MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

Held in Room 526, at the Statehouse at 3:30 a. m./p. m., on February 21, 19 79.

All members were present except:

The next meeting of the Committee will be held at 3:30 a. m./p. m., on February 22, 19 79.

The minutes of the meeting held on February 19, 1979 were considered, corrected and approved.

JOSEPH J. HOAGLAND
Chairman

The conferees appearing before the Committee were:

Representative Mike Meacham

Chairman Hoagland called the meeting to order at 3:30 p.m. and indicated to the committee the agenda for next week was before each of them.

The chairman indicated the first order of business was HB 2193, the Coal Slurry Pipeline bill. He indicated that as Chairman of the committee, the committee's deliberations had been a humbling experience since this was a very complex issue. He stated that he had encouraged ETSI and the Railroads to sit down together earlier in the day to come to an agreement and that he had issued a brief press release stating the nature of the agreement and a copy was in front of each committee member for their information. He closed by stating he was hopeful the Coal Slurry Pipeline issue would never again come before this legislature. (Press Release - SEE ATTACHMENT # 1).

Chairman Hoagland then introduced Rep. Meacham, major sponsor of HB 2193. He gave a lengthy statement to the committee and closed by indicating there no longer seemed to be a need for HB 2193 and therefore recommended to the committee that the bill be reported adversely. (SEE ATTACHMENT # 2).

Rep. Gillmore made a motion to report HB 2193 adversely. Seconded by Rep. Baker. Motion carried unanimously.

The next item was HB 2547, a bill to simplify contract agreements. Mr. Ferguson moved to report the bill adversely. Seconded by Rep. Douville. Motion passed. Rep. Gillmore is recorded as voting "no."

Rep. Brewster then moved that HB 2123 be reported favorably. Rep. Miller seconded. The motion carried.

Rep. Heinemann then moved that HB 2188, a bill on witness fees, be passed favorably. It was seconded by Rep. Harper. Motion passed.

Chairman Hoagland then asked Rep. Heinemann, Chairman of the Criminal Law Sub-Committee for his report to the committee.

The sub-committee recommended reporting HB 2038, a death penalty bill, adversely. Rep. Heinemann moved to report HB 2038 adversely. Seconded by Rep. Roth. Motion passed.

The sub-committee further recommended reporting HB 2042, a death penalty bill, adversly. Mr. Heinemann made that motion, seconded by Rep. Gillmore. Motion carried.

HB 2131, was recommended by the sub-committee to be passed favorably. Rep. Heinemann moved that HB 2131 be passed favorably. Seconded by Rep. Ferguson. Motion passed.

Rep. Ferguson then moved that HB 2365 be passed favorably. This was a bill requested by the Judicial Council; an act concerning public defenders. Seconded by Rep. Brewster. Motion passed.

The sub-committee chairman then indicated they recommended HB 2366 be passed favorably. Mr. Frey moved to amend the bill by reinstating the stricken language in Section 1, through Line 48. Seconded by Rep. Glover. Motion carried to amend HB 2366. Rep. Heinemann then moved to pass HB 2366 favorably as amended. Seconded by Rep. Roth. Motion passed.

HB 2127 was the next bill recommended by the sub-committee. Rep. Brewster moved to conceptually amend to read, "photographs may be admitted as evidence." Seconded by Rep. Gillmore.

Rep. Stites then moved that HB 2127 be reported adversely. Rep. Crow seconded this substitute motion. Motion failed. Rep. Brewster then withdrew his conceptual amendment motion.

Rep. Brewster then moved to report HB 2127 to pass favorably. Seconded by Rep. Harper. Motion passed. Rep.'s Miller, Martin, Crow and Ferguson voted no on the motion.

