

MINUTES OF THE Senate COMMITTEE ON Governmental Organization

The meeting was called to order by Senator Vidricksen at \_\_\_\_\_  
Chairperson

1:43 ~~am~~/p.m. on March 23, 1983 in room 531N of the Capitol.

All members were present except:

Senator Roitz

Committee staff present:

Norm Furst - Revisor

Julian Efird - Legislative Research

Conferees appearing before the committee:

Representative Steve Cloud

Brian Moline - KCC

Jim Grimes - Inter North

Preston Barton - Ombudsman

Representative Steve Cloud appeared before the committee on behalf of H.B. 2478 and 2479 to clarify some parts of the bills and answer questions. There was some discussion regarding the language and interpretation but no action was taken. Brian Moline elaborated on the questions regarding terminology as interpreted by the KCC.

Jim Grimes distributed copies of his testimony to the committee regarding the proposed amendment to H.B. 2479 which would exempt certain public utilities and common carriers from this regulation. (Exhibit A) He stated that he felt this amendment was necessary because of the possible risk of staff or commission not being available to sign an order at the closing of a securities sales and therefore risk a possible loss of capital.

The committee then turned its attention to H.B. 2184 which concerned the corrections ombudsman board. Preston Barton distributed a summary of his testimony to the committee and explained some of the problems the Ombudsman had been having with the Department of Corrections. He explained that this bill would clearly communicate legislative intent and minimize interference in an Ombudsman inquiry as well as help the Ombudsman do a more credible job. (Exhibit B) Written material was distributed to the committee from David Barclay, Special Assistant to the Secretary of Corrections explaining the amendments made by the House Committee on Federal and State Affairs. (Exhibit C)

After some discussion the Chairman stated that they were going to change and rewrite this bill and appointed Senators Hein, Gaar, Vidricksen and Norm Furse to do this study.

The meeting was adjourned at 2:30 p.m.

GUEST LIST

COMMITTEE: Senate Governmental Organization DATE: Mar. 23, 1983

NAME ADDRESS COMPANY/ORGANIZATION

Bill Anderson Muson Water Dist No 1 of Jo Co

Don Willoughby Topeka INI

Jim Spruce Topeka Interoak

Paul Womer Topeka TMI

Bretton Baxter Topeka Ombudsman

Bill D. Topeka KCI

William J. Topeka State Library

BEFORE SENATE GOVERNMENTAL ORGANIZATION COMMITTEE

March 23, 1983

RE: Proposed Amendment To House Bill No. 2479

Internorth, Inc. is a diversified, energy based corporation involved in natural gas, liquid fuels, petrochemicals, and exploration and production. It operates through divisions and subsidiaries and has its headquarters in Omaha, Nebraska. It does utility business in Kansas through Peoples Natural Gas Company. It had 1982 operating revenues of \$4,158,980,000 and assets of \$3,954,058,000. It is responsible for raising all of the capital required for its operations, the operations of its divisions and all of its subsidiaries.

By reason of its public utility operation in Kansas through Peoples Natural Gas division of Internorth, Inc. serving at retail approximately 30,000 customers, it is subject to the requisites of K.S.A. 66-124 and 125. Notwithstanding the fact that a very small percentage of its revenues and assets are tied to Kansas it is tied to the statutes each time it goes into the capital market. Its gross operating revenues from Peoples' Kansas operations in 1982 were \$91,000,000. For instance, its 1982/83 capital requirements are estimated at \$850,000,000 and its 1981/82 capital requirements were estimated at \$650,000,000. It filed applications with the Kansas Corporation Commission in connection with obtaining the authorization for raising the capital. It also had to make filings with the Securities and Exchange Commission and a number of state regulatory agencies. Coordination of all of the requisite authorizations has become expensive, time-consuming and burdensome. Raising capital may be delayed significantly or prejudiced by a simple breakdown in the coordination required. That is the reason we propose and urge the committee to adopt and amendment which would exempt from Kansas Corporation Commission regulation the authorization of capital for multi-state corporations such as Internorth, Inc.

