

Members Present:

Chairman Hayes
Vice Chairman Stewart
Mr. Banner
Mr. Brady
Mr. Coulter
Mr. Fielding
Mr. Horn
Mr. Malone
Mr. Polish
Mr. Prengaman
Mr. Sena

Members Absent:

None

Guests Present:

Judge Howard Babcock	Eighth Judicial District
Barbara Bailey	Nevada Trial Lawyers
Grace W. Bell	Humboldt County Clerk
Yvonne Bernard	Douglas County Clerk
Loretta Bowman	Clark County Clerk
Robert Broadbent	Clark County Commissioner
Mike Brown	Administrative Office of the Courts
John C. DeGraff	State Court Administrator
Thomas S. Gardner	Administrative Office of the Courts
Colleen Glover	Carson City Clerk's Office
Judge James Guinan	Second Judicial District
Frances E. Harris	Humboldt County Clerk's Office
Judge Keith Hayes	Eighth Judicial District
Joe Karm	Las Vegas Sun
Jane Logan	Nye County Clerk
Zel Lowman	Eighth Judicial District
Kent R. Robison	Nevada Trial Lawyers
Joan L. Swift	Clark County Recorder
Judge Charles Thompson	Eighth Judicial District
Ted Thornton	Carson City Clerk

Chairman Hayes called the meeting to order at 8:10 a.m.

ASSEMBLY JOINT RESOLUTION 1 OF THE 59TH SESSION

Proposes to remove requirement that county clerk be ex officio clerk of court.

Judge Babcock said he was present with other judges from the Eighth Judicial District to urge adoption of the resolution. He presented a letter (Exhibit A) to the Committee signed by 11 of the 12 judges in Clark County supporting the resolution. He said that there would be no financial impact upon Clark County by reason of passage of this resolution.

Judge Guinan said that under the present constitutional provision, judges are not interested in the duties of the County Clerk other than court duties. He said that in Washoe County

a situation exists where the County Clerk feels that he is autonomous in the administrative scene of the courts. He said that adoption of the resolution is supported by all of the District Judges in Washoe County.

Judge Thompson said that when the Constitution was first written over 110 years ago, it made sense to have the County Clerk serve as clerk of the court. He said the judge did not sit in one county all the time, and the court clerk's job was part-time. He said that this job is now full time, and it is time for the court clerks to be responsible to the individuals who they are required to serve. He said the present situation is like having one's secretary hired and controlled by another branch of government.

Mr. Lowman read from a prepared statement (Exhibit B) to the Committee.

Judge Babcock related the problems he felt there were with the court calendar in Clark County. He had with him the calendar for January 17, 1979, which consisted of 82 pages. He said judges receive the calendar the day before hearings at about 4:00 p.m. He said that the judges should receive this calendar at least 24 to 48 hours before hearings, and he said the present system is grossly inefficient. He said that the Clark County Clerk has many duties totally unrelated to the courts, and she sets her priorities. He said the judges presently have no right to dictate the priorities they demand. He said this is an example of why the judges feel they should have the control of this branch of the court process.

Mr. Lowman said that there would be no change in duties if this resolution were adopted, rather, there would be a change in administration. He said that what is being dealt with is a responsiveness to the needs of the court.

Judge Guinan said that in Washoe County court clerks in the past had been taken from the duties on election days to help in that area. He said that the court stopped functioning as a result. He said there are presently problems involving the Washoe County Clerk in that the Clerk holds the only key to the room where exhibits are stored. He said that if a court session runs past 5:00 p.m., another place must be found to store the exhibits because the Clerk will have gone home for the day and already locked the exhibit room.

Judge Thompson noted that the present language of the resolution would not require this action in every county. It would give the Legislature the authority to look at each county individually to see if this type of action would benefit the county or not.

Mr. Malone asked if the County Clerk in Clark County had been contacted to provide the court calendar sooner as stated by

Judge Babcock. Judge Babcock said there was reasonably good dialogue with the Clerk, but he said she has many other responsibilities other than managing the office as it relates to the business of the courts.

