

Approved: 5-31-91
Date

MINUTES OF THE HOUSE COMMITTEE ON APPROPRIATIONS.

The meeting was called to order by Chairperson George Teagarden at 12:10 p.m. on April 10, 1991 in room 514-S of the Capitol.

All members were present except: Representatives Helgerson, Hensley, and Gregory (all excused).

Committee staff present:

Ellen Piekalkiewicz, Legislative Research Department
Debra Duncan, Legislative Research Department
Jim Wilson, Revisor of Statutes
Susan Miller, Administrative Aide
Sue Krische, Committee Secretary

Conferees appearing before the committee:

Bill Wagnon, Education Liaison for the Governor
Bob Kelly, Kansas Independent College Association
Robert Wunsch, University of Kansas Medical Center
Paul Shelby, Office of Judicial Administration
Bill Burns, District Court Administrator, Wyandotte County
Marlin Rein, University of Kansas Medical Center
Ralph Decker, Executive Director, Kansas Lottery
Charles Simmons, Chief Counsel, DOC
Neil Shortlidge, City Attorney, Roeland Park, Kansas
Ernie Mosher, League of Kansas Municipalities

Others attending: see attached list.

SB 307 - Investment of idle funds by Kansas private colleges.

Bill Wagnon, Education Liaison for the Governor, appeared in support of SB 307. He explained that SB 307 would allow private colleges to place their idle funds in the Pooled Money Investment Board. This would provide an opportunity for private colleges to obtain a greater rate of return on idle funds because of the volume of funds handled by the Pooled Money Investment Board.

Bob Kelly, Kansas Independent College Association, stated he supports passage of SB 307.

Representative Blumenthal moved that SB 307 be recommended favorably for passage. Representative Goossen seconded. Motion carried.

SB 379 - Exemption from and assessment of court costs against the state of Kansas.

Robert Wunsch, KUMC, testified that SB 379 exempts the state from court costs on cases that have been dismissed due to no service of summons (Attachment 1). Current law states court costs will be paid by the losing party in a court case, but Wyandotte County now advises it will assess court costs to KUMC for cases that were dismissed. The funds collected by the assessment of Wyandotte County court costs would be remitted to the State General Fund. The Medical Center files several hundred cases at one time and currently there are 500 cases with the Clerk of the Wyandotte County Court which have not yet been filed. Mr. Wunsch estimates it would cost the Medical Center \$75,000 annually for these court costs on cases dismissed for lack of prosecution. Mr. Wunsch pointed out this situation affects SRS in the filing of child support cases.

In response to a question, Mr. Wunsch stated an effort is now being made by the Medical Center's collection agencies to find the defendant before the case is filed. Representative Vancrum suggested the solution to this problem might be better selection of cases in the beginning.

Paul Shelby, Office of Judicial Administration, testified that SB 379 if enacted will prevent county general funds from recovering any of the cost of serving process for these cases, as a part of every civil docket fee collected goes to the county general fund (Attachment 2). He asked that the bill be dropped from consideration.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON APPROPRIATIONS, room 514-S Statehouse, at 12:10 p.m.
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Bill Burns, District Court Administrator, Wyandotte County, appeared in opposition to SB 379 and explained that in 1989 the Court realized the docket fees in question were authorized in statute but were not being collected (Attachment 3). The Court instituted the collection of these fees at that time. The Medical Center currently owes \$29,000 in court costs which have not been paid. Mr. Burns stated K.S.A. 60-2005 assessing these court costs applies to cities, the Kansas City Housing Authority, and the Board of Public Utilities and all of these entities are paying the costs assessed. He does not feel the Board of Regents, who files the Medical Center cases, should be exempt.

Representative Wisdom moved that SB 379 be reported adversely. Representative Dean seconded. Representative Solbach made a substitute motion to table SB 379. Representative Heinemann seconded. Substitute motion carried.

HB 2626 - Health care employees at medical center placed in unclassified service.

Representative Wisdom explained that HB 2626 would allow the university to designate all employees who provide health care services at KUMC as unclassified employees. Current law allows the Board of Regents to designate as unclassified employees individuals who are medical technicians or technologists or respiratory therapists or who are licensed professional nurses or licensed practical nurses.

Marlin Rein, University of Kansas Medical Center, appeared in support of HB 2626 stating it allows the Medical Center to unclassify health care workers as regards the establishment of salary plans only (Attachment 4). The advantage to the institution is that it is able to structure a salary plan in a manner that is comparable to that offered by other institutions and to adjust salaries as needed to maintain an adequate work force. He emphasized that the institution has utilized the authority that it now has in this area very responsibly; that is, KUMC has not increased salaries beyond levels that were absolutely warranted. Mr. Rein's testimony included an attachment listing six classes of workers that are now critical to the Medical Center to unclassify and to adjust salaries in order to hire and retain.

Representative Blumenthal moved to amend HB 2626 to remove the broad authority to unclassify health care workers at the Medical Center and to give specific authority to unclassify the positions of radiologic spec tech., radiologic tech (X-ray), radiologic tech (Therapy), occupational therapist, physical therapist and histotechnologist. Representative Turnquist seconded. Motion failed. Representative Gatlin moved that HB 2626 be recommended favorably for passage. Representative Heinemann seconded. Motion carried.

SB 409 - Authorizing Secretary of Corrections to enter into oil and gas leases.

Charles Simmons, Chief Counsel, Department of Corrections, advised the Committee that SB 409 has been amended into HB 2424 and he did not feel it was necessary to proceed with the hearing on SB 409. Chairman Teagarden announced the hearing on SB 409 is cancelled.

SB 416 - Self-supported municipal improvement district bonds.

Neil Shortlidge, City Attorney, City of Roeland Park, appeared in support of SB 416 stating the bill was introduced at the request of the City of Roeland Park (Attachment 5). Current law provides that the governing body of a city acting on behalf of a municipal improvement district may issue bonds for the cost of improvements in the district. SB 416 would allow such bonds to be retired using either revenue from a previously approved local option sales tax or revenue from the pledge of income and receipts derived from the improvement if the improvement generates income. This act is not mandatory; a city would have the option of using the provisions of the bill. The central business district of Roeland Park has deteriorated and the city is interested in redeveloping the area. SB 416 would allow Roeland Park to pledge a portion of its sales tax revenue to pay off the bonds and this authority could substantially increase the marketability of the bonds resulting in a lower interest rate.

Ernie Mosher, League of Kansas Municipalities, appeared in support of SB 416 as a mechanism to assist cities in Kansas in their redevelopment efforts.

Representative Patrick moved that SB 416 be recommended favorably for passage. Representative Vancrum seconded. Motion carried.

SB 402 - Classified and unclassified employees of the Lottery.

Ralph Decker, Executive Director, Kansas Lottery, testified in support of SB 402 and reviewed the changes outlined in his written testimony on SB 402 (Attachment 6). The bill would create a new unclassified position

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of Administrator of Budget and Finance and would remove the Lottery sales staff from the unclassified service, placing them within the classified service. Mr. Decker requested the Committee amend the bill to combine the Director of Marketing and the Director of Sales into one position designated the Director of Marketing and Sales and to authorize the position of Public Information Officer for the Lottery.

Representative Chronister moved to amend SB 402 to make the Directors of Marketing and Sales one position. Representative Blumenthal seconded. Motion carried. Representative Heinemann moved to amend SB 402 to add authorization for a Public Information Officer at the Lottery. Representative Mead seconded. Motion failed. Representative Blumenthal moved that SB 402, as amended, be recommended favorably for passage. Representative Hochhauser seconded. Motion carried.

Representative Blumenthal moved to reconsider Committee action on SB 416. Representative Kline seconded. Motion carried. Back on the motion to report favorably, Representative Kline made a substitute motion to amend SB 416 to make the act effective on publication in the Kansas Register rather than the statute book and that SB 416, as amended, be recommended favorably for passage. Representative Vancrum seconded. Substitute motion carried.

Regarding bills referred to the Committee from General Orders, Representative Solbach moved that SB 12, SB 13, SB 336, SB 337, and SB 361 be reported without recommendation. Representative Vancrum seconded. Motion carried.

Representative Chronister moved that Sub. for SB 118, SB 24, SB 122, SB 267, SB 237 be reported without recommendation. Representative Blumenthal seconded. Representative Patrick asked to divide the question to consider SB 122 separately. The Chair ruled the question divisible in two parts. On Sub. for SB 118, SB 24, SB 237, and SB 267, the motion carried. Representative Chronister withdrew the motion on SB 122 in order to give Representative Patrick time to review the bill and her second, Representative Blumenthal, agreed.

INTRODUCTION OF BILLS

Representative Gatlin moved introduction of a bill allowing a professional nurse to practice as a licensed practical nurse. Representative Heinemann seconded. Motion carried.

The meeting was adjourned at 2:20 p.m. The next meeting is scheduled for 12:00 noon on Thursday, April 11 in 514-S.

