

Approved 2-19-91
Date

MINUTES OF THE Senate COMMITTEE ON Federal and State Affairs

The meeting was called to order by Sen. Edward F. Reilly, Jr. at
Chairperson

11:00 a.m./~~XX~~ p.m. on February 14, 1991 in room 254-E of the Capitol.

All members were present ~~XXXXX~~

Committee staff present:

Mary Galligan, Legislative Research Department
Mary Torrence, Office of Revisor of Statutes
Deanna Willard, Committee Secretary

Conferees appearing before the committee:

Nancy Lindberg, Assistant to the Attorney General
Charles Simmons, Department of Corrections
Charles Yunker, State Adjutant, Kansas American Legion
Lee Stolfus, Past Commander, Kansas American Legion
U. S. "Udie" Grant, National Executive Committeeman, American
Legion
Jeanne Littell, Manhattan

Nancy Lindberg presented requests for bill introductions.

1) A clean up of the consumer protection act. Cleans up definitions and makes it easier for private attorneys to enforce. She will provide a copy of the request to the revisor.

2) Amend language regarding charities so that those which receive contributions in excess of \$100,000 rather than \$10,000 would be required to register with the Secretary of State. The Secretary of State supports the bill. The enforcement would remain the same. (Attachment 1)

3) An act concerning default proceedings before administrative agencies conducted under the Kansas Administrative Procedures Act; amending K.S.A. 77-520 and repealing the existing section. This bill would clarify the right of parties who seek to vacate a proposed default order. (Attachment 2)

A motion was made by Senator Morris and seconded by Senator Strick that the three bills be introduced. The motion carried.

Hearing on: SB 151 - concerning controlled substances; relating to the forfeiture of property.

Mr. Chuck Simmons, Department of Corrections, presented testimony on behalf of Secretary Davies. This bill would add the DOC to the other state agencies included in the special asset forfeiture fund. (Attachment 3)

Mr. Simmons said this could apply to property of an employee who was smuggling contraband unto the grounds.

There was a question as to whether cities and counties also put proceeds into the fund that is administered by the Attorney General. Nancy Lindberg will provide that information to the committee.

It was requested that staff determine if these funds are--or could be--considered a source of revenue to meet normal operating expenses.

Mr. Simmons said there would be no problem in having this take

the speaker's individual remarks as reported herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Federal and State Affairs,
room 254-E, Statehouse, at 11:00 a.m./~~p.m.~~ on February 14, 1991.

effect upon publishing in the State Register.

Hearing on: SCR 1612 - urging Congress to propose a constitutional amendment prohibiting desecration of the flag.

A letter was presented to the committee members from Attorney General Robert Stephan saying that he does not believe it is necessary in the exercise of our freedom to destroy property nor that anyone should have the right to desecrate the American flag and urging passage of the resolution. (Attachment 4)

Testimony was presented by Mr. Charles Yunker, Kansas American Legion, in support of SCR 1612. (Attachment 5) Attached to his testimony was a list of 401 organizations in Kansas who support an amendment to protect the flag from desecration. A similar list was included with the minutes on January 29, 1991. A copy of the updated list is on file in the office of the Chairman of the Federal and State Affairs Committee.

Mr. Lee Stolfus, Kansas American Legion, gave testimony in support of SCR 1612 suggesting that the value of any expression in burning our flag is greatly outweighed by the offense it creates, especially to the hundreds of thousands of American service personnel. (Attachment 6)

Mr. U. S. "Udie" Grant, National American Legion, gave testimony in support of SCR 1612 saying the flag is the symbol of this country and needs to be protected by law and that Kansas has the opportunity to be one of the first to endorse this resolution. (Attachment 7) He stressed that the people would have the opportunity to vote on an amendment; that it would have to be ratified by the state.

Mrs. Jeanne Littell, Manhattan, Kansas, spoke in opposition to SCR 1612 saying that we have fought to maintain freedom of speech and expression. (Attachment 8) She continued that protestors are very creative and that they would just find other ways to protest, and our constitution would have been tampered with. She doesn't know if it's a widespread problem.

A committee member commented that the old law wasn't effective; the fact that it was against the law gave more reason for a protestor to burn a flag.

