Minutes of the Nevada State Legislature
Senate Committee on Government Affairs
Date: April 20, 1979
Page: One

Present: Chairman Gibson
Senator Dodge
Senator Echols
Senator Ford
Senator Kosinski
Senator Raggio

Also Present: See Attached Guest Register

Chairman Gibson called the thrity-fourth meeting of the Government Affairs Committee to order at 2:05 p.m.

S.B.468 Modifies requirement of financial rating of certain persons in connection with economic development revenue bonds.

Kent Dawson, City Attorney for Henderson testified that this amendment will allow the city or county to approve a company, subject to the approval of the State Board of Finance, if the company is unable to obtain a rating in compliance with the current statutes. Gave an example of the Buster Brown Company and the problems encountered by them in obtaining a sufficient bond rating to complete their warehouse in southern Nevada. At this time Mr. Dawson turned testimony over to Mr. Lenz, representing Buster Brown Company.

Bruce Lenz, Buster Brown Company, testified on the financial stability of the company and felt that the requirements in Nevada were too rigid. He noted that their sales are approximately $60 million but they were denied a bond rating because of lack of prior experience. Also, the rating institutions arbitrarily do not rate a company of under $100,000. strength.

Mr. Dawson also gave an example of a beverage body business called the Hesse Company. He noted their assets were approximately seven million, liabilities were two million and Owners Equity was estimated at approximately four and one half million. Their experts feel that this is a strong, reliable company. They are also denied a bond rating and may not be able to locate in Nevada due to this restriction.

Bob Mitchell, Dawson, Nagel, etc. (law firm) stated that he was the bond counsel for six other states and Nevada's requirements for bond ratings are the strictest by far.

Chairman Gibson asked Mr. Lenz how much Buster Brown was asking for and Mr. Lenz responded that they were trying to obtain approximately $2 million to help finance the completion of the plant. The project is nearly complete.

Tim Carlson, Executive Director of the Nevada Development Corporation, handed out copies of the companies that are interested in locating in Nevada. Mr. Carlson felt that these companies might reject Nevada due to its not being able to utilize the economic development bond law because of the rating requirements. (See Attachment #1)

Gary Price, City of Henderson, was unable to be present but asked Mr. Dawson to note his support of the bill.

Senator Raggio moved "Do Pass" on SB-468
Seconded by Senator Ford
Motion carried unanimously.

A.B.496 Permits establishment of employee merit personnel system by ordinance in certain counties.

Russ McDonald, representing Washoe County, and Chan Griswold, Chief Civil Deputy District Attorney for Washoe County, were present to give legal cases to support the amendments proposed in this bill. Senator Raggio had requested that an opinion from Washoe County on the bill prior to the committee taking action. The Senator felt that there was sufficient reason for the bill and was satisfied with Mr. Griswold's opinion. (See Attachment #2)

Senator Raggio moved "Do Pass" on AB-496
Seconded by Senator Ford
Motion carried unanimously.

SB-475 Reorganizes communications system used by state.

Bart Jacka, Director of the Department of Motor Vehicles, testified to the committee on the amendments that they propose in order to make the bill more acceptable to their department. (See Attachment #3) Mr. Jacka went over the bill and the attachment amendment suggestions for the committee. Mr. Jacka concluded his testimony by stating that a reserve should be set up in order to have the money available for replacement and repairs as needed.

Chairman Gibson felt that this could be taken care of in the budget in the Finance Committee and that the section of the bill dealing with reserves should be deleted.

Stan Warren, Nevada Bell, stated that the bill will be a step in the right direction and informed the committee that he hoped to be appointed to the board. Mr. Warren has been involved in communucation systems for a long time and feels that great progress is being made.

The amendments were as follows; (1) Attachment #3 - (2) Delete lines 13 and 14 to correct lines 28 and 29. (3) Delete Section 17 if the matter can be handled in the Finance Committee.

Senator Raggio moved, "Amend and Do Pass" on SB-475
Seconded by Senator Echols
Motion carried unanimously.

AB-645 Removes requirement to keep Clark County offices at county seat.

Sam Mamet, representing Clark County, stated that this bill is intended to clear up the statutes. The statute goes back to 1909 and should be deleted.

Senator Ford moved "Do Pass" on AB-645
Seconded by Senator Dodge
Motion carried unanimously.

AB-664 Changes procedure for handling certain claims against certain counties.

Sam Mamet, representing Clark County testified that Mr. Darryl Daines, County Auditor, provided the language in this bill in order to cut down the lengthy procedures that they must now comply with. They feel it will modernize the system and the comptroller will get any debts against the county.

Senator Echols noted a typing error, page 2, line 26 the word should be "prescribe".

Senator Raggio asked why Washoe County was not interested in being included in the bill. Russ McDonald, Washoe County, stated that they were interested in this bill and thought that they should be included.

