SENATE TAXATION COMMITTEE
MEETING OF APRIL 16, 1977

The meeting was called to order by Chairman Bryan. The following members were present:

Senators Gary Sheerin, Norman Ty Hilbrecht, Carl Dodge, Norman Glaser, Floyd Lamb and Richard Bryan.

The following items were considered and action taken:

SB 456 Enacts excise tax on aviation jet fuel, provides for distribution of tax and replacement of certain revenue received by cities from public utilities.

Senator Sheerin moved for indefinite postponement, stating that the idea has merit but the end result is still a $500,000 loss to the counties. Senator Dodge seconded the motion, saying he wished to pursue putting a lid on the counties on the dollar amount they enjoy with the franchise tax. The vote was unanimous with Senator Glaser absent.

SB 303 Prohibits cities from imposing license taxes on certain utilities.

Senator Bryan explained to Mr. Frank Daykin, of the Legislative Counsel Bureau, that the bill is not properly drawn but the thrust behind it is clear. It purports to eliminate the so-called franchise fee which cities collect from customers of public utilities. It's impact overall is $3.9 million. The Committee has suggested freezing the amount collected. He asked Mr. Daykin if there was a device or method for freezing the dollar revenue generated.

Mr. Daykin said, with respect to the cities, constitutionally a lid can be placed on the revenue generated.

Senator Hilbrecht asked how this would be done.

Mr. Daykin stated the burden would be placed upon the city to adjust its rate so that the revenue generated did not exceed a certain amount. As to the counties, it would have to be worded as a general law that they could not collect more than what was being collected on a specific date.

Mr. Jim Lien, Deputy Director of the Department of Taxation, stated that the concept could be abolished with the counties. The revenue in Churchill County only amounts to $300.

Senator Hilbrecht stated the bill also should be amended. It is defective. It cites the wrong chapter.

Senator Lamb moved to Amend and Do Pass. Senator Hilbrecht seconded the motion. It was decided to prohibit counties from imposing or collecting such a fee. Chapters .266 and .268 must be amended and the figures to be used would be the ones Mr. Lien had obtained from the cities on how much was being collected this year. The motion was passed unanimously.

SB 441 Authorizes property tax exemption for surviving spouse of disabled veteran.

Mr. Lien stated the Department of Taxation had corrected the amount of fiscal impact. After further talks with the Veterans Administration, it was determined the impact would be $64,000 in valuation.

Senator Hilbrecht stated he felt, at this time, the Committee would be committed not to delete the limitation on page 19, line 1 of the bill.

Mr. Lien told the Committee that AB 622 expands considerably the people who would be eligible under the disabled veterans language. Approximately 5,000 would be eligible.

Senator Hilbrecht stated, if that is the case, he was not sure SB 441 should be processed.

Senator Sheerin stated he felt these things had to be taken at a step at a time. He moved to Do Pass and Re-refer to Finance. The motion died due to a lack of a second.

Senator Glaser moved to hold the bill pending AB 622. Senator Hilbrecht seconded the motion and it passed unanimously.

AB 100 Places cigarette taxes directly upon ultimate consumer.

Senator Bryan said there was some ambiguity in the language on page 7, lines 36-37. He understood the function of section 31 is to permit wholesalers to sell directly without imposing the stamp to veterans hospitals, military installations and Indian reservations.

Mr. Salo said it did not necessarily mean that the wholesalers could sell without placing the stamp on the cigarettes, but these recipients, including certain Indians, would be entitled to a refund.

Senator Hilbrecht stated the problem is what the language on lines 36-37 means. The person who is exempt from the tax is going to have to be defined.

Senator Sheerin said this could be done by striking the words "members of".

Senator Hilbrecht stated that the people who are Indians must be amended, however that might be defined. Secondly, it must define if on an Indian reservation. It's not necessary that they be members of that tribe. The Moe case goes further than the simple members of the tribe.

Mr. Jim Salo, Deputy District Attorney, stated the Moe case talks in terms of resident Indians on the particular reservation.

Senator Bryan asked if it would give Mr. Salo problems if the section was amended to read: "c. A recognized Indian tribe which sold and delivered to Indians on an Indian reservation or Indian colony within the state."

Mr. Salo said it would improve the definitional problem, but it might expand the exemption to include tribes when there isn't a specific case that makes this clear.

Senator Lamb stated it is the intent to allow Indians to get tax exempt cigarettes. What is the difference if it says Indian or tribe?

Senator Dodge stated he felt the language should be addressed to an Indian retailer. The test should not be whether an Indian tribe is conducting the business for itself. With the situation now where they have a lease with Mr. Steve King, there would be serious trouble if it said he were not exempt from the excise tax as a lessee selling to the Indians on the Indian reservation.

Mr. Joe Midmore, of the Tobacco Tax Council, stated the thrust of the bill is at the ultimate consumer. Therefore, wouldn't it be correct to say to a retailer on an Indian reservation for sale to Indians.

Mr. Daykin stated that is what the bill really says because it says "upon proof satisfactory refunds shall be allowed for the face value of the cigarette revenue stamp tax, paid upon cigarettes that are sold to members of a recognized Indian tribe if sold and delivered on an Indian reservation." The list on a, b and c is not the dealer to whom the cigarettes are sold but the person or legal entity to which the dealer sells that.

Senator Dodge stated the problem was with the refund. It was not the intent to reach the consumer for the refund.

Mr. Daykin said the list in paragraphs a, b and c refers to the persons to whom the dealer claiming the refund has sold the cigarettes, upon which he claims the refund.

Senator Hilbrecht stated he questioned whether the wording "members of a recognized Indian tribe" is consistent with Moe in terms of defining the persons exempt from the tax.

Mr. Salo said an Indian is not defined in Moe. There are cases which define it differently for different purposes. By the adoption of section 31, it would in effect be saying, for purposes of this act, a person is deemed an Indian only if he is a member of a recognized tribe and can prove that.

Senator Bryan asked if this would cause legal problems.

Mr. Salo said he did not know. There is no authority which specifies what is an Indian.

Senator Bryan asked Mr. Salo if he would like the language in section c to say "Indians if sold or delivered on an Indian reservation or colony" and eliminate the qualification "Member of a recognized Indian tribe."

Mr. Salo said he agreed with the suggestion.

Mr. Daykin stated that would avoid a lot of problems, although it might open some loopholes. He cited a Supreme Court case in which it was determined the fact that a person was a Mexican national did not prevent him from being an Indian because most Mexicans have a substantial portion of Indian blood.

Senator Bryan asked to address the suggestion to give Indians an exemption if they impose a tax upon their own sales which would be equal to or greater than the tax presently imposed in the State of Nevada. He said he personally supported that suggestion.

Mr. Salo said there is no question that there is federal case law which recognizes that tribes have governmental functions and governmental powers, although albeit it is limited. The Indian sovereignty doctrine has been discredited in recent years in the sense that the Supreme Court has clearly indicated it will not accept the sovereignty doctrine as a blanket exemption.

Senator Dodge stated there was another policy question. The cigarette tax is returned to the cities and counties for support of local governmental services. There is no question about there being governmental entity on a reservation and it makes some sense for the State of Nevada to at least help the Indians like it supports another jurisdiction in supporting local governmental services through that tax.

Senator Sheerin stated they ought to tax Indians too.

Senator Bryan said that is the thrust of it. Also, if they do that, it takes away the unfair, economic competitive advantage.

Mr. Daykin stated there would have to be provisions, saying if they voluntarily imposed the tax, then it is collected in the same way as the cigarette tax and refunded prorata, or if they did not elect to impose a tax, then they would enjoy the exemption being provided here. That exemption would go to Indians only. Consequently, they would receive more money by electing to have the tax collected, assuming there were any non-Indian sales.

Mr. Salo raised the question about the Moe case prohibiting imposition of penalties on the Indian dealer. On section 17 of page 3, the approach used is that the department may issue a dealer's license to the retailer without fees if he is doing business on an Indian or military reservation. The Supreme Court clearly indicated in Moe that the State could not impose a license fee on the retailer on a reservation and indicated that the penalties should not be applicable. He questioned whether the language in AB 100 was broad enough to imply that any penalties imposed would not be effective.

Senator Bryan suggested that Mr. Daykin and Mr. Salo get together to make that determination.

Mr. Daykin said if there was a problem with it, it would be taken out.

Senator Dodge asked Mr. Salo if it was his unqualified opinion that the state could stand up to the Supreme Court decision.

Mr. Salo said that was correct.

Senator Hilbrecht moved to Amend and Do Pass. Senator Sheerin seconded the motion and it passed unanimously with Senator Lamb absent.

AJR 21 of the 58th Session -- Proposes constitutional amendment for progressive exemption of business inventories from property taxation and legislative exemption of other personal property.

Senator Bryan explained to Senator Hilbrecht that Mr. Daykin had advised the Committee that a joint resolution cannot be amended on the second go around. The only way to consider it procedurally would be to draw a new resolution.

Senator Hilbrecht explained he believed the personal property tax is unfair. The only people who pay it are the ones who are honest or homeowners who don't have much option about paying it. It's not an indispensable part of the state's revenue. He said he had problems with this bill because it singles out business inventories and makes two classifications. It mandates certain action with respect to business inventory and indicates that the legislature may do some things in other areas. He said his amendment would have repealed the personal property tax.

Senator Glaser moved to Do Pass. Senator Dodge seconded the motion. The motion passed 5-1 with Senator Hilbrecht dissenting. Senator Hilbrecht stated he opposed the bill only on the grounds that it is discriminatory in that it does not include all personal property.

SB 473 Permits taxation by weight of certain vehicles when original purchase price cannot be determined.

Senator Richard Blakemore said this bill came about because there is no way to establish book value on old equipment. This bill suggests to adjust it by the pound in order to get some continuity in the computation.

