Approved April 8, 1983
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

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

3:30 ~~XXX~~ a.m./p.m. on March 24, 1983 in room 526-S of the Capitol.

All members were present except:

Representative Justice was excused.

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:

John Brookens, Kansas Bar Association
Harvey Snapp, Chairman of the Title Standards Committee of the Kansas Bar Association
Harvey Sorenson, Wichita Attorney
Don Paxson, Topeka
Jon Josserand, Office of the Secretary of State
Jim Buchele, Judge of the 3rd Judicial District
Mark Bennett, American Insurance Association
Senator Gus Bogina
Steve Tatum, Assistant Johnson County District Attorney
Lou Hoskins, Narcotics Division, Johnson County Sheriff's Department
Jim Clark, Kansas County and District Attorneys Association
Marjorie Van Buren, Office of the Judicial Administrator
Frances Kastner, Kansas Food Dealers Association
Wendell Barker, Franklin County Attorney

SB 346 - An act relating to the time period for determining marketable record title.

John Brookens said the bill was requested by the Kansas Bar Association. He introduced Harvey Snapp, Chairman of the Title Standards Committee of the KBA, who said SB 346 would shorten the defects period of change of title from 40 to 25 years which most attorneys approve. He noted Nebraska has the 25-year period, and the period varies from state to state.

SB 106 - An act relating to limited partnerships.

Mr. Brookens gave a statement supporting the bill (Attachment No.1). He distributed an article (Attachment No.2) from Byron Schlosser, an attorney practicing in the field of limited partnerships, supporting the bill. Mr. Brookens mentioned the interim study on SB 106 and the objections of the Secretary of State which have been worked out. The bill includes parts of the uniform limited partnership act and makes it compatible with Kansas procedure.

Harvey Sorenson supported the bill, stating he prepares 40 to 50 limited partnerships a year. Passage of the bill would be an incentive for investment in Kansas. He noted areas of concern with present law which SB 106 would remedy. He had no recommendations for amendments.

Don Paxson, an attorney and CPA now working in securities, supported the bill. He manages 28 limited partnerships in Kansas that involve 5,000 participants. Kansas should have the best and most modern law to assure investors and to help economical development in the state. Mr. Paxson said, although he disagreed with conferees during the interim, he now concurs.

Jon Josserand, representing the Secretary of State, said that office has worked with other interim conferees on agreement. Language in SB 106 was adopted from the Delaware law and uses the flat fee concept for filing. Section 25 has the informal blessing of the IRS. His office receives about 200 limited partnership filings a year. He supported the bill.

SB 350 - An act relating to process servers.

Judge Jim Buchele said he requested the bill. It would improve the service of process servers. He said a suggestion had been made in the Senate to require the Secretary of State to notify the clerks of the district courts when licenses are granted so they will know who is licensed in their counties. The Judge said he appoints 2 or 3 special process servers a month, and this is on the increase.

A member noted the absence of a definition for "good moral character" and the trend to eliminate this phrase in legislation. Judge Buchele said the intent was that the person be approved by the sheriff and clerk. There was discussion on the bond requirement and how the amount compared with the bond for notaries public.

Mark Bennett said his group was neutral on the bill but did not think it had an adequate limit on liability. He suggested an amendment to put a $1,000 aggregate limit on the bond. Without the amendment, insurance companies would not write the bond. He was not speaking for surety companies. The aggregate limit for notaries is $2,500.

SB 51 - An act relating to controlled substances.

Senator Bogina, sponsor, said the bill was a response to a newspaper article (Attachment No. 3). Congress has passed a similar law, and 12 states have similar bills. He noted SB 113, concerning the property section, was amended into SB 51 on the Senate floor. He endorsed this concept but would not object to its removal from the bill. Law enforcement and courts need the bill as a tool to discourage drug traffic.

Lou Hoskins, Narcotics Division of the Johnson County Sheriff's Department, supported the bill. He gave examples of drug related incidents where law enforcement officers could not act in forfeitures, noting the high standard of living and personal property drug dealers have with no evidence of a paying job. Although judges have the discretion, he has never seen any money returned to local general funds by court order.

Steve Tatum, Assistant DA for Johnson County, gave a statement (Attachment No.4) from the DA's office supporting the bill and Senate amendments. He said Kansas has a major drug problem, especially in the metropolitan areas. Most crimes are drug or alcohol related. Passage of the bill would allow seizure of proceeds tied in with drug sales and seizure of real property. He had no definition for "close proximity" which would have to be determined by case law.

Jim Clark said the Kansas County and District Attorneys Association supports SB 51.

SB 353 - An act relating to issuance of warrants or summons.

The Chairman said the bill was requested by Judge Floyd Coffman of Ottawa (see Attachment No. 5).