Mr. Polish, noting that the statement was made that there would be no additional cost to Clark County, said that he could see that there would have to possibly be an extra person and additional office space. He said there would have to be room for microfilming. Judge Babcock said there would have to be a person to supervise the court clerks and take the County Clerk's place, but for the most part, the court clerks would continue to use office space that was already there.

Judge Guinan said that in Washoe County the court clerks had already been separated from the other employees of the Clerk's Office. He said that if this resolution passed, there would only be a question of who would control the personnel who work for the court.

Mr. Banner asked if there was a tendency for salaries to be higher for individuals working for the court as compared to people doing the same job in other departments. For a comparison, Judge Babcock said that the person that would be running the court clerk division would have the same salary as a person running the division in the county system. Mr. Banner said he felt there would be a difference in salary for comparable positions due to pressures put on by the judges. Judge Guinan said that the judges prepare a budget, and the figures are approved by the County Commissioners, and that would be where salaries were set.

Judge Thompson said that in the past the Clerk's Office prepared a notice of setting of motions or trials. He said this is no longer done, and now attorneys select their own dates and notice each other for those dates. He said that his secretary types all the notices for trials.

Mr. Stewart asked if there might have been an interest when the Constitution was written in having a Clerk that is separate for safety reasons in keeping up records of the court. Judge Babcock answered that there was no "magic" in accepting the public records that are lodged with the Clerk. He said he did not see why it would be beneficial to have a division of the records for safety or the integrity of the system. He further stated that the system would be far more efficient by having an administrator that is responsible to the courts who would manage the records that relate totally to the court system.

Judge Babcock said that in the hearings on this resolution at the last session of the Legislature, there was testimony concerning the management of the monies that have been deposited with the Clerk. He said that the County Clerk is presently

bonded, and the court administrator would be bonded in a like manner. He said there would be no way that there could be defaultation concerning court fees.

Mr. Robison said he was present to recommend passage of the resolution. He said that the most contact that attorneys have with the court system is through the clerks until the trial stage. He said that as it stands now, the clerks are not responsive or responsible to the judges, and he felt it should not be that way.

Mr. Robison said that he thought the most significant problem is the calendaring function. He said this is controlled by the Clerk who is not responsive or responsible to the judges; therefore, if an attorney has a problem, a complaint can be made to the judge, but the judges still do not have the control. He said that when problems arise, their point could be made more vividly to a judge than to a clerk.

Mrs. Bowman went through a prepared statement (Exhibit C) opposing the resolution. She also presented to the Committee a statement of the workload for 1978 (Exhibit D) in the Clark County Clerk's Office.

Mrs. Bowman said she would like to respond to some of the remarks made by the judges. She said that presently the court calendar in Clark County is given to the judges at 4:00 on the day before hearings because of last-minute changes by the judges. She further said that the setting of motions and hearings was taken from the Clerk's Office and assigned to the judges' secretary because of a recommendation from the former court administrator. She said that there was no "magic" in running the Clerk's Office other than a lot of work. She said that if there was better communication, the judges would only have to ask for some of the things they were complaining about.

Chairman Hayes asked what percentage of the employee time in the Clerk's Office in Clark County was court-related. Mrs. Bowman said that out of 110 employees, 13 work in the marriage bureau and 8 work with the Board of County Commissioners. The remainder work for the courts.

Mr. Horn asked what the reason might be that the judges want this change. Mrs. Bowman answered that she could not answer the question. Mr. Broadbent answered that he felt they thought they could do a better job having the court clerks under their supervision. He said that he thought the judges were misled in this regard. He cited that Mrs. Bowman has been past president of the National County Clerk's Association. When people have come to Clark County to view the system there, they have said that the Clerk's Office managed one of the best operations they had seen. He said he could not believe that the people of Nevada would condone taking the court clerk duties away from the County Clerk.

Mr. Broadbent further stated that the judges have put pressure on the County Commissioners and said that if the Commission did not abide by their recommendations concerning such things as salaries that they would use their inherent powers to do what they had recommended to start with. He said that people are generally skeptical of the courts and anything that could be done to give faith to the court system would be better for all concerned. He said that taking court clerk duties from the County Clerk would not help this situation.

