

MEMBERS PRESENT: Chairman Dini
Vice Chairman Schofield
Assemblyman Craddock
Assemblyman DuBois
Assemblyman Jeffrey
Assemblyman May
Assemblyman Mello
Assemblyman Nicholas
Assemblyman Polish
Assemblyman Prengaman
Assemblyman Redelsperger

MEMBERS ABSENT: None

GUESTS PRESENT: Please refer to the guest list attached to the minutes of this meeting.

Vice-Chairman Schofield called the meeting to order at 9:07 A.M.

Mr. Schofield stated that the first bill they would hear today was A.B. 660.

Mr. Patrick Pine representing Clark County testified first.

Mr. Pine stated that they requested Chairman Dini to introduce this bill primarily because we have a situation in Clark County that many of you may be aware of and that is that we are in the process of building a county parking garage in the downtown area of the City of Las Vegas adjacent to the jail that we will also be constructing and across from a new county office building. We have been for some time negotiating with the City of Las Vegas to share in some of the parking spaces that will be in that facility and the City has indicated that they have no objection to this particular bill because what it would really allow us to do. Under the existing law a county would not be authorized to charge for any public parking spaces within that parking facility and we simply want a mechanism by which we can charge for any public spaces which may be available within the parking garage itself as one means of financing that facility. We purposely restricted our ability to charge for parking to the facility itself. It would not give us any authority to charge for parking meters and so forth on the street and this bill is very important to us because it will be essential to some of our financing plans for that facility.

Mr. Schofield asked if there was any further testimony.

Mr. Mello moved for a DO PASS on A.B. 660, which was seconded by Mr. DuBois. The motion carried unanimously.

The next bill before the committee was A.B. 662.

Mr. Larry Lessly, General Counsel for the University of Nevada System testified first.

He stated that this bill is really a housekeeping bill as far as the University is concerned. It makes several changes which simply reflect the organizational structure which the Board of Regents has adopted and which the University is functioning under at this time. I would suppose that the major change of the bill contained in Section 1 and 2 indicates that UNLV is no longer a branch in effect of the University of Nevada-Reno. It indicates that there are two branches of the University and it also changes the seat of the University from the UNR campus to the office of the Chansellor. I would be happy to answer any questions about the bill.

Mr. Nicholas asked if the subpoena power ennumerated on page 8 is indeed restricted to only disciplinary hearings.

Mr. Lessly stated yes it is and he would also indicate that there is an error in the way the bill was requested with respect to subpoena power. We left out Clark County Community College. We would of course like Clark County Community College to have that subpoena power in Section 5 of the bill. It would be Section 5 on page line 27 or 28.

Mr. Lessly stated that with respect to subpoena power it has seldom been used.

Mr. Lessly stated that in his five years with the University it has never been used.

Testimony was concluded on A.B. 662.

Mr. Schofield indicated that the committee would hear A.B. 641 next.

Mr. Larry Lessly testified next. With me is Kenneth Partridge, a CPA who serves as the Vice Chansellor of Finance at the University System and we are here representing the Board of Regents with respect to this bill. This bill has several purposes. One to allow the University System Board of Regents to meet with its investment counsel when it deems necessary with respect to long range investment policy and also request the legislature to allow the university Board of Regents to meet with its legal counsel with respect to claims or litigation in which the Board may be involved in closed sessions. The third thing that it seeks is authorization for the Board of Regents to make decisions with respect to its investments between its regularly scheduled meetings of the board by means of a telephone vote and then report those results at the next regularly scheduled meeting of the board. As you all may know the Board of Regents as endowment funds which total somewhat in excess of \$15,000,000. These endowment funds are management by Nevada banks. There are two major funds and several minor funds. The two major funds total about \$14,000,000. Constitutionally the Board of Regents is required to make decisions with respect to investment of the funds

These funds are in no way contrary to the language of the editorial in the Reno paper yesterday. These funds are in no way taxpayer dollars as such. These are private funds that have been contributed to the Board of Regents. They are then managed by the Board of Regents through endowment and the proceeds of that endowment fund are used for purposes of scholarships for students. They are not appropriated dollars and they have nothing to do with operating dollars that are invested by the Board of Regents. They are funds that come from private individuals, alumni, corporations, whatever the source might be they are private funds.

The Board does not meet frequently and in order to take action, it takes a vote of five members of the Board of Regents. As you all know, the stock market and the entire financial market has been very volatile the past couple of years and we have had great difficulty on occasion in finding five regents to meet in an emergency situation when one of our managers, our banks, tells us that they anticipate some change in the market conditions which would necessitate either a purchase or a sale in one of the university endowment funds. On occasion we have lost money because we have not been able to call special meetings of the Board of Regents in an emergency, in order to get five of them together to make a change. The right to conduct that type of activity by telephone only between regularly meetings would greatly alleviate our problem with respect to protection of this endowment fund.

As to revision in the bill allowing the Board of Regents of the University to meet with its legal counsel in closed session with respect to claims or litigation, none of this legislation is new. This bill merely tracks the language of NRS 286.150. This section gives exactly the same rights that this bill seeks for the Board of Regents to the PERS Board. The university, perhaps more than any other State entity, is involved in litigation involving people. In the five years that I have been an attorney for the university and in the years that my predecessors have functioned in that capacity, there have been very few lawsuits filed involving anything other than faculty rights, faculty grievances, failure to be awarded tenure, failure to be awarded a promotion, allegations of sex discrimination, allegations of women being paid less than properly qualified males. Those are the types of litigation that we are involved in. Those are the types of litigation that I think properly should be discussed in private because they are confidential in nature. The second problem we have in not being able to meet with our legal counsel in a private session is that it certainly is not in the public interest to prohibit it. As an example, as you all know, administratively before you can sue the University you must present a claim to the Board of Regents. An attorney will normally come in and present a claim for some type of alleged form of discrimination for \$50,000 or \$100,000 and the Board is expected to act on it. I can't even advise the Board whether there is any merit to that claim or lack of merit to that claim other than open session. In many cases it is to the taxpayers' advantage to resolve those types of claims and litigation when litigation is filed by a University employee against the Board

Regents. It is difficult for me to have to advise my client that there is liability in a law suit in an open session and perhaps the plaintiff's attorney is sitting in the audience listening to that or they read about it the next day in the newspaper, or they see it on TV the next day. I think the public is entitled to have its dollars defended and represented by counsel on equal terms with the private sector and that is all that this bill asks. Again, I would indicate to you that it is not a new item of legislation. The exact provisions exist right now in NRS 286.150 for the PERS Board.

