

M I N U T E S

SPECIAL COMMITTEE ON JUDICIARY - B

August 29 and 30, 1977  
Room 528, State House

Members Present

Representative Dick Brewster, Chairman  
Senator Ron Hein  
Senator Joe Norvell  
Senator Jim Parrish  
Representative Ben Foster  
Representative Mike Glover  
Representative Fred Lorentz  
Representative Phil Martin  
Representative Kent Roth

Staff Present

Art Griggs, Revisor of Statutes Office  
Paul Purcell, Kansas Legislative Research Department

Others Present

Senator Elwaine Pomeroy, Chairman of the Special Committee on Judiciary - A

August 29, 1977  
Morning Session

Chairman Brewster called the meeting to order at 10:00 a.m. and directed the Committee's attention to Proposal No. 38.

Proposal No. 38 - Lien Laws

The first conferee was Representative Roy Garrett, 99th District, sponsor of H.B. 2310. He said that under present law the burden is always on the homeowner and that a homeowner ought to be able to hire a contractor who submits the lowest bid instead of having to consistently inquire about the contractor's history of paying subcontractors. He said the issue is whether the homeowner or the subcontractor is to be protected and that the issue should be resolved in favor of the homeowner because the subcontractor is in a better position to protect himself than is the homeowner. Most homeowners, he said, do not even know a subcontractor can put a lien on their house, even though they have paid the contractor, when the contractor fails to pay the subcontractor.

Senator Hein said that suppliers may not be able to protect themselves better than a homeowner because they would not necessarily know where the supplied materials were going. He asked how suppliers would be treated and Representative Garrett said that the supplier would have to fill out a sheet or get cash from the purchaser or else know that the purchaser's credit is good. As a homeowner, a person could require a performance bond because even reputable general contractors have been known to go under. Under H.B. 2310, if the subcontractor, material, or labor supplier fails to notify the owner, his lien rights would be waived. Representative Garrett also said that the subcontractor could get a bond from the general contractor.

It was pointed out that H.B. 2485 would go further than Representative Garrett's bill and Representative Garrett said he could support that bill because the present law is unfair to homeowners.

The Chairman agreed that the issue is whether the burden is to be placed on the homeowner or the subcontractor. Representative Foster said the legal question is which of two innocent parties will prevail and which will have to bear the burden. He suggested that another state might have figured out how to handle this problem. Representative Lorentz said that there is no privity between the subcontractor and the homeowner and if the subcontractor was required to protect himself, he would pay more attention to the practices of the general contractor.

With regard to suppliers, Chairman Brewster said that, if suppliers do not know where a particular item is going, they cannot file a lien under present law anyway. Senator Hein said that material liens are different from labor liens but the principle is the same in both cases. If there is no privity the subcontractor should not be allowed to file a lien.

Chairman Brewster asked how frequently this is a problem and Representative Garrett said that he had been receiving inquiries from the Association of Retired People and others in the Wichita area.

Ms. Avis Badke, Topeka, described how she and her husband, as homeowners, had gotten stuck because of existing lien laws. Ms. Badke said that the bankruptcy laws also cause problems and that criminal actions against the general contractor would not solve the problem of monetary loss. She said that even if you get a bond from the general contractor ultimately you must sue the bonding company.

Representative Foster again said that the question is which of two innocent parties is going to have to be protected and the answer to that question depends on how consumer oriented a person is and that a good argument can be made either way.

Chairman Brewster said there is no simple way to protect all the parties.

Representative Lorentz pointed out that, under H.B. 2310, a subcontractor would always know whether he had any lien rights or not. Senator Hein said that the subcontractor needed more options and Representative Lorentz said the problem with that is there is no privity between the subcontractor and homeowner. He said that H.B. 2485 puts the burden on the subcontractor because if the owner pays the general contractor, the owner does not have to pay anyone else. Representative Lorentz said the subcontractor would find a way to protect himself or else he would eventually go out of business. Senator Norvell said the subcontractor could still sue the general contractor.

Chairman Brewster asked the Committee to give thought to the problem before the next meeting.

Senator Parrish said that, on the one hand, it was important to avoid unjustifiable enrichment by the homeowner and, on the other, that suppliers of labor may only be able to be protected by a lien. Suppliers of material, however, may be in a different situation.

Senator Hein said he favored the bonding approach and that options could be allowed.

