

OK Wood 3/11/69

MINUTES OF MEETING - COMMITTEE ON COMMERCE - 55TH NEVADA ASSEMBLY  
SESSION - MARCH 4, 1969

Present: Wood, Capurro, Bowler, Hafen, Mello and Torvinen

Absent: Espinoza

Also Present: Oliver Bolton, Nevada Independent Insurance Agents  
Wm. Parish, Nevada Independent Insurance Agents  
Pete Kelly, Nevada Association of Realtors  
Assemblyman Frank Young

Chairman Wood called the meeting to order at 11:00 a.m. and proceeded with Mr. Young's bill, A.B. 95.

A.B. 95, providing that recipients of unsolicited merchandise through the mails are not required to make payment therefor.

Mr. Young stated that this bill was prompted by an article in the December issue of Consumer Report which stated that certain states have passed laws in this respect. The consumer groups all over the country are interested in the bill.

Mr. Wood said he was not necessarily against the bill but felt it should be amended to say "no person receiving such merchandise through the U.S. mails should destroy, but rather return it to the Post Office with proper notation thereon 'return to sender'. He said the sender has to guarantee the postage will be paid upon return.

Mr. Young agreed that this would increase the effectiveness of the matter but that in so doing, you are imposing an obligation on the part of the people and he did not think the obligation should be there. He noted the possibility of opening a package by mistake. Some packages will have no identification on the front or it could be mistaken for something that you did order. Once it is open you cannot return the package.

Capurro raised the question whereby you receive gifts or tokens from organizations such as the Boys Clubs of America or other charitable institutions and in return they are asking for donations. Some of these do not even ask that the merchandise be returned. He said he would not like to see the legislature cut these people out. They are not offending anyone and they are usually non-profit organizations.

Young said he believed an example of this would be the Disabled American Veterans, however, they do not dun you if payment is not received. Torvinen noted also Easter Seals who ask for donations but do not dun you either.

Mello related the instance about a month ago when a large package was delivered to his home and his wife, thinking he had ordered same, opened the box. Upon opening it they found a bill inside. They re-packaged the item and returned it to the Post Office. The post Office refused to accept the box because it had been opened.

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Torvinen said he believed the general law is that if you receive an article in the mail and you use it, you must pay the value of the article; not the list price, but the value. If you just put the item away in the garage or somewhere else and do not use it, there is no problem. They can sue you for the money, but they have to prove that the article was used and if used, what the useful value of the item was. He noted that he is receiving the reader's digest quarterly condensed books and that they did not order them. He said he is receiving duns on these now.

Pete Kelly introduced himself and suggested the possibility that the Post Office makes a mistake in delivery. Supposing it is delivered to him and not addressed to him. The way the bill reads, he has the right to retain the article without paying for it.

Mr. Wood noted that this was a good point and that there should be some provision for this. Young said he would check to see if this might not be covered somewhere else. He asked Mr. Torvinen if he meant by his statement that the law now provides that you do not have to pay for items received.

Mr. Torvinen said his statement was on case law, not statutory law. Hafen suggested that the bill be amended to state "properly mailed" and received. Young said that would take care of the situation as far as the mails was concerned.

Torvinen noted that the bill did not cover other methods of package service, such as Railway Express and the Parcel Delivery Service. Wood said perhaps they could state, "U.S. Mails or otherwise".

Torvinen gave an example where a stereo phonograph is delivered to an individual by mistake and the person goes ahead and uses it. He felt the person should be obligated to pay for it. It was an honest mistake on the part of the delivery people. Hafen said if they added the words "properly delivered" it would cover that instance.

Mr. Wood asked what would happen in the case of ordering by telephone. When the person receives the merchandise, he could then claim that he did not order it, keep it and consider it a gift. Discussion was held on the chances of this happening since most companies would not send things out by virtue of a phone call unless they knew the person well or sent it COD. Wood noted that very little business is done by cash anymore, it is almost always credit. Of course in a case like that a person's credit standing would have to be known.

Torvinen said he did not think the bill was needed. He felt the problem was in educating the people. When they receive something they did not order, they should immediately forward a letter to the sender and state that if the item is not picked up within two weeks, the receiver will consider it a gift and do with it what they want. Then keep a copy of the letter in the event of suit.

