

Approved: 5-18-92  
Date

## MINUTES OF THE HOUSE COMMITTEE ON APPROPRIATIONS.

The meeting was called to order by Chairperson George Teagarden at 1:05 p.m. on April 30, 1992 in room 514-S of the Capitol.

All members were present except: Representative Solbach. (Excused)

Committee staff present: Ellen Piekalkiewicz, Legislative Research Department  
Debra Duncan, Legislative Research Department  
Jim Wilson, Revisor of Statutes  
Sue Krische, Administrative Aide  
Rose Baker, Committee Secretary

Conferees appearing before the committee:

Sally Thompson, State Treasurer  
Susan Seltsam, Department of Administration  
Larry Rute, Deputy Director, Kansas Legal Services  
Donna Whiteman, Secretary, SRS

Others attending: See attached list

HB 3210 - Concerning the pooled money investment board.

Sally Thompson, State Treasurer, presented testimony in support of HB 3210 (Attachment 1). State Treasurer Thompson explained to the Committee that this bill provides that the administration and budget of the PMIB be moved from the Department of Administration to the Office of the State Treasurer.

A memorandum from Michael L. Johnston, Secretary of Transportation, supporting HB 3210 was handed out to the Committee. (Attachment 2).

Susan Seltsam, Department of Administration, stated that the Department of Administration had no opposition regarding the moving of the administration and budget of the PMIB from the D of A to the Office of the State Treasurer as stated in HB 3210.

HB 3212 - Concerning the department of SRS services support enforcement and contracts for legal services.

Larry Rute, Deputy Director, Kansas Legal Services, presented testimony in support of HB 3212 (Attachment 3). Representative Patrick expressed concern that this bill would give KLS a statutory monopoly to contract with SRS to represent the individual client and suggested that this contract should be open for bids. In response to a question from Representative Vancrum, Director Rute stated that KLS would drop any case and recommend it to the proper party if a conflict of interest would occur while under contract with SRS. Several Committee members expressed concern regarding the disclosure of fraud to SRS because of the attorney-client privilege.

Donna Whiteman, Secretary, SRS, presented testimony in opposition to HB 3212 (Attachment 4). Secretary Whiteman stated that KLS would not be in a position to protect state interests and provide the legal services required unless they are willing to avoid a client relationship with custodial parents. This bill will interfere with SRS's ability to collect child support and will create administrative problems.

## INTRODUCTION OF BILLS

Chairman Teagarden requested an introduction of a bill to change the deadline for filing for office. Representative Wisdom moved the bill as requested. Seconded by Representative Patrick. Motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON APPROPRIATIONS, room 514-S Statehouse, at 1:05 p.m. on April 30, 1992.

Representative Dean moved to include in the Omnibus Bill \$374,313 in disproportionate share dollars for legislative computerization. Seconded by Representative Heinemann. Representative Dean stated that this amendment includes a computer for each secretary, a printer for each office, and the computers will be linked to the network. Motion carried.

Representative Dean moved to include in the Omnibus Bill a VAX System Maintenance and 3 FTE positions at a cost of \$130,609 SGF. Seconded by Representative Helgerson. The amount suggested includes \$85,000 in salary and the balance would be used to increase storage capacity, maintenance, additional software and hardware. Representative Patrick expressed concern over the need of the VAX System as the Secretary of State now has the information the VAX System offers in their own AS/400 system. Motion carried.

Representative Kline moved insertion of \$2.7 million from CIBF in the Omnibus Bill for the transition of the women prisoners from Lansing to Topeka and construction of a maximum security facility in Topeka to house these prisoners. Seconded by Representative Heinemann. Representative Kline stated that Secretary Stotts, DOC, provided two recommendations to the Building Committee. They were: 1) construct a new free-standing building; or 2) construct an addition to the I-Building. There was considerable discussion from Committee members as to the need for moving of prisoners and the need of construction for a building to house these prisoners. Motion carried.

Representative Mead moved to insert in the Omnibus Bill the authorization of expenditure of \$1,589 for FY92 and \$167,090 for FY93 for the Kansas Grain Sorghum Commission Fund. Seconded by Representative Gatlin. Motion carried.

Representative Wisdom moved to include in the Omnibus Bill funding of \$215,227 SGF for FY93 for a Bureau of Vital Statistics satellite office located in Kansas City, Kansas. Seconded by Representative Blumenthal. Motion failed.

Representative Wisdom moved to include in the Omnibus Bill funding for 2 FTE positions for the Department of Wildlife and Parks. Seconded by Representative Hamm. Motion carried.

Representative Helgerson moved to strike the language from the Omnibus Bill concerning the appropriation of \$19,322, 606 in operating expenditures for KDHE as the House has overridden the veto of this funding. Seconded by Representative Wisdom. Motion carried.