Although we have always enjoyed the fullest cooperation of the Kansas Corporation Commission and the staff in obtaining requisite authorization within the time schedule required, it has always been subject to the risk that the staff involved for the review would be ill on the given closing date, or the Commission, individually or collectively, not available to sign an order at the closing of the securities sale. In one instance, in another

Ex. A

state (Michigan), a six to eight week delay in getting state authorization cost the company \$20,000,000 to \$30,000,000 extra in the costs of raising capital.

This request by Internorth, Inc. in Kansas is not unique, it has been trying to accomplish deregulation of this activity in other states in which it does business. It has now obtained exemption in Michigan and Colorado by legislative amendment. It has been exempted in some other states by administrative regulation and in one state by a "friendly suit" determining that the regulation was a burden to interstate commerce. This type of regulation restricts the opportunity to take advantage of cost of money changes in the market because so much has to be fixed in advance to satisfy the regulatory requirements. To the extent this costs money, much of the cost is ultimately borne by the company's customers.

K.S.A. 66-1(a)01 sets forth the fees which the Commission is required to charge for issuing a certificate under K.S.A. 66-125 based on the percentage of the capital raised invested in Kansas. In 1981 the authorization of the \$650,000,000 in debt resulted in a authorization fee of \$265 and in 1982 the authorization of the \$850,000,000 in debt required payment of an authorization fee of \$565. The sums are not mentioned as a significant burden, but only to reflect that the loss of regulatory revenues to the Commission is relatively nominal.

Lastly, although I am not authorized to speak on their behalf, I am aware that the wording of the proposed amendment would also exempt Southwestern Public Service Company, Missouri Public Service Company, MCI Airsignal, Inc. and Western Union. I am sure there are a number of other multi-state utilities or carriers deriving less than five percent (5%) of their consolidated revenues from Kansas regulated activities that would also be able to take advantage of this exemption. We submit that this is an appropriate step in deregulation of activities that will continue to be regulated on a national basis. It also will relieve the Commission from review duties which it does not wish to perform and which burden its more essential activities. For this reason I understand the Commission is supportive of the amendment.

James L. Grimes, Jr.  
Bruce J. Woner  
COSGROVE, WEBB & OMAN  
1100 First National Bank Tower  
Topeka, Kansas 66603  
(913) 235-9511  
Attorneys for Internorth, Inc.

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Session of 1983

HOUSE BILL No. 2479

By Committee on Governmental Organization

2-21

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0016 AN ACT concerning the issuance of securities by public utilities  
0017 and common carriers; relating to the duties of the state corpo-  
0018 ration commission with respect thereto; exempting certain public  
0019 utilities and common carriers; amending K.S.A. 66-125 and  
0020 repealing the existing section.

0082 terms upon which such stocks, certificates, bonds, notes or other  
0083 evidences of indebtedness are proposed to be issued, as set out in  
0084 the application of such certificate, ~~and that the statements con-~~  
0085 ~~tained in such application have been ascertained to be true.~~ Any  
0086 issue of stocks, certificates, bonds, notes or other evidences of  
0087 indebtedness not payable within one year, which shall be issued  
0088 by such public utility or common carrier contrary to the provi-  
0089 sions of this act shall be void.

0090 (c) The provisions of this statute and K.S.A. 66-124 shall  
0091 only apply to a public utility or a common carrier if such company  
0092 derives more than five percent of its consolidated gross revenues from  
0093 Kansas activities subject to the rate setting jurisdiction of the  
0094 Commission.

