

Approved 3-14-89  
Date

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by Senator Lana Oleen at  
Chairperson

1:35 ~~XX~~ p.m. on February 27, 19 89 in room 531 N of the Capitol.

All members were present except: Senator Kanan - Excused  
Senator Strick - Excused

Committee staff present: Julian Efird - Research  
Jill Wolters - Revisor  
Nancy Jones - Secretary

Conferees appearing before the committee: Secretary Ed Rolfs, Department of Revenue  
Richard Dewees, Kansas Auctioneers Association  
Bob Wilson, Manhattan, Ks.  
Robert Bloomer, Osborne, Ks.  
Ron Hein

Hearings on:

SB 272 - Concerning authority transfer of the oil inspection law

Secretary Rolfs stated the intent of this legislation is to transfer the inspection functions of motor fuel pumps and facilities and respective personnel who perform these functions, from the Department of Revenue to the Department of Agriculture. The majority of the inspection functions performed are consumer protection services and not related to taxation or revenue collection. Passage of this legislation would not affect state funds, and would place responsibility with the agency most germane to service being done. Senator Doyen expressed the feeling that responsibility of marking should be transferred to the Department of Transportation and committee supported the concept.  
(Attachment 1)

SB 273 - Concerning taxation, unclassification of certain employees, alcoholic Board of Review

Secretary Rolfs stated this legislation would provide the Secretary authority to designate the Director of Collections to perform functions handled only by the Director of Taxation. SB 273 would also unclassify the positions of Manager of Planning and Research and Director of Collections, giving the Secretary the ability to fill the policy-making positions with individuals of the Secretary's choosing.  
(Attachment 2)

Committee discussed reasons for classified and unclassified positions with the Secretary. Senator Oleen suggested amending the bill in line 495 to include publication in the Kansas Register so that positions now vacant and appointive could be expedited.

Motion was made by Senator Gaines to amend SB 273 in lines 496 and 497 with language "published in the Kansas Register"; seconded by Senator Moran.  
Motion carried.

SB 241 - Licensure of auctioneers

Bob Wilson testifying as a proponent of SB 241, stated that licensure of all auctioneers would ensure they have full knowledge of statutes, regulations and common law relating to pursuit of their profession. Licensure would also protect consumers and an agency would then be in place to followup on grievances.  
(Attachment 3)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION,  
room 531-N Statehouse, at 1:35 ~~xxx~~ p.m. on February 27, 1989

Richard Dewees stated this legislation could be the best law he has read if the words "and who resides in" on line 138 were deleted. The bill would be fair to all auction buyers, sellers and auctioneers. Licensing is more desirable now with increasing mobility and specialization of products sold at auction.  
(Attachment 4)

Robert Bloomer stated funds received by auctioneers for clients, should be placed in an escrow or trust account, since, at present, the clients funds can be comingled with personal funds of the auctioneers subjecting the funds to risk of loss. At present there are no rules, regulations or laws in place to protect the client. Mr. Bloomer supports SB 241 as it provides for adequate regulation of those within the auction industry, which he feels is sorely needed.  
(Attachment 5)

A letter distributed to the committee from R.C. Dixon describes an example of unfair practices that do occur between clients and an auctioneer.(Attachment 6)

Chairman Oleen asked committee members to give attention to the fiscal note for SB 241.  
(Attachment 7)

Ron Hein stated the public would have greater protection by implementation of regulations placed on this profession. Certain standards of knowledge and expertise should be required of those holding themselves to be auctioneers. Kansas is in the minority of states with no regulation of auctioneers.

Mr. Hein offered two amendments to SB 241: deletion of "and who resides in" in line 138; delete "of" and insert "not to exceed" in line 143. (Attachment 8)

Mr. Hein further stated this legislation will set up the frame work for a board to determine policies regarding licensing of acutioneers, bonding and escrow funds. Discussion was held on funding procedures and the negative reaction of current auctioneers to imposition of another fee to pursue their profession. Mr. Bloomer stated the KAA members were strongly in favor of pursuing a license law at the convention held last year. He further stated that creation of a Bond Recovery Fund is advised in the future.

Committee members expressed concerns regarding a stronger law than stated in this legislation and the need for a regular audit as is done with other agencies.

Meeting adjourned. The next meeting will be February 28, 1989.

