

MEMBERS PRESENT: Chairman Vergiels
Vice Chairman Craddock
Mr. Banner
Mrs. Hayes
Mr. Malone
Mr. Stewart
Mrs. Wagner
Mrs. Westall
Mr. Webb

MEMBERS ABSENT: None

GUESTS PRESENT: See attached guest lists.

Chairman Vergiels called the meeting to order at 3:05 in the Assembly Public Lounge. He asked Mr. Merlin Anderson to begin the testimony on AB 499.

AB 499: Establishes system of registration for private post-secondary educational institutions to provide short-term educational services.

Merlin Anderson, Administrator for the Commission on Postsecondary Institutional Authorization, stated that this bill was an effort to clarify the intent of the legislature relative to oversight of institutions which they have termed as short term seminars or workshops. He supplied each committee member with a list of short term seminars known to them in the first part of 1978 which is attached to these minutes as Exhibit A. He explained that a number of these seminars or workshops are offered by Universities, some by private institutions particularly in the area of real estate. He then read the underlined portions of a memorandum giving the opinion of the Deputy Attorney General, James L. Spoo, as requested by the Commission, on short term seminars and the governing of them which is attached to these minutes as Exhibit B. Mr. Anderson then stated that because of the Commission's efforts to license a particular seminar, he had requested a legislative readout, and the response from Edward Dannan, Deputy Legislative Counsel, which he read is attached to these minutes as Exhibit C. He pointed out the difference of opinion from the attorney general and from the legislative counsel. He added that in discussing this difference it was felt that the legislature should provide some guidelines for the exemption and control of these seminars. He then read a portion of NRS 394 which says in part that it is the purpose to protect the citizens of the state and its institutions against substandard, transient, unethical type programs. He explained that they had found that the short-term seminar area was particularly subject to these substandard and unethical type of programs, and there was no recourse. He said that this bill was a much shortened version of their original request, but because of the concern this year for economics and the requirement in the earlier bill for oversight, this bill was in essence a matter of definition but enabled them to be

aware of which institutions should be covered and which would be exempt by virtue of certain types of criteria.

Mr. Anderson referred to the short term seminar registration form which they have been using on a voluntary basis and which is attached to these minutes as Exhibit D. He explained that this form is similar to what they would use if AB 499 becomes law to gather data and to be aware of any problems that might exist.

When Mr. Vergiels asked if he had shown the bill to Senator Ashworth, Mr. Anderson indicated that he had.

Mrs. Wagner asked if there was a definition in NRS of short-term education and, if not, she felt this should be defined.

Mr. Anderson answered there was no definition and they were attempting to do so in this bill by indicating the length of training, the type of facility used and the credits earned.

Mrs. Wagner asked where Mr. Anderson obtained criteria for the limitation to no more than forty hours.

Mr. Anderson explained that this problem has confronted many states, that some have instituted legislation such as AB 499 and others have chosen to ignore the situation. He added that because these short-term seminars are often tied to hotels and casinos in Nevada they felt this legislation was needed.

When Mrs. Westall asked if there was any criteria included concerning courses offered for credit or not, Mr. Anderson replied that in the bill on page 2, lines 3, 4 and 5 it provides that in order to be registered in exempt credits can not be offered toward any type of degree. He pointed out that if credits were given, a license would be required.

When Mrs. Westall questioned whether this would be interference in private enterprise, Mr. Anderson pointed out that Chapter 394 of NRS also indicates that they cannot offer credits toward any degree.

When Mr. Stewart asked if this would apply to conventions, Mr. Anderson explained that it would not apply to conventions, per se, but to programs advertised as educational.

Mr. Stewart asked if justification for this registration was because some groups have advertised and collected money for programs that never were given, and Mr. Anderson replied yes on the one side, but on the other side was to establish criteria to exempt these types of institutions from licensure.

Mr. Webb asked if in the recent years anyone had collected money and then not held a program, and Mr. Anderson said that they had no record of complaints because up to this point they have not been registered or licensed and that any complaints they did receive had been referred to the Consumer Affairs Division.

Mr. Webb asked Mr. Anderson to obtain a list from the Consumer Affairs Division of any complaints made in the last two years because he was also concerned about interference in private enterprise and more government regulation.

Mr. Anderson noted that this bill was an effort to reduce regulation. He added that they were concerned with government intervention because of the requirement enacted by the FTC to take effect next January for oversight on private institutions in the state that will overturn state law.

Mrs. Westall questioned whether part of this legislation belonged in the Commerce Committee since it sometimes deals with businesses such as real estate who offer courses for added expertise but not for credit.

