MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON COMMERCE AND LABOR

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
APRIL 15, 1981

The Senate Committee on Commerce and Labor was called to order by Chairman Thomas R. C. Wilson, at 2:05 p.m., on Wednesday, April 15, 1981, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Thomas R. C. Wilson, Chairman
Senator Richard E. Blakemore, Vice Chairman
Senator Melvin D. Close
Senator William Hernstadt
Senator William Raggio
Senator Clifford E. McCorkle

COMMITTEE MEMBER ABSENT:

Senator Don W. Ashworth

GUEST LEGISLATORS PRESENT:

Assemblyman Ira V. Rackley
Assemblyman John E. Jeffrey

STAFF MEMBER PRESENT:

Trina Bertelson, Acting Committee Secretary

SENATE BILL NO 522--Authorizes certain public utilities to acquire water rights by eminent domain under specified circumstances.

Chairman Wilson allowed Mayor Barbara Bennett, Mayor of Reno, to testify on Senate Bill No. 522, before the other items scheduled, as she had to appear at a meeting in Reno and could not wait here until the bill came up in order on the agenda. Mayor Bennett began her testimony by stating the opposition of the City of Reno to the bill. (For her verbatim statement see Exhibit C.)

After completing her prepared statement, Mayor Bennett added a few comments of her own. She stated the governing bodies are not interested in agricultural water rights or rights to which people have a clear claim. It is the unidentified water rights they would like to have made available; some of which they have title to but are unable to claim.

In response to Senator Wilson's questions as to whether it was appropriate for a municipal or county government to acquire water rights and hold them, Mayor Bennett replied that she did not think the legal authority existed at the present time. However, she remarked that county governments exert the power of eminent domain over many things less important to a city's survival than water. Senator Wilson pointed out that the state water law is based on the theory that water is generally owned by the public and its use is permitted upon application and proof of beneficial use. Again, from a policy standpoint, he asked if it was appropriate for water rights to be obtained and stored by a municipal corporation or county government. Mayor Bennett indicated it was appropriate because adequate water supplies were necessary for any planning measures embarked upon by the city.

Senator Wilson's concern was the primary responsibilty to provide water services to a community. Mayor Bennett stated that local governments are responsible for the public health, safety and welfare of the community and within that charge the answer might be found.

Senator Raggio asked Mayor Bennett if, assuming the city received the water rights, what use would the city have for them, beside the limited use of public purposes. Mayor Bennett said she envisions these water rights being leased (or some basis of that sort) to the power company in conjunction with projects that have the approval of the Reno City Council. She pointed out that if Sierra Pacific acquired these water rights, they would be in the position of making planning decisions for the city.

Responding to Senator McCorkle's question, Mayor Bennett said the City of Reno should have the power of eminent domain in approving a major project as opposed to placing a condition upon approval that the water must be deeded, which is currently very unsatisfactory. Better planned policy and decision making would result if the city had access to those water rights.

In answer to Senator Blakemore's question about the possibility of a metropolitan water district, Mayor Bennett replied that a great many people would like to see the city have a metropolitan water district. However, she pointed out the acquisition of the

water and its accompanying facilities would be very expensive for the city, in the neighborhood of $100 million.

Chairman Wilson temporarily closed the hearing on Senate Bill No. 522, and returned to the item at the top of the agenda.

ASSEMBLY BILL NO. 32--Makes certain employees of department of motor vehicles eligible for compensation for heart and lung disease.

Mr. William Goddard, inspector, motor carrier enforcement bureau of the department of motor vehicles, testified in favor of the bill. He said the bill was drafted to correct inequities in NRS 617.455 and NRS 617.457, which are the heart and lung disease statutes. Mr. Goddard said it was not his intent to expand the number of occupations included in those statutes, which include peace officers and firemen. His intent was that inspectors be included as peace officers in this bill. He asked that his official statement (see Exhibit D) be made a part of the record.

Mr. Joe Nusbaum, chairman, Nevada industrial commission, testified in opposition to Assembly Bill No. 32, and submitted his statement for the record. (See Exhibit E.) In reply to Senator Blakemore's question about the premiums under special benefits for heart and lung disease statutes, Mr. Nusbaum said the employer pays the greater premium.

Chairman Wilson closed the hearing on Assembly Bill No. 32.

ASSEMBLY BILL NO. 140--Provides for chiropractors' assistants.

Assemblyman Ira Rackley opened testimony on the bill. He said it was introduced to correct some oversights in previous legislation concerning the comprehensive physicians' assistants certification program as related to the attorney general's letter submitted for the record. (See Exhibit F.) He said chiropractors were left out of previous legislation and this bill would clear up the problem.

Mr. David Hagen, representing the Nevada Chiropractic Association, spoke for the bill. He said the association wishes to have the assistants as defined in Assembly Bill No. 140.

Senator Blakemore asked for a brief explanation of the purpose chiropractic assistants serve. Dr. Eugene Scrivner, Carson City chiropractor and chiropractic board member replied that chiropractors have had assistants for a number of years. The proposed legislation provides nothing new in that respect. Its purpose is

to give legal status to their functions as the attorney general's decision (see Exhibit F) denies them their functions.

Chairman Wilson closed the hearing on Assembly Bill No. 140.

ASSEMBLY BILL NO. 192--Authorizes pharmacists to fill prescriptions from outside state with substitutes for drug named.

Mr. Orvis Reil, representing National Retired Teachers Association, American Association of Retire Persons, and Nevada Joint State Legislative Committee, testified in favor of the bill, but offered some changes in the wording of lines 15, 16 and 17 of the first reprint. Senator Wilson summarized Mr. Reil's changes, saying they provided for generic substitutions to be made either for prescriptions written by practitioners outside the state or for prescriptions mailed in from outside the state, and Mr. Reil agreed with his summary.

In reply to Senator McCorkle's questions, Mr. Reil said he believed the language in the bill dealing with generic substitutions was the standard language used by other states. He also refuted the statement the bill was too restrictive, citing that since the bill's passage two years ago, it has been considered one of the best measures of its kind.

Mr. Cliff Young, for the Nevada state pharmacy board, testified they were not opposed to the bill but had some amendments to offer also, with regard to the prescription form used by out of state prescription writers. There was discussion by Mr. Young, Senator Hernstadt and Mr. Frank Titus, chairman of the state pharmacy board about the make-up of the forms, their use, and requirements thereof.

Assemblyman Jack Jeffrey testified for the bill and stated it was drafted at the request of the American Association of Retired Persons. He felt that requiring out of state practitioners to use the same form as Nevada physicians would make things very difficult. Mr. Leo Gray, of Merck, Sharp and Dohme, stated the bill failed to deal with notification and consent, requiring generic changes and was concerned about the possibility of confusion regarding the prescription forms. Mr. John D. Adams, of the Nevada Pharmacy Association also voiced his concern about portions of the bill the association disagrees with. He stated that people using prescriptions filled outside of the state call pharmacists at all hours of the day and night to ask about effects of the drugs they are taking, and it was a continuing problem to the state's pharmacists.

In reply to Senator Wilson's question if Mr. Adam's position was that prescriptions filled out of state and then mailed in should not be honored in this state, Mr. Adams replied that was his position; but that it was not the pharmacists' intention to bar any outside prescriptions coming into the state. They believe it should be done very carefully, in such a way as to enhance health care for the public.

Chairman Wilson closed the hearing on Assembly Bill No. 192.

ASSEMBLY BILL NO. 209--Requires any excess insurance or reinsurance for self-insured employer to be written by Nevada carriers.

Ms. Patsy Redmond, acting commissioner of insurance, testified in support of the bill. She said it was submitted by her division as a "housekeeping" bill. It merely clarifies that excess insurance or reinsurance must be written by an insurer authorized to do business in this state.

Chairman Wilson closed the hearing on Assembly Bill No. 209.

SENATE BILL NO. 510--Broadens power of public service commission to alter boundaries of service areas of public utilities.

Mr. Heber Hardy, chairman, public service commission, testified on the bill. He submitted an attorney general's decision for the record. (See Exhibit G.) The decision (letter) addresses the question as to whether or not the legislature can constitutionally require or allow the PSC to require a public utility to enlarge its boundaries without the utility's consent. Mr. Hardy cited a case where the district court upheld the PSC position (Richardson vs. the Public Service Commission, case No. 12403). Senator Wilson asked if the holding was statutory or constitutional and Mr. Hardy said he thought is was a constitutional issue. Senator Wilson was concerned that a public utility enjoying a monopoly by virtue of its certificate is immune from PSC jurisdiction to enlarge its boundaries when circumstances justify such an enlargement. Mr. Hardy explained forcing the utility to enlarge its boundaries against its will is taking property without due process because it would require an investment by the utility to serve the larger area. Senator Wilson commented that, given financial feasibility, public need for the service, and the means to provide the service are present, the utility has the obligation to serve by virture of the certificate granted by the PSC.

Senator Blakemore observed the PSC has authority to make boundaries smaller but not to enlarge them. Senator Wilson still felt there was nothing unconstitutional about requiring a utility to enlarge its boundaries given certain conditions to be met.

Mr. William C. Branch, vice president and controller of Sierra Pacific Power Company, testified in opposition to Senate Bill No. 510. He said that, under existing statutes, the utility is required to obtain permission from the PSC before it can enlarge its boundaries. He referred the committee to PSC General Order No. 3, Rule 19. (See Exhibit H.) Mr. Branch said a utility must be able to prove the proposed enlargement of a service area will be economically feasible, thereby protecting the rate payers and potential investors. He cited the problem with the Hidden Valley service area which had very poor water service, and Sierra Pacific was under pressure to take over the service area. After making an analysis of the property, Sierra Pacific did not acquire the property because of a lack of economic feasibility.

Senator Blakemore and Senator McCorkle discussed the problems of the Hidden Valley system and the Trans Sierra problem in the Virginia Foothills. Mr. Branch reiterated that he and his company feel the PSC should not have the right to require a service company to expand its service area. He said that Ms. Sue Oldham, legal counsel for Sierra Pacific had researched and presented a case to the committee for the record dealing with the constitutionality of this type of legislation. (See Exhibit I.)

Senator Wilson stated there should be two issues defined. One is whether the vesting of jurisdiction exercised under any circumstances is constitutional. The other is whether the power is unconstitutionally exercised in terms of the facts of the individual case. He said the two issues should not be blended or said to be unconstitutional per se without examining the facts. He remarked the particular case presented by Ms. Oldham to the committee (see Exhibit I) is based on a factual issue and not a question of unconstitutionality regardless of the facts.

Ms. Oldham said she felt the PSC already had the jurisdiction under present statutes to require a utility to increase its boundaries if the company has in some way indicated a dedication to serve the area. Senator Wilson assumed that dedication is defined as the area included in the service area when the public certificate is granted. Ms. Oldham commented in some cases dedication could go further than the boundaries defined in the public certificate. Senator Raggio stated he did not feel the court decision was that authoritative.

Senator Raggio made specific reference to page 434 of the exhibit, in which the utility "may be required to make reasonable extensions of its lines to accommodate the increased demands of a growing municipality." He said if a city enlarges its boundaries, it would follow the utility would have to enlarge its service area to accommodate the city's needs. Ms. Oldham noted the particular case he referred to was prior to the establishment of a specific service area boundary; that at one point in time in California and Nevada, a utility could obtain a franchise from a city without specific boundaries being outlined. (See Exhibit I.)

Senator Blakemore remarked that up until 1962, (when specific boundaries were instituted), a utility had an implied obligation to extend its boundaries to include any areas added to the city. Ms. Oldham said it was not necessarily unconstitutional, but would be a factual question whether the utility had dedicated to serve in that extended area. Senator Wilson summarized the power company's position by saying they felt it was flatly unconstitutional for the PSC to require them to extend their service area beyond the dedicated area; and that the dedicated area coincides with the certificated area. Ms. Oldham agreed that was their position.

Senator Wilson asked if the requirements are met and the need for service increases, does the granted certificate impose an obligation to the poser company to extend its area of service. Mr. Branch replied the utility does have an obligation to serve if all the requirements are satisfied. Asked whether the obligation was an enforceable or moral one, Mr. Branch answered he felt it was a moral obligation.

Mr. David Russell, representing Southwest Gas Company, testified the Southwest Gas Company position is, if the general requirements are met as outlined in the bill, the PSC should have the authority to require the utility to expand its service area boundaries.

Chairman Wilson closed the hearing on Senate Bill No. 510.

SENATE BILL NO. 522--Authorizes certain public utilities to acquire water rights by eminent domain under specified circumstances.

The hearing on Senate Bill No. 522 was reopened with Mrs. Florence Marsh, representing the Truckee River Land Owners Protective Association, testifying in opposition to the bill. She stated that

water rights do not automatically transfer with the land. They are purchased and are a personal asset. Mrs. Marsh said the property owners along the Truckee River had their water rights cited in the Ore Decree of 1944. She indicated it was her understanding a public utility is a purveyor of services to the public and they should not have the right to "rob Peter to pay Paul" with the water rights of property owners who have paid for their land and their water rights. Mrs. Marsh added if Senate Bill No. 522 were passed, the present owners of water rights would probably get 5 or 10 cents on the dollar whereas when she decided to sell some water buyers were willing to pay the market price of $1 thousand per acre foot. She said the property owners might be willing to sell at a fair market price but will not stand for the power company condemning their waters rights and paying only a small percentage of the real value.

Senator Blakemore commented that under "eminent domain" they would not have to pay anything at all. Senator McCorkle asked Mrs. Marsh if potential buyers of her water rights at $1 thousand per acre foot did indeed purchase the water rights. Mrs. Marsh said the one particular buyer only needed 5 inches but would have been forced to buy 10 inches because the power company insisted on taking half of his water rights in order to service him with water. Senator McCorkle asked if any power company representatives could respond to that.

Mr. Bob Firth, manager of land and water resources, Sierra Pacific Power Company, answered that he thought Mrs. Marsh was referring to the formula the water company computes the yield of water rights on, based on the 1934 drought year. Senator Wilson asked if it was fair of the company to insist on an advance of water rights based upon the 1934 supply. In spite of further questions on this seemingly inequitable formula, Mr. Firth insisted the power company's position is supported by the state engineer.

Mr. Robert Quilici also testified againt the bill saying the old timers who bought their ranches along the river bought them for the purpose of gaining their water rights. He said he would be glad to sell but resents the fact the water company would be able to take it from him without just compensation.

Mr. Joseph Gavica also testified in opposition to the bill. He said that what water rights he has he would like to leave to his family without the fear of their being condemned away from him. Mr. Randy Capurro also voiced his opposition to the bill saying if the power company really needed the rights they could purchase

The committee members questioned Mr. Firth and Mr. Branch and finally elicited the information the water company was paying $70 to $100 per acre foot for water rights they were acquiring. The 28,000 acre feet they estimate is available and unused at the present time would be prohibitively expensive at the price asked by the landowners along the river. However, further questioning brought out the water rights they are really after are those which are in land which has already been developed, some of it for many years. It is water that is "floating" around under subdivisions and streets, in areas which are already being serviced, by Sierra Pacific Power. Mr. Firth said the way the bill is written now, they would have to oppose it also as it does not really apply to the water rights they seek which are those from originally agricultural land which has been converted to residential, commercial and industrial development which is not presently making use of the water rights. These water rights were appurtenant to the land when it was sold and are not being put to use because the people owning those rights are already being serviced by the utility.

Senator Wilson asked Mr. Firth about the downstream claimants who claim a priority dating back to 1859 and if it might be necessary to forfeit claims to them. Mr. Firth said he was not prepared to answer that question. Senator Wilson said it is important to determine the most effective way of conveying the unused water rights for the most beneficial use. To that end, he suggested that the public service commission, Sierra Pacific Power, and the state engineer prepare suggestions for obtaining the rights other than by condemnation.

