

Approved \_\_\_\_\_ Date 4-24-84

MINUTES OF THE House COMMITTEE ON Ways and Means

The meeting was called to order by Bill Bunten at \_\_\_\_\_  
Chairperson

12:00 ~~xxx~~p.m. on Wednesday, April 4, 1984 in room 514-S of the Capitol.

All members were present except: Representative Wisdom (excused)

Committee staff present: Jim Wilson, Office of the Revisor  
Lyn Goering, Legislative Research  
Gloria Timmer, Legislative Research  
Ed Ahrens, Legislative Research  
Sherry Brown, Legislative Research  
Bill Gilmore, Legislative Research  
Dave Hanzlick, Administrative Assistant  
Sharon Schwartz, Committee Secretary

Conferees appearing before the committee:  
J. Paul Flower, Director-Real Estate Commission  
Janet Stubbs, Executive Director, Home Builders Assn.  
Terry Cobb (Kirk Realtors) Kansas Assn. of Realtors  
Art Griggs, Counsel-Department of Administration  
Marvin A. Harder, Secretary of Administration

Others present (Attachment 1)

Chairman Bunten called the meeting to order at 12:00 noon.

SB 575 -- relating to real estate brokers and salespersons; ~~certification of-instructors~~; fees; (exemptions and prohibited acts) amending K.S.A. (58-3037, 58-3046a and 58-3063 and repealing the existing sections.

J. Paul Flower explained the bill - he said the original intent for introduction of the bill was to raise the cap on license fees. The Real Estate Commission is requesting a separation of the fees language from items not related. (Attachment 2 - lists the position that the 5 members of the Real Estate Commission is taking on the bill).

Janet Stubbs, representing Homebuilders Association, spoke to the Amendment to SB 575 (Lines 164 through 174). She directed the committee's attention to supporting documents (Attachment 3). The amendment would permit an unlicensed employee of a Builder/Developer to perform the 3 functions listed on Lines 167 through 170 of the bill. Current law permits the Builder/Developer to sell his own property without licensure. This amendment prohibits him from performing the actual "sale" of the property without licensure.

Todd Sherlock introduced Terry Cobb who spoke in opposition to the amendment. The real issue is a problem between Builder/Developers and Realtors. Mr. Cobb directed the committee's attention to a third party, that is the public, which his association is trying to protect. The main objection to the amendment is that the Realtors do not feel that employees of the Builder/Developer are professionally trained to handle a sale, especially in the area of financing. (Attachment 4).

SB 816 -- concerning the mined-land conservation and reclamation act; relating to fees for permit operators; amending K.S.A. 49-406 and repealing the existing section.

Representative Teagarden explained the bill to the committee and then introduced Bill Rinehart of Gulf Oil Corporation and Pittsburg Coal Mining, who offered an amendment to the bill (Attachment 5). Information was distributed which explains their position on the bill (Attachment 6).

Representative Teagarden moved that SB 816 be amended as follows: Page 6-strike all of Line 197, 198; and in Line 199, all before "This". Insert: "Pursuant to paragraph (2) of this subsection (g), the per ton fee, not to exceed 300,000 ton, shall be an amount not less than \$.06 and not more than \$.15 per ton of coal extracted each calendar year.". Representative Miller seconded the motion. The motion carried.

Representative Teagarden moved that SB 816, as amended, be reported favorable for passage. Seconded by Representative Farrar. Motion carried.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Ways and Means,  
 room 514-S, Statehouse, at 12:00 ~~xx~~ p.m. on Wednesday, April 4, 1984

HB 2778 -- concerning Department of H & E; relating to certain fees; amending K.S.A. 65-171d and K.S.A. 1983 Supp. 65-3431 and repealing the existing sections.

Representative Duncan introduced a proposed Substitute for HB 2778 (Attachment 7) which incorporates HB 2727 and HB 2728 into HB 2778. Representative Shriver moved the amendment be adopted. Seconded by Representative Turnquist. Motion carried.

Representative Duncan moved that Substitute for HB 2778, as amended, be recommended favorable for passage. Seconded by Representative Heinemann. Motion carried.

SB 872 -- Appropriations for FY 85, 86 and 87, to initiate and complete certain capital improvement projects for department of Corrections, state correctional-vocational training center, state industrial reformatory, Kansas state hospital and training center, Osawatomie state hospital;

Art Griggs, representing Department of Administration, presented a handout (Attachment 8 and 8a) which gives a breakdown of proposed funding for the various facilities; also an information sheet regarding State Printing Services.

Discussion today centered on a proposed new printing plant for inclusion in this bill. Representative Farrar moved that SB 872 be amended to include appropriations of \$3,278,400 for FY '85 and \$578,500 for FY '86 for a new state printing plant and that this be included in Section 6 of the bill. Seconded by Representative Hamm. Motion carried.

No final action taken this date on SB 872 - further discussion will be held at a later date.

SB 803 -- an act concerning missing or unidentified deceased persons; providing for a repository for information relating thereto; requiring certain reports and providing penalties for failure to make them the collection of certain information to be filed with the Kansas bureau of investigation; amending K.S.A. 21-2501 and repealing the existing section.

Representative Chronister presented an amendment that would include HB 3029 in this bill and moved it be adopted. Seconded by Representative Teagarden. Motion carried. (See Attachment 9 for amendment)

Representative Chronister moved that SB 803, as amended, be recommended favorable for passage. Seconded by Representative Heinemann. Motion carried.

HB 3027 -- an act authorizing attorney general to provide certain legal services for eligible persons engaged in agriculture-related business. This bill was previously heard and chairman asked for final action. Representative Dyck moved that the bill be amended to read as follows: On Page 1, Line 40, following the word "relief", add "UNDER ANY U.S. GOVERNMENT PROGRAM", and on Line 41 following the word "representation", add "OR ADVICE"; following the word "proceeding", add "OR BORROWING", Representative Shriver seconded. The motion carried.

Representative Hoy moved to further amend the bill to read as follows: On Page 1, Line 23, strike the word "other" and after the word "activities", add "Or Other Small Businesses". Several committee members disagreed with the proposal to include other small businesses in the bill. Representative Hoy then withdrew his motion and Representative Meacham agreed.

Representative Dyck moved that HB 3027, as amended, be recommended favorable for passage. Seconded by Representative Farrar. Motion carried.

Representative Helgerson moved that SB 505, relating to insurance companies, be removed from the "tabled" position. Seconded by Representative Luzzati. Representative Rolfs said we might need to look at this sometime, but that now is not the time because we are not sure what the fiscal effect would be. Representative Chronister then moved that due to the lateness of the hour, that we adjourn. Representative Meacham seconded. Chairman Bunten announced that we would discuss the subject at our next meeting. Meeting adjourned at 2:00 p.m.

4-4-84

Name	Address	Representing
1. Fred Bentley	Whiting	Ks Rural Center
2. Van W Wyatt	M Pherson	Ks Farmers Union
3. Jan Maye	Topeka	Ks Assoc of REAERS
4. Jean Duncan	Leannell	Real Estate Commission
5. Lil Brantley	Lawrence	AARP/KRTA, KOA
6. Bob Runnels	Leawood	St. Catholic Center
7. Lois McBride	Topeka	United Way of Topeka
8. Ruth Wilken	"	AAUP - D.S.
9. Bill Ruetter	Tulsa, OK	Gulf Oil Corp.
10. Charles L. Lamm	Topeka - Fork Field	Kans Dept of Health & Environ
11. Dennis Williams	Topeka	Dir. of Budget
12. Paul Johnson	"	PACK
13. Gordon Ganett	"	Kansas Legal Serv
14. D. Ferrell	"	Budget
15. JOE PASHMAN	"	HOME BUILDERS ASS Kansas
16. ANNET STUBBS	"	" " " "
17. Ken Francisco	"	Legislator
18. Dale Smith	Topeka	Dir of Printing
19. William T Smith J.	Topeka	Director of Printing
20. Faith Foster	"	D. of Sch.
21. Art Rogers	"	" "
22. Bill Melaney	"	KLS
23.		
24.		
25.		





April 4, 1984

The Honorable William W. Bunten  
Chairman, House Ways and Means Committee  
Room 514-S  
Capitol Building

STATE OF KANSAS

**KANSAS  
REAL ESTATE  
COMMISSION**

PHONE: (913) 296-3411  
217 East Fourth  
TOPEKA, KANSAS 66603

Dear Representative Bunton:

S.B. 575

I am Paul Flower, Director of the Kansas Real Estate Commission. The following information was compiled after a telephone conference with all five commissioners, this morning.

1. The commission would request a separation of the fees language from items not related.

2. Many builders currently hold a restricted or full broker license depending upon the experience and background information submitted for a waiver of the experience requirement. The commission has the authority to consider what it deems equivalent experience.

3. Lines 164 through 174 do nothing other than clarify the existing interpretation of the statute. The commission does not have a problem with this language, it is our understanding of the law.

4. The public has no license recourse against an unlicensed builder at this time. S.B. 575, as written, would not change this factor. A proposal for a different or limited licensure for a builder would allow a licensure recourse against the builder. However, to be of value, some qualifying examination or standard must be made.