Mr. Anderson explained that the commission deals with private business and private schooling, but they have an arrangement with the Division of Real Estate where they review the courses of study and handle licensees and the commission handles the consumer protection aspects relative to students as consumers. He added that they have this arrangement with most state agencies because they do not have the expertise to cover all types of programs.

Mrs. Wagner questioned how Mr. Anderson would notify all groups planning seminars of the requirement of registration 30 days prior to the seminar as stated on page 2, lines 10 and 11.

Mr. Anderson noted that there was no penalty involved mainly because they do not have the manpower to enforce this, but that they expected to provide notification by working with the Hotel and Casino Operator's Association, the Board of Economic Development, the Better Business Bureau, the Consumer Affairs Division and the licensing agencies. He added that at present Las Vegas requires a business license which they do not issue without consulting the commission.

H. F. "Bob" Rose who owns a dealing school in Las Vegas stated that 90% of his students were subsequently employed and he did not see how anyone with only forty hours of instruction could learn enough to acquire a position. He added that he did not have specifics but that he knew there were instances where people had been "ripped off." He stated that he was totally in support of any effort to control these instances.

Mr. Vergiels said they would break with usual procedure and asked Dr. William O'Brian to introduce those persons he had brought with him who were in opposition to AB 519.

AB 519: Revises procedure for demotion, suspension, dismissal of and refusal to reemploy certain personnel of public school system.

Dr. William O'Brian from Reno, currently President of the Nevada State School Board Association, introduced the following people in the order in which they would testify:

Mrs. Elizabeth Lenz, Washoe County School Board, 13 years a member and past president several times of that board, and past president of the State School Board Association.

Mrs. Helen Cannon, Clark County School Board, 18 years a member and past president of that board, and past president of the State School Board Association.

Mr. Earl Edwards, White Pine School Board.

Linda Terry, Carson City School Board.

Mr. Alan List, Pershing County School Board.

Janet Sobel, Clark County School Board.

Mr. Bob Cox, Legal Counsel for the Washoe County School Board and several other school boards in the state.

Mr. Robert Cox stated that he had consulted with the board members and they wanted to reserve their comments until after the proponents of the bill had spoken as in normal procedure.

Mr. Wendall Newman, Executive Director of the Nevada State Education Association, presented copies of his prepared testimony to the committee, a copy of which is attached to these minutes as Exhibit E. In his testimony he referred to the Supreme Court case of Clark County School District vs. Jim Rathbun, the opinion of which is attached as Exhibit F.

In the course of Mr. Newman's testimony, Mrs. Westall asked what happens in a case where the employee loses and he has already been paid, how do the school boards get their money back.

Mr. Newman said that an employee would be paid until proven guilty but there might be an opportunity for him to work in another position where he could be earning the money.

Mrs. Westall noted that most of this bill was passed last session at which time it was debated at length. She added that they thought they had made great advances then, but now were being asked to do even more.

Mr. Newman stated that they thought AB 519 was appropriate and fair.

When Mr. Newman was speaking about hearing officers, Mrs. Wagner said she assumed that out of the list of fifty Nevada attorneys only a certain number were willing to get involved.

Mr. Newman said that if attorneys had not been called upon for one reason or another, they did not know their names were still on the list. He said that the process as it is established at the present time is not as workable as it might be if the American Arbitration Association provided arbitrators.

Mr. Stewart asked how much the American Arbitration Association (AAA) charged for a hearing officer, and Mr. Newman replied that it varied in a range of \$300 to \$500 per day.

In answer to Mr. Stewart's question of how many Nevadans were on the AAA list of arbitrators, Mr. Newman said that in the past there have been three or four Nevada attorneys and others on the list but he did not know how many now. When Mr. Stewart asked if the AAA had any type of training for their arbitrators, Mr. Newman stated that they had a training program for their own people and others who were interested which outlined how an arbitration hearing should be held, how testimony should be prepared.

Mrs. Westall asked Mr. Newman if he felt that Nevada was a more conservative state than most, and if outside people were brought in they might be more liberal than Nevadans.

Mr. Newman replied that he did not think this would be a problem because the decision would be made by a third neutral party based on the facts that are presented and on what appears to be right procedurally as well as the merits of the case.

Mrs. Westall said that her point was that what would not raise an eyebrow in another state might have everyone up in arms in this state, and a local person might understand the people better.

Mr. Newman said they did not see any fear of this, that an arbitrator must follow certain guidelines in making his decision.

