Approved February 8, 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./p.m. on January 30, 1990 in room 514-S of the Capitol.

All members were present except:

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:

Charles Kent Pomeroy, Shawnee County Landlord Association and
Associated Landlords of Kansas
Senator Lana Oleen
Everett Stilley, Skate Plaza Roller Skating Rink, Manhattan
Terry Maxfield, Skateland Family Fun Center, Emporia
Bob Frey, Kansas Trial Lawyers Association
Dick Hummel, Kansas Health Care Association
Rick Carlson, Delmar Gardens Enterprises, Lenexa
Joseph Kroll, SRS Bureau of Adult and Child Care

Senator Martin moved to approve the minutes of January 16, 17, 18 and 22 as written. Senator Petty seconded the motion. The motion carried.

The Chairman outlined seventeen bill requests made of the committee through the Chairman. (ATTACHMENT I)

Senator Bond moved to introduce the bills outlined on the attached as outlined by Chairman Winter. Senator Gaines seconded the motion. The motion carried.

The hearing for SB 299 was opened.

SB 299 - concerning the residential landlord and tenant act; relating to disposition of personal property of tenant.

Charles Kent Pomeroy, Shawnee County Landlord Association and Associated Landlords of Kansas, testified in support of SB 299. Mr. Pomeroy shared a copy of Davis v. Odell, noting areas of concern to them in the margins. (ATTACHMENT II) Mr. Pomeroy suggested amendments to the bill to change the time constraints. (ATTACHMENT III)

As no opponents appeared on SB 299, this concluded the hearing.

Hearing was opened for

SB 289 - concerning civil liability; relating to the duties and liabilities of roller skating center operators and persons who utilize roller skating centers; providing for the acceptance of certain risks by persons who utilize roller skating centers.

Senator Oleen presented a short briefing of SB 289, explaining the bill was based on a Michigan law instituted in 1988. She then introduced individuals interested in the legislation; Jerry Ottaway from Wichita, Scott Brown from Emporia, Larry Burke from Emporia, and Ed "Pappy" Winkler from Topeka.

Everett Stilley, Skate Plaza Roller Skating Rink, Manhattan, testified in support of SB 289. (ATTACHMENT IV) He also furnished the committee with copies of the Roller Skating Rink Safety Standards. (ATTACHMENT V)

Terry Maxfield, Skateland Family Fun Center, Emporia, testified in support of SB 289. (ATTACHMENT VI)

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,

room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on January 30, 1990

Bob Frey, Kansas Trial Lawyers Association, testified in opposition to SB 289. (ATTACHMENT VII)

This concluded the hearing for SB 289.

The hearing was opened for SB 252.

SB 252 - concerning confidential information; prohibiting certain acts and providing penalties for violations.

Dick Hummel, Kansas Health Care Association, testified in support of SB 252. (ATTACHMENT VIII)

Rick Carlson, Delmar Gardens Enterprises, Lenexa, testified in support of SB 252. (ATTACHMENT IX)

Joseph Kroll, SRS Bureau of Adult and Child Care, testified in opposition to SB 252. (ATTACHMENT X)

This concluded the hearing for SB 252.

The meeting was adjourned.

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE DATE: January 30, 1990

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Tonya Blank	Smith Center	Page
Shannon Hrabe	Smith Center	Page
Josh Koser	KSHSAA	Topeka
M. Stottlemire	KDHE	TOPEKA
Athena Andaya	SEN. BOGINA	"
RG Frey	Topeka	KTLA
Virginia L. Stilley	Manhattan	Skate Plaza
Everett L. Stilley	Manhattan	Skate Plaza
TERRY MAXFIELD	EMPORIA	SKATELAND
Peggy Maxfield	Emporia	Skateland
Jerry O'Hara	Wichita	Lanasel
Larry Burke	Emporia	Skateland
Marilyn Bradt	Lawrence	KINH
Ron Smith	Topeka	KBA
Claire McCaughey	Topeka	Aging
Kappy Wheeler	Topeka Ks	Skateway
Dick Hummel	Topeka	KHCA
Richard Carlson	Overland Park	Delma Gardens
Mark Sheeks	Lawrence	Intern - Parrish
BILL DODSON	TOPEKA	SHAWNEE COUNTY LANDLORDS
Charles Ponecop	Topeka	Shawnee Co Landlords & Associated Landlords of Ks
Rosilyn James Martin	Topeka	SRS
James Dunn	Lawrence	Landlords of Lawrence
Nancy Dunn	"	"
Gary Weeks	"	Landlord Lawrence

GUEST LIST

COMM. TEE: SENATE JUDICIARY COMMITTEE DATE: January 30, 190

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Lana Oleen	Topeka	Petroleum Assn.
GORDON M. HAHN	TOPEKA	LANDLORD
Paul Shelby	Topeka	OJA
M. Haaver	"	Capital-Journal

January 24, 1990
Requests for Bill Introductions

1. Controlled Substances Act: makes changes to criminal statutes; re drug schedule etc. (KBI, Attorney General and Uniform Law Commission)

2. Pregnant Substance Abusers: Define delivery of drugs to include use of drugs while pregnant, if intent is to bring child to term. (Winter)

3. Felony post trial jail after acquittal: (Douglas County District Attorney)

4. Eliminate right to jury trial for "minor traffic offenses." (District Judges)

5. Aggravated Telephone harassment: (Douglas County D.A.)

6. Juvenile Placement: Eliminate Grandparents' Notice Requirement. (Private attorney)

7. Child Victim/Witness Testimony: Amend K.S.A. 22-3434 to reflect the constitutionality of requiring the court to make a case-by-case determination in determining if a child can be allowed to testify using alternate means to traditional face-to-face in-court confrontation with the defendant. (Attorney General)

8. Parents Tort Liability: Amend K.S.A. 38-120 by increasing the monetary responsibility of parents from $1,000 to $$5,000 for malicious or willful acts by their children. (Attorney General)

9. Victim/Counselor Confidentiality: Support a "Victim/Counselor Confidentiality Act" which concerns privileged communication between a victim and a counselor. (same as attorney-client, and physician/patient) (Attorney General)