5. If this committee prefers two levels of licensure (homebuilder's and homebuilder's employee) the commission would support such legislation. Again the commission feels that some reasonable examination or standard must be set. If this is the direction of the committee, the commission would especially appreciate the separation of the fees limits from the unrelated items.

Thanking you for any consideration you may give this letter, I remain,

Respectfully yours,

J. Paul Flower, Director  
Real Estate Commission

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- COMMISSIONERS:
- IGNATIUS "ICKIE" KISNER  
1ST CONGRESSIONAL DISTRICT  
STAFFORD
  - DORA L. "SUSIE" PARMER  
CHAIRPERSON  
2ND CONGRESSIONAL DISTRICT  
TONGANOXIE
  - M. W. PERRY III  
3RD CONGRESSIONAL DISTRICT  
OVERLAND PARK
  - TERRY F. MESSING  
VICE-CHAIRMAN  
4TH CONGRESSIONAL DISTRICT  
HUTCHINSON
  - THERESA M. KARLESKINT  
5TH CONGRESSIONAL DISTRICT  
PARSONS
  - J. PAUL FLOWER  
DIRECTOR

MEMBER:  
NATIONAL  
ASSOCIATION  
OF  
REAL ESTATE  
LICENSE LAW  
OFFICIALS



TESTIMONY BEFORE  
HOUSE WAYS AND MEANS  
APRIL 4, 1984  
BY  
JANET STUBBS  
HOME BUILDERS ASSOCIATION OF KANSAS

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

MY NAME IS JANET STUBBS, EXECUTIVE DIRECTOR OF THE HOME BUILDERS ASSOCIATION OF KANSAS WHICH HAS APPROXIMATELY 1800 MEMBERS STATEWIDE.

I WISH TO SPEAK TO THE AMENDMENT TO SB 575 CONTAINED IN LINE 164 THROUGH 174 AND DIRECT THE COMMITTEE'S ATTENTION TO THE ATTACHMENTS TO THE WRITTEN TESTIMONY WHICH HAS BEEN DISTRIBUTED.

PLEASE KEEP IN MIND AS WE DISCUSS THE ISSUE ADDRESSED IN THE AMENDMENT, WE ARE SPEAKING ONLY TO NEW CONSTRUCTION OWNED BY THE BUILDER/DEVELOPER.

WE STRESS THIS POINT BECAUSE WE BELIEVE IT MAKES A SIGNIFICANT DIFFERENCE WHEN THERE IS NO THIRD PARTY OWNER OF PROPERTY TO BE REPRESENTED.

THE AMENDMENT WOULD PERMIT AN UNLICENSED EMPLOYEE OF A BUILDER/DEVELOPER TO PERFORM THE 3 FUNCTIONS LISTED ON LINES 167 THROUGH 170 OF THE BILL.

IT PROHIBITS HIM FROM PERFORMING THE ACTUAL "SALE" OF THE PROPERTY WITHOUT LICENSURE.

CURRENT LAW PERMITS THE BUILDER/DEVELOPER TO SELL HIS/HER OWN PROPERTY WITHOUT LICENSURE.

THE BILL BEFORE YOU IS A COMPROMISE POSITION ON THE PART OF THE HBAK, BECAUSE IT DOES NOT SOLVE THE ENTIRE PROBLEM WHICH HAS BEEN EXPRESSED BY MY MEMBERSHIP.

FOR EXAMPLE, DEVELOPERS TELL ME THEY ARE OFTEN UNABLE TO FIND LICENSED SALESPEOPLE TO SIT DAILY IN A MODEL HOME OPEN HOUSE IN A SUBDIVISION BECAUSE THE MONETARY REWARDS ARE NOT SUFFICIENT TO JUSTIFY THE TIME SPENT THERE.

THE BUILDER IS FACED WITH SITTING IN THE OPEN HOUSE HIMSELF, WHICH IS NOT PRUDENT USE OF HIS TIME, OR HIRING AN UNLICENSED SALESPERSON FOR THE PURPOSE, WHICH IS CURRENTLY PROHIBITED BY LAW.

I AM TOLD IN INSTANCES WHERE THE BUILDER RESORTS TO THE UNLICENSED PERSON, NO COMPLAINT IS HEARD AS LONG AS THE PROPERTY IS LISTED WITH A BROKER AND A COMMISSION PAID THE BROKER.

THE AMENDMENT DOES ADDRESS THE PROBLEM WHERE THE BUILDER/DEVELOPER'S EMPLOYEE IS ON THE SITE AND IS APPROACHED BY A PROSPECTIVE BUYER OR WHERE THE SMALL BUILDER IS OUT OF TOWN FOR A WEEKEND OR ON BUSINESS.

THE INTENT OF PROVISIONS OF THE AMENDMENT IS TO ALLOW THE SITE EMPLOYEE TO AVOID LOSING A POSSIBLE SALE BECAUSE HE CANNOT DISCUSS THE PROPERTY. KEEP IN MIND THIS MAY BE A FOREMAN ON THE CONSTRUCTION WHO WOULD KNOW FAR MORE ABOUT THE DETAILS OF THE DWELLING THAN A LICENSED PERSON FROM A BROKER'S OFFICE.

SINCE INITIATION OF DISCUSSIONS WITH REC AND KAR, THERE HAVE BEEN EXPRESSIONS OF CONCERN REGARDING PUBLIC PROTECTION OF REAL ESTATE TRANSACTIONS.

HBAK BELIEVES THE LAW PROVIDES FOR RESPONSIBILITY OF THE BUILDER/DEVELOPER FOR ACTIONS BY AN EMPLOYEE JUST AS ANY OTHER EMPLOYER IS RESPONSIBLE FOR AN EMPLOYEE.

THE OPPOSITION'S ARGUMENT HAS BEEN THAT LICENSURE ALLOWS PROSPECTIVE BUYERS ACCESS TO THE REAL ESTATE RECOVERY FUND. HOWEVER, K.S.A. 58-3068 (c)(3) SEEMS TO EXEMPT SUCH RECOVERY.

(c) "A PERSON SHALL NOT BE QUALIFIED TO MAKE A CLAIM FOR RECOVERY FROM THE REAL ESTATE RECOVERY REVOLVING FUND, IF:"

(3) "SUCH PERSON'S CLAIM IS BASED UPON A REAL ESTATE TRANSACTION IN WHICH THE LICENSED BROKER OR SALESPERSON WAS ACTING ON THE BROKER'S OR SALESPERSON'S OWN BEHALF WITH RESPECT TO PROPERTY OWNED OR CONTROLLED BY SUCH BROKER OR SALESPERSON."

IT HAS BEEN OUR POSITION THAT RECOVERY OF ANY DAMAGES BY AN AGGRIEVED PARTY FROM A BUILDER/DEVELOPER COULD EXCEED THE AMOUNT TO WHICH HE WOULD BE LIMITED BY THE RECOVERY FUND.

THERE HAS BEEN IMPLICATIONS BY THE OPPOSITION THAT INTRODUCTION OF THIS ISSUE WAS A MEANS OF "OPENING UP" THE REAL ESTATE LICENSE LAW AND SUBJECTING THE PROSPECTIVE HOME BUYER TO INFERIOR INFORMATION ON THE PRODUCT FOR SALE. THIS IS CERTAINLY NOT OUR INTENT AND IT WOULD NOT BE COMPATIBLE WITH THE INTERESTS OF A BUILDER TO HAVE PEOPLE WHO ARE NOT KNOWLEDGEABLE ABOUT THE PRODUCT OR WHO DO NOT MAKE A GOOD PRESENTATION TO THE PUBLIC REPRESENTING HIM. THE FUTURE BUSINESS OF THE BUILDER DEPENDS UPON THE PROSPECT'S CONTACT WITH THE BUILDER'S REPRESENTATIVE.

WE HAVE NOT FELT OUR REQUEST WAS UNREASONABLE, EVEN THE ORIGINAL REQUEST FOR AMENDMENT CONTAINED IN SB 531, IN LIGHT OF THE 1980 LEGISLATIVE POST AUDIT REPORTS' CONCLUSION THAT THE EXPENSE BY THE STATE OF LICENSURE OF SALESPERSONS APPEARED UNWARRANTED DUE TO THE LACK OF EVIDENCE THAT THE PUBLIC WOULD BE HARMED WITHOUT STATE REGULATIONS OF THIS PARTICULAR SEGMENT. THIS WAS BASED UPON THE REVIEW OF COMPLAINTS FILED WITH THE REAL ESTATE COMMISSION IN WHICH A SMALL PER CENT WERE AGAINST SALESPERSONS AND, IN THOSE INSTANCES, THE SALESPERSON'S SUPERVISOR, (EMPLOYER/BROKER), WAS LEGALLY RESPONSIBLE FOR THE ACTIONS OF THEIR EMPLOYEES.

I HAVE NOT BEEN ADVISED OF ANY COMPLAINTS TO THE COMMISSION ON MISHANDLED TRANSACTIONS BY BUILDERS.

