

MINUTES OF THE House COMMITTEE ON Transportation

The meeting was called to order by Rex Crowell at  
Chairperson

1:30 ~~xxx~~ p.m. on February 24, 1986 in room 519-S of the Capitol.

All members were present except:

Representatives Ott and Brown - Excused.

Committee staff present:

Bruce Kinzie, Revisor of Statutes  
Hank Avila, Legislative Research  
Donna Mulligan, Committee Secretary

Conferees appearing before the committee:

Mr. Bill Edds, Kansas Department of Revenue  
Senator Don Montgomery  
Mr. John Scheirman, Kansas Department of Transportation  
Mr. Pat Hubbell, Kansas Railroad Association  
Mrs. Pat Wiechman, Kansas Auto Dismantlers and Recyclers Association  
Mr. Bill Green, Kansas Corporation Commission

The meeting was called to order by Chairman Crowell and the first order of business was a bill request from the Department of Revenue.

Mr. Bill Edds, Department of Revenue, referred to a letter sent to Chairman Rex Crowell from Secretary of Revenue Harley T. Duncan outlining legislative changes the Dealer Review Board would like to see implemented. They request 1) the two years referenced in K.S.A. 8-2410, (21), be amended to five years, and 2) the \$5 license fee for vehicle salesman or mobile home salesman, K.S.A. 8-2404(e), (15) be increased to \$15. (See Attachment 1)

A motion was made by Representative Patrick to introduce the requests as Committee legislation. The motion was seconded by Representative Wilbert. Motion passed.

The next order of business was a hearing on HB-2998 concerning abandoned railroad right-of-way.

Senator Don Montgomery spoke in support of HB-2998 and said that in Wabaunsee County a problem has arisen concerning the Rock Island Line. He said language in HB-2998 would clarify how abandoned right-of-way is to be treated.

Mr. John Scheirman, Kansas Department of Transportation, gave favorable testimony concerning HB-2998. (See Attachment 2) He said this bill would require railroads or their successors, such as bankruptcy trustees, to file disclaimers of interest with the county register of deeds upon a request by a rightful reversionary landowner. Mr. Scheirman stated HB-2998 would create a clear chain of title for the landowner.

Discussion among Committee members and Mr. Scheirman ensued concerning railroad rights-of-way and related matters.

Mr. Scheirman discussed a proposed amendment to HB-2998, which would say that if a railroad files a general release, for example, to all the abandoned property in a given county, it doesn't need to respond by filing individual releases. (See Attachment 3)

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation,

room 519-S, Statehouse, at 1:30 ~~xxx~~ p.m. on February 24, 1986

Mr. Pat Hubbell, Kansas Railroad Association, testified in support of HB-2998.

Mr. Hubbell discussed federal land grants and previous court cases concerning railroad rights-of-way. He said land has been acquired by warranty deed, easements, and condemnation, but however the land is held, it is still considered an easement in Kansas, except in rare circumstances where town lots are involved.

Chairman Crowell asked how much existing railroad right-of-way in Kansas came about as a result of land grants. Mr. Hubbell said less than 10 percent.

The hearing on HB-2998 ended.

Mrs. Pat Wiechman, Kansas Auto Dismantlers and Recyclers Association, requested introduction of a bill exempting vehicle dealers from the requirement of displaying upon demand evidence of motor vehicle liability insurance.

A motion was made by Representative Spaniol to introduce the request as a Committee bill. The motion was seconded by Representative Erne. Motion passed.

Mr. Bill Green, Kansas Corporation Commission, requested legislation be introduced involving amendments to K.S.A. 66-1,112g; K.S.A. 66-1,112c; K.S.A. 66-1,118 and K.S.A. 66-1,115a. (See Attachment 4)

A motion was made by Representative Knopp to introduce the requests as Committee legislation. The motion was seconded by Representative Shore. Motion passed.

The meeting was adjourned at 2:45 p.m.

  
Rex Crowell, Chairman





KANSAS DEPARTMENT OF REVENUE  
*Office of the Secretary*  
State Office Building · Topeka, Kansas 66612-1588

February 24, 1986

Representative Rex Crowell  
Chairman,  
Committee on Transportation  
Room 431-N  
State Capitol  
Topeka, KS 66612

Dear Representative Crowell:

The Dealer Review Board has continued their review of the statutes detailing prerequisites for licensure of vehicle sales persons, (K.S.A. 8-2401 to 8-2426). The Board requests that the House Committee on Transportation review these recommendations and introduce the appropriate legislation.

These measures are recommended by the Review Board in an attempt to screen those individuals from licensure who will not be operating the in the public's best interest.

