

House Judiciary Committee Meeting
Monday, April 1, 1963

The House Judiciary Committee met Monday, April 1, 1963, in Room 529 at 8:30 A.M. with Chairman Clyde Hill presiding. Eighteen members were present. Members Arthur and Euler were absent. H. C. Klement, Reverend Paul L. Gaering, Reverend J. D. Forest, Rabbi Judia B. Miller, Rabbi Bernhard, Dr. A. A. Armbruster, Eugene Wakefield, Sidney W. English and Mrs. Joel Reilstein were present to speak concerning Senate Bill No. 137.

Chairman Hill called the meeting to order.

The members of the committee heard the opponents of Senate Bill No. 137, an act prohibiting the sale or offering for sale on the first day of the week, commonly called Sunday, or the compelling, forcing or obligating of employees to sell certain named items on said day; providing certain exemptions; prescribing penalties for violations; and repealing sections 21-952, 21-953, 21-955 and 21-956 of the General Statutes of 1949.

H. C. Klement introduced the first speaker, Reverend Paul L. Gaering, Wichita. Reverend Gaering stated that he is a member of the Mayor's Human Relations' Commission of the City of Wichita. He said he is in favor of voluntary closing on Sunday. He stated that this law will work a hardship on religious minorities who observe other days as days of rest or worship. He said he feels an obligation to ask for consideration for minority groups who may observe another day. It may stand the test of legality, but it violates the giving of equal treatment to all groups. He said that he is asking for an option or privilege for those who observe another day.

Mr. Malone asked how many people in Kansas observe another day of rest or worship. Reverend Gaering stated that he didn't know. He said that the number is insignificant, but the principle is important.

The next speaker was Reverend J. D. Forest, Wichita. He stated that this is an unnecessary law. He said that if the people do not want to shop on Sunday, then the stores will close. He stated that they are only concerned that the shopping centers are drawing the business. This law is unjust in that it does not affect all groups equally. He went on to say that if it is for the people, then let the people decide by putting the issue on the next statewide ballot.

Rabbi Judia B. Miller, Wichita, also stated that this is a discriminatory law. Rabbi Miller; Rabbi Bernhard, Wichita; Dr. A. A. Armbruster, Mission, Kansas; Eugene Wakefield; Sidney W. English and H. C. Klement, Topeka, all supported the statements made by the speakers preceding them.

The members of the committee were presented copies of a statement adopted by the Mayor's Human Relations' Commission of the City of Wichita and a pamphlet entitled "Why I Vetoed Utah's Sunday Closing Law".

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Mrs. Joel Reilstein read a letter printed in the Topeka Daily Capital against Senate Bill No. 137 which she stated expressed her views exactly. The letter hit upon many of the points previously stated by the preceding speakers. The most important point was that the consumer should be considered and if they want to shop on Sunday, then they should be permitted to do so.

Chairman Hill asked if there was anyone else who wished to be heard or if there were any questions by the members of the committee. There were none. Chairman Hill thanked the people for appearing and expressing their views.

There was some discussion by the members of the committee concerning Senate Bill No. 364, an act relating to retired justices of the supreme court and judges of the district courts, providing for the appointment, powers and authority of a retired justice or judge as judge pro tem and as commissioner, and as relating to the retirement system for justices of the supreme court and district court judges increasing the rates of contributions of justices and judges to the retirement fund, prescribing fees for such fund to be taxed as costs, limiting benefits and incomes of retired justices and judges; amending sections 20-2603 and 20-2610 of the General Statutes Supplement of 1961, and repealing said original sections. Mr. Crossan moved that Senate Bill No. 364 be reported favorably for passage. Mr. Van Cleave seconded. Chairman Hill asked for any further discussion. There was none. Motion carried unanimously.

Mr. Crossan moved that the committee reconsider their action on Senate Bill No. 365. Mr. Liebert seconded. Chairman Hill asked for any discussion. There was none. Motion carried. The only member of the committee voting against this motion was Mr. Davis.

