

MINUTES OF THE House COMMITTEE ON Elections

The meeting was called to order by Representative Harold Guldner at
Chairperson

9:00 am a.m./p.m. on Tuesday, March 19, 1985 in room 521-S of the Capitol.

All members were present except: Representative Knopp

Committee staff present: Myrta Anderson, Legislative Research Department
Ramon Powers, Legislative Research Department
Mary Hack, Revisor of Statutes Office
Eric Rucker, Secretary of State's Office
Dottie Musselman, Committee Secretary

Conferees appearing before the committee:

Ron Smith, Kansas Bar Association
Marge Phelps, Attorney, Topeka
Judge William Carpenter, Shawnee County District Court
Ann Heberger, League of Women Voters of Kansas
Donald Schnacke, Kansas Independent Oil & Gas Assoc.
Ruth Wilkin, Former Legislator, and Girl Scout
Councils of Kansas
Judge Leo Moroney, Wyandotte Co. District Judge,
29th Judicial District
Representative Laird, Topeka, District 59

Vice Chairman Guldner called the meeting to order and recognized Ron Smith, Kansas Bar Association. SB 39, An Act concerning judges of the district court; relating to method of selection was the first order of business for hearing.

Mr. Smith came before the committee to give them a briefing of SB 39, and told them that the Kansas Bar Association had requested this piece of legislation from the Senate Judiciary Committee. SB 39, as amended, deals with elections concerning the method of selection of judges of the district courts. The bill provides different wording of the ballot proposition in each of the following instances; where judges are currently selected on a partisan basis, on a nonpartisan basis, and where a new judicial district is formed. This bill also extends the time period for when the issue of the partisan election of judges or selecting judges on a nonpartisan basis can be voted upon from once every four years to once every eight years. The eight year limit applies in any judicial district which held an election on this issue in 1984, and will apply in any other judicial district once an election is held on this issue in the future. As there were no questions of Mr. Smith, the Vice Chairman recognized Marge Phelps, Attorney, Topeka, Kansas, at this time.

Ms. Phelps appeared before the committee in opposition to SB 39. Following a lengthy testimony, a question and answer period was held. In checking with Ms. Phelps after the meeting regarding written testimony, she assured me that she would provide testimony for the committee members at the meeting on Thursday, March 21, 1985.

Judge William R. Carpenter, Shawnee County District Court, was now recognized. Judge Carpenter appeared before the committee in support of SB 39.

The next person to be recognized was Judge Leo Moroney, Wyandotte County, 29th Judicial District. Judge Moroney told the committee that he was appearing on behalf of Judge Wayne H. Phillips. Attention was called to a letter which Judge Phillips had written to the committee regarding SB 39, a copy of this letter was passed to the members earlier. (Attachment 1). Judge Moroney drew attention to the section of the letter in which it was stated that the committee of the Kansas District Judges' Association unanimously opposed the wording contained in SB 39 because it appears to "lock-in" whichever election system prevails in the judicial district. It is noted that the Judges' Association committee was generally favorable to the 8-year moratorium beginning in 1984.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Elections,
room 521-S, Statehouse, at 9:00 am a.m./p.m. on Tuesday, March 19,, 1985.

The Chairperson told the committee that the hearing on SB 39 would be continued on Thursday, March 21, as the House was due to convene at 10:00 am. Chairperson Harper ask the conferees who did not speak today to return on Thursday. Conferees not speaking today were: Ann Heberger, League of Women Voters of Kansas; Donald Schnacke, Kansas Independent Oil & Gas Association; Ruth Wilkin, Former Legislator, and Girl Scout Councils of Kansas; and, Representative Laird.

It was moved by Representative Justice that the minutes of the March 7 and 8th meetings be approved. Seconded by Representative Kline. Motion carried.

The meeting adjourned.

(attachment 1)

DISTRICT COURT OF KANSAS

CHAMBERS OF
WAYNE H. PHILLIPS
JUDGE



COURT HOUSE
KANSAS CITY, KANSAS
66101

WYANDOTTE COUNTY

March 11, 1985

House of Representatives
State Capitol
Topeka, Kansas 66612

Attention: Elections Committee

In re: SB 39

Gentlemen:

In November, 1984, I was appointed Chairman of a committee of the Kansas District Judges' Association to make recommendations for changes in Article 29, K.S.A. 20-2901 on judicial selection. Senate bills 39 and 45 (now combined) were discussed. The committee unanimously opposed the wording contained in SB 39 because it appears to "lock-in" whichever election system prevails in the judicial district. The committee was generally favorable to the 8-year moratorium beginning with 1984.

At our committee meeting of March 8, 1985, the enclosed language change in SB 39 was recommended. Because the Executive Council of the Kansas District Judges' Association does not meet until April 4, 1985, I cannot state this as policy of the association.

We felt you should know our concern and critically review the method contained in SB 39 of presenting the question to the voters.

Cordially,

WAYNE H. PHILLIPS

WHP:maf

ENC: Proposed language change

4. Elect. 3/19/85
(attachment #1)

Amend K.S.A. 20-2901(c) (1984 Supp.) to read:

(c) The proposition on the ballot at an election held pursuant to this section for the repeal of non-partisan selection shall be as follows:

"The present method of non-partisan selection of judges of the district court in this judicial district by the governor upon nominations by a district nominating commission and subject to retention in office by a vote of the voters shall be discontinued and there is hereby adopted in this judicial district the election of judges of the district court by the voters."

(d) The proposition on the ballot at an election held pursuant to this section for the adoption of non-partisan selection shall be as follows:

"The present method of electing judges of the district court in this judicial district shall be discontinued and there is hereby adopted in this judicial district the non-partisan method of selection of judges by the governor upon nominations by a district nominating commission and subject to retention in office by a vote of the voters."

