses to follow the reversal directive then there is a complaint filed for an unsuitable method of operation, which complaint goes to the commission and therein the facts are considered and then there is an appeal to the courts for that process.

Senator Bryan stated he felt what they were doing in effect, is requiring that an individual in effect to refuse to comply with your order rather than affirmatively provide some procedure to that person to review and ask for a review by the commission.

Mr. Hannafin stated that the mechanisim also applies in other ways. If we went into a location and found there were a particular method of dealing that the board found objectionable, we could tell them to desist. If they were to refuse, we would then file a complaint and then they would have that due process hearing. This covers a multitude of problems that come up that you cannot articulate within regulation or statute. This is a procedural matter.

Les Koefed, Executive Director of the Gaming Industry Association stated that he wanted to agree with Mr. Johnson in regard to unanimous vote. On applications he feels it is absolutely necessary, however, in trying to think of any other case where you might need a majority vote, he can't think of one. He believes in this bill, everyone is thinking of a licensee who wants to go to a foreign country, but this bill foes much further then one licensee wanting to go someplace. There are several states considering gaming, one of them California and if that were to become a reality and one of our Nevada licensees wanted to extend himself across the state line, and one individual on that commission doesn't like that licensee, he can gum up the whole works. That is not fair, the majority rule must be considered, because he can foresee the exclusion of any Nevada licensee crossing the state line.

Senator Ashworth asked if four out of the five would be satisfactory.

Mr. Koefed stated that would be satisfactory but he would prefer a majority of those present.

Mr. Hannafin stated that any changes that are made to the voting or the members would be a major revision to the gaming control act. The baord and the commission actions and how they function, are woven throughout the law, and if you want to change this little portion here on voting, has implications for the relationships between these two bodies in all of their ongoing daily activities.

Senator Dodge stated he doesn't feel that they have been that heavy handed nor that the procedures have ever been abused.

Senator Asworth stated that he felt that the chairmen should still only be at the policy board hearings in an advisory capacity.

After some discussion by the Committee it was agreed that the people making the policy should not also be required to enforce that policy.

Senator Ashworth moved amend and do pass, taking out the two chairmen and mandating that they are in an advisory capacity only.

Motion was seconded, voting as follows:

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

Motion died, Senator Gojack absent from the vote.

Senator Ashworth stated that is why he suggested puting in two Legislators on the board, they represent the people and he doesn't feel they are being represented now.

Senator Bryan stated he didn't see how we could remove these people without some testimony as to why they are on ther and also what the feeling of the industry was.

Senator Foote moved do pass.
Senator Ashworth seconded the motion.

Senator Bryan brought up the fact that we should then leave the bracketed material on line 22 in.

Senator Foote stated if it was to be amended she withdrew her motion.

Senator Bryan stated he would move amend and do pass, deleting the brackets in lines 22 and 23 of page 3.

Senator Foote seconded the motion.

Motion carried unanimously, Senator Gojack was absent from the vote.

AB 469 Makes possession of cheating device unlawful and increases penalty for manufacture or sale of such devices.

Phil Hannafin stated that this was not a bill proposed by the gaming control board, but rather from the DA's Association. The board has reviewed this bill which effectively increases the penalties for cheating and/or possession of cheating equipment, and the board is in favor of taking a more stringent approach to these kinds of problem.

Mr. Koefed stated that the Industry was 100% in favor of this bill's passage.

Larry Hicks, Washoe County DA and president of the District Attorneys Association stated this was requested for two

purposes. One, to add the crime of possession of cheating devices with intent to defraud and to increase the penalties for a felony. To add "possession" came about because we have had cases where people are apprehended and found to have a considerable amount of cheating paraphanalia in their possession, and unless we have been actually able to show that they have been using it, we cannot prosecute those individuals. The penalty was increased because of the type of offender that we have found that commits this type of offense. Also, if a casino is in possession of equipment to defraud, we felt this should also be a felony.

Senator Sheerin moved do pass.
Seconded by Senator Bryan.
Motion carried unanimously, Senator Gojack was absent from the vote.

SB 453 Provides for censure, removal and retirement of justices of the peace and municipal court judges by commission on judicial discipline.

Senator Close stated he had a letter from John McCloskey, which he read to the committee (see exhibit A) also a letter from the Justices (see exhibit B) which he would like entered into the record. See minutes of 4/12/77 for action by the committee.

AB 197 Clarifies provision which makes imposition of consecutive sentence of imprisonment mandatory.