A committee member asked if it would be more effective to have individuals write their Congressman rather than urging Congress to act through this resolution. Mr. Yunker said that this method was effective in getting Veteran's Day changed back to November 11. National leaders have said this is the only way the matter will be brought up again.

There was discussion of the flag protection act, what penalties there were--perhaps fines, threats of imprisonment. Staff was asked to provide that information.

The minutes of the February 12, 1991, meeting were approved.

The meeting was adjourned at 12:00 noon.

00001 ATTORNEY GENERAL'S LEGISLATIVE PROPOSAL
00002
00003
00004 CHANGE IN CHARITABLE ORGANIZATION REGISTRATION
00005
00006
00007 Exemptions from registration
00008
00009 17-1762(d) Amend
00010
00011 Any charitable organization which does not intend to solicit
00012 and receive and does not actually receive contributions in excess
00013 of \$10,000 \$100,000 during such organization's tax period, as
00014 defined by K.S.A. 17-7501 and amendments thereto, if all of such
00015 organizations fund-raising functions are carried on by persons who
00016 are unpaid for such services. However, if the gross contributions
00017 received by such charitable organization during any such tax period
00018 is in excess of \$10,000 \$100,000, such organization, within 30 days
00019 after the end of such tax period, shall register with the Secretary
00020 of State as provided in K.S.A. 17-1763 and amendments thereto.

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_____ Bill No. _____

AN ACT concerning default proceedings before administrative agencies conducted under the Kansas administrative procedures act; amending K.S.A. 77-520 and repealing the existing section.

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

Section 1. K.S.A. 77-520 is hereby amended to read as follows: 77-520. (a) If a party fails to attend or participate in a prehearing conference, hearing or other stage of an adjudicative proceeding, the presiding officer may serve upon all parties written notice of a proposed default order, including a statement of the grounds.

(b) Within seven days after service of a proposed default order, the party against whom it was issued may file a written motion requesting that the proposed default order be vacated and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the presiding officer may adjourn the proceedings or conduct them without the participation of the party against whom a proposed default order was issued, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings.

(c) ~~Unless vacated by the presiding officer, the~~
The proposed default order shall become effective after
expiration of the time within which the party may file a
written motion under subsection (b) ~~unless a written~~
motion to vacate the order is timely filed with the agency.

Upon receipt of a motion to vacate a proposed default order, the presiding officer shall either vacate the proposed order or issue the default order as proposed. If the presiding officer issues a default order as proposed, the order shall become effective upon service.

(d) After a default order becomes effective, the presiding officer shall conduct any further proceedings necessary to complete the adjudication without the participation of the party in default and shall determine all issues in the adjudication, including those affecting the defaulting party. The presiding officer in lieu of determining the issues affecting the defaulting party may, unless otherwise prohibited by law, dismiss such party's application for an adjudicative proceeding.

Section 2. K.S.A. 77-520 is hereby repealed.

Section 3. This act shall take effect and be in force from and after its publication in the Kansas Register.

STATE OF KANSAS



DEPARTMENT OF CORRECTIONS

OFFICE OF THE SECRETARY

Landon State Office Building
900 S.W. Jackson—Suite 400-N
Topeka, Kansas 66612-1284
(913) 296-3317

Joan Finney
Governor

Steven J. Davies, Ph.D.
Secretary

To: Senate Committee on Federal and State Affairs

From: Steven J. Davies, Ph.D.
Secretary of Corrections *Steven J. Davies*

Re: Senate Bill No. 151

Date: February 14, 1991

The amendment of K.S.A. 1990 Supp. 65-4173 proposed in S.B. 151 would add the Department of Corrections to the other state agencies (Kansas Bureau of Investigations and Kansas Highway Patrol) included in the special asset forfeiture fund.

This fund involves proceeds obtained from forfeiture proceedings of property utilized in illegal transactions involving controlled substances. Current law provides that proceeds of such forfeitures, after deduction of certain costs, be deposited to the KBI or KHP special asset forfeiture fund, if one of those agencies was the agency to which the property was forfeited.

S.B. 151 would add the Department of Corrections as an agency for this fund.

