

Approved January 31, 1990

Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

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

10:00 a.m./~~xxx~~ on January 23, 19 90 in room 514-S of the Capitol.

All members were present except: Senator Yost who was excused.

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:

Alan Alderson, Topeka
Senator Don Montgomery
Paul Shelby, Assistant Judicial Administrator, Office of Judicial Administration

The Chairman opened the meeting by recognizing Mr. Alan Alderson, from the law firm of Alderson, Alderson & Montgomery in Topeka, who presented a request for introduction of legislation on behalf of the Kansas Lumber Dealers Association and Mid-America Lumber. The request would establish the crime of fraudulent use of construction funds and prescribe penalties therefor. (ATTACHMENT I) Mr. Alderson requested that the bill draft presented to the committee, if approved for introduction, be altered by inserting in Section 1(a) the words "knowing and willful" after "Construction fund fraud is the" and before "failure of an owner". Mr. Alderson stated that the current law in Arkansas was used as the pattern for their draft of the requested bill introduction.

Senator Gaines moved to introduce a bill a requested by Mr. Alderson. Senator Martin seconded the motion. The motion carried.

The Chairman opened the hearing on SB 441.

SB 441 - concerning district courts; relating to district magistrate judge positions.

Senator Don Montgomery testified in support of SB 441. He stated that the 22nd Judicial District had a problem with a lack of applications to fill a vacant judge position because of the residency requirement of living in Brown County as interpreted in existing statutes. (ATTACHMENT II) He stated that SB 441 would eliminate the problem that now exists in Brown County.

Paul Shelby, Assistant Judicial Administrator, Office of Judicial Administration, testified in opposition of SB 441. (ATTACHMENT III)

This concluded the hearing for SB 441.

The Chairman turned the committee's attention to HB 2347 for consideration.

HB 2347 - party shacks described as common nuisances.

Senator Petty moved to amend HB 2347 by adding language to the section on notification to the property owner that the notification be in writing. Senator Feleciano seconded the motion. The motion carried.

Senator Bond moved to amend HB 2347 with the provision that before the court can order the padlocking and seizure of the real estate property, notice and opportunity to be heard be given to parties holding recorded interest in the real estate such as a contract seller, mortgagee, or other lien holder of the property in question. Senator Morris seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~pm~~ on January 23, 1990.

Discussion followed on whether to alter the section regarding padlocking of the property. It was the consensus of the committee that since padlocking was an option of the court and not mandatory, no action was taken.

Senator Parrish moved to recommend HB 2347 favorable for passage as amended. Senator Petty seconded the motion. The motion carried.

The meeting was adjourned.

GUEST LIST

COMM. SEE: SENATE JUDICIARY COMMITTEE

DATE: Jan 23, 1990

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Jason Wilson Jason Wilson	1907 Clay	Robinson
Jim Anderson Jim Anderson	3559 Summerwood	Page
Mike Miller	Topoka	City of Topoka
Mark Sheeks	Lawrence	Intern - Parrish
ART BROWN	KANSAS CITY MO	KS LBR DEALER
AARON ANDERSON	TOPEKA	KS WMBER DEALER
Sue Boid	Omuland Park	
R. Fry	Topoka	KTLA
Ron Smith	"	KBA
Ken Evans	TOPEKA	WIBW-TV

January 23, 1990

Senate Bill No. _____

By Senate Committee on Judiciary

AN ACT to establish the crime of fraudulent use of construction funds and prescribing penalties therefor.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) Construction fund fraud is the failure of an owner, contractor, owner-contractor or subcontractor to pay invoices received from or contractual obligations to its contractors, subcontractors, materialmen or laborers for materials, work or labor furnished for real property improvement within thirty (30) days of final receipt of all construction funds due said owner, contractor, owner-contractor or subcontractor.

(b) As used in this section, construction funds shall include construction loans to owners and owner-contractors and all sums paid or to be paid to contractors or subcontractors.

(c) Construction fund fraud in an amount in excess of \$5,000.00 on any one project shall constitute a Class E felony. Construction fund fraud in the amount of \$5,000 or less on any one project is a Class A misdemeanor.

