

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS

The meeting was called to order by SENATOR AUGUST "GUS" BOGINA at
Chairperson

8:00 a.m./~~p.m.~~ on April 1, 1988 in room 123-S of the Capitol.

All members were present except:

Committee staff present:

Research Department: Scott Rothe, Russ Mills
Revisor's Office: Norman Furse
Committee Office: Judy Bromich, Pam Parker

Conferees appearing before the committee:

Senator Phil Martin
Eric Rosenblad, Kansas Legal Services
Michael George, Attorney, SRS
John Torbert, Kansas Association of Counties
Steven R. Wiechman, Kansas Association of Counties
Gerry Ray, Johnson County Board of Commissioners
Paul Johnson, PACK

HB 3046 - County social welfare provisions repealed.

Senator Martin stated that HB 3046 stems from a litigation in his county which may have statewide effect. He stated he would hate to see a legislative decision before the Judge has ruled on the case.

Eric Rosenblad presented testimony. (Attachment 1) He stated that he is the attorney for the woman who filed the law suit in Pittsburg, Kansas which has caused concern for this legislation. He stated that he does not believe there is a crisis in the Crawford County District Court. Any final decision in this case, due to the appellate process, would not be likely to occur until January, 1989. He outlined four reasons HB 3046 should be opposed. (1) K.S.A. 39-749 is the only provision they know of that allows or authorizes counties to voluntarily, or on their own, provide welfare assistance. If this is repealed the counties would be powerless to help the poor should there be an immediate need. (2) This is not transition legislation as it has been capped. Representative Ehrlich wrote this law in 1973 at request of the counties, intending to give the counties the opportunity to have a continuing role in the providing of welfare. It is little used but remains vital. (3) The legislature, in some cases, should respond to the outcome of litigation. The legislature should not intervene prematurely before the decision has even been rendered by the District Court. That would be speculation. (4) The Kansas Constitution requires the counties of the state to provide, as prescribed by law, for their inhabitants who have claims upon the aid and sympathy of society. The Constitution also allows the state to participate in that.

In answer to questions, Mr. Rosenblad stated that he was not aware of other situations where K.S.A. 39-749 has been used. The amount of the law suit in Crawford County involves, at most, \$723 and the state's responsibility in that law suit would be \$200 for the two cases, November and December of 1986.

Mr. George stated that he represented SRS in the law suit mentioned above in Crawford County. He stated that the Department supports HB 3046. The statutes were certainly transitional statutes at the time in which they transferred all of the powers from the County Welfare Association to the state. He pointed out that it is the responsibility of the state, with the programs they administer and the money which has been appropriated by the Legislature, to determine whether or not someone is eligible for assistance. Under the present statute, the state would have no input into the eligibility determination. The state would simply be paying money to the counties. This creates a dual system in allowing counties to develop their own standards for approving assistance. He pointed out that with

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS,

room 123-S, Statehouse, at 8:00 a.m./~~pm~~ on April 1, 1988

the state determining eligibility, it eliminates confusion and develops uniformity. He pointed out that he was not asking this Committee, or any one else, to make a decision on this bill based on the case in Crawford County. He stated that he does not contend that Kansas counties are in violation of the law or the Constitution, they are in compliance with the present law in that they are allowing the state of Kansas and SRS to administer the welfare program.

Mr. Torbert introduced Mr. Wiechman who presented testimony. (Attachments 2 and 3) Mr. Wiechman stated that a method by which counties could address emergency situations for people who need assistance would be through home rule statutes. He stated that their concern is what is going to happen in the future, what kind of a burden is it going to place upon taxpayers. The impact could be tremendous. To their knowlege, K.S.A. 39-749 has not been used except in this one case in Crawford County.

Ms. Ray presented her testimony. (Attachment 4) Ms. Ray stated that Johnson County provides utility assistance to the elderly after eligibility screening in addition to transportation to the elderly and handicapped. They have a food pantry for emergency help. They feel this is the county role.

