

Approved 3-22-91
Date

MINUTES OF THE House COMMITTEE ON Judiciary

The meeting was called to order by Representative John M. Solbach at
Chairperson

3:30 ~~am~~/p.m. on February 13, 1991 in room 313-S of the Capitol.

All members were present except:

Representatives Douville, Lawrence, Gomez, Everhart and Hockhauser who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research
Jill Wolters, Office of Revisor of Statutes
Gloria Leonhard, Secretary to the Committee

Conferees appearing before the committee:

Jim Clark, Kansas County and District Attorneys Association
Paul Shelby, Office of Judicial Administration
Gerald Goodell, General Counsel, Kansas-Nebraska League of Savings Institutions
Frank Ojile, Member of Wichita City Council
Matt Lynch, Representative from Judicial Council
Dave Landis, representing Kansas Association of Redemption Specialists

The Chairman called the meeting to order and asked for bill requests.

Jim Clark, Kansas County and District Attorneys Association, requested legislation which would amend KSA 1990 Supp. 22a-232 and KSA 22a-233 (c), regarding coroner's reports. (See Attachment # 0).

Representative Smith made a motion to introduce the proposed legislation. Representative Rock seconded the motion. The motion carried.

Representative Allen requested legislation which would ensure that spousal support would not be dischargeable in bankruptcy and made a motion that the proposed legislation be introduced. Representative Smith seconded the motion. The motion carried.

Representative Hamilton requested a bill which would extend the statute of limitations for rape when the victim is less than 16 years of age to five years, regardless of who committed the crime, also amending the adult statute KSA 21-3106.

Representative Hamilton made a motion to introduce the proposed legislation. Representative O'Neal seconded the motion. The motion carried.

The Chairman called for hearing on HB 2099, regarding limitations on amounts of disposable earnings subject to garnishment.

Paul Shelby, Office of Judicial Administration appeared and urged the committee to pass HB 2099. (See Attachment # 1).

There being no further conferees, the hearing on HB 2099 was closed.

Representative Heinemann made a motion to amend HB 2099 by adding another line for (5) "other" at the bottom of Page 4 of HB 2099. The motion died for lack of a second.

Representative O'Neal made a motion that HB 2099 be passed. Representative Heinemann seconded the motion. The motion carried.

The Chairman called for hearing on HB 2098, shortening redemption period under certain situations.

Gerald Goodell, General Counsel, Kansas Nebraska League of Savings Institutions (KNLSI) appeared in support of HB 2089, with one amendment. (See Attachment # 2).

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,
room 313-S, Statehouse, at 3:30 ~~am~~/p.m. on February 13, 1991

Frank Ojile, member of the Wichita City Council, appeared in support of HB 2098. (See Attachment # 3).

A committee member asked what kinds of facts would be required for the court to make a finding that the lands and tenements have been abandoned, or will not have been occupied in good faith.

Mr. Ojile said in every foreclosure a property search would be needed, that an affidavit could be obtained from the lender stating that the inspection had been made and the property was found abandoned.

A committee member asked if abandonment of the property can't be proved, what facts would be sufficient to show that it will not have been occupied in good faith; also if the words "occupied in good faith" were stricken would the bill be damaged.

Mr. Ojile said he believes that language refers to the equiteer situation.

Mr. Goodell responded that most judges do not accept the present argument; that that is why his amendment is needed to directly speak to equiteering.

A committee member asked if a claim would be protected in a bankruptcy case where the city or lender had put money into the property.

A committee member asked Mr. Goodell if he believes HB 2098 addresses the problems inherent in our present system. Mr. Goodell said the bill provides a major improvement along with his proposed amendment.

Matt Lynch testified for the Judicial Council in support of HB 2098 and explained the recommendations contained therein to K.S.A. 60-2411 from the Judicial Council Civil Code Advisory Committee. (See Attachment # 4).

A committee member noted technical corrections needed: On Page 2, Line 27, the word "credit" should be changed to "creditor"; on Page 4, Line 17, the word "of" should be changed to "or"; and on Page 5 Line 15, the word "lessor" should be changed to "lesser".

