

Approved March 5, 1986
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

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

10:00 a.m. on February 20, 1986 in room 514-S of the Capitol.

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

Committee staff present:

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

Conferees appearing before the committee:

Willie Martin, Sedgwick County Board of Commissioners
Don Farr, Sedgwick County District Court Administrator

Senate Bill 508 - Youth detention facilities in Sedgwick county.

Chairman Frey opened the meeting and called on Willie Martin who read testimony relating to the establishment and operation of public youth residential facilities in the three largest counties of Kansas (See Attachment I).

Comments from committee members centered on endorsement of the judges and ownership of the facilities.

Motion to amend was made by Senator Yost on page 1, in line 26, after "residential", by inserting "and detention"; also in line 26, by striking all after "facilities" and inserting a period; by striking all of line 27; in line 28, by striking "operation" and inserting "administration and control"; in line 35, by striking "detention"; seconded by Senator Feleciano, and the motion carried. The amendment includes a proposal made by Senator Feleciano to be incorporated in the initial motion. The bill was discussed by committee. Senator Feleciano moved to recommend Senate Bill 508 favorably for passage as amended; seconded by Senator Yost, and the motion carried.

Senate Bill 556 - Garnishment order; fee paid to financial institution.

This bill relating to orders of garnishment was thoroughly discussed by committee members.

Senator Feleciano moved the \$15.00 fee be stricken; seconded by Senator Gaines, and the motion carried. Senator Feleciano moved the bill be reported favorably for passage as amended; Senator Parrish seconded the motion.

Senator Frey suggested Senate Bill 556 be combined with Senate Bill 585 which also concerns garnishment. Limiting wage garnishment to twice per month was discussed.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 20, 1986

Senate Bill 556 continued

Senator Gaines conceptionally moved to incorporate 25 percent of whatever the earnings are per month. Senator Frey felt the formula should not be changed. Senator Gaines made a substitute motion to include the language of Senate Bill 585 in Senate Bill 556 to provide for these limitations; Senator Langworthy seconded the motion, and the motion carried.

Senator Gaines moved that Senate Bill 556 be reported favorably for passage as amended; seconded by Senator Burke, and the motion carried.

Senate Bill 414 - Civil procedure; joinder of parties and comparative indemnity; Re Proposal No. 35.

Chairman Frey requested discussion on above bill which concerns civil procedure. Mary Hack presented a proposed amendment (See Attachment II). Senator Parrish made a motion to amend; seconded by Senator Feleciano, and the motion carried.

At Senator Frey's suggestion, committee discussed amending bill in regard to bankruptcy proceedings, however, no motion was made in this regard.

Senator Parrish moved to recommend the bill favorably for passage as amended; seconded by Senator Feleciano, and the motion carried.

The meeting adjourned.

Copy of the guest list is attached (See Attachment III).



SEDGWICK COUNTY, KANSAS

BOARD OF COUNTY COMMISSIONERS

BUD HENTZEN
CHAIRMAN
THIRD DISTRICT

DONALD E. GRAGG
CHAIRMAN PRO-TEM
FIRST DISTRICT

TOM SCOTT
COMMISSIONER
SECOND DISTRICT

COUNTY COURTHOUSE • SUITE 320 • WICHITA, KANSAS 67203-3759 • TELEPHONE (316) 268-7411

Senate Judiciary Committee
February 20, 1986
Senate Bill 508

Testimony of Willie Martin
Sedgwick County, Kansas

K.S.A. 38-553 et seq. provides for the establishment and operation of public youth residential facilities in the State's three largest counties, Sedgwick, Johnson and Wyandotte. While it is the obligation of the Board of County Commissioners to provide for the construction of these facilities and to approve and fund an annual budget for their operation, the administration, supervision and control is the responsibility of the District Court. The employees of the facilities, while paid from county funds, are supervised by the Administrative Judge, who also has complete discretion regarding expenditure of all other budgeted funds.

This system of dual authority raises many questions regarding the application of basic administrative policies (i.e. personnel, purchasing, etc.) which all other county funded operations are subject to. Without clear authority to establish basic administrative controls, it is unreasonable to require the Board of County Commissioners to approve a budget and levy taxes for the support of these operations. The Board of County Commissioners is accountable to the taxpayers for expenditure of tax dollars, but inhibited from exercising the direct control necessary to satisfy their liability.

The public youth residential facilities are, in fact, detention and corrective centers. It is questionable that the District Courts should logically be involved in the actual operation of detention facilities, since there is no precedence for this at any other level of the State and local correctional system. Therefore, the operation of the public youth residential facilities should be removed from the auspices of the District Courts, and placed with the Board of County Commissioners.

The Court Unification Advisory Committee has recommended that the operation of the public youth facilities be placed with the Board of County Commissioners.

S.B.508 would amend K.S.A. 38-554 and establish administrative control of the public youth residential facilities, in Sedgwick County, with the Board of County Commissioners. We respectfully request that S.B. 508 be recommended favorably.

S. Judiciary
2/20/86

A-I

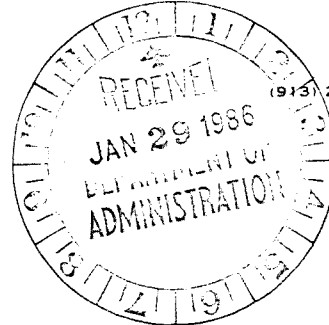


KANSAS JUDICIAL COUNCIL

KANSAS JUDICIAL CENTER
301 West Tenth Street
Topeka, Kansas 66612-1507

COUNCIL STAFF
RANDY M. HEARRELL
RESEARCH DIRECTOR
MATTHEW B. LYNCH
RESEARCH ASSOCIATE
NELL ANN GAUNT
FISCAL OFFICER &
ADMINISTRATIVE ASSISTANT

JUDICIAL MEMBERS
JUSTICE DAVID PRAGER, CHAIRMAN,
TOPEKA
JUDGE MARY BECK BRISCOE, TOPEKA
JUDGE JAMES J. NOONE, WICHITA
JUDGE HERBERT W. WALTON, OLATHE
LEGISLATIVE MEMBERS
SENATOR ROBERT G. FREY, LIBERAL
REPRESENTATIVE JOSEPH A. KNOPP, MANHATTAN
LAWYER MEMBERS
JAMES D. WAUGH, SECRETARY,
TOPEKA
ROBERT H. COBEAN, WELLINGTON
JACK E. DALTON, DODGE CITY
MARVIN E. THOMPSON, RUSSELL



January 24, 1986

TO THE MEMBERS OF THE COURT UNIFICATION ADVISORY COMMITTEE

Dear Committee Members:

Enclosed is a copy of the minutes of the last meeting of the Committee and a copy of the report as it was approved by the Judicial Council and sent to the Legislative Coordinating Council. Also enclosed is a copy of Justice Prager's letter that accompanied the report.

Although no meetings are scheduled the Committee will not be disbanded for a few months. After that time, if the Judicial Council decides that it is unlikely that there will be any reason to meet again, the Council will disband the Committee and you will be notified.

Very truly yours,

Randy
Randy M. Hearrell

RMH:ng

Enclosures

MINUTES OF THE MEETING OF THE JUDICIAL COUNCIL
COURT UNIFICATION ADVISORY COMMITTEE
HELD DECEMBER 20, 1985

The Judicial Council Court Unification Advisory Committee met Friday, December 20, 1985 in the Judicial Council Conference Room, Kansas Judicial Center in Topeka, Kansas. The meeting convened at 8:30 a.m.

The following persons were present:

Elwaine F. Pomeroy, Chairman,
Judge Donald L. Allegrucci,
Carol B. Chalmers,
Senator Paul Feleciano, Jr.,
John J. Gardner,
Howard W. Harper,
Justice Tyler C. Lockett,
Judge Lee Nusser,
F. Tim Witsman, and
Randy M. Hearrell, Reporter.

Representative Rochelle Chronister and Richard D. Shannon could not attend.

MINUTES

It was moved by Chalmers and seconded by Feleciano that the minutes of the November 15, 1985 meeting of the Committee be approved. The motion carried.

GENERAL DISCUSSION OF REPORT

The Committee generally discussed the report and its organization. It was suggested by Mrs. Chalmers and agreed by the Committee that the table of contents be changed to read as follows and that the report be similarly reorganized:

"TABLE OF CONTENTS

- I. SUMMARY OF RECOMMENDATIONS
- II. BACKGROUND AND METHODS
- III. COURT UNIFICATION
 - A. Evaluation
 - B. Recommendations
 - 1. Court Finance
 - a. Costs
 - b. State Finance
 - c. Tax Lid
 - d. Authority Over Juvenile Detention Facilities
 - e. Governor Changing Court's Budget Request
 - 2. Authority of Administrative Judge

3. Judicial Salaries
 4. Expansion of Court of Appeals
 5. Municipal Courts
- IV. APPENDIX A, Volume 1
APPENDIX B, Volume 2"

PREPARATION OF THE REPORT

"I. SUMMARY" was amended in the second paragraph by striking "abolition of" and in the third paragraph by striking all after the first sentence and inserting the summary of recommendations prepared by Mrs. Chalmers and approved as amended by the Committee.

