

House Judiciary Committee  
Tuesday, January 26, 1965

The House Judiciary Committee met in joint session with the Senate Judiciary Committee in Room 529 at 11:15 A.M. with Chairman Steadman Ball, Senate Judiciary Committee, presiding. Nineteen members of the House Judiciary Committee were present. Members Euler and Hill were absent.

Chairman Ball called the meeting to order. He announced that this meeting and the joint meeting held Monday, January 25, 1965, are to enable the members of the committees to hear presentations concerning the proposal of the citizens' committee for revision of the court system, a copy of which is attached. Yesterday's presentation was a general one, but today's is to be more specific. He also announced that the two committees will meet jointly Wednesday, January 27, 1965, at 11:00 A.M. in Room 529 to work on the Uniform Commercial Code. Senator Ball then turned the meeting over to Philip Lewis who introduced Beryl Johnson, Jim Logan, Judge David Prager and Judge Earl O'Conner, president of the Kansas State Judges Association.

Mr. Lewis pointed out that there are certain basic concepts which are repeated throughout the article and these are unification, one court of justice, and flexibility. He then read Section 1. The Judicial Power. This utilizes the Supreme Court rule. The responsibility is placed in the Supreme Court.

The question was raised as to the acceptability of the alternative of the Supreme Court sitting in divisions in place of the Court of Appeals. Judge Prager stated that they felt that a constitution should be drafted that would be of simplicity and flexibility in order to use it for a length of time and to fit the needs of the future. This would make it possible at some time in the future to have one.

Section 4. The District and Magistrate's Courts. The Magistrate's Court shall be a Court of limited jurisdiction. It will be utilized to sit as a district court on a temporary basis if necessary in order to utilize the court to its fullest. Judge Prager stated that this is flexibility of jurisdiction; given certain functions which might be given to the district courts in the larger counties. He said there should be

specialized judges rather than specialized courts. This is a modern theory of justice. This is flexibility that would provide effective justice for the next one hundred years.

There was a great deal of discussion concerning this proposal by the members of the committees.

Mr. Lewis went on to explain the removal of the judges and read Section 9. Rule Making Power. He stated that the Supreme Court has the responsibility of seeing who its officers are; the admission of them and the discipline.

The question was raised in regard to what recourse there is if the Supreme Court does not use good judgment. Mr. Lewis stated that there is none.

There were several more questions by the members of the committees and Senator Ball pointed out that they will be discussing these matters in the committee and then they can go into these things at this time. The gentlemen appearing will be available to answer questions when the committee goes into these matters.

Senator Ball asked the gentlemen appearing if they would prepare a brief and furnish copies to the chairmen of the two judiciary committees as to whether an entire article of the constitution may be repealed or if it has to be done section by section. Mr. Lewis assured Senator Ball that one will be furnished.

Senator Ball thanked the gentlemen for appearing. There being no further business, the meeting adjourned.

Respectfully submitted  
Jack R. Euler

Minutes approved:

PROPOSED ARTICLE 3 (JUDICIAL ARTICLE)  
OF THE CONSTITUTION OF THE STATE OF KANSAS

ARTICLE 3. - JUDICIAL

Section 1. THE JUDICIAL POWER.

The judicial power of the State shall be vested exclusively in one Court of Justice which shall be divided into one Supreme Court, one Court of Appeals, one Trial Court of General Jurisdiction known as the District Court, and one Trial Court of Limited Jurisdiction known as the Magistrate's Court.

Section 2. THE SUPREME COURT.

Para. 1. Composition. The Supreme Court shall consist of the Chief Justice of the State and six Associate Justices of the Supreme Court.

Para. 2. Jurisdiction.

A. Original jurisdiction. The Supreme Court shall have no original jurisdiction, but it shall have the power to issue all writs necessary or appropriate in aid of its appellate jurisdiction.

