

MINUTES OF MEETING - ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS
55TH LEGISLATIVE SESSION, FEBRUARY 12, 1969

84

Present: Smith, Hilbrecht, Branch, Mello, Wood, Dini, Bryan Hafen, Getto and Lingenfelter.

Absent: None.

Chairman Smith acknowledged to the committee the presence of the following:

Dr. Elmer R. Rusco, Bureau of Governmental Research, University of Nevada.

Joseph R. Carlson, Rural Counties Community Action Program

Mike Beshaw, RUCAP, Carson City, Nevada

Peggy Beaty, Secretary, RUCAP, Carson City, Nevada

Mildred Heyer, Nevada State Library

Ray Knisley, former State Senator

Harvey Dickerson, Esq., Attorney-General, State of Nevada

Curt Blyth, Nevada Municipal Association

Chairman Smith opened the meeting and introduced Ray Knisley who had requested time to make a remark to the committee.

Mr. Knisley told the committee he had heard part of the hearing the previous day on AB 60 and was disturbed to hear the presentation of the young men purportedly from the Desert Research Institute. He told the committee he was well acquainted by Dr. Wendell Mordy, Director of the Institute from the time when as a state senator he had co-sponsored legislation that helped establish that institute at the University. After the hearing he called Director Mordy and was assured that no person from the Institute had appeared before the committee with an endorsement of the Institute's official position. Dr. Mordy stated that if a representative did appear he did so only as an individual and his remarks should be so regarded by the committee.

Chairman Smith thanked Mr. Knisley for the clarification and he was excused from the meeting.

Chairman Smith said the first item on the agenda was AB 1, the ombudsman bill. He said that Attorney-General Dickerson had some comments on the bill and that Dr. Elmer R. Rusco also had some comments he wished to make. Also the presence of Joseph R. Carlson, Mike Beshaw and Peggy Beaty of the Rural Counties Community Action Program was acknowledged on behalf of this bill.

Assemblyman Hilbrecht, as sponsor of the bill, was asked to make his comments and introduce the others.

Mr. Hilbrecht said that as legislators the committee must have become more aware of the need for such an office as ombudsman. Individuals seem to have been caught up in the processes of government in a manner that does not afford them any outlet for what they feel are legitimate complaints. For example, the industrial commission might settle a claim without proper follow-up for rehabilitation. We are constantly concerned for those individuals on a state level.

Mr. Hilbrecht noted that on the federal level the need has been recognized by President Nixon. He said he had read recently in the Las Vegas Review Journal that the President intends to equip the Vice President with a staff whose purpose would be to channel consideration for complaints emanating from administrative failures to recognize problems presented to the various federal agencies. State legislators are often called upon to take over these functions in order to get these problems straightened out. It is found that in many instances that in dealing with the various departments in the state government that those departments just don't have the time. Frequently the individual becomes frustrated and goes away feeling that the democratic process has been denied to him. It is important to us to effect an improved process. This bill would provide such a process that would have a profound effect upon individual morale. The people would feel that they have been heard. If this is not done, it breaks down the confidence of the people. There develops a despair in the fairness of things; a situation that may in part explain the widespread growth of dissidents among young people today. An ombudsman can recommend remedial actions or procedural changes in an agency. San Diego has three ombudsmen. Many agencies in the federal government have them. Mr. Hilbrecht stated that he had discussed this with the Attorney-General who has indicated that he does not feel the office is warranted within the framework of Nevada government. Although I disagree with him, he said, we welcome his comments.

Attorney-General Dickerson had prepared his comments in written form which he read to the committee. A complete copy is made a part of this record and is appended. Toward the end of the appended statement, Mr. Dickerson inserted the following comment: Another objection to the bill is that under section 6 it would be difficult, if not almost impossible, to remove an ombudsman once appointed. It would require the vote of 14 Senators and 27 Assemblyman on the apportionment that presently exists.

Chairman Smith asked the committee for any questions they might have. Mr. Hilbrecht asked the Attorney General what "great powers" he was alluding to in his statement that an ombudsman would have.

Mr. Dickerson said he thought the power great for an ombudsman to be able to enter a public agency, have access to their records, and then to hold private hearings. He has great power when he can compel any person to produce papers and documents. He has the power to bring suit in any district court to enforce his office; and he has great power when his actions can not be looked into in any court. These go far beyond those powers that should be given any individual. The Attorney General said he felt it would be ridiculous to establish such an agency at such an expense and further that he felt it is completely unconstitutional.

Chairman Smith then asked Dr. Elmer Rusco if he would make his comments.