"II. BACKGROUND OF STUDY" was amended to read "II. BACKGROUND AND METHODS". On page II-3 the second paragraph was amended by striking "a communication was received in the form of". On page II-4, second line, all after the word "purpose" was stricken and "the following people were appointed to serve:" was inserted.

"III. METHOD OF STUDY" was stricken and language remaining after the amendment by the Committee become a part of new § II. On page III-1 the first and second paragraphs were stricken along with the first sentence of the fourth paragraph. On paragraph III.2. minor changes were made and the first and second paragraphs were combined. The last paragraph was also stricken. On page III-3 the second and third paragraphs were stricken and a new paragraph was added which reads as follows:

"Throughout the study, the Committee attempted to gather accurate information on the costs of operation of the Kansas Court System. (See III.B.1.a.) The Committee was neither able to obtain the accurate information, nor was it able to secure funding for a professional survey of total costs. Lack of these figures greatly hampered this study."

"IV. COURT UNIFICATION" was changed to "III. COURT UNIFICATION." Old subsection "A. Background", was changed to "A. Evaluation". On page IV-1 the first sentence of the second paragraph was stricken and other minor changes were made. On page IV-2 "B. Accomplishments" was stricken. Minor changes were made on page IV-3.

On page IV-4 "C. Issues and Recommendations" was changed to "B. Recommendations" and the first paragraph was stricken. Subsection "a. Costs" of subsection "1. Court Finance" was changed by striking the last paragraph on page 4 and the first two paragraphs on page 5. Minor changes were made on pages IV-6 and IV-7. All of page IV-8, with the exception of the first seven words, was stricken. Page IV-9 was stricken with the exception of the first five sentences of the legislative report. On page IV-10, the first two single spaced paragraphs were stricken and the last paragraph on the page was rewritten as were the paragraphs on page IV-11. Also on page IV-11 the second sentence of the last

paragraph was stricken as were the first two paragraphs on page IV-12. Subsection "(b) Tax Lid" was changed to "c. Tax Lid" and minor changes were made throughout the subsection along with the addition of the proposed language prepared by Mr. Witsman relating to fiscal obligations under chapter 20 (which was inserted at the end of the section on the tax lid). Section "(c) Juvenile Detention Facilities" was changed to section "(d) Juvenile Detention Facilities". The section was amended by adding a sentence at the end of the first paragraph. The second sentence of the second paragraph was stricken and Mr. Hearrell was directed to include reference to data processing, utilities and postage, to include specific reference to Sedgwick County, and to include in the appendix section the materials Mr. Witsman prepared about Sedgwick County. Subsection (d) relating to the Governor's authority to change the court's budget was changed to subsection (e) and on page IV-18, the second paragraph was stricken. Present subsection "(e) Reconciliation of Obligations" was stricken on page IV-19.

Section 2, Authority of Administrative Judge was approved with minor changes.

Section 3, "Judicial Salaries" was approved, as amended, including a change at the top of page IV-23 striking the sentence "It is possible that in order to secure passage of the proposal the proposed commission may also be expanded to include salaries of top officials in all branches of government." It was also agreed that on page IV-23 and 24, the November figures relating to judicial salaries will be inserted, when they are available.

Section "4. Expansion of Court of Appeals" was approved with the only change being on page IV-26 at the end of the third paragraph by inserting language indicating how long the present appeals take.

Section "5. Municipal Courts" was amended by striking the second, third, fourth, and fifth paragraphs, the first sentence of the sixth paragraph and the first paragraph of page IV-29.

Section "V. CONCLUSION" was stricken because the Committee is of the opinion it is duplicative of the section entitled "I. SUMMARY OF RECOMMENDATIONS."

After discussion of the report several other matters were discussed. It was agreed that reference to nonpartisan selection should be made in the two places in the report where there is discussion of parts of recommendations of the JSAC Committee that have not yet been implemented. Also, it was noted that the Galligan report is the most comprehensive report on Kansas trial court financing and should be highlighted in the report.

I

PROCEDURE FOR SUBMISSION OF REPORT TO JUDICIAL COUNCIL

It was agreed that Mr. Hearrell would make the changes directed in the report and send copies to the Committee prior to its consideration by the Judicial Council. After the report is approved by the Judicial Council Mr. Hearrell will then send copies of the approved report to the Committee. It was agreed that no further meetings of the Committee need be scheduled at this time.

The meeting adjourned.



KANSAS JUDICIAL COUNCIL

KANSAS JUDICIAL CENTER
301 West Tenth Street
Topeka, Kansas 66612-1507

JUDICIAL MEMBERS
JUSTICE DAVID PRAGER, CHAIRMAN,
TOPEKA

JUDGE MARY BECK BRISCOE, TOPEKA
JUDGE JAMES J. NOONE, WICHITA
JUDGE HERBERT W. WALTON, OLATHE

LEGISLATIVE MEMBERS
SENATOR ROBERT G. FREY, LIBERAL
REPRESENTATIVE JOSEPH A. KNOPP, MANHATTAN

LAWYER MEMBERS
JAMES D. WAUGH, SECRETARY,
TOPEKA

ROBERT H. COBEAN, WELLINGTON
JACK E. DALTON, DODGE CITY
MARVIN E. THOMPSON, RUSSELL

COUNCIL STAFF
RANDY M. HEARRELL
RESEARCH DIRECTOR
MATTHEW B. LYNCH
RESEARCH ASSOCIATE
NELLY ANN GAUNT
FISCAL OFFICER &
ADMINISTRATIVE ASSISTANT

(913) 296-2498

January 23, 1986

TO THE MEMBERS OF THE LEGISLATIVE COORDINATING COUNCIL

Gentlemen:

Enclosed is a copy of the report on court unification which was requested by the Legislative Coordinating Council and was prepared by the Judicial Council Court Unification Advisory Committee. A copy of the appendix has been filed is on file with the Office of Legislative Services and Facilities.

At its meeting held January 9, 1986, the Judicial Council received and discussed the report. It was agreed by the Judicial Council that it would forward the report to the LCC in the form it was submitted to the Judicial Council by the Court Unification Advisory Committee.

The thinking of the Judicial Council was that the Court Unification Committee was an excellent committee which had spent a great deal of time studying the subject and the Council was of the opinion that the LCC should have the benefit of the advisory committee's findings.

It was agreed, however, that while the Judicial Council would not change the report of the advisory committee it would make certain comments and observations in a cover letter to accompany the report. Those comments follow.

It is recognized that the recommendations contained in section III.B.1.a, III.B.1.b, and III.B.1.c, relating to financial matters are legislative policy issues. The Judicial Council recommends serious consideration of the advisory committee's recommendations.

As to the recommendation contained in section III.B.1.e, relating to submission of the Court's budget directly to the legislature, the Judicial Council agrees with the position of the Committee and the Supreme Court that the budget of the judicial

I

branch of state government should not be treated as an executive branch budget. The Judicial Council agrees that the judicial branch is entitled to submit its proposed budget directly to the legislature without modification by the executive branch.

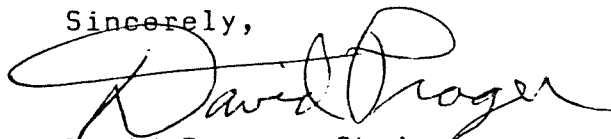
As to the recommendation contained in section III.B.2, relating to the authority of the administrative judge, the Judicial Council agrees with the recommendation of the advisory committee that the authority of the administrative judge be clarified by the adoption of Senate Bill 298. The Council received the proposal of the advisory committee relating to proposed Supreme Court Rule No. 107 and has forwarded that proposal to the Civil Code Advisory Committee for its consideration and report.

As to the recommendation contained in section III.B.C, relating to establishment of a permanent independent commission to review and set judicial salaries, the Judicial Council agrees with the recommendation of the Committee. The Judicial Council is concerned that judicial salaries in Kansas consistently remain lower than the national average. This has discouraged many qualified lawyers from seeking judicial office.

