

MINUTES OF THE House COMMITTEE ON Judiciary

Held in Room 522, at the Statehouse at 3:30 ~~a.m.~~ ^{p.m.}, on February 8, 19 78.

All members were present except: Representatives Augustine, Ferguson, Gillmore, Hurley, Lorentz and Whitaker, who were excused.

The next meeting of the Committee will be held at 3:30 ~~a.m.~~ ^{p.m.}, on February 9, 19 78.

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



Chairman

The conferees appearing before the Committee were:

Mr. Jack Brier, Assistant Secretary of State
Rep. Dillon
Mr. Ed Mayfield
Mrs. Ann Heberger, League of Women Voters

The meeting was called to order by the Chairman, who introduced Mr. Jack Brier to discuss HB 3181, who explained the bill is strictly cleanup and was requested by the Secretary of State. It makes some changes in the way the personnel of the Secretary of State is organized. He explained it will enable them to use their personnel to a better advantage if it is not set out in the statutes.

It was moved by Rep. Heinemann and seconded by Rep. Roth, that the bill be recommended favorably. Motion carried.

Rep. Dillon appeared to discuss HB 2941, explaining that the proposal would prevent anyone with delinquent taxes to bid on other delinquent tax property. He introduced Mr. Ed Mayfield, County Clerk of Wyandotte County, who explained they have a problem with speculators picking up large tracts of property and then never paying any taxes on them, and that this prevents individuals from buying property which they would improve and pay taxes on. He testified that Wyandotte County has a 6.3% delinquency and at the last sale one person owned 70 parcels, 40 of which were delinquent, and he is constantly purchasing more property. He explained another individual owns 198 parcels, 190 of which are delinquent. He noted there is even an lending institution there owns 97 pieces of land and 36 of them are delinquent.

Rep. Stites inquired how many names were on the delinquent list, and Mr. Mayfield stated it would be difficult to say, but the delinquency was around four million dollars. Rep. Stites suggested it would be difficult for the Sheriff to determine who was delinquent, and Mr. Mayfield explained the bidders are usually

the same speculators, and it doesn't take long to get acquainted with them. He explained he visualized that someplace in the publication for sale it would state all taxes must be paid before a bid would be accepted.

The Chairman explained that HB 2708 would require the appointment of a guardian ad litem in juvenile matters whether or not the parents retained counsel. Ann Heberger, stated the League of Women Voters strongly support the bill, and offered a printed statement in support of their position. (See exhibit.)

Rep. Roth noted he had supported the bill in the interim because he thought there could easily be a conflict of interest in counsel hired by the parents. Rep. Frey stated he could see what the desire was but didn't necessarily agree every child should have a guardian ad litem. The Chairman appointed a subcommittee comprised of Representatives Martin, Frey and Roth to study the bill and report back to the committee.

The Chairman stated that HB 2814 amends the same section of the law as Rep. Dillon's bill. He explained he had introduced the bill because there is often a problem in Shawnee County when there is a sheriff's sale because the statutes specify the sale must be held on the courthouse steps, and in inclement weather it isn't practical and also, there is not room inside the building for people to gather and wait.

It was moved by Rep. Stites and seconded by Rep. Matlack that HB 2814 be recommended favorably. After a great deal of discussion, the vote was taken, and the motion carried.

Rep. Frey called attention to HB 3005, explaining that he has a special interest in the bill because he felt the court had taken a narrow view in a case previously considered. (See exhibit.) He stated he is trying to make it clear what must be done under the statute. He noted it amends the same section as the interim committee bill but said he understood the interim bill would be treated separately and there would be no conflict.

It was moved by Rep. Heinemann and seconded by Rep. Stites that the bill be recommended favorably. Motion carried with Rep. Hayes voting in opposition.

The Chairman asked for comments concerning HB 2679, and Mr. Heinemann stated he would have some amendments ready later in the week.

Rep. Stites asked if consideration could be given to the farm tenant bill, and Mr. Griggs stated he would need to work with him on some redrafting in order for the bill to assure what the people were asking for.

