

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Elwaine F. Pomeroy at
Chairperson

10:00 a.m./p.m. on February 4, 19 83 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~ were: Senators Pomeroy, Winter, Burke, Feleciano, Gaar,
Gaines, Mulich, Steineger and Werts.

Committee staff present: Mary Torrence, Revisor of Statutes
Mike Heim, Legislative Research Department

Conferees appearing before the committee:

Johnnie Darr, Sedgwick County Sheriff
Senator James Francisco
Jim Clark, Kansas County and District Attorneys Association
Reverend Richard Taylor, Life at its Best
John Brookens, Kansas Bar Association

The chairman announced he has appointed a subcommittee to look into the products liability reporting system and see what, if any, legislation is needed, and also look at the information that the insurance department has with regard to the Health Care Stabilization Fund. The chairperson is Senator Hein, and the other members are Senators Feleciano and Gaar.

Senate Bill 66 and Senate Bill 96 - Firearms in clubs and bars.

Senator Gaines had requested that Senate Bill 66 be introduced. He explained the bill would change the penalty to a class E felony to carry a firearm on the premises where alcoholic beverages are being sold and allow the proprietor to have a weapon.

Sheriff Johnnie Darr presented his written report to the committee (See Attachment #1). He stated it is terrifying to go to these kind of clubs when they get the call. The chairman inquired which bill he preferred, Senate Bill 66 or Senate Bill 96. Sheriff Darr answered he had no preference; they look about the same. A committee member inquired what an officer really can do in a club with a patron, can you frisk him? Sheriff Darr replied, you have to have probable cause to frisk him. The chairman explained Senate Bill 66 focuses on the firearm, and Senate Bill 96 is broader and includes knives and other weapons. Sheriff Darr stated with that difference, he would prefer Senate Bill 96. It was pointed out the penalty for the violation is different in the bills. Considerable committee discussion was had on what is described as a concealed weapon, and the problem of proof.

Senator Francisco appeared before the committee to discuss Senate Bill 96.

Jim Clark testified the association does favor the concept of both bills. A copy of his statement is attached (See Attachment #2). Mr. Clark feels either of these bills would deter carrying a firearm into clubs. Considerable committee discussion was held with him on the problem of proof. A committee member inquired about the exception of law enforcement officers under subsections (2) and (3); would it be all right for law enforcement officers to go into a bar with a concealed firearm on his hip? Sheriff Darr replied, it is not permissible in most departments. He explained an officer is on duty 24 hours a day, and if he happens to go to a club; there are some people who don't like officers. Sheriff Darr said this is an internal policy in departments, and in his department officers should not carry concealed weapons into clubs.

Reverend Richard Taylor testified he would like to deal with what the drug does to the brain. Alcohol is a drug that depresses the brain function, and it depresses the ability to think. A copy of his statement is attached (See Attachment #3).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 4, 1983

Senate Bills 66 and 96 continued

John Brookens discussed Senate Bill 96, on page 2, subsection (2) (a). He said he felt that should be defined. He explained a law enforcement officer would have an occasion to have a concealed weapon on his person when he is doing undercover work. Mr. Brookens stated Senate Bill 96 is more inclusive and would like to have it more inclusive. In line 57, he suggested including the wording "possessing of any"; he feels an officer needs help in this field. He said this problem applies anywhere in Kansas. A committee member inquired, what is possess? Mr. Brookens defined it is having an object under one's control and having the right to such control. Committee discussion with him followed.

The chairman welcomed the visitors in the committee today from Logan Junior High School.

Senator Steineger moved to approve the minutes of February 2, 1983; Senator Werts seconded the motion, and the motion carried.

The chairman presented a request from Nancy G. Maxwell, Associate Professor of Law, Washburn University School of Law, regarding joint custody (See Attachment #4). Following the explanation, Senator Burke moved that the bill be introduced; Senator Gaines seconded the motion, and the motion carried.

The chairman presented a request from the department of revenue concerning the use of disclaimers to succession (See Attachment #5). The chairman explained the revenue department had no suggestion, they want the committee to look at it. A committee member suggested the request be sent to the Kansas Bar Association, and they can refer it to the title standards or probate committee. The chairman said he would call this to their attention and try to get an answer soon.

