

STATE OF WISCONSIN

# Senate Journal

## Eightieth Session

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FRIDAY, June 11, 1971.

8:30 o'clock A.M.

The senate met.

The senate was called to order by the clerk of the senate.

Upon motion of Senator Kendzierski, with unanimous consent, Senator Heinzen was selected as presiding officer.

Prayer was offered by Senator Swan.

Upon motion of Senator Roseleip, with unanimous consent, the calling of the roll was dispensed with.

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### BILLS INTRODUCED

Read first time and referred:

**Senate Bill 589**

Relating to minor's consent to adoption.

By Senator Cirilli.

To committee on Judiciary.

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### COMMITTEE REPORTS

The committee on Judiciary reports and recommends for introduction:

**Senate Resolution 36**

Requesting an opinion of the Attorney General as to the constitutionality of 1971 Senate Bill 481 prohibiting attorneys' minimum fee schedule.

Introduction; Ayes, 4; Noes, 0.

## JOURNAL OF THE SENATE [June 11, 1971]

Requesting an opinion of the attorney general as to the constitutionality of 1971 Senate Bill 481 prohibiting attorneys' minimum fee schedule.

*Resolved by the senate*, That the attorney general is requested to render an opinion to the senate at an early date in regard to the constitutionality of proposed 1971 Senate Bill 481, particularly noting:

(1) Whether the bill as drawn, presuming the bar minimum schedule to be recommended rather than mandatory, offends in the area of both state and federal due process; and

(2) Whether, when the fee schedule is a recommended minimum, the bill as it inhibits promulgation does not violate freedom of speech rights under the 1st and 14th amendments to the U. S. constitution; and

(3) Whether the bill does not represent an effort by the legislature to usurp inherent judicial powers to regulate the practice of law.

Read and referred to calendar.

### Senate Bill 590

(By request of Communication Workers of America—AFL—CIO) Relating to safeguards for employees required to work in manholes and providing a penalty.

Introduction; Ayes, 4; Noes, 0.

Read and referred to committee on Commerce, Labor, Taxation, Insurance and Banking.

And further recommends:

### Senate Resolution 26

Relating to imprudent disclosure of information compiled by the Department of Justice.

Adoption of senate amendment 1 to senate substitute amendment 1; Ayes, 4; Noes, 0; adoption of senate substitute amendment 1; Ayes, 4; Noes, 0 and adoption as amended; Ayes, 4; Noes, 0.

## JOURNAL OF THE SENATE [June 11, 1971]

### **Senate Bill 173**

Relating to aid to mothers of dependent children.

Rejection of senate amendment 1 to senate substitute amendment 1; Ayes, 3; Noes, 1; adoption of senate amendment 2 to senate substitute amendment 1; Ayes, 3; Noes, 1; adoption of senate substitute amendment 1 as amended; Ayes, 3; Noes, 1 and passage as amended; Ayes, 3; Noes, 1.

### **Senate Bill 270**

Relating to legal counsel for school boards in joint city school districts.

Indefinite postponement; Ayes, 4; Noes, 0.

### **Senate Bill 524**

Relating to penalties for principals failing to file lobbying expense statements.

Adoption of senate amendment 1; Ayes, 4; Noes, 0 and passage as amended; Ayes, 4; Noes, 0.

### **Senate Bill 534**

Relating to filing lien memoranda by registers of deeds.

Indefinite postponement; Ayes, 3; Noes, 1.

### **Senate Bill 550**

Relating to defining death.

Passage; Ayes, 4; Noes, 0.

### **Senate Bill 554**

Relating to defining the term "closed meeting" and establishing a penalty for public officers or employees unlawfully conducting closed meeting.

Passage; Ayes, 4; Noes, 0.

### **Senate Bill 555**

Relating to unlawful detainer actions.

Passage; Ayes, 4; Noes, 0.

### **Senate Bill 558**

Relating to redistricting the state pursuant to the congressional apportionment based on the 1970 census of population.

Indefinite postponement; Ayes, 2; Noes, 1.

## JOURNAL OF THE SENATE [June 11, 1971]

### **Assembly Bill 189**

Relating to physical examination of claimants in personal injury cases.

Concurrence; Ayes, 4; Noes, 0.