The special asset forfeiture fund is administered by the Attorney General. Proceeds in the fund may be expended by the agency originating the forfeiture to defray the costs of protracted or complex investigations, provide additional technical equipment or expertise, provide matching funds to obtain federal grants, or for such other law enforcement purposes as the Attorney General deems appropriate.

The Department of Corrections is involved in controlling the introduction of contraband substances into correctional facilities. In addition, the supervision of parolees involves efforts to control illegal drug use or transactions. From time to time Department personnel are involved in incidents where individuals involved in such incidents are apprehended or certain assets are

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seized. When such incidents result in property forfeitures, the Department is proposing that the funds be credited to the special asset forfeiture fund to be used by the Department of Corrections for purposes authorized in the statute.

Participation by the Department of Corrections would not impact the KBI or the KHP because the Department would only have access to funds where the DOC originated the forfeiture. The fund would still be administered by the Attorney General.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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

ROBERT T. STEPHAN
ATTORNEY GENERAL

February 14, 1991

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

Senator Edward Reilly, Jr.
Chairperson, Senate Federal and State Affairs Committee
State Capitol, Room 255-E
Topeka, Kansas 66612

RE: Senate Concurrent Resolution 1612

Dear Senator Reilly:

Many people have been concerned about the U.S. Supreme Court decision that allows desecration of the flag of the United States of America. I know you agree with me that we must protect the rights of the people of our nation, but I do not believe it is necessary in the exercise of our freedom to destroy property. I do not believe anyone should have the right to desecrate the American flag.

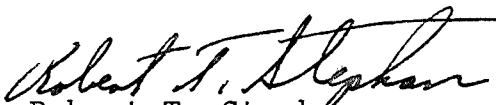
Millions of men and women of the Armed Forces of the United States have fought valiantly and died to protect, for future generations, this sacred symbol of nationhood. Protecting the flag will not cut down on anyone's right of expression or anyone's right to participate in the governmental process.

In 1989 I proudly joined with the Kansas American Legion Commander Jack Chiappetti in initiating a statewide petition drive to encourage our Congressional delegation to support a constitutional amendment which would protect the integrity and dignity of the flag of the United States of America.

Today, I ask you and the Kansas Senate Federal and State Affairs Committee to pass Senate Concurrent Resolution 1612 which also urges Congress to propose a U.S. Constitutional amendment authorizing Congress and the states to prohibit desecration of the United States Flag.

Thank you for your consideration.

Very truly yours,


Robert T. Stephan
Attorney General

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STATEMENT IN SUPPORT OF
SENATE CONCURRENT RESOLUTION 1612
presented to the
SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
by CHARLES M. YUNKER, STATE ADJUTANT
THE KANSAS AMERICAN LEGION
FEBRUARY 14, 1991

Thank you for allowing me the opportunity to appear before you today in support of Senate Concurrent Resolution 1612 which calls upon Congress to propose an Amendment to the United States Constitution, for ratification by the states, to empower Congress and the States the authority to prohibit the physical desecration of the Flag of the United States.

On June 21, 1989 the U.S. Supreme Court overturned the Texas vs. Johnson case stating that desecration of the Flag was protected under the Freedom of Speech provision of the First Amendment. On June 23, 1989, Kansas Attorney General Bob Stephan joined with The American Legion in a call for a Constitutional Amendment to protect the Flag. That action resulted in over 35,000 Kansans signing petitions, which along with over 1 million other petition signatures from across America, were presented to Senators Bob Dole (KS) and John Warner (VA), and Congressmen Jerry Solomon (NY) and Chuck Douglas (NH) on August 31, 1989.

That October, the Flag Protection Act of 1989 was passed by Congress and it was subsequently overturned by the Supreme Court in 1990 thus leaving the majority of Americans, those who felt the Flag should be protected from desecration, with no choice but to work for an amendment to the Constitution. Indeed, The American Legion feels such action was invited by Justices Kennedy and Brennan, both of whom voted with the majority in the Texas vs Johnson case. Justice Kennedy wrote:

"Sometimes we must make decisions we do not like. We make them because
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they are right, right in the sense that the law and Constitution compel the decision." Further Justice Brennan wrote: "There is moreover, no indication either in the text of the Constitution or in our cases interpreting it, that a separate juridical category exists for the American Flag."