WE HAVE DISTRIBUTED A LETTER REGARDING OCCASIONAL SALES FROM THE EXECUTIVE DIRECTOR OF THE REAL ESTATE COMMISSION AND A COPY OF A 1981 LETTER FROM THE DEPARTMENT OF REVENUE TO THE KANSAS ASSOCIATION OF REALTORS REGARDING OCCASIONAL SALES OF MOBILE HOMES.

WE ASK THAT THE COMMITTEE'S DECISION BE BASED UPON THE FOLLOWING:

1. SAVINGS TO THE HOME BUYING PUBLIC OF NEW HOMES. THIS WOULD PROBABLY RESULT IN THE SALE OF AN EXISTING HOME BY A LICENSED SALESPERSON. WE ARE NOT ASKING FOR THE ABILITY TO SELL OUR TRADE-IN PROPERTIES WITHOUT LICENSED PEOPLE INVOLVED.
2. THIS SAVINGS WOULD COME WITH AS MUCH PROTECTION AS A TRANSACTION ON A SIMILAR SALE BY A LICENSED SALESPERSON.
3. THE TRANSACTIONS INVOLVED ARE ON NEW HOMES ONLY AND ARE OWNED BY THE BUILDER/DEVELOPER AND THE REPRESENTATIVE INVOLVED WOULD ALSO BE THE EMPLOYEE OF THE OWNER/DEVELOPER OF THE PROPERTY. THERE IS NO 3RD PARTY OWNER INVOLVED AS THERE IS ON AN EXISTING HOME.
4. WE ARE ATTEMPTING TO MAKE IT EASIER FOR THE BUILDER TO CONDUCT HIS BUSINESS.





*Kansas*  
DEPARTMENT OF REVENUE

State Office Building  
TOPEKA, KANSAS 66626

Division of Vehicles

October 7, 1981

Kansas Association of Realtors  
3644 Burlingame Road  
Topeka, Kansas 66611

Attention: J. W. Mayer

Dear Mr. Mayer:

Our legal department has issued an interpretation of the amendment to K.S.A. 1980 Supp. 8-2401 Sec. (E) as follows:

"The occasional sale of a mobile home by a real estate salesman does not require a mobile home dealer's license. On the other hand, regular repeated sales of such units would probably require a mobile home dealer's license."

We are furnishing you with this opinion to clarify the statement made in your letter to Kansas real estate agents with reference to the requirement of having a mobile home dealer's license for the occasional sale of a mobile home.

If we can be of any further assistance, please feel free to call on us.

Very truly yours

*HBT*  
Harold B. Turntine  
Administrative Aide  
Division of Vehicles

HBT:gju

cc: Jack McCord, Acting Director  
Marcus Woods ✓  
Lowell Wriston



March 20, 1984

The Honorable Ben E. Vidricksen  
Chairman, Subcommittee  
Senate Federal and State Affairs  
Room 143-N  
Capitol Building

STATE OF KANSAS

**KANSAS  
REAL ESTATE  
COMMISSION**

PHONE: (913) 296-3411  
217 East Fourth  
TOPEKA, KANSAS 66603

Dear Senator Vidricksen:

RE: S.B. 531

S.B. 531 provides for exemption from the License Act for employees of homebuilders. The commission and the Kansas Association of Realtors have testified against the bill.

First, a homebuilder may sell his own property regardless of the financial structure of his business. This is provided for in K.S.A. 58-3037 (a) if the business is a proprietorship or partnership; (j) if the business is a corporation. However, this is not the question.

Second, the question is to what limit may an employee of a homebuilder show the property. If the employee is not compensated for showing the home then the commission does not consider the employee to be under the scope of the act. K.S.A. 58-3035 (c) requires the person to be compensated before the activity falls under the jurisdiction of the License Act. The employee, if basically compensated to perform activities related to building the home, could do the following activities so long as the employee was not compensated additionally for the following activities.

1. Escort a prospect who arrives at the property and expresses an interest in the property.

2. Give a prospect who arrives at the property any written information pertaining to the property, provided that such written information contains a statement that it was prepared or authorized by the person, partnership, association or corporation who constructed such home, and point out where certain information may be found therein. If a question arises that cannot be answered from such written information, the employee shall inform the prospect to whom the question may be addressed. The employee shall not make statements concerning the terms and conditions of sale or any other factual representations concerning the property, other than information contained in the prepared statement.

COMMISSIONERS:

IGNATIUS "ICKIE" KISNER  
1ST CONGRESSIONAL DISTRICT  
STAFFORD

DORA L. "SUSIE" FARMER  
CHAIRPERSON  
2ND CONGRESSIONAL DISTRICT  
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THERESA M. KARLESKINT  
5TH CONGRESSIONAL DISTRICT  
PARSONS

J. PAUL FLOWER  
DIRECTOR

MEMBER:  
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Senator Vidricksen  
March 20, 1984  
Page Two

3. An unlicensed employee, who does not qualify for exemption under K.S.A. 58-3037(a) or (j), may not negotiate a contract of sale, arrange any terms of financing other than those stated in the printed material prepared by the homebuilder, or give estimates of trade-in values related to the prospect's property.

This concept is in keeping with the commission's understanding of the law as announced by the Attorney General. You and I, as individuals, can sell our own property. You and I, as individuals, cannot compensate an unlicensed person to sell our property for us. You and I, as individuals, can expect an employee to assist us in selling our own property within the limits of that information or directions which we, as owners, prepare for the employee.

The homebuilders differ from the S & L's, for example. An employee of the S & L currently can sell those repossessions acquired in the normal course of business. In those cases the sale of the property is not a primary activity of the S & L. The sale of homes, not previously occupied, is the expected end result of new home building.

We feel the present law and regulations are adequate and do not need modification.

Respectfully,



J. Paul Flower, Director  
Kansas Real Estate Commission





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SEP 2 1981

KANS. REAL ESTATE COMM.

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

September 1, 1981

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

ATTORNEY GENERAL OPINION NO. 81-207

Kansas Real Estate Commission  
Room 1212  
535 Kansas Avenue  
Topeka, Kansas 66603

Re: Personal and Real Property -- Real Estate Brokers and  
Salesmen -- Permissible Activities of Unlicensed "Tour Guides"

Synopsis: An individual who is employed to act solely as "tour guide" for a developer, and whose functions and duties do not involve assisting or directing in the procuring of prospective buyers or customers or otherwise contravene the provisions of K.S.A. 1980 Supp. 58-3035(c) (8), is not required to be licensed as a real estate broker or salesperson. Cited herein: K.S.A. 1980 Supp. 58-3035, 58-3036.

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Dear Commissioners:

You inquire whether an individual who is employed to act solely as a "tour guide" for a developer violates the proscription provided at K.S.A. 1980 Supp. 58-3036 as that provision is further defined at K.S.A. 1980 Supp. 58-3035(c) (8).

K.S.A. 1980 Supp. 58-3036 states in part:

"No person shall . . . (c) perform or offer, attempt or agree to perform any act described in subsection (c) of K.S.A. 1980 Supp. 58-3035, whether as a part of a transaction or as an entire transaction, unless such person is licensed pursuant to this act."

K.S.A. 1980 Supp. 58-3035(c) (8) states:

"(c) 'Broker' means an individual, other than a salesperson, who, for compensation, engages in any of the following activities as an employee of, or on behalf of, the owners of real estate:

. . . .

"(8) Assists or directs in the procuring of prospects calculated to result in the sale, exchange or lease of real estate."

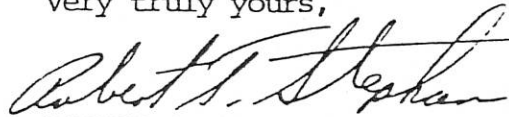
It is our understanding that, in the situation at hand, the "tour guide" will assist the developer, or the licensed real estate broker retained by the developer, by escorting a prospect who arrives at the property and expresses an interest in viewing lots and amenities being offered. The tour guide will not be authorized to make statements concerning the terms or conditions of sale or any other factual representations concerning the project. The tour guide will, however, be permitted to show where such information may be found in the Kansas Public Offering Statement or the HUD Property Report. If a question should arise that cannot be answered by either of those documents, then the tour guide will be required to inform the prospect that only a licensed real estate salesman or broker may answer such questions. Once a prospect has toured the property, he or she will be brought back to the sales office to be interviewed by licensed personnel.

In the context of your inquiry, the crucial question to be resolved is whether the tour guide's stated activities can be construed as assisting or directing in the "procuring of prospects calculated to result in the sale, exchange or lease of real estate." K.S.A. 1980 Supp. 58-3035(c) (8), supra.

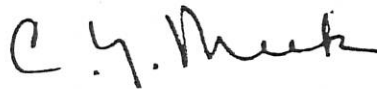
In determining whether 58-3035(c) (8) applies to the tour guide's stated activities, we must ascertain and give effect to the intent of the legislature, as expressed by the language of the statute. Randall v. Seemann, 228 Kan. 395, 397 (1981), and cases cited therein. The terms "procuring" and "prospects" are not defined by the act and, accordingly, must be accorded their ordinary meanings. K.S.A. 77-201, Second; see, also, Personal Thrift Plan of Wichita, Inc. v. State, Kansas Supreme Court, No. 52,592, filed June 10, 1981. In Webster's Third New International Dictionary (1968), "procure" is defined as "to get possession of: obtain, acquire" (at pg. 1809); "prospect" is defined as a "potential buyer or customer" (at pg. 1821).

