

Approved April 1, 1986

Date

MINUTES OF THE House COMMITTEE ON Judiciary

The meeting was called to order by Chairman Joe Knopp at  
Chairperson

3:30 ~~am~~ p.m. on March 20, 1986 in room 313-S of the Capitol.

All members were present except:

Committee staff present:

Jerry Donaldson, Legislative Research Department  
Mike Heim, Legislative Research Department  
Mary Torrence, Revisor of Statutes Office  
Jan Sims, Committee Secretary

Conferees appearing before the committee:

Jim Clark, County and District Attorneys' Association  
Thomas Kelly, Director, Kansas Bureau of Investigation  
Gerald Goodell, Kansas League of Savings Institutions  
Ivan Wyatt, Kansas Farmers Union  
Jeffrey S. Southard, Attorney General's Office

SB 278 - An act concerning the uniform controlled substances act; relating to forfeitures.

Jim Clark of the County and District Attorneys' Association appeared in support of this bill. (Attachments 1 and 2). He introduced Director Thomas E. Kelly of the KBI who also spoke to the committee in support of SB 278. He stated that forfeiture is a good tool for law enforcement in drug trafficking in that it makes it more difficult for violators to hide the assets of their criminal activities. This bill would make it more difficult for the violator to shield real property and in particular to avoid forfeiture by claiming the real property as a homestead. He stated that lines 123-6 state that the proceeds of sale of forfeited property are to be transferred to the general fund of the agency having custody of the property. Mr. Kelly would prefer that this be changed to allow the KBI to designate these funds for their undercover buy fund. (Attachment 3).

Gerald Goodell representing the Kansas League of Savings Institutions spoke before the committee stating that he believes that as currently worded the bill would be unconstitutional as it pertains to a homestead. He further feels that first mortgage lien rights are jeopardized by the current wording of the bill. He stated in large financial institutions it is possible that some employee of the institution could have some knowledge of the illegal activities and this would impair the lien rights. He offered amendments to lines 78-81 and 88-91 to alleviate these concerns. (Attachment 4)

There was discussion among committee members and the conferees regarding the homestead provisions of this bill.

SB 308 - An act concerning interests in agricultural land; relating to certain limited partnerships.

Ivan Wyatt, President of the Kansas Farmers Union appeared before the committee in support of SB 308. Jeffrey S. Southard of the Attorney General's office also appeared in support of the bill. He explained the basis for the bill as being a concern for farmers who entered into limited partnerships with out of state entities which were scams. The limited partnerships were not prevented by the corporate farming law although the limited partnerships involved were identical to a corporation in that the limited partners had the role of stockholders. Although the same did not materialize the attempt uncovered this loophole in the corporate farming law. The bill allows limited partnerships but requires the farmer/operator to be a general partner and not a limited partner. Limited partners would not be allowed any control of the daily operations and are limited to providing capital. He stated that the purpose is to strengthen the law and not to provide an infusion of capital into the state's farming system although that is a possible result of passage of the bill. (Attachment 5)

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,  
room 313-S, Statehouse, at 3:30 ~~xxx~~/p.m. on March 20, 1986.

Final action SB 311

Rep. Snowbarger moved to report SB 311 favorably and to place same on the consent calendar. Seconded by Rep. Solbach. Motion carried on a voice vote.

Final action SB 298

Rep. Snowbarger moved to amend SB 278 to take single county districts out of these provisions on the budgetary provisions only. Seconded by Rep. Vancrum. Rep. Solbach made a substitute motion to localize the entire bill to teh district where there has been a problem leading to the introduction of this bill. The substitute motion died for lack of a second. Rep. Whiteman made a substitute motion to table SB 298. Seconded by Rep. Wagnon. Motion carried on a voice vote.

Final action SB 419

Rep. Shriver moved to report SB 419 favorable for passage. Seconded by Rep. Wagnon. Motion carried on a voice vote.

Final action SB 278

Rep. Solbach moved to amend lines 52-4 and 89-91 as per the suggestions of the Kansas League of Savings Institutions. Seconded by Rep. Wagnon. Motion carried on a voice vote.

