

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

Held in Room 519 S, at the Statehouse at 11:00 a. m. ~~p. m.~~ on March 10, 19 78.

All members were present except: Senator Gaar

The next meeting of the Committee will be held at 11:00 a. m. ~~p. m.~~ on March 13, 19 78.

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


Chairman

The conferees appearing before the Committee were:

- Representative Ward P. Ferguson
- Glenn D. Cogswell - Kansas Association of Professional Sureties
- Fred Carman - Revisor of Statutes

Staff present:

- Art Griggs - Revisor of Statutes
- Jerry Stephens - Legislative Research Department

House Bill 2147 - Prohibiting disclosure of certain arrests, declare certain acts to be a crime and providing for nondisclosure of certain arrests no amendments. Representative Ferguson appeared in support of his bill. He stated that his bill would fill a void in the law; there presently is provision for expungement, but the law is silent with regard to records of arrests which do not lead to convictions. Committee discussion with him followed.

House Bill 2278 - Forfeiture of appearance bonds, authorizing civil actions thereon. The chairman reviewed the status of the bill and the hearings that were had on it last year, and the committee decision to leave it in the committee last year. Representative Ferguson testified in support of the bill. He suggested several possible amendments to the bill. Committee discussion with him followed.

Mr. Glenn Cogswell appeared in opposition to the bill, on behalf of the Kansas Association of Professional Sureties. He stated the bill would increase the cost of bonds; and that it would tend to promote civil litigation. He stated that in Sedgwick County, approximately fifteen to twenty percent of the bonds are temporarily forfeited; of those temporarily forfeited, the forfeitures are set aside very quickly in seventy-five percent of the cases; approximately ten percent remain permanently forfeited. Committee discussion with him followed.

Senate Concurrent Resolution 1648 - Constitutional amendment, corporations. Mr. Fred Carman appeared at the request of the committee to explain the background of the bill. He reviewed the report of the Citizens Commission on Constitutional Revision.

continued -

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

Minutes of the Senate Committee on Judiciary March 10, 1978.

SCR 1648

A copy of the handout distributed by him is attached hereto.
Committee discussion with him followed. Some committee members were concerned about the proposed amendment making it more difficult to pierce the corporate veil.

The meeting adjourned.

These minutes were read and approved
by the committee on 4-24-78.

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Wm. J. Cogswell	Topeka	Kans. Assoc. of Prof. Societies
Jeff Burkholder	Lawrence	
Walter Ferguson	Topeka	House of Rep.
Charles V. Hamm	State Off. Bldg. Topeka	SRS
Fred Carma	Reviser of Statutes	

As Amended by House Committee

Session of 1977

HOUSE BILL No. 2278

By Representative Ferguson

2-7

1977

0016 AN ACT relating to forfeitures of appearance bonds; authorizing
0017 a civil action the judgment of which may be satisfied by the
0018 sum forfeited; amending K.S.A. ~~1976~~ Supp. 22-2807 and re-
0019 pealing the existing section.

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

0021 Section 1. K.S.A. 1976 Supp. 22-2807 is hereby amended to
0022 read as follows: 22-2807. (1) If there is a breach of condition of an
0023 appearance bond the court in which the bond is deposited shall
0024 declare a forfeiture of the bail.

0025 (2) *Except as provided in section 2*, the court may direct that a
0026 forfeiture be set aside, upon such conditions as the court may
0027 impose, if it appears that justice does not require the enforcement
0028 of the forfeiture.

0029 (3) When a forfeiture has not been set aside, the court shall on
0030 motion enter a judgment of default and execution may issue
0031 thereon. If the forfeiture has been decreed by a district magistrate
0032 judge and the amount of the bond exceeds the limits of the civil
0033 jurisdiction prescribed by law for a district magistrate judge, the
0034 fact of forfeiture shall be certified by such district magistrate
0035 judge to a district judge or associate district judge of the judicial
0036 district who, on motion, shall enter a judgment of default. By
0037 entering into a bond the obligors *and the defendant* submit to the
0038 jurisdiction of any court having power to enter judgment upon
0039 default and irrevocably appoint the clerk of that court as their
0040 agent upon whom any papers affecting their liability may be
0041 served. Their liability may be enforced on motion without the
0042 necessity of an independent action. The motion and notice
0043 thereof may be served on the clerk of the court, who shall
0044 forthwith ~~1~~ copies to the obligors *and the defendant* to their

0045 last known addresses. No default judgment shall be entered
 0046 against the obligor *or the defendant* in an appearance bond until
 0047 more than ten (10) days after notice is served as provided herein.
 0048 (4) After entry of such judgment, the court may remit it in
 0049 whole or in part under the conditions applying to the setting aside
 0050 of forfeiture in paragraph (2) of this section.

0051 New Sec. 2. (a) When the court has ~~declared a forfeiture of~~
 0052 ~~bail~~ as provided by K.S.A. ~~1976~~ Supp. 22-2807, as amended, any
 0053 person ~~alleging~~ who alleges that he or she is a victim of and has
 0054 suffered damage, other than personal injuries, by reason of the
 0055 conduct of the defendant as alleged in the complaint or informa-
 0056 tion for which the defendant deposited an appearance bond; ~~such~~
 0057 ~~person for any~~ and who brings a civil action ~~brought~~ against said
 0058 defendant prior to or within thirty (30) days after such ~~bond~~
 0059 ~~forfeiture~~ shall give notice of such suit to the court in which the
 0060 bond was ~~declared forfeited~~ and the court shall not thereafter
 0061 remit or set aside the ~~forfeiture until such civil action is dismissed~~
 0062 ~~or final judgment is entered and satisfied~~

0063 (b) When an action has been filed within the time limits of
 0064 subsection (a) the clerk of the court shall serve a copy thereof
 0065 upon the obligors on the bond and, if the defendant has not
 0066 previously been served, then upon the defendant as provided in
 0067 subsection (3) of K.S.A. ~~1976~~ Supp. 22-2807, as amended. The
 0068 obligors on the bond may intervene in said action as a party
 0069 defendant but shall in no way be liable for any judgment for
 0070 damages and court costs in excess of the amount of their bond.

