Approved March 12, 1984
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Representative Bob Frey at
Chairperson

3:30 ~~a.m.~~/p.m. on February 27, 1984 in room 526-S of the Capitol.

All members were present except:

Representative Justice was excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes' Office
Nedra Spingler, Secretary

Conferees appearing before the committee:

Dr. James McHenry, Commissioner, SRS/Alcohol and Drug Abuse Services
Ron Eisenbarth, Kansas Citizens Advisory Committee on Alcohol and Other Drug Abuse
Ron Smith, Kansas Legal Services
Rod Bieker, Assistant Attorney General
Bob Wootton, Legislative Liason, Governor's Office
Ivan Wyatt, President, Kansas Farmers Union
Mary Harper, Healy, Kansas, American Agriculture Movement
Donald Edson, Vice-President, Federal Intermediate Credit Bank, Wichita
Grace and Bob Sheeley, a farm couple, Atchison, Kansas
Howard Moses, office of Congressman Jim Slattery, Topeka
Representative Dean Shelor
Roger McCollister, Kansas Legal Services
Nancy Fursman, assistant general counsel for Federal Intermediate Credit Bank
Don Strole, attorney for the Board of Healing Arts
Cathy Hovancsak, Kansas Pharmacists Association

The minutes of the meeting of February 21, 1984, were approved.

Hearings were held on HB 3026, HB 3027, and HB 3037.

HB 3026 - An act relating to alcoholism and intoxication treatment.

Dr. James McHenry, Commissioner, SRS/Alcohol and Drug Abuse Services, spoke in support of the bill which will aid local courts, especially those in rural areas, in extending time limits in alcoholism treatment commitment procedures and will allow psychologists to conduct examinations of these patients. His statement, rationale for changes, and two suggested amendments are in Attachment No. 1.

Ron Eisenbarth, representing the Kansas Citizens Advisory Committee on Alcohol and other Drug Abuse, gave a statement (Attachment No. 2) supporting HB 3026.

HB 3027 - An act relating to legal services for eligible persons in agriculture-related businesses.

The Chairman said the bill was introduced at the request of the Kansas Legal Services and the Attorney General.

Ron Smith, representing the Kansas Legal Services, gave a statement (Attachment No. 3) supporting the bill and analyzing its sections. He noted it was not intended that the program to provide legal services for certain eligible farmers would involve credit problems with private lending institutions but pertain only to government credit sources. Attachment No. 3 contains suggested amendments which clarifies the exemption of the private credit institutions. The bill also provides an outreach aspect and creates an educational program in conjunction with the Attorney General, Kansas State University agricultural extension service, and the state's law schools which is an effort to counsel farmers regarding government credit. A letter from the Director of the Kansas State University agricultural extension service, and the state's law schools which is an effort to counsel farmers regarding government credit. A letter from the Director of the Kansas State University Cooperative Extension Service endorsing this aspect of the bill is attached (Attachment No. 4).

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 HOUSE COMMITTEE ON JUDICIARY,

room 526-S, Statehouse, at 3:30 xxxx/p.m. on February 27, 1984

Rod Bieker, Assistant Attorney General, gave a statement on behalf of the Attorney General (Attachment No. 5) who supports the bill. It will make farmers aware of their rights concerning borrowing and repaying loans made to them under federal loan programs and provides legal assistance in exercising those rights.

Bob Wootton, Legislative Liason, gave a statement for the Governor in support of the bill (Attachment No. 6). He said the Governor would amend his budget request to include $135,000 to fund this program.

Ivan Wyatt, President, Kansas Farmers Union, noted the increasing trend of farm foreclosures and said there is a great need for the services HB 3026 will provide. His statement is attached (Attachment No. 7). It shows charts of declining farm prices. Mr. Wyatt said the Farmers Labor Coalition also endorses the bill.

Mary Harper, Healy, Kansas, who monitors legislation for the American Agriculture Movement, gave a statement supporting HB 3026 (Attachment No. 8). In additional remarks regarding page 3, Secton 3, of the bill and the outreach aspects, she said many farmers participating in the Extension Service's farm management program were in their current situations because of advice from this group to either become big operations or get out of farming. Ms. Harper did not believe farmers should have to be in farm management to be eligible under this bill.

Donald Edson, Vice-President, Federal Intermediate Credit Bank, Wichita, expressed the concerns of his group regarding HB 3027. In his statement (Attachment No. 9), he gave the background of the Farm Credit System of which his bank is a member, noting it is not affiliated with government agencies. Classification in the bill of federal land banks and production credit associations under the category of U.S. government programs is not appropriate and is legally unsound. He asked that the bill be amended to remove these names from subsection (c) and add them to subsection (d) which would make them the same as federal chartered banks and credit unions.

Grace and Bob Sheeley, operators of a dairy and hog operation in Atchison County, gave a statement supporting HB 3027 (Attachment No. 10). It outlines their experiences and difficulties regarding Farmers Home Administration loans. Because of loan commitments, they cannot afford to hire attorneys, and the availability of free legal assistance would relieve the high level of farm stress.

Howard Moses, who handles, in Congressman Slattery's Topeka office, constituent inquiries regarding agriculture, said problems with FmHA loan applications and service make up a large part of inquiries in this office. It is estimated that 95 % of FmHA borrowers do not have the ability to satisfactorily complete the necessary forms which seem to be lender- rather than farmer-oriented. Mr. Moses' statement is attached (Attachment No. 11).

Representative Dean Shelor supported the bill. He furnished copies of clippings (Attachment No. 12) which indicate the problem of farm loans is nationwide. Recent meetings he has had with farmer groups indicate a need for the bill.

During discussion with all conferees and with Roger McCollister, Kansas Legal Services, also responding to questions, it was questioned if private loans could be separated from government loans since many farmers will have a mixture of both kinds of loans. It was noted the bill may mislead a farmer who might think he has an attorney to handle all of his concerns but in reality the attorney can help with only part of the problem. Mr. McCollister said farmers would be told what the attorney could deal with. The bill was not designed to deal with every problem, and ethics of the profession would prevent attorneys from misleading farmers. A member questioned why the legislature should provide legal service for farmers and not for other groups such as small businesses that go bankrupt. Mr. Wyatt noted Kansas' predominantly small family farm cultural heritage is threatened and should be singled out to preserve this institution.

In regard to exempting private lending institutions from the bill, Mr. Smith said including them would dramatically raise the fiscal impact. The bill was designed to address situations where a farmer has consolidated all his loans under one FmHA or other government loan operation.

A member questioned why the Kansas Legal Services was the only entity named in the bill to provide legal service and believed the Extension Service could provide the necessary counseling. Mr. McCollister said the Director of Extension Services has said this group does not

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,

room 526-S, Statehouse, at 3:30 a.m./p.m. on February 27, 1984

have the resources or the manpower necessary for such a program. He said the bill's concept is unique to Kansas because the state is agriculture-oriented. Although Kansas Legal Services is the entity to provide service and has strategic locations throughout the state, others can also provide service.

Because most farm foreclosures involve PCA loans, the question was raised as to why they should be excluded in the bill as suggested. Mr. Edson said his statement listed four reasons. Nancy Fursman, assistant general counsel for Federal Intermediate Credit Bank, said the bill was asking the Intermediate Credit Bank to change its classification which would not work. Borrowers would be paying the cost of loans and interest rates would go up.

It was noted the language on lines 45 and 46 might not be specific enough to limit provisions to only credit matters. Mr. Smith said the intent was to limit the bill to just credit information relating to loans from federal credit agencies, FmHA, PCA, and land banks. Although conferees had no figures on the number of foreclosures for which there was no legal representation, how many people give up before they are foreclosed, or how many farms were liquidated without foreclosure, Ms. Fursman said there had been 53 bankruptcies in four states in 1983. She said the majority of foreclosures start out with an attorney, but when the attorney tells the farmer the ramifications, the farmer fires the attorney.

HB 3037 - An act relating to restrictions on drug prescriptions.

Don Strole, attorney for the Board of Healing Arts, gave a statement (Attachment No. 13) giving the background of the problem and the need for the bill. Too many doctors have been prescribing too many amphetamine and amphetamine-like drugs for obesity. HB 3037 takes the place of HB 2087 and is a cooperative effort by the Board of Healing Arts, the Kansas Medical Society, the Kansas Association of Osteopathic Medicine, and the Kansas Pharmacists Association. A similar law in Wisconsin has reduced the sale of amphetamines 70 %.

The Chairman noted that the Kansas Medical Society and Representative Jim Patterson, sponsor of HB 2087, support HB 3037.

Cathy Hovancsak said the Kansas Pharmacists Association is concerned about the misuse of amphetamines and supports the bill.

There was discussion concerning the Board's of Healing Arts authority to grant permission to a doctor to prescribe these drugs in certain cases. Mr. Strole said the intent of Section 7 was to allow the Board to have discretion in allowing certain drugs to be prescribed before research proves they can be commonly used. It was noted an amendment may be needed to clarify the Board's authority and to remove possibility of liability.

The meeting was adjourned at 5:05 p.m.

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2-27

To: House Committee on Judiciary

Attachment # 1

From: Dr. James A. McHenry, Jr., Commissioner
SRS/Alcohol and Drug Abuse Services

Date: February 27, 1984

RE: HB 3026

In Kansas there were 417 involuntary commitments of persons who were incapacitated or a danger to themselves or others because of the use of alcohol in 1983. The statutes for the commitment of these persons has sections that are confusing and that do not correspond with the same procedures for mental illness commitment. The current statutes also allow too little time both for obtaining the proper examinations of these persons and for hearing these cases.

House Bill 3026 cleans up these procedures and modifies the alcohol commitment procedure so that it is consistent with the mental illness commitment whenever possible. The intent is to amend the current statute to make the commitment procedure more responsive to the needs of the proposed patient, the person who is seeking the commitment and the courts.

Significant changes are as follows:

> The bill adds "psychologists" to physicians as persons able to determine if a person is incapacitated or a danger to self or others because of alcohol. Psychologists are capable of performing this examination and should be included in this process.
>
> The bill allows more time for the examination of the proposed patient by a physician or psychologist before a hearing to determine the merits of the application for protective custody and requires the court to hold the hearing for protective custody at its earliest opportunity but in no case longer than 5 days after the filing of the application. These changes will allow the courts more flexibility in obtaining the needed examinations and will particularly aid the rural courts in obtaining appropriate information on which to make a sound and accurate decision.
>
> The last major change provides better guidelines to the Secretary of SRS in determining the county of residence of persons who have alcohol petitions filed on them when the county of residence of these persons is not obvious.

In summary, this bill is a clean up bill also designed to aid the local courts, especially in rural areas of the state, in extending the time limits required of them. The intent is to insure that fair and appropriate hearings are conducted both for the proposed patient and the persons who feel that he/she is a danger to self or others.

Atch. 1

I have provided you with two additional amendments that need to be included in this bill. The first is to be consistent with other amendments and the second is an oversight omission in the drafting of this bill.

I have also provided you with an handout that gives the rationale for each of these changes.

I would like to thank the chairman and the members of this committee for permitting me to share these views. I would be happy to answer any questions that you may have.

0602B14

RATIONALE FOR CHANGES IN ALCOHOL COMMITMENT STATUTE
RE: HB 3026

P. 2 Lines 65 - 68	To be consistent with MI commitment statutes.
P. 2 Line 78 & Lines 80 - 83	The "Informal patient" does not apply to drug treatment programing.
P. 3 Line 85	Clean up language.
P. 4 Line 131	Psychologists, along with physicians, should have the ability to determine if a person is incapacitated or a danger to self or others because of drug abuse/ dependency.
P. 4 Lines 137 - 144	Clean up language. To be consistent with MI commitment statutes.
P. 4 Line 154	Clean up language.
P. 5 Lines 157 - 167	Clean up language.
P. 5 Lines 171 - 176	Clean up language.
P.5/6/7Lines 183 - 239	To be consistent with MI commitment statutes.
P. 7/8 Lines 262 - 271	To be consistent with MI commitment statutes.
P. 8 Line 272	No definition of "reputable". Not needed.
P. 8 Lines 281 - 285	To be consistent with MI commitment statutes.
P. 8 Line 287	Clean up language/adds psychologist.
P. 8 Line 288	"Delete" and "Add" are clean up. The change to 72 hours gives more time for an examination to be valid and therefore one more day of time to accomplish the examination.
P. 8 Line 290 - 295	In the rural areas of Kansas it is hard to accomplish all the requirements within the currently required 48 hours. This will provide not more than 5 days for the performing of the examination by a physician or psychologist after the filing of the application.
P. 8/9 Line 302 - 306	To be consistent with MI commitment statutes.
P. 9 Line 320 - 321	To be consistent with MI commitment statutes.
P. 10 Line 341	Clean up language and clarity.
P. 10 Lines 344 - 351	Clean up language.
P. 10 Lines 352 - 355	Gives courts, especially in rural areas, sufficient time to hold this hearing and still protect the rights of the proposed patient by keeping to the shortest time possible.

P. 12	Line 426	No definition of "reputable". Not needed.
P. 12	Lines 432 - 444	Clean up language.
P. 13	Lines 457 - 473	To be consistent with MI commitment statutes.
P. 14	Line 510 & 512	Clean up language.
P. 14	Lines 522 - 524	Clean up language/adds psychologist.
P. 15	Lines 550 & 553	Treatment programs generally have a set number of days of program length under 90 days. This reduction will provide better consistency with the treatment system.
P. 16	Lines 584 - 588	Clean up language.
P. 17	Lines 622 & 623	Clean up language.
P. 17	Lines 632 - 634	Clean up and to aid with possible problems with confidentiality.
P. 18	Lines 647 & 654	Clean up language/adds psychologist.
P. 18	Line 661	Protect the confidentiality of the proposed patient.
P. 18	Line 667	Clean up language/adds psychologist.
P. 19	Lines 694 - 697	Clean up language/adds jury.
P. 19	Lines 704 & 707	Provides a more realistic length of treatment time, 60 days is about the average length of treatment programs.
P. 20	Lines 717 & 720	Clean up language/adds psychologist.
P. 21	Lines 767 & 778	Clean up language.
P. 22	Lines 806 & 807	See P. 24 below.
P. 22	Lines 817 & 819	Since drug treatment is not as open ended as MI treatment, a shorter period of time is appropriate.
P. 23	Lines 844 - 851	Clean up language. Most community based treatment programs do not have a physician as a head of the treatment facility so the decision should be made by a person with clinical skills and authority.
P. 24	Lines 863, 872- 877 & 882 - 885	If it can not be determined in the usual manner the county of residence of the patient, the secretary can determine the county of residence or nexus using this information. This is in determining which county will pay the court costs and applies primarily to transient persons.

