

SUBCOMMITTEE MEMBERS PRESENT: Chairman Mello
Vice Chairman Schofield
Assemblyman May
Assemblyman Prengaman
Assemblyman Redelsperger

SUBCOMMITTEE MEMBERS ABSENT: None

GUESTS PRESENT: Senator Wilson
Please refer to the guest list
attached to the minutes of this
Subcommittee Meeting.

Chairman Mello called the Subcommittee Meeting on the Consumer Advocate Office to order at 7:05 A.M.

Mr. Mello indicated that the committee would start right off with the proposed BDR 58-1730 which is attached to the Minutes of this Meeting as EXHIBIT A.

Senator Wilson indicated that he had requested the BDR for your use in developing the bill, and it is really not what I want. Larry Struve and I met yesterday and he has prepared a memo which we really ought to distribute. A copy of Mr. Larry Struve's memo which was distributed to the subcommittee is attached to the Minutes of this Meeting as EXHIBIT B. Senator Wilson indicated that the memo reflects his views as well as the views of Larry Struve.

Senator Wilson stated that the initial problem with Section 2 on the first page of the bill is that that language really doesn't give the agency complete power to act. It is really limited frankly to a responsive position and the one thing that we didn't want to do was limit it to a responsive activity like an intervention. They have to have the full ability to file a petition, an application, hear a complaint, or intervene and I think you have addressed that in your memo Larry.

Mr. Larry Struve, Chief Deputy Attorney General indicated that when he met with the subcommittee on Monday he was asked to come back today with maybe a suggestion with a definition for the role of the consumer. I met with my two deputy AGs that now work over at the Public Service Commission and I presented them with the problem of basically providing some independence to the Consumer Advocate but at the same time defining the role that enables them to do the job that I think the committee had in mind. They came up with some

definitions from the states of New Hampshire and New Jersey, and what this memo has done is that it has tried to consolidate those and also taking into account some of the concepts in this BDR 58-1730.

In a nutshell, Section 1 is a section which defines the powers and the duties and functions of the Consumer Advocate and Senator Wilson has indicated that defines it in a fairly broad fashion. This is enabling legislation telling the Consumer Advocate what he can do and what he can get involved with, and as you will note, it's drafted fairly broadly. These would be in subparagraphs (a), (b), (c), (d) and (e), basically to conduct the studies, surveys, research and to obtain the expert testimony for all matters affecting utility customers' interests or the public interest in the regulation of public utilities. The definition of public interest which we have taken from the New Jersey legislation is also in paragraph (a).

Subparagraph (b) does not come from the two states I mentioned, but it picks up a concept that is in the Initiative Petition and I think is also in your BDR 58-1730. Basically this is authorizing your Consumer Advocate to familiarize him or herself with what is going on before the Public Service Commission and to initiate examinations on his own behalf to determine if there is any basis to bring matters before the Public Service Commission.

Mr. Mello asked if Mr. Struve had enough copies for everyone in the audience.

Mr. Struve indicated he did not because he had put this all together at the very last minute.

Mr. Struve indicated that he had one extra copy.

Mr. Mello indicated that the committee secretary would run off enough copies for the members of the audience.

Mr. Struve stated that he thought Subparagraph (c) of Section 1 is maybe the critical one as far as the role or the authority for the Consumer Advocate. That is to petition for request, initiate, appear or intervene in any proceeding concerning rates, charges, tariffs, modification of service and any related matter before the Public Service Commission and any court, regulatory body, board, commission or agency having jurisdiction over any matter which the Consumer Advocate may bring before or has brought before the Public Service Commission and in which the interests of any utility customer represented by the Consumer Advocate are involved and to represent the interests of such customers.

Mr. Struve stated that that is of all the states that his staff reviewed, this comes from the State of New Hampshire and they felt it was the best description they could find with what a Consumer Advocate should be empowered to do.

Subsection (d) also comes from New Hampshire. I think basically what they had in mind here is that if there is monies available to conduct studies to help the Consumer Advocate prepare cases there should be authority to receive the grants, which you will note that I have also noted, that the expenditure of any funds will be in the manner provided by the laws of the State of Nevada. I think this builds on the concept of your 1979 legislation which requires legislative approval for expenditure of funds even if they come from non-general fund revenues.

Subsection (e) is simply the enabling legislation to perform other necessary functions that are necessary to carry out the powers and duties that are assigned.

Mr. Struve indicated that he thought that Section 2 is very critical as far as our office is concerned because as you recall I indicated on Monday that I don't think the Advocate should be in a position of being mandated to get involved in everything that may be brought before the Public Service Commission. I don't think the staff is going to be large enough, and I think that the cases the Consumer Advocate gets involved with should be thoroughly prepared and it should be an effective presentation. What Section 2 does, and this incidentally comes from the language out of the New Jersey statutes, is to give the discretion to the Consumer Advocate to represent or refrain from representing the public interest in any class of utility customers in any proceeding. I submit that the accountability as to what the Consumer Advocate is doing is going to be in the actual performance of that office and how well that Consumer Advocate is dealing with the sensitive issues that the consumers or the customers feel should be brought before the Commission. The problem is that the Advocate is mandated to get involved in everything and to do regulatory functions. I think the dilution of the person's time and effectiveness may very well compromise what the Consumer Advocate can do.

Senator Wilson stated that this language that Larry is talking about would be in lieu of what you see in Section 2, Paragraph 1 on the first page of the BDR. Section 1 which he spoke to on the first page and second page of his memorandum would replace all of the rest of Section 2 on the first page of the BDR.

Senator Wilson indicated that the subcommittee would probably keep the BDR number and re-write the whole thing, because this is not going to fly.

Mr. Struve stated that also in Section 2, I have tried to address what he thought is going to be a potential problem. We had talked about the Advocate representing the small residential rate payers and commercial rate payers and any other classes - customer classes - that would have an interest before the Public Service Commission. In talking with my staff and reflecting upon this, the recommendation that we feel would be best is to simply give the discretion to the Consumer Advocate to represent those customer interests in which there is no conflict and in which there is no other means by

which that class or that customer can be represented. For instance, if in a case the large industrial rate payers have the capability and in fact are represented, and the small rate payers are not, it seems to me that you should build into the law discretion in the Consumer Advocate to elect to represent those small rate payer interests and let the large rate payer interests represent what they have to present to the Commission. The problem is that if you build a specific class of client into the statute, we may have a constitutional problem. To our knowledge, this language which comes from New Jersey has not been challenged and I think the flexibility is built in here to assure that the Advocate does not find himself in a conflict where he has to represent conflicting customer interests before the Public Service Commission.

Senator Wilson indicated that they had spent some time discussing this yesterday and the original language we looked at authorized the Advocate to represent the residential and small commercial utility customer. The classifications of user have conflicts and that just may tie the agency up with an initial lawsuit based upon the face and on an equal protection argument so the substitute language which appears in the memo simply vests discretion wherever the public interest appears most to reside. I think that is better language.

Mr. Struve stated that since there are going to be consulting funds the very last sentence of Section 2, you will note, that if the Advocate determines that if there is a conflict between two classes of customers that he thinks should be represented, but he can't represent both because of the conflict, he would then have the authority to engage outside counsel through this consulting budget to see that those other classes of customers are represented.

Again, I think the principle here is flexibility, to allow a solution to be made on a case basis depending upon what the facts and the players are. In your BDR, Mr. Chairman, no mention is made other than a very general statement about the employment of staff. I believe on Section 5 of your BDR, it simply says the administrator may employ the staff and purchase the equipment necessary to carry out the duties and functions of the division. We don't really have any object to that but upon reflecting of what is an essential bare minimum skeleton staff which you need, I really believe, Mr. Chairman, and I will confess this was influenced by my discussions with our two attorneys who are very intimately involved with the PSC work, that I think you are looking at three positions, and that is in addition to the Consumer Advocate who has to manage and put this all together.

I think, number 1, you simply have got to provide for staff attorney. We talked on Monday, if the Consumer Advocate is not a licensed attorney in Nevada, you are going to have to find someone to represent that whole division or that office, whether it is before the PSC or in court, and my people tell me that there is so much work now that you can take the time of one attorney entirely in the administrative proceedings and another attorney just for the court

work which is contesting what the administrative hearing is all about. So I think one essential person and I think it should be written into the law, should be a staff counsel who is licensed to practice law. Secondly, and this is partly redundant from our discussion on Monday, I think a person who is knowledgeable -

Senator Wilson asked Mr. Struve if by Staff Counsel he meant a Deputy AG.

Mr. Struve stated that assuming this is all in the Attorney General's Office, yes, it would be a Deputy AG assigned to represent the office of the Consumer Advocate.

Mr. Struve indicated that the second essential person is a person knowledgeable in utility rate design. We talked about economists, and I think there was some discussion by the Subcommittee on Monday as to whether that is really a critical one. It's possible that an economist with knowledge in utility rate design can become the key qualification here. His knowledge of the utility rates and how they are designed so when this bulk of material comes to the Consumer Advocate's Office, they can see if there is really a significance that would merit going in before the Commission and putting on the case and hiring experts and so forth and then the third critical person is the one knowledgeable in accounting, and, perhaps particularly utility financial records. This person must be the one who does the initial review and decides whether or not we should get other CPAs, other experts involved to prepare for an intervention. So basically in the time that we have, this summarizes our work this week.

Mr. Struve stated that Mr. May had asked a question that I was able to answer today on the tax mill. I am informed that all public utilities, including, gas, electric, water and telephone pay the mill tax. The motor carriers and other transportation companies do not. Therefore, if you include it, the telephone utilities within the gambit of the authority of the Consumer Advocate, you wouldn't have a constitutional problem it seems to me, if the mill tax was used to fund the office. There just is no case law and I am told in the absence of that case law, it is something that if it is challenged, there probably are some arguments to defend that arrangement under the general principle that the mill tax is to go for regulation generally and is not to be earmarked for specific things. But to avoid even the argument or an unnecessary lawsuit by including telephone utilities within the authority of the Consumer Advocate which your BDR does, I think you have mooted any concern as far as equal protection in the use of the mill tax is concerned.

Mr. Mello asked if there were any questions.

Mr. May questioned the qualifications for the head of the department.

Mr. Struve stated that he was sort of deferring to the BDR there and indicated that if the committee would note Section 3. Mr.

Struve indicated that he had gone over this with Attorney General Bryan yesterday and as far as Section 3 is concerned he had no problem with that, as far as qualifications are concerned.

Senator Wilson indicated that it says that he must be knowledgeable.

Mr. Mello asked who is to determine that.

Senator Wilson indicated that granted, it is a relative standard.

Mr. Mello indicated that the committee should discuss the conflict, between the Attorney General's Office with the PSC; the representation of the Consumer Advocate and of the PSC.

Senator Wilson indicated that he thought the BDR -

Mr. Struve indicated that the BDR merely authorizes the Public Service Commission to retain independent counsel on a case where a conflict exists.

Senator Wilson stated that at the bottom of page 3, it says, any action in which the Division of representation - and he indicated that he did know if that was the appropriate name you want to hang on this division of the AG's office - is a party or intervenor, the Attorney General shall represent the division and the commission shall employ private legal counsel. I think that the commission is going to have to have its own staff counsel anyway. This sounds like it is kind of on an ad hoc basis and that's not very workable. The commission is going to have to have its own counsel and this division is going to have to have its own staff counsel, as a continuing working arrangement.

