

Approved 3/20/84
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

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

11:00 a.m. ~~pm~~ on March 16, 1984 in room 254-E of the Capitol.

All members were present except:

Senator Francisco and Senator Pomeroy, who were 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:

Representative Harold Guldner
Larry Christ, General Counsel, Kansas Securities Commission
Colonel Bert Cantwell, Superintendent, Kansas Highway Patrol
Paul Flower, Director, Kansas Real Estate Commission

HB2813 - concerning cost of land survey.

The Chairman introduced Representative Harold Guldner, who appeared as one of the authors of the bill. His prepared remarks are a part of yesterday's Minutes (March 15, 1984, as Attachment #2.) He spoke as a proponent of this proposed legislation. There were questions from the Committee. No action was taken.

The Chairman then recognized Larry Christ. Mr. Christ distributed copies of a Proposed Necessary Amendment to K.S.A. 17-1262a, which is a part of these Minutes as Attachment #1. He said that this proposed legislation would make the legislative intent clearer concerning the oil and gas people.

Senator Vidricksen moved that this proposal be introduced as a committee bill. 2d by Senator Gannon. Motion carried.

Mr. Christ made a presentation concerning the appointment of special investigators to enforce the provisions of the securities act. Copies of correspondence between the Securities Commission and the Office of the Attorney General are attached as Attachment #2 and Attachment #3 as a part of these Minutes. Proposed legislation is part of these Minutes as Attachment #4.

Senator Vidricksen moved that this proposal be introduced as a committee bill. 2d by Senator Daniels. Motion carried.

Colonel Bert Cantwell appeared to request an amendment of K.S.A. 21-4213, to include a requirement that physicians or other health care providers must report the treatment of motor vehicle accident victims to law enforcement authorities. His statement is a part of these Minutes as Attachment #5. Also is attached a letter from Marilyn Gates of the Kansas Hospital Association, Attachment #6. The Committee asked that Colonel Cantwell do further investigation on this subject and report back to the Committee.

The Chairman directed the Committee's attention to HB575, concerning certification of real estate instructors and other matters. He stated that amendments had been made to this bill for clean-up purposes. Fred Carman briefed the Committee as to what these were. The Committee discussed these and asked questions of Paul Flower of the Real Estate Commission. Senator Morris moved that the new language in lines 75 through 78 be stricken. 2d by Senator Roitz. There was discussion. The Chairman instructed the Committee to reflect on this over the week-end. Senator Morris moved that the Minutes of March 15, 1984, be approved. 2d by Senator Meyers. Motion carried.

Senator Morris moved to introduce a new bill identical to that of SB716, concerning cosmetologists. 2d by Senator Vidricksen. Motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS,
room 254-E, Statehouse, at 11:00 a.m./~~p.m.~~ on March 16, 1984.

The Chairman introduced Russell Mills for a review of the Law Enforcement Training Act. Mr. Mills passed out copies of information for the Committee. Shortly after the Chairman said that due to the hour the Committee would take up Mr. Mills' review at the next meeting of the Committee.

Senator Winter moved to introduce a bill that would amend the existing law so it would not prohibit the appointment of any elected state officer to an office in the judicial branch for which nomination is required by the non-partisan Nominating Commission as set up in the state constitution.
2d by Senator Gannon. Motion carried.

The meeting adjourned at noon.

3/16/84
Attachment #1
Clean-up

Proposed Necessary Amendment to K.S.A. 17-1262a

(c) The exemption provided by this section shall not be cumulative to or used in conjunction with any other exemption provided under K.S.A. 17-1262 and amendments thereto, nor shall any exemption provided by ~~this section~~ or by K.S.A. 17-1262 and amendments thereto, other than the exemption provided by subsections (a), (e) or (n) of that section, or by this section, be available for any offer to sell or sale of any limited partnership interest involving, or any fractional or undivided interest, or any certificate based upon any fractional or undivided interest in any oil or gas royalty, lease or deed, including subsurface gas storage and payments out of production.

Attachment #1

FINAL

HOUSE BILL No. 2185

AN ACT concerning securities; relating to the exemption of certain transactions from certain registration requirements; amending K.S.A. 17-1262a and repealing the existing section.

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

Section 1. K.S.A. 17-1262a is hereby amended to read as follows: 17-1262a. (a) As used in this section:

(1) "Commission or other remuneration" shall include any consideration, compensation or fees paid or given to an agent in exchange for ~~his or her~~ *the agent's* services, except that "commission or other remuneration" shall not include any interest in the oil and gas estate, including any overriding royalty interest, or the production therefrom so long as the identity of the person or persons owning or holding any such interest and the extent of such interest is fully disclosed to all purchasers.