Mr. Broadbent said that County staff had done a study on the costs of this separation. He said that if the Committee feels strongly about the resolution that they should have a fiscal note prepared and ask the State to fund the extra cost.

Mr. Coulter said that it appeared this resolution was the cause of seeing two influential political groups colliding. He said he could not buy the statements of cost of dividing these functions that had been made by Mrs. Bowman and Mr. Broadbent. He said it would seem that if 90% of the employees were moving that the equipment they had used would also be moving. Mr. Broadbent said that he would be happy to provide the Committee with a list of the expected costs.

Mr. Malone asked Mrs. Bowman if she would be able to prepare a court calendar 24 to 48 hours in advance and then prepare a supplement to it on the day before hearings. Mrs. Bowman answered that she did not know if this would be acceptable to the judges, but there would be no reason this could not be prepared as early as the judges wanted it. She said that when the computer system for calendaring is in operation, the calendar could be prepared two weeks in advance.

Mr. Banner asked Mr. Broadbent if the County Commission was under a different pressure when considering salaries for the juvenile and court systems. Mr. Broadbent said that this was a basic problem.

Mrs. Logan said that in her office there is a maximum of ten papers filed a day. She said she could not see how this action could be justified in Nye County. She said the judge has the final say in the hiring of a court clerk, and she felt the office was being run okay.

Mrs. Bell said that she did not see how a circuit judge in the smaller counties could see the court duties separated from the Clerk's duties unless the State took over and ran the courts totally.

Mrs. Bernard said that the court system in Douglas County has grown gigantically. She said that three out of five Clerk's employees do nothing but court. She said that court was considered the top priority in her office. She asked that the Committee not forget the responsibility of the check and balance system because she felt this was a case of check and balance.

Mr. Broadbent said that the Nevada Association of County Commissioners objects to the passage of this resolution as not being in the best interest of the State of Nevada.

Attached to the minutes is a letter from the Elko County Clerk objecting to passage of the resolution (Exhibit E).

ASSEMBLY JOINT RESOLUTION 2 OF THE 59TH SESSION

Proposes to amend Nevada constitution to create intermediate appellate court.

Judge Guinan said that the District Judges Association recognizes the need for this court and would support passage of the resolution. Mr. Robison said that the Trial Lawyers would echo Judge Guinan's remarks.

Mr. DeGraff said that the intermediate appellate court is something that is needed desperately and was needed a year ago. He said the caseload at the Supreme Court is too large already. He said the Supreme Court presently does not have the time it needs to spend on cases, and some of the present duties would be designated to the appellate court as the Legislature would divide the jurisdiction of the courts. He said that the proposed starting date of the intermediate appellate court would be 1983 if approved by the voters in 1980.

Mr. Sena stated that he did not remember any opposition to this resolution at the last session of the Legislature.

ASSEMBLY JOINT RESOLUTION 3 OF THE 59TH SESSION

Proposes election of chief justice by justices of supreme court.

Mr. DeGraff said this resolution would change the present system where the Chief Justice position rotates to the justice whose commission is oldest. The Chief Justice must supervise and coordinate legislative activities, yet his appointment takes place only a few weeks before each Legislature convenes.

Mr. DeGraff said that under the resolution, a new Chief Justice would be elected by the other justices to begin his term in even-numbered years so he would have a year of experience before having to appear before the Legislature. He noted that the justices would be able to select the one of their number they would feel would best be able to handle the job. He said that former Chief Justice Batjer had said that he did not like being Chief Justice, and this resolution would change the present system so that an unwilling justice would not have to serve in the top capacity.

ASSEMBLY JOINT RESOLUTION 2 OF THE 59TH SESSION

Mr. Stewart requested that the Committee be presented the figures on the cost of the intermediate appellate court.

Chairman Hayes said the Committee would defer action on the resolution.

Mr. Horn moved to adjourn; Mr. Malone seconded the motion. The Committee unanimously approved the motion.

The meeting was adjourned at 10:09 a.m.

Respectfully submitted,

Carl R. Ruthstrom, Jr.