Rep. Solbach moved to amend line 84 to add "express" after the word "owners". Seconded by Rep. Adam. Motion carried on a voice vote. Rep. Solbach moved to add the word "express" where necessary to conform with the last amendment wherever necessary throughout the bill. Seconded by Rep. Adam. Motion failed 6 votes to 5. Rep. Whiteman moved to delete lines 78-81 and reinsert the language at line 178. Seconded by Rep. Solbach. Rep. Snowbarger made a substitute motion to conceptually amend the bill to define "consent" in Artle 15 Section 9 in that if there is express knowledge of a crime being committed on the premises they are deemed to have consented to waive the homestead rights under the constitution. Upon further discussion it was agreed to pass over SB 278 for final action until next week.

Final action SB 308

Rep. Teagarden moved to amend SB 308 by adding the word "general" before the word "partner" in line 68. Seconded by Rep. Wunsch. Motion carried on a voice vote. Rep. Teagarden moved to recommend SB 308 as amended favorable for passage. Seconded by Rep. Wunsch. Motion carried on a voice vote.

The Chairman adjourned the meeting at 5:20 P.M.

National Institute  
of Justice

Research in Brief

July 1985

# Use of Forfeiture Sanctions in Drug Cases

Lindsey D. Stellwagen

Forfeiture, the ancient legal practice of government seizure of property used in criminal activity, may prove a particularly useful weapon against illicit narcotics trafficking.

Federal prosecutors have used forfeiture successfully in several major cases. In 1983, for example, more than

\$100 million in cash and property was forfeited to the Government by convicted criminals. The Comprehensive Crime Act of 1984 increased existing Federal forfeiture powers.

Although a National Institute of Justice survey showed that State and local prosecutors and police administrators

rank the drug traffic as their most serious law enforcement problem, use of forfeiture at the State and local levels is still relatively limited. Thus, the potential remains for greater State use of forfeiture to disrupt the illegal drug trade by denying traffickers their prof-

Chart follows on next three pages.  
Text continues on page 5.

## From the Director

We know that fighting drug abuse is fighting crime. Research has shown, as highlighted in two earlier publications in the *Research in Brief* series, that intensive drug abusers are heavily involved in crime, much of it violent.

Without a readily available supply of drugs, however, use of narcotics would dwindle. That is why this Administration has focused enforcement efforts so heavily against those sophisticated criminals who make up the drug trafficking networks. This *Brief* examines an often overlooked legal weapon that could help cripple many drug operations by depriving traffickers of the fruits of their criminal activity.

Federal authorities, as well as police and prosecutors in several States, are using an ancient legal procedure—forfeiture—against today's drug traffickers. Forfeiture enables the government to seize property used in the commission of a crime.

As a law enforcement strategy, forfeiture can be used under Federal law to break up a continuing criminal enterprise. Foreign and domestic bank accounts can be seized, together with planes, vessels, cars, and luxury items

like jewelry or resort homes purchased with proceeds from the illicit drug trade. Seizure of such assets disrupts the "working capital" of criminal organizations and perhaps diminishes the motivation to traffic in drugs.

Forfeiture is also a deterrent. For example, a recent Federal case employed forfeiture to confiscate land used to grow marijuana. While a drug seller might be willing to risk loss of his harvest and a conviction for producing marijuana, the danger of losing prime California real estate should give him second thoughts about choosing to grow an illegal crop.

At a time when criminal justice agencies are striving to stretch resources and avoid burdening the taxpayer, forfeiture is a practical option. Forfeiture can be used to recoup some of the money the public spends on pursuing drug traffickers. Not only law enforcement may gain; victim compensation funds, hospitals, and drug treatment centers may also benefit.

Among the States, Florida has been highly successful in its use of forfeiture. While Florida's success is widely known, other States, notably Maryland and Michigan, have also demonstrated

forfeiture can be an effective tool for local police and prosecutors.

In preparing this *Brief*, researchers for the National Institute of Justice constructed a detailed chart showing forfeiture provisions as they apply to drug cases in the laws of all 50 States. They also interviewed some 50 prosecutors nationwide on how they use the forfeiture provisions.

Police and prosecutors will be interested in comparing details of their own State's forfeiture laws with those of other States. Policymakers may wish to consider legislation that encompasses the best features of the Federal forfeiture statutes and the stringent provisions used by States such as Florida.

Many other felonies, particularly those committed by organized crime, can be successfully attacked through appropriate forfeiture provisions. Drug traffickers, however, are particularly appropriate targets for such laws. Effective use of forfeiture can help make a difference in the campaign against drug abuse.

James K. Stewart  
Director  
National Institute of Justice

attachment 1 Abuse Judiciary  
March 20, 1986

Continued from page 1.

its, working capital, and means of doing business.

