

Approved 3-28-88
Date

MINUTES OF THE House COMMITTEE ON Appropriations

The meeting was called to order by Bill Bunten at
Chairperson

1:30 ~~am~~/p.m. on March 3, 1988 in room 514-S of the Capitol.

All members were present except:

Representatives Miller, Vancrum, Fuller, Teagarden, Ott, and Hoy (all excused)

Committee staff present: Diane Duffy, Legislative Research
Ellen Piekalkiewicz, Legislative Research
Jim Wilson, Revisor of Statutes
Sharon Schwartz, Administrative Aide
Sue Krische, Committee Secretary

Conferees appearing before the committee:

Robert Gottschalk, Executive Director, Kansas State Fair
Dennis Gillen, Attorney, Wichita, Kansas
Karl Cozad, Head of Litigation, Department of Human Resources
M. Douglas Mays, Securities Commissioner
Ron Emmons, Vice President, Kansas Sanitary Supply Association
Rodger Oroke, Director of Support Services, University of Kansas
Phil Endacott, Director of Housekeeping Services, KU-Lawrence Campus
Marjorie Denton, Director of Housekeeping, KU Medical Center
Secretary Roger Endell, Department of Corrections

Others attending: see attached list.

HB 2996 - An Act concerning certain claims against the state; making appropriations, authorizing certain transfers, imposing certain restrictions and limitations, and directing or authorizing certain disbursements, procedures and acts incidental to the foregoing.

Bill Wolff, Kansas Legislative Research Department, explained the bill section by section. Representative Shriver advised the Committee that there are a number of inmates receiving settlements in the bill who owe the state of Kansas for defense services. Representative Chronister moved that the settlements to the prisoners in HB 2996 be used to offset the amounts owed the state for defense services. Seconded by Representative Guldner. Motion carried.

Chairman Bunten announced the Committee would not vote on HB 2996 today so members could seek further information on sections of the bill they question.

Staff reviewed proposed amendments to the bill (Attachment 1). Representative Shriver moved adoption of the amendments. Seconded by Representative Goossen. Motion carried.

HB 2996 - Section 14

Robert Gottschalk, Executive Secretary, Kansas State Fair, testified in opposition to Section 14 of HB 2996 and submitted written testimony (Attachment 2). The traffic through the gate used by the claimant was 1,500 people per hour during the high traffic hours. Mr. Gottschalk stated the Attorney General's office has advised that the claim is without legal merit and the State Fair requests the claim not be paid from the State Fair Fee Fund, which is to fund operating expenses of the Fair.

Mr. Dennis Gillen, attorney for claimant Freda R. Jackson, appeared in support of Section 14 of HB 2996. Mr. Gillen stated that from Mrs. Jackson's vantage point--east to west--the hole in the road which caused her fall was not visible.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Appropriations

room 514-S Statehouse, at 1:30 ~~am~~/p.m. on March 3, 1988

HB 2996 - Section 10

Karl Cozad, Head of Litigation, Department of Human Resources, appeared on a problem with Section 10 of the bill. The Department believes the federal government will not allow the payment of the two claims in Section 10 out of the Employment Security Administration Fund and feels they may have to be paid from the State General Fund. Chairman Buntin directed staff to look into this question and report on Monday, March 7.

HB 2976 - An Act relating to the securities commissioner of the state of Kansas; concerning registration of broker-dealers, agents and investment advisers; fees; amending K.S.A. 1987 Supp. 17-1254 and repealing the existing section.

M. Douglas Mays, Securities Commissioner, testified in support of HB 2976. This is an Appropriations Committee bill that would amend the Kansas Securities Act dealing with registration of broker-dealers, agents and investment advisers and fees charged for that registration. Mr. Mays distributed a memorandum of suggested amendments to the bill (Attachment 3) and an analysis sheet of registration fees in Kansas and surrounding states (Attachment 4). Representative Heinemann made a conceptual motion that the suggested amendments by the Commissioner be adopted and that the revisor be authorized to incorporate them as he sees fit into this legislation. Seconded by Representative Hamm. Motion carried.

Representative Heinemann moved that HB 2976, as amended, be recommended favorably for passage. Seconded by Representative Shriver. Motion carried.

HB 2986 - An Act concerning the prison-made goods act of Kansas; relating to purchase of goods and services by state agencies; amending K.S.A. 75-5276 and repealing the existing section; also repealing K.S.A. 75-5277 and 75-5278.

Representative Helgerson explained that this bill is the result of a subcommittee report and arises from complaints by some state agencies regarding the quality of products provided by the Corrections Department. The bill changes from "shall" to "may" the statute directing state agencies to purchase products from Kansas Correctional Industries (KCI).

Ron Emmons, Vice President, Kansas Sanitary Supply Association, appeared in support of HB 2986 and provided written testimony (Attachment 5). A booklet of documentation from various state agencies describing cases of KCI product failure and complaints from users and facility occupants was distributed to the members (on file in House Appropriations Committee office). He stated the current statutes regarding prison-made goods are monopolistic in that they allow the various state agencies only one source from which to acquire available goods and services.

Written testimony in support of HB 2986 was distributed from Bernie Koch, Wichita Area Chamber of Commerce (Attachment 6). James Freund, President, Kansas Sanitary Supply Association, did not appear, but provided written testimony in support of HB 2986 (Attachment 7).