Chairman Gibson suggested that the bill state, "in any county that has a Comptroller". This would make the bill apply to any county.

Russ McDonald stated that in the statutes it is mandatory in the larger counties and up to the discretion of the smaller counties.

Chairman Gibson stated that the above noted suggestions would be brought to the bill drafter and the proper amendments could be handled in that office.

Senator Raggio moved, "Amend and Do Pass" on AB-664
Seconded by Senator Dodge
Motion carried unanimously.

SB-359 Makes various amendments to North Las Vegas city charter.

Senator Echols referred the committee to this bill as it was held until a report could be returned from the people of North Las Vegas on the powers given to the City Manager. The Senator stated that the City Manager has been using the discharge power noted in the cities general statutes. The recourse is in the civil procedure law. The Senator informed the committee that this bill was voted on during the January meeting of the city counsel and they unanimously supported it during that meeting. The problems with the bill are political and feels that the committee should go with the unanimous support voiced in January.

Senator Dodge moved "Do Pass" on SB-359
Seconded by Senator Dodge - Motion carried unanimously.

AB-263 Removes distinctions based on sex from NRS 417.090

Esther Micholson, Nevada League of Women Voters, testified in support of the bill and urged passage of all bills that deal with the removal of distinctions based on sex.

Senator Ford moved, "Do Pass" on AB-263
Seconded by Senator Dodge
Motion carried unanimously.

AB-467 Removes distinctions based on sex from residency requirements for elections.

Esther Micholson, Nevada League of Women Voters, testified in support of the bill and noted that the bill removes an antiquated provision in the law.

Senator Kosinski moved "Do Pass" on AB-467
Seconded by Senator Echols
Motion carried unanimously.

SB-431 Changes method of refunding any excess from special assessment by Las Vegas Valley water district and corrects misprint.

Senator Kosinski reported back to the committee on the problems with the bill and the possible amendments in order to give the refunding on special assessments a fair disbursement. The previous meeting on this bill indicated that some of the committee members wanted the refund to go to the present owner and some felt that the original owner was due the refund.

Senator Raggio felt that the problem of refunding can become very technical. The Senator gave an example of the original owner paying a portion of the assessment and the current owner paying the remaining portion. The situation could involve a great deal of paperwork and the Senator suggested that the only portion of the bill to be amended is that reference to "savings", making it "banks". The remainder of the bill would be amended as per the suggestions provided by Mr. Paff of the Las Vegas Valley Water District.

Note: The bill was amended and passed out of committee on April 18, 1979. Meeting No. 33.

Senator Raggio brought a resolution from the City of Reno to the attention of the committee. The Senator read same to the committee. (See Attachment #4)

At this time the committee took a fifteen minute recess and then began discussion on SB-253 and SB-254.

SB-253 Adapts County Economic Development Revenue Bond law to certain projects for generating and transmitting electricity.

S.B.254 Provides for payment in lieu of taxes on certain power projects.

Chairman Gibson stated that Mr. Noel Clark, Energy Commission, would be present later in the meeting to discuss certain aspects of the power plant project proposed in White Pine County.

There was discussion about having SB-253 changed to be a special act and not a part of the Economic Development Revenue Bond Law.

Senator Ford felt that the committee would like to process SB-253 but wanted a phasing mechanism. The committee discussed having an oversight committee that would follow the progress of the power plant. The committee felt that if the enabling legislation is provided in a special act it might be more flexible and allow for changes as time goes on. The special act would carry the same impact of the law and the applicable general laws could be written in. Senator Ford stated that she was open to any opinions on this suggestion.

Tom Bath, White Pine County, stated that they considered this approach but the bond counsel felt that the best approach was to go with the County Economic Development Revenue Bond Law. At this time Mr. Bath turned the testimony over to Mr. Dave Hagen, bond counsel.

Mr. Hagen stated that if the legislature feels this is the best approach they would work out the details as long as the general law is applicable in those areas where the features of the Economic Development Revenue Bond law applies. Mr. Hagen referred to Chapter 244 because of the ease and flexibility that this chapter allows for the changes mentioned earlier in testimony by Senator Ford.

Mr. Gremban, President of Sierra Pacific Power Company, testified to the committee that the present statutes indicate that they can only recapture 25% without imparing the bonds. They would like to be able to recapture approximately 33%. This can be done with appropriate language changes in the statutes.

Frank Daykin, Legislature Counsel Bureau, was asked to be present to give the committee a legal opinion about the feasibility of making the power plant project a special act rather than going with adaptions to the Economic Development Revenue Bond Law.

Mr. Daykin stated that the special act could handle the power plant project and felt that he was the only attorney that could handle the drafting of this act. Mr. Daykin stated that it was constitutional and the act would not interfere with any of the prohibitions in Article 4.

Mr. Daykin continued that the judgement would be with the legislature, the situation is unique and can be adequately cited. The general law can be applied in part, by reference and the county could be empowered.