Mr. Mello indicated that that would have to be reworded.

Senator Wilson indicated that virtually the entire BDR is going to have to be redone. Maybe you want a new number, I don't know.

Mr. Mello asked Jan Wilson of the Bill Drafting Office if we can still use the same BDR number.

Jan Wilson indicated that we could still use it as it had not been introduced.

Senator Wilson indicated that was right.

Senator Wilson stated that in the BDR the division has a term of four years. Perhaps the removal - in the middle of page two of the BDR - the language provides that the Attorney General may remove him for inefficiency, neglect or malfeasance. I don't know what you want to do with that. That gives him a term, but provides avenue for removal, but whatever your judgment is.

Mr. Mello asked if Senator Wilson had considered having a review

commission or board meet after the legislature, such as appointing one senator from the majority and one senator from the minority party and then the speaker would appoint the same, one from the minority and one from the majority party and then have them every now and then review what the Advocate is doing and to give recommendations to the Attorney General.

Senator Wilson indicated that he had not considered that. That would be in the nature of I guess in term or between sessions. Senator Wilson indicated that he did think that the Attorney General ought to be able to make the appointment if he is going to hire and be responsible for him he ought to select him.

Mr. Mello indicated that the committee had discussed this somewhat.

Mr. Mello asked if anyone had any problems with that. Mr. Mello stated that if the Review Committee is not doing his or her job and recommends to the Attorney General that the person be replaced. Mr. Mello indicated that the committee would take the heat off of the Attorney General.

Senator Wilson indicated that he gathered in addition to the staff that Larry (Struve) outlined, he thought that that staff structure was about right. I guess we are talking about contract monies to retain consultants or experts in given fields where he is going to be in hearing or litigation.

Mr. Mello indicated that they were considering five people. Three professionals and two clerical and he indicated that that was something the committee should probably talk about now.

Mr. Mello indicated that many of our colleagues feel that it should only be one person. We should talk about expanding it from three professionals to four professionals. What we are talking about is the consumer advocate himself and then counsel, and that is the only one that we haven't considered, because we were considering that the Advocate be an attorney. But I can see some problems with that.

Senator Wilson indicated that he thought the lawyer ought to be an Attorney General staffer. This office is kind of a team arrangement, I think. Utility regulation is a multi-discipline kind of thing, whether it is tariffs or engineering or economics, and one guy isn't going to be able to handle it.

Mr. Redelsperger stated that the wording in the bill should leave us enough leeway so that if we can't find someone qualified we could go to a CPA.

The committee then discussed the wording for the position of the Consumer Advocate, as to whether or not it should provide that the Consumer Advocate be an attorney also.

Senator Wilson indicated that maybe the way the committee ought to do that is when they meet with the Attorney General and if you will be talking about some kind of oversight, obviously there will be some consultation on whom he appoints, and that might be the way to exhaust the resources to appoint an attorney. This would not be an attorney to represent the advocate. You are simply talking about somebody with - who is an attorney.

Mr. Schofield indicated that he would have to make a choice to allow him that prerogative to -

Senator Wilson indicated that they would still need staff counsel. Senator Wilson stated that if you are in a rate case or if you are in court, your staff counsel is going to be busy 18 hours a day on that and your advocate then won't be able to do anything if he also has to run the office. He has got to be free to administer the office and make some judgments on what to do.

Mr. Mello indicated that he had real concerns though as to what level though this legal person would be. I certainly don't want to see a \$20,000 attorney sitting over there representing the Consumer Advocate.

Senator Wilson questioned Mr. Mello and indicated that he was not talking about the staff counsel, that he was talking about the Advocate.

Mr. Mello stated no, he was talking about the staff counsel.

Mr. Mello indicated he was really concerned on what level we set that at. For experience.

Mr. Struve indicated that that was a very good point.

Mr. Mello indicated that he did not feel a young attorney should take that job, and the consumer advocate just getting whipped.

Senator Wilson stated that it should be a legal internship is what you are saying and you are absolutely right.

Mr. Mello stated then we have to go to the salary and that should be set fairly high.

Mr. Struve indicated that they had submitted to the Money Committees the classification proposal that is based on experience of attorneys and they are in five classifications. The Attorney III classification is that that we use for the experienced attorneys with minimum of three or four years experience, some government experience, and who can handle some duties other than just trial work, in other words some supervisory responsibilities. It would seem to me that just for discussion purposes, you might take a look at the Attorney III as one classification and salary level that we have

recommended for that classification, for the staff counsel.

Mr. Struve indicated that he believed that it was probably within the budget, that you are ultimately going to have to submit to the budget committees for the office and the recommendation would be for your staff counsel position, you might be looking at the Attorney III that we have recommended already to the money committee. That would top out at \$35,000. It gives a range for the Attorney General that would top out at \$35,000.

Mr. Schofield indicated that he shared the concern about that.

Senator Wilson indicated that that was a good point.

Mr. Mello indicated that we want people who are going to understand when they see this that such a small staff, each one of these individuals, these professionals is going to have to be well qualified. If we get well qualified people, we are going to have to pay them.

Senator Wilson indicated that was right. He further indicated that you want the office to be competitive.

Mr. Mello stated absolutely.

Senator Wilson indicated that it was an adversary situation and they are not going to be unless you find qualified people.

Mr. Mello stated then that the committee should talk about the fact that we have the director, legal counsel, an economist -

Mr. Struve indicated that he would call it a rate design specialist.

Mr. Mello questioned "rate design specialist".

Mr. Struve stated that they would be delighted if that person was an economist, but he thought that in terms of defining what the expertise is that the office needs, it is somebody who understands utility rate designs, how they are structured.

Mr. Mello questioned whether we were talking about the same salary range then as an economist?

Mr. Mello asked whether Mr. Hardy had such a person. Heber Hardy of the Public Service Commission was seated in the audience at this subcommittee meeting.

Mr. Hardy indicated that they had an economist and a rate design person. He further stated that if you are going to have single persons, and he had recommended to Mr. Struve the other day, that he thought the critical area for a consumer advocate office is rate design, whether it be - I am not sure it makes that much difference, but he needs that expertise because that is what you are really looking at for residential customers, at least, is

protection after the revenue requirements have been determined.

Mr. Mello asked if that was the same level as far as salary as your economist?

Mr. Hardy indicated that he believed it would have to be at least that.

Mr. Mello asked what Mr. Hardy was paying - \$35,000/\$37,000?

Mr. Hardy stated that that was not what it was now but that was what they were recommending. That is what you are going to be talking about.

Mr. Hardy indicated that they were recommending their staff counsel go to almost \$40,000.

Mr. Mello stated then we have a problem.

Mr. Hardy stated that he wanted to make sure that the subcommittee was aware of that because if you are going to relate it to our staff counsel, we had it at \$40,000 and I think we had come down 1% to \$39,000 something, but it is almost \$40,000.

Mr. Mello questioned Mr. Struve's chief deputies salaries.

Mr. Struve indicated that the Chief Deputies are recommended at \$37,000, which is an Attorney IV. That was what we had recommended as far as the PSC staff counsel in this budget. I am not familiar with the PSC budget if they were to hire their own staff. Clearly, we would want to be competitive. I am just not familiar with how these budgets are being meshed in the money committees.

Mr. Mello asked Mr. Hardy of the PSC to come forward to the table in order that he might be heard clearly.

Mr. Hardy indicated that if the subcommittee was talking in terms of competition, I assume it might be competing with us and we might be competing with them as far as personnel is concerned. We in the past have attempted to get the staff counsel up to the level of our Deputy Attorney General our Chief Deputy AG assigned to the Public Service Commission. The money committees in the past have not seen fit to go along with us on that, but we are making a valiant try this year, actually, to put it above the level of the Deputy AG because those salaries are set by the Attorney General, but it is our feeling, and I think you have touched on it here today, that Staff Counsel, or in this case, the Counsel for the Consumer Advocate is a critical, critical position and we have been accused - I shouldn't say accused - there have been indications we have had young green attorneys handling cases in opposition to the attorneys for the applicant, they are the major intervenors. It is our feeling that in order to get somebody and to keep them there to make a career out of it, you have to pay them an adequate salary, because those pressures are too great to keep them there very long. They are

simply going to be trained to go somewhere else. And so we have discovered with our people whom we are working with now, and in talking with our people now, it is our feeling that we will have some career people there at those salary levels we are proposing, but if we don't, we won't. We will simply have them to the point where they become very expertise - expert attorneys in this field - and then they are going to be hired off by some legal firms. So we think that is critical. We are making a major move on this and we will be talking on this along these lines very critically with the money committees that this be the salary level for staff counsel, and if this -

Mr. Mello asked Mr. Hardy for that figure again.

Mr. Hardy stated that he could get Mr. Mello an exact figure. He stated that it was in the budget material he had furnished to the committee. Mr. Hardy indicated that they had recommended a low of \$40,000. We recommended \$40,280, but however, the governor's recommendation is \$39,930 and I think that will be the figure we will be supporting. Mr. Hardy stated that for the economist they were recommending \$36,000 - the governor's recommendation is \$37,174.

Mr. Mello indicated that that was going to be lower than the request that the Attorney General has put in for the chief deputies.

Mr. Struve indicated that the recommendation of the governor for PSC staff counsel is higher.

Mr. Hardy stated that because they had more than one person involved in possible rate design, it might explain this, but a utility rate specialist who will be working under a manager of rates and tariffs will be \$27,670 under the governor recommend column. Mr. Hardy was referring to figures given to the committee at a prior meeting on the Consumer Advocate.

Mr. Hardy indicated that their figures are set forth in the budget, the revised budget we proposed and I have given Spike a copy of that as well as your committee.

Mr. Mello asked if they were going to have a problem in earmarking Staff 9, he believed it was in the study?

Jan Wilson of the bill drafter's office indicated that she has not been real familiar with this area, but based on what Larry (Struve) said, it sounded like it was some problem about the telephones. Is that correct?

Mr. Struve stated if they are excluded.

Jan Wilson indicated that if they are in it seems to be no problem about earmarking. If they are not, there seems to be some problem.

Mr. Hardy indicated that on a technical basis right now, railroads are also classified as public utilities and are subject to mill assessment too. It is a minor area, there should be very little because we have very little intrastate operations. But if that is a legal problem, then it still is a legal problem if you exclude railroads. Now I am not recommending you leave them in, but under the law they are classified as public utilities.

Mr. Struve stated that again he can only reiterate what my people told me that a challenge to mill tax assessment because it may not be going into a certain regulatory function has not been challenged to date in this state and there is no case law that they they were aware of that had been successfully challenged in other states. It is not to say that an objection might not be raised. I was told that utilities included the four identified - electric, water, gas and telephone. They are the ones who pay for the mill assessments.

Mr. Hardy indicated that railroads are under 704 and they are classified as a public utility.

Senator Wilson asked if they pay the mill tax?

Mr. Hardy indicated that they did pay mill tax.

Mr. Hardy further indicated that they can be well classified as transportation, there is no question about that. Mr. Hardy stated that in fact you could deregulate them in the State of Nevada and it would be a favor to the commission as well as the State.

Mr. Mello indicated that that would not have any effect though on the collection of the mill tax.

