

**MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-fourth Session
March 5, 2007**

The Senate Committee on Government Affairs was called to order by Chair Warren B. Hardy II at 1:39 p.m. on Monday, March 5, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Warren B. Hardy II, Chair
Senator Bob Beers, Vice Chair
Senator William J. Raggio
Senator Randolph J. Townsend
Senator Dina Titus
Senator Terry Care
Senator John J. Lee

GUEST LEGISLATORS PRESENT:

Senator Bernice Mathews, Washoe County Senatorial District No. 1
Senator Dean A. Rhoads, Rural Nevada Senatorial District

STAFF MEMBERS PRESENT:

Olivia Lodato, Committee Secretary
Eileen O'Grady, Committee Counsel
Michael J. Stewart, Committee Policy Analyst
Erin Miller, Committee Secretary

OTHERS PRESENT:

Kendall Matina, Chair, Charter Committee, City of Sparks
Rob Joiner, Manager, Government Affairs, City of Sparks
Kimberly McDonald, City of North Las Vegas
Shirley Bertschinger
William A. Kohbarger, City Manager, City of Carlin
Catherine Sue Smith, City Clerk/Treasurer, City of Wells

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CHAIR HARDY:

We have a bill draft request (BDR) to consider.

BILL DRAFT REQUEST 20-1020: Revises provisions relating to county fair and recreation boards. (Later introduced as [Senate Bill 218](#).)

SENATOR TOWNSEND MOVED TO INTRODUCE BDR 20-1020.

SENATOR LEE SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS BEERS, RAGGIO AND TITUS WERE ABSENT FOR THE VOTE.)

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CHAIR HARDY:

We will hear testimony on Senate Bill (S.B.) 101.

SENATE BILL 101: Amends the Charter of the City of Sparks. (BDR S-335)

SENATOR BERNICE MATHEWS (Washoe County Senatorial District No. 1):

The Charter Committee has worked hard to look at the issues and bring them forth. Senate Bill 101 makes two proposed changes to the Sparks City Charter. The first relates to the employment of attorneys by the City Council, and the second concerns the Civil Service Commission. It authorizes the City Council of the City of Sparks to employ attorneys to perform any civil or criminal duty of the City Attorney. The bill declares these attorneys are responsible only to the City Council, and the City Attorney does not have authority over employment of an attorney hired by the City Council. The measure also adds language to the City Charter to set qualifications for members of the City's Civil Service Commission. These qualifications provide that a person may not serve as a member of the Civil Service Commission if he or she is an employee of the City; a member of the City Council or an appointed member of any other board, commission or committee of the City; or related within the third degree of consanguinity or affinity to a person who is employed by the City. A chart has been distributed to show those degrees ([Exhibit C](#)). These provisions do not apply to anyone who now serves on the City's Civil Service Commission until their current term expires.

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KENDALL MATINA (Chair, Charter Committee, City of Sparks):

The changes to the Charter are not large. We have a request that the City Council be allowed to engage outside legal services when there is a conflict between the City and City Attorney. It is in the best interest of our citizens to have the opportunity to seek a second opinion. The other change is an issue of equity. The Civil Service Commission should be bound by the same antinepotism rules as employees of the City of Sparks.

CHAIR HARDY:

How many members are on the Charter Committee in Sparks?

MS. MATINA:

There are 11 members.

CHAIR HARDY:

Is the process working well?

MS. MATINA:

This is my second year on the Charter Committee, and it seems to go very well.

CHAIR HARDY:

I am a fan of the charter committee process because it is the best way for everybody to have input. Usually, this Committee finds a recommendation from the Charter Committee is unanimous by the City Council, and it makes the process smoother.

ROB JOINER (Manager, Government Affairs, City of Sparks):

I was impressed with the hard work and many hours expended by the Charter Committee. Appointed by different elected officials on the state and local levels, they take their work seriously and yet, neither City Council members nor elected officials influence them in what they do. It is a great process closest to the representative democracy of our community.

SENATOR LEE:

Do we have this in the City of North Las Vegas?

KIMBERLY McDONALD (City of North Las Vegas):

We do not have a charter committee. Last session, a bill came forth where we thought any charter amendment should funnel through that forum. Instead, we

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have a Legislative Affairs Committee that serves the same purpose for legislative proposals and charter amendments.

