SENATE LEGISLATIVE FUNCTIONS COMMITTEE

February 10, 1977 @ 2:00 P.M.

The fifth meeting of the Senate Legislative Functions Committee was called to order at 2:04 p.m.

Chairman Gene Echols was in the Chair.

PRESENT: Chairman Echols
Vice Chairwoman Gojack
Senator Close
Senator Gibson
Senator Schofield
Senator Wilson

ABSENT: Senator Raggio

TESTIMONY FROM: Pat Gothberg, Common Cause
Jim Richardson, Washoe County and Nevada Democratic Party
Bob Warren, Nevada League of Cities
Frank Daykin, Legislative Counsel
Don Klasic, Deputy Attorney General
Janet MacEachern, League of Women Voters

SB 172 — Repeals Nevada Ethics in Government Law and reenacts or restores statutory provisions which had been repealed or amended by that law.

Pat Gothberg suggested holding SB 172 until the Committee starts getting other ethics laws.

Senator Close noted that at the present time, Nevada had no ethics law at all, and suggested passing SB 172 now, and later on, going back and correcting the problems.

Jim Richardson read three resolutions, which he asked be read into the record. (Please see EXHIBIT "A").

Bob Warren stated that the Nevada League of Cities, during its annual conference in 1972, endorsed support for any reasonable conflict of interest legislation, as long as it applies equally to all elected persons within the State; including the judiciary.

Frank Daykin and Don Klasic explained the various aspects of the bill, as well as the ruling on its unconstitutionality. (Please see EXHIBIT "B", requested for the record by Chairman Echols).

After the above-mentioned discussion(in EXHIBIT "B"),

Senator Gibson moved "DO PASS"
Senator Wilson seconded
Motion carried unanimously.

SR 7 — Amends Senate Standing Rule 118 to change procedures relating to resolutions.

Frank Daykin explained that the existing rule says that joint and concurrent resolutions addressed to Congress, are subject in all respects to the foregoing rules governing the course of bills. He explained that the language is partly obsolete, as we now call a resolution either joint or concurrent, and customarily use a joint resolution to address the Congress. He noted that there was a constitutional requirement that a joint resolution, proposing an amendment to the constitution of this state, shall be entered in the journal in its entirety, and stated that no such requirement applied to a bill. He noted, therefore, it seemed appropriate to amend 118, so that it did not imply anything different from what the Constitution requires.

Senator Gibson suggested "HOLD" for later consideration.

SB 149 — Provides for remuneration of legislators during certain adjournments.

Mr. Daykin answered various questions concerning the bill, including explaining that only members of the various committees who were actually meeting during a brief adjournment, would be paid; the same thing also applying to committee employees.

Janet MacEachern entered into the record a list of comments, by the League of Women Voters, relative to bills before the Committee. (Please see EXHIBIIT "D").

After considerable discussion,

Senator Close moved "DO PASS"
Senator Schofield seconded
Motion carried unanimously.

SJR 7 — Proposes constitutional amendment to permit special sessions of the legislature upon petition of two-thirds of members of each house and expansion of agenda.

Testimony having been heard during the February 1st meeting, and Mr. Daykin explaining the resolution further,

Senator Close moved "DO PASS"
Senator Gojack seconded
Motion carried; Chairman Echols opposed.

SCR 5 — Directs the legislative commission to study feasibility of conducting performance audits.

Senator Gibson suggested "HOLD" until the fate of SB 62, which is now in Government Affairs, is known.

SCR 6 — Provides specifically for interim adjournments of the legislature.

Chairman Echols noted that this was a companion bill to SB 149, and after Mr. Daykin examined the history of SCR 6,

Senator Schofield moved "ADOPT"
Senator Gojack
Motion carried unanimously.

SR 5 — Amends Senate Standing Rule 92 to specify notice required for committee meetings.

Pat Gothberg expressed concern that this resolution had not been given proper notice.