The meeting adjourned.

2-4-83

GUESTS

SENATE JUDICIARY COMMITTEE

NAME

ADDRESS

ORGANIZATION

DAVID BALONCHI

TOPEKA

KIN

Larry HUMES

Staff

Steineger

Rev Dick Taylor

Joseph

Life at Best

Johnnie Carr

Wichita

Sheriff

Alm Brookens

Topeka

Kans Bar Assn

Jim Clark

Topeka

KCPAA

Lana Overstreet

Topeka

Aimee Brunner

Topeka

Robert Haynes

Topeka

Zee Schurz

Topeka

Mark Owens

Topeka

Dorena White

Topeka

Marisa Rivegard

Topeka

Carla Cumming

Topeka

Melissa Francis

Topeka

Brenda Meier

Topeka

Carne Dunshee

Topeka

Molly Donaldson

Topeka

Mark A. Carr

Topeka

Beth Johnson

Topeka

BRIAN STEWART

TOPEKA

Joe Stefan

topeka

Linda Reardon

"

Michelle Bussey

Topeka

Michele Higgins

Topeka

2-4-83

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Sheriff Johnnie Darr

SEDGWICK COUNTY COURTHOUSE

525 North Main

Wichita, Kansas 67203

February 3, 1983

- COL. SAM DAVISON
UNDERSHERIFF
268-7264
- CAPT. LYMAN REESE
INVESTIGATION DIVISION
268-7604
- CAPT. JOHN MONAHAN
ROAD PATROL DIVISION
268-7315
- CAPT. BOB STRONG
JUDICIAL SERVICES DIVISION
268-7464
- CAPT. ED MILLER
CIVIL PROCESS DIVISION
268-7375
- CAPT. CHARLIE LUTKIE
DETENTION DIVISION
268-7205
- LT. ED PAVEY
DIRECTOR OF TRAINING
268-7786
- LT. GOODIE GOODMAN
PROPERTY OFFICER
268-7379
- LARRY RIEDLINGER
DIRECTOR OF CORRECTIONS
268-7684
- ELAINE WOHLGEMUTH
SUPERVISOR OF RECORDS
268-7352
- ELEANOR RALLS
SUPERVISOR OF DEL. TAX
268-7658
- KATHLEEN GRAGG
JUDY FIELDS
SHERIFF'S SECRETARY'S
268-7265
- STUART GRIBBLE
SHERIFF'S LEGAL ADVISOR
268-7327
- PAUL EVANS
ADMINISTRATIVE ASSISTANT
268-7567

There are 260 plus clubs in Sedgwick County that serve alcoholic beverages. A survey of Law Enforcement records indicate that over 25,000 requests for Law Enforcement assistance were made at these businesses in 1982.

An indepth survey of five randomly selected establishments that serve alcoholic beverages (clubs) showed the following:

An average of 98 calls for assistance by Law Enforcement for each establishment that serves alcoholic beverages.

An average of 39 cases per establishment per year with weapons involved.

There were 42 homicides in Sedgwick County in 1982. Nine of these homicides occurred in establishments that serve alcoholic beverages. Twenty involved intoxicated persons. Alcohol involved homicides 47.6 percent.

Of the clubs surveyed the highest percent of cases involving weapons was 55%. The lowest was 37%.

Johnnie Darr

 Johnnie Darr, Sheriff
 Sedgwick County Sheriff's Office

Atch. 1

OFFICERS
Steven L. Opat, President
William T. North, Vice-President
Donald H. Shoop, Sec.-Treasurer
Dennis W. Moore, Past-President



2-4-96
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DIRECTORS
Daniel F. Meara
Robert J. Frederick
Daniel L. Love
Tim R. Karstetter
Stephen R. Tatum

Kansas County & District Attorneys Association

827 S. Topeka Ave., 2nd Floor • Topeka, Kansas 66612 • (913) 357-6351

EXECUTIVE DIRECTOR • JAMES W. CLARK

February 4, 1983

TO: Members of the Senate Judiciary Committee
FROM: Jim Clark, Kansas County and District Attorneys Association
RE: Senate Bills 66 and 96

The Kansas County and District Attorneys Association supports the concept of both SB 66 and SB 96. Just as the combination of alcohol and motor vehicles creates a clear danger to life and property, so, too, does the combination of alcohol and firearms or other dangerous weapons. Both bills attempt to deal with this problem.