Ms. Lois Brown, representing Lewis Homes, suggested the bill be changed to include those water rights presently not being used, and owned by people who are already serviced by Sierra Pacific Power Company.

Chairman Wilson closed the hearing on Senate Bill No. 522.

ASSEMBLY BILL NO. 242--Raises limit on individual residential loans of savings and loan associations.

Mr. Howard Furner, executive vice president of Family Savings testified that NRS 673.3271 is sufficient as it is. There is no need to put a 2 percent cap on nonresidential loans. Senator Hernstadt inquired what kind of loans were savings and loan companies planning on, since their original purpose was to make loans on home construction. Mr. Furner said since the Deregulation Act of 1980, savings and loan companies were doing retail banking, and had made development loans for commercial projects.

Senator McCorkle asked if there are federal requirements on limitations of percentage of a portfolio for nonresidential loans and Mr. Furner replied there were. Senator McCorkle then asked if the proposed legislation is more strict than federal regulations and, if not, what is the purpose of this legislation.

Mr. Norman Okada, acting savings and loan commissioner, said the state regulations meet parity with the federal regulations. He felt that, based on the solvency he has seen, the cap can be lifted because of the limitation guideline set by NRs 673.3271 which limits the amount of funds which can be placed in any particular project. He said the federal regulations are an overall guideline but because of their broad nature cannot be "fine tuned" for specific situations. Senator Hernstadt referred Mr. Okada to page 2, lines 14 and 15 which provide that a savings and loan company cannot make a nonresidential loan in excess of 2 percent of the total savings accounts of the association unless approved by the commissioner and asked Mr. Okada if any such loans had been approved. Mr. Okada said there had been a number of requests and a number of them had been granted for various types of developments, commercial and residential projects. He stated, in answer to Senator Hernstadt's question, even if the 2 percent limit is repealed, he still has review power under NRS 673.3271.

Chairman Wilson closed the hearing on Assembly Bill No. 242.

ASSEMBLY JOINT RESOLUTION NO. 25--Proposes to amend the Nevada Constitution to allow deposit of public money in any bank or savings and loan association.

Mr. Norman Okada, acting savings and loan commissioner, supports this resolution because if savings and loan institutions cannot place funds as specified in the resolution, the current system of placing public deposits may be jeopardized. Currently, there is about $400 million in public deposits to be placed.

Senator Hernstadt asked why this particular resolution is necessary if public funds are already being placed in banks and savings and loan associations. Mr. Bob Faiss, representing First Federal Savings, stated the state constitution forbids government funds being risked in private business ventures. A savings and loan association chartered by the federal government, as is First Federal, is a mutual association owned by the depositors. In 1975, the legislature, to avoid a possible conflict of interest, excluded mutual associations from competing for public deposits. In 1977, they adopted NRS 356.005 which was even more restrictive and this

resolution is an effort to correct that inequity.

Mr. James Joyce, representing the Savings and Loan League, said this legislation is aimed at remedying the situation of one particular savings and loan institution, First Federal Savings which is being unfairly discriminated against because the six other savings and loan institutions which are state-chartered are allowed to compete for public deposits but First Federal Savings, a mutual savings and loan, is not allowed to compete. In the interest of equity, the Savings and Loan League urges support of AJR No. 25.

Chairman Wilson closed the hearing on Assembly Joint Resolution No. 25, and turned the meeting over to Vice Chairman Blakemore.

ASSEMBLY BILL NO. 276--Changes duties of sheriff.

Mr. Greg Biggin, Chief of Detectives, Carson City Sheriff's office, said the Sheriff's Office supports this bill. Now that the fees on line 7 were bracketed out in the first reprint, there are no objections to the bill.

Vice Chairman Blakemore closed the hearing on Assembly Bill No. 276.

ASSEMBLY BILL NO. 206--Clarifies definition of "adjuster" of insurance.

Ms. Patsy Redmond, acting commissioner of insurance, spoke in favor of this bill. She said that adjusters, at the present time are not properly defined as property or casualty adjusters; and this bill specifically limits, under the adjusters statute, whether the coverage is for property, casualty, or surety. Ms. Redmond said life and health claims processors are under the administrator's statutes and this bill is simply a matter of clarification.

Vice Chairman Blakemore closed the hearing on Assembly Bill No. 206.

Ms. Redmond asked for and received permission to testify on Senate Bill No. 493, which was on the agenda for Monday, April 13.

SENATE BILL NO. 493--Requires notice of nonguaranty of claims against insolvent insurers under surplus lines coverage.

Ms. Redmond testified in support of Senate Bill No. 493. She stated the legislation is a request that all surplus line insurers put a statement at the bottom of their policies so people will be aware they are not covered by the Nevada Guaranty Association. Ms. Redmond submitted a letter of further explanation for the record. (See Exhibit J.)

Vice Chairman Blakemore closed the hearing on Senate Bill No. 493.

ASSEMBLY CONCURRENT RESOLUTION NO. 3--Urges housing division of department commerce to procure lands for development of mobile home parks for persons of low and moderate income.

Mr. Al McNitt, administrator for the housing division, department of commerce, testified in favor of the the resolution. He said that ACR 3 as well as ACR 4 were the direct result of a legislative study conducted during the last legislative interim. The resolution is designed to encourage the housing division to find governmental property and have it converted into mobile home parks. He said the division had no difficulty with the resolutions and he knew of no opposition to it.

Vice Chairman Blakemore closed the hearing on Assembly Concurrent Resolution No. 3.

ASSEMBLY CONCURRENT RESOLUTION NO. 4--Urges local housing authorities to pursue federal aid for certain owners of mobile homes.

Mr. McNitt, testified in favor of this resolution. He said that Congress has not treated mobile home housing in the same (or equal) manner as regular housing and this resolution requests Congress to do that.

The following bill draft requests were presented for committee approval and were approved for introduction:

BDR 57-1322--Revises fees and licensing provisions for persons engaged in business of insurance. (S.B. 554)

BDR 57-1358--Raises ceiling for administrative fees assessed by life and health insurance guaranty association. (S.B. 555)

(S.B. 548) BDR-53-1716--Reorganizes system of labor and industrial insurance.

BDR 58-1519--Repeals requirements relating to size of train crews. (S.B. 552)

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The meeting closed as a public hearing and re-opened as a work session.

SENATE BILL NO. 493 (See Exhibit K.)

Senator Hernstadt moved "Do Pass" Senate Bill No. 493.

Senator Raggio seconded the motion.

The motion carried unanimously. (Senator Don Ashworth was absent for the vote.)

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ASSEMBLY JOINT RESOLUTION NO. 25 (See Exhibit L.)

Senator Raggio moved "Do Pass" Assembly Joint Resolution No. 25.

Senator McCorkle seconded the motion.

The motion carried unanimously. (Senator Don Ashworth was absent for the vote.)

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ASSEMBLY BILL NO. 206 (See Exhibit M.)

Senator Raggio moved "Do Pass" Assembly Bill No. 206.

Senator Blakemore seconded the motion.

The motion carried unanimously. (Senator Don Ashworth was absent for the vote.)

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ASSEMBLY CONCURRENT RESOLUTION NO. 4 (See Exhibit N.)

Senator Raggio moved that Assembly Concurrent Resolution No. 4 "Be Adopted".

Senator Blakemore seconded the motion.

The motion carried. (Senator McCorkle voted "No". Senator Don Ashworth was absent for the vote.)

* * * *

ASSEMBLY CONCURRENT RESOLUTION NO. 3 (See Exhibit O.)

The committee concurred in amending the resolution, adding the word "partially" after the word "been".

Senator Raggio moved Assembly Concurrent Resolution No. "Be Adopted as Amended".

Senator Blakemore seconded the motion.

The motion carried unanimously. (Senator Don Ashworth was absent for the vote.)

* * * *

ASSEMBLY BILL NO. 276 (See Exhibit P.)

Senator Blakemore moved "Do Pass" Assembly Bill No. 276.

Senator Raggio seconded the motion.

The motion carried unanimously. (Senator Don Ashworth was absent for the vote.)

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ASSEMBLY BILL NO. 192 (See Exhibit Q.)

The committee concurred in amending the bill as follows: section 2, line 11, delete the word "used" and insert "issued or to be filled". Delete lines 15, 16, and 17 on page 1. On page 2, line 2,in front of the word "the document", insert the words "each page of". On page 2, line 4, delete the words "checked here" and insert the words "initialed by the prescriber".

Senator Hernstadt moved "Amend and Do Pass" Assembly Bill No. 192.

Senator Raggio seconded the motion.

The motion carried unanimously. (Senator Don Ashworth was absent for the vote.)

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As there was no further business or action to be taken, the meeting and work session was adjourned at 5:20 p.m.

Respectfully submitted,

Trina Bertelsen

Trina Bertelsen, Acting Committee Secretary

APPROVED:

Senator Thomas R. C. Wilson, Chairman

DATE: _____

EXHIBITS - MEETING - APRIL 15, 1981

Exhibit A is the revised Meeting Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is the statement of City of Reno's position on Senate Bill No. 522, submitted by Mayor Bennett.

Exhibit D is remarks in favor of Assembly Bill No. 32, submitted by Mr. Goddard.

Exhibit E is the statement against Assembly Bill No. 32, submitted by Mr. Nusbaum.

Exhibit F is an AG opinion of chiropractor's assistants, re Assembly Bill No. 140, submitted by Assemblyman Rackley.

Exhibit G is an AG opinion on constitutionality of Senate Bill No. 510, submitted by Mr. Hardy.

Exhibit H is a copy of PSCN General Order No. 3, Rule 19, submitted by Mr. Branch.

Exhibit I is a copy of a California Supreme Court case with some bearing on Senate Bill No. 510, submitted by Ms. Oldham.

Exhibit J is letter from Ms. Redmond of the insurance division re Senate Bill No. 493.

Exhibit K is a copy of Senate Bill No. 493.

Exhibit L is a copy of Assembly Joint Resolution No. 25.

Exhibit M is a copy of Assembly Bill No. 206.

Exhibit N is a copy of Assembly Concurrent Resolution No. 4.

Exhibit O is a copy of Assembly Concurrent Resolution No. 3.

Exhibit P is a copy of Assembly Bill No. 276.

Exhibit Q is a copy of Assembly Bill No. 192

EXHIBIT A

REVISED (Second Revision)

SENATE AGENDA

COMMITTEE MEETINGS

Committee on Commerce and Labor, Room 213.

Day Wednesday, Date April 15, 1981, Time 1:30 p.m.

A.B. No. 32--Makes certain employees of department of motor vehicles eligible for compensation for heart and lung diseases.

A.B. No. 140--Provides for chiropractors' assistants.

A.B. No. 192--Authorizes pharmacists to fill prescriptions from outside state with substitute for drug named.

A.B. No. 209--Requires any excess insurance or reinsurance for self-insured employer to be written by Nevada Carriers.

S.B. No. 510--Broadens power of public service commission to alter boundaries of service areas of public utilities.

S.B No. 522--Authorizes certain public utilities to acquire water rights by eminent domain under specified circumstances.

A.B. No. 242--Raises limit on individual residential loans of savings and loan associations.

A.B. No. 276--Changes duties of sheriff.

A.C.R. No. 3--Urges housing division of department of commerce to procure lands for development of mobile home parks for persons of low and moderate income.

A.C.R. No. 4--Urges local housing Authorities to pursue federal aid for certain owners of mobile homes.

A.J.R. No. 19--Memorialized Congress to remove distinctions relative to eligibility for loans for certain types of housing.

A.B. No. 206--Clarifies definition of "adjuster" of insurance.

A.J.R. No. 25--Proposes to amend Nevada constitution to allow deposit of public money in any bank or savings and loan association.

ATTENDANCE ROSTER FORM — COMMITTEE MEETINGS

SENATE COMMITTEE ON Commerce & Labor

DATE: 4/15/81

EXHIBIT B

PLEASE PRINT NAME	PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT	PLEASE PRINT TELEPHONE
JOHN MADOLE	ASSOC. GEN. CONTRS		329-6116
ORVIS E. REAL	NRTA/AARP-Nev Joint State Leg. Comm.		882-1675
ROBERT QUILICI	FARMER		853-4900
JOEY GAVICA	ELECTRICIAN		241-0107
BARBARA BENNETT	MAYOR - RENO		785.2350
HELEN K. GAVICA	HOMEMAKER		345.0107
Florence P. Marsh	P.O. Box 128 Verdi		345.0175
Rose Quilici	P.O. Box 5 Verdi		345.0127
Ed Jackson	QUILICI RANCH - VERDI		849-1853
Greg Biggin	Carson City Sheriff's Dept.		882.3453
[illegible]	Board Hearing		885 5747
IRA RACKLEY	ASSEMBLYMAN		885-8974
DAVID HOGEV	CHIROPRACTORS ASSN		786-2366
WILLIAM SCRIVNER	NEVADA STATE Board Chiropractic Examiners		882-3583
[illegible]	NEV. MINING ASSN		323-2574
GEORGIA MASSEY	NEVADA INSURANCE DIV		885-4270
PATSY REDMOND	NEVADA INSURANCE DIV		885-4270
WILLIAM C. BRADY	SIERRA PACIFIC POWER CO		789 4537
Susan L Oldham	Sierra Pacific Power Company		789 4349
BOB FIRTH	" " "		789 4658
Jim Haddan	Carson City Public Works		883-1600
HOWARD FICHER	FAMILY SAVING		789-7400

ATTENDANCE ROSTER FORM | COMMITTEE MEETINGS

SENATE COMMITTEE ON Commerce

DATE: [illegible]/81

PLEASE PRINT NAME	PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT TELEPHONE
John Clay	First Federal Savings of Nv.	785-8583
Garret Faiss	" " " " "	385-2188
[illegible] R. Tucker	Nev. State Board of Pharmacy	322-0691
[illegible] Young	Nev State Bd of Pharmacy	786-7600
[illegible]	Nev State Board of Pharmacy	747-4089
[illegible] Grey	[illegible]	916-487-6463
Marian Dekker	2304 Plumas St. Reno	322 4677
David [illegible]	[illegible]	DM-2366
Pat Gothberg	NEV. NURSES' ASSN, RENO	825-3555
JOHN ADAMS	NEV. PHARMACY ASS'N.	883-7011
William Goddard	D.M.V. Motor Carrier Div	885-5340

ATTENDANCE ROSTER FORM — COMMITTEE MEETINGS

SENATE COMMITTEE ON Commerce & Labor

DATE: 4/15/81

PLEASE PRINT NAME	PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT TELEPHONE
Hardy Wilson	Reno	329-7400
William E. Bennett	Roacher 5125 W 4th St Reno	747-1133
Harry Hooper	Waste Water Tech Corp Reno	[illegible]
Ken Allee	DMV	8855396
Wm Aldaro	DMV	885396

EXHIBIT C

TESTIMONY OF MAYOR BARBARA BENNETT, CITY OF RENO, APRIL 15, 1981

We are here to speak in opposition to Senate Bill No. 522 as it is presently drafted. The City of Reno strongly opposes any legislation which would allow a private entity the authority of condemnation. That responsibility for public purpose, is reserved for the governing body. While Reno is concerned about the ability to obtain control of unused water rights in the Truckee Meadows, we feel that this proposed legislation is inappropriate. The City of Reno, working with Sparks and Washoe County, through the Washoe Council of Governments has been exploring this problem for a number of months. Rather than giving the power of condemnation to Sierra Pacific, we suggest that the legislation be revised to enable Reno, Sparks and Washoe County the ability, through due process, to obtain the unused water rights. Data reflects that 10,000 to 28,000 acre feet of water rights are unused and will never be used. The large majority of these water rights were transferred with the older subdivisions of the Truckee Meadows whenever the land was sold in the 1940's, 50's and 60's. Enabling legislation should allow the three governing entities to obtain these water rights by paying a fair and consistent amount. The enabling legislation, perhaps by allowing quit claims, would provide the public bodies with the authority to obtain these water rights without the possibility of being tied up in the courts for years on a quarter or third of an acre water right. Again, the City of Reno is in opposition to this proposed legislation giving the authority of condemnation to Sierra Pacific. However, we do strongly encourage and request that you consider granting the authority to the governing bodies. (This was an official statement by the City of Reno, delivered by Mayor Bennett.)