Mr. Johnson stated that the woman in Crawford County exhausted her eligibility for TGA and was left with no assistance at all through November and December, 1986. It was thereafter that she became disabled and eligible for GAU. It is his organization's feeling that it is a public policy question and if counties want to walk away from this mandate and feel there is not entitlement for this assistance, the proper route is to go with an amendment to take it out of the Constitution and clearly show it is simply a state obligation and the state can set any regulations and programs it desires. He feels that this is an inadequate and unfair way to change a technical part of the law that speaks to a much broader public policy question.

Senator Werts moved, Senator Gaines seconded, to report HB 3046 favorably for passage. The motion carried on a roll call vote.

Senator Gannon moved, Senator Doyen seconded, to reconsider Committee action on the Public Broadcasting portion of HB 2720 which was voted upon during the March 31st, 11:00 a.m. meeting. The motion carried on a voice vote.

Senator Gannon moved, Senator Talkington seconded, to amend the Senate Subcommittee Report on HB 2720, FY 1989, by providing language that would require the Public Broadcasting Commission to conduct a feasibility study on moving KOOD from Bunker Hill to the campus of Fort Hays State University and report back to the 1989 Legislature. The motion passed on a voice vote.

Senator Talkington moved, Senator Doyen seconded, to adopt the Senate Subcommittee Report on HB 2720 as amended. The motion carried on a voice vote.

The meeting was adjourned.

TESTIMONY OF ERIC ROSENBLAD
BEFORE THE SENATE WAYS AND MEANS COMMITTEE

HOUSE BILL 3046

APRIL 1, 1988

Mr. Chairperson, Members of the Committee, I very much appreciate the opportunity to appear before you today. My name is Eric Rosenblad. I am the Managing Attorney of Legal Services of Southeast Kansas.

As this is my first appearance before your committee, I think it would be useful to provide you a little information with respect to the organization and mission of Kansas Legal Services. Kansas Legal Services is a non-profit corporation whose mission is to provide a wide variety of legal services for low income Kansans. We serve all 105 Kansas counties through twelve service offices regionally located throughout the state.

I am here today in opposition to House Bill 3046, introduced by the Kansas Association of Counties. Specifically, we are in opposition to the removal of K.S.A. 39-749, which provides:

The board of county commissioners of any county may authorize expenditures from the county general fund to provide assistance in emergency circumstances to any person qualified under the provisions of this act to be a recipient of public assistance. The county shall be reimbursed from the state social welfare fund for any such expenditures up to a maximum amount of one hundred dollars (\$100) for each case.

We believe that the repeal of K.S.A. 39-749 will have profound public policy implications for Kansas citizens. You will note that as we review the development of Kansas Public Assistance programs below, that the Kansas Legislature has never failed to provided a means for assisting the poor who are in need. **Repeal of this statute will, for the first time in our history, leave a significant portion of indigent Kansas citizens without the protection of the public assistance safety net.** We believe that when the facts are fully set out this committee will properly reject any repeal of this statute.

Development of Kansas Public Assistance

To more fully understand our position it is important that I review the development of Kansas Public Assistance laws.

The first of three major periods in public assistance began with the adoption of the Wyandotte Constitution on July 29, 1859. Art. 7, §4 provided:

§4. Aged and infirm persons. The respective counties of the state shall provide, as may be prescribed by law, for those inhabitants who, by reason of age, infirmity, or other misfortune, may have claims upon the sympathy and aid of society.

Following admission to the Union, the legislature passed An Act For the Relief of the Poor. (1862 Kan. Sess. Laws, Ch. 163.) At Section 4, the statute provided:

SEC. 4. Every county shall relieve and support all poor and indigent persons lawfully settled therein, whenever they shall stand in need thereof, and the board of county commissioners may raise money for the support and employment of the poor in the same way and manner as in the twenty-ninth section of this act is provided.

The 1862 Act provided a basic framework of strict County responsibility for public assistance and remained substantially unchanged for more than 70 years.

The second major period of public assistance began in the 1930s. The Federal government developed many major programs creating a new need for centralized state administration in order to participate in these programs. To remove any lingering doubt that the state could participate in these programs, Art. 7, §4 of the Kansas Constitution was amended in 1936 to add the following:

Provided, however, The state may participate financially in such aid and supervise and control the administration thereof.