Mr. Davis reported on Senate Bill No. 414, an act relating to the collection and disposition of certain fees by clerks of district courts, amending section 28-170 of the General Statutes Supplement of 1961, and repealing said original section. He presented the members of the committee with figures regarding this. A copy of this information is attached to these minutes. Mr. Briggs stated that he objects to the charge for acknowledgment and certificates. Chairman Hill stated that they are supposed to charge at the present time. He asked if the Legislative Council worked on this. Mr. Van Cleave stated that they did. Mr. Davis pointed out that they studied all the states and that this is a compromise.

Mr. Smith moved that Senate Bill No. 414 be reported favorably for passage. Mr. Skoog seconded. Chairman Hill asked if there was any further discussion. There was none. Motion carried. Fourteen members of the committee were in favor of the motion and three opposed.

The meeting adjourned at 10:00 A.M. The committee will meet at 4:00 P.M. and at 7:00 P.M. Monday, April 1, 1963, in Room 523.

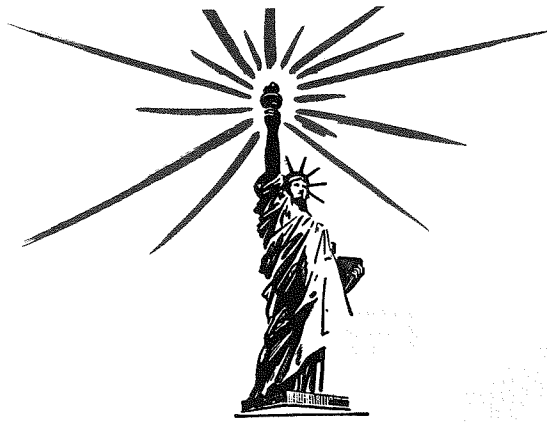
Respectfully submitted,
Clyde Hill, Chairman



Governor
George
Dewey
Clyde

Why I **VETOED**

Utah's Sunday Closing Law



Honorable Sherman P. Lloyd
President of the Senate and
Members of the Senate

Gentlemen:

I am returning herewith, without my signature or my approval, Senate Bill 24; popularly referred to as the "Sunday Closing Bill."

I am taking this action with reluctance, because of the large majority with which this bill passed both Houses of the Legislature. However, I have given this matter much thought and study, I have sought counsel from many sources, and I have been forced to the conclusion that this legislation is not in the best interest of the State of Utah.

I have endeavored to group my objections to this proposed law into categories connected by logic. The first of these which I shall discuss are the moral issues involved.

Many deeply religious people belonging to many different churches have expressed their support of Senate Bill 24, and I should like to make it clear that I am personally wholly in sympathy with their basic aim of reverence for and observance of the Sabbath.

This very thing, however, brings up a major objection to Senate Bill 24 as passed by the Legislature.

There are religious groups in this State who observe another day than Sunday as their Sabbath. The fact that these groups may be small in number only emphasizes the importance of respecting their rights. The true democratic process rests as much on the principle of respect for the fundamental rights of minorities as on that of majority rule.

Would Force Minority Groups

It has been pointed out to me that Senate Bill 24 would not require these minority religious groups to worship on any day or

in any manner not of their choosing. I consider this a specious argument. In practical effect, Senate Bill 24 would force members of the minority religious groups to adopt one of two choices:

1. To work on their own Sabbath day—which is precisely what this bill is purporting to prevent; or

2. To refrain from work on both Saturday and Sunday, thereby attempting to compete on the basis of a five-day week as compared to the six days available to their competitors who recognize Sunday as the Sabbath day.

It has been urged on me that Senate Bill 24 would have a salutary moral effect by closing avenues of Sunday employment to young people who are kept by their employment from attending their church duties. I find this argument inconclusive. Because avenues of gainful employment are closed to these young people, it does not necessarily follow that they will devote their Sundays to religious activities.

I am afraid that many of them might, if deprived of their Sunday jobs, spend their time loitering in beer halls or other places which are exempted from the Sunday closing requirements of Senate Bill 24 on the theory that they fall in the area of "recreation."

