

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS

The meeting was called to order by REPRESENTATIVE ROBERT H. MILLER at
Chairperson

1:30 a.m./p.m. on February 4, 1986 in room 526S of the Capitol.

All members were present except:

- Rep. Peterson - E
- Rep. Ramirez - E
- Rep. Gjerstad - ~~E~~

Committee staff present:

- Lynda Hutfles, Secretary
- Russ Mills, Research

Conferees appearing before the committee:

- Representative Laird
- Dr. Steven Zeller
- Dr. Loren Phillips, Dept. of Health & Environment
- Representative Guldner
- John Blythe, Farm Bureau
- Andy Olson, Council Grove

The meeting was called to order by Chairman Miller.

Representative Long made a motion, seconded by Representative Sughrue, to approve the minutes of the February 3 meeting. The motion carried.

Representative Vancrum made a motion, seconded by Representative Roenbaugh, to introduce as a committee bill a bill dealing with custody of court records of juveniles. The motion carried.

HB2637 - Warning labels required on containers of chewing tobacco.

Representative Laird, sponsor of the bill, gave testimony in support of the bill. There should be a warning on every can of snuff or any smokeless tobacco product. He said he believes the nitrosamines cause oral diseases and cancer. He distributed a copy of an article about a young athlete in perfect health who died as a result of dipping snuff. See attachment A.

Dr. Steven Zeller, an oral surgeon from Topeka, gave testimony in support of the bill. He told the committee he was on the Head and Neck Cancer Team at the KU Medical Center. Dr. Zeller is experienced in the diagnosis and reconstruction of oral diseases and firmly believes that smokeless tobacco causes cancer. Dr. Zeller showed the committee a slide presentation of persons who have contracted cancer as a result of smokeless tobacco. With the vast number of teenagers using smokeless tobacco, there will be an epidemic of oral cancer in years to come.

Dr. Loren Phillips, Department of Health & Environment, gave testimony in support of the bill, but suggests there should be some enforcement tied to it. See attachment B.

Hearings were concluded on HB2637.

HB2316 - Payment of cost of establishing corners and boundaries for land surveys

Representative Guldner, sponsor of the bill, gave testimony in support of the bill and explained why it was introduced. There needs to be some uniformity to the way a legal survey is paid for in the state. See attachment C.

John Blythe, Farm Bureau, gave his support of the bill and introduced Andy Olson.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS
room 526S, Statehouse, at 1:30 a.m./p.m. on February 4, 1986

Andy Olson, Council Grive, gave testimony in support of the bill. He told the committee about the problems he was having with a legal survey which cost \$12,573. This bill would make the person requesting the survey liable for the cost.

Chip Whelan, Kansas Legislative Policy Group, distributed testimony in support of the bill and was available for questions. See attachment D.

The meeting was adjourned.