Marjorie Van Buren appeared on behalf of Judge Coffman. Present statutes do not give judges the discretion of issuing summons instead of warrants although county and district attorneys can do so. This discretion would save court time. Judge Coffman supports the Senate amendments regarding misdemeanors.

Frances Kastner, Kansas Food Dealers Association, gave a statement (Attachment No.6) in opposition to the bill.

Wendell Barker, Franklin County Attorney, opposed the bill. In his opinion, it conflicts with the entire code of criminal procedure. He questioned if police or magistrates have the training necessary to exercise discretion in the use of warrants or summons which county attorneys have. A member pointed out this discretion was not being taken away from county attorneys. Mr. Barker said the bill would lead to persons being fingerprinted, mug shots taken, and records being on file for no good reason. He said the bill was the result of a conflict between him and Judge Coffman. In his opinion, it was just one of a series of things the Judge had done. He saw no reason to pass SB 353 when it is not a statewide concern.

The meeting was adjourned at 5:35 p.m.

ATTACHMENT # 1

KANSAS BAR ASSOCIATION

MEMORANDUM

DATE: March 24, 1983

RE: SB 106, Kansas Revised Uniform Limited Partnership Act.

STATEMENT OF KANSAS BAR ASSOCIATION - John W. Brookens, Legislative Counsel

The concept of Limited Partnership dates back to the year 1160 in Italy and to the Middle Ages in France. However, the limited partnership concept did not exist in the English common law.

The law of general partnership developed in the Common Law, and as early as 1866 the Kansas Legislature dealt with this subject, and in 1972, Kansas adopted the Uniform Partnership Act, which appears in our statutes as K.S.A. 56-301, et seq.

Limited Partnership, both in England and in the United States, is a creature of statute. Kansas first enacted statutes dealing with Limited Partnerships in 1868.

As you know, the National Conference of Commissioners on Uniform State Laws exists for the purpose of studying, drafting, and recommending adoption of uniform laws throughout the United States. Kansas is represented in the National Conference, Senator Elwaine Pomeroy being one of our representatives thereon at this time.

The National Conference adopted and recommended a Uniform Limited Partnership Act in 1916, but it was not until 1967 that Kansas adopted that Act, which now appears in our statutes as K.S.A. 56-122, et seq.

In 1976, the National Conference adopted a Revised Uniform Limited Partnership Act, and this was approved and recommended for adoption in all of the States in 1979.

SB 106 incorporates the substantive provisions of the Revised Uniform Act, and tailors it to the procedural requirements of Kansas. It is procedurally much the same as the Delaware law. The reason for this is that the Kansas Corporation Code was modeled after the Delaware corporation code. Filing requirements in the office of Secretary of State are similar in the case of both corporations and limited partnerships. Hence, the need to dovetail the procedural aspects of both.

Delaware, along with some fifteen other States, has adopted the Revised Uniform Limited Partnership act. SB 106 will bring Kansas in line with modern practices in this area of the law.

I am authorized to state that the Office of the Secretary of State supports enactment of SB 106.

JWB:nmm

Time To Change Your Act

The Revised Uniform Limited Partnership Act

By Bryon R. Schlosser

Bryon R. Schlosser, '71 is Treasurer and General Counsel of McBiz Corporation in Topeka, Kansas. He has been an adjunct at the law school for several years.

One of the most popular vehicles for promoting tax-oriented investments has been the limited partnership. The commingling of the laws of general partnerships with that of corporations, created for the investor-limited partner an ability to share in profits and losses of the venture (as would a partner) while still enjoying the benefit of limited liability (as would a corporate stockholder).

For the promoter-general partner of the limited partnership, the preservation and consolidation of the traditional corporate functions of the Board of Directors and Corporate Officers in the general partner created a flexible and governable investment vehicle.

The acquiesence by the Internal Revenue Service that a limited partnership may, where proper procedures and rulings are heeded, be taxed as a partnership and not as a corporation adds the benefit of being able to pass through taxable losses and credits to the partners (sometimes in excess of their investment), or avoiding the double taxation of our corporate tax structure by passing through taxable income to the partners with no tax being imposed upon the limited partnership itself.

No wonder the use of the limited partnership structure has increased. Along with this increase in use has come an increase in litigation by limited partners or creditors of limited partnerships. The increase in the necessity for judicial resolutions of these disputes evidences some inadequacies of our Kansas Uniform Limited Partnership Act (K.S.A. 56-122 **et. seq.**) which could be corrected in the 1983 Legislative Session.

Although the Kansas Uniform Limited Partnership Act was adopted by our legislature in 1967, it is modeled after the 1916 U.L.P.A. formulated and promoted by the National Conference of Commissioners on Uniform State Laws. Kansas is therefore subject to a 66 year old code regulating business activities which were largely unknown and unforeseen at the time the model was drafted.