Senator Dodge stated, under the known suggested retail price, a depreciation of 13 per cent of the value will be permitted. He said he could conceive that with some of these vehicles that may still be on the road, a $4,500 valuation is being talked about. That is high if it is a real old vehicle. He asked if it was intended to go by the original value.

Senator Blakemore stated it is the intent to go by weight only. It makes it uniform for all by doing it this way.

Mr. John Ciradella, of the Department of Motor Vehicles, said in order to keep equality in the system, this has been applied for numerous years until advised by the Attorney General that the DMV did not have the authority to use the weight factor. This is why it was felt it should be put in the statute.

Senator Bryan stated the concern was with the residual values.

Mr. Ciradella said the original value would be taken down to 13 per cent as is stated in 371.060.

Senator Bryan asked if the values included in sub-section four in the bill are depreciated from those base figures.

Mr. Ciradella said that was correct.

Senator Bryan stated then Senator Dodge was incorrect.

Senator Dodge said that should then be stated to be the original value.

Senator Bryan stated there is another statute that plugs into 371.050 which allows them to take the depreciation from that. That depreciation schedule relates back to sub-sections 1-3 of the statute which is sought to be amended. All that is being done is a new category is added and, by implication, that depreciation schedule would relate to it.

Senator Dodge suggested that the word "original" be inserted in front of the word "value" on lines 19 and 21 to make this clear.

Senator Dodge moved to Amend and Do Pass. Senator Lamb seconded the motion. It was decided to place the word "original" on lines 19, 21 and 22. The motion passed 5-0 with Senator Hilbrecht absent.

AB 533 Adds Trust for Public Land to charitable corporations; broadens exemption for land held for charitable purposes.

Mr. Russ McDonald, Washoe County Manager, explained the background in the bill which was stated in an opinion by the Washoe County District Attorney, Larry Hicks. Mr. McDonald submitted Mr. Hicks' opinion. The opinion is attached.

Senator Bryan stated his problem with this bill is that during the course of the session, five or six groups have asked for exemptions and their bills were killed. In each case, the Committee told these groups they would not be exempt because they were not occupying the land. Now, if in the closing days in the session, the charitable definition is expanded, it may break faith with these other people.

Mr. McDonald offered the Committee an escape hatch. He suggested amending the bill by deleting section two and still recognizing the Trust for Public Land as a viable non-profit corporation which may assist the State of Nevada in the acquisition of this property to get it back into public ownership. Then leave the question of what the word actually occupied means to the Supreme Court rather than having this body decide it.

Senator Dodge stated, under 361.110, the only thing an exemption can be taken on is on an improvement. It can't be taken on unimproved property.

Mr. Lien said there is some question about 361.111. It appears to allow the exemption even though the property is actually occupied by people. He did not feel .111 had to be read in conjunction with .140.

Senator Sheerin stated .110 talks about the buildings and the lots on the ground on which they stand are exempt. The language in .140 is talking about the buildings together with the land actually occupied. All that is needed to be done is to strike the words "actually occupied" and use the language "the land on which it stands." If section .111 is amended, the Committee would be getting in the inconsistencies of denying those other groups before the Committee earlier.

Senator Glaser said he did not like the philosophy of the bill. He said he could foresee some organization purchasing land and having that property taken off the tax roll.

Senator Bryan asked Mr. Lien to explain the fiscal impact.

Mr. Lien said the Trust owns 120 acres in Washoe County with a tax bill of $450. It cannot be estimated what the group may purchase in the future.

Senator Lamb moved to indefinitely postpone the bill. Senator Glaser seconded the motion and it passed 4-1 with Senator Bryan dissenting. Senator Hilbrecht was absent.

AB 575 Provides for recovery of costs of nuisance abatement on certain property.

Mr. McDonald said he was faced with an actual situation and found no answer in the statute where the county treasurer receives property in trust for delinquent taxes. The property may be within an incorporated city and is subject to the uniform codes of that city. In one situation, the county had a substantial piece of property with rundown buildings and weeds. As manager, Mr. McDonald was served an abatement notice by the Fire Department and the county had to spend the money to clean it up. The statute is absent as to how the county would recover these costs when the land is sold.

Senator Lamb moved to Do Pass. Senator Glaser seconded the motion and it passed 5-0 with Senator Hilbrecht absent.

AB 576 Provides for use of unrefunded county tax collected on aviation fuel.

Mr. McDonald stated this is a situation in which the independent auditors of Washoe County took an indefinite position about the refunds of aviation fuel when the money was paid on the county gas tax. It was being put into the county street and highway fund and those aviation fuel funds were not apportioned back to the airport. This bill proposes to give the funds back to the City of Reno to operate the airport.

Senator Glaser moved to Do Pass. Senator Lamb seconded the motion and it passed 5-0 with Senator Hilbrecht absent.

AB 578 Changes terminology and maturity of short-term financing under county motor vehicle fuel tax law.

Mr. McDonald stated this bill proposes to clean up the question of emergency loans. This corrects the section of the

vehicle tax law to the short-term financing.

Senator Dodge moved to Do Pass. Senator Lamb seconded the motion and it passed 5-0 with Senator Hilbrecht absent.

There being no further business the meeting was adjourned.

Respectfully submitted,

Colleen Crum, Secretary

APPROVED:

Senator Richard H. Bryan
Chairman

(REPRINTED WITH ADOPTED AMENDMENTS)
SECOND REPRINT **A. B. 100**

ASSEMBLY BILL NO. 100—COMMITTEE ON TAXATION

JANUARY 20, 1977

Referred to Committee on Taxation

SUMMARY—Places cigarette taxes directly upon ultimate consumer.
(BDR 32-224)

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

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

AN ACT relating to taxation; providing for licensing of retail dealers in cigarettes and for direct taxation of the consumers of cigarettes; permitting the governing body of an Indian reservation or colony to impose an excise tax on the sale of cigarettes; providing for refunds in certain instances; 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 370 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 4.5, inclusive, of this act.

SEC. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 370.010 to 370.055, inclusive, have the meanings ascribed to them in those sections.*

SEC. 3. *All taxes paid under the provisions of this chapter are direct taxes upon the consumer and are precollected for convenience only. Taxes paid by persons other than the consumer are advances, and shall be added to the selling price of the cigarettes.*

SEC. 4. *There is hereby levied a tax upon the purchase or possession of cigarettes by a consumer in the State of Nevada. The tax may be represented and precollected by the affixing of a revenue stamp or other approved evidence of tax payment to each package, packet or container in which cigarettes are sold. The tax shall be precollected by the wholesale or retail dealer, and shall be recovered from the consumer by adding the amount of the tax to the selling price. Each person who sells cigarettes at retail shall prominently display on his premises a notice that the tax is included in the selling price and is payable under the provisions of this chapter.*

SEC. 4.5. *1. The governing body of an Indian reservation or Indian colony may impose an excise tax on any cigarettes sold on the reservation or colony.*

(REPRINTED WITH ADOPTED AMENDMENTS)
FIRST REPRINT

S. B. 473

SENATE BILL NO. 473—SENATORS BLAKEMORE AND ASHWORTH

APRIL 12, 1977

Referred to Committee on Taxation

SUMMARY—Permits taxation by weight of certain vehicles when original purchase price cannot be determined. (BDR 32-1668)
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 vehicle privilege tax; providing for taxation by weight of buses, trucks and truck tractors, trailers and semitrailers whose original purchase price cannot be determined; 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. NRS 371.050 is hereby amended to read as follows:

371.050 1. Valuation of vehicles shall be determined by the department upon the basis of 35 percent of the manufacturer's suggested retail price in Nevada excluding options and extras, as of the time the particular make and year model is first offered for sale in Nevada.

2. If the department is unable to determine the manufacturer's suggested retail price in Nevada in respect to any vehicle because the vehicle is specially constructed, or for any other reason, the department shall determine the valuation upon the basis of 35 percent of the original retail price to the original purchaser of the vehicle as evidenced by such document or documents as the department may require.

3. For each bus, truck, truck tractor, trailer and semitrailer having an unladened weight of more than 6,000 pounds, the department may use 85 percent of the original purchaser's cost price in lieu of the manufacturer's suggested retail price.

4. If the department is unable to determine the original manufacturer's suggested retail price in Nevada, or the original retail price to the purchaser of any bus, truck or truck tractor having an unladen weight of less than 6,000 pounds, the department may determine the original value of the vehicle on the basis of 75 cents per pound. If the vehicle has an unladen weight of 6,000 pounds or more, the original value may

(REPRINTED WITH ADOPTED AMENDMENTS)
FIRST REPRINT

S. B. 303

SENATE BILL NO. 303—SENATOR HERNSTADT

MARCH 3, 1977

Referred to Committee on Taxation

SUMMARY—Prohibits cities from imposing license taxes on certain utilities. (BDR 32-986)

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

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

AN ACT relating to public utilities; limiting the power of the governing body of a county, city or town to impose a license tax or similar tax, fee or charge on the transaction of the business of a public utility; 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 364 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. The governing body of a county shall not fix, impose or collect a license tax or fee of more than $150, a franchise tax or fee or any other similar tax, fee or charge, however denominated, for the transaction of the business of any public utility within its jurisdiction.

2. The governing body of any city or town shall not fix, impose or collect a license tax or fee of more than $150, a franchise tax or fee or any other similar tax, fee or charge, however denominated, for the transaction of the business of any public utility within the city or town limits to raise a greater revenue than was raised during the fiscal year 1976–1977.

SEC. 2. NRS 244.335 is hereby amended to read as follows:

244.335 1. Except as provided in [subsection 2,] *subsections 2 and 3,* the board of county commissioners shall have power and jurisdiction in their respective counties to:

(a) Regulate all character of lawful trades, callings, industries, occupations, professions and business conducted in their respective counties, outside of the limits of incorporated cities and towns.

(b) Fix, impose and collect a license tax for revenue or for regulation, or for both revenue and regulation, on such trades, callings, industries, occupations, professions and business.