#### Afternoon Session

#### Proposal No. 38 (continued)

Mr. Rolland Werner, Right Cooperative Association of Wright, Kansas, commented on H.B. 2413 and 2414. He said that agri-businessmen needed the right to recover expendable costs of production and that these two bills would do that. Representative Foster stated that this would change the rule that prior in time is prior in right.

#### Proposal No. 40 - Determinate Sentencing

Minnesota's system of handling adult offenders was discussed by the Committee.

Senator Parrish said that the premise is one of openness and fairness. Chairman Brewster noted that judges feel that they should have an input into when a person can be paroled.

Representative Foster said that the 120-day parole eligibility clause ought to be repealed because the public hears from the media that offenders are eligible for parole at that time and then believes that offenders are getting out after only 120 days and that this is just not true.

The Committee then discussed possible drafting instructions.

Senator Parrish commented that the Department of Corrections should not have the authority to decide who sees the Adult Authority, and that only the Adult Authority should be able to determine this.

August 30, 1977  
Morning Session

Proposal No. 41 - Death With Dignity

Mr. Vincent DeCoursey, representing the Kansas Catholic Conference, discussed Death with Dignity legislation in general. The Conference submits that legislation is not the correct approach to the problem because doctors and hospitals are now free to meet their responsibilities with respect to their care of the dying; patients and their families presently have the legal right to request that "extraordinary means" not be used to prolong life; fear of legal action is more imagined than real; and legislation cannot resolve conflicts arising from questions of medical competency, the accuracy of prognosis or the interpretation of a patient's wishes. The Conference also submits that the "living will" is undesirable and dangerous. Mr. DeCoursey said that the Conference was not presenting this from the Catholic viewpoint nor was this a matter of Catholic opposition.

Proposal No. 39 - Expungement and Annulment

Senator Hein pointed out that S.B. 214 would make it easier to get an expungement. Representative Foster said that the Committee should not do anything to make expungement easier. Senator Hein said the main problem was with the arrest procedure. He said that expungement of traffic violations should be eliminated because of the concern with insurance rates and revocation of driver's licenses. Senator Hein moved to eliminate all expungements of traffic offenses. Representative Glover offered a substitute motion that a two-year waiting period be required before an expungement of a traffic offense could be granted. Representative Foster opposed this. Representative Lorentz said that if an offense was committed then it was committed and this is the way it should be. Representative Foster said that insurance rates are determined by the Insurance Commissioner and if the rates are too high it is his fault.

The Habitual Violator Act was discussed briefly.

After additional Committee discussion relating to possible drafting instructions, staff was directed to draft for review purposes a bill which would eliminate all annulments; make expungements applicable to all offenders not just those over 21 years of age; require a two-year waiting period before any expungement could be granted; and allow the expunged record to be made available for specific relevant reasons.

Afternoon Session

Proposal No. 43 - "Child Grabbing" (or Child Custody)

Ms. Linda Elrod, Washburn University School of Law, described the impact on Kansas law of the Uniform Child Custody Jurisdiction Act. She noted that 17 states have adopted the uniform act as of this date. She stated that K.S.A. 21-3422, which

makes interference with parental custody a crime, has no effect outside of the state and is a non-extraditable offense because it is a misdemeanor and since Kansas will not extradite for misdemeanors, other states will not extradite to Kansas for misdemeanors.

Brief Committee discussion followed this statement as to whether the classification of this crime should be changed to that of a Class E felony so that extradition would be possible.

Without the uniform act more than one state currently may exercise custody over a child. The uniform act deals with this problem by placing jurisdiction in the state having most contacts with the child. Ms. Elrod said the act will not hurt the state but it will require a minimal amount of state money. She said that two important aspects of the uniform act were the emphasis on the best interest of the child and the process of channeling information. She stated that she recommends changing the criminal statutes for extradition purposes.

Representative Roth then discussed a recent Colorado Supreme Court case, commenting that the court had misinterpreted certain provisions of the uniform act.

Proposal No. 82 - LEAA Requirements: Criminal History Records

Staff described the K.B.I. proposed technical changes to S.B. 406.

Proposal No. 39 - Expungement and Annulment

Major Russell Hill, Lieutenant Ed Johnson and Sergeant John Miller of the Topeka Police Department spoke briefly on this subject and described the diversion program in current use in the Third Judicial District. Major Hill identified the problem of greatest concern to the Topeka Police Department as being the indiscriminate expungement within a record of an ongoing case.

The Chairman adjourned the meeting at 4:30 p.m.

Prepared by Paul Purcell

Approved by Committee On:

November 18, 1977  
(Date)