B. Appellate jurisdiction. Appeals from a judgment of the District Court imposing a sentence of death or life imprisonment, or imprisonment for a term of 20 years or more, shall be taken directly to the Supreme Court. In all other cases, criminal and civil, the Supreme Court shall exercise appellate jurisdiction under such terms and conditions as it shall specify in rules, except that such rules shall provide that a defendant shall have an absolute right to one appeal in all criminal cases. On all appeals authorized to be taken to the Supreme Court in criminal cases, that Court shall have the power to review all questions of law and, to the extent provided by rule, to review and revise the sentence imposed.

Section 3. THE COURT OF APPEALS.

The Court of Appeals shall consist of one or more divisions as the Supreme Court shall determine to be necessary. Each division of the Court of Appeals shall consist of three judges. The Court of Appeals shall have no original jurisdiction, except that it may be authorized by rules of the Supreme Court to review directly decisions or administrative agencies of the State and it may be authorized by rules of the Supreme Court to issue all writs necessary or appropriate in aid of its appellate jurisdiction. In all other cases, it shall exercise appellate jurisdiction under such terms and conditions as the Supreme Court shall specify by rules which shall, however, provide that a defendant shall have an absolute right to one appeal in all criminal cases and which may include the authority to review and revise sentences in criminal cases.

#### Section 4. THE DISTRICT AND MAGISTRATE'S COURTS.

Para. 1. Composition. The District Court shall be composed of such number of divisions and the District and Magistrate's Courts shall be composed of such number of judges as the Supreme Court shall determine to be necessary, except that each district shall be a geographic unit fixed by the Supreme Court and shall have at least one judge and one magistrate. Every district judge and magistrate shall be eligible to sit in every district.

Para. 2. District Court Jurisdiction. The District Court shall exercise original general jurisdiction in all cases, except in so far as original jurisdiction may be assigned exclusively to the Magistrate's Court by the Supreme Court rules. The District Court may be authorized, by rule of the Supreme Court, to review directly decisions of State administrative agencies and decisions of Magistrate's Courts.

Para. 3. Magistrate's Court Jurisdiction. The Magistrate's Court shall be a court of limited jurisdiction and shall exercise original jurisdiction in such cases as the Supreme Court shall designate by rule.

#### Section 5. SELECTION OF JUSTICES, JUDGES AND MAGISTRATES

Para. 1. Nomination and Appointment. A vacancy in a judicial office in the State, other than that of magistrate, shall be filled by the governor from a list of three nominees presented to him by the appropriate judicial nominating commission. If the governor should fail to make an appointment from the list within sixty days from the day it is presented to him, the appointment shall be made by the Chief Justice or the Acting Chief Justice from the same list. Magistrates shall be appointed by the Chief Justice with the approval of the appropriate district nominating commission.

Para. 2. Eligibility. To be eligible for nomination as a justice of the Supreme Court, judge of the Court of appeals, judge of the District Court, or to be appointed as a magistrate, a person must be domiciled within the State, a citizen of the United States, and licensed to practice law in the courts of the State. A District Court judge or a magistrate shall be domiciled in the judicial district from which he is nominated or appointed.

#### Section 6. TENURE OF JUSTICES AND JUDGES.

Para. 1. Term of Office. Each justice, judge or magistrate appointed pursuant to the provisions of Para. 1 of Section 5 shall hold office for an initial term ending on the second Monday in January following the next general election after the expiration of twelve months in office. Any Supreme Court justice or district judge holding office at the time the provisions of this section become applicable to his office shall, unless removed for cause, remain in office for the term or unexpired term for which he was elected or appointed. Not less than sixty days prior to the holding of the general election next preceding the expiration of his term of office, any justice or judge may file in the Office of the Secretary of State a declaration of candidacy for election to succeed himself. If a declaration is not so filed, the position held by such justice or judge shall be open from the expiration of his term of office. If such declaration is filed, his name shall be submitted at the next election to the electors of the State, if he is a justice of the Supreme Court or a judge of the Court

of Appeals, or to the electors of his district if he is a judge of the District Court, on a separate judicial ballot, without party designation, reading substantially as follows:

Shall \_\_\_\_\_  
(here insert name of justice or judge)

\_\_\_\_\_  
(here insert the title of the court)

be retained in office?