2. The county license boards shall have the exclusive power and

ASSEMBLY BILL NO. 578—COMMITTEE ON GOVERNMENT AFFAIRS

MARCH 30, 1977

Referred to Committee on Taxation

SUMMARY—Changes terminology and maturity of short-term financing under county motor vehicle fuel tax law. (BDR 32-1328)
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 the county motor vehicle fuel tax; changing terminology and maturity on short-term financing; 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. NRS 373.020 is hereby amended to read as follows:

373.020 As used in this chapter, unless the context otherwise requires:

1. "Acquisition" or "acquire" means the opening, laying out, establishment, purchase, construction, securing, installation, reconstruction, lease, gift, grant from the United States of America, any agency, instrumentality or corporation thereof, the State of Nevada, any body corporate and politic therein, any corporation, or any person, the endowment, bequest, devise, condemnation, transfer, assignment, option to purchase, other contract, or other acquirement (or any combination thereof) of any project, or an interest therein, herein authorized.

2. "Board" means the board of county commissioners.

3. "City" means an incorporated city or incorporated town.

4. "Commission" means the regional street and highway commission.

5. "Cost of the project," or any phrase of similar import, means all or any part designated by the board of the cost of any project, or interest therein, being acquired, which cost, at the option of the board may include all or any part of the incidental costs pertaining to the project, including without limitation preliminary expenses advanced by the county from [funds] *money* available for use therefor or any other source, or advanced by any city with the approval of the county from [funds] *money* available therefor or from any other source, or advanced by the State of Nevada or the Federal Government, or any corporation, agency

ASSEMBLY BILL NO. 576—COMMITTEE ON GOVERNMENT AFFAIRS

MARCH 30, 1977

Referred to Committee on Taxation

SUMMARY—Provides for use of unrefunded county tax collected on aviation fuel. (BDR 32-1327)
FISCAL NOTE: Local Government Impact: Yes.
State or Industrial Insurance Impact: No.

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

AN ACT relating to the county motor vehicle fuel tax; providing for the use of the unrefunded balance of the tax on aviation fuel for purposes related to aviation; 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. NRS 373.150 is hereby amended to read as follows:

373.150 1. [Any] *Except as provided in subsection 3, any* city or town whose territory is not included wholly or in part in the streets and highways plan described in NRS 373.030 may receive a distribution in aid of an approved construction project from the regional street and highway fund, which shall not exceed the amount allocated to such city or town under subsection 2.

2. The share of revenue from the county motor vehicle fuel tax allocated to each such city or town shall be in the proportion which its total assessed valuation bears to the total assessed valuation of the entire county. Any amount so allocated which is not distributed currently in aid of an approved project shall remain in the fund to the credit of that city or town.

3. The unrefunded balance of the tax collected under this chapter which is subject to refund by reason of the use of such taxed fuel as aviation fuel, shall be allocated to the local governments which own or control any airports, landing areas and air navigation facilities within the county in the manner and for the purposes described in NRS 494.046.

SEC. 2. NRS 373.130 is hereby amended to read as follows:

373.130 1. Funds for the payment of the cost of a project within the area embraced by the streets and highways plan described in NRS 373.030 may be obtained by the issuance of revenue bonds and other revenue securities as provided in subsection 2 of this section, or, subject to any pledges, liens and other contractual limitations made hereunder, may be

A. B. 575

ASSEMBLY BILL NO. 575—COMMITTEE ON GOVERNMENT AFFAIRS

MARCH 30, 1977

Referred to Committee on Taxation

SUMMARY—Provides for recovery of costs of nuisance abatement on certain property. (BDR 32-1322)

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

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

AN ACT relating to the property tax; providing for recovery by the county of its costs of nuisance abatement on property held in trust for delinquent taxes; 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 361 of NRS is hereby amended by adding thereto a new section which shall read as follows:

The necessary costs to the county to abate a nuisance on property held in trust by the county treasurer for delinquent taxes are legally chargeable against the property.

(30)

A. J. R. 21 of the 58th Session

ASSEMBLY JOINT RESOLUTION NO. 21—COMMITTEE ON TAXATION

APRIL 1, 1975

Referred to Committee on Taxation

SUMMARY—Proposes constitutional amendment for progressive exemption of business inventories from property taxation and legislative exemption of other personal property. (BDR C-1427)

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

ASSEMBLY JOINT RESOLUTION—Proposing an amendment to section 1 of article 10 of the constitution of the State of Nevada, relating to taxation, by requiring the legislature to provide for a progressive exemption of business inventories from property taxation and permitting the legislature to exempt any other personal property from such taxation.

Resolved by the Assembly and Senate of the State of Nevada, jointly, That section 1 of article 10 of the constitution of the State of Nevada be amended to read as follows:

Section 1. The legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, except mines and mining claims, when not patented, the proceeds alone of which shall be assessed and taxed, and when patented, each patented mine shall be assessed at not less than five hundred dollars ($500), except when one hundred dollars ($100) in labor has been actually performed on such patented mine during the year, in addition to the tax upon the net proceeds; shares of stock (except shares of stock in banking corporations), bonds, mortgages, notes, bank deposits, book accounts and credits, and securities and choses in action of like character are deemed to represent interest in property already assessed and taxed, either in Nevada or elsewhere, and shall be exempt. Notwithstanding the provisions of this section, the legislature may constitute agricultural and open-space real property having a greater value for another use than that for which it is being used, as a separate class for taxation purposes and may provide a separate uniform plan for appraisal and valuation of such property for assessment purposes. If such plan is provided, the legislature shall also provide for retroactive assessment for a period of not less than 7 years when agricultural and open-space real property is converted to a higher use conforming to the use for which other nearby property is used.

SENATE

SENATE TAXATION

DATE APRIL 16, 1977

PLEASE PRINT — PLEASE PRINT — PLEASE PRINT — PLEASE PRINT — PLEASE PRINT — PLEASE

STI-FYING?	NAME	ORGANIZATION	ADDRESS	PHON
	JOHN CIARELLA	DEPT OF NATURAL RES		

Washoe County District Attorney

Washoe County Courthouse
South Virginia and Court Streets
P.O. Box 11130 • Reno, Nevada 89510

LARRY R. HICKS
District Attorney

July 29, 1976

OFFICIAL OPINION NO. 76-47

Donald E. Peckham
Washoe County Assessor
2910 Mill Street
P. O. Box 11130
Reno, Nevada 89510

Re: Tax Exemption Application of The Trust for Public Land respecting Real Property

Dear Don:

This is in response to your letter of February 23, 1976, requesting a Legal Opinion as to the tax-exempt status of real property owned by The Trust for Public Land (hereinafter termed The Trust), involving a 120-acre parcel in Washoe County, Nevada. The issuance of this Opinion was delayed, pending receipt of additional information from the applicant on July 14, 1976.

FACTUAL BACKGROUND

Based on the materials forwarded to our Office, including a copy of the Articles of Incorporation of The Trust for Public Land, copies of correspondence from the Internal Revenue Service to said Corporation, and the other supporting documents submitted on behalf of said Corporation, it appears that The Trust is a nonprofit corporation organized for the following charitable purposes:

1. To acquire open lands on behalf of the general public devoted to "the preservation of native plants or animals, biotic communities, geological or geographical formations of scientific interest, or recreation and scenic beauty."

2. To seek, develop, and demonstrate practical ways to

insure an ecologically balanced use of the nation's land resources which "promotes optimum human living conditions in a biologically healthy environment."

3. To contract, rent, buy, or sell real or personal property in furtherance of the above charitable purposes.

In connection with the above, our Office has been advised that the 120-acre parcel in question has been acquired by The Trust as an "inholding" and will be held by said Corporation until it can be reconveyed to the U. S. Forest Service for inclusion in the Toiyabe National Forest.

Other facts pertinent to this Opinion are as follows:

The land in question is totally vacant and is not occupied by The Trust or any of its officers, agents, or employees. However, the land is currently available for public use, such as hiking, picnicing, backpacking, nature walks and other such low intensity uses.

No revenues are derived from the land and no other monetary benefits are distributed to any person or entity as a result of the ownership of the land by The Trust.

In accordance with the Articles of Incorporation, it appears that real property owned by The Trust is "irrevocably" dedicated to charitable purposes, and no part of its assets shall ever inure to the benefit of any director, officer, or member thereof or to the benefit "of any private person."

Upon dissolution of The Trust, its remaining assets must be distributed to a "nonprofit fund, foundation, or corporation which is organized and operated exclusively for charitable purposes."

LEGAL BACKGROUND

The Trust has applied for a real property tax exemption pursuant to the terms of NRS 361.140. Our Office has also reviewed NRS 361.111 (which appears inapplicable to The Trust) and NRS 361.135 in connection with this matter.

NRS 361.140 is applicable to corporations whose objects and purposes are for public charity, religious or educational, and whose funds have been derived in whole or in part from public donations. See: NRS 361.140, Subsection 1(a).

Based on the representations of Robert W. McIntyre, Vice-President of Finance for The Trust, in his letter of June 4, 1976, it appears these qualifications have been met. The tax exemption provided in NRS 361.140 is set forth in subsection 2 as follows:

> "2. All buildings belonging to a corporation defined in subsection 1, together with the land actually occupied by such corporation for the purposes described and the personal property actually used in connection therewith, are exempt from taxation when used solely for the purpose of the charitable corporation." (Emphasis supplied.)

As noted, the key word in the above statute is the term "occupied." Since the 120-acre parcel in question is not "occupied" by The Trust in a technical sense, it is not clear from general case law if this land qualifies for tax exempt status under the above statute. There is no case law on point in the State of Nevada, construing this term. In other jurisdictions, cases can be found construing this term in both a narrow and a broad sense.

