

MINUTES

BOARD OF CITY COMMISSIONERS

A RECESSED REGULAR MEETING of the Board of City Commissioners of the City of Las Vegas, Nevada, held this 15th day of March, 1976, was called to order by His Honor, Mayor William H. Briare, at the hour of 2:00 P.M., with the following members present:

Mayor	William H. Briare
Commissioner	Paul J. Christensen
Commissioner	Myron E. Leavitt
Commissioner	Ron Lurie

ABSENT

Commissioner	Roy A. Woofter (excused)
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STAFF PRESENT

City Attorney	Carl E. Lovell, Jr.
City Manager	A. R. Trelease
Deputy City Attorney	Leonard P. Smith
Director, Department of License & Revenue	Ila M. Britt
City Clerk	Edwina M. Cole

(See Page 2 of these Minutes)

BILL No. 76-18

BILL No. 76-18 - RELATING TO ESCORT BUREAUS, ESCORTS AND ESCORT BUREAU RUNNERS

Committee: Commissioner Myron E. Leavitt and Commissioner Roy A. Woofter

Published by Title 3/7/76 - LAS VEGAS REVIEW JOURNAL
No action prior to 3/15/76
Action required by 4/8/76

Mayor Briare: I would ask that the City Clerk repeat what she just said - whether this is a new meeting or whether this is a continuation of a prior meeting, or what. My memory does not serve me too well as to the exact status -

City Clerk: Your Honor, at your regular meeting held March 5th this Bill received its first reading. That meeting was recessed to the 10th which was the date set for the Joint City/County meeting. That meeting was recessed until today at an hour to be set by the office of the City Attorney. On last Friday City Attorney Carl Lovell set it for 2:00 P.M. this date.

Mayor Briare: The reason for that, I believe, is because we are caught in some kind of a time element here -

Mr. Trelease: We need to have these Ordinances in effect by Wednesday -

Mayor Briare: Mr. Lovell, will you then please proceed -

Mr. Lovell: The first item is Bill No. 76-18 - 1st Amendment - the Escort Ordinance.

Mr. Trelease: We need a motion for the adoption of this Bill.

Mr. Lovell: This Ordinance tightens all regulations -

Mayor Briare: I think these new restrictions have all been gone over. This Bill No. 76-18 was referred to a Recommending Committee consisting of Commissioner Leavitt and Commissioner Woofter.

Our next regular meeting after the 17th would be April 7th so in

BILL No. 76-18
(continued)

the way we've got the issue going, we have to take action -

Mr. Trelease: Today. This is considered as a Regular Meeting so you can adopt it.

Mayor Briare: Just so the record reflects all of this in case there should be any question raised as to the time and the handling of it in this manner. I just want to have the record reflect the sequence of events. What is the pleasure of the Board?

Commissioner Leavitt: Mr. Mayor, I report this Bill No. 76-18 out of Committee favorably, as amended, and ask that it be read by Title.

A Bill entitled: "BILL No. 76-18 - FIRST AMENDMENT - AN ORDINANCE TO AMEND TITLE VI, CHAPTER 23 OF THE MUNICIPAL CODE OF THE CITY OF LAS VEGAS, NEVADA, 1960 EDITION, BY ADDING THERETO CERTAIN PROVISIONS RELATING TO ESCORT BUREAUS, ESCORTS AND ESCORT BUREAU RUNNERS; PROVIDING OTHER MATTERS PROPERLY RELATING THERETO; PROVIDING PENALTIES FOR THE VIOLATION HEREOF AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH" was read by Title by the City Attorney, Carl E. Lovell, Jr. (2nd Reading)

Commissioner Leavitt: I move for the adoption of Bill No. 76-18 as read by Title and authorize the City Clerk to proceed with the 2nd publication (by Title) of said Bill No. 76-18.

Motion carried by the following vote: Commissioners Christensen, Leavitt, Lurie and Mayor Briare voting aye; noes, none.