AB 32

EXHIBIT D

There is an inequity in N.R.S. 617.455 and 617.457 as they are now written. Only one of three groups of law enforcement officers in the Department of Motor Vehicles is included as subject to certain occupational diseases, even though all three groups are sworn peace officers.

A. B. 32 has been introduced to alleviate this inequity, by including the other two groups of law enforcement officers in the coverage provided by N.R.S. 617.455 and 617.457. It has not been introduced to broaden the number of occupations eligible for the coverage, but merely to correctly define and recognize these two groups as peace officers.

The two groups are the uniformed officers of the Commercial Enforcement Bureau, and the investigators of the Bureau of Investigation and Enforcement.

The officers of the Commercial Enforcement Bureau, patrol the highways of the state of Nevada, in marked patrol units, enforcing the commercial vehicle licensing, weight, and safety laws, and all traffic laws, as well as giving assistance to the motoring public and all other law enforcement agencys. As peace officers, sworn to protect and serve the people of the state, they also make, and assist with, arrests of felons, and other wanted persons, both on sight and by warrant.

The officers of the Bureau of Investigation and Enforcement are responsible for enforcement of statutes concerning misrepresentation, embezzlement, fraud and theft, in dealings with motor vehicles. The investigations they conduct often require undercover work, to bring about the arrest of persons involved in offenses ranging from fraudulant financing practices to organized auto theft.

N.R.S. 617.455 and 617.457 currently recognize law enforcement officers as subject to certain occupational diseases. The duties, authority and responsibilities of these two groups parallel the duties, authority and responsibilities of the other agencies included in these statutes, and it is felt that the failure to include these two groups as subject to the same occupational diseases was an oversight in the original drafting of these statutes. A. B. 32 is an effort to correct this oversight.

REMARKS ON AB 32

BY JOE E. NUSBAUM

CHAIRMAN, NEVADA INDUSTRIAL COMMISSION

EXHIBIT E

If I must be recorded as appearing for or against this bill, then I am appearing against it. However, I wish to make it clear that NIC has no special knowledge about the degree of exposure of the classifications of employees covered by this bill with regard to the heart and lung laws. Our concerns are the following:

1. The heart and lung laws are extremely difficult to administer because of the often near impossibility of arriving at a medical judgment as to whether the disease is or is not related to employment. This is particularly difficult in the heart law because that law requires "If caused by extreme over exertion in times of stress or danger and a causal relationship can be shown by competent evidence that the disability or death arose out of and in the course of the employment."

Our concern with AB 32 is that it expands the coverage of the law that has introduced great uncertainties into the workers' compensation program.

2. As a matter of policy, the Commission believes there should be no discrimination in the workers' compensation laws. If one worker is exposed to a danger once a week and another worker is

exposed to ~~that same~~ a similar danger once a year, each should be protected for whatever degree of exposure he may have. Though we oppose the heart and lung law because of the extreme uncertainty ~~in attempting~~ involved in determining causal relationships, we nevertheless believe if some employees are to have such protection, all employees should have it.

3. Perhaps NIC is not the appropriate agency to raise constitutional law questions, but we do believe ~~that~~ the expansion of the groups covered by the heart and lung statutes increases the possibility of those statutes being challenged on a constitutional equal protection ground. I assume that most courts would find a rational basis for special treatment of policemen and firemen but we question whether the rational basis can extend to all the other groups who ~~no doubt~~ will seek this special benefit.

We request that the Committee consider these broader implications of AB 32.

Wilson

AD 140

EXHIBIT F

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
300 SOUTH FOURTH STREET, SUITE 811
LAS VEGAS, NEVADA 89101
(702) 384-2781

RICHARD H. BRYAN
ATTORNEY GENERAL

ROBERT N. PECCOLE
CHIEF DEPUTY ATTORNEY GEN

September 3, 1980

Fred L. Stoner, B.A., D.C.
Secretary, Nevada State Board
of Chiropractic Examiners
1204 East Desert Inn Road
Las Vegas, Nevada 89109

Dear Dr. Stoner:

In your letter of June 3, 1980, you requested an opinion of this office on the following:

Question

May doctors of chiropractic use unlicensed persons to do physiotherapy, give advice on nutrition and perform colonic irrigations?

Analysis

Chapter 634.010(2) defines "Chiropractic . . . to be the science art and practice of palpating and adjusting the articulations of the human body by hand, the use of physiotherapy, hygenic, nutritive and sanitary measures and all methods of diagnosis."

Further, Chapter 634.060 provides in pertinent part that: "It i unlawful for any person to practice chiropractic in this state withou a license to do so."

The question you raise necessarily involves a resolution as to whether unlicensed persons employed by licensed chiropractors to perform physiotherapy, give advice on nutrition and perform colonic irrigations act in violation of Chapter 634 of the Nevada Revised Statutes.

It is the duty of the courts to interpret and enforce statutes accordance with the intention of the Legislature. Worthington v. District Court, 37 Nev. 212, 244, 142 P.230 (1914). What is true of the courts is equally true for an executive agency such as the Attorne General's office. Attorney General's Opinion 216, July 12, 1977. Where the language of a statute is plain and unambiguous, the legislative intent must be ascertained from the language itself and one

should not go beyond such language. Seaborn v. First Judicial Distri Court, 55 Nev. 206, 218, 219, 29 P.500 (1934). Where the intention c the Legislature is thus clear, it is the duty of the courts (and of this office -- AGO 216, supra) to give effect to such intention and r to nullify its manifest purpose. Woofter v. O'Donnell, 91 Nev. 756, 762, 542 P.2d 1396 (1975).

The language of the statute is plain and unambiguous. There is provision in Chapter 634 of the Nevada Revised Statutes for unlicense office personnel to engage in the above-cited practices -- practices which fall within the definition of the practice of chiropractic. Accordingly, unlicensed personnel may not perform physiotherapy, give advice on nutrition or perform colonic irrigations.

This conclusion is particularly reasonable in light of legislati enactments with respect to several other healing arts professions. T Legislature has adopted a comprehensive Physician's Assistant certifi cation program in NRS 630.271 - 630.275, a Dental Assistant certifica tion program in NRS 631.313 and 631.317, and an Osteophathic Physicia Assistant certification program in NRS 633.431 - 633.461. Chapter 5 of NRS, which governs the practice of chiropractic, contains no pro- visions analogous to the assistants' programs created for physicians, dentists and osteopathic physicians.

Accordingly, it is the opinion of this office that the Legislatu did not intend to allow chiropractors to create their own assistant p gram by hiring unlicensed personnel to perform the functions cited above. One cannot read into a statute something beyond the manifest intention of the Legislature as gathered from the statute. Ex Parte Pittman, 31 Nev. 43, 50, 99 P.700 (1909); Seaborn v. First Judicial District Court, supra at 219.

Our office appreciates that progressive medical advances have created opportunities for trained support personnel to operate health care equipment and to prepare patients for treatment by licensed chiropractors. The law does not always keep pace with these advances Thus, it is the recommendation of this office that, in order to recti the apparent vacuum, an assistant certification program be proposed t the Nevada Legislature for its consideration. Accordingly, I am en- closing a copy of NRS 630.271 - 630.275 for your review. Hopefully, these statutes may be of some help in preparing for legislative chang

Conclusion

Unlicensed office personnel working for doctors of chiropractic

may not perform physiotherapy, give advice on nutrition, and perform colonic irrigations prior to their licensure.

Sincerely yours,

RICHARD H. BRYAN
Attorney General

By: Jeffrey L. Eskin
JEFFREY L. ESKIN
Deputy Attorney General

JLE:ge

Enc.

MEMORANDUM

EXHIBIT G

January 23, 1981

To Heber P. Hardy, Chairman
Public Service Commission of Nevada

From Zev E. Kaplan, Deputy Attorney General ZEK

Subject: Inquiry from Senator Wilson

I.(1) Q. Whether the legislature could constitutionally authorize the PSC to order (after hearing) a public utility to extend its certificated area when the utility has not applied to do so and objects to such an extension?

A. The legislature could not constitutionally authorize the PSC to order a utility to extend its certificated area. To require a public utility to devote its property to a service which it has never professed to render or to the service of a territory which it has never undertaken to serve is tantamount to taking that property for public use without just compensation, a violation of the United States Constitution and the Nevada Constitution.

(2) Q. Does any state authorize such extensions of certificated area?

A. Not to my knowledge - as noted in #(1), to do so would be unconstitutional.

(3) Q. Are there any court decisions on this issue?

A. There are several court decisions on this issue. None of the decisions are from Nevada, however.

(a) Georgia Power Co. v. Georgia Pub. Serv. Commission, 211 Ga. 223, 85 S.E.2d 14 at 19 (1954).

(b) California Water & Telephone Co. v. Public Util. Comm'n., 51 Cal. 2d 478, 334 P.2d 887 at 895 (1959).

(c) Oklahoma Natural Gas Co. v. Corporation Com, 88 Okla. 51, 211 P.401, 31 ALR 330 (1922).

(d) Greyhound Lines v. Public Util. Comm'n., 68 Cal. 2d 406, 67 Cal. Rptr. 97, 438 P.2d 801 (1968).

The Public Service Commission of Nevada is currently engaged in an appeal before the Nevada Supreme Court which addresses this issue. (Richardson v. PSC, Case No. 12403)

II. Q. Are there any legal problems with a Statute which would require a public utility to purchase water rights at fair market value determined by negotiation or by a court in case of a dispute when the utility does not have sufficient water supply to hook-up every customer who applies for service?

A. The Public Service Commission may, within constitutional and reasonable limitations, compel a public utility which has undertaken to serve a certain territory to serve all inhabitants of the territory who may apply for such service and comply with the reasonable regulations of the public utility.

A potential problem is the question of reasonableness of ordering an extension. It would be necessary to have a hearing before the PSC to determine whether the facts of the particular situation justify the costs which may have to be shared by the current ratepayers to permit a return to the utility pursuant to constitutional requirements.

III. Q. Do you have any other areas where PSC jurisdiction should be expanded?

A. (1) Small Water Companies
They should be within the jurisdiction of the PSC from their origination and subject to the Utility Environmental Protection Act. If no action is taken to bring these water companies fully under the jurisdiction of the PSC then they should be totally exempt.

(2) Water Meters should be permitted, even required, in Reno-Sparks. Repeal of NRS 704.230 would be required.

(3) Motor Carrier Regulation
Reduction of regulation by PSC to coordinate with current Federal regulatory philosophy. (Consider adoption of NARUC Model Act.)

(4) Cable T.V.
Give jurisdiction to local governments.

ZEK:lm

PSCN GENERAL ORDER NO. 3

RE: SB 510

EXHIBIT H

RULE 19

Certificates of Public Convenience and Necessity

Public Utilities

9.010 Scope

This rule applies to an application by a public utility, ;cept air carriers, for a certificate to commence operating as a ıblic utility or to construct or extend its plant or system in ıch a manner as to require certification under NRS 704.330 to IS 704.380, inclusive.

9.020 Form and contents of application

An applicant for a certificate of public convenience and ecessity under this rule shall, in addition to complying with the rovisions of the rules applicable to pleadings, submit the following ata, either in the application or as exhibits attached to it:

1. A full description of the proposed construction or extension, and the manner in which it will be constructed.

2. The names and addresses of all utilities, corporations, persons, or other entities, whether publicly or privately operated, with which the proposed service or construction is likely to compete, and of the cities or counties within which service will be rendered under the requested certificate. If a public utility applies to the Commission to extend or establish its water service within a county water district, a public utility or municipal utility district, other water or utility district, or any area served by such a district, that district shall also be named if it furnishes a like service. The application shall contain a certification that a copy of the application has been served upon or mailed to each party named in this list.

3. A map of suitable scale showing the location or route of the proposed construction or extension, and its relation to other public utilities, corporations, persons, or entities with which the proposal is likely to compete.

4. A statement identifying the franchise and the health and safety permits that appropriate public authorities require for the proposed construction or extension.

If a construction permit is required under NRS 704.820 to 704.900, inclusive, application shall also be made under Rule 25.

5. Facts showing that the public convenience and necessity requires or will require, the proposed construction or extension of operation.

6. A statement detailing the estimated cost of the proposed construction or extension and the estimated annual costs, both fixed and operating, associated with the proposal. The applicant shall file, as a part of the application, supporting statements or exhibits showing that the proposed construction is in the public interest and that it is economically feasible.

7. Statements or exhibits showing the financial ability of the applicant to render the proposed service and information regarding the manner in which the applicant proposes to finance the cost of the proposed construction or extension. At a minimum the applicant shall submit a copy of its most recent balance sheet and income statement.

8. A statement of the proposed rates to be charged for service to be rendered by means of the construction or extension, the rules governing service in tariff format, and an estimate of the number of customers to be served and an estimate of annual revenue from those customers.

9. In the case of a telephone utility, in addition to all other applicable requirements of this rule, the estimated number of customers and the estimated revenue to be recovered from those customers by the telephone utility for the first five (5) years in the future.

10. In the case of an electric utility, in addition to all other applicable requirements of this rule:

    a. Load and resource data setting forth recorded and estimated loads (energy and demands), available capacity and energy, and margins for two (2) years actual and three (3) years estimated, on an average year basis.

    b. Existing rated effective operating capacity of generating plants and planned additions for the next three (3) years.

c. Estimated capital and operating costs of any proposed generating plant.

d. The estimated number of customers to be served and their requirements for the first five (5) years in the future.

11. In the case of a water utility, in addition to all other applicable requirements of this rule:

a. An estimate of the number of customers and the requirements for water for the first five (5) years in the future, and a description of the proposed normal, and emergency standby, water facilities for production, storage, and pressure to serve the area for which the certificate is sought.

b. A statement of the estimated operating revenues and estimated expenses, by major classes of service, including taxes and depreciation, for the first five (5) years in the future attributable to operations in the proposed area.

c. If the applicant has operated as a water utility in the state, a general statement of the operating plans for the proposed area, including a statement as to whether the new area will be served by new personnel. If the applicant has not operated as a water utility in the state, a description of the operating plans for the proposed area, including, to the extent available, but not necessarily limited to, such items as qualifications of management and operating personnel, proposed operating pressures for the system, plans for water treatment, availability of utility personnel to customers, billing procedures, emergency operation plans, and provisions for handling customer complaints.