(d) An invoice or contractual obligation shall not be considered under this section if within the 30 days provided in subsection (a) it is the subject of a good faith detailed written notice of dispute served by certified or registered mail, return receipt requested, on the project owner and the claiming contractor, subcontractor, materialman or laborer, or the obligor has filed a proceeding under the United States Bankruptcy Act.

(e) Should the property owner, contractor, owner-contractor or subcontractor provided in subsection (a) be corporations or entities other than individuals, they and their managing officers shall be responsible for adhering to the requirements of this section and shall be subject to the criminal provisions of subsection (c).

(f) This section shall not replace or in any manner affect the mechanic's or materialmen's lien remedy nor shall the filing of a lien affect the requirements of this section.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

justice of peace. *Harris v. Christy*, 166 K. 395, 201 P.2d 1067.

39. Court without jurisdiction to hear case where remedies under workmen's compensation act not exhausted. *Anchor Casualty Co. v. Wise*, 172 K. 539, 542, 544, 241 P.2d 484.

40. Court may remand criminal action to inferior court for another preliminary hearing. *State v. Aspinwall*, 173 K. 699, 706, 707, 252 P.2d 841.

41. Cited; rules governing modification and vacation of judgments. *Voth v. Thompson*, 178 K. 539, 544, 289 P.2d 733.

42. Mentioned; action to establish alleged equitable mortgage on personalty constituted demand; probate court jurisdiction. *Shields v. Fink, Executrix*, 190 K. 17, 22, 372 P.2d 252.

43. No absolute right to take deposition of adverse party residing in adjoining county; deposition statutes and decisions reviewed; court did not abuse discretion in enjoining taking of deposition. *Miller v. Huffman*, 191 K. 570, 572, 382 P.2d 464.

44. Naturalization; jurisdiction of district court restricted to county where sitting. *United States v. Johnson*, 181 F. 429.

45. Question involved determination of ownership of property; not probate matter; federal court jurisdiction. *Holt v. King*, 250 F.2d 671, 672, 675.

46. Trial by jury on appeal from police court unless expressly waived. *Dodge City v. Day*, 195 K. 303, 306, 403 P.2d 1004.

47. Finding by court that it had jurisdiction in accounting proceedings to determine interest of deceased life tenant of trust upheld. *Jennings v. Speaker, Executrix*, 1 K.A.2d 610, 614, 517 P.2d 358.

48. Applied; waiver of record by defendant held not reversible error under facts. *State v. Daniels*, 2 K.A.2d 603, 608, 586 P.2d 50.

49. Not applicable to jurisdiction question raised by the filing of amended petition without permission of court or consent of adverse party. *Mansfield Painting and Decorating, Inc. v. Budlaw Services, Inc.*, 3 K.A.2d 77, 78, 589 P.2d 643.

50. Court originally entering child support order under 60-1610 retains exclusive jurisdiction with respect to courts of coordinate jurisdiction. *Nixon v. Nixon*, 226 K. 218, 219, 596 P.2d 1238.

51. Cited; appeal properly taken to district court. In re *Estate of Kempkes*, 4 K.A.2d 154, 157, 603 P.2d 642.

52. Failure of legislature to act on matter clearly not the same as taking positive action to exclude jurisdiction. *Murphy v. City of Topeka*, 6 K.A.2d 488, 496, 497, 630 P.2d 186 (1981).

53. Kansas district court has all general original jurisdiction not otherwise provided by law. *Dipman v. Dipman*, 6 K.A.2d 844, 845, 635 P.2d 1279 (1981).

54. District court of district where defendant resided and security interest impaired (21-3734) had personal and subject matter jurisdiction. *State v. Matzke*, 236 K. 833, 835, 696 P.2d 396 (1985).

55. Cited; concurrent jurisdiction of city and state examined; one which first obtains jurisdiction may proceed. *State v. Frazier*, 12 K.A.2d 164, 165, 166, 736 P.2d 956 (1987).

