

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION

The meeting was called to order by Senator Dan Thiessen at
Chairperson

11:00 a.m./~~xxx~~ on Tuesday, March 28, 1989 in room 519-S of the Capitol.

All members were present except:

Senator Sheila Frahm, (excused)

Committee staff present:

Don Hayward, Revisor's Office
Chris Courtwright, Research Department
Tom Severn, Research Department
Marion Anzek, Committee Secretary

Conferees appearing before the committee:

John Luttjohann, Director of Taxation, Dept. of Revenue
Representative William R. Roy, Jr.
Robert Runnels, Executive Director, KS Catholic Conference
Reverend John Holmgren, Executive Director, Catholic Health Association of KS

Chairman Dan Thiessen called the meeting to order and said we had Mr. Mike Chamberlain, with the senior government class of Sedan High School, visiting the committee today, and he welcomed them. He then asked, Senator Gerald Karr, to introduce another group, visiting the committee.

Senator Karr introduced the speech class from Fort Hays State, including his nephew.

The Chairman told the committee members that have the minutes from 3-20-89, in front of them and he would ask for a motion at the end of the meeting. He then turned attention to HB2219 and recognized John Luttjohann, Director of Taxation, Department of Revenue.

HB2219: would require that 50 percent of all assessments and penalties collected under the state's tax on illegal drugs be returned to the counties where the unstamped marijuana or controlled substance was found and seized. The counties would be required to use the money solely for law enforcement purposes.

John Luttjohann said it is estimated that passage of this legislation would have a minimal negative impact on State General Fund Receipts.

He said, during fiscal year 1988, \$400 was collected. To date in fiscal year 1989, \$1699.50 has been collected. It is anticipated, however, that the collection of tax and penalties will increase due to two factors. The KS Supreme Court recently issued a favorable decision on the constitutionality of the Drug Tax law, and the expected enhancement of our enforcement efforts by the formation of a Criminal Audit Unit within the Department of Revenue. In addition, we have seen two situations thus far where a district court judge has made payment of the drug tax a condition of probation. (ATTACHMENT 1)

The Chairman called upon Representative William R. Roy, Jr.

Representative Roy said this proposal is similar to the practice of the federal government of sharing proceeds with local units in drug cases (article attached-to handout). This practice creates a great incentive for local law enforcement to collect delinquent taxes as well as fight illegal drugs. He recalled the comment that frequently accompanied the first applications of our drug tax in 1987. Local units were reluctant to fight challenges to the constitutionality of the tax because of the expense, when they would see no compensating benefit.

He said, he had discussed this proposal with local officials, and he said, they are supportive. He urged the committee's favorable consideration of HB2219. (ATTACHMENT 2)

Chairman Thiessen concluded hearings on HB2219, and turned attention to SB374, asking Tom Severn to brief the committee on the bill.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION

room 519-S, Statehouse, at 11:00 a.m./~~p.m.~~ on Tuesday, March 28, 1989

SB374:AN ACT concerning property taxation; relating to exemptions; amending K.S.A. 1988 Supp. 79-201 and repealing the existing section.

Tom Severn said the bill relates to church owned property used for residential and religious purposes, by person's bound to abide vows to a religious life, usually called convents. He said, he thought it was last session a bill passed, to exempt those after December 31, 1987. He said, this would go back, making the effective date December 31, 1986, so any of that property taxed in 1987 would be eligible for a refund.

The Chairman called upon Robert Runnels, Jr., Executive Director, KS Catholic Conference.

Robert Runnels said in the 1988 legislative session by the provision of HB2651 the legislature exempted convents from property tax; one of the provisions limited that exemption to apply after December 31, 1987. He said, it was their belief that the legislature intended that convents should pay no tax, past or future. He said, convents have never been taxed in the State of Kansas before, and now there is a gap for the year of 1987. He asked for the committee's favorable support, of the corrective language in SB374. (ATTACHMENT 3)

Chairman Thiessen recognized Reverend John Holmgren, Executive Director, Catholic Health Association of KS.

Reverend John Holmgren said he had no written testimony, but they are in support of the testimony of Robert Runnels, because many of the catholic hospitals and nursing homes in the state, and sponsoring groups have the same situations, and he asked the committee to please support SB374.

Senator Fred Kerr told Mr. Chairman, that he wanted to make sure that the amendment applied only to what the above conferee's testified to, as the one year gap was intentional for some exemptions.

Chairman Thiessen asked Don Hayward to respond.

Don Hayward said that is why they wrote the amendment, "just intent", otherwise we would have written them all in line 137.

Robert Runnels said there had only been 3 counties, in which this has come up, Johnson, Shawnee, and Sedgwick Counties.