BILL No. 76-19
Adopted

BILL No. 76-19 - AN ORDINANCE TO AMEND TITLE V OF THE MUNICIPAL CODE OF THE CITY OF LAS VEGAS, NEVADA, 1960 EDITION, BY REPEALING CHAPTER 29 THEREOF; BY ADDING THERETO A NEW CHAPTER TO BE DESIGNATED CHAPTER 29, SECTIONS 1 THROUGH 34; PROVIDING FOR THE REGULATION AND CONTROL OF MASSAGE PARLORS

Committee: Commissioner Paul J. Christensen and Commissioner Ron Lurie

Published by Title 3/7/76 - LAS VEGAS REVIEW JOURNAL
No action prior to 3/15/76
Action required by 4/5/76

Mr. Lovell: Mr. Smith has one amendment proposed for this Bill. He is here to verbally explain it to you.

Mr. Smith: An amendment is necessary because of the fact that we have added a Massage Board which the regulations call for a meeting at least twice a year. Section 5-29-13 - it's on Page 12 of the proposed Ordinance - 5-29-13 requires the Department of Licensing and Revenue to act on the permit not later than ninety (90) days from the date of application. That will have to be changed to reflect that the Department of License & Revenue shall act not later than ninety (90) days from the report received from the Board of Massage Examiners. Since they meet only twice a year, it would be impossible for them to act within ninety (90) days of the date of the application in some circumstances. That was overlooked in the first draft of this Ordinance and it should be amended at this time. Now, that doesn't preclude the Board from meeting more than twice a year -

Commissioner Christensen: That's a minimum requirement - that they have to meet twice a year -

Commissioner Lurie: How often does the County Board meet?

Mr. Smith: As Commissioner Christensen knows, it was at his suggestion that we put this Board provision in here, and we tried to put it in in exactly the same terms as the County's ordinance, in order to use the County Board of Massage. So, with a little bit of coordination between the City and the County, we can use their meeting day - at the same time. I think right now, they've only had one meeting. I don't know how they are going to schedule it in the future. There is nothing in our Ordinance that would preclude us from using their Board, in toto.

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Commissioner Lurie: That was the whole idea - to establish a Board so that we wouldn't have to have two Boards. To coordinate the procedure so that we could use the County's Board.

Mr. Smith: We have already been in touch with the County Board and they want to work with us.

Commissioner Christensen: That's correct. I move this amended Ordinance out of Committee favorably and ask that it be read by Title.

A Bill entitled: "BILL No. 76-19 - 1st AMENDMENT - AN ORDINANCE TO AMEND TITLE V OF THE MUNICIPAL CODE OF THE CITY OF LAS VEGAS, NEVADA, 1960 EDITION, BY REPEALING CHAPTER 29 THEREOF, BY ADDING THERETO A NEW CHAPTER TO BE DESIGNATED CHAPTER 29, SECTIONS 1 THROUGH 34; PROVIDING FOR THE REGULATION AND CONTROL OF MASSAGE PARLORS; PROVIDING OTHER MATTERS PROPERTY RELATING THERETO AND REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT THEREWITH" was read by Title by the City Attorney. (2nd Reading)

Commissioner Christensen Moved that Bill No. 76-19, as amended, be ADOPTED and the Clerk authorized to proceed with the second publication, by Title, of said Bill No. 76-19.

Motion carried by the following vote: Commissioners Christensen, Leavitt, Lurie and Mayor Briare voting aye; noes, none.

Mr. Lovell: The record might reflect, Mr. Mayor, as Commissioners Christensen and Lurie were just discussing - that the Board was set up some two years ago. It was wanted as another level of government to proceed as a legitimate exercise of those in the profession taking a look at and screening applicants

Mayor Briare: Is there anything else?

Commissioner Christensen: We have a Budget Hearing scheduled for nine o'clock on the 23rd?

Mr. Trelease: That's right.

Commissioner Christensen: I wonder if we could schedule that for another time -

Mr. Trelease: Since it has been set for a Public Hearing on the 23rd it would have to be recessed -

Commissioner Christensen: On the 23rd at nine o'clock is when this Budget Hearing is scheduled. At 8:30 that morning there is a meeting of the Convention Authority - the regular meeting of the Convention Authority is at nine o'clock on the 23rd and that includes two members of this Commission. The earlier time is a personnel session which we really should attend.