A committee member noted that on Page 6, Line 39, the judge is given no latitude in setting the redemption period. Mr. Lynch pointed out that a recent court case gives the judge the right to extend if there is proper equitable reason to do so.

A committee member noted that another bill modeled after the California statute has been introduced which may deal with the redemption issue more directly; that he believes HB 2098 may address too many policy issues.

A committee member noted that on Page 6 of HB 2098, Section (m) "may" has been changed to "shall".

Dave Landis, representing Kansas Association of Redemption Specialists, said he is a real estate broker who deals in redemptions; that his organization was established to help people in foreclosure realize their equitable equities out of the property during the redemption period, by renting the property, selling the property, and paying off mortgages, etc; that there has been difficulty by relating his organization to equiteers; that his organization is against equiteers; that his organization has worked with the Judicial Council on HB 2098 and on another bill supported by Representative Vancrum; that although HB 2098 does not encompass all that must be done in the future with redemption law, it gets rid of a lot of ambiguity in the law; that he believes to take away the consumer's right to rent the property during the foreclosure period would be wrong; that the largest makers of loans in the State of Kansas are mortgage bankers, not controlled by the Legislature, that loans are transferred between companies and the Kansas consumer is often hurt.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,
room 313-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on February 13, 1991

A committee member inquired if rights of a person serving in Desert Storm but with little equity in a home are protected. Mr. Ogile pointed out service people's rights are protected by the Soldier and Sailors Relief Act.

There being no further conferees, the hearing on HB 2098 was closed.

The meeting adjourned at 4:30 P.M. The next meeting is scheduled on February 14, 1991, 3:30 P.M., in room 519-S.

OFFICERS

Rod Symmonds, President
James Flory, Vice-President
Randy Hendershot, Sec.-Treasurer
Terry Gross, Past President



DIRECTORS

Wade Dixon
Nola Foulston
John Gillett
Dennis Jones

Kansas County & District Attorneys Association

827 S. Topeka Ave., 2nd Floor • Topeka, Kansas 66612
(913) 357-6351 • FAX # (913) 357-6352
EXECUTIVE DIRECTOR • JAMES W. CLARK, CAE

REQUEST FOR LEGISLATION

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

Section 1) K.S.A. 1990 Supp. 22a-232 is hereby amended to read as follows: 22a-232. Upon receipt of notice pursuant to K.S.A. 22a-231 and amendments thereto, the coroner shall take charge of the dead body, make inquires regarding the cause of death and reduce the findings to a report in writing. Such report shall be filed with the clerk of the district court of the county in which the death occurred.

If the death is a suspected homicide the law enforcement agency investigating the death may request the district court to order that the report not be disclosed. If the court finds that disclosure of the report would interfere with the prospective investigation of the suspected homicide the court shall order the report not to be disclosed by the clerk of the district court until further order of the court. Any order entered shall automatically terminate upon the filling of criminal charges arising out of the suspected homicide.

If the coroner determines that the dead body is not a body described by K.S.A. 22a-231 and amendments thereto the coroner shall immediately notify the state historical society.

Section 2) K.S.A. 1989 Supp. 22a-232 is hereby repealed.

Section 3) This act shall take effect and be in force from and after its publication in the statute book.

2. K.S.A. 22a-233(c) is hereby amended to read as follows:

(c) A full record and report of the facts developed by the autopsy and findings of the pathologist performing such autopsy shall be promptly made and filed with the coroner and with the clerk of the district court of the county in which the decedent died. *If the record and the report shall be made in the case of a suspected homicide the law enforcement agency investigating the suspected homicide may request the district court to order that the record and report not be disclosed. If the court finds that the disclosure of the record and report may interfere with the prospective investigation of the suspected homicide the court shall order that the record and report not be disclosed by the coroner or clerk of the district court until further order of the court. Any order entered shall automatically terminate upon the filing of criminal charges arising out of the suspected homicide.* If, in any case in which this act requires that the coroner be notified, the body is buried without the permission of the coroner, it shall be the duty of the coroner, upon being advised of such fact, to notify the county or district attorney, who shall communicate the same to a district judge, and such judge may order that the body be exhumed and an autopsy performed.