A. Cases with Narrow Construction.

In some cases, the term "occupied" in tax exemption statutes has been construed to mean that the property must actually be used and physically occupied by the charitable corporation for the intended charitable purpose in order to qualify for the exemption. See: Society of Cincinnati v. Exeter, 31 A. 2d. 52, 54, 92 N.H. 348 (1943). The cited case involved an old building that had been moved onto land owned by a charitable corporation, that was being restored to house historic items. At the time the lawsuit was commenced, the charitable society was not actually using the building but holding it for eventual use for its charitable purposes. The New Hampshire statute being construed exempted the real estate of charitable institutions "owned and occupied" by them for their charitable purposes. In the situation noted, the New Hampshire Supreme Court stated:

> "The statute contemplates occupancy as more than bare possession. Such possession is not an existing use for the owner's purposes, even with a plan and purpose of future use therefor. Clearly,

> if the building were rented it would be taxable, and it is not less so while it remains indefinitely idle."

Similar reasoning was used in the case of Franciscan Fathers v. Town of Pittsfield, 89 A2d. 752. In that case, the Pennsylvania Court of Appeals considered a tax exemption for a religious society, which claimed a tax exemption under a statute which provided that real estate owned by religious societies "and occupied by their pastors or clergy in active service" was tax exempt. The Court held that of a 113 acre parcel owned by the Plaintiff (a religious society) only those portions of the property and the buildings thereon actually used by the clergy in their religious activities were found to qualify under the statute for tax exemption.

Though the statute in question was not entirely analogous to NRS 361.140, the U. S. Supreme Court in the case of Missionary Society v. Dalles City, 107 U.S. 336 (1882), indicated that the term "to occupy" meant to "hold in possession" or to keep "for use," as to occupy an apartment. In that case, the property in question had been abandoned by a religious society prior to the date on which a Federal act took effect, thereby depriving such society from claiming that said land was "occupied" by them as of the date of the act. The Supreme Court rejected a "constructive possession" theory, which would have permitted the religious society to claim that it occupied the property on the date in question. Rather, actual use or possession appeared to be a necessary prerequisite to establish "occupancy."

B. Cases with Broad Construction.

Other cases have construed the term "occupied" in tax exemption statutes less restrictively. In these cases, Courts have not required actual use and possession to be established in order to find that property is "occupied" within the meaning of the applicable statute. An example is St. Mary's School v. City of Concord, 118 A. 608 (1922). In that case, a charitable and religious society acquired land for the purpose of establishing a school for the education of girls and to erect suitable buildings for that purpose. The Court appeared to indicate in the opinion that since obtaining land upon which to erect a building was one of the purposes of the charitable corporation, the holding of land until a building could be erected was also within the charitable purpose. Accordingly, the unimproved land held

for erecting a school building was tax exempt under the tax exemption statute in question, which provided tax exempt status to real estate "owned and occupied" by educational institutions for the purposes for which they were incorporated.

In the case of Nevada Irrigation District v. Keystone Copper Corporation, 36 Cal. Rptr. 777, 224 Cal. App. 523, 531 (1964), the court there indicated that "actual possession" and "occupancy" are synonymous and that "actual possession" is "a subjection to the will and dominion of the claimant." Furthermore, the court noted that the term "occupancy" does not always require physical occupancy and that each case bases its interpretation upon the special context in connection with which the term is to be applied. See: 36 Cal. Rptr. at pp. 780-781.

C. Analysis of Nevada Statutes.

In the situation involving the 120-acre parcel owned by The Trust for Public Land, the choice of words used by the Nevada Legislature in NRS 361.140, subsection 2, could support a narrow construction of the term "occupied." You will note that the tax exemption is to be applied to buildings belonging to a charitable corporation, together with the land actually occupied by said corporation for its corporate purposes. This connotes an actual use and possession or physical occupancy of the property in question by the Corporation. Mere ownership would not be enough.

The Nevada Legislative Counsel Bureau was unable to locate any materials on the legislative history of NRS 361.140, which would clarify the intent of the Legislature in the use of the word "occupied."

Accordingly, our Office is unable to conclude that NRS 361.140 provides a real property tax exemption for the 120-acre parcel in question. However, in view of the fact that the Nevada Legislature has encouraged the type of activity that The Trust for Public Land is engaged in, as evidenced by the language of NRS 361.111, our Office has looked elsewhere in Chapter 361 to determine if the requested tax exemption would be permitted.

NRS 361.135 appears to provide a statutory basis for allowing the requested exemption. This statute refers to various charitable organizations and lodges, including the Lahontan

Audubon Society, the National Audubon Society, Inc., of New York, and the Defenders of Wildlife of the District of Columbia. The statute also makes reference to any "similar benevolent or charitable society." Subsection 2 of NRS 361.135 provides that the real estate of any such organization or society shall be "exempt" from taxation as long as such property is used for the purpose of such organization. The language of this statute appears to invite a broad interpretation of its terms. As noted above, The Trust for Public Land has as one of its stated corporate purposes the acquisition of open lands "devoted to the preservation of native plants or animals [and] biotic communities." It would thus appear that The Trust is a similar benevolent or charitable organization to those specifically enumerated in NRS 361.135. Accordingly, the real estate of said organization is exempt from taxation under section 2 of that statute.

CONCLUSION:

This Office recommends approval of the application for tax exempt status of The Trust for Public Land pursuant to the provisions of NRS 361.135, on condition that the 120-acre parcel in question is used only for the charitable purposes of said Corporation. This Office further recommends that the Washoe County Assessor seek legislative amendment of NRS 361.140 and 361.111, to clarify the meaning of the term "occupied" in NRS 361.140, subsection 2, and to provide a broader exemption in NRS 361.111 to include all charitable corporations that hold real property and improvements for ultimate acquisition by the State of Nevada or other governmental unit. NRS 361.111 is particularly appropriate for the situation at hand, in view of the fact that should the property in question not be conveyed to a governmental unit or tax exempt organization as intended by the charitable corporation, the taxes that would have been collected can be recaptured upon the conveyance of said property. This advantage would not now belong to Washoe County under either NRS 361.140 or 361.135.

Very truly yours,

LARRY R. HICKS
District Attorney

By _____
LARRY D. STRUVE
Chief Civil Deputy

LDS/ks

cc: Deputy Attorney General James D. Salo
Russell W. McDonald, Washoe County Manager
Andrew Grose, Legislative Research Director
Robert W. McIntyre

SENATE TAXATION COMMITTEE
MEETING OF APRIL 14, 1977

The meeting was called to order by Chairman Bryan. The following members were present:

Senators Gary Sheerin, Norman Ty Hilbrecht, Richard Bryan, Carl Dodge, Norman Glaser and Floyd Lamb.

The following items were discussed and action taken:

AB 100 Places cigarette taxes directly upon the ultimate consumer.

Speaking in support of the bill were:

Mr. Jack Sheehan, Director of the Department of Taxation, reiterated the testimony he gave April 7, 1977. (See April 7, 1977 minutes.)

Senator Sheerin asked Mr. Sheehan to explain how the cigarette use tax pertains to this bill.

Mr. Sheehan said the cigarette use tax is a tax in which if a person purchases unstamped cigarettes, he must pay a use tax. He said he could stand in front of a smoke shop and, as soon as a purchaser leaves the reservation or the colony, he could confiscate the cigarettes unless that person paid the tax on it. It's much like the use tax on a car. The department has not reverted to that policing technique.

Senator Sheerin asked if the federal court prohibits that policing technique.

Mr. Sheehan said it does not.

Senator Hilbrecht stated line 36, on page 7, was criticized in previous testimony to the effect that the definition of who is exempt should be tightened. Is it the intent that any Indian, irrespective of the organization or community of which he belongs, may purchase cigarettes without a levy from any smoke shop? Or is it simply meant selling to the tribe's own people? That language should be more specific.

Mr. Sheehan said he hoped that type of problem would be resolved through the administrative regulation adoption.

Senator Hilbrecht questioned whether that was desirable. It is known this statute will be litigated.

Mr. Sheehan stated this language merely states to whom the wholesalers can sell.

Senator Hilbrecht asked Mr. Sheehan what he understood the federal law to say.

Mr. Sheehan stated that he felt the federal government has pre-empted the commercial transactions between tribes and members of tribes. He said his position would be that any Indian would be able to purchase.

Senator Hilbrecht asked how is this done?

Mr. Sheehan stated historically the Indians have always said that the law of the U.S. Supreme Court controls Indian situations. They have traditionally said states have limited jurisdiction, if any. The Supreme Court did not say the Department of Taxation in Montana has to make that determination. It said the Indian trader must make that determination. In this case, the tribes in Montana have elected not to follow that dictate of the Supreme Court. Therefore, Montana has been negotiating with the Indians to try to iron out the situation. They tried to come up with a formula based on the population of the Indian reservations and the national consumption of cigarettes which would allow the Indian's to receive "x" amount of cigarettes tax free. There has been no agreement. Montana is anticipating going back to the district court for guidance.

Senator Hilbrecht asked if Nevada will have to go to the court for guidelines too.

Mr. Sheehan said he did not have the answer to the question because he did not believe the smoke shop operators in Nevada will follow the mandate of the U.S. Supreme Court any more than the Indians are in Montana. He said he did not feel this is the panacea for the problem. Smoke shops are here to stay. The only way to eliminate smoke shops would be to eliminate the cigarette tax, which would put everyone on the same economic base.

Senator Sheerin stated the federal law definitely allows Indians to sell to Indians tax free. Has the Committee been presented any material on that?

Mr. Jim Salo, Deputy Attorney General, said the influence of Congress over Indian lands relates to the commerce and treaty clauses of the Federal Constitution. The commerce clause allows Congress to regulate commerce among the states and with the

Indian tribes. The power of Congress over Indian lands is unchallenged. The issue of the Moe case related more to who was the potential law violator. The U.S. Supreme Court concluded that the consumer, who goes on to the reservation to avoid his obligation to pay the state cigarette tax, is the one who is violating the law. If the Indian vendor is allowed to shield himself from his responsibility of assisting the state in collecting the tax simply because he is in a different geographic area, then, in effect, he would be aiding large numbers of non-Indian consumers from paying their rightful share of tax to the state. What Montana officials proposed was that vendors sell only stamped taxed cigarettes. They would be entitled to a refund of the tax revenue to the extent that they could show that they sold cigarettes to resident Indians. Negotiations fell down sometime in October and it has not been resolved.

