

MINUTES OF THE SENATE COMMITTEE ON JUDICIARYThe meeting was called to order by Senator Elwaine F. Pomeroy at
Chairperson10:00 a.m./~~p.m.~~ on March 25, 1983 in room 514-S of the Capitol.~~All~~ members ~~were~~ present ~~except~~ were: Senators Pomeroy, Winter, Burke, Feleciano, Gaines, Hein, Mulich, Steineger and Werts.Committee staff present: Mary Torrence, Revisor of Statutes
Mike Heim, Legislative Research Department

Conferees appearing before the committee:

Representative Larry Erne
 Representative Joan Adam
 Senator Francis Gordon
 Marjorie Van Buren, Office of Judicial Administrator
 Walt Scott, Jr., Associated Credit Bureaus of Kansas, Inc.
 Judge Richard Loffswold, Eleventh Judicial District
 Judge David Brewster, Eleventh Judicial District
 Art Griggs, Department of Administration
 Bob Alderson, Office of Attorney General
 Robert Coldsnow, Legislative Administrative Services
 Alan Alderson, Department of Revenue

Sub. House Bill 2340 - Answer to wage garnishment order if defendant not an employee.

Representative Erne explained this is a very simple bill addressing a problem that was called to his attention last summer. The bill spells out, if the employee has been terminated, the employer can sign the garnishment form without it being verified and return it to the court house. During committee discussion, the chairman referred to Senate Bill 372 and inquired if he would mind if the committee would amend the Senate bill into this House bill. Representative Erne said he did not mind.

House Bill 2114 - Converting district magistrate judges to an associate district judge in Atchison County.

Representative Joan Adam explained the bill would allow a change in judicial positions in Atchison County, and it will be more efficient this way. She presented one suggested change in the bill to insert "in Atchison County" in line 181 of the amended bill. Committee discussion with her followed. A committee member reported Justice Holmes testified in the House Judiciary Committee, and he is very supportive of this change, but he couldn't speak today because he was on the bench. During the discussion, the chairman pointed out Senate Bill 115 eliminates distinction between administrative and district judges and considering blending the bills, and also Senate Bill 407.

Senator Francis Gordon testified he endorses what Representative Adam presented to the committee, and he would appreciate any help the committee could give on this bill. Committee discussion with him followed.

Sub.House Bill 2340 - Answer to wage garnishment order if defendant not an employee.

Marjorie Van Buren testified there is a fiscal note every time the form is changed.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

room 514-S, Statehouse, at 10:00 a.m./~~xxx~~ on March 25, 1983

House Bill 2114 - Converting district magistrate judges to an associate district judge in Atchison County.

Marjorie Van Buren testified the bill was requested by the bar association in Atchison County, and the judges there are agreeable to the bill, and feel it would be good for the district, and it will give them more flexibility.

The chairman explained the amendments made to Senate Bill 407; a bill realting to district courts. Marjorie Van Buren was very supportive of the amendment that made changes in the dates, but cannot support the provision to eliminate Cherokee County magistrate judge position. A copy of a letter from Justice David Prager is attached (See Attachment #1). A copy of a chart showing case-load for Cherokee and Wilson Counties is attached (See Attachment#2).

Judge Richard Loffswold testified he was opposed to Section 7 amendment and the amendment that would eliminate the magistrate upon a vacancy. Considerable committee discussion was held concerning the caseload in Cherokee and Wilson Counties.

Judge David Brewster testified he would appreciate consultation before the amendments take place, so they can have a little input. He stated he takes the same position as Judge Loffswold.

Following further committee discussion, Senator Gaines moved to amend the contents of Senate Bill 407 into House Bill 2114, with the exception of the elimination of the magistrate position in Cherokee County; Senator Werts seconded the motion, and the motion carried. Senator Gaines moved to amend the contents of Senate Bill 115 into House Bill 2114; Senator Mulich seconded the motion, and the motion carried. Senator Gaines moved to report the bill favorably as amended; Senator Mulich seconded the motion, and the motion carried.

House Bill 2477 - Defense of governmental employees in civil rights cases

Art Griggs testified in support of the bill. He pointed out Senate Bill 246 is a similar bill that is in the House Judiciary Committee. He stated it is a good measure to make civil rights actions and tort actions similar.

Bob Alderson explained the changes in Senate Bill 246, and this House bill is a little broader.

Bob Coldsnow testified he did research on legislative immunity, and discussed the doctrine of legislative immunity. He explained this would be a vehicle to clarify the immunity and legal liability for legislative functions. A copy of his proposed amendments is attached (See Attachment #3). Committee discussion with him followed.

Alan Alderson testified his office has no problem with what Mr. Coldsnow presented. They are concerned with amending the bill in the Senate, which would require further action by the House.

The chairman recognized Mr. Griggs. He stated he had not had an opportunity to review the amendment. He didn't see anything objectionable. He has same concern as Mr. Alderson.

