

Approved 2/6/87

Minutes of the House Taxation Committee. The meeting was called to order by E. C. Rolfs, Chairman, at 9:00 a.m. on February 5, 1987, in room 519 South at the Capitol of the State of Kansas.

The following members were absent (excused):
Crowell
Fox
Grotewiel
Lowther

Committee staff present: Tom Severn, Legislative Research
Chris Courtright, Legislative Research
Don Hayward, Revisor of Statutes
Millie Foose, Committee Secretary

Representative R. H. Miller spoke as a proponent for HB-2140, an act imposing a tax upon marijuana and controlled substances. He said that this bill is modeled after the Minnesota law which has now been in operation for about eight months. He said there were three good arguments for having a tax on the illegal drug trade -- it helped eliminate tax evasion in the underground economy and thereby increased sorely needed revenues for the State, discouraged consumption, and created another new way to prosecute drug dealers. (Attachment 1)

Representative William R. Roy also appeared as a proponent. He said the law would put a squeeze on drug dealers and tip the balance of proof required from the state to the defendant in drug cases. It would also take the profitability out of the underground cash economy of drug dealing. (Attachment 2)

Attorney General Robert Stephan gave his whole-hearted support to the concept of imposing a tax on dealers of marijuana and controlled substances. He suggested a couple changes in the bill concerning the amounts stated and the use of the revenue collected. (Attachment 3)

Mr. Thomas Kelly, Director of Kansas Bureau of Investigation, appeared as a proponent. He said the proposed tax will attack the problem of profit from an illegal activity. He believes it will assist the state in the overall effort to bring drug trafficking under control. (Attachment 4)

Mr. Allen Rush, representing Governor Hayden, presented a memorandum concerning the bill. The thought there was that it might produce some tax revenue and would provide an additional tool in combating illegal drug dealings. (Attachment 5)

Mr. Gene Johnson, representing Kansas Community Alcohol Safety Action Project Coordinator's Association, gave whole-hearted support to HB-2140. He does not believe the bill should attempt to define a dealer, as a dealer who was caught with a lesser amount in his possession might not be penalized. (Attachment 6)

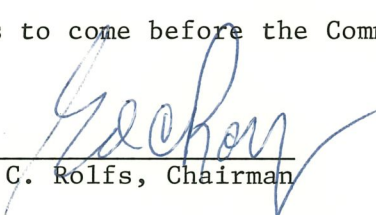
Ms. Elizabeth E. Taylor, Legislative Consultant to Kansas Association of Alcohol and Drug Program Directors, supported HB-2140 because it would provide benefits for the state of Kansas and the alcohol and drug programs of Kansas. (Attachment 7)

Harley Duncan, Secretary Kansas Department of Revenue, outlined the key features of the bill and answered questions from committee members. (Attachment 8)

Chairman Rolfs, a sponsor of the bill, presented figures from other states which demonstrate the revenue producing capacity of the bill. He stated that the State is in desperate need of additional revenue to fund its programs, and this bill would address some of these problems.

The minutes of the February 4 meeting were approved.

There being no further business to come before the Committee, the meeting was adjourned.


E. C. Rolfs, Chairman

STATE OF KANSAS

ROBERT H. MILLER
HOUSE OF REPRESENTATIVES
Sumner County



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
CHAIRMAN: FEDERAL AND STATE AFFAIRS
CHAIRMAN: JOINT LEGISLATIVE POST AUDIT
CHAIRMAN: CONTRACT AUDIT COMMITTEE
MEMBER: PENSIONS, INVESTMENTS AND
BENEFITS
RULES AND JOURNAL
NATIONAL CONFERENCE OF STATE
LEGISLATURES COMMITTEE ON
NATURAL RESOURCES AND
ENVIRONMENT

Testimony of Robert H. Miller before the House Taxation
Committee on HB2140

I am not here as a tax expert. I am not here as a legal expert. Other people are going to fill that role. I am here as a legislator with a long time interest in revenue and drug issues. I was the author of the bill that prohibited drug paraphernalia. It is now law in this state. I am also here in my new role as a father wanting to have a better Kansas for my children to grow up in.

