Approved April 2, 1985
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

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

10:00 a.m./p~~x~~m. on March 21, 1985 in room 514-S of the Capitol.

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

Committee staff present:

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

Conferees appearing before the committee:

Senator Eugene Anderson
James Butler, Kansas Commission on Civil Rights
Michael Bailey, Kansas Commission on Civil Rights
Roger Lovett, Kansas Commission on Civil Rights
Dennis Essary, Unified School District 383
Representative Max Moomaw
John Koepke, Kansas Association of School Boards

Senate Bill 145 - Exempting the commission on civil rights from the provisions of the act for judicial review and civil enforcement of agency actions.

Senator Anderson, sponsor of the bill, testified this bill will clear something that is unfair and hampers the commission on its day to day operation.

James Butler, Kansas Commission on Civil Rights, appeared in support of the bill. He cited three basic reasons why the Kansas Commission on Civil Rights should be exempt from the provisions of the Act for Judicial Review: (1) The possibility of excessive appeals, (2) With reference to Trial De Novo, (3) Negating the work of the Hearing Examiner. A copy of his presentation is attached (See Attachment I).

Michael Bailey, Kansas Commission on Civil Rights, appeared in support of the bill. He testified including the Kansas Commission on Civil Rights under the coverage of the Act for Judicial Review will generate delays and additional expenses in administering the Kansas Act Against Discrimination by substituting a new and cumbersome procedure for one which is tried and proven. A copy of his presentation is attached (See Attachment II). Considerable committee discussion with him followed. A committee member inquired if this bill would change procedure they have now? Mr. Bailey replied, it wouldn't change procedure with the local commissions. Another committee member commented, if exempt everybody, there would be no reason to have the Administrative Procedures Act. Mr. Bailey replied, the way it is written, it would be detrimental to our agency. We have processed 1200 cases over the last three years.

Roger Lovett, Kansas Commission on Civil Rights, appeared in support of the bill. He stated the most substantial problem lies in the area of the potential of more than 700 judicial reviews annually of "No Probable Cause" decisions and the attendant substantial increases in the commission's budget. But the expense does not stop with the commission. These new cases will be an additional burden upon the resources of the judicial system. They will constitute an extra and unnecessary burden upon both complainants and respondents. A copy of his presentation is attached (See Attachment III). A committee member inquired,

Senate Bill 145 continued

if strike you out on the de novo position, why exempt you totally from judicial review? Mr. Lovett replied, they are comfortable with the old procedure. The committee member inquired, wouldn't it work just as well if put under the Administrative Procedures Act? Mr. Lovett replied, their problems are with the judicial review.

House Bill 2248 - Registered owner liability for vehicle unlawfully passing a school bus.

The chairman explained the bill.

Dennis Essary, Unified School District 383, stated he was asked to appear in support of the bill by the transportation people of the state because of the children nearly hit by violators. In response to a question, Mr. Essary responded in the past four years there have not been any children killed. The committee member inquired how many near misses have been reported? Mr. Essary replied, 100 violations have been turned in. The committee member inquired what has happened to those cases. Mr. Essary replied, an average of about 75% were prosecuted. He stated across the state in many cases the police department is not interested or want to take time to take care of the violations. The bill limits the amount of information they have to take. He explained most cities in the state use the Standard Traffic Ordnance in Kansas for cities to prosecute; the letter of warning is for the first offense. A committee member inquired, if people were not aware of the law? Mr. Essary replied, some people are not aware of the law and some people are in a big hurry. He reported since the beginning of this school year, Manhattan has had 100 cases so far this year. A committee member inquired if the information is remitted to the insurance companies? Mr. Essary replied, it is a traffic violation. He explained Kansas has mandated training for school bus drivers, and compared to other states, they are better trained.

Representative Max Moomaw appeared in support of the bill. He explained this bill speaks to the times when only the vehicle is identified, the owner of the vehicle is subject to a civil penalty. If the owner can identify the actual driver, the driver will be charged and prosecuted for violation and the owner will not be subject to the civil penalty. A copy of his testimony is attached (See Attachment IV). Representative Moomaw stated this has been a problem in Finney County area. New people in the area are not familiar with their laws in regard to passing school buses, and it is hard to identify a person unless you know that person. They feel this bill, should it become law, would bring attention to the owner of that vehicle that this vehicle has been involved in a passing incident.

John Koepke, Kansas Association of School Boards, testified they have no position on the bill but have some problems with it. He stated it seems this imposes a duty on school bus drivers who are put in a position of a law enforcement officer. It takes attention from the children. The guilty party is the owner of the vehicle unless proven someone else is guilty. They have some problems with the bill.