As to the the recommendation contained in section III.B.4, relating to expansion of the Court of Appeals, the Judicial Council agrees with the recommendation of the Committee. The Judicial Council has long sought expansion of the Court of Appeals and prior to the submission of this report had determined it would be propose such legislation this legislative session.

As to the recommendation contained in section III.B.5, relating to training and certification of nonlawyer municipal judges, the Judicial Council endorses the concept.

Sincerely,



David Prager, Chairman
Kansas Judicial Council

DP:ng

Enclosure

cc: Legislative Services and Facilities

REPORT OF THE JUDICIAL COUNCIL
COURT UNIFICATION ADVISORY COMMITTEE

TABLE OF CONTENTS

	PAGE
I. SUMMARY OF RECOMMENDATIONS	1
II. BACKGROUND AND METHODS	2
III. COURT UNIFICATION	8
A. Evaluation	8
B. Recommendations	12
1. Court Finance	12
a. Costs	12
b. State Finance	15
c. Tax Lid	19
d. Juvenile Detention Facilities	23
e. Governor Changing Court's Budget Request.	25
2. Authority of Administrative Judge	27
3. Judicial Salaries	29
4. Court of Appeals	32
5. Municipal Courts	34
IV. APPENDIX	

I. SUMMARY OF RECOMMENDATIONS

The following is the report of the Judicial Council Court Unification Advisory Committee. The Committee is a Committee of the Judicial Council which was created as a result of the request by the Legislative Coordinating Council to review court unification including its fiscal and budgeting impact on the counties.

The Committee has met a number of times, performed research, analyzed materials, interviewed persons, and concluded that court unification has had many positive results. The Committee has also concluded that many of the recommendations of the Judicial Study Advisory Committee have been implemented with the principal exceptions being in the areas of state finance, municipal courts, judicial compensation and state-wide merit selection procedure.

In the report the Committee discusses its inability to obtain accurate figures relating to the cost of operation of the Kansas court system and the ramifications thereof. The Committee makes the following recommendations:

1. Court Finance

- a. The accurate combined costs (county and state) of funding the Unified Court be obtained as soon as possible.
- b. The state assume all costs, except facilities, of the Kansas Unified Court System, when feasible.
- c. Until the state assumes all costs, items which affect the administration of justice, except facilities, be exempted from the "tax lid".

- d. The administrative authority over the juvenile detention facilities and the funding obligation of these facilities be placed with either the county or SRS.
- e. The budget of the Judicial branch of Kansas be submitted directly to the Legislature, with a copy to the Governor.

2. Authority of Administrative Judge

The authority of the administrative judge be clarified.

3. Judicial Salaries

A permanent, independent commission be established to review and set judicial salaries, and the recommendations of the commission take effect unless the legislature takes further action.

4. Court of Appeals

The Court of Appeals should be expanded to 10 members.

5. Municipal Courts

The Supreme Court require training and certification of nonlawyer municipal judges.

II. BACKGROUND AND METHODS

On June 3, 1983, the Legislative Coordinating Council received a request to review court unification and its fiscal and budgeting impact upon the counties. The matter was discussed by the Coordinating Council but no action was taken at that time.¹ At the July 1, 1983 meeting of the Legislative Coordinating

¹ Minutes of Meeting of Kansas Legislative Coordinating Council, June 3, 1983. Appendix, p. 1.

Council action was taken formally assigning the review of court unification and its fiscal impact on both the state and the counties to the Kansas Judicial Council.²

The letter containing the request of the Legislative Coordinating Council was addressed to Justice David Prager, Chairman of the Judicial Council, from Ross O. Doyen, Chairman of the Legislative Coordinating Council.³ The letter read as follows:

"At a recent meeting of the Legislative Coordinating Council in reviewing matters for study by legislative interim committees a request was received for a study of court unification including its fiscal and budgeting impact upon both the state and the counties. The request noted that some time had now elapsed since court unification and that a review of this experience might now be in order. It was decided that this matter should more appropriately be presented to the Judicial Council and I have been directed by the Legislative Coordinating Council to request that the Judicial Council conduct a review and study of the experience of the judicial system under court unification, including its fiscal and budgeting impact upon the state and the counties."

Upon receipt of Senator Doyen's letter the Judicial Council discussed the request and concluded that more information would be needed before the Council could make an appropriate decision as to how such a study should be conducted.⁴

² Minutes of Meeting of Kansas Legislative Coordinating Council, July 1, 1983. Appendix, p. 3.

³ Appendix, p. 8.

⁴ Minutes of Meeting of Kansas Judicial Council, July 29, 1983. Appendix, p. 9.

The Council then requested the Judicial Administrator to provide certain information relating to the financial impact of court unification on the state and counties, information relating to the volume of litigation, information relating to the delay reduction program, and information as to the amount of court produced revenue allocated to the state and counties. The Council also requested an analysis of the degree of success in implementing the specific recommendations of the Judicial Study Advisory Committee Report. The information received from the Judicial Administrator is contained in the appendix to this report.⁵

On January 16, 1984, Justice Prager wrote Senator Doyen⁶ and reported that the Judicial Council had requested and received the report from the Judicial Administrator, placed a notice in the "Kansas Bar Letter"⁷ requesting comments from lawyers and judges on unification, contacted the Kansas Association of Counties, and contacted the Sedgwick County Department of Administration with a request for comments about court unification.

Chairman Prager also wrote that he was sending the materials gathered by the Council because they contained at least a partial answer to the request of the Coordinating Council, because budgetary considerations would make it difficult for a Council Committee to do a great deal more work on the project until July

⁵ Office of Judicial Administrator, Court Unification Statistical and Financial Data, (1983). Appendix, p. 11.

⁶ Appendix, p. 92.

⁷ Kansas Barletter, vol. 33, no. 9, p. 1, Nov. 1984. Appendix, p. 94.

I

of 1984 and because it was thought to be desirable to make a report as soon as possible. Chairman Prager further wrote that if the Coordinating Council believed it would be appropriate for the Council to conduct a more thorough study the Council would be willing to do so.

In April of 1984, in a communication from the House Ways and Means Subcommittee on Courts, a recommendation was received which read as follows:

"1. That the Judicial Council pursue a formal study of court unification during FY 1985 that expands upon the preliminary survey of the topic done during the current fiscal year. In view of the magnitude of such a study, the subcommittee does not expect that a completed report will be ready prior to the start of the 1985 legislative session."⁸

The Senate Subcommittee on Courts concurred with the House Subcommittee's recommendation and joined in the request.

At the April 20, 1984, meeting of the Kansas Judicial Council the request of the House and Senate Subcommittee was considered and there was discussion on the scope of such a study and the possible membership of such a committee. At the June 8, 1984, meeting of the Judicial Council the requested study assignment was referred to the Judicial Council Court Unification Advisory Committee, which was created for that purpose. The following persons were appointed to serve:

⁸ Appendix, p. 95.

ELWAIN F. POMEROY, Chairman, Topeka, former member of the Judicial Council, former State Senator, and Chairman of the Kansas Adult Authority;

DONALD L. ALLEGRUCCI, Pittsburg, District Court Judge;

CAROL B. CHALMERS, Manhattan, member of original JSAC Committee;

ROCHELLE R. CHRONISTER, Neodesha, State Representative;

PAUL FELECIANO, JR., Wichita, State Senator;

JOHN J. GARDNER, Olathe, practicing lawyer;

HOWARD W. HARPER, Junction City, practicing lawyer;

TYLER C. LOCKETT, Topeka, member of original JSAC Committee and Justice of the Supreme Court;

LEE NUSSER, St. John, District Magistrate Judge;

RICHARD D. SHANNON, Kansas City, District Court Administrator; and

F. TIM WITSMAN, Wichita, Sedgwick County Administrator.

The Committee held its first meeting on August 10, 1984, and has met 14 times since the initial meeting.

Prior to the organizational meeting of the Committee each member was furnished a copy of the correspondence relating to the request for the study⁹ and a copy of the Report of the Judicial Study Advisory Committee¹⁰

⁹ Appendix, p. 8.

¹⁰ Kansas Judicial Study Advisory Committee Recommendations for Improving the Kansas Judicial System, May, 1974. (The JSAC Report was reprinted, in full, at 13 Washburn L.J. 2, Spring

The Committee sent letters to over 750 interested persons and groups inquiring about the effect of court unification and how the present system works from a practical point of view. In addition administrative judges were asked if they had adequate authority to carry out their administrative function.