0071 (c) If judgment is rendered for the plaintiff, it shall be satis-
 0072 fied from the ~~proceeds of the forfeiture~~. If after the judgment is
 0073 satisfied there remains a portion of the ~~forfeited~~ amount, the court
 0074 may remit the same as provided in K.S.A. ~~1976~~ Supp. 22-2807, as
 0075 amended. If the judgment is in excess of the amount ~~forfeited~~, all
 0076 of the amount ~~forfeited~~ shall be used to satisfy the judgment and
 0077 the plaintiff shall be entitled to enforce the unsatisfied portion of
 0078 the judgment in the same manner as other civil judgments are
 0079 enforced.

0080 Sec. 3. K.S.A. ~~1976~~ Supp. 22-2807 is hereby repealed.

0081 Sec. 4. This act shall take effect and be in force from and after
 0082 its publicati~~o~~n in the statute book.

issued execution upon the bond

1977

execution upon the

judgment against the

granted

judgment until dismissal of, or entry and satisfaction of, final judg-
ment of such civil action

1977

security given for the bond

bond

1977

of the bond

1977

0047 cide;

0048 (5) presentence investigation and other reports prepared for
0049 use by a court in the exercise of criminal jurisdiction or by the
0050 governor in the exercise of the power of pardon, reprieve or
0051 commutation; or

0052 ~~(d)~~ (c) "Criminal justice agency" means any government
0053 agency or subdivision of any such agency which is authorized by
0054 law to exercise the power of arrest, detention, prosecution, ad-
0055 judication, correctional supervision, rehabilitation, or release of
0056 persons suspected, charged, or convicted of a crime and which
0057 allocates a substantial portion of its annual budget to any of these
0058 functions. The term includes, but is not limited to, the following
0059 agencies, when exercising jurisdiction over criminal matters or
0060 criminal history record information:

0061 (1) State, county, municipal and railroad police departments,
0062 sheriffs' offices and county-wide law enforcement agencies, cor-
0063 rectional facilities, jails, and detention centers;

0064 (2) the offices of the attorney general, county or district attor-
0065 neys, and any other office in which are located persons autho-
0066 rized by law to prosecute persons accused of criminal offenses;

0067 (3) the district courts, the court of appeals, the supreme court,
0068 the municipal courts and the offices of the clerks of these courts.

0069 ~~(e)~~ (d) "Criminal justice information system" means the
0070 equipment (including computer hardware and software), facili-
0071 ties, procedures, agreements, and personnel used in the collec-
0072 tion, processing, preservation, and dissemination of criminal
0073 history record information.

0074 ~~(f)~~ (e) "Disseminate" means to transmit criminal history
0075 record information in any oral or written form. The term does not
0076 include:

0077 (1) The transmittal of such information within a criminal
0078 justice agency;

0079 (2) the reporting of such information as required by this act;
0080 or

0081 (3) the transmittal of such information between criminal jus-
0082 tice agencies in order to permit the initiation of subsequent
0083 criminal justice proceedings against a person relating to the same

Report
of the
Citizens' Committee on
Constitutional Revision



Submitted to

THE GOVERNOR AND THE LEGISLATURE
OF THE STATE OF KANSAS

February, 1969

CITIZEN'S COMMITTEE ON CONSTITUTIONAL REVISION

MEMBERS APPOINTED BY GOVERNOR, STATE OF KANSAS, ROBERT B. DOCKING

Dr. M. A. Harder, Wichita
Mrs. David Prager, Topeka, Secretary of the Committee
Dr. Richard C. Welty, Kansas State College, Pittsburg

MEMBERS APPOINTED BY PRESIDENT PRO TEMPORE OF SENATE, GLEE S. SMITH, JR.

Mr. Ross Beach, Hays, Vice-chairman of the Committee
Mr. Clifford R. Hope, Jr., Garden City
Mr. Stanley L. Lind, Kansas City

MEMBERS APPOINTED BY SPEAKER OF HOUSE OF REPRESENTATIVES, JOHN J. CONARD

Mrs. F. H. Heller, Lawrence
Mr. August G. Lauterbach, Colby
Mr. Wesley H. Sowers, Wichita, Chairman of the Committee

MEMBERS APPOINTED BY CHIEF JUSTICE OF SUPREME COURT, ROBERT T. PRICE

Mr. Charles N. Henson, Topeka
Mr. W. A. Kahrs, Wichita
Mr. James P. Mize, Salina

STAFF

Executive Secretary: Byron C. Loudon
Consultant: Fred J. Carman, Assistant Revisor of Statutes

SIGNIFICANT RECOMMENDED CHANGES

Article 12.—CORPORATIONS

1. Insures that the individual liability of stockholders of corporations organized for profit shall not exceed the amount of the stock owned by each stockholder.
2. Permits religious corporations to hold and convey title to real estate in the same manner as other corporations.
3. Transfers the section on incorporation and organization of cities to Article 9 on "Local Government."
4. Transfers the provisions for banking from Article 13 to this article.

For Complete Text of Existing Section 5 of Article 12 on City Home Rule, See Page 79.

(SENATE) (HOUSE) CONCURRENT RESOLUTION No. _____
 A PROPOSITION to repeal article 13 and amend article 12 of the
 constitution of the state of Kansas, relating to corporations.