Rodger Oroke, Director of Support Services, University of Kansas, appeared in support of HB 2986. He stated the University of Kansas has a very good working relationship with Kansas Correctional Industries and has been very satisfied with their services in numerous instances with the exception of the housekeeping products sold by KCI. The University's inability to resolve performance difficulties with the KCI floor finish prompted them to request an exemption to purchase elsewhere. Only the Medical Center was granted the exemption.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Appropriations

room 514-S, Statehouse, at 1:30 ~~am~~/p.m. on March 3, 1988

Phil Endacott, Director of Housekeeping Services, University of Kansas, testified in support of HB 2986. Worker morale has been affected by the inferior floor finish product and the exemption process has not worked. In response to a question, Mr. Endacott stated the final authority on an exemption is the Secretary of Administration after the process goes through the Director of Purchasing.

Marjorie Denton, Director of Housekeeping, University of Kansas Medical Center, strongly supports HB 2986 and testified that an exemption was granted on floor care products to the Medical Center in June 1987 for FY 1988 and they will request another exemption for FY 1989. The inability to retain a satisfactory finish was a drain to the labor and supply budget.

Secretary Roger Endell, Department of Corrections, testified in opposition to HB 2986. He noted that to remove the mandatory language from the statute could place the entire KCI program in jeopardy. He noted the exemption mechanism is in place and should be utilized when appropriate. An August 1985 Post Audit report said the prison-made goods act should be strengthened. KCI is endeavoring to improve customer services all the time and has an ongoing quality control program. He stated, judging from the testimony, both of the University of Kansas campuses should be exempted from purchasing the floor care products. Secretary Endell believes the problems should be dealt with administratively and not statutorily.

The meeting was adjourned at 3:40 p.m.

GUEST LIST

COMMITTEE: HOUSE APPROPRIATIONS

DATE: 3-3-88

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
PHIL ENDACOTT	KU - LAWRENCE	
Marjorie Denton	KU Med Center	
RODGER OROKE	UNIV of KANSAS	
Vickie Thomas	Lawrence	
Dana May	Topeka	Securities Commission
Steve Wasson	✓	✓ ✓
Tony Maple	✓	KHP
Dennis L. Gillen	Wichita	Frieda Jackson
Karl V. Cozas	Topeka	KCHR
Ruth Scott	Topeka	KCC
Poger Endl.	Topeka	Dept Corrections
Lenny Ewell	Lansing	Dept. Corrections
Angela Rinaldo	topeka	dept. of Corrections
Lynne Ewell	Lawrence	K.S.S.A.
Lynne Ewell	Wichita	KSSA
James R. Hill	WICHITA	KSSA
Dorothy Tillery	Wichita	KSSA
Steve Robinson	Topeka	Antidumping for Counties
Frank S. Hedge	KE	KSSA KSSA
John Springer	Fairway	KSSA
Larry W. Cunningham	Wichita	KSSA
Sabrina Wells	Topeka	Budget Division
Don Koldif	"	A.G.
Robert A. Furr	Hutchinson	Kansas St. Fair
John Furr	Topeka	
Marty Kennedy	"	Budget

PROPOSED AMENDMENTS TO H.B. NO. 2996

"AN ACT concerning certain claims against the state; making appropriations, authorizing certain transfers, imposing certain restrictions and limitations, and directing or authorizing certain disbursements, procedures and acts incidental to the foregoing."

Be amended:

On page 6, in line 544, by striking "Kansas state penitentiary" and inserting in lieu thereof "Richard L. Reid, Attorney at Law, Suite 918, Two Gateway Center, Fourth and State, Kansas City, KS 66101";

On page 7, following line 619, by inserting the following material to read as follows:

"Gilliland Printing, 215 N. Summit, Arkansas City, KS 67005.....	20,525.67
Precision Pattern Incorporated, 1643 South Maize Road, Wichita, KS 67209.....	3,438.48";

Also on page 7, in line 623, by striking "\$112,769.35" and inserting in lieu thereof "\$136,733.50";

On page 9, in line 685, by striking "immigrant" and inserting in lieu thereof "migrant"; in line 706, preceding "The" by inserting "(a)"; following line 712, by inserting the following material to read as follows:

"(b) The Norton state hospital is hereby authorized and directed to pay the following amount from the Norton state hospital fee fund for damages to the engine of the claimant's 1970 Ford pickup truck which was destroyed by being driven approximately 40 miles, in low gear at a high r.p.m. rate, by a patient who had eloped from Norton state hospital and took the truck from behind claimant's place of business, to the following claimant:

Vern J. Jacobs, d/b/a Jacobs Service Center, c/o John F. McClymont, Attorney at Law, 120 S. State Street, P.O. Box 364, Norton, KS 67654.....	\$1,469.12";
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On page 12, following line 824, by inserting the following

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material to read as follows:

"Sec. 21. (a) The board of nursing is hereby authorized and directed to pay the following amount from the board of nursing fee fund for the cost of continuous license forms and mailers incurred during fiscal year 1987, to the following claimant:

Moore Business Forms, c/o William E. Davis, District Manager, P.O. Box 4109, Topeka, KS 66604..... \$1,373.18";

(b) The board of nursing is hereby authorized and directed to pay the following amount from the board of nursing fee fund for the balance due for license application forms purchased during fiscal year 1987, including interest charges, to the following claimant:

