

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

Held in Room 522, at the Statehouse at 3:30 ~~xx~~ ~~am~~/p. m., on March 20, 19 78

All members were present except: Representatives Augustine, Ferguson, Foster, Frey, Hoagland and Martin, who were excused.

The next meeting of the Committee will be held at 3:30 ~~xx~~ ~~am~~/p. m., on March 21, 19 78.

February 27th through March 14

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



Chairman

The conferees appearing before the Committee were:

Mr. Walter Scott
Helen Jagers, Register of Deeds, Salina
Susie Parner, Register of Deeds, Leavenworth
Mr. Jim Marquez, Secretary of Corrections
Mr. Darrell McNeil, Dept. of Administration
Mr. Dwight Keen, Securities Commissioner
Mr. Don Horttor

The meeting was called to order by the Chairman who noted the Senate had amended the provisions of SB 908 into a house bill, and asked Rep. Heinemann to look at it and see if it was adequate. He stated he was not sure the language was adequate to accomplish the desired result. He suggested the committee look at the bill and at the alternative to assure themselves they will be willing to concur in the Senate amendments to the house bill.

Mr. Walt Scott told the Committee that SB 905 deals with limited actions and the proposed changes are fairly minor, but that lines 64 and 65 on the second page clarifies the duties of the court.

The Chairman noted there has been considerable interest in SB 865 and displayed a letter from the County Counselor of Douglas County (see exhibit). Helen Jagers, Register of Deeds from Salina County, testified she couldn't imagine who decided this bill was needed; that prior to 1974 they had never had such filings and about that time they started coming in and they had indexed them under real estate. She explained that then there were two or three opinions from the Attorney General which indicated any instrument creates a lein. When they started charging mortgage registration tax on these filings they began to receive instead Contracts for Sale of Real Estate. If these filings are exempt from fees then the counties would lose a great deal of revenue.

Mr. Griggs inquired if the contracts are treated the same as notice of equitable interest. Ms. Jagers stated they put it in the mortgage book, as well as the contract for sale. She noted they did not charge for these filings prior to 1974.

Susie Parner of Leavenworth stated their concern is with the various types of documents which are presented to them. She stated people have begun to file the other documents so as to avoid paying mortgage registration fees. She pointed out if the bill is passed it will do away with mortgage registration fees, and Leavenworth County will lose at least \$153,000.00 per year.

The Chairman asked Mr. Marquez to discuss SB 874. He explained the bill would allow the Secretary of Corrections to issue warrants for arrest for persons who have escaped from a facility. He stated that presently they can issue warrants on parole violation, but he explained the problem they are having is that they will transfer an individual to one of the state hospitals and he will walk away, because SRS does not think in terms of security and they forget to tell the hospital about it. Further, he stated many times County Attorneys are reluctant to issue warrants in such cases and they would like to have the authority upon notification of a missing person, but not with a charge for commission of a crime--just a pick up warrant.

Mr. Darrell McNeil of the Department of Administration, appeared to discuss SB 932, explaining that the Department had requested the bill be introduced (see letter to Mr. Cobler), because of some amendments enacted by Congress last year. Further, he stated the amendments by the Senate were placed there at the request of the Department.

The Chairman stated the committee would examine the bill later, but expressed reservations about the Federal government getting involved in matters such as this. Mr. Griggs noted the language is similar to the federal provisions, but agreed with the Chairman it would be difficult to say this involves interstate commerce matters.

Mr. Dwight Keen, the Securities Commissioner, appeared on SB 912, explaining the bill would allow the Commissioner authority to issue cease and desist orders, bringing Kansas into conformity with a majority of the states. He stated it is a protective piece of legislation, providing safeguards, and noted Kansas had been a pioneer in the "Blue Sky ethic" and now is behind. (See exhibit.)

Mr. Don Hortter was introduced to discuss SB 904, and explained the bill speaks to powers of conservators in the investment of funds; that it would allow prudent investments without court permission. He pointed out that conservators are always under the control of the court anyway because annual reports must be made, and this way some money could be saved.

