

Date: April 20, 1979

Page: 1

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:

Zane E. Azbarea	North Las Vegas Municipal Court
Richard Blakemore	Senator
Steve Dollinger	
Joseph Drew	Esmeralda Justice Court
John Fleckenstein	Dayton Justice Court
Jim Joyce	Nevada Judges Association
James B. Kelly	North Las Vegas Justice Court
Richard C. Minor	Reno Justice Court
Edmond G. Psaltis	Administrative Office of the Courts
Solan Terrell	Tonopah Justice Court

Chairman Hayes called the meeting to order at 8:13 a.m.

SENATE BILL 295

Requires certain justices of the peace to serve full time.

Judge Kelly said that his remarks were endorsed by all of the lower court judges in Clark County. He said that this bill would require that Justices of the Peace give up the private practice of law. He said that the judges would endorse the concept of the lower court judges giving up this private practice. He said that in his own case as an attorney with the private practice and as a Justice of the Peace, there was an inherent conflict. He said that lower court judges should be recognized as professionals and, as district court judges, they should not be involved in private law practice.

Judge Kelly said that there are bills under consideration by the Legislature to raise the jurisdiction of lower courts, but he said there was no uniformity in the State on how the judges should be paid. He presented a proposed amendment (Exhibit A), and he said the amendment would in effect address

both the question of private law practice and the judges being required to work full time and their salaries.

Judge Kelly said that the bill provides that the limit regarding private law practice would be effective in townships with population over 60,000. He said he would request that this figure be reduced to 55,000 so that the North Las Vegas township would be included.

In the amendments, Judge Kelly said that a salary of \$38,400 is established for lower court judges. He said that this figure was 90% of the present salary of district judges. He said this would be a uniform salary for all lower court judges who work full time, and the bill would provide a standard formula for computing salaries of judges who do not work full time. He said that this formula would allow discretion in setting salaries still for those judges who were not full time.

Chairman Hayes asked if municipal court judges had the types of cases that would qualify them for a salary of \$38,400. Judge Kelly answered that he did not think the type of case was the important factor. He said that if a judge works full time, he should be paid on a uniform basis.

Judge Fleckenstein said that at this point in time, the State should decide if judges should be left on a fee system. He said that in marriage fees alone, he brought in \$12,000 in fees. He said that he finds himself trying to rush through cases in Justice Court because there are five couples waiting outside the courtroom to be married. He said that the judges should not be under this type of system. He felt that the extra income was important, but if a salary could be paid, it would be more equitable to the judges and to those who use their services.

Mr. Psaltis said that in Montana, case loads for lower courts increased 50% when the limit for small claims was raised to \$750. He said that Montana is not growing like Nevada is, and he said there would appear to be a tremendous increase in cases at the Justice Court level.

Judge Kelly outlined salaries that are presently being paid to city attorneys in Las Vegas.

Mr. Joyce said that judges are willing to go along with increased duties, but he said that they are also asking for some equity in regard to salaries.

Judge Azbarea said that his salary as municipal court judge in North Las Vegas is \$18,000. He said that this was for him a full time job, and he said he did not work another job. He felt that consideration should be given by the Legislature in setting salaries for lower court judges to make salaries more livable.

Mr. Prengaman said that it seemed to him that the justification for this proposed salary increase for lower court judges was pending legislation. Judge Kelly said that it was his position that salaries for lower court judges throughout the State were so "out of whack" that they needed the Legislature to set a formula so they could be paid in a reasonable manner.

Judge Fleckenstein said that during budget hearings before City Councils and County Commissions is how much revenue the justice court is bringing in. He said that they then base the salary of the judge on this amount. He said that this puts a judge in an awkward position of knowing that his salary will be based upon the fines that he imposes.

Mr. Prengaman said that the amendments proposed to this bill seemed to have circumvented the work done by the Senate in hearing the bill. Judge Minor said that a pay bill for lower court judges had been introduced only late in the session and did not have a chance of passage. He said if there was to be a bill regarding salaries, it would have to be done in this manner. He said that if the salaries would not be changed that the present bill under consideration should be killed.

SENATE BILL 108

Makes a technical change concerning challenges to sufficiency of evidence before grand jury.

Mr. Stewart read from a statement prepared by the Counsel Bureau. The statement said that in the 1977 legislative session, a revision was made in the procedure by which a defendant in a criminal case can file a writ of habeas corpus to test the sufficiency of the probable cause finding which resulted in the information of indictment filed with the District Court. The bill that was passed, A.B. 38 of the 59th Session, overlooked NRS 172.155 where there was an inconsistency in regard to the bill. He said that the present S.B. 108 deletes the inconsistency.

Mr. Horn moved Do Pass; Mr. Sena seconded the motion. The Committee approved the motion on the following vote:

Aye - Stewart, Coulter, Fielding, Horn, Malone, Polish, Prengaman, Sena - 8.