Mayor Briare: Is there any way you could know about how long that Convention Authority meeting will last?

Commissioner Christensen: We are usually out of there by 10:30 or 11:00 o'clock. I'm sure we could hold the Budget Hearing in the afternoon or late in the morning -

Mayor Briare: I think, Commissioner Christensen, that we are bound by

Commissioner Christensen: I think we are bound to have it on that date, but maybe we can reschedule the time for that day -

Mr. Trelease: When we send in the Budget we have to indicate what time and where the meeting will be held. The State dictates that we hold it on the 23rd and we set nine o'clock in the Commission Chambers and this Board did ratify that.

Commissioner Lurie: Maybe we could change the time and make it eleven o'clock -

BUDGET HEARING -
DISCUSSION

Mayor Briare: On the other hand, knowing how many people don't show up at these types of Hearings - I would think that if there is some real compelling reason to commence the meeting at that hour . . .

Commissioner Leavitt: Is Commissioner Woofter going to be in town?

City Clerk: I have not been notified to the contrary - he is out of town today and tomorrow -

Commissioner Christensen: We can recess that meeting because part of it has to do with him - he is the Vice Chairman of . . .

Mr. Trelease: The meeting can be recessed to a time when you can meet later on in the day, but you do have to start the Hearing on that day -

Mayor Briare: If it weren't for the fact it has already been committed for that date . . . I don't recall whether this meeting (that we are in right now) is for a specific purpose and no other -

Mr. Trelease: You are now in a Recessed Regular Meeting so other matters may be discussed -

Mayor Briare: I haven't talked to Carl Lovell on this yet, but this is something that, at least, can be mentioned in the minutes of the meeting and then whatever can be done later, we can either continue or whatever. This case of Eileen Largo vs. the City of Las Vegas and certain members of the Commission individually - namely, if my memory serves me, it is Mayor Briare and Commissioner Ron Lurie.

I am getting very concerned because of letters and communications in your office on this one particular case, which far exceed all communications we have received in all of the other cases that have gone on before, and if I understand your discussion in these letters, Carl - which I am not sure I do - I've got to have a determination for my own personal reasons, which are obvious, as to whether the City is going to defend the two members of the Commission who voted one way and are the only ones involved, or whether we are going to have to go out and find our own attorney. Because if we do, I'm in the position of trying to prevail upon the Board to hire other attorneys. If the Hearing has to be held to determine this, I think it is perfectly proper that the City should defend us. I can't gather from the thrust of your memorandum as to whether your office is going to defend us, individually, or not. And I will ask for it in the simplest of terms - either yes, you are or no, you are not.

Mr. Lovell: Yes, we are. Let me tell you how and why. Commissioner Lurie, you look like you would like to say something -

Commissioner Lurie: Well, I'm concerned . . .

Mayor Briare: If you say "yes", that's all I really need to know. It was getting to a point - I just asked the City Clerk for a transcript of those minutes - of both meetings - and since this involves a possible personal liability - it is inconceivable to me, based on the minutes of those meetings, that anybody could sue an individual who voted and made the remarks that I made at that meeting - on a personal basis.

Commissioner Christensen: That's true, but how do you make it stick?

Commissioner Leavitt: The way I understand it from the correspondence I have received from the City Attorney's office - I have received it on other cases where I have been sued on an individual basis - the way I understand it - as defendants, in the event we want to hire our own attorneys, we can. That's the way I interpret that -

Mayor Briare: But what is that saying?

Commissioner Leavitt: If you want to hire an attorney, other than the City Attorney, to represent you, you can. The law says he can represent us in our individual capacity. The way I understood the communication was that if I don't want him to represent me, I can go and get my own attorney.

Mr. Lovell: You are free to do that, if you wish. We haven't even

suggested it - we haven't gone to the extremes not to force you to do it, but allow you only to do it.

