

Approved _____

Date

5-2-91

MINUTES OF THE House COMMITTEE ON Judiciary

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

3:30 ~~xxx~~ p.m. on April 11, 1991 in room 313-S of the Capitol.

All members were present except:

Representative Hamilton who was 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:

Representative Eugene P. Amos

Senator Norma Daniels

Chip Wheelen, representing the Kansas Medical Society

The Chairman called for action on SCR 1612, urging Congress to propose a Constitutional Amendment prohibiting desecration of the flag.

Committee discussion followed.

Representative Garner made a motion that updated staff balloon amendments to SCR 1612, as amended by Senate committee, be adopted. (See Attachment # 1). Representative Sebelius seconded the motion. The motion carried.

Representative Rock made a conceptual motion that SCR 1612 be further amended in new proposed language, Page 1, following Line 26, to acknowledge that more than "two critical units" were sent to the Persian Gulf. Representative Hochhauser seconded the motion. The motion carried.

Representative Parkinson made a conceptual motion that SCR 1612 be further amended by adding an additional "whereas" clause specifically expressing support of Kansans for the flag, e.g. "whereas Kansans support, cherish and many thousands display the American flag..."; that in addition in the enactment clause. Page 2, Line 8, express that the Legislature expresses strong support for the American flag; also strike "that flag desecration is a serious problem and "; also in the new language on Page 2, change "to" the Constitution to "by" the Constitution. Representative Everhart seconded the motion.

Committee discussion followed.

The motion carried.

The Chairman called for a vote on the proposed expression of strong support by the Legislature of the American flag, the striking of the language "that flag desecration is a serious problem; "and changing "to" the Constitution to "by" the Constitution. The motion carried.

Representative Everhart made a motion to restore the language stricken on Page 1, Lines 29 and 30. Representative Hochhauser seconded the motion.

Committee discussion followed.

The motion carried.

Representative Heinemann made a motion to reword the new language in the first change set out on the balloon bill as follows: Strike the word "against" and insert "while protecting" "as" guaranteed. Representative Gomez seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,

room 313-S, Statehouse, at 3:30 ~~am~~/p.m. on April 11, 1991

Representative Heinemann made a motion to reword the new language in the second change set out on the balloon bill as follows: Symbolizes the "cherished constitutional rights". Representative Rock seconded the motion. The motion carried.

Representative Heinemann made a motion to reword the new language in the third change set out on the balloon bill as follows: In the first whereas clause, change support "to" to support "of". Representative Gomez seconded the motion. The motion carried.

Representative Heinemann made a motion that in the third change set out on the balloon bill, in the fourth whereas clause, the Korean War be placed before the Vietnam War. Representative Everhart seconded the motion. The motion carried.

Representative Everhart made a motion that SCR 1612 be passed as amended. Representative Sebelius seconded the motion. The motion carried.

The Chairman called for consideration of the minutes of the meetings of February 25, 26, 27, and 28, 1991.

Representative Rock made a motion that the minutes be approved as submitted. Representative Everhart seconded the motion. The motion carried.

The Chairman called for hearing of SB 405, when autopsies are performed.

Representative Eugene P. Amos appeared in support of SB 405. (See Attachment # 2). Representative Amos distributed written testimony from J. Michael Boles, M.D., Coroner, 10th Judicial District. (See Attachment # 3) and from Alan C. Hancock, M.D., President, Kansas Coroner's Association (See Attachment # 4).

There were no committee questions.

Senator Norma Daniels appeared in support of SB 405. Senator Daniels said it is extremely important that this action of a coroner not be impeded; that the coroner should be able to conduct his business without obstruction; that due to the high cost of autopsies, coroners do not order them unless absolutely necessary to determine the cause of death.

Committee questions followed.

Chip Wheelen, representing the Kansas Medical Society, appeared in support of SB 405. (See Attachment # 5). Mr. Wheelen said he would not favor amending SB 405 at this time but would request the bill be passed as amended by the Senate Committee.

There were no committee questions.

There being no further conferees, the hearing on SB 405 was closed.