Mr. Schofield asked if there were any questions of Mr. Lessly.

Mr. Craddock stated that he had concern about Mr. Lessly's indication that this was something other than a public fund and it does not exactly fit squarely on all four with me.

Mr. Lessly stated that it is in fact public dollars yes. My point was that these are not appropriated dollars that had been given to the University to manage. These are funds that have come from private individuals. Yes sir, once they are given to the University they are public dollars. They are managed as a public trust but they are also managed by the Board of Regents with a little bit more than public trust, because let's face it, unless those funds are properly managed by the Board you are not going to get any additional private dollars. So the Board takes the management of the endowment extremely seriously.

Mr. Mello asked Mr. Lessly how much money we were talking about in the endowment fund.

Mr. Lessly stated approximately \$15,000,000. The majority of that fund is managed by First National Bank of Nevada. A smaller portion of it is managed by Valley Bank. The First National Bank portion is the University of Nevada-Reno Foundation Fund and the smaller portion is managed by Valley Bank and that is the University of Nevada-Las Vegas Fund. Another small fund is managed by Security National Bank for the benefit of the Fleischmann Planetarium and then there are other special funds which were created and which are managed by the banks. The two major funds and one smaller fund for the Fleischmann Planetarium.

Mr. Mello asked if most of these monies were invested in short term investments.

Mr. Lessly stated that right now they are invested in short term. We have gotten out of the stock market obviously. One of our funds has absolutely no stockholdings and we have gone from approximately a 60% holding a couple of years ago to no stock at this time. It was a wise decision.

Mr. Mello asked if the money was being invested in the State of Nevada.

Mr. Lessly stated yes.

Mr. Mello asked Mr. Lessly what the NRS number was that he had referred to earlier.

Mr. Lessly stated 286.150.

Mr. Schofield asked how often the investment in the endowment fund had to be moved so that it would be necessary where they couldn't get together. Mr. Schofield asked if Mr. Lessly would set an example.

Mr. Lessly stated that five years ago there was no problem. The market was really stable and we simply had our Regents meetings every six weeks or eight weeks and the banks came in with rather long range investment projections and advice to us. In the last couple of years, the problems have become acute. With the market conditions as volatile as they are, we have had calls from banks on Thursday afternoon saying folks we need to make a sale tomorrow morning or you are going to lose \$150,000 or \$250,000. I would say that over the last year that has occurred a dozen times between meetings. Now this does not include the advice that they may come to us with at a regular meeting and say we suggest that you get out of the stock market entirely at this point. We have had that type of advice lately. We are only asking for this authority for those occasions where a decision is absolutely imperative to preserve the corpus of that endowment fund.

Mr. Lessly stated there is a constitutional problem. As I indicated in my opinion and in my predecessor's opinion, the Board is charged under the constitution with managing the funds and the property of the University. The Board feels not only constitutionally are they required but morally they are required because these funds are given by private individuals to the Board of Regents to manage and again they have a very serious approach to indicating to private individuals that they do intend to manage those funds correctly in order that we keep private funds coming in. As you know, we need private funds at this point.

Mr. Lessly stated that we utilize a committee. It is known as the Investment Advisory Committee of the Board of Regents. That committee hears the recommendations from the money managers - the banks - but goes to the entire Board of Regents with its recommendation on each investment decision and again constitutionally in my opinion and my predecessor's opinion, it is the responsibility of the entire Board of Regents to make those investment decisions. In other words, we do not turn over to the banks the right to sell 500 shares of AT & T if they decide they want to in order to keep our fund functioning properly. They come to us and say we recommend that you sell 500,000 shares of AT & T and we proceed on that basis. The Board makes the decisions.

Mr. Redelsperger asked if they would be making investments without

public hearings by contacting the other board members by telephone.

Mr. Lessly stated that they would need to find at least five members of the Board of Regents who could be contacted by telephone and who would vote for any action.

Mr. Lessly stated that they manage the fund with three objectives; to preserve the capital that is presently there, to cause that capital to grow and to have a reasonable return. The return is all utilized and distributed quarterly - it is all utilized for student scholarships. It is not anything that goes into the operating budget and no decision is made to spend the dollars in the investment fund.

Mr. Redelsperger asked if this was all done in public.

Mr. Lessley stated yes. The distribution comes quarterly to us.

Mr. Ken Partridge stated that he could answer that question. He stated that most of the endowments that we do have - the earnings from these funds - are restricted by gift. There is no decision to be made as to where the money goes. Now if a certain donor will specify that this is a scholarship to be awarded to "X" type of students so the Board of Regents has their little discretion, as to where the money will be used once we earn it.

Mr. Lessly stated that there are very few unrestricted funds.

Mr. Mello stated that he was a little confused. He asked if they were saying that the constitution prohibits the Board of Regents from having investment counsel, other than a bank.

Mr. Lessly stated to make the decisions yes. Normally with normal trust matters, normal investment matters, corporate or private or whatever, you delegate to your money manager your right to make the decisions as to what you buy and sell. I am saying that under the constitutional provision we have it says that the Board of Regents will control the University, its property, its assets. That the Board wants to make that decision and I think constitutionally we are charged with making that decision as to what property they will buy, what property they will sell within their particular endowment funds.

Mr. Mello asked if they had investment counsel now.

