

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

Held in Room 519 S, at the Statehouse at 10:00 a. m. 1979, on January 30, 1979.

All members were present except: Senators Gaar and Gaines

The next meeting of the Committee will be held at 10:00 a. m. 1979, on January 31, 1979.

~~These minutes of the meeting held on XXX were considered, corrected and approved.~~

*E. Wayne Tomlinson*  
Chairman

The conferees appearing before the Committee were:

- Senator Richard Gannon
- Frank Gentry - Kansas Hospital Association
- Hannes Zacharias - Associated Students of Kansas
- Senator Michael Johnston
- Jerry Levy - Kansas Trial Lawyers Association
- Paul E. Fleener - Kansas Farm Bureau

Staff present:

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

Senate Bill 107 - Increasing jurisdictional amount of small claims procedure act. Senator Gannon testified in support of the bill. He stated it would save litigants time and money. In answer to a question, he stated that HB 2086 accomplishes the same purpose, and he would have no objection to the committee acting on the house bill rather than on his bill. Committee discussion followed.

Frank Gentry testified in support of the bill. He stated he favors increasing the jurisdictional amount to \$1,000; however increasing it to \$500 would be helpful. He urged the committee to consider amending the statute which limits a person to five usages of the small claims court in a given calendar year.

Hannes Zacharias testified in support of the bill. He stated he also would support increasing the jurisdiction amount to \$1,000.

Senate Bill 111 - Emergency care or assistance at scene of an emergency or accident. Senator Johnston testified in support of the bill. He stated it seems reasonable to provide limited immunity for someone who wants to help a person in time of need. He feels that everyone should have protection when they render

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 30, 1979.

SB 111 continued

care in good faith. Committee discussion with him followed.

The chairman informed the committee that Mary Wiersma of the Kansas Farm Bureau had wanted to testify in support of the bill, but bad weather prevented her from being present. Her written statement is attached hereto.

Jerry Levy stated that his problem is with the present law and the mention of gross negligence or willfull and wanton acts. Committee discussion with him followed. He stated that if the gross negligence provisions were changed, he would have no problem with the bill otherwise. He stated he feels that the standard of care should be commensurate with the skill and training that the person rendering aid had.

Paul Fleener testified in support of the bill.

The committee discussed the introduction of a committee bill dealing with powers and authority concerning campus police officers. Following committee discussion, Senator Steineger moved to introduce it as a committee bill and have it referred back for hearing; Senator Mulich seconded the motion, and the motion carried with Senator Allegrucci voting "No."

House Bill 2086 - Small claims procedure maximum amount.

Senator Hess, who with Senator Gannon, was the co-sponsor of SB 107, stated that he shares the views of Senator Gannon that the committee should proceed to act on the house bill, rather than on SB 107. Senator Burke moved to report HB 2086 favorably for passage; Senator Werts seconded the motion. Senator Berman made a substitute motion to amend the bill by inserting a new section as indicated on the ballooned copy of SB 65 which was distributed to the committee members; a copy is attached hereto. Senator Hein seconded the motion. Committee discussion followed, but was not completed in time to take further action at this meeting.

The meeting adjourned.

These minutes were read and approved  
by the committee on 2-12-79.

GUESTS

## SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Arland V. Hicks	Topeka	KDOT
Frank Gentry	"	Ks Hospital Assoc
Jerry Levy	Topeka	KTLA
Paul Johnson	Topeka	KLS
Dan Bell	AP	
Hannes Zachario	Topeka	Assoc. Stud. of Kans
Alton Seelins	"	KTLA
Paul E. Fleener	Manhattan	Kansas Farm Bureau

Statement Presented to  
Senate Judiciary Committee  
January 30, 1979  
Re: Senate Bill 111  
By Mary J. Wiersma  
Director, Rural Health Care Dept.  
Kansas Farm Bureau  
Manhattan, Kansas

Approximately four years ago we began working within our organization to help our members become aware of the opportunities for better citizenship as more and more of the Kansas population became users of CPR skills. As with the majority of citizens, the term CPR had little recognition at that time. Within a year, however, our organization had established a long-range objective of having one member of every farm family trained in cardiopulmonary resuscitation. We soon found that we were wise in designating that goal as a long-range objective because in the more rural areas of the state, we had to wait several months to have access to a qualified instructor or training program.

We know that in the first year of active CPR training we did train at least 5,000 members. These members were trained by American Heart Association volunteers, Red Cross volunteers, highway patrolmen, local ambulance personnel, community hospital personnel, physicians, nurses, etc. Thus, many of these people have no certificate but do have the pride and security--with continued and conscientious retraining--of knowing that should an emergency develop, they could make a good faith effort to save a family member, friend, or stranger using CPR skills.