Rep. Heinemann reported to the Committee that the provisions of SB 908 had indeed been amended into his house bill which is on the calendar for concurrence. The Chairman asked for any comments to the contrary and as there were none, he announced Rep. Heinemann would concur in the Senate amendments.

The Chairman called attention to SB 834 and suggested it attempts to codify the procedures concerning contempt. Mr. Griggs stated it repeals two statutes on contempt and explained the bill came from the Prospective Legislation Committee of the Kansas Bar Association. They had actually suggested there needs to be a study of the contempt laws because judges handle it differently.

Rep. Hurley stated some judges automatically issue a warrant and others will always give notice to appear. He noted the bill does away with the warrant approach except in (e). He expressed the opinion that the violation of restraining order may be too broad. Mr. Griggs pointed out you must allege physical abuse as well. He stated the affidavit would be filed, the judge would set a hearing and it would be served upon a party, eliminating one hearing.

Rep. Hayes suggested in lines 17 and 18 it mentions an "order is entered and decision rendered, and that possibly it should be consistent. He moved that the word "rendered" be stricken and the word "entered" be substituted. Motion was seconded by Rep. Mills, and carried.

It was then moved by Rep. Ferguson and seconded by Rep. Hurley that SB 834 as amended, be reported favorably. Motion carried.

The Chairman called for discussion on SB 932, reiterating he felt the Federal government should not be involved in this area. It was moved by Rep. Stites and seconded by Rep. Mills that the bill be reported adversely. Motion carried.

The Chairman called for comments on SB 905, and it was moved by Rep. Ferguson that the bill be reported favorably. Motion was seconded by Rep. Baker, and upon vote carried.

The Chairman suggested holding SB 908 in case something happened to the House bill the contents had been amended into. It was moved by Rep. Stites and seconded by Rep. Matlack that SB 865 be reported adversely. Motion carried.

It was moved by Rep. Hurley and seconded by Rep. Gillmore that SB 874 be reported adversely. Motion carried.

It was moved by Rep. Hurley and seconded by Rep. Matlack that SB 912 be reported favorably. Motion carried.

It was moved by Rep. Gillmore and seconded by Rep. Lorentz that SB 904 be reported favorably. Motion carried by a majority.

The Chairman noted this gets through all of the bills on the agenda but there is a bill on the floor to concur or non-concur, which deals with criminal injury to persons. He stated last year there was a court opinion declaring the criminal injury to persons statute unconstitutional. He told the Committee he knows Senator Pomeroy does not feel the section stricken by the Senate is needed. Rep. Ferguson suggested non-concurring and the Chairman agreed to ask for a conference committee.

The meeting was adjourned.

Monday March 20, 1978

Issue _____

Judiciary

Name

Address

Association

Bill R. Stewart	Gov. Commission	Leg. of Deeds
Pat Bittles	"	Deputy " "
John Rogers	Register of Deeds	Saline County
Velma B. Buford	Register of Deeds	Clay County
Susie Farmer	Register of Deeds	Leavenworth Co.
Dwight D. Keen	KANSAS SECURITIES	COMMISSIONER
Robert E. Edmonds	215 E. 8TH Topeka	KANSAS SECURITIES
Don HORTON	Topeka, KANSAS	COMMISSION
		KANSAS BANKERS (TRUST)

MEMO

FROM

DANIEL A. YOUNG

Attorney At Law

P. O. Box 585

Lawrence, Kansas 66044

Telephone (913) 842-1528

March 17, 1978

The Honorable Dick Brewster
Chairman, House Judiciary Committee
State Capitol Building
Topeka, Kansas 66612

Dear Representative Brewster:

I have attempted to reach you by phone today
and am sending this letter in the event we are
unable to get together by telephone.

