

The meeting was called to order at 8:10 a.m. Senator Close was in the Chair.

PRESENT: Senator Close
Senator Hernstadt
Senator Don Ashworth
Senator Dodge
Senator Ford
Senator Raggio
Senator Sloan

ABSENT: None

SB 379 Makes various changes to law on guardianships. (See minutes of April 4 for previous testimony.)

Kathryn Laughlin, Chairman of the Legislative Committee of the Washoe Advisory Board for Senior Citizens, stated she had not really looked at the bill but understood it was rather weak. There are no procedures indicated here for the protection of the ward, and there are none in the current law. She stated that it was her understanding that there is another bill in the Assembly, dealing with guardianships, and she would hope the Committee would consider that one. In talking with the legal aid people in Washoe, she has found that there are a number of people who have gone to the legal aid office because they don't know what to do and have found that they were declared incompetent, without even being notified. Their assets have been taken away from them, and it is decided where they will live. They have no rights because an incompetent has none under the law.

Senator Close stated that this bill really does not deal with that problem. He stated that they will keep in mind her testimony when the bill comes over from the other house. He stated that they would now go over the bill to see if it does what they wanted it to. He stated that from the testimony the other day, on line 21 it is "other than a banking corporation." However, he would like to know what the statutes are that cover Section 3.

Senator Raggio stated that this section is to conform the notice provision and make it uniform.

Senator Sloan pointed out that subsection 2 was the section that the Bankers Association did not want.

Senator Close stated that there is no clear set-forth procedures, as to how sales of a guardian's property takes place.

Senator Raggio stated that although they didn't ask for it, it certainly does no harm to leave it in.

Senator Close asked if partnership property is deemed to be

real or personal property.

Senator Raggio stated that he felt it would clear that up if it were left in.

Senator Close pointed out that the whole section of NRS 159 deals with guardianships, 113 is management and disposition of ward's estates, 155 is the notice statute and 157 deals with investments. All of this is dealing with sales.

Senator Ford asked if there was a guardian of the person Statute.

Senator Close stated that there was but the guardian of the person would not fall under the sales act. He felt that "of the estate" could be deleted.

Senator Raggio stated that that would mean that a person could be a non-resident and qualify as a guardian of either the person or the estate if he associated with a resident.

Senator Close stated he would talk with Frank on this, as what they want is an unrestricted right to act as co-guardian with either a bank or a resident of the state.

Senator Raggio stated that there shouldn't be a higher qualification to serve as guardian of the person.

Senator Sloan moved that SB 379 be passed out of Committee with an "amend, if required, and do pass" recommendation.

Seconded by Senator Raggio.

Motion carried unanimously. Senator Dodge was absent for the vote.

AB 497 Creates committee on standards and training for peace officers.

Senator Raggio stated he thought this was already in the law.

Senator Close stated that it was his bill that created this several years ago, however, he could not understand why there should be a committee created within a commission.

Testifying on the bill were Mike de la Torre, Director of the Department of Law Enforcement Assistance, and John Compston, Training Coordinator for the Peace Officers Standards and Training.

Mr. Compston stated that the thrust of the bill is to give the committee, that is already in existence, back the power it had before 1977 when Governor O'Callaghan had his reorganization and tried to cut down on the number of committees in state government. What happened was that the

committee was placed under the Crime Commission, which established procedures for peace officers within the state. When this happened, it cut down on the scope of what could be done and limited the Crime Commission as to what they could do.

Senator Close asked how they were hampered without the committee.

Mr. Compston stated that what it did was to take away the power of the committee to upgrade, update or change regulations to meet the changing standards. What has happened is that there have been several case laws which stated that you cannot set height and weight standards. Under the present statutes we do not have the authority to go back and change our standards, which are set at 5'8" and weight appropriate.

Senator Ford stated that this bill would create a sub-committee under the Crime Commission.

Mr. Compston stated that that is how it is currently functioning. When this was changed, Colonel Dehl of the Crime Commission, took the same 5 people that were on the committee before and appointed them as a special sub-committee, which we have been functioning as, ever since then. We have been doing everything the same, except for the ability to change the regulations that we function under.

Mr. de la Torre stated that basically what this would be is an enabling statute.

Senator Hernstadt stated he didn't see how anything would ever get sunsetted if we keep creating more committees.

Senator Ford pointed out that what they want is for the sub-committee to be able to adopt regulations. They want 5 people, instead of 17, making the decisions.

Senator Sloan stated that as a practical matter, the staff writes regulations and brings them to the committee to adopt.

Mr. Compston stated that it is an added expense to their limited budget to try and get 17 people together to look over the regulations. It is quite a bit more extensive than just meeting with them in an open public meeting. It has to be filed with the Secretary of State's Office, and you have to hold meetings in the areas in which the people are going to be affected.

Senator Raggio stated that that is what they do now. He feels that they would have to make a better case than they had before he would support another committee.

Senator Ford pointed out that it is a sub-committee which already exists.

