MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

Held in Room 519 S, at the Statehouse at 10:00 a. m./p.m., on March 9, 1979.

All members were present except: Senators Gaines and Mulich

The next meeting of the Committee will be held at 10:00 a. m./p.m., on March 12, 1979.

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

Elwaine F. Pomeroy
Chairman

The conferees appearing before the Committee were:

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

House Bill No. 2012 - Juvenile code, out-of-home placement of juveniles. A copy of the interim committee report was distributed to each member of the committee; a copy is attached. Mr. Griggs reviewed the report and particularly matters contained in the report that have not been placed in bill form. Following considerable discussion, involving followup services and vocational training, Senator Simpson moved that this committee send a letter to the chairman of the House Ways and Means Committee asking the committee to give serious consideration to the matters relating to funding that were contained in the interim committee report. Senator Hess seconded the motion, and the motion carried.

Senate Bill No. 389 - Changes in securities commissioner statutes. The chairman pointed out that if this bill was to be worked, it would have to be referred to an exempt committee, such as Federal and State Affairs. Since this committee had already had hearings on the bill, it would be better for us to work the bill and then ask that it be rereferred to the Federal and State Affairs Committee. Following committee discussion, including proposed amendments, Senator Gaar moved to amend the bill with regard to investment advisers who do not maintain custody of moneys; Senator Parrish seconded the motion, and the motion carried. Senator Hess moved to amend the bill with regard to the statute of limitations for civil actions to eliminate the one year from discovery provision; Senator Simpson seconded the motion, and the motion carried. Following further committee discussion, Senator Parrish moved to amend the bill on page 18 with regard to examination fees; Senator Werts seconded the motion, and the motion carried. Senator Hess moved to amend the bill on page 19 to specifically provide that by rules and regulations,

**CONTINUATION SHEET**



SB 389 continued -

cooperation with other states would be possible; Senator Parrish seconded the motion, and the motion carried.

The meeting adjourned.

These minutes were read and approved by the committee on 4-25-79.

3-9-79

GUESTS

SENATE JUDICIARY COMMITTEE

| NAME | ADDRESS | ORGANIZATION |
|---|---|---|
| C. Karle S. Hamm | State Office Bldg. | S.R.S. |
| Mary L. Slaybaugh | State Office Bldg. | S.R.S. |
| Stephanie Alexander | Topeka | NASW |

3-9-79
15



RE: PROPOSAL NO. 12 - JUVENILE FACILITIES AND PROGRAMS*

Proposal No. 12 directed the Special Committee on Juvenile Facilities and Programs to study both public and private programs for the care, treatment, or detention of juveniles under the Kansas Juvenile Code.

Background

State institutions for juveniles and the Kansas Juvenile Code, K.S.A. 38-801 et seq., have been the subject of much legislative concern. During the 1978 Session the Legislature considered 24 bills relating to the Juvenile Code, four of which became law. Among those four bills was S.B. 553 which redefined the types of juveniles under the Code, and changed the dispositions that may be made for the various types of juveniles.

Interim session proposals have dealt with either the Juvenile Code or specific state institutions for juveniles during each of the past five years. In 1977 the Code was completely reviewed under Proposal No. 37; in 1976 the Institutions Committee toured the Youth Center at Topeka under Proposal No. 25; in 1975 the Code was studied under Proposal No. 30, and the Youth Centers at Beloit and Atchison were reviewed under Proposal No. 47; in 1974 the Special Committee on Ways and Means examined placement statutes in the Code for Proposal No. 81, and Proposal No. 44 included a study of the Youth Center at Topeka; 1973 saw an extensive review of the Code, study of the 1972 Comprehensive Plan for Juvenile Delinquency Prevention and Control, and monitoring of 1973 S.B. 577 funding under Proposals No. 13 and 88, along with a tour of the Girls Industrial School (now named the Youth Center at Beloit) under Proposal No. 1. The charge to the

* S.B. 22, S.B. 23, S.B. 24, H.B. 2010, H.B. 2011, and H.B. 2012 accompany this report.

1978 Special Committee, directed by 1978 H.C.R. 5061, is unique, however, for including non-institutional programs and private facilities in the scope of the study.