Senator Sheerin asked if the commerce clause prevented the state from taxing and collecting from out-of-state wholesalers.

Mr. Salo said the commerce clause prohibits the state from taxing directly if there is no local contact. If the wholesaler had a local branch office, there would be taxable jurisdiction. In the case of the Burnstein Brothers, it is in interstate commerce and its flow to the reservations cannot be interrupted. That was one of the holdings of the Sheehan vs. Walker River case.

Senator Sheerin asked what is the effect of the Nevada statute in which Nevada gave up jurisdiction of Indian affairs.

Mr. Salo stated Public Law 280 is a statute passed by Congress in 1953 which authorized many states to assume jurisdiction over the reservations if they wished by legislative act. Nevada had assumed jurisdiction over all Nevada Indian lands with the exception of some areas which, as a matter of local option, were excluded. Thereafter, pursuant to some Congressional action, the Indian tribes were given the option to retrocede back to federal jurisdiction. All but one Indian colony in Nevada retroceded. He said he did not feel that diminishes the impact of the Moe decision in Nevada because the Moe case clearly indicates that, at least in the area of taxation and licensing, the state of Montana had not assumed any jurisdiction and, therefore, remained under federal jurisdiction for those purposes.

Mr. Salo read from the district court case on that point: "Montana's limited assumption of civil jurisdiction over the Flathead Reservation Indians includes only the following compulsory school attendance, public welfare, domestic relations except adoptions, mental health, insanity, care of the infirm, aged and afflicted, juvenile delinquency and youth rehabilitation, adoption proceedings with the consent of the tribal court, abandoned, dependent, neglected, orphaned or abused children and operation of motor vehicles upon the public streets, alleys, roads and highways. Clearly the power to impose cigarette and licensing taxes is not among the categories of assumed jurisdiction." Montana, under Public Law 280, only assumes state jurisdiction for certain limited purposes generally relating to welfare types of purposes, streets and roads and schools. They did not attempt to assume tax jurisdiction or licensing jurisdiction. Mr. Salo read that as meaning that Montana was a federal jurisdiction state, just as Nevada is.

Senator Sheerin asked where does the cigarette tax revenue go.

Senator Bryan stated it is allocated to the cities and counties.

Mr. Salo spoke in regard to the question of enforcement. He said the Moe case did not raise the issue. A footnote from the slip note on the case says, "The district court noted that the state's present statutory scheme contemplates advance payment or pre-collection of the sales tax by the retailer when he purchases his inventory from the wholesaler. Recognizing that holding a distinction between sales to Indians and non-Indians would result in 'complicated problems' of enforcement by the state, the district court deferred passing on these problems pending a decision by this court. We, of course, express no opinion on this question." Clearly, the U.S. Supreme Court did not touch the issue because the trial court had chosen to defer action on the enforcement issue until the basic constitutional issue had been considered.

Senator Sheerin asked if Montana, after the Moe decision, is collecting any money.

Mr. Sheehan stated he did not know that they were not collecting money. They have not resolved all the problems. If this is enacted, Mr. Sheehan said, in two years the Committee might ask him how he is doing and he may answer that no progress

has been made. By having this act, the department will have the benefit of the Moe case. That will control, presumably, future litigation. To the extent that there is other litigation involved, to have a law which is compatible to the Moe case seems in the state's best interest.

Senator Hilbrecht asked if there is any difficulty collecting any other kinds of taxes levied on the consumer.

Mr. Sheehan said there wasn't. He stressed the economic incidence of the sales tax is on the retailer.

Senator Hilbrecht asked if the law recommended by Mr. Sheehan with respect to the cigarette tax would be construed the same way.

Mr. Sheehan stated some courts have interpreted laws to mean that the economic burden and legal incidence of the sales tax is in fact on the consumer. There hasn't been a problem with that.

Senator Hilbrecht stated he was trying to anticipate difficulties in this area.

Mr. Salo said California and Nevada have similar sales and use taxes. Both states historically (California through the courts and Nevada administratively) have taken the position that with sales taxes imposed on the retailer, the economic burden is passed on to the consumer. California has never deviated from this approach. Several California court decisions uphold that. Within the last year, the U.S. Supreme Court took the opposite view in interpreting California's sales tax act for the purposes of determining whether a certain federal exemption was applicable. The court said, since the statute requires the burden to be passed on to the consumer, it's really imposed on the consumer, notwithstanding the literal language of the statute.

Senator Hilbrecht asked if that was consistent with the state's policy in which the retailer is paid a premium in exchange for extracting the tax. If there is obligation, why would he be paid a bribe to return it?

Mr. Salo said that is arguable and, therefore, if the line of authority supported by the Moe decision is carried forward, it is possible that the state's existing sales tax act, without amendment, could be interpreted to apply on the reservation to sales to non-Indians.

Senator Sheerin asked if there was problems with the liquor tax being collected on reservations.

Mr. Sheehan stated there are no other problems except with cigarettes. He felt there might be federal laws which prohibit the sale of liquor on reservations. That is not to say that reservation operators have not said that might be next.

Senator Sheerin asked what is done with sales of cars.

Mr. Sheehan said he has advised retailers and the Indian tribes that if tangible personal property is purchased and delivered on the reservation, there is no sales or use tax obligation. If the property is taken off the reservation, there is a use tax obligation on that individual.

Senator Hilbrecht stated this raises the question of taxes which are impossible to be treated as addressed to the consumer, such as the gaming tax. If there were gaming activities on the reservations, it would be impossible to extract that tax because there is no way to levy a gross receipts tax on the consumer.

Mr. Sheehan indicated that was a new ball game and he did not know the answer to it.

Mr. Joe Midmore, representing the Tobacco Tax Council, stated that when talking about the competition the smoke shops offer to the state's wholesalers and retailers, a package of cigarettes today would sell for around 25 cents if there were no taxes. Eight cents federal tax and 12 cents for the state cigarette tax and sales tax takes the price up to 45 cents. The amount that would be paid in a super market is $4.50 per carton. The smoke shop advertises in Reno for $3.60. That is cheaper than the state's wholesalers can sell them, let alone the retailers. Anything this Committee and Legislature can do to protect the businessmen who have been in this business for years and want to continue in it would be to the good.

Speaking in opposition to the bill were:

Linda L. Howard, Chairman of the Yerington Paiute Tribe, emphasized points in her written testimony submitted at the April 7, 1977 meeting. (See statement in April 7, 1977 minutes.) The Yerington Tribe is not self-supporting financially. It must secure funds from the federal government. The direction the tribe is taking now is that it would like to self-determine its

own government and develop those enterprises that would financially support the administration. That would lead the tribal government from depending upon the federal government for financial support. She questioned the testimony regarding the intent of this bill because she did not believe it is equal justice under the law. She said the Indians are also citizens of the state of Nevada and, when the tax revenues are distributed to local and city governments, the Indian people should receive some of that tax revenue.

Ms. Yvonne T. Knight, Attorney for the Yerington Paiute Tribe, submitted a supplement to her written testimony given to the Committee on April 7, 1977. (Supplement is attached.) Her previous testimony is attached to the April 7, 1977 minutes. She outlined why the tribe is concerned about AB 100. The tribe has an economic development plan which was developed with the help of the Federal E.D.A. two or three years ago. In the ensuing years, the tribe has attempted to implement this plan. One of the aspects of this long-range development plan is to establish a smoke shop which would sell cigarettes as well as tribal crafts. The tribe seeks to establish itself upon an economic self-sufficiency. One of the ways to do this is to set up its own smoke shop. The tribe understands the problem the state has with regard to the economic advantage of establishing a smoke shop on a reservation, particularly in light of the Moe decision. The tribe would own and operate the smoke shop. It intends to use the majority of the profits to support government services to its members. In effect, the tribe would be imposing a tax upon its own business in order to provide funds for services to tribal members on its reservation. The tribe, like the state, wishes to derive revenue so it may provide services to its members just as the state provides services to its citizens. If and when the tribe establishes a smoke shop and imposes this tax, it intends that the tax will be comparable to the state tax on cigarettes. The tribe, therefore, is concerned that the present language of AB 100 is not clear whether tribally owned and operated smoke shops in which the profits are ear-marked to go to tribal services are exempted from this act. Section 370.075 of the Nevada Statutes says "nothing in this chapter shall operate to abridge the rights of an Indian, individual or tribe, or to infringe upon the sovereignty of any Indian tribe organized under the IRA. The Yerington Paiute Tribe is organized under the IRA and it is not clear whether or not AB 100 would be applicable in forcing the tribe to obtain a state license or whether the economic and criminal penalties are intended to be applicable to tribally owned and operated smoke shops. If the bill is

intended to effect tribally owned and operated smoke shops, there are serious constitutional problems with that attempt. Moe vs. Salish and Kootenai Tribes stands for two basic principles as is stated in the supplemental testimony. Firstly, states may not impose its taxes on Indians within the reservation, and secondly, states may impose taxes on non-Indian consumers on the reservation so long as that does not frustrate tribal self-government. Moe reaffirmed this long-standing principle and found in the case of Moe that tribal self-government was not frustrated. In Moe, the tribe had no taxing statutes; a tribally-owned shop was not involved. It was an individual retail shop. Clearly, in this instance wherein the Yerington Paiute Tribe intends to establish its own smoke shop and use the revenues to provide needed services to its members, there is a serious question as to whether or not the state may impose and force the tribe to collect the tax. The tribe feels this is a direct infringement upon tribal sovereignty and tribal self-government. She suggested it be clarified that the bill does not apply to tribally owned and operated smoke shops, particularly where the revenues are used to benefit the tribal members in terms of government services. There are other problems with the bill, particularly the section (page seven, section 31c) which provides for refunds where cigarettes are sold to members of a recognized tribe. It is unclear as to who is to apply for the refund. She said she thought initially that the members of the tribe would apply. But she believes that Mr. Sheehan interprets it to mean that the retailers would sell cigarettes to tribal members without charging them a tax. Then the retailer would apply for a refund of the tax of cigarettes sold to members. She said she construed it that the members would be charged the tax and then they must apply for the refund. If that is so, then they are taxed in the first instance, which is not permissible under the Moe decision.