Mr. Hardy stated if you deregulated them they would not be subject to regulation. They would no longer be a public utility in the state.

Senator Wilson indicated that the problem is an academic one. The Advocate just isn't going to be interested in chasing the railroads. It is not a problem. But I would hate to see something done where somebody could raise an equal protection problem in the use of this mill tax. The railroads might not but some other utility might. They might simply state that you can't fund from this and it would tie the agency up for two years.

Mr. Chuck King of Central Telephone stated that there was an easy way to handle that. Go to the definition in 704 of Public Utilities. Do the same thing that you have in motor carrier there where it says that public utility does not include motor carriers under chapter 706. Just make railroads under 705 also and that would take care of the problem.

Mr. Hardy indicated that that would do it.

Mr. Hardy stated that there then would be no source of revenue from the railroads for regulatory purposes and there would not be need of much, but what we do is we do have a railroad inspector and we would have to have some means then of getting some funds from the railroads which we did carry out. So it would strip us of our source of revenue if you take them out.

Mr. Mello asked Jan Wilson if she would investigate that.

Ms. Wilson indicated that she would find out and stated that she was not really prepared on that now, but she would find out.

Mr. Hardy indicated that if you had them out of the general fund it would eliminate all of these problems.

Mr. May stated that Senator Wilson had referenced without indicating his preference the language whereby the Attorney General may provide for dismissal of the Consumer Advocate. That is exactly the language in 703 whereby the Governor may remove the adfocate.

Senator Wilson indicated that that was fine.

Mr. Mello indicated that the committee would then go through the BDR and find out what we are going to keep and what we are going to take out.

Senator Wilson indicated that we would take out all of Section 2 and replace it with what we have been discussing under Section 1 and 2 of the memoranda, so all of that is out of the BDR.

Section 3 I think is okay. Section 4 is okay. Section 5 I think is necessary and okay.

Mr. Struve asked if he would be able to question that. He stated that as he understood Section 5, this puts the Consumer Advocate or the administrator of this office in the position as employer of the staff. That may be a bit awkward. That will be different than all of our other divisions in the Attorney General's Office. The appoint authority for personnel purposes and all of that body of law is the Attorney General. I am wondering if the committee would be amenable to having the appointing authority being the Attorney General upon recommendation of the Consumer Advocate, so that there is a single appointing authority in the attorney general's office for all of the staff. The way this is worded, the appointing authority, the employer in essence, would be the administrator of a division who works presumably under the supervisory authority of the Attorney General.

Mr. Mello indicated he did not know if they would be taking some politics out of it by doing it that way or not.

Mr. Struve indicated that he was not concerned about - his concern is that when you set this office up under state government you

have to have a designated appointing authority for all of the personnel rules and regulations. Presumably the appointment of this Consumer Advocate is subject to a supervisory control by the Attorney General in terms of his ability to remove and since it is within the office for consistency, what I am offering for the committee's consideration is having the appointing authority being the attorney general but on recommendation of the consumer advocate.

Mr. Mello indicated that he knew what Mr. Struve was saying but this expertise though is actually working directly with the Consumer Advocate and not with the Attorney General.

Mr. Struve stated that was correct.

Mr. Mello stated that it would be just like the Commission hiring the CPAs here but the recommendation does come through and we have always followed this as far as I know the recommendations of staff. That is what the commission has always done, now I don't know what the Attorney General would do.

Mr. Struve stated the subcommittee could solve his problem if he would leave the decision up to the Consumer Advocate but have the paperwork - the actual employment under signature of the Attorney General. In other words, bind him with the selection of the Consumer Advocate so that everyone is working under the authority of the head of that department because this is within the Department of the Attorney General.

Mr. Schofield stated that he agreed with what Mr. Struve was saying but I am sure you can see our concerns of setting it up that way and allowing the administrator the total control over his staff. Mr. Schofield asked Mr. Struve to explain that again.

Mr. Struve stated that his concern was with the administration side of this. Your concern is with the control, the political intrigues that might occur in the office. I am suggesting that instead of setting up in essence two employment authorities that would create a lot of unnecessary book work, I'm suggesting that if you want the control over this staff, the actual decision of who to hire and the control over supervision, give it to the Consumer Advocate, but for administrative purposes that decision is merely endorsed by the one department head of the office of Attorney General which is the attorney general. There would have to be some language worked out but if the committee is amenable to taking a look at it to avoid an administrative nightmare, I would at least like the opportunity to try.

Mr. Mello stated that he had no objections to that - to looking at some new language.

Mr. Struve stated that he believed that the committee wanted the

power of hiring and firing to be the consumer advocate's for the professional staff.

Mr. Mello stated that the four professionals would have to be unclassified. Now what we want to do about our secretarial staff, our recommendation, Spike, was an administrative secretary, clerical and perhaps the clerical should be classified. How are you handling your clerical over there in your office, Larry? Are they all unclassified?

Mr. Struve stated no. Clerical staff is all classified.

Mr. Mello asked about the administrative secretaries.

Mr. Struve stated there are about roughly three positions that would be administrative assistant, supervisor of office services and I am sorry but I can't think of any offhand, they are unclassified. They serve at the pleasure of the Attorney General.

Mr. Mello asked what Mr. Struve thought about this position here - the one for administrative secretary?

Mr. Struve asked if they would just have one administrative secretary and would they also have a legal steno?

Mr. Mello indicated yes.

Mr. Struve stated that he believed that would be helpful.

Mr. Struve stated that he thought the administrative assistant would probably want to be in the same category as your other professionals. That is the person who is going to be a right hand assist to my advocate. The legal steno I think should clearly be classified.

Mr. Mello indicated that Mr. Struve would come back with some language for the subcommittee.

Senator Wilson indicated that the rest of Section 5 - contracts for services of consultants and experts that is necessary, obviously, and number 3 is important, to examine during regular business hours the books, accounts, minutes, records and other papers and property of the utility, or broker, that does business in the State. I don't know what that is.

Mr. Capurro stated that it looks like some of this language was taken out of current law and put in here and he indicated that he believed that "or broker" should be taken out because that refers to motor carrier operations or possibly even the railroads. I don't believe there is any such animal in utilities.

Mr. Mello indicated that the subcommittee would take that out then.

Senator Wilson indicated that 4 of course is the power to subpoena and pay witness fees.

Section 6 is important because you want the advocate to be served or receive copies of not just applications but the proposed changes in rates or tariffs. That concludes page two.

Senator Wilson stated that 210 occupies page 3 simply for inclusion of paragraph 3 at the bottom which simply provides that the AG staff counsel is going to be the counsel for the consumer and the Public Service Commission itself is going to have its own staff counsel. That finishes the BDR and then I think we are back on the memoranda. Larry has reviewed section 3 and I think that was the only other one. It is a bit more inclusive I think than the language of the BDR on the employment of consultants and experts. That about wraps it up. That is it, I think.

Mr. Mello asked if there were any questions from the committee.

Senator Wilson stated that the BDR captions the division - the Division of Representation. That is a little ambiguous and I think that needs some attention. I don't know what you want to designate it, but it ought to have a functional title.

Mr. Struve stated that the word "Utility" might be used. Utility Consumer Advocate.

Ms. Wilson stated that we have some problem with legislative counsel on the use of these terms. That is how we got Division of Representation. He told me that consumers' advocate would be all right. I don't think he would go for utility consumer advocate. This has to do with "Daykinisms".

Senator Wilson asked why we would want to modify consumer whether it is possessive or not, with the word utility. Would Frank have a problem with that?

Ms. Wilson stated she would ask him.

Mr. Schofield asked if he had a problem with using the word utility?

Ms. Wilson stated that he has a problem with nouns used as adjectives in a row.

Ms. Wilson then stated "utility consumer's advocate".

Mr. Struve stated that he would offer a title that he knew Mr. Daykin will buy because it is the title that we had in AB 58. Utility customer representative agency.

Mr. Mello stated that he liked consumer advocate.

Mr. Mello asked if Ms. Wilson would change the summary too.

Ms. Wilson stated yes.

Mr. Mello indicated that where the subcommittee was having its problem was in getting this done. We have four committees that are involved in this one piece of legislation and a lot of interest in it, so if we could try to expedite this it would be very helpful.

Mr. Capurro stated that in Section 2 and Section 6, perhaps there is a gramatical problem where it says: The Division shall, with respect to all public utilities, except railroads and aircraft, -

Mr. Mello indicated that Section 2 had been taken out.

Mr. Capurro stated that wherever in this legislation it says railroads and aircraft and it should be "common or contract motor carriers" not motor vehicle carriers, to be consistent with what is in 706.

Mr. Capurro indicated that that also appears in the memorandum in Section 1.

Ms. Wilson asked if he was suggesting that anything be done in this bill about the mill tax - it is not in here, or do you want to leave that out still.

Senator Wilson indicated that that should be in the bill.

Mr. Mello stated that it should be put in.

Mr. Mello asked Senator Wilson if he knew what the revenues are at 1/2%?

Senator Wilson indicated he did not.

Mr. Mello indicated that the first year - almost \$406,000.

Senator Wilson asked if the committee was going to provide that they can spend by the budget doctrine, so you can provide for whatever amount of money from the mill taxes assessed but the budget is going to control how much the assessment is going to get anyway. You are probably going to be between 1/2 and 3/4.

Mr. Mello stated that it could be 3/4 now that we added another staff member.

Senator Wilson stated that the kicker is the contract money that is necessary. I don't know what we are looking at there, but that's important at least in a big rate case. Even if you provide for up to 3/4, the budget is going to control it. They can't spend up to the mill tax limit they are still limited to the budget document.

Mr. Mello stated that he was concerned about getting this too high. We will have problems with it. Again we have interim finance. They have to come to interim finance and ask for more money.

Mr. Mello stated that we would just have to see if we have to go to 3/4 of a percent. That puts it right up there though.

Mr. Mello stated that we do have some check and balance though if they had to go before interim finance.

Senator Wilson stated that that might be the answer.

Mr. Mello indicated that the subcommittee should talk a little bit more about the review committee. What do you see that they should be able to do as far as recommend - oversight on the functions, duties and what the performance of the consumer advocate should be and how much jurisdiction should they have over the consumer advocate with the Attorney General. How much input do you think they should have?

Senator Wilson stated that he did not know that you can divide administrative responsibilities. Maybe you are really talking about your giving them things to recommend to the AG and to make recommendations for additional legislation later on to the legislature. This probably could be a subcommittee to the commission if you want to do it that way.

Mr. Mello stated that it could be but he would rather not.

Mr. Mello stated that there would be some problems as far as the Commission because many people feel the commission has gone far beyond their capabilities. Many feel they are unconstitutional and I hate to give them any more authority.

Senator Wilson stated that he guessed we were really talking about a review and a recommend type of duty.

Mr. Mello stated that the subcommittee should get back to the bill now as we want to be able to talk to Spike as he has to leave at 8:00 A.M.

Mr. May stated that since this is not under the Executive branch and by being with the AG, do we have any more license then to mandate the duties and powers of that review committee where under the AG's office. If this is under the AG are we going to hamper it by the review process

Senator Wilson stated he thought the situation was the same whether it is the governor's office or the AG's office. The AG though constitutionally elected, is still part of the executive. He is just selected differently and has a separate jurisdiction. He is part of the executive branch of government so the problem is the same.

