

Approved March 26, 1986
Date

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

The meeting was called to order by Representative Ron Fox at
Chairperson

3:30 ~~am~~/p.m. on March 19, 1986 in room 526-S of the Capitol.

All members were present except:

Representative Foster (excused)

Committee staff present:

Ramon Powers, Legislative Research Department
Theresa Kiernan, Revisor of Statutes' Office
Betty Ellison, Committee Secretary

Conferees appearing before the committee:

Bill Hanzlick, Director, Kansas Fish and Game Commission
Omar Stavlo, Chief of Law Enforcement, Kansas Fish and Game Commission
George Axline, Chief, Administrative Services Division,
Kansas Fish and Game Commission
Jim Clark, Director, Kansas County Attorneys Association

The meeting was called to order by the Chairman. There were no objections to the minutes of March 6, and they were adopted.

SB 495--Watercraft regulation; vessels. Bill Hanzlick, Director of the Fish and Game Commission, introduced Omar Stavlo of his agency. Mr. Stavlo explained that this bill defined "vessel" as "any watercraft designed to be propelled by machinery, oars, paddles or wind action upon a sail for navigation on the water." The purpose of this definition was to bring Fish and Game Commission regulations into compliance with the federal Coast Guard regulations. This definition is less restrictive in order to avoid enforcement of safety laws on swimming aids, inner tubes, air mattresses, etc. Representative Patterson asked about water skooters. Mr. Stavlo replied that these were designed as a navigational product and would be registered and required to have life jackets on board. Responding to a question of Representative Shore, Mr. Stavlo said that stock tanks on the Arkansas River, under this definition, would not be designed as a vessel and would not require life jackets.

SB 496--Fish and game; bonds of agents appointed to issue licenses and permits. George Axline spoke in support of this bill because it would provide a convenient method for Fish and Game license vendors to obtain a bond to cover the value of licenses through a self-bonding situation which the Fish and Game Commission would administer. He said that the advantage to the agency would be the savings in time and expense with their vendors. Mr. Axline commented that the State of Michigan already has a self-bonding program and that Colorado is considering one. (See Attachment 1) Committee discussion followed.

SB 498--Fish and game violations; notice to appear. Omar Stavlo stated that this bill would include the Kansas Fish and Game "Notice to Appear" under the Kansas criminal code procedure, and make the "Notice to Appear" a valid complaint. Previously, the Fish and Game Commission had issued a uniform "Notice to Appear"; however, some problems have recently arisen in court with this procedure. The District Court of Comanche County overturned Fish and Game's "Notice to Appear" last September, and a "Notice to Appear" can no longer be issued in that court district. (See Attachment 2) Mr. Stavlo noted that in order to comply with the decision of Judge Smith, which no longer will allow a "Notice to Appear" to substitute for a complaint in the commencement of a prosecution, considerable extra time and expense would be required of the Fish and Game Commission.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES,
room 526-S Statehouse, at 3:30 ~~xx~~ p.m. on March 19, 1986.

Jim Clark represented the Kansas County Attorneys Association with testimony in support of SB 498. He felt that this bill would also save a lot of time in the County Attorney's Office, noting that areas which have a lot of Fish and Game violations are also small counties with a one-person, part-time County Attorney. Mr. Clark stated that this would also be allowed under the city codes, as shown in Attachment 3. He said that HB 3058 had a similar provision, but he preferred SB 498 because it makes the definition of "complaint" very clear. Discussion ensued.

The meeting was adjourned at 4:00 p.m.

The next meeting of the House Energy and Natural Resources Committee will be held on March 20, 1986 at 3:30 p.m. in Room 526-S.

KANSAS FISH & GAME COMMISSION

Testimony on Self-Bonding

George E. Axline, Chief
Administrative Services Division

It has become apparent that it is becoming more difficult for the license vendors to obtain a corporate surety bond at a reasonable price. Attached is correspondence from the Western Surety Company indicating they will only write this type of bond with "supporting coverages." With most companies now, there is a \$50 minimum. This provides an average of \$5,000 coverage.