MF 1613B

~~talization, at a treatment facility or who is admitted therein~~
0083 ~~pursuant to K.S.A. 65-1025 and amendments thereto;~~
0084 ~~(14)~~ *(13)* "voluntary patient" means a person, ~~other than an~~
0085 ~~informal patient,~~ who is *voluntarily* receiving care or treatment
0086 at a treatment facility other than by order of any court;
0087 ~~(15)~~ *(14)* "proposed patient" means a person for whom an
0088 application pursuant to K.S.A. 65-4032 and amendments thereto
0089 has been filed;
0090 ~~(16)~~ *(15)* "involuntary patient" means an alcoholic or a per-
0091 son incapacitated by alcohol who is receiving care or treatment
0092 under an order of a district court;
0093 ~~(17)~~ *(16)* "other facilities for care or treatment" means any
0094 mental health clinic, medical care facility, nursing home, physi-
0095 cian or any other institution or individual authorized or licensed
0096 by law to give care or treatment to any patient;
0097 ~~(18)~~ *(17)* "physician" means a person licensed to practice
0098 medicine and surgery as provided by the Kansas healing arts act;
0099 ~~(19)~~ *(18)* "head of the treatment facility" means the adminis-
0100 trative director of a treatment facility;
0101 ~~(20)~~ *(19)* "care or treatment" means such necessary services
0102 as are in the best interests of the physical and mental health of
0103 the patient;
0104 ~~(21)~~ *(20)* "discharge" means the final and complete release
0105 from care or treatment, by either an order of a district court
0106 pursuant to K.S.A. 65-4042 and amendments thereto or a treat-
0107 ment facility;
0108 ~~(22)~~ *(21)* "convalescent" describes the status of any patient
0109 who has not been discharged, but who is permitted by the head
0110 of the treatment facility to live apart from a treatment facility;
0111 ~~(23)~~ *(22)* the various terms defined in K.S.A. 59-3002 and
0112 amendments thereto for obtaining a guardian or conservator, or
0113 both, mean the same herein as they do in that act;
0114 ~~(24)~~ *(23)* "law enforcement officer" means any person who by
0115 virtue of office or public employment is vested by law with a
0116 duty to maintain public order or to make arrests for crimes,
0117 whether that duty extends to all crimes or is limited to specific
0118 crimes;

Delete

0304 *admitted pursuant to subsection (B) or (C), shall not be liable in a*
0305 *civil or criminal action based upon a claim that such treatment*
0306 *was rendered without legal consent.*
0307 Sec. 5. K.S.A. 1983 Supp. 65-4031 is hereby amended to read
0308 as follows: 65-4031. A district court may issue an ^ order of pro- — Insert: "ex parte"
0309 tective custody under any of the following circumstances:
0310 (A) Upon the verified application of any law enforcement
0311 officer. The application shall state:
0312 (1) The name and address of the person, if known;
0313 (2) the name and address of the spouse or nearest relative of
0314 the person, if known;
0315 (3) the affiant's belief that the person is intoxicated or inca-
0316 pacitated by alcohol and because of this is likely to injure oneself
0317 or others if not immediately detained;
0318 (4) the circumstances under which the person was taken into
0319 custody.;
0320 *(5) the application provided for in K.S.A. 65-4032 and*
0321 *amendments thereto has been filed.*
0322 This order shall only be valid until 5 *5:00* p.m. of the second
0323 day the district court is open for the transaction of business after
0324 the date of issuance, but in no case more than 72 hours following
0325 the issuance of such order, excluding Saturdays, Sundays and
0326 legal holidays. The district court shall not issue successive
0327 orders of protective custody pursuant to this subsection.
0328 (B) Upon the verified application of any reputable person, if
0329 the application provided for in K.S.A. 65-4032 and amendments
0330 thereto has been filed in the court. The application shall state:
0331 (1) The application provided for in K.S.A. 65-4032 and
0332 amendments thereto has been filed;
0333 (2) the affiant's belief that the proposed patient is intoxicated
0334 or incapacitated by alcohol;
0335 (3) because of the proposed patient's intoxication or incapa-
0336 citation by alcohol, such person is likely to injure oneself or
0337 others if not immediately detained.
0338 This order shall only be valid until the conclusion of the
0339 hearing held pursuant to K.S.A. 65-4036 and amendments
0340 thereto.

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Kansas Citizens Advisory Committee on Alcohol and other Drug Abuse

Attachment # 2

P.O. BOX 4052 TOPEKA, KANSAS 66604

February 27, 1984

TO: House Judiciary Committee

FROM: Ron Eisenbarth, Representing Kansas Citizens Advisory Committee on Alcohol and other Drug Abuse

SUBJECT: House Bill 3026

Dear Chairperson and Committee Members:

The Kansas Citizens Advisory Committee on Alcohol and other Drug Abuse is designated by Kansas Law to be advisory to the Commissioner of Alcohol and Drug Abuse Services on behalf of the Secretary of Department of Social and Rehabilitation Services with regards to the needs of services for alcohol and other drug abuse in the State of Kansas. The Committee has 25 members representing the entire State.

I appreciate this opportunity to express the full support of the Citizens Committee for House Bill 3026.

This legislation provides for changes in evaluation and treatment procedures for voluntary or involuntary alcoholic or intoxicated patients by:

A. Allowing a more appropriate amount of time for treatment facilities to conduct the evaluation and judges to schedule hearings.

B. Making the Alcoholism Intoxication and Treatment laws more compatible with Mental Health laws.

C. Provides that psychologists as well as physicians can conduct the examination of these patients.

We feel these changes in the law are badly needed especially in rural areas of the State where services are not as readily available as in the larger cities in the State.

We respectfully ask for your support of House Bill 3026.

Atch. 2

3
2-27

Attachment # 3

LEVY, SMITH, GARRETT, & SMITH
LAWYERS

JERRY K. LEVY P.A.
RONALD D. SMITH
GORDON T. GARRETT
JANET JO SMITH

JAYHAWK TOWER
SUITE 1000
700 JACKSON
TOPEKA, KANSAS 66603
(913) 232-2727

February 27, 1984

HB 3027
Proponent Testimony
by
Kansas Legal Services

Mr. Chairman. Members of the House Judiciary Committee.

I am Ron Smith and our law firm represents Kansas Legal Services. We hope you'll view this legislation in the spirit it is intended: as a unique and necessary program that affects a significant industry in Kansas, an industry worth helping.

I have passed out explanatory balloons of an amendment, as well as a section by section analysis of the bill. We've also included a list of legal remedies for FmHA applicants, and some information about Kansas Legal Services.

It was not intended the contracting party become involved in credit problems with private lending institutions. There is no need for this program to overlap current legal services from the private sector. Legal counsel for the Kansas Bankers Association, Charles Henson, talked with me about the wording in Section 1 and suggested the balloon amendment. We hope you'll adopt the amendment.

Atch. 3

Mr. Chairman, the legal profession is under fire from many quarters, including from the Chief Justice of the United States Supreme Court. The criticism is not so much on what we actually do but on how we are perceived as lawyers. We are perceived as oriented towards corporate clients, as attorneys interested only in large jury verdicts, or those who zealously protect only the criminally inspired.

It's an erroneous perception, I believe--but nevertheless there. We have an opportunity with this unique legislation to work on that image--at least partially, in Kansas.

There are two parts to this bill.

One, is the provision of legal services to eligible persons concerning federal credit problems and working with farm operations to insure proper use of federal credit. The small Kansas agri-businessman struggling to stay on the family farm, and who cannot afford a lawyer, is the beneficiary of this bill.

The second part is the outreach aspect of the last section. The bill creates an educational program in conjunction with the Attorney General's office, KSU agricultural extension services and the state's law schools. Through this portion we can begin to provide a new generation of lawyers with better skills in representing agri-businessman in the complex world of federal credit agencies. The secondary beneficiary is the image of our profession.

If this makes this bill a "lawyer bill" then its a "good" lawyer bill because it will help us better represent all our clients.

Before we discuss what this program does, I'd like to list what HB 3027 is not intended to do:

a. HB 3027 is not intended as criticism of Farmers Home Administration (FmHA), federal land banks, or PCA credit programs;

b. HB 3027 is not intended as a method by which credit agencies will be harrassed by legions of legal services providers;

c. HB 3027 is not intended as a panacea for all farmers who are having credit problems with federal agencies. The bill cannot magically revive a farm operation that, because of a variety of reasons, has reached its operational point of no return;

d. HB 3027 is certainly not intended to make it easier to be a farmer, or allow farmers to be reckless in their pursuit of credit.

e. HB 3027 cannot answer the long-term question of the role of agriculture in our society;

What this bill does do is build a bridge between the agricultural sector of our Kansas economy and federal credit agencies--a bridge both parties can use to mutual advantage.

Why this program?

Our nation is recovering from a recession. The national Farm Economy, however, has not responded like the rest of the economy. The farm sector still sees:

1. Poor market conditions for commodities and livestock;

2. Rising costs for feed, seed and fertilizer;

3. Bad weather;

4. A 4% national inflation rate last year, but 12-15% interest rates sets up cost squeezes in this capital-intensive industry;

5. General leveling off or drop in land prices, which for years served as equity for operating loans for agricultural interests;

Historically, the federal government has always been involved in agriculture - - from the Homestead acts of the frontier, to provision of low-cost rail transportation, to the protective tariffs. But since the Depression, the main thrust of federal programs is to provide federal mechanisms which help agriculture secure low cost credit, or to help support prices of commodities.

Purpose of federal credit agency programs has been to provide low-cost money and program plans that allow agricultural interests already stretched to the limit a variety of administrative remedies which go further than traditional farm lenders, such as banks.

Kansas banks are number one in the nation in the percent of farm debt held by banks (American Bankers Association figures, 1983). They do an excellent job for ag borrowers. But bankers have responsibilities to, and are regulated by, FDIC or state examiners. Banks will stay with an ag customer as long as they can, but if the loan becomes non-performing, FDIC will flag it during an examination. FDIC may require the bank to tell this farm customer that its bank credit is over! If the banker is unable to convince FDIC to stay with this farmer a little longer, the bank is obligated to call the note.

Federal credit agencies have more flexibility and are not regulated by an outside agency like FDIC. FmHA is the lender of the last resort, in most instances. In fact, in order to qualify for FmHA loans, applicants must show they cannot qualify for loans from other credit sources.

This is good, but if farmers are unaware or are financially unable to take advantage of the flexibility in these federal credit programs, nothing positive results.

But while federal credit agencies have been in operation for some time, their legal due process remedies are in their infancy. We have an opportunity here to work with federal credit agencies - - on behalf of agri-clients - - and provide the management and legal services these clients need.

The evolving complexity of such programs has reached the point where agri-operators without graduate degrees in law or accounting not only cannot spot the advantages or disadvantages of a particular program, but they can't take advantage of the program, either. Even inexperienced lawyers trying to work with farm credit problems can be intimidated by the complexity of the programs. Imagine how their clients feel. Agri-businessmen have their everyday livestock operations, or must get their machinery ready for harvest. They haven't the time to school themselves in the fine print of federal credit agency programs, or the ability to design a detailed plan of operation like those required by FmHA programs. As these complexities increase, agri-businessmen have more and more difficulty working with these credit-providers, low-cost professional help.

What I mean when I say HB 3027 is building a bridge to FmHA is that through the use of legal services providers, low-cost professional planning methodology plus expertise in the requirements of the programs can

be used on the farmer's behalf, allowing him maximum use of these federal credit programs.

HB 3027 also allows farmers the ability to implement with professional help an appeals process with FmHA that is fair, and insure that all remedies are fully utilized by agri-businessmen.

Admittedly, the farm credit programs of federal agencies affect all farmers of all income levels. But those who need this bill most are those <u>least</u> able to secure professional help. Many farmers who are squeezed hardest by the costs of modern agriculture are the young. They don't have their land or equipment paid for yet. They've borrowed to the hilt.

Do we let small farmers fail without even trying to help?

Does this state <u>really</u> have a policy of promoting the family farm, or are those just words?

Those are the policy questions this program seeks to remedy--in part.

It is only fitting that one of the nation's most agricultural states take the lead in implementing this <u>unique</u> <u>and</u> <u>innovative</u> program. If agriculture is truly our number one industry, and if Kansas is to pay more than lip service to agriculture, then we have to make the public policy decision that helping agriculture is a socially-desireable policy.

We hope you'll report the bill favorable for passage.

AVAILABLE ADMINISTRATIVE REMEDIES
WITH
FARMERS HOME ADMINISTRATION

Farmers Home Administration is a lender of last resort. However, when farmers are faced with problems within FmHA, they can use any or all of the following administrative remedies:

--restructuring of the credit needs of the small agri-businessman.

--deferral of principal and/or interest payments for a certain period of time;

--development and financing of new operational plans for the agri-business

--release of all or part of the federal credit agency's security interest(s) in order to provide a farmer the flexibility to sell products or livestock and thereby improve cash flow;

--an agency appeals process to insure that decisions are fairly made and consistent with federal laws and policies;

KANSAS LEGAL SERVICES
INFORMATION

--Only statewide legal services network in Kansas;

--10 offices spread throughout the state, including 3 in western Kansas: Hays, Salina and Garden City. Fulltime staff of lawyers who are salaried, which unlike Aid to Indigent Defendants funds, means a greater measure of cost control;

--Grantee of the national Legal Services Corporation headquartered in Washington. KLS is a non-profit Kansas corporation funded partially by the federal government as well as local charitable groups like United Way;

--Currently working as grantee of Kansas Area Agencies on Aging, KLS has developed expertise in representing low-income and elderly persons in administrative law and credit matters;

--KLS also has expertise in development and implementation of community-based training programs such as those anticipated by HB 3027;

--KLS has expertise in implementing complex eligibility guidelines like those proposed to be made by the Attorney General in the bill;

Session of 1984

HOUSE BILL No. 3027

By Committee on Judiciary

2-17

0016 AN ACT authorizing the attorney general to provide certain legal
0017 services for eligible persons engaged in agriculture-related
0018 business.

0019 *Be it enacted by the Legislature of the State of Kansas:*
0020 Section 1. As used in this act:
0021 (a) "Eligible person" means any person who (1) is primarily
0022 engaged in the business of farming, ranching, agribusiness or
0023 other agriculture related activities; (2) is eligible for financial
0024 assistance under any United States government program; (3)
0025 cannot afford to pay for private legal advice and representation
0026 by reason of low income and family obligations; and (4) meets
0027 the eligible criteria prescribed by the attorney general.
0028 (b) "Eligible services" means the provision of (1) legal ad-
0029 vice and representation for or on behalf of an eligible person
0030 with respect to participation by the eligible person in any United
0031 States government program. Such legal advice and representa-
0032 tion may include, but is not limited to, the provision of informa-
0033 tion, advice, counsel and representation (A) in judicial or ad-
0034 ministrative proceedings involving federal credit agencies, (B)
0035 for the protection of rights of redemption under state or federal
0036 law, and (C) with regard to the credit relief provisions of 7 U.S.C.
0037 1981a, and acts amendatory or supplemental thereto; and (2)
0038 general information and educational outreach services concern-
0039 ing rights in relation to the process of borrowing, debt service,
0040 and debt relief. "Eligible services" does not include legal rep-
0041 resentation in any action or proceeding involving a private
0042 lending institution.
0043 (c) "United States government program" means any federal
0044 program which is designated to benefit persons engaged in

[under any United States government program]

[or advice]

[or borrowing]

5 agriculture related business activities and includes specifically
0046 any program offered by the farmers home administration, federal
0047 land banks or production credit associations. "United States
0048 government program" does not include any credit program of-
0049 fered by a private lending institution.
0050 (d) "Private lending institution" means any state or federally
0051 chartered bank, savings and loan association, credit union or any
0052 corporation owning a bank under Kansas law and any subsidiary
0053 activity of such corporation.