Mr. Lessly stated yes we do. We have at least three banks in Nevada,

Mr. Mello stated other than banks.

Mr. Lessly stated that their money managers are evaluated quarterly.

Mr. Mello stated that he was not sure that he considered banks as investment counselors.

Mr. Partridge can give you the results of that evaluation. It is done by a rather reputable firm. That is made public, obviously.

Mr. Partridge stated that on a quarterly basis, the stock brokerage firm of Merrill, Lynch, Pierce, Fenner and Smith reviews the transactions that have been recommended by our money managers to the Board of Regents. Each quarter, and I happen to have one, the analysis that they have done on the First National Bank holdings.

As you can see by leafing through, there are quite a few analyses. I can leave this copy of the report for the committee if you would like to look at it. We do take the endowment fund management very seriously. It is perhaps the most widely monitored funds at the University of Nevada which is under their control. For instance, each year, the University is audited by an independent firm of certified public accounts. They are mandated by the American Institute of Certified Public Accountants to follow the industry audit guide for the audits of colleges and universities. This particular guide has set aside a full chapter to audit techniques and requirements for endowment and similar types of funds. Now every transaction that we enter into with these banks based on their recommendation and approval by the Board, is subject by statistical sampling techniques to review by this firm of independent certified public accountants. They put their signature on their letterhead on our financial statements. The endowment funds are part of our balance sheet. They also are part of the statement of changes in fund balance. They come into the Statement of Current Operating Funds and revenues and the financial footnotes. Note 2 is cash and securities with trustees. It lays it out just exactly by the dollar amount that we have in corporate stock, corporate bonds, government bonds, notes, mortgages and cash. So this is a fund that is first reviewed on a quarterly basis by a stockbroker and it is then reviewed on an annual basis by an independent firm of certified public accountants. I am responsible for the internal audit function of the university. In the seven years that I have been there, I have personally audited this endowment fund three times. So it is a fund that is very closely watched. Transaction by transaction. For example, on a monthly basis, I just happen to have the transaction report from Security National Bank. Every transaction that goes through their portfolio comes out on a computer printout from Security Bank. Every bank that has our funds provides us with the same type of an accounting, so any transaction that is handled over the telephone is going to be reported in Board of Regents' meetings and it is also going to come out on a monthly transaction report by the banks.

Mr. Mello asked in telephoning, the regent that you are talking to, are they receiving all information or only just particular information.

Mr. Lessly stated that we are not telephoning. The only thing that that regent would be contacted to make a decision would be the recommendation that our money manager was making with respect to a transaction. Only that.

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Mr. Mello questioned if there would be policy making over the telephone.

Mr. Lessly stated no.

He further stated that the recommendation would generally be instituted by our money managers, the banks. The telephone call would probably concern something to the effect that we recommend that you buy or sell "X" number of shares of "XYZ" corporation. The reason that we recommend it at this particular time is that we feel the market is going to go up in the next thirty days or go down in the next thirty days and we recommend either moving into the market or getting out and taking advantage of a profit or cutting a loss short. It would be that type of a telephone situation.

Mr. DuBois asked if their need for immediate decisions primarily on short term investments.

Mr. Partridge stated that basically it would depend on the economic condition at that particular time in the marketplace.

Mr. Lessly stated that the best example they could talk about as far as the problems we have had have been recommendations from money managers that you sell "Y" stock or "X" stock immediately. We think the market is going to take a plunge tomorrow morning and you had better be out of that stock or you are going to lose \$200,000. So it has been primarily emergency situations with respect to stock transactions in the past.

Mr. DuBois asked how much of their investment was involved in stock.

Mr. Lessly stated none in the First National Bank investment portfolio at this time. We have had as much as 60% or 70% involved and invested in stocks in the past. Our money manager said get out and get your money into short term investments and bonds and we have done that and I would think that if their investment advice turns out to be correct which it appears to be we stand to make a substantial increase in the endowment when we get back in the market.

Mr. DuBois asked if they were out of the stock market right now.

Mr. Lessly stated that was correct.

Mr. DuBois asked if their primary concern was in bonding - short term bonding?

Mr. Lessly stated bonds and short term treasury bills.

Mr. Partridge stated that at any given time the stock market could slide about 40 or 50 points. We saw it go down about 40

points this past month and it could drop down to a level where they feel that they should move out of the short term investments and get back into the stock market to take advantage of another rise that we might possibly see.

Mr. Lessly stated that they might not have a regents meeting scheduled for thirty days at that time.

Mr. DuBois asked what their yield had been.

Mr. Partridge stated that the University operates a little bit differently than a lot of people. We operate under a total return concept in which we are interested in obviously the interest earnings and capability of our funds as well as the growth. On a total return concept we have been in the neighborhood of 12%.

Mr. Craddock stated that he was concerned about the accuracy of the money manager recommendations. While you may on occasion have a recommendation on Thursday that you have to do something on Friday or you will lose \$150,000 by Monday, while that may be the case, the reverse also applies. If you follow the money manager's recommendation, the possibility of a loss also occurs. Do you keep any record on the amount of times that the money manager's recommendation is in fact accurate.

Mr. Partridge stated that that is what their quarterly performance analysis does to us.

Mr. Craddock asked if they included the recommendations which are in fact not followed?

Mr. Partridge stated that generally the Board of Regents follows the advice of the money managers.

Mr. Lessly stated that there have been occasions where we have not been able to follow advice of money managers because of the inability to hold a meeting and we have lost. Mr. Craddock stated that that was the point he was looking for. Is there any record of the recommendations that have been made that have not in fact been followed?

Mr. Partridge stated that he did not think that they had a written record. We have never kept track. We do have a member of one of the banks here that could probably give his view on this type of a problem that they have.

Mr. Mello stated that if the money manager was not doing his job that he would not be retained.

Mr. Partridge stated that that was correct and that was the purpose of the review.

