

Approved: 14 June 1991  
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Senator Wint Winter Jr. at

10:05 a.m. on March 25, 1991 in room 514-S of the Capitol.

All members were present except: Senator Petty who was excused.

Committee staff present:

Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department  
Gordon Self, Office of Revisor of Statutes  
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:

Kyle Smith, Assistant Attorney General  
Ben Coates, Kansas Sentencing Commission

Chairman Winter called the meeting to order by returning the Committee's attention to SB 287 to receive new information.

SB 287 -unlawful acts of individuals infected with human immunodeficiency virus.

A letter from the Attorney General responding to the committee's inquiry on SB 287 was shared with the committee. (ATTACHMENT 1)

The Chairman reviewed Professor Tonkovich's opinion that the revised criminal code, stated in SB 358, amendments to the Kansas criminal code, would probably meet the federal requirement but he wanted to research the topic in more detail. It was the consensus of the Committee that, due to the July, 1992 effective date of the "Ryan White Act," SB 287 should be held in Committee until the 1992 Legislative Session.

Chairman Winter asked staff to draft a letter to the Kansas Department of Health and Environment requesting them to consult with Professor Tonkovich and Attorney General Stephan to determine the requirement for Kansas to be in compliance with the new federal mandate, reporting back to both the interim committee and the standing committee at the beginning of the 1992 Legislative Session.

Chairman Winter turned the Committee's attention to SB 234.

SB 234 - enacting the athletic association procedures act.

A copy of a news item regarding the National Collegiate Athletic Association (NCAA) was distributed to the Committee. (ATTACHMENT 2)

It was noted by staff that SB 234 would apply to the relationship of all who hold membership in the NCAA, regardless of which state they were located in. With no severability clause, it affects all schools and obviates the problem of different standards for schools in different states; each school would have equal protection of due process.

Senator Feleciano moved to recommend SB 234 favorable for passage with technical amendments as needed. Senator Kerr seconded the motion. The motion carried.

The Committee returned its attention to SB 382.

SB 382 - enacting a presumptive sentencing guidelines system.

Using the listing of policy issues prepared by staff as a guide, the committee discussed whether drug crimes should be treated as proposed in SB 382. (see minutes of March 22, 1991, attachment 2)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 514-S, Statehouse, at 10:05 a.m. on March 25, 1991.

Kyle Smith, Assistant Attorney General, reviewed the federal sentencing guidelines structure and offered examples of differentials in both drug quantity and type.

Ben Coates, Executive Director of the Kansas Sentencing Commission, outlined problems of projecting situations that have little historical record and their limited compute capabilities. The existing data would require an inordinate amount of computer time to project and draw conclusions. He added that the Commission discussed the drug involvement situations and he concluded that it seems justifiable to differentiate between possession and selling.

Mr. Coates further outlined the Oregon example of using "border boxes" that are discretionary to the judges and non-appealable. However, he added that the Commission expressed their position as against the use of "border boxes". The consensus of the Committee was that the drug grid of SB 382 required adjustments.

Senator Martin moved to conceptual amend SB 382 to apply differently to drug crimes so they fall under a border box theory if without previous convictions, giving judges discretion for either incarceration of other type of treatment; using federal guideline criteria for court to consider when moving to the border boxes; for meeting criteria before border box, judge has second set of criteria for subjective sentencing. Senator Bond seconded the motion.

Chairman Winter requested the Committee's Revisor, Gordon Self, get together with Kyle Smith, Assistant Attorney General and Ben Coates of the Kansas Sentencing Commission, to draft language for the amendment before the Committee considers action on the motion.

Following further Committee discussion on the drug grid, the Chairman requested Gordon Self, Kyle Smith and Ben Coates work together to compile the specific options discussed by the Committee for their consideration.

The meeting was adjourned.





STATE OF KANSAS

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March 20, 1991

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The Honorable Wint Winter, Jr.  
State Senator, 2nd District  
Chairman, Senate Judiciary Committee  
State Capitol, Room 120-S  
Topeka, Kansas 66612

Dear Senator Winter:

Pursuant to your letter of March 18, 1991, I have reviewed the federal requirements of the Ryan White Care Act, K.S.A. 21-3414, which defines the crime of aggravated battery and Senate Bill No. 287.

You ask whether aggravated battery as presently defined is broad enough to include the type of behavior defined as criminal in Senate Bill No. 287. In my opinion it would not. Neither can I locate any other Kansas statute within the criminal code which would proscribe as criminal behavior that which is defined in Senate Bill No. 287. Therefore, it is my opinion that the state of Kansas is not in compliance with the federal requirements of the Ryan White Care Act.