If the majority of those voting on the question vote against retaining him in office, the position or office which he holds shall be open upon the expiration of his term of office; otherwise he shall, unless removed for cause, remain in office for six years from the second Monday in January following such election, or until his sooner reaching compulsory retirement age. At the expiration of each term prior to his reaching retirement age, he shall be eligible for retention in office by election in the manner prescribed in this paragraph. Not less than sixty days prior to the holding of the general election next preceding the expiration of his term of office, a magistrate may file in the Office of the Secretary of State a declaration of his desire to be retained in office. If a declaration is not so filed, the position held by such magistrate shall be open from the expiration of his term of office. If such declaration is filed, his name shall be submitted at the next election to the electors of his district on the separate judicial ballot, without party designation, reading substantially as follows:

Shall \_\_\_\_\_  
(here insert name of magistrate)

\_\_\_\_\_  
(here insert the title of the court)

be eligible for reappointment to office?

If a majority of those voting on the question vote against his eligibility to be appointed to office, the position or office which he holds shall be open upon the expiration of his term of office. If a majority of those voting on the question favor his eligibility for appointment, the Chief Justice may, with the approval of the district nominating commission, appoint him for a term of four years from the second Monday in January following such election, or until he reaches compulsory retirement age. At the expiration of each term prior to his reaching compulsory retirement age, he shall be eligible for reappointment in office if approved by a majority of those voting each four years in the manner prescribed in this section.

Para. 2. Retirement. Every justice and judge shall retire at the age specified by statute at the time of his appointment, but that age shall not be fixed at less than sixty-five years. The Chief Justice is empowered to authorize retired justices and judges to perform temporary judicial duties in any court of the State.

Para. 3. Retirement for Incapacity. A justice of the Supreme Court may be retired after appropriate hearing, upon certification to the Governor, by the Judicial Nominating Commission for the Supreme Court that such justice is so incapacitated as to be unable to carry on his duties.

Para. 4. Removal. Justices of the Supreme Court shall be subject to removal by the impeachment process. All other judges and magistrates shall be subject to retirement for incapacity and to discipline, suspension, and removal for cause by the Supreme Court after appropriate hearing. No justice, judge, or magistrate shall, during his term of office, engage in the practice of law. No justice, judge or magistrate shall, while retaining his judicial office, run for elective office other than the judicial office which he holds, or directly or indirectly make any contribution to or hold any office, in a political party or organization, or take part in any political campaign.

#### Section 7. COMPENSATION OF JUSTICES AND JUDGES.

Para. 1. Salary. The salaries of justices, judges, and magistrates shall be fixed by statute.

Para. 2. Pensions. Provision shall be made by the legislature for the payment of pensions to justices and judges and their widows. The legislature may provide for the payment of pensions to magistrates and their widows.

Para. 3. No Reduction of Compensation. The compensation of a justice, judge, or magistrate shall not be reduced during the term for which he was elected or appointed.

#### Section 8. THE CHIEF JUSTICE.

Para. 1. Selection and Tenure. The Chief Justice of the State shall be selected by the Judicial Nominating Commission for the Supreme Court from the members of the Supreme Court, and he shall retain that office for a period of three years, subject to reappointment in the same manner, except that a member of the court may resign the office of Chief Justice without resigning from the court. During a vacancy in the office of Chief Justice, or during the temporary incapacity of the Chief Justice when certified by the Nominating Commission for the Supreme Court, all powers and duties of that office shall devolve upon the member of the Supreme Court who is senior in length of service on that court.