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Mr. Nicholas stated that he wanted to come in from a little different angle. He stated that the purpose of this was to maintain some secrecy insofar as investments are concerned as to not allowing the press to be privy to the decisions made.

Mr. Nicholas asked if that was essentially the purpose.

Mr. Lessly stated no that was not the purpose at all. The purpose of this is to give the Board of Regents the same latitude with respect to its investment decisions that the PERS Board does and to provide for those situations between regularly scheduled meetings of the board where we've got to make a decision.

Mr. Nicholas stated that in the past these decisions have basically been made under public scrutiny, including the scrutiny of the press. Has there ever been a single occasion in which the press has blown it for you where you have not made money because some reporter has come out with a story that apparently has given the story to other investors. Has this ever happened.

Mr. Lessly stated that would not be a situation that would occur because I have never seen a member of the press attend a meeting of the investment advisory committee of the board of regents.

Mr. May stated that Mr. Lessly had stated that he had requested this legislation.

Mr. Lessly stated that the Regents had requested it.

Mr. May asked if he took a bill draft to the bill drafter or just a concept.

Mr. Lessly stated that he believed the Chanselor requested from the bill drafter legislation similar to that being utilized by the PERS Board.

Mr. May stated that they were seeking to amend NRS 396.100, but NRS 396.110, which is not in the bill, says the Board of Regents shall have the power to prescribe rules for (1) its own government, etc. Would it be acceptable if it were amended to add a number 3 to that to have the Board of Regents then prescribe the rules for management of the endowment fund and put the burden back upon the Regents themselves.

Mr. Lessly stated that he thought that they would be receptive to any amendment that would allow us to accomplish what this bill seeks to do. The main problem we are concerned about is the open meeting law. The provision in the open meeting law that simply prohibits these types of votes being taken between regularly scheduled meetings and the attorney general's manual clearly says you don't have telephone votes.

Mr. May stated that they do have constitutional protection. It is sort of a gray area.

Mr. Lessly stated that he felt that the board would be more comfortable if the legislature gave it the express authority. Obviously we do have some constitutional authority different than other State agencies. There has been a lot of work done on the relationship between the legislature's power and the power of the Board of Regents with respect to the University and the Newman report done several years ago indicates it has to be a team effort and that the fact that the legislature may not have some power with respect to the University or the University may seek from the legislature the guidance that is necessary to statutorily provide for things that may be within the constitutional power of the Board of Regents. We would feel more comfortable with the statutory authority.

Mr. Schofield asked what they have been doing in the past.

Mr. Lessly stated that they have been attempting to find five regents and in many cases we have found five in Clark County where the larger number of regents happen to reside. On other occasions we have had to get Mr. Ross from Carson City, one of the regents from Reno and fly that regent to Las Vegas, hold an emergency meeting of the Board of Regents in order to make that determination. There have been occasions to indicate that we could not find five regents. We knew where they were, but we could not get them physically together.

Mr. Schofield stated that he thought that that was a question asked earlier.

Mr. Lessly stated that he is aware of two instances himself and Mr. Partridge might be able to comment on more where a recommendation has been made by Valley Bank regarding the UNLV fund and we were unable to hold those meetings. Ken (Partridge) might be able to comment more on that.

Mr. Partridge stated that at one point Valley Bank was attempting to try and get some of the Regents together virtually every Friday afternoon and it became such a burden on the Regents that they really discouraged this action that on Friday afternoons either a lot of them are either involved in business activities or they are trying to get away for the weekend and they just really are not too agreeable to one of them at least having to leave or possibly two, leave Reno early Friday morning, devote the entire day to a fifteen minute decision process and come back late Friday evening. For instance on March 11th, we were able to get five members of the Board together in Las Vegas, Regent John Tom Ross flew from Reno to Las Vegas as you are all aware now just to fly down there it is about \$100, plus or minus. On that particular day, Valley Bank had some recommendations to sell three different stocks. As a result of being able to sell those we realized a \$20,749 profit that day. Also, First National Bank had a recommendation on three different stocks in one of our smaller endowments, the McMillan Endowment Fund, and we were able

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to cut some losses short in that particular fund. In the main endowment pool they had a change in five different issues and we were able to take an advantage of \$270,157 gain. We are not talking at times of small amounts of money. It is a real gain and over the course of the year if you can get together and make telephone decisions you can take advantage of smaller upturns in the market and realize smaller gains, but over the year's period of time, they add up.

Mr. Schofield stated that it just seemed funny to him that it could not be done within the investment group - I can't quite see where the problem would be within the investment group if the board of regents would take action on a situation relative to their investments.

Mr. Lessly stated as was indicated, the constitutional authority of the Board - there is not a great deal of law in it in this State - there is one decision - the King Decision - it is a gray area. Again, I would indicate to you that the Board of Regents would prefer to legislatively have this provision enacted and have the legislature provide that power to them the same as you have with respect to the PERS Board. It is just a safer situation as far as I am concerned, legally also. I would not prefer to advise the board that you have that constitutional power and we begin to make those investment decisions and then have some judge tell me that we don't have that constitutional power in a lawsuit.

Mr. May asked what the King decision addressed itself to in case law?

Mr. Lessly stated that the King decision had to do with a provision by the legislature to provide for an advisory group to the Board of Regents which group was to have State stature, act as State officers, the decision is a very long decision, probably 30 to 40 pages and it goes into the powers of the Board of Regents and indicates that the legislature had exceeded its power in trying to in effect interfere with the constitutional authority of the Board of Regents to manage the University by recruiting that advisory group and giving it any power whatsoever.

Mr. DuBois referred to Section 2 and stated that that seems like a long range matter that should be open to the public and he further stated that he could not understand why you would be talking about objectives and planning decisions.