Gramatical cleanup amendment

0054 (e) "Legal services provider" means any nonprofit corpora-
0055 tion organized under the laws of this state which receives funds
0056 directly from the legal services corporation pursuant to the legal
0057 services corporation act (42 U.S.C. 2996, et seq.).
0058 Sec. 2. (a) The attorney general may provide, supervise and
0059 coordinate, in the most economical manner possible, eligible
0060 services for eligible persons.
0061 (b) In order to comply with the requirements of subsection
0062 (a), the attorney general shall enter into contracts with legal
0063 services providers to provide for eligible services for eligible
0064 persons. Any such contract shall specify that only eligible ser-
0065 vices may be provided and that such services may only be
0066 provided for eligible persons.
0067 (c) The attorney general shall adopt rules and regulations
0068 necessary to effectuate the provisions of this act and shall pre-
0069 scribe by rules and regulations the criteria for determining
0070 eligible persons. In prescribing such criteria, the attorney gen-
0071 eral shall consider the following factors:
0072 (1) Household income as defined in the homestead property
0073 tax relief act;
0074 (2) family size;
0075 (3) medical, child care and work-related expenses;
0076 (4) cost of legal assistance if provided by a private attorney;
0077 (5) the size and type of the agricultural business operation;
0078 (6) liquid and nonliquid assets;
0079 (7) net worth; and
0080 (8) any other factors which the attorney general deems nec-
1 essary for determining whether a person is financially unable to

0082 employ private legal counsel.
0083 Sec. 3. (a) Any legal services provider which enters into a
0084 contract with the attorney general under authority of this act
0085 shall:
0086 (1) Cooperate, to the fullest extent feasible, with the Kansas
0087 state university agricultural extension service so that its eco-
0088 nomic and farm management counseling services are utilized by
0089 eligible persons.
0090 (2) Utilize, to the fullest extent feasible, existing resources of
0091 accredited law schools within the state of Kansas to provide
0092 consulting assistance to attorneys performing eligible services
0093 under this act.
0094 (3) Assist, to the fullest extent feasible, accredited law
0095 schools within the state of Kansas in enhancing their expertise in
0096 the area of agricultural law so that all attorneys within the state
0097 will have a resource available to provide training and expertise
0098 in the agricultural law field.
0099 (b) Any legal services provider which enters into a contract
0100 with the attorney general under authority of this act shall submit
0101 its annual operating budget for the next fiscal year of the state,
0102 including projected salaries and all anticipated expenses of
0103 operation, to the attorney general. Such budget shall set forth the
0104 maximum obligation of financial aid and contributions proposed
0105 for payment by the state and the availability of any additional
0106 funds from the federal government and other sources to meet
0107 such expenses of operation. At the end of each fiscal year any
0108 contracting legal services provider and the attorney general shall
0109 furnish to the post auditor and the director of the budget an
0110 audited statement of actual expenditures incurred.
0111 (c) Contracts entered into pursuant to this section shall pro-
0112 vide for any contractual payments to the legal services provider
0113 to be made monthly.
0114 Sec. 4. This act shall take effect and be in force from and
0115 after its publication in the statute book.

Session of 1984

HOUSE BILL No. 3027

By Committee on Judiciary

2-17

0016 AN ACT authorizing the attorney general to provide certain legal
0017 services for eligible persons engaged in agriculture-related
0018 business.

0019 *Be it enacted by the Legislature of the State of Kansas:*
0020 Section 1. As used in this act:
0021 (a) "Eligible person" means any person who (1) is primarily
0022 engaged in the business of farming, ranching, agribusiness or
0023 other agriculture related activities; (2) is eligible for financial
0024 assistance under any United States government program; (3)
0025 cannot afford to pay for private legal advice and representation
0026 by reason of low income and family obligations; and (4) meets
0027 the eligible criteria prescribed by the attorney general.
0028 (b) "Eligible services" means the provision of (1) legal ad-
0029 vice and representation for or on behalf of an eligible person
0030 with respect to participation by the eligible person in any United
0031 States government program. Such legal advice and representa-
0032 tion may include, but is not limited to, the provision of informa-
0033 tion, advice, counsel and representation (A) in judicial or ad-
0034 ministrative proceedings involving federal credit agencies, (B)
0035 for the protection of rights of redemption under state or federal
0036 law, and (C) with regard to the credit relief provisions of 7 U.S.C.
0037 1981a, and acts amendatory or supplemental thereto; and (2)
0038 general information and educational outreach services concern-
0039 ing rights in relation to the process of borrowing, debt service,
0040 and debt relief. "Eligible services" does not include legal rep-
0041 resentation in any action or proceeding involving a private
0042 lending institution.
0043 (c) "United States government program" means any federal
0044 program which is designated to benefit persons engaged in

Subsection (a): gives three statutory definitions as to who constitute "eligible persons," but note that the definition can be further modified by rule and regulation of the attorney general.

Eligible services" includes two basic types: (1) of a litigation or pre-litigation type of legal service for eligible persons concerning United States Government Programs only. Such types fall into three categories only.

Second, in line 37, eligible services consist of services of a "general information and educational outreach" nature. This contemplates a contracting provider to work with law schools and extension services at KSU to provide information concerning work within U.S. Government Programs.

[[[NOTE THE AMENDMENT]]]

Note that eligible services does not include representation against a private lending institution.

5 agriculture related business activities and includes specifically
0046 any program offered by the farmers home administration, federal
0047 land banks or production credit associations. "United States
0048 government program" does not include any credit program of-
0049 fered by a private lending institution.

U.S. Government program specifically excludes credit programs offered by private lending institutions.

0050 (d) "Private lending institution" means any state or federally
0051 chartered bank, savings and loan association, credit union or any
0052 corporation owning a bank under Kansas law and any subsidiary
0053 activity of such a corporation.

"Private lending institution" includes the holding company owning a bank, or any of such bank holding company's subsidiary activities that are authorized by the federal reserve board.

0054 (e) "Legal services provider" means any nonprofit corpora-
0055 tion organized under the laws of this state which receives funds
0056 directly from the legal services corporation pursuant to the legal
0057 services corporation act (42 U.S.C. 2996, et seq.).

"Legal Services provider" pertains to Kansas Legal Services, Inc.

0058 Sec. 2. (a) The attorney general may provide, supervise and
0059 coordinate, in the most economical manner possible, eligible
0060 services for eligible persons.
0061 (b) In order to comply with the requirements of subsection
0062 (a), the attorney general shall enter into contracts with legal
0063 services providers to provide for eligible services for eligible
0064 persons. Any such contract shall specify that only eligible ser-
0065 vices may be provided and that such services may only be
0066 provided for eligible persons.

Eligible services may be provided only to those persons who meet the eligibility requirements of the act.

0067 (c) The attorney general shall adopt rules and regulations
0068 necessary to effectuate the provisions of this act and shall pre-
0069 scribe by rules and regulations the criteria for determining
0070 eligible persons. In prescribing such criteria, the attorney gen-
0071 eral shall consider the following factors:

Attorney General implements using rules and regulations, which can be reviewed by the legislature next session.

0072 (1) Household income as defined in the homestead property
0073 tax relief act;
0074 (2) family size;
0075 (3) medical, child care and work-related expenses;
0076 (4) cost of legal assistance if provided by a private attorney;
0077 (5) the size and type of the agricultural business operation;
0078 (6) liquid and nonliquid assets;
0079 (7) net worth; and
0080 (8) any other factors which the attorney general deems nec-
81 essary for determining whether a person is financially unable to

Statutory considerations as to eligibility.

Attorney general has considerable leeway in determining which persons are eligible for assistance, using the rule and regulation process.

employ private legal counsel.

Sec. 3. (a) Any legal services provider which enters into a contract with the attorney general under authority of this act shall:

(1) Cooperate, to the fullest extent feasible, with the Kansas state university agricultural extension service so that its economic and farm management counseling services are utilized by eligible persons.

(2) Utilize, to the fullest extent feasible, existing resources of accredited law schools within the state of Kansas to provide consulting assistance to attorneys performing eligible services under this act.

(3) Assist, to the fullest extent feasible, accredited law schools within the state of Kansas in enhancing their expertise in the area of agricultural law so that all attorneys within the state will have a resource available to provide training and expertise in the agricultural law field.

(b) Any legal services provider which enters into a contract with the attorney general under authority of this act shall submit its annual operating budget for the next fiscal year of the state, including projected salaries and all anticipated expenses of operation, to the attorney general. Such budget shall set forth the maximum obligation of financial aid and contributions proposed for payment by the state and the availability of any additional funds from the federal government and other sources to meet such expenses of operation. At the end of each fiscal year any contracting legal services provider and the attorney general shall furnish to the post auditor and the director of the budget an audited statement of actual expenditures incurred.

(c) Contracts entered into pursuant to this section shall provide for any contractual payments to the legal services provider to be made monthly.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Section 3(a) makes certain statutory requirements of the person or corporation that contracts pursuant to this act:

--- work with KSU agricultural extension service
--- farm management counseling

--- use resources of Kansas law schools to provide assistance to those attorneys providing the services.

--- work with law schools to help create specialties in agricultural law for those attorneys who one day might provide these types of services to private clients outside this act.

Providers must:

1. Submit proposed budget for next FY

2. List any eligible funds which can augment the state general fund for this activity;

3. furnish post audit accounting statement at end of FY

Allows monthly statements to the provider, per the contract.

July 1, 1984 effective date

4
2-27

KANSAS STATE UNIVERSITY

Cooperative Extension Service

Office of the Director
Umberger Hall
Manhattan, Kansas 66506
913-532-5820

Attachment # 4

RECEIVED

February 24, 1984

Mr. Roger L. McCollister
Executive Director
Kansas Legal Services, Inc.
Columbian Building, Room 202
112 West Sixth Street
Topeka, KS 66603

Dear Mr. McCollister:

I thoroughly enjoyed visiting with you and Mr. Metcalf yesterday afternoon. As you know, I was not aware until earlier this week that House Bill No. 3027 had been introduced by the Committee on Judiciary.

Certainly, these are very difficult economic times for agriculture. Many farmers need very intensive counseling to help them make the best management decisions on their farms, and to prepare good documented information to work with credit agencies to obtain credit or refinance their existing loan structure. I am sure there are many instances where these individuals need legal assistance and counseling which cannot be provided by the Cooperative Extension Service. As you know, the Cooperative Extension Service has been providing educational programs for 70 years to the people of Kansas who are engaged in agriculture and agricultural-related activities. Farmers have been seeking advice from us on all aspects of farming. We work with them, providing information and advice from specialists and county agents.

For services in which we don't have expertise, we refer farmers to those agencies that can provide the appropriate help. Certainly, if House Bill No. 3027 is passed to expand the efforts of Kansas Legal Services, Inc., we would be very pleased to cooperate with you in directing the appropriate clientele to you and continue to provide economic and farm management counseling and educational services to all eligible persons who request them within the existing scope of our work and personnel. The additional services as proposed in the legislation could provide very valuable legal assistance to qualified clientele. This type of service could be of substantial benefit to many farmers.

Sincerely,

Fred D. Sobering
Director of Extension

cc: President Duane Acker, Dean John Dunbar

KSU, County Extension Councils and U.S. Department of Agriculture Cooperating.
All educational programs and materials available without discrimination on the basis of race, color, national origin, sex, or handicap.

Atch. 4

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2-27

Attachment # 5

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

February 27, 1984

STATEMENT OF ATTORNEY GENERAL ROBERT T. STEPHAN

BEFORE THE HOUSE JUDICIARY COMMITTEE

REPRESENTATIVE ROBERT G. FREY, CHAIRMAN

RE: 1984 House Bill No. 3027,
Relating to the Provision of Certain Legal and
Educational Services to Persons of Low Income
Engaged in Agribusiness Pursuits

Dear Mr. Chairman and Members of the Committee:

I am Rodney Bieker, Assistant Attorney General, and I am here today on behalf of Attorney General Stephan, whose schedule, regrettably, did not allow him to appear personally in regard to this bill.

Mr. Stephan is very interested in this proposed legislation and asked me, on his behalf, to read his statement in regard to House Bill No. 3027. (HB 3027).

Mr. Stephan's statement is as follows:

I appreciate the opportunity to comment upon, and indicate my support for, HB 3027.

I believe the provisions of this bill are clear and straight-forward. If enacted, the bill would authorize the Attorney General to enter into contracts with legal services providers so that the legal and educational services described in section 1 of the bill could be provided to persons of low income who are engaged in farming or ranching activities. One of the main services that would be provided is to make

Atch. 5

those persons aware of their rights in regard to borrowing and repaying loans made to them under federal loan programs and provide legal assistance in exercising those rights. This service, however, would not be provided in connection with loans made by state or federal banks, savings and loan associations or credit unions. It applies only to federal loan programs.

The other major assistance to be provided under this bill is the economic and farm management counseling services offered by the Kansas State University Agricultural Extension Service. These counseling services may prove to be more important, in the long run, than the legal services authorized by this bill. It serves little purpose to know your legal rights concerning financial matters, if you lack the management resources which assist in carrying on a profitable operation. Thus, I am very encouraged about the provision of these counseling services by the extension service.

In regard to the need for this bill, there is no doubt the farm and ranch economy has been and continues to be depressed. The economic recovery being experienced by other segments of our state and national economy simply has not been felt in the agricultural community. Many farmers continue to face economic extinction. The financial pressures forced upon those engaged in agricultural pursuits over the past few years presents a crisis situation for those individuals and, in my judgment, for the state's economy and the Kansas family-farm tradition.

In this situation, I believe it is appropriate and necessary that the state at least attempt to make those family farmers facing financial ruin aware of their legal rights in regard to federal loan programs in which they are involved. Persons in this situation do not have the resources available to them to secure legal counsel and advice. Thus, the rights afforded them by federal law are of little assistance. It is only through competent legal counseling and representation that these people can be informed of their rights and effectively exercise them. Through this bill, the mechanism will be put in place through which the provision of such counseling and representation services may be made. Therefore, I wholeheartedly endorse the provisions of HB 3027.

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2-27

STATE OF KANSAS

Attachment # 6

OFFICE OF THE GOVERNOR
State Capitol
Topeka 66612-1590

John Carlin *Governor*

Testimony to House Judiciary Committee
by
Robert Wootton
February 27, 1984

Mr. Chairman and Members of the Committee:

Thank you for allowing me to testify for Governor Carlin in support of House Bill No. 3027.

The financial plight being faced by our farmers is not a positive scenerio. As prices for farm products remain at a level below a profit-making margin, farmers are increasingly dependent upon federal sources for financing their operations.

More and more, farmers are forced to miss loan payments or delay those payments. According to many federal rules and regulations, those missed payments constitute default on farmers' loans.

As is often the case with federal regulations, many farmers have difficulty in determining their rights under these rules without the aid of legal assistance. Because of the unstable financial situation experienced by many of these farmers, retention of private legal counsel is simply out of the question.

