

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

APRIL 22, 1977

The meeting was called to order at 9:02 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 515 Limits time within which to petition for probate of will.

Fred Higgins, Nevada Bar Association stated that the Board of Governors opposes this measure. It becomes an interference in the legal environment orderly administration of the State simply to handle a problem that has occurred once and will likely never happen again. Now suppose a decedent has property in joint tenancy and that is all he has got. There is litigation as to whether it is truly joint tenancy or community property or has been transmitted to tenancy in common and the litigation finally wears down to a grind four years and one day later, Then it is found that it wasn't joint tenancy at all and lets suppose further that this person had a will, it could not be offered in probate and the property in question would go by in testate succession. This would frustrate the wishes of the testator.

Senator Close stated what then about putting 5 or 6 years on it rather than just letting it go on for every and ever.

Mr. Higgins stated you could have a situation where someone was missing for 7 years and after that time was determined to be dead. If this limitation was in effect, that persons will could not be introduced for probate.

Senator Dodge questioned if it wouldn't be a bad idea to let property hang in a hiatus for an indefinite period of time?

Mr. Higgins stated that the only problem he has found is where the will is not found and letters of administration are issued, and an administrator maybe gets in who may be in conflict with the testator following which the will is discovered, following which there is a will contest with the estate and the estate consists of a going business, and one case I had before the will went to probate, the entire estate was dissipated by the administrator. The

problem seems to be in reverse in my experience. I have never heard of any real problem caused by a will showing up after intestate succession distribution has occurred.

Senator Close stated he did not even realize this existed in the law, that you could bring in a will 20 years after. What do you do then, when the person says I want my property back?

Senator Sheerin stated then you file another order of distribution. Once an order of distribution has been filed even if it was on an invalid will or in testacy, you have a 6 year limitation to open up that judgment again and once that passes it is gone.

L.J. McGee, speaking for the Trust Committee of the Nevada Bankers Association stated our particular problem in those of us that do estates as corporate executors and corporate administrators is the problem of after discovered assets. Mr. Higgins has already mentioned a situation of people who hold in joint tenancy and so at the death of the first there is normally no probate unless there is some unusual circumstance. So maybe down the road 4 years or 15 years later something happens and you can't at this point open up the estate in probate. The will is required by law to be deposited with the county clerk within 30 days after the death of the decedent. He sees all sorts of problems if you put a statute of limitations on the probate of a will. For example, there have been cases where there have been dormant bank accounts, not necessarily in this state, but other places, now if this is not found until 5 or 6 years later that the property had passed without a probate you have a problem. The same thing with stock that crops up at a later date. He can see some real problems with not being able to submit a will for probate some time down the road. But they are not in favor of this piece of legislation.

Senator Bryan moved to indefinitely postpone.
Seconded by Senator Dodge.
The motion carried unanimously.

AB 476 Makes changes in Juvenile Court Act and child labor laws.

Bill Labadie, Deputy Administrator for Social Services Welfare and had with him Gloria Handley, Chief of Family and Child Services, stated they have no particular problem with the bill. However on page 5 lines 41 thru 43 where it states "except as provided in subsection 6 any peace officer, probation officer or employee of the Welfare Division, Department of Human Resources may take into custody any child--", we do not feel that we are staffed to do this sort of thing and it puts us in an untenable position. If we have to remove that child from an irate parent and then turn around the next day and work with that parent this puts us in a bad situation. We do feel that this is a police responsibility.

Senator Close stated that the juvenile people had previously testified on this and they felt that this language was not mandatory. He asked if there were a situation where you would pick the child up.

Mr. Labadie stated that if we start doing this the police will back out of it and we just don't have the staff to do it. We would have to be open 24 hours a day, 7 days a week.

Bart Jacca, Assistant Sheriff, Las Vegas Metro Police Dept. stated they felt that the law should be processed. This would give the Welfare Dept. permissive capability. We had a meeting last week with the Welfare people, the DA, the Juvenile people, and it resolved nothing. What our department wants is that in highly volatile cases we stand by and keep the peace, take custody of the child if necessary. But in some instances it is not necessary. We feel we should be concentrating on law enforcement and protection and not some of these peripheral areas. The Welfare people should have the power to transport the child in some of these mediocre cases instead of tying up officers for this. Welfare has totally handled the case, we have had no involvement, we are just transporters and feels this is a waste of the taxpayers money.

