

Minutes of the

## LEGISLATIVE COMMISSION

Nevada Legislative Counsel Bureau (LCB)

Legislative Building, Room 4100

Carson City, Nevada

**June 26, 1998**

The third meeting in 1998 of the Legislative Commission, created pursuant to *Nevada Revised Statutes* (NRS) 218.660, was held on Friday, June 26, 1998, commencing at 10 a.m., in Room 4100 of the Legislative Building, Carson City, Nevada, with a simultaneous video conference conducted to Room 4412 of the Grant Sawyer State Office Building, Las Vegas, Nevada.

### COMMISSION MEMBERS PRESENT IN CARSON CITY:

Assemblyman Richard D. Perkins, Chair

Assemblyman Joseph E. Dini, Jr., Vice Chair

Senator Ernest E. Adler

Senator Mike McGinness

Senator Randolph J. Townsend

Assemblyman John C. Carpenter (alternate for Assemblyman Peter G. Ernaut)

Assemblywoman Joan A. Lambert

### COMMISSION MEMBERS PRESENT IN LAS VEGAS:

Senator Mark A. James

Senator Dina Titus

Assemblywoman Deanna Braunlin

Assemblywoman Barbara E. Buckley

### COMMISSION MEMBERS ABSENT:

Senator Joseph M. Neal, Jr.

### OTHER LEGISLATORS PRESENT:

Senator Lawrence E. Jacobsen, Carson City

Senator Jon C. Porter, Las Vegas

**LCB STAFF PRESENT IN CARSON CITY:**

Lorne J. Malkiewich, Director

Gary Crews, Legislative Auditor

Brenda J. Erdoes, Legislative Counsel

Robert E. Erickson, Research Director

Daniel G. Miles, Senate Fiscal Analyst

Mark W. Stevens, Assembly Fiscal Analyst

Linda B. Alden, Chief Clerk of the Assembly

Janice L. Thomas, Secretary of the Senate

Marcia J. Conway, Assistant to the Director

**LCB STAFF IN LAS VEGAS:**

Brian L. Davie, Legislative Services Officer

The Chairman asked for a moment of silence in the recent passing of an employee of the Information Systems Unit, Mr. James Fast.

**Item I--Approval of the Minutes of the Meeting Held April 17, 1998**--Assemblyman Richard Perkins, Chair.

SENATOR TOWNSEND MOVED TO APPROVE THE MINUTES OF THE APRIL 17, 1998, MEETING. MOTION SECONDED BY SPEAKER DINI AND CARRIED UNANIMOUSLY.

**Item II--Legislative Auditor:**

**A. Summary of audit reports presented to Legislative Commission's Audit**

**Subcommittee (NRS 218.6823)--Gary Crews, Legislative Auditor.**

Mr. Crews reviewed the letter in the packet from Speaker Dini, Chairman of the Audit Subcommittee.

The five audit reports reviewed by the Audit Subcommittee (April 23, 1998) were:

- Follow-up on Department of Administration, Risk Management Division;
- Department of Prisons, Inmate Classification;

Department of Prisons, Computer System Security;

- Nevada Disability Advocacy and Law Center (NDALC); and
- Department of Information Technology.

A copy of each of the abovementioned audit reports may be obtained from the LCB's Audit Division (second floor of the Sedway Office Building).

Chairman Perkins asked the reasons that the NDALC did not provide access to the records. Mr. Crews replied that NDALC said the information was confidential under client-attorney privilege. Other state agencies with similar records have given the Audit Division access, he added. The situation with NDALC is somewhat different in that it is a private-nonprofit corporation. The statutes provide access to records of state agencies. It is almost a situation, he noted, that NDALC has to be receptive to the audit.

Senator Adler asked if NDALC offered to show the records with the removal of client names so as not to violate client-attorney privilege. Mr. Crews replied there was an agreement that some access to records but it made it difficult to be able to trace records from one to another or to ensure that a complete set of records were available to the auditors.

Mr. Crews noted that the Audit Subcommittee of the Legislative Commission accepted the five audit reports.