4JUD
2-13-91
attachment # 0

House Bill No. 2099
House Judiciary Committee
February 13, 1991

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. 2099 which is a proposal from our office.

This bill would update the wage garnishment statutes in both Chapter 60 and Chapter 61 to reflect the needed changes in calculations and forms due to the change in the federal minimum wage law that will be effective April 1, 1991.

K.S.A. 60-725 requires the Clerks of the District Court to keep garnishee answer forms current with the minimum hourly wage as established by the U.S. Secretary of Labor.

The present federal minimum wage is \$3.80 per hour which was effective last year on April 1, 1990 and our present calculations and forms reflect this wage. We were aware of this change last year when the present law was enacted, but to avoid confusion, only one year was passed.

On April 1, 1991 the minimum wage will increase to \$4.25 per hour and this bill was introduced so that the Kansas Statutes Annotated will reflect the same information as the garnishee answer forms used by the Clerks of the District Court.

We are also requesting that this act shall take effect and be in force from and after its publication in the Kansas register to make it a timely enactment.

We respectfully urge the committee to consider our proposal and pass it favorably.

HSJD
2-13-91
attachment #1

**Kansas-Nebraska
League of
Savings
Institutions**

James R. Turner, President

Suite 512
700 Kansas Avenue
Topeka, Kansas 66603
(913) 232-8215

February 13, 1991

TO: HOUSE COMMITTEE ON JUDICIARY
FROM: GERALD GOODELL, GENERAL COUNSEL, KNLSI
RE: H.B. 2089 - MORTGAGE FORECLOSURE REDEMPTION LAW CHANGES

The Kansas-Nebraska League of Savings Institutions appreciates the opportunity to appear before the House Committee on Judiciary in support of H.B. 2098. The measure makes important revisions to the present Kansas redemption law. Many of the changes are technical in nature, however there are two provisions that provide for reduced or extinguished redemption periods for the mortgagor. The right of redemption would remain intact for the legitimate homeowner who may be experiencing financial difficulty. The major changes deal with abandonment of the property by the mortgagor or the transfer of the right of redemption to individuals commonly referred to as equiteers who do not occupy the property in good faith.

The bill amends K.S.A. 60-2414 to make several changes in the mortgage foreclosure redemption law. The changes include:

1. Where the property before or after the sale is abandoned or not occupied in good faith, the court may shorten or extinguish the owner's right of redemption.
2. Technical changes in the law for junior creditors to redeem after the owner's exclusive redemption period has expired.
3. Holders of the certificate of purchase are allowed to add sums spent to prevent waste to the amount the owner must pay to redeem.
4. Technical changes in the procedure to seek a deficiency.
5. If amended by on page five, section 1., subparagraph (h), line 28, striking "or by agent or tenant" the bill would make failure of the assignee of the right of redemption to occupy the property evidence to support failure to occupy the property in good faith. The court could then reduce or extinguish the redemptions period.

Gerald L. Goodell, Counsel KNLSI

GLG:bw

*HJUD
2-13-91
Attachment #2*



CITY COUNCIL OFFICE
CITY HALL — FIRST FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202
(316) 268-4331

February 13, 1991

TESTIMONY BEFORE HOUSE JUDICIARY COMMITTEE
H.B. 2098
FEBRUARY 13, 1991

CHAIRMAN SOLBACH AND MEMBERS OF THE COMMITTEE:

My name is Frank Ojile and I am a member of the Wichita City Council and have been a practicing attorney in the State of Kansas since 1984, specializing in foreclosure law. As a City Council member who represents over sixty thousand citizens in my district, there is not a week that goes by that I do not receive at least two or three telephone calls from concerned citizens regarding run down housing in their neighborhoods. Once a complaint is received by my office, it is then turned in to the City's Central Inspection Division for review. If the structure is in ill-repair, it is then placed on the condemnation rolls and will come before the City Council for review and action.

