

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at  
Chairperson

10:00 a.m./~~p.m.~~ on February 4, 1985 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~ were: Senators Hoferer, Burke, Feleciano, Gaines, Langworthy, Parrish, Talkington, Winter and Yost.

Committee staff present:

Mary Torrence, Office of Revisor of Statutes  
Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Randy Hearrell, Kansas Judicial Council  
Jerry Palmer, Kansas Judicial Council  
Judge J. Richard Foth, Chief Judge, Court of Appeals  
John Myers, Office of the Governor  
Marjorie Van Buren, Office of Judicial Administrator  
Ron Smith, Kansas Bar Association

The committee was chaired by Senator Jean Hoferer, vice-chairperson, in the absence of Senator Robert Frey, chairman.

Senator Yost presented a proposal to request introduction of a committee bill which would allow the Assembly of God Church to transfer abandoned property from one of their churches to the main church. A copy of the proposal is attached (See Attachment I). Senator Yost made a motion that the bill be introduced and placed on the consent calendar. Senator Parrish seconded the motion. The motion carried.

Senate Bill 36 - Increase in judges on court of appeals.

Randy Hearrell presented background information to the bill.

Jerry Palmer appeared on behalf of the Kansas Judicial Council. Mr. Palmer explained the committee studied lawyer time from filing of appeal to disposition of the appeal in the court of appeals. They discussed the caseload of the court; looked into the internal operating procedures; studied statistics from other states; history of supreme court's decisionmaking and looked at individual judges. He stated there is not enough personnel in the court to dispose of cases that come into the system. It was recommended in the beginning the court of appeals should be larger than it is now by an addition of three judges. The committee found the judges were working very hard, and there is stress in the job. They were concerned with the reputation of the caseload in the court and other persons would not be interested in applying for the position. Mr. Palmer stated the Judicial Council Advisory Committee is available to this committee and the committee report shows the need for the judges. He added the Kansas Trial Lawyers Association endorses this proposal and his testimony.

Judge J. Richard Foth, the Chief Judge of the Court of Appeals, stated the court needs the help. He said he did not participate in the advisory committee's work, but did participate to the extent that he consulted with them. No one can quarrel with the logic of the judicial council's report, and the 1983-84 figures have been added to the report. Judge Foth explained the kinds of

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 4, 1985

Senate Bill 36 continued

cases will not increase in volume, but they are more complex and difficult. The cases have increased to 80 per judge per year. The court has had health problems this past year, and it is an acute problem when outside judges come in, because they have no staff, and they have to be staffed. The lawyers and the litigant expect to have appeals decided by appellate judges. The governor's recommendation is for two judges, and Judge Foth said he would rather have two judges than one. If they have ten judges, this would take care of vacations. One hundred filings per judge is a bench-mark for need for judges. He explained the chief judge has more administrative duties with more filings. Adding two more judges does not give you a third panel, but three judges does give you a third panel. During discussion, a committee member inquired how other states compare with the backlog in Kansas and how their backlog compares with the supreme court. Judge Foth replied, an ordinary civil case gets pushed back six months. They dispose of sixty to seventy cases a month, but they get 100 filings a month. The supreme court has a different operation. The supreme court control their own docket because their only jurisdiction is A and B felonies. They are only getting 130 cases filed in their court. They have no backlog. In Colorado, their civil cases had been pushed back to a couple of years.

John Myers appeared on behalf of the governor to support an expansion of the court of appeals. Although this bill provides for the addition of three new judgeships to the court, the governor, after careful review of the court's status, concluded that two judges would meet their needs. A copy of his testimony is attached (See Attachment II).

Marjorie Van Buren testified the Office of the Judicial Administrator is in support of the bill. She stated the additional judicial help and supporting staff will resolve this impact.

Ron Smith testified the Kansas Bar Association Executive Council has consistently supported adding new judges to the Kansas Court of Appeals. A copy of his testimony is attached (See Attachment III).

Judge Foth was recognized to make an additional comment. He noted the bill pending, Senate Bill 9, a workers compensation bill, those cases will go to the court of appeals rather than the district court where they go now. This will add to their caseload. In answer to a question, Judge Foth replied, when a case is appealed it takes 13 or 14 months time waiting to have oral argument. Committee discussion with him followed.

This completed the hearings on the bill.

Senator Gaines moved to report Senate Bill 36 favorably. Senator Winter seconded the motion. A committee member wanted more time to discuss the cost involved. Senator Gaines withdrew his motion. Further committee discussion was held.

The meeting adjourned.

Copy of the guest list attached (See Attachment IV).



2-4-85

STATE OF KANSAS

SENATOR ERIC YOST  
SEDGWICK COUNTY  
STATE CAPITOL BUILDING  
TOPEKA, KANSAS 66612



TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS  
CHAIRMAN LEGISLATIVE AND CONGRESSIONAL  
APPORTIONMENT  
MEMBER ENERGY AND NATURAL RESOURCES  
JUDICIARY  
LABOR, INDUSTRY, AND SMALL  
BUSINESS  
JOINT COMMITTEE ON SPECIAL CLAIMS

February 4, 1985

The denominations listed below currently have statutes which allow them to transfer abandoned property from one of their churches to the main church. The Assembly of God Church seeks a similar statute.

