

Approved April 7, 1983  
Date

MINUTES OF THE SENATE COMMITTEE ON LEGISLATIVE AND CONGRESSIONAL APPORTIONMENT

The meeting was called to order by Senator Dan Thiessen at  
Chairperson

5:00 a.m./p.m. on Tuesday, March 22, 1983 in room 531-N of the Capitol.

All members were present except:

Senator James Francisco - excused

Committee staff present:

Fred Carman, Revisor's Office  
Russell Mills, Research Department  
Marion Anzek, Committee Secretary

Conferees appearing before the committee:

Robert Stephan, Attorney General  
Jeff Southard, Assistant Attorney General  
Representative Clarence Love

Chairman Dan Thiessen called the meeting to order and explained that the purpose of the meeting would be to hear testimony on SR1814. The Chairman also advised the committee that tape recorders were in use at this meeting.

Attorney General, Robert Stephan was the first conferee to appear. He spoke as an opponent on SR1814, and explained he had researched his opinion (See Attachment #1) thoroughly, and had nothing to add to it, but would be glad to answer questions of the committee. The Attorney General, explained that he had just arrived from a trip in Wichita, and that Senator Gaar had called his office while he was away, and spoke to Jeff Southard, Assistant Attorney General, regarding three cases in the The Opinion that were of main issue, and because Jeff Southard had done the research on these cases, the Attorney General stated that he and Jeff both were there to answer questions.

The Chairman asked Senator Gaar if he would like to start, and the Senator declined til he could hear from Russell Mills, and Senator Gaar asked if Russell Mills and the committee had a copy of the memorandum, dated December 20, 1982 (See Attachment #2) prepared by the Research Department at his request, of the Kansas Senate Districts using the 1980 U.S. Census Data on Senatorial districts and population deviations.

Senator Gaar asked Russell Mills how they arrived at the figures that were on the memorandum, and Russell Mills answered the figures were taken from the 1980 Federal U.S. census.

Intensive questioning by Senator Gaar and the committee members were directed to Mr. Mills regarding how the data was arrived at to prepare the memorandum and how they arrived at the population and deviation figures, as one senatorial district to district had a plus 43.6% while another had -14.3% deviation, while the ideal mathematically perfect senatorial district is a population of 59,106. Senator Gaar, asked Russell Mills to explain this.

Russell Mills, explained that the figures used were taken from the 1980 U.S. census, and the 1979 State Agriculture census.

Senator Angell: Russell, do you think that the 1980 Federal U.S. census figures are correct?

Russell Mills: I do not think I am qualified to answer that question, as it is the only federal census figures available.

Senator Angell: Russell, do you have an opinion as to why there is such a vast difference between the two census.

Russell: No.

Senator Angell: Russell, do you believe there is any validity to these figures?

Russell: Up to 1979 that is what the Kansas Legislature ruled, as the figures we would use.

Senator Angell: Therefore, you used those as comparative data, because of that decision, that weighed your decision, as to the validity?

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Russell: Yes

Senator Angell: Do you feel that the 1980 federal U. S. census figures are correct.

Russell: There again, I am not qualified to answer that question.

Senator Angell: Do you think that the 1978 State Agriculture figures are correct?

Russell: Senator, I can not answer that, it was through the 1977 Federal State Affairs interim committee hearings that it was decided to abolish the State Agriculture census.

Senator Angell: Russell, could you explain the difference in the methodology used in the two census.

Russell: In general, students and military were not counted in the State Agriculture census. and they are counted in the U.S. Federal census.

Senator Angell: Now when you talk about the students not counted, as your saying that the students that come from Salina, Ks. and go to the University of Kansas are not counted anywhere?

Russell: In general, I don't believe any of them are counted in Lawrence, Ks., most of them are counted in their home counties.

Senator Angell: Then they were counted somewhere.

Russell: Yes.

Chairman Thiessen: Are there any more questions from the committee for Russell Mills?

Senator Meyers: Russell, when we worked in 1979, do you re-call, it seems to me like the goal that we had for variation, was more like 3%, no more than 1 1/2% above and 1 1/2% below, wasn't that what we were working for? I don't think that we reached it.

Russell: My recollection is 10%, 5% above and 5% below, and later changed it to 6%, 3% above and 3% below.

Chairman Thiessen: asked Attorney General, Robert Stephan if he would answer questions of the committee at this time.

Senator Gaar: I have a question on page six of the opinion (Attachment #1) 2nd paragraph, Winter v Docking, with a 11.6% variation from ideal, Harris v Anderson, 11% variance from ideal, Yancey v Faubus, 15% variance from ideal, and Mahan v Howell 16.4% variation from ideal, and asked the Attorney General, do I understand that your opinion cites these cases as authority for deviations from high population to low population, from the ideal that was approved by various courts, and do you have any opinion on where the line was in your research and did you find cases which do not comply with the Federal requirements of 1 person, 1 vote, so that we can compare the cases? Here we see the top percentages that you cite with deviations of 16.4%, but do you have the figures where the deviations were not true?

Jeff Southard, Assistant Attorney General: I might mention one of the cases, the Flateau case. There the largest district was 84%, 85% above the ideal, and the courts said that was fairly out of line.

Robert Stephan: You, know, I do think that is is important enough to understand that the deviations, are what the federal court says they ought to be, and in the reapportionment case, concerning the federal court, and the legislature tried to stay within the certain deviations, thinking that was the norm, and bound to the constitution.

Senator Gaar: Do we have any figures where the federal court says this, where it is 84% and they say no, and do we have anything lower than that?

