

MINUTES OF THE  
MEETING OF THE SENATE COMMITTEE  
ON TAXATION

SIXTY-FIRST SESSION  
NEVADA STATE LEGISLATURE  
March 5, 1981

The Senate Committee on Taxation was called to order by Chairman Keith Ashworth at 2:09 p.m., Thursday, March 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 Keith Ashworth, Chairman  
Senator Norman D. Glaser, Vice Chairman  
Senator Don Ashworth  
Senator Virgil M. Getto  
Senator James N. Kosinski  
Senator William J. Raggio

COMMITTEE MEMBER ABSENT:

Senator Floyd R. Lamb

STAFF MEMBERS PRESENT:

Ed Shorr, Deputy Fiscal Analyst  
Colleen Crum, Committee Secretary

The chairman read Bill Draft Requests for possible committee introduction. If there were no objections the bills would be introduced.

There were no objections to the introduction of the following bills:

- \* BDR C-1176: Proposing to amend the Nevada constitution to provide for the taxation of oil and gas by value or by amount removed or produced.
- o BDR 32-225: Relating to county motor vehicle fuel tax; extending the tax to diesel fuel and liquefied petroleum gas and replacing the amount per

\* (S.J.R. 27)      o (S.B. 373)

Senate Committee on Taxation  
March 5, 1981

gallon with a percentage of sale price as the measure of the tax; and providing other matters properly relating thereto.

† BDR 32-1219: Relating to motor vehicles; increasing registration fees and certain taxes on fuel; and providing other matters properly relating thereto.

The chairman stated a round table discussion would be conducted to attain the committee's philosophy on the tax reform proposals. He explained the priorities he felt the committee must address. The general tax package must be handled first, and as quickly as possible. The second priority is the issue of motor fuel taxes for highways. The third priority is the issue of taxing the production and transportation of electricity.

The chairman gave background information on the third priority. The Valmy power plant, which will be in operation later this year, will ship out of state 50 percent of its energy. A tax reduction on the ad valorem rate on property will result in a tremendous windfall to the state of Idaho, which will receive half of the power generated by Valmy. Idaho has already received a tremendous windfall as a result of the passage last session of Senate Bill No. 204. The same situation will occur when the White Pine power plant goes on line. Sierra Pacific is also contemplating the construction of a power plant in Elko. The valuation in these plants, as well as existing plants, amounts to billions of dollars. He felt the situs and line mileage taxes must be studied. He opposed giving a tremendous windfall to surrounding states which use Nevada-generated energy.

The chairman stated he had requested the drafting of legislation which would give a flat exemption for the improvements on land. He proposed the following scaled exemption:

<u>Valuation</u>	<u>Amount of Exemption</u>
\$0-\$100,000	\$ 50,000
\$100,000-\$200,000	\$ 75,000
Over \$200,000	\$100,000

The chairman explained this proposed concept would amount to approximately a 50 percent reduction on the full value of

Senate Committee on Taxation  
March 5, 1981

of improvements on land. If this scaled proposal proves to be unconstitutional, the chairman requested the drafting of legislation which would give an across-the-board exemption of \$75,000 on improvements to both commercial and residential property.

Senator Getto stated he had asked for an opinion from the Legislative Counsel on this proposal. He said it is clear that the proposal is unconstitutional because the constitution says the tax rate on property shall be equal. The chairman noted that the veterans and widows exemptions, presently permitted by law, are an example of his proposal.

Senator Don Ashworth stated it would be a waste of time for the Senate Committee on Taxation to determine its own approach without considering the approach of the Assembly Committee on Taxation. Senator Raggio stated the committee must make decisions on basic concepts. If these decisions are different than the Assembly's, an agreement must be reached between the two parties.

