

Approved March 16, 1984
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Senator Edward F. Reilly, Jr. at
Chairperson

11:00 a.m.~~p.m.~~ on March 15, 1984 in room 254-E of the Capitol.

All members were present except: Senator Francisco, who was excused.

Committee staff present:

Fred Carman, Assistant Revisor of Statutes
Russell Mills, Legislative Research
Emalene Correll, Legislative Research
June Windscheffel, Secretary to the Committee

Conferees appearing before the committee:

Chip Wheelen, Kansas Legislative Policy Group, Jayhawk Tower, Topeka, Kansas
W.M. "Bill" Perry, District Director, Kansas Real Estate Commission
Todd Sherlock, Kansas Association of Realtors, Topeka, Kansas
Janet Stubbs, Home Builders Association of Kansas, Topeka, Kansas

HB2813 - concerning cost of land survey.

The Chairman introduced Chip Wheelen who spoke as a proponent of HB2813. He presented his testimony and answered questions from the Committee. A copy of his prepared remarks are a part of these Minutes as Attachment #1.

Representative Harold Guldner, one of the authors of the bill, was also scheduled to appear as a proponent of the bill. Copies of his prepared remarks were distributed to the Committee, and are a part of these Minutes as Attachment #2. Representative Guldner sent word that the House was in Session and that he would be unable to appear and requested a later appearance. Senator Reilly stated that the Committee would be happy to have Representative Guldner appear later.

Copy of a letter from the Garden City Area Chamber of Commerce was also distributed to the Committee. It was addressed to Representative Ivan Sand and states that their legislative committee would like to go on record in support of this proposed bill. It is a part of these Minutes as Attachment #3.

SB531 - relating to homebuilders' exemption from real estate brokers' and salespersons' licensure.

The Chairman recognized W.M. "Bill" Perry, who appeared to present the statement of the Kansas Real Estate Commission. He said that the Commission has opposed SB531 and present this proposal as a compromise between the groups representing the realtors, home builders and the Real Estate Commission. He said it eliminates the examination and experience requirements for the home builder in K.S.A. and enables him to receive a broker license and therefore hire employees who are fully licensed to sell newly-constructed homes. This would apply only to the newly constructed, unoccupied homes that were built by that builder. Mr. Perry stated that he felt this was a viable compromise. There were questions from and discussion by the Committee. The Commission's proposed compromise is part of these Minutes as Attachment #4. The Chairman introduced Todd Sherlock. Mr. Sherlock said that his organization basically had played the part of getting together with the home builders in what they feel is a good compromise. He said that they have some members across the State who have problems with the compromise, but generally they feel it is a good faith effort to come up with a ready solution to the problem.

The Chairman then recognized Janet Stubbs. She said that Joe Pashman, of the Home Builders Association, was also present if there were questions for him. Ms. Stubbs presented her written statement. It is a part of these Minutes as Attachment #5. She stressed that the amendments to SB531 address only the sale of newly constructed homes owned by the builder/developer, and that her organization is asking that the employee to be exempt from licensure would be dealing only with property owned by his employer, not by a 3rd party. She also presented

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 SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS,
room 254-E, Statehouse, at 11:00 a.m./~~p.m.~~ March 15, 1984

a proposed amendment from the Home Builders Association for the SB531. Copy is a part of these Minutes as Attachment #6.

After more discussion concerning the matter, the Chairman said that he would suggest that the Real Estate Commission sit down with the pertinent groups and share their feelings and suggestions with a sub-committee which he would appoint to report back to the Committee. He then appointed a sub-committee composed of Senator Vidricksen, Chairman; and Senator Meyers and Senator Gannon.

The Chairman said that in view of the time the Committee would not consider SB575 today, but at a later date.

The meeting adjourned at noon.



JW
3/15/84
Attachment #1

Kansas Legislative Policy Group
200 Jayhawk Tower, 700 Jackson, Topeka, Kansas 66603, 913-233-2227

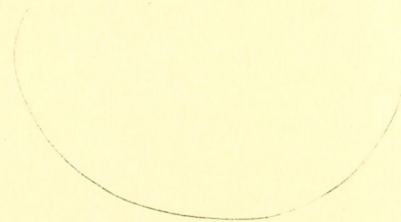
January 18, 1984

WHEREAS: The Kansas Legislature has enacted statutes governing the establishment of boundaries which define land ownership; and

WHEREAS: The administration of land surveys has been delegated to the several counties of the State; and

WHEREAS: The cost of conducting surveys and administering the proceedings of establishing boundaries should not be born by the general taxpayers unless such surveys benefit the general citizenry.

THEREFORE BE IT RESOLVED: The Kansas Legislative Policy Group, Inc. supports and endorses the policy that county administered surveys should be afforded by the landowners requesting such surveys.



