

STATE OF WISCONSIN

Senate Journal

Seventy-Seventh Session

TUESDAY, October 12, 1965.

9:00 o'clock A.M.

The senate met.

The president pro tempore in the chair.

Prayer was offered by Father Eugene T r e s t e r of St. Raphael's Cathedral of Madison.

The roll was called and the following senators answered to their names:

Senators Benson, Bice, B u s b y , Carr, Christopherson, Dempsey, Dorman, Draheim, Hansen, Hollander, Kendzior-ski, Keppler, Knowles, Krueger, LaFave, Leonard, Leverich, Lorge, Lourigan, McParland, Meunier, Panzer, Rasmusen, Risser, Roseleip, Schreiber, Schuele, Smith, Sussman, Thompson, Warren and Zaborski—32.

Absent—Senator Miller—1.

Senate Bill 314

Senator Sussman secured unanimous consent to have the journal show that had he been present and voting yesterday on the question, that he would have voted "Aye" to over-ride the veto of the Governor on the bill.

BILLS INTRODUCED

Senator LaFave secured unanimous consent to introduce the following bill.

Senate Bill 602

Relating to the elimination of inconsistencies and the clarification of various provisions pertaining to the Wiscon-

sin retirement fund, the state teachers retirement system and teachers annuity and retirement funds in cities of the 1st class.

By Senator LaFave, by request of joint Survey committee on Retirement Systems.

Read first time.

The bill was referred to the joint Survey committee on Retirement Systems, upon motion of Senator LaFave, with unanimous consent.

PETITIONS AND COMMUNICATIONS

The State of Wisconsin
Office of Attorney General
Madison

The Honorable, The Senate
State Capitol
Madison, Wisconsin

Gentlemen: In response to the request contained in **Senate Resolution 36**, we wish to advise you that we have today issued an opinion to the Assembly as to the constitutionality of **Assembly Bill 852**. A copy of that opinion is attached.

Very truly yours,

BRONSON C. LA FOLLETTE,
Attorney General.

October 11, 1965.

October 11, 1965.

The Honorable, the Senate
State Capitol
Madison, Wisconsin

Gentlemen: By **Senate Resolution 36** you have requested my opinion as to the constitutionality of the exclusions in sec. 101.60 (1) (a), Stats., as proposed by section 4 of **Assembly Bill 852**, in view of the prohibitions and penalties in said section against discrimination in housing and the basic reasons for such prohibitions.

In my opinion the exclusions in the proposed statutory section would not render the statute unconstitutional.

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Section 4 of Assembly Bill 852 would create sec. 101.60, Stats., relating to equal opportunities in housing. Subsec. (1) (a) would provide:

“(a) ‘Housing’ means any improved property, including any mobile home as defined in s. 66.058, which is used or occupied, or is intended, arranged or designed to be used or occupied, or is intended, arranged or designed to be used or occupied, as a home or residence, but does not include:

“1. Any building or structure containing living quarters occupied or intended to be occupied by no more than one family and which is used by or was last used by the owner thereof as a bona fide residence for himself and any members of his family forming his household;

“2. Any building occupied by the owner as his residence, in which single rooms are rented out for occupancy by 4 or less individuals, not members of the owner’s family.

“3. Any building consisting of four or less dwelling units, all in one structure, in which at least one of such dwelling units is occupied by the owner of such building as his residence.”

Discrimination is defined to mean unequal treatment of any person because of race, color, religion, national origin or ancestry. Subsec. (2) of the proposed sec. 101.60 would make it unlawful for any person to discriminate by refusing to sell, lease, finance or contract to construct housing; by refusing to permit inspection or refusing to negotiate or exacting more stringent conditions for the sale, lease or rental of housing; by refusing to finance or sell an unimproved residential lot or to construct a home thereon; or by issuing any advertising which indicates discrimination in connection with housing. The proposed sec. 101.60 also would empower the industrial commission to administer the statute, including the issuance of enforceable orders, would provide for judicial review, and would impose a forfeiture for violation of the section

In order to answer your question it is necessary to understand the effect of the three exemptions to the definition of housing quoted previously.