Testimony before the House Appropriations Committee
on SB 379

April 10, 1991

Robert S. Wunsch
University of Kansas Medical Center

Senate Bill 379 was introduced by the Senate Ways and Means Committee at the request of the Board of Regents.

You may recall the legislation that was passed last session directing the Medical Center to advertise, negotiate, and contract with collection agencies and/or attorneys to collect our delinquent hospital accounts. This was accomplished last summer and it would appear, thanks to such legislation, that we certainly have much better control over our outside collections than in the past. SB 379 does not deal with the legislation of last session, but it does involve our outside collection activities.

K.S.A. 60-2005 provides that the state of Kansas, along with cities and counties, is exempt in any civil action from depositing court costs or paying docket fees, except that if costs are assessed against the state of Kansas or any city or county the costs shall include the amount of the docket fee prescribed by K.S.A. 60-2001 together with any additional court costs accrued. This statute was passed in 1969. Thus since 1969 all state, city, and county agencies have not been required to pay the docket fee when filing civil actions.

In May 1990 our collection attorneys received a letter from the clerk of the District Court of Wyandotte County, a copy of which is attached, which provided that docket fees were going to be billed in cases where costs were assessed against the state. Likewise, they were advised by the Honorable Dean J. Smith, Administrative Judge of the Wyandotte County District Court that in cases filed on and after June 1, 1990 when costs were assessed against the state the billings would include the otherwise exempted docket fee. We have no argument with these directives as they are in keeping with K.S.A. 60-2005. The question that arises, however, is when are court costs to be assessed? K.S.A. 60-2002 provides that, unless otherwise provided by statute, or order of the judge, court costs shall be allowed to the party in whose favor judgment is rendered. This means that court costs are assessed against the losing party. I would like to address what is happening in Wyandotte County as a result of these directives.

For a variety of reasons, many of the patients/debtors sued by the Medical Center in Wyandotte County are not found by the process server and thus no service of summons is made. Sometimes the address the hospital is given is incorrect and sometimes the patient/debtor has moved by the time the process server arrives without any forwarding address being available to the process server. Until there is service of process on a patient/debtor there really is no lawsuit. When there is no service of process, there are a number of legal alternatives available. Our attorney can ask that an alias summons be issued which is a request to the process server to go out and try again.

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Attachment 1

Technically, these cases can be dismissed by court order for lack of prosecution as it is impossible of course to prosecute a case where there has been no service of summons. A third alternative is available to get these cases off the docket. K.S.A. 60-241 provides that plaintiff's attorney, without court order, may dismiss the action by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgement. As I understand it, attorneys for the Medical Center have been dismissing cases under K.S.A. 60-241 when there has been no service of process. Notwithstanding this statutorily authorized dismissal, which is done without court order, there has been an assessment of costs made against the state and as a result the Medical Center has been directed to pay the otherwise exempt docket fee.

It seems to the Medical Center that when there has been no service of process and a case is voluntarily dismissed under the provisions of K.S.A. 60-241 it is not appropriate to assess costs against the state in order to recover an otherwise exempt docket fee. There is no losing or prevailing party --- there is no judgment --- there is in fact no case.

This proposed legislation would provide that in situations where attorneys for state, city, and county agencies follow the provisions of K.S.A. 60-241, there would clearly be no authority for the assessment of court costs against the state, city, or county in order to collect the otherwise exempt docket fee.

This bill further resolves the potential argument that K.S.A. 60-2005 does not apply to Chapter 61 cases. New section 2 of this bill would make the same applicable to Chapter 61 cases. There is no statute in Chapter 61 like K.S.A. 60-2005 and there currently is no incorporation of K.S.A. 60-2005 by reference.

Thank you.

WILLIAM J. BURNS, JR.
COURT ADMINISTRATOR

HELEN ZAGAR
CLERK DISTRICT COURT



DEAN J. SMITH, DIVISION 3
ADMINISTRATIVE JUDGE

THE DISTRICT COURT
TWENTY-NINTH JUDICIAL DISTRICT, KANSAS
COURTHOUSE
710 NORTH 7TH STREET
KANSAS CITY, KANSAS 66101

May 1, 1990

Mr. Richard Haitbrink
2000 Johnson Drive, Ste. 10
Mission Woods, Kansas 66205

Mr. Wayne Hundley
412 West 5th
Topeka, Kansas 66603

Mr. Joseph Weiler
1610 S.W. Topeka, P.O. Box 237
Topeka, Kansas 66612

Mr. Larry Winn, III
3000 W 95th, Ste. 300
Prairie Village, Kansas 66207

Gentlemen:

It has come to our attention that court costs are not being paid by the state on cases filed in the Wyandotte County District Court by the Board of Regents.

KSA 60-2005 states that the State of Kansas is exempt from depositing a docket fee, but the docket fee shall be paid if costs are assessed against the state.

We are presently in the process of identifying these cases and the unpaid amounts. In the meantime I suggest you contact Dorothy Koska, Supervisor Limited Actions Department at your earliest convenience to work out a billing procedure acceptable to all concerned.

Your cooperation in this matter will be appreciated.

Sincerely yours,

Helen Zagar
Helen Zagar
Clerk of the District Court

CASE ANNOTATIONS

Prior law cases, see G.S. 1949, 60-2835 and the 1961 Supp. thereto.

Annotation to G.S. 1949, 60-2835:

1. Objection to use of affidavit as evidence cannot be raised for the first time on appeal. *Barajas v. Sonders*, 193 K. 273, 277, 392 P.2d 849.

Annotations to K.S.A. 60-2003.

2. Attorney fees allowed under 59-1504 taxed as costs; prior law (G.S. 1949, 60-3706) considered. *Baldwin v. Hambleton*, 196 K. 353, 361, 411 P.2d 626.

3. Charges for discovery depositions not used as evidence held not ordinarily taxable as costs. *Wood v. Gautier*, 201 K. 74, 78, 79, 439 P.2d 73.

4. Attorney fees not chargeable against estate of decedent where action to enforce contract as claim against estate. *Reznik v. McKee, Trustee*, 216 K. 659, 681, 534 P.2d 243.

5. Subsection (6) cited in holding attorney fees not allowable under 40-256 where insurer paid claims against plaintiff. *Frickey v. Equity Mut. Ins. Co.*, 2 K.A.2d 163, 167, 576 P.2d 702.

6. Docket fee may be taxed against any one or more litigants even if poverty affidavit filed. *Davis v. Davis*, 5 K.A.2d 712, 713, 623 P.2d 1369.

60-2004. Payment of costs not acquiescence in judgments so as to prevent appeals. Payment of the costs of any action in any court in this state including, but not limited to, the payment of court reporter fees, shall not be considered an acquiescence in the judgment or any order of the court so as to prevent an appeal by the person or persons paying such costs. This act shall not apply to any pending question arising out of such payment heretofore made, but otherwise this act shall apply to all actions heretofore or hereafter filed.

History: L. 1967, ch. 193, § 1; July 1.

60-2005. State, cities and counties exempt from depositing court costs; exceptions. The state of Kansas and all cities and counties in this state are hereby exempt, in any civil action in which such state, city or county is involved, from depositing court costs or paying docket fees prescribed by any other law of this state, except that if the costs are assessed against the state of Kansas or any city or county in this state in any such action, such costs shall include the amount of the docket fee prescribed by K.S.A. 60-2001 together with any additional courts costs accrued in the action.

History: L. 1969, ch. 289, § 1; L. 1974, ch. 168, § 6; July 1.

CASE ANNOTATIONS

1. 60-2001(b) should parallel this section if docket fee to be taxed even if poverty affidavit filed (dissent-

ing opinion). *Davis v. Davis*, 5 K.A.2d 712, 714, 623 P.2d 1369.

60-2006. Attorneys' fees taxed as costs in certain actions involving negligent motor vehicle operation. (a) In actions brought for the recovery of damages of less than \$3,000 sustained and caused by the negligent operation of a motor vehicle, the prevailing party shall be allowed reasonable attorneys' fees which shall be taxed as part of the costs of the action unless:

(1) The prevailing party recovers no damages; or

(2) a tender equal to or in excess of the amount recovered was made by the adverse party before the commencement of the action in which judgment is rendered.

(b) This section shall apply to actions brought pursuant to the code of civil procedure and actions brought pursuant to the code of civil procedure for limited actions.

History: L. 1969, ch. 288, § 1; L. 1976, ch. 251, § 28; L. 1977, ch. 205, § 1; L. 1982, ch. 249, § 1; July 1.

Law Review and Bar Journal References:

"No Fault—The Insurer's Reimbursement Rights Under the New Statute," William R. Sampson, 46 J.B.A.K. 211, 219 (1977).

"Recovery of Attorney Fees in Kansas," Mark A. Furney, 18 W.L.J. 535, 561 (1979).