Jeff Southard: Yes, I don't have the cites, but Baker v Carr, and the figures that were handed down to the federal court, the figure there was 20%.

Senator Gaar: They approved or disapproved?

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Jeff: They approved the 20% deviation for Baker v Carr. If I can give that cite to you, it was a 1965 case.

Senator Gaar: Was that district or federal court?

Jeff: The federal court.

Senator Gaar: That was not here?

Jeff: No.

Senator Gaar: Mr. Attorney General, would either of you care to venture an opinion as to where the federal court might say the deviation percentage was in violation of the 1 person, 1 vote?

Robert Stephan: Well, I think your hunch might be just as good as ours, but do you understand that our legal opinion is based on the 1979 Kansas State Agriculture census?

Senator Gaar: Would you theorize with me, as to what you thought the U.S. Federal constitution might require, in fairness and justice for all, in an approximate equal population, but not a mathematically exact presumption.

Robert Stephan: No, I don't think the State constitution would supersede the federal constitution, where they both apply.

Senator Gaar: So you do believe in the supremacy clause of this document?

Robert Stephan: Well, I don't necessarily believe in it, but I adhere to it.

Senator Gaar: If I read your opinion correctly you feel it is a valid federal opinion, and a valid census at the time, as upheld by the federal court.

Robert Stephan: Yes.

Senator Gaar: What, if anything, in our method of counting our people would cause you to say that we ought to reapportion ourselves, because of requirements of either the Kansas Constitution or the 14th Amendment?

Robert Stephan: Well, perhaps if there were some fraud involved in the State Agriculture census, but I believe it is honest.

Senator Gaar: Your saying that we did the Ag census, which is a valid census, we went through the procedures, and our Supreme Court validated it in accordance with your motion to review it, as required by the State of Kansas Constitution, over which we have no authority, even if we wanted to reapportion before 1989.

Robert Stephan: That is right. Just because the federal government came out with the census in 1980, and the state agriculture census in 1979, I don't think there is grounds enough for the legislature to act upon the constitution.

Senator Hess: Mr. Chairman, I just have a couple of questions. Thinking back in my legislative problems class in law school, I'm wondering if the Attorney General or anyone can tell me the reason Article #10 of the State Constitution, where it says that the legislature shall enact a statute reapportioning the state senatorial districts and representative districts, That is obviously required, but in regards to Senator Garr" questioning, does that mean that in your opinion that the legislature may not enact a reapportionment plan at any other time. In other words, you have to do it in 1979 and every ten years thereafter, and that you are precluded from doing it at any other time, to me that is really the heart of the whole situation.

Attorney General: Yes.

Jeff Southard: A Kansas case law, case of Harris v Shanahan, 192 Kansas, they said there, that once a valid apportionment law is enacted no future act may be passed by the legislature until after the next regular apportionment period prescribed by the Constitution.

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Senator Steineger: Mr. Attorney General, give the figures that you have seen for the senate districts, and may I inquire, have you seen the figures for the house districts? Do you have those, and do you know of any compelling reason for justification for not reapportioning the senate and the house of representatives to more closely meet the mandate for the Federal Constitution?

Attorney General: Well, I think that the legislature has met this.

Chairman Thiessen: Senator Steineger, I think the resolution calls for us to look at the Senate districts and not the House districts.

Senator Steineger: Mr. Chairman, I would like for the committee to look at these figures, and I want this to be called Exhibit A (See Attachment #3), I am bringing this to the attention of the committee so they can see the deviation figures in the House as well as the Senate.

Senator Angell: Just briefly, I want to make sure that, either Mr. Mills or the Attorney General answer. It is my understanding that if you take State Agriculture census in 1979 and the 1980 Federal census that the methodology used was that students were counted where they were attending school on the federal census and they were counted at home on the state agriculture census, is that generally true?

Russell Mills: Generally speaking, that is true, and those are the two biggest differences in deviations.

Senator Angell: and the second difference is the military personnel, and they are counted where they were actually stationed in the Federal census but not counted in the State Agriculture census? Is that correct?

Russell Mills: Once again, generally speaking yes, because you had 105 county clerks taking the census, but they were counted if they were registered to vote.

Chairman Thiessen: Are there any other questions from the committee for the Attorney General?

Senator Gaar: Mr. Attorney General, in light of the conversation here or through your examination of the Flateau case, or anything else is there anyplace where you would like to revise your views, as set out in your opinion of March 16, 1983?

Robert Stephan: No, we have no reason to revise.

Senator Angell: I have a question of Russell Mills. Russell, the prior 1979 Ag census was done in 1969. Did you make equal comparisons to the 1969 and the 1979 Ag census?

Russell: No, sir.

Senator Angell: Have you made any comparisons in the 1970 and the 1980 Federal census?

Russell: No, sir.

Senator Angell: Would you get for me and the committee a comparison of the 1959, 1969 and the 1979 Ag census, and the 1960, 1970 and 1980 Federal census, and the purpose of that is to find if there is a general trend of direction to the deviations between the two census.

Russell: Certainly.

Chairman Thiessen; We have one more conferee and asked Representative Clarence Love if he would care to make a statement.

