

JUDICIARY SUBCOMMITTEE ON CRIMINAL AND UNIFORM COMMERCIAL CODE
Senator Jerry Moran, Chairman

March 15, 1990 - 12:00 Noon - Room 514-S

Committee members present: Senators Moran, Oleen, Petty, D. Kerr,
and Winter.

HB 3045 - Reinserting prosecuting attorneys' training fund into court fees statute.

Jim Clark, Kansas County and District Attorneys Association

This bill is result of drafting error in enrolled version of the bill.

HB 2644 - Recording of certain decrees of the court with the register of deeds.

Matt Lynch, Judicial Council
Paul Shelby, Office of Judicial Administration
(See Attachment I)

Carolyn Burns, Clerk of the District Court, Barton County
(See Attachment II)

Linda Fincham, Register of Deeds, Marshall County
(See Attachment III)

Committee member recommended the group meet to work out their problem.

SB 764 - Crimes of interference with the legislative process and possession of a loaded firearm in the state capitol building.

Emil Lutz, Legislative Administrative Services

SB 758 - Power of KBI members to administer oaths and acknowledge signatures.

Edwin A. Van Petten, Office of the Attorney General
(See Attachment IV)

Larry J. Thomas, Kansas Bureau of Investigation
(See Attachment V)

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March 15, 1990
12:00 Noon

HB 2671 - Probable cause shown before installation and use of pen register allowed.

Proponents:

Edwin A. Van Petten,
of the Attorney General
(See Attachment VI)

Larry J. Thomas, Kansas Bureau of Investigation
(See Attachment VII)
(See Attachment VIII)

Opponents:

Jim Clark, Kansas County Office
District Attorneys Association

HB 2470 - Revivor of dormant judgments in child support cases.

Jim Robertson, Social and Rehabilitation Services
(See Attachment IX)

Senator Winter moved to recommend to the full committee to report the bill favorably. Senator Oleen Seconded the motion. The motion carried.

HB 2721 - Privilege against discovery or disclosure of certain proceedings and findings of accountants.

T. C. Anderson, Kansas Society of CPAs
(See Attachment X)

Senator Winter moved to amend the bill. Senator Oleen seconded the motion. The motion carried. Senator Winter moved to recommend the the bill be passed as amended. Senator Oleen seconded the motion. The motion carried.

3-15-90
12:00 PM

House Bill No. 2644
Senate Judiciary Subcommittee
March 16, 1990

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Mr. Chairman:

I appreciate the opportunity to appear today to discuss House Bill No. 2644. As amended by the House Committee of the Whole, 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 and transcribe the information from the judgment, complete and file the Notice of Action with the proper Register of Deeds pursuant to K.S.A. 58-2242a and K.S.A. 1989 Supp. 59-2249.

The bill as originally drafted and approved by the House Judiciary Committee, deleted the law regarding certificates of title that required district court judges to cause to be recorded with the registers of deeds' offices certificates of title to real estate whenever any court decree or judgment, including probate matters, changed the ownership of property. The Kansas Judicial Council introduced the bill, the District Judges Association supported the bill as drafted, as well as, our office.

Attach. I
Judiciary Subcomm.
1/2

The main concern we now have with this bill is the 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 complete this notice on real estate is a concern...unless you would repeal K.S.A. 20-3133.

We feel this requirement causes unnecessary paperwork, is time consuming, has legal liabilities, and is a waste of tax payers money....especially when the County Clerks already have the information for transfer purposes.

We strongly urge the committee to get the bill back to its original form and repeal the Certificate of Title requirement.

Thank you for your time and I'd be glad to answer any questions.

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HOUSE BILL 2644
CRIMINAL SUB COMMITTEE

Testimony of Carolyn Burns
Clerk of the District Court, Barton County
Legislative Chairman of KADCCA

Mr. Chairman:

I appreciate the opportunity to appear today on behalf of our association, to discuss House Bill 2644. We are requesting that this bill be amended to the original form in which it was introduced.

The bill now requires that " the Clerk of the District Court shall cause to be recorded with the register of deeds of the proper county, a notice of action" on any court decree changing the ownership of property. The form calls for a summary of the journal entry and the retyping of a legal description.

In 1984 a bill was passed repealing the judgment docket books kept by clerks of court, because of the summarization being made from a journal entry by a lay person. The Notice of Action that this bill is proposing creates a similar problem, an interpretation by a lay person from a journal entry involving legal descriptions. Such summarizations may be relied on, which could expose the Clerk of Court to litigation.

A Notice of Action filed with the Register of Deeds will not result in having all changes in real estate titles filed in one place. The court record will still need to be checked as the property may have a lien, which could only be determined by the journal entry. The best evidence of the Court's action will always be the journal entry.

Attached to my testimony are a few copies of journal entries so you may see first hand our concerns.

The journal entries are as follows:

Case 88 C 321 a mortgage foreclosure, has six months after the sale for redemption. This case has several liens on the property with a lengthy legal description.

Attach. II
Judiciary Subcomm.
1/46

Case 89 C 134 a partition, this case has an Order Nunc Pro Tunc which would change the journal entry and would require another Notice of Action.

Case 89 D 151 a Decree of Annulment has several legal descriptions. A property settlement agreement was also filed, which contains legal descriptions.

Other types of civil cases such as Mechanic Lien Foreclosures, Quiet Titles, Mortgage Foreclosures and Tax Foreclosures would all require a Notice of Action. A Tax Foreclosure could require as many as two hundred or more Notice of Action to be typed.

Case 88 P 63 Probate has a lengthy journal entry of final settlement with numerous legal descriptions.

Problems with the Notice of Action form:

1. Caption inadequate.
2. Legal description won't fit on form.
3. If redemption occurs notice is wrong.
4. If case is appealed and reversed notice is wrong.

The Clerks of Court feel the occasional need for a title explanation in the Register of Deeds office doesn't justify the additional work and expense the bill in its present form would generate. All interested parties know to check the court records and will continue to do so in spite of the Notice for the next hundred years. We feel this bill is double work for all concerned. Most of the cases I cited above will have deeds filed in the Register of Deeds office thereby duplicating the Notice. We urge you to consider that this bill be amended.

Finally, should the committee believe a problem exists which requires legislative action, may we suggest the existing statute be amended to require the County Clerks to forward the certified copies of journal entries they already receive from our office to the Register of Deeds. In the alternative, the Clerks of the District Court could provide the Registers of Deeds with an additional certified copy of the journal entry for them to use as they please. We believe such duplication of official records is unnecessary and wasteful but we respectfully bow to your decision in the matter.

Thank you for allowing our association the time to appear today.

IN THE DISTRICT COURT OF BARTON COUNTY, KANSAS

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OTIS STATE BANK)
)
 vs.)
)
 MARVIN L. McNETT, etal.)
)
)

Plaintiff
Case No. 88-C-321
Defendants

83 MAY 16 PM 4:33

BARTON COUNTY
CLERK OF THE DISTRICT

JOURNAL ENTRY OF JUDGMENT

NOW on this 3rd day of April, 1989, this matter comes on for trial to the Court. The Plaintiff appears by and through its counsel, Timothy R. Keenan of the Keenan Law Firm, P.A.; Defendant, The Barton County Board of County Commissioners, appears by and through their counsel, County Attorney Gene Porter; Defendants, Marcia R. McNett and Marie A. McNett appear in person; and there are no other appearances.

WHEREUPON, the Court examines the pleadings and files in the above entitled cause and finds that each of the Defendants has been duly and legally served with Summons, by publication or by mail in a manner provided by law, and said services of Summons and by publication and by mail are hereby approved by the Court; that Defendants, Marvin L. McNett, C. F. McNett, Arthur E. Welch, Central Purchasing, a corporation, Mitchell Newell d/b/a Mitch's Mini Mart, Mobil Concrete, Pay Day IGA, Westgate Food Market, Inc., Mike Estes, Creative Copy, Melvin Zuendel, and Kent D. Converse, have failed to answer or otherwise plead to Plaintiff's Petition, and are in default. None of the Defendants are in the military service of the United States as defined in the Soldiers' and Sailors' Civil Relief Act of 1940, amended.

THEREUPON, the Court makes the following findings of fact:

1. That proper service has been had upon all of the parties as to the Petition and finds that the Court has venue and jurisdiction over the parties and the subject matter of the litigation. Further, the time for answer on the part of each and all of the Defendants has expired.

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860603 and 3168 in the sum of \$2,261.10 and \$148.13, with interest and costs, respectively, which constitute liens against the property eighth and ninth in priority of judgment of Plaintiff herein.

IT IS FURTHER ORDERED that unless said judgments, as aforesaid, be satisfied within ten (10) days from the date hereof, an Order of Sale shall issue on said judgments of foreclosure ordering the Sheriff of Barton County, Kansas, to sell such real estate hereinbefore described, and upon said sale being had, the Sheriff shall issue the purchaser of said real property a Certificate of Purchase which shall entitle the purchaser to a Sheriff's Deed covering the real property at the expiration of six (6) months from the date of sale, subject to redemption as provided by law, said period of redemption being fixed at six (6) months from the date of sale; that the proceeds of the Sheriff's Sale shall be applied as follows:

FIRST: To the payment of the costs of this action including costs of sale;

SECOND: To the payment of any real property taxes for the years 1986, 1987, and 1988 totaling \$311.43 as of this date, that may be due and payable at the date of sale;

THIRD: To the payment of Plaintiff's judgment with interest, costs, and expenses found due Plaintiff herein;

FOURTH: To the United States of America based on its lien in the amount of \$25,517.70, plus interest;

FIFTH: To the United States of America based on its lien in the amount of \$977.34, plus interest;

SIXTH: To the payment of Defendant, Concrete Service Company, Inc.'s, judgment lien identified in Paragraph 6, above, including interest, costs, and expenses found due said Defendant;

SEVENTH: To the payment of Defendant, Southwestern Bell Publications', judgment lien identified in Paragraph 7, above, including interest, costs, and expenses found due said Defendant;

736, in the amount of \$1,015.04, with interest at the rate of 18% per annum from and after November 6, 1985, until paid, and costs, said lien being fourth in priority to the interest of Plaintiff herein.

IT IS FURTHER ORDERED that Southwestern Bell Publications has a lien against the subject property by virtue of this judgment entered in Barton County Case No. 87-L-640, in the amount of \$1,847.40, plus late fees incurred in the amount of \$143.37, with additional interest on the principal sum at the rate of 10% per annum from June 12, 1987, to September 25, 1987, and at 12% per annum from that date until paid, and for costs, said lien being fifth in priority to the interest of Plaintiff herein.

IT IS FURTHER ORDERED that Defendant, United States of America, has a lien against the subject property by virtue of its Tax Lien filed August 31, 1988, recorded at Volume 10, at Page 144, in the office of the Register of Deeds of Barton County, Kansas, with a balance due thereon as of December 14, 1988, in the amount of \$23,848.20, with interest thereafter at the rate of \$7.17 per day and failure to pay penalty accruing thereafter, said judgment constituting a lien against the subject property sixth in priority to the judgment of Plaintiff herein.

IT IS FURTHER ORDERED that Defendant, United States of America, has a lien against the subject property by virtue of its Tax Lien filed August 31, 1988, recorded at Volume 10, at Page 145, in the office of the Register of Deeds of Barton County, Kansas, with a balance due thereon as of December 14, 1988, in the amount of \$964.78, with interest thereafter at the rate of \$0.29 per day and failure to pay penalty accruing thereafter, said judgment constituting a lien against the subject property seventh in priority to the judgment of Plaintiff herein.

IT IS FURTHER ORDERED that Defendant, Barton County Board of County Commissioners, has liens against the subject property by virtue of personal property tax warrants numbered

WHEREFORE, IT IS CONSIDERED, ORDERED, ADJUDGED AND DECREED BY THE COURT that the findings hereinbefore made should be and the same are hereby made the order of this Court.

IT IS FURTHER ORDERED that Plaintiff have and recover judgment against Defendants, Marvin L. McNett and C. F. McNett, in the principal sum of \$13,731.40, together with interest accrued through April 3, 1989, in the sum of \$5,551.24, plus interest on the principal sum at the rate of 12% per annum, from April 3, 1989, until paid; for recovery of costs of title searches in the amount of \$250.00 necessary to bring this action; and Plaintiff's judgment, by virtue of its above-entitled Mortgage, is a first and prior lien upon the subject property, and judgment is hereby granted foreclosing said Mortgage.

IT IS FURTHER ORDERED that Defendant, United States of America, has a lien against the subject property by virtue of its Tax Lien filed December 7, 1983, recorded at Volume 9, at Page 169, in the office of the Register of Deeds of Barton County, Kansas, with a balance due thereon as of December 14, 1988, in the amount of \$25,517.70, with interest thereafter at the rate of \$7.67 per day and failure to pay penalty accruing thereafter, said judgment constituting a lien against the subject property second in priority to the judgment of Plaintiff herein.

IT IS FURTHER ORDERED that Defendant, United States of America, has a lien against the subject property by virtue of its Tax Lien filed August 12, 1986, recorded at Volume 9, at Page 437, in the office of the Register of Deeds of Barton County, Kansas, with a balance due thereon as of December 14, 1988, in the amount of \$977.34, with interest thereafter at the rate of \$0.29 per day and failure to pay penalty accruing thereafter, said judgment constituting a lien against the subject property third in priority to the judgment of Plaintiff herein.

