MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON TRANSPORTATION

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
May 28, 1981

The Senate Committee on Transportation was called to order by Chairman Richard E. Blakemore, at 2:08 p.m., on Thursday, May 28, 1981, in Room 323 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Richard E. Blakemore, Chairman
Senator William Hernstadt, Vice Chairman
Senator Joe Neal
Senator Lawrence E. Jacobsen
Senator Wilbur Faiss
Senator Clifford E. McCorkle
Senator James H. Bilbray

STAFF MEMBER PRESENT:

Kelly R. Torvik, Committee Secretary

ASSEMBLY BILL NO. 179 (See Exhibit C)

Mr. Bill Isaeff, representing the Attorney General's Office, presented the committee with the decision of a court case involving the Taxicab Authority (see Exhibit D) and an opinion of a court case involving the City of Las Vegas (see Exhibit E). He noted the Eighth Judicial District Court ruled the law creating the Taxicab Authority (T.A.) to be unconstitutional. That ruling is on appeal to the Nevada Supreme Court. In the case involving the City of Las Vegas the court upheld the use of population criteria as being constitutional. The use of the population figure in the City of Las Vegas case was rationally related to the legislative objective of producing an economical and efficient police organization within the larger metropolitan areas of the state. He said the City of Las Vegas case does not necessarily mute the pending appeal of the T.A. case. As long as the population criteria is rationally related to the legislative objective behind the legislation it will be found constitutional. Every case can be seen differently by the members of the Nevada Supreme Court. They may or may not see the rationale in the T.A. case. There is

an unusual aspect to the City of Las Vegas case which may have some bearing on the T.A. appeal. The court found the change in population classifications unconstitutional. However, Clark County did not appeal that portion of the decision and conceded the unconstitutionality of the population change. Therefore, the Supreme Court did not reach the population issue. The population change is a very strong issue in the T.A. case. Judge Legakes stated in the decision he found nothing rationale about the population classification in relationship to the T.A. The population classification began with 120,000, was raised to 200,000 and was finally raised to 250,000 over the course of a ten year period. It is the position of the Attorney General's office that some type of legislative solution would be the best method of addressing the question of constitutionality of the T.A.

Chairman Blakemore asked if it would be advisable to set the population limit at 200,000. Mr. Isaeff stated a 200,000 population limit could be attacked on the grounds that the original bill in 1969 set the limit at 120,000. This would only affect two counties for a great period of time.

The committee recessed at 2:18 p.m. The committee reconvened at 2:24 p.m.

Chairman Blakemore stated if the committee is going to change the basis of the T.A. it should be done is such a way that it would be unchallengable in court. He asked how the committee could solve the question of constitutionality and keep the jurisdiction of the T.A. confined to Clark County.

Mr. Will Crocket, Senate Bill Drafter, did not see any constitutional problems with giving all the counties an option of joining the T.A. as proposed in Amendment No. 1279. Mr. Crocket did not see any constitutional problems with a population distinction because population distinctions have been upheld for 100 years as being constitutional. The problem is with the finding of the percentage split. Because the act contains specifications along with the classification the Legislative Counsel Bureau is unable to determine when this particular rule will apply. In the City of Las Vegas case it was stated the funding formula specifies rather than classifies and is therefore constitutionally impermissible.

Senator Neal asked if there would be any problems giving statewide jurisdiction to the T.A. Mr. Isaeff stated the deputy attorney general who represents the T.A. stated giving the T.A. statewide jurisdiction would be the best and obvious solution to making the T.A. constitutional.

Senator Bilbray suggested the T.A. be given statewide jurisdiction and any county commission could declare itself under the jurisdiction of the Public Service Commission (P.S.C.).

Senator Jacobsen stated it would not be sensible to give the T.A. jurisidiction in a county where there are no taxicabs. Mr. Isaeff stated the P.S.C. has jurisidction in the 16 counties besides Clark County and the P.S.C. is apparently doing nothing in those counties where there is no cause for them to act.

Senator McCorkle, Senator Faiss, Senator Jacobsen and Senator Bilbray stated they did not feel the T.A. should be given statewide jurisdiction.

Mr. Crocket stated giving the counties the ability to accept or not accept the T.A. would be constitutional.