10. Protection from Abuse: Amend the protection from abuse act by:
a. clarifying the act to provide for consistency in its application. (Some judges insist it is only to be used when the victim is single.)
b. Clarifying the act to provide for consistency in its enforcement. (Some law enforcement agencies/judges/county attorney offices are under the impression that violators cannot be arrested.)
c. Including a compensation clause for damages which occurred at the time of the incident which created the need for a Protection from Abuse Order with the Act. (Domestic Violence Advocates)

11. Domestic Violence Reporting: establish a uniform reporting system across the state which requires all law enforcement agencies, when responding to domestic disturbances, to write a report whether an arrest is made or not. (Attorney General)

12. Domestic Violence inclusion: Amend K.S.A. 74-7305(b) to comply with federal regulations. This will assure that victims of domestic violence are not denied compensation. The same eligibility requirements that apply to other victims must be used in evaluating domestic violence claims, and no special requirements not applicable to other victims can be used to deny compensation. (Attorney General)

13. Stop and Frisk: KBI proposal amending K.S.A. 22-2402 which removes the word "search" from our Stop and Frisk Statute. Case law only allows a cursory pat down of individuals stopped on reasonable suspicion and not a full-blown search of the interior pockets, etc. (KBI and Attorney General)

14. Lethal Force - Support the KBI proposal which would amend K.S.A. 22-3215 which brings the Kansas Deadly Force Statute into compliance with the Tennessee v. Gardner decision which prohibited use of legal force by law enforcement officers in the apprehension of non-violent felons.

15. Allowing sentencing of third time convicted DUI offenders to jail work release programs rather than jail. (District Court Judge)

16. Permitting Municipal Court judges to perform wedding ceremonies. (Senator Roy Ehrlich)

17. Allow DUI drivers license suspension hearings to be conducted by telephone conference. (City of Overland Park)

No. 58,394

BECKY DAVIS a/k/a REBECCA DAVIS and RONNIE DAVIS, *Appellants/Cross-Appellees*, v. MELVIN ODELL, GLORIA ODELL, and MADALEIN ODELL, *Appellees/Cross-Appellants*.

SYLLABUS BY THE COURT

1. LANDLORD AND TENANT—*Landlord's Lien against Tenant's Personal Property—Abolition of Distraint for Rent—Exception.* K.S.A. 58-2567 of the Kansas Residential Landlord and Tenant Act eliminates any lien or security interest on behalf of the landlord for unpaid rent in the tenant's household goods, furnishings, fixtures, or other personal property. Distraint for rent is abolished except where the tenant abandons or surrenders his personal property as provided in K.S.A. 58-2565.

2. SAME—*Tenant's Abandonment of Personal Property.* Abandonment of personal property by the tenant occurs only where the tenant voluntarily relinquishes all his right, title, or interest in the property with the intention of terminating his ownership, possession, or enjoyment.

3. SAME—*Tenant's Surrender of Personal Property.* Surrender of personal property by the tenant occurs only where there is shown a mutual agreement between the landlord and the tenant that the tenant's interest in his property is terminated.

4. SAME—*Tenants under Facts Did Not Abandon or Surrender Their Personal Property.* Under the factual circumstances set forth in the opinion, it is held that the tenants did not abandon or surrender their personal property with the intention of terminating their ownership, possession, or enjoyment of the same.

Appeal from Wyandotte district court; WILLIAM M. COOK, judge. Opinion filed December 5, 1986. Affirmed in part, reversed in part, and remanded with directions.

Paul M. Dent, of Kansas City, and *Richard Scaletty*, of Independence, Missouri, argued the cause and were on the brief for the appellants/cross-appellees.

Scott I. Asner, of Kansas City, argued the cause, and *Edward H. Powers, Jr.*, of Oskaloosa, was on the brief for the appellees/cross-appellants.

The opinion of the court was delivered by

PRAGER, J.: This is an action brought by former tenants of an apartment to recover from their former landlords compensatory damages for conversion of the plaintiffs' household goods and punitive damages. The case was tried to a jury which answered certain special questions in favor of the plaintiffs. Both sides have appealed.

Although there were some minor factual conflicts in certain areas, the essential facts in the case were not in dispute and are

as follows: In March of 1982, the plaintiffs, Becky Davis and Ronnie Davis, rented an apartment from the defendants, Melvin, Gloria, and Madalein Odell, in a building complex known as the Suntree Plaza Apartments in Kansas City, Kansas. The plaintiffs failed to pay their rent which was due and owing on August 13, 1983. The defendants served the three-day statutory notice on the plaintiffs to either pay the rent or an action would be brought to evict the tenants. Plaintiffs did not pay the rent. The Odells then brought an action to recover possession of the apartment and for judgment for unpaid rent in the sum of $652.50 in the district court of Wyandotte County.

On September 7, 1983, a default judgment was rendered in favor of the Odells for possession of the apartment, for court costs, and for unpaid rent in the sum of $652.50. This judgment is conceded to be a valid judgment. On September 8, 1983, the clerk of the district court issued a writ of restitution and execution to the sheriff of Wyandotte County directing the sheriff to cause Mr. and Mrs. Davis, as tenants, to be removed from the premises and the landlords to be restored to the possession of the apartment, and that the nonexempt personal property of the defendants, Ronnie and Becky Davis, be executed upon to satisfy the judgment and costs, together with fees for execution of the writ, as provided by law.

On September 13, 1983, pursuant to the writ of execution, the Odells, under the supervision of a Wyandotte County Deputy Sheriff, took possession of the apartment and removed therefrom the personal property of Mr. and Mrs. Davis. The Odells took charge of the property and stored it inside a building, although there was some dispute in that regard. The plaintiffs testified that the property was stored in an open field behind a fence where it was rained on.

On the day the Davises were evicted, they had left the apartment that morning to go to work. Upon their return in the afternoon, they discovered that all of their personal property had been removed and was in the possession of the Odells. Plaintiff, Becky Davis, demanded the return of their property but the defendants refused to release the property unless the plaintiffs paid the sum of $1,737.50, that amount being for back rent, court costs, and removal expenses, plus claimed damages resulting from the abuse of the property by the plaintiffs. The plaintiffs did

not pay that amount or tender any money to obtain the return of their personal belongings.

The defendants sent to the Davises a letter advising them that defendants intended to sell the personal property. On November 2, 1983, the defendants published a notice in the Wyandotte Echo advising the Davises that on or about November 7, 1983, their "furniture, household goods and miscellaneous personal items" would be offered for sale. The defendants heard nothing from the plaintiffs. No further demand was made by the Davises for the personal property. Thereafter, the defendants disposed of plaintiffs' property either by sale or other disposition. The record does not show exactly what the defendants did with the plaintiffs' property.