0095 Sec. 2. K.S.A. 66-125 hereby repealed.

0096 Sec. 3. This act shall take effect and be in force from and after  
0097 its publication in the statute book.

OF THE OMBUDSMAN FOR  
503 Kansas, Suite 500  
(913) 296-5295 KANS-A-N 561-5295  
Preston N. Barton, Ombudsman

SUMMARY OF TESTIMONY ON HB 2184, AS AMENDED  
Access to Prisons for the Ombudsman

Purpose of Bill

1. The Ombudsman is granted reasonable access to adult correctional facilities. He would be able to delegate this authority to certain staff.
2. Should access be denied, the Secretary of Corrections or his designee would have 24 hours in which to provide a written explanation for this denial.
3. While on the premises of correctional facilities, ombudsman staff would not have documents relating to their official function read or confiscated by correctional staff.
4. (Original Section 2(b) has been removed, since changes to KAR 44-12-601 have been proposed which adequately address this issue.)
5. The Ombudsman would have the authority to administer oaths. This authority could be delegated to the Ombudsman Associates.

Discussion

Justice must not only be done, but must be perceived as being done. If the Ombudsman is kept out of an institution, it raises the specter of suspicion even if there is no basis for suspicion.

While the authority provided in this bill would not make an Ombudsman inquiry immune to subterfuge, it would clearly communicate legislative intent and, thus, minimize interference in an Ombudsman inquiry. It would help the Ombudsman Office do a more credible and accurate job - and would present the appearance of doing a more credible job.

In upholding the statutory authority of an ombudsman office, a court opinion stated in part:

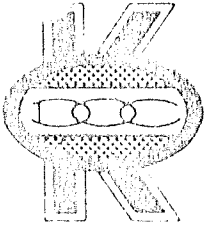
... (the Ombudsman) can bring the lamp of scrutiny to otherwise dark places, even over the resistance of those who would draw the blinds. If his scrutiny and observations are well founded, corrective measures can be taken in due democratic process; if not no harm can be done in looking at that which is good.

Purpose of the Office of the Ombudsman for Corrections

The objectives of the Office of the Ombudsman for Corrections are to:

- 1) dispense with unfounded staff and inmate complaints.
- 2) substantiate valid staff and inmate complaints.
- 3) improve administrative procedures.

Ex. B



KANSAS DEPARTMENT OF CORRECTIONS  
INTERDEPARTMENTAL MEMORANDUM

TO: Senator Ben E. Vidricksen                      DATE: March 23, 1983

FROM:  David Barclay, Special Assistant to the Secretary

SUBJECT: HB 2184

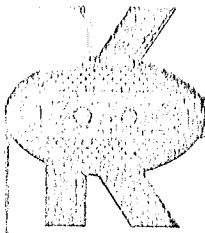
The Department of Corrections supports HB 2184 as amended by the House Committee on Federal and State Affairs.

Attached is a copy of the material presented to the House Committee.

DB:dja  
Enclosure

Ex. C





# KANSAS DEPARTMENT OF CORRECTIONS

JOHN CARLIN — GOVERNOR

PATRICK McMANUS — SECRETARY

535 KANSAS AVENUE • TOPEKA, KANSAS • 66603  
• 913-296-3317 •

March 2, 1983

Representative Neal Whitaker  
State Capitol - Room 112-S  
Topeka, Kansas 66612

Dear Representative Whitaker:

Attached, for you and the Federal and State Affairs Committee, are copies of the recommended compromise language on HB 2184 regarding the corrections ombudsman's access to institutions, confiscation of materials, handling of official correspondence, and the administering of oaths.

This language was prepared by the Department of Corrections and the corrections ombudsman. Both support the recommendation.

Also attached is a proposed change in the Department's regulations regarding legal and official mail (which includes the ombudsman's mail). In lieu of handling the portion of HB 2184 regarding mail through legislation, we have agreed to modify the Department's regulation on the handling of mail. In short, the proposal provides that official and legal mail outgoing from the institution shall not be opened, unless requested by the addressee. Incoming official and legal mail would continue to be handled as it is currently: It may be inspected but not read or censored. The Department will file this amendment as a permanent regulation after May 1, 1983.