Of course, the basic concepts need not be changed. But in 1976, the National Conference of Commissioners on Uniform State Laws published a revised model for U.L.P. Acts. Recognizing that limited partnerships were now a common investment vehicle for real estate projects, movies, oil and gas development, livestock operations, mining ventures and even public relation campaigns, the Commission did not opt to re-state or change the structure of the Act, but did choose to provide additional protection for limited partners and creditors, while streamlining and clarifying organizational and operation procedures.

Senate Bill 828 of the 1982 Legislative Session was considered by the Senate Judiciary Committee during the later part of the 1982 session. This bill simply repealed the Kansas Uniform Limited Partnership Act and replaced it with the 1976 revision of the U.L.P.A. approved by the National Conference of Commissioners on Uniform State Laws.

At hearings before the Senate Judiciary Committee, it was pointed out by a representative of the Secretary of State's office that S.B. 828 repealed all of the recording and annual fees currently being paid by approximately 1,500 foreign and domestic limited partnerships registered in Kansas with no substitute provisions. The representative from the Secretary of State's office also disclosed that his office had been considering a change in these fees and would prefer additional time to report the conclusions of the Secretary of State before recommending repeal or confirmation of those statutes.

The entire matter was then placed on the interim agenda for study, and hearings were held by the Special Committee on Judiciary on July 2, 1982. Appearing before the Special Committee at this time were representatives of the Secretary of State's office, the Kansas Bar Association and John M. McCabe, Legal Counsel and Legislative Director of the National Conference of Commissioners of Uniform State Laws. There was no testimony in opposition to the substantive provisions of the proposed changes, and if my analysis is correct, Kansas is well on its way to substituting the 1976 revised Uniform Limited Partnership Act for the 1916 model act provisions currently embodied in K.S.A. 56-122 **et. seq.**

Although the changes and additions to the 1916 model act are too numerous to mention in this article, the major changes may be summarized as follows:

(continued on next page)

Time To Change Your Act *continued:*

1. The current requirement for filing the partnership certificate in the county in which the partnership has its principal place of business is deleted.

2. A procedure for reserving a name for the partnership prior to filing the certificate is provided.

3. Each limited partnership (foreign and domestic) will be required to maintain a registered office in Kansas and a resident agent for service of process.

4. A current list of all partners and their addresses, a copy of the certificate, the partnership's last three years' tax returns and financial statements, and a copy of the partnership agreement must be maintained at the registered office and be made available to any partner for inspection or copying upon reasonable request.

5. Much greater flexibility is permitted by allowing the partnership agreement to provide for admission of new partners and withdrawal of partners without the necessity of amending the agreement. Also, the partnership agreement is permitted to provide for distribution of assets to a withdrawing partner without dissolution of the partnership.

6. A "safe harbor" rule is provided to guide limited partners as to what duties each may assume without forfeiting their limited liability status. The revised act allows a limited partner to be a contractor, agent or employee of the limited partnership or one of the general partners. A limited partner may also consult with and advise the general partner; act as surety for the partnership; and vote on (a) dissolution and winding up of the partnership, (b) the sale, exchange, lease, mortgage, pledge or transfer of all or substantially all of the assets, (c) the incurrance of indebtedness (except in the ordinary course of business), (d) the change of the nature of partnership business, or (e) the removal of a general partner.

7. Limited partners are permitted to perform services in exchange for their interest in the partnership.

8. In the absence of an agreement to the contrary, profits, losses and asset distribution is set in proportion to the value of each partner's contributions.

9. A derivative action for limited partners is created parallelling the rights of a corporate stockholder.

10. Voting rights may be granted to limited partners or classes thereof in the partnership agreement.

11. The name of the limited partnership must contain without abbreviation the words "limited partnership".

Based upon a memorandum to the Special Committee on Judiciary from John R. Wine, Jr., Legal Counsel and Deputy Assistant Secretary of State, it is anticipated that the 1976 Revised Uniform Limited Partnership Act will be further modified so that procedures and fees for filing, name reservation, annual reporting, foreign registration and reinstatement will closely resemble that of our corporation code.

Many of these changes statutorily clarify what the adept limited partnership attorney would have already provided in the partnership agreement. Nevertheless, the revised act obviously attempts to increase protection for the limited partners and creditors while stressing procedural changes permitting easier management of those limited partnerships which have hundreds of limited partners.