Larry Hicks stated that in regard to this bill it seems to suffer from what happens sometimes when you have a hearing in a Committee and apparently there is some agreement on a re-draft, and then there is never any further hearing on the redraft. The essence of this is to provide that if a person is on probation for a felony offense and commits another felony offense, that he will be immediately sent to prison upon conviction of the 2nd offense. He feel that is sounds good, but is very counter-productive because it means we will be going to trial everytime on the second offense. Right now particularly in an aggravated situation, the defendent is out on probation for a felony offense and he is arrested on aggravated facts in another felony offense, the District Judge will take him right in and revoke his probation. So it would now definitly encourage a trial on the second matter, so they are not in support of this bill.

Bob Barengo, Assemblyman District 29 stated the reason they had amended this bill was because a situation could arise whereby a person on probation for a first offense and was tried on a second offense, either got left on probation or sentenced to jail, could not go to jail until his first probation was revoked or he served that first probation.

Senator Foote moved to indefinitely postpone.
Seconded by Senator Ashworth.

Motion carried unanimously, Senator Gojack was absent from the vote.

SB 412 Replaces rape and other sex-related crimes with offense of sexual assault.

See minutes of 4/5/77.

Senator Close stated he had passed out the recommended amendments (exhibit C) and they would read through the bill to see where these fit in and if there were any other changes to be made. He stated on page one that the term "beastiality" does not fit in that section and that Jan is working on some amended language, as it has to have a seperate section entirely. He stated that in talking about the statutory rape situation, now that rape is redefined to sexual assault, they had to find another term, so the only thing they could think of was "sexual imposition".

After some discussion, the Committee felt that the word imposition was bad and Senator Dodge suggested "statutory sexual seduction", in the case of consent. They also had a problem with the husband and wife situation with the terminology of sexual assault. Senator Dodge stated then consent is the key word so Mr. Hicks suggested that instead of saying ordinary sexual intercourse, say sexual intercourse without the consent of the spouse.

At this time as the Committee had to go into session the meeting was adjourned.

Respectfully submitted,

Virginia C. Letts

Virginia C. Letts, Secretary

APPROVED:

SENATOR MELVIN D. CLOSE, JR., CHAIRMAN

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I believe there are some thought provoking comments contained herein

April 8, 1977

Hon. D.N. O'Callaghan
Governor of the once
Great State of Nevada
Unsafe Capitol Building
Carson Street
Carson City, Nevada

Your Excellency:

Re: SB 453

When Question No. 8 on the November, 1976, General Election was, unfortunately, approved by majority of voters (largely in the more heavily populated counties where there are multiple departments of district court) the proposed amendment to the constitution pertained to justices of the supreme court and district judges, and provided for creation of a Commission on Judicial Discipline with authority to "censure, remove or retire" Justices of the Supreme Court and District Judges.

Comes now SB 453 which would extend the authority (and responsibility) of the Commission on Judicial Discipline to meddle in the affairs of "inferior" courts including justices of the peace and municipal judges. This has to be a complete copout on the part of either or both our legislative and judicial branches because there already is ample provision for disciplinary action against, or removal from office of, the 58 justices of the peace and 16 municipal judges.

1. Court action based upon a grand jury accusation. 2. Complaint of a citizen seeking removal for malfeasance or nonfeasance. 3. Recall.

The Commission on Discipline will have enough to do, hearing and acting upon complaints against supreme court justices and district judges, even though no disciplinary action may result. There also is the "economic" factor involving legal fees and expenses that would confront a JP or Muni judge if called to defend himself away from his home ground. Some of those "inferior" judges work for $150, $200 and $250 a month.

The legislature would do well to allow the Commission on Discipline to get organized and develop, or flounder, on the assignment spelled out in the constitutional amendment -- spanking or praising the big boys -- during the next two years. To hand the Commission the justice court and municipal court package at this time is premature and preposterous.

Respectfully, without opinion,

John R. McCloskey

John R. McCloskey, junior member
Commission on Judicial Discipline

Exhibit A

MEMORANDUM

From chambers of
E. M. GUNDERSON, *Justice*
Supreme Court of Nevada,
Carson City

April 12, 1977

TO: THE HONORABLE MIKE O'CALLAGHAN

RE: S.B. 453

My dear Governor--

S.B. 453 must be considered in the context of events motivating the introduction thereof.

The questions on the ballot last election sought to create in Nevada a unified court system, with the chief justice as its administrative head.

Concerning central administration perhaps the two most important questions (both derived from a comprehensive ballot question defeated in 1972) were Question 6 and Question 8. Question 6 vested the Supreme Court with authority over all courts, including the justice and municipal courts, and Question 8 endeavored to provide a mechanism for judicial discipline.