Sincerely yours,

DAVID BARCLAY  
Special Assistant  
to the Secretary

DB:dja  
Enclosures

## HOUSE BILL No. 2184

By Committee on Federal and State Affairs

2-1

0017 AN ACT concerning the corrections ombudsman board and the  
 0018 ombudsman of corrections; relating to certain powers, docu-  
 0019 ments and correspondence thereof.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. ~~The ombudsman of corrections shall have the~~  
 0022 ~~power to enter and inspect at any time any premises under the~~  
 0023 ~~control of the secretary of corrections and may delegate that~~  
 0024 ~~power in writing to any ombudsman associate.~~

0025 Sec. 2. (a) No documents relating to complaints, investiga-  
 0026 tions or studies in the possession of the ombudsman of correc-  
 0027 tions or any employee of the ombudsman shall be read or  
 0028 confiscated by any officer or employee of the department of  
 0029 corrections.

0030 (b) ~~Correspondence between a person who is in the custody~~  
 0031 ~~of the secretary of corrections and the ombudsman of corrections~~  
 0032 ~~or the corrections ombudsman board shall be forwarded at once,~~  
 0033 ~~unopened, to the addressee.~~

0034 Sec. 3. The ombudsman of corrections shall have the power  
 0035 to administer oaths and take testimony, and may delegate such  
 0036 power in writing to any ombudsman associate.

0037 Sec. 4. This act shall take effect and be in force from and  
 0038 after its publication in the statute book.

(a) The ombudsman of corrections may enter and inspect at any reasonable time any premises under the control of the secretary of corrections and may delegate that power in writing to any employee of the office acting as ombudsman.

(b) If the ombudsman of corrections is denied access to any premises under the control of the secretary of corrections the secretary of his or her designee, within 24 hours after the denial, shall give the ombudsman a written statement of the reason for the denial of access.

as specified by rules and regulations of the corrections ombudsman board

DEPT. OF CORRECTIONS REGULATION  
INMATE WRITING AND OTHER INMATE COMMUNICATIONS  
OR PUBLICATIONS

44-12-601. Mail. (a) Definitions. (1) *Legal mail* is mail which effects the inmate's right of access to the courts or legal counsel. It includes letters between the inmate and his or her lawyer, a judge, a clerk of a court, any lawyer, and any intern or employee of legal services for prisoners.

(2) *Official mail* is any mail to an official of the state or federal government who has authority to control or to obtain or conduct an investigation of the custody or conditions of confinement of the inmate.

(3) *Privileged mail* is any mail between the inmate and his or her doctor.

(4) *Censor* means to remove or change any part or all of the correspondence or literature.

(5) *Read* means to read the contents of correspondence or literature to ascertain the content.

(6) *Inspect* means to open, shake out, look through, feel or otherwise check for contraband without reading or censoring.

(b) Inmates shall comply with the mail procedures and restrictions established by the order of the institution director or facility supervisor. Failure to comply, or making any circumvention or attempt to circumvent mail procedures or restrictions by any means, including any deliveries through an employee, volunteer, teacher, or any other person not acting in the established mail handling system is prohibited.

(c) *Contraband*. Items identified as contraband items shall be removed from any incoming mail and returned at state expense to the sender and the inmate shall be notified, in writing, by the mail officer with a list of the items returned, the date, and the name of the sender to whom they were returned. Items which are illegal under Kansas or U.S. law shall be seized and held as evidence for other law enforcement officers.

~~(d) Incoming mail which is clearly identified as legal, official, or privileged mail shall be opened only in the inmate's presence and inspected for contraband but not read or censored, except as otherwise provided for in these regulations.~~

~~(e) Violation of mail regulations of the department of corrections, orders of the principal administrator, or the laws of Kansas or the United States may result in an investigation and an increase of restrictions of mail of the offender sufficient to remedy the continuation or prevent reoccurrence of the violation.~~

~~(f) Incoming or outgoing legal or official mail may be read and censored only if there is documented and shown to have been an abuse of the right in the recent and related past, or if probable cause exists to believe a crime is being committed through such mail, and only for a time period and to an extent necessary to remedy the abuse.~~

(g) Incoming or outgoing *privileged* mail shall not be censored or read unless a previous abuse of the right, or other good cause is shown, and documented.