IT IS FURTHER ORDERED that Defendant, Concrete Service Company, Inc., has a lien against the subject property by virtue of this judgment entered in Barton County Case No. 86-L-

as a third lien. The lien shall attach to the proceeds of sale and will then be removed as a cloud of title against this property.

13. The tax lien of Defendant, Concrete Service Company, Inc., in the amount of \$1,015.04, should be declared a fourth priority lien against the subject property; Concrete Service Company, Inc.'s, judgment lien should be foreclosed; the Court should order and direct the sale of the subject property according to law for the satisfaction of said judgment lien due.

14. The tax lien of Defendant, Southwestern Bell Publications, in the amount of \$1,847.40, should be declared a fifth priority lien against the subject property; Southwestern Bell Publication's judgment lien should be foreclosed; the Court should order and direct the sale of the subject property according to law for the satisfaction of said judgment lien due.

15. The Court finds that the United States has a valid and subsisting lien on the subject real estate in the amount of \$23,848.20. The lien of the United States is entitled to priority as a sixth lien. The lien shall attach to the proceeds of sale and will then be removed as a cloud of title against this property.

16. The Court finds that the United States has a valid and subsisting lien on the subject real estate in the amount of \$964.78. The lien of the United States is entitled to priority as a seventh lien. The lien shall attach to the proceeds of sale and will then be removed as a cloud of title against this property.

17. The Court finds that the Barton County Board of County Commissioners has a valid and subsisting lien on the subject property in the sums of \$2,261.10 and \$148.13, plus interest and costs, in connection with personal property tax warrants numbered 860603 and 3168, respectively. The liens shall be eighth and ninth priority liens, respectively, and attach to the proceeds of sale and will then be removed as a cloud of title against this property.

tion, Mitchell Newell d/b/a Mitch's Mini Mart, Mobil Concrete, Pay Day IGA, Westgate Food Market, Inc., C. F. McNett, Mike Estes, Creative Copy, Melvin Zuendel, and Kent D. Converse, have failed to respond or to enter an appearance herein and are forever barred from claiming any right, title or interest in and to the subject property.

9. The Court examines the Answer filed by Defendant, Marie A. McNett, and the allegations made by her at the time of trial. The Court finds that the allegations are not supported by fact or law and Marie A. McNett is specifically found to have no interest in the property which is the subject matter of this action by virtue of the Warranty Deed which she granted to Marvin L. McNett and Marcia R. McNett, dated December 24, 1983, and recorded January 4, 1984, in Book 205, Page 402, in the office of the Register of Deeds. The Court further reviews the allegations made in person at the time of trial by Marcia R. McNett and finds them not to be supported by fact or law.

10. Plaintiff's Mortgage should be declared a first and prior lien against this subject property; Plaintiff's Mortgage should be foreclosed; the Court should order and direct the sale of the subject property according to law for the satisfaction of said money judgment due Plaintiff and against Defendants, Marvin L. McNett and C. F. McNett, for any deficiency due Plaintiff after the application of the proceeds of the sale; and for Plaintiff's costs herein incurred.

11. The Court finds that the United States has a valid and subsisting lien on the subject real estate in the amount of \$25,517.70. The lien of the United States is entitled to priority as a second lien. The lien shall attach to the proceeds of sale and will then be removed as a cloud of title against this property.

12. The Court finds that the United States has a valid and subsisting lien on the subject real estate in the amount of \$977.34. The lien of the United States is entitled to priority

and less than 1/3rd of the original indebtedness has been paid, and therefore, the redemption period shall not exceed six (6) months.

5. Defendant, United States of America has the following Federal Tax Liens against this property:

<u>TOTAL AMOUNT DUE</u>	<u>DATE TO WHICH INTEREST COMPUTED</u>	<u>DAILY INTEREST</u>	<u>DATE RECORDED</u>	<u>BOOK & PAGE</u>
\$ 964.78	12-14-88	\$0.29	08/31/88	10/145
\$23,848.20	12-14-88	\$7.17	08/31/88	10/144
\$25,517.70	12-14-88	\$7.67	12/07/83	9/169
\$ 977.34	12-14-88	\$0.29	08/12/86	9/437

The first Tax Lien identified above, in the amount of \$964.78, plus interest, represents a seventh priority lien against this property. The second Tax Lien identified above, in the amount of \$23,848.20, plus interest, represents a sixth priority lien against this property. The third Tax Lien identified above, in the amount of \$25,517.70, plus interest, represents a second priority Lien against this property. The fourth Tax Lien of the United States is entitled to priority as a third priority lien.

6. Defendant, Concrete Service Company, Inc., has a lien against the subject property by virtue of its judgment entered in Barton County Case No. 86-L-735, in the amount of \$1,015.04, together with interest at the rate of 18% per annum from November 6, 1985, until paid, said lien being fourth in priority to the interest of Plaintiff herein.

7. Defendant, Southwestern Bell Publications, has a lien against the subject property by virtue of its judgment entered in Barton County Case No. 87-L-640, in the amount of \$1,847.40, plus late fees incurred in the amount of \$143.37, with additional interest on the principal sum at the rate of 10% per annum from June 12, 1987, to September 25, 1987, and 12% per annum from that date until paid, said lien being fifth in priority to the interests of Plaintiff herein.

8. The Court further finds that the Defendants, Marvin L. McNett, Arthur E. Welch, Central Purchasing, a corpora-

2. That Defendants, Suburban Dry Cleaners and Launderers, The State of Kansas, through the Kansas Department of Revenue, and Bushton State Bank, have filed disclaimers, relinquishing any claim which they may have had to the property.

3. By virtue of the Promissory Note marked Exhibit "A" attached to Plaintiff's Petition, there is due and owing to Plaintiff the principal sum of \$13,731.40, together with interest which has accrued through April 3, 1989, in the amount of \$5,551.24, plus interest on the principal amount at the rate of 12% per annum from and after April 3, 1989, until paid, and additionally, for the sum of \$250.00 for title evidence in bringing this action.

4. The aforesaid Promissory Note is secured by a Mortgage marked Exhibit "B" attached to Plaintiff's Petition, recorded December 3, 1979, in Book 176 of Mortgage Records, Page 153, and refiled on February 11, 1980, in Book 177 of Mortgage Records, Page 84, the same being a first and prior lien on the following described property:

A tract of real estate situated in the Northwest Quarter of the Southeast Quarter (NW/4 SE/4) of Section Four (4), Township Twenty (20) South, Range Thirteen (13) West, by metes and bounds described as follows, to-wit: Commencing at a point 662 feet, more or less, South and 1059 feet, more or less, East of the center of said Section Four (4), for a point of beginning (said point being the Southeast corner (SE/c) of that certain tract deeded from McNett to Erbe in Warranty Deed, Book 102, Page 264); thence North a distance of 662 feet more or less along the East side of said Erbe tract to a point on the North line of said SE/4 of said Section 4; thence East along said North line a distance of 144 feet to a point; thence South parallel with the East line of said NW/4 SE/4 a distance of 399 feet to a point; thence East a distance of 18 feet to a point; thence South parallel with the East line of said NW/4 SE/4 a distance of 250 feet more or less to a point; thence West at a right angle a distance of 162 feet to the point of beginning,

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EIGHTH: To the United States of America based on its lien in the amount of \$23,848.20, plus interest;

NINTH: To the United States of America based on its lien in the amount of \$964.78, plus interest;

TENTH: To the Barton County Board of County Commissioners for the sums owing on personal property tax warrants described above.

ELEVENTH: The residue, if any, to be paid to the Clerk of the District Court of Barton County, Kansas, to await further order of the Court.

IT IS FURTHER BY THE COURT ORDERED that upon said sale, and confirmation thereof, that the Sheriff of Barton County, Kansas, is hereby ordered and directed to execute and deliver to the purchaser at said sale the appropriate Certificate of Purchase containing the recitals required by law, and after the period of redemption set forth above, if said property is not redeemed, then the Sheriff of Barton County, Kansas, shall execute and deliver to the holder of said Certificate of Purchase, or assigns, a good and sufficient Sheriff's Deed conveying said property to said purchaser or assigns.

IT IS FURTHER BY THE COURT ORDERED that upon praecipe of the holder of said Sheriff's Deed, the Clerk of the District Court shall issue to the Sheriff of Barton County, Kansas, a writ of assistance directing said Sheriff to place the holder of said Sheriff's Deed in the possession of the above-described real estate and improvements thereon.



Judge of the District Court

APPROVED BY:

KEENAN LAW FIRM, P.A.
2200 Lakin; P.O. Drawer 459
Great Bend, Kansas 67530

By  _____



II 11/46

IN THE DISTRICT COURT OF BARTON COUNTY, KANSAS

IRENE BUSKIRK, et al.,)
)
 Plaintiffs,)
 vs.)
)
 EARL L. WAKEFIELD, et al.,)
)
 Defendants.)
)

No. 89-C-134

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BARTON COUNTY
CLERK OF THE DISTRICT

JOURNAL ENTRY OF JUDGMENT IN PARTITION

Now on this, the 23rd day of June, 1989, this cause comes on for hearing before the court in its regular order. The plaintiffs appear by their attorney, Charles L. Buehler; Etta Shepardson, William Henry Bortz, JaNelda Jean Bodnarchuk, JaNeva June Hart, Ella Jane McKemey, and Zoe Ann Goheen, appear by their attorney, Hugh D. Mauch; and the remaining defendants appear not.

All parties appearing in this cause having announced themselves ready for trial, and none of the parties demanding a trial by jury, by agreement of those present, it is agreed that this cause be tried to the court. Thereupon, the court proceeds to trial and the determination of the issues involved in this cause.

The court having examined the pleadings and files in this cause, and having heard and considered the evidence offered in the trial finds:

That service of process was properly obtained upon all of the defendants in this action, and that by virtue thereof this court has jurisdiction of the parties and the subject matter of this action.

That the allegations of the petition are true, and that the plaintiffs, Irene Buskirk and Willard B. Wakefield, and the defendants Earl L. Wakefield, Leonard Wakefield, Ruby M. Hatter, and Arlone Kaiser are the owners as tenants in common of and have possession of the following described real estate, to-wit:

- TRACT A: The South half of the Southeast Quarter (S½SE¼) of Section Thirty-six (36), Township Fourteen (14) South, Range Twelve (12) West, Russell County, Kansas.
- TRACT B. The East half of the Southwest Quarter (E½SW¼) of Section Thirty-two (32), Township Sixteen (16) South, Range Twelve (12) West, Barton County, Kansas.
- TRACT C: The Southeast quarter (SE¼) of Section Twenty-three (23), Township Sixteen (16) South, Range Twelve (12) West, Barton County, Kansas.

and that in addition to the above named parties the defendants, Etta Shepardson, William Henry Bortz, JaNelda Jean Bodnarchuk, JaNeva June Hart, Ella Jane McKemey, and Zoe Ann Goheen are the owners as tenants in common of and have possession of the following described real estate, to-wit:

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TRACT D. The West half of the Northwest Quarter (W $\frac{1}{2}$ NW $\frac{1}{4}$) of Section Five (5), Township Sixteen (16) South, Range Twelve (12) West, Barton County, Kansas.

The court finds that this is an action for the partititon of the above described real estate, reserving, however, to the above named tenants in common, all of the oil, gas and other minerals thereunder for a period of one (1) year and for so long thereafter as oil and /or gas is produced therefrom, together with all bonuses and delay rentals, including without limitation, the right of ingress and egress for the purpose of mining, producing and removing any oil, gas or other minerals produced from said real estate as to each described tract.

That the lessees under verbal agricultural and grass leases, Leo Friebus, Joe Schiller, Vincent Dolechek, and Cecil C. Charles, which leases terminate on or before March 1, 1990, are terminated by the court.

That the land above described does not constitute a homestead of any of the owners thereof, and that said real estate is subject to partition.

IT IS THEREFORE BY THE COURT ORDERED, ADJUDGED AND DECREED that the plaintiffs, Irene Buskirk, and Willard B. Wakefield, and the defendants Earl L. Wakefield, Leonard Wakefield, Ruby M. Hatter, and Arlone Kaiser, are tenants in common of the above described Tracts A, B and C, and they with defendants, Etta Shepardson, William Henry Bortz, JaNelda Jean Bodnarchuk, JaNeva June Hart, Ella Jane McKemey, and Zoe Ann Goheen, are tenants in common of the above described Tract D., and that their respective undivided interests are as set forth hereinabove, and are the owners of said real estate in fee simple.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that the reservation of the mineral interests requested in the petition and answer filed herein, should be limited to the tract as described in the existing oil and/or gas leases and not extend to all the real estate herein above described as the period after one year.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that Leo Friebus, Joe Schiller, Vincent Dolechek and Cecil C. Charles, are lessees under verbal agricultural and grass or pasture leases, which leases terminate on March 1, 1990, and at the end of the 1989 grass season or pasture period and said lessees shall have no right, title or estate or interest in or claim upon the above described real estate, as agricultural and grass/ pasture tenants, other than the right to harvest any crops which may be growing thereon on March 1, 1990, and that any lessee under any grass or pasutre lease shall have no right, title, estate or interest in or claim upon the above described real estate, as grass or pasture lessee, after the end of the 1989 grass season or pasture period.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Dwayne C. Teichmann, Alvin Prosser, and Kenneth Schremmer, be and they are hereby appointed commissioners to make partition of the land above described among the plaintiff and defendant owners according to their respective interests as found by the court.