12. In the case of a sewer utility, in addition to all other applicable requirements of this rule:

a. An estimate of the number of customers and the requirements for sewer service for the first five (5) years in the future, the future system development anticipated by the applicant, and a description of the proposed normal and emergency standby sewerage facilities for treatment and storage (settlement ponds) to serve the area for which the certificate is sought.

b. A statement of the estimated operating revenues and estimated expenses, by major classes, including taxes and depreciation, for the first year in the future attributable to operations in the proposed area.

c. If the applicant is operating a sewer utiltiy in the state, a general statement of the operating plans for the proposed area, including a statement as to whether the new area will be served by existing personnel or will constitute a separate district to be served by new personnel. If the applicant is not operating a sewer utility in the state, a description of the operating plans for the proposed area, including, to the extent available, but not necessarily limited to, such items as qualifications of management and operating personnel, plans for sewage treatment availability of utility personnel to customers, billing procedures, emergency operation plans, and provisions for handling customer complaints.

13. In the case of an application by a water or sewer utility that is no longer exempt under NRS 704.030, in addition to the information required for a water or sewer utility elsewhere in this rule:

a. A balance sheet as of the date the utility reached the statutory jurisdictional requirements of gross revenues and customer numbers of NRS 704.030.

b. A schedule of plant accounts showing the original cost of any plant in service as of the balance sheet date or an estimate of plant proposed by a new water utility.

c. A depreciation schedule by plant account showing the depreciation rate, depreciation method, and accumulated depreciation as of the date of the balance sheet.

d. Operating statement for the most recent twelve (12)-month period ending on the date of the balance sheet, showing operating revenues and expenses.

e. A statement showing the number of customers being served as of the date of the balance sheet.

f. A statement of the rates for service charged by the utility from the date of the utility's inception to and including the date of filing of the application for a certificate. Rates for service may not be increased without a Commission order for those rates after the utility has reached the jurisdictional requirements of gross revenues and customer numbers set forth in NRS 704.030. An application pursuant to Rules 7 and 16 must be filed if the utility proposes to increase its existing rates or charges. No application may be filed pursuant to NRS 704.100 until the utility has been issued a certificate of public convenience and necessity by the Commission.

14. In the case of a natural gas transmission or distribution utility in addition to all other applicable requirements of this rule:

    a. The estimated number of customers and their estimated requirements for the first five (5) years in the future. These requirements should be categorized by priorities as set forth in Commission General Order No. 18.

    b. A statement of current sources of supply of natural gas and an estimate of the sources of supply of natural gas for the first five (5) years in the future. These sources shall be delineated by quantity or availability and,to the extent possible, all costs associated with delivery.

    c. A description of all existing or planned storage facilities of the utility and of all existing or planned compressor facilities of the utility.

15. Additional information and data as may be necessary to a full understanding of the application.

RE: SB 510

Exhibit I

people for an adequate and dependable essential utility service, and weigh this need against the interest of a small number of adjacent property owners and considerations of local zoning. See Wilson Point Property Owners Asso. v. Connecticut Light & P. Co., *supra*, 145 Conn at pp. 249, 258, 259, 261 and 268, 23 PUR3d at pp. 422, et seq.

VI. Findings of Fact

From all the evidence, the commission makes the following findings of fact:

1. Additional water storage in the Jones Hill road area of West Haven is required to adequately provide water service to the company's present and future patrons.

2. The water tank proposed by the company will meet this requirement.

3. Construction of such a tank on Shingle Hill can be accomplished with a minimum of delay since it is on property presently owned by the company.

4. Such construction can be undertaken at a lesser expense after consideration of all cost factors, including land acquisition and the construction of additional connecting pipelines, than any other site that might potentially serve the purpose.

5. The Shingle Hill site is nearest the center of the company's high service area in this part of West Haven. From an engineering standpoint, the construction of a tank at this point would best serve the need for additional water storage.

6. Public interest in the construction of facilities for water storage at Shingle Hill outweigh any applicable zoning factors.

CALIFORNIA SUPREME COURT

California Water & Telephone Company

v.

California Public Utilities Commission et al.

S. F. 19690
— Cal2d —, 334 P2d 887
February 2, 1959

IN BANK. APPEAL *from commission order modifying contract between water company and subdivider; order annulled.*

Contracts, § 8 — Commission jurisdiction — Enforcement of private contracts.

1. The commission is not a body charged with enforcement of private contracts; its function is to regulate public utilities and compel the enforcement of their duties to the public, not to compel them to carry out their contract obligations to individuals, p. 430.

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Service, § 43 — Commission power — Modification of contract.

2. The commission cannot modify a public utility's contract or order a utility to perform a contract, whether modified or unmodified; the commission may, however, within the limits of its jurisdiction, order a utility to render services on certain terms and conditions, and in so doing, it is not bound by the terms of a utility's previously negotiated contracts, p. 430.

Constitutional law, § 18 — Use of utility property — Exercise of police power.

3. A commission order directing a public utility to devote its property to some other use than the public use to which the utility has dedicated the property cannot be justified as an exercise of the police power, p. 430.

Service, § 121 — Dedication to service.

4. A public utility may limit its dedication to a territorial area, p. 430.

Service, § 179 — Extensions — Dedication to service — Territorial limits.

5. A public utility may not be compelled to extend service beyond the territorial limits of dedication, p. 432.

Service, § 210 — Extensions — Water company — Dedication of service.

6. The territorial scope of a water company's dedication to service may ordinarily be measured by the municipality's boundaries when the company has dedicated its service to the inhabitants of a municipality; in a proper case, the company may be required to make reasonable extensions of its lines to accommodate the increased demands of a growing municipality, but only within the territorial scope of its dedication, p. 432.

Service, § 179 — Reservation by company of right to extend — Dedication to service.

7. A water company which claims the right to extend service into certain territory cannot be deemed to have dedicated its service to such territory since a claimed privilege cannot be transmuted into an avowed obligation, particularly where the contemplated possible future service has itself been expressly made conditional on explicit commission approval of the extension plan as tentatively offered, p. 434.

Service, § 121 — Dedication to public use — Holding out.

8. To hold that property has been dedicated to a public use is not a trivial thing; such dedication is never presumed without evidence of unequivocal intention, which need not be expressly stated but may be inferred from some act which is reasonably interpreted and relied upon by the public as a holding out or indication of willingness to provide service on equal terms to all who might apply, p. 434.

Service, § 178 — Extensions — Agreement — Dedication to service.

9. The mere signing of agreements by a water company, stipulating conditions under which it would extend service to new subdivisions in a previously nondedicated area, cannot be held to evidence a dedication of property to public use so as ipso facto to empower the commission to compel the extension of the company's mains on conditions other than those specified in the agreements, p. 434.

Service, § 179 — Dedication to service — Actual rendition of service to restricted class.

10. Actual rendition of public utility service to only a restricted class or eligible segment of the public may constitute a dedication of service to the public, but the commission will not imply that a water company has

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dedicated its service to a certain territory where, pursuant to conditioned contractual agreements, service has been furnished to specific houses within the area, p. 437.

Service, § 52 — Regulatory powers — Water company extension — Dedicated service area.

11. A water company is not free from all regulation when it contracts to extend mains beyond a dedicated service area, notwithstanding a statute that no water corporation shall begin construction of a line without first obtaining a certificate but providing that such certificate shall not be necessary for extension into a territory contiguous to an existing line, p. 439.

Service, § 179 — Extensions — Dedication to service — Water company — Actual deliveries.

12. A contention that a water company cannot be considered to have dedicated its service to the public in a previously nondedicated area until water is actually delivered in that area is untenable, since regulation of compensation charged for actual water deliveries could be substantially inadequate to protect the public interest if utilities were free from all regulation with respect to the compensation charged for the main extensions which make such water deliveries possible, p. 440.

Service, § 176 — Water company extension rule — Commission approval of deviation.

13. A water company undertaking to extend mains beyond its dedicated area may do so only on the terms and conditions stated in its main extension rule on file with the commission; deviation from such rule is permitted only after obtaining commission approval, and provisions deviating from the main extension rule are of no force or effect until such commission approval is obtained, p. 440.

(GIBSON, CJ., and TRAYNOR, J., dissent.)

APPEARANCES: Claude N. Rosenberg, Tadini Bacigalupi, Jr., and Bacigalupi, Elkus & Salinger, San Francisco, for petitioner; Everett C. Mc Keage, Chief Counsel, Roderick B. Cassidy, Assistant Chief Counsel, Cyril M. Saroyan, Senior Counsel, Rita L. Heiser, Assistant Counsel, San Francisco, Twohig, Weingarten & Schmidt and Saul M. Weingarten, Seaside, for respondents.

SCHAUER, J.: This is a proceeding to review an order of the public utilities commission which purports to modify the terms of a certain contract between petitioner and respondent Sawyer, and directs petitioner to re-execute the contract "as modified" by the commission and thereupon to specifically perform such "contract." We have concluded that the commission has acted in excess of its jurisdiction and that the order under review must be annulled.

Petitioner is a public utility engaged in the business of supplying water service to consumers in certain portions of Monterey county. The contract involved provides for the extension of petitioner's water mains and services into unimproved land which respondent Sawyer proposes to subdivide and which petitioner considers outside its dedicated service area. The commission premises its authority to make the

1503

subject order on its finding that petitioner has dedicated its service to the territory involved. Petitioner contends that the evidence is insufficient to sustain the finding of public dedication as to the subject area and that petitioner is, therefore, being deprived of its property without compensation in violation of its constitutional rights. For reasons hereinafter indicated we have concluded that petitioner's argument should be sustained. Because of the nature of the issue it is necessary to summarize all of the evidence which conceivably could tend to support the commission's holding.

In 1948 petitioner's admitted territory of dedicated service extended as far south as the southern boundary of an area known as Carmel Highlands. In that year respondent Sawyer purchased some 1,146 acres of land lying immediately south of Carmel Highlands. This land is known as the Victorine ranch and, at the time of the Sawyer purchase, apparently contained but two dwelling houses and was in fact, as the name implies, a ranch or farm and not a residential area.

Following oral discussions with certain officers and employes of petitioner and after receiving letters from the manager of its Monterey Peninsula division to the effect that "our installations at Carmel Highlands can be extended to the Victorine ranch with storage tanks which would supply any development that might be contemplated in this area," and that "It would not be necessary to supplement our present supply from any other sources," respondent Sawyer proceeded to subdivide some 23 acres, hereinafter referred to as Tract No. 1, install a water distribution system therein, and construct an 8-inch water main from that distribution system to a 3-inch water main of petitioner's at its termination point some 400 feet north of the southern boundary of Carmel Highlands. This work was completed in October, 1948, and petitioner's local representatives prepared and presented to Sawyer for his consideration and signature a certain proposed contract for the extension of petitioner's service. However, neither Sawyer nor petitioner signed the document.

This unsigned proposal apparently contemplated the extension of petitioner's service to Tract No. 1 as an area contiguous to that being served by petitioner and also contained proposed agreements for possible later extensions of service to future subdivisions of the balance of the Victorine ranch area. As to Tract No. 1 the proposed contract provided, in substance, that upon respondent Sawyer's transferring to petitioner ownership of the distribution system and 8-inch pipeline which he had constructed, petitioner would extend its service to Tract No. 1 as a public utility and would refund "the actual cost of the installation of said facilities" in conformance with petitioner's then effective subdivision main extension rule. Such extension rule (designated Rule and Regulation 19B) provided, in effect, that applicants for main extensions to serve subdivisions would pay the construction costs of the extension and would receive from petitioner, for a period not to exceed ten years, an annual refund of 35 per cent of the gross revenues collected from consumers within the subdivision.

The unsigned document also provided that respondent Sawyer would, as a condition precedent to petitioner's being obligated to supply water to areas other than Tract No. 1, construct at his own expense some 5,000 feet of 8-inch pipeline running from the northern terminus of the 8-inch pipeline installed by Sawyer to the southern terminus of petitioner's certain 8-inch pipeline in Carmel Highlands. There was no refund provision concerning the 5,000-foot pipeline.

The parties, having failed to agree, resumed negotiations and on July 8, 1949, reached agreement. They signed a contract which provided, among other things, that respondent Sawyer in effect transferred to petitioner, without obligation to refund, the pipeline and Tract No. 1 distribution system which he had constructed. Petitioner then connected its 3-inch main with the 8-inch main constructed by Sawyer and commenced service to Tract No. 1. Petitioner concedes, and has conceded throughout, that Tract No. 1, but only No. 1, thereby became and is now within its dedicated public service area. The order of the commission presently under review does not concern the terms of petitioner's service to Tract No. 1; it relates solely to the nature of petitioner's obligation, if any, to extend its mains and services to new subdivisions proposed to be created in other areas of the Victorine ranch.

Under the July, 1949, contract petitioner conditionally agreed, in effect, to extend its mains and services from time to time to other contemplated subdivisions of the Victorine ranch land lying below the 600-foot contour. Such main extensions were to be made in accordance with petitioner's Rule and Regulation 19B, *provided that Sawyer, as a condition precedent,* deposited with petitioner $20,000 toward the cost of the installation by petitioner rather than by Sawyer of the aforementioned 5,000 feet of 8-inch pipeline running from the northern terminus of the 8-inch pipeline in Carmel Highlands. Sawyer agreed to pay petitioner's actual construction costs and construction was to begin upon deposit of the $20,000. Petitioner agreed to refund any portion of the $20,000 that should prove in excess of the actual construction costs, but there was no provision for refund of the actual construction costs themselves. Respondent Sawyer agreed to commence accumulating the $20,000 by opening an escrow savings account and depositing the sum of $1,500 therein concurrently with each and every sale of a lot in Tract No. 1.

Paragraph 9 of the agreement provides that "This agreement shall at all times be subject to such changes or modification of the public utilities commission . . . as said commission may from time to time direct *in the exercise of* [its] *jurisdiction.*" (Italics added.) Such provision is required by and was inserted pursuant to the commission's General Order No. 96. General Order No. 96 also states that no public utility such as petitioner "shall hereafter *make effective* any contract or arrangement for the furnishing of any public utility service . . . under conditions other than the . . . conditions contained in its tariff schedules on file and in effect at the time, unless it first obtain the authorization of the commission to carry out the terms of such contract

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or arrangement . . . . Each such contract shall contain a provision indicating the understanding of the parties that it shall not become effective until such authorization of the commission is obtained." (Italics added.) The latter provision was not inserted in the subject contract and petitioner did not submit the contract for the commission's approval but, as hereinafter shown, it was not until 1954 that Sawyer requested petitioner to "make effective" the contract for service beyond the original contiguous areas of Tract No. 1.

Petitioner also agreed to apply to the commission, within sixty days after execution of the contract (July 8, 1949), for a certificate of public convenience and necessity to render water service as a public utility in that portion of the Victorine ranch lying below the 600-foot contour. Petitioner has not made such application and holds no certificate or franchise to serve the Victorine ranch area.

In 1954 respondent Sawyer sought water service for certain areas of the Victorine ranch other than Tract No. 1. Petitioner advised Sawyer that it would not extend its mains or services unless and until Sawyer complied with the condition precedent and, as specified in the contract, deposited with petitioner $20,000 for the construction of the 5,000-foot pipeline. Sawyer did not deposit the $20,000 but, on November 29, 1954, filed a complaint with the commission. The complaint alleged the substance of the foregoing facts, among other things, and prayed that petitioner be required to reduce its demands and extend service to the entire Victorine ranch territory in accordance with its Rule and Regulation 19B. Petitioner filed an answer which, among other things, contested the commission's jurisdiction to grant the prayed-for relief. Hearings were held during April and July, 1955.