With the Constitution amended, the legislature enacted statutes creating the State Board of Social Welfare in 1937 (1937 Kan. Sess. Laws, Ch. 327). This statute made the County Commissioners the sole members of newly created County Boards of Social Welfare. The counties continued to be responsible for day to day operation of public assistance programs through the County

Board of Social Welfare. Major responsibility for funding public assistance remained with the counties. The most significant change from the 1862 system was the state's responsibility to provide oversight, direction, and guidance, and to hear and settle disputes arising from the County Boards, largely due to Federal requirements.

In 1972, Art. 7, §4 of the Constitution was amended in a major effort to update the entire Constitution. This technical amendment exchanged "Provided, however" for a period to punctuate §4 into two sentences as it presently appears in our Constitution.

The creation of SRS at an umbrella agency was considered in January of 1973 through House Bill 1039. The provisions found in K.S.A. 39-749 were not part of the original H.B. 1039.

On January 23, 1973, the House Public Health and Welfare Committee, John C. Peterson, Chair, heard testimony in support of H.B. 1039. This bill, presented by the State Director of Social Welfare, would establish state administration and regionalization of the various welfare programs. The next day, January 24, opponents testified raising several concerns about a centralized welfare system and the perceived loss of local control. The committee discussed H.B. 1039 again on February 5 and on February 6 an amendment was proposed by Representative Ehrlich to include the language now found at K.S.A. 39-749. On February 7, the amendment was adopted.

Thus the provision for local county participation was intentionally inserted into the legislation creating an otherwise centrally administered welfare program. It was not transitional in nature, but was enacted as a direct response to demands for continuing county level involvement. The County Boards of Social Welfare were abolished and all duties of those boards, **not the counties**, were transferred to SRS. The same Act that gave SRS broad and sweeping authority also included the provision now found at K.S.A. 39-749 regarding provision of emergency public assistance by the counties. K.S.A. 39-749 remains a little used but integral part of the new system for delivering public assistance to low income Kansans.

Current Status of Poverty in Kansas

According to a study recently released by the Institute for Research on Poverty at the University of Wisconsin, the official poverty rate in Kansas increased from 8.3 percent in 1979 to 13.8 percent in 1985. Kansas has the seventh highest rate of increase

in poverty in the United States during the 1980s. There are now approximately 338,000 Kansans living below the poverty line. Many more are "near poor" and having difficulty making ends meet. Farmers and rural residents have been placed under particular financial stress in recent years. Nationally, the poverty rate on the farm in 1986 was 19.6 percent as compared to 13.4 percent in the general population.

The vast majority (approximately 75 percent) of those officially unemployed in Kansas do not receive unemployment benefits. Half of the people receiving General Assistance in Kansas, despite a history of full-time work, have never received unemployment benefits.

Emergency service providers of all kinds in all parts of Kansas have experienced unprecedented increases in demand for their services during the past year. Health care needs in particular are going unmet because of the small percentage of emergency care providers who offer health care services.

The Kansas legislature has adopted a minimum survival budget that is only approximately 85 percent of the official poverty threshold established by the Department of Health and Human Services. The monthly cash assistance provided through Aid to Families with Dependent Children (AFDC) to a family of three in Kansas amounts to 44 percent of the poverty threshold. The average Unrestricted General Assistance (GAU) grant in Kansas for a three person family is only 33 percent of the federal poverty income guideline.

The Present "Social Safety Net"

Today Kansans who are in need may turn to a limited network state and federal assistance programs:

1. Retired workers may turn to Social Security insurance or Supplemental Security Income benefits administered by the federal government.

2. Children and their eligible parents may receive assistance through the ADC program.

3. Disabled individuals of a working age may receive disability benefits from the federal government (Social Security or SSI), the state (general assistance unrestricted), or perhaps the Veterans Administration or private insurance.

4. Vocational Rehabilitation services are offered to those who can be assisted to enter or re-enter the work force.

5. Unemployed individuals who can work may receive unemployment compensation and can seek help from employment placement programs.