*Be it resolved by the Legislature of the State of Kansas, two-thirds
 of the members elected to the House of Representatives and two-
 thirds of the members elected to the Senate concurring therein:*

Section 1. The following proposition to amend the constitution
 2 of the state of Kansas shall be submitted to the qualified electors of
 3 the state for their approval or rejection: Article 13 of the constitu-
 4 tion of the state of Kansas is hereby repealed and article 12 of such
 5 constitution is amended to read as follows:

6 "Article 12.—CORPORATIONS

7 "Section 1. *Corporate powers.* The legislature shall pass no
 8 special act conferring corporate powers. Corporations may be
 9 created under general laws; but all such laws may be amended
 10 or repealed.

11 "Sec. 2. *Liability of stockholders.* ~~Dues from corporations~~
 12 ~~shall be secured by~~ The individual liability of the stockholders
 13 ~~of corporations shall be limited~~ to the amount of stock owned by
 14 each stockholder, and ~~such other means as shall be provided~~
 15 ~~by law; but such~~ but no individual liability shall not apply to
 16 ~~railroad corporations nor corporations apply to corporations~~
 17 ~~organized for religious or charitable purposes.~~ The legislature
 18 ~~may provide for assessment against individual stockholders where~~
 19 ~~the capital of a banking corporation is impaired.~~

20 "Sec. 3. *Religious corporations.* The title to all prop-
 21 erty of religious corporations, shall ~~vest in trustees,~~
 22 ~~whose election shall be by the members of such corpora-~~
 23 ~~tions.~~ Banking corporations. No bank shall be established other
 24 than under a general banking law, nor be operated otherwise
 25 than by a duly organized corporation.

(Note: The new material in this section is found in existing section 1 of article 13 which is proposed to be repealed.)

2 "Sec. 4. ~~Rights of way; eminent domain~~ Limitations on
3 powers of eminent domain. No right-of-way shall be appropriated
4 to the use of any corporation, until full compensation therefor
5 be first made in money, or secured by a deposit of money, to the
6 owner, irrespective of any benefit from any improvement pro-
7 posed by such corporation.

8 "Sec. 5. (It is proposed that this existing section on city home
9 rule be amended and transferred to article 9. See proposed sec-
10 tion 4 of article 9 for full text of this section.)

11 "Sec. 6. *Definition of corporation; suits.* The term corpora-
12 tions, as used in this article, shall include all associations and
13 joint stock companies having powers and privileges not possessed
14 by individuals or partnerships; and all corporations may sue and
15 be sued in their corporate name."

16 "~~Article 13. BANKS AND CURRENCY~~

17 "Section 1. *Banking laws.* No bank shall be established
18 otherwise than under a general banking law.

19 "Sec. 2. *Security for redemption of circulating notes.*
20 ~~All banking laws shall require, as collateral security for~~
21 ~~the redemption of the circulating notes of any bank, or~~
22 ~~organized under their provisions, a deposit with the auditor~~
23 ~~of state, of the interest paying bonds of the several states~~
24 ~~or of the United States, at the cash rates of the New York~~
25 ~~stock exchange, to an amount equal to the amount of~~
26 ~~circulating notes which such bank shall be authorized to~~
27 ~~issue, and a cash deposit in its vaults of ten percent of~~
28 ~~such amount of circulating notes; and the auditor shall~~
29 ~~register and countersign no more circulating bills of any~~
30 ~~bank, than the cash value of such bonds when deposited.~~

1 "Sec. 3. *Additional security.* Whenever the bonds
2 pledged as collateral security for the circulation of any
3 bank, shall depreciate in value, the auditor of state shall
4 require additional security, or curtail the circulation of
5 such bank, to such extent as will continue the security
6 unimpaired.

7 "Sec. 4. *Redemption of notes.* All circulating notes
8 shall be redeemable in the money of the United States.
9 Holders of such notes shall be entitled, in case of the in-
10 solvency of such banks, to preference of payment over
11 all other creditors.

12 "Sec. 5. *State not to be stockholder.* The state shall not
13 be a stockholder in any banking institution.

14 "Sec. 6. *Banking offices.* All banks shall be required to
15 keep offices and officers for the issue and redemption of
16 their circulation, at a convenient place within the state,
17 to be named on the circulating notes issued by such bank.

18 "Sec. 7. *Denominations of notes.* No banking institution
19 shall issue circulating notes of a less denomination than
20 one dollar.

21 "Sec. 8. *Referendum on laws.* No banking law shall be
22 in force until the same shall have been submitted to a
23 vote of the electors of the state at some general election
24 and approved by a majority of all the votes cast at such
25 election.

26 "Sec. 9. *Amendment or repeal of laws.* Any banking
27 law may be amended or repealed."

28 Sec. 2. This resolution, if concurred in by two-thirds of the
29 members elected to the house of representatives and two-thirds of
30 the members elected to the senate, shall be entered on the journals.

1 together with the yeas and nays. The secretary of state shall cause
2 the proposed amendment to be published and submitted to the
3 electors of the state at the general election in the year 1970 as pro-
4 vided by law.

COMMENTARY ON PROPOSED CHANGES

Article 12.—CORPORATIONS

The changes recommended in this article exemplify the need for constitutional revision of a document that was written a century ago. This does not necessarily mean that there have been impediments to effective state government, but it does mean that some of the reasons for certain restrictions have been lost with the passage of time, and others are no longer needed by reason of the changes that have evolved in intergovernmental relationships and public policy.

Section 2 which pertains to the liability of stockholders of corporations was the subject of an amendment voted upon favorably in 1906. Many thought that the purpose of that amendment was to limit the liability of stockholders to the face amount of their stock certificates. However, the supreme court held in *Bank v. Laughlin*, 1922, 111 Kan. 520, that the language contained in the present section 2 of Article 12 means that the minimum liability of individuals as stockholders is the face amount of their stock, while the maximum is the limit specified by the legislature. The public policy of the state as exemplified by K. S. A. 17-2803a, which was enacted in 1939, has been to permit the articles of incorporation to limit the liability of individual stockholders to the amount of the stock owned. This recommended change will conform the constitution to the state's public policy and should be conducive to greater corporate organizational activity in the state. Since this limitation would apply to all corporations for profit, the century-old exception that limited the liability of stockholders of railroad shares to the amount that they own as provided in the present section 2 would no longer be needed. The non-liability policy as to religious and charitable purposes continues. The new sentence in section 2 is to permit the state's policy, as reflected by K. S. A. 9-906 wherein the bank commissioner may order the assessment of bank stockholders where bank capital is impaired, to be continued if deemed appropriate by the legislature.

