MINUTES OF THE House COMMITTEE ON Federal and State Affairs

Held in Room 510-S, at the Statehouse at 2:45 ~~a.m./~~p. m., on March 26, 19 75.

All members were present except: Mr. Lindahl who was excused.

The next meeting of the Committee will be held at 2:45 a.m./p. m., on March 27, 19 75.

These minutes of the meeting held on _____, 19____ were considered, corrected and approved.

H. V. VanBebber
Chairman

The conferees appearing before the Committee were:

Senator Crofoot
Representative Graber
Mr. Bill Ewing, Southwestern Bell Telephone
Mr. Robert Graves, United Telephone Company
Mr. Mike Johnson, Labor Department
Mr. Ernest Bressler, Bird City
Mr. George Jackson, Ft. Scott
Mr. Morgan Williams, Agriculture Hall of Fame
Mr. Joe Detrixhe, Kansas Wheat Commission
Mr. Mel Gray, Dept. of Health and Environment
Mr. Jack Brier, Asst. Secretary of State
Mr. Lance Burr, Kansas Ass'n. of Realtors
Mr. John Ball, Real Estate Commission
Mr. Bob Moore, Executive Vice-President, Kansas Board of Realtors
Senator Sowers

The meeting was called to order by the Chairman and Senator Crofoot was introduced to discuss SB 408. The Senator explained that originally this was a local bill for Lyon County, which would permit the consumption of alcoholic liquor in a building on the fair grounds at a private party; however, he stated that an amendment was placed on the bill on the floor of the Senate and he is not entirely sure what it does to the bill. He stated that originally this was a request by the city and county commissioners, because on occasion they rent a certain building on the fair grounds to groups for private parties and they would like to bring their own refreshments in for the party.

Representative Graber appeared to discuss HB 2614, a bill relating to public utilities and in particular to telephone service in his area; that some individuals in his area are on party lines with as many as ten patrons and while promises are made to provide better and more reliable service, very little progress has been made, and this bill would require the Corporation Commission to offer the franchise to another company if the present supplier fails to offer relief. He stated that promises have been made since 1968 but very little relief has been realized. He offered a packet of printed statements. (see exhibit)

Mr. Hayes inquired if the patrons have talked with the Corporation Commission and Mr. Graber stated they have and it is explained in the first letter of the exhibit.

Mr. Bill Ewing, Public Affairs Manager of Southwestern Bell, appeared in opposition to the bill, although he explained Bell is not the utility directly involved. He explained that he is opposed to this concept because the process of converting is expensive and time consuming. Especially, he stated, providing rural telephone service is an expensive process; that it costs about $1,000 per station to convert from an 8 party line to a 4 party line.

Mr. Robert Graves, Vice President and General Manager of United Telephone Company of Kansas, appeared in opposition to the bill, stating that his company is the one referred to in this bill. He stated that they have approximately 80,000 telephones in Kansas; that in Haven there are some 10 party lines but the average is 6.2 people and they are working toward making it no more than 4 per party line; that they continually work to improve service but it is slower than they would like because of the cost; that they had asked the Corporation Commission for a rate increase which would accelerate this work but that the request was cut substantially and they have to gauge their work accordingly.

Mr. Tom Slattery inquired what the target date might be, and Mr. Graves explained they couldn't predict a specific date. Mr. R. Miller inquired if the party lines were serving individuals or businesses and Mr. Graves stated they are sometimes combined. Mr. Morris inquired if it was customary to charge installation charges, and Mr. Graves stated that it is under certain circumstances; that it depends on the requirements.

Senator Sowers appeared on his SB 138, explaining that the top of the capitol building had never really been completed; that the architect had envisioned that a statute would be on top of the dome, but because of opposition from different quarters it was never done. Senator Sowers says now that he feels it would be appropriate to fly the flag from the top of the capitol, and that is what SB 138 proposes. He stated there would be a cost of around $15,000 for the installation of a flagpole, and probably $1,000 to $2,000 per year for flags.

The Chairman called attention to SB 531, which deals with the inspection of steam boilers and repeals the present section. Mr. Mike Johnson, Industrial Safety Division of the Department of Labor, stated that the bill in its present form would make insurance compulsory for any owner; that at the present time there are approximately 2200 boilers registered; that they are not opposed to the concept but it would take in model equipment and antique machines, and suggested that the committee might want to consider amendments.

Mr. Ernest Bressler of Bird City appeared in opposition to the bill on behalf of people interested in preserving antique engines and boilers. He introduced Mr. George Jackson of Ft. Scott who asked that these individuals be exempt from the requirements of the bill. He stated this is not the first time they have appealed to the Legislature, but they had done so at the time boiler inspection came in with the $75.00 fee, and they were given the same consideration as antique automobiles. He stated that his organization draws in about a half million dollars because of this relief, and besides keeps the people from going outside

the state with their collections for shows. He stated if this bill passes it will be impossible to have their exhibits and shows because some of these boilers cannot be insured. The Chairman inquired if there have been any accidents with these machines, and Mr. Jackson stated there had been none in over thirty years.

Mr. Morgan Williams of the Agriculture Hall of Fame, stated he represents an organization in Mr. Cooper's district; that he supports the position of Mr. Jackson. Mr. Joe Detrixhe, Wheat Growers Association, testified that this bill would place an undue burden on the hobbists.

Rep. Hayes stated that he had an amendment which he felt would meet the needs which had been pointed out. Rep. Morris expressed some concern about commercial cooking equipment and Mr. Mel Gray, Department of Health and Environment stated there might be some problems with sterilizing equipment in labs and hospitals depending on definitions. He also mentioned some of the research in progress in regard to steam engines for transportation.

The Chairman stated it had been brought to his attention that Jim Wilson had another draft in the Revisor's office which might meet the need and suggested staff and interested members meet with him.