Spectra Business Systems and Design, Inc., c/o William H. Green, P.O. Box 12710, Lexington, KY 40583..... \$1,601.33

(c) The board of nursing is hereby authorized and directed to pay the following amount from the board of nursing fee fund for the cost of leasing software and maintenance of equipment from April 1 through June 30, 1987, to the following claimant:

IBM Corporation, c/o E.A. Blankenship, 611 Kansas Avenue, Topeka, KS 66603..... \$643.50

(d) The board of nursing is hereby authorized and directed to pay \$1,378.49 to the department of administration for postage billing for June, 1987, by voucher transfer of such amount from the board of nursing fee fund to the central mail services revolving fund of the department of administration, as a transaction between state agencies as provided in K.S.A. 75-5516 and amendments thereto.";

And by renumbering sections accordingly;

Also on page 12, in line 826, by striking "The" and inserting in lieu thereof "Except as otherwise provided by this act, the"; in line 835, preceding the comma, by inserting the following: "or as transactions between state agencies as provided by this act";

And the bill be passed as amended.

**Starting the first Friday
after Labor Day.**

2000 North Poplar
Hutchinson, Kansas 67502
(316) 662-6611

ROBERT A. GOTTSCHALK
Executive Secretary

ELMER K. DENNING
Assistant Secretary



*The Great Kansas
Get Together!*

March 2, 1988

The Honorable Bill Buntin, Chairman
House Appropriations Committee
State Capitol Building
Topeka, KS 66612

Dear Mr. Chairman and Members:

Re: HB 2996, Section 14

On behalf of the Kansas State Fair, I am hereby submitting the following appeal of Section 14 of HB 2996.

It should be recognized that the Kansas State Fair operation is unique and has a great many aspects that have significant implications in this matter, and are justified as outlined below:

1. Fairgrounds contains 280 acres with approximately five (5) miles of surfaced streets, and approximately three (3) miles of unsurfaced streets.
2. Streets handle a large variety of vehicles during the fair and non-fair season.
3. During the State Fair, ten days in September, beginning on the Friday following Labor Day, streets are also used as foot pedestrian trafficways.
4. Average daily attendance, 25,000. Attendance 9/19/87, 80,000.
5. Streets on the Kansas State Fairgrounds' 280 acre physical plant contains 100 buildings with 25 acres under roof, and are maintained with Special Maintenance funds, appropriated by the State of Kansas, from the State General Fund.
6. Cost to maintain fairground streets in sidewalk condition, \$50,000 to \$60,000 per year.

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7. Special Maintenance Funds are spent on prioritized improvements, with minor street deterioration carrying a low priority in the annual maintenance plan of operation.

8. A detailed maintenance plan is designed to address most urgent needs, as recommended by the public, by employees and Fair Board members. Any emergency needs are addressed as soon as possible and practical, providing funds are available in the Special Maintenance Fund.

In summary:

It appears that the assessed penalty, such as is being made in HB 2996, Section 14, is not practical, because of past history of fairgrounds "slip and falls". Records show that from 1983 thru 1987, there were eight (8) reported such incidents, with four (4) filing for compensation. Three claims requested only actual medical or other out-of-pocket expenses. The fourth, Mrs. Freda Jackson's claim is addressed in HB 2996, Section 14.

It further appears that such an award could set a precedent in claim settlements, not only for the Kansas State Fair, but for the State of Kansas, and its many properties.

The Jackson claim is without legal merit according to the Attorney General's Office. Kansas caselaw reflects that the street defect in question was minor and is not an actionable defect. The Fair Board has insured that our streets/walkways are reasonably safe for use. We take pride that we have maintained that standard.

See attached copy of Kansas case No 56,101, Sepulveda v. Duckwall-Alco Stores, Inc., pages 38 and 39.

In conclusion, I would request the Committee deny the claim, per the facts previously stated and for the legal ramifications that such provisions may have for the State of Kansas. The State Fair specifically objects to the funding being allowed from the State Fair's Fee Fund, which is to fund operating expenses of the State Fair.

A favorable decision in this matter will be appreciated.

Sincerely,


Robert A. Gottschalk
Executive Secretary

dn

Attachment

Sepulveda v. Duckwall-Alco Stores, Inc.

No. 56,101

FREDA SEPULVEDA, Appellant, v. DUCKWALL-ALCO STORES, INC.,
ELWOOD C. TOBIAS, GERTRUDE L. WASSBERG, and THE CITY OF
LYONS, KANSAS, a Municipal Corporation, Appellees.

(708 P.2d 171)

SYLLABUS BY THE COURT

1. TORTS—*Slip and Fall Action Due to Slight Sidewalk Defect—Sufficiency of Defect to Establish Actionable Negligence.* Slight variances or imperfections in sidewalk surfaces are not sufficient to establish actionable negligence in the construction or maintenance of sidewalks.
2. SAME—*Slip and Fall Action Due to Slight Sidewalk Defect—Effect of Comparative Negligence.* The adoption of comparative negligence does not alter the rule of non-actionability for slight sidewalk defects. Where there is no actionable defect, there is no negligence as a matter of law and plaintiff's negligence, or lack of it, is irrelevant.
3. SAME—*Slip and Fall Action Due to Slight Sidewalk Defect—Summary Judgment for Defendant Upheld.* The record is examined in an action brought by plaintiff for injuries she sustained when she fell as a result of a one-inch variation in the level of the sidewalk and it is held: The trial court did not err in granting defendant's motion for summary judgment on the ground that the sidewalk defect was slight and thus not actionable as a matter of law.