The Chairman called for action on SB 405.

Representative Snowbarger made a motion that SB 405 be passed. Representative Scott seconded the motion. The motion carried.

The meeting adjourned at 1:10 P.M. No future meetings are scheduled.

Senate Concurrent Resolution No. 1612

By Committee on Federal and State Affairs

1-30

carefully balance the desires of many to protect the American Flag from desecration against the important freedoms of speech and religion guaranteed in the Constitution

and further symbolizes the rights Americans have fought for, died for and cherished under the constitution

WHEREAS, Kansans have a long history of patriotism and of support to the Constitution and the American Flag; and

WHEREAS, In the early days of Statehood, Kansans were selective of a Constitution because of the slavery issue; and

WHEREAS, Many Union Army veterans came to Kansas because of Kansas being a free state by popular vote prior to the Civil War; and

WHEREAS, Kansans, in disproportionate numbers, have fought in the Spanish-American war, World War I, World War II, the Vietnam war and the Korean war. Kansas also sent two critical units to the Persian Gulf in support of freedom; and

WHEREAS, Kansans hold dear the right to effect peaceful change through political means, such as giving women the right to vote, an issue early decided in Kansas; and

WHEREAS, Kansans are careful and deliberate people who possess a deep respect for human rights, freedom, the democratic process and our republican form of government with its built-in checks and balances; and

WHEREAS, Kansans are deeply concerned and want Congress to protect the Constitution as well as our national symbols; and

WHEREAS, Kansans have often taken a leadership role in working to preserve our form of government and the rights guaranteed to individuals therein; and

WHEREAS, The framers of the Constitution created the First Amendment to discourage the oppression of the views expressed by unpopular minorities; and

many feel

WHEREAS, Several states have passed or are considering resolutions urging Congress to submit a constitutional amendment which would allow the Congress and States to punish as a crime desecration of the American flag even though the controlling Supreme Court cases, United States v. Eichman and Texas v. Johnson, and the changes in the composition of the Supreme Court leave room for statutory approaches

9 A CONCURRENT RESOLUTION urging Congress to propose, for
10 ratification by the states, a U.S. constitutional amendment au-
11 thorizing Congress and the states to prohibit desecration of the
12 United States Flag and burning of the Cross and other Religious
13 Symbols

14
15 WHEREAS, The United States Supreme Court has held that the
16 burning of the American Flag is a protected form of free speech
17 under the First Amendment of the United States Constitution; and

18 WHEREAS, The American Flag has served as a rallying force for
19 American fighting men from Yorktown to Khe Sanh and the Persian
20 Gulf; and

21 WHEREAS, Millions of Americans hold the American Flag in
22 deep reverence, as evidenced by the fact that Flag desecration was
23 prohibited by an act of Congress and by the laws of 48 of the 50
24 states; and

25 WHEREAS, The American Flag symbolizes the ideas of liberty
26 and equality and what our nation is and what it values; and

27 WHEREAS, No other American symbol has been as universally
28 honored as the American Flag; and

29 ~~WHEREAS, Kansans find the desecration of the American Flag~~
30 ~~to be highly offensive and are appalled by the Supreme Court's~~
31 ~~decision allowing this type of repugnant behavior to go unpunished;~~
32 ~~and~~

33 WHEREAS, Kansans believe that the right to express displeasure
34 with government is a cherished right protected by the First Amend-
35 ment; however, the Flag represents the ideals and beliefs of the
36 nation and Kansans believe that the desecration of the American
37 Flag is an atrocious act which should be prohibited; and

38 ~~WHEREAS, The Cross and other Religious Symbols represent the~~
39 ~~ultimate personal beliefs of members of many religious sects; and~~

40 ~~WHEREAS, Many citizens of this state regard the Cross or other~~
41 ~~Religious Symbols as sacred objects embodying a holy supreme being;~~
42 ~~and~~

43 ~~WHEREAS, The burning of a Cross or other Religious Symbols~~

HJUD
Attachment #1
4-11-91

1-2

1 ~~is often done to intimidate or harass members of racial, religious or~~
2 ~~ethnic minorities; and~~