Dr. Rusco said that he had requested an opportunity to speak on this bill. He said that the ombudsman is a new movement in this country. Understandably there is some problem in understanding

the kind of institution it is. He said he understood how it operates in other countries, and that everything he had learned tells him it is desirable. Some universities have established them successfully. San Francisco State, Michigan State, and the University of New York at Stonybrook have them. It is true that no state has them now. The idea is new. The most important thing about the ombudsman idea is that you have an official of the government to investigate complaints who is not himself in the chain of command and relies on recommendations based upon impartial investigation rather than the recommendations of his friends. From my experience there are a number of complaints that citizens have that are not things that can be handled by the courts but are important to the citizen. These essentially are the result of the development of our society. We have developed an administrative state and it seems that as this happens the problems increase between the time a government function is established and it actually become operative. The citizen becomes subject to an increasingly impersonal type of process that does not account for him as an individual. The office of ombudsman can help to overcome this. The influence of investigation and reasoned advice can have good effects. I would endorse the general idea of an ombudsman in Nevada, he said. Nevada it is true does not have the problems to the same extent as other states. But it is a desirable way to head off these problems. 86

Attorney General Dickerson asked Dr. Rusco if it were not true that in the Scandinavian countries where this idea originated, that they have no other agencies such as a district attorney and that the lack of the agency such as we have in the United States is the reason they created an ombudsman. Dr. Rusco said that the agencies in the United States do not always take care of the problems. The Grand Jury does not meet all of the time and it operates within a restricted framework. The problems they handle are bound to be violations of the law and are not concerned with failures within an administrative framework. Dr. Rusco said he did not feel Mr. Dickerson's argument was sufficient. He said that New Zealand has ombudsmen. Great Britain has a similar office with another nomenclature.

Assemblyman Lingenfelter asked Dr. Rusco if he truly felt that in a state as small in population as Nevada the office was necessary in view of the fact that communication between the legislator, councilman, etc. and the citizen is comparatively easy. Dr. Rusco said that an ombudsman would relieve the legislator from many types of complaints and that as the population of the state increases and it is doing so rapidly this will not be true.

Assemblyman Wood asked how anyone could justify an office being free from investigation of itself. Assemblyman Hilbrecht answered that the bill in its present form was adopted from a model act and that it is subject to amendment.

Chairman Smith stated that at this time the committee restrict its consideration to avail themselves of the interested parties who had appeared. He asked the Attorney General to comment on AB 185 which is also on the committee agenda.

Mr. Dickerson said that special investigators are called from the Attorney General's office to all parts of the state to assist in gathering evidence. For this job it is desirable that he be

provided with an unmarked vehicle and that legislative approval is sought in this bill for this provision and expense participation. AB 138 provides that counties pay costs for special investigators and provide unmarked vehicles.

Chairman Smith thanked the Attorney General and he was excused from the meeting.

The next bill for consideration of the committee was AB 138 which permits certain library and school district purchases by informal bids. Present from the Nevada State Library was Mildred Heyer and she was invited for her comments.

She said that the Nevada State Library does not have the problem that this bill is intended to solve because they have the privilege of purchasing as they need to. However many schools in the state and some of the smaller county libraries under the present formal bid restrictions cannot avail themselves of advantageous subscription offers on periodicals, for example. They are restricted and if the informal bid process were adopted many savings could be made and greater flexibility adopted in selection. Discount rates could be taken advantage of that the present process prevents. It is true in the larger areas that the dollar volume of purchases permits advantages that are not presently available to smaller communities. Miss Heyer was then thanked and excused.

The committee discussed AB 138 and agreed to give it further consideration.

Hilbrecht moved Do Pass AB 185.

Lingenfelter seconded.

Motion unanimously passed.

Chairman Smith called the committee's attention to AB 133 a bill purporting to prohibit public employees from encouraging violation of the laws. The committee agreed that the intent of the bill was good but Assemblyman Hilbrecht said there were some serious difficulties with it. He said that law enforcement agencies would be hampered in that the bill would make them violators of the law.

Mello moved AB 133 be indefinitely postponed.

Branch seconded.

Motion unanimously passed.

Chairman Smith presented a series of bills to the committee that were to be introduced.

Lingenfelter moved the bills be introduced by request to the assembly. Motion seconded and passed unanimously.

Meeting adjourned.

STATEMENT OF ATTORNEY GENERAL HARVEY DICKERSON
BEFORE COMMITTEE ON GOVERNMENT AFFAIRS ON A. B. 1

MR. CHAIRMAN: MEMBERS OF THIS COMMITTEE:

I AM UNALTERABLY OPPOSED TO A. B. 1, WHICH PURPORTS TO SET UP WITHIN OUR FRAMEWORK OF GOVERNMENT WHAT HAS BEEN DESCRIBED IN OTHER JURISDICTIONS AS A DEPARTMENT OF GRIPES.