Very truly yours,



Daniel A. Young
Douglas County Counselor

mlw
encl

73-4100

YOUNG AND RUMSEY
ATTORNEYS AT LAW
LAWRENCE, KANSAS 66044
PHONE (913) 842-1528

3-20

March 17, 1978

OFFICE:
7 WEST 11TH

DANIEL A. YOUNG
JAMES E. RUMSEY
MAILING ADDRESS
POST OFFICE BOX 585

Mrs. Sue Neustifter
Register of Deeds
Judicial & Law Enforcement Center
Lawrence, Kansas 66044

Re: Senate Bill No. 865

Dear Mrs. Neustifter:

You have forwarded to me a copy of Senate Bill No. 865 which, according to your information, has been passed by the Senate and is now being considered by the House Judiciary Committee, with hearings before the committee set for sometime Monday, March 20.

The Senate Bill would amend the statute on mortgage registration tax by providing an additional exemption from the tax. The exemption to be added would read as follows:

"No registration fee whatsoever shall be paid, collected, or required for or on any mortgage or other instrument, (5) given for the purpose of providing notification by the purchaser of real property of his or her interest therein."
(Amending language is the underlined portion.)

It seems to me that the effect of this language would permit any purchaser to record his mortgage or contract first for the purpose of notification of his interest in the real property and then record the warranty deed at a later time even if the interest recorded is a purchase money mortgage. Thus, the effect would be that the interest of the seller under contract or the interest of the mortgagee would be matters of public record constituting liens or other encumbrances on the property, and no mortgage registration tax could be collected. Since the mortgage registration tax is a cost generally passed on to the purchaser, there is every reason in the world for the purchaser to cooperate with the seller under contract or the mortgagee to record the instrument pursuant to the proposed exemption.

You advised that in 1976 mortgage registration taxes produced \$157,000 in Douglas County, and in 1977 mortgage registration taxes produced \$194,463.50. While there has not been time to determine how many purchase money mortgages might have been filed in those years, it appears

Mrs. Sue Neustifter

March 17, 1978

Page 2

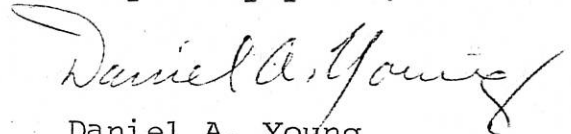
to me that the potential loss to Douglas County of mortgage registration tax revenues could be at least \$150,000.

I understand that you and other Registers of Deeds throughout the State of Kansas are appearing before the House Judiciary Committee on Monday.

I have taken the following steps to alert interested parties to what I regard as a very dangerous amendment to the mortgage registration statute if counties wish to continue to collect substantial revenues from it. I have contacted Senator Arnold Berman by telephone yesterday. I have called Mr. Allen at the Kansas Association of Counties. I have contacted County Counselors in Johnson County, Shawnee County, and Sedgwick County, and I have called and am attempting to contact Mr. Ben Foster who is a representative of Sedgwick County and a member of the House Judiciary Committee.

Thank you for bringing this statute to my attention.

Very truly yours,



Daniel A. Young
Douglas County Counselor

mlw

cc: Senator Arnold Berman
Representative Lloyd Buzzi
Representative Mike Glover
Representative John Vogel
Peter A. Whitenight, Chairman, Board of County Commissioners
Representative Ben Foster
Fred Allen, Kansas Association of Counties
Representative Dick Brewster, Chairman, House Judiciary Committee

Saline County Register of Deeds

Helen Jagers

Salina, Kansas

67401

March 10, 1978

3-26

Representative Richard E. Brewster, Chairperson
House Judiciary Committee
House of Representatives
Topeka, Ks.

In Re: Senate Bill # 865
(Lines 47 & 48)

Dear Mr. Brewster:

As Legislative Chairperson of the Kansas Register of Deeds Association, this letter pertains to the above mentioned Senate Bill, which is now in your committee and to be scheduled for hearing soon.

Our Association is concerned on the "Outcome" of this bill. During the years 1974 to 1976 inclusive, Affidavits and or Notices of "Equitable Interest" were filed of record in various counties (copies of which I am enclosing as filed in Saline County). Finally, an Attorney General's opinion was issued, stating the Mortgage Registration Fee Statute (K.S.A. 79-3101 et seq.) required that we shall collect Mortgage Registration Fee- so we did and what happened? We did not have any more of the said instruments brought into our office for filing, instead, the Contract itself was submitted for filing, which we are required by statute to collect the fee on.

