

Approved _____ March 25, 1988
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Robert S. Wunsch at
Chairperson

3:30 ~~xxx~~/p.m. on March 17, 1988 in room 313-S of the Capitol.

All members were present except:

Representatives Douville, Peterson, Roy and Vancrum, who were excused

Committee staff present:

Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Matt Lynch, Judicial Council
Shirla McQueen, Kansas Corporation Commission

Continuation of Hearing on S.B. 334 -- Kansas Administrative Procedure Act

Matt Lynch explained the recommended changes made to S.B. 334 by the Interim Committee, (see Attachment I).

Representative Adam moved and Representative Whiteman seconded to adopt the proposed amendments to S.B. 334. The motion passed.

Matt Lynch explained the Judicial Council Advisory Committee's recommendations, (see Attachment II). He said the "order" approach was not taken. Sec. 2, page 2, should be deleted since the "specific statute" approach was adopted.

Shirla McQueen testified the K.C.C. was opposed to the requirement that the presiding officer would have to issue initial orders. They request the Committee adopt the proposed amendment (i) on page 7.

A motion was made by Representative Adam to adopt the amendments in Attachment II as explained by the conferees. The motion was seconded by Representative Kennard. The motion passed.

Matt Lynch explained the first three sections of H.B. 2613 were taken care of by the adoption of the specific statute approach and can be deleted. Sections 4 and 5 were incorporated in the amendments adopted by the Committee. The remaining sections, Section 6 and Section 7 can be amended into S.B. 334.

Representative Buehler moved and Representative Jenkins seconded to amend S.B. 334 in compliance with Sec. 6 and Sec. 7 of H.B. 2613. The motion passed.

Representative Crowell moved to amend the bill to reflect the proper statutes that are amended by this bill. The motion was seconded and passed.

A motion was made by Representative Solbach and seconded by Representative Vancrum to remove the four sections pertaining to the Public Disclosure Commission. The motion passed.

Representative Crowell moved and Representative Whiteman seconded to report Substitute for S.B. 334 favorably for passage. The motion passed.

Communications dated January 28 and February 1, 1988 from the Commission on Civil Rights are Attachment III and Attachment IV.

The Committee meeting was adjourned at 4:45 p.m.

Interim Committee Changes

[] indicate deletions

Attachment I

Sec. 5. K.S.A. 1986 Supp. 77-511 is hereby amended to read as follows: 77-511. (a) Except to the extent that the time limits in this subsection are inconsistent with limits established by another statute for any stage of the adjudicative proceedings, a state agency shall process an application for an order, other than a declaratory order, as follows:

(1) Within 30 days after receipt of the application, the state agency shall [examine the application, notify the applicant of any apparent errors or omissions and notify] the applicant of the name, official title, mailing address and telephone number of a state agency member or employee who may be contacted regarding the application. Failure to detect such errors or omissions does not preclude the state agency from raising them at a later stage of the proceeding.

acknowledge receipt thereof and inform

As soon as practicable, the state agency shall notify the applicant of any apparent errors or omissions.

(2) Within 90 days after receipt of [the] application [or of the response of the applicant to a timely request made by the state agency pursuant to paragraph (1)] the state agency shall:

When practicable,

(A) Approve or deny the application, in whole or in part, on the basis of emergency or summary [adjudicative] proceedings, if those proceedings are available under this act for disposition of the matter;

a completed

(B) commence a formal [adjudicative] hearing or a conference [adjudicative] hearing in accordance with this act; ~~or~~

(C) *issue an order and notify the applicant of the right to request* [an adjudicative proceeding] pursuant to subsection (b) of K.S.A. 1986 Supp. 77-508 and amendments thereto; or

a hearing

(D) dispose of the application in accordance with K.S.A. ~~1985~~ 1986 Supp. 77-510 and amendments thereto.

(b) *Except to the extent that the time limits in this subsection are inconsistent with limits established by another statute, a state agency shall process a request for* [an adjudicative proceeding] pursuant to subsection (b) of K.S.A. 1986 Supp. 77-508 and amendments thereto as follows:

a hearing

(1) Within 30 days after receipt of the request ~~and~~, if the state agency has not previously done so, the state agency shall notify the applicant of the name, official title, mailing address and telephone number of a state agency member or employee who may be contacted regarding the request; and the state agency shall acknowledge receipt thereof and

(2) ~~within 90 days after receipt of the request the state agency shall:~~ when practicable,

(A) ~~Dispose of the matter, in whole or in part, on the basis of emergency or summary adjudicative proceedings, if those proceedings are available under this act for disposition of the matter;~~

(B) ~~commence a formal or conference~~ [adjudicative] hearing in accordance with this act; or

~~[(C)] dispose of the matter in accordance with K.S.A. 1986 Supp. 77-510 and amendments thereto.~~ (B)

(3) If the request for ~~[an adjudicative proceeding]~~ is in response to agency action under (2)(C) of subsection (a), the agency shall take one of the actions under subpart (2) of this subsection within 30 days. ~~_____~~ a hearing, if practicable

(c) If a timely and sufficient application has been made for renewal of a license with reference to any activity of a continuing nature, the existing license does not expire until the state agency has taken final action upon the application for renewal or, if the state agency's action is unfavorable, until the last day for seeking judicial review of the state agency's action or a later date fixed by the reviewing court.