The reasons for the inclusion of present section 3 of Article 12 is not explained nor discussed in the Wyandotte Constitutional Convention proceedings. Most attorneys handling real estate transactions for incorporated churches agree that the present constitutional provisions cause needless expense and waste of time in order to comply with the requirements of this section. No reason has

been ascertained why the title to religious corporations should not be handled in the same manner as any other corporation. Inquiry was made of the various religious denominations through the Kansas Council of Churches and the attorney for the Archdiocese of Kansas City in Kansas of the Roman Catholic Church to ascertain their position in regard to this section. The response was overwhelmingly in favor of the position that the handling of real property transactions for religious corporations would be improved with the repeal of this section. It was pointed out, however, that transition legislation should accompany the repeal of this section since all such property now stands in the name of trustees.

The new material added to section 3 down to the comma, is all that remains of present Article 13 after deletion of the portion thereof that is no longer applicable. Since almost all of the reasons for Article 13 are no longer existent by reason of the federal government's pre-emption of the issuance of currency (see commentary following Article 13) there remained only the bare statement of public policy that all banks be organized under general banking laws as opposed to special legislation. For this reason, it was thought that the "remains" of Article 13 should be transferred to the corporations article by reason of commonality of subject matter. The committee further recommends that the last phrase in new section 3 be added so that banks will be operated only as corporations, as opposed to "private" banks, to insure continuity and stability.

Setting out Article 13 in this proposition, as deleted material, indicates the committee's recommendation that Article 13 "as is" should not be repealed, unless and until, this new article is adopted.

Section 5 of Article 12 of the present constitution pertains to the incorporation and home rule of cities. While cities are said to be "incorporated" and therefore were logically placed under the corporation article by our founding fathers, it was the unanimous thought of the committee that the constitutional provisions for the creation, organization and home rule of cities more properly belongs in the article on "Local Government" than it does in "Corporations." Therefore, it is recommended that it be transferred with some clarifying amendments to Article 9. For an explanation of those amendments, see the commentary on Article 9.

SIGNIFICANT RECOMMENDED CHANGE**Article 13.—BANKS AND CURRENCY (REPEAL)**

The committee recommends repeal of this entire article, except section 1, because it is obsolete, and that section 1, with addition of the phrase "nor be operated other than by a duly organized corporation" be added to Article 12—Corporations, as new section 3 therein.

For Complete Text of Existing Article 13 of the Constitution of Kansas See Page 99.

COMMENTARY ON PROPOSED CHANGE

Article 13.—BANKS AND CURRENCY

In *Pape v. Capitol Bank*, 20 Kan. 440 (1878) and in *The State v. Dietrich*, 117 Kan. 105 (1924), the supreme court of the state of Kansas ruled that the present article of the constitution applied to banks issuing their own currency or having authority to issue their own currency. Since the federal government now regulates all currency, it would appear that all nine sections of Article 13 are now obsolete and could be eliminated from the constitution without impairing its effectiveness. In recognition of the belief that banking business should be carried on by corporations organized under general banking laws, it is proposed that section 1 of the present Article 13 be included as a new section 3 under Article 12 on Corporations, and that the phrase "nor be operated otherwise than by a duly organized corporation," be added to the section. It is felt that this would provide the legislature with sufficient latitude in formulating banking laws, yet would provide a prohibition against the formation of private banks.

e
s
n
n
b
p
a
o
P
w
d
P

Article 12 - CORPORATIONS

Section 1. Corporate powers. The legislature shall pass no special act conferring corporate powers. Corporations may be created under general laws; but all such laws may be amended or repealed.

5 ~~Section 6.~~ Section 2. Definition of corporation; suits. The term corporations, as used in this article, shall include all associations and joint stock companies having powers and privileges not possessed by individuals or partnerships; and all corporations may sue and be sued in their corporate name.

10 ~~Section 2.~~ Section 3. Liability of stockholders. ~~Dues from corporations shall be secured by the~~ The individual liability of the stockholders of corporations shall be limited to the amount of stock owned by each stockholder, and such other means as shall be provided by law, but such no individual liability shall ~~not~~ apply to ~~railroad corporations or~~ corporations organized for religious or charitable
15 purposes. The legislature may provide for assessment against individual stockholders where the capital of a banking corporation is impaired.

Section 4. ~~Rights of way; eminent domain.~~ Limitations on powers of eminent domain. No right of way shall be appropriated to the use of any corporation, until full compensation therefore be first made
20 in money, or secured by a deposit of money, to the owner, irrespective of any benefit from any improvement proposed by such corporation.

~~Section 5-(a)---Incorporation of cities~~

~~(b)---Cities empowered to determine their legal affairs~~

Transferred to

25 ~~(c)---Charter ordinances~~

Local Government

~~(d)---Liberal constuance of powers granted~~

Article.

~~(e)---Effective date~~

Section 5. Banking laws, corporations. No bank shall be
30 established otherwise other than under a general banking law, nor be
(Present Art.13, §1.) operated otherwise than by a duly organized corporation.

Article 12 - CORPORATIONS

Section 1. Corporate powers. The legislature shall pass no special act conferring corporate powers. Corporations may be created under general laws; but all such laws may be amended or repealed.