HB2140 would impose a tax on illegal drugs in the State of Kansas. There would be a \$3.50 tax on each gram of marijuana; a \$200 tax on each gram of controlled substance; and a \$2,000 tax on each 50 dosage units of a controlled substance that is not sold by weight.

The bill also provides for confidentiality by the Department of Revenue and a penalty for violation of this act. Neither the director of taxation nor a public employee may reveal facts contained in a report or return required by this act, nor can any information contained in such a report or return be used against the dealer in any criminal proceeding, unless independently obtained, except in connection with a proceeding involving taxes due under this act from the taxpayer making the return.

I recognize that "dealers" are not likely to pay the tax on a regular basis. However, such legislation will create the following benefits:

- a. Law enforcement officers would have a criminal charge of tax evasion that may be successfully prosecuted whether or not the "dealer" is convicted on other drug

charges. There would be a prima facie case of tax evasion against any person arrested on a drug charge who had illegal drugs in their possession without a tax stamp. A criminal tax evasion charge may be harder to throw out on issues that are common in criminal drug charges, such as illegal search and seizure. If a "dealer" is convicted on both charges, the combined penalties would be substantially stiffer than under current law.

- b. The taxes would provide a way to tax part of a flourishing underground economy that is normally operating on a tax-free basis. Such a tax could be considered as similar to taxes imposed on other products in order to discourage their consumption, such as tobacco and alcohol.

Arizona has had a "grass tax" in effect since 1983. Challenges to its constitutionality have not been pursued. The Arizona tax rates are substantially lower than in the Minnesota Statute which carries a \$100 cost for a license for a "dealer"; a \$10 tax per ounce of marijuana; and a \$125 tax per ounce of controlled substance. Civil penalties for violation of the act are the same as for other "luxury taxes" in Arizona, and failure of a "dealer" to affix the stamps is a class 6 felony.

An Arizona Department of Revenue official indicated that they have collected \$100,000 in taxes over a three-year period, but have \$10 million in outstanding assessments. A copy of their statute is attached.

Minnesota finds advantages of taxing illegal drugs

By PHILIP M. DEARBORN
and ROBERT D. EBEL
L.A. Times-Washington Post Service

When a tax on the illegal drug trade was recommended by the Minnesota Tax Study Commission, there were a few snickers, but no one outside the commission paid much attention. What, after all, does state tax policy have to do with drug pushing? When the legislation was introduced in the Minnesota legislature, however, with the support of the State Revenue Department and police officials, it was different: The bill's sponsor received a death threat. No more snickering — this must be pretty serious business.

It is. And, as a result of a far-seeing citizens' commission, good legislative and state agency staff work and some political courage, the "Minnesota grass tax" passed. Beginning last August, the state began requiring drug dealers to buy stamps for their supplies of marijuana, cocaine and other illegal drugs just as cigarette manufacturers and liquor distillers must put stamps on their products. After three months of operation, some local law enforcement officials call it the best piece of anti-narcotics legislation to come along in years.

The Minnesota law is quite simple. It says that drug dealers — people who are in illegal possession of specified minimums of marijuana or controlled substances (thereby exempting licensed pharmacists, persons with prescriptions and casual users) — must pay an excise tax as

follows: \$3.50 per gram on marijuana, \$200 per gram of controlled substances and \$2,000 per 50 dosage units of controlled substances sold by weight. When the tax has been paid, it will be evidenced by a tax stamp printed and sold by the state. Drug dealers arrested in Minnesota are now subject to two actions. First, the usual criminal proceedings from arrest to bail to plea bargaining begin. During this process the pusher is probably soon back on the street on bail or, too often, off to another jurisdiction after jumping bail.

But in addition to the usual judicial proceedings, the state can now prosecute for felony tax evasion if tax stamps are not affixed to the illegal drugs. At the time of arrest, the police call tax officials, who can impose a penalty on the unpaid tax of 100 percent of the tax. The tax and penalty are due whether or not the dealer is convicted on other drug charges.

The tax officials can immediately issue an assessment on the pusher's assets and begin to collect the tax and the penalty. This means that when a pusher selling drugs is caught and has no evidence of the tax stamps, tax officials can bill the pusher for the amount of the tax and penalty due, and initiate collection efforts by attaching motor vehicles, bank accounts, real estate or other assets. In the first three months of use in Minnesota, the state has billed drug dealers for more than \$6 million.