Since I began my term on the Council almost two years ago, there have been dozens of properties that have come before the Council warranting extensive repair or removal. We feel that our hands are tied when a mortgage exists on the property and the owner of record is nowhere to be found. No one on the Council wants to remove a structure which acts as collateral on a loan, likewise the mortgage holder is not willing to furnish the money to repair the property which is vacant or will be further vandalized if it is repaired. Experience has shown that the mortgage holder is only willing to make the required repairs or is able to resell the property only after the Sheriff's sale and the six month redemption period has expired.

I would like to give you a typical example of this recurring problem for the neighborhoods, local officials and the mortgage holder:

1. The owner of record allows the property to be in disrepair;
2. The owner of record defaults on his/her loan as of January 1, 1991;
3. It will take four missed payments before the lender will start

*HSUD
2/13/91
attachment #3*

to foreclose (January, February, March and April); as generally they are subject to regulations requiring them to try to rehabilitate the loan;

4. Once the case is referred to an attorney for foreclosure, the attorney will need to order title work and by the time the title work comes in and the case has been filed, you have lost another 30 days (May 30);

5. The case is filed June 1, 1990 and since the owner is nowhere to be found, the attorney obtains service of process by publication which takes another 41 days;

6. Now it is approximately July 15, 1991 and providing your foreclosure has gone smoothly and without delay you are ready to journalize your case. Once it is journalized you have to wait ten days before you can order the property up for sale. It is now the first of August;

7. In order to have a sale under Kansas law, you must publish for 3 consecutive weeks and then have the sale not less than seven nor more than fourteen days after the last publication date. There goes another thirty days;

8. It is now around the first of September and you are ready to have the Sheriff's sale. Meanwhile, the house has been vacant the past nine months, it has probably been vandalized or turned into a crack house and the neighbors have your home and office telephone number committed to memory. Once the sale is completed, the lender, local government and neighbors must now wait for the six month redemption period to expire on March 1, 1992, fifteen months after the first default.

You can see how the aforementioned time line is frustrating to a lender, neighbors and local officials. Attached to this report is a memo from Central Inspection regarding some property located at 3433 All Hollows, in Wichita. This matter came before the Council on Tuesday, October 2, 1990. As you can see, the Housing Code case was initiated on May 18, 1988, the Petition to foreclose was filed on September 27, 1988, the sale was held on May 30, 1990, and the redemption period ended on November 30, 1990, almost 31 months from the date that the property became a Housing Code case. Of particular interest is the notation that in July, 1990, the structure was once again open and the City had to go in and secure the property. If this proposed House Bill would have been in effect, the lender would have had the house back at the end of June and could have made the necessary repairs instead of wasting City time, money and effort.

Under proposed House Bill 2098, several criteria must be met before the redemption period can be reduced. It is common knowledge among attorneys that when you mention reducing redemption rights in K.S.A. 60-2414, a lot of people feel uneasy. The principal idea behind K.S.A. 60-2414 is to protect the homestead and the family farm and to alter it is seen as a move to erode those rights.

The safeguards which are proposed to alleviate the above-mentioned concerns are as follows:

*HJUD.
2-13-91
attachment # 3-2*

1. Notice of reducing or terminating the redemption period must be given to all interested parties, including junior lienholders, the titleholder, etc.;

2. There must be a hearing before the Court after proper notice has been sent and the Court must make a finding that the lands and tenements have been abandoned, or will not have been occupied in good faith.

If the Court finds that the conditions have been met, then it may in its discretion shorten or extinguish the redemption period from the date of the sale.

At the end of this report, I have attached a copy of a memo from Central Inspection regarding an area of housing called Sylvan Manor which is less than two miles from my house. I have also attached an article from the Wichita Eagle dated September 24, 1990 showing what kind of activity is taking place at Sylvan Manor and at other such similar places in Wichita.

I am asking you today, on behalf of the Wichita City Council, the citizens of Wichita and of the State of Kansas to consider amending K.S.A. 60-2414 for the following reasons:

1. That lenders could reclaim their property, make the needed repairs and ready it for sale in a timely manner;

2. That these properties can once again become useful in a shorter period of time than is currently allowed by law; and

3. To help reverse the proliferation of drug and gang activity with its related gang and the non-gang related crimes preying on abandoned housing in our neighborhoods.

