

Minutes of the

LEGISLATIVE COMMISSION

Nevada Legislative Counsel Bureau (LCB)

Legislative Building, Room 4100

Carson City, Nevada

November 13, 1997

The fourth meeting in 1997 of the Legislative Commission, created pursuant to Nevada Revised Statutes (NRS) 218.660, was held on Thursday, November 13, 1997, commencing at 10 a.m., 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 Raymond C. Shaffer (alternate for Senator Dina Titus)

Assemblyman Peter G. Ernaut

Assemblyman Brian Sandoval (alternate for Assemblywoman Joan A. Lambert)

COMMISSION MEMBERS PRESENT IN LAS VEGAS:

Senator Mark A. James

Senator Joseph M. Neal, Jr.

Assemblywoman Barbara E. Buckley

COMMISSION MEMBERS ABSENT:

Senator Randolph J. Townsend

Assemblywoman Deanna Braunlin

OTHER LEGISLATORS PRESENT IN CARSON CITY:

Assemblyman Mark Amodei

OTHER LEGISLATORS PRESENT IN LAS VEGAS:

Assemblywoman Merle Berman

Assemblyman Bob Price

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

Steven J. Watson, Chief Deputy Director-Administrative Division

Linda B. Alden, Chief Clerk of the Assembly

John McCloskey, Chief Accountant

Marla McDade, Senior Research Analyst

John Meder, Senior Research Analyst

Kimberly A. Morgan, Chief Deputy Legislative Counsel

Ron Nichols, Information Systems Manager

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

Item I--Approval of the Minutes of the Meeting Held September 4, 1997

ASSEMBLYMAN ERNAUT MOVED TO APPROVE THE SEPTEMBER 4, 1997, MINUTES OF THE LEGISLATIVE COMMISSION. 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)

Mr. Crews said four audit reports were presented to the audit subcommittee on October 23, 1997. He briefly summarized the reports.

Administrative Office of the Courts (AOC)

Judicial Branch of Government

Mr. Crews said it was important to indicate that the AOC requested that an audit be done.

Continuing, he stated that although the AOC has some controls over its financial administration, improvements are needed to ensure revenues and expenditures are properly accounted for, assets safeguarded, and that compliance with the laws, rules and policies are met.

Mr. Crews said the AOC provided lower courts with about \$250,000 during the audit period without written agreements covering the terms and conditions of the payments.

The AOC did not prepare written agreements setting forth terms, duties and responsibilities with two independent contractors or document its determination of independent contractor status for these two individuals. Since August 1995, the contractors were paid \$120,900.

Mr. Crews further stated that AOC lacked documentation explaining why checks totaling \$379,280 were written to lower courts but never sent. No encumbrance forms were prepared for purchases totaling \$13,361 during the audit period.

The Judicial Branch accepted all 12 of the audit recommendations.

Division of Agriculture

Department of Business and Industry

The Division of Agriculture has not established formal policies regarding program funding. Without funding policies, it is unclear if program fees are recovering appropriate levels of associated costs. In addition, the division does not always generate reliable or sufficient cost information needed by management to monitor and evaluate program activity. In excess of \$1.6 million of costs should have been distributed to specific programs to appropriately reflect actual program expenses.

Mr. Crews continued saying although the division developed a strategic plan in accordance with the Governor's instructions in 1994, it lacks any funding strategies or goals.

The Division of Agriculture has inconsistently funded programs over the years with no evidence that these changes reflect Board or management intentions.

Mr. Crews explained that the division does not charge fees for certain services that may directly benefit specific individuals or groups; and it has not established a process to periodically review or assess the adequacy of its funding levels. Consequently, he concluded, funding actions have been untimely and are often reactionary and crisis driven. The agency accepted all six audit recommendations.

Nevada State Library

Department of Museums, Library and Arts

Mr. Crews explained that the current process used by the Nevada State Library for awarding and accounting for the Cooperative Libraries Automated Network (CLAN) grants to local libraries provides misleading information. Approximately \$75,000 of grant funds were spent on equipment purchased for the CLAN program by libraries who did not apply for a grant or receive the actual equipment.

Equipment inventory records for equipment purchased for the CLAN program are incomplete and inaccurate, he stated. At least \$97,934 of equipment purchased for the CLAN program between 1993 and 1996 is not recorded on the Nevada State Library's federal fixed asset list.

The agency accepted all six recommendations.

Nevada State Railroad Museum

Division of Museums and History

Department of Museums, Library and Arts

Mr. Crews said the Nevada State Railroad Museum allowed Friends of the Nevada State Railroad Museum, a nonprofit organization, to retain \$2,073 of train ride receipts.