3 ~~WHEREAS, The burning of Religious Symbols is abhorrent,~~
4 ~~whether intended as a display of disdain for others' religious beliefs~~
5 ~~or as an act of terrorism against American minority citizens, and~~
6 ~~should be prohibited:~~ Now, therefore,

7 *Be it resolved by the Senate of the State of Kansas, the House of*
8 *Representatives concurring therein:* That the Legislature urges the
9 Congress of the United States to ~~propose an amendment to the~~
10 ~~United States Constitution, for ratification by the states, specifying~~
11 ~~that Congress and the states shall have the power to prohibit the~~
12 ~~physical desecration of the Flag of the United States and burning~~
13 ~~of the Cross or other Religious Symbols;~~ and

14 *Be it further resolved:* That the Secretary of State be directed
15 to send enrolled copies of this resolution to the Speaker of the United
16 States House of Representatives, the President of the United States
17 Senate and all members of the congressional delegation from the
18 State of Kansas.

,if it finds that flag desecration is a serious problem and that existing means of combating it are inadequate, to carefully balance the desires of many to protect the American Flag from desecration against the important freedoms of speech and religion guaranteed to the Constitution; and to not sacrifice central First Amendment principles, and to preserve the values and basic constitutional rights that the American people have long fought for under the American Flag

STATE OF KANSAS

EUGENE P. "GENE" AMOS
REPRESENTATIVE, EIGHTEENTH DISTRICT
SHAWNEE, LAKE QUIVIRA
AND WESTERN LENEXA
5925 BLUEJACKET
SHAWNEE, KANSAS 66203
(913) 631-8118



TOPEKA

HOUSE OF
REPRESENTATIVES

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JOINT COMMITTEE ON HEALTH CARE
DECISIONS FOR THE 1990s

April 11, 1991

TO: Representative John Solbach, Chairman
House Judiciary Committee
FROM: Representative Gene Amos *GPA*
RE: SB 405

Less than a month ago, the District Coroner of Johnson County, Dr. J. Michael Boles, was prevented, by court action, from conducting an autopsy to determine the cause of death of a 34-year old man with unusual circumstances.

For many years as a funeral director, I was under the impression that the coroner could perform an autopsy on bodies who died unexpectedly and not under the medical care of a physician.

The coroner should be able to have an autopsy if in his professional opinion, one should be conducted. Many times they will follow up the medical history of the deceased and sign the death certificate if there are not unusual circumstances and not do an autopsy.

I have written testimony to be passed out to the committee from Dr. Boles and Dr. Alan Hancock, Coroner of Wyandotte County.

I would urge the committee to pass SB 405 out favorably.

Thank you.

*Attachment # 2
4-11-91*

J. MICHAEL BOLES, M.D.
5949 NIEMAN RD.
SHAWNEE, KANSAS
631-1300

March 29, 1991

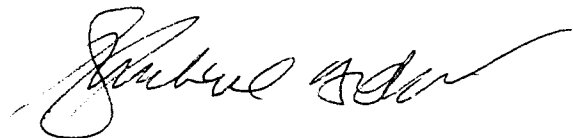
Honorable Gene Amos
State Representative
State Capital Building
Room 174 W
Topeka, Kansas

Dear Gene:

I am sorry that the responsibilities of my medical practice will not allow me to testify at the hearing on the proposed changes in the Coroner's Law which you have told me is scheduled for April 2, 1991.

As you know, we have had a recent successful court challenge to our right to order an autopsy in the case of an unattended death. It was the feeling of this office that a postmortem examination was necessary to determine the cause of death with a reasonable degree of certainty since the subject was in his early 30's and had had no antecedent medical history. However, a restraining order was issued by a Johnson County Judge on the basis of his interpretation of the Coroner's Law which states "If in the opinion of the Coroner it is advisable and in the public interest that an autopsy be made" then an autopsy shall be performed. The judge in this case felt that although the cause of death could not be accurately determined, that an autopsy would not be in the public interest.