FORMAL ~~PROCEEDINGS~~

hearings

77-513. Formal ~~proceedings~~, when required. All adjudicative proceedings shall be formal ~~adjudicative proceedings~~ and shall be governed by K.S.A. 1985 Supp. 77-513 through 77-532, and amendments thereto, except as otherwise provided by:

hearings

- (a) A statute other than this act;
- (b) a rule and regulation that adopts the

procedures for the conference ~~adjudicative~~ hearing or summary ~~adjudicative~~ proceeding in accordance with the standards provided in this act for those proceedings;

(c) K.S.A. 1985 Supp. 77-536 and amendments thereto pertaining to emergency ~~adjudicative~~ proceedings; or

(d) the act for judicial review and civil enforcement of agency actions.

SUMMARY PROCEEDINGS

77-537. When. A state agency may use summary ~~adjudicative~~ proceedings if:

(a) The use of those proceedings in the circumstances does not violate any provision of law;

(b) the protection of the public interest does not require the state agency to give notice and an opportunity to participate to persons other than the parties; and

(c) the matter is entirely within one or more categories for which the state agency by rule and regulation has adopted this section and K.S.A. 1985 Supp. 77-538 to 77-541, inclusive.

0161 Sec. 4. K.S.A. 1986 Supp. 77-513 is hereby amended to read
0162 as follows: 77-513. All adjudicative proceedings shall be formal
0163 ~~adjudicative proceedings~~ and shall be governed by K.S.A. ~~1985~~
0164 1986 Supp. 77-513 through 77-532, and amendments thereto,
0165 except as otherwise provided by:

hearings

0166 (a) A statute other than this act;

0167 (b) ~~a rule and regulation that adopts the procedures for the~~
0168 ~~conference adjudicative hearing or summary adjudicative pro-~~
0169 ~~ceeding in accordance with the standards provided in this act for~~
0170 ~~those proceedings; K.S.A. 1986 Supp. 77-533 through 77-535,~~
0171 ~~and amendments thereto, pertaining to conference~~ ~~adjudicative~~
0172 ~~hearings;~~

0173 (c) K.S.A. 1986 Supp. 77-537 through 77-541, and amend-
0174 ments thereto, pertaining to summary ~~adjudicative~~ proceedings;

0175 ~~(e)~~ (d) K.S.A. ~~1985~~ 1986 Supp. 77-536 and amendments
0176 thereto pertaining to emergency ~~adjudicative~~ proceedings; or
0177 ~~(d)~~ (e) the act for judicial review and civil enforcement of
0178 agency actions.

0179 Sec. 5. K.S.A. 1986 Supp. 77-537 is hereby amended to read
0180 as follows: 77-537. A state agency may use summary ~~adjudicative~~
0181 proceedings if:

0182 (a) The use of those proceedings in the circumstances does
0183 not violate any provision of law;

0184 (b) the protection of the public interest does not require the
0185 state agency to give notice and an opportunity to participate to
0186 persons other than the parties; and

0187 (c) ~~the matter is entirely within one or more categories for~~
0188 ~~which the state agency by rule and regulation has adopted this~~
0189 ~~section and K.S.A. 1985 Supp. 77-538 to 77-541, inclusive. a~~
0190 ~~statute does not require a hearing or the opportunity for a~~
0191 ~~hearing on the matter.~~

77-516. Prehearing conference; availability; notice. The presiding officer designated to conduct the hearing may conduct a prehearing conference. If the conference is conducted:

(a) The state agency may assign a presiding officer for the prehearing conference, exercising the same discretion as is provided by K.S.A. 1985 Supp. 77-514 concerning the selection of a presiding officer for a hearing.

(b) The presiding officer for the prehearing conference shall set the time and place of the conference and give reasonable notice to all parties and to all persons who have filed written petitions to intervene in the matter.

(c) The notice shall include:

(1) The names and mailing addresses of all parties and other persons to whom notice is being given by the presiding officer;

(2) the name, official title, mailing address and telephone number of any counsel or employee who has been designated to appear for the state agency;

(3) the official file or other reference number, the name of the proceeding and a general description of the subject matter;

(4) a statement of the time, place and nature of the prehearing conference;

(5) a statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held;

(6) the name, official title, mailing address and telephone number of the presiding officer for the prehearing conference;

(7) a statement that at the prehearing conference the proceeding, without further notice, may be converted into a conference adjudicative hearing or a summary adjudicative proceeding for disposition of the matter as provided by this act; and

(8) a statement that a party who fails to attend or participate in a prehearing conference, hearing or other stage of an adjudicative proceeding may be held in default under this act.

(d) The notice may include any other matters that the presiding officer considers desirable to expedite the proceedings.

77-532. Record. (a) A state agency shall maintain an official record of each formal adjudicative proceeding.

(b) The state agency record consists only of:

(1) Notices of all proceedings;

(2) any prehearing order;

(3) any motions, pleadings, briefs, petitions, requests, and intermediate rulings;

(4) evidence received or considered;

(5) a statement of matters officially noticed;

(6) proffers of proof and objections and rulings thereon;

(7) proposed findings, requested orders and exceptions;

(8) the record prepared for the presiding officer at the hearing, together with any transcript of all or part of the hearing considered before final disposition of the proceeding;

(9) any final order, initial order, or order on reconsideration; and

(10) staff memoranda or data submitted to the presiding officer.