"Garnishment in Kansas: A Procedural Paradox," Leon B. Graves, 49 J.B.A.K. 129, 131 (1980).

"Survey of Kansas Law: Civil Procedure," 29 K.L.R. 449, 479 (1981).

CASE ANNOTATIONS

1. Construed; section held constitutionally permissible under due process clause (U.S. Const. Amend. 14, § 1). *Pinkerton v. Schwiethale*, 208 K. 596, 597, 599, 602, 493 P.2d 200.

2. Factors to be considered by court in awarding attorney fees hereunder discussed. *Stafford v. Karmann*, 2 K.A.2d 248, 577 P.2d 836.

3. Awarding of attorney fees for services on appeal held inherently allowed hereunder. *Stafford v. Karmann*, 2 K.A.2d 248, 252, 577 P.2d 836.

4. Trial court's awarding of attorney fees reversed; statute not applicable when claim asserted was not less than \$750. *Faucett v. Kirk*, 227 K. 505, 506, 508, 608 P.2d 1306.

5. Discussed; statute does not require a demand prior to filing a case to recover attorney fees. *Arnold v. Hershberger*, 4 K.A.2d 24, 25, 602 P.2d 120.

6. Only requirement for award of attorney fees is that recovery be greater than amount tendered before action commenced. *Darnall v. Lowe*, 5 K.A.2d 240, 241, 242, 243, 244, 615 P.2d 786.

60-2007. Assessment of costs of frivolous claim, defense or denial; liability of attorney, when. (a) Except as otherwise provided in this subsection, the provisions

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Article 20.—COSTS

Cross References to Related Sections:

See, also, particular actions and proceedings.

60-2001. Docket fee; additional costs; certain sheriff's charges prohibited. (a) *Docket fee.* Except as otherwise provided by law, no case shall be filed or docketed in the district court, whether original or appealed, without payment of a docket fee in the amount of \$55 to the clerk of the district court.

(b) *Poverty affidavit in lieu of docket fee.* (1) *Effect.* In any case where a plaintiff by reason of poverty is unable to pay a docket fee, and an affidavit so stating is filed, no fee will be required.

(2) *Form of affidavit.* The affidavit provided for in this subsection shall be in the following form and attached to the petition:

State of Kansas, _____ County.

In the district court of the county: I do solemnly swear that the claim set forth in the petition herein is just, and I do further swear that, by reason of my poverty, I am unable to pay a docket fee.

(c) *Disposition of docket fee.* The docket fee shall be the only costs assessed in each case for services of the clerk of the district court and the sheriff. The docket fee shall be disbursed in accordance with K.S.A. 20-362 and amendments thereto.

(d) *Additional court costs.* Other fees and expenses to be assessed as additional court costs shall be approved by the court, unless specifically fixed by statute. Other fees shall include, but not be limited to, witness fees, appraisers' fees, fees for service of process outside the state, fees for depositions, transcripts and publication, attorneys' fees, court costs from other courts and any other fees and expenses required by statute. All additional court costs shall be taxed and billed against the parties as directed by the court. No sheriff in this state shall charge any district court in this state a fee or mileage for serving any paper or process.

History: L. 1963, ch. 303, 60-2001; L. 1974, ch. 168, § 3; L. 1975, ch. 218, § 3; L. 1976, ch. 251, § 27; L. 1982, ch. 116, § 8; July 1.

Source or prior law:

(a). L. 1862, ch. 76, § 1; G.S. 1868, ch. 80, § 581; L. 1875, ch. 121, § 1; L. 1901, ch. 276, § 1; L. 1909, ch. 182, § 606; R.S. 1923, 60-2401.

(b). L. 1862, ch. 76, § 1; G.S. 1868, ch. 80, § 581; L.

1875, ch. 121, §§ 1, 2; L. 1901, ch. 276, § 1; L. 1909, ch. 182, §§ 606, 607; R.S. 1923, 60-2401, 60-2402.

(c) G.S. 1868, ch. 80, § 584; L. 1891, ch. 78, § 1; L. 1909, ch. 182, § 609; R.S. 1923, 60-2404.

Cross References to Related Sections:

Additional fees in civil actions, see 28-170, 28-170b, 28-171, 28-173a.

Research and Practice Aids:

Costs—105 et seq.

Hatcher's Digest, Costs & Fees §§ 11, 20 to 24.

C.J.S. Costs §§ 125, 162.

Gard's Kansas C.C.P. 60-2001.

Vernon's Kansas C.C.P.—Fowks, Harvey & Thomas, 60-2001.

Vernon's Kansas Forms, C.C.P.—Hatcher §§ 20.1, 20.2, 20.3 et seq.

Law Review and Bar Journal References:

Paragraph (b) cited in discussing post conviction motions, J. Richard Foth and Arthur E. Palmer, 12 K.L.R. 493, 495 (1964).

"Practicing Law in a Unified Kansas Court System," Linda Diane Henry Elrod, 16 W.L.J. 260, 263 (1977).

Subsection (d) discussed in "Recovery of Attorney Fees in Kansas," Mark A. Furney, 18 W.L.J. 535, 546 (1979).

CASE ANNOTATIONS

Prior law cases, see G.S. 1949, 60-2401, 60-2404 and the 1961 Supp. thereto.

1. Paragraph (c) applied in construing 61-2102; appeal bond not mandatory; courts may require. Underwood v. Allmon, 215 K. 201, 204, 523 P.2d 384.

2. Subsection (a) construed; payment of docket fee to perfect an appeal to district court from magistrate court not jurisdictional. Avco Financial Services v. Caldwell, 219 K. 59, 61, 62, 547 P.2d 756.

3. Payment of docket fee secondary; adverse party not affected; not jurisdictional. Walnut Valley Bank v. Stovall, 1 K.A.2d 421, 422, 566 P.2d 33.

4. Cited; compared to 59-2401. *In re Estate of Kempkes*, 4 K.A.2d 154, 159, 603 P.2d 642.

5. Subsection (b)(1) postpones rather than waives fee; fee may be taxed to any one or more litigants. Davis v. Davis, 5 K.A.2d 712, 713, 714, 623 P.2d 1369.

60-2002. Taxation of costs. (a) *As of course.* Unless otherwise provided by statute, or by order of the judge, the costs shall be allowed to the party in whose favor judgment is rendered.

(b) *Offer of judgment.* At any time more than fifteen (15) days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him or her for the money or property or to the effect specified in his offer, with costs then accrued. If within ten (10) days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed

continu- State v. Guthrie, 192 K. 659, 661, 662, 663, 664, 665, 391 P.2d 95.

ndict the Annotations to K.S.A. 60-240:

ss is ex- 4. Granting of continuance is discretionary in trial court. State v. Zimmer, 198 K. 479, 485, 426 P.2d 267.

ny other 5. Granting or refusing of continuance rests in sound discretion of court; assignment of case for trial did not motion be de- abuse discretion so as to prejudice defendant; history of section discussed. Scott v. Keyse, 200 K. 625, 626, 628, 629, 438 P.2d 112.

5, be de- 6. Granting of continuance is within the discretion of trial court; party seeking continuance not justified as that the re- lying on mere promises of witness to be present at testify as section discussed. State v. Milum, 202 K. 196, 199, 200, 447 P.2d 801.

ree that 7. Denial of motion for continuance upheld; petitioner considered the wit- failed to support motion with required affidavit. Jackson v. State, 204 K. 823, 827, 465 P.2d 927.

ed. The 8. Subsection (b) cited; governs the assignment of cases for trial and the continuance thereof. Pacific necessary 9. Under subsection (c), a trial court need not entertain a motion for a continuance based on the absence of a thing or granted or cretion- document, thing or other evidence unless such motion ns have is supported by an affidavit in compliance with the provisions of the statute. Pacific Indemnity Co. v. Berges, 205 K. 755, 759, 760, 761, 473 P.2d 48.

Jan. 1, 10. No abuse of discretion in denying oral request for continuance where no satisfactory explanation of 70, ch. 87, delay in request appeared. State v. Hale, 206 K. 521, 523, 479 P.2d 902.

ch. 182. 11. Facts sustained trial court's decision in refusing 2. § 314: continuance. Tilley v. International Harvester Co., 208 3. § 315: K. 75, 80, 490 P.2d 392.

12. Construed in holding trial court did not abuse its discretion in refusing a further continuance of the trial. Fouts v. Armstrong Commercial Laundry Distributing Co., 209 K. 59, 64, 495 P.2d 1390.

nce, con- 13. Subsection (c) cited; denial of motion for time to prepare affidavit prejudicial. Winkelman v. Allen, 214 2. § 315: K. 22, 34, 519 P.2d 1377.

ndar, see 14. Paragraph (b) applied; no abuse of discretion in refusing to grant motion for continuance. Security National Bank v. City of Olathe, 225 K. 220, 222, 589 P.2d 589.

