

MINUTES OF MEETING - ASSEMBLY COMMITTEE ON JUDICIARY, 55th Session
February 3, 1969

1-46

Meeting was called to order by Chairman Torvinen at 2:05 P.M.

Present: Torvinen, Schouweiler, Swackhamer, Bryan, Prince, Lowman,
Kean, Reid, Fry

Absent: None

Hearing was held on AB 85 with a number of interested people present to be heard: Jack McAuliffe, Webb Brown, Mil Sharp, Ray Hellman, Lingenfelter.

AB 85: Grants certain powers to state board of architecture; requires proof of licensure in certain court actions.

Mr. Torvinen: We will call first on the proponents of this legislation to give us their comments.

Jack McAuliffe: I am an attorney in Reno and I represent the State Board of architecture.

The purpose of the first section of AB 85 is to eliminate the restriction to \$200 per year for a secretary for the board. This limit was imposed in 1947 and is now completely unrealistic. I have compiled the volume of material that was handled by the secretary last year. This will give you an idea of why we need this restriction removed. (Paper was passed around).

Ray Hellman is the secretary of the board and has been for a number of years. However, he doesn't care too much whether you pass this section or not. We are looking to the future and would like to have discretion in this field. I don't know how much time is going to be required of the secretary in the future. The board should be able to set the salary that will be commensurate with what is needed.

The second part of the bill is to permit the board to establish fees for the examinations and other duties which they perform. At present, some applicants are being charged too much and some too little. The new applicant, right out of school, is paying twice as much as the one who has been in practice for a number of years. We feel the applicant should be charged just what it costs to give him the test and the older ones should pay more because they can better afford it. We would like to have Leroy Bergstrom figure out a fee schedule. This second portion of the bill is the one which has generated the interest, I understand.

All the fees we are speaking of, the funds, come from the architects themselves.

The reason for this request is a recent decision by the Nevada Supreme Court which said that unless the licensing statute prohibits suing for a fee, you may sue. Common law said that this was unenforceable and we think this is the way it should be. Under the decision I could contract with you to build a house and it would be legal.

We are not trying to keep anyone from suing who has a right to sue, and I think if this committee decides to go ahead with this bill, we

should change this wording.

Mr. Kean: Is there an overlapping situation here with regard to the designers?)- 47

Mr. McAuliffe: Designers, per se, have limited areas in which they can operate. Mostly they work with general contractors and this is perfectly proper and legal.

There is one area of this bill in which the language, as written is too restrictive.

Mr. Kean: Some designers work directly for the client.

Mr. McAuliffe: My opinion is that this would be illegal.

Mr. Kean: Doesn't our law now provide for them to operate?

Mr. McAuliffe: Not in my opinion. There is no reference in the statute to a designer. Draftsmen are exempt. Six years ago, a bill along those lines was submitted but it was never passed. Oddly enough it was opposed by the designers themselves.

Mr. Torvinen: You suggest that subsection 5, page 2, should be amended to include exemptions. 23.330 states persons engaged, etc. (The list was read). Would these exemptions be adequate, do you think?

Mr. McAuliffe: These people should not be prevented from suing for a fee. Engineers are concerned about this language, as written, and I can understand their concern.

Mr. Bryan: Would you be able to submit a current schedule of fees for us to look at if we pass this?

Mr. McAuliffe: We probably could, but it would be much more practical and feasible to be able to change these as we need to.

Mr. Bryan: Is there any present provision with reference to an out-of-state architect who chooses to work with a local architect?

Mr. McAuliffe: I don't think this, as written, would interfere with that type of situation at all.

Mr. Bryan: Is an out-of-state architect required to associate if he doesn't want to?

Mr. McAuliffe: Only for professional services in Nevada for which he is not licensed. I don't think this bill will cause many problems in that area. In 1968 we had 118 requests for licensing by reciprocity. The statute doesn't require that they associate with a local man, but it does require that they get a license.

Mr. Torvinen: The architects don't feel that merely associating with a local architect is enough?

Mr. McAuliffe: What I said was that if an out-of-town architect

associates with a local architect, he can operate in Nevada legally. He cannot do it by himself without a license. He can't just work out of a San Francisco office.

Mr. Torvinen at this point read the requirements for out-of-town real estate brokers.

Mr. Lingenfelter: An out-of-state architect only has to pay his money and fill out an application and he can get his license. It is a reciprocal deal if he is licensed in California.

Mr. McAuliffe: Not all registered architects can come in and get their license that way. If his state has an examination comparable to ours then he can do that. We turned down one this year who had taken an examination so simple that even I could have passed it.

Mr. Swackhamer: How many states have requirements that are equal or superior to Nevada that you would give reciprocity to?

Mr. McAuliffe: Most architects have applied to the National Council to be certified. If an architect has met their requirements, we will give them reciprocity. There is only one state that I am aware of that doesn't give an examination equal to ours.

Mr. Swackhamer: In your opinion, at least 48 states would have reciprocity?