- Baptist Church
- Christian Church
- Church of Christ
- Church of the Nazarene
- Congregational Church
- Disciples of Christ
- Free Methodist Church
- German Baptist Brethren
- Native American Church
- Swedish Evangelical Mission
- United Brethren in Christ

2/4/85  
Attch. I

2-4-85

STATE OF KANSAS



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OFFICE OF THE GOVERNOR

State Capitol  
Topeka 66612-1590

John Carlin Governor

Testimony to  
Senate Judiciary Committee  
on Senate Bill 36  
by John Myers  
on February 4, 1985

Mr. Chairman, Committee Members:

I am appearing on behalf of Governor Carlin today to support an expansion of the Court of Appeals. Although Senate Bill No. 36 provides for the addition of three new judgeships to the Court, the Governor, after careful review of the Court's status, concluded that two judges would meet their needs. The Governor has included \$285,075 in his budget for two judges, support staff and related operating expenditures.

One of the basic premises on which the Legislature created the unified court structure was the principal that every individual should have the right to one judicial appeal. The major forum for exercising that right is the Court of Appeals.

Since the initial establishment of the Appeals Court, the number of cases being filed has dramatically increased, while the number of judges available to make determinations has remained at seven. This has resulted in a growing backlog of cases. As of December 31, 1984, there were 260 pending cases ready for disposition, as compared to 220 a year ago. The backlog has increased from 273 at the time of the Judicial Council Report in 1983, to the current 314, based on the same formula as the Council utilized. This formula results in a higher number of backlog cases, because it not only includes those cases ready to be heard, but also those cases which have specifically not been prepared because the docket is full. The average time span from the filing of a case to the court hearing is one year. This time element varies by geographical area, type and complexity of the individual case.

2/4/85  
Attch. II

Although the research capability of the court was increased significantly in Fiscal Year 1985, the problem remains one of an adequate number of judges to consider the merits of each case and issue an opinion. The Chief Judge, because of his administrative duties, is limited in time spent on case deliberations, while the remaining six travel on a rotating basis in panels of three. The responsibilities of making case decisions cannot be delegated to support staff. An expansion of the court is required.

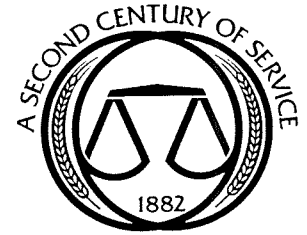
The Court of Appeals has attempted to address the problem by utilizing temporary panels of retired appellate judges and trial judges. These individuals are empaneled with a current appellate judge. In the past, these "blitz" panels have been used once or twice a year, with three to four panels operating simultaneously. The additional burden on existing support staff within the court, however, restricts the further use of these panels. Although these "blitz" panels have been of benefit in slowing the increase, they have not had any impact on the backlog of cases pending before the court. During the time these panels have been employed, the backlog has continued to grow.

By increasing the number of appellate judges from seven to nine, the capability of the sitting court would be greatly enhanced. The capacity of a judge to deliberate and decide appellate cases is considered on a national average to be 80 cases per year. The two additional judgeships would not only expand the numerical caseload capacity, but would give added flexibility to the rotation of sitting panels.

It is anticipated that with a nine member court and the continued use of "blitz panels," the current backlog of cases could be eliminated within a year. Once the docket has been brought current, the nine member court would continue handling the newly filed appeals. Fluctuations in the filings which might create a high demand for a certain period could, if necessary, be disposed of with a temporary panel.

Maintaining an accessible court for its citizens is an important responsibility of government. Failure to provide a timely and efficient disposition of cases undermines the public's confidence both in the judicial process and state government. The expansion of the Court of Appeals is necessary to fulfill this responsibility to the public.

RON SMITH  
Legislative Counsel



KANSAS BAR  
ASSOCIATION

SB 36  
Senate Judiciary Committee  
February 4, 1985

Mr. Chairman. Members of the Senate Judiciary Committee.  
I am Ron Smith, Legislative Counsel for the Kansas Bar Association.

The Legislative Policy of our professional association is made by the Executive Council. Last year, and again in September of this year, the KBA Executive Council has consistently supported adding new judges to the Kansas Court of Appeals.

When the court system was unified in 1976, the caseload of the Court increased dramatically. A recent Judicial Council study indicated clear need for at least two new judges on the Court. The Court is requesting three new judges through this legislation. KBA supports that request.

In our system of government the judiciary must justify expansion of the size of the court to the other branches of government. We believe it is in the public interest for the Judicial Branch to be able to work its caseload quickly. This requires more than adequate salaries or staff or equipment. It often requires--and in this instance does require--more positions be named to the Court of Appeals.

Currently, to handle backlog, former or retired district judges are being called in to help alleviate the pressure of the docket. A larger Court of Appeals should function better than the current system. KBA believes 1985 is the year such expansion should take place. We support that expansion.

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Attch. III