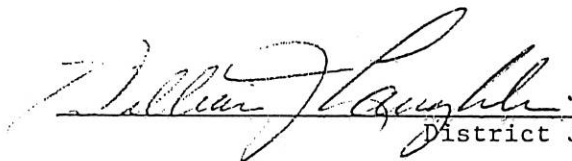
If partition cannot be made without manifest injury, then said commissioners shall make a valuation and appraisalment of said land, subject to a reservation for all the oil, gas and other minerals, for a period of one (1) year and as long thereafter as oil and /or gas is produced therefrom, together with all bonuses and delay rentals, including without limitation, the right of ingress and egress for the purpose of mining, producing and removing any oil, gas or other minerals produced from said real estate, all as provided by law; said valuation and appraisalment made by the commissioners to be made separately as to each of the tracts of land as above described, and in the event of sale, to be sold in a manner to be later determined by the court.

IT IS FURTHER ORDERED AND DECREED that said commissioners shall begin their duty and make a report of their proceedings to the court within fifteen (15) days from the date of filing of this Journal Entry, and that before entering upon their duties as such shall each take and subscribe and oath as provided by law.

IT IS FURTHER CONSIDERED, ORDERED AND ADJUDGED BY THE COURT, that if a partition of said real estate cannot be made without manifest injury, then the respective commissioners shall make a valuation and appraisalment of each of the parcels of real estate as described hereinabove, and upon the approval of the report of the commissioners that said plaintiffs, Irene Buskirk and Willard B. Wakefield, and the defendants Earl L. Wakefield, Leonard Wakefield, Ruby M. Hatter, and Arlone Kaiser; and Etta Shepardson, William Henry Bortz, JaNelda Jean Bodnarchuk, JaNeva June Hart, Ella Jane McKemey, and Zoe Ann Goheen, owners pursuant to the findings above made, shall have a right to make their election to take said real estate or any parcel thereof within ten (10) days after the approval of the report of the commissioners; that in the event no election to take said land or parcel thereof at the appraised value is filed by said plaintiffs or any of said defendants, or in the event more than one election is filed against said land or any parcel thereof, then said real estate or any parcel thereof upon which no election has been filed or where more than one election has been filed, shall be sold at public auction. The court shall make an order directing the Sheriff of Barton County,

Kansas to sell the same in the manner provided for sale of proerty on execution, all as provided by Kansas Statutes Annotated 60-2410, et seq., and supplements thereto.

IT IS FURTHER ORDERED that a certified copy of this journal entry be made and delivered to each of said commissioners, which order shall be their warrant for making such partition.

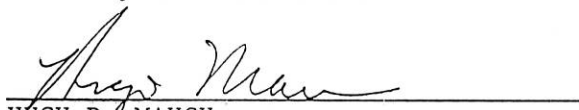

District Judge

APPROVED:



CHARLES L. BUEHLER
1815 Broadway
Great Bend, Kansas 67530
(316) 793-8993
Attorney for Plaintiffs.





HUGH D. MAUCH
3111 10th Street, Suite 106
P. O. Box 1444
Great Bend, Kansas 67530
(316) 792-2472
Attorney for Defendants -
Etta Shepardson, William Henry Bortz,
JaNelda Jean Bodnarchuk, JaNeva June Hart,
Ella Jane McKemey, and Zoe Ann Goheen.

FILED

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IN THE DISTRICT COURT OF BARTON COUNTY, KANSAS

IRENE BUSKIRK, et al.,)
) Plaintiffs,)
 vs.)
)
 EARL L. WAKEFIELD, et al.,)
) Defendants.)
 _____)

No. 89-C-134

ORDER NUNC PRO TUNC

NOW on this 20th day of November, 1989, comes plaintiffs by their attorney, Charles L. Buehler, and state that in the Journal Entry of Partition filed herein on June 23, 1989, the reversionary mineral interests of the owners were not specified in and under the following described real estate, to-wit:

TRACT C. The Southeast Quarter (SE\4) of Section Twenty-three (23), Township Sixteen (16) South, Range Twelve (12) West, Barton County, Kansas.

and that the following respective undivided ownership in and to the mineral reversionary interests, should be substituted in lieu thereof, to-wit:

- Irene Buskirk, an undivided one-twelfth (1/12) interest;
- Willard B. Wakefield, an undivided one-twelfth (1/12) interest;
- Earl L. Wakefield, an undivided one-thirty six (1/36) interest;
- Leonard Wakefield, an undivided one-thirty six (1/36) interest;
- Ruby M. Hatter, an undivided one-thirty six (1/36) interest;
- Arlone Kaiser, an undivided one-twelfth (1/12) interest;
- Etta Shepardson, an undivided one-third (1/3) interest;
- William Henry Bortz, an undivided one-fifteenth (1/15) interest;
- JaNelda Jean Bodnarchuk, an undivided one-fifteenth (1/15);
- JaNeve June Hart, an undivided one-fifteenth (1/15) interest;
- Ella Jane McKemey, an undivided one-fifteenth (1/15) interest;
- Zoe Ann Goheen, an undivided one-fifteenth (1/15) interest;

and that the Appraisal and Valuation of the Commissioners in Partition included all reversionary rights of minerals in and to said described Tract C.

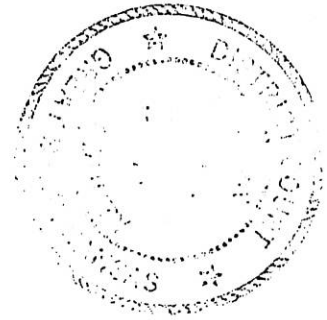
IT IS THEREFORE BY THE COURT CONSIDERED, ORDERED, ADJUDGED AND DECREED that the corrected ownership interests and valuation be substituted for the incorrect interests of the reversionary mineral interests and that the sale thereof further confirmed.

II - 16/46

William F. Laughlin
JUDGE

APPROVED;

Charles L. Buehler
CHARLES L. BUEHLER
1815 Broadway
Great Bend, KS 67530
(316) 793-8993
Attorney for Plaintiffs.



Hugh D. Mauch
HUGH D. MAUCH
3111 10th Street, Suite 106
Great Bend, KS 67530
(316) 792-2472
Attorney for Defendants,
Etta Shepardson, William Henry Bortz,
JaNelda Jean Bodnarchuk, JaNeve June Hart,
Ella Jane McKemey, and Zoe Ann Goheen.

IN THE DISTRICT COURT OF BARTON COUNTY, KANSAS

FILED
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JUN 23 1989

IN THE MATTER OF THE MARRIAGE OF)
WILMA FAYE AXMAN and JOSEPH)
BENEDICT AXMAN.)

Case No. 89-D-151

JOURNAL ENTRY AND DECREE OF ANNULMENT

NOW on this 22nd day of June, 1989, the above-entitled matter comes on before the Court. The Petitioner appears in person and by her attorney, JERRY G. LARSON of SMITH, BURNETT & LARSON, Larned, Kansas. The Respondent appears in person and by his attorney, LARRY E. KEENAN, of KEENAN LAW FIRM, P.A., Great Bend, Kansas.

THEREUPON, Counsel for the parties announce to the Court that this matter is ready to proceed to trial and the Court, after examining the file herein, finds that the Court has jurisdiction of the subject matter and the parties to this action and the same may proceed.

THEREUPON, evidence is presented to the Court and the Court, after having heard said evidence and being fully and completely informed, finds as follows:

1. That the allegations contained in the Petition are true. That there are grounds for annulment and that the Court finds that said marriage is voidable pursuant to K.S.A. 60-1602(b) and that said marriage should be annulled.

2. That the parties have been actual residents of the State of Kansas for more than sixty (60) days next preceding the filing of the Petition herein.

3. That no children have been born of this marriage.

4. That the Petitioner and Respondent have entered into a Property Settlement Agreement setting forth provisions for division of property and payment of attorneys' fees and costs, and that said Agreement has been furnished

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odometer no. 139
date June 22, 1989

II-18/46

to this Court and testified to; and the Court finds that said Agreement has been knowingly entered into with independent Counsel and provides for a fair disposition of the property of the parties. The Court further finds that such Agreement should be and is hereby incorporated by reference by the Court as part of this Journal Entry and Decree of Annulment as though the same were set forth in detail.

5. That the aforementioned Property Settlement Agreement failed to address an undivided one-fourth (1/4) mineral interest in the Southeast Quarter (SE/4) of Section Twelve (12), Township Seventeen (17) South, Range Fifteen (15) West of the 6th P.M. in Barton County, Kansas, which property was owned by the Respondent prior to the marriage of the parties, and that the parties agree that said mineral interest should be awarded to the Respondent.

6. The Court further finds that the Petitioner should be restored to her former name, WILMA FAYE CREED.

IT IS, THEREFORE, BY THE COURT ORDERED, ADJUDGED AND DECREED that the marriage between the parties is declared void and that the marriage between the parties is hereby annulled.

IT IS BY THE COURT FURTHER ORDERED that the Petitioner should be restored to her former name, that being WILMA FAYE CREED.

IT IS BY THE COURT FURTHER ORDERED, ADJUDGED AND DECREED that the written Property Settlement Agreement executed by the parties hereto on the 2nd day of June, 1989, and filed herein, be and the same is hereby incorporated with the approval of this Court in this Journal Entry and Decree of Annulment by reference as though said Agreement were set forth in detail, and the same is approved by the Court.

IT IS BY THE COURT FURTHER ORDERED, ADJUDGED AND DECREED that the following-described tracts of real estate are awarded to the Petitioner, WILMA FAYE CREED, absolutely,

free and clear of any claim whatsoever on the part of the Respondent, to-wit:

The East Five Feet (5') of Lot Nineteen (19), and all of Lots Twenty (20), Twenty-One (21), Twenty-Two (22), Twenty-Three (23), and Twenty-Four (24), Block Twenty (20), Original Townsite of the City of Larned, Pawnee County, Kansas;

A life estate in the surface and remainder interest in the minerals following a 20-year reservation from January 11, 1982, in the Southeast Quarter (SE/4) of Section Thirty-One (31), Township Twenty-Two (22) South, Range Thirteen (13) West of the 6th P.M. in Stafford County, Kansas;

The Northeast Quarter of the Southeast Quarter (NE/4 SE/4) and the North Half of the Northwest Quarter of the Southeast Quarter (N/2 NW/4 SE/4) of Section Five (5), Township Twenty-Three (23) North, Range Thirteen (13) West of the Giala and Salt River Base and Meridian, Mohave County, Arizona;

Parcel 1 and 4 according to the survey of record in the Office of the County of Recorder of Cochise County, Arizona, in Map Book 1, Page 26, and 26A through 26K;

Lot Eleven (11), Block K, Unit 1, Deer Valley Meadows, Alamosa County, Colorado;

Cemetery Lot #162B, Spaces 1, 2, 3, 4, in Garden of Rose Croix, White Chapel Memorial Garden, Sedgwick County, Kansas.

IT IS BY THE COURT FURTHER ORDERED, ADJUDGED AND DECREED that the following-described tracts of real estate are awarded to the Respondent, JOSEPH BENEDICT AXMAN, free and clear of any claim whatsoever on the part of the Petitioner, to-wit:

The Northeast Quarter (NE/4) and the Southeast Quarter (SE/4) of Section Twenty-Five (25), Township Seventeen (17), Range Fifteen (15) West of the 6th P.M. in Barton County, Kansas;

Lot Five (5) Block Five (5) of Replat of Block Four (4) and Block Five (5) of Indian Heights Addition # One, to the City of Great Bend, Kansas, commonly known as 1512 Cherokee;

An undivided one-fourth (1/4) interest in the Southeast Quarter (SE/4) of Section Twelve (12), Township Seventeen (17) South, Range Fifteen (15) West of the 6th P.M. in Barton County, Kansas.

IT IS BY THE COURT FURTHER ORDERED, ADJUDGED AND DECREED that the parties hereto are prohibited from contracting marriage with any other person until thirty (30) days


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after the entry of this Decree of Annulment, or if an appeal is made until receipt of the mandate from the Supreme Court, in accordance with K.S.A. 60-2106c. Any marriage contracted before the expiration of that period of time shall be null and void, and any agreement to waive such right of appeal shall not be effective to shorten such period of time.