House Bill 2043 - Notice of sale of personal property under probate code.

The chairman explained this is a cleanup bull to bring the requirements for selling real property and personal property into conformity. A copy of Senator Walker's testimony is attached (See Attachment V).

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,

room 514-S, Statehouse, at 10:00 a.m./p.m. on March 21, 1985

House Bill 2043 continued

Senator Burke moved to report the bill favorably and placed on the consent calendar. Senator Parrish seconded the motion. The motion carried.

House Bill 2038 - Notice of termination of farm tenancies.

The chairman explained the bill.

Senator Burke moved to report the bill favorably and placed on the consent calendar. Senator Winter seconded the motion. The motion carried.

The meeting adjourned.

Copy of guest list is attached (See Attachment VI).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE DATE: 3-21-85

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
CHARLES S. SCOTT	1139 Lane City	KCCR
Michael Bailey	2145, W. 6th Ave	KCCR
DENNIS ESSAM	RT 1 BOX 69, WAMEGO	USD 383
ROGER W. LOVETT	2331 S.E. LIBRA TOPEKA	KCCR
JAMES E. BUTLER	729 Canyon Drive MANHATTAN, KAN	KCCR
CORBIN R. BENHAM	3314 LEONINE WICHITA KANS 67217	KCCR
George M. Wahlmeier	2820. FAIRMOUNT WICHITA KS. 67220	KCC. R.
John Koepke	Topeka	KASB
Dale Peters	"	KCCI
Mike Beyerman	"	Ks Railroad Assn.
Ron Hein	"	Ks Bar Assn
Mike Slotsky	Lawrence	Intern Sen Parrish
Eugene Anderson	Topeka	Senate
Helene Zacharias	Lawrence	City of Lawrence
Buford Watson	Lawrence	City Mgr.
Rep Max Moomaw	117th Dist	Legislature

3/21/85
Attch. VI

3-21-85

PRESENTATION

By: James Butler, Chairperson
Kansas Commission on Civil Rights

Mr. Chairman, Members of the Committe, I am James Butler, Chairman of the Kansas Commission on Civil Rights.

I would like to cite three basic reasons, as I see them, why the Kansas Commission on Civil Rights should be exempt from the provisions of the Act for Judicial Review.

Those reasons are:

1. The possibility of excessive appeals -- that is to say that in a given year the Civil Rights Commission renders at least 700 No Probable Cause decisions, dealing with complaints of unlawful discrimination. Once the No Probable Cause decision is reached, the case is closed. More over, the Kansas Supreme Court has held that once the determination is reached, the Commission's administrative process is completed.

Under K.S.A. 77-607 and 608, these No Probable Cause decisions would become subject to review and appeal. This would of course, involve more legal assistance and require the wasteful expenditure of State funds.

2. With reference to Trial De Novo -- currently, courts interpreting the provisions of trial de novo, (which has existed for the last 12 years), determined to accept and review the Commission's record from Public Hearings and require only additional information which it deemed pertinent. This eliminated duplicative effort at any stage of the process. K.S.A. 77-618 appears to abrogate these considerations.

3. Negating the work of the Hearing Examiner. If the record made before the Hearing Examiner is disregarded in a trial de novo judicial review, then the Hearing Examiner's efforts would be in vain.

3/21/85
Attch. I

3-21-85

PRESENTATION OF THE KANSAS COMMISSION
ON CIVIL RIGHTS RELATIVE TO S.B. 145
Michael L. Bailey

The Kansas Commission on Civil Rights urges the passage of Senate Bill 145 which has as its object the exemption of the Kansas Commission on Civil Rights from the provisions of the Act for Judicial Review which was enacted in 1984 and under which the Commission will come as of July 1, 1985.

We first point out that the Act for Judicial Review specifically recognizes that some administrative agencies may, and presumably should, be exempted from its provisions, and provides that such exemption should be accomplished by specific legislation such as is now contemplated.

Next, we point out that the Commission does not seek to be exempted from judicial review, it merely seeks to maintain the potential for and form of judicial reviews that were specifically enacted for it some years ago.