With an estimated 1,000 bonded vendors in the state at an average bond of \$3,000, it is estimated that there is approximately \$3,000,000 in the total bond coverage outstanding. With the less expensive, more convenient self-bonding procedure, we would expect this coverage to increase to \$5,000,000.

With this bond value times \$3.50 per thousand premium, the annual income for the agency would be \$17,500. Through a survey with the County Clerks, losses over the last five years have averaged \$11,073 per year. This plus an estimated operating cost of \$6,000 per year fits very well with the \$3.50 per thousand premium. This premium amount was used since this is the amount most companies currently charge. The state of Michigan, which has a similar program, also charges this premium amount.

The bill as written would merely allow the charging of an annual premium to go into the agency fee fund to off-set losses for uncollectable amounts from vendors. The premium amounts would be set by regulation and could be adjusted to changes in the loss pattern. This in effect amounts to a "blanket" bond that would be available to all vendors.

The advantage to the vendors would be the convenience of obtaining higher bond coverage at a lower cost from one source. This would allow them to carry more license books and have all types of licenses available.

The advantage to the agency would be the savings in time and expense with their vendors. Currently, with lower bond amounts, licenses must be sent several times a month in some cases.

THE WESTERN
INSURANCE COMPANIES

December 30, 1985

Farmers Insurance Services, Inc.

RE: Bond #43 51 98

*Policy Expires
Feb 4, 1986*

Gentlemen:

The above captioned bond has a February anniversary date. In checking for supporting business we found nothing for this account. Since we are no longer writing this type of bond without supporting coverages, we will be unable to offer renewal. If the Western does have any supporting business, please send us a list of all policy numbers and premiums.

Yours truly,



Douglas L. Kinney
Bond Department

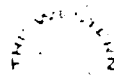
DLK:kan

1-2-86

Dale:

I received this letter today from The Western Company. If you have any questions, or if I can be of any assistants, please contact me.

Thank you.



IN THE DISTRICT COURT OF COMANCHE COUNTY, KANSAS

STATE OF KANSAS,)
)
 Plaintiff,)
)
 vs.)
)
 MICHAEL J. BOWMAN,)
)
 Defendant.)
 _____)

Case No. 85FG-2

JOURNAL ENTRY OF JUDGMENT

Now on this 7th day of August, 1985, the same being the regular August motion day of the Comanche County District Court, this matter comes on for hearing on the motion filed herein by the defendant as well as the appeal filed by the defendant from the judgment of the District Magistrate Court which was entered on April 11, 1985.

The State of Kansas appears by Richard J. Rathbun II, Comanche County Attorney, Coldwater, Kansas; and the defendant appears by Wallace W. Underhill, Wichita, Kansas.

Whereupon, the parties do make oral argument to the Court.

Now, on this 16th day of September, 1985, the Court, after having considered the oral argument and having been furnished written memoranda by the parties hereto, does announce the following Findings of Fact:

1. On the 11th day of April, 1985, in the District Court of Comanche County, Kansas, before ~~L. E. Murphey,~~

District Magistrate Judge, the defendant was found guilty of two counts of violating K.S.A. 32-142a (hunting without written permission).

2. The prosecution was commenced by the issuance of two "Uniform Notice to Appear and Complaint" forms. Neither was under "Oath" (verified or acknowledged), although a space is provided on the Notice to Appear and Complaint for such verification.

3. These two instruments constitute "Written Citations".

4. The defendant filed a notice of appeal to the Court of Appeals on April 26, 1985.

5. On July 22, 1985, defendant filed a motion for relief from the April 11, 1985 judgment of guilty and asked that the District Court of Comanche County, Kansas, consider his appeal.

Thereupon, the Court states the applicable Conclusions of Law:

1. Unless otherwise provided by law, a prosecution shall be commenced by filing a complaint (K.S.A. 22-2301).

2. A "complaint" is a written statement under oath of essential facts constituting a crime, except that a notice to appear issued by a law enforcement officer pursuant to and in compliance with K.S.A. 8-2106 (Traffic Code) shall be deemed a valid complaint if signed by a law enforcement officer. No statutory exception appears for fish and game citations.

