

M I N U T E S

SPECIAL COMMITTEE ON JUDICIARY - HOUSE

June 30, 1975

Members Present

Representative John Hayes, Chairman  
Representative Richard Brewster  
Representative Albert Campbell  
Representative Wm. Cather  
Representative Donn Everett  
Representative Ben Foster  
Representative Robert Frey  
Representative Ronald Hein  
Representative David Heinemann  
Representative Joseph Hoagland  
Representative Patrick J. Hurley  
Representative Fred Lorentz  
Representative David P. Mikesic  
Representative Ted Templar  
Representative Richard Walker  
Representative Neal Whitaker  
Representative Mike Glover  
Representative Eugene Gastl

Staff Present

Bob Alderson, Revisor of Statutes Office  
Art Griggs, Revisor of Statutes Office  
Walt Smiley, Legislative Research

Conferees Present

Mr. Ernie Mosher, Executive Director, League of Kansas  
Municipalities  
Mr. Jim James, Judicial Administrator  
Mr. Jerry Kuban, Public Administration Services

The Chairman called the meeting to order, and announced that the subject for the day was Proposal No. 25, concerning 1975 Senate Bill No. 284.

The Chairman then introduced Mr. Ernie Mosher, Executive Director of the League of Kansas Municipalities. Mr. Mosher told the Committee that the League was in opposition to those provisions of S.B. 284 which universally mandate the abolition of all municipal courts in the cities of Kansas. Mr. Mosher proposed several amendments which are described in his statement (see attached).

In response to a question, Mr. Mosher stated that he didn't know of any instance where the revenue for overtime parking violations has been used as a pledge for parking meter bonds.

Mr. Mosher was asked who would absorb the costs of the municipal courts after the 1977 date. He stated that as he interprets the bill, the counties would in most cases.

In response to a question, Mr. Mosher stated that he didn't feel municipal courts are used primarily to generate local revenue.

The chairman then introduced Mr. Jim James, Judicial Administrator, who in turn introduced Mr. Jerry Kuban of Public Administration Services, Chicago. He told the Committee that PAS was conferring with the Judicial Administrator, regarding a study of the Kansas judicial system for the Judicial Council. This study would emphasize

1. Revenue Generated and Expenditures. He stated that they propose to examine, in some detail, salaries, operating expenses, etc.
2. Personnel Inventory. Specifically, judges, court reporters, bailiffs, etc. PAS proposes to look into where the people are in the judicial system, what they are doing, and levels of responsibility.
3. Evaluation of Municipal Caseload. What the caseload is, its location, the convenience of the people to be served.

Mr. Kuban stated that he felt that these were questions for which there is presently no information. He stated that they would try to have these things put together by November 1, 1975. Mr. Kuban stated that they are also looking into how many support personnel S.B. 284 would take and how many additional magistrates would be needed. He indicated another area of concern is the retirement system when, for example, a judge comes into the judicial retirement system from the public retirement system.

Mr. James then stated that an expression of the Committee's feeling about the proposed PAS study would assist the Judicial Council in making a decision about authorizing the study. In response to a question, Mr. James indicated that the study could be funded with money left from the Judicial Study Advisory Committee's appropriation.

A staff member then reviewed some of the decisions still to be made regarding S.B. 284.

Following Committee discussion, a Committee member moved to request that the Judicial Council enter into a contract with Public Administration Services, to conduct the aforementioned study. The motion received a second, and carried on a voice vote.

A staff member stated that numerous amendments to the Probate Code and Code of Civil Procedure before Courts of Limited Jurisdiction would be required if S.B. 284 was adopted. A Committee member then moved that the staff be authorized to proceed with the drafting of the required amendments. The motion was seconded and carried on a voice vote.

The Chairman thanked Committee members and conferees for their presence, and adjourned the meeting.

Subsequent to the meeting, written comments were received from the following persons and groups. These comments are attached.

- 1) Sumner County Car Association
- 2) Kansas Land Title Association
- 3) Mr. Paul R. Wunsch

The next scheduled meeting of the Committee will be September 25.

