

M I N U T E S

SPECIAL COMMITTEE ON LABOR AND INDUSTRY

October 12, 1977

Room 532-S, State House

Members Present

Representative Eugene Gastl, Chairman
Senator John Vermillion, Vice-Chairman
Senator Paul Feleciano, Jr.
Senator Don Allegrucci
Senator Bill Morris
Representative Darrell Webb
Representative Denny Burgess
Representative John Sutter
Representative Bill Wisdom
Representative Lynn Whiteside
Representative Samuel Sifers

Staff Present

Mike Heim, Kansas Legislative Research Department
Sherman Parks, Revisor of Statutes Office
Mary Allen, Secretary

Conferees and Others Present

Hamp Fairleigh, Kansas Department of Human Resources
Tim Brazil, Kansas Insurance Department
J. Kurtiss Carlson, Kansas Insurance Department
R. J. Soptic, United Auto Workers, Local 31
Edward R. Desoigne, Kansas Department of Human Resources
Marc Lowe, Kansas Department of Human Resources
Carl Nordstrom, Kansas Association of Commerce and Industry
Lyle Phillips, Division of Employment
Bill Clawson, Division of Employment
Barbara Hodges, Division of Employment
Paul B. Bicknell, Division of Employment
E. W. Maxwell, Department of Human Resources
William Layes, Department of Human Resources
Dr. James McCain, Secretary, Department of Human Resources
Harold Stones, Kansas Bankers' Association
William Douglass, League of Kansas Municipalities
Bryce Moore, Workers' Compensation Director
Gary Hower, Workers' Compensation Counselor
Patrick Brazil, Department of Human Resources
Mark L. Bennett, American Insurance Association
L. M. Cornish, Kansas Association of Property and Casualty Insurance Companies
David Brasher, National Federation of Independent Business

October 12, 1977
Morning Session

Proposal No. 46 - Employment Security

The Special Committee on Labor and Industry was called to order at 10:00 a.m. by the Chairman, Representative Eugene Gastl. The purpose of the morning session was to hear reports of legislative suggestions made by the Employment Security Advisory Council.

Chairman Gastl introduced Dr. James McCain, Secretary of the Department of Human Resources, to present the report of the Employment Security Advisory Council. Dr. McCain said that one significant recommendation was to recodify the Employment Security Law. He said that this was a very complex task and had taken several years to complete. The purpose of the recodification is to improve the organization of the legislation without changing the substance.

Dr. McCain called on Mr. Patrick Brazil, Chairman of the Employment Security Advisory Council, to explain other recommendations of the Council. Mr. Brazil, together with Mr. Carl Nordstrom, Kansas Association of Commerce and Industry, Mr. Paul Bicknell, Acting Chief of Contributions of the Employment Security Division, and Mr. Bill Clawson, Employment Security Division, presented the following recommendations:

1. The adoption of the recodification of the Employment Security Law was recommended. This recodification is now in the hands of the Revisor of Statutes office for final refinement.
2. To assure that employer experience ratings be computed for 1978-79 on the new \$6,000 wage base, an amendment to K.S.A. 44-710a(3)(B) was recommended that would provide that in computing such rates for calendar years 1978 and 1979 taxable wages shall be determined on a \$6,000 wage base per employee. It was pointed out that this amendment must be acted upon within the first week or ten days of the next legislative session for its value to be realized. This was a unanimous recommendation of the Advisory Council.
3. After a study of S.B. 411, including a study of disqualification provisions for voluntary quit, misconduct and refusal of suitable work, the Advisory Council requested that S.B. 411 and other matters pertaining to disqualifications be held over for interim study in 1978. It was noted by Mr. Nordstrom that there was a great difference of opinion in the Advisory Council concerning this matter.
4. The Advisory Council recommended that for the next year nothing be done toward the elimination of the zero rate or increasing the maximum rate. Mr. Nordstrom said that there was a great deal of difference of opinion in the business world concerning this issue.
5. The Advisory Council recommended a change in the computation date for rated governmental employers from June 30 to March 31 effective January 1, 1978. This would enable political subdivisions to meet their August 1 deadline for budget publication.
6. A change in the heading of K.S.A. 44-710(c) was recommended to read "Charging of Benefit Payments". Mr. Bicknell said that the old heading is misleading to some employers.
7. It was recommended that K.S.A. 44-710(c) be amended to permit a charge to an employer's account of all benefits paid prior to the June 30 computation date.
8. The ideas of a redefinition of average annual payroll and a limit on annual increases in tax rates were not recommended at this time. Advisory Council representatives said further study was needed.
9. The Council said it would continue to study the possibility of revising procedures used in notifying employers regarding assessments and notice to employers of a final notice of payment. This final notice is now served by registered mail. Since a warrant actually becomes a judgment against an employer, different ways to serve these notices, other than by mail, are being considered. Proposals from the Advisory Council on this subject will be forthcoming.

10. No recommendation was made by the Council on the reduction of a weekly benefit amount by retirement or pension amounts.

11. The Council decided to take no stand on the elimination of the waiting week requirement. (See Attachment I for the full report.)

The meeting was recessed by Chairman Gastl for lunch at 12:00 Noon.

Afternoon Session

Proposal No. 45 - Workers' Compensation

Chairman Gastl called the meeting to order at 1:30 p.m. The purpose of the afternoon session was to hear the report of the Advisory Council on Workers' Compensation. Chairman Gastl introduced Mr. Bryce Moore, Director of Workers' Compensation, to give a summary of the recommendations of the Advisory Council. The recommendations included the following:

1. There was no general agreement by the Council that Kansas should meet at this time all the recommendations of the National Commission on State Workers' Compensation Laws.

2. The Council agreed that some farm workers definitely should be covered by Workers' Compensation. There was no agreement, however, in regard to extending coverage to any other class of employees that are not presently covered.