Senator McCorkle asked what are the problems with Assembly Bill No. 179. Senator Bilbray stated the bill could be unconstitutional.

Senator McCorkle asked if the criteria in Assembly Bill No. 179 would be deemed unconstitutional on the same basis population can be deemed unconstitutional. Mr. Isaeff stated the deputy attorney general who represents the T.A. indicated a stronger argument could be made for the rationale of a classification by the number of taxicabs and certificate holders than possibly could be made on a strict population basis. Senator Bilbray stated Mr. Avance indicated to him that a 275 vehicle limitation could be justified in court.

Mr. Jim Avance, Administrator, Taxicab Authority, said if the committee decided to base the T.A. on the number of taxicabs and certificate holders, he would suggest an additional provision which would allow a county option. Senator Bilbray explained if the number of vehicle criteria were declared unconstitutional, which he did not think it would, Clark County could then accept the T.A. under the second provision. A county could not be a part of the T.A. unless there is an affirmative vote of the county commission.

Senator McCorkle was concerned about the provision requiring legislative approval for a county to be able to return to the P.S.C. once it had opted to go under the T.A. Senator Bilbray stated that provision could be left out of the amendment.

Senator Bilbray did not believe an amended version of Assembly Bill No. 179 would be considered special legislation because any county would be allowed to join. Mr. Crocket stated that statutes are full of optional clauses as suggested by Mr. Avance.

Mr. Crocket stated the classification of nine certificate holders and 400 taxicabs could be very close to special legislation because of the regulation of a county business and the singling out of a particular county. The population classification has been upheld in court. He felt the committee would be wiser to base the T.A. on population or give the counties the option of joining the T.A. Senator Bilbray suggested the committee choose a population limitation and give the counties the option of joining the T.A. Mr. Isaeff noted there was a similar provision in the metropolitan police law. However, that law had a date tied to it. The court found the date constitutionally offensive. By removing the date the law was found constitutional. Senator Bilbray said there did not have to be a date in Assembly Bill No. 179. This would rememdy the problem of the possibility of the T.A. being deemed unconstitutional and all of its duties being turned over to the P.S.C. before something could be done by the next session of the legislature.

Mr. Crocket noted that instead of making the county acceptance of the T.A. perpetual the provision could allow the counties to withdraw from the T.A. after June 30 of odd numbered years. This would give the legislature a chance to address any problems.

Senator Hernstadt suggested the committee use Senate Bill No. 318, which contains language which would allow the counties to opt the T.A., be used as a vehicle to remedy the question of constitutionality of the T.A. Senator Neal noted it is getting late in the session and Assembly Bill No. 179 would be a better vehicle because there would not be a need to have another hearing on the bill. Senator Bilbray did not believe there was enough time left in the session to process a Senate bill.

> Senator Bilbray moved the committee amend and do pass Assembly Bill No. 179. The amendment would consist of a population limitation of 250,000 or more and there would be an alternate method of joining the T.A. by an affirmative vote of the county commission of any county. Any reference to not allowing a county to withdraw from the T.A. without legislative approval would be removed. Any reference to the number of vehicles or certificates would be removed. The option would remain in effect indefinitely.

Senator Neal questioned why the committee would want a population limitation in the bill when population limitations, when raised, have been deemed illusory. Mr. Isaeff said the question of raising the limits occured both in the T.A. case and the City of Las Vegas case. In the City of Las Vegas case the judge felt the raise from 200,000 to 250,000 was unconstitutional. However, Clark County did not appeal that issue to the Nevada Supreme Court so the Nevada Supreme Court did not address population criteria directly in the City of Las Vegas case.

Senator Neal asked if the failure to appeal the lower court decision would make the population criteria any more constitutional. He noted the lower court ruled the population criteria to be unconstitutional. Mr. Isaeff stated the decision of one district court judge in a multi-member district does not control the decision of another judge who hears another case on the same matter. Decisions are not precedent setting matters at the district court level. According to the decision, Clark County apparently conceded the fact that the change in 1979 to 250,000 was unconstitutional.

