

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Wint Winter, Jr. at
Chairperson

10:00 a.m./~~p.m.~~ on January 24, 1989 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Winter, Yost, Moran, Bond, Feleciano, Gaines,
D. Kerr, Martin, Morris, Oleen, Parrish, Petty and Rock.

Committee staff present:

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

Conferees appearing before the committee:

Ron Smith, Kansas Bar Association
Dale Pohl, Kansas Bar Association President
Robert C. Barnum, Supreme Court Permanency Planning Task Force
Rodney H. Symmonds, Lyon County Attorney
Jim Clark, Kansas County and District Attorneys Association

Ron Smith, Kansas Bar Association, requested a bill be introduced concerning the professional corporation code. Following his explanation, Senator Morris moved the bill be introduced as a committee bill. Senator Moran seconded the motion. The motion carried.

The chairman announced there will be a joint meeting with the House Judiciary Committee to hear the recommendations of the Attorney General's Crime Victims Task Force on February 13, 1989, at 3:30 P.M. in Room 313-S

Senate Bill 9 - Establishing the office of the district attorney in each judicial district.

Ron Smith, Kansas Bar Association, was recognized to introduce Dale L. Pohl, President of the Kansas Bar Association.

Dale Pohl, Eureka, testified the KBA supports this legislation. We have supported all legislation designed to give local prosecutors the best possible administrative system to protect citizens from criminal action. A copy of his testimony is attached (See Attachment I). The chairman inquired what the association thinks of the recommendations of the Kansas County and District Attorneys Association. Mr. Pohl responded it is the concepts of the district attorney plan we are supporting. I don't think we would have any problems with the recommended changes.

Robert C. Barnum, Chairman of the Supreme Court Permanency Planning Task Force, appeared in support of the bill. He stated I am before you today because I believe that this will have a positive impact on children's cases which need to go before the court. A copy of his testimony is attached (See Attachment II). Committee discussion was held with Mr. Barnum.

The chairman called the committee's attention to a letter from James McHenry, Executive Director of Kansas Child Abuse Prevention Council, supporting the legislation. A copy of the letter is attached (See Attachment III).

Rodney H. Symmonds, Lyon County Attorney, appeared in support of the bill. He presented background information on the legislation. He stated he is concerned about funding for prosecuting cases. A copy of his testimony is attached (See Attachment IV). A committee member inquired how they feel in Chase County about the plan? Mr. Symmonds replied, I believe that in Chase County one of the concerns is they want to have someone

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 514-S a.m./~~p.m.~~ on January 24, 19 89

Senate Bill 9 - continues

there who continues to reside in the county. I believe the bill will do that. Another committee member inquired, what is your attitude about the public defender theory as compared to our present system? Mr. Symmonds replied, from prosecuting standpoint, and looking at the overall picture the public defender will improve representation. A committee member inquired, do you see any need to change or amend not guilty for reason of insanity? Mr. Symmonds replied, I find a great deal of concern expressed by victims of crime. I don't like the way the statute reads. I have had people suggest there should be some kind of guilty verdict.

The chairman recognized Jim Clark to respond to questions. A committee member inquired, do you have a fiscal note on the proposal you are making? Mr. Clark replied if all amendments are adopted the fiscal note would be \$2.3 million. Considerable committee discussion was held with Jim Clark.

The meeting adjourned.

A copy of a letter from Paul Shelby, Deputy Judicial Administrator, is attached (See Attachment V).

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

Copy of handout from Kansas Bar Association is Attached (See Attachment VII).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 1-24-89

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Dale L. Pohl	Eureka, Ks	Kans. Bar Assoc.
PATRICIA HENSHAW	TOPEKA	OJA
BOB BARNUM		SRS
Jim Clore	Topeka	KC DAA
Rocky Shaley	Topeka	Intern
Red Symmonds	Emporia	Linn County Atty
Sue Bond	Overland Park	
Jacque Dakes	Topeka	KPOA
Sabrina Wells	Topeka	DOB
Patrick Murphy	Manhattan	KTLA
Matt Kopp		Intern - Sen Moran
Karen Fisher	Emporia	ESU
Debra Lewis	Emporia	ESU