Attachment #1

HAROLD GULDNER
REPRESENTATIVE 122ND DISTRICT
GREELEY, HAMILTON, KEARNY, SCOTT,
WICHITA COUNTIES
P O BOX 648
SYRACUSE, KANSAS 67878



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE-CHAIRMAN ELECTIONS
MEMBER ENERGY AND NATURAL RESOURCES
TRANSPORTATION

HOUSE BILL 2813

TESTIMONY BY REPRESENTATIVE HAROLD GULDNER, 122nd DISTRICT
TO HOUSE COMMITTEE ON LOCAL GOVERNMENT

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I proposed this Bill to bring some uniformity to the way a legal survey is paid for in this state. Since KSA 19-1427 was repealed in 1977, there isn't another statute that tells exactly how legal surveys are to be paid for. Counties are either abiding by the part in the repealed statute that says the county shall bear the cost or are opting out of this under home rule and are requiring the person requesting the survey to pay for it. Other counties because of a misunderstanding of the statutes are going through a complicated formula which they think allows them to spread the costs to adjoining land owners.

House Bill 2813, will leave no doubt how a legal survey in this state is to be paid for. This Bill also requires the county to pay for a legal survey when one is requested by the County Board of Commissioners.

CASE ANNOTATIONS

1. Irregularities in survey cured only by appeal. *Cline v. Huntington*, 66 K. 354, 71 P. 812.
2. Bond by one party affected sufficient to give jurisdiction of case. *Goffinet v. Soper*, 77 K. 555, 95 P. 571.
3. Statute should be liberally construed in favor of appeal. *Goffinet v. Soper*, 77 K. 555, 95 P. 571.
4. District court may consider any lawful objection to report. *Washington v. Richards*, 78 K. 114, 116, 96 P. 32.
5. Injunction lies to enjoin another survey after boundaries once established. *Washington v. Richards*, 78 K. 114, 117, 96 P. 32.
6. Record of former survey admissible in evidence. *Dent v. Simpson*, 81 K. 217, 222, 105 P. 542.
7. Report conclusive in absence of appeal. *Edwards v. Fleming*, 83 K. 653, 658, 112 P. 836.
8. Section applies to land survey only, not road survey. *Willis v. Stafford*, 84 K. 570, 114 P. 854.
9. Appeal considered and held taken within time prescribed. *Anderson v. Roberts*, 86 K. 175, 176, 119 P. 354.
10. Conclusive effect of survey not appealed from may be waived. *In re Martin's Appeal*, 86 K. 336, 120 P. 545.
11. Sufficiency of notice of appeal considered. *In re Artz's Appeal*, 91 K. 829, 832, 139 P. 360.
12. Costs are taxable in discretion of court. *Libbey v. Holloway*, 92 K. 163, 139 P. 1188.
13. When special findings of fact or law not required. *In re Appeal from Survey*, 106 K. 222, 187 P. 677.
14. Survey unappealed from is conclusive and not subject to collateral attack. *Stalnaker v. Bair*, 110 K. 1, 202 P. 600.
15. Appeal must be taken within statutory time. *Great Western Petroleum Corp. v. Allen*, 119 K. 731, 241 P. 248.
16. Authority of district court on appeal considered. *Boyer v. Champeny*, 125 K. 319, 322, 263 P. 1066.
17. Section cited as to recording in determining weight as evidence. *Hammond v. City of Ottawa*, 127 K. 874, 275 P. 141.
18. Bond to secure appeal costs must be absolute and unconditional; bond insufficient, court without jurisdiction. *Eidson v. Palmquist*, 188 K. 373, 374, 375, 376, 377, 362 P. 2d 626.
19. Mentioned on an appeal from county survey. *Frey v. Feeders*, 207 K. 764, 767, 486 P. 2d 1377.
20. All landowners adjacent to boundary line benefit from official survey. *Cnadt v. Durr*, 208 K. 783, 784, 787, 788, 494 P. 2d 1219.

19-1427. Lost government survey corners, cost of replacing; cost of survey, apportionment and collection; bond, when. The cost of replacing all lost government survey corners shall be assessed to the county or township. The county surveyor, upon replacing a government survey corner shall notify the county commissioners of the cost thereof; and such costs shall be paid from the county or township road fund, as determined proper by the county commissioners. The county surveyor, subject to the approval of the county commissioners, shall apportion the

actual cost of the survey, after the government corners are reestablished, equitably among the landowners whose lands are situated on the boundary line, according to the respective benefits received: *Provided*, That the board of county commissioners of any county located in the third and sixth state highway districts as defined and established by K. S. A. 74-2001, and of any county having a population of more than three thousand (3,000) and less than four thousand (4,000) and having an assessed tangible valuation of more than sixteen million dollars (\$16,000,000) and less than twenty million dollars (\$20,000,000), and of any county having a population of more than four thousand (4,000) and less than five thousand (5,000) and having an assessed tangible valuation of more than twenty-five million dollars (\$25,000,000) and less than thirty million dollars (\$30,000,000), may when they deem the same advisable, provide for the assessment of the costs of making such surveys and the replacement of lost government survey corners against the party or parties requesting such survey.

