MINUTES OF HEARING - ASSEMBLY COMMITTEE ON JUDICIARY, 55th Session
February 26, 1969

Hearing was called to order at 2:55 by Chairman Torvinen.

PRESENT: Torvinen, Bryan, Fry, Prince, Reid, Schouweiler, Lowman

EXCUSED: Swackhamer, Kean (they came in later.)

AB 198: Repeals law relating to prospecting on private lands.

TOM COOKE: Attorney from Cooke & Roberts Law Firm of Reno, Nevada.

I would like to tell you the reason I asked to have this bill prepared and the reason I would like to explain the background of this bill.

I had a lawsuit last year which involved NRS Chapter 516. This chapter explains the public use of land. It provides procedures for all the things that are done with land. In the case of mining, if a man's property is condemned he is only entitled to damages of surface rights. 516.60 declares this doesn't include minerals. On the occasion of my law suit, this was declared unconstitutional by the Supreme Court. The rest of the act is still in effect. This bill will do away with all that we had left except 516.10, chapter 37.

The main thrust of this new statute is page 1, lines 28 and 29, "mining, smelting and related activities. Mining, smelting and related activities as follows:" This repeats what is in 516.10. It is already declared to be public use in chapter 37, so that was not put in.

I have discussed this legislation with Howard Gray, and his suggestion was that instead of limiting to these certain named minerals, we should include non-metallics which is also an important industry in Nevada. Mining and related activities are the primary interest of this state and I am perfectly agreeable to his idea.

Actually, Chapter 37 of NRS has always given mining companies the right of eminent domain for all practical purposes. Roads have been upheld, etc.

This 516.35 was enacted in 1875 and there was supplementary legislation in 1907, to enable them to have roads and to carry out their various mining activities. The 1907 legislation was enacted because we had a statute purporting to disclaim any interest by the State of Nevada to any mining rights.

Mineral rights were reserved to the state, but the state disclaimed any interest in them in behalf of the individuals. All patents granted by the state after that excluded mineral rights. This was in favor of the United States. Under this 1907 implementation, there were lots of minerals and mineral rights in private hands that could not be developed or exploited. The only method they could see was to give them the right to go on these private lands to prospect and stake claims, if they found any, and then condemn the property. A private person who owned the land was not entitled to anything except surface rights. This law went into effect and in 1911 the Legislature repealed the 1875 statute.

There were no cases from the 1907 Act which went to the Supreme Court until I took mine last year, in which the Court declared that since the owner did not get compensation, the suit was no good. I lost my case, and they could not take the minerals from the land. I don't see any public service that is served by leaving this statute on the books. You can locate a claim but then you can't do anything about it.

MR. REID: Let me review this to see if I have it straight. Someone got a permit from the United States, thereafter located minerals and tried to get this property from the owner and the Supreme Court would not let him do it. Is that right? Well, that makes sense to me.

MR. COOKE: I think this is good legislation. A 1950 decision declared that the United States did not own the mineral rights to these lands, and Nevada could not give them back to them. Under 321.331 of NRS the Nevada Legislature recognized this problem and declared that all who own these patents could forget them. If anyone wanted to find out for sure, he could declare action.

What we have left right now is an embryo skeleton with no substance or skin.

MR. TORVINEN: This covers just about everything there is.

MR. REID: But it doesn't say these things are of paramount interest.

MR. TORVINEN: If we want to make it more encompassing, we could say "Ferrous or non-ferrous" and that would pretty well cover it.

MR. COOKE: My main interest is that we have an entirely useless law here and it could cause endless litigation. Someone could get hurt.

MR. FRY: Are "ferrous and non-ferrous" the proper terms to use? I believe it would be better to say "metallic and non-metallic."

MR. REID: Someone has a patent. He comes in and stakes a claim. Then all he has to pay for are surface rights?

MR. COOKE: Yes.

MR. REID: I had a case where we were fighting a gravel company. They came in and just wiped a place out good on the assumption that they had a right to these minerals by paying only for the surface rights. If it's out in the desert and was bought for a future investment return, the gravel company could say that when they went in land had no surface value and pay nothing.

MR. COOKE: There is no place for our present statute to operate and you would be doing the public a service if you would get rid of the rest of it and put in that one section where mining is declared a public use. I think this can be worded strongly enough to cover everything.

MR. TORVINEN: It seems to me that this would be redundant with (b).

MR. COOKE: I don't think so. It could be of great importance to some of the people in the outlying areas. That is what they want and it could not do any harm. I don't think it is redundant, but politically it might be a good idea. I would like to see this old statute off the books.

AB 176: Provides for detaining in jail certain juveniles charged with committing offenses.

MR. TORVINEN: We have Frank Young here to talk on this bill, which is his. It provides that certain juveniles have to stay in the jug.

