

Approved February 26, 1988  
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at  
Chairperson

10:00 a.m./~~p.m.~~ on February 24, 1988 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Frey, Hoferer, Burke, Feleciano, Gaines, Langworthy, Parrish, Steineger, Talkington and Winter.

Committee staff present:

Gordon Self, Office of Revisor of Statutes  
Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee: None

Senate Bill 458 - Establishment of municipal courts for certain counties.

Senator Feleciano moved to report the bill adversely. Senator Steineger seconded the motion. The motion carried.

Senate Bill 522 - Contracts to maintain stocks of outdoor power equipment by retailers.

Senator Burke moved to report the bill adversely. Senator Feleciano seconded the motion. The motion carried.

Senate Bill 584 - Sheriff's duties in sale of property under execution.

Staff passed out copies of a ruling by the Russell County District Court. A copy of the handout is attached (See Attachment I). Considerable committee discussion followed. Senator Talkington moved to report the bill favorably. Senator Feleciano seconded the motion. The motion carried.

Senate Bill 594 - Mandatory sentencing for selling certain narcotic and hallucinogenic drugs.

The committee discussed requesting a committee study on the subject of penalties. It was the consensus of the committee to pass over the bill until the report from the Secretary of Corrections comes out next week.

Senate Bill 608 - Service of summons and petition by mail.

Staff handed out copies of docket fee changes (See Attachment II). Following committee discussion, Senator Gaines made a conceptual motion to provide the service of summons be by mail, and if the sheriffs department is used, the county is paid the sum of fifteen dollars. Senator Hoferer seconded the motion. Staff will draft the amendment and bring it back for the committee to consider and then take action.

The meeting adjourned.

A copy of the guest list is attached (See Attachment III).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 2-24-88

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
<del>Jim Clark</del>	<del>Topeka</del>	<del>KC DAA</del>
<del>Curtis Hottel</del>	<del>Topeka</del>	<del>Supreme Court</del>
KAY BILLEAUX	TOPEKA	SUPREME COURT
Matt Lynch	Topeka	Judicial Council
<del>Tom Sawyer</del>	<del>Wichita</del>	<del>The Coleman Co.</del>
BRAN ALDERSON	TOPEKA	WESTERN RETAIL TRADE ASSOCIATION & HARDWARE ASSN.
BARB REINERT	"	KPOH
Kevin Kelly	Overland Park	SUN
Tony Purcell	TOPEKA	K.S.A.

IN THE DISTRICT COURT OF RUSSELL COUNTY, KANSAS  
RUSSELL COUNTY DISTRICT COURT

DUKE DRILLING, INC.,

Plaintiff

1987 FEB 23 AM 10:10

vs.

RUSSELL, KS. 67665

Case No. 84-C-204

BOB R. WEBSTER, d/b/a  
CUSTOM OIL OPERATIONS, et al.

Defendants

JOURNAL ENTRY

Now on this 15th day of January, 1987, the above entitled matter comes on for hearing. The Russell County Sheriff, Tom Keys, appears in person and by and through Jerry E. Driscoll, Russell County Attorney. The movant, J & J Productions, Inc., appears by and through Keith Collett, of Junction City, Kansas.

THEREUPON, J & J Productions, Inc., presents their evidence and rests.

THEREUPON, Russell County Sheriff, presents his evidence and rests.

THEREUPON, the Court, having reviewed the file, heard the evidence and argument of counsel and being otherwise duly advised in the premises, finds to-wit:

1. That this Court has jurisdiction over the person and subject matter of this action.

2. That this matter stems from a partition action in which one or more oil and gas leases were sold after a result of a petition being filed for partition. Russell County, Kansas was not named as a defendant or interested party in the partition action that was filed. The leases were sold by the Sheriff of Russell County at a Sheriff's Sale. The attorney for the plaintiff, Warner Moore, prepared the documents for the Order of Sale and prepared the Sheriff's Return on the Sale or at least provided a form for the Sheriff to use in reporting the sale. Thereafter plaintiff's attorney Mr. Moore prepared an Order Confirming the Sale. The form that was furnished to the Sheriff contained in its body a provision or blank in which the Sheriff can insert the amount of taxes and tax liens due on the property that had been sold by him. This blank was not filled in either by Mr. Warner Moore or by the Russell County Sheriff. The Sheriff filled in the total sales price for which the property was sold and made his return from the total sales price without making any disbursements from those proceeds.