In the petition filed in this case on August 27, 1984, the plaintiffs, as former tenants, claimed that they were entitled to recover from the defendants the value of their personal property on the theory of conversion and also because of violations of the Kansas Residential Landlord and Tenant Act (K.S.A. 58-2540 *et seq.*). Stated simply, it was the position of the plaintiffs that the defendants, their landlords, unlawfully took possession of and confiscated their personal property without legal justification or excuse in violation of K.S.A. 58-2567. In their answer, the defendants took the position that the tenants had abandoned the dwelling unit and the personal property and, under K.S.A. 58-2565(d), they had a right to take possession of the personal property, store it at the tenants' expense, and sell or otherwise dispose of the same by giving 15 days' notice prior to the sale and by mailing a copy of the publication notice to the tenants at the tenants' last known address. Defendants contended that because the tenants failed to respond or make any claim to the property, defendants had a right to assume it was abandoned and dispose of it without liability to the tenants. The defendants counterclaimed seeking to recover damages from the plaintiffs to pay the judgment for unpaid rent and costs in the forcible detainer action, for the expense of removing the tenants' belongings from the apartment, for the cost of painting and cleaning the premises, and for replacing certain damaged carpet. The defendants claimed that the total damages due from the plaintiffs were $1,737.50. The plaintiffs denied that they had left the apartment in disrepair.

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The case was tried to a jury on April 22-24, 1985. The jury's verdict consisted of answers to special questions. Although the plaintiffs had testified that the value of their personal belongings amounted to $12,385, the jury found the fair and reasonable market value of plaintiffs' possessions taken by defendants to be $2,000 and that the reasonable cost of removing the property was $90, thus entitling the plaintiffs to a net recovery of $1,910. The trial court, on grounds of equity, reduced the judgment another $500 to $1,410. The court then allowed the defendants to set off their forcible detainer judgment and court costs, but also permitted the plaintiffs to recover their $200 security deposit. The plaintiffs were also awarded their filing fees in the case.

On the appeal, the plaintiffs raise five issues in their brief. The first two issues involve the trial court's failure to sustain plaintiffs' motion for default judgment because of defendants' failure to file an answer to the plaintiffs' amended petition. Plaintiffs also claim that the trial court erred in denying plaintiffs' motion for summary judgment on the plaintiffs' first amended petition. As noted heretofore, the plaintiffs were awarded a verdict by the jury which would render these issues moot. However, the trial court properly concluded that there were genuine issues of fact involved in this case and denied summary judgment in favor of the plaintiffs.

Issue # 1

The next point raised by the plaintiffs on the appeal is that the trial court erred in failing to instruct the jury that a landlord's taking of possession of a tenant's personal property upon his eviction as security for unpaid rent is a violation of K.S.A. 58-2567. In opposition to that position, the defendants contend that K.S.A. 58-2565 is the controlling statute and that K.S.A. 58-2567 is not applicable.

The issues raised require us to analyze certain provisions of the Kansas Residential Landlord and Tenant Act (K.S.A. 58-2540 *et seq.*) which was adopted by the Kansas Legislature in 1975. The basic provisions and the purpose of the Kansas Residential Landlord and Tenant Act are discussed in some depth in *Clark v. Walker*, 225 Kan. 359, 590 P.2d 1043 (1979). In *Clark*, it is pointed out that prior to the enactment of the residential landlord and tenant act there was little or no statutory law in Kansas governing landlord-tenant relations. It was apparent to the legislature that the antiquated common-law concepts and the absence of statutory law created problems and worked to the detriment of both landlords and tenants who were operating on different legal premises. A special committee of the legislature was appointed to study the problem area, and, as a result, the 1975 legislature enacted a comprehensive landlord-tenant code to establish a single standard of reference for both landlords and tenants.

The Kansas act was based in part on the Uniform Residential Landlord-Tenant Act with certain modifications. Various provisions of the act are summarized in *Clark v. Walker*, 225 Kan. at 364. It is clear that, under the act, both landlords and tenants gained certain advantages and suffered certain disadvantages in order to strike a reasonable balance between the interest of both landlords and tenants. One of the most significant provisions was K.S.A. 58-2567 which provides as follows:

"58-2567 **Lien or security interest in tenant's personal property unenforceable; distraint abolished, exception.** (a) Except as otherwise provided in this act, a lien or security interest on behalf of the landlord in the tenant's household goods, furnishings, fixtures or other personal property is not enforceable unless perfected prior to the effective date of this act.

"(b) Except as otherwise provided in K.S.A. 58-2565, distraint for rent is abolished."

This section eliminated any lien or security interest on behalf of the landlord in the tenant's household goods, furnishings, fixtures, or other personal property after the effective date of July 1, 1975. Subsection (b) abolished distraint for rent except as otherwise provided in K.S.A. 58-2565. The term "distraint" is not defined in the statutes. "Distraint" has been defined as a summary extrajudicial remedy having its origin in the common law under which it consisted of seizure and holding of personal property by individual action without intervention of legal process for the purpose of compelling the payment of a debt. *Raffaele v. Granger*, 196 F.2d 620 (3rd Cir. 1952). It has been said that the word "distraint" comprehends any seizure of personalty to enforce a common-law or statutory right or lien. *In re Timberline Lodge*, 139 F. Supp. 13, 16 (D. Or. 1955).

In the law of landlord and tenant, rather than the word "distraint," the term "distress" has been used where there was a taking of the tenant's personal property by a landlord in order to obtain satisfaction for past due rent. All goods of the tenant on leased premises were considered to be subject to a privilege of

the landlord to seize the personal property and hold it as security for the payment of rent. The concept of "distress" is discussed in 49 Am. Jur. 2d, Landlord and Tenant § 726 as follows:

"Distress for rent in arrears, whereby the landlord may seize personal property on the demised premises, is one of the oldest, as well as one of the most efficient, of the common-law remedies for the collection of rent. Broadly defined, common-law distress allows the landlord to go upon the demised premises and seize anything that he might there find, as security for rent in arrears, and hold it without sale until the rental is paid. The right to *distrain* arises from the moment the relation of landlord and tenant is established, and as administered at common law the remedy is enforceable against any removable personal property found upon the demised premises, whether belonging to the tenant or to a stranger." (Emphasis supplied.) p. 675.

