

He is an upstream muscle mammal and I will pray that he will always be a muscle man. Son, you know, we all mammals have feet and because we have feet we play mammalball which is the most important sport in Mammalary Land and I want you to be sure to develop your feet so you will be an excellent mammalball player." "But why am I different as a mammal," Babble asked? "Son, because you nurse." "Gee, Dad, does that mean I get to go to the nursery?" "Yes, something like that. Son, one other thing you should know. Mammalar or Shirley Marsh is going to put in a bill that will put us mammals on the map." "What do you mean, Pappy?" "Well, she is going to name a mammal of Mammalary Land and when this is accomplished we will truly have arrived at the Shangri-Mammal and we will be living happily ever after in Mammalary Land." Thank you, Mr. President, I just wanted to improve the....

SENATOR CLARK: Cut that man's microphone off.

SPEAKER MARVEL: Okay, the Clerk will read.

CLERK: Mr. President, new bills: (Read title to LB 434-451. See pages 281-286 of the Legislative Journal.)

SPEAKER MARVEL: I wish to make an announcement. From Tehran, Iran, a plane carrying the fifty-two American hostages took off today from Tehran's Mehrabad Airport a policeman at the airport told reporters. (applause.)

In the North balcony from Senator Landis' district it is my pleasure to introduce 11 sixth grade students from Sacred Heart School in Lincoln, Miss Glushenko, teacher. Will you raise your hands so we can see where you are located? Welcome.

February 17, 1981

LR 17, 13  
LB 15, 16, 55, 76, 83, 92, 136,  
144, 170, 185, 187, 199, 217,  
238, 244, 354, 434, 457.

Your Committee on Revenue gives notice of public hearing in Room 1520 for March 9, 16 and 18. (See pages 546 and 547 of the Legislative Journal.)

Mr. President, Senator Maresh would like to have the Business and Labor Committee meet underneath the north balcony upon adjournment.

Mr. President, LB 15, 16, 92, 170, 185, 187, 199, 238 and 244 are ready for your signature.

PRESIDENT: While the Legislature is in session and capable of doing business, I propose to sign and I do sign LB 15, LB 16, LB 92, LB 170, LB 185, LB 187, LB 199, LB 238 and LB 244.

CLERK: Mr. President, your Committee on Urban Affairs whose Chairman is Senator Landis to whom was referred LB 434 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File; 144 General File with amendments; 354 General File with amendments. (Signed) Senator Landis. (See pages 546 through 547 of the Legislative Journal.)

Your Committee on Judiciary whose Chairman is Senator Nichol to whom was referred LB 55 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File; 76 General File with amendments; 83 General File with amendments. (Signed) Senator Nichol, Chair. (See pages 548 and 549 of the Legislative Journal.)

Your Committee on Miscellaneous Subjects whose Chairman is Senator Hefner to whom was referred LB 217 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File; 136 General File with amendments; 457 General File. (Signed) Senator Hefner, Chair.

Mr. President, two new resolutions, LR 17 by Senator Hoagland. (Read LR 17 as found on page 550 of the Legislative Journal.) That will be laid over. Mr. President, LR 18 offered by Senator Wagner and others. (Read LR 18 as found on pages 551 and 552 of the Legislative Journal.) That too, Mr. President, will be laid over.

PRESIDENT: The Chair also has an announcement from Legislative Services Coordinator, Harlan Johnson, who reminds all of you that pictures will be taken of all

SENATOR NEWELL: Mr. Speaker, the only reason we suggest that we bring it up today is because with another conversation with you, you thought we had some time right now. If you want to lay it over that is no problem with us. We will be more than happy to deal with it tomorrow. If Chris would have come to me or to anyone and suggested that we hold off until tomorrow, we would have been more than happy to accommodate him but Chris instead decided to offer a motion without talking to anybody and so we leave it entirely in your hands, Mr. Speaker.

SPEAKER MARVEL: The Chair will make this ruling and you can treat it as you see fit. The request for the introduction of the bill will be on tomorrow's agenda. Is there any further business? What is the next order of business? I have lost the ....

CLERK: Mr. President, I have got a couple of matters to read in if I may.

SPEAKER MARVEL: Okay.

CLERK: The committee on Urban Affairs whose chairman is Senator Landis to whom is referred LB 311 reports the same back to General File; LB 307 indefinitely postponed. Those are signed by Senator Landis. (See page 679 of the Journal.)

Mr. President, I have a request from Senators Hefner, Von Minden, Wagner, Fitzgerald, Chronister and Wesely to add their names to LB 157 as coinroducer.