(c) Except to the extent that this act or another statute provides otherwise, the state agency record, excluding matters under paragraph (10) of subsection (b), constitutes the exclusive basis for state agency action in formal adjudicative proceedings and for judicial review thereof.

History: L. 1984, ch. 313, § 32; July 1, 1985.

CONFERENCE HEARING

77-533. When. A conference adjudicative hearing may be used if its use in the circumstances does not violate any provision of law and where there is:

(a) A matter in which there is no disputed issue of material fact; or

(b) a matter in which there is a disputed issue of material fact and the parties agree to a conference adjudicative hearing.

hearing

hearings

EMERGENCY PROCEEDINGS

77-534. Procedure. The procedures of this act pertaining to formal [adjudicative] hearings apply to a conference [adjudicative] hearing, except to the following extent:

(a) If a matter is initiated as a conference [adjudicative] hearing, no prehearing conference may be held.

(b) The provisions of K.S.A. 1985 Supp. 77-522 do not apply to conference [adjudicative] hearings insofar as those provisions authorize the issuance and enforcement of subpoenas and discovery orders, but do apply to conference [adjudicative] hearings insofar as those provisions authorize the presiding officer to issue protective orders at the request of any party or upon the presiding officer's motion.

(c) Paragraphs (a), (b) and (c) of K.S.A. 1985 Supp. 77-523 do not apply; but (1) the presiding officer shall regulate the course of the proceedings; (2) only the parties may testify and present written exhibits; and (3) the parties may offer comments on the issues.

77-535. Disclosure of material or essential facts. (a) If during a conference [adjudicative] hearing the presiding officer has reason to believe that material facts are in dispute, the presiding officer may require any party to state the identity of the witnesses or other sources through whom the party would propose to present proof if the proceeding were converted to a formal [adjudicative] hearing, but if disclosure of any fact, allegation or source is privileged or expressly prohibited by any provision of law, the presiding officer may require the party to indicate that confidential facts, allegations or sources are involved, but not to disclose the confidential facts, allegations or sources.

(b) If during a conference [adjudicative] hearing a party has reason to believe that essential facts must be obtained in order to permit an adequate presentation of the case, the party may inform the presiding officer regarding the general nature of the facts and the sources from whom the party would propose to obtain those facts if the proceeding were converted to a formal [adjudicative] hearing.

77-536. When; procedure. (a) A state agency may use emergency [adjudicative] proceedings: (1) In a situation involving an immediate danger to the public health, safety or welfare requiring immediate state agency action or (2) as otherwise provided by law.

(b) The state agency may take only such action as is necessary: (1) To prevent or avoid the immediate danger to the public health, safety or welfare that justifies use of emergency adjudication or (2) to remedy a situation for which use of emergency adjudication is otherwise provided by law.

(c) The state agency shall render an order, including a brief statement of findings of fact, conclusions of law and policy reasons for the decision if it is an exercise of the state agency's discretion, to justify the state agency's decision to take the specific action and the determination of: (1) An immediate danger or (2) the existence of a situation for which use of emergency adjudication is otherwise provided by law.

(d) The state agency shall give such notice as is practicable to persons who are required to comply with the order. The order is effective when rendered. Notice under this subsection shall constitute service for the purposes of the act for judicial review and civil enforcement of agency actions.

(e) After issuing an order pursuant to this section, the state agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not justify the use of emergency [adjudicative] proceedings under subsection (a).

(f) The state agency record consists of any documents regarding the matter that were considered or prepared by the state agency. The state agency shall maintain these documents as its official record.

(g) Unless otherwise required by a provision of law, the state agency record need not constitute the exclusive basis for state agency action in emergency [adjudicative] proceedings or for judicial review thereof.

77-538. Procedure. (a) In summary [adjudicative] proceedings, the agency head, or a person designated by the agency head, may be the presiding officer.

(b) The presiding officer, at the time any unfavorable action is taken, shall give each party a brief statement of findings of fact, conclusions of law and policy reasons for the decision if it is an exercise of the state agency's discretion, to justify the action, and a notice of any available administrative review.

(c) The state agency shall forthwith serve each party with a copy of the order in a summary [adjudicative] proceeding in the manner prescribed by K.S.A. 1985 Supp. 77-531. The order shall include at least a statement of the state agency's action and a notice of any available administrative review.

Unless prohibited by law, a person exercising authority over the matter is the presiding officer.

(d) Except for the provisions of K.S.A. 1980 Supp. 77-515, 77-520 and 77-531, the provisions of K.S.A. 1980 Supp. 77-514 through 77-532 inclusive shall not apply to summary proceedings.

77-539. Agency review of order. Unless prohibited by any provision of law, a state agency, on its own motion, may conduct administrative review of an order resulting from summary [adjudicative] proceedings and shall conduct this review upon the written request of a party if the state agency receives the request within 15 days after service under subsection (c) of K.S.A. 1985 Supp. 77-538.

77-540. Same; procedure. (a) A state agency need not furnish notification of the pendency of administrative review of an order resulting from summary [adjudicative] proceedings to any person who did not request the review, but the state agency may not take any action on review less favorable to any party than the original order without giving that party notice and an opportunity to explain that party's view of the matter.