Letters were sent to interested associations and groups, county and district attorneys, district court administrators, chief clerks of district courts, judges of the district court, former JSAC committee members and county commissioners. The Committee staff reviewed letters received¹¹ and prepared a report categorizing the responses.¹²

The Committee interviewed the following persons with regard to various aspects of court unification: Lewis C. Carter, Clerk of the Appellate Courts; Chief Judge J. Richard Foth, Chief Judge of the Court of Appeals; James R. James, former Judicial Administrator of Kansas and presently Regional Director of the National Center for State Courts; Chief Justice Alfred G. Schroeder, Chief Justice of the Kansas Supreme Court; Jerry Sloan, Fiscal Officer of the Kansas Judicial Branch, and Dr. Howard Schwartz, Judicial Administrator of Kansas.

1974 and that source is included in the appendix and is often cited). Appendix, p. 96.

11 Appendix, p. 158, contains the letters received by the Committee.

12 Kansas Judicial Council Court Unification Advisory Committee, Report on Responses to Request for Opinion of Court Unification, Feb. 1985. Appendix, p. 378.

The Committee reviewed the recommendations of JSAC,¹³ considered the Judicial Administrator's opinion of the degree of success in implementation of each recommendation¹⁴ and reached its own conclusions about the degree of success in implementation of the JSAC recommendations.¹⁵

Throughout the study, the Committee attempted to gather accurate information on the costs of operation of the Kansas Court System.¹⁶ The Committee was neither able to obtain the accurate information, nor was it able to secure funding for a professional survey of total costs. The lack of these figures greatly hampered this study.

III. COURT UNIFICATION

A. Evaluation

In 1964 the Citizens' Conference on Modernization of the Kansas Courts¹⁷ adopted a formal statement urging unification of the courts and many other far-reaching reforms. In November of 1972 the Kansas courts were unified by an amendment to the state constitution.¹⁸ In May of 1974, the Judicial Study Advisory

¹³ Appendix, p. 96.

¹⁴ Appendix, p. 68.

¹⁵ Minutes of Meetings of Judicial Council Court Unification Advisory Committee held May 3, 1985, June 21, 1985, and August 16, 1985. Appendix, pp. 409, 419, and 427.

¹⁶ See discussion under subsection III.B.1.a. of this report.

¹⁷ Speeches and Summary Statements, Citizens' Conference on Modernization of the Kansas Courts, September 24-26, 1964. Appendix, p. 446.

¹⁸ The 1972 proposition to revise the Judicial Article of the Kansas Constitution was submitted to the qualified electors of the state on November 7, 1972 (L. 1972, ch 392; H.C.R. 1018) and was adopted. The amendment replaced sections 1 to

Committee reported and made recommendations relating to implementation of unification.¹⁹ The constitutional amendment was implemented by legislative enactments in 1975, 1976 and 1978.

The technical definition of "court unification" is the act of placing the courts under one jurisdiction. The term "court unification" has come to have a much broader meaning. The term has come to mean not only the restructuring of the courts under the Supreme Court, but also encompasses many other related changes that took place at about that time. Changes such as the creation of the Court of Appeals, adoption of time standards, centralization of the administrative function and partial state financing of the court system have come to be considered a part of "court unification". Because the public perception of "court unification" is broader than the technical definition, the Committee has chosen to use that broader definition in its consideration of the subject.

Court unification has had many positive results. It has provided Kansas with a system which provides efficient, timely and effective dispute resolution for the people of Kansas.

20, inclusive, which appeared under article 3 of the constitution prior to the 1972 revision.

¹⁹ JSAC Report. Appendix, p. 96.

When revenues generated by the court system and paid into the general fund are deducted from appropriations, the cost to the taxpayers of Kansas has remained at approximately 1% of the state budget.²⁰

Benefits of court unification include providing a modern structure which permits administrative direction from a central office; transformation of a case statistics collection process into an effective case management system; improvements in district court accounting; consolidation of juvenile and adult probation; adoption of statewide jury management guidelines; oversight of restitution collections; conduct of work productivity reviews of district court operations; provisions to better educate and train judicial employees; initiation of a statewide program of delay reduction (for which Kansas has received national recognition); improvement of utilization of personnel resources; consolidation of training of all trial judges; more effective use of available judge time through more effective assignment of judges and implementation of a personnel plan tailored to the needs of the court.²¹

It has been the Supreme Court's policy to allow local management of courts. Statewide goals are articulated by the Supreme Court and local procedures and management strategies to meet the goals are determined by the trial judges and their staffs.

²⁰ Address of Chief Justice Alfred G. Schroeder to the Joint Session of the 1985 Legislature, January 17, 1985. Appendix, p. 485.

²¹ Ibid.

In reviewing the questionnaires sent to persons interested in the judicial system the Committee found that the most often mentioned positive comment about court unification related to the availability of resources, including training and information. Persons commenting on improvements in the system brought about by unification frequently mentioned how well the system worked. The positive comments quite often included such words as "uniformity", "efficiency", "flexibility", "reduced delay", "streamlined", "standardized", and "consolidated". The areas of time standards, delay reduction, case management, and bookkeeping, record keeping and accounting were often mentioned as improvements brought about by court unification.²²

In reviewing the 87 recommendations of the Judicial Study Advisory Committee the Committee found that many have been implemented, with the principal exceptions being in the areas of state finance, municipal courts, judicial compensation, and a state-wide merit selection procedure.²³

Although unification must properly be considered to be a process which is still ongoing, as opposed to a once-for-all accomplishment, a review of the process shows that a great deal has been accomplished by unification of the courts.

²² Kansas Judicial Council Court Unification Advisory Committee, Report on Responses to Request for Opinion of Court Unification, p. 9, Feb. 1985. Appendix, pp. 378, 387,

²³ Minutes of Meetings of Judicial Council Court Unification Advisory Committee held May 3, 1985, June 21, 1985, and August 10, 1985. Appendix, pp. 409, 419, and 427.

The following section of this report deals with issues on which the Committee makes recommendations. The reason this section of the report is larger than the section dealing with accomplishments under unification, is not because the problems found to exist are greater than what has been accomplished. That is not the case. It is the position of the Committee that the accomplishments which have come from court unification far exceed the areas in which work remains to be done. However, the nature of a report such as this is to focus on areas of possible improvement.

B. RECOMMENDATIONS

1. Court Finance

a. Costs

The Judicial Council Court Unification Advisory Committee recommends that the accurate combined costs (county and state) of funding the Kansas Unified Court System be obtained as soon as possible.

In 1984, the Legislative Coordinating Council assigned Proposal No. 48, District Court Financing, to the Special Committee on Ways and Means. The Committee was directed to review the financing of the state judicial system since unification, and to consider the feasibility of increased state support of district court operations. The Committee looked into the background of the unified court system, reviewed the JSAC

recommendations, and referred to the preliminary report of the Judicial Council which was prepared prior to establishing this Committee.²⁴

The report of that committee states:

"Examination of the detail of district court expenditures for FY 1983 reveals the difficulty of making generalizations. First, the district courts, despite using a common budget form and set of instructions, do not construct their budgets uniformly. Some budgets include actual, estimated, and requested amounts for each object of expenditure. Other budgets aggregate various levels of detail and do not reflect all objects of expenditure. Second, some objects of expenditure are frequently absent from the court budget. Expenditures for postage, telephones and utilities are in some cases not budgeted for the courts, nor reported as expenditures. In addition, amounts budgeted for staff travel and professional association dues are frequently not shown in the budgets.

The conclusion of the legislative interim committee was as follows:

"The Committee concluded that the quality of the data available about the district court operating expenditures does not permit determination of the actual costs of state assumption of those expenditures. For that reason and because of the current fiscal status of the state, the Committee does not recommend immediate state assumption of additional district court operating expenditures. The Committee also concluded that any court expenditures replaced by increased state expenditures should result in an equal reduction of county budgets and expenditures.

The Committee recommends that the state consider assumption of additional court costs now paid by the counties, except facilities, when a uniform accounting and reporting system is perfected that accurately identifies the costs of operating the district courts."

This Committee had similar misgivings about the available data relating to the costs of operating the district courts. It is the opinion of the Committee that the data utilized by the

²⁴ Report on Kansas Legislative Interim Studies to the 1985 Legislature, p. 707, Dec. 1984. Appendix, p. 490.

legislative interim committee contained significant omissions of costs. Using data which was described by the legislative committee itself as making it "difficult to make generalizations" that committee concluded that the state paid 70% of the district court costs in FY 1983. Additional information obtained by this Committee from Sedgwick County indicates that 7.3 million dollars reported as county expenditure for court operations²⁵ omits approximately two million dollars, if all costs were reported.²⁶ A similar discrepancy occurs with the 10.4 million dollar figure which included the costs of the juvenile detention facilities. The figures suggest to this Committee that county spending for the unified court system may be significantly underestimated.