The same section in 49 Am. Jur. 2d points out that in a number of jurisdictions in this country distress for rent either has been expressly abolished by statute or is deemed to be impliedly abolished by statutes relating to remedies for the recovery of rent.

The effect of K.S.A. 58-2567 was to abolish the common-law right of the landlord to distraint or distress for rent except as otherwise provided in K.S.A. 58-2565. K.S.A. 58-2565(d) and (e) were subsections not included in the uniform act and which were enacted in the Kansas act at the request of an organization representing the landlords. K.S.A. 58-2565 provides as follows:

"**58-2565. Extended absence of tenant; damages; entry by landlord; abandonment by tenant, when; reasonable effort to rent required; termination of rental agreement, when; personal property of tenant; disposition, procedure; proceeds; rights of person receiving property.** (a) If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of seven days required in K.S.A. 58-2558, and the tenant willfully fails to do so, the landlord may recover actual damages from the tenant.

"(b) During any absence of the tenant in excess of thirty (30) days, the landlord may enter the dwelling unit at times reasonably necessary. If, after the tenant is ten (10) days in default for nonpayment of rent and *has removed a substantial portion of such tenant's belongings from the dwelling unit*, the landlord may assume that the tenant has abandoned the dwelling unit, unless the tenant has notified the landlord to the contrary.

"(c) If the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it at a fair rental. If the landlord rents the dwelling unit for a term beginning prior to the expiration of the rental agreement, it is deemed to be terminated as of the date the new tenancy begins. The rental agreement is deemed to be terminated by the landlord as of the date the landlord has notice of the abandonment, if the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the landlord accepts the abandonment as a surrender. If the tenancy is from month-to-month, or week-to-week, the term of the rental agreement for this purpose shall be deemed to be a month or a week, as the case may be.

"(d) If the tenant *abandons* or *surrenders* possession of the dwelling unit and leaves household goods, furnishings, fixtures or any other personal property in or at the dwelling unit, the landlord may take possession of the property, store it at tenant's expense and sell or otherwise dispose of the same upon the expiration of thirty (30) days after the landlord takes possession of the property, if at least fifteen (15) days prior to the sale or other disposition of such property the landlord shall publish once in a newspaper of general circulation in the county in which such dwelling unit is located a notice of the landlord's intention to sell or dispose of such property. Within seven (7) days after publication, a copy of the published notice shall be mailed by the landlord to the tenant at the tenant's last known address. Said notice shall state the name of the tenant, a brief description of the property and the approximate date on which the landlord intends to sell or otherwise dispose of such property. If the foregoing requirements are met, the landlord may sell or otherwise dispose of the property without liability to the tenant or to any other person who has or claims to have an interest in said property, except as to any secured creditor who gives notice of his or her interest in such property to the landlord prior to the sale or disposition thereof, if the landlord has no knowledge or notice that any person, other than the tenant, has or claims to have an interest in said property. During such thirty-day period after the landlord takes possession of the property, and at any time prior to sale or other disposition thereof, the tenant may redeem the property upon payment to the landlord of the reasonable expenses incurred by the landlord of taking, holding and preparing the property for sale and of any amount due from the tenant to the landlord for rent or otherwise.

"(e) Any proceeds from the sale or other disposition of the property as provided in subsection (d) shall be applied by the landlord in the following order:

"(1) To the reasonable expenses of taking, holding, preparing for sale or disposition, giving notice and selling or disposing thereof:

"(2) to the satisfaction of any amount due from the tenant to the landlord for rent or otherwise; and,

"(3) the balance, if any, may be retained by the landlord, without liability to the tenant or to any other person, other than a secured creditor who gave notice of his or her interest as provided in subsection (d), for any profit made as a result of a sale or other disposition of such property.

"(f) Any person who purchases or otherwise receives the property pursuant to a sale or other disposition of the property as provided under subsection (d) of this section, without knowledge that such sale or disposition is in violation of the ownership rights or security interest of a third party in the property, takes title to the property free and clear of any right, title, claim or interest of the tenant or such third party in the property." (Emphasis supplied.)

Subsection (d) authorizes the landlord to dispose of household goods, furnishings, and fixtures or any other personal property left on the leased premises in situations where the tenant has

abandoned or surrendered possession of the dwelling unit. This relieves the landlord of the burden of storing the property indefinitely until the tenant returns to get it. Simply stated, the landlord, after the expiration of 30 days after the landlord takes possession of the property, is authorized to sell or otherwise dispose of abandoned or surrendered personal property, provided the landlord publishes a 15-day notice prior to the sale or disposition in a newspaper of general circulation in the county in which the dwelling unit is located and gives notice by mail within seven days after publication to the tenant at his last known address. The notice shall contain a description of the property and the approximate date on which the landlord intends to sell or dispose of the property. If these requirements are satisfied, the landlord may sell or dispose of the property without liability to the tenant or to any other person who has or claims to have an interest in the property. There is a provision, however, for the protection of a secured creditor.

The primary issue presented in this case is whether the provisions of K.S.A. 58-2565(d) are applicable so as to afford the defendants, as landlords, the right to proceed thereunder and dispose of the tenant's personal property. The answer to that question, of necessity, depends upon whether the factual circumstances show that the tenants abandoned or surrendered possession of the dwelling unit and their personal property.

K.S.A. 58-2565(b) provides some insight as to what action of the tenant constitutes an abandonment. It states that, if the tenant is ten days in default for nonpayment of rent and has removed a substantial portion of the tenant's belongings from the dwelling unit, the landlord may assume that the tenant has abandoned the dwelling unit, *unless the tenant has notified the landlord to the contrary.* In the present case, the evidence was undisputed that the tenants were living in the apartment when they left for work in the morning and returned to find that all of their personal belongings had been removed from the apartment and were in the custody of the landlords. There was no evidence whatsoever to show that the tenants had removed a substantial portion of their belongings from the dwelling unit. Furthermore, the tenants immediately notified the landlords that they wanted their personal property back, which is contrary to any intention to abandon either the dwelling unit or the property.