Representative Love: I would like to make a statement to this committee, and that he was representative of the 35th legislative house district, which is located in Kansas City, and he was appearing in favor of SR1814, but for different reasons proposed by Senator Gaar, and requested that the current senate apportionment be modified to meet the constitutional people representation requirement, and there should be a modification of the senatorial district in Wyandotte County, and he stated in the present district form the senatorial district in Wyandotte County is nothing but a mechanical, racial gerrymandering which violates the United States Constitution and the Federal Voting Rights Act as amended, and prevents

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the election of a black senator which can better serve the needs of citizens of that district, in his opinion. Fairness dictates that the legislature investigate this question with its usual thoroughness and if it fails to do so then the people of our State will have no other recourse than to seek justice and equity in our Country's courts. (See Attachment #4).

Chairman Thiessen asked if there were any questions from the committee for Representative Love.

Senator Hess: Representative Love, are you aware basically how the reapportionment committee in 1979 went about the task or reapportionment in the urban counties?

Representative Love: in 1979?

Senator Hess: Yes, when we passed senate bill #220.

Representative Love: No, I can't respond to your question.

Senator Hess: Well, Representative Love, one of the things that we did, was to determine how many senators should be assigned to certain counties, for example the six senators for Sedgwick County came fairly close, although it was a little under deviation. The three senators assigned to Shawnee County, there were three senators assigned to Wyandotte County, and there were four senators assigned to Johnson County, now in regards to Wyandotte County, do you know who actually drafted those boundry lines, for those three senatorial districts in Wyandotte County?

Representative Love: I don't know, Sir, but I imanage it was the three senators that are presently serving.

Senator Hess: Yes, that is correct, they adopted their recommendations, so are you asking us now to overturn the recommendations from Senators, Rehorn, Mulich and Steineger?

Representative Love: Yes.

Senator Hess: I want to get that on record.

Chairman Thiessen stated he thought we had been here long enough, and Senator Gaar stated he would like to know what we are going to do about further meetings to be held.

Chairman Thiessen: I would like to have the information that was requested about the history of these census figures, and asked Russell Mills if he had any idea how long it would take to get those figures and prepare them.

Russell Mills: A couple of days.

Chairman Thiessen said he would notify the committee of the next meeting and the meeting adjourned at 6:42 p.m.

SENATE LEGISLATIVE & CONGRESSIONAL APPORTIONMENT COMMITTEE

Date March 22, 1983 Place Statehouse - Rm. 531-N Time 5:00 p.m.

GUEST LIST

NAME

ADDRESS

ORGANIZATION

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Jeff Southard	Attorney General	
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Larry Hynes	Lawrence	
Bob Stephens	Judicial Center	U.S.
Pat McNeely	Topeka	MIN
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Linda Lege	"	UPI
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March 16, 1983

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ATTORNEY GENERAL OPINION NO. 83- 33

The Honorable Robert V. Talkington  
Majority Leader of the Senate  
Room 357-E, Statehouse  
Topeka, Kansas 66612

Re: Apportionment -- Reapportionment of Senatorial  
Districts -- Constitutional Requirements

Synopsis: Pursuant to Article 10 of the Kansas Constitution, the 1979 Session of the Kansas Legislature enacted Senate Bill No. 220, which reapportioned the state senatorial districts, based on figures compiled in the 1978 state agricultural census. The reapportionment statute was presented to the supreme court by the Attorney General, with the court holding, in a final judgment, that the plan complied with the requirements of the state and federal constitutions. Accordingly, unless it is ordered to do so by a court of competent jurisdiction, the legislature may not act again on reapportionment until the time set forth by Article 10, which is 1989.

Reapportionment on a decennial basis, such as that provided by the Kansas Constitution, has been held consistent with equal protection rights under the federal constitution. Additionally, court decisions have sanctioned the use of figures derived from the state agricultural census, rather than the United States census, and have found no discrimination in the way the state census considered persons in military service in arriving at population figures for each district. Accordingly, the fact that U.S. census figures collected subsequent to 1979

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are dissimilar from those used by the legislature and approved by the supreme court is insufficient to challenge the validity of the apportionment plan currently in effect. However, given that the state agricultural census has been replaced by the federal census, the next reapportionment scheduled for 1989 will of necessity use data collected in 1980, yet will draw districts which will be used until 1999. As population shifts during this lengthy period may give rise to equal protection concerns the legislature may wish to consider remedial measures prior to 1989, such as amending the Kansas Constitution, Article 10, or reinstating some form of state census. Cited herein: K.S.A. 11-201, 24-3402, 24-3403, L. 1979, ch. 55, 1983 SR No. 1814, 1979 SB No. 220, Kan. Const., Art. 10, §1, U.S. Const., Amend. XIV.

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Dear Senator Talkington:

As Majority Leader of the Kansas State Senate, you have requested our opinion on several inter-related questions concerning the possible reapportionment of that body. Your request was prompted by 1983 Senate Resolution No. 1814, which directs the Senate Committee on Legislative and Congressional Apportionment to review the population of each district in light of the state and federal constitutions, and to determine whether a denial of the Equal Protection Clause of the 14th Amendment to the United States Constitution would occur if reapportionment is delayed until 1989, as is currently contemplated. You inquire whether any conflict exists between the current system of apportionment and the equal protection clause, and whether there is anything which the Legislature can do to remedy any such conflicts.

The current senatorial districts were drawn in 1979, and represented the first use of Article 10, Section 1 of the Kansas Constitution as amended in 1974. Pursuant to the section's requirements, 1979 Senate Bill No. 220 was presented by this office to the state supreme court for a determination of its validity. The court reviewed the plan and entered a judgment approving it in full, which judgment is final as provided by Article 10, Section 1(e). In re Senate Bill No. 220, 225 Kan. 628 (1979). Among other things, the court found that the population deviations contained in the new districts were acceptable (the maximum spread between districts was 6.5%),



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and that the use of census figures collected by the Kansas State Board of Agriculture was acceptable. In making this latter determination, the court noted that it was following earlier decisions which had been rendered by the federal district court for this state. Winter v. Docking, 373 F. Supp. 308 (D. Kan. 1974). The districts so approved were used in the 1980 elections for the senate.