K.S.A. 38-802, as amended by 1978 S.B. 553, defines the following six types of juveniles who come under the jurisdiction of the district court: (1) delinquent children; (2) miscreant children; (3) wayward children; (4) truant children; (5) traffic offenders; and (6) deprived children. The Code specifies what types of placements are available for each type of juvenile; included are special restrictions on placements for "status offenders," juveniles adjudicated as truant, wayward, or deprived who have committed no acts that would be punishable if done by an adult, but who nevertheless may have behavioral problems.

A child found to be deprived may be committed by the court to: (1) the child's parents; (2) custody of a juvenile probation officer; (3) a children's aid society; or (4) the Secretary of Social and Rehabilitation Services. When the parents of a deprived child have their parental rights severed, the court may commit the child to: (1) the care of a reputable citizen; (2) a public or private institution used as a home or place of detention; (3) an association caring for or obtaining homes for deprived children; or (4) the Secretary of Social and Rehabilitation Services. The Secretary may place a child in a residential facility, a foster care facility, a children's aid society or, when parental rights have been severed, with adoptive parents.

When a child is adjudged to be delinquent or miscreant the court may make one or more of the following orders: (1) place the child on probation in the custody of the child's parents; (2) place the child in the custody of a probation officer; (3) place such child in a detention home, parental home or farm; (4) place such child in a children's aid society; (5) place the child in the county jail, pending final disposition if the child is age 16 or older; (6) commit the child to the Secretary of Social and Rehabilitation Services; (7) commit children age 13 or over to either the Youth Center at Topeka (boys), the Youth Center at Beloit (girls), or any other training or rehabilitation facility for juveniles; or (8) require restitution.

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Wayward or truant children are subject to one of the first six orders, listed above, that are available for delinquent or miscreant children. Traffic offenders are subject to one of the first five orders listed above for delinquent or miscreant children.

Status offenders (deprived, wayward, or truant children) under amendments made by 1978 S.B. 553, may not be placed in one of the Youth Centers. Furthermore, after January 1, 1980, no status offenders are to be placed in detention facilities, with the exception of limited periods before and after their detention hearing; they may be placed only in shelter facilities. Detention facilities are currently defined by section 31 of 1978 S.B. 553 as facilities that: (1) are secure; or (2) used for criminal offenders or have populations where 50 percent or more of the residents are delinquents or miscreants; or (3) any facility with more than 20 juveniles subject to the Kansas Juvenile Code, unless all are status offenders. The 1978 amendments will allow Kansas to participate in federal funding under the Juvenile Justice and Delinquency Prevention Act.

## Committee Activity

The Committee has held six two-day and two one-day meetings. During the meetings the Committee has toured the Youth Center at Topeka, the Youth Rehabilitation Center at Topeka State Hospital, the Villages in Topeka, and the Youth Center at Beloit.

The Committee has received testimony from representatives of the following organizations or institutions: the Kansas Council on Crime and Delinquency; the Governor's Task Force on the Problems of Youth; the League of Women Voters; the Kansas Juvenile Detention Association; the Kansas Association of Foster Parents; the Kansas Juvenile Probation Officers Association; the State Department of Social and Rehabilitation Services; the State Department of Education; the State Department of Human Resources; the State Department of Health and Environment; the Shawnee County Youth Center; Achievement Place, Lawrence; United Methodist Youthville,

Newton; Children's Court Center, Pittsburg; Argentine Youth Center, Kansas City; McPherson Youth Center, McPherson; and the St. Francis Boys Home, Salina. The Committee has also heard legislative staff reports and testimony from three judges, three probation officers, and one county attorney.

During the meetings the following questions were considered: what type of dispositions are allowed under the Code; what facilities and programs are available in each area of the state; are there sufficient facilities for status offenders; should status offenders remain in the Code; should the effective date of restrictions on placement of status offenders be changed; who are the hardest to place children; should a distinction be made between placements for delinquents and those for miscreants; should the placement power of the Secretary of Social and Rehabilitation Services be redefined; and what facilities or programs need expansion?

## Recommendations

The Committee recommends adoption of the six bills summarized below. These bills are printed after this report.

