

MINUTES OF THE Senate COMMITTEE ON Governmental Organization

The meeting was called to order by Senator Vidricksen at
Chairperson

1:37 ~~xxx~~/p.m. on February 10, 1983 in room 531N of the Capitol.

All members were present except:

Senator Gaar
Senator Roitz

Committee staff present:

Norm Furse - Revisor
Julian Efird - Legislative Research

Conferees appearing before the committee:

Senator Joe Norvell - Sponsor of S.B. 46
Larry Scheller - Leavenworth County Clerk
Mike Billinger - Ellis County Treasurer
Emery Rome - Ellis County Clerk
Virginia Herzog - Ellis County Register of Deeds
Rosa Mary Moore - Reno County Register of Deeds
Harold Kraus - Ellis County Commissioner

Senator Norvell appeared before the committee on behalf of Senate Bill 46 stating that this bill was meant to clarify the powers of various elected county officials and to promote more harmony in the court house. It specifically deals with the powers of county commissioners, county clerks, county treasurers and county registers of deeds. The various amendments to the bill were discussed and Senator Norvell stated that this bill will clarify questions pertaining to duties and powers, and will avoid other expensive court cases which must be paid by the taxpayers. (Exhibit A) The committee raised several questions and there was a brief discussion.

Mike Billinger distributed copies of his testimony to the committee and stated that Senate Bill 46 was important to all County Treasurers in Kansas because it would effectively make them the administrators of their employees. It was pointed out that a survey taken of County Treasurers revealed that 91 counties supported the proposed legislation, 2 opposed and the remaining took no stand. It was requested that the committee give favorable consideration of Senate Bill 46. (Exhibit B)

Testimony from Emery Rome addressed Section 2 of Senate Bill 46 in which the Clerk is given the authority to appoint a deputy and hire and/or fire any additional help the Clerk would deem necessary. He expressed the feeling that someone who worked with employees on a daily basis would be the best qualified to evaluate their performance. (Exhibit C)

Virginia Herzog concurred with the previous testimony and requested favorable passage of Senate Bill 46. (Exhibit D)

Copies of testimony from the Reno County Offices were distributed and Rosa Mary Moore emphasized that efficient management and control of county offices is a must and requested passage of this legislation. (Exhibit E)

Ellis County Commissioner, Harold Kraus enlightened the committee on the background of the law suit that caused Senate Bill 46 to be introduced. He gave information on the hiring practices of the Register of Deeds office in Ellis County. His concern was that they have no statutory guidelines to insure County Commissioners of their rights to control the budgetary processes in the various elective offices in the counties. They feel the County Commissioners do not have statutory authority to limit the number of employees in the various departments. (Exhibit F) Many questions were raised by members of the committee.

The Chairman announced that the hearing would be rescheduled for February 24th and appointed a sub-committee consisting of Senators Hein, Gaines and Meyers.

The meeting was adjourned
at 2:41 p.m.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

GUEST LIST

COMMITTEE: Senate Governmental Organization DATE: Feb. 10, 1983

NAME	ADDRESS	COMPANY/ORGANIZATION
Thomas M. Mowman	KEKS	IL of D
Sue Neustifter	Lawrence	" " "
Spencer Farmer	Leavenworth	Reg. of Deeds
Robert Jagers	Lehigh Co.	Reg. of Deeds
Doriel Rose	Eldorado	" "
Rosa Mary Moore	Hutchinson	" "
Virginia Herzog	Ellis	Reg. of Deeds
Emergy J. Rowd	Ellis	Co. Clerk
Mike Billinger	HAYS	Co. TREASURER
Larry E. Schellen	Leavenworth	Co. Clerk
Richard D. Davis	Osage Co.	Co. Treasurer
Bill McShick	Cherokee Co.	Co. Treasurer
Ghelma Lancon	Brown Co.	Co. Secy.
Shirley J. Tate	Leavenworth	Co. Treasurer
Larry Larson	Lincoln Co.	Co. Treasurer
Clayton Wiggins	Ellis Co., Hays	Commissioner
Harold G. Kiser	Ellis Co., Hays	Commissioner
Johnna Hingle	Johnson County Courthouse	Commissioner
Robert Bacon	Johnson County Courthouse	BOARD OF COMMISSIONERS
GENE R. KRISTENSON	Administrator -	Survey County
DAVE FRILSEN	Survey County	Commissioner
MARK R. ANSON	Oreland Park	Johnson County PCC
Everett Murphy	Seneca	Co. Commissioner
Clifford Houk	Oshtemo Co. Ke.	Co. Commr
Dollie Scheller	Linwood, Ks.	Co. Commissioner