It is our understanding that the recent senate resolution was prompted by figures derived from the 1980 United States census, which differ, in some cases considerably, from the figures used in determining the districts in 1979, i.e., the 1978 state agricultural census totals. The three districts in Shawnee County are 12.6% below the population for an "ideal" district, which is 59,106. Similar deficiencies are found in several districts located in the western portion of the state. On the other hand, several districts in the eastern section of Kansas, such as the four districts in Johnson County, are above the ideal figure by as much as 9.6%. The most extreme anomaly, however, is the 22nd District, encompassing parts of Riley and Geary Counties, which exceeds the ideal total by 43.6%. In actual numbers, this district has 84,869 people, more than 25,000 in excess of the population for the ideal district.

In that the 22nd District presents a situation which is entirely dissimilar from the other 39 districts, it would be in order to discuss it separately later in this opinion. Prior to doing so, the initial question which you raise concerning the authority of the legislature to act should be examined, so as to determine whether any legislative action is constitutionally permissible. As noted above, Article 10 of the Kansas Constitution was followed in the drawing of the current districts. Therein, Section 1 provides in pertinent part:

"(a) At its regular session in 1979, and at its regular session every tenth year thereafter, the legislature shall enact a statute reapportioning the state senatorial districts and representative districts. Bills reapportioning legislative districts shall be published in the official state paper immediately upon final passage and shall be effective for the next following election of legislators and thereafter until again reapportioned.

"(b) Within fifteen days after the publication of an act reapportioning the legislative districts within the time specified in (a), the attorney general shall petition the supreme court of the state to determine the validity thereof. The supreme court, within thirty days from the filing of the petition, shall enter its judgment . . . .

. . . .

"(e) A judgment of the supreme court of the state determining a reapportionment to be valid shall be final until the legislative districts are again reapportioned in accordance herewith." (Emphasis added.)

By the plain language of the above, it is clear that the legislature, having acted in accordance with the constitution in 1979, is without the authority to act again until 1989, which is the tenth year after the initial reapportionment under the above-quoted language. In our judgment, any attempt by the legislature to reapportion senatorial districts on its own motion would be in direct contravention of the Kansas Constitution, and in our opinion would be struck down by the supreme court as unconstitutional. In addition, any bill enacted by the legislature prior to 1989 would be in conflict with the final judgment of the supreme court rendered in 1979. Only through a change in the constitution could the legislature act prior to 1989.

This conclusion has direct support in Kansas case law. In Harris v. Shanahan, 192 Kan. 183 (1963), the court was faced with 1963 Senate Bill No. 440, which, although stipulated to by all parties as providing equal representation, contained a serious technical flaw (the city of Leawood was disenfranchised). The court stated as follows (at 192 Kan. 190-191):

"It is the general rule that once a valid apportionment law is enacted no future act may be passed by the legislature until after the next regular apportionment period prescribed by the Constitution. (Jones v. Freeman, 193 Okl. 554, 146 P.2d 564; Denney, Clerk, et al., v. The State, ex rel., Basler, 144 Ind. 503, 42 N.E. 929; The People v. Hutchinson, 172 Ill. 486, 50 N.E. 599; Parker, et al. v. The State,

ex rel. Powell, 133 Ind. 178, 32 N.E. 836, 33 N.E. 119; People ex rel. Henderson v. Supervisors, 147 N.Y. 1, 41 N.E. 563; Harmison v. Ballot Com'rs, 45 W. Va. 179, 31 S.E. 394; 18 Am.Jur., Elections, §14, p. 190.) The apportionment period provided in the Constitution does not, of course, require that the act be passed at a regular session, but a special session may be called for that purpose. (The State ex rel. Attorney General vs. Cunningham, 81 Wis. 440, 51 N.W. 724; 18 Am.Jur., Elections, §14, p. 190.))

"The existing apportionment of the house of representatives was enacted in 1961 and that of the senate in 1963. Thus, both being current in terms of time within the meaning of Article 10, Section 2, those acts are not subject to change by the legislature until the next constitutional apportionment period unless held to be invalid. Since there is a presumption that laws passed by the legislature are valid and constitutional until judicially determined to be otherwise, the legislature will be powerless to lawfully reapportion until the next apportionment period, unless this court adjudges the present senate apportionment act to be invalid." (Emphasis added.)

After finding no acceptable way to read the omitted city back into the bill, the court threw out the entire measure.

Accordingly, while the legislature may not act on its own motion to reapportion the senatorial districts until 1989, it of course may be ordered to do so by the state supreme court or the federal district court, as has occurred numerous times in the past. See, e.g., cases cited at 225 Kan. 634, 635. Since the plan was deemed to be constitutionally sound when enacted, it may now be found defective only because the passage of time and the occurrence of events have rendered it unacceptable, or because of an inherent defect in the entire system used in Kansas for the reapportionment of such districts. In our opinion, a review of the facts and the case law precedents does not support either of the above grounds.