Chairman Echols noted that SR 5 had been on the agenda for five days prior to its February 1st hearing. Senator Close stated that the committee was not taking matters for hearing now, but were voting on matters previously discussed at the February 1st hearing. After considerable discussion of pros and cons, explanations from Mr. Daykin, and a suggestion by Ms. MacEachern that the agendas be given to the news media,

Senator Gojack moved "AMEND AND ADOPT"
Senator Schofield seconded
Motion carried unanimously.

Ms. MacEachern commended all the committees in the legislature for the great improvements that have been made over the past three sessions, regarding notices of hearings, and stated that all are doing a wonderful job of trying to give notice of hearings.

SR 8 — Amends senate standing rule 104 to reduce period for submission of bill drafting requests.

Chairman Echols noted that this resolution had been previously heard, and after additional discussion,

Senator Gojack moved "INDEFINITELY POSTPONE"
Senator Close seconded
Motion carried unanimously.

Senator Schofield moved for committee introduction of BDR-17863, dealing with travel expenses for the Secretary of the Senate.
Senator Gibson seconded
Motion carried unanimously.

Chairman Echols commended Senator Schofield for his attitude and actions in his committee, relative to members of his committee discussing bills on the floor. He stated that he, also, would be glad for any member of the committee to choose any bill for floor discussion.

Senator Gojack is to handle SB 172 and SR 5.

Senator Schofield suggested Chairman Echols choose members to discuss various bills at his own discretion.

Chairman Echols commended the committee for their excellent attendance record so far (noting that Senator Raggio had asked to be excused this time, and Senator Wilson had been excused for the last meeting), and told the committee how much he appreciated their efforts.

There being no further business, Chairman Echols adjourned the meeting at 3:16 p.m.

Respectfully submitted,

Beth Quilici

Beth Quilici, Secretary

APPROVED:

Gene Echols

SENATOR GENE ECHOLS, CHAIRMAN

EXHIBIT "A"

TESTIMONY OF James T. Richardson, on behalf of the State Democratic Party and the Washoe County Party, to the Semate Committe on Legislative Functions, Feb. 10, 1977.

I would like to read into the record of the Committee the following resolutiona of the Democratic Party of Nevada and the Washoe County Democratic Party.

Resolutions of the State Part

That the 1977 Session of the Nevada Legislature provide strong conflict of interest and disclosure laws with appropriate penalities governing all elective and appointive policy making public officials including the judiciary.

That the 1977 Session of the Nevada Legislature do all things possible and necessary to provide sufficient constitutional and legal authority for the Ethics Commission to operate and to provide sufficient funds so the Ethics Commission may be properly staffed in order to carry out its functions.

Resolution of the Wshoe County Party.

Conflict of interest laws that would include the Judiciary should be strengthened and enforced. Existing laws for full campaign disclosure for all public officials should be strengthened. There should be full financial disclosure for all elected, appointed and policy making public officials.

Thank you very much.

James T. Richardson

EXHIBIT "B"

SENATE LEGISLATIVE FUNCTIONS COMMITTEE

FEBRUARY 10, 1977 HEARING

NOTES TAKEN FROM SB 172 TESTIMONY:

"You remember that 172 enacted a whole series of sections added to Chapter 281 and it repealed or amended a number of other sections which would have duplicated that. That law was held unconstitutional; the new material was unconstitutional in its entirety, so that has no affect."

Senator Gibson asked, "What was the basis of all of it being unconstitutional?"

Mr. Daykin: "Well, they said the provisions were so interrelated, that they would not sever them. Does that sound familiar, Senator?"

Senator Gibson: "That sounds very familiar."

"And so, all that this bill does, Senator Gojack, is to reenact Sections repealed and re-amend sections amended, so that the law of Nevada will read as it did before the so-called ethics in government law was enacted."

Senator Gojack: "So when I go through and read SB 172 as it is here, I ignore all the italics and pay attention to .....; in other words, do I have to read it in reverse?"

"No, you do not. What you see in italics here, for instance this first section reenacts the section that was repealed. Then going to Section 6, for example, we bracketed out the reference to the Nevada Ethics in Government Law that was inserted, and we restored the reference to Sections 4 and 5 of this act, which had been repealed and are now reenacted."