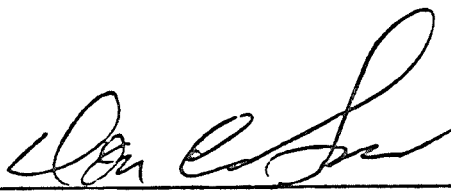
3. In order to make the exception obvious, the

Legislature enacted K.S.A. 8-2108, which provides in essence that "traffic citations" complying with K.S.A. 8-2106 when filed with the proper court shall be "deemed" lawful complaints for purposes of prosecution under the "Traffic Code".

4. Notwithstanding the legislative provision (K.S.A. 32-155a) authorizing fish and game officers to order violators to court with a "Notice to Appear", the citation is not a substitute for a complaint in the commencement of a prosecution.

5. Since K.S.A. 22-2301 is not permissive and no statutory exception has been granted, the District Magistrate Court lacked jurisdiction and these convictions must be set aside.

IT IS, THEREFORE, ORDERED that the convictions of April 11, 1985 be set aside.



Don C. Smith
District Judge

employment is vested by law with a duty to maintain public order and to make arrests for violation of the laws of the state of Kansas or ordinances of any municipality thereof.

(k) "Notice to appear" is a written notice to a person accused by a complaint of having violated an ordinance of a city to appear at a stated time and place to answer to the charge of the complaint.

(l) "Subpoena" is a process issued by the court to cause a witness to appear and give testimony at a time and place therein specified.

(m) "Ordinance traffic infraction" is a violation of an ordinance that proscribes or requires the same behavior as that proscribed or required by a statutory provision that is classified as a traffic infraction in K.S.A. 1984 Supp. 8-2118.

(n) "Warrant" is a written order made by a municipal judge directed to any law enforcement officer commanding the officer to arrest the person named or described in it.

History: L. 1973, ch. 61, § 12-4113; L. 1984, ch. 78, § 1; L. 1984, ch. 39, § 27; Jan. 1, 1985.

Law Review and Bar Journal References: "A Comment on Kansas' New 'Drunk Driving' Law," Joseph Brian Cox and Donald G. Strole, 51 J.K.B.A. 230, 233 (1982).

Article 42.—CODE FOR MUNICIPAL COURTS; PROSECUTION AND ARREST

12-4201. CASE ANNOTATIONS

1. Filing of complaint mandatory in municipal court; to duplicate, amendment or refile of that which never existed. Seaton v. City of Coffeyville, 9 K.A.2d 60, 761, 688 P.2d 1240 (1984).

12-4202. Complaint; requirements; form. A complaint shall be in writing and shall be signed by the complainant. More than one violation may be charged in the same complaint. A complaint shall be deemed sufficient if in substantially the form of the complaint set forth in K.S.A. 12-4205 and amendments thereto or in substantially the following form:

THE MUNICIPAL COURT
KANSAS
vs.

The undersigned, complains that on or about the day of _____, A.D., 19____, in the City of _____, County of _____, and State of Kansas,

_____ did then and there unlawfully _____

_____ in violation of Section _____ of Ordinance No. _____ of the City of _____

Complainant
* Sworn to positively before me, this _____ day of _____, A.D., 19____

Officer authorized to administer oaths
(* This complaint is not required to be sworn if it is signed by a law enforcement officer.)

History: L. 1973, ch. 61, § 12-4202; L. 1984, ch. 78, § 2; July 1.

12-4204.

Law Review and Bar Journal References: "A Comment on Kansas' New 'Drunk Driving' Law," Joseph Brian Cox and Donald G. Strole, 51 J.K.B.A. 230, 233 (1982).