The information gathering problem encountered by the legislative interim committee has continued. Despite the best efforts of the Court Unification Advisory Committee and extraordinary efforts by Senator Feleciano and former Senator Pomeroy, this Committee was unable to obtain a survey by Legislative Post Audit of the district courts which would have provided accurate costs of operating the courts in Kansas. Senator Feleciano chaired a subcommittee of this Committee which worked with the staff of Legislative Post Audit, prepared a proposed scope of study and presented it to the Legislative Post Audit Committee. Chairman Pomeroy testified before the Legislative Post Audit

²⁵ Sedgwick County Department of Administration, Actual Costs of Support of 18th Judicial District and Youth Facilities for 1983 and 1984 and Budgeted Costs for 1985, Feb. 21, 1985. Appendix, p. 494.

²⁶ Ibid.

Committee and emphasized the need for the information and the fact that the information is not otherwise available. Despite the efforts on behalf of this Committee the request was turned down.

This Committee then turned to the National Center for State Courts and requested an estimate for performing a similar audit.²⁷ Unfortunately, the estimate of \$30,000 was beyond the ability of the Judicial Council to finance and the Judicial Administrator indicated that funding above what the Judicial Council could provide was not available from his office.

The action by the Legislative Post Audit Committee in failing to approve the audit and the inability of the Judicial Council to finance or arrange financing for an outside study made the gathering of accurate information about the cost of running the state courts impossible.

b. State Finance

The Committee believes that the original Judicial Study Advisory Committee's discussion of the benefits of state finance are still valid²⁸ and the Committee recommends that the state assume all costs, except facilities, of the Kansas Unified Court System, when feasible.

The following background is of interest in considering state financing of the courts. After the report of the Judicial Study Advisory Committee there was other activity relating to court unification. In 1974, the special committee on the judiciary

²⁷ National Center for State Courts, Kansas Court Finance Proposal, November 18, 1985. Appendix, p. 501.

²⁸ JSAC Report, Appendix, p. 9.

reviewed the JSAC recommendations and prepared legislation to implement most of them. The bill that passed the legislature in 1975, included only the provisions creating the Court of Appeals.²⁹

In 1975, a legislative interim study committee met, held hearings, and submitted a bill that was a duplicate of the previous year's bill (without the provision for creating the Court of Appeals). This proposal was passed by the legislature and left the responsibility for financing the courts with the counties.³⁰

In 1976, the interim study committee on legislative budget reviewed judicial compensation. The committee recommended that the legislature work toward a goal of phasing out local supplements of district court judges and associate district court judges.³¹

In 1977, the Citizens' Committee on Judicial Compensation reported and recommended the elimination of salary supplements and proposed that the legislature look to the county retained share of court revenue as a means of financing judicial and nonjudicial salaries.³²

²⁹ L. 1975, ch. 178.

³⁰ L. 1976, ch. 145.

³¹ Kansas Report on Legislative Interim Studies to the 1977 Legislature, Nov. 1976, pp. 51-55. Appendix, p. 505.

³² Kansas Report on Legislative Interim Studies to the 1978 Legislature, Dec. 1977, p. 1319. Appendix, p. 509.

In 1977, the legislature also considered the cost of financing a unified court system and a district court personnel plan prepared by an outside consulting firm.³³ As a result of that firm's work and Attorney General's opinion 76-289,³⁴ legislation was passed requiring counties to provide district court employees, whose salary is paid by the county, with benefits equal to those provided to other state employees. The legislature also passed legislation requiring the Supreme Court to develop a pay plan for its personnel and statutorily established the salary of research attorneys. Also, House Bill 2642³⁵ appropriated \$1,725,000 in federal revenue sharing funds to help defray costs of court unification. H. B. 2642 gave county commissions final authority to determine and approve the budget for district court operations payable by the counties, the bill also prohibited counties from reducing the budget under the 1976 level.

In 1979, Chief Justice Alfred G. Schroeder requested the Legislative Coordinating Council to reestablish the Citizens' Committee on Judicial Compensation. The Committee was reestablished as an advisory committee to the LCC and reported in

³³ Resource Planning Corporation, Cost of Assuming nonJudicial Salaries of Kansas Court System, October, 1977.

³⁴ Attorney General's Opinion 76-289, September 17, 1976. Appendix, p. 523.

³⁵ L. 1977, ch. 110.

December of 1979. The Committee recommended increased judicial salaries and establishment of a permanent independent citizens' judicial compensation commission.³⁶

In 1979, the Special Committee on Ways and Means conducted an interim study of the organization and operations of the judicial branch. The study focused on the court personnel system, data processing, judicial compensation, compensation of court reporters, compensation of law clerks, nonpartisan method of selection of judges, and nonjudicial personnel compensation. In 1979 the probation supervision function was moved from the Department of Corrections to the judicial branch.³⁷

In 1984, the Legislative Coordinating Council assigned Proposal No. 48, District Court Financing, to the Special Committee on Ways and Means. The Committee was directed to review the financing of the state judicial system, since unification, and to consider the feasibility of increased state support of district court operations.³⁸ The report was discussed earlier in this report.

In considering whether or not there should be increased state funding of the Kansas court system the Committee looked at other states. The most comprehensive article on court finance in other states appears to be "State Funding of Court Systems"

³⁶ Report on Kansas Legislative Interim Studies to the 1980 Legislature, p. 1048, Dec. 1979. Appendix, p. 527.

³⁷ Report on Kansas Legislative Interim Studies to the 1985 Legislature, p. 880, Dec. 1979, Appendix, p. 534.

³⁸ Report on Kansas Legislative Interim Studies to the 1985 Legislature, p. 707, Dec. 1984. Appendix, p. 490.

written by Harry O. Lawson of the University of Colorado³⁹ which categorizes states' as to the amount of funding, funding system used, and the method of budget preparation. In addition to considering Professor Lawson's article the staff of the Committee contacted him and inquired if the contents of the article were still accurate (because the article was written in 1979). Professor Lawson stated that Iowa, New Hampshire, North Dakota, Oregon, Utah and Wyoming have moved "to or toward" state funding of the court since his article was written. He also stated that due to financial problems Michigan has delayed its state funding plan. Professor Lawson stated that several other states are presently considering moving toward state funding of their court systems.

The Committee found Trial Court Financing in Kansas⁴⁰ written by Mary K. Galligan to be the most comprehensive work in the area of Kansas Court Financing. The paper contains a discussion of ways to move toward state funding of the trial courts.

c. Tax Lid

If for some period of time counties continue to make levies to support the operating expenses of the State District Courts, the Committee recommends a statutory exemption for these levies from the aggregate levy limitations. The Committee does not

³⁹ Lawson, Harry O., State Funding of Court Systems: An Initial Examination, (1979). Appendix, p. 541.

⁴⁰ Galligan, Mary K., Trial Court Financing in Kansas, (Unpublished paper prepared in partial fulfillment of Masters in Public Administration Degree, [1984]). Appendix, p. 574.

believe it is logical for the law to require certain levels of expenditures by the counties for the State District Courts while imposing limits on the counties restricting their ability to raise revenues to meet the courts obligations.

K.S.A. 79-5001 et. seq.⁴¹ imposes an aggregate levy limitation on all taxing subdivisions except school districts and junior colleges. This is commonly referred to as the "tax lid". The intent of the limitation is to regulate those levies which support operations and services under the control of the political subdivision. The statutes provide several exceptions for levies which support operations and services which cannot be controlled by the taxing subdivision. Examples include levies for the payment of out-district junior college tuition or levies to pay judgments against the taxing subdivision.

K.S.A. 79-5015 provides that "Whenever any taxing subdivision of this state shall be required by law to levy taxes for the financing of the budget of any political or governmental subdivision of this state which is not authorized by law to levy taxes on its own behalf . . . the tax levies . . . shall not be included in or considered in computing the aggregate limitations upon the property tax levies . . ." K.S.A. 79-5002 states "The phrase 'taxes levied for the base year' shall refer to taxes . . . which were levied . . . for the use of and expenditure by the taxing subdivision."

⁴¹ Appendix, p. 656.

Several counties have used these statutes to argue that levies for State District Court expenditures should not be subject to the tax lid. The Attorney General has disagreed in opinion No. 81-134.⁴² Notwithstanding this opinion, it does appear that there was intent on the part of the Legislature that levies made on behalf of other government entities or levies made for purposes outside of the direct control of the taxing subdivision, not be subject to the tax lid.