When Mr. Malone asked if the Governor had an agency of arbitrators, Mr. Newman responded that there is a state Labor Commission which is at present a one-man office which handles labor disputes but he did not think that office would be appropriate to deal with this type of situation. He added that it was his understanding that this office was called upon for labor relations, group contract activities rather than demotions, dismissals or non renewal of contracts in a single employee situation.

Mr. Stewart asked if there were certain rules governing an AAA arbitration hearing, and Mr. Newman said he would be glad to furnish the committee with a copy of these rules.

Mrs. Wagner asked if the concept of the single hearing officer was wedded to the selection from the list of the AAA, and Mr. Newman answered not necessarily.

Bill Middleton from Las Vegas heartily endorsed Mr. Newman's comments because he felt teachers expected fairness and equity. He stated that the type of people wanted in a classroom are those who are sensitive and aware and who feel a strong need for equity and fairness for themselves as well as for the children in the classroom. He added that this bill is an approach to fairness and equity for teachers.

Since there was no further testimony in favor of AB 519, Mr. Vergiels said the committee would now hear testimony from those persons that Dr. O'Brian introduced earlier.

Elizabeth Lenz, a member of the Washoe County School Board, said that this bill looked familiar because it has been around since 1967 and school trustees have been struggling with it since that time. She stated that in that length of time they have been able to dismiss only 10 teachers under this law and she felt there were others that deserved to be dismissed. She added that the cost of proceedings has risen to about \$1,000 per day not including attorney costs.

When Mr. Vergiels asked if those ten cases had been successful, Mrs. Lenz relied that some of these cases have run five years and are still being appealed.

Mrs. Westall questioned whether these ten cases were from the state or Washoe County and Mrs. Lenz replied they were for the state.

Mrs. Lenz went on to say that rather than make it more difficult and costly as this bill does to dismiss incompetent teachers, she would like to see a bill that would simplify procedures and reduce costs. She added that she felt this law was designed to help incompetent teachers. She noted that presently there is no probation period for a teacher and even though the school boards are extremely careful they sometimes make errors and hire people who would be better and happier in other fields. She said that since this law does not allow for a probationary period, they must rehabilitate and train incompetent teachers rather than being able to dismiss a teacher who is not producing.

Mrs. Lenz stated that the bill also makes it more difficult to accumulate documentation because of the short time allowed to keep evidence.

Mrs. Westall commented that last session the reduction of time for documentation from life to three years was thought to be good and she felt the 12 month period was much too short.

Mrs. Wagner asked how a supervisor would help a teacher who had received admonition.

Mrs. Lenz replied that in Washoe County there were qualified people in the Curriculum Department who observe the class and offer suggestions for improving teaching ability.

Mrs. Lenz commented that in this time of budget cuts she did not see how they could run good school districts if dismissal procedures were made more cumbersome and costly than they are at present.

Mrs. Helen Cannon from the Clark County School Board said there were two parts of the bill that she would address. She stated that they did not like an out of state arbitrator making decisions

for Nevadans, that a local person would have to live with his decision. She added that they felt a decision should not be binding on a school board and they should have the opportunity to vote on someone's dismissal.

Earl Edwards from White Pine County School District agreed with the previous speakers in regard to the twelve month documentation period being much too short. He added that he felt it was a mockery for an employee to be dismissed and receive pay while suspended. He explained that this bill as written now made it far more difficult and costly than before for the rural counties.

Mrs. Westall asked Mr. Malone what happened to a police officer who was suspended and he answered that they were suspended without pay until after a hearing.

Mr. Edwards added that he felt an arbitrator should reside in Nevada because they had had problems with AAA not because of unfairness but because of the time involved and because most of these arbitrators come from California and do not have to live with their decisions.

Mrs. Wagner asked Mr. Newman to obtain a current list of arbitrators for the committee.

Mrs. Westall questioned whether, even though there were Nevadans on the arbitrator list, they would necessarily hear all Nevada's cases and Mr. Newman replied that they might but not always.

Mr. Edwards stated that the maximum suspension of two days as provided on page 2, line 23 was ridiculous and that it should be a minimum of five to ten days.

Linda Terry from the Carson City School Board agreed with the previous opponents in all aspects. She said there was currently a case in Carson City that was being appealed to the State Supreme Court and hopefully would be heard within the next two years. She explained that the teacher was under suspension without pay, but that they had to guarantee or post bond for all back pay plus interest and fringe benefits if the teacher won the case. She questioned the fact that if a teacher was receiving pay during suspension and hearings and lost the case, how would that teacher return two or three years pay to the taxpayers.

When Mr. Vergiels asked how long this case had been going on, Mrs. Terry answered four years. She pointed out that if an employee is being paid while under suspension, that employee has no real desire or reason to speed up proceedings.