In order to ensure the constitutional protection against self-incrimination, there are very strict confidentiality rules associated with tax payment. Not only is the stamp sale confidential, but the tax records are off limits to local police and interstate data exchange services.

Are taxes on the illegal drug trade an appropriate way to use tax policy? We think there are three good arguments for them:

• Equity. The tax addresses one part of a growing problem — tax evasion occurring in the underground economy. It does not follow that because activities are illegal that their participants should be preferentially treated relative to persons who engage in legal and taxable market transactions.

• Discouraging consumption. Throughout history, taxes have been imposed for "sumptuary" reasons — to discourage consumption of products, such as tobacco and alcohol, held to be morally or ethically undesirable.

• Support for the system of law. The tax creates another way to prosecute drug dealers. They can now be charged with tax evasion in addition to current criminal drug statutes.

Drug dealers may be odious characters, but they are also entrepreneurs who must buy, sell and turn a profit to stay in business. The basic commercial aspect of the business creates a weak spot in the dealers'

defense against the law. The "grass tax" could be used to exploit this weakness.

About the writers

Philip M. Dearborn is vice president of the Greater Washington Research Center. Robert D. Ebel is director of tax study commission for the District of Columbia and Minnesota.

HB 2140 is
modeled after this
Minnesota law
They have sold
over 100 stamps
To date

~~Robert H. Miller~~ Robert H. Miller

WILLIAM R. ROY, JR.
REPRESENTATIVE, FIFTY-THIRD DISTRICT
STATE CAPITOL
TOPEKA, KANSAS 66612



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: ELECTIONS
FEDERAL AND STATE AFFAIRS
JUDICIARY

TESTIMONY BEFORE HOUSE TAXATION COMMITTEE

February 5, 1987

H.B. 2140 - 2148

I appear before you today in support of H.B. 2140, a bill that is identical to one introduced by myself, which proposes that Kansas place a tax upon illegal drugs. This bill is patterned after a Minnesota law enacted only last year that will provide law enforcement officials another tool with which to fight the growing problem in illegal drug trafficking.

Since August 1 of 1986, Minnesota has required the drug dealers to buy tax stamps for drugs - \$3.50 a gram for marijuana, \$200 a gram for harder drugs. If drug dealers are caught without the required stamps, they are subject to a 100 percent penalty. In the first few months, the State of Minnesota assessed taxes of nearly \$7 million against unstamped drugs. The largest claim was for \$3.2 million for half a ton of marijuana.

This law puts the squeeze upon drug dealers similar to federal tax laws enacted during the 1920's and 30's against bootleggers of illegal liquor. It tips the balance of proof required from the state to the defendant in drug cases. In a criminal case, such as drug dealing, the burden of proof is upon the state, and the standard to be met to find the defendant guilty is "beyond a reasonable doubt". In a civil case such as non-payment of taxes, the tax as estimated

and assessed is presumed to be valid and correctly determined, and the burden of proof is upon the defendant to show its incorrectness and invalidity, and the standard the state must meet is a lesser "preponderance of the evidence".

The tax will take the profitability out of the underground cash economy of drug dealing. It will allow the state to go after assets of drug dealers - houses, automobiles- by allowing the state the seize and ultimately liquidate property that may have been bought from the profits of crime.

Because the bill assumes the tax as estimated by the Department of Revenue to be correct, the burden shifts to the defendant to show that the tax is incorrect. It creates a dilemma for the defendant. He can go into court and testify to try to save his property and thus give up his Fifth Amendment protection against self incrimination, or he can remain silent and give up his property.

Last, as an amendment to the bill before you, I would propose that the committee consider returning a portion of the proceeds of this tax to local units of government. Because the persons taxed under this bill would likely also be subject to criminal charges from the local prosecutor, to return a portion of this tax to the county would assist the county and District Attorney in covering the cost of investigating and prosecuting the criminal case.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

STATEMENT OF
ATTORNEY GENERAL ROBERT T. STEPHAN
TO THE HOUSE COMMITTEE ON TAXATION
RE: TAX ON MARIJUANA AND CONTROLLED SUBSTANCES
FEBRUARY 5, 1987

Mr. Chairman and Members of the Committee:

Members of the Committee, I am pleased to give my whole-hearted support to the concept of imposing a tax on dealers of marijuana and controlled substances. Although such a tax might at first blush sound somewhat far-fetched, it provides a novel tool to address the growing drug problem in our state. In fact, I was in the process of preparing my own similar proposal, but I am happy to support this one.