I hope this informal opinion is sufficient. However, please contact me if you need any additional information.

Very truly yours,

ROBERT T. STEPHAN  
Attorney General of Kansas

RTS:CN:bas

*Senate Judiciary Committee*  
3-25-91  
*Attachment 1*

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^BC-BKC--Byers-Tarkanian, Adv23-24,0845<

^For Release Weekend Editions, March 23-24, and Thereafter.<

^Eds: A version also moved on national circuits<

^By DOUG TUCKER=

^AP Sports Writer=

KANSAS CITY, Mo. (AP) - Who has been the most influential person in college sports the past 10 years?

The answer, considering the source, seemed odd.

''Jerry Tarkanian,'' said Walter Byers. ''Through the latter part of the 1980s and now into the '90s, Tarkanian has had a bigger impact on intercollegiate athletics than anybody else. If UNLV goes on now to win a second straight NCAA championship, it will only underscore that fact.''

Byers, who retired in 1987 after 36 years as the NCAA's executive director, said the long conflict with the UNLV coach has left ''a legacy that could haunt the NCAA in the future.''

''People can decide for themselves whether his impact has been good or bad,'' Byers said in an interview. ''I was on the opposing side to him for most of the past decade. The facts are, however, that he has brought into question the ability of the NCAA to govern college athletics.''

Even when the NCAA won a 5-4 decision over Tarkanian in the U.S. Supreme Court in 1988, Byers said, ''it was a pyrrhic victory.''

''It opened up action by state legislatures such as we're seeing now in Nebraska and Nevada and Florida (where there have been challenges to the NCAA's right to restrict spending and scholarships), and took away the NCAA's ability to get cases on issues such as due process settled in the federal courts. The Supreme Court said the NCAA is not subject to suit on federal due process laws in either state or federal court. It said the Tarkanian case should be reconciled in Nevada. The NCAA now is subject to due process challenges in state courts under state due process laws.

''As a result,'' Byers added, ''the NCAA is going to face new challenges by state legislators and civil rights activists and this could become a real threat to the NCAA.

''He can't say he won the case. He lost the case. But he has set up the NCAA for new challenges.''

NCAA officials, including Byers' successor Dick Schultz, are saying state legislatures might cause their schools to become disqualified from NCAA membership, or from competing in NCAA championships.

*Senate Judiciary Committee*

*3-22-91*

*Attachment 2*

"I don't believe they can meet this problem by simply saying we'll kick Nebraska out of the NCAA, or if any other state legislature does it we'll dismiss their schools from the NCAA," Byers said. "That doesn't answer the problem and that does not end the threat."

Another part of the Tarkanian legacy, Byers said, is the NCAA's inability to suspend coaches found in violation of NCAA rules. Tarkanian successfully fought the two-year suspension the infractions committee sought to impose in 1977, even though the school served its two-year ban on television and postseason appearances.

"He suspended application or use of the penalty of the coach suspension. We were in the courts for about 13 years, fighting that issue of due process," Byers said. "It effectively suspended the NCAA's use of the penalty. By recently agreeing with coach Tarkanian not to pursue it with him, the NCAA effectively gave up its use for the future, I believe."

The final settlement of the original 1977 case, Byers said, may cause the the NCAA the biggest headache of all. The infractions committee, citing the extraordinary length of the case and its unusual show-cause provision concerning the two-year Tarkanian suspension, banned the Rebels from this year's tournament. But with four returning starters from their 1990 championship team, the school and its supporters were outraged.

In a subsequent meeting, however, the infractions committee did something it had never done before and reversed itself. As the first school in NCAA history given its choice of penalties, UNLV opted quickly for a ban on television and postseason play next year, letting this year's team — possibly Tarkanian's greatest — go for a second straight championship.

"There is already serious fallout over this within the NCAA membership," Byers said. "When the committee on infractions agreed to negotiate out with him the penalty, they established the precedent that when faced with a lawsuit by a coach or his players ...they will sit down and work out a penalty with the institution and the coach. That's a negotiated penalty principle. I think it's going to haunt them in the future."

A factor in the committee's decision to reverse itself was the threat of a lawsuit by UNLV players or their coach, Roy Kramer, a member of the infractions committee, recently confirmed in a news conference.

"The infractions committee said that because of the uniqueness of this case, that it was not a precedent," Byers said with a laugh. "But declaring a precedent a non-precedent usually doesn't work."

END ADV for Weekend Release March 23-24  
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