Now, under SB 865 the following situation arises - 1st, we are under an AG's opinion stating we are required to collect the fee, because the Notice or Affidavit does create a lien on the real estate - then the law changes exempting the Notice or Affidavit from the Registration Fee. If this happens, I am sure we will be blessed with various instruments, all worded differently, making it difficult to determine whether the Notice or Affidavit does create a lien on the real estate, making the Mortgage Tax due.

As Legislative chairperson of our association, we are not endorsing nor are we opposed to Senate Bill #865 - but feel before a decision is made you review the instruments enclosed herein and also the Attorney General opinions. I feel this bill needs careful studying and K.S.A. 79-3101 et seq. needs more clarification as to what creates a lien on real estate and what does not. This statute has given every Register of Deeds in the State more problems than any other Statute in the books; and the same situation will exist, unless steps are taken to clarify what creates a lien on real estate and what does not create a lien on real estate.

Would appreciate being notified when this bill comes up for hearing in your committee, and I and possibly others from the eastern part of the state will be present to answer any questions that may arise.

Awaiting further word, I remain

Sincerely yours,

Helen Jagers, Legislative Chairperson
Kansas Register of Deeds Association
Saline County Register of Deeds
Salina, Ks. 67401



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

February 9, 1976

Mr. Terry J. Malone
Ford County Attorney
County Courthouse
Dodge City, Kansas 67801

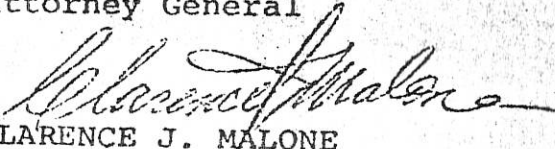
Dear Mr. Malone:

Congratulations upon your appointment as County Attorney. One of his last acts as your predecessor, John Fierro wrote asking if the attached affidavit could be filed of record without the collection of a mortgage registration fee under K.S.A. 79-3101, et seq.

We simply reassert our opinion No. 75-447, dated December 4, 1975, that any instrument which includes by reference an executory contract for the installment sales agreement to sell specific real estate, and the purpose of filing an affidavit is to give public notice of the existence of such outstanding equitable interest, the mortgage registration law clearly applies. The sales contract must itself be recorded, or it must be brought in so the Register of Deeds can properly figure and assess the recording fee.

Very truly yours,

CURT T. SCHNEIDER
Attorney General

by 
CLARENCE J. MALONE
Assistant Attorney General

CJM/cgm
Enc.

NOTICE OF RECORD INTEREST

The undersigned, hereby acknowledge that Hal J. Berkley and Eleanor L. Berkley and Karla J. Berkley and Karen M. Davis have an interest in and to the following described real estate located in Saline County, Kansas, to-wit:

The North Half (N/2) of Section Nineteen (19), Township Thirteen (13) South, Range Five (5) West of the Sixth Principal Meridian; less the East Half (E/2) of the Northeast Quarter (NE/4) of the Northeast Quarter (NE/4) of Section Nineteen (19), Township Thirteen (13) South, Range Five (5) West of the Sixth Principal Meridian; subject to the railroad right-of-way, public highways, easements and restrictions of record, if any,

under and by virtue of a certain Contract of Sale, dated June 1, 1973, and Assignment dated the 10th day of October, 1975; and that a deed is being held in escrow conveying the above described property to said persons on completion of the terms of the Contract of Sale.

Dated this 20th day of October, 1975.



HENRY S. DREHER, SR. TRUST
FIRST NATIONAL BANK AND
TRUST COMPANY OF SALINA,
a trustee

Hal J. Berkley
Hal J. Berkley

By: Velda R. Roberts
Velda R. Roberts
Assistant Trust Officer
STATE OF KANSAS, COUNTY OF SALINE, KS.