**SENATOR TOWNSEND MOVED TO APPROVE THE FIVE AUDIT REPORTS AS RECOMMENDED BY THE AUDIT SUBCOMMITTEE. MOTION SECONDED  
SPEAKER DINI AND CARRIED UNANIMOUSLY.**

#### **B. Summary of 6-month status reports on the implementation of the audit**

**recommendations by the Legislative Auditor as submitted to the audit subcommittee--Gary Crews, Legislative Auditor.**

Mr. Crews referred to the packet material containing a letter from the chairman of the Audit Subcommittee, Speaker Dini, which is a follow-up on audit reports previously presented to the Audit Subcommittee. It also provides a status report on the implementation of the recommendations. He explained that there were

16 recommendations of which six have been fully implemented and 10 are partially implemented. The subcommittee was pleased by the progress being made by state agencies on implementation of audit recommendations.

The following three six-month implementation reports can be obtained from the Audit Division:

- Department of Museums, Library and Arts, State Council on the Arts;
- Department of Museums, Library and Arts, Nevada Historical Society; and
- Department of Administration, Hearings Division.

**SENATOR TOWNSEND MOVED TO APPROVE THE THREE, 6-MONTH STATUS REPORTS AS RECOMMENDED BY THE AUDIT SUBCOMMITTEE. MOTION SECONDED BY SPEAKER DINI AND CARRIED UNANIMOUSLY.**

## **C. Request for audit of the Nevada Disability Advocacy and Law Center**

**(NDALC)--Gary Crews, Legislative Auditor.**

Referring to the packet material, Mr. Crews explained that since the auditors were unable to determine if NDALC complied with state contracts and federal grant requirements program information reported to the state and federal granting agencies could not be verified. In addition, it could not be determined if NDALC complied with certain terms of its contract with the Department of Business and Industry as verification if NDALC conducted investigations of incidents reported to it by the Mental Hygiene and Mental Retardation Division could not be completed.

Continuing, Mr. Crews said the audit was unable to determine if NDALC complied with its policy and procedures for case handling, supervisory review or investigation because client or investigative files could not be reviewed. It was not possible to verify if NDALC implemented the recommendations of the last audit because access was denied to client files and information to support the numbers reported to federal granting agencies and the Nevada Legislature. In addition, the auditor was not able to determine the timeliness of NDALC's actions on cases and investigations.

Speaker Dini said Mrs. Erdoes provided the Audit Subcommittee with a legal opinion regarding the NDALC audit. Mrs. Erdoes said the agency was reviewed and unlike other audits, there was no coverage of NDALC under the definition of "agency of the state." The other provisions of NRS which state that the Legislative Auditor has access to confidential records do not apply to NDALC and

therefore, it was the Legal Division's conclusion that this agency could not be compelled to produce the records.

The Chairman noted that the Legislative Commission's options are: 1) gain compliance through NDALC's cooperation; 2) place funds in another location in the future; or, 3) prepare a bill draft to change the provisions.

Mr. Jack Mayes, Executive Director of NDALC, said his agency is bound by law to follow the confidentiality conditions because of the attorney license issues. The agency is willing to go ahead with the audit. However, it is legally required to protect the confidentiality information of clients. Access was allowed of all records except those deemed to be confidential in nature. It was offered to "white out" names and any confidential information allowing auditors access to that abbreviated material.

Mr. Crews said the selection of case files by the agency being audited does not enable an accurate audit and places a scope limitation from the outset. He explained that concerns about the validity of the computer listing and being able to rely on the information and whether the entire population of case files is available. Also, prior findings on that agency have raised questions about the reliability of the records and statistics. A time duration of approximately

6 months since the work has been done which places a concern on the auditor regarding the reliability of information and files currently in place. An auditor can not come to a conclusion without unrestricted immediate access.

Continuing further, Mr. Crews said the letter almost provides for a veto right to any protector case file that the auditor may draw because the client's identity might be obvious.

If there are investigative case files from another facility, the names would already be available and that would provide a problem of going to an agency.

