

Approved

  
Date

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by REPRESENTATIVE THOMAS F. WALKER at  
Chairperson

9:00 a.m. ~~XXX~~ on WEDNESDAY, MARCH 1, 1989 in room 522-S of the Capitol.

All members were present except:

Representative Graeber - Excused

Committee staff present:

Carolyn Rampey - Legislative Research

Avis Swartzman - Revisor

Jackie Breymeyer - Committee Secretary

Conferees appearing before the committee:

Louis Armstrong - Kansas Barber Board

Elizabeth Taylor - Kansas Barbers for Legislation Action

Dennis Baker - SRS

Cheryl Brown Henderson - Vocational Specialist, Dept. of Education

Ben Coates - SRS

James R. Davis - President, Kansas Polygraph Association

Kyle Smith - Assistant Attorney General for KBI

Jeff Gitlin - Licensed Private Investigator

Mickey Gitlin - Licensed Private Investigator

Dave Yates - Kansas State Firemarshall's Dept.

The meeting of the House Governmental Organization Committee was called to order by Representative Thomas F. Walker, Chairman. He said the minutes would stand approved at the end of the meeting if there were no corrections or additions.

The first order of business was House Bill 2466 - relating to the practice of barbering

Louis Armstrong, Kansas Barber Board appeared on the bill. He stated the major feature of the bill is the raising of license fees in order to meet administrative costs. It is a fee agency, with 80% of collected fees to support the agency, and the other 20% deposited in the general fund. The bill would authorize the Board to raise barber fees from \$35 to \$45 and shop licenses from \$15 to \$20. Present Board makeup consists of 3 licensed barbers and two members who represent the public. The Board would like to see HB 2466 amended to have four professionals and one public member. (Attachment 1)

Elizabeth Taylor, Kansas Barbers for Legislative Action, spoke to the bill next. She said her organization supports the increased fee to cover administrative costs. They also support Mr. Armstrong's amendment on Board makeup.

The Chairman asked for other conferees on HB 2466. Seeing none, he declared the hearing closed on HB 2466.

The Committee turned to HB 2467 - KanWork interagency coordinating committee

Dennis Baker, Special Assistant to Secretary Barton for KanWork, addressed the Committee. He spoke in support of the bill which would add a representative of the State Department of Education from the area of Vocational Education/Community Colleges.

At the November Interagency Coordinating Committee meeting, Dr. Berger, who represents the local school districts asked why there was no representation from the State Department of Education. This question was also posed by Cheryl Henderson, Department of Education. A motion to this effect was made and seconded by the Interagency Committee and carried. Based upon this recommendation, the Interagency Coordinating Committee requests this addition to the Committee. (Attachment 2)

Cheryl Henderson gave a few brief comments. She said the community colleges are governed differently and are not under the auspices of the school district. Her concern is to be sure there will be no duplicated efforts in the community.

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 HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATIONroom 522-S Statehouse, at 9:00 a.m. ~~XXXX~~ p.m. on WEDNESDAY, MARCH 1, 19<sup>89</sup>

It only makes sense that the Department of Education be included so they are well aware of what is going on in terms of funds and information getting to the right place.

As there were no other conferees on HB 2467, the Chairman declared the hearing closed.

HB 2472 - the placement of dentists in the unclassified service who work in state institutions under the direction of the Commissioner of Mental Health and Mental Retardation Services

Ben Coates, Director of Policy, SRS, said that this bill would allow the agency to be competitive in the recruitment and retention of dentists. Permission has had to be granted to go above normal entry level salary to hire the last two dentists. Currently, three dentists are on staff, two of which are at the top of their salary range. If the agency is going to compete with other states and salaries, Kansas must be able to offer market rates to dentists. There are special challenges in working with these populations. (Attachment 3)

As there were no other conferees to speak to the bill, Chairman Walker declared the hearing closed on HB 2472.

