

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION

The meeting was called to order by Representative Don Crumbaker at
Chairperson

3:30 ~~xxx~~/p.m. on February 28, 1984 in room 313-S of the Capitol.

All members were present except: Representative Leach, who was excused.

Committee staff present:

Avis Swartzman, Revisor of Statutes' Office
Ben Barrett, Legislative Research
Dale Dennis, State Department of Education
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:

Representative David Louis
Bill Stapleton, resident of Johnson County
Craig Grant, Kansas-National Education Association
Nelson Hartman, Kansas State High School Activities Association
Bill Curtis, Kansas Association of School Boards
Jerry Schreiner, United School Administrators

The minutes of February 16, 20, 21, 22 and 23 were approved as written.

The Chairman opened the hearings for this day.

Representative David Louis presented HB 2946 which affects the Kansas State High School Activities Association. Representative Louis stated that he likes the idea of having the Association under the direct rule of elected officials. He added that this bill was proposed as a way for checks and balances.

Bill Stapleton, a resident of Johnson County, testified in support of HB 2946. (ATTACHMENT I)

Craig Grant, Kansas-National Education Association, testified with statements to HB 2946. They would like to see the appeal procedures different than stated within this bill. He added that we need to find a way for more cooperation between the Association, the State Board and the local boards of education.

Nelson Hartman, Kansas State High School Activities Association, testified in opposition of HB 2946. He stated that he felt the State Board had quite enough to do without overburdening them with yet another area that is extremely time consuming. He related to the committee that the rule change Mr. Stapleton specifically pointed out was unanimously voted to remain as is. Mr. Hartman stated that the present rules were established for the fairness to all. The appeal board is separate and apart from the Board of Directors of the Association, and they strive to make the process as democratic as possible.

Bill Curtis, Kansas Association of School Boards, testified in opposition of HB 2946. He stated that they felt the KSHSAA performed its functions without pressure from without. He added that each case is generally very specific and very time consuming. He did not feel that anyone on the State Board would request a change that would involve their taking over this lengthy process.

Jerry Schreiner, United School Administrators, testified in opposition of HB 2946. Dr. Schreiner stated that they felt the process should continue to be kept as close to the case level as possible. These matters tend to be highly personal and affect a wide range of problems, the solutions of which are not always simple.

Craig Grant, K-NEA, opened the hearing for HB 3018 which would increase the amount of deductions from compensations allowable by law without renewing the written authorization from year to year. During committee questions, Mr. Grant stated that they had no objections to eliminating the check-off limit, but would be satisfied with the increase of the limit within this legislation.

Jerry Schreiner, USA, testified in support of HB 3018. He added that they would support removing the limit.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION,
room 313-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on February 28, 1984

Merle Hill, Kansas Association of Community Colleges, was listed to testify in support of HB 3035 which affects the community colleges petty cash funds. Avis Swartzman of staff filled the committee in on the details in the absence of Dr. Hill. She stated the Association requested this measure to be able to replace funds in the account when the funds were depleted and they needed to make a purchase before the end of the year and prior to the board meeting.

The Chairman adjourned the meeting at 4:47 p.m.

The next meeting of the committee will be on February 29, 1984 at 3:30 p.m.

KANSAS STATE HIGH SCHOOL ACTIVITIES ASSOCIATION, INC.

Ladies and gentlemen of the Committee, my name is Bill Stapleton and I am here to speak on behalf of House Bill 2946.

Before I begin, a foundation must be laid to demonstrate the necessity of this Bill. I would therefore draw your attention to Article 6 of the Constitution of the State of Kansas and in particular §§ 1, 2, and 5 of said Article 6, a copy of which is provided to you. Also the Kansas Supreme Court in Blaine v. Board of Education of Haysville, 210 Kan. 560, stated that:

"Careful recognition should be given to the differences between what are reasonable restraints in the public classroom and what are reasonable restraints on a non-student on the public street corner."

And with regards to Article 6, § 5 of the Constitution of the State of Kansas, the Blaine case also held that the local boards are to provide "rules and regulations to govern the learning process."

In the case of Stapleton, et al. v. KSHSAA, filed in Johnson County and heard last summer on June 20, 1983, the Activities Association submitted to the Court in their Findings of Facts that "the purpose of the interschool extracurricular program (of which the Activities Association controls) is to enhance the overall education (or learning) process." Comments add.

