

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

Held in Room 522, at the Statehouse at 11:00 a. m. ~~xxx~~, on February 10, 1978.

All members were present except: Representatives Foster, Hayes, Heinemann and Stites, who were excused.

The next meeting of the Committee will be held at 3:30 ~~xxx~~ p. m., on February 13, 1978.

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



Chairman

The conferees appearing before the Committee were:

The meeting was called to order by the Chairman, and Rep. Baker discussed HCR 5460, dealing with initiative referendum. He explained the Resolution changes the requirement from votes for the Secretary of State to votes for the Governor. He explained there had been conversation regarding the possibility of using Senatorial districts and other geographical boundaries, but they were concerned about the one-man one-vote ethic.

The Chairman noted another thing which had been discussed was who should draft the resolution for the ballot, and it was agreed it should be someone with legal expertise to avoid the possibility of confusing issues on the ballot.

Mr. Griggs noted the interim committee had suggested the language on lines 43 and 44, which says the legislature should prescribe the wording for the proposition.

Rep. Ferguson stated that Senatorial districts would not be fair because the western half of the state has only nine districts, and the remainder of the state could impose something on the western half that would be bad for them. Rep. Baker stated they had looked at judicial districts as well, but that only magnified the discrepancy. Rep. Roth expressed satisfaction with the 75 county concept. Rep. Frey suggested there would be nothing wrong with using the entire county concept. Rep. Hoagland he felt there would be a problem in representative districts in trying to verify signatures on petitions, whereas they would be easier to identify on a county basis.

Rep. Martin stated he didn't see a great deal of difference except in certain instances such as counties versus Senatorial districts, where an urban area might control the entire District but it might not be representative at all. The Chairman observed that with the urban-rural and east-west conflicts, as well as the two-thirds vote requirement, there may be problems with the Resolution when it goes to the floor.

The Chairman inquired about the limit of three issues as opposed to five. Rep. Hurley moved that the Resolution be amended to three. Motion was seconded by Rep. Hoagland, and carried.

Rep. Hurley then moved that the ten percent figure be changed to total votes for the office of Governor as opposed to Secretary of State. Motion was seconded by Rep. Martin, and after discussion, the motion carried by a majority vote. Representatives Whitaker and Hoagland asked to be recorded as voting in opposition.

It was moved by Rep. Hurley and seconded by Rep. Gastl that the boundaries be set in the Senatorial districts. Rep. Frey offered a substitute motion that 75 counties be changed to 75 percent of the counties. Motion was seconded by Rep. Roth. Upon vote, the substitute motion lost. The Chairman asked to return to the original motion, and Rep. Lorentz offered a substitute motion that HCR 5046, as amended, be reported favorably. Motion was seconded by Rep. Hoagland. Rep. Frey suggested the matter should be given additional consideration before voting, and the Chairman noted it had been several days since hearing and felt there had been adequate time to study the matter. Upon vote, the substitute motion carried.

Rep. Kalo Heinman appeared on HB 2787, which he explained deals with open meetings. He suggested amendments as shown on the exhibit. He explained that sometimes there is a large group of individuals who wish to be notified on meetings, and in cases of wide spread residences it would be more practical to specify one person to receive notices. He further stated he feels one publication a week is too often, but if a meeting date is changed there should be another publication.

Mr. Charles Henson, attorney for the Topeka U.S.D. 501, stated he appeared not in opposition to the bill, but to point out a practical problem. He stated he is not sure what the effect of the amendment would be, but explained in the past they have always met on the first Tuesday of the Month and sometimes have adjourned to a later date to open a bid or hear a student disciplinary matter. He explained that if publication is required for the regular meetings and not adjourned meetings it would cause no problems for them, but if the adjourned meetings had to be published, it would be hard for them to comply.

Mr. Roger Wilson appeared in support of the bill, and stated he feels it is important to have notification of public body meetings. Rep. Ferguson inquired how frequently he felt notice should be given. Mr. Wilson stated that for regular meetings, annual notice is sufficient, but that it is the special meetings which cause problems, but to some degree the adjourned meetings do also. The Chairman appointed Representatives Baker, Matlack and Lorentz to serve as a subcommittee and consider recommendations made by conferees.

Mr. Don Simons, Chief Attorney for the Department of Transportation, explained their meetings are quite different from most others; that it would work a hardship on them because of the cost of publication. He stated they have three groups meeting regularly, and there are certain situations where scheduled meetings cannot be held at the announced time. He urged that the committee consider the problems of state agencies.

Peggy Gatewood appeared on HB 2950, and explained that Rep. Glover, the sponsor, was unable to be present. She stated it was the feeling of KNEA that the courts should be given as much authority as an arbitrator. (See printed statement.) The Chairman appointed Representatives Augustine, Lorentz and Martin to serve as a subcommittee and report back to the committee on this matter.

Rep. Francisco appeared in support of HB 2803, explaining he felt it should be a crime if a person gives a bad check in payment of a lawful debt which is due, and which is for the purpose of delaying payment. He stated the Attorney General has said under the present law it is not a crime and he feels it is pure fraud.

Mr. Max Moses of the Kansas County and District Attorneys Association, told the committee that they did not have the staff to handle the load such a bill would generate. He stated that merchants already have the impression they are in the collection business and this would magnify their demands. (See printed statement.)

The Chairman noted HB 3206 is the new bill replacing House Bills 2851 and 2877. He explained he had talked with Jim James, the Judicial Administrator, and they have no problem with this bill. He did note the Court of Appeals is very overloaded and this would not make much of an impact of the case load.

Mr. Art Griggs explained the necessary amendments. (See printed statement.)