Chairman Gibson stated that the committee was exploring the various possibilities to process the bill and noted that they wanted to make the the act more restrictive.

Senator Dodge felt that a legislative overview was considered and with a special act the overview would not be necessary.

Senator Echols asked Mr. Gremban if he would have any problems with a special act and the site being in White Pine County.

Mr. Gremban responded that the site should be studied and more options for a location should be presented. The E.P.A. will not allow for a predetermined site.

Noel Clark, Department of Energy Administrator, testified to the committee on the proposed power plant project in White Pine County.

Chairman Gibson stated that the committee felt that a study was necessary to include the possible power plant sites in the state. The Chairman asked Mr. Clark what he felt about this and should a study be conducted within their department.

Mr. Clark stated that he was testifying as an individual and not on behalf of the Department of Energy at this time. Mr. Clark responded to the special act suggestion by stating that it was a good idea. He feels that the legislature should have overview on this project and a special act would prohibit abuses of water resources. Mr. Clark noted that the problem in moving the project lies within a power struggle between the public vs. private industry.

Mr. Clark felt that the revenues would substantially help the economically unsound county and that if the appropriate safeguards are written into the taxing structure there will be other benefits from this plant for the White Pine area. Mr. Clark also noted that Nevada is not an island and we are dependent on other states for fuel and gasoline. Nevada needs to be in the position of having something to trade.

Chairman Gibson asked Mr. Clark to comment on the needs within the state.

Mr. Clark stated that there are no transmission lines traversing Nevada. This would give the opportunity to tie Nevada transportation lines into the other states and make Nevada part of the overall system within the western states.

Chairman stated that we do not have a list of these areas within the state that might be alternate sites. The committee feels that the Energy Department should conduct a study on the other possible sites.

Noel Clark responded that the Department of Energy was the approriate department for such a study and they have part of this study completed and have determined the amount of power required by Nevada through 1985. The report should be complete in 30 days. Mr. Clark further stated that the studies for power shouldn't be limited to electricity. There are many geothermal sources and they should also be studied.

Mr. Clark concluded by stating that safeguards were very important in a power project. Los Angeles Power and Light is a very reputable company but Nevada should be very careful not to over sell or over develop at this time.

Mr. Gremban indicated that Sierra Pacific Power has made site studies and were already looking at the different types of power and energy that can be used in Nevada.

Chairman Gibson asked the committee to get their materials on the power project together and there would be a three hour meeting on Saturday, April 21, 1979.

Mr. Gremban stated that they would be available at the Saturday meeting to help with any questions the committee might have.

With no further business the meeting was adjourned at 5 p.m.

Respectfully submitted,

Janice M. Peck
Committee Secretary

Approved:

Chairman
Senator James I. Gibson

FIRMS WHICH HAVE CONSIDERED REVENUE BONDING

Flexible Tubing
Ennis Business Forms
Buster Brown Textiles
Levi Strauss
Swan, Inc.
National Homes, Inc.
U.S. Pioneer Electronics
National Data Corporation
Panasonic
Ace Hardware
Brisck Manufacturing
International Harvester
R.R. Donnelley & Sons
American Atomics Corporation
Ford Aerospace Corporation
Motorola, Inc.

Made application through City Economic Development Revenue Bond Law - or have stated that the section in question was extremely cumbersome.

CALVIN R. X. DUNLAP
District Attorney

Washoe County District Attorney

Washoe County Courthouse
South Virginia and Court Streets
P.O. Box 11130 • Reno, Nevada 89520

MEMORANDUM

TO: RUSS McDONALD

FROM: CHAN G. GRISWOLD
Chief Civil Deputy

RE: Possible Amendment to NRS 245.215--County Merit Personnel Systems

DATE: March 8, 1979

I am enclosing a copy of NRS 245.215 and a copy of a recent case, State ex rel. Sweikert v. Briare, 94 Nev., Advanced Opinion 221.

It appears to me that the recent Nevada Supreme Court case is in conflict with the provisions of NRS 245.215(8) setting forth the grievance procedure that the County is required to adopt as part of Merit Personnel Ordinance. The Sweikert case requires that as a matter of constitutional due process, a permanent public employee is entitled to a pre-determination hearing except under limited, extraordinary circumstances. However, NRS 245.215(8) establishes a grievance procedure which does not contemplate a pre-determination hearing. Therefore, this statutory provision is unconstitutional under the reasoning of the Sweikert case.