GUEST LIST

COMMITTEE: SENATE GOVERNMENTAL ORGANIZATION

DATE 2-27-89

NAME	COMPANY / ORGANIZATION	ADDRESS
Charles Cole	Cole Auction & Real Estate	1405 Main Goodland, KS 67735
Curtis C. Cole	Cole Auction & Real Estate	1405 Main Goodland, KS 67735
Loren Z. Thiels	Thiels Auction & Realty	Worton, Ks. 67654
Berta Thiels	Thiels Auction & Realty	Worton, Ks. 67654
Anna Smith	Heint & Ebert - KAA	Topeka
Richard W. Deweck	Kansas Auctioneers Assn	Prairie Village
Bob Wilson	Wilson Realty, Auction & Appraisal	Washburn, KS
Robert A. Bloomer	Kansas Auctioneers Assoc.	Osborne, Kansas
William H. Kelly	KS BA	Topeka
Bob Houryman		JUNCT. CITY
John Lottman	Revenue	Topeka
Susan Niffy	Revenue	Topeka
Sherri Hollman	Budget	''

2/27-

MEMORANDUM

TO: THE HONORABLE LANA OLEEN, CHAIRMAN  
SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

FROM: ED C. ROLFS  
SECRETARY OF REVENUE

DATE: FEBRUARY 27, 1989

SUBJECT: SENATE BILL NO. 272

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Thank you for the opportunity to appear before you today in support of Senate Bill No. 272.

As introduced, this legislation would transfer the inspection functions performed by the Petroleum Measurement Inspectors from the Motor Fuel Tax Unit of the Department of Revenue to the Department of Agriculture. The personnel associated with performing these functions would also be transferred. Responsibility for receiving the reports associated with collecting the oil inspection fee will remain with the Department of Revenue.

The Petroleum Measurement Inspectors perform various duties relating to inspecting wholesale and retail motor fuel pumps and facilities. Their duties are technical in nature, and include calibration and testing of pumping equipment. The function is related to the collection of revenue only in the sense that if the refineries and pipeline terminals do not use properly calibrated devices, the measurement of fuel on which tax is paid could be misstated. The majority of the inspection functions performed by these inspectors are consumer protection services, and not related to taxation or revenue collection.

We recommend transfer of these personnel and duties to the Department of Agriculture. It is our understanding that they currently perform other similar inspection functions.

Passage of this legislation would not affect state funds since the fee rate is not changing.

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

S.G.O.  
2-27-89  
ATTACH 1

MEMORANDUM

TO: Lana Oleen, Chairwoman  
Senate Committee on Governmental Organizations

FROM: Ed C. Rolfs  
Secretary of Revenue

DATE: February 27, 1989

SUBJECT: Senate Bill 273, As Introduced

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I appreciate the opportunity to appear before you today in support of legislation requested by the Department of Revenue. Senate Bill 273 is the result of a Department recommendation for cleanup language in regard to duties currently able to be performed only by the Director of Taxation and to unclassify two policy level positions.

The technical amendments proposed in Senate Bill 273 would grant the Secretary the authority to designate the Director of Collections to perform various functions currently handled only by the Director of Taxation. This would involve waiving penalties, signing tax warrants and issuing injunctions in regard to the collection of delinquent taxes.

This bill would also place the Department of Revenue positions of Manager of Planning and Research and Director of Collections into unclassified service. Because these positions involve significant policy level decisions, the Secretary of Revenue should have the ability to fill them with individuals of his/her choosing with whom he/she has complete confidence.

I appreciate your time and would be glad to answer any questions.

Thank you.

S.G.O  
2-27-89  
ATTACH - 2

TESTIMONY TO SENATE GOVERNMENTAL ORGANIZATION  
ON BEHALF OF THE KANSAS AUCTIONEERS ASSOCIATION  
PRESENTED BY BOB WILSON  
RE: SENATE BILL 241  
FEBRUARY 27, 1989

Madame Chairman, members of the committee:

I am from the Manhattan area and have been an auctioneer for twenty-two years. I am the vice president of the Kansas Auctioneers Association and am in favor of SB 241.

The KAA is currently the only avenue of information and assistance for auctioneers in Kansas. Licensure would ensure that all auctioneers be required to demonstrate knowledge of statutes, regulations, and common law relating to sale, purchase, and transfer of personal property. Auctioneers should be required to be knowledgeable about the Kansas Bulk Sales Act, the Uniform Commercial Code, the law with regards to secured transactions, federal bankruptcy law, foreclosure laws, etc.

