

MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON GOVERNMENT AFFAIRS

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
March 18, 1981

The Senate Committee on Government Affairs was called to order by Chairman James I. Gibson, at 2:00 p.m., Wednesday, March 18, 1981, in Room 243 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator James I. Gibson, Chairman
Senator Jean Ford, Vice Chairman
Senator Keith Ashworth
Senator Gene Echols
Senator Virgil Getto
Senator James Kosinski
Senator Sue Wagner

STAFF MEMBERS PRESENT:

Frank Daykin, Legislative Counsel
Anne Lage, Committee Secretary

SENATE JOINT RESOLUTION NO. 26

Proposing to amend the constitution of Nevada to permit varied forms of county government.

Chairman Gibson explained that the matter contained in this resolution had been before the committee in previous years. Under the present language of the constitution, it has been difficult to meet differing needs in differing counties. A large percentage of local government statutes that pertain to both counties and cities are found with these provisions in them. In recent years there have been at least three court decisions that have ruled this type of approach to be unconstitutional.

Chairman Gibson requested Mr. Frank Daykin, Legislative Counsel, to explain the rationale and the basis of the form in which it was presented.

SENATE COMMITTEE ON
GOVERNMENT AFFAIRS
March 18, 1981

Mr. Daykin explained that this resolution adopts a positive approach toward establishing county and township governments.

Senator Keith Ashworth questioned why in subsection 2 it did not stipulate the registered voters "of the county". Mr. Daykin agreed that this provision would be clarified if it did include "of the county" following "voters".

Mr. Daykin indicated that this constitutional provision was very similar to a provision in the constitution of Montana which was adopted in 1970.

Mr. Daykin explained that subsection 2 gives explicit authority to make classification by population, etc., optional with the local vote of the counties.

Mr. Bryce Wilson, Nevada Association of Counties, testified that he had not had any contact with the small counties regarding this resolution so he could not comment on their feelings.

Mr. Etcheverry, Nevada League of Cities, had no comment regarding Senate Joint Resolution No. 26.

Mr. Daniel Fitzpatrick, Clark County, presented his testimony in support of this resolution to the committee. See Exhibit C.

Mr. John Roethel, Deputy City Attorney for the City of Las Vegas, testified that he hoped that this legislation was not being considered as a way of treating the large counties differently from the small counties.

Senator Keith Ashworth requested an opinion from the City of Las Vegas commissioners as to their feeling toward this resolution.

Senator Wagner also wanted to obtain input from Washoe County before taking action on this resolution.

Chairman Gibson testified that he had spoken with Mr. Ashley Hall, from the City of Las Vegas, and it was his understanding that the commission was not opposed to this resolution.

SENATE COMMITTEE ON
GOVERNMENT AFFAIRS
March 18, 1981

Ms. Carole Vilardo, Citizens for Public Enterprise, testified that she was concerned that in subsection 2 the word "may" could be construed as being permissive. The committee assured her that a vote would have to be taken before any optional government could be adopted.

Ms. Peggy Twedt, League of Women Voters, testified that the League was in support of Senate Joint Resolution No. 26.

Chairman Gibson agreed to get the proposed amendment to this bill, while waiting to hear from Las Vegas and Washoe County, before taking action.

SENATE BILL NO. 368

Revises certain procedures for approval and payment of claims by metropolitan police departments.

Chairman Gibson advised the committee that this bill had been introduced by the Senate Committee on Government Affairs at the request of the Metropolitan Police Department.

Mr. Jim Lien, Business Manager for the Las Vegas Metropolitan Police Department, testified that the principal purpose of this bill as amended was to allow the county controller to pay Metro's claims in a similar manner as county claims were handled. This bill would allow processing of claims on a dialy basis. Mr. Lien distributed proposed amendments to Senate Bill No. 368 to the committee. See Exhibit D.

Mr. Patrick Pine, Clark County, testified that Clark County supported the passage of this bill with the proposed amendments.

Mr. John Roethel, City of Las Vegas, indicated that the City of Las Vegas was in support of this bill with the proposed amendments.

Senator Wagner moved "Amend and Do Pass" on Senate Bill No. 368.

Senator Kosinski seconded the motion.

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

SENATE COMMITTEE ON
GOVERNMENT AFFAIRS
March 18, 1981

SENATE BILL NO. 378

Limits power of cities and counties to prohibit reopening of mines.

Senator Hernstadt, Prime Sponsor, testified that the reason for introducing this bill was to encourage mining revival in the state. This bill would prevent special interest groups from stopping future mining operations.