Mr. Redelsperger stated at the beginning Section 1 we are talking about the powers - does that limit us basically to the four main utilities then? Does this take care of such things as taxicabs?

Senator Wilson indicated that he thought you would be pulling those out

Senator Wilson stated that it was his understanding -

Senator Wilson indicated that you go to the chapter for the definition of utility and they are listed there so yes -

Mr. Redelsperger asked what about elected co-ops and associations.

Mr. Hardy indicated for regulatory economic purposes.

Senator Wilson indicated that those were wholly owned.

Mr. Hardy stated that he thought they are classified as public utilities and we are just simply not given full powers of regulation over them.

Mr. Hardy stated that they could only appear before the PSC because they don't come before us for rate relief.

Mr. Redelsperger asked if they needed to put some language in?

Mr. Hardy stated he did not think it was necessary.

Senator Wilson stated that Jan could check that. He indicated he thought they were out but let's be sure they are out.

Mr. Hardy stated that it also includes CATV companies in case you want to be aware of that.

Senator Wilson indicated that he would not tamper with that unless you have to. For example to take out the wholly owned - the coops. You are just buying trouble.

Mr. Mello asked Mr. Struve if he saw any problem with the oversight as far as the AG is concerned?

Mr. Struve stated that as he understood the concept you are talking about, it is to review the performance and make recommendations to the attorney general concerning the effectiveness and the functioning of the office.

Senator Wilson stated it is not jurisdictional so it should avoid the separation of powers question.

Mr. Struve stated that as he understood what you are saying is the ultimate authority then is still with the attorney general to take appropriate action once the recommendation is made. I talked with Dick Bryan about that and he did not have any problem.

Mr. Prengaman stated that they would also be making recommendations.

Mr. Mello stated that they could even make them to the legislative commission.

Mr. Prengaman stated that he though it was a good idea to have a committee that reviews the establishment of the office and maybe makes recommendations.

Mr. Mello stated it would make it more public as long as the AG does not have any problem with that we should be all right.

Mr. Prengaman stated that he could also continue the interest on the part of the legislature.

Senator Wilson left the subcommittee meeting at 8:00 A.M. for another committee meeting.

Mr. Mello asked if there were any questions from the committee before we get into some testimony with regard to the bill?

Mr. Mello asked who would like to testify with regard to the BDR.

Mr. George Tackett, Administration Manager - Public Affairs for Nevada Bell testified first. Mr. Tackett indicated that he had sent correspondence that covered areas of concern that we had about the proposed legislation. I would like to repeat again that we feel the competitive filings should be exempt from the consumer advocate review. We believe the Commission should continue to consider these tariffs as they have in the past and the commission be given adequate technical staff to properly review and analyze these important filings. In fact, the most appropriate arrangement would be to confine the agency or the department of representation to represent the consumer interest in rate case proceedings and align the commission with adequate staff to continue to be responsible for the ongoing utility matters. And I think we have called this matter to your attention on previous occasions.

Mr. Mello asked if there was anyone else who would like to testify.

Mr. Hardy stated that his only comment would relate to the ability of the Public Service Commission to hire its own counsel and if I read the committee right, they already agree with that position.

Mr. Mello stated that he thought so.

Mr. Hardy stated that it was his understanding to hire our own counsel for all purposes and have no deputy ag assigned to the commission. That is my understanding with Attorney General Bryan.

Mr. Struve stated that he though in concept, Attorney General Bryan has agreed with that. It is going to avoid on a case by case basis deciding if there is a conflict in going through the legal motions since one of the intervenors or utilities might object if there is two AGs playing different roles. The only qualification is the same I indicated last Monday to the subcommittee. If the interests of the State of Nevada somehow get involved and I think here we are probably talking about an action in a court of law, then I think the Attorney General should be

the attorney for the State of Nevada even though the PSC legal counsel may also be representing the interests of the commission. I don't know what facts may come up but we have had an instance where instead of the attorney general being on an amicus brief, the United States Supreme Court, I think it was staff counsel for the NIC or the NIC Advisory Board and they were coming to the attorney general saying we have to do this without any prior independent review so my concern is if the state of Nevada's interests are involved that the attorney for the state should be the attorney general. In no way would this prohibit staff counsel for the PSC being involved, but it would require that the AG be involved when a proceeding rises to the level where the state become a party and state interests become involved.

Mr. Hardy stated that we had no objection to that at all.

Mr. Hardy stated that they were talking about legal counsel to the commission rather than staff counsel. That is two different positions.

Mr. May referred to the handout given to the subcommittee by Larry Struve. He referred to Section 1 of the first page, and asked if the PSC does that at the moment.

Mr. Hardy stated yes. He stated that even though he does not have any objection to that concept and would not express any that could be a slight problem if we brought our battery of auditors into a public utility and another office does - it would be minor administrative problems. I have no problem with the concept, but nevertheless it could cause a slight mechanical problem for our people if they are both asking for the same material at the same time and they are in an adversary position.

Mr. Hardy stated that he was talking about the utility offices where books and records are kept - it could be a slight conflict for access to the materials at the same time. That's all I am talking about.

Mr. Hardy stated that he believed that the major functions of a consumer advocate would be - ordinarily they do not send auditors into the public utility to do the same work we do. I think what it is if I understand the intent they simply want the statutory right to do it if they feel it is necessary, but I don't envision the consumer advocate sending the auditors in to do the basic work which our staff auditors do as to the revenue requirements. This would give them the authority to do it and I think you should be aware of that.

Mr. May asked Mr. Hardy if he envisioned cooperation between the PSC and the Consumer Advocate or is it truly an adversary situation.

Mr. Hardy stated not between the PSC staff and the Consumer Advocate. I don't think that is an advocate position. I don't that's an advocate position, but it is a different role. As I understand the role of the commission and its staff would still be a balancing of the interests, and not advocating one position or the other, either the utility position or the other. It is a balancing position.

Mr. Mello indicated if there was a lack of cooperation from the Public Service Commission with the Consumer Advocate, then I believe the Consumer Advocate should have access to these records.

Mr. Hardy stated that he thought that was wise there too.

Mr. Struve stated that he thought the important point to make on this subject is that the Advocate is expected to prepare in essence an administrative proceeding and that may become the record for a judicial proceeding and in order to prepare that the advocate is going to have to look at books, interview people, put the kinds of things together that are the substance of administrative proceedings. As Mr. Hardy has pointed out and I think he has assessed it correctly, it is not that this is to supersede or duplicate a regulatory function of the PSC, it is to give statutory authorization to the advocate that he or she can have access to that material necessary to build a case.

Mr. Struve stated that you would have to go into court maybe and try and get a court order to see something, we may be dependent on what the PSC provides and so forth. This gives an independent basis to prepare the case. Mr. Struve stated that the functions are different. The advocate is representing a viewpoint before the commission that it is going to be accessing and adjudicating. The advocate is going to be representing a position, either saying the utility request is out of line or what they want is out of line and here is the evidence that supports our case. Their role is to sit in judgment and to weigh what the truth is after hearing the two sides.

Mr. Mello indicated that he thought that we were going to have to give them as much leeway as we can in starting this. If we find next session, whoever is here, that they are abusing this privilege, then think we should look at them. If they are not abusing it, then I can see nothing wrong with it.

Mr. Hardy stated there would be budgetary limitations. They have 13 auditors and they wouldn't have the auditors on a regular basis. They might hire an outside consulting firm to do that sort of thing.

Mr. Mello stated that you have to check and balance as far as the budget is concerned. If they start showing where they are using their contractual services in hiring auditors to go in and audit Sierra Pacific or someone else and those audits are being performed right now before the Public Service Commission and they are not taking advantage of that and going around them, I think they are in trouble. They had better have just cause to do it.

Mr. Hardy stated that he would presume that the Consumer Advocate Office would just as soon as the staff completes their audit and files their information would have access to that immediately, because they are a party. If they have particular problems they may want to send somebody to look at a particular area they think the staff may have overlooked or have to take a different view on.

Mr. May asked if all of the records of the PSC are available to the general public.

Mr. Hardy indicated that that was a touchy question. The public records are certainly open to the public, but it is a question as to whether or not the work papers of auditors and attorneys are a public record. That's the question. I think that you would find that if there is a request made early on in an investigative process from the Consumer Advocate Office I think you would find good cooperation. I am sure you would.

Mr. May questioned if there was anything in the statutes to look at the books and records.

Mr. Hardy stated that there was nothing in the statutes that say that the workpapers of the PSC staff must be turned over to some other office. That would be very awkward, because you see when we are working through what they are getting to and have them come up to the final recommendations, it would be extremely awkward to turn that over to anybody while they are working through to get to that position.

Mr. Hardy stated that as he had indicated earlier to this committee, I view the Consumer Advocate role as looking at really the large issues. They will be looking at cost of money, they will be looking at rate design. I don't view them as doing the bread and butter work of auditing the public utilities, because I hope there is a trust enough in our audit staff that it has been properly done and I can assure you it is being properly done.

Mr. Mello questioned if there were any further comments.

Assemblyman Peggy Westall testified next. She indicated that she simply wanted to make two comments. Three maybe. Number 1, as described when Senator Wilson was here, I think you are headed in the right direction. I like it. As to the PSC having its own staff counsel, I believe they should, a separate one. Then we know there isn't a conflict of interest and number 3, I would urge that you don't start nitpicking and making exceptions because Section 2 on page 2 of the memo I think is broad enough to take care of any of the small problems that there are. That's the one that gives the Advocate to chose when he intervenes and if you begin to make exceptions you are going to water down the concept to where it is going to be nothing but a hassle for everyone. I think you are headed in the right direction and I urge you to continue, rather than to begin with these exceptions.

Mr. Mello asked if the subcommittee had any questions of Peggy Westall.

Mr. May stated with regard to telephone companies, apparently there is some type of equipment that they offer for marketing.

Mrs. Westall indicated that she thought that if you accept one then someone else is going to want it. I understand that there is a problem, but I am sure that under Section 2 of the memo, that they wouldn't want to be looking at that sort of thing.

Mr. Redelsperger stated that he does have the right though.

Mrs. Westall indicated that that was correct. She further stated that she thought they are going to have so many other things to look at that they are not going to want to bother with that. If you feel it is necessary, I think when you make one exception you are going to have others and others and others.

Mr. Mello asked if there was any more testimony in regard to this?

Mr. Stan Warren of Nevada Bell testified next. He stated that we do find ourselves in a market today when a new product comes out and it mandates us to get a tariff as quickly as we possibly can. I realize that what has been proposed here does not include that you would necessarily be looking at that, but unfortunately there could be the time when a new product is out and there happens to be a lull in the advocate's office and that would be a good time to look at that and it would slow up the filing and the effective date of the tariff and probably by the time we got it there would not be a market to sell it to. There are about 100 times a year that we come up with new products - it is a quick changing industry we are in with new technology constantly coming out and I just simply ask that you give consideration to what we think our needs are. We have supported the whole concept of this and we have looked at something we think is tailored definitely to the telephone industry through court actions and FCC decisions and what have you and we find this in a very different mode than it was in 1968 and ask that you consider this.

Mr. Mello asked how much abuse there has been in this area in the past.