The term "abandonment" and "surrender" have an established meaning in the law of landlord and tenant which logically should be applied in determining whether or not a tenant has abandoned or surrendered a dwelling unit and his or her personal property. In *Kimberlin v. Hicks,* 150 Kan. 449, 94 P.2d 335 (1939), the court cites 1 C.J.S., Abandonment, § 1 and defines "abandonment" as follows:

"'"Abandonment" of property or a right is the voluntary relinquishment thereof by its owner or holder, with the intention of terminating his ownership, possession, and control, and without vesting ownership in any other person.'" 150 Kan. at 454.

In *Botkin v. Kickapoo, Inc.,* 211 Kan. 107, 505 P.2d 749 (1973), "abandonment" is discussed in some depth as follows:

"The law respecting abandonment as applied to property and property rights is well established. Generally, abandonment is the act of intentionally relinquishing a known right absolutely and without reference to any particular person or for any particular purpose. Abandoned property is that to which the owner has voluntarily relinquished all right, title, claim and possession, with the intention of terminating his ownership, but without vesting it in any other person and with the intention of not reclaiming future possession or resuming its ownership, possession or enjoyment. In order to establish an abandonment of property, actual relinquishment accompanied by intention to abandon must be shown. The primary elements are the intention to abandon and the external act by which that intention is carried into effect. Although an abandonment may arise from a single act or from a series of acts the intent to abandon and the act of abandonment must conjoin and operate together, or in the very nature of things there can be no abandonment. The intention to abandon is considered the first and paramount inquiry, and actual intent to abandon must be shown; it is not enough that the owner's acts give reasonable cause to others to believe that the property has been abandoned. Mere relinquishment of the possession of a thing is not an abandonment in a legal sense, for such an act is not wholly inconsistent with the idea of continuing ownership; the act of abandonment must be an overt act or some failure to act which carries the implication that the owner neither claims nor retains any interest in the subject matter of the abandonment. It is not necessary to prove intention to abandon by express declarations or by other direct evidence; intent to abandon property or rights in property is to be determined from all the surrounding facts and circumstances. It may be inferred from the acts and conduct of the owner and from the nature and situation of the property. Mere nonuse of property, lapse of time without claiming or using property, or the temporary absence of the owner, unaccompanied by any other evidence showing intention, generally are not enough to constitute an abandonment. However, such facts are competent evidence of an intent to abandon and as such are entitled to weight when considered with other circumstances (1 Am. Jur. 2d, Abandonment, Lost, Etc., Property, § 1, pp. 3-4, § 15, pp. 15-16, § 16, pp. 16-17, § 40, p. 32, § 41, pp. 33-34)." pp. 109-10.

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The term "surrender" as used in the law of landlord and tenant is discussed in *Rogers v. Dockstader*, 90 Kan. 189, 191, 133 Pac. 717 (1913), which quoted *Weiner v. Baldwin*, 9 Kan. App. 772, 59 Pac. 40 (1899), as follows:

"In *Weiner v. Baldwin*, 9 Kan. App. 772, 59 Pac. 40, an instruction that the agreement to surrender a lease need not be in writing was approved.

" 'A surrender, as the term is used in the law of landlord and tenant, is the yielding up of the estate to the landlord, so that the leasehold interest becomes extinct *by mutual agreement* between the parties. The rescission of a lease, when by express words, is called an express surrender or a surrender in fact; and when by acts so irreconcilable to a continuance of the tenure as to imply the same thing it is called a surrender by operation of law. . . . While the definitions of what constitutes a surrender by operation of law differ somewhat in the language used, the rule may safely be said to be that a *surrender is created by operation of law when the parties to a lease do some act so inconsistent with the subsisting relation of landlord and tenant as to imply that they have both agreed to consider the surrender as made.*' " (Emphasis supplied.)

These cases clearly hold that there cannot be a surrender of a leasehold by a tenant unless there is shown, either expressly or by implication, a mutual agreement between the landlord and tenant that the lease is terminated.

The undisputed evidence in the present case clearly established that the plaintiffs, as tenants, never intentionally abandoned the property nor did they surrender possession of the property. Possession of the property was obtained by the landlords through an action in forcible detainer filed in the district court of Wyandotte County. Thus, we have no hesitancy in holding that the provisions of K.S.A. 58-2565 are not applicable in this case and that the landlords had no legal right to dispose of the plaintiffs' personal property in accordance with the procedure set forth in subsection (d) of K.S.A. 58-2565. The landlords obtained possession of the dwelling unit and also of the personal belongings of the tenants as the result of an execution on the landlords' judgment for restitution of the premises and for recovery of rent in the sum of $652.50. The sheriff was directed to cause the tenants' belongings to be removed from the premises and the landlords restored to possession of the apartment together with an execution on the nonexempt personal property of the judgment debtors, Ronnie and Becky Davis. The deputy sheriff did not carry out the execution required by the writ issued by the clerk of the court. The sheriff turned the property over to the defendants, as landlords, who had no right to either sell or

dispose of the property other than by execution as provided by statute. Because of the fact that the defendants in this case, as landlords in possession of the tenants' property, had no right to sell the property or dispose of it except as provided by law, their act of selling or disposing of the property constituted a conversion as a matter of law. The measure of damages for conversion of personal property is the value of the property at the time and place of the conversion.

Although the jury was improperly instructed in this case as to the right of a landlord to sell or dispose of a tenant's property where the property has been abandoned or surrendered by the tenant, the jury obviously found that there had been no abandonment or surrender. The jury specifically found, in its answers to the special questions, that the plaintiffs made demand on the defendants or their employees for the return of their personal possessions and belongings. The jury found that the fair and reasonable market value of the plaintiffs' possessions and belongings taken on September 13, 1983, was $2,000, and that the cost of removing the personal property from the apartment was $90. The court, on its own motion "on grounds of equity," subtracted $500 and reduced the award to $1,410. The plaintiffs maintain that the court had no right to reduce the award of the jury in that amount and we agree. There was substantial competent evidence to support the verdict of the jury that the value of the plaintiffs' belongings was $2,000. The court did not grant a remittitur. It simply reduced by $500 the value of the personal property as found by the jury. We hold that the trial court erred in that regard. The plaintiffs' jury award should be restored to the amount of $1,910.