Mr. Jack Brier, Assistant Secretary of State, appeared to explain SB 560, stating that with the abolishment of the Auditor's office and transfer of records, they had run into some problems in the cost of duplicating records too large for their xerox equipment; that the law provides for 0.25 per page, but some of the land records are quite large and must be blue printed; that they would like to be able to charge actual cost, as well as insurance while the records are out of the office, and this bill is designed for that purpose. It was moved by Mr. Ward and seconded by Mr. Cooper that the bill be recommended favorably. Motion carried without dissent.

Mr. John Ball, Director of the Kansas Real Estate Commission introduced Mr. Lance Burr, representing the Kansas Association of Realtors. He testified that this is an educational bill and stated that two years ago the legislature had passed a bill establishing a "recovery fund" for the benefit of individuals who have been damaged in real estate transactions; that he believes this is a good bill too in that it does not require additional education before taking the examination, but requires that you obtain it after being licensed. In this way he stated, he believes the industry will be upgraded. He stated that there are a number of schools which offer courses which are acceptable, and also correspondence courses are available. He stated that there is a rather large turn over in this field and he feels that this bill will be helpful in weeding out those who are not seriously interested in the business.

Mr. Ball stated that they have only examined 250 applicants since the new testing procedure was adopted and that ordinarily they examine around 2,000 per year and therefore, his statistics at this time are not very accurate. He stated that the Commission

is interested in the passage of the bill because they feel it is vital that people who are dealing in real estate have knowledge of how to handle their transactions; that during inspections they have been appalled at how accounts are sometimes taken care of; that they would like their people to have some knowledge of the laws governing them and how to conduct transactions. He did ask for an amendment on page 11, line 21, reinserting November 30 for the renewal date because they need about 30 days to get the licenses out after payment of the renewal fee.

Mr. Mel Gray discussed SB 359, explaining that it was their department which had requested Senator Sowers to introduce the bill; which would authorize the Secretary of Health and Environment to increase the issue of revenue bonds from fifteen million to twenty million dollars for the purpose of grants to local communities; that such funds would make a great deal of difference in federal grants and if available would result in 55% federal participation.

The Chairman announced that HB 2613 was introduced at the request of Rep. Cooper and others, and Mr. Cooper stated that now the courts must find the juvenile would not be amenable to to treatment before they can be tried in accordance with the seriousness of the crime. The Chairman stated the juvenile judges he had talked with were in favor of the bill. Mr. Cooper stated he had some amendments which were in line with a letter he had from a juvenile judge. After a great deal of discussion, the Chairman appointed a sub-committee of Mr. Cooper, Mr. Hayes and Mr. J. Slattery to look at possible amendments.

Rep. Hayes displayed a bill which he explained was killed in the Senate when the attempt was made to amend capital punishment into it, and that it has previously passed the House with no problems, and moved that the bill be introduced and referred to the Committee of the Whole. Motion was seconded by Mr. Ward and carried without dissent.

The meeting was adjourned.

3-26

STATEMENT DELIVERED BY MICHAEL L. JOHNSTON
ON BEHALF OF COMMISSIONER DARRELL D. CARLTON
BEFORE THE FEDERAL AND STATE AFFAIRS COMMITTEE OF
THE KANSAS HOUSE OF REPRESENTATIVES: MARCH 26, 1975

Mr. Chairman and Members of the Committee, with your permission I have a few remarks concerning Senate Bill 531.

Senate Bill 531, in its present form, would essentially make insurance compulsory for any person, firm, etc., owning a steam boiler in this state which operates in excess of 15 p.s.i. Let me say first of all that at the present time, approximately 2,200 boilers are covered under the Kansas Boiler Inspection Act and registered with our agency. Of that total number, only approximately 320 are subject to state inspection since the remainder of the units are insured and inspected annually by agents of their insurance companies. Accordingly, the scope of Senate Bill 531 would be confined to only those units now operating without boiler insurance and annually inspected by the State Boiler Inspector.

I will outline our concerns with respect to Senate Bill 531 as follows:

1. We believe that the word owning in line 2 of Section 1 should be changed to operating.

2. Since Section 2 repeals the entire existing law, it would also repeal the existing regulations that were promulgated from authority contained therein. Moreover, Senate Bill 531 provides no authority for regulation repromulgation nor does it contain any existing regulation transfer clause. Therefore, if Senate Bill 531 is enacted in its present form, the fundamental and only text of statutory compliance would be the maintenance of boiler insurance,

notwithstanding all other relevant safety factors concerning construction, installation, operation and maintenance of steam boilers generally addressed through regulation.

3. Senate Bill 531 does not address the question of administrative responsibility. We had originally suggested that the Insurance Commissioner's office would be the appropriate place to certify insurance company inspections as well as the procurement of boiler insurance by those persons operating steam boilers not now insured.

4. Another potential problem area is that of scale model boiler equipment and equipment used exclusively for exhibition and show purposes. It is our understanding that insurance is difficult to acquire for old steam engines, etc., and if available, the costs are substantial since that equipment was generally constructed over 70 years ago. I believe there are others here today who will speak to that issue in a more detailed and substantial manner.

5. Finally, Mr. Wilson of the Revisor's office has another legislative draft with respect to this entire matter which was not introduced. That draft, in my judgment, is substantially superior to Senate Bill 531, and with minor modification, could address all of the issues I have raised.

Thank you Mr. Chairman and members of the Committee. I will be happy to try to answer any questions you have.

United Tel. Co. of Kansas, Inc.