At the present time, the Washoe County Merit Personnel Ordinance contains the grievance procedure required by NRS 245.215 which, in view of Sweikert, is unconstitutional. A sensible step would appear to be to amend NRS 245.215 to eliminate the unconstitutional details of the grievance procedure. Frankly, I think it is a mistake for the Legislature to try to spell out the details of the grievance procedure. The one presently set forth in the statute is not an ideal procedure. In small departments, it is difficult to find two persons to serve on the Grievance Board who have not prejudged the action. Also, with five County employees on the Board, it is an extremely time consuming and takes five employees away from their jobs. Some counties might

EXHIBIT 2 - 839 #2

wish to go to a hearing officer or fact finder approach. Others might prefer a fact finding panel of non-employees. I believe there are many procedures superior to that set forth in the statute.

Another problem is the conflict between the NRS 245.215 dismissal grievance procedure and the dismissal grievance procedure negotiated with an employee association pursuant to the provisions of Chapter 288. Obviously, an employee cannot pursue both procedures. Language should be added to state that section 8 of NRS 245.215 does not apply to employees included within the provisions of a collective bargaining agreement containing a grievance procedure for dismissals.

I realize it is late in the session, but in view of the Nevada Supreme Court decision in Sweikert, perhaps the Legislature might be willing to take some action. I would appreciate it if you would pursue this for me or let me know what I should do to try to get the statute amended.

Best regards,

CALVIN R. X. DUNLAP
District Attorney

By _____
CHAN G. GRISWOLD
Chief Civil Deputy

CGG/st

Enclosures

cc: J. Howard Reynolds
Personnel Administrator

4. The plan or program authorized by this section shall be supplemental or in addition to and not in conflict with the coverage, compensation, benefits or procedure established by or adopted pursuant to chapter 616 of NRS.

5. The benefits provided for in this section are supplemental to other benefits an employee is entitled to receive on account of the same disability. In no event shall the benefits provided for in this section, when added to benefits provided for or purchased by the expenditure of public moneys, exceed the maximum amount of benefits an employee is entitled to receive if he has been a member of the department or agency for 10 years or more.

(Added to NRS by 1975, 1298)

EMPLOYEE MERIT PERSONNEL SYSTEM IN CERTAIN COUNTIES

245.213 Establishment of merit personnel system in counties of 100,000 or more population mandatory. In each county having a population of 100,000 or more, as determined by the last-preceding national census of the Bureau of the Census of the United States Department of Commerce, the board of county commissioners shall establish a merit personnel system for all employees of the county except those exempted under the provisions of NRS 245.213 to 245.216, inclusive.

(Added to NRS by 1969, 827; A 1969, 1545; 1973, 1139)

245.214 Administration by board of county commissioners. The board of county commissioners shall administer the provisions of NRS 245.213 to 245.216, inclusive, through the promulgation of appropriate rules and regulations and the employment of clerical and administrative staff.

(Added to NRS by 1969, 828)

245.215 Regulations: Required provisions. The board of county commissioners shall develop rules and regulations of any merit personnel system established pursuant to the provisions of NRS 245.213 to 245.216, inclusive. Such rules and regulations shall provide for:

1. The classification of all county positions, not exempt from the merit personnel system, based on the duties, authority and responsibility of each position, with adequate provision for reclassification of any position whatsoever whenever warranted by changed circumstances.
2. A pay plan for all county employees, including exempt employees other than elected officers that are covered in other provisions of NRS or by special legislative act.
3. Policies and procedures for regulating reduction in force and the removal of employees.
4. Hours of work, attendance regulations and provisions for sick and vacation leave.

5. Policies and procedures governing persons holding temporary or provisional appointments.

6. Policies and procedures governing relationships with employees and employee organizations.

7. Policies concerning employee training and development.

8. Grievance procedures whereby:

(a) An employee other than a department head, county manager or county administrator who has been employed by the county for 12 months or more and is dismissed from employment may, within 15 days of dismissal, request a written statement specifically setting forth the reasons for such dismissal. Within 15 days of the date of such request he shall be furnished such a written statement. Within 30 days after receipt of such written statement, the dismissed employee may, in writing, request a public hearing before a grievance board appointed by the board of county commissioners to consist of two persons appointed from the department where the employee is employed and three persons appointed from other departments in the county.

(b) The employee may appeal the decisions of the grievance board to the board of county commissioners.

(c) Formal rules of evidence will not be followed.

9. Other policies and procedures necessary for the administration of a merit personnel system.

(Added to NRS by 1969, 828)

245.216 Personnel exempted from merit personnel system. There shall be exempted from the provisions of NRS 245.213 to 245.215, inclusive:

1. All department heads appointed and elected and the county administrator or county manager of the county.

2. A number of employees in each department excluding the department head as designated by the department head, which shall not exceed 3 percent of the permanently established positions as authorized by the board of county commissioners.