There are, however, several policy decisions that should be considered carefully in dealing with this problem:

- 1) Should the prohibition include only firearms (SB 66) or should it be broadened to include other dangerous or deadly weapons (SB 96).
- 2) Should the prohibition be restricted to where alcoholic beverages are sold (SB 66) or should it include any area where alcohol is likely to be used in abundance (SB 96).
- 3) Should the penalty for the open carrying of such a weapon on such premises be significantly greater than the concealed carrying of such weapons in a church, school, bank or day care center. Both SB 66 and SB 96 cause this disparity of sentences in their respective Section 7, page 3.

As a policy recommendation, KCDA would recommend restricting legislative action to firearms, and enhancing the penalty for carrying a concealed firearm. In addition, we would recommend placing such offenses under the Firearm Sentencing Act, K.S.A. 21-4618.

Atch. 2

Persons smoke pot, shoot heroin, snort cocaine or drink alcohol because they like the way the drug makes them feel. Nobody drinks beer for the taste, or because it is less filling and made with all natural ingredients. They drink for the drug effect.

Feelings of pleasure are produced by alcohol because it depresses brain function. It numbs the brain to anxiety and worry, fears and frustrations. But therein lies the danger. Drinking impairs thinking. Abraham Lincoln said it all when he quoted Shakespeare to a young man in Leavenworth, "My young friend, do not put an enemy in your mouth to steal away your brains."

Dr. Morris Chafetz in his book, LIQUOR THE SERVANT OF MAN, defends and promotes drinking. So his description of what happens is not from a biased non-drinker. Here is what he said.

In any case, it is not necessary to see a man drink himself to death in order to observe the interesting spectacle I am about to describe. For it is under the influence of alcohol that we are a witness to the retracing of the whole life history of the race — in one man, in one evening — all the way back down the evolutionary stairway. First, his herd-group tendencies disappear (these are the last tendencies man has acquired and are recognizable as the following: consideration of other people, restraints, refinements and niceties). Next to go are anxiety, prudence, modesty, reserve, and all the rest of what psychologists call "group logic," the orthodox rules of group or civilized conduct. Older, more basic impulses push up from below: jerky speech, roaring laughter, excessive sentimentality. By now he has gone a good way down; he has left the herd and is imitating the procedures of the hulking man with the one-inch forehead who was his forebear. Psychically he is roving alone — coarse, reckless, predatory, dangerous, and possibly criminal, because the criminal life of today comes close to the normal life of primitive man.

A firearm in the hands of a hulking man with an one-inch forehead should not be permitted. SB 66 ought to set a record for quick passage through the legislature.

Respectfully,

Richard Taylor

Reverend Richard E. Taylor, Jr.
President,
KANSANS FOR LIFE AT ITS BEST!

2-4-83
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WASHBURN UNIVERSITY OF TOPEKA

School of Law
Topeka, Kansas 66621
Phone 913-293-6600

February 1, 1983

Senator Elwaine F. Pomeroy
State Capitol Building
Topeka, KS 66612

Re: Amending K.S.A. § 21-3422 and 21-3422a,
Interference with Parental Custody

Dear Elwaine,

Enclosed are the amendments to the Interference with Parental Custody statute that were proposed by the Family Law Advisory Committee, together with the changes we discussed on the telephone.

Please let me know if the Senate Judiciary Committee will be interested in proposing this legislation so I can get back to Judge Walton regarding the status of this proposal.

Thank you for your assistance.

Sincerely,

Handwritten signature of Nancy G. Maxwell in cursive.

Nancy G. Maxwell
Associate Professor of Law

NGM/dg

cc: Honorable Herbert W. Walton

Atch. 4

K.S.A. § 21-3422

Interference with parental custody. Interference with parental custody is leading, taking, carrying away, decoying or enticing away a child under the age of ~~fourteen-(14)~~ years, with the intent either (1) to detain or conceal such the child from its the child's parent, guardian, or other person having lawful charge of such the child, or (2) to refuse or impede the return of the child in violation of the residency provisions of a custody decree.