Under our current laws regarding controlled substances and marijuana, there is sometimes a problem of proving an "intent to sell" when a dealer is prosecuted. For the purposes of this act, such an intent is statutorily made clear. A statute, such as this one, also assists the state in taking the profit out of selling drugs.

I would suggest some changes in this bill or that the committee look at some of the other states' statutes on this topic. First, I believe the amounts stated in the

definition of "dealer" should be reduced to more than 1 ounce of marijuana and more than 1 gram of cocaine. These amounts would more accurately reflect amounts in excess of "personal use." Further, because a person might lawfully possess more than 10 doses of a controlled substance for certain medical conditions, I would add to line 0038, "except as acquired or possessed pursuant to a lawfully obtained prescription from a licensed physician and registered pharmacist."

I would also suggest that any revenue collected as a result of this or similar legislation be returned to law enforcement for drug enforcement activities, rather than putting it in the general fund.

After appropriate amendment, I urge you to favorably recommend this bill.



THOMAS E. KELLY
DIRECTOR

KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL
STATE OF KANSAS
1620 TYLER
TOPEKA, KANSAS 66612
(913) 232-6000



ROBERT T. STEPHAN
ATTORNEY GENERAL

TESTIMONY OF THOMAS E. KELLY

DIRECTOR, KANSAS BUREAU OF INVESTIGATION

BEFORE THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

FEBRUARY 5, 1987 on HOUSE BILL 2140

Mr. Chairman and members of the Committee, I appear before you as a proponent of HB2140.

My remarks reflect the viewpoint of a statewide law enforcement unit which is actively engaged in the investigation of illegal drug activity; and we work very closely with local and federal investigators as well as other state agencies in the fight against illegal drug trafficking.

As in most criminal activity the motive for the conduct of illegal drug activity is financial gain and this gain becomes greater through the avoidance of state and federal taxes. In addition, the profits from illegal drug sales are extremely high, and the lure of such profits act as a magnet for those willing to take a risk. We have seen suspected drug dealers, who have no known source of income from employment, buy large homes, farms, and vehicles. We are frequently involved in drug raids where marijuana and controlled substances are seized in substantial amounts, and the only tax action taken is by the Internal Revenue Service. In such cases we seize the contraband material as evidence for trial, and may also seize other available assets for forfeiture purposes.

The tax proposed in this bill will clearly attack the problem of profit from an illegal activity. I am certain we are all in agreement that no one has a right to conduct an illegal activity with the knowledge that if he is caught, his business practice is tax free.

The bill clearly defines a dealer as the person responsible for the payment of the tax and the amounts of marijuana and controlled substances used in defining the dealer will, in many cases, also include the "recreational user" who sells enough of the contraband to support his own habit. The dealer is not "licensed" in the sense that he is approved to sell illegal

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drugs, but he does have the burden to purchase and affix the required tax stamps.

It is significant that section 6 requires the Director of Taxation and any public employee to protect all information contained in these reports against disclosure to unauthorized persons. One of the strong issues involved in the enforcement of similar legislation in other states has been the question of the "dealer" being required to furnish incriminating information, in the procedure of obtaining the required tax stamps. It is suggested the rules and regulations adopted under this act clearly set forth the restricted nature of the information and the manner in which the information is maintained to assure the act cannot be placed in jeopardy by inappropriate access on the part of any public employee.

It is obvious the law enforcement community needs to develop a close liaison with the Division of Taxation to enhance the success of this act.

I am clearly in favor of the bill and believe it will assist the state in the overall effort to bring drug trafficking under control.

I appreciate the opportunity to respond to questions.