Senator Gibson asked for an analysis, including specific issues that had been ruled on.

"The principal issue was what Bob Warren described; an excessive requirement of disclosure, and they appeared to say two things: one, it was excessive; and two, it wasn't clear what you were required to disclose."

Senator Gibson asked if the bulk of the bill came from another state's law.

"The bulk of it was tendered to the Legislative Counsel Bureau, at least at the last session, as the so-called "common cause draft", which may have been enacted in other states, perhaps

Ms. Gothberg could give us a name there; but the problem was that the resulting Chapter 540 was a horse designed by committee. It was partly the assembly bill, which had contained rather moderate disclosure requirements at the outset, and then on to that, had been engrafted the much more rigorous requirements of the common cause draft. The result was, in part, self-contradictory, and, at least the court felt, went beyond what was held to be reasonable. Would you like to come up, Don? Don Klasic argued the case, and let me defer to him, upon the primary issue, if you would rather state it."

Don Klasic: "The prime issue, really, was the question of vagueness, and you're quite right, Frank, when you indicate that they made some reference to the question of the extent of disclosure. But, I really feel that when you read the decision, that they really did not decide it on that particualr matter, because you will see, that this language was almost virtually identical with language that was upheld in California. I think when the Court referred to this case, they were just simply throwing out a guideline, indicating to you that be careful not to go to the same language that was enacted prior to this other language in California. Actually, all they were concerned about was the question of vagueness, and cited several issues. For example, the act requiring that you had to disclose all interests within the jurisdiction of your agency, and that 'jurisdiction of your agency' was not defined. This is one of the vague areas of concern, so that really was it. I would also like to comment on some of the comments made here about the judiciary. If I may, I would just like to read one very short paragraph on the opinion." (Please see EXHIBIT "C") "So what they're saying here is that those seperation of powers did prevent the legislature from even including the judiciary in the ethics in government law at all. This is something that the judiciary must take care of through their own rules and regulations, and as Justice Gunderson has pointed out in his dissent, this is what the judiciary is currently doing. I just wanted to address the question of the judiciary there, but if you read this thing, you'll see that the soul reason, although they threw in a lot of other clues and hints as to how you should proceed on drafting a law, the sole issue was the question of vagueness, with regards to the financial disclosure law."

Frank Daykin agreed to furnish each member of the Committee with a copy of the opinions quoted by Mr. Klasic.

Mr. Daykin: "There is another bill request which I think has been both drafted and delivered (I did not check before I came up here whether it has been introduced), which would, in effect, reenact the new provisions that you had enacted before, reestablishing the ethics commission, and so forth, and attempting to eliminate the vagueness problem of which the court spoke. That, of course, is not this bill. This was directed to restoring the structure so that you could then build upon it with whatever you choose to come up with. I'm glad to see that Don agrees with me (as I knew he would), that our Supreme Court was not saying that you could not require disclosure. They landed upon the question of the judiciary, because the district judge, on the contrary, had said that exclusion of the judiciary made it unconstitutional."

Mr. Klasic told the committee that another problem that they might wish to consider is the proper definition or consideration of officers. He stated that one of the major controversies of the last session was the question of whether advisory officers should be included or not.

Chairman Echols expressed concern that possibly there was danger of exposure by not having an ethics law at this time.

Mr. Klasic stated that he had "done some research on the question of what happens to all these laws that had been extensively repealed, when the ethics law was passed. I did happen to find a few cases which indicated that with the finding of unconstitutionality of the ethics law, these laws which were repealed were back in force, because, supposedly, they'd never, you know, void-ab initio. And so, these other laws, theoretically, are still on the books. The question is not all that clear. I certainly found some cases, but there are others going the other way."

Senator Wilson asked if Mr. Klasic were referring to the severability clause.