Mr. McAuliffe: Yes, also District of Columbia, Guam, etc.

Mr. Swackhamer: Why is it then that you have the word in there, and have not requested an amendment, that "you shall give reciprocity" rather than "you may"?

Mr. McAuliffe: That language has been in the statute for years. We would like the right to review.

Mr. Swackhamer: Under Section 5, an unscrupulous person in Nevada could make a contract with an out-of-state man and then let the guy whistle for his money. The man could not go into court and get his money.

Mr. McAuliffe: I don't believe this would prevent him from suing. He might have to sue the contractor also. I might add that one of our Supreme Court decisions had to do with this situation. An owner raised the defense in the action that the work had been contracted as a joint venture and wasn't licensed as a joint venture.

Mr. Swackhamer: The people should have the right to choose one from another.

Mr. McAuliffe: Most firms in San Francisco have a man who is registered in Nevada.

Mr. Swackhamer: Do you think it would be administratively better for you if you did not have to publish a fee schedule but it would be better for the public if they had some place they could go to find out the fees?

Mr. McAuliffe: Once they were established, we would have to hold a Public Hearing and they would have to be published. This is a requirement of our Rules and Procedures. (Distributed Pamphlet of Rules and Procedures) L 49

Mr. Reid: You said 31 took the test and only 1 passed it? Is that right?

Mr. McAuliffe: The examination is given in two phases. After 5 years of schooling and a degree you take the first part, and after 5 years experience you take the second part.

Mr. Swackhamer: How long does it take to change the fees if you decided they needed revising?

Mr. McAuliffe: I couldn't say right off the top of my head. We would have to run them up and then hold a Public Hearing after notice.

Mr. Reid: I am concerned that the public have some protection against the Board being arbitrary on the fees charged. Would the fees be published?

Mr. McAuliffe: Everybody is going to know what the fees are.

Mr. Swackhamer: Who attends these hearings? Is the public adequately represented?

Mr. McAuliffe: Nobody shows up except those who call them and a few with special interest. Mostly nobody shows up.

Mr. Hellman: I am the secretary who is hoping to get a salary raise. \$200 is not adequate for a year. We are only trying to upgrade the profession.

Mr. Kean: How can only 1 pass out of 31?

Mr. McAuliffe: Our present statute requires high school. Normally architecture is a 5-year course. Some come in and say they can't go to college and they have come in to see if they can pass the examination without going to college. They are usually not qualified and don't have a prayer of passing.

All examinations are made up by the National Educational Testing Bureau in conjunction with the Architectural Board. An interesting break-down would be the number of times the college graduate has to take the test as compared with the number of times the non-college student has to take it. We used to have a ruling that the test could only be taken twice. I guess these people who fail do not do enough studying to prepare themselves.

Mr. Torvinen: Do many states have the requirement that you must take an accredited course at an architectural college?

Mr. Hellman: That is the trend. Utah requires 8 years of experience after taking the required course. Our test is not impossible to pass. We are trying to get the U.S. School of Correspondence to set up a course to help these guys.

Mr. McAuliffe: With reference to these people who have not been to school: The test is in 7 parts and some of them have been in the mill for some time. Once past the 7 parts you are in.) ~ 50

Mr. Schouweiler: Do approximately all of our western states give the exact same examination and use the same grading?

Mr. McAuliffe: Yes. The grading is done by Princeton University.

Mr. Webb Brown: I am an architect and I am on the Registration Committee. My associate here, Mil Sharp, is on the Legislative Committee.

When we got a copy of this bill we were a little concerned about it, but we have no particular feelings about it except for Section 5. Basically, for 100 years, people have been designing buildings in this state. Engineers and architects have been building buildings. Many have been designed by registered engineers. Our concern is that if a man designs a building and could not prove that he was a licensed architect he could not sue for costs. There is nothing in the language that says you could prove you are exempt. You just have to prove that you are licensed. Our Association is strongly opposed to this legislation as it is now.

Forfeitures other than the right to sue on a contract: 623, relating to architects, says that failure to comply with the regulations of that chapter is a misdemeanor. An after the fact contractor sued and could not get paid because he was not licensed. The District Court said the owner did not have to pay him. The Supreme Court overruled this and said the owner had to pay him.

The Architect's Act provides further suggestions. I have always thought that the owner did not have to pay if the contractor was not legally qualified to give help. If a man were to practice medicine and was not legally qualified you should not have to pay him.

I believe that if you, in your judgment, feel that this Supreme Court decision should be essentially overturned, it should be done in the field of general procedure, if it is the legislative intent to make it illegal to collect on illegal contracts.

I would like to say again that we are opposed to the bill the way it is written. I think this wrong should be righted but by the general statutes pertaining to all classes, rather than just the architects.

Roland Oakes asked me to tell the Committee that he was unable to attend the hearing today but did want to be heard on this bill. He asked that you hold it over until he can be heard and you can get a broader opinion from the public at large.