The chairman expressed his opinion on the Governor's tax proposals. He disagreed with increasing the sales tax from 3.5 cents to 5.75 or 6 cents. The maximum amount of sales tax that the state can levy is 6 cents. He opposed using the full amount of sales tax for the benefit of local governments. He also opposed lowering the ad valorem rate from \$3.64 to \$1.00. He felt this would allow too much money to escape from the net proceeds of mines and power sources. He opposed applying the \$2.64 difference to the valuation of properties of establishments with unrestricted gaming licenses, and calling it a different tax. He felt the sales tax should be increased to 5 cents and the ad valorem rate should remain near the present \$3.64 rate. He supported constitutional amendments on the net proceeds of mines. He felt the integrity of smaller counties was being impugned by reducing the ad valorem rate to \$1.00.

Senator Raggio stated property tax relief was required. He felt assessments must be brought up to an equal level across the state by the use of a factoring system. The public is

Senate Committee on Taxation  
March 5, 1981

insisting that property tax be de-emphasized. He stated the task force figures indicate that the sales tax may not need to be raised to 6 cents because the cities and counties have padded their budgets. A lesser sales tax is more palatable. He said he would have reservations if it became necessary to levy a sales tax near the 6-cent level.

Senator Kosinski stated the assessment problem must be resolved. He acknowledged that property tax relief is necessary, but he disagreed with including businesses in the reduction program. He said residential homeowners, not business owners, were complaining about property taxes. He suggested providing a property tax rebate for residential homeowners. Legal counsel indicated last session that this approach was constitutional. He felt the integrity of the property tax base must be protected. Digging too deeply into the property tax base would make it difficult in future years to raise property taxes should the state experience financial problems. He noted that owner-occupied residential property accounts for less than 40 percent of the ad valorem tax revenues. He was also concerned about the integrity of the sales tax base. Increasing the sales tax to approximately 5 cents would not leave much for future revenue needs. He said there were many problems with the Governor's approach, particularly the windfalls to the mining, gaming, and utility industries. None of these problems would arise under a property tax rebate to residential homeowners.

Senator Getto agreed with Senator Kosinski and the chairman. As a small county representative, he was very concerned about the switch from a basic solid tax on property to a sales tax. Rural counties would experience a shortfall under the sales tax method and would be required to ask the legislature each session for a portion of the sales tax moneys generated in other counties. He felt more people would shop in other states where the sales tax is less if the sales tax is increased in Nevada.

Senator Don Ashworth agreed with Senator Kosinski's comments. He stated eroding the property tax base would be shortsighted. He felt utilities which ship their energy out of state must be made to pay. He stated increasing the sales tax above



Senate Committee on Taxation  
March 5, 1981

5 cents would result in a loss of potential funds if additional revenue is needed in the future.

Senator Glaser stated he agreed with Senator Kosinski's comments. Senate Bill No. 204, which was passed last session, provided \$240 million in tax relief in two years. Now tax reform was being addressed. He urged moderation. He was fearful of eroding the property tax base. He felt additional relief to homeowners should be provided by taking smaller increments in valuation. He also proposed capping revenues.

Senator Don Ashworth stated revenues should be capped, but he opposed capping expenditures. He said the legislature should not dictate how the counties and cities spend their money.

The chairman noted that the consensus of the committee appeared to be to give tax relief to the homeowner. He asked the committee if it wanted to provide tax relief to businesses. He observed that businesses presently receive favorable tax treatment because a different method of valuation, which includes a depreciation schedule, is used to assess businesses. He felt the legislature should dictate the formulas assessors use in assessing property. Senate Bill No. 69, which the committee amended, addressed this issue.

Senator Raggio observed the committee appeared content to maintain the present system of a real property tax base. He said his constituents fully endorse the concept of tax reform as well as tax relief. He said a serious mistake would be made if the committee considered only tax reform. He felt there should be a shift from relying on property tax as the primary means of revenue. He said there was a great deal of merit to shifting the tax base so tourists would pay a greater share of the taxes. Although he personally supported classification of property, which required a constitutional amendment, he felt bound by the constitutional requirement that all property be taxed the same. He questioned the validity of the legal opinion that tax exemption can be achieved legally by using an indirect method when it cannot be done legally through a direct method. While he endorsed the senior citizens program, he felt it was an example of the use of an indirect method of tax exemption.