Review of the judgment of the Court of Appeals in an unpublished decision filed May 2, 1985. Appeal from Rice district court, HERB ROHLEDER, judge. Judgment of the Court of Appeals reversing the district court is reversed. Judgment of the district court is affirmed. Opinion filed October 25, 1985.

Arthur C. Hodgson, of Hodgson & Kahler, of Lyons, argued the cause and was on the brief for appellant.

Jerry M. Ward, of Ward & Berscheidt, of Great Bend, argued the cause and was on the brief for appellees Tobias and Wassberg.

Casey R. Law and Raymond L. Dahlberg, of Turner and Boisseau, Chartered, of Great Bend, were on the brief for appellee City of Lyons.

The opinion of the court was delivered by

HERD, J.: This is a damage suit for personal injuries arising out of a fall on a defective sidewalk. The trial court granted summary judgment to the defendants and this review follows the Court of Appeals' decision in an unpublished decision filed May 2, 1985, which reversed the trial court and remanded the case for trial.

The facts are as follows: On the afternoon of August 18, 1979, the appellant, Freda Sepulveda, went to the Duckwall-Alco store in Lyons to purchase a birthday card. The store is located on the town square. After making her purchase, she left the store

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through its north exit. She walked out the door, traveled a few steps, and fell. Ms. Sepulveda attributed her fall to a sunken section in the sidewalk. She testified in her deposition that the time of her fall was between 1:00 and 3:30 p.m. on a ~~clear, sunny day~~.

Ms. Sepulveda also stated that when she came out of the store, she was carrying a handbag and the birthday card, and nothing was blocking her vision or distracting her attention.

Ms. Sepulveda was familiar with the sidewalk in front of the store, ~~having been there many times prior~~ to the day in question, ~~but she had never noticed the unevenness of the sidewalk~~ in front of the north door.

The deposition testimony of the witnesses who observed the sidewalk irregularity was to the effect that the ~~sunken area~~ in the sidewalk ~~was no more than one inch~~. Other testimony revealed ~~no one had ever reported tripping on the unevenness before~~.

On August 14, 1981, Ms. Sepulveda filed this action against Duckwall-Alco Stores, Inc.; Elwood Tobias and Gertrude Wassberg, co-owners and lessors of the building in which the Duckwall store was located; and the City of Lyons. She seeks damages for permanent disability, pain and suffering, and past and future medical expenses.

The discovery testimony revealed that the sidewalk in front of the Duckwall store was city property. However, Lyons city ordinances required abutting property owners to keep the sidewalks clean and in good repair.

In early 1970, the federally funded Lyons Urban Renewal Agency replaced a portion of the sidewalk running in front of the Duckwall store in order to install a sewer and drainage system. The sidewalk was initially even, but due to compaction settled all along the block after the Urban Renewal project.

In 1976, appellee, Elwood Tobias, had some of the concrete slabs in front of the Duckwall store replaced. He paid the bill for the replacement, but was later reimbursed by the City for 75% of the costs.

After the repair in 1976, the walk slowly became uneven again. One section, four feet north of the north door to Duckwall's, had sunk approximately one inch.

At some time, the Duckwall manager and the Lyons City Administrator spray-painted red lines along the uneven slabs

Sepulveda v. Duckwall-Alco Stores, Inc.

and red X's on the slabs needing to be replaced. The testimony is conflicting as to whether the sidewalk was painted before or after appellant's fall.

In 1980, the City again repaired the sidewalk. The City did not consult with either Mr. Tobias or Duckwall-Alco Stores, Inc. about the repair work and did not submit the bill to them. The last repair revealed an old, open stairwell under the sinking slab.

At the conclusion of discovery, the trial court granted summary judgment to appellees. The trial court relied primarily on our holding in ~~Taggart v. Kansas City, 156 Kan. 478, 184 P.2d 417 (1945)~~, and held as a matter of law "that defects in sidewalks of the nature and extent involved in this case are not actionable."

The Court of Appeals noted in its opinion that all of the cases cited by appellees concern causes of action accruing prior to July 1, 1974, the effective date of the comparative negligence statute, K.S.A. 60-258a, and its elimination of contributory negligence as a complete defense. Additionally, the Court of Appeals emphasized this court's statement in *Taggart*:

"The facts of the particular situation, and the circumstances shown by the evidence with respect to [the walk's] use, are matters which must be taken into account, and for this purpose each case must depend upon its own facts and circumstances." 156 Kan. at 481.

The Court of Appeals refused to find the approximate one-inch "stepdown" was a slight and inconsiderable defect not actionable at law, and reversed and remanded the case for trial on the theory an unresolved question of fact was presented.

We granted review.

~~The sole issue in this case is whether the trial court erred in holding a one-inch drop-off in a sidewalk does not constitute an actionable defect as a matter of law.~~

The trial court in granting summary judgment determined that:

"[T]he sidewalk defect existing on August 18, 1979, in front of the defendant Duckwall store in the City of Lyons, Kansas, is not actionable as a matter of law, and that as a result thereof, there exists no genuine issue as to any material fact."