This *Research in Brief* analyzes major provisions of State forfeiture laws as they apply specifically to narcotics problems. It also reports on a survey of 50 prosecutors nationwide and recommends practical steps for expanding use of this legal tool. Included is a chart showing a State-by-State breakdown of drug-related forfeiture provisions. Typically, however, forfeiture provisions applying to crimes other than drug offenses are scattered through a State's criminal code; the chart does not cover these statutes.

### Criminal activities targeted

Virtually all States authorize forfeiture in connection with drug trafficking and manufacture; four States also mention cultivation of drugs. Other States group drug crimes, for purposes of forfeiture, with other offenses such as gambling and hazardous waste violations.

In addition, Illinois and Louisiana have enacted, and other States are considering, special drug racketeering statutes to address large criminal enterprises engaged in organized narcotics traffic. This new direction suggests a State strategy of focusing on a few large cases. This approach holds the potential for a greater impact on public safety than pursuit of many "street level" cases.

### Types of property seized

Once a State defines the type of criminal activity for which forfeiture may be invoked, it must define what property can be seized. All States authorize forfeiture of drugs themselves. Statutes also define properties that may not be illegal per se but may be seized because they were used to commit the crime.

Common provisions permit seizure of these types of property:

- **Conveyances** (aircraft, vessels, vehicles) used to transport, conceal, or facilitate the crime (47 States).
- **Raw materials, products, and equipment** used in manufacturing, trafficking, or cultivation (42 States) and the **containers** used to store or transport drugs (38 States).

- **Drug paraphernalia** used to consume or administer the controlled substance (19 States).

- **Criminal research and records**, including formulas, microfilm, tapes, and data that can be used to violate drug laws (38 States).

In practice, vehicles and cash are the most frequent forfeiture targets; a few States also authorize pursuit of real and personal property. A growing number of States are adding "traceable assets" (purchased with drug profits) such as jewelry and houses. A financial investigation is often required to link such assets to drug profits. The investigative expense may be cost effective, however, because the property is valuable and the potential for disrupting the criminal organization is high.

A number of prosecutors surveyed pointed out that a *broad* definition of property subject to forfeiture increases the effectiveness of the sanction by reducing the offenders' opportunity to convert profits into nonforfeitable assets.

### Disposition of forfeited property

An important and controversial aspect of a forfeiture law involves the disposition of forfeited property. Most State statutes provide that outstanding liens be paid first. Next come the administrative costs of forfeiture, such as storing, maintaining, and selling the property. Some States require that, after administrative costs are reimbursed, the costs of law enforcement and prosecution must be paid.

More than half the States provide that confiscated property goes to the State or local treasury, or part to each. In some States, however, law enforcement agencies may keep the property for official use. If the property is sold or if it is cash, then the money goes to the State or local treasury. In eight States, law enforcement agencies can keep all property, cash, and sales proceeds.

The legislative rationale for allowing law enforcement agencies to benefit from forfeiture seems clear. It is the belief that police departments will be more likely to commit resources to pursue forfeiture of criminal property if the department can gain an automo-

bile for undercover work or cash to supplement the drug "buy fund." Indeed, a few statutes not only allow the police department to keep all forfeited property but explicitly state that forfeited moneys and property cannot be used to reduce appropriations for the police budget.

In addition to allocating forfeiture proceeds to government treasuries and to law enforcement agencies, legislatures have provided for other interests to benefit. A few States earmark a percentage of forfeitures for drug rehabilitation and prevention programs. New York's law provides funds for restitution to victims, while Washington State allocates 50 percent of proceeds to its Criminal Justice Training Fund.

### Limitations to forfeiture provisions

Because it involves surrender of property rights, forfeiture is a severe penalty. For this reason, legislatures often include exceptions to forfeiture laws, most of them designed explicitly to prevent innocent people from losing their property.

The most common of such provisions concern forfeiture of conveyances; they protect innocent owners, lienholders, and common carriers. Exceptions are invoked for a person with interest in the property who neither knew of nor consented to its illegal use.

A number of States explicitly limit application of forfeiture to serious drug offenses. Nine States exclude the offense—usually only a misdemeanor—of possessing a controlled or counterfeit drug without a valid prescription. (A counterfeit drug is a substance falsely portrayed as a drug or as a different drug.)