AS FAR AS MY OFFICE HAS BEEN ABLE TO DETERMINE NO STATE IN THE UNION EXCEPT HAWAII HAS AN OMBUDSMAN AT THE PRESENT TIME, AND THIS POOR FELLOW IS NOT PERFORMING HIS DUTIES UNLESS HE IS DOING SO FOR NOTHING. THAT STATE HAS HAD AN OMBUDSMAN SINCE 1967. THE LAW PASSED WITHOUT THE GOVERNOR'S SIGNATURE AND NO FUNDS WERE PROVIDED FOR THE JOB. PRIOR LEGISLATIVE ATTEMPTS IN CALIFORNIA, CONNECTICUT, ILLINOIS, MAINE, MASSACHUSETTS, NEW JERSEY, NEW YORK, PENNSYLVANIA, RHODE ISLAND AND UTAH HAVE ALL FAILED, MAINLY BECAUSE THESE STATES FELT, AS I DO, THAT GOVERNMENTAL AGENCIES AT THE STATE LEVEL ARE NOW, AND ALWAYS HAVE BEEN, COMPETENT TO TAKE CARE OF COMPLAINTS DIRECTED AT THEIR AGENCIES.

I ALSO WANT TO POINT OUT THAT IN SWEDEN THE OMBUDSMAN'S DUTIES ARE CONFINED TO ADMINISTRATIVE AGENCIES AND THAT THE MINISTERS OF GOVERNMENT, ANALAGOUS TO OUR ELECTED OFFICIALS, ARE IMMUNE FROM INTERFERENCE OF THIS OFFICIAL.

LET ME CALL ATTENTION TO THE FACT THAT THERE ARE MANY PROTECTIVE FACTORS IN AMERICAN JURISPRUDENCE WHICH ARE ABSENT IN SCANDINAVIAN COUNTRIES, THUS AFFORDING FEWER PLACES TO LODGE COMPLAINTS. FOR EXAMPLE THE GRAND JURY PROCEDURE IS ABSENT IN SCANDINAVIA. SURELY THERE IS NO ADVANTAGE AND CONSIDERABLE DISADVANTAGE TO BE EXPECTED FROM INTRUSION OF THE OMBUDSMAN INTO THIS FINELY ADJUSTED APPARATUS OF PROTECTION. COMPLETELY FOREIGN TO SCANDINAVIAN TRADITION IS THE INDEPENDENT PROSECUTOR, SUCH AS THE DISTRICT ATTORNEY AND THE ATTORNEY GENERAL. IF THIS LAW SHOULD PASS IT MAY PROVE IMPOSSIBLE TO MAINTAIN THE SECRECY NECESSARY TO EFFECTIVE LAW ENFORCEMENT IF THE FILES AND INVESTIGATIVE ACTIVITIES OF STATE LAW ENFORCEMENT AGENCIES, INCLUDING THE OFFICE OF THE ATTORNEY GENERAL, LOSE THEIR CONFIDENTIAL CHARACTER.

NEVADA IN ITS ADMINISTRATIVE PROCEDURE ACT HAS MET MANY OF THE COMPLAINTS DIRECTED AGAINST ADMINISTRATIVE AGENCIES, TO-WIT, THE LACK OF DUE NOTICE AND FAIR HEARINGS. NO OFFICE IN STATE GOVERNMENT GETS MORE COMPLAINTS FROM THE CITIZENRY OF OUR STATE THAN DOES THE ATTORNEY GENERAL, AND EVERY ONE OF THESE COMPLAINTS ARE ANSWERED AND ADVICE GIVEN AS TO WHERE RELIEF MAY BE SOUGHT. IF ANOTHER STATE AGENCY IS INVOLVED A COPY OF THE COMPLAINING LETTER IS FORWARDED TO IT FOR APPROPRIATE ANSWER AND ACTION. I AM SURE THIS IS TRUE OF ALL STATE AGENCIES, BOARDS AND COMMISSIONS.

THE INDEPENDENCE OF REGULATORY AGENCIES AND ADMINISTRATIVE AGENCIES OF STATE GOVERNMENT FROM INTERFERENCE BY A SUPER SNOOPER SHOULD BE PRESERVED IF UNINTERRUPTED CONTINUITY OF GOVERNMENT IS TO BE DESIRED.

THERE ARE NUMEROUS SPECIFIC PROVISIONS IN A. B. 1 THAT SHOULD RECEIVE THE CAREFUL ATTENTION OF THIS COMMITTEE BEFORE THE BILL IS RECOMMENDED FOR PASSAGE.

