

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

Held in Room 519 S, at the Statehouse at 10:00 a. m. ~~xxxx~~, on February 5, 19 79.

All members were present except: Senator Hein

The next meeting of the Committee will be held at 10:00 a. m. ~~xxxx~~, on February 6, 19 79.

~~These minutes of the meeting held on XXX~~



Clarence J. Tomney
Chairman

The conferees appearing before the Committee were:
Representative Kent Roth

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

Senate Bill No. 154 - Appointment of municipal judges, approval.

Senator Hess explained the problems which led to the introduction of this bill. The chairman explained that at the last meeting of the Judicial Council, discussion was had concerning the problem with cities chartering out from under the code of practice for municipal courts because of one provision in the code which relates only to first class cities. Mr. Griggs distributed copies of the Attorney General's Opinion No. 77-145; a copy is attached hereto. Mr. Griggs discussed enactments that are not uniformly applicable to all cities.

Senator Gaines explained the reasons for introduction of the bill. Following further committee discussion, staff was requested to obtain information as to what effect the making of a previously nonuniform act uniform has on home rule ordinances which already had been placed in effect.

Senator Simpson discussed with the committee the bill dealing with eminent domain which he introduced in 1977. Following committee discussion, Senator Simpson moved to introduce such legislation as a committee bill to be referred back for hearing; Senator Berman seconded the motion, and the motion carried.

The chairman announced that the committee had been asked to introduce a bill dealing with tampering with utility meters and stealing utilities. Senator Gaines moved to introduce the bill and refer it back for hearing; Senator Parrish seconded the motion, and the motion carried.

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 February 5, 19 79.

House Bill No. 2046 - Search warrants issued by district magistrate judges, territorial limitations. Representative Roth testified in support of the bill. He stated that it is primarily a cleanup bill.

Max Moses distributed copies of a statement from his association which had been distributed to the House committee in support of the bill.

Senator Steineger moved to report the bill favorably; Senator Parrish seconded the motion, and the motion carried.

The chairman called to the attention of the committee the deadlines for consideration of senate bills, and stated that the committee should complete its work on senate bills by Tuesday, February 27.

Senator Berman stated that the city of Lawrence had asked him have a committee bill introduced to amend K.S.A. 12-4213 to permit a person arrested to be held up to 48 hours, instead of the present 12 hours. Following committee discussion, Senator Berman moved that the committee introduce such a bill; Senator Steineger seconded the motion, but the motion failed.

Senate Bill No. 43 - Crime of giving a worthless check, notice and service charges. Mr. Griggs explained prior committee action on the bill. Following further committee discussion, Senator Allegrucci moved to amend the bill to provide that only the amount of the check has to be paid and not the statutory fee in order to invoke the presumptions; Senator Steineger seconded the motion, and the motion carried. Senator Allegrucci moved to further amend the bill by increasing the threshold to \$100 from the present \$50; Senator Parrish seconded the motion, and the motion carried. Senator Parrish moved to report the bill favorably as amended; Senator Simpson seconded the motion, and the motion carried.

Mr. Griggs stated that Senator Hein had requested a bill be drafted to present to the committee with regard to agreed divorce and separate maintenance actions which would permit the filing a petition by both parties. Committee discussion followed. No action was taken on the matter at this time.

The meeting adjourned.

These minutes were read and approved
by the committee on 2-21-79.

2-5-79

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Max Moses	Topeka	KCSA
Dan Close		Capital-Journal
Joe Patterson	Pittsburg, ks	KOAM Radio
Bill Anderson		AP



2-5-79

STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

April 28, 1977

ATTORNEY GENERAL OPINION NO. 77-145

Mr. Richard M. Pugh
Pugh & Pugh
625 Lincoln Avenue
Wamego, Kansas 66547

Re: Cities--Home Rule--Municipal Courts

Synopsis: A city may, in the exercise of its constitutional home rule powers under Article 12, § 5 of the Kansas Constitution, exempt itself from K.S.A. 12-4101 through -4701, including K.S.A. 12-4104, and empower the municipal judge to issue search warrants.

* * *

Dear Mr. Pugh:

You inquire concerning Charter Ordinance No. 4, adopted by the City of Wamego in July, 1974, and particularly, section 11-111 thereof, which states thus:

"A Municipal Judge may issue a search warrant to be executed in the City of Wamego, Kansas, by any law enforcement officer to search the things and places and seize the items described and by the procedure set out in Article 25 of Chapter 22 of the Kansas Statutes Annotated, as amended.

