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MINUTES OF MEETING - ASSEMBLY COMMITTEE ON JUDICIARY, 55th Session
January 27, 1969

Meeting was called to order by Chairman Torvinen at 2:40 P.M.

Present: Torvinen, Kean, Swackhamer, Bryan, Prince, Reid, Schouweiler,
Fry (Lowman for a few minutes)

AB 19: Authorizes recordation of notice of real property action in
Federal court.

Torvinen: This was the bill with court introduction. I received one
comment through a letter from Bruce Begley. He said that it should be
amended to read "U.S. District Court for district of Nevada".

Mr. Reid: I think that is a good suggestion. The point is well taken.
The way it now reads is "any U.S. Court" Period.

Mr. Reid: I move to amend and Do Pass. The amendment to be in Section 2
and in effect add "U.S. District Court for the District of Nevada".

Mr. Kean seconded
Motion carried unanimously

AB 21: Requires resident agents to file notices of resignation with
the Secretary of State.

Mr. Torvinen: This is a bill we took up with Russ McDonald. He has
prepared an amendment such as was suggested in our comments. It reads:
"A resignation shall not be effective until filed with the Secretary
of State".

Mr. Kean moved Do Pass
Mr. Reid seconded

Mr. Kean: I have a question on Paragraph 1. . .

Mr. Torvinen: A prior resident agent is not relieved of responsibility
until his resignation is recorded with the Secretary of State. They
have to file on July 1st of each year.

Mr. Kean: Would this take precedence over that? Could it possibly
happen?

Mr. Reid: No, I don't see how it could. There is still a method of
processing. Resident agent is for a specific person.

Mr. Bryan: Are you speaking of the possibility of a new agent being
appointed about June?

Mr. Reid: No, he means what would happen if the man never files and
I said there was provision for effective service, so this would not
even come into effect.

Mr. Kean: Suppose he goes to South America and never comes back and doesn't file and the corporation appoints a new one. Does this preclude from appointing a new one?

Mr. Reid: No, and we can go to the books and find who he is.

Mr. Bryan: Some resign in the corporation minutes but never publicly. We are making him resign publicly.

A couple of fellows in Las Vegas made the suggestion to make it mandatory to file with the Secretary of State. Even when you are trying to serve a corporation, it is sometimes a lot of expense. Could we amend this provision to also require that the resignation be filed with each county clerk?

Mr. Torvinen: My feeling is that it would be rather difficult for the county clerks. I would hesitate to put that in here without discussing it very carefully with the county clerks. They don't have the document to begin with. My first thought is that this might be subject to separate legislation.

Mr. Kean: I have five corporations and I never have filed with the counties.

The motion to Do Pass AB 21 carried unanimously

AB 22: Confirms penalties for unlawful conduct in care of mentally ill to related crimes and penalties.

Mr. Torvinen: Not having heard anything yet from Dr. McAllister, we will put this over for awhile.

AB 28: Provides for service of notice of proceedings for termination of parental rights.

Mr. Bryan: I have looked at this quite carefully and we are in pretty good shape on it so far as eliminating the summons.

Mr. Torvinen: The purpose of this bill is to conform the words "summons and complaint" to "notice and petition", wherein we adopt the Nevada rules of civil procedure. I have gone over this, also.

Mr. Bryan moved Do Pass AB 28

Mr. Fry seconded

Motion carried unanimously

AB 37: Enables State Board of Pharmacy to adopt more extensive regulations relating to sales of dangerous drugs.

Mr. Torvinen: Mr. Lowman wants to hold this and he indicates that we will have a number of other bills coming in dealing with dangerous drugs

and some of them may be in conformance with the final report of the Committee on Drug Abuse. It is now in the final draft and we will hold and consider a number of these bills at the same time.

AB 46: Deletes certification requirement for complaint in civil action.

Mr. Torvinen: This bill was introduced by Mr. McKissick. The law now provides that in civil cases certified copies be delivered and generally in our rules concerning service of complaints we don't require certified copies. He is asking that the word "certified" be deleted.

Mr. Kean: Last session we passed a statute that said that thermofax or zerox copies would have the same status as original copies. I agree that it is in order to take this out, the word "certified".