This in itself offers a strong argument against approval of Senate Bill 24. I do not think we can honestly take the position that the spirit of the Sabbath will be preserved by closing certain retail establishments while approving the Sunday operation of beer taverns.

A Lack of Equity

My second group of objections to Senate Bill 24 may be listed under the heading of "Equity"—or rather lack of equity in the provisions of this proposed law.

Senate Bill 24 discriminates sharply between types of businesses, without logical justification.

It is understandable that operations directly affecting public health and welfare—including such things as hospitals, prescription counters, hotels and restaurants—should be exempted from the Sunday closing requirement. However, I find no such logic behind the intent of the bill's sponsors to exempt such things as mining and manufacturing operations.

I have discussed this matter at length with the owners and operators of many of Utah's mining and manufacturing operations, and I find they agree that if they are exempt from the Sunday closing requirement—and this is a very large and important "if" to which I shall return later in this message—it can only be on the ground of economic necessity.

The actual Sunday output of any of our mines or factories cannot be held essential to public health or welfare.

Now if a mine or factory is allowed to operate on Sunday as a matter of economic necessity, I find it inequitable to require the owner of a small independent grocery store or a roadside fruit stand to close his place of business on Sunday when it may mean economic ruin to the small operator. The difference in the amount of money involved in the large and small operations does not alter the basic principle.

Attempt to Regulate Competition

I have been forced to the conclusion that the major support for Senate Bill 24 comes from a group of retail merchants who are seeking by this means to regulate competition within their own industry.

In fact, some competition, the competition provided by the small independent operator, for example, would very probably be eliminated if this bill became law. I do not think it proper to enact laws to provide an economic advantage to a particular group or industry—most certainly not when such advantage might work to the disadvantage of a business competitor.

My third area of objection to Senate Bill 24 may be placed under the heading of "Practical Effects."

I referred earlier to the status of mining and manufacturing operations under the provisions of Senate Bill 24, and pointed to certain inequities that would be apparent if these operations are held exempt from the Sunday closing requirements. The supporters of Senate Bill 24 assure me that these operations are exempted from the Sunday closing requirement.

However, I find that lawyers are very much divided in their opinion on this question. In the face of this disagreement among members of the legal profession, I, as a layman, shall make no attempt to resolve the legal question.

Serious Economic Consequences

But I am forced to examine closely the consequences that would follow a determination by the courts that these operations are required by the provisions of this proposed law to close down on Sundays.

If our mines were required to close down on Sundays, I am informed that their production schedules would be seriously affected. They would have to reduce the number of their employees by hundreds, even thousands, depending on the size of individual operations. Production would be reduced substantially, and with it the State's return from the mine occupation tax.

The whole economic pattern of the State would be seriously and adversely affected. Even the warmest proponents of Senate Bill 24 say they do not want this to happen, and that they have for this very reason exempted these operations from the Sunday closing requirements—and yet the legal counsel of our mining companies are of the opinion that the exemption provided by Senate Bill 24 is extremely doubtful.

Food Industry Jeopardized

By the time the question could be decided by the courts, extensive damage could have resulted to the Utah economy.

The food processing industry is placed in particular jeopardy by the Senate Bill 24. This industry is seasonal in its operation, and officials of the food canning industry tell me that their legal counsel feel that the industry is not exempt from the Sunday closing requirement under the language in Senate Bill 24 that defines businesses "normally in continuous operation."

If a cannery were forced to shut down over Sunday at a critical time in the operational season, it would result in spoilage and loss of quality that could possibly wipe out the entire year's profits for the growers of canning produce, and result in substantial loss to the canner.

The problem now being faced by the canning industry is peculiar and immediate. The 1959 canning season is many months away, but we are now [February] at the time when contracts must be signed between food processors and growers. In the face of the doubt as to the status of the canning industry under the provisions of Senate Bill 24, and particularly in the face of the opinion of legal counsel for the industry, growers are showing an understandable reluctance to sign contracts to grow canning crops.