S.B. 22 amends K.S.A. 1978 Supp. 38-816a by adding provisions which allow the district court to issue a warrant commanding that children alleged to be deprived, wayward, or truant be brought into custody.

Passage of this bill will statutorily clarify the authority of the courts to issue warrants for all types of juveniles.

H.B. 2010 amends K.S.A. 1978 Supp. 38-826 by limiting direct court placements to a youth center or state rehabilitation facility to children who have committed certain violent offenses, or those who have had a prior out-of-home placement of over 90 days.

This bill may help relieve overcrowding at the youth centers by limiting the types of juveniles who may be committed directly to such institutions by the court. Last year approximately 50 percent of the boys admitted to the

Youth Center at Topeka had no prior out-of-home placement, yet many of them had not committed any serious offenses. The bill will not limit the power of the Secretary of Social and Rehabilitation Services to place children in a youth center or rehabilitation facility.

S.B. 23 amends the definition of a "juvenile detention or correctional facility" contained in K.S.A. 1978 Supp. 38-840 (section 31, 1978 S.B. 553). This will allow status offenders to be placed in a non-secure facility along with miscreants and delinquents if the facility has only 20 beds or less or, if community-based, it has 40 beds or less.

This amendment loosens somewhat the restrictions on placements of status offenders that will take effect on January 1, 1980. The changes, however, do conform to revised federal guidelines adopted under the federal Juvenile Justice and Delinquency Prevention Act.

H.B. 2011 amends K.S.A. 1978 Supp. 38-825 and 38-826 to require written approval from the judge of the district court of all initial placements proposed by the Secretary of Social and Rehabilitation Services, or certain transfers of placement proposed by the Secretary. A new section requires consent of the court for the following transfers: from one state institution to another; from a private facility to a state facility; and from one private facility to another. Prior judicial consent to the release of a deprived child must also be given. Notice to the court is all that will be required for other types of transfers or releases.

Concern has been expressed by judges about their lack of control over the placement, transfer, and release of juveniles. H.B. 2011 will help clarify the role of judges in the placement process, and it will mandate consultation between the Department of Social and Rehabilitation Services and the courts for placements proposed by the Department. It will assure that placement decisions are reviewed by the courts, and will give the court the opportunity to allow other interested parties to participate in the placement process. The Committee heard no testimony that the bill will jeopardize federal financial participation for Aid to Families with Dependent Children.

H.B. 2012 makes technical changes and standardizes the language used for describing out-of-home placements available for juveniles under the Code, and places the same restrictions on placements at a state youth rehabilitation center as are already imposed on placements at the state youth centers.

Section 6 also adopts several policy changes in amending K.S.A. 1978 Supp. 38-819. One change amends the statute to allow temporary placements of certain juveniles in a county or city jail if the juveniles are kept in quarters separate from adults. The statute is further amended, however, to limit to 48 hours the time deprived children may be placed in detention. This latter provision applying to deprived children will expire on January 1, 1980, when the restrictions on detention for all status offenders, which are contained in K.S.A. 1978 Supp. 38-841, take effect.

Section 11 amends K.S.A. 1978 Supp. 38-826 by deleting the authority of the court to order placement of delinquents or miscreants 16 years of age or older in a county jail, pending final disposition. Temporary placements in county or city jails are provided for in K.S.A. 1978 Supp. 38-819, subject to the limitations expressed in that section which are discussed above.

The bill will remove out-dated or undefined terms from the Juvenile Code, and will fully implement the policy decision on placements made in 1978 S.B. 553. It will also require the segregation of juveniles from adults in county or city jails and places the authority to temporarily place juveniles in such facilities in one statute. It will also prohibit placement of deprived children in detention for more than 48 hours.

S.B. 24 requires the Director of Personnel Services to reclassify the Cottage Parent staff positions at the state youth centers. The new classification is to provide at least six new classes of "Youth Center Workers," including one trainee classification. The trainee positions (Youth Center Worker I) are to be set at a minimum of Salary Range 10, (which has a gross salary ranging from $7,464 to $9,288) and the highest classification is to be set at a minimum of Salary Range 22 (which has a gross salary that ranges between $12,792 and $16,116). If four
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$16,116). If four trainee positions are established at each youth center, the total annual cost of this portion of the bill will be $100,644 ($7,464 in gross salary and $923 in fringe benefits, not including KPERS, for each position).