If any of the costs for surveying and replacing corners remain unpaid after the report of any survey shall have become final, and the surveyor may furnish to the county clerk a statement under oath, showing the amount remaining unpaid, and a description of the land against which the apportionment was made. On receipt of any such statement the county clerk shall levy a tax against the land mentioned in said statement sufficient to pay the said apportionment. All of said tax shall be collected in the manner provided for the collection of taxes on real estate, and be subject to the same penalties; and when collected, the county treasurer shall pay the amount so collected to the county surveyor: *Provided*, That where the lands occupied by the party or parties requesting such surveys are not subject to taxation, the county surveyor may refuse to make such survey until the expense thereof is secured by a bond to be approved by him; and in case any land affected by such survey is not subject to taxation, the county surveyor may recover the portion of the expense of such survey apportioned to such land in a civil action against the owner or owners thereof. [L. 1891, ch. 89, § 11; R. S. 1923, 19-1427; L. 1961, ch. 136, § 6; L. 1967, ch. 139, § 1; July 1.]

Source or prior law: L. 1879, ch. 177, § 4.

the decree of the court, shall be held and considered as permanently established, and shall not thereafter be changed. When any report of a survey made in pursuance of an agreement, or of legal notice, or by the order of court, shall have become final, it shall be the duty of the county surveyor to record the same in the records of permanent surveys. He shall also make a certified record of such survey on paper of the same size as the record of permanent surveys, suitable for binding, and shall file the same in the office of register of deeds.

History: L. 1891, ch. 89, § 10; March 14; R.S. 1923, 19-1426.

Source or prior law:

L. 1879, ch. 177, § 3.

Research and Practice Aids:

Boundaries—54(3).

C.J.S. Boundaries § 89 et seq.

Bond on appeal, Vernon's Kansas Forms § 1855.

Notice of appeal from report of survey by county surveyor, Vernon's Kansas Forms § 1857.

CASE ANNOTATIONS

1. Irregularities in survey cured only by appeal. *Close v. Huntington*, 66 K. 354, 71 P. 812.
2. Bond by one party affected sufficient to give jurisdiction of case. *Coffinet v. Soper*, 77 K. 555, 95 P. 571.
3. Statute should be liberally construed in favor of appeal. *Coffinet v. Soper*, 77 K. 555, 95 P. 571.
4. District court may consider any lawful objection to report. *Washington v. Richards*, 78 K. 114, 116, 96 P. 32.
5. Injunction lies to enjoin another survey after boundaries once established. *Washington v. Richards*, 78 K. 114, 117, 96 P. 32.
6. Record of former survey admissible in evidence. *Dent v. Simpson*, 81 K. 217, 222, 105 P. 542.
7. Report conclusive in absence of appeal. *Edwards v. Fleming*, 83 K. 653, 658, 112 P. 836.
8. Section applies to land survey only, not road survey. *Willis v. Stafford*, 84 K. 570, 114 P. 354.
9. Appeal considered and held taken within time prescribed. *Anderson v. Roberts*, 86 K. 175, 176, 119 P. 354.
10. Conclusive effect of survey not appealed from may be waived. *In re Martin's Appeal*, 86 K. 336, 120 P. 545.
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12. Costs are taxable in discretion of court. *Libbey v. Holloway*, 92 K. 163, 139 P. 1153.
13. When special findings of fact or law not required. *In re Appeal from Survey*, 106 K. 222, 157 P. 677.
14. Survey unappealed from is conclusive and not subject to collateral attack. *Stalnaker v. Bair*, 110 K. 1, 202 P. 600.
15. Appeal must be taken within statutory time. *Great Western Petroleum Corp. v. Allen*, 119 K. 731, 241 P. 248.
16. Authority of district court on appeal considered. *Boyer v. Champeny*, 125 K. 319, 322, 263 P. 1066.
17. Section cited as to recording in determining weight as evidence. *Hammond v. City of Ottawa*, 127 K. 874, 275 P. 141.

18. Bond to secure appeal costs must be absolute and unconditional; bond insufficient; court without jurisdiction. *Eidson v. Palmquist*, 188 K. 373, 374, 375, 376, 377, 362 P.2d 626.

19. Mentioned on an appeal from county survey. *Frey v. Feeders*, 207 K. 764, 767, 486 P.2d 1377.

20. All landowners adjacent to boundary line benefit from official survey. *Gnadt v. Durr*, 208 K. 783, 784, 787, 788, 494 P.2d 1219.