Nay - None.

Absent - Hayes, Banner, Brady - 3.

SENATE BILL 196

Entitles jurors to same compensation for lodging as received by state officers and employees.

Senator Blakemore said this bill was requested by Judge Beko who has said there is a great deal of problem jury-wise

especially in Nye County where jurors must come to Tonopah from Pahrump at a distance of 180 miles. He said that citizens are requested to serve in this capacity, he did not think they should lose money while they are serving. He said this bill would provide that jurors be paid the same amount as State employees receive for per diem. He said that if this amount is locked into the amount received by State employees, it should be adequate compensation. He said that this bill could apply to any county.

Mr. Fielding moved to Do Pass; Mr. Sena seconded the motion. The Committee approved the motion on the following vote:

Aye - Stewart, Coulter, Fielding, Horn, Malone, Polish, Prengaman, Sena - 8.

Nay - None.

Absent - Hayes, Banner, Brady - 3.

ASSEMBLY BILL 338

Limits privilege of husband or wife to prevent testimony of other to testimony regarding events occurring after marriage.

Mr. Stewart said that an amendment had been prepared to this bill to make it applicable only to criminal proceedings. The title of the bill would also be amended.

Mr. Horn moved to Amend, and Do Pass A.B. 338 as Amended; Mr. Polish seconded the motion. The Committee approved the motion on the following vote:

Aye - Stewart, Coulter, Fielding, Horn, Malone, Polish, Prengaman - 7.

Nay - None.

Absent - Hayes, Banner, Brady, Sena - 4.

ASSEMBLY BILL 30

Changes certain procedures for defending actions against public officers and employees.

Mr. Stewart said that amendments had been distributed to the Committee on this bill (Exhibit B). He said the purpose of the bill was to provide defense to employees working for the government. This would also apply to members of official boards and commissions. He said that the employee would be required to notify the public entity immediately after he is served notice of the suit. He said that Section 4 of the bill extends the time the governmental entity has to answer the suit. He said the bill would have no application in Federal courts and it states that fact.

Date: April 20, 1979

Page: 5

Mr. Malone moved to Amend, and Do Pass A.B. 30 as Amended;
Mr. Sena seconded the motion. The Committee approved the
motion on the following vote:

Aye - Stewart, Banner, Coulter, Fielding, Horn, Malone,
Prengaman, Sena - 8.

Nay - None.

Absent - Hayes, Brady, Polish - 3.

Vice Chairman Stewart declared the meeting adjourned at 9:55
a.m.

Respectfully submitted,

Carl R. Ruthstrom, Jr.
Carl R. Ruthstrom, Jr.
Secretary

PROPOSED AMENDMENT TO SB 295

Delete paragraph 2 and add the following:

2. Each justice of the peace in a township of more than 55,000, as determined by the last preceding national census of the Bureau of the Census of the United States Department of Commerce, shall serve full time.
3. During the month of June, 1979, the board of County Commissioners of each county shall determine which justice(s) of the peace, if any, in their county, in addition to those designated in paragraph 2, shall be designated full time.
4. Each justice of the peace designated full time in paragraph 2 and 3 above, effective July 1, 1979 shall not engage in private practice of law. Each full time justice of the peace shall be paid a salary of \$38,400 per year effective July 1, 1979.
5. During the month of June, 1979, the board of County Commissioners of each county shall designate what portion of full time each justice of the peace in their county who is not designated full time, is required to work.
6. Each justice of the peace shall be paid a salary based on the same ratio or percentage of a full time salary as the proportion to full time he is required to work.
7. Justices of the peace shall not retain any fees. The annual salary of each justice of the peace shall be set in an amount not less than his salary as set in June, 1979 and including the total of his reported retained fees during the past twelve month period, not to exceed the amount of a full salary.
8. The board of County Commissioners may, in addition to the regular salary as provided in this act, pay a part time justice of the peace an additional amount for sitting in another township or townships providing such additional amount combined with the regular salary does not exceed a full time salary in any calendar year.
9. The board of County Commissioners at its first regular meeting in July of each election year shall designate the portion of full time that each justice of the peace in the county, other than those designated full time by reason of population as set out in 2 above, shall be required to work during the term to begin the following January. With the consent of such justice of the peace, the board of County Commissioners may at any time change the portion of full time to be worked by any justice of the peace not designated in paragraph 2 above, and the accompanying salary.
10. Any justice of the peace who also serves as a municipal judge shall have a salary set by the board of County Commissioners for that portion of full time spent as justice of the peace and by the City Council for that portion of full time spent as municipal judge with the combined total of the two positions not to exceed a full time salary. Nothing herein is intended to prevent either the city or the county from paying into the other entity an amount to cover the salary owed by that city or county so that the pay to the justice of the peace may be in one check for retirement or other purposes.
11. Each municipal judge in a city with a population of more than 55,000, as determined by the last preceding national census of the Bureau of the Census of the United States Department of Commerce, shall serve full time.