TO BEGIN WITH SECTION 2, SUB-PARAGRAPH 2 DOES NOT EXEMPT ELECTED STATE OFFICIALS. UNDER SEC. 16 OF THE ACT THE OMBUDSMAN IS GOING TO DETERMINE WHETHER ACTS OF ELECTED OFFICIALS ARE IN COMPLIANCE WITH WHAT HE DEEMS TO BE THE LAW AND TO JUDGE OF AN ELECTED OFFICIAL'S PERFORMANCE OF DUTY, ALTHOUGH AN ELECTED OFFICIAL IS RESPONSIBLE ONLY TO THOSE WHO PLACED HIM IN OFFICE.

SEC. 17 GIVES HIM THE RIGHT TO ENTER ANY OFFICE AND MAKE INSPECTIONS AND DESPITE THE OPEN HEARING LAW TO HOLD PRIVATE HEARINGS FROM WHICH THE PRESS WOULD BE BARRED.

SEC. 18 WOULD COMPEL ANY ELECTED OFFICER TO PRODUCE DOCUMENTS, PAPERS OR OBJECTS WITHIN HIS CONTROL WHICH THE OMBUDSMAN REASONABLY BELIEVES TO RELATE TO A MATTER UNDER INVESTIGATION. LET ME POINT OUT HERE THAT STATE AGENCIES SUCH AS GAMING, THE HEALTH DEPARTMENT, THE ATTORNEY GENERAL, AND OTHERS HAVE CLASSIFIED INFORMATION WHICH SHOULD NOT BE WITHIN THE PURVIEW OF SUCH AN OFFICIAL.

BUT EVEN MORE DANGEROUS THAN THE OTHER PROVISIONS IS SEC. 25 WHICH PROVIDES THAT NO PROCEEDING OR DECISION OF THE OMBUDSMAN MAY BE REVIEWED IN ANY COURT OF THIS STATE UNLESS SUCH PROCEEDING OR DECISION IS NOT AUTHORIZED BY THIS CHAPTER. IN VIEW OF THE FACT THAT NEARLY ALL THE PROCEEDINGS ARE AUTHORIZED BY THE ACT, ANY DECISION OF THE OMBUDSMAN IS PRECLUDED FROM COURT REVIEW. I STRONGLY DOUBT WHETHER SUCH UNLIMITED POWER IS SANCTIONED EITHER BY THE CONSTITUTION OF THE UNITED STATES OR THE CONSTITUTION OF NEVADA. TO PLACE IN THE HANDS OF ANY SINGLE PERSON SUCH ABSOLUTE POWER IS NOT ONLY DANGEROUS, IT IS COMPLETELY UNWORKABLE.

SEC. 6 OF THE ACT CLEARLY CONTRAVENES SECTION 1 OF ARTICLE 3 OF OUR STATE CONSTITUTION WHICH HOLDS THAT NO PERSONS CHARGED WITH THE EXERCISE OF POWERS PROPERLY BELONGING TO

THE EXECUTIVE, JUDICIAL OR LEGISLATIVE DEPARTMENT OF GOVERNMENT SHALL EXERCISE ANY FUNCTIONS APPERTAINING TO EITHER OF THE OTHERS, EXCEPT AS IN THE CONSTITUTION EXPRESSLY DIRECTED. THIS IS THE FAMOUS SEPARATION OF POWERS DOCTRINE. HERE THE OMBUDSMAN IS A CREATURE OF THE LEGISLATURE -- APPOINTED BY THEM -- SUBJECT TO THEIR DIRECTION YET DIRECTED TO INTERFERE IN THE EXECUTIVE ADMINISTRATION OF STATE GOVERNMENT -- AND TO EXERCISE DOMINION OVER THEM.

NOW LET'S GET DOWN TO THE COST OF WHAT I CALL A "POLICE STATE" AGENCY. TO BEGIN WITH, HIS SALARY SHALL BE THAT OF A SUPREME COURT JUSTICE -- IN EXCESS OF THAT DRAWN BY ANY BUT MEMBERS OF OUR HIGHEST COURT AND THE GOVERNOR. WE BEGIN THEREFORE WITH \$22,000. THEN WE HAVE A CHIEF DEPUTY AT SHALL WE SAY \$18,000 AT LEAST. THE NUMBER OF OTHER OFFICERS AND EMPLOYEES CANNOT BE DETERMINED BY THE STATUTE BECAUSE THE OMSBUDSMAN CAN APPOINT ~~UNDER~~ UNDER SECTION 9 SUCH OTHER OFFICERS AND EMPLOYEES AS ARE NECESSARY TO CARRY OUT THE PROVISIONS OF THE ACT. THAT THIS STAFF WILL BE OF CONSIDERABLE STRENGTH IS INDICATED BY THE FACT THAT BUILDINGS AND GROUNDS IS ORDERED TO PROVIDE SUITABLE QUARTERS IN CARSON CITY WITH AN ADDITIONAL OFFICE IN CLARK COUNTY, THUS PRESUPPOSING A STAFF IN THAT CITY. THIS CANNOT HELP BUT BE A QUARTER OF A MILLION DOLLAR AGENCY.