The language of the first exemption or exception, set forth in proposed sec. 101.60 (1) (a) 1., requires construction. Literally, the wording would exempt from the operation

tion of the section a 1,000-unit apartment building, if the owner used one of the apartments as his residence. This follows from the fact that the exception is not expressly limited to a building containing only one apartment or dwelling unit. However, such a construction would render meaningless the exception contained in subparagraph 3., which applies to a building consisting of 4 or less dwelling units, one of which is occupied by the owner as his residence.

It seems obvious that what is intended by subparagraph 1., is to exclude from the operation of the section a single-family residence or other building containing only one dwelling unit, which is used, or was last used, by the owner as his family's residence. Thus this exception would, for example, exclude from the operation of the section an ordinary single-family residence which might be rented once during the temporary absence of the owner.

If the foregoing construction of the first exception is adopted, the third exception then becomes meaningful. The third exception would remove from the operation of the section a 4-apartment building, one apartment of which is occupied by the owner as his residence. The exception or exemption would be lost, however, if the owner temporarily moved away from his apartment and rented it to another.

The second exception, of course, would remove from the operation of the section a building occupied by the owner as his residence, if single rooms were rented to no more than 4 individuals not members of the owner's family.

In my opinion each of these exclusions is reasonable. In reaching this conclusion I am cognizant of the language of the resolution requesting my opinion, in which it is stated that the bill "arbitrarily and unreasonably excludes" certain buildings and the owners thereof. Despite that language, it cannot be presumed that the Assembly deliberately passed a bill containing an arbitrary and unreasonable classification. Furthermore, if the bill is passed by the Senate, it would have to be presumed that in enacting the bill the legislature thereby determined that there was need for such legislation and that the classifications made were reasonable.

A measure somewhat comparable to Assembly Bill 852 came before the Supreme Court of Ohio recently. *Porter v. City of Oberlin*, (1965) 1 Ohio St. 2d 143, 205 N.E. 2d 363. The court there had no difficulty in sustaining the constitu-

tionality of a fair housing ordinance which applied to an owner of 5 or more dwelling units and to a real estate broker, salesman or lending institution. The ordinance there was attacked on the grounds that it permitted an owner of only one property to practice racial discrimination but prohibited a realtor serving such an owner from so discriminating. This attack the court brushed aside on the grounds that if such an owner could not obtain the services of a real estate broker, the owner would himself be discouraged from indulging in racial discrimination.

The Oberlin Ordinance also was attacked on the ground that there was no reasonable basis for treating owners of 5 or more dwelling units differently from owners of less than 5 such units. The court held that this distinction did not violate the equal protection clause, stating at 1 Ohio St. 2d 152:

“Equal protection provisions of the federal and Ohio Constitutions do not require resort to close distinctions or the maintenance of a precise scientific uniformity and do not prohibit distinctions not shown to be substantial or which are based on differentiations not shown to be arbitrary or capricious. * * *

“Furthermore, it is generally recognized that a legislative body, when it chooses to act to correct a given evil, need not correct all the evil at once, but may proceed step by step. * * *

“Certainly, a legislative body is not unreasonable because it elects to proceed slowly in such an emotionally involved field as race relations.”

The decision in the *Porter* case went on to state that an owner of more than 4 dwelling units, who desired to practice racial discrimination in the sale or rental of such units, was potentially a greater threat to those who would be hurt by such discrimination than was the owner of less than 5 such units.

The reasoning of the decision in the *Porter* case is equally applicable to the question you propound. Each of the exclusions set forth in proposed sec. 101.60 (1) (a) applies only to a building containing few dwelling units. The second and third exclusions apply only to buildings in which the owner has his residence. The first exclusion, construed as previously discussed herein, would apply to a single-family residence last used by the owner as his residence,

but the exclusion would be lost if the owner rented the property to a second tenant.

In my opinion the decision in *Porter v. City of Oberlin*, *supra*, contains a complete answer to a constitutional attack which might be made upon the exclusions from the definition of housing contained in proposed sec. 101.60, Stats.

Very truly yours,

BRONSON C. LA FOLLETTE,
Attorney General.