However the Leadership in Congress has indicated Congress would not act upon this issue again unless the overwhelming majority of states request that Congress do so. Almost every American Legion state organization submitted a resolution in support of a Constitutional Amendment during our 1990 National Convention in August. With that in mind, the National organization of The American Legion declared a Constitutional Amendment to protect the Flag as the Legion's number one priority.

In October 1990 the Legion brought leaders from every state together at our National Headquarters to form grass roots "Flag Action Teams" whose task it is to seek memorializing resolutions from their respective legislative bodies. Thus our purpose for appearing before you today.

The American Legion is not alone in our quest for a Constitutional Amendment; as far back as 1989, the National Jaycees organization endorsed the idea of a Constitutional Amendment to protect the Flag. The Knights of Columbus passed a similar resolution during their 1990 National Convention and the Daughters of the American Revolution have indicated their support. Likewise every candidate appearing during our Gubernatorial Candidate Forum in Wichita last May, including Governor Mike Hayden and now Governor Joan Finney, spoke out in favor of a Constitutional Amendment to protect the flag.

Every poll taken regarding this issue has shown overwhelming support for a Constitutional Amendment. Those same polls have indicated the majority of Americans do not feel such an amendment would infringe on their First Amendment Rights. We do not seek to change the First Amendment; we merely seek to add the 27th Amendment to the Constitution. When writing the Constitution its authors, knowing full well that they could not address every test to be put to the Constitution, allowed for changes. That is why we have the Bill of Rights today; the first ten amendments. The Constitution has been amended twenty-six times to reflect society's wishes; what it feels is right and what it feels is wrong. The Eighteenth and Twentieth Amendments are but two examples of society's desire for change to mirror what the majority of Americans felt was right or wrong. Prior to June 21, 1989 forty eight states including Kansas and the Federal government had passed flag desecration statues.

Attached to this testimony is a list of 401 organizations and bodies of government in Kansas who support an amendment to protect the Flag from desecration. Each has forwarded a resolution to our office urging your support with more arriving daily. I have those resolutions with me today for your inspection if you wish to do so.

Again thank you for allowing me to appear before you today in support of SCR 1612.

Respectfully submitted by,



Charles M. Yunker
State Adjutant
The American Legion

SENATE HEARING ON
SENATE CONCURRENT RESOLUTION NO. 1612
by LEE STOLFUS, PAST COMMANDER
KANSAS AMERICAN LEGION
FEBRUARY 14, 1991

I am Lee Stolfus from Emporia and a past State Commander of The American Legion. Thank you for allowing me the privilege to address you today in support of the Senate Concurrent Resolution No. 1612.

I would like to add to the American Legion's testimony already submitted. Our freedoms and our liberties in this country have never been absolute. We have always had to weigh our right to do things based upon the effects our actions have on others. There are limits in regard to indecent exposure, obscenity, words which constitute "fighting words," words which constitute libel, slander, threats and so on.

What was really expressed by the burning of the flag in the case of Texas vs Johnson? In our view really nothing was expressed. They were allowed to say and do anything, whatever they wanted to before they burned the flag. The only reason why they burned our flag was to bring attention to themselves. Had they instead of burning the flag, indecently exposed themselves they would have been immediately arrested and we suggest that conviction would have stood. Why? Because it was offensive to the people and our society has decided through its laws, that they are not going to put up with that sort of conduct. We suggest that the value of any expression in burning our flag is greatly outweighed by the offense it creates and the slap in the face that it give to the hundreds of thousands of American Service Personnel, veterans and those who gave their

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lives while serving this great nation. The law needs to be changed and it needs to be changed by a Constitutional Amendment.

For someone to argue that there would be inadequate means of expressing oneself in this country without burning the flag would be similar to someone saying that there is not enough sand in the desert or stars in the sky.

We have corresponded with approximately 3,000 of our soldiers now serving in Saudi Arabia and many have expressed their support for a ban on flag burning.

From the Revolutionary War to Desert Storm, our flag has been the world's symbol of freedom. We ask that our flag be kept free from desecration.