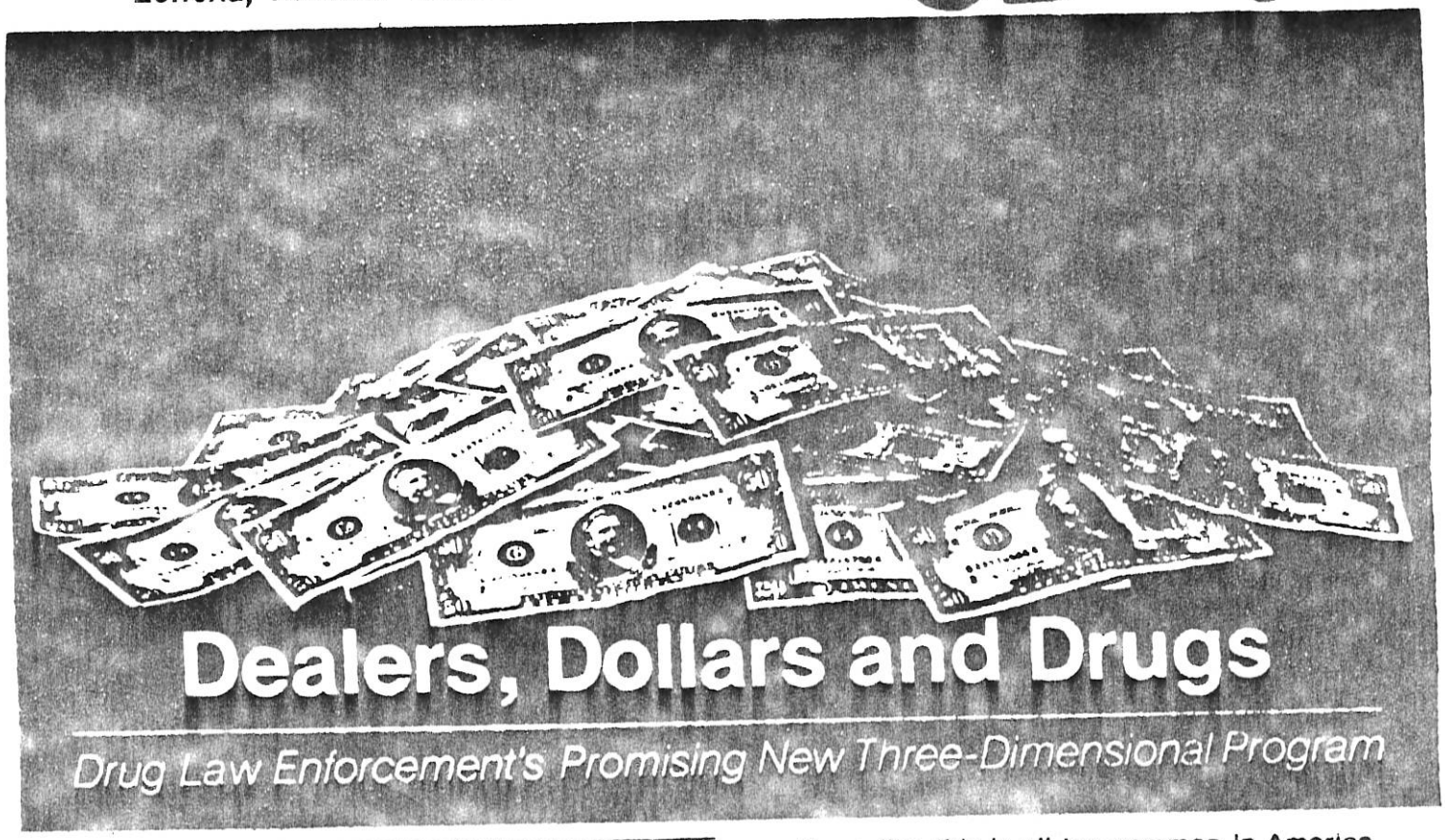
These added protections and clarifications, particularly in light of the changes in business and investors' needs since 1916, justify our profession's support of the Kansas Legislature's substitution of the substantive provisions of the 1976 Revised Uniform Limited Partnership Act for our current Kansas act.

Dean Carl Monk shares a few words with Meyer Ueoka during Homecoming activities.

August (Gus) Bogina Jr.
Sen. 10th District
13513 West 90th Place
Lenexa, Kansas 66215

ATTACHMENT # 3

SB 51



Dealers, Dollars and Drugs

Drug Law Enforcement's Promising New Three-Dimensional Program

Harry L. Myers
Assistant Chief Counsel
Drug Enforcement Administration
and
Joseph P. Brzostowski
Special Agent
Financial Investigative Section
Drug Enforcement Administration

NEW YORK—Federal agents arrest twelve drug traffickers; seize 11,600 pounds of hashish, 1.5 pounds of Thai sticks and 5,000 units of LSD; and confiscate $400,000 in cash, a painting valued at $1,000,000, gold and jewelry worth $100,000 and a Mercedes Benz. . .