3. The Council felt that Kansas essentially meets the recommendations to provide full coverage of work-related diseases.

4. There was no agreement by the Council in regard to setting a maximum benefit higher than it presently is. The maximum benefit is now \$120.95.

5. It was agreed by the Council that Kansas meets the recommendation in regard to definition of permanent total disability.

6. In regard to paying total disability for the duration of the worker's disability or for life, the Council agreed that the present \$50,000 maximum was not sufficient. There was discussion about raising the \$50,000 limit to a new limit of \$75,000 or \$100,000 but no specific recommendation was made.

7. It was agreed that the \$50,000 limit should be raised in regard to death benefits. Further, it was agreed that there should be a presumption of dependency of children when a worker responsible for child support did not fulfill his obligation.

8. It was agreed that generally Kansas meets the recommendation that there be no statutory limits of time or dollar amount for medical care or physical rehabilitation services for any work-related impairment.

9. The Council recommended that no change be made in the present heart amendment.

10. The Council recommended that no change be made in regard to the present method of computation for permanent partial benefits.

11. It was agreed that a problem of education rather than legislation exists in regard to extending the time limit for filing a workers' compensation claim to three years.

12. It was felt that there was no need to amend the law to require that employers' attorneys be given seven days notice prior to a preliminary hearing taking place.

13. It was agreed that the state should not set up a Workers' Compensation Insurance Fund.

Mr. Moore then explained some additional proposals agreed to by the Advisory Council on Workers' Compensation for changes in the Kansas Workmen's Compensation Law. They are as follows:

1. To provide job security for the new fulltime Workers' Compensation examiners.
2. To express the maximum benefit amount in a rounded off dollar amount.
3. To provide a method where employers could file an election to cover volunteer workers.
4. To provide a method where labor unions and other associations could file an election to cover persons who are on union or association business.
5. To allow employers and insurance carriers to implead the Workmen's Compensation Fund where the employer had knowledge of a prior handicap even though he had not filed with the Division of Workers' Compensation a Notice of Handicapped Employees, Form 88. (Mr. Tim Brazil, Kansas Insurance Department, said that the Insurance Department is opposed to this recommendation. He asked for permission to submit a letter to the Special Committee on Labor and Industry expressing their position on this matter. Chairman Gastl granted the request and asked that the letter be ready by the first of next week.)
6. To amend K.S.A. 44-528 to prohibit a review and modification of a settlement award if final payment has been made.
7. To amend K.S.A. 44-510a to reflect that the percentage of contribution for a prior injury shall be applied against the money rate paid or collectable for the prior injury.
8. To amend K.S.A. 44-510 to give the director discretion to allow mileage paid for trips for medical treatment within the home community of the injured worker. The present law allows only for mileage for out-of-town trips.

In conclusion Mr. Moore discussed the reactions of the Advisory Council to the questions set out in the letter from Chairman Gastl to the Council of August 22, 1977, in which Chairman Gastl asked for the Council's consensus on certain issues. Mr. Moore stated that the Committee should recognize in analyzing these reactions that agriculture is not represented on the Advisory Council.

A complete copy of the recommendations of the Advisory Council on Workers' Compensation, the reactions of the Council to the issues raised by Chairman Gastl, and statutory changes agreed upon by the Council are attached (Attachment II).

Representative Lynn Whiteside moved that the minutes of the meeting of September 15, 1977, be approved. Senator John Vermillion seconded the motion. The motion carried.

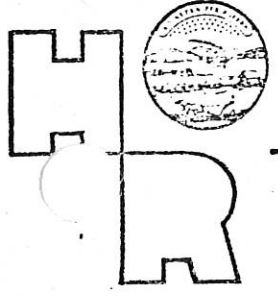
Chairman Gastl announced that the Special Committee would hold a two-day meeting October 19 and October 20, 1977.

Representative Lynn Whiteside moved that the meeting adjourn. Senator Don Allegrucci seconded the motion. The motion carried.

Prepared by Mike Heim

Approved by Committee on:

Oct 20, 1977
(Date)



KANSAS DEPARTMENT OF
Human Resources
DIVISION OF EMPLOYMENT

401 TOPEKA AVENUE TOPEKA, KANSAS 66603
913-296-5000

October 6, 1977

Eugene F. Gastl, Chairman
Interim Legislative Committee on Labor and Industry
Statehouse
Topeka, Kansas 66612

Dear Chairman Gastl:

Upon receipt of your letter relaying the Committee's request that our Advisory Council recommendations be presented by October 10th, a special meeting of the Council was called in early September. They met again on September 26th to finalize decisions.

As an outcome of these meetings, I have been asked to transmit the following to you as a communication from the Council.

- (1) The mammoth recodification project, three years in preparation, should now be in the hands of the Revisor's Office for final refinement.

The Advisory Council passed the following resolution:

"Be it resolved, that the Advisory Council recommend the adoption of the recodification of the Employment Security Law to the Interim Committee in line with the copy returned to the Revisor's Office and inform the Committee that the Council would be available and very agreeable to further review and study the final draft to assure that the work in no way deviates from the original intent or purpose of the present law."

- (2) To assure that employer experience ratings be computed for 1978-79 on the new \$6,000 wage base, the Council voted to recommend the following amendment to be added to K.S.A. 44-710a (3) (B):

"Provided, however, that in computing such rates for calendar years 1978 and 1979 taxable wages shall be determined on a \$6,000 wage base per employee."

Present law would require computation of the 78-79 experience rates on the \$4,200 wage base, yet applied to the higher base which becomes effective January 1, 1978.

Atch. I

Eugene F. Gastl, Chairman
October 6, 1977
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We emphasize that this amendment must be acted upon within the first week or ten days of the next session for its value to be realized. Later action would not provide the lead-time necessary for rate computation and disbursement of the rate to the approximately 42,000 employers covered by the program in time for their first quarter payment.