Sean Marsee's Smokeless Death

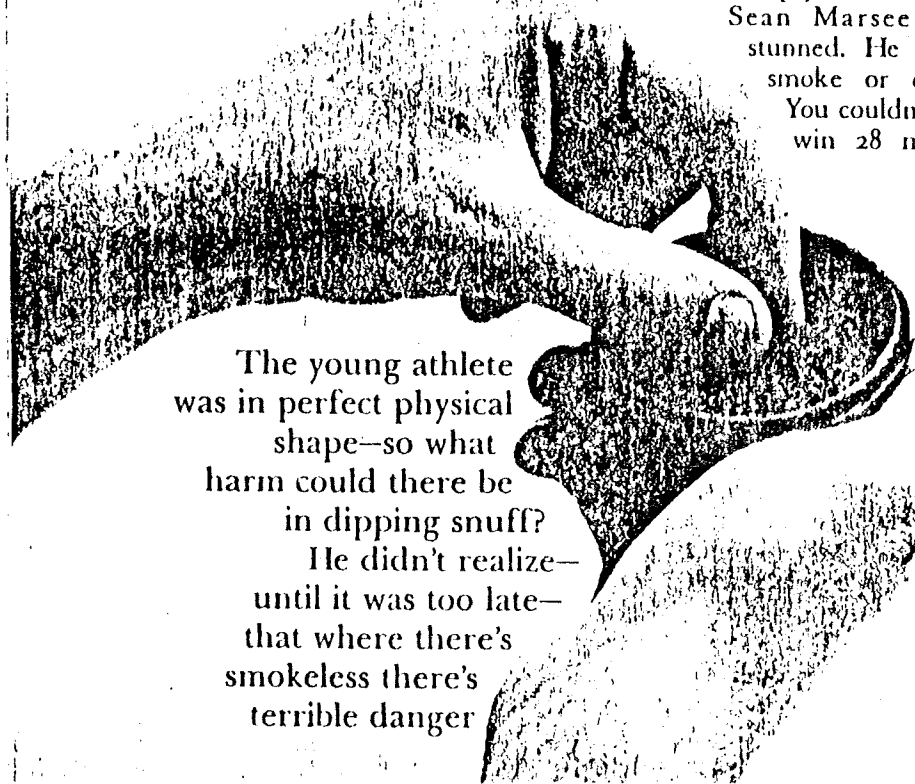
By JACK FINCHER

THE ANGRY RED SPOT with its hard white core was the size of a half-dollar. It belonged, thought Dr. Carl Hook, in the mouth of a 75-year-old who had been dipping snuff since the age of three, not on the tongue of the high-school boy who sat across from him. "I'm sorry, Sean," said the Ada, Okla., throat specialist. "It doesn't look good. We'll have to do a biopsy."

Sean Marsee was stunned. He didn't smoke or drink. You couldn't and win 28 medals

The young athlete was in perfect physical shape—so what harm could there be in dipping snuff?

He didn't realize—until it was too late—that where there's smokeless there's terrible danger



H. F+SA
2/4/82
ATTACHMENT A

running anchor leg on the 400-meter relay. A tapered five-foot-five, 130 pounds, Sean had always taken excellent care of his body: watching his diet, lifting weights, running five miles a day six months of the year.

Now this. How could it be? True, he was never without a dip. He used up a can of snuff, a type of smokeless tobacco, every day and a half, holding it in his mouth to get a nicotine jolt without smoking. It was popular among high-school athletes who didn't want to break training. "But I didn't know snuff could be that bad for you," Sean said. "No warning label or anything. And all those ads on TV. . . ."

A Mind of His Own. Eighteen-year-old Sean had been secretly using "smokeless"—chewing tobacco briefly, then snuff—since he was 12. His mother, Betty, a registered nurse, had hit the roof when she found out. Didn't he know tobacco was hazardous, smoke or no smoke?

Sean refused to believe her. Would sports stars sell snuff on TV if it hurt you? Why, even his coach, Jim Brigance, a bear for conditioning, knew boys on his team dipped and didn't make a big thing of it.

Finally, Betty dropped the subject. It had been Sean who pulled his sister Marian out of the lake when she fell through the ice; Sean who was his sister Melissa's model for an ideal husband; Sean who taught his younger brothers Shannon and Jason to hunt, fish and

trap; Sean who planned to join the Army Airborne as a career and to get his college education paid for. The oldest of her five children had a mind of his own.

Besides, Betty, a single parent working the hospital night shift in Ada, had enough to think about just raising the children. Then Sean had come to her with his ugly sore. Betty took one look; her heart sank. And now Dr. Hook was saying, "I'm afraid we'll have to remove that part of your tongue, Sean."

The high-school senior was silent. "Can I still run in the state track meet this weekend?" he finally asked. "And graduate next month?" Dr. Hook nodded.

A Necessary Mutilation. On May 16, 1983, the operation was performed at the Valley View Hospital in Ada. More of Sean's tongue had to be removed than Dr. Hook had anticipated. Worse, the tumor biopsy was positive. Once the swelling in his mouth went down, Sean agreed to see a radiation therapist.

Before therapy could begin, however, a newly swollen lymph node was found in Sean's neck, an ominous sign that the cancer had spread. Radical neck surgery would now be needed. Gently Dr. Hook recommended the severest option: removing the lower jaw on the right side as well as all lymph nodes, muscles and blood vessels except the life-sustaining carotid artery. There might be some sinking, but the chin would support the general planes of the face.

Betty Marsee began to cry. Sean was being asked to approve his own mutilation—Sean who was so fastidious about his appearance that he'd even swallow his dip rather than be caught spitting tobacco juice. They sat in silence for ten minutes. Then, dimly, she heard him say, "Not the jawbone. Don't take the jawbone."