We would initially note that, while the figures used in drawing up the current districts and those presented by the federal census (a table of which you attached to your request) do differ in every district, the differences in most cases are slight. Indeed, the ideal district under the current plan is 59,000, or only 106 persons less than that presented by the federal census figures, which were compiled two years later. Furthermore, to the extent that such variances from the ideal figure have developed, they are probably due to population shifts or differences in counting, not action taken by the legislature which is subject to scrutiny for constitutional defects.

It is also pertinent to note that, with the exception of the 22nd District, the deviations between the two sets of census figures are within the range approved by other decisions in the area of reapportionment, given the valid state interest in preserving existing political subdivisions. See, e.g., Winter v. Docking, supra, 373 F. Supp. at 309-310 (11.6% variance from ideal), Harris v. Anderson, 196 Kan. 450, 453 (1966) (11% variance from ideal), Yancey v. Faubus, 251 F. Supp. 998 (1965) (15% variance from mean average), Mahan v. Howell, 410 U.S. 415, 35 L.Ed.2d 320 (1972) (16.4% total variance between largest and smallest districts). As the courts are so fond of saying, mathematical exactness is not required, even in the absence of a state interest. White v. Regester, 412 U.S. 755, 37 L.Ed.2d 314 (1973). Where a state interest is present, fairly large differences have been tolerated. Wyche v. Madison Parish Policy Jury, 635 F.2d 1158 (5th Cir. 1981).

It is additionally our opinion that the Kansas Constitution is not subject to attack on the grounds that reapportionment will not occur again until 1989. The validity of reapportionment on a decennial interval was discussed and approved by the United States Supreme Court in the landmark case of Reynolds v. Sims, 377 U.S. 533, 12 L.Ed.2d 506 (1964), wherein the court stated:

"That the Equal Protection Clause requires that both houses of a state legislature be apportioned on a population basis does not mean that States cannot adopt some reasonable plan for periodic revision of their apportionment schemes. Decennial reapportionment appears to be a rational approach to readjustment of legislative representation in order to take into account population shifts and growth . . . . Limitations on the frequency of reapportionment are justified by the need for

stability and continuity in the organization of the legislative system, although undoubtedly reapportioning no more frequently than every 10 years leads to some imbalance in the population of districts toward the end of the decennial period . . . .

"In substance, we do not regard the Equal Protection Clause as requiring daily, monthly, annual or biennial reapportionment, so long as a State has a reasonably conceived plan for periodic readjustment of legislative representation. While we do not intend to indicate that decennial reapportionment is a constitutional requisite, compliance with such an approach would clearly meet the minimal requirements for maintaining a reasonably current scheme of legislative representation."  
12 L.Ed.2d at 539-540.

However, even if subsequent population shifts since 1979 are insufficient to call the plan into question, it is possible that inherent flaws may have been present at the outset which would result in the same finding. Specifically, this would arguably be the case for District 22, which is the one district where the state agricultural census figures differ widely from those of the federal census taken two years later. However, it is our opinion that the variance, while real, reflects a difference in the purpose for which the figures were gathered, and does not invalidate the 1979 reapportionment on equal protection grounds. The Supreme Court has held that states are not required to use the federal census for apportionment purposes, and has recognized that the use of other types of enumerations will give different, yet permissible, results. Burns v. Richardson, 384 U.S. 73, 16 L.Ed.2d 376 (1966).

A number of background facts about the 22nd District can be obtained from material contained in prior court files and decisions. As established by the final decree of the federal district court in Anderson v. Docking, Case No. W-3220, the district contained the city of Junction City and the townships of Milford and Smoky Hill in Geary County, and the city of Manhattan and the townships of Madison, Grant, Wildcat, Ogden, Manhattan, Ashland and Zeandale in Riley County. This left the district with a population which by 1978 had reached 60,444 (using the agricultural census), or only 2.5% over the ideal figure. Given this, only minimal changes were made

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by 1979 Senate Bill No. 220, which shifted two and one-half townships in Riley County to the district on the east (the 21st), which needed more people.

As it is currently constituted, the district contains Junction City, Manhattan and the territory between the two cities, including the Fort Riley Military Reservation. While the residents of the post were included in the 1980 federal census, they were for the most part not counted by the state in its annual agricultural census, including the 1978 census from which the 1979 districts were derived. Only those inhabitants who had registered to vote, or who had taken other affirmative steps to establish residency, were counted. This fact was noted by the federal district court in Winter v. Docking, supra at 310-11, which rejected arguments that the agricultural census discriminated against military personnel. The court noted that Kansas statutes in fact treat persons living in federal enclaves on the same basis as Kansas residents for purposes of registering to vote. K.S.A. 25-3402, 25-3403.

The principle of "one man, one vote," first applied in Baker v. Carr, 369 U.S. 186, 7 L.Ed.2d 663 (1962), is predicated upon the concept that one elector's voice should have the same weight as another's, within practical limits. Unless a person living within a federal enclave has taken steps to become a resident of Kansas, whether by registering to vote or otherwise, he or she has no connection with the political affairs of this state. The situation presented here is not like that in Evans v. Cornman, 398 U.S. 419, 26 L.Ed.2d 370 (1970), where residents of a federal enclave were not permitted to vote in Maryland, nor are members of the military being discriminated against because of the nature of their employment. Davis v. Mann, 377 U.S. 678, 12 L.Ed.2d 609 (1964). While it is theoretically possible that the 25,000 persons not reflected on the 1978 state agricultural census have since registered to vote, it is enough for the state to demonstrate a rational basis for its procedures. In considering such cases, courts have placed on plaintiffs the burden of showing that a particular class has reduced opportunity to participate in the electoral process, and are so disenfranchised. Clark v. Marengo City, 469 F. Supp. 1150 (S.D. Ala. 1979). The exclusion from the census of non-registered military personnel has already been challenged in Kansas, and the state's procedures upheld. Winter v. Docking, supra.