Carl R. Ruthstrom, Jr.
Secretary



STATE OF NEVADA
EIGHTH JUDICIAL DISTRICT

JOHN F. MENDOZA
DISTRICT JUDGE
DEPARTMENT FIVE

200 EAST CARSON STREET
LAS VEGAS, NEVADA 89101
(702) 386-4011

January 25, 1979

The Honorable Melvin D. Close, Chairman
Senate Judiciary Committee
Nevada Legislature
Carson City, Nevada 89710

The Honorable Karen Hayes, Chairman
Assembly Judiciary Committee
Nevada Legislature
Carson City, Nevada 89710

Dear Legislators:

On February 15, 1977, the Judges of the Eighth Judicial District Court wrote to the chairmen of the Judiciary Committees of the 59th Session in support of A.J.R. 1, which proposed to amend the Nevada Constitution by removing the designation of county clerks as ex-officio clerk of the Courts of Record. This letter is to re-affirm that position as the 1979 legislative hearings begin on that resolution.

It has been evident over the years that the courts would benefit by being able to control the records which are their responsibilities. The District Judges of the Eighth Judicial District Court encompassing Clark County, support this change to Article Four of the Nevada Constitution.

When the Constitution was written it was probably entirely reasonable to have a single County Clerk handling the records for a single district judge. As the work load has increased and more judges have been added, along with staff to handle their supportive services, it is logical that the processing of records, and gathering of information and the placement of responsibility will all be improved by assigning greater responsibilities to the court itself. Among the duties which are ministerial in nature and essential to the judicial function are calendaring, case file control, personnel and record management.

Mr. Close; Mrs. Hayes

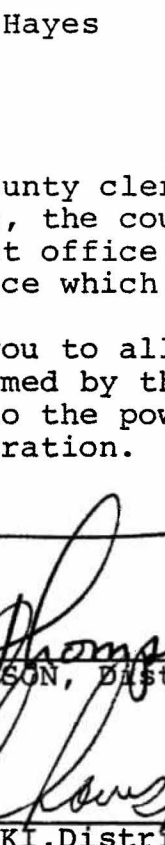
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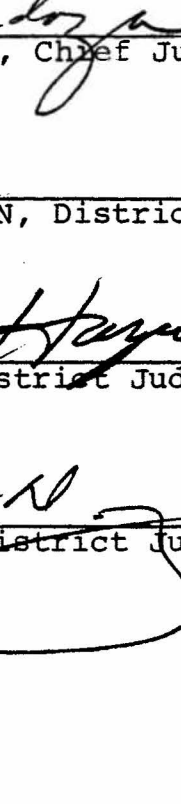
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As the county clerk's office has taken on more responsibilities, the court clerk services have become less important to that office and the Court does not receive the quality of service which it requires.

We urge you to allow the voters to give these functions currently performed by the county clerk but which are inherent and incidental to the powers of the judiciary, to the Court for its administration.