3. All persons holding temporary or provisional appointments, the duration of which does not exceed 6 months.

(Added to NRS by 1969, 828; A 1973, 1140)

ADVANCES OF FUNDS TO COUNTY OFFICERS AND EMPLOYEES FOR TRAVEL EXPENSES AND SUBSISTENCE ALLOWANCES

245.350 County travel revolving fund: Creation; purpose; duties of county treasurer.

1. The board of county commissioners of any county may, by order of the board and for the purpose of providing advance moneys to county

EXHIBIT 2 842

94 Nev., Advance Opinion 221

IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA, EX REL. WILLIAM E. SWEIKERT, JR., APPELLANT, v. WILLIAM BRIARE, MAYOR; CITY OF LAS VEGAS; RON LURIE, MYRON LEAVITT, PAUL CHRISTENSEN AND ROY WOOFTER, CITY COMMISSIONERS; THE CITY COMMISSION AND THE CIVIL SERVICE BOARD OF THE CITY OF LAS VEGAS, CONSISTING OF DON ASHWORTH, AMOS KNIGHTEN, WALTER MARTINI, DR. JOHN MONTGOMERY AND MELVIN B. WOLZINGER, RESPONDENTS.

No. 10453

December 20, 1978

Appeal from judgment upholding administrative action. Eighth Judicial District Court, Clark County; Howard W. Babcock, Judge.

Affirmed.

GUNDERSON, J., dissented.

Larry C. Johns, Las Vegas, for Appellant.

M. H. Sloan, City Attorney, and *John H. Howard, Jr.*, Deputy City Attorney, Las Vegas, for Respondents.

OPINION

By the Court, MANOUKIAN, J.:

Appellant Sweikert was employed by the City of Las Vegas as a building inspector and assigned a specific territory in which to exercise his authority. This territory included the Jolly Trolley Casino, which at the time Sweikert was assigned to that area, was engaged in some construction work pursuant to building permits already obtained. These permits specified the performance of "interior remodeling" at an estimated cost of $1,100.

The construction project at the Casino was called to Sweikert's attention on November 8, 1976, approximately three weeks subsequent to his assignment to that area. The building permit was not posted at the construction site, and Sweikert

requested to see one. A maintenance person who was performing construction work produced the permit. Sweikert radioed his supervisor who confirmed that a permit was issued and that the building contractor was legitimate.

Apparently, however, the Casino personnel produced one of the permits issued for a smaller construction job occurring in the backroom. The construction which Sweikert was investigating was much more substantial in scale, involving the kitchen area and subsequently the dining area. With the exception of this initial inquiry, Sweikert never further ascertained the precise scope of the building permits issued, although he made at least 25 inspections and investigations of the construction during the next two months.

The Casino eventually completed the kitchen area and had knocked a hole into the wall of an adjoining building in which it had an interest. Sweikert was later called to approve the construction. Although the kitchen had no apparent exits to any dining area which it was to service, Sweikert made no inquiry as to the purpose of the kitchen before approving it. Further, the Casino requested Sweikert's approval of the area for occupancy, although there was no indication of precisely what dining area was to be occupied. The Casino told Sweikert that it wanted to turn on the gas and electricity to its large kitchen appliances to check them out and that it was thus necessary for him to approve the construction. Sweikert admitted that it would have been more appropriate to approve the building permit rather than to "approve for occupancy."

Once the Casino had its approval for occupancy, its construction crew worked on a weekend to enlarge the hole into the adjacent building and to convert the adjoining room into a dining area. This construction work resulted in several serious structural and fire hazard defects. Another City employee noticed the defects and advised the supervisors in the City building department who immediately investigated the project to determine why a construction job with such serious defects was approved for occupancy. Sweikert participated in this investigation. On February 4, 1977, he was suspended with pay pending further investigation and one week later was terminated.

Sweikert filed a timely appeal with the City Civil Service Board and a post-termination hearing was held in which Sweikert was represented by counsel. The Board affirmed the termination, and Sweikert sought judicial review in the district court. The lower court remanded the proceedings to the Board for clarification of the permit-issuing process and Sweikert's responsibilities. Another hearing was held, and the district court again assumed jurisdiction. The court held that there was

substantial evidence upon which to premise the termination and Sweikert now appeals that decision.

Three issues confront us: (1) Was appellant denied due process; (2) did the lower court err in remanding the matter for further proceedings, and (3) was there substantial evidence to sustain the termination?

1. *Due process claims:* Appellant contends that his constitutional due process rights were violated because he was not afforded a pre-termination hearing, his termination notice did not specify the charges against him, and the findings of fact made by the Civil Service Board were defective.

Any employee who has obtained a property interest in his employment is entitled to due process constitutional protections. Perry v. Sindermann, 408 U.S. 593 (1972); Board of Regents v. Roth, 408 U.S. 564 (1972). Appellant was dismissed for cause. Generally, an employee who can only be discharged for cause has a property right in his employment with the concomitant entitlements to constitutional protections. Bishop v. Wood, 426 U.S. 341 (1976); Arnett v. Kennedy, 416 U.S. 134 (1974).