Mr. Hardy stated in this particular area staff does look at it and we have arrived at an accomodation over the years now. There is a formula which they use. They call it a GT 100 cost analysis of a new offering. Our staff has reviewed the process they go through and all they do now pretty much is review the mathematics and arithmetic to see that they follow the formula which we have approved in the past. These new equipment offerings are approved on an administrative and expetited basis. It could be suspended for up to 150 days beyond the 30 and it could be delayed up to six months if somebody had a problem with it. In the early days our staff used to have some problem with it and we took up to six months

until we got an accomodation worked out to do this on a regular basis.

Mr. Stan Warren stated that very often one of these requests for a tariff is dependent on a whole communication system designed for a given customer and this also would be to the disadvantage of the customer.

Mr. Hardy stated that it may be late in the session but you could consider deregulating this whole area. It might even be in the public interest, where it is subject to competition already to the competitive market.

Mr. Mello asked if there were any other comments in that area?

Mr. Barbano stated that he supposed he would basically agree with Assemblywoman Westall when you build in a loophole, intelligent people when they see a certain need or advantage they figure out a way to utilize that loophole and I think the office of Advocacy should simply have the discretion. This goes very far afield and it is an area that we never have considered in any of our studies with respect to advocacy and it is not an area that even comes up in conversation let alone being a crying need, but I would opt for as much discretion in the office as possible without building in exemptions, if you say telephone, include everything involving telephone because with the communications industry being so changing what we see tomorrow or six months from now may send us in the direction of what is exempt competitive equipment. A year or two years or three years down the road, the communications industry could have so substantially changed that there may be some very legitimate need for review of one or two of these 100 tariffs that you can't even imagine right now, so I would opt for that discretionary power.

Mr. Mello stated that he could appreciate that, but if there was no abuse in it right now I don't if I want to try to weigh down this new division of government that might take more time and more money in contractual services. We don't have the staff to review this, so we would have to have contractual services.

Mr. Stan Warren stated that he would like to bring to the committee's attention that their intention is to certify that the particular tariffs that we have reference to that are competitive we would do to the commission. It is not a broad thing. One other thing, when AB 58 and we were approaching the governor's people and John (Capone) on the competitive filing, our language at that time said utility competitive offerings and he said it was too broad; hence came the word telephone and we attempted to narrow it down to telephone competitive offerings, etc. rather than to leave a broad spectrum and I would certainly appreciate your consideration.

Mr. May stated that he believed that the Consumer Advocate should move in the areas of the necessities that are provided by the utilities companies, the power, the water and the natural gas. Certainly in today's market the telephones are a necessity. I think the Consumer Advocate should try to protect the average rate payer.

Mr. May moved that the subcommittee exempt the tariffs under debate from the jurisdiction of the consumer advocate, I suppose.

The motion was seconded by Mr. Redelsperger.

Mr. Mello stated that the subcommittee had heard the motion that they exempt these tariffs. He asked the subcommittee members if there were any questions or any comments?

The motion carried unanimously.

Mr. Mello asked if anyone else wished to testify.

Mr. Mello asked if there were any other comments in regard to the bill from the subcommittee?

Mr. Hardy stated that he saw nothing in the bill about the source of funding. Our concern again was that we not have anything to do with it, that is proving claims or processing any funding through the commission and I hope that is the direction you are taking. Also, if the mill assessments are in any way going to be tied to us, I think you have to be careful that we already have a 4 mill limitation now and there would have to be an increase in that authorized mill level if it in any way goes through our mill assessment. I propose again, and I hope that is the direction you are taking that whatever source of funding, that it be totally independent from the commission.

Mr. Mello stated that as far as the mill tax, first of all we have to work out a budget and find out how much of the mill tax we are going to need.

Mr. Hardy stated that his question is whether or not it would be tied in with the present authorized mill assessment of the Public Service Commission. My recommendation is that a new provision be drawn up which authorizes this agency to directly assess the -

Mr. Mello stated absolutely that the committee had decided that a long time ago.

Mr. Hardy stated that he must have missed that.

Mr. Mello stated that they did not want it funneled through the Public Service Commission.

Mr. Hardy stated then that it would have nothing to do with our authorized mill assessment - 4 mill for our planning purposes?

Mr. Mello stated that he hoped so.

Mr. Dave Russell of Southwest Gas stated for the background of the committee, perhaps a question of Larry Struve.

Mr. Russell asked Mr. Struve if his language was broad enough to permit the Consumer Advocate to intervene in federal power cases or in federal regulatory commission cases?

Mr. Struve stated that that was the understanding he had of subparagraph (c) where it says any court, any regulatory body or commission or agency but it is limited to matters that the Public Service Commission would have authority to hear or has heard. In other words this would not be an independent grant of authority to get involved in exclusive Federal regulatory matters.

Mr. Struve further stated that it would be limited only to those type matters within the jurisdiction of the PSC.

Mr. Russell questioned Mr. Struve with regard to the examination of the records and asked if the examination would be tied obviously to anything before the PSC.

Mr. Struve stated that he thought that the language in paragraph C talks about initiating proceedings before the Public Service Commission. That was a major policy decision that I understood the Senate Committee insisted be included in the proposal so if there is to be an initiation of a proceeding it may have to be preceded by an examination of books and records to tell the advocate they think there is a problem. If you limit it to something that is always pending before the Public Service Commission that's an effective cutting off of the right of the advocate to exercise that authority of initiating whatever appropriate action is needed to correct the problem if there is one.

Mr. Russell asked Mr. Struve if he thought that the language in Section 5 of the BDR should be changed?

Mr. Russell stated that these are just language questions that Larry should and the committee should address.

Mr. Russell stated that he had a question to ask of Mr. Struve and that was the intent of the language concerning the role of the Consumer Advocate in administrative proceedings. Theoretically, the language is broad enough to permit the consumer advocate to intervene in Federal power commission cases, cases that may or may not be unrelated to the role of the consumer advocate in the State of Nevada. I don't think the intent is to permit the consumer advocate to intervene in matters unrelated to the Public Service Commission. I just wanted that put on the record.

Mr. Struve stated that that was clearly the intent of our drafting

subparagraph (c) and as I explained to Mr. Russell, the authority to proceed in any court regulatory body board commissioner agency is limited to matters in which the Public Service Commission has jurisdiction.

Mr. Russell stated that the language contained on page 3, the conflict language which you addressed earlier, I think the subcommittee ought to be aware that we are relying a great deal on the discretion of the attorney general's office. Theoretically the consumer advocate can intervene in any action for the Public Service Commission and that would effectively preclude the Public Service Commission of any representation by the attorney general's office at any time. Also, theoretically, we may have a situation where the attorney general could represent the consumer advocate on an appellate matter and would require the public service commission not to have representation or go outside. I don't know what Heber's (Hardy) staff capabilities are. Do you have one staff counsel.

Mr. Hardy stated that we have the staff counsel and one assistant staff counsel. They only appear before the commission representing our staff. We are talking about getting the AGs to represent us in court and our recommendation is that we be allowed to hire outside private counsel as legal counsel to the commission in matters where the commission needs to protect its interest or initiate some action.

Mr. Schofield questioned some of the language that Mr. Struve had presented to the committee.

Mr. Struve stated that he would have to apologize. That particular language he tailor made for Nevada. New Hampshire did not put the limitation on that the advocate would only be involved in any court proceedings. Well they just said in any court proceedings, so in theory it could go as broadly as Mr. Russell suggested. The language we are recommending because we think this is the intent of the committee is that we go into these other proceedings whether in a federal agency or in federal court and it has to be related to a matter that could have been brought or was within the jurisdiction of the Nevada Public Service; it can't just be an open-ended matter that the consumer advocate wants to get involved with. It has to be tied to a matter over which the Nevada Public Service Commission has jurisdiction.

Mr. Russell stated that he believed that the language in Section (c) had to be changed a little to tighten that. Perhaps the last sentence could be removed from that and that would make it clear that it would have been a matter that has already been heard before the Public Service Commission, or could have been heard.

Mr. Schofield stated that Mr. Struve would then come up with some new language on Section 5, is that correct?

Mr. Struve stated yes with regard to subparagraph 1, which involves

the employing of the staff. For the remainder, I will defer to Jan (Wilson).

Jan Wilson stated that she would like to know who she should talk to. Larry (Struve) if I have questions?

Mr. Mello stated that he would like to make it very clear that we are not going to take what we have been talking about today when it comes down in bill form and is introduced and make a run with it. Jan will come back to the committee when she has finished the draft of this BDR and we will have another hearing on it. I just want to make sure what we have and that everyone will agree to it. Before we introduce this when we have a draft that we are prepared to take before the committee as a whole of Government Affairs, my intention then, with the approval of that committee, to go to the other committees concerned and make sure that they are in full agreement with the legislation and then perhaps all we have to do is to send it to both houses without any further hearings. It will take care of a lot of delay. I would like to call on Mr. Warren. This might be a little after the fact though.

Mr. Stan Warren representing Nevada Bell stated that to clarify and to back up the motion that was made on that and he indicated that he had language here that he was not totally married to, but I think it does what I would like to have done, and I will read it to you.

A copy of Mr. Warren's language which he read to the committee is attached as EXHIBIT C to the minutes of this meeting.

Mr. Mello questioned Mr. Warren as to what he meant by service.

Mr. Warren stated that service can be a long distance type of service, it can be a product that you use to provide a service for the customer in a communications convenience. Mr. May had a question on tariffs. When we charge for any product that we sell, a tariff has to be on file with the Public Service Commission to set the charge for that so we file for tariffs with the commission and what we are saying here is that these tariffs that we are filing, we are certifying that they are competitive type tariffs where we are competing with another - with possibly an outside vender - maybe a PBX - a whole system or maybe a feature that goes with the telephone. We are not talking about the dial tone, telephone numbers or the basic concept services at all.

Mr. Redelsperger questioned Mr. Warren on MIC.

Mr. Warren stated that it was MCI - Microwaves, Inc.

Mr. Redelsperger asked if they were competing with MCI.

Mr. Warren stated yes and that they also compete with Southern Pacific Communications. We have a sprint service that you see everyday advertised in the local papers on costs.

Mr. Mello asked if anyone else wished to speak or testify.

Mr. Andy Barbano of the Coalition for Affordable Energy stated that he would recommend that you be very, very clear when you research that language very well, because what Mr. Warren has presented would seem to me being a layman would be extremely broad and just about include everything a telephone company does.

Mr. Warren stated that we are certifying competitive. I think that is the question and I think that is the issue here. We are not trying to get around general rate increases or things that are not competitive and we are certifying this.

Mr. Barbano stated again, as Dr. Schwartz pointed out, telephone utilities are declining cost industries due to increased equipmental efficiency; because of that increased equipmental deficiency and being a declining cost industry your frequency of general rate increase applications is much lighter than gas and electricity but that being the case, I would still say that there would be some broad areas of perview that an advocate's office might want to look at in the future. The general rate increase area is infrequent at best, but because of the equipmental declining cost, making telephone utilities more efficient, I think because you have the declining cost factor and you have fewer general rate increases, but I would say that you have, I am trying to phrase this properly, you would have, since you have fewer general rate increases due to equipment efficiency, that does not mean that there may not be areas of increased efficiency that would be left without review in the entire spectrum of telephone regulations.