~~Section 6.~~ Section 2. Definition of corporation; suits; The term corporations, as used in this article, shall include all associations and joint stock companies having powers and privileges not possessed by individuals or partnerships; and all corporations may sue and be sued in their corporate name.

~~Section 2.~~ Section 3. Liability of stockholders. ~~Dues from corporations shall be secured by the~~ The individual liability of the stockholders of corporations shall be limited to the amount of stock owned by each stockholder, and such other means as shall be provided by law, but such no individual liability shall not apply to railroad corporations nor corporations organized for religious or charitable purposes. The legislature may provide for assessment against individual stockholders where the capital of a banking corporation is impaired.

~~Section 3. - Religious corporations. - The title to all property of religious corporations shall vest in trustees, whose election shall be by the members of such corporations.~~

~~Section 4. Rights of way; eminent domain.~~ Limitations on powers of eminent domain. No right of way shall be appropriated to the use of any corporation, until full compensation therefor be first made in money, or secured by a deposit of money, to the owner, irrespective of any benefit from any improvement proposed by such corporation.

~~Section 5 (a) - Incorporation of cities~~

~~(b) - Cities empowered to determine their local affairs~~

~~(c) - Charter ordinances~~

~~(d) - Liberal construance of powers granted~~

~~(e) - Effective date -~~

Transferred to
Local Government
Article.

Section 5. Banking laws, corporations. No bank shall be established

~~otherwise other than under a general banking law, nor be operated otherwise than by a duly organized corporation.~~

par value; or, (2) if the corporation is to be authorized to issue more than one class of stock. (a) The total number of shares of all classes of stock which the corporation shall have authority to issue, and (b) the number of the shares of each class thereof that are to have a par value, and (c) the par value of each share of each such class, and/or (d) the number of such shares that are to be without par value and the consideration therefor, and (e) a statement of all or any of the designations and the powers, preferences and rights, and the qualifications, limitations or restrictions thereof, which are permitted by the provisions of section 17-3201 of the General Statutes Supplement of 1939 and any amendments thereto, in respect of any class or classes of stock of the corporation and the fixing of which by the articles of incorporation is desired.

F. An express grant of such authority as it may be desired to give to the board of directors to fix by resolution or resolutions thereof any such powers, preferences, rights, qualifications, limitations or restrictions thereof provided in the last preceding paragraph but which shall not be fixed by the said articles.

G. The minimum amount of capital with which the corporation will commence business, which shall not be less than one thousand dollars.

H. The names and places or [of] residence of each of the incorporators.

I. The duration of its corporate existence, which shall not exceed one hundred years.

J. The number of directors, and it shall be lawful to provide in said articles of incorporation a minimum and maximum number of directors to be varied from time to time by the board of directors or stockholders between said minimum and maximum numbers. [L. 1939, ch. 152, § 11; L. 1941, ch. 182, § 2; June 30.]

Source or prior law: §§ 17-209, 17-210, 17-214; L. 1937, ch. 167, § 1.

Note: Referred to in § 17-4406.

Cross reference: Amendment of articles, see ch. 17, art. 42.

Duties of secretary of state under corporation code not strictly ministerial. *Kansas Milling Co. v. Ryan*, 152 K. 137, 141, 102 P. 2d 970.

Corporation may not obtain right to conduct business under trade name in addition to corporate name. *Kansas Milling Co. v. Ryan*, 152 K. 137, 144, 145, 146, 147, 102 P. 2d 970.

Discussed; charter restriction on stock sales held inapplicable to sale to another stockholder. *Talbot v. Nibert*, 167 K. 138, 149, 153, 155, 156, 206 P. 2d 131.

17-2803. What articles of incorporation may set forth. The articles of incorporation may also set forth:

A. Whether the private property of the stockholders or, in the case of a corporation which is to have no capital stock, whether the members of such corporation shall be subject to the payment of corporate debts, and if so, to what extent.

B. Any provision which the incorporators may choose to insert for the management of the business and for the conduct of the affairs of the corporation, and any provisions creating, defining, limiting and regulating the powers of the corporation, the directors and the stockholders, or any class of the stockholders, or, in the case of a corporation which is to have no capital stock, of the members of such corporation; provided, such provisions are not contrary to the laws of this state.

C. The following provisions, in *haec verba*, viz.: "Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them, secured or unsecured, or between this corporation and its stockholders, or any class of them, any court, state or federal, of competent jurisdiction within the state of Kansas may on the application in a summary

way of this corporation, or of any creditor, secured or unsecured, or stockholders thereof, or on the application of trustees in dissolution, or on the application of any receiver or receivers appointed for this corporation by any court, state or federal, of competent jurisdiction, order a meeting of the creditors or class of creditors secured or unsecured or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in such manner as said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, or of the stockholders or class of stockholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, or on all the stockholders or class of stockholders, of this corporation, as the case may be, and also on this corporation ["]].

D. Such provisions as may be desired limiting or denying to the stockholders the preemptive right to subscribe to any or all additional issues of stock of the corporation of any or all classes.

E. A provision to the effect that no stockholder of the corporation shall ever own, or vote as owner or by proxy, or both, to exceed a certain percent of the capital stock of such corporation.

F. A provision reserving to the corporation and existing shareholders the right to purchase and acquire the stock of a selling stockholder before sale to a nonstockholder.

G. Provisions requiring for any corporate action the vote of a larger proportion of the stock or any class thereof than is required by this act.

H. The manner of adoption, alteration and repeal of bylaws. [L. 1939, ch. 152, § 12; June 30.]

Cross references: Provisions of paragraph C binding on creditors and stockholders, when, see § 17-3002. Jurisdiction conferred on courts to enforce paragraph C, see § 17-4001.

Amendment of articles, see ch. 17, art. 42.

Duties of secretary of state under corporation code not strictly ministerial. *Kansas Milling Co. v. Ryan*, 152 K. 137, 141, 102 P. 2d 970.