Mr. Lessly stated that some of the controversial things that are happening today in the issue of investment of university funds not necessarily in this state, but it has come up several times, but not where there is an great furor about it. Obviously there have been universities who have been criticized by the public and by alumni for investing in stock in stock in South Africa because of the racial policies in that country. There have

been questions in our investment advisory meetings by some persons concerning the advisability in investing in stocks in the tobacco market, in the liquor industry, in the gaming industry. Those types of things are the types of things that ought to be discussed confidentially, I think. They are sensitive issues. We get into those types of decisions when we talk about long range investments. Will we in fact invest in a company that does business in South Africa or in a South African stock? That is the type of decision I think that a private meeting lends itself toward the full discussion of that issue.

Mr. DuBois stated that he did not see why they would have to have a closed meeting for that. I could understand the possibility of a short term immediate decision, that is very clear, but you are talking about making policies here and having a closed meeting on long range investments.

Mr. Lessly stated that they were talking about doing exactly what the PERS Board does.

Ms. Dorothy Kosich, a member of the National Freedom of Information Committee for the Society of Professional Journalists and the newswoman employed here in Carson City and I might add a graduate student at the University of Nevada-Reno, testified next. She stated that in the past when she had appeared before this committee you have superbly guarded the open meeting law and any attempts to weaken it. I am trying today to urge you to continue your policy. You have already determined that property transactions should not be discussed privately. I think property transactions are about in the same category as investments. You did not want to permit any further weakening of the strong prevention against attorney/client privilege discussions unless they were extremely vital. Now, UNR has just admitted to you and I quote "The public is entitled to have its dollars defended". He has just said it is the public dollars despite the fact that it is private donations and if they are spending private money for the public, I believe the public has the right to have the input and the say on how those dollars will be invested. The university is important - the public has a vital interest in it and they have a right to participate in discussions involving these investments. They also have a right to assure that these investments will be conducted honestly and openly. Another thing that bothers me is these votes by the telephone. You know, with all the best intentions in the world one can have a telephone conversation and ask your opinion on investment but also there might be some questions asked of another subject matter. It is only human nature. That means there will be discussions going on perhaps on things other than the investments. Who is to keep tabs of what is discussed in these telephone conversations during the votes. If you allow this precedent to be set to allow votes to be conducted by telephone, next it will be something else. A sports pavillion for local governments they may want to start conducting their votes by telephone. I argue that if you weaken it even slightly you may give some legal precedence

to allow even further violations of the open meeting law. Now Mr. Lessly argued about the litigation involving personnel matters. It has already been determined by your group and the courts that personnel matters can be discussed in closed personnel sessions and I would argue that that includes litigation involving personnel matters. The other thing I kind of objected to was that if they are allowed these privileges even if they are a different branch of government, what is to stop local governments from walking in and saying, hey, you allowed the board of regents to take votes by telephone, you allowed the board of regents to discuss their finances behind closed doors, local governments make financial investments all the time and strangely enough it seems that their staffs are able to handle it, and when it is discussed, it is discussed in an open meeting. Why should the University of Nevada Board of Regents be privileged? I have a hard time understanding that.

Another thing I might point out is the University of Nevada has been in trouble before for violating the open meeting law and there are some things that are not quite clear and I do have some question that they will be able to keep to the absolute straight and narrow if they are allowed to go ahead and have this bill passed. I would urge you to stand on your previous position - not to weaken the open meeting law, because I guarantee you, this bill will open the barn door for the horse and everybody will come in and want changes and privileges for themselves.

Mr. Nicholas referred to the telephone situation and asked Ms. Kosich if there was a system at UNR now whereby meetings have been held with the telephone hook-up with reporters present?

Ms. Kosich stated it was the UNITE system. I participated in one of those.

Mr. Nicholas asked how that differed from what she saw in this bill - that is would you be in favor of the UNITE system and not in favor of this and why.

Ms. Kosich stated that if reporters were present and members of the public can be present, I have no problems with conducting things by that conference call situation where you are allowed to listen to what goes on, which you can do with the UNITE system, but if you conduct it by telephone, unless it is a conference call that is very elaborate, there is going to be no opportunity for the public to hear what is going on and there is going to be no opportunity for their input and I will tell you right now I have a strange suspicion if they make the phone calls they are not going to put a notice down saying that there is a public meeting and we are going to make these calls. They are just going to go ahead and make these calls and hold the discussions and give no one a chance to hear what goes on and that is where the difference is I believe.

Mr. Nicholas asked if she would be in favor of utilizing the UNITE system here if logistics could be put together in a fairly rapid methodology.

Ms. Kosich stated that she thought that it was an excellent idea. As long as they continue to go by the open meeting law and at least notice - well Mr. Lessly says nobody ever attends - he may be right there but at least the opportunity should be there for somebody to attend and to have input and I wouldn't mind using the UNITE system if it was noticed and followed the open meeting law. I have no problems with the logistics of that.

Mr. Nicholas stated that they understood that it would have to be streamlined to take care of these time considerations but would you consider that that might not be a bad direction to investigate.

Ms. Kosich stated that it was her personal opinion that it was a good idea to investigate, if it were noticed.

Mr. May asked if Ms. Kosich would explain the UNITE system to him.

Ms. Kosich stated that she was not the best one to explain it but basically what it is is that the University Office of Communications set up sort of a network throughout the State and in each county you are able to have microphones set up to make transmissions back and forth and like for example when I participated there were 17 different areas that actually participated in a State-wide dialogue at the same time on the first amendment. You were able to listen over a loudspeaker on what somebody was saying in Las Vegas and you just hit your microphone and you were able to talk to that person in Las Vegas while people throughout the State could hear what you were saying. It is just like it would be a monumental conference call is what it comes down to where everyone could hear and everyone could participate in the discussion and it is great because they use it now to teach students in outlying areas. They have actually used the UNITE system to teach classes where the professors were not able to make it out there and apparently it has worked very well. It has been in existence for about I think a little over a year.

Mr. Nicholas stated that he had seen official votes taken by official state agencies over the UNITE system and they have been accepted and also subject to litigation in the event that it could occur and they have not been questioned, so the answer has to be an obvious yes.