**KANSAS BAR
ASSOCIATION**

Dale L. Pohl, President
A.J. "Jack" Focht, President-elect
Robert W. Wise, Vice President
Linda D. Elrod, Secretary-Treasurer
Christel Marquardt, Past President

Marcia Poell, Executive Director
Ginger Brinker, Director of Administration
Dru Sampson, Continuing Legal Education Director
Patti Slider, Public Information Director
Ronald Smith, Legislative Counsel
Art Thompson, Legal Services Coordinator

SB 9

Senate Judiciary Committee
January 24, 1989

Mr. Chairman, and members of the Senate Judiciary Committee. I am Dale Pohl, President of the Kansas Bar Association.

KBA supports this legislation. We have supported all legislation designed to give local prosecutors the best possible administrative system to protect citizens from criminal action. SB 9 is consistent with that concern, and allows the state of Kansas to make a good system -- county attorneys -- into a better one -- district attorneys. We preserve the best parts of the old system, yet modernize the ability of government to protect its citizens through timely and efficient law enforcement.

The bill requires each judicial district to have at least one "assistant" district attorney or a deputy district attorney residing in each county in the district. That would mean there are prosecuting attorneys available for the ancillary duties of a prosecuting attorney, such as requesting search warrants or crime scene investigation. This means the availability of a law enforcement attorney in the county at all times. In addition, since these individuals work together within the judicial district, they are available in neighboring counties, too, something that is not ordinarily a part of the current system.

We believe the following positive benefits accrue from the change to a district attorney system:

1) A high percentage of the last crop of county attorneys decided not to seek reelection or were defeated in office. SB 9 allows better management of inevitable turnover in younger prosecuting attorneys within the district. As a full time, well-paid professional, the district attorney can better manage change in personnel in his office. In a sense, SB 9 changes management of deputy district attorneys into a new function of the state, not local bar associations, who often in the past have to go hat in hand to local members and ask them to assume county attorney functions.

1200 Harrison • P.O. Box 1037 • Topeka, Kansas 66601 • (913) 234-5696

BOARD OF GOVERNORS: Thomas A. Hamill, John L. Vratil, David J. Waxse, District 1 • Hon. Fred N. Siv, District 2 • Tim Brazil, District 3 • Warren D. Andreas, District 4
E. Dudley Smith, Dale L. Somers, District 5 • Anne Burke Miller, District 6 • Dennis L. Gillen, Philip L. Bowman, Warren R. Southard, District 7
William B. Sweare, District 8 • Linda Trigg, District 9 • Hon. Charles E. Worden, District 10 • Thomas L. Boeding, District 11
Kim R. Mattens, Young Lawyers President • John Elliott Shamberg, Association ABA Delegate • Glee S. Smith, Jr., ABA Delegate
Christel Marquardt, Association ABA Delegate • Richard C. Hite, Kansas ABA Delegate • Hon. Samuel K. Bruner, KDJA Representative.

ATTACHMENT I
SJC
1-24-89

- 2) It allows standardization of the training of prosecutors and the development of a high degree of professionalism.
- 3) In most of our smaller counties, it removes a layer of county government, transferring some of those costs to state government. There may be criticism of this feature. However, if a county wants specialized prosecution or other legal work, it can accomplish much of that work through county counselors.
- 4) State and local management of crime fighting resources is facilitated by allowing a single full time prosecutor to direct prosecutions in the judicial district.
- 5) Much more crime is happening that is considered "white collar" in nature. It will require dedicated prosecutors to battle this trend. SB 9 moves us in the right direction.
- 6) It will reduce the high degree of duplicate administrative services necessarily a part of each current county attorney's offices. The ability of a D.A. to use any of his prosecutors within his district allows more efficient use of legal resources.
- 7) SB 9 can help achieve better consistency in the reliance of law enforcement agencies on the long term nature of the district attorney's office. Investigative procedures will be standardized and may lead to appropriate consolidation of some law enforcement functions within counties in the district.