Eleanor L. Berkley
Eleanor L. Berkley

The foregoing instrument was acknowledged before me this 20th day of October, 1975, by Velda Roberts, Assistant Trust Officer of the First National Bank and Trust Company of Salina, a trustee of the Henry S. Dreher, Sr. Trust.



Expiration Date: 10/7/79

Suzanne K. Wagner
Notary Public

STATE OF KANSAS, COUNTY OF SALINE, KS.

The foregoing instrument was acknowledged before me this 21st day of October, 1975, by Hal J. Berkley and Eleanor L. Berkley.

Shirley M. Hall
Notary Public

ONFIA M HALL
Saline County, KS
Expires Aug 17 1977

STATE OF KANSAS
COUNTY OF SALINE
FILED FOR RECORD

ON DEC 1 1975

300
Tony Williamson
P.O. Box 1403

10/21/75
112 449

Department of Corrections

State of Kansas



535 Kansas Avenue - Suite 200

Topeka, Kansas 66603

(913) 296-3317

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

JIM J. MARQUEZ, Acting Secretary

March 20, 1978

Representative E. Richard Brewster, Chairman
House Judiciary Committee
Room 402-S - State Capitol
Topeka, Kansas 66612

RE: SENATE BILL 874

Dear Representative Brewster:

Precedent is established for this bill in K.S.A. 75-5217, which authorizes the Secretary of Corrections to issue a warrant for the arrest of a released inmate for violation of any of the conditions of release. Since the issuance of a parole violation warrant does not meet constitutional standards for the issuance of an arrest or search warrant, it is obvious that the warrant is really a notice to apprehend based on the Secretary's continuing custody resulting from the Journal Entry of Conviction, Sentence and Commitment.

Occasionally, it occurs that an inmate is transferred from the Department of Corrections institution to a facility of the State Department of Social and Rehabilitation Services. Typically, this is a mental hospital. The SRS agency is not a place of incarceration as such, and the director of that facility often-times feels it is not his responsibility to file a complaint with the county attorney to obtain an arrest warrant when the inmate leaves the premises. If the director of the SRS institution notifies the correctional officials, they may request the county attorney to issue a warrant for arrest for the crime of aggravated escape.

The problem arises when the county attorney, in the county of the SRS institution, refuses to issue a warrant based on the complaint of a correctional official from a different county. The inmate was in the physical custody of the SRS agency in one county, while the legal custody was in the correctional officials in another county. The question of who was the actual witness to the escape, and, therefore, the one eligible to file a complaint is what often stops the county attorney from issuing a warrant.

Representative Brewster
Page 2
March 20, 1978

Further, the SRS director typically views the escape as a mental patient walkaway and since the patient was not committed to the SRS agency as an involuntary patient pursuant to the mental health laws, there tends to be a lessor priority given to the apprehension of such persons by the SRS agency.

Our objective is to reduce the burden on the SRS agency by requiring only that they notify the Department of Corrections by telephone and to permit the correctional officials to quickly and efficiently issue the warrant, not for arrest on the crime of aggravated escape, but for a re-apprehension of the inmate based upon the original Journal Entry of Conviction, Sentence and Commitment. This would further avoid the need to convince the county attorney that there was adequate evidence to prosecute the case of aggravated escape before he was willing to issue the warrant on the charge. This sometimes becomes an issue and further confuses the matter.

Senate Bill 874 represents a simple and efficient method of dealing with the problem which is similar in its nature and legal characteristics to the retaking of a parole violator, a process which has been successfully used by many jurisdictions for many years.

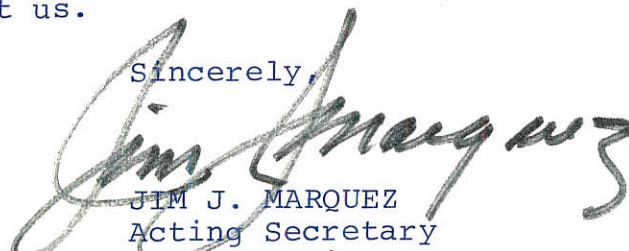
This matter was submitted for review by the Kansas County and District Attorneys Association in early June of 1977. A copy of the letter from the Executive Director of that association is included for your information.

