

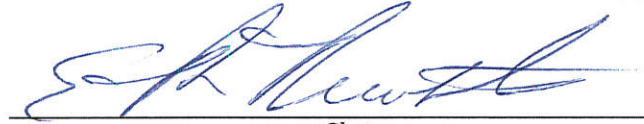
MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

Held in Room 381-W, at the Statehouse at 4:00 ~~xxx~~ p. m., on April 26, 19 78.

All members were present except:

The next meeting of the Committee will be held at \_\_\_\_\_ a. m./p. m., on \_\_\_\_\_, 19\_\_\_\_.

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 who apologized to members of the committee for his motion to concur on SB 780. He explained he had done so in the spirit of compromise because of a situation on other bills, and explained he did not know what the fate of the bill might be in its present form.

The Chairman noted that most members had been present at a meeting where the League of Kansas Municipalities had requested a bill be introduced granting governmental units immunity for one year, which proposal was in response to the Supreme Court finding in the case of Gorrell vs. Parsons. He further noted that the committee had generally rejected such an approach.

The Senate Ways and Means Committee subsequently did introduce the proposal at the request of the League and others and most members attended a joint meeting with the Senate Judiciary Committee and heard additional testimony concerning this approach.

He noted that now SB 972, which is a Tort Claims Act and includes all units of government, including the state, has passed the Senate 36 to 4. He reminded members that a number of conferees told the joint meeting that this is what is really needed. He explained the Senate felt it was only a matter of time until the state would have its immunity stripped away, and that is why they proposed this bill. Further, he agreed that this seems to be the impression the courts are giving. The Chairman noted this bill is basically the one that came from the select interim committee of a few years ago, and has the support of most groups, but that some feel there is no rationale for making the state vulnerable until such time as the courts decree it.

Rep. Hayes explained he had served on that study committee and feels the bill is alright; that it is modeled after the federal law. He noted Rep. Hurley has reservations about voluntarily opening the state up to liability.

Rep. Hoagland inquired if there shouldn't be language pertaining to an effective date, and Rep. Hayes noted the Revisor would probably say it is not necessary because it is automatic when it is published in the statute books, although some acts do specify.

The Chairman told members that Senator Pomeroy had distributed copies of both proposals to the Senate and he had voted to go with the tort bill. Rep. Stites asked if there were any limitations in the tort bill. Mr. Griggs explained there is no dollar limitation but it does prohibit punitive damages entered prior to judgement. He also noted neither this bill nor the federal act limit attorney fees.

Rep. Stites expressed the opinion that bringing the subject up would do away with immunity for the state right now, and there is no machinery to purchase insurance, nor is there any estimate of what it might cost. The Chairman agreed it would probably cause problems for the Ways and Means Committee.

Rep. Hayes noted someone had spoken of no fund warrants for buying insurance, and Mr. Griggs stated they can do anything they wish--use current available funds, issue no fund warrants, etc., for the purchase of insurance, setting up reserve funds, attorney fees, etc.

The Chairman suggested another meeting could be scheduled and really look at the bill after it is available. Rep. Stites stated he is confused as to which is the better approach, and Rep. Lorentz noted he would not want to take any action until he has a chance to look at the bill.

Rep. Hayes told members he is generally opposed to "shot-gun" measures at the last minute but there has been the interim study and the bill passed the House, but it was rejected by the Senate. Apparently the reason was the Brown II case where the Chief Justice changed his mind and that took the heat off of the situation.

The Chairman noted there will be an interim study in either event. He noted the bill could be run leaving the state out, but he didn't know how the Senate would react, although he knew they did not like the one year bill.

The meeting was adjourned without reaching a consensus.