Marge Roberts	Topeka, Ks.	Shawnee County Treasurer
Winnie Engman	Topeka, Ks.	Shawnee County Commissioner
Pat McDonald	Topeka, Ks.	Shawnee County Clerk
Carl C. Clark	Independence, Kans.	Mont. Co. Comm.
Jim D. Brownlee	Wenatcha County	Commissioner
Kim C. Dewey	Wichita Ks.	SEDOWICK COUNTY
Strenu Michael	Topeka, Ks.	
L. N. Rasmussen	Frankfort, Ks.	co. commissioner
Fred Allen	Topeka	Ks. Assoc. of Counties
Dolchi Scheller	Linwood, Ks.	Lv Co. Commissioner
Nancy B. Helbert	Lawrence Ks.	Dg. Co. Commissioner
Joyce W. Miller	Independence Ks.	rep. self
Patte Z. McCart	Wichita, Ks.	Register / ²⁰⁰⁰ ₂₀₀₀
Dan Hary	Newton, Ks.	Register of Deeds Hanyla.
Bob McWeery	Topeka	Aide to Sen. Hein
Martha Mother	"	"

S.B. 46 IS MEANT TO CLARIFY THE POWERS OF VARIOUS ELECTED COUNTY OFFICIALS AND HOPEFULLY PROMOTE MORE HARMONY IN THE COURT HOUSE. THE BILL SPECIFICALLY DEALS WITH THE POWERS OF COUNTY COMMISSIONERS, COUNTY CLERKS, COUNTY TREASURERS AND COUNTY REGISTERS OF DEEDS.

SECTION 1 OF THE BILL AMENDS THE COUNTY HOME RULE STATUTE, K.S.A. 1982 SUPP. 19-101A TO ADD A FIFTEENTH (15) LIMITATION ON COUNTY HOME RULE POWERS. THE NEW LIMITATION PROHIBITS COUNTIES FROM EXEMPTING THEMSELVES OR AFFECTING CHANGES TO THE STATUTES WHICH ARE AMENDED BY THIS BILL. THIS APPEARS IN LINES 81 AND 82 OF THE BILL AT THE TOP OF PAGE 3. THE OTHER AMENDMENTS IN SECTION 1 ARE MERELY CLEANUP.

SECTION 2 OF THE BILL AMENDS K.S.A. 19-302 DEALING WITH THE POWERS OF COUNTY CLERKS. THE BILL CLARIFIES THAT A COUNTY CLERK HAS THE POWER TO APPOINT, PROMOTE, DEMOTE AND DISMISS ADDITIONAL DEPUTIES AND ANY ASSISTANTS NECESSARY TO CARRY OUT THE DUTIES OF THE OFFICE. THE AMENDMENTS PROVIDE THE COUNTY CLERK SHALL SUPERVISE ALL ASSISTANTS IN THE PERFORMANCE OF THEIR DUTIES. AND FURTHER, THE COUNTY CLERK MAY ATTEND AND MAY REQUIRE THE DEPUTIES AND ANY ASSISTANTS TO ATTEND ANY MEETINGS OR SEMINARS WHICH THE CLERK DETERMINES WILL BE BENEFICIAL TO THE OPERATION OF THE CLERK'S OFFICE.

FINALLY, THE CLERK SHALL SUBMIT A BUDGET FOR THE FINANCING OF THE OPERATION OF THE CLERK'S OFFICE TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR APPROVAL.

SECTIONS 3 AND 4 OF THE BILL DEAL WITH COUNTY TREASURERS AND SECTION 5 OF THE BILL DEALS WITH COUNTY REGISTERS OF DEEDS. THE SAME CLARIFYING LANGUAGE IS ADDED IN REGARD TO THESE COUNTY OFFICERS AS WAS ADDED FOR COUNTY CLERKS. THESE ELECTED OFFICIALS ARE ALSO GIVEN POWER TO APPOINT, PROMOTE, DEMOTE AND DISMISS THEIR OWN DEPUTIES AND ASSISTANTS, TO ATTEND MEETINGS OR SEMINARS AS THESE ELECTED OFFICIALS DEEM APPROPRIATE, AND TO SUBMIT BUDGETS FOR THEIR RESPECTIVE OFFICES.

THIS BILL, AS I HAVE STATED, IS MEANT TO CLARIFY THE POWERS AND RELATIONSHIPS AMONG THESE ELECTED COUNTY OFFICIALS. THE CURRENT STATUTES DO NOT PROVIDE ADEQUATE GUIDELINES. MY BILL WOULD FILL THIS VOID.

S.B. 46 IS PROMPTED IN PART BY SEVERAL ATTORNEY GENERAL'S OPINIONS IN RECENT YEARS WHICH HAVE DEALT WITH THE POWERS OF OUR ELECTED COUNTY OFFICIALS.