(2) "Public advertising or public solicitation" ~~mean~~ *means* any offers to sell or sales that are effected by means of any advertising or general solicitation printed in any brochure, prospectus, offering memoranda, handbill, newspaper, magazine, periodical or other publication of general circulation and mailed or delivered to its subscribers or addressees, or communicated by radio, public seminar, television, general telephone solicitation, or similar means.

(3) "Purchasers" ~~mean~~ *means* any individual, corporation, partnership, association, joint stock company, trust or unincorporated organization, except that if such entity was organized for the specific purpose of acquiring the oil or gas interests offered, each beneficial owner of equity interests or equity securities in such entity shall count as a separate purchaser.

(b) Except as hereinafter expressly provided, K.S.A. 17-1254, 17-1255, 17-1256, 17-1257, 17-1258, 17-1259 and 17-1260, and ~~any amendments to said sections~~ *amendments thereto*, shall not apply to any offer to sell or sale of any limited partnership interest involving, or any fractional or undivided interest, or any certificate based upon any fractional or undivided interest in any oil or gas royalty, lease or deed, including subsurface gas storage and payments out of production, ~~where the land subject to the interest or certificate is situated in the state of Kansas~~ *if the land subject to the interest or certificate is situated in Kansas and:*

(1) All sales are made to persons who are and have been during the preceding two years engaged primarily in the business of drilling for, producing, or refining oil or gas or whose corporate predecessor, in the case of a corporation, has been so engaged or whose officers and ~~two-thirds~~ ^(2/3) ~~2/3~~ of the directors in the case of a corporation having an existence of less than two years, have each been so engaged; or

(2) all sales are made to not more than a total of ~~thirty-two~~ ⁽³²⁾ 32 purchasers without regard to whether the purchasers reside within or without the state of Kansas, and:

(A) The seller of such interests reasonably believes that all purchasers of such interests are purchasing for investment and not for resale; and

(B) no commission or other remuneration is paid or given directly or indirectly for the solicitation, offer to sell or sale of any such interests; and

(C) no public advertising or public solicitation is used in connection with the solicitation, offer to sell or sale of any such interest; or

(3) all sales of such interests involve properties that produce oil or gas or petroleum products in paying quantities on the date of sale and the seller, subsequent to the sale, does not retain any ownership interest in or control over the lease or the interest or interests that are being sold.

(c) The exemption provided by this section shall not be cumulative to or used in conjunction with any other exemption provided under K.S.A. 17-1262 *and amendments thereto*, nor shall any exemption provided *by this section* or by K.S.A. 17-1262 *and amendments thereto*, other than the exemption provided by subsections (a) ~~or~~, (e) or (n) of K.S.A. 17-1262, ~~or by this section~~ *that section*, be available for any offer to sell or sale of



JOHN R. WURTH
Securities Commissioner

Office of the Securities Commissioner
109 West 9th, Suite 501

Ph. 913 296-3307
TOPEKA, KANSAS 66612

February 27, 1984

Mr. Jim Flory
Deputy Attorney General
Kansas Judicial Center
2nd Floor
Topeka, Kansas 66612

Dear Jim:

This office has recently considered the possibility of asking the Legislature and the Governor to grant "law enforcement officer" status upon our securities investigators. Although the Securities Act gives our investigators, through the Commissioner, general investigatory powers, we believe the more specific law enforcement officer authority may be necessary in order to properly conduct our investigations.

Such authority would allow our investigators to carry weapons, have access to criminal history information, and most importantly, execute search warrants. This last item is of special importance to us. The search warrant is a tool used frequently by this office. In the past, we have had police officers or sheriff's deputies actually serve the warrant and remain with us during the course of the search. However, our investigators have always been the persons who actually go through the files, and who take possession of the seized materials.

In reviewing our search warrant statutes, however, we wonder if we can legally do this. As I am sure you are aware, K.S.A. 22-2507 requires that the warrant "command the person directed to execute the same to search the person, place or means of conveyance particularly described in the warrant and to seize the things particularly described in the warrant." K.S.A. 22-2505, of course, requires that all warrants be directed to law enforcement officers, which our investigators are not. Although these statutes could arguably pertain simply to the contents and form of the warrant, we think it is more likely that these statutes would prohibit our investigators from participating in the search in any fashion. I write to ask for your opinion on this matter.

Mr. Jim Flory
February 27, 1984
Page Two

As I have mentioned, search warrants are a tool we must have in order to carry out our duties. Only our investigators would have the expertise to conduct a search for the relevant documents that we so frequently need. If you were to say that this office would be unable to participate in such searches unless we get the law enforcement officer designation, it would be an important factor in helping us to decide whether or not to attempt to obtain this status.