Mr. May stated that he thought at that point that you fall back to general philosophic jurisdiction of the utility which is a monopolistic, non-competitive service and as I understand it and what I predicated my motion on was those items that might be supplied by a 95-98% non-competitive service, yet offering some areas that may be in direct competition and exempt from the monopolistic ability.

Mr. Warren stated that he thought that Mr. Barbano is talking more generally about the telephone industry and I am talking about particular products that come along -

Mr. Schofield asked if Mr. Warren could read the amendment again.

Mr. Warren re-read the language contained in EXHIBIT C.

Mr. Mello asked if Jan Wilson understood what the committee was trying to do.

Ms. Wilson indicated that the committee wanted the certification of the company to be enough. She question the subcommittee as to whether it wanted the PSC or the agency to make an independent determination of the competitiveness.

Mr. Warren stated that step 1 should be with the certification that it is a competitive product.

Ms. Wilson stated that certification by the companies -

Mr. Warren indicated that he thought that if the commission in its wisdom determined that we were trying to make an end run on the thing, I think that they should bounce that out.

Mr. Mello asked if Mr. Struve had any comments.

Mr. Struve stated that he thought it was a policy decision if certification by the telephone utility is deemed sufficient, that establishes that in truth and in fact it is a competitive product, I assume that would be sufficient. It is beyond my area of expertise. If you want a watchdog to see that certification is accurate, then I think even Mr. Warren is indicating you might consider some other language, but I think it is your policy decision.

Mr. Warren indicated that he thought that they would perjur ourselves if we would submit and certify that this is competitive when in fact it is not. This is the question we have right here at hand

Mr. Hardy stated that the safeguard could well be as to the issue of certification, the Consumer Advocate may petition to intervene. As to the issue of certification by the company that it is a competitive product, that may be subject to the consumer advocate office challenging and petitioning the commission - challenging that that particular product is not competitive. That may be cumbersome, but it would be protection.

Mr. Warren indicated that he thought if you stayed with the scope of the BDR which he realizes is being overhauled quite a bit and you call in there for the receipt of the advocate of the correspondence and filings and all kinds of things, and I can't imagine that the advocate is not going to be looking at those, and I think if the advocate ran into a situation where in fact we were purposely perjuring ourselves they would bring something to that attention. I think we really have the magnifying glass out looking - we don't intend on end running this thing, truly we don't.

Mr. Schofield stated that he believed that that was clarified in Section 1, subsection (a). It gives them that particular means of going in, even though we are exempting that particular competitor.

Mr. Warren stated that he did not know exactly where we are in looking at what it is but the concept is there and I think some of the perimeter that are in the BDR are going to be the ones that will eventually flow through to the legislation.

Mr. Mello stated that it is difficult to sit here and go through all of this and try to see the proper perspective. We will do that when the bill is drafted and then we will go through it again.

Mr. Mello indicated to Mr. Bill Bible that things have changed somewhat in regard to staff. We have no changes as far as director. We are going to be looking now though at the director - a rate design staff person - utility rate design and if I am wrong, please correct me - a CPA and one other person - legal counsel. Legal counsel would have to be at the level of the legal counsel in the Public Service Commission. They will have their own legal counsel and they will not be from the attorney general. You know what their requests are. I think it is \$39,930 -

Mr. Hardy indicated that it is shown in their present proposed budget that is Staff Counsel. We intend to put legal counsel in that same salary position.

Mr. Mello asked what Mr. Struve thought about that.

Mr. Struve stated that he strongly encouraged the committee to do that. I think you are looking at equals in the whole process in front of the PSC.

Mr. Mello asked what problem would that create though as far as the other salaries. I don't want to have to be pushing salaries up to where we raise everybody else.

Mr. Struve stated that he appreciated that. There has been a recommendation with respect to one chief deputy position which is for the gaming division which we have recommended to the money committees to be set at a \$40,000 level because of the type of expertise and specialization that is involved both in that and in this position for the utility intervention. It could be justified. I will certainly check this with the Attorney General and see what impact it may have on the salary ranges, but I think at the outset if we are going to be competitive and have people of equal caliber participating in the process, they should be at least able to command the same salary that staff counsel is that is adjudicating the case or serving the adjudicator of the case.

Mr. Schofield asked Mr. Struve if this went back to what he was recommending on the step 3 or class 3.

Mr. Struve stated no. That would move your staff counsel up to attorney IV. This is just below the top one.

Mr. Bible asked what the subcommittee's direction on the director's salary.

Mr. Mello stated that we may have to stay at Attorney General III. Mr. Mello asked Mr. Bible if when he was preparing the budget he wanted him to prepare it at IV.

Mr. Mello stated that he would certainly hope that the Attorney General will do everything possible to see that perhaps that can be done and that the director would have those qualifications.

Mr. Struve stated that he thought he indicated Monday and it has not changed that we would certainly prefer that and would make every effort - at this point we are not exactly sure what the market is and who you can attract

Mr. Redelsperger asked if Mr. Struve felt that level III would be enough if the director had the qualifications of being an attorney?

Mr. Struve stated if he was licensed to practice law that would mean that your director would be earning less than the staff attorney. Is that what you had in mind?

Mr. Redelsperger indicated he meant if he was an attorney.

Mr. Struve stated in other words if he was an attorney you are talking about a salary level commensurate with PSC staff counsel in the \$39,000 range. Is that what you are talking about?

Mr. Redelsperger mentioned \$35,000.

Mr. Struve stated that is the Attorney III, that is a staff counsel position. The advocate - the administrative head - we hadn't really given some thought to that if you are going to require that person to be a licensed attorney. Mr. Struve indicated that from his experience administrative if the head of the office earns less than one of the staff positions, you've got problems, so maybe the two positions ought to be keyed together with whatever you decide and we would probably want to have staff counsel below the consumer advocate, but if the consumer advocate merits the higher salary to being on a par with a counterpart in the PSC we would certainly like it to be set there. I think these are matters that are probably going to have to take some further discussion. I would at least like the opportunity to work up some budget figures in our office with your counterparts to see what we can come up with.

Mr. Hardy indicated that for some possible guidance, if you were to compare the attorney who is directing the staff to our staff counsel, the assistant staff counsel under him, you are talking in terms of \$34,600.

Mr. Struve stated that would equate because that would be pegging the consumer advocate at something a little above the attorney IV in our system and the attorney III would be the staff counsel. That is assuming that your advocate is a licensed attorney.

Mr. Mello stated that what we are talking about is driving the price up of the director and then once again maybe not having the type of expertise we want in legal counsel. We have to decide what we are going to do here. Perhaps the Attorney General can put some feelers out to fill the Director's new office with an individual who is a capable attorney who can handle this position at we will say \$40,000. We are going to be in the position here

before long we are going to have the director at \$50,000 and the legal staff at \$40,000. We are just not going to be able to do that.

Mr. Struve indicated that the figures Mr. Mello was talking about the \$35,000 to \$40,000 range would be more than adequate to get a director and staff counsel. It is just meshing the exact amounts to make it come out right.

Mr. Bill Bible suggested that the subcommittee consider the director's salary and then back the legal counsel off from that perhaps 5%.

Mr. Mello indicated that the subcommittee should work on that. Mr. Mello indicated that Mr. Hardy had recommended earlier that the utility rate designer was up around \$35,000 or \$37,000.

Mr. Hardy stated yes. He indicated that the manager of rates and tariffs about \$36,300.

Mr. Mello questioned Mr. Hardy about their CPA.

Mr. Hardy indicated that his senior auditor was \$34,600 in the proposed budget - that is 14% above what they are presently getting.

Mr. Mello indicated that these figures will not, as far as he is concerned, go above the salaries that they approve for the PSC. They will coincide.

Mr. Mello stated that actually those four positions would be unclassified - the administrative secretary would be at a higher level - Bill - what did you figure for the administrative secretary.

Mr. Bible indicated somewhere between \$18,000 and \$20,000.

Mr. Mello asked if that was comparable to the unclassified administrative secretary you have now.

Mr. Bible stated that Mr. Struve's secretaries were all classified.

Mr. Struve stated that he would have to check on that. He indicated that he would think \$18,000 to \$20,000 is adequate. Again, I would like to check these figures. I did not come prepared for this. It seems in the ballpark.

Mr. Bible questioned Mr. Struve if he wanted to have the top secretary position in the unclassified service.

Mr. Mello indicated that he was under the understanding that he has about five of them over there now that are classified.

Mr. Struve stated that he could only think of two. We have an administrative assistant and a supervisor of office services, they are unclassified. All other secretarial staff is classified. They

are looking I think at an administrative assistant and a legal steno, the legal steno being classified. So you would have five unclassified positions and one classified.

Mr. Bible indicated that they would budget that position in with some sort coordination with the unclassified positions in their office. The one position I suspect has greater responsibilities.

Mr. Mello stated to Mr. Bible that the problem was that they were trying to live within the budget and we may not be able to do this of the 1/2% mill tax. We may have to go to 3/4. Jan is going to have to know this as to what will fit in.

Jan Wilson stated that she could leave it blank if the committee liked.

Mr. Bible asked if the committee wanted to provide the authorization for the funding within this bill.

Mr. Mello asked if we actually had to.

Mr. Bible indicated that the dollar amounts can be provided by the money committees when they review the final budget and then put in the general authorization act along with all the other agencies.

Mr. Bible stated that it would stand by itself.

Mr. Mello stated that he personally did not want to go to 3/4.

Mr. Bible stated that it looks like at this point they were talking about salaries just in pencil figures of about \$190,000 and your 1/2 mill would generate about \$352,000 the first year. Mr. Bible asked the committee what level of contract services they were considering?

Mr. Mello indicated that he was hoping in the ballpark of \$150,000.

Mr. Bible stated that that gives you about \$340,000 total and that would not leave then enough monies for travel and rent and paper and pencils and that sort of thing.

Mr. Mello indicated that is why they should go to the budget and see just what they have.

Mr. Struve brought up the item of the remodeling in the attorney general's office.

Mr. Mello stated if we do that he believed we would be at a point where this consumer advocate would cost us a million dollars.

Mr. Bible indicated that the chairman had requested that he look at space availabilities and space needs perhaps for the consumer advocate agency and currently in Carson City we are fairly fortunate

in the rent situation. There is a surplus of building space compared to needs of state agencies. In the Stokes building which is behind the Attorney General's office on King Street, we currently have three state agencies and they are paying 80¢ a square foot. The Department of Taxation complex which does have space available and is down south of town is priced out at 83¢ a square foot. Evergreen Plaza which is on North Carson Street has 20,000 square foot available at 70¢ a square foot. The budget office when they call for budget requests has each agency submit a space allocation guideline to them to determine whether or not the space is being requested by the various agencies is within general guidelines and it provides a certain number of square feet for each type of position and yesterday you asked me to price out or determine approximately what five positions would need and I determined three professional positions and two clerical positions which we were discussing at that time, plus a conference room with a library area and some space for file areas and reception area and it would seem that we would need about 1100 square feet and at 90¢ a square foot which is a little bit above the going rate now, but which will probably be about the going rate in the first year of the biennium - that would cost about \$12,000 and the following year 82/83 would cost about \$13,800. That would change somewhat because you have added an additional position here. We would have to add some additional square feet because you have increased the staff. I constructed the square footage needs based upon fairly liberal interpretations of the budget office guidelines. I went to the higher numbers.