The Museum waived train ride fees for 2 days, he continued, resulting in an estimated maximum potential loss of \$4,000 to the general fund. It also waived the admission fees on 6 days during the year, resulting in an estimated maximum potential loss of \$12,000 to the general fund.

The agency accepted all five recommendations.

In conclusion, Mr. Crews said the audit subcommittee recommends acceptance of the four audit reports by the Legislative Commission.

**SPEAKER DINI MOVED TO ACCEPT THE FOUR AUDIT REPORTS AS
RECOMMENDED BY THE LEGISLATIVE COMMISSION'S AUDIT SUBCOMMITTEE.
MOTION SECONDED BY SENATOR SHAFFER 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

Mr. Crews said a schedule and brief report are in the packet material which includes the status of 10 audit reports. The reports were previously issued and

the audit subcommittee reviewed the 6-month status reports prepared by the Department of Administration on the implementation of legislative audit recommendations. He added that there were 44 recommendations contained in the reports and based on the Department of Administration's report, 42 were fully or partially implemented [95 percent].

Concluding, he said the audit subcommittee recommends the Legislative Commission's acceptance of the 10 6-month status reports.

SPEAKER DINI MOVED TO ACCEPT THE 10 6-MONTH STATUS REPORTS AS RECOMMENDED BY THE LEGISLATIVE COMMISSION'S AUDIT SUBCOMMITTEE. MOTION SECONDED BY SENATOR SHAFFER AND CARRIED UNANIMOUSLY.

Item III--Progress Reports and Appointments

A. Approval of Nominees to Be Submitted to the Governor for Appointment to the Commission on Nuclear Projects (NRS 459.0091)

Mr. Malkiewich stated that the Commission on Nuclear Projects is an executive branch agency appointed by the Governor. However, two of the members of the commission are appointed from a list of three nominees submitted by the Legislative Commission. Recommendations for both positions must be made.

The "representative" position which has historically been from the "labor" category has been vacant since 1996 and would be filled until July 1, 1998. The

"business" representative position expired July 1, 1997, so three nominees are required also for appointment through July 1, 1999.

Explaining further, Mr. Malkiewich said that a memo was sent to all legislators requesting proposals for the Commission on Nuclear Projects. He stated that three names have been submitted for each of the two positions. The names for the labor representative include: Frank Caine [incumbent], Rob Trenkle and Mike Auperle. The three business representatives nominees include: Dr. Robert Kaufman, Steve Molasky [incumbent] and Troy Wade.

SPEAKER DINI MOVED TO SUBMIT THE SIX NAMES TO THE GOVERNOR FOR APPOINTMENT TO THE COMMISSION ON NUCLEAR PROJECTS. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED UNANIMOUSLY.

B. Update on the Legislative Commission's Budget

Mr. Malkiewich referred to the memo and Legislative Commission budget contained in the packet material as provided by Mr. McCloskey. He explained that the budget was reviewed as a result of the September 4, 1997, commission meeting to determine if savings are expected which would allow for the purchase of gifts for visiting dignitaries. The total cost of such gifts would not exceed \$500.

Mr. McCloskey found that savings in the "Annual Dues" category of the Legislative Commission budget could be used; therefore, that area was reduced and a separate operating costs category entitled, "Gifts for Visiting Dignitaries," has been created.

SPEAKER DINI MOVED TO APPROVE THE LEGISLATIVE COMMISSION BUDGET AS PRESENTED BY THE DIRECTOR. MOTIONED SECONDED BY SENATOR SHAFFER AND CARRIED UNANIMOUSLY.

C. Estimated Budget for Legislative Commission's Utility Oversight Committee and Appointment of New Member

Mr. Malkiewich referred to the letter from Assemblywoman Braunlin stating her resignation from the utility oversight committee as a result of a private company she is forming which would be involved in the utility area.

The packet material contains the proposed budgets, Mr. Malkiewich continued, of the interim studies for fiscal years 1998 and 1999. He noted that the overall budget of the interim studies is \$80,000 and adding the utility committee would bring the total budget to \$71,800.

Mr. Malkiewich added that the utility oversight committee budget is satisfactory to the chairman, Senator Townsend, who was unable to attend the meeting.

ASSEMBLYMAN ERNAUT MOVED TO THE INTERIM STUDY BUDGET FOR THE INCLUSION OF \$7,900 FOR THE UTILITY OVERSIGHT COMMITTEE. MOTION SECONDED BY SPEAKER DINI AND CARRIED UNANIMOUSLY.