Corporation may not obtain right to conduct business under trade name in addition to corporate name. *Kansas Milling Co. v. Ryan*, 152 K. 137, 145, 102 P. 2d 970.

Discussed; charter restriction on stock sales held inapplicable to sale to another stockholder. *Talbot v. Nibert*, 167 K. 138, 149, 152, 153, 155, 156, 206 P. 2d 131.

Construed; right of bank to limit transfer of stock; bylaw invalid. *Wentworth v. Russell State Bank*, 167 K. 246, 252, 253, 205 P. 2d 972.

17-2804. Articles; how signed and acknowledged; filing; recording. The articles shall be signed and duly acknowledged by each of the incorporators. Said articles shall be filed in the office of the secretary of state, who shall furnish a certified copy of the same under his hand and seal of office, and said certified copy shall be recorded in the office of the register of deeds of the county where the registered office of said corporation is to be located in this state. [L. 1939, ch. 152, § 13; June 30.]

Source or prior law: § 17-210.

Note: Referred to in § 17-3205.

Duties of secretary of state under corporation code not strictly ministerial. *Kansas Milling Co. v. Ryan*, 152 K. 137, 139, 141, 102 P. 2d 970.

Corporation may not obtain right to conduct business under trade name in addition to corporate name. *Kansas Milling Co. v. Ryan*, 152 K. 137, 146, 102 P. 2d 970.

17-2805. When corporate existence begins; amount and payment of fees. Upon duly executing

17-6002. Articles of incorporation; contents. (a) The articles of incorporation shall set forth:

(1) The name of the corporation which, except for banks, shall contain one of the words "association," "company," "corporation," "club," "foundation," "fund," "incorporated," "institute," "society," "union,"

"syndicate" or "limited," or one of the abbreviations "co.," "corp.," "inc.," "ltd.," or words or abbreviations of like import in other languages if they are written in Roman characters or letters, and which shall be such as to distinguish it upon the records in the office of the secretary of state from the names of other corporations organized, reserved or registered under the laws of this state, unless there shall be obtained the written consent of such other corporation, executed, acknowledged and filed in accordance with K.S.A. 17-6003. The name of every corporation heretofore organized, except for banks, may be changed to conform to the provisions of this section, but such change of name for existing corporations shall not be required, and nothing herein shall be construed as requiring any corporation which is subject to special statutory regulation to include any of such names or abbreviations in the name of such corporation if such name or abbreviation would be inconsistent or in conflict with such special statutory regulation;

(2) The address, which shall include the street, number, city and county of the corporation's registered office in this state, and the name of its resident agent at such address;

(3) The nature of the business or purposes to be conducted or promoted. It shall be sufficient to state, either alone or with other businesses or purposes, that the purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the Kansas general corporation code, and by such statement all lawful acts and activities shall be within the purposes of the corporation, except for express limitations, if any;

(4) If the corporation is to be authorized to issue only one class of stock, the total number of shares of stock which the corporation shall have authority to issue and the par value of each of such shares, or a statement that all such shares are to be without par value. If the corporation is to be authorized to issue more than one class of stock, the articles of incorporation shall set forth the total number of shares of all classes of stock which the corporation shall have authority to issue and the number of shares of each class that are to have a par value and the par value of each share of each such

class, the number of shares of each class that are to be without par value, and a statement of the designations and the powers, preferences and rights, and the qualifications, limitations or restrictions thereof, which are permitted by K.S.A. 17-6401 in respect to any class or classes of stock or any series of any class of stock of the corporation and the fixing of which by the articles of incorporation is desired, and an express grant of such authority as it may then be desired to grant to the board of directors to fix by resolution or resolutions any thereof that may be desired but which shall not be fixed by the articles of incorporation. The foregoing provisions of this paragraph shall not apply to corporations which are not organized for profit and which are not to have authority to issue capital stock. In the case of such corporations, the fact that they are not to have authority to issue capital stock shall be stated in the articles of incorporation. The conditions of membership of such corporations shall likewise be stated in the articles of incorporation or the articles may provide that the conditions of membership shall be stated in the bylaws, and if a corporation not organized for profit is to have authority to issue capital stock, such fact shall be stated in the articles of incorporation;

(5) The name and mailing address of the incorporator or incorporators; and

(6) If the powers of the incorporator or incorporators are to terminate upon the filing of the articles of incorporation, the names and mailing addresses of the persons who are to serve as directors until the first annual meeting of stockholders or until their successors are elected and qualify.

(b) In addition to the matters required to be set forth in the articles of incorporation by subsection (a) of this section, the articles of incorporation may also contain any or all of the following matters:

(1) Any provision for the management of the business and for the conduct of the affairs of the corporation, and any provision creating, defining, limiting and regulating the sale or other disposition of stock and the powers of the corporation, the directors and the stockholders, or any class of the stockholders, or the members of a non-stock corporation, if such provisions are not contrary to the laws of this state. Any provision which is required or permitted by any sec-



tion of this act to be stated in the bylaws may be stated instead in the articles of incorporation;

(2) The following provisions, in *haec verba*, viz.: "Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them or between this corporation and its stockholders or any class of them, any court of competent jurisdiction within the state of Kansas, on the application in a summary way of this corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this corporation under the provisions of K.S.A. 17-6901 or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under the provisions of K.S.A. 17-6808, may order a meeting of the creditors or class of creditors, or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, or of the stockholders or class of stockholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as consequence of such compromise or arrangement and the said reorganization, if sanctioned by the court to which the said application has been made, shall be binding on all the creditors or class of creditors, or on all the stockholders or class of stockholders, of this corporation, as the case may be, and also on this corporation";