(3) S.B. 411 was the study of a Council sub-committee representing labor, management and a public member. Included in this study were disqualification provisions for voluntary quit, misconduct and refusal of suitable work.

After discussing the report of its committee, the Council voted to request that, in view of additional information and new developments since the original study of provisions included in the Bill, S.B. 411, and other matters pertaining to disqualifications, be held over for interim study in 1978.

Reviewing agency staff recommendations the Council presents the following:

(4) The Advisory Council recommends that for the next year nothing be done toward the elimination of the 0 rate or increasing the maximum rate. The Council is of the opinion that at least one year's experience is necessary at the anticipated 1.2 percent yield before considering action in this area. Employer representatives felt they were not in possession of enough information to measure completely the impact of any change, especially with the advance in the taxable wage base.

(5) The Advisory Council recommends the change in computation date for rated governmental employers from June 30 to March 31st effective January 31, 1978. This requires only a minor amendment and enables political subdivisions to meet an August 1st deadline for budget publication.

(6) The Council also recommends changing the heading of K.S.A. 44-710 (c) to read "Charging of Benefit Payments".

(7) The Council recommends a change in K.S.A. 44-710 (c) which would permit a charge to an employer's account of all benefits paid prior to the June 30 computation date. The suggested change would provide up-to-date charging of benefits to an employer's account and give a more timely reflection of an accurate rate.

(8) The redefinition of average annual payroll, and any limit on an annual increase in tax rate are not being recommended at this time, both subjects are being undertaken for further study by the Council over the coming year.

(9) Revised procedures in notifying employers regarding assessments, and notice to employers of a final notice are currently under study by the Council. Definite recommendations will be forthcoming in the near future.

Eugene F. Gastl, Chairman
October 6, 1977
Page Number Three

(10) The Council took no action on the reduction of a weekly benefit amount by retirement or pension amounts awaiting information from the federal government on a new activation date and decisions on conformity requirements.

(11) By official motion, consideration of any change in the waiting week requirement was moved up and put at the top of the agenda of the next meeting.

In conclusion, Council members have asked me to relay to you that a study of the complete tax rate schedule is a foremost topic on their agenda for the coming year. The topic requires in-depth research and earnest consideration affecting, as it does, the entire employment security program.

The Council asked me to convey to the Committee, through you, their appreciation of the Committee's sincere concern and interest in the employment security program. They assure each of you that all will be done to continue the excellent relationship that has existed between members of the Legislature and the Employment Security Advisory Council.

It is this spirit of cooperative association that has given Kansas a very effective, equitable and sound employment security program.

Sincerely,



Patrick Brazil
Chairman
Employment Security Advisory Council

attachment "II"

Human Resources

DIVISION OF WORKERS' COMPENSATION

6TH FLOOR, 535 KANSAS AVE. TOPEKA, KANSAS 66603
913-296-3441

SUMMARY OF THE RECOMMENDATIONS OF THE GOVERNOR'S
JOINT ADVISORY COMMITTEE ON WORKERS' COMPENSATION

(See attached letter for the full report of the Committee)

1. The Joint Advisory Committee recognizes that Kansas does not meet all the essential recommendations of the National Commission on State Workers' Compensation Laws and there was no general agreement that Kansas should meet all the recommendations at this time.

2. The Committee did agree that some farm workers definitely should be covered; however, they would leave it to the Committee as a whole to determine the best method of extending such coverage. There was no other agreement in regard to extending coverage to any other class of employees that are not presently covered.

3. It was agreed that Kansas essentially meets the recommendation to provide full coverage of work-related diseases. However, the labor representatives pointed out that with the burden of proof of medical evidence required, it is impossible in many cases to prove these truly occupation related diseases.

75% 4. There was no agreement in regard to setting a maximum benefit higher than it presently is which is ~~66-2/3%~~ of the worker's gross average weekly wage up to a maximum of ~~66-2/3%~~ of the state's average weekly wage.

5. It was agreed that Kansas meets the recommendation in regard to definition of permanent total disability; however, the labor representatives thought this term should be further defined while the industry representatives felt the present definition was sufficient.

75,000 6. In regard to paying total disability for the duration of the worker's disability or for life, the Joint Advisory Committee agreed the present \$50,000 maximum was not sufficient and there was some discussion about raising the \$50,000 limit to a new limit of \$75,000 or \$100,000. No final agreement was made in regard to this amount.

75,000 75% 7. In regard to death benefits again it was agreed that the \$50,000 limit should be raised; however, the Committee did not set a new maximum. The Joint Advisory Committee further agreed that there should be a presumption of dependency of children when a worker responsible for child support did not fulfill his obligation.

8. It was agreed by the Joint Advisory Committee that generally Kansas meets the recommendation that there be no statutory limits of time or dollar amount for medical care or physical rehabilitation services for any work-related impairment.

Attch. II

9. The Joint Advisory Committee made a recommendation that there be no change in the present heart amendment.

10. The Joint Advisory Committee recommended no change in regard to the present method of computation for permanent partial benefits.

11. In regard to extending the time limit for filing a workers' compensation claim to three years, it was agreed that this was not so much a problem for legislation but more one of education.

12. The Joint Advisory Committee agreed that there is no need to amend the law to require that employers' attorneys be given seven day notice prior to a preliminary hearing taking place.

13. The Joint Advisory Committee agreed that the state should not set up a workmen's compensation insurance fund and that private insurance industry can do a better job than a competitive or exclusive state fund.

There were additional proposals made by the Joint Advisory Committee for changes in the Kansas Workmen's Compensation Law. These proposals follow and copies of the proposed amendments are attached to the full report of the Committee.