19-1427.

History: L. 1891, ch. 89, § 11; R.S. 1923, 19-1427; L. 1961, ch. 136, § 6; L. 1967, ch. 139, § 1; Repealed, L. 1977, ch. 91, § 1; July 1.

Source or prior law:

L. 1879, ch. 177, § 4.

CASE ANNOTATIONS

1. Bond requirement in 19-1426 is to protect nonappealing landowners. *Eidson v. Palmquist*, 188 K. 373, 376, 362 P.2d 626.

2. All landowners adjacent to boundary line benefit from official survey. *Gnadt v. Durr*, 208 K. 783, 784, 785, 786, 787, 788, 789, 494 P.2d 1219.

19-1428. Survey affecting county line; notice; appeal. In any survey affecting a county line, the surveyor who may be called on to make the survey shall serve notice upon the county surveyor of the adjoining county, and they shall agree upon a time, and they shall each serve notice upon the landowners of their respective counties who are interested in such survey, in the same manner as is provided in K.S.A. 19-1423 and 19-1424, and shall make such survey in the same manner as other surveys; and each surveyor shall file a copy of the plat and field notes of such survey in the county surveyor's office. Appeals from the said survey may be made, and to the same effect as in K.S.A. 19-1426. The corners and boundaries so established and recorded in each county shall be held to be permanent, and shall never be changed.

History: L. 1891, ch. 89, § 12; March 14; R.S. 1923, 19-1428.

Research and Practice Aids:

Boundaries—54(1).

C.J.S. Boundaries § 89 et seq.

CASE ANNOTATIONS

1. Cited in discussing legality of survey of abandoned bed of navigable stream. *Pessemier v. Nichols*, 153 K. 267, 271, 109 P.2d 205.

19-1429.

History: L. 1891, ch. 89, § 13; L. 1895, ch. 253, § 1; R.S. 1923, 19-1429; Repealed, L. 1961, ch. 135, § 1; June 30.

Supplemental Information on SENATE BILL 58

AS AMENDED BY SENATE COMMITTEE ON LOCAL GOVERNMENT

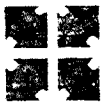
Brief of Bill *

SB 58 as introduced would strike obsolete language from a statute (K. S. A. 19-1427) relating to the replacement of lost government survey corners by counties. The language stricken from the bill cites a statute (K. S. A. 74-2001) which has been repealed. The Senate Committee amended the bill to repeal the entire statute since counties now can act in this area under their home rule powers.

Background

The statute currently provides two procedures for counties to assess the costs of replacing lost government survey corners. One procedure, which applies to most counties, provides for the assessment of costs to the county or township. Certain counties (Elk, Cheyenne and Woodson), however, may assess these costs against the parties requesting a survey. Since the statute is non-uniform any county under home rule by charter resolution could alter its provisions. By repealing the statute counties could act by ordinary resolution in this regard.

* Bill briefs do not express legislative intent. They give general information about the bill, not details or expected effects. They are prepared by the Legislative Research Department. The sponsors have not reviewed the briefs.



Garden City Area

CHAMBER OF COMMERCE

201 E. LAUREL, GARDEN CITY, KANSAS 67846, PH. 316 276-3264

3-15-84
Attachment # 3

March 5, 1984

Representative Ivan Sand, Chairman
Local Government Committee
Room 521 - State House
Topeka, KS 66612

Dear Representative Sand:

The Legislative Committee of the Garden City Area Chamber of Commerce has reviewed House Bill #2813 concerning land surveys. Our committee would like to go on record in support of this bill because at this time anyone can request the County commissioners to conduct land surveys, leaving the question of who pays for it unanswered.

This legislation provides a statutory vehicle mandating the requesting petitioner to fund his request.

Please consider our support of this bill when voting.

Cordially,

Barbara McMinimy
Barbara McMinimy
Chairperson
Legislative Committee

BM:cm

cc: Representative David Heinemann
Representative Max Moomaw
Representative Harold Guldner
Senator Leroy Hayden

Attachment # 3

58-3041. Restricted license. (a) The commission may at any time issue a restricted license to a person:

(1) Who is or has been licensed but has been found by the commission after a hearing to have violated any provision of this act or rules and regulations adopted hereunder; or

(2) Who is applying for an original license under this act and has met the examination and experience requirements but has been found by the commission after a hearing to have failed to make a satisfactory showing that he or she meets all other applicable requirements.

(b) A restricted license issued pursuant to ~~this section~~ subsection (a) may be restricted, as the commission determines advisable in the public interest, as follows:

(1) By term;

(2) To employment by or association with a particular broker as an independent contractor;

(3) To a particular type of transaction; or

(4) By other conditions deemed advisable by the commission, including the filing of a surety bond in such amount as may be required by the commission for the protection of persons with whom the licensee may deal.