During the 1975 legislative session, an attempt was made to explain to certain legislators that Question 8 was poorly drafted, for various reasons. In the first place, we tried to point out that a Judicial Council such as that in Idaho (with disciplinary powers but primarily concerned with positive approaches to improving the judicial system) would be more in keeping with the needs of a small state like Nevada than the commission proposed by Question 8 would be. (We questioned whether judicial misconduct was so prevalent in Nevada that it warranted creating a separate commission with no other concerns.) In the second place, we tried to point out that Question 8, relating to judicial discipline, failed to provide a comprehensive mechanism to enforce the central authority of the Supreme Court over the unified court system which Question 6 was expected to create.

During the last legislative session, many legislators were in the throes of an exceptional desire to show concern for "ethics." Thus, rather than taking a more reflective look at Question 8, the committee considering it passed it out, without addressing the matters just referred to.

Central administration is recognized as essential to meeting the problems of a modern court system. Basically, the Nevada Bar Association felt that the total effect of all the proposed

Exhibit B1

amendments would be good, and, although some, including Question 8, might be imperfect, the Bar determined that all judicial reform questions should be supported. I agreed with this view, and worked with the Bar and the American Judicature Society to support all amendments, including Question 8, although I was quite aware that Question 8 unfortunately was poorly drafted.

As I am sure you know, on Law Day of 1975, the vast majority of the judiciary of Nevada (including most of the justice and municipal court judges) met at the National College of the State Judiciary, listened to nationally recognized experts on judicial ethics, and voted to work toward formulation of an enforceable Code of Judicial Conduct. The expectation was that the new Code would be enforced by the Supreme Court, with the assistance of the Commission on Judicial Discipline, if that body should come into being, but enforced in any event. A representative committee of judges (including four district judges, four justice and municipal court judges, and one Supreme Court justice) spent hundreds of hours researching and preparing a Code designed to govern all levels of the Nevada judiciary; hearings have been held; and the Supreme Court is about to adopt the Code, with some revisions.

As you also know, I told you last Fall, when Question 8 had just been approved, that although the judges in the courts of limited jurisdiction expected to be governed by the Code, a feeling prevailed that they should have some representation on the body that would judge their conduct. You felt it would be inappropriate to provide such representation by naming a lay judge to the Commission on Judicial Discipline, as one of your non-lawyer members, so other means of providing representation had to be considered.

S.B. 453 is the device ultimately conceived to provide a means for enforcing the Code of Judicial Conduct, which has been drafted to apply to all judges in the Nevada "court system" as defined by Question 6. It has the support of the Nevada Judges Association (which consists of Nevada's justice and municipal court judges) and, indeed, this morning, at about the same time you were calling to tell me someone believed S.B. 453 to represent an imposition on the lower court judges, the president of that organization was appearing at the Legislature to support its passage.

The primary purpose of S.B. 453 is not to provide for restructuring the Commission on Judicial Discipline, when a justice or municipal court judge is charged with a violation of the Code of Judicial Conduct. By virtue of the administrative

SBG

control which Question 6 vests in this court, we unquestionably could take care of that problem ourselves, although we might have to set up a totally separate disciplinary commission if lay members appointed by you to the constitutionally mandated commission were unwilling to serve in matters relating to lower court judges. (That, surely, would be unfortunate, since the development of expertise by commission members should be desirable.)

The primary purpose of S.B. 453 is to establish that justice and municipal court judges are not subject to redundant disciplinary measures, but instead are governed by the Code of Judicial Conduct prescribed by the Supreme Court, and are to be disciplined or removed from office in accordance with procedures applicable to other judges. In summary, then, it is believed that S.B. 453 represents a sound and practical response to handling the problem posed by Question 6, which imposes on this court the obligation of central control of the entire court system, considered in light of the inadequacies of Question 8.

There is absolutely no question but what the judiciary of Nevada, as a whole, fully expects the Supreme Court to adopt and to enforce an appropriate Code of Judicial Conduct, not just with regard to district judges and Supreme Court justices, but with regard to justice and municipal court judges as well.

E.G.