Proce- 15. A continuance is within the discretion of the trial court; discretion abused; judgment reversed. State v. ivil Pro- Jones, 226 K. 503, 509, 601 P.2d 1135.

Thomas, 16. Motion for continuance within discretion of trial court; no abuse shown. State ex rel. Miller v. Richard- 2.3161. son, 229 K. 234, 239, 623 P.2d 1317.

60-2934 **60-241. Dismissal of actions.** (a) *Voluntary dismissal; effect thereof.* (1) *By plaintiff; by stipulation.* Subject to the provisions of subsection (e) of K.S.A. 60-223 and of any statute of the state, an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Where the dismissal is by stipulation the

clerk of the court shall enter an order of dismissal as a matter of course. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

(2) *By order of court.* Except as provided in paragraph (1) of this subsection, an action shall not be dismissed at the plaintiff's instance save upon order of the judge and upon such terms and conditions as the judge deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice. The judge may on the judge's own motion cause a case to be dismissed without prejudice for lack of prosecution, but only after directing the clerk to notify counsel of record not less than ten (10) days in advance of such intended dismissal, that an order of dismissal will be entered unless cause be shown for not doing so.

(b) *Involuntary dismissal; effect thereof.* For failure of the plaintiff to prosecute or to comply with these sections or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of the plaintiff's evidence, the defendant, without waiving the defendant's right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in subsection (a) of K.S.A. 60-252. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subsection and any dismissal section, other than this section, for jurisdiction, for failure to join a party, or for failure to operate as an adjudication upon the merits, (c) *Dismissal of claim, or third-party claim, or counterclaim, or cross-claim.* A voluntary dismissal of an action pursuant to subsection (a) shall be without prejudice to the plaintiff's bringing a new action. A dismissal of an action pursuant to subsection (b) shall be with prejudice to the plaintiff's bringing a new action. (d) *Costs of action.* If a plaintiff dismisses an action in any court of this state based upon or against the same defendant, the plaintiff shall make such order as to costs as the court deems proper and in the action until the order is made with the order.

History: L. amended by S. July 17, 1969; L.

Source or prior law:

(a). G.S. 1868, ch. R.S. 1923, 60-3105.

(b). G.S. 1868, ch. R.S. 1923, 60-3105.

(c). G.S. 1868, ch. R.S. 1923, 60-3106.

Revisor's Note:

Settlement or dismissal. See *Benchbook*, Kansas.

Cross References to:

Certain stipulation less reduced to writ supreme court rule.

Dismissed counter and judgment, see 6 Non-jury trial findings 60-252 (a).

Motion for direct Motion to dismiss state claim or joint process, see 60 Class actions, court mise, see 60-223 (e).

Research and Practice:

Dismissal and Procedure 1691 et C.J.S. Dismissal a Civil Procedure § 77 Barron & Holtzoff to 931, 1074, 1125, Gard's Kansas C.C.

1-6

Senate Bill No. 379
House Appropriation Committee
April 9, 1991.

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Mr. Chairman:

I appreciate the opportunity to appear before you today to testify on 1991 Senate Bill 379, a bill which extends the Executive Branch exemption for paying docket fees at the beginning of a civil case to the point of dismissal, if the dismissal is before the adverse party files an answer or there is a motion for summary judgment, whichever occurs first. The bill is retroactive, relating back to June 1, 1990.

Docket fees for filing a civil case are basically nonrefundable. This statute (K.S.A. 60-2005) as currently in effect recognizes that it is difficult for cities, counties, and the state to be able to produce a docket fee at the time a case is filed, but that if court costs are ordered paid by the city, county, or state, that payment in due course easily fits into the governmental agency's expenditure procedure.

This extension of exemption would fiscally impact funds which share in the distribution of the proceeds of a docket fee: State General Fund, county general fund, local law library fund (if there is one). If a state agency is involved a good part of the docket fee would be returned to the State General Fund. However, the county general fund would be a big loser.

When the single docket fee concept was adopted by the State Legislature in 1974 to replace the security for costs system in effect, the sheriff's fees for service and mileage were among the court costs which were incorporated into the docket fee. K.S.A. 60-2001 and K.S.A. 28-172a have language which prohibit the sheriff from charging fees to district courts. In exchange K.S.A. 20-362 gives a part of every civil docket fee collected to the county general fund.

If this bill is enacted it will prevent county general funds from recovering any of cost of serving process for these cases.

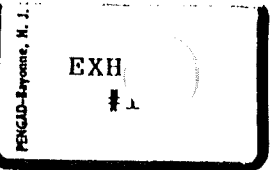
HA
4-10-91
Attachment 2

Senate Bill No. 379
April 9, 1991
Page 2

If accurate addresses are supplied, the docket fee would be assessed to the defendant, however, we are informed that some agencies are quite careless in this regard, all to the expense of counties. We estimate that district court revenue will suffer appreciably from this bill. Mr. Bill Burns of Wyandotte District Court will testify on the situation in that county.

Statewide we would expect loss to all district courts, but not as severe as in Wyandotte, as Mr. Burns will explain.

I recommend this bill be dropped from consideration.
Thank you for your attention.



SENATE BILL No. 379

By Committee on Ways and Means

3-12

8 AN ACT concerning civil procedure and civil actions; relating to
9 court costs; exemptions and assessments involving the state of
10 Kansas; amending K.S.A. 60-2005 and repealing the existing
11 section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 60-2005 is hereby amended to read as follows:
15 60-2005. (a) The state of Kansas and all cities and counties in this
16 state are hereby exempt, in any civil action in which ~~such state,~~
17 *the state or such* city or county is involved, from depositing court
18 costs or paying docket fees prescribed by any other law of this state,
19 except that if the costs are assessed against the state of Kansas or
20 any city or county in this state in any ~~such~~ action, such costs shall
21 include the amount of the docket fee prescribed by K.S.A. 60-2001
22 *and amendments thereto* together with any additional ~~courts court~~
23 costs accrued in the action.

24 (b) *Court costs shall not be assessed against the state of Kansas*
25 *or any city or county in this state in any civil action in which such*
26 *state, city or county is exempt from depositing court costs or paying*
27 *docket fees prescribed by any law of this state when such action is*
28 *dismissed by such state, city or county in this state or by court*
29 *order at any time before service of the adverse party of an answer*
30 *or of a motion for summary judgment whichever first occurs. The*
31 *provisions of this subsection shall be applicable to actions commenced*
32 *on or after June 1, 1990.*

33 New Sec. 2. The provisions of K.S.A. 60-2005 and amendments
34 thereto shall be applicable to actions pursuant to this chapter.

35 Sec. 3. K.S.A. 60-2005 is hereby repealed.

36 Sec. 4. This act shall take effect and be in force from and after
37 its publication in the statute book.

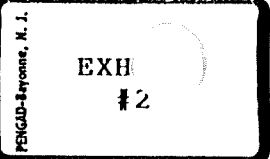
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4-10-91
Attachment 3

WILLIAM J. BURNS, JR.
COURT ADMINISTRATOR

HELEN ZAGAR
CLERK DISTRICT COURT



DEAN
ADM



THE DISTRICT COURT
TWENTY-NINTH JUDICIAL DISTRICT, KANSAS
COURTHOUSE
710 NORTH 7TH STREET
KANSAS CITY, KANSAS 66101

Attorneys filing Board of Regents cases:

Larry Winn, III
Firm: Bennett, Lytle, Wetzler, Winn & Martin
5000 W. 95th St., Ste. 300
Prairie Village, Ks. 66207

