

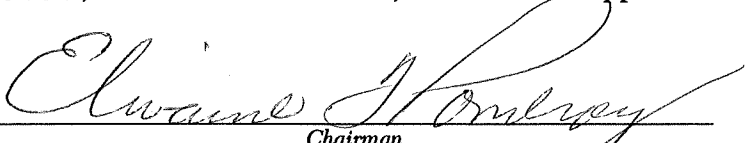
MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

Held in Room 519 S, at the Statehouse at 10:00 a. m. ~~p.m.~~, on January 15, 19 79.

All members were present except: Senators Allegrucci, Gaar and Mulich

The next meeting of the Committee will be held at 10:00 a. m. ~~p.m.~~, on January 16, 19 79.

~~These minutes of the meeting held on XXXXXXXXXXXXXXXXXXXXXXXX were considered, corrected and approved XX~~



\_\_\_\_\_  
Chairman

The conferees appearing before the Committee were:

- Shirley Atteberry
- Max Moses - Kansas County and District Attorneys Association
- Frances B. Kastner - Kansas Food Dealers Association
- Senator Neil H. Arasmith

Staff present:

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

Senate Bill 65 - Appeals in small claims procedure actions.  
At the request of Senator Berman, the author of the bill, the consideration of this measure was postponed to a later date.

Senate Bill 43 - Crime of giving a worthless check, notice and service charges. The author of the bill, Senator Arasmith, testified in support of this bill. He stated that the present \$3.00 charge is not sufficient to cover the actual costs incurred by the payee of an insufficient fund check. He also explained the reasons for the changes in the bill relating to the type of mailing of notice. Committee discussion followed. A committee member raised the question as to whether there should be a requirement for anything other than ordinary first class postage prepaid mail. Another committee member raised questions as to writing into various statutes different presumptions as to the time when mailed notice is presumed and becomes effective. Committee discussion also included an attorney general's opinion concerning this service charge, and a recent Kansas Court of Appeals decision.

Mrs. Shirley Atteberry testified in support of the bill. She stated that the \$3.00 charge was first placed in the statutes in 1972. She gave a summary of the holding in the Court of Appeals case. Committee discussion with her followed. In response to a question, she stated that she certainly favors leaving the \$50.00 threshold for felony prosecutions, rather than increasing it to \$100.00.

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 January 15, 1979

Max Moses, of the Kansas County and District Attorneys Association, testified with regard to the bill; a copy of his comments are attached hereto. He stated the association supports the change in the type of mail required. He further recommended that the threshold be increased from \$50.00 to \$100.00. Committee discussion with him followed.

Frances B. Kastner, of the Kansas Food Dealers Association, testified in support of the bill. She stated that the association would certainly be opposed to raising the threshold to \$100.00.

Senator Burke moved to approve the minutes of the meetings held January 10 and 11; Senator Hein seconded the motion, and the motion carried.

The meeting adjourned.

These minutes were read and approved  
by the committee on 1-18-79.

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Max G. Moses	Townsite 3 - #246	Kansas County & DA Assoc.
Leland W. Attebery	Topeka, KS	Research + Data, Inc.
Shirley M Attebery	Decumbe, KS	Research + Data Inc
John Dearloff	Dodge City	Leg. Intern
Shannon S. Krupl	Topeka, KS	Leg. Asst.
DWAYNE SACKMAN	" "	BUDGET Div.
Jon Kessler	Intern for Don Allegrucci	
Pete B. Carlsman	Topeka	AP
Media House	"	Topeka Daily Credit
Frances Koptner	3923 Rochester Rd	Topeka
John Patton	Topeka	Coye
Mary Subase	"	KS DA
Bill Gough	"	KACT

# Kansas County & District Attorneys Association

1-15-79

Townsite Office Plaza #3 • Suite 240 • 200 E. 6th St. • Topeka, Kansas 66603 • (913) 357-6351

TO: Senator Elwaine Pomeroy, Chairman Senate Judiciary Committee  
RE: Senate Bill 43

Senate Bill 43 on lines 42 through 47 changes the requirements necessary to raise the presumption that notice has been given to the maker or drawer of an allegedly worthless check.

The Amendment would expand the time before prosecution may be commenced to ten days and further provides for the alternate use of registered or certified mail as opposed to restricted.

The prosecutors in Kansas support this change from restricted to registered or certified mail. The prosecution of worthless checks can be one of the most difficult on which to obtain a conviction. Many times the passer of a worthless check will provide an out of date address with the sole purpose in mind to escape prosecution.

The overly restrictive "restricted" mail provisions do not allow enough flexibility to both give notice and at the same time allow for the successful prosecution of the case.

"Restricted" delivery would require the signature of the person addressed or his agent. Merely refusing to appear to pick-up and sign for the letter by the potential defendant can defeat the notice presumption.

Registered or certified delivery can enable the prosecutor to show at least delivery to the place of residence shown on the check, while still allowing the defendant the opportunity to present valid evidence to rebut the presumption.

We urge that the Senate Judiciary Committee report favorably on this amendment.

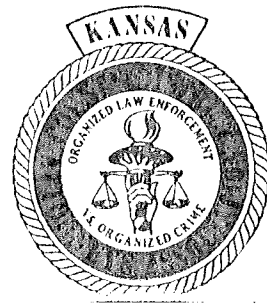
Turning for a moment to another item in K.S.A. 21-3707, specifically Section 4, we would like to offer a further Amendment for your consideration.

We recommend that line 57 and line 59 be changed from \$50.00 to \$100.00 in determining whether the crime charged is a felony or misdemeanor.

There are other statutes that deal with the deprivation of property and theft which are similar in scope to K.S.A. 21-3707. Notably the following:

K.S.A. 1978 Supp 21-3701	-	Theft
K.S.A. 1978 Supp 21-3704	-	Theft of Service
K.S.A. 1978 Supp 21-3720	-	Criminal Damage to Property.

In all of the above statutes, the felony level was raised to \$100.00 in the 1978 Session of the Legislature.



In this day and age of inflation \$100.00 much less \$50.00 will not buy much.

It is important that uniformity be established and maintained in these types of statutes.

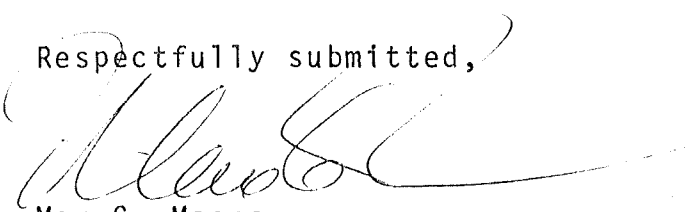
Under current law, someone could shoplift an item worth \$85.00 and be subject only to prosecution for a misdemeanor. However, if he would have written a worthless check for the same item at the same store, he would be prosecuted for a felony.

In most jurisdictions, the individual who shoplifted the item would probably qualify for diversion, whereas the man who wrote the worthless check might not.

The inconsistencies need to be resolved.

We would urge that the Committee further amend K.S.A. 21-3707 to raise the dollar amount for a misdemeanor to \$100.00

Respectfully submitted,

  
Max G. Moses  
Executive Director