I thank you for your time and attentiveness, and I will now answer any questions you may have.

HJOD
2-13-91
attached #3-3

THE CITY OF WICHITA

OFFICE OF Central Inspection Division DATE September 25, 1990

TO Monty Robson, Supercintendent of Central Inspection
FROM Jim Roths, Chief Housing Inspector

SUBJECT Structures Subject to Foreclosure

Additional structures subjected to foreclosure.
805 and 811 South Seneca, both on the current condemnation group.
Foreclosed by Bank IV of Benton, these have been turned to F.D.I.C.

CDM-E-37-90 3433 All Hallows
Foreclosure Case No. 89-C-3664
This structure was subject to Certificate of Purchase issued to World Savings
and Loan Association on May 30, 1990. A Redemption period of 6 months was
granted to the Defendants.

The Housing Code case file on 3433 All Hallows was initiated on May 18, 1988,
at this time the structure had few code violations, however, it was open. Staff
secured the structure and issued a Notice of Improvements needed to the owner.
No repairs were made so utilities were held and the structure was placarded.

On March 30, 1989, a notice was issued to secure the garage, this notice was
complied with. On July 29, 1989, a new notice to secure the dwelling was
issued. The owner did not comply with the 7 day order so the property was
boarded up by the City.

The structure was again open in July of 1990, the City resecured the structure.
At this point additional vandalism was noted so condemnation was initiated. This
structure is to be before the Council on October 2, 1990, for Hearing.

HJUD
2-13-91
Attachment
3-4

Office of the City Manager
[] CEC [] SH
[] RGF [] JA
[] RT []
SEP 25 1990
[] Copies To
[] Send To
[] File

INTEROFFICE MEMORANDUM

Date: 25-Sep-1990 04:30pm CST
From: Beth A. Prentice
PRENTICE_B
Dept: CID
Tel No: 268-4267

TO: Council Member Ojile through
Chris Cherches
CC: Paul Steinbrenner
CC: Roths_J
CC: Porter_H

(CHERCHES_C)
(STEINBRENNER_P)
(PAPER MAIL)
(PAPER MAIL)

Subject: Sylvan Apts

The following is in response to your request for information from our case file on the Sylvan Apartments and 3433 All Hallows (see attached memo):

Sylvan Apartments Case History

A file was started Feb. 16, 1990 on 5216-22 E. Morris due to neighborhood complaints. The Notice of Improvements were issued to Mid-Kansas Savings and Loan.

Mid Kansas S&L became insolvent on Oct. 19, 1989 and was put in the hands of the Resolution Trust Corporation to manage and dispose of properties received on bad debts. Jess W. Foster is the managing agent at 125 So. Market.

As a result of the notice a meeting was held with R.T.C., Mid Kansas and CID on March 28, 1990. At that meeting CID was requested to make a complete inspection of all buildings owned by Mid Kansas. Central Inspection made inspections April 3 & 4, 1990, on 34 structures containing 136 dwelling units and issued Notice of Improvements for same to Mid Kansas.

The Sylvan Apartments consists of a total of 49 structures containing 196 dwelling units of which 15 structures with 60 dwelling units are privately owned. Exterior inspections have been made and Notice of Improvements issued to the owners.

Mid Kansas has hired Five Star Management Inc. to rent, collect rent and do only necessary maintenance until a buyer can be found for their properties. R.T.C.'s charge is to sell the property rather than make improvements, and thus we have been unable to gain compliance. However, CID is staying in contact with Mid Kansas and the R.T.C. to determine when the project is sold and we will work with the new owner to get compliance.

MHR:HP:bp

*HSUP
2-13-91
attach # 3-5*



The Wichita Eagle

Suspected gang members are patted down in officers' search for drugs and weapons.

Pressure points

New police squad takes aim at quelling gang, drug activities

Editor's Note: A reporter and a photographer for The Wichita Eagle spent eight hours Saturday night and early Sunday with two officers on the Police Department's new Special Community Action Team. This is their report.

By Lisa Agrimonti
The Wichita Eagle

Gang graffiti decorates the fences and Dumpsters behind the Sylvan Manor Apartments, one of Wichita's newest crack cocaine hot spots.