Mr. Labadie stated that they have 600 staff members and he would hate to see 600 people set loose to start picking up children. They are not trained in anyway to be policemen. They do not have the staffing, the increase in child abuse is too great. In the first three months of this year there were approximately 100 cases of child abuse. If this goes into effect the money for more staff will have to come from somewhere, we just can't handle it. He realizes that the police department is having problems with tying up their time but he feels it is their responsibility, it is a police power.

Senator Dodge thought the bill was too broad. Later it gets into custodial language and you could possibly be in an area of having to read him his rights and so forth, so maybe there is a problem as he doesn't think Welfare would want to get into this area.

Senator Foote stated that where a child is abused, it would seem logical to have the Welfare Dept. handle it. They are the ones that have an area of child abuse within their department, they have the registry plus the child might be more frightened then he already is of a uniformed officer. If the child has to be taken away from the home, wouldn't Welfare be the people that would put them in a foster home?

Senator Dodge stated that the Welfare people, and it could be a young woman worker, were afraid of the hostile parents that don't want the child moved.

Senator Foote stated she felt that the situation of child

abuse has gotten so serious, something has to be done about it instead of every body being afraid or not wanting to get involved.

Mr. Jacca stated they would be agreeable to having an officer go with the Welfare person to keep the peace and insure their welfare and that of the child, and then have the Welfare worker take custody of the child. This would relieve the officer of all the book work involved and yet protect the Welfare Officer and the child.

Senator Bryan felt that the language went beyond the child abuse situation and if that is what we are talking about then let's say it in here.

Senator Ashworth stated he understood that everybody had a staff problem, but he agrees with Senator Foote that it is clearly a Welfare jurisdiction and therefore their staff problem not the police departments. The Legislature has put the responsibility on you people and he feels that is where it should lie.

Senator Dodge stated he felt the departments should get together and work out some type of procedure to follow. He stated if he was in the Welfare Division and had the police department doing his work he wouldn't want to muddy up the waters either. But on the other hand he can see where the police department wants to get out of an area where they don't really belong. So if they are willing to be there to pick up and to keep the peace the the Department of Human Resources ought to be able to do what they are supposed to do from then on. It seems to him there has to be some meeting ground to work out some understood procedures to cover all three departments.

Senator Sheerin stated he felt that they should get the juvenile authority in on this, as they are the ones that should be picking the kid up to begin with.

Mr. Labadie stated that they do in the smaller counties, it is a team effort, but for some reason not in Clark.

Senator Dodge stated it seemed to him Clark County is the best county in the state, as far as the man power and facilities that they have to handle this sort of thing.

Mr. Labadie stated that the whole problem down there right now, is who is going to do what. The way things stand right now, juvenile handles the neglect cases, we handle the abuse cases. We are talking about physical abuse vs neglect. Now they are already talking about dumping that back on our division, and they asked for it several years ago, but by law they have every right to do so. So I think if you are talking about getting them to help on the abuse cases you won't get very far.

Senator Close stated he suggests that they contact juvenile and get with Bart and report back to us with what you can resolve. We can sit here and talk about this for the next 5 hours and not resolve anything. We recognize the problems but see what reasonable solutions you can come to among yourselves. You can't put the burden on any one agency, so you may have to share the burden among the agencies involved.

SB 235 Requires examination of prospective jurors to be conducted under oath.

See minutes of 2/25/77 for testimony.

Senator Close stated that this has been put into another bill entirely, we have amended another bill.

Senator Bryan moved to indefinitely postpone.
The motion was seconded and carried unanimously.

AB 240 Creates presumption of mental competence for person admitted to mental health facility and repeals certain provisions for judicial declaration of competence.

See minutes of 4/19/77 for testimony.

Senator Dodge moved to indefinitely postpone.
Senator Gojack Seconded the motion.
The motion carried unanimously.

As the Committee had to go into the session the meeting was adjourned.

Respectfully submitted,


Virginia C. Letts, Secretary

APPROVED:

SENATOR MELVIN D. CLOSE, JR., CHAIRMAN