Nothing contained herein shall preclude a law enforcement officer of the City of Wamego from applying to a Magistrate for the issuance of a search warrant nor shall this section be construed to limit the right of

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a law enforcement officer to search as otherwise permitted by the laws."

In 1973, the Kansas Legislature adopted an act identified as the Kansas Code of Procedure for Municipal Courts. K.S.A. 12-4101 through -4701. The title of Charter Ordinance No. 4 recites that it is a

"charter ordinance exempting the City of Wamego, Kansas, from the provisions of K.S.A. 1973 Supp. 12-4101 through 12-4701 and providing substitute and additional provisions on the same subject, providing for a code for the municipal court of Wamego, Kansas."

The 1973 code is not in its entirety uniformly applicable to all cities. Every section of the enactment does apply to all cities uniformly, save one. K.S.A 12-4105 provides in pertinent part thus:

"The municipal court shall be presided over by a municipal judge. The judge shall be selected in the manner provided by statute. The person so selected shall be a citizen of the United States and at least eighteen (18) years of age. In cities of the first class, the person selected shall be an attorney admitted to the practice of law in the state of Kansas."

Thus, the act includes a qualification for the office of municipal judge which applies only to cities of the first class, and not to any other city or class of cities in the state.

Article 12, § 5 of the Kansas Constitution provides in pertinent part thus:

"(b) Cities are hereby empowered to determine their local affairs and government Cities shall exercise such determination by ordinance passed by the governing body . . . subject only to enactments of the

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legislature of statewide concern applicable uniformly to all cities, [and] to other enactments of the legislature applicable uniformly to all cities"

The enactment from which the City of Wamego has sought to exempt itself is the 1974 enactment of the legislature prescribing a code of procedure for municipal courts. That enactment does not apply uniformly to all cities in its entirety, and thus it does not apply uniformly to all cities at all.

Section 11-111 quoted above from Charter Ordinance No. 4 specifically contravenes K.S.A. 12-4104 of the statutory code, which states as follows:

"The municipal court of each city shall have jurisdiction to hear and determine cases involving violations of the ordinances of the city. Search warrants shall not issue out of a municipal court."

This section, of course, applies uniformly to all cities. It is not an enactment in and of itself, however, but only one section of an enactment which does not apply uniformly to all cities. Under Article 12, § 5(c)(1), the city may by charter ordinance exempt itself from this restriction:

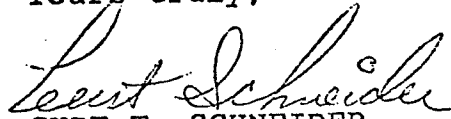
"Any city may by charter ordinance elect in the manner prescribed in this section that the whole or any part of any enactment of the legislature applying to such city, other than enactments of statewide concern applicable uniformly to all cities, other enactments applicable uniformly to all cities, and enactments prescribing limits of indebtedness, shall not apply to such city."

Thus, it is clearly within the constitutional power of the city under Article 12, § 5 of the Kansas Constitution to exempt itself from K.S.A. 12-4101 et seq., including K.S.A. 12-4104, and enact either substitute or additional provisions, or both.

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I would point out that in paragraph I of the ordinance, the city elects to exempt itself from K.S.A. 1973 Supp. 12-4101, rather than the entire enactment found at K.S.A. 1973 Supp. 12-4101 through -4701, as recited in the title of the ordinance. A court might regard this as a clerical error; however, I suggest that a corrective ordinance be adopted to correct this omission.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Mr. Michael Moroney
Assistant Attorney General
Kansas Bureau of Investigation
3420 Van Buren
Topeka, Kansas

As Amended by Senate Committee

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 1977

HOUSE BILL No. 2223

By Representatives J. Slattery, Brewster and Mainey

1-31

0022 AN ACT relating to eminent domain procedure; requiring a
 0023 hearing before the state corporation commission before the
 0024 power of eminent domain may be exercised by certain enti-
 0025 ties; prescribing a procedure therefor; amending K.S.A. 26-
 0026 502 to 26-504, inclusive, 26-509, 26-511 and 26-513 and re-
 0027 pealing the existing section sections.