20-301a. Classes of judges; "judge of the district court" defined; jurisdiction, power and

authority. There shall be two classes of judges of the district courts established pursuant to K.S.A. 20-301: District judges and district magistrate judges. As used in this act, "judge of the district court" means any of such judges. Such judges shall have the jurisdiction, powers and duties prescribed by this act and otherwise prescribed by law. The judicial power and authority of a judge of the district court in each judicial district may be exercised anywhere within such judicial district and may be exercised anywhere within any other judicial district when assigned to hear any proceeding or try any cause in such judicial district, as provided in K.S.A. 20-319 and amendments thereto.

History: L. 1976, ch. 146, § 10; L. 1986, ch. 115, § 31; Jan. 12, 1987.

Cross References to Related Sections:

Application in wiretap cases, see 22-2516.

Attorney General's Opinions:

Election expenses of candidates and organizations; reporting of receipts and expenditures by certain organizations. 81-5.

Clerk of district court; board of trustees of county law library. 82-124.

Clerk of the district court; board of trustees of county law library. 84-64.

Classes of judges of district court. 85-183.

District magistrate judges; election due to vacancy; length of term. 88-38.

CASE ANNOTATIONS

1. Applied in construing 22-2516a; district judge outside county in which telephone and monitoring devices located without power to authorize interception. *State v. Adams*, 2 K.A.2d 135, 137, 576 P.2d 242.

2. Applied in construing 20-337; constitutional order declaring office of magistrate judge vacant upheld. *Sinclair v. Schroeder*, 225 K. 3, 6, 586 P.2d 684.

20-301b. Judge required in each county.

In each county of this state there shall be at least one judge of the district court who is a resident of and has the judge's principal office in that county.

History: L. 1983, ch. 105, § 12; L. 1984, ch. 111, § 1; July 1.

20-302. District judges; power and authority.

The district judge provided for in the Kansas constitution shall have and exercise the full judicial power and authority of a district court.

History: G.S. 1868, ch. 28, § 2; R.S. 1923, 20-302; L. 1965, ch. 214, § 1; L. 1976, ch. 146, § 11; Jan. 10, 1977.

Source or prior law:

L. 1861, ch. 22, §§ 2, 3.

person who takes office as district magistrate judge on January 10, 1977, and any person who thereafter is elected or appointed to the office of district magistrate judge and, in either event, and who has not been regularly admitted to practice law in Kansas, as required by subsection (c)(3) of K.S.A. 20-334, shall be issued a temporary certificate permitting such judge to commence upon the duties of office, conditioned that such judge becomes certified as being qualified to hold such office, as provided herein. The supreme court shall provide by rule for the examination of such district magistrate judges, in order to ensure that each such district magistrate judge possesses the minimum skills and knowledge necessary to carry out the duties of such office. Such examination shall be administered without charge, and shall be given at least once each six months at a time and place designated by the supreme court. If a district magistrate judge fails to successfully complete such examination within eighteen (18) months after the date said judge takes office, said judge shall forfeit his or her office and the district magistrate judge position for which such judge was elected or appointed shall be vacant at the expiration of such eighteen-month period. A district magistrate judge who fails to successfully complete any examination may take such examination again at the next time it is offered prior to the expiration of such eighteen-month period. Any person who fails to successfully complete the examination within the prescribed time shall be ineligible for election or appointment as a district magistrate judge, unless such person subsequently meets all the qualifications prescribed by subsection (c)(3) of K.S.A. 20-334.

Any person who successfully completes the examination administered under this section shall be certified by the supreme court as qualified to hold such office. Any district magistrate judge who has been so certified shall be eligible for reelection or retention in office as provided in this act.

The supreme court shall prepare a manual which shall contain the substantive and procedural rules of law and principles of judicial conduct which are deemed necessary to be understood and practiced by a district magistrate judge. Such manual shall be given to each district magistrate judge who is required to be examined under this section subsequent to the time of such judge's election or appointment. From time to time, as the necessity arises,

such manual shall be amended and supplemented to reflect changes in the law or code of judicial conduct.

History: L. 1976, ch. 146, § 22; April 19.

Attorney General's Opinions:

Retirement system for justices and judges; eligible members. 80-145.

CASE ANNOTATIONS

1. Section construed and applied; order declaring office vacant upheld; section constitutional; not in conflict with 20-340. *Sinclair v. Schroeder*, 225 K. 3, 586 P.2d 683.

20-338. District magistrate judge positions established. (a) District magistrate judge positions shall be constituted as provided in subsection (b).

(b) (1) In the first judicial district, there shall be one district magistrate judge position in Atchison county, subject to the provisions of K.S.A. 1985 Supp. 20-354a and amendments thereto.

(2) In the second judicial district, there shall be three district magistrate judge positions in the district, with position one in Jefferson county, position two in Pottawatomie county and position three in Wabaunsee county.

(3) In the fourth judicial district, there shall be two district magistrate judge positions in the district, with position one in Osage county and position two in Coffey county.

(4) In the fifth judicial district, there shall be one district magistrate judge position in Chase county.

(5) In the sixth judicial district, there shall be a district magistrate judge position in Bourbon county.

(6) In the eighth judicial district, there shall be two district magistrate judge positions in the district, with position one in Dickinson county and position two in Morris county.

(7) In the 11th judicial district, there shall be one district magistrate judge position in Cherokee county.

(8) In the 12th judicial district, there shall be six district magistrate judge positions in the district, with position one in Cloud county, position two in Jewell county, position three in Lincoln county, position four in Mitchell county, position five in Republic county and position six in Washington county.

(9) In the 13th judicial district, there shall be two district magistrate judge positions in the district, with position one in Elk county and position two in Greenwood county.

(10) In the 14th judicial district, there shall

be one district magistrate judge position in Chautauqua county.

(11) In the 15th judicial district, there shall be six district magistrate judge positions in the district, with position one in Cheyenne county, position two in Logan county, position three in Sheridan county, position four in Wallace county, position five in Thomas county and position six in Rawlins county.

(12) In the 16th judicial district, there shall be five district magistrate judge positions in the district, with position one in Clark county, position two in Comanche county, position three in Gray county, position four in Kiowa county and position five in Meade county.

(13) In the 17th judicial district, there shall be six district magistrate judge positions in the district, with position one in Graham county, position two in Decatur county, position three in Norton county, position four in Osborne county, position five in Phillips county and position six in Smith county.

(14) In the 20th judicial district, there shall be four district magistrate judge positions in the district, with position one in Ellsworth county, position two in Rice county, position three in Russell county and position four in Stafford county.

(15) In the 21st judicial district, there shall be one district magistrate judge position in Clay county.

(16) In the 22nd judicial district, there shall be three district magistrate judge positions in the district, with position one in Doniphan county, position two in Marshall county and position three in Nemaha county.

(17) In the 23rd judicial district, there shall be three district magistrate judge positions in the district, with position one in Gove county, position two in Rooks county and position three in Trego county.

(18) In the 24th judicial district, there shall be six district magistrate judge positions in the district, with position one in Edwards county, position two in Hodgeman county, position three in Lane county, position four in Ness county, position five in Pawnee county and position six in Rush county.

(19) In the 25th judicial district, there shall be five district magistrate judge positions in the district, with position one in Greeley county, position two in Hamilton county, position three in Kearny county, position four in Scott county and position five in Wichita county.

(20) In the 26th judicial district, there shall be five district magistrate judge positions in the district, with position one in Grant county, position two in Haskell county, position three in Morton county, position four in Stanton county and position five in Stevens county.

(21) In the 28th judicial district, there shall be one district magistrate judge position in Ottawa county.

(22) In the 30th judicial district, there shall be four district magistrate judge positions, with position one in Barber county, position two in Harper county, position three in Kingman county and position four in Pratt county.

(23) In the 31st judicial district, there shall be two district magistrate judge positions in the district, with position one in Allen county and position two in Woodson county.

~~History: L. 1976, ch. 146, § 16; L. 1977, ch. 112, § 3; L. 1982, ch. 130, §§ 14, 15; L. 1982, ch. 129, §§ 7, 8, 9; L. 1983, ch. 105, § 6; L. 1983, ch. 105, § 7; L. 1985, ch. 105, § 1; L. 1986, ch. 115, § 39; Jan. 12, 1987.~~

Attorney General's Opinions:

Classes of judges of district court. 85-183.