Auctioneering is a powerful means of enterprise. The entire life-savings of an individual can be liquidated in a few hours. Licensure would protect consumers and would provide an agency which could regulate activities and follow-up on any grievances.

This bill has been endorsed unanimously by the membership of the KAA at their Annual Meeting. Thank you for the opportunity to express my views on this matter.

TESTIMONY TO SENATE GOVERNMENTAL ORGANIZATION  
ON BEHALF OF THE KANSAS AUCTIONEERS ASSOCIATION  
PRESENTED BY RICHARD A. DEWEES  
RE: SENATE BILL 241  
FEBRUARY 27, 1989

Madame Chairman, members of the committee:

Stephen J. Martin, of Indiana University, and I are co-editors of the Auction Encyclopedia.

Over half of the states have enacted state auctioneer license laws and since 1962, I have maintained copies of all of these state laws. The first auction license was enacted in Kentucky in 1962, and the most recent one I understand was enacted in Arkansas last Friday.

Of all the state laws I've researched, if the four words "and who resides in" on line 138 of new Section 7 on page 4 were deleted, this would be the best law I have read. It would be compatible with the model law of the National Auctioneers Association and the National Auctioneers License Law Officials Association (NALLOA).

If the above four words were deleted, the bill will be fair to auction buyers, sellers and auctioneers.

NALLOA is in the process of letting a contract for a national testing firm to administer a uniform auction examination for licensure and Kansas would participate in that program/

The auction profession has enjoyed steady growth for many years. With easy access to interstate highways and competitive airfares, there is increasing mobility and specialization in the type of products sold by auction, thus making licensing desirable.

TESTIMONY TO SENATE GOVERNMENTAL ORGANIZATION  
ON BEHALF OF THE KANSAS AUCTIONEERS ASSOCIATION  
PRESENTED BY ROBERT A. BLOOMER  
RE: SENATE BILL 241  
FEBRUARY 27, 1989

Madame Chairman, members of the committee:

I support a license law for auctioneers for several reasons. However, the most important reason and the issue I wish to discuss with you today, is the great fiduciary relationship which exists between auctioneers and their clients creating the responsibility to protect the client's funds.

In addition to owning and managing an auction company, I currently am a licensed and practicing attorney and a licensed and practicing real estate broker in the state of Kansas. In both of these professions, whenever funds are received which belong to clients, rules and regulations dictate that those funds be placed in an escrow or trust account. Failure to do so or the comingling of such funds with personal funds would result in suspension or revocation of either license.

In contrast, auctioneers daily in Kansas, can and do receive thousands, even millions of dollars of client's funds, yet there is no law, rule or regulation which requires those funds to be placed in escrow or trust accounts. Consequently, funds belonging to clients of auctioneers can be comingled with the personal funds of the auctioneers subjecting those funds to risk of loss.

The auction profession deserves more. The profession should be allowed to regulate those in the industry. The people of Kansas deserve the protection this regulation would afford.

In closing, Senate Bill 241 as drafted, provides for adequate regulation of those within the auction industry. It affords adequate protection for the people of Kansas. It is not so restrictive as to prohibit responsible business people to enter and/or remain in the auction business. In addition, this protection would not be an expense to the Kansas taxpayers. We ask your support for Senate Bill 241. Thank you.



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PHONE: (316) 326-8902

Sherri Theurer  
Secretary  
Kansas Auctioneer's Assoc.  
318 North Washington  
Wellington, Kansas 67152

February 16, 1989

Mrs. Theurer,

Approximately the middle of October 1988, I was contacted several times by a Mr. Mert Christiansen with Hunter Auctioneers, 706 1st Avenue, Council Bluffs, Iowa 51501, 1-800-999-2425, about a sale being held on November 17th in Wichita, Kansas. He wanted to know if I had any equipment I wanted to sell at that auction. My property sold at that sale was a 1965 '933' Cat Crawler Loader which sold for \$4,500 and a 1969 Miller 12 ton Tilt Top Trailer which sold for \$1,100, for a total of \$5,600. After many attempts to contact them, we still have not recieved the money due to us, and it has now been three months.

I believe there should be a better procedure for the screening and licensing process for auctioneers, both in the state of Kansas, and out-of-staters who operate in Kansas periodically. If there were, perhaps there wouldn't be anyone "taken" as I have been.

Thank you for your attention on this matter.

