

Approved

3-29-87 SR
Date

MINUTES OF THE HOUSE COMMITTEE ON LEGISLATIVE, JUDICIAL AND CONGRESSIONAL
APPORTIONMENT

The meeting was called to order by Rep. Ed Bideau at
Chairperson

12:00 ~~am~~/p.m. on February 11, 1987 in room 313 of the Capitol.

All members were present except: Representatives Buntin, King, Knopp, Williams, Grotewiel, Justice, Roper - excused.

Committee staff present:

Mary Galligan, Research Kay Coen, Secretary
Raney Gilliland, Research
Myrta Anderson, Research
Arden Ensley, Revisors
Robert Coldsnow, Legislative

Conferees appearing before the committee:

Julene L. Miller, Deputy Attorney General

Deputy Attorney General, Julene L. Miller, presented testimony on behalf of Attorney General Stephan. (Attachment 1)

The Attorney General feels that to insure compliance with Federal & State Constitutional provisions, reapportionment, based on current census data, must be done prior to the 1990 election of the Kansas House of Representatives.

Ms. Miller stated that if you pursue an option other than to reapportion in 1989 using timely census data, whether acquired from a new state census or new federal figures, there is a strong likelihood of a successful court challenge to the apportionment plan. The disposition of any such case in Federal court, should the Federal court overturn the state plan under such a method which does not comply with constitutional requirements is very speculative. The Attorney General is therefore, in support of a new state census and reapportionment in 1989 based on that data.

In response to questions by Rep. Roe, Ms. Miller stated that there was little doubt that the Legislature would be in violation of the Equal Protection Clause if they attempted to delay reapportionment till 1992. Rep. Roe mentioned 1982 and 1983 law suits contesting reapportionment based upon 1978 census.

Rep. Hensley expressed a concern that if reapportionment was effected in 1989 based upon the state census, that the Legislature might take the position that it had done its duty and it might never again reapportion in 1992 but would put it off another 10 years. In response to questions and comments by Rep. Hensley, Ms. Miller said that she questions whether using 1990 figures in the 2002 election would be acceptable, but noted that courts say that as long as the legislature make a good faith effort to keep the apportionment scheme as close to one man, one vote as they can get, then the legislature ought to be alright.

Rep. Hensley asked Ms. Miller if the Attorney General's Office would support changing "may" to "shall" in the constitutional amendment and she indicated that the Attorney General's Office would have no objection to that but that this was of course a legislative decision.

Following discussion and questions for Ms. Miller, the committee adjourned at 12:35 p.m.



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Testimony of Deputy
Attorney General Julene L. Miller to the
House Apportionment Committee
February 11, 1987

Mr. Chairman and Members of the Committee:

On behalf of Attorney General Stephan, I appreciate this opportunity to provide information relevant to 1987 House Bill No. 2038 and 1987 House Concurrent Resolution No. 5003.

Concurrent Resolution No. 5003 provides that reapportionment in 1989 is optional. Reapportionment would be mandated in 1992 and every tenth year thereafter.

Attorney General Stephan issued an opinion on September 4, 1986 stating that postponement of reapportionment until 1992 would present constitutional problems.

This opinion is based on the fact that the Supreme Court of Kansas, in Bacon v. Carlin, 575 F.Supp. 763 (Kan. 1983), cited with approval the decisions in four previous cases, all which declared unconstitutional apportionment schemes based on census figures over 10 years old. If reapportionment in Kansas is delayed beyond 1989, the election of the Kansas House of Representatives in 1990 would

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ATTACHMENT 1

be based on an apportionment plan using 12-year-old census figures. Taken together, these four cases, in addition to Bacon, make it apparent that reapportionment should not be delayed beyond 1989. In all likelihood, such delay would be found by the federal courts to violate the Equal Protection clause of the United States Constitution.

The constitutional concept of one-person, one vote is so basic and fundamental to our system of government that the courts are unlikely to allow this fundamental right to be secondary to the convenience and economy of delay of reapportionment from 1989 to 1992.

Additionally, it would appear impermissible to follow the current statutory and Kansas Constitutional scheme and reapportion in 1989 using 1980 U.S. census figures. In Bacon, the court specifically stated:

"[I]n 1989, if the Kansas Legislature attempts to implement its constitutional provision requiring reapportionment by reliance upon 1980 federal census figures or those figures updated by estimates, constitutional problems will arise."

To insure compliance with Federal and State constitutional provisions, reapportionment, based on current census data, must be done prior to the 1990 election of the Kansas House of Representatives.

It you pursue an option other than to reapportion in 1989 using timely census data, whether acquired from a new state census or new federal figures, there is a strong

likelihood of a successful court challenge to the apportionment plan. The Attorney General is therefore in support of a new state census and reapportionment in 1989 based on that data.