Senator Sheerin asked if the word "members" was struck, would that solve the problem. It would apply to a recognized Indian tribe.

Ms. Knight stated if the Indian tribe purchased the cigarettes and applied for the refund, that might present the same problem because the tribe itself would initially pay the tax, which is not permissible under the Moe decision. If any Indian, whether it is an individual or the tribe, pays the tax in the first instance, then they are in effect being taxed.

Senator Dodge asked if the Indians are mandated under this section to buy cigarettes from the State of Nevada.

Ms. Knight stated that Indians aren't mandated to buy from the State but the statute says that any retailer must apply for a license. She did not feel this is legal pertaining to a tribe and there is serious questions with regard to the Moe decision whether that is legal as to an Indian retailer.

Senator Dodge asked Mr. Sheehan if he intended to mandate the Indians to qualify as retailers.

Mr. Sheehan said no. The Moe case specifically said the licensing provisions in the state do not apply.

Senator Dodge suggested that be written in the bill to make it clear the licensing, reporting and criminal provisions do not apply to the tribe unless they choose to become retailers and that they are not mandated to buy cigarettes from Nevada. He asked Ms. Knight if these suggested provisions would give the Indians problems.

Ms. Knight said if the tribe was exempted from the licensing, reporting and penalty provisions, in effect, they would be exempt from the provisions of the act because those are basically its major provisions. That would permit the tribe to set up a tribally owned smoke shop and they would not be forced to pre-collect the tax from a non-Indian consumer.

Senator Dodge stated the thrust of this bill as the Moe decision permits was to enforce the law against the ultimate consumer.

Ms. Knight stated that is what Mr. Sheehan said except she felt the bill provides for penalties being applicable to the retailer, who does not pay the tax.

Mr. Sheehan stated he felt that could be the case. The U.S. Supreme Court said to place the obligation on these retail outlets on the reservation to pre-collect the tax. All this does is make Nevada's law compatible with what the U.S. Supreme Court said they must do. He explained the wholesaler's procedure for selling cigarettes that are not taxed. The wholesaler stamps all his cigarettes and, when he sells to those which are exempt, he notifies the department and is refunded. It is the wholesaler who gets the refund.

Ms. Knight said that the retailer must buy stamped cigarettes just like the wholesaler does. But the act says the tax shall be pre-collected by the wholesaler or retailer.

Mr. Sheehan explained that means the retailer must collect it from the consumer.

Ms. Knight stated that is not clear in the act. If, in section 31c, a member of a recognized tribe is being talked about, who is a retailer, or is a member of a recognized tribe who is a consumer being talked about?

Mr. Sheehan said he interpreted that to allow the Nevada wholesalers to sell cigarettes unstamped to Indian tribes.

Ms. Knight said that means wholesalers can sell cigarettes without the stamp attached. That is not clear here.

Senator Dodge stated it is not clear because it talks about a refund.

Ms. Knight said it is not clear that tribes are exempt from the many provisions of this act which would directly interfere with their self-government and their right to license, sell and regulate themselves. In the Moe decision, the court carefully pointed out that the penalties of the Montana act fell directly upon the consumer. The consumer was the person who would be guilty of a misdemeanor in the event that the tax was not paid, and not the retailer. This act obviously puts penalties upon the person who must pre-collect the tax.

Senator Dodge asked Mr. Sheehan what was the Indian obligation in regard to pre-collecting the tax.

Mr. Salo said part of the Moe case on the slip opinion stated that "the state's requirement that the Indian tribal seller collect the tax imposed on non-Indians is a minimal burden designed to avoid the likelihood that in its absence the non-Indians purchasing from the tribal seller will avoid payment of a concededly lawful tax. Since this burden is not, strictly speaking, a tax at all, it is not governed by the language dealing with the special area of state taxation. We see nothing in this burden that frustrates tribal self-government or runs afoul of any congressional enactment dealing with the affairs of reservation Indians. Enactment of the federal government passed to protect and guard its Indian laws only affect the operation within the colony of such state laws as conflict with federal enactments." Clearly, in the Moe case, it did contemplate what the Supreme Court calls the minimal burden imposed upon the

Indian retailer, requiring him to pre-collect the tax from the consumer was a violation of Indian sovereignty or other tribal rights.

Senator Sheerin stated he could understand that the Indians don't like the idea of collecting the sales tax and cigarette tax to give it to the state in order for the state to distribute it to the cities. He suggested solving the problem by having the Indians tax Indians as well as non-Indians and when the state redistributes the cigarette tax it will distribute it back to Indian tribes as well as to the cities.

Ms. Knight said that was a possibility. The tribe was considering a similar possibility whereby the state and the tribe would enter into a tax sharing agreement. The tribe would agree to collect taxes on reservations from both Indians and non-Indians and share with the state a certain portion of that. There's serious question as to whether the state can force the tribe to collect any taxes at all, or it certainly cannot tax the tribe itself. As to their own Indian people, the Yerington tribe knows and sees the value of taxing its own people. It wishes to derive revenue to provide services and it sees the problem of undercutting competition and realizes that can present more problems to the tribe in its efforts to be economically self-sufficient. The Attorney General says there was no interference in tribal self-government in Moe. There wasn't because the tribe had not acted at all. This was an individual Indian retailer who was simply selling and passing on the benefit to the non-Indian consumer.

Senator Sheerin stated what was being talked about here was not the profits, but the taxes on top of the profits. Why should the tribe have the advantage over some other retailer of not having to collect that tax? Yet a retailer does. It's an unequal situation.

Ms. Knight said it was no more unequal than the state of California not collecting Nevada's taxes. The tribe is a government just like the state of Nevada is. It has its own obligations to its own area. It is simply attempting to meet those obligations by making profit on its smoke shop and, by effect, providing its own tribal tax on top of that. The tribe intends to impose a tax which is comparable to Nevada's tax so that there would not be the economic advantage.

Senator Bryan asked Ms. Knight to respond to Mr. Sheehan's statement that, in theory, it would be possible to station persons to examine customers outside the colony or reservation to

see if the cigarettes are stamped and, if they are not, either confiscate or require some kind of a use tax. Is that legal?

Ms. Knight stated it would be, assuming the criminal and due process requirements were met in terms of probable cause.

Senator Bryan stated that would not be an Indian problem. It would be a claim or privilege which must be asserted by the individuals who would be stopped.

Ms. Knight said that's what Moe says.

Senator Bryan asked if, indirectly, the state would be accomplishing the same thing by what is trying to be done in AB 100.

Ms. Knight answered in the affirmative. But a burden upon the Indian retailer or tribal retail outlet would not be imposed. Moe permits the state to require a retailer on the reservation to collect tax because it is a minimal burden. Why it is minimal is not exactly explained, but looking at all the penalties which AB 100 imposes on retailers who do not abide by its provisions, there is a serious question as to whether or not that burden is minimal. Moe did not address the situation being considered today, which is what about a tribally owned and operated smoke shop. Again, Moe very carefully qualified its holding by saying as long as the state does not frustrate tribal self-government. The tribe feels that by applying the provisions to tribes and their smoke shops where they are using the money for their own government services, that would be a direct interference with tribal self-government not permitted by Moe.

Senator Bryan asked if the retrocession provision was present in Moe.

Ms. Knight said she didn't believe it was. She was not sure that Public Law 280 really affects the taxing question that much. Indian tribes under Public Law 280 still have the same tax exemptions as any other tribe not under Public Law 280.

Senator Sheerin asked if presently, when an Indian tribe sells cigarettes to an Indian or non-Indian customer, does it collect a tax?

Ms. Knight said the Yerington tribe has not opened its shop. It is in the process of opening it.

Senator Sheerin asked if the King shop is paying a tax back to Schurz, for instance, when he sells cigarettes.

Ms. Knight said she did not believe any tribe in Nevada imposes a tribal tax. The Yerington tribe does intend to impose a tax when it opens shop.

Senator Sheerin asked if that tax will be imposed on Indians also.

Ms. Knight answered in the affirmative.

Senator Dodge asked if all the smoke shops are operated as concessions.

Senator Bryan stated there was testimony in the last hearing indicating that the concession agreement with Mr. Steve King on one of these locations had terminated.

Mr. Dell Steve, Chairman of the ITC of Nevada, stated Walker River's lease has terminated and it plans to take over its own shop. The Fallon tribe has a lease with Mr. King, but it will run its own smoke shop as soon as the lease expires. Reno-Sparks is an independent, tribally-owned smoke shop. There are only two smoke shops left in which Mr. King has a lease agreement. That's Las Vegas and Fallon. The intention is to eventually have tribal control over all the smoke shops.

Senator Hilbrecht stated the difficulty is not in attempting to impress a tax where one is already being collected, but to allow the other factors that would ordinarily operate in the market to work. It might be reasonable to come to a different result if the Yerington Tribe was collecting a tax equal to or greater than the state tax. If that was the case, the state wouldn't really be as interested in enforcing the tax because the competitive factor would be the same. Has that ever been considered?

Ms. Knight stated that she did not believe this has been considered. That's because the areas of tribal self-determination and exercising its own taxing authority has only recently come to the front. The amendment suggested by Senator Hilbrecht is a reasonable one.

Mr. Sheehan stated if the tribe put a tax on cigarettes, the economic advantage is gone and there wouldn't be much incentive to go to the smoke shops. He said he would be surprised if the Indians imposed a tax because that would, in effect, eliminate the smoke shops.