(c) The commission may issue a restricted broker's license to a person who is exempt by K.S.A. 58-3037(j), and amendments thereto, and who has made a satisfactory showing that he or she meets all applicable requirements for licensure except for the examination and experience requirements. Any license issued pursuant to this subsection shall be limited to the employment of licensed salespersons for the sole and limited purpose of engaging in any of the activities described in K.S.A. 58-3035, and amendments thereto, in connection with the sale or lease of newly constructed and not previously occupied properties for which the exemption applies to the person obtaining such restricted license. Any person to whom such a restricted license is issued shall be required to

comply with all other provisions of the Kansas real estate brokers' and salespersons' license act but shall not be entitled to engage in any activities for which a license is required except as expressly permitted hereby.

(d) The holder of a restricted license shall not be entitled to automatic renewal of such license, such renewal being in the discretion of the commission.

TESTIMONY BEFORE
SENATE FEDERAL AND STATE AFFAIRS
MARCH 15, 1984
BY

JANET STUBBS
HOME BUILDERS ASSOCIATION OF KANSAS

JMS
3/15/84
Attachment #5

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.

FIRST, I WANT TO STRESS THE POINT THAT THE AMENDMENTS TO SB 531 ADDRESS ONLY THE SALE OF NEWLY CONSTRUCTED HOMES OWNED BY THE BUILDER/DEVELOPER.

THE EMPLOYEE WHICH WE ARE ASKING TO BE EXEMPT FROM LICENSURE WOULD BE DEALING ONLY WITH PROPERTY OWNED BY HIS EMPLOYER, NOT BY A 3RD PARTY.

THE EMPLOYER/BUILDER IS AND WOULD BE LEGALLY RESPONSIBLE FOR STATEMENTS AND/OR ACTION OF THAT EMPLOYEE JUST AS HE IS RESPONSIBLE FOR THE WORKMANSHIP OF THE CRAFTSMAN/EMPLOYEE BUILDING THE HOME.

THE CONCERN EXPRESSED BY THE REPRESENTATIVES OF THE KANSAS ASSOCIATION OF REALTORS AND THE REAL ESTATE COMMISSION HAS BEEN THE ABILITY OF THE HOME BUYER TO ACCESS THE REAL ESTATE RECOVERY REVOLVING FUND DUE TO THE LICENSURE OF THE BUILDER OR SALESPERSON.

HOWEVER, I WOULD DIRECT THE COMMITTEE'S ATTENTION TO THE FOLLOWING:
K.S.A. 58-3068

(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 WOULD APPEAR THAT CURRENT LAW WOULD PREVENT ACCESS TO THE RECOVERY FUND BY A CUSTOMER OF A BROKER/BUILDER. I WOULD QUESTION HOW MANY CASES SUCH AS THIS THAT THE COMMISSION HAS DEALT WITH IN THE LAST FEW YEARS?

IN RESPONSE TO HBAK'S STATEMENTS REGARDING THE BUILDER'S LIABILITY FOR ACTIONS AND THE HOME BUYERS ABILITY TO RECEIVE AWARDS FROM THE BUILDER OR HIS LIABILITY INSURANCE, THE OPPOSITION HAS BEEN CONCERNED WITH THE EXPENSE TO THE AGGRIEVED INDIVIDUALS BY SEEKING RECOVERY THROUGH THE COURTS.

HOWEVER, AS I UNDERSTAND K.S.A. 58-3067 AND 58-3068, ACCESS TO THE FUND MAY BE MADE ONLY PURSUANT TO AN ORDER OF A COURT OF COMPETENT JURISDICTION

Attachment #5

AND AFTER EXHAUSTING OTHER AVENUES OF RECOVERY OF DAMAGES.

IT HAS ALWAYS BEEN HBAK'S BELIEF THAT AN AGGRIEVED HOME BUYER HAS THE ABILITY TO RECOVER MORE FROM THE BUILDER AND HIS LIABILITY INSURANCE THAN THE RECOVERY FUND, IF THE LAW PERMITTED, AND K.S.A. 58-3067 (B) AND (C) SPEAK TO THE LIMITATIONS OF THE RECOVERY FUND.

MARCH 7, THE SENATE WAYS AND MEANS COMMITTEE INTRODUCED SB 830 WHICH APPEARS TO ABOLISH THE REAL ESTATE REVOLVING RECOVERY FUND IN LIEU OF ERRORS AND OMISSIONS LIABILITY INSURANCE COVERAGE OF NOT LESS THAN \$25,000.

THE CHAIRMAN OF THE WAY AND MEANS SUBCOMMITTEE RESPONSIBLE FOR THIS LEGISLATION ADVISES ME THE REAL ESTATE COMMISSION HAS NO POSITION IN OPPOSITION TO SB 830.