(d) Direct communication with officials. Outgoing official or legal mail sent by any inmate to the inmate's attorney, the courts, an elected official, the secretary of corrections, the principal administrator of the facility, the governor's pardon attorney, ombudsman for corrections, or any other public official who is responsible for such matters as the inmate is concerned about shall not be opened; provided, if any inmate threatens or terrorizes any person through such mail, subsequent mail from the inmate, including official or legal mail, to the person threatened or terrorized may, at the request of the person, be read and censored for a time period and to an extent necessary to remedy the abuse.

(e)

(f)

(h) Funds sent to inmates must be in the form of a money order, a cashier's check, or a certified check.

(i) All incoming or outgoing mail other than legal, or official or privileged mail, may be inspected and read at any time at the discretion of the principal administrator. Such mail shall not be censored unless it presents a clear and present threat to security and control or can be shown to be a serious interference with the operation and function of the institution or facility, or constitutes a crime. Such mail may also be censored if it is obscene and the principal administrator has on file a written complaint from the addressee or responsible parent, or guardian, of such addressee, if a minor, regarding previous communications requesting they be stopped or if it constitutes a threat.

(j) In the event of any censorship of a communication to or from an inmate following procedures shall be conducted: (1) The inmate shall be given a written notice of the censorship and the reason therefor without disclosing the censored material.

(2) The inmate shall be given the name and address of the sender of incoming or addressee of outgoing mail and the date the item was received in the mail room.

(3) The author of that letter shall be given a reasonable opportunity to protest that decision; and

(4) Complaints shall be referred to a prison official other than the person who originally disapproved the correspondence.

(k) Incoming bulk mail will not be delivered unless each piece is individually addressed to the inmate by conviction name.

(l) Outgoing letters, first class, may be sent to as many people and to whomever the inmate chooses.

(m) Outgoing mail must bear the full conviction name and address of the sender.

(n) The facility shall provide free writing paper and envelopes to all inmates in a reasonable amount. Inmates may also purchase stationery from the inmate canteen. The facility shall pay postage for the initial two (2) pieces of first class domestic mail weighing one (1) ounce or less each per week for all individual inmates, but not for groups or organizations. Any postage in excess of two (2) per week must be paid by the inmate. All postage for legal and official mail shall be paid by the institution or facility.

(o) Inmates may not correspond with minors whose parent or guardian has objected, in writing, to the institution director or facility supervisor regarding such correspondence. The inmate shall be notified of such objection when it is received, but need not be informed of the exact contents.

.. 44-15-202- Direct communication to officials: (a) Notwithstanding the grievance procedure, any inmate may send a sealed letter as official or legal mail to the inmate's attorney, the courts, his legislator, the secretary of corrections, the principal administrator of the facility, the governor's pardon attorney, ombudsman for corrections, or any other public official who is responsible for such matters as the inmate is concerned about.

(b) All communication concerning parole or clemency shall be addressed to the Pardon Attorney, Statehouse, Topeka, Kansas 66612, or the Director, Kansas Adult Authority (Parole Board), 535 Kansas Avenue, Room 400, Topeka, Kansas 66603. (Authorized by K.S.A. 75-5251, K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1988.)

(p) Publications. (1) Inmates may receive books, newspapers, and periodicals except inmates at the reception center for evaluation purposes may receive newspaper publication only.

(2) The same procedure mentioned in mail rule to be followed when censorship occurs (section (j) above) shall be followed when a publication is censored.

(3) Inmates shall have the option of mailing censored publications out of the facility at their own expense, or discarding them.

(4) Publications which are obscene or are otherwise illegal or meet the test for censorship of mail in section (i) above, shall not be allowed into the facility.

(5) On transfer between institutions or facilities, the inmate shall arrange change of address for newspapers and periodicals.

(q) Packages. Procedure for the handling of packages, both incoming and outgoing, will be established by order of the principal administrator to be consistent with other rules and policies. Violation of this rule shall be a class II offense. (Authorized by K.S.A. 1980 Supp. 75-5210, 75-5210(f); effective May 1, 1980; amended May 1, 1981.)