MR. YOUNG: Our Juvenile detention statutes call for facilities that emphasize rehabilitation and minimize detention and security.

MR. REID: Do you think that you really mean that or is it because of the way something is constructed?

MR. YOUNG: The statute says the facility has to be as much like a home as possible. We have had situations in which juveniles have escaped and when they were found they had to be put right back there because the law says they have to. I contend that after his escape he should be put where he can be securely held. The bill that you see is one that I asked to have drawn to accomplish this effect.

Line 10 talks about the juvenile being previously convicted. We do not convict a juvenile so that needs to be changed. Maybe it should be made permissive if the jail is full. We must provide our law officers with more security for these juveniles.

MR. REID: I can sympathize with your position, but have you ever been in the city or county jails? There is a difference like day and night, between the two of them and the same difference between them and the Juvenile Detention Facility. It would be a shame to put them in jail. If they can be certified as an adult, we can put them in jail. If not, we should not put them there.

The bill requires a report of this within 24 hours and then the judge has the power to send him back to the juvenile facility if he wants to.

MR. YOUNG: Some juveniles should not be put in and mixed with other juveniles, such as a 17-year old flying in drugs from Mexico.

MR. LOWMAN: Frank, do you have any statistics indicating how many escapes that we have from the juvenile homes and how many of these we might save with this legislation?

MR. YOUNG: No, I don't. We had four escapes awhile back. I still maintain the principle is the same.

MR. LOWMAN: Would it be possible to get this information for us if we do not act on the bill at once?

MR. YOUNG: Yes.

MR. FRY: Is this situation peculiar to Clark County?

MR. REID: We have it there but I don't know whether they have this trouble in other places.

MR. FRY: I have not been in any of the Clark County jails, but I have been in some other places and they are absolutely horrible. In some of the small communities where a judge is not readily available, you might not be talking about 24 hours. This bothers me considerably because these police jails don't have the right facilities.

MR. TORVINEN: Aren't they held for two or three weeks in those jails anyway?

MR. FRY: In some places they do not hold because they do not have the facilities.

MR. YOUNG: I really don't know why you are so concerned about putting these people in jail. The shock might do them some good. They do need a shock treatment of some kind.

MR. BRYAN: You emphasize the escape problem we have had. It may still be bad, but your bill goes beyond this. It could apply to a kid that took a stero out of a car and has never done anything like that before.

My experience would be that a simple amendment which would provide that the judge could issue an order that the boy could not be contained in the juvenile facility would do the job. I can think of a couple of guys that they were not able to contain in these facilities.

MR. YOUNG: I would not object to changing the bill, but I do not want to ask a police officer to get a court order at 2:00 A.M. in the morning. He should be able to put him some place right then.

I respect your judgment but I think we do have a problem here.

MR. REID: Your main concern is with juveniles escaping?

MR. YOUNG: Those who have committed felonies and those who escape.

MR. REID: What about allowing the judge to make the decision rather than the police officer?

MR. YOUNG: This would not allow the police to put him in security when he picks him up.

MR. BRYAN: Why not put him under the court activities officer?

MR. TORVINEN: Some of the questions being raised are not real. In small counties, these kids would go to jail anyway. In Washoe or Clark Counties a judge is always available within 24 hours.

MR. LOWMAN: What has that to do with this question?

MR. TORVINEN: The question of notifying the judge within 24 hours was raised previously.

MR. LOWMAN: I would like to know if Mr. Young would accept help from MR. Bryan to draw up a new bill that will do the job?

MR. FRY: Do we have this problem of escapes in Washoe County?

MR. TORVINEN: I think we do have but it doesn't get much publicity. We don't have much in the way of security facilities.

AB 144: Provides for treatment as adults of children over 16 years old on felony charge.

MR. REID: I move to kill AB 144.
Mr. Bryan: I second the motion.

VICKI NASH: Other bills this morning raised the adult age to 20-21. Now here is a bill that wants to lower it.

MR. LOWMAN: Income-taxwise you can keep him a child until he is 22.

We have a continuing lowering of the age on sophistication, whatever that term means and at the age of 18 a youngster is normally still in high school and when he breaks the law he is the worst kind of an example and yet he is treated the same as any other juvenile offender.

Sometime or other we have to find out that a juvenile by age, if he is a criminal, is a criminal no matter what that age is. I feel it is high time to move them down to 16. We are lowering the voting age because of the increased sophistication of our young people. Shouldn't we try them as adults at 16?

MR. BRYAN: In the courts there is the authority to certify the habitual offender as an adult and if this is done, then he is tried as an adult.

MR. REID: Now even a 19 year old kid can still be tried as a juvenile.

MR. TORVINEN: I agree with Mr. Reid. This comes within the realm of "hard cases" make bad law. Sometimes we legislate because we think a judge is not doing what he should do. Hard cases come back and cause some more bad law. In this field we should encourage courts to more readily certify hard cases as adults.