Mr. Kean: Let's take the case of a man who wanted to perform the services of an architect but didn't set himself up as such. He did perform the services. If there were cause for him to believe that there were damages would there be relief?

Mr. McAuliffe: This is not a case where the owner hired a contractor

to build. He hired the contractor to design. You could not get a building permit on the plans as drawn. The real value of the services rendered was nothing.

Mr. Kean: He failed to perform under contract. The other case was practicing architecture without a license.

Mr. Torvinen: I have a question. I am interested in Mr. Webb's comment that this could be under the general procedures act. I guess Chapters 41 and 42 have some controlling actions. Title 54 lists 20 to 25 professions. I am not sure such action as this is applicable to every profession. Any suggestion?

Mr. McAuliffe: I wrote a letter Dec. 3 to Mr. Lingenfelter and this decision of the Supreme Court was given in the letter. I asked Mr. McKissick for the change so far as architecture was concerned. I never saw the bill after it was drafted until Friday of last week. After seeing it, I know that it is too restrictive. You might solve it by "any contract which is illegal shall not be enforceable in the courts". That is what my understanding is of the common law.

Mr. Swackhamer: Can you give us a specific suggestion for amendment?

Mr. McAuliffe: I hesitate to try to write something myself. The bill drafters are much more skilled at this than I am.

Mr. Bryan: Do you see a possibility of reconciling the differences between yourself and the architects?

Mr. McAuliffe: There is no difference, really, in our positions. We are not trying to affect their position in practicing their profession or collecting their fees. Perhaps we could broaden by adding "unless a person is exempt". I think we agree in principle.

Mr. Bryan: Would that meet your objections to the bill, Mr. Brown?

Mr. Brown: I would have to see it after the new language was written. There is some overlapping between engineers and architects. We don't want to get into petty things. This would not be in the public's interest. We don't want to leave it to the courts to say whether or not a man is an architect. People should not be able to collect on an illegal contract.

Mr. Mil Sharp: I think we can get language that will satisfy everybody.

Mr. Kean: I propose that we let the Architects' Society propose some language.

Mr. Torvinen: I don't know that the motion is in order, but if they would care to submit something to us, we would certainly accept it and use it the best we could.

All those who came in to be heard on AB 85 were excused at this point.

Mr. Lowman: Are we going to try to amend this?

Mr. Torvinen: It is rather interesting to contemplate this idea of a general statute to cover any services under Title 54. The professions that are regulated are practically endless.

Mr. Swackhamer: If there were 54 professions that were regulated, there would be 53 of them that would have been put in by people who came down to beef up their professions.

What is an illegal contract?

Mr. Kean: I have some misgivings about taking away the right of contract.

Mr. Torvinen: On other subjects, we have several things to talk about.

Mr. Bryan: AB 119 is a bill I helped introduce. I suggest we hold it for the time being. I have received many requests for additional requirements on this. We may have to ask for additional legislation in this same field and it might help to have both bills at the same time.

Mr. Schouweiler: On AB 79: I think the Director of Motor Vehicles wants to be heard on this. We might hold and see.

Mr. Reid: I would like to talk about some legislation I would like the Judiciary Committee to introduce. We are having troubles in Clark County because of certain jurisdictions passing 3-day gun laws. Those that did not pass them are getting more business. I think we should have a standard statute where you would have to wait 3 days to buy a gun. I would have no objection if others of you would like this law to apply only to Clark County.

Mr. Torvinen: Mr. Lowman has indicated that it might be helpful to have a hearing on AB 147.

Mr. Lowman: That is correct. Several people have called me to tell me they would like to be heard.

Mr. Torvinen: We will set the hearing for AB 147 for Tuesday, Feb. 11, at 2:00 P.M.

It has been suggested by Mr. Monroe, Chairman of the Senate Judiciary, that we hold a Joint Hearing on the Court Reform Bill on Feb. 13. Their Committee meets in the mornings and we meet in the afternoon. He is going to talk to them and see if they can meet in the afternoon with us as that would be easier for those people who have to come long distances and would also give us open-end time for the hearing.

Snowy also suggested that we exclude from the hearings those provisions having directly to do with the solemnization of marriage. This is the tentative plan.

In addition to the bills already listed for hearings this Thursday, Mr. Lowman suggested we add AB 79. I am wondering if we should not have a separate hearing on this one? We will, however, add ACR 4.

Mr. Swackhamer: Couldn't we make up our own minds on that one without having to hold a hearing?

Mr. Torvinen: We are not having a hearing on just this bill. We are just going to add it to the ones we want the D.A.'s to comment on.

Mr. Bryan: Could we add AJR 10 on that same date?

Mr. Lowman: Also AB 117?

Mr. Torvinen: AB 117 has nothing to do with the District Attorneys.

Mr. Bryan: It does in this regard. We have had cases in Clark County where infants have been killed by some bad advice or another.

Mr. Torvinen: We will add AJR 4 to the agenda for Thursday, also.

Several people have contacted me on AB 70. We will have some people show up on that one.

Meeting was adjourned at 3:30 P.M.