K.S.A. § 21-3422a

Aggravated interference with parental custody. ~~(1)~~ Aggravated interference with parental custody is (1) hiring someone to commit the crime of interference with parental custody, as defined by K.S.A. 21-3422, or (2) committing interference with parental custody, as defined by K.S.A. 21-3422, when done with the intent to deprive of custody such child's parent, guardian, or other person having the lawful charge or custody of such child, and when:

(a) Committed by a person who has previously been convicted of interference with parental custody, as defined by K.S.A. 21-3422;

(b) committed by a person for hire;

(c) committed by a person who takes the child outside the state without the consent of either the person having custody or the court;

(d) committed by a person who, after lawfully taking the child outside the state while exercising visitation or custody rights, refuses to return the child at the expiration of such rights; or

(e) committed by a person who, at the expiration of visitation or custody rights, outside the state, refuses to return or impedes the return of such child.

Aggravated interference with parental custody is a class E felony.

~~(2)~~(3) This section shall be a part of and supplemental to the Kansas Criminal Code.



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Kansas
DEPARTMENT OF REVENUE

State Office Building
TOPEKA, KANSAS 66625

M E M O R A N D U M

TO: Senator Elwaine Pomeroy
Chairman, Senate Judiciary Committee

DATE: January 25, 1983

FROM: Mark Beshears *MB*
Director of Taxation

RE: Disclaimer to Succession;
K.S.A. 59-2291 et seq.

It has come to my attention that a conflict exists within the probate code concerning the use of disclaimers to succession. The issue has been raised by the Inheritance Tax Section.

Since the amendment of the disclaimer statute to include the disclaimer of joint tenancy assets, the Department of Revenue has taken the position that a disclaimer, certified by the Court, must accompany an inheritance tax return to effectively alter the distribution of joint tenancy assets. Prior to this time, a joint tenant could simply file an affidavit stating that they would, in fact be making an alternate distribution of the property. The inheritance tax return would then reflect a distribution of the joint tenancy assets in accordance with the affidavit.

The Department's current position is that the disclaimer of jointly held assets creates an asset which is subject to probate jurisdiction. As such, certification of a disclaimer by the probate court is necessary to insure the validity of the disclaimer. No real problems have arisen in estates being probated or administered, but where no probate or administration has been required or otherwise contemplated, taxpayers have faced a dilemma.

K.S.A. 59-2292 provides "The disclaimer instrument shall be filed within nine (9) months after the death of the decedent..." The statute goes on to say "Said disclaimer instrument shall be filed and recorded in the district court in which the estate of the decedent or the donee of the power is or may be administered." Initially, it would appear a disclaimer could be filed with the Court prior to, or even in the absence of, probate proceedings.

The initial impression is in error. In order to secure Court certification of a disclaimer, some type of probate proceeding must be commenced. Several taxpayers have reported the Court will not accept a disclaimer in the absence of a current probate proceeding.

As a result, serious questions have arisen concerning the ability to combine a disclaimer, and a descent and distribution hearing pursuant to K.S.A. 59-2250. While a disclaimer must be filed within nine months, a petition to commence a descent hearing may not be offered until after nine months have expired following the decedent's death. It appears one or the other approach may be used, but not both.

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Senator Elwaine Pomeroy
January 25, 1983
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This situation results in forcing the administration of an estate in order to secure a disclaimer, or foreclosure of the disclaimer option. To open a probate estate is a much more complicated, and expensive procedure than a descent hearing. The situation is especially awkward where the estate is quite small, and may contain only joint tenancy property held between the decedent and a third party, who holds for the convenience of the decedent.

Since this concern has arisen, most problems have been equitably resolved. A few taxpayers have elected to pay a minimal inheritance tax, rather than spend a larger sum on probate proceedings. However, since the potential for future problems exists, I felt it advisable to bring this matter to the committee's attention.

MB:le

cc Michael Lennen, Secretary of Revenue
Bill Edds, Tax Policy Manager