

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

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

10:00 a.m./~~p.m.~~ on January 29, 1986 in room 514-S of the Capitol.

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

Committee staff present:

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

Conferees appearing before the committee:

Joe Furjanic, Kansas Association of School Boards
Jim Kaup, League of Kansas Municipalities
David Cooper, Kansas-National Education Association
Steve Wieehman, Kansas Association of Counties

Senate Bill 415 - Application of act for judicial review and civil enforcement of agency actions to political subdivisions.

Joe Furjanic, Kansas Association of School Boards, stated the association represents 303 school districts in the State of Kansas and they are quietly opposed and quietly supportive of the bill. He said they can live with this act as quasi-judicial functions except for the venue section in the county where the school would be located. The major problem is with legislation as it applies to legislative functions of political subdivisions. He stated this bill is not clear as to whether legislative functions of these political subdivisions are kept out of the judicial review and the judicial enforcement act. He feels the bill needs amending on page five; he would be willing to work with judicial council committee to amend the bill. The chairman announced the judicial council subcommittee will meet tomorrow, January 30, and Mr. Furjanic could meet with the subcommittee to arrive upon an agreed for an amendment.

Jim Kaup, League of Kansas Municipalities, testified they were involved in the 1984 legislation and presented testimony two years ago. They did not know what the significance of this law would be. They have no consensus of the bill now; they have technical problems with it. They don't know what the track record of judicial review is and they don't know what the result of this bill will be. The two problems they have with the bill are, the legislative decision of the political subdivisions and the scope of the bill. He said the league has over 4,000 subdivisions that would be brought within the scope of this bill. During discussion the chairman pointed out the absence of agencies today speaks to the fact that it has been well received, and there are no major complaints about judicial review. What has the league of municipalities done but wait two years? Have you had seminars to work on it? Mr. Kaup replied, it has been a wait and see attitude. There is no consensus. City attorneys are concerned. A judicial review act presupposes that there is a record by the agency, but there is no record by these political subdivisions. They are concerned which agency decisions would be affected by this. They are confused. The chairman suggested Mr. Kaup make an effort to attend the judicial council's meeting tomorrow to get some information from there.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./p.m. on January 29, 1986

Senate Bill 415 continued

David Cooper, Kansas-National Education Association, stated, in general, the association supports efforts to broaden the scope of the Judicial Review Act by enacting legislation such as this bill. Copies of his remarks with proposed amendments are attached (See Attachments I). A committee member inquired, are we going to have various appellate routes to follow on this bill? The chairman explained K.S.A. 60-2101d, source of the right to appeal agency actions, is going to be eliminated, and Senate Bill 415 will be the new action. Professor Ryan explained there will be five or six different bills.

Steve Wieehman, Kansas Association of Counties, stated the association has a mailing going out to all of the counties, and they will try to draw attention to this bill and will report the results back to the committee. Mr. Wieehman stated he can't see it's going to save costs.

The meeting adjourned.

Copy of guest list attached (See Attachment II).

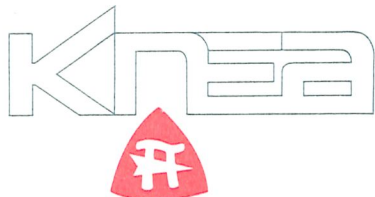
GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: Jun 29, 1986

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Ma H Lynch	Topeka	Judicial Council
PATRICIA HENSHALL	"	OJA
Sabrina Wells	"	Budget Division
Steven Wiecekman	"	Kansas Assn. of Counties
HAROLD C. PITT	"	TARPA
Bob West	"	K's Lumber Dealers
Richard Fink	"	KASB
Joe Ferguson	"	KASB
Craig Thant	Lawrence	K-NEA
John B. Gjesen	"	KASB
Paul R. Pagan	Topeka	Prof. Wesleyan Jud. Council
R. E. Lubertus	Topeka	KTGA
Jim Kay	"	League of Munic.
Judy Anderson	Wichita	City of Wichita
Buddy Rags	Topeka	K-NEA
David M. Cooper	Topeka	K-NEA
Jim Collins	Topeka	K-NEA
M. Hansen	"	Cap-Journal
Karen McClain	Topeka	Ks. Assoc. REALTORS
Roxe Smith	"	KBA

1-29-86



MEMO TO: SENATE COMMITTEE ON THE JUDICIARY

FROM: DAVID M. COOPER
STAFF ATTORNEY, KANSAS-NEA

DATE: JANUARY 29, 1986

RE: SENATE BILL NO. 415

In general, the Kansas-National Education Association supports efforts to broaden the scope of the Judicial Review Act by enacting legislation such as Senate Bill No. 415. However, in its present form SB 415 could create confusion with respect to appeals filed pursuant to the Due Process Procedure Act (K.S.A. 72-5436 et seq.) and the Public Employer-Employee Relations Act (K.S.A. 75-4321 et seq.). The attached statutory amendments would eliminate possible confusion which might otherwise arise under these two acts concerning a petitioner's right to appeal and the procedures to be utilized on appeal.