Mr. May asked if they had a shorthand reporter or some kind of a secretary who takes official minutes?

Mr. Nicholas stated yes. It is also recorded.

Mr. Craddock stated that he shared some of Ms. Kosich's concerns but one that you stressed and were concerned about was other

discussions which may take place as a result of a conversation between two people. Quite frankly, so long as these two people don't constitute a majority of any particular body, I couldn't care less what they talk about. So on what do you base your concerns about additional conversation which may occur when they attempt to take a vote?

Ms. Kosich stated that she had noticed, and was referring to a local government she could think of, before votes are taken one sits there and kind of goes into the bathroom and has coffee and says how about going this way? I don't like things like that and I don't like any business being discussed outside of the public and that just bothers me. I realize it may sound not sensible to allow any discussion whatsoever, but I would just like to be able to force as much business as possible to be conducted as possible within the public scrutiny and that is my feelings on that.

Mr. Craddock stated that two members of a five member committee can sit down and discuss anything they want, so I really don't have any concerns about additional conversation.

Ms. Kosich stated that they sure had better not vote and if they do discuss things and it can be shown that in any way, shape or form the attorney general informed us that because of those discussions some action was taken, there is a possibility that the action could be voided too.

Mr. Craddock stated that it could be shown that perhaps there would be a possibility that some information could be lost if two members don't talk. Do you think for one minute that I don't talk with my colleagues here.

Ms. Kosich stated that is true, but as long as you don't take a vote and say yes I am going to vote on that for you I won't feel so bad about it, but if you are calling to ask me for a vote, I have some problems with that if I were an elected official. I don't mind you talking, I am not being ridiculous, but I do mind if you are having a vote.

Mr. DuBois referred to the UNITE system and asked Ms. Kosich if she would agree that if the press received a 12 hour notice of a meeting, would that be sufficient.

Ms. Kosich stated no, that bothers me. I am sorry but so many times just about anything can be declared an emergency and it kind of scares me and I think that if they have to meet every Friday to discuss investments, fine, then notice the meeting three days ahead of time and discuss those investments. If the University is going to go broke and it is an absolute crisis if they don't make the investments, maybe I would go along with that. I am not so concerned for the press - I am more concerned with the public's access to things than I am for the press. We represent the public and I want to make sure that the public can get in for

sure to talk about things and just because I know doesn't mean that maybe John Q. Public didn't want to have something to say about those investments himself and that is what bothers me. That's why I would like to see them try to stick as much as possible to the open meeting law and if it is a crisis, sure there are exceptions, but I think mainly they should try to say every Friday we are going to get together on maybe the UNITE system and discuss investments, fine, then do it.

Mr. DuBois stated that perhaps if they were faced with a large loss the next morning they might not have the opportunity to do that.

Ms. Kosich stated that that might be constituted as an emergency.

Mr. Mello indicated that Ms. Kosich stated that the press represents the public. He asked Ms. Kosich if she did not think that the Board of Regents did.

Ms. Kosich stated that she thought they did, but sometimes I have noticed, having worked in government myself, you get caught up in your own little things and you don't want things discussed publicly and you are not quite certain if this or that should be brought up and you can't see the forest for the trees when you are part of a little group and that happens sometimes.

Mr. Mello stated that he thought that the press had that problem too.

Ms. Kosich stated yes we do on occasion. I will admit to it. That is why there are national committees to discuss national issues.

Mr. Bob Ritter, Executive Editor of the Gazette and Journal in Reno, testified next. Mr. Ritter stated that he would like to speak against A.B. 641 as a representative of both my newspapers and the Nevada State Press Association. It is my belief that both of the proposed changes in NRS 396.100 are in serious conflict with the spirit of open government. Indeed they are in conflict with Nevada's open meeting law. Investment of public money is the most vital activity of government. To allow discussions of investment policies to be held in secret would be to show a blatant disregard for the principles of democracy. To suggest that regents be allowed to make investment decisions on the telephone invites allegations of illicit activity and the possibility of favoritism. Such allegations whether true or not invite further public questioning of government credibility questions which cannot be afforded in this time when American institutions are already facing challenge at all levels. Instead of denying public access it would be far better if regents were to set a clear policy regarding investment procedures and allow the university staff to carry them out. I would suggest that while regents are responsible for investments, the peoples' money will be protected far more satisfactorily and with greater

continuity of practice if the job is delegated to an expert. I might add that congress is charged with providing for an army and navy, but I think we would have a lot more dead soldiers if congress made the decisions on the battlefield. I think that is a volatile situation too, perhaps as volatile as the money markets.

Assemblyman May's suggestion, which Assemblyman Schofield also mentioned, seems to parallel the practices of investment counsellors corporate traders in the corporate world and while I realize we are not talking about a corporate situation when we are referring to the Board of Regents, I think some of their management practices whereby the board of directors if you will, does set investment policies and investment procedures which had better be followed by the corporate staff. I think there are some possibilities in that area.

In the area of allowing closed meetings for discussion of litigation, I would suggest that this committee again demonstrate its commitment to open government by dealing with this matter in the same matter in the same way you dealt with A.B. 57 earlier in the session. As you will recall, you voted to reject a similar provision which would have amended the open meeting law. Again I ask you to consider the possibilities of abuse. The proponents of this legislation argue that they are entitled to an attorney/client relationship and that they need secrecy to plan legal strategy and to protect the public interest. Let us consider the situation where legal counsel believes the wisest course of action is to simply pay off a potential litigant rather than face the penalty which might be levied by a judge. The decision is made in secret. There are no arguments presented. The case is decided. The people are the losers, financially, ethically and perhaps morally. This committee rejected the proposal to allow secret meetings with attorneys when it considered amendment to the open meeting law. I urge you to reject this change.

I am asking you to protect the basic rights of Nevada's citizens to share and contribute within the Democratic process. I hope you will again respect our system of government.