"Okay, Sean," Dr. Hook said softly. "But the rest; that's the least we should do."

On June 20 Sean underwent a second operation, which lasted eight hours. That same month 150 students and teachers at Talihina High assembled to honor their most outstanding athlete. Sean could not be there to receive his award.

Coach Brigance and his assistant came to the Marsee trailer home to present him with the walnut plaque. They tried not to stare at the huge scar that ran like a railroad track from their star performer's earlobe to his breastbone. Smiling crookedly out of the other side of his mouth, Sean thanked them.

Last Lap. Miraculously, Sean snapped back. When Dr. Hook saw him that August, he showed no trace of his ordeal except the white incision scar. Five weeks of radiation therapy were behind him. Sean greeted his doctor with enthusiasm, plainly happy to be alive.

He really believes his superb physical condition is going to lick it, Carl Hook thought, driving home. Let's hope he's going to win this race too.

But in October Sean started having headaches. A CAT scan showed twin tentacles of fresh malignancy, one snaking down his back, the other curling under the base of his brain.

Sean had his third operation in November 1983. It was the jawbone operation he had feared—and more. After ten hours on the operating table, he had four huge drains coming from a foot-long crescent wound, a breathing tube sticking out of a hole in his throat, a feeding tube through his nose, and two tubes in his arm veins. Sean looked at Betty as if to say, *My God, Mom, I didn't know it was going to hurt like this.*

The Marsees brought Sean home for Christmas. Even then, he remained optimistic, until the day in January when he found lumps in the left side of his neck. Later, Betty answered when the hospital phoned the results of another biopsy. Sean knew the news was bad by her silent tears as she listened. When she hung up, he was in his arms, and for the first time since the awful nightmare started, gritty-tough Sean Marsee began to sob.

After several minutes, he straightened and said, "Don't worry. I'm going to be fine." Like the winning runner he was, he still had faith in his finishing kick.

For the last two weeks of his life, his adjustable hospital bed dominated the trailer's living room. Coach Brigance visited often, sometimes with a check from Talihina-area

residents, teachers and classmates who knew how hard-pressed the Marsees must be.

Almost to the end Sean insisted on caring for himself, packing his wound and cleaning and reinserting his breathing tube several times a day.

One day Sean confessed to Betty

thing to share with young athletes "later." Sean wrote two brief messages. One was a simple declaration of Christian faith. The other was a plea: *Don't dip snuff.*

Early on February 25, 1984, Sean smiled a tired smile at his sister Marian and flashed an index finger skyward. An hour later he died.

Time Bomb in the Mouth. Last February, Betty Marsee was among 54 witnesses who testified at a Massachusetts Public Health Department hearing on whether to label snuff a hazardous substance. The Marsees had determined to tell Sean's story: "If we didn't speak out, nothing was going to get better."

Scientists testified that the connection between snuff and oral cancer, the nation's seventh leading cause of cancer death, cannot be questioned. The culprit: highly potent cancer-causing compounds called nitrosamines, one of which forms in the mouth through the chemical interaction of saliva and tobacco. According to Stephen Hecht, an organic chemist with the American Health Foundation, a dip of snuff delivers roughly the same amount of nicotine as a cigarette and *ten times* the nitrosamines.

There are now 6 million to 10 mil-

lion consumers of snuff, and sales are rising 8 percent annually. "The more I dipped, the more I liked it," said Paul Hughes, 18, a six-four football co-captain from North Easton, Mass. "Makes you feel—you know, calms you down. When I tried to stop, I couldn't." Alan Lawrence, his co-captain of the football team in Taunton, Mass., said, "In our school, about three-quarters of the kids who play sports do it. As an everyday thing." Added Andover dental hygienist Joan Walsh, "Many equate it with gum chewing."

Scientific witnesses for the Smokeless Tobacco Council argued that no undisputed scientific evidence exists proving its product causes any human disease or is clinically addictive. Nitrosamines have produced cancer in some laboratory animals, but have not been shown to cause cancer in any human being, they pointed out.