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S. Judiciary
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K-NEA: SUGGESTED AMENDMENT NO. 1

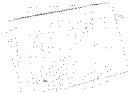
K.S.A. 72-5443. RECOMMENDATION OF HEARING COMMITTEE; FINDINGS OF FACT; DETERMINATION OF ISSUES; DECISION BY BOARD; APPEAL TO DISTRICT COURT. (a) Unless otherwise agreed to by both the board and the teacher, the hearing committee shall render a written opinion not later than 30 days after the close of the hearing, setting forth its findings of fact and recommendation as to the determination of the issues. The opinion of the hearing committee shall be submitted to the teacher and to the board.

(b) If the members of the hearing committee are unanimous in their opinion, the board shall adopt the opinion as its decision in the matter and such decision shall be final, subject to appeal to the district court as provided in ~~K.S.A. 60-2101, and amendments thereto.~~ the act for judicial review and civil enforcement of agency actions.

(c) If the members of the hearing committee are not unanimous in their opinion, the board shall consider the opinion, hear oral arguments or receive written briefs from the teacher and a representative of the board, and decide whether the contract of the teacher shall be renewed or terminated. The decision of the board under this subsection shall be submitted to the teacher not later than 30 days after the close of oral argument or submission of written briefs and such decision shall be final, subject to appeal to the district court as provided by ~~K.S.A. 60-2101, and amendments thereto.~~ the act for judicial review and civil enforcement of agency actions.

COMMENT:

This amendment makes the board's final decision in a due process hearing subject to review under the provisions of the judicial review act.



K-NEA: SUGGESTED AMENDMENT NO. 2

75-4334. SAME; PROCEEDINGS FOR DETERMINATION; FINDINGS OF FACT; JUDICIAL REVIEW; ENFORCEMENT OF FINAL ORDERS; ACTION IN DISTRICT COURT IN PROCEEDING INVOLVING ALLEGED STRIKE OR LOCKOUT. (a) Any controversy concerning prohibited practices may be submitted to the board. Proceedings against the party alleged to have committed a prohibited practice shall be commenced within six (6) months of the date of such alleged practice by service upon it by the board of a written notice, together with a copy of the charges. The accused party shall have seven (7) days within which to serve a written answer to such charges, unless the board determines an emergency exists and requires the accused party to serve a written answer to such charges within twenty-four (24) hours of their receipt. A strike or lockout shall be construed to be an emergency. The board's hearing will be held promptly thereafter and at such hearing, the parties shall be permitted to be represented by counsel and to summon witnesses in their behalf. Compliance with the technical rules of evidence shall not be required. The board may use its rule-making power, as provided in K.S.A. 75-4323, to make any other procedural rules it deems necessary to carry on this function.

(b) The board shall state its findings of facts upon all the testimony and shall either dismiss the complaint or determine that a prohibited practice has been or is being committed. If the board finds that the party accused has committed or is committing a prohibited practice, the board shall make findings as authorized by this act and shall file the same in the proceedings. Any person aggrieved by a final order of the board granting or denying in whole or in part the relief sought may obtain a review of such order in the district court, in the judicial district where all of the major geographical area of the public employer is located, by filing in such court a petition praying that the order of the board be modified or set aside, with copy of the complaint filed with the board, and thereupon the aggrieved party shall file in the court the record in the proceeding certified by the board. ~~Findings of the board as to the facts shall be conclusive unless it is made to appear to the court's satisfaction that the findings of fact were not supported by substantial evidence and the record considered as a whole.~~ Review of the board's decision shall be subject to the provisions of the Kansas act for judicial review and civil enforcement of agency actions.

(c) The board is hereby authorized to file a petition in the district court to enforce its final orders, subject to the provisions of the act for civil enforcement of agency actions, until such time as they are modified or set aside by the court. ~~The procedures for obtaining injunction and allied remedies shall be as set forth in the code of civil procedure, except that~~ The provisions of K.S.A. 60-904 shall not control injunction actions arising out of public employer-employee relations under this act.

K-NEA SUGGESTED AMENDMENT NO. 2 (CONTINUED)

(d) In the event there is an alleged violation of either subsections (b)(8) or (c)(5) of K.S.A. 75-4333, the aggrieved party is authorized to seek relief in district court in the manner provided for the board in subsection (c) of this section while proceedings on such prohibited practices are pending before the board. Any ruling of the district court shall remain in effect until set aside by the court on motion of the parties or of the board or upon review of the board's order as provided by subsection (b).

COMMENT:

This statute is a section from the Public Employer-Employee Relations Act. The intent of this amendment is to make final orders of the PERB board subject to review pursuant to the judicial review act.