

MINUTES OF THE Senate COMMITTEE ON Governmental Organization

The meeting was called to order by Senator Vidricksen at
Chairperson

1:30 ~~xxx~~/p.m. on February 23, 1984 in room 531N of the Capitol.

All members were present except:

Senator Hein

Committee staff present:

Bruce Kinzie - Revisor
Julian Efird - Research

Conferees appearing before the committee:

Senator Wertz
Dr. John Mingle - Executive Vice President, KSU Research Foundation
Bob Stephan - Attorney General
John Meyers - Governor's Office
Bill Henry - Kansas Engineering Society
Carol Keith - Acting Ombudsman for Corrections
JoAnn Klesath - KAPE
Bill Kauffman - Board of Regents

The Chairman called the meeting to order.

Senator Wertz appeared on behalf of S.B. 654 stating that this bill was introduced at the request of the Kansas Research Foundation. He pointed out the addition of new language in lines 186-188 which states that "Records involved in the obtaining and processing of intellectual property rights that are, or are expected to be wholly or partially vested in, or owned by a public agency." Senator Wertz requested that this be kept a "clean bill" and that it be allowed to proceed at its own level. He then introduced Dr. John Mingle who went on to explain the terms of "intellectual property" and "know-how licensing". (Exhibit A)

The hearing on S.B. 654 was then interrupted in order to hear testimony by Attorney General Bob Stephan on behalf of S.B. 568, which related to the Kansas Adult Authority. Mr. Stephan stated that he felt there were too many people on this board who were not working full time and he believed that 3 would be sufficient to deal with the problems. He encouraged favorable passage of S.B. 568. John Myers submitted testimony from the Governor's office and discussed two changes recommended by the Governor. (Exhibit B) He stated that the Governor asked that the legislature approve S.B. 568.

Attention was turned back to S.B. 654 and Dr. Mingle answered questions from the Committee. Mr. Kauffman testified that the Board of Regents supported the concept in S.B. 654 and agreed to confirm the understanding in the proposed amendment to the Kansas Open Records Law to exempt certain intellectual property. (Later correspondence to the Chairman verified this proposal. See Exhibit C)

Bill Henry appeared on behalf of S.B. 480 stating that there was no reason to have 2 entities representing the agency when 5 could do as well as 10 in representation.

Carol Keith spoke in opposition to S.B. 480 stating that this action would have some negative impact on the functioning of the Board and the agency inasmuch as it serves in both a supervisory and an administrative role. She stated that absenteeism was one of the factors that influenced the decision to reduce the number on the Ombudsman Board as some members had difficulty in attending due to scheduling problems. It was felt that appointments made every two years provided staggering of terms and insured continuity on the Board. The Corrections Ombudsman Board requested that S.B. 480 be defeated and the size of the Board remain unchanged. (Exhibit D)

CONTINUATION SHEET

Minutes of the Senate Committee on Governmental Organization, Feb. 23,
1984

JoAnn Klesath appeared briefly before the committee to answer some questions pertaining to S.B. 482.

A motion was made by Senator Johnston to recommend S.B. 534 favorable for passage. This motion was seconded by Senator Mulich and carried.

A motion to approve the minutes of the February 16 and 22 meetings was made by Senator Mulich. Senator Francisco seconded this. Motion carried.

The meeting was adjourned at 2:30 p.m. by the Chairman.

GUEST LIST

COMMITTEE: Senate Governmental Organization DATE: Feb 23

NAME	ADDRESS	COMPANY/ORGANIZATION
Bill Koel	503 KS. AVE Rm. 539	Ombudsman
John Myers	612 E. 10 th Hutchinson	Budget Div.
Larry Wolgast	Topeka	O. Human Resour
Phil Anderson	-	Budget Div.
Jenny Latimer Bartlow	503 KS Avenue, Ste 328	DHR - Mexican American Affairs
Merrill Wertz	-	Senate
Von Miller	3200 W Topeka	Assoc. B. Topeka, Ka
Don Heltinger	6703 Hadley - O.P. 66204	L.W.V.K.
BILL KAUFFMAN	TOPEKA	KANSAS BOARD OF REGENTS
Joe Zuzanic	Topeka	KASB
W. Zuber	-	AP
John Kirchhaber	Topeka	DISC
BILL BELLEVILLE	Topeka	DISC
J. CAREY BROWN	"	"
BRUCE ROBERTS	"	"