Given the plain and ordinary meanings of these terms, it is apparent that the legislature intended to preclude persons who are not licensed as real estate brokers or salesmen from assisting in the obtaining or acquiring of potential buyers or customers. Accordingly, it is our opinion that the duties of the tour guide, as previously set forth herein, do not involve assisting in the "procuring of prospects." Rather, once the individual arrives at the developer's property for a tour and expresses interest in seeing the property, the individual has already become a "prospect," i.e., a potential buyer or customer. It follows, then, that the activity undertaken by the tour guide subsequent to this point in time and prior to any sale, cannot be considered as assisting in procuring, since the act of procuring the prospect has been completed at the time of the prospect's arrival. Under these circumstances, therefore, it is unnecessary for the tour guide to be licensed as a real estate broker or salesperson. However, we must caution that this opinion is based solely on the specific facts provided by you, and any deviation therefrom may result in a different conclusion.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General



Christopher Y. Meek  
Assistant Attorney General

RTS:TDH:CYM:may

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SEP 2 1981

KANS. REAL ESTATE COMM.





Executive Offices:  
3644 S. W. Burlingame Road  
Topeka, Kansas 66611  
Telephone 913/267-3610

HOUSE WAYS AND MEANS COMMITTEE

Mr. Chairman and members of the Committee, my name is Terry Cobb and I represent the Kansas Association of REALTORS. Our association is very much opposed to the language in Senate Bill 575, which, if enacted, would statutorily allow non-licensed employees of a homebuilder greater freedom in procuring the sale of new homes to potential homebuyers.

The Kansas Association of REALTORS is very much united on the fact that this particular legislation must be shelved for this session. We take this position based on several very practical reasons. First, the public will be less protected should this become law. Second, the enactment of such a provision could lead to an erosion of a real estate license law which has worked very well in the past. Finally, the Senate Federal and State Affairs Committee appointed a subcommittee to work out acceptable language to both the REALTORS and the Homebuilders. We feel the subcommittee was not given a proper chance to work with us on coming up with acceptable language, if there is any, which would satisfy everyone.

Let me first examine how the public would be harmed by allowing greater freedom on the part of the unlicensed employee to help in the procurement of a sale. I should stress the fact that the license law, with all its built in protections for the home-buying public, will be of no value should an unlicensed employee make negligent or intentional misrepresentations of fact to a potential homebuyer.

-CONT.-

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The license law, KSA 58-3034 et seq., allows a damaged home-buyer several quick, inexpensive methods for relief. First, the Real Estate Commission has control of a real estate recovery fund in the event that an insolvent, licensed broker or salesman makes a misstatement to a homebuyer. The real estate recovery fund does not pay out damages to the homebuyer when an unlicensed employee makes a wrongful statement. Second, the five members of the Kansas Real Estate Commission have the power, provided for them in the license law, to revoke, suspend, or otherwise terminate a license of a licensed salesperson. It is obvious the commission would have no power to protect the public in this regard when dealing with an unlicensed salesperson.

Enforceability of the proposed language by the Real Estate Commission would also be a problem. Since the commission will not have the authority to punish an unlicensed employee should he make factual misstatements, what is to stop the employee from entering into a sales transaction with a homebuyer?

Members of the Kansas Association of REALTORS have another concern when we consider the effects of watering down the license law. The license law, as passed by this legislature several years ago, has served the real estate profession and the property buying public very well. The methods for protecting the public are in place and are working. Anyway you look at it, the language offered in Senate Bill 575 is a significant step towards curtailing legislative control of the real estate selling profession. We fear that exemptions in the license law will be easier to attain down the road should this legislation pass at this late date of the legislative session.

This bill was originally, in a somewhat different form, introduced as Senate Bill 531 in the Senate Federal and State Affairs Committee. The committee in the Senate had seen fit to appoint a subcommittee to work out the differences between the Homebuilders and the REALTORS on this issue. The subcommittee was prepared to sit down and look at the language offered by the Homebuilders and the language proposed by our association. The subcommittee has not had a chance to serve in their appointed capacity. Instead, the Homebuilders introduced a similar measure in the House and the language in Senate Bill 575 was offered as an amendment to S.B. 575 on the Senate floor. We ask that we have the opportunity to examine and respond more adequately to this legislation before it is quickly acted upon by this state legislature.

Thank you. I will attempt to answer any questions you may have.

Bill 2

SB 816

Seagarden  
amendment

SB 816

Page 6

Strike all of Line <sup>197</sup> 196, <sup>198 +</sup> 197 and in Line <sup>199</sup> 198 all before  
This.

Insert: (3) Pursuant to paragraph (2) of this subsection (g),  
the per ton fee, not to exceed 300,000 ton, shall be an amount  
not less than \$ .06 and not more than \$ .15 per ton of coal  
extracted each calendar year.

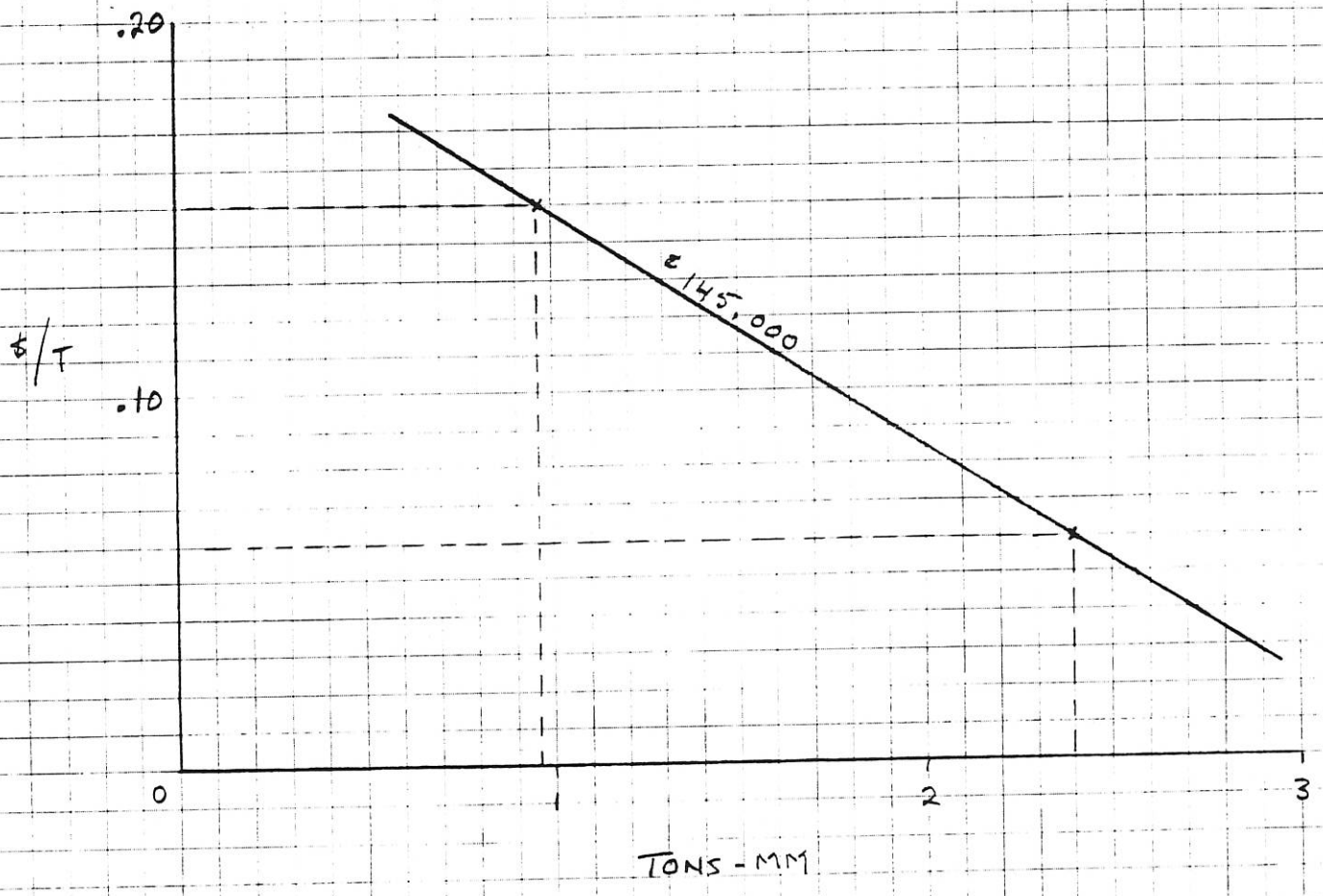
5

POINT PAPER

- o The Pittsburg & Midway Coal Mining Company operates the largest surface mine in Kansas. In 1983, the Midway Mine produced 35% of the State's total production and paid 100% of the severance tax on coal.
- o Five coal companies operate six mines in Kansas. One of these or 16-2/3% is P&M's.
- o There are 71 inspectable units. Six of these or 8% are P&M's.
- o There are currently 25 active permanent program permits of which two or 8% are P&M's.
- o If the current fee formula contained in ~~SB 816~~ is enacted, based on 1983 production figures, P&M would pay 35% of the burden and the total industry fee collected by KMLCRB would still be \$15,000 short of the \$145,000 goal.
- o Utilizing P&M's recommended fee formula, the \$145,000 goal would be reached and there would be a more equitable distribution of payment among the five companies. P&M's burden would be 27%, based on 1983 total tonnage.
- o Without a tonnage cap, P&M would pay 35% of the total amount and this percentage would rise as the company shifts its production to Kansas. The Midway Mine potentially has an annual capacity of 1.6 million tons.
- o P&M doesn't oppose the fee concept but doesn't feel the company should have to pay more than its fair share. P&M wants equitable treatment.
- o P&M was founded in Kansas in 1885. Next year commemorates the 100th anniversary of the company. This home-grown, Kansas company has successfully become one of the ten largest coal companies in the U.S.
- o There are 180 employees at the Midway Mine. Most of them live in Kansas.
- o The P&M Coal Mining Company advocates the following language relative to Section (g)(2) of SB 816:

"Each permittee shall be assessed on up to a maximum of 300,000 tons sold each calendar year at the rate of not less than \$.06 and not more than \$.15 per ton for one-half the costs of administrative and enforcement provisions of the Mined Land Conservation and Reclamation Act."





PREPARED BY WGR-GOC/P+M 3-27-84

Bil #2  
SB 816

\*KANSAS COAL TABLE

Coal Companies Operating in Kansas	Headquarters	Mine Locations County	Primary Customer	Annual Kansas Coal Tonnage Produced Source: KMLCRB						Severance Tax Paid 1983	Inspectable Units	Mines
				1978	1979	1980	1981	1982	1983			
Alternate Fuels, Inc.	Arma	Crawford	Cement plants	11,000	54,132	150,500	212,560	205,000	195,180	0	17	1
Oswego Coal Co.	Ottawa	Labette	Cement plants	0	0	0	0	8,024	83,515	0	6	1
Will's Coal Co.	Pittsburg	Bourbon Crawford Labette	Electric Utility (Springfield, MO)	734,634	389,086	438,553	520,753	336,601	342,250	0	34	2
Mackie Clemens	Pittsburg	Crawford	Electric Utility	250,095	141,072	247,589	145,905	298,730	222,803	0	8	1
P&M	Denver	Linn	Electric Utility (KCP&L)	0	0	0	398,899	544,937	<b>**461,307</b>	\$461,307	6	1
<b>Kansas - TOTAL</b>				<u>995,729</u>	<u>584,290</u>	<u>836,642</u>	<u>1,278,117</u>	<u>1,393,292</u>	<u>1,305,055</u>			
<b>TOTAL P&amp;M MIDWAY MINE MISSOURI PRODUCTION</b>				<u>1,100,721</u>	<u>1,134,836</u>	<u>1,351,807</u>	<u>1,336,379</u>	<u>1,283,721</u>	<u>**718,611</u>			

KMLCRB estimates 1984 total production will be 1,200,000 tons.

\* Table prepared by WGR - GOC/P&M 3-27-84

\*\* Mine Shutdown approximately 4-1/2 months a/c power plant.

Bill #3

# Proposed

Substitute for HOUSE BILL NO. 2778

By Committee on Ways and Means

AN ACT concerning the department of health and environment; relating to certain fees; amending K.S.A. 65-166a, 65-171d and 65-4506 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 65-166a is hereby amended to read as follows: 65-166a. The secretary of health and environment is authorized and directed to establish by duly adopted rules or regulations a schedule of fees to defray all or any part of the costs of administering the water pollution control permit system established by K.S.A. 65-165 and 65-166 and amendments to those statutes. The amount of the fees so established shall be based upon the quantity of raw wastes or treated wastes to be discharged, units of design capacity of treatment facilities or structures, numbers of potential pollution units, physical or chemical characteristics of discharges and staff time necessary for review and evaluation of proposed projects. In establishing the fee schedule, the secretary of health and environment shall not assess fees for permits required in the extension of a sewage collection system, but such fees shall be assessed for all treatment devices, facilities or discharges where a permit is required by law and is issued by the secretary of health and environment or ~~his~~ the secretary's designated representative. Such fees shall be nonrefundable.

~~After--the--establishment--of--such--fee--schedule--an--application for--a--permit--pursuant--to--K.S.A.--65-165--shall--be--accompanied--by the--prescribed--fees,--which--shall--not--be--refundable.~~ Any such permit for which a fee is assessed shall expire five (5) years from the date of its issuance, ~~unless--otherwise--stipulated--as--a condition--for--its--issuance--or--unless--revoked--prior--to--such--time.~~

1

The secretary of health and environment may issue permits pursuant to K.S.A. 65-165 and amendments thereto for terms of less than five years, if the secretary determines valid cause exists for issuance of the permit with a term of less than five years. The minimum fee assessed for any permit issued pursuant to K.S.A. 65-165 and amendments thereto shall be for not less than one year. Permit fees may be assessed and collected on an annual basis and failure to pay the assessed fee shall be cause for revocation of the permit. Any permit which has expired or has been revoked may be reissued upon payment of the appropriate fee and submission of a new application for a permit as provided in K.S.A. 65-165 and 65-166 and amendments to those statutes.

The secretary of health and environment shall remit all moneys received ~~by or for him~~ from the fees established pursuant to this act to the state treasurer at least monthly. Upon receipt of such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury to the credit of the state general fund.

Sec. 2. K.S.A. 65-171d is hereby amended to read as follows: 65-171d. (a) For the purpose of preventing surface and subsurface water pollution and soil pollution detrimental to public health or to the plant, animal and aquatic life of the state, and to protect beneficial uses of the waters of the state and to require the treatment of sewage predicated upon technologically based effluent limitations, the secretary of health and environment shall make such rules and regulations, including registration of potential sources of pollution, as may in ~~its~~ the secretary's judgment be necessary to: (1) Protect the waters of the state from pollution by oil, gas, salt water injection wells or underground storage reservoirs; ~~to~~ (2) control the disposal, discharge or escape of sewage as defined in K.S.A. 65-164 and amendments thereto, by or from municipalities, corporations, companies, institutions, state agencies, federal agencies, or individuals and any plants, works, or facilities owned ~~and/or~~ or operated, or both, by them; and ~~to~~ (3) establish

water quality standards for the waters of the state to protect their beneficial uses.

(b) The secretary of health and environment may adopt by reference any regulation relating to water quality and effluent standards promulgated by the federal government pursuant to the provisions of the federal water pollution control act and the 1972 amendments thereto, which the secretary is otherwise authorized by law to adopt.

(c) For the purposes of this act, including K.S.A. 65-161 through 65-171h~~7~~~~-or-any~~ and amendments thereto to those statutes, pollution ~~is hereby defined (a)~~ means: (1) Such contamination or other alteration of the physical, chemical or biological properties of any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to public health, safety or welfare, or to the plant, animal or aquatic life of the state or to other designated beneficial uses~~;~~ or (b) ~~as~~ (2) such discharge as will or is likely to exceed state effluent standards predicated upon technologically based effluent limitations.

(d) In making rules and regulations, the secretary of health and environment, taking into account the varying conditions that are probable for each source of sewage and its possible place of disposal, discharge~~7~~ or escape, may provide for varying the control measures required in each case to those ~~it~~ the secretary finds to be necessary to prevent pollution. The storage or disposal of salt water, oil or refuse in surface ponds shall be prohibited unless a permit for such storage or disposal shall first be obtained from the secretary of health and environment, and such permit shall be considered as granted unless denied within ~~ten (10)~~ 10 days. The secretary of health and environment is authorized to deny or revoke a permit for such storage or disposal in any case where ~~he~~ the secretary finds such storage is causing or likely to cause pollution~~+-Provided, however, That.~~ Where a fresh water reservoir or farm pond is privately owned and where complete ownership of land bordering the reservoir is under



common private ownership, such fresh water reservoir or farm pond shall be exempt from water quality standards except as it relates to water discharge or seepage from the reservoir to waters of the state, either surface or groundwater, or as it relates to the public health of persons using the reservoir or pond or waters therefrom.

(e) (1) Whenever the secretary of health and environment or ~~his~~ the secretary's duly authorized agents shall find that the waters of the state are not being protected from pollution by oil, gas, salt water injection wells, or underground storage reservoirs, or that storage or disposal of salt water, oil or refuse in any surface pond is causing or is likely to cause pollution of soil or waters of the state, the secretary or the secretary's duly authorized agents ~~designated-by-him,~~ shall issue an order prohibiting the operation or use of such oil, gas, salt water injection well, underground storage reservoir, or surface pond. Such order to take effect ~~ten-(10)~~ 10 days after service upon the owner, operator, contractor or agents thereof. Any person aggrieved by such order may within ~~ten-(10)~~ 10 days of service of the order request a hearing on the order.