ASSEMBLYMAN ERNAUT MOVED TO APPOINT ASSEMBLYMAN AMODEI TO THE UTILITY OVERSIGHT COMMITTEE AS A RESULT OF ASSEMBLYWOMAN BRAUNLIN'S RESIGNATION FROM THE COMMITTEE. MOTION SECONDED BY SPEAKER DINI AND CARRIED UNANIMOUSLY.

D. Appointment of a Legislative Committee for the Fundamental Review of the Base Budgets of State Agencies

Mr. Miles referred to the resolution in the packet material which was adopted by the Interim Finance Committee on September 18, 1997. The IFC made a determination that a fundamental review of certain base budgets should be made and included the 11 state agencies in the resolution. According to

NRS 218.5382, the Legislative Commission shall create the committee and leadership makes the appointments.

ASSEMBLYMAN ERNAUT MOVED TO APPROVE THE CREATION OF THE FUNDAMENTAL REVIEW OF THE BASE BUDGETS OF CERTAIN STATE AGENCIES. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED UNANIMOUSLY.

E. Appointment of Chair and Vice Chair of the Committee on High-Level Radioactive Waste

Mr. Meder explained that four members of the Committee on High-Level Radioactive Waste were appointed by the majority leader of the Senate and four members were appointed by the speaker of the Assembly and the Legislative Commission appoints the chair and vice chair from the members (list included in the packet material).

SENATOR SHAFFER MOVED TO APPROVE APPOINTMENT OF ASSEMBLYMAN BOB PRICE AS CHAIR OF THE COMMITTEE ON

HIGH-LEVEL RADIOACTIVE WASTE. MOTION SECONDED BY SENATOR NEAL AND CARRIED UNANIMOUSLY.

SENATOR ADLER MOVED TO APPROVE APPOINTMENT OF SENATOR MCGINNESS AS VICE CHAIR OF THE COMMITTEE ON HIGH-LEVEL RADIOACTIVE WASTE. MOTION SECONDED BY SENATOR SHAFFER AND CARRIED UNANIMOUSLY.

F. Legislative Committee on Health Care (NRS 439B.200) Progress Report

Ms. McDade referred to the handout material regarding the progress report of the Legislative Committee on Health Care. She stated that the report identifies the number of recommendations for bill draft requests that resulted in bills being adopted since 1989 and discusses the topic of each of the recommendations. Items that were successfully adopted in past legislative sessions were identified also.

The current committee, she continued, is involved in different areas than the past health care committees. The chair has invited an additional 27 persons representing various sectors of the health care community to participate directly with the committee [the handout provided a detail list of names and affiliations].

Explaining the format of the committee, Ms. McDade said that the chair acts as a facilitator between the different interests and attempts to develop consensus on the issues; and, the legislative committee members have the final vote on items presented to the committee. This concept seems to move the meetings along since most people that have an interest are represented and able to respond to each other's concerns directly.

As a result of the format and the fact that discussion during the meetings are moving more smoothly, she concluded, the committee asked that the Legislative Commission consider a budget increase of \$5,000 to pay airfare expenses for of people representing non-profit organizations and others to use the state rate for airfare. Monthly meetings have been planned to June 1998, she concluded.

Speaker Dini asked if the funding was obtained from health insurance fees and Ms. McDade replied affirmatively.

Mr. Malkiewicz said that this item was brought to the Legislative Commission because of the need for additional reimbursement for any invited members who plan to participate in the committee. The Legislative Commission does have the authority to create the 27-member committee as a type of subcommittee to the health care committee upon approval.

SPEAKER DINI MOVED TO APPROVE THE REQUEST FOR THE \$5,000 BUDGET AUGMENTATION TO THE COMMITTEE ON HEALTH CARE FOR PURPOSES OF AIRFARE. MOTION SECONDED BY SENATOR SHAFFER AND CARRIED.

G. Legislative Commission's Building Subcommittee (NRS 218.682)

Mr. Malkiewicz said a memorandum in the packet material highlights some of the major projects of the Building Subcommittee to include: accommodating the various needs for space in the Legislative Building, determining how artwork for the Legislative Building will be acquired, potential renovation tasks (video screens in chambers, internal dome in the entrance, walkway to parking garage, and treatment to the exterior columns and arches on the building).

On June 7, 1998, a cornerstone ceremony and open house will be held at the Legislative Building which is the same date of the year when the original Capitol Building and Legislative Building were dedicated.

He concluded saying that the Division of Child and Family Services, Department of Human Resources, withdrew its request to use space within the Legislative Building and are seeking

other alternatives.

