

MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON JUDICIARY

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
February 5, 1981

The Senate Committee on Judiciary was called to order by Chairman Melvin D. Close at 9:00 a.m., Thursday, February 5, 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 Melvin D. Close, Chairman
Senator Keith Ashworth, Vice Chairman
Senator Don W. Ashworth
Senator Jean E. Ford
Senator William J. Raggio
Senator William H. Hernstadt
Senator Sue Wagner

STAFF MEMBERS PRESENT:

Frank Daykin, Legislative Counsel
Iris Parraguirre, Committee Secretary

SENATE BILL NO. 107

Conforms certain statutory provisions to constitutional provisions relating to jurisdiction of courts of record.

Tom Davis, Justice of the Peace of Carson City, stated it was his understanding there was an amendment to S. B. No. 107 which would increase the dollar jurisdiction.

Chairman Close asked what would happen if the jurisdictional levels of Justice of the Peace courts were raised to \$1000 rather than \$750. Mr. Davis stated he had no problem with a maximum of \$1000 for small claims but if the jurisdictional limits were any higher, the case should then be directed to a Justice Court civil action because of the complaint, summons, answer, and a more formal proceeding.

In response to Chairman Close's question regarding having both

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the Justice Court and civil claims actions set at the same amount, Mr. Davis stated the average person is not equipped to handle an attorney. He also felt there would be more attorneys involved representing either the plaintiff or defendant, which would make it extremely difficult for the court to try to represent both sides and still protect the interests of the person who was not represented by counsel. He explained that in small claims, persons can have counsel present but the attorney is not entitled to be paid out of the judgment of the court.

Senator Raggio stated he felt there are some people who are completely inept, even in small claims actions, and need the assistance of an attorney. Mr. Davis stated there has been an increase of 20 to 25 percent in legal counsel in court since the maximum was raised to \$750.00.

Senator Raggio asked Mr. Davis what the effect on the Justice Court has been with the requirement they be courts of record. Mr. Davis stated there had been no problem at all but that he did not like the tapes.

John Fleckenstein, Dayton Justice of the Peace, stated occasionally they have problems and in one instance, he heard a civil case when the tape was not working so it had to be heard again since there was no transcript and the case was to be appealed to the District Court.

Mr. Jim Joyce of the Nevada Judges Association stated he had been in contact with the judges throughout the state and they had no problems as far as being courts of record was concerned.

Senator Raggio asked Mr. Davis if his court would still be able to handle all the cases if the maximum was raised to \$1000. Mr. Davis replied they probably would not, however, a new court was being considered, possibly within the next two years. He stated that with the increase to the \$750 maximum, there had been an increase of 40 percent in 1980 over small claims in 1979 and 25 percent in Justice Court civil action. He indicated, however, that the economy is also a reason for the increase. For example, evictions have skyrocketed and many people cannot pay their bills.

Mr. Fleckenstein stated he felt the main issue was if the legislature is considering raising the dollar jurisdiction beyond \$1000, a civil Justice Court action must be filed instead of a small claims action because the higher the amount gets, the more complicated the case gets.

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In reply to Mr. Hernstadt's question regarding whether the Justice Courts would be agreeable to the \$1000 amount set for small claims, Mr. Fleckenstein stated he felt that would not work a hardship on anyone. However, if the amount of \$1500 or \$2000 was being considered, then he would prefer to see \$1000 being put on small claims and \$1500 or \$2000 on civil Justice Court so those people between the cutoff of the limit for small claims would be forced into a Justice Court action. Since they now hear between an average of 15 or 20 small claims actions in an hour, if the limit were \$2000, it could take an hour for one case.

Senator Hernstadt suggested drafting a new bill. Chairman Close stated a new bill would be drafted indicating \$1250 for Justice Court and \$1000 for small claims.

SENATE BILL NO. 107

Senator Raggio moved to Do Pass S. B. No. 107 and place on Consent Calendar.