The hearing opened on HB 2491 - Polygraphists

~~Ren~~ <sup>James R.</sup> Davis, Emporia, President of the Kansas Polygraph Association, testified on the bill. His organization applauds the work of Representative Brown for her work on this legislation, but at the same time has concerns with certain sections of the bill. Sections of the law would tend to discriminate against practicing polygraph examiners by requiring all applicants for a license to have two years of college or its equivalent. This is more restrictive than 95% of the polygraph schools in the country. He referred to Sec. 5 which he said would discriminate against an examiner based only on the number of examinations performed rather than on work quality. (Attachment 4)

Kyle Smith, Assistant Attorney General for the KBI, spoke next. While the efforts to professionalize and regulate polygraph examiners is good, the Attorney General's office feels the bill is no longer an appropriate response to that need. There are very few private polygraph examiners. Those examiners still existing are either in law enforcement or private investigators. The Attorney General feels that a board for such a small number of people is not economically feasible and a waste of governmental time and effort.

The Revisor of Statutes Office is drawing up a proposal by the Attorney General legislation combining the board for both polygraph examiners and private investigators. It is felt that this board would address the needs of the examiners and the private investigators. It is questionable whether this legislation will get out of the Revisor's office in time to be considered. The Attorney General's office recommends no passage of this bill and the repeal of K.S.A. 75-740 thru K.S.A. 75-749 and amend K.S.A. 75-7bol(a) by inclusion of the definition of detective business polygraph examinations except those run by a public agency. (Attachment 5)

Jeff Gitlin, private investigator, stated he disagrees with the concept of a person on the board with no technical expertise in the field.

Mickey Gitlin, private investigator, stated that the Attorney General had ruled that individuals administrating polygraph examinations fell under the definition of private investigators. He asked what will become of people that fall into his category. This ruling has been in effect for at least 15 years and he has operated ever since with that understanding.

Dave Yates, Kansas State Firemarshal's office said that he has been administering tests for a long time but he is not a college graduate and does not meet the hours requirement. His department would have to find something else for him to do if legislation passed because it is the nature of his employment that not that many tests are given.

Gary Davis made a few brief comments. He was appointed to the state board by the Attorney General. Prior to the meeting, he was not aware of any opposition to the bill. He feels the continuing education aspect is a good one and would serve the public interest. (Attachment 6)

The Chairman closed the hearing on HB 2491. He gave the agenda for the rest of the week.

The meeting was adjourned.



My name is Louis Armstrong and I am from Fort Scott. Effective Feb. 18th of this year I was appointed Administrative Officer for the Kansas Barber Board. As of today I am the only full time employee but I hope to have a part time secretary in the not too distant future. We have two ½ time shop inspectors in the field.

The majority of changes in HB 2466 relate to language changes. The most important feature would grant authority to the barber board to raise license fees in order to meet administrative costs.

We are a fee agency supported entirely by 80% of fees collected with the other 20% deposited in the State General Fund. It has been approximately ten years since the last fee increase.

On July 1, 1988, our cash carry over was \$48,169. On July 1, 1989 it will drop to approximately \$35,000 and by July 1, 1990 to approximately \$15,000. We license barbers and barber shops on a quarterly basis depending on last name of the licensee. Consequently, during the first quarter of Fy-1990 we would collect only 1/4 of our annual revenue and cash operating funds could be at a critical level.

The bulk of our annual revenue is derived from a \$35.00 fee for a barber license and \$15.00 for a shop license. Under the present fee structure, and with 20% allocated to the general fund, our net revenue for operating costs from barber and shop fees is approximately \$63,200. Other fees for schools, student examinations, instructors etc. generate additional revenue but the number of such fees collected is relatively small. Our expenditures for this fiscal year will be approximately \$86,000 and approximately \$93,000 in Fy-90.

This bill would authorize the barber board to raise the barber fee from \$35 to \$45 and the shop license from \$15 to \$20. There would be similar increases in the other categories.

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It is our present thinking that we would raise the barber and shop fees by \$5 on or about Jan. 1, 1990. This would generate approximately \$5,500 before the end of FY-90 and enhance the cash carry over into FY-91.

Although this bill would grant authority to raise the barber fee by another \$5, I would hope that this could be deferred until need was absolute. The barber fee is now 350% higher than a cosmetology license even though both crafts provide the same basic service to the public.

Mention should be made of SB-66 which would merge the administrative functions of the barber and cosmetology boards. The separate boards would continue to function and set their own policies, rules and regulations. Because of efficiency improvements that would occur through the merger, it should not be necessary to raise the barber fees. If SB-66 does not pass then HB 2466 needs to be in place in order to meet operational needs into fiscal years 90 and 91.