DEPARTMENT OF ADMINISTRATION
Office of the SecretaryMIKE HAYDEN
GovernorH. EDWARD FLENIJUE
Secretary of AdministrationRoom 263-E
State Capitol Building
Topeka, Kansas 66612-1572
(913) 296-3011M E M O R A N D U M

TO: Allen Rush

FROM: Art Griggs *AG*
am

DATE: February 3, 1987

SUBJECT: House Bill 2140

Per your request, I have reviewed House Bill 2140. Attached is a memo prepared by Faith Loretto of our staff, providing additional background information. As Faith's memo notes, the bill is almost identical to a Minnesota law that is currently being challenged on constitutional grounds. Until that litigation is completed, we will not have a clear reading on any constitutional concerns.

We have found only one case where a similar law has been held unconstitutional - that was in South Dakota. In the South Dakota laws, law enforcement officers had access to the state's drug tax records, thus the Court found a self-incrimination, Fifth Amendment law in the South Dakota law. As it relates to H.B. 2140, the South Dakota case holding I believe is distinguishable. H.B. 2140, at section 6, precludes the Director of Taxation from revealing facts contained in any tax report.

While I would expect little in the way of tax revenues from the bill, I would assume law enforcement officials might feel that the bill provides an additional tool in combating illegal drug dealings. The bill certainly provides harsher penalties for such activities.

If you have questions, or if I may be of further assistance, please feel free to contact me.

AHG:jDeS



DEPARTMENT OF ADMINISTRATION
Office of the Secretary

MIKE HAYDEN
governor
H. EDWARD FLENTJE
Secretary of Administration

Room 263-E
State Capitol Building
Topeka, Kansas 66612-1572
(913) 296-3011

M E M O R A N D U M

TO: Arthur H. Griggs, Assistant Secretary of
Administration/Chief Attorney

FROM: Faith Loretto, Staff Assistant *FL*

DATE: February 3, 1987

SUBJECT: House Bill 2140; "Grass Tax"

1. Summary of House Bill 2140

House Bill 2140 imposes a tax on marijuana and controlled substances that are illegally acquired, possessed, transported, transferred or offered for sale. Each "dealer" is responsible for paying the tax as soon as the substance is acquired and for affixing official stamps or labels on the controlled substances as evidence of having paid the tax. A dealer is anyone producing, transporting or in any manner acquiring or possessing 42 1/2 grams (1 1/2 ounces) of marijuana, seven or more grams (.25 ounces) of controlled substances, or ten or more doses of controlled substances not sold by weight. Persons legally in possession of controlled substances are not required to pay the tax. The tax rates are: (1) \$3.50 per gram of marijuana (\$99.00 per ounce); (2) \$200.00 per gram of controlled substance (\$5,670.00 per ounce); and (3) \$2,000.00 per fifty dosage units of the substance (\$40.00 per dose).

The Department of Revenue would be responsible for administering the tax. Section 6 of the bill prohibits the department and its employees from divulging any information obtained in administering the tax. Such information cannot be used in any criminal proceedings, except those arising from violations of the tax provisions.

The penalty for failure to pay the tax is 100% of the tax owed. In addition, violation of the tax is a crime punishable by five years imprisonment, a fine of not more than \$10,000, or both. The bill contains a six-year statute of limitations.

2. Background and Objectives

House Bill 2140, introduced by Representative R.H. Miller and Representative Ed Rolfs, is a carbon copy of legislation enacted in Minnesota. Supporters of the bill recognize that "dealers" are not likely to pay the tax on a regular basis. However, they suggest that such legislation will create the following benefits:

- a. Law enforcement officers would have a criminal charge of tax evasion that may be successfully prosecuted whether or not the "dealer" is convicted on other drug charges. There would be a prima facie case of tax evasion against any person arrested on a drug charge who had illegal drugs in their possession without a tax stamp. A criminal tax evasion charge may be harder to throw out on issues that are common in criminal drug charges, such as illegal search and seizure. If a "dealer" is convicted on both charges, the combined penalties would be substantially stiffer than under current law.
- b. The taxes would provide a way to tax part of a flourishing underground economy that is normally operating on a tax-free basis. Such a tax could be considered as similar to taxes imposed on other products in order to discourage their consumption, such as tobacco and alcohol.

Arizona has had a "grass tax" in effect since 1983. Challenges to its constitutionality have not been pursued. The Arizona tax rates are substantially lower than in the Minnesota Statute --- \$100.00 for a license for a "dealer;" \$10.00 per ounce of marijuana; and \$125.00 per ounce of controlled substance. Civil penalties for violation of the act are the same as for other "luxury taxes" in Arizona, and failure of a "dealer" to affix the stamps is a class 6 felony.