A number of States exclude drug offenses involving a specified minimum amount of drugs, although the minimum varies. For example, Kentucky states that conveyances are not subject to forfeiture for "any offense relating to marijuana"; Pennsylvania provides that a conveyance shall not be confiscated for possession or distribution of a small amount of marijuana (as opposed to sales); California sets minimum amounts for possession of drugs ranging from marijuana to heroin.

## Administrative issues

A number of administrative issues must be addressed when a State passes or revises forfeiture legislation\* Most of them fall under five broad categories:

- *Who initiates proceedings.* Most States provide that the prosecutor shall file forfeiture proceedings. In Florida, however, a broad new law allows police to hire an attorney to expedite proceedings. This approach avoids overburdening prosecutors busy with criminal cases and inexperienced in civil forfeiture proceedings. A few States authorize the city solicitor to initiate forfeiture proceedings for similar reasons.
- *Time of filing.* Many States provide that forfeiture proceedings are to be filed "promptly," while some specify a given amount of time. Filing periods range from 15 to 90 days, with the median about 30 days from time of seizure.
- *Provisions for notice and hearing.* Most States establish procedures for notifying people who may have an interest in the property and who may want to contest the forfeiture at the court hearing. Constitutional considerations for due process require provisions for notice and a hearing; indeed, a few forfeiture laws lacking these provisions have been struck down as unconstitutional and have had to be amended.
- *Filing an answer.* Some States provide that, after the government has filed a forfeiture proceeding, anyone with an interest who wants to contest the confiscation must file an answer

\* One important issue related to the forfeiture process is not discussed: the issue of whether civil or criminal procedures should be used for forfeiture cases. The question of which approach is more appropriate, and under what circumstances, involves a number of complex legal questions that are summarized in the full report from which this *Brief* is drawn.

within a certain period of time. If no one files an answer within the stated period, the property can be forfeited—automatically, or sometimes after a hearing. Some States do not specify a time to answer; presumably, the period is 20 days, as in the Rules of Civil Procedure.

- *Actions in replevin.* Most State laws prohibit an action in replevin—a suit by the owner claiming that the property was wrongfully taken. Without such a prohibition, multiple lawsuits might result, perhaps even with the replevin action and the forfeiture petition going before different judges. Barring replevin concentrates the entire matter at the forfeiture hearing.

## Policy recommendations

Successful use of forfeiture is likely to grow as States and localities gain greater experience in using such sanctions. Most of the 50 prosecutors who were interviewed for this study expressed general satisfaction with the use of the forfeiture sanction for narcotics cases in their jurisdictions. The interviews, however, revealed areas where the process can be improved. The changes most often recommended included:

- Revision of existing statutes to establish clear procedures for condemning property.
- Revision of statutes to specify whether forfeiture is a civil or criminal procedure—or both—and whether a jury trial can be demanded.
- Consideration of expanding the types of property subject to forfeiture by adopting a provision for real property used in the cultivation of drugs or purchased with drug-sale profits.
- Consideration of adding "traceable assets" (property purchased with drug profits) to the types of property subject to forfeiture.

In addition, State and local governments may wish to consider incorporating the forfeiture process into their standard law enforcement procedures.

This is not as easy as it might sound. Development of a more systematic means of using forfeiture would involve an additional effort by States and localities. It could require hiring additional staff or funding of special training for officers in financial investigation and asset management. It might also require adaptation of case-screening mechanisms, procurement of property storage facilities, and development of procedures for seizing property.

However, for jurisdictions burdened with serious drug trafficking, the potential of forfeiture for disrupting the drug trade may outweigh the costs of establishing such a systematic approach.

*Information in this Brief was collected for the National Institute of Justice by Abt Associates, Inc., a research firm in Cambridge, Massachusetts. The research team, headed by attorney Lindsey Stelwagen, examined forfeiture statutes relating to drug cases for each of the 50 States. The researchers also interviewed more than 50 prosecutors nationwide on their use of the forfeiture sanctions.*

*The full text of this report is available on loan from the National Institute of Justice/NCJRS (Use of Forfeiture Sanction in Drug Cases, NCJ 98122). For details, call 800-851-3420 (in Maryland and the Washington, D.C., Metropolitan Area, call 301-251-5500). Other information appears in the National Institute of Justice report Strategies for Supplementing the Police Budget, NCJ 97682, to be available later this year. Call NCJRS for availability information.*

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# Forfeiture bill aims at drug dealers' pocketbooks

By John Petterson  
Topeka Correspondent

TOPEKA — Drug traffickers could lose their homes, farms or businesses to state law enforcement officials who crush their illicit operations if a proposal before the Kansas Senate becomes law.