The first and foremost difficulty the the Commission has with the present Act for Juducial Review is that it provides for a judicial review of every "final" agency action. Our agency receives some fourteen hundred formal complaints every year, and that number is rising. Under K.S.A. 44-1011, the statute now controlling judicial review of Commission actions, only those cases which have proceeded to public hearing and culminated in a commission order are subject to judicial review. This has never constituted more that forty cases in any given year. However, of the fourteen hundred, at least seven hundred are closed each year as the result of administrative decision that no probable cause exists to credit the allegations of the complaint. Additionally, a few are closed because it is administratively determined that we lack jurisdiction to proceed, or because it is determined that the complaining party has failed to cooperate in the investigation. Obviously, any such closing is final agency action, and under the provisions of the Act for Judicial Review a potential appeal. Thus the potential for becoming embroiled in a district court proceeding is increased twenty-fold. If only two percent of the potential were realized the commission would have to add one staff attorney, and for each additional three percent another additional attorney. With the aditional attorneys would come the requirement for additional clerical help, additional office equipment and additional office space. This of course does not begin to address the additional burden to the judicial system that these additional cases would create.

In addition to the increased expense to the state, consider also the delays in completing a case which languishes in the courts for months or years. Presently, no probable cause cases are, on an average, concluded in substantially less than six months. If such a case is appealed to the district court and then remanded to the commission for further processing, it would remain on the commissions books for at least eighteen months, and most probably longer, all to the detriment and delay of cases with obvious merit.

3/21/85
Attch. II

Morever, this newly devised area of appeal avails nothing to no one. The current state of the law in Kansas, as announced by our Supreme Court in VanSkoyk and Wiley vs. St. Mary's Assumption Parochial School, 224 Kan. 304, some years ago, is such that a complaining party, having received "a less than efficacious resolution" (no probable cause decision) from the commission, having thus exhausted the administrative remedies, could then pursue an independant action in district court against the party respondent to which action the commission is not a party, and in which the ultimate issue is the resolution of the allegation of unlawful discrimination. Comapre this action with that prescribed by the impending Act for Judicial Review, in which the district court could at best remand the case to the commission for additional processing. At identical expense to parties and additional expense to the state there is no final resolution. It is obvious that this facet of the Act for Judicial Review, as applied to the present law controlling judicial review of the actions of the commission, provides no additional protection for anyone, and does it at great expense, not only to the state but to it's citizens as well.

The other difficulty the commission has with the Act for Judicial Review is the provision of 77-618 which provides that in the case of de novo reviews the review will not be on the record made before the commission. Presently, reviews of commission orders are de novo, but on the record made before the commission, with such additional evidence as the district court may, in its discretion, admit, as provided by 44-1011. It has taken a dozen years of litigation for the Supreme Court to arrive at a comprehensive decision as to how the review is to be conducted, and we are satisfied that it is a correct and proper decision. We now apparently face another long line of litigation to determine the manner in which future reviews are to be conducted. The end result of rejecting the record made before the commission is to make the entire administrative process a charade, reduce the quasi-judicial public hearing to an expensive dress rehersal and totally ignore the fact that the primary purpose of administrative hearings is to reduce the burden on the judiciary. It is the position of the commission that we now have a sound, workable, and well litigated provision for judicial review, and to change it will only cause confusion, delay and expense.

In summary, including the Kansas Commission on Civil Rights under the coverage of the Act for Judicial Review will generate delays and additional expenses in administering the Kansas Act Against Discrimination by substituting a new and cumbersome proceedure for one which is tried and proven. in addition, as you will be told by representatives of local human relations commissions, the net reult to them, even though the judicial review act does not address them directly, will be to delay their processes also as they are obliged to stand by while dual-filed complaints are tied up in the courts. We urge your favorable consideration of S.B. 145.

Attch. II

3-21-85

PRESENTATION BEFORE THE
SENATE JUDICIARY COMMITTEE
ON S.B. 145

ROGER W. LOVETT

In the waning days of the 1984 session the Act for Juducial Review came before this committee. At that time, and on very short notice, we addressed our concerns relative to its potential effects on the Kansas Commission on Civil Rights. Members of the ad hoc committee that had originally drafted the legislation, as well as members of the Judiciary Committee, asured us that there was no intent to alter the form or substance of judicial review then applicable to the commission, and we were further placated by assurances that there would be a "trailer bill" to rectify the problems which we forsaw. The bill in the form enacted has the potential of very substantially effectiing the commission's operations and expenses, and there was no trailer bill to rectify the problems.

The first of these, and the most substantial as has already been explained to you, lies in the area of the potential of more than 700 judicial reviews annually of "No Probable Cause" decisions and the attendant substantial increases in the commission's budget. But the expense does not stop with the commission. Naturally, these new cases will be an additional burden upon the resources of the the judicial system; in addition, they will constitute an extra and unnecessary burden upon both complainants and respondents. Let me explain.