(2) Hearings may be conducted by the secretary, or hearing officers appointed by the secretary. Such hearing officers shall have the power and authority to conduct such hearings in the name of the secretary at any time and place and a record of the proceedings of such hearings shall be taken and filed with the secretary together with findings of fact. On the basis of the evidence produced at the hearing, the secretary shall make findings of fact and conclusions of law and shall give written notice of such findings and conclusions to the alleged violator. The order of the secretary shall be final unless appealed to the courts within ~~thirty-(30)~~ 30 days after the order has been made.

(3) Any notice, order or instrument issued by or with the authority of the secretary may be made by mailing a copy of the notice, order, or other instrument by registered or certified mail directly to the person affected at ~~his~~ such person's last

known post office address as shown by the files or records of the secretary.

(4) An appeal may be taken from any final order or final determination of the secretary, by any person adversely affected, to the district court of the county of residence of the appellant. Notice of appeal from any such final order or determination shall be served on the secretary. Failure to serve such notice of appeal within ~~thirty-(30)~~ 30 days shall operate as a waiver of the right of appeal. Notice of appeal shall refer to the action of the secretary appealed from and shall specify the grounds for appeal. Copy of the original notice of appeal with proof of service on the secretary shall be filed by the appellant with the clerk of the court within ~~ten-(10)~~ 10 days of the service of the notice and thereupon the court shall have jurisdiction of the appeal. Service of a notice of appeal shall not operate as a stay of the secretary's order, ~~however,~~. The appellant has the right to apply to the secretary for a stay, which the secretary in ~~his~~ the secretary's discretion may grant. Upon receipt by the secretary of the notice of appeal, ~~he~~ the secretary shall, within ~~fifteen-(15)~~ 15 days, file with the clerk of the district court a certified transcript of all files and proceedings relating to the order or decision appealed from. The review shall be conducted by the court without a jury and shall be de novo, except that in cases of alleged irregularities in procedure, testimony thereon may be taken in the court. The court may affirm the order or decision of the secretary, or may reverse or modify ~~said~~ the order. Appeals may be taken ~~to--the--supreme court~~ from the order or decision of the district court in the same manner as in other civil cases. ~~The secretary shall fix fees to cover the cost of services rendered under this act.~~

(f) The secretary may adopt rules and regulations establishing fees for the following services:

(1) Plan approval, monitoring and inspecting underground or buried petroleum products storage tanks, for which the annual fee shall not exceed \$5 for each tank in place;

(2) permitting, monitoring and inspecting salt solution mining operators, for which the annual fee shall not exceed \$1,950 per company;

(3) permitting, monitoring and inspecting hydrocarbon storage wells and well systems, for which the annual fee shall not exceed \$1,875 per company; and

(4) permitting, monitoring and inspecting oil and gas lease salt water and oil storage, disposal and emergency facilities, for which the fee shall not exceed \$.012 for each barrel of oil and \$.0036 for each 1,000 cubic feet of gas produced and removed from the lease each month.

Sec. 3. K.S.A. 65-4506 is hereby amended to read as follows: 65-4506. The secretary shall certify persons of appropriate qualifications to supervise the operation of water supply systems and wastewater treatment facilities. In lieu of requiring classroom instruction for certification, the secretary shall accept the successful completion of a correspondence course of instruction offered by the secretary. The fee for such correspondence course shall be ~~twenty-dollars-(\$20)~~ in an amount fixed by rules and regulations of the secretary which is sufficient to cover the cost of administering the correspondence course but which does not exceed \$50.

Sec. 4. K.S.A. 65-166a, 65-171d and 65-4506 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

*2/24/84*

BILL EXPLANATION

Senate Bill No. 872

Senate Bill No. 872 was introduced by the Senate Committee on Ways and Means to include those projects for agencies whose budget review began in the Senate Committee on Ways and Means. House Bill No. 3114 has been introduced by the House Ways and Means Committee containing recommended multiyear funding for those agencies whose budgets are initially reviewed by the House.

The following table identifies for all funds any recommendations made by the Governor concerning the projects included in this bill. Also displayed are the total recommendations from all funds of the Senate Committee for the specific projects included in the bill.

<u>Agency/Project</u>	<u>Governor's Recommendation</u>		<u>Senate Recommendation</u>		
	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1987</u>
<u>Sec. 2 — Department of Corrections</u>					
Major Maintenance Account	\$ 300,000	\$ —	\$ 300,000	\$ —	\$ —
New Honor Camp	1,450,000	—	—	—	—
Expand El Dorado Honor Camp	—	—	550,000	—	—
<u>Sec. 3 — Correctional-Vocational</u>					
<u>Training Center</u>					
Replace and Repair Roofs	\$ 400,000	\$ —	\$ 262,000	—	—
<u>Sec. 4 — State Industrial</u>					
<u>Reformatory</u>					
Renovate "D" Cellhouse	\$ 900,000	\$ 600,000	\$ 900,000	\$ 600,000	\$ —
Replace Standby Generator	382,815	—	—	—	—
<u>Sec. 5 — State Penitentiary</u>					
<u>Administration/Support Services</u>					
Building	\$ 2,554,000	\$ 2,579,700	\$2,334,200	\$2,779,500	\$ —
Water System Improvements	500,000	944,000	221,300	1,090,700	132,000
Needs Analysis Steam Generating	50,000	—	50,000	—	—
Reconfiguration of Electrical					
System	217,024	—	217,024	—	—
Renovate Locking System "B"					
Cellhouse	796,936	—	—	—	—
Renovate Locking System "C"					
Cellhouse	230,494	—	—	—	—
Replace Locking System "B"					
Cellhouse and Renovate					
Locking System "C" Cellhouse	—	—	676,172	351,258	—

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Agency/Project	Governor's Recommendation		Senate Committee Recommendation		
	FY 1985	FY 1986	FY 1985	FY 1986	FY 1987
<u>Sec. 6 — Department of Administration</u>					
New State Printing Plant	\$ 3,856,900	\$ —	\$ —	\$ —	\$ —
Statehouse Exterior Stone Repair	150,000	—	150,000	150,000	—
<u>Sec. 7 — Parsons State Hospital and Training Center</u>					
New Vocational Training Building	\$ 675,500*	\$ —	\$ 575,500*	\$ 100,000	\$ —
New Heating Plant	—	—	800,000*	807,700	—
<u>Sec. 8 — Osawatomie State Hospital</u>					
Remodel Dormitory for Administration Building	\$ 1,000,000	\$ 591,400	\$ —	\$ —	\$ —
New Administration Building	—	—	900,000	1,650,000	—
<u>Funding</u>					
State General Fund	\$11,788,169	\$ 4,123,700	\$5,660,696	\$4,971,458	\$132,000
Institutions Building Fund	1,000,000	591,400	900,000	2,557,700	—
TOTAL	<u>\$12,788,169</u>	<u>\$ 4,715,100</u>	<u>\$7,360,696</u>	<u>\$7,529,158</u>	<u>\$132,000</u>

\* Contained within S.B. 579.



Agency Request/  
Governor's Recommendation

Senate  
Committee  
Adjustments

House  
Committee  
Adjustments

Conference  
Committee Adjustments

Sec. 2 — Department of Corrections

The Governor recommended \$1,750,000 from the State General Fund in FY 1985 for two projects. One project would establish a \$300,000 major repairs, special maintenance, and remodeling account for correctional institutions. The other project is construction of a new 64-bed inmate honor camp at Melvern State Park.

The Committee concurs with the Governor's recommendation with the following adjustments:

1. Delete \$1,450,000 for the construction of a new honor camp pending final site determination.
2. Add \$550,000 for a 32-bed addition to the El Dorado honor camp, including acquisition of loose equipment for the expansion.

Sec. 3 — State Correctional-  
Vocational Training Center

The agency requested \$676,700 from the State General Fund in FY 1985 to replace the roofs on all 12 structures at the institution. The Governor recommends \$400,000 for selected roof replacement and repair.

The Committee concurs with the Governor's recommendation with the following adjustment:

1. Delete \$138,000 based on a revised cost estimate for the project.

Sec. 4 — Kansas State Industrial  
Reformatory

The Governor recommends \$1,282,815 from the State General Fund for two new projects. The first project is \$900,000 in FY 1985 and \$600,000 in FY 1986 for renovation of "D" cellhouse. The second project is \$382,815 in FY 1985 to acquire a replacement standby generator.

The Committee concurs with the Governor's recommendation with the following adjustment:

1. Delete \$382,815 for the replacement standby generator pending further review of the project by the Joint Committee on State Building Construction.

Agency Request/  
Governor's Recommendation

Senate  
Committee  
Adjustments

House  
Committee  
Adjustments

Conference  
Committee Adjustments

Sec. 5 -- Kansas State Penitentiary

The Governor recommended \$5,714,307 from the State General Fund. Projects recommended by the Governor include \$2,554,000 in FY 1985 and \$2,579,100 in FY 1986 for the construction of an administration/support services building for the new medium-custody facility; water system improvements of \$500,000 in FY 1985 and \$944,000 in FY 1986; needs analysis for a new steam generating system, \$50,000 in FY 1985; renovation of the locking system in "C" cellhouse, \$230,494 in FY 1985; renovation of the locking system in "B" cellhouse, \$796,936 in FY 1985; and reconfiguration of the electrical system, \$217,024 in FY 1985.