Appellant argues the trial court's grant of summary judgment was error because questions of negligence are questions for the jury to decide. While that is true, it is also a rule in Kansas that ~~slight variances in the level of sidewalk surfaces, whether caused by projections, depressions or otherwise, are not sufficient to~~

Sepulveda v. Duckwall-Alco Stores, Inc.

~~establish actionable negligence in the construction or maintenance of the sidewalk. *Biby v. City of Wichita*, 151 Kan. 981, 101 P.2d 919 (1940).~~

~~The rule of non-actionability for slight defects has been consistently upheld and applied in a number of Kansas cases. See, e.g., *Green v. Steward*, 216 Kan. 720, 533 P.2d 1240 (1975) (corner of concrete slab one-fourth inch higher than rest of sidewalk); *Roach v. Henry C. Beck Co.*, 201 Kan. 558, 442 P.2d 21 (1968) (plywood board three-fourths inch thick and three feet square covering hole in sidewalk); *Pierce v. Jilka*, 163 Kan. 232, 181 P.2d 330 (1947) (eighteen inch by twenty-four inch by one inch doormat located at entrance to hotel); *Station v. Union Electric Ry. Co.*, 158 Kan. 132, 145 P.2d 456 (1944) (three-inch depression in brick road immediately adjacent to railway track).~~

~~It is important to note the same rule applies in actions against an individual or private corporation alleged to have created or maintained a defect in the sidewalk. *Roach v. Henry C. Beck Co.*, 201 Kan. at 560; *Pierce v. Jilka*, 163 Kan. at 239.~~

It was the rule of slight defect non-actionability which was determinative in *Taggart v. Kansas City*, 156 Kan. 478, the case relied upon by the trial court in its memorandum decision granting defendants' motion for summary judgment.

In *Taggart*, the plaintiff brought an action for personal injuries sustained when she fell on a city sidewalk. The alleged cause of her fall was a "stepdown" not exceeding three inches from an irregular slab in the sidewalk. A jury trial resulted in a judgment for the plaintiff and defendant appealed on the ground that its demurrer to the plaintiff's evidence should have been sustained.

The court in *Taggart* first set out the two issues on appeal as follows:

"Was the imperfection in the sidewalk at the place where plaintiff fell so serious as to be an actionable defect, and was plaintiff negligent in her use of the walk in such a way as to bar her recovery?" 156 Kan. at 480.

This statement indicates the issue of whether the sidewalk imperfection constituted an actionable defect was separate and distinct from the issue of whether plaintiff was contributorily negligent. Such distinction is significant since appellant here contends the adoption of comparative negligence in Kansas requires a reversal of the "actionable defect" rule.

In considering whether the sidewalk irregularity constituted

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an actionable defect, ~~the court in Taggart held that a city's only duty with respect to its sidewalks is to furnish walks which are reasonably safe for use. The court held~~

~~"In determining whether a sidewalk is reasonably safe for the use of pedestrians its location, the extent of the irregularity therein, its prior use, and its use on the occasion in question are matters to be taken into account." Syl. ¶ 2.~~

The ~~Taggart~~ court then determined that the irregularity of the walk as it was used by the plaintiff did not make the walk unsafe for reasonable use and, therefore, ~~the stepdown of not more than three inches was not an actionable defect.~~ This holding was supported by evidence that the walk had been in substantially the same condition for six to eight years prior to plaintiff's fall. Additionally, the walk was situated in a residential section of the city and no one had previously reported tripping or falling because of the alleged defect in the walk.

As in *Taggart*, the sidewalk irregularity in the present case had existed for some two to three years prior to appellant's fall. The three-inch irregularity in *Taggart*, however, was three times as great as the one-inch depression in the present case. Also, like *Taggart*, the evidence in the present case was that no one had previously reported problems because of the sunken sidewalk. In addition, here, Ms. Sepulveda had walked on this sidewalk many times without mishap.

Therefore, the trial court's determination that the one-inch variance in the level of the sidewalk surface was not an actionable defect was supported by the evidence presented and adheres to the rules set out in *Taggart*.

Appellant also contends that even if the rule in *Taggart* is applicable to the present case, the case should be reversed on the basis that it does not comply with modern-day conceptions of the right of the public to be protected from the negligence of governmental entities, store owners and lessors. Appellant cites no authority in support of this argument. ~~We have reexamined the rule set out in Taggart and conclude it is just as valid now as when announced. To require a higher degree of care in street and sidewalk maintenance than the current "reasonably safe for use" standard would make such public improvements financially prohibitive, particularly in this state where the wide variation in temperature causes much contraction and expansion of paving material.~~

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The Court of Appeals noted that all of the cases cited as authority by appellees concern causes of action occurring prior to July 1, 1974, the effective date of the comparative negligence statute, K.S.A. 60-258a, and its elimination of contributory negligence as a complete defense.

The Court of Appeals' opinion ignores the distinction which must be made between the actionable defect rule and the issue of plaintiff's negligence. The latter issue cannot be reached until the former is resolved. ~~If there is no actionable defect, there is no negligence and thus nothing to compare.~~

~~We find that a sidewalk defect such as the one here is not an actionable defect as a matter of law.~~ Thus, there remains no question of fact for trial and summary judgment was properly granted. We hold the rule in *Taggart* should not be reversed.