Mr. Young was excused and Mr. Wood introduced the other witnesses present.

A.B. 135, providing for regulation of controlled business insurance sales.

Mr. Capurro presented the background for this bill and noted that it ran hand in hand with A.B. 136. He noted that A.B. 135 was written with those persons in mind who hold insurance licenses for the sole purpose of insuring himself, family or company.

Mr. Parish stated that this law is in effect in about 45 states at the present time and is now being introduced in others. Large companies will hire certain agents for the purpose of doing only the business of that company. These companies are not usually aware of the policies available because they are only doing this to keep their insurance costs lower. "We do not feel that this is in the public interest." He said if the bill were to pass, it would require that an insurance agent cannot sell policies to himself, family or company if it is more than 50% of his other business. In this way there would not be a controlled business. Mr. Bolton noted that he was in full agreement with Mr. Parish in this regard.

Mr. Wood noted the section wherein it precludes the agent from insuring his wife's automobile, for instance. Mr. Torvinen said according to the bill, the agent could insure his wife's car as long as it did not come to more than 50% of his other business.

Capurro said in many cases an agent will write policies for his whole family; sons, daughters, etc. They will use him as an agent only because he is related. This is a controlled situation. This bill does not preclude an agent from writing policies for these relatives, if he is a licensed agent, but his policies could not equal more than 50% of his other policies.

Mr. Parish stated that the large insurance companies are usually self-insured or employ insurance counselors who handle the insurance through a brokerage firm.

Wood noted the case where an individual holds a couple of shares in a corporation but is not active. Mr. Parish said this would not make up a "controlling interest" and that the problem here would still come back to the question of being over 50% of his other business.

Wood asked about those persons who are retired but maintain a few accounts for extra income. The individual who maintains a few accounts but does not want to sell up and down the street. Parish said in his opinion it was not in the best interests of the public but still would not apply unless he sold over 50% of his business only to his family, himself or his company.

Capurro noted that the insurance companies are very seldom licensing this type of person anymore. They do not care about this small volume of business, they are after the large volume agent. Torvinen said he thought there was already a regulation in affect on the controlled business.

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Mr. Parish stated that in 1954 there had been a regulation written on controlled business but that for some reason it was later rescinded. Mr. Wood asked if there was anything in S.B. 39 that would cover this and Bolton said "no, that is why we are appearing today".

A.B. 136, providing for protection of trade secrets.

Mr. Torvinen asked if this bill was covered in S.B. 39 and Parish said he did not think so. He said the problem here is with certain mortgage companies who handle the dwelling mortgage and require insurance agents to provide original policies on the home. Three months prior to the expiration of the policy, the mortgage company will provide a copy of this policy to their own agent who will then write a letter to the owner of the home and tell them that they have a branch near to them and quote figures on the insurance they feel would be necessary. Then they tell the people if they would like to have this policy, they can simply sign at the bottom of the letter. They do not elaborate on the types of insurance which is available and sometimes their own insurance is much better. There are five types of insurance and each have different coverage. The coverage is not spelled out in the letters. He said in his opinion it is important that the owners have proper counsel and that they sit down and advise them. Then they can choose the policy which best satisfies their budget and requirements. Your major insurance companies like Equitable and Prudential do not even require that policies be filed with them anymore. "These mortgage companies which we are referring to are using the information contained in these policies and soliciting clients who are not theirs." He continued by saying that this bill does not cover insurance only. For instance if a blue print company received a print which looked good to him, they could make a copy and use it as they wanted to. However, they would be unable to do this if A.B. 136 were in force.

Hafen asked if a person came and wanted to sell him a life insurance policy and he was told that he already had a policy and showed the policy to this agent, would he be in violation under this bill. Parish said no, because the policy belonged to him. He was the owner of that policy.

Discussion was then held on the possibilities that the mortgage company may be named as the "insured" on a policy. Parish said the mortgage company may show on the liability portion of the policy or can be shown as an additional insured, but the mortgage company is not the insured under the policy.

Capurro said he has known instances when a company or person who is operating heavily on bank capital, the bank may request that he put a life insurance policy with the bank, regardless of who the beneficiary is. This bill would make it unlawful for the bank to give this insurance policy to another agent for his perusal. This bill would cover securities and stocks and bonds also.