12. During the month of June, 1979, the City Council of every city in the State of Nevada shall designate whether the municipal judge(s) of their city, if not designated full time by reason of population as set out in paragraph 11 above, shall be designated full time.

13. Each municipal judge designated full time in paragraph 11 and 12 above, effective July 1, 1979 shall not engage in the private practice of law. Each full time municipal judge shall be paid a salary of \$38,400 per year effective July 1, 1979.

14. During the month of June, 1979 the City Council of every city in the State of Nevada shall designate what portion of full time the municipal judge(s) who is not designated full time, is required to work.

15. Each municipal judge shall be paid a salary based on the same ratio or percentage of a full time salary as the proportion to full time he is required to work.

16. The salary of each municipal judge shall be set in an amount not less than the salary set for that position for June, 1979.

17. Each City Council at its first regular meeting in January of each municipal election year shall designate what portion of full time the municipal judge(s) who is not designated full time under paragraph 11 above, is required to work during the next term. With the consent of the municipal judge(s), not designated full time under paragraph 11 above, the City Council may at any time change the portion of full time to be worked by such municipal judge(s) and the accompanying salary.

18. The City Council or City Commission may set the salary of any alternate municipal judge(s) and any extra compensation to a justice of the peace who is invited to sit in the absence of a municipal judge, however, in the case of a justice of the peace, the city shall coordinate with the county to insure that in no event shall the salary of any justice of the peace combined with all extra compensation shall not exceed the amount of a full time salary in any calendar year.

PROPOSED AMENDMENT TO CHAPTER 41 OF NRS

(REPLACES SECS. 2-9 OF A.B. 30 (FIRST REPRINT), 1979 LEGISLATURE)

Sec. 1. [Section 1 of A.B. 30 (First Reprint) as it is currently worded would be retained.]

Sec. 2. Chapter 41 of NRS is hereby amended by adding thereto the provisions set forth below:

Sec. 3. The attorney general or, in the case of a political subdivision, the chief legal officer or attorney or authorized legal representative of the political subdivision shall provide for the defense, including the defense of cross-claims and counterclaims of any officer or employee, former officer or employee, member or former member of any official board or commission of the state or political subdivision or of any state legislator or former state legislator in any civil action brought against that person based on any alleged act or omission relating to the public duties of said person, provided:

(a) Within eight (8) days after service of a copy of the summons and complaint or other legal document commencing the action, said person submits a written request for such defense to the attorney general or chief legal officer or attorney of the political subdivision, or, in the case of any officer or employee who has an administrative superior, to both his agency administrator and the attorney general or the chief legal officer or attorney of the political

subdivision; and

(b) The attorney general or chief legal officer or attorney of the political subdivision has determined that any act or omission on which the action is based appears to be within the course and scope of employment of such person and was in good faith.

Sec. 4. The initial written request for defense extends the time to answer, move or otherwise plead to the complaint filed in a court of competent jurisdiction of this state to forty five (45) days after the date of service. Upon receipt of the written request, the attorney general or, in the case of a political subdivision, the chief legal officer or attorney of the political subdivision shall immediately file with the court a notice, with a certificate of service, of a copy by mail on all plaintiffs of record in the action, that the time within which the defendant must plead to the complaint or similar pleading, is extended by this section forty five (45) days from the date the defendant was served, specifying the last date a responsive pleading must be filed under this section. In all other courts of law, the attorney general or the chief legal officer or attorney of the political subdivision shall appear in the action and move or plead on behalf of the person requesting a defense or otherwise protect the time of said person to file a responsive pleading, pending a final determination whether the act or omission was within the course and scope of employment and was in good faith.

Sec. 5. Any facts pertaining to the arrangements or circumstances by which the state or political subdivision or any attorney thereof does or does not defend any person described in Sec. 3 above shall not be admissible in evidence at trial or in any other proceeding in the civil action in which such person is named defendant, except in connection with an application to withdraw as the attorney of record pursuant to Sec. 11 below.

Sec. 6. The state or appropriate political subdivision may not require a waiver of the attorney-client privilege as a condition of tendering the defense of any of its officers or employees, but nothing herein shall preclude an application to withdraw as the attorney of record pursuant to Sec. 11.

Sec. 7. The attorney general may employ special counsel whose compensation shall be fixed by the attorney general, subject to the approval of the state board of examiners, if the attorney general determines at any time prior to trial that it is impracticable, uneconomical or could constitute a conflict of interest for the legal service to be rendered by the attorney general or a deputy attorney general. Compensation for special counsel must be paid out of the reserve for statutory contingency fund.