An Arizona Department of Revenue official indicated that they have collected \$100,000 in taxes over a three-year period, but have \$10 million in outstanding assessments. A copy of their statute is attached.

3. Potential Constitutional Defects

The Minnesota "Grass Tax" statute is being attacked as unconstitutional. A District Court ruling is expected soon on an allegation that the law infringes on Fifth Amendment rights. A second law suit is related to a technical issue and an adverse decision in that case would not be fatal to the statute. The plaintiffs in the second case are challenging a provision that allows the state to pursue claims against the "dealer's" assets immediately after conviction of tax evasion and prior to appeals. This provision is being challenged as a violation of the Fourteenth Amendment right to due process.

An attorney for the Minnesota Department of Revenue indicated in a telephone conversation that the plaintiffs challenging the tax based on Fifth Amendment rights are using three arguments:

- a. The mere act of coming in to purchase stamps forces the "dealers" to identify themselves even if no name is given; law enforcement officers could patrol the office area and follow persons purchasing stamps.
- b. Merely possessing stamps could be incriminating evidence of illegal possession of drugs.
- c. The statute's confidentiality provision could be superseded by a federal grand jury request for information under the federal supremacy principle.

The Department of Revenue attorney felt that the state had several good counter-arguments. Many people use Department of Revenue Offices so that it would be difficult to identify the purpose of a "dealer's" visit to Revenue Offices. Stamps may have been purchased as collector's items, and therefore, mere possession of a stamp could not be assumed to be evidence of possessing illegal drugs. With respect to the federal supremacy concerns, the attorney indicated that they had found case law saying that state-granted immunity would be applied to federal proceedings.

A similar South Dakota statute was found to be unconstitutional as it violated the Fifth Amendment. Using a three-part test for determining whether a taxation scheme creates a Fifth Amendment violation, the South Dakota Supreme Court held that: (1) filing the required tax return created a

Arthur H. Griggs
February 3, 1987
Page 4

real appreciable risk of self-incrimination; (2) the statute was directed toward a select group inherently suspect of criminal activities. A copy of the statute and opinion are attached.

I have discussed this bill briefly with John Lamb, Director of Alcoholic Beverage Control, and Larry Humes of the Department of Revenue. Mr. Lamb supported the concept and the purposes behind the bill, although he acknowledged that there could be some Constitutional defects. Larry Humes indicated that the Department of Revenue is preparing a fiscal and administrative impact statement and that they have also discussed some of the Constitutional issues.

I would be glad to provide any additional information you may require on this topic.

AHG:jDeS

TESTIMONY ON HOUSE BILL 2140
Before the House Committee on Taxation


Mr. Chairman, and members of the committee, the Kansas Community Alcohol Safety Action Project Coordinator's Association, who provide the evaluations for all D.U.I. offenders in the state of Kansas, wholeheartedly support the concept of House Bill 2140.

We believe that those individuals who are involved in the sale of an illegal substance in the state of Kansas, whether it be a controlled substance or marijuana, should be punished under the criminal aspects of their crime. However, sometimes that's not enough. We must also hit them where it hurts the most, that being in their pocketbook. Let us remember that they pay no tax on their income, nor do they report it. Any buck that they make is all theirs to keep. If they wish to maintain an illegal profession, they should pay a hefty tax for operation contrary to our laws.

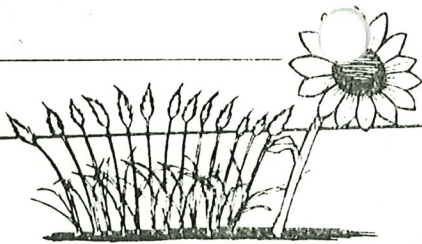
Our only concern on this piece of legislation is under Section 1, Subsection C, Lines 33 through 38, in which it appears that this proposed legislation is attempting to define what constitutes a dealer of illegal drugs. Many smart dealers will learn very quickly that if they had within their possession somewhat less as defined in that particular subsection, that they would not be penalized under the tax law and therefore that might carry over to the criminal prosecution on their case as not being classified as a dealer.