FOR EXAMPLE, OPINION No. 81-287 SAID THE BOARD OF COUNTY COMMISSIONERS HAS THE POWER TO ESTABLISH HIRING AND FIRING PROCEDURES FOR NONDEPUTY PERSONNEL IN THE COUNTY CLERK'S OFFICE PURSUANT TO COUNTY HOME RULE POWERS SINCE THE STATUTES ARE OTHERWISE SILENT ON THIS MATTER. THE OPINION RECOGNIZED THAT THE COUNTY CLERK HOWEVER, HAD THE POWER TO HIRE AND FIRE DEPUTIES. THE ISSUE OF CLERKS AND THEIR DEPUTIES ATTENDING MEETINGS WAS ALSO RAISED IN THIS OPINION. THE OPINION SAID THE CLERK HAD THE AUTHORITY TO ATTEND MEETINGS AND AUTHORIZE OTHER PERSONNEL TO ATTEND MEETINGS AS LONG AS SUFFICIENT PERSONNEL REMAINED AT THE COURT HOUSE FOR THIS OFFICE TO FUNCTION IN AN ORDERLY MANNER.

OPINION No. 80-69 WHICH DEALT WITH SHERIFFS, BUT RELATED TO OTHER COUNTY ELECTED OFFICIALS AS WELL, SAID THAT COUNTY OFFICIALS MAY PURCHASE EQUIPMENT AND SUPPLIES WHICH ARE DIRECTLY NECESSARY IN ORDER FOR THE OFFICIAL TO PROPERLY PERFORM DUTIES ESTABLISHED BY STATE LAW AND COUNTY COMMISSIONERS MAY NOT DISALLOW THESE EXPENDITURES.

A THIRD EXAMPLE IS OPINION No. 81-205 WHICH STATED THAT A COUNTY MAY NOT REQUIRE A SHERIFF TO ENFORCE CITY ORDINANCES UNDER INTERLOCAL COOPERATION AGREEMENTS. THE RATIONALE OF THE OPINION WAS, IN PART, THAT IT IS THE SHERIFF'S STATUTORY RESPONSIBILITY TO KEEP THE PEACE AND THE SHERIFF HAS DISCRETION AS TO HOW BEST TO FULFILL THIS DUTY IN THE UTILIZATION OF HIS LAW ENFORCEMENT PERSONNEL.

THESE OPINIONS ARE OFFERED MERELY TO SHOW THE DIFFERENT AND OFTEN COMPETING INTERESTS, OF COUNTY ELECTED OFFICIALS. MY BILL IS DESIGNED TO CLARIFY SOME OF THESE COMPETING INTERESTS IN REGARD TO CLERKS, TREASURERS AND REGISTER OF DEEDS.

S.B. 46

THE NEED FOR SB 46 IS QUITE APPARENT. LAST YEAR A DISTRICT JUDGE RULED IN FAVOR OF THE REGISTER OF DEEDS SAYING THE COMMISSION'S AUTHORITY IS LIMITED TO BUDGETARY MATTERS.

THE COURT CASE COST THE TAXPAYERS OF ELLIS COUNTY \$5,000 TO PAY COURT COSTS AND ATTORNEY FEES. IF SB 46 IS ENACTED TO CLARIFY SOME OF THESE COMPETING INTEREST IN REGARD TO CLERKS, TREASURERS AND REGISTERS OF DEEDS IT WILL PROVIDE GUIDELINES WHICH ARE NOT IN THE CURRENT STATUTES. DURING THESE ECONOMIC TIMES I DO NOT BELIEVE THAT THE CITIZENS OF THE STATE CAN AFFORD LEGITIMATION TO DETERMINE THE POWERS AND DUTIES OF THE VARIOUS OFFICES. THIS PIECE OF LEGISLATION WILL CLARIFY ANY QUESTIONS PERTAINING TO DUTIES AND POWERS, AND WILL AVOID OTHER EXPENSIVE COURT CASES, WHICH MUST BE PAID BY THE CITIZENS OF THE COUNTY INVOLVED.

IN ADDITION, LAST YEAR THE 1982 LEGISLATURE PASSED SB 832 WHICH GAVE THE COUNTY APPRAISER THE SAME POWERS AND DUTIES AS IS PROVIDED IN SB 46 FOR THE CLERKS, TREASURERS AND REGISTERS OF DEEDS. SB 832, WHICH THIS BILL IS MODELED AFTER, WAS PASSED BY THE HOUSE OF REPRESENTITIVES 123 IN FAVOR AND 1 AGAINST AND WAS PASSED BY THE KANSAS SENATE 35 TO 0. I HOPE THAT WE WILL APPROVED SB 46 IN THE SAME OVERWHELMING MANNER.

STATEMENT
OF
MIKE BILLINGER
ELLIS COUNTY TREASURER
BEFORE THE
SENATE GOVERNMENTAL ORGANIZATION COMMITTEE

Mr. Chairman and members of the Senate Governmental Organization Committee. My name is Mike Billinger, and I am the County Treasurer of Ellis County.

I would like to express my appreciation to the Committee for the time they have granted me for my brief presentation. Senate Bill 46 is important to me, as well as to all County Treasurers in the State of Kansas, because it would effectively make us the administrators of our employees.