Thank you.

Respectfully submitted by,

Lee Stolfus, Past State Commander
Kansas American Legion

STATEMENT IN SUPPORT OF
SENATE CONCURRENT RESOLUTION 1612
presented to the
SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
by U.S. "UDIE" GRANT
NATIONAL EXECUTIVE COMMITTEEMAN
THE AMERICAN LEGION

I am U. S. "Udie" Grant National Executive Committeeman for Kansas. Thank you Senator Reilly, for the opportunity to appear this morning in support of Senate Concurrent Resolution No. 1612.

The American Legion is an organization of War Time Veterans. The Legion has a membership of over 3 million, a 42 year high, an Auxiliary of 1 million members for a total of over 4 million members with over 16,000 Posts.

The flag desecration bill is a priority of the National Organization of The American Legion. We believe the people of the grass roots level should be heard. That the people have an opportunity to vote on a clean resolution without any amendments.

This amendment to the Constitution, which would be the 27th, would not infringe on any rights granted under the 1st Amendment.

There are laws now that prohibit the desecration of mail boxes, the money in your pocket or to defame any of our National Historical Buildings.

When we recite the Pledge of Allegiance to the Flag, what do we say? "I pledge allegiance to the flag of the United States of America, and to the Republic for which it stands."

My granddaughter 7 years old was at our house the other evening and she found a flag I had. She came marching through the house

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waving the flag. I asked her what does the flag mean to you. Immediately she said America! Again I asked her what does America mean Freedom! was her reply.

The flag is the symbol of this country and need to be protected by law. The American Legion is the leader in supporting the flag desecration bill. We are willing to spend our time, our talents and our money to accomplish our objective.

Kansas has to opportunity in this session of the legislature to be the leader. To be the first or at least one of the first to endorse this resolution. With your support and wisdom the Kansas Legislature will be a leader among all the state legislatures.

Thank you for your continued support.

Respectfully submitted by

U. S. "Udie" Grant
National Executive Committeeman
Kansas American Legion

January 29, 1991

2301 Willow Lane
Manhattan, Kansas 66502
(913) 776-3250

Dear Kansas Legislator,

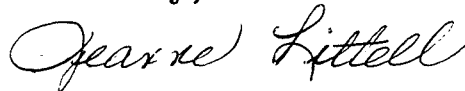
I am a fifty four year old female. I am politically a moderate, proud of my country, American flag and friends who serve it. I have lost family and friends serving our country in time of war and conflicts. When I see the American flag and hear the "Star-Spangled Banner" I get a lump in my throat and a warm feeling of pride and security overwhelms me.

The war with Iraq is a very emotional time and issue for all of us. However, we must not lose sight of what we as Americans represent. We have fought for ourselves and other countries to maintain freedom of speech and expression. Freedom of speech and expression was one of President Franklin D. Roosevelt's "Four Freedoms" in a speech he delivered over fifty years ago.

To use a paraphrase taken from the Topeka Capital-Journal. "If... people abandon some small feature of their constitution, next time they will with an easier mind tamper with some other and slightly more important feature, until in the end they tamper with the whole structure (Aristotles Politics.)"

Please see the attached Page two.

Sincerely,



Jeanne Littell

Inc. 1
cc. Joan Finney, Governor
Bob Dole, U.S. Senator
Nancy Landon Kassebaum, U.S. Senator
Jim Slattery, U.S. Congressman
Pat Roberts, U.S. Congressman
Dick Nichols, U.S. Congressman
Jan Meyers, U.S. Congressman
Dan Glickman, U.S. Congressman

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Flag resolution passed

MANHATTAN — Riley County Commissioners here passed a resolution supporting a constitutional amendment to protect the American flag from desecration.

The resolution had been presented to the commission several weeks ago by Manual Houghton, commander of American Legion Post 17. The three-man commission passed the resolution Thursday by a 2-to-1 margin, according to secretary Cindy Cox.

The resolution requests the Kansas Legislature approve a resolution urging Congress to propose a constitutional amendment to prohibit physical desecration of the flag. The resolution criticizes this year's Supreme Court ruling that flag burning is legal.