The Attorney General, in conjunction with Kansas Legal Services, has developed the program outlined in HB 3027. The Governor fully supports this program of providing access to competent legal services to those farmers who are unable to afford private counsel. He intends to submit a Governor's Budget Amendment to provide funds for this important program.

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2-27

Attachment # 7

STATEMENT
of
IVAN W. WYATT, PRESIDENT
KANSAS FARMERS UNION
on
HB-3027
before
THE JUDICIARY HOUSE COMMITTEE

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

I AM IVAN WYATT, PRESIDENT OF THE KANSAS FARMERS UNION.

THERE IS A GREAT NEED FOR THE SERVICES HB-3027 WILL PROVIDE.

A FORECLOSURE SALE OR BANKRUPTCY IS A TOTALLY NEW AND AWESOME EXPERIENCE FOR MOST FARMERS FACING SUCH A FINANCIAL DIFFICULTY.

SINCE THE 1930's THERE HAS BEEN A RELATIVELY SMALL NUMBER OF FARM FAILURES AND FORCED FARM SALES UNTIL RECENT YEARS; CONSEQUENTLY, THERE ARE NOT THAT MANY AFFORDABLE PEOPLE AVAILABLE WITH EXPERTICE IN AGRICULTURE ON FARM BANKRUPTCY AND FORECLOSURES.

CONSEQUENTLY, THE NEED FOR HB-3027 IS GREAT.

THE KANSAS FARMERS UNION HAS BEEN DIRECTLY INVOLVED IN FEDERAL COURT ACTIONS, ORDERING THE FMHA TO RELEASE FEDERAL ECONOMIC EMERGENCY LOAN FUNDS SET FORTH IN PUBLIC LAW.

AS OF THIS DATE, U.S. DISTRICT JUDGE THOMAS FLANNERY, THE MAN WHO FORCED THE USDA, FARMERS HOME ADMINISTRATION TO REINSTATE THE ECONOMIC EMERGENCY LOAN PROGRAM IN A COURT ORDER ISSUED LAST OCTOBER, HAS BEEN ASKED TO INTERVENE AGAIN, BECAUSE THE FMHA STILL IS NOT CARRYING OUT THE INTENT OF CONGRESS AND THE COURTS.

(more)

Atch. 7

THE POINT IS, IF THERE IS NEED FOR LEGAL ACTION AT THE TOP END TO GET THE FMHA TO OBEY AND CARRY OUT THE INTENT OF LAW, THERE DEFINITELY IS NO DOUBT A GREAT NEED FOR LEGAL ASSISTANCE FOR THE BORROWER AT THE LOWER END.

OVER A YEAR AGO A GROUP OF HARD-PRESSED FARMERS WERE VICTORIOUS IN TAKING THE FMHA TO COURT PROTESTING LENDING POLICIES OF THE LENDING AGENCY, BASED ON THE FACT THAT THE FMHA HAD FAILED TO GIVE THEM THE OPPORTUNITY TO APPLY FOR DEFERRMENT OR A MORATORIUM ON PAYMENTS OF THEIR LOAN AS REQUIRED BY LAW.

FMHA FIGURES INDICATE IN KANSAS, SEVEN FMHA BORROWERS WERE FORECLOSED ON IN "1981", nine in "1982", AND AS OF SEPTEMBER 30, 1983, ELEVEN WERE FORECLOSED ON.

BUT NO ONE KNOWS HOW MANY VOLUNTARILY QUIT WHEN THREATENED WITH BANKRUPTCY OR FORECLOSURE ACTIONS BECAUSE THEY MAY NOT HAVE BEEN AWARE OF THEIR LEGAL RIGHTS, OR COULD NOT AFFORD LEGAL ADVICE, THAT IS THE TOTAL PURPOSE OF THIS BILL, TO SIMPLY MAKE THESE SERVICES AVAILABLE TO THOSE FARMERS, WHO EITHER CAN'T AFFORD LEGAL ADVICE, OR ARE NOT AWARE OF THEIR LEGAL RIGHTS.

THIS SITUATION WILL ESCULATE AS LONG AS FARM PRICES CONTINUE AT A LOW LEVEL.

YOU WILL NOTICE FROM "81" THRU "83" THE RATE OF KNOWN FARM FAILURES HAVE ESCULATED.

THIS TREND WILL CONTINUE AT AN EVER INCREASING RATE.

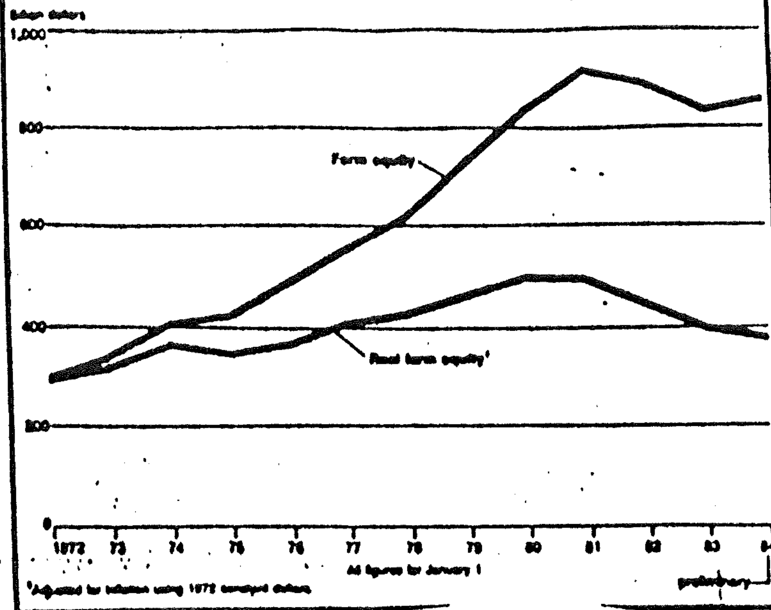
(more)

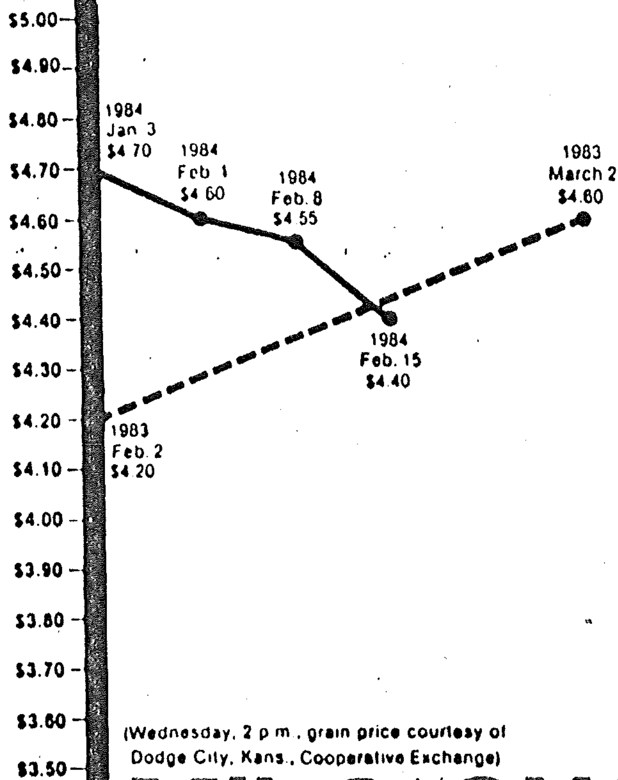
IN NOVEMBER, 1980, WHEAT WAS SELLING AT $4.41 PER BUSHEL, AND HAS CONTINUALLY DECLINED TO $3.02 as of FEBRUARY 15, 1984. EVEN WITH THE DROUGHT AND PIK, MILO HAS EVEN FELL FROM $5.44 PER HUNDRED IN NOVEMBER, 1980, to $4.40 PER HUNDRED AS OF FEBRUARY 15, 1984, AND REAL FARM EQUITY HAS DECLINED FOR FOUR STRAIGHT YEARS.

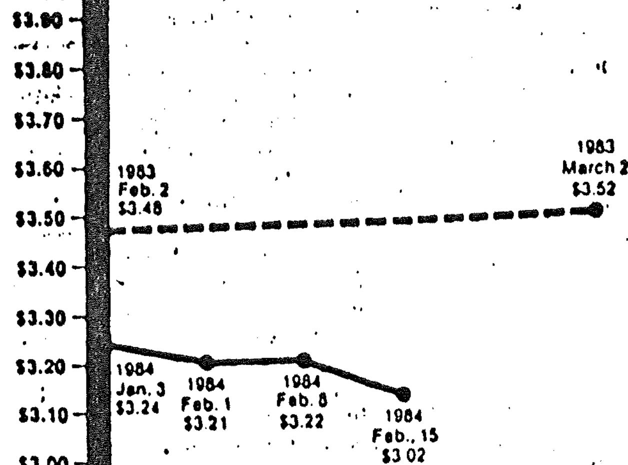
THE SERVICES PROVIDED IN HB-3027 WILL BE NEEDED MORE AND MORE UNTIL FARM INCOME IMPROVES DRAMATICALLY.

HB-3027 IS NOT A SOLUTION TO THE PROBLEM OF LOW FARM INCOME BUT DOES DEAL POSITIVELY WITH THE SYMPTOMS, AND AS LONG AS FARM PRICES CONTINUE AT A LOW LEVEL, OR CONTINUE TO SLIDE LOWER, THERE WILL BE AN EVER INCREASING NEED FOR THESE LEGAL SERVICES.

#


Real Farm Equity—the Inflation-Adjusted Wealth of the Farm Sector—Slides for the Fourth Straight Year
Farm equity
Real farm equity¹
All figures for January 1
¹Adjusted for inflation using 1972 constant dollars.
preliminary


1980
Nov.
$5.44
5.45
1984
Jan 3
$4.70
1984
Feb 1
$4.60
1984
Feb. 8
$4.55
1984
Feb. 15
$4.40
1983
March 2
$4.60
1983
Feb. 2
$4.20
(Wednesday, 2 p.m., grain price courtesy of
Dodge City, Kans., Cooperative Exchange)
MILO CWT.


1980
NOV
$4.41
4.40
1983
Feb. 2
$3.48
1983
March 2
$3.52
1984
Jan. 3
$3.24
1984
Feb. 1
$3.21
1984
Feb. 8
$3.22
1984
Feb., 15
$3.02
(Wednesday, 2 p.m., grain price courtesy of
Dodge City, Kans., Cooperative Exchange)
WHEAT

8
2-27

Attachment # 8

I AM HERE TODAY IN SUPPORT OF HB3027.

AS ALL OF YOU ON THIS COMMITTEE ARE AWARE OF, THE ECONOMIC CONDITIONS FACING THE KANSAS FARMER ARE SEVERE AND REAL. THE GROWING NUMBER OF FORECLOSURES ON KANSAS FARMERS ARE INCREASING ON NEARLY A MONTHY BASIS.

THE FARMERS EXPERTISE IS IN THE AREA OF FARMING. THIS EXPERTISE IS NOT IN THE AREA OF BANKRUPTCY AND FORE-CLOSURE. SB 3027 WILL PROVIDE MUCH NEEDED ASSISTANCE TO THOSE FARMERS FACING FINANCIAL CRISIS.

I COULD GO ON AND ON, BUT THE THRUST OF MY COMMENTS WHICH I WANT TO LEAVE WITH YOU THIS AFTERNOON IS THAT I WHOLEHEARTEDLY SUPPORT THIS PIECE OF LEGISLATION, AND ASK THAT YOU GIVE IT FAVORABLE CONSIDERATION.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, THANK YOU FOR ALLOWING ME TO EXPRESS MY INPUT TO YOU ON THIS IMPORTANT PIECE OF LEGISLATION.

Mary Harper
Healy Ks, 67850
316-872-2772

Atch. 8

9
2-27

Attachment # 9

TESTIMONY TO HOUSE COMMITTEE ON JUDICIARY

BY DONALD P. EDSON, VICE PRESIDENT

FEDERAL INTERMEDIATE CREDIT BANK OF WICHITA

Mr. Chairman and Ladies and Gentlemen of the Committee on Judiciary:

I appreciate the opportunity to testify on House Bill No. 3027 authorizing the attorney general to provide certain legal services for eligible persons engaged in agriculture-related business.

My name is Don Edson and I'm Vice President of Administration for the Federal Intermediate Credit Bank of Wichita. Our bank, a wholesale bank, supervises and provides services to production credit associations in Kansas, Colorado, Oklahoma, and New Mexico, the Ninth Farm Credit District. We join with the Federal Land Bank and Federal Land Bank Associations and the Bank for Cooperatives to form the Farm Credit System in these four states. There are similar configurations of organizations in eleven other districts covering the United States and Puerto Rico.

The Federal Land Banks and Federal Land Bank Associations provide mortgage credit, backed by first mortgages on farm real estate to the farmers and ranchers. Production credit associations provide short and intermediate term operating credit and family living expense money to farmers and ranchers. The Federal Intermediate Credit Bank supervises PCAs and also discounts agricultural notes of certain other financing institutions. The Banks for Cooperatives supply all credit needs of farmer cooperatives.

Atch. 9

The Farm Credit System was incorporated under Federal law beginning in 1916. The entire Farm Credit Act was rewritten in 1971 and specific amendments were added to that act in 1980 by the U. S. Congress. The entire Farm Credit System is regulated and supervised by an independent Federal agency within the executive branch of government called the Farm Credit Administration.

Although originally capitalized by government funds, the Farm Credit System was later authorized to repay those funds and that process was completed in 1968. Therefore, the entire Farm Credit System is owned and capitalized by its borrowers--farmers, ranchers, and their cooperatives. The System currently extends over $75 billion of credit to those groups. In Kansas alone, the Farm Credit System extended $2.9 billion to approximately 35,000 farmers, ranchers, and their cooperatives last year.

The system obtains its money through the sale of securities, bonds and discount notes primarily, to the investing public world wide. This process is accomplished through the Federal Farm Credit System Funding Corporation, headquartered in New York City. Those bonds and discount notes require that we extend sound and constructive credit to farmers, ranchers, and their cooperatives because of our need to maintain a spotless image of being able to repay all borrowed funds on time and at the prevailing rates of interest. To this date, in the 65 year history of the Farm Credit System, that goal has always been met. As a result, because of our size and the perceived safety of our securities, the Farm Credit System securities sell at comparable levels to United States Treasury notes in the agency market. That economical rate is of large benefit to agriculture,

particularly during these kinds of times. Recognize the importance of our continuing to extend sound credit with minimal losses to American agriculture. Anything less and the investor's perception of the safety of their investments would suffer and our rates would increase as a result.

With this brief explanation, I want to suggest to you that those drafting House Bill 3027 have placed organizations of the Farm Credit System, specifically, federal land banks and production credit assoications in the wrong classification. While we have reservations about the appropriateness of the entire bill, we have specific objections to that part that defines to whom the provisions of the bill apply to. Specifically, under subsection 1, paragraph (c), beginning on line 43 of the bill as originally introduced. That section specifically defines U. S. Government programs "to include Farmers Home Administration, federal land banks, and production credit associations." Section D excludes private lending institutions meaning " any state or federally chartered bank, savings and loan association, credit union or . . . ."

