

MINUTES OF THE House COMMITTEE ON Transportation

The meeting was called to order by Representative Rex Crowell at
Chairperson

1:30 ~~xxx~~/p.m. on February 18, 1985 in room 519-S of the Capitol.

All members were present except: Representatives Adam and Justice, excused.

Committee staff present:

Hank Avila, Legislative Research Department
Fred Carman, Office of the Revisor of Statutes
Donna Mulligan, Committee Secretary

Conferees appearing before the committee:

Representative Harold Guldner
Mr. Harley T. Duncan, Kansas Department of Revenue
Representative Max Moomaw
Representative Marvin Smith
Mr. Ron Smith, Kansas Bar Association

The meeting was called to order by Chairman Rex Crowell, and the first order of business was a hearing on HB-2248 concerning owners of registered vehicles which unlawfully pass school buses.

Representative Harold Guldner, sponsor of the bill, briefed the Committee on its contents. He said HB-2248 permits using the motor vehicle license tag as a means of identifying a violator who passes a stopped school bus.

Discussion was held regarding identification of violators driving rental cars.

Mr. Harley T. Duncan, Secretary of the Kansas Department of Revenue, testified concerning HB-2248.

Mr. Duncan said they are uncertain as to what constitutes a second offense. He said it was not clear if it constituted a second offense if a person who has been cited and fined for passing a bus later receives a notice saying that person owns a vehicle that was identified under this bill. Also, he wondered when determining a second offense, should they start over in counting after that second offense, or would the second and all subsequent offenses receive the sanction.

Mr. Duncan said that for purposes of prosecution, they propose that the wording be similar to that in KSA 8-286 pertaining to habitual violators where the case is referred to the County Attorney.

There were no questions for Mr. Duncan.

Representative Max Moomaw, co-sponsor of the bill, briefed the Committee on HB-2248 and said it was his intention that anytime there was a verification of who was driving a vehicle which unlawfully passes a school bus the driver would be prosecuted.

Representative Marvin Smith, co-sponsor of the bill, spoke in favor of HB-2248, saying school bus drivers are constantly concerned with the safety of children while exiting the bus.

Mr. Ron Smith of the Kansas Bar Association presented testimony concerning HB-2248 and distributed copies of a quote from Blacks Law Dictionary, Fourth Edition, which said, "If any question of fact or liability be conclusively presumed against him, this is not due process of law." (See Attachment 1) He indicated the Kansas Bar Association remains neutral on the bill.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation,
room 519-S, Statehouse, at 1:30 ~~xxx~~/p.m. on February 18, 1985

The hearing on HB-2248 was concluded.

Chairman Crowell appointed a subcommittee on HB-2248 consisting of Representatives Moomaw as Chairman, Snowbarger and Erne.

The meeting was adjourned at 2:10 p.m.


Rex Crowell, Chairman

DUE

DUE POSTING. Includes stamping and placing letter in United States mail. *Tharp v. Loeb Hardware Co.*, 135 So. 412, 413, 24 Ala.App. 344.

DUE PROCESS OF LAW. Law in its regular course of administration through courts of justice. 3 Story, Const. 264, 661. "Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs." *Cooley*, Const. Lim. 441. Whatever difficulty may be experienced in giving to those terms a definition which will embrace every permissible exertion of power affecting private rights, and exclude such as is forbidden, there can be no doubt of their meaning when applied to judicial proceedings. They then mean a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the enforcement and protection of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution—that is, by the law of its creation—to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the state, or his voluntary appearance. *Pennoyer v. Neff*, 95 U.S. 733, 24 L.Ed. 565. Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law. *Zeigler v. Railroad Co.*, 58 Ala. 599. These phrases in the constitution do not mean the general body of the law, common and statute, as it was at the time the constitution took effect; for that would seem to deny the right of the legislature to amend or repeal the law. They refer to certain fundamental rights, which that system of jurisprudence, of which ours is a derivative, has always recognized. *Brown v. Levee Com'rs*, 50 Miss. 468. "Due process of law," as used in the constitution, cannot mean less than a prosecution or suit instituted and conducted according to the prescribed forms and solemnities for ascertaining guilt, or determining the title to property. *Embury v. Conner*, 3 N.Y. 511, 517, 53 Am.Dec. 325. And see, generally, *Davidson v. New Orleans*, 96 U.S. 104, 24 L.Ed. 616.