Senator Close stated that perhaps 17 members on the commission is too many. Maybe that is part of the problem.

Mr. de la Torre stated that there would be a problem with that because they operate under LEAA guidelines. There has to be representation from the courts, Department of Corrections, juvenile justice, etc.

Senator Dodge stated that in NRS 216.105, the commission has the power to establish or change regulations.

Senator Ford stated that the things on lines 14 thru 21, in this bill, cover all the things that were left out of the law when the sub-committee was deleted.

Mr. Compston stated that what they are trying to do is set a minimum standard, so that law enforcement will be uniform statewide. We want to make sure that each one is of good moral character and can provide good protection.

Senator Close stated that it was never the intent to have a state agency tell the local government how to judge moral quality, or anything else. This was set up to assist in training them, not to set any standards.

Senator Raggio stated that that was in the law now, but it does not preclude the local law enforcement from setting their own. Certainly there should be a minimum standard set and a minimum training standard set.

Mr. Compston stated that as it now exists, standards can be waived upon showing good cause to the committee. Their main concern is that if you take the language out, you could have some small law enforcement agency in central Nevada that could hire an ex-felon, or someone of poor moral turpitude.

Senator Sloan stated that he could see a real problem if no minimum standard was set, as these people are going to carry a gun.

Senator Close asked if they would have any objection to giving the power to the commission.

Mr. de la Torre stated that the only problem he would have is that the sub-committee does other things, such as accepting equivalency requirements from other states, in lieu of training. At a meeting they may go through 30 or 40 applications, one by one, and that would have to be repeated again in front of the whole commission.

Senator Dodge stated that the commission could administer the thing anyway they wanted to, and they could leave that authority with the sub-committee.

No action was taken on this bill at this time.

AB 504 Authorizes bailiffs in smaller counties under certain circumstances.

Joe Dini, Assemblyman, stated that this bill came out of Humboldt County, and was requested the District Attorney's Office. Usually in the small counties the sheriff has a considerable amount of influence with the voters. The judge can still fire the bailiff, they just didn't want to get the judge and the sheriff crossways. He stated he would like to make one comment on AB 497 and that is that the training program that has been set up has really helped in the rural counties. That is why we processed the bill the way they recommended it. If this bill isn't passed, you could end up with a federal mandate, and that could have a fiscal impact on the whole commission which operates on a small budget.

No action was taken on AB 504 at this time.

SB 353 Creates presumption that trustee with title has power to sell, convey or encumber real property.
(See minutes of April 2 for previous testimony.)

Senator Close stated that he had the amendments and they seem to do what the Committee concurred with. However, in reading the bill over, he has another question. He read the language as it is in the bill, "when title to real or personal property is taken in the name of a trustee of an expressed trust, the trustee has the power to sell, convey or encumber that property unless the deed or conveyance of the trustee specifically limits his power to do so." If you are a title company, how are you ever going to know what is in the expressed trust, which has been created without looking at the document.

Senator Raggio stated that you could distinguish between a written trust and an implied or constructive trust, so there wouldn't be any question about it.

Senator Sloan stated that the Uniform Trust Act states that trust means an "expressed trust", but it does not tell you what an "expressed trust" is.

Senator Close stated he thought it should come out. Using "expressed" is going to impose another description of some kind, or at least another inquiry.

Senator Raggio stated this presumed power should only apply to an expressed trust. You ought to have to go to court to get the authority to sell it.

Senator Raggio stated that "expressed trust" is in Chapter 163. Chapter 164 is the chapter on administration of trusts, so he assumes this would apply to any trust.

Senator Close stated that if what we are trying to do, is

allow the trustee to sell the property, unless the deed specifically eliminates that power, he feels the issue is being clouded by calling it an "expressed trust."

Senator Dodge asked if Senator Ashworth didn't want this to take care of a living trust situation.

Senator Close stated he would think that it would be the persons responsibility. If he wants to limit a person's right to sell property than that should be stated in the deed.

Senator Sloan asked if there was some language in there to make it prospective.

Senator Close stated that this doesn't apply to property acquired by a trustee on or after July 1, 1979.

The Committee concurred with taking "expressed trust" out of the bill.

SB 267 Transforms justices' courts to courts of record.
(See March 8 for previous testimony.)

Senator Sloan stated he had a letter from Eileen Carson, and she states that the number of appeals was very small. He stated he knew that the number of appeals in municipal courts were far more substantial than in justice court.

Senator Dodge stated that he had a call from Frank Fahrenkopf about this bill and also about the increased jurisdiction in the other bill. Frank told him that he teaches courses to the J.P.'s, and they feel that they are going to get a lot of increased traffic with the raise on the monetary limits. He thought that we ought to make the effective date at least January 1, 1980 to give sufficient time for indoctrination.

Senator Close stated that he had the amendments and as far as he could tell it was what they had asked for.

The Committee concurred with the amendments.