As elected officials it is necessary for us to be responsive to public needs and opinions. The staffs in our offices are an extension of our personal philosophies in dealing with the public. If they, the staff, question our authority as their employers versus the authority of others in the courthouse structure then whose philosophy are they to follow? And another question, who is best qualified to determine promotions, demotions and hiring qualifications? Not to belabor the obvious, but just who is the employer of our employees? These and other questions are answered in Senate Bill 46, which if passed would clearly address this in the Kansas Statutes.

At this point I would like to make a personal observation, that Treasurers are indeed elected officials, elected to a statutory office, which dictates statutory duties and responsibilities. For example I personally handle for the residents of Ellis County approximately 16 million dollars annually, a direct endproduct of my statutory responsibilities as tax collector. A byproduct of this responsibility requires me to be the investment officer and invest these monies as wisely as possible,

Ex. B

earning last year approximately \$600,000.00 to \$700,000.00 in interest. Not only this but I am required by statute to collect and remit hundreds of thousands of dollars to the State of Kansas in the form of Motor Vehicle Registration fees and State Sales Tax. I welcome these statutory responsibilities, but in order to assure the public that these duties are administered in the proper manner, it is explicitly important that I, and all Treasurers, have administrative control over our offices.

Before I conclude my presentation I would like to interject that a survey taken of County Treasurers revealed that 91 counties supported the proposed legislation, 2 opposed and the remaining took no stand.

In conclusion, I would on behalf of all County Treasurers request your favorable consideration of Senate Bill 46.

Thank you,



Mike Billinger

Ellis County Treasurer

STATEMENT
OF
EMERY ROME
ELLIS COUNTY CLERK
BEFORE THE
SENATE GOVERNMENTAL ORGANIZATION COMMITTEE

Mr. Chairman, members of the Governmental Organization Committee. I am Emery Rome Ellis County Clerk and Vice-Chairman of the County Clerks Legislative Committee. On behalf of myself and the Clerks' Association I would like to express my sincere appreciation for this opportunity to appear before this committee asking for your consideration of the passage of Senate Bill 46.

Senate Bill 46 concerns itself with several different subjects but the one area which I would like to address today is that of Section 2, amending K.S.A. 19-302. In this section the Clerk is given the authority to appoint a deputy and hire and/or fire any additional help the Clerk might deem necessary. Presently there is not a statute which addresses this subject. Consequently this very matter was tested in district court in Ellis County and it was reasoned that in order to maintain the unity and stability of a properly functioning office this authority would have to be that of the elected official rather, as some might argue, the County Commissioners. It would be impossible to maintain organization in an office if the employees were to show their loyalties to someone other than the elected official for which they were hired to work for. Not only this but the situation could be such that an elected official would be forced to hire unqualified staff, or staff incapable of handling the various responsibilities of the position. Would it not be reasonable to assume that someone who works day in and day out with employees be more capable of evaluating their performance rather than someone who might be exposed to the employees only once or twice weekly? The assumption would be that the elected official would be more qualified to evaluate the production of the staff if for no other reason than daily exposure to the work of the staff. Not only this but an elected official is elected by his or her constituents and is expected to ^{do} the best job possible, an impossibility if the loyalties

Ex. C

of the staff would be to someone other than the elected official.

In order to make this presentation I initiated a survey to all the Clerks of the Clerks' Association and the results were decisively conclusive. 105 surveys were mailed out, 96 were returned showing that 94 were in favor of having this situation addressed in a statute and 2 did not take a stand on the matter. Also of interest was the fact that the majority of Clerks surveyed indicated that they presently operate their offices in this manner. However for the sake of uniformity they felt it should be addressed in the Kansas Statutes.

In conclusion I would like to once again take this opportunity to thank you for the time you have allowed me to make my presentation and should you have any questions I would be more than happy to answer them at this time.

Thank you,

Emery Rome

Ellis County Clerk

Vice-Chairman County Clerks Legislative Committee

STATEMENT
OF
VIRGINIA HERZOG
ELLIS COUNTY REGISTER OF DEEDS
BEFORE THE
SENATE GOVERNMENTAL ORGANIZATION COMMITTEE

Honorable Chairman and Members of the Senate Governmental Organization Committee. Please accept my sincere appreciation for the valuable time this committee has granted me for my presentation.

On behalf of Register of Deeds across the State: I Virginia Herzog, Ellis County Register of Deeds, would like to express my feeling concerning Senate Bill 46. In order not to repeat much of the testimony presented by Clerk Rome and Treasurer Billinger, I will concur with their presentations and agree in principle with them 100%. In addition I too have the results of a survey taken of Register of Deeds across the State which was also very conclusive: 91 supported this concept, none opposed, and 5 took no stand.

With the above information in mind I will conclude my presentation and ask your favorable passage of Senate Bill 46. Should you have any questions, I will try at this time to answer them.