SENATOR MCGINNESS MOVED TO ACCEPT THE REPORT OF THE LEGISLATIVE COMMISSION'S BUILDING SUBCOMMITTEE AS PRESENTED BY THE DIRECTOR. MOTION SECONDED BY SENATOR ADLER AND CARRIED UNANIMOUSLY.

H. Legislative Commission's Subcommittee on Computer Application to the Legislative Process (NRS 218.682)

Mr. Nichols said the Legislative Commission's Subcommittee on Computer Application to The Legislative Process held its first meeting in 1997 on

October 30th. A number of projects were discussed and the highest in priority were: completion of the Front Desk, upgrade the bill drafting system (which did not work last session), photo identification system for the Legislative Police, disaster planning for the computer facility, needs for additional space, public access and interactive broadcast-quality video between Carson City and

Las Vegas.

In response to a question by the Chair, Mr. Nichols said there were concerns addressed in the areas of network reliability, disaster recovery, recovery planning, performance and many other items to be completed by the Information Systems Unit in its attempt to move towards a 24-hour production environment.

Senator Adler said that last session's Internet access was excellent. Comments from constituents who expressed their appreciation for access of bills and information through their computer systems were abundant.

Mr. Nichols added that the public access capability would be expanded for the 1999 session of the Nevada Legislature.

In response to Senator McGinness's question regarding the rural areas of Nevada, Mr. Nichols said Senator Rhoads is on a pilot program whereby connection access with the laptop computers enables LCB staff to telephone a legislator [expenses would be incurred by the LCB] and eliminate long-distance charges for persons who are not in the metro-Reno or metro-Las Vegas areas.

Speaker Dini asked Mr. Nichols about the contract with the Pythia vendor.

Mr. Nichols assured him that the contract has been completed. However, Pythia software will be used as a backup for what is being developed for the upcoming legislative session. The front desk system will be re-engineered using what is appropriate and discarding what can not be used. The voting system will be kept in total.

SENATOR ADLER MOVED TO ACCEPT THE REPORT OF THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE ON COMPUTER APPLICATION TO THE LEGISLATIVE PROCESS AS PRESENTED BY THE INFORMATION SYSTEMS MANAGER, MR. NICHOLS. MOTION SECONDED BY SPEAKER DINI AND CARRIED UNANIMOUSLY.

I. Appointment of the Legislative Commission's Ballot Review Committee

Mr. Erickson said at the end of each legislative session, the Legislative Commission typically

appoints a committee to work with LCB staff on the language that will accompany the ballot questions to be provided to the public. The ballot questions were approved by the legislature and voted upon in November 1998. There will be eight measures [most of which are constitutional amendments including the proposal to limit future sessions to 120 calendar days and an advisory question to the people regarding Nevada Day] submitted to the public in 1998 by the legislature.

Two years ago, Mr. Erickson continued, there was a problem in the law which required the Legislative Commission to approve the fiscal notes which would accompany initiatives or referenda and through the action of the past legislative session, the passage of AB 630 places the responsibility to the Office of the Secretary of the State in consultation with the LCB Fiscal Analysis Division. No longer does the Legislative Commission have to approve fiscal notes for the initiatives. The bill also extends the date by which the commission must approve the language to accompany the measures submitted to the people by the legislature. The Legislative Commission will have to take action on the language recommended by the Ballot Review Committee before July 1, 1998.

The Chair said that this would probably be one of the more difficult committees in which to work and noted that he has a list of those legislators interested in serving. He then recommended appointing the following to serve on the Legislative Commission's Ballot Review Committee: Senator Mark A. James, Chair, Senator Dina Titus, Assemblymen Amodei, Berman, Koivisto and Ohrenschall.

ASSEMBLYMAN ERNAUT MOVED TO APPROVE THE APPOINTMENTS TO THE LEGISLATIVE COMMISSION'S BALLOT REVIEW COMMITTEE [SENATORS JAMES, CHAIR; TITUS, ASSEMBLYMEN AMODEI, BERMAN, KOIVISTO AND OHRENSCHALL] AS RECOMMENDED BY THE CHAIR. MOTION SECONDED BY SPEAKER DINI AND CARRIED UNANIMOUSLY.

Item IV--Legislative Commission Policy

A. Review of Administrative Regulations

Mrs. Erdoes said an amended list (in conjunction to the one in the packet material) totals 42 administrative regulations. It is the Legal Division's opinion that all administrative regulations submitted are within the authority of the respective agencies to adopt with the concurrence of Assemblyman Sandoval (who reviewed the regulations in Mrs. Lambert's anticipated absence at the meeting).