You are rightly concerned with the cost of this system. The interim committee report recommended a fiscal note of \$6.6 million if you assume certain levels of administrative costs and certain assistant D.A.'s within state government. The cost is modest, \$1.9 million, if only the district attorney salary is absorbed by the state. KBA feels costs are secondary. The primary feature of this legislation will be more effective law enforcement and prosecution. We commend this legislation to you, and urge its swift adoption.

Issue: A statewide district attorneys system.

KBA Position: *The Kansas Bar Association SUPPORTS all legislation designed to give local prosecutors the best possible administrative system to protect citizens from criminal action.*

Rationale: Strong, consistent prosecution is the centerpiece of a criminal justice system. Kansans have been well served by the county attorney system. However, we believe in this day and age a statewide district attorney system gives more uniformity to the prosecutorial function and promotes a more proficient and professional approach to the administration of the criminal justice system.

We believe a statewide district attorney system or alternative legislation designed to make a county prosecutor's office as efficient as possible, is desirable.

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Winston Barton, Secretary

Testimony in Support of S.B. 9
AN ACT ESTABLISHING AN OFFICE OF DISTRICT ATTORNEY IN EACH JUDICIAL DISTRICT

Mr. Chairman, Members of the Committee, I am appearing today in support of Senate Bill 9 which creates the Office of District Attorney for all judicial districts.

I am before you today because I believe that this will have a positive impact on children's cases which need to go before the court. County and District Attorneys are, in addition to all their other duties, assigned all responsibility for representing the state's interest under both the Juvenile Offender Code and the Code for Care of Children. All too often Child in Need of Care matters are the bottom priority and thus receive little or no attention which is detrimental to the child. For example, a young infant was placed in the temporary custody of the Department of SRS, shortly thereafter his juvenile mother relinquished him for adoption, but he remained in temporary custody and in foster care until he was almost three years old because no petition was filed by the part time county attorney to adjudicate him as a Child in Need of Care or to sever his father's rights.

The system as proposed by S.B. 9 would result in a more efficient administration and would keep the quiet cases - the children's cases - from being overwhelmed by other pressing duties and interests. In counties served by part time assistants or deputies the work load would be supervised by the full time district attorney and back-up assistance could be assigned as needed.

The establishment of a district attorney's training and assistance council for the purpose of coordinating a program for the training of all district

ATTACHMENT II
SJC
1-24-89

attorneys, their assistants and deputies is a real strength in this bill and will go far in improving the quality and consistency of representation of children in Kansas.

In past years, the establishment of a statewide system of district attorneys has been supported by the Kansas Supreme Court Permanency Planning Task Force, the Attorney General's Missing and Exploited Children's Task Force and the Courts-SRS-Education Liaison Committee.

Robert C. Barnum
Commissioner
Youth Services
Department of Social and
Rehabilitation Services
(913) 296-3284



January 22, 1989

**Kansas
Child Abuse
Prevention Council**

112 West 6th Street, Suite 305
Topeka, Kansas 66603
(913) 354-7738

140 N. Hydraulic, U.L.
Wichita, Kansas 67214
(316) 262-8434

**Senator Wint Winter, Jr.
State Capitol Building
Topeka, Ks. 66612**

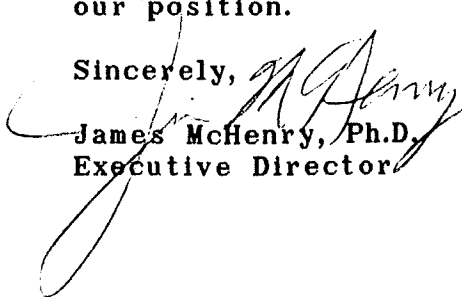
Dear Wint:

I am writing to express KCAPC's interest in Senate Bill 9, an act establishing the office of district attorney in each judicial district. We believe adoption of such legislation will advance the interests of children who have been abused and those who are attempting to serve them.

Our organization works hard to prevent child abuse and neglect. We know that, even with our best efforts, we sometimes fail to reach the hearts and minds of adults who are abusing children. When this occurs, it is essential that the legal system react quickly and with a high standard of professionalism.