EMG:jb

cc: All Justices
John De Graff, Judicial Planner

Attachment: S.B. 453

S. B. 453

SENATE BILL NO. 453—COMMITTEE ON JUDICIARY

APRIL 6, 1977

Referred to Committee on Judiciary

SUMMARY—Provides for censure, removal and retirement of justices of the peace and municipal court judges by commission on judicial discipline. (BDR 1-1571)

FISCAL NOTE: Local Government Impact: No.
State or Industrial Insurance Impact: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to courts and judicial officers; providing for the censure, removal and retirement of justices of the peace and municipal court judges by the commission on judicial discipline; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Chapter 1 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. The commission on judicial discipline has exclusive jurisdiction over the censure, removal and involuntary retirement of justices of the peace and judges of municipal courts which is coextensive with its jurisdiction over justices of the supreme court and judges of the district courts and shall be exercised in the same manner and under the same rules.

2. The supreme court may appoint two justices of the peace or municipal court judges to sit on the commission for proceedings against a justice of the peace or municipal court judge, respectively. Justices or judges so appointed shall be designated by an order of the supreme court to sit for such proceedings in place of and to serve for the same terms as the regular members of the commission appointed by the supreme court.

SEC. 2. NRS 283.300 is hereby amended to read as follows:

283.300 An accusation is writing against any district, county, township or municipal officer, [including a justice of the peace,] *except a justice or judge of the court system,* for willful or corrupt misconduct in office, may be presented by the grand jury of the county for or in which the officer accused is elected or appointed.

SEC. 3. NRS 283.440 is hereby amended to read as follows:

283.440 1. Any person now holding or who shall hereafter hold any office in this state, [including without limitation a justice of the peace,]

except a justice or judge of the court system, who [shall refuse or neglect] *refuses or neglects* to perform any official act in the manner and form prescribed by law, or who [shall be] *is* guilty of any malpractice or malfeasance in office, may be removed therefrom as hereinafter prescribed in this section.

2. Whenever a complaint in writing, duly verified by the oath of any complainant, [shall be] *is* presented to the district court alleging that any officer within the jurisdiction of the court:

(a) Has been guilty of charging and collecting any illegal fees for services rendered or to be rendered in his office; or

(b) Has refused or neglected to perform the official duties pertaining to his office as prescribed by law; or

(c) Has been guilty of any malpractice or malfeasance in office,

the court shall cite the party charged to appear before it on a certain day, not more than 10 days or less than 5 days from the day when the complaint was presented. On that day, or some subsequent day not more than 20 days from that on which the complaint was presented, the court, in a summary manner, shall proceed to hear the complaint and evidence offered by the party complained of. If, on the hearing, it [shall appear] *appears* that the charge or charges of the complaint are sustained, the court shall enter a decree that the party complained of shall be deprived of his office.

3. The clerk of the court in which the proceedings are had, shall, within 3 days thereafter, transmit to the governor or the board of county commissioners of the proper county, as the case may be, a copy of any decree or judgment declaring any officer deprived of any office under this section. The governor or the board of county commissioners, as the case may be, shall appoint some person to fill the office until a successor shall be elected or appointed and qualified. The person so appointed shall give such bond as security as is prescribed by law and pertaining to the office.

4. If the judgment of the district court [shall be] *is* against the officer complained of and an appeal is taken from the judgment so rendered, the officer so appealing shall not hold the office during the pendency of the appeal, but the office shall be filled as in case of a vacancy.

Senate Amendment _____ to Senate Bill 412 BDR 16-1757

Proposed by: Committee on Judiciary

Amend section 2, page 1, line 7, after "manipulated" insert: "or inserted".

Amend sec. 2, page 1, between lines 9 and 10, insert:

"3. "Statutory sexual imposition" means sexual intercourse in its ordinary meaning, cunnilingus or fellatio committed by a person 18 years of age or older upon a consenting person under the age of 16 years."

Amend sec. 2, page 1, line 10, delete "3." and insert "4."

Amend sec. 4, page 2, delete lines 9 through 12 and insert:

"Sec. 4. A person who commits statutory sexual imposition shall be punished:".

Amend sec. 4, page 2, delete lines 16 and 17.

Amend sec. 6, page 3, line 24, delete "unless he is" and insert: "unless [he is] :

1. The act committed was other than sexual intercourse in its ordinary meaning; or

2. He was".

Amend sec. 6, page 3, lines 25 and 26, delete "person, or unless at" and insert: "person [, or unless at] ; or

3. At".

Amend sec. 9, page 4, line 33, delete "assault" and insert "imposition".

Amend sec. 12, page 5, line 22, delete "assault" the second time it appear in said line and insert "imposition".

Amend sec. 15, page 5, line 50, delete "assault" the second time it appear in said line and insert "imposition".

Amend sec. 14, page 5, line 45, delete "assault," and insert "imposition,"

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Exhibit C