Ms. Mimi Rodden, Administrator Historic Preservation and Archaeology, testified that there was a similar bill in the Assembly; Assembly Bill No. 112.

Ms. Rodden stated that there could be a substantial danger to the public's health and safety if this bill were passed. She felt that this was special interest legislation. This bill would take away all local input regarding mining within their areas.

Mr. Robert E. Warren, Executive-Secretary for the Nevada Mining Association, testified that this bill was not requested by the mining industry and they were not in support of it although they recognized the reasonings behind its introduction.

Mr. Warren stated that the mining industry preferred to work with the counties on an individual basis to formulate acceptable solutions to any adverse feeling toward mining. He felt that this bill would give the mining industry too much power.

Mr. Patrick Pine, Clark County, testified that the Clark County zoning office would like to include a section 2 which would stipulate that mining operations would not be exempt from any local zoning ordinances in effect as of January 1, 1981.

Senator Getto moved "Indefinite Postponement" on Senate Bill No. 378.

Senator Echols seconded the motion.

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

SENATE COMMITTEE ON
GOVERNMENT AFFAIRS
March 18, 1981

SENATE BILL NO. 382

Enables local governments to purchase development rights to land.

Mr. Ken Kjer, Chairman Douglas County Board of Commissioners, testified that this bill was requested by Douglas County and by the Nevada Association of Counties. It would give legislative authority to add another tool to their planning process. This bill would allow for the protection of their agricultural and forest lands and also protect the rights of the private property owner in reasonable uses of his properties by offering a mechanism wherein he could have areas of development rights transferred if the local level determined that this was appropriate. This was an initial step toward legislative authority so that they could proceed with a program of development rights, both the transferring and purchase of those rights, in order to protect certain properties and allow development of others.

Mr. Herb Witt, Douglas County Commissioner, testified that he was very interested in the preservation of agricultural lands. He felt that this bill would help accomplish this.

Mr. Kjer explained the transferring of development rights in this manner: If a person had 100 acres, but was restricted to 20 acre parcel development, he could buy another person's development rights of say 1 acre lots and use them. The person who sold their 1 acre development rights would then have a deed restriction which would not allow the subdivision of his land in the future.

Ms. Deanna Doughty, Nevada Home Builders' Association, testified that they were not in support of this bill. She read an excerpt from a Massachusetts proposal explaining how this type of legislation would operate. Ms. Doughty stated that this form of legislation would put government in the business of dealing in the private sector in development. She also raised the concern that a land owner could be placed into a situation where he was forced to sell his development rights thus devaluing his property.

Mr. Dwight Millard, Carson City Builders' Association, pointed out that once development rights were established, you had an open door for condemnation of development rights

SENATE COMMITTEE ON
GOVERNMENT AFFAIRS
March 18, 1981

only. He stated that this would not be a benefit to the local community as it was now written.

The committee decided to hold this bill for further consideration.

SENATE BILL NO. 283

Restricts use of proceeds of sale of certain lands by University of Nevada.

Chairman Gibson advised the committee that he had received another amendment to this bill from the Senior Advisory Board. See Exhibit E. It was decided to hold this bill for further consideration until hearing from the Board of Regents.

There being no further business, meeting was adjourned at 4:00 p.m.

Respectively submitted by:

Anne L. Lage
Anne L. Lage, Secretary

APPROVED BY:

James I. Gibson
Senator James I. Gibson, Chairman
DATE: March 24, 1981

SENATE AGENDA

REVISED 3/12/81

COMMITTEE MEETINGS

Committee on Government Affairs , Room 243 .
Day Wednesday , Date March 18 , Time 2:00 p.m. .

S. J. R. No. 26--Proposing to amend the constitution to permit varied forms of county government.

G. P. Etcheverry, Nevada League of Cities
Bryce Wilson, Nevada Association of Counties
Julius Conigliaro, City of Las Vegas
Daniel Fitzpatrick, Clark County
Russell McDonald, City of Sparks
Frank Daykin, Legislative Counsel Bureau

S. B. No. 368--Revises certain procedures for approval and payment of claims by metropolitan police departments.

James Lien, Las Vegas Metro Police Department
Julius Conigliaro, City of Las Vegas
Patrick Pine, Clark County

S. B. No. 378--Limits power of cities and counties to prohibit reopening of mines.

S. B. No. 382--Enables local governments to purchase development rights to land.

ATTENDANCE ROSTER FORM

COMMITTEE MEETINGS

SENATE COMMITTEE ON GOVERNMENT AFFAIRS

DATE: March 18, 1981

EXHIBIT B

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME ORGANIZATION & ADDRESS TELEPHONE