S.B. 24 is in response to testimony which indicated that a major problem at state-operated youth centers is the turnover rate among Cottage Parent staff. Officials of the youth centers indicated that this turnover rate is the result of several factors, including job stress, low starting salary, and the lack of a career ladder. The bill thus mandates increasing salaries and the development of a career ladder. It will provide for: (1) six levels of Youth Center workers, rather than the present three levels; (2) increased starting salaries; (3) revised educational criteria; and (4) staffing of the more structured cottages (semi-closed, closed, and security) with personnel from the higher ranges of the six-level schedule.

The bill is also designed to develop more adequately trained staff. With high turnover, Cottage Parent I positions are often vacant, and new staff members may be placed in the cottages with very little training. Those placements are necessary to avoid staff shortages in the cottage units. The bill creates trainee positions at each youth center and persons hired in these positions can receive classroom instruction from youth center staff development personnel, as well as on-the-job training in the cottages. They would then receive a promotion to Youth Center Worker II upon successful completion of 12 to 14 weeks of training.

The Committee also recommends changes in programs and funding to meet needs that have been recognized.

Children in state or private facilities may receive intense and structured rehabilitation programs. After release from such facilities, however, the children are often without effective supervision or emotional support. The Committee thus recommends that the standing Committees on Ways and Means approve funding sufficient to hire additional employees to provide follow-up services for children after their release from a facility.

The Committee recommends that social workers be hired to perform these follow-up services. It is estimated that 23 social workers will be needed for this function; two and one-half positions will be needed for each of the four major metropolitan counties of the state, and one for each of the remaining Social and Rehabilitation Services area offices. If Social Workers II are utilized, the cost of these services would be $327,267 ($12,228 gross salary and $2,001 in fringe benefits per position).

Foster parents obviously play a major role in the care foster children receive. Often the foster parents are subjected to unique financial and emotional pressures as a result of being a foster parent. The Committee therefore strongly recommends that additional money be appropriated under the Community Based Services for Children Act, K.S.A. 39-1301 through 1307 (1973 S.B. 577), to provide additional support services for foster parents. Support services favored by the Committee include training classes for foster parents and personnel for times of crisis. The Committee also recommends the appropriation of more money to the General Assistance Foster Care Fund to make service fees for foster children with emotional problems as available as they are for foster children with physical handicaps. Additionally, the development of a "levels of care" system for foster care homes, recommended by the Governor's Task Force on the Problems of Youth, may be an effective way to reimburse foster parents according to their skills and the needs of the child. The Committee endorses this recommendation of the Governor's Task Force.

Overcrowding requires the Youth Center at Topeka to release some students before they have completed their full rehabilitation program. The Committee does not support expansion of the Center, but does recommend that half-way houses be used for Youth Center students. The half-way houses should be in a community, separate from the Center, and serve students who are nearing the completion of their program. The Committee believes this would both help relieve overcrowding at the Center and provide a valuable "stepping stone" between the Center and the general community.

The state should contract with a community organization to provide half-way house services for various juveniles leaving state youth centers. Additionally, staff at the youth centers should be made available to provide technical assistance to the half-way houses accepting students from the youth centers.

The Committee was favorably impressed with the vocational exploration program that is offered to students at the Youth Center at Beloit. The Committee recommends establishment of a similar program at the Youth Center at Topeka. The Committee also recommends that the Youth Centers develop a "life skills" class which would teach basic skills such as balancing a checkbook, writing resumes for job applications, and job interview techniques.

The Committee also wishes to express support for efforts to increase the vocational training offered on-campus at the Youth Center at Topeka. Such training could be provided through contractual agreements with the Kaw Area Vocational Technical School.

On-campus vocational training at the Youth Center will become especially crucial if H.B. 2010 is adopted. The bill should lower the Center's population because only the most serious offenders or most disturbed boys can be directly committed there by the courts. Boys will thus be on the campus long enough to complete a vocational program, but few will be able to go off-campus for class. Because few students, upon release, return to school, on-campus training may be the last chance to train the Center's students for independent life as a responsible adult.