Senator Hernstadt asked if the lower court decision would become part of the Supreme Court decision since the population issue was not reached by the Supreme Court. Mr. Isaeff stated the decision of the Supreme Court upheld the lower court on the unconstitutionality of the population change only because the point had not been reached in the Surpeme Court for decision.

Senator Hernstadt noted the decision becomes part of the Supreme Court judgement. Mr. Isaeff stated that affirmation does not set the precedent that a direct address of the issue would set.

Senator Hernstadt asked if it would be rationale and legal to allow a county commission to go back and forth under the jurisdiction of the T.A. and the P.S.C. They are both statewide operations. Mr. Crocket knew of no objections to allowing the counties to go back and forth between the T.A. and the P.S.C.

Senator Neal seconded the motion.

The motion passed unanimously.

Mr. Don Walls, representing Whittlesea-Bell Company, stated the law which was written 11 years ago provides that any county that qualifies will have its own T.A. He asked if that was the intent of the committee regarding Assembly Bill No. 179. He said if there is to be T.A. jurisdiction in Washoe County, they would like to have a separate T.A.

Senate Committee on Transportation
May 28, 1981

Senator Hernstadt stated the existing T.A. would be a statewide operation based in Las Vegas. Mr. Darrell Dreyer noted the committee decided that there would be no statewide T.A. jurisdiction. Senator Bilbray noted there would be no mandatory statewide jurisdiction.

Senator McCorkle asked what was the rationale behind the original creation of the state T.A. rather than a county T.A. Senator Bilbray noted a county T.A. would be special legislation.

Senator McCorkle asked why the amendment did not include the provision that the county can have its own authority, at its option. Senator Neal explained the T.A. grew out of a situation where there were a lot of fights, burning of taxicabs and wholesale destruction of property. It was a matter which was clearly in the purview of the state and the state saw fit to address itself to the matter. The problems were not felt in the northern portion of the state because that portion of the state was not heavily unionized. Senator Jacobsen noted the public health and safety of Nevadans and tourists was in jeopardy. Senator Neal stated the county did not want to solve the problem. It wanted the state to solve the problem. Mr. Barton Jacka, Director, Department of Motor Vehicles, stated he was with the Clark County Sheriff's Department when the taxicab problems were in Las Vegas. Those taxicab problems were a severe burden on law enforcement agencies. The county helped urge the legislature to exercise its police powers and create the T.A.

Senator McCorkle asked if the taxicab companies would prefer the T.A. be a county authority. Mr. Walls did not believe a county authority had ever gotten support, principally because of the fear that the authority would become far to politicized. Clark County tried to exercise authority even though it did not have the right to do so. The county did not want the authority once it had it. The operators did not want the county to have authority.

There being no further business, the meeting adjourned at 2:51 p.m.

Respectfully submitted by:

Kelly R. Torvik

APPROVED:

Senator Richard E. Blakemore
Chairman

Dated: 6/1 1981

SENATE AGENDA

COMMITTEE MEETINGS

EXHIBIT A

Committee on Transportation, Room 323.

Day Thursday, Date May 28, 1981, Time 2:00 p.m.

WORK SESSION.

ATTENDANCE ROSTER FORM — COMMITTEE MEETINGS

SENATE COMMITTEE ON TRANSPORTATION

DATE: May 28, 1981

EXHIBIT B

PLEASE PRINT NAME	PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT TELEPHONE
Bill Isaeff	Nev. Atty Gen.	X4170
Jim Aubuchon	Taxicab Authority	3860-393
A. Swalls.	Whittlesea-Bell	
Jim Bell	Whittlesea-Bell	
Willard Booth	Lucky 7 Limo.	Home 649-4382 Bus 8
JoAnna Booth	Lucky 7 Limo.	649-4382 →
Bart Jacka	DMV	885-5375

946

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(REPRINTED WITH ADOPTED AMENDMENTS)
FIRST REPRINT **A. B. 179**

ASSEMBLY BILL NO. 179—COMMITTEE ON TRANSPORTATION

FEBRUARY 18, 1981

Referred to Committee on Transportation

SUMMARY—Makes various changes in provisions regarding regulation of taxicabs. (BDR 58-323)

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 taxicabs; changing the basis of the jurisdiction of the taxicab authority; making various changes to laws which regulate operators of taxicabs; providing penalties; 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 706.881 is hereby amended to read as follows:

706.881 1. NRS 706.8811 to 706.885, inclusive, apply to any county [whose population is 250,000 or more.] *in which there are more than:*

(a) Nine certificates outstanding which authorize the holders to engage in the taxicab business; and

(b) Four hundred taxicabs being operated by certificate holders.