Senator Hernstadt seconded the motion.

The motion carried unanimously.

SENATE BILL NO. 110

Clarifies statutory procedure for releasing mechanic's line upon posting surety bond.

Senator Raggio asked Frank Daykin, Legislative Counsel, if S. B. No. 110 is a technical bill.

Mr. Daykin stated this is a revisor's bill and the form of the bond that was provided in the statute had a defect in it as there was no place for the principal to sign. S. B. No. 110 corrects the error and also breaks down without substantive change, except for the matter of the signature, NRS 108.2391 into a total of eight sections of manageable length. He stated the matter of the signature is on page 2 on line 4, and it should have been between lines 40 and 41 on page 4 in the old text.

SENATE BILL NO. 110

Senator Don Ashworth moved to Do Pass S. B. No. 110 and place on Consent Calendar.

Senator Hernstadt seconded the motion.

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The motion carried unanimously.

SENATE BILL NO. 111

Ratifies technical corrections made to various chapters of NRS.

Mr. John H. Stratton of the Gaming Control Board said he had no comments relative to S. B. No. 111, however, he did have some technical corrections on NRS 463.386, page 14, Section 17.

Senator Raggio moved to Do Pass S. B. No. 111 and place on Consent Calendar.

Senator Hernstadt seconded the motion.

The motion carried unanimously.

The following bill drafting request was presented and received for committee introduction.

BDR NO. C-548 (S.J.R. 2D)

Proposes a constitutional amendment to provide for selection of supreme court justices by merit.

Chairman Close stated the District Court Judges have requested the committee introduce three bills. The three bills are as follows:

1. A constitutional amendment which would allow District Court Judges to have their salaries increased during their term in office.
2. A bill which would allow District Court Judges to be paid as exofficio members of certain boards.
3. A bill which would set District Court Judges salaries the next time they are elected at a higher level.

Senator Raggio moved to draft the three bills requested by the District Court Judges.

There was no second to the motion.

The motion failed.

Senator Hernstadt stated he objected to the first two of the three bills because he felt they would be voted down. He stated the second bill, allowing District Court Judges to be paid as exofficio members of boards, was a subterfuge which would make the committee look bad. He stated he would favor the committee introducing a bill for a modest increase in salary.

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Senator Keith Ashworth stated he objected to District Court Judges being paid as exofficio members of any board.

Senator Close stated he did not know why the committee should draft a bill increasing salaries in 1985 because there are four years before it would become effective and the legislature will be in session in 1983.

Jim Joyce stated he would not be in favor of processing the bill because it would not become effective until January of 1985 and the judges would have to live with it until 1991.

Senator Keith Ashworth agreed and did not feel this legislature should obligate the 1983 legislature by its actions during this session.

Senator Don Ashworth agreed and did not feel there was any reason to set salaries at this time, since no one knows what will happen to the economy in four years.

Mr. Jim Joyce, as a representative of the District Court judges, stated there is really a crisis concerning the judges salaries if the committee does process the bill and sets their salaries at \$50,000 or \$55,000. It would not be effective in January of 1985 and whoever is a judge would not qualify until January of 1985 and would receive that salary until January of 1991. He stated it is not realistic to say you are going to give someone a salary of \$50,000 and that he is going to have to live with that amount until January 1991. This is a serious problem. In the 1977 session of the legislature they were able to get a pay raise for the District Judges from \$30,000 to \$43,00 but Mr. Joyce stated it was one of the toughest bills he had ever been involved with. It should not have been difficult. It was passed by the legislature in May 1977, however, the judges did not qualify for the raise until January 1979 and 18 months of inflation reduced its value. They are now stuck with the \$43,000 figure until January of 1985. Mr. Joyce stated that if the committee is considering \$50,000 or \$55,000 to become effective in 1985 and the judges are expected to live with that amount until 1991, we are going to lose some of the best judges in the state because they are not going to sit on the bench for that salary. He felt a way must be found of compensating some good and decent people who are sitting on the bench in this state or we are going to end up with a judiciary which is comprised of lawyers who cannot get a job anywhere else. The Supreme Court is, in fact, compensated for certain additional duties beyond their offices. Mr. Joyce stated there is precedence in giving the judges some relief by giving them additional duties and paying for them. He requested

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the committee to reconsider its previous action, at least draft a bill and let the judges come to testify on it.