HBAK OPPOSES THE LANGUAGE PROPOSED BY THE REAL ESTATE COMMISSION AS A COMPROMISE ON THIS ISSUE.

LICENSURE, EVEN RESTRICTED LICENSURE OF A BUILDER, IS, WE BELIEVE, A STEP BACKWARD FOR US AND HAS SEVERAL RAMIFICATIONS.

1. THE BUILDER WHO MAY UNDER CURRENT LAW SELL HIS OWN PRODUCT WOULD BE SUBJECT TO EDUCATIONAL REQUIREMENTS FOR AT LEAST RENEWAL OF THAT LICENSE AND, BY KAR'S INTERPRETATION, WOULD BE SUBJECT TO THE 30 HOUR PRE-LICENSURE EDUCATION REQUIREMENTS.

2. THOSE BUILDERS OPERATING BOTH A BUILDING FIRM AND A REAL ESTATE FIRM ADVISE OF PROBLEMS WITH THE COMMISSION DIFFERENTIATING BETWEEN WHEN JOHN DOE BUILDER BECOMES JOHN DOE BROKER.

3. ONCE A BUILDER IS DESIGNATED A BROKER, IT CAN AFFECT HIS TREATMENT BY THE IRS.

THE PROPOSED LANGUAGE REQUIRES THE RESTRICTED LICENSED BUILDER TO HIRE A LICENSED SALESPERSON TO SELL HIS HOMES.

ONE OF THE REASONS THE HBAK HAS REQUESTED EXEMPTION FOR THEIR EMPLOYEES IS BECAUSE LICENSED SALESPEOPLE DO NOT FIND THE MONETARY REWARDS SUFFICIENT TO JUSTIFY THE TIME SPENT SITTING IN THE SUBDIVISION OPEN HOUSE AND THE DEVELOPER IS OFTEN UNABLE TO EMPLOY A LICENSED INDIVIDUAL.

THEREFORE, THE BUILDER IS FACED WITH THE CHOICE OF SITTING IN THE OPEN HOUSE HIMSELF, WHICH IS NOT PRUDENT USE OF HIS TIME, OR HIRING AN UNLICENSED PERSON TO SIT IN THE OPEN HOUSE, WHICH IS CURRENTLY PROHIBITED BY THE LAW.

IN SUCH INSTANCES, I AM TOLD THERE IS NO COMPLAINT BY LICENSED REAL ESTATE PEOPLE IF THE HOUSE IS LISTED AND A COMMISSION WILL BE PAID TO THE BROKER.

THIS RAISES ANOTHER CONCERN EXPRESSED ON THIS ISSUE.

IF THE POTENTIAL BUYER OF A NEW HOME IS EQUALLY PROTECTED IN CIRCUMSTANCE DISCUSSED THUS FAR, ARE WE ATTEMPTING TO TAKE MONEY FROM THE POCKET OF THE

REALTOR AND PUT IN THE POCKET OF THE BUILDER?

THAT HAS NOT BEEN THE REASON FOR OUR POSITION EITHER.

WE DO IN FACT WANT TO KEEP THE COST OF HOUSING AFFORDABLE FOR AS MANY POTENTIAL BUYERS AS POSSIBLE WHILE STILL ACHIEVING THE MAXIMUM EFFICIENCY IN MARKETING AND BUYER SERVICE AND PROTECTION.

BUILDERS STRIVE TO REDUCE THE COST OF HOUSING FROM OUR NATIONAL ASSOCIATION OF HOME BUILDERS DOWN TO OUR LOCAL ASSOCIATIONS. THE TOPEKA ASSOCIATION, FOR EXAMPLE, HAS WORKED WITH LOCAL GOVERNMENT TO REDUCE PERMITTING COSTS AND ACTIVELY PARTICIPATED IN DRAFTING THE NEW COMPREHENSIVE PLAN FOR TOPEKA - SHAWNEE COUNTY.

BUILDERS BORROW MONEY AND TAKE THE RISK TO SPECULATE BY BUILDING HOUSES WITHOUT A CUSTOM ORDER. DURING RECENT ECONOMIC CONDITIONS BUILDERS ATTEMPTED TO SURVIVE BY SELLING HOUSES AND QUALIFYING THEIR POTENTIAL BUYERS. THIS LEGISLATION, THEY BELIEVE, AFFORDS THEM MORE FLEXIBILITY TO ACHIEVE THIS GOAL IN FUTURE.

IT IS NOT COMPATIBLE WITH THE INTERESTS OF A BUILDER TO HAVE PEOPLE WHO ARE NOT THOROUGHLY KNOWLEDGEABLE ABOUT THE PRODUCT OR WHO WOULD NOT MAKE THE PROPER PRESENTATION TO THE PUBLIC. THE BUILDER'S BUSINESS FUTURE DEPENDS UPON THE PROSPECT'S CONTACT WITH HIS REPRESENTATIVE.