Para. 2. Head of Administrative Office of the Courts. The Chief Justice of the State shall be the executive head of the judicial system and shall appoint an administrator of the courts and such assistants as he deems necessary to aid the administration of the courts of the State. The Chief Justice shall have the power to assign for temporary service any judge of the State to sit in any court in the State when he deems such assignment necessary to aid the prompt disposition of judicial business. The Chief Justice shall have the power to assign for temporary service any magistrate of the State to sit in any District Court or Magistrate's Court. The administrator shall, under the direction of the Chief Justice, prepare and submit to the legislature the budget for the court of justice and perform all other necessary administrative functions relating to the courts.

#### Section 9. RULE MAKING POWER.

The Supreme Court shall have the power to prescribe rules governing appellate jurisdiction, rules of practice and procedure, and rules of evidence, for the judicial system. The Supreme Court shall, by rule, govern admission to the bar, the discipline of members of the bar, and the discipline, suspension and removal of judges and magistrates.

## Section 10. JUDICIAL NOMINATING COMMISSIONS.

There shall be non-partisan nominating commissions whose duties it shall be to nominate and submit names of persons for appointment as provided in this section. For vacancies in the office of any justice of the Supreme Court or any judge of the Court of Appeals, there shall be one such commission, to be known as the Supreme Court and Court of Appeals Nominating Commission. For vacancies in the office of judge of any District Court, and for the approval of appointments to the magistrate's Court, there shall be one such commission, to be known as the " \_\_\_\_\_ (insert appropriate judicial district number) District Nominating Commission," for each such district. The Supreme Court and Court of Appeals Nominating Commission shall be composed as follows: one member, who shall be chairman, chosen from among their number by the members of the Bar who are domiciled and licensed in Kansas; one member from each Congressional district chosen from among their number by the members of the Bar domiciled in the district; and one member, who is not a lawyer, from each Congressional district appointed by the Governor from among the citizens domiciled in the district. Each District Nominating Commission shall be composed of seven members who are domiciled in the district, four of said seven members shall be chosen from among their number by the members of the Bar domiciled in said district and licensed in Kansas; and three members who are not lawyers shall be appointed by the Governor from among the citizens domiciled in the district; and one of the four who are members of the Bar shall be chairman of the commission. The terms of office, the procedure for selection and certification of the members of the commission, and provision for their compensation or expenses shall be as provided by the legislature. No member of any nominating commission provided for in this section shall, while he is a member, hold any other public office by appointment or any position in a political party, or for six months thereafter be eligible for nomination under this section to a position for which the nominating commission on which he has served has either a power of recommendation or approval. Any commission may act only by the concurrence of a majority of its members.

House Judiciary Committee  
Wednesday, January 27, 1965

The House Judiciary Committee met in joint session with the Senate Judiciary Committee in Room 529 at 11:15 A.M. with Chairman Steadman Ball, Senate Judiciary Committee, presiding. Fifteen members of the House Judiciary Committee were present. Members Davis, Euler, Fatzer, Hill, Tillotson, and Van Cleave were absent.

Chairman Ball called the meeting to order. He announced that this meeting is in regard to the Uniform Commercial Code. He then read Senate Concurrent Resolution No. 19 of the 1963 Kansas legislature which directed the Kansas Legislative Council to make or have made a complete study of the effect that enactment of the Uniform Commercial Code would have on the existing Kansas statutory and case law, have printed sufficient copies of a report containing the results of such study for distribution to members of the 1965 legislature and to individuals and groups which such enactment would directly affect, and to make such recommendations as it shall see fit to adopt to the 1965 session of the legislature. He then read the special report on the Uniform Commercial Code submitted by Howard W. Harper, Chairman of the Legislative Council Committee on Judiciary, a copy of which is attached. He then read the introduction to the code from the Uniform Commercial Code: Informational Report and a portion of an article by the chief draftsman of the Uniform Commercial Code, William A. Schnader.