0028 Be it enacted by the Legislature of the State of Kansas:

0029 Section 1. K.S.A. 26-502 is hereby amended to read as fol-
 0030 lows: 26-502. (a) A petition shall include allegations of (1) the
 0031 authority for and the purpose of the taking; (2) a description of
 0032 each lot, parcel or tract of land and the nature of the interest to
 0033 be taken; (3) insofar as their interests are to be taken; (a) (i) the
 0034 name of any owner and all lienholders of record, and (b) (ii) the
 0035 name of any party in possession. Such petition shall be verified
 0036 by affidavit. When a permit is required of a plaintiff before
 0037 exercising the power of eminent domain as provided by section 8,
 0038 the petition shall be accompanied by such permit. Upon the filing
 0039 of such petition the court by order shall fix the time when the
 0040 same will be taken up heard. No defect in form which does not
 0041 impair substantial rights of the parties shall invalidate any
 0042 proceeding.

0043 (b) Any time after a petition is filed pursuant to K.S.A. 26-501,
 0044 any party named defendant therein, or his or her attorney, shall be
 0045 authorized to inspect and to copy any and all files or records of
 0046 the condemnor which might have some relevance as a basis for the
 0047 appraisal of a defendant's property, except that no information in

0048 such files or records which is solely the product of an opinion of
0049 the condemnor's attorney, nor any recommendation made by said
0050 attorney, shall be subject to such inspection or copying. Any
0051 inspection or copying of documents authorized by this section
0052 shall be made only during normal business hours of the condem-
0053 nor, and any expenses involved in copying any materials shall be
0054 borne by the defendant. Insofar as they relate to the inspection and
0055 copying of documents, the provisions of subsection (c) of K.S.A.
0056 60-226 and the provisions of K.S.A. 60-234 and 60-237 shall
0057 govern the inspection and copying of documents pursuant to this
0058 section, except that the judge shall shorten the time limitation for
0059 filing a response to a request made pursuant to this section when
0060 necessary to allow the defendant to accomplish the requested
0061 inspection and copying within a reasonable time prior to the
0062 hearing held pursuant to K.S.A. 26-506.

0063 **Sec. 2. K.S.A. 26-503 is hereby amended to read as follows:**
0064 **26-503. The plaintiff shall cause to be published once in a**
0065 **newspaper of general circulation in the county where the lands**
0066 **are situated a notice of the proceeding hearing on said petition at**
0067 **least nine (9) days in advance of the date fixed by the court for**
0068 **consideration of the petition said hearing and the appointment of**
0069 **appraisers, and shall, at least seven (7) days before such date, the**
0070 **plaintiff shall mail to each interested party as named in K.S.A.**
0071 **26-502, as amended, and whose address is known or can with**
0072 **reasonable diligence be ascertained a copy of such publication**
0073 **notice and petition insofar as it relates to his interest. No defect**
0074 **in any notice or in the service thereof shall invalidate any**
0075 **proceedings.**

0076 **Sec. 3. K.S.A. 26-504 is hereby amended to read as follows:**
0077 **26-504. If the judge finds from the petition: (1) the plaintiff has**
0078 **the power of eminent domain; and (2) the taking is necessary to**
0079 **the lawful corporate purposes of the plaintiff, he such judge**
0080 **shall enter an order appointing three (3) disinterested house-**
0081 **holders of the county in which the petition is filed to view and**
0082 **appraise the value of the lots and parcels of land found to be**
0083 **necessary, and to determine the damages to the interested par-**
0084 **ties resulting from the taking. Such order shall also fix the time**

0085 for the filing of the appraisers' report, and such time for filing
0086 shall not be later than twenty (20) days after the entry of such
0087 order. *Provided*, except that for good cause shown, the court may
0088 extend the time for filing by a subsequent order. The granting of
0089 an order determining that the plaintiff has the power of eminent
0090 domain and that the taking is necessary to the lawful corporate
0091 purposes of the plaintiff shall not be considered a final order for
0092 the purpose of appeal to the supreme court, but an order deny-
0093 ing the petition shall be considered such a final order.

0094 Appeals to the supreme court may be taken from any final
0095 order under the provisions of this act. Such appeals shall be
0096 prosecuted in like manner as other appeals and shall take pre-
0097 cedence over other cases, except cases of a like character and
0098 other cases in which preference is granted by statute.