Senator Sheerin asked if it would be possible to solve this problem by amending the multi-state tax compact to get to the wholesaler in Oregon.

Mr. Salo said that would be impossible because the wholesaler has no physical presence with Nevada. The multi-state tax compact agreed that the parties to the compact are states. There is no provision for reservations or tribes to become parties. There have been efforts to encourage the Oregon authorities to change their law, but they have not cooperated.

Ms. Janet B. Allen, Commissioner of the Nevada Indian Commission, referred to a written statement submitted at the April 7, 1977 meeting and read from a prepared statement. (The written statement is attached to the April 7, 1977 minutes. The prepared statement is attached to these minutes.)

Mr. Norman Allen, Executive Director of the Nevada Indian Commission, stated AB 100 is not the solution to the particular problem of cigarette taxes. It addresses only one aspect of the problem. He urged the Committee to determine how this bill will be enforced. Don't run the risk of turning Nevada into the same type of situation which exists in the Northwest where armed riot squads attempted to confiscate cigarettes on the reservations. The tribes are willing to sit down with the Committee and try to iron out these problems. If they had been approached, the problems might already have been resolved.

Senator Sheerin suggested that an interim sub-committee be formed, which included the Indians and the Tax Commission, to formulate a bill to settle this problem.

Several Indian leaders indicated they would make themselves available for such a meeting.

Mr. Steve submitted a statement telling how the state benefits from the smoke shops. The statement is attached.

Mr. Hy Forgeron, representing the Battle Mountain Smoke Shop, stated there is one overwhelming problem with the provisions of AB 100. That is jurisdiction. The state has no jurisdiction of any nature on the reservation property. Regardless of what measure is passed, no Nevada Tax Commission agent or officer and no agent or officer of the State of Nevada is allowed to go upon reservation property for the purpose of enforcing any Nevada statute, or for the purpose of informing

themselves as to the compliance on the reservation of any Nevada statute, or for any purpose whatsoever. Therefore, the only enforcement procedure that can occur is off the reservation property. And that perforce must be against the consumer. That poses the problem of the Tax Commission trying to collect from the consumer as he leaves the reservation. Mr. Forgeron said he serves as Deputy District Attorney in Lander County. He said he did not purport to speak officially for the office or for the county, but he related that, after the Indian colony in Battle Mountain voted to retrocede, a policy decision was made by the Lander County Sheriff which is enforced today and which he has informed Mr. Forgeron will remain in force as long as he is Sheriff. That policy is that he will refuse to make an arrest for violation of a law which occurs on the Indian reservation. He would consider the violation of an act such as AB 100 to be a law that was violated on the Indian reservation regardless of where the consumer would be located. He has consistently refused to exercise law enforcement authority at the reservation and he has even refused to allow his deputies to become deputized BIA officers to allow them to go on the reservation. The District Attorney has indicated that he will refuse to prosecute cases which arise out of the Indian reservation, that he will yield only to federal jurisdiction and will assume no state or county jurisdiction. There will be no effective means of enforcing this law within the confines of Lander County.

He continued saying there is a terrible probable cause problem. If a person goes upon the reservation property and buys a carton of cigarettes, he is not going to tape it to the top of his car or put in on the dash board where it can be seen. Mr. Forgeron said he does not smoke, but he does have legitimate reason to go on the reservation. If he entered the smoke shop and left the reservation property and Mr. Sheehan or his agents stopped him, they had better have a search warrant or they will have a lawsuit. The same goes for any number of consumers. There had better be probable cause to get the issuance of that search warrant and he said he could guarantee the district courts in the State of Nevada would consider entry and exit in a smoke shop not to be probable cause to obtain a search warrant. It requires something more sufficient than that. One of the things that must be considered before passing any legislation is what does the law do after it is passed. Mr. Sheehan stated in the previous hearing that he did not know how this was going to be enforced. This is the man who is going to have to enforce the law and the man who has proposed this legislation. Even the Deputy Attorney General has testified that he doesn't know how the enforcement will work. At the very best, this bill is buying a lawsuit.

He said another serious problem is the proposal to exempt the sale of cigarettes to an Indian on an Indian reservation from the provisions of the act. He recalled a district court case which arose on the Walker River reservation. It arose from a highway patrolman stopping a car for speeding in which there was evidence of some controlled substance in the vehicle. The driver happened to a a Negro. He did not appear to be an Indian but part of Judge Young's decision in dismissing the matter was that it would be unfair to require the highway patrolman, at his risk, to identify whether or not the people he was arresting within the confines of the reservation were Indians because it simply can't be done by looking at a person. Indian tribes themselves have difficulties in determining who is an Indian and who is not. Using that district court decision as a basis, it would be unfair to require an Indian retailer to identify at his peril, under these regulations, who is an Indian and who is not.

With regard to the Moe case, just because something is done in Montana is not a reason for the Nevada Legislature to act. The Moe case arose under the situation where the Sherrif arrested the dealer on reservation property because Montana was a Public Law 280 state. Nevada is not. There is no Sheriff in the State of Nevada, unless he is an authorized federal officer, who has the right to arrest anyone on an Indian reservation. Moe will not work in the State of Nevada. It is not precedent for this bill and is wrongly cited by the Tax Commission as being such. Mr. Forgeron offered some suggestions to the bill. The provision in AB 100 for the refund of monies to wholesalers who sell and deliver on these reservations should be elaborated upon. It should be a blanket authorization to sell without collecting any tax, buying any stamps or affixing any stamps to an Indian dealer within the State of Nevada. This would eliminate the out-of-state advantage.

Senator Dodge stated that was not the main thrust of the bill. The main thrust is the competitive situation in which the smoke shops, which do not have to pay taxes, can sell cigarettes cheaper than the non-Indian retailers can buy cigarettes from the wholesaler.

Mr. Forgeron stated that was correct and that he did not have an answer for that. He suggested a study during the interim to get input on both sides to resolve this situation.

Senator Bryan asked Mr. Forgeron if he or any other Indian representative indicated to the Assembly Taxation Committee a willingness to meet in an attempt to reach a compromise.

Mr. Forgeron said a number of those suggestions were made. It was the opinion of the chair that a sub-committee should be appointed. However, a vote was taken before any sub-committee meetings could be scheduled.

Mr. Elmer D. Miller, of the Inter-tribal Council of Nevada, told the problems of the Indians and why he could not support AB 100.

S.B. 456 Enacts excise tax on aviation jet fuel, provides for distribution of tax and replacement of certain revenue received by cities from public utilities.

Testifying in favor of the bill was:

Senator William Hernstadt, the bill's introducer, stated his basic concern was the franchise tax on utilities within certain jurisdictions. He had earlier proposed SB 303, which eradicated the franchise tax on utilities. All the testimony before the Committee was negative. The cities charged they could not afford to lose the revenue without some compensation. Out of this arose SB 456. The thrust of this bill is to take the tax off of utilities which are necessities of life. This tax amounts to approximately $50 or more a year on an average family. The secret of low taxes in this state is that the tax burden is paid by non-residents. This aviation jet fuel tax would offset the losses incurred in eliminating the utility franchise fee. This state has a tax on aviation gasoline, but has never taxed jet fuel. That seems unfair. He doubted that airplanes would load up with fuel in another state to avoid buying fuel in Nevada because of weight specifications with planes on landings and take-offs. This is not that heavy of a tax, considering airlines use the Nevada's air facilities, police service, fire equipment, make noise, burn the state's oxygen and pollute the air. The research department indicates there are 21 states which exempt taxes on airplane and jet fuel. Four others have refunds for fuels not used on highways and four others tax jet fuel but exempt common carriers. Twenty-one states tax jet fuel at rates from .5 cents to 9 cents per gallon. The average tax is 2.7 cents per gallon. McCarran Airport officials indicated approximately 150 million gallons of jet fuel was sold last year. Reno Airport officials would not disclose the amount sold.

Senator Dodge asked what this tax would cost to the airlines.

Senator Hernstadt estimated it would cost $3.6 million in taxes. He foresaw that some business would be lost but did not expect a plane or a franchise landing right route would be cancelled.

Senator Dodge stated that later this month the Carter Administration will present its energy program. That may or may not include tax increases on all types of fuels. He suggested the Committee learn the impact of President Carter's plans before passing any legislation.

Senator Hernstadt stated that the two things are totally irrelevant.

Senator Bryan asked Senator Hernstadt for his figures again on how much the tax would raise.

Senator Hernstadt estimated $3.6 million. Assuming there would be shrinkage, he felt at least $3 million would be raised.

Senator Bryan asked what is the total amount derived from the cities in Nevada from the franchise tax.

Mr. Jim Lien, Deputy Director of the Department of Taxation, stated it was $3.9 million. He said $3.4 million was anticipated from the jet fuel tax.

Senator Hilbrecht questioned page nine, line nine which refers to a refund. Aviation fuel is subject to refund. The tax on it is the sales tax on motor vehicles, which is refunded if an application is filed under certain circumstances. Therefore, it is incorrect to say there is a levy on aviation fuel. There is a levy but it is subject to full rebate.

Those speaking in opposition to the bill were:

Mr. Robert Hayes, representing the Air Transport Association and an employee of Hughes Air West, who stated 9.2 million passengers were enplaned and deplaned at Las Vegas and Reno Airports in 1976. Approximately 40 million pounds of cargo were enplaned and deplaned at these two airports. He was contacted by the Legislative Council Research Division to provide fuel usage figures. He gave ATA figures of 150 million gallons per year from a 1977 forecast of scheduled airlines. That is a state-wide figure. The average cost per gallon in February 1977 was 33.8 cents. That is a 53.6 per cent increase over November 1974.