SENATOR LEE:

Section 1 of this bill says they can hire outside attorneys. Is this something North Las Vegas might want to jump on?

MS. McDONALD:

It is my understanding we procure outside attorneys.

SENATOR LEE:

We already have this on the books for North Las Vegas?

MS. McDONALD:

We do. Our City Attorney is appointed and reports directly to the City Council.

CHAIR HARDY:

Regardless, if the attorney is appointed, everybody reports to the City Council. In Sparks, the City Attorney is elected so the City Council feels they need these changes. Mr. Joiner, can you give the Committee an example of a conflict that would require this type of separation?

MR. JOINER:

The most direct is on a land use issue. That sometimes divides the community. When you have an opinion from your attorney on a hot issue, it is good to have another opinion.

SENATOR CARE:

I am inclined to say it is your city, and you run it how you want. Nonetheless, let me go to section 1. Does this have to do with the City Attorney who settled a case without consulting the City Council?

MS. MATINA:

That instigated this, but other issues since have further divided the City Attorney's office and the City Council. Senate Bill 101 would be useful, not for attorney shopping but to have an outside, unbiased third-party opinion.

SENATOR CARE:

What would be the standard for hiring special counsel?

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MS. MATINA:

It would be at the City Council's discretion with a majority vote.

CHAIR HARDY:

How many cities have elected attorneys, as opposed to appointed?

MR. JOINER:

There are two left in the State of Nevada: Sparks and Reno.

SHIRLEY BERTSCHINGER:

I am a citizen advocate living in the City of Sparks. I am here today to support S.B. 101 and have submitted written testimony ([Exhibit D](#)). In August 2006, the Sparks Planning Commission and City Council denied the Lazy 8 project. The developer filed a lawsuit against the City of Sparks. After this, the City Attorney stated he was in favor of the project and told the City Council he would not represent them in the lawsuit. The City Attorney conducted a closed-door meeting, violating the Nevada Open Meeting Law to persuade the Council to change their vote. He was successful in getting one person to change their vote. When the public meeting was held, at least 35 residents and 2 Council members asked the City Attorney to allow the Council to hire outside legal counsel. The City Attorney refused and stated his opinion was final. A change in the Sparks City Charter is needed because no one person should be given such power that their decision is final and no recourse is allowed by the governing body.

SENATOR CARE:

Did the current City Attorney ever advise the City Council that it could not retain special counsel?

MS. BERTSCHINGER:

I do not know the facts on your question, but the City Attorney emphatically refused to allow the Council to hire outside legal counsel.

SENATOR CARE:

It is difficult to believe the City Council does not, inherently, have the power to engage special counsel.

MR. JOINER:

Ms. Bertschinger is correct. In his interpretation of our Charter, the City Attorney advised his office that we do not have the right to go outside for any opinion other than his.

CHAIR HARDY:

Ms. Bertschinger, you indicated in your written testimony that the City Attorney has never received a vote or faced the voters. Has he been unopposed?

MS. BERTSCHINGER:

That is correct.

CHAIR HARDY:

Under the City Charter, if he is unopposed, his name does not appear anywhere on the ballot.

MS. BERTSCHINGER:

The Sparks City Charter says "Candidates for the offices of Mayor, City Attorney and Municipal Judge must be voted upon by the registered voters of the City at large." We did not vote for him. By his name not appearing on a ballot, we feel this violated the Sparks City Charter.

MR. JOINER:

Ms. Bertschinger's points have not been tested. The facts are what they are; his name did not appear on the ballot because he ran unopposed.

CHAIR HARDY:

It provides a good example of why you would want to employ outside counsel. I suggest you get an answer right away as to why his name did not appear.

SENATOR MATHEWS:

Reno has an elected attorney, and I sat on the Civil Service Commission and the Reno City Council for a number of years. They have often had outside counsel, and they have a sizable city attorney staff. Even if the attorney is elected, the Council can make those decisions. Most times, the attorney came to the Council and requested outside legal counsel.