SPEAKER MARVEL: Any objection? If not, so ordered.

CLERK: That is all I have, Mr. President. We are to proceed to General File.

SPEAKER MARVEL: The first order of business on General File is LB 434.

CLERK: Mr. President, LB 434 was introduced by the Urban Affairs Committee and signed by its members. (Title read.) The bill was read on January 20, referred to the Urban Affairs Committee for public hearing. It was advanced to General File. I have no amendments on the bill, Mr. President.

SPEAKER MARVEL: Senator Landis.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, this is the committee bill by the Urban Affairs Committee, introduced on behalf of the League of Municipalities. This

bill emanates from several recent lower court decisions who have been applying, as many of us believe, incorrectly the decision in Boyer vs. Grady. Boyer vs. Grady is a bill interpreting or rather a case interpreting the initiative and referendum powers by statute of cities and villages. In 1972 only urgent ordinances were exempt from referendum and referendum is, you will recall, that procedure by which people may petition for an election to take off from statute books an ordinance that has been passed by city council. In 1972 the Supreme Court of Nebraska ruled on Hoover vs. Carpenter that there was the distinction between the administrative and legislative actions by municipalities as they applied to the referendum. So, as a response to that decision in Hoover, in 1974 the Legislature laid out four types of ordinances which could not be attacked by referendum and they were urgent or emergency ordinances; ordinances of furtherance or those ordinances which carry out previously set policy, in other words, the time to attack the policy is when it is created, not down the line when subordinate and secondary decisions are being made; capital project ordinances or those related to building or maintenance of public works; and lastly, rate setting ordinances for such things as municipally owned utilities. In 1978 the Supreme Court ruled without regard to that statute in Boyer vs. Grady that there was no limitation on referendum in terms of the time that voters could use the referendum and that they could do by initiative anything they could do by referendum. That is as far as the Boyer vs. Grady decision goes. You may do by initiative anything that you may do by referendum and apparently, vice versa. Initiative you will recall is that petition mechanism that creates an election to write a law or to put something on the books. Historically we have always believed that initiative is where you put something on the books, referendum is where you take something off the books. After Boyer vs. Grady the Supreme Court said the two are the same. Lower courts, in interpreting the implication of Boyer now say the exemptions that are only written in the referendum section do not imply to initiatives and, therefore, if you use the initiative mechanism you may petition through that form for an election to take off the books rates for utilities, emergency ordinances, ordinances of furtherance or capital projects. What is the implication of that? The implication is that any capital construction may at any time be attacked by a petition and an election of the public. The net result there is to call into question all of the bondings and all of the general underpinnings of financial obligations that a city makes in furtherance of those capital projects. You may have an ordinance. You may have a bond. That bond may be signed. Three years down

road if one looks to those decisions that are now on the horizons as the governing law, a body of people may petition, have an election and then negate that bond. We heard testimony in the Urban Affairs Committee that this was a, if not substantial at this point, at least a portending defect or flaw in the financial responsibility of cities and, therefore, bonding houses would think twice, would perhaps raise rates or perhaps not offer to purchase municipal bonds unless some guarantees were made, that certain kinds of ordinances were beyond the purview of an initiative or referendum that could be utilized at any time as a collateral attack on that kind of a project. LB 434 specifically then, indicates that the referendum exemptions that I read to you, those four exemptions, apply to initiative actions and that you may not by initiative as we now have by law by referendum, attack emergency ordinances, ordinances of furtherance, ordinance of capital projects or ordinance of rate setting and that is the purpose behind LB 434. It was passed to the floor without dissenting vote by the Urban Affairs Committee. I move for its advancement to E & R and eventually to Select File.

SPEAKER MARVEL: Senator Vickers.

SENATOR VICKERS: Thank you, Mr. Speaker and members, I would like to ask Senator Landis a question if he would yield please. Senator Landis, as I understand this, this is taking the right of the people, if you will, away from them to stop what some of their elected representatives have, in fact, done. Would that be a correct statement?

SENATOR LANDIS: Actually, no. That would be a simplification of what is happening. We have never had up until the Boyer vs. Grady decision, the idea that the initiative could be utilized to take something off the books. We have always had the idea that the referendum was for the idea of taking something off the books and the referendum has always had limitations on its application. So, we are responding to a recent decision and some of the lower court decisions to that which indicate that the initiative may be utilized to take something off the books and that has never been granted by the Legislature. That is actually a judicial decision. So, with that caveat I guess I would say that we are narrowing the scope of initiative but we are not narrowing the scope of something that at one time this Legislature meant to do and gave away and created as a right to the people.