We hereby request an informal letter opinion from you regarding this issue. Since we believe that the Senate State and Federal Affairs Committee would be able to introduce such legislation, we believe we would still have time this session to accomplish this. But we must act quickly, and for that reason, I would ask for any opinion you might be able to give us as soon as possible.

Please consider what I have said. If you have any questions or comments, please do not hesitate to contact me.

Sincerely,

JOHN R. WURTH
Securities Commissioner

LARRY V. CHRIST
General Counsel

LVC:pjl

cc: Ms. Brenda Hoyt



3/16/84
Attachment #3

STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL
2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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

March 1, 1984

Larry Christ
General Counsel
Securities Commission
109 West 9th St., Suite 501
Topeka, Kansas 66612

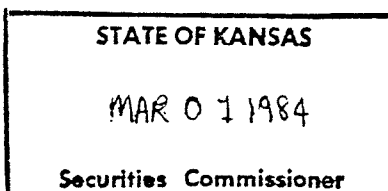
Re: Letter of 27 Feb 84

Dear Mr. Christ:

I have reviewed your concern and in short, I concur with your result. It is my impression from a review of the statutes involved that only law enforcement officers may execute search warrants. K.S.A. 22-2505 in pertinent part states: "A search warrant shall . . . be directed for execution to all law enforcement officers of the state or to any law enforcement officer specifically named therein." It would also appear that this statute narrowed the class of persons authorized to execute searches.

Considering the above section in pari materiae with K.S.A. 22-2507 reinforces the conclusion that only law enforcement officers may execute searches. The language you set out at that section encompasses both the question of "seizure" and of "search" and is conjoined with the phrase "the person directed" which can only refer to law enforcement officers.

Further support for this limitation appears at K.S.A. 22-2509 where the "person executing . . . may reasonably detain and search any person in the place . . ." Obviously this assumes the general powers vested in law enforcement officers.



Attachment #3

Larry Christ
Page Two
March 1, 1984

In the present posture of the civil law relating to Fourth Amendment issues, I think your suggestion of a legislative clarification is in keeping with the "ounce of prevention." The impression I have regarding the question you posed is that non-law enforcement officers may not participate in the execution of search warrants under our current scheme.

If we may be of further assistance, please feel free to contact me.

Very truly yours,

OFFICE OF THE ATTORNEY GENERAL
ROBERT T. STEPHAN

A handwritten signature in dark ink, appearing to read "Kenneth R. Smith", written over a horizontal line.

Kenneth R. Smith
Assistant Attorney General

KRS:may

AN ACT concerning the securities commissioner of Kansas; relating to the appointment of special investigators to enforce the provisions of the securities act; amending K.S.A. 17-1265 and repealing the existing section.

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

Sec. 1. K.S.A. 17-1265 is hereby amended to read as follows:

17-1265. (a) The commissioner in his discretion (1) may make such public or private investigations within or outside of this state as he deems necessary to determine whether any registration should be granted, denied or revoked, or whether any person has violated or is about to violate any provision of this act or any rule or order hereunder, or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder, (2) may require or permit any person to file a statement in writing, under oath or otherwise as the commissioner may determine, as to all the facts and circumstances concerning the matter to be investigated, and (3) may publish information concerning any violation of this act or any rule or order hereunder.

(b) The commissioner may appoint special investigators to aid in investigations conducted pursuant to this act, who shall have the authority to make arrests, serve subpoenas and all other process, conduct searches and seizures, store evidence, and carry firearms, concealed or otherwise, except that no special investigator appointed by the commissioner shall be permitted to carry a firearm without having first successfully complete the firearm training course or courses prescribed for law enforcement officers under article 56 of chapter 74 of the Kansas Statutes

Annotated.

~~(b)~~ (c) For the purpose of any investigation or proceeding under this act, the commissioner or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

~~(e)~~ (d) In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the commissioner, may issue to that person an order requiring him to appear before the commissioner, or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question; and any failure to obey the order of the court may be punished by the court as a contempt of court.

~~(d)~~ (e) No person is excused from attending and testifying or from producing any document or record before the commissioner, or in obedience to the subpoena of the commissioner or any officer designated by him, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after claiming his privilege

against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

Sec. 2. K.S.A. 17-1265 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

3/11 '84
Attachment #5

REQUEST FOR INTRODUCTION OF LEGISLATION
BEFORE THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

REQUESTED BY THE KANSAS HIGHWAY PATROL
COLONEL BERT CANTWELL, SUPERINTENDENT

MARCH 16, 1984

The Kansas Highway Patrol requests amendment of K.S.A. 21-4213 to include a requirement that physicians or other health care providers must report the treatment of motor vehicle accident victims to law enforcement authorities.