Our objections to being categorized under Section C, "United States Government Program" is based on four points. First, the Farm Credit System is a federally chartered institution. The United States Code passed by Congress as the Farm Credit Act of 1971 with amendments of 1980 specifically referred to the federal charter under Sections 2011, 2031, 2071, and 2091. In this respect, we are very much like any federally chartered commercial bank.

Second, the intent of Congress that the System be farmer-owned and not an instrumentality of government is very clearly outlined in Title 12 U. S. Code 2001.

Our third point is that our funding is entirely the result of selling securities to private investors worldwide. Those securities are not guaranteed by government and are not generated from any kind of tax funds. In fact costs of our supervisory body, the Farm Credit Administration, are also borne entirely by the interest payments of farmers, ranchers, and their cooperatives. No government funds are involved in our system.

Finally, the Farm Credit System operates under similar processes as the credit unions, listed under "private lenders" in the bill. As a cooperative lender, each of our members has one vote in our operations, boards of directors are elected from among active borrowers and our stockholders are limited to those using or having used Farm Credit System services.

Therefore, Mr. Chairman and ladies and gentlemen, we would respectfully submit that classification of Federal Land Banks and production credit associations under the category of U. S. Government programs is not appropriate and legally unsound. We would ask that you specifically amend the bill as introduced to remove our names from section c and add them to section d, the same as federally chartered banks and credit unions.

This concludes my testimony, Mr. Chairman, but I would be happy to answer any questions that you or members of your committee might have. Thank you.

TESTIMONY FOR THE HOUSE JUDICIARY COMMITTEE February 27, 1984

Attachment # 10

My name is Grace Sheeley. My husband, Bob, and I farm 280 acres near Nortonville, Ks. in Atchison County. We operate a 50 cow dairy and a purebred hog operation, and feed the grain we grow to our livestock. We have farmed all our lives. Our parents were farmers. We hope to pass the farm on to our children. One of our daughters comes home on weekends to help with the work, and our 13 year old son, who also helps with the work, is interested in farming.

As is well known, farmers have been hit with hard times in recent years. Since 1980, every year has presented weather problems: drought in 1980 and 1983; cool, wet planting seasons in 1981 and '82; and an early fall frost in 1982 hurt our feed grain crops. The cost of the things we buy continues to go up and interest rates stay high. Yet the prices we receive have remained low. These circumstances have not only hurt our ability to repay farm debt and meet our living and operating expenses, but have made us even more dependent upon credit.

In the mid-70's, we turned to the Farmers Home Administration for our credit needs. Today we have outstanding real estate and operating loans, and because of poor weather conditions, disaster and emergency loans. We do not have enough land to provide all our livestock feed, so we have had to borrow to purchase the additional feed. Currently we pay FmHA 50 per cent of our monthly milk check for debt repayment. However, since much of our debt is short term, this has not been enough to meet our full annual debt obligation to FmHA. Adverse weather conditions and unstable livestock markets have created difficulties in meeting our annual debt payments.

We are hopeful, however, that with careful management (and we are working with K-State farm management specialists), one or two years of normal weather, and a more stable farm economy, our debt situation will improve. But until then, like many other farmers, we face immediate credit problems and complicated legal questions.

While we already have outstanding FmHA loans, last fall we were forced to turn to them once more for a loan for livestock feed. Two months ago, after working with us for several years, FmHA denied our loan eligibility. We appealed their decision, and after several meetings and a hearing we are still trying to establish

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our eligibility. With the assistance of a lawyer, this issue might have already been resolved.

If we are determined eligible for FmHA assistance, we then have to negotiate the loan. How long this process will take, I do not know. But while we wait, our livestock continue to eat. Our current feed supply was purchased with the sale of a few head of dairy cows. If we do not get the loan, we will be forced to liquidate our herd. If we liquidate our herd, we're out of farming.

I understand that FmHA could let us keep more of our milk check, but they don't want to do this. Not being familiar with FmHA rules, regulations and procedures, we don't know what our rights are and what assistance they can give. We have heard about loan deferrals, refinancing and other FmHA assistance, but how these apply to us we don't know without legal assistance.

All the programs, procedures, and regulations are very complicated and confusing. We already work 12 to 14 hours a day to get our farm work done. We spend additional time maintaining our financial records. We do not have the time, and I fear we are not qualified, to learn all the regulations and procedures governing FmHA. The FmHA appeal process is very difficult to go through without help, and we have friends and neighbors who face similar problems and need assistance.

Because we already have difficulty meeting all our debt payments and other expenses, we cannot afford to hire an attorney. With the complex credit problems facing ourselves, some of our neighbors, and many other farmers, the availability of free legal assistance would help resolve some of the credit problems, reduce the high level of farm stress, and give many families the opportunity to work out their debt problems and remain in farming. We encourage you to support House Bill 3027.

Thank you very much for the opportunity to speak. We would be happy to answer any questions.

STATEMENT BY HOWARD MOSES, DISTRICT AIDE TO CONGRESSMAN JIM SLATTERY, REGARDING THE PROVISION OF LEGAL ASSISTANCE TO FARMERS

Attachment # 11

My name is Howard Moses. I am a District Aide in the Kansas Office of Congressman Jim Slattery. My duties include responding to constituent problems in the area of agriculture. Problems with Farmers Home Administration loan applications and servicing are a large part of the agricultural inquiries the Congressional Office receives.

During the first thirteen months of Congressman Slattery's term of office, we have received thrity-two requests for assistance with problems regarding FmHA. Several of these requests have been through referrals from Members of the Kansas House of Representatives and the Kansas Senate, both Democrat and Republican.

Most of these requests for assistance pertained to applications for Farm Operating Loans, and to a smaller extent, Farm Ownership Loans. The individuals seeking FmHA financing tend to be smaller farmers with marginal incomes. Most of the individuals contacting our office are either younger farmers, ages 22-30, or older producers, ages 50-60. Almost all of them are in severe need of credit assistance. A sizable percentage are facing partial or full liquidation.

Assistance for these farmers is extremely limited. Farm management consultation from the Kansas State University Extension Service is one of our primary referrals. Direct assistance for preparing farm plans, loan applications, and appeals of eligibility decisions is almost nonexistent for small, marginal farmers unable to afford legal of financial counseling due to their financial crisis. Information

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on Limited Resource Loans from FmHA and other avenues of funding is limited at best.

The initiation of the Coordinated Financial Statement system by FmHA has further complicated the procedure for this group. The new 26-page farm loan application replaces the old standard four-page form. The intent of the new system is to give the agency a better idea of a farmer's repayment ability and to give the farmer a better picture of his financial situation. However, a FmHA District Director from Northeast Kansas stated that insufficient staff time is available to counsel farmers on the completion of the new forms.

Richard Denison, head of Pennsylvania Farm Management estimates that 95 percent of FmHA borrowers will not have the ability to satisfactorily complete the forms.

Robert A. Luening, a farm records specialist and professor at the University of Wisconsin, indicates that the new forms "appear to be lender rather than farmer oriented."

The Kansas Farmers Home Administration Office has been responsive to congressional inquiries. However, the level of assistance that can be provided by congressional staff members in no way meets the current need for legal assistance that a substantial number of farmers now have.

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Attachment # 12

Farm borrowers in Oregon have appealed to government regulators to tap a special $112-million emergency fund to keep their troubled Production Credit Association (PCA) afloat.

If approved, the appeal could set a precedent for other PCAs nationwide that are struggling under the burden of heavy loan losses. Five PCAs out of 420 already have failed in the past year and several more have merged or required capital infusions.

"We are using all means at our disposal" to encourage the governor of the Farm Credit Administration (FCA) to use that emergency fund, says George VanLeeuwen, a Linn County, Ore., farmer and chairman of the board of the Willamette Valley PCA, an association that FCA claims is insolvent. The appeal is part of a lawsuit filed in U.S. District Court in Portland by the board of directors against FCA.

Troubled PCA asks for national aid

Feds block access to emergency fund

By MARCIA ZARLEY TAYLOR

It was FCA's arbitrary valuation of loan collateral at recovery value minus 25% that triggered the PCA's solvency problem, the farmers charge. If auditors had valued property at appraised values, the association contends it would have a positive net worth. The judge overseeing the case has indicated that the farmers likely will prevail if litigation continues.

In a related move, the General Accounting Office has agreed to audit FCA procedures in loan examinations and liquidations of PCAs. A key part of the investigation will involve the consequences of using that revolving fund to assist PCAs that are in trouble, according to a staffer for Rep. Denny Smith (R., Ore.), one of the congressmen from three states that requested the study.

FCA is a government agency that supervises the farmer-owned PCAs, Federal Land Banks (FLB) and Banks for Cooperatives. Last year, FCA officials took control of Willamette and three other PCAs in the Spokane region with heavy loan losses. Three of the associations have since liquidated. Operations of the Willamette PCA are back under local control until Jan. 31, pending the outcome of an FCA audit.

The little-known revolving fund is earmarked for banks or associations of the Farm Credit System with "emergency credit needs," according to Tom Brown, a spokesman of the Federal Intermediate Credit Bank of Spokane, Willamette's parent bank. In a newsletter to members, Brown explains that the FCA governor has legal access to the Treasury Department for the money. "But there isn't any huge pool out there that we could tap," he adds.

The money traces back to the Depression, when Congress authorized the governor to make temporary investments of $112 million in FICBs and $149 million in the Bank for Cooperatives, confirms Ron Erickson, a spokesman for the FCA in Washington, D.C. The Secretary of the Treasury is authorized to deposit $6 million in FLBs. None of the funds has ever been activated, Erickson says.

Even if the loans were made, demand could far exceed supply. Nationally, 75 PCAs are experiencing "serious delinquencies involving a total of $1.8 billion," Larry Butterfield, president of the Spokane FICB, says in the same newsletter to members. Butterfield says that national PCA losses for 1983, earlier predicted at about $180 million, have been revised upward to about $240 million.

The woes of the four PCAs in the Spokane District already are affecting other borrowers in the region, primarily through higher interest rates. But "this situation will have impact on all PCAs, and that impact is serious," Butterfield says. "The system is experiencing difficult times nationwide, and the situation is not getting any better."

Traditional loss-sharing measures have not helped to rescue some PCAs. The Spokane District's "mutual loss-sharing agreement," a reserve fund composed of district PCAs' contributions, cannot be activated in some critical situations. Explains Brown, "It does not provide for the injection of capital into a PCA if the contribution would not make it a viable association" or prevent the loss of farmers' stock.

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The second line of defense for troubled PCAs—merger or consolidation with healthy associations—"in many cases is not an alternative," Brown says. "When you try to consolidate PCAs with high levels of nonperforming assets, there's a problem. We don't want to make those other PCAs vulnerable by burdening them with excessive levels of problem accounts."

A third option, capital investment by the FICB, works when only one or two PCAs are having financial difficulty. But the resources of the district FICB can be depleted if many PCAs require recapitalization.

A fourth alternative, the national pooling of heavy PCA losses through the "Systemwide Capital Preservation Agreement," does not appear to be an option either, Brown explains. This agreement is only activated by an FICB when "catastrophic PCA losses disrupt the income flow of the FICB and then deplete FICB reserves."

Although Spokane District PCAs lost an estimated $50 million in 1983, the parent FICB "won't lose a dime," Brown says. That means the district cannot qualify for systemwide aid. The other 11 Farm Credit Districts that would be asked to make those contributions expect Spokane "to exhaust all possibilities" before considering this option, Brown says.

Thus some look to the U.S. Treasury as the last resort for ailing PCAs. "The intent of Congress is very clear. In case we had a catastrophe in agriculture and associations were having trouble, Congress wanted FCA to step in and prop them up until the associations could repay the money," says Philip Brandt, a consultant for the Willamette PCA board and chief executive of the association from 1938 to 1980. "It's quite comparable to the government's loan to Chrysler, only PCAs have a much better established credit record."

Other Farm Credit officials doubt that FCA will tap the emergency fund. "We have no intention of using it [for Spokane PCAs] because it wouldn't be a temporary investment," says Erickson of the FCA. "In my view, the fund is not to bail out PCAs [like Willamette] in serious financial difficulty . . . it would be tantamount to throwing good money after bad."

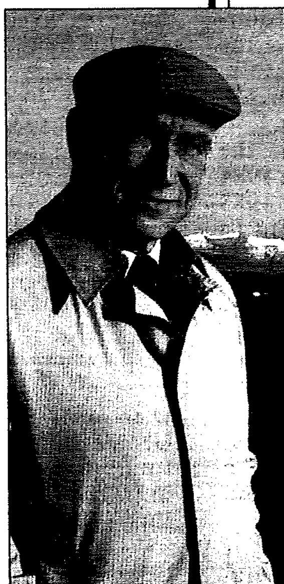

Photo Craig Zarley

THE EMERGENCY FUND was intended to rescue PCAs like Willamette, contends Brandt.

The disadvantages of its use would outweigh its benefits, says Jack Curry, an official of the Farm Credit Banks of Baltimore. "In the long-run, it might revive direct links with the federal government. And many people within the system feel that would be detrimental to the interest of an independent financial cooperative."

But the 1,100-farmer members of the Willamette PCA can't afford to be patient. They estimate that members could lose $10 million in their PCA stock if the association folds.

"If that revolving fund is not the right answer, they ought to pursue other means to use the reserves that the system has created," VanLeeuwen says. "If there's no aid for an individual PCA that gets into circumstances beyond its control, then PCAs are less equipped to meet with disasters than commercial banks. If that's the case, we need a new national reserve or a change in the laws so PCAs can set higher reserves." ◁

For 44 years, they repaid debts

■ Thanks to an out-of-court settlement reached in November, the Spokane FICB and the local directors say they are trying their "dead-level best" to solve the crisis at Willamette.

"They have a tough row ahead of them, but they are already turning things around," observes Philip Brandt, a consultant hired by the local board. For instance, the same $1.8-million loan that FCA auditors recommended as a $1.5-million loss has been picked up by a large commercial bank. The bank will not only repay the PCA in full, but lend the borrower another $1 million.

A crucial part of any permanent solution will be the infusion of cash to the beleaguered PCA. "They can be in a position to survive. But they need an injection of capital from somebody—either the FICB or FCA," says Brandt, who was recalled from retirement to work out the loan problems. "If the Spokane FICB does it, the money would come out of the hides of the other PCA borrowers in the district. If the federal government does it, it would be the taxpayers of the U.S. providing this temporary support to the system."

There's no question that the PCA—like the entire Farm Credit System— has an excellent repayment history. For more than four decades, from 1934 to 1978, the Willamette PCA advanced a total of $900 million. Yet during that period, it kept cumulative loan losses under $500,000, or less than one tenth of one percent of loans advanced. "In short," a U.S. district court judge observes, "the great majority of these borrowers repay their debts."

