

MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON TAXATION

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
May 21, 1981

The Senate Committee on Taxation was called to order by Chairman Keith Ashworth, at 2:17 p.m., Thursday, May 21, 1981, in Room 213 of the Legislative Building, Carson City, Nevada. There was no Meeting Agenda nor 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 Schorr, Deputy Fiscal Analyst
Colleen Crum, Committee Secretary

The chairman explained the meeting was called to clarify a statement made by Mr. Roy Nickson, Director of the Department of Taxation, in which he said power-generating plants which use coal would escape paying sales tax on the purchase of coal.

Mr. Frank Daykin, Legislative Counsel, stated the exemption in the local school support tax law and the sales and use tax law is intended to protect suppliers who execute long term contracts for the sale of goods at a fixed price from an arbitrary change in costs forced by a tax increase. In the case of coal contracts, the utility company is the purchaser of the coal. The utility company has a contract with the supplier of the coal to purchase so much coal at a specified price. The utility company does not have a contract with the State of

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Nevada to tax the coal at a specified rate. Consequently, the utility, as the purchaser, is not entitled to claim any tax benefit under that contract. The supplier of the coal could claim a reduction in the sales tax if he were buying something to be used in the performance of that contract.

The chairman asked whether any utility companies are presently purchasing coal under an agreement executed prior to the adoption of the sales law in 1955. Mr. Daykin explained the sales and use tax law was adopted in 1955; the local school support tax law was adopted in 1967. One power company has claimed to be buying coal under a contract executed prior to the 1967 local school support tax act. However, a district judge held that the contract had been amended so many times it was not the same contract. The judge did not rule on the questions of whether the exemption was valid because he first found the contract was not the same contract as the one executed prior to 1967.

The chairman asked whether a trailer bill was advisable to make the exemption from the increased tax for a definite duration and to limit the exemption to capital improvements or construction. Mr. Daykin said the exemption could be limited in duration and could be limited to capital construction because the exemption or reduction is not compelled by the constitution. The exemption or reduction has been allowed by the legislature as a matter of fairness. The legislature is trying to protect the supplier who binds himself to another person to supply something at a fixed price, based on the costs when the contract was executed. The legislature is not constitutionally compelled to protect the supplier, however. Consequently, the legislature can limit the degree of protection. Mr. Daykin did not feel either sug-
gestion made by the chairman was required to reach coal contracts
because coal contracts are not within the language which was used.

The chairman asked Mr. Daykin if he was saying the utility companies would be required to pay the increased sales tax on the purchase of coal. Mr. Daykin stated the chairman's statement was correct with the exception that the tax would be on the use rather than on the sale.

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Senator Raggio asked whether Mr. Daykin was saying there was no loophole in the present law except to protect the supplier who had agreed to supply material for a fixed price under a contract executed prior to the increase in the sales and use tax. Mr. Daykin stated Senator Raggio's statement was correct.

Mr. Daykin noted a construction contract is not the only species of contract on which a long, continuing bid may be made.

The chairman asked whether the legislature should specify that the exemption would no longer apply when a contract is amended. Mr. Daykin stated contracts are amended in other respects than prices.

The chairman asked whether the legislature could specify that the increased tax would apply if the contract is renegotiated for consideration of price. Mr. Daykin stated the legislature could make that specification, but the courts would rule in favor of the State if the point was disputed.

The chairman stated Senator Kosinski had related to him that a deputy attorney general had indicated the legislature should make the exemption for a definite duration and should limit the exemption to capital improvements or construction. Mr. Daykin said the deputy attorney general serving the Department of Taxation related to him that it was unnecessary to amend the law. He was fearful amending the law would leave the law open to challenge because the challenger could argue something would have been exempt from taxation if the law had not been changed.

Senator Raggio asked the legal definition of "existing contract." Mr. Daykin stated "existing contract" is defined as "performance of a written contract entered into." In the case in question, the contract must have been entered into before May 1, 1981.

The chairman asked Mr. Daykin to read the entire section relating to contracts. Mr. Daykin said the language reads, "There are exempted from the additional taxes imposed by amendment to this chapter the gross receipts from the sale of and the storage, use, and consumption in accounting of tangible personal property used for the performance of a written contract entered into prior to May 1, 1981."

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Senator Raggio asked how this language would apply only to suppliers. Mr. Daykin explained if the language was intended to benefit the buyer, it would have said, "sale or use of tangible personal property sold or used pursuant to a written contract," not "sold for the performance or used for the performance of." The phrase "for the performance" relates to the person who is furnishing the service or the goods.

Senator Raggio asked whether the "for the performance" clause was interpreted in the district court case. Mr. Daykin stated that aspect of the case was not brought up because the court did not have to reach it. The judge ruled simply that the contract was amended so many times it wasn't the same contract.

There being no further business, the meeting adjourned at 2:35 p.m.

Respectfully submitted by:

Colleen Crum

Colleen Crum, Secretary

APPROVED BY:

Keith Ashworth

Senator Keith Ashworth, Chairman

DATED: 5-26-81