

MINUTES OF MEETING - ASSEMBLY COMMITTEE ON JUDICIARY, 55th Session<sup>2</sup> -189  
March 21, 1969

Meeting was called to order at 3:35 P.M by Vice Chairman Schouweiler.

PRESENT: Schouweiler, Kean, Fry, Reid, Prince, Bryan, Lowman,  
Swackhamer.

ABSENT: Torvinen.

MR. REID: The amendment for AB 233 was given to me but it was wrong and I am having it re-written.

SB 183: Grants subpena power and related powers to Advisory Personnel Commission. Cost, \$4,200.

MR. SCHOUWEILER: The personnel division does not have subpena powers presently and they would like to have this power. There are probably occasions when they need this power.

MR. FRY: I don't care for this bill particularly without some recourse to the courts.

MR. SCHOUWEILER: They would always have recourse to the courts.

MR. BRYAN: In the past, these things have been used to launch colossal witch hunts. These rights should be limited somehow to legitimate matters.

MR. FRY: May I be charged with getting an amendment for SB 183?

MR. BRYAN: This is a Senate bill and maybe Pozzi has more good reasons for asking for this than we know about. Let's hear from him.

AB 551: Regulates the business of debt adjusting.

MR. REID: I think we should have some testimony on this.

MR. SCHOUWEILER: I will try to find out who really wants this and have them in.

MR. LOWMAN: This is one of the package that came in from the banks.

AB 664: Permits district attorneys to cause summoning of grand jury.

MR. BRYAN: George Franklin made an application for the summoning of a grand jury. The District Judge reviewed the application and said that it was not warranted. The district attorneys like grand juries because they are faster than preliminary hearings.

MR. SCHOUWEILER: It has been suggested we have a hearing on this but it is a simple bill. We don't need a hearing.

MR. REID: Lines 5 & 6 call for the signatures of 75 voters or 5% of the registered voters. The judge shall act on the affidavit within 5 days. This is like a Writ of Mandamus.

MR. BRYAN: The mandatory provisions here have been construed by the

courts as not being mandatory. I would prefer holding this till <sup>2-</sup> 130  
Mr. Swackhamer is present.

MR. REID: I move to hold up and look up the case on it.

MR. BRYAN: The request did go to the master calendar judge.

AB 701: Exempts certain persons from paying State Bar dues.

MR. KEAN: I move to hold a hearing on this July 2.

MR. SCHOUWEILER: Why not just hold?

MR. BRYAN: I think we should take some action.

AB 247: Provides accountant's lien for services performed.

MR. KEAN: I move to kill the bill.

MR. REID: There is a good policy reason for this. Let's say your accountant does your books for you. You go over and bawl him out. He won't return the books. You take them and what has he got?

MR. KEAN: Why should he have more protection than I have?

MR. BRYAN: You can protect yourself. You can make it a secured sale. I don't think this is unreasonable.

MR. FRY: The problem is that you have certain rights of recourse. An accountant does not.

MR. SCHOUWEILER: You are selling a product. An accountant is selling services.

ASSEMBLYMAN KEITH ASHWORTH: Las Vegas CPA: If you pass this out I would suggest an amendment to section 1, subsection 1 to add "public accountant" as well.

I am not sure what the actual lien is. The courts have held that the books are the property of the client. What usually happens is when someone takes his account away from an accountant it is because he can't pay the account.

I know one client in Las Vegas that just went around in turn to all the accountants while he ran up a bill which he didn't pay, until we all got together and decided we would not honor an account until he had paid the previous accountant.

From a personal standpoint, I think this lien would be nice. I don't think we are having too much trouble in Clark County with this problem because we pretty well respect each other on our accountant-client relationship.

MR. REID: This is the law in most places, isn't it?

MR. ASHWORTH: I don't know whether the accountant has the right to hold the books or not. I would surely recommend that you pass this.

MR. MCKISSICK: This would give him the right to protect his rights by keeping the books. A lawyer can keep everything until he gets paid. 2

MR. ASHWORTH: What we do in a case like this, since the accountants are not privileged on this, is to return the books to the attorney's office.

