

MINUTES

SPECIAL COMMITTEE ON AGRICULTURE AND LIVESTOCK

August 23, 1977

Members Present

Representative Ambrose Dempsey, Chairman
Senator Fred Kerr, Vice-Chairman
Senator Neil H. Arasmith
Senator Joseph F. Norvell
Senator Larry Rogers
Representative Richard D. Adams
Representative Ralph Bussman
Representative Dean B. Hinshaw
Representative John J. Maloney
Representative John Vogel
Representative George Works

Staff Present

Chris Badger, Kansas Legislative Research Department
Ron Smith, Kansas Legislative Research Department
Arden Ensley, Revisor of Statutes Office

Conferees and Others Present

JoAnn Huerter, Seneca, Kansas
P. D. Turner, Mid-America Dairymen
Dean Bishop, Kansas Board of Food and Drug
Debra Schumacker, Hays, Kansas
Art Sommers, Kansas Seed Dealer's Association
Kenneth Wilke, Kansas Board of Agriculture
Bob Guntert, Kansas Board of Agriculture
W. W. Duitsman, Secretary, Kansas Board of Agriculture
Brace Rowley, Dairy Commissioner
John Miller, Committee of Kansas Farm Organizations
John Blythe, Kansas Farm Bureau
Helen Lietz, United Farm Wives of America
Lowell Burchett, Kansas Crop Improvement Association
John B. Riley, Department of Agricultural Economics, Kansas State University

August 23, 1977

Morning Session

The meeting was called to order by the Chairman at 10:00 a.m.

The minutes for the July 28 and July 29, meeting were approved as presented to the Committee members.

The Chairman called on the staff to go over the Committee Report on Proposal No. 3 — Kansas Seed Laboratory and Seed Laws. This subject was covered in detail in a memorandum dated May 27, 1977. Proposal No. 3 directed the Special Committee on Agriculture and Livestock to conduct a "study to review the organization, funding, facilities, services offered and the qualifications of personnel in the Kansas Seed Laboratory." The Committee was to also review "the present Kansas Seed Law, K.S.A. 2-1425 et seq., and determine if there is a need to update this law."

The Committee report thoroughly covered the background for the interim study and the Committee's deliberations. One area of the report the Committee again reviewed was the lack of an adequate enforcement mechanism for protecting the sales of patented plant varieties in Kansas. It was pointed out during the hearings that patented plant varieties were primarily protected under P.L. 91-577, the Federal Plant Variety Protection Act and primary enforcement has been delegated to federal officials. The result has been that while federal authorities are willing to cooperate with state officials in the enforcement of the P.V.P.A., they have been excessively slow in processing violations. Research information provided the Committee noted that Nebraska had recently passed a state statute authorizing its control personnel to officially enforce the P.V.P.A.

The report concluded with Committee conclusions and recommendations. The Committee concluded that the Kansas Seed Laboratory needs only to purchase several new pieces of equipment and revise its fee structure in order to meet the standards of quality desired by the agricultural sector in Kansas. The Committee supports the improvement program for the Seed Laboratory which includes the purchase of two new germinators and one electronic balance with table. The requested equipment is estimated to cost \$20,000. The Board of Agriculture also recommends that it revise its current fee schedule upward an average of 30 to 40 percent through Board rule and regulation authority.

The Committee found that the Kansas Seed Laws are not in need of major change with one exception. The Committee believes that a state plant variety protection amendment should be added to the current list of unlawful acts. This will provide the Control Division with the necessary tool to officially carry out its enforcement program of the Plant Variety Protection Act. As proposed the bill would amend K.S.A. 2-1421 to include as an unlawful act the sale of seed when it is a variety for which an application has been made for a certificate of plant variety protection under the P.V.P.A. An exception to this unlawful act would be when a person uses certified seed in a mixture for sale labeled as to variety name with the permission of the owner of the variety.

Representative Vogel commended staff for the thoroughness of the Committee Report and asked if it would be distributed to all legislators.

Representative Works asked about the word "industry" in the first paragraph of the background and indicated it should be eliminated in the final draft. The Committee agreed.

Representative Dempsey suggested that the report should show that Mr. Duitsman has recommended that one employee will be eliminated from the Department's payroll in the course of time when he retires and will not be replaced. Both Senator Rogers and Representative Dempsey agreed to this.

The staff had been directed to draft a bill relating to enforcing the P.V.P.A. at the state level. There was considerable Committee discussion about this bill and the present federal-state relationship in enforcing the P.V.P.A. The discussion brought out that the only enforcement involved would be those under Title V.

Mr. Lowell Burchett pointed out the costs to produce and sell seeds and the problems that arise when farmers sell back and forth among themselves. He stated that it is risky business for all involved and the liability is tremendous to save a few cents.