March 21, 1985

HOUSE ELECTIONS COMMITTEE

Honorable Richard Harper, Chairperson
Honorable Harold Guldner, Vice-Chairperson
Honorable Elizabeth Baker, Member
Honorable Don Crumbaker, Member
Honorable Dorothy Flottman, Member
Honorable Ben Foster, Member
Honorable Carl Holmes, Member
Honorable Phil Kline, Member
Honorable Joe Knopp, Member
Honorable Lawrence Wilbert, Member
Honorable Norman Justice, Ranking Minority Member
Honorable Gary Blumenthal, Member
Honorable Betty Jo Charlton, Member
Honorable Henry Helgerson, Member
Honorable Mary Jane Johnson, Member
Honorable Bill Roy, Jr., Member
Honorable Judith Runnels, Member

SUBJECT: Senate Bill Nos. 39 and 45.

Honorable Chairperson, Vice-Chairperson & Representative Members:

This is to formally set out the opposition of the Committee to Elect Judges to proposed Senate Bills numbered 39 and 45. We are primarily opposed to the following two provisions of those bills:

1. The proposal to extend the period of time within which the issue of appointment versus election of judges can be placed on the ballot from 4 to 8 years.
2. The proposal that any election on this issue be limited to a "yes" or "no" choice to continue the method intact at the time of the election (proposed par. 1c1 to No. 39).

On its face, these proposals do nothing more than further erode and limit the right of the voters throughout this state to be heard, by proper election process, with regard to the placement of county judges who sit in judgment with regard to vital matters effecting peoples' lives daily.

In 1974 the legislature carefully considered what procedure and time frame to put into motion. The legislature accepted the recommendation of many people in proposing the passage of a 4 year period and in proposing the passage of a statute allowing the voters, on each occasion when this matter is placed on the ballot, to consider both options available.

(Written testimony)

This proposed legislation is unduly restrictive, confusing, and unwarranted.

The proponents of this bill argue: When the issue of election versus appointment of judges appears on the ballot it necessarily requires judges to politick, this is undesirable, so limit the placement of this issue on the ballot to every 8 years. We respond: This argument proves entirely too much. By this thought process this issue should never be allowed to appear on the ballot. Are we really willing to allow judges to go forever unchecked?

If the voters of a given county in this state determine (because of the conduct of their county judges) that they wish to review the method of placement of judges of that county, under this proposed legislation, they will have to languish under an unwanted and intolerable condition for up to 8 long years! Do we really want to place the citizens of this state in such dire straits?

Representative Foster has suggested (in hearings held March 19) that this issue is not an issue of election versus appointment of judges. First, we must suggest that the issue of this legislation and the election versus appointment of judges issue are inseparable. If the voters of this state are not going to be allowed to even address the issue of election versus appointment but every 8 years, and if they are going to be restricted to simply approving or disapproving the system intact at the time, in effect, the voters of this state are going to be entirely ignored on this issue!

However, and more to the point, I must respectfully disagree with Representative Foster to this extent: This issue before this Committee is very much an issue of judicial conduct! This is as blatant a piece of special interest, self serving legislation as ever was proposed! This is legislation proposed in an effort, on the part of very few, to further erode the voice of the voters in stating how they want their judges placed.

And, the context in which this bill appears is crucial to this Committee's consideration of the bill.

The issue of election versus appointment was placed on the ballot in Shawnee County at the request of 7,450 voters of the county. Immediately following media coverage of the circulation of the petitions the judges of this county, with the full weight, influence and resources of the state behind them, undertook to vigorously politick against election of judges. In excess of \$50,000 was spent by those favoring appointment. Judges engaged in activity unsuited to the judiciary, including conduct intended to intimidate those attorneys favoring election of judges. The voters opted in favor of appointment.

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Those favoring election announced, through the media, that they intended to give the people a chance to vote again in 4 years. Then, and only then, was the legislation proposed; and, the legislation is sponsored by and supported by the very same group favoring appointment in this past election--with judges right in the big middle!

This is not a matter for the judiciary! This is a matter for the people! Simply because judges do not want to be put to the trouble of having to spend enormous amounts of time and money (when they should not even be involving themselves) to persuade the voters to vote in favor of appointment (thereby insuring that judges do not have to go to the people every 4 years, one man/woman on his/her merits, facing the people) is not a good reason for this Committee to approve further restrictions on the voters' right and ability to provide a check on the judges who are to serve them!

Only those who favor appointment of judges favor and support this proposed legislation. Those who favor election are not appearing here whining and clamoring to avoid facing the people on the merits of election. (Now almost half the counties in this state elect judges; the people of these counties are not asking that those who would favor appointment be restricted from presenting this issue to a period of 8 years.)

The role of judges in our society is vital! The right of the voters to hold judges accountable is essential! Year by year, every time any person or group endeavors to meaningfully present this issue to the voters, judges seek to, little by little, take away any power by the voters to cause judges to answer to them!

This Committee--this legislature--has far too many truly important matters--matters which effect many people--matters far more deserving of the attention of our representatives--to spend any more time on this obviously self serving effort by some of the judges of this state to insure job security. No member of this House--no other public official--indeed, not even the President of the United States--is allowed to go unchecked for 8 long years! Against this backdrop, the inequity of requiring the voters of this State to wait so long before being allowed only to say "yes" or "no" to an existing method becomes apparent!

Please preserve the right of the people to insure unto themselves worthy judges. Please vote against Senate Bill Nos. 39 and 45.

Respectfully,


Margie J. Phelps, Co-Chairperson
COMMITTEE TO ELECT JUDGES