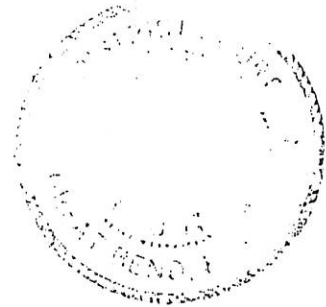



JUDGE

APPROVED BY:



JERRY G. LARSON
SMITH, BURNETT & LARSON
111 East 8th Street
Larned, KS 67550
ATTORNEY FOR PETITIONER





of KEENAN LAW FIRM, P.A.
P.O. Drawer 459
Great Bend, KS 67530
ATTORNEY FOR RESPONDENT

IN THE DISTRICT COURT OF BARTON COUNTY, KANSAS

FILED
1st
AUG 22 1989

IN THE MATTER OF THE MARRIAGE OF)
WILMA FAYE AXMAN and JOSEPH)
BENEDICT AXMAN.)
_____)

Case No. 89-D-151

PROPERTY SETTLEMENT AGREEMENT

THIS AGREEMENT, Made and entered into this 3rd
day of June, 1989, by and between WILMA FAYE AXMAN,
hereinafter referred to as Petitioner, and JOSEPH BENEDICT
AXMAN, hereinafter referred to as Respondent,

WITNESSETH:

WHEREAS, the parties hereto were married on the
26th day of September, 1987, and

WHEREAS, the Petitioner has filed a Petition
herein for an absolute divorce, or in the alternative for an
annulment of the parties marriage, and

WHEREAS, the parties desire to enter into a fair
and equitable agreement completely and finally settling
their respective rights and obligations, and

WHEREAS, both parties are fully informed regarding
their respective property, assets and financial condition,
and have made full disclosure of their property, assets and
financial condition one to the other, and are fully informed
regarding their respective legal rights by independent
counsel and have mutually agreed upon the terms and con-
ditions hereinafter contained, subject to approval of the
District Court of Barton County, Kansas.

NOW, THEREFORE, THE PARTIES COVENANT, CONTRACT AND
AGREE AS FOLLOWS:

1. That no children have been born of their
marriage.
2. That the Petitioner should be restored to her
former name of WILMA FAYE CREED.

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3. That the Petitioner owned individually prior to marriage the following-described tracts of real estate, to-wit:

The East Five Feet (5') of Lot Nineteen (19), and all of Lots Twenty (20), Twenty-One (21), Twenty-Two (22), Twenty-Three (23), and Twenty-Four (24), Block Twenty (20), Original Townsite of the City of Larned, Pawnee County, Kansas;

A life estate in the surface and remainder interest in the minerals following a 20-year reservation from January 11, 1982, in the Southeast Quarter (SE/4) of Section Thirty-One (31), Township Twenty-Two (22) South, Range Thirteen (13) West of the 6th P.M. in Stafford County, Kansas;

The Northeast Quarter of the Southeast Quarter (NE/4 SE/4) and the North Half of the Northwest Quarter of the Southeast Quarter (N/2 NW/4 SE/4) of Section Five (5), Township Twenty-Three (23) North, Range Thirteen (13) West of the Giala and Salt River Base and Meridian, Mohave County, Arizona;

Parcel 1 and 4 according to the survey of record in the Office of the County of Recorder of Cochise County, Arizona, in Map Book 1, Page 26, and 26A through 26K;

Lot Eleven (11), Block K, Unit 1, Deer Valley Meadows, Alamosa County, Colorado;

Cemetery Lot #162B, Spaces 1, 2, 3, 4, in Garden of Rose Croix, White Chapel Memorial Garden, Sedgwick County, Kansas.

That the Petitioner, WILMA FAYE CREED, shall have all of the real estate described in this paragraph #3 as her sole and separate property, free and clear of any claim whatsoever on the part of the Respondent.

4. That the Respondent, individually and in his own name, owned prior to the marriage of the parties the following-described real estate, to-wit:

The Northeast Quarter (NE/4) and the Southeast Quarter (SE/4) of Section Twenty-Five (25), Township Seventeen (17), Range Fifteen (15) West of the 6th P.M. in Barton County, Kansas;

A residence located at 1512 Cherokee Street, Great Bend, Barton County, Kansas, described as follows:

That the Respondent, JOSEPH BENEDICT AXMAN, shall have all of the real estate described in this paragraph #4 as his sole and separate property, free and clear of any claim whatsoever on the part of the Petitioner.

5. That the Respondent individually owned prior to the marriage a 1986 Lincoln automobile, a Chevrolet pickup truck, furniture, household goods, and other personal property, and that the Respondent, JOSEPH BENEDICT AXMAN, shall have all of said personal property as his sole and separate property, free and clear of any claim whatsoever on the part of the Petitioner.

6. That the Respondent owned individually and prior to the marriage certain cash and certificates of deposit in the total amount of \$50,000.00, and that all of said cash and certificates shall be the sole and separate property of the Respondent, free and clear of any claim whatsoever on the part of the Petitioner.

7. That the Petitioner owned prior to the marriage a 1976 Ford automobile, furniture, household goods, and certain bank accounts and certificates of deposit, and that all of said personal property shall be the sole and separate property of the Petitioner, WILMA FAYE CREED, free and clear of any claim whatsoever on the part of the Respondent.

8. That the Respondent, JOSEPH BENEDICT AXMAN, shall have as his sole and separate property the one joint bank account owned by the parties, that being bank account at the First National Bank of Hoisington, Kansas.

9. That the Petitioner owned the following items of personal property prior to the marriage of the parties: three (3) pictures, two (2) sets of dishes and china, one (1) Oriental rug, various pots and pans, some items of clothing, Abby Jo's baby things, including clothes, toys and a play pen, six (6) goblets, one (1) set of wine glasses, six (6) mugs, table ware, bedding, and towels. That said

property is presently located at the residence of the Respondent at 1512 Cherokee, Great Bend, Kansas. That the Respondent agrees to immediately deliver said items of personal property to the Petitioner, WILMA FAYE CREED.

10. That each party shall retain full ownership of the items of personal property in their individual possession, with the exception of those items listed in paragraph 9 above, which the Respondent agrees to deliver to the Petitioner.

11. That the parties shall file separate income tax returns for the year 1989, and shall be entitled to retain any refund that they might receive.

12. That the Petitioner shall have as her sole and separate property any savings accounts, certificates of deposit, and checking accounts in her individual name.

13. That the Respondent shall have as his sole and separate property any savings accounts, certificates of deposit, and checking accounts in his individual name.

14. That each party will assume and pay all indebtedness incurred by themselves respectively on or after the date of filing of the Petition herein.

15. That the Respondent shall pay to the Petitioner for her attorney fees the sum of \$400.00, plus the filing fee in the amount of \$55.00.

16. That the Petitioner shall be restored to her former name of WILMA FAYE CREED and shall, on approval of this Agreement by the District Court of Barton County, Kansas, be known as WILMA FAYE CREED.

That both parties specifically agree that this Agreement shall constitute a full settlement of all property rights and support responsibilities as between them, and that such Agreement has been reached with full independent advice and with full disclosure of all property, assets and financial condition, and each will execute such deeds, bills of sale, stock transfers, payments, trust agreements, and

other documents on execution of this Agreement as may be necessary to fully implement this Agreement subject to the approval of the District Court of Barton County, Kansas.

IN WITNESS WHEREOF, the parties hereto have executed this Property Settlement Agreement, in triplicate, as of the day and year first above written.

Wilma Faye Axman
WILMA FAYE AXMAN, Petitioner

Joseph B. Axman
JOSEPH BENEDICT AXMAN,
Respondent

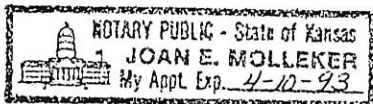
STATE OF KANSAS, PAWNEE COUNTY, SS:

WILMA FAYE AXMAN, of lawful age, being first duly sworn on oath states:

That she is the Petitioner above named; that she has read the above and foregoing PROPERTY SETTLEMENT AGREEMENT, knows and understands the contents thereof, and that all of the statements therein contained are true and correct.

Wilma Faye Axman
WILMA FAYE AXMAN

Subscribed and sworn to before me this 2nd day of June, 1989.



Joan E. Molleker
Notary Public - Joan E. Molleker

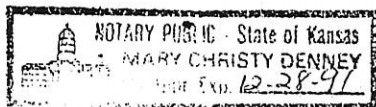
STATE OF KANSAS, BARTON COUNTY, SS:

JOSEPH BENEDICT AXMAN, of lawful age, being first duly sworn on oath states:

That he is the Respondent above named; that he has read the above and foregoing PROPERTY SETTLEMENT AGREEMENT, knows and understands the contents thereof, and that all of the statements therein contained are true and correct.

Joseph B. Axman
JOSEPH BENEDICT AXMAN

Subscribed and sworn to before me this 8th day of June, 1989.



Mary Christy Denney
Notary Public

FILED

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IN THE DISTRICT COURT OF BARTON COUNTY, KANSAS

Ph
DISTRICT

In the Matter of the Estate)
Of)
BROWNIE D. OLSON, Deceased)

No. 88 P 63

JOURNAL ENTRY OF FINAL SETTLEMENT

NOW on this 14th day of August, 1989, comes on for hearing the Petition for Final Settlement filed by First National Bank & Trust Company in Great Bend, Executor of the Estate of Brownie D. Olson, deceased.

Title to
Real Estate
Involved

The petitioner appears in person and by Larry E. Keenan of Keenan Law Firm, P.A., it attorney. Other appearances are NONE.

There are no other appearances.

After examining the files, hearing the evidence, statements and arguments of counsel, and being duly advised in the premises, the Court finds:

1. That due diligence has been exercised in the search for names, ages, relationships and residences and addresses of heirs, devisees and legatees.
2. That notice of this hearing has been given as required by law and the order of this Court and that proof thereof has been duly filed herein and is hereby approved.
3. That the allegations of the Petition are true.
4. That none of the persons interested in this estate is in the military service of the United States or its allies as defined in the Soldiers' and Sailors' Civil Relief Act of 1940, as amended.
5. That the Executor made diligent inquiry into the decedent's debts and obligations and, to the best of its knowledge and belief, all of the decedent's creditors had actual knowledge of the decedent's death and of this probate proceeding.

KEENAN LAW FIRM, P.A.
ATTORNEYS AT LAW
2200 LAKIN AVENUE
P. O. DRAWER 459
GREAT BEND, KANSAS 67530
316-793-7813

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meter no. 021
date 8-15-89

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6. That all taxes imposed by the State of Kansas have been paid as evidenced by the Kansas Inheritance Tax Closing Letter filed herein; that this estate is not subject to federal estate taxes as evidenced by the federal estate tax closing letter filed herein; that demands against the estate of the decedent have been filed as follows:

Memorial Medical Center	\$ 5,871.30
City of Lufkin, Texas	269.13
Angelina Radiology Associates	54.00
R.R. Bachireddy, M.D., P.A. & Associates	340.00
Wilson McKewen Rehabilitation Center	448.00.

That although the above claims were not timely filed, the Executor was aware of the claims and all of the claims are legitimate debts of the decedent and the Court finds that they should be allowed and paid; that the demand of Wayne K. Rathbun for determination of validity and enforceability of the Lease/Option dated July 2, 1987, entered into between Wayne K. Rathbun and the decedent has been fully resolved as stated in paragraph 8 following, and the time for filing demands has expired.

7. That the decedent owned at the time of his death the following described real estate:

A tract of land in the Northwest Quarter (NW/4) of Section Thirty-six (36), Township Nineteen (19) South, Range Fourteen (14) West, Barton County, Kansas, better described: Beginning 60.00 feet South and 1,014.65 feet West of the NE corner of the Northwest Quarter (NW/4) of said Section Thirty-six (36), said point being on the South right of way line of County Road; thence South 600.89± feet, to a point on the South right of way line of a County Road; thence East on and along said right of way line 289.90 feet, to a point of beginning, being Lots Eight and Nine (8 & 9), in an unrecorded Plat,

and the following described interests in oil and gas leaseholds:

- (1) .0512696 WI in oil and gas lease covering the Southwest Quarter of the Northeast Quarter (SW/4 NE/4) and the West Half of the Southeast Quarter (W/2 SE/4) of Section Thirty-six (36), Township Seventeen (17) South, Range Thirteen (13) West, Barton County, Kansas (Clear Creek, Inc. - Hickel Lease No.52481)

Page 3--Journal Entry of Final Settlement

- (2) .0488282 WI in oil and gas lease covering the North Half of the Northwest Quarter (N/2 NW/4) of Section Seventeen (17), Township Nineteen (19) South, Range Twelve (12) West, Barton County, Kansas (Koch Oil - #1 Leroy Lease No. 55199)
- (3) .0512080 WI in oil and gas lease covering the West Half of the Southeast Quarter (W/2 SE/4) of Section Thirty-four (34), Township Eighteen (18) South, Range Eleven (11) West, Barton County, Kansas (Clear Creek - Birzer Lease No. 15170)
- (4) .0546875 WI in oil and gas lease covering the West Half of the Southwest Quarter of the Southeast Quarter (W/2 SW/4 SE/4) and the North Half of the Southeast Quarter (N/2 SE/4) of Section Twenty-three (23), Township Twenty (20) South, Range Twelve (12) West, Barton County, Kansas (Biege Lease No. 15158, Clear Creek, Inc.)
- (5) .0512695 WI in oil and gas lease covering the East 100 acres in the South 3/4ths of the Northeast Quarter (NE/4) of Section Twenty-six (26), Township Seventeen (17) South, Range Eleven (11) West, and the North Half of the Southeast Quarter (N/2 SE/4) of Section Twenty-six (26), Township Seventeen (17) South, Range Eleven (11) West, Barton County, Kansas (Bloomer Lease No. 08493 - Koch Oil Company)
- (6) .0512695 WI in oil and gas lease covering the Northeast Quarter (NE/4) of Section Thirty-four (34), Township Nineteen (19) South, Range Eleven (11) West, Barton County, Kansas (#1 Brenn Lease No. 10620 - Koch Oil Company)