Representative Vogel said the selling of the seed over the fence has been a sacred rite.

Mr. Art Sommers contended that this is a big mistake with many liabilities for the farmer in order to save a few cents. He said farmers make mistakes and forget, and under the best circumstances many mistakes are made. He cited a particular case.

Representative Dempsey mentioned his concern for legislation that cannot be enforced.

Senator Norvell questioned the actual hazards. He mentioned the importance of free enterprise and competition.

Mr. Sommers contended that it not only protects the individual and industry but the breeder. He said the farmer can sell his seed, he just cannot use the actual name if he advertises.

Mr. Burchett also mentioned that the intent was to allow the breeder to recover some of the costs to develop the new seed through research, etc.

Representative Dempsey mentioned that most research and development is done in the state colleges with public funds and not in private industry. Representative Vogel added that any seed developed with state funds should not come under this act.

Representative Dempsey asked about the regulations for growing seeds. He learned that it must be certified seed grown on clean ground from foundation seed. The second crop is regulation and the third is certified seed.

Staff summarized the bill by saying it gives the state officials authority to carry out the law. Mr. Duitsman added it is not as big an issue as it might appear and simply grants the state the authority to carry out the mandate. He concluded that it would not adversely affect the farmer in any way.

Senator Arasmith moved that the Committee Report, Proposal No. 3 -- Seed Laboratory and Seed Laws, be adopted by the Committee as reported and corrected. Representative Vogel seconded the motion. The motion carried.

Afternoon Session

The Chairman called the meeting to order at 1:30 p.m.

Representative Vogel again referred to the bill relating to sale and distribution of seeds. He said he would like to see soybeans, and alfalfa included and delete kafir in Section B. He made this in a form of a motion and Senator Arasmith seconded. Motion carried.

The Chairman called on Mr. Duitsman regarding recent activities of the Dairy Commissioner. He mentioned the case filed in Shawnee County Court and said that it seemed something should have been done by now to bring it to a head. He said the Dairy Commissioner has taken some additional action in three other counties on similar products. He then called on their legal counsel, Mr. Ken Wilke, who briefly explained the action taken. He said the county attorney in each of the counties; namely, Lyon, Leavenworth and McPherson have been most cooperative.

Senator Arasmith asked if they were finding a lot of illegal filled milk products. The Dairy Commissioner said twelve products had been found so far and pointed out where these items were found in the stores. He said they are displayed many different ways and therefore it is difficult to locate all of them and it would be easy to overlook some.

Representative Hinshaw asked how long Milnot has been marketed in the state. The Dairy Commissioner said it first appeared on the shelves on February 21, 1975 and the legal action was taken the next month.

The Chairman then called on the staff to review the comprehensive report of August 16, on Proposal No. 4 -- Filled Milk and Filled Milk Products. The report was nine legal size pages with eight exhibits. It covered the background of legislative action beginning in 1923. It listed in detail the chronological order of events to date relating to Proposal No. 4, current information relating to Proposal No. 4, the economic impact on the dairy industry in Kansas and concluded with policy options.

Senator Kerr asked for further explanation of the economic impact section.

Senator Rogers asked for additional explanation of the two Kansas statutes, K.S.A. 65-707(E)(2) and K.S.A. 65-725 et seq. Mr. Wilke explained the Department's position of administering the statutes and the exclusionary clause.

Senator Kerr asked about re-interpreting the statutes at this time and wondered about the pending case in Shawnee County against Milnot. The attorney said that it should not affect it, that there is still criminal coverage.

Representative Dempsey expressed concern that changing the law at this time might weaken the case.

Representative Vogel asked for an explanation of proprietary foods. The Department explained the various products and gave examples.

Representative Hinshaw asked what the basic intent was behind the law initially, to which staff replied "public health and fraud and deception." There was Committee discussion about what constitutes good health products and the swing to the poly-unsaturates and low cholesterol products.

Senator Arasmith said that there is a law and should be enforced and the question is whether we want filled milk products in Kansas. Representative Vogel agreed with him.

Senator Norvell then suggested that the Committee take a look at page 9 of the memorandum and consider Policy Option No. 2. He made the motion that the Committee take this course of action and Senator Arasmith seconded the motion. Motion carried.

Senator Kerr said the intent of the Committee should be clearly stated as it pertains to Milnot.

Senator Norvell suggested that the Committee Report show all the areas of Committee consideration as listed in the August 16 memorandum with Representative Vogel stating that it is possible that the 1978 Legislature may want to take some action.

The staff was instructed to write the Committee Report and include some of the various considerations and suggestions made by Committee members.

The meeting adjourned.

Prepared by Ron Smith

Approved by Committee on:

9-16-77

Date