SAN FRANCISCO—Federal agents arrest two drug traffickers, seize 23.5 pounds of cocaine, and confiscate a bank account containing $212,000, stocks worth $15,000 and a mansion on an estate valued at $750,000. . .

MIAMI—Federal agents arrest one of the biggest financiers of drug trafficking in the United States, seize 44 pounds of pure cocaine, confiscate $1,000,000 in cash and notify Swiss authorities to freeze the drug dealer's secret bank accounts. . .

News like this is all too common in America. Every day we hear reports of more drug arrests and more drug seizures. Yet something about these three reports is different. An important new dimension has been added to the drug enforcement picture they describe: Money! Law enforcement has begun to seize the profits of crime.

Stalking $80 Billion

Drug trafficking is big business. It is organized to earn huge profits. Each year Americans spend almost $80 billion to buy illicit drugs. The statistics are staggering. Like all other businesses, drug trafficking organizations have three elements:

- Workers and managers;
- Products and services;
- Money and other assets.

Historically, we have attacked criminal businesses by arresting and punishing their workers and managers. And we have attacked them by seizing their illegal products, such as narcotics and other dangerous drugs. But we have ignored their third dimension. For too long we did not attack the money, property or assets of these illegal companies.

"It seems probable that drug law enforcement will eventually pay its own way."

All businesses need money and property to create products, to deliver them to their customers, to promote sales and to grow. Criminal businesses are no different. Drug dealers need money and property to produce and market their contraband goods. They need money to buy silence from witnesses, to pay bribes, to expand into other illegal activities, to move into new towns and cities, to seduce more citizens into joining their ranks, and to pay for all their other illegal expenses.

Money and property are at the heart of all businesses. As long as assets and profits go untouched, lost workers and lost products can always be quickly replaced. Even with leaders in jail, confederates continue the dangerous and deadly business of drug trafficking by using the wealth and property left behind. And those imprisoned quickly return to drug dealing after being released, because criminals making huge profits see jail as an acceptable risk as long as they get to keep their earnings. They can invest their illegal fortunes while in jail, and the money will be waiting for them, with interest, when they get out.

The Drug Enforcement Administration is implementing an enforcement program that strikes at all three dimensions of drug trafficking. We are continuing to improve upon our traditional objectives of arresting major dealers and seizing large amounts of drugs. But, as the reports at the beginning of this article indicate, we are now seizing the ill-gotten profits and property of these criminals.

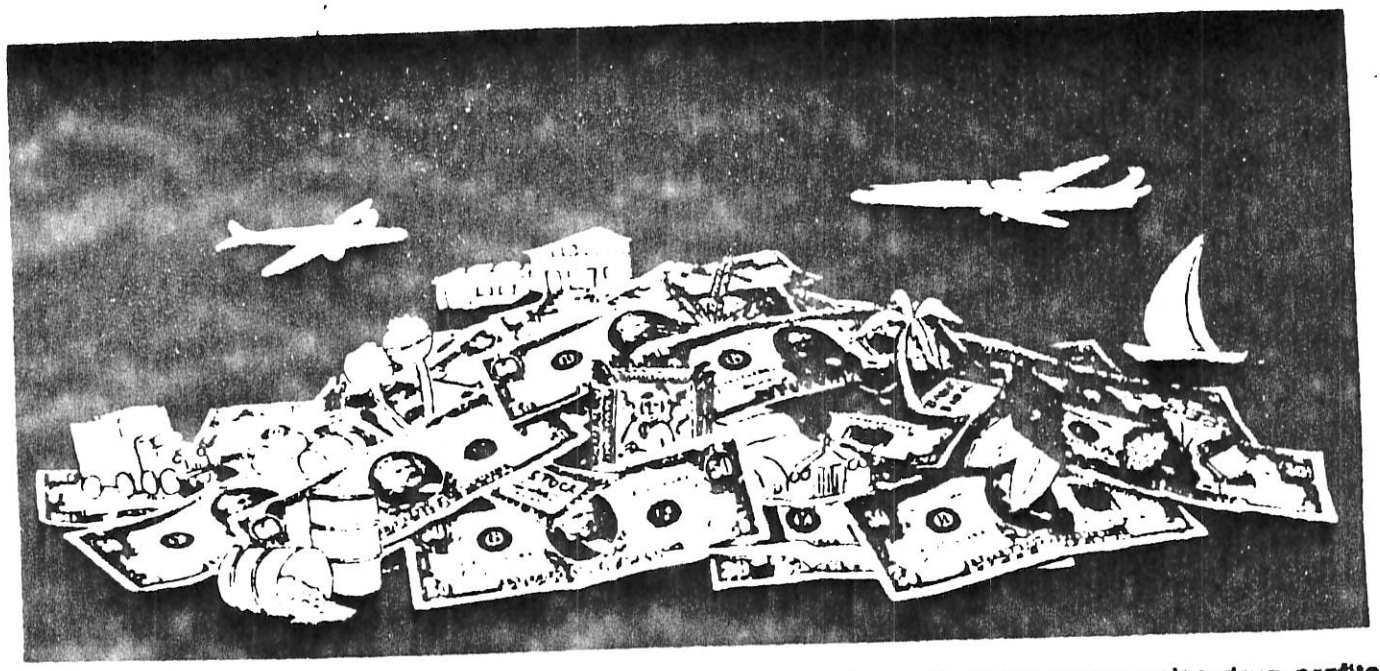
Today's drug agents can no longer confine themselves to the "who, what, where, when and why" of drugs and drug dealers. During every phase of their investigations they must now ask: "What about the dollars?" If we are ever to be successful against drug traffickers, we must raid their treasuries, we must confiscate their ill-gotten wealth.