Mr. Daykin:"There was not a specific severability clause in the act, Senator Wilson. The court inverted (not having taken, I think, proper account of Don's argument) to the general severability clause in NRS, and they raised some doubt about it,which is why we reprocessed,in NRS, the severability clause and placed it within NRS; but the court's holding here was different from its holding upon the consolidation law. There, they said that Chapter 641 of the Statutes of Nevada was void in its entirety. That was lock, stock and barrel. Here, they did not say Chapter 540 of the statutes, they said Nevada Ethics in Government Law, which

was only a part of Chapter 540. Therefore, Don's anxiety (I think) is well founded and my problem is that I have no authority (even under the case law, I think) for reprinting in NRS, the statutes which were repealed, or for restoring the former language of statutes which were amended, unless this bill is enacted. I would say, Senator Echols, that you do expose the state to some risk by postponing the consideration of this bill. You will notice that this bill is effective upon passage and approval. If you subsequently, at this session, enact any other ethics bill, it will amend Nevada law, as amended by this bill, and not conflict with it."

Comment by Mr. Klasic.

Mr. Daykin: "That is what troubles me, Don, and I have kept my mouth shut ever since the decision came down, because I did not wish to embarrass the law enforcement officers of the state, in doing their duty to prosecute any violation which might arise, but I think we should give them the full tools to do it with, and not rely upon Don's skill in argument to convince the court that something which the legislature repealed was somehow re-enacted by the Supreme Court."

Chairman Echols noted he did not see any severability clause in SB 172.

Mr. Daykin: "No, Senator Echols, with all deference to the learned court, a severability clause is not appropriate in any bill which amends NRS, because there already is one, and we are in the process (and I am not sure, Senator Close; you passed it out to the Senate, it is in the Assembly, and if the Assembly Judiciary will graciously deign to pass it out, it will become, I think, the law of the State of Nevada) of moving that severability clause up into NRS where it's more noticeable."

In answer to Senator Gibson's question "What you are suggesting is that we go ahead and process this now, and then look at it as being seperate from the proposals that are coming in?", Mr. Daykin replied, "Yes I do, Senator."

In reply to a question from Senator Schofield, Mr. Daykin replied, "Yes. In other words, this will put the law back where it was before you started in 1975. Then, you will go on from that point, with whatever new you may choose to enact."

Senator Gibson moved DO PASS
Senator Wilson seconded
Motion carried unanimously.

EXHIBIT "C"

The doctrine of separation of powers is fundamental to our system of government. Galloway v. Truesdell, 83 Nev. 13, 422 P.2d 237 (1967). The judicial department may not invade the legislative and executive province. State v. District Court, 85 Nev. 485, 457 P.2d 217 (1969). Neither may the legislative and executive branches of government exercise powers properly belonging to the judicial department. Graves v. State, 82 Nev. 137, 413 P.2d 503 (1966). Out of deference to the doctrine of separation of powers the legislature specifically excluded members of the judiciary from the Ethics in Government Law. Such exclusion was constitutionally mandated. In re Kading, 235 N.W.2d 409 (Wis. 1975).

EXHIBIT "D"

10 Feb 1977

To: Senate Legislative Functions

I am Esther Nicholson and I am here today, representing the League of Women Voters. Since 1965, the League has had a study of the Nevada Legislature as one of its major program items, supporting, in general, proposals to modernize and improve its procedures toward the goal of greater effeciency of operation and value for monies expended. We have arrived at consensus in a number of specific areas and we would like to commend the legislature on the numerous steps it has already taken toward enabling the legislative branch to function as a more effective lawmaking body.

I should like to make brief comments and give specific endorsements on several of the bills which appear on your agenda for today. In the interest of saving time and avoiding multiple appearances behind this table, I will, if it meets with the approval of the committee, read my entire statement covering the bills the League wishes to speak to, and I have left copies for each of you with your secretary, in case you wish to refer to it at a later time. The order I am using, does not conform to the order in which the bills are listed in the hearing notices in the Daily Journal.