0099 Sec. 4. K.S.A. 26-509 is hereby amended to read as follows:
0100 26-509. In an action on appeal the court shall assign the case for
0101 trial to a jury, or to a master in accordance with K.S.A. 60-253,
0102 or acts amendatory thereof or supplemental thereto. Whenever
0103 the plaintiff condemnor shall appeal the award of court appointed
0104 appraisers, and the jury renders a verdict for the landowners in an
0105 amount greater than said appraisers' award, The court may allow
0106 as court costs an amount to be paid to two of the landowner's
0107 expert witnesses as expert witness fees and to the landowner's
0108 attorney as attorney fees whenever the plaintiff condemnor ap-
0109 peals the award of the court appointed appraisers and the jury
0110 renders a verdict for the landowner in an amount greater than said
0111 appraiser's award.

0112 Sec. 5. K.S.A. 26-511 is hereby amended to read as follows:
0113 26-511. If the compensation finally awarded on appeal exceeds
0114 the amount of money previously paid to the clerk of the court,
0115 the judge shall enter judgment against the plaintiff for the
0116 amount of the deficiency with interest thereon at the rate of ~~six~~
0117 percent (6%) eight percent (8%) per annum from the date of the
0118 payment to the clerk to the date of payment of the deficiency
0119 judgment. If the compensation finally awarded on appeal is less
0120 than the amount paid to the clerk of the court by the plaintiff
0121 the judge shall enter judgment in favor of the plaintiff for the

0122 *return of the difference, together with interest at the rate of six*
0123 *percent (6%) eight percent (8%) per annum on any amount with-*
0124 *drawn by a defendant pursuant to K.S.A. 26-510 from the time*
0125 *payment was made to the clerk defendant to the date of the*
0126 *judgment.*

0127 *Section 1: Sec. 6. K.S.A. 26-513 is hereby amended to read*
0128 *as follows: 26-513. (a) Necessity. Private property shall not be*
0129 *taken or damaged for public use without just compensation.*

0130 *(b) Taking entire tract. If the entire tract of land or interest*
0131 *therein is taken, the measure of compensation is the value of the*
0132 *property or interest at the time of the taking.*

0133 *(c) Partial taking. If only a part of a tract of land or interest is*
0134 *taken, the compensation and measure of damages are the differ-*
0135 *ence between the value of the entire property or interest immedi-*
0136 *ately before the taking, and the value of that portion of the tract or*
0137 *interest remaining immediately after the taking. Where any per-*
0138 *son and such person's spouse or any parent and such parent's*
0139 *child or children own tracts of land, jointly or severally, and*
0140 *such tracts are used for a common purpose and managed as if*
0141 *they were a single tract of land, severance of any portion of any*
0142 *of such tracts of land may be considered a severance from all*
0143 *such tracts of land.*

0144 *(d) Factors to be considered. In ascertaining the amount of*
0145 *compensation and damages as above defined, the following fac-*
0146 *tors, without restriction because of enumeration, shall be given*
0147 *consideration if shown to exist but they are not to be considered*
0148 *as separate items of damages, but are to be considered only as*
0149 *they affect the total compensation and damage under the provi-*
0150 *sions of subsections (b) and (c) of this section:*

0151 *1. The most advantageous use to which the property is rea-*
0152 *sonably adaptable.*

0153 *2. Access to the property remaining.*

0154 *3. Appearance of the property remaining, if appearance is an*
0155 *element of value in connection with any use for which the*
0156 *property is reasonably adaptable.*

0157 *4. Productivity, convenience, use to be made of the property*
0158 *taken, or use of the property remaining.*

0159 5. View, ventilation and light, to the extent that they are
 0160 beneficial attributes to the use of which the remaining property is
 0161 devoted or to which it is reasonably adaptable.

0162 6. Severance or division of a tract, whether the severance is
 0163 initial or is in aggravation of a previous severance; changes of
 0164 grade and loss or impairment of access by means of underpass or
 0165 overpass incidental to changing the character or design of an
 0166 existing improvement being considered as in aggravation of a
 0167 previous severance, if in connection with the taking of additional
 0168 land and needed to make the change in the improvement.

0169 7. Loss of trees and shrubbery to the extent that they affect the
 0170 value of the land taken, and to the extent that their loss impairs
 0171 the value of the land remaining.

0172 8. Cost of new fences or loss of fences and the cost of
 0173 replacing them with fences of like quality, to the extent that such
 0174 loss affects the value of the property remaining.

0175 9. Destruction of a legal nonconforming use.