Mr. Reid: Do you know when the word "certified" was put in there? I read it through and it doesn't make sense that it was ever put in there.

Mr. Torvinen: This law was changed some in 1960 and before that it went back to 1911. At one time our statutes required more verification than they require now.

Mr. Reid moved Do Pass AB 46

Mr. Kean seconded

Motion carried unanimously

AB 53: Bases allowance of attorney's fees to plaintiff in civil action upon amount recovered.

Mr. Torvinen: There has been considerable comment about AB 53. Various parties have requested to be heard on it. In fairness, we should give everyone a right to be heard. Is there any objection to setting a hearing on it for February 4th? That is a week from tomorrow. Hearing no objection this will be set definitely for Feb. 4th at the PM recess.

AB 55: Clarifies that prosecutions in certain courts are by complaint.

Mr. Torvinen: This is a bill I introduced. The present law makes no reference to how these offenses should be prosecuted. It makes reference to complaints in a dual capacity. These have been prosecuted in municipal courts but it doesn't say so. I thought we should correct this. It is merely for clarification.

Mr. Bryan moved a Do Pass for AB 55

Mr. Reid seconded

Motion carried unanimously

AB 56: Conforms Nevada Law to Uniform Business Records as Evidence Act.

Mr. Torvinen: This is my bill. I had occasion to research the Business Records Law which, according to our statute, was supposed to be uniform law, but it didn't have too much in common with the Uniform Business Law on Evidence. This bill merely conforms present statutes to the

Uniform Business Law as currently established by the Uniform Business Law Commission. I would like to be able to cite uniform laws with some firmness, or force. The uniform wording is clearer than in our old statute which can be a little vague.

Mr. Bryan: How many states have this Uniform Business Law?

Mr. Torvinen: Almost every state has a law concerning business records but I don't know how nearly they conform to this.

Mr. Reid: We would be making a policy change. I am not sure I would be in favor of the change. The old statute was based on letting business itself set its own way of arriving at business records. This new bill would allow discretion of the courts and I think they have too much discretion as it is.

Mr. Torvinen: The point is well taken. Custodian, or other qualified witness must verify record.

Mr. Reid: I think this, along with the Uniform Evidence Act, leaves too much discretion to the court. We wouldn't even need lawyers. It just lets the judge do whatever he wants. There has been much criticism of the courts and what they are doing and this would lean in that direction.

Mr. Bryan: Aren't there two general statutory approaches to this matter?

Mr. Reid: What is wrong with the present law?

Mr. Torvinen: It doesn't require of everybody that this be kept in the regular course of any business.

Mr. Fry: You could have a new person come in that has no idea of what is going on.

Mr. Torvinen: We are speaking of an affidavit that the record was kept in the regular course of business. Our justice court in Reno lets them in all the time.

Mr. Kean: Sometimes my company will ship directly to the customer and also sometimes my people don't invoice the customer. We once had a year and a half go by before we invoiced a customer. Would that be called in the regular course of business?

Mr. Torvinen: Yes. The fact that it was late doesn't affect the regular course of business.

Mr. Kean: This says "near the time of the act". This could have caused me a lot of trouble.

Mr. Torvinen: You would have your shipper's copy which would be a document in the regular course of business.

Mr. Reid: My complaint is in section 2 c of the new act. With this wording you could get an affidavit admitted. I suggest we hold up on this and I will study it.

Mr. Bryan: There is a work called "Uniform Laws Annotated" that could help us in this situation.

Mr. Kean: Will you look into this business of a late invoice.

Mr. Torvinen: The point of evidence that you want to bring up is that the carload was actually shipped. Your Bill of Lading should establish this. In your case, the time of the invoice should not be critical in a business suit.

We have now taken care of all of McDonald's bills. The next three I introduced. We have Bryan's and Reid's bill on the sale of hallucinatory drugs, which we probably should hold, as per our previous comments.

Mr. Reid: When will we get the committee's report on drug abuse?

Mr. Torvinen: Sometime next week I would say.

AB 57: Increases penalty for issuance of wage check without sufficient funds.