Thank You

Virginia Herzog

Ellis County Register of Deeds

Reno County Offices

206 WEST FIRST ST.

HUTCHINSON, KANSAS 67501

OFFICE OF: Register of Deeds

Statement before the Senate Governmental Organization Committee
February 10, 1983

Ben E. Vidricksen, Chairman

Chairman Vidricksen and honorable members of this committee:

I am Rosa Mary Moore, Register of Deeds of Reno County and I would like to express my support, as well as that of the Reno County Clerk, Glenis Heldenbrand, and Treasurer, Annabell Miller for Senate Bill #46.

We have a FANTASTIC County -- not only were we the pilot county for Home Rule, but have the first female commissioner in the state, plus state presidents of our associations in the Commissioners, Engineers, Sheriff and Register of Deeds. We all work well together.

Senate Bill #46 sets out, by statute, our administrative duties. Registers of Deeds in most counties over the state are not only administrators, but working recorders. We are recording legal documents and must insist on as near perfect performance as possible. A land simplification bill was introduced in Kansas a few years ago -- and had it passed, our bond as recorders would be one million dollars. Our responsibility today is NO less than had this bill passed. With this much pressure to do perfect work, those who are employed by each official, need to be accountable to that official. As elected officials, we are all Servants of those who elect us. We are open to law suits for errors, and failure to be re-elected if we do not please. Efficient management and control of our offices is a MUST, and something that should not be questionable.

Your passage of this legislation will clear the duties of each of our offices.

Thank you for your consideration.

Ex. E

IN THE DISTRICT COURT OF ELLIS COUNTY, KANSAS

VIRGINIA HERZOG, Register of Deeds
of Ellis County, Kansas

Plaintiff,

vs.

Case No. 81-C-45

HAROLD KRAUS, EUGENE SCHMEIDLER, A.B.C.
DUBACH, in their capacity as The Board
of County Commissioners of the County
of Ellis,

Defendants.

JOURNAL ENTRY

NOW ON this 8th day of March, 1982, the above-entitled matter comes on for trial.

Plaintiff Virginia Herzog, Register of Deeds of Ellis County, Kansas, appears in person and by her attorney, John T. Bird of Hays, Kansas.

Defendants, Harold Kraus, Orlando Wasinger and A.B.C. Dubach, Board of County-Commissioners of Ellis County, Kansas, appear in person and by the Ellis County Attorney, John C. Herman, of Hays, Kansas.

THEREUPON, counsel for the parties announce to the Court that they are ready for trial.

THEREUPON, counsel for the parties present to the Court a joint stipulation of facts and stipulated exhibits A, B, C, D and E, which the Court does order admitted as stipulated.

THEREUPON, Plaintiff presents her evidence and rests.

THEREUPON, Defendants present their evidence and rest.

THEREUPON, the Court does take this matter under advisement and does order that counsel prepare suggested findings of fact and conclusions of law, with memorandum briefs if desired, and does further order that said suggested findings and conclusions be submitted to the Court no later than March 15, 1982, by mail, to be in the office of the Court no later than March 16, 1982.

THEREUPON, the Court, having heard the evidence, having reviewed the stipulation of facts and the evidence admitted at trial, having reviewed the suggested findings of fact and conclusions of law, having reviewed the files of the Court, and being duly advised in the premises, does find as follows:

FILED		VELMA GIEBLER	
CLERK OF DISTRICT COURT			
MAR 18 1982			
AM			PM
7	8	9	10
11	12	1	2
3	4	5	6

1. This is an action in mandamus, filed by the Plaintiff on March 5, 1981, in which Plaintiff alleges that Defendants, in their official capacities as the Board of County Commissioners of Ellis County, Kansas, have unlawfully usurped certain statutory powers of Plaintiff in her official position of Register of Deeds of Ellis County, Kansas; that Defendants have refused to do certain acts required of them by law and that Plaintiff is entitled to judgment in mandamus ordering Defendants to do certain acts, a permanent injunction enjoining Defendants from interfering with Plaintiff's performance of her official duties, declaratory judgment, and for attorney fees.

2. Defendants deny that they have usurped any of Plaintiff's statutory powers; deny that they have refused to do any acts required of them by law; allege that a union contract controls the hiring practices of Defendants; allege that Plaintiff has violated historically standard hiring practices, giving use to a grievance by the employee union, and Defendants allege that they are entitled to declaratory judgment setting out the hiring duties and responsibilities of both parties.

3. Virginia Herzog is the duly elected and serving Register of Deeds of Ellis County, Kansas. (Stipulation)

4. Defendants constitute the duly elected and serving Board of County Commissioners of Ellis County, Kansas. (Stipulation)

5. Rebecca Ann Kreutzer on April 3, 1978, applied for employment with Plaintiff and was hired on April 3, 1978. Kreutzer was hired primarily for the purpose of micro-filming backlogged records in Plaintiff's office. Eventually, Kreutzer was working approximately a forty hour per week in the Plaintiff's office. Rebecca Ann married the son of Plaintiff in July, 1978.