Let me explain how:

Commissioner Lurie: In your memos it seems like you question our ability to make a decision in voting on a matter - that you can investigate us and if you find out we didn't vote within the scope of our capacity as a City Commissioner, then you have the right to withdraw from the case, and I don't particularly care to be investigated by your office on a vote where I've been to trial on - have had to present the facts before the Judge. This whole thing appears that you are looking for a way out of defending us and telling us to get our own Counsel. I was going to call you over the weekend, but I felt I would have an opportunity to talk to you about it today. I didn't pick this up until yesterday -

Mr. Lovell: Commissioner Leavitt has already signed one of those for our office - without a particular problem, except that he wanted everything that happened in the case - in the pleadings. You were reading into it something - for some reason - you shouldn't be. Let me explain why we have to do it this way.

The law states that if you are sued, as you know, the City of Las Vegas and the Commissioners we, of course, represent you. The new law from the 1975 Legislature also, in addition, for your protection states that if you are sued as an individual within the scope and course of your authority, we also, at public expense, will represent you. If you don't want us to represent you, that's up to you.

It also states that, as it goes along, if there is something that appears to discover interrogatories, or depositions, or taking - that there appears to be a conflict of interest wherein your interests might best, in addition to our representation in the case, be protected by other Counsel, this is what we would notify you of so that you could make a choice if you had to - not without any qualms up front all of the safeguards and all the things being put down - if ever you have been involved with insurance companies - they always . . . Myron (Leavitt) can tell you that. But the point is this: In this particular case it is the intent - at least it has been stated by the Plaintiff's attorney, Mr. Cochran, that they intend on calling members of the City Attorney's office - members of sanitation employees - and try to be their witnesses. I know what they are going to try to attempt and I think I am a little astonished that they think they can. But because of the fact they want to do that, in addition to the fact that the insurance company - as I have indicated to you - wrote to us indicating there was coverage on this particular case and that as of right now they would let us continue with both the first law suit, which was a Writ of Mandamus and also the one against the Mayor and Commissioner Lurie.

Since this has come up, it would seem to me the most conservative and best approach for your protection, to not only have us in there representing the interest of you as a Commission individual and the City, but the insurance carrier and other independent counsel in case they attempt, if I am representing you, to call me as a witness against you. So we went to the Judge and asked him about it, and he agreed that it would probably be best, and in your best interests to either at public expense or by special separate counsel or, at least, be given that opportunity. Since the insurance company itself said there was coverage, I then informed them at the same time I informed you - it was time to bring your attorney in to represent them on an individual basis. This thing is written up in accordance with the procedures outlined by the Attorney General and it is not to alarm you, but is for your protection - because some of these cases go on for three, four or five years and there are other faces that appear here and appear there. You don't know exactly what your terms are. There is no way to get out of it - these particular things are for your protection, which is just the opposite of what you seem to think.

Mayor Briare: I can tell you one of the reasons why it would seem otherwise - that is because, as Commissioner Christensen has just mentioned and brought to our attention the \$35.00 - anybody who wants

to file a law suit, may do so. The thing that concerns me is that this is a 2-part case, I suppose. One involves the Zone Change and one involves a granting, or denial, of a License -

Commissioner Lurie: Moving a License -

Mayor Briare: You're right - moving a License to a new location. In the one instance, if we are allowed to use discretion in our vote as members of a Board, a deliberative body - if we are allowed to cast votes based on what we think is our best judgment - that we get sued for exercising what we think is our best judgment - as we are charged with the responsibility of doing - and we're going to have to go out and defend ourselves - in this day and age where everybody sues everybody else for everything - it becomes pretty scary.

Now, as far as the Licensing is concerned - which is another matter apart from the Zoning - there it would seem that it would just be a matter . . .