Some names were brought up during testimony today. My intent was not to look at people's names and call out those names for the record. I have no idea if

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any testimony we heard today about what happened behind closed doors actually occurred. Any names mentioned were not mentioned at my request.

CHAIR HARDY:

That is something generally not permitted by the Committee. Ms. Bertschinger is a citizen who we gave considerable leeway on that rule.

SENATOR CARE:

Does the City Attorney have power to engage special counsel? What happens if there is a conflict between the City Attorney's office as now structured?

MR. JOINER:

That has happened at times. He can defer to one of his counsel members or request funding from the City Council for special counsel.

SENATOR CARE:

The City Attorney can engage special counsel, but City Council of its own accord may not.

MR. JOINER:

That is the City Attorney's opinion.

SENATOR TOWNSEND:

Since the only two local-elected bodies have elected city attorneys for the Cities of Reno and Sparks, why does the City Council not appoint them like every other jurisdiction? Has the Charter Committee addressed that?

MS. MATINA:

We spent a great deal of time addressing that particular session. The Charter Committee felt it was our tradition to elect our city officials, and they would like it to remain that way. The City Council agreed. However, we would like the ability to hire outside counsel. Most members of the Charter Committee saw that as implicit in our Charter anyway because that practice was not forbidden. This change would specifically allow them to do that.

SENATOR TOWNSEND:

Many of us are familiar with the issue of names who appear on the ballot from the Nevada Supreme Court to our Constitutional Officers. They do not get a free

ride. Before this bill gets processed, we need to find out why the City Attorney's name did not appear on the ballot.

CHAIR HARDY:

Can Legal Division render an opinion whether appearing on the ballot in Sparks, and presumably Reno, would violate city charters? We will wait to get that opinion and process S.B. 101 at a later date.

SENATOR MATHEWS:

I had not spoken with Reno concerning doing away with electing their City Attorney. I would not want that to happen unless they indicate they want this. I was surprised when I heard the City Attorney's name did not appear on the ballot.

CHAIR HARDY:

I did not want to recommend looking into that unless a member of the Senate who represents that area agrees, but since Senator Townsend brought the issue up, it is a good opportunity for us to make that request of our Committee Counsel. We will close the hearing on S.B. 101 and open the hearings on S.B. 121 and S.B. 122.

SENATE BILL 121: Amends the Charter of the City of Carlin to change the time for election of certain officers. (BDR S-312)

SENATE BILL 122: Amends the Charter of the City of Wells to change the time for election of certain officers. (BDR S-292)

SENATOR DEAN A. RHOADS (Rural Nevada Senatorial District):

Senate Bill 121 and S.B. 122 are almost identical. City elections for Carlin and Wells are in June and the general election in the fall. The City of Carlin presented a fiscal note stating it would cost \$5,000 if they have to have the city election in June. If they have it in the general election, it would cost \$1,000. The City of Wells figures if they do not change it, it would cost \$41,200, and the cost would be considerably less if they have the city election during the general election.

WILLIAM A. KOHBARGER (City Manager, City of Carlin):

We are requesting you allow us to change our charter for two reasons. The first reason is if the city elections are changed to the general elections, it would

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garner more voters as it does every year. The second reason is cost. It will save the City of Carlin money not only in coming years but in the far future. The Elko County Clerk has no issues with this and supports our bills.

CATHERINE SUE SMITH (City Clerk/Treasurer, City of Wells):
Our reasons are similar to Carlin's as to why we want to change the charter.

CHAIR HARDY:
Do you have a charter committee?

MR. KOHBARGER:
The City of Carlin does not.

MS. SMITH:
The City of Wells does not either.

CHAIR HARDY:
I would recommend you consider it.

SENATOR BEERS:
Other local governments around the state consider what you are proposing as disastrous because it takes away how special they are.

MR. KOHBARGER:
The City Council requested that this be done. I work for them.

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CHAIR HARDY:

A couple of our Committee members have left the room, so we will not process this today. We will close the hearing on S.B. 121 and S.B. 122. This meeting is adjourned at 2:13 p.m.

RESPECTFULLY SUBMITTED:

Erin Miller,
Committee Secretary

APPROVED BY:

Senator Warren B. Hardy II, Chair

DATE: _____