Rep. Foster asked if action could be taken on Rep. Erne's HB 2888, and suggested he didn't feel the amendment hurts the law. It was moved by Rep. Foster and seconded by Rep. Martin that the bill be reported favorably. Motion carried with Rep. Mills voting in opposition.

The Chairman noted that HB 2694 had been on yesterday's agenda but there had been no conferees. He mentioned amendments in Section 2, and pointed out that the following sections are new. He appointed a subcommittee to report back to the committee. Rep. Martin was asked to serve as Chairman, with Representatives Roth, Gastl, Hayes and Heinemann as members.

The Chairman appointed Representatives Heinemann, Frey and Mills to study House Bills 2809 and 2821, and to make recommendations at the earliest possible time.

The meeting was adjourned.

House Judiciary
February 8, 1978

<u>Name</u>	<u>Address</u>	<u>Organization</u>
Ann Kibben	6723 W. 11th St.	P.K.
JACK BRIER	CAPITOL	OFF. OF Secy. STATE
Edward Mayfield	429 North	Shanley Co. (Cousin)
Franz	1000 1st St.	
Ronald Bradford	John Lee House Alaska	Judge, Civil Dept, Section D

2-8-78



league of women voters of kansas

STATEMENT TO THE HOUSE JUDICIARY COMMITTEE
CONCERNING HB 2708 - THE APPOINTMENT OF GUARDIANS AD LITEM...

February 8, 1978

Mr. Chairman and Members of the Committee:

I am Ann Heberger speaking for the League of Women Voters of Kansas.

League members believe strongly in the principle that every child shall be guaranteed equal protection under the law. Without proper legal counsel to protect that right, we think that the Juvenile Code is considerably weakened.

We understand that this is a controversial issue because it costs money. The Legislature and the courts seem to go to great lengths to protect the rights of adults, but for some reason, childrens' rights come off second best. Many parents do care what is best for their children, but provisions should be included to protect all childrens' legal rights, and especially when conflicts of interest arise.

We therefore support HB 2708 and urge the passage of the bill.

Thank you for the opportunity to appear before you today.

League of Women Voters
909 Topeka Blvd.
Topeka, KS
354-7478

2-8-76
H-3005
2-8

Rounsavell v. Tipton

No. 46,339

LEO R. ROUNSAVELL, d/b/a ROUNSAVELL TANK SERVICE, *Appellee*, v. ALVIN E. TIPTON, *Appellant*; VERNON STEINERT, d/b/a STEINERT OIL COMPANY, *Appellee*. LEO R. ROUNSAVELL, d/b/a ROUNSAVELL TANK SERVICE, *Appellee*, v. ALVIN E. TIPTON; KARL M. HERMAN; ELIZABETH F. HERMAN; WILLIAM B. FULLERTON, JR.; RUBY ELIZABETH FULLERTON; HUGH G. GRAFF; SUZANNA J. GRAFF; G. E. DEBACKER, SR.; MILDRED DEBACKER; RAY C. GREMLI, SR.; ALICIA G. GREMLI; FLOYD L. SNYDER, JR., *Appellants*; VERNON STEINERT d/b/a STEINERT OIL COMPANY, *Appellee*. VERNON STEINERT, d/b/a STEINERT OIL COMPANY, *Appellee*, v. D. M. ERBERT and HAROLD W. BAIN, *Appellants*. VERNON STEINERT, d/b/a STEINERT OIL COMPANY, *Appellee*, v. HAROLD ERBERT; JOHN M. VORSE, and LOUISE L. VORSE, *Appellants*.

(497 P. 2d 108)

MEMORANDUM OPINION

MECHANICS' LIEN—Notice to Owner—Restricted Registered or Certified Mail.

Appeal from Ellis district court; BENEDICT P. CRUISE, judge. Opinion filed May 6, 1972. Reversed with directions.

Clayton S. Flood, Donald L. Martin, Richard D. Coffelt and Steven P. Flood, of Hays, were on the brief for the appellants.

Robert E. Southern, of Great Bend, was on the brief for appellee Leo R. Rounsavell, d/b/a Rounsavell Tank Service, and Hugh D. Mauch, of Great Bend, was on the brief for appellee Vernon D. Steinert, d/b/a Steinert Oil Company.