1. To provide job security for the new full-time workers' compensation examiners. (See Attachment A.)

2. To express the maximum benefit to apply in Kansas in a rounded off amount instead of the dollar and cent figure that is now utilized. (See Attachment B.)

3. To provide a method where employers could file an election to cover volunteer workers. (See Attachment C.)

4. To provide a method where labor unions and other associations can file an election to cover persons who are on union or association business. (See Attachment D.)

5. To allow employers and insurance carriers to implead the Workmen's Compensation Fund where the employer had knowledge of a prior handicap even though he had not filed with the Division of Workers' Compensation a Notice of Handicapped Employees, Form 88. The Workmen's Compensation Fund can be impleaded 60 days following an award being final and non-appealable as well as prior to the first full hearing. The Fund would have the right to re-examine witnesses if impleaded after the award is entered. (See Attachment F.)

6. To insert language in K.S.A. 44-528 in regard to not allowing review and modification of a settlement award. (See Attachment E.)

7. To amend K.S.A. 44-510a to reflect that the percentage of contribution for a prior injury shall be applied against the money rate paid or collectable for the prior injury. This amendment corrects the language inserted in 1974 to this statute. (See Attachment G.)

8. To amend K.S.A. 44-510 to give the director discretion to allow mileage paid for trips for medical treatment within the home community of the injured worker. (See Attachment H.)

Human Resources

DIVISION OF WORKERS' COMPENSATION

6TH FLOOR, 535 KANSAS AVE. TOPEKA, KANSAS 66603

913-296-3441

October 12, 1977

The Honorable Eugene F. Gastl
Representative
Chairman - Special Committee on
Labor and Industry
Capitol Building
Topeka, Kansas 66612

Dear Representative Gastl:

This is in reply to your letter of August 22, 1977, in which you ask the Joint Advisory Committee to react to the issues set out in your letter. The Committee's consensus on the issues you raised are set out below. Other recommendations for legislative changes by the Joint Advisory Committee are also contained in this letter. This letter constitutes a full report of the Committee's action on recommended changes to the Kansas Workmen's Compensation Act.

(1) Should Kansas come into full compliance with the 19 essential recommendations of the President's National Commission on State Workmen's Compensation Laws? The Joint Advisory Committee recognizes that Kansas does not meet all 19 essential recommendations and there was no general agreement that Kansas should meet all the recommendations at this time.

The Joint Advisory Committee's reaction to the individual recommendations of the National Commission are set out below.

R2.2 which states, "We recommend that employers not be exempted from workmen's compensation coverage because of the number of their employees."

The Committee did not reach an agreement on this recommendation.

R2.4 which reads, "As of July 1, 1973, coverage should be extended to agricultural employees whose employer's annual payroll exceeds \$1,000. By July 1, 1975, coverage should be extended to farm workers on the same basis as all other employees."

The Joint Advisory Committee agreed that some farm workers definitely should be covered; however, would leave it to the committee as a whole to determine the best method of extending such coverage.

R2.5 which reads, "We recommend that by July 1, 1975, household workers and all casual workers be covered under workmen's compensation at least to the extent they are covered by Social Security."

The Committee agreed that to cover household workers and all casual workers to the extent that they are covered by Social Security would create more problems than it would solve. The Committee also noted most casual workers are covered as part-time employees anyway unless they are household workers whose employers had a payroll of less than \$10,000. The main problem created by household workers is that so many work a half day at a time for different families who would have no way of knowing that they must obtain workers' compensation insurance.

R2.6 which reads, "We recommend that workmen's compensation coverage be mandatory for all government employees."

The Joint Advisory Committee noted that all government employees are covered in Kansas except possibly some employees of smaller government units who may have payrolls of less than \$10,000. No agreement was reached in regard to further extending coverage to governmental employees.

R2.7 which reads, "We recommend that there be no exemptions for any class of employees such as professional athletes or employees of charitable organizations."

The Joint Advisory Committee agreed that Kansas generally meets this recommendation.

R2.11 which reads, "We recommend that the employee be given the choice of filing a claim for workmen's compensation in any State where he was hired, or where his employment was principally localized, or where he was injured."

It was agreed by the Joint Advisory Committee that Kansas fully meets this recommendation.

R2.13 which reads, "We recommend that all States provide full coverage of work-related diseases."

The Joint Advisory Committee agreed that basically Kansas meets this recommendation. However, the labor representatives pointed out that with the burden of proof of medical evidence required it is impossible in many cases to prove these truly occupation related diseases. It was the labor's position that Kansas should adopt the Federal Standards set by the Department of Health, Education and Welfare as to what constitutes an occupational disease.

R3.7 and R3.8 which state, "We recommend that, subject to the state's maximum weekly benefit, temporary total disability benefits be at least 66 2/3% of the worker's gross weekly wage." (R3.7.)

"We recommend that as of July 1, 1973, the maximum weekly benefit for temporary total disability be at least 66 2/3% of the state's average weekly wage, and that as of July 1, 1975, the maximum be at least 100% of the state's average weekly wage." (R3.8.)

The Joint Advisory Committee agreed that this recommendation is not met because the Federal Standards provide for an escalation clause and Kansas meets only the July 1, 1973, recommended weekly maximum. It could not be agreed that this recommendation be fully implemented.

R3.11 which reads, "We recommend that the definition of permanent total disability used in most states be retained. However, in those few states which permit the payment of permanent total disability benefits to workers who retain substantial earning capacity, we recommend that our benefit proposals be applicable only to those cases which meet the test of permanent total disability used in most states."

The Joint Advisory Committee agreed that Kansas meets this recommendation on a definition of total permanent disability. However, the labor representatives thought substantial and gainful employment should be more adequately defined. It was the industry position that the present definition was sufficient.

R3.12 and R3.15 which read, "We recommend that, subject to the State's maximum weekly benefit, permanent total disability benefits be at least 66 2/3% of the worker's gross weekly wage." (R3.12.)