(3) Such provisions as may be desired granting to the holders of the stock of the corporation, or the holders of any class or series of a class thereof, the preemptive right to subscribe to any or all additional issues of stock of the corporation of any or all classes or series thereof, or to any securities of the corporation convertible into such stock. No stockholder shall have any preemptive right to subscribe to an additional issue of stock or to any security convertible into such stock unless, and except to the extent that, such right is expressly granted to him in the articles of incorporation. All such rights in existence on July 1, 1972, shall remain in existence unaffected by this paragraph (3) unless and until changed or terminated by

appropriate action which expressly provides for such change or termination;

(4) Provisions requiring for any corporate action, the vote of a larger portion of the stock or of any class or series thereof, or of any other securities having voting power, or a larger number of the directors, than is required by this act;

(5) A provision limiting the duration of the corporation's existence to a specified date; otherwise, the corporation shall have perpetual existence;

(6) A provision imposing personal liability for the debts of the corporation on its stockholders or members to a specified extent and upon specified conditions; otherwise, the stockholders or members of a corporation shall not be personally liable for the payment of the corporation's debts except as they may be liable by reason of their own conduct or acts; and

(7) The manner of adoption, alteration and repeal of bylaws.

(c) It shall not be necessary to set forth in the articles of incorporation any of the powers conferred on corporations by this act.

9-906. Restoration of impaired capital. Whenever it shall appear that the capital stock of any bank or trust company is impaired, the commissioner shall notify such bank or trust company to restore the capital stock within ninety days. Within fifteen days after the receipt of such notice, it shall be the duty of the board of directors of such bank or trust company to levy an assessment on the common stock sufficient to restore the capital: *Provided*, That such bank or trust company with the approval of the board may reduce its capital stock to the extent of the impairment, if such reduction will not reduce the capital stock below the amount required by this act. [L. 1947, ch. 102, § 19; June 30.]

Bank v. Laughlin.

of being required to do so. The jury having fixed 200 feet as the limit of vision from a distance of 25 feet, their estimate of the limit from the other distances being necessarily less became practically immaterial for the purposes of this trial.

Questions that have been raised with respect to instructions given and refused are practically disposed of by what has already been decided under other assignments.

The judgment was for \$20,000. The defendant urges that the amount is excessive, and it appears to be very large; but inasmuch as a reversal is ordered upon other grounds it is not necessary to rule upon this question.

The judgment is reversed and the cause is remanded for a new trial.

No. 23,739.

THE KANSAS STATE BANK, *Appellant*, v. A. W. LAUGHLIN, *Appellee*.

OPINION ON REHEARING.

SYLLABUS BY THE COURT.

BANKING ACT—Statute Imposing "Double Liability" Upon Stockholders of Bank—Not Repealed by Constitutional Amendment. The section of the banking act (Gen. Stat. 1915, § 523) providing that stockholders of a bank shall be additionally liable for a sum equal to the par value of the stock owned by each was not repealed by the amendment to section 2, article 12, of the constitution adopted in 1906, which provides that—

"Dues from corporations shall be secured by the individual liability of the stockholders to the amount of stock owned by each stockholder, and such other means as shall be provided by law," etc.

Appeal from Saline district court; DALLAS GROVER, judge. Opinion on rehearing filed June 10, 1922. Former opinion reversed. (For original opinion of affirmance see 110 Kan. 559.)

John L. Hunt, of Topeka, and *B. I. Litowich*, of Salina, for the appellant.

Frank T. Knittle, *Ralph Knittle*, and *Thomas L. Bond*, all of Salina, for the appellee.

The opinion of the court was delivered by

JOHNSTON, C. J.: This controversy involves the effect of a constitutional amendment relating to the individual liability of stockholders upon a statute fixing the liability of stockholders in banking corporations, which was in force when the amendment was adopted.

Bank v. Laughlin.

The appeal, which was taken from a judgment holding that the amendment operated as a repeal of the statute, has had unusual attention. On the first hearing, the court, one justice not sitting, was equally divided on the question. A reargument of the case was therefore directed, and that hearing in which all the justices participated, resulted in a decision affirming the judgment of the district court, holding that the statute was repealed by the amendment. (*Bank v. Laughlin*, 110 Kan. 559.) Following that hearing an application for a rehearing was granted, and the third hearing has led to a shift of opinion so that the majority of the court now hold that the amendment did not nullify or affect the statute imposing a double liability on stockholders in banking corporations. As noted in the former opinion, the original constitutional provision on the subject was:

"Dues from corporations shall be secured by individual liability of the stockholders to an additional amount equal to the stock owned by each stockholder, and such other means as shall be provided by law; but such individual liabilities shall not apply to railroad corporations, nor corporations for religious or charitable purposes." (Gen. Stat. 1915, § 237, note.)

This provision was changed by an amendment adopted in 1906 which provided:

"Dues from corporations shall be secured by the individual liability of the stockholders to the amount of stock owned by each stockholder, and such other means as shall be provided by law; but such individual liability shall not apply to railroad corporations nor corporations for religious or charitable purposes." (Const., Art. 12, § 2.)

Before the adoption of the amendment statutes had been enacted for the enforcement of the double liability as against stockholders and corporations other than those specifically excepted in the constitutional provision. These provisions remained in force with some minor amendments until 1903, when the legislature repealed the enforcement provisions, except as to stockholders of banking corporations. The exception was made in these terms:

"Nothing in this act shall be construed so as in any manner to affect the liability of stockholders in any banking corporation, organized under the laws of this state as now provided by law." (Laws 1903, ch. 152.)

About five years before that time the legislature passed an elaborate act for the regulation of banks and in it is the provision, the existence of which is now challenged, that—

"The shareholders of every bank organized under this act shall be additionally liable for a sum equal to the par value of the stock owned and no more." (Laws 1897, ch. 47, § 10.)

Later and in 1906 the constitutional amendment already quoted was adopted which in effect substituted a single for the double liability of stockholders.