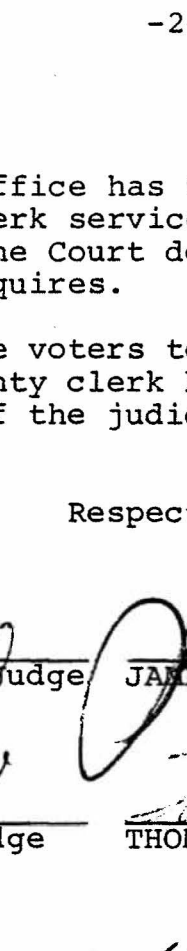
Respectfully,

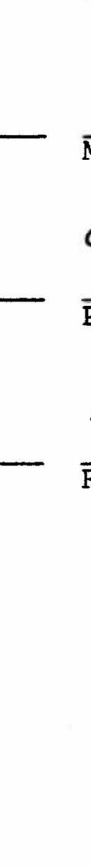

J. CHARLES THOMPSON, District Judge


JAMES BRENNAN, District Judge


JOSEPH PAVLIKOWSKI, District Judge


THOMAS J. O'DONNELL, District Judge



JOHN F. MENDOZA, Chief Judge

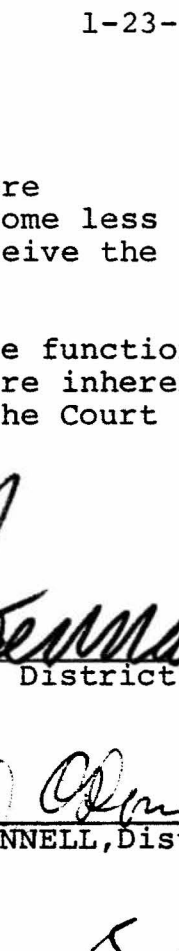

HOWARD BABCOCK, District Judge

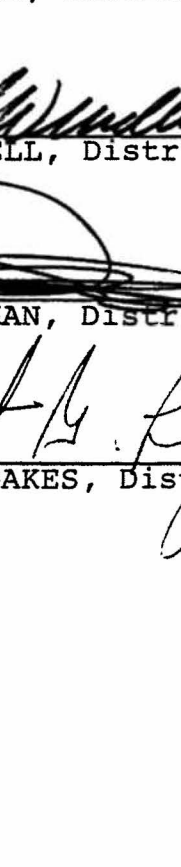
CARL CHRISTENSEN, District Judge


MICHAEL WENDELL, District Judge


KEITH HAYES, District Judge


PAUL S. GOLDMAN, District Judge


ADELIAR GUY, District Judge


ROBERT G. LEGAKES, District Judge

TESTIMONY ON AJR 1 OF THE FIFTY-NINTH SESSION

BY ZELVIN D. LOWMAN, COURT ADMINISTRATOR
EIGHTH JUDICIAL DISTRICT COURT
BEFORE THE ASSEMBLY JUDICIARY COMMITTEE
JANUARY 26, 1979

From the standpoint of the Administrator directly responsible for the quality of Court records, it probably goes without saying that I am in favor of AJR 1, so that my office may have the authority to go along with the responsibility.

You will find if you read the authorities in the field of management of Courts, and I speak of Friesen and his book by that name and the American Bar Association which in 1974 set up standards relating to court organizations, as well as Rubin in his book, "The Courts, Fulcrum of the Justice System" published in 1976, that they are all of one accord in urging that the Court should be in control of its records preparation and maintenance. In the past few years several states are moving in this direction from the early American practice of using the County Clerk to service the Courts, ex-officio. Some of these states are Alabama, Alaska, Colorado, Hawaii, and Maine.

The last twenty five years prior to my being appointed Court Administrator to the Eighth Judicial District on January 1, of this year, I was in private industry. Nowhere in industry have I ever seen a situation like ours in the Court where we are not in control of the records on which we make decisions and which we use as precedents. Because of this, we are unable to maintain standards of results-quality, quantity, time and cost. In addition in the sensitive areas where the Courts are affecting peoples lives in a major way they can not be adequately responsive to the electorate unless they control their own personnel.

For these administrative reasons AJR 1, should pass the 1979 Legislature and should be approved by the voters in 1980.

A.J.R. 1 presents several problems of a very serious nature with regard to the protection of the citizens' rights before the courts.

My purpose here is in part to call to your attention the questions I believe one must ask oneself in regard to these changes:

1. What caused the offices of the Clerk to be elective in the first place?
 - (a) Was it to provide the electorate another voice in their affairs?
 - (b) Was it to prevent excesses in control by the Judicial Branch?
 - (c) Was it to assist in assuring equal accessibility of the record to all parties to a case as well as to inform the general public?

I find there was, in fact, good reason why most states in the United States included in their constitutions a provision that these ministerial officers be elected; this reason being to make the officeholder responsible to the people instead of allowing them to hold first allegiance to an appointing authority. This wisdom has not lost its validity in the case of the Clerks of the Courts.

Is there any valid or compulsive reason for seeking this change? If it is thought this will bring efficiencies, they surely are no greater than that which can be brought by proper administration and upgrading of the activities under the present structure.

If the purpose be change, for change sake, or for expansion of a given sphere of influence by any group, then the bill does a serious disservice to the people of Nevada and its courts, lawyers and judges!