Spray-painted in black is the word "cuzz." That's how members of the Junior Boys refer to one another. Also scrawled are the letters JRB, the abbreviated name of the same

gang that police estimate has 100 members.

This is drug territory and a frequent destination for members of the new Special Community Action Team, the Wichita Police Department's seven-member unit devoted to cleaning up gang and drug-related activity in the city.

A \$1 million grant financed by the city and the federal government will pay for the team, activated last month. A second seven-member team will begin work in October to provide seven-day-a-week coverage to targeted areas.

On this Saturday night, two members of the action team, Officers



Officers Kent Bauman, left, and Bret Giffin check serial number of confiscated handgun.

See **GANGS**, Page 2C

Salina to vote on financing college merger

By John R. Engen

"I couldn't imagine why the people of Salina within seven years from 400 students to

HSUD
Attachment 3-6
2-13-91

GANGS

From Page 1C

Bret Giffin and Kent Bauman, tour Wichita's toughest neighborhoods — southeast Wichita, where members of the Crips, a Los Angeles-based gang, congregate; the old Crack Alley at Ninth and Washington; and East 21st Street, where drug trafficking is heavy.

"Hopefully, we'll get some drug busts tonight," Giffin says as the partners begin their night's work. He isn't optimistic, and his doubts are confirmed during the shift. Many crack houses are closed on Saturdays. The dealers are out partying themselves.

The next five to six hours will be spent talking to suspected and known gang members, stopping alleged drug buyers and watching for drug sales. Bauman and Giffin collect full names and the birth dates of the young men and women they stop. They ask for addresses, too, if they suspect the youths of being gang members.

At 7:10 p.m., the two officers stop near the Sylvan Manor Apartments, 763 S. Sylvan, to talk with Johnny, an 18-year-old Junior Boys member who is hanging out on the street corner.

Johnny wears the black and blue colors of the Junior Boys; his pants

drop below his waist in a fashion called "sagging" that is common among the gang members. He says he joined the gang about a year ago.

Officers pat down the teen, searching for weapons. Patting down is standard procedure for the SCAT officers, Bauman says, because gang members and drug dealers often are armed.

"It's for our own safety," he says.

At about 8:30 p.m., the two cruise by Ninth and Washington, the heart of the old Crack Alley. A woman sitting in a chair in front of her house tosses an object behind her, and Bauman stops to investigate. He finds a loaded .25-caliber semiautomatic handgun with a pearl handle behind her chair.

A 47-year-old man sitting with the woman confesses to owning the gun. He tells Bauman that he bought the weapon for safety after he was hit on the head several weeks ago.

Because he was once convicted of armed robbery, he could be charged with illegally possessing a weapon, a crime that could get him 10 years in prison. Bauman and Giffin confiscate the gun.

Just after 9 p.m., the partners stop a man in a snazzy, low-riding purple Bronco. He wears British Knights tennis shoes, a brand associated with the Crips, whose members like to say that the "BK" trademark stands for "Blood Killer." The Crips

are at war with the Bloods, a rival Los Angeles gang.

The officers talk to him and let him go.

Then they spot the car of a 24-year-old suspected dealer near 21st and Platt. Officers say they have taken several guns from the man in recent weeks.

When they try to pull him over for having no tag light, he continues driving for a few blocks, until he reaches his house.

The two officers draw their weapons and order him out of the car. He comes out, shouting that he is being harassed.

Inside the car are two Colt 45 malt liquor cans. There is a full can of beer on the front seat of the Chevy Impala, which has concrete bricks in the trunk for a low-riding effect. Officers find 38 rounds of ammunition for a 9mm semiautomatic gun.

They also open the hood of the car and check the air filter. Dealers and gang members have been known to hide drugs and weapons there, but Bauman and Giffin find nothing.

Soon, a drug-sniffing dog will be added to the SCAT program to help catch drug dealers and users, the officers say.

The man's mother comes out of the house during the commotion and Lt. Phil Marceau, who heads

the SCAT crew and has met Giffin and Bauman at the house, tells her that her son's activities could get him in trouble. He urges her to exert whatever influence she can.