Prepared by Walt Smiley

Approved by Committee on:

\_\_\_\_\_  
(Date)



STATEMENT ON PROPOSAL NO. 25 - JUDICIAL REFORM  
SB 284 AND MUNICIPAL COURTS

Special House Committee on Judiciary, June 30, 1975

E. A. Mosher, Executive Director  
League of Kansas Municipalities

My name is E. A. Mosher, Executive Director of the League of Kansas Municipalities, appearing in opposition to those provisions of SB 284 which universally mandate the abolition of all municipal courts, in all the cities of Kansas, on the fixed date of January 10, 1977. The statements I present to you reflect a discussion of this proposal at a meeting of the League's state legislative committee and is substantially similar to a statement presented to the House Committee on Judiciary on March 20. Further, my statement is generally consistent with the provisions of our convention-adopted Statement of Municipal Policy, which provides as follows:

"Municipal Courts. We believe cities which provide for an active ordinance enforcement program and a municipal court function which meets reasonable standards of performance, should be authorized to retain their municipal court, with cities generally authorized to utilize courts of larger jurisdiction, or to provide for joint employment of competent judges."

To put it another way, we believe the legislature should provide for some time and flexibility which is not provided for in SB 284. We hope there will be at least a few years following court unification, to work things out at the municipal court level to best serve the public. However, we would first like to submit two proposed amendments to the bill, before dealing with the basic question as to whether we should abolish all municipal courts beginning in 1977.

Amendment No. 1

We suggest the committee give serious consideration to an amendment which would authorize cities by ordinance to deal with minor, non-moving traffic ordinance infractions, where there is a stipulation of guilt or a no contest plea as the result of payment of a penalty fee. We don't see why a fifty cent parking meter violation, or even a \$5 overtime parking citation, should have to be handled by the district court, nor do we see why the state should get 10 or 20% of the revenue from these kinds of ordinance violations.

The National Advisory Commission on Criminal Justice Standards and Goals has recommended that "All traffic violation cases should be made infractions subject to administrative disposition, except certain (major) offenses. . . "Speaking about minor traffic infractions, this national commission reported:

"Judges who hear routine presentations many times a day find it difficult to give cases or defendants individualized attention or concern. These monotonous cases dull the creative energies of the sitting judges, and are a major factor in discouraging talented, able lawyers from seeking criminal court judgeships. These factors help create opposition to a unified trial court system. Sitting judges often oppose unification of the trial courts because they do not want to handle these cases. The cases tie up court resources that could be used to process more serious cases."



While the final report is not yet available, it is my understanding that the Kansas Governor's Advisory Panel on Criminal Justice will recommend an administrative procedure for handling minor traffic cases. Task Force III of this panel recommended the following:

"8.12 Objective: By 1978, Kansas should enact legislation to make minor traffic violation cases infractions subject to administrative disposition, except for but not limited to, certain serious offenses, such as driving while intoxicated, hit and run, reckless driving, driving while license is suspended or revoked, homicide by a motor vehicle and eluding police officers in a motor vehicle."

It should be noted that the above recommendation was intended to apply to all minor traffic violation cases, not just ordinance violations.

A 1973 Nebraska law authorizes such a system, as follows:

"18-1729. Violations bureau; purpose. Any incorporated city or village may, by ordinance, establish a violations bureau for the collection of penalties for nonmoving traffic violations. Such violations shall not be subject to prosecution in the courts except when payment of the penalty is not made within the time prescribed by ordinance. When payment is not made within such time, the violations may be prosecuted in the same manner as other ordinance violations."

The amendment we propose is as follows:

On page 87, after line 10, insert a new section, as follows, renumbering the remaining sections:

"Sec. 114. Any city may provide by ordinance that persons charged with stopping, standing or parking violations under the traffic ordinances of such city may waive court action by payment of specified penalty assessments within a prescribed time to a designated officer of the city, but any person so charged shall be entitled to a trial by entering a plea of not guilty. Any such ordinance shall provide that if a person charged pleads not guilty, or if the penalty assessment prescribed for the violation is not paid within the time prescribed, the officer authorized to receive payment shall forward a copy of the traffic citation to the clerk of the district court for court action, and the violator shall be proceeded against as provided by law for the violation of applicable traffic ordinances."

In support of this amendment, we would also suggest that such a local administrative procedure for dealing with non-moving traffic ordinance violations would prove advantageous to the state, as well as the city and the individual involved. We don't believe most people appreciate the tremendous volume of cases which will be transferred to the district court with the abolition of the municipal courts. A 1973 survey, covering 206 of an estimated 380 active municipal courts, reported 186,160 filings, predominantly traffic. The city of Wichita issued 178,186 "tickets" in 1974, of which 17,505 cases were docketed. Topeka had 22,676 municipal court cases in 1974 and Overland Park had 15,148.