The plan, requested by the Kansas County and District Attorneys Association, would toughen the state's existing asset forfeiture law by adding real estate to the property used in illegal drug activities that could be seized and, after court approval, sold.

Already subject to seizure are air-

craft, automobiles, laboratory equipment, money and records used in illegal drug activity in Kansas.

The unit of government initiating the separate civil action would be entitled to the proceeds of the sale or to forfeited cash.

The idea behind the forfeiture law is to attack drug dealers on the civil front while prosecuting them on criminal charges.

"The intent of that kind of legislation is to hit the criminal where it hurts the most, and that's in the pocketbook," said Benjamin Burgess Jr., U.S. attorney for the district of Kansas, who has urged adop-

tion of tougher assets forfeiture laws.

Federal law already is broader than even the proposed state law. The U.S. Department of Justice reported last July that in 1983 more than \$100 million in cash and property was forfeited to the government by convicted criminals. Federal forfeiture powers were increased the next year.

No estimate of the value of drug-related property forfeited in Kansas was available, although some state and local officials said they file forfeiture actions regularly, usually to seize automobiles used in drug

operations.

A house on Mission Road in Fairway recently was sold for \$172,000. Federal authorities had seized it after the former owner was indicted on drug charges; federal law allows seizure of property obtained through illegal drug profits.

Missouri has no asset forfeiture law, said Bobby George, a spokesman for Attorney General William Webster. However, he said, such legislation, endorsed by Mr. Webster, is pending in the General Assembly.

According to the July 1985 federal survey, seven states now allow

real estate to be forfeited when it is involved in some type of criminal activity — Colorado, Iowa, New Jersey, New York, Texas, Virginia and Wisconsin.

In Kansas, Clark Owens, Sedgwick County district attorney, said the proposal approved by the Senate Judiciary Committee "would certainly be another advantage we would have in trying to combat drug dealing on a higher level."

He said civil penalties, such as seizing cars, real estate and other assets, "provide as much, if not

See MEASURE, B-4, Col. 1

B-4 The Kansas City Times Saturday, February 8, 1986

## Measure would let state seize real estate

Continued from Page B-1

more, deterrent to major drug dealers than do prison sentences."

In some drug cases, Mr. Owens said, those arrested on drug charges fight forfeiture actions harder than they do the criminal charge.

"They fight us tooth and nail when we try to take away their cars," he said.

Federal authorities in Wichita have a forfeiture action pending against an expensive house owned by a Wichita man.

Mr. Burgess said the house, in fashionable Eastborough, is valued at \$180,000.

James Clark, executive director of

the county and district attorneys' organization, said many drug dealers work out of their homes, including some who operate drug houses and exchange money for narcotics through small openings in the door.

"Real estate is a good investment, even if it's purchased with drug money," Mr. Clark said.

Sen. Bud Burke, a Leawood Republican who is a member of the Senate Judiciary Committee, said the committee recognized that drugs often are sold from a dealer's home.

"The major objective is to get the drug business out of the home — make them do their dirty work somewhere else," Mr. Burke said.

He said dealers are knowledgeable about drug laws and are aware that their homes could not be forfeited under the existing state law.

"They always had a base to start up again," Mr. Burke said. "You could bust them and bust them, but you couldn't get to their \$2 million residence."

The pending legislation is designed to discourage drug dealers from using their homes, farms or business in their operations.

Tom Kelly, director of the Kansas Bureau of Investigation, said that if a person buys a farm, illegally grows marijuana and is caught by law enforcement officers, the land could be subject to forfeiture.

*Attachment 2  
House Judiciary  
March 20, 1980*

March 20, 1986

TESTIMONY OF THOMAS E. KELLY  
DIRECTOR, KANSAS BUREAU OF INVESTIGATION  
ON SENATE BILL 278  
HOUSE JUDICIARY COMMITTEE

I appear as a proponent of SB 278.

As you are undoubtedly aware narcotics violations are the most pervasive crime in our nation and probably our state. In addition, individuals involved in these violations many times commit other criminal acts to secure the funds to support a drug habit. Extensive networks of supply, distribution, and sales must be present to have a continuing criminal activity to meet the needs of narcotic users. As a result of the wide scope of this criminal activity and the tremendous profits available to those who supply narcotics to the users, it follows that large sums of money realized from this activity may be invested in real and personal property. In our investigations in our state we have arrested individuals who are selling drugs from their home or using the home as a storage area for narcotics and in some cases maintaining a laboratory to make drugs in the home. In our rural areas we have arrested

*Attachment 3  
House Judiciary  
March 20, 1986*

landowners who have used the land for the growing of domestic marijuana as a cash crop. In the cases where the person arrested has been the owner of the property and claimed it as a homestead, no action could be taken to forfeit the real property involved in the criminal activity.