Having examined each of the above challenges to the current plan used to apportion the population of Kansas for senatorial

districts, it is our opinion that none rise to a level which results in a denial of equal protection under the law. Hence, in our opinion, no basis exists for court-ordered reapportionment at this time. However, given the timing of the next regularly scheduled reapportionment (1989), and the abolition of the state agricultural census, we feel constrained to note a likely grounds for challenge in the future.

In that the agricultural census was abolished in 1979 (L. 1978, ch. 55), with the federal census now used for all purposes (K.S.A. 11-201), the 1989 session of the legislature will be required to utilize the 1980 federal census figures, with the resulting districts based on such number until 1999, or nearly 20 years later. Such a result would be extremely vulnerable to an equal protection attack, which could end in yet another court-mandated reapportionment.

The existence of this potential problem was recognized during the 1979 hearings on Senate Bill No. 220 and its companion measure reapportioning the house of representatives. (Minutes of House Committee on Legislative, Judicial and Congressional Reapportionment, January 8, 1979.) As yet, we are aware of no steps which have been proposed to correct the situation, which of necessity would involve either amending Article 10 or reinstating some form of state census. In contrast to undertaking actual reapportionment now, the legislature is fully capable of studying these or other solutions and then taking action.

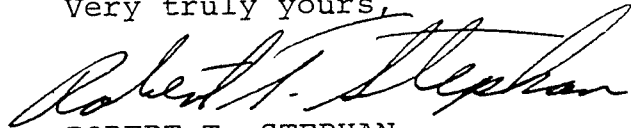
In conclusion, pursuant to Article 10 of the Kansas Constitution, the 1979 Session of the Kansas Legislature enacted Senate Bill No. 220, which reapportioned the state senatorial districts, based on figures compiled in the 1978 state agricultural census. The reapportionment statute was presented to the supreme court by the Office of the Attorney General, with the court holding, in a final judgment, that the plan complied with the requirements of the state and federal constitutions. Accordingly, unless it is ordered to do so by a court of competent jurisdiction, the legislature may not act again on reapportionment until the time set forth by Article 10, which is 1989.

Reapportionment on a decennial basis, such as that provided by the Kansas Constitution, has been held consistent with equal protection rights under the federal constitution. Additionally, court decisions have sanctioned the use of figures

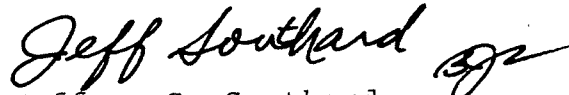
The Honorable Robert V. Talkington  
Page Ten

derived from the state agricultural census, rather than the United States census, and have found no discrimination in the way the state census considered persons in military service in arriving at population figures for each district. Accordingly, the fact that U.S. census figures collected subsequent to 1979 are dissimilar from those used by the legislature and approved by the supreme court is insufficient to challenge the validity of the apportionment plan currently in effect. However, given that the state agricultural census has been replaced by the federal census, the next reapportionment scheduled for 1989 will of necessity use data collected in 1980, yet will draw districts which will be used until 1999. As population shifts during this lengthy period may give rise to equal protection concerns, the legislature may wish to consider remedial measures prior to 1989, such as amending the Kansas Constitution, Article 10, or re-instituting some form of state census.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard  
Assistant Attorney General

RTS:BJS:JSS:hle



Kansas Legislative Research Department

December 20, 1982

KANSAS SENATE DISTRICTS

(1980 U.S. Census Data)

<u>District</u>	<u>1980 Population</u>	<u>Deviation</u>	<u>District</u>	<u>1980 Population</u>	<u>Deviation</u>
1	57,445	-2.8%	21	59,709*	+1.0
2	61,464	+4.0	22	84,869*	+43.6
3	63,835	+8.0	23	53,574	-9.4
4 } <i>Wagonwheel</i>	172,335 ÷ 3 = 57,445	-2.8	24	59,690	+1.0
5 }			25	60,184	+1.8
6 }			26	63,155	+6.9
7 } <i>St. Lawrence</i>	253,555* ÷ 4 = 63,389	+7.2	27 } <i>St. Lawrence</i>	306,536 ÷ 5 = 61,307	+3.7
8 }			28 }		
9 }			29 }		
10 }			30 }		
11	64,804*	+9.6	31		
12	59,785	+1.2	32	59,024	-0.1
13	58,999	-0.2	33	55,586	-6.0
14	60,606	+2.5	34	56,720	-4.0
15	57,750	-2.3	35	52,111	-11.8
16	60,080	+1.7	36	53,934	-8.8
17	56,253	-4.8	37	56,354	-4.7
18 } <i>St. Lawrence</i>	154,916 ÷ 3 = 51,639	-12.6	38	56,184	-4.9
19 }			39	50,666	-14.3
20 }			40	54,113	-8.5