HAVEN, KANSAS

	BRU 1-PTY	BRU MULTI	RRU MULTI	RRU 2-PTY	RRU 1-PTY	RRU 4-PTY	TOTAL
1969	-	11	186	-	-	-	197
1970	-	9	193	-	-	-	202
1971	-	9	192	-	-	-	201
1972	7	8	190	3	11	-	219
1973	6	9	190	2	15	-	222
1974	6	9	191	6	18	-	229

Multi-Party Residence	Four-Party Residence	Increase
$4.15 X 191 = $792.65	$6.50 X 191 = $1,241.50	$448.85
Multi-Party Business	**Four-Party Business**	**Increase**
$5.15 X 9 = $46.35	$8.30 X 9 = $74.70	$28.35

Annual Revenue Increase - $448.85 + $28.35 X 12 = $5,726.40

KANSAS

	BRU 1-PTY	BRU MULTI	RRU MULTI	RRU 2-PTY	RRU 1-PTY	RRU 4-PTY
1969	-	248	7702	-	-	2505
1970	-	213	6720	-	-	4077
1971	-	190	5662	-	-	5169
1972	479	166	4921	472	1535	6031
1973	464	163	4539	470	1764	6510
1974	485	143	3743	499	1942	7443
ES 1975	460	142	3680	493	1937	7579

United Tel. Co of Kansas, Inc.

HAVEN, KANSAS

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1971	-	9	192	-	-	-	201
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S.B. 531

Town Talent
March 6, 1975

Mr. T. Evans
State Representative
State House
Topeka, Kansas 66612

Dear Mr Baker:

Enclosed please find the list of names of concerned people pertaining to the quality of service and our crowded lines in our area.

Our crowded lines and outages are concerns as well as unavailability of private lines.

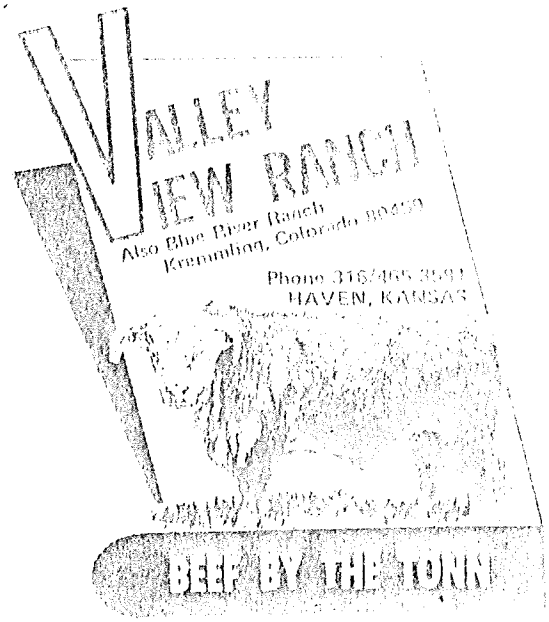
I have at hand a letter stating a price of $175.66 for a private line installation and a statement from another that was installed for will only a used a month extra charge.

Other names were picked up on a few hours so thought I'd send them in. There are some more papers out and will get them to you.

Sincerely,

Mrs Harold Tonn

2 encl.
1. Pertaining to United Telephone Co.
1 encl. for Bill SB 227



HAROLD TONN AUCTIONEER
Registered Hereford cattle • Belgian horses

United Telephone Co. Patrons on our crowded lines

Mr & Mrs Robert Belz		
Mr & Mrs. Jon Vogelgesang	465-3605	
Mrs. Glen Preisser	465-2310	(6)
Mr. & Mrs Ray L Ast	465-3342	(10)
Mr. & Mrs Raymond Ritter	465-3344	(10)
Mr Daniel D Schmidt	465-7741	(10)
Mrs Louise Schmidt	465-3343	(10)
Mr & Mrs Milton Blocher	465-7767	(7)
Mr & Mrs O J Johns	465-3347	(10)
Mr. & Mrs. M J Bolyen	465-3553	
Mr & Mrs Pete Preisser	465-3349	
Mr & Mrs Milton Brauer	465-3682	
Mr & Mrs Irwin Cooper	465-3683	
Mr & Mrs Ray Lanning	465-2354	(7)
Mr & Mrs Eugene Popp	465-3464	(9)
Douglas Murphy	465-3391	
Harold Volk	465-3366	SCHOOL DISTRICT LINE
Betty Albright	465-3843	(5)
Mr & Mrs Delbert Shive	463-3393	(4)
Mr & Mrs Milton Stade	463-3404	
Mr & Mrs. Galen Hill	465-3405	(8)
Mr. & Mrs. Eugene Stein	465-3420	
Mrs Dorothy E. Schmidt	465-3306	
Faye & Nancy Cokeley	465-3302	(10)

United Telephone Co. —

Patrons on over crowded lines

Mr + Mrs Cecil Hutchinson, R1 Haven, Ks 465-3589
Mr. + Mrs. Harold Blocker R1 Haven, Ks.
Mr and Mrs Bob Town R1. Haven, Ks.
Mrs + Mrs AJ Blocker R1 Haven Kans 465-3586
Mr + Mrs Arthur Back R1 Haven Ks 465-3587
Mr + Mrs LeRoy BACK R1 HAVEN Ks 465-3812
Douglas L. Gehby R1 Haven Ks 465-3593
Dean Andrews R.1 Haven Ks. 465-3571
Mr + Mrs. Harold Town " " " 465-3581

STATE OF KANSAS

WALTER W. GRABER
REPRESENTATIVE EIGHTY-FIRST DISTRICT
KINGMAN-RENO COUNTY
PRETTY PRAIRIE, KANSAS 67570

COMMITTEE ASSIGNMENTS
MEMBER: AGRICULTURE AND LIVESTOCK
ASSESSMENT AND TAXATION
ENERGY AND NATURAL RESOURCES

TOPEKA

HOUSE OF
REPRESENTATIVES

Mr. Chairman, Members of the Committee

House Bill 2614 is an act relating to certain telephone utilities concerning service to patrons in certain territories.

The problem stems from the fact that there are as many as 10 patrons served by one party line. Efforts to remedy this situation between the patrons and the public utility company date back to 1968. Promises of relief from this situation went on and on with still no relief in sight. The odds of getting use of the line are very slim with so many people being served by one line. I personally made 8 calls to a party on one of these lines in one day during the session, before I was able to get the use of the line.