Forfeiture is an excellent law enforcement tool in the fight against narcotics violations and violators in that it makes it very difficult for the violator to hide the assets of his criminal activity. This bill makes it more difficult for a violator to profit from criminal activity by removing the shield of his claim of real property as a homestead to defeat the forfeiture of the property.

In addition lines 123-126 reflect the proceeds from the sale of forfeited property must be transferred to the general fund of the unit of government having custody of the forfeited property or money. This restriction works to the disadvantage of law enforcement agencies who have limited sources of funds to utilize in their undercover narcotic investigations.

It is suggested this be changed in the case of the Kansas Bureau of Investigation to allow the funds from such sales to go to a special no limit forfeiture fund in the KBI to use in the "Undercover Buy Fund" and other related budgetary needs of the KBI. In this regard I wish to set forth a recommendation made by the Senate



Sub-Committee in our 1986 budget appropriation bill SB 524, as follows:

The Subcommittee would suggest that S.B. 278 concerning forfeitures be monitored. If the bill passes, the Subcommittee suggests that the House Subcommittee reviewing the KBI consider the establishment of a separate forfeitures fund to trace these funds to the agency and consider possible use of those funds for budgetary needs of the Bureau.

Thank you for the opportunity of appearing before you today.

LAW OFFICES OF  
**GOODELL, STRATTON, EDMONDS & PALMER**

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March 19, 1986

LES E. DIEHL  
THOMAS L. BELL  
DAVID E. BRUNS  
MARTA FISHER LINENBERGER

To: House Judiciary Committee

Re: Senate Bill No. 278


I represent the Kansas League of Savings Institutions. The League is concerned about possible forfeitures of real estate secured by first mortgages held by savings and loan associations under Section 1, Subsection 7(A), page 2 lines 78-81 and (D), page 3, lines 88-91.

In my opinion, the bill as written would be held unconstitutional as applied to a homestead since it purports to allow a forced sale without the joint consent of husband and wife required by Article 15, Section 9 of the Constitution of the State of Kansas. (See copy attached)

The League is also concerned about the impairment of first mortgage lien rights found in Section 1, Subsection 7(DE) on page 3, lines 88-91. In a large financial institution with numerous employees, it is possible that someone at the institution might have some knowledge that would impair the mortgage lien rights. We feel the language is an inappropriate utilization of lending personnel as enforcement agents and would like to see lines 90 and 91 deleted.

The League respectfully requests the following amendments:

- 1) Amend Section 1, Subsection 7(a) lines 78-81 by deleting the same so that the law would still include "No homestead shall be subject to forfeiture;"
- 2) Amend Section 1, Subsection 7(d) lines 88 through 91 by deleting the same.

  
\_\_\_\_\_  
Gerald L. Goodell  
Attorney for Kansas League of Savings  
Institutions

GLG:mph

*attachment 4  
Abuse Judiciary  
March 20, 1986*

ly conveyed; surviving spouse or partition. *Murray v. Murray*, 393.  
 conveyance unnecessary in conveyance to spouse. *Brecheisen v. Putnam*, 176 P. 137.  
 erred in connection with divorce. *Putnam v. Putnam*, 104 K. 47,

n and control property independent. *Putnam v. Putnam*, 104 K. 47,

, discussing competency of wife. *Harris v. Brown*, 187 F. 6, 9.  
 rule of unity of property right of community. *State v. Koontz*, 124 K.

erty rights of married women. *State Savings Bank*, 136 K. 767,

ing custody rights of estranged children. *State v. Taylor*, 138 K.

tation run as between husband and wife. *Crawford*, 155 K. 388, 390,

guardianship rights to next of kin. *Paranto v. Paranto*, 725, 171 P. 2d 299.

y not maintain tort action for negligence. *Sink v. Sink*, 172 K. 217,

union awarding to nonresident husband's property held in trust. *Bank of Topeka*, 192 K. 319,

fter becoming wife of defendant against husband for alleged tort. *Potts*, 193 K. 644, 646, 396

r spouse may maintain an action against the other not in violation. *Toler*, 194 K. 701, 702,

ion considered; 60-1610 (b), in conflict herewith or 23-2013 section. *Harrah v. Harrah*, 5, 146, 409 P. 2d 1007.

uced for neglect of duty. y reduce the salaries of neglect the performance of

ids:  
 ates 58, 60.2.  
 nstitutional Law § 37.  
 to 96; States §§ 89 to 99.