I have discussed one possible change to HB-2466 with board members and we are in agreement. The present make up of the five member board calls for 3 licensed barbers and two members to represent the public.

Four times a year the board meets in Topeka or Wichita to formulate policy and rules changes. This is always on a Sunday. On the day following, the board conducts written and practical examinations for students who have completed their schooling. It is very essential that those conducting the practical portion of the examination be professional barbers. On occasion, because of weather, illness or other emergencies, a barber member may be absent. To cover contingencies we would like to amend this bill to have four professionals and one public member.

Sec. 20 K.S.A. 74-1805 (Lines 405 - 408)

~~Three-~~ Four members of the board shall be barbers and ~~two~~  
one ~~members-~~ member shall represent the general public.

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES  
Winston Barton, Secretary

Testimony concerning House Bill 2467

Relating to the KanWork Interagency Coordinating Committee's recommendation that a representative from the State Department of Education who is knowledgeable in the area of vocational-technical education or community colleges, or both, be added to the committee.

I am Dennis Baker, Special Assistant to Secretary Barton for KanWork. I am pleased to have the opportunity to represent the KanWork Interagency Coordinating Committee in their request to add a member to the committee in response to House Bill 2467. I have prepared a brief summary to explain the request and provide other information that I feel would be helpful to you in your deliberations on this proposal.

A major provision of the KanWork Act involves education and training for AFDC clients to prepare or update them with job skills. An important link with SRS and the KanWork Program is the Area Vocational-Technical schools and the Community Colleges. Most of these institutions already offer courses in technical update, English as a second language, Displaced Homemaker Orientation, and G.E.D. We are proposing an amendment to House Bill 2644, Section 8 (a) that will add a representative of the State Department of Education from the area of Vocational Education/Community Colleges.

In the few short months that the KanWork Program has been in full operation, we have had tremendous support from the Community Colleges and the Vocational-Technical schools in all four counties. In Barton and Finney counties, especially, the Community College serves as the major provider for the educational and vocational training component of the KanWork client's self-sufficiency plan.

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Testimony - House Bill 2467  
March 1, 1989  
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At our November Interagency Coordinating Committee meeting, Dr. Stuart Berger, who represents local school districts, asked why there was no representation from the State Department of Education, since the Community Colleges and Vocational-Technical Schools play such an important part in the KanWork Program. Two weeks earlier at a presentation to the state program coordinators of Single Parent/Homemaker and Displaced Homemaker Programs, Cheryl Henderson, Vocational Specialist with the Kansas Department of Education, asked the same questions.

A motion by Susan Irza, designee of the Secretary of Administration, to request the addition of this member to the committee as established in the KanWork Act (House Bill 2644, Section 8 [a]) was seconded by James Bolden. The motion carried unanimously. Based upon this recommendation of the Interagency Coordinating Committee, we request this addition to the Committee.

Thank you for the opportunity to address your committee.

Dennis R. Baker, Ed. D.  
Special Assistant to the Secretary for KanWork  
Social and Rehabilitation Services

March 1, 1989

TESTIMONY  
KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES  
WINSTON BARTON - SECRETARY  
HB 2472

The Agency requests permission to move our institutional dentist's positions from the classified to the unclassified service. This would allow the agency to be competitive in recruiting and retaining dentist. We currently have three dentist on staff, two are at the top of their range and one only has one step left. We have had to get permission to go above the normal entry level salary to hire our last two dentists.

This lack of flexibility hampers recruitment, our most recent hire was at Winfield two years ago. That person has already peaked out and is not eligible for any step increases. If we are realistically going to compete with other states or offer salaries commensurate with private practice opportunities, the state must be able to offer market rates.

Our populations especially our mentally retarded clients offer special challenges that are best met by having full-time dentists on staff. This change would allow us to recruit dentists in the same manner that we recruit physician specialists.

Ben Coates  
Director of Policy  
296-3765

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# Kansas Polygraph Association



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*President*

James R. Davis

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*Vice-President*

*(Law Enforcement)*

Allen Raynor

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*Vice-President*

*(Private)*

Larry W. Lane

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*Secretary/Treasurer*

Caroline Adams

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*Board of Directors*

Vic M. Strnad

Jim Martin

Steven R. Starr

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MY NAME IS JAMES R. DAVIS AND I AM PRESIDENT OF THE KANSAS POLYGRAPH ASSOCIATION. I AM A CERTIFIED POLYGRAPH EXAMINER EMPLOYED BY THE EMPORIA POLICE DEPARTMENT.