But representatives of the American Cancer Society, American Heart Association, American Lung Association, American Dental Society, the U.S. Addiction Research Center and the Centers for Disease Control joined research-

ROGER McDOWELL, the fireballing, righthanded mainstay of the New York Mets' bullpen, started dipping snuff five years ago when he was a sophomore at Bowling Green State University in Ohio. "A lot of the older players on the baseball team were using it," he remembers, "so I did too." By the time he signed to play with the Mets' farm club in Jackson, Miss., he was up to a can every two days. Then he met his future wife, Karen, who recalls, "Roger wouldn't dip around me. I just said to him when I saw him do it once, 'Ugh, how can you do that?'"

Still, it wasn't until after their marriage that Roger gave up dipping altogether. That was the night they learned of Sean Marsee's tragic fate on "Sixty Minutes." Karen turned to Roger and said, "Promise me you're going to quit." He promised. And quit he did. Today the only dipping done in the McDowell family is by his blazing fast ball. Sums up Roger: "Taking snuff is an unhealthy habit, and any young athlete who values his physical condition should stay away from it."

ers from the National Cancer Institute in condemning the practice of dipping. Concluded Assistant Surgeon General Robert Mecklenburg, chief dental officer of the U.S. Public Health Service: "Why should a chemical time bomb be allowed to tick without warning in the mouths of children?"

Health scientist Elbert Glover of East Carolina University recently conducted two quit-smokeless-tobacco clinics in which only one of 41 participants was able to go for more than four hours without the use of smokeless tobacco. "This, to me," Glover says, "means that smokeless can be highly addictive."

Since the Massachusetts hearing, that state now requires warning labels on snuff cans, and eight other states have similar mandato-



Photos tell Sean's tragic story

that he still craved snuff. "I catch myself thinking," he said, "I'll just reach over and have a dip." Then he added that he wished he could visit the high-school locker room to show the athletes "what you look like when you use it." His appearance, he knew, would be persuasive. A classmate who had come to see him fainted dead away.

One friend who didn't flinch was John O'Dell, then 29, a former football player from the local Fellowship of Christian Athletes. John asked Sean, when he became unable to speak, if he'd like to pencil some-

READER'S DIGEST

How YOU CAN HELP prevent repetitions of the tragedy that befell Sean Marsee:

- Write your Congressman to support Representative Waxman's efforts to ban smokeless advertising on television and radio, and to require national health-warning labels on all smokeless-tobacco products.
- Write to Rep. Dan Rostenkowski (D., Ill.), Chairman of the House Ways and Means Committee, and to Sen. Bob Packwood (R., Ore.), Chairman of the Senate Finance Committee, to demand that in this time of unprecedented deficits there be an excise tax on all smokeless-tobacco products.
- Find out if your state is one of the 26 that prohibit the sale of snuff and chewing tobacco to minors. If it does not, ask your state legislators why. If it does, try to determine if the law is being enforced.
- Make sure that your children read about what happened to Sean Marsee. And insist that your local school system educate the student body about the dangers of dipping.

ry warnings under consideration.

Both the World Health Organization and U.S. Surgeon General C. Everett Koop have declared that smokeless tobacco does indeed pose a cancer threat, and the Public Citizen Health Research Group has petitioned the Federal Trade Commission to order warning labels. The FTC, in turn, has asked the Surgeon General to conduct a comprehensive review of existing scientific evidence on health effects before taking action. Last July, Rep. Henry Waxman (D., Calif.), chairman of the House Subcommittee on Health and the Environment, held hearings on whether to ban all smokeless advertising from television.

Dr. Gregory Connolly, director of dental health for the Massachu-

setts Department of Public Health, concedes that "we don't know how much oral cancer is caused by snuff. But we do know that each year we have about 29,000 new cases of oral cancer and 9000 deaths in this country. Tobacco of one kind or another is believed to account for about 70 percent of it. According to the National Cancer Institute, if you use snuff regularly you increase your risk fourfold."

Shortly before his death, Sean Marsee told his mother that there must be a reason God decided not to save him. "I think the reason is what we're doing right now," says Betty Marsee. "Keeping other kids from dying—that's Sean's legacy."

✠ For information on reprints of this article, see page 247 ✠

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

TESTIMONY ON H.B. 2637

PRESENTED TO Committee on Federal and State Affairs, 1986

This is the official position taken by the Kansas Department of Health and Environment on H.B. 2637.