2. Within any such county, the provisions of this chapter which confer regulatory authority over taxicab motor carriers upon the public service commission of Nevada do not apply.

SEC. 2. NRS 706.8825 is hereby amended to read as follows:

706.8825 1. All fees collected pursuant to NRS 706.881 to 706.885, inclusive, [shall] *must* be deposited with the state treasurer to the credit of the taxicab authority fund, which is hereby created as a special revenue fund. The transactions [of] *for* each county [taxicab authority subject to those sections shall] *must* be accounted for separately within the fund.

2. The revenues received pursuant to subsection 1 of NRS 706.8826 are hereby appropriated for the purpose of defraying the cost of regulating taxicabs in the county or the city, respectively, making the deposit under that subsection.

3. The fees received pursuant to subsection 3 of NRS 706.8826 are hereby appropriated for the purpose of defraying the cost of regulating taxicabs in the county in which the certificate holder operates a taxicab business.

4. Any balance remaining in the fund [shall] *does* not revert to the state general fund, but any balance over $100,000 remaining in the fund [shall] *must* be used to refund certificate holders a pro rata portion of the $100 paid pursuant to NRS 706.8826, not to exceed $95.

5. The administrator may establish a petty cash account not to exceed $100 for the support of undercover investigation and if the account is created the administrator shall reimburse the account from the taxicab authority fund in the same manner as other claims against the state are paid.

SEC. 3. NRS 706.8829 is hereby amended to read as follows:

706.8829 1. A certificate holder shall maintain a uniform system of accounts in which all business transacted by the certificate holder is recorded. The accounts [shall be:

(a) In] *must be:*

(a) Kept in a form prescribed by the taxicab authority;

(b) Prior to [April 15] *May 15* of each year, submitted to the taxicab authority in an annual report in the form and detail prescribed by the taxicab authority;

(c) Retained for a period of 3 years after their receipt back from the taxicab authority; and

(d) Supplemented with such additional information as the taxicab authority may require.

2. The taxicab authority may examine the books, accounts, records, minutes and papers of a certificate holder at any reasonable time to determine their correctness and whether they are maintained in accordance with the [rules and regulations prescribed] *regulations adopted* by the taxicab authority.

SEC. 4. NRS 706.8832 is hereby amended to read as follows:

706.8832 A certificate holder shall have each taxicab equipped with a two-way mobile radio and shall [have access to, be affiliated with or] maintain central *facilities for dispatching taxicabs* [radio dispatch facilities] at all times. *The facilities:*

1. May be maintained individually or in cooperation with other certificate holders.

2. Must be principally engaged in communication by radio with the taxicabs of the certificate holder or holders.

SEC. 5. NRS 706.8845 is hereby amended to read as follows:

706.8845 While a driver is on duty, he shall:

1. Be appropriately dressed by the standards of the taxicab [industry.] *business.*

2. Be neat and clean in person and appearance.

3. Refrain from talking loudly, uttering profanity and from shouting to other drivers.

4. Not have in his possession a lighted cigar, cigarette or pipe while a passenger is being carried in his taxicab.

5. Not chew tobacco or use snuff while a passenger is being carried in his taxicab.

6. Attend his taxicab if it is being held out for hire.

7. Not permit his taxicab to remain at a taxicab stand unless it is being held out for hire.

8. Discourage passengers from entering or leaving a taxicab from the left side except at the left curb of a one-way street or while the car is parked perpendicularly to a curb.

9. Not load or unload passengers or luggage at an intersection or crosswalk or at any place or in any manner that will interfere with the orderly flow of traffic.

10. Not carry more than two passengers in the front seat of the taxicab or carry more passengers in the back seat of the taxicab than are authorized by the manufacturer's recommendations.

11. *Not leave his taxicab unattended with the key in the ignition lock.*

12. Operate his taxicab in accordance with all applicable state and local laws and regulations and with due regard for the safety, comfort and convenience of passengers and of the general public.