After the case was submitted but prior to a decision, the parties, on May 21, 1956, signed a proposed compromise agreement. Le Forust, Inc., to whom respondent Sawyer had previously sold certain undeveloped portions of the Victorine ranch, was a party to such agreement. This proposed compromise evidenced a full meeting of the minds of the parties and a clear statement of their intended contractual rights and obligations but, inasmuch as under General Order No. 96, hereinabove quoted, the proposed agreement would not be fully valid and *effective* without approval of its terms by the public utilities commission, the parties expressly declared such approval to be a prerequisite to *any effectiveness* of the proposed agreement. The agreement provided that in place of meeting the condition theretofore agreed upon (the immediate deposit of $20,000 to be credited against Sawyer's obligation to pay *all of* the actual cost of constructing the 5,000-foot pipeline specified in the 1949 agreement) respondent Sawyer would "pay to" petitioner $24,000 but would not be obligated to pay any further amount toward petitioner's costs of making the necessary extension to its facilities. Petitioner agreed that upon receipt of the $24,000 it would proceed to construct an 8-inch pipeline some 560 feet in length connecting the 8-inch pipeline originally installed by Sawyer with a certain 8-inch pipeline of petitioner's which terminates on "Lower Walden road." This latter pipeline

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is not 8 inches in diameter throughout its entire length; it contains some 1,500 feet of smaller pipe. Petitioner agreed to replace the smaller pipe so as to provide a continuous 8-inch main leading to the Victorine ranch.

The $24,000 was, of course, intended to substantially defray petitioner's construction costs for the addition but was stipulated in the compromise agreement to be a "firm amount" not subject to readjustment upon determination of petitioner's actual construction costs. It was also agreed that as to any future main extensions —i. e., extensions *after its service would have become dedicated to the new area*—petitioner's main extension rule in effect at the time of such extension would be applicable, rather than the Rule and Regulation 19B which was in effect at the time of the 1949 agreement.[1]

Respondent Sawyer also agreed to request the commission to dismiss his complaint with prejudice and approve the 1949 agreement as amended by the 1956 agreement. In this regard the 1956 agreement provided as follows: "It is mutually agreed by the parties hereto that unless and until the commission shall have, upon the application of [Sawyer] . . . , dismissed said complaint with prejudice and approved the 1949 agreement, as amended hereby, all in such manner as to make such dismissal and approvals full, final, and unconditional and subject to no further change without the consent of the parties hereto, this agreement shall be of no force or effect and the rights, duties, and obligations of the parties hereto shall remain as they were prior to the execution hereof." Except as expressly proposed to be modified, the agreement of July 8, 1949, was ratified and affirmed.

Pursuant to the terms of the 1956 proposed compromise agreement, Sawyer, on May 23, 1956, submitted the contracts to the commission for its approval and requested dismissal of his complaint with prejudice.

On August 29, 1956, the commission rendered its decision. Its opinion notes petitioner's argument to the effect that petitioner has not dedicated its public service to the Victorine ranch properties other than Tract No. 1, and that the commission, therefore, has no jurisdiction to order an extension of service or regulate the conditions upon which petitioner's mains may be extended. The commission opinion, however, concludes that petitioner is subject to "whatever order in this proceeding [the commission] . . . may deem appropriate with respect to the facilities and service contemplated by [the 1949] . . . agreement *and by the [1956] amendments thereto.*" (Italics added.) This conclusion is apparently based on (1) the commission's interpretation of the contracts involved, and (2) its finding "that [petitioner] . . . , by execution of the 1949 agreement *and the 1956 amendments thereto,* has unequivocally indicated its intent to dedicate and *has in fact dedicated* its service, as set forth in said amended agreement, to the balance of the Victorine ranch properties." (Italics added.) The above-quoted finding, as appears from the above-recited facts and as is here-

[1] In 1954 the commission promulgated a new main extension rule. Its refund provisions are considered less onerous to the utility.

inafter explained in more detail, is untenable.

The commission opinion then turns to what it terms "a consideration of the merits" of the agreement and concludes that petitioner's main extension rule in effect in 1949 should apply to future extensions and that Sawyer should not be required to pay the $24,000 contemplated in the 1956 agreement; that Sawyer should be required to pay no more than the actual cost of constructing the 560 feet of 8-inch pipe connecting the pipeline originally constructed by Sawyer with petitioner's "Lower Walden road" pipeline, that petitioner should stand the cost of removing the "bottlenecks" in the latter pipeline. Placing emphasis on paragraph 9 of the 1949 agreement, which states that the agreement shall "at all times" be subject to modification by the commission "in the exercise of [its] jurisdiction," the commission entered its order: (1) Denying petitioner's motions to dismiss the Sawyer complaint. (2) Denying Sawyer's request for approval of the agreements and dismissal of his complaint. (3) Directing petitioner "to carry out the terms and conditions of its agreement of July 8, 1949, as amended by its agreement of May 21, 1956, . . . *as modified to the extent and in the manner set forth in the preceding opinion* . . . ." (4) Directing petitioner *"to re-execute said agreement* of July 8, 1949, *as amended by the agreement of May 21, 1956, and as modified by this order* . . . ." (Italics added.) (5) Denying all other relief prayed for by Sawyer, with the exception of the institution of an investigation by the commission into petitioner's "Monterey subdivision main extension contracts and practices," such investigation having already commenced. A petition for rehearing was denied.

[1–4] Petitioner contends that the commission has acted in excess of its jurisdiction in that the commission's order purports to modify a private contract and order its re-execution and specific performance "as modified." As stated in Atchison, T. & S. F. R. Co. v. California R. Commission (1916) 173 Cal 577, 582, PUR1917B 336, 340, 160 Pac 828, 2 ALR 975, "the . . . commission is not a body charged with the enforcement of private contracts. [Citation.] Its function . . . is to regulate public utilities and compel the enforcement of their duties to the public [citation]; not to compel them to carry out their contract obligations to individuals." The commission cannot "modify" a public utility's contract or order a public utility to perform a contract, whether "modified" or "unmodified." It may, however, within the limits of its jurisdiction, order a public utility to render certain services on certain terms and conditions, and in so doing it is not bound by the terms of a utility's previously negotiated contracts. (Cf. Motor Transit Co. v. California R. Commission [1922] 189 Cal 573, 581, PUR1923A 232, 209 Pac 586.) The commission argues that the record supports its determination that petitioner has dedicated its service as a public utility to the entire Victorine ranch area rather than just to Tract No. 1 therein, and that, consequently, the order under review merely utilizes various provisions of the contracts in the course of directing petitioner to extend its mains and services to the bal-

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ance of the ranch on conditions which the commission has found reasonable.

The law is clear that an order directing a public utility to devote its property to some other use than the public use to which the utility has dedicated the property cannot be justified as an exercise of the police power. As appears from Pacific Teleph. & Teleg. Co. v. Eshleman (1913) 166 Cal 640, 680, 137 Pac 1119, 50 LRA NS 652, "[I]n dealing with public utilities, regulation of use within the dedicated use is as far as the police power may be extended, and . . . when the regulation exceeds this, it is always void for unreasonableness and may, depending upon the form and character of the order, be also void as an attempt to take property without compensation . . . ." In that case the commission had ordered Pacific Telephone Company to "permit a connection between its long-distance lines and the local lines of the [competing] . . . companies [Tehama County Telephone Company, and Glenn County Telephone Company], under which, by the use of the switchboards, operators, and lines of the Pacific Company, its property and its agencies, the petitioning companies and their subscribers would have the same rights to all the long-distance instrumentalities of the Pacific Company as its subscribers and patrons." (At p. 669 of 166 Cal, at p. 1129 of 137 Pac.) In opinions annulling the commission's order it was pointed out (166 Cal at pp. 669, 670, 690–701, 137 Pac at pp. 1129, 1130, 1138–1143) that the Pacific Company had dedicated its property to telephone service conducted by itself for the benefit of its own patrons and to the service of local companies in noncompeting territory, but had not made such dedication to the use of rival and competing companies, and held (166 Cal at pp. 686, 687, 702, 703, 137 Pac at pp. 1136, 1137, 1143) that to compel it to provide service to such companies would be to subject its property to a new use which would constitute a taking without compensation first being paid to the owner as required by the California Constitution, Art 12, § 22.

This court has likewise recognized that a public utility may limit its dedication to a territorial area. (Hollywood Chamber of Commerce v. California R. Commission [1923] 192 Cal 307, PUR1924B 503, 219 Pac 983, 30 ALR 68; Atchison, T. & S. F. R. Co. v. California R. Commission, *supra;* Del Mar Water, Light & P. Co. v. Eshleman [1914] 167 Cal 666, 140 Pac 591, 948.) In the last cited case we annulled an order which directed a water company to extend its pipeline and render service to a certain individual. (See at pp. 678–683 of 167 Cal, pp. 595–597 of 140 Pac 591.) Although there was some doubt whether the company was a public utility, such was assumed to be the fact and this court based its decision on failure of the evidence to show, and of the commission to find, that the individual concerned was within the territorial area to which the company had dedicated its public service. The court further commented on the limited nature of the supply of water itself, and declared (167 Cal at p. 681, 140 Pac at p. 597) that "There can be no doubt, therefore, that the owner of a water supply may make a limited dedication of it to public use, *confining the use to*

such territory as he sees fit. Nor can there be any doubt that one owning a water supply is not compelled to dedicate all of it to public use, or that he may dedicate a part of it, only, to such use, . . . Accordingly, our decisions have recognized and have repeatedly declared the right of a water company to make such limited dedication and to decline to furnish its water to persons not within the area it has undertaken to serve. [Citations.]" (Italics added.)

[5, 6] The commission, however, argues that certain language appearing in the decision of Hollywood Chamber of Commerce v. California R. Commission, *supra,* indicates that a public utility water company may be ordered to expand into territory outside its dedicated service area in the interest of public convenience and necessity. As applied to the circumstances of the case at bar the argument is without merit. In the cited case this court held (192 Cal at pp. 313, 314, 219 Pac at pp. 985, 986) that the commission is without jurisdiction to order a street railway company to extend its lines into new territory in which it has no municipal franchise to operate. We recognized (192 Cal at pp. 312, 313, PUR1924B at p. 508, 219 Pac at pp. 985, 986) that the territorial scope of a utility's dedication might be measured by the territorial scope of the municipal franchises the utility had acquired, but reasoned that "whereas these other utilities [water, gas, electric, telephone] are given franchises [and hence have dedicated their services] to supply the inhabitants of the particular community," the territorial scope of the railway company's franchise included only the land over which the company had obtained permission to run its lines.

This court further stated among other things (at p. 312 of 192 Cal, at p. 507 of PUR1924B at p. 985 of 219 Pac): "The argument of the railroad commission seems to be predicated upon the erroneous assumption that a street railway company's public duty is analogous to the duties of a water, gas, electric power, or telephone company, *which are required to expand their facilities to meet the demands of a growing community.* (Lukrawka v. Spring Valley Water Co. 169 Cal 318, PUR1915B 331, 146 Pac 640, ...)" (Italics added.) Respondent commission now suggests that the italicized portion of the above quotation establishes that a water company may be compelled to extend its service beyond its dedicated area. But as hereinafter shown a reading of the court's opinion shows no support for the commission's suggestion.

The Lukrawka case (cited above) involved a corporation which was organized "under the act of April, 1858 [Stats 1858, p. 218], for the purpose of supplying the city and county of San Francisco and the inhabitants thereof with a sufficient supply of water . . . ." (At p. 321 of 169 Cal, at p. 332 of PUR1915B at p. 641 of 146 Pac). Certain residents of San Francisco sued the company to compel it to extend its water mains and provide them with water. The court pointed out (169 Cal at p. 324, PUR1915B at p. 336, 146 Pac at p. 642) that "The act of 1858 in express terms confers on corporations accepting the franchise extended under it, the privilege of using the streets of the municipality in which it has undertaken to

operate for laying its pipes and conduits. The respondent could acquire no right to engage in the business of supplying water to the city and county of San Francisco, with an easement over all the streets of the municipality, unless under a franchise granted by the state for that purpose and with such a right. It was for the benefit of the public that the franchise was extended to secure to the municipality . . . and its inhabitants an adequate supply of water . . . This was the purpose and this the condition upon which the franchise was offered, and when it was accepted by the respondent it constituted a contract between the state and the respondent under which the rights, duties, and responsibilities of each were fixed, . . . The franchise was not offered, nor could it be accepted, with any limitation as to the area to be fixed by the corporation organized under the act within which in the municipality it would furnish water to its inhabitants." The holding was that by accepting the franchise the water company had also assumed the obligation "to anticipate the natural growth of the municipality it had undertaken to serve as a whole; and to take reasonable measures to have under its control a sufficient supply of water and make gradual extensions of its distributive system to meet the reasonable demands for water by the growing community." (At p. 325 of 169 Cal, at p. 337 of PUR1915B at p. 643 of 146 Pac.) The court further commented that it had not been cited to any authority holding that a corporation "operating under the terms of a *franchise such as is involved here*" (italics added) is not required to extend its water system into new territory in the city of its franchise. There is no suggestion that the commission could require the water company to extend its lines and services to some other city or new community lying beyond the bounds of the franchise it had accepted. It is thus clear that in the Lukrawka case the court was concerned with the peculiar obligations of a water company which had been organized and had accepted a franchise under the particular statute there involved (act of April, 1858), rather than with any general power of the public utilities commission to order a public utility to extend its service beyond the territorial limits of its dedicated area, and that neither the Lukrawka nor the Hollywood case supports the commission's suggestion that it has such power.

To summarize, the above-cited cases are uniformly to the effect that a public utility may not be compelled to extend its service beyond the territorial limits of its dedication. This is true regardless of the nature of the utility involved. In measuring the territorial scope of a utility's dedication a fundamental distinction exists between railway companies and other utilities such as water, gas, electric power, and telephone companies. This distinction stems from the fact that the latter utilities normally extend their lines to their customers, whereas a railway company's customers bring themselves to the utility. This distinction is most apparent in cases like Hollywood and Lukrawka, *supra,* wherein a public utility has acquired a franchise to operate within a municipality. The extent and terms of such franchises constitute persuasive evidence of the territorial scope of the utility's dedication.

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When a railway company obtains a franchise to operate within a municipality it normally merely acquires permission (and impliedly obligates itself to the public) to run its lines over certain specified streets or strips of land; it does not acquire permission or obligate itself to extend its lines should the municipality grow in the future. The territorial scope of a railway's dedication is limited to a relatively narrow strip of land and, from the nature of the business, it is up to the public to bring itself to the railway company's line. Such is normally not the situation with respect to water companies and like utilities which extend their lines to individual customers within the areas to which they are dedicated. When a water company acquires a franchise to operate within a municipality, it normally (although not necessarily) acquires permission (and impliedly obligates itself to the public) to extend its lines along all the streets in the municipality, including streets to be built in the future, so that it may bring its service to all customers embraced within the territorial limits of the municipality. It follows that when a water utility has dedicated its service to the inhabitants of a municipality, the territorial scope of its dedication may ordinarily be measured by the municipality's boundaries, and, in a proper case, it may be required to make reasonable extensions of its lines to accommodate the increased demands of a growing municipality. But it is only within the territorial scope of its dedication that a water utility, or any other utility, may be compelled to extend its lines.

[7] The commission also suggests that as a matter of law petitioner must be held to have dedicated its service to the balance of the Victorine ranch properties, because it claims the right to extend its service into that territory. Such reasoning, which transmutes a claimed privilege into an avowed obligation, is clearly untenable; this is even more obviously true here where the claimed privilege or, more accurately, contemplated possible future service, was itself expressly made conditional on explicit commission approval of the extension plan as tentatively offered.

