

The meeting was called to order at 2:06 p.m. in Room 323 in the Legislative Building.

Senator Blakemore in the Chair.

PRESENT: Senator Richard Blakemore, Chairman
Senator Wilbur Faiss, Vice-Chairman
Senator Lawrence Jacobsen
Senator Clifford McCorkle
Senator Joe Neal

ABSENT: Senator Keith Ashworth
Senator William Hernstadt

OTHERS

PRESENT: Jim Avance, Administrator of the Taxicab Authority

A.B. 269 REVISES PROVISIONS OF LAW REGULATING OPERATION OF TAXICABS.

Jim Avance, Administrator of the Nevada Taxicab Authority, spoke on A.B. 269. He said this bill is an agency bill and the first two pages of it came as a result of a Supreme Court decision called Andrews versus the State Board of Cosmetology (see Exhibit A). He said the bottom line of this decision was that even though the legislature, in its enabling legislation to executive agencies, tells that agency to create the rules and regulations necessary to enforce the sections, the agency does not have the ability to grant itself subpoena power. He said that in the Taxicab Authority's document entitled "Rules of Practice and Procedure" they granted themselves subpoena power, which has been in use since then. The first part of this bill is to have the legislature grant the subpoena power to them. He said when he requested this bill, he put it into the bill drafter's in one line and it came back in two pages. He said this took care of all of Sections 1, 2 and 3.

Mr. Avance said that Section 4 and 5 are for language changes only.

He said that Section 6 come into their request so that the agency's governing body, which is a three-man board, be increased to a five-man board.

Mr. Avance said that Section 7 is to clarify language.

Mr. Avance continued by saying there are two things on Page 4, one of which is monetary fines. This should be moved from Section 9 to Section 8.

Senator Neal asked about the 5¢ raise in compensable taxicab trips. Mr. Avance said the 5¢ raise will generate \$340,000 and the reason for this raise is because they are currently spending more money than they are bringing in.

Senator McCorkle asked why there was identical language in Sections 2 and 3 except for the change of one word in each, "administrator" and "authority." Mr. Avance said he would have no objection to changing it to "taxicab authority or administrator."

Frank Daykin, Legislative Counsel, was summoned for consultation on this language and to see if it could be concentrated into "taxi-cab authority or administrator." Mr. Daykin said this language could be put into one section, which would save a great deal of repetition and said he would amend the bill accordingly.

Senator McCorkle moved that A.B. 269 be recommended to "Do Pass" as amended.

Seconded by Senator Jacobsen.

Motion carried unanimously.

A.B. 633 AUTHORIZES APPROPRIATE COUNTY OFFICIALS TO REMOVE OBSTACLES AND ENCROACHMENTS FROM PUBLIC HIGHWAYS.

Senator McCorkle questioned Mr. Daykin on some of the wording in A.B. 633. Mr. Daykin explained the language questioned and said it was adequate and legal.

Chairman Blakemore said A.B. 633 would be held and re-scheduled and closed the hearing on it.

COMMITTEE ACTION:

A.B. 66 EXEMPTS CERTAIN TRANSPORTATION OF ELDERLY AND HANDICAPPED PERSONS FROM REQUIREMENT OF OBTAINING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY. (See previous testimony on April 10, 1979.)

Senator Faiss moved that A.B. 66 be recommended to "Do Pass."

Seconded by Senator Neal.

Motion carried unanimously.

S.B. 399 SPECIFIES APPLICABILITY OF PROHIBITION AGAINST RECKLESS DRIVING TO PUBLIC AND PRIVATE PROPERTY. (See previous testimony on April 10, 1979.)

Senator Blakemore said he could not condone the word "private" in this bill but, where public areas are being used for drag racing and other types of reckless driving, he feels the bill is necessary.

Chairman Blakemore said he wanted the bill held for further testimony on May 1, 1979 and requested that Col. Dehl of the Nevada Highway Patrol and Carson City Sheriff Hal Dunn be notified so

they could appear before the committee.

S.B. 429 INCREASES PENALTIES FOR DRIVING UNDER INFLUENCE OF INTOXICATING LIQUOR OR CONTROLLED SUBSTANCES AND PROVIDES FOR SUPPORT OF ALCOHOL AND DRUG ABUSE PROGRAMS. (See previous testimony on April 17, 1979.)

Senator McCorkle said there was one small change suggested in this bill. He said that as it is presently written in the law, a breath test and a blood test cannot be administered during the same arrest. Use of drugs can only be detected through a blood test, so users will drink small amounts of liquor or beer which will be detected on their breath and they will only be subjected to a breath test. He said that Mr. Borda of the Office of Traffic Safety and Col. Dehl suggested this language be changed so that violators could be given both tests at the same time, if necessary.

Chairman Blakemore said the bill was to be amended and referred back to the Committee for action.

There being no further action, the meeting was adjourned at 2:45 p.m.

Respectfully submitted,


Jane A. King, Secretary

APPROVED:


Richard E. Blakemore, Chairman

Nev.