BACKGROUND INFORMATION:

A. In 1965, when Congress first required health warning labels on cigarette packages, the smokeless tobacco industry fought to keep their products exempt from those requirements. They won that battle, but perhaps "lost the war". The bill that passed Congress provided for warnings and advertising regulations only on cigarettes. Smokeless tobacco products were excluded from the bill.

For two decades this exclusion worked to the advantage of the smokeless tobacco manufacturers. They were able to sit back and watch their cigarette manufacturing brethren fight battle after battle with Congress. The cigarette manufacturers, however, were able to take advantage of a "pre-emption" clause in the 1965 bill which prohibited states from enacting their own warning label and advertising legislation. The cigarette industry was assured that all of the battles would be fought in Washington.

B. Massachusetts was the first state to pass legislation requiring health warning labels on snuff cans and bills requiring warning labels are now pending in Delaware, Illinois, Michigan, New Jersey, New York, Oregon, Pennsylvania, and Utah. Legislation is expected to be filed this fall and winter in several other states, including California and Minnesota.

DEFINITIONS:

1. Chewing calls for a golf ball-size wad or quid of tobacco to be placed in the pouch of the cheek and sucked. Just think how it looks with a wad that size in your mough, and the spitting that goes with getting rid of it creates another potential health hazard for other people.
2. Dipping is the process of placing a pinch of tobacco (snuff) between the lower lip and teeth where it stimulates the flow of saliva and mixes with it. The saliva must either be swallowed or spat out frequently.

THE IMPLICATION IS THAT SMOKELESS TOBACCO IS SAFE; IT'S NOT!

1. Smokeless tobacco doesn't carry the health hazard warning that cigarettes do, but it should. It's tobacco just the same and is habit-forming. The nicotine in it lifts you up first...then lets you down. That high-low effect on your nervous system sets you up for continued need. That's what the ads are really doing - trying to get you hooked.
2. The Primary health hazard of smokeless tobacco is oral cancer and other mough and gum disorders. But that's not all. Habitual use of chewing tobacco and snuff means you face other health hazards.
 - a. Leukoplakia, leathery white patches inside the mouth that are the result of direct contact with, and continued irritation by, tobacco juice. Approximately 5 percent of diagnosed cases develop into oral cancer.
 - b. Less sense of taste and the ability to smell. The result: More need to salt and sugar food, both of which are unhealthy if used a lot.
 - c. Dental problems such as receding gums, greater wear and tear on tooth enamel and more tooth decay. And, like most tobacco users, more bad breath and discolored teeth.

STRENGTHS:

This would provide greater public education and awareness on the health hazards of smokeless tobacco.

WEAKNESSES:

The responsibility for the implementation and enforcement has not been assigned.

DEPARTMENT'S POSITION:

KDHE supports this Bill with the recommended changes.

Presented by: Lorne A. Phillips, Ph.D.
Director, Bureau of
Community Health. Dept. of
Health and Environment

HOUSE BILL No. 2637

By Representative Laird

1-6

0016 AN ACT concerning tobacco; requiring certain warning labels
0017 be affixed to tins or other containers of chewing tobacco or
0018 snuff; prescribing penalties for violations.

0019 *Be it enacted by the Legislature of the State of Kansas:*

0020 Section 1. No tin or other container of chewing tobacco or
0021 snuff shall be sold or offered for sale in this state unless such tin
0022 or other container has placed thereon a label stating in words
0023 which are clearly legible the following: "Warning: The use of
0024 this product could cause oral cancer and other mouth and gum
0025 disorders." Any person who sells or offers for sale a tin or other
0026 container of chewing tobacco or snuff in violation of this section
0027 shall be guilty of a class C misdemeanor.

0028 Sec. 2. This act shall take effect and be in force from and
0029 after its publication in the statute book.

HAROLD GULDNER
REPRESENTATIVE, 122ND DISTRICT
GREELEY, HAMILTON, KEARNY, SCOTT,
WICHITA COUNTIES
P.O. BOX 648
SYRACUSE, KANSAS 67878



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE-CHAIRMAN ELECTIONS
MEMBER, WAYS AND MEANS
ENERGY AND NATURAL RESOURCES

HOUSE BILL 2316

TESTIMONY BY REPRESENTATIVE HAROLD GULDNER, 122nd DISTRICT
TO HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I proposed this Bill to bring some uniformity to the way a legal survey is paid for in this state. Since KSA 19-1427 was repealed in 1977, there isn't another statute that tells exactly how legal surveys are to be paid for. Counties are either abiding by the part in the repealed statute that says the county shall bear the cost or are opting out of this under home rule and are requiring the person requesting the survey to pay for it. Other counties because of the misunderstanding of the statutes are going through a complicated formula which they think allows them to spread the costs to adjoining land owners.