SEC. 6. NRS 706.8849 is hereby amended to read as follows:

706.8849 1. A taxicab driver shall:

(a) Assure that the fare indicator on the taximeter of his taxicab reads zero prior to the time that the taxicab is engaged.

(b) Assure that the taximeter of his taxicab is engaged and the flag is rotated to the right so that the stem of the flag is horizontal while the taxicab is on hire.

(c) Not make any charge for the transportation of a passenger other than the charge shown on the taximeter.

(d) Not alter, manipulate, tamper with or disconnect a sealed taximeter or its attachments nor make any change in the mechanical condition of the wheels, tires or gears of a taxicab with intent to cause false registration on the taximeter of the passenger fare.

(e) Not remove or alter fare schedules which have been posted in his taxicab by the certificate holder.

(f) Not permit any person other than the person who has engaged the taxicab to ride therein unless the person who has engaged the taxicab gives permission for such other person to ride in the taxicab, but if permission is given the fare charged by the driver shall be as follows: When the person who has engaged the taxicab is first to leave the taxicab and pay the fare, the taximeter shall be reset to zero.

(g) Not drive a taxicab or go on duty while under the influence of any dangerous drug, narcotic or hallucinogenic drugs or intoxicating liquor or drink intoxicating liquor while on duty.

(h) Not use dangerous drugs, narcotics or hallucinogenic drugs at any time except with a prescription from a physician who is licensed to practice medicine in the State of Nevada.

(i) Not operate a taxicab with an expired driver's permit.

(j) Not operate a taxicab without a driver's permit issued pursuant to NRS 706.8841 in his possession.

(k) Obey all provisions and restrictions of his employer's certificate of public convenience and necessity.

2. If a driver violates any provision of subsection 1, the administrator may, after a hearing, impose the following sanctions:

(a) First offense: 1 to 5 days' suspension of a driver's permit or a fine of not more than $100, or both suspension and fine.

(b) Second offense: 6 to 20 days' suspension of a driver's permit or a fine of not more than $300, or both suspension and fine.

(c) Third offense: [Revocation of a driver's permit or a] *A* fine of not more than $500. [, or both revocation and fine.] *In addition to the other penalties set forth in this subsection, the administrator may revoke a driver's permit for any violation of a provision of paragraph (g) of subsection 1.*

3. Only violations occurring in the 12 months immediately preceding the most current violation [shall] *may* be considered for the purposes of subsection 2. The administrator shall inspect the driver's record for that period to compute the number of offenses committed.

SEC. 7. NRS 706.885 is hereby amended to read as follows:

706.885 1. Any person who knowingly makes or causes to be made, either directly or indirectly, a false statement on an application, account or other statement required by the taxicab authority or the administrator or who violates any of the provisions of NRS 706.881 to 706.885, inclusive, is guilty of a misdemeanor.

2. The taxicab authority or administrator may at any time, for good cause shown, and upon at least 5 days' notice to the grantee of any certificate, permit or license, and after a hearing, [had therefor,] penalize such grantee to a maximum amount of $500 or suspend or revoke [such] *the* certificate, permit or license granted by it or him, respectively, for:

(a) Any violation of any provision of NRS 706.881 to 706.885, inclusive, or any [rule or] regulation of the taxicab authority or administrator.

(b) Knowingly permitting or requiring any employee to violate any provision of NRS 706.881 to 706.885, inclusive, or any [rule or] regulation of the taxicab authority or administrator.

3. *When a driver or certificate holder fails to appear at the time and place stated in the notice for the hearing, the administrator shall enter a finding of default. Upon a finding of default, the administrator may suspend or revoke the license permit or certificate of the person who failed to appear and impose the penalties provided in this chapter. For good cause shown, the administrator may set aside a finding of default and proceed with the hearing.*

4. Any person who operates or permits a taxicab to be operated in passenger service without a certificate of public convenience and necessity issued pursuant to NRS 706.8827, is guilty of a gross misdemeanor.

[4.] *5.* The conviction of a person pursuant to subsection 1 does not bar the taxicab authority or administrator from suspending or revoking any certificate, permit or license of the person convicted.