Efforts to obtain private lines by these people have fallen on deaf ears at proposed costs for installation by the company varying from $200 to $2069.53 which were non-refundable.

Attached is a letter by one party in this area quoting installation charges as well as some service charges.

These people have had endless inconveniences caused by this situation. School officials say it is virtually impossible to call people on these lines even in cases of emergency.

People often have to drive to Haven to take care of business calls.

The Kansas Corporation Commission has been unable to do anything about this situation under existing laws. It is hoped that through this legislative action, we can update the telephone service in these communities from 1920 to 1975 during the next year.

I will appreciate your favorable consideration of House Bill 2614.

WALTER W. GRABER
Representative
81st District

Wamego Kansas
Feb 18 1975

W. W. Graber
State Representative
Topeka, Kansas
Dear Mr. Graber:

Please give this United Telephone Service situation serious thought.

I have had correspondence and talks with both Commissioners and Telephone Co. over some of these matters ever since 1968.

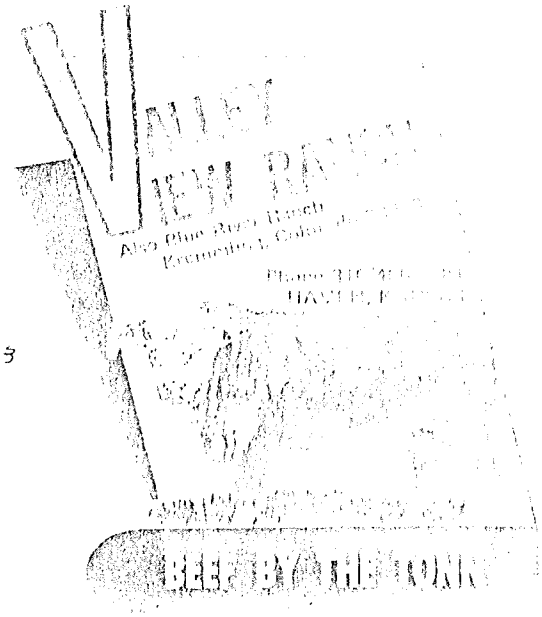
I went to Topeka and testified on the July 15th hearing of '74. I called about the Sept. 4th hearing and was personally told there was no use to come as it was a cut and dried deal. I could say nothing.

The telephone situation in my area is as serious as any I come to or hear. I would like to tell you the various things I have been told and prices quoted on trying to get a private line over the right of way party line I'm on.

The school office woman told me she has tried ten times during the day to get parents of a sick child. No school nurse either.

I would welcome the chance to visit with you on some of the things that have been brought to my attention.

Mrs. Harold Tonn
Wamego Kansas
66543



HAROLD TONN AUCTIONEER
Registered Hereford cattle • Belgian horses

Feb. 26, 1975
Haven, Kansas

W. W. Graber
State Representative
Topeka, Kansas

Dear Mr. Graber:

Thanking you so much for your phone call.

I realize I wasn't quite as much on the ball as I should have been with some specific facts to quote when you called. You see when I wrote 'visit with you' I didn't have over the phone in mind as with 8 on our line we always have to drive to town for business. When Harold heard our business being discussed in the resturant when he walked in after a conversation we learned to do the least possible over the phone.

It isn't that I had anything to say that I wouldn't say over the phone but it does make a difference in how it is told.

I sat in on a hearing for a full day where the telephone company admitted their stockholders reaped a million dollars profit last year. They would not even give the names of the boards of directors (which they admitted more than one board). A board director was testifying but he said he didn't know who was on, or he couldn't remember. But still it was a lack of funds as to why our lines couldn't be upgraded to at least the quality of service that was promised years ago.

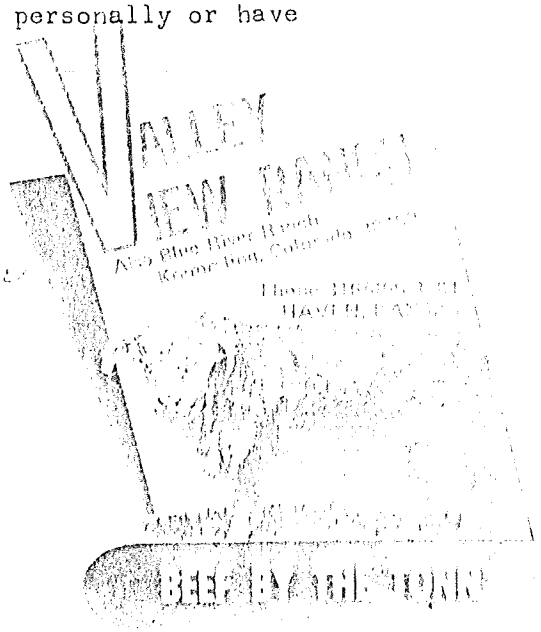
After all I have listened to and all the correspondence with the commission and the phone company and how all is operated, a private line is the thing I think I better just work on.

I can tell you names and prices and how some people got private lines, some at prices I could afford.

If you are home on a week-end to talk to personally or have a watts line, I will be glad to go to a private phone where you can call me.

Sincerely,

Mrs Vivian Tonn



Haven, Kansas
March 19, 1975

W. W. Graber
State Representative
State House #104
Topeka, Kansas 66612

Dear Mr. Graber:

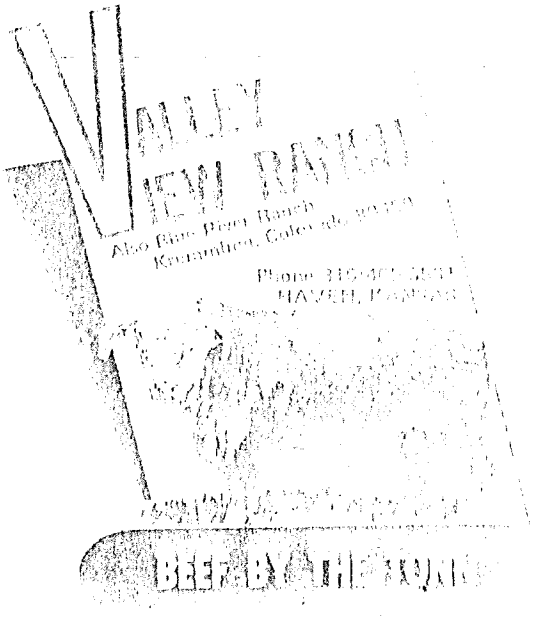
In regard to your phone call: The following are some figures I hope will be of benefit to you for legislation pertaining to the phone company bill.