Rep. Gillmore then reported for the Family Law Sub-Committee. They recommended that HB 2124 be amended on Page 1, Line 34, by striking all after "restrained," and by striking all of lines 35 and 36, and in line 37, by striking all before the period. Rep. Gillmore so moved to amend HB 2124. Seconded by Glover. Motion carried to amend HB 2124. Rep. Gillmore then moved to pass HB 2124 as amended. Seconded by Rep. Glover. Motion carried.

Rep. Gillmore then moved to recommend HB 2351 for favorable passage. Seconded by Rep. Brewster. Motion carried.

Rep. Martin moved for favorable passage of HB 2501. Seconded by Rep. Foster. Motion passed.

HB 2117, a bill concerning certain appeals concerning the Kansas Juvenile Code, was discussed next. Rep. Foster moved to report the bill adversely. Seconded by Rep. Gillmore. Motion carried.

Chairman Hoagland adjourned the meeting at 4:40 p.m.

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HOUSE OF
REPRESENTATIVES

February 21, 1979

PRESS RELEASE - *** FOR IMMEDIATE RELEASE ***

Representative Joe Hoagland (R) of Overland Park, Kansas, Chairman of the House Judiciary Committee, stated today: "The adversaries in the intense dispute over eminent domain legislation for coal slurry pipelines in the Kansas Legislature, have reached an agreement on their differences."

Representative Hoagland stated today, "at a meeting in his office, representatives of the railroads and coal slurry pipelines reached an agreement as to the status of the law in Kansas on the rights of the pipeline to get under the railroad rights-of-way."

Mr. Hoagland quoted Henry Schulteis, General Counsel for the Kansas Railroad Associations, as stating: "The law in Kansas is that railroads in Kansas have easements only in all of their rights-of-way, with two settled exceptions and these are only; where the land is used for depots, repair shops or when a railroad acquires entire town lots by warranty deeds; and a possible third exception, where the U.P. acquired it's right-of-way under the 1862 Act of Congress. The appeal by the U.P. from a judgment in favor of E.T.S.I. is to be argued on March 13, before the 10th Circuit."

Representatives of the coal slurry pipelines present at the meeting, agreed this was a correct statement of the law.

Atch. 1

Representative Mike Meacham, a primary sponsor of the coal slurry pipeline bill, agreed with the parties that need for HB 2193 no longer existed. He appeared before the House Judiciary Committee today and requested that the bill be reported adversely on the grounds the question has been resolved, and the need no longer exists.

Chairman Hoagland acknowledged there were at least some misunderstandings during the time the bill was pending. Mr. Hoagland, in this regard, stated: "The Committee finds that although there were controversies, there were no deliberate misrepresentations of fact and no deliberate attempts on the part of any of the participants to mislead the committee or to distort the truth."

STATEMENT OF REPRESENTATIVE MEACHAM ON FEBRUARY 21, 1979
TO THE HOUSE JUDICIARY COMMITTEE OF THE KANSAS LEGISLATURE

Mr. Chairman, and Members of the Committee:

I appear before you this afternoon on House Bill 2193, the coal slurry pipeline bill.

I attended a meeting in Chairman Hoagland's office this morning concerning this bill. Those attending the meeting included Henry Schulteis, general counsel for the Kansas Railroad Association; Pat Hubbell, legislative representative for the Kansas Railroad Association; William C. Farmer, general counsel for Energy Transportation Systems, Inc.; and Pete McGill, legislative representative for Energy Transportation Systems, Inc.; and committee members consisting of Mr. Robert Frey, Mr. Neil Whittaker, Mr. James A. Gillmore, and Chairman Hoagland.

