

April 19, 1979

LB 152

particular provision is going to do anything toward bringing about a just situation, and if you will follow the amendment first, the part of Section 8, in addition to what I have struck on Pages 1 and 2, makes reference to gambling records and that's what would be struck in the second part of the amendment. Now if you will look in line 21, you'll see that there is a requirement of a knowing possession of these records. It might be difficult to prove that a person knows that these records are in his or her possession, but before you can even get to that issue, we would have to determine what possession means. I would like to ask Senator Johnson for some help on this, not as an advocate or opponent of the bill. If you merely see the word "possession", Senator Johnson, with nothing more, would that mean located in your establishment, within a certain distance of your person, on your person, or just what does that term mean, standing alone?

SENATOR JOHNSON: Senator Chambers, I suspect that the word possession is a somewhat vague term. It would seem to me that it would probably mean any device or writing or instrument or paper which is effectively under your control. Obviously, if a betting slip is in your wallet, it's under your control. If it's in your home, it may well be under your control simply because it's in your home. If it's in a place of business shared by a number of persons, and you are an employee there, it may not be under your control. If it's in your desk drawer, it may be under your control. If it's in somebody's school locker, which is not your own, it may not be under your control. I think possession is an ambiguous word. I do think, however, that there probably have been so many judicial pronouncements over the years concerning possession, such as in marijuana cases and the like, that judicial case law development would provide an adequate gloss on the meaning of possession in this act.

SENATOR CHAMBERS: Alright, now we have a modifying word, Senator Johnson. Knowingly...what does knowingly mean legally? Does it mean actual knowledge or constructive knowledge? If it uses the term "knowingly", it seems to me it would have to mean actual knowledge.

SENATOR JOHNSON: Yes, I would say so too. Actual knowledge.

SENATOR CHAMBERS: So how would actual knowledge be proved?

SENATOR JOHNSON: I think that in the end actual knowledge becomes a question for the jury, and the jury to determine

3606