Senator Ashworth asked why the cost of living cannot be tied in with the salaries.

Senator Raggio agreed with Mr. Joyce that the state would lose some very good district judges between now and 1984 if there is not some relief given to them.

Senator Hernstadt asked what expense accounts the judges receive.

Chairman Close replied they are not given an expense account as long as they are working at home. If they sit in some other district, they get their per diem.

Regarding the proposed bill to enact legislation which would increase District Court Judges salaries the next time they are elected:

Senator Wagner moved to draft the bill.

Senator Keith Ashworth seconded the motion.

Senator Don Ashworth voted no.

Mr. Joyce stated if this committee processes a pay raise for the judges who are currently sitting in office who were elected in 1978 and whose terms expire in 1984, they would become eligible for a pay raise in 1985. Whatever salary the committee and this legislature sets for them, they will have to live with from this day forward or from 1985 until January 1991, and that none of us can predict the rate of inflation.

Chairman Close asked at what level the salaries should be set.

Senator Keith Ashworth quoted a figure of \$48,000.

Senator Hernstadt suggested raising the judges salaries to \$60,000 so they will know when they run for reelection there will be a substantial increase in the future. He felt that would solve the problem of what happens at reelection time but if any of the judges quit in the meantime, there is not much that can be done. He stated the constitutional amendment is one thing because the public is given a chance on the long-term types of electorate offices, such as the Supreme Court Justices which is six years.

Senator Keith Ashworth agreed with Senator Hernstadt that judges should be paid well, but he did not agree they should be paid

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for additional duties which they may not perform. He stated there was a problem when they were doing that in the past which was the reason it was discontinued.

Mr. Joyce commented that District Judges had never had additional duties, just the Supreme Court Justices.

Senator Don Ashworth stated he felt if there was another constitutional amendment, it would be presenting a bill to the voters which was very similar to the one that had previously been voted down.

Chairman Close stated it would probably be four or five years before it came before the people again.

Senator Wagner stated she did not think the judges had organized or talked about the previous bill when it was presented to the voters.

Chairman Close stated that if capable people are going to continue to serve as judges, they will have to be paid a salary that is fair and you cannot set their salary ten years in advance.

Senator Hernstadt suggested raising District Court judges salaries to \$55,000 and the Supreme Court Justices to \$60,000 for the purpose of bill drafting.

Senator Ashworth said he would withdraw his "no" vote.

Mr. Joyce said he would not process the bill before the 1983 session because it would not become effective until January of 1985. Looking ahead to 1991, the salary would have to be set at such a level that the whole committee might take a lot of criticism because the people will not understand the figure.

Regarding the preparation of the bill which would allow District Court Judges to be paid as exofficio members of certain boards:

Senator Raggio moved to draft the bill.

Senator Keith Ashworth objected.

There was no second to the motion.

The motion failed.

Chairman close asked if there was any objection on the constitutional amendment. There was no objection. He stated the resolution would be drafted.

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Senator Hernstadt asked whether the judges worked on their cases at home. Jim Joyce replied that some of them do. Senator Hernstadt suggested an expense allowance for the maintenance and study at home. Senator Ford and Senator Keith Ashworth disagreed. Senator Wagner stated the amount of time spent on work at home would be very hard to prove. She felt it could cause some problems.

Chairman Close said there would be just the one item drafted, which would be the resolution allowing for salary increases during the judges' terms in office.