CAPTION: The exclusions from the application of the fair housing provisions of **Assembly Bill No. 852**, set forth in proposed sec. 101.60 (1) (a), Stats., would not render the resulting law unconstitutional.

The reading at length of the foregoing opinion of the Attorney General was dispensed with and the caption only was read by the clerk, upon motion of Senator Knowles, with unanimous consent.

MESSAGE FROM THE ASSEMBLY

By James P. Buckley, chief clerk thereof.

Mr. President:

I am directed to inform you that the assembly has passed and asks concurrence in

Assembly Bill 301,
Assembly Bill 359,
Assembly Bill 389,
Assembly Bill 438,
Assembly Bill 445,
Assembly Bill 470,
Assembly Bill 547,
Assembly Bill 767,
Assembly Bill 882,
Assembly Bill 919,
Assembly Bill 922,
Assembly Bill 925 and
Assembly Bill 931 and has

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**Concurred in
Senate Joint Resolution 104,
Senate Bill 261,
Senate Bill 562 and**

The senate action, upon motion of Assemblyman Nager, pursuant to Joint Rule 26, directing the Legislative Reference Bureau to prepare a suitable joint certificate of Commendation to Dr. Alfred Wilson Swan who retired after 35 fruitful years as minister of Madison's First Congregational Church; and Whereas, Reverend Swan set an example as a minister with a deep concern for the social conflicts of his time, donating his time and efforts as a charter member and founder of the Congregational Christian Council for Social Action in 1934, as the first chairman of the Congregational Christian Service Committee in 1943, and as a charter member of the Wisconsin Governor's Commission on Human Rights in 1947, helping to draft the commission's statement of principles; and Whereas, Reverend Swan repeatedly served as the chaplain of the Wisconsin Senate and Assembly, the Members of the Wisconsin Legislature commend Dr. Alfred Wilson Swan on his outstanding record of service to his community as minister of Madison's First Congregational Church, and extend to the Reverend their best wishes for the years of his retirement, and

The senate action, upon motion of Assemblyman Schaeffer, pursuant to Joint Rule 26, directing the Legislative Reference Bureau to prepare a suitable joint certificate of Commendation to Cy Rice upon his retirement from the Milwaukee Sentinel after 43 years in the news and communications business. Whereas, he is one of Wisconsin's most widely known newspapermen—having covered politics with a hard and sometimes cynical eye, and also the theater with deep affection, insight and knowledge, and Whereas, some years ago he invented a character, Duffy J. Guffey, "Milwaukee's Alderman at Large" who could delight politicians, and at times make them twinge, Therefore, be it Resolved, that both the Senate and Assembly extend to Cy Rice our sincere appreciation for his outstanding service to the news media, and sincerely wish him many happy retirement years, and has

**Nonconcurrent in
Senate Bill 423**

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ASSEMBLY MESSAGE CONSIDERED

Read first time and referred:

Assembly Bill 301

To committee on Judiciary.

Assembly Bill 359

To committee on Public Welfare.

Assembly Bill 389

To committee on Governmental and Veterans' Affairs.

Assembly Bill 438

To committee on Public Welfare.

Assembly Bill 445

To committee on Public Welfare.

Assembly Bill 470

To committee on Public Welfare.

Assembly Bill 547

Read first time.

Was referred to the calendar, upon motion of Senator Warren, with unanimous consent.

Read first time and referred:

Assembly Bill 767

To committee on Governmental and Veterans' Affairs.

Assembly Bill 882

To committee on Public Welfare.

Assembly Bill 919

To committee on Governmental and Veterans' Affairs.

Assembly Bill 922

To committee on Judiciary.

Assembly Bill 925

To committee on Governmental and Veterans' Affairs.

Assembly Bill 931

To committee on Judiciary.

MOTIONS

**Senate Bill 247 and
Senate Bill 428**

Were recalled from the joint committee on Finance and referred to the calendar, upon motion of Senator Hollander, with unanimous consent.

Senate Bill 430

Was recalled from the joint committee on Finance and referred to the calendar, upon motion of Senator Bice, with unanimous consent.