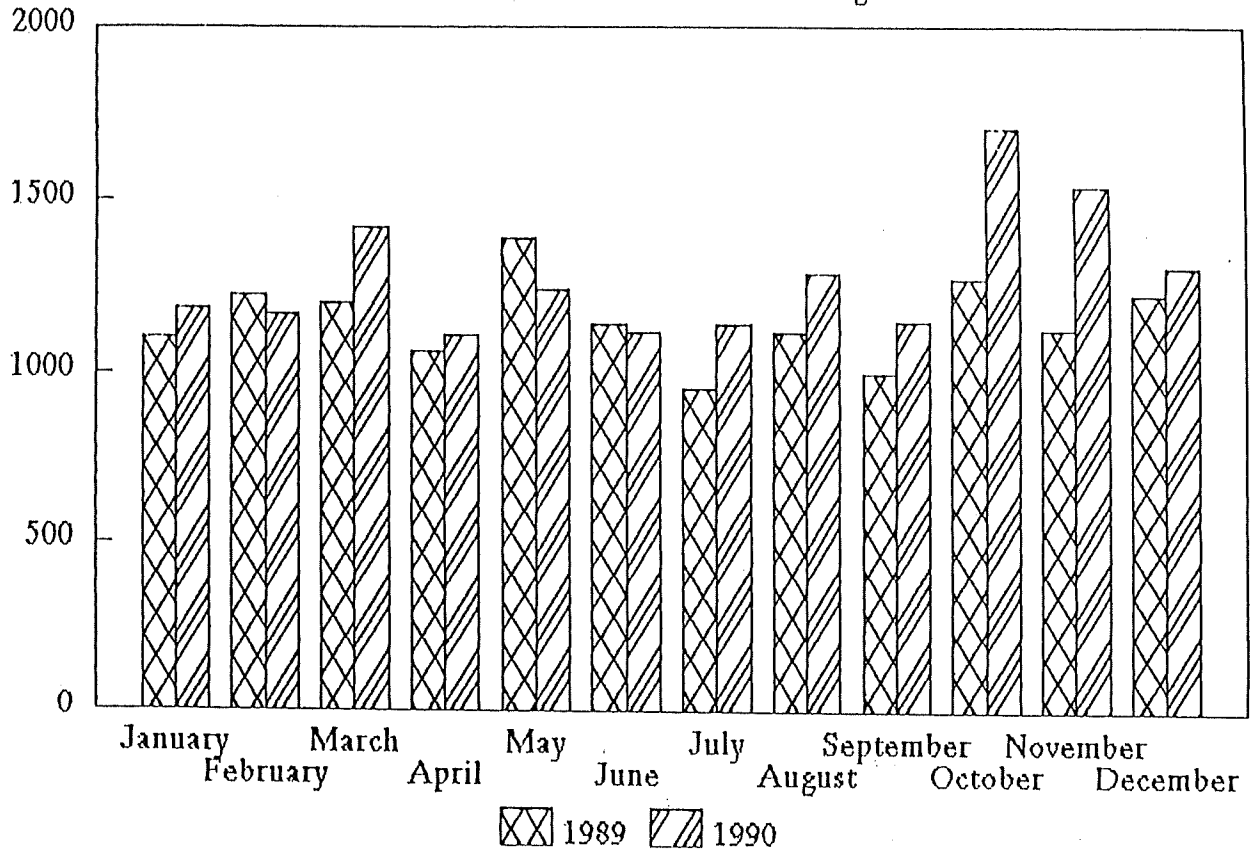
Richard F. Haitbrink
2000 Johnson Drive - Ste. 10
Mission Woods, Ks. 66205

Joseph M. Weiler
Firm: Alderson, Alderson, Montgomery & Newbery
2101 S.W. 21st St.
Topeka, Kansas 66604

Wayne E. Hundley
412 W. 5th St.
Topeka, Kansas 66603

LIMITED ACTIONS DEPARTMENT

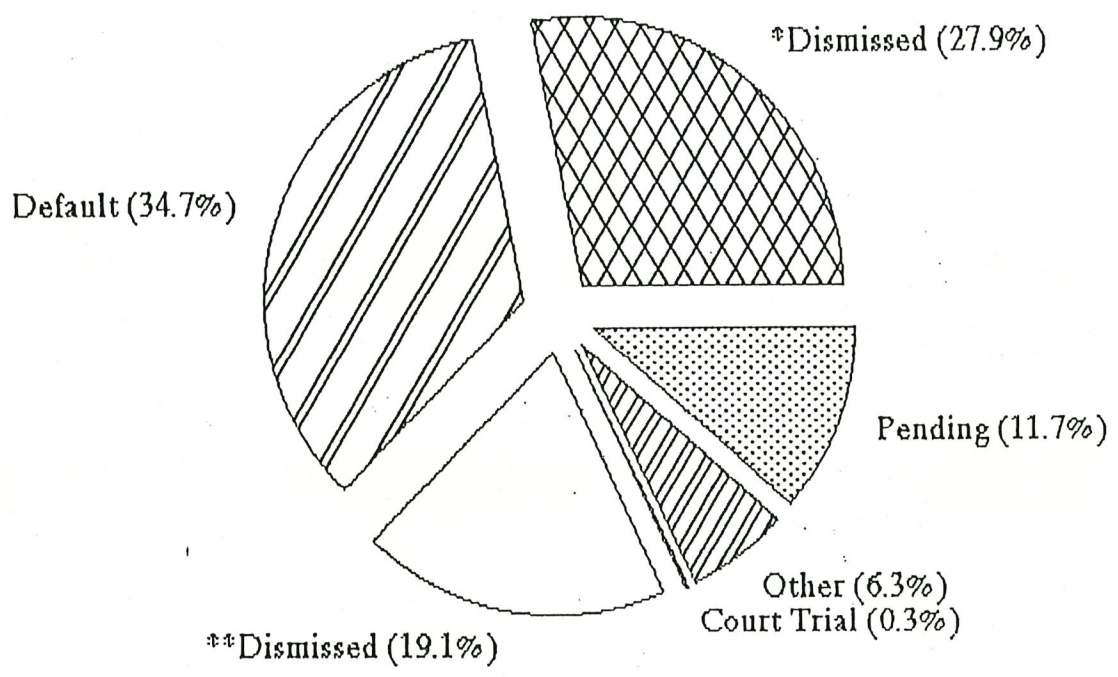
Civil and Small Claims Filings



	1986	1987	1988	1989	1990
January	997	1,093	1,026	1,098	1,188
February	782	1,009	953	1,224	1,173
March	972	1,171	1,258	1,204	1,420
April	964	879	1,097	1,061	1,111
May	778	1,288	1,078	1,388	1,242
June	1,039	1,433	1,018	1,142	1,115
July	976	1,649	1,100	954	1,142
August	895	1,436	1,576	1,116	1,286
September	840	1,250	1,061	996	1,144
October	998	1,327	918	1,268	1,698
November	757	886	965	1,124	1,537
December	986	898	1,269	1,224	1,299
Total	10,984	14,319	13,319	13,799	15,355
Percentage Change		30.36%	-6.98%	3.60%	11.28%

LIMITED ACTIONS DEPARTMENT

Dispositions of 1990 Board of Regents Filings



*Dismissed for want of prosecution per court

**Dismissed (other than above)

	1986	1987	1988	1989	1990
*Dismissed	904	2,372	2,050	2,593	1,736
Default	555	1,589	1,267	1,519	2,163
**Dismissed	172	598	456	501	1,189
Court Trial	10	19	32	11	16
Other	59	197	158	259	395
Pending	0	0	1	0	726
Total	1,700	4,775	3,964	4,883	6,225

EXHIBIT #5
 PERGAD-Byronne, N. J.

COURT FEES AND DISTRIBUTION

<u>1-1-91</u> <u>Wy Co</u> <u>COLLECT</u>	<u>DOCKET/FUNCTION</u>	<u>STATUTE</u> <u>COLLECT</u>	<u>1-1-91</u> <u>Wy Co</u> <u>LIBRARY</u>	<u>LETC</u>	<u>PATF</u>	<u>IDS</u>	<u>CLK/COUNTY</u>	<u>CLK/STATE</u>
\$62.00	CIVIL	(60.00)	- 7.00				-10.00	-45.00
57.00	FOREIGN JUDGMENT	(55.00)	- 7.00				-10.00	-40.00
94.00	CRIMINAL	(92.00)	- 6.00	-5.00	-1.00	- .50		-81.50
124.00		(122.00)	- 7.00	-5.00	-1.00	- .50		-110.50
154.00		(152.00)	- 7.00	-5.00	-1.00	- .50		-140.50
54.00	MUNICIPAL COURT APPEAL	(52.00)	- 6.00	-5.00	-1.00	- .50		-41.50
62.00	LIMITED OVER \$5,000	(60.00)	- 6.00				-10.00	-44.00 76
37.00	LIMITED CIVIL (\$501 to \$5,000)	(35.00)	- 6.00				-10.00	-21.00
17.00	LIMITED CIVIL (\$500 or less)	(15.00)	- 6.00				- 5.00	- 6.00
17.00	SMALL CLAIMS (\$500 or less)	(15.00)	- 6.00				- 5.00	- 6.00
37.00	(\$500.01 to \$1,000)	(35.00)	- 6.00				-10.00	-21.00
17.00	JUVENILE	(15.00)	- 6.00		-1.00	- .50		- 9.50
97.00	PROBATE	(95.00)	- 6.00					-91.00
22.00	TREATMENT	(20.00)	- 6.00		-1.00	- .50		-14.50
37.00	ADOPTIONS	(35.00)	- 6.00					-31.00
34.00	TRAFFIC	(32.00)	- 6.00	-5.00	-1.00	- .50		-21.50
34.00	FISH & GAME, and WATERCRAFT	(32.00)	- 6.00	-5.00	-1.00	- .50		-21.50
	STATE TAX WARRENT	15.00						-15.00
	SERVICE AGENT	5.00						- 5.00
	PERS. PROPERTY TAX	5.00						- 5.00
	HOSPITAL LIEN	5.00						- 5.00
	MECHANIC LIEN	5.00						- 5.00
	PENDING ACTION LIEN	5.00						- 5.00
	PROBATION/CC Fee Misc.	25.00						-25.00
	Fel	50.00						-50.00
	MARRIAGE LICENSE	40.00						STATE TREASURER -40.00
	D.L. REINSTATEMENT	50.00 per charge						-50.00

THE FOLLOWING CHAPTER 61 CASES HAVE BEEN PENDING IN THIS COURT FOR OVER 60 DAYS. SUPREME COURT TIME STANDARDS STIPULATE THAT CASES FILED IN THE LIMITED ACTIONS DEPARTMENT SHOULD BE TERMINATED WITHIN 60 DAYS. THEREFORE THE FOLLOWING CASES WILL BE DISMISSED APRIL 24, 1991, UNLESS EXTENDED BY ORDER OF A JUDGE FOR CAUSE SHOWN, NO LATER THAN APRIL 23, 1991.