We are interested in the concept proposed in SB 9 because of reports reaching our office each year. In some cases, private citizens or law enforcement officials call us to complain that local county attorneys are not vigorously pursuing child abuse cases. We are not in a position to judge the merits of these complaints, but the fact people feel compelled to call us may be a signal of some importance.

I regret that fundraising obligations this week make it impossible for me to appear personally to testify. Please feel free to share this letter with other members of the Judiciary Committee. Our Board's advocacy committee chairman, Mr. John Wine, would be glad to visit with you should you have any questions regarding our position.

Sincerely,

**James McHenry, Ph.D.,
Executive Director**

ATTACHMENT III
SJC
1-24-89

BOARD OF DIRECTORS

- SuEllen Fried, Founder
Shawnee Mission
- Helen Cochran, President
Wichita
- Catherine Hiersteiner, VP Programs
Prairie Village
- Dorothy Werner, VP Coalitions
Great Bend
- Crystal M. Toot, VP Membership
Great Bend
- Roxanne Greco Butler
VP Publicity & Public Relations
Topeka
- Dennis Moore, VP Financial Development
Lenexa
- Susan J. Rank, Secretary
Topeka
- Keith Holtz, Treasurer
Topeka
- Beckie Fabian Cooper, Past President
Fairway
- Jody (JoNell) Abbott
Overland Park
- Barbara P. Allen
Prairie Village
- Phyllis K. Abraham
Wichita
- Joyce Allegrucci
Topeka
- Rhonda Anstaett
Garden City
- Rick Bloomer
Wichita
- Terry Campbell
Leavenworth
- Edith M. Freeman
Grandview, Mo.
- Howard R. Fricke
Topeka
- George R. Gomez
Topeka
- Aleene Griggs
Topeka
- Barbara Groh
Dearing
- Terri L. Jowett
Topeka
- Diane G. Lund, M.A.
Kansas City
- Stephen Lyrene
Topeka
- Carol F. Marshall
Emporia
- Marlene Merrill
Topeka
- Vicki Minor
Parsons
- John Poertner
Lawrence
- Donald B. Reynolds, Jr.
Great Bend
- David K. Rolph
Wichita
- Myron E. Scafe
Overland Park
- Michael P. Stephenson
Hutchinson
- John R. Wine, Jr.
Topeka
- Susan A. Yoder
Hutchinson

EXECUTIVE DIRECTOR
James McHenry, Ph.D.

TO: SENATE JUDICIARY COMMITTEE
FROM: RODNEY H. SYMMONDS, LYON COUNTY ATTORNEY
RE: SENATE BILL NO. 9
STATEWIDE DISTRICT ATTORNEY SYSTEM
DATED: JANUARY 24, 1989

The implementation of a statewide public defender program will have a detrimental effect upon our criminal justice system in Kansas, unless the State provides funding for prosecution services. While many of the effects of such a change do not lend themselves to easy proof, one of the most apparent problems will be the disparity between the salaries paid to assistant county attorneys and attorneys employed in the public defender offices. In Lyon County the disparity in salaries is illustrated by the following:

Salaries for Assistant County Attorneys in Lyon County:

Beginning Salary	\$20,488.00
One (1) year experience	\$22,880.00
Two (2) years or more experience	\$24,939.20

Public Defender Office:

Beginning Salary	\$28,056.00
Three (3) years experience	\$30,936.00

It should be noted that \$64,012.00 dollars were expended by the B.I.D. Fund for legal services in Lyon County, Kansas in the fiscal year which ended July 1, 1988. The costs of legal services from July of 1988 until December 31, 1988 were \$57,728.47. This rapid increase in the cost of defense services has not been matched by any comparable funding for prosecution services.

The creation of a public defender system will adversely effect the ability of the County Attorney to employ and retain competent assistants. The effect on the criminal justice system will be immediate and yet due to the budget freeze caused by reappraisal, the problem cannot be addressed at the local level until 1991. Victims of crime will ultimately suffer if prosecutors are not competent and well trained.