THE KANSAS POLYGRAPH ASSOCIATION HAS CONSISTENTLY SUPPORTED LICENSING OF POLYGRAPH EXAMINERS IN THE STATE OF KANSAS SINCE 1986 WHEN THIS LEGISLATION WAS FIRST DRAFTED. WE APPLAUD THE EFFORTS OF REPRESENTATIVE NANCY BROWN AND HER STAFF FOR THEIR WORK IN SPONSORING THIS LEGISLATION.

WE ARE, HOWEVER, ESPECIALLY CONCERNED WITH SECTIONS OF THIS LAW THAT WOULD TEND TO DISCRIMINATE AGAINST PRACTICING POLYGRAPH EXAMINERS IN THE STATE OF KANSAS.

FIRST OF ALL, I REFER TO SECTION 5 (B) ON PAGE 7, LINE 237. IT HAS BEEN BROUGHT TO MY ATTENTION THAT THIS SECTION APPEARS TO REQUIRE ALL APPLICANTS FOR POLYGRAPH LICENSE TO HAVE TWO YEARS OF COLLEGE OR ITS EQUIVALENT.

SINCE MOST POLYGRAPH SCHOOLS WILL SUBSTITUTE YEARS OF INVESTIGATIVE EXPERIENCE FOR COLLEGE CREDITS, I FAIL TO UNDERSTAND WHY WE CANNOT DO THE SAME. WHEN THE STATE OF KANSAS BEGAN TO REQUIRE LAW ENFORCEMENT OFFICERS TO ATTEND THE LAW ENFORCEMENT ACADEMY THEY ALLOWED ALL PRESENT OFFICERS TO "GRANDFATHER". RECENTLY WHEN MY DEPARTMENT BEGAN TO REQUIRE ANY APPLICANT FOR EMPLOYMENT TO HAVE 60 HOURS OF COLLEGE CREDIT, THEY DIDN'T COME TO ME AND TELL ME THAT I'M OUT OF A JOB. I HAVE BEEN "GRANDFATHERED" IN MY POSITION AS A POLICE DETECTIVE.

ARE YOU GOING TO SUGGEST TO THESE SMALL LAW ENFORCEMENT AGENCIES AND PRIVATE SECURITY FIRMS, WHO SPENT \$5,000 TO SEND THEIR INVESTIGATORS TO POLYGRAPH SCHOOL AND THEN SPENT \$5,000 TO PURCHASE A POLYGRAPH INSTRUMENT, THAT BECAUSE THOSE INVESTIGATORS DO NOT HAVE TWO YEARS OF COLLEGE THEY CAN'T BE LICENSED UNDER THIS LAW? WHY MUST THIS LAW BE MORE RESTRICTIVE THAN THE ENTRANCE REQUIREMENTS TO 95% OF THE POLYGRAPH SCHOOLS IN THE UNITED STATES? WE WOULD SUGGEST A COMPROMISE WHERE INVESTIGATORS WITH EXPERIENCE BE ACCEPTED AS APPLICANTS FOR LICENCE.

MY NEXT POINT IS TO ASK THAT YOU CREATE A SECTION OF THIS LAW REQUIRING LICENSED POLYGRAPH EXAMINERS TO ATTEND CONTINUING EDUCATION SEMINARS AT THE RATE OF SIX HOURS EVERY TWO YEARS. POLYGRAPHY IS LIKE ANY OTHER SCIENCE. IF THE POLYGRAPHER DOES NOT KEEP IN TOUCH WITH THE LATEST TECHNIQUES AND DISCOVERIES HE DOES NOT MERELY STAND STILL, HE REGRESSES. THE KANSAS BOARD OF POLYGRAPHERS CANNOT DEVELOP RULES AND REGULATIONS REQUIRING AN EXAMINER TO ATTEND TRAINING, IF YOU DO NOT SPECIFY THAT HE DO SO, IN THE LAW.