#### ANNOTATIONS

officers; constitution does not apply. *Hiner v. Miami County*, 32.

tate capital. The temporary location is hereby located at county of Shawnee. The constitution shall submit the question of location of the capital to a

popular vote, and a majority of all the votes cast at some general election shall be necessary for such location.

Research and Practice Aids:  
 States 22.  
 C. J. S. States § 27.

#### CASE ANNOTATIONS

1. Section cited in considering "location" of rural high school. *Miely v. Metzger*, 97 K. 804, 807, 156 P. 753.

§ 9. Homestead exemption. A homestead to the extent of one hundred and sixty acres of farming land, or of one acre within the limits of an incorporated town or city, occupied as a residence by the family of the owner, together with all the improvements on the same, shall be exempted from forced sale under any process of law, and shall not be alienated without the joint consent of husband and wife, when that relation exists; but no property shall be exempt from sale for taxes, or for the payment of obligations contracted for the purchase of said premises, or for the erection of improvements thereon: *Provided*, The provisions of this section shall not apply to any process of law obtained by virtue of a lien given by the consent of both husband and wife: *And provided further*, That the legislature by an appropriate act or acts, clearly framed to avoid abuses, may provide that when it is shown the husband or wife while occupying a homestead is adjudged to be insane, the duly appointed guardian of the insane spouse may be authorized to join with the sane spouse in executing a mortgage upon the homestead, renewing or refinancing an encumbrance thereon which is likely to cause its loss, or in executing a lease thereon authorizing the lessee to explore and produce therefrom oil, gas, coal, lead, zinc, or other minerals.

#### Revisor's Notes:

This section was originally ratified October 4, 1859. The last proviso of this section constitutes an amendment submitted by the legislature in 1943 (L. 1943, ch. 161) and adopted at the general election November 7, 1944.

#### Cross References to Related Sections:

Execution of mortgages and mineral leases on the homestead where one spouse incapacitated, see 59-2314 to 59-2322.

#### Research and Practice Aids:

Homestead 3 et seq.  
 Hatcher's Digest, Homestead §§ 1 to 42.  
 C. J. S. Homesteads § 6 et seq.

#### Judicial Council Bulletin References:

Articles on the law of homestead, James W. Taylor, 1935 J. C. B. 52 to 83; William Porter, 1951 J. C. B. 7 to 52.

#### Law Review and Bar Journal References:

Execution of oil and gas leases, George B. Collins, 8 J. B. A. K. 25, 27 (1939).  
 Ward's homestead cannot be sold by guardian to pay debts, Samuel E. Bartlett, 19 J. B. A. K. 146, 151 (1950).  
 Effect of land trust upon homestead exemption discussed, Richard L. Zinn, 14 K. L. R. 97, 107 (1965).  
 Discussed application to 41-806, John H. Johntz, Jr., 14 K. L. R. 193, 208 (1965).  
 Cited in comment on illegal use and alienation of homestead, Daniel C. Sullivan, 5 W. L. J. 296, 297 (1966).

#### INDEX TO CASE ANNOTATIONS

##### Actions, 185

Abatement of nuisance, 199  
 Accounting, 183  
 Alimony, 63  
 Bankruptcy, 202  
 Condemnation, 85, 97, 138, 139  
 Criminal, 118  
 Divorce, 28, 40, 63, 128, 140, 164, 180  
 Foreclosure, 34, 93, 113, 170, 188, 189, 190, 195, 197, 201, 202  
 Injunction, 116, 117, 124  
 Limitation of, 100, 113, 161, 166, 191  
 On judgment, 112, 122, 163, 169  
 Partition, 64, 65, 94, 162, 165  
 Probate, 173  
 Decedent's estates, 96, 97, 129, 130, 132, 133, 146, 147, 156, 161, 174 to 177, 181, 184, 187, 192, 194, 198  
 Incompetency, 63, 104, 141, 142, 180, 183, 186, 191  
 Insanity, 63, 104, 141, 142, 143, 153, 183  
 Quiet title, 110, 165, 191  
 Specific performance, 67