Mar. 1970 Andrews v. Nev. St. Bd. Cosmetology

207

RUTH ANDREWS, PETITIONER, v. NEVADA STATE BOARD OF COSMETOLOGY; ARNOLD ALMOND, PRESIDENT; BERNICE RANDALL, SECRETARY, RESPONDENTS.

No. 6084

March 25, 1970

467 P.2d 96

Original proceedings in mandamus.

Mandamus proceeding asking the court to order State Board of Cosmetology to issue eight blank subpoenas to be utilized in requiring attendance of witnesses at hearing scheduled before Board. The Supreme Court, MOWBRAY, J., held that in absence of a specific grant of authority, State Board of Cosmetology had no power to issue subpoenas to compel attendance of witnesses.

Petition denied.

Richards & Demetras, of Reno, for Petitioner.

Harvey Dickerson, Attorney General, and *Michael L. Melner*, Deputy Attorney General, for Respondents.

1. ADMINISTRATIVE LAW AND PROCEDURE; LICENSES.

State Board of Cosmetology is a state administrative agency which has no general or common-law powers but only such powers as have been conferred by law expressly or by implication. NRS 644.010 et seq.

2. ADMINISTRATIVE LAW AND PROCEDURE.

Official powers of an administrative agency cannot be assumed by agency nor can they be created by courts in exercise of their judicial function.

3. ADMINISTRATIVE LAW AND PROCEDURE.

Subpoenas can be enforced by courts only when issued by officer properly endowed with authority to issue subpoenas.

4. ADMINISTRATIVE LAW AND PROCEDURE.

In absence of a specific grant of authority, State Board of Cosmetology had no power to issue subpoenas to compel attendance of witnesses at its hearing. NRS 233B.123, subd. 3, 644.010 et seq.

5. ADMINISTRATIVE LAW AND PROCEDURE.

Statute providing that each party may call and examine witnesses does not disclose an intent to grant subpoena power to all state administrative agencies, and the subpoena power is limited to those agencies to whom legislature expressly granted it. NRS 233B.123, subd. 3.

OPINION

By the Court, MOWBRAY, J.:

This is a mandamus proceeding asking this court to order the State Board of Cosmetology to issue to petitioner, Ruth

counsel. We below. armichel was parently had and had not re not offered e us. Thus, it ility of irrep arding them, rness. Within 85 Nev. 134, that a lineup accorded the ards required 7), are con- hereof, or an ch protection

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AY, JJ., con-

Andrews, eight blank subpoenas, so that Andrews may utilize the subpoenas to require the attendance of witnesses at a hearing scheduled before the Board of Cosmetology to determine whether petitioner's beauty salon license should be revoked for employing an unlicensed hairdresser in violation of NRS 644.430.

We find that the Board does not have the power to issue the subpoenas, and we deny petitioner's request for mandamus.

[Headnotes 1-4]

The Board is a state administrative agency created by the Legislature pursuant to the provisions of chapter 644 of the Nevada Revised Statutes. Its powers are limited to those powers specifically set forth in chapter 644. As an administrative agency the Board has no general or common law powers, but only such powers as have been conferred by law expressly or by implication. *Civil Aeronautics Bd. v. Delta Air Lines, Inc.*, 367 U.S. 316 (1961); *L. & A. Constr. Co. v. McCharen*, 198 So.2d 240 (Miss. 1967), *cert. denied*, 389 U.S. 945 (1967); 1 K. Davis, *Administrative Law Treatise* §§ 2.01-2.16 (1958). Official powers of an administrative agency cannot be assumed by the agency, nor can they be created by the courts in the exercise of their judicial function. *Federal Trade Comm'n v. Raladam Co.*, 283 U.S. 643 (1931); *Cabell v. City of Cottage Grove*, 130 P.2d 1013 (Ore. 1942). The grant of authority to the agency must be clear. There is no authority in chapter 644 giving the Board the power to issue subpoenas. Subpoenas can be enforced by courts only when issued by an officer properly endowed with the authority to issue the subpoenas. *Cudahy Packing Co. v. Holland*, 315 U.S. 357 (1942); *Lowell Sun Co. v. Fleming*, 120 F.2d 213 (1st Cir. 1941), *aff'd*, 315 U.S. 784 (1942); *Fleming v. Arsenal Bldg. Corp.*, 38 F.Supp. 675 (S.D.N.Y. 1940).

[Headnote 5]

Petitioner urges that, absent a specific grant to the Board to issue subpoenas under the provisions of chapter 644, the Board may issue subpoenas under the provisions of the Nevada Administrative Procedure Act. NRS 233B.123(3) in that Act provides:

"Each party may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even though such matter was not covered in the direct examination, impeach any witness regardless of which party first called him to testify, and rebut the evidence against him."