Kansas State University Research Foundation

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

MEMORANDUM

TO: Senate Governmental Organization Committee

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

DATE: February 27, 1984

SUBJECT: Intellectual Property

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

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

STATE OF KANSAS



OFFICE OF THE GOVERNOR
State Capitol
Topeka 66612-1590

John Carlin Governor

Testimony to Senate Governmental Organization
John Myers
February 23, 1984

Mr. Chairman and Members of the Committee;

Thank you for allowing me to testify before you today in support of Senate Bill 568.

Senate Bill 568 amends current statute to provide that the Kansas Adult Authority shall consist of three, rather than five members.

The Governor made the decision to recommend such a change after it came to his attention last fall that as the Board was currently operating, the work load was not sufficient to keep the Adult Authority busy. Consequently, the Governor recommended two changes. One is before the Committee today, that being a reduction in the size of the Adult Authority from five to three members. The second change is one which has already been implemented administratively by the Authority. The Governor asked that on all A and B felonies, the Adult Authority sit as a full panel for the interviews and when decisions are made. Previously, these important decisions were made by a subcommittee of the Authority without the participation of all members.

Currently, the Adult Authority is functioning with three members. It is functioning well and efficiently. The Governor asks that the legislature approve this Senate Bill 568.

EXHIBIT B

Ex. B

KANSAS BOARD OF REGENTS



Suite 1416 Merchants National Bank Tower
Topeka, Kansas 66612-1251 913/296-3421

EXHIBIT C

February 23, 1984

The Honorable Ben Vidricksen
Senator, State of Kansas
Chairman, Senate Governmental
Organization Committee
State House
Topeka, Kansas 66612

RE: Senate Bill 654: Proposed Amendment to Kansas
Open Records Law

Dear Senator Vidricksen:

I am writing to confirm the understanding reached yesterday with the Senate Governmental Organization Committee concerning Senate Bill 654, a proposed amendment to the Kansas Open Records Law to exempt certain intellectual property. In order to facilitate the Committee's consideration of the bill, there will be submitted to you for the Committee some time prior to your Monday, January 27, 1984, meeting a background memorandum providing more detailed information as to the scope of intellectual property. You may expect that this item will be delivered to you either by Mr. William Henry, Executive Director of the Kansas Engineering Society, or Mr. John O. Mingle, Kansas State University Research Foundation.

With respect to a proposed amendment to S.B. 654, I initially would propose an amendment to line 188 to limit the applicability of the intellectual property exception to the State educational institutions, that is the Regents institutions, and any assignee of the institutions. While this amendment does not speak to the global nature of intellectual property as used in the existing amendment, it does attempt to limit the application to those areas where the development of intellectual property should be the greatest, that is our universities. The reference to an "assignee" of the institution is found in the policy of the Board of Regents that provides that intellectual property, and particularly patents, are assigned to corporations such as the K.S.U. Foundation for patent development. Thus, the protection of the property in the hands of the assignee is appropriate. It is hoped that the background memorandum to be submitted by Mr. Mingle will provide the Committee with sufficient information as to find the suggested approach acceptable.

EX. C

The Honorable Ben Vidricksen
February 23, 1984
Page 2

If, on the other hand, further amendments are deemed to be appropriate so as to provide specificity of the term "intellectual property," may I suggest that for the Monday, February 27, meeting you consult with Messrs. Henry and Mingle and Dr. Joe McFarland acting in my place on behalf of the Kansas Board of Regents. I appreciate the opportunity to assist the Committee in its consideration of this matter.