The purpose of the meeting was to determine if there was some possible reconciliation of the differences which had developed between the proponents and opponents. As a result of this meeting, certain specific conclusions were reached:

1. Henry Schulteis, general counsel of the Kansas Railroad Association, rendered a legal opinion as to the rights and interests all railroads had in their rights of way. He advised he was authorized to make this commitment for all railroads and stated: "The railroads own an easement only in their respective rights of way anywhere in Kansas except for ~~three~~ two instances which are: Lands used for depots, shops, and town lots where obtained by warranty deeds." *

2. In addition to the remarks made by Mr. Schulteis, I am mindful of the statements made by Mr. Hubbell before this Committee at the hearings held on February 13, 1979, when he said:

Atch. 2

* And a possible third exception where the Union Pacific acquired its right of way under the 1862 Act of Congress. The appeal of the U.P. from a judgment in favor of ETSI is to be argued (over)

on March 13 before the 10th Circuit.

"Thank you, Mr. Chairman, Members of the Committee:

"Proponents have testified they need eminent domain to enable them to cross railroad rights of way where the railroads own the right of way in fee simple. They need this power to avoid a zigzag effect of their pipeline and that this would result in a savings of $31 million in their construction cost. This contention as to railroad title is contrary to present Kansas law.

"Regarding also the nature of the instrument by which a railroad occupies ordinary right of way, the rights are limited. A railroad has all rights to the surface and to the strata below the subsurface and below the substrata, which are necessary, convenient, and needed by the railroad now or in the future in connection with its construction, maintenance, and operation of its railroad.

"All other rights in the subsurface and substrata are vested in the owners of the fee in abutting lands. There are two occasions where a railroad has limited fee title to its right of way: Where a railroad holds a warranty deed to the abutting land which is used other than for ordinary right-of-way purposes, such as land occupied by depot or repair shops in the towns or close to towns.

"The other occasion would be where a railroad acquires entire town lots by warranty deed . . ."

You will recall that last Wednesday, February 14, 1979, at the rebuttal hearing before this Committee, the proponent's position was stated by Mr. McGill on this subject. He commented on Mr. Hubbell's prior statements along the same line as above concerning the easements only which the railroads own in their rights of way. Concerning this, Mr. McGill stated:

"If Mr. Hubbell is sincere, Mr. Chairman, as I prefer to believe, and Mr. Hubbell will so assure this Committee, then we would be quite willing to recommend to the sponsors of House Bill 2193 that the primary need for this legislation no longer exists."

Mr. Chairman, it was my impression from the meeting this morning that you and the other committee members presently felt that, in view of these clarifications, the need for House Bill 2193 no longer exists. I speak for the proponents of this bill when I say we agree with this conclusion. This is consistent with our representations made to the Committee on February 14, 1979. I, therefore, recommend that in order to clear the calendar of this Committee that this bill be reported adversely.

Mr. Chairman, I hand you a copy of my remarks and request that they be made a part of the permanent records of this Committee.

Respectfully submitted,

Mike Meacham

Representative Mike Meacham

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SENATE CHAMBER

M I N U T E S

CONFERENCE COMMITTEE ON HOUSE BILL NO. 2501

April 24, 1979

Room 519 - State House

The Conference Committee on House Bill No. 2501 was called to order by Senator Elwaine F. Pomeroy at 8:00 a.m. on April 24, 1979. Members present were Senator Elwaine F. Pomeroy, Senator Paul Hess, Senator Jack Steineger, Representative David J. Heinemann, and Representative Phil Martin. The Conference Committee proceeded to receive testimony from conferees who were present.

Mr. Nick Tomasic, the District Attorney from the 29th Judicial District (Wyandotte County) testified in support of the senate amendments to House Bill No. 2501. He stated that if any doubt exists whether the insanity defense acquitee might engage in future harmful conduct, then the matter should be resolved in favor of protection of the community. He further suggested additional amendments to House Bill No. 2501. His suggestions included, among others, a requirement that the judge make express findings of fact and conclusions of law; provision for a stay of an order to release the patient if the prosecution appeals the court's decision; a specific list of factors the court must take into consideration in determining whether or not to release the acquitee; and a provision to allow the district or county attorney to request an additional patient evaluation, at a place designated by the court.