DWIGHT MILLARD CCBA Box 45 CO NO 882-4353

Deanna Doughty Builders Assoc. Reno 329-4611

KEN KJER DOUGLAS COUNTY

Bryce Wilson Nev. Assn. of Gentel 883 7863

Bob WARREN NEV. MINING ASSN 8323-8575

ANDREW BURNHAM Douglas County 782-5655

Herb Witt Douglas County 782-2155

MIKE POOL City of Las Vegas 883-0768

John Roethel City of Las Vegas 883-0768

G P Etcheverry New Language Center

Clark County
Testimony on SJR 26
Presented by Daniel R. Fitzpatrick
March 18, 1981

EXHIBIT C

Clark County strongly supports SJR 26. . Over the past decade, it has become apparent that due to drastically varying population size and density within the state of Nevada, the state constitutional mandate of uniform statutes for all of Nevada's 17 counties is nearly impossible.

In fact, the Nevada statutes today are replete with references to the classification of counties and townships based on population. One need only to refer to SB 72 of last session to discern how pervasive population classifications are for Nevada's townships and counties in today's state statutes. Population classifications affect justices of the peace, marriage commissicners, jury commisioners, probation committee (NRS 62.100), recreational facilities (NRS 244.3081), development and maintenance of water, sanitation, and storm sewer systems (NRS 244.366), county fair and recreation board for our convention and visitor authority (NRS 244.647), providing offices of county controller (NRS 251.170), and public defender (NRS 260.010), our unincorporated towns (NRS 269.500), as well as the providing for Metropolitan Police Department (NRS 280) 318 districts, hospital trustees (NRS 450.090), etc. Statutes based on classification have been developed and utilized by the Legislature and are the very underpinning for providing county and township services throughout the state.

The State Legislature has recognized that the concerns of the various counties and townships within the state are not uniform in nature and laws must be developed to efficiently and effectively provide services to our communities.

SJR 26 proposed to remove the uniformity clause from the constitution and allow for the classification by population or other reasonable method. This, in essence, places into the constitution what is already legislative procedure....a practice upheld on a number of occasions by the Nevada Supreme Court. It should be noted that the Nevada Supreme Court has never overturned a statute simply because of a population classification. The problem encountered with certain statutes such as the County Commission Districts Act, the Fire Departments Consolidation Act, the City/County Consolidation Act, was one of special legislation, i.e., the Supreme Court found that act was so specific that it could not apply to other counties within the state besides Clark County.

Although the Nevada Supreme Court has upheld population classification, our county attorneys have spent numerous hours defending a number of challenges to various statutes enacted by the Legislature based on such classification. The proposed constitutional amendment would substantially eliminate these challenges by simply clarifying that population is a legitimate classification mechanism. (See Attachment A)

Currently before the Nevada Supreme Court are two major Legislative acts found to be unconstitutional by district court, the Metropolitan Police Department Act and the Taxicab Authority Act.

Section 2 of SJR 26 would allow for the Legislature to develop optional forms of county government but any such statute would have to be approved by the voters in the affected county. This provision we wholeheartedly support in that: (1) it gives the Legislature the flexibility to develop general or specific legislation for various county entities depending on their specific needs, but (2) within the protection that the electorate of that county will have the opportunity to vote for or against the actual enactment of the statute.

Thus, SJR 26 is significantly different from SJR 1, reviewed in the last session, in that SJR 1 simply deleted the uniformity clause from the constitution. SJR 26 deletes the uniformity clause but replaces it with specific verbage to: (1) classify townships and counties by population or other reasonably related methods - - a current legislative practice upheld by the Nevada Supreme Court, and (2) provide for optional forms of county government by statute and only after a vote of the people.

We would recommend one minor change to section 2, however. The way the bill is presently worded is ambiguous as to whether the electorate voting on some potential optional form

measure is limited to the registered voters of the affected county or whether it would be a state-wide referendum. Since the intent is obviously to give the residents of the particular county input into the structure of their government and not the state as a whole, it would appear desirable to amend section 2, clarifying it to read "registered voters in the affected county".