SENATOR VICKERS: Okay, thank you. Now, does this apply or how does this work on a state? Can an initiative petition route be used to stop something that we the Legislature have

done, whether it be capital construction or whatever?

SENATOR LANDIS: The sections that I have read, LB 434 applies only to cities and villages. There is, however, initiative and referendum power with respect to state enactments, however, those are not found in statutes. Those are found in the Constitution and if you will look in your copy of the Constitution which is in the black book, and not in mine, you take a look at Article III, Section 3 in the Legislative Powers granted by the Constitution, it indicates that with respect to referendum there is no referendum that the people have to counteract an appropriations measure for state government or for the furtherance of state institutions. So, with respect to the referendum and again I guess I would make this analogy. In our Constitution we have that same underlying philosophy, that referendum takes away the initiative, puts on the books and there the referendum is limited with respect to financial obligations, appropriations undertaken by this body. There is an analogy in state law that covers the State Legislature. It is found in the Constitution and there is a limitation on the power of the people to effect financial exchanges. I think the underlying theory is that you have to be able to rely on the appropriations process. You have to rely on that contractual arrangement that may set a lot of people into motion, a lot of money changing hands setting into motion as you do in the cities with respect to bonds.

SENATOR VICKERS: Okay, thank you, Senator Landis. That answers a concern that I had had. I didn't want to get in a situation where the people had a right as far as the state was concerned and didn't have that same right as far as the cities and villages of the state was concerned and if, in fact, this is, if I understood you correctly, then what we are doing is making it so that it is uniform, both on the state level and also on the local level and I will support this bill. Thank you, Senator Landis.

SPEAKER MARVEL: The motion is to advance 434 to E & R for review. All those in favor vote aye, opposed no. Have you all voted? Record.

CLERK: 25 ayes, 0 nays on the motion to advance the bill, Mr. President.

SPEAKER MARVEL: The motion is carried. The bill is advanced. The next bill, LB 144.

March 2, 1981

LB 31, 33, 85, 96,  
120, 434, 547.

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: (Microphone not on.)

DR. ROBERT PALMER: Prayer offered.

PRESIDENT: Roll call. Senator Cope, will you push your button. Thank you. Now we're....record the presence, Mr. Clerk.

CLERK: Quorum present, Mr. President.

PRESIDENT: Quorum being present, are there any corrections to the Journal?

CLERK: I have no corrections, Mr. President.

PRESIDENT: The Journal stands correct as published. Any other messages, reports or announcements?

CLERK: Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 434 and recommend that same be placed on Select File. (Signed) Senator Kilgarin, Chair.

Mr. President, communication from the Governor addressed to the Clerk. Engrossed LB 31, 33, 85, 96 and 120 were signed by me on February 27 and delivered to the Secretary of State. Sincerely, Charles Thone, Governor.

Mr. President, I have an Attorney General's Opinion addressed to Senator Vard Johnson. (See pages 701 and 702 of the Legislative Journal.)

PRESIDENT: We are waiting for someone from the Agriculture Committee, Senator Schmit or someone to take care of Agenda Item #3, Motions, motion to introduce a new bill. The Legislature will be at Ease until Senator Schmit gets here to handle the first item on the agenda.

EASE

PRESIDENT: The Chair recognizes Senator Schmit for purpose of introduction of a new bill.

SENATOR SCHMIT: Mr. President and members of the Legislature, I ask the body to consider the introduction of this bill by the Committee on Agriculture and Environment. The bill was introduced last session. It was heard. It was, I believe, four bills down on the worksheet for about

March 4, 1981

LB 144, 354, 434

SPEAKER MARVEL: All in favor of that motion say aye. Opposed no. The motion carried. The bill is advanced. LB 434.

CLERK: I have nothing on the bill, Senator.

SENATOR KILGARIN: I move LB 434 be advanced to E & R for Engrossment.

SPEAKER MARVEL: All in favor of that motion say aye. Opposed no. The motion carried. The bill is advanced. 144.

CLERK: There are E & F, Senator.

SPEAKER MARVEL: 144.

CLERK: 144.

SENATOR KILGARIN: I move the E & R amendments to LB 144.

SPEAKER MARVEL: All those in favor of that motion say aye. Opposed no. The motion carried. The E & R amendment's adopted.

SENATOR KILGARIN: I move LB 144 be advanced to E & R for Engrossment.

SPEAKER MARVEL: All in favor of that motion say aye. Opposed no. The motion carried. The bill advanced. LB 354.

