

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Bob Frey at  
Chairperson

3:30 ~~XXX~~ p.m. on March 14, 1983 in room 526-S of the Capitol.

All members were present except:

Representatives Erne, Peterson, Matlack, and Duncan

Committee staff present:

Mark Burghart, Legislative Research Department  
Mike Heim, Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes Office  
Nedra Spingler, Secretary

Conferees appearing before the committee:

Senator Jan Meyers  
Lewis C. Smith, Administrative Judge, Johnson County District Court  
Marjorie Van Buren, Office of the Judicial Administrator

The minutes of March 1, 2, and 3, 1983, were approved.

SB 34 - An act relating to selection of judges of the district court.

The Chairman said the bill was essentially the same as another bill in Committee, HB 2076, by Representative Schweiker.

Senator Meyers, sponsor of HB 34, said the bill was introduced to eliminate a conflict in two statutes which would affect Johnson County which now has 5 county commissioners. It would leave an imbalance in the number of lawyers and non-lawyers they appoint to judicial nominating commissions. Line 34 contains the main thrust of the bill.

Lewis Smith, Johnson County District Court Administrative Judge, agreed that Johnson County needs the bill and said the county commissioners also support it.

Representative Schweiker moved to report SB 34 favorable for passage, seconded by Representative Patrick. Motion carried.

SB 172 - An act concerning appeals from certain municipal courts.

Senator Meyers, sponsor, told of Johnson County's problems regarding defendants not appearing for notices of appeals and bonding and said the Senate committee expanded the bill to apply statewide. It allows municipal court clerks to act as deputies for and to forward to the district court notices for appeals and bonding, facilitating action.

Judge Smith supported the bill. Because the municipal courts in Johnson County are night courts, he proposed to the mayors, prosecutors, and police judges that some person be designated as deputy for the sole purpose of taking appeals and bonds with no additional state funds being involved. In discussion, possible delays in appeal notices getting moved to the district court were mentioned. Judge Smith said, if SB 172 passes, the district court would certify the notices the next day, and the effective date would be the day the municipal clerk receives the notice. He had no objection to a possible requirement in the bill that the district court clerk must certify notices the following day.

Marjorie Van Buren, Office of the Judicial Administrator, said that office had no objection to the bill but it should be clarified as to whose appearance bond was intended, it being the municipal court's bond. She had no objection to requiring certification on the following day by district court clerks.

Representative Solbach moved to report SB 172 favorable for passage, seconded by Representative Douville. There was discussion on placing a time requirement for certification, but no action was taken. The vote on the motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,  
room 526-S, Statehouse, at 3:30 ~~am~~/p.m. on March 14, 1983.

SB 348 - An act relating to duties of court officers.

Ms. Van Buren said clerks of the district courts and the office of the Judicial Administrator support the bill. Her statement is attached (Attachment No.1). She knew of no instances of clerks being sued for advice given persons regarding small claims forms, but the bill would clarify that they can give advice without being liable to lawsuits. Representative Miller believed clerks handled requests for assistance adequately under present law, and Section 2 (b) would remove restraints and allow them to give legal advice. He moved to strike Section 2 (b), seconded by Representative Wunsch. Representative Patrick made a substitute motion to table SB 348, seconded by Representative Cloud. The substitute motion failed to carry. In discussion on the original motion, the difference between clerks giving advice as opposed to assistance was mentioned, and the point was made that clerks should be able to help fill out forms but not to advise. Representative Cloud made a substitute motion to strike "advice and" on line 35, seconded by Representative Buehler. The vote on the substitute motion failed to carry 8 to 9. The vote on the original motion carried 9 to 5. Representative Solbach moved to report SB 348, as amended, favorable for passage, seconded by Representative Wunsch. Motion failed to carry.

The Chairman called attention to the large number of Senate bills to be considered and requested members to list their preferences for consideration.

The meeting was adjourned at 4:40 p.m.

TESTIMONY ON

SENATE BILL 348

ATTACHMENT # 1

Marjorie Van Buren  
Office of Judicial Administration  
Unified Court System

This bill amends K.S.A. 19-1305, 19-1326, and 60-2603, clarifying the role of the clerks of the court and their deputies, which are sometimes called into question because the statutes are now somewhat ambiguous.

Section 1 amends K.S.A. 19-1305 to specify that both clerks of the district court and their lawful deputies have authority to administer oaths and affirmations and to take acknowledgments.

Section 2 amends 19-1326 to affirm that a clerk's assisting persons involved in small claims litigation with the necessary forms and procedures, either before or after judgment, does not violate the prohibition against performing service as an attorney or counselor at law.

Section 3 offers two technical changes. The first amends K.S.A. 60-2603 by substituting the words "the officers" for "his or her." In a second technical change, the evidently erroneous reference to "60-304" is deleted, as that statute does not provide any authority regarding this matter.