Under the present state of the law, if a complaint filed before the commission is closed as "No Probable Cause" after investigation, the Supreme Court of Kansas has determined that there is no right to appeal. Rather, the complainant may bring an original action against the respondent in district court, in which action the the court may determine the ultimate fact of unlawful discrimination and issue whatever order is appropriate. (See Bush v. City of Wichita, 223 Kan. 651, and VanScoyk v. St. Mary's Assumption Parochial School, 224 Kan. 304.) In Bush the court properly identified the decision relative to probable cause as an executive, rather than a quasi-judicial, function. It is a decision whether or not to proceed to the concilliation stage of complaint processing. The quasi-judicial function does not commence until a determination has been made to proceed to public hearing.

Under the Act for Judicial Review a district court, on appeal from a "No Probable Cause" decision, could do nothing further than remand the case to the commission for further processing. Thus at the same expense to the parties and at the additional expense of commission's involvement in the appeal, the court would be powerless to render a final decision on the merits of the complaint. At great expense to all involved, as well as to the judicial system, nothing is resolved. Is this the result the

3/21/85
Attach. III

legislature intended in enacting the Act for Judicial Review ? I trust it is not.

The second problem we forsee lies in the nature of judicial review which the Act prescribes for appeals from the orders of the commission. Under the presently-effective K.S.A. 44-1011, these reviews are de novo on the record made before the commission at public hearing, together with such additional evidence as the court in its discretion may receive. The provisions of the new Act, specifically K.S.A. 77-618, provide that reviews of the orders of the commission on civil rights are excepted from review on the agency record, thus making it appear that upon such reviews all the witnesses and exhibits will have to be marshalled and intruduced anew in court. It has taken a dozen years of litigation and appeals to arrive at a comprehensive interpretation of the provisions of K.S.A. 44-1011. We forsee at least as long a period of flux under the new Act, for it carries with it additionally the inherent issues of conflict between general and special statutes and implied repeals.

There is, of course, a very simple way to avoid all these problems; a way specifically anticipated by the drafters and enacters of the Act for Judicial Review. It is suggested in the language of K.S.A. 77-603(a):

> "On and after July 1, 1985, this act shall apply to all agencies...not specifically exempted by statute from the provisions of this act."

This is what Senate Bill 145 will do, and what in the name of fiscal responsibility and the preservation of a well-tried, established and satisfactorily functioning proceedure I urge you to do. Exempt the Kansas Commission on Civil Rights from the provisions of the Act for Judicial Review !

Attch. III

3-21-85

STATE OF KANSAS

MAX MOOMAW
REPRESENTATIVE 117TH DISTRICT
HODGEMAN LANE AND
PARTS OF FINNEY AND
NESS COUNTIES
R R 2, BOX 45
DIGHTON, KANSAS 67839

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: EDUCATION
ELECTIONS

TO: The Honorable Robert G. Frey, Chairman
Senate Judiciary Committee

FROM: Representative Max Moomaw
117th District

RE: House Bill 2248

DATE: March 21, 1985

Mr. Chairman and Members of the Committee:

Under current law a driver who passes a school bus that is stopped to pick up or deposit students is charged with a misdemeanor. It is difficult in most cases for a driver of a school bus to identify the driver of a car passing the bus.

HB 2248 speaks to the times when only the vehicle is identified. In that case the owner of the vehicle is subject to a civil penalty of $30.00. If the owner can identify the actual driver, then the driver will be charged and prosecuted for violation of K.S.A. 8-1556 and the owner will not be subject to the civil penalty.

3/21/85
Attch. IV

STATE OF KANSAS

THOMAS F. WALKER
REPRESENTATIVE, SEVENTY-SECOND DISTRICT
15 CIRCLE DRIVE
NEWTON, KANSAS 67114

TOPEKA

COMMITTEE ASSIGNMENTS
MEMBER: GOVERNMENTAL ORGANIZATION
FEDERAL AND STATE AFFAIRS
JUDICIARY

HOUSE OF
REPRESENTATIVES

Testimony by Thomas F. Walker

HB 2043 grows out of a discrepancy in the law that a lawyer in Newton noted when he researched the correct way to advertise and sell personal property at a public sale by the personal representative in an estate. K.S.A. 59-2243 requires that notice shall be given for public sale of personal property by--"a notice containing a description of the property to be sold, and stating the time, terms and place of sale by publication for ten days in some newspaper authorized to publish legal notices, of the county where the sale is to be had."

This places an onerous burden (if not impossible) on these types of sales. It is also a higher burden than that required for real estate. HB 2043 would simply conform personal property sales with real estate sales.

Note: The bill was amended in committee to require only one publication.

3/21/85
Attach. V