Page 4--Journal Entry of Final Settlement

- (7) .0256348 WI in oil and gas lease covering the Southwest Quarter (SW/4) of Section Twenty-four (24), Township Nineteen (19), Range Twelve (12), Barton County, Kansas (Apel Lease - Citgo Petroleum Lease No. 1502346)
- (8) .0495605 WI in oil and gas lease covering the East Half of the Northwest Quarter (E/2 NW/4) and the Southwest Quarter of the Northwest Quarter (SW/4 NW/4) of Section Twenty-five (25), Township Twenty (20) South, Range Eleven (11) West, Barton County, Kansas (#1 A Bryant Lease No. 11865 - Koch Oil Company)
- (9) .0500000 WI in oil and gas lease covering the Southeast Quarter of the Southwest Quarter of the Southwest Quarter (SE/4 SW/4 SW/4) of Section Twenty-four (24), Township Seventeen (17) South, Range Eleven (11) West, Barton County, Kansas (Grizzell "A" Lease No. 47663 - Clear Creek, Inc.)
- (10) .0512695 WI in oil and gas lease covering the North Half of the Southwest Quarter (N/2 SW/4) of Section Twenty (20), Township Twenty (20) South, Range Eleven (11) West, Barton County, Kansas (Hagen Lease No. 541369 - Permian Corporation)
- (11) .0529785 WI in oil and gas lease covering the Southeast Quarter (SE/4) of Section Twenty-three (23), Township Seventeen (17), Range Twelve (12), Barton County, Kansas (Hekele Lease No. 52042 - Clear Creek, Inc.)
- (12) .0512695 WI in oil and gas lease covering the Southeast Quarter (SE/4) of Section Twenty-five (25), Township Twenty (20), Range Eleven (11) West, Barton County, Kansas (#1 Jochems Lease No. 48206 - Koch Oil Company)

Page 5--Journal Entry of Final Settlement

- (13) .0512695 WI in oil and gas lease covering the Northeast Quarter (NE/4) of Section Twenty-nine (29), Township Eighteen (18) South, Range Eleven (11) West, Barton County, Kansas (Klepper Lease No. 61829 - Clear Creek, Inc.)
- (14) .0512695 WI in oil and gas lease covering the South Half of the Northwest Quarter (S/2 NW/4) of Section Seventeen (17), Township Nineteen (19) South, Range Twelve (12) West, Barton County, Kansas (#1 Rusco Lease No. 79232 - Koch Oil Company)
- (15) .0504150 WI in oil and gas lease covering the North Half of the Southwest Quarter (N/2 SW/4) of Section Nine (9), Township Sixteen (16) South, Range Twelve (12) West, Barton County, Kansas (Turgeon Lease No. 91387 - Koch Oil Company)
- (16) .0512695 WI in oil and gas lease covering the West Half of the Northwest Quarter (W/2 NW/4) except 10 acres, square in form, described as follows: South Half of the Northwest Quarter Northwest Quarter Northwest Quarter (S/2 NW/4 NW/4 NW/4), and the North Half of the Southwest Quarter of the Northwest Quarter of the Northwest Quarter (N/2 SW/4 NW/4 NW/4) in Section Eighteen (18), Township Twenty (20), Range Eleven (11), Barton County, Kansas, (#1 Wilfred Lease No. 97237-Koch Oil Company)
- (17) .0512695 WI in oil and gas lease covering Northwest Quarter (NW/4) of Section Twenty (20), Township Nineteen (19), Range Thirteen (13), Barton County, Kansas (#1 Williams Lease No. 97462 -Koch Oil Company)

Page 6--Journal Entry of Final Settlement

- (18) 4/64ths of 79% WI in oil and gas lease covering the Northeast Quarter (NE/4) of Section Twenty-four (24), Township Twenty (20) South, Range Eleven (11) West, Barton County, Kansas (Roetzel Lease No. 993129 - Mobil Oil Corporation)
- (19) .0529785 WI in oil and gas lease covering the West Half of the Southeast Quarter (W/2 SE/4) of Section Twenty-three (23), Township Sixteen (16) South, Range Thirteen (13) West, Barton County, Kansas (#1 Koeller Lease No. 52072 - Koch Oil Company)
- (20) .0495605 WI in oil and gas lease covering the East Half of the Southwest Quarter (E/2 SW/4) of Section Twenty-eight (28), Township Sixteen (16) South, Range Thirteen (13) West, Barton County, Kansas (#1 Larson Lease No. 64325 - Clear Creek, Inc.)
- (21) .0521240 WI in oil and gas lease covering the East Half of the Southwest Quarter (E/2 SW/4) of Section Eight (8), Township Sixteen (16), Range Twelve (12), Barton County, Kansas (#1 Luerman Lease No. 57629 - Koch Oil Company)
- (22) .0529785 WI in oil and gas lease covering the Southwest Quarter (SW/4) of Section Twenty-one (21), Township Nineteen (19) South, Range Thirteen (13) West, Barton County, Kansas (#1 Marvin Lease No. 60119 - Koch Oil Company)
- (23) .0495605 WI in oil and gas lease covering the South Half of the Northwest Quarter (S/2 NW/4) of Section Thirty-two (32), Township Sixteen (16) South, Range Thirteen (13) West, Barton County, Kansas (Penka Lease No. 79548 - Clear Creek, Inc.)

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- (24) 4/64ths of 79% WI in oil and gas lease covering the Southeast Quarter of the Northeast Quarter of the Northwest Quarter of the Southwest Quarter (SE/4 NE/4 NW/4 SW/4); the Southwest Quarter of the Northwest Quarter of the Northeast Quarter of the Southwest Quarter (SW/4 NW/4 NE/4 SW/4); the Northwest Quarter of the Southwest Quarter of the Northeast Quarter of the Southwest Quarter (NW/4 SW/4 NE/4 SW/4); and the Northeast Quarter of the Southeast Quarter of the Northwest Quarter of the Southwest Quarter (NE/4 SE/4 NW/4 SW/4); all in Section Nine (9), Township Seventeen (17) South, Range Eleven (11) West, from the surface to a depth of 3,287 feet, Barton County, Kansas (Grosshardt Lease No.694806 - Mobil Oil Corporation)
- (25) .0529790 WI in oil and gas lease covering the Northeast Quarter (NE/4) of Section Thirty-two (32), Township Sixteen (16), Range Thirteen (13), Barton County, Kansas (Schreiber #1 Lease No. 85843 - Clear Creek, Inc.)
- (26) .0476903 WI in oil and gas lease covering the Southwest Quarter of the Southwest Quarter (SW/4 SW/4) of Section Twenty-four (24), Township Twenty (20), Range Eleven (11), down to and including, but not below 3,252 feet, Barton County, Kansas (Sessler #1 Lease No. 1579900-001 - Citgo Petroleum)
- (27) .0499375 WI in oil and gas lease covering the South Half of the South Half of the Northwest Quarter (S/2 S/2 NW/4) of Section Thirty-four (34), Township Twenty (20) South, Range Twelve (12) West, Barton County, Kansas, containing 40 acres, more or less, from the surface of the ground to the stratigraphic equivalent of the depth of 3,533 feet below the surface of the ground which depth is 100 feet below the total depth

as identified and logged in the Walter's #1 well, located on the SW/4 SE/4 NW/4 of 34-20-12, Barton County, Kansas (#1 Walters Lease No. 94107 - Clear Creek, Inc.)

- (28) .0512695 WI in oil and gas lease covering the Northeast Quarter (NE/4) of Section Thirty-four (34), Township Sixteen (16) South, Range Thirteen (13) West, Barton County, Kansas (Peschka "A" Lease No. 79604 - Clear Creek, Inc.)
- (29) .0256348 WI in oil and gas lease covering the South Half of the Southwest Quarter (S/2 SW/4) of Section Twelve (12), Township Sixteen (16) South, Range Fifteen (15) West, Barton County, Kansas (#1 Ben Karst Lease No. 3865 - (Inland Crude Purchasing)
- (30) .0039063 ORRI in oil and gas lease covering 149 acres, more or less, being the Northwest Quarter (NW/4) of Section Three (3), Township Eighteen (18), Range Fourteen (14), less and except the SE/4 SW/4 NW/4 and SE/4 SE/4 NW/4, Barton County, Kansas (Tindall B Lease No. 11565 - Quinoco)
- (31) 1/32nd of 15/16ths of 7/8ths WI in oil and gas lease covering the Northwest Quarter (NW/4) of Section Four (4), Township Fourteen (14) South, Range Seventeen (17) West, Ellis County, Kansas (Lang Lease No. 1552940-001 - Cities Service)
- (32) .19570% WI in the oil and gas lease covering the East Half of the East Half (E/2 E/2) of Section Eleven (11); and the West Half (W/2) of Section Twelve (12), all in Township Seventeen (17) South, Range Nine (9) West, Ellsworth County, Kansas (NCRA - Lorraine LKC Unit - Lease No. 03-55730)

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- (33) .0512696 WI in oil and gas lease covering the North Half of the Southwest Quarter (N/2 SW/4) and North Half of the North Half of the South Half of the Southwest Quarter (N/2 N/2 S/2 SW/4) of Section One (1), Township Seventeen (17) South, Range Ten (10) West, Ellsworth County, Kansas (Clear Creek - Frevert Lease No. 42694)
- (34) 1/32nd of 15/16ths of 7/8ths WI in oil and gas lease covering the Northeast Quarter (NE/4) of Section Thirty-six (36), Township Seven (7) South, Range Twenty-five (25) West, Graham County, Kansas (Moore Lease No. 72520 - Clear Creek, Inc.)
- (35) .0256348 WI in oil and gas lease covering the East Half of the Northeast Quarter (E/2 NE/4) of Section Twenty-eight (28), Township Nine (9), Range Twenty-four (24), Graham County, Kansas (Kohart Lease No. 62160 - Clear Creek, Inc.)
- (36) .0256348 WI in oil and gas lease covering the East Half (E/2) of Section Twenty-six (26), Township Eight (8), Range Twenty-five (25), Graham County, Kansas (Minium Lease No. 72200 - Clear Creek, Inc.)
- (37) .0512696 WI in oil and gas lease covering the South Half of the Southeast Quarter (S/2 SE/4) and is limited to zones "down to, but not below, a depth of 3,831 feet below the surface of the earth" of Section Thirty-four (34), Township Nine (9), Range Twenty-two (22), Graham County, Kansas (Koch Oil - #1 Rech Lease No. 75927)

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- (38) .0256348 WI in oil and gas lease covering the Northwest Quarter (NW/4) and the South Half of the Southwest Quarter (S/2 SW/4) of Section Twenty-five (25), Township Eight (8), Range Twenty-five (25), Graham County, Kansas (Schamberger Lease No. 85090 - Clear Creek, Inc.)
- (39) .0256348 WI in oil and gas lease covering the West Half of the Northwest Quarter (W/2 NW/4) of Section Seven (7), Township Eight (8), Range Twenty-three (23), and the East Half of the Northeast Quarter (E/2 NE/4) of Section Twelve (12), Township Eight (8), Range Twenty-four (24), Graham County, Kansas, (Hutton Lease No. 675613 - Mobil Oil Corporation)
- (40) .0150192 WI in the oil and gas lease covering the Northeast Quarter (NE/4) of Section Three (3), Township Ten (10), Range Twenty-two (22), Graham County, Kansas (Hansen Foundation Property No. 078155-01 - TXO)
- (41) .05078125 WI in oil and gas lease covering 10 acres in the form of a square around the Donald C. Slawson #1 Stewart "K" well located approximately....Lane County, Kansas (Stewart "K" Lease No. 76650-00 - Inland Crude Purchasing)
- (42) .0495604 WI in oil and gas lease covering the Southwest Quarter (SW/4) of Section Thirteen (13), Township Eleven (11) South, Range Thirty-two (32) West, Logan County, Kansas (Brungardt #1 Lease No. 11768 - Koch Oil Company)
- (43) 1/32nd of 7/8ths WI in oil and gas lease covering the North Half (N/2) of Section Thirteen (13), Township Seventeen (17) South, Range Twenty-one (21) West, Ness County, Kansas (Muller Lease No. 61200 - NCRA)

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- (44) .050458 WI in oil and gas lease covering the Northeast Quarter (NE/4) and the North Half of the Southeast Quarter (N/2 SE/4) of Section Twenty-nine (29), Township Twenty-three (23) South, Range Fifteen (15) West, Pawnee County, Kansas (Petro No. 1 Lease No. 2398 - Vess Oil Corporation)
- (45) .0512695 WI in oil and gas lease covering the West Half of the Southwest Quarter (W/2 SW/4) of Section Fifteen (15), Township Twenty (20) South, Range Ten (10) West, Rice County, Kansas (Burns Lease No. 12788 - Koch Oil Company)
- (46) .0256348 WI in oil and gas lease covering the Northeast Quarter of the Southwest Quarter (NE/4 SW/4) and the North Half of the Southeast Quarter of the Southwest Quarter (N/2 SE/4 SW/4) of Section Sixteen (16), Township Twenty (20), Range Ten (10), Rice County, Kansas (Specht Lease No. 12669 - Koch Oil Company)
- (47) .0503526 WI in oil and gas lease covering the Northwest Quarter (NW/4) of Section Thirty-three (33), Township Eighteen (18) South, Range Nine (9) West, Rice County, Kansas (Koch Oil - Merry Lease No. 63771)
- (48) .0510864 WI in oil and gas lease covering the North Half of the Northwest Quarter (N/2 NW/4) of Section Twenty-two (22), Township Twenty (20) South, Range Ten (10) West, Rice County, Kansas (#1 Madden Lease No. 58181 - Koch Oil Company)
- (49) .0512695 WI in oil and gas lease covering the Southeast Quarter (SE/4) of Section Seven (7), Township Nineteen (19) South, Range Ten (10) West, Rice County, Kansas (Musenberg #1 Lease No. 641313 - Permian Corporation)

