

MEMBERS PRESENT: Chairman Stewart
Vice Chairman Sader
Mr. Thompson
Ms. Foley
Mr. Beyer
Mr. Price
Mr. Chaney
Mr. Malone
Mrs. Cafferata
Ms. Ham
Mr. Banner

MEMBERS ABSENT: None

GUESTS PRESENT: Guy Shipler, Judicial Discipline Commission
Bob Shriver, NV Trial Lawyers Association
Lee Adler, Gazette
Robert C. Manley, Attorney General
Tammy Friberg
Ruby Ruedy
A. Robertson
Katherine Loughlin

Chairman Stewart called the meeting to order at 8:15 a.m. and stated the Committee would hear testimony on AB 204 first.

AB 204: Empowers attorney general to subpoena documents.

The only individual to testify on this bill was Mr. Robert C. Manley from the Criminal Division of the Attorney General's Office.

Mr. Manley explained that the purpose of AB 204 is to rectify a problem which has arisen several times in the past two years; it gives the Attorney General an authority which appears to have been assumed but not actually written into the law.

Mr. Manley pointed out that NRS 228.120 is the primary section giving the Attorney General power to investigate and prosecute, etc., and subsection 4 of that section states the Attorney General "may issue subpoenas, subscribed by him, for witnesses within the state, in support of the prosecution..." Two things not stated in this section is that the Attorney General can a) subpoena books and items; i.e., the traditional duces tecum, in support of a Grand Jury matter and b) subpoena people before a Grand Jury in support of the other function of the Grand Jury: the power to investigate for the good of the government and/or people. AB 204 is thus simply an attempt to clarify these powers. He stressed this bill was extremely different from AB 54.

Mr. Sader stated he understood what AB 204 was attempting to do, but questioned whether the proposed changes were actually an improvement over the current wording of the law. He noted there was very little difference between that wording contained in lines 17 and 18, and lines 23 and 24. He suggested the Attorney General's Office might wish to review the bill and draft more precise wording.

Mr. Manley agreed the wording was not as clear as it could be, and pointed out that the Attorney General's Office had not been involved in the drafting of the new bill. He also said he felt the law as presently written was worded differently (more vaguely) than that version read by Mr. Sader.

Ms. Foley noted she could not see any difference between the two versions of the bill either, except for the addition of books and records. Mr. Manley explained to her that the Attorney General was also seeking clarification of his authority to subpoena witnesses for other than prosecutions before the Grand Jury. He suggested addition of the wording "in support of other work of the Grand Jury" as (b) under subsection 4.

In reply to Ms. Foley Mr. Manley explained that the District Attorneys already have the power to subpoena documents, books, etc. before Grand Juries and for any other purpose. He noted that AB 204 would not give the Attorney General the power to subpoena these items at any other time except through the Grand Jury.

Mr. Stewart commented that he had discussed this bill with the Attorney General, who had noted that in the case of the District Attorney the law specifically stated he had the authority to issue subpoenas for witnesses, books, records, etc.; NRS 228.120 governing these powers for the Attorney General does not cover books and records specifically.

Mr. Manley added here that the power to subpoena a person was more powerful than the power to subpoena books or papers; he said the Attorney General had the former, but the latter--which is the lessor power--was not clearly given to him. He explained this power was a working tool which was needed in dealing with the Grand Jury.

Mr. Stewart suggested Mr. Manley have his office review the bill and draft more explicit--and less limiting--language.

Mrs. Cafferata asked if the situation which developed with the Washoe County Assessor's Office was the only recent example of problems arising from this oversight. She pointed out that there was no reason to draft a new law if this problem was simply a onetime occurrence. Mr. Price agreed with Mrs. Cafferata that there was no need to draft a law if the problem was not likely to reoccur.

Mr. Stewart noted Mr. Price and Mrs. Cafferata had a valid point, however the Legislature also has a duty to provide laws that are efficient and complete; in this case there is a deficiency in the law, and since the bill is already drafted and does correct this deficiency, the Committee should pass it.

The consensus of opinion among the Committee members was that while the intent of the bill was commendable, the language being proposed was definitely lacking. It was therefore agreed that Mr. Manley's Office would draft new language and submit it to Ms. Foley, who would then return it to the Committee for further discussion.

As there was no further testimony on this bill, Chairman Stewart declared the public hearing on AB 204 closed.

The next item on the agenda was AB 228.

AB 228: Relieves court administrator of duties of secretary of commission on judicial discipline.

Mr. Guy Shipler, Chairman of the Nevada Commission on Judicial Discipline, testified in support of this bill.