[8, 9] The next issue is whether the evidence is sufficient to support the commission's finding that petitioner has dedicated its public service to the territory involved. If there was any evidence[2] before the commission that could support its finding of dedication, such finding will not be disturbed. (Kern County Land Co. v. California R. Commission [1934] 2 Cal2d 29, 35, 38 P2d 401; Western Canal Co. v. California R. Commission [1932] 216 Cal 639, 646, 15 P2d 853; Samuel Edwards Associates v. California R. Commission [1925] 196 Cal 62, 70, 235 Pac 647; Butte County Water Users' Asso. v. California R. Commission [1921] 185 Cal 218, 231, 196 Pac 265; Van Hoosear v. California R. Commission [1920] 184 Cal 553, 555, PUR1921C 447, 194 Pac 1003; see also, California Portland Cement Co. v. California Pub.

[2] For the purposes of this argument we do not consider the possible effect of § 1760 of the Public Utilities Code. (See Southern P. Co. v. California Pub. Utilities Commission [1953] 41 Cal2d 354, 361, 1 PUR3d 438, 260 P2d 70; Southern California Edison Co. v. California R. Commission [1936] 6 Cal2d 737, 748–750, 17 PUR NS 311, 59 P2d 808.)

Utilities Commission [1957] 49 Cal2d 171, 175, 21 PUR3d 146, 315 P2d 709; Southern California Edison Co. v. California R. Commission, *supra*, 6 Cal2d 737, 747, 17 PUR NS 311, 59 P2d 808.) Petitioner has admittedly dedicated its property to public use in various areas of Monterey county. The question is whether the evidence supports the finding that petitioner has made such a dedication with respect to the balance of the Victorine ranch area. As stated in Allen v. California R. Commission (1918) 179 Cal 68, 85, PUR1919A 398, 414, 175 Pac 466, 8 ALR 249, "To hold that property has been dedicated to a public use is 'not a trivial thing' [citation], and such dedication is never presumed 'without evidence of unequivocal intention.'" (See also, Trask v. Moore [1944] 24 Cal2d 365, 373, 149 P2d 854; Klatt v. California R. Commission [1923] 192 Cal 689, 702, 221 Pac 926; Richardson v. California R. Commission [1923] 191 Cal 716, 721, PUR1924A 775, 218 Pac 418.) However, such unequivocal intention need not be expressly stated; it may be inferred from the acts of the owner and his dealings and relations to the property. (Samuel Edwards Associates v. California R. Commission, *supra*, 196 Cal 62, 70, 235 Pac 647.) Dedication is normally evidenced by some act which is reasonably interpreted and relied upon by the public as a "holding out" or indication of willingness to provide service on equal terms to all who might apply. (See Samuel Edwards Associates v. California R. Commission, *supra*, 196 Cal at pp. 70, 71; Traber v. California R. Commission [1920] 183 Cal 304, 312, PUR1921A 67, 191 Pac 366; City of San Leandro v. California R. Commission [1920] 183 Cal 229, 234, 191 Pac 1; Producers Transp. Co. v. California R. Commission [1917] 176 Cal 499, 503–505, PUR1918B 518, 169 Pac 59; Camp Rincon Resort Co. v. Eshleman, 172 Cal 561, 563, 564, PUR 1916E 418, 158 Pac 186; Thayer v. California Develop. Co. [1912] 164 Cal 117, 126–132, 128 Pac 21.) If the evidence reveals any acts on the part of petitioner which were reasonably relied upon by the public as an expression of petitioner's willingness to extend its mains to the uninhabited balance of the Victorine ranch and render public utility service therein whenever members of the public should occupy that area and request such service, the commission's order will not be annulled.

The commission in its written opinion states: "We . . . find that [petitioner] . . . by execution of the 1949 agreement *and the 1956 amendments thereto,* has unequivocally indicated its intent to dedicate and *has in fact dedicated* its service, as set forth in said amended agreement, to the balance of the Victorine ranch properties." (Italics added.) But the mere signing of the 1949 and 1956 agreements furnishes no evidence of public dedication. For one thing, the 1956 agreement has not become effective and the commission errs to the extent that it treats that agreement as binding upon petitioner. That agreement clearly states that it "shall be of no force or effect" unless and until the commission "shall have . . . dismissed [the Sawyer] . . . complaint with prejudice and approved the 1949 agreement, as amended hereby . . . ." Neither of the conditions

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precedent has occurred and the 1956 agreement is inoperative. Furthermore, it is manifestly arbitrary and unreasonable to hold that the mere signing of these agreements evidenced a dedication of property to public use in a previously nondedicated area, so as to ipso facto empower the commission to compel the extension of petitioner's mains on conditions other than those specified by petitioner in the agreements, and without which petitioner, in the exercise of its managerial judgment (cf. Pacific Teleph. & Teleg. Co. v. California Pub. Utilities Commission [1950] 34 Cal2d 822, 828, 829, 83 PUR NS 101, 215 P2d 441), would not have signed the agreements in the first place.

Butte County Water Users' Asso. v. California R. Commission, *supra*, 185 Cal 218, 228, 229, 196 Pac 265, cited by the commission, is not persuasive to the contrary. In that case this court, despite protest by certain "old consumers" of a water utility, affirmed an order of the commission directing the utility to supply water, beginning with the year 1920, to some 14,400 acres of land not theretofore served by it. In September, 1919, the utility had contracted with the owners of the 14,400 acres to supply such service. In the spring of 1920 it became evident that there was danger of a water shortage due to light rainfall during the preceding winters. Before the water company actually commenced deliveries to the 14,400 acres the company's pre-1920 consumers filed a complaint with the commission, alleging that the company would not have enough water to serve both their lands and the 14,400 acres of new lands, and asking the commission to direct the company not to supply the latter. The owners of the 14,400 acres intervened, alleging that they had been accepted by the water company as consumers. The commission, on the ground that the interveners occupied the status of consumers and were, therefore, as a matter of law, entitled to share pro rata in the available supply, ordered the company to serve them.

Although in affirming the commission's order this court held that the record supported the commission's conclusion that the owners of the 14,400 acres occupied the status of consumers, i. e., persons whom the water company was obligated to serve, the holding did not rely on the mere creation of the September, 1919, contract. The opinion states (at pp. 228, 229 of 185 Cal, at p. 269 of 196 Pac 265): "The facts in the matter are, . . . that in September, 1919, the company and the owners of the new lands contracted for service for those lands; that the company thereupon extended its system and the owners prepared their land, both at very considerable expense; and that prior to January 1, 1920, pursuant to the company's rules, the respective owners had made application to it for water for the ensuing year, and those applications had been accepted, and the owners had paid the company's charges.

"These facts are not disputed, and upon them certainly the owners had become consumers, provided only the company had authority to admit them as such. . . . The relation of public utility company and consumers was established as soon as the company came under obligation to serve and the owners came under obligation to

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take. Both these obligations had been assumed by the respective parties by January 1, 1920, so far as they could assume them. . . ." In the Butte case, *supra*, the water company had actually extended its system into the new territory and the owners of the 14,400 acres had performed all conditions precedent to the water company's obligation to commence water deliveries. The case is clearly not authority for the proposition that petitioner here dedicated its service to the entire Victorine ranch by merely signing the 1949 and 1956 agreements.

[10] The commission contends also that the record supports an implied finding that petitioner had dedicated its service to the territory in question prior to the signing of the contracts. The commission's written opinion, as well as its order denying rehearing, indicate that it relied to some degree upon evidence that petitioner serves water to three houses located on the Victorine ranch a short distance south of Tract No. 1.

Two of those houses existed at the time Sawyer acquired the Victorine ranch and are served water pursuant to a 1943 contract with their then owner, Joe Victorine. The record reveals that when Victorine applied to petitioner for water service in 1943 the matter was the subject of correspondence between petitioner and the commission. In a letter to the commission dated March 8, 1943, petitioner advised that it was willing to serve Victorine only on condition that it would not be interpreted "as an extension of the company's service area or the dedication of any of the company's water to the Victorine service or the area in which it is located." That area, of course, was farm land, not a growing residential area. By letter of April 12, 1943, the commission suggested to Victorine that "the service be covered by an agreement in order that there can be no cause for future misunderstanding concerning it." Such a contract was entered into and expressly provides that the service is to be temporary in character and to meet an emergency, and is to be supplied from surplus waters; that petitioner may terminate the service at any time upon one year's written notice, and that neither Victorine nor any successor in interest of his shall acquire any right to receive water except on such temporary basis; that "no water is dedicated to any such uses of Victorine or of the present or future occupants of said residences [sic] or said residences or said real property or any part thereof." By the terms of the contract Victorine agreed to, "at his own cost and expense, furnish and install pipe necessary to accept delivery of water from [petitioner] . . . within [petitioner's Carmel Highlands] . . . service area." There is nothing to indicate that the pipe installed by Victorine became the property of petitioner. Petitioner's rendition of service to the two Victorine ranch houses certainly does not evidence a willingness to assume public utility obligations to all potential inhabitants of the 1,146 acre Victorine ranch as a residential subdivision area.

The third house referred to by the commission is owned by one Andrews. It appears that in 1954 Andrews was negotiating with Sawyer for the purchase of 2 acres immediately south of Tract No. 1. Sawyer inquired whether petitioner would serve the property

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and was informed that petitioner would not serve any area outside of Tract No. 1 until Sawyer complied with his obligation under the 1949 contract. Finally, however, an arrangement was worked out between Sawyer and petitioner whereby the property could be served under a private and limited contract. Pursuant to that arrangement Andrews, now petitioner, ran a pipe from the Andrews home to petitioner's mains in Tract No. 1, at which point delivery is made and metered. Also pursuant to that arrangement, Sawyer deposited $2,500 from the proceeds of his sale to Andrews in the escrow account provided for by the 1949 contract. Even if we should assume that petitioner thereby dedicated its service as a public utility to this single residence located on the outskirts of Tract No. 1, such service cannot be construed as a representation to the public that like service will be provided all who purchase lots in future subdivisions yet to be developed by Sawyer. The very nature of the arrangement made negates any such inference.

The commission asserts that its finding of public dedication was particularly based upon the testimony of one Neill, who was petitioner's division manager in the Monterey area from 1940 to 1943. Neill testified to the effect that at the time he was connected with petitioner both he and his superiors considered petitioner obligated to serve "the entire Monterey peninsula, the subdividable land in Carmel valley from the Mathiot ranch on down. . . . the coast line down to and including the [Carmel] Highlands . . . ." The Victorine ranch, of course, lies *beyond* and immediately south of Carmel Highlands. At other times during his examination Neill made statements to the effect that the entire Victorine ranch was within what he and his superiors considered to be petitioner's "service area." It is clear from Neill's testimony that he used the term "service area" to include all territory into which he expected petitioner, at some future time, to expand. For instance, he included within petitioner's "service area" territory that was then being served by three other water systems which he expected petitioner would eventually absorb. Neill's testimony thus amounts to no more than a statement of his own 1943 conclusion as to what petitioner probably would do in the future. He testified to no acts which could be construed as representations to the public by petitioner that it had dedicated its public utility service to the entire area of the Victorine ranch or that it would extend its service to that new area whenever requested. His testimony does not support the commission's finding that petitioner has dedicated its service to the public in the balance of the Victorine ranch area. Nor is any other evidence cited which can support such finding.

This is a situation wherein Sawyer, as a private individual businessman, desired, negotiated for, and obtained, a conditioned or provisional obligation running from petitioner to Sawyer as an individual, as distinguished from a member of the public. The most that can be deduced from the dealings between petitioner and Sawyer is that petitioner has conditionally obligated itself to Sawyer as an individual subdivider, to obligate itself to the public

in the future when and if the specified conditions precedent have been met. And such conditions have not been met.

Of course, an actual rendition of public utility service to only a restricted class or eligible segment of the public may be held to constitute a dedication of service to the public. (Camp Rincon Resort Co. v. Eshleman, *supra*, 172 Cal 561, 564, PUR1916E 418, 158 Pac 186; see Commercial Communications v. California Pub. Utilities Commission [1958] 50 Cal2d 512, 25 PUR3d 1, 327 P2d 513.) Section 207 of the Public Utilities Code defines "Public or any portion thereof" as "the public generally, or any limited portion of the public, including a person . . . for which the service is performed or to which the commodity is delivered." In the present case, however, Sawyer has not sought, *much less received,* actual water deliveries to himself for his own use upon the balance of the Victorine ranch property. He does not appear interested in himself receiving and paying for water deliveries. What he has sought and what he has received is a conditioned contractual obligation running to himself, not as a water consumer, but as a private individual engaged in the business of subdividing uninhabited land.

The commission has relied upon the mere existence of that conditioned and provisional obligation, running to Sawyer as an individual private businessman—who has never met the conditions precedent—as evidence that petitioner obligated itself to "the public"—an unidentified and intangible public—to provide service in an as yet uninhabited area. Such a view is untenable. It follows that the evidence fails to support the finding of dedication and that the order under review must be annulled.

Petitioner further contends that the commission had no jurisdiction whatsoever over the terms and conditions upon which a water public utility may voluntarily agree to extend its mains into nondedicated territory. Petitioner concedes the commission's jurisdiction over the rates which may be charged for actual water delivery once the mains have been extended and service commenced, but urges that the commission's jurisdiction does not attach until such time as water is actually delivered to consumers; that a water public utility may agree to extend its mains into previously nondedicated territory upon whatever terms and conditions it pleases. The commission contends that when a water public utility undertakes to extend its mains beyond its dedicated area it must do so on the terms and conditions stated in its main extension rule on file with the commission, or obtain commission authority for any arrangements which deviate therefrom; that until the commission approves provisions deviating from the utility's main extension rule, such provisions are of no force or effect.

[11] Petitioner argues that its main extension rule is applicable only to extensions *within* its dedicated service area; that when it contracts to extend its mains to an area wherein it is under no obligation to the public to serve, it does so as a private corporation free from regulation by the public utilities commission. Petitioner relies on § 1001 of the Public Utilities Code which provides: "No . . .

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water corporation shall begin the construction . . . of a line, plant, or system, or of any extension thereof, without having first obtained from the commission a certificate [of public convenience and necessity] . . .

"This article shall not be construed to require any such corporation to secure such certificate for an extension . . . into territory . . . contiguous to its . . . line, plant, or system, and not theretofore served by a public utility of like character . . . ."

Nothing in § 1001 indicates that a water utility is free from all regulation when it contracts to extend its mains beyond its dedicated service area. The commission seeks to apply and enforce that part of its General Order No. 96 which states that no public utility such as petitioner "shall hereafter make effective any contract or arrangement for the furnishing of any public utility service . . . under conditions other than the . . . conditions contained in its tariff schedules on file and in effect at the time, unless it first obtain the authorization of the commission to carry out the terms of such contract or arrangement." As authority for its promulgation of the quoted portion of General Order No. 96, the commission relies on § 532 of the Public Utilities Code which provides that "no public utility shall charge, or receive a different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the . . . charges applicable thereto as specified in its schedules on file and in effect at the time . . . The commission may by rule or order establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to each public utility."

[12, 13] Petitioner contends that a water utility cannot be considered to have dedicated its service to the public in a previously nondedicated area until water is actually delivered in that area; that the commission's jurisdiction to regulate terms and conditions of service does not attach until such time as water is actually delivered; and that, therefore, the commission has no jurisdiction whatsoever over the compensation charged for the extension of a water utility's mains preparatory to the commencement of actual water deliveries. In other words, petitioner concedes that § 532 is applicable in so far as compensation charged for actual water deliveries is concerned, but contends that the section is inapplicable with respect to the compensation charged for the main extensions which make such water deliveries possible.

But regulation of compensation charged for actual water deliveries could be substantially inadequate to protect the public interest if public utilities were free from all regulation with respect to the compensation charged for the main extensions which make such water deliveries possible. The extension of a water utility's mains in preparation for the actual delivery of water is no less a public utility service than the water deliveries themselves. The cost of installing mains for the delivery of water is a part of the cost of the water deliveries. Petitioner's position on this issue is not tenable. Various cases from other jurisdictions cited by petitioner do not involve statutory schemes of regulation akin to that in California, and are not in point.