Prior concerns about discussing the operations of the individuals of the agency and allegations were brought that certain employees of NDALC were terminated. He explained that ADA information

In summary, the Chairman noted the restrictions mentioned in the letter would prohibit the Audit Division performing a complete audit. Mr. Crews concurred saying that some procedures but could not decide upon any conclusions because of the restrictions.

In response to Mrs. Lambert's question regarding a BDR to change the auditors' scope of authority, Mrs. Erdoes said the Legal Division was unable to find any federal law that would make the files confidential other than a very few cases. The contract between NDALC and the Department of Business and Industry would make the Legislative Auditor an authorized person to review the records. The only compelling force at this time, she noted, was Nevada state law which states that medical records are confidential.

Senator McGinness said that the money the State of Nevada is investing is not coming back to services for those individuals who really need assistance.

Senator James said the state is funding an agency that has a public function and use public funds and have not provided the auditors with the information requested. He added that the NDALC has not submitted the required monthly financial and operational reports to the Interim Finance Committee, or the monthly status reports on progress toward resolution and coordination of issues in development of client protocols.

Secondly, Senator James asked if the subpoena power could be used to produce the necessary records. Mrs. Erdoes said the commission does have subpoena power. The documents promised to IFC could be subpoenaed if not forthcoming. However, she noted the medical records and the attorney-client privilege documents might be questioned by the courts.

Senator James said that with the doubt about the scope of the commission's ability to support the Legislative Auditor in obtaining records and if a subpoena is issued, it could be decided in court.

In the future, Senator Adler asked if a waiver could be signed acknowledging that a file might be audited by LCB. Mr. Mayes agreed that that could be done.

Senator Titus proposed that a BDR delegating commission authority for some of the quasi-agencies or refunding the program with another agency that is under commission jurisdiction.

In response to Chairman Perkins question regarding moving the funds into another function, Mrs. Erdoes stated that according to the contract, a portion of the appropriation was funded up front. Two portions of the contract provide that the legislature must release, after completion of the audit, those two portions made contractually with the agency.

In response to Speaker Dini's question regarding what percentage of the agency's budget is state money and how much is federal, Mr. Mayes replied 8% is state money.

SENATOR TITUS MOVED TO REQUEST AN AUDIT OF THE NDALC AND IF THE AUDIT IS NOT FORTHCOMING BY COMMISSION STANDARDS THE MONEY WILL BE WITHHELD. MOTION SECONDED BY SENATOR TOWNSEND AND CARRIED WITH ASSEMBLYWOMAN BUCKLEY NOT PRESENT FOR VOTE.

#### **D. Request for audit of the State Contractors Board--Gary Crews,**

##### **Legislative Auditor.**

Mr. Crews referred to the letter in the packet from Senator Jon C. Porter requesting an audit of the State Contractors Board.

Prior to the 1997 legislative session, Senator Porter said he has held over five town hall meetings [over a period of 18 months] in Las Vegas hearing testimony from hundreds of consumers with complaints.

One of the tools of the State Contractors Board is to regulate contractors within its statutory-based investigative powers. However, Senator Porter explained, recent issues have come to his attention that raise concern regarding the integrity and effectiveness of the process. It was alleged and has been alleged that complaints had not been adequately investigated and the employees of the board were supporting the position of the contractor even in situations where the contractor's actions violated state law or the board's own regulations.

Also, he continued, the board (in the past) was not properly informed of the problems and held an extremely high turn-over of employees over a period of a year. Numerous unresolved cases that have not had resolution for various

home-owners and many other internal problems with management and equipment. He commended the current director, Margee Green, who has been part of the solution and not the problem who is taking serious steps for change in the management structure and design.

Mr. Crews said it would be feasible to allow the State Contractors Board to proceed and monitor any progress reports submitted to the board which would ensure that the issues raised by Senator Porter are carried out and comprehensive in nature.

He continued stating that he has contacted the Nevada State Board of Accountancy with regard to the firm performing the current audit and it appears that they [the auditors] are taking the right course but we [LCB Audit Division] can monitor the progress and review the work once it is completed.