(b) The reviewing officer, in the discretion of the agency head, may be any person who could have presided at the summary [adjudicative] proceeding, but the reviewing officer shall be one who is authorized to grant appropriate relief upon review.

(c) The reviewing officer shall give each party an opportunity to explain the party's view of the matter unless the party's view is apparent from the written materials in the file submitted to the reviewing officer. The reviewing officer shall make any inquiries necessary to ascertain whether the proceeding must be converted to a conference [adjudicative] hearing or a formal [adjudicative] hearing.

(d) The reviewing officer may render an order disposing of the proceeding in any manner that was available to the presiding officer at the summary [adjudicative] proceeding or the reviewing officer may remand the matter for further proceedings, with or without conversion to a conference [adjudicative] hearing or a formal [adjudicative] hearing.

(e) An order under this section shall be served on the parties in the manner prescribed by K.S.A. 1985 Supp. 77-531.

(f) A request for administrative review of an order resulting from a summary [adjudicative] proceeding is deemed to have been denied if the reviewing officer does not dispose of the matter or remand it for further proceedings within 15 days after the request is submitted.

77-541. Record. The state agency record for a summary [adjudicative] proceeding consists of any documents regarding the matter that were considered or prepared by the presiding officer for the summary [adjudicative] proceeding or by the reviewing officer for any review. The state agency shall maintain these documents as its official record.

(a)

(b) Unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in summary proceedings or for judicial review thereof.

The Special Committee on Judiciary recommended that any legislation expanding the Administrative Procedure Act have a delayed effective date of July 1, 1989. It might be advisable to add a provision to the following effect:

This act shall take effect on July 1, 1989, and does not govern adjudicative proceedings pending on that date. Subject to K.S.A. 1987 Supp. 77-503 and amendments thereto, this act governs all state agency adjudicative proceedings commenced after that date. This act also governs state agency adjudicative proceedings conducted on a remand from a court or another state agency after the effective date of this act.

Judicial Council Advisory Committee
Recommendations

[] indicate deletions

Attachment II

0077 Section 1. K.S.A. 1986 Supp. 77-502 is hereby amended to
0078 read as follows: 77-502. As used in this act:

0079 (a) "State agency" means any officer, department, bureau,
0080 division, board, authority, agency, commission or institution of
0081 this state, except the judicial and legislative branches of state
0082 government and political subdivisions of the state, which is
0083 authorized by law to administer, enforce or interpret any law of
0084 this state.

0085 (b) "Agency head" means an individual or body of individu-
0086 als in whom the ultimate legal authority of the state agency is
0087 vested by any provision of law.

0088 (c) "License" means a franchise, permit, certification, ap-
0089 proval, registration, charter or similar form of authorization re-
0090 quired by law for a person to engage in a profession or occupa-
0091 tion.

0092 (d) "Order" means a state agency action ~~which pertains to a~~
0093 ~~license and is of particular applicability to a person that deter-~~
0094 *mines the legal rights, duties, privileges, immunities or other*
0095 *legal interest of one or more specific persons.*

0096 (e) "Party to state agency proceedings," or "party" in context
0097 so indicating, means:

0098 (1) A person to whom an order is specifically directed; or

0099 (2) a person named as a party to a state agency proceeding or
0100 allowed to intervene or participate as a party in the proceeding.

0101 (f) "Person" means an individual, partnership, corporation,
0102 association, political subdivision or unit thereof or public or
0103 private organization or entity of any character, and includes
0104 another state agency.

0105 (g) "Political subdivision" means political or taxing subdivi-
0106 sions of the state, including boards, commissions, authorities,
0107 councils, committees, subcommittees and other subordinate
0108 groups or administrative units thereof, receiving or expending
0109 and supported in whole or in part by public funds.

If the "order" approach to expansion is
taken, see also § 1 of H.B. 2613.

0110 Sec. 2. K.S.A. 1986 Supp. 77-503 is hereby amended to read
0111 as follows: 77-503. (a) This act applies ~~only to the extent that~~
0112 ~~other statutes expressly provide that the provisions of this act~~
0113 ~~govern proceedings under those statutes to all orders and to all~~
0114 ~~adjudicative proceedings thereon not expressly exempted by~~
0115 ~~statute.~~

0116 (b) This act creates only procedural rights and imposes only
0117 procedural duties. They are in addition to those created and
0118 imposed by other statutes.

0119 (c) This act does not apply to:

0120 (1) Orders under the workmen's compensation act other
0121 than orders of the commissioner of insurance;

0122 (2) orders under the employment security act;

0123 (3) orders of the mined-land conservation and reclamation
0124 board;

0125 (4) orders of the director or division of vehicles concerning
0126 (A) drivers' licenses, and driving privileges ~~of~~; and (B) suspen-
0127 sions of vehicle registrations as provided in K.S.A. 40-3104 and
0128 40-3108 and amendments thereto;

0129 (5) orders of state educational institutions and the state
0130 board of regents other than orders relating to the granting of
0131 licenses; ~~and~~

0132 (6) orders under K.S.A. 72-972 through 72-975, and amend-
0133 ments thereto; and

0134 (7) orders of the Kansas parole board.

strike

If the "specific statute" approach to expansion is taken, the deleted language in lines 111 through 113 would be retained and this section could be removed from the bill.