Mrs. Terry said that she personally did not like the idea of the decision of an arbitrator being binding because the school board sometimes gets sued and they should have a say in the final decision.

Alan List, Chairman of the Pershing County School Board, stated that two years ago the legislature passed a bill requiring

competency testing for pupils, but this session with legislation such as this it would be almost impossible to get rid of incompetent teachers. He explained that particularly in small counties where there are apt to be more than one grade in a classroom, an incompetent teacher can be very harmful to students' development over a two year period.

Robert Cox, representative of and consultant for seven or eight school districts across the state, said that Mr. Banner had raised the question of why school districts do not negotiate with their employee organizations and stated that the reason they do not negotiate is that employee organizations do not want to because they could not duplicate this bill which is extremely favorable for the employee. He added that this bill and the Professional Practices Act will be very important to districts this year when there likely will be caps on spending. He explained that even though school districts by law can reduce their staffs to cut spending, each teacher who is cut will have the opportunity to go through the procedures of the Professional Practices Act before dismissal. He commented that there was basically no difference between a tenure teacher and a non-tenure teacher except for evaluation twice a year, that there is no such thing as a probationary period or a short-term teacher.

Mr. Cox further stated that he felt page 1, lines 7-9 were completely unnecessary because at the present time letters are sent to teachers stating specifically where the deficiencies are and offering specific help for those deficiencies through the central curriculum office, school phyciatrist or psychologist, visitation of other classes, master teachers. He added that because they try to help teachers through all these channels, the time involved is often more than twelve months thus making the twelve month documentation period much too short.

He commented that suspension was not usual unless the case involved a felony or moral turpitude and to pay a person under such circumstances did not make sense.

He added that in the area of hearing officers, he knew that there were one or two Nevadans on the American Arbitration Association's list but they might not necessarily be qualified to serve on this type of panel and he felt that people from the state should be used as arbitrators because they have to answer to the state. He explained that arbitrators in this state receive about \$150 per day as compared to the \$300 to \$500 per day charged by the AAA.

He commented that he felt that binding arbitration was the most detrimental part of this legislation and that the final decision of dismissal should be left to the trustees. He added that with this bill the teachers would seemingly have limitless right of appeal.

Mr. Vergiels appointed a subcommittee to study AB 519 consisting of Mr. Malone as Chairman, Mrs. Hayes, Mr. Shaff, Mr. Newman and Mr. Petroni. He asked Mr. Malone to contact Mr. Edwards and Mr. Cox for input.

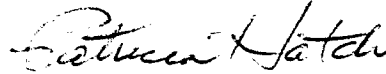
Robert Petroni, Attorney for the Clark County School District, said that he had prepared another bill which would probably be introduced in the Senate within the next few days, but some of this bill could be worked into AB 519 as amendments and he would bring it before the subcommittee.

Mr. Petroni referred to the court case cited by Mr. Newman and said that this teacher was admonished for five different reasons and the law states that dismissal must be for the same or similar act. He added that he also did not like the twelve month provision for documentation. He alluded to a case in Clark County which has been going on for three years where they had no control of the circumstances, and pointed out that if they had had to pay this teacher all this time it would have run into approximately \$60,000.

Mr. Vergiels informed the committee that Washoe County had asked that a bill be drafted requiring all school district employees to submit to fingerprinting. He asked for and received the committee's permission to have such a bill drafted.

Mr. Vergiels adjourned the meeting at 5:10 p.m.

Respectfully submitted,



Patricia Hatch
Assembly Attache

GUEST LIST

NAME (Please print)	REPRESENTING	WISH TO SPEAK	
		Yes	No
Steven R. Roberti	Esmeralda Co.		X
Joanna Kauf	Churchill County Schools		X
Emo Arrecco	Churchill " " "		X
Lila A. Fuson	Nye Co. S. D.		X
Mary L. Tidwell	Nye Co School Dist.		X
July A. Thompson	Nye Co School Dist		X
James R. Kilby	Washington Co School Dist		X
Beth Duffy	Esmeralda Co. School Dist		X
Helma Johnson	"		X
Karen Messer	Storey County		X
Alfred T. Krue	Mineral		X
Carl Shaff	Nevada State School Board		X
John A. O'Connell	"	✓	X
Almon L. Crowley	Elko County School Bd		X
James Wright	Elko County School Bd		X
HARRY LUNDOS	WP. SCHOOL BD		X
Jeanne Botts	Humb. Co. Sch. Dist		X
Warren Scott	" " " "		X
Fred Archer	Lincoln Co. (Hiko)		X
Phil. Carter	White Pine Co. Sch		X
Luzanne Carter	" " "		X
Laurie A. Richter	Lincoln, Co.		X
and LeBurger	DD. CO. SC DIST		X
—	CC SD		X

MEMO



NEVADA COMMISSION ON
POSTSECONDARY INSTITUTIONAL AUTHORIZATION

October 11, 1978



LISTING OF SHORT TERM SEMINARS KNOWN TO CPIA

Attached is information relative to Short Term Seminars, which to our knowledge have operated within the State this year. These are of very short duration and may earn credit toward a degree or continuing education credit, or no credit at all.

