

CONTINUATION SHEET

Minutes of the Senate Committee on Judiciary February 15, 19 78.

Senator Hess moved that the minutes of February 3 be approved;
Senator Mulich seconded the motion, and the motion carried.

The meeting adjourned.

These minutes were read and approved by the committee on 4-6-78.

2-15-78

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Jack R Euler	Troy	Ks Bar Assn
Ken Klein	Topoka	Ks Bar Assn.
Carol Ann Phillips	H.C., H.	Church Sup.
Judy Tensink	Topoka	Ks. Womens Political Caucus
Ben Neill	"	Ks Dept Revenue
Matt Benson	"	State
Allen Seeseus	Topoka	KTLA

LAW OFFICES
EULER & EULER

137 South Main
TROY, KANSAS 66087

February 21, 1978

Senator Elwaine F. Pomeroy
Chairman, Judiciary Committee
Kansas Senate
State House
Topeka, Kansas 66612

RE: Legislative Proposal
Kansas Bar Association

Dear Senator Pomeroy:

With reference to the above, I beg leave to report on those proposals which are before your committee as follows:

1. Senate Bill No. 824. Herewith you will please find a copy of this Bill on which I have shown the amendments which I feel should be made to the measure by your committee. You will note that the proposed amendments limit applicability of the act to testamentary instruments which might affect the joint tenancy.
2. Senate Bill No. 834. This Bill relates to contempts of court and you will recall that the Bar Association has requested that your committee request the Judicial Council to study the entire area of contempts of court and to report its findings to the Legislature.
3. Senate Bill No. 859. This measure relates to delivery of intangible personal property included in a non-resident decedent's estate. Herewith enclosed you will find a copy of this Bill on which I have shown certain proposed amendments which I feel should be made by your committee before the Bill is given further consideration.
4. Senate Bill No. 907. This Bill relates to the non-recognition of gain in cases involving divorce and a division of jointly accumulated property, and the intent of the measure is to overrule *Wiles v. Comm.* IRS, 442 F.2d 1149, 1151, which requires recognition of gain. Mr.

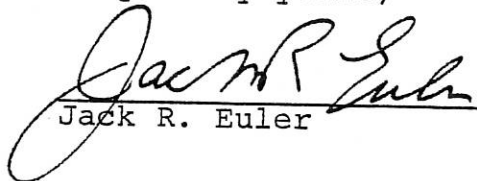
Senator Elwaine F. Pomeroy
February 21, 1978
Page - 2 -

Austin Nothern of your city has agreed to prepare the proposed committee amendments which he feels this Bill will require and to submit the same to you prior to February 24, 1978.

The foregoing covers all KBA proposals presently in your committee and, in conclusion, I take this opportunity to thank you again for your fine cooperation in assisting the KBA in getting these measures before the Legislature and invite you to contact me in the event that you have any further question with regard to any of the same.

With best regards, I am,

Very truly yours,



Jack R. Euler

JRE:md

Encs.

cc: Mr. Austin Nothern
Mr. Benjamin J. Neill
Mr. Art Griggs
Mr. Ken Klein

SENATE BILL No. 824

By Committee on Judiciary

1-31

0017 AN ACT relating to joint tenancy in real property; concerning the
0018 termination thereof with regard to purchasers without notice of
0019 the termination.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. Any contract which terminates a joint tenancy in
0022 real property shall not affect the title to any real property con-
0023 veyed by the surviving joint tenant or tenants to a purchaser in
0024 good faith who is without notice of such termination. The provi-
0025 sions of this section shall apply to a contract executed as one or
0026 more separate instruments, and executions made as a part of a
0027 consent to a will, trust or other instrument.

0028 Sec. 2. This act shall take effect and be in force from and after
0029 its publication in the statute book.

Be amended in line 0021 by striking the word "contract"
and inserting in lieu thereof the words "testamentary
instrument" and in line 0024 by striking all after the
word "faith" and by striking all of lines 0025 and 0026
and all of line 0027 preceding the period and inserting
in lieu thereof the following:

"and without knowledge of such testamentary
instrument by a deed of conveyance dated and
recorded at any time between the date of the
death of the deceased joint tenant and the
date that such testamentary instrument of
such deceased joint tenant is filed for probate."