SPECIAL ORDER

Senator Knowles called the attention of the senate to the Special Order which had been fixed for 9:01 o'clock this morning and to the fact that that hour had arrived.

The senate proceeded to consider

Senate Bill 601

Which had been made the Special Order.

Senate Bill 601

Read a second time.

The bill was ordered engrossed and read a third time.

Upon motion of Senator Knowles, with unanimous consent, the bill was considered for final action at this time.

Senate Bill 601

An act to create a temporary committee to make recommendations on Senate Bills 221 and 434.

Was read a third time.

The question was: Shall the bill pass?

The ayes and noes were required and the vote was: ayes, 32; noes, 0; absent or not voting, 1; as follows:

Ayes—Senators Benson, Bice, Busby, Carr, Christopher-son, Dempsey, Dorman, Draheim, Hansen, Hollander, Kendziorski, Keppler, Knowles, Krueger, LaFave, Leonard, Leverich, Lorge, Lourigan, McParland, Meunier, Panzer, Rasmusen, Risser, Roseleip, Schreiber, Schuele, Smith, Sussman, Thompson, Warren and Zaborski—32.

Noes—None.

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Absent or not voting—Senator Miller—1.
So the bill passed.

Senate Bill 221

Relating to the licensing and regulation of water softener contractors, installers and servicemen.

And

Senate Bill 434

Relating to installers of certain water system connected appliances, equipment and fixtures in rural areas and granting rule-making authority.

Which bills were Special Orders for 9:01 o'clock this morning were laid on the table, upon motion of Senator Knowles, with unanimous consent.

SPECIAL ORDER

Senator Knowles called the attention of the senate to the Special Order which had been fixed for 9:02 o'clock this morning and to the fact that that hour had arrived.

The senate proceeded to consider

Senate Bill 488

Which had been made the Special Order.

Senate Bill 488

Relating to prohibiting certain practices by municipal employes or their representatives acting individually or in concert.

The question was: Shall the vote by which the bill was ordered engrossed and read a third time be reconsidered?

The ayes and noes were demanded and the vote was: ayes, 19; noes, 13; absent or not voting, 1; as follows:

Ayes—Senators Benson, B u s b y , Carr, Christopherson, Dempsey, Dorman, Hansen, Kendziorski, Krueger, LaFave, Leverich, Lourigan, McParland, Risser, Schreiber, Schuele, Sussman, Thompson and Zaborski—19.

Noes—Senators Bice, D r a h e i m , Hollander, Keppler, Knowles, Leonard, Lorge, Meunier, Panzer, Rasmusen, Roseleip, Smith and Warren—13.

Absent or not voting—Senator Miller—1.

So the vote was reconsidered.

Senate Bill 488

The question was: Shall the bill be ordered engrossed and read a third time?

The ayes and noes were demanded and the vote was: ayes, 15; noes, 17; absent or not voting, 1; as follows:

Ayes—Senators Benson, Bice, Draheim, Hollander, Keppler, Knowles, Leonard, Lorge, Meunier, Panzer, Rasmusen, Roseip, Smith, Warren and Zaborski—15.

Noes—Senators Busby, Carr, Christopherson, Dempsey, Dorman, Hansen, Kendziorski, Krueger, LaFave, Leverich, Lourigan, McParland, Risser, Schreiber, Schuele, Sussman and Thompson—17.

Absent or not voting—Senator Miller—1.

So the question was decided in the negative.

SEPCIAL ORDER

Senator Knowles called the attention of the senate to the Special Order which had been fixed for 9:03 o'clock this morning and to the fact that that hour had arrived.

The senate proceeded to consider.

Senate Bill 533

Which had been made the Special Order.

Senate Bill 533

Read a second time.

Amendment No. 1, S. to amendment No. 1, S. was offered by Senators Schreiber and Christopherson.

Amendment No. 1, S. to amendment No. 1, S. was adopted.

Amendment No. 1, S. was refused rejection.

Amendment No. 1, S. was adopted.

Amendment No. 2, S. was rejected, upon motion of Senator Hollander.

The bill was ordered engrossed and read a third time.

Upon motion of Senator Knowles, with unanimous consent, the bill was considered for final action at this time.