Mr. Sandoval referred to regulation No. R084-97 from the Tax Commission. He expressed concern in the wording regarding the construction of a charitable organization in operation of a church, synagogue or other place of religious worship. One of the elements in the regulation stated that religious activities by said organizations not exceed one meeting per week. Mr. Sandoval said it would be unfortunate that a charitable organization be eliminated merely because it met more than twice a month.

Senator McGinness concurred with Mr. Sandoval regarding the wording of the Tax Commission resolution.

Mrs. Erdoes said the Legislative Commission could choose to object to the regulation and she would work with the agency to appropriately change the wording.

Ms. Buckley questioned the regulation of the Mental Hygiene and Mental Retardation Division (R130-97). She asked if a family would automatically be eligible if an application was completed as set forth in the regulation if the division has a diagnosis of mental retardation and an appropriation is available as set forth in the bill; or, would the division be able to set forth additional qualifications? She said the language seemed vague and the exact intent is unclear.

Mrs. Erdoes said there is an acceptance clause that would allow the division to deny an application if something unfavorable was found.

Ms. Buckley expressed concern that regulations should not be arbitrary; they should set forth the qualifications of the application process. The diagnosis of mental retardation with sufficient certainty so that it is inappropriate for someone making decisions based on items that are not in the regulations.

ASSEMBLYMAN SANDOVAL MOVED TO APPROVE THE REGULATIONS AS RECOMMENDED BY THE LEGISLATIVE COUNSEL WITH THE EXCEPTION OF THE NEVADA TAX COMMISSION AND THE INDICATED REGULATIONS OF THE MENTAL HYGIENE AND MENTAL RETARDATION. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED UNANIMOUSLY.

B. Approval of a Resolution for a Permanent Home for the Enola Gay in Wendover, Nevada

Mr. Malkiewich said there were two letters in the packet material from Senator William J. Raggio, Senate Majority Leader, and Tom Grady, Executive Director of the Nevada League of Cities followed by a resolution concerning the relocation of the Enola Gay. Also, as a handout, he said a proposed Legislative Commission resolution indicating the commission's support in placing the Enola Gay in Wendover, Nevada.

Mr. Grady explained that the major portion of the Enola Gay is at the Smithsonian but it is scheduled to be removed from that facility and be placed at an airport in the Washington, D.C., or other area. The airbase is located in Wendover, Nevada-Utah, and are presently redoing Hanger 1 which was the place that the Enola Gay was housed and it is the intention to relocate it there as part of the museum.

Senator Neal expressed concern to the sensitivity of the relocation in respect to the good relationship now held with Japan and the United States.

In light of the fact, Senator Adler noted that since the Enola Gay has been on display in the Smithsonian, perhaps the sensitivity nature is not relevant at this time. He added that the display in Washington, D.C. is not judgmental one way or another.

Mr. Grady explained further that the Enola Gay is a major project of the American Legion [both in Utah and Nevada] and it is going to the national board although many persons may not like what happened or what it represents--it is part of America's history.

SENATOR JAMES MOVED TO ACCEPT THE ENOLA GAY RESOLUTION OF THE

LEGISLATIVE COMMISSION WITH DUE SENSITIVITY TO THE COUNTRY OF JAPAN AND JAPANESE-AMERICANS IN NEVADA AND AROUND THE COUNTRY THAT THE INTENTION OF THE COMMISSION IS TO AID THE COMMUNITIES IN THE PERMANENT RELOCATION OF THE ENOLA GAY AS A HISTORICAL MARKER. MOTION SECONDED BY ASSEMBLYMAN ERNAUT AND CARRIED UNANIMOUSLY.

C. Authorization to Reprint 10,000 Copies of "1997-1998 Legislative Brochure"

Mr. Erickson explained that the Research Division worked with a subcommittee to solicit and evaluate bids for the design and preparation of a legislative brochure. The publication is made available to the public and the various schools throughout Nevada at no charge. Many legislators distribute the brochures during the interim when performing representational duties.

Continuing, Mr. Erickson referred to the handout which provided a historical background on the legislative brochures and the number of copies printed over the years.

Currently, he concluded, the 1997-1998 Legislative Brochure supply is exhausted and the reprinting of 10,000 additional copies is recommended.

SENATOR ADLER MOVED TO APPROVE THE REQUEST AS SUBMITTED BY THE RESEARCH DIRECTOR. MOTION SECONDED BY SENATOR SHAFFER AND CARRIED UNANIMOUSLY.