Senator Ford stated she felt there should be a show of confidence the legislature could make to the judges so they could look ahead as far as their salaries were concerned. She asked what figure they could politically suggest and how the people are going to look at the legislature recommending that figure. She recommended a compensation commission to look into all salaries.

Bill McDonald, District Attorney of Humboldt County, stated he is a member of the Nevada Association of Counties Legislative Commission on public officials salaries, which will be dealing with the Government Affairs Committees of the Senate and Assembly. He pointed out that the judges might prefer their bill not be processed for two more years, as the judges salaries tend to be a maximum compressing other public official's salaries. The other public official's salaries, both state and county, have to be processed by this legislature because they go into effect before the legislature convenes again. He stated that in looking at the two big counties of Clark and Washoe, the public official's salaries are getting fairly close to the district judges, which possibly may be a problem for the money committees, as the county official's salaries are going to be higher than what the district judges are getting now. The overall salary picture of all public officials, including the judges, is going to have to be addressed and he felt it was unfortunate there is the six-year term problem. He stated this legislature is going to have to see how the judges salaries fit into the overall scheme.

Mr. McDonald stated he hoped some serious consideration and constitutional analysis would be looked at because county officials, unlike the prohibition against increases in salary for judges and state officials, are able to be evaluated for across-the-board pay increases. He felt it might be possible to figure out a scheme whereby the statute which creates the salaries can be amended so it can read x dollars plus 80 percent of the increase annually of the cost of living index, 50 percent or something

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that would satisfy the constitution which says the legislature shall set county salaries, state official's salaries, and shall set judge's salaries. The constitution does not say set by a specific number and the theory is being advanced that when the legislature says the salary will be x dollars plus x percent of a figure to be determined by a responsible entity, it would then be complying with the constitutional mandate.

Senator Raggio stated the salaries would not be increased during the term, they would be increased prior to the term but according to the formula.

Mr. McDonald stated no decisions would be made by the legislature during the term which would increase salaries. Those decisions would have been made before. For instance, if it was decided that for the period of time from 1983 to 1985, the salaries for the Humboldt County District Attorney shall be \$25,000 instead of \$22,900 and for the period 1985 to 1987, shall be \$27,000, if the amount is set now it might comply with the constitutional requirement that the legislature set the salaries. If there were a prohibition against the increase during the term, the salary would go up during the term because it had been increased before the term. Persons running for office would know what the salary would be before they ran for office.

Chairman Close asked if there was a motion to approve the minutes.


Senator Hernstadt moved the minutes of January 28, 1981 be approved.

Senator Keith Ashworth seconded the motion.

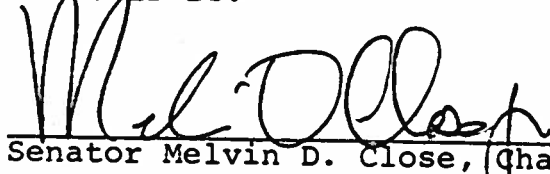
Motion carried unanimously.

There being no further business, the meeting was adjourned at 10:05 a.m.

Respectfully submitted by:


Iris Parraguirre, Secretary

APPROVED BY:


Senator Melvin D. Close, Chairman

Date: 2-16-81

SENATE AGENDA

EXHIBIT A

COMMITTEE MEETINGS

Committee on JUDICIARY, Room 213.

Day Thursday, Date February 5, Time 9:00 a.m.

S. B. No. 107--Conforms certain statutory provisions to constitutional provisions relating to jurisdiction, of courts of record.

(Amendment may be proposed to increase the jurisdictional limitations of Justice of Peace Courts.)

S. B. No. 110--Clarifies statutory procedure for releasing mechanic's lien upon posting surety bond.

S. B. No. 111--Ratifies technical corrections made to various chapters of NRS.

Postponed S. B. No. 118--Prohibits use of list of registered voters for selection of jurors and increases fees for jurors.

EXHIBIT C

EXHIBIT D

EXHIBIT E