Mr. Lovell: Mayor, may I interrupt you? I know you are concerned. You are concerned with the same thing that I've been, because every time that you make a decision as a Board, or time delays, etc. are made, and the City Attorney's office and the Licensing Department or the Building Department is involved, you are all sued individually. So what you are saying also applies to me and Hank Elder and Ila Brit. But it is my considered opinion - and I think it would be that of anyone else you would ask - that you have a matter of discretion of Licensing before you. You exercise your discretion in good faith with all good intention that that is your feeling. That you have the right to do without any recourse against you, as an individual. The only recourse is that if the Court felt as they look at it - that you should have reached a different decision, then they will just tell the City to reconsider the decision. Unfortunately, the situation that causes the alarm is not that so much, as it is the perhaps a little of the harrassment or liberality which certain applicants, and especially their attorneys, would feel like throwing the \$35.00 out and suing you as individuals to alarm you. Unfortunately, since they have the power to file any law suit at will, as they wish . . .

Mayor Briare: We are at their mercy - without reason.

Mr. Lovell: Exactly. Consequently the law around the country has been established - Commissioner Lurie, I believe, has even found some of it and I know Commissioner Leavitt did - we have on this particular occasion various extensive points and authorities to dismiss this entire action against you two, individually, because it is totally without merit. Not only that, but the way they feted the case, we feel, was totally inapplicable of what they are trying to reach. They have already tried to reach this thing by a Writ of Mandamus against the Board itself. In any regular Licensing matter - let's say someone comes in for a Candy Store License and you have to be eighteen years old and he is seventeen - or say, he has to be twenty-one - the law recognizes that and he is only twenty years old. And you say - no, you can't do it - because of the ordinances, etc., you can't do that. Or he wants to put a Candy Store in a residential area where you can't do that, and you turn him down, not only at your discretion but under your ordinance. He can come back the very next day and sue you for in excess of \$100,000, personally, but that doesn't mean he is get it on, as such. All it does is harrass you and attempt to intimidate all of us. I think we are all sitting here involved in several different cases. So far, they haven't been successful. In fact, those they sued individually they lost - on the Wrestling Studio, they lost and the Largo case at the present time is up on a motion to dismiss . . .

Mayor Briare: Like in the Motor Cross case now - everybody is getting sued -

Commissioner Leavitt: I don't think we were sued as individuals -

Mr. Lovell: No - not on that one -

Commissioner Lurie: This is the first time we have been sued as

individuals and that's what has alarmed me. I was wondering what I would be signing because here it says I accept this or I go out and find other legal counsel . . . subject to the following stipulations, and these are pretty strong stipulations.

Mr. Lovell: Well, the reason those stipulations are in there - this is the verbatim agreement that the Attorney General - I spoke to Mr. List - got his forms, if you will - the reason they are in there that way is because this statute allows you to be defended at public expense -

Commissioner Leavitt: But he may not want you to -

Commissioner Lurie: When I have acted in good faith I don't even like going into Court.

Commissioner Christensen: Let me ask you a question: These people who sue us and go to Court and get an injunction preventing us from enforcing our ordinances, is there any way we can prevail on the Court to get an injunction against an attorney who is suing us individually for the same thing - pointing up the excuses time after time after time after time, if it is once determined if we act within the scope of our positions and duties and deny something that we get an injunction suing us individually every time we act within the scope of our authority? Or is that part of the game - to be sued every week by these attorneys? Or is there any way we can recover damages for harrassment, or anything like that, or are we just left out in left field on that?

Mr. Lovell: If they wish - if the same client on a different issue before you - or different applicants on different issues before you each week, want to sue you individually and see if they can try to show it, unfortunately it is one of the intimidation aspects, and they can do it.

Where your causes of action and counterclaims come in, is if you show that it was groundless - that it caused you emotional concern - intimidation or any type of expense - of what nature it can be - and you get that action against you dismissed - set aside - thrown out - as to its being groundless, then you have an opportunity, depending upon the circumstances, to sue them. Sometimes someone such as yourself may want - after you get through with all of these preliminary motions - have to answer, if you are still in the case - may want to counterclaim right away to try to prove that it is totally useless. Depending upon the circumstances, generally what has been followed is that you will get that action filed against you initially, dismissed, because it was groundless - didn't have any grounds to it at all - then you go back and sue them.