THERE IS ABSOLUTELY NO REASONABLE BASIS FOR AN AGENCY WHICH HAS BEEN TURNED DOWN IN EVERY STATE, AND WHICH, IN MY OPINION, CAN SERVE NO USEFUL PURPOSE AT THE PRESENT TIME.

LAW ENFORCEMENT AND THE PRESERVATION OF PUBLIC SAFETY IS THE MOST IMPORTANT FUNCTION OF STATE GOVERNMENT AND MY RESPONSIBILITY TO THE PEOPLE WHO ELECTED ME COMPELS ME TO EXPRESS MY VIEWS WHERE MEASURES PROPOSED DO NOT CORRESPOND TO ANY EXISTING NEED OR DEFICIENCY AND WHICH MAY HAMPER THE EFFECTIVENESS OF LAW ENFORCEMENT.

CLASS OF SERVICE

This is a fast message unless its deferred character is indicated by the proper symbol.

WESTERN UNION

TELEGRAM

W. P. MARSHALL
CHAIRMAN OF THE BOARD

R. W. MCFALL
PRESIDENT

SYMBOLS

DL=Day Letter
NL=Night Letter
LT=International Letter Telegram

The filing time shown in the date line on domestic telegrams is LOCAL TIME at point of origin. Time of receipt is at point of destination

IPRB055 CTA099

C WNA033 FG COLLECT=FAX WN CHICAGO ILL 30 1133P CST=

HARVEY DICKERSON, ATTORNEY GENERAL=

NEVADA SUPREME COURT BLDG CARSON CITY NEV:

HAWAII HAS HAD AN OMBUDSMAN SINCE 1967. THE LAW PASSED WITHOUT THE GOVERNORS SIGNATURE AND NO FUNDS WERE PROVIDED. A BILL FOR AN OMBUDSMAN WAS INTRODUCED IN THE PRESENT SESSION OF THE FLORIDA LEGISLATURE. PRIOR LEGISLATIVE ATTEMPTS INCLUDE: CALIFORNIA CONNECTICUT, ILLINOIS, MAINE, MASSACHUSSETTS, NEW JERSEY, NEW YORK, PENNSYLVANIA, RHODE ISLAND AND UTAH=

CONSTANCE ROGIER COUNCIL OF STATE GOVERNMENTS=

CLASS OF SERVICE

This is a fast message unless its deferred character is indicated by the proper symbol.

WESTERN UNION

TELEGRAM

W. P. MARSHALL
CHAIRMAN OF THE BOARD

R. W. MCFALL
PRESIDENT

SYMBOLS

DL=Day Letter

NL=Night Letter

LT=International Letter Telegram

The filing time shown in the date line on domestic telegrams is LOCAL TIME at point of origin. Time of receipt is LOR (22) point of destination

=PRB009 SYA165

SY MNA095 IG COLLECT=MINEOLA NY 5 1118

HARVEY DICKERSON=

ATTY GENERAL CARSON CITY, NEV=

I WAS CHAIRMAN OF COMMITTEE SET UP TO STUDY THE
FEASIBILITY OF CREATING AN OMBUDSMAN IN NASSAU COUNTY
SENT TO SWEDEN NORWAY DENMARK AND ENGLAND AND CONDUCTED
RECORDED INTERVIEWS WITH THEIR OMBUDSMEN PUBLIC OFFICIALS
AND LAYMEN MADE RECOMMENDATIONS TO COUNTY IN A REPORT
WHICH FOLLOWS UNDER SEPARATE COVER THE PLAN TO CREATE AN
OMBU DSMAN WAS VOTED DOWN BY THE CITIZENS OF NASSAU COUNTY
IN A REFERENDUM HELD IN NOVEMBER 1967 AM AVAILABLE FOR
ANY FURTHER INFORMATION YOU DESIRE AND WILL COOPERATE

IN EVERY WAY=

WM CAHN D A NASSAU COUNTY=

RECEIVED

FEB 5 - 1969

DEPT. OF ATTORNEY GENERAL