Another point raised by the plaintiffs on the appeal is that the trial court erred in refusing to allow the jury to consider an award of punitive damages. In *Geiger v. Wallace*, 233 Kan. 656, 661-62, 664 P.2d 846 (1983), it was held that, in a proper case, a tenant may recover punitive damages from a landlord where there has been a violation of the Kansas Residential Landlord and Tenant Act. In order to recover punitive damages, the plaintiffs were required to show that the defendants maliciously, willfully, or wantonly violated plaintiffs' rights. We agree with the trial court that punitive damages were not justified by the evidence in this case. The record is clear that the defendants acted on advice of

counsel and with the misunderstanding that K.S.A. 58-2565 was applicable. The defendants, as landlords, went to court and obtained a judgment for forcible detainer and for unpaid rent. They obtained an execution on their judgment. They attempted to follow the procedure set forth in K.S.A. 58-2565(d) in disposing of the tenants' property. We think it also significant in this case that the plaintiffs, as tenants, made no attempt to contact the defendants after September 13, 1983, until they filed their action on August 27, 1984. If they had obtained a lawyer, the plaintiffs could have claimed the right to possession of their property and the matter possibly could have been adjusted to the satisfaction of all parties. We have concluded from the record that, although the defendants' acts of withholding and disposing of the plaintiffs' personal belongings were tortious and not authorized by law, they acted in good faith in a way they thought was legally appropriate. Under the circumstances, we hold that the trial court did not err in failing to submit the issue of punitive damages to the jury.

In view of our disposition of this case on the appeal, we do not deem it necessary to consider the issue raised by the defendants on their cross-appeal. K.S.A. 58-2565 is not applicable under the factual circumstances in this case. Hence, the issue of its constitutionality is not properly before us.

The judgment of the district court is affirmed in part and reversed in part. The case is remanded to the district court with directions to restore the sum of $500 deleted from the verdict of the jury and to render judgment in favor of the plaintiffs as so modified.

SUGGESTED AMENDMENT TO
SB 299
from
Shawnee County Landlord Association
and
Associated Landlords of Kansas

insert on Page 2, line 48:

"or allows household goods, furnishings, fixtures or other personal property to remain in or at the dwelling unit more than five (5) days after a forceable detainer or other legal action has returned the dwelling unit to the landlord,"

presented by:
Charles Pomeroy
January 30, 1990

INTRODUCTION:

EVERETT STILLEY
OWNER/OPERATOR of SKATE PLAZA ROLLER SKATING RINK
MANHATTAN, KANS.

FOR SENATE BILL #289

The object of this bill is help eliminate the trivial law suits that are brought to the courts; suits in which the persons involved should accept their own responsibility, not charge neglect of a second party.

The bill is in fact a statement that a person who participates in the sport of roller skating must accept the responsibility of their own actions and accept the reasonable actions of others involved in a sport of physical activity.

The bill is not intended to eleminate the responsibility of the rink operator to provide and maintain a place that is safe, but to be protected somewhat from the person not willing to accept his own responsibility.

We do not want to restrict liability. Insurance is our KEY ISSUE. Insurance companies across the United States cancelled our liability insurance policies in Nov. of 1984. There is NO decent insurance available at any decent price, let alone a reasonable premium.

In the early 80's membership in our trade association was approaching 3,000 members. Largly because of insurance problems our membership is approximately 1200. Many of the rinks built in the 70's were SBA financed, & SBA loans & banks too require the business to have liability insurance.

We, the rink operators feel this bill will not only enhance the safety of the sport but also allow the insurance industry to view us as a viable business venture again.

Other Rink Operators represented here today are --

1. Jerry Ottoway - Wichita
2. Ed Winkler - Topeka
3. Scott Brown - Hutchinson
4. Larry Burke - Emporia
5. Terry Maxfirld-Emporia
6. Ron Beaman - Leavenworth

Also here to represent an interested custom of a rink - Mrs. Carolyn Hill.

Everett L. Stilley

ROLLER SKATING RINK SAFETY STANDARDS

The following operational standards for rinks were compiled by the RSROA Risk Management Committee and adopted February 7, 1980, and amended May 2, 1981, as an industry standard by vote of the RSROA Board.

I. Safety Standards for Roller Skating Floor Supervisors

A. There will be floorguards on duty whenever the rink is open for sessions.
B. One floorguard shall be on duty for approximately every 200 skaters.
C. Floorguards must be identifiable by their attire.
D. The floorguard's duty is to direct and supervise skaters.
   1. The conduct of skaters will be under floorguard's supervision.
   2. When working alone, floorguards will not skate special events with a partner. He or she must be available to assist skaters at all times. Relief of floorguard will be provided by management.
   3. When two floorguards are working, one must be available to assist skaters and supervise the floor.
   4. Additional skating supervision may be provided by personnel observing the premises on or off skates.
   5. Watch for foreign objects of all kinds that may have fallen on the floor.
   6. Watch skates for bad stops, nails or other protrusions.
   7. When a skater falls, if it is necessary, assist the skater off the floor via the nearest exit. If possibility of serious injury exists, CALL MANAGER FOR ASSISTANCE.
   8. A floorguard must use good judgement while being firm and maintaining the respect of the skaters.
   9. Although floorguards must be informative and courteous, conversations must be limited. If a patron needs to be reprimanded more than once, he or she should be brought to the Manager for final disposition.

II. Safety Standards for Building

1. Skating surface shall be inspected before each session and kept clean.
2. Railing, kickboards and wall surrounding skating surface shall be kept in good condition.
3. In rinks with step-up or step-down skating surfaces, the covering on the riser shall be securely fastened.
4. Emergency lighting units should be inspected periodically to insure that they are in proper operating condition.
5. Exit lights and lights in service areas shall remain on when skating surface lights are turned off during special numbers.
6. Fire extinguishers should be inspected at recommended intervals.
7. If a burglar alarm system is installed, it should be checked for operation at least once a month.
8. Conduct in parking areas shall be regulated by rink personnel.
9. When required by applicable law, emergency lighting shall be installed in conformity with that law.
10. When required by applicable law, all fire exits shall have panic hardware installed, which shall be in good operating condition, in conformity with that law.