In closing, any funds which are collected from this type of legislation should be allocated to a state fund for the prevention, education and rehabilitation of those people who are so adversely affected by the illegal drug traffic in our state.

Thank You



Gene Johnson
Kansas Community Alcohol Safety
Action Project Coordinator's
Association



Kansas Association of Alcohol and Drug Program Directors

February 5, 1987

TO: Members of the House Taxation Committee
FROM: Elizabeth E. Taylor, Legislative Consultant to KAADPD
RE: Support for HB 2140

The Kansas Association of Alcohol and Drug Program Directors represents approximately 45 of the 70 alcohol and drug programs in Kansas. We would like to share our support for HB 2140, the "grass tax", on the grounds that it would provide four benefits to the state of Kansas, and hopefully, the alcohol and drug programs of Kansas:

- It would provide an additional avenue for generating funds to be used in the fight against the social and personal cost of alcohol and drug abuse;
- It would address the tax question of evasion in the underground economy;
- Issuing a tax on these substances would discourage consumption; and
- It would provide another way of prosecuting drug dealers.

In 1986, Minnesota passed the first "grass tax". Since October 1, \$7.8 million has been levied on the drug dealers. Of that amount, \$28,000 has been collected thus far. The other monies are expected to be tied up in court action for some time.

KAADPD supports issuing a tax on the illegal substances and would strongly urge that the monies generated be used in the programs serving the results of the problem of alcohol and drug abuse.

Thank you for the opportunity to present our support for HB 2140.

Minnesota finds advantages of taxing illegal drugs

By PHILIP M. DEARBORN
and ROBERT D. EBEL
L.A. Times-Washington Post Service

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follows: \$3.50 per gram on marijuana, \$200 per gram of controlled substances and \$2,000 per 50 dosage units of controlled substances sold by weight. When the tax has been paid, it will be evidenced by a tax stamp printed and sold by the state. Drug dealers arrested in Minnesota are now subject to two actions. First, the usual criminal proceedings from arrest to bail to plea bargaining begin. During this process the pusher is probably soon back on the street on bail or, too often, off to another jurisdiction after jumping bail.

But in addition to the usual judicial proceedings, the state can now prosecute for felony tax evasion if tax stamps are not affixed to the illegal drugs. At the time of arrest, the police call tax officials, who can impose a penalty on the unpaid tax of 100 percent of the tax. The tax and penalty are due whether or not the dealer is convicted on other drug charges.

The tax officials can immediately issue an assessment on the pusher's assets and begin to collect the tax and the penalty. This means that when a pusher selling drugs is caught and has no evidence of the tax stamps, tax officials can bill the pusher for the amount of the tax and penalty due, and initiate collection efforts by attaching motor vehicles, bank accounts, real estate or other assets. In the first three months of use in Minnesota, the state has billed drug dealers for more than \$6 million.

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Are taxes on the illegal drug trade an appropriate way to use tax policy? We think there are three good arguments for them:

- Equity. The tax addresses one part of a growing problem — tax evasion occurring in the underground economy. It does not follow that because activities are illegal that their participants should be preferentially treated relative to persons who engage in legal and taxable market transactions.

- Discouraging consumption. Throughout history, taxes have been imposed for "sumptuary" reasons — to discourage consumption of products, such as tobacco and alcohol, held to be morally or ethically undesirable.

- Support for the system of law. The tax creates another way to prosecute drug dealers. They can now be charged with tax evasion in addition to current criminal drug statutes.

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About the writers

Drug dealers may be odious characters, but they are also entrepreneurs who must buy, sell and turn a profit to stay in business. The basic commercial aspect of the business creates a weak spot in the dealers'

Philip M. Dearborn is vice president of the Greater Washington Research Center. Robert D. Ebel was director of tax study commissions for the District of Columbia and Minnesota.



KANSAS DEPARTMENT OF REVENUE
Office of the Secretary
Robert B. Docking State Office Building
Topeka, Kansas 66612-1588

MEMORANDUM

TO: The Honorable Ed C. Rolfs, Chairman
House Committee on Taxation

FROM: Harley T. Duncan, Secretary
Kansas Department of Revenue

RE: House Bill No. 2140

DATE: February 5, 1987

Thank you for the opportunity to appear before you today on HB 2140 which would impose a tax on marijuana and controlled substances.