Pertaining to my private case I have had three quotes: one $900 and the next $800 both non-refundable. Next was $22.00 a month ontop of the billing.

Another party was quoted $200 and he accepted but it was not installed. He started over again and they said $250 and he again agreed, this went on for two years and then they said equipment would be $550 (he was on a party line). He said to install the equipment and sent the money in. After several months more they installed it but said this was installation charges and that the equipment was not his and it was not a redeemable fee. A neighbor of his had previously paid $500 but it was prorated back to him.

Another subscriber in the last yer was quoted $2069.53 non-refundable and they are closer to Haven than I am. They gave up the idea of a private line even though it was a business necessity, and it cost them $130 to go on a party line refunded in 26 months at the rate of $5.00 pre month. Yet, one phone only two miles from me and a mile from this party got a private phone during the time I was asking for it for "such a small fee that they couldn't afford to be without it" was the quote to me. Another two miles from this one got a private line for 50¢ a month extra and no down payment .

Another instance is where some parties partitioned off an overused line because one party absorbed and demanded use ot it. They ignored two of the requests because that left only three on the line. These people left on the line ask for private lines but were refused. They now have no better service as when six or seven were on the line because the original condition still exhists. I can give you more specifics on this, even as to what the lineman said.



HAROLD TONN AUCTIONEER
Registered Hereford cattle • Belgian horses

(11)

W. W. Graber

Enclosed is a copy of a letter given to me by Mr. Voth of Haven Unified School District on figures for the Yoder school. They are on a 4 party line and want a private one.

There are three other private lines in Yoder I know of fairly recently and I could probably find their cost if it is necessary.

Certainly hope this will be of help to you and that we can get a private line that wheat and beef prices can support.

Sincerely,

Mrs. Harold Tonn
Valley View Ranch
Haven, Kansas 67543

1:encl.

UNITED TELEPHONE COMPANY OF KANSAS, INC.

United Telephone System

(15)

Box 433
Russell, Kansas 67665
February 5, 1975

Yoder Grade School
Yoder,
Kansas 67585

ATTN.: Mrs. Betty Albright

Dear Mrs. Albright:

In regard to your request for main line service in the Haven area, we have had our Engineering Department run a survey on what the cost would be to provide this service.

They have informed me that it would cost $475.66, which would be a construction cost you would have to pay us to insure our part of the investment. This would not be the full cost of the construction, but would be your part of it. We will need to receive this amount before we can begin procedures to have your service installed. Please let us know within 10 days what your decision is.

If you should have any further questions on this, please contact the Russell Business Office. Please remit this amount to my attention.

Yours truly,

UNITED TELEPHONE COMPANY OF KANSAS, INC.

Barry DeMuth
Commercial Supervisor

BD/can

21-45-10

(g) *Status of deposition as part of record.* No part of a deposition shall constitute a part of the record in the proceeding, unless received in evidence by the commission presiding officer. Objection may be made at the hearing in the proceeding to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witnesses were then present and testifying.

21-45-10 (i)

KCCR

This regulation is an extremely abbreviated version of K.S.A. 60-226 tailored to the less formal nature of an administrative hearing.

MORRIS

21-45-10(i) No comment.

21-45-13. Evidence. (a) *Form and admissibility.* In any proceeding before the commission or a presiding officer relevant and material evidence shall be admissible, but there shall be excluded such evidence as is unduly repetitious or cumulative, or such evidence as is not of any probative value.

(b) *Reception and ruling.* The presiding officer shall rule on the admissibility of all evidence, and shall otherwise control the reception of evidence so as to confine it to the issues in the proceeding. The production of further evidence upon any issue may be ordered.

21-45-13 (a) (b)

It appears the question here is,"are the sections uniformly followed by hearing examiners"? The answer would be yes with the following condition:

KCCR

It is sometimes necessary upon hearing to subpoena a great number of records in order to obtain a specific line of information. In such instances, all of the material subpoenaed is offered and accepted into evidence but only that which is relevant to the issue is considered. Such practice is dictated by necessity to maintain the integrity of the files. However, whenever possible, evidence received is limited to relevant evidence of probative value. Likewise, naturally repetitious or cumulative evidence is not received. Undoubtedly the decisions of the presiding officer relative to admissability are subject to review upon appeal.

MORRIS

21-45-13(a)(b) Rules of evidence in our court system should apply. Legal opinion probably needed on Commission statement.

21-45-17. Presiding officers. (*a*) *Designation of presiding officers.* Either the chairman or, when duly designated for that purpose, one of the hearing commissioners, or a hearing examiner, or other duly appointed representative may preside at a hearing or otherwise, as the presiding officer.

21-45-17 (a)

The question here appears to center around the phrase, "or other duly appointed representative may preside at a hearing or otherwise". This is included because the membership of the commission includes only one attorney. Thus the four commissioners before whom a hearing might be held would not necessarily include an attorney. Insofar as the presiding officer is required to make decisions which by their nature involve questions of law, the "presiding officer" should be an attorney. With this provision the fifth person, an attorney not a member of the commission, could serve as a presiding officer but would not participate in the deliberations of the hearing commissioners.

KCCR

DRRIS

21-45-17(a) Should still restrict to people within the Commission who are qualified.