6. The budget for Ellis County, Kansas, for the fiscal year 1980, was approved in August, 1979, pursuant to K.S.A. 79-2525, on forms approved by the Kansas Director of Accounts, pursuant to K.S.A. 79-2926. For 1980, the approved budget for the Register of Deeds was a total amount of \$42,111.00, a figure arrived at after submission of a proposed amount by Plaintiff in the same amount. For the 1981 fiscal year, the amount proposed by Plaintiff was \$49,227.00, which amount was approved by Defendants in August, 1980. At no time during 1980, 1981 or 1982 has Plaintiff exceeded the amount budgeted for expenditures by her office.

7. On August 18, 1980, Plaintiff submitted a form supplied for internal purposes called a "Change Employee Status" which constituted a request by Plaintiff to cause her employee Rebecca to be changed from a pay

rate of \$3.25 per hour to a salary of \$667.00 per month and to cause Rebecca's group health insurance premium to be paid. The source of funds was indicated on said form to be the Register of Deeds office. The "Change Employee Status" form was signed by Rebecca Herzog and by Plaintiff. There were sufficient funds in Plaintiff's budget to allow payment of the sums requested for the balance of 1980 without exceeding the 1980 budget for Plaintiff's office. At the request of personnel in the County Clerk's Office, the effective date for the change was made September 1, 1980, rather than August 18, 1980.

8. At a County Commission meeting on August 25, 1980, Plaintiff was told by Defendants that the action she had requested would not be taken.

9. On September 2, 1980, Plaintiff and her attorney appeared before the Board of County Commissioners and again requested the budgeted amount previously requested. The Defendants took no action on the request and referred the question to the County Attorney.

10. On September 8, 1980, the Defendants approved a Resolution Of The Board Of Ellis County Commissioners which provided that "no elected official or appointed department head shall cause to be placed or have under his or her employment of said office or department any member of his or her immediate family." Immediate family was defined in the Resolution as "mother, father, daughter, son, sister, brother, step-mother, step-father, step-daughter, step-son, mother-in-law, father-in-law, daughter-in-law, son-in-law, brother-in-law, sister-in-law, husband or wife". The Resolution provided that any employee "who becomes an immediate family member on account of marriage after his or her initial date of employment shall be terminated within ninety (90) days after said marriage. This resolution will be effective upon publication in the official county newspaper and shall not apply to current immediate family relationships and their respective employment positions." The Resolution was adopted as a simple resolution and not as a charter resolution.

11. At the meeting of September 8, 1980, the Ellis County Attorney, William Jeter, advised the Board that according to K.S.A. 79-2934 and K.S.A. 19-235, and an Attorney General's opinion, an elected official can hire budgeted clerical help not to exceed the amount budgeted and that it is irrelevant whether the clerk is full or part-time. The Defendants decided to leave their decision the same, that is, to continue to refuse Plaintiff's request for payment of Rebecca Ann per her instructions.

12. On September 15, 1980, Defendants were again advised by the County Attorney that once the budget had been adopted the elected officials could hire whomever they wish, within the confines of the budgeted amount. Defendants

then said that "if state statutes allow the hiring of clerical help in an elected official's department without the Board's approval then the clerk should be placed on the payroll upon the official's request."

13. On September 22, 1980, at the regular Monday meeting, Defendant Harold Kraus again raised the issue by requesting certain Attorney General's opinions to be entered in the minutes and copies sent to the Union Representative. Defendants requested the County Attorney to request an Attorney General's opinion on the validity of the resolution referred to in Paragraph 10, supra.

14. On February 26, 1981, Defendants met in a special session "for the purpose of determining who is the governing body of the County." At the meeting, representatives of the Kansas Public Employees Relations Board delivered to Defendants a copy of a memo from PERB to Art Veach, Union Representative and to the Ellis County Commission. This memo is set out in full in the minutes contained in Exhibit "E". Defendants asked County Attorney John C. Herman to "prepare a rough draft which would advise them as to their authority in setting employee policy or what action to pursue."

15. At the meeting of February 26, 1981, Defendants were told by County Attorney John Herman that they should force a legal confrontation and have two courts settle the question. At the meeting of March 2, 1981, Defendants discussed the possibilities of having Plaintiff discharge Rebecca Ann or making her a part-time employee again. Defendants also discussed signing the still-unsigned voucher submitted by Plaintiff in August, 1980.

16. On March 5, 1981, Plaintiff filed suit. On August 15, 1981, Plaintiff submitted another "Change Employee Status" form to be effective September 1, 1981, to increase Rebecca Ann's monthly salary from \$777 per month to \$799. The request was submitted as a length of service increase. The Defendants refused to allow the request to be implemented.