The inquiry then arises as to precisely what process is due. There are no inflexible rules in the application of this constitutional protection. Due process has a flexibility determined by time, place, and circumstances. Morrissey v. Brewer, 408 U.S. 471 (1972). An employee with a property interest in his employment is entitled by due process to a pre-termination hearing absent extraordinary or exigent circumstances. Fuentes v. Shevin, 407 U.S. 67 (1972).

In the instant case, "extraordinary" and "exigent" circumstances did exist permitting a post-termination rather than a pre-termination hearing. Appellant, as a building inspector, was responsible to assure that construction projects in his assigned area conformed to the building code. The danger to the public from structural collapse and fire hazards are sufficient extraordinary and exigent circumstances to warrant immediate termination. Here, the subsequent post-termination hearing satisfied due process considerations.

Appellant next claims that the Notice of Termination failed to specify the charges against him. Suffice it to say that the allegations contained in the notice of termination were specific, comprehensive and plainly put appellant on notice of his several purported Civil Service Rule violations. Sweikert concedes that the Notice contains specific allegations, but contends that because he allegedly disproved the specific allegations contained in the Notice of Termination, the remaining general allegations are insufficient to give the required notice. The argument is specious. The adequacy of notice is determined at the time notice is tendered not after a hearing has been held.

Appellant's argument that he in fact rebutted the specific charges is without substance. Sweikert suggests that because he neither inspected nor approved the casino construction, his behavior is not culpable. This contention is unpersuasive. Sweikert, as a building inspector assigned to a specific territory, was responsible for all the construction projects within his territory. He had authority to stop construction on projects not conforming to code or undertaken without building permits, together with authority to approve conforming projects. If his defense were logically extended, a building inspector could be less vigilant, permit construction in defiance of code throughout the city and defend termination allegations with the fact that he neither inspected nor approved the projects.

Sweikert was terminated precisely because he failed to properly inspect and investigate the casino construction project, but he uses this failure as his defense.

Appellant further challenges the findings of fact entered by the Civil Service Board contending the findings are in violation of NRS 233B.125 pertaining to explicit statements of fact. The Administrative Procedures Act, NRS Chapter 233B, is by its terms limited to "all agencies of the executive department of the state government." NRS 233B.020. Even if any of the Act were adopted as establishing guidelines with which to evaluate the Las Vegas Civil Service rule, the findings are factually related. Appellant concedes that finding number five is adequate. That finding is the actual basis and rationale for Sweikert's dismissal and reads:

> the illegal construction and code violation noted at the Jolly Trolley Casino occurred during the period of time in which William E. Sweikert, Jr., had the sole and direct responsibility for the construction and the remodeling of the interior and exterior of the main casino building and the two (2) adjacent buildings.

Sweikert complains that respondent utilized the transcript and findings of fact associated with the hearing on remand rather than the initial hearing. The objection is without merit. Appellant was willing to have the Civil Service Commission reconsider his termination based on the evidence produced at the second hearing. Now after a second unfavorable decision he wishes to utilize only the initial transcript. The court remanded for further proceedings and the transcript of that hearing provides valid evidence. Appellant was not denied any right to due process.

2. *The Remand.* The trial court remanded this matter to the Civil Service Board for further proceedings pursuant to

NRS 233B.140. Although the Administrative Procedures Act is not applicable, the district court apparently utilized it as a guide and we find no error in its decision to do so.

3. *Substantial Evidence:* Appellant claims that there was not substantial evidence to warrant his dismissal. However, in addition to our preliminary statement of facts, the record shows that in an area over which Sweikert had complete responsibility, nearly $30,000 of casino construction was completed without permits and in non-conformance to code. There was evidence that while Sweikert initially inquired of his supervisor whether the casino had permits, the record reflects that Sweikert never personally examined the permits to determine the exact scope and approximate value of the construction project. The evidence further shows that Sweikert never made responsible inquiry into the exact nature of the construction project, although he had visited the job site some 27 times during the construction period.

Testimony revealed that Sweikert in the presence of another inspector was not very concerned about the obvious code violations. Most importantly, Sweikert "finaled off" the kitchen construction as "approved for occupancy," although there existed no dining room to occupy. Additionally, there was testimony that over 100 violations existed. Subsequently, the dining area construction involved several serious structural and fire hazards. Appellant even informed construction workers how to build a certain structure which was in violation of code. Sweikert contends that he never inspected and approved the defective construction and thus committed no wrong. The construction, however, occurred in Sweikert's territory and generally while he was making frequent inspections and investigations of the project. Confronted with this devastating evidence, Sweikert contends that respondents never proved a duty which he allegedly breached. Sweikert's duty, however, was precisely his sole responsibility for all the construction projects in his assigned territory. This Court in No. Las Vegas v. Pub. Serv. Comm'n, 83 Nev. 278, 281, 429 P.2d 66, 68 (1967), stated the scope of judicial review of administrative decisions:

> The function of this court is the same when reviewing the action of the district court in such a matter. Thus neither the trial court, nor this court, should substitute its judgment for the administrator's determination. We should not pass upon the credibility of witnesses or weigh the evidence, but limit the review to a determination that the board's decision is based upon substantial evidence. (Citations deleted.)