The man is arrested on suspicion of evading and eluding police; among the charges against him are three outstanding traffic warrants.

By early Sunday, Bauman and Giffin have returned to the Sylvan Manor Apartments to try to locate a suspected dealer spotted by undercover officers. No luck.

At about 1:45 a.m., they hook up with Marceau and another SCAT officer, who have arrested a woman on suspicion of possessing crack cocaine. The woman, 32, was seen leaving a crack house on the 700 block of North Sylvan.

Officers find a \$10 "rock," about the size of half a pencil eraser, on the seat of her car. The woman and a male companion are taken to the police station.

The SCAT team's street work is done for the day.

Team members go home early Sunday without making any significant arrests for drug dealing and gang activity. But their high profile in the turbulent neighborhoods over the past month has driven many dealers indoors, Marceau says.

Bauman hopes the pressure on drug dealers will continue. "I hope we can make it uncomfortable for them," he says.

turning back

Handwritten notes: #3-7, HSD, 2-0-91

JUDICIAL COUNCIL TESTIMONY ON HB 2098
HOUSE JUDICIARY COMMITTEE
FEBRUARY 13, 1991

1991 House Bill No. 2098 contains the recommendations of the Judicial Council Civil Code Advisory Committee for amendments to K.S.A. 60-2414.

K.S.A. 60-2414 sets forth rights and procedures for statutory redemption of real property from execution sale.

Last session the House Judiciary Committee had before it 1990 HB 2642, which contained extensive revisions to K.S.A. 60-2414. Lewis "Pete" Heaven, Jr. was primarily responsible for the drafting of HB 2642. As a member of the Executive Committee of the Real Estate, Probate and Trust Section of the Kansas Bar Association, Pete was requested to develop recommended changes to K.S.A. 60-2414. The eventual result of Pete's recommendations, and the responses to them, was HB 2642. The House Judiciary Committee referred the subject matter of HB 2642 to the Judicial Council for consideration.

Another bill amending K.S.A. 60-2414 was also before the legislature last session, 1990 HB 2972. It was requested by officials of the City of Wichita and was aimed at situations in which property, subject to a mortgage, has been abandoned. The property is often run down and being used for drug-related or other criminal activity. The City is interested in seeing the property removed or repaired. However, the City is hesitant to take action on property which serves as collateral. Mortgage holders are not interested in taking action on the property until the expiration of the redemption period. Consequently, HB 2972 was designed to shorten the redemption period in cases of abandonment to promote quicker action in regard to such property.

In developing HB 2098, the Civil Code Committee considered both HB 2642 and 2972 and met with their proponents.

Historically, Kansas has had legislation on the right of redemption since 1861. With some amendments, the basic features of K.S.A. 60-2414 have been in effect since 1893.

The basic elements of K.S.A. 60-2414 state: (1) Who can redeem (the defendant owner, such owner's assignee or transferee, lien creditors), (2) The amount that must be paid to redeem (the basic factor being the sale price), (3) The time periods for redemption (which vary for different classes of persons) and (4) The effects of redemption.

One purpose of the redemption statute is to give the mortgagor or other person entitled to exercise the right of redemption additional time to refinance and save the property. However, it appears to the Civil Code Committee that the primary

HJUD
2-13-91
Attachment #4

purpose of the statute is to apply the property as fully as possible to satisfy claims against the defendant owner and to avoid, as much as possible, deficiency judgments against the defendant owner. It is the goal of the statute to put pressure on foreclosing creditors to bid the value of the property at sale, at least up to the amount of the underlying debt.

The first change made by HB 2098 appears on page 1 in lines 19 and 20 and concerns the rate of interest to be paid on the amount necessary for redemption. The amendment provides for interest at the judgment rate specified in K.S.A. 16-204(e)(1). Presently, the statute does not specify a particular rate of interest. Appellate cases indicate the appropriate interest rate is that of the lien foreclosed. The Civil Code Committee adopted Mr. Heaven's reasoning that the successful bidder at sale may have had to borrow money to purchase the property and it makes more sense to use a definite rate of interest which bears some relationship to current economic conditions rather than that of a note which could be many years old.