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WHICH BRINGS ME TO MY NEXT, AND PERHAPS MOST IMPORTANT POINT. I AM REFERRING TO SECTION 5 (j) PAGE 8, LINE 275, THE SO CALLED "GRANDFATHER CLAUSE" OF THIS BILL. WE HAVE CONSTANTLY CALLED FOR THIS SECTION TO BE WRITTEN TO ALLOW ALL POLYGRAPH EXAMINERS WHO HAVE BEEN ENGAGED IN CONDUCTING POLYGRAPH EXAMINATIONS IN THIS STATE FOR THE PAST ONE YEAR PRECEDING THE EFFECTIVE DATE OF THE LAW TO BE GRANTED A LICENSE UPON APPLICATION. WE STRONGLY BELIEVE THAT ALL EXAMINERS WHO HAVE BEEN CONDUCTING EXAMINATIONS IN THE PAST IN THE STATE OF KANSAS SHOULD NOT BE PROHIBITED FROM DOING SO IN THE FUTURE. THIS SECTION OF THE LAW DISCRIMINATES AGAINST A POLYGRAPH EXAMINER BASED ONLY ON THE NUMBER OF EXAMINATIONS HE HAS PERFORMED RATHER THAN ON THE QUALITY OF HIS WORK.

WHO ARE WE TO SAY THAT AN EXAMINER WITH LESS THAN 250 EXAMS IS LESS QUALIFIED THAN AN EXAMINER WITH 500 EXAMS. EVEN AN INTERN, ACCORDING TO THIS LEGISLATION, NEED ONLY COMPLETE 100 EXAMS IN A TWO YEAR PERIOD TO RECEIVE HIS LICENSE. WHY THEN, WOULD YOU REQUIRE US TO CONDUCT 250 EXAMINATIONS TO BE LICENSED?

BECAUSE PRE-EMPLOYMENT EXAMINATIONS WERE, FOR THE MOST PART, OUTLAWED BY THE FEDERAL GOVERNMENT IN 1988, THE MAJORITY OF EXAMINATIONS CONDUCTED IN KANSAS THIS YEAR WILL BE SPECIFIC ISSUE (CRIMINAL) EXAMINATIONS. THEREFORE THE NUMBER OF EXAMS WILL BE DRASTICALLY REDUCED.

THIS MAKES IT PRACTICALLY IMPOSSIBLE FOR MOST LAW ENFORCEMENT EXAMINERS TO CONDUCT MORE THAN 100 EXAMS PER YEAR. I HAVE BEEN AN EXAMINER FOR 3 1/2 YEARS AND HAVE CONDUCTED 135 EXAMINATIONS FOR MY SMALL DEPARTMENT AND SURROUNDING LAW ENFORCEMENT AGENCIES. I KNOW OF OTHER EXAMINERS WHO HAVE BEEN CERTIFIED IN THE FIELD FOR THREE TO FIVE YEARS AND HAVE CONDUCTED LESS THAN 150 EXAMS.

IT IS BECAUSE OF THE HIGHLY RESTRICTIVE NATURE OF CRIMINAL INVESTIGATIONS THAT THE ATTORNEY GENERAL COULD NOT FIND A QUALIFIED LAW ENFORCEMENT EXAMINER WITH 500 EXAMS CONDUCTED IN THE LAST FIVE YEARS TO APPOINT TO THE BOARD OF POLYGRAPHISTS IN 1988. IT IS FOR THAT REASON THE NUMBER OF EXAMS WAS REDUCED IN THE PRESENT LEGISLATION TO 250 EXAMS IN THE LAST FIVE YEARS.

EVEN THE STATE OF TEXAS WHICH HAS PERHAPS ONE OF THE MOST RESTRICTIVE POLYGRAPH LAWS IN THE UNITED STATES ALLOWED ALL EXISTING POLYGRAPH EXAMINERS TO "GRANDFATHER" IMMEDIATELY BECAUSE THEY RECOGNIZED THE NEED TO NOT LEGISLATE EXAMINERS OUT OF THEIR JOBS. I WOULD SUGGEST TO YOU THAT WE KANSANS ARE EVERY BIT AS PROGRESSIVE AND OPEN MINDED AS ANY TEXAN.

WE BELIEVE THAT YOU ARE CREATING A KANSAS BOARD OF POLYGRAPHISTS WHOSE PURPOSE IS TO REGULATE POLYGRAPH EXAMINERS, AND IF A LESSER QUALIFIED EXAMINER PERFORMS SHODDY WORK THEN HE SHOULD HAVE HIS LICENSE SUSPENDED.