The judgment of the trial court is affirmed and the decision of the Court of Appeals is reversed.

STATE OF KANSAS



OFFICE OF THE SECURITIES COMMISSIONER

Landon State Office Building
900 Southwest Jackson St., Suite 552
Topeka, Ks 66612-1220
(913) 296-3307

Mike Hayden,
Governor

M. Douglas Mays
Securities Commissioner

M E M O R A N D U M

TO: Representative Bill Buntten, Chairman
House Committee on Appropriations

FROM: M. Douglas Mays, Securities Commissioner *DM*

DATE: March 2, 1988

RE: House Bill No. 2976
Technical Corrections and Suggested Revisions

Please consider the following technical corrections and revisions to HB 2976 for recommendation to the Committee on Appropriations:

Section 1(d)

Lines 90 to 94 would be changed to: "...January in each year, but any registration for the succeeding year shall be renewed upon written application and payment of the fee as herein provided without filing a further statement or furnishing any further information unless specifically required by the commissioner."

Line 97 should be changed to: "...made not later than December 31 ..."

The changes in dates are deemed necessary as technical corrections so that the statute will be consistent with current practice and renewal dates in other states.

The deletion regarding bonds is proposed because the provision is redundant in relation to lines 73 and 74, under subsection (c), and because bonds are not currently required by regulations for renewal applications.

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Attachment 3

Section 1(f)

On lines 124, 130 and 133: Insert the word "individual" before the word "investment" on each line. This is a technical change to specify the type of investment adviser (investment advisers are either individuals or business entities).

Line 137: change the last word "renewal" to "registration" because original registration fees cannot be paid with applications for renewal.

I would also suggest revision of maximum fees for investment advisers so that fees for advisory firms and individual advisers will be the same as fees for broker-dealer firms and agents. This is deemed necessary to continue the policy of equivalent fee rates which are currently provided in the statute and regulations, and because there is no significant rationale for providing lower fee rates for investment advisers. These changes would increase rates for investment advisers:

On line 126, from \$100 to \$300;
on line 127, from \$50 to \$300;
on line 132, from \$15 to \$50; and
on line 136, from \$10 to \$50.

MDM:dec

OFFICE OF THE SECURITIES COMMISSIONER
SURVEY AND ANALYSIS OF REGISTRATION FEES

Survey of States	Broker-Dealers		Agents	
	Original	Renewal	Original	Renewal
Oklahoma	\$300	\$300	\$50	\$50
Missouri	\$200	\$100	\$50	\$50
Iowa	\$200	\$200	\$30*	\$20
Nebraska	\$100	\$100	\$20*	\$15
Average	\$200	\$175	\$37.50	\$33.75

Analysis of Kansas fees	Estimated Volume	Fees at Various rates			
		Current	Alternatives**		
Broker-Dealers:		@\$100/\$50	@\$100	@\$200	@\$300
Original	150	15,000	15,000	30,000	45,000
Renewal	850	42,500	85,000	170,000	255,000
Total		<u>\$57,500</u>	<u>\$100,000</u>	<u>\$200,000</u>	<u>\$300,000</u>
Increase			<u>\$ 42,500</u>	<u>\$142,500</u>	<u>\$242,500</u>
Agents:		@\$15/\$10	@\$20	@\$30	@\$50
Original	11,500	\$172,500	\$230,000	\$345,000	\$ 575,000
Renewal	21,500	215,000	430,000	645,000	1,075,000
Total		<u>\$387,500</u>	<u>\$660,000</u>	<u>\$990,000</u>	<u>\$1,650,000</u>
Increase			<u>\$272,500</u>	<u>\$602,500</u>	<u>\$1,262,500</u>

Range of Increase Combinations: \$42,500 to \$1,505,000

Note: Estimated volumes are based on annualized actual data for FY 1988 (Rounded).

* Includes Examination Fee for Original Registrations.

** Originals and Renewals at same Rates.

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KANSAS HOUSE OF REPRESENTATIVES

Committee on Appropriations
March 3, 1988
In Support of House Bill 2986

Mr. Chairman

Members of the Committee

I am Ron Emmons, a member of the Kansas Sanitary Supply Association. The Kansas Sanitary Supply Association consists of manufacturers, agents, and distributors of building maintenance products that do business in the State of Kansas. We wish to go on record as supporting House Bill 2986.

The sanitary supply industry, an industry that K.C.I. has taken business away from, is considered to be a low growth low profile industry. Yet ours is an important role in helping protect the health and welfare of the general population, protecting the capital investments in facilities, and providing aesthetic enhancements that contribute to worker satisfaction and customer appeal.

Sales revenues and profits for the K.S.S.A. distributor members have been negatively impacted by the current mandatory statutes. Where is the justification for government to arbitrarily take sales, income, and jobs away from Kansas based companies that have been supporting this state for up to 61 years? We believe there is none.

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The current statutes are monopolistic in that they allow the various State agencies only one source from which to acquire available goods and services. At the same time, the statutes represent restraint of trade and price fixing because the user agencies are not allowed to shop for products and prices that meet their specific requirements. The agencies are restricted to one source of supply and one pricing scheme. Is this completely legal? If so, is it morally right? The Constitution of the United States guarantees all Americans freedom of choice. This Bill will return this right to the professional persons within the State agencies.

