Approved ______________ Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS.

The meeting was called to order by Rep. Robert H. Miller (Chairperson) at

1:30 a.m./p.m. on March 20, 1984 in room 526S of the Capitol.

All members were present except:

Rep. Peterson-E

Committee staff present:

Russ Mills, Research
Mary Torrence, Revisor

Conferees appearing before the committee:

Senator Werts
Dr. John Mingle
William Kaufman
Bill Henry
Senator Erlich
Representative Robert D.
Harold Turntine
Peter Rinn
Tom Kennedy

The meeting was called to order by Chairman Miller. The Chairman announced that a subcommittee has been appointed to study the dairy bill (HB3055) Representative Ediger is Chairman and Representatives Smith, Vancrum and Ott are members.

SB654 - Open records

Senator Werts explained the bill and why he was asked to introduce it by the KSU Research Foundation.

Dr. John Mingle, Executive Vice President of the Kansas State University Research Foundation, gave testimony in support of the bill. The problem posed by the open record act lies in the interaction between its provisions and those of the federal laws concerning intellectual property. See attachment A.

William Kaufman, General Council for the Board of Regents, stated to the Committee that he was in support of this bill.

Bill Henry, Kansas Engineering Society, gave testimony in support of the bill. He said that he felt this bill would allow Universities to protect property rights that could be of great help to our schools.

Hearings were concluded.

SB166 - Motor Vehicle Tax on "Classic Cars"

Senator Erlich told the committee that this bill was a carry over from the 1983 session and explained that the reason it was introduced was to correct the checkerboard way of assessing antique vehicles.

Representative Robert D. Miller gave testimony in support of the bill with a suggested amendment to change on line 79 the year from 10 to 15. See attachment B. People are not registering these cars for street driving since the new law which does not require safety inspection has become effective. At this time there is no uniformity across the state for assessment of these cars.

Hearings were concluded on SB166.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

Minutes of the F&SA Committee on March 20, 1984

HB2040 - Subpoena powers for SRS

Peter Rinn, Director Fraud and Recoupment Section, SRS, gave testimony in support of the bill and explained what the bill does. See attachment C

Hearings were conclused on HB2040.

SCR1657 - Farm Wineries

Tom Kennedy, Director Alcoholic Beverage Control, gave testimony in support of the bill and explained it to the committee. See attachment D.

Hearings were concluded on SCR1657.

SCR1657 - Farm Wineries

Representative Runnels made a motion, seconded by Representative Aylward, to report SCR1657 favorable for passage. The motion carried.

HB2040 - Subpoena powers for SRS

Representative Fuller made a motion, seconded by Representative Vancrum, to report HB2040 favorably. The motion carried.

SB166 - Motor Vehicle tax on "Classic Cars"

Representative Vancrum made a motion, seconded by Representative Fuller, to change the language on line 78 from "10 years" to "15 years". The motion carried.

Representative Runnels made a motion, seconded by Representative Goosen, to report SB166 favorable as amended. The motion carried.

SB654 - open records

Representative Aylward made a motion, seconded by Representative Eckert, to report SB654 favorable for passage. The motion carried.

HB2697 - criteria for admission of persons to state institutions for the mentally retarded

Representative Matlack made a motion, seconded by Representative Runnels, to report HB2697 favorable for passage. The motion carried.

HB2876 - Insurance coverage of punitive damages

Representative Vancrum explained the bill. See attachment E.

Representative Barr made a motion, seconded by Representative Smith, to report HB2876 favorable for passage. The motion carried.

The Chairman reminded the committee that if there were bills they wanted hearings on to let him know. There have been a number of bills rereferred and time is running short. Most of these bills have had hearings.

The meeting was adjourned.

A

KANSAS STATE UNIVERSITY

Kansas State University Research Foundation

Office of the Executive Vice President
Fairchild Hall
Manhattan, Kansas 66506
913-532-5720

REMARKS

BEFORE: House Federal and State Affairs Committee

BY: John O. Mingle, Esq.

ON: March 20, 1984

SUBJECT: Amendment to Kansas Open Records Act, Senate Bill 654.