Vocational training is also seen by the Committee as one of the most effective ways of preventing juvenile offenses. The Committee thus wishes to express its support of all efforts to expand vocational education opportunities for all juveniles. It also recommends that the Legislative Educational Planning Committee (1202 Commission) or other appropriate postsecondary planning agency study ways in which vocational education opportunities for high school dropouts may be expanded. Particular attention should be given to discover ways to provide more information to high school dropouts about

available vocational programs and to remove eligibility requirements that may discourage high school dropouts from attending vocational school. If warranted, the Committee supports increasing the number of area vocational schools.

Conferees told the Committee that the regulations promulgated by the Department of Health and Environment for the licensure of family foster homes are so strict as to discourage some families from becoming foster parents. The Committee reviewed the family foster licensing regulations and has suggested changes in them. It is recommended that the appropriate legislative committee monitor upcoming proposals for changes in the regulations to assure that the regulations protect children while not making unreasonable demands that may discourage worthy families from becoming foster parents.

The Committee also recommends that the Secretary of Health and Environment and the Secretary of Social and Rehabilitation Services develop an agreement covering family foster homes which would eliminate duplicate inspections by the departments. The Committee would recommend changes in the licensing laws if such an agreement is not reached by the start of the 1979 Legislative Session.

The Committee has received testimony concerning a lack of detention facilities in an area generally located West of Highway 81. The Committee recognizes that the total absence of facilities suitable for placement of children on a short term basis should be corrected. Costs to communities in Western Kansas for transportation of juveniles to available facilities are high. Lack of facilities generally creates and sustains a sense of frustration on the part of the judiciary since very few options are made available to the juvenile courts for placement of juvenile offenders outside the home.

The Committee recognizes that the problem of lack of facilities in Western Kansas is one which must be addressed by local governments as well as state government. Detention facilities for temporary detention of juveniles have traditionally been provided by funding from the city or county level.

It is recommended by this Committee that the State Department of Health and Environment move quickly to establish the necessary regulations needed to allow development of licensing standards for juvenile detention facilities. It is further recommended that the Secretary of Corrections move quickly to establish the guidelines necessary to allow communities to develop community based corrections plans for juvenile offenders.

It is recommended that the Secretary of the Department of Social and Rehabilitation Services adopt regulations which will provide adequate funding for services provided by juvenile detention facilities to juveniles who are placed in those facilities by the courts. The Committee additionally recommends that the Ways and Means Committees study the issue of state funding for detention services, paying particular attention to the amount of money local units of government should contribute for detention and the possibility of the state reimbursing detention centers at a rate sufficient to pay for their actual operating costs.

Innovative projects funded under K.S.A. 39-1301-1308 have been shown to be effective in preventing delinquent behavior and helping children remain with their natural families. The Committee recommends that the standing Ways and Means Committees study ways in which funding may be continued for worthy projects, while money is still made available to fund additional new projects.

The Committee commends the effort that the Department of Social and Rehabilitation Services is making to provide quality services to juveniles in the state. The implementation of a "levels of care" system in which facilities are paid according to the type of child they accept and are equipped to handle, the effort to develop a Level VI facility for hard-to-place children, the funding of meritorious projects under K.S.A. 39-1301 through 1307, and the efforts made to provide quality programs at the state youth centers are especially appreciated by the Committee.

The provision of services to juveniles under the Juvenile Code is a broad and complex subject. It is finally recommended that another interim committee be appointed to study selected issues in the juvenile area and to monitor changes recommended by this Committee.

Respectfully submitted,

November 8, 1978

E. Richard Brewster,
Chairperson
Special Committee on Juvenile Facilities and Programs

Sen. John M. Simpson,
Vice-Chairperson
Sen. William T. Mulich
Rep. Harold P. Dyck
Rep. Robert G. Frey
Rep. Eugene F. Gastl
Rep. Mike Glover
Rep. Ardena Matlack
Rep. W. Edgar Moore

## MINORITY REPORT

The minority of the Special Committee on Juvenile Facilities and Programs submits the following statement in opposition to H.B. 2011 which is recommended by the Committee majority.