Senator Feleciano made a conceptual motion to amend the bill in the manner presented by Mr. Coldsnow; Senator Werts seconded the motion, and the motion carried. Senator Feleciano moved to report the bill favorably as amended; Senator Werts seconded the motion, and the motion carried.

The meeting adjourned.

3-25-83

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Walt Smith	Topeka	Assoc Credit Bureaus
Leslie A. Kubik	Topeka	Attorney General's Office
John Van Buren	"	
Tom Brookers	"	Kan. Bar Assoc
David J. Brewster	Columbus	Eleventh Judicial Dist
Richard D. Loffredo	Leiad	"
Sam Adams	Atchison	House of Representatives
Bob Anderson	Topeka	A. E.
Henry Humes	Lawrence	Sen. Steineyer
L. Pulshaw	Lawrence	KU
Sophie George	Topeka	Sen. Halcione
Bob McNeary	Lawrence	Anten
Jim Kang	Topeka	League of Ks Municipalities
Mary	Topeka	House
Sharon Smith	"	
Mary VanBuren	Topeka	OSA
W. C. Cuzick	"	D of Baker
M. Hawes	"	Can - Jervis

3-25-83
#1



SUPREME COURT OF KANSAS
TOPEKA 66612

DAVID PRAGER
JUSTICE

March 25, 1983

Hon. Elwaine F. Pomeroy
Statehouse, Room 143-N
Topeka, Kansas 66612

Dear Senator Pomeroy:

As departmental justice of the Fourth Judicial Department, I would strongly recommend against action to eliminate the District Magistrate Judge position in Cherokee County. It is my opinion that action to eliminate this or any other position (even though scheduled for some future date) should be based on a thorough examination of caseload and other pertinent factors, and should be taken only after adequate public discussion and consideration.

Sincerely,

A handwritten signature in cursive script that reads "David Prager".

David Prager
Associate Justice
Kansas Supreme Court

DP:dm

Atch. 1

3-25-83

#2

FISCAL YEAR 1982

	<u>Cherokee</u>	<u>Wilson</u>
A. Major caseload		
Regular Actions	111	132
Domestic	217	114
Limited	<u>55</u>	<u>95</u>
Total Civil	383	343
Felonies	108	55
Misdemeanors	43	26
Appeals	<u>1</u>	<u>3</u>
Total Criminal	152	84
Total Major Caseload	<u>535</u>	<u>425</u>
B. Lesser Jurisdiction Cases		
Formal Juvenile	118	38
Decedent Estates	61	33
Guardianship & Conservatorship	19	12
Other Probate	69	31
Small Claims	136	94
Adoptions	15	12
Mental Illness	10	4
Alcoholism	3	1
Fish & Game	78	26
Traffic	<u>2,150</u>	<u>1,380</u>
Total Lesser Jurisdiction	<u>2,659</u>	<u>1,631</u>
GRAND TOTAL	3,194	2,056

Atch. 2

75-3102. Definitions. As used in K.S.A. 1982 Supp. 75-6101 to 75-6116, inclusive, unless the context clearly requires otherwise:

(a) "State" means the state of Kansas, or any agency, authority, institution or other instrumentality thereof.

(b) "Municipality" means any county, township, city, school district or other political or taxing subdivision of the state, or any agency, authority, institution or other instrumentality thereof.

(c) "Governmental entity" means state or municipality.

(d) "Employee" means any officer, employee or servant or any member of a board, commission/or council of a governmental entity, including elected or appointed officials and persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation. "Employee" does not include an independent contractor under contract with a governmental entity. "Employee" does include former employees for acts and omissions within the scope of their employment during their former employment with the governmental entity.

History: L. 1979, ch. 186, § 2; L. 1982, ch. 374, § 1; April 15.

Law Review and Bar Journal References:

"A Practitioner's Guide to the Kansas Tort Claims Act," Jerry R. Palmer, 48 J.B.A.K. 299, 300 (1979).

* *
and any department or branch of state government

, committee, division, department, branch

* Note! Art. I of Kansas Constitution speaks of the "executive department" and various statutes speak of "legislative branch" (K.S.A. 46-1103), "executive department" (K.S.A. 31-151, K.S.A. 1981 Supp. 74-2613, K.S.A. 74-7303) and other statutes create "departments" (K.S.A. 75-3702a, department of administration; K.S.A. 75-5101, department of revenue) others then create "divisions" within the "executive department" (K.S.A. 75-4701, DISC within administration; K.S.A. 75-5102, taxation within revenue).