### **Assembly Bill 214**

Relating to a 7% interest charge on money judgments from time of verdict until satisfaction of judgment.

Concurrence; Ayes, 4; Noes, 0.

### **Assembly Bill 289**

Relating to collection of a fee from persons for whom the family court commissioner drafts legal instruments affecting marriage.

Concurrence; Ayes, 4; Noes, 0.

### **Assembly Bill 331**

Relating to an increase in witness' and interpreters' mileage fee in court actions.

Concurrence; Ayes, 4; Noes, 0.

### **Assembly Bill 387**

Relating to holder in due course status.

Adoption of senate substitute amendment 1; Ayes, 3; Noes, 1 and concurrence as amended; Ayes, 3; Noes, 1.

ALLEN J. BUSBY,  
Chairman.

The committee on Governmental and Veterans' Affairs reports and recommends:

### **Senate Bill 214**

Relating to littering on private or public property and providing a penalty.

Adoption of senate amendment 1 to senate substitute amendment 1; Ayes, 4; Noes, 1; adoption of senate amendment 2 to senate substitute amendment 1; Ayes, 3; Noes, 2; adoption of senate substitute amendment 1; Ayes, 3; Noes, 2; and passage as amended; Ayes, 3; Noes, 2.

## JOURNAL OF THE SENATE [June 11, 1971]

### **Senate Bill 399**

Relating to retention of public documents by the legislative reference bureau (suggested as remedial legislation by the legislative reference bureau.)

Passage recommended; Ayes, 5; Noes, 0.

### **Senate Bill 479**

Relating to creating a legislative service division by combining the staffs of the legislative council and the legislative reference bureau.

Passage recommended; Ayes, 4; Noes, 1.

### **Senate Bill 561**

Relating to tuition grants for Vietnam veterans.

Passage recommended; Ayes, 3; Noes, 1.

### **Assembly Joint Resolution 20**

Relating to establishing a second state home for veterans.

Concurrence recommended; Ayes, 5; Noes, 1.

### **Assembly Bill 292**

Relating to proof of age requirements for persons seeking official identification cards.

Concurrence recommended; Ayes, 5; Noes, 0.

GORDON W. ROSELEIP,  
Chairman.

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## PETITIONS AND COMMUNICATIONS

### **Senate Petition 168**

A petition by 54 residents of the 12th senatorial district in opposition to Assembly Bill 14 which would legalize abortion.

Introduced by Senator Krueger.

Read and referred to committee on Health and Social Services.

JOURNAL OF THE SENATE [June 11, 1971]

**Senate Petition 169**

A petition by 55 residents of Taylor county in opposition to Assembly Bill 14, which would legalize abortion.

Introduced by Senator Krueger.

Read and referred to committee on Health and Social Services.

The State of Wisconsin  
Department of Justice  
Madison

June 11, 1971.

The Honorable, the Senate  
State Capitol  
Madison, Wisconsin 53702

Gentlemen: You have requested my opinion as to the constitutionality of Assembly Bill 43 (1971), as amended by assembly amendment 1, which would create sec. 134.47, Stats., and provide:

**"EMERGENCY PUBLIC SERVICE ANNOUNCEMENTS.** Emergency public service announcements broadcast on television stations in this state shall be visually as well as verbally presented so that essential information concerning the emergency may be seen and read by the deaf."

Assembly amendment 1 would require such information to be presented in written as well as oral form.

The statute would provide no specific penalty for non-compliance and, as currently numbered, would be included in the chapter devoted to miscellaneous trade regulations, which chapter has no omnibus penalty provision.

It is evident that one of the purposes of the statute would be to enable deaf persons to see in written form the message contained in any emergency public service announcements made via the television media. The proposed statute does not define "emergency public service announcements" or require that they be carried. Nor is the statute concerned with the content of the announcement in terms of censorship, but deals solely with the form of presentation.

JOURNAL OF THE SENATE [June 11, 1971]

I am of the opinion that a resulting statute would, at most, have the effect of salutary advice and could not be constitutionally enforced.

Television is interstate commerce and as such is regulated by Congress under the commerce clause of the United States Constitution.