"Law of the land," "due course of law," and "due process of law" are synonymous. *People v. Skinner*, Cal., 110 P.2d 41, 45; *State v. Rossl*, 71 R.I. 284, 43 A.2d 323, 326; *Direct Plumbing Supply Co. v. City of Dayton*, 138 Ohio St. 540, 38 N.E.2d 70, 72, 137 A.L.R. 1058; *Stoner v. Higginson*, 316 Pa. 481, 175 A. 527, 531. But "judicial process" and "judicial proceedings" are not necessarily synonymous with "due process." *Pennsylvania Publications v. Pennsylvania Public Utility Commission*, 152 Pa.Super. 279, 32 A.2d 40, 49; *Barry v. Hall*, 98 F.2d 222, 68 App.D.C. 350.

The essential elements of "due process of law" are notice and opportunity to be heard and to defend in orderly proceeding adapted to nature of case, and the guarantee of due process requires that every man have protection of day in court and benefit of general law. *Dimke v. Flnke*, 209 Minn. 29, 295 N.W. 75, 79; *Di Malo v. Reid*, 13 N.J.L. 17, 37 A.2d 829, 830. Daniel Webster defined this phrase to mean a law which hears before it condemns, which proceeds on inquiry and renders judgment only after trial. *Wichita Council No. 120 of Security Ben. Ass'n v. Security Ben. Assn.*, 138 Kan. 841, 28 P.2d 976, 980, 94 A.L.R. 629; *J. B. Barnes Drilling Co. v. Phillips*, 166 Okla. 154, 26 P.2d 766. This constitutional guaranty demands only that law shall not be unreasonable, arbitrary, or capricious, and that means selected shall have real and substantial relation to object. *Nebbia v. People of State of New York*, N.Y., 54 S.Ct. 505, 291 U.S. 502, 78 L.Ed. 940, 89 A.L.R. 1469; *North American Co. v. Securities and Exchange Commission*, C.C.A., 133 F.2d 148, 154.

DUE PROOF. Within policies requirements mean such a statement of facts, reasonably verified, as, if established in court, would prima facie require payment of the claim, and does not mean some particular form of proof which the insurer arbitrarily demands. *Misskelley v. Home Life Ins. Co.*, 205 N.C. 496, 171 S.E. 862, 868; *National Life Ins. Co. v. White*, D.C.Mun.App., 38 A.2d 663, 666. Sufficient evidence to support or produce a conclusion; adequate evidence. *Lando v. Equitable Life Assur. Soc. of U. S.*, D.C.Cal., 11 F.Supp. 729, 732.

DUE REGARD. Consideration in a degree appropriate to demands of the particular case. *Willis v. Jonson*, 279 Ky. 416, 130 S.W.2d 828, 832.

DUE TO. Expressions "sustained by," "due to," "resulting from," "sustained by means of," "sustained in consequence of," and "sustained through" have been held to be synonymous. *Federal Life Ins. Co. v. White, Tex.*, 23 S.W.2d 832, 834. Also, synonymous with "caused by." *American Stores Co. v. Herman*, 166 Md. 312, 171 A. 54, 58.

DUE-BILL. A brief written acknowledgment of a debt. It is not made payable to order, like a promissory note. See *Feeser v. Feeser*, 93 Md. 716, 50 Atl. 406; *Lee v. Balcom*, 9 Colo. 216, 11 Pac. 74. See I. O. U.

DUEL. A duel is any combat with deadly weapons, fought between two or more persons, by previous agreement or upon a previous quarrel. *Baker v. Supreme Lodge K. P.*, 103 Miss. 374, 60 So. 333, Ann.Cas.1915B, 547.

DUELLING. The fighting of two persons, one against the other, at an appointed time and place, upon a precedent quarrel. It differs from an affray in this, that the latter occurs on a sudden quarrel, while the former is always the result of design.

DUELLUM. The trial by battle or judicial combat. See *Battel*.

DUES. Certain payments; rates or taxes. See *Ward v. Joslin*, 105 Fed. 227, 44 C.C.A. 456; *Whitman v. National Bank*, 176 U.S. 559, 20 Sup.Ct. 477, 44 L.Ed. 587. As applied to club and other membership corporations, word refers to sums paid toward support of society and to retain membership therein. *Jefferson County Farm Bureau*

2/18/85
Attach 1