Commissioner Christensen: But in the meantime, you see, you are intimidated. Now, what we have here - we've got this legal case pending again. It was put to bed once and now it has been reopened in the Supreme Court. We have a Show Cause Hearing they are about to make a decision on, and we've been sued individually. It creates a problem because the Mayor brought the point out here where a person almost has to abstain in order to stay out of Court. At the salary the City pays, we can't afford to hire an outside attorney. To take a case like this - to hire a first class attorney - then you serve for four years at your own expense, plus! Once that gets started every week you pick up \$90.00 and spend \$2,000.00! It puts a person in a position to where he almost has to abstain whenever there is a vote in order to keep out of Court. There ought to be some remedy to do something about it -

Commissioner Lurie: Something to protect us - not the others -

Commissioner Christensen: Regardless of what the issue is, if we're going to be sued over every decision we make whether it's a zoning decision - a license decision - or any other kind of a decision - we're going to have to defend ourselves in Court and there's a good change that on many of them we will have to go for private counsel - there's the possibility that we will - and right away it makes it so that if that becomes known to the public you will have nothing but

attorneys running for the City Commission because there won't be anybody else able to afford to go into Court unless you are an Attorney yourself.

Mayor Briare: And one added thing too - here we have Ken Langbell and Charlie Zobel and Sarah Andrews all here at this meeting - they have been at other meetings, and the impression is that we - and I don't think it's an accurate impression - I can assure you of that - but it could perhaps be concluded that the City Commission is spending an awful lot of time and money on these things. It just so happens that it would appear our efforts are being rewarded by virtue of the Court success we are beginning to have. However, if some of these attorneys who were causing this expense would have to come back and pay some of it . . . Carl Lovell is prevailing - we are beginning to be successful in the Courts. Now, maybe you should go after those people who cause it to go to Court - counter-sue them -

Commissioner Lurie: We could probably get some of these attorneys and their clients, both. What recourse do we have to do that?

Mr. Lovell: I think we have discussed, perhaps individually on this libel case, or other cases, filed by Mr. Andrews, this might be a possibility -

Commissioner Leavitt: By the way - on this libel case - on the Order to Show Cause - I am ready to make my decision on it. If you want to do that now we can . . .

Commissioner Christensen: The reason I asked the question is because here we sit with being harrassed daily with law suits. It is generally conceded that it is harrassment because 99% of them, once they sue you individually, they go ahead and grant the License - then all is forgiven and they drop the personal liability, which indicates that they really didn't want it anyway. And then what you end up with - I guess what my question is - the Laws are designed to give that person a right to sue for - to recover whatever damages he feels he has lost, etc., and if he prevails, he can collect them, Now, is there no place in the Law to protect the taxpayers of the community, when they prevail, that they will have to pay the costs?

Mr. Lovell: In every case that we have filed - in every case that I have filed in North Las Vegas for three and a half years, I have always asked for attorneys' fees and court costs. We tried also in the 1975 Legislature to say that if someone sued a public entity, and they lose, that it would be within the jurisdiction of the Court to allow the award of attorneys' fees and court costs to public entities. They did not pass that in the Legislature session and only on one or two occasions where there was nothing involved of this type of business, were we allowed attorneys' fees - in certain civil condemnation cases.

Commissioner Christensen: In other words, it's a one-way protection -

Mr. Lovell: It seems to be that way - the Courts do not see any . . .

Commissioner Christensen: That's fine for the government entity, but what about individuals - when they sue individuals?

Commissioner Leavitt: I think as long as the City Attorney is representing us, we're not going to get it. I think you would have to engage a private attorney - not that I'm suggesting it at this point . . .

Mr. Lovell: On the Larto case an insurance counsel comes in, who also sits on the case. He will have a better argument than the City will to get attorneys' fees, because the Judge has said there is no statutory authority to allow attorneys' fees to a public entity, and they are reluctant to do so.

Let me say one other thing - this whole conversation that is taking place right now is exactly what was planned in the Fall of 1973. There is an organization called the First Amendment Lawyers Organization Association - something like that - and when we started at that point in adult oriented business litigation, we had Mr. Ahlstrom - who was new - to come with us and join that organization as a private attorney.