Table with columns: CASE NUMBER, TITLE, ATTORNEY, DATE FILED. Contains a list of legal cases with their respective details.

Table with columns: CASE NUMBER, TITLE, ATTORNEY, DATE FILED. Contains a list of legal cases with their respective details.

EXH 46

PHOTO - BOSTON, MA

Table with columns: CASE NUMBER, TITLE, ATTORNEY, DATE FILED, CASE NUMBER, TITLE, ATTORNEY, DATE FILED. Contains numerous entries of legal cases.

Table with columns: NUMBER, TITLE, ATTORNEY, DATE FILED, CASE NUMBER, TITLE, ATTORNEY, DATE FILED. Lists various court cases and their details.

THE FOLLOWING PROCEDURE IS USED IN THE SCHEDULING OF MOTIONS AND CONTEMPTS

Hearing Officer / Post-Trial Child Support Matters
URES A Motions & Contempts - 1st & 3rd Monday Morn - 9:00 AM
URES A Establish - 2nd & 4th Monday Morn - 9:00 AM
Monday Afternoon - 1:30 PM - Court Trustee & S.R.S. - A thru L
Tuesday Morning - 9:00 AM - Private Attorneys - A thru L
Tuesday Afternoon - 1:30 PM - Private Attorneys - M thru Z
Thursday Morning - 9:00 AM - Court Trustee & S.R.S. - M thru Z

When the motion is filed by a private attorney the motion date will be scheduled using the first letter of the last name of the attorney filing the motion.
When the motion is filed by an agency the motion date will be scheduled using the first letter of the last name of the defendant.

Domestic Pre-Trial Motion Dockets

Pre-trial domestic motions will be heard each Friday afternoon at 1:30 PM
Attorneys should contact the Civil Dept for advance dates and locations.

Post-trial Domestic Motions Not Pertaining to Child Support and Civil Motions or Contempts

- Divisions 11, 12 & 13 First Monday of the Month 1:30 PM
Division 10 Second Monday of the Month 1:30 PM
Division 1 & 6 Second Friday of the Month 9:00 AM
Division 2 Second Friday of the Month 9:30 AM
Division 8 Third Friday of the Month 9:30 AM
Division 5 Fourth Friday of the Month 9:00 AM
Divisions 4 & 7 Fourth Friday of the Month 9:30 AM
Division 3 by Special Settings Only
Division 16 by Special Settings Only.

ALL MOTIONS IN DOMESTIC RELATIONS CASES MUST BE DESIGNATED BY COUNSEL ON THE FACE OF THE MOTION AS PRE-TRIAL, SUPPLY/RT/HEARING OFFICER, OR POST-TRIAL.

WYANDOTTE COUNTY DISTRICT COURT CIVIL SETTINGS SCHEDULE LIST FOR TRIAL SETTINGS ON 4/08/91 AT 9:00 A.M. HEARING OFFICER LOCATED ON THIRD FLOOR

Table with columns: CASE, ENTITLEMENT, INFORMATION, ATTORNEYS. Row 1: 91R 00438 MASSOHILL VS STROUD, COURT TRUSTEE.

WYANDOTTE COUNTY DISTRICT COURT CIVIL SETTINGS SCHEDULE LIST FOR MOTION SETTINGS ON 4/08/91 AT 9:00 A.M. HEARING OFFICER LOCATED ON THIRD FLOOR

Table with columns: CASE, ENTITLEMENT, INFORMATION, ATTORNEYS. Row 1: 880 04783 GRAY VS GRAY, CARSON HARRIS.

WYANDOTTE COUNTY DISTRICT COURT CIVIL SETTINGS SCHEDULE LIST FOR MOTION SETTINGS ON 4/08/91 AT 1:30 P.M. HEARING OFFICER LOCATED ON THIRD FLOOR

Table with columns: CASE, ENTITLEMENT, INFORMATION, ATTORNEYS. Rows include: 890 01217 KIEL VS KIEL, DEPT SOC REHAB CORDER; 900 01037 ST OF KS EX REL VS JOHNSON, DEPT SOC REHAB; 780 62440 DRESSLER VS DRESSLER, COURT TRUSTEE GEORGE.

TCF MORTGAGE CORP. VS. CORRIGAN, ET AL.

IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS TCF MORTGAGE CORPORATION PLAINTIFF

vs. ANTHONY J. CORRIGAN, et al. Mortgage Foreclosure

NOTICE OF SHERIFF'S SALE Under and by virtue of an Order of Sale issued by the Clerk of the District Court in and for the said County of Wyandotte, in a certain cause in said Court numbered 9100350, wherein the parties above named were respectively plaintiff and defendants, and to me, the undersigned Sheriff of said County, directed, I will offer for sale at public auction at the Court House in the City of Kansas City, in said County, on Tuesday, April 30, 1991, at 10:00 a.m., of an undivided following described real estate located in the County of Wyandotte, State of Kansas, to wit:

A parcel of land being a part of Lot 3, in C.A. PROBST'S SUBDIVISION, a subdivision of land in Kansas City, Wyandotte County, Kansas, said parcel being more particularly described as follows: Beginning at the Southwest corner of said Lot 3, thence North 00 degrees 00 minutes 00 seconds East 410.80 feet, along the West line of said Lot 3, to a point on the Southerly right of way line of Swartz Road, a now established; thence South 57 degrees 53 minutes 00 seconds East 252.02 feet, along said right of way line; thence South 37 degrees 37 minutes 47 seconds West 349.60 feet to the point of beginning of the parcel herein described, except that part conveyed to the State of Kansas for highway purposes in the Instrument recorded as document number 681237 in Book 1943, Page 301, commonly known as 4315 Swartz, Kansas City, Kansas 66106.

Owen Sully, Sheriff of Wyandotte County, Kansas (SIAPIRO & REID) Attorneys for Plaintiff Home State Bank Bldg. 5114 & Minnesota Avenue P.O. Box 17-1874 Kansas City, KS 66117 (913) 371-6421

ANDRUS ESTATE

IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS PROBATE DEPARTMENT

In the Matter of the Estate of JERRY L. ANDRUS, Deceased. Case No. D1 P 0142 NOTICE TO CREDITORS To All Persons Concerned: You are hereby notified that on 28th day of March, 1991, a Petition for issuance of Letters of Administration was filed in this Court by Barbara J. Phillips, as heir and natural mother of Jerry L. Andrus, deceased.

All creditors of the above named decedent are notified to exhibit their demands against the Estate within 4 months from the date of the first publication of this notice, as provided by law, and if their demands are not thus exhibited, they shall be forever barred. Barbara J. Phillips DAVID K. DUCKERS #2605 Horner & Duckers, Chartered 707 Security Bank Building 707 Minnesota Avenue Kansas City, Kansas 66101 013/281-2376 ATTORNEY FOR PETITIONER (First Published 4-3-91) 31-The Wyandotte Echo 4-17-91

BROWNE ESTATE

IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS PROBATE DEPARTMENT

In the Matter of the Estate of JOHN PAYNE BROWNE, n/k/a J.P. BROWNE, Deceased. Case No. 91-P-0140 Division No. 10

NOTICE OF HEARING TO THE STATE OF KANSAS TO ALL PERSONS CONCERNED:

You are hereby notified that a petition has been filed in this Court by Rosa Plesco Villarreal, n/k/a J.P. Browne, deceased, praying that the foreign Last Will and Testament of John Payne Browne, n/k/a J.P. Browne, deceased, dated March 17, 1986, be admitted to probate and record in this Court; that no administration of this estate is necessary; that the issue be construed; and that the following described Kansas real estate owned by the decedent, situated in Wyandotte County, Kansas, to wit:

HEIGHITS, a subdivision of land in Wyandotte County, Kansas, be assigned in accordance with the terms of the Will.

You are required to file your written defenses thereto on or before April 29, 1991, at 10:15 o'clock a.m. in this Court, in the City of Kansas City, Wyandotte County, Kansas, at which time and place the cause will be heard. Should you fail therein, judgment and decree will be entered in due course upon the petition.

