

Approved Stephen R. Cloud (12-83)
Date

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by Rep. Stephen R. Cloud at
Chairperson

9:09 a.m. ~~XX XX~~ on Tuesday, February 8, 19 83 in room 522-S of the Capitol.

All members were present except:

Committee staff present:

Avis Swartzman - Revisor
Carolyn Rampey - Research Dept.
Jackie Breymeyer - Secretary

Conferees appearing before the committee:

Carolyn Rampey - Research Dept.
Rep. Duncan - Rules & Regulations Committee
Vera Sutton - Shawnee County Abstracter

The meeting of the House Governmental Organization Committee was called to order by Rep. Stephen R. Cloud, Chairperson, at 9:09 a.m. The minutes of the January 27 meeting were approved.

Carolyn Rampey, Research Department, gave a brief run through of the Abstracters' Board of Examiners, going through the Application and Examination and Issuance of License of the Board. (See Attachment I)

Rep. Sandy Duncan was present to give the rationale for HCR 5014, stating that no agency has to do everything that the Rules and Regulations Committee says, they are merely an oversight Committee. The problem with 85-2-3 is one of legality of licensing in more than one county without proper legislative authority. Since this is one of the agencies that has fairly detailed statutes, it would be no problem for them to sit down, decide what has to be done and then go through the proper procedure of various agencies and hearings to rectify their problems. A letter from Mr. Jenkins, Chairman of the Abstracters' Board was distributed. Vera Sutton, a Shawnee County Abstracter spoke briefly. She said that she had come to defend the regulations but that she was very relieved to hear Rep. Duncan's clear and concise presentation of the matter. She stated that she read and re-read every regulation and statute and thinks that they are very open to interpretation. She cannot answer for the Board's not responding to the Committee. Mr. Jenkins is on vacation in Mexico. Ms. Sutton responded briefly to some questions on title insurance.

Chairman Cloud stated that this closes the hearing on HCR 5014. Final Action will be taken on this Thursday, February 10. Hearing and Final Action will also be taken on HB 2242. The Committee will meet Feb. 15 and 17 for the purpose of going over subcommittee reports and conferring with our Revisor on having bills drafted. Avis Swartzman, Revisor said that deadlines do not apply to House Concurrent Resolutions, only changes that are of a statutory nature. An Agenda for the week of Feb. 21 will be passed out to the Committee.

The meeting was adjourned at 9:58 a.m.

Agency 85

Abstracters' Board of Examiners

Articles

85-1. APPLICATION AND EXAMINATION. 85-1-1, 85-1-2.

85-2. ISSUANCE OF LICENSE. 85-2-1 to 85-2-5.

85-3. ABSTRACT BONDS. 85-3-1.

Article 1.—APPLICATION AND EXAMINATION

85-1-1. Application form. The application to take the examination to be licensed to make, compile or complete and sell abstracts of title to real estate in the state of Kansas shall be made upon the application form which is furnished and approved by the abstracters' board of examiners upon written request by said applicant. (Authorized by K.S.A. 1970 Supp. 74-3901; effective, E-70-18, March 10, 1970; effective Jan. 1, 1971.)

85-1-2. Examinations. At the board's discretion, examinations relative to the qualifications of an applicant shall be oral or written, or partially oral and partially in writing. Such examination shall include an inquiry into the ethical qualifications and general knowledge or expertise in the field of making, compiling or completing and selling abstracts of title to real estate within the state of Kansas. (Authorized by K.S.A. 1970 Supp. 58-2805, 74-3901; effective, E-70-18, March 10, 1970; effective Jan. 1, 1971.)

Article 2.—ISSUANCE OF LICENSE

85-2-1. Corporations; retaining qualified licensees. Before issuing a license to a corporation engaged in the abstract profession, now in existence or to be hereafter organized, such corporation shall have a provision in its bylaws providing that said corporation have and retain in its employment, a person who has been duly qualified, examined and licensed by this board. Such person shall be actively engaged in the operation of the corporation at the place of business within the county where abstracting services are being, or will be, performed. (Authorized by K.S.A. 1970 Supp. 74-3901; effective, E-70-18, March 10, 1970; effective Jan. 1, 1971.)

85-2-2. Duplication of corporate or business name within same county; denial of license. No license shall be granted to any corporation hereafter applying for a corporate license where it appears that the corporate name duplicates or is quite similar to that of a duly qualified, active and existing corporation already licensed within the county where such corporate applicant desires to transact its business. Neither shall a license be granted to any individual, association, firm, person or partnership who shall choose a business name which duplicates or is similar to that of a presently licensed individual, association, firm, person or partnership actively engaged in abstracting within the county where such license applicant intends to do business, unless such name consists of, or is directly derived from, the name of an individual directly connected with the licensee. (Authorized by K.S.A. 1970 Supp. 74-3901; effective, E-70-18, March 10, 1970; effective Jan. 1, 1971.)