III. Safety Standards for Roller Skating Equipment

1. Skate rentals should be checked on a regular basis for good mechanical condition.

IV. General

1. For safety, intoxicating beverages shall not be sold, dispensed or knowingly used in rink premises.

Senate Judiciary Committee
State of Kansas

Jan. 30, 1990

re; Senate Bill no. 289

Senators,

Thank-you for your time to consider this bill which can so dramatically affect my livelyhood. While being a roller skating center owner and operator for 20 years and the president of our trade association for 4 years, I have had the opportunity to see how the insurance business can have a dramatic influence on my business. This bill, while not a complete cure for the problem, can be a giant step in the right direction. This bill has been enacted in one state and is being considered in another state. If enough states follow suit, the insurance industry will see that the roller skating industry is not a losing proposition. This bill will not take away the citizen's right to seek redress in a court of law, but will hopefully, limit the number of "unwinable" contingency cases that currently bankrupts our insurance programs.

As rink operators, we are not looking for a way to shy away from our responsibility to provide a safe and wholesome place of family recreation; in fact, we welcome the bill as a way to publically state what our responsibilities are. This will encourage all rink operators in the state to operate their centers as well as we who are present operate ours. What we hope is that this bill will keep the small segment of our customers who are "slip & fall" artists from depriving the rest of our customers from enjoying a wonderful sport that is recommended by the presidents council on physical fitness and sports and many other health concience groups.

Over the last seven years, we have already seen a decline in RSROA rinks(our national trade association) of more than 50%, much of this caused by insurance rates and availability. Most rinks who were financed by the SBA in the mid-eightys were forced to close when Liability insurance became unavailable at any price!

Although liability insurance is once again available to some at a price that some can afford, we know that this is just another swing in the cycle, and if something is not done to solve the problem, the next swing in the cycle could put an end to the sport of roller skating in the state of Kansas.

Help us to continue to provide a safe and healthy place of recreation for the youth and families of Kansas. Support Senate bill No. 289. Thank-you.

Sincerely,

Terry W. Maxfield

Terry W. Maxfield
Owner
Skateland Family Fun Center
Emporia, KS

KANSAS TRIAL LAWYERS ASSOCIATION

Jayhawk Tower, 700 S.W. Jackson, Suite 706, Topeka, Kansas 66603
(913) 232-7756 FAX (913) 232-7730

TESTIMONY
of the
KANSAS TRIAL LAWYERS ASSOCIATION

January 30, 1990

SB 289 - ROLLER RINK ACT

The Kansas Trial Lawyers Association appears today in opposition to SB 289, primarily because the proposed legislation does not, in our opinion, provide an acceptable alternative to existing law.

SB 289 can be characterized as a bill that tries to make people take responsibility for their own actions. The bill attempts to restate the law in such a manner as to provide that persons who engage in operating a roller rink, who skate at the rink and who watch others skating at a rink will have to be responsible for their own negligence should anyone be injured while engaging in any of those three classes of activity. There does not appear to be any reason provided in the bill for singling out those three classes of activity, nor does there appear to be any actual change in the law as to how those people would be treated should damage occur. With all due respect, it appears as though this bill is not ready for consideration by this committee. Consider the following:

1. The term "emergency personnel" is defined for no apparent reason. It is never mentioned again in the bill.

2. The class "roller skater" and "spectator" are confusing and could possibly include the same person in both classes where a "roller skater" becomes tired of skating and sits down to watch others skate. What is that person's status at that time? Is that person a skater or a spectator?

3. The location and type of notice which the "operator" is to post is not defined, thus leaving it uncertain as to what the operator must do in order to comply with the law and uncertain whether or not the skaters or the spectators could even benefit from an improper or poorly located notice.

4. Use of the 1980 roller skating rink operators association safety standards is arbitrary and subject to the danger of being outdated, if that association either changes their standards or the standards are unfairly drawn by that association to favor operators and not skaters or spectators.

5. Section 6 of the bill appears to be an attempt to modify the Kansas comparative negligence law and could cause substantial difficulty in the courts, simply because a new standard of negligence would have to be established for those persons who bring an action under the "Roller Rink Act", as opposed to under the current statutory tort law.

This bill needs a lot of work if it is to become law in Kansas. We believe that it is not needed and that it would cause greater harm to the law of comparative negligence and torts than anyone really wants. Senate Bill 289 should be reported unfavorably.

KHCA

Member of ahca

Kansas Health Care Association
221 SOUTHWEST 33rd STREET
TOPEKA, KANSAS 66611 • 913-267-6003

DATE: January 30, 1990

TO: Senate Committee on Judiciary

FROM: Dick Hummel, Executive Vice President

SUBJ: SENATE BILL NO. 252: CONCERNING CONFIDENTIAL INFORMATION

Senator Winter and Committee Members:

I am Dick Hummel, Executive Vice President of the Kansas Health Care Association, the state's largest organization of long-term care, adult care home providers.

We support S.B. 252 which was introduced at our association's request:

S.B. 252

* RELATES TO THE PUBLIC DISCLOSURE OF INFORMATION DEEMED CONFIDENTIAL IN THE ADULT CARE HOME LICENSURE, INSPECTION, AND INVESTIGATIVE PROCESS.

* MAKES IT A CLASS B MISDEMEANOR FOR VIOLATING THIS CONFIDENTIALITY.

* THREE ADULT CARE HOME LAWS ARE AMENDED:

  SECTION 1. KANSAS HEALTH AND ENVIRONMENT LICENSURE ACT.

  SECTION 2. SRS INVESTIGATIVE PROCEEDINGS UNDER ABUSE REPORTING LAW.

  SECTION 3. DEPARTMENT ON AGING LONG TERM CARE OMBUDSMAN PROGRAM.

COMMENT: In the process of state inspections and investigations, state agents are required now by law to maintain confidentiality of certain information. The disclosure of the name of a resident and information contained in the medical record is forbidden. There have been, and continue to be, violations of this confidentiality.

In a recent case, a nursing home in good faith filed a report with a state agency about a dispute between a resident of its facility and a family member. Within an hour a newspaper investigative reporter and an attorney with a reputation for litigation against nursing homes appeared at the home.

The rights of nursing home residents, and of nursing care facilities, must be uniformly respected by government agencies in the course of their official duties.

S.B. 252 flashes a red light to halt breaches of confidentiality under penalty of a misdemeanor.

Thank you for this opportunity.

Issue

IMPOSE PENALTY UPON STATE EMPLOYEES FOR VIOLATION OF RESIDENT/FACILITY CONFIDENTIALITY

Background

Foremost in the process of nursing home care are the rights of nursing home residents. These rights are numerous, and include the right to privacy and confidentiality. A nursing home is required by both federal and state regulations to explain, respect, and protect these rights. The failure to do so carries severe sanctions by government.