We conclude that § 532 of the Public Utilities Code fully supports the commission's position that when a water public utility undertakes to extend its mains beyond its dedicated area it may do so only on the terms and conditions stated in its main extension rule on file with the commission, and must obtain commission authority for any arrangements which deviate therefrom; that until provisions deviating from the utility's main extension rule are approved by the commission, they are of no force or effect. The commission may properly regulate the terms on which extensions into new areas may be voluntarily made and it may regulate the service which must be given within an area to which the utility is dedicated. But this is not to say that the commission may compel a water utility to extend its mains into a wholly new, proposed residential community to be created by a subdivision in nondedicated territory, on terms other than those agreed to by the utility. It cannot. Neither may the commission accomplish that result by itself proposing the terms on which the utility will contract to enter a new territory, order the utility to enter into such a contract, and then compel it to specifically perform that contract.

The order under review is annulled.

Shenk, Carter, Spence, and McComb, JJ., concur.

GIBSON, CJ.: I dissent.

I am of the view that the commission's finding that there was a dedication of service by the company with respect to the Victorine ranch property is supported as to all portions of the ranch other than the part above the 600-foot contour. It is not disputed that, if there was such a dedication, the commission has authority to order the company to extend service to the dedicated area when such service becomes necessary. The order of the commission should be affirmed, with the possible exception of certain provisions discussed hereinafter relating to the form of the order.

In considering the propriety of the commission's order we must keep in mind the rule that the public utilities commission is a statewide agency which derives adjudicating power from the Constitution (Cal. Const., Art XII, § 22) and that its factual determinations, for example, those of public convenience and necessity and of reasonableness, are not subject to re-examination in a trial de novo but must be upheld by a reviewing court if they are supported by substantial evidence. (Southern P. Co. v. California Pub. Utilities Commission [1953] 41 Cal 2d 354, 362, 367, 1 PUR3d 438, 260 P2d 70; Pacific Greyhound Lines v. California R. Commission [1938] 11 Cal2d 427, 429, 25 PUR NS 350, 80 P2d 971; see California Portland Cement Co. v. California Pub. Utilities Commission [1957] 49 Cal2d 171, 175, 176, 21 PUR3d 146, 315 P2d 709; cf. Shepherd v. State Personnel Board, 48 Cal2d 41, 46, 307 P2d 4.)

The water company admits that in 1948 its territory of dedicated service extended south to the southern boundary of Carmel Highlands. In that year respondent Sawyer purchased the Victorine ranch which contained 1,146 acres of land lying immediately south of Carmel Highlands. After receiving letters from an officer of the water company to the effect that its installations could be extended to the ranch

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with storage tanks that would supply any development that might be contemplated in this area, Sawyer subdivided 23 acres, herein referred to as Tract No. 1, installed a water distribution system therein, and constructed an 8-inch water main to connect with the company's 3-inch main some 400 feet north of the southern boundary of Carmel Highlands.

In July, 1949, the parties signed an agreement which provided for the transfer to the water company, without obligation to refund, of the 8-inch pipeline and the distribution system in Tract No. 1. The agreement provided in part as follows: The company, within five days, was to connect its 3-inch main with the 8-inch main and, within sixty days, to apply to the public utilities commission for a certificate of public convenience and necessity "to render water service as a public utility in that portion of said Victorine ranch lying below the 600-foot contour." Sawyer agreed to pay the company the cost of installing an 8-inch pipeline running some 5,000 feet to connect the one previously built by Sawyer with an existing 8-inch pipe of the water company. He was to create a fund of $20,000 toward this purpose, the fund to be turned over to the company upon the construction of 10 homes in Tract No. 1 or in the event Sawyer should subdivide an additional portion of the main tract. The company agreed "to extend its facilities to other portions of said tract lying below the 600-foot contour in accordance with published Rule and Regulation 19B of company," provided such additional areas were developed in units of not less than 5 acres. With respect to the portion of the ranch lying above the 600-foot contour, the company agreed to supply water under terms and conditions acceptable to it, but the contract provided that the company should be under no obligation to serve that area if Sawyer and the company were unable to agree on reasonable terms. It was further provided that the services to be rendered by the company and the rates to be charged should be subject to such rules and regulations as were or should be established by the public utilities commission and that the agreement should be subject to such changes and modifications as the commission might direct in the exercise of its jurisdiction.

The company's Rule 19B referred to above, filed with the commission, provided that applicants for extensions of mains to serve tracts and subdivisions should pay the construction costs of the necessary facilities with certain minor exceptions and should receive from the company, for a period of not to exceed ten years, an annual refund of 35 per cent of the gross revenue collected from consumers within the subdivision. It thus appears that the 1949 agreement was more favorable to the company than its rule on file with the commission with respect to who should pay the costs of the 8-inch main already built by Sawyer, the contemplated 5,000-foot pipeline, and the distribution system for Tract No. 1.

Following execution of the July, 1949, agreement, the company connected its 3-inch main with the 8-inch main built by Sawyer and commenced service to Tract No. 1. The company concedes that Tract No. 1 thereby became a part of its dedicated public service area.

The company, however, failed to comply with its unconditional promise,

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under the 1949 agreement, to apply within sixty days to the public utilities commission for a certificate of public convenience and necessity "to render water service as a public utility in that portion of said Victorine ranch lying below the 600-foot contour." Moreover, the company did not comply with paragraph X of General Order No. 96 of the commission which, in accord with § 532 of the Public Utilities Code, declares that a water company cannot make effective any contract for furnishing public utility service under conditions other than those contained in its schedules on file with the commission (in this case, Rule 19B of the company) unless it obtains commission authority for any arrangements which deviate therefrom. Here, as we have seen, the 1949 agreement contained several departures, favorable to the company, from its Rule 19B, and these departures, under the law, could not be made effective without approval. The company thus violated the law when it put the 1949 agreement into effect, without commission approval, by proceeding into a portion of the ranch area, namely, Tract No. 1.

In view of the fact that the company proceeded into a portion of the ranch area, commenced service, and operated there for a period of several years, at all times purporting to act under the 1949 agreement, there was clearly a dedication by the company to furnish water to the area, at least in accordance with the terms and conditions of that agreement. One of these terms, and a part of the consideration due to Sawyer, was the unconditional promise of the company to seek within sixty days a certificate of public convenience and necessity with respect to the entire ranch below the 600-foot contour, and the extent of the dedication must be measured by this term of the agreement, which cannot properly be severed from the remainder of the contract. In the analogous case of Lukrawka v. Spring Valley Water Co. 169 Cal 318, 324, PUR1915B 331, 146 Pac 640 et seq., a water company, organized under a statute permitting the formation of corporations to supply water to a city or town, had commenced service to part of San Francisco. It was held that the company, by proceeding under the statute and accepting the statutory franchise which was applicable to the whole city, dedicated its service to the entire city. Although in the present case there is no franchise to show the boundaries of the land to be served, the extent of the area of dedication is clearly indicated by the provisions of the 1949 contract under which the company obligated itself to apply for a certificate of public convenience and necessity as to all portions of the ranch below the 600-foot contour.

The 1949 contract is not, as asserted by the majority opinion, merely a conditioned or provisional obligation upon the part of the company to obligate itself in the future. The existence of the agreement itself is unconditional, and the company's promise to apply for a certificate is likewise unconditional. While the contract by implication makes certain acts by Sawyer conditions precedent to performance by the company of its obligation to serve the portions of the ranch outside of Tract No. 1 in accordance with Rule 19B, such conditions would merely affect the time for performance of those duties and do not excuse the company's failure to perform its unconditional

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promises nor operate to terminate the completed dedication. If the company in 1949 had performed its duty to apply for such a certificate and for approval of the terms and conditions of the contract which departed from its Rule 19B, and if the commission had granted those requests and had approved the contract, there obviously would have been a completed dedication of service to the entire ranch below the 600-foot contour. Under such circumstances the commission would have had authority to order the company to render service to the area, upon performance by Sawyer of his obligations under the 1949 agreement, giving Sawyer a reasonable time for performance upon his part within the meaning of the contractual provisions. The company should not be permitted to rely either on the fact that it breached its agreement by failing to apply for the certificate or on the fact that it violated the law by putting the contract into effect without first obtaining commission approval.

The foregoing conclusions are not affected by the fact that in 1956 the company, Sawyer, and a purchaser of a part of the ranch property entered into a compromise agreement which expressly provided that it should have no force and effect until dismissal of Sawyer's complaint and unqualified approval by the commission of the 1949 agreement as modified by the compromise. The 1956 compromise adopted, with certain amendments, the provisions of the 1949 agreement relating to the extension of service to all the ranch below the 600-foot contour but was conditioned upon dismissal of the complaint and unqualified approval by the commission of all the terms of the 1949 agreement as amended by the compromise. The 1956 compromise indicates at least a conditional intent upon the part of the company to dedicate its services to all portions of the ranch below the 600-foot contour, and, in any event, it is clear that the 1956 agreement discloses no desire upon the part of the company to depart from its announced intent, as declared in the 1949 agreement, to extend service to all portions of the ranch below the 600-foot contour. Although the 1956 compromise, standing alone, would not be sufficient to show a dedication, in view of the fact that it was conditioned upon an approval which was never obtained, this is immaterial because, as we have seen, there was a completed dedication of service to the whole ranch below the 600-foot line as a result of the 1949 agreement and the action of the company pursuant thereto in commencing service to part of the ranch.

Under the circumstances of this case the commission, in addition to concluding that the company had dedicated its services to all the ranch property below the 600-foot contour, could also order the company to render service upon terms different from the conditions set forth in the 1949 contract, and the commission was not required to make a choice between accepting or rejecting the agreement as an entirety. As the majority opinion recognizes, the commission may properly regulate the service which must be given in an area to which the utility is dedicated and the terms on which extensions into new areas may be made, and any arrangements made by the utility which deviate from its rules on file with the commission, unless approved by the commission, are of no force and effect.

(Public Util. Code, § 532; Paragraph X of General Order No. 96 of the commission.) When the company put into effect the 1949 agreement by extending service thereunder to a portion of the ranch area, without complying with its promise to seek a certificate of public convenience and necessity and in violation of the order requiring commission approval of deviations from the company's filed rules, it was bound to know that it acted at its peril. The company thus assumed the risk that the commission would subsequently conclude that the company had dedicated its services to the entire area as delineated by the promises under which it purported to act, that the company could be ordered to render service within the area under reasonable regulations, and that such contract terms as were not acceptable to the commission could be disregarded.

Any other conclusion would be very unfair to Sawyer and other persons interested in the ranch property, would give the company benefits to which it was not entitled, and would permit the company to circumvent the law requiring commission approval of extensions of service upon terms different from the company's filed rules. The company purportedly acted under the 1949 contract when it entered into the ranch property, began to serve a portion of it, and continued that service during the intervening years to the date of this proceeding. Sawyer and other persons interested in the ranch property clearly had a right to rely upon the fact that the company, by its conduct, indicated that it intended to fulfill the obligations which it had undertaken in 1949, including the unconditional, express promise to apply for a certificate of public convenience and necessity to serve the entire ranch property below the 600-foot contour and the implied in law promise to seek commission approval of the arrangements. In view of all the circumstances, including the contract and the fact that the company was at all times aware of Sawyer's plans to continue subdividing the land, the commission could reasonably conclude that it would be unfair to permit the company, at this late date, to be released from its agreement to apply for permission to serve the entire area. Moreover, it should be noted, in this connection, that the commission could reasonably consider the possibility that, for purposes of economy of operation and public convenience, only one water utility should serve the entire ranch area, that the company's entry into a portion of the area made it impossible for any other utility to perform such unit service unless the company was forced to withdraw, and that, since the company had entered Tract No. 1 under nonapproved conditions but pursuant to its agreement to extend service to the balance of the ranch, the company should be required to serve the portions outside Tract No. 1 as a condition to applying in Tract No. 1 terms of service which depart from Rule 19B.

Contrary to the position taken by the majority opinion the order of the commission, when properly construed, concerns the terms of the company's service to Tract No. 1 and does not relate solely to the company's obligation to serve other areas of the ranch. The terms of extension of the company's service to Tract No. 1, under the 1949 agreement, obviously include the various promises of Sawyer and the company with regard to construction of

pipelines, payment therefor, connections with the company's system, and transfer of Sawyer's 8-inch main and distribution system to the company. These promises clearly related to, and were parts of the consideration for, the company's agreement to enter Tract No. 1 as well as for its agreement to apply for a certificate as to other portions of the ranch. Thus, when the commission, by its order, prescribed terms other than those fixed by the 1949 agreement for construction of and payment for pipelines, it was in effect altering the terms of extending service to Tract No. 1 as well as to the remaining property. The majority opinion does not discuss the right of the commission under General Order No. 96 and the undisputed facts of this case to order the company to revise the unapproved terms upon which it entered Tract No. 1 in 1949 or, as an alternative, to withdraw from that tract. If the commission were not permitted to make such an order, any company could ignore the commission, flout the rules discussed above, and establish service on its own exorbitant terms by simply entering a tract and commencing service under private arrangements without obtaining commission approval.

I find no merit in that portion of the majority opinion which appears to argue that there has been no dedication of service to the ranch area outside of Tract No. 1 because, it is asserted, "Sawyer has not sought, *much less received,* actual water deliveries to himself for his own use" upon this portion of the ranch but, rather, has sought an "obligation running to himself, not as a water consumer, but as a private individual engaged in the business of subdividing uninhabited land." Under the evidence presented here the commission could reasonably conclude that in 1949 Sawyer, to the knowledge of the company, was planning to subdivide the entire ranch property and that the 1949 contract was made in order to assure a water supply for the subdivided area. Unquestionably this was true with respect to Tract No. 1, and the agreement and the other circumstances discussed above are sufficient to justify a similar conclusion with respect to the remainder of the ranch. The use of a contract of this type, subject to approval of the commission, is clearly an appropriate method for a subdivider and a water company to employ for the purpose of establishing for the subdivider, in advance of actual construction, the necessary water supply for his tracts, and it would be wholly unreasonable to require that he receive some of the water for his personal use or that he obtain the signatures of prospective home owners, who are probably unknown to him. The implied finding of the commission that the parties to the agreement contemplated and arranged for service by the company to the public, as distinguished from some private contractual service which would not come within the jurisdiction of the commission, is likewise supported by the provision of the 1949 agreement requiring the company to apply for a certificate of convenience and necessity with respect to the remainder of the ranch property. As we have seen, the factual determinations of the commission, under its constitutional powers, are not subject to reexamination in a trial de novo and must be upheld by this court if they are supported by substantial evidence.

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The finding of the commission is that there had been a dedication of service to the balance of the ranch, but the only provision in the contract relating to service above the 600-foot contour is that the company should not be under any obligation to serve that area unless it was able to agree with Sawyer on reasonable terms. There was merely an agreement to agree in the future, which is not sufficient to show a clear intent to dedicate service to the area above 600 feet. However, the portion of the finding as to the upper area is severable, and the deficiency of evidence does not require any modification of the commission's order since it does not direct that any action be taken with reference to the land above the 600-foot contour.

It is not necessary in this dissent to discuss the power of the commission to compel a utility to extend its mains into a wholly new and nondedicated area on terms other than those agreed to by the utility.