The Board recommends that:

- A. The two years referenced in K.S.A. 8-2410, (21), be amended to five years. This subsection relates to the period of time which must expire between conviction for a felony and application for a sales person's license.
- B. The \$5 license fee for vehicle salesman or mobile home salesman, K.S.A 8-2404 (e), (15) be increased to \$15.00.

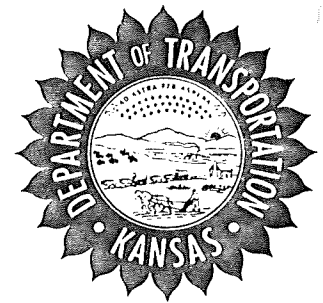
Thank you for considering these requests. The Department will be glad to appear when these bills are scheduled for hearing.

Sincerely

Harley T. Duncan  
Secretary of Revenue

# KANSAS DEPARTMENT OF TRANSPORTATION

STATE OFFICE BUILDING—TOPEKA, KANSAS 66612



JOHN B. KEMP, Secretary of Transportation

JOHN CARLIN, Governor

February 24, 1986

MEMORANDUM TO: HOUSE TRANSPORTATION COMMITTEE  
FROM: KANSAS DEPT. OF TRANSPORTATION  
REGARDING: HOUSE BILL 2998

Mr. Chairman, Members of the Committee, thank you for the opportunity to address House Bill 2998, an act concerning abandoned railroad right of way property. This bill was requested by the Secretary of Transportation and was recommended in the Governor's legislative message. Several members of the legislature and numerous concerned citizens have contacted the Kansas Department of Transportation and expressed a need for some solution to the problem with which this bill would deal.

Under Kansas common law as recognized by numerous decisions of the Kansas appellate courts, it is clearly established that a railroad owns only a limited interest, similar to an easement, in the property on which its rail lines are situated. In other words, Kansas railroads do not own ordinary right of way property in fee simple, but rather they hold the right to use the property for railway purposes. When that use is abandoned, as has been done on

*H. Transp. 2/24/86  
Attachment 2*

many miles of Kansas branchlines in recent years, the ownership reverts to the underlying fee holder, who is generally an owner of adjoining property.

The problem that has developed, most notably in the instance of the bankrupt Rock Island Railroad, is that the fact of reversion does not automatically get recorded in the public records of title. Rather, some affirmative act is required, such as a quiet title lawsuit or the purchase of a quitclaim deed. The purpose of the bill is to provide a simple, economic and uniform procedure by which landowners holding the reversionary rights to railroad right of way may obtain clear title to their property in the event that rail service on such a line is abandoned by a rail carrier.

Most railroad companies in Kansas have handled this issue in a responsible manner, and the Kansas Railroad Association has been helpful in our effort to draft a reasonable bill to cover those situations where problems have occurred. Despite the overall trend in the industry, there have been numerous complaints of abuse by a couple of railroads in Kansas. The pattern has been for the railroad to advertise a public sale of abandoned railroad property, and to offer quitclaim deeds for sale to any takers. This has created fear among the rightful landowners that they may lose control of their land and have all variety of uses

being made of it by interlopers. Although the case law is on their side, such landowners often do not have the benefit of informed legal advice on the subject.

In effect, such railroads have attempted to sell what they do not own. House Bill 2998 would cure this problem by requiring railroads or their successors, such as bankruptcy trustees, to file disclaimers of interest with the county register of deeds upon a request by a rightful reversionary landowner. This would create a clear chain of title for the landowner. If the railroad failed to comply, within a reasonable time, the railroads could be taken to court for enforcement of the landowner's rights.

It is not the intent of this bill to hasten the abandonment of railroad branchlines in Kansas. On the contrary, the bill provides some disincentive to abandonments in marginal cases, as it ensures that railroads will not attempt to claim any resale value for their right of way when calculating their financial standing in cases before the Interstate Commerce Commission. The bill would simply ensure that railroad right of way continues to be used only for its proper public purpose, or otherwise reverts to the ownership of the underlying landowners.

Requests for additional information may be referred to John R. Scheirman, KDOT Staff Attorney, at 296-3831.

Proposed Amendment to H.B. 2998

new section (d) A grantee or assignee of railroad right-of-way may, at any time, file a general release of all right, title and interest in the right-of-way of one or more particular rail lines or portions thereof with the register of deeds of the county or counties in which such property is located. If such action has been taken, the grantee or assignee shall be relieved of any further obligation under this section to file individual releases of any right-of-way included in such a general release.

Change existing section (d) to (e)

Change existing section (e) to (f)

Submitted by the Kansas Department of Transportation

H. TRANSP. 2/24/86  
Attach. 3



**66-1,112g.** Issuance of permits; reports of carriers; regulations. The commission is hereby vested with power and authority and it shall be its duty to issue permits to private

motor carriers of property, to require the filing of ~~annual and other reports, and such additional~~ data as may be required by the commission in carrying out the provisions of this act. The commission shall have power and authority, by general order or otherwise, to prescribe reasonable and necessary rules and regulations governing all private motor carriers of property.