INTRODUCTION OF SB 531 WAS NOT INTENDED TO ACHIEVE A METHOD BY WHICH BUILDERS COULD "BILK" THE PROSPECTIVE HOME BUYER.

WE DID NOT FEEL THE REQUEST WAS AT ALL UNREASONABLE 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.

THE DECISION FOR OUR ACTION THIS LAST YEAR EVOLVED FROM THE COMMITMENT MADE TO THIS COMMITTEE IN MARCH 1983 WHEN WE BELIEVED AN AGREEMENT EXISTED BETWEEN THE REPRESENTATIVES OF THE TRADE ASSOCIATIONS AND THE REGULATORY AGENCY.

DURING OUR RECENT APPEARANCE BEFORE THE REAL ESTATE COMMISSION TO DISCUSS THIS ISSUE, THE COMMISSIONERS EXPRESSED THEIR UNDERSTANDING OF OUR PROBLEM CONCERNING WHAT THEY TERM "INCIDENTAL" OR "OCCASIONAL" SALES BY BUILDER'S UNLICENSED EMPLOYEES, AND MOST COMMISSIONERS STATED THEY HAD NO OBJECTION TO THIS IF PROPER LANGUAGE COULD BE DRAFTED. SOME OF THE COMMITTEE MEMBERS EXPRESSED THE OPINION THIS WAS PERMITTED BY CURRENT LAW.

IF THIS COMMITTEE BELIEVES THE PROSPECTIVE HOME BUYING PUBLIC WILL NOT BE PROTECTED BY THE BUILDER'S PROPOSED ABILITY TO PLACE UNLICENSED PEOPLE IN AN OPEN HOUSE, WE THEN REQUEST THAT YOU AMEND SB 531 TO CLAIRFY THE LANGUAGE TO PERMIT THE OCCASIONAL SALE.

ALTHOUGH THIS APPEARS TO BE A CONFLICT BETWEEN TWO TRADE ASSOCIATIONS REPRESENTING SIGNIFICANT MEMBERSHIP WITHIN YOUR CONSTITUENCY, WE BELIEVE THE REAL WINNER OR LOSER ON THIS ISSUE IS THE PORTION OF YOUR CONSTITUENCY NOT APPEARING ON THE AGENDA TODAY.

THAT, OF COURSE, IS THE PROSPECTIVE BUYER OF A NEW HOME WHOSE PURCHASE IN TURN, BENEFITS THE ECONOMY.

REGULATION OF ANY INDUSTRY SHOULD BE ONLY FOR THE PURPOSE OF PROTECTING AND BENEFITING THE PUBLIC. ONE OF THE REASONS FOR PASSAGE OF THE SUNSET LAW WAS TO INSURE THIS FACT.

AGAIN, AS STATED IN THE 1980 SUNSET AUDIT REPORT OF THE COMMISSION, "THE PRIMARY PURPOSE OF REGULATION IS TO PROTECT THE PUBLIC. STUDIES HAVE SHOWN, HOWEVER, THAT REGULATORY AGENCIES MAY BECOME SYMPATHETIC TO -- EVEN DOMINATED BY -- THE INDUSTRIES THEY REGULATE. THESE AGENCIES MAY CREATE POLICIES AND TAKE ACTIONS THAT BENEFIT THE INDUSTRY RATHER THAN THE PUBLIC.

WE ASK THAT THE COMMITTEE'S DECISION BE BASED UPON THESE CONSIDERATIONS.

thereof, or (4) in shares or accounts in saving and loan associations insured by the federal saving and loan insurance corporation, or other federal agency, to the extent covered by such insurance. All moneys received as interest earned by the investment of the moneys in the real estate recovery revolving fund shall be credited to such fund.

History: L. 1980, ch. 164, § 33; L. 1981, ch. 304, § 2; July 1.

58-3067. Same; recovery from; limitations. Payments from the real estate recovery revolving fund under the provisions of this act shall be subject to the following conditions and limitations:

(a) Payments shall be made only pursuant to an order of a court of competent jurisdiction, as provided in K.S.A. 58-3071, and in the manner prescribed by this act.

(b) Payments for claims arising out of the same transaction shall be limited in the aggregate to \$15,000, irrespective of the number of claimants or parcels of real estate involved in the transaction.

(c) Payments for claims based upon judgments against any one licensed broker or salesperson shall not exceed in the aggregate \$30,000 within any calendar year, but in no event shall payments for claims based upon judgments against any one licensed broker or salesperson exceed in the aggregate \$50,000.