In view of the holding of the majority opinion it is likewise unnecessary for this dissent to consider, with respect to the form of the commission's order, whether the company can properly be ordered to "modify" or "reexecute" or "perform" its 1949 contract as amended. The commission, nevertheless, has the power, as the majority opinion recognizes, to order a public utility to render certain services on certain terms and conditions, and, in so doing, it is not bound by the company's previously negotiated contracts. It would be a minor matter to correct, or direct the commission to correct, any technical errors of this type in its order.

In my opinion the order of the commission should be affirmed, except in so far as concerns the possible technical errors referred to above.

Traynor, J., concurs.

KANSAS STATE CORPORATION COMMISSION

Re Plateau Natural Gas Company

Docket No. 56,286-U
February 10, 1959

APPLICATION *by gas company for permission to increase rates; modified increase granted.*

Rates, § 120.1 — Test period.

1. The commission gave consideration to the fact that a gas company's test period was not entirely representative in the determination of the rate of return since it was based upon the company's first year of operation and included many nonrecurring maintenance charges, p. 449.

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STATE OF NEVADA
DEPARTMENT OF COMMERCE
INSURANCE DIVISION
201 SOUTH FALL STREET
CARSON CITY, NEVADA 89710
(702) 885-4270

ROBERT LIST
GOVERNOR

JAMES L. WADHAMS
DIRECTOR

DONALD W. HEATH, CLU
COMMISSIONER OF INSURANCE

EXHIBIT J

April 15, 1981

Senate Committee on Commerce & Labor
Nevada Legislative Building
Capitol Complex
Carson City, NV 89710

re: S.B. 493

Dear Senators:

The Insurance Division advocates S.B. 493 because the proposed revision of NRS 685A.090 will provide full disclosure to policyholders of surplus lines insurance that their claims will not be covered by the Nevada Insurance Guaranty Association if the insurer becomes insolvent.

The operation of the Nevada Insurance Guaranty Association provides purchasers of insurance issued by authorized insurers with a beneficial recourse in case of insurer insolvency. This protection is not available to policyholders of surplus lines insurance. The average insurance buyer is unaware of the differences between a policy issued by an authorized insurer and one issued by a surplus lines insurer. The addition of the proposed language to NRS 685A.090 will clearly identify what should be a major consideration by the consumer.

Regulation PC 22 of the Insurance Division provides that every surplus lines contract must contain a conspicuous statement that the contract is not subject to the Nevada Insurance Guaranty Act, and it is customary for surplus lines brokers to add this statement to the wording that is already required under NRS 685A.090. There is, however, no uniformity in the statements currently in usage. A specific standard will be set by providing statutory language as proposed under S.B. 493.

Patsy Redmond

EXHIBIT K

S. B. 493

SENATE BILL NO. 493—COMMITTEE ON COMMERCE AND LABOR

APRIL 2, 1981

Referred to Committee on Commerce and Labor

SUMMARY—Requires notice of nonguaranty of claims against insolvent insurers under surplus lines coverage. (BDR 57-1369)

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

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

AN ACT relating to surplus lines insurance; requiring a notice of nonguaranty of claims against an insolvent insurer; 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 685A.090 is hereby amended to read as follows:

685A.090 Every insurance contract procured and delivered as a surplus lines coverage pursuant to this chapter [shall] *must* be countersigned by the broker who procured it, and [shall] *must* have conspicuously stamped upon it:

This insurance contract is issued pursuant to the Nevada insurance laws by an insurer neither licensed by nor under the supervision of the Nevada insurance division. *If the insurer is found insolvent, a claim under this contract is not covered by the Nevada Insurance Guaranty Association Act.*

EXHIBIT L

(REPRINTED WITH ADOPTED AMENDMENTS)
FIRST REPRINT

A. J. R. 25

ASSEMBLY JOINT RESOLUTION NO. 25—
COMMITTEE ON COMMERCE

FEBRUARY 25, 1981

Referred to Committee on Commerce

SUMMARY—Proposes to amend Nevada constitution to allow deposit of public money in any bank or savings and loan association. (BDR C-961)

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

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

ASSEMBLY JOINT RESOLUTION—Proposing to amend sections 9 and 10 of article 8 of the constitution of the State of Nevada to remove any prohibition against the deposit of public money in any bank, mutually owned depository or savings and loan association.

Resolved by the Assembly and Senate of the State of Nevada, jointly, That sections 9 and 10 of article 8 of the constitution of the State of Nevada be amended to read as follows:

[Sec:] *Sec.* 9. The State shall not donate or loan money, or its credit, subscribe to or be, interested in the Stock of any company, association, or corporation, except corporations formed for educational or charitable purposes. *This section does not prohibit the deposit of money of the state in any bank, savings and loan association or mutually owned depository.*

[Sec:] *Sec.* 10. No county, city, town, or other municipal corporation shall become a stockholder in any joint stock company, corporation or association whatever, or loan its credit in aid of any such company, corporation or association, except, rail-road corporations, companies or associations. *This section does not prohibit the deposit of money of a county, city, town or other municipal corporation in any bank, savings and loan association or mutually owned depository.*

EXHIBIT M

A. B. 206

ASSEMBLY BILL NO. 206—ASSEMBLYMAN BANNER

FEBRUARY 24, 1981

Referred to Committee on Commerce

SUMMARY—Clarifies definition of "adjuster" of insurance. (BDR 57-962)
FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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

AN ACT relating to insurance; clarifying the definition of "adjuster"; 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 684A.010 is hereby amended to read as follows:

684A.010 This chapter applies to adjusters [,] *only* as defined in NRS 684A.020, and [shall be known and] *does not apply to any person who adjusts or settles claims relating to life or health coverage or annuities. This chapter* may be cited as the Nevada Insurance Adjusters Law.

SEC. 2. NRS 684A.020 is hereby amended to read as follows:

684A.020 1. As used in this code, "adjuster" means any person who, for compensation as an independent contractor or for a fee or commission, investigates and settles, and reports to his principal relative to, claims arising under insurance contracts [,] *for property, casualty or surety coverage,* on behalf solely of either the insurer or the insured.

2. An associate adjuster, as defined in NRS 684A.030, or an attorney at law who adjusts insurance losses from time to time incidental to the practice of his profession, or an adjuster of ocean marine losses, or a salaried employee of an insurer, or a salaried employee of a managing general agent maintaining an underwriting office in this state, is not deemed to be an adjuster for the purposes of this chapter.

A. B. 4

ASSEMBLY BILL NO. 4—ASSEMBLYMAN BANNER

JANUARY 20, 1981

Referred to Committee on Judiciary

SUMMARY—Increases fees for official reporters in district courts. (BDR 1-392)
FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: No.

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

AN ACT relating to district courts; increasing fees for official reporters; 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 3.370 is hereby amended to read as follows:

3.370 1. For his [or her] services the official reporter or reporter pro tempore [shall receive] *is entitled to* the following fees:

(a) For being available to report civil and criminal testimony and proceedings when the court is sitting, [$50] *$200* per day, to be paid by the county as provided in subsection 2.

(b) For transcription, 70 cents per folio for the original draft, and 20 cents per folio for each additional copy to the party ordering the original draft. For transcription for any party other than the party ordering the original draft, 20 cents per folio.

(c) For reporting all civil matters, in addition to the salary provided in paragraph (a), [$8] *$32* for each hour or fraction thereof actually spent, but not more than [$50] *$200* in any calendar day, to be taxed as costs pursuant to subsection 3. If the fees for any day computed according to the hourly rate would exceed [$50,] *$200,* the fee to be taxed for each civil matter reported is that proportion of [$50] *$200* which the time spent on that matter bore to the total time spent that day.

2. The fee specified in paragraph (a) of subsection 1 [shall] *must* be paid out of the county treasury upon the order of the court. In criminal cases the fees for transcripts ordered by the court to be made [shall] *must* be paid out of the county treasury upon the order of the court. When there is no official reporter in attendance and a reporter pro tempore is appointed, his reasonable expenses for traveling and detention [shall] *must* be fixed and allowed by the court and paid in like manner. The respective district judges may, with the approval of the respective

board or boards of county commissioners within the judicial district, fix a monthly salary to be paid to [such] *the* official reporter in lieu of per diem; the salary, and also actual traveling expenses in cases where the reporter acts in more than one county, to be prorated by the judge on the basis of time consumed by work in the respective counties; the salary and traveling expenses to be paid out of the respective county treasuries upon the order of the court.

3. In civil cases the fees prescribed in paragraph (c) of subsection 1 and for transcripts ordered by the court to be made [shall] *must* be paid by the parties in equal proportions, and either party may, at his option, pay the whole thereof. In either case all amounts so paid by the party to whom costs are awarded [shall] *must* be taxed as costs in the case. The fees for transcripts and copies ordered by the parties [shall] *must* be paid by the party ordering [the same.] *them.* No reporter may be required to perform any service in a civil case until his fees have been paid to him [or her] or deposited with the clerk of the court.

4. Where a transcript is ordered by the court or by any party, the fees for [the same shall] *it must* be paid to the clerk of the court and by him paid to the reporter upon the furnishing of the transcript.

5. The testimony and proceedings in an uncontested divorce action need not be transcribed unless requested by a party or ordered by the court.

EXHIBIT O

A. B. 3

ASSEMBLY BILL NO. 3—ASSEMBLYMAN BANNER

JANUARY 20, 1981

Referred to Committee on Judiciary

SUMMARY—Provides for abandonment of fictitious name and makes certain other changes to requirements for conducting business under a fictitious name. (BDR 52-401)

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

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

AN ACT relating to doing business under a fictitious name; providing a procedure for abandonment of a fictitious name; providing for the expiration of a certificate of a fictitious name; creating an exemption for nonprofit organizations; 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 602 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 4, inclusive, of this act.

SEC. 2. *1. No person may adopt any fictitious name which includes "Corporation," "Corp.," "Incorporated," or "Inc." in its title, unless that person is a corporation organized pursuant to the laws of this state or of some other jurisdiction.*

2. No county clerk may accept for filing a certificate which violates any provision of this chapter.

SEC. 3. *1. Upon ceasing to conduct business in this state under a fictitious name, a person may abandon that name by filing a statement of abandonment of a fictitious name with the county clerk of the county where the certificate is filed.*

2. This statement must include:

(a) The name to be abandoned and the principal location at which business was conducted under that name;

(b) The date upon which the certificate for the fictitious name was filed; and

(c) The names and addresses of all owners and general partners or, if the business is incorporated, the name of the corporation as set forth in its articles.

3. The statement must be signed by all owners and general partners

or by an officer of the corporation and must be acknowledged in the same manner as provided for certificates.

4. The county clerk:

(a) May furnish, without charge, a form upon which the statement may be made;

(b) Shall keep a record of all filings of a statement of abandonment of a fictitious name in the same manner as the record of certificate is kept; and

(c) Shall charge a fee of $5 for each filing of a statement to cover the cost of filing and indexing the statement.

SEC. 4. *1. A certificate of fictitious name expires upon December 31 during the 5th year after the date it was filed.*

2. The county clerk shall send, by first-class mail, a notice of the expiration date of the certificate not later than 60 days before that date.

3. Failure of the county clerk to mail or of the person to receive the notice does not extend its expiration date.

SEC. 5. NRS 602.010 is hereby amended to read as follows:

602.010 [Every] *1. Except as provided in subsection 2, every* person [, corporation, firm and general partnership] conducting [, carrying on or transacting] business in this state under an assumed or fictitious name or designation which does not show the real name or names of the corporation or person or persons engaged or interested in [such] *that* business, [must] *shall* file with the county clerk of each county in which the business is being carried on, or is intended to be carried on, a certificate containing the information required by NRS 602.020.

2. The provisions of this chapter do not apply to nonprofit corporations or associations, including, but not limited to, churches, labor organizations, fraternal and charitable organizations, nonprofit hospitals and similar organizations.

SEC. 6. NRS 602.060 is hereby amended to read as follows:

602.060 A copy of the certificate so filed, [and copies of the entries in the county clerk's register,] when duly certified by the county clerk as true and correct, [shall be] *is* prima facie evidence of the facts stated therein and admissible in evidence in all courts of this state.

(30)

EXHIBIT P

A. B. 276

ASSEMBLY BILL NO. 276—COMMITTEE ON GOVERNMENT AFFAIRS

MARCH 4, 1981

Referred to Committee on Government Affairs

SUMMARY—Changes duties of sheriff. (BDR 54-631)
FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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

AN ACT relating to the duties of a sheriff; requiring a sheriff to investigate each applicant for a permit to operate as a locksmith or safe mechanic; repealing the provision which requires a sheriff to file certain statements with the board of county commissioners; 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 655.070 is hereby amended to read as follows:

655.070 1. Every person who wishes to operate as a locksmith or safe mechanic shall obtain a permit from the sheriff of the county in which his principal place of business is located.

2. The sheriff of a county shall *investigate each applicant and upon a finding of a suitability shall* issue a permit to [any] *each* applicant who pays a permit fee of $5 and who qualifies under any ordinance adopted by the board of county commissioners of [such county regulating] *the county which regulates* the occupation of locksmiths.

3. A permit expires 1 year from the date it was obtained and may be renewed. The renewal permit fee is $1.

4. The holder of a permit shall have the permit in his possession at all times.

5. The holder of a permit shall, within 10 days, report any change of address of his principal place of business to the sheriff of the county in which the permit was obtained.

SEC. 2. NRS 364.010 is hereby amended to read as follows:

364.010 1. The sheriff of each county having a population of less than 250,000 [, as determined by the last preceding national census of the Bureau of the Census of the United States Department of Commerce,] is the ex officio collector of county licenses provided for in chapter 244 of NRS and by other laws.

2. In counties having a population of 250,000 or more, [as determined by the last preceding national census of the Bureau of the Census of the United States Department of Commerce,] the board of county commissioners shall by ordinance:

(a) Establish a county license department;

(b) Adopt procedures for the investigation of applicants for county licenses and for the administration, collection and disposition of county license fees; and

(c) Provide regulations for the operation of the county license department.

3. The provisions of NRS 364.020 to [364.070,] *364.060,* inclusive, do not apply to counties which have a county license department.

SEC. 3. NRS 364.070 is hereby repealed.

EXHIBIT Q

A. B. 192

ASSEMBLY BILL NO. 192—ASSEMBLYMEN JEFFREY, SCHOFIELD, BENNETT, MAY, MELLO, PRENGAMAN, BEYER, CHANEY, DuBOIS, RACKLEY, CRADDOCK, HICKEY, PRICE, DINI, THOMPSON AND FOLEY

FEBRUARY 19, 1981

Referred to Committee on Commerce

SUMMARY—Authorizes pharmacists to fill prescriptions from outside state with substitute for drug named. (BDR 54-706)

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

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

AN ACT relating to pharmacists; authorizing a pharmacist to fill a prescription that was written by a practitioner from outside the state with a substitute for the drug which is named; 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 639.2583 is hereby amended to read as follows:

639.2583 If a practitioner has prescribed a drug by brand name and has indicated that a substitution may be made, a pharmacist may fill the prescription with another drug which is biologically equivalent and has the same active ingredient or ingredients of the same strength, quantity and form of dosage and is of the same generic type as the drug prescribed. *The pharmacist may also make such a substitution if the prescription was written by a practitioner from outside this state and does not indicate that a substitution may not be made.*

SEC. 2. NRS 639.2589 is hereby amended to read as follows:

639.2589 1. Each prescription form used in this state must contain two lines for the signature of the prescriber. The line on the left must be printed above the words "substitution permitted", and the line on the right must be printed above the words "dispense as written."

2. Substitutions may not be made in [filling prescriptions written by practitioners outside the State of Nevada or in] prescriptions filled outside the state and mailed into Nevada.

(30)