State Total: 2,364,236

"Ideal": 59,106

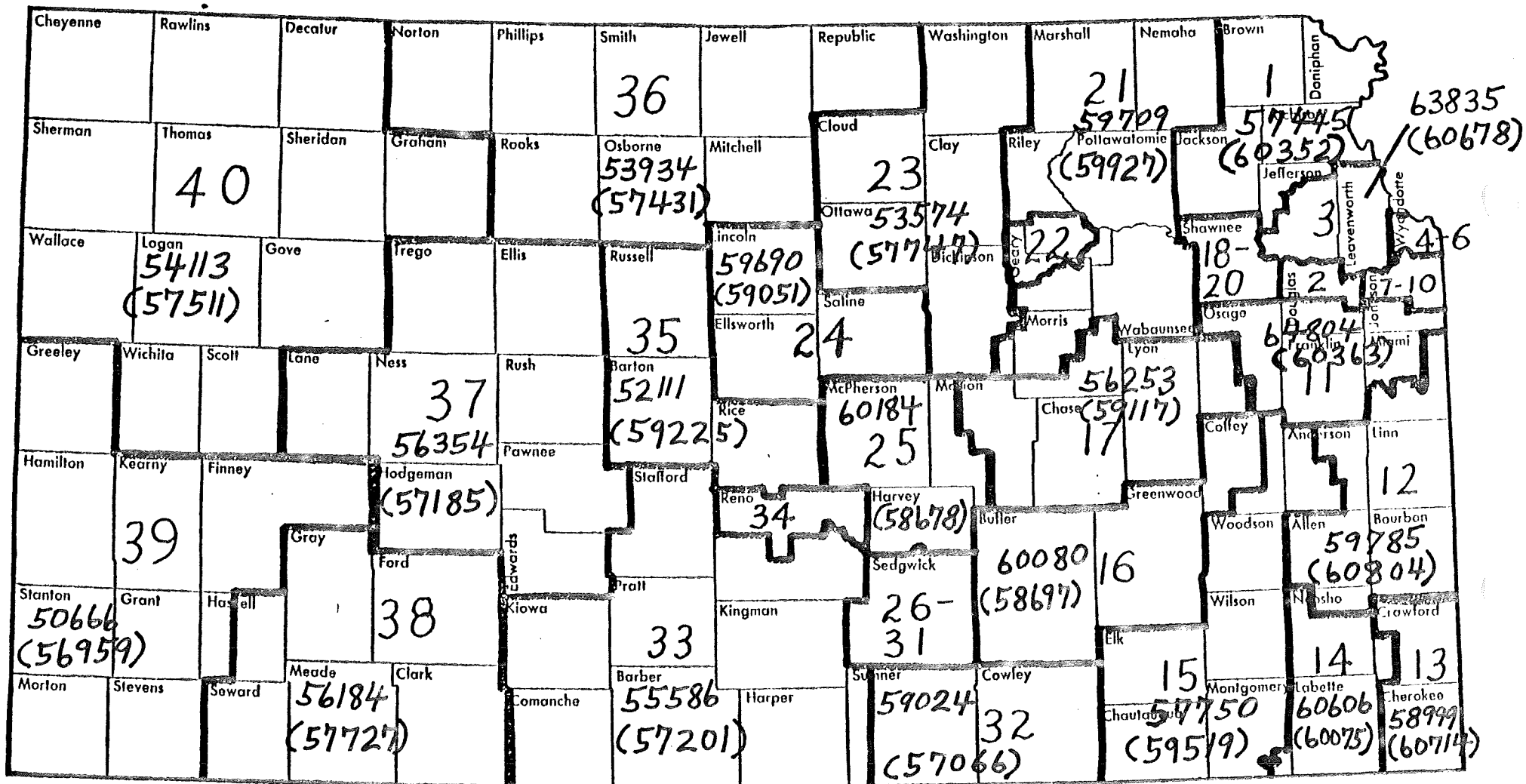
\* Population of some precincts in this district has been extrapolated.

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Kansas Legislative Research Department

May 17, 1979

KANSAS SENATE DISTRICTS CREATED BY SENATE BILL 220, 1979 SESSION



2-61464 (60169)  
 4-6-AVG. 57445 (60435)  
 7-10-AVG. 63389 (60546)  
 18-20-AVG. 51639 (60011)  
 22-84869 (58194)

26-63155 (57557)  
 27-31-AVG. 61307 (57354)  
 34-56720 (57024)

## Senate Bill 220 - Final

<u>District</u>	<u>Verified Population</u>	<u>Deviation</u>
1	60,352	+2.3%
2	60,169	+2.0
3	60,678	+2.9
4	60,719	+2.9
5	60,134	+2.0
6	60,451	+2.5
7	60,522	+2.6
8	60,373	+2.4
9	60,479	+2.5
10	60,809	+3.1
11	60,363	+2.3
12	60,804	+3.1
13	60,714	+2.9
14	60,075	+1.9
15	59,519	+0.9
16	58,697	-0.5
17	59,117	+0.2
18	60,141	+1.9
19	59,780	+1.4
20	60,113	+1.9
21	59,927	+1.6
22	58,194	-1.3
23	57,747	-2.1
24	59,051	+0.1
25	58,678	-0.5
26	57,557	-2.4
27	57,127	-3.1
28	57,201	-3.0
29	57,134	-3.1
30	57,618	-2.3
31	57,690	-2.2
32	57,066	-3.2
33	57,201	-3.1
34	57,024	-3.3
35	59,225	+0.4
36	57,431	-2.6
37	57,185	-3.1
38	57,727	-2.1
39	56,959	-3.4
40	57,511	-2.5

Range: High +3.1%  
Low -3.4%

Total Deviation: 6.5%

KANSAS HOUSE DISTRICTS  
 (1980 U.S. Census Data)