Oregon State University--Corvallis, Oregon

Workshop: "Beyond Stress to Effective Performance"
November 6, 1978--Reno

Workshop: "Modern Secretarial Efficiency"
September 15, 1978--Reno

Workshop: "Managing Interpersonal Conflict"
June 29, 1978--Reno

University of Denver--Denver, Colorado

Seminar: "Making Positive Discipline Work: How to Identify and Reduce Performance Problems"
April 12-13, 1978--Reno

Seminar: "Management Skills for the Educational Administrator"
May 22-23, 1978--Reno

Seminar: "Finance and Accounting for Non-Financial Executives"
March 29-31, 1978--Reno

Seminar: "Efficient Traffic Management"
March 30-31, 1978--Reno

Seminar: "Basic Project Management: Planning, Scheduling & Control"
April 4-6, 1978--Reno

Seminar: "Purchasing Negotiations"
April 5-7, 1978--Reno

Seminar: "A Manager's Guide to Computer-Assisted Hotel Management"
April 10-12, 1978--Reno

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- Seminar: "Leadership Styles and Managerial Effectiveness"
May 24-25, 1978--Reno
- Seminar: "Management Skills for Women Supervisors and Administrative Assistants"
March 22-24, 1978--Reno
- Seminar: "Time Management: Concepts and Techniques for Doing More in Less Time"
July 24-25, 1978--Reno
- Seminar: "Maintenance Management for First Line Maintenance Supervisors"
July 26-28, 1978--Reno
- Seminar: "Fundamentals of Management for Warehouse Supervisors"
June 19-20, 1978--Reno
- Seminar: "Zero Base Planning and Budgeting: A Powerful Management Tool"
June 22-23, 1978--Reno
- Seminar: "Positive Discipline"
October 3-4, 1978--Reno
- Seminar: "Preventive Maintenance"
September 28-29, 1978--Reno
- Seminar: "Effective Project Management"
October 26-27, 1978--Reno
- Seminar: "Mergers and Acquisitions and Divestitures"
October 26-27, 1978--Reno
- Seminar: "Women Managers"
September 28-29, 1978--Reno
- Seminar: "Efficiency in Construction Management"
October 5-6, 1978--Reno
- Seminar: "Marketing, Planning/Evaluating Advertising"
October 30-31, 1978--Reno

Real Estate Seminars:

1. Graduate Realtors Institute
Course I--May 15-19, 1978--Incline Village, NV
2. Reno Board of Realtors
"Roger Butcher Advanced Listing Workshop"
July 14, 1978--Reno

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3. South Lake Tahoe Board of Realtors
"Reducing the Risk of Malpractice in Real Estate"
May 1-3, 1978--South Lake Tahoe, Nevada
4. Farm and Land Institute
"Agricultural and Urban Land Brokerage Courses"
September 14-16, 1977--Las Vegas, Nevada
5. Tom Hopkins--Champions Unlimited
"How to", "Where to Find" and "How to Take"
September 26, 1977--Reno
6. Professional Educational Foundation
"The Income Tax Aspects of Real Estate Transactions"
October 10-12, 1977--South Lake Tahoe, Nevada

Merlin D. Anderson

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

MEMORANDUM

TO: NEVADA COMMISSION ON POSTSECONDARY
INSTITUTIONAL AUTHORIZATION (for meeting
of November 14, 1977)

DATE: 11/14/77

FROM: JAMES L. SPOO, Deputy Attorney General *JL*

SUBJECT: SHORT TERM SEMINARS

This memo is in response to a request from Merlin Anderson, Administrator of the Commission on Postsecondary Institutional Authorization as to the jurisdiction of the Commission under NRS Chapter 394 over short term seminars, as described in Mr. Anderson's memo (attached hereto).

The conclusion is that such seminars may be covered under Chapter 394 by implication, but are not expressly covered, as will be set forth below. Chapter 394 clearly does not specifically cover such seminars, but could reasonably be interpreted to include such coverage.