The Power of Forfeiture

The power to confiscate the financial resources of criminals exists in the ancient Law of Forfeiture. Since the days of Moses civilizations throughout the world have recognized the inherent right of government to confiscate, or "forfeit," anything used illegally, acquired illegally or dangerous to society.[1] Government does not pay for forfeitable property; it is simply confiscated and disposed of. While this may seem harsh, American courts have repeatedly upheld it as constitutional.[2] The power of forfeiture was approved and practiced by the American Colonies.[3] It was used by the First Congress of the United States to confiscate pirate ships, smuggling ships and slave ships.[4] Hundreds of forfeiture laws are now enforced by both the Federal Government and the states.

The first use of the forfeiture power to confiscate the profits and other assets of drug dealers occurred in 1970. Persons convicted of operating large drug-trafficking organizations, in violation of the Federal Controlled Substances Act, were required to forfeit: all their illegally acquired profits, all their capital in the illegal business, and all their other property that helped them operate illegally.[5] Forfeiture of this property was made a part of the punishment for the crime. A similar (but not identical) provision, designed to forfeit the assets of all convicted organized criminals, was passed, at the same time, in the Racketeer Influenced and Corrupt Organizations Act.[6]

Despite the best efforts of agents and prosecutors, relatively little was seized from drug dealers under these criminal forfeiture laws.[7] Congress reacted in 1978 with a bold new approach. It passed a civil law declaring that all moneys used in, and all assets acquired from, the illicit drug trade belong to the United States Government and are subject to civil seizure under the forfeiture power.[8] In effect, Congress authorized federal attorneys to file civil lawsuits asserting the Government's right to such property. Although the same evidence gathered in a criminal investigation can be used in these civil suits, they are independent of any criminal trials.[9] Dismissal of criminal charges against an owner due to some technicality does not prevent the Government from civilly suing for return of the property.[10] Civil forfeiture suits are



not burdened by the complex procedures followed in criminal cases.[11] The level of proof needed in civil forfeiture suits is significantly less than the "proof beyond a reasonable doubt" required in criminal trials.[12] And the Government can introduce more kinds of evidence in these civil cases.[13]

Results under the 1978 civil forfeiture law have been impressive. In 1979, the first full year of implementing the law, DEA alone seized $9.8 million in assets. In 1980, DEA civilly seized $34.5 million in assets. And in 1981 DEA civilly seized $54.4 million in assets. Seizures made by other agencies based upon information and assistance provided by DEA amounted to $154.2 million. DEA seizures of drug-related assets under the 1970 criminal statutes totaled $14.75 million for this same period. In all, DEA agents captured $268 million from drug dealers in just three years.

This is only the beginning. It takes time—a long time—to educate thousands of agents, prosecutors and judges in the intricacies of new laws. As the educational process on forfeiture continues, the dollar value and the variety of assets seized should dramatically increase. It seems probable that drug law enforcement will eventually pay its own way. We should reach a point where the costs to taxpayers will be offset by the fortunes seized from drug dealers. Although the federal program is still in its infancy, it is already producing vast amounts of revenue.

While all states arrest drug dealers and seize drugs, fewer than ten states seize drug profits. Most have neglected to pass laws attacking the finances of drug traffickers. To help correct this, DEA has developed a Model Act based upon the 1978 federal forfeiture law. It consists of an amendment to the civil forfeiture section of the Uniform Controlled Substances Act, now enforced in forty-seven states.[14]

[redacted]

SECTION (insert designation of the civil forfeiture section) of the Controlled Substances Act of this State is amended by adding the following paragraph after paragraph (insert designation of the last category of forfeitable property):

( ) Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of this Act (meaning the Controlled Substances Act of this State), all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of this Act; except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by him to have been committed or omitted without his knowledge or consent.