Representative Lowther moved to delete language regarding the Fire Marshal from the Omnibus Bill as the veto of \$1,396,730 in funding in HB 2722 was overridden by the House along with the veto of HB 2611, which creates the Fire Marshal Fee Fund. Seconded by Representative Lowther. Motion carried.

Representative Dean moved introduction of the Omnibus Bill for the FY92 session. Seconded by Representative Chronister. Motion carried.

Meeting adjourned at 2:45 p.m. The next scheduled meeting will be May 1, 1992 at 8:00 a.m. in room 514-S.

GUEST LIST

COMMITTEE: HOUSE APPROPRIATIONS

DATE: 4-30-92

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Jim Hoyt	RT1 Box 19 Tonganoxie	KC Health Care Time
Harold Quinn	Topeka	State Treasurer
Wanda J. O'Dell	Topeka	State Treasurer's Office
Sally Thompson	Topeka	State Treasurer
Susan Seltman	Topeka	Day A
Mark L Manning	"	DOB
Terry Marnet	Topeka	Ks St. Hist Soc
Martin Reed	Lawrence	KU
Roger McColister	Topeka	KWS
James R. Rute	Topeka	ALS
Wayne A. White	Oskaloosa	Ks. Land Service
M. Bohmhart	Topeka	DOB
Sharon Huffman	Topeka	KCDC
Jim Persinger	Manhattan	KSU
Michelle Lester	Topeka	Ks. Gov. Consulting
ED HERBERT	TOPEKA	KNI
Royal Reid	Goodland	Farmer
Jackie McCluskey	Manhattan	KSU
Bill Hollenbeck	Pittsburg	PSU
Ron P. Fluhott	Hays	FHSU
Wendy Reedy	Stilwell	Bd. of Cas.
James J. Tutman	Topeka	SRS
Kevin Robertson	Topeka	SRS
Eric Kutler	Wichita	Rd. of Cosmetology
Denise Williams	Topeka	AOC



STATE OF KANSAS

Sally Thompson  
TREASURER

900 JACKSON, SUITE 201  
TOPEKA, KANSAS 66612-1235

TELEPHONE  
(913) 296-3171

Testimony on HB 3210  
from State Treasurer Sally Thompson  
to the House Committee on Appropriations  
Thursday, April 30, 1992

Mr. Chairman, Rep. Teagarden, and members of the committee. Thank you for the opportunity to discuss HB 3210 which provides for the administration and budget of the pooled money investment board to be moved from the Department of Administration to the Office of the State Treasurer.

This proposal is a result of a review of effectiveness and efficiencies of the PMIB investment staff by the PMIB, the office of the State Treasurer, and the Department of Administration. For example, as we looked to provide the in-house expertise, the computer hardware and software, the financial pricing services, the accounting, tracking and reporting systems necessary for the municipal investment pool, the investment of KDOT bond proceeds, and the idle funds broadened investments, we found that either we could be duplicating personnel, equipment and services or we could combine budgets to be the most effective and efficient. In effect, move the PMIB office administration under the State Treasurer's office from the Department of Administration--formalize and streamline what was the informal practice/relationship of the office staffs.

I have attached a copy of the minutes from the April 16, 1992, meeting of the PMIB which addresses the administration of the PMIB staff.

In addition, this bill provides that the investment officer/analyst positions would be part of the unclassified personnel in recognition of the expertise and responsive to the

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4-30-92  
Attachment 1

PMIB statutory fiduciary responsibility in providing oversight in the investment of public funds.

I will be happy to answer any questions you may have. Thank you for your attention to this matter.

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MINUTES OF MEETING  
POOLED MONEY INVESTMENT BOARD  
APRIL 17, 1992, 10:00 A.M., TOPEKA, KANSAS

Sally Thompson, Chairman  
Clayton C. McMurray, Member  
Michael L. Johnston, Member

Meeting came to order with the following persons present: Board Members Thompson, McMurray and Johnston; Lyell Ocobock, Executive Officer; Marmie Bobko and Diane Gates, staff members; JoLana Pinon, Asst. State Treasurer; and Robert Haley, Director of Administration, Department of Transportation.

At 10:05 A.M. Mr. Johnston moved to adjourn to executive session for the purpose of discussing personnel issues for a period of time up to 12:00 noon. Motion was seconded by Mr. McMurray and carried unanimously.

Mr. Ocobock was asked to remain for the executive session. Also remaining were Ms. Pinon and Mr. Haley.

Open session resumed at 10:40 A.M., with all members present. Also present were Lyell Ocobock, JoLana Pinon, Robert Haley and Diane Gates.

The motion was made by Mr. Johnston, and seconded by Mr. McMurray, that it shall be the policy of this board that the oversight of the board's staff in conducting its daily functions, duties and responsibilities shall be delegated to the State Treasurer in her role as chairman of this board. Motion carried unanimously.

The board agreed to pursue options which would move administrative functions from the Department of Administration to the State Treasurer.

Meeting adjourned at 10:45 A.M.