Mr. May asked Mr. Ritter for his opinion of using the UNITE system together with a reporter or secretary to take verbatim minutes.

Mr. Ritter stated that he saw some real problems for the University. I respect their need for speed in these matters being somewhat familiar with the money market just on a corporate basis. I think if that procedure could be used in an expedient manner, I have no problems with it. I wonder however, about the management principles which are coming into play here. I really question the management principles of the regents if they are in fact going to make every decision about the shifting of their funds.

Mr. DuBois asked Mr. Ritter if he found some problem with the second paragraph.

Mr. Ritter stated yes. I don't think that the peoples' money can be

spent in secret and basically if we accepted the practice by the Regents of setting policy and investment guidelines, I think that has to be done in public. I might also point out, the way this is written although they speak about the endowment funds, the way I read this, I don't think it matters whether it is State money or endowment funds or anything else. This language to me is wide open.

Mr. Schofield stated that he agreed that the policies here gave it a broad scope.

Mr. Pat O'Driscoll, President of the Nevada Professional Chapter based at the northern end of the State of the Society of Professional Journalists, Sigma Delta Chi, testified next. Mr. O'Driscoll's testimony is attached to the minutes of this meeting as EXHIBIT A.

Mr. Gerald Prendeville representing Common Cause in the State of Nevada and I start this out by saying Honorable Members of the Assembly and I feel like saying Dear Friends because I feel very close to you wonderful dedicated men.

I respectfully ask you to vote against this bill for the reason that - a different reason. It would shut out the public from the input process, and the thinking processes involved in some very important decisions. At the same time the Board of Regents under this would limit itself to a minimum of information regarding the topic under consideration. Most of all this bill would permit the Board of Regents to spend the taxpayers money in secret whereas it should be done openly where the public can be knowledgeable regarding decisions under study. A.B. 641 would prevent of all groups, members of the assembly, members of the legislature from finding out what is being done with monies, some of which have probably been appropriated by the legislature. I know there is great talk about endowments, but some of that money is certainly coming from you. I speak as a former University Dean and University Professor. Proponents of this bill are paid servants who wish to operate the university system for their bureaucratic convenience rather than for the public interest. They don't seem to realize that the voters in 1980 are really with it. The secret deals of the past are for the birds in an electronic age. Open accountability is the only way to insure integrity of governments of the university of Nevada system and that far outweighs any bureaucratic inconvenience. I want - you know that within the past three months since we met the last time on this subject, the attorney general did consider legal action against the board of regents for violation of the open meeting law, so the danger is here. I want to congratulate some of you gentlemen. Assemblyman May and Schofield talked about the fact that if a policy is organized you don't need to have these quickie phone meetings. Congratulations gentlemen.

Assemblyman DuBois said the same thing in another way. He was concerned about these emergency immediate investment bits and what probably - I don't want to put words in his mouth, but immediately when he started asking questions about emergency

immediate investments, you are talking about some guy on the Board of Regents that has some dog investment and he wants to get his nickel's worth and he is going to do it on the phone and that is the way you do things that the public does not appreciate.

I would like to compliment Assemblyman Craddock that gifts to the University do in fact represent public funds. Further, I suggest that gifts are not given to the Board of Regents, they are given to the University and the Board of Regents is entrusted by the public to guard said gifts.

I likewise agree with Assemblyman Mello that the banks may not be the best investment counsellors and when they can only get 12% roughly out of \$15,000,000 today, something is wrong. You know that you and I could go to any savings and loan right now and pick up 15-3/4 and it had been higher than that six or eight months ago. I wonder if something is basically wrong in a situation where no written record is kept concerning the Board's recommendation to money managers that have not been followed. That was Assemblyman Craddock's point. If they are going in and out of stocks where they have to do it on a quickie phone call on Friday afternoon when the stock markets are closed, something is fishy in Denmark. Maybe the Assembly should take this over. Maybe the Assembly needs to watch these funds more closely. I trust you gentlemen implicitly and maybe there is something in that. The public has every right and every responsibility to be advised personally and through the press and the media regarding both investments and legal decisions and I respectfully ask you gentlemen to please vote against A.B. 641.

Mr. Tom Josephsen with Security Bank testified next. We are one of the three banks managing portfolios for the University and contrary to the prior opinion, I would say that the investments would benefit by being approved over the telephone. Now if we look back and take a look at the first week - the first seven days in May, the Dow Jones Industrial Average is down 60 points. Now based on having to get a meeting with the Board of Director who would not have been able to take any investment policy making decisions in the portfolios that we or any of the other banks manage. The one major thing that we are looking at for such a fast move - 60 point movements in seven working days - is there are two things in the Dow Jones Industrial Average that are of importance to us. One is the support area and the other is the resistance area. Now if a stock moves out like American Can did and it went up 11 points - a \$30.00 stock up 11 points in just two weeks you want to take your profits in that and get out so basically I would say that both the market and the stocks held in the portfolio would benefit from being approved from either a purchase or sale over the telephone.

Ms. Esther Nicholson, representing the League of Women Voters testified next. Ms. Nicholson stated that they have been interested in open meeting legislation from the beginning. We have been happy

that the Assembly was the body that has been much more supportive of open meeting legislation in general than the Senate has. It has been detailed, and I could detail it still more, but there isn't time. We could quibble about whether this is a Republican government or a Democratic government, but I think in the minds of the world, the United States is considered one of the democracies of the world. Democratic government is slower, it is perhaps less efficient, it is perhaps more expensive, but I doubt that any of us would opt for a dictatorship. The dangers of closed meeting government far outweigh the advantages. I was, as has been pointed out by other speakers, particularly disturbed at allowing investment policies to be made in closed session. Investment policies today in the minds of many people who have very strong feelings about it, have moral implications as well as financial implications. Various things in the minds of many people had a moral implication and whether or not the public money which should be invested in things that the public has a right to at least express their opinion on I think is a very dangerous precedent. I think that the highest possible return on public money or corporate money should not be the only criteria in determining where that money is to be placed. Corporations - you read constantly about stockholders meetings at which many, many people come and protest certain investment policies because they do not feel that is where money should be used and regardless of how the decision comes out, I think the public has a right to express their opinion as to where they want public money to go - to be invested. Therefore I do hope that you will vote a do not pass on A.B. 641.