The following amendment to K.S.A. 79-5011 would exclude the expenses incurred by the counties for district court operations from the tax lid:

75-5011. The provisions of K.S.A. 79-5001 to 79-5016, inclusive, shall not apply to or limit the levy of taxes for the payment of:

(a) Principal and interest upon bonds and temporary notes;

(b) no-fund warrants issued prior to April 3, 1970, and no-fund warrants issued after such date but prior to April 30, 1973, with the approval of the state board of tax appeals upon the basis of a finding of extreme emergency;

(c) no-fund warrants issued after April 30, 1973, when authorized by the state board of tax appeals subject to the conditions and requirements of K.S.A. 79-2938, 79-2939, 79-2941 and 79-2951 and where said board in addition specifically finds that an extreme emergency exists;

(d) judgments rendered against taxing subdivisions;

(e) rent due under any lease with a public building commission authorized by K.S.A. 12-1757 to 12-1768, inclusive, and acts amendatory thereof, which rent is for a facility specified in a resolution adopted prior to April 3, 1970, pursuant to K.S.A. 12-1767, and is pledged to retire bonds issued under the authority of such act; ~~or~~

⁴² Attorney General's Opinion 81-134, June 18, 1981, Appendix, p. 662.

(f) special assessments, and as used in article 50 of chapter 79 of Kansas Statutes Annotated the term "special assessments" shall include amounts assessed either specifically as special assessments or using other terminology but being in the nature of special assessments; or

(g) expenses incurred by counties for district court operations under the provisions of K.S.A. 20-348 and 20-349 and any amendments thereto.

The provisions of article 50 of chapter 79 of Kansas Statutes Annotated do not apply to the tax levies authorized or required under K.S.A. 40-2305, 72-4424, 74-496, 12-11a01, 12-1617h, 13-14,100, 19-262, and K.S.A. 1977 Supp. 13-14a02, 19-4004, 19-4011, 19-4102, 19-4443, 71-301 and 72-707 or to tax levies required for the payment of employer contributions to any other employee pension and retirement program not hereinbefore specifically designated which was in existence on July 1, 1970.

Amounts produced from any levy specified in this section shall not be used in computing any aggregate limitation under article 50 of chapter 79 of Kansas Statutes Annotated.

The dual funding system for the district courts has raised questions regarding the responsibility of board of county commissioners to control county expenditures. K.S.A. 19-229 provides that: "The boards of county commissioners. . . shall have exclusive control of all. . . county expenditures." K.S.A. 20-348 assigns responsibility to the board of county commissioners for all operating expenses of the district courts. K.S.A. 20-349, in contradiction to K.S.A. 19-229, states "After the amount of the district court budget is established, the expenditures under said budget. . . shall be under the control and supervision of the administrative judge. . . and the board of county commissioners shall approve all claims submitted by the administrative judge within the limits of said district court

budget." This is clearly a limitation on the authority of the board of county commissioners to control expenditures of the county.

Constitutional considerations probably would prevent the board of county commissioners from being granted any real control over the actual expenditures from the approved district court operating budget. However, recognition of the inability of the board of county commissioners to control district court expenditures in the tax lid law by exempting such expenditures from the tax lid, would alleviate the concern county commissioners have with the apparent contradiction of their fiscal responsibility. Most exceptions to the tax lid are expenditures which cannot be directly controlled by the county commission or expenditures which are made on behalf of another governmental unit. Expenditures by the county on behalf of the district court meet both of these criteria.

d. Juvenile Detention Facilities

The Committee recommends that the operation of the juvenile detention facilities⁴³ be removed from the authority of the district courts, and placed with either the State Department of Social and Rehabilitation Services or county correctional agencies. In either case, the entity which is responsible for operating the facilities should be responsible for funding them.

⁴³ The Juvenile Detention Facilities affected are the Sedgwick County Youth Residence Hall; Judge James E. Riddell Boys Ranch in Sedgwick County; Johnson County Juvenile Hall; and Kaw View Detention Home in Wyandotte County. The Shawnee County Youth Center is administered by the Shawnee County Department of Corrections.

Therefore, if they are placed under the control of SRS, they should be financed by state revenues. If they are placed under the control of a county correctional agency, they should be funded by the county.

The juvenile detention facilities are, in fact, detention and correction centers. It is questionable that the district courts should logically be involved in the operation of detention facilities, since there is no precedence for this at any other level of the State or local correctional system.

K.S.A. 38-553 et. seq. provides for the establishment and operation of facilities in three of the State's largest counties, Sedgwick,⁴⁴ Johnson and Wyandotte. While it is the obligation of the board of county commissioners to provide for the construction of these facilities and to approve and fund an annual budget for their operation, the administration, supervision and control is the responsibility of the district court. The employees of the facilities, while paid from county funds, are supervised by the district administrative judge, who also has the complete discretion regarding expenditure of all budgeted funds. This supervision of employees and other administrative tasks requires much judicial time, takes time away from performance of judicial duties and sometimes necessitates assignment of outside judges to perform such judicial duties.

⁴⁴ Sedgwick County officials have indicated that Sedgwick county plans to request legislation this session to allow transfer of administrative authority of the Juvenile Detention Facilities in Sedgwick County from the 18th Judicial District to the Board of Sedgwick County Commissioners.

This system of dual authority can lead to conflict between the board of county commissioners and the district courts, and raises many questions regarding the application of basic administrative policies (i.e. personnel, purchasing, etc.) to which all other county funded operations are subject. Problems occur because employees are under county classification and personnel rules, but are supervised by state judges. The board of county commissioners is accountable to the taxpayers for expenditure of tax dollars, but inhibited from exercising the direct control necessary in this instance.

e. Governor Changing Court's Budget Request

The Committee agrees in principle with the position of the Supreme Court⁴⁵ that the judicial branch budget should be submitted to the legislature, without change, as it was submitted to the director of the budget by the Chief Justice. The Committee goes somewhat further and suggests that the court's budget be submitted directly to the legislature. The Committee recommends that K.S.A. 20-158 be amended to provide for the budget of the judicial branch to be submitted directly to the legislature. It is recognized that if K.S.A. 20-158 were interpreted differently by the executive branch that the amendments would not be necessary.

K.S.A. 20-158 relates to the preparation and submission of the budget of the judicial branch. It states that the Chief Justice is responsible for preparing the budget of the judicial branch and that the Chief Justice shall submit to the director of

⁴⁵ Letter from Chief Justice Alfred G. Schroeder to Governor John Carlin, September 25, 1985. Appendix, p. 671.

the budget the annual budget request for the judicial branch of state government for inclusion in the annual budget document for appropriations for the judiciary, and states that the director of the budget shall review and may make such recommendations to the legislature for proposed changes in such budget as the director deems necessary and appropriate. The Supreme Court is of the opinion that such terms as "for inclusion", "recommendations", and "proposed changes" indicate that the statute gives no authority to the executive branch to delete any item or monies from the judicial branch budget.

The director of the budget interprets K.S.A. 20-158 to allow him to make deletions from the judicial budget and amendments to the judicial budget prior to its submission to the legislature. This approach has never been challenged.

The problem with the present interpretation of K.S.A. 20-158 is a constitutional problem. It is the unanimous opinion of the Supreme Court that article 3, section 1, of the constitution confers on the Supreme Court the responsibility for general administrative authority over all the courts of the state. By reason of this constitutional provision, and inherent authority of the court, it is the responsibility of the Supreme Court to determine the financial needs of the judicial branch and make those needs known to the legislature.

The court believes that because the budget requests of the legislative branch are not amended by the director of the budget that the judicial branch should be given like treatment for its fiscal needs.

The following amendment to K.S.A. 20-158 would implement the Committee's recommendations:

20-158. The chief justice of the supreme court shall be responsible for the preparation of the budget for the judicial branch of state government, with such assistance as the chief justice may require from the judicial administrator, the chief judge of the court of appeals and the administrative judge of each judicial district. Each district court and the court of appeals shall submit their budget requests to the chief justice in such form and at such time as the chief justice may require. The chief justice shall submit to the ~~director of the budget~~ legislature the annual budget request for the judicial branch of state government ~~for inclusion in the annual budget document for appropriations for the judiciary.~~ A copy shall be delivered to the Governor. Such budget shall be prepared and submitted in the manner provided by K.S.A. 75-3716 and K.S.A. 1980 Supp. 75-3717. Such budget shall include the request for expenditures for retired justices and judges performing judicial services or duties under K.S.A. 20-2616 as a separate item therein. ~~The director of the budget shall review and may make such recommendations to the legislature for proposed changes in such budget as the director deems necessary and appropriate.~~

2. Authority of Administrative Judge

The Committee recommends that the authority of the administrative judge be clarified. K.S.A. 20-345 relating to appointment of nonjudicial personnel for district courts and K.S.A. 20-349 relating to the preparation of the budget for the district court should both be amended. It's recommended that K.S.A. 20-345 be amended by striking the language that requires that the administrative judge to have the approval of the majority of the other district judges and associate district judges in appointing bailiffs, court reporters, court service officers, and other clerical and nonjudicial personnel. It's recommended that K.S.A. 20-349 be amended by removing the requirement that the judges of the district court approve the budget for the county in which

those judges are regularly assigned prior to submission of that budget to the board of county commissioners. It should be noted that 1985 Senate Bill 298 contains the suggested changes.⁴⁶

The Committee also recommends the adoption of proposed amendments to Supreme Court Rule 107 relating to duties and powers of administrative judges. A copy of the proposed amendments are attached.⁴⁷

The problems pointed out to the Committee, which seem to indicate that the administrative judge's authority needs to be clarified, are in the three areas of budgeting, personnel, and supervision of nonjudicial employees. The problems may not exist in a majority of the judicial districts, but where such problems do exist they are disruptive.