As more and more Kansas citizens become aware of the present language of the Kansas Good Samaritan Act, laymen question whether to enroll in a CPR class if such training is not available via Red Cross or Heart Association and more and more citizens question whether to stop or pass by an accident or emergency demanding responsible life-saving care. We appear today to support the language of Senate Bill 111 as it does grant both the health care provider and/or trained layman the exemption originally intended by this act. We firmly believe the time has arrived

for the State of Kansas to consider a more general statement of liability exemption.

At the conclusion of this statement you will find a copy of the resolution endorsed by the voting delegates representing 105 county Farm Bureaus at our state annual meeting, December 6, 1978. This is the second year our membership has held this position. In adopting this resolution the first time, our Public Affairs staff found that the states of Arkansas, Florida, Iowa, Minnesota, Ohio, Oregon, Virginia and Wyoming do now have statutes providing a general exemption. There may be other states to add to the general exemption list, but I have information only from these eight states thanks to a limited survey completed last year by our Public Affairs Division.

You will find attached to this statement a copy of the Iowa law passed in 1969. Its simplicity would encourage both the health care provider and the layman to make a good faith effort without compensation when an emergency demanded reasonable care.

We firmly believe that more Kansas citizens would be trained if the liability question was removed. We do not believe that it is reasonable to expect the physician's assistant who has completed the training program at WSU and might be waiting the results of his or her national board exam to question whether to stop at the scene of an accident and yet the law now provides exemption only when such an individual has successfully completed the national board exam. We cannot believe that the American Heart Association first aid or CPR trainee whose certification has expired just one week ago could not provide reasonable care and attention at the scene of an accident. We cannot believe that the many citizens of northeast Kansas who have been CPR trained by St. Francis or Stormont Vail Hospital here in Topeka should question bypassing the scene of an accident knowing that if a legal question came up they would not be covered under the present law.

We thank you for the opportunity to discuss these concerns with you and would be most happy to answer any questions or share any additional information we might be able to provide.

1979 Kansas Farm Bureau Resolution

**Good Samaritan Law**

More and more state legislatures have come to realize that original intent of such laws has been clouded as additional health professionals sought exemption from such statutes. We would encourage the Kansas Legislature to remove the specific language exempting various health professionals and laymen now found in Kansas Statutes and substitute a general statement exempting from civil damages any person acting in good faith to render emergency aid without compensation.

IOWA CODE  
ANNOTATED

*Official Classification*

Volume 41

Sections 611 to 615

Cumulative Annual Pocket Part

*For Use In 1977-1978*

Replacing prior pocket part in back of volume

Includes laws through the  
1976 Regular Session  
See, also, Iowa Criminal Laws  
1977 Special Pamphlet

ST. PAUL, MINN.  
WEST PUBLISHING CO.

TORT LIABILITY

§ 613A.1

Law Review Commentaries

Intrafamily immunity, pure compensation, and family exclusion clause. Gerald G. Ashdown, 60 Iowa L.Rev. 239 (1974).

Parental Responsibility Act of Iowa. 55 Iowa L.Rev. 1037 (1970).  
Protection of the family. 60 Iowa L.Rev. 560 (1975).

613.17 Emergency assistance in an accident

Any person, who in good faith renders emergency care or assistance without compensation at the place of an emergency or accident, shall not be liable for any civil damages for acts or omissions unless such acts or omissions constitute recklessness.

Acts 1969 (63 G.A.) ch. 292, § 1, eff. July 1, 1969.

1. Construction and application

Whether or not emergency which prompts negligent conduct on part of driver of vehicle responding to emergency call has ceased at time of conduct complained of is ordinarily determinable by trier of fact. *Pleper v. Harmeyer*, 375, 235 N.W.2d 122.

Determination of whether or not peace officer was responding to "emergency call," and, therefore, given "special privilege" with regard to actions taken by such officer in response to such call is, in ordinary case, issue to be determined by trier of fact. *Id.*

Legal excuse doctrine could have applied, in personal injury action arising from automobile accident, to excuse actions of defendant deputy sheriff in improperly parking sheriff's car at scene of emergency call where such emergency was not of his own making since adoption of contrary view could unduly discourage prompt medical or lifesaving

services by doctors, peace officers or ambulance personnel. *Id.*

A person who undertakes to be a Good Samaritan is bound by same rules of road as others who use the highway, and his good intentions do not relieve him of obligation to use due care. *Manley v. Janssen*, 1973, 213 N.W.2d 603.

A person who renders emergency service or assistance for compensation is not covered by this section. City owned vehicles used for official business must display license plates, but a fee may not be charged for them. A city need not purchase insurance for an ambulance. *Op. Atty. Gen. (Hutchins)*, July 14, 1976.

