

House Judiciary Committee Meeting
Tuesday, April 6, 1965

The House Judiciary Committee met Tuesday, April 6, 1965, in Room 523 at 4:45 P.M. with Chairman Jack R. Euler presiding. Fifteen members were present. Members Barnhill, Davis, Hill, Howard, Rogers and Van Cleave were absent.

Chairman Euler called the meeting to order.

Mr. Roberts read the proposed amendments to Senate Bill No. 205, a copy of which is attached. He then moved that the committee adopt the amendments to Senate Bill No. 205 as read by him. Mr. Tillotson seconded. Chairman Euler asked for any discussion. There was none. The motion carried unanimously.

Mr. Roberts moved that Senate Bill No. 205 as amended be reported favorably for passage. Mr. Foster seconded. Chairman Euler asked for any discussion. There was none. The motion carried unanimously.

There was a great deal of discussion by the members of the committee in regard to Senate Bill No. 109, an act concerning crimes affecting children; prescribing certain penalties; amending existing K.S.A. 38-701, 38-702, 38-704 and 41-715 and repealing said existing sections. It was decided that Senator Bennett should appear and explain this bill.

Chairman Euler explained Senate Bill No. 111, an act to enact and enter into with all other jurisdictions joining therein the driver license compact, the same being fully set-out in the body of the act and providing for the administration and implementation of the act. Mr. Gray moved that Senate Bill No. 111 be reported favorably for passage. Mr. Tillotson seconded. Chairman Euler asked for any further discussion. There was none. The motion carried unanimously.

Mr. Foster moved that Senate Bill No. 186, an act relating to criminal procedure; pertaining to arraignment and other proceedings before and after trial; amending existing K.S.A. 62-1304 and repealing said existing section, be reported favorably for passage. Mr. Woodworth seconded. Chairman Euler asked for any discussion. There was none. There were thirteen members in favor of the motion and one opposed. The motion carried.

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Chairman Euler read the following proposed amendment by Senator Haley to Senate Bill No. 211, an act relating to the vacation of streets, avenues, alleys and lanes or part thereof in cities and authorizing the reservation of rights-of-way and easements for public facilities: amend by inserting on page 1, line 7, immediately following the period after the word "service" the following: "Provided, That when the street, avenue, alley or lane to be vacated contains existing public utility facilities, an easement therefor shall be reserved, which easement the abutting property owners may extinguish by paying for the full costs of relocating such public utility facilities to the nearest available public way."

The following explanation was given for this proposed amendment. As a result of state or of city franchises, depending upon the utility concerned, and of contracts with the local cities and of understandings with property owners who file plat's, utilities secure easements along city streets. In reliance on these easements they invest money and build their facilities. It is only fair that when these streets are abandoned for someone else's benefit, that the utilities be permitted to retain their easements or that the person who is to benefit from their removal, pay the cost of relocation. Most cities require this now, before vacating the street, if it is brought to their attention. Sometimes, however, through failure of communication by the city, property owner or utility, the city council is not aware of the problem and forgets to make the necessary arrangements.

There was some discussion by the members of the committee in regard to the proposed amendment being worded properly.

The committee discussed Senate Bill No. 221, an act relating to cities; providing for the vacation of sites or additions, streets or alleys, or for exclusion of land; prescribing the procedures therefor; amending existing K.S.A. 12-504 and 12-505 and repealing said existing sections. Mr. Bell moved that

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Senate Bill No. 221 be reported favorably for passage. Mr. Gray seconded. Chairman Euler asked for any further discussion. There was none. The motion carried unanimously.

The committee discussed Senate Bill No. 222, an act relating to vacations of plats, streets, alleys or other public reservations and accomplishing such vacations by platting or replatting the same area. There were no objections raised to this bill. Mr. Bell moved that Senate Bill No. 222 be reported favorably for passage. Mr. Gray seconded. Chairman Euler asked for any further discussion. There was none. The motion carried unanimously.

Mr. Sargent moved that Senate Bill No. 304, an act concerning the code of civil procedure; extinguishing judgment liens and lis pendens claims under certain conditions; amending existing K.S.A. 60-2201 and 60-2202 and repealing said existing sections, be reported favorably for passage. Mr. Foster seconded. Chairman Euler asked for any discussion. There was none. The motion carried unanimously.