17. Harold Kraus testified that it was the Board's position that the resolution forbidding the hiring of family in effect froze Rebecca Ann at the salary being paid in September of 1980, and that she could never receive any merit increase while working for Plaintiff but that she could and had received cost-of-living pay increases.

18. Defendant Board of County Commissioners formally elected to come under the provisions of K.S.A. 75-4321 et seq, the Public Employees-Employers Relations Act, on June 19, 1972, and on April 2, 1973, an election was held at which Service Employees Union Local 513 was approved as the representative of "all office clerical, custodians, county assessor, clerks, and all other

non-supervisory employees of the Ellis County Courthouse."

19. Subsequently, the Union Local and the Ellis County Commissioners entered into an agreement dated July 17, 1978, covering the period of January 1, 1978 to December 31, 1980, which agreement is Exhibit "B". Article VI of this agreement provides that "job openings or vacancies in the County Courthouse will be posted at the Courthouse. Openings may be posted or advertised by such procedures as deemed appropriate by the Commission." The Article stated that qualified applicants will be considered by the Commission in filling each opening or vacancy, and sets priorities for hiring where qualifications are judged to be equal by the Commission. (Emphasis supplied) Article V sets priorities for layoffs based upon seniority, referring in several instances to hiring "by the Commission".

20. The powers of the Board of Commissioners applicable to all counties are set out in K.S.A. 19-212, which provides that the Board shall have the powers to: examine and settle all accounts of the receipts and expenses of the County, and to examine and settle and allow all accounts chargeable against the county (Paragraph Second) and that the Board shall have the power to represent the county and have care of the county property, and the management of the business and concerns of the county; in all cases where no other provision is made by law (Paragraph Sixth) and to perform such other duties as are or may be prescribed by law (Paragraph Thirteenth). The financial operation of the county is clearly vested in the Board of County Commissioners. K.S.A. 19-101a provides:

"(a) Counties are hereby empowered to transact all county business and perform such powers of local legislation and administration as they deem appropriate, subject only to the following limitations, restrictions, or prohibitions: First, counties shall be subject to all acts of the legislature which apply uniformly to all counties; second, counties shall have no power under this section to consolidate or alter county boundaries; third, counties shall have no power under this section to affect the courts located therein; fourth, counties shall be subject to acts of the legislature prescribing limits of indebtedness; fifth, in the exercise of powers of local legislation and administration authorized under provisions of this section, the home rule power conferred on cities to determine their local affairs and government shall not be superseded or impaired without the consent of the governing body of each city within a county which may be affected; sixth, counties shall have no power under this section to legislate on social welfare administered under state law enacted pursuant to or in conformity with public law No. 271-74th congress, or amendments thereof; seventh, counties shall be subject to all acts of the legislature concerning elections, election commissioners and officers and their duties as such officers and the election of county officers; eighth, counties shall be subject to the limitations and prohibitions imposed under K.S.A. 1978 Supp. 12-187 to 12-195, inclusive, and amendments thereto,

prescribing limitations upon the levy of retailers' sales taxes by counties; and ninth, counties shall have no power to exempt from or effect changes in statutes made nonuniform in application solely by reason of authorizing exceptions for counties having adopted a charter for county government.

"(b) Counties shall apply the powers of local legislation granted in subsection (a) of this section by resolution of the board of county commissioners. If no statutory authority exists for such local legislation other than that set forth in subsection (a) of this section and the local legislation proposed under the authority of such subsection is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper. If the legislation proposed by the board under authority of subsection (a) of this section is contrary to an act of the legislature which is applicable to the particular county but not uniformly applicable to all counties, such legislation shall become effective by passage of a charger resolution in the manner provided in K.S.A. 19-101b."

21. The appointment powers of the Ellis County Register of Deeds are governed in part by K.S.A. 19-1201 et seq, and in particular K.S.A. 19-1202, which provides that the Register of Deeds may appoint a deputy who shall serve at the pleasure of the Register of Deeds. Other pertinent statutes are K.S.A. 28-167, pertaining to counties of a population not more than 100,000 population, which provides that when it is necessary, the Board of County Commissioners shall allow such reasonable sums for assistants, deputies, clerical and stenographic hire as may be necessary to properly expedite the business of the various elected officials, including Register of Deeds. K.S.A. 28-824 makes the same provision as K.S.A. 28-167, without limiting its provisions to any particular size county. K.S.A. 19-235 provides that when the county commissioners have allowed any sum of money to any county officer for clerk hire or assistants, that "said sum so allowed shall be available for the payment of any such clerk hire or assistance, upon itemized and verified vouchers presented by the clerk or assistant employed in such office, and such voucher shall be approved by the county officer in whose office such clerical work or assistance is performed."