In this situation, therefore, a policy, as much as a legal determination confronts the Commission. The Commission may determine that it does not wish to cover such seminars in the absence of a specific statute providing for such coverage; or the Commission may determine that it does wish to cover such seminars under the existing statute, and that it may decide, but is not required, to hereafter seek a statutory amendment specifically covering such seminars. Whatever determination is made, a consistent enforcement practice is mandatory. Obviously, an express statutory amendment would resolve doubt as to coverage, and any choice, as well.

The purpose underlying the establishment of the Commission is expressed in NRS 394.125. Such purpose is declared to be the protection, education and welfare of citizens and institutions of Nevada by, among other means:

- "1. Establishing minimum standards concerning the quality of education, ethical and business practices, health and safety, and fiscal responsibility, to protect

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against substandard, transient, unethical, deceptive or fraudulent institutions and practices; (Emphasis supplied)

4. Prohibiting misleading literature, advertising, solicitation or representation by educational institutions or their agents...."

Thus, the purpose of Chapter 394 may reasonably be interpreted to contemplate coverage of such seminars. Case authority has held that when the intent of the Legislature is known, statutes must be construed so as to effectuate that intent. State v. California Mining Company, 13 Nev. 203 (1878); State ex rel Nevada Tax Commission v. Boerlin, 38 Nev. 39, 144 P. 738 (1914); Abel v. Eggers, 36 Nev. 372 (1913); School Trustees v. Bray, 60 Nev. 345, 109 P.2d 274 (1941).

However, even if the statement of purpose provides a secure disembarkment, it remains to be discovered what specific operative authority supports such purpose.

To begin with, the relevant definitions in Chapter 394 could reasonably encompass such seminars. The terms "education" and "educational services" are defined to include "...any class, course or program of training, instruction or study." NRS 394.041. Though more restricted, the term, "educational credentials" might reasonably be said to encompass such seminars, depending upon the particular documentation culminating a given seminar. See NRS 394.043.

The term "person" is defined in its customary legal generality to include individuals and entities. NRS 394.096; Cf. NRS 394.047. Both "postsecondary education" and "postsecondary educational institution" devolve from the definitions of "education," "educational services," and "educational credentials," cited above. See NRS 394.098 and 394.099. "Postsecondary education" includes education undertaken for academic, professional, or vocational ends. "Postsecondary educational institution" is not limited to

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regular, established, or situate institutions of learning, but includes "any person offering...educational services." Such definitions could encompass a variety of seminars.

NRS 394.560 specifies the illegality of such educational activities and the advertising thereof as are included in the proceeding definitions, but are unlicensed. Such section applies its prohibitions to such interstate activities whether the implicated institutions or persons are within or without the state; in addition, "agents" of such institutions or persons are included in such prohibitions. Thus, an interpretation of the Chapter may be further broadened to facilitate a potential application to such seminars. Cf. NRS 394.009.

If the cited statutory provisions be construed narrowly, for legal or policy bases, so as to exclude coverage of such seminars, NRS 394.430(2) may at least minimally include such seminars. This section authorizes investigations of persons "reasonably believed by the Commission to be subject to its jurisdiction." Under this section, the Commission could, if consistent and in good faith, closely watch and scrutinize, if not all such seminars, then such seminars whose coverage would, even if the remainder of the Chapter is narrowly applied, give rise to valid doubts.

The potential coverage of the Chapter outlined to this point may be said to be pointedly circumscribed by the exemptions specified in NRS 394.371(2), (3), and (4). These provisions describe exemptions for in-house kinds of education, avocational and recreational education, and education offered by eleemosynary entities. The Commission's general application, if any, of these exemptions heretofore would substantially determine the extent of any exemptions for such seminars. Nevertheless, future application of such exemptions, particularly that exemption applying to avocational or recreational education, could either restrict or expand the desired coverage of the Chapter as a whole, as previously discussed. Significant, but undefined, discretion is granted the Commission by these exemptions in the application of such exemptions. A policy choice again arises, as with other provisions of the Chapter as previously indicated. Beyond that, a consistent and good faith application of such exemptions is a fundamental legal requisite.

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This memo is, as has been evident, necessarily indefinite to some degree. It is offered as a guide, because no ultimate legal conclusion readily appears from Chapter 394. The Commission may correctly choose to rely upon the memo as a basis for action or for discussion alone.

Further consultation with this office as to regulatory implementation of any desired action would be necessary if a decision is reached by the Commission as to such seminars.

We trust the above satisfactorily answers your inquiry; however, if we may be of any further assistance on this matter, please advise.