Chairman Thiessen concluded hearings on SB374 and asked the committee's pleasure on working the bill.

Senator Martin move to favorably pass SB374, seconded by Senator Fred Kerr. The motion carried.

The Chairman asked for action on HB2219.

Senator Petty moved to report HB2219 favorable for passage, seconded by Senator Karr. The motion carried.

The Chairman turned attention to SB327 and asked Senator Lee to give the committee a briefing on the bill.

Senator Janis Lee said SB327 would allow recreational districts, assistance that came into being in 1988, to be able to tax in 1989. She said, currently there are arguments, as to whether they have authority to go ahead and levy the tax, and she said, she believes there are four districts.

Senator Lee moved to amend SB327 by inserting on line 3, after the word "and" "with respect to any such levy made for the first time in 1989" seconded by Senator Langworthy. The motion carried.

Senator Lee moved to favorably pass SB327 as amended, seconded by Senator Langworthy.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION,
room 519-S, Statehouse, at 11:00 a.m./~~p.m.~~ on Tuesday, March 28, 1989.

The motion carried.

Senator Montgomery moved to adopt the minutes of March 20, 1989, seconded by Senator Langworthy. The motion carried.

The Chairman announced the committee would meet tomorrow, and he adjourned the meeting at 11:32 a.m.



KANSAS DEPARTMENT OF REVENUE

Division of Taxation

Robert B. Docking State Office Building
Topeka, Kansas 66625-0001

MEMORANDUM

**TO: THE HONORABLE DAN THIESSEN, CHAIRMAN
SENATE COMMITTEE ON ASSESSMENT AND TAXATION**

**FROM: JOHN R. LUTTJOHANN
DIRECTOR OF TAXATION**

RE: HOUSE BILL 2219

DATE: MARCH 28, 1989

Thank you for the opportunity to appear today in support of House Bill 2219.

This bill provides that the Director of Taxation will remit one-half of all collections made pursuant to the illegal drug stamp tax act to the county treasurer of the county where the unstamped marijuana or controlled substance was seized. The county treasurer will credit this money for use solely for law enforcement purposes.

It is estimated that passage of this legislation would have a minimal negative impact on State General Fund Receipts.

During fiscal year 1988, \$400 was collected. To date in fiscal year 1989, \$1699.50 has been collected. It is anticipated, however, that the collection of tax and penalties will increase due to two factors. The Kansas Supreme Court recently issued a favorable decision on the constitutionality of the Drug Tax law, and the expected enhancement of our enforcement efforts by the formation of a Criminal Audit Unit within the Department of Revenue. In addition, we have seen two situations thus far where a district court judge has made payment of the drug tax a condition of probation.

I would be happy to respond to any questions which you may have.

Attachment 1
Senate Assessment and Taxation
Tuesday, March 28, 1989

House Bill 2219
Attachment
Background Information on the Drug Tax

The illegal drug tax was enacted during the 1987 Legislative Session, to be effective after July 1, 1987. The rates of tax imposed are as follows:

Marijuana -	\$3.50 per gram, or portion thereof.
Controlled substance sold by weight-	\$200.00 per gram, or portion thereof.
Controlled substance not sold by weight-	\$2000.00 for every 50 dosage units, or portion thereof.

A dealer is defined in the act as one who possesses more than 28 grams of marijuana, more than one gram of any controlled substance sold by weight, or 10 or more dosage units of any controlled substance not sold by weight. A dealer is in violation of the act if he possessed these quantities without having the necessary tax stamps affixed.

The Department has a different tax stamp for each of the three categories listed above which may be purchased anonymously.

Following are the amounts which have been collected since the enactment of the drug tax:

	<u>FY88</u>	<u>FY89 (to date)</u>
Sale of Stamps	\$2,457.50	\$1,598.00
Tax Collected	\$ 200.00	\$1,699.50
Penalty Collected	\$ 200.00	\$ -0-

\$10,283,268.00 has been assessed since the enactment of the drug tax. The vast majority of the assessments are in the administrative appeals process.

WILLIAM R. ROY, JR.
 REPRESENTATIVE, FIFTY-THIRD DISTRICT
 STATE CAPITOL
 TOPEKA, KANSAS 66612



TOPEKA

COMMITTEE ASSIGNMENTS
 VICE CHAIRMAN: RULES AND JOURNAL
 MEMBER: FEDERAL AND STATE AFFAIRS
 JUDICIARY
 TAXATION

HOUSE OF
 REPRESENTATIVES

March 28, 1989

TESTIMONY BEFORE
 THE SENATE ASSESSMENT AND TAXATION COMMITTEE

HB 2219

Mr. Chairman and Members of the Committee:

In 1987, the Legislature enacted a tax on illegal drugs. As you may recall, the law requires that drug dealers as defined by the statute purchase tax stamps on marijuana for amounts exceeding 28 grams, on controlled substances of more than one gram sold by weight, and on controlled substances of 10 dosages or more not sold by weight. Persons who are found to possess taxable amounts of drugs who fail to pay the tax are also subject to a 100 percent penalty.