Rebuttable Presumption: All moneys, coin and currency found in close proximity to forfeitable controlled substances, to forfeitable drug manufacturing or distributing paraphernalia, or to forfeitable records of the importation, manufacture or distribution of controlled substances, are presumed to be forfeitable under this paragraph. The burden of proof is upon claimants of the property to rebut this presumption.

Put simply, this Model Act would permit states to seize, civilly forfeit, and deposit in their treasuries:

1. All moneys and other property used to buy contraband drugs.
2. All property bought with the profits from drug dealing, and
3. All moneys used to facilitate any drug law violation.

States adopting this provision should seriously consider allocating the moneys forfeited under it to the drug enforcement, education, prevention and treatment agencies within their jurisdictions. Variations in state finance laws preclude drafting a model provision dedicating forfeited property. Nevertheless, every state should amend its laws to devote a substantial portion of forfeited drug profits to the fight against drug abuse.

Drug Agents' Guide to Forfeiture of Assets

Until recently, the Law of Forfeiture played a very insignificant role in our struggle with crime. Although it is a well-established legal doctrine, up to now it has been ignored by most legal scholars. No books have been written on forfeiture law. No schools offer courses in forfeiture. Few legal experts exist in the area. Only a relative handful of police, lawyers and citizens are even aware of the concept.

As a result, states adopting the Model Forfeiture of Drug Profits Act will face the immediate challenge of educating their officials in this area. Fortunately, DEA has just completed a training manual on forfeiture. The text, entitled the **Drug Agents' Guide to Forfeiture of Assets**, is approximately 400 pages long and contains over 800 citations to state and federal forfeiture cases. The first seven chapters explain all aspects of civil forfeiture law, including a comprehensive analysis of the 1978 federal law on which the Model Forfeiture of Drug Profits Act is based. The eighth chapter discusses criminal forfeiture law, including the provisions of both the Racketeer Influenced and Corrupt Organizations Act and the Continuing Criminal Enterprise Offense of the Federal Controlled Substances Act. The ninth chapter probes the practical problems facing agents investigating cases involving substantial drug-related assets. And the tenth chapter contains the Model Forfeiture of Drug Profits Act, with a Prefatory Note and Comment.

The guide is available through the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. At present, it sells for $9.50, which includes postage and handling. The GPO Stock Number is 027-004-00034-2.

Conclusion

Thanks to the Law of Forfeiture, drug agents now have the potential of seizing more money than they spend. With tax dollars becoming scarce, the Law of Forfeiture holds the promise of dramatically improving drug law enforcement while profiting the public treasuries. The long-range implications are enormous. The Drug Enforcement Administration sincerely believes that no state can afford to ignore the modern potential of this ancient legal doctrine.

Footnotes

1. Finklestein, *The Goring Ox: Some Historical Perspectives On Deodands, Forfeitures, Wrongful Death And The Western Notion of Sovereignty*, 46 Temple Law Quarterly 169 (1973).
2. *Calero-Toledo* v. *Pearson Yacht Leasing Company*, 94 S.Ct. 2080 (1974).
3. Surrency, *The Courts In The American Colonies*, 11 Am. Jour. Legal History 253 at 261 (1967).
4. *Supra* Note 2, at 2092.
5. 21 U.S.C. 848.
6. 18 U.S.C. 1962, 1963.
7. *Asset Forfeiture—A Seldom Used Tool In Combatting Drug Trafficking*, General Accounting Office, GGD-81-51, April 10, 1981.
8. 21 U.S.C. 881(a)(6).
9. *The Palmyra*, 12 Wheat. 1, 6L.Ed. 531 (1827).
10. *United States* v. *One Clipper Bow Ketch Nisku*, 548 F.2d 8 (1 Cir. 1977).
11. See, e.g., *United States* v. *110 Bars of Silver*, 508 F.2d799 (5 Cir. 1975).
12. 19 U.S.C. 1615; *One Lot of Emerald Cut Stones* v. *United States*, 93 S. Ct. 489 (1972).
13. Rule 1101(e), Federal Rules of Evidence (28 U.S.C.); See, e.g., *United States* v. *One Twin Engine Beech Airplane*, 533 F.2d 1106 (9 Cir. 1976).
14. Volume 9, Uniform Laws Annotated, Table of Jurisdictions.

STATE OF KANSAS
Tenth Judicial District

ATTACHMENT # 4

OFFICE OF DISTRICT ATTORNEY

DENNIS W. MOORE
District Attorney

Johnson County Courthouse
P.O. Box 728, 6th Floor Tower
Olathe, Kansas 66061
913-782-5000, Ext. 333

March 24, 1983

Honorable Robert Frey, Chairman
House Judiciary Committee
State House
Topeka, KS

Dear Representative Frey:

I urge your support and the support of other members of the House Judiciary Committee for Senate Bill No. 51 which provides for for forfeiture of real propery, monies, negotiable instruments and securites used to facilitate a vilation of the Uniform Substances Act.