Congress, by enactment of the Communications Act of 1934 and subsequent legislation, has substantially preempted the field of regulation where television is concerned. Only small areas are available for state and local regulation in the exercise of the police power, zoning being one area.

15 C.J.S. Commerce §81, 684, 685.

*Kroeger v. Stahl* (D.C. N.J. 1957), 148 F. Supp. 403, affirmed, C.A., 248 F. 2d 121.

In *Allen B. Dumont Laboratories v. Carroll*, D.C. Pa. 1949, 86 F. Supp. 813, affirmed, 184 F. 2d 153, 155, cert. denied, 71 S. Ct. 490, 340 U.S. 929, 95 L. Ed. 670, it was held that a state had no power of censorship over form or content of televised programs. The Court of Appeals, Third Circuit, held that the federal acts and regulations show an intention of Congress "to occupy the television broadcasting field in its entirety."

Subsequently the United States Supreme Court stated that there could be limited state regulation of certain non-technical areas.

In *Head v. New Mexico Board of Examiners in Optometry* (N.M. 1963), 83 S. Ct. 1759, 374 U.S. 424, 10 L. Ed. 2d 983, state legislation proscribing price advertising of eyeglasses by any means was held applicable to radio broadcasts. The court said that, in determining whether a state's jurisdiction to regulate radio advertising has been preempted by federal law, the question must be resolved as to whether the Congress intended to make its jurisdiction exclusive, and that federal preemption of an area does not exist where national uniformity is not required. In the *Head* case the court found no conflicting federal regulations dealing with price advertising.

## JOURNAL OF THE SENATE [June 11, 1971]

I am of the opinion that with respect to the broadcasting or televising of public emergency announcements the Congress intended to make its jurisdiction substantially exclusive, at least where the national interests are concerned.

Title 47 CFR §73, Subpart E, relates to television broadcast stations. 47 CFR 73.670 (3) requires a log to be kept of public service announcements as defined in Note 4 at the end of that section, and the log time for this type of service is a factor which the Federal Communications Commission considers in determining whether the station shall continue to be licensed. 47 CFR 73.675 provides for operation of commercial television stations during emergencies. Such powers are generally permissive rather than mandatory. Examples listed are announcements concerning tornadoes, hurricanes, floods, heavy snows, power failures, civil disorders, information as to school closings, changes in school bus operation, and point-to-point messages in aid of rescue operations. Subparagraph (c) provides in part that modes of operation shall be confined to those specified in license documents.

47 U.S.C.A. §606 provides that the President of the United States shall have special powers in periods of wars or national emergency. There are a number of Executive Orders now outstanding which relate to this provision and emergency preparedness functions.

Federal regulations 47 CFR 73.901 to 73.981 pertain to a national emergency action notification system and emergency broadcast system with detailed provisions as to manner of operation and broadcasts during periods of emergency.

Other federal regulations govern the use of radio for emergency purposes by various private and public agencies. 47 CFR Part 89.

47 CFR 73.597 provides for operation of noncommercial educational FM broadcast stations during various emergencies; 47 CFR 73.298 grants permissive authority to commercial FM radio stations; and 47 CFR 73.98 grants standard radio broadcast stations permissive operation powers during emergencies.

Under the federal warning system, nationwide hookups may be employed, the broadcast may originate in another



## JOURNAL OF THE SENATE [June 11, 1971]

state, the video portion of television transmission may be blacked out, and the President himself may be giving the emergency announcement live.

A state statute requiring the essential information contained in every emergency public service announcement on television stations to be visually as well as verbally presented, or to be presented in written form, would be unenforceable and void to the extent it conflicts with federal law relating to regulation of television.

Sincerely yours,

ROBERT W. WARREN,  
Attorney General.

CAPTION: Statute resulting from Assembly Bill 43 (1971) which would require every emergency public service announcement broadcast on television to be also presented in written form would be unenforceable to the extent it conflicts with federal law.

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### MESSAGE FROM THE ASSEMBLY

By Thomas P. Fox, chief clerk.

Mr. President:

I am directed to inform you that the assembly has concurred in:

Senate Joint Resolution 69.

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Upon motion of Senator Kendziorski with unanimous consent, the senate adjourned until 10:00 A.M. Tuesday, June 15.