FCA officials still maintain that any attempts to revive the Willamette PCA with the $112-million revolving fund would be imprudent. "Such an investment would be made only if there appeared to be a reasonable likelihood that it would be sufficient to return the institution to viability and that it could be repaid," says FCA spokesman Ron Erickson. "In view of the small amount of the fund relative to the assistance needed in the troubled PCAs in the Spokane District, it was our judgment that a fund intended as a backstop for the entire system should not be depleted in one district in what appeared to be a futile gesture." ◁

Withholding Of Economic Emergency Funds Widely Rapped —

Same Judge Who Ordered Loan Fund Release Asked To Intervene Again

U.S. District Judge Thomas A. Flannery, the man who forced the USDA Farmers Home Administration to reinstate the Economic Emergency Loan Program in a court order issued last October, has been asked to intervene again.

This time the Washington, D.C. judge has been asked to overrule an FmHA decision to allocate only a minor fraction of the $600 million for use in the insured loan program. At the direction of the Office of Management and Budget (OMB), Farmers Home ruled that only $50 million would be used in the insured direct loan program and $550 million in guaranteed loans. The latter are at a higher interest rate.

The appeal to Judge Flannery was made by U.S. Sen. Walter Huddleston (Ky.), one of the sponsors of the 1981 legislation which renewed the Economic Emergency Loan Program. The Kentucky Senator pointed out that during the history of the loan program, since it was created in 1978, the bulk of the $4.85 billion in loans issued was in direct loans and that Congress assumed the same when it renewed the program authority.

Sen. Huddleston asked the federal judge to rule that the OMB/FmHA conduct of the program was not consistent with his Final Judgment and Order in the Case of Kjeldahl v. Block.

Meanwhile, plaintiffs who brought the original court action are reported to be preparing to sue again if needed.

Congressional protests of the FmHA action have been many. At a Feb. 2 hearing before the House Agriculture Conservation and Credit Subcommittee, Undersecretary of Agricullture Frank Naylor and FmHA Administrator Charles Shuman were sharply questioned by subcommittee members.

Naylor termed the split of loan funds between insured and guaranteed loans "a good balance," and claimed it was too early to tell if there would be substantial demand for the guaranteed loans.

However, the $50 million allocated to insured loans was used up during the first three weeks of the program while only $28 million had been issued in guaranteed loans.

Naylor said that he has noted "very significant interest in the banking community" in the guaranteed loan approach.

Pressured by subcommittee members, Naylor said that the split of the funds might be reviewed later in the year. "We are at the very beginning of the lending season," he offered.

Joining in demands for a fairer allocation of the loan funds were Representatives Ed. Jones (Tenn.), subcommittee chairman; Tom Harkin (Iowa); Jim Oberstar (Minn.); Tom Coleman (Mo.); Tom Daschle (S.D.); Dan Glickman (Kan.); Berkley Bedell (Iowa); Robin Tallon (S.C.); Bob Thomas (Ga.); and Dick Durbin (Ill.).

Rep. Daschle termed the OMB/FmHA decision a "disastrous" one and urged a substantial increase in the funds for direct loans.

Insured loans usually carry interest rates of 10.25 to 10.75%, while the guaranteed loans are at the market rates charged by commercial banks. This would make a 2 to 3% difference in the rate to be charged to farm borrowers.

Rep. Oberstar charged that the Department is "insensitive to the economic plight of farmers" and noted that in the early years of the loan program, 95% of the funds were issued in direct loans.

Rep. Harkin said that if he were a judge in court he would find the loan agency heads guilty of "contempt of court."

Stanley Moore, vice president of National Farmers Union, declared recently that the ceiling on direct loans is a "capricious violation of Congressional intent, and totally unjustified.

"At least half of the authorized funding should have been made available for direct loans to producers," Moore contended.

At the same time, NFU President George W. Stone and Executive Committee Chairman Cy Carpenter called for the removal from office of both Naylor and Shuman.

Carpenter also asked for a Congressional investigation of the role of the OMB in interfering with the administration of the FmHA.

Farm Union Newspaper 2-10-84

FmHA borrowers receive reprieve

A total of 70,000 borrowers in 44 states are affected by an injunction granted to North Dakota FmHA farmers last spring. The injunction is in effect until a final ruling is made and a lawsuit is settled against FmHA by North Dakota farmers.

Under terms of this injunction, FmHA must provide written notice of foreclosure, inform farmers of their right to seek loan deferral and to have a formal hearing.

"FmHA cannot accelerate a borrower's account, foreclose or repossess security or refuse to release proceeds from sale of secured property without giving the borrower a chance to challenge the action," says Gene Severns, Center for Rural Affairs, Walthill, Nebraska.

SUCCESSFUL FARMING, MACHINERY MANAGEMENT, FEBRUARY [illegible]

Commodity	Parity Price	Prelim. Jan. Price Rec'd	Jan. Price as a % of parity
Wheat, bu.	$ 7.42	$ 3.43	46%
Rice, cwt.	20.40	8.74	43%
Corn, bu.	5.29	3.15	60%
Oats, bu.	3.06	1.76	58%
Barley, bu.	4.94	2.64	53%
Sorghum, cwt.	8.97	4.92	55%
Cotton, lb.	1.25	.639	51%
Peanuts, lb.	.453	.271	60%
Soybeans, bu.	13.00	7.49	58%
Flaxseed, bu.	13.40	6.82	51%
Beef Cattle, cwt.	99.50	56.50	57%
Hogs, cwt.	89.50	47.30	58%
All Milk, cwt.	23.10	13.70	58%
Mfg. Milk, cwt.	21.04*	12.60	60%*
Eggs, doz.	1.17	.961	79%
Wool, lb.	2.23	.637	29%

* Parity equivalent for manufacturing milk
Source: USDA "Agricultural Prices" Report 1 31 84

Farm and Home 2-15-84

Key Shelter

USDA plans to streamline FmHA program

A PLAN to streamline the USDA's Farmers Home Administration (FmHA) guaranteed farm loan program is expected soon from a study group of government and private credit specialists, Charles W. Shuman, administrator of the agency, announced Jan. 19.

The study group this month will recommend the establishment of an approved lender program, Shuman said, that will permit greater participation in FmHA lending by private credit institutions and provide faster loan service to farmers.

The proposal, expected to be in operation in March, will benefit "those farmers who are caught in what we might call a credit availability gap — those who do not quite meet the commercial agricultural loan institutions' standards or who may need help in making the transition from direct Farmers Home Administration loans to regular commercial agricultural lenders," he said. "All FmHA borrowers are expected to graduate to commercial credit when they are able to do so."

FmHA, USDA's rural credit agency, makes loans to farmers and other rural residents who cannot obtain credit from private commercial lenders.

Under the program, qualifying banks and other lenders already in the farm credit field would be approved in advance to process loans to applicants found eligible by FmHA. The agency is authorized to guarantee up to 90% of such loans.

The proposal has been developed over a 6-month period by representatives of FmHA, the Agricultural Bankers Division of the American Bankers Association, the Cooperative Farm Credit System and the Independent Bankers Association, with advice from the Small Business Administration and the General Accounting Office. The team leader is Russell Beckham, deputy director of FmHA's farm real estate and production loan division.

Net worth gets cold shoulder from lenders

It's no secret that the love affair between lenders and net worth is over, only to be replaced by cash flow. Not only has net worth been cast aside, but it may slip away overnight.

Brett Anderson, Des Moines, Iowa attorney, reports that some lenders are devaluing farm assets by 35-50%. "You can imagine the adverse effect on even good borrowers," he says.

Tim Taylor, First of America Bank, Holland, Michigan, agrees that some banks are lowering farmers' equity on the basis of land and machinery values. "Depending on the situation, it's possible for a farmer to end up with a negative net worth," he says.

Rex Schultz, Federal Intermediate Credit Bank, Omaha, says that some balance sheet values may be overstated. "In some areas, a PCA working with a distressed farm operation, may realistically devalue assets," he says.

Farm machinery and equipment are prime targets. Anderson explains, "A lot of machinery is on the market as a result of forced sales, and poor timing has resulted in low prices."

"Demand for machinery is spotty," says Oliver Hansen, Durant, Iowa banker. "Some bankers have reduced the balance sheet value of big ticket items by as much as 30%."

Land values also are vulnerable. Taylor points out, "There's not much land on the market to set value, but we expect more soon."

"Land sales show values down 15-20%, and farmers are depreciating machinery at least 10%," adds Jerry Olson, Lancaster, Wisconsin PCA. "Large equipment could drop 20%."

"One effect of a decline in equity and a renewed emphasis on repayment ability is a drop in lending capacity," Anderson says.

But Tom Langemeier, South Central Iowa PCA, Creston, points out, "In a situation involving refinancing or a sale, a hard look at balance sheet values is necessary. For an ongoing farm customer, asset value is academic."

Farm morale needs boost

Bankers, attorneys and financial consultants are predicting continuing tough times in farming in 1984.

"In 1983, a lot of big operators reached their day of reckoning, but smaller farmers will come to the end of their rope in 1984," Don Kelley, North Platte, Nebraska attorney, believes. "Many have been hanging on in hopes that PIK and lower interest rates would save them."

Bob Plager, Freeport, Illinois attorney, points out, "Tough times are here—even in this conservative area. We're feeling the problems of 1982 without the benefits of 1983, and I expect there will be liquidations and reductions among farmers who have owned land for several years," he says. "The cause may be bad marketing, or an imbalance of short-term debt, but it isn't because they were high flyers."

"I've had a half dozen calls recently from farmers whose backs are against the wall," says Randy Fiddelke, Agri-Consultants, Manchester, Iowa. "These farmers were told they only had two weeks to 30 days to present a liquidation plan or to pay lenders."

Refinancing problems

According to the Annual Credit Outlook survey by the American Bankers Association, about 3.6% of farm loans were delinquent for more than 30 days, compared to 3.9% a year ago. A total of 78% of banks have farm borrowers who no longer qualify for financing—about the same as a year earlier. However, these figures were compiled prior to the impact of severe and widespread drought.

"Our bank and all ag banks are experiencing more loan problems," says Marion McMillan, Trego WaKeeney State Bank, in WaKeeney, Kansas. "Workouts are extremely tough and refinancing of short-term bank debt has been hurt by the drying up of long-term credit sources. Our local Federal Land Bank said that 80% of applications for refinancing are being denied. The local Farmers Home Administration has turned down about 50% of refinancing applications."

He adds, "Farmers and their bankers are taking a close look at financial statements and asking, 'Is this asset or enterprise adding significantly to the bottom line?' This includes considering possible partial liquidation of real estate holdings to reduce debt."

"Few farmers think the coming year holds much promise," Kelley says. "There's no optimism out here." Plager agrees. "It's unusual for farmers to be down at this time of year, and perhaps the feeling isn't justified, but it's there," he says.

innovations

PRESCRIPTION DRUG ABUSE CONTROL: THE WISCONSIN APPROACH

by Keon S. Chi

SUMMARY

Until recently, Wisconsin was no exception to the growing nationwide trend of growing prescription drug abuse and diversion. Today, however, Wisconsin is regarded as a model state in dealing with controlled substances and in helping federal agencies as well as other states. Wisconsin's programs and activities in reducing prescription drug abuse, especially amphetamine abuse, have received national attention. The model program was presented in 1979 to Congressional hearings and a special meeting sponsored by the White House. Congress adopted legislation in 1980 requiring the U.S. Attorney General to provide reports to all states based on the approach pioneered by Wisconsin; and the Wisconsin approach was featured in 1980 at the White House Conference on Prescription Drug Misuse, Abuse, and Diversion. The innovative aspect of the Wisconsin model lies in cooperative efforts among several regulatory agencies in the state to stop diversion of controlled substances by a small percentage of doctors and pharmacists. A comprehensive program has been coordinated by a state agency—the Controlled Substances Board—assisted by professional licensing boards and law enforcement agencies in the state. Subsequently, the sale and abuse of amphetamines has decreased drastically, by more than 90 percent, within a period of two to three years. During that period, the State Medical Society issued strict prescription guidelines for amphetamines; the Pharmacy Examining Board conducted an audit of pharmacies; the Medical Examining Board investigated physicians and promulgated an administrative rule; and the state Department of Health and Social Services restricted Medical Assistance payments for amphetamines to only a few legitimate uses.

The Wisconsin experience exemplifies what interagency cooperation can achieve in combating the prescription drug abuse problem. State-federal coordination has also helped a great deal. Equally significant has been reducing the sale of amphetamines without corresponding increases in sales of other controlled substances, at least during the period surveyed.

AUG 04 1983

The author wishes to thank Robert T. Angarola, formerly with the White House Domestic Policy Staff, now a partner in the law firm of Hyman and Phelps, P.C., Washington, D.C.; W. Wayne Bohrer, Chief, State and Industry Unit, Drug Enforcement Administration; Charles E. Barner Jr., assistant secretary, Florida Department of Professional Regulation; Ernest Sjoblom, Director, Missouri Bureau of Narcotics and Dangerous Drugs; and especially David E. Joranson, drug abuse specialist and staff to the Wisconsin Controlled Substances Board, for their generous help in collecting data for this study. For further information on the Wisconsin approach to prescription drug abuse control, contact David Joranson (608) 267-7704, or the Innovations Transfer Program staff (606) 252-2291, The Council of State Governments, P.O. Box 11910, Iron Works Pike, Lexington, Kentucky 40578.

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Controlling Amphetamine Abuse

Wisconsin, in the past, was similar to other states in the sizable number of prescription drugs sold on the street. In addition, Medicaid recipients were obtaining prescriptions, then selling drugs at a profit.

Wisconsin's comprehensive approach to control prescription drug abuse began in 1976 when the Controlled Substances Board (CSB), through the Drug Enforcement Administration (DEA), learned about physicians purchasing large quantities of amphetamines (Biphetamine 20). Biphetamine 20, available in the illicit market as "black Cadillac" or "black beauty," contains a combination of amphetamine and dextro amphetamine both of which were subject to the strict regulatory control of Schedule II of the state Controlled Substances Act.

The manufacturer's product information calls for Biphetamine 20 to be prescribed for exogenous obesity. The amphetamine product was chosen for investigation by the CSB for two reasons: first, the drug was widely available in the black market; and second, Wisconsin state officials were able to obtain the product's purchase data from the DEA's Automation of Reports and Consolidated Orders System (ARCOS), a computerized record of manufacturers' and distributors' reports of retail purchases.

The analysis of the 1975 purchase information on Biphetamine 20 showed that of 922,700 dosage units purchased by state practitioners, 26 individuals purchased 118,300 dosage units, or about 13 percent of the total purchases. The 26 included 20 physicians; three osteopaths; two dentists; and one podiatrist. The top five practitioners were connected with 71 percent of the purchases; and 10 of the 26 dispensing practitioners were from the urban Milwaukee area.

Concerned about such high concentrations of amphetamines in the Milwaukee area, the CSB in 1977 shared its analysis of the ARCOS data with the state pharmacy and medical licensing boards, requesting that they determine the legitimacy of the dispensing or prescription of the drugs. Specifically, the CSB asked the Pharmacy Examining Board (PEB) to review the physicians' prescription patterns. At the direction of the PEB, state pharmacy inspectors conducted an unprecedented prescription audit at 10 pharmacies that had purchased the largest quantities of Biphetamine 20. The results, which were subsequently sent to the Medical Examining Board (MEB), showed that of the total 10,202 prescriptions filled, approximately 83 percent or 8,432 prescriptions were written by eight physicians.