If the "order" approach is taken, see also § 2 of H.B. 2613.

77-506. Conversion of proceedings. (a)

At any point in a state agency proceeding the presiding officer or other state agency official responsible for the proceeding:

(1) May convert the proceeding to another type of state agency proceeding provided for by this act if the conversion is appropriate, is in the public interest and does not substantially prejudice the rights of any party; and

(2) if required by any provision of law, shall convert the proceeding to another type of state agency proceeding provided for by this act

(b) A conversion of a proceeding of one type to a proceeding of another type may be effected only upon notice to all parties to the original proceeding.

(c) If the presiding officer or other state agency official responsible for the original proceeding would not have authority over the new proceeding to which it is to be converted, that officer or official, in accordance with state agency procedure, shall secure the appointment of a successor to preside over or be responsible for the new proceeding.

(d) The record of the original state agency proceeding may be used in the new state agency proceeding.

(e) After a proceeding is converted from one type to another, the presiding officer or other state agency official responsible for the new proceeding shall:

(1) Give such additional notice to parties or other persons as is necessary to satisfy the requirements of this act pertaining to those proceedings;

(2) dispose of the matters involved without further proceedings if sufficient proceedings have already been held to satisfy the requirements of this act pertaining to the new proceedings; and

(3) conduct or cause to be conducted any additional proceedings necessary to satisfy the requirements of this act pertaining to those proceedings.

0135 Sec. 3. K.S.A. 1986 Supp. 77-508 is hereby amended to read
0136 as follows: 77-508. (a) Except as provided by this section, an
0137 adjudicative proceeding shall be the process for formulating and
0138 issuing an order, unless the order is a decision:

0139 (a) To issue or not to issue a complaint, summons or similar
0140 accusation;

0141 (b) to initiate or not to initiate an investigation, prosecution
0142 or other proceeding before the state agency, another agency or a
0143 court; or

0144 (c) under K.S.A. 1985 Supp. 77-510, not to conduct an ad-
0145 judicative proceeding.

0146 (b) Unless prohibited by law, a state agency may issue an
0147 order subject to the right of a person to whom the order is
0148 directed to request in writing an appropriate adjudicative pro-
0149 ceeding within 15 days after service of the order. The order shall
0150 inform the person to whom it is directed of the right to request
0151 an adjudicative proceeding and the time and manner for making
0152 such request. The state agency may extend the time for re-
0153 questing an adjudicative proceeding for good cause shown. If an
0154 adjudicative proceeding is not requested, the order shall become
0155 effective upon the expiration of the time for requesting an
0156 adjudicative proceeding. If an adjudicative proceeding is re-
0157 quested, any order resulting from the proceeding shall become
0158 effective in accordance with the provisions of this act. This
0159 subsection does not preclude a state agency from taking imme-
0160 diate action to protect the public interest in accordance with
0161 K.S.A. 1986 Supp. 77-536 and amendments thereto.

0162 (c) The following state agency actions, whether or not in-
0163 cluded within the definition of order, shall not require an
0164 adjudicative proceeding under this act:

0165 (1) A decision to issue or not to issue a complaint, summons

If the "specific statute" approach to expansion is taken, the deleted language in lines 138 through 145 should be reinserted and redesignated as (1), (2) and (3). Proposed subsection (c) (lines 162 through 199) could be deleted.

a hearing

hearing

If the "order" approach is taken, see § 3 of H.B. 2613. The advisory committee recommends that an additional exemption be added to (c) for "decisions pertaining to educational plans, programs, accreditation and budgets;"

0166 or similar accusation or a determination as to whether or not
0167 probable cause exists for crediting a complaint;
0168 (2) a decision to initiate or not to initiate an investigation,
0169 prosecution or other proceeding before the state agency, an-
0170 other agency or a court;
0171 (3) a decision under K.S.A. 1986 Supp. 77-510 and amend-
0172 ments thereto not to conduct an adjudicative proceeding;
0173 (4) decisions pertaining to contracts, obtaining materials or
0174 services, or awarding grants;
0175 (5) management decisions pertaining to internal agency
0176 policy and procedure, personnel matters other than orders of
0177 the state civil service board, or the budget process;
0178 (6) decisions pursuant to K.S.A. 45-215 et seq., and amend-
0179 ments thereto, pertaining to disclosure or copying of public
0180 records;
0181 (7) decisions pursuant to K.S.A. 75-4317 et seq., and amend-
0182 ments thereto, pertaining to access to meetings of public bodies;
0183 (8) approval of plans, specifications or other matters pre-
0184 liminary to the granting of a license or permit;
0185 (9) decisions regarding management, discipline or release of
0186 persons in the custody of the secretary of corrections or com-
0187 mitted to a state youth center;
0188 (10) ~~decisions relating to parole or revocation of parole;~~
0189 ~~(11)~~ decisions relating to the admission, treatment, condi-
0190 tional release or discharge of persons at state psychiatric hos-
0191 pitals or state institutions for the mentally retarded;
0192 ~~(12)~~ (11) decisions regarding public improvement need, de-
0193 sign or location;
0194 ~~(13)~~ (12) decisions as to the specifications governing the
0195 nature and quality of materials to be used in any public im-
0196 provement project or the plans and specifications governing the
0197 design of any such project prior to the time the contract for any
0198 such project is awarded; and
0199 ~~(14)~~ (13) other agency actions exempted by statute.