CLERK: Mr. President, there are no E & R amendments to LB 354 but I do have amendments from Senator Landis. Mr. President, Senator Landis has amendments found on page 735 of the Journal which I understand he wishes to withdraw.

SENATOR LANDIS: Mr. Speaker and members of the Legislature, I do have some amendments which have been placed on the Clerk's desk and I am hoping he will read them. They are a substitute and seek to accomplish exactly the same goals as those amendments which appear in the Journal. However, the language of them has been improved by the bill drafting staff and that is why the substitute amendments are offered. At the conclusion of this introduction to that language, I hope that the Clerk will read that language. It accomplishes two things, number one, by reference to the territorial jurisdiction and the zoning limits and the way that we are currently doing

March 9, 1981

LB 55, 114, 128, 190, 198, 217, 246,  
271, 279, 297, 327, 388, 434, 462,  
407, 258

fellows walk around lobbying for this bill. They say, we hear you are against our bill, Rex, we are going to...we have some lobbyists working against you. They are sure are. They have been working their heads off this morning. I don't mind standing up here all alone, I have done it before, but I would like to have you fellows stop and think, we are only raising it from 6 to 8. They had a profit, a net profit of forty million in 1979. Thirty percent crosses the state. So I will ask for you to think down the road, raise it the two percent and then we will go from there. Thank you.

SPEAKER MARVEL: Motion is the Haberman amendment to legislative bill 190. All those in favor vote Aye, opposed vote No. Have you all voted? O.K. Record the vote.

CLERK: Eight Ayes. Fifteen Nays, Mr. President.

SPEAKER MARVEL: O.K. The motion lost. Now do you have some items to read in?

CLERK: Yes, sir.

SPEAKER MARVEL: While you are bringing them up, the Chairmen of the various committees have received a note this morning that we will meet tomorrow at 8:30a.m. in Room 2102. We need to start talking about priorities. If you will look at the sheet, you will find that this is the 39th day. Okay.

CLERK: Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 55 and find the same correctly engrossed; 114, 128, 217, 246, 279, 388, 434, 462, all correctly engrossed.

Mr. President, your Committee on Government reports LB 407 to General File. (Signed) Senator Kahle. LB 297 indefinitely postponed. Your Banking Committee whose Chairman is Senator DeCamp reports LB 271 to General File with amendments. (Signed) Senator DeCamp. (See page 809 of the Legislative Journal.) Miscellaneous Subjects Committee whose Chairman is Senator Hefner reports LB 258 to General File with amendments. (See pages 809 and 810 of the Legislative Journal.) (Signed) Senator Hefner. Your Banking Committee reports 327 to General File with amendments. (See page 810 of the Legislative Journal.)

Finally, Mr. President, Senator Warner would like to print amendments to LB 198 in the Legislative Journal. (See pages 810 through 815 of the Legislative Journal.)

SPEAKER MARVEL: Senator Peterson, will you adjourn us until 9:00 o'clock tomorrow morning. Howard Peterson.

March 12, 1981

LB 63, 434, 462, 512

LB 434.

CLERK: (Read LB 434 on Final Reading.)

SPEAKER MARVEL: All provisions of all relative to procedure having been complied with, the question is, shall the bill pass? Those in favor vote aye, opposed vote no. LB 434 on Final Reading.

CLERK: (Read the record vote as found on pages 881 and 882 of the Legislative Journal.) 47 ayes, 0 nays, 2 excused and not voting, Mr. President.

SPEAKER MARVEL: The bill is declared passed on Final Reading. We now go to LB 462 on Final Reading.

ASSISTANT CLERK: (Read LB 462 on Final Reading.)

SPEAKER MARVEL: All provisions of law having been complied with, the question is, shall the bill pass? Those in favor vote aye, opposed vote no. LB 462 on Final Reading. Have you all voted? Have you all voted? Clerk, announce the vote.

ASSISTANT CLERK: (Read the record vote as found on page 882 of the Legislative Journal.) The vote is 46 ayes, 0 nays, 1 present and not voting, 2 excused and not voting, Mr. President.

SPEAKER MARVEL: The bill is declared passed on Final Reading. It is my privilege to introduce underneath the north balcony Scott Koch who is working the State Basketball Tournament. Scott, hold up your hand so we can see where you are. Welcome. He is the basketball player of the family. In the north balcony from Senator Beyer's District we welcome twenty seniors from Bryan Senior High School of Omaha, and Mr. Bitzes, the teacher. Will you raise your hand so we can see where you are. Are you up there? Welcome. Do you have any other items, Mr. Clerk?