Ms. Green, Executive Officer of the Nevada State Contractors Board, said she would be happy to answer any questions regarding the steps taken since February 1998. The current audit is in its fourth stage, she noted, and the licensing department will be the next phase. Many changes have been made and the Board members have been completely supportive and would be more than willing to share information and work with the Legislative Auditor.

Chairman Perkins stated he would like to accept Mr. Crew's recommendation that the Audit Division of the LCB monitor the current audit without incurring redundancy in duplicating resources.

Senator Porter concurred that duplication should not occur. Use of the third party audit [that is in place] and actually taking it to a higher level [LCB audit staff review and follow-

through with any additional steps] will secure additional confidence in the process. He added that Senator Townsend also has some suggestions that should take place prior to the next session.

The Chairman said he would accept a motion to have the Legislative Auditor monitor the third party audit.

SENATOR TOWNSEND MOVED TO ACCEPT REVIEW BY THE LCB AUDIT DIVISION OF THE AUDIT OF THE STATE CONTRACTORS BOARD. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED UNANIMOUSLY.

**E. Request Legislative Auditor to assist Committee on Workers'**

**Compensation--Gary Crews, Legislative Auditor.**

Mr. Malkiewich noted that the agenda item and IVC were placed on the commission agenda to comply with the open meeting law notice requirements whereby it was not known at the time if the request would be necessary. The Committee on Workers' Compensation has decided not to request Legislative Auditor assistance and has been withdrawn.

**Item III--Interim Committee Reports and Requests:**

**A. Legislative Commission's Committee to Consult With Director**

**(NRS 218.6828)--Lorne J. Malkiewich, Director.**

A report of the Committee to Consult With Director, Mr. Malkiewich began, is contained in the packet material listing detailed staff suggestions for implementing the proposed 120-day session. Copies of the material may be obtained in the Director's Office.

Chairman Perkins commended staff for the enormous amount of research contained in the options for implementing a 120-day session. Many of the recommendations will be implemented before the 1999 session.

One of the items discussed by the Committee to Consult with Director, the Chairman noted, whether or not the 120-day ballot question passes, it will still be important to implement many deadlines so the session can be shortened and become more efficient in the handling of legislative business.

SENATOR TOWNSEND MOVED TO ACCEPT THE REPORT OF THE COMMITTEE TO CONSULT WITH DIRECTOR. MOTION SECONDED BY SPEAKER DINI AND CARRIED UNANIMOUSLY.

**B. Legislative Commission's Building Subcommittee (NRS 218.682)--**

**Lorne J. Malkiewich, Director.**

Mr. Malkiewich stated that the major items discussed by the Building Subcommittee were:

- Allocation of space in the Legislative Building;

- The issue of artwork for the building; and
- Directing LCB staff to work with the Nevada Council on the Arts in developing proposals for a sculpture for the front of the building.

SENATOR TOWNSEND MOVED TO APPROVE THE REPORT OF THE LEGISLATIVE COMMISSION'S BUILDING SUBCOMMITTEE. MOTION SECONDED BY SPEAKER DINI AND CARRIED UNANIMOUSLY.

### **C. Appointment to the Interim Study of the System of Juvenile Justice in**

#### **Nevada (ACR 57)--Lorne J. Malkiewich Director.**

Mr. Malkiewich noted that the packet material contained a letter from Assemblywoman Jan Evans, Chairman of the Interim Study of the System of Juvenile Justice in Nevada, requesting that Assemblyman Brian Sandoval (recently resigned) be replaced by Assemblyman David Humke.

SPEAKER DINI MOVED TO APPROVE THE APPOINTMENT OF ASSEMBLYMAN HUMKE TO THE INTERIM STUDY OF THE SYSTEM OF JUVENILE JUSTICE IN NEVADA AND REIMBURSE HIM FOR HIS ATTENDANCE AT THE LAST MEETING. MOTION SECONDED BY SENATOR ADLER AND CARRIED UNANIMOUSLY.