MR. FRY: If you represent some guy and he comes in and wants his books you can't keep them?

MR. ASHWORTH: No, we can't and there are a lot of dead beats in the business and they will change accountants two-three times a year and get all their accounting for nothing.

MR. REID: I move Do Pass with an amendment to include "accountants and public accountants" to section 1, subsection 1, line 3.

MR. KEAN: I would oppose. You can't protect the world.

MR. REID: We also have the problem in Nevada of determining whether some of these laws are common law. This would define the problem more clearly in this area. It seems to me an accountant has a difficult position going to someone and trying to prove his rights.

MR. KEAN: I am looking beyond at what we are talking about. He could hold your books and ruin your company.

MR. REID: It seems that we are here trying to protect someone that we are normally not trying to protect. I think he should have a lien on these work papers.

MR. KEAN: He can go to court and sue.

MR. REID: You are dealing with products. An accountant is working with his knowledge. He sells a service.

MR. BRYAN: I personally think it is a good bill.

MR. REID: You are a businessman and people come to you to buy your products. When a person comes to an accountant they must have faith in one another.

MR. BRYAN: A merchant who sells merchandise can protect himself. He retains a security interest.

I second Mr. Reid's motion to Amend and Do Pass AB 247.  
MOTION CARRIED WITH MR. KEAN VOTING NO.

AB 394: Specifies what contractors' bonds cover.

MR. LOWMAN: I move we kill AB 394.

MR. PRINCE: I second the motion.

MOTION CARRIED UNANIMOUSLY.

MR. FRY: This was already the law in the State of Nevada through court decision.

SB 214: Confers peace officer status on certain personnel of the Nevada State Prison.

MR. REID: I move Do Pass SB 214.

MR. KEAN: I second the motion.

MOTION CARRIED UNANIMOUSLY.

2 132

SB 230: Clarifies responsibility of district attorneys in pursuing nonsupporting parent.

MR. REID: I would like to speak in favor of this bill. I have had several cases of URA's. A girl is going to have a baby. She says this man is the father and he won't do anything for me. The district attorney will not help her. We have a Bastardy statute now but the district attorneys will not do anything. As I understand this bill, if someone on welfare is having a baby, the district attorney is obligated to try to find the father.

MR. BRYAN: Chapter 425, the ADC Chapter. There is a little uncertainty who has the responsibility for trying to find the party.

MR. FRY: First of all, we are in the wrong area. We should be looking at Chapter 126, on illegitimacy.

MR. BRYAN: Plus 200 on nonsupport, in my opinion.

MR. FRY read from NRS requirements on civil law.

MR. SWACKHAMER: The cases that you refer to are still not going to be touched by this.

MR. REID: That's right.

MR. SWACKHAMER: The reason for this shifting around: These were put in the district attorney's at one time and they just do not act on them. Then these were shifted to the Attorney General.

MR. REID: They know who the father of the child is. Why don't you get someone to get that bum to do something? Nobody does anything.

MR. SWACKHAMER: I am all for it if you could put some responsibility on the district attorney but you can't make him act.

MR. FRY: That is his discretion. This bill will not make any difference.

MR. REID: Surely, it will.

MR. FRY: I believe that is there, and if we have decent people there they will do it.

MR. BRYAN: Couldn't we declare it is legislative policy that the responsibility for these bastardy cases and so on are to rest with the District Attorney?

MR. REID: Some of these guys will get out of working if they can. They get a salary. They don't care whether anything gets done.

MR. BRYAN: I am not sure the particular form of this bill is specific enough.

MR. SWACKHAMER: The big problem is not with the district attorneys or

Attorney General. It is just poor welfare work. They just do not call attention to these things.

MR. SCHOUWEILER: We passed legislation requiring that this be called to the attention of the district attorney.

MR. FRY: These public attorneys are charged with this responsibility and they ought to put it on.

MR. REID: Your situation in Washoe is different from Clark County. You have had Raggio for about 16 years. During that time we have had five or six district attorneys and about 99 deputies. Usually the low man on the totem pole is assigned to these nonsupport cases.