So he was a member of it with all these other defense lawyers. He went to a convention they had - an annual conference of attorneys from all over the country, in Los Angeles. One of the items on their agenda, and one of the things they instructed people to do, was - since they don't seem to listen to our interpretation of the First Amendment to the Constitution - in other words, almost total liberal freedom - and let's sue them all individually and scare them into doing it.

This was done on a case I handled in North Las Vegas against me - and as it is now, it is not only me, it is against all of you. Their theory is that they want threaten - to intimidate and put fear in all Public Officials who would dare turn down their right under the First Amendment, whether they win or not. They feel - Mr. Ahlstrom is here and he can comment if he thinks it appropriate - they feel by doing that, it will make them both gun-shy and not do what they feel they have to do but what they must do so they won't get sued. It is happening all over the country this way.

So the situation is really this: When you enter public life, no matter what form - whether policy-making or department head or attorney - and you know what type of issues there are when you take that office - that you are going to be dealt with and confronted with - that whatever you do as long as you do it in good faith - and this is what the Law and the Courts say - you do it in good faith and intentions, you are going to be all right. If they can prove some bad mal-faith, you've got a problem there. If you do it with your intention of good faith to reach the result you feel you have to as an Elected Official in the best interests of the people, you will be all right.

And I think, even though we have had a thrust of four or five cases of individual law suits, two of them have already been thrown back at those people. Now we're seeing it again, but your concern right now is on the initial thrust. When you enter Public life you've got to, unfortunately, in this day and age, expect that that is going to happen and make your record when you take your actions in your Commission meetings, or wherever it might be, and state them and I think you will be all right.

Mayor Briare: Carl, you mentioned, in answer to the question - you said "yes" that your office will defend when we are named as individuals in a case because, first of all, I don't think anybody on this Board - I want to speak for myself pretty clearly here - each person here and Commissioner Woofter as well - we are acting in what we consider to be "good faith" - to the best of our ability and if we are going to get sued for so doing, and we would have to defend ourselves against that suit for so doing, then we'd better take another reading on the Law.

I am convinced, and I'm satisfied with what you say - the only thing is - the apparent significance of importance you are putting on this one case by giving us these memorandums and these things you want us to sign, whereas before, we didn't have to sign anything, and to a person not trained in the Law, I got a little nervous. Now I'm not nervous any more.

Mr. Lovell: The reason for that form, and I hadn't though it necessary earlier to use, but when I talked to the Attorney General, this is what he suggested - this is what he is using and suggested that we use it also.

Mayor Briare: If I'm going to be accused of acting maliciously, or arbitrarily, or capriciously, or any of those other adjectives, then I'm going to trust the Courts to determine that, in truth, I am not acting in any one of those ways. Anybody can accuse me of it, but I'm going to have the faith and be fortunate enough to be able to prove that I have not been any of those. I am confident that the same holds true with the other members of the Commission. I'm accused, but at least defend me while they are accusing me.

Commissioner Christensen: The fault that I find in this form - in

some of the wording - we've lost some cases in Court and been forced to issue Licenses because the wording in our ordinances have said that after these conditions are met, the Commission shall issue a License . Right here it says - in this form - says that decisions concerning the conduct in litigation, including choosing legal alternatives shall be made by the City Attorney. Which means that he will make them whether you like the decision he makes or not - he will make them. It would be a legal alternative as to whether or not you would appeal the case. It says you will fully cooperate with the City Attorney during the course of the litigation - such cooperation shall include but not be limited to . . . In other words, it would include all these things and anything else he wants. All information and evidence in his possession and failure to cooperate shall be deemed constructive refusal of the offer . . .

Mr. Lovell: That is in the State Statutes -

Commissioner Christensen: You know - that's pretty heavy stuff - When you take about intimidating - frankly, I'm intimidated. Yes, he has accomplished that. He has harrassed and browbeat me in the Courts until I hate going into the Courthouse even to talk to anybody now that I'm in there every other week on some law suit and, frankly, it has intimidated me. I has done that, because I can't afford to spend the kind of money that could possibly be required to hire an attorney to defend me . . . and what you're telling me is that I have no defense - the City has no defense - other than to just go into Court and fight it out any time anybody wants to sue.