#### Amendment No. 2

Our second amendment is also brief, and simply provides that the governing body of a city and the administrative judge of the district court, may enter into agreements whereby the city could continue to provide necessary docketing, clerical and administrative services--except for the direct service of the presiding judge. Some of our cities have some expertise, experience and equipment which could be effectively used by the district court, especially in the beginning years when the grand transformation occurs.



One of the reasons we support this amendment is to give the city some influence over the docketing of cases. We are concerned that without some city involvement, cases may be scheduled by the district clerk in a manner which will not permit the efficient use of police manpower, or even city attorney manpower. We emphasize that the amendment calls for a bilateral agreement. We think it would also be helpful to the state. The suggested amendment is as follows:

On page 65, after the period on line 30, insert the following: "The governing body of any city and the administrative judge of the judicial district in which such city is located may also enter into an agreement whereby such city shall provide docketing, clerical and administrative services essential to the effective operation of the court for the hearing and disposition of cases involving violations of such city's ordinances. Such agreements may be for one or more years and may contain such provisions and conditions as may be mutually agreed upon."

#### Timing of Revisions

It is also suggested that adequate lead-time be provided for the implementation of New Sec. 74, as presently worded in relation to facilities and as proposed by the amendments in relation to services. As presently worded, the administrative judge does not come into official existence until January 10, 1977, yet the municipal courts are abolished January 10, 1977! It seems to us that a full year of preparation for the transition is not unreasonable. Municipal court employees should have some advance knowledge as to what happens to them. Cities should have time to plan the use of their facilities. For larger jurisdictions, considerable time will be required to work out the mechanics of the transition. For example, Wichita has their municipal court transactions computerized, but no similar capacity exists at the district court level.

#### Amendment No. 3

Finally, we would like to discuss with you the basic issue as to whether all municipal courts should be abolished as of January 10, 1977. I think we should acknowledge that SB 284 is not, in fact, in direct accordance with the recommendations of the Judicial Study Advisory Committee (JSAC). This committee, instead of recommending a universally effective date, proposed instead a "phase-in" of the unified system in application to municipal ordinances. The summary of the JSAC recommendations provide as follows:

#### "Elimination of Municipal Courts

"At the time the unified district court is established, municipal courts of cities of the second and third class should be eliminated and the jurisdiction of these courts merged with the district courts.

"Three years after the creation of the unified district court, all remaining municipal courts should be abolished and jurisdiction over municipal ordinances should be vested in the unified district court.

"Provision should be made for transfer of municipal jurisdiction of any such remaining cities to the unified district court prior to that date upon consent of the municipality and the state judiciary."

Not specifically stated in the summary, but understood by the members of the JSAC committee, was that the constitutional home rule powers of cities could come into play during the three-year "phase-in" period following the effective date of the new system. While ostensibly mandatory for cities of the second and third class, it was understood that even cities of the third class could, by charter ordinance, elect not to be governed by the provisions of these statutes, until such time as the act became uniformly applicable to all cities.

Part of the intent, as I heard the JSAC committee discussions, was to provide time to develop a system which could, based on experience, best serve the public. For example, the city of Herington or Wamego, or any of dozens of other cities that are not county-seat towns, could exercise a choice, based on local conditions. There is no choice for local decision-making under SB 284. There are provisions for agreements for holding court at other than county-seat cities (New Sec. 74). But there is no provision for a judge "in residence," who is readily available for cases or warrants. Further, cities have little assurance that the administrative judge of the district will be amenable to proposals for a decentralized system.

From discussion with municipal officials throughout the state, I observe the following:

(1) County-seat cities, which are usually the largest city in each county, generally have no strong objections. The 10 percent or 20 percent state surcharge on ordinance violations and forfeitures does not sound unreasonable, although there is a concern about sharing parking violations revenue, as I previously noted. However, the convenient location of the district court in county-seat cities tends to remove most of the principal objections of officials in these cities.

(2) The city officials of smaller cities, typically those with a population of less than 1,000 or 2,000, also generally have no strong objections to the proposal. They have difficulty in finding and keeping good judges. They often don't have adequate facilities. Some want a bill like SB 284; some oppose it. But generally, they're reconciled to the apparent inevitability of centralization in government.

(3) Deducting the small city and the county-seat city still leaves a large group of cities, the officials of which have a good deal of anxiety about the proposal. Some of the questions we hear are these:

(a) Why should our citizens have to drive 30 miles to and from the courthouse for a traffic ordinance violation?

(b) Our local governing body requires court be held in the evening for the convenience of people who work during the day. What will happen under SB 284?