On line 23 of page 1, language is inserted to allow the court, after hearing, to find the property has been abandoned or is not occupied in good faith and to shorten or extinguish the redemption period. Presently in such cases, the court can shorten the redemption period to six months. This new provision would appear to satisfy in large measure the concerns raised by the City of Wichita.

Amendments on page 1 in lines 29 through 43, and continuing on page 2, reword the existing provisions on waiver of redemption rights. The new language is intended to retain the ability of corporations and partnerships to waive redemption rights and to protect individuals from such waiver in regard to agricultural land or single or two-family dwellings. The new language should allow other entities such as joint ventures or syndicates which are purchasing real property for investment purposes, to waive redemption rights.

The amendments to subsection (b) on page 2 are intended to clarify the redemption period for a redeeming creditor where there has been a waiver of redemption rights by the defendant owner or a shortening or extinguishing of such owner's redemption rights. As amended, the subsection also implements the concept that there should be only one redemption by a creditor. Redemption among creditors seldom occurs and the provisions on creditor-to-creditor redemption are generally perceived as confusing. The Advisory Committee saw some value in retaining the potential of redemption by one creditor in that the possibility of such redemption should promote the foreclosing lienholder bidding the amount of his or her judgment at the sale. The Advisory Committee also believes that allowing only one creditor to redeem will promote creditors bidding at the sale if they believe there is any further value to be realized from the property.

The elimination of creditor-to-creditor redemption allows the deletion of considerable language in subsection (d) and the entirety of current subsections (e), (f), and (g).

In subsection (d) on page 3 in line 17 and 18, the advisory committee adopted Mr. Heaven's suggestion that the holder of the certificate of purchase be able to recover money spent to prevent waste during the redemption period in that such a provision will promote preservation of the property.

Subsections (e) and (f) relate to redemption by a creditor and its impact on what the defendant owner must pay to redeem from the creditor and the consequences of a subsequent redemption or failure to redeem by the owner. For the most part, the amendments represent an elaboration or adjustment of the existing law on these issues. Essentially, the redeeming creditor must make a determination whether the value of the land satisfies the creditor's claim. If the creditor deems the land sufficient, the creditor only files a statement of the amount unpaid due on the claim of that creditor. If the defendant owner wishes to redeem, the defendant owner must add the unpaid amount of the creditor's claim to the redemption amount to redeem the property and the claim of the creditor is satisfied. If the defendant owner does not redeem the property is deemed to have satisfied the claim of the creditor and such claim is extinguished. If the redeeming creditor does not believe the land is sufficient to satisfy the creditor's claim, the creditor may file a statement of a lesser amount the creditor is willing to credit on the claim of the defendant owner in the event of redemption. The defendant owner must then only pay that additional amount in order to redeem from the creditor, the creditor's lien is extinguished but the creditor has a deficiency for the difference between the unpaid amount of the creditor's claim and the lesser amount as stated in the creditor's affidavit. If the defendant owner does not redeem, the creditor's claim is reduced by the lesser amount included in the creditor's statement. It would appear unfair to require the defendant owner to pay the full amount of the creditor's claim in order to redeem and, in the failure of such redemption by the defendant owner, let the creditor realize some satisfaction of the creditor's claim from the property and retain a deficiency judgment for the full amount of the creditor's unpaid claim.

In regard to subsection (j) on pages 5 and 6, Mr. Heaven pointed out the ambiguity as to who may be held responsible for injury or waste against the property. The amendment is intended to clarify that any person committing or permitting injury or waste is liable.

The Advisory Committee also adopted Mr. Heaven's recommendation in regard to subsection (m) on page 6. Mr. Heaven characterized the intent of the subsection as allowing the court to reduce the redemption period in situations where the land owner has an insignificant amount of equity in the property. He observed that confusion has resulted with regard to what "indebted-

ness" is to be used to determine whether one-third of the indebtedness has been paid, or what "indebtedness" should be measured against the market value of the property. The last sentence of the subsection reflects that events justifying a shorter redemption period under subsection (a) may have occurred.

HJUD
2-13-91
attachment # 4-4