Chairperson Miller, Committee Members, and Guests:

My name is Dr. John O. Mingle, and I am Executive Vice President of the Kansas State University Research Foundation. My organization handles patents, copyrights and other intellectual property for the University. As such we fall under the provisions of the Kansas Open Records Act. For instance, with patents we accept invention disclosures, analyze them from both a patentability and marketing viewpoint, arrange for the filing of patent applications, supervise the prosecution of all patents, own the issued patents, and negotiate licenses for these patents. These subject files would not fall under the identified exceptions of the current subject Act.

The problem posed by this Act lies in the interaction between its provisions and those of the federal laws concerning intellectual property. Take for instance patents. Federal law requires that for something to be patentable, the inventor must be the first to so invent it. This is commonly called "novelty." Yet, novelty is not present if the invention is already in the public domain, except in restricted instances. For instance, the United States patent laws allow a one year grace period between public disclosure and the filing of a patent application. Most foreign countries allow no grace period at all. Thus, an invention disclosure would be immediately public information, at least as soon as my office received it, and perhaps at the time of generation unless it fell under the very limited exemption of "research data in the process of analysis." This would extinguish the foreign patent rights and severely restrict the United States patent rights. Yet, the real danger might surface several years later when a court may declare the subsequently received patent invalid because of the time it deems the disclosure first fell under the subject Act.

Atch. A

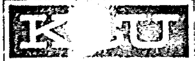
Thus, I fully support the suggested amendment of Senate Bill 654, as amended by the Senate Committee on Governmental Organization, adding an exception number thirty-five to Section 7(a) of this Kansas Open Records Act. This reads:

> Records involved in the obtaining and processing of the intellectual property rights that are, or are expected to be, wholly or partially vested in, or owned by, a state educational institution, as defined in K.S.A. 76-711, and amendments thereto, or an assignee of the institution organized and existing for the benefit of such institution.

Note, that it is not only the confidentiality required in processing of the intellectual property right records that is important, but also the confidentiality needed for the records that lead to the obtaining of these rights.

One final concern is that for completeness this amendment to the Act should be made retroactive to the time that the Act was made effective. This date is January 1, 1984, I believe.

Thank you for your patience in hearing of my support for this amendment to the Kansas Open Records Act. I would be pleased to answer any questions.



KANSAS STATE UNIVERSITY

Kansas State University Research Foundation

Office of the Executive Vice President
Fairchild Hall
Manhattan, Kansas 66506
913-532-5720

MEMORANDUM

TO: House Federal and State Affairs Committee

FROM: John O. Mingle, Esq.
Executive Vice President

DATE: February 27, 1984

SUBJECT: Intellectual Property

Intellectual property represents "those property rights which result from the physical [tangible] manifestation of original thought." [Ballentine's Law Dictionary, 3rd Ed., 1969]. Generally, because of the modern use of electronic media, the tangible manifestation form is employed. This is a broad legal definition and sometimes a restraint is implied of requiring a usefulness sufficiently great so that the licensing or assigning of these specific property rights for royalties is feasible. Often times these rights mature into a mode recognized by the Constitution [U.S. Const. Art. I, § 8, cl. 8] and Congress, and become attainable as patents, copyrights and trademarks. Although these intellectual property rights exist external to registration, their federal and/or state registration greatly enhances their value and thus their potential to be licensed or assigned. This is especially true of copyrights and trademarks. An invention may have its greatest value if patentable; yet, an unpatented invention can still be valuable intellectual property, and this situation is often referred to as "know-how" licensing.

Subtracting the rights associated with patents, copyrights and trademarks from those of intellectual property leaves this know-how remainder. One specific subset of know-how is referred to as "trade secret" information, and is usually identified with a business orientation. Trade secrets are a recognized intellectual property right and are legally protectable at the state rather than the federal level. For instance, the Kansas Supreme Court deduced these factors to consider in deciding whether information is a company trade secret: 1) External knowledge; 2) General employee knowledge; 3) Confidentiality precautions; 4) Information value; 5) Cost of information; and 6) Duplication effort required. [Koch Engineering Co., Inc. v. Faulconer, 227 Kan. 813 (1980)]. The key to maintaining a trade secret lies in this confidentiality requirement, so destroying this represents a legal tort. [4 Restatement of Torts, § 757, 1939]. Although know-how may become a trade secret when licensed or assigned to a company, it is a separate valuable intellectual property right and often is associated with the effective utilization of an invention, either patented or unpatented. As would be expected, know-how is legally extinguished if the information exists in the public domain, for nothing would exist to license or assign.