A fire department that serves its members without compensation, but serves non-members for compensation is not entitled to the benefits of this section. *Op. Atty. Gen. (Ellsworth)*, Feb. 3, 1971.

CHAPTER 613A. TORT LIABILITY OF GOVERNMENTAL SUBDIVISIONS

Sec.		Sec.	
613A.1	Definitions.	613A.7	Insurance.
613A.2	Liability imposed.	613A.8	Officers and employees defend-
613A.3	Actual knowledge of defect as		ed.
	defense.	613A.9	Compromise and settlement.
613A.4	Claims exempted.	613A.10	Tax to pay judgment or set-
613A.5	Limitation of actions.		tlement.
613A.6	Death-claim presented by an-	613A.11	Claims not retrospective.
	other.		

*Chapter 613A, Tort Liability of Governmental Subdivisions, consisting of sections 613A.1 to 613A.11 was enacted by Acts 1967 (62 G.A.) ch. 405, §§ 1 to 11, effective January 1, 1968.*

613A.1 Definitions

As used in this Chapter, the following terms shall have the following meanings:

1. "Municipality" means city, county, township, school district, and any other unit of local government.
2. "Governing body" means the council of a city or town, county board of supervisors, board of township trustees, local school board, and other boards and commissions exercising quasi-legislative, quasi-executive, and quasi-judicial power over territory comprising a municipality.
3. "Tort" means every civil wrong which results in wrongful death or injury to person or injury to property or injury to personal or property rights and includes but is not restricted to actions based upon negligence; error or omission; nuisance; breach of duty, whether statutory or other duty or denial or impairment of any right under any constitutional provision, statute, or rule of law.
4. "Officer" includes but is not limited to the members of the governing body.

Acts 1967 (62 G.A.) ch. 405, § 1, eff. Jan. 1, 1968. Amended by Acts 1974 (65 G.A.) ch. 1087, § 32; Acts 1974 (65 G.A.) ch. 1263, §§ 1, 2.



# Jogger Takes Time Out To Save Runner with CPR

Monday night Dr. George Kirschbaum was a dead man sprawled on the track at Shawnee Mission East High School.

Wednesday night he was a grateful man resting in the intensive care unit at Menorah Medical Center.

Dr. Robert Morantz, who administered cardiopulmonary resuscitation (CPR) that saved Kirschbaum's life, was grateful, too—grateful he went jogging Monday night instead of following his inclination to stay home and grateful he had taken a refresher course a month ago in CPR, a technique for restoring breathing and heartbeat.

Morantz also is convinced as never before that as many people as possible should know CPR.

"I became a believer after Monday night," Morantz said.

As he bent over Kirschbaum, breathing for him and compressing his chest rhythmically to circulate life-giving blood, Morantz kept calling for help. He was growing wearier by the moment.

"There were people around," Morantz said. "I kept asking if anyone knew CPR, but no one did."

Kirschbaum, a dentist, was winding up his customary jog Monday night when suddenly, with little warning, he dropped to the ground. His heart, which on two previous occasions had failed him, began fibrillating—beating irregularly and too fast to circulate blood properly. His breathing stopped. He recalls thinking just before he lost consciousness, "Oh, boy, I'm having another one. I thought I was gone."

"I was trying to call for my wife,

Florence. I needed help but nothing would come out."

Morantz, an associate professor of neurosurgery at the University of Kansas Medical Center, was a quarter-lap away when he saw Kirschbaum lying on the track ahead.

Within the first crucial minutes that can mean the difference between life and death, between brain damage and a full recovery, he was at Kirschbaum's side performing CPR. As he forced air into Kirschbaum's lungs with mouth-to-mouth resuscitation, he paused between breaths to shout to joggers for help. One ran to call an ambulance. Morantz worked on. He can't remember how long. He was too busy.

Morantz thinks it was about 10 minutes later that Milton Brown of 4809 W. 78th Terrace, Prairie Village,

ran up. Brown, despite his ignorance of CPR, followed Morantz's instructions and helped with the chest compressions. Between breaths, Morantz guided Brown. "I'd tell him, 'a little slower, or a little harder,'" Morantz said.

Brown's wife, Kathy, who was jogging with him when the two heard Morantz's cries for help, ran to make a second call for an ambulance.

A team from Med-Act, Johnson County's emergency rescue service, arrived, and Morantz worked on while they used a portable defibrillator—a device which gives an electrical shock—to try to return Kirschbaum's heart rhythm to normal.

Finally, Morantz remembers: "His hand moved, and I thought, 'Oh, my God.' Then he started to talk. He asked an appropriate question. It surprised me because I honestly had some doubts on that cold track in the middle of nowhere how salvageable he might be."