Mr. Bell moved that Senate Bill No. 341, an act concerning existing K.S.A. 59-2213, amending said section to read in conformity with the new code of civil procedure, and repealing said existing section, be reported favorably for passage. Mr. Foster seconded. Chairman Euler asked for any discussion. There was none. The motion carried unanimously.

Mr. Gray moved that Senate Bill No. 342, an act relating to monopolies and unfair trade; authorizing suit for treble damages, injunctive relief and attorney's fees by certain injured persons, be reported favorably for passage. Mr. Woodworth seconded. There was a great deal of discussion by the members of the committee in this regard. Mr. Cram pointed out that there might be a lot of litigation with this. Mr. Sargent suggested that this would be an excellent help to the small business man. Several members called for the question. Ten members were in favor of the motion and members Bell and Cram were opposed. The motion carried.

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The meeting adjourned at 6:00 P.M.

Respectfully submitted,
Jack R. Euler
Chairman

Minutes approved:

A handwritten signature in cursive script that reads "Jack R. Euler". The signature is written in dark ink and is positioned to the right of the printed text "Minutes approved:". The signature is written over the printed name "Jack R. Euler" in the typed signature block above.

REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

Your committee on Judiciary

Recommends that Senate Bill No. 205

"AN ACT relating to certain courts, providing for changing the name of city courts in certain counties to magistrate courts of such counties, providing for divisions and judges thereof; pertaining to their jurisdiction and officers; prescribing bonds, oaths, salaries, powers and duties; providing for elections; appeals and recognizances; amending existing K. S. A. 20-2101, 20-2102, 20-2103, 20-2105, 20-2107, 20-2108, 20-2109, 20-2110, 20-2111, 20-2112, 20-2113, 20-2117 and 20-2121, and repealing said existing sections, and also repealing existing K. S. A. 20-2118 and 20-2311."

Be amended:

On page 1 by striking all of line 1 after the period after the figure "1"; in line 2 by striking the following: "as follows: 20-2101."; in line 5 by striking the word and figures "January 9, 1967" and inserting in lieu thereof the word and figures "January 1, 1966";

On page 2 by striking all of line 10 after the period after the figure "2"; in line 11 by striking the following: "follows: 20-2102.";

On page 3 in line 21 by striking the word and figures "January 9, 1967" and inserting in lieu thereof the word and figures "January 1, 1966"; in line 25 by striking all after the period after the figure "3"; in line 26 by striking the following: "follows: 20-2103." and inserting in lieu thereof the following: "(a)";

On page 4 between lines 6 and 7 by inserting a new paragraph to read as follows: "(b) That in any civil action brought in said court, before summons or other process shall be issued therein, a deposit of five dollars (\$5) shall be made by the plaintiff with the clerk of said court as security for costs in cases involving not more than five hundred dollars (\$500), and a deposit of ten dollars (\$10) shall be made by the plaintiff with the clerk of said court as security for costs in cases involving more than five hundred dollars (\$500): Provided, That in any case where the plaintiff, being a resident of the state and having a just cause of action, is not able, by reason of poverty, to give such security, that on an

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affidavit made by said plaintiff setting forth such fact, as provided by the code of civil procedure now in force, no security shall be required: Provided further, That on motion and notice additional security for costs may be required by the court. All costs advanced or paid by the plaintiff shall be refunded to him when the same are collected from the defendant."; in line 7 by striking all of said line after the period after the figure "4"; in line 8 by striking the following: "follows: 20-2105."; in line 17 by striking all of said line after the period after the figure "5"; in line 18 by striking the following: "follows: 20-2107.";

in line 10
On page 5/by striking all of said line after the period after the figure "6"; in line 11 by striking the following: "follows: 20-2108."; in line 19 by striking all of said line after the period after the figure "7"; in line 20 by striking the following: "follows: 20-2109.";

On page 6 in line 31 by striking all of said line after the period after the figure "8";