Testimony on A.B. 641 was concluded.

Mr. May moved for a Do Pass on A.B. 662, which was seconded by Mr. Nicholas. Mr. May revised his motion for an Amend and Do Pass on A.B. 662, which was seconded by Mr. Nicholas. The amendment was to add Clark County Community College. The motion carried unanimously.

Mr. Nicholas asked if Mr. Schofield would consider a motion on A.B. 641 at this time.

Mr. Schofield stated that he would.

Mr. Nicholas moved for Indefinite Postponement of A.B. 641, which was seconded by Mr. DuBois.

Mr. Schofield stated that he believed that perhaps they could come up with an investment policy that would handle their problem at the University and that the policies would be approved within a public meeting.

Mr. May stated that there are two places in the Constitution where the legislature is required to prescribe by law the duties and in one place I believe by regulation the duties of the Regents.

Mr. Nicholas stated that he would also like to recommend that the University investigate their own system - the UNITE system and to

see if some methodology cannot be used under existing law to utilize it. It is a darn good system.

Mr. Schofield stated that there was a motion on the floor and if there was no further comment on it - all of those in favor of Indefinitely Postponing A.B. 641 - The motion carried unanimously. Mr. Polish voted no for the Indefinite Postponement of this bill. Mr. Dini and Mr. Prengaman were not present at the time of the vote.

There being no further business to come before the meeting, the meeting adjourned at 10:27 A. M.

Respectfully submitted,


Barbara Gomez
Assembly Attache

ASSEMBLY GOVERNMENT AFFAIRS COMMITTEE

GUEST LIST

Date May 9, 1981

PLEASE PRINT

<u>PLEASE PRINT YOUR NAME</u>	<u>PLEASE PRINT REPRESENTING:</u>	<u>I WISH TO SPEAK</u>		
		<u>FOR</u>	<u>AGAINST</u>	<u>BILL NO.</u>
✓ Ken Partridge	Wat Nevada System	✓		AB 641 AB 662
✓ Larry D. Lessly	UNS Bd. of Regents	✓		AB 641 AB 662
✓ Dorothy Kosich	Society of Professional Journalists NAT Comm.		✓	AB 641
✓ Patrick O'Driscoll	Society of Prof. Journ.		✓	AB 641
✓ Bob Ritter	NEW Newspaper Nevada State Press Assoc		✓	
✓ Patricia Fine	CLARK COUNTY	✓		AB 660
✓ Gerald Prindiville	Common Cause		✓	AB 641

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Nevada Professional Chapter Society of Professional Journalists, Sigma Delta Chi



May 19, 1981

TO: ASSEMBLY GOVERNMENT AFFAIRS COMMITTEE

FROM: NEVADA PROFESSIONAL CHAPTER, SOCIETY OF PROFESSIONAL
JOURNALISTS, SIGMA DELTA CHI

RE: AB 641

My name is Pat O'Driscoll, and I am president of the Nevada Professional chapter of the Society of Professional Journalists, Sigma Delta Chi, a national organization representing more than 35,000 professional working and student journalists.

Yes, I'm back again. Three months ago I sat here, along with other journalists and concerned citizens, to defend our state's Open Meeting Law from those who would bar citizens from the deliberations of government bodies in legal and real estate matters.

We were glad to see you agreed with our arguments and shelved the offending legislation, AB 57.

Unfortunately, someone didn't quite get the message of your vote and now is back taking another shot at undermining the high standards of openness and truly public government we place on Nevada's public bodies.

AB 641 was crafted with just that in mind; and it cleverly attacks the "problem" by not taking on the Open Meeting Law itself, but rather the laws that govern the specific duties and procedures of the University of Nevada Board of Regents. The board would be allowed under this ridiculous bill to bar the public from its meetings when the talk turns to lawsuits and financial investments.

Surely you remember the Board of Regents. That's the bunch whose hands were slapped in February by the attorney general's office for numerous "procedural violations" of the Open Meeting Law during a meeting Jan. 12 in Las Vegas. Comes now before you the public body with one of the more dubious records in recent months

Nevada Professional Chapter Society of Professional Journalists, Sigma Delta Chi



ASSEMBLY GOVERNMENT AFFAIRS COMMITTEE
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in dealing with the Nevada Open Meeting Law. The disregard with which the board treated the supposedly public conduct of public business should tell you something about the motives this time around.

We said it before and we'll say it again. The need for confidence in legal matters is frequently served at the staff level, before an issue ever goes to the elected body. This is PUBLIC business, remember? Democracy is tough, being in the open. But it works, and we submit that it'll keep working just fine when THE PUBLIC university's highest board continues to consider them in the open.

As for the proposal to close meetings on investments, it's simply preposterous. The University of Nevada is in the business of education, not investment. The dangerously broad power proposed here for closed meetings with investment counsel or for planning future investments hardly fits the university's modest involvement in investments.

And just because the state retirement board has such powers is no reason to spread them around to other state bodies -- which, we surmise, is the reason the regents want similar power. Neither prospect is encouraging. In fact, they're disturbing.

Such legislative proposals as AB 641 may serve bureaucratic convenience, but they do nothing for candid and public government.

Gerald Prindiville of Common Cause may have put it best when he sat here three months ago, testifying on AB 57, and said:

"To make decisions in secret sessions at the very time the public is being called upon to make sacrifices will only aggravate the oft-felt suspicion that special interests alone are being served."

We heartily agree, and ask you to reject the special legislation of AB 641 and any other back-door attempts at shutting the public out of state government.

Thank you.