Sincerely,



R.C. Dixon  
President

S.G.O  
2-27-89  
ATTACH-6

The Honorable Don Montgomery, Chairperson  
Senate Committee on Local Government  
Senate Chamber  
Third Floor, Statehouse

*Governmental Organization*  
*Sen. Olson 143-N*

Dear Senator Montgomery:

SUBJECT: Fiscal Note for SB 241 by Committee on Local Government

In accordance with KSA 75-3715a, the following fiscal note concerning SB 241 is respectfully submitted to your committee.

SB 241 would be known as the Auctioneers License Law and would create a State Board of Auctioneers. The Board would consist of five members appointed by the Governor for three year terms. The Board would issue licenses and administer an auctioneers examination four times a year. The Board would be empowered to investigate complaints and suspend or revoke licenses for specific reasons.

The bill would require individuals who intend to work as auctioneers to obtain a license annually. A \$50 license fee would be charged to applicant. Applicants who cannot prove having worked as an auctioneer for at least a year prior to the enactment of the bill or who let their license expire before applying for a new license would be required to take a written test and pay a \$100 testing fee. Twenty percent of all fees collected would be credited to the State General Fund. The remaining fees would be credited to the Board of Auctioneers Fee Fund account.

Working as an auctioneer without a license would be a Class A misdemeanor. The bill, however, would exempt some auctioneers from coverage, including auctioneers at court ordered sales, federally licensed livestock auctioneers, and auctioneers acting without compensation on behalf of a political party, charity, church, or non-profit corporation.

The license fee and testing fee would generate an estimated \$48,000 in FY 1990, FY 1991, and FY 1992. Of this amount, \$9,600 would be credited to the State General Fund and \$38,400 would be credited to the Board of Auctioneers Fee Fund account. The revenue estimate is based on 800 annual license fees at \$50 and 80 testing fees at \$100, per year.

It is assumed expenditures by the Board in pursuit of its mandate under SB 241 would not exceed \$38,400 for FY 1990, FY 1991, and FY 1992. This figure is equal to the revenue estimate for the fee fund account.

Any fiscal impact resulting from the passage of this bill is not reflected in the FY 1990 Governor's Report on the Budget.

*M. F. O'Keefe*  
Michael F. O'Keefe  
Director of the Budget

MFO:MB:sm  
cc: Dr. Kimmel  
Dept. of Animal Health

TESTIMONY TO SENATE GOVERNMENTAL ORGANIZATION  
ON BEHALF OF THE KANSAS AUCTIONEERS ASSOCIATION  
PRESENTED BY RONALD R. HEIN  
RE: SENATE BILL 241  
FEBRUARY 27, 1989

Madame Chairman, members of the committee:

My name is Ron Hein and I am legislative counsel for the Kansas Auctioneers Association. The KAA strongly supports SB 241 for a number of reasons that will be addressed in greater detail by the other conferees who are here today.

First of all, we strongly believe that the public would be offered greater protection by having some element of regulation placed upon this profession. Auctioneers can and do handle large sums of money, oftentimes in the form of cash, and do so without any prohibitions on co-mingling other people's money with their own, holding such monies in an escrow account, or even requiring return of the money to the individual for whom the sale was conducted.

Secondly, auctioneering is, indeed, a profession. The person who holds himself out as an auctioneer should be required to meet certain standards of knowledge and expertise, just as we require of a dealer of motor vehicles, or a broker or real estate agent with regard to real estate transactions. Being an auctioneer is more than simply "barking a sale". Being an auctioneer requires knowledge of the worth of the product to be sold, knowledge of the marketplace, knowledge of the varied laws, rules and regulations, and common law applicable to possession, sale, and transfer of personal property, and knowledge of the general rights and obligations of parties to a legal transaction with regard to personal property.

It is ironic that an auctioneer who conducts a sale of a \$25,000 farmhouse is required to be licensed as a real estate agent, but at the same sale can auction \$100,000 worth of personal property and not be required to have any training or meet any standards whatsoever.

As you will hear later today, Kansas is in the minority of states that do not regulate auctioneers.

S.G.O.  
1-27-89  
ATTACH-8

I do have two minor amendments that need to be adopted that were not caught in the original draft.

We well understand the time restraints upon the committee, so I have asked three auctioneers to make very brief presentations. With your approval, we would request that the committee hold all of its questions until each conferee has had an opportunity to present its testimony.

At the conclusion of all of the testimony, Madame Chairman, we will all be happy to yield for questions.

AMENDMENT TO SB 241

On page four, line 138, by deleting "and who resides in".

Also on page four, line 143, by deleting "of" and inserting "not to exceed".