Key Features of the Bill

1. A tax is imposed on marijuana and controlled substances illegally acquired, possessed, transported, transferred or offered for sale. Each "dealer" (persons in possession of certain threshold amounts) are responsible for paying the tax as soon as the substance is acquired and is responsible for affixing the stamps or other indicia evidencing payment of the tax to the substances.
2. The rates of tax are: (1) \$3.50 per gram of marijuana (\$99 per ounce); (2) \$200 per gram of controlled substances sold by weight (\$5,670 per ounce); and (3) \$2,000 per fifty dosage units for substances not sold by weight (\$40 per dose).
3. The Department of Revenue is to administer the tax. If the tax is not paid, the Director of Taxation is to establish a jeopardy assessment based on personal knowledge or information available to the Director. Written notice of the assessment is to be mailed to the dealer's last known address and if not paid "immediately", the Director is to proceed to collect the tax. Presumably, this means through such tools as are available to the Department including garnishments, warrants and seizure of property.
4. No person may bring suit to enjoin the assessment or collection of any taxes, interest or penalty imposed by the act. The burden is placed on the taxpayer to prove that the assessment of the Director is incorrect. The Director is given broad authority to compel records, witnesses and other evidence to determine the proper level of tax to be assessed.

5. The Director and employees are prohibited from disclosing any information contained in any tax report or return required under the act and such information cannot be used in any criminal proceeding against the dealer except in a proceeding involving the taxes due under the act.
6. If taxes due are not paid, a penalty equal to 100 percent of the tax due is to be imposed. Failure to pay the tax is a crime punishable by a fine of not more than \$10,000, or five years in prison, or both.

In short, the bill attacks the problems associated with illegal drugs in two ways. It creates a situation in which a dealer can be convicted of a criminal tax evasion charge. It also imposes significant taxes on illegal drugs and grants extraordinary authority to the Department of Revenue to collect those taxes.

Minnesota Experience

The bill is patterned closely after a Minnesota law which has been in effect since August 1986. Minnesota has had 136 stamp sales for \$1,360 in revenue. They have also issued 46 assessments for a total of \$7.8 million. Actual cash collections have totalled \$22,000. Minnesota expects that most of the stamp sales are to collectors, and stamped drugs have not been confiscated. Two law suits challenging the constitutionality of the Minnesota law have been filed. These actions have halted collection efforts on many of the assessments.

The first suit alleges that the act violates the right to protection from self-incrimination. A similar challenge to a South Dakota statute was successful. South Dakota law, however, provided that law enforcement officers had access to the tax stamp records whereas the Minnesota law (and HB 2140) specifically prohibit such disclosure. Further Minnesota has designed procedures to allow the stamps to be purchased without divulging one's identity. Minnesota feels comfortable with its position in this statute.

The second action challenges the Minnesota act on the grounds that it violates due process of law in some of the procedures and authority allowed the Minnesota Department of Revenue. Specifically, it is my understanding that the Minnesota law does not require the collection of the jeopardy assessments to await certain appeal rights and hearings need not be held on the assessment. Again, the Minnesota Department feels comfortable with its position.

Despite the fact that the law has not produced sizeable amounts of revenue to this point, the Minnesota Commissioner of Revenue believes that over time, it will prove to be an effective revenue generator and a deterrent to dealing in illegal drugs.

Recommendations

The Department of Revenue believes this act can be effective in collecting taxes on illegal drugs. We would make three recommendations to improve the bill and possibly avoid or minimize the potential for success in a constitutional challenge.

1. The bill should be amended to require the Department to make the stamps available without divulging the identity of the purchaser if the purchaser so desires. This would serve to further protect against a self-incrimination argument.
2. The bill should be amended to provide an opportunity for a hearing on the correctness of the jeopardy assessment. We would suggest the addition of language such as : **"The taxpayer may, within 15 days from the date of the notice, request in writing a hearing by the director on the correctness of the jeopardy assessment."**
3. The bill should be amended to clarify that the Department can use any of the collection tools available to it to pursue the tax assessed and that such tools may also be used to collect the penalty imposed in section 8. We would suggest the addition a(on line 89) of language such as **"and penalties in any manner provided in article 32 of chapter 79 of the Kansas Statutes Annotated."**