I have seen kids in trouble at 16 and 17 because of family emotional things.

MR. LOWMAN: How long have we had a juvenile court law?

MR. BRYAN: The very first juvenile court was in Chicago in 1879. More followed very rapidly.

MR. LOWMAN: Do you consider that our juvenile court system is working?

MR. REID: Right now we have some real problems in administration of juvenile justice, but I think the way to approach this is to concentrate on really establishing a good juvenile court. This is absolutely necessary because of the recent decisions of the Supreme Court.

Spring Mountain Youth Camp is an example of something working well. I have spent time at this facility and I believe it is working quite well.

MR. LOWMAN: It handles people, but does it help our crime problem? The first reason for a court is justice and this should help us solve our crime problems.

MR. FRY: The courts are not there necessarily to solve the crime problem. It is a smaller portion of the big thing there.

MR. LOWMAN: You attorneys don't seem to have much confidence in the police.

MR. REID: The police are only one method of fighting the crime problem. We can't let them do everything. They should do their jobs within their areas, and the courts likewise. We are trying to fight crime with laws passed a century ago.

MR. LOWMAN: That statement backs up what I am trying to do - get some new laws that will cope with the situation. I think we should study the administration of justice.

MR. REID: We are getting into some new areas.

MR. BRYAN: We have failed some way with the crime problem but I don't think the whole thing lies with the courts. We have not been very effective with our rehabilitation approach. We have case loads three or four times the national average. We can beef up the number of people working with these youngsters. That would help.

The court is for the purpose of adjudicating whether innocent or guilty. Then other facilities take it from there. They are put on probation or sent to Elko and so on. I feel that Spring Mountain has been somewhat successful.

MR. REID: An example: We ask a judge to do what is right. He feels the boy deserves probation so he puts him on probation. We have only a very few probation officers so they can't see each juvenile offender very often, maybe only once every six or seven months. It is our job to get enough supervision so that what the judge does is meaningful. It is a very complex problem.

MR. TORVINEN: I can't argue with the philosophy of rehabilitation, but I see Zel's point that recognition that punishment is inevitable will have a very telling effect on a juvenile. Right now they feel they have three or four chances before anything will happen to them. I agree with Mr. Lowman, but knowing how the jails are I would hate to bring in a 16-year old high school student and charge him as an adult. You will just get acquittals, have parents pay their fines, etc.

I am all for giving a meaningful punishment to these kids, but we put prosecuters in the position where they would just be acquitted.

MR. LOWMAN: You all know that I have many bills aimed at the crime problem. I get them from many different places. You are more familiar with the courts than I am. I did not expect to get all these bills passed. You will agree that it is a very complex problem, so the more considerations we have from every angle the better off we will be.

MR. REID: I again move to Indefinitely Postpone AB 144.
MR. FRY: I second the motion.
Motion passed, with Mr. Lowman voting No.

MR. TORVINEN: I just wanted to tell Zel that the Juvenile Court Act was passed in 1943.

MR. BRYAN: Zel, do you remember when we had the hearing on this? I was very much impressed by the requirement that we have down our way that makes the parents attend these courts with their children. When Daddy has to come in with him, Junior is going to hear about it. I would like to encourage some desirable features in the bill.

MR. REID: My notes reflect that the Bar Association favors this bill. In following up what Mr. Bryan said: I think Nevada would take a big step forward if we adopted something that would make it mandatory that parents come in.

MR. LOWMAN: Is that a feasible thing?

MR. REID: Not if the kid has five or six violations a year.

MR. BRYAN: Another question I have: By placing this within the existing justice court would we then make the offender subject to incarceration?

MR. REID: If it is for speeding or reckless driving, yes.

MR. SCHOUWEILER: One problem: This has been put back and forth from one court to another, three times in one decade. Obviously, there was some reason why the other system did not work, but just throwing the ball back and forth is not going to accomplish anything.

MR. BRYAN: Would it be helpful to get a judge to tell us what the problems were under the old system?

MR. TORVINEN: I started out prosecuting the kids, but in 1956 I went back to the other way. In 1960 I went back to prosecuting in municipal court. For two years, then, I went back to juvenile court.

VICKI NASH: Judge Matthews has been hauling the kids into his court. I went in with my son when he was dragged in and there were 27 other cases that morning. I was the only parent that showed. The five boys that were with my boy were all held all night and then released to my custody because I was the only parent there.

MR. SCHOUWEILER: Holding them in the city and county jails was held to be very undesirable. Now you are making it so they would have to be held there.

MR. REID: Chief argument in favor of this bill is that under our present system the juveniles are not given the points on their driving record. Another argument in favor of this is that the district attorneys want it, also the traffic people.

MR. LOWMAN: I still feel that if he is old enough to get a driver's license, he is old enough to take an adult's responsibility and to be tried as an adult.