21-45-21. Content of orders. (*a*) *An unlawful practice.* If a proposed or final report finds that a respondent has engaged in any unlawful practice, the proposed or final order based on such report may include, where appropriate, but is not limited to the following:

(1) Cease and desist: Directing the respondent to cease and desist from such unlawful practice; and

(2) Affirmative action: Requiring such respondent to take such affirmative action, including (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, maintenance and operation of an affirmative action file per K. A. R. 21-30-18, restoration to membership in any respondent labor organization, admission to or participation in a guidance program, apprenticeship program, on-the-job training program or other occupational training or retraining program, and the extension of full, equal and unsegregated accommodations, advantages, facilities and privileges to all persons, as will effectuate the purpose of the law; and

(3) Compensation damages: Awarding of compensatory damages to the persons aggrieved by such practice, as will effectuate the purposes of the law; and

(4) Punitive damages: Awarding of punitive damages to the persons aggrieved by such practice, as will effectuate the purposes of the law; and

21-45-21 (a) (4)

KCCR

The decision of the federal court in Gilliam vs. City of Omaha directs that when a civil rights violations would support punitive damages under federal law, a state or local agency must award punitive damages "even though punitive damages be abhorrent to the public policy of the state".

MORRIS

21-45-21(a)(4) This was not provided for original statute ard should be deleted.

21-45-24. Rehearing. (*a*) *Form, filing and service.* An application for rehearing shall be filed with the commission at its office in Topeka within ten (10) days after the issuance of any adjudication or other final order by the agency. Such application shall be made by petition, stating specifically the grounds relied on. A copy of such application shall be served on all the other persons receiving a copy of the original order in conformity with the service provisions of these rules, by the party making such application.

(*e*) *Granting an application for rehearing.* When the commission grants an application for rehearing, it shall so notify the parties in writing.

MORRIS

* 21-45-24(~~4~~)(e) Should still be granted when requested - or at least an appeal procedure established. Request for a rehearing should be mandatory.

28

21-46-1. Class B private clubs. All clubs holding licenses from the alcoholic beverage control commission as class B clubs are deemed places of public accommodations and subject to the provision of the Kansas act against discrimination. Nothing in the present paragraph shall be construed as grounds for an automatic exemption of any club holding a license from the alcoholic beverage control commission as a class A club from the provisions of the Kansas act against discrimination. (Authorized by K. S. A. 1972 Supp. 44-1003 and 44-1004; effective Jan. 1, 1974.)

21-46-1

KCCR

This section merely means that possession of a Class A Club License does not constitute proof that the club is, in fact, a non-profit fraternal or social association or corporation.

21-46-1 No comment.

MORRIS

FOR Rep. VanBebber chm.
F & S affairs committee

FROM Rep. MORRIS
Re: Reply FROM CIVIL RIGHTS ATTY. - To my ORIGINAL Objections + Questions

* ORIGINAL QUESTIONS NOT ANSWERED

21-30-16 Immediate defensive position - a preference is always shown when hiring one person over another - regardless of reason. Basic criteria should be, as stated, "bear a reasonable relationship to the racial and/or ethnic pattern." As stated, "friends or neighbors" could preclude hiring of minorities or females.

21-30-18 Does not speak to the problem as stated. What is asked for is a preferential hiring list which, in effect, is discrimination in reverse. Hiring should be done from an "applicant flow file" not from the affirmative action file. Affirmative action file would indicate that on the application form an employer would have to ask for race, creed, color, sex, etc. - which has been found to be in violation of the law.

* 21-30-18 C 4 Should be limited to the individual - complicates procedures and involves additional unnecessary recordkeeping.

21-30-19 Private referral agencies cost money. A monetary burden on the employer not required under the statute. Duplicates work of company personnel department and adds to the cost of doing business.

21-32-1 Referred to "co-workers" not clients. Job history of heavy work not previously done by female - inability to carry "a fair share" of the work load with co-worker. "Bigoted opinions" reference could be referred to as a normal "personal customer preference." Could put a person out of business because of "customer preference."

21-32-2(a) Under current Federal court appeal and should not include until Federal case renders a decision - one way or the other.

21-32-2(e) Differential in U.S. Social Security allowed, individual cases put extreme burden on employer. Again, U.S. Supreme Court considering.

21-32-4 OK

* 21-32-6 Only if Federal case upholds

21-33-1 OK

* 21-40-4 If business is operating under a Federal program it should be sufficient for the state.

21-40-7(c) Commission exercising right to censorship, without appeal.

* 21-40-9 Plain Commission harassment opportunity - and reason for heavy backlog. Allows Commission right to a "witch hunt."

21-40-12 Should be mandatory not to release material (will to shall). Statement does not refer to major problem noted (i.e. Commission sitting as judge and jury to determine what may or may not be stricken - thus placing a limitation on facts available for future inclusion in court cases. (Should strike "except where, in the judgment of the commission, the public interest so requires").

21-40-13(b) No comment - probably OK

* 21-40-13 (3-e) Still question the authority of the commission. It would be solely the commission opinion.

* 21-41-4 Time limit should be 90 days or less - NOT six months.

* 21-41-6 Commission should not have the right to modify the complaint.

* 21-41-7 If complaint is satisfied with resolution of the problem why should commission determine whether case should be continued? Constitutes additional backlog of cases.

* 21-41-9 Same as above (21-41-7)

* 21-41 10 Should be mandatory for Commission to drop case. (change may to "shall" and delete "in its own discretion")

* 21-42-3 "Powers of discovery" provides another opportunity to "witch hunt." Provision should include for appeal to the Director and Commission in the event an investigator presents a situation in which it is impossible to arrive at a satisfactory investigation or conclusion in the case.

* 21-42-4 Should require a complaint.

* 21-42-5(c) Word "relevant" not sufficient. Commission should indicate what records should be kept.

* 21-42-7 Notification should be "in writing."

21-43-3(c) Should be limited to actual wage loss - this section probably refers to cease and desist.