If Senate Bill 24 became law, and even if the courts later decided that the canning industry is exempt from the Sunday closing requirement, irreparable damage might have been done.

I feel it would be most unwise to jeopardize the future of an industry that is of large and growing importance to the Utah economy.

Effective Enforcement Impossible

One of the largest practical problems that would be posed by signing Senate Bill 24 into law would be that of enforcement. I am convinced that effective enforcement would be impossible, and that we should virtually force many honest citizens to become lawbreakers.

This may best be illustrated by a practical example. A drugstore is allowed to remain open on Sundays for the sale of medicines and other items essential to public health and welfare. Yet other items in the same store could not legally be sold.

A druggist would have a most difficult choice between breaking the law and alienating customers who asked to purchase items that were not exempt under the provisions of Senate Bill 24.

Widespread Violation

I am sure there would be widespread violations of the law and that this would tend to breed general disrespect for the law throughout our communities.

I have discussed the question with a number of law enforcement officers. When I asked: "How would this law be enforced?" I invariably received the answer: "It wouldn't!" This may be deplorable, but it is a fact we must face.

We should have to depend for enforcement on the law enforcement agencies of our counties, cities and towns. When these local government units have refused to exercise their statutory power they now possess to order Sunday closing in their own jurisdictions, it would be unrealistic to expect them to vigorously enforce a State law to the same effect.

Police Every Store

Even if strenuous efforts toward enforcement were made, they could hardly be effective short of placing a policeman in each and every establishment that is allowed to remain open on Sundays. I am sure none of us want to return to the practice prevalent in the prohibition era of sending undercover agents to places of business in an effort to entrap merchants in violations of the law.

The question of the constitutionality of Senate Bill 24 has been raised by a number of lawyers, but I do not consider this a factor in my present decision.

As I have noted, legal minds are not in agreement on this point and many lawyers are confident that the bill would be held constitutional.

If the question of constitutionality were the only one at issue, I should be inclined to sign the bill and let the courts decide. However, the many other issues I have outlined, including the serious damage that might be done if the court decision were along certain lines, compel me to take another course of action.

For the reasons I have discussed, I feel compelled to veto Senate Bill 24.

Reprinted from *Liberty*

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(The following statement was adopted by the Mayor's Human Relations' Commission of the City of Wichita on May 24, 1962.)

SUNDAY BLUE LAWS AND THE FIRST AMENDMENT

In the light of the renewed activity favoring passage of a Sunday closing law in Kansas, it is important that we consider the effect such "Blue Laws" leave on the preservation of religious freedom that is guaranteed in the First Amendment to the Constitution.

What do such laws mean to those who celebrate Saturday (or any day other than Sunday) as the Sabbath? It means one of three things:

(a) Those who celebrate the Sabbath on Saturday, and continue to do so, put themselves at a severe competitive disadvantage. For they must be closed two days a week, while their competitors are closed only one day a week.

(b) Those who have been celebrating the Sabbath on Saturday decide they must compromise their religious convictions and remain open for business on that day.

(c) Such businessmen continue to close on their Sabbath and open on Sunday, forced to defy an unjust law in order to make a living without violating their religious principles. This is, of course, not an acceptable solution to the problem, and puts honest, reverent citizens in the position of being law-breakers and subjects them to prosecution and punishment.

Attorneys throughout the land have attacked the "Blue Laws" on several grounds. The particular objections pertaining to religion are:

1. That the laws prohibit the free exercise of religion of those who observe some day other than Sunday as their Sabbath.

2. That Sunday closing laws "by placing the authority of the state behind the religious holy day of Christians, constitute an establishment of religion in violation of the First Amendment."

On May 29, 1961, the Supreme Court ruled that the laws were constitutional - that Sunday laws were an implementation of the legitimate concern of the state for the improvement of "the health, safety, recreation, and general well-being of our citizens."

The present efforts for a Sunday closing law are framed within the terms of this Supreme Court decision. i.e., there is no effort to declare Sunday to be the legal Sabbath, but rather a uniform closing day in the nature of "America's day off".