<u>District</u>	<u>1980 Population</u>	<u>Deviation</u>	<u>District</u>	<u>1980 Population</u>	<u>Deviation</u>
1	17,895	-5.39	63	16,897	-10.66
2	18,459	-2.41	64	24,656	+30.36
3	17,489*	-7.53	65	19,305	+2.07
4	19,035*	+0.64	66	34,165	+80.63
5	18,967	+0.28	67	25,898	+36.93
6	18,672	-1.28	68	17,900	-5.36
7	17,472	-7.62	69	18,709	-1.08
8	17,769	-6.05	70	16,831	-11.01
9	17,624	-6.82	71	18,493	-2.23
10	18,183	-3.86	72	19,513	+3.17
11	18,089	-4.36	73	19,503	+3.11
12	19,739	+4.36	74	18,439	-2.51
13	19,501	+3.10	75	18,758	-0.83
14	20,100	+6.27	76	18,833	-0.43
15	18,519	-2.09	77	19,543	+3.33
16	18,215	-3.70	78	21,048	+11.28
17	19,098	+0.97	79	19,677	+4.03
18			80	18,305	-3.22
19			81		
20			82		
21			83		
22			84		
23	259,107		85		
24	±13=	+5.38	86		
25	19,931		87		
26			88	372,243	
27			89	±18=	+9.34
28			90	20,680	
29			91		
30			92		
31			93		
32			94		
33			95		
34	158,946*		96		
35	±9=	-6.63	97		
36	17,660		98		
37			99	18,940	+0.14
38			100	17,864	-5.55
39			101	17,853	-5.61
40	19,728*	+4.30	102	18,284	-3.33
41	15,782*	-16.60	103	16,996	-10.14
42	26,611*	+40.70	104	18,740	-0.92
43	20,513	+8.45	105	19,178	+1.40
44	21,753*	+15.01	106	17,328	-8.39
45	18,810*	-0.55	107	16,759	-11.39
46	17,726*	-6.28	108	18,369	-2.88
47	20,268	+7.16	109	17,147	-9.34
48	17,791	-5.94	110	18,667	-1.31
49	17,422	-7.89	111	18,827	-0.46
50	18,833	-0.43	112	16,170	-14.51
51			113	15,173	-19.78
52			114	18,030	-4.67
53			115	17,417	-7.92
54	143,899		116	18,885	-0.15
55	±9=	-15.47	117	15,214	-19.62
56	15,989		118	18,073	-4.45
57			119	18,475	-2.32
58			120	17,134	-9.41
59			121	18,255	-3.48
60	17,718	-6.32	122	16,617	-12.14
61	20,067	+6.10	123	16,469	-12.93
62	17,421	-7.89	124	19,047	+0.70
			125	18,388	-2.78

State Total: 2,364,236

"Ideal": 18,914

\* Population of some precincts has been extrapolated.

*Att 3*

STATE OF KANSAS



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
MEMBER COMMITTEE ASSIGNMENTS  
AND FEEDBACK  
GOVERNMENTAL ORGANIZATION  
INTER-STATE COOPERATION  
LOCAL GOVERNMENT

CLARENCE C LOVE  
35th LEGISLATIVE HOUSE DISTRICT  
WYANDOTTE COUNTY  
WYANDOTTE, KANSAS  
KANSAS HOUSE OF REPRESENTATIVES  
TOPEKA, KANSAS

March 22, 1983

Mr. Chairman,  
Members of the Committee,

As you well know, I am Clarence Love, Representative of the 35th Legislative House District which is located in Kansas City, Kansas. I appear before you ~~this afternoon to rise~~ in favor of S.R. 1814, by Senator Norman Garr, which requests that the current Senate Apportionment be modified to meet the constitutional equal representation requirements.

Even though I appear in favor of S.R. 1814, I appear for different reasons than what Senator Garr has testified about. I appear before this committee for the reason that there should be a modification of the senatorial districts in Wyandotte County. The present senatorial district arrangement dilutes the voting rights of the Kansas City, Kansas Afro-American voting citizens. In its present district form, the senatorial districts in Wyandotte County are nothing but mechanical racial gerrymandering which violates the United States Constitution and the Federal Voting Rights Act as amended.

Kansas City, Kansas has the largest concentration of Kansas Black Citizens, more than any other community in the state of Kansas. However, this county's Black population is divided between two different Senatorial districts. This type of racial gerrymandering prevents the election of a Black Senator which can better serve the needs of citizens of that district. (My opinion) If this type of districting is allowed to continue until 1989 it will only cause a diluted or canceled out voting strength of the Kansas City, Kansas Black citizens.

In the years since the Federal courts began reviewing legislative districting, many cases have presented complaints that particular districting arrangements diluted the voting rights of racial or ethnic minorities. One legal theory that has resulted in these cases by the United States Supreme Court is as follows:

"Inherent in the concept of fair representation are two (2) propositions: First, that in Apportionment schemes, one man's vote should equal another man's vote as nearly as practicable; And second that assuming substantial equality, the scheme must not operate to minimize or cancel out the voting

Atch. 4

strength of racial elements of the voting population..." Although population is the factor to consider in Apportionment, the Supreme Court is actually announcing that access to the political process and not population is the barometer of dilution of minority voting strength.

Because of these Supreme Court cases, precise mathematical equality is not the constitutionally mandated goal of reapportionment; but access to the political process is. Therefore, the discriminatory effects of the present senatorial districts should be changed.

I will be happy to respond to any questions or comments.

Thank you Mr. Chairman.



Clarence C. Love

*Fairness dictates that the Legislature investigate this question with its usual thoroughness and if it fails to do so then the people of our state will have no other recourse than to seek Justice and equity in our Country's Courts*