Utilizing these statistics, the CSB sponsored a symposium on "Diversion of Licit Controlled Substances" which was attended by state leadership of the medical, dental, nursing, and pharmacy professions and licensing authorities, and representatives of state and federal health and law enforcement agencies. The timely symposium in 1977 was widely publicized by the news media throughout the state.

The action taken by the Wisconsin MEB was equally swift. The board promptly initiated investigations of 60 physicians, while the board began to clarify its position on the medical safety and usefulness of amphetamines. The MEB concluded that there was no statistically reliable evidence showing that the drug had lasting positive effects in treating obesity and that there existed a high potential for abuse.

At the same time, it was acknowledged that amphetamines are medically useful for the treatment of some conditions such as narcolepsy and hyperkinesis. It was in this context that the state MEB issued an administrative rule under the state medical practice act which, in effect, made the prescribing of amphetamines, along with phenmetrazine, in the treatment of obesity, "unprofessional conduct." In addition, the rule was designed to permit the use of amphetamines in cases such as treatment of narcolepsy, hyperkinesis, drug-induced brain dysfunction, epilepsy, depression shown to be refractory to other therapeutic modalities, the differential diagnostic psychiatric evaluation of depression, or the clinical investigation of the effects of such drugs.

The MEB's initial administrative rule restricted all anorectic drugs in Schedules II, III and IV. But the rule was later amended to apply only to Schedule II drugs and took effect in 1977. Since 1977, the MEB has received only seven requests for exceptions to the new amphetamine rule. Of these requests, only three were granted: two relating to research and one for a patient with diabetic neuropathy.

Faced with the growing concern about amphetamines, the Wisconsin Department of Health and Social Services (DHSS) conducted an investigation of Title XIX (Medical Assistance) claims for amphetamine prescription. As a result of the investigation, the DHSS in 1977 stopped reimbursement of Title XIX claims for all Schedule II, III and IV amphetamine and anorectic products, unless a prior authorization had been approved. Title XIX prior authorization requests have been reviewed by the Bureau of Health Care Financing (BHCF) within the DHSS. Since the inception of the policy, according to the BHCF, only 10 to 15 requests have been received monthly, the majority from psychiatrists for depression ("unresponse to ordinary medications and treatment") and from pediatricians for the "hyperactive child." BHCF staff estimate that the annual Medicaid reimbursement level for amphetamines dropped from $100,000 in 1976 to approximately $1,000 in 1979.

Controlled Substances Board

The cooperative approach in controlling drug abuse, as described above, has been directed and coordinated by the Controlled Substances Board, an agency created

in 1970 by the state legislature. The Board, established by Chapter 161 of the Wisconsin Statutes, is authorized to administer certain provisions of the Controlled Substances Act (CSA), including proper placement of psychoactive drugs having abuse potential into the schedules of the act, and granting special authorizations to permit nonpractitioners involved in research, teaching and other functions to possess controlled substances.

The Board serves as an advisory agency on drug abuse to the public, the legislature, state departments and agencies, and to the State Council on Alcohol and Other Drug Abuse, of which the CSB is a member. The Board also provides technical assistance to various state agencies and individuals to interpret provisions of the CSA, and revises and publishes the schedules of controlled substances.

The Board membership consists of the state Attorney General; the Secretary of the Department of Health and Social Services; the Chairman of the Pharmacy Examining Board; the Secretary of the Department of Agriculture, Trade and Consumer Protection; a pharmacologist and a psychiatrist—the latter two appointed by the governor for three-year terms. Staff services for the six-member Board are provided by the DHSS' Office of Alcohol and Other Drug Abuse.

Since 1970, the CSB, in cooperative efforts, has conducted annual symposia to help public and professional understanding of drug abuse and controlled substance issues. Symposia topics have included the abuse of aerosols and inhalants; use of narcotic antagonists; the role of law in the social control of drugs; diversion of licit controlled substances; and use and diversion of sedative hypnotics. The CSB has also been involved in reviews of sale and control of "look-alikes," phencyclidine (PCP); and use of Delta 9-THC for cancer patients. Since 1976 the Board has paid most attention to control of diversion problems involving amphetamines, sedative-hypnotics, narcotics and "Ts and Blues."

Cooperative Approach

The cooperative effort undertaken by Wisconsin officials was subsequently formalized in a 1980 memorandum ("Memorandum of Cooperation for Controlling Diversion of Controlled Substances in Wisconsin"). A review of the memorandum will illustrate how the agencies have actually been able to realize interagency and state-federal cooperation.

Parties to the memorandum were the Controlled Substances Board, Pharmacy Examining Board, Medical Examining Board, Dentistry Examining Board (DEB), Veterinary Examining Board (VEB), and U.S. Drug Enforcement Administration. The memorandum was designed to develop and maintain a high degree of cooperation between state agencies and the federal government by strengthening working arrangements between them. In the memorandum they agreed that the CSB, because of its composition and its statutory relation to the Uniform Controlled Substances Act, would serve as a focal point for coordination of agency efforts, prepare reports for the public, state agencies and the DEA describing controlled substances distribution patterns and trends, monitor overall observance of state amphetamine regulations, and participate in periodic work-planning and coordinating meetings with state agencies and the DEA.

On the other hand, the PEB, MEB, DEB, and VEB reaffirmed their authorities and responsibilities for initiating investigations of their practitioners and adjudicating violations of the non-criminal ethical controlled substances law. They specifically agreed to: (1) participate in periodic work-planning and coordinating conferences with other state agencies and DEA; (2) provide the DEA with information on the initiation of results of any controlled substances and license investigations and of actions concerning Wisconsin practitioners; (3) regularly analyze controlled substances purchase reports from CSB and DEA and initiate investigative and regulatory actions; (4) undertake specialized projects to monitor and foster compliance with controlled substances law; (5) provide the DEA with complaints or any other information concerning registrants (manufacturers, distributors, etc.); and (6) report suspected criminal activities to enforcement agencies.

The Drug Enforcement Administration agreed to: (1) provide annual ARCOS reports (drug category, excess purchase, other special reports) to the CSB, MEB, and PEB; (2) review triplicate order forms routinely and provide reports to appropriate state licensing boards for follow-up; (3) refer all pertinent information and complaints concerning state-licensed registrants to the appropriate licensing board; (4) not conduct investigations of community level registrants unless in coordination with state boards; (5) notify state licensing boards of the initiation or results of regulatory or criminal investigations and actions against Wisconsin registrants; (6) conduct drug accountability investigations of drug manufacturers, wholesalers, distributors, and packagers to determine the adequacy of their reports; (7) routinely notify the appropriate state boards when excessive sales of controlled substances to Wisconsin registrants are discovered; (8) conduct joint field investigations or audit with personnel of state agencies; (9) provide assistance to state and local associations of Wisconsin pharmacists for the purpose of upgrading their approaches to the prevention of theft of controlled substances from pharmacies; (10) provide annual reports to CSB and PEB describing the previous year's experience concerning theft of controlled substances from Wisconsin pharmacies; and (11) participate in mutually arranged periodic work planning and coordinating conferences with state agencies.

In December 1981, the Wisconsin Legislature unanimously passed Assembly Bill 930, requiring the CSB to enter into formal agreements with state and federal

agencies to control the abuse of prescription drugs and to monitor cooperation between the agencies involved. The legislation recognized the value of interagency cooperation in diversion control and strengthened the CSB's authorities and responsibilities in further reducing drug abuse and diversion in Wisconsin.

Results

The results of Wisconsin's cooperative approach in controlling prescription drug abuse are surprising. The DEA's computerized data system, ARCOS, showed a sharp decline in amphetamine purchases in Wisconsin within the first two years: from approximately 40,000 grams in 1976 to under 4,000 grams in 1978. As shown in Figures 1 and 2, the sale of amphetamines between 1976 and 1980 to physicians, pharmacists and hospitals dropped by 92 percent. In 1976, Wisconsin ranked 26th among the states in per capita consumption of amphetamines; but by 1979 the state ranked 50th in the nation.

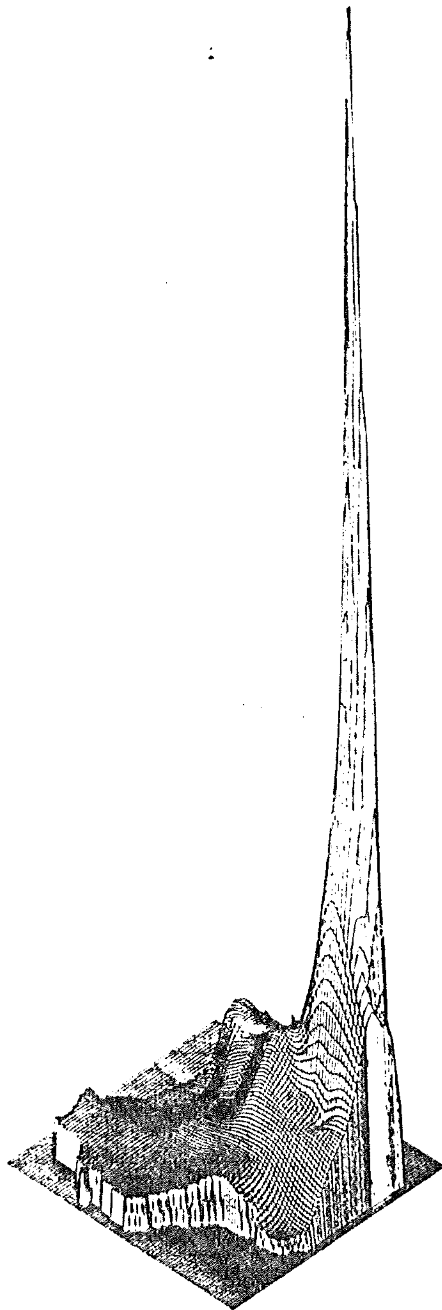

Fig. 1 Amphetamine Grams Purchased in 1975

The decline in amphetamine purchases has also been correlated with a decrease in amphetamine-related arrest rates, as reflected in arrest data from police departments in the Milwaukee area (103 in 1976 to 76 in 1977, to 23 in 1978, to six in 1979, and nine in 1981). The decline in arrests for illegal sale of amphetamines was confirmed by a separate survey of law enforcement officials conducted by the state Justice Department. (Incidentally, the DEA arrested two physicians who were responsible for writing over 10,000 prescriptions. They were subsequently convicted in federal court for unlawful distribution of a controlled substance.)

Furthermore, amphetamine restrictions have received favorable reaction from drug abuse treatment providers in the state. Available statistics on amphetamine purchases in Wisconsin appear to substantiate the recent pronouncement to the CSB by David Joranson, a drug abuse specialist and CSB staffer: "The diversion of amphetamine-related drugs from legitimate sources—physicians and pharmacists—is all but gone."

A significant implication of the Wisconsin experience is that there has been no correspoding increase in purchases in drugs in Schedule III or IV. There has been, instead, an apparent decline in the sale of other drugs. Between 1976 and 1979, for instance, data from a small sample of Wisconsin drug distributors indicate that purchases of one Schedule IV anorectic decreased 77 percent, while purchases of another Schedule IV anorectic decreased 49 percent. Sale of methaqualone, a commonly abused sedative sold under brand names such as Quaaludes and Sopor, dropped 90 percent between 1976 and 1981; sale of amorbarbital decreased by 84 percent during the same period; and by 1982 the sale of phenmetrazine, a stimulant, dropped 99 percent.

It has been noted earlier that Wisconsin has drastically reduced reimbursement by the Medical Assistance Program for amphetamine prescriptions. It is also worth noting that the state has continued to take measures to curb drug abuse among recipients of the Medical Assistance Program. In 1981, for example, Wisconsin state

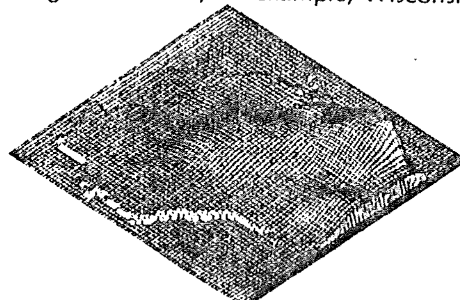

Fig. 2 Amphetamine Grams Purchased in 1980

officials, utilizing the Medicaid Management Information System, identified 140 Medicaid recipients who were charged with abusing drugs, including narcotics, sedatives, tranquilizers and soporifics.

Although a majority of drug recipients obtained prescriptions from a few physicians and pharmacists, some sought drugs from as many as 45 different physicians and 35 different pharmacies in 12 communities in the state. And it was found that over 38 percent of the total prescriptions were obtained from four physicians, who later were charged with drug abuse "for the price of an office call, a drug dispensing fee, or other gratuities." These findings are the result of cooperative efforts between Medicaid and other health insurance agencies. In addition, the Medical Assistance Program pharmacy consultant is a member of the CSB.

Although the Medicaid primary provider program in Wisconsin has contributed to helping the primary physicians and/or pharmacies manage the recipient's drug abuse problem, an alternative approach has been initiated in the state whereby pharmacists' dispensing practices are readily identifiable by the Medicaid program. The alternative—known as the Pharmacy Primary Provider Program—has proven to be more effective in controlling drug abuse; and the new program has eliminated legal problems associated with the Medicaid primary provider program, such as those involving recipients' civil liberties, confidentiality issues, and the time-consuming administrative appeal process.

Evaluation

Some national advisors consider the Wisconsin program "the most farsighted and innovative" in the nation, according to Robert T. Angarola, who served for several years in the White House Drug Policy Office. The success of Wisconsin's Controlled Substances Board is attributable to several factors, among them the positive attitudes and approaches of state government officials, cooperation among professional societies in the state, and the use of new techniques in data collection and analysis.

The CSB in Wisconsin has demonstrated that it has a lasting plan, instead of a "quick-fix" program, to reduce prescription drug abuse problems. State officials, supported by legislative measures, established a permanent government agency—the Controlled Substances Board—with broadly-defined authority to coordinate the prevention and control of prescription drug diversion, emphasizing interagency cooperation.

The Wisconsin experience might be looked at from another angle: that is, the CSB began with a cooperative approach and early recognition that prescription drug abuse was not merely a law enforcement issue. The CSB then devoted more attention to working within the regulatory and peer pressure framework.

Close cooperation among the regulatory agencies has been a major strength of the Wisconsin program. In particular, the willingness of the leaders of the MEB and the PEB to take preventive measures and to conduct self-evaluations and investigations has been an important source of the program's success. Further, state government officials, before taking action, have been receptive to ideas and concerns of various interest groups representing medical and pharmaceutical industries in the state.

The fact that Wisconsin was the first state to use the federal drug information system along with the state system as a source of information should be noted here in measuring the effectiveness of the Wisconsin approach. The ARCOS data, combined with the computer cartography technique developed in Wisconsin, provided a comprehensive picture for identifying the amphetamine problem areas.

As a result of the amphetamine control experience, the CSB has also been able to identify diversion problems involving other prescription drugs. The ARCOS data has provided necessary information on several drugs in Schedule II, and Wisconsin officials have been able to pinpoint suspected overprescriptions. Perhaps the Wisconsin program could not have been as efficient as it has been without direct communication and cooperation between the CSB and the DEA.