"We recommend that as of July 1, 1973, maximum weekly benefit for permanent total disability be at least 66 2/3% of the State's average weekly wage, and that as of July 1, 1975, the maximum be at least 100% of the State's average weekly wage." (R3.15.)

The Committee's position to this recommendation was the same as its reaction to R3.7 and R3.8 set out above.

R3.17 which states, "We recommend that total disability benefits be paid for the duration of the worker's disability, or for life, without any limitations as to dollar amount or time."

The Joint Advisory Committee agreed that the present \$50,000 maximum was not sufficient and there was some discussion about raising the \$50,000 limit to a new limit of \$75,000 or \$100,000. No final agreement was made on this recommendation.

R3.24 and R3.25 which read, "We recommend that as of July 1, 1977, the maximum weekly death benefit be at least 133 1/3% of the State's average weekly wage; as of July 1, 1979, the maximum should be at least 166 2/3% of the State's average weekly wage, and on and after July 1, 1981, the maximum should be at least 200% of the State's average weekly wage." (R3.24.)

"We recommend that death benefits be paid to a widow or widower for life or until remarriage, and in the event of remarriage we recommend that two years' benefits be paid in a lump sum to the widow or widower. We also recommend that benefits for a dependent child be continued at least until the child reaches 18, or beyond such age if actually dependent, or at least until age 25 if enrolled as a full-time student in any accredited educational institution." (R3.25.)

The Joint Advisory Committee agreed that probably the \$50,000 limit should be raised but did not agree in regard to the new maximum. The Joint Advisory Committee did agree that there should be a presumption of dependency of children when a worker responsible for child support did not fulfill his obligation.

R4.2 and R4.4 which state, "We recommend there be no statutory limits of time or dollar amount for medical care of physical rehabilitation services for any work-related impairment." (R4.2.)

"We recommend that the right to medical and physical rehabilitation benefits not terminate by the mere passage of time." (R4.4.)

The Joint Advisory Committee agreed that Kansas has no statutory limitations on the dollar amount for medical care and that medical and rehabilitation does not terminate by the passage of time and therefore, it was agreed that Kansas generally meets this recommendation. However, it was noted that there is a possibility that in some cases this could not be true because of the statute of limitations, but in most cases where further treatment is needed, the statute would not be a bar because there would be a continuance of payments or an application for hearing made which would toll that statute.

This concludes the Joint Advisory Committee's reaction to the recommendations of the National Commission. The remainder of your questions are discussed below.

(2) Should Kansas change the so-called "heart amendment" provision?
The Joint Advisory Committee recommends no change be made to the heart amendment.

(3) Should the formula for computing permanent partial disability be changed according to the suggestions made by the Western Insurance Companies?
The Joint Advisory Committee recommended no changes in regard to computation of permanent partial benefits.

(4) Should the time limit for filing a workers' compensation claim be extended to three years? It was agreed that this was not a problem for legislation but more for education.

(5) Should seven days notice be given to the employer's attorney of a filing for a preliminary hearing by a claimant? The Joint Advisory Committee agreed that the seven day notice of the intent of filing for a preliminary hearing if temporary total compensation is not paid should be given to the employer and his insurance carrier as a claimant in many cases would not know the attorney for the insurance carrier. There was no recommendation for a legislative change on this proposal.

(6) Should Kansas create a Workmen's Compensation Insurance Fund to sell workmen's compensation insurance for employers either in competition with private insurance companies or exclusively? The Joint Advisory Committee agreed that the private insurance industry can do the job better than a competitive state fund.

The Joint Advisory Committee also agreed upon some other legislation changes which are set out as follows:

(7) It was agreed by the Committee that legislation be enacted to create job security for the workers' compensation examiners and assistant directors. The bill agreed upon by the Committee is attached to this letter. It essentially requires that examiners devote full-time to the duties of being an examiner and that they serve a year probationary period prior to being placed on a permanent basis. If they are serving on a permanent basis, they can only be removed for the causes set out in the proposed amendment. (See Attachment A.)

(8) It was agreed that K.S.A. 44-510c should be amended to allow the annual maximum benefit to be rounded off to the nearest whole dollar. (See Attachment B.)

(9) The Division of Workers' Compensation ask that legislation be created to allow volunteers to be placed under the act if the employer so elects to cover his volunteer workers. This was agreed upon by the Committee. (See Attachment C.)

(10) It was further agreed upon by the Joint Advisory Committee that labor unions and other associations can provide workers' compensation coverage for individuals who are performing services for the labor union or other associations. (See Attachment D.)

(11) It was further agreed by the Joint Advisory Committee that employers be allowed to implead the Workmen's Compensation Fund if they had knowledge of a pre-existing handicap, even though they did not file a Notice of Handicapped Employees, Form 88, with the Director's office. The Workmen's Compensation Fund can be impleaded 60 days following an award being final and non-appealable as well as prior to the first full hearing. The Fund would have the right to re-examine witnesses if impleaded after the award is entered. (See Attachment F.)

(12) To insert language in K.S.A. 44-528 in regard to not allowing review and modification of a settlement award. (See Attachment E.)

(13) To amend K.S.A. 44-510a to reflect that the percentage of contribution for a prior injury shall be applied against the money rate paid or collectable for the prior injury. This amendment corrects the language inserted in 1974 to this statute. (See Attachment G.)

(14) To amend K.S.A. 44-510 to give the director discretion to allow mileage paid for trips for medical treatment within the home community of the injured worker. (See Attachment H.)

The Honorable Eugene F. Gastl
October 12, 1977
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This concludes the report of the Joint Advisory Committee. Statutory changes agreed upon by the Committee are attached to the report.