On page 7 in line 1 by striking the following: "follows: 20-2110."; in line 14 by striking all of said line after the period after the figure "9"; in line 15 by striking the following: "follows: 20-2111."; in line 20 by striking all of said line after the period after the figure "10"; in line 21 by striking the following: "follows: 20-2112."; in line 28 by striking all of said line after the period after the figure "11"; in line 29 by striking the following: "follows: 20-2113.";

On page 8 in line 3 by striking the words and figures "one dollar (\$1)" and inserting in lieu thereof the words and figures "ten dollars (\$10)"; in line 5 by striking all of said line after the period after the figure "12"; in line 6 by striking the following: "follows: 20-2117."; in line 15 by striking all of said line after the period after the figure "13"; in line 16 by striking the following: "as follows: 20-2121.";

On page 9 by striking all of lines 26 to 28, inclusive and in lieu thereof inserting/six new sections to be numbered 15, 16, 17, 18, 19 and 20 which new sections shall read as follows: "Sec. 15. Each judge

shall be a full-time judge and he shall devote all of his time to the duties of his office and is hereby prohibited from engaging in the practice of law during his tenure thereof: Provided, All persons occupying said office of judge under and by virtue of appointment to fill a vacancy need not devote all of his time to the duties of the office and may engage in the practice of law during his tenure under and by virtue of such appointment except he shall not practice in said court. Should any judge violate any of the provisions of this or of any other section of this act, he shall, upon a trial and conviction thereof, be adjudged to be guilty of malfeasance in office and his tenure of office shall immediately cease and he shall be forthwith removed therefrom in the manner provided by law.

"Sec. 16. That all vacancies in the office of judge, clerk or marshal of said court shall be filled by appointment of the governor until the next election for county offices occurring more than thirty (30) days after such appointment.

"Sec. 17. That in case of the absence, sickness or disability of either of the judges of said court, said judge may appoint a judge pro tem of said court, who shall hold court for him and hear and determine any matter pending therein, to the same extent that such absent or disabled judge might do if personally present, the person so appointed shall have the same qualifications and shall take the same oath as the judges of said court as provided in this act, and such judge pro tem shall fill such position until the judge of said court can be personally present.

"Sec. 18. That when judgment shall have been rendered against a defendant in his absence, the same may be set aside upon the following conditions: First, that his motion be presented to the court within five (5) days after such judgment was entered. Second, that he pay or confess judgment for the costs awarded against him. Third, that he file an affidavit that he has a just and valid defense to the whole or some part of the plaintiff's claim, setting out in a general way the facts constituting said

defense. Fourth, the motion shall be heard summarily, and if the court finds that the facts stated in said affidavit shall constitute a defense to plaintiff's claim or any part thereof, he shall set aside said judgment and set the case down for trial at some date to be designated by said court, not more than seven (7) days from the date of setting aside said judgments.

"The defendant shall notify in writing the opposite party, his agent or attorney, or cause it to be done, of the opening of such judgment and of the time set for said trial, at least three (3) days, before the time of the trial, if the party is a resident in the county and if he is not a resident of the county, by leaving a written notice thereof at the office of the clerk three (3) days before the time set for the trial; by depositing in the United States post office, postage prepaid, a letter containing a copy of said notice addressed to the opposite party or his attorney of record at their place of business or residence if known; but judgment shall be set aside but once under this section in any case.

"Sec. 19. That all fees, costs and fines of said court shall be paid into the general fund of the county in which such judicial district is located.

"Sec. 20. From and after the effective date of this act, the provisions of existing K. S. A. 20-2101 to 20-2124, inclusive, and amendments thereto, and 20-2307 to 20-2313, inclusive, and amendments thereto, shall not apply in those counties where a magistrate court is established under this act."

On page 9, in line 29 by striking the figure "16" and inserting in lieu thereof the figure "21"; in line 30 by striking the word and figures "January 9, 1967" and inserting in lieu thereof the word and figures "January 1, 1966";

In line 5 of the title of striking the semicolon after the word "elections" and inserting in lieu thereof a comma; in line 6 by striking all of said line after the ~~word "nizances"~~ syllable "nizances"; and by striking all of lines 7, 8, 9 and 10 and inserting in lieu thereof a period;

And the bill be passed as amended.

Chairman