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- (50) .0512695 WI in oil and gas lease covering the Southwest Quarter (SW/4) of Section Twenty-seven (27), Township Nineteen (19), Range Ten (10), Rice County, Kansas (Hathaway Lease No. 50645 - Clear Creek, Inc.)
- (51) .0256348 WI in oil and gas lease covering the Northeast Quarter of the Northeast Quarter (NE/4 NE/4) of Section Thirty-three (33), Township Eight (8) South, Range Sixteen (16) West, Rooks County, Kansas (Adams "E" Lease No. 10198 - Clear Creek, Inc.)
- (52) .0093658 WI in oil and gas lease covering the South Half of the Northeast Quarter (S/2 NE/4) and the East Half of the Northwest Quarter (E/2 NW/4) of Section Twenty-eight (28), and the Southwest Quarter (SW/4) of Section Twenty-seven (27), all in Township Eight (8) South, Range Sixteen (16) West, Rooks County, Kansas (North Laton Unit - Lease No. 75890 - Clear Creek, Inc.)
- (53) .05125000 WI in oil and gas lease covering the East Half of the Northeast Quarter (E/2 NE/4) of Section Twenty-five (25), Township Eighteen (18), Range Eighteen (18), Rush County, Kansas (Oliverius Lease No. 59510-00 - Inland Purchasing & Transportation)
- (54) .031250 WI in oil and gas lease covering the North Half of the Northeast Quarter of the Northwest Quarter (N/2 NE/4 NW/4) of Section Twenty-seven (27), Township Fourteen (14) South, Range Twelve (12) West, Russell County, Kansas (Morris Lease No. 1563260-001 - Cities Service Oil)
- (55) .0256348 WI in oil and gas lease covering the Southwest Quarter (SW/4) of Section Six (6), Township Nine (9), Range Twenty-eight (28) West, Sheridan County, Kansas (Mosier Lease No. 73150 - Clear Creek, Inc.)

- (56) .0253906 WI in oil and gas lease covering the Northeast Quarter (NE/4) of Section Twenty-two (22), Township Twenty-two (22) South, Range Twelve (12) West, Stafford County, Kansas (Durham Lease No. 36423 - Clear Creek, Inc.)
- (57) .0510864 WI in oil and gas lease covering the Northeast Quarter (NE/4) of Section Twenty-seven (27), Township Twenty-one (21) South, Range Twelve (12) West, Stafford County, Kansas (#1 Siefkes Lease No. 83802 - Koch Oil Company)
- (58) .0488281 WI in oil and gas lease covering the North Half of the Southeast Quarter (N/2 SE/4), except the 10 acres in the Northeast Quarter of the Northeast Quarter of the Southeast Quarter (NE/4 NE/4 SE/4) of Section Ten (10), Township Twenty-one (21) South, Range Thirteen (13) West, Stafford County, Kansas (#1 Rothgarn - Getty Crude Gathering, Inc.)
- (59) .0506997 WI in oil and gas lease covering the Northwest Quarter of the Northeast Quarter (NW/4 NE/4) of Section Nineteen (19), Township Twenty-two (22) South, Range Eleven (11) West, Stafford County, Kansas, (Permian Corporation - Alpers Lease No. 644713)
- (60) .0546876 WI in oil and gas lease covering the South Half (S/2) of Section Nine (9), Township Twenty-two (22) South, Range Eleven (11) West, Stafford County, Kansas (Koch Oil - Eriksen Lease No. 27896)
- (61) .1025391 WI in oil and gas lease covering Lots 6 and 7, the East Half of the Southwest Quarter (E/2 SW/4), being all of the fractional Southwest Quarter (SW/4) of Section Six (6), Township Twenty-one (21) South, Range Fourteen (14) West, Stafford County, Kansas (Barrett Lease No. 04862 - Koch Oil)

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- (62) .0512696 WI in oil and gas lease covering the Southwest Quarter of the Southeast Quarter (SW/4 SE/4) and the South Half of the Northwest Quarter of the Southeast Quarter (S/2 NW/4 SE/4) of Section Nine (9), Township Twenty-three (23) South, Range Fourteen (14) West, Stafford County, Kansas (Clear Creek - Welsh Lease No. 95066)
- (63) .0512696 WI in oil and gas lease covering the North Half of the Northeast Quarter (N/2 NE/4) of Section Twenty-one (21), Township Twenty-two (22) South, Range Twelve (12) West, Stafford County, Kansas (Clear Creek - Ukens Lease No. 91477)
- (64) .0507812 WI in oil and gas lease covering the Southwest Quarter (SW/4) of Section Eighteen (18), Township Twenty-two (22) South, Range Eleven (11) West, Stafford County, Kansas (Ross Lease No. 84252 - Clear Creek, Inc.)
- (65) .0512695 WI in oil and gas lease covering the Northwest Quarter (NW/4) of Section Thirty-six (36), Township Twenty-one (21), Range Twelve (12), Stafford County, Kansas (#1 Sayler Lease No. 5490-00-000 - Texaco, Inc.)
- (66) .0256348 WI in oil and gas lease covering the South Half of the Southeast Quarter (S/2 SE/4) and also the North Half of the Southeast Quarter (N/2 SE/4) with common TB Agreement, all in Section Three (3), Township Twenty-one (21) South, Range Thirteen (13) West, Stafford County, Kansas (McDonald Lease No. 58968 - Texaco Trading & Transportation)

- (67) 1/32nd of 15/16ths of 7/8ths (.0256348) WI in oil and gas lease covering the Northeast Quarter of the Southeast Quarter (NE/4 SE/4) of Section Nine (9), Township Twenty-one (21) South, Range Eleven (11) West, Stafford County, Kansas (Sifers "B" Lease No. 183505 - Union Oil Company)
- (68) .0499375 WI in oil and gas lease covering the Southwest Quarter of the Southeast Quarter of the Southeast Quarter (SW/4 SE/4 SE/4) of Section Seventeen (17), Township Twenty-four (24) South, Range Fourteen (14) West, Stafford County, Kansas (Denker 1-A Lease No. 59882 - Texaco)
- (69) .0468125 WI in oil and gas lease covering the Southeast Quarter of the Southwest Quarter of the Southeast Quarter (SE/4 SW/4 SE/4) of Section Seventeen (17), Township Twenty-four (24) South, Range Fourteen (14) West, Stafford County, Kansas (Denker B-2 Lease No. C.P.5474 - Texaco)
- (70) .00156245 RI in oil and gas lease covering the Southwest Quarter (SW/4) of Section Six (6), Township Twenty-three (23), Range Eleven (11), Stafford County, Kansas (Bryant-Brock Lease No. 62075 - BHP)
- (71) .0256348 WI in oil and gas lease covering the Southeast Quarter (SE/4) of Section Thirteen (13), Township Twenty-four (24), Range Fourteen (14), Stafford County, Kansas (Iva Lease No. 57400 - Clear Creek, Inc.)
- (72) 1/16th of 80% WI in oil and gas lease covering the North Half of the Northeast Quarter of the Northwest Quarter (N/2 NE/4 NW/4) of Section Ten (10), Township Fourteen (14) South, Range Twenty-two (22) West, Trego County, Kansas (Inland Purchasing & Transportation - Nelson "BB" Lease No. 58497-00)

- (73) .04799804 WI in oil and gas lease covering the Northeast Quarter of the Northwest Quarter (NE/4 NW/4) of Section Eighteen (18), Township Seven (7) North, Range Two (2) West, McClain County, Oklahoma (Sun Refining & Marketing Company - Walker "B" Lease No. 891619)
- (74) .0239902 WI in oil and gas lease covering the Southwest Quarter of the Southwest Quarter (SW/4 SW/4) of Section Seven (7), Township Seven (7) North Range Two (2) West, McClain County, Oklahoma (Sun Refining & Marketing Company - Martin "B" Lease No. 855708)
- (75) .04799804 WI in oil and gas lease covering the Northwest Quarter of the Northwest Quarter (NW/4 NW/4) of Section Eighteen (18), Township Seven (7) North, Range Two (2) West, McClain County, Oklahoma (Sun Refining & Marketing Company - Marti "A" Lease No. 855713)
- (76) Undivided interest in salt water disposal well located on the Southeast Quarter of the Southwest Quarter (SE/4 SW/4) of Section Seven (7), Township Seven (7), Range Two (2), McClain County, Oklahoma (Superior Walker #1)

8. That the real estate described in paragraph 7. was determined by this Court to have been sold by the decedent during his lifetime under a Lease/Option agreement dated July 2, 1987, entered into between decedent and Wayne K. Rathbun. That issues concerning the validity of the Option/Lease were resolved as set forth in the Settlement Agreement dated May 23, 1989, and the Journal Entry of Judgment on Petition for Allowance of Demand filed herein, with the amount due thereunder being a part of the residue of the estate.

9. That the oil and gas leasehold working interests described in paragraph 7., subparagraphs (27), (35), and (44) were sold by the Executor at private sale, with the proceeds therefrom being a part of the residue of the estate. That the oil and gas leasehold working interests described in paragraph 7., subparagraphs (3) and (51) above, are subject to sale contracts for which the consideration has not yet been paid.

16. That the names, ages, and relationships of the devisees and legatees of the decedent who are entitled to the Estate under the provisions of the decedent's Last Will and Testament are:

Gary Dean Olson Trust, c/o First National Bank & Trust Company in Great Bend, 1222 Kansas, Great Bend, Kansas 67530; and

Randy Lee Olson Trust, c/o First National Bank & Trust Company in Great Bend, 1222 Kansas, Great Bend, Kansas 67530.

17. That Gary Dean Olson, one of the heirs above named, has a duly appointed Conservator, who is:

Randy Lee Olson, Route #4, Great Bend, Kansas 67530.

18. That the Last Will and Testament of the decedent is construed to distribute the Estate as follows:

(a) One-half (1/2) of decedent's property, real and personal, to the Gary Dean Olson Trust; and

(b) One-half (1/2) of decedent's property, real and personal, to the Randy Lee Olson Trust,

including the balance due under the Lease/Option agreement dated July 2, 1987, entered into between decedent and Wayne K. Rathbun as set forth in the Settlement Agreement dated May 23, 1989, and the following described real estate:

The South Fifty-five Feet (55') of the Northwest Quarter (NW/4) of Block Five (5) in the Ark Valley Town Company's Addition to the City of Great Bend, Kansas, according to the recorded Plat thereof; being a part of Section Thirty-three (33), Township Nineteen (19) South, Range Thirteen (13), Barton County, Kansas (Popularly described as 812 Kansas, Great Bend, Kansas),

and the interests of decedent in the oil and gas leaseholds described above in paragraph 7., subparagraphs (1) through (26), subparagraphs (28) through (34), subparagraphs (36) through (43), and subparagraphs (45) through (76).

10. That the decedent was the owner of personal property as reflected on the Inventory and Valuation filed herein.

11. That since the filing of the Inventory and Valuation herein, the real estate covered by the real estate mortgage dated April 1, 1972 in favor of decedent and owing by LeRoy L. Sharp and Ona L. Sharp, his wife, recorded in Book 188, Page 115, in the office of the Register of Deeds, Barton County, Kansas, has been quitclaimed to the Estate of decedent by LeRoy L. Sharp and Ona L. Sharp in satisfaction of the indebtedness as reflected on said Inventory. That the said real estate described as:

The South Fifty-five Feet (55') of the Northwest Quarter (NW/4) of Block Five (5) in the Ark Valley Town Company's Addition to the City of Great Bend, Kansas, according to the recorded Plat thereof; being a part of Section Thirty-three (33), Township Nineteen (19) South, Range Thirteen (13), Barton County, Kansas, (Popularly described as 812 Kansas, Great Bend, Kansas),

is now an asset of the decedent's Estate.

12. That the petitioner has filed herein a full and complete accounting of its receipts and disbursements as Executor, and files herewith its Supplemental Final Accounting accounting for all receipts and disbursements since the filing of the Petition herein.

13. That the account attached to the Petition and the supplemental account should be settled and allowed and all of the acts and proceedings of the Executor have been in accordance with the law and the orders of this Court and are approved.

14. That the decedent's spouse, Helen Olson, predeceased him on September 9, 1986.

15. That Brownie D. Olson was survived by the following named persons who are all of his heirs:

<u>Name</u>	<u>Age</u>	<u>Relationship</u>
Randy Lee Olson	Adult	Son
Gary Dean Olson	Adult	Son

19. That First National Bank & Trust Company in Great Bend, Great Bend, Kansas, has performed valuable services as Executor; that it has employed Keenan Law Firm, P.A., as its attorneys in this Estate; that there are other costs due this Court; that the following fees, expenses and costs are reasonable and should be paid:

(a) To First National Bank & Trust Company in Great Bend, for its fee and expenses, the sum of \$ 9,000.00.

(b) To the Executor for its attorneys' fees and their expenses, the sum of \$ 19,000.00.