Sincerely yours,

James A. McCain

OF WORKERS' COMPENSATION, ASSISTANT DIRECTORS, EXAMINERS: APPOINTMENT, COMPENSATION,

REGULATIONS: PRESERVATION OF RULES AND REGULATIONS, ORDERS AND DIRECTIVES. (a)

There is hereby established within and as a part of the department of human resources a division of workers' compensation. The division shall be administered, under the supervision of the secretary of human resources, by the director of workers' compensation, who shall be the chief administrative officer of said division. The director of workers' compensation shall be appointed by the secretary of human resources and shall serve for a term of four (4) years. In the case of vacancy in the office of the director of workers' compensation the secretary of human resources shall appoint a successor to fill the vacancy for the unexpired term. The director of workers' compensation shall be in the unclassified service under the Kansas civil service act and shall receive an annual salary fixed by the secretary of human resources, with the approval of the state finance council. The director, ~~of workers' compensation~~ assistant directors and examiners shall be attorneys and admitted to practice law in the state of Kansas. Said director, assistant directors and examiners shall devote full time to the duties of such their office and shall not engage in the private practice of law during his or her their term of office.

(b) The director of workers' compensation may appoint two assistant directors of workers' compensation and also may appoint not to exceed seven examiners. Such ~~assistant directors and examiners shall serve at the pleasure of the director,~~ ~~shall be in the unclassified service, and shall~~ receive compensation in an amount fixed by the secretary of human resources, with the approval of the state finance council. The assistant directors shall act for and exercise the powers of the director of workers' compensation to the extent authority to do so is delegated by the director. The assistant directors and examiners ~~shall be attorneys and~~ ~~admitted to practice law in the state of Kansas, and~~ shall have such powers, duties and functions as are assigned to them by the director or are prescribed by law.

Such assistant directors and examiners shall be selected by the director on the basis of merit with the approval of the secretary of human resources. Appointees shall serve a one year probationary period at the pleasure of the director and if not removed by the director within such time shall attain permanent status.

An appointee serving on permanent status shall only be subject to either dismissal or suspension of up to 30 days for one or all of the following reasons:

- (1) failure to conduct himself or herself in a manner becoming to one serving in judicial capacity and/or,
- (2) failure to perform duties as required by the Kansas Workmen's Compensation Act contained in Chapter 44 of Kansas Statutes Annotated and/or,
- (3) for the reasons set out for dismissal or suspension of a state employee in Kansas Civil Service Act contained in Chapter 75 of the Kansas Statutes Annotated and regulations pertaining thereto.

Neither a probationary nor a permanent appointee shall be appointed nor dismissed or suspended for political, religious or racial reasons or for reason of their sex.

To dismiss or suspend an appointee serving on permanent status, the director, with approval of the secretary of human resources, shall serve upon him or her a letter of dismissal by registered mail specifically setting forth the reasons for dismissal or suspension. He or she shall have 30 days from receipt of such letter to appeal his or her dismissal or suspension to the state civil service commission who shall have the authority to hold a hearing to determine the reasonableness of such action. The commission shall grant a hearing within 45 days after the receipt of such request. An appointee shall have the right to a de nova appeal from the decision of the commission to the district court where the appointees permanent office may be located.

Incumbents presently employed by the division of workers' compensation shall be considered as having attained permanent status if he or she has served at least one year in that capacity at the time this statute takes effect.

Where death does not result from the injury, compensation shall be paid as provided

K.S.A. 44-510, as amended, and as follows:

(a) (1) Where permanent total disability results from the injury, weekly payments shall be made during the period of permanent total disability in a sum equal to sixty-six and two-thirds percent (66 2/3%) of the average gross weekly wage of the injured workman computed as provided in K.S.A. 44-511, as amended, but in no case less than seven dollars (\$7) per week nor more than the whole dollar amount nearest sixty-six and two-thirds percent (66 2/3%) of the state's average weekly wage, determined as provided in K.S.A. 44-511, as amended, per week. The payment of compensation for permanent total disability shall continue for the duration of such disability, subject to review and modification as provided in K.S.A. 44-528, as amended.

(2) No change

(b) (1) Where temporary total disability results from the injury no compensation shall be paid during the first week of disability, except that provided in K.S.A. 44-510, as amended: Provided, That if the temporary total disability exists for three (3) consecutive weeks then compensation shall be paid for the first week of said disability. Thereafter weekly payments shall be made during such temporary total disability, in a sum equal to sixty-six and two-thirds percent (66 2/3%) of the average gross weekly wage of the injured workman, computed as provided in K.S.A. 44-511, as amended, but in no case less than seven dollars (\$7) per week nor more than the whole dollar amount nearest sixty-six and two-thirds percent (66 2/3%) of the state's average weekly wage, determined as provided in K.S.A. 44-511, as amended, per week. The payment of compensation for temporary total disability shall continue for the duration of such disability, subject to review and modification as provided in K.S.A. 44-528, as amended.

(2) No change

(3) No change

(c) No change

44-508. Definitions. As used in the workmen's compensation act:

(a) No change

(b) "Workman" or "employee" or "worker" means any person who has entered into the employment of or works under any contract of service or apprenticeship with an employer. ~~for wages in money and who is not a volunteer.~~ Such terms shall include but not be limited to: Executive officers of corporations; professional athletes; persons serving on a volunteer basis as duly authorized law enforcement officers, firemen or fire fighters, but only to the extent and during such periods as they are so serving in such capacities; persons employed by educational, religious and charitable organizations, but only to the extent and during the periods that they are paid wages by such organizations; persons in the service of the state, or any department, agency or authority of the state, any city, school district, or other political subdivision or municipality or public corporation and any instrumentality thereof, under any contract of service, express or implied, and every official or officer thereof, whether elected or appointed, while performing official duties; volunteers in any employment if the employer has filed an election to extend coverage to said volunteers; and minors whether said minors are legally or illegally employed. Any reference to a worker who has been injured shall, where the worker is dead, include a reference to his or her dependents, as hereinafter defined, or to his or her legal representatives, or where he or she is a minor or an incapacitated person to his or her guardian or conservator. Unless there is a valid election in effect which has been filed as provided in K.S.A. 1975 Supp. 44-542a, such terms shall not include: individual employers, limited or general partners, or self-employed persons.