House Bill 2316 will leave no doubt how a legal survey in this state is to be paid for. This Bill also requires the county to pay for a legal survey when one is requested by the County Board of Commissioners.

This same bill passed the House three years ago and ran out of time for a hearing in the Senate.

ATTACHMENT C
H. F+SA
2/4/86

CASE ANNOTATIONS

1. Irregularities in survey cured only by appeal. *Cline v. Huntington*, 66 K. 354, 71 P. 812.
2. Bond by one party affected sufficient to give prediction of case. *Coffinet v. Soper*, 77 K. 555, 95 P. 571.
3. Statute should be liberally construed in favor of appeal. *Coffinet v. Soper*, 77 K. 555, 95 P. 571.
4. District court may consider any lawful objection to report. *Washington v. Richards*, 78 K. 114, 116, 98 P. 32.
5. Injunction lies to enjoin another survey after boundaries once established. *Washington v. Richards*, 78 K. 114, 117, 98 P. 32.
6. Record of former survey admissible in evidence. *Dent v. Simpson*, 81 K. 217, 222, 105 P. 542.
7. Report conclusive in absence of appeal. *Edwards v. Fleming*, 83 K. 653, 658, 112 P. 836.
8. Section applies to land survey only, not road survey. *Willis v. Stafford*, 84 K. 570, 114 P. 854.
9. Appeal considered and held taken within time prescribed. *Anderson v. Roberts*, 86 K. 175, 176, 119 P. 354.
10. Conclusive effect of survey not appealed from may be waived. *In re Martin's Appeal*, 86 K. 336, 120 P. 545.
11. Sufficiency of notice of appeal considered. *In re Artz's Appeal*, 91 K. 829, 832, 139 P. 360.
12. Costs are taxable in discretion of court. *Libbey v. Holloway*, 92 K. 163, 139 P. 1188.
13. When special findings of fact or law not required. *In re Appeal from Survey*, 106 K. 222, 187 P. 677.
14. Survey unappealed from is conclusive and not subject to collateral attack. *Stalnaker v. Bair*, 110 K. 1, 202 P. 600.
15. Appeal must be taken within statutory time. *Great Western Petroleum Corp. v. Allen*, 119 K. 731, 241 P. 248.
16. Authority of district court on appeal considered. *Boyer v. Champeny*, 125 K. 319, 322, 263 P. 1066.
17. Section cited as to recording in determining weight as evidence. *Hammond v. City of Ottawa*, 127 K. 874, 275 P. 141.
18. Bond to secure appeal costs must be absolute and unconditional; bond insufficient, court without jurisdiction. *Eidson v. Palmquist*, 188 K. 373, 374, 375, 376, 377, 362 P. 2d 626.
19. Mentioned on an appeal from county survey. *Frey v. Feeders*, 207 K. 764, 767, 486 P. 2d 1377.
20. All landowners adjacent to boundary line benefit from official survey. *Cnadt v. Durr*, 208 K. 783, 784, 787, 788, 494 P. 2d 1219.

actual cost of the survey, after the government corners are reestablished, equitably among the landowners whose lands are situated on the boundary line, according to the respective benefits received: *Provided*, That the board of county commissioners of any county located in the third and sixth state highway districts as defined and established by K. S. A. 74-2001, and of any county having a population of more than three thousand (3,000) and less than four thousand (4,000) and having an assessed tangible valuation of more than sixteen million dollars (\$16,000,000) and less than twenty million dollars (\$20,000,000), and of any county having a population of more than four thousand (4,000) and less than five thousand (5,000) and having an assessed tangible valuation of more than twenty-five million dollars (\$25,000,000) and less than thirty million dollars (\$30,000,000), may when they deem the same advisable, provide for the assessment of the costs of making such surveys and the replacement of lost government survey corners against the party or parties requesting such survey.