(c) To the Court for costs in the sum of \$ 441.00.

(d) To the Great Bend Tribune for the final legal publication, the sum of \$ 69.83.

IT IS THEREFORE BY THE COURT CONSIDERED, ORDERED, ADJUDGED AND DECREED:

(A) That the findings hereinabove made be and the same are hereby made a part of the order and decree of this Court.

(B) That the accounts of First National Bank & Trust Company in Great Bend, Executor of the Estate of Brownie D. Olson, deceased, are settled and allowed and all of its acts and proceedings are approved and it is authorized and directed to pay the fees, expenses, and costs set out in paragraph 19. above.

(C) That after the payment of fees, expenses and costs the assets remaining in the hands of the Executor and all other real and personal property owned by the decedent at the time of his death, subject to any lawful disposition heretofore made, including the following described property:

(1) the balance due under the Lease/Option agreement dated July 2, 1987, entered into between decedent and Wayne K. Rathbun, as set forth in the Settlement Agreement dated May 23, 1989; and

(2) the following described real estate:

The South Fifty-five Feet (55') of the Northwest Quarter (NW/4) of Block Five (5) in the Ark Valley Town Company's Addition to the City of Great Bend, Kansas, according to the recorded Plat thereof; being a part of Section Thirty-three (33), Township Nineteen (19) South, Range Thirteen (13), Barton County, Kansas (Popularly described as 812 Kansas, Great Bend, Kansas), and

(3) the interests of decedent in the oil and gas leaseholds described above in paragraph 7., subparagraphs (1) through (26), subparagraphs (28) through (34), subparagraphs (36) through (43), and subparagraphs (45) through (76),

are assigned one-half (1/2) thereof to the Gary Dean Olson Trust and one-half (1/2) thereof to the Randy Lee Olson Trust, pursuant to the provisions contained in Article Second, paragraph (a) subparagraphs 3., through 12., and paragraph (b) subparagraphs 3., through 12, respectively, of the decedent's Will; said trusts to be independent of the other and administered separately.

(D) That the real estate is assigned as of the date of death of the decedent. The Executor is directed to distribute the personal property forthwith.

(E) That upon the filing of proper receipts, the administration of the Estate shall be closed, First National Bank & Trust Company in Great Bend, Great Bend, Kansas shall be finally discharged as Executor of the Estate of Brownie D. Olson, deceased, and it shall be released from further liability.



(SEAL)

William J. Hagglin
District Judge

APPROVED:

KEENAN LAW FIRM, P.A.
2200 Lakin
Great Bend, Kansas 67530

By *[Signature]*

Linda Fincham

3-15-90
12:00 PM

MARSHALLVILLE, KANSAS 66508

REGISTER OF DEEDS
MARSHALL COUNTY

913-562-226

Good Morning Mr. Chairman, and members of the Committee. I am Linda Fincham, Legislative Chairman for the Register of Deeds Association. The Register of Deeds Association supports H.B. 2644 as Amended.

The "Notice of Action" called for in the Amendment Does Not change ownership or title to property, it only provides "Notice" to those researching property in the Register of Deeds Office that legal action has taken place on a particular piece of property and where to find the relevant document.

Reappraisal highlighted instances where property ownership records were missing. The reappraisal assessment committee in reviewing the reappraisal process felt that a transmittal document was vital for the ongoing reappraisal effort, especially notification of judgements and decrees that affect property in another county.

H.B. 2644 as Amended will benefit everyone who searches real estate records. The "Notice" will show where to find judgements and decrees that affect real estate, along with the case number, reducing the "Runaround" people perceive they get from government. When the researcher goes to the district court they will be able to go to the specific case file saving time searching the district court alphabetical indices. Many professional researchers have expressed their view, that they would not use a transmittal for title purposes but, that such a document has proven beneficial as a check.

H.B. 2644 as Amended addresses concerns proponents of H.B. 2644 had with S.B. 268 passed during the 1989 Legislative session, and still allows for a more efficient handling of real estate records.

In summary, the Register of Deeds Association strongly feel that the "Notice of Action" is necessary, and we would appreciate your support of H.B. 2644 as Amended. We thank you for the time that you have given us to express our opinion and we appreciate your consideration.

Attach. III
Judiciary Subcomm.

1/1

3-15-90
12:00 no



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

TESTIMONY OF
DEPUTY ATTORNEY GENERAL EDWIN A. VAN PETTEN
ON BEHALF OF ATTORNEY GENERAL ROBERT T. STEPHAN
BEFORE THE SENATE SUBCOMMITTEE
ON CRIMINAL LAW AND UNIFORM COMMERCIAL CODE
MARCH 15, 1990
RE: SENATE BILL 758

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

The office of the Attorney General has drafted the legislation before you to expand the powers of K.B.I. Agents in an effort to simplify the investigative process. Senate Bill 758 will enable a Special Agent for the K.B.I. to take sworn statements while in the field, thus eliminating the necessity of finding someone capable of giving an oath prior to the taking of a sworn statement.

There are occasions when an entire investigation hinges on one individual, or the course of an investigation may change based on the statement of one witness. It will be beneficial to have that statement under oath for future reference in the investigation, as well as for review of a magistrate, if necessary, to obtain warrants.

Attach. IV
Judiciary Subcomm.
1/3

I have been involved in many investigations over the years, and have served as a prosecutor for the Office of the Securities Commissioner where the investigators have the authority to administer oaths and affirmations. While it is not a tool used everyday, this does keep critical witnesses from backing down from their original statements. It also subjects witnesses to perjury charges if it is shown that they have intentionally misled an investigator.

This is not a matter that in any way impinges on anyone's rights or enables an investigator to take a shortcut. We are only asking for this authority so that witness' statements, when necessary, can be taken under oath in a more expeditious manner for law enforcement as well as the proposed witness.

We will appreciate your favorable consideration of this bill.

STATE OF KANSAS



OFFICE OF THE SECURITIES COMMISSIONER
Second Floor

618 South Kansas Avenue
Topeka, Kansas 66603-3804
(913) 296-3307

Mike Hayden,
Governor

M. Douglas Mays,
Securities Commissioner

March 15, 1990

Senator Jerry Moran
Kansas Senate
Subcommittee on Criminal Law
Statehouse
Topeka, KS 66612

Dear Senator Moran:

Re: Senate Bill No. 758

This agency strongly supports Senate Bill No. 758. The investigators on my staff have the authority to administer oaths and affirmations pursuant to K.S.A. 17-1265(c).

This authority is seldom used, but when required, has been a very valuable investigative tool. The ability to take sworn testimony from a witness enhances the accuracy of the information, reduces the likelihood of the witness changing their testimony at a later date, and protects the investigator from accusations of false or erroneous reporting.

If you have any questions, do not hesitate to contact me.

Very truly yours,

M. Douglas Mays
Securities Commissioner

Larry E. Cook
Director of Enforcement

lec

3-15-90
12:00 PM



JAMES G. MALSON
DIRECTOR

KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL
STATE OF KANSAS
1620 TYLER
TOPEKA, KANSAS 66612-1837
(913) 232-6000



ROBERT T. STEPHAN
ATTORNEY GENERAL

TESTIMONY OF
SPECIAL AGENT LARRY J. THOMAS
THE KANSAS BUREAU OF INVESTIGATION
BEFORE THE SENATE SUBCOMMITTEE
ON CRIMINAL LAW AND UNIFORM COMMERCIAL CODE
SENATE BILL 758
THURSDAY, MARCH 15, 1990

Mr. Chairman and Members of the Committee:

My name is Larry Thomas. I've been a Special Agent with the Kansas Bureau of Investigation (KBI) since 1984. I am here today on behalf of the KBI to ask for your support of Senate Bill 758.

The amendment of K.S.A. 75-712 contained in Senate Bill 758 would give members of the KBI the power to administer oaths and affirmations to witnesses and to acknowledge signatures of witnesses during the course of an investigation.

We believe Senate Bill 758 would provide KBI Agents a means of expediting some phases of an investigation that presently require more time consuming procedures. For instance, if an agent currently wants to obtain a sworn statement from a witness, the witness must be brought before a court reporter, notary or someone authorized to administer oaths. An inquisition proceeding is one other approach to securing a sworn statement, but it can only be used in the investigation of certain limited crimes. Allowing KBI Agents the power to administer oaths can expedite the process and would be especially useful when conducting investigations in remote areas. The same holds true for cases when

Attach. V
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dealing with transient witnesses who could disappear before arrangements are made for a sworn statement under current provisions.

Senate Bill 758 would also discourage witnesses from intentionally providing false or misleading information to a KBI Agent during the course of an investigation. By allowing an agent to place the witness under oath, the person could be subject to perjury charges for such statements.

The amendment also provides a measure of control on the information provided to KBI Agents, who in turn rely on the information when preparing affidavits and supporting document for search warrants in a court of law.

Some of our state agencies currently have the authority to administer oaths and acknowledge signatures of witnesses. These include investigators for the State Security Commission, State Fire Marshal's Office and the State Board of Healing Arts.

The agents for the Kansas Bureau of Investigation respectfully ask for your support of Senate Bill 758 which can provide benefits in the course of investigations by streamlining the procedure for securing sworn statements.

Thank you for your consideration. I will be pleased to answer any questions.

V 2/2

3-15-90
12:00 van



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
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TESTIMONY OF
DEPUTY ATTORNEY GENERAL EDWIN A. VAN PETTEN
ON BEHALF OF ATTORNEY GENERAL ROBERT T. STEPHAN
BEFORE THE SENATE JUDICIARY COMMITTEE
HOUSE BILL 2671
THURSDAY, MARCH 15, 1990

Mr. Chairman and Members of the Committee:

On behalf of Attorney General Robert T. Stephan, I am here today to speak in opposition to House Bill 2671. The proposed bill would make it more difficult for investigative law enforcement agencies to utilize one of the most effective weapons we have to battle drug dealers and other organized crime operations.

Pen registers allow for the recording of the numbers of outgoing local telephone calls, and are also called dialed number recorders. A trap and trace device merely records the telephone number from which a call is placed to the target telephone. In other words, these are the exact same kind of records that are available on phone bills for long distance calls. We are not dealing with privileged information or the actual contents of the conversations in this act. What we are dealing with is basically a business record which individuals freely provide to their local telephone company. In fact, some telephone companies are now offering trap and trace capabilities to customers as a 'service' without any court order.

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Senate Judiciary
Subcommittee 1/4

Traditionally, no order by a court was required to obtain pen register devices by law enforcement. The Supreme Court of the United States ruled in Smith v. Maryland, 442 U.S. 735 (1979), that a person had no legitimate and reasonable expectation of privacy in the phone numbers dialed from a telephone. In 1986, the federal government passed a major revision in what we refer to as Title III. That revision set out the procedures which now have been adopted in Kansas law for obtaining the use of a pen register. Briefly, the statute K.S.A. 22-2525, et seq. requires an attorney for the government or a law enforcement officer to certify to the court that the information to be obtained by pen register is relevant to an ongoing criminal investigation. This bill injects the court in making these investigative decisions.

The federal government considered and specifically decided that an independent judicial review was not appropriate in this investigative stage of a case: Senate Report #99-541 at page 47 reprinted in U.S. Code, Congressional and Administrative News 3555,3601, states: "The provision does not envision an independent judicial review of whether the application meets the relevant standard, rather the court needs only to review the completeness of the certification submitted."

By creating hurdles that no other jurisdiction has, this bill would also affect our ability to rely on case law from the federal courts and other states in interpreting complicated electronic surveillance law. Currently the Kansas Supreme Court has specifically ruled that federal case law is generally applicable to the Kansas statutes.

The bill you are considering is based on speculation that some officer might abuse the system someday. I might note that if such an unlikely attempt was made, the officer could just as easily lie about "facts" to establish reasonable suspicion or even probable cause; so this bill doesn't even solve the imagined problem it was created to guard against. I say imagined because it is a highly unlikely scenario that any officer is going to get hold of one of these \$5,000 machines, get cable and pair information from the phone company, lease another line, hook up the machine and not have the officer's supervisor notice something is going on.

It is vital to remember the kinds of crimes that are involved here. It is very easy to establish probable cause that a crime has been committed with a murder or robbery, as you have victims, witnesses and evidence of the crime. However, with organized criminal activity such as drug dealing, neither the buyer nor the seller is reporting it to the police. Nor do any parties to illegal gambling make such reports. It is only by a long, sometimes slow investigative process that enough pieces are collected whereby probable cause can be established to obtain a search or arrest warrant, or proceed with electronic surveillance.

If the ability to obtain pen registers is ever abused, and even the proponents of this amendment are aware of no such allegations, there are remedies both in the criminal courts and under civil actions to right such a wrong. It would be extremely ill-advised to hinder an effective weapon

against organized crime merely on the speculation that it might someday be abused. As the saying goes, "if it ain't broke, don't fix it".

Thank you for your time and consideration.



JAMES G. MALSON
DIRECTOR

KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL
STATE OF KANSAS
1620 TYLER
TOPEKA, KANSAS 66612-1837
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ROBERT T. STEPHAN
ATTORNEY GENERAL

TESTIMONY OF
SPECIAL AGENT LARRY J. THOMAS
KANSAS BUREAU OF INVESTIGATION
HOUSE BILL 2671
BEFORE THE SENATE JUDICIARY COMMITTEE
THURSDAY, MARCH 15, 1990

Mr. Chairman and Members of the Committee:

My name is Larry Thomas. I've been a Special Agent with the Kansas Bureau of Investigation (KBI) since 1984, assigned to the Narcotics Division. I'm here today on behalf of the Kansas Peace Officer's Association as well as a representative for the KBI, to testify against House Bill 2671.