EXHIBIT C

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710



LEGISLATIVE COMMISSION (702) 885-5627
DONALD R. MELLO, *Assemblyman, Chairman*
Arthur J. Palmer, *Director, Secretary*
INTERIM FINANCE COMMITTEE (702) 885-5644
FLOYD R. LAMB, *Senator, Chairman*
Ronald W. Sparks, *Senate Fiscal Analyst*
William A. Bible, *Assembly Fiscal Analyst*

ARTHUR J. PALMER, *Director*
(702) 885-5627

FRANK W. DAYKIN, *Legislative Counsel* (702) 885-5627
EARL T. OLIVER, *Legislative Auditor* (702) 885-5620
ANDREW P. GROSE, *Research Director* (702) 885-5637

RECEIVED
FEB 6 1978
C.P.L.A.

February 3, 1978

Merlin Anderson, Administrator
Commission on Postsecondary Institutional Authorization
State Capitol Complex
308 North Curry Street
Carson City, Nevada 89710

Dear Mr. Anderson:

At your request, I am sending my written comments concerning the subject of regulation of short-term seminars, workshops and conferences.

Construing chapter 394 of NRS as a whole, short-term seminars, workshops and conferences are not a proper subject for regulation by the Commission. That chapter was enacted to regulate educational institutions such as schools, colleges and universities which are established and operated in Nevada on a long-term basis.

Very truly yours,

Edward Dannan
Edward Dannan
Deputy Legislative Counsel



NEVADA COMMISSION ON POSTSECONDARY INSTITUTIONAL AUTHORIZATION

SHORT TERM SEMINAR REGISTRATION FORM

1. Name of institution offering program _____
2. Address of institution _____
 City _____ State _____ Zip _____ Telephone _____
3. Title of seminar _____
4. Date/s of seminar/s _____
5. Location (city, name of hotel, etc.) _____
6. Type of education or training offered _____
7. Tuition costs _____ Other educational fees _____
8. Estimated number of participants or enrollees _____
9. Length of program: Hours _____ Days _____
10. Estimate of number of times institution will offer such programs in Nevada during 12 month period _____
11. Principal objectives of training or education being offered:
 - a. _____
 - b. _____
 - c. _____
 - d. _____
12. A description of any follow-up or post seminar requirements including fees charged to participants:

13. If institution is accredited, name of accrediting agency or association

14. Name of individual filing registration form _____

THE FOREGOING INFORMATION IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF AS OF THIS DATE _____

Signature of Auth. Rep.

A.B. 519

Mr. Chairman, Members of the Committee, I am Wendell Newman, Executive Director of the Nevada State Education Association.

The NSEA supports A.B. 519. I would like to go through the bill, pointing out reasons why we believe this legislation improves the current NRS 391.

Page 1, Line 7 (A) We feel this language is important and clarifies the importance of stating a reason(s) for an admonition and, further, that the admonition could result in a demotion, dismissal or refusal to reemploy. This language simply makes good sense in that any certificated employee should be made aware of the specific error or problem created so that corrections can be made.

The Nevada Supreme Court, in November of 1976, affirmed a lower court's decision in the case of Clark County School District vs Jim Rathbun, (see copies attached). I believe this opinion of the Supreme Court supports our logic that reasons for the admonition must be provided. Further, in the District Court decision of Burnsen vs Carson City School District, again the Court's decision supports our contention that specific reasons must be provided as a part of the admonition.

In Line 20 of page 1, we urge the time period as outlined be reduced from 3 years to 1 year because if, in fact, the admonition and reasons for the admonition are corrected, there is no sound reason for such admonition to remain in the employee records or files. Allowing the admonition to remain can have an intimidating effect on the employee. What purpose can a satisfied admonition have in remaining in the files of the employee?

Page 2 Line 20 (4). We believe no certificated employee should suffer loss of compensation, contractual benefits or seniority rights during the course of time provided for proceedings as outlined in NRS 391.311 through 391.3197.

The problem is simply that a classroom teacher and, in some cases, and an administrator cannot afford loss of pay and fringe benefits at any time during the life of their contracted employment. Certainly, with inflation taking its huge bite out of an employee's salary, it is not reasonable to cut off the person's livelihood. This problem becomes particularly acute in areas where supplemental income opportunities are limited or do not exist.

A.B. 519

Likewise, a second income of a spouse may not be available. Furthermore, we believe this language is a relief from undue punishment. It should be pointed out that suspension itself is punishment and removal of the employee from the circumstances is the key to corrective action. What beneficial effect can withholding an employee's pay have on the problem at hand.