In the questionnaire the Committee sent to various persons involved in the judicial process the issue of "split administrative authority between the judicial administrator and administrative judge" was mentioned a number of times as a negative comment about the system. The problems that have been previously mentioned occur almost exclusively in multi-county judicial districts.

⁴⁶ Appendix, p. 672.

⁴⁷ Appendix, p. 674.

3. Judicial Salaries

It is the recommendation of the Committee that the legislature establish a permanent, independent commission to review and set judicial salaries, and that the recommendations of the commission take effect unless the legislature takes further action.

There have been at least three studies of judicial compensation in Kansas since 1977. In 1977 then Chief Justice Harold R. Fatzer requested the Legislative Coordinating Council to study judicial compensation of all judges in Kansas. The LCC agreed to this request and created a special committee on judicial compensation with committee members being appointed by the Chief Justice, the President of the Senate, and the Speaker of the House. The Committee made a number of recommendations including the amounts at which salaries should be set and the appointment of an ongoing independent citizens' commission on judicial compensation.⁴⁸ As a result of the recommendations of the committee there were some improvements made in judicial salaries. However, the improvements were less than recommended and were spaced over a longer period of time than recommended. The ongoing citizens' commission on judicial compensation was not created.

In 1979, Chief Justice Alfred G. Schroeder requested that the Legislative Coordinating Council reestablish the citizens' committee on judicial compensation to update the work originally performed by that body in 1977. The LCC established the commit-

⁴⁸ Report on Kansas Legislative Interim Studies to the 1978 Legislature, p. 1319, Dec. 1977. Appendix, p. 509.

tee and it was structured the same as the 1977 citizens' committee. The committee consisted of 12 nonlegislative members; four appointed by the Chief Justice; four by the President of the Senate and four by the Speaker of the House. Also, Supreme Court Justice Richard Holmes chaired an advisory committee of seven judges which was charged by the Chief Justice with assisting the citizens' committee in its consideration of judicial compensation matters. This second citizens' committee on judicial compensation recommended certain adjustments in salary and again recommended the establishment of a permanent independent citizens' judicial compensation commission.⁴⁹

In January of 1985, a committee to study judicial compensation was appointed by Darrell Kellogg, who was then President of the Kansas Bar Association. The committee members included Don Newkirk, Chairman, Nancy Schmidt Roush, Robert Gilliland, Honorable David Prager, Honorable William Carpenter, and Honorable Robert Bishop. The committee was staffed by Ron Smith of the KBA and Marjorie VanBuren of the Judicial Administrator's Office.

The Committee presented its report to the KBA Executive Council during the mid-year meeting of the bar in late September of 1985. It is the recommendation of that Committee that a long-range mechanism to deal with the problem of judicial salaries be established. The matter will be placed before the legislature this session for its consideration.

⁴⁹ Report on Kansas Legislative Interim Studies to the 1982 Legislature, p. 1048, December 1981, Appendix, p. 527.

In November of 1985, the Survey of Judicial Salaries published by the National Center of State Courts set forth the judicial salaries in all the states and provided a median and an average of those salaries, along with a numerical ranking of the salaries⁵⁰

At the time of the publication the Supreme Court of Kansas was paid \$62,396 which ranked it thirty-second. The average salary is \$66,974 and the median salary is \$65,655.

As of November, 1985, the Kansas Court of Appeals was paid \$60,169 and ranked twenty-eighth (out of 36) nationally. The national average salary for the intermediate appellate court of the states is \$66,639 and the median is \$65,486.

As of November, 1985, the salary of the general trial court in Kansas was \$54,245 and ranked thirty-fifth in the country. The national average salary for judges of the general trial court, was \$60,064 with a median salary being \$58,223.

As of August 1, 1985, the salary of district magistrate judges was raised from \$21,146 to \$26,000. No ranking is provided for the district magistrate judges salaries.

While it is generally recognized that more attractive salaries would likely aid in attracting capable practitioners to apply for positions in the judiciary, a recent trend which should concern those interested in the quality of the judicial system has been occurring at the district court level. The trend is the resignation by relatively young but experienced trial judges to

⁵⁰ National Center for State Courts, Survey of Judicial Salaries, vol. 11, no. 2, November 1985. Appendix, p. 678.

I

enter private law practice. In the past few years a number of the most capable young judges in the system have resigned to pursue other opportunities. It should also be noted that judicial positions are increasingly being filled by younger lawyers. It is believed that higher judicial compensation would attract more experienced lawyers to the bench and keep those persons on the bench.

4. Court of Appeals

The Committee recommends that the Kansas Court of Appeals be expanded by the addition of three judges and that this expansion occur as soon as possible. The Committee recognizes that even with the expansion of the court to ten members that the backlog problem will not immediately be resolved.

On January 10, 1977, the newly created Court of Appeals began to function. It has served its intended purpose, in that it has relieved the Supreme Court of its excess caseload,⁵¹ provided an appellate court to hear cases that were previously appealed to the district court and made appellate litigation in Kansas less expensive and more accessible to the people. The Court of Appeals has produced a high quality of work in the face of an overwhelming number of cases filed.

Two members of this Committee who were members of the Judicial Study Advisory Committee have stated that it was the opinion of the Judicial Study Advisory Committee that the anticipated workload of the Court of Appeals could justify the

⁵¹ Kansas Supreme Court Statistics for Calendar Years 1977-1984. Memoranda of July 17, 1985. Appendix, p. 685.

appointment of a ten-member Court of Appeals at the time of the court's creation. However, the Judicial Study Advisory Committee believed that it was advisable to begin with a seven-person court and allow those persons to develop the procedures for the operation of the court and to begin hearing cases. It was the intention of the Judicial Study Advisory Committee that somewhat later the court would be expanded to ten members.

Recommendation 20 of the Judicial Study Advisory Committee Report⁵² proposed the creation of an intermediate appellate court consisting of a chief judge and six associate judges. It was further recommended that additional judgeships be created when the proper administration of justice so required.

The plans of the Judicial Study Advisory Committee have not been followed. Despite repeated efforts by the judicial branch and the Judicial Council the Court of Appeals has not been expanded.

The number of appeals filed with the Court of Appeals has risen from 759 in 1977, to approximately 1,100 in 1985.⁵³ To compound the problem, the percentage of cases settled or dismissed has fallen from approximately 25% in 1977, to approximately 18% in 1985. Despite capable leadership on the Court of Appeals and attempts through various means, including special panels,

⁵² JSAC Report, Appendix, p. 116.

⁵³ Kansas Court of Appeals Statistics for Calendar Years 1977-1984, July 9, 1985. Appendix, p. 686.

changes in the court rules, additional staff, and word processing equipment, the backlog has continued to grow. Presently, it may take as much as 18 months from notice of appeal to hearing.

For more detail on the Court of Appeals caseload problem see "Report of the Judicial Council Appellate Process Advisory Committee on the Caseload and Backlog of Cases of the Kansas Court of Appeals", Judicial Council Appellate Process Advisory Committee (1984).⁵⁴

5. Municipal Courts

The Committee recommends that the Supreme Court require training and certification of nonlawyer municipal court judges, similar to the training presently required of district magistrate judges.

It is the position of many persons interested in the court system that the municipal courts are important in that most citizens experience with the judicial system comes in the municipal court. Because many citizens perception of the court system is shaped by their experience in the municipal court it is important that municipal courts be of high quality and be perceived as fair in their administration of justice.

In the late 1970's the Judicial Administrator was able to conduct education sessions for municipal court judges as a part of the annual judicial conference. Unfortunately, legislative cuts in training funds ended those sessions.

⁵⁴ Appendix, p. 687.