### **D. Request for Additional Funds to Support Meeting Between Committee**

#### **to Continue the Review of the Tahoe Regional Planning Agency and California Legislators--Fred W. Welden, Chief Deputy Research Director.**

Mr. Malkiewich referred to a handout from Mr. Welden in response to the directive in SCR 2 to communicate with members of the California Legislature. The Legislative Commission's Committee to Continue the Review of the TRPA adopted the following recommendation:

Request funds from the Legislative Commission to support a trip by the committee to Sacramento, California, in order to discuss with legislators from that state issues and programs of mutual interest, including the Nevada committee's adopted recommendations.

He noted that the committee anticipates a schedule of individual meetings with relevant California legislators and representatives of the California Executive Branch similar to the type of meetings employed by the Public Lands Committee in Washington, D.C. Based on a one-night stay, the maximum funding required to support the request is \$3,500. Any unused balance will automatically revert to the Legislative Fund.

Senator Jacobsen, Chairman of TRPA, said that one of the things discussed over the years is the importance of communication with the California legislators. An audit was conducted and Mr. Crews was able to monitor the results of which Nevada's portion of the funding is one-third versus California's two-thirds.

Speaker Dini said he had the privilege of talking with the Chairman of the California Budget



Committee last year [when the problems arose] and she was very cooperative and the attitude between California and Nevada is better now which is why it is a good idea to keep the lines of communication open.

SPEAKER DINI MOVED TO APPROVE THE REQUEST OF TRPA FOR ADDITIONAL FUNDING. MOTION SECONDED BY SENATOR TOWNSEND AND CARRIED UNANIMOUSLY.

#### **Item IV--Legislative Commission Policy:**

##### **A. Review of administrative regulations--Brenda J. Erdoes, Legislative**

##### **Counsel.**

Mrs. Erdoes suggested that the administrative regulations be divided for voting purposes. She recommended considering R213-97 regulation of the Board of Homeopathic Medical Examiners separate from the other 10 regulations which are Museums Libraries and Arts, two from the Public Utilities Commission, two from the Real Estate Commission, Real Estate Division, State Board of Education, State Industrial Insurance System, State Board of Nursing and State Industrial Insurance System and Commissioner of Insurance (jointly) which are within the authority of the agencies to adopt with the concurrence of Mrs. Lambert.

SENATOR ADLER MOVED TO ADOPT THE 10 UNCONTESTED REGULATIONS IN WHICH LEGISLATIVE COUNSEL HAS NO OBJECTIONS. MOTION SECONDED BY SENATOR TOWNSEND AND CARRIED WITH ASSEMBLYWOMAN LAMBERT ABSTAINING FROM THE TWO REGULATIONS OF THE PUBLIC UTILITIES COMMISSION, THE TWO FROM THE REAL ESTATE COMMISSION AND THE REGULATION OF THE REAL ESTATE DIVISION.

Regulation R213-97 [Regulation of the Board of Homeopathic Medical Examiners]

Mrs. Erdoes referred to several letters before the commission concerning the regulation. Questions may wish to be directed to the State Board of Medical Examiners or the State Board of Pharmacy to state their respective objections to the regulation.

Before testimony began, the Chairman indicated that the only issue before the Legislative Commission is whether the regulation meets the letter of the law and the intent of the legislature. The issue, in its entirety, will not be reheard, he noted, or even in impartiality.

Dr. Fuller Royal, President of the Board of Homeopathic Medical Examiners for the State of Nevada. He said the board unanimously passed the regulation.

Dr. Royal presented each member of the commission of a statement of the position of the Board of Homeopathic Medicine which states:

The board assumes the position that the question of intent raised by Assemblyman Perkins should only be a factor when a statute has reasonable meaning or is unclear. The therapies under NRS 630A.0402 are neither ambiguous or unclear and the board has correctly defined those therapies (verified by the LCB) therefore as a member of the legislative commission I encourage you to please act upon this particular regulation based upon the law as it now stands (which in my opinion is very clear that the board has the authority and these

particular regulations are, in fact, correct as verified by the LCB).

Chairman Perkins asked about the review of the session minutes. Were there any items in the minutes that were removed because they were redundant?

Mr. Fuller said you have copies of some of the minutes that were reviewed. I reviewed the minutes and could not find anything that supported the position that it was not the intent of the Assembly Commerce Committee to grant the exact definitions which are there underneath the therapies mentioned.