The Committee concurs with the Governor's recommendation with the following adjustments:

1. Adjust the multiyear financing of the administration/support services building to \$2,334,200 in FY 1985 and \$2,779,500 in FY 1986.
2. Adjust the multiyear financing of the water system improvements to \$221,300 in FY 1985; \$1,090,700 in FY 1986; and \$132,000 in FY 1987.
3. Provide multiyear financing of the projects concerning the locking systems. The recommendation provides \$676,172 in FY 1985 and \$351,258 in FY 1986 and amends the line item title to "Replace locking system in "B" cellhouse and renovate locking system in "C" cellhouse. The FY 1985 appropriation could not be released until approved by the State Finance Council.

Sec. 6 -- Department of Administration

The agency requested and the Governor recommends State General Funds of \$3,856,900 in FY 1985 to construct a new state printing plant to be located on the grounds of the Topoka State Hospital. Also requested and recommended by the Governor was a State General Fund appropriation of \$150,000 in FY 1985 for Exterior Stone Repair, Statehouse.

The Committee concurs with the Governor's recommendation with the following adjustments:

1. Delete \$3,856,900 for the construction of a new state printing plant.
2. Provide multiyear financing of \$150,000 in FY 1985 and the same amount in FY 1986 to enable continuous scheduling of work and amend the line item title to Exterior Repair, Statehouse to allow greater flexibility to address unforeseen problems.

Agency Request/  
Governor's Recommendation

Senate  
Committee  
Adjustments

House  
Committee  
Adjustments

Conference  
Committee Adjustments

Sec. 7 — Parsons State Hospital and  
Training Center

The agency requests a multiyear appropriation of \$1,607,700 from the State Institutions Building Fund (SIBF) to construct a new Heating Plant. The request includes \$1,300,000 for FY 1985 and \$307,700 for FY 1986.

The Governor does not recommend funding for the new Heating Plant.

The Senate Committee recommends adoption of the capital improvement decisions of the Joint Committee on State Building Construction, which includes:

1. Deferral of \$100,000 in the SIBF from FY 1985 to FY 1986 (from \$675,500 to \$575,500) to construct a new Vocational Training Building. The Governor recommended \$675,500 in FY 1985 for this project.
2. Addition of \$1,607,700 from the SIBF to construct a new Heating Plant. The recommendation includes \$800,000 for FY 1985 and \$807,700 for FY 1986.

Sec. 8 — Osawatomie State Hospital

The agency requests \$1,000,000 in FY 1985 and \$1,173,229 in FY 1986 for the final planning and construction of a new administration building. An appropriation of \$200,000 was made in FY 1984 to begin planning the new construction. All funds would be from the State Institutions Building Fund.

The Governor recommends the appropriation from the State Institutions Building Fund of \$1,000,000 in FY 1985 and \$591,400 in FY 1986 for the remodeling of the employees' dormitory for use as an administration building.

The Committee recommends the appropriation of \$900,000 from the SIBF in FY 1985 and \$1,650,000 from the SIBF in FY 1986 for the construction of a new administration building.

Bureau

SB 872

State Printing Services

General Information and Management Initiatives

The Division of Printing employs 118 skilled and semiskilled printing craftspersons, including support services. This represents a 17% staffing reduction in the several years the division has been under the Department of Administration. In these past several years, the division's management has been restructuring operations by updating equipment and discontinuing marginal operations that are highly specialized and more cost effective to have done in the private sector. Over the last two years, the volume of printing jobs contracted out to the private sector has increased by 10%, or \$325,000 annually.

Future plans call for a phased approach to increase the use of the private sector for selected printing services (not including legislative work--bills, calendars, journals, and bill locators, etc.). The Division of Printing, rather than the Division of Purchases, would take primary responsibility for development of bid specifications for private sector printing. This approach will take advantage of the Division of Printing's experience and knowledge of costs, which can result in cost-saving recommendations relating to types of paper stock to use, types of finishing design layout, and other production costs.

Should Legislative Printing Needs be Met by the Private Sector?

It has been suggested that the legislative printing needs could be met on an economical and efficient basis by contracting with private sector printers for such services. All information available to the Department of Administration indicates that such an approach would not be advantageous in Kansas.

Conclusions of Studies and Reports

The 1976 report of the State Printer Advisory Committee, titled "A Proposed Printing Program for the State of Kansas", considered the issue of private sector versus in-house printing and concluded that lack of qualified private printers would prohibit contracting out printing of legislative documents.

"At the present time a degree of sophistication of high speed computerized composition and photo typesetting systems in use in private printing plants in Topeka is not of the level that would enable any one plant to produce the 27,000 pages of original composition required by the Kansas Legislature in the timeframe that the Legislature requires.

Ja

It would require major updating in any private facility in Topeka to accomplish this objective. It is extremely doubtful that any private entrepreneur would be willing to gamble the investment needed to make the necessary updates in his equipment to be able to bid on legislative work if it were put to bid. It is even more doubtful that he would be willing to take such a risk if other private sector vendors could bid successfully, thereby assuring no vendor of more than one year's legislative business. Cost of equipment, software and staffing for three months of legislative business would be prohibitive."

A detailed study completed in February 1983 by an independent consultant, Arthur Blumenthal, also concluded that the Division of Printing is providing competent, timely service to the Legislature and state agencies and that, for most jobs, it is a cost-effective operation. A number of excerpts from the report illustrate these conclusions.

[The printing division] is well managed, suitably equipped and it is cost effective for most of the work they do."

". . . some departments of the state printing division are at the very leading edge of all the new print technology. They do a fine job of producing short run, fast turn around jobs for state agencies at competitive rates."

"Some printing company executives who do work for the state were contacted by phone in this study. All agreed that there is a real need for a state printer. They see that it would be impossible to bid out the fast turn around duplicator jobs. Most of the private sector printers believe that the state printing division should continue to do the printing of legislative bills, journals, calendars and law books. There is just no one set up to do this work on a timely basis at present." (Emphasis added.)

"Based on the findings of this shop study and based on in-depth interviews with state agency users of printing products, it is essential that the state continue to furnish this service to its branches of government."



"The state printer operations are really intertwined with the legislative administrators in the production of bills, etc. The production of printed statutes in Kansas is efficient and is one of the very best systems in the country."

The Blumenthal study did recommend that certain types of jobs be contracted out and, as indicated previously, the division has begun to implement that recommendation.

#### Other States' Experience

Some states do contract all or part of their legislative printing needs. A 1976 study by the advisory committee and recent conversations with the officials in several states that contract out such printing jobs seem to point out two potential effects:

Reduction in speed and quality of services. In some states that contract for legislative printing needs, the level of service does not compare favorably with Kansas. In some states, amended bills are simply typed and xeroxed or amendments are attached to the original version of the bill (Arkansas and Wisconsin). In other states, turn around time is longer than that available in Kansas (Virginia).

Lack of Competition or Difficulty in Controlling Printing Standards. In Virginia, where typesetting is done in-house and printing is purchased, only one printing company has submitted a bid for the last five years. That company, however, refuses to print the appropriations bill and another company has consistently won the contract for it.

For many years, Louisiana printing contracts were dominated by one firm until it received almost 70% of the state printing purchases. Wisconsin had a similar experience; competition was inhibited because the successful printer held the type for lengthy materials such as statutes. When Wisconsin set up computerized typesetting operations, competition did increase; however, Wisconsin has since had difficulty, under competitive bidding laws that give the job to the lowest bidder, in maintaining printing standards. Arkansas, where the constitution requires purchase of all printing services, has had similar problems maintaining standards under a competitive bidding situation.

#### Impact of Contract Printing

It should be noted that if the state of Kansas were to contract with private vendors for legislative printing services, the sophisticated electronic typesetting and transmission system now in place would be difficult and expensive to transfer to a private vendor. The Printing Division now has a "front end computer" that allows incoming material to be stored so that alterations can be made to the material by the printing shop if necessary. The Department is not aware of any printers in the Topeka area that now have such a "front end computer". Without it, any typographical errors or other alterations would have to be sent again from the Revisor's Office or corrected manually.

In addition, the private vendor would have to purchase and/or develop "interface programs" that would allow transmissions from the Revisor's Office to "talk" with the vendor's typesetting system. Thus, the hardware and software that a private printer would have to acquire in order to allow us to continue using our present electronic system would involve an expensive investment. In 1976, such a typesetting system cost the state \$450,000. Such an investment would stifle future competition.

The present electronic typesetting system is economical in that millions of keystrokes are entered one time and then stored for later use in related documents. If centralized high-volume typesetting is abandoned, standing data bases for many existing jobs would be of no value to the successful vendor because the vendor would lack the equipment and software to process them. The cost, per page, would rise from \$2 to \$18, as the printer would have to keystroke all material. Since the contracts would probably be subject to annual changes among vendors, the advantage of picking up stored data base would rest with the last successful vendor, thereby reducing competition.