Rep. Martin announced that the subcommittee on child custody and guardian ad litem would be ready to report at the next meeting.

The meeting was adjourned.

PROPOSED AMENDMENT TO HB 2787

On Page 1, line 43 after the word "once" and before the comma insert the following:

"each year of the proposed schedule of regular meetings"

and delete the word "seven".

One line 44 delete all before the comma

On Page 2, line 61 add the following sentence"

"In the event that it becomes necessary to change the date, time, and place of any regular meeting, notice shall be given as provided in this act."

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February 11, 1978

Before the House Judiciary Committee

K-NEA statement in support of H.B. 2950

The purpose of H.B. 2950 is to provide court review of the facts presented by both parties to a contract dispute and offer an impartial decision.

Kansas-NEA supports HB 2950 because it speaks to a newly developed problem of appeal from board--employee disputes arising from interpretation and application of contracts. The Kansas Supreme Court in Schultz v. Board of Education, USD 58, 221 Kan. 351 (1977), a due process case, stated "When a school board exercises a quasi-judicial function and a party is aggrieved by its order, the remedy is by appeal pursuant to K.S.A. 60-2101(d). . .which remedy is exclusive." No trial of facts is to be had by an impartial judge. The court can ask of the record before it only whether the board was acting within its statutory powers and whether the decision is capricious or arbitrary. The test for capriciousness and arbitrariness is whether there is substantial evidence in the record to support the record. The assumption is that the board acted correctly. If any evidence, as little as 10%, supports the board decision, it must be affirmed because the court cannot substitute its decision for that of the board even though it may not agree with the board decision.

H.B.2950 does not dispute the application of limited scope of review to due process cases such as Schultz. However, district courts are applying this limited review as the exclusive remedy in contract disputes with boards. K-NEA feels this is contrary to the legislative intent of the PN act.

The PN law from the beginning of its enactment contemplated review of contract disputes by an impartial third party because it allows for arbitration as part of a negotiated grievance procedure. H.B. 2950 will make it clear to the courts that they have as much authority to find facts and render a decision as would an arbitrator when arbitration has not been negotiated.

Only 8 districts have negotiated arbitration of grievances. In the remaining districts, the board judges its own performance under the negotiated contract. The other party or parties to the contract, whether it is teacher, administrator or anyone selling goods and services to the district, has no action for breach of contract unless specifically spelled out. They must depend upon the school district to enforce the contract against itself.

K-NEA supports the purpose of HB 2950 to provide court review of the facts in a contract dispute and deliver an impartial decision.



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Kansas County & District Attorneys Association

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FEBRUARY 10, 1978

TO: HOUSE JUDICIARY COMMITTEE
FROM: KANSAS COUNTY AND DISTRICT ATTORNEYS ASSOCIATION
RE: HOUSE BILL - 2803

House Bill - 2803 could have a devastating effect on the duties of the prosecutors in the State of Kansas. The proposed Amendments open the floodgates of potential prosecution of bad checks that could triple the number of bad check prosecution in this state.

Specifically, the bill permits the prosecution of a bad check without requiring the showing of an intent to defraud. Rather, an intention to delay or avoid payment of a pre-existing debt becomes a help to the prosecution of bad checks.

The effects of the proposed change is to put the State of Kansas into the collection business for merchants. This is clearly not a role that belongs to an officer of the courts and a representative of the people of this state.

Currently, if a check bounces upon payment of a pre-existing debt, the person passing the check had received no merchandise or service in return for that check, thus no crime has been committed. The check was accepted in compliance with a previously arranged agreement between the vendor and the purchaser based upon consideration other than the offer of a check. As a ground rule the merchant sets these rules for the credit agreement



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and it was based upon this agreement that the merchant relinquished control of the goods or performed the services. Thus in accepting a bad check, the merchant is in no worse position than at the time he released the goods or rendered the service.

The criminal justice system and the courts are already clogged with cases and the number of criminal cases to be investigated and prosecuted are climbing in number. To add yet another function to the prosecution that is solely a collection activity for business is not fair to the country and district attorneys and more significantly, must be considered an undue burden on the taxpayers of Kansas who must ultimately bear the cost of these types of prosecution.

It is the position of the Kansas County and District Attorneys Association that House Bill - 2803 be reported unfavorably to the amendments proposed on lines - 0022, 0023, 0033 and 0034 and we ask that this committee report the bill in this manner.

Respectfully submitted,

MAX G. MOSES
EXECUTIVE DIRECTOR

MGM:llb

66-118g Same; stay or suspension of order or decision pending review.

(a) The filing or pendency of the application for review provided for in this act shall not in itself stay or suspend the operation of any order or decision of the commission, except as provided in sub-section (b) below, but, during the pendency of such proceeding the court, in its discretion, may stay or suspend, in whole or in part, the operation of the order or decision of the commission. No order so staying or suspending an order or decision of the commission shall be made by any court of this state otherwise than on five days' notice and after a hearing, and if a stay or suspension is allowed ~~the order granting the same~~ shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that great or irreparable damage would otherwise result to the petitioner and specifying the nature of the damage.

(b) If the court of appeals does not issue a final order within one hundred twenty (120) days after the filing with the clerk of the court of appeals of an application for judicial review of an order or decision of the commission in a public utility rate case, there shall be an automatic stay of the order or decision of the commission, to the extent hereafter described, when such stay is requested by a public utility that is a party to the action. The public utility may collect under bond rates up to but not exceeding the amount that is being contested by the public utility on appeal. The procedure for bonding, payment of funds into court, distribution of unclaimed funds and for other aspects of review shall be governed by K.S.A. 66-118h through 66-118k, inclusive.

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