Mr. Shipler explained that the Commission requested this bill be drafted because it was discovered that there was a built-in conflict in the Commission's dealing under the Court Administrator. This Administrator is appointed by the Supreme Court and has jurisdiction over all of the judges (i.e., he is an administrator in their behalf); thus, in receiving their complaints these might not be presented to the Commission. Mr. Shipler explained this conflict became particularly evident during the investigations, by the Commission, of the Supreme Court last year. He went on to describe the complications which arose from this situation.

Mr. Shipler noted that in order to maintain consistency in the operation of the Commission, a separate office should be involved. He added that the Supreme Court is opposed to this.

Regarding the fiscal impact of this bill, Mr. Shipler said the Supreme Court has estimated a cost of \$75,000; he did not believe this to be a reasonable estimate.

Mr. Shipler pointed out that during the last fiscal year, which was busier than an average year due to the investigations of the Supreme Court, the total spent was approximately \$27,000. He therefore did not believe the fiscal impact would be as serious as indicated by the Supreme Court.

Mr. Shipler was not certain how the new office would be set up. He said that based on the figuring of the previous Administrator, a separate office, including capital expenditures, etc., would cost a maximum of \$45,000 for the first year, and would be less

for subsequent years. He said this would include such expenditures as travel, etc. Mr. Shipler also said the previous Administrator felt this would be a part-time job, which could be handled by a Management Assistant I or II, at a salary of approximately \$7,000 - \$8,000.

Mr. Shipler said another cost to be considered was the hiring of outside attorneys for investigations; he said he did not feel this to be necessary. However, this would also be included in the \$45,000 figure.

Ms. Foley noted that the fiscal note attached to the bill mentioned a Management Assistant IV as opposed to a level I or II. Mr. Shipler noted the difference was between the Supreme Court Administrator's appraisal and that of the previous Administrator. He added that the Commission had no input into the budget projections. He believed the procedure, which involved communicating with the individual making the complaint to determine whether or not it was a serious complaint and then advising the Commission that the complaint was valid, could be handled by a level I or II Management Assistant.

Mr. Beyer stated he had discussed this bill with the Attorney General, and the possibility of this individual coming out of his office on a part-time basis arose. The question was whether this might also involve a conflict situation since he also worked for the Supreme Court. He opined this position might very well be filled by a part-time individual, possibly a retired person who only wanted to work part of the year.

Mr. Beyer submitted an amendment to AB 228 (see EXHIBIT A) which denotes the duties of the secretary as preparing and submitting to the Commission a summary of those complaints received, without any indication as to whether these complaints were valid. The Commission would then decide whether or not to pursue the matter.

Mr. Shipler noted that the Commission reviews each complaint presented to it for validity right now, therefore Mr. Beyer's amendment would not really change their procedures. He further said he did not believe there would be a conflict if the person came from the Attorney General's Office, since every State agency can call upon the Attorney General for representation.

Mr. Beyer then suggested elimination of Section 2 (a) (1) (c) regarding the establishment of procedures to insure the confidentiality of proceedings in his proposed amendment, since the Commission ought to establish those rules.

It was noted that the issue of conflict might be based on the fact that the Attorney General represents the Supreme Court in those suits pending against the Supreme Court.

Mrs. Cafferata said she had been involved in researching this bill, and that this direct conflict was one of the problems which

arose at that time. She added that another problem which arose, and which is corrected by Mr. Beyer's amendment, is that the duties of the secretary were not spelled out. Finally, Mrs. Cafférata pointed out that the Supreme Court has cut the Commission's budget drastically.

Mr. Sader questioned whether by specifying the secretary's duties this didn't limit what she could be assigned to do; he suggested a more general description of duties to allow for some leeway.

Next Mr. Sader asked how many complaints the Commission handled on a yearly basis. Mr. Shipler said they had considered less than 200 complaints in the four years of the Commission's existence. He said last year, which was their busiest year, they had about eight meetings--five a year being the average--and that these were in addition to the hearings.

Mr. Sader suggested the Committee could subtract about \$13,000 from the salary contained in the fiscal note attached to the bill. Mr. Shipler agreed this appeared to be accurate.

Mr. Sader wondered if it wouldn't be advisable to ask for a new fiscal note. Mr. Stewart explained that the fiscal notes are prepared by the agency involved, and since the Supreme Court prepared the first note, and would be asked to prepare the new one as well, he doubted there would be any change submitted. He added that it often occurs that an agency which opposes a certain bill will attach a fiscal note at the upper end of their approximation.

Mr. Shipler noted that the differences in the fiscal note appended to the bill and that suggested by the previous Administrator might be explained by the Supreme Court's opposition to this bill, and possibly to the Commission as well.