- (c) No change
- (d) No change
- (e) No change
- (f) No change
- (g) No change
- (h) No change
- (i) No change

average weekly wage. (a) As used in this section:

(1) No change

(2) No change

(3) No change

(4) No change

(5) No change

(b) No change

(1) No change

(2) No change

(3) No change

(4) No change

(5) No change

(6) The average gross weekly wage of a person serving on a volunteer basis as a duly authorized law enforcement officer, an ambulance attendant, mobile intensive care technician, fireman or fire fighter, or any other volunteer under the act, who receives no wages for such services, or who receives wages which are substantially less than the usual wages paid for such services by comparable employers to employees who are not volunteers, shall be computed on the basis of the usual wages paid by the employer for such services to employees who are not volunteers, or, if the employer has no employees performing such services for wages who are not volunteers, the average gross weekly wage shall be computed on the basis of the usual wages paid for such services by comparable employers to employees who are not volunteers.

(7) No change

(8) No change

(c) No change

(d) No change

NEW SECTION

Members of a labor union or other association who perform services in behalf of the labor union or other association and who are not paid as full time employees for the labor union or other association and who are injured or suffer occupational disease in course of performance of duties in behalf of the labor union or other association shall recover workers' compensation benefits under this act from the labor union or other association provided said labor union or other association files an election with the director of workers' compensation to bring its members under the coverage of this act.

The average weekly wage for the purpose of this section shall be based on what the worker would earn in his general occupation as if at the time of the injury the worker was performing work in the worker's general occupation. The insurance coverage shall be furnished by the labor union or other association unless otherwise provided in a collective bargaining agreement.

44-528. Review, modification, reinstatement or cancellation of awards. (a)

Any award or modification thereof agreed upon by the parties, except settlement awards or releases approved by the director, whether said award provides for compensation into the future or whether it does not, may be reviewed by the director for good cause shown upon the application for the workman, employer, dependent, insurance carrier of any other interested party. In connection with such review the director may appoint one (1) or two (2) physicians to examine the workman and report to the director. The director shall hear all competent evidence offered and if he shall find that the award has been obtained by fraud or undue influence, or that the award was made without authority, or as a result of serious misconduct, or that the award is excessive or inadequate or that the incapacity or disability of the workman has increased or diminished, the director may modify such award, or reinstate a prior award, upon such terms as may be just by increasing or diminishing the compensation subject to the limitations provided in the workmen's compensation act.

(b) If the director shall find that the workman has returned to work for the same employer in whose employ he was injured or for another employer and is capable of earning the same or higher wages than he did at the time of the accident, or is capable of gaining an income from any trade or employment which is equal to or greater than the wages he was earning at the time of the accident, or shall find that the workman has absented himself and continues to absent himself so that a reasonable examination cannot be made of him by a physician selected by the employer, or has departed beyond the boundaries of the United States, the director may cancel the award and end the compensation.

(c) The number of reviews under this section shall be limited pursuant to regulations adopted by the director to avoid abuse.

44-566a. Same; fund created; assumption of second injury fund liabilities; administration by commissioner of insurance; annual assessment; commissioner of insurance to be impleaded; settlements; liabilities of fund; attorneys' fees when fund not liable.

(a) No change

(b) No change

(c) Whenever the workmen's compensation fund may be made liable for the payment of any amounts in proceedings under the workmen's compensation act, the commissioner of insurance, in his or her the capacity as of administrator of such fund, shall be impleaded in such proceedings and shall represent and defend the workmen's compensation fund. The commissioner of insurance shall be deemed impleaded in any such proceedings whenever written notice of the proceedings setting forth the nature of the liability asserted against the workmen's compensation fund, is given to the commissioner of insurance. ~~The commissioner of insurance~~ workmen's compensation fund may be made a party in this manner by any party to the proceedings. Written notice of the commissioner of insurance being made a party to the proceedings shall be given to the director and to any other party to the proceedings. The workmen's compensation fund shall be impleaded either before the first full hearing on the claim or a claim for reimbursement filed or action to shift liability to the fund filed, either if impleaded prior to the first full hearing where any evidence is presented; or if claim is filed it must be subsequent to, and within a period of sixty (60) days following, the date when any award, order or judgment becomes final and non-appealable. In the event a claim for reimbursement is filed or action to shift liability is filed against the commissioner after a final award, order or judgment, the workmen's compensation fund shall have the right to call additional witnesses, cross-examine witnesses who have previously testified, present evidence, lodge objections, and take other action to the same extent as had the fund been a party to and participated in the trial of the cause from its outset. The director or his or her examiner shall

Dismiss the workmen's compensation fund from any proceedings where the director has determined that there is insufficient evidence to indicate involvement by the workmen's compensation fund.

(d) No change

(e) No change

(1) No change

(2) No change

(3) No change

(4) No change

(f) No change

(g) No change

44-567. Same; relief from or apportionment of liability for subsequent injuries to handicapped workmen; presumptions; commissioner of insurance to be impleaded.