Page 2, Line 41 (1.) We support removal of all language on line 41 to line 2, page 3, by replacing it with a process involving hearing officers from a list of arbitrators provided by the AAA.

We believe arbitrators are more skilled and better trained to conduct hearings of this type than hearing officers as provided through the current system. Further, the system of selecting an arbitrator pursuant to NRS 288.200 has worked satisfactorily and, therefore, we support this change as well.

Line 10, page 3 would provide that a single hearing officer would hear cases pertaining to any and all grounds for demotion, dismissal or refusal to reemploy.

Line 22, same page removes the hearing "commission" from the current procedures. We contend the commission system is often less efficient and more time consuming than use of a single hearing officer. Attempting to clear dates for three members of a panel is obviously more difficult than selecting a date for a single hearing officer. Likewise, the cost to both the taxpayer and employee could be greater.

In following sections, all reference to a hearing commission and the involvement of the State Department of Education is removed. We support these amendments as shown.

Page 4, Line 15. This new language provides for a final and binding recommendation by the hearing officer. Again, we feel this is an advantage in that it provides for a neutral and unbiased professional to make the final determination on the basis of the merits and procedures of the case. Naturally, this decision or recommendation is subject to judicial review.

We support shortening the time limits for completing the written report of the hearing officer.

Page 5, Line 8 through 10 reaffirms the binding recommendation and subjection to judicial review.

IN THE SUPREME COURT OF THE STATE OF NEVADA

BOARD OF SCHOOL TRUSTEES)
 OF THE CLARK COUNTY SCHOOL DISTRICT)
)
 Appellant,)
)
 vs.)
)
 JAMES RATHBUN,)
)
 Respondent.)

No. 8572

FILED
 NOV 29 1976
 CLERK OF SUPREME COURT
Judith McEwen

Appeal from judgment, Eighth Judicial District Court, Clark County; J. Charles Thompson, Judge.

Affirmed.

Robert L. Petroni, Las Vegas,
for Appellant.

Frank A. Schreck, Las Vegas,
for Respondent.

O P I N I O N

PER CURIAM:

Appellant dismissed respondent from a teaching position with the Clark County School District for alleged unprofessional conduct. On review, the district court ordered respondent reinstated because admonishments required by NRS 391.313 had not been given for certain conduct specified as grounds for dismissal and other conduct, properly admonished, did not constitute legal cause for dismissal. Here, appellant contends the district court erred in ruling (1) admonishments must be given for each diverse and dissimilar act relied upon as grounds for disciplinary action, and (2) there was no legal cause for respondent's dismissal. We disagree.

1. As a condition precedent to the dismissal of a certificated teacher for unprofessional conduct, NRS 391.313 requires

an admonishment be given the teacher to enable him to remedy the cause for potential dismissal. No such admonishments were given for each diverse and dissimilar type of conduct relied upon by appellant as grounds for dismissing respondent. Thus, the district court correctly ruled this conduct could not be considered in the disciplinary action against respondent. Cf. Miller v. Board of Education of School Dist. No. 132, 200 N.E.2d 838 (Ill. App. 1964); Fresno City High School Dist. v. De Caristo, 92 P.2d 668 (Cal. App. 1939).

2. The only conduct admonished in accordance with NRS 391.313 consisted of data respondent placed in an article concerning an incident which occurred at his school. This article, which was prepared for a university class attended by respondent, did not produce any harmful disorganization or chaos among students, teachers, or administrators; and, it did not adversely affect respondent's ability to perform his duties. As such, it did not constitute a legal cause for dismissal. See: Paulson v. Civil Service Commission, 90 Nev. 41, 518 P.2d 148 (1974); Meinhold v. Clark County School Dist., 89 Nev. 56, 506 P.2d 420 (1973).

Other contentions by appellant are without merit, and we need not consider them.

Affirmed.

Gunderson, C. J.
Gunderson
Batjer, J.
Batjer
Zaner, J.
Zaner
Mowbray, J.
Mowbray

1
NRS 391.313(1) provides:
"1. Whenever an administrator charged with supervision of a certificated employee believes it is necessary to admonish a certificated employee for a reason that he believes may lead to demotion, dismissal or cause the certificated employee not to be reemployed under the provisions of NRS 391.312, he shall:
"(a) Bring the matter to the attention of the certificated employee involved, in writing, and make a reasonable effort to assist the employee to correct whatever appears to be the cause for potential dismissal or failure to reemploy; and
"(b) Except as provided in NRS 391.314, allow reasonable time for improvement, which shall not exceed 3 months for the first admonishment."