There was substantial evidence produced to warrant his termination and the district court correctly upheld the adminstrative decision.

The judgment of the lower court is affirmed.

BATJER, C. J., and THOMPSON, J., concur.

BEKO, D. J.,[1] concurring:

I concur in the result reached by the majority. To avoid the possibility that this opinion be construed to condone or encourage post-termination of employment hearings, I feel compelled to express my reservations.

Admittedly, there are valid grounds, most of which involve moral turpitude, to justify termination of employment without hearing. Such grounds do not appear here. While post-termination procedures may not offend constitutional due process standards, hearings after termination assume the posture of ratification of an accomplished result, completely ignoring any possibility of utilizing less harsh alternatives such as suspension without pay, supplemental training, reassignment to other duties, analysis of job procedures or standards, adequacy of supervision and instruction, etc. I have serious doubts that this result would have been reached if pre-termination hearings had been conducted, on this record.

GUNDERSON, J., dissenting:

The building inspector in question apparently is an experienced, generally capable man. In this instance, he overlooked violations he arguably should have observed; however, I cannot endorse my brethrens' statement that "danger to the public from structural collapse and fire hazards are sufficient extraordinary and exigent circumstances to warrant immediate termination" without allowing the inspector a pre-termination hearing. Our attention has been directed to nothing which justifies the conclusion such danger characteristically results from the inspector's work.

For related reasons, it does not appear to me that termination was justified in any event. The inspector's honesty does not appear to be questioned. His culpability is grounded solely in that, in this instance, he arguably should have perceived and reported the violations in question. There is no question but that the City's deficient procedures, apparently corrected now

[1]The Governor designated William P. Beko, Judge of the Fifth Judicial District, to sit in the place of the Honorable John Mowbray, who was disqualified. Nev. Const. art. 6, § 4.

as a result of this case, were in fact the root cause of the entire problem.[1]

[1]As appellant's counsel correctly points out in his Opening Brief:

"The question was whether Petitioner was justified in relying upon a premit [sic] supplied him on November 8, 1976, by Dave Berry. Petitioner had called Mr. Hymer [Assistant Supervisor, Division of Building and Safety], on that date and confirmed that there was such a permit for Interior Remodel. Petitioner called Mr. Hymer, which *is* the accepted procedure. (See the very operation Rules # 10 relied upon by the City as well as the testimony of Mr. Bailey and the 4 other inspectors.

"That it was the very procedures which were defective rather than the Petitioner is admitted in a memo from Mr. Hymer to office personnel dated February 10, 1977. (Appendix Exhibit 7). Although Mr. Hymer denied that Petitioner's circumstance brought about the Memo, Mr. Bailey and everyone else knew that it did. The memorandum stated:

> " 'In the past we have not had the full amount of information we need on the commercial permit forms, and plans. This leaves the field inspector more or less in the dark as to the amount of work the permit covers and which plans he is to follow.
>
> Effective February 14, 1977, *no* commercial permits are to be issued which simply states (Interior REmodel).' [sic]

"The new order became effective the day Petitioner was terminated. It is apparent that Petitioner was 'in the dark' relying upon accepted procedures which were inadequate. He had a permit which stated only 'Interior Remodel' (Appendix Exhibit 6). Petitioner cannot be punished for relying upon inadequate permit procedures. The responsibility for any illegal construction falls squarely upon those who adopted and for years operated under defective rules, which could only result in difficulties. But, the inspector 'in the dark' is not the one who should pay with his livelihood."

SPO, CARSON CITY, NEVADA, 1978

233F.100 State communications board: [Chairman, officers:] meetings; [quorum; alternates:] technical representatives[.]; expenses.

1. [The board shall elect a chairman and such other officers as it deems necessary from among its members. Each officer shall serve 1 year and until a successor is elected by the board. Board officers may be reelected.]

[2.] The board shall meet a least quarterly and at such times and places as are specified by a call of the chairman. [or any two members of the board. Four members of the board constitute a quorum.]

2. [Each member] The chairman of the board shall [:]

[(a) Designate a permanent voting alternate to represent him at board meetings in his absence.

(b)] [A] a ppoint [a] technical representatives to serve on a technical advisory committee which is hereby created to serve the board.

[4.] 3. Members of the board shall serve without compensation but may be reimbursed from the Nevada highway patrol communications subdivision working capital fund for necessary travel and per diem expenses in the amounts provided by law.

233F.110 1. The board shall establish and [implement] administer policy respecting the development, administration and operation of the state communications system. The board shall provide sufficient numbers of microwave channels for use by state agencies.