Mr. Torvinen: This is a bill on bad checks. Some attorneys have taken the position that when you pay a man for work previously done the wages for that work are classified as existing debt. The bad check law does not apply to existing debt. It would be better for a man not to get paid than to get a bad check. If a pay check bounces, the man who got paid is the last endorser and has to pay back the money, as well as not getting his pay. I wanted to beef up the law to discourage these people from paying wages with bad checks.

Mr. Prince: I think that is really good. I have cashed pay checks and had this happen.

Mr. Swackhamer: I have one right now for \$230. This bill will not do anything because of line 28, "has knowledge". In many instances you don't even know the guy who was supposed to have the money. You will nail the wrong guy such as the payroll clerk. We have got to figure a way to get directly to the responsible person and nail him.

Mr. Torvinen: A number of these are one-horse operations without payroll clerks. Most of the cases I have seen are small, individual operations.

Mr. Bryan: Could we use the language "any person who directs the issue" then we could still leave in language to protect the innocent party.

Mr. Reid: This is why it is so important to study these bills.

Mr. Torvinen: This bill was not on the agenda for today. I am just explaining why this bill was drafted and you can be thinking about it.

Mr. Swackhamer: This is not the first time this matter has been presented. We have always found that no matter what was enacted, the responsible one always weasels out. There are so many ways. We once had a bill that passed both houses that before you could hire a man you should have so much financial resources with which to pay him. No

one paid any attention to it and it was later repealed.

Mr. Kean: Could we do this by inserting a sentence in paragraph 1 "including labor claims"? Labor debts should not be a prior existing debt for the purposes of this section.

Mr. Torvinen: That was about the way my request went in to the bill drafters office but this is the way it came back.

Mr. Kean: Why don't you just do it the way you wanted it originally?

Mr. Bryan: Could you beef up the wage claim section?

Mr. Torvinen: My approach is to keep these employers from issuing these bad checks so that the poor people don't lose their wages and also have to pay back the one who cashed the check.

Mr. Swackhamer: Most cases have to have intent to defraud before they are too mad at you. But in wage claims we ought to make damn sure that the money is in the bank before the employer issues the pay check.

Mr. Bryan: To make sure you don't get the innocent party, such as the payroll clerk, also.

Mr. Torvinen: Even under this, he would have to have knowledge that there was no money in the bank. I left it up to the bill drafter whether the law should be amended to 205 or whether it should be made a part of the Labor Act.

Mr. Kean: I think we should change it to the way you wanted it.

Mr. Torvinen: I can see a problem, if wages are to be an exception to the existing debt. I think to have the words "wages are not a pre-existing debt" inserted might not be good bill drafting.

Mr. Reid: It would accomplish what you set out to do.

AB 58: Requires registration of corporation doing business under assumed fictitious name.

Mr. Torvinen: This is also my bill. It is not on the agenda for today. The need for it apparently came about through an oversight or a different interpretation. I talked to Prince Hawkins who is the Bar Citizen's Representative about this. The statute provided that a corporation was exempt from filing a fictitious name with the county clerk. What they wanted to clarify was that a corporation name was not a fictitious name, but it came out there was no way you could make them file and so you could not find out who was behind "Joe's Pizza Parlor". Corporations do not have to file and if you want to do business with them you cannot find who is really behind the corporation.

Mr. Bryan: This is really a problem.

Mr. Torvinen: I haven't had any comments from anyone about this bill.

Mr. Reid: I can't see why anyone would object. To prevent a person from being sued would be the only possible reason.

Mr. Torvinen: The First National Bank will not open an account for you until they know who the real owner is.

Mr. Kean: We never have opened up a charge account in a fictitious name even. This brings up another point: Line 5 says must be filed by the county clerk in each county in which the business is carried on. We do business in every county in the state. I am registered with the Secretary of State and in Washoe County but our trucks do business in every county. Do they want me to file in every county? My case can serve as an illustration.

Mr. Torvinen: There are several ways of looking at "doing business".

Mr. Bryan: It is a one-shot deal once you have filed a fictitious name if the individual was filed. If you are a corporation you don't have to.

Mr. Reid: It can be very difficult to run down the responsible party if damage is done to you by a corporation truck for instance and you can't find who owns the corporation.

Mr. Kean: This would place an impossible burden on people who do business in all the counties.

Mr. Bryan: The corporation is technically required to file the articles with the counties anyway.