MR. FRY: You are going to take some of your juvenile authorities and give them more time to work on other thing. There is some feeling, also, that the kids don't like a law that will let a fellow push narcotics and treat him as a juvenile, whereas Kid B gets arrested for reckless driving and loses his license for six months. Difference in treatment is the basis for disrespect for the law.

MR. BRYAN: One advantage now is that you would keep your records of the juvenile offender. If he gets in trouble again, the record is right there and this gives the court some flexibility. If you separate the two functions, the record will not be there all together. The court may not discover his previous record.

MR. PRINCE: If a kid gets licensed to drive a car the same as an adult, he should be tried the same on his offenses.

AB 174: Permits juvenile traffic offenders to be tried in justice's court or municipal court.

MR. TORVINEN: This sends the juvenile traffic offender back to the justice court. My personal opinion is that they belong in the traffic courts.

MR. KEAN: Is this in the proposed change of the courts?

MR. TORVINEN: It may have been talked about, but it did not come out in the hearing.

MR. SCHOUWEILER: The juvenile was given to another committee headed by Judge Zenoff. They were to come up with an answer. I think partial conclusions have been made already.

MR. BRYAN: They are studying and debating the idea of a family court.

I want them to talk about the procedure within the system.

MR. LOWMAN: I move Do Pass AB 174.
Mr. Prince: I second the motion.

MR. LOWMAN: If this passes, I will start working on possible amendments to make the parents appear with the kids.

MR. REID: If this bill passes, the judge can request they be sent to traffic court.

Motion to Do Pass AB 174 failed, with Prince, Lowman, and Reid voting Aye and Fry, Torvinen, Kean, Bryan, Swackhamer and Schouweiler voting No.

MR. TORVINEN: I did not notify people properly about this bill.

AB 344: Authorizes judgment of acquittal in criminal cases.

MR. TORVINEN: I have letters from district attorneys saying it is the worst piece of legislation they have ever seen. (Mr. Torvinen then read to the committee a part of a letter he had received on this).

MR. REID: I would like to hear more on this.

MR. BRYAN: I think we should have testimony on this. We passed practically every law of the Federal Criminal Code except this. I would like to know more about it.

MR. SCHOUWEILER: Mr. Hansen, of the Parole and Probation Department, has given me a group of bills pertaining to that department and wants committee introduction and referral if possible.

MR. KEAN: Have you gone over them? Are they dogs?

MR. SCHOUWEILER: I think they are mostly good. They may need a few amendments.

Mr. Schouweiler then read the numbers and summaries of the following proposed bills: BDR 14.621, BDR 14.81, BDR 14.82, BDR 16.80, BDR 16-623, BDR 16-622, BDR 16-488, BDR 16-624.

MR. REID: I move that these proposed bills be introduced by and referred back to our committee.

MR. FRY: I second the motion.

Motion passed unanimously.

MR. REID: Why don't we, right now, set a hearing date for this.

MR. TORVINEN: We will set it for Monday, March 10.

AB 198: Repeals law relating to prospecting on private lands.

MR. REID: I move Do Pass AB 198 as written, without the amendment.

MR. TORVINEN: It should say "metallic and non-metallic."

MR. FRY: I thought Mr. Cooke's suggestion of "mining and related activities" was pretty good.

MR. TORVINEN: 516.10 allows prospecting on private land. We are repealing 516 and we want to retain elsewhere the part the miners feel is necessary.

MR. REID: What would be wrong with just saying "mining is recognized as the paramount interest of the state."

MR. SWACKHAMER: They consider mining and milling different things. We had a case in our section where they had a devil of a time. They cut a road across some private land that belonged to some very cranky people.

MR. TORVINEN: They have a clear right, under this, to condemn the right to their road. The lawsuit was because of the question of the necessity to condemn. Had they lost their suit, they would not have lost their road. They could have condemned.

MR. REID: I withdraw my previous motion to Do Pass AB 198.

MR. TORVINEN: What Mr. Cooke wanted was to put in "mining and other related activities" and not name all the kinds of mining.

MR. REID: I move we amend on page 2 to "mining and other related activities are recognized as paramount interest in this state" and Do Pass AB 198.

MR. FRY: I second the motion.
Motion carried unanimously.

MR. KEAN: I think your amendment is good.

MR. PRINCE: Howard Gray suggested it to him.

MR. KEAN: It would be horrible if the State of Nevada were ever to lose those words.

MR. TORVINEN: We will have a hearing on 174 and 344. There is no hearing set for Friday afternoon and no one is taking flight to Southern Nevada, so we can get through a lot then. Tomorrow we have 20 narcotics bills to get through. We will skip Saturday.

We will schedule a hearing on the deficiency judgment bills for March 13t

Meeting was adjourned at 4:45 P.M.