Petitioner argues that the language of this statute, as well as the express purpose of the Act to provide "minimum procedural requirements", demonstrates a legislative intent to grant subpoena power to all administrative agencies. We do not agree. During the Fifty-fourth Session of the Legislature, in 1967, when NRS 233B.123, supra, was enacted, the Legislature in that session and at that time granted subpoena power to the following State administrative agencies: (1) State Department of Agriculture, NRS 561.146(1);¹ (2) State Air Pollution Control Hearing Board, NRS 445.555;² and State Board of Pharmacy, NRS 639.246.³

It is clear that, had the Nevada Legislature intended, when it enacted NRS 233B.123, supra, during the Fifty-fourth Session in 1967, to grant subpoena powers to all state administrative agencies, as petitioner contends, then the specific grants of subpoena power to the State Department of Agriculture, State Air Pollution Control Hearing Board, and State Board of Pharmacy would not have been necessary. We may only

¹NRS 561.146(1):

"1. Whenever the executive director [of the state department of agriculture] is authorized or required by law to conduct a hearing, he shall have authority to issue subpoenas requiring the attendance of witnesses before him, together with all books, memoranda, papers and other documents relative to the matters for which the hearing is called, to administer oaths and take testimony thereunder, and to take depositions within or without the state, as the circumstances of the case may require." (Added to NRS by 1967, 420.)

²NRS 445.555:

"The chairman or, in his absence, the vice chairman of the state air pollution control hearing board or of a county or district air pollution control hearing board may issue subpoenas to compel attendance of any person at a hearing and require the production of books, records and other documents material to a hearing." (Added to NRS by 1967, 1072.)

³NRS 639.246:

"1. The secretary of the board [state board of pharmacy] shall issue subpoenas for the production of witnesses, documents or papers, in accordance with statutory provisions, at the request of any party to a hearing.

"2. Witnesses appearing pursuant to a subpoena shall receive expenses and witness fees in the amounts and under the same circumstances as prescribed by law for witnesses in civil actions. Such expenses and fees shall be paid in full by the party at whose request the witness is subpoenaed.

"3. Subpoenas shall be served in the same manner as prescribed by law for the service of subpoenas in civil actions, and failure to comply with the order shall be punishable as contempt." (Added to NRS by 1967, 1659.)

interpret such action as manifesting an intent by the Legislature during that session to limit subpoena power to those state agencies to whom it was expressly granted, and none other.

Petition denied.

ZENOFF, BATJER, and THOMPSON, JJ., concur.

COLLINS, C. J., concurring:

I concur in the majority opinion and add these additional comments: Petitioner's occupation is a lawful one and she may not be deprived of that right by revocation or suspension of her license except through due process of law. Should she be prevented from presenting her defenses to the charge through inability to compel attendance of witnesses or otherwise secure their testimony because of lack of the subpoena power, due process may be violated. See Jewell v. McCann, 116 N.E. 42 (Ohio 1917); followed in Geer v. State, 121 N.E. 901 (1918); reaffirmed in State v. O'Brien, 196 N.E. 664, 666 (Ohio 1935). See also 1 K. Davis, Administrative Law Treatise § 8.15 (1958).

JACK ELMER SUMMERS, APPELLANT, v. THE STATE OF NEVADA, RESPONDENT.

No. 5904

March 26, 1970

467 P.2d 98

Appeal from conviction of first degree murder and sentence of death by a jury. Second Judicial District Court, Washoe County; Thomas O. Craven, Judge.

Defendant was convicted in the district court of first-degree murder, and he appealed. The Supreme Court, ZENOFF, J., held that mere absence of defendant's reading glasses was not such coercion of defendant as to constitute "third-degree" forced confession and that admission into evidence of pictures of corpse of deceased showing location of six bullet holes for purpose of establishing degree of crime was not error.

Affirmed.

[Rehearing denied April 14, 1970]

Samuel B. Francovich, of Reno, for Appellant.

Harvey D. District Atty Attorney, W

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(REPRINTED WITH ADOPTED AMENDMENTS)

SECOND REPRINT

A. B. 66

ASSEMBLY BILL NO. 66—ASSEMBLYMEN HAYES,
GLOVER, JEFFREY, BARENGO AND HORN

JANUARY 16, 1979

Referred to Committee on Transportation

SUMMARY—Exempts certain transportation of elderly and handicapped persons from requirement of obtaining certificate of public convenience and necessity. (BDR 58-14)

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 transportation; exempting nonprofit carrier of elderly and handicapped persons from requirement of obtaining certificate of public convenience and necessity; 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. NRS 706.386 is hereby amended to read as follows:
2 706.386 1. It is unlawful:
3 [1. For] (a) *Except as provided in subsection 2, for any common*
4 *motor carrier to operate as a carrier of intrastate commerce within*
5 *this state without first having obtained a certificate of public convenience*
6 *and necessity from the commission.*
7 [2. Notwithstanding any other provision of this chapter, for]
8 (b) *For a broker to act as such on or off the highways of this state*
9 *without having obtained a certificate of public convenience and neces-*
10 *sity from the commission.*
11 2. *A nonprofit carrier of elderly or physically or mentally handicapped*
12 *persons is not required to obtain a certificate of public convenience and*
13 *necessity to operate as a common motor carrier of such passengers only,*
14 *but such a carrier is not exempt from inspection by the commission to*
15 *determine whether its vehicles and their operation are safe.*

END