Sec. 8. The chief legal officer or attorney of a political subdivision may employ special counsel whose compensation shall be fixed by the governing body of the political subdivision if he determines at any time prior to trial that it is impracticable or could constitute a conflict of interest for the legal services to be rendered by him. Compensation for special counsel must be

paid by the political subdivision.

Sec. 9. The attorney general or the chief legal officer or attorney of the political subdivision may provide for the defense of any person who is entitled to a defense from the state or a political subdivision by requiring an insurer who is obligated by contract to defend against the action to do so.

Sec. 10. At any time after a written request for defense is submitted to the attorney general, or in the case of a political subdivision, to the chief legal officer or attorney or authorized legal representative of the political subdivision, the person requesting the defense may employ his or her own counsel to defend the action, in which event the state or political subdivision shall be excused from any further duty to represent said person and shall not be liable for any expenses in defending the action, including court costs and attorney's fees.

Sec. 11. At any time after the attorney general, or in the case of a political subdivision, the chief legal officer or attorney of the political subdivision has appeared in any civil action and commenced to defend any person sued as a public officer, employee, board or commission member, or legislator, the attorney general or the chief legal officer or attorney of the political subdivision may apply to any court to withdraw as the attorney of record for such person based upon any of the following events:

- (a) Discovery of any new material fact or facts not known

at the time the defense of such person was tendered, which fact or facts would have altered the decision to tender the defense;

(b) Misrepresentation of any material fact or facts by the person requesting the defense, which fact or facts would have altered the decision to tender said person's defense had not the misrepresentation occurred;

(c) Discovery of any mistaken fact or facts which was material to the decision to tender said person's defense and which would have altered said decision but for the mistake.

(d) Discovery of any fact or facts which indicate that the act or omission on which the civil action is based was clearly not within the course and scope of employment or was wanton or malicious.

(e) Failure of the defendant to cooperate in good faith with the defense of the case.

(f) Failure to name the state or political subdivision as a party defendant in accordance with NRS 41.031 and NRS 41.0337, provided there is sufficient evidence to establish that the civil action is clearly not based on any act or omission relating to the defendant's public duties or employment.

If any court grants a motion to withdraw on any of the grounds

noted above brought by the attorney general or, in the case of a political subdivision, the chief legal officer or attorney for the political subdivision, the state or political subdivision shall have no further duty to continue to defend any person who is the subject of the motion to withdraw.

Sec. 12. If the attorney general or the chief legal officer or attorney of a political subdivision does not provide for the defense of a present or former officer, employee, board or commission member of the state or any political subdivision or of a legislator in any civil action in which the state or political subdivision is also a named defendant, and if it is judicially determined that the injuries arose out of an act or omission of that person during the performance of any duty within the course and scope of said person's public employment and that his act or omission was not wanton or malicious, the following provisions shall apply:

1. If the attorney general was responsible for providing the defense, the state is liable to that person for reasonable expenses in prosecuting his own defense, including court costs and attorney's fees. These expenses must be paid, upon approval by the state board of examiners, from the reserve for statutory contingency fund; or

2. If the chief legal officer or attorney of a political subdivision was responsible for providing the defense, the political subdivision is liable to that person for reasonable

expenses in prosecuting his own defense, including court costs and attorney's fees.

Sec. 13. No judgment may be entered against the state of Nevada, or any agency of the state, or any political subdivision of the state for any act or omission of any officer, employee, board or commission member or former officer, employee, board or commission member or any legislator or former legislator, which was wanton or malicious, irrespective of whether the act or omission was otherwise within the scope of his public duties, agency or employment.

Sec. 14. In every action or proceeding in any court of this state in which both the state or political subdivision and any present or former officer, employee, board or commission member thereof or any present or former legislator are named defendants, the court or jury in rendering any final judgment, verdict, or other disposition shall return a special verdict in the form of written findings which determine:

(a) Whether the officer, employee, board or commission member or legislator was acting within the scope of said person's public duties or employment; and

(b) Whether the alleged act or omission by the officer, employee, board or commission member or legislator was wanton or malicious.

Sec. 15. In any civil action brought against any person described in Sec. 3 above in which a judgment is entered against such person based on any act or omission relating to his or her public duties, the state or political subdivision shall indemnify said person unless it establishes that:

not to exceed the amount specified in NRS 41.035

(a) Said person failed to cooperate in good faith in the defense of the action;

(b) Any act or omission of the person was not within the scope of said person's public duties, agency or employment;

(c) Any act or omission of the person was wanton or malicious; or

(d) The state or political subdivision has not been named a party defendant as required by NRS 41.031 and NRS 41.0337 and the attorney general or chief legal officer or attorney of the political subdivision has not provided or authorized the defense of any such person.

Sec. 16. Same as Sec. 10 of A.B. 30 (First Reprint).