12-4205. Uniform complaint and notice to appear. In all cases a complaint and notice to appear may be made in the form of the uniform complaint and notice to appear which shall be deemed sufficient if in substantially the following form:

UNIFORM COMPLAINT AND NOTICE TO APPEAR

State of Kansas
County of _____
City of _____
The Undersigned, complains that on the _____ day of _____, 19____, at _____ p.m. (a.m.) Name _____ (Please Print)

Street Address _____
City _____ State _____
Birth Date _____ Sex _____
Chauf. Driv. Lic. No. _____
Did Unlawfully at _____

TRAFFIC
(Operate) a Vehicle: Veh. Lic. No. _____
State _____ Yr. _____
Make _____ Model _____ Color _____
By: [] Speeding (Over Limit) _____ mph in _____ mph zone
[] Disobeyed Traffic Signal
[] Disobeyed Stop Sign
[] Followed too Closely of Way
[] Careless Driving
[] Reckless Driving
[] Driving While Under Influence of Intoxicating Liq. _____

(Park)
[] Overtime [] Prohibited Area [] Double Parking
OTHER VIOLATIONS (NON-TRAFFIC)

All In Violation of Section(s) _____ of Ordinance No. _____ of _____, Kansas.
Signature of Officer or Complainant _____ No. _____
*Sworn To Positively Before Me This _____ day of _____, 19____

Municipal Judge
(*This complaint is not required to be sworn if it is signed by a law enforcement officer.)

NOTICE TO APPEAR
The City of _____, Kansas, To The Above-Named Person

You are hereby summoned to appear before the Municipal Court of _____, Kansas, at _____ on the _____ day of _____, 19____, at _____ o'clock _____m., to answer the above complaint.

If you fail to appear a warrant will be issued for your arrest.
Dated _____, 19____.

Signature of Officer
I agree to appear in the Court at the stated time and place.

Signature of Accused Person
RETURN
The undersigned hereby certifies that on the _____ day of _____, 19____, the notice to appear was served, mailed or delivered.

Law Enforcement Officer

History: L. 1973, ch. 61, § 12-4205; L. 1982, ch. 80, § 1; L. 1984, ch. 78, § 3; July 1.

12-4207.

Law Review and Bar Journal References: "Municipal Courts: A Thought on Notice Procedures," James M. Sheeley, 5 J.K.T.L.A. No. 6, 24, 25, 26 (1982).

12-4209. Warrants; when issued; limitations. A warrant may be issued: (a) When an accused person fails to appear as required in a notice to appear after its service.

(b) In all other cases where a complaint has been filed and the municipal judge determines that a warrant should be issued.

No warrant shall issue unless the complaint giving rise to its issuance is supported by oath or affirmation. No warrant shall issue for an ordinance traffic infraction unless the person charged has received service of a notice to appear and has failed to appear for the ordinance traffic infraction.

12-4212. Arrest by law enforcement officer; when authorized. (a) Except as provided in subsection (b), a law enforcement officer may arrest a person under any of the following circumstances:

(1) The officer has a warrant commanding that the person be arrested.

(2) A warrant for the person's arrest has been issued by a municipal court in this state.

(3) The officer has probable cause to believe that the person is committing or has committed a violation of an ordinance and that the person has intentionally inflicted bodily harm to another person.

(4) The law enforcement officer detained the person pursuant to subsection (c) or (d) of K.S.A. 12-4211 and amendments thereto and:

(A) The person refuses to give a written promise to appear in court when served with a notice to appear;

(B) the person is unable to provide identification of self by presenting a valid driver's license or other identification giving equivalent information to the law enforcement officer;

(C) the person is not a resident of the state of Kansas; or

(D) the law enforcement officer has probable cause to believe that the person may cause injury to self or others or may damage property unless immediately arrested.

(b) A law enforcement officer may not arrest a person who is charged only with committing an ordinance traffic infraction unless the person charged has received service of a notice to appear and has failed to appear for the ordinance traffic infraction.

History: L. 1973, ch. 61, § 12-4212; L. 1984, ch. 127, § 1; L. 1984, ch. 39, § 29; L. 1985, ch. 78, § 3; May 16.

CASE ANNOTATIONS

1. Arrest valid where officer has probable cause to believe arrest warrant has been issued. City of Bonner Springs v. Bey, 236 K. 661, 662, 694 P.2d 477 (1985).

12-4214. Notice; explanation of rights.

(a) When a person is charged with an ordinance traffic infraction, the notice to appear shall provide a place where the person may make a written entry of appearance, waive the right to a trial and plead guilty or no

Attachment 3
Energy and Natural Resources 3/19/86