(c) We can afford to have only one police officer on duty. What do we do when he is at the courthouse to testify on a case?

(d) Is the case scheduling going to be handled to permit efficient use of police manpower?

(e) When we need a judge to sign something, do we have to drive clear to the courthouse? How much will this cost the taxpayers?



(f) We know the bill provides for agreements to hold court in our city. But what if the administrative judge doesn't like the idea? The city has no bargaining power and the judge handling ordinance violations may resist the idea of driving to other cities when he can just stay in the courthouse.

(g) What makes people think that the district magistrate judge is going to be a better judge on ordinance violations than our present municipal judge?

(h) What's wrong with part-time judges? Who says they'll be better if they're all full-time? Can we really expect a professional full-time judge to do nothing but hear ordinance violations day after day after day?

### Conclusion

These are the kinds of questions we have been hearing. What are the answers?

Frankly, we don't know. We think the two proposed amendments will be helpful. We think the JSAC committee recommendations for a time phase-in would also be helpful. We have not prepared an amendment for such a "phase-in" program. It would require considerable revision of the bill. The concept was discussed by the Senate Judiciary Committee last session, and rejected by a 6 to 5 vote. We still think it has practical advantages as well as being politically realistic. It would permit, for example, the city of Overland Park, a city of the 1st class which has been recognized by the American Bar Association for three years for its traffic court operation, to continue its operation. It would permit Fort Scott, a city of the 1st class with a population of 8,990, to enter into an agreement for state "take-over." It would permit Merriam, a city of the 2nd class (not a county seat) with a population of 10,869, to provide for a municipal court by charter ordinance.

In closing, we would note that Chief Justice Fatzer, in his message to the legislature on February 19, identified the municipal courts matter as a "different issue". We agree. We also hear questions about the capacity of the unified system to absorb the tremendous volume of ordinance violations in one fell swoop. We don't think a little time is going to compromise the mutual objectives of both the state and its cities of better serving the public.



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TOM L. SCHWINN  
W. H. SCHWINN (1888-1972)

June 13, 1975

AREA CODE 316  
326-7484

John F. Hayes  
c/o Legislative Services and Facilities  
Room 511 S  
State House  
Topeka, Kansas 66612

Dear John:

I am enclosing herewith a copy of a resolution recently adopted by the Sumner County Bar Association relative to Proposal # 25. Please take note of the fact that we would like to be notified of hearings on this proposal and will wish to present oral and documentary evidence in support of the resolution.

We are also interested in Proposal # 26 insofar as it concerns the office of District or County Attorney and would also like to be notified of hearings on that proposal.

Yours truly,



Tom L. Schwinn  
Chairman

TLS:py  
Enclosure  
cc: John A. Potucek II  
Ford Harbaugh  
Harold Pfalzgraf

# SUMNER COUNTY BAR ASSOCIATION

CLERK OF THE DISTRICT COURT  
COURT HOUSE  
WELLINGTON, KANSAS 67152

## R E S O L U T I O N

WHEREAS, the Nineteenth Judicial District, which includes Sumner County, Kansas has a very high level of court activity, both civil and criminal; and,

WHEREAS, it is important in the orderly and expeditious administration of justice that the public and the members of the Bar have ready access to a district judge, an associate district judge or a district magistrate judge and that suitable positions for Sumner County were not secured to and provided for in SB 284 as considered by the 1975 Kansas Legislature.

NOW, THEREFORE, BE IT RESOLVED, that the Sumner County Bar Association in regular monthly meeting assembled at Wellington on the 13th day of May, 1975, urges and memorializes the Kansas Legislature to create within Sumner County the positions of two associate district judges and district magistrate judge, all to the end that the citizens of Sumner County may enjoy an effective and efficient administration of the court system.



LAW OFFICES

**William L. Mitchell**  
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A. LEWIS OSWALD (1898-1960)  
WILLIAM L. MITCHELL

TELEPHONE 316-665-5211  
P. O. Box 604

June 16, 1975

John F. Hayes, Esq.  
Chairman - Special Committee on Judiciary  
330 West 1st Street  
Hutchinson, Kansas 67501

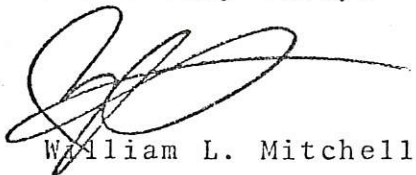
Dear Mr. Chairman:

As you know, I represent the Kansas Land Title Association and this association is very vitally interested in Proposal No. 25, the Judicial Reform proposal studying the report of the Kansas Judicial Study Advisory Committee and other recommendations for improving the Kansas judicial system. The bill introduced in the 1975 Session of the Kansas Legislature which passed the Senate consolidating all of the Courts into the District Courts would have placed the Kansas abstractors in an untenable position with respect to recording all transactions as Courts of record for the various police courts, magistrate courts, juvenile courts and courts of common pleas. While this may only affect 8 or 9 counties in the state, it would have been impossible for the abstractors to assume this burden of reporting or abstracting.