B

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

Room 545-N - Statehouse

Phone 296-3181

Date February 8, 1984

TO: REPRESENTATIVE ROBERT D. MILLER Office No. 183-W

RE: MOTOR VEHICLE TAX ON "CLASSIC CARS"

This memorandum is in response to your request for some brief background information and legislative history pertaining to S.B. 166 and the motor vehicle tax on classic cars.

S.B. 166, as amended, would amend K.S.A. 1982 Supp. 79-5105 to require that the motor vehicle tax on vehicles ten years old or older be $12. That section already requires that the tax be a minimum of $6 for motorcycles and $12 for other motor vehicles, and that the tax on antique vehicles be $12.

The motor vehicle tax was originally enacted in 1979 to apply in 1981. During the 1980 Session the Legislature made several changes in that law including one to impose a $12 tax on vehicles registered as antiques. To qualify as an antique, however, a vehicle must be 35 years old or older. Vehicles approximately 15 to 34 years old were valued in the 1980 base year using the Old Cars Price Guide prescribed by the Division of Property Valuation. Vehicles less than 15 years old were valued using "trade-in" values. Thus, a car approximately 15 years old in 1980 might have been valued at a salvage value while a car 20 years old might be taxed at a much higher value. S.B. 166, as amended, would tax such "classic cars" (older cars not yet classified as antiques) at the same rate as antiques.

S.B. 166, as introduced, was identical to H.B. 2347. The Senate Committee on Assessment and Taxation, at the recommendation of the Department of Revenue, amended the bill to merely impose the $12 tax. A technical amendment was added by the Senate Committee of the Whole, and the bill was recommended for passage by the House Committee on Assessment and Taxation in 1983. As you know, the bill was later withdrawn from the House calendar and was referred to the Committee on Federal and State Affairs.

For additional information I am enclosing a copy of the bill's fiscal note from the Department of Revenue, copies of two statements from supporters of the bill, and a 1981 news article on the subject. I hope this material will be of assistance to you. Please call me if you have any other questions.

Wayne D. Morris
Principal Analyst

WDM/pb

Enclosures

Atch. B

C

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

House Bill No. 2040

1. Short Title of Bill:

An act concerning the secretary of social and rehabilitation services; conferring certain investigative and subpoena powers; amending K.S.A. 75-3306 and repealing the existing section.

2. Problem:

The Secretary of Social and Rehabilitation Services does not have the authority to issue subpoenas duces tecum (requests for documents, etc.) when conducting investigations pursuant to K.S.A. 75-3306.

3. Background:

K.S.A. 75-3306 states in part that "The secretary of social and rehabilitation services shall have authority to investigate any claims and vouchers and persons or businesses who provide services to the secretary of social and rehabilitation services or to welfare recipients . . . and the eligibility . . . of providers of services. The secretary of social and rehabilitation services shall have authority when . . . conducting investigations as provided for in this section, to subpoena witnesses, administer oaths, take testimony . . .".

However, the attorney general has ruled (Opinion No. 79-194) that said statute does not grant the secretary the authority to issue subpoenas duces tecum (requests for books, records, papers, or other documents).

The inability of the department to review books, records, papers, or other documents in the possession of a provider or third party may well hamper any effective investigation into a provider's billing practices vis-a-vis the department. Oral testimony alone is usually insufficient to prove or disprove any allegation of wrongdoing.

Further, investigations into client wrongdoing are hampered if a third party fails to voluntarily provide the agency with necessary information. An example would be if an employer would withhold wage and other employee information from SRS.

4. SRS Position:

Amend K.S.A. 75-3306 to grant the secretary the authority to issue subpoenas duces tecum.

Even though the authority to issue subpoenas duces tecum will be used sparingly by the department, its mere existence will facilitate the review of materials necessary to conduct an effective investigation. Example: The attorney of one provider under investigation for wrongdoing immediately upon learning of the above mentioned negative opinion drafted a letter of rebuke citing said opinion and refused to share records with the department.