If any of the costs for surveying and replacing corners remain unpaid after the report of any survey shall have become final, and the surveyor may furnish to the county clerk a statement under oath, showing the amount remaining unpaid, and a description of the land against which the apportionment was made. On receipt of any such statement the county clerk shall levy a tax against the land mentioned in said statement sufficient to pay the said apportionment. All of said tax shall be collected in the manner provided for the collection of taxes on real estate, and be subject to the same penalties; and when collected, the county treasurer shall pay the amount so collected to the county surveyor: *Provided*, That where the lands occupied by the party or parties requesting such surveys are not subject to taxation, the county surveyor may refuse to make such survey until the expense thereof is secured by a bond to be approved by him; and in case any land affected by such survey is not subject to taxation, the county surveyor may recover the portion of the expense of such survey apportioned to such land in a civil action against the owner or owners thereof. [L. 1891, ch. 89, § 11; R. S. 1923, 19-1427; L. 1961, ch. 136, § 6; L. 1967, ch. 139, § 1; July 1.]

Source or prior law: L. 1879, ch. 177, § 4.

19-1427. Lost government survey corners, cost of replacing; cost of survey, apportionment and collection; bond, when. The cost of replacing all lost government survey corners shall be assessed to the county or township. The county surveyor, upon replacing a government survey corner shall notify the county commissioners of the cost thereof; and such costs shall be paid from the county or township road fund, as determined proper by the county commissioners. The county surveyor, subject to the approval of the county commissioners, shall apportion the

the decree of the court, shall be held and considered as permanently established, and shall not thereafter be changed. When any report of a survey made in pursuance of an agreement, or of legal notice, or by the order of court, shall have become final, it shall be the duty of the county surveyor to record the same in the records of permanent surveys. He shall also make a certified record of such survey on paper of the same size as the record of permanent surveys, suitable for binding, and shall file the same in the office of register of deeds.

History: L. 1891, ch. 89, § 10; March 14; R.S. 1923, 19-1426.

Source or prior law:

L. 1879, ch. 177, § 3.

Research and Practice Aids:

Boundaries—54(3).

C.J.S. Boundaries § 89 et seq.

Bond on appeal, Vernon's Kansas Forms § 1858.

Notice of appeal from report of survey by county surveyor, Vernon's Kansas Forms § 1857.

CASE ANNOTATIONS

1. Irregularities in survey cured only by appeal. *Close v. Huntington*, 66 K. 354, 71 P. 812.
2. Bond by one party affected sufficient to give jurisdiction of case. *Goffinet v. Soper*, 77 K. 555, 95 P. 571.
3. Statute should be liberally construed in favor of appeal. *Goffinet v. Soper*, 77 K. 555, 95 P. 571.
4. District court may consider any lawful objection to report. *Washington v. Richards*, 78 K. 114, 116, 96 P. 32.
5. Injunction lies to enjoin another survey after boundaries once established. *Washington v. Richards*, 78 K. 114, 117, 96 P. 32.
6. Record of former survey admissible in evidence. *Dent v. Simpson*, 81 K. 217, 222, 105 P. 542.
7. Report conclusive in absence of appeal. *Edwards v. Fleming*, 83 K. 653, 658, 112 P. 836.
8. Section applies to land survey only, not road survey. *Willis v. Stafford*, 84 K. 570, 114 P. 854.
9. Appeal considered and held taken within time prescribed. *Anderson v. Roberts*, 86 K. 175, 176, 119 P. 354.
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13. When special findings of fact or law not required. *In re Appeal from Survey*, 106 K. 222, 187 P. 677.
14. Survey unappealed from is conclusive and not subject to collateral attack. *Stalnaker v. Bair*, 110 K. 1, 202 P. 600.
15. Appeal must be taken within statutory time. *Great Western Petroleum Corp. v. Allen*, 119 K. 731, 241 P. 248.
16. Authority of district court on appeal considered. *Boyer v. Champeny*, 125 K. 319, 322, 263 P. 1066.
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18. Bond to secure appeal costs must be absolute and unconditional; bond insufficient, court without jurisdiction. *Eidson v. Palmquist*, 188 K. 373, 374, 375, 376, 377, 362 P.2d 626.