Those Not Covered by Federal or State Programs

Except for the provisions of K.S.A. 39-749 no adequate program exists to help individuals who are:

- 1) 18-55 years old,
- 2) Not disabled,
- 3) Not eligible for vocational rehabilitation,
- 4) Have no children in the home, and
- 5) Are unemployed, have no unemployment benefits or savings to live on.

The typical person in this group has very low or no job skills, has little or no work experience in skilled labor, and usually has physical and/or mental limitations that severely compromise his or her ability to compete in a tight job market.

Lila Catanzaro is such a person. She is 52 years old and a Navy veteran. She raised a daughter and then entered the work force as a university cafeteria worker for almost fourteen years. When that job was eliminated she sought other employment in nursing homes and as a personal care attendant. She could not do the work and cannot find permanent employment. She received and exhausted unemployment benefits. She is not disabled, but is limited by her age, excessive weight, high blood pressure, and chest pain. She has no marketable job skills and faces stiff competition from younger, more able bodied workers in a tight Southeast Kansas job market.

Ms. Catanzaro alleged that she was a destitute resident of the County and without adequate resources to meet her needs. The claim further stated that she was not eligible to receive any public assistance and made a demand upon the County to furnish her with emergency assistance based upon Article 7, Section 4 of the Kansas Constitution and K.S.A. 39-749.

The Board denied her claim and a law suit was filed in state District Court on November 7, 1986. The suit has since survived a motion to dismiss and a decision is expected within the next several weeks.

There are no federal or state programs that could help her meet her undeniable needs. Her only alternative was to seek help from the county under K.S.A. 39-749.

The "Gap" in the Federal and State Safety Net

Prior to July 1986, individuals such as Ms. Catanzaro were able to get some help from the state through the SRS Transitional General Assistance program (TGA).

The TGA used to be available twelve months out of the year. In July 1986, SRS restricted the program to pay any individual only four out of twelve months in a fiscal year. By December, the restriction was reduced to one month, and in 1987, the program was eliminated entirely in appropriation measures. Thus the only existing program at that time was entirely eliminated.

Transition Statute

We have no objection to the repeal of unnecessary transition statutes. The committee may wish to broaden this bill to include other transition statutes such as K.S.A. 39-744, 39-745, and 39-746.

K.S.A. 39-749 was not and is not a transition statute. The approximately 4600 Kansans who were receiving TGA in July 1986 had relied on programs at the state level to provide assistance. When the program was eliminated, the need remained. The counties that have not been asked to act under K.S.A. 39-749, now had to face the responsibility given to them in 1973.

Conclusion

The Kansas legislature has always found a way to maintain programs for the poor in Kansas who are in need of assistance. At this time, this means that a part of this responsibility now rests with the counties. When changes in our welfare programs have been needed, the legislature has always found a way to continue effective assistance and not to abandon Kansans in need. We oppose efforts to abolish the only assistance left for these poor and instead encourage efforts to make Kansas welfare programs more effective. We further oppose efforts by any attorney to attempt to win cases before the legislature before they are first successful in the courts.

Respectfully submitted,

Eric L. Rosenblad

Kansas Association of Counties

Serving Kansas Counties

SENATE WAYS & MEANS COMMITTEE

April 1, 1988

HOUSE BILL 3046

MR. CHAIRMAN and MEMBERS OF COMMITTEE:

I am Steven R. Wiechman, appearing on behalf of the Kansas Association of Counties. We are here today in support of HB 3046 which was introduced at our request.

This is the testimony that was presented to the House Local Government Committee.

In 1973, the social welfare statutes were enacted transferring many of the functions for welfare from the county to the state. Several statutes were created one of which was to provide a way by which counties could respond and provide emergency welfare to its residents.

This discretionary authority however, gave use to conflicting interpretations. This resulted in a lawsuit being filed against a Board of County Commissioners because of the Boards refusal to exercise the discretionary authority set forth in the statute. However, when you look at KSA 39-749 closely, you'll find an interesting twist. That twist is that even though a resident has been denied or has failed or is not qualified for public assistance from federal or state sources, the Board could grant the assistance and the State, statutorily is required to reimburse the local units of government. This is required, even if the State is out of funds, has no program available, or the recipient is not qualified. The statute created a dual welfare system, both of which is funded by the State.