And, in the title, line 0017, by striking the word
"the" and inserting in lieu thereof the word "certain"
and, in line 0018, by adding an "s" to the word
"termination" at the end thereof and, by striking the
words "with regard" and inserting in lieu thereof the
following:

",and concerning conveyances to certain"

SENATE BILL No. 859

By Committee on Judiciary

2-6

0015 AN ACT relating to probate proceedings; concerning transfers of
0016 certain intangible personal property; amending K.S.A. 59-809
0017 and repealing the existing section.

0018 *Be it enacted by the Legislature of the State of Kansas:*

0019 Section 1. K.S.A. 59-809 is hereby amended to read as fol-
0020 lows: 59-809. Any person, firm or corporation upon whom no
0021 demand has been made by a personal representative or other
0022 person authorized by this state to collect a nonresident decedent's
0023 personal property may, at any time three (3) months or more after
0024 the grant of letters in another jurisdiction upon the estate of the
0025 decedent (or, lacking notice of any such grant of letters within
0026 three (3) months after his or her death, then three (3) months or
0027 more after his or her death), transfer, pay or deliver intangible
0028 personal property of the nonresident decedent to the foreign
0029 personal representative ~~or, if none, to such other person as may be~~
0030 ~~entitled thereto~~, and shall not be liable for the debts of or claims
0031 against the nonresident decedent or his or her estate by reason of
0032 having made such transfer, payment or delivery.

0033 Sec. 2. K.S.A. 59-809 is hereby repealed.

0034 Sec. 3. This act shall take effect and be in force from and after
0035 its publication in the statute book.

Be further amended in line 0020 by striking the word "Any"
and inserting in lieu thereof the following: "After the
requirements of K.S.A. 79-1514 have been complied with,
any"

And in line 0030 by striking the word "and" and inserting in
lieu thereof the following: "or, if none, then to any other
person who shall present competent legal evidence of entitle-
ment thereto. The person, firm or corporation making such
transfer, payment or delivery"

50-1610. Decree. A decree in an action under this article may include orders on the following matters:

(a) *Care of minor children.* The court shall make provisions for the custody, support and education of the minor children, and may modify or change any order in connection therewith at any time, and shall always have jurisdiction to make any such order to advance the welfare of a minor child if (i) the child is physically present in the county, or (ii) domicile of the child is in the state, or (iii) the court has previously exercised jurisdiction to determine the custody or care of a child who was at such time domiciled in the state. In connection with any decree under this article, the court may set apart such portion of the property of either the husband or the wife, or both of them, as may seem necessary and proper for the support of all of the minor children of the parties, or of either of them. Any order requiring either parent or both parents to pay for the support of any child until the age of majority shall terminate when such child attains the age of eighteen (18) years, unless by prior written agreement approved by the court such parent or parents specifically agreed to pay such support beyond the time such child attains the age of eighteen (18). If the court finds that both parties are unfit to have the custody of such minor children, their parental rights may be terminated and the custody of such children placed with an appropriate person, agency, or association, in or out of the state of Kansas. If such an order remains in effect for one year or more, the person, agency, or association having such custody may be given by the court the power to consent to the adoption of any such minor child under the adoption laws of this state under the following conditions:

(1) *Application.* Application shall be made to the district court in which the decree was granted for permission to consent to such adoption.

(2) *Notice.* At least thirty (30) days written notice of such application shall be given to the parents, if their whereabouts are known, and to their attorneys of record, if any, by restricted mail prior to the hearing of the application.

(3) *Restoration of parental rights.* If the court permits such consent to be given, the

court in which the adoption proceedings are commenced shall have exclusive jurisdiction over the custody of the minor child. If the adoption proceedings do not result in final adoption, the jurisdiction of the district court shall be immediately restored, and parental rights which have been terminated under the provisions of this subsection may be restored on the application of either party by order of the court in which they were terminated and on such reasonable notice to all parties affected as the court may require.

(b) *Child custody where parental rights are not terminated.* In all cases involving the custody of any minor children, the court shall consider the best interests of such children to be paramount. Where parental rights have not been terminated, either parent shall be considered to have a vested interest in the custody of any such child as against the other parent, regardless of the age of the child.

(c) *Division of property.* The decree shall divide the real and personal property of the parties, whether owned by either spouse prior to marriage, acquired by either spouse in his or her own right after marriage, or acquired by their joint efforts, in a just and reasonable manner, either by a division of the property in kind, or by setting the same or a part thereof over to one of the spouses and requiring either to pay such sum as may be just and proper, or by ordering a sale of the same under such conditions as the court may prescribe and dividing the proceeds of such sale.