Very truly yours,



William R. Kauffman
General Counsel

WRK:bf

Enclosure

cc: Senator Merrill Werts
John L. Mingle, Esquire
William Henry, Esquire
Mr. Stanley Z. Koplik
Dr. Joe McFarland ✓

TESTIMONY TO SENATE GOVERNMENTAL ORGANIZATION COMMITTEE
Thursday, February 23, 1984

I am Carol Keith, Acting Ombudsman for Corrections. I am speaking to you on behalf of the Corrections Ombudsman Board in opposition to Senate Bill 480. Dr. Alan Steinbach, the Chairman of the Corrections Ombudsman Board, sends his regrets that he is unable to appear before you today. Representatives from the Board recently attended a meeting of the Senate Ways and Means sub-committee, but were, unfortunately, unable to attend this meeting.

I am not going to tell you that cutting the Corrections Ombudsman Board in half will result in the total demise of the Ombudsman program. The Board does believe, however, that this action would have some negative impact on the functioning of the Board and the agency. The Corrections Ombudsman Board is a rather unique entity. It does not function in just an advisory capacity - it serves in a supervisory role and an administrative role as well.

As you know, the Ombudsman Office oversees the functioning of the state correctional institutions. This oversight function necessitates some checks and balances. The necessary balance has been built into the Ombudsman Board by statute in that appointments are made by the Governor, the President of the Senate, the Speaker of the House, the Attorney General, and the Chief Justice of the Supreme Court. Presently, each of these appointers makes two appointments to the Board. Senate Bill 480 would reduce the appointments to one each. Appointees to the Corrections Ombudsman Board, for the most part, have been professional people with busy schedules. Absenteeism is a reality. The balance provided by the representation from all branches could very well be jeopardized by absenteeism in a five-member board, as only three members would constitute a quorum.

Absenteeism was one of the factors that influenced the decision to reduce the Corrections Ombudsman Board from fifteen members to ten. This action was initiated by the Board. Figures regarding Board attendance over the past twelve months show an average of 80 percent attendance. The two Board members who experienced difficulty in attending resigned because of their consistent scheduling problems.

Currently, each appointer makes one appointment to the Board every two years, and the appointee serves a four-year term. This provides a staggering of terms and insures continuity on the Board. Senate Bill 480 eliminates the staggering of terms. The possible result of this action would be a new and inexperienced Board every four years. I realize that five members could be staggered as well as ten. However, the current staggering of each appointer's appointments allows the appointer to have an experienced person on the Board at all times.

The original legislation, as well as Senate Bill 480, reflects the legislative desire for representation on the Board from different parts of the state. Realistically speaking, geographic coverage would be difficult if each of the five appointers were limited to one appointment. As a matter of fact, if this bill is enacted, there will be no representation from western Kansas whatsoever between the period of September, 1984, until September, 1986.

Finally, the fiscal impact of this legislation is minimal. The effect on the FY 1985 budget would be \$1,322.00 in salaries and wages and \$2,100.00 in travel and subsistence for a total of \$3,422.00.

The Corrections Ombudsman Board requests that SB480 be defeated and the size of the Board remain unchanged. Your consideration of this is appreciated.

EXHIBIT D

Ex. D

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

Room 545-N - Statehouse

Phone 296-3181

Date February 22, 1984

TO: SENATOR BEN VIDRICKSEN Office No. 143-N

RE: OTHER STATES' OMBUDSMAN AND PAROLE BOARDS

A quick review of available information concerning state correctional ombudsman boards indicates that no other state has a board similar to Kansas'. Minnesota does have a correctional ombudsman but this individual serves at the pleasure of the governor.

Four other states (Nebraska, Iowa, Alaska, and Hawaii) have general jurisdiction ombudsmen who handle complaints against state agencies. All four of these agencies are responsible to their respective legislatures and not to a board.

The following table reflects the composition of parole boards in selected states.

<u>State</u>	<u>Number of Members</u>
Colorado	5 full-time
Iowa	7 part-time
Missouri	3 full-time
Nebraska	5 members, only <u>3 are full-time</u> x
New Mexico	3 full-time x
North Dakota	3 part-time x
Wyoming	3 part-time x

If I may be of further assistance, please contact me.

Alan D. Conroy
Alan D. Conroy
Fiscal Analyst

ADC/sdp