Officers of the Patrol, county sheriff's departments and municipal police departments are charged under the provisions of Chapter 8, Article 16 of the statutes with investigating and reporting vehicular accidents. These provisions also place certain duties on those persons involved in the accident.

We feel a definite problem has arisen as stated in the letter you have been furnished and which was directed to members of the Kansas Hospital Association and the Kansas Association of Hospital Attorneys.

We have no argument with the opinion as stated but submit, that if adopted as policy by our hospitals, could have a very undesirable affect.

For instance, consider the possibility of drinking drivers and the short lived evidence involved in this crime. Under the provisions of the opinion the health care provider could disregard the officer's request for acknowledgment and identification and by the time an investigation was conducted, the primary evidence would be forever lost.

This would also cause great confusion in the investigation when the registered owner of the vehicle and the driver were not the same person. Without the cooperation of the health care provider, driver identification could not be effected without extensive investigative effort.

Realistically, we have not experienced any great amount of problems in this area but are very concerned with the possible reaction to this statewide opinion, particularly where it might be invoked in isolated instances and at the whim of the health care provider.

We feel the reporting requirement as requested in the proposed legislation would suffice to defuse the issue.

Attachment #5

3/16, '74

21-4213. Unlawful failure to report a wound or injury resulting from an accident involving a motor vehicle. (1) Unlawful failure to report a wound is the failure by an attending physician or other person to report his treatment of any wound, described in subsections (a) and (b) hereafter, to the office of the chief of police of the city or the office of the sheriff of the county in which such treatment took place:

(a) Any bullet wound, gunshot wound, powder burn or other injury arising from or caused by the discharge of a firearm; or

(b) Any wound which is likely to or may result in death and is apparently inflicted by a knife, ice pick, or other sharp or pointed instrument.

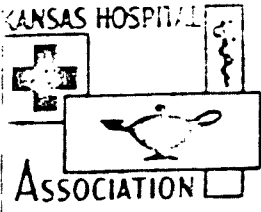
(2) Unlawful failure to report an injury resulting from an accident involving a motor vehicle is the failure by an attending physician or other person to report such treatment to the office of the chief of police of the city or the office of the sheriff of the county where such treatment took place or to the office of the Kansas Highway Patrol.

(3) Unlawful failure to report a wound or injury as specified in subsection (1) and (2) is a class C misdemeanor.

History: L.1969, ch. 180, 21-4213; July 1, 1970

DIV.
3/16/83

Attachment #6



Donald A. Wilson
President

November 4, 1983

TO: Kansas Hospital Association Members
Kansas Association of Hospital Attorneys

FROM: Marilyn Gates
Director of Administrative Services

RE: CHARLES R. HAY OPINION LETTER -
Reporting Requirements - Auto Accident Victims

Dick Hay recently responded to a question regarding whether or not a hospital is required to provide the name of an auto accident victim to law enforcement officials. The accident had not been reported to the local police, who subsequently found the wrecked vehicle and came to the hospital to inquire if the hospital had treated an accident victim.

Mr. Hay responded as follows:

"You have asked for our opinion as to whether a hospital is required to provide the name to law enforcement authorities of anyone who is admitted with wounds that appear to be the result of an automobile accident. The specific factual situation that you inquired about was that an automobile accident apparently happened during the nighttime hours and at least one of the individuals involved sought treatment at a local hospital. Thereafter, presumably the next day, the police visited the hospital to request the name of anyone who had been admitted as a result of the accident. In our opinion, the hospital is not required to provide the name.

"State law requires a report of wounds caused by a firearm and serious wounds apparently inflicted by a knife, icepick or similar instrument. K.S.A. 21-4213. The statute makes no reference to injuries resulting from an automobile accident. Kansas also has a criminal statute prohibiting the obstructing of official duty. K.S.A. 21-3808. However, we do not believe that it can be construed so as to compel a hospital to provide such information to law enforcement authorities. Moreover, the information sought by the police would in effect require the hospital to review patient charts to provide the information. In the recent case of Wesley Medical Center v. Clark, the Kansas Supreme Court indicated that hospital records were subject to the physician-patient privilege and 'would not ordinarily be discoverable without notice to and the consent of the holder of the privilege,' meaning the patient.

OVER

or to meet of
newspaper
6/1/83

Attachment #6

3/16/8

"Therefore, we do not believe ~~that the~~ hospital has an obligation to report in the situation that you have described. We should hasten to add that we are not advising hospitals not to ~~cooperate~~ with law enforcement authorities. Rather, the facts that you have described appear to us to be an instance in which the information sought ~~by law~~ enforcement authorities is confidential and may not be released by the hospital."

MG:rf