Property acquired by one spouse in his or her own right after marriage transferred to the other spouse pursuant to a division of property by the court shall be treated as a division of property between co-owners.

(d) *Maintenance.* The decree may award to either party an allowance for future support denominated as alimony, in such amount as the court shall find to be fair, just and equitable under all of the circumstances. The decree may make the future payments conditional or terminable under circumstances prescribed therein. The allowance may be in a lump sum or in periodic payments or on a percentage of earnings or on any other basis. At any time, on a hearing with reasonable notice to the party affected, the court may modify the amounts or other conditions for the payment of any portion of the alimony originally awarded that have not already become due, but no modification shall be made, without the consent of the party liable for the alimony, if it has the effect of increasing or accelerating the liability for the unpaid alimony beyond what was prescribed in the original decree.

(e) *Separation agreement.* If the parties have entered into a separation agreement which the court finds to be valid, just, and equitable, it shall be incorporated in the decree; and the provisions thereof on all matters settled thereby shall be confirmed in the decree except that any provisions for the custody, support, or education of the minor children shall be subject to the control of the court in accordance with all other provisions of this article. Matters, settled by such an agreement, other than matters pertaining to the custody, support, or education of the minor children, shall not be subject to subsequent modification by the court except as the agreement itself may prescribe or the parties may subsequently consent.

(f) *Restoration of name.* Upon the request of the wife, the court shall order the restoration of her maiden or former name.

(g) *Costs and fees.* Costs and attorneys' fees may be awarded to either party as justice and equity may require.

(h) *Effective date.* Every decree of divorce shall contain a provision to the effect that the parties are prohibited from contracting marriage with any other persons until thirty (30) days after the entry of the decree, unless an appeal is taken, and then until the receipt of the mandate issued in accordance with subsection (c) of K. S. A. 60-2106. Any marriage contracted before the expiration of that period shall be null and void, and any agreement to waive the right of appeal shall not be effective to shorten such period of time. [L. 1963, ch. 303, 60-1610; L. 1965, ch. 355, § 6; L. 1975, ch. 305, § 1; L. 1976, ch. 256, § 1; July 1.]

79-1501e. Foreign estates; reciprocity; personal property. The tax imposed by this act in respect to personal property of non-residents (other than tangible personal property having an actual situs in this state) shall not be payable (1) if the decedent at the time of his or her death was a resident of a state or territory of the United States which at the time of his or her death did not impose a transfer tax or death tax of any character in respect to personal property of residents of this state (other than tangible personal property having an actual situs in such state or territory), or (2) if the laws of the state or territory of residence of the decedent at the time of his or her death contained a reciprocal provision under which nonresidents were exempted from transfer taxes or death taxes of every character in respect to personal property (other than tangible personal property having an actual situs therein) provided the state or territory of residence of such nonresidents allowed a similar exemption to residents of the state or territory of residence of such decedent.

In no case shall the provisions of this section apply to the intangible personal property of nonresident decedents unless such intangible personal property shall have been subjected to a tax or submitted for purposes of taxation in the state of the decedent's residence. This section shall apply only to estates of decedents dying subsequent to the effective date of this section. For the purpose of this section the District of Columbia and possessions of the United States shall be considered territories of the United States.

79-1514. Notice of transfer of certain assets of nonresident decedents. (a) Assets belonging to the estate of a deceased non-resident, other than intangible assets of a decedent who at the time of death resided in the United States but outside this state, shall not be delivered or transferred to a foreign executor, administrator or legal representative of said decedent without serving notice upon the director of taxation of the time and place of such intended delivery or transfer seven days at least before the time of such delivery or transfer. The director, or by representative, may examine such assets prior to the time of such delivery or transfer. Failure to serve such notice or to allow such examination or a delivery or transfer of such assets against the objection of the director shall render the person, association, or corporation making the delivery or transfer liable to the payment of the tax due upon said assets, in an action brought by the county or district attorney of the proper county or the attorney general or the department of revenue in the name of the state.

(b) A foreign or Kansas person, corporation, partnership or other association of persons may release or transfer intangible assets of a nonresident decedent upon receipt of a sworn affidavit from the executor or administrator of the decedent's estate, stating that the decedent was not a resident of the state of Kansas at the time of the decedent's death but that such decedent was a resident of another state in the United States.