More recently the Kansas Municipal Judges Association has become more active. The association conducts annual meetings, communicates among its members, and has an active board of directors. Also, within the past few months the Judicial Council has begun updating the Kansas Municipal Court Manual. The Judicial Council has also decided that the committee preparing this manual will be a standing committee and will prepare supplements to the manual. Information supplied by the Kansas Municipal Judges Association indicates that there are 627 cities in Kansas and presently 373 of these cities have municipal judges.

Despite the wide variety of opinions on the subject, and the fact that most of the opinions have some basis for support, it is the position of the Committee that the Supreme Court require training and certification of nonlawyer municipal judges. The Committee is aware of the positive effect such certification and training has had on the district magistrate judges.

SENATE BILL No. 414

By Special Committee on Judiciary

Re Proposal No. 35

12-19

0017 AN ACT concerning civil procedure; relating to certain negli-
0018 gence actions; amending K.S.A. 60-258a and 60-258b and
0019 repealing the existing sections.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 New Section 1. (a) Any party in an action based on negli-
0022 gence may join as an additional party any person whose negli-
0023 gence is claimed to have contributed to a claimant's damages and
0024 who can be subject to liability in the action. Joinder under this
0025 subsection shall be made by service of a summons and petition
0026 for joinder, to which shall be attached copies of all claims then on
0027 file in the action. The petition for joinder shall contain a concise
0028 statement of the facts which support joinder; a demand for
0029 judgment for the relief, if any, that the pleading party seeks from
0030 the additional party; and a statement that the additional party
0031 may be held liable to any claimant in the action for all or part of
0032 the relief demanded in any prior claim then on file in the action.

0033 (b) Any party in an action based on negligence may join as an
0034 additional party any of the following persons whose negligence
0035 is claimed to have contributed to a claimant's damages and who
0036 cannot be subject to liability in the action: (1) A person who is
0037 immune by reason of a release from liability or covenant not to
0038 sue by a claimant; (2) a person who is immune by reason of a
0039 family relationship with a claimant; (3) a person who cannot be
0040 subject to liability by reason of a statutory exclusive remedy; (4) a
0041 person who cannot be subject to liability by reason of the federal
0042 bankruptcy laws; (5) a person identifiable by name who could be
0043 subject to liability in the action except that personal jurisdiction
0044 over the person cannot be obtained in this state; and (6) a person

A-II

Atch. II
S. Judiciary 2/20/86

0045 who cannot be subject to liability by reason of a statute of
0046 limitations. Joinder under this subsection may be made in the
0047 manner provided for joinder pursuant to subsection (a) or by
0048 written notice of joinder filed with the court and served on all
0049 parties then in the action. The notice of joinder shall contain a
0050 concise statement of the facts which support joinder.

0051 New Sec. 2. (a) Any additional party joined under subsection
0052 (a) of section 1 shall be deemed a party defendant to all claims in
0053 the pleadings then on file. Any additional party joined under
0054 subsection (b) of section 1 by the summons and petition pro-
0055 cedure shall be a party to the action for the limited purposes of
0056 discovery and of determining that party's percentage of negli-
0057 gence. Any additional party joined under subsection (b) of sec-
0058 tion 1 by the notice procedure shall be a party for the limited
0059 purpose of determining that party's percentage of negligence.
0060 Any additional party joined under subsection (b) of section 1 may
0061 intervene in the action.

0062 (b) Upon joinder of an additional party under subsection (a)
0063 of section 1, the additional party shall respond to all claims in the
0064 action in the manner provided for in article 2 of chapter 60 of the
0065 Kansas Statutes Annotated.

0066 New Sec. 3. With respect to any additional party joined
0067 pursuant to section 1, any statute of limitations applicable to the
0068 liability of any party that had not expired as of the date on which
0069 the original action was commenced shall not expire earlier than
0070 one year after the date on which the original action was com-
0071 menced.

0072 New Sec. 4. (a) Whenever under a judgment in an action
0073 involving the negligence of more than one party, a party pays to a
0074 claimant both that party's own share of liability, if any, and the
0075 share of liability of any other party, the paying party shall be
0076 entitled to recover from the other party the amount paid on the
0077 other party's behalf.

0078 (b) Whenever a person has paid in settlement of a claim
0079 based on negligence an amount that is expressly stated in a
0080 written settlement agreement to represent both the settling per-
0081 son's own share of liability and the share of liability of one or

A-II

0082 more designated other persons, the settling person shall be
0083 entitled to recover from each designated nonsettling person that
0084 nonsettling person's share of the settlement amount or of a
0085 reasonable settlement amount, whichever is less. An action for
0086 such comparative indemnity may be maintained regardless of
0087 whether, as of the date of the settlement agreement, all of the
0088 persons were parties in a pending action, or one or more of the
0089 persons had not yet been joined in a pending action, or the
0090 claimant had not yet commenced an action. A nonsettling person
0091 may assert as a defense to the comparative indemnity action any
0092 defense the nonsettling person could have asserted in an action
0093 brought by the claimant to establish the settled claim. If the
0094 claimant had not commenced an action as of the date of the
0095 settlement, the date of settlement shall be deemed to be the date
0096 on which the claimant would have commenced an action for
0097 purposes of the statute of limitations against additional persons
0098 who might have been joined under subsection (a) of section 1. An
0099 action for comparative indemnity shall be commenced within
0100 one year of the date of the settlement agreement.

0101 (c) Whenever two or more persons have entered into an
0102 indemnity agreement, the provisions of subsections (a) and (b)
0103 shall be inapplicable to the extent to which they are inconsistent
0104 with the terms and provisions of the indemnity agreement.

0105 New Sec. 5. Each party to an action, where comparative
0106 negligence is an issue, who has sustained damages arising out of
0107 the same transaction or occurrence shall assert in that action any
0108 claim, counterclaim or cross-claim that the party may have
0109 against any other party in the action. Any such claim, counter-
0110 claim or cross-claim not so asserted shall be barred. No party
0111 shall be required to join another person in order to assert a
0112 cross-claim against that person.

0113 Sec. 6. K.S.A. 60-258a is hereby amended to read as follows:
0114 60-258a. (a) The contributory negligence of any party in a civil
0115 action shall not bar such party or said party's legal representative
0116 from recovering damages for negligence resulting in death, per-
0117 sonal injury or property damage, if such party's negligence was
0118 less than the causal negligence of the party or parties against

New Sec. 6. If a party is found to be at fault and it is determined by the court that the party cannot be collected from, either by operation of law or inability to satisfy a judgment, then the court shall reassess that party's fault to all of the other parties to the action pro rata. Each party to the extent of this reassessment of fault shall be subrogated to the judgment against such uncollectible party.

0119 ~~whom claim for recovery is made,~~ but the award of damages to
 0120 any party in such action shall be diminished in proportion to the
 0121 amount of negligence attributed to such party. If any such party
 0122 is claiming damages for a decedent's wrongful death, the negli-
 0123 gence of the decedent, if any, shall be imputed to such party.
 0124 (b) Where the comparative negligence of the parties in any
 0125 such action is an issue, the jury shall return special verdicts, or in
 0126 the absence of a jury, the court shall make special findings,
 0127 determining the percentage of negligence attributable to each of
 0128 the parties, and determining the total amount of damages sus-
 0129 tained by each of the claimants, and the entry of judgment shall
 0130 be made by the court. No general verdict shall be returned by the
 0131 jury.

0132 (e) ~~On motion of any party against whom a claim is asserted~~
 0133 ~~for negligence resulting in death, personal injury or property~~
 0134 ~~damage, any other person whose causal negligence is claimed to~~
 0135 ~~have contributed to such death, personal injury or property~~
 0136 ~~damage shall be joined as an additional party to the action.~~

0137 (d) (c) Where the comparative negligence of the parties in
 0138 any action is an issue and recovery is allowed against more than
 0139 one party, each such party shall be liable for that portion of the
 0140 total dollar amount awarded as damages to any claimant in the
 0141 proportion that the amount of his or her causal negligence bears
 0142 to the amount of the causal negligence attributed to all parties
 0143 against whom such recovery is allowed.

0144 (e) (d) The provisions of this section shall be applicable to
 0145 actions pursuant to this chapter and to actions commenced pur-
 0146 suant to the code of civil procedure for limited actions.

0147 Sec. 7. K.S.A. 60-258b is hereby amended to read as follows:
 0148 60-258b. The provisions of *Amendments* to this act shall not
 0149 apply to any cause of action which has accrued prior to the
 0150 effective date of this act such amendments.

0151 Sec. 8. K.S.A. 60-258a and 60-258b are hereby repealed.

52 Sec. 9. This act shall take effect and be in force from and
 53 after its publication in the statute book.

all other parties to the action

H-A

8

9

10