(See Attachment B)

Summary Review of Court
Challenges to Classifications of
Townships and Counties

1. Cases where population classifiers have been upheld:

State vs. Donovan

Constitutional population classification premised on a maximum number of votes cast in any general election - held constitutional

Fairbanks vs. Pavlikowski

An additional J.P. provided for any township in Nevada having a population of 100,000 or more - held constitutional

Reid vs. Woofter

Prohibition against any J.P. solemnizing marriages in any township which had 8,000 or more registered voters and was located in a county having 50,000 or more registered voters at the close of registration for the last preceding general election - held constitutional

Damus vs. County of Clark

Statutory authorization to any county with a population in excess of 200,000 persons to issue special and general obligation bonds without voter approval - held constitutional

2. Cases where statute held unconstitutional:

- (1) County Commission Districts - specific legislation - the act described in detail, down to metes and bounds the districts, thus could only apply to Clark County.
- (2) Fire Department Consolidation Act - The principal argument used by the Nevada Supreme Court in finding that this was specific legislation is that representation on the board violated the one man, one vote principle.
- (3) City/County Consolidation Act - Found to be specific legislation principally due to one man, one vote issue as well as specifically designed districts.

3. Pending cases before the Nevada Supreme Court:

The following two acts were found unconstitutional by the Clark County District Court:

(1) Metropolitan Police Department Act

(a) Taxicab Authority Act

Proposed Amendment to SJR 26

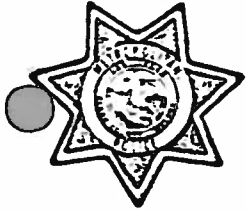
Resolved by the Senate and Assembly of the State of Nevada, jointly, that section 25 of article 4 of the constitution of the State of Nevada be amended to read as follows:

[Sec:] Sec. 25. The Legislature shall establish a system of County and Township Government which [shall be uniform throughout the State,] may include:

1. Classification on the basis of population or any other basis reasonably related to the purpose of the classification.
2. Optional forms of county government which may be adopted or abandoned by a majority vote of the registered voters in the affected county voting on the question in a manner provided by law.

Las Vegas Metropolitan Police Department

400 EAST STEWART AVENUE
LAS VEGAS, NEVADA 89101
PHONE 702/356-3111

EXHIBIT D

PROPOSED AMENDMENT SB 368

Amend Section 1 by deleting lines 2 through 23, page 1 and lines 1 through 6, page 2 and inserting:

280.250 1. Every demand against a department, except the salary of the sheriff, contested claims and those required by resolution to be submitted to the police commission must [shall be acted upon by the police commission. The demands shall] be listed on cumulative voucher sheets [and a copy of such vouchers shall be presented to each member of the police commission. When the demands have been approved by a majority of the police commission and the cumulative voucher sheets have been signed by the chairman and secretary of such commission, such demands are valid vouchers in the hands of the county auditor or comptroller for him to issue warrants on the county treasurer to be paid out of the department fund.

2. The county auditor or comptroller shall satisfy himself whether the money is legally due and remains unpaid, and whether the payment thereof from the department fund is authorized by law.

3.] from claims signed by the sheriff or his designee.

2. If the county auditor or comptroller allows the demand, he shall endorse upon the voucher the word "allowed", the name of the department fund, the date of [such] the allowance and sign his name thereto and draw his warrant on the county treasurer for the amount allowed.



3. The warrants and the voucher sheets must be signed by the county auditor or comptroller and the county treasurer. A signed copy of the cumulative voucher sheet must be forwarded by the county treasurer to the police commission.

4. Any claim against a department fund which is contested or is a type which by resolution requires submission to the commission, must be approved by a majority of the police commission before it is paid.

AMEND SECTION 2 BY DELETING LINES 14 THROUGH 32 PAGE 2 AND INSERTING:

of [such warrant, the order shall] a demand, the demand must be presented to the police commission with the refusal of the county auditor or comptroller endorsed thereupon and his reasons for [such] the refusal.

2. If the police commission orders the issuance of such a warrant by a unanimous vote of all the members, the county auditor or comptroller shall immediately issue [such warrants] the warrants upon service upon him of a copy of [such] the order of the police commission, certified to be the secretary of the commission, that all members of the commission voted for its passage; otherwise, the [account shall] demand must be rejected, and no warrant [shall] may thereupon issue.

3. If the county auditor or comptroller allows [such account] a demand in part, a warrant [shall] must only issue for [such] that part, unless the police commission allows a greater sum by unanimous vote.

4. No warrant [shall] may be drawn by the county auditor or comptroller on [the] a department fund, unless there is sufficient money in the fund to pay the

S. B. No. 283--substitute for sub sec 2 of sec 5.

EXHIBIT E

The legislature hereby finds that the lands described in sec 1 are held in trust for the benefit of the Nevada Agricultural Experiment Station and that the proceeds of any sale or of the reinvestment of any funds accruing from any sale or otherwise should be used for the Station by the Regents, subject to budgetary procedure, as a supplement to funds available from other sources but not as a substitute for such funds.

Approve by Chairman of Advisory Group

RLK