In the event a death penalty bill is passed by the legislature, the need for experienced prosecutors will be greater in the future. The complexity of such litigation and the small margin for error will require that any prosecutor who handles such a case be well trained and extremely competent.

In light of the foregoing, I would suggest State funding for prosecution services.

Attachment IV
SJC
1-24-89



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 West 10th
Topeka, Kansas 66612-1507

(913) 296-2256

January 23, 1989

Hon. Wint Winter, Jr.
Room 120-S
State Capitol
Topeka, KS 66612

Dear Senator Winter:

Re Senate Bill 9
Establishing the Office of District
Attorney in each judicial district

I do not plan on testifying regarding the above referenced bill.

However, I wish to bring to your attention K.S.A. 28-170a, 1988 Supp. which outlines a prosecutor's training fund to be collected and expended at the county level for the purpose of training personnel in the offices of county or district attorneys. (copy attached)

The \$1.00 fee is collected by the clerk of the district court in each criminal, juvenile, treatment, traffic, Fish & Game and Watercraft cases. Fees are paid monthly to the county treasurer.

If the money now devoted to this purpose were to be redirected to the State General Fund there would be a discernible fiscal impact on judicial branch operations.

Sincerely,

A handwritten signature in cursive script that reads "Paul Shelby".

Paul Shelby
Deputy Judicial Administrator

PS:cml

Attachment I
SJC
1-24-89



Dale L. Pohl, President
A.J. "Jack" Focht, President-elect
Robert W. Wise, Vice President
Linda D. Elrod, Secretary-Treasurer
Christel Marquardt, Past President

Marcia Poell, Executive Director
Ginger Brinker, Director of Administration
Dru Sampson, Continuing Legal Education Director
Patti Slider, Public Information Director
Ronald Smith, Legislative Counsel
Art Thompson, Legal Services Coordinator

January 19, 1989

The Honorable Winton Winter, Jr.
State Senator
State Capitol Building, Room #120S
Topeka, KS 66612

re: Professional Corporation Code changes

Dear Wint,

Please find enclosed some suggested changes to the professional corporation code on which KBA would like to request introduction of a committee bill. The recommendations came in conjunction with the Secretary of State's office, and the Corporation, Business and Banking Law section of KBA. Our board recommends the changes, too. If you like a short presentation as to this recommendation, I'll be glad to oblige.

Cordially,

Ron Smith,
Legislative Counsel

enc

1200 Harrison • P.O. Box 1037 • Topeka, Kansas 66601 • (913) 234-5696

Attachment VII

BOARD OF GOVERNORS: Thomas A. Hamill, John L. Vitell, David J. Wasse, District 1 • Hon. Fred N. Six, District 2 • Tim Brazil, District 3 • Warren D. Andreas, District 4
E. Dudley Smith, Dale L. Somers, District 5 • Anne Burke Miller, District 6 • Dennis L. Gillen, Philip L. Bowman, Warren R. Southard, District 7
William B. Sweater, District 8 • Linda Trigg, District 9 • Hon. Charles E. Worden, District 10 • Thomas L. Boeding, District 11
Kim R. Martens, Young Lawyers President • John Elliott Shamborg, Association ABA Delegate • Glee S. Smith, Jr., ABA Delegate
Christel Marquardt, Association ABA Delegate • Richard C. Hite, Kansas ABA Delegate • Hon. Samuel K. Bruner, KDJA Representative

Senate Judiciary

1-24-89

K.S.A. 17-2708

The general laws of the state of Kansas relating to corporations, Kansas Statutes Annotated, chapter 17, except as otherwise provided herein, shall be applicable to a professional corporation organized pursuant to this chapter except that any provisions of this chapter shall take precedence over any provision of said chapter, which conflicts with it. The provisions of this chapter shall take precedence over any law which prohibits a corporation from rendering any type of professional service. Any person or organization, as defined in K.S.A. 17-2707, as amended, which is authorized to form a professional corporation may also incorporate under the Kansas General Corporation Code contained in K.S.A. 17-6001 et. seq., as amended.