0176 10. Damage to property abutting on a right-of-way due to
 0177 change of grade where accompanied by a taking of land.

0178 11. Proximity of new improvement to improvements remain-
 0179 ing on condemnee's land.

0180 12. Loss of or damage to growing crops.

0181 13. That the property could be or had been adapted to a use
 0182 which was profitably carried on.

0183 14. Cost of new drains or loss of drains and the cost of
 0184 replacing them with drains of like quality, to the extent that such
 0185 loss affects the value of the property remaining.

0186 15. Cost of new private roads or passageways or loss of
 0187 private roads or passageways and the cost of replacing them with
 0188 private roads or passageways of like quality, to the extent that
 0189 such loss affects the value of the property remaining.

0190 ~~16. Cost of acquiring like property in a similar location land~~
 0191 ~~suitable for use for a similar purpose.~~

0192 ~~17~~ [16]. Cost of reasonable relocation expenses of the de-
 0193 fendant arising from the taking of the defendant's land not
 0194 otherwise compensated for, except that expenses to be incurred
 0195 for relocation in excess of four hundred (400) miles from the

0196 *defendant's land being taken shall not be considered.*

0197 *New Sec. 7. As used in sections 7 to 12, inclusive, the fol-*
0198 *lowing words and phrases shall have the meanings ascribed to*
0199 *them herein:*

0200 (a) *"Commission" means the state corporation commission;*

0201 (b) *"Utility" means every utility or common carrier subject*
0202 *to regulation by the commission, except municipally owned and*
0203 *operated electric utilities where the proposed taking of land is*
0204 *within three miles of the municipality;*

0205 (c) *"Landowner" means any person or entity having an es-*
0206 *tate or interest in any land, which land is proposed to be*
0207 *acquired by a utility by the power of eminent domain.*

0208 *New Sec. 8. No utility may exercise the power of eminent*
0209 *domain to acquire any land without first acquiring a permit*
0210 *from the state corporation commission, except when the land-*
0211 *owner is an entity subject to regulation by the federal interstate*
0212 *commerce commission or state corporation commission. When-*
0213 *ever any utility desires to obtain such a permit, it shall file an*
0214 *application with the commission, setting forth that it proposes to*
0215 *exercise the power of eminent domain and specifying the pro-*
0216 *posed location, the total number of acres of land that such utility*
0217 *contemplates will be taken by the power of eminent domain and*
0218 *the names of the landowners. In addition, the utility shall file*
0219 *with the application such documents pertaining to the con-*
0220 *struction, operation and maintenance of any structures to be*
0221 *located on the land to be taken and such other matters deemed*
0222 *relevant thereto as may be required by rules and regulations of*
0223 *the commission. Thereupon, the commission shall fix a time for a*
0224 *public hearing on such application, which shall be not less than*
0225 *thirty (30) nor more than sixty (60) days from the date the*
0226 *application was filed, to determine the reasonableness of the*
0227 *taking desired by the utility. The commission shall fix the place*
0228 *for hearing, which shall be in the county in which is located the*
0229 *major portion of the land which is proposed to be acquired.*

0230 *New Sec. 9. Written notice of the time, place and subject*
0231 *matter of such hearing and a copy of the application also shall*
0232 *be served not less than twenty (20) days prior to the hearing date*

0233 upon all landowners, as shown by the files, records and indices
0234 of the register of deeds of the county in which such land is
0235 located. Such written notice also shall state that the utility has
0236 filed the application and supporting documents as required by
0237 section 8, and that such application and supporting documents
0238 are available in the office of the commission for examination
0239 and copying by any person desiring copies thereof.

0240 *New Sec. 10.* Landowners, at their own expense, may retain
0241 counsel to represent their individual interests at such hearing.
0242 Any owner or lessee of land whose estate or interest in such land
0243 would not be acquired by the utility but would be affected in
0244 some other manner may be allowed to intervene by the commis-
0245 sion in such hearing.

0246 *New Sec. 11.* Except as otherwise provided in this act, the
0247 rules and regulations adopted by the commission pursuant to
0248 K.S.A. 66-106 to govern the commission's proceedings shall be
0249 applicable to any proceeding before the commission under this
0250 act. The utility shall proceed with the introduction of evidence
0251 of the reasonableness of the taking. The burden of proof on any
0252 such matter shall be upon the utility and shall be established by
0253 a preponderance of the evidence. All parties present or repre-
0254 sented by counsel at the hearing shall have an opportunity to be
0255 heard and the right to cross-examine any witness appearing
0256 before the commission at the hearing. The commission shall
0257 cause a transcript to be made of the hearing. All costs of any
0258 hearing shall be taxed against the utility.