I believe in this matter a single directing administrator is essential to the successful operation of this rather complex office. Recent experience with regard to court administrators in Nevada seems to justify my position.

Clerks of Court in Nevada have, for the most part, been dedicated in their desire to work with the courts and the people and represent continuity of service and experience that is essential to the operation of the system.

This administrative task of Clerk of the Court may be best expressed by relating it to the following statistics regarding the work performed:

WORK LOAD YEAR 1978

Court Calendars required (1 case Xerox paper daily)	3,400
Requests for court hearings	40,000
Jury questionnaires sent and analyzed	18,000
Hours spent on calendaring (Present method)	22,000
Hours on jury questionnaires	2,000
Jury summons sent	18,000
Hours to issue vouchers	10,000

FILING FUNCTIONS

Estimated file retrievals	200,000
Estimated copies requested	750,000
Average time spent for retrieval requests	2 minutes
% of file retrieval requests with copies provided that were completed within 5 minutes	75%

There are now approximately 4 million papers in 400,000 cases in the Clerk's office. Out of this there may have been some errors made by the approximately 75 people who serve the court in the Clerk's Office.

If the new office of Clerk of the Court is created, an expenditure of \$500,000 would be required for equipment for the office of County Clerk. Also, an annual expenditure of \$250,600 would be required to staff the office of County Clerk as follows:

(1) County Clerk	\$ 30,000
(1) Assistant County Clerk	23,000
(1) Microfilm Manager	25,000
(1) Programmer Analyst	17,500
(6) Microfilm Operators	60,000
(1) Bookkeeper	10,500
(4) Counter Clerks	38,800
(1) Cashier	9,800
(2) File Clerks	18,000
(2) Copy Machine Operators	18,000
	<u>\$250,600</u>

It may be of value to mention what has taken place to improve service to the court and some of our plans.

The Clerk's Office in Clark County has a centralized support service staff, i.e., a staff which supports all the diverse functions assigned to the Clerk by State law. We have a central file room, a central microfilming room, a central duplicating facility, and a very sophisticated on-line computer retrieval system for quick access to any records filed by this office. We have several hundred thousand dollars worth of duplicating machines, microfilming machines, and computer equipment in order to run these functions. If one were to split out the court-related area, the new Court Administrative

Office would be required to purchase all this equipment, as I would still need 85% of the equipment in order to run my other State-mandated responsibilities. Additional cost to the taxpayers: \$500,000.

Through the years there has been constant change, not always in time but always with the thought of improving service to the court and to the people. We are automating the system via computer as fast as possible and we are, presently, in the third of four stages.

Case information is stored in computer files with new cases entered as filed.

The Register of Actions has been automated. Active case listings by case number and Note to Trial Docket are listed monthly by Court. The Jury System has been automated via the Clerk's Office Computer.

The Judgment Docket has been automated to save many hours and dollars.

A first terminal is being installed in the Judge's Chambers to afford direct access to case information.

The Calendar System is to be word-processed via the computer in approximately 60 days.

These are only a few of the advances completed or to be made.

Reduced copies of some of these items are available for your review.

Finally, I have other questions I believe are of greatest importance to the public:

1. Will the change save money or improve service to the public?
2. Where are the functions going, under what administrative control, who hires and fires, under what rules?
3. Under what personnel administration do the people fall - State, County or Court?
4. What is the grievance procedure - where does it end? Does the Court pass final judgment on its own employees or is there change of venue to another state?
5. What about job security and protection of present employees' rights?

Is the system to be one in which the court collects the fees, keeps the official court documents, banks the money and controls the expenditures? In cases of errors and omissions resulting in law suit or criminal actions, does the court pass judgment on itself?

Isn't there need for an elected guardian of YOUR records that is answerable only to YOU THE PEOPLE!