Nursing homes are inspected by various levels and agencies of federal and state government. In addition, three arms of state government, the Departments of Social and Rehabilitation Services, Aging, and Health and Environment conduct individual or joint complaint investigations.

Status

In this process of state inspections and investigations of alleged complaints, state agents are required by law to maintain confidentiality with limitations on what can be publicly disclosed. One caveat is the non-disclosure of the name of a resident and information contained in the medical record.

There have been, and continue to be violations of confidentiality by state agents. In one recent case, a nursing home that in "good faith" filed a report with a state agency employee found an investigative newspaper reporter and attorney known for initiating nursing home litigation at their door within an hour.

KHCA's Position

The rights of nursing home residents, and of nursing home facilities, must be respected by government employees in the course of their official duties.

KHCA's Action Plan

KHCA will seek the introduction of legislation to impose a misdemeanor penalty upon state agents who violate the confidentiality of their office. Amendments will be requested to Kansas Statutes, K.S.A. 39-934, 75-5921 and 39-1401, which relate to the confidentiality of reports and investigations.

11/88

Kansas Health Care Association
221 S.W. 33rd Street, Topeka, KS 66611 (913) 267-6003
(In-State Toll-Free 1-800-232-0075)

Delmar Gardens® of Lenexa

9701 Monrovia • Lenexa, Kansas 66215 • 913/492-1130

DATE: January 30, 1990

TO: Senate Judiciary Committee

SUBJECT: Senate Bill #252

****

My name is Richard Carlson, Executive Administrator of Delmar Gardens Enterprises. We operate three skilled nursing facilities in Overland Park, consisting of over 600 beds, and have been in operation there since 1980.

I am here today to present testimony in support of Senate Bill #252 by sharing with you a personal experience regarding a breach of confidentiality.

The letter I received in early 1988 was succinct. Because of failing health the son of a Delmar Gardens of Lenexa nursing home resident explained he could no longer afford the expense of his mother's care and asked us to discontinue her life-sustaining tube feeding immediately.

Delmar Gardens of Lenexa declined, explaining it would be contrary to the facility's philosophy to discontinue the tube feeding the woman had been receiving throughout her nine-month stay. Instead, we informed the son we would help him apply for Medicaid financial assistance for his mother. At that time our Lenexa facility housed only private-paying patients, but once the woman became eligible for Medicaid the son approved an immediate transfer to Delmar Gardens of Olathe, which accepted Medicaid patients.

Considering the ethical and moral issue raised in the son's letter and following what we believed were our guidelines, our facility decided to voluntarily share the contents of the letter with county and state representatives of the Kansas Department of Aging.

The events that followed were no less than chaotic. Finding appropriate Medicaid placement, at the son's request, in one of our own facilities, met sound opposition from Department of Aging officials who felt this patient's interests were not being appropriately represented by her son. The Department of Aging attempted to block this transfer. Subsequently, we received a threatening phone call from a private attorney (known for initiating nursing home litigation) who had gained knowledge of this occurrence, and a call from a Kansas City Star reporter wanting a story, saying she had received a "tip" from an employee of the Kansas Department of Aging and calling the patient involved by name.

We stand in support of this bill to stop the indiscriminate disclosure of confidential information. The rights of nursing home residents and nursing home facilities must be respected by government employees in the course of their official duties.

Thank you.

State of Kansas
Mike Hayden, Governor

Department of Health and Environment
Division of Health

Stanley C. Grant, Ph.D., Secretary

Landon State Office Bldg., Topeka, KS 66612-1290

(913) 296-1343
FAX (913) 296-6231

Testimony presented to

Senate Judiciary Committee

by

The Kansas Department of Health and Environment

Senate Bill No. 252

Background

This bill was developed by the Kansas Health Care Association in response to a concern they have regarding an alleged incident of a state agency publicly releasing information regarding a complaint of abuse/neglect in an adult care home.

KDHE Bureau of Adult and Child Care is unaware of any incident where a Bureau employee has released such information contrary to current restrictions in K.S.A. 39-934. The Kansas Health Care Association has advised this bureau that KDHE was not responsible for the alleged breech of confidentiality. This bill was considered in the 1989 Session by the Senate Public Health and Welfare Committee. KDHE, as last year, opposes the bill.

Issues

The bill attempts to further assure, beyond current statutory restrictions, that release of information regarding individuals is not done by making such release a violation of criminal law.

K.S.A. 39-934 of the Adult Care Home Act already prohibits disclosure publicly of information received by the licensing agency in a manner as to identify individuals. K.S.A. 39-1404 of the Abuse/Neglect Act exempts abuse/neglect reports and related written findings from the Open Records Act and thus provides confidential protection. Additional specific prohibitions against publicly identifying persons abused, neglected, or exploited is included in legislation drafted amending this statute as part of the Governor's proposal to transfer investigations of abuse, neglect or exploitation from SRS to KDHE. K.S.A. 75-5921 of the Kansas Act on Aging also exempts information records and reports received or developed by the ombudsman from being subject to the Open Records Act.

KDHE supports and recognizes the need to protect and hold as confidential information related to individuals, whether that information is from routine reports, inspections, abuse/neglect investigations, or any other means. The absence of any known incident regarding a violation of current prohibitions by KDHE supports our position that meaningful prohibitions already exists.

Violation of existing prohibitions most appropriately belong within the realm of agency employee discipline procedures in accordance with agency personnel procedures. We believe the same holds true for the Department of SRS and Department on Aging.

Making release of such information a Class B misdemeanor will most certainly require that the supervisor of the "guilty" employee be actively involved in documenting and pursuing the action. A supervisor unwilling to enforce current prohibitions would be no more likely to do so, and perhaps even less likely, if the violation becomes a criminal offense. We also have concern that an employee who released such information, would be guilty of a Class B misdemeanor, even if the release of such information was in innocence and no harm resulted.

Department Position

As indicated above, KDHE is not aware of any known incident in which this agency has ever violated the confidentiality protections provided in K.S.A. 39-934. Likewise, we are also not aware that any similar allegation against any other state agency has ever been documented. KDHE does not divulge confidential information. We believe such a disclosure is most appropriately dealt with by agency personnel procedures.

Presented by: Joseph F. Kroll, Director
Bureau of Adult and Child Care
January 30, 1990