It is obvious, however, that such a law, regardless of its stated motivation, would have the inescapable effect of discriminating against the free practice of those religions that honor another day as the Sabbath.

For these reasons, it is unthinkable that a Sunday closing law could be passed in our American democracy without providing an exemption for those who observe a different Sabbath closing.

However, even with such an exemption included, we feel obliged to oppose passage of a Sunday closing law because, although such an exemption might technically and legally protect the religious freedom of all groups, in practical terms it would be ineffectual. For example:

(1) Despite their legal right to be closed on their own Sabbaths and open on Sunday, the relatively small number of businessmen involved are likely to find the social and economic pressures to conform are simply too strong to resist.

(2) The afore-mentioned social and economic pressures and ill-will may very probably, in the popular mind, be extended from the individual Sunday-opening Sabbatarian to include the entire group or denomination to which he belongs. This will tend to divide and arouse hostilities among various groups within our pluralistic society.

(3) Such an exemption would be totally ineffectual in protecting the job of an employee of a firm that presently allows him to take off on his Sabbath day and to make it up by working on Sunday instead, for his firm would henceforth be forced to be closed on Sunday.

These examples illustrate that a Sunday closing law, even with an exemption for those observing a different day as the Sabbath, is bound to infringe seriously upon the religious freedom of a significant number of Americans. It is for this reason that we firmly oppose the passage of such a law and urge all who value our American way of life to do the same.

be making the same charges for like services, and there will be a uniform operation throughout the State.

You will note this new proposed schedule has fewer charges, and while they seem larger, they represent in many instances a "lumping together" or combination of operations or fees which we charge. The method of keeping our records will not be altered by this schedule, except as the charges will be fewer for our services in the Appearance Docket.

Yes, the fees are a little ^{higher in preparing} ~~higher in preparing~~ this schedule, we figured some sample cases, and I would like to set a few of these out for you, showing the charges for Clerk's Fees, and the total costs, in each, figured by both the old and the new, proposed fee schedule: (These are representative cases picked at random by title to compare several types of action):

Case No.	Kind of Action		Old charge	New Charge
14303	Damages (Friendly Suit)	Clerk's Fee	\$3.40	\$4.50
		Total Costs	8.40	9.50
14307	Quiet Title	Clerk's	7.70	11.00
		Total	41.16	44.46
14310	Burglary	Clerk's	7.35	8.00
		Total	24.55	25.20
14315	Unif. Recip.	Clerk's	4.40	6.50
		Total	7.40	9.50
14324	Divorce	Clerk's	4.75	6.50
		Total	20.67	22.42
14333	Appeal from Police Court	Clerk's	4.35	7.00
		Total	6.35	9.00
14337	Partition	Clerk's	11.25	19.50
		Total	51.49	59.74
14339	Divorce	Clerk's	5.95	7.00
		Total	8.95	10.00
14343	Sep't. Maint.	Clerk's	5.80	6.00
		Total	8.80	9.00
14348	Replevin	Clerk's	6.80	9.00
		Total	11.80	13.80
14358	Rec. of Money	Clerk's	6.80	9.00
		Total	11.60	13.80

I believe, Mr. Davis, you will see this increase is not exorbitant.

I am crowded for time, and regret that I do not have time to write a personal letter to each member of your Committee. I am taking the liberty of sending a copy of this letter to you, to each Mr. Hill, your Committee Chairman, and to Speaker Arthur. I would like to ask your kind indulgence in sharing this information with other members of your Committee, to assist them in reaching a conclusion in regard to this bill.

Thank you for your interest in good Government in Kansas, which I assure you we District Clerks also share, and also thank you for your time which you have taken to read this letter.

May I again urge that your Committee give favorable consideration to this bill? And if you have further questions, rest assured I will be more than pleased to discuss the matter with you.

Very sincerely yours,
Edward C. Verbeke, President, Kansas District Clerks' Assoc.

cc to Mr. Hill
Mr. Arthur