Do you know of any harm that this bill could do?

I move Do Pass. (Motion died for lack of a second.)

I move to amend the bill by preparing proper language so that the section will also apply to Chapter 126 and Do Pass.

MR. BRYAN: I will go for it at a later date. I want to see first how it conforms to NRS.

MR. REID: Does anyone want me to pursue this amendment?

MR. BRYAN: I will go for it in an amended form. 201.050: Let's see if we can't tie them all in the same bill.

SB 337: Provides for use of stamp by official acknowledging instrument entitled to recordation.

MR. KEAN: I move Do Pass SB 337.

MR. REID: I second the motion.

MOTION CARRIED UNANIMOUSLY.

SB 402: Specifies time for criminal trial of defendant incarcerated in another jurisdiction.

MR. BRYAN: This looks good. The Shewy case held that if he makes a demand for a speedy trial the State must bring him back for a speedy trial from another state.

MR. SWACKHAMER: What about the situation where he is wanted in three states? Does he get tried in one and then go on to the second and then on to the third?

MR. BRYAN: They used to bring back to the second state after he had served his full time in the first and so on. However, failure to bring him back denies his right to a speedy trial. By the time he gets back to the second state after having served his time in the first state the witnesses may be dead or moved away, and so forth.

MR. SWACKHAMER: If he was convicted in two states and was serving concurrently, which state does he serve in first?

MR. BRYAN: The first state to convict him would have the first right if they want him.

MR. REID: Many states may not want to bring him back if he is serving time in another state. The reason for the Supreme Court ruling was it would be easier to wait.

MR. BRYAN: I presume these prisoners are frequently left in position where they are not eligible for parole, etc. because of pending charges in another state. Under this, if he demands a speedy trial you have got to give it to him.

MR. REID: Is the law really necessary in light of the Supreme Court ruling?

MR. BRYAN: I think so. There was another law passed in 1965 that said just the opposite.

SB 261: Prohibits picketing and mass demonstrations which obstruct orderly procedures.

MR. KEAN: I move Do Pass SB 261.

MR. SWACKHAMER: I second the motion.

MOTION FAILED WITH FRY & BRYAN VOTING AND SOME OTHERS NOT VOTING.

The bill is still alive.

SB 235: Allows restitution of overpayments made to welfare recipients, creates rebuttable presumption of fraud, and provides penalties.

MR. SWACKHAMER: I move Do Pass SB 235.

MR. KEAN: I second the motion.

MR. SWACKHAMER: Suppose a guy is receiving x number of dollars from the welfare then his rich uncle dies and leaves him some money. He is supposed to tell the welfare department about his new-found wealth. It becomes, on the third time, the presumption that he was withholding the information deliberately.

MR. FRY: The State is in the position of proving this beyond the shadow of a doubt. I have no objection if you want to take some of that out on the rebuttable presumption.

MR. BRYAN: How about making the change on page 1, line 11.

MR. FRY: If you want to put in change of circumstances then OK.

MR. SWACKHAMER: This guy knows that his situation has changed and he knows his responsibilities in these matters because they tell him.

MR. REID: One other thing: Maybe this isn't as bad as our first reading indicated. We have all kinds of presumptions.

MR. BRYAN: In burglary if a man is found in a place of business where he has no business we assume he is planning or committing a burglary.

MR. REID: I think there should be some way we can work this out because we are giving the guy three chances. I don't think we are being too blood thirsty.

MR. BRYAN: I think I can go for it.

MR. LOWMAN: I move Do Pass SB 235.  
MR. REID: I second the motion.  
MOTION CARRIED WITH MR. FRY VOTING NO.

SB 402: Specifies time for criminal trial of defendant incarcerated in another jurisdiction.

MR. REID: I move Do Pass.  
MR. BRYAN: I second the motion.  
MOTION CARRIED UNANIMOUSLY.

MR. FRY: I move we adjourn.  
MR. LOWMAN: I second the motion.  
MOTION CARRIED UNANIMOUSLY.

MEETING WAS ADJOURNED AT 5:00 P.M.