Senate Bill 533

Relating to increased membership on the legislative committee to visit state institutions.

Was read a third time.

The question was: Shall the bill pass?

The ayes and noes were required and the vote was: ayes, 27; noes, 3; absent or not voting, 3; as follows:

Ayes—Senators Benson, Bice, Busby, Carr, Christopher-son, Dorman, Hansen, Hollander, Kendziorski, Keppler, Knowles, Krueger, LaFave, Leverich, Lourigan, McParland, Panzer, Rasmusen, Risser, Roseleip, Schreiber, Schuele, Smith, Sussman, Thompson, Warren and Zaborski—27.

Noes—Senators Dempsey, Leonard and Lorge—3.

Absent or not voting—Senators Draheim, McParland and Miller—3.

So the bill passed.

SPECIAL ORDER

Senator Knowles called the attention of the senate to the Special Order which had been fixed for 9:04 o'clock this morning and to the fact that that hour had arrived.

The senate proceeded to consider

Assembly Bill 615

Which had been made the Special Order.

Read a second time.

Assembly Bill 615

Relating to applications and qualifications of cosmetologists.

The question was: Shall the bill be non-concurred in?

The ayes and noes were demanded and the vote was: ayes, 16; noes, 14; absent or not voting, 3; as follows:

Ayes—Senators Busby, Christopherson, Dempsey, Dorman, Hansen, Kendziorski, Knowles, Leonard, Leverich, Panzer, Risser, Schreiber, Sussman, Thompson, Warren and Zaborski—16.

Noes—Senators Benson, Bice, Hollander, Keppler, Krueger, LaFave, Lorge, Lourigan, McParland, Meunier, Rasmusen, Roseleip, Schuele and Smith—14.

Absent or not voting—Senators Carr, Draheim and Miller—3.

So the bill was non-concurred in.

CALENDAR OF FRIDAY, OCTOBER 8th
CONSIDERATION OF RESOLUTIONS

Assembly Joint Resolution 110

Requesting the judicial council to study the apportionment of judicial manpower and devise a plan for a more efficient utilization of such manpower.

Was read.

Amendment No. 1, S. was adopted.

Amendment No. 2, S. was adopted.

The joint resolution, as amended, was concurred in.

SECOND READING AND AMENDMENT OF
SENATE BILLS

Senate Bill 266

Relating to the authority of the conservation commission to limit the number of hunters in any area.

Read a second time.

Substitute amendment No. 1, S. was adopted.

The bill was ordered engrossed and read a third time.

Upon motion of Senator Knowles, with unanimous consent, the bill was considered for final action at this time.

The bill was read a third time and passed.

Senate Bill 273

Read a second time.

Amendment No. 1, S. was adopted.

Amendment No. 2, S. was adopted.

Amendment No. 3, S. was adopted.

The bill was ordered engrossed and read a third time.

Upon motion of Senator Knowles, with unanimous consent, the bill was considered for final action at this time.

Senate Bill 273

Relating to a public defender at appellate level.

Was read a third time.

The question was: Shall the bill pass?

The ayes and noes were required and the vote was: ayes, 29; noes, 2; absent or not voting, 2; as follows:

Ayes—Senators Bice, Busby, Carr, Christopherson, Dempsey, Draheim, Hansen, Hollander, Kendziorski, Kep-

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pler, Knowles, Krueger, LaFave, Leonard, Leverich, Lorge, McParland, Meunier, Panzer, Rasmusen, Risser, Roseleip, Schreiber, Schuele, Smith, Sussman, Thompson, Warren and Zaborski—29.

Noes—Senators Dorman and Lourigan—2.

Absent or not voting—Senators Benson and Miller—2.

So the bill passed.

Senate Bill 517

Relating to certificates of title for motor vehicles and providing penalties.

Read a second time.

The bill on the calendar of Friday, October 8th was referred to the joint committee on Finance, upon motion of Senator Leonard, with unanimous consent.

Upon motion of Senator Knowles, with unanimous consent, the senate recessed until 11:20 o'clock this morning.

RECESS

11:20 o'clock A.M.

The senate was called to order by the president.