##### Constitution

Amendment, 186  
 Construction of, 10, 11, 96, 97, 99, 112, 115, 116, 117, 129, 130, 132, 133, 162, 168, 174  
 Kansas, 95, 96, 97, 118, 163 to 169  
 Limitations, 10, 11, 157, 158  
 Schedule, 157  
 United States, 10, 11  
 Wyandotte convention, 157

##### Courts

Appeals, 163  
 Comity, 179  
 Deposits, 188, 189, 190  
 Equity powers, 36, 37, 47  
 Evidence, 200  
 Judgments, 182  
 Lien, 12, 14, 21, 35, 38, 43, 44, 56, 57, 58, 166, 167, 171, 181, 193, 196  
 Vacation of, 162, 196

##### Jurisdiction

District court, 129, 130, 132, 133, 168, 180  
 Probate court, 180, 183, 186, 191

##### Procedure, 171

Attachment, 2, 22, 41  
 Execution, 34, 79, 83, 84  
 Garnishment, 188, 189, 190

Process, 188, 189, 190

Right to jury trial, 36, 37

##### Powers and functions of government

Changing common law, 113, 152  
 Exercise of, 17, 20, 69, 114, 151, 184, 186, 199  
 Legislative, 129, 130, 132, 133

Making rules of evidence and procedure, 10, 11, 123



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WRITTEN TESTIMONY OF DEPUTY ATTORNEY  
GENERAL JEFFREY S. SOUTHARD  
TO THE HOUSE JUDICIARY COMMITTEE  
MARCH 20, 1986

Mr. Chairman and Members of the Committee:

On behalf of Attorney General Stephan, I appreciate this opportunity to provide some background information on 1986 Senate Bill No. 308. This bill concerns amendments to K.S.A. 17-5903 and 17-5904, which are commonly known as the corporate farming statutes. These statutes have the general effect of prohibiting corporate ownership of farmland. Due to a situation which has arisen concerning a limited partnership, our office believes the statutes currently contain a loophole which should be eliminated if the law is not to be circumvented.

In particular, an entity known as Consolidated Family Farms came in the state in July of 1984 and announced it was interested in acquiring farmland in Kansas and other midwestern states. In that CFF was a series of interlocking limited partnerships, the corporate farming law did not prevent such acquisitions. However, in that a limited partnership is virtually identical to a corporation (with the limited partners in the role of shareholders), a

*Attachment 5  
House Judiciary  
March 20, 1986*

farmer who tendered his land to CFF would be, for all practical purposes, the same as if he had sold it to a corporation. Fortunately, due to incomplete and inaccurate securities filings, CFF was prevented from getting established in Kansas. Soon afterwards, the scheme fell through, and while it has been subsequently revived, its sponsors have avoided entry into Kansas.

In order to avoid such situations in the future, we suggest that the corporate farming statutes be amended to restrict the use of limited partnerships which acquire any interest in farmland. A limited partnership is composed of general partners and limited partners, with the general partners actually performing the daily operation of the partnership. The limited partners provide the capital in the form of money or property, but are restricted from having anything to do with the daily operations. In this sense, they are similar to stockholders of a corporation. For example, in the CFF scheme, the farmers would be the limited partners, as it is they who provide the capital for the partnership in the form of their land. However, in that they would be only limited partners, actual management decisions would be made by persons not connected with the land, in this case located in Chicago. The proposed amendments would allow a "limited agricultural partnership" which would be similar to the family farm corporations and family trusts which are now allowed, even

though corporations and trusts in general are prohibited. There would be a grandfather clause for those limited partnerships now operating, although we do not have any information as to how many such partnerships there may now be, if any.

These proposed changes are for the purpose of strengthening the law and are not intended directly to provide any infusion of additional capital into the Kansas agricultural system. However, by removing the uncertainty which now exists concerning limited partnerships, it is conceivable that some investors may be induced to enter into limited agricultural partnerships with farmers who need additional capital. For example, a group of individual investors would be able to establish such a limited agricultural partnership with an individual who was already residing on the land or engaged in the labor or management of the farming operation. In this sense, therefore, even this limited measure could have a beneficial effect in these distressed times for agriculture. Control of any management decisions would, however, remain with the farmer, who would serve as general partner.

Attorney General Stephan appreciates the committee's willingness to consider these amendments, which will serve to strengthen the Kansas statutes which protect the family farm. If we can be of any further assistance to the committee in its deliberations, please let us know.