Initiatives at the National Level

Prescription drug abuse, although not as well recognized as illegal drug abuse, has been a nationwide problem in the United States for many years. A 1979 national survey showed that the use of prescription drugs was second to the use of marijuana. Moreover, health hazards are not less serious than those of illegal drug abuse. A recent GAO report shows, for instance, that 75 percent of the most frequently mentioned controlled drugs in the Drug Abuse Warning Network (DAWN) emergency room reports in 1980 were prescription drugs.

Currently over 20 billion dosage units of some 20,000 drug products, which are controlled under federal law, flow through over 625,000 registered manufacturers, distributors and dispensers. And, of those, nearly 99 percent involve retail level practitioners—physicians, dentists, pharmacies, veterinarians, hospitals and educational institutions.

Controlling prescription drugs is a joint responsibility of states and the federal government. At the federal level, the legal framework for controlling drug abuse was established by Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, commonly referred to as the Controlled Substances Act. Although the Drug Enforcement Administration, created in 1973, is the lead agency of the federal government in enforcing controlled substances laws and regulations, the DEA's administrator, since 1982, reports to the director of the FBI, who is authorized to supervise drug enforcement efforts. Currently, some 200 DEA diversion investi-

gators enforce regulation of the legal manufacture and distribution of prescription drugs.

Two pilot projects have been initiated recently by the DEA. Operation Script was begun in 1979 to identify high-level violators. Although the DEA concentrated nearly 500 prescription drug investigations in 24 cities, and although about one-third of the targets had been convicted or had lost their medical or pharmacy licenses through revocation, suspension or surrender, the project failed to meet its objectives, according to a 1982 GAO report. In 1981, the DEA initiated a permanent program, the Targeted Registrant Investigations Program (TRIP), designed to focus DEA investigations on retail violators.

According to a recent DEA survey of state health-care-related regulatory agencies and professional associations in 50 states, the most serious source of prescription drug diversion is pharmacy theft. Nationwide, the number of drug thefts reported to the DEA since 1976 has risen by 29 percent, and retail pharmacies account for most, if not all, of these thefts. To deal with drug thefts, the DEA, in addition to the Pharmacy Theft Prevention Program which became fully available in 1977, created the Registrant Drug Theft Program. Its purpose was to develop a proposed amendment to the 1970 Controlled Substances Act which would provide for mandatory minimum sentences in violent drug theft situations. Under that program, most states are expected to revise their statutes.

Between 1978 and 1980, two congressional hearings and a White House conference were held to discuss desirable courses of action to control the diversion and abuse of prescription drugs. Major themes of the hearings and conferences have centered around the need for coordinated efforts involving the three levels of government in cooperation with professional organizations and regulatory, licensing and law enforcement agencies.

The 1980 White House conference made specific recommendations so that states and localities would have more timely access to DEA's ARCOS information and use of DAWN or a statewide mini-DAWN system. Responding to these recommendations, DEA has changed ARCOS reporting from annually to quarterly, and the agency has also adopted Wisconsin's "mapping" technique for targeting practitioners most likely to be diverting drugs.

One significant development is that the American Medical Association (AMA) is currently in the process of devising a new model plan to help states determine the extent of drug abuse and diversion. The model plan is patterned after Wisconsin's approach and is known as Prescription Abuse Data Synthesis (PADS). The model synthesizes data from several different sources for use by states: Automated Reports and Consolidated Orders System (ARCOS); Drug Abuse Warning Network (DAWN), which is a record of drug mentions from drug-related emergency room visits in 26 major metropolitan areas; statistics on theft of controlled substances collected by the DEA; Medicaid Management Information System (MMIS) involving state records of reimbursement for medical assistance services; state crime laboratory reports regarding drug-related investigations; drug abuse treatment program admissions; and drug-related arrests by local law enforcement agencies. The AMA expects to complete the PADS model in 1983, and drug abuse agencies in each state will be able to have access to it.

Four Categories of Errant Prescribers

Joseph H. Skom, MD, clinical professor of medicine at Northwestern University Medical School, Chicago, and chairman of AMA's Steering Committee on Prescription Drug Abuse, offers four categories for doctors who misprescribe:

- Dishonest—or "script"—doctors probably represent no more than 1 percent of all practicing physicians, but they are responsible for the majority of prescription drugs earmarked for illegal use.
- Disabled doctors are those whose professional competance has been impaired by physical or emotional illness. Impaired physicians are not responsible for much misprescribing, according to available data.
- Dated doctors are poor prescribers because they have not kept pace with developments in pharmacology and drug therapy. They may prescribe excessive amounts of drugs for unusually long periods, prescribe drugs that are not appropriate for the condition being treated, or prescribe drugs when another type of therapy is indicated.
- Duped doctors have ethical intentions but misprescribe because they accede to pressure from patients who are drug abusers or who wish to obtain drugs for sale to others.*

*From *American Medical News*, November 12, 1982.

Transferability

The role of states in controlling prescription drug abuse should be reemphasized. The states are the most appropriate level of government to solve the prescription drug abuse problem since states, in addition to their enforcement capabilities, hold regulatory authority over the licenses of physicians, pharmacists, veterinarians and dentists who divert drugs into the illicit market.

Obviously, many states have not implemented effective methods of curbing drug problems. In fact, most states lack a single agency for administering a program of interagency diversion control and prevention. In Wisconsin, the addition of these new responsibilities to an interagency board already vested with controlled substances scheduling authority was a logical and practical choice.

States also administer the Medicaid program, sometimes abused by recipients but more often by providers. Many state governments have not been able to investigate Medicaid fraud, however. According to the U.S.

House of Representatives Select Committee on Aging's 1982 report on Medicaid Fraud Enforcement, many states need legislative measures—to subpoena, arrest, and seize evidence—before Medicaid Fraud Units can investigate and prosecute. The report found that state Medicaid Fraud Units have not been successful in getting interagency cooperation, and that as many as 20 states have not even applied for the 90 percent federal funding for Medicaid Fraud Units because of "the resistance of state Medicaid administrators who do not want to share their powers or have them taken away."

As demonstrated in the Wisconsin approach, additional legislative actions might be necessary to launch a comprehensive program. Presently, the AMA is considering drafting papers on this issue; there is a need to enact legislation to enable authorities to take regulatory and peer pressure action to deal with the diverters before having to go to the criminal justice system.

It appears that state legislators also need to be better informed about the activities of the substances abuse office. In Wisconsin, such knowledge prompted enactment of necessary legislation, since key legislative leaders had been informed of the situation.

Additionally, states can learn from Wisconsin some lessons having little to do with legal mechanisms. Professional organizations, for example, can initiate and implement various preventive measures to control prescription drugs; statewide or regional conferences and seminars can be held to educate state authorities to take steps to handle the drug abuse problem; and state drug abuse agencies might try to devise ways and means to have law enforcement and medical personnel work closely together in an atmosphere of trust and cooperation.

Other States

Florida is often cited as another model state with innovative programs to control prescription drug abuse. As a result of the 48-hour delay rule and educational programs initiated in 1977, for example, the number of methaqualone and amphetamine prescriptions was reduced by more than 70 percent. In 1980, the Florida legislature approved the creation of 12 investigator positions within the Department of Professional Regulation (DPR), which regulates 32 professions, including physicians, osteopaths, dentists, podiatrists, veterinarians, naturophathic physicians, nurses and pharmacists.

The investigators, through two surveys of pharmacies in 1980 and 1981, helped identify drug prescribers involved in the operation of so-called "stress clinics" in Southeast Florida. Those establishments prescribed methaqualone (Quaalude) to treat young persons with "stress problems." As a result of DPR actions against health care practitioners in "stress clinics," Florida officials report there are now no known "stress clinics" in the state.

The DPR has recently added another dimension to its ability to identify those involved in drug diversion. Through cooperation with the DEA, the DPR began to maintain copies of DEA 222 forms for all drug purchases in Florida. DEA 222 forms must be used by pharmacists when ordering Schedule II drugs from wholesale distributors or other pharmacies. Similarly, medical practitioners must utilize the 222 form when purchasing drugs for office use from pharmacies or wholesale distributors. Effective November 1982, this system enables the DPR to assess whether individual medical practitioners are purchasing Schedule II drugs beyond what is considered reasonable.

Missouri initiated the Controlled Substance Prescription Survey Program in 1981 to detect "inappropriate" prescribing and dispensing practices. Specifically, the survey's purposes are to identify practitioners who prescribe indiscriminately; identify pharmacies filling forged, altered or excessive prescriptions; and to identify "professional patients."

Under the program, prescriptions on file at pharmacies or physicians' dispensing records are hand-recorded by field representatives on forms submitted to electronic data processing. The data are used to generate specific information, such as prescriptions issued to patients by individual practitioners, individual patient records to detect persons obtaining prescriptions from several physicians, and information on files at particular pharmacies for audit purposes.

Administered by the Bureau of Narcotics and Dangerous Drugs within the Missouri Division of Health, the program has generated information used in actions against practitioners as well as patients. In the past two years, over 100 actions have been taken by the bureau, which currently uses four field investigators and two clerical assistants to check 16,000 practitioners.

Conclusion

Wisconsin has been able to eliminate "script doctors," who have been responsible for prescribing large quantities of drugs with abuse potential. The Wisconsin experience would indicate that elimination of sources of diversion has been largely responsible for sales reduction. Some questions still remain to be answered, however.

There could be, for example, more pressure on physicians to prescribe narcotics. The fact is that anyone in Wisconsin who tries to obtain amphetamines and other controlled substances could easily get them from practitioners in other states. And the effects of declining prescription drug abuse on the overall problem of drug abuse has yet to be measured. Nevertheless, the Wisconsin approach could be used as a model by other states contemplating a lasting, single state agency to curb prescription drug abuse and diversion.

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April 1983

13
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TESTIMONY BY THE BOARD OF HEALING ARTS IN SUPPORT OF HOUSE BILL 3037

Attachment # 13

Chairman Frey and Members of the Committee.

The Board of Healing Arts strongly urges the passage of House Bill 3037. This bill represents a cooperative effort by the Board, The Kansas Medical Society, The Kansas Osteopathic Association and the Kansas Pharmacists Association, to deal with a very significant problem in this State. In the following remarks I will try to highlight the problem and then explain why this bill is necessary.

I have attached to my testimony an article which explains in detail the amphetamine problem and the approach Wisconsin took in response to it. It shows clearly how successful the regulation was. House Bill 3037 is modeled after the Wisconsin law, and thus, it is reasonable to assume that similar success would be accomplished here in Kansas.

Put simply the problem is caused by too many doctors prescribing too many amphetamines and amphetamine-like drugs for obesity. Our experience is that this is a statewide problem. I would estimate that at least one-fourth of my time and the Secretary of the Board's time is spent dealing with complaints regarding the prescribing of these drugs. We write between 5-10 letters a month to doctors indicating that they are over-prescribing amphetaimes or similar drugs. In the last 6 months we have formally restricted 11 doctors, prohibiting them from prescribing or dispensing any of these drugs at all. Unfortunately, the indications are that this represents only the tip of the iceberg, since we only become aware of such problems when we receive complaints from individuals, or information from the Drug Enforcement Administration.

The doctors who prescribe or dispense these drugs fall into several categories: First, there are the "script" doctors who write prescriptions simply to make money from the office visits. Second, there are the dispensing physicians who buy large quantities of the drugs and them mark them up 200-300%. Third, there are doctors who are unknowing and misinformed who believe they are being helpful to people who

Atch. 13

need to lose weight. Such doctors do not intend to deliberately mistreat patients. In fact, many are rural general practitioners who have spent many years taking care of the people in their communities.

The consequences of such practices can be devastating. Amphetamines are of little effect in the control of obesity, but have very dangerous side effects. Many patients either abuse the drugs or become addicted to them. The drugs also have a tremendous street value. For example, Preludin, an amphetamine-like drug, has a value on the streets which is ten times what the "patient" pays for it. It is thus easy to see what occurs. A network of people who are somewhat overweight go to unsuspecting doctors who prescribe or dispense amphetamines or similar drugs to them, believing that the drug will help the patient to start a weight-control program. The "patients" pool their pills and then sell them on the streets.

House Bill 3037 will go a long way towards stopping this growing problem. The bill will serve the following objectives:

(1) It will restrict the prescribing or dispensing of all Schedule II amphetamines or sympathomimetic amines to the conditions listed in Section 1, Subsection (b). This effectively means that all amphetamines and drugs, like Preludin, cannot be prescribed or dispensed for obesity. If the Wisconsin experience is any indication, this should put the "script" doctors and the "fat" clinics out of business. After the Wisconsin law went into effect, there was a 97% reduction in the sale of amphetamines.

(2) The bill will have a preventative or deterrent value. The rural unsuspecting doctor would know that these pills should not be prescribed for anyone for obesity. Thus, legitimate patients who in the past may have suffered some dangerous side effects or may have become addicted to the drugs will no longer suffer such consequences. The illegitimate patients will not be able to obtain the drugs, and thus, there is a greater chance that the drugs will not find their way to the streets.

In other words, we will have prevented harm from ever occurring instead of trying to "mop up" in piecemeal fashion after the harm has occurred. In this respect, the bill is analogous to setting air quality standards or adopting building codes, which prevent numerous illness or accidents from occurring.

(3) The bill would also give notice to all our licensees what

the Board's standards are in regard to the prescribing or dispensing of amphetamines or sympathomimetic amines. Presently, the Board's standard is not specifically defined, and thus, licensees can legit-amately argue that they were not aware of it or that inconsistent application can occur. This obviously is not an ideal situation for either the Board or it's licensees. This bill will put teeth into the law and make it much easier for the Board to deal with the prob-lem, while at the same time ensuring that all licensees are treated fairly and equally.

The Board does recognize that there may be legitimate cases of obesity where a drug of this kind may be effective, and perhaps neces-sary. House Bill 3037 addresses this possibility in Subsection (c) of Section 1, which allows Schedule III and IV sympathomimetic amines to be prebscribed or dispensed for a short term period. These drugs, as their scheduling suggests, do not have as high of stimulant effect and thus are not as subject to abuse either by the patient or on the streets. Thus, if used only for a short term they may be effective in obesity treatment, if other methods have not worked. Our experience has shown, however, that when the amphetamines or Preludin are not available, Schedule III and IV drugs will be substituted in their place. Didrex (Schedule III) and Tenuate (Schedule IV) are good examples of such drugs. Thus, it is necessary that the Board have some regulatory power over them as well.

As I indicated before, all interested parties have spent a great amount of time drafting a bill with which we can all live, but which will hopefully solve a serious problem in this State. House Bill 3037 is the product of that effort. We urge the favorable passage of it out of this committee. Thank you.

DGS/sl
Attachment

From

Kansas State Board of Healing Arts

STATE REGULATIONS ON AMPHETAMINES

Arizona
Arkansas
California
Colorado
Florida
Indiana
Iowa
Kentucky
Maryland
Massachusetts
Minnesota
Nevada
New Hampshire
New Jersey
New York
Pennsylvania
South Carolina
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