2. Regulations governing the joint use of the state communications system [shall] must establish a minimum standard for such use and are supplemental to rules or regulations of the Federal Communications Commission on the same subject.

3. [Microwave] Except as provided in subsection 5, microwave channels assigned to user agencies by the board [prior to July 1, 1975, shall] must not be reassigned without the concurrence of the user agency.

4. Microwave channels [shall] may be assigned [permanently] to the department of law enforcement assistance for assignment by

EXHIBIT 3

RESOLUTION NO. 3423

INTRODUCED BY COUNCILMAN BIGLIERI

RESOLUTION TO REQUEST ADEQUATE APPROPRIATIONS FROM THE STATE LEGISLATURE TO OPERATE AND MAINTAIN THE EXECUTIVE ETHICS COMMISSION AND THE LEGISLATIVE ETHICS COMMISSION SO THEY MAY BE MORE EFFICIENT AND EFFECTIVE.

WHEREAS, the State Legislature of the State of Nevada adopted Chapter 528 of the 1977 Statutes of Nevada entitled "AN ACT relating to public officers and employees; creating ethics commissions; establishing statewide codes of ethical standards and authorizing the establishment of specialized and local ethics codes; requiring candidates for and holders of certain public offices to make financial disclosures; providing a penalty; and providing other matters properly relating thereto," on May 14, 1977; and

WHEREAS, such Act created an executive ethics commission and legislative ethics commission; and

WHEREAS, the Reno City Council supports the concept of the two commissions; and

WHEREAS, each commission is required to adopt procedural regulations to facilitate the receipt of inquiries and render proper opinions on those inquiries; and

WHEREAS, the commissions may render advisory opinions that will give guidelines to appropriate public officials or employees on questions of a conflict of interest which may exist between their personal interest and their official duties; and

WHEREAS, the public confidence in elected and appointed officials is not as high as it should be; and

WHEREAS, the Reno City Council is vitally concerned with the maintenance of state laws which provide effective help and enforcement against unethical practices in government; and

WHEREAS, such opinions require an adequate staff and adequate funds to properly render such opinions;

EXHIBIT 3

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Reno that the Nevada State Legislature support the conflict of interest laws as found in NRS §281.411 to §281.581 by appropriating adequate funds to the legislative ethics commission and the executive ethics commission to properly and expeditiously render opinions requested by public officials and employees.

BE IT FURTHER RESOLVED that the City Clerk is instructed to immediately mail copies of this Resolution upon passage, to each member of the Legislature.

On motion of Councilman Biglieri, seconded by Councilman Spoon, the foregoing Resolution was passed and adopted this 26th day of March, 1979, by the following vote of the Council:

AYES: BIGLIERI, SPOON, GRANATA, WALLACE, OAKS, DURANT

NAYS: NONE

ABSTAIN: NONE ABSENT: MENICUCCI

APPROVED this 26th day of March, 1979.

Bruno Menicucci
MAYOR OF THE CITY OF RENO

ATTEST:

CITY OF RENO CORPORATE SEAL WASHOE COUNTY NEVADA

Gilbert Mendoza
CITY CLERK AND CLERK OF THE CITY COUNCIL OF THE CITY OF RENO, NEVADA

EXHIBIT 3

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CITY OF RENO

OFFICE OF THE CITY CLERK

GILBERT F. MANDAGARAN
CITY CLERK
(702) 785-2030

POST OFFICE BOX 7 RENO, NEVADA 89504

March 29, 1979

DONALD J. COOK
CHIEF DEPUTY CITY CLERK
(702) 785-2032

Honorable William J. Raggio
The State Senate
Legislative Building
Capitol Complex
Carson City, Nevada 89710

Dear Senator Raggio:

At the regular meeting held March 26, 1979, the Reno City Council adopted Resolution No. 3423 requesting that the Nevada State Legislature provide adequate appropriations to operate and maintain the Executive Ethics Commission and the Legislative Ethics Commission, and to further indicate the Council's support for the concept of both commissions.

In accordance with the provisions contained therein, I am enclosing one (1) copy of the Resolution, which is being provided each member of the State Legislature.

Respectfully,

Gilbert Mandagaran

Gilbert Mandagaran
City Clerk

GM/ll
Enc. 1
cc: file

Exhibit 4

SENATE GOVERNMENT AFFAIRS COMMITTEE

GUEST REGISTER

DATE 4-20

PLEASE SIGN - EVEN IF YOU ARE NOT HERE TO TESTIFY.....

NAME	WILL YOU TESTIFY	BILL NO	REPRESENTING
KENT DAWSON	✓	468	City of Henderson
Tim Carlson	✓	468	Nev. Dev. Auth.
Bob Mitchell	✓	468	Dawson, Nagel, Sherman & Howard
BRUCE C. LENZ	✓	468	BUSTER BROWN TEXTILES, INC