85-2-3. License for more than one county. (a) A duly qualified abstracter may be issued a license to do business in more than one county by applying to and personally appearing before the board: *Provided, however,* That the said counties shall not be too distant geographically that, in the judgment of the board, such licensee could not adequately serve the public. Any licensee transacting business in more than one county must comply with the bond requirements of K.S.A. 1969 Supp. 58-2802.

(b) Such application for multi-county business transactions shall be by written request to the board. If the board, in its discretion, determines that the applicant should be issued a license to transact business in another county, no additional fee will be assessed. (Authorized by K.S.A. 1970 Supp. 58-2802, 74-3901; effective, E-70-18, March 10, 1970; effective Jan. 1, 1971.)

85-2-4. Employees' authorization to sign abstracts on behalf of licensees. (a) A licensee may authorize one or more employees to sign abstract certificates and other documents for or on behalf of said licensee, provided the names of those so authorized shall be submitted on each application for a license, and provided further that such delegated authority shall expire at the death or discontinuance for any reason of the business of such licensee. Each county office where the business of abstracting is performed shall be staffed with a duly licensed abstracter unless said licensee operates solely upon an individual basis.

(b) The board shall have the power to limit the number of unlicensed authorized signatures referred to in (a) above in any office or firm applying for a license. (Authorized by K.S.A. 1970 Supp. 74-3901; effective, E-70-18, March 10, 1970; effective Jan. 1, 1971.)

85-2-5. Disallowance of temporary li-

cense. No temporary license shall be issued to any applicant who has failed the board's qualifying examination, but such applicant may be issued a regular license upon satisfactory completion of such examination. (Authorized by K.S.A. 1970 Supp. 74-3901; effective, E-70-18, March 10, 1970; effective Jan. 1, 1971.)

Article 3.—ABSTRACT BONDS

85-3-1. Filing of bond. (a) The original of the corporate surety or personal bond referred to in K.S.A. 1969 Supp. 58-2802 shall be retained on file by the board and the duplicate copy shall be filed with the county clerk as provided by that statute.

(b) Surety bonds in K.S.A. 1969 Supp. 58-2802 shall run for a period not to exceed the statutory limit of 5 years. (Authorized by K.S.A. 1970 Supp. 58-2802, 74-3901; effective, E-70-34, March 10, 1970; effective Jan. 1, 1971.)

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ABSTRACTERS' BOARD OF EXAMINERS

February 4, 1983

Representative Stephen R. Cloud
Room 175 West
Capitol Building
Topeka, Kansas 66612

RE: Rules and Regulations
Abstracters' Board of Examiners

Dear Representative Cloud:

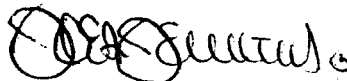
It is my understanding that the hearing on the above matter will be held Tuesday, February 8, 1983, at 9:00 A.M. Due to prior commitments of long standing, it will be impossible for me to attend this most important hearing.

Since time is of the essence in this matter, I can only repeat to you what was stated in my letter to Senator Merrill Werts, Chairman of the Joint Committee on Administrative Rules and Regulations, dated June 28, 1982. I, therefore, am enclosing to you a copy of that letter in the hopes that you will be able to take some time to study it and introduce testimony at the hearing on behalf of the Abstracters' Board as to why these most important rules and regulations should not be revoked.

I would be most happy to attend any future hearings or meet with any committees on this behalf. In the meantime, if you could use the enclosed information to show cause as to why these rules and regulations are so vitally important to maintain the respect and professionalism of the Abstracters' Board Examiners, it would be appreciated.

My sincere thanks for all your help in this regard.

Sincerely,



Joe F. Jenkins, II
Chairman

JFJ, II:cm
Enc.

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ABSTRACTERS' BOARD OF EXAMINERS

June 28, 1982

Senator Merrill Werts, Chairman
Joint Committee on Administrative Rules
and Regulations
c/o William G. Wolff, Principal Analyst
Room 545-N. Statehouse
Topeka, Kansas 66612

RE: Abstracters' Board of Examiners (Rules and Regulations)-
Joint Committee on Administrative Rules and Regulations

Dear Senator Werts:

First of all, let me offer an apology on behalf of the Abstracters' Board of Examiners, for not responding to the letter of July 14, 1980, from the Joint Committee. I want to make it very clear that the Abstracters' Board wishes and intends to cooperate with your office in every way possible, but at this point is quite confused by the process we are apparently presently involved with. As you will see from the letterhead, I am currently serving as Chairman of the Board. At the time of the 1980 hearing, my position was that of Executive Secretary of the Board, and as noted by the minutes, I did testify to the committee regarding the board's long-established rules and regulations.

The abstracters' licensing law was established by act of the legislature in 1941, and obviously since that time many individuals have served on this board. I would like to further add that there has never been a problem or scandal of any nature regarding this profession; and further that the State of Kansas is respected throughout the United States for its professionalism in the field of land title evidencing due to Kansas' licensing law, and the quality that said law has been administered.