Persons involved in the manufacture, distribution and sale of controlled substances seem at times to have almost unlimited resources in carrying on their illicit business. I believe S.B. 51, and particularly the provision that forfeited property or money shall be returned to the general fund of the unit of government having custody, will be a step in the right direction in striking a balance and assisting law enforcement to deal more effectively with illicit drugs in our State.

I know you will give serious consideration to this bill and,again, I urge your support for this most effective tool for law enforcement. I would appreciate your sharing this letter with other members of the committee and I thank you in advance for your consideration.

Very truly yours,

Dennis W. Moore

DWM:eac

Fourth Judicial District of Kansas

ATTACHMENT # 5

FLOYD H. COFFMAN
DISTRICT JUDGE DIVISION ONE
OTTAWA, KANSAS 66067

JOHN W. WHITE
DISTRICT JUDGE DIVISION TWO
IOLA, KANSAS 66749

DONALD L. WHITE
ASSOCIATE DISTRICT JUDGE
OTTAWA, KANSAS 66067

JAMES J. SMITH
ASSOCIATE DISTRICT JUDGE
GARNETT, KANSAS 66032

December 17, 1982

Honorable Elwaine F. Pomeroy
Kansas State Senator
1415 Topeka Ave.
Topeka, Ks. 66612

Re: Issuance of Summons K.S.A. 22-2302

Dear Senator:

You are no doubt aware the Supreme Court in Cook v. City of Topeka and Findley, decided December 3rd, reversed Judge Jackson's decision to summarily dismiss the action against a clerk of the municipal court of the City of Topeka for failure to recall a warrant after fine and costs were paid. Judge Jackson gave the clerk the benefit of judicial immunity but the opinion has the effect of giving her qualified immunity only regarding matters about which she has discretion.

I have a concern that warrants for arrest are being issued in quite a number of cases where a summons to appear would suffice. For instance, I am called upon by the prosecutor's office to issue warrants in insufficient check cases where the check writer may have never received the notice that the check "bounced". I realize that responsible people do or should keep track of their bank accounts and that normally the bank mails a notice of overdraft, in addition to the notice required under the check statute. However, changes of address and other circumstances sometimes result in "responsible people" not having received a notice or at least not having responded and taken care of the "bad" check.

My concern is that K.S.A. 22-2302 does not give the magistrate or judge the discretion regarding whether a summons rather than a warrant should issue upon the filing of the complaint. The statute provides that upon the filing of the complaint "a warrant for the arrest of the defendant shall issue". The next sentence provides "Upon the request of the prosecuting attorney a summons instead of a warrant may issue".

It is my suggestion that this statute should simply be amended to add at the end of the first sentence which provides that "a warrant for the arrest of the defendant shall issue" the following "unless the magistrate determines that initially a summons should be issued". With that amendment the next sentence I have quoted above should be eliminated. The last sentence of the statute provides for the follow-up procedure in that if a defendant fails to appear in response to a summons, a warrant shall issue.

I appreciate your diligent attention to my suggestions in the past. You and your committee should appreciate how much the provision for juries of six in all misdemeanors is facilitating the administration of justice. If I knew who is Chairman of the Judiciary Committee in the House, I would have sent a copy of this letter to him.

Respectfully yours,

Floyd H. Coffman
District Judge

FHC/mk
enc.
cc: Senator Merrill Werts
1228 Miller Drive
Junction City, Ks. 66441

ATTACHMENT # 6

Kansas Food Dealers' Association, Inc.

2809 WEST 47th STREET SHAWNEE MISSION, KANSAS 66205
PHONE: (913) 384-3838

March 24, 1983

SB 353 HOUSE JUDICIARY COMMITTEE

Thank you, Mr. Chairman, and members of the committee. I am Frances Kastner, Director of Governmental Affairs for the Kansas Food Dealers Association, and our members consist of wholesalers, distributors and retailers of food products throughout Kansas.

We have always been in favor of any measure which would serve to strengthen enforcement of the bad check laws, whether that bad check is over $50 or under $50. Those under $50 are considered a misdemeanor, and under SB 353, as we understand it, the County Attorney would no longer be responsible for initiating warrants for arrests in these misdemeanor cases. This would be delegated to judges, and in our opinion just puts the possibility of having violators of the bad check law further avoid arrests.

For this reason we OPPOSE SB 353, and ask that you NOT consider SB 353 for passage.

Thank you for the opportunity to appear before you today, and if you have any questions I will be happy to respond.

Frances Kastner, Director
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