Office of the Secretary
Robert C. Harder
296-3271
March 20, 1984

Atch. C

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

August 28, 1979

ATTORNEY GENERAL OPINION NO. 79- 194

Mr. Peter E. Rinn
Director, Fraud and Recoupment Section
Kansas Department of Social and
Rehabilitation Services
State Office Building
Topeka, Kansas

Re: Department of Social and Rehabilitation Services--Investigations--Subpoena Power of Secretary of Social and Rehabilitation Services

Synopsis: In conducting investigations pursuant to K.S.A. 75-3306, the subpoena power of the Secretary of Social and Rehabilitation Services extends to any person possessing information which is relevant and material to the inquiry, and is not confined to those persons who are under investigation. However, the above-cited statute grants only the power to subpoena witnesses, and does not authorize the issuance of subpoenas duces tecum.

*   *   *

Dear Mr. Rinn:

You have requested our opinion relative to the following two questions:

1. May the Secretary of Social and Rehabilitation Services issue an administrative subpoena to a person in the course of an investigation, even though such person is not under investigation?

2. May the Secretary of Social and Rehabilitation Services issue a subpoena duces tecum requiring the production of business records, materials, and other papers during the course of an investigation?

K.S.A. 75-3306 enumerates the investigative and subpoena powers of the Secretary of Social and Rehabilitation Services and provides, in part, as follows:

> "The secretary of social and rehabilitation services shall have authority to investigate any claims and vouchers and persons or businesses who provide services to the secretary of social and rehabilitation services or to welfare recipients and the eligibility of persons to receive assistance or of providers of services. The secretary of social and rehabilitation services shall have authority, when hearing appeals or conducting investigations as provided for in this section, to subpoena witnesses, administer oaths, take testimony, and render decisions . . . ."

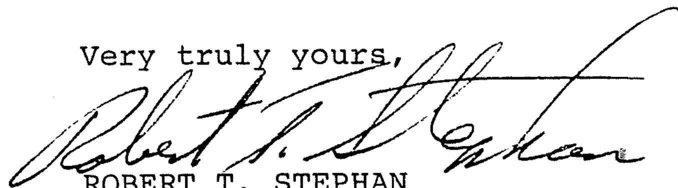
Answering your first question, K.S.A. 75-3306 must be construed as granting power to issue subpoenas to any person possessing information which is relevant and material to the investigation being conducted, and such subpoena power is not limited to those persons who are under investigation. Numerous cases support such a construction of similar statutes granting subpoena powers to administrative agencies. Pope & Talbot, Inc. v. Smith, 340 P.2d 960, 965 (1959); Federal Communications Commission v. Cohn, 154 F.Supp. 899, 906 (1957); Freeman v. Fidelity-Philadelphia Trust Company, 248 F.Supp. 487, 492 (1965).

In response to the second question, it is clear that K.S.A. 75-3306 grants only the power to subpoena witnesses, and does not authorize the issuance of subpoenas duces tecum by the Secretary of Social and Rehabilitation Services. The power to subpoena witnesses does not, in the absence of other statutory provisions, include the power to require the production of records. Donatelli Building Co. v. Cranston Loan Company, 140 A.2d 705 (1958). Further, it has been held that "the power to issue subpoenas duces tecum does not inhere in administrative agencies

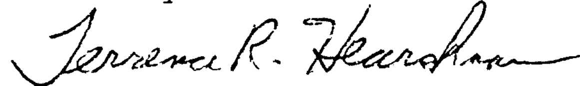
or committees and can be exercised by such committees only when expressly authorized by statute." (Emphasis added.) Id. at 707. In accordance with this authority, it is our opinion that K.S.A. 75-3306 cannot be construed to authorize the issuance of subpoenas duces tecum by the Secretary of Social and Rehabilitation Services because such statute does not expressly grant such power.

In passing, we note that the legislature has enacted numerous statutes expressly authorizing certain administrative agencies and public officials to issue subpoenas to compel the production of records and documents: K.S.A. 1978 Supp. 44-1004(5) (Civil Rights Commission); K.S.A. 74-3902 (Board of Abstracters); K.S.A. 1978 Supp. 75-2929d(c) (Civil Service Commission); K.S.A. 74-1707 (Board of Embalming); K.S.A. 22-3720 (Kansas Adult Authority); K.S.A. 79-3233 and 79-3419 (Director of Taxation); K.S.A. 74-1106(d) (Nursing Board); K.S.A. 74-1504(g) (Optometry Board); K.S.A. 74-5309(b) (Board of Psychologists); K.S.A. 58-3016(c) (Real Estate Commission); K.S.A. 17-1265(b) (Securities Commission); and K.S.A. 74-2437a (Board of Tax Appeals). Action by the legislature is necessary, however, if the Secretary of Social and Rehabilitation Services is to be granted such subpoena powers in investigations under K.S.A. 75-3306.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm

P

MEMORANDUM

TO: Honorable Robert H. Miller
Chairman, House Federal and State Affairs Committee

FROM: THOMAS J. KENNEDY, Director, ABC Division

RE: Senate Concurrent Resolution No. 1657

DATE: March 20, 1984

PURPOSE

The purpose of Senate Concurrent Resolution No. 1657 is to reject Kansas Administrative Regulation 14-11-13.

PERSPECTIVE

Kansas Administrative Regulation 14-11-13 is a new regulation promulgated this year as a result of the enactment of House Bill 2551, the Farm Winery Bill. As such, it is one of a set of new regulations that were promulgated with the intended purpose of treating farm wineries in the same way that other licensed manufacturers and licensed retailers are now treated. Because the Farm Winery Bill amended K.S.A. 41-102 to exclude farm wineries from the definition of "manufacturer" and "retailer", it was our opinion that existing regulations applicable to other licensees would not apply to farm wineries. New regulations were drafted to establish parallel standards for farm wineries by closely following the language of existing ABC regulations.

K.A.R. 14-11-13 defines "advertising". The definition for all practical purposes limits advertising to printed public media. K.A.R. 14-11-20 authorizes advertising by radio, television, motion pictures, film strips, newspapers and magazines. The Joint Committee on Rules and Regulations apparently determined that there is an inconsistency between the two regulations, and that an exact definition of advertising is not necessary.

COMMENTS AND/OR RECOMMENDATIONS

K.A.R. 14-11-13 is one regulation in what was originally a package of 21 proposed new regulations. It was reviewed several times during the adoption process and this alleged inconsistency was not spotted. However, we are in agreement with the Joint Committee on Rules and Regulations that there may be an inconsistency in the language, or at least a real potential for confusion. The Joint Committee also seems to feel that the definition of the word advertising is not necessary. The word

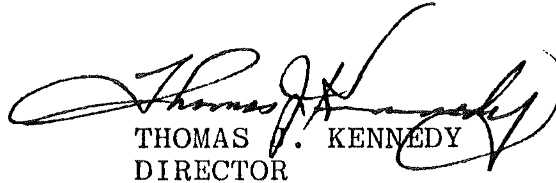
Atch. D

advertising is such a commonly used and well understood word that there should not be significant confusion as to what it means.

Our goal was to allow farm wineries in Kansas to advertise their products on radio, television, film strips, newspapers and magazines, the same way that other manufacturers of alcoholic liquors may advertise.

To whatever extent there is inconsistency and confusion between 14-11-13 and 14-11-20 that would be clarified by eliminating 14-11-13, then we would support passage of SCR 1657.

Respectfully submitted



THOMAS J. KENNEDY
DIRECTOR

TJK:cjk

 D

14-11-13. Advertisement defined. The word "advertisement," as used in this article, means any advertisement of domestic table wine through the medium of newspapers, periodicals, circulars, pamphlets, or other publications or any sign or outdoor advertisement or any other printed or graphic matter. (Authorized by K.S.A. 41-211; implementing K.S.A. 41-714, as amended by L.1983, ch. 161, §17; effective, T-__-__________, ____________; effective May 1, 1984.)

14-11-20. Advertising by radio, television, motion pictures, filmstrips, newspapers and magazines authorized. Licensed farm wineries may advertise domestic table wine or the place of business over the radio, the television, by public address system, or by means of motion pictures, film strips, newspapers, or magazines. (Authorized by K.S.A. 41-211; implementing K.S.A. 41-714, as amended by L.1983, ch. 161, §17; effective, T-__-__________, ____________; effective May 1, 1984.)

14-8-1. "Advertisement" defined. The word "advertisement," as used in this article shall mean and include any advertisement, of alcoholic liquor through the medium of newspapers, periodicals, circulars, pamphlets, or other publications or any sign or outdoor advertisement of any other printed or graphic matter. (Authorized by K.S.A. 41-211, 41-714, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966.)