H.B. 2011 may increase the amount of time juveniles must spend in detention because of the time that may be required for court hearings, settlements of differences of opinion, and the identification of alternative placement facilities. The bill requires consent to certain placements suggested by the Department of Social and Rehabilitation Services (SRS), but SRS alone is responsible for the cost of juvenile placements. Additionally, it may also place federal funding for Aid to Families with Dependent Children (AFDC) payments in question because federal participation is not available when the responsibility for placement and care of a child is vested with an agency other than the state agency (SRS) that

administers the AFDC plan. The bill, therefore, would not be in the best interests of either juveniles or the state.

Rep. E. Richard Brewster,
Chairperson
Sen. John M. Simpson,
Vice-Chairperson
Rep. Mike Glover

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February 22, 1979

Senator Elwaine Pomeroy
Chairman, Senate Judiciary Committee
State Capitol Building
Topeka, Kansas 66612

Dear Senator Pomeroy:

RE: Senate Bill No. 389 Concerning Regulation of Investment Advisers

As a follow-up to my presentation before your Committee on February 22, 1979 regarding Senate Bill No. 389, I would like to briefly outline below my concerns about this bill.

I. Section 3. K.S.A. 17-1254(b)
Lines 0201 to 0207:

> "The applicant shall be registered if the commissioner finds that the applicant (and, in the case of a corporation or partnership, the officers, directors or partners) is a person of good character and reputation, that the applicant's knowledge of the securities business and the applicant's financial responsibility are such that the applicant is a suitable person to engage in the business...."

The above phrasing is far too vague to be of any use in insuring uniform enforcement. The phrase "securities business" is too general and does not recognize the differences in training and experience that are required of a broker-dealer as compared to an investment adviser, or

a broker-dealer as compared to an agent, or as an investment adviser as compared to an agent.

In addition, the section does not make clear what the standard for ascertaining what "financial responsibility" would be, nor does it define what is "a suitable person to engage in the business...."

II. Section 3. K.S.A. 17-1254(b)
Line 0215 to 0216:

> "...pass a written examination as evidence of knowledge of the securities business."

Again, the above phrasing does not make any distinction between brokers, investment advisers, and agents. More properly, it should identify them at least by class and provide for written examinations that are appropriate to their respective professions.

III. Section 3. K.S.A. 17-1254(c)
Lines 0221 to 0230:

> "Before registering any broker-dealer, agent or investment adviser, the Commissioner may, by rule, require such broker-dealer, agent or investment adviser to enter into, and file in the office of the Commissioner a bond in a sum of not less than five thousand dollars ($5,000) and not more than twenty-five thousand dollars ($25,000) and may determine its conditions. No bond shall be required of any registrant whose net capital, which shall be defined by rule, exceeds one hundred thousand dollars ($100,000), nor shall a bond be required of any agent of such registrant."

The aforementioned section should exempt from the bonding requirement those investment advisers who do not have actual custody, or access to, the funds of their clients. The Federal Government has already recognized this exemption under Section 412 of ERISA which governs the bonding of all fiduciaries. Under this section the

Labor Department has issued temporary regulations on exceptions from bonding for all those who do not directly, or their subordinates, "handle plan funds." The latest edition of Prentice-Hall's Service on Pension and Profit Sharing Plans clearly sets forth this exemption on page 1317 of their service under the heading "Fiduciary Responsibility Under the Labor Law." This commentary by Prentice-Hall is dated February 2, 1979.

In addition, on Wednesday, February 21, 1979, I contacted representatives of the Meade Insurance Company and the Foltz-Roepke Insurance Agencies, both located in Topeka, Kansas, and I inquired of them what the cost would be for such a bonding requirement. Both companies responded that their master indexes, which cover the various types of surety bonds, did not provide for surety bonds covering investment advisers. The insurance companies' representatives also contacted the Kemper Insurance Company and the Aide Insurance Company and were informed that those companies did not have this type of surety bond available. In addition, neither of the two representatives that I had discussions with could render even a "ball park" estimate of what such bonding could cost.