(d) If, at any time, the moneys in the real estate recovery revolving fund are insufficient to satisfy any valid claim, or portion thereof, the director of the commission shall satisfy such unpaid claim or portion thereof, as soon as a sufficient amount of money has been transferred to the fund as provided in subsection (b) of K.S.A. 58-3066. Where there is more than one such claim outstanding, such claims shall be paid in the order that they were made. Any such unsatisfied claim, or portion thereof, shall accrue interest at the rate of 4% per annum.

History: L. 1980, ch. 164, § 34; L. 1981, ch. 304, § 3; July 1.

58-3068. Same; acts for which recovery allowed; persons qualified to recover; notice at commencement of action for recovery. (a) Moneys in the real estate recovery revolving fund shall be used in the manner provided by this act to reimburse persons who suffer monetary damages by reason of any of the following acts commit-

ted in connection with any transaction involving the sale of real estate in this state by any broker or salesperson who was licensed under the laws of this state at the time the act was committed or by any unlicensed employee of such broker or salesperson:

(1) Violation of this act; or

(2) Obtaining money or property by any act which would constitute any crime defined by K.S.A. 21-3701, 21-3704, 21-3705, 21-3706, 21-3707, 21-3710, 21-3711 or 21-3712 or any amendments thereto.

(b) Any person may seek recovery from the real estate recovery revolving fund under the following conditions:

(1) Such person has received final judgment in a court of competent jurisdiction of this state in any action wherein the cause of action was based on any of the acts described in subsection (a);

(2) The act for which recovery is sought occurred not more than two years prior to making such claim;

(3) Such person has caused to be issued a writ of execution upon such judgment, and the officer executing the same has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment could be found, or that the amount realized on the sale of the judgment debtor's property pursuant to such execution was insufficient to satisfy the judgment;

(4) Such person has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets, subject to being sold or applied in satisfaction of the judgment, and by such search such person has discovered no such property or assets, or that such person has discovered such property and assets and that such person has taken all necessary action and proceedings for the application thereof to the judgment and that the amount thereby realized was insufficient to satisfy the judgment;

(5) Any amounts recovered by such person from the judgment debtor, or from any other source, has been applied to the damages awarded by the court; and

(6) Such person is not a person who is precluded by subsection (c) from making a claim for recovery.

(c) A person shall not be qualified to make a claim for recovery from the real estate recovery revolving fund, if:

0044 (g) Any nonprofit referral system or organization of brokers
0045 formed for the purpose of referral of prospects for the sale or
0046 listing of real estate.

0047 (h) Railroads or other public utilities regulated by the state of
0048 Kansas, or their subsidiaries, affiliated corporations, officers or
0049 regular employees, unless performance of any of the acts de-
0050 scribed in subsection (c) of K.S.A. 58-3035 *and amendments*
0051 *thereto* is in connection with the sale, purchase, lease or other
0052 disposition of real estate or investment therein unrelated to the
0053 principal business activity of such railroad or other public utility
0054 or affiliated or subsidiary corporation thereof.

0055 (i) The sale or lease of real estate by an employee of a
0056 corporation which owns or leases such real estate, if such em-
0057 ployee owns not less than five percent ~~(5%)~~ 5% of the stock of
0058 such corporation.

0059 (j) The sale or lease of new homes by a person, partnership,
0060 association or domestic corporation who constructed such
0061 homes, but the provisions of this act shall apply to the sale or
0062 lease of any such homes by any employee of such person,
0063 partnership or association or by any employee of such corpora-
0064 tion who owns less than five percent (5%) of the stock of such
0065 corporation ~~or the employees of such person, partnership, asso-~~
0066 ~~ciation or domestic corporation.~~

0067 (k) The lease of real estate for agricultural purposes.

0068 Sec. 2. K.S.A. 58-3062 is hereby amended to read as follows:
0069 58-3062. (a) No licensee shall:

0070 (1) Intentionally use advertising that is misleading or inac-
0071 curate in any material particular or that in any way misrepresents
0072 any property, terms, values, policies or services of the business
0073 conducted, or uses the trade name, collective membership mark,
0074 service mark or logo of any organization owning such name, mark
0075 or logo without being authorized to do so;

0076 (2) fail to account for and remit any money which comes into
0077 the licensee's possession and which belongs to others;

0078 (3) commingle the money or other property of the licensee's
0079 principals with the licensee's own money or property, except
0080 that nothing herein shall prohibit a licensee from depositing in a

on an occasional basis,

when doing any of the following:

- (1) Exhibiting one or more such homes;
- (2) demonstrating features of one or more such homes;
- (3) distributing literature concerning one or more such homes;
- (4) conveying information concerning one or more such homes;
- (5) performing such other duties relating to any of the foregoing as may be needed, except making a contract of sale of any such home or arranging terms of financing.

JW

3/15/84

Attachment #6

Home Builders

Atch. 6