14-8-11. Advertising by radio, television, motion pictures, gifts prohibited. No licensee shall advertise any alcoholic liquor nor place of business over the radio, television, public address system, or by means of motion pictures, still slides, or film strips, or by the gift or distribution of matches or similar advertising media. A retail licensee may provide shirts or jackets for bowling, baseball, or other athletic teams so long as the advertising to be placed on the garment consists solely the name and address of the liquor store as it appears on the retail license. Any manufacturer, supplier or distributor may advertise wine or beer over the radio, television, public address system, or by means of motion pictures, still slides or film strips. (Authorized by K.S.A. 41-210, 41-714, K.S.A. 1979 Supp. 41-211; effective Jan. 1, 1966; amended Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1, 1972; amended Jan. 1, 1974; amended, E-80-28, Dec. 12, 1979; amended May 1, 1980.)

E

BOB VANCRUM
REPRESENTATIVE, TWENTY-NINTH DISTRICT
OVERLAND PARK
9004 W. 104TH STREET
OVERLAND PARK, KANSAS 66212
(913) 341-2609
STATE CAPITOL, ROOM 115-S
TOPEKA, KANSAS 66612
(913) 296-7655

STATE OF KANSAS

TOPEKA

HOUSE OF REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE-CHAIRMAN: FEDERAL AND STATE AFFAIRS
MEMBER: ASSESSMENT AND TAXATION
JUDICIARY

TESTIMONY OF ROBERT J. VANCRUM

ON HB 2876 - THE VICARIOUS LIABILITY FOR PUNITIVE DAMAGES BILL

Thank you Mr. Chairman and members of the Committee for giving me an opportunity to appear here today. HB 2876 for those of you who were on the committee last year is merely the provisions of HB 2062 with the amendment which you added in committee at my suggestion. I appreciate your action in amending and reporting this bill favorably last year. The purpose of having a new bill is to not confuse persons who see the bill with rather substantial changes in it.

For those of you who were not on the committee last year, the purpose of HB 2876 is rather simple. The bill would merely reverse the 1980 Supreme Court ruling in the Guarantee Abstract Case, in which the Supreme Court of Kansas stated that the public policy of Kansas does not permit an insurance company to reimburse an employer for punitive damages assessed against the employer due to the intentional acts of his employees or agents, even if he had no prior knowledge of the acts and had no way to prevent the same. I want to emphasize that nothing in this bill requires insurance companies to write this coverage and requires employers to carry coverage. It merely states that if insurance companies choose to write the coverage, they will have to pay off in accordance with policy terms.

Atch. E

Let me give you a brief example of instances in which this provision comes into play. Suppose a trucking company employs a driver for several years who then by his negligence causes an accident which causes serious injuries to the motorist. If a jury finds negligence, both he and the company are obligated to pay damages. The company of course did not authorize him to drive negligently, but they can at least obtain insurance to cover this liability. However, if the jury is sufficiently impressed that the driver's actions were in reckless disregard of the law or rights of other motorists or if they find that he intentionally assaulted another individual, a jury might be permitted to award not only actual but punitive damages intended to "punish" the wrongdoer against the trucking company. In such a case the trucking company still did not authorize the actions and in fact may not have even been aware of them but in such a situation the Kansas Supreme Court ruling states that we are not going to permit insurance companies to reimburse the company, even if they have written an insurance policy which claims to cover punitive damages.

The overwhelming majority of states permit the reimbursement of punitive damages to the innocent employer. The 1980 Kansas decision is so far out of the main stream of usual case law that most policies written by national companies on their face appear to provide coverage in this situation. Nevertheless,

When faced with such claims, the insurance companies routinely deny coverage for such damages in Kansas.

The situation is even more critical with regard to the owners of commercial real estate who employ security guards and other personnel to enforce reasonable rules of behavior upon the public using these premises. The case is also severe in the case of medical groups where each member may be personally liable for punitive damages arising out of alleged malpractice by other members even though some of them did not authorize or even know of the acts.

You are going to hear this afternoon from the realtors, the motor carriers and the Kansas Medical Society, each of whom I believe will express support for the concepts in this bill.

I would be happy to answer any of your questions concerning the workings of this bill.