D. Filing of Amicus Curiae Brief in Blue Cross/Blue Shield of Colorado Conversion Case

Ms. Buckley said the Legislative Commission is being asked to file an amicus curiae brief in the Colorado Conversion Case. She stated that Mrs. Erdoes and Ms. Morgan have been working with the group per her and Senator Townsend's request.

Mrs. Erdoes said the Legal Division has worked closely with the Office of the Attorney General, the representatives of the interested non-profit organizations and their counsels to produce a coordinated response in the conversion case before the Colorado Insurance Commissioner.

Cherie Jamason, President of Truckee Meadows Human Services Association and CEO of the Food Bank of Northern Nevada, read the following letter to be placed into record:

This morning we are requesting the Legislative Commission authorize a support document which could increase the dollars available for Nevada health care. The conversion of Blue Cross/Blue Shield from a non-profit to a for-profit corporation requires that the assets of the non-profit be retained in a foundation for use by those who helped to accumulate those assets. The question is: Will the assets generated by Nevada Blue Cross/Blue Shield subscribers over the last 30 years be retained for Nevada citizens or Colorado citizens?

Blue Cross/Blue Shield of Nevada merged with Blue of Colorado last December. During the merger, the subsequent conversion of Colorado Blue from a non-profit to a for-profit was not discussed. Further, Nevada statutes are silent on the issue of conversions. This conversion law would normally require that Nevada assets be retained for Nevada citizens once the merger was approved and Blue of Nevada became Blue of Colorado.

When the conversion process began, the question of *who was protecting the interests* of Nevada subscribers and citizens dramatically proved the lack of appropriate Nevada statutes. This has now placed us in a very precarious, complicated position. Colorado law requires that the assets must be retained for Colorado citizens. The law simply did not anticipate out-of-state funds being awarded to Colorado.

Unless this support document is filed, the citizens of Colorado may be unjustly enriched with Nevada assets. The non-profits I represent believe this would be grossly unfair and Colorado law specifically prevents the conversion from being unfair or unjust. On the positive side, the Colorado law permits the Insurance Commissioner a great deal of latitude in handling the conversion process. There is a brief, on behalf of a Nevada subscriber, being submitted (by Jon Sasser who is present this morning) on this issue. Our non-profit coalition will submit petitions and testimony as well. Attached you will find a letter from the Attorney General. A draft letter has been written by the Governor's office but is awaiting a review by a staff person who is currently on vacation. We believe a document from this body is particularly necessary since the legislature was denied an opportunity to act on this process during the merger and because this body will be evaluating legislation on this topic in the coming session. We believe that support documents from the state of Nevada are essential to gaining our goal.

Our goal is to have the Colorado Insurance Commissioner separate the Nevada assets in the coming valuation. Colorado is about to begin a comprehensive valuation of Colorado Blue. Colorado has not contemplated the need to separate Nevada assets out in that process. The separate valuation could either sustain the current foundation amount of 1.5 million or show that the Nevada assets were greater than originally represented. If the value does not increase, the legislature can take the satisfaction of having made the effort to protect the interests of Nevada. We believe the valuation will clearly demonstrate that the Nevada portion of the assets are far greater than 1.5 million dollars. Other states have gone through this same conversion process and in those instances, the initial valuation was significantly lower than the "negotiated" value. For example, in California, the foundation grew from 300 million to 3.2 billion. *In Kentucky, the Attorney General is currently litigating our same issue:* Blue Cross and Blue Shield of Kentucky merged with another company in another state and Kentucky is being unjustly denied the value of their non-profit assets.

Current estimates of the value of Colorado Blue is approximately 300 million. We do not know the potential dollar amount of a proper valuation in Nevada, but we are absolutely sure, and we believe the legislature will agree, that the effort by each of us to identify the true value of Nevada assets is certainly worthwhile.

In order to protect Nevada's future interests, our coalition, with the help of Senator Townsend and the Legislative Counsel Bureau, has begun to outline a bill draft which will strengthen our law. We will build on the Colorado law and improve on it. The BDR will ensure that there is more public participation in both the merger and conversion process, we will add language to address the potential of another state's assets being co-mingled with the conversion state's assets and, should Colorado refuse our request to separately value Nevada assets, we will request wording that may make it more difficult for conversion companies like Blue Cross/Blue Shield to do business in Nevada in the future.

Nevada legislators are keenly aware of the growing health needs in Nevada. *We cannot miss any opportunity to capture all of our assets to provide for those needs.* If Colorado inadvertently gains from our assets, Nevada not only loses those dollars but also loses the financial synergism that occurs when the health care marketplace is strong and growing.