It is the duty of the coroner to determine the cause of death beyond a reasonable doubt. I would like you to point out to the committee that if the Coroner's office is shackled by this type of restriction then it is quite possible for homicide to go undetected. It is the result of the autopsy in many cases, which prompts law enforcement to look into the circumstances surrounding the death more closely. In the Tenth Judicial District we perform autopsies on approximately 20 to 25% of the deaths we investigate. If there is any way to reasonably determine the cause from the circumstances without a full autopsy then this is done. In my opinion the portion of the law which refers to the public interest should be deleted.



J. Michael Boles, M.D.
Coroner
Tenth Judicial District

Attachment # 3
4-11-91

Dear Mr. Amos,

4/10/71

I am writing in support of Senate Bill No. 405

It is my opinion that KSA 22a233 which states "If, in the opinion of the coroner, it is advisable and in the public interest that an autopsy be made....." allowed the coroner to decide if an autopsy was desirable or in the public interest. Apparently others have taken a different view.

Since the coroner is required to sign the death certificate and include his opinion as to the cause and manner of death, he should be allowed to use all the investigative tools available to him whenever he feels that they are needed. To allow the deceased's family to block an autopsy may well allow a suicide or homicide to remain undetected. I believe that the coroner is the person most qualified to determine the necessity if an autopsy and it would be unreasonable to require the coroner to certify the cause and manner of death if he felt that an autopsy was needed and was prevented from having one performed.

If there is a question of accountability, I would point out that the coroner is appointed by the district judges of the judicial district in which he serves. This is appropriate because the coroner's evidence is presented most often in district court. If the judges feel that his performance is substandard, they can replace him. Also, I believe that the coroners take their responsibility seriously and are not likely to order an autopsy without good reason.

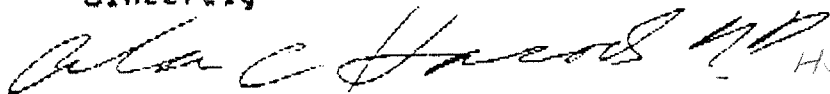
There is another problem with this statute that I would like to see corrected at the same time. The present statute requires the coroner in the district where a death occurred to decide if an autopsy is needed and, if needed, to order it while requiring the coroner in the county where the cause of death occurred to pay for it.

The county in which the cause of death occurred is normally the county in which the investigation will take place. By making the coroner in that district responsible for the autopsy, continuity of the investigation will be improved. Also, in the interest of fairness, the coroner who is required to pay for the autopsy should be the one to decide whether or not it is needed. Also, Missouri has amended their statute and now considers the coroner in the jurisdiction where the cause of death occurred to be responsible for certification of death. Under their statutes a homicide victim who was shot in Missouri and taken to a Kansas emergency room where he was found dead on arrival or died shortly thereafter should be returned to Missouri for autopsy and vice versa. The Kansas coroners have no statutory authority to do this.

If Senate Bill 405 were amended to read "If, in the opinion of the coroner of the jurisdiction in which the cause of death occurred, an autopsy to determine the cause of death should be made....." these problems would be solved.

This second change was discussed in the coroner's association meeting last year and all present agreed that this change should be made

Sincerely

 HJVO

Alan C. Hancock M. D.
President, Kansas Coroners Association

4-11-91
Attach. #4

Attachment #4



KANSAS MEDICAL SOCIETY

1300 Topeka Avenue • Topeka, Kansas 66612 • (913) 235-2383
Kansas WATS 800-332-0156 FAX 913-235-5114

April 9, 1991

TO: House Judiciary Committee

FROM: Kansas Medical Society

A handwritten signature in cursive script, appearing to read 'Myra A. Geelen', written over the 'FROM:' line.

SUBJECT: Senate Bill 405; Autopsies

Thank you for this opportunity to express our support for SB 405. This bill was amended by the Senate Committee (at our request) to allow district coroners more discretionary authority. We believe that determination of when an autopsy should be performed should be a reflection of the clinical judgement of the physician appointed by the district judges to make such decisions. We respectfully request that you recommend SB 405 for passage.

/cb

HJUD
Attachment # 5
4-11-91