Mr. Ed Hall, Hughes Air West Director of Taxes, stated this would not be a popular tax for airlines in the State of Nevada. The airlines and other aircraft operators pay for the use of airports through landing fees, rentals and other agreed local charges. In addition, aviation is subject to the same general business taxes as are ordinarily assessed to all industry. Having paid reasonable airport charges and appropriate customary taxes, air transportation has fully paid its way. This is one reason why all aviation opposes and objects strenuously to paying a state tax on fuel loaded. These state fuel taxes represent a serious financial burden which hampers the normal development of all segments of aviation. He stated Senator Hernstadt was correct when he said there would be some shrinkage in the purchase of fuel. The 15 states which have neither an excise tax or sales tax on fuel load 30 per cent of all aviation fuel. Nineteen states with the sales tax only load 56 per cent of the fuel. Twelve states with an excise tax only load 10 per cent of the fuel.

Senator Hilbrecht said those statistics are assuming the population of New York and Nevada are the same.

Mr. Hall said there are alternative sources of fuel boardings. More fuel can be boarded in Los Angeles, San Francisco, Arizona and other states which have a lower nozzle price of fuel. When this is done, a city like Las Vegas would lose its importance as a hub city with Hughes Air West. That would in turn reduce the airline's flight property tax which is partially time based and would reduce employment.

Senator Hilbrecht stated he doubted minor incidence of a two cent tax would be the basis for determining a hub city. The airline's certificate of covenience and necessity with the CAB requires schedules to be serviced into Las Vegas. If the airline wanted to abandon the city, it would have to petition.

Mr. Hall stated he did not feel removal of service would happen. The airlines would probably increase fares which would have to be petitioned and approved.

Senator Bryan asked what this tax would cause the additional cost to Hughes Air West.

Mr. Hall said, based on 1976 figures, it cost $460,000. In 1977, it was anticipated to cost at least $500,000.

Mr. Hall stated Senator Hernstadt was incorrect when he said that airlines owed an additional tax because they use fire

and police services. Landing fees paid to the airport pay for its own on-site fire department and police protection.

Senator Dodge asked how much Hughes Air West pays in user fees at McCarran Airport.

Mr. Hall said Hughes Air West, as of September 1976, paid over $1 million per year. A flight property tax is paid in addition. The airlines had an assessed valuation in 1976 and 1977 of $18.3 million dollars. Airlines also pay sales taxes for purchases within the state.

Mr. Hayes said Hughes Air West paid $59,000 in flight property taxes to Clark County in 1976.

Mr. Bob Mandeville, Director of Airports for the City of Reno, stated most airport authorities would like to run a self-sufficient, self-sustaining operation. When revenues of airports go to other portions of the community, the airport is losing revenues which could help it to be self-sustaining. McCarran International is the only Nevada airport operating in the black. Reno and most of the other airports in the state have not been able to operate in the black, primarily because of a lack of revenues. They have had to resort to municipal assistance through general obligation bonds or through general funds. It is important that airports be self-sufficient and not be a tax drain on the community. The City of Reno recently got the airport in the black by major negotiations with the carriers and landing fees. The bond requirements and capital improvements in the future are going to require major revenue bonding capabilities. Therefore, any revenues that can be generated at the airport will only serve to eliminate the tax drain on the County of Washoe, if it is the authority, or on the general fund if it remains with the city. While the State of Nevada does not charge a tax on jet fuel, the federal government charges a seven cents per gallon tax. The money generated is reverted back to the aviation community.

In regard to Senator Hernstadt's statement that Reno refused to make the figures of fuel flowage available, if he was referring to the City of Reno and the airport, it was not the intent to make him feel the figures were being refused. The City of Reno through the airport does not receive reports from the scheduled airlines in terms of gallonage and flowage. There is no charge to the City of Reno to the scheduled carriers for flowage fees and, therefore, it is irrelevant to keep those figures. He stated section 10 in the bill, which amends 365.210,

would keep the City of Reno from collecting a three cents per gallon fuel flowage fee charged to non-scheduled, chartered and general aviation field which is charged in lieu of a landing fee.

Senator Dodge asked, if Nevada should impose this fee, is there any way this tax will affect the user fee?

Mr. Mandeville said the landing fee agreements would be affected because the concept of the agreement is based upon a single cash-register approach. That is to say that all the revenues go into cash drawer. The expenses are added up and the carriers pick up the difference between the two in the form of a landing fee. If revenues are lost in one area, the carriers are committed to picking it up.

Mr. Larry Larson, Business Manager of the McCarran Airport, stated the arguments which have been proposed in opposition to the bill should be reiterated. There will be some shrinkage of fuel loaded at McCarran and other locations. This would be detrimental to the local field supplier. McCarran is a tourist oriented airport. An imposition of a tax, which is a further effort to milk the tourist, is opposed. It would be detrimental to the aviation segment of the Clark County economy. It would tend to discourage development of new markets and new carriers.

Mr. Jim Brown, General Manager of Hughes Aviation Services and representing the National Air Transportation Association, said this tax will have an effect on the amount of fuel sold. As such, it is a tax which will have a diminishing return. The basic cost of fuel is higher in Nevada than in the surrounding states because of increased transportation costs. It becomes a factor which must be faced all the time. An additional fuel tax will cause people to buy less and less. Negotiations are in progress with two airlines which are supplemental carriers. They wish to base with Hughes Aviation. These negotiations will be affected by increasing the fuel tax. The upcoming Carter Energy Plan could have a disastrous effect on aviation. Another load, like SB 456, on the airline's back will further hinder the business. Mr. Brown was told by the Chamber of Commerce to relate to the Committee that it has been overwhelmed by calls from travel agents, hotel people and others from transportation on this issue.

Mr. Carl Farr, Vice President of Marketing for Scenic Airlines, gave the Committee the view of the small businessman who would also be affected by this tax. During 1977, Scenic Airlines, which primarily caters to the tourism trade, will be

using approximately 600,000 gallons of jet fuel. Simple mathematics tells the company this tax will be an extra burden of approximately $12,000 for this year. It would eventually have to be passed on to the consumer.

Mr. Jerry Fuller, of the Reno Flying Service, said the net fuel price at Reno delivered to the Fixed Base Operator is higher than the cost to the FBO in California. As a small businessman, Mr. Fuller said he felt the impact upon an area such as Reno, which is just beginning to get into a tourism and charter businesses, would hinder viable community development. Reno Flying Service serves only the charter business. The corporate companies flying in Reno have options on where to buy fuel. They could buy fuel in California. Without the fuel business, the FBO, who has to support the basic functions of an airport, cannot survive.

Mr. Lien stated the Department of Taxation has some technical problems with the bill beside conceptual ones. The bill is not going to do what was really intended--reimbursing the entities. It will fall $500,000 per year short. This does not take into account shrinkage. A source is being taxed at which time in the future may be utilized for airport development. Section 10 on page three causes problems for airports which now charge flowage fees. On page six, because of how the bill is written, AB 102 is repealed. The department went through great lengths to get AB 102 passed. Section 27 also conflicts with AB 102. There are also questions regarding that section. On page nine, lines 12-13, it refers to chapter .364 when it should refer to .268. Line 13 does not specify as to whose revenues are being referred to. This bill repeals what can be done under .268 and gives no relief. He questioned line 19 which says the distribution shall be made on a yearly basis. This will impact cash flow for cities. It would be more appropriate to distribute it on a monthly basis. Line 20-21 on page nine is a problem. It has removed, when it should have retained, the language "motor vehicle fuel used and aircraft" instead of saying aviation fuel. Page 12, in section 32, the repealers do away with AB 102. He requested extensive amendments to the bill if there is going to be serious consideration given to it.

Senator Hernstadt agreed with Mr. Lien's comments on the problems of the bill. He rebutted comments made by those appearing in opposition to the bill. SB 303 had total shrinkage. This has less. He disputed that airlines would avoid fueling in Nevada. Regarding the cost of the Clark County Airport, there is a Clark County sub-station there. The metro police is 50 per cent funded under AB 17, which was just passed, by the City of

Las Vegas. He said he was shocked that airports charge a discretionary fuel tax. According to the constitution, taxes have to be levied evenly. That they levy landing fees on some and flow fees on others is disturbing.

AB 100 Places cigarette taxes directly upon ultimate consumer.

Senator Bryan asked if there was appetite to process the bill. He said he did not think, in fairness to the Indians, that there was time to negotiate a settlement this late in the session.

Senator Dodge stated, when considering the legal problems involved, even if the Moe decision would stand up, it will be a real enforcement problem.

Mr. Lien stated he felt there was an enforcement problem. It is a step only. The department will have to see what will happen with the two cases in Washington, which address the next step.

Senator Sheerin stated he thought the Committee ought to do what is right irrespective of what the Indians threaten to do or not to do.

Senator Dodge said one of the reasons the Indians have been on weak ground in the past is that, rather than operate the shops themselves and put a charge that constitutes an Indian nation tax, they are leasing the shops out to an operator who isn't paying them much money. If they operated it themselves and if they were to under the law, impose a tax at least equal to the state tax, they wouldn't have the advantage.

Senator Sheerin stated he felt the Moe decision and AB 100 were in line with each other. That will get at Mr. King. The next thing is will the Moe decision get at the tribes. If that gets litigated, he thought it would. Tribes aren't sovereign like states are. Counties aren't sovereign. Moe will be extended to the tribal situation, but that still leaves an enforcement problem. The Department of Taxation must still be given the ability to try to work forward rather than staying in the status quo for two or three more years.

Senator Dodge suggested writing a provision in the bill which says if the Indians levy the tax within their own jurisdiction, at least in the amount of the state tax, that none would be due to the state.

AB 348 Provides standard for determining assess value of improvements under construction and clarifies which standards may be used in assessing agricultural land.

Senator Bryan asked the Committee to read the proposed amendment on this bill, which says assessment will begin upon completion of major improvement and be prorated, to see if it was satisfactory.

Senator Dodge moved to Do Pass as Amended. It was seconded by Senator Sheerin and passed unanimously with Senators Glaser and Lamb absent.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Colleen Crum

Colleen Crum, Secretary

APPROVED:

Senator Richard H. Bryan
Chairman