RUSSELL COUNTY KANSAS  
SEAL  
CERTIFICATE  
This is a true and correct copy of the Original  
filed in this court.  
JAN 24 1987  
Deputy  
Att. I

3. That Mr. Warner Moore then drafted an Order Confirming the Sale and an Order to pay out funds which was signed by the Court on July 21, 1986.

4. The Order to pay out funds distributed the sale proceeds to the guardian ad litem, to the plaintiff's attorney and made a distribution for publication costs.

5. The balance of the funds were then distributed to the owners of the lease hold interest.

6. Russell County Sheriff, Tom Keys, received no notice of the disbursement of the funds from the sale of the oil and gas leases involved in the above entitled matter.

7. No provisions was made for the payment of taxes.

8. The leasehold interest was purchased by J & J Production, Inc. of Herington, Kansas, who paid \$19,000.00 for the leasehold estate.

9. Subsequently, J & J Production, Inc., received a statement from the Russell County Treasurer for taxes which showed that the 1984 and 1985 taxes had not been paid. The 1984 taxes were in the amount of \$1,921.54 and the 1985 taxes were in the amount of \$934.60.

10. Upon receipt of the tax statement, J & J Production, Inc. filed a Motion for Amercement of the Russell County Sheriff, Tom Keys, pursuant to K.S.A. 60-2604. That the Order of sale issued by the Court in this case to the Russell County Sheriff dated April 1, 1986, and signed by the Clerk of the District Court, states in part "you are commanded to cause the above described oil and gas leasehold estate to be advertised and sold. The proceeds of said sale to be paid and applied by you as follows: . . . 2. "To the payment of all taxes and assessments that may be due upon said oil and gas leasehold estate". . . 5. "The surplus, if any, to be paid into the hands of the Clerk of this Court to await further order of this Court."

11. The Court finds that as a matter of fact the Russell County Sheriff conducted this sale apparently in the matter in which he is accustomed and in the matter in which Sheriff's sales are usually conducted in Russell County, Kansas.

12. That the Russell County Sheriff did not willfully refuse to pay the taxes due and owing in this case, however, the statute states that if the Clerk of the District Court, Sheriff or other officer willfully refuses or fails without clearly excusing cause to discharge the performing duty imposed upon him under this chapter, the Court may on the motion of the injured party cause such officer to be amerced for the benefit of the injured party.

13. I find that the Sheriff of Russell County, Kansas, failed to cause the taxes to be paid in accordance with the Order of Sale issued pursuant to the provisions of Chapter 60.

14. The Sheriff's cause for failure was that it has become customary in Russell county and indeed, insofar as I know all the counties in this judicial district, for the Sheriff to rely on the plaintiff's attorney to prepare the documents of sale, to prepare the return of the sale and to be the Sheriff's Scrivener. The Sheriff then affix his signature on the documents prepared by the plaintiff's counsel and in due course of the suit, plaintiff's counsel causes the proceeds of the sale to be distributed in accordance with the Order of Sale having, in fact, in the Clerk of the Court pay the taxes that are due and owing rather than the Sheriff.

15. The manner that was followed by the plaintiff's counsel in this case was not in accordance with what is customarily done in this county, but it was in accordance with what the law allows.

16. The Sheriff of Russell County, Kansas, does not have clearly excusing cause for failure to cause the taxes to be paid and the Court hereby directs the Russell County Sheriff be amerced in the amount of the unpaid taxes plus penalty and interest to the date of payment of same.

17. The statute further provides that the liability extends to the official bond of the officer. The Court notes that the bond company is not a part of this action or transaction, so it can not extend the liability directly to the bonding company.

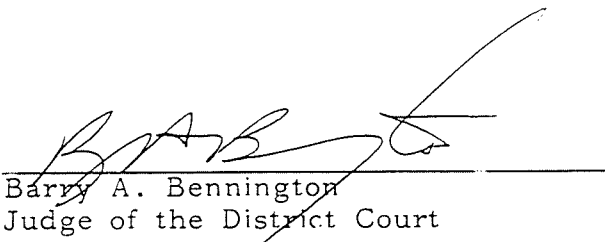
18. That the movants request for penalty is denied.

19. That the Court awards the movant, attorney fees, in the sum of \$1,000.00.

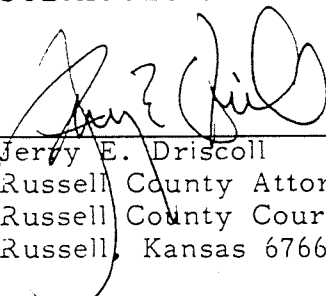
IT IS THEREFORE BY THE COURT, CONSIDERED, ORDERED, ADJUDGED AND DECREED that the findings as hereinabove set forth, hereby make and

constitute the order and judgment of the Court as if set forth verbatim.

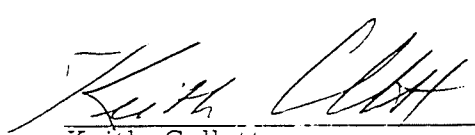
AND IT IS SO ORDERED.

  
\_\_\_\_\_  
Barry A. Bennington  
Judge of the District Court

SUBMITTED AND APPROVED BY:

  
\_\_\_\_\_  
Jerry E. Driscoll  
Russell County Attorney  
Russell County Courthouse  
Russell, Kansas 67665

APPROVED BY:

  
\_\_\_\_\_  
Keith Collett  
Attorney at Law  
P. O. Box 1325  
Junction City, Kansas 66441

## DOCKET FEE CHANGES

## CRIMINAL

- 1949-- criminal costs statutes; different criminal costs added together to arrive at total bill to be paid by convicted person or a prosecuting witness who brought a frivolous action. Additional miscellaneous fees authorized from time to time during this period included judges retirement, court reporter retirement, law library and bar docket fees. Chapter 260, L. 1949.
- 1974-- criminal docket fees established; \$40 for misdemeanor, \$70 for felony, \$100 for murder or manslaughter, \$40 for forfeited recognizance, and \$35 for appeals from other courts. Miscellaneous fees for law library, etc., to be deducted from docket fee, rather than added on to other criminal cost. Chapter 168, L. 1974.
- 1976-- traffic fees added to criminal docket fee statute, \$14.50 for cases disposed of by trial or hearing, \$10 if no trial or hearing conducted. Miscellaneous charges to be deducted, also. Chapter 163, L. 1976.
- 1977-- prosecuting attorneys' training fund established as a \$.50 deduction from criminal, traffic, and fish and game docket fees. Chapter 144, L. 1977.
- 1982-- criminal docket fees increased to \$144 for murder or manslaughter from \$100, other felony increased to \$114 from \$70, misdemeanor to \$84 from \$40, forfeited recognizance to \$44 from \$40, appeals from other courts to \$44 from \$35; traffic docket fee set at \$19. The \$40 increments were intended to finance a statewide district attorney system but the plan was not enacted. The \$4 increments were for distribution to two newly established funds; \$3 to the Law Enforcement Training Center Fund and \$1 to the Victims Reparations Fund. The only remaining miscellaneous charge from the 1949 law is the law library fee, which is also deducted. Chapters 116 and 167, L. 1982.
- 1985-- all criminal fees including traffic, fish and game, and watercraft violations increased \$1, and the additional dollar allocated to Crime Victims Reparation. Chapter 106, L. 1985.
- 1986-- all criminal docket fees including traffic, fish and game and watercraft violation increased \$2 and the additional two dollars allocated to the Law Enforcement Training Center Fund. Chapter 146, L. 1986.
- 1987-- all criminal docket fees including traffic, fish and game, and watercraft violations increased \$1. Deductions increased to \$1 from 50 cents for prosecuting attorneys' training fund, and a new deduction of 50 cents established for the Indigent Defense Services Fund. Chapter 134, L. 1987.

Current docket fee schedule attached.

Att. II

## Other Charges:

Probation fee; community corrections service fee

Misdemeanor \$25, K.S.A. 21-4610a All to State General Fund

Felony \$50

Alcohol and drug safety action program fee. For the benefit of local programs.

\$110, K.S.A. 8-1008 Two different methods of distribution.

Driver's License Reinstatement Fee

\$25, K.S.A. 8-2110; to State Treasurer for Motor Vehicle Operating Fund

Marriage License; \$25, to State Treasurer for distribution.

Docket Case Type	Fee	Statute	State	County	Law Library Fund	Pros. Attys. Fund	Aid to Indigent Def. Fund	CVR	LETC
Regular Civil	\$55.00	60-2001	Balance	\$10.00	X	--	--	--	--
Limited Action or Small Claims Appeal	\$55.00	61-2102 61-2709	Balance	\$10.00	X	--	--	--	--
Limited Action	\$500 or less \$10	61-2501	Balance	\$ 5.00	X	--	--	--	--
Limited Action	\$500.01 - \$5,000 \$30	61-2501	Balance	\$10.00	X	--	--	--	--
Foreign Judgment	\$55.00	60-3005	Balance	\$10.00	X	--	--	--	--
Small Claims (See limited action)	\$10.00 30.00	61-2704 61-2704	Balance Balance	\$ 5.00 \$10.00	X X	--	--	--	--
Probate, Estates	-\$ 95.00	59-104	Balance	--	X	--	--	--	--
Probate, Treatment	-\$ 20.00	59-104	Balance	--	X	\$1.00	\$.50	--	--
Probate, Property	-\$ 35.00	59-104	Balance	--	X	--	--	--	--
Probate, Trust, etc.	-\$55.00	59-104	Balance	--	X	--	--	--	--
Probate, Adoption	\$ 35.00	59-104	Balance	--	X	--	--	--	--
Murder or Manslaughter	\$149.00	28-172a	Balance	--	X	\$1.00	\$.50	\$2.00	\$5.00
Felony	\$119.00	28-172a	Balance	--	X	\$1.00	\$.50	\$2.00	\$5.00
Misdemeanor	\$ 89.00	28-172a	Balance	--	X	\$1.00	\$.50	\$2.00	\$5.00
Traffic, Fish & Game, Watercraft	\$ 29.00	8-2107 28-172a 32-155b	Balance	--	X	\$1.00	\$.50	\$2.00	\$5.00
Juvenile	\$ 15.00	38-1511 38-1613	Balance	--	X	\$1.00	\$.50	--	--
Appellate	\$ 55.00	Supreme Ct. Rule 2.04	All	--	--	--	--	--	--



I. Revenue

Docket Case Type	1974	1976	1977	1982	1984	1985	1986	1987
Murder/Manslaughter	100.00	100.00	100.00	144.00	145.00	146.00	148.00	149.00
Felony	70.00	70.00	70.00	114.00	115.00	116.00	118.00	119.00
Misdemeanor	40.00	40.00	40.00	84.00	85.00	86.00	88.00	89.00
Traffic, Fish & Game, Watercraft								
W/trial		14.50	14.50	-	-	-	-	-
W/O trial		10.00	10.00	19.00	25.00	26.00	28.00	29.00
*Juvenile	-	-	-	15.00	15.00	15.00	15.00	15.00

II. Distribution

Prosecuting Attys Fund	-	-	.50	.50	.50	.50	.50	.50
Aid to Indigent Def. Fund	-	-	-	-	-	-	-	.50
Crime Victims Fund	-	-	-	1.00	1.00	2.00	2.00	2.00
Law Enfor Train Cntr Fund	-	-	-	3.00	3.00	3.00	5.00	5.00
State General Fund	Balance	Balance	Balance	Balance	Balance	Balance	Balance	Balance
Law Library Fund	-	-	-	-	-	-	-	-

\*Only Prosecuting Attorneys Fund and the Aid to Indigent Defense Funds receive and assessment from the Juvenile docket fee