Rosa Plesco Villarreal, Petitioner SUBMITTED BY: MCANANY, VAN CLEAVE & PHILLIPS, P.A. 707 Minnesota Avenue - Fourth Floor P.O. Box 1300 Kansas City, Kansas 66117 (913) 371-3838 Rosemary Podrebarac - #12883 Attorneys for Petitioner Attest: Clerk of District Court by Frances S. Mulch, Deputy. (First Published 4-3-91) 31-The Wyandotte Echo 4-17-91

HOKE ESTATE

IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS PROBATE DEPARTMENT

IN THE MATTER OF THE ESTATE OF JOAN C. HOKE, DECEASED. No. 91P0141

NOTICE TO CREDITORS THE STATE OF KANSAS TO ALL PERSONS CONCERNED:

You are hereby notified that on the 28th day of March, 1991, pursuant to a petition for probate of will filed in this Court by Stephen M. Stadler and Julianne Preece, the will of Joan C. Hoke deceased was admitted to probate and Stephen M. Stadler and Julianne Preece were appointed Co-executors of the will and duly qualified as such executor. Letters testamentary were issued to Stephen M. Stadler and Julianne Preece on March 28, 1991, by the District Court of Wyandotte County, Kansas.

All creditors are notified to exhibit their demands against the estate within six months from the date of the first publication of this notice as provided by law, and if their demands are not thus exhibited, they shall be forever barred. STEPHEN M. STADLER JULIANNE PREECE Petitioners SUBMITTED BY: DAVID K. DUCKERS & CORSON, P.A. D.L. CORSON, JR. 05254 222 Brotherhood Building Kansas City, Kansas 66101 (913) 371-1580 Attorney for Petitioner Attest: Clerk of the District Court by Kathleen Kelly, Deputy. (First Published 4-3-91) 31-The Wyandotte Echo 4-17-91

TESTIMONY BEFORE THE HOUSE APPROPRIATIONS COMMITTEE

HOUSE BILL 2626

MARLIN L. REIN

APRIL 10, 1991

House Bill 2626 was introduced in response to a recommendation contained in the report of the Special Interim Committee on Ways and Means/Appropriations on Proposal 39. One component of the interim study on Regents System Issues was the University of Kansas Hospital. In its report, the interim committee supported a series of long-range goals the institution had suggested for improving hospital operations. One of the goals was to broaden the authority to move health care personnel from the classified to the unclassified service. House bill 2626 would accomplish that objective.

The legislation before the committee today is the third in a series of bills the Legislature has considered over the past three sessions. Some of you may remember 1989 Senate Bill 350. That bill created a new class of unclassified employee at the University of Kansas Medical Center titled a Health Care employee. As introduced, that bill would have permitted the institution to move from the classified service to this new unclassified title any health care employees it felt was necessary

Since Senate Bill 350 was, in effect, the beginning of this continuing saga, it is perhaps important to review some of that testimony offered two years ago. Members of appropriations committees had become accustomed to annual requests from the University for upgrading salary ranges for selected classified positions, most notably, registered nurses, among others. With each year, the institution's competitive position was becoming worse. These requests created for the Legislature a dilemma of how to justify moving classified titles at the University Hospital to higher salary ranges if there were employees at other institutions, though they be few in number, who were in the same or similar class titles. While the Legislature struggled with this seemingly continual problem of the institution; the institution found itself waging a losing battle of trying to remain competitive with salaries offered in the metropolitan area.

When salary range upgrades were approved, they typically were funded on a least-cost method of implementation which raised the starting salary but did little to benefit existing employees of the institution. As a result, newly-hired employees were making nearly the same as employees with several years of experience. While the institution's entry level salary was extremely competitive, often among the highest in the metropolitan area, the fact that employees were not able to advance salary-wise resulted in a severe retention problem.

As early as 1982, the Legislature suggested to the institution that one approach to this problem was to move any health care personnel it chose from the classified to the unclassified service. However, aside from cost implications, there were other concerns that prohibited any wide-scale use of this authority. For example, Regents' unclassified employees are not eligible for overtime, shift differential, etc. As a consequence, during the subsequent years very little use was made of the latitude the institution had been given. It was in the 1989 session that the proposal to create this new unclassified group of employees was first presented to the Legislature. In effect, these employees are unclassified only as regards the establishment of salary plans. With regards to all other fringe benefits, including sick leave, overtime, holiday pay, shift differential, vacation, etc., they receive the same benefits as classified employees. The advantage to the institution is that it is able to structure a salary plan in a manner that is comparable to that offered by other institutions and to adjust salaries as needed to maintain an adequate work force.

Senate Bill 350 was enacted by the 1989 Legislature in a somewhat restrictive form. Essentially, it limited the use of this new authority to medical technologists and respiratory therapists. It also provided that the institution could unclassify special care nurses though that provision was never utilized by the institution.

A year ago, Senate Bill 464 was enacted by the Legislature broadening this authority to include all registered and licensed nurses employed at the institution. House Bill 2626 is similar to the original Senate Bill 350 in that it provides the institution with the authority to transfer unspecified other health care provider classes of positions to the unclassified health care employee category.

It would be our hope that with two years of experience with this new authority, our track record will confirm that the decisions of the last two sessions were wise ones, and that the proposal before this committee today has merit. Additionally, I believe the material that we can present will demonstrate clearly to the Committee that the institution has utilized this authority in a very responsible manner; that is, we have not increased salaries beyond levels that were absolutely warranted.

When we appeared before the Legislature in 1989, we reported that we had 18 vacant medical technologists and technician positions vacant; today we have three positions vacant. With regard to respiratory therapists, in the 1989 session we reported 8 vacant positions; today, we have six vacancies.

Our situation with nurses was even more serious. Two years ago when we appeared on behalf of Senate Bill 350, we reported 70 vacant positions. Last year, that number had risen to 81. I can report to you today, we have 48 nursing positions vacant.

In the attachment to the testimony, we have indicated for each of the classes of positions that we have previously moved to the health care worker category, comparative information which shows how we compare in the metropolitan area. While we would like to be more competitive than we are, we do not have unlimited resources available to us. Further, we have exercised restraint in the use of this new authority. And salaries, while they are important, have to compete with all other obligations of the hospital which must be financed within the funds available to the institution. Granting us authority to control our own salaries does not provide us with any additional resources.

The attachment to the testimony includes a list of six additional classified titles that we would like to eventually unclassify. Included in the material is the number of positions in each class title and the weighted average salary currently paid employees of the University Hospital as compared to the weighted average salary offered by hospitals in the metropolitan area. The problems we are experiencing with this group of positions are becoming increasingly acute. With one exception, we are currently paying below the market in Kansas City ranging from 4 to 15% for the positions identified. Currently, we are slightly above the Kansas City average for X-ray technologists because of special salary latitude granted us by the Division of Personnel Services. I would suspect that come July 1, our problem will become even more acute. Turnover continues to be a problem for us. As an example, in the last 18 months, we have had a total of 6 resignations in the 11 authorized positions for radiological technologists (radiation therapy). Of the 30 radiological technologist (X-ray) -- in that same 18 month period -- we have had a total of 13 resignations -- a turnover rate of 28% a year.

The problems we are already encountering with these classes of positions will only worsen in the months to come. If we are not able to address our salary problems through unclassifying these positions, we will have to revert to the old methods of requesting of the Department of Administration to increase the salary ranges for these classes. These workers are too vital to the patient care program of the institution to allow our position to erode further.

In conclusion, I would be remiss if I did not express our appreciation for the support the Kansas Legislature has given the University Hospital in the past. Much of the success we have achieved is directly attributable to your support.

I would be pleased to respond to any questions.

#

MLR:rdp
4-10-91

CLASSES PREVIOUSLY UNCLASSIFIED

PER SB 350 AND SB 464

<u>CLASS</u>	<u>Avg. Weighted Hrly Rate</u>		<u>Ranking In Area</u>
	<u>KUMC</u>	<u>K.C. Area</u>	
Medical Technician	\$ 8.44	\$ 7.65	3 of 33
Medical Technologist	12.37	14.65	32 of 35
Respiratory Therapist I	9.13	11.50	11 of 20
Respiratory Therapist II	12.06	13.35	24 of 33
Medical Center Nurse	14.90	15.91	26 of 41
Licensed Practical Nurse	10.48	10.48	4 of 41

CLASSES PROPOSED FOR
CONVERSION TO UNCLASSIFIED

<u>CLASS</u>	<u># of Positions</u>	<u>Weighted Avg Hourly Rate</u>		<u>Ranking In KC Area</u>
		<u>KUMC</u>	<u>K.C. Area</u>	
Radiologic Spec Tech.	30	\$12.80	\$14.32	23 of 30
Radiologic Tech (X-Ray)	37	12.20	11.70	6 of 35
Radiologic Tech (Therapy)	11	12.78	13.82	
Occupational Therapist	16	12.89	13.81	27 of 34
Physical Therapist	11	13.21	15.25	29 of 35
Histotechnologist	12	11.39	11.91	

4-10-91

4-4

THE CITY OF
ROELAND PARK, KANSAS

4600 WEST FIFTY-FIRST STREET
ROELAND PARK, KANSAS 66205

TELEPHONE
(913) 722-2600

MEMORANDUM

TO: Appropriations Committee
Kansas House

FROM: Neil R. Shortlidge, Roeland Park City Attorney

DATE: April 10, 1991

RE: Senate Bill 416

Senate Bill 416 was introduced at the request of the City of Roeland Park. The amendments made to the bill by the Senate Assessment and Taxation Committee are acceptable to the City. In order to fully understand the reasons for the City's requesting the legislation, some background information is in order.