April 1, 1988

The attached newspaper accounts cover part of the concerns at hand. However, we are not advocating any constitutional law change and believe that this bill will go far to solving the conflict.

If you have questions, I will attempt to respond. In any case, I want to express my appreciation^e and consider it a privilege to appear before you.

Respectfully submitted,

STEVEN R. WIECHMAN
General Counsel
Kansas Association of Counties

County's responsibility to poor at issue in court case

PITTSBURG (AP) — A court case scheduled for today in Crawford County could decide whether Kansas county governments are responsible for caring for the poor.

Lila Catanzaro, 51, of Pittsburg, sued the Board of County Commissioners of Crawford County in 1986 after the state limited the number of public assistance payments she could receive.

Her suit contends she was indigent and that Crawford County has a financial responsibility for public wel-

fare under Kansas law. Catanzaro had been enrolled in the state's Transitional General Assistance program, which provided financial aid to low-income people with marginal job skills or little, if any, employment experience.

In fiscal year 1987 the state cut back payments to Catanzaro and others and subsequently eliminated the program because of budget cuts.

Catanzaro sued Crawford County in district court for \$723.60 in assistance that she contended she needed

to live on in November and December of 1986.

John Torbert, executive director of the Kansas Association of Counties, said the case could result in a "blank check" on the county property tax dollar.

"Does that mean every time the state cuts funding to a certain social welfare program, people are going to turn to us?" he said. "I think you can make a rational case that leads you down that path."

1/28/88

Suit asks county to pay for indigent

By David Goldstein
Of the Metropolitan Staff

Although few county officials in Kansas appear to know anything about it, a court case scheduled for Thursday in Crawford County could cause their governments serious financial problems and saddle them with a new responsibility: caring for the poor.

The case involves Lila Catanzaro, 51, of Pittsburg, who sued the Board of County Commissioners of Crawford County in 1986 after the state limited the number of public assistance payments she could re-

ceive. Her suit contends that she was indigent and that Crawford County also has a financial responsibility for public welfare under Kansas law.

Attorneys on both sides said the case probably would be appealed, regardless of the outcome, and could end up before the Kansas Supreme Court. Several county officials in Kansas, after being apprised of the issue, said they were fearful about the potential impact of the case on their county budgets.

"It could be devastating," said Reno

County Commissioner Mildred Beaman, president of the Kansas County Commissioners Association.

Catanzaro is a high school graduate, naval veteran and has about 50 hours college credit. She was married, had a daughter and was a homemaker for many years. She could not be reached for comment, but her attorney, Eric Rosen, managing attorney for Legal Services of Southeast Kansas, said she was separated from her husband several years ago and worked in a college cafeteria between 1975 and 1980.

See KANSAS, B-4, C-1

Kansas woman's suit asks counties to pay

Continued from Page B-1

and 1984. She then worked occasionally as an attendant to home-bound adults.

Catanzaro had been enrolled in the state's Transitional General Assistance program, which provided financial aid to low-income people with marginal job skills or little, if any, employment experience.

In fiscal year 1987 — July 1986 through June 1987 — the state cut back payments to Catanzaro and others from 12 a year to four. She received payments from July through October 1986. The state subsequently reduced payments to one month and then eliminated the program in 1987 because of budget cuts.

She sued Crawford County in district court for \$723.60 in assistance that she contended she needed to live on in November and December of 1986.

She sued, Rosenblad said, because the Kansas Constitution says counties shall provide, according to state law, for people who "by reason of age, infirmity or other misfortune, may have claims upon the aid of society."

That clause, plus Kansas law concerning emergency aid to people on public assistance, is the basis of Catanzaro's claim.

Crawford County has argued that it has no obligation under the constitution or state law.

"She wasn't a person we would consider as being in need, even in the event we did have an obligation to pay such people," Crawford County Attorney Carla Stovall said.

She said the state constitution says county responsibility for public welfare is determined by state law.

The state law in this case, Kansas Statute 39-749, says counties "may" spend money on emergency aid for people who qualify for public assistance, but they don't have to, Stovall said.