On one side it is contended that the amendment applies to all corporations other than those organized for railroad, religious or charitable purposes; that it operates as a repeal of the statute in question and effectually abrogates the additional or double liability of stockholders in corporations, including those holding stock in banks; and because of the obvious conflict between the amendment abolishing the double liability and the statute in question, the latter is necessarily repealed.

On the other side it is contended that there is no repugnancy between the amendment and the statute, that the amendment prescribes the minimum of liability, but leaves the maximum or extent of liability that may be imposed to the legislature and that this is disclosed by the words in the amendment, "such other means as may be provided by law." And it is further contended that the statute which provides "other means"; that is, the double liability of stockholders in banks, being in force when the amendment was adopted, continued in force and was as effective as if it had been reenacted after the adoption of the amendment. It is further insisted that the interpretation contended for is the practical construction which has been placed upon the amendment by the executive and legislative departments of the state and should be given consideration by the court.

The majority view of the court is that the amendment did not effect a repeal of the statute and that the plaintiff is entitled to recover the amount claimed from defendant. The theory is that there are no limits upon the legislative power except such as are prescribed in the state and federal constitutions, that under our system a constitutional provision is not a grant of power but is a limitation on the power the legislature may exercise and where there is no limitation, its power is absolute and plenary. The only limitations imposed upon that body by the constitutional amendment is that no individual liability shall be imposed on stockholders of railroad, religious and charitable corporations and that the liability of stockholders in other corporations shall not be less than the amount of stock owned by each of them. Under the amendment the legislature is admonished that the debts of the corporation must be secured by stockholders up to the prescribed

me. in
the leg
addit
vision
credite
bilty
to such
vide.
fix the
bilty.
liabilit
by the
liabilit
constit
amend
withou

"The
unless t
69 Kan.
688, 693

Unde
nothing
erence
694, ar
opposed
view o
an aut
dealt w
here wa
language
of the
more co
valid st
Bank v
language
double
the pra
held th
times w
tion pla

Bank v. Laughlin.

minimum of liability and as no maximum of liability is prescribed the legislature under its general power is free to provide for such additional liability as it deems to be wise. The constitutional provision is a measure for the protection of creditors, and under it creditors may look to the stockholders upon their individual liability to an amount equal to the stock held by each of them and to such further liability as the legislature in its discretion shall provide. The legislature could not under the constitutional mandate fix the protection of creditors at an amount less than the single liability, but under its general power could make it a double or treble liability or any reasonable amount in excess of the minimum fixed by the amendment. The legislature had provided for a double liability of stockholders in banks in harmony with the original constitutional limitation and as it is not inconsistent with the amendatory provision as construed, that act continued in force without an express provision to that effect. It has been said that—

"The adoption of a constitutional amendment will not repeal a valid statute unless the repugnance between them be irreconcilable." (*Fischer v. Moore*, 69 Kan. 191, 202, 76 Pac. 403. See, also, *Leavenworth Co. v. The State*, 5 Kan. 688, 693; *Prohibitory-Amendment Cases*, 24 Kan. 700, 722.)

Under the construction placed upon the amendment there is nothing approaching repugnancy between it and the statute. Reference has been made to *Bicknell v. Altman*, 81 Kan. 436, 105 Pac. 694, and *Douglass v. Loftus*, 85 Kan. 720, 119 Pac. 74, as being opposed to the construction now given the amendment. It is the view of the court that neither of these cases can be regarded as an authority against the construction adopted as the corporations dealt with in those cases were not banks, and the statute involved here was not under consideration. It may be said further that the language employed in those cases is to be interpreted in the light of the questions the court had under consideration. They are no more controlling as to the effect of the amendment on an existing and valid statute than *Faulkner v. Bank*, 77 Kan. 385, 94 Pac. 153, and *Bank v. Strachan*, 89 Kan. 577, 132 Pac. 200, in both of which language was used that was open to the interpretation that the double liability of stockholders was still in existence. So far as the practical construction of the amendment is concerned, it is held that the court may call to its aid not only the history of the times when it was adopted, but also the contemporaneous construction placed upon it for a considerable period by those charged with

its application and execution. So attention is called to the fact that the legislature had framed and submitted the amendment in 1905 and that in 1909 it passed an act which provided for the collection of double liability from stockholders in banking corporations. (Laws 1909, ch. 59, § 7, Gen. Stat. 1915, § 573.) There was a like reference when the bank guaranty law was enacted, for in it was a provision requiring the officer in charge of an insolvent bank to exhaust the double liability of its stockholders. (Laws 1909, ch. 61, § 4, as amended by Laws 1911, ch. 62, § 1, Gen. Stat. 1915, § 598.) It was said in argument that the banking department since 1906 when the amendment was adopted had interpreted it and the statute as justifying and requiring the enforcement of a double liability against stockholders of insolvent banks, and that this interpretation had been acquiesced in by banks and the stockholders of banks during the period named. The constitutional amendment is of course to be construed in the sense in which it was understood by those who adopted it and cannot be given a meaning contrary to the import of the language used. However, where there is obscurity or ambiguity in the provision, resort may be had to the aids mentioned to ascertain the purpose and meaning of those who framed and adopted the amendment. Of themselves they are of little weight, none at all unless the construction is a doubtful one, but such light as they throw on the purpose of the authors of the amendment is corroborative of the construction placed upon it. It follows that the former decision is set aside and that the judgment of the district court is reversed with the direction to enter judgment against the defendant.

JOHNSTON, C. J. (dissenting): I am unable to concur in the construction placed upon the constitutional amendment. The view stated in the first and what was then the prevailing opinion sufficiently set forth the views I entertain on the question. (*Bank v. Laughlin*, 110 Kan. 559.) A reiteration of them here is unnecessary and a reference to that opinion is made for the grounds of my dissent.

WEST and MARSHALL, JJ., join in the dissent.

BURCH, J. (concurring): Section 1 of article 2 of the constitution of this state reads as follows: