

Approved February 28, 1989
Date

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by Sen. Don Montgomery at
Chairperson

9:00 a.m./p.m. on February 27, 1989 in room 531-N of the Capitol.

All members were present except:

Senators Gaines and Steineger - Excused

Committee staff present:

Mike Heim, Legislative Research
Emalene Correll, Legislative Research
Theresa Kiernan, Revisor of Statutes
Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

Paul Shelby, Office of Judicial Administration
Linda Fincham, Marshall County Register of Deeds
Susie Parmer, Leavenworth County Register of Deeds
John Peterson, Kansas Cemetery Association

The hearing began on SB 268 concerning the filing of a Certificate of Title with the Register of Deeds office. Paul Shelby, Office of Judicial Administration, testified first. (See Attachment I). He told the committee if it approves the bill, the certificate needs to be updated.

Linda Fincham, Marshall County Register of Deeds, testified in support of the bill. (See Attachment II). The Chairman asked if a duplicate copy of the final order from the Clerk of the District Court would be acceptable to the Registers of Deeds. Ms. Fincham said final orders are often lengthy and would take up a lot of space. Also they are not used to reading final orders, thus, it would be difficult to determine who the heirs are.

Susie Parmer, Leavenworth Register of Deeds, stood to inform the committee that her county has used the method supported by Ms. Fincham for over ten years. A form is filled out in the Clerk of the District Court's office, copies of the description are attached to the form and sent to her office just as an accomodation.

Sen. Lee asked why there is a \$5.00 filing fee. Ms. Fincham answered that the books that are used for recording are expensive, and the fee is used to defray the cost of buying the books. The Chairman asked who collects the fee. Ms. Fincham said it is collected by the Clerk of the District Court as court costs. The hearing was closed.

Discussion of SB 268 began as to the alternatives offered by Mr. Shelby. Staff determined that the second suggestion is probably the better as the first one will not take care of pro se cases. Sen. Burke offered the suggestion that the first option apply where an attorney is involved, and the second option apply where an attorney is not involved. Sen. Daniels noted that the bill has the clerk sign the certificate, but Ms. Fincham's certificate has the Judge sign. Mr. Shelby stated that he prefers the judge signing it.

Attention was turned to SB 288 relating to the revestment of title to cemetery lots. The Chairman said his district had requested help on this matter.

John Peterson, Kansas Cemetery Association, testified in support of the bill. He said the bill deals with city and township cemeteries, not private ones. At present, cemetery boards can proceed to have lots declared back to the cemeteries if they are not used in fifty years. The bill would lower the years to thirty. Many of these cemeteries have this land and also need more space. They would not have to buy land if they could use the unused land.

Sen. Daniels asked how many municipal and township cemeteries there are in

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT

room 531-N, Statehouse, at 9:00 a.m./~~p.m.~~ on February 27, 1989.

Kansas. Mr. Peterson had no exact figure but said there are many. Sen. Daniels then expressed her concern that perhaps thirty years would not be long enough time if the lots were purchased when a person was young or if that person had moved far away and did not receive notice from the cemetery within the thirty day notification requirement. A short discussion of this followed, and staff felt that perhaps an Attorney General's ruling is needed. Sen. Allen said he feels there may be some difficulty in finding owners, but he would support the bill if the Chairman really feels a need for it. Sen. Daniels restated her problems with the bill and thought more questions should be answered before acting on the bill. The Chairman said he has been working on this for two years, and this is the best solution found. He added that many lots are there with no record of a family owning them and, therefore, there is no one to notify. The Chairman said if anyone has a better solution, to work on it and present it to the committee. This concluded the hearing on SB 288.

The minutes of February 24 were approved.

The meeting was adjourned.

Senate Bill 268 - Court judgments concerning transfer of title to property, filed with the register of deeds.

This bill requires the clerk of the district court to determine when legal title has passed in a judgment or decree of the district court, to extract the information from the judgment, complete, certify a legal title to that effect, to file the Certificate of Title with the proper register of deeds, and to pay a \$5.00 fee for filing the certificate.

Supreme Court Rules relating to district courts now require attorneys in a case to note on the margin of the journal entry of a case when a judgment or decree involves ownership or title to real estate (S. Ct. Rule No. 170). Also, in a significant number of instances, litigants appear for themselves (pro se) and are not aware of the requirement. Thus, journal entries in every case of this nature will have to be read line by line to determine if title to real estate has passed and then extract that information for the certificate of title.

Since clerks of the district court and their deputies are prohibited from practicing law (K.S.A. 20-3133), none of them are attorneys. It seems likely that the finer points of transfer of real estate title in a lawsuit will escape clerks. Each time the clerk fails to interpret real estate law correctly, the State Tort Claims Act would subject the state to a lawsuit for damages. The liability stemming from requiring non law-trained persons to fill out titles to real estate is a concern.

The \$5.00 filing fee as outlined on lines 46 and 91 is also a concern. In both civil and probate actions, the courts collect docket fees upon filing. This additional fee would either increase those docket fees or require an additional fund be established to be deducted from those fees.

Recommendations: Require the attorney who is drawing up the journal entry to be responsible for completing the form and filing it with the register of deeds. This would relieve the liability issue with the clerks and the additional accounting procedures, or;

Insert the language, AND REGISTER OF DEEDS, after county clerk on lines 24 and 68 and remove the requirements of both the Certificate of Title and the \$5.00 filing fee. The clerk of the district court then would certify two copies of the judgment or decree and file one with the proper county clerk and one with the proper register of deeds.

2-27-89
Senate L.G.
Attachment I

Good morning Chairman Montgomery and members of the Committee. I am Linda Fincham, Legislative Chairman for the Register of Deeds Association. Because of an on going problem with a gap in the chain of title in the real estate records in the Register of Deeds Office and at the request of the Kansas Property Valuation Department, the Register of Deeds Association asked that this bill be drafted and introduced as a means to show a more complete chain of title in the Register of Deeds Office.

The Registrars are not trying to abstract property; however according to K.S.A. 58-2221.....it shall be the duty of the Register of Deeds to file the same for record immediately, and in those counties where a numerical index is maintained in his or her office the Register of Deeds shall compare such instrument, before copying the same in the record, with the last record of transfer in his or her office of the property described and if the Register of Deeds finds such instrument contains apparent errors, he or she shall not record the same until he or she shall have notified the grantee where such notice is reasonably possible.

Much of the property that is transferred today is transferred by divorce and descent or probate proceedings, these actions are rarely recorded in the Register of Deeds office and in order for the Registrars to comply with K.S.A. 58-2221, we must first go to the Clerk of the District Court's office and check the file and read the final order to determine the heirs, devisees and legatees. During reappraisal, the County Appraisers also had problems in determining the last owner of record and they are in agreement that a document such as the Certificate of Title would list the new owner in the numerical index and would be a much faster and easier solution for them to obtain the last record owner then to search probate files and read page after page of final orders in a court case.

The Certificate of Title described in S.B. 268 would also aid in our office when attorneys, oil and gas landmen, bankers and the general public use our records. The Certificate of Title would serve as a simple notice to the public and would help close the gap in the chain of title that so often confuses people as to why their names do not appear as the record owner in our office records.

The Certificate of Title is already being used in Leavenworth County where it was implemented several years ago. This same form is also being used in several other counties across the state, and to our knowledge it has presented no problems to anyone from those counties.

2-27-89
Senate Local Gov't
Attachment II

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In summary, the Register of Deeds Association supports S.B. 268 and would appreciate your consideration on this bill. If you have any questions, one of the members of my committee or I would be happy to give you an answer.

Thank you.

Linda Fincham,
Chairman Legislative Committee
Register of Deeds Association

2-27-89
Senate L.G.
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CERTIFICATE OF TITLE

LEAVENWORTH COUNTY, LEAVENWORTH, KANSAS

19_____

CASE # _____

STATE OF KANSAS)

LEAVENWORTH COUNTY)

IN THE DISTRICT COURT OF SAID COUNTY AND
STATE ---- FAMILY COURT DIVISION

IN THE MATTER OF THE ESTATE OF _____
DECEASED.

This is certify that _____

heir(s)-at-law of the above named decedent, has acquired title to the hereinafter
described Real Estate by _____

Devisee's interest is hereby described as follows, to wit: _____

This, therefore, authorizes the Register of Deeds to enter same on the
Record of the proper County.

District Court Judge
Leavenworth County, Kansas

By Martha Moppin, Deputy Clerk

2-27-89
Senate L.G. II-3