You will note that his concern regarding mental health officials having the right to issue the warrant is not appropriate since Senate Bill 874 gives this authority to the Secretary of Corrections only.

The association apparently has no other objections.

If this office can be of any further assistance, please do not hesitate to contact us.

Sincerely,



JIM J. MARQUEZ
Acting Secretary
of Corrections


JJM:dja

cc House Judiciary Committee Members

3-20

M E M O R A N D U M

TO: Members of the Judiciary Committee
of the Kansas House of Representatives

FROM: Dwight D. Keen, Securities Commissioner 

DATE: March 16, 1978

RE: S.B. 912 -- House Judiciary Committee Hearing

On Monday, March 20, 1978, at 3:00 p.m., the House Judiciary Committee will hold its hearing on S.B. 912 -- a proposed amendment and supplement to the Kansas Securities Act. If enacted, this revision would bring Kansas into conformity with the vast majority of states by granting the Securities Commissioner the authority to issue cease and desist orders to halt and deter certain violations of the Securities Act.

For your review, attached hereto please find a memorandum that sets forth background information concerning this matter that previously has been considered by the Kansas Senate and by our Kansas Securities Act Review Committee -- a special committee formed for the purpose of reviewing and recommending needed revisions to the Kansas Securities Act.

Succinctly stated, the proposed amendments to existing law (Sections 1 and 2 of the bill) would bring Kansas into conformity with the other states (i.e. 43) that have adopted a version of the Uniform Securities Act. In addition to the public benefits set forth more fully in the attached memorandum, the adoption of "New Section 3" would remove and partially eliminate the present delaying tactics and advantages afforded those who blatantly and repeatedly violate the Securities Act to the detriment of the capital formation process and to the detriment of the public and who thereby are the Commissioner v

DDK:km

cc: G. T
Wil
R



DWIGHT D. KEEN
Securities Commissioner

Office of the Securities Commissioner

Fourth Floor, State Office Bldg.
Ph. 913/296-3307
TOPEKA, KANSAS 66612

MEMORANDUM

TO: Members of the Kansas Securities Act Review Committee

FROM: Dwight D. Keen
Securities Commissioner
State of Kansas

DATE: January 19, 1978

RE: Administrative Cease and Desist Powers Under the Kansas Securities Act

As you will recall, a packet of materials containing background information about the committee's proposed activities was sent to each member on November 14, 1977. At that time, I had anticipated that the first set of topics or issues would be distributed for your consideration and comment before the end of November. Unfortunately, to date I have been unable to carry out this intention. Nevertheless, I am hopeful that it will soon be possible for the committee to commence its substantive deliberations so that most of the proposed revisions of the Securities Act might be considered by the 1979 Session of the Kansas Legislature. However, there is one matter of concern to this office that preferably would be considered by the committee at this time and by the 1978 Session of the Legislature. This issue involves our proposal that the Securities Commissioner be granted the authority to issue administrative "Cease and Desist" orders. With such powers, the Commissioner could halt or deter certain violations of the Kansas Securities Act in a more timely fashion.

Currently, the remedies available to the Securities Commissioner for violations of the Kansas Securities Act include:

1. Civil Remedies - Permanent or temporary injunctions, restraining orders, restitution for investors, writs of mandamus, appointments of receivers or conservators for the defendant or the defendant's assets or other forms of equitable relief may be granted by any court of competent jurisdiction when the Commissioner can demonstrate that any person has engaged

or is about to engage in any act or practice constituting a violation of the Securities Act or any rule thereunder. [K.S.A. 17-1266]

2. Criminal Enforcement - Criminal penalties are provided for willful violations of the Securities Act or any rule or order thereunder. [K.S.A. 17-1267]
3. Administrative Enforcement - Under certain circumstances, the Commissioner may by order:
 - (a) Deny, suspend or revoke the registration of a broker-dealer or agent if such an order is in the public interest. [K.S.A. 17-1254(g)];
 - (b) Summarily suspend broker-dealer or agent registration pending a hearing on any contested matter. [K.S.A. 17-1254(h)];
 - (c) Cancel the registration of a broker-dealer or agent. [K.S.A. 17-1254(i)];
 - (d) Issue a stop order denying effectiveness to or suspending or revoking the effectiveness of any securities registration if such an order would be in the public interest [K.S.A. 17-1260(a)]; or
 - (e) Summarily suspend or postpone the effectiveness of a securities registration pending a hearing on any contested matter [K.S.A. 17-1260(b)].