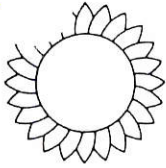
"It's permissive and not obligatory," she said. The Crawford County commissioners could not be reached for comment.

The state's public welfare program is a safety net for Kansas residents who don't qualify for federal aid programs. Among the low-income people it covers are those with medical disabilities, those in vocational and mental health rehabilitation programs and families with children not eligible for federal aid.

In fiscal year 1986 — July 1985 through June 1986 — 11,068 people statewide were covered under the Transitional General Assistance program, costing the state more than \$5 million; 745 of them were in Wyandotte County, receiving \$340,700 in state payments, and 114 were in Johnson County. Those people received \$52,143 in state payments.

Mike VanLandingham, area director of the Olathe office of the Kansas Department of Social and Rehabilitation Services, which administers the state's assistance programs, said the lawsuit raised serious questions.

"Suppose the courts declare counties are responsible," he said. "How far could the courts go in specifying that responsibility? How are counties going to fund that?"



Johnson County
Kansas

SENATE WAYS AND MEANS COMMITTEE

WEDNESDAY, MARCH 31, 1988

HEARING ON HOUSE BILL 3046

TESTIMONY OF GERRY RAY, INTERGOVERNMENTAL COORDINATOR
JOHNSON COUNTY BOARD OF COMMISSIONERS

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS GERRY RAY, REPRESENTING THE JOHNSON COUNTY BOARD OF COMMISSIONERS. THANK YOU FOR THE OPPORTUNITY TO SPEAK IN SUPPORT OF HOUSE BILL 3046.

THE BILL REPEALS OBSOLETE STATUTES THAT WERE ADOPTED BY THE 1973 LEGISLATURE AS A TRANSITIONAL MEASURE NEEDED DURING THE TRANSFER OF RESPONSIBILITY FOR SOCIAL WELFARE FROM COUNTIES TO THE STATE. WE WERE UNAWARE OF THE EXISTENCE OF THESE STATUTES UNTIL RECENTLY, WHEN THEY WERE ABRUPTLY BROUGHT TO OUR ATTENTION DUE TO LITIGATION BROUGHT AGAINST A COUNTY FOR NOT PROVIDING SOCIAL WELFARE.

THE REPEAL OF THESE STATUTES CANNOT BE CONSIDERED A LEGISLATIVE POLICY CHANGE, THE DECISION WAS MADE IN 1973 THAT SOCIAL WELFARE WAS TO BE THE RESPONSIBILITY OF THE STATE. THE FACT THAT FOR FOURTEEN YEARS NO ONE QUESTIONED OR CHALLENGED THAT POLICY IS INDICATION IT WAS UNDERSTOOD AND ACCEPTED.

THE STATE HAS DEVELOPED THE SYSTEM AND ESTABLISHED THE MECHANISM FOR THE PROPER ADMINISTRATION OF SOCIAL WELFARE. COUNTIES DO NOT HAVE THE APPROPRIATE SYSTEM TO ADEQUATELY PROVIDE THIS SERVICE TO THE PEOPLE. THE MONEY THAT WOULD BE REQUIRED FOR 105 COUNTIES TO SET UP A MEANS TO HANDLE THE NECESSARY SCREENING AND COUNSELING OF WELFARE RECIPIENTS WOULD BE MUCH BETTER SPENT HELPING THE INDIGENT OF KANSAS.

IF THESE LAWS REMAIN ON THE BOOKS ALL KANSAS COUNTIES ARE IN JEOPARDY OF BEING FORCED TO DEFEND THEMSELVES FROM LEGAL ACTION BROUGHT UNDER INVALID STATUTES. WE BELIEVE THE OBJECTIONS TO HB 3046 RAISED BY THE OPPONENTS DO NOT JUSTIFY THE LIABILITY IMPOSED ON COUNTIES BY RETAINING OBSOLETE STATUTES. JOHNSON COUNTY URGES THIS COMMITTEE HELP CARRY OUT THE ORIGINAL INTENT OF THE LEGISLATURE BY PASSING THE BILL AND THUS RELIEVING COUNTIES OF THIS LIABILITY.

ATTACHMENT 4
SWAM 4-1-88