The imposition of a fine or suspension or revocation of any certificate, permit or license by the taxicab authority or administrator does not operate as a defense in any proceeding brought under subsection 1.

CASE NO. A 192713

EXHIBIT I

DEPARTMENT XII

JAN 7 1981

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CLERK

BY .....

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF CLARK.

EUGENE MADAY; VEGAS-WESTERN CAB, INC.; ALLEN HARRIS and JEFFREY COHEN,

Plaintiffs,

-vs-

STATE OF NEVADA TAXICAB AUTHORITY; JACK JAMES, LLOYD BELL, EILEEN BROOKMAN, PHIL STOUT, and HANK THORNLEY, Members of the Taxicab Authority; and JAMES J. AVANCE, Taxicab Administrator,

Defendants.

D E C I S I O N

Plaintiffs' Complaint for Declaratory Judgment challenges the constitutionality of the "Taxicab Authority".

In 1969, the Legislature created the "Taxicab Authority by enacting legislation which made it applicable to counties whose population was 120,000 as determined by the last preceding national census. Since its passage the original legislatio has been amended several times, and today the population criteria is set at 250,000.

For the following reason it is the opinion of this Court that the original legislation creating the "Taxicab Authority" and the Amendments thereto are unconstitutional.

Written into the statutes is the requirement of determining application by population by the last preceding

national census. This has the effect of locking in those counties meeting the requisite population minimums to abide b the Taxicab Authority for ten years. Since the population category was raised as each new census approached and since Clark County was the only county in the State that met the requirements of the law, it must necessarily follow that the legislation was aimed directly at Clark County and is therefo special legislation and enacted in violation of the State Constitution, Article 4, Sections 20 and 21.

The Court recognizes that classification by populatio is not in itself special legislation. To be constitutional however, such legislation must be rational, relate to a legitimate government purpose and must create no unreasonable distinctions between government entities subject to the legislation. The intended legislative purpose as expressed i Chapter 638, Nevada Revised Statute, 1969, was regulation of the taxicab industry. In effect, the statute has isolated Clark County to separate regulation under the guise of a general statute. There is nothing wrong with setting populat limits for counties to be regulated by a taxicab authority, but there is no rational reason for beginning with a minimum of 120,000, raising it to 200,000 and then raising it to 250,000 all over a ten year period, and each time only as another county approached that population limit. The result keeps Clark County under a separate agency. Nor can an incre of 50,000 rationally relate to the legitimate government purpose of taxicab regulation.

Population based legislation has been challenged numerous times in the Nevada Supreme Court. In Anthony v. State, 94 Nev. 337, 580 P2d 939 (1978), the Supreme Court stated:

"The use of population

criterion, however, must be rationally related to the subject matter and if the use of a population criterion creates an odious and absurd distinction, then it is unconstitutional."

Since this statute violates the constitutional prohibition against special and local legislation, since it fails to be adapted to general and uniform operation throughou the State and since it is not reasonably and rationally relate to a legitimate legislative purpose, it is herein declared to be unconstitutional.

DATED this 6 day of January, 1981.

Robert G. Legakes

ROBERT G. LEGAKES
District Judge

97 Nev. Adv. Op. #92
(5-26-81)

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EXHIBIT E

IN THE SUPREME COURT OF THE STATE OF NEVADA

COUNTY OF CLARK, by and through its Board of County Commissioners, THALIA DONDERO, Chairman, DAVID CANTER, Vice Chairman, ROBERT N. BROADBENT, SAM BOWLER, RICHARD RONZONE, MANUEL CORTEZ, and JACK PETITTI, constituting said Board, and Sheriff of Clark County, RALPH J. LAMB,

Appellants,

vs.

CITY OF LAS VEGAS, NEVADA, by and through its Board of City Commissioners, WILLIAM H. BRIARE, RON LURIE, PAUL J. CHRISTENSEN, ROY WOOFTER and MYRON E. LEAVITT, constituting said Board.

Respondents.

No. 12626

FILED

MAY 26 1981

Joanne C. Rutabi
DEPUTY CLERK

Appeal from order granting partial summary judgment. Eighth Judicial District Court, Clark County; Joseph S. Pavlikowski, Judge.