0200 Sec. 4. K.S.A. 1986 Supp. 77-509 is hereby amended to read
0201 as follows: 77-509. (a) A state agency may provide an adjudicative
0202 proceeding at any time with respect to an order within the
0203 agency's jurisdiction.

0204 (b) A state agency shall provide *an opportunity for* an ad-
0205 judicative proceeding with respect to an order upon the written
0206 application of any person, unless:

0207 (1) The state agency lacks jurisdiction of the subject matter;

0208 (2) resolution of the matter requires the state agency to exer-
0209 cise discretion within the scope of *subsection (c) of K.S.A. 1985*
0210 *1986 Supp. 77-508 and amendments thereto;*

0211 (3) a statute vests the state agency with discretion to conduct
0212 or not to conduct an adjudicative proceeding ~~before issuing an~~
0213 ~~order~~ to resolve the matter and, in the exercise of that discretion,
0214 the state agency has determined not to conduct an adjudicative
0215 proceeding;

0216 (4) resolution of the matter does not require the state agency
0217 to issue an order that determines the applicant's legal rights,
0218 duties, privileges, immunities or other legal interests;

0219 (5) the matter was not timely submitted to the state agency;
0220 or

0221 (6) the matter was not submitted in a form substantially
0222 complying with any applicable provision of law.

0223 (c) An adjudicative proceeding commences when the state
0224 agency or a presiding officer:

0225 (1) Notifies a party that a prehearing conference, hearing or
0226 other stage of an adjudicative proceeding will be conducted; or

0227 (2) begins to take action on a matter that appropriately may
0228 be determined by an adjudicative proceeding, unless this action
0229 is:

0230 (A) An investigation for the purpose of determining whether
0231 an adjudicative proceeding should be conducted; or

0232 (B) a decision which, under *subsection (c) of K.S.A. 1985*
0233 *1986 Supp. 77-508 and amendments thereto,* the state agency
0234 may make without conducting an adjudicative proceeding.

If the "specific statute" approach to expansion is taken and subsection (a) of 77-508 is amended accordingly, (b)(2) in line 209 and (c)(2)(B) in line 232 should be amended to make reference to subsection (a) of 77-508.

77-526. Final order; initial order. (a) If the presiding officer is the agency head, the presiding officer shall render a final order.

(b) If the presiding officer is not the agency head, the presiding officer shall render an initial order, which becomes a final order unless reviewed in accordance with K.S.A. 1985 Supp. 77-527 ^{or unless} otherwise required by law to be finally determined by the agency head.

(c) A final order or initial order shall include, separately stated, findings of fact, conclusions of law and policy reasons for the decision if it is an exercise of the state agency's discretion, for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness. Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant provision of law, shall be accompanied by a concise and explicit statement of the underlying facts of record to support the findings. The order shall also include a statement of the available procedures and time limits for seeking reconsideration ~~or other administrative relief.~~ An initial order shall include a statement of any circumstances under which the initial order, without further notice, may become a final order.

, administrative review

(d) Findings of fact shall be based exclusively upon the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding.

(e) If a substitute presiding officer is appointed pursuant to K.S.A. 1985 Supp. 77-514, the substitute presiding officer shall use any existing record and may conduct any further proceedings appropriate in the interests of justice.

(f) The presiding officer may allow the parties a designated amount of time after conclusion of the hearing for the submission of proposed findings.

(g) A final order or initial order pursuant

to this section shall be rendered in writing and served within 30 days after conclusion of the hearing or after submission of proposed findings in accordance with subsection (f) unless this period is waived or extended with the written consent of all parties or for good cause shown.

(h) The presiding officer shall cause copies of the order to be served on each party and, if the order is an initial order, on the agency head in the manner prescribed by K.S.A. 1985 Supp. 77-531.

add:

(i) Notwithstanding the other provisions of this section, if the presiding officer in a hearing before the state corporation commission is not the agency head, the presiding officer shall not render an initial order but shall make written findings and recommendations to the commission. The commission shall render and serve a final order within 60 days after conclusion of the hearing or after submission of proposed findings in accordance with subsection (f) unless this period is waived or extended with the written consent of all parties or for good cause shown.

0477 Sec. 11. K.S.A. 1986 Supp. 77-527 is hereby amended to read
0478 as follows: 77-527. (a) The agency head, upon its own motion
0479 may, and upon petition by any party or when required by law
0480 shall, review an initial order, except to the extent that:

0481 (1) A provision of law precludes or limits state agency review
0482 of the initial order; or

0483 (2) the agency head (A) determines to review some but not all
0484 issues, or not to exercise any review, (B) delegates its authority to
0485 review the initial order to one or more persons, *unless such*
0486 *delegation is expressly prohibited by law*, or (C) authorizes one
0487 or more persons to review the initial order, subject to further
0488 review by the agency head.