Senator Ball stated that the bankers appeared before the committee and he has available their proposals. The bankers had two important suggestions and both of these were adopted. Also available are the suggestions of the savings and loan people.

Representative Bell asked if there is anything available to the members of the committees which gives a list of the changes in Senate Bill No. 4 from the new book. Fred Carman, Assistant Revisor of Statutes, said that such a list is being made and will be available to the members of the committees next week.



Representative Coldsnow asked if a list is available which gives the sections to which the Uniform Commercial Code gives choices. Mr. Carman stated that these will be listed also.

Senator Ball pointed out that some of these choices were made because of the presentation by the bankers.

Mr. Coldsnow then asked if it would be appropriate to defer action on this matter until this material is available.

Mr. Bell asked if this coming action in regard to the code shouldn't be made public in order to present the opportunity for hearing any opposition to the code.

Senator Ball pointed out that all interested parties who wished to be heard appeared when this proposal was being prepared.

Mr. Carman then read a portion of an article by Mr. Schnader stressing the importance of few changes being made in the code.

Senator Bennett suggested that the matter lay on the table until the day after the committees are presented the material by Mr. Carman and that the members try to be prepared to discuss the code fully at this time.

Senator Ball confirmed this suggestion and stated that this would enable anyone wishing to be heard to appear before the committees.

There being no further business, the meeting adjourned at 12:00 noon.

Respectfully submitted  
Jack R. Euler

Minutes approved:

## SPECIAL REPORT ON UNIFORM COMMERCIAL CODE

To Members of House and Senate Judiciary Committees:

This report is submitted pursuant to action taken by the Kansas Legislative Council on November 13, 1964, which authorized the Council's Committee on Judiciary to continue its study of Proposal No. 1 - Uniform Commercial Code and to submit directly to the appropriate committees of the 1965 legislature a proposed bill to incorporate the Uniform Commercial Code into Kansas law.

The Council adopted a general recommendation that the Uniform Commercial Code be enacted in Kansas, and in so doing noted several advantages of its adoption. These included simplification, clarification, and modernization of commercial law, the providing of greater certainty in a number of areas of Kansas law, and the Code's establishing uniformity of Kansas law with the law of other states.

The Council's report adopted in November was of a general nature and was based on detailed annotations prepared for the Council by three teachers of law and a practicing attorney. Since November, a bill relating the Code to existing Kansas law has been prepared by the revisor of statute's office under the direction of the Committee.

In preparing the bill, the Committee held hearings with representatives of the Kansas Banker's Association committee on the Uniform Commercial Code, the Kansas Association of Railroads, and the Kansas Savings and Loan League. In addition, the chairman of the Kansas Bar Association committee on the Uniform Commercial Code submitted his individual comments and suggestions. Prepared statements from these conferees are available in the Research Department. Two of the Kansas annotators, Dean John E. Howe and Professor Charles H. Oldfather, also participated in these hearings and subsequently provided the Committee with supplementary information. The technical points of the bill have been reviewed by the revisor of statutes office and two of the Kansas annotators.

Two additional bills are recommended for enactment along with the Uniform Commercial Code. The first one is an act prescribing requirements for and recording and filing certain security interests of railroads and public utilities which would replace present provisions in K.S.A. 66-1206, 66-1207, and 66-1208. Enactment of this bill would in no way affect the principal of uniformity of the Code. The second bill involves the criminal provisions of the present uniform acts that would be replaced by the Code. These statutes will be retained but simply located in a different article of the Kansas statutes.

In preparing the bill, the Committee recognized that a principal value of the Code lies in its uniformity with other states. Therefore, the bill contains a minimum number of proposed changes in the wording of the Code in order to make it fit specific Kansas needs. The Committee believes the legislative committees should also give major attention to uniformity in its consideration of the Code.

Respectfully submitted,

Howard W. Harper, Chairman  
Legislative Council Committee  
on Judiciary