WE ASK YOU TO CONSIDER WORDING SECTION 5 (j) TO READ " THE BOARD SHALL WAIVE THE EDUCATION, TRAINING, INTERNSHIP AND EXAMINATION REQUIREMENTS OF THIS SECTION AND GRANT A POLYGRAPHER LICENSE TO ANY APPLICANT UPON PRESENTATION OF SATISFACTORY EVIDENCE THAT THE APPLICANT HAS HAD PRIOR TRAINING OR EXPERIENCE SUBSTANTIALLY EQUIVALENT TO THESE REQUIREMENTS, AND THAT THE APPLICANT HAS BEEN ENGAGED IN CONDUCTING POLYGRAPH EXAMINATIONS IN THIS STATE FOR AT LEAST ONE YEAR IMMEDIATELY PRECEDING THE DATE ON AND AFTER WHICH SUCH APPLICANT IS REQUIRED TO BE LICENSED."

LASTLY, LET ME SAY THAT WE HAVE READ THE NEW SECTION, NUMBER 6, WHICH BEGINS ON PAGE 8, LINE 298, CAREFULLY TIME AND AGAIN. WE DO NOT SEE A SPECIFIC EXEMPTION FOR GOVERNMENTAL EMPLOYERS IN THIS SECTION. THIS SECTION IS TAKEN FROM THE FEDERAL EMPLOYEE POLYGRAPH PROTECTION ACT OF 1988. WITHOUT THE SPECIFIC EXEMPTION, THIS LEGISLATION APPEARS TO PROHIBIT LAW ENFORCEMENT EXAMINERS FROM CONDUCTING PRE-EMPLOYMENT EXAMINATIONS FOR FIRE AND POLICE POSITIONS AND WOULD PROHIBIT LAW ENFORCEMENT FROM CONDUCTING "INTERNAL INVESTIGATIONS" USING THE POLYGRAPH. WE DO NOT BELIEVE THAT THIS WAS THE INTENT OF THE SPONSOR. SECTION 6 SHOULD CONTAIN THE FOLLOWING EXEMPTION:" THIS SECTION SHALL NOT APPLY WITH RESPECT TO THE UNITED STATES GOVERNMENT, ANY STATE OR LOCAL GOVERNMENT, OR ANY POLITICAL SUBDIVISION OF A STATE OR LOCAL GOVERNMENT."



DAVID E. JOHNSON  
DIRECTOR

# KANSAS BUREAU OF INVESTIGATION

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



ROBERT T. STEPHAN  
ATTORNEY GENERAL

## TESTIMONY

KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL  
FOR THE HOUSE GOVERNMENT ORGANIZATIONS COMMITTEE  
MARCH 1, 1989  
HOUSE BILL 2491

Mr. Chairman and Members of the Committee:

I am here today on behalf of Attorney General Stephan, who, while supporting the efforts to professionalize and regulate polygraph examiners in Kansas, feels that House Bill 2491 is no longer an appropriate response to that need.

The passage of the Employee Polygraph Protection Act of 1988 by the federal government has essentially eliminated the private polygraph examiner as a profession. Those polygraphists who are still in business are either law enforcement officers or private investigators who are also polygraph examiners on those rare occasions when an exception to the federal law banning such exams exists.

In Kansas there are 20-40 polygraph examiners in both the public and private sector. Attorney General Stephan feels that a board to regulate and control such a relatively small number of persons is both economically unfeasible and a poor utilization of governmental time and effort. This is particularly true as those polygraph

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examiners who are employed by law enforcement agencies are subject to the controls and standards of both their departments and judicial review of their actions while the other private examiners are currently private investigators and subject to the licensure and control of that act.

The Attorney General has proposed, and the Revisor of Statutes Office is currently drafting, a combined board for both polygraph examiners and private investigators. This act is modeled after the State of Nevada which issues separate licenses for different security related professions.

There are approximately 283 licensed private investigators in Kansas at this time. As I stated before, that would include all the private polygraph examiners in that number.

We believe this combined board could address the needs of upgrading and controlling polygraph examiners as well as addressing the needs of private investigators.