SJR 7 The League feels that SJR 7 is one of the most important measures that will come before you this session. We feel strongly that the legislature should be a strong, independent, co-equal branch of government, cooperating whenever possible, of course, with the executive and judicial branches, but in no way subservient to them. The legislature is peculiarly the people's branch. It most closely represents them in all their diversity. It is closer and more accessible to them than any other branch. The enacting clause of every law

reads "the people of the State of Nevada represented in Assembly and Senate do enact as follows".

It seems to us, therefore, that the power to call the legislature into special session and to determine what business it should be able to take up therein, should not reside solely with the Governor. The Resolution before you makes it mandatory upon the Governor to call a special session if two-thirds of the members elected to each house, petition him to do so. And, it also allows for two-thirds of the members to expand the agenda in a session called by the Governor beyond the specific business for which he has convened them.

This Resolution seems to us a much needed amendment to correct a serious imbalance of power, especially in a state where legislature meets only biannually. Nevada has been fortunate, at least since the early 1960s when I began following state government, to have had, in the main, men and women serving in the legislature and men (perhaps someday I can also say "women") serving as governor who were honest, conscientious and of high calibre, who could work together amicably. However, I have heard and read of serious problems occurring in other states when the governor and the legislature were at loggerheads and the inability to act, unless called into session by the governor, was or could have been crucial. I'm sure you can all think of hypothetical cases where such a situation could arise in Nevada. Perhaps you can even fantasize about what might have happened, during the Watergate crisis, had the Congress not been in session and dependent upon the will of the President to reconvene. We urge a unanimous "Do Pass" on S.J.R.5

SB 147 would seem to need little comment. The League supported the concept of an orientation session preceding the regular session during the 58th session and we were delighted to see the excellent attendance at the first such conference everheld in Nevada in December 1976,

not only of freshmen members but also of many who had served in previous sessions. The League has also long supported adequate compensation for legislators and their supportive staffs. SB 147 simply provides travel and per diem expenses for legislators attending pre-session orientation conferences at the same rate as for attendance at regular and special sessions. Naturally we endorse it.

SCR 6, SB 147, SB 148 and SB 149 it seems to us, may be considered more or less as a packet. According to Journal Rule 9,now operative, the Legislature may, by concurrent resolution, adjourn for more than the normal three day week-ends (Sundays not being counted) but this power has seldom been used. SCR 6 places a limit of 20 days total during any one regular session and specified the purposes for such adjournments and, I quote, "to permit standing committees, select committees or the legislative counsel bureau to prepare the matters respectively entrusted to them for the consideration of the legislature as a whole." This would seem to the League, to provide a needed flexibility to the session and could prevent the legislature, as a whole, from sitting around spinning its wheels if logjams develop in committees or in the counsel bureau.

SB 46 and SB 56 clarify and make more effective, the process already provided for in Nevada statues for the pre-filing of bills. The League supported the pre-filing concept when it was before the legislature in previous sessions, The only change which SB 46 makes in the existing statute is to provide that pre-filed bills and resolutions shall be automatically delivered to the secretary of the Senate or the chief clerk of the Assembly and shall be deemed introduced by the requester on the date printed upon it. That date, as is clear in the wording of the present statute shall be the date of the convening of the next succeeding regular session except for

most appropriation bills which shall bear a date 10 days later. This automatic introduction of pre-filed bills on the first day of the session, would seem to speed up the process and save time.

SB 56 makes possible the distribution of pre-filed bills to the legislature or to the public. The wording protects the requester, should he not wish to authorize such distribution. However, it would seem to us that pre-distribution would be highly desirable. The pre-filed bills would carry the name of the standing committee to which the requester proposes to refer the bill. Since most committees assignments are pretty firm before the session opens, a substantial amount of careful reading and study of early bills could be accomplished prior to opening day. Of course, we realizw the seccess of these measures will depend upon the degree to which legislators understand and utilize it. We hope SB 46 and SB 56 will not only pass but that its potential will be realized.

SB5 sets up certain specific requirements for public notice of hearings and committee discussions on bills and resolutions. We support it as one more step toward the citizen's right to know and to participate in the law-making process.