0259 *Within thirty (30) days after the conclusion of all parties'*
0260 *arguments, the commission shall make findings of fact and file*
0261 *the same with its decision to issue or deny the permit applied for.*
0262 *Upon a determination that the proposed taking is reasonable,*
0263 *the commission shall issue to the utility a permit declaring that*
0264 *the taking is reasonable and that the utility may exercise the*
0265 *power of eminent domain.*

0266 *New Sec. 12.* Within thirty (30) days after the issuance or
0267 denial of a permit any party may appeal to the district court of
0268 the county in which the hearing was conducted. The notice of
0269 appeal shall be filed in the office of the clerk of the district court

0270 of such county and shall specifically state the grounds for review
0271 upon which the appellant relies and shall designate the decision
0272 sought to be reviewed. The clerk of the district court shall
0273 immediately serve a certified copy of said notice of appeal upon
0274 the state corporation commission by transmitting a certified
0275 copy thereof by restricted mail to the secretary of the state
0276 corporation commission at the commission office. The secretary
0277 shall immediately notify by restricted mail all parties who
0278 appeared in the proceedings before the commission that such
0279 appeal has been filed. The judge of the district court, in the
0280 discretion of the judge, may require the appellant to file an
0281 appeal bond, conditioned on payment of all court costs incurred
0282 incidental to such appeal. The taking of an appeal shall not stay
0283 the issuance of a permit but the court on appeal may stay the
0284 eminent domain proceeding for which the permit was issued
0285 pending the appeal.

0286 *New Sec. 13. The provisions of K.S.A. 1976 Supp. 66-1,165 to*
0287 *66-1,167, inclusive, shall be applicable to actions pursuant to*
0288 *section 8, except for the provisions thereof relating to rehearings*
0289 *and the requirement that appeals to the supreme court are to be*
0290 *given precedence.*

0291 *Sec. 2 14. K.S.A. 26-502 to 26-504, inclusive, 26-509, 26-511*
0292 *and 26-513 is are hereby repealed.*

0293 *Sec. 3 15. This act shall take effect and be in force from and*
0294 *after its publication in the official state paper.*



Kansas County & District Attorneys Association

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TO: Representative Joe Hoagland, Chairman House
Judiciary Committee

RE: House Bill 2046

House Bill 2046 seeks to expand the territorial limit within which a district magistrate judge's search warrants may be executed.

District magistrate judges are designated "Judge of the District Court" by K.S.A. 1978 Supp 20-301 and as such possess the judicial power and authority within the confines of his or her judicial district or such other district as the judge may be assign.

Under K.S.A. 1978 Supp 20-302 b, the district magistrate judge is given jurisdiction over the trial of misdemeanors and preliminary hearings of felonies.

Further, the district magistrate judge under K.S.A. 1978 22-2301, as a judge of the district court may issue arrest warrants when he is satisfied after an examination of the evidence placed before him that probable cause exists.

Pursuant to K.S.A. 22-2305 that arrest warrant may be executed in any place within the jurisdiction of Kansas.

Safeguards similar to those dealing with issuance of arrest warrants are present in K.S.A. 1978 Supp 22-2502 relating to search warrants.

However, K.S.A. 1978 Supp 22-2503 currently allows for the execution of those search warrants only within the territorial limits of the county in which the judge resides.

Only seven counties in Kansas constitute a single county judicial district. The remaining ninety-eight counties are combined into twenty-two judicial districts ranging in size from two counties to seven counties.

Because of distribution of caseload, scheduling efficiency, and assignment to other districts, district magistrate judges are required to hold court in counties other than the one in which they reside. In such a situation, the district magistrate judge could not be called upon to issue a search warrant if that search warrant were not to be executed in his or her home county, even if that judge were the only one available for whatever reason.

The current state of the law causes time delays, possible loss of evidence and creates the potential for an illegal search and seizure based upon a search warrant which might be technically deficient.

In order to correct these problems and maintain uniformity within the statewide judicial system, we would urge favorable action on House Bill 2046.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'Max G. Moses', with a long horizontal line extending to the right.

Max G. Moses
Executive Director