Mr. Robert L. Feldt, an attorney from Great Bend, Kansas, stated that in his opinion, the senate amendments to House Bill No. 2501 might be likened to performing cosmetic surgery on a terminally ill patient. He stated that K.S.A. 1978 Supp. 22-3428 is subject to Constitutional challenge. He related that in his opinion, the reasoning of the United States Court of Appeals for the District of Columbia decision in Bolton v. Harris, 395 Fed. 2d 642 (1968) would apply to the Kansas statute pertaining to the insanity defense, because that decision struck down a similar statute for the District of Columbia. In addition, he believes that a recent United States Court of Appeals, Fifth Circuit, decision -- Powell v. Florida, 579 Fed. 2d 324 (1978) is indicative of a trend in the way the federal courts will review the insanity defense statutes. He believes both cases stand for the proposition

that to satisfy the constitutional due process requirements there must be no substantial differences between statutes authorizing the commitment of a defendant based upon an acquittal because of insanity and a patient committed to a hospital under civil commitment provisions. In answer to a question from Senator Pomeroy, Mr. Feldt stated that in his opinion, it would be possible for Kansas to do away with the insanity defense, if there was a subsequent hearing on the matter of disposition of the defendant upon a finding of guilty. He pointed out that this would be a very far-reaching decision, and he urged the Conference Committee to request an interim study of the entire matter, rather than adopting the senate committee amendments.

Mr. Bill Ryan, a part-time counsel for Larned State Hospital, testified on problems the hospital faces in complying with statutory requirements pending a proposed release of the insanity defense acquitee from the hospital. In answer to one question, he pointed out that upon release from the hospital, the law provides for a probation-type arrangement to oversee patient compliance with the terms and conditions of release. If the acquitee fails to comply, the district or county attorney may then file to have the person involuntarily committed to the hospital.

Bruce Roby, an attorney with the Department of Social and Rehabilitation Services, stated that he agrees with Mr. Feldt that there does appear to be a trend -- beginning in the eastern states -- to treat the insanity defense acquitee in the same way as a person committed under civil provisions. There may be some constitutional risk to the Kansas commitment provisions if this trend continues. He stated that there was a recent report issued by the New York Department of Mental Hygiene which advocated abolishing the insanity defense and which recommended that the New York Legislature adopt a rule of diminished capacity under which evidence of abnormal mental condition would be admissible to affect the degree of the crime for which an accused could be convicted.

Mr. Max Moses, representing the Kansas Association of County and District Attorneys, spoke in support of the senate amendments to House Bill No. 2501.

Thereupon, the meeting adjourned until 12:15.

The Conference Committee was called to order again at 12:15 by Senator Elwaine F. Pomeroy. Discussion of the merits of the senate amendments followed. Following committee discussion, it was agreed that the House should accede to the Senate amendments to House Bill No. 2501, and that further amendments to the bill should be made. The members agreed that although the burden of proof should be placed on the acquitee, that burden should be by a preponderance of the evidence, rather than by

clear and convincing evidence as provided in the Senate amendments. The committee agreed to provide that a copy of the medical report would be furnished to the county or district attorney of both the county where the hospital is located and the committing county, and that the county or district attorney of the committing county would have five days after receipt of that medical report in which to move to have the venue transferred to the committing county.

The committee members agreed that abolition of the insanity defense presents issues much too complex to be resolved by the Conference Committee, and that an interim study should be requested.

It was further agreed that the Senate amendments which added the language "or a danger to persons in the community if the patient is discharged or conditionally released" following the phrase "continues to be a danger to the patient's self or others" was not needed, because the present law presently should be interpreted in that manner, and that it was the legislative intent when the present statute was adopted that the phrase "or others" includes persons in the community if the patient is discharged or conditionally released. Therefore, the additional language suggested by the Senate amendments are not necessary, since the law presently includes a consideration of the potential for danger to persons inthe community.

Elwaine F. Pomeroy

Senator Elwaine F. Pomeroy