SB 185 Permits interception of communications and use of evidence derived from such interceptions in certain circumstances involving gaming violations.
(See minutes of February 28, March 13 and 26 for previous testimony and discussion.)

Senator Close stated that as he recalls they were going to limit this to hidden interests, and also require that the Chairman of the Gaming Commission authorize the wire tap. He stated he was not sure that there were enough votes to continue processing the bill.

Senator Sloan stated he would vote to process the bill, Senators Hernstadt, Ford and Dodge concurred.

Senator Close stated that the wire tap would cover Sections 463.430 thru 480. That should be limited in here to 463.430, otherwise they have even included the penalty section, and how can you wire tap a penalty section. We are also adding a new section to Chapter 185 that will permit the information to be utilized in a hearing before the Gaming Commission.

Senator Dodge stated he had some second thoughts about the D.A. being able to have the authority to get a wire tap. He stated that there is a local licensing board in Clark County, they could go to the D.A. to do this sort of thing and there could be a dissemination of information back to that board.

Senator Close stated that before you can wire tap, you have to have approval by 2 members of the Gaming Control Board.

Senator Sloan stated he didn't mean to sound prejudicial to the D.A.'s, but he felt that you could alleviate a lot of the industry's concern if only the A.G. could make the application.

Senator Raggio stated that having been a D.A. he could just see the D.A.'s reactions. If they were left out of this process, they would feel that they didn't have to prosecute anything.

Senator Close stated that what he envisioned was that first the agent finds the problem, the agent would then go to the Control Board, the Board would get two of its members to give their consent to the wire tap, and at that point the Board uses its discretion to go to the D.A.'s office or the Attorney General to request the court to authorize the wire tap.

Senator Dodge states he was still concerned over the Clark County thing. After the state licenses, they conduct their own review as far as county licensing. The county feels that they have the authority for continuing review, so unless you structure it properly, you are going to end up with them in the act.

Senator Close stated that the way it is the ultimate burden would be on the Control Board.

Senator Raggio stated there was another problem and that is in NRS 129.500. If you are going to wire tap and use it as evidence against an individual, certainly it ought to be made available to that person. That is contemplated under present law, with the exception of the court, who can waive the 10-day requirements. However, there is a distinction between appearing before the Board and then before the court

or the Commission. The hearing before the Board is not really an independent tribunal, you go before them on a contested matter, where the Board sits on one side and you on the other side. So I wouldn't want the 10-day waiver to be deleted. It ought to be made clear in this Chapter that if the 10 days is waived, then there still ought to be a period where the person can have an opportunity to get the transcript and have it available to them.

Senator Sloan stated that you could say that the 10-day period may be waived by the judge or the chairman of the Commission. Therefore, if you want to waive before the Control Board, you must go to the Commission.

Senator Close stated what he will do is bring the bill back with the amendments before it is acted upon.

As they had to go into general session, the meeting was adjourned.

Respectfully submitted,


Virginia C. Letts, Secretary

APPROVED:

Senator Melvin D. Close, Jr., Chairman

SENATE BILL NO. 379—COMMITTEE ON JUDICIARY

MARCH 27, 1979

Referred to Committee on Judiciary

SUMMARY—Makes various changes to law on guardianships. (BDR 13-1531)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.



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

AN ACT relating to guardianship; adding a circumstance under which nonresidents may serve as guardians; changing certain notice requirements; providing for sales of certain property of a ward; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

- 1 SECTION 1. Chapter 159 of NRS is hereby amended by adding
- 2 thereto the provisions set forth as sections 2 and 3 of this act.
- 3 SEC. 2. *1. Any interest of a ward in real or personal property,*
- 4 *including interests in contracts and choses in action, may be sold pur-*
- 5 *suant to this chapter.*
- 6 *2. The interest of a ward in a partnership may be sold as personal*
- 7 *property, and another partner may be the purchaser.*
- 8 SEC. 3. *All sales of real or personal property of a ward must be*
- 9 *made in the same manner as the property of the estate of a decedent*
- 10 *is sold under NRS 148.060 and 148.080 to 148.400, inclusive.*
- 11 SEC. 4. NRS 159.059 is hereby amended to read as follows:
- 12 159.059 Any qualified person or entity that the court finds suit-
- 13 able may serve as a guardian. A person is not qualified to serve as a
- 14 guardian who is:
- 15 1. An incompetent.
- 16 2. A minor.
- 17 3. A person who has been convicted of a felony.
- 18 4. A person suspended for misconduct or disbarred from the prac-
- 19 tice of law during the period of the suspension or disbarment.
- 20 5. A nonresident of this state who has not:
- 21 (a) Associated as a coguardian *of the estate, a resident of this state or*
- 22 *a banking corporation whose principal place of business is in this state;*
- 23 *and*
- 24 (b) Caused the appointment to be filed in the guardianship proceed-
- 25 ing.

Original bill is 2 pages long.
Contact the Research Library for
a copy of the complete bill.