Mr. Lovell: If they want to file a law suit, they have the burden of proof - to say that their law suit is meritorious. That throws us the opportunity of having it dismissed, to prove that it is a ridiculous case or groundless and if, in fact, that is true . . .

Commissioner Christensen: But in the meantime if I'm subpoenaed into Court, my travel is restricted - I can't go anywhere - I could have the middle of my vacation cut in two - all these things at the whim of some attorney who wants to file a law suit to harrass me. That's what we're saying, basically.

Commissioner Leavitt: Well, this is true, but if you want the City Attorney to represent you, he has to make the legal decisions. If you want to have your own attorney, your own attorney will have to make those legal decisions.

Commissioner Christensen: It just seems there ought to be some way that we could get some kind of injunctive relief from this guy filing a suit against us every 15 minutes - on the same action every time. He gets thrown out one time and comes back and files again by putting a different dot over the eye - he gets it on again. He files a suit 15 minutes after the License is turned down.

Mr. Lovell: Before we adjourn - there are two cases in the Largo matter: One is a Complaint for Declaratory Judgment. The other is the Writ of Mandamus in the Supreme Court. You will recall that we won the Writ of Mandamus in front of Judge Hayes. Then Allen Andrews then took a brand new Writ of Mandamus, suing Judge Hayes and all of us as well, in our official capacities, not individually, to the Supreme Court. The only case that exists with personal liability is the one for Declaratory Judgment, which seeks to throw out the Ordinance itself.

Now, in the Largo case, we in the City Attorney's office are representing the City of Las Vegas, the Board of City Commissioners in both suits - the Writ and the Cicil suit. On the individual basis we'll be in there at bat - as the Judge said - to make sure there is no question about their representations - especially if they are going to call the attorney to try to get him to testify against his own client. Consequently they suggested that the Insurance Company - not the Insurance Company, but independent counsel - since we have the Insurance Company that is giving extended coverage, we use him at that expense.

Now, with that conference and convention and that policy in the Fall of

1973 which this type of defense lawyers took, you have a conflict, between what they want the Judicial Branch to rule on and what you as the Legislative Branch, want, and as long as you are at odds and you are trying to - at least insofar as you feel - try to show the Judiciary what the people in the Legislative bodies want out of their society, you are going to have this caustic conflict, and they are going to do everything they can when the tide seems to be changing, to do something to force you to back off.

The Supreme Court has become more conservative in the last several years. The cases are not so fluidly in their favor any more, as you can readily see. The Judges are now listening to you - listening to meaning you are trying to convey to them. They turned you down on this thing and that thing and then when you bring in certain evidence, etc., they are changing, but as long as you are in the middle of that battle and get elected knowing that is going to happen, every time you do make a decision, then you are putting your hat in the ring.

Commissioner Christensen: If we feel that we need private counsel, but there is nothing that shows that we acted maliciously and that if, in fact, we did act within the scope of our responsibilities, and you still feel you need private counsel, is that a proper municipal expense?

Mr. Lovell: In the Largo case, to be specific, the Judge said "at public expense." In other cases, I don't know -

Commissioner Christensen: How can we find out?

Mr. Lovell: We would have to look at each particular case.

Mayor Briare: One of our particular concerns - and several have been expressed - and maybe we can draw this to a conclusion if it is satisfactory in the minds of the Commissioners - we should certainly try to stress clarification relative to situations where City Commissioners may be sued individually pertaining to matters involving the City.

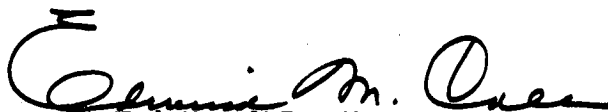
There being no further business to come before the Commission, at the hour of 3:00 this meeting was ADJOURNED.

APPROVED:



WILLIAM H. BRIARE, MAYOR

ATTEST:



EDWINA M. COLE, CMC
CITY CLERK

APPROVED BY REFERENCE at a Regular Meeting of the Board of City Commissioners held on the 23rd day of November 1977.