Chairman Perkins said it is your contention that there aren't any minutes contrary to Mr. Martin's suggestion that those items were removed because they were redundant. Are there any items in the minutes that support that those items were removed because they were redundant? Dr. Royal said not to his knowledge.

Senator Adler asked Dr. Royal if the regulation allowed homeopaths to administer dangerous drugs as defined in the statutes? Dr. Royal replied affirmatively. A change in the law implemented in 1987, they can only prescribe one pill but they have the same rights as allopathic doctors to prescribe dangerous drugs already.

In response to Senator Adler's second question, Dr. Royal said that some homeopaths would be allowed to prescribe Demerol (for example) and some would not. The decision would be made through evaluation of each particular licensee in the same manner of the medical board in terms of restricting physicians when necessary under those conditions.

Senator Adler asked if there were any limitations on the quantities of dangerous drugs that could be prescribed. Dr. Royal said that there are restrictions now but there would not be with the passage of the regulation.

Speaker Dini asked the amount of pharmaceutical training required for homeopathic physicians. Dr. Royal replied that it is equivalent to that of a medical doctor.

Mr. Robert Barengo, representing the Board of Medical Examiners, said the board objects to numerous provisions found in R213-97. See Exhibit A for detailed description of Mr. Barengo's comments.

A Las Vegas Review Journal article of December 3, 1997, quotes the lobbyist for the Board of Homeopathic Physicians, Mr. Martin as saying: Martin said he wrote the bill and deliberately included orthomolecular therapy as an acceptable practice for homeopaths. No one bothered to ask me what it meant.

Mr. Barengo said testimony as to what the words "Orthomolecular Therapy" was not made during the legislative hearings. Dr. Mike Fisher talked in opposition to those words. There was some discussion. The record then showed that at subsequent hearings, when the proposed amendment was distributed to AB 286

#### **B. Transfer of money appropriated to Legislative Counsel Bureau among**

**Legislative Commission, various divisions and interim operations and between fiscal years--  
Lorne J. Malkiewich, Director.**

#### **C. Augmentation of budget of Legislative Committee on Workers'**

**Compensation--Lorne J. Malkiewich, Director.**

Agenda item withdrawn.

**D. Appointment of Legislative Commission's Subcommittee to Review**

**Biennial Budget of the Legislative Counsel Bureau--Lorne J. Malkiewich, Director.**

SPEAKER DINI MOVED TO APPROVE THE APPOINTMENT OF THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO REVIEW THE BIENNIAL BUDGET OF THE LEGISLATIVE COUNSEL BUREAU AS FOLLOWS: SENATOR WILLIAM J. RAGGIO, CHAIRMAN; SENATOR RAYMOND D. RAWSON, SENATOR DINA TITUS, SENATOR RANDOLPH J. TOWNSEND, ASSEMBLYMAN MORSE ARBERRY; ASSEMBLYMAN JOSEPH E. DINI, JR.; ASSEMBLYMAN LYNN HETTRICK AND ASSEMBLYWOMAN JAN EVANS. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED UNANIMOUSLY.

**Item V--Informational Items:**

The Chairman noted that the following items are informational only. Material was included in the packet for review:

A. Legislators' Travel Reports.

B. Legislative Committee Reports.

C. Reports:

1) Quarterly report that assesses the developments in the electric industry in the State of Nevada, Public Utilities Commission, pursuant to Section 53 of Chapter 482, 1997 Statutes of Nevada.

2) Southern Nevada Strategic Planning Authority, Master Plan and Capital Improvement Plan Review, pursuant to SB 383, 1997 Statutes of Nevada.

**Item VI--Public Comment.**

There being no further public comments, the meeting was adjourned.

Respectfully  
submitted,

Marcia J.  
Conway

Assistant to

the Director

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Assemblyman Richard D. Perkins, Chair  
of the Nevada Legislative Commission

# EXHIBIT A

# EXHIBIT B

# EXHIBIT C

**E X H I B I T D**

**E X H I B I T E**

# EXHIBIT F



# EXHIBIT G

# EXHIBITH

# EXHIBIT I