Affirmed in part and reversed in part.

Robert J. Miller, Clark County District Attorney, Scott W. Doyle, Deputy District Attorney, Las Vegas,
for Appellants.

George F. Ogilvie, Las Vegas City Attorney, John H. Howard, Jr., Deputy City Attorney, Las Vegas,
for Respondents City of Las Vegas and Board of City Commissioners.

O P I N I O N

By the Court, BATJER, J.:

The City of Las Vegas (City) and F. D. Houston,[1] a

[1] F. D. Houston has not participated in this appeal.

resident of Las Vegas, Nevada, filed suit for declaratory relief against Clark County (County) challenging the constitutionality of Chapter 280 of the Nevada Revised Statutes. That chapter mandates consolidation of county and city police agencies in any city which is the county seat of a county having a population of 200,000[2] or more. The legislation was first enacted in 1973 and the Legislature has amended portions thereof during each successive legislative session.

In the district court the County moved for partial summary judgment based upon its contention that NRS Chapter 280 did not constitute special or local legislation. The City filed a cross-motion for partial summary judgment asking that NRS Chapter 280 be held unconstitutional as a matter of law.

The district court granted partial summary judgment for the City, declaring portions of NRS 280.100 and NRS 280.201 to be unconstitutional, granted the County's motion for certification pursuant to NRCP 54(b) and ordered the parties stayed from implementing any changes relating to the partial summary judgment pending appeal.

The County claims that the district court erred when it found NRS 280.100 and NRS 280.201 to be special or local legislation prohibited by the Nevada Constitution, art. 4, §§ 20, 21 and 25, and therefore unconstitutional.

Legislative enactments enjoy the presumption of constitutionality. The burden is upon the attacking party to show the questioned statute to be unconstitutional. Anthony v. State of Nevada, 94 Nev. 337, 341, 580 P.2d 939,

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2 NRS 280.100, which became effective in 1980 when the decennial census was reported, raised the county population figure to 250,000.

enacts a statute with a population classification which applies to a few counties, or even to one county, it is not necessarily in contravention of the Nevada Constitution, art. 4, §§ 20 and 21, which forbids the enactment of local or special laws. Viale v. Foley, supra.

If the classification applies prospectively to all counties which might come within its designated class, it is neither local nor special. Reid v. Woofter, 88 Nev. 378, 380, 498 P.2d 361, 367 (1972); Fairbanks v. Pavlikowski, 83 Nev. 80, 83, 423 P.2d 401 (1967).

Nor is such an enactment in violation of the Nevada Constitution, art. 4, § 25, which requires a uniform system of county and township government as long as the use of the population criteria is rationally related to the subject matter and does not create an odious or absurd distinction. Anthony v. State of Nevada, 94 Nev. 338, 341, 580 P.2d 939, 941 (1978).

Although the district court correctly found the intended legislative purpose as expressed in Chapter 568 of the 1973 Statutes of Nevada was to reduce duplication of functions and expenses and to coordinate law enforcement efforts throughout metropolitan areas, it nevertheless went on to determine the legislative purpose would not be served by the population based mandatory merger provisions of NRS 280.100, both as originally enacted and as amended by Chapter 338, 1979 Statutes of Nevada. See NRS 280.010.

For nearly a century this court has continued to approve use by the legislature of a population criterion in effecting laws which may nevertheless be deemed general.[4]

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[4] The general power to make a classification of counties based upon a voting population, is expressly recognized in Young v. Hall, 9 Nev. 212 (1874); State v. Woodbury, 17 Nev. 337 (1883).

941 (1978); Damus v. County of Clark, 93 Nev. 512, 516, 569 P.2d 933, 935 (1977); Viale v. Foley, 76 Nev. 149, 152, 350 P.2d 721, 722 (1960).

1. The district court declared NRS 280.100 to be unconstitutional as originally enacted because it included the date of July 1, 1973.[3] The court found "upon a fair reading" that the date operated as an absolute cutoff beyond which no additional cities or counties would be compelled by law to merge. Since Clark County and Las Vegas were the only entities meeting the requirements on that date, the court found the statute to be impermissible special legislation. This conclusion was erroneous because by Chapter 572 of the 1979 Statutes of Nevada, the legislature deleted the date which, according to the ruling of the district court, rendered NRS 280.100(1) unconstitutional. If the original insertion of "July 1, 1973" into NRS 280.100(1) rendered that section unconstitutional, its deletion by amendment cured the defect. McCormick v. District Court, 69 Nev. 214, 221, 246 P.2d 805, 808 (1952).