22. K.S.A. 75-4330, a part of the Kansas Public Employer-Employee Relations Act, provides that the scope of a memorandum of agreement between a public employer and an employee organization may extend to all matters relating to "conditions of employment", which term is defined in K.S.A. 75-4322(t) as salaries, wages, hours of work, vacation allowances, sick and injury leave, number of holidays, retirement benefits, insurance benefits, prepaid legal services benefits, wearing apparel, premium pay for overtime, shift differential pay, jury duty and grievance procedures, and 75-4330 specifically excludes from the permissible scope of the memorandum of agreement any subject

preempted by federal or state law or municipal charter ordinance, employee rights as defined in K.S.A. 75-4324, employer rights defined in K.S.A. 75-4326, and items infringing upon the powers of any civil service board. K.S.A. 75-4331 provides that such memorandum of agreement shall be implemented by law, ordinance, resolution, executive order, rule or regulations, whichever is appropriate for the particular governing body. ~~The~~ "employer rights" referred to above are defined in K.S.A. 75-4326, which states that nothing in the Kansas Public Employer-Employee Relations Act is intended to circumscribe or modify the existing right of a public employer to direct the work of its employees, to hire, promote, demote, transfer, assign and retain employees, to suspend or discharge employees for proper cause, to maintain the efficiency of governmental operations, to lay-off employees, to operate in emergencies, and to determine the methods, means and personnel by which operations are to be carried on.

23.

The Resolution adopted by Defendants on September 8, 1980, is also invalid insofar as it is claimed to apply to Plaintiff's employee, Rebecca Ann, for several reasons. First, it is clear from the evidence that Plaintiff did all necessary acts to hire this employee prior to the adoption of the Resolution. As such, any attempted application to her would cause the Resolution to operate as an ex post fact law, which is specifically forbidden by Article 1, Section 10 of the United States Constitution. Second, the language of the Resolution itself indicates that it is not intended to apply to already existing employment situations. The operative factor here is the existence of an employment contract between Plaintiff and her employee, not the level of pay or benefits. Defendants' claim that Rebecca Ann's pay may never be increased must fail for that reason. Third, the Resolution is invalid insofar as it pretends to affect the power of elected officials to determine which and how many employees may be hired after the processes of the Kansas Budget Law, K.S.A. 79-2925 et seq, have been complied with. The fiscal powers of the Board of County Commissioners are exercised during the budget process. The budget, after approval by the Defendants, constituted an appropriation for each fund, including the Register of Deeds' budget. From the point at which the budget has been formally approved forward, the Plaintiff has the statutory power, via K.S.A. 19-1202, K.S.A. 28-84, K.S.A. 28-167 and K.S.A. 19-235, to completely control the expenditures of her office for personnel purposes, so long as she does not exceed the budget. The September 8, 1980, Resolution obviously, if given the application urged by Defendants, would frustrate the expressed desire of Plaintiff to exercise these statutory rights.

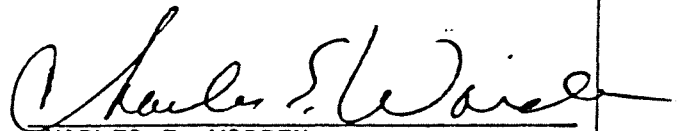
25. The Defendants' assertion that the terms of the Memorandum Agreement, specifically Article VI, prohibit Plaintiff from employing Rebecca

Ann must also fail. It is important to note that K.S.A. 75-4322 separately defines both "public employer" and "governing body" in subsections (f) and (g). Reading the Kansas Public Employer-Employee Relations Act in its totality, it is apparent that as to the right to hire, promote and discharge employees, the Defendants are not empowered, and never were empowered, to include in a memorandum of agreement any provision circumscribing or modifying said power, whether that right is possessed by the Board of County Commissioners or an elected official such as Plaintiff. It also appears that no resolution or other similar device has ever been adopted to implement the memorandum of agreement contained in Exhibit "B", as required in K.S.A. 75-4331. For the purposes of resolving this dispute, the Court finds that Plaintiff is the employer of Rebecca Ann and that any provision of Exhibit "B" which purports to circumscribe or modify Plaintiff's right to hire, promote or discharge her employee is invalid, specifically Article VI, thereof.

26. That Plaintiff is entitled to an order of mandamus, ordering Defendants to do all acts prescribed by law, including execution of vouchers, necessary to allow Plaintiff's employees to be paid according to her directions; that Defendants are permanently enjoined from interfering with Plaintiff's performance of her official duties, including attempting or threatening to cause Rebecca Herzog to be fired or demoted; that Plaintiff is entitled to declaratory judgment finding that Article VI of the Memorandum of Agreement does not apply to her hiring practices and that the September 8, 1980 Resolution does not have any application to Rebecca Herzog or to any deputy Plaintiff may appoint; and that Plaintiff is entitled to judgment against the Board of County Commissioners of Ellis County, Kansas, for her costs and attorney fees herein, said attorney fees to be established by an evidentiary hearing to be later scheduled by the Court.

27. That the above findings and conclusions shall constitute the Order of this Court.

IT IS SO ORDERED, ADJUDGED AND DECREED.


CHARLES E. WORDEN
District Judge