0489 (b) A petition for review of an initial order must be filed with
0490 the agency head, or with any person designated for this purpose
0491 by rule and regulation of the state agency, within 15 days after
0492 service of the initial order. If the agency head on its own motion
0493 decides to review an initial order, the agency head shall give
0494 written notice of its intention to review the initial order within
0495 15 days after its service. *If the agency head determines not to*
0496 *review an initial order in response to a petition for review, the*
0497 *agency head shall, within 20 days after filing of the petition for*
0498 *review, serve on each party an order stating that review will not*
0499 *be exercised.*

0500 (c) The petition for review shall state its basis. If the agency
0501 head on its own motion gives notice of its intent to review an
0502 initial order, the agency head shall identify the issues that it
0503 intends to review.

0504 (d) In reviewing an initial order, the agency head *or designee*
0505 shall exercise all the decision-making power that the agency
0506 head *or designee* would have had to render a final order had the
0507 agency head *or designee* presided over the hearing, except to the
0508 extent that the issues subject to review are limited by a provision
0509 of law or by the agency head *or designee* upon notice to all
0510 parties.

0511 (e) The agency head *or designee* shall afford each party an
0512 opportunity to present briefs and may afford each party an
0513 opportunity to present oral argument.

0514 (f) The agency head ~~may~~ *or designee shall* render a final
0515 order disposing of the proceeding or ~~may~~ remand the matter for
0516 further proceedings with instructions to the person who ren-
0517 dered the initial order. Upon remanding a matter, the agency
0518 head *or designee* may order such temporary relief as is autho-
0519 rized and appropriate.

0520 (g) A final order or an order remanding the matter for further
0521 proceedings shall be rendered in writing and served within 30
0522 days after receipt of briefs and oral argument unless that period
0523 is waived or extended with the written consent of all parties or
0524 for good cause shown.

0525 (h) A final order or an order remanding the matter for further
0526 proceedings under this section shall identify any difference
0527 between this order and the initial order and shall include, or
0528 incorporate by express reference to the initial order, all the
0529 matters required by subsection (c) of K.S.A. ~~1985~~ 1986 Supp.
0530 77-526 and amendments thereto.

0531 (i) The agency head shall cause copies of the final order or
0532 order remanding the matter for further proceedings to be served
0533 on each party in the manner prescribed by K.S.A. ~~1985~~ 1986
0534 Supp. 77-531 and amendments thereto.

0535 [(j) A final order rendered on review of an initial order is
0536 subject to review in accordance with the act for judicial review
0537 and civil enforcement of agency actions. An initial order which
0538 has not been reviewed under this section is not subject to
0539 judicial review unless a provision of law precluded administra-
0540 tive review of the initial order or the agency head determined
0541 not to review the initial order in response to a petition for
0542 administrative review.]

} strike

0569 Sec. 13. K.S.A. 1986 Supp. 77-530 is hereby amended to read
0570 as follows: 77-530. (a) *Unless a later date is stated in a final*
0571 *order or a stay is granted*, a final order is effective upon service
0572 ~~unless stayed~~.

0573 (b) *Unless a later date is stated in an initial order or a stay is*
0574 *granted*, an initial order shall become effective and shall become
0575 the final order: (1) *When the initial order is served, if adminis-*
0576 *trative review is unavailable; (2) when the agency head serves*
0577 *an order stating, after a petition for review has been filed, that*
0578 *review will not be exercised; or (3) 30 days after service if no*
0579 *party has filed a petition for review by the agency head, the*
0580 *agency head has not given written notice of its intention to*
0581 *exercise review and* a final determination *by the agency head is* — review
0582 *not otherwise required by law.*

0583 (c) This section does not preclude a state agency from taking
0584 immediate action to protect the public interest in accordance
0585 with K.S.A. ~~1985~~ 1986 Supp. 77-536 and amendments thereto.

0586 New Sec. 14. State agencies are hereby authorized to
0587 promulgate rules and regulations pursuant to K.S.A. 77-415 *et*
0588 *seq.* and amendments thereto that adopt the procedures for the
0589 conference adjudicative hearing or summary adjudicative pro-
0590 ceeding and such rules and regulations shall be in accordance
0591 with the standards provided in the Kansas administrative pro-
0592 cedure act for those proceedings.

strike

If it is decided that summary proceedings and conference hearings should be available without the necessity of adopting a rule and regulation, new § 14 of S.B. 334 should be deleted.

MIKE HAYDEN, GOVERNOR

STATE OF KANSAS



COMMISSION ON CIVIL RIGHTS

LONDON STATE OFFICE BLDG.—8TH FLOOR
900 S.W. JACKSON ST.—SUITE 851 S.
TOPEKA, KANSAS 66612-1258

(913) 296-3206

January 28, 1988

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LINDA AUWARTER
OFFICE MANAGER

Honorable Representative Bob Wunsch
Chairman, House Judiciary Committee
State Capitol Building - Room 175-W
Topeka, Kansas 66612

RE: S. B. 334

Dear Representative Wunsch:

We request notifications and an opportunity to speak at all meetings of the Judiciary Committee regarding the above.

The Kansas Commission on Civil Rights (KCCR) generally supports the idea of uniform laws, if, in fact, the proposed laws are truly uniform.