Per Curiam: This appeal consolidates four separate *in rem* actions seeking to foreclose oil and gas liens for labor and materials used in drilling test wells in Ellis County. The trial court entered judgment foreclosing the liens and the leasehold owners have appealed. The parties will be referred to herein as plaintiffs and defendants.

The owners of the various leaseholds present three questions on appeal. However, we deem it necessary to reach only the first point raised, which relates to the question of service. The issue is present in all four cases.

The parties agree that the lien claimants are subcontractors and that notice of their liens must be given in accordance with K. S. A. 60-1103 (a), as amended. (See K. S. A. 1969 Supp. 60-1103 a.) They further agree that notice was given in each case by mailing a copy of the lien statement by certified mail, return receipt re-

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quested. The defendants contend that notice given in this manner is insufficient under 60-1103 (a) and herein lies the first dispute.

K. S. A. 1969 Supp. 60-1103 (a) (which has since been amended) provides, so far as material to this lawsuit, as follows:

“. . . The claimant shall either cause a copy of the lien statement to be served personally upon the owner and any party obligated to pay the same in the manner provided for the service of summons . . . or shall mail a copy of the lien statement to the owner of the property and to any party obligated to pay the same by *restricted registered or certified mail*, or if the address of the owner or such party obligated to pay the same is unknown, and cannot with reasonable diligence be ascertained, a copy of the lien statement shall be posted in a conspicuous place on the premises.” (Emphasis added.)

The heart of the defendants' argument is that service by *unrestricted* certified mail does not comply with the command of the statute; that whenever notice is given by mail, either registered or certified, the mail must be restricted. The plaintiffs' response is that the requirement of restricted mail applies only when the notice is sent by mail which is registered, and not by mail which is certified.

We find restricted mail defined in K. S. A. (now K. S. A. 1971 Supp.) 60-103, the statute having been amended in 1970 as to a matter not here material. The statute reads as follows:

“The term ‘restricted mail’ as used in this chapter means mail which carries on the face thereof in a conspicuous place, where it will not be obliterated, the endorsement ‘deliver to addressee only’ and which also requires a return receipt or a statement by the postal authorities that the addressee refused to receive and receipt for such mail.”

The court is persuaded by the logic of defendants' position. It is our view that in the phrase “restricted registered or certified mail” the adjective *restricted* applies to mail which is either registered or certified; that it modifies both registered and certified mail. Any other construction appeals to us as illogical. No reason is suggested for requiring restricted delivery in the case of registered mail but not requiring restricted delivery in case of certified mail.

We are fortified in our view by Judge Gard's comments found in Gard, Kansas Code of Civil Procedure, § 60-103, p. 3:

“The definition of ‘restricted mail’ is necessary because of the several places in Chapter 60 where the term is used in connection with process or the giving of other notice. The phrase finds a common ground of definition whether

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registered or certified mail is used. Both are adaptable to the definition by the postal regulations. The important thing is the requirement of restricted delivery, thus substituting for reliance on the presumption of delivery the sureness of proof by the return receipt, or, that which is the equivalent of delivery, certification of tender of delivery and refusal by the addressee. This is in keeping with the policy of the new code to require actual notice whenever it is possible to give it as essential to a just and expeditious disposition of the proceedings."

It has long been the rule in this jurisdiction that a mechanic's lien is purely a creature of statute; that there is no privity of contract between subcontractor and owner; that the former can obtain a lien only by compliance with the statutory provisions; that it is not enough that the claimant has furnished material and filed his lien, but service of notice upon the owner is one of the necessary steps to obtain a lien; and that without such notice a claimant obtains nothing. (See *Potter v. Conley*, 83 Kan. 676, 112 Pac. 608; *Bridgeport Machine Co. v. McKnab*, 136 Kan. 781, 18 P. 2d 186; *Jones v. Lustig*, 185 Kan. 208, 341 P. 2d 1018, *D. J. Fair Lumber Co. v. Karlin*, 199 Kan. 366, 430 P. 2d 222.) These cases are controlling on the issue presented here.

The judgments entered in the court below are reversed with directions that judgments be entered in favor of the respective defendants.

It is so ordered.