Clearly, in those cases where ancillary relief in the form of receivership, restitution or rescission is necessary or where criminal willfulness is present or where the conduct of a registered broker-dealer, a registered agent or a registered securities issuer is questionable, the civil, criminal and administrative remedies currently provided to the Commissioner by the Securities Act are sufficient to protect the public interest and the interests of Kansas investors. However, where there has been no registration nor any attempt to register, where deterring or halting violations of the Securities Act must be timely to be effective, where the nature of the violations do not initially require or merit the time and expense associated with formal court proceedings or where a lesser and more expeditious remedy is preferable under the circumstances to any remedy presently authorized, the ability of the Commissioner to issue cease and desist orders would be most beneficial. Thus, cease and desist orders are useful when a violation is technical or unintentional and is unlikely to be repeated once

it has been brought to the attention of the offender. More importantly, for potentially more serious violations these administrative orders may serve as the first step in an enforcement proceeding by placing both the investing public and the offending individuals on notice of the Commissioner's concern about a particular problem while preventing a continuation of the prohibited conduct.

Of course, the use of cease and desist orders by some administrative agencies to halt or deter illegal conduct is common. For example, the State Fire Marshall [K.S.A. 31-139 et. seq.] and the State Insurance Commissioner [K.S.A. 40-2407] both have the power to issue such orders when violations of the laws they administer occur. Further, under the Kansas Uniform Land Sales Practices Act the Securities Commissioner may issue either temporary or permanent cease and desist orders when the public interest is jeopardized by unlawful subdivided land sales practices [K.S.A. 58-3312]. However, presently no authority is conferred upon the Commissioner to issue cease and desist orders under the Kansas Securities Act. By contrast, virtually every other state that has enacted a version of the Uniform Securities Act (i.e. 43 states) has granted this administrative power to the securities administrator. Of course, the rights of persons subject to cease and desist orders are protected since such persons are provided with the right to a hearing and judicial review.

Summarized briefly, the principal benefits of cease and desist orders ("C & Ds") include:

1. Timeliness for Investor Protection - C & Ds provide for the protection of the public interest and the prevention of possible irreparable investor harm that could result from the delay in deterring violations of the Securities Act; and
2. Cost Effectiveness - C & Ds permit a higher volume of law enforcement actions at the lowest possible cost; and
3. Preferred Forum - Administrative hearings incident to the issuance of a cease and desist order provides an opportunity for the expert treatment of novel questions of securities law before hearing examiners knowledgeable in securities matters.

Overall, the absence of this enforcement tool under the Securities Act materially lessens the ability of this office to adequately protect Kansas investors. In some instances, a "cease and desist"

order may represent the only timely safeguard which may protect investing Kansans from buying "total blue sky".

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Attached hereto, please find a comment and recommendation sheet. To permit possible legislative consideration of this issue during the 1978 Session, it is requested that each committee member return this comment and recommendation page to our office by January 27, 1978. Should this one comment page be insufficient, each member is encouraged to attach and return additional pages.

KANSAS SECURITIES ACT REVIEW COMMITTEE (1977-1978)

Name of Committee Member

Date

- I. TOPIC OR ISSUE: Proposed adoption of administrative cease and desist powers under the Kansas Securities Act.

COMMENTS OR RECOMMENDATIONS

(Please check one)

- Favor the proposed revision.
- Against the proposed revision.
- Favor the proposed revision as qualified below.
- Request additional background information as indicated below.

If you wish to make specific comment about this topic or issue, please do not hesitate to do so (please attach additional pages as necessary):