WORK LOAD YEAR 1978

Court Calendars required (1 case Xerox paper daily)	3,400
Requests for Court hearings	40,000
Jury questionnaires sent and analyzed	18,000
Hours spent on calendaring (Present method)	22,000
Hours on jury questionnaires	2,000
Jury summaries sent	18,000
Hours to issue vouchers	10,000

FILING FUNCTIONS

Estimated file retrievals	200,000
Estimated copies requested	750,000
Average time spent for retrieval requests	2 Minutes
% of file retrieval requests with copies provided that were completed within 5 minutes	75%

There are now approximately 4 million papers in 400,000 cases
in the Clerk's Office.

If the courts were to operate the system as it is now, equipment expenditures would amount to approximately \$500,000.

There will also be a cost of approximately \$250,000 per year for personnel, as follows:

County Clerk (1)	\$30,000
Assistant County Clerk (1)	23,000
Microfilm Manager (1)	25,000
Programmer Analyst (1)	17,500
Microfilm Operators (6)	60,000
Bookkeeper (1)	10,500
Counter Clerks (4)	38,800
Cashier (1)	9,800
File Clerks (2)	18,000
Copy Machine Operators (2)	18,000
	<u>\$250,600</u>

R. L. KANE
COUNTY CLERK
P. O. Box 390
ELKO, NEVADA 89801

January 22, 1979

HONORABLE KAREN W. HAYES
CHAIRMAN ASSEMBLY COMMITTEE ON JUDICIARY
NEVADA LEGISLATURE
6010 EUCLID
CARSON CITY, NEVADA
89710

Dear Mrs Hayes:

Re-AJR 1 of the 59th Session

I will not be able to attend your Committee Hearing on January 26, 1979, as I have to attend the final meeting of the Board of Equalization that day, which I have to attend by law. We also have a Court Trial for that day and three of us can not be in four places as the same time.

In regards to having separate Clerks of the Court. I will give you the make up of the Office in Elko County, Nevada, 28 years ago when I took Office as County Clerk of Elko County, Nevada, there were the Clerk and three other employees. When one old timer retired about 20 years ago that only left three, the Clerk and 2 other employees and has been that way ever since. On Election Years I hire a High School Girl to help during June, July and August.

If the County Clerk and Court Clerk are separated it will in Elko County take Two People to run the Office of Court Clerk, One to go to Court to take the minutes, Swear the Witnesses and take care of the Exhibits and one to run the Office, to Index and file papers and doing the typing in to Books all documents that are required by Law, Then there will have to be at least a $\frac{1}{2}$ or $\frac{1}{4}$ time employee to be there while the other two employees take vacation and sick leave.

In the Office of the County Clerk if the Offices are separated it will take at least two People to run the Office, One to attend the meetings of the County Commissioners, Boards of Equalization in January and General Obligation Bonding Commission when they meet and One Person to be in the office, then there will have to be at least a $\frac{1}{2}$ or $\frac{1}{4}$ time employee for vacations and sick leave.

The part time employee in both of these Offices will require more pay because it is not possible for some one to walk off the street and handle these jobs, they have to have special training and ability and it would require more salary to keep them available when needed.

As conclusions if the Office of County Clerk and Court Clerk in Elko County are separated the costs would double, because the Clerk of Court should receive a salary equal or more than the Elected County Clerk and the Four and $\frac{1}{2}$ or more employees will costs double what the present three employees are receiving.

Look at Clark and Washoe County Clerks Offices, they have all ready taken the Elections away from them by having Registrars of Voters and if they take the Court away, all the County Clerk will have to do is attend

meeting of the County Commissioners, Boards of Equalization in January and General Obligations Bonding Commissions when they meet, and Issue Marriage License.

If I was County Clerk of Clark or Washoe County and the Offices were separated into County Clerk and Court Clerks, it would only take me 5 minutes to accept the Office of County Clerk.

In Elko County, if the Offices were separated to Office of County Clerk and Clerk of the Court and the salary were about equal, I think I would have to take the Job of Clerk of the Court, because you would not have to run for Election and You would not have to handle the Elections and the only time you would have to work over time without extra pay would be taking the verdict of the Jury which come in some times at night

I can not see why the Offices should be separated in the small Counties.

Sorry that I can not be at your meeting.

Thank You;



R. L. KANE
COUNTY CLERK OF
ELKO COUNTY, NEVADA