One of Governor Hayden's primary objectives when he took office was to implement programs to stimulate economic growth in the business sector. The current statutes certainly are contrary to that goal.

It may be argued by Kansas Correctional Industries that their sales are only about \$500,000.00, one-half million dollars, per year in janitorial and building maintenance products. And how can that be so devastating? We are small businesses, by federal definition, and each dollar of lost sales is important. Our distributor members have annual gross sales of one to three million dollars from all sales entities. Since the current statutes were fully implemented, and adhered to in 1984, we have suffered sales losses of 5% to 15% of our total annual sales. These losses directly correlate to our sales to the State of Kansas prior to 1984.

This loss of sales, \$500,00.00 per year, is very significant when you consider the premise that says each dollar in sales will multiply itself five times as it impacts an economy. Now, we are talking about very negative economic impact. Lost sales equals lost profits, lost jobs, lost taxes, and lost capital expenditures.

The sanitary supply industry is highly regulated by numerous governmental agencies: Environmental Protection Agency, U.S. Department of Agriculture, O.S.H.A., Department of Transportation, Kansas Department of Agriculture, to name a few. We must comply with the Clean Air Act, Clean Water Act, and the Hazardous Communications Standards. Does Kansas Correctional Industries fully comply with all of these? We think not. Can you justify the cost of compliance for \$500,000.00 annual sales? We know not.

This a very technical industry. It is no longer the "town dummy" with a push broom and a box of floor sweep. The manufacture of quality chemicals is the result of much time and money being invested in testing and research and development. Quality compounds do not come from raw material suppliers starter formulae. Does Kansas Correctional Industries have a qualified technical director? Can you afford one?

K.S.A. 75-5275 states in part, "The secretary is hereby authorized to purchase in the manner provided by law, equipment, raw materials and supplies, and to employ the supervisory personnel necessary

to establish and maintain for this state at each correctional institution, industries for the utilization of services of inmates in the manufacture or production of such articles or products..."

Upon lodging a complaint about K.C.I.'s scouring powder, one of the user agencies was told by K.C.I., "We don't make that. We just buy it and repackage it". When inquiring about a reported safety problem with bleach, a member of the House of Representatives was told that it was not made by K.C.I. It is bought in bulk and packed in jugs. Do these actions meet the "manufacture or produce" qualifications of the statute? Of course not. The statute does not allow for buying in bulk and repackaging.

You will receive copies of documentation from various State agencies describing numerous cases of product failure, health and safety hazards, complaints from users and facility occupants. Kansas Correctional Industries's response or lack there-of is also documented.

All of these situations have resulted in a deterioration of facilities appearance, worker pride and morale, in some instances higher rates of worker turnover, and increased labor costs.

Because of the mandatory nature of current statutes your user agencies have no recourse. When they were allowed to purchase from the private business sector their problems were in fact fewer, in many cases the price of product was less, the labor

requirement less, and the problems that did occur were addressed promptly. If they were dissatisfied they could change suppliers.

It is our understanding that part of the purpose of Kansas Correctional Industries is to generate revenues to help off set the need for general fund monies. This is false economy when you consider the excess labor costs of State agencies due to the inadequacy of K.C.I. products, services, and the lost tax revenues from the private sector.

Based upon the profit averages of the sanitary supply industry, it is estimated that the sale of janitorial supplies by K.C.I. generates less than \$200,000.00 gross profit. From that you must subtract all administrative expenses, selling expenses, operational expenses, and fees for outside consultants. How much is left to off set general fund requirements? Very little.

In testimony given on March 31, 1986, before the Senate Federal and State Affairs Committee, a spokesman for K.C.I. testified that they were not in business to make a profit, only to break even. They further stated that they did not compete with private enterprise. This was not true then and is less so today as their product line expands.

Our biggest job is not selling products. It is providing services such as teaching the end users how to properly use and apply the products, showing them how to achieve greater labor and

product efficiencies, instruct them in how to safely use and store the chemicals, survey and recommend solutions to problems, keep them abreast of technological advances, and provide product liability insurance along with accurate up-to-date safety data sheets.

We do not charge a fee for these services. And, we don't do it just once or twice a year. It is a 12 month a year on-going program.

From all indications, K.C.I. does not have the skill, knowledge, or desire to provide these things in a manner or with the frequency called for by most user agencies.

The manufacture of cleaning chemicals is not labor intensive. Nor, is there a high job potential for a person that has worked as a compounder. In the cleaning industry the labor requirements are in the use and application of the products.

A U.S. Department of Labor report states that the job position that will be in greatest demand from now through the year 2000 is that of custodian. It is projected that the needed custodial positions in the U.S. will be two and one-half times greater in the year 2000 than they were in 1986.

We suggest that inmates be taught the custodial trades so they will have employable skills upon their release. The members of K.S.S.A. volunteer to assist in setting up and conducting

such a training program.

There is no one set of products nor one singular supplier that can fulfill all of the needs of any end user. If this were not true, we would all be driving Fords. When the prison made goods act was originally enacted, K.C.I. requested that a portion of the statutes give them exclusive distribution rights to State agencies on a temporary basis so they could get their program going and products entrenched with the user agencies.

Enough time has passed. A free competition environment is needed again.

We urge you to pass this Bill out of Committee with a favorable recommendation.