MOTIONS

Assembly Bill 482

Relating to the committee of examiners in the barber division of the state board of health and the compensation of the examiners.

On today's calendar was re-referred to the committee on Public Welfare, upon motion of Senator Dempsey, with unanimous consent.

Assembly Bill 741

Relating to powers of the state board of health to order preparation, filing of plans and construction of sanitary facilities.

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Senator Dempsey asked unanimous consent that the bill on the calendar of Friday, October 8th be re-referred to the committee on Public Welfare.

Senator Schreiber objected.

The bill was placed on the calendar of Monday, October 11th, upon motion of Senator Schreiber, with unanimous consent.

Assembly Bill 826

Relating to authorizing the director of the personnel bureau to establish a separate pay plan and salary schedule for the professional staff in the attorney general's office.

On the calendar of Friday, October 8th was re-referred to the committee on Judiciary, upon motion of Senator Busby, with unanimous consent.

CALENDAR OF FRIDAY, OCTOBER 8th, CONTINUED

Senate Bill 407

To appropriate the sum of \$12,766.10 to the Imperial Lithographic Corp., 914 East Hamilton Street, Milwaukee, Wisconsin, for payment of a claim made by it against the state.

Read a second time.

Senator Riser moved that the bill be indefinitely postponed.

The bill was laid over until Monday, October 18th, upon motion of Senator Leonard, with unanimous consent.

Upon motion of Senator Rasmusen, with unanimous consent, the senate returned to the 11th order of business.

MOTIONS

Senate Bill 43

Was recalled from the joint committee on Finance and referred to the calendar, upon motion of Senator Rasmusen, with unanimous consent.

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Upon motion of Senator LaFave, with unanimous consent the senate returned to the 3rd order of business.

INTRODUCTION OF AMENDMENTS

Amendment No. 1, S. to Senate Bill 287 was offered by Senator LaFave.

Amendment No. 2, S. to Senate Bill 538 was offered by Senator Benson; co-sponsored by Assemblyman Stalbaum.

Substitute amendment No. 1, S. to Senate Bill 545 was offered by Senator LaFave.

Amendment No. 1, S. to Senate Bill 571 was offered by Senator LaFave.

Amendment No. 1, S. to Assembly Bill 301 was offered by Senators Leonard, Busby and McParland.

Upon motion of Senator Panzer, with unanimous consent, the senate returned to the 7th order of business.

COMMITTEE REPORT

The committee on Legislative Procedure reports and recommends:

Senate Joint Resolution No. —

Relating to extra compensation of public officers and employees.

Introduction; Ayes, 12; Noes, 0.

Senate Bill —

Relating to affidavits of prejudice in multibranch circuit courts.

Introduction; Ayes, 12; Noes, 0.

Senate Bill —

Relating to municipal justices of the peace.

Introduction; Ayes, 12; Noes, 0.

FRANK E. PANZER,
Chairman.

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RESOLUTIONS INTRODUCED

Senate Joint Resolution 106

Relating to extra compensation of public officers and employes.

By committee on Legislative Procedure, by request of Senators Christopherson and LaFave.

Read first time.

To joint committee on Finance.

BILLS INTRODUCED

Senate Bill 603

Relating to affidavits of prejudice in multibranch circuit courts.

By committee on Legislative Procedure, by request of Judge Edwin M. Wilkie.

Read first time.

To committee on Judiciary.

Senate Bill 604

Relating to municipal justices of the peace.

By committee on Legislative Procedure, by request of the Judicial Council.

Read first time.

To committee on Judiciary.

GUESTS INTRODUCED

Senator Schuele introduced to the senate Mr. and Mrs. John Hopp from Milwaukee, Wisconsin.

Senator Hollander introduced County Judge Schultz from Dodge County.

Upon motion of Senator Knowles, the senate adjourned until 9:00 o'clock Wednesday morning, October 13th, 1965.

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THE CHIEF CLERK'S REPORT

The chief clerk records

Senate Bill 266,

Senate Bill 273,

Senate Bill 429 and

Senate Bill 533,

Correctly engrossed on Tuesday, October 12, 1965.