There is no doubt that all of the insured people in Nevada pay higher premiums because of the uninsured and indigent. Further, the poor rely on non-profit organizations, such as I am representing today, and the state to provide health care services. We cannot bypass any opportunity to protect our health care system or demand that businesses not unfairly prosper on the backs of Nevada's poor. Thank you for this opportunity to speak.

Paula Berkley, representing Truckee Meadows Human Services Association, said that the proposal is a win-win situation for all parties concerned. The State of Colorado wins if it separates the assets of Nevada--in the evaluation that is already going to be done--by showing that there has been either a just evaluation of assets

of Nevada and the money entitled has been received. Additional dollars are not being requested, she assured the commission members, only the ones due to Nevada.

By allowing the separate evaluation, Ms. Berkley continued, the State of Colorado avoids any possible litigation of the issue. The State of Nevada wins whether or not additional dollars are received. The Blue Cross/Blue Shield Company wins also. If the evaluation is done, all the non-profits in Nevada will realize the benefits as well. It is important to have everyone go in the same direction [along with the Governor's finalized letter] for a fair and separate evaluation of the Nevada Blue Cross/Blue Shield.

Senator Adler asked if it would be an ongoing case or simply filed with the Insurance Commissioner's Office. Ms. Berkley replied that there is a brief presented to the Insurance Commissioner by Jon Sasser, Washoe Legal Services.

On January 14, 1997, Mr. Sasser explained, the Blue Cross/Blue Shield of Colorado [now the merged corporation--non-profit Blue Cross/Blue Shield of Nevada and the non-profit Blue Cross/Blue Shield of Colorado] filed an application with the Insurance Commissioner of the State of Colorado for approval to convert to a for-profit corporation. Colorado passed a comprehensive statute in 1996 called the Colorado Conversion Statute that outlined a process the commissioner must follow before he approves that conversion. He must hold a series of public hearings and a series of formal administrative hearings in which all parties are represented.

Continuing, Mr. Sasser said the commissioner has set up a two-phased administrative hearing. The first phase is what is going to be held focuses on the nature of the foundation in Colorado that would benefit from an initial public offering of Blue Cross/Blue Shield. All of the money raised by that sale of stock goes to the foundation.

The second phase is the valuation of the corporation [how it is going to be done]. Washoe Legal Services filed a motion [last spring] for party status on behalf of Patricia Johnson [Nevada subscriber of Blue Cross/Blue Shield] and a broader Nevada coalition of groups. The commissioner approved the request of Patricia Johnson to be a party in that proceeding but denied party status to the coalition at that time.

He stated further that he has been representing the one subscriber in the process and on her behalf, has been talking not only about 'rights of subscribers but the rights of the Nevada public.' It is important not to look just at the past and what happened in Nevada

during the merger process, he noted, but look to the future about what is going to happen unless the commissioner gives a separate evaluation for Nevada.

As Ms. Berkley said, he continued, after this is approved, there will be a public stock offering of the entire value of the merged corporation and the amount of money that is raised by that stock offering will be given to a foundation. If no relief is received from that process, all the beneficiaries of that foundation will be the citizens of Colorado; and, none of the money will come back to Nevada. If hypothetically, Nevada has 10 or 15 percent of the total business, and that stock offering is \$300 million, one would think Nevada would be entitled to \$30 or \$40 million whereas at the merger process there was a foundation set up for only

\$1.5 million.

The amicus brief being asked on behalf of the Legislative Commission, Mr. Sasser stated, would ask the Colorado Commissioner (as part of his evaluation of the overall company) to split the portion of the value that may be attributable to Nevada from that attributable to Colorado. And, then if it proves that Colorado citizens may be unjustly enriched at the expense of Nevada citizens, to set aside that amount of money for Nevada through whatever process he chooses.

Senator Adler asked if Mr. Sasser would help prepare the brief. Mr. Sasser answered that it would be part of the process in Colorado to have the commissioner set up a briefing schedule and he would file a brief outlining Patricia Johnson's arguments as to why Nevada is entitled to a portion of the value of the overall corporation.

Mr. Sasser said he has had discussions with Ms. Morgan and members of the LCB Legal Division who will be representing the Legislative Commission's interest.

In response to Mr. Ernaut's question, Mr. Sasser said he would hope that no one in Nevada would be against a separate evaluation to determine what percentage of the "pie" Nevada should receive. It is hoped that Blue Cross/Blue Shield would take the position that as long as money has to be paid for a pie, it is unimportant whether or not a slice goes to Nevada.