21-43-6 Again, the release of information prior to a public hearing tends to prejudice a public hearing. Last half sentence should still be stricken ("except as necessary to the conduct of further commission proceedings")

Adverse rulings by the Commission generally get publicity (via the Commission) which could create adverse public opinion and affect business whereas a reversal in the courts is never given publicity by the commission which could give improper public opinion.

21-44-2(b) Redundant, as noted by Commission - may imply no duplicate filing but does not say so - Leave out.

21-44-4 We refer to "other records," not as noted by Commission. Must identify other records in order to meet Federal requirements on reporting procedures. Need to be more specific in reference to "other records" or exclude.

21-45-7(d) If statement of Commission is accepted legal practice - no objection.

21-45-8(d)(1) No comment.

21-45-8(f)(2) No comment.

21-45-8(m)(4) Determined solely at the Commission's discretion.

21-45-8(g) No comment - check on case cited.

21-45-10(i) No comment.

21-45-13(a)(b) Rules of evidence in our court system should apply. Legal opinion probably needed on Commission statement.

21-45-17(a) Should still restrict to people within the Commission who are qualified.

21-45-21(a)(4) This was not provided for original statute and should be deleted.

* 21-45-24(4)(e) Should still be granted when requested - or at least an appeal procedure established. Request for a rehearing should be mandatory.

21-46-1 No comment.

STATE OF KANSAS

COMMISSION ON CIVIL RIGHTS

535 KANSAS AVE. TOPEKA, KANSAS 66603

PHONE (913) 296-3206

March 7, 1975

Mr. Russell Mills
Research Assistant
545 North - State House
Topeka, Kansas 66612

Dear Mr. Mills:

Tony Lopez asked me to respond to your enumerated concerns relative to the Rules and Regulations of the Kansas Commission on Civil Rights.

21-30-16

Given present social and housing patterns the giving of preference in hiring to friends or neighbors of present employees would tend then to give preference to members of the same social and ethnic groups as present employees, thereby perpetuating the effects of past discrimination. This regulation does not indicate that friends or neighbors of present employees may not be hired; it only indicates that friends or neighbors will not be given preference over applicants who are not friends or neighbors of present employees.

21-30-18

It would appear that your question on this section was directed to the notification of an applicant and "appropriate organizations and agencies". These "organizations and agencies" would be the ones specified in the conciliation agreement or commission order which provided that an affirmative action file be maintained.

21-30-19

It appears that your question on this section is relative to sub-section (2) under Section A. This section is necessary to ensure that in the event an agreement or order requires diligent efforts to rectify an imbalance in employment, use may be made of all available resources.

21-32-1

Your question here was relative to the preferences of clients or customers . This is based on well established case law and EEOC decisions. Basically, if an employer is to allow the(perhaps) bigoted opinions of his customers to dictate his hiring policies it could only serve to perpetuate discrimination.

21-32-1 (2)

The provisions relative to laws and regulations prohibiting or limiting the employment of females comes directly from comparable EEOC regulations. This does not constitute an attempt on the part of the Kansas Commission on Civil Rights to repeal state law but does in fact indicate exactly what it says, i.e: such laws shall not constitute a defence against otherwise discriminatory acts in the eyes of the commission.

21-32-2

The question relative to the first portion of this regulation appears to center around maternity leave for men and "maternity leave for men" of course, does not appear in the regulations and is perhaps a misnomer which has crept into the discussions, and more lengthy discussion is required. At the outset we accept the guidelines of EEOC and the decisions of courts that disabilities and possible complications attendant to pregnancy should be handled in exactly the same manner as any other disabilities which might arise as a result of accident, illness or injury. Therefore, if an employer has a policy of granting leaves to disabled employees leave must be granted under the same terms and conditions to pregnant employees. Naturally, such disabilities are experienced only by female employees, and as occasioned by actual physical disability rather than the state of impending parenthood. Thus, a man would not be able to demand a leave because of impending parenthood, or merely because he has just become a parent. However, if an employers' disability policy included a period of "disability" for a female employee after the birth of a child which was based not on the inability of the employee to perform the job task but rather was based on the theory that the infant required full time parental care (and was not based solely on the fact that the mother was providing natural nourishment for the child), a male employee being a new father might as well provide such care to the newborn and could therefore be allowed leave. It would appear that such leave could be granted on the basis of the infant's needs rather than the parent's desire.

Also to be considered would be an employer's policy of permitting female employees excused absence or leave to care for members of the immediate family etc., who were ill. Given such a policy a male employee could be granted leave to care for a wife who has just been confined and requires such care. Likewise, if an employer's policy permitted female employees excused absence or leave to care for children in the home when required by temporary exigencies the male employee with children whose wife has just been confined should be granted temporary excused absence or leave to care for such children.

21-32-2 (e)

Again, this section is adopted from the EEOC guidelines. A differential optional or compulsory retirement age based on sex has of course, no valid basis in fact and would clearly be discrimination on the basis of sex. Undoubtedly, a problem arises in the words"differentiates in benefits". Here again, a"differential in benefit" based on sex would be clearly discriminatory. The question of what constitutes a differential (e.g.: higher periodic payments X lower life expectancy versus lower periodic payments X higher life expectancy, or equal payments to all reglardless of life expectancy)is a question which must be attacked on an individual case basis.

21-32-4

This section is adopted directly from the EEOC guidelines.

21-33-1

The question in this section appears to relate to the burden of proof. In essence, the section says that once the commission has proved that a discharge or refusal to hire was based on the fact that the employee wished to observe a particular Sabbath or religious holiday a prima facie case of discrimination has been established and it then becomes the duty of the employer to prove that the required accommodations of the employee were unreasonable. Shifting of the burden of proof is a normal function in many litigative procedures and is based on the premise that undue hardship to

the employer is an element of defence rather than the lack of undue hardship being an element of offence. Therefore, when the employer claims the defence, he must prove it.

21-40-7 (c)

Documents filed with the commission are matters of public record and as such should not be tainted with scandalous matter nor should they be burdened with redundant, immaterial or impertinent matter.