At present, the central business district of Roeland Park consists of a shopping center which was initially constructed in the early 1950's. Over the years, some of the buildings within the shopping center have deteriorated. Some of the buildings are vacant and boarded up. Because of the deteriorating conditions, for several years the City has been attempting to facilitate redevelopment of the area. A study was done which found the area to be blighted within the meaning of several Kansas statutes. The area has been designated an enterprise zone. The City solicited requests for proposals from developers in an attempt to identify a responsible development company which would be interested in redeveloping the business district. Those previous attempts were unsuccessful, in part due to the meddling of the then shopping center owner, who had been resistant to the City's attempts to revitalize and redevelop the area. Late last fall, however, the City was encouraged to find that there might be light at the end of the tunnel, when it learned that a contract had been executed for the sale of the property to a development company.

We won't bore you with the details of the proposed redevelopment project, other than to tell you that it is an exciting plan which includes a PACE Wholesale Club store of approximately 108,000 square feet as the anchor tenant, and is expected to generate an increase in the City sales tax due to redevelopment of approximately \$600,000 per year. This is clearly a significant benefit to the City of Roeland Park, which has an adopted 1991 operating budget totalling less than \$1 million (out of a total budget of less than \$2.5 million). Obviously, the redevelopment project not only has a vital effect on economic development activities within the central business district, but

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perhaps more significantly will ultimately provide the opportunity for significant property tax relief for the citizens of Roeland Park.

As part of a redevelopment agreement which the City entered into with the redeveloper, legally known as the Roeland Park Development Company, the City has committed to expend up to \$986,000 for certain public improvements associated with the redevelopment of the central business district. Conceptually, the City intends to meet its obligations using the proceeds of half of the increased sales tax revenue over the first four years following the opening of the new shopping center. Although the City is optimistic that the sales tax revenues will match the projections, the Governing Body was concerned that there might be a shortfall. Because the Governing Body had committed that the property taxpayers would not be required to pay any portion of the \$986,000 committed to the project, it was necessary to find a mechanism by which those costs could be passed on to the developer in the event of such a shortfall. The only legal and feasible method of doing so identified by attorneys for the City and the developer was the creation of a self-supported municipal improvement district authorized by Kansas statutes, K.S.A. 1990 Supp. 12-1795 et seq.

Simply stated, the municipal improvement district legislation authorizes the creation of a special district within the boundaries of the central business district of a city which is authorized to undertake certain improvements within the district. One section of the statute -- the section to be amended by Senate Bill 416 -- authorizes the district to issue bonds for the costs of the improvements authorized by the act. As presently written, the only revenue sources which may be committed to the repayment of the principal and interest on the bonds are ad valorem taxes to be levied on property within the district and the income and receipts from revenue producing improvements. While we are advised by bond counsel that other sources of revenue, such as a city retailers' sales tax, may be used to make payments on the principal and interest of the bonds, such other sources of revenue cannot be legally committed to such purpose. The City is further advised by bond counsel that given the present language of the statute, bonds issued by a municipal improvement district are of quite limited marketability. Allowing the City the opportunity to pledge a portion of its sales tax revenues to pay off the bonds could substantially increase the marketability of the bonds and result in a lower interest rate.

The City's interest in requesting legislation amending K.S.A. 1990 Supp. 12-17,103 is intended to promote fulfillment of its

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commitment to use portions of the increase in sales tax revenues resulting from the redevelopment to fund its share of the improvements, and to do so in a manner which will make the bonds more marketable, resulting in a lower interest rate, which will in turn reduce the cost to the taxpayers of the City. Initially, we thought the least threatening way of doing this would be to have special legislation introduced which would relate only to Roeland Park. However, legislation of that nature would make the entire statutory scheme non-uniform and subject to charter ordinance, a result which might not be desirable in the eyes of some legislators. Consequently, we opted to request legislation which would be uniformly applicable to all cities.

You should know, however, that as a practical matter, this bill will have a very limited effect statewide and, in fact, may only affect Roeland Park. To date, no other city has created a municipal improvement district, notwithstanding the fact that the legislation has been on the books for ten years. From my conversations with municipal officials who have explored the municipal improvement district as an option for their city, I have discovered that the reasons the statute has not been utilized previously are two-fold: 1) the statute is procedurally cumbersome, involving a drawn out process of jumping through a number of hoops in order to create the district; and 2) as a practical matter, a municipal improvement district cannot be created without the willing support of the property owners within the proposed district. Due to these circumstances, it is clear that a municipal improvement district will result only where there is a public/private partnership between a city and a property owner which has assembled a significant amount of property within the central business district (or a group of property owners owning a sufficient amount of land within the central business district), which have come to terms concerning their mutual obligations in an effort to redevelop the central business district, including the willingness of the property owner or owners to be subject to taxation to that end.

We believe those circumstances are present in Roeland Park. The City held a public hearing on the creation of the district on April 1st. There was no opposition. The Roeland Park Development Company, which ultimately will be the only owner of property within the district, committed its support to the creation of the district. We are asking the legislature to provide us with the mechanism by which the City can fulfill its economic commitment to the project in a manner which will render the bonds marketable and cost-efficient.

SUMMARY OF PROPOSED AMENDMENTS TO KANSAS LOTTERY ACT

SENATE BILL No. 402

We would like to comment on Senate Bill No. 402 and the various things it does, and fails to do, in its current form:

1. Professional sales-related positions.

The sales positions in subsection (c)(4) K.S.A. 1990 Supp. 74-8703 should remain unclassified. The Lottery must be able to hire and to terminate sales personnel without the standards imposed by the Kansas Civil Service Act. To remove an unsatisfactory sales employee under the Civil Service Act is a slow and difficult process, and could involve months of observation and adequate documentation to be successful. Such a potential long-term process may lead to irreparable harm to the sales arm of this sales-oriented agency. The Lottery and any other sales-related business in the private sector, must be able to effectively service its accounts (in our case, Lottery retailers) to maximize revenues.

There are 40 individuals falling in the category of "professional sales-related positions," and it is my intention to review and evaluate the performance of each to determine how well they are doing.

2. Director of Sales and Director of Marketing.

The positions set forth in subsections (c)(4) and (c)(5) of K.S.A. 1990 Supp. 74-8703 were combined in August, 1989, since there is a need for only one Director to perform both functions. Thus, subsection (c)(4) could be amended to reflect "a Director of Marketing and Sales," and that part of subsection (c)(5) referring to a Director of Marketing, could be eliminated.

3. Addition of Position of Administrator of Finance and Budget.

This position is one that was recommended by the legislature in both 1989 and 1990. The Governor's office approved the creation of an unclassified position of Administrator and Budget in FY90. Having a qualified person serving in this capacity is critical to the financial integrity and well-being of the Lottery.

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4. Public Information Officer Position.

There is currently no statutorily authorized Public Information Officer position, although the Lottery is a sales-related agency where there is a constant need for communication with the media. It is doubtful that other agencies have a greater need for a person to serve in such a capacity. Subcommittee #3 of the House Appropriations Committee, in its Subcommittee report on Senate Bill 99 (Section 4), noted that the Senate Subcommittee deleted the Public Information position. The Subcommittee report recommended that both the Public Information Officer position and the Administrator of Finance and Budget should be treated in a similar manner.

The Lottery must have a person dealing with the media on a day-to-day basis, writing numerous press releases and working on promotions and advertising with marketing personnel.

5. Elimination of Old Sections (d) and (e) of K.S.A. 1990 Supp. 74-8703.

These sections have been eliminated because cooperation of other state agencies during start-up and emergency purchases during the first 18 months of operation have long been concluded.

6. Commissions for Sales Employees.

New subsection (d) of K.S.A. 1990 Supp. 74-8703 authorizes the Executive Director to provide compensation to employees holding professional sales-related positions based in whole or in part on a sales commission. I feel that incentive-based commissions will greatly enhance performance levels of our sales staff just as it does in the private sector.

The changes outlined in Senate Bill No. 402, as well as the proposed additions, if approved, will be of tremendous benefit to the Lottery and ultimately to the State of Kansas.