

Approved March 6, 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.~~XXX~~ on February 25, 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, Revisor of Statutes  
Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Omar Stavlo, Chief of Law Enforcement, Kansas Fish and Game Commission  
Jim Clark, Kansas County and District Attorneys Association  
Lieutenant Bill Jacobs, Kansas Highway Patrol  
Elwaine Pomeroy, Kansas Adult Authority

Senate Bill 498 - Fish and game violations; notice to appear.

Bill Hanzlick, Director, Kansas Fish and Game Commission, introduced Omar Stavlo who spoke on behalf of Senate Bill 498. He stated that for 15 to 20 years the agency has issued a notice to appear for an infraction of the law, similar to a traffic citation; but recently a court decision was made that this particular procedure is not in compliance with the criminal code. Copy of court decision is attached (See Attachment I).

Jim Clark said they would favor this change, but have some problems with the open container violation because it is not in the traffic code. Lieutenant Jacobs echoed that there are isolated instances in this regard. A short discussion followed.

Senate Bill 509 - Criminal damage to property, fire.

Senator Winter explained the bill was requested by a Douglas County District Judge because of several instances where minor property damage has occurred (in large part connected with K.U.).

Senator Steineger moved that the bill be reported favorably for passage; seconded by Senator Purke.

The bill was discussed at length in regard to concept and in regard to present statutes on arson. Consensus seemed to be the need for clarification.

Senator Feleciano made a substitute motion to provide for a misdemeanor where value is less than \$150, but value of over \$150, arson statutes would apply. Senator Burke seconded the motion.

After further discussion, with the consent of committee, the bill was tabled until further action.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 514-S, Statehouse, at 10:00 a.m.~~p.m.~~ on February 25, 1986.

Senate Bill 498 - Fish and game violations; notice to appear.

Senator Hoferer moved that Senate Bill 498 be reported favorably for passage; seconded by Senator Winter, and the motion carried.

Senate Bill 622 - Restitution in criminal cases.

Elwaine Pomeroy explained the bill states that if the aggrieved party cannot be located, money will go to the reparations board. He called the committee's attention to House Bill 2924 which he said goes a bit further.

Committee discussion followed. Mr. Pomeroy stated that Senate Bill 622 makes it clear that where the mandate is followed it shall be the responsibility of the clerk of the court to collect, and that is not in present law. This would supply a mechanism for payment of monies to the clerk of the court, unless aggrieved party is not available wherein it will go to reparations board. He also remarked that Senate Bill 622 says that in all cases the court will determine the amount which is a big advantage. The bill was not acted upon as time ran out.

Chairman Frey announced the next meeting today will be held in Room 522-S at 12:30 p.m.

The meeting adjourned.

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



IN THE DISTRICT COURT OF COMANCHE COUNTY, KANSAS

STATE OF KANSAS, )  
 )  
 Plaintiff, )  
 )  
 vs. ) Case No. 85FG-2  
 )  
 MICHAEL J. BOWMAN, )  
 )  
 Defendant. )  
 )

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JOURNAL ENTRY OF JUDGMENT

Now on this 7th day of August, 1985, the same being the regular August motion day of the Comanche County District Court, this matter comes on for hearing on the motion filed herein by the defendant as well as the appeal filed by the defendant from the judgment of the District Magistrate Court which was entered on April 11, 1985.

The State of Kansas appears by Richard J. Rathbun II, Comanche County Attorney, Coldwater, Kansas; and the defendant appears by Wallace W. Underhill, Wichita, Kansas.

Whereupon, the parties do make oral argument to the Court.

Now, on this 16<sup>th</sup> day of September, 1985, the Court, after having considered the oral argument and having been furnished written memoranda by the parties hereto, does announce the following Findings of Fact:

1. On the 11th day of April, 1985, in the District Court of Comanche County, Kansas, before L. E. Murphey,

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District Magistrate Judge, the defendant was found guilty of two counts of violating K.S.A. 32-142a (hunting without written permission).

2. The prosecution was commenced by the issuance of two "Uniform Notice to Appear and Complaint" forms. Neither was under "Oath" (verified or acknowledged), although a space is provided on the Notice to Appear and Complaint for such verification.

3. These two instruments constitute "Written Citations".

4. The defendant filed a notice of appeal to the Court of Appeals on April 26, 1985.

5. On July 22, 1985, defendant filed a motion for relief from the April 11, 1985 judgment of guilty and asked that the District Court of Comanche County, Kansas, consider his appeal.

Thereupon, the Court states the applicable Conclusions of Law:

1. Unless otherwise provided by law, a prosecution shall be commenced by filing a complaint (K.S.A. 22-2301).

2. A "complaint" is a written statement under oath of essential facts constituting a crime, except that a notice to appear issued by a law enforcement officer pursuant to and in compliance with K.S.A. 8-2106 (Traffic Code) shall be deemed a valid complaint if signed by a law enforcement officer. No statutory exception appears for fish and game citations.

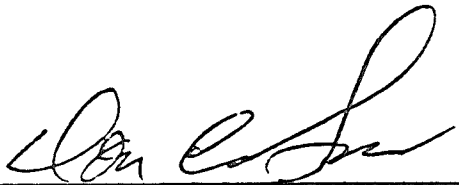
3. In order to make the exception obvious, the

Legislature enacted K.S.A. 8-2108, which provides in essence that "traffic citations" complying with K.S.A. 8-2106 when filed with the proper court shall be "deemed" lawful complaints for purposes of prosecution under the "Traffic Code".

4. Notwithstanding the legislative provision (K.S.A. 32-155a) authorizing fish and game officers to order violators to court with a "Notice to Appear", the citation is not a substitute for a complaint in the commencement of a prosecution.

5. Since K.S.A. 22-2301 is not permissive and no statutory exception has been granted, the District Magistrate Court lacked jurisdiction and these convictions must be set aside.

IT IS, THEREFORE, ORDERED that the convictions of April 11, 1985 be set aside.

  
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Don C. Smith  
District Judge

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