In FY 1988, \$2,457.50 in revenues resulted from that tax. To date in FY 1989, \$1,598.00 has been collected from the sale of stamps and \$1,699.50 in assessments has been collected. To date in FY 89, some \$10.2 million in assessments is outstanding.

Three weeks ago, the tax was upheld unanimously by the Kansas Supreme Court.

Our present law requires that all tax proceeds are to be paid to the state and remitted to the general fund. This came about because of the tight fiscal circumstances in which the state found itself in 1987. HB 2219 changes the law to share 50 percent the tax proceeds that are assessed as delinquent or as a penalty with the county where the illegal substances are found, to be dedicated for the purpose of law enforcement. This is proposed in order to assist the county or district attorney in covering the cost of investigating and prosecuting any possible criminal case that may arise.

This proposal is similar to the practice of the federal government of sharing proceeds with local units in drug cases (article attached). This practice creates a great incentive for local law enforcement to collect delinquent taxes as well as fight illegal drugs. I recall only too well the comment that frequently accompanied the first applications of our drug tax in 1987. Local units were reluctant to fight challenges to the constitutionality of the tax because of the expense when they would see no compensating benefit.

I have discussed this proposal with local officials, and they are supportive. I urge your favorable consideration.

Attachment 2

Senate Assessment & Taxation
 Tuesday, March 28, 1989

Drug arrest gets patrol ^{CS} ^{B-23-88} \$16,739 check

U.S. Marshal Kent Pekarek turned \$16,739 over to the Kansas Highway Patrol Tuesday, a figure equal to 90 percent of the cash amount seized by the patrol in a drug arrest near Goodland last June.

A check was presented to Don Pickert, head of the Highway Patrol, as part of the National Asset Seizure and Forfeiture Program.

The program, set up by Congress in 1984, allows for 90 percent of the assets seized in a drug arrest to be returned to the arresting agency to be used for law enforcement purposes. Ten percent of the money is given to the federal Drug Enforcement Administration for administrative costs, according to Otto Privette, resident in charge of the DEA's Wichita office.

Last October, \$18,599 in cash and \$73,000 in jewelry seized during the June arrest was turned over to the U.S. Marshal Service in Topeka. On Tuesday, the highway patrol was presented with 90 percent of the cash amount. Pekarek said the patrol would also receive 90 percent from the sale of the jewelry, once authorization was received to sell it.

U.S. Attorney Ben Burgess, who was on hand for the occasion, said the program had proved effective because it allowed the money seized to go back into the budget of the arresting agency. He stressed that the money was considered a supplement to the budget, and that the agency's budget could not be cut in compensation for receipt of the extra money.

Pickert said this was the first time the Kansas Highway Patrol had received money under the National Asset Seizure and Forfeiture Program, but said he hoped it would not be the last.

He said there has been no decision yet on how to use the money.

LEGISLATIVE ADMINISTRATIVE SERVICES

DATE: Sat. Mar. 4, 1989

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|--|---|---|
| <input checked="" type="checkbox"/> TOPEKA CAPITAL-JOURNAL | <input type="checkbox"/> GARDEN CITY TELEGRAM | <input type="checkbox"/> OLATHE DAILY NEWS |
| <input type="checkbox"/> WICHITA EAGLE-BEACON | <input type="checkbox"/> HAYS DAILY NEWS | <input type="checkbox"/> PARSONS SUN |
| <input type="checkbox"/> KANSAS CITY TIMES | <input type="checkbox"/> HUTCHINSON NEWS | <input type="checkbox"/> PITTSBURG MORNING SUN |
| <input type="checkbox"/> KANSAS CITY STAR | <input type="checkbox"/> LAWRENCE JOURNAL WORLD | <input type="checkbox"/> RUSSELL DAILY NEWS |
| <input type="checkbox"/> COFFEYVILLE JOURNAL | <input type="checkbox"/> LEAVENWORTH TIMES | <input type="checkbox"/> SALINA JOURNAL |
| <input type="checkbox"/> EMPORIA GAZETTE | <input type="checkbox"/> MANHATTAN MERCURY | <input type="checkbox"/> WINFIELD DAILY COURIER |

Drug tax deemed constitutional

The state's tax on marijuana and other illegal drugs was declared constitutional in a unanimous decision by the Kansas Supreme Court on Friday, reversing two prior decisions by judges in Shawnee and Osage counties who found the law unconstitutional.