19. Mentioned on an appeal from county survey. *Frey v. Feeders*, 207 K. 764, 767, 486 P.2d 1377.

20. All landowners adjacent to boundary line benefit from official survey. *Gnadt v. Durr*, 208 K. 783, 784, 787, 788, 494 P.2d 1219.

19-1427.

History: L. 1891, ch. 89, § 11; R.S. 1923, 19-1427; L. 1961, ch. 136, § 6; L. 1967, ch. 139, § 1; Repealed, L. 1977, ch. 91, § 1; July 1.

Source or prior law:

L. 1879, ch. 177, § 4.

CASE ANNOTATIONS

1. Bond requirement in 19-1426 is to protect nonappealing landowners. *Eidson v. Palmquist*, 188 K. 373, 376, 362 P.2d 626.
2. All landowners adjacent to boundary line benefit from official survey. *Gnadt v. Durr*, 208 K. 783, 784, 785, 786, 787, 788, 789, 494 P.2d 1219.

19-1428. Survey affecting county line; notice; appeal. In any survey affecting a county line, the surveyor who may be called on to make the survey shall serve notice upon the county surveyor of the adjoining county, and they shall agree upon a time, and they shall each serve notice upon the landowners of their respective counties who are interested in such survey, in the same manner as is provided in K.S.A. 19-1423 and 19-1424, and shall make such survey in the same manner as other surveys; and each surveyor shall file a copy of the plat and field notes of such survey in the county surveyor's office. Appeals from the said survey may be made, and to the same effect as in K.S.A. 19-1426. The corners and boundaries so established and recorded in each county shall be held to be permanent, and shall never be changed.

History: L. 1891, ch. 89, § 12; March 14; R.S. 1923, 19-1428.

Research and Practice Aids:

Boundaries—54(1).

C.J.S. Boundaries § 89 et seq.

CASE ANNOTATIONS

1. Cited in discussing legality of survey of abandoned bed of navigable stream. *Pessemier v. Nichols*, 153 K. 267, 271, 109 P.2d 205.

19-1429.

History: L. 1891, ch. 89, § 13; L. 1895, ch. 253, § 1; R.S. 1923, 19-1429; Repealed, L. 1961, ch. 135, § 1; June 30.

1. Comp Comm'r's o 13.

19-14 and mon notified washing usual sur in danger shall be t township county ro porations around su such man ther, when ects above enough to by travel, means, or fills the co be displac depth exce concrete, surfacing, ment has i witness m shall be gi certified m location of

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Supplemental Information on SENATE BILL 58
AS AMENDED BY SENATE COMMITTEE ON
LOCAL GOVERNMENT

*Brief of Bill **

SB 58 as introduced would strike obsolete language from a statute (K. S. A. 19-1427) relating to the replacement of lost government survey corners by counties. The language stricken from the bill cites a statute (K. S. A. 74-2001) which has been repealed. The Senate Committee amended the bill to repeal the entire statute since counties now can act in this area under their home rule powers.

Background

The statute currently provides two procedures for counties to assess the costs of replacing lost government survey corners. One procedure, which applies to most counties, provides for the assessment of costs to the county or township. Certain counties (Elk, Cheyenne and Woodson), however, may assess these costs against the parties requesting a survey. Since the statute is non-uniform any county under home rule by charter resolution could alter its provisions. By repealing the statute counties could act by ordinary resolution in this regard.

* Bill briefs do not express legislative intent. They give general information about the bill, not details or expected effects. They are prepared by the Legislative Research Department. The sponsors have not reviewed the briefs.

Attach D



Kansas Legislative Policy Group

301 Capitol Tower, 400 West Eighth, Topeka, Kansas 66603, 913-233-2227

TIMOTHY N. HAGEMANN, Executive Director

January 18, 1984

WHEREAS: The Kansas Legislature has enacted statutes governing the establishment of boundaries which define land ownership; and

WHEREAS: The administration of land surveys has been delegated to the several counties of the State; and

WHEREAS: The cost of conducting surveys and administering the proceedings of establishing boundaries should not be born by the general taxpayers unless such surveys benefit the general citizenry.

THEREFORE BE IT RESOLVED: The Kansas Legislative Policy Group, Inc. supports and endorses the policy that county administered surveys should be afforded by the landowners requesting such surveys.

ATTACHMENT D

H. FLSA

2/4/86