Mr. Ernaut said it is important to note the fact that this is not creating dollars that are not there already. This is an appropriate allocation of dollars, he added, that will already be allocated. Mr. Sasser concurred.

Senator Neal questioned why the Attorney General did not pursue the filing of an amicus brief on her own authority. He concluded saying that it is now incumbent upon the legislature to move towards the amicus curiae brief since the Attorney General has failed to file.

Jim Wadhams, attorney in private practice representing Blue Cross/Blue Shield, said it was his desire to make it clear to the commission that he was not appearing in opposition or support but there have been certain comments made that necessitate a public statement.

Blue Cross/Blue Shield of Nevada, he explained, merged in 1996 with Blue Cross/Blue Shield of Colorado and did so in strict compliance with the statutes. Blue Cross/Blue Shield has not done anything contrary to statute. It seems that the issue raised today, he continued, deals with the fairness, interpretation or application of a Colorado statute and, in that regard, there is no opposition to that issue. It is important that the issue of valuation which was alluded in the California case be avoided.

Continuing further, Mr. Wadhams stated that Blue Cross/Blue Shield has proposed [in the conversion plan which is a public document in this state as well as in Colorado] is that 100 percent of the value be placed into a foundation and as

Mr. Sasser acknowledged there is no interest, request or suggestion that Blue Cross/Blue Shield ought to put up more money--100 percent of what they have is fair. The issue deals with the allocation of those dollars under the context of the Colorado statute.

In response to a question from Senator Neal, Mr. Wadhams said that his testimony is to ensure that Blue Cross/Blue Shield have complied with the statutes and a distinction might be made as a non-profit between tax exempt non-profits and taxable non-profits which is not his client's issue and there is no objection to that item being pursued.

Mr. Wadhams answered Senator Adler saying that the statute that Colorado legislature crafted purports to restrict the use of the proceeds of the conversion to the benefit of Colorado citizens. It is Mr. Sasser's position on behalf of his client that the allocation should be made among all subscribers and, in fact, between Colorado and Nevada, he noted.

Senator Adler asked if a separate Nevada foundation would be setup if the proceeds were split. Mr. Wadhams replied that under the Colorado statute,

Blue Cross/Blue Shield has no relationship whatsoever with that foundation. The statute was crafted to create a complete and total separation. The State of Colorado would setup the foundation which would be administrated by the Insurance Commissioner in Colorado pursuant to its statute; but, the statute provides that Blue Cross/Blue Shield [as the converting entity] can have no influence over the use or application of those proceeds.

Jan Gilbert, representing the Progressive Leadership Alliance in Nevada [coalition of over 33 statewide organizations], said her organization supports the amicus brief that would be filed. The citizens of Nevada should try to benefit the health care needs of the State of Nevada. Her organization is interested in working towards drafting legislation in the future so it will not happen again.

Senator James said desired to disclose that he is a member of the board of a health care company that is not effected by the issue in anyway and that he intends to vote.

ASSEMBLYWOMAN BUCKLEY MOVED TO FILE THE AMICUS CURIAE BRIEF IN BLUE CROSS/BLUE SHIELD OF COLORADO CONVERSION CASE. MOTION SECONDED BY SPEAKER AND CARRIED UNANIMOUSLY.

E. Approval of Resolution Honoring Jean Ford

Mr. Malkiewich said the resolution is in the packet material in honor of Jean Ford. There will be a dinner in December 1997 at which a number of resolutions will be presented to Ms. Ford.

Senator Adler noted that he had attended one dinner in honor of Jean Ford and it was a great event for someone who has done so much for the State of Nevada. Therefore, it is an appropriate resolution, he concluded.

ASSEMBLYMAN ERNAUT MOVED TO APPROVE THE LEGISLATIVE COMMISSION RESOLUTION HONORING JEAN FORD. MOTION SECONDED BY ASSEMBLYMAN SANDOVAL AND CARRIED UNANIMOUSLY.

Item V--Informational Items

Chairman Perkins noted that items A through C are informational items only and do not require Legislative Commission action. [The following were included in the packet material as exhibit items.]

A. Legislators' Travel Reports

B. Legislative Committee Reports

C. Progress Reports

1) Department of Business and Industry, Office for Hospital Patients, Quarterly Report, July 1, 1997, through September 30, 1997

2) Department of Business and Industry, Division of Insurance, Sec. 196 of Chapter 580, *Statutes of Nevada 1995* at p. 2061

There being no public comment, the meeting was adjourned.

Respectfully submitted,
Marcia J. Conway
Assistant to the Director

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