Mr. Mello indicated Mr. Struve would probably like the remodeling.

Mr. Struve stated not necessarily. The space is there - it depends on where you are getting the most value out of your dollar. If this is a long term commitment, rental space we know is going to go up, so you have to amortize over the period of time we would be paying in rent what it is going to cost you to remodel. It is really quite simple. We will be happy to live with your policy. It just so happened the basement was available.

Mr. Bible's exhibit of office space available in Carson City is attached to the minutes of this meeting as EXHIBIT D.

The committee then discussed the recommendations of the Public Works Board, a copy of which is attached to the Minutes of this Meeting as EXHIBIT E. Mr. Struve stated that that was recommended by the Public Works Board because they felt it was necessary for certain handicap requirements. We believe that these requirements can be met as far as this office is concerned by extending that sidewalk.

Mr. Mello stated that he thought the problem we have is selling this budget to the money committees. I would hope that it would not be made more difficult by talking about remodeling.

Mr. Bible stated that in addition to the remodeling costs that Mr. Hancock advised the subcommittee of there would be an ongoing rent cost that would be charged by buildings and grounds to this office for use of the space and that would be about 1/2 of the figures I just quoted you.

Mr. Mello asked if Mr. Bible had anything else to add.

Mr. Bible indicated no.

Mr. Mello asked if Mr. Bible understood the direction.

Mr. Bible stated that when he read the bill draft that Mr. Mello had supplied him with yesterday there was no mechanism provided in there for the funding. Mr. Bible asked if he wanted him to work with Jan (Wilson) to create a fund to collect the monies and establish that sort of thing.

Mr. Bible stated he would work on putting together a proposed budget for the subcommittee.

Mr. Mello asked Jan Wilson how long she thought it would be before the subcommittee had something to work on?

Ms. Wilson stated it was really hard for her to know.

Mr. Mello stated that next week would be a short week for us.

Jan Wilson stated that she didn't think that the subcommittee would wait until after that. After next weekend you are talking about? That would be no problem.

Mr. Mello asked Ms. Wilson to let him know by giving some advance notice how you are coming with the draft so I can call another meeting. I don't want to wait any longer than we have to.

Mr. Mello asked if an evening meeting would be a problem to her.

Ms. Wilson indicated no.

Mr. Mello asked if there were any further comments.

Mr. Schofield questioned if the committee could go through what was discussed at this subcommittee meeting.

Mr. Mello stated that he really believed that going through it again would not serve any useful purpose at all, because we will have a draft here before long and I think that would be the time to do it. Mr. Mello indicated that he felt that if Jan (Wilson) will keep in touch with the committee and Larry that the committee should be able to come up with a pretty good piece of legislation by a week and a half or so.

Mr. Redelsperger indicated he had just one policy question and that is on co-ops.

Mr. Hardy stated that the way he sees the bill as constructed now is that the consumer office would not be involved in any matters involved in coops because they do not come before us in any rate hearings.

Ms. Wilson stated that she had noted that if the language isn't adequate that be sure that it is. If it is adequate keep them out.

Mr. Redelsperger stated that there seems to be quite a bit of concern on their part.

Mr. Mello indicated that hopefully we will not have that many changes when the bill is redrafted, but it would be a lot easier to go through it then, than to try and go back through all of this.

Ms. Wilson indicated she believed that would be a good idea.

Mr. Mello commented that he would like to be kept abreast of what is going on.

Mr. Mello stated once again, does anyone else wish to speak at this time regarding this draft?

Mr. Andy Barbano of the Coalition of Affordable Energy indicated he would like to speak.

Mr. Mello stated that if Mr. Barbano was going to back to the tariffs again, he would appreciate it if he would not do that at this time.

Mr. Barbano stated no he was not. With respect to jurisdiction, we seem to be swinging the other way toward limitation of jurisdiction and I would like to bring up two points. If we are talking about only having purview on intrastate matters especially before the Public Service Commission in Nevada and no authority for the advocate's office to take any activity for instance on a federal level, I can give you one specific example where the interest of Nevadans would be concerned on the federal level.

Sierra Pacific Power has a docket pending before the Federal Energy Regulatory Commission. It is Docket EC 80-9. Docket EC 80-9 involves an application to take over the service area of CP National Corporation from Winnemucca all the way to Elko. That is a very very major piece of work. Now it is a federal issue from the standpoint that unless the Federal Energy Regulatory Commission gives its approval, nothing can happen. The County Commissions and the City Councils in Elko and Winnemucca have already given their preliminary approval to that takeover. That takeover must be approved in Washington and must also be approved by the Public Service Commission of Nevada. As of yesterday, Sierra Pacific Power had still not filed with the Public Service

Commission of Nevada an application to take over the CP actual service territory but it had been filed on the Federal level. There are some significant issues to be discussed in that - in such a proceeding but if there were a consumer advocate's office in existence at this time on this very day, that - the Nevada Attorney General's Office of Consumer Advocacy would have no power to do anything in those proceedings because there would be no application before the commission but there would be significant issues to be discussed on the federal level and it affects many millions of dollars and a significant number of Nevada ratepayers, so the limitation of the office of consumer advocacy to essentially what is happening before the Public Service Commission in Nevada and not allowing that broad election of purview to go to the federal level when necessary might be a narrowing of the scope that could be unfortunate on some future day. By way of an example, and it is not the best example, the Ohio consumer advocate's office which has the largest staff in the country and a budget of over \$3,000,000 took the bull by the horns on a coal gasification case. There was a proposed coal gasification plant I believe being put together by a consortium of utilities and major oil companies in North Dakota to supply tremendous amounts of power to the entire Northeastern United States. It was considered quite wasteful and quite a bad use of public monies. The Ohio Consumer's Counsel's office, intervened in those proceedings on the Federal level and in North Dakota and was successful in taking the lead in stopping that huge coal gasification plant from being put into operation and saved ratepayers all over the northeast, including Ohio, hundreds of millions of dollars, because the plant was unnecessary, but without that authority to step up to the Federal level when the needs of your ratepayers are concerned, such things could not happen. And the CP National right now which is not before the PSC is a very good instance in point and I would strong urge for your consideration the allowing of that flexibility.

Mr. Struve stated that he was not sure there is really a problem in view of what Mr. Barbano said. I think there would be a problem if the Initiative Petition language were in effect because the Initiative Petition would restrict the consumer advocate from intervening in federal regulatory issues only in matters relating to subsection 1 which is to review applications filed with the PSC so there is a very clear limitation under the Initiative language. What we have suggested in subparagraph (c) is that the Consumer Advocate would have authority to get involved with any regulatory body or commission or agency which would include Federal. Having jurisdiction over any matters which the consumer advocate may bring before the Nevada Public Service Commission. Mr. Russell was questioning this particular area so I think that flexibility and the language is there - the only touchstone is it has to be a matter that would ultimately be within the jurisdiction of the Nevada PSC. If it was, even though it wasn't currently pending, there would be authority for the consumer advocate to get involved in this very thing.

Mr. Barbano stated in the case of for instance the need to intervene in the area of let's say gas exploration in Wyoming directly affecting ratepayers in Nevada but not being before the Commission it might not ever be, you might still want that flexibility which is not there now.

Mr. Schofield stated that that was his question too.

Mr. Struve stated that he hoped we did not get off the track. I think the current law, where you don't have an advocate, clearly the PSC does have jurisdiction over something that is brought before them. Under the proposal that you are now considering which would be this re-draft, there may be authority for the advocate to get involved as long as it was a matter that could come before the Public Service Commission at some point.

Mr. Schofield asked if the language in here does that.

Mr. Struve indicated that he felt it does and Mr. Russell is going to point out some language to tighten it up but that was the intent.

Mr. Mello indicated that he believed that something that was already covered was being addressed. He indicated he still felt it would be best to wait and see what the next draft is going to do.

Mr. Barbano stated he just wanted to bring that into focus because there are potential areas that need to be treated.

Mr. Mello indicated that they were holding up taking action on the Initiative Petition because we felt that we could come up with something better.

Mr. Prengaman stated that he had just a comment. He indicated that he strongly supports the consumer advocate and I have always done it, but I have to admit being a little bit uncomfortable with the idea that our consumer advocate is going to be involved in power plants in other states. At the very beginning we want that consumer advocate to be working for our people and rate increases which directly affect us. Maybe as time goes on and he gets a little stronger and an issue of regional interest or the type of issue that you raised comes up, maybe at that time we might want him to be involved, but in the beginning I see, at least in my own mind, the things that I want him doing and that is not necessarily involved in things in other states.

Mr. Barbano stated that energy is an international issue, not confined in the borders of any one area and there - I was simply bringing forward that there may be a case on some future date that would - by which the interests of Nevada would best be served by representation in some foreign jurisdiction.

Mr. Mello stated that the subcommittee would have some language on that.

Mr. Struve stated that as he understood it there is concern if there will be a misallocation of resources in matters that go beyond that of proceedings. From the attorney's standpoint all I can say is if a matter comes up that may be related to something of great significance to Nevada consumers you want the authority in the law for the attorney or the advocate to go in and participate even if the matter is not yet before the Nevada Public Service Commission. If that is a misallocation or there has been too much emphasis on that sort of thing, the adjustment will probably come through this oversight committee you are talking about, the budgeting process, particularly if you eat up an awful lot of these consultant fees to intervene in these kinds of cases, so I think you would have checks and balances in it. The key decision you have got to make is whether you are going to give them the flexible authority to do that if it becomes necessary or just limit it, as I indicated, which the Initiative Petition does do. Just simply matters that have already been filed and are pending before the Public Service Commission, so it is kind of a policy decision.

Mr. Mello indicated that he was sure that we were going to have a lot of debate on the bill - the redraft.

Mr. Mello asked Jan Wilson if she would let him know how she is doing.

Ms. Wilson stated that she sure would.

Mr. Mello asked if there was anyone else who wished to speak at this time?

There being no further business to come before the subcommittee, the meeting adjourned at 9:21 A.M.

Respectfully submitted,

Barbara Gomez

Barbara Gomez
Assembly Attache

SUBCOMMITTEE ON
CONSUMER ADVOCACY

March 13, 1981

INDEX OF EXHIBITS

- Exhibit A - BDR 58-1730
- Exhibit B - Memorandum from Larry D. Struve, Chief Deputy Attorney General to the Subcommittee on Consumer Advocate dated March 12, 1981 with regard to Proposal for Definition of "role" of Consumer Advocate.
- Exhibit C - Language supplied by Stan Warren of Nevada Bell.
- Exhibit D - Letter from the Department of General Services to Mr. Bill Bible, Legislative Counsel Bureau.
- Exhibit E - Letter to Assemblyman Donald R. Mello from the Public Works Board of the State of Nevada dated March 9, 1981.

SUMMARY--Creates division of representation in office of attorney general to represent customers of certain public utilities. (BDR 58-1730)

Fiscal Note: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to public utilities; creating a division of representation in the office of the attorney general to represent customers of certain public utilities; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 228 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

Sec. 2. The division of representation is hereby created in the office of the attorney general. The division shall, with respect to all public utilities except railroads, and aircraft and motor vehicle carriers:

1. Examine the basis for all proposed increases in rates or proposed modifications of service by public utilities before the public service commission of Nevada.