75-6104. Same; exceptions from liability. A governmental entity or an employee acting within the scope of the employee's employment shall not be liable for damages resulting from:

(a) Legislative functions, including, but not limited to, the adoption or failure to adopt any statute, regulation, ordinance or resolution;

(b) ~~judicial function;~~

(c) enforcement of or failure to enforce a law, whether valid or invalid, including, but not limited to, any statute, regulation, ordinance or resolution;

(d) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a governmental entity or employee, whether or not the discretion be abused;

(e) the assessment or collection of taxes or special assessments;

(f) any claim by an employee of a governmental entity arising from the tortious conduct of another employee of the same governmental entity, if such claim is (1) compensable pursuant to the Kansas workmen's compensation act or (2) not compensable pursuant to the Kansas workmen's compensation act because the injured employee was a firemen's relief association member who was exempt from such act pursuant to K.S.A. 44-505d at the time the claim arose;

(g) the malfunction, destruction or unauthorized removal of any traffic or road sign, signal or warning device unless it is not corrected by the governmental entity responsible within a reasonable time after actual or constructive notice of such malfunction, destruction or removal. Nothing herein shall give rise to liability arising from the act or omission of any governmental entity in placing or removing any of the above signs, signals or warning devices when such placement or removal is the result of a discretionary act of the governmental entity;

(h) any claim which is limited or barred by any other law or which is for injuries or property damage against an officer, employee or agent where the individual is immune from suit or damages;

(i) any claim based upon emergency preparedness activities, except that governmental entities shall be liable for claims to the extent provided in article 9 of chapter 48 of the Kansas Statutes Annotated;

(j) the failure to make an inspection, or making an inadequate or negligent inspection, of any property other than the property of the governmental entity, to determine whether the property complies with or violates any law or regulation or contains a hazard to public health or safety;

(k) snow or ice conditions or other temporary or natural conditions on any public way or other public place due to weather conditions, unless the condition is affirmatively caused by the negligent act of the governmental entity;

(l) the plan or design for the construction of or an improvement to public property, either in its original construction or any im-

, adopting or fixing, or the failure to adopt or fix, any rules or criteria which changes existing conditions applicable in the future to those subject to the jurisdiction or power of a governmental entity, and the activities and functions of any committee of a governmental entity exclusively composed of members of the legislative department or branch of the governmental entity

judicial or quasi-judicial function, including, but not limited to, the investigation, declaration and enforcement of liabilities and rights as they stand on present or past facts under existing laws or criteria, proceedings to determine whether a particular application meets predetermined or existing criteria or laws, investigating facts, weighing evidence, or drawing conclusions as a basis for official action;

provement thereto, if the plan or design is approved in advance of the construction or improvement by the governing body of the governmental entity or some other body or employee exercising discretionary authority to give such approval and if the plan or design was prepared in conformity with the generally recognized and prevailing standards in existence at the time such plan or design was prepared;

(m) failure to provide, or the method of providing, police or fire protection;

(n) any claim for injuries resulting from the use of any public property intended or permitted to be used as a park, playground or open area for recreational purposes, unless the governmental entity or an employee thereof is guilty of gross and wanton negligence proximately causing such injury;

(o) the natural condition of any unimproved public property of the governmental entity;

(p) any claim for injuries resulting from the maintenance of an abandoned cemetery, title to which has vested in a governmental entity pursuant to K.S.A. 17-1366 through 17-1368, and amendments thereto, unless the governmental entity or an employee thereof is guilty of gross and wanton negligence proximately causing the injury; or

(q) the existence, in any condition, of a minimum maintenance road, after being properly so declared and signed as provided in K.S.A. 1982 Supp. 68-5,102.

The enumeration of exceptions to liability in this section shall not be construed to be exclusive nor as legislative intent to waive immunity from liability in the performance or failure to perform any other act or function of a discretionary nature.

History: L. 1979, ch. 186, § 4; L. 1981, ch. 358, § 2; L. 1981, ch. 357, § 1; L. 1981, ch. 359, § 1; July 1.

Law Review and Bar Journal References:

"A Practitioner's Guide to the Kansas Tort Claims Act," Jerry R. Palmer, 48 J.B.A.K. 299 (1979).

"Constitutional Law: Governmental Immunity Statute Violates Equal Protection as Applied to Kansas Turnpike Authority," Robert G. Martin, 19 W.L.J. 581 (1980).

"The Kansas Tort Claims Act and School Districts," Susan C. Jacobson, 28 K.L.R. 619, 620, 623 (1980).

CASE ANNOTATIONS

1. Individual officers and employees of immune governmental entity share immunity when acting within scope of their employment. *Murphy v. City of Topeka*, 6 K.A.2d 488, 493, 494, 630 P.2d 166 (1981).

2. Claim of wrongful conversion for collection of unconstitutional assessments barred under subsection (e). *Wheat v. Finney*, 230 K. 217, 219, 220, 630 P.2d 1160 (1981).

3. Action of police officers in failure to remove person from plaintiff's property found discretionary and exempt from liability under Kansas tort claims act. *Robertson v. City of Topeka*, 231 K. 358, 359, 360, 363, 644 P.2d 458 (1982).

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provement thereto, if the plan or design is approved in advance of the construction or improvement by the governing body of the governmental entity or some other body or employee exercising discretionary authority to give such approval and if the plan or design was prepared in conformity with the generally recognized and prevailing standards in existence at the time such plan or design was prepared;

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