21-40-12 (c)

The question here seems to be based on the provision whereby orders may be made public prior to delivery to parties when, in the judgment of the commission, public interest so requires. There are built-in delays (preparation of transcript, approval by commission, etc) between the hearing of a case and the issuance of an order. In times past it has been the commission's experience that corporate parties may lose their corporate entity or individual parties may disappear between the date of the hearing of a case and the date the decision becomes the final order of the commission. The decision in such a case may be in the general interest of the citizens of the State. In such a case the commission should have the authority to make its orders public although a party may not be located.

On the other hand, where such difficulties do not arise, it would appear that the individual parties should at least learn of an order by direct communication from the commission rather than through the news media or other sources. This regulation is intended to work to the benefit of the citizens of Kansas whether they be parties to a case or not.

21-40-13 (b)

This provision is fashioned after K.S.A. 60-2702 #109 which is a rule of the Supreme Court of Kansas relating to district courts and is advisable so that a party's attorney is not only aware of the laws, rules and regulations of this state but is available within the jurisdiction of the state for both pre and post hearing matters.

21-43-3 (c)

The first sentence of this section constitutes a re-statement of the provisions of K.S.A. 44-1004 (6). The second sentence is a re-statment of K.S.A. 44-1004 (7).

21-43-6

It appears that the first question relative to this regulation concerns the possibility of the disclosure of a proposed conciliation agreement after the conciliation has been termed unsuccessful. Insofar as the regulation as written permits only the disclosure of an executed conciliation agreement the disclosure of proposed agreements in unsuccessful conciliation attempts is precluded as an executed agreement could come only as the result of a successful conciliation.

The second question raised by this section is relative to the making public of information only "as necessary to the conduct of further comission proceedings". The act against discrimination clearly provides for public hearings and at such public hearings relevant evidence will naturally be made public in the interests of the elimination of discrimination.

In Atchison, Topeka and Santa Fe v. Lopez, 216 Kan____ the Supreme Court of this state has upheld both confidentiality of the investigative files of the Kansas Commission on Civil Rights and the proposition that the interests of the state in eliminating discrimination is paramount to the right of privacy of an individual. This regulation anticipated the court's decision.

21-44-2 (b)

It appears the only question here would be the connotation of the term "that agency". Since the only "agency" referred to in the section is the U.S. Equal Employment Opportunity Commission then of course, the section requires only that those entities listed do what is required of them by the federal agency. While it is, perhaps, redundant it requires no additional action on the part of any entity than that which is already required of it. It does not intend to imply duplicate filing with this agency.

21-44

[illegible] question with this regulation appears to be based on th[illegible]hrase "except as provided otherwise in these rules". 21-30 [illegible] in relation to affirmative action files would, of cours[illegible] require (when a conciliation agreement or order of the c[illegible]ission included provisions for an affirmative action file) that the racial, etc., identity of a person whose application was maintained in an affirmative action file appear therewith. Briefly, the regulation requires that unless observance of an operative conciliation agreement or order by a civil rights agency mandates racial, etc., identification on applications and in personnel files, such identity of employees should be maintained in a manner which would exclude consideration of such identity in decisions relative to hiring, promotion, termination, lay-off, etc.

21-45-7 (d)

The question here apparently arises over the last sentence. The provision for the controlling nature of a presiding officer's rulings are, of course, necessary to order in the conduct of a hearing. It is also to be noted that such rulings would naturally be subject to appeal if they constituted denial of due process, exclusion of relevant evidence or admission of irrelevant evidence.

21-45-8 (d)

These are standard rules and procedures followed by administrative agencies.

21-45-8 (f) (2)

This is standard court procedure.

21-45-8 (m) (4)

This would apply to both the exclusion of persons whose conduct at a hearing was disruptive or contemptuous as well as to the sequestering of witnesses.

21-45-8-(q)

The portion of this regulation relative to the substitution of hearing examiners or presiding officers reflects the decision of the Kansas Supreme Court in Clairborne vs. Coffeyville Memorial Hospital, 212 Kan. 315.

21-45-10 (i)

This regulation is an extremely abbreviated version of K.S.A. 60-226 tailored to the less formal nature of an administrative hearing.

21-45-13 (a) (b)

It appears the question here is, "are the sections uniformly followed by hearing examiners"? The answer would be yes with the following condition:

> It is sometimes necessary upon hearing to subpoena a great number of records in order to obtain a specific line of information. In such instances, all of the material subpoenaed is offered and accepted into evidence but only that which is relevant to the issue is considered. Such practice is dictated by necessity to maintain the integrity of the files. However, whenever possible, evidence received is limited to relevant evidence of probative value. Likewise, naturally repetitious or cumulative evidence is not received. Undoubtedly the decisions of the presiding officer relative to admissability are subject to review upon appeal.

21-45-17 (a)

The question here appears to center around the phrase, "or other duly appointed representative may preside at a hearing or otherwise". This is included because the membership of the commission includes only one attorney. Thus the four commissioners before whom a hearing might be held would not necessarily include an attorney. Insofar as the presiding officer is required to make decisions which by their nature involve questions of law, the "presiding officer" should be an attorney. With this provision the fifth person, an attorney not a member of the commission, could serve as a presiding officer but would not participate in the deliberations of the hearing commissioners.

21-45-21 (a) (4)

The decision of the federal court in Gilliam vs. City of Omaha directs that when a civil rights violations would support punitive damages under federal law, a state or local agency must award punitive damages "even though punitive damages be abhorrent to the public policy of the state".

21-46-1

This section merely means that possession of a Class A Club License does not constitute proof that the club is, in fact, a non-profit fraternal or social association or corporation.

I trust that these explanations will be of benefit and if further clarification is needed I will be most willing to try to provide it.

Very truly yours,

Roger W. Lovett

Roger W. Lovett

RWL:ks
cc: Tony Lopez