Most importantly, in view of the position of the federal laws that exempt investment advisers from bonding requirements if they do not have custody or access to their clients' funds, I believe that any bonding requirement that would be incorporated in Senate Bill No. 389 should provide for an exemption for investment advisers who do not have custody or access to client funds. To do otherwise would simply increase the cost of doing business unnecessarily for small to medium size investment advisers who do not have a minimum net capital of $100,000 and who do not have custody of their clients' assets. In the case of our firm, the assets are kept either in segregated custodial accounts at the trust department of federal banks or in segregated brokerage firm accounts which are insured up to $300,000 by the SIPC. To require a surety bond under these circumstances is simply unjustified.

IV. Section 3. K.S.A. 17-1254(d)
Lines 0251 to 0259:

> "Every registration under this section shall expire on the first day of March in each year but any registration for the succeeding year shall be issued upon written application and payment of the fee and the making and filing of a bond as herein provided without filing a further statement or furnishing any further information unless specifically required by the commissioner. Application for renewals must be made not later than February 1 and not earlier than January 1 in each year; otherwise, they shall be treated as original applications."

Section 3. K.S.A. 17-1254(f)
Lines 0272 to 0275:

> "...and each investment adviser shall be one hundred dollars ($100) and the fee for renewal of each broker-dealer registration and each investment adviser shall be fifty dollars ($50)."

The two sections set forth above are in excess of the filing requirements imposed on investment advisers by the Federal Investment Advisers' Act of 1940. The federal law requires that investment advisers file an extensive initial application but does not require subsequent annual filings unless there have been any changes in the investment advisers' business structure since the original filing. Under the federal system, if there are any subsequent changes in the information provided in the original filing, e.g. changes in personnel, legal proceeding against adviser, if any, changes in fee structure, etc., then the adviser must submit a timely amended filing for which there is no charge.

Under the proposed provisions each investment adviser would be required to file a renewal application form even if there were no changes on the renewal application as compared to the initial filing. In addition, there

would be a $50 charge for the annual renewal filing which could, in many cases, simply be for a duplicate of the original filing. I would suggest that the proposed section be drawn along lines similar to the federal system which requires amended filings as they become necessary. To proceed under the proposed provision would simply be creating unnecessary paper work, the cost of which is going to be at the expense of not only the investment adviser but the already overburdened staff of the Securities Commissioner's office. Finally, I find repugnant the idea of paying $50 a year to file a potentially duplicate document which, under the proposed law, I would have already paid $100 to file to meet the initial requirement.

V. Section 7, K.S.A. 1978 Supp. 17-1270(d)
Lines 0660 to 0674:

> "The books and records of every person issuing or guaranteeing any securities subject to the provisions of this act, and of every broker-dealer or investment adviser registered under this act, shall, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors, be subject at any time, or from time to time, to such periodic or special examinations by the commissioner, or such accountant or examiner as the commissioner may determine. The person, broker-dealer or investment-adviser subject to the examination shall pay a fee for each examiner or accountant employed to make such examination of not to exceed one hundred dollars ($100) for each day or fraction thereof, plus the actual expenses, including the cost of transportation of said accountant or examiner, while absent from his or her office for the purpose of making such examination.

The above provision increases the cost of an accountant 400%. The way the provision is worded, an accountant could charge the investment adviser $100 for a fraction of a day. I believe this provision could result in

simply encouraging unnecessary examinations because of the attractive fee schedule under this provision. I would also suggest that for those investment advisers who do not have custody of their clients' assets that there either be an exemption provided or that any accountant examination be charged at a substantially lower cost per day, or fraction thereof, than exists under the proposed legislation.

Finally, I would like to express my thanks to the Committee for having been given the opportunity to present my views as a small investment adviser on this proposed legislation. I am certainly willing to provide any additional input that you might possibly desire. For a long time I have believed that minimum qualifications and regulations governing investment advisers in the state of Kansas should be implemented. The proposed legislation has considerable merit and is similar to the legislation that has been adopted by Missouri and other states.

However, I also believe that it should not be drafted to favor only the large banks, insurance companies and investment adviser firms. The modifications to the proposed legislation, which I have suggested, will allow for an upgrading in the qualifications of investment advisers, will protect investers by requiring surety bonds in cases where investment advisers have custody of assets, and will not create an unreasonable financial and administrative burden on the small investment adviser.

Respectfully submitted,

J. D. MINNICK & COMPANY

John D. Minnick
President

JDM/mc