One specific remaining concern with S. B. 334 is whether it will eliminate the current requirement that KCCR public hearings be bound by the rules of evidence. The KCCR wants its hearings to be governed by the rules of evidence. Over the course of many years of litigative development, the Kansas Courts have established that when KCCR public hearing decisions are appealed to district court, the court must read the transcript of the KCCR public hearing, rather than have all witness' testimony represented "live" to the Court. Such was not always the case. Formerly, the KCCR public hearing was relegated by the Courts to a "practice trial," with a renewed testimonial presentation to district court on appeal. During those presentations there would be, nonetheless, constant references to the public hearing testimony of each witness. This all resulted in a circus atmosphere at the district court appeal stage, inordinately slowed the appeal process, was highly cumbersome, unfair and expensive for the parties and was generally untenable.

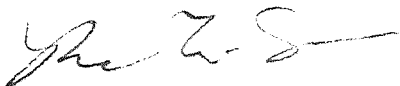
Attachment III

Honorable Representative Bob Wunsch
Page 2
January 28, 1988

Subsequently, the appellate courts have recognized the sufficiency of the KCCR public hearing record and now require the district court on appeal to review that record. The major reason for this improved situation is the fact that KCCR hearings are bound by the rules of evidence and are conducted in a manner therefore consistent with a district court proceeding. We do not wish to have KCCR proceedings relegated to second-rate status and to be disastrously returned to the previous horrible appellate situation. If the current provisions of S. B. 334 portend abrogation of KCCR public hearings being governed by the rules of evidence, we will oppose such provisions of the bill.

Your consideration of this is greatly appreciated.

Sincerely,



Brandon L. Myers

BLM/kp
cc: Joanne E. Hurst
Roger W. Lovett

MIKE HAYDEN, GOVERNOR
STATE OF KANSAS



COMMISSION ON CIVIL RIGHTS

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February 1, 1988

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Honorable Representative Bob Wunsch
Chairman, House Judiciary Committee
State Capitol Building - Room 175-W
Topeka, Kansas 66612

RE: S. B. 334

Dear Representative Wunsch:

Please consider this an addendum to my January 28, 1988 letter expressing Commission concerns regarding the above bill.

I attach a copy of our Chief Legal Counsel's fiscal note letter written regarding the bill last year. It appears to still be germane to the currently-pending bill.

I enclose sufficient copies of this letter for your committee members.

Sincerely,

A handwritten signature in cursive script, appearing to read "Brandon L. Myers".

Brandon L. Myers

BLM/kp

cc: Joanne E. Hurst
Roger W. Lovett

Attachment IV

MIKE HAYDEN, GOVERNOR
STATE OF KANSAS



COMMISSION ON CIVIL RIGHTS

LANDON STATE OFFICE BLDG. --8TH FLOOR
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March 13, 1987

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B. A. VILLARREAL
OVERLAND PARK
MARILYN YARBROUGH
LAWRENCE

RECEIVED

Mr. Phil Anderson
Division of the Budget
1st Floor, Capitol
Topeka, Kansas 66612

MAR 13 1987

DIVISION OF BUDGET
STATE OF KANSAS

Dear Mr. Anderson:

The Kansas Commission on Civil Rights submits the following fiscal notes regarding Senate Bill No. 334:

- a) The proposed amendment to K.S.A. 44-1005, subsection (n) commencing at line 0431 on page 178, provides:

"The commission shall review an initial order rendered under subsection (k) or (m)."
(Emphasis added)

Note that the mandatory "shall" is employed. Thus every initial order must be reviewed by the commission, whether or not any party seeks such a review, and apparently under the provisions of K.S.A. 77-527 which provides, at subsection (e) "The agency head shall afford each party an opportunity to present briefs and may afford each party an opportunity to present oral argument."

These provisions insert a mandatory second adversary proceeding into our public hearing process. This second adversary proceeding will involve the entire commission. Thus, on an anticipated thirteen public hearings during fiscal year 1988, the commission would necessarily convene an additional thirteen times. Statutory per diem for these thirteen extra meetings would total \$3,185.00. Additionally, the commissioners would be entitled to an estimated reimbursement of \$7,332 for travel and

subsistence in connection with these meetings. Preparation and presentation of the briefs on review would entail at least one day of staff legal time per case, at a total annual cost of \$1,820.00.

Thus the total cost of the additional adversary review would be \$12,337.

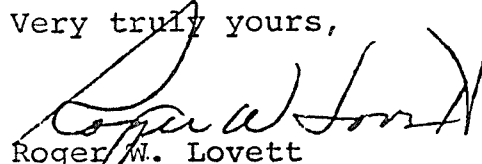
- b) The cross-references between K.S.A. 44-1010 and 77-529, together with the deletion of the wording "Such application shall set forth specifically the ground or grounds on which the applicant considers such order or decision to be unlawful or unreasonable" from 44-1010 presents a high potential for exhaustive appellate procedure to redetermine issues which arose under that section in its original form. The cost in legal staff time for such proceedings would approximate \$7,500.00.

*current staff,
will absorb*

3/24/87

To recapitulate, the estimated annual cost to the Kansas Commission on Civil Rights of Senate Bill No. 334 will be approximately \$12,337.00 occasioned by an apparently redundant second adversary administrative proceeding. Added to that is a highly potential one-time expense of \$7,500.00 to judicially determine the effect of the ambiguous amendment to K.S.A. 44-1010.

Very truly yours,


Roger W. Lovett
Chief Legal Counsel

RWL/mks