2. NRS 280.100 mandates consolidation of a county law enforcement agency with the law enforcement agency of a city which is the county seat, if the county's population is 200,000 or more. The district court found NRS 280.100 to be "illusory" because it was not reasonably and rationally related to a legitimate legislative purpose and therefore unconstitutional. This was error. If the Legislature

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[3] NRS 280.100 formerly read:

1. Each county which has a population of 200,000 or more and the city which is the county seat of each such county shall comply with the provisions of this chapter on July 1, 1973. Any other city in any such county may comply with provisions of this chapter on or after July 1, 1973.

2. Each county which has a population of less than 200,000, and any city or cities located in the county may comply with the provisions of this chapter on or after July 1, 1973.

State v. Donovan, 20 Nev. 75, 15 P. 783 (1887); Damus v. County of Clark, supra; Anthony v. State, supra; accord, Reid v. Woofter, supra.

However, the use must be rationally related to the subject matter and must not create odious or absurd distinctions. Anthony v. State of Nevada, supra.

Here, the required consolidation of law enforcement agencies of the county seat and the county within the population limitations is as rationally related to the subject matter and the purpose of the act as were the relationships in the previously decided cases. NRS 280.010. The population limitation is prospectively applicable to all counties and county seats which might come within its designated class. Furthermore, the limitations are neither odious, absurd or bizarre and comport favorably with established law. As a result, we reverse the district court and find NRS 280.100 to be constitutional.

3. We turn now to consider the funding formula and find that NRS 280.201(1)(a) specifies rather than classifies and is therefore constitutionally impermissible and in contravention of Nevada Constitution, art. 4, § 21. State v. Boyd, 19 Nev. 43 (1885); Anthony, supra, at 342, 580 P.2d at 942. The unconstitutional specification did not appear in the original enactment of 1973,[5] but was added in

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[5] 1973 Nev. Stats. Ch. 568, § 21 at 918:

1. Commencing with the preparation of the budget for the first fiscal year after merger and annually thereafter, the governing bodies of the various participating political subdivisions shall, in determining the amounts of their respective budget items allocated to law enforcement, apportion among all the participating political subdivisions the total anticipated capital and operating costs of the department, as submitted by the police commission, on the basis of a formula which has been approved by the Nevada tax commission.

the amendments of 1977[6] and 1979.[7] Because these specifications in the plan for apportionment of expenses, as amended, are unconstitutional, the law as it existed prior to the amendments will be controlling. Johnson v. Goldman, 94 Nev. 6, 9, 575 P.2d 929, 930 (1978).

4. Although both the City and the County, in briefs filed with this court, extensively discuss the question of the constitutionality of those particular sections of Chapter 338, 1979 Statutes of Nevada, which raised the population classification factor from 200,000 to 250,000, that question is not now before us. In the order granting partial summary judgment, the district court specifically found those sections of Chapter 338, 1979 Statutes of Nevada, which change the population classification factor in NRS Chapter 280 from 200,000 to 250,000, to be unconstitutional. The County has chosen not to appeal from that finding, and has specifically conceded the unconstitutionality of the change from 200,000 to 250,000. Upon that issue the partial summary judgment of the district court remains in full force and effect.

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6 1977 Nev. Stats. Ch. 196, § 3(1)(a) at 363:

In those counties which have:
Only one participating city, the county and the city shall pay equal shares of the total capital and operating costs of the department.

7 1979 Nev. Stats. Ch. 518, § 1(a) at 1002:

In those counties which have:
(a) Only one participating city, the county shall pay 53 percent and the city shall pay 47 percent of the total capital and operating costs of the department.

The judgment of the district court is affirmed in part and reversed in part in conformance with this opinion.

Batjer, J.

We concur:

Gunderson, C. J.

Mahoukian, J.

Spitzer, J.

Mowbray, J.