### Conclusions

As the level of service provided by the Division of Printing is of high quality, and as private contractors for services of the type needed by Kansas state government are not currently available unless a substantial investment is made by a private printer, three studies since 1976 have concluded that the state needs the present capability to provide overnight services to the Legislature on legislative documents. Given this conclusion, and the deteriorating conditions of the present printing building, as recognized by the Joint Committee on State Building Construction in 1982, the state cannot afford to delay construction of a new printing plant.

Further delay of the project will incur increased operating construction costs. If an inflationary escalation in construction costs of 5% per year is used, delayed construction would result in increased construction costs of \$200,232 a year. Efficiencies in design of the new printing plant will result in annual savings of \$117,910 for such items as waste removal, building maintenance, and utility costs. Furthermore, the one-story design of the new building will improve productivity. The current facility is multi-storied and considerable effort and time is required to move materials from one floor to another.

All information available to the Department of Administration indicates that the state should proceed immediately with construction of a new printing plant.

STATE OF KANSAS

HOUSE OF REPRESENTATIVES

MR. CHAIRMAN:

I move to amend Senate Bill No. 803, As Amended by Senate Committee, on page 1, in line 23, before "Section", by inserting "New";

On page 2, following line 55, by inserting the following:

"Sec. 2. K.S.A. 21-2501 is hereby amended to read as follows: 21-2501. (a) It is hereby made the duty of every sheriff, police department or countywide law enforcement agency in the state, immediately upon--the--arrest--of--any--person--or persons to cause two sets of fingerprint impressions to be made of a person who is arrested if the person:

(1) Is wanted for the commission of a felony or believed to be a fugitive from justice,~~7--er--upon--the--arrest--of--any--person--or persons--who;~~

(2) may be in the possession at the time of arrest of any goods or property reasonably believed to have been stolen by such ~~person--or--persons,7--or--in--whose--possession--may--be--found~~ the person;

(3) is in possession of firearms or other concealed weapons, burglary tools, high explosives,7 or other appliances believed to be used solely for criminal purposes,~~7--er--who--are;~~

(4) is wanted for any offense which involves sexual conduct prohibited by law,7 or for violation of the uniform controlled substances act,~~7;~~ or

(5) is suspected of being or known to be a habitual ~~criminals--or--violators~~ criminal or violator of the intoxicating liquor law,~~7--to--cause--two--sets--of--fingerprint--impressions--to--be made--of--such--person--or--persons,7.~~

(b) Fingerprint impressions taken pursuant to this section shall be made on the forms provided by the department of justice

of the United States or the Kansas bureau of investigation of the state of Kansas, and forward one set of such impressions to the federal bureau of investigation, department of justice, at Washington, D.C., and forward one set of such impressions to the The sheriff, police department or countywide law enforcement agency shall cause the impressions to be forwarded to the Kansas bureau of investigation of the state of Kansas at Topeka, Kansas, together with which shall forward one set of the impressions to the federal bureau of investigation, department of justice, at Washington, D.C. A comprehensive description of ~~such individual or individuals~~ the person arrested and such other data and information as to the identification of such person ~~or persons arrested~~ as the department of justice and bureau of investigation ~~may require, and such~~ require shall accompany the impressions.

(c) A sheriff, police department or countywide law enforcement agency ~~as aforesaid~~ may take and retain for its own use copies of such fingerprint impressions ~~for their own use of a person specified in subsection (a),~~ together with a comprehensive description and such other data and information as ~~may be~~ necessary to properly identify such person ~~or persons.~~

(d) This section shall not be construed to include violators of any ~~city, town or local~~ county resolution or municipal ordinance.

Sec. 3. K.S.A. 21-2501 is hereby repealed.";

By renumbering section 2 as section 4;

In the title, in line 18, by striking all after "concerning"; by striking all in lines 19 and 20; in line 21, by striking all before the period and inserting "the collection of certain information to be filed with the Kansas bureau of investigation; amending K.S.A. 21-2501 and repealing the existing section"

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District.

REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

Your Committee on Ways and Means

Recommends that House Bill No. 3027, As Amended by House  
Committee

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

Be amended by adoption of the amendments recommended by the  
House Committee on Judiciary and the bill, as printed with  
amendments by House Committee, be further amended:

On page 1, in line 41, preceding the period by inserting  
"under any United States government program"; in line 42,  
preceding "in" by inserting "or advice"; also in line 42,  
preceding "involving" by inserting "or borrowing";

On page 2, in line 54, by striking "a";

And the bill be passed as amended.

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Chairperson

REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

Your Committee on Ways and Means

Recommends that House Bill No. 2778

"AN ACT concerning the department of health and environment; relating to certain fees; amending K.S.A. 65-171d and K.S.A. 1983 Supp. 65-3431 and repealing the existing sections."

Be amended by substituting a new bill to be designated as "Substitute for HOUSE BILL NO. 2778," as follows:

"Substitute for HOUSE BILL NO. 2778

By Committee on Ways and Means

"AN ACT concerning the department of health and environment; relating to certain fees; amending K.S.A. 65-166a, 65-171d and 65-4506 and repealing the existing sections."

And the substitute bill be passed.

\_\_\_\_\_Chairperson



## REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

Your Committee on Ways and Means

Recommends that Senate Bill No. 816, As Amended by Senate  
Committee

"AN ACT concerning the mined-land conservation and reclamation  
act; relating to fees for permit operators; amending K.S.A.  
49-406 and repealing the existing section."

Be amended:

On page 6, in line 198, after "fee" by inserting ", not to  
exceed 300,000 tons,"; also in line 198, by striking "\$.03" and  
inserting in lieu thereof "\$.06"; in line 199, by striking "\$.10"  
and inserting in lieu thereof "\$.15";

And the bill be passed as amended.

\_\_\_\_\_  
Chairperson

REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

Your Committee on Ways and Means

Recommends that Senate Bill No. 803, As Amended by Senate Committee

"AN ACT concerning missing or unidentified deceased persons; providing for a repository for information relating thereto; requiring certain reports and providing penalties for failure to make them."

Be amended:

On page 1, in line 23, before "Section", by inserting "New";

On page 2, following line 55, by inserting the following:

"Sec. 2. K.S.A. 21-2501 is hereby amended to read as follows: 21-2501. (a) It is hereby made the duty of every sheriff, police department or countywide law enforcement agency in the state, immediately ~~upon--the--arrest--of--any--person--or persons~~ to cause two sets of fingerprint impressions to be made of a person who is arrested if the person:

(1) Is wanted for the commission of a felony or believed to be a fugitive from justice,~~--or--upon--the--arrest--of--any--person--or persons--who;~~

(2) may be in the possession at the time of arrest of any goods or property reasonably believed to have been stolen by such person--or--persons,~~--or--in--whose--possession--may--be--found~~ the person;

(3) is in possession of firearms or other concealed weapons, burglary tools, high explosives,~~--or--other--appliances--believed--to--be--used--solely--for--criminal--purposes,~~~~--or--who--are;~~

(4) is wanted for any offense which involves sexual conduct prohibited by law,~~--or--for--violation--of--the--uniform--controlled--substances--act,~~~~--or~~

(5) is suspected of being or known to be a habitual criminals--or--violators criminal or violator of the intoxicating liquor law,~~--to--cause--two--sets--of--fingerprint--impressions--to--be--made--of--such--person--or--persons,~~

(b) Fingerprint impressions taken pursuant to this section

shall be made on the forms provided by the department of justice of the United States or the Kansas bureau of investigation ~~of the state of Kansas, and forward one set of such impressions to the federal bureau of investigation, department of justice, at Washington, D.C., and forward one set of such impressions to the~~. The sheriff, police department or countywide law enforcement agency shall cause the impressions to be forwarded to the Kansas bureau of investigation of the state of Kansas at Topeka, Kansas, together with which shall forward one set of the impressions to the federal bureau of investigation, department of justice, at Washington, D.C. A comprehensive description of ~~such individual or individuals~~ the person arrested and such other data and information as to the identification of such person ~~or persons arrested~~ as the department of justice and bureau of investigation ~~may require, and such~~ require shall accompany the impressions.

(c) A sheriff, police department or countywide law enforcement agency ~~as aforesaid~~ may take and retain for its own use copies of ~~such~~ fingerprint impressions ~~for their own use~~ of a person specified in subsection (a), together with a comprehensive description and such other data and information as ~~may be~~ necessary to properly identify such person ~~or persons~~.

(d) This section shall not be construed to include violators of any ~~city, town or local~~ county resolution or municipal ordinance.

Sec. 3. K.S.A. 21-2501 is hereby repealed.";

By renumbering section 2 as section 4;

In the title, in line 18, by striking all after "concerning"; by striking all in lines 19 and 20; in line 21, by striking all before the period and inserting "the collection of certain information to be filed with the Kansas bureau of investigation; amending K.S.A. 21-2501 and repealing the existing section";

And the bill be passed as amended.

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Chairperson