As you are aware, it is getting late in the session. Whether this bill gets out of the Revisor's Office in time to be considered and passed is questionable. Even if it does not, it is our belief that it would be better to repeal the existing moribund Polygraphist Act and expressly place private polygraph examiners under the Private

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Investigator Act while exempting out polygraph examinations by and for public agencies, then to continue to tinker an attempt to breathe life into the polygraphist board which would serve so few.

Therefore, we recommend this committee not pass House Bill 2491, but rather repeal K.S.A. 75-740 thru K.S.A. 75-749 and amend K.S.A. 75-7b01(a) by including the definition of detective business polygraph examinations except those run by a public agency. I would be happy to answer any questions.

SUMMARY OF REMARKS MADE CONCERNING HOUSE BILL 2491

MARCH 1, 1989

Mr. Chairman and members of the committee;

My name is Gary Davis and I will be brief. I am a licensed as a polygraph examiner in the state of Oklahoma. I am licensed in Kansas as a private investigator. I was appointed to the Kansas Board of Polygraphists by Attorney General Bob Stephen and have served as chairperson since the Board's inception. I was surprised to hear opposition to this bill from Mr. Kyle Smith. Prior to today, I was unaware of any opposition to House Bill 2491.

I would first like to thank Rep. Nancy Brown for her efforts on behalf of polygraph examiner's doing business within the state of Kansas. I support the comments made by Ron Davis, President of the Kansas Association of Polygraph Examiners.

Comments were made today indicating individuals were licensed as polygraph examiners prior to the enactment of the current legislation. This is somewhat misleading. For the past 15 years the Attorney General has ruled individuals administering polygraph examinations fell under the definition of private investigators. Therefore, polygraph examiners were required to become licensed private investigators. There is no language in the private detective act defining polygraph or polygraph examiners. In fact, anyone with a private detective license could administer polygraph examinations with or without formal training or experience. The purpose of House Bill 2491 is to regulate and set standards for those administering polygraph examinations within this state.

Mr. Kyle Smith spoke in opposition to House Bill 2491. As a representative of Attorney General Bob Stephen, Mr. Smith indicated he was in the process of preparing a joint licensing bill to regulate both private investigators and polygraph examiners. He was unsure when this legislation would be available. Mr. Smith indicated private polygraph examiners were no longer doing business in this state and the only ones to be regulated were public examiners. He indicated the number of examiners would not make the Board of Polygraphists cost effective. This may be an accurate statement. I am a private examiner conducting tests on behalf of businesses, legal, and municipal clients. There is at least one other examiner in Wichita area. Other examiners in the private sector exist in the Kansas City area. To say the private polygraph industry does not exist is misleading.

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The passage of the Employee Polygraph Protection Act of 1988 (EPPA) has had a profound effect on the polygraph industry. The number of practicing examiners has diminished dramatically. But the EPPA did not eliminate all private examiners.

The proposed legislation would regulate both public and private examiners. I have served in both capacities. To say it is not necessary to regulate public examiners is unfair. Anyone administering polygraph examinations should meet minimum standards. Unfortunately, prior to the passage of licensing, anyone who wanted to administer tests could. This situation exists in both the public and private sector. Some comment was made concerning public examiners technique and qualifications were subject to review by the courts. During the past 7 years, I have testified in court concerning polygraph examinations in eight cases. All other cases were resolved prior to any court hearings. In Kansas, polygraph test results are admitted by agreement of both parties and in non-jury proceedings. Because of the real world situation, there is no review of public examiners by the courts.

Mr. Ron Davis expressed concern about requiring continuing education for all examiners. This requirement is essential if an examiner is to remain proficient. There are those, both public and private who will not make the effort to keep abreast of changes in the field of polygraph. Some municipal governments refuse advance training, either because of the expense or because of case load. When this occurs, the criminal justice system and the public suffer. Polygraph examiners develop bad habits, can not cope with changes in the field and make mistakes like everyone else. As a member of a regulatory board and professional polygraph examiner, I believe remaining current is of the up most importance. A continuing education requirement will insure compliance and serve the public good.

Thank you for your time and consideration of House Bill 2491. Your efforts are appreciated and supported by members of the polygraph profession. Should any member of the committee ever have questions about polygraph or polygraph testing feel free to contact me at our Wichita Office or through the Attorney General's Office.