20-339.

History: L. 1976, ch. 146, § 17; Repealed, L. 1986, ch. 115, § 105; Jan. 12, 1987.

20-340.

History: L. 1976, ch. 146, § 19; Repealed, L. 1986, ch. 115, § 105; Jan. 12, 1987.

CASE ANNOTATIONS

1. Section not in conflict with 20-337; order under 20-337 declaring office of magistrate judge vacant upheld; section constitutional. *Sinclair v. Schroeder*, 225 K. 3, 5, 6, 7, 586 P.2d 683.

20-341. District magistrate judges; expenses; retirement system. (a) District magistrate judges shall be reimbursed for expenses incurred by them in the performance of their official duties in the same manner and to the same extent district judges are reimbursed for such expenses.

(b) District magistrate judges may become members of the Kansas public employees' retirement system in the manner provided by law for becoming a member thereof. If, upon entry into the retirement system for justices and judges, a district judge has prior service under the Kansas public employees' retirement system, any retirement benefits to which such judge was entitled under the Kansas public employees' retirement system and retirement

Senate Bill No. 441
Senate Judiciary Committee
January 23, 1990

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Mr. Chairman:

I appreciate the opportunity to appear this morning to discuss Senate Bill No. 441, which would add a district magistrate judge position in Brown County, bringing the total number of magistrate judges in the 22nd Judicial District to four positions. (See page 2, lines 25-28.)

The 22nd Judicial District is comprised of four counties-- Brown, Doniphan, Marshall, and Nemaha. There is a judge in each county and the position allocations are: Brown County, one district judge; Doniphan County, one magistrate judge; Marshall County, one district judge and one magistrate judge; and Nemaha County, one magistrate judge. The Administrative Judge is located in Marshall County.

The problem appears to be that if a judgeship vacancy occurs in Brown County, the district judge position would be required to be on the ballot districtwide but required to be a resident of Brown County. This situation is not unique--

it exists in nine other counties in the state. Those other nine counties are Anderson, Jackson, Linn, Marion, Miami, Neosho, Seward, Sherman, and Wilson. We have lived with this situation since unification and do not perceive it to be a problem.

The Administrative Judge of this district assigns magistrate judges into Brown County every Tuesday, Wednesday, and Thursday to hear criminal, traffic, juvenile, and probate cases. We understand that this assignment system is working very well in this district as well as in other districts across the state. This particular assignment pattern has been in effect for a number of years, and we have found it to be an effective and efficient use of district magistrate judges.

The Supreme Court has established annual budget policies and procedures to be followed, which allows each judicial district to request additional judicial and/or nonjudicial positions. The Court reviews the requests and then decides whether the requests should be included in the budget or denied.

This additional magistrate judge position request for the 22nd Judicial District did not follow the prescribed procedures and therefore was never considered by the Court.

The Supreme Court is not requesting any new judicial positions this year in its budget. Even if the Court were considering additional judicial positions, district judge positions would be given priority due to the caseload in our larger courts.

The Court does not feel this request is justified by caseload measures, residency requirements, needs of the district, or because of inefficient use of assigned magistrate judges into Brown County.

The Supreme Court does not support this bill for the above reasons, but the interest of Senators Montgomery and Sallee in this matter is appreciated.

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22nd JUDICIAL DISTRICT
(Brown, Doniphan, Marshall & Nemaha counties)

District Judges:

Marshall County

Hon. Keith Sprouse, Administrative Judge
Div. 1, District Court
P.O. Box 309
Marysville 66508

Brown County

Hon. J. D. Euler
Div. 2, District Court
P.O. Box 417
Hiawatha 66434

District Magistrate Judges:

Doniphan County

Hon. Virgil W. Begesse (Pos. 1)
Doniphan County Courthouse
Troy 66087

Marshall County

Hon. Elizabeth Carleen (Pos. 2)
Marshall County Courthouse
Marysville 66508

Nemaha County

Hon. James B. O'Connor (Pos. 3)
Nemaha County Courthouse
Seneca 66538