(a) An employer operating within the provisions of the workmen's compensation act ~~who employs a handicapped employee as defined in K.S.A. 1976 Supp. 44-566 and who prior to the occurrence of a compensable injury to a handicapped employee establishes knowledge of the preexisting handicap by filing a notice thereof, together with a description of the handicap claimed with the workmen's compensation director or meets the conditions of subsection (b) of this section~~ who knowingly employs or knowingly retains in his employment a handicapped employee shall be relieved of liability for compensation awarded or be entitled to an apportionment of the costs thereof as follows:

(1) Whenever a handicapped employee is injured or is disabled or dies as a result of an injury and the director awards compensation therefor and finds that the injury, disability or the death resulting therefrom probably or most likely would not have occurred but for the preexisting physical or mental impairment of the handicapped employee, all compensation and benefits payable because of the injury, disability or death shall be paid from the workmen's compensation fund.

(2) Subject to the provisions of the workmen's compensation act, whenever a handicapped employee is injured or is disabled or dies as a result of an injury and the director finds that the injury probably or most likely would have been sustained or suffered without regard to the employee's preexisting physical or mental impairment but the resulting disability or death was contributed to by the preexisting impairment, the director shall determine in a manner which is equitable and reasonable and based upon medical evidence the amount of disability and proportion of the cost of award which is attributable to the employee's preexisting physical or mental impairment, and the amount so found shall be paid from the workmen's compensation fund.

(b) In order to be relieved of liability under this section, the employer must prove either that he had knowledge of the preexisting impairment at the time he employed

one handicapped employee or that he retained such handicapped employee in his employment after acquiring such knowledge. The employer's knowledge of the pre-existing impairment may be established by any evidence sufficient to maintain the employer's burden of proof with regard thereto. If the employer, prior to the occurrence of a subsequent injury to a handicapped employee, files with the director a notice of the employment or retention of such employee, together with a description of the handicap claimed, such notice and description of handicap shall create a presumption that the employer had knowledge of the preexisting impairment.

(c) ~~(b)~~ Knowledge of the workmen's preexisting impairment or handicap at the time the employer employs or retains the workman in his employment shall be presumed conclusively if the workman, in connection with an application for employment or an employment medical examination or otherwise in connection with obtaining or retaining employment with the employer, knowingly: (1) Misrepresents himself as not having such an impairment or handicap; (2) misrepresents himself as not having had any previous accidents; (3) misrepresents himself as not having previously been disabled or compensated in damages or otherwise because of any prior accident, injury or disease; (4) misrepresents himself as not having had any employment terminated or suspended because of any prior accident, injury or disease; (5) misrepresents himself as not having any mental, emotional or physical impairment, disability, condition, disease or infirmity; or (6) misrepresents or conceals any facts or information which are reasonably related to the employee's claim for compensation.

(d) ~~(e)~~ An employer shall not be relieved of liability for compensation awarded nor shall he be entitled to an apportionment of the costs thereof as provided in this section, unless the employer shall cause the commission of insurance, in his capacity as administrator of the workmen's compensation fund, to be impleaded, as provided in K.S.A. 1976 Supp. 44-566a, as amended, ~~in any proceedings to determine the compensation to be awarded a handicapped employee who is injured or disabled or has died, by giving written notice of the employee's claim to the commissioner of insurance~~

~~...for-to-the-first-full-hearing-where-any-evidence-is-presented-on-the-claim.~~

(e) ~~(d)~~ The provisions of this section, as amended by this act, shall apply only to cases where a handicapped employee, or his dependents, claims compensation, as a result of an injury occurring after the effective date of this act.

(f) ~~(e)~~ The total amount of compensation due the workman shall be the amount for disability computed as provided in K.S.A. 1976 Supp. 44-503a, 44-510 to 44-510g, inclusive, and 44-511, and amendments thereto, and in no case shall the payments be less nor more than the amounts provided in K.S.A. 1976 Supp. 44-510c.

44-510a. Reduction in compensation for prior compensable permanent injury;
termination of reduction.

(a) No change

(b) The percentage of contribution that the prior disability contributes to the later disability shall be applied ~~to the amount of weekly disability compensation resulting from the later injury. This figure shall then be subtracted from the amount of weekly permanent total or partial disability compensation resulting from the later disability to give the reduced amount of compensation as provided in this section.~~ to the money rate actually collected or collectable for said prior injury and the amount so determined shall be deducted from the money rate which compensation is awarded for the later injury. This reduced amount of compensation shall be the total amount payable during the period of time as above provided, unless the disability award is increased under the provisions of K.S.A. 1974 Supp. 44-528.

44-510. Medical compensation; powers of director. Except as otherwise provided in this act, medical compensation under the workmen's compensation act shall be as follows: (a) It shall be the duty of the employer to provide the services of a physician, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, and apparatus, and transportation to and from the home of the injured workman to a place outside the community in which he or she resides and the director may order transportation within the community at his discretion as may be reasonably necessary to cure and relieve the workman from the effects of the injury. All fees, transportation costs and charges under this section shall be fair and reasonable, and shall be subject to regulations by the director, and shall be limited to such as are fair and reasonable.. The director shall have jurisdiction to hear and determine all disputes as to such charges.

(b) Any physician, nurse, medical supply establishment, surgical supply establishment, ambulance service or hospital who accept the terms of the workmen's compensation act by providing services or material thereunder shall be bound by the fees approved by the director and no injured employee or dependent of a deceased employee shall be liable for any charges above said amounts approved by the director. If the employer has knowledge of the injury and refuses or neglects to reasonably provide the benefits herein required, the employee may provide the same for himself or herself, and the employer shall be liable for such expenses subject to the regulations adopted by the director.

(c) If the services of the physician furnished as above provided are not satisfactory to the injured workman the director may authorize the appointment of some other physician subject to the limitations set forth in this section and the regulations adopted by the director. If the services of a physician furnished as above provided are not satisfactory to the injured workman, said workman may, without the approval of the director, consult another physician of his or her own choice, and the employer shall pay the fees and charges therefor. If such fees and charges are for examination,

diagnosis, or treatment, such fees and charges shall not exceed a total amount of one hundred fifty dollars (\$150).