Again, our confusion is due to the fact that the license law, as established by the legislature, provided for the establishment of rules and regulations, and as you are aware, there are very few that have been established and I would view our rules and regulations as the bare parameters necessary to properly examine, license and regulate the abstracting profession so that the citizens of Kansas can be assured of

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continued professionalism in this important field that is so necessary to facilitate the transfer of real estate in this state. It is my further understanding that the present rules and regulations have been adopted with minor modifications over the years with the approval and assistance of many different Attorney Generals, and never have these been questioned before, and many have been proposed with the assistance of the then Attorney General and/or members of his staff.

It would be very difficult to go into great detail regarding each rule in this letter since the abstracting business itself is so complex by its nature, but I will briefly attempt to address several concerns and offer the members of the board to be at your disposal personally for any other conversations in this regard.

85-1-1. Application form. There appears to be a legislative concern regarding the application form, which is quite brief and contains only the necessary information so that the board knows who is taking the examination prior to its commencement and properly prepares to administer same. The statute provides that an applicant must make application to take said exam twenty days prior to the commencement of the examination, and I know of no other way to document said fact other than by use of an application for examination form.

85-1-2. Examinations. We are most confused by the comments of the committee under Legislative Concerns, and feel that a description of the scope of the examination is most necessary so that the board administering the examination and the prospective licensee or applicant both will know what the examination consists of. We feel this to be necessary and only fair to both parties involved; and I might add that the present rule does not, in fact, properly describe the scope of the examination currently being given.

85-2-1. Corporations; retaining qualified licensees. This rule is stated for clarification of 58-2805, the purpose being to assure that a qualified and licensed abstracter is actively in the employ of any firm, partnership, association or corporation, so as to insure professionalism and accuracy to the public since a corporation, partnership, etc., as an entity, does not have the capability of properly preparing title information, and same can only be assured by a qualified individual being in the employ of said entity.

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85-2-2. Duplication of corporate or business name within same county; denial of license. If my memory serves me properly, when we testified before the committee they were of the opinion that this problem would be prohibited by the Secretary of State since that office would not grant a corporate name very close or identical to another corporate name. With that thinking I agree with the exception that in excess of 75% of all Kansas abstracting entities do not operate through the form of a corporation, and this rule is to prohibit for example a situation wherein John Smith, d/b/a Brown County Abstract, could presently be licensed in Brown County, and a subsequent application be received from Sam Smith to also do business as Brown County Abstract, which could only result in confusion to all parties involved, including but not limited to the board itself and certainly the consumer.

85-2-3. License for more than one county. With this regulation lies the real meat of the Kansas licensing law, and consequently the professionalism and respect that this industry enjoys. The board feels very strongly about this rule, and in this letter I will probably be unable to express to you the absolute necessity of same, but I will attempt to do so briefly, and again offer to meet or appear before you so as to more properly explain. The entire intention of qualifying and licensing members of the abstracting profession is geared towards protection of the homeowners and to professionally facilitate the exchange of real estate within our state. It is obvious that any individual could not be in all or many of the 105 counties in Kansas at any given time, and the deletion of this rule would insure "branch abstracting". By this I mean an individual who was qualified and knowledgeable enough to pass the examination could sit, for instance, in Wichita and sublet searches in any county within the state to nonlicensed and unqualified individuals, and certify same under his license. The purpose of this rule is to insure that the licensee, as a qualified abstracter, conduct each search that he certifies and not someone else merely by his certification. Again, I want to emphasize the importance of this issue, and if necessary, request an audience to further discuss the matter. I think you should further be aware that the board in fact will and does grant multi-county licensing in situations where the board is assured that said licensee will in fact be in a position and will conduct the search in the various counties personally, and where said counties geographical proximity lend themselves to this being feasible.

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85-2-4. Employees' authorization to sign abstracts on behalf of licensees. I have been unable to determine the origin of this rule, and do not know of many instances whereby this rule is being used.

85-2-5. Disallowance of temporary license. It would appear that this rule is properly covered in the statutes that affect licensing and its origin must have been to make it absolutely clear that one must successfully complete all requirements prior to licensure and no exceptions will be granted. I think it does tend to clarify the statute, but even if the committee feels repeal necessary, the board would not grant temporary licenses since there is no statutory authority for their issuance.

85-3-1. Filing of bond. The Board agrees with the committee on this matter since the rule duplicates the statute (58-2802), and we would not oppose repealing same.

I hope, in my awkward way, I have been able to explain a little about a most complicated and sometimes misunderstood but extremely important profession.

Sincerely,



Joe F. Jenkins, II
Chairman

JFJ,II:cm

cc: Ms. Alice Macke
Vice Chairman
Abstracters' Board of Examiners

Ms. Shirley Nevins
Executive Secretary
Abstracters' Board of Examiners