Thank You,

KANSAS SANITARY SUPPLY ASSOCIATION



Ron Emmons, V.P.

c/o Wich-Craft I.M.S.
1040 S. Santa Fe
Wichita, KS
67211

March 3, 1988

House Appropriations Committee
Kansas Legislature
Topeka, Kansas 66612

Dear Committee members,

The Wichita Area Chamber of Commerce Legislative Committee, at its weekly meeting today, endorsed HB 2986 concerning the prison-made goods act of Kansas. The bill simply changes the law so it is no longer mandatory that all state agencies must purchase prison-made goods when available.

Under this law, the state is required to buy items from the corrections system, even though less costly goods might be available. Also, the law does not take into consideration the cost of shipping items from corrections institutions to the state agency that is buying them. Less costly goods could be available much closer to the agency which needs them.

We believe this bill will save the state not only money, but will result in more efficient operation of state government. We urge your support for this measure and thank you for your consideration.

Sincerely,

Bernie Koch

Bernie Koch
Wichita Area
Chamber of Commerce

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Kansas State House of Representatives

Statement In Support of H. B. #2986

by

James F. Freund

President

Kansas Sanitary Supply Association

My name is James F. Freund and I am the President of the Kansas Sanitary Supply Association (K.S.S.A.) as well as the President of Pur-O-Zone Inc., located in Lawrence, Kansas.

The K.S.S.A. and it's sister organization the International Sanitary Supply Association are composed of over 3100 distributors and manufactures of cleaning and maintenance products and supplies used in hospitals, schools, food processing plants, hotels and other industrial/institutional establishments. Over 30 ISSA members are currently located within the State of Kansas, the majority of which are small businesses. As such, the K.S.S.A. and the I.S.S.A. is concerned with the unfair competition these members face from the Kansas Correctional Industries which among other things manufactures and distributes sanitary supplies to all state agencies. In this regard, we commend Representative Henry Helgerson and support his efforts in introducing H. B. #2986 which would allow the state agencies to purchase from the K.C.I. on a permissive basis instead of a mandatory basis.

Private Industry vs. Correctional Industries

"Can The Conflict Be Resolved"

Although the principle purpose of this hearing is to address H. B. #2986, it might be prudent if we first consider the following areas of common agreement:

1. Inmates should be kept busy while in prison at a minimum cost to the tax payers.
2. Wherever possible the inmates should be taught skills or trades which will best assist them in obtaining gainful employment upon their discharge from prison.
3. The manufacturing facilities at any correctional institution should be designed to produce the most needed products by the most efficient methods.
4. The products manufactured in any correctional institution should be those which will require the maximum amount of labor.

The K.S.S.A. which represents in excess of 30 Kansas firms manufacturing and distributing cleaning and maintenance products, does not consider the manufacture of these products in correctional facilities to be either:

1. Cost effective such that it would justify the government's monetary investment in both equipment and facilities.
2. Labor intensive enough to effectively utilize the abundant captive labor force available, or
3. A trade or vocation which will offer the inmate many opportunities of gainful employment upon their discharge from prison.

Since the majority of the prison industries, of which K.S.S.A. are familiar, specialize in the formulating and sale of cleaning chemicals and manufacture of floor care products; it would be advisable the the following factors be thoroughly reviewed and considered:

1. Awareness of the necessity of product liability insurance.
2. Danger in manufacturing cleaning and maintenance chemical products...toxic fumes, irritation to the skin, etc.

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3. Environmental Protection Agency FIFRA registration and labeling regulations.
4. Department of Transportation shipping regulations.
5. Lack of cost effective distribution and marketing facilities and techniques.

After 60 plus years experience in the distribution and manufacturing of cleaning and maintenance products; K.S.S.A. members are better equipped to provide these products to not only the present state agencies, but the correctional facilities as well. Furthermore, they can accomplish these tasks more efficiently and profitably.

Although in many cases the prison-made product has a lower selling price, this price does not take into account the real cost to the state government and the citizens of the state. This cost includes:

1. Overhead costs to the taxpayers, such as the building and up-keep of publicly owned manufacturing facilities and the hiring of additional prison personnel to train and oversee the operation.
2. Wasted tax dollars on the manufacture, because as stated above, this work can be done more efficiently by the private sector.
3. Lost income revenues which would have been collected from a private company (income taxes are lost on the federal level as well).
4. Lost property taxes, employment taxes and other fees generated by for-profit companies.
5. Cost can be measured in terms of loss of citizen's good will and loss of a sound economic policy. Citizens see it as improper for a state to pit its governmentally derived/tax based economic power against small business. In effect, the citizens of the state are funding the competition with their tax dollars.

In conclusion, it is the recommendation of K.S.S.A. that the Kansas Correctional Institutions would be further ahead to expend their resources by training their inmates to become effective custodians so that they can provide better sanitation within the prisons and develop work experience which will lead to gainful employment in the building services industry after their release from prison.

In addition to the negative economic consequences of having to compete with tax dollar subsidized products, we have the additional burden of forcing products of poor (documented) quality and performance upon our own state institutions. The quality, or the lack of, has forced our institutions to accept lower level appearance and very costly additional labor necessary to make do with inferior products. There is also (documented) reports which have indicated health related problems with employees and equipment failures.

Having considered all of the results of the KCI program, the K.S.S.A. and it's membership strongly urge you to give a positive vote to H. B. #2986.