CLERK: Yes, sir, I do. Mr. President, Senator Haberman moves that LB 63 be placed on General File notwithstanding the action of the committee. That will be laid over.

Mr. President, Senator Kilgarin asks unanimous consent to add her name to LB 512 as cointroducer.

SPEAKER MARVEL: No objections, so ordered.

March 13, 1981

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: Prayer by Reverend Larry Spader, Central Alliance Church.

REVEREND SPADER: Prayer offered.

PRESIDENT: Roll call. While we are waiting to get everyone checked in this morning we will take this opportunity to introduce from Senator Wesely's district some 9 students from Riley Elementary School here in Lincoln, Mrs. Barth and Mrs. Frogge, teachers. They are up here in the North balcony. Would you welcome Riley Elementary School up here in the North balcony. Welcome to your Legislature. Record the presence.

CLERK: There is a quorum present, Mr. President.

PRESIDENT: A quorum being present, are there any corrections to the Journal?

CLERK: I have no corrections, Mr. President.

PRESIDENT: The Journal will stand correct as published. Any messages, reports or announcements?

CLERK: Mr. President, your committee on Enrollment and Review respectfully reports we have carefully examined LB 56 and recommend that same be placed on Select File with amendments; 313 Select File; 84 Select File; 47 Select File with amendments, (Signed) Senator Kilgarin, Chair.

Mr. President, engrossed LBs 55, 114, 128, 217, 246, 279, 388, 434, 462 and LR 33 and 34 are ready for your signatures.

PRESIDENT: While the Legislature is in session and capable of doing business I propose to sign and I do sign LB 55, LB 114, 128, 217, 279, 388, 434, 462, LR 33 and LR 34. We will proceed then with Final Reading. The Sergeant at Arms will secure the floor. All members of the Legislature will please return to your desks and as soon as everyone is at your place we will commence with Final Reading. All unauthorized personnel, non-legislative personnel will leave the floor of the Legislature. We are on Final Reading. We are awaiting Final Reading then. All legislators will be at their desks. We will commence with Final Reading.

CLERK: Mr. President, while we are waiting...

PRESIDENT: Go ahead, Mr. Clerk.

March 17, 1981

LR 21, 30  
LB 24, 38, 51, 55, 83, 114, 128,  
136, 150, 154, 195, 217, 246, 250,  
272, 275, 279, 288, 302, 325, 354,  
388, 409, 434, 444, 457, 462, 515

SPEAKER MARVEL PRESIDING

REVEREND RON WASIKOWSKI: (Prayer offered. Microphone not on. See page 951, Legislative Journal.)

SPEAKER MARVEL: Record your presence. Record.

CLERK: There is a quorum present, Mr. President.

SPEAKER MARVEL: Did you have any other items?

CLERK: Yes, sir, I do. Mr. President, first of all, the Journal is without error this morning.

Mr. President, a communication from the Governor addressed to the Clerk. (Read. Re: LBs 55, 83, 114, 128, 136, 150, 154, 195, 217, 246, 272, 275, 279, 288, 325, 354, 388, 409, 434, 457, 462, 24, 38, and 51. See pages 951 and 952, Legislative Journal.)

Mr. President, I have a series of Attorney General opinions. One to Senator DeCamp regarding the Executive Board and the powers thereof; one to Senator DeCamp regarding payment of salary; one to Senator Nichol regarding LB 515.

Mr. President, your committee on Government, Military and Veterans Affairs whose Chairman is Senator Kahle reports LB 250 to General File with amendments; LB 444 to General File with amendments. Signed Senator Kahle as Chair.

Your committee on Public Works whose Chairman is Senator Kremer reports LB 302 to General File with amendments and Public Works reports LR 21 back to the Legislature with amendments. Signed by Senator Kremer as Chair.

SPEAKER MARVEL: From Senator Barrett's District in the North balcony it is my privilege to introduce 19 senior high students from St. Ann's Catholic School, Lexington, Nebraska. Mr. Roger Lucas, Government teacher; Dr. Phillip Vreeland, English teacher. Will you hold up your hand so we can see where you are and greet you? Okay, we will go to item #4.

CLERK: Mr. President, the first resolution is offered by Senator Dworak. It is LR 28. It is found on page 737 of the Journal.

Mr. President, while Senator Dworak is missing, LR 30 by Senator Vickers. It is found on page 787. (Read.) That resolution, Mr. President, is found on page 787 of the Journal.