2. Request a hearing for any proposed rate increase or proposed modification of service by a public utility which, based upon its research, the division deems unreasonable or unjustly discriminatory.

3. Intervene in any administrative proceeding respecting any related matter which the division believes to have a potentially significant effect on the customers of public utilities.

4. Commence or intervene in any legal action to obtain judicial review of or extraordinary relief from any final order or other official act of the public service commission fixing the rates of or approving a modification of service rendered by a public utility if the division deems the order or act to be unreasonable or unjustly discriminatory.

Sec. 3. The attorney general shall appoint the administrator of the division of representation to a term of 4 years. The administrator:

1. Must be knowledgeable in the various areas of the regulation of public utilities;
2. Must be independent of and have no pecuniary interest in any utility or industry regulated by the public service commission;
3. Shall devote all of his time to the business of the division and shall not pursue any other business or vocation or hold any other office of profit; and
4. Must not be a member of any political convention or a member of any committee of any political party.

Sec. 4. The attorney general may remove the administrator of the division of representation from office for inefficiency, neglect of duty or malfeasance in office.

Sec. 5. The administrator of the office of representation may:

1. Employ the staff and purchase the equipment necessary to carry out his duties and the functions of the division.
2. Enter into contracts for the services of consultants and experts.
3. Examine during regular business hours the books, accounts, minutes, records and other papers and property of any public utility ~~or broker~~ that does business in this state, whether or not the document is located within this state.
4. Subpena and pay the fees of any witnesses necessary to conduct a hearing or other action in which the division is a party or intervenor.

Sec. 6. All public utilities, except railroads, and aircraft and motor vehicle carriers, shall provide the division of representation with copies of any proposed changes in rates or service, correspondence, legal papers and other documents which are served on or delivered or mailed to the public service commission.

Sec. 7. NRS 703.210 is hereby amended to read as follows:

703.210 1. The attorney general shall:

(a) Except as provided in [subsection 2,] subsections 2 and 3,
be counsel and attorney for the commission in all actions,
proceedings and hearings.

(b) Prosecute in the name of the State of Nevada all civil
actions for the enforcement of chapters 704, 704A, 705, 706, 708,
711 and 712 of NRS and for the recovery of any penalty or
forfeiture provided for therein.

(c) If the district attorney fails or refuses to do so, pros-
ecute all violations of the laws of this state by public utili-
ties and motor carriers under the jurisdiction of the commission
and their officers, agents and employees.

(d) Generally aid the commission in the performance of its
duties and the enforcement of chapters 704, 704A, 705, 706, 708,
711 and 712 of NRS.

2. Each district attorney shall:

(a) Prosecute any violation of chapters 704, 704A, 705, 706,
708, 711 or 712 of NRS for which a criminal penalty is provided
and which occurs in his county.

(b) Aid in any investigation, prosecution, hearing or trial
held under the provisions of chapters 704, 704A, 705, 706, 708,
711 or 712 of NRS and, at the request of the attorney general or
the commission, act as counsel and attorney for the commission.

3. In any action in which the division of representation is a
party or intervenor, the attorney general shall represent the
division and the commission shall employ private legal counsel.

Sec. 8. The attorney general shall appoint the first adminis-
trator of the division of representation pursuant to section 3 of
this act to a term ending December 31, 1984.

March 12, 1981

To: Subcommittee on Consumer Advocate

From: Larry D. Struve, Chief Deputy Attorney General

Re: Proposal for Definition of "role" of Consumer Advocate

Pursuant to your request, I asked our staff to work up a proposal for defining the scope of the proposed Consumer Advocate in the Attorney General's Office. The following has been prepared for your consideration and generally addresses the subject matter of Sec. 2 of BDR 58-1730. The authority of the Consumer Advocate is generally restricted in BDR 58-1730 to proposed rate increases or modifications of service. Our office believes there should be a broader definition of the role of the Consumer Advocate, as follows:

Proposed definition of role of Consumer Advocate in Attorney General's Office:

Sec. 1. "The consumer advocate [or division of public interest representation in the office of attorney general] shall have the following powers, functions and duties with respect to all public utilities, except railroads, and aircraft and motor vehicle carriers:

A. To conduct or contract for studies, surveys, research or expert testimony in or for all matters affecting utility customers' interests or the public interest in the regulation of public utilities. The public interest shall mean an interest or right arising from the Constitution, decisions of court, common law or other laws of the United States or of this State inhering in the citizens of this State or in a broad class of such citizens who may be represented by the Consumer Advocate as provided by law.

B. To examine any books, accounts, minutes, records and other papers and property of any public utility subject to the regulatory authority of the public service commission in the same manner and to the same extent as allowed by law for members of the public service commission or staff.

C. To petition for, request, initiate, appear or intervene in any proceeding concerning rates, charges, tariffs, modification of service, and any related matter (which the Consumer Advocate believes to have a potentially significant effect on customers of public utilities) before the public service commission and any court, regulatory body, board, commission, or agency having jurisdiction over any matter which the consumer advocate may bring before or

has brought before the public service commission and in which the interests of any utility customers represented by the consumer advocate are involved and to represent the interests of such customers.

D. To receive grants, contributions or other financial assistance from the federal government or any public or private corporation or individual and to expend such monies in the manner and to the extent provided by the laws of the State of Nevada.

E. To perform such other functions as may be necessary to carry out the powers and duties assigned by law to the Consumer Advocate.

Sec. 2 The Consumer Advocate shall have sole discretion to represent or refrain from representing the public interest and any class of utility customers in any proceeding. The Consumer Advocate shall consider in exercising the discretion provided in this section the importance and the extent of the public interest or customers' interest involved and whether that interest would be adequately represented without the action of the Consumer Advocate. If the Consumer Advocate determines that there would be a conflict of interest or any inconsistent public interests among the classes of utility customers involved in a particular matter, the Advocate may choose to represent one such interest based on the considerations in this section, to represent no interest in that matter, or to represent one such interest through the office of the Consumer Advocate and another or others through outside counsel engaged on a case basis.

Sec. 3. The Consumer Advocate shall employ such staff, shall purchase such necessary equipment, and shall enter into such contracts for the services of consultants and experts as are necessary to carry out the functions and duties of the office; but the staff shall include the following individuals:

- a. A person licensed to practice law in the State of Nevada, who shall function as staff counsel;
- b. A person knowledgeable in utility rate design; and
- c. A person knowledgeable in accounting and utility financial records.

Competitive filing proposed amendment:

DIVISION OF REPRESENTATION - Consumer Affairs
The ~~agency~~ shall have no responsibility nor shall it intervene in the filing of tariffs by telephone public utilities for products or services for which the utility certifies in such filing that such product or services is subject to competition.

STATE OF NEVADA
DEPARTMENT OF GENERAL SERVICES
BUILDINGS AND GROUNDS DIVISION
Capitol Complex
406 East Second Street
Carson City, Nevada 89710

ROBERT LIST
Governor

DIVISIONS
Purchasing
Printing
Data Processing
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March 10, 1981

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MEMORANDUM

TO: Bill Bible
Legislative Counsel Bureau

FROM: Mike Meizel
Buildings and Grounds Division

SUBJECT: OFFICE SPACE - CARSON CITY

LEGISLATIVE COUNSEL BUREAU
FISCAL ANALYSIS DIVISION

Per your request, I am submitting the following information.

Stokes Building - King Street

Administrative Office of the Court-----	2,080 s/f @ \$.80
Department of Education-----	19,739 s/f @ \$.80
Department of Energy-----	3,404 s/f @ \$.80
Vacant-----	750 s/f @ \$.80

Department of Taxation complex----sp. available 20,000 s/f @ \$.83

Evergreen Plaza (North Carson Street)-----20,000 s/f @ \$.70

If you have any additional questions, please contact me.

MM:b

576

Exhibit A

0-22



STATE OF NEVADA
PUBLIC WORKS BOARD

WILLIAM E. HANCOCK, A.I.A.
Secretary and Manager

Kinhead Building, Room 400
Capitol Complex
CARSON CITY NEVADA 89710
(702) 885-4870

March 9, 1981

IN REPLY REFER TO SUBJECT

RE Remodel Heroes Memorial
Building, #75-27

Assemblyman Donald R. Mello
Legislative Building
Carson City, Nevada

Dear Don:

As I advised your sub-committee, I estimate that the entire basement of the original Heroes Memorial Building can be remodeled to jointly house the proposed Consumer Advocate Office as well as providing additional space for the Attorney General so that more of his staff attorneys can be housed at the headquarters office for the sum of \$238,000. This solution would provide three private offices and the steno-reception area for the Consumer Advocate as well as a conference-library facility. It would also provide eight offices for attorneys plus a steno-reception area for the use of the Attorney General.

To remodel the basement only for the Consumer Advocate's Office would require doing almost two-thirds of the total remodeling in order to provide access to toilet facilities and a second means of egress. I would estimate that this remodeling would cost \$186,103.

Based on the above-noted figures, I would recommend considering appropriating the entire \$238,000 to remodel the basement.

I also advised the Committee that it would be desirable to include an elevator in that building which would serve not only the main building but the annex as well. However, because of the many different floor levels, the cost for the elevator would be \$323,000.

If I can provide you with any further information, please let me know.

Very truly yours,

William E. Hancock, A.I.A.
Secretary-Manager

/md

cc Senator Thomas Wilson
Larry Struve, Attorney General's Office

JOE DINI, JR.
ASSEMBLYMAN
104 N. MOUNTAIN VIEW
SPRINGTON, NEVADA 89447



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LEGISLATIVE COMMISSION

Nevada Legislature

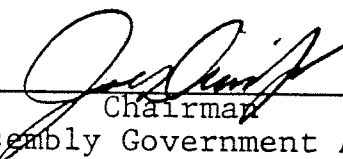
SIXTY-FIRST SESSION

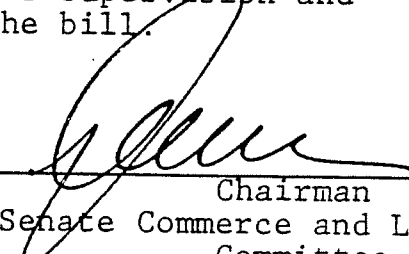
April 10, 1981

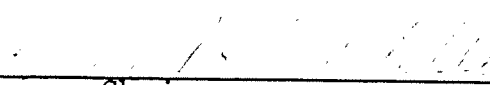
TO: The Attorney General of the State of Nevada

Re: A. B. 473

It is the intent of the Subcommittee on Government Affairs that the statutory powers and authority conferred on the consumer advocate in Section 8 of A.B. 473 are intended to enable the office of advocate for customers of public utilities, which is created in Section 3 of the bill, to carry out all of the purposes of A.B. 473 in protecting the "public interest" and the interests of utility customers represented by the consumer advocate. In this connection, the Subcommittee interprets the term "consumer's advocate" as used in Section 8 to include staff members and consultants who are employed by the consumer advocate in his official capacity and who are working under his supervision and direction pursuant to Section 5 of the bill.


Chairman
Assembly Government Affairs
Committee


Chairman
Senate Commerce and Labor
Committee


Chairman
Sub-Committee on Consumer
Advocate Bill