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Mr. Wood asked what would happen in the case of a person who has been an insurance agent for a company for a number of years and then decides to change companies. Does this bill restrict him from doing business with his former clients? Parish said it did not, but it did stop him from taking papers and documents from the company and using them for the benefit of another company.

Wood suggested that this person may have a black book wherein he keeps track of the people and their policies. If he did not keep his own record, he would not be a very good agent. The book belongs to him but does he have to throw it away or can he keep the book and use it?

Parish said the records would not be complete in the book and those notes that he made himself are not covered in this bill. Wood suggested that there could be a lot of problems if it were taken to court. Parish said he believed most companies require acceptance agreements wherein if the employee leaves the company, they will not be doing any insurance business for some time. Wood said this would not hold up in court because you cannot be deprived of his livelihood. Parish said regardless of that, it is usually standard procedure with most companies.

A.B. 92, limits benefit of official bonds.

Mr. Wood noted that he had called the county assessor and asked for an unbiased report on this bill and he would report back when it was available.

A.B. 173, Prohibits false, deceptive and misleading advertising.

Mr. Wood said this bill was given to him by Mr. Lowman. Torvinen said he would like to see how the false advertising statutes are now. He felt there were some already in affect through the criminal code or somewhere.

Mr. Wood noted that there were some facts coming from the district attorney's office on this bill.

Witnesses were excused.

A.J.R. 17, urges air service be provided all portions of the state.

Mr. Capurro said in his opinion, there was not much sense in passing this bill and all concurred.

Mr. Torvinen then said he understood they had discussed A.B. 92 while he was out of the room and he would like to move for an indefinite postponement of the bill in view of the problems which could be involved;

Motion seconded by Bowler and unanimously carried.

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A.B. 95: Torvinen moved for indefinite postponement; motion seconded by Capurro.

Mello said that if this bill was not passed, how would the problems be solved in this regard. He cited the example of the package he had received and Capurro said he would then follow the procedures suggested by Mr. Torvinen by sending letter to the sender and giving them two weeks to pick up the merchandise.

Mello said this was causing an annoyance and obligation on the people which should not be there. Torvinen said it would be better for the people to be under this obligation than for a certain few to see the loop holes in this legislation and use it for their benefit. There is also the chance of an honest mistake and the sender is the one going to suffer for it.

Mello said there are some outfits who will send you something completely different than what you have ordered, what can be done with this sort of thing? Capurro noted that this would be covered under the false advertisement legislation.

Mr. Bowler stated that through the years, those legislators who have been there longer than others will tell you that it is impossible to be in on all of the good legislation that comes out of session. However, he feels that if a piece of legislation looks bad, it should be turned down.

Motion for indefinite postponement having been made and seconded thereto, Chairman Wood took the vote with following results:  
5 For and 1 Against.

A.B. 135: Bowler moved for Do Pass;

Mr. Mello said he had been out of the room when this bill was discussed and asked for a review. Mr. Capurro gave him the background and Torvinen said in his opinion it looked like the insurance firms were after the large companies who were insuring themselves rather than the small agent who is just insuring his family. Unfortunately, if you go after the big company, you have to go after the little guy too. Capurro said this was basically true however certain cases do exist where the little guy is a problem as far as the public is concerned. He does not necessarily give the best service. Torvinen said Mr. McDonald had suggested that the committees either kill the bills that they have under consideration or give them a Do Pass and let them come back for corrective work later.

Mello asked who was being protected by A.B. 135 and Capurro said he believed both the public and the insurance firms are being protected.

Wood noted that Bowler had moved for Do Pass of A.B. 135; Capurro then seconded the bill and vote was taken with following results:  
3 For and 3 Against.

Chairman Wood stated that the bill had been defeated and it would

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require the vote of five of the committee members to bring A.B. 135 back for further consideration.

Mello then moved that A.B. 135 be indefinitely postponed, however lacking a second to the motion, the move failed.

A.B. 136 Hafen moved for a Do Pass; Torvinen seconded the motion and vote was taken with the following results:  
4 For and 2 Against.

Capurro asked if there would be a minority report on this bill and Wood said the routine report would be made.

A.B. 173: Deferred for further consideration.

A.J.R. 17: Mello moved for indefinite postponement; motion seconded by Bowler and unanimously carried.

Meeting was adjourned.