K.S.A. 17-2712

(a) A professional corporation may issue shares of its capital stock only to a qualified person. A shareholder may voluntarily transfer his shares in a professional corporation to the corporation or to a qualified person with the prior written consent of the corporation unless the articles of incorporation otherwise provide. No shares may be transferred upon the books of the professional corporation or issued by the professional corporation until there is presented to and filed with the corporation a certificate by the regulating board stating that the person to whom the transfer is to be made or the shares issued is duly licensed to render the same type of professional services as that for which the corporation was organized. No shareholder shall enter into any voting trust agreement, proxy, or any other type of agreement vesting another person, other than another shareholder of the same corporation, with authority to exercise the voting power of any or all of his stock. The issuance or transfer of any shares and any proxy, voting trust or other agreement made in violation of this section shall be null and void. Every certificate of stock issued by a professional corporation shall contain substantially the following provision: "The ownership and transfer of this stock and the rights and obligations of stockholders are subject to the limitations and provisions of the professional corporation law of Kansas."

(b) The Kansas securities law (Kansas Statutes Annotated, chapter 17, article 12) shall not be applicable to nor govern any transactions relating to any shares of a professional corporation.

(c) A general partnership if all partners thereof are authorized to render a professional service permitted by the articles of incorporation of the issuing professional

corporation and in which at least one partner is authorized by a licensing authority of this state to render in this state a professional service permitted by the articles of incorporation of the corporation shall be deemed a qualified person for purposes of this section.

(d) A professional corporation or foreign professional corporation in which at least one shareholder is authorized by a licensing authority of this state to render in this state a professional service permitted by the articles of incorporation of the corporation shall be deemed a qualified person for purposes of this section.

K.S.A. 17-2714

If the articles of incorporation or bylaws of a corporation subject to this act fail to state a price or method of determining a price at which the corporation or its shareholders may purchase the shares of a deceased shareholder, or a shareholder no longer qualified to own shares in the corporation, then the price for such shares shall be determined by arbitration pursuant to the rules of the American arbitration association. Unless request in writing is made for arbitration hereunder within thirty (30) days after the death or disqualification of a shareholder, the fair value shall be determined by a district judge of the district court in which the principal place of business of the professional corporation is located, said determination to be had by the district judge without a jury. The election to incorporate under this act shall constitute a full and final waiver of the right of jury trial on all issues in respect to the price and fair value to be paid for such shares. Upon the death or disqualification of the last shareholder qualifying to be shareholder of a professional corporation hereunder, such corporation shall not be dissolved but shall become a general business corporation. The successors in interest to such disqualified or deceased professional shareholder shall have the authority to amend the articles of incorporation to provide that the corporation may function under and be governed by the General Corporation Code to collect its accounts receivable, pay its debts, otherwise wind up its affairs or conduct any business or activity which is permitted under the General Corporation Code, and the successors in interest of such shareholder shall also have the authority to elect new directors of the corporation.

K.S.A. 17-2715

This chapter shall not affect any law, duty, right or privilege arising out of or applicable to the relationship between a person rendering professional services and a person receiving

those services, including, but not limited to, liability or privilege arising out of the professional services. All rights and obligations pertaining to communications made to, or information received by any qualified person, or his advice thereon, shall be extended to the professional corporation of which he is a shareholder or employee, and to the corporation's officers and employees. Every individual who renders a professional service as an employee of a professional corporation or a foreign professional corporation shall be liable for any negligent or wrongful act or omission in which he or she personally participates to the same extent as if he or she rendered such service in his or her individual capacity. An employee or shareholder of a professional corporation or a foreign professional corporation shall not be liable for the conduct, actions, or omissions of other employees in which he or she did not personally participate unless he or she was negligent in appointing or supervising that employee. Except as provided above, the liability of an employee or shareholder of a professional corporation or foreign professional corporation in his or her capacity as such shall be no greater in any respect than that of an employee or a shareholder of a corporation organized under the General Corporation Code of Kansas, K.S.A. 17-6001 et. seq., as amended.