House Bill 2671 seeks to amend K.S.A. 22-2527 regarding the application authorizing the installation and use of a pen register or a trap and trace device.

The current language requires that the information likely to be obtained by such installation and use is relevant to ongoing criminal investigation. The change introduced in House Bill 2671 creates the need for our court system to become involved in the investigative stage of a case.

A pen register or dial number recorder, the technical name for the pen register, and trap/trace device are investigative tools used by law enforcement authorities primarily in drug and gambling investigations. As investigative tools the equipment is used to gather evidence in the same

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manner as other investigative tools, including neighborhood interviews, surveillance details, and even crime scene analysis to focus your investigation on the criminal perpetrators.

The pen register and trap/trace device are usually utilized in higher level, more complex narcotics investigations. The persons at the top of these organizations utilize several measures including countersurveillance equipment, phony business fronts and a pyramid of lower-level working associates to insulate themselves from detection and avoid prosecution. At a time when the war on drugs needs to strike at the top of these pyramids, as an investigator, we cannot afford to lose any of our investigative tools from our arsenal.

It is important to understand the pen register and trap/trace device pose no threat to anyone's rights from the invasion of privacy. The equipment does not allow interception of actual conversations as in an actual wire intercept. The equipment allows for identification of telephone locations from which telephone calls are originating or terminating. The information is a business record of the same nature as a long distance telephone bill.

Some concerns expressed that an innocent person calling a target of an investigation could become subject to the investigation through "guilt by association". The use of a pen register or trap/trace device as an investigative tool is not used alone. When analyzing the information from the system, the investigator is looking for a pattern of contact to help define the organizational outline of a narcotics trafficking or gambling

organization. Other investigative tools such as surveillance or confidential informants (CI's) are used to assist in confirming if, in fact, the contacts in question are criminal in nature.

Another benefit of using the pen register and trap/trace device as an investigative tool is the avoidance of conducting a wire intercept when not needed. The information from the equipment can show if there is a lack of evidence to be gathered from the targeted telephones. In such a case when a target may not be using the telephone in question in the furtherance of a crime, the expense of a wire intercept can be avoided.

The average cost of conducting an electronic eavesdropping investigation is approximately \$40,000. In the time I have been with the KBI, I have conducted ten wire intercept investigations. In addition to these cases I have utilized the pen register as an investigative tool in three other cases where the information showed a wire intercept would not be effective, thereby avoiding the high cost of the wire intercept investigation and avoiding the invasion of privacy of those using the telephones in question.

In considering House Bill 2671, I believe we must weigh the concerns of our ongoing struggle to control the influx of dangerous drugs into society as opposed to the possible abuse of the pen register or trap/trace equipment. There is no knowledge of any abuse of the pen register or trap/trace equipment by law enforcement officers. In contrast, we all certainly are aware of the affect drugs are having in our society.

Another concern of law enforcement authorities in regards to House Bill 2671 is, if we have judicial review for pen register or trap/trace devices, can we later expect to have judicial approval before we can run other preliminary investigative processes, such as a criminal record check.

In closing, I would reiterate the concern of losing the pen register and trap/trace device as investigative tools necessary to help accumulate information to show probable cause for wire intercept investigations. During 1989, I was personally involved with three investigations where pen registers were used. One case resulted in the seizure of twenty-two and one half pounds of cocaine, the largest in Kansas history. The second case resulted in the seizure of approximately ten pounds of cocaine, and the other resulted in the seizure of over one hundred and ten pounds of marijuana in addition to assets being seized in four states totalling over three million dollars.

On behalf of the 3,000 members of the KPOA I would strongly urge that House bill 2671 not be passed. We believe the language in K.S.A. 22-2527 is adequate.

Thank you for your consideration. I will be pleased to answer any questions.



3-15-90
12:00 T
Rep. VanCrum
JAN 29 1990

CHAMBERS OF:
G. JOSEPH PIERRON
DISTRICT JUDGE
COURT NO. 3

DISTRICT COURT OF KANSAS
TENTH JUDICIAL DISTRICT
JOHNSON COUNTY COURTHOUSE
OLATHE, KANSAS
66061

OFFICERS:

MARILYN ZELLER
ADMINISTRATIVE ASSISTANT

DEBORA RANDOLPH, C.S.R.
OFFICIAL COURT REPORTER

(913) 782-5000 EXT. 472

January 26, 1990

Representative Michael R. O'Neal
State Capitol Building, Room 426-S
Topeka, Kansas 66612

In re: House Bill 2671 - Pen Registers

Dear Representative O'Neal:

Representative VanCrum has indicated that a hearing has been scheduled for Tuesday, January 30, 1990 at 3:30 P.M. The press of court business prevents me from making comments on this bill in person, so I am submitting these written remarks for your consideration.

I think it would come as a surprise to most citizens of the State of Kansas if they were informed that the only requirement for getting a pen register on their phones is that an investigative or law enforcement officer certify to the court that the information likely to be obtained by such installation and use is relevant to an on-going criminal investigation. No facts have to be stated in support of this assertion other than to identify who (or what) is being trapped and what kind of crime is suspected.

As a prosecutor for ten years prior to taking the bench, I understand the importance of such investigative tools. I also believe that they are probably not misused very often. However, the opportunity for abuse is obvious. "Trust me" is generally not regarded as sufficient grounds for taking legal action.

Although I believe the law needs tightening, the amendment suggested in H.B 2671 might be going a little too far. By requiring that the officer certify "facts sufficient to show probable cause that a crime has been or is being committed", we are approaching or achieving the standard necessary for a wiretap. Also, as written, the amendment is somewhat of a non sequitur. Just because an officer can show probable cause that a crime has been or is being committed is

Attach. VIII
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not necessarily the basis for the authorization of a pen register. There would need to be additional language requiring that the pen register produce information whose use would be relevant or material to an on-going criminal investigation.

I would suggest the following modification. Beginning at line 20 amend so it reads:

". . . enforcement officer has certified to the court facts sufficient to show that the information likely to be obtained by such installation and use is relevant to an on-going criminal investigation."

This would replace all of the present language in lines 20, 21, 22 and 23.

With this amendment the officer would simply have to tell the judge why he believes that the pen register will in fact produce information that could be used in a criminal investigation. The judge would then rule on whether there were sufficient facts to justify the trap.

Thank you for this opportunity to comment on this bill. If I can be of any assistance, please let me know.

Sincerely,



G. Joseph Pierron

GJP:mz

cc: Representative Robert J. Vancrum
State Capitol, Room 112-S
Topeka, Kansas 66612

Senator Wint Winter, Jr.
State Capitol, Room 120-S
Topeka, Kansas 66044

3-15-90
17:00n

Department of Social and Rehabilitation Services

Winston Barton, Secretary

Statement regarding H.B. 2470

Purpose:

The purpose of this amendment is to clarify that a child support judgment which has become dormant may be revived at any time throughout the dormancy period, not merely during the first two years of dormancy.

Background:

The 1988 Legislature amended K.S.A. 60-2403 to extend the dormancy period for child support judgments until two years after the child's emancipation, normally age 18. Unfortunately, the corresponding revivor language in K.S.A. 60-2404, which requires that a motion to revive a dormant judgment be filed within two years of the date the judgment became dormant, was not also amended.

To illustrate the dilemma this ambiguity creates: Suppose that a judgment for child support becomes dormant when the child is ten years old and, under the 1988 amendment, remains dormant for eight years. While it is dormant, the unpaid judgment cannot be enforced. Because of the present wording of K.S.A. 60-2404, a motion to revive that dormant judgment cannot now be filed because more than two years had passed since the date the judgment became dormant.

Historically, Kansas appellate courts have strictly construed the dormancy and revivor statutes. Strict construction of the existing statutes controlling dormancy and revivor of child support judgments, however, would render the 1988 legislation meaningless because dormant judgments which are not revived cannot be enforced. Consequently, so long as the ambiguity exists there is a risk that children will be deprived of the child support they both need and deserve.

It should be noted that the 1988 Legislature also safeguarded the rights of debtors, giving the debtor an opportunity to show good cause why the judgment should not be revived and authorizing the judge to enter an order preventing unjust enrichment of any party.

Effect of Passage:

The fiscal impact of this bill is potentially significant. If the ambiguity is allowed to remain and the dormancy and revivor statutes are strictly construed, the amount of enforceable judgments owed on behalf of children will be greatly reduced over time. In 1988, the positive impact of preserving child support judgments was estimated to be \$5,000,000 through 1992 for Title IV-D cases alone, primarily because custodial parents unable or unwilling to preserve unpaid support debts would not cause them to be wiped out simply through the passage of time. This projected benefit is now in jeopardy.

Agency Recommendation:

SRS recommends passage of this bill.

Attach. 2
Senate Judiciary
Subcommittee 1/1



**Kansas Society of
Certified Public Accountants**

3-15-90
12:00 noon

FOUNDED OCTOBER 17, 1932

400 CROIX / P.O. BOX 5654 / TOPEKA, KANSAS 66605-0654 / 913-267-6460

Testimony on HB 2721

Presented to the

Senate Judiciary Subcommittee on
Criminal Law and Uniform Commercial Code

by

T. C. Anderson

Executive Director

Kansas Society of CPAs

March 15, 1990

Attach. X
Judiciary
Subcommittee 1/5

Thank you Chairman Moran:

Members of the Subcommittee, I am T. C. Anderson, Executive Director of the Kansas Society of Certified Public Accountants.

Also with me today is Kevin Fowler, a Topeka attorney. Mr. Fowler will be pleased to respond to any legal questions you might have on this bill.

I appreciate the opportunity to appear before you today in support of HB 2721 as amended by the House Committee on Judiciary which would grant a privilege against discovery or disclosure of any reports, working papers and findings of any person who conducts or participates in any CPA program of positive enforcement, quality assurance or peer review.

At the outset, let me emphasize this privilege is not designed to prevent the discovery of working papers or other items necessary to determine if a certified public accountant has committed an act of negligence in a particular engagement, nor is it designed to prevent the State Board of Accountancy access to any material currently available to them in considering a complaint against a permit holder.

In 1987 the Kansas Legislature enacted K.S.A. 1-501 at the request of the Board of Accountancy and the Kansas Society. This legislation granted the Board of Accountancy the right to establish a positive enforcement program for the review of audits, reviews, compilations and projections and forecasts prepared by each CPA office in Kansas.

In 1986 the Kansas Society initiated a similar positive report review program as a requirement for membership.

Even earlier, in 1983 the Kansas Society began a program of reviewing twice a year audit reports filed with state agencies by Kansas CPA firms. And in 1980 the American Institute developed its voluntary Division of CPA firms which required a comprehensive review of ones practice once every three years.

These programs have been designed to be educational in that written comments as to suggestions for improving financial reporting in Kansas have been issued to all CPA firms based upon these reviews.

In all instances the reports have been masked as to client and firm so the reviewers had no knowledge of whose work was being reviewed. Comment letters were typed, matched to the reports and returned to the firms. There was no requirement that the comments be retained by the firms. Such programs were truly educational and there was little chance that any of the results could be used against a CPA in a law suit.

However, in 1988 the American Institute of CPAs imposed a Quality Assurance Review of each CPA practice in the country once every three years as a requirement for membership.

Each firm that has one audit or more must have an on-site quality review every three years. Those firms not doing audits may elect to have an off-site review of their compilation and review reports.

These reviews will be conducted by CPAs whose firms have been through the review process and who have attended a training course.

The cost to Kansas CPA firms for on-site reviews are estimated to run from \$1,200 for the smallest to over \$20,000 for the largest, and this cost will reoccur every three years.

Quality reviews will cover the professional aspects of a firm's accounting and auditing practice. The reviewers will check each firm for its compliance with professional standards relative to independence, planning an engagement, methods for checking a client's internal control procedures and the accounting and auditing standards followed on selected engagements. For larger firms the Quality Review will take two reviewers three to four days to complete. A smaller firm with fewer audit clients might be done in a day.

At the conclusion of the Quality Review the CPA firm receives a report and letter of comments which contain a description of each deficiency found and a suggestion for improving that particular area of practice. In addition the reviewer has pages upon pages of notes and checklists from each financial report reviewed.

Regardless of how qualified a firm is, when you open the door of your practice to a peer and ask for suggestions for improvement...you're going to get them.

Finally, the report and letter of comment must be kept by the firm to give to those who conduct the review the following third year.

HB 2721
March 15, 1990
Page 4

Five Kansas firms have undergone the review in 1989 and 60 more are scheduled for 1990. By 1993 some 350 CPA firms in this state will have had their first Quality Review.

These reviews meet the requirements established by K.S.A. 1-501 and oversight of the program will be available to the State Board through a program being developed by the National Association of State Boards of Accountancy since many state's have positive enforcement programs.

Because of the nature of these Quality Reviews, which are designed to be educational and not punitive, the Kansas Society hopes you will vote to recommend HB 2721 favorable for passage.

Thank you and Mr. Fowler or I will be happy to respond to questions.

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