Senate Committee on Taxation  
March 5, 1981

The chairman stated that reform has been achieved. The ad valorem rate in the state has been lowered from \$5.00 to \$3.64 and it will undoubtedly be lowered again. He reiterated his opposition to lowering the ad valorem rate to \$1.00 and to increasing the sales tax to near the maximum of 6 cents.

Senator Raggio said a high ad valorem rate creates higher property taxes because the property values are increasing rapidly. The chairman stated this would be plugged. Senator Raggio felt it would be difficult to plug because the legislature has no control over the increase in property values.

Senator Kosinski expressed concern that the Governor's proposal for tax reform would force future legislatures to squeeze the breath and life out of the gaming and mining industries, or to turn to the alternative of a state income tax. He asked how sales tax revenues would be redistributed back to the counties which would be shortchanged under the Governor's proposal. He said the beauty and simplicity of the homeowners tax rebate program is that it will require 17 checks to be drawn by the Department of Taxation and sent to each of the counties. The counties would not suffer a loss beyond their present revenue under this plan.

The chairman explained that his proposed tax rebate program would operate under an offset credit system. The bill to the property owner would reflect the taxes due as well as a credit for the rebate. The county assessor would send the property owner a bill for the tax, reflecting the credit, and would send a bill to the state for the amount of the credit.

Senator Raggio questioned the constitutionality of the offset credit. The chairman stated if the offset credit was ruled unconstitutional, the senior citizens, widows and veterans rebates would have to be eliminated. Senator Getto noted that the senior citizens rebate has never been tested in court.

Senator Don Ashworth suggested that the amount of the tax reform should be based upon how much revenue is needed in the state.

Senate Committee on Taxation  
March 5, 1981

The mechanics of equalizing all property assessments were discussed. The chairman stated that the legislature must pass a law and then the Department of Taxation would have to equalize all of the property in the state by December 1, 1981. The counties are charged with that responsibility, but the counties will need an abundant amount of help to accomplish equalization. Senator Don Ashworth opposed equalizing properties on a percentage basis because, in some cases, the base for equalizing is incorrect. He felt the physical assessment of properties was required. Senator Raggio stated a factor formula was the only practical method. The chairman said it would be impractical to reappraise every piece of property in the state.

The chairman read an opinion by Mr. Frank Daykin, Legislative Counsel, on Senate Bill No. 303 in which Mr. Daykin said the proposal for an allowance risks being declared unconstitutional. (See Exhibit C.)

Senator Raggio asked for the consensus of the committee if the rebate method is ruled unconstitutional. Senator Kosinski stated that if the rebate is unconstitutional, a flat reduction in assessment should be employed. The chairman stated he asked Mr. Daykin for an opinion on that concept.

Senator Kosinski noted that Mr. Daykin's opinion on Senate Bill No. 204 of the 60th Session dealt with an allowance, not a rebate, for homeowners. Senator Glaser questioned the difference between a rebate and an allowance. Senator Raggio explained the senior citizens program was a tax rebate because the senior citizen must pay the entire tax bill and then apply for a rebate.

Senator Raggio stated the taxpayers would be in dire trouble if the rebate was passed and then declared unconstitutional.

Senator Don Ashworth questioned how renters would be helped. Senator Raggio stated Senate Bill No. 204 of the 60th Session dealt with this problem, but it was more cosmetic than real. In few cases was the tax decrease passed on to the renter.

The chairman suggested asking for a declaratory judgement by the Supreme Court before the rebate is passed. Senator Raggio

Senate Committee on Taxation  
March 5, 1981

stated declaratory law prohibits the Supreme Court from passing judgement on proposed legislation. Senator Don Ashworth noted the law would have to be passed before the legislature could ask for a declaratory judgement. Senator Glaser said this was attempted last session, but the Assembly didn't cooperate quickly enough.

The chairman noted only one member of the committee felt the tax burden should be shifted from the ad valorem base. Senator Don Ashworth stated that an agreement must be reached with the Assembly Committee on Taxation. Senator Raggio noted a friendly suit to test the constitutionality of the rebate concept would be impossible if the Assembly does not agree with the concept.