Mr. Reid: When I was City Attorney in Henderson they were always arresting people for not having a city license.

Mr. Bryan: Whether a city can impose a separate tax is another question.

Mr. Kean: The result would be that most companies would cease doing business in some of the counties.

Mr. Swackhamer: How much does it cost to register?

Mr. Torvinen: Two dollars. In several smaller cities in the state it is common to arrest people for not having a license. If they actually enter into sales contracts in a city I guess that is "doing business".

Mr. Bryan: Would the statute be helped by requiring one filing in the home county?

Mr. Reid: You should be able to go to the county seat and find out who owns that truck that has done damage to you.

Mr. Kean: Then every passenger car should have six-inch letters on the side naming the owner.

Mr. Fry: I don't see why a corporation should be exempt from doing what individuals and partnerships have to do.

Mr. Torvinen: We have lived with this for thirty or forty years and

it seems to be workable. I don't see why we couldn't just add corporations to it. I have heard no comments concerning the things you talked about, Tom. 23

Mr. Fry: Perhaps in deference to Tom we should hold the bill. There may be people in the state interested in it.

Mr. Reid: From my experience, if a client wants you to sue a hotel, you don't know who to sue. The statutory time is about to expire and so you sue everybody and still may not get the right one.

AB 59: Revises procedure for filing affidavits alleging judicial bias or prejudice.

Mr. Torvinen: This is also my bill. It is a lawyer's bill. In Washoe we now have multiple settings. For each department they set two or three cases, sometimes on top of each other for every Monday or Tuesday. You may have a case set before one judge and when you come to trial you may find yourself under a different judge, one you feel is prejudiced. Lots of attorneys qualify a judge if he is not the one he expected.

Mr. Bryan: You don't know who your judge is going to be. You may find the judge has something against your client.

I am in agreement with what you are trying to do but I wonder if this bill does it.

Mr. Reid: Why don't we just wipe out the ten days? The same thing happens in Clark County. We are assigned to a master calendar and on the morning of trial we are assigned to a department.

Mr. Bryan: It is completely unworkable. Some judges will tell you your case will not go to trial. The problem is you are never warned in advance. You don't know until the case is called. When the judge announces is the first time you know about it.

Mr. Reid: The purpose is to speed the trial. Some attorneys will try to qualify the judge on a few occasions.

Mr. Torvinen: We set them too deep and on Monday they are reassigned. I tell you what I will do. I am appointing Mr. Bryan, Mr. Fry and Mr. Reid as a sub-committee to work up something and bring it back to us.

Mr. Swackhamer: Suppose you have a multiple place and you are not quite ready with your case. Couldn't you disqualify for that reason?

Mr. Reid: Yes, but you have to be mighty careful. All judges think they are qualified whether they are or not. You had better be prepared with some good explanation the next time you go before that judge.

Mr. Swackhamer: Justice in Nevada has always been too slow, we have been told. Now maybe this is getting too fast.

Mr. Torvinen: I had a plaintiff in mind when I had this bill drafted.

Mr. Fry: If the complaint were to go before the main judge, he could

re-assign it on the same day.

Mr. Reid: To show you how judges feel about being disqualified: One judge said to one attorney, "Fine. I won't ever again sit on a case of yours."

Mr. Swackhamer: If we have that kind of prima donnas on the bench maybe we should be hearing some laws for them.

Mr. Fry: This would be abused by some attorneys but not many.

Mr. Bryan: This applies only in a civil case.

Mr. Swackhamer: I have heard as much about civil cases being slow as about any others. It is a common complaint in Nevada. If you had a claim for money you had better just write it off, because by the time it comes up in court there won't be any money.

AB 70: Prohibits exhibition and sale of obscene material to minors.

Mr. Kean: What was the decision of the Supreme Court on the Ginsberger case on obscene literature?

Mr. Torvinen: I am not an expert on this. Maybe we should have counsel or someone come in and explain.

Mr. Fry: This is subject to constitutional question. The New York case is not the same as this. "Exhibits for sale".

Mr. Reid: Maybe Mr. Lowman has someone who can talk to the committee on this.

Mr. Fry: It came out of the district attorneys.

Meeting was adjourned at 4:00 P.M.