H. Transp. 2/24/86  
Attach. 4X

**66-1,112c.** Permit transferable, when; notice and hearing; abandonment, notice; revocation or suspension of permit certificate or interstate license, when; notice and hearing. No contract carrier permit issued

under the authority of this act shall be construed to be either a franchise or irrevocable, but if a permit shall have been regularly issued, and the holder thereof is complying with the applicable provisions of this act, the holder may transfer or assign such permit in the following instances, subject to the approval of the commission given after a hearing thereon has been held, and which hearing shall have been noticed in like manner as provided in K.S.A. 66-1,112b:

~~(a) Where an individual or partnership transfers to a corporation for the purpose of incorporating his own or the partnership's business, when the transferor or former members of the partnership are to be the owners of a majority of the stock of the corporation;~~

(b) where a partnership dissolves and all of the permit rights are transferred, either by an agreement, a will, or operation of law, to one or more of the partners or his legatees or heirs, or to a new partnership, of which one or more of the partners were members of the former partnership or heirs or legatees of a deceased partner;

(c) where an individual transfers permit rights to a partnership of which he is one of the partners;

(d) where the holder of a permit dies, such permit rights may be transferred to the surviving spouse, or decedent's children provided that application to transfer such permit shall be filed with the corporation commission within one (1) year from the date of death of the holder, and pending such transfer, said operating rights authorized by said permit may be operated by the surviving spouse, children or the personal representative of said holder.

Every contract motor carrier of property or passengers who shall cease operation and abandon his rights under the permits issued shall notify the commission within thirty (30) days of such cessation or abandonment. The commission may at any time, upon showing of failure to comply with the provisions of the motor carrier law or other laws of the state relating to motor carriers, or failure to comply with the motor carrier rules and regulations of the commission, or the rules and regulations of the state property valuation department or the department of revenue relating to taxation of motor carriers, or of the port of entry board relating to motor carriers, suspend or completely re-

voke any permit, certificate or interstate license upon five (5) days' notice to the grantee thereof and an opportunity to be heard.

History: L. 1933, ch. 229, § 6; L. 1949, ch. 336, § 1; L. 1959, ch. 258, § 4; L. 1967, ch. 350, § 1; July 1.

**66-1,118.** Assignment or transfer of certificate; approval of commission; application; notice and hearing; findings; merger of authorities. (a) A certificate of public convenience and necessity issued under the provisions of the motor carrier act or any portion of the authority conferred thereby may be assigned or transferred, but not without the consent of the commission. Applications for transfer of any certificate of public convenience and necessity or any portion of the authority conferred thereby shall be filed jointly by the assignor and the assignee, and shall be subject to the same provisions as to public hearings and notices as the original applications for certificates of public convenience and necessity, and the commission may issue the transfer, as prayed for, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted such terms and conditions as in its judgment the public convenience and necessity may require. Approval of the proposed ~~transportation~~ *TRANSFER*, either in whole or in part, may be given after notice and hearing only upon finding by the commission that ~~such transportation will be consistent with the public interest and will not unduly restrict competition, and that~~ the applicant is fit, willing, and able to properly perform the proposed service.

AND ONLY IF THE HOLDER IS IN COMPLIANCE WITH THE APPLICABLE PROVISIONS OF THIS ACT.

(b) On and after January 1, 1960, no person shall be permitted to hold a certificate as a common carrier of property if he is also the holder of a permit as a contract carrier which authorizes the transportation of any of the same kind of property wholly or partially over the same route, or within any of the same territory as is authorized by said common carrier certificate. If, as a result of a transfer proceeding, a common carrier is granted additional authority, the two authorities shall be merged, and a single authority only reissued, unless the commission finds that such merger is contrary to public convenience and necessity. If, prior to the effective date of this act a common carrier has acquired additional rights as a result of a transfer of authority, the commission may require such carrier, after reasonable notice and hearing unless waived by the carrier, to consolidate his operations, and thereafter the authorities shall be merged and a single certificate of authority issued to said carrier.

**66-1,115a.** Granting of certain permits and certificates without hearing, when; notice. Notwithstanding the provisions of K.S.A. 66-1,112b and 66-1,114, and acts amendatory thereof or supplemental thereto, the commission may issue or grant contract carrier permits and common carrier certificates or abandonments thereof without a hearing when the request for such issuance, grant, or abandonment is made by verified application, ~~supported by shipper witness affidavits~~ and proper notice thereof has been given in accordance with said K.S.A. 66-1,112b and 66-1,114 above mentioned, if no protests are lodged against the granting of the application.