The power to make rules and regulations to govern the learning process of the local school boards (see Article 6, § 5 and K.S.A. 72-8205) has been delegated to the Activities Association. This delegation of authority or power can only be done by legislative enactment pursuant to Article 6, § 1 of the Constitution of the State of Kansas. The attempted legislation is found in K.S.A. 72-130 et. seq. which permits the local school to become a voluntary member of any association having a majority of the schools as its members. The problem with the present legislative structure is that under K.S.A. 72-130 et seq. the Activities Association is answerable to no one in the general public in that a member school cannot join any other activities association nor is anyone on the Board of Directors answerable to the electorate of the State of Kansas except for the six (6) board members from the two hundred and forty (240) schools.

The power to promulgate rules and regulations of the Activities Association can be no greater than the power to promulgate rules and regulations bestowed upon ^{if from} the delegating authority, i.e., the local school boards. However, the Activities Association promulgates rules and regulations affecting the general public by restricting their activities while they are not under the control of the delegating authority, again the local school boards.

For example, Rule 31-1-1 provides that:

"Not more than two (2) players from the same junior or senior high school football, volleyball, or basketball squad may play on an outside team prior to or after the termination of the school season in that sport."

Mr. Hartman, the executive secretary of the Activities Association testified under oath in the District Court of Johnson County that this was direct control over an individual while he was not a student or under the control of the delegating authority. However, when this rule was questioned in a court of law in Johnson County, the Activities Association argued:

"Although it (KSHSAA) is sanctioned by the Kansas legislature, it is not a state agency. The applicable statutory provisions do not create the KSHSAA and empower it; they simply say that if such an association exists, certain requirements will be made of it. For this reason, the anticipated reliance by plaintiffs on cases holding that administrative agencies must be judiciously held within their statutory authority is unfounded.

"The purpose of the KSHSAA is stated in its Articles of Incorporation and bylaws. The purposes are broad and general in nature."

The Supreme Court of the state of Kansas on numerous occasions, the most recent being Pork Motel, Corp. v. Kansas Department of Health and Environment, December 1983 decision, held that:

"Administrative agencies are creatures of statute and their power is dependent upon authorizing statutes; therefore, any exercise of authority claimed by agency must come from within the statute; there is no general or common law power that can be exercised by an administrative agency."

What the Activities Association was saying to the Court in Johnson County is that since we are not an agency we can define what our purpose and authority consists of by defining same in our constitution and bylaws.

In the case in Johnson County regarding whether the Activities Association had exceeded their authority of regulation, supervision, promoting or developing activities referred to in K.S.A. 72-130 et seq., which activities are defined in K.S.A. 72-133(a) as interschool extracurricular activities, the Court bought the Activities Association's argument of not being an administrative agency when it ruled that:

"The Association enacts rules and regulations for Inter-High School competition in areas of Sports, Music, and Debate. While this organization is recognized by Kansas Statute, it is not a State Administrative Agency and therefore the District Court does not have review powers over it."
(Emphasis added.)

The way the present statute is worded, the District Courts of this state do not have review powers over the Activities Association nor does any other state agency which is answerable to the general public have any review powers over the Activities Association's. The Activities Association, as it is presently structured, is truly an autonomous organization floating out there making rules and regulations within a self defined scope of authority that is in direct violation of Article 2,

§ 1 of the Constitution of the State of Kansas defining legislative power which states that:

"The legislative power of this state shall be vested in the House of Representatives and Senate."

and you cannot delegate that power. But this is what has been done when the Activities Association is able to regulate and control members of the general public during times that they are not under the control of the member school (the delegating authority).

We as parents have lost the absolute right to control the activities of our children while they are out of the school environment to a man named Nelson Hartman and a group of 50 school administrators from around the state which are not elected by the general public.

By placing the Activities Association under the direct supervision of the State Board of Education and since any rules and regulations submitted by the Activities Association would ~~not~~ fall within the exception of K.S.A. 77-415(4)(e) or any other of the 17 exceptions in K.S.A. 77-415, the State Board of Education would need to submit said rules and regulations to the revisor of statutes pursuant to K.S.A. 77-416(a) and the Secretary of Administration and the Attorney General's Office pursuant to K.S.A. 77-420(a) and (b). The purpose of this

amendment is two-fold.

"1). To have someone who is answerable to the general public to review the legality of any rules and regulations thus submitted by the State Board of Education.

2) To give the District Courts of this state the jurisdiction to review the legality of said rules and regulations which would now be the rules and regulations of the State Board of Education, a state agency."

Please, we in the general public raising children and trying to control the child's environment and peer groups and to try to steer them from the use drugs prevalent in the urban areas, need to have absolute control over our children while they are not in the school environment and further need protection from Mr. Hartman and his floating band of school administrators. This amendment will help to accomplish that goal.

Respectfully submitted,


J. William Stapleton