During further discussion of the possible expenditures involved in this bill, it was pointed out that the Commission cannot really formulate an accurate budget prediction, since it does not know in advance how many complaints it will receive during the coming year. It was also noted that if AB 228 is passed, an office for the secretary, as well as for storage of confidential material, would be required. The point was also made that if the secretary only worked for the Commission part-time, then consideration must be given to what that person does the rest of the time, in order to preclude conflict in this area.

Mr. Chaney suggested changing Mr. Beyer's amendment by listing the secretary's duties as noted in section 2, 1 (a) (1) (a) and eliminating the rest of the duties listed.

Mrs. Cafferata suggested amending the bill to specify that this secretary will be someone from the Attorney General's Office.

It was finally agreed by the Committee that the bill should be amended to require the secretary would be from the Attorney General's Office and to generally list the secretary's duties as those assigned by the Commission. Mr. Beyer, Mrs. Cafferata and Mr. Malone agreed to check into this.

Next Mrs. Cafferata brought up the problem outlined in a Gazette article concerning the fact that the Commission has no authority to censure Municipal Judges or Justices of the Peace. (See EXHIBIT B.) She suggested correcting this problem in the amendment to AB 228 as well.

In reply to Mr. Stewart, Mr. Shipley explained this discrepancy came about because the original amendment restricted the duties mentioned to the Supreme Court and to District Judges. Municipal Judges and Justices of the Peace were granted these powers following the creation of the Commission. Until now, complaints have resulted in either the Judge's resignation or in the Judge not running for office again.

It was agreed by the Committee that the language contained in AJR 14 be included in the amendment to AB 228 regarding censure of Municipal Judges and Justices of the Peace.

As there was no further business, Chairman Stewart adjourned the meeting at 9:10 a.m.

Respectfully submitted,

Pamela B. Sleeper

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Assembly Attache

SUMMARY--Relieves court administrator of duties of secretary of commission on judicial discipline. (BDR 1-298)
 Fiscal Note: Effect on Local Government: No
 Effect on the State or on Industrial Insurance: Yes.

DB 228

AN ACT relating to the commission on judicial discipline; providing for the employment of a secretary to the commission and relieving the court administrator of the secretary's duties; 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. NRS 1.420 is hereby amended to read as follows:

1.420 The court administrator shall [serve as secretary,] prepare the budget and manage the fiscal affairs of the commission on judicial discipline.

Sec. 2. NRS 1.450 is hereby amended to read as follows:

1.450 1. The commission on judicial discipline may:

(a) Within the amount of money appropriated by the legislature for this purpose, employ and [compensate attorneys,] compensate:

(1) A secretary to the commission who shall:

(a) Perform those duties of a district court clerk which are appropriate to the function of the commission.

(b) Provide for clerical services for, and service of process on behalf of, the commission.

(c) Establish procedures to insure the confidentiality of proceedings, information and materials designated as confidential in Rule 4 of the Procedural Rules of the Nevada Commission on Judicial Discipline.

(d) Prepare and submit to the commission summaries of all complaints received.

(e) Prepare and submit to the commission for approval reports of the proceedings of the commission.

(f) Preserve evidence admitted at any hearing before the commission until such time as the supreme court may by order permit its destruction.

(g) To assist in preparation of the budget and management of the fiscal affairs of the commission; and

(2) Attorneys, accountants, investigators, reporters, physicians, technical experts and any other necessary persons;

(b) Provide for the attendance and compensation of witnesses; and

(c) Pay from available funds all necessary expenses incurred by the commission.

2. The attorney general shall, upon request of the commission, act as its counsel in any investigation or proceeding of the commission.

Bryan rules panel can oust local judges

3-5-81
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By JACK McFARREN
Gazette Capital Bureau

CARSON CITY — The Nevada Commission on Judicial Discipline has the authority to remove or involuntarily retire justices of the peace and municipal judges, according to an opinion issued Wednesday by Attorney General Richard Bryan.

However, Bryan said the commission may not censure the jurists.

In the formal opinion, requested by the commission, the attorney general said the state constitution empowers the Legislature to provide for the removal of judges and justices for acts of professional misconduct.

Two district court judges have ruled that the commission does not have the authority to remove or involuntarily retire justices of the peace or municipal judges.

Bryan said the judges ruled that Article 6 of the constitution does not au-

thorize the commission to remove the justices or judges.

The district judges were right in their interpretation of Article 6, the attorney general said. But he said he did not believe they considered Article 7, which authorizes the Legislature to provide for the removal of local officials.

Bryan said his office could find no constitutional authority to allow the Judicial Commission to censure municipal judges or justices of the peace. The section of Nevada law that presently authorizes the commission to censure is invalid, he ruled.

The opinion also states there is nothing in current law to prohibit a judge or justice of the peace who has been removed from office to run for re-election.

Bryan stressed the opinion would have no effect on the power of the commission to censure, retire or remove district court or state Supreme Court jurists.