The chairman instructed Mr. Ed Shorr, Deputy Fiscal Analyst, to ask Mr. Daykin for a legal opinion on the rebate proposal on taxes paid by residential homeowners as well as an opinion on a flat, across-the-board reduction. Ms. Jeanne Hannafin, Deputy Executive Director of the Department of Taxation, was asked to obtain information on the percentage of assessed rolls made up by resident owner-occupied properties in each county. She was also asked for a fiscal impact statement on the flat, across-the-board proposal.


Senator Kosinski noted that local governments were criticizing the figures developed by the task force and presented at the March 3, 1981 joint Assembly and Senate Committees on Taxation meeting. The chairman said the purpose of the meeting was to allow the local governments to note any errors and to report to the committee. He said the data was taken directly from the audited reports and from the local government budgets. He stated computation or copying errors were possible.

There being no further business, the meeting adjourned at 3:35 p.m.

Respectfully submitted by:

  
Colleen Crum, Secretary

APPROVED BY:

  
Senator Keith Ashworth, Chairman

DATE: 3-9-81



SENATE AGENDA

EXHIBIT A

COMMITTEE MEETINGS

Committee on TAXATION, Room 213.

Day Thursday, Date March 5, Time 2:00 p.m.

WORK SESSION.



STATE OF NEVADA  
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING  
CAPITOL COMPLEX  
CARSON CITY, NEVADA 89710



LEGISLATIVE COMMISSION (702) 885-5627  
KEITH ASHWORTH, *Senator, Chairman*  
Arthur J. Palmer, *Director, Secretary*  
INTERIM FINANCE COMMITTEE (702) 885-5640  
DONALD R. MELLO, *Assemblyman, Chairman*  
Ronald W. Sparks, *Senate Fiscal Analyst*  
William A. Bible, *Assembly Fiscal Analyst*

ARTHUR J. PALMER, *Director*  
(702) 885-5627

FRANK W. DAYKIN, *Legislative Counsel* (702) 885-5627  
JOHN R. CROSSLEY, *Legislative Auditor* (702) 885-5620  
ANDREW P. GROSE, *Research Director* (702) 885-5637

February 24, 1981

Senator Keith Ashworth  
Legislative Building  
401 South Carson Street  
Carson City, Nevada 89710

EXHIBIT C

Dear Senator Ashworth:

We have drafted at your request the attached bill (BDR-32-1261) which would grant an allowance against property taxes accrued against homes occupied by their owner. In our opinion this proposal risks being declared unconstitutional. Article 10, section 1 of the Nevada constitution states in relevant part:

The legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property \* \* \* and there shall also be excepted such property as may be exempted by law for municipal, educational, literary, scientific or other charitable purposes.

Although your proposal takes the form of an allowance, in substance it has the same effect as an exemption and risks being regarded as such by the Nevada supreme court. If the court finds the allowance to be in reality an exemption, it could be upheld only if it were found to have a charitable purpose. Here the allowance runs a further risk.

In Hendel v. Weaver, 77 Nev. 16 (1961) the court upheld as charitable a property tax exemption to veterans, even though it was not limited to "needy" veterans. Your proposal could be characterized as the ultimate extension of the holding in Hendel. Its purpose is to alleviate the hardship imposed on homeowners who cannot manage rising property taxes. Under the reasoning in the Hendel case, the allowance need not be provided only to "needy" homeowners for the court to find a charitable purpose.

Page 2

The court could find that purpose in the legislative declaration we drafted in your bill. The risk is that the court may not, and may instead find only an attempt by the legislature to provide indirectly preferential tax treatment for homeowners; something it cannot do directly under the uniformity requirement of Article 10, section 1. Boyne v. State ex rel. Dickerson, 80 Nev. 160 (1964).

Very truly yours,

Frank W. Daykin  
Legislative Counsel

By George V. Postrozny  
George V. Postrozny  
Deputy Legislative Counsel

GVP:rp