Larry Joy, director of Med-Act and another firm believer in the necessity of a widespread effort to train the public in CPR, echoed that thought. Without CPR—immediate CPR—Joy said, "It was one of the those instances where if he'd zone eight to nine minutes with nothing—no heartbeat or breathing—you'd have had nothing."

Kirschbaum, of 5308 W. 80th, Prairie Village, recovered at the track to the point that he was able to tell the ambulance workers' emergency medical workers that he wanted to go to Menorah for admission. Wednesday, as he lay in bed chatting with the man who saved his life, he asked Morantz a question.

"How long did I have when I went out before ...?"

"About three to four minutes," Morantz replied.

Even though Kirschbaum has had two previous heart attacks, his family has never been trained in CPR so they could respond quickly should his heart fail again. "But they will now," he said.

Brown, who had passed up a chance to take CPR training through the company he works for, and his wife also plan to be prepared if they ever again find themselves in a similar situation.

"I would have been useless without the doctor there," he said. "This man knew what to do."

"I know if my wife and I had been there alone, the man would have stayed dead."

## SENATE BILL NO. \_\_\_\_\_

AN ACT concerning campus police officers; relating to powers and authority thereof; amending K.S.A. 76-726 and repealing the existing section.

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

Section 1. K.S.A. 76-726 is hereby amended to read as follows: 76-726. (a) The chief executive officer of any state educational institution may employ campus police officers to aid and supplement state and local law enforcement agencies. Such campus police officers shall have the power and authority of peace and police officers on: (1) Property owned or operated by the state educational institution or by an endowment association, athletic association, fraternity, or sorority associated with such institution; and (2) on the street immediately adjacent to the campus of the institution. When there is reason to believe that a violation of a state law, city ordinance or county resolution has occurred on property described in subdivision (1) or (2), such officers may investigate and arrest persons for such a violation anywhere within the county where such property is located.

(b) In addition to enforcement of state, county and city laws, resolutions and ordinances, campus police officers shall enforce rules and regulations of the board of regents and rules and policies of the state educational institution, whether or not violation thereof constitutes a criminal offense. Every campus police officer shall, while on duty, wear and publicly display a badge of office, except that no such badge shall be required to be worn by any plainclothes investigator or departmental administrator, but any such person shall present proper credentials and identification when required in the performance of such officer's duties. In performance of any of the powers,

duties and functions authorized by this act or any other law, campus police officers shall have the same rights, protections and immunities afforded to other peace and police officers.

Sec. 2. K.S.A. 76-726 is hereby repealed.

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

SENATE BILL No. 65

By Senator Berman

1-9

0015 AN ACT relating to the small claims procedure act; concerning  
0016 appeals from actions pursuant to such act; authorizing the  
0017 award of attorneys' fees; amending K.S.A. 1978 Supp. 61-2709  
0018 and repealing the existing section.

0019 *Be it enacted by the Legislature of the State of Kansas:*

0020 Section 1. K.S.A. 1978 Supp. 61-2709 is hereby amended to  
0021 read as follows: 61-2709. (a) An appeal may be taken from any  
0022 judgment under the small claims procedure act. All appeals shall  
0023 be by notice of appeal specifying the party or parties taking the  
0024 appeal and the order, ruling, decision or judgment complained of  
0025 and shall be filed with the clerk of the district court within ten  
0026 (10) days after entry of judgment. All appeals shall be tried and  
0027 determined *de novo* before a district judge or associate district  
0028 judge, other than a judge from which the appeal is taken. The  
0029 provisions of K.S.A. ~~1977~~ 1978 Supp. 61-1716 shall be applicable  
0030 to actions appealed pursuant to this subsection. The appealing  
0031 party shall cause notice of the appeal to be served upon all other  
0032 parties to the action in accordance with the provisions of K.S.A.  
0033 60-205. An appeal shall be perfected upon the filing of the notice  
0034 of appeal. When the appeal is perfected the clerk of the court or  
0035 the judge from which the appeal is taken shall refer the case to the  
0036 administrative judge for assignment in accordance with this sec-  
0037 tion. All proceedings for the enforcement of any such judgment  
0038 shall be stayed during the time within which an appeal may be  
0039 taken and during the pendency of an appeal, without the neces-  
0040 sity of the appellant filing a supersedeas bond. ~~If the appellee is~~  
0041 ~~successful on an appeal pursuant to this subsection, [The] court~~  
0042 ~~[may] award to the appellee as part of the costs, reasonable~~  
0043 ~~attorneys' fees incurred by the appellee [prevailing party] on ap-~~

If the appellee is successful on an appeal pursuant to this section, the

shall

to the appellee

appellee