The 1987 Kansas Marijuana and Controlled Substances Tax Act requires "dealers" of the illicit drugs to pay taxes on the substances. Anyone possessing 28 grams or more of marijuana or more than 1 gram of a controlled substance is required to pay the tax, which amounts to \$100 an

ounce in the case of marijuana.

Shawnee County District Attorney Gene Olander called the ruling "a great victory for law enforcement."

Osage County District Judge Donald White and Shawnee County District Judge Adrian Allen, in separate cases, last year declared the law unconstitutional, largely because they said it requires the self-reporting of a criminal activity and thus violated a person's Fifth Amendment right against self-incrimination.

The state attorney general's office appealed both rulings to the

Supreme Court, saying the tax act provides for anonymous and confidential payment of the tax, and therefore does not require a person to report his or her own criminal activity. The high court agreed.

"All information obtained through compliance with the act is confidential and may not be used as evidence in the prosecution for any crimes, other than enforcement of the act itself," the court's decision said.

The unanimous decision covering both cases was written by Justice Richard W. Holmes.

DATE:

3-4-89

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TOPEKA CAPITAL-JOURNAL
 WICHITA EAGLE-BEACON
 KANSAS CITY TIMES
 KANSAS CITY STAR
 COFFEYVILLE JOURNAL
 EMPORIA GAZETTE

GARDEN CITY J
 HAYS DAILY NE
 HUTCHINSON NE
 LAWRENCE JOUF
 LEAVENWORTH J
 MANHATTAN MEF

By John Petterson
 Kansas Correspondent

TOPEKA — The Kansas Supreme Court upheld Friday the constitutionality of a 2-year-old law that requires dealers of illegal drugs to buy tax stamps issued by the state.

In a unanimous opinion written by Justice Richard Holmes, the court said the Kansas law does not violate the U.S. Constitution's Fifth Amendment prohibition against self-incrimination.

"There is clearly no merit to the argument that the information allegedly compelled by the statutes could be used against a dealer in a federal prosecution," the court said.

The Legislature enacted the law in 1987 as a means of providing an additional penalty to be assessed against persons convicted of selling illegal drugs and as a method of raising revenue. The law says information provided when obtaining the stamps cannot be used for any other purpose.

Dealers found in possession of illegal drugs without state tax stamps can be assessed the tax, plus a 100 percent penalty. The law also provides further criminal penalties of up to five years in prison and a \$10,000 fine.

Since the law went into effect on July 1, 1987, the state has sold \$3,900 worth of marijuana tax

stamps and has assessed penalties of about \$10 million. So far it hasn't collected any of the penalties.

Sam VanLeeuwen, a Kansas Revenue Department spokesman, said Friday that some of the stamps were sold to collectors, "but we also think some went to people who wanted them to comply with the law."

VanLeeuwen said the department is preparing to assess \$7.5 million more in drug taxes now that the law has been declared constitutional.

In its opinion, the court said the state law provides sufficient immunity from self-incrimination for stamp buyers to provide Fifth Amendment protections.

The court reversed rulings in district courts in Shawnee and Osage counties that the drug tax law was invalid. In both cases, judges held that the act violated the Fifth Amendment privilege against self-incrimination.

In Shawnee County, a court found that the act exposed individuals to the risk that information gathered by the state could be used later against them in a federal prosecution.

When the act was declared unconstitutional, drug tax charges were dropped.

The Supreme Court reversed that ruling and returned the case for further proceedings.

The Osage County court held that the "immunity clauses of the law fail to give absolute immunity and could lead to investigatory searches, a use which is barred by the (Fifth Amendment) privilege."

The state appealed that ruling and the Supreme Court sustained the appeal.

TESTIMONY

Senate Bill 374

Senate Assessment & Taxation Committee
Tuesday, March 28, 1989 - 11:00 a.m.

KANSAS CATHOLIC CONFERENCE

By: Robert Runnels, Jr., Executive Director

In the 1988 legislative session by the provision of H.B. 2651 the legislature exempted convents from property tax; one of the provisions limited that exemption to apply after December 31, 1987. It was at least our belief that the legislature intended that convents should pay no tax, past or future. With the contemporaneous consideration of the prototype of Substitute for S.B. 491, it was our understanding that the legislature desired the two acts to complement each other to effect a continuous tax exemption - abatement for such structures. Substitute for S.B. 491 was enacted as K.S.A. 79-213a and provides exemption and abatement for those taxes only prior to January 1, 1987. In other words, there is a gap for the year 1987.

We ask this legislature and particularly this committee to favorably support corrective language in Senate Bill 374.

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Attachment 3
Senate Assessment & Taxation
Tuesday, March 28, 1989