Would you please keep me informed of any hearings with respect to Proposal No. 25?

With kindest regards, I remain

Yours very truly,



William L. Mitchell

WLM:gu

Copy to - Roger Bell

PAUL R. WUNSCH  
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May 29, 1975

copy

Mr. Britt Brown  
Editor and Publisher  
The Wichita Eagle  
825 East Douglas  
Wichita, Kansas

Dear Britt:

Of course, I do not know who wrote the editorial appearing in your May 27, 1975, issue entitled JUDICIAL REFORM ESSENTIAL, but I am certain that whoever wrote it has very little knowledge of the functioning of our court system. I hesitate to say that the editorial demonstrates the author's complete lack of knowledge of our judicial system, but I am certain that the court reform and reorganization that some people are speaking about would not bring about any reform whatsoever and would practically put our court system into chaos.

I know that the governor and chief justice have been speaking about court reform and reorganization, but there are many things that they are not taking into consideration when they say it is essential to the cause of justice in our state. One of the matters which they have been advocating was up for discussion before the Kansas Bar Association meeting last week in Wichita and by an overwhelming vote the proposition was tabled. In discussing these reforms with various lawyers, I find that there are not very many who would be in favor of the changes that have been suggested by some people and even those that have been suggested by the executive council of the Kansas Bar Association.

The proposal as the editorial suggests would abolish probate, juvenile, county, magistrate, common pleas and city courts and would create a one-level trial court within each county. During my fifty years of practice, I have had considerable business in the probate court of Sedgwick County and many of the other probate courts of this state, and it has been my experience that you can obtain speedy justice and a speedy disposition of any matter that is presented to our probate courts as they are now constituted. I think the same could be said of our juvenile courts. I am not so familiar with the magistrate, common pleas and city courts, but I doubt very much if abolishing them and placing power in one man to delegate to others its various functions that are now being performed by these courts would do anything except bring about more delay and cause more dissension than there is at the present time among not only litigants but lawyers as well. When the editorial speaks of speeding up justice, I would like to have the writer to go to the probate court of your county, and he would find that action will be taken on any matter presented to that court within a very brief time. Judge Owens does a wonderful job with the assistance of his clerks in handling estate matters, and no district judge or anyone else could do a better job. This holds true, as I stated above, in many of our other smaller counties as well.



Mr. Britt Brown

May 29, 1975

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The editorial mentions the fact that unification "would permit more efficient utilization of justice and administrative manpower and speed justice at the local level." This in my judgment would not be true, and the very opposite would occur. Abolishing these courts and transferring their present functions to the district court would only cause a more congested docket at the district court than there is at the present time.

Your editorial also mentions that it would change the method of financing the entire court system "thus reducing the load on the property tax." It makes no difference whether the expense of our courts is paid through property taxes or through sales taxes. The taxes would necessarily be paid by we citizens of the state. The last statement in the editorial states that it would reduce the cost of the courts to the cities, counties and citizens. The citizens are going to pay the expense of operating our courts whether it is done by property tax or otherwise, and certainly, there would be no reduction of the costs.

This same old argument was used when we were talking about unification and modernizing our schools. I was then in the Kansas legislature, and to my sorrow, I admit that I fell for such argument, and the change in our school system has more than trebled the cost of education, and the same would be true if we consolidated our judicial system.

As I stated above, I do not know who wrote this editorial, but I would compare it to an editorial that I might write saying that we should have certain reforms in the various newspapers of the state. Anyone that writes an editorial or an article on any subject should have before him all the facts surrounding such matter before coming out and stating that "reform is essential." I apologize for taking issue with the writer of the editorial, but editorials such as this in my opinion give the wrong impression to the public just as it did when we organized and unified our school systems.

With very best personal regards to you, and I hope that I will in the near future have an opportunity to visit with you personally about this subject matter.

Very truly yours,



Paul R. Wunsch

mr

cc: Judge Clark V. Owens