POOLED MONEY INVESTMENT BOARD

\_\_\_\_\_  
Sally Thompson, Chairman

\_\_\_\_\_  
Clayton C. McMurray, Member

\_\_\_\_\_  
Michael L. Johnston, Member

*Lyell D. Ocobock*  
\_\_\_\_\_  
Lyell D. Ocobock, Executive Officer

STATE OF KANSAS

Michael L. Johnston  
Secretary of Transportation

KANSAS DEPARTMENT OF TRANSPORTATION  
Docking State Office Building  
Topeka 66612-1568  
(913) 296-3566  
FAX - (913) 296-1095

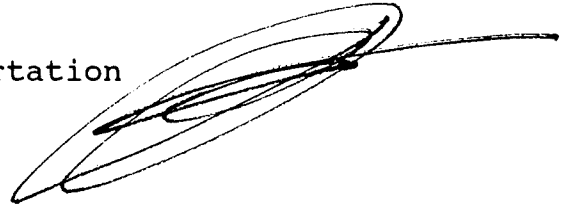
Joan Finney  
Governor of Kansas

April 30, 1992

MEMORANDUM TO: Chairman George Teagarden and  
Members of the House Appropriations Committee

FROM: Michael L. Johnston  
Secretary of Transportation

REGARDING: House Bill 3210



As a member of the Pooled Money Investment Board (PMIB), I would like to lend my full support to the passage of HB 3210. It is my view that the amendments to K.S.A. 75-4222 are in the interest of a more efficient and businesslike management of state funds and frankly, are long overdue.

I would appreciate your favorable action on this measure.

HA  
4-30-92  
Attachment 2



**TESTIMONY OF LARRY R. RUTE  
KANSAS LEGAL SERVICES, INC.  
(913) 233-2068**

**HOUSE APPROPRIATIONS COMMITTEE**

**George Teagarden, Chairperson  
Thursday, April 30, 1992**

Mr. Chairman, members of the Committee, I appreciate having the opportunity to appear before you today. I am here today to discuss House Bill 3212. This Bill modifies K.S.A. 1991 sub 39-756 to allow Kansas Legal Services (KLS) to contract with the Department of Social and Rehabilitation Services to assist the Department in certain child support enforcement activities. It expressly permits KLS to contract with SRS to represent the individual client rather than the state.

By way of background, KLS was approached several weeks ago by members of the Senate Ways and Means Subcommittee on SRS and asked if we would consider utilizing our staff to assist the state in child support enforcement activities. As a result of our discussions, the Senate Subcommittee report ultimately recommended that KLS or another entity contract with SRS to provide certain child support enforcement legal functions. The recommended contract amount was \$1,350,000.

Upon receipt of the Subcommittee report KLS undertook an extensive examination of how we might best provide child support enforcement legal functions under contract with SRS. In so doing we met with Jim Robertson, CSE Director, and his staff to discuss the overall problems facing child support enforcement staff statewide. We made site visits to the Topeka and Manhattan child support enforcement offices. We undertook extensive interviews with SRS Section Chiefs, supervisors, staff attorneys, collection offices, and secretarial staff. We also discussed child support issues with Managing Attorneys of legal services programs in the state of New York who currently contract to provide child support enforcement services.

On March 26, 1992 KLS presented testimony before the House Appropriations Subcommittee #2 (See Attachment Number 1). Within the body of our testimony we discussed contract assumptions, project organization and concept, caseload estimates, an estimate of case outcomes and contract advantages. Our contract with SRS envisioned a turn-key operation within 120 days from the date the contract was signed utilizing 14 teams, each team consisting of an attorney, a paralegal and a secretary. These teams would be strategically located throughout the state to provide optimal services and support of SRS child support enforcement functions. An important concept within our proposal was KLS' willingness to accept referrals that involve issues of child custody and visitation as well as referrals requiring complex discovery techniques in those situations where the obligor may be hiding or under-reporting assets. The House Appropriations Subcommittee reported out the proposal favorably.

On April 2, 1992 I received a letter from Secretary Whiteman (See Attachment Number 2). The letter indicated that while our proposal looked good, but the one

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Attachment 3*



issue that had not been specifically addressed was who the KLS client would be. She expressed her opinion that KLS must accept the Secretary of SRS as client as required of any Title IV-D contract attorney pursuant to K.S.A. 39-756(e). The letter also referred to the CSE program conflict of interest policy previously mailed to me which illustrated the types of potential conflict of interest circumstances which may arise.

The issues raised by Secretary Whiteman's letter required that I review whether there were any federal statutory or regulatory language which would prohibit KLS from designating the applicant/recipient as our client. In addition we undertook a review of American Bar Association and state ethical opinions. In so doing we not only conducted our own research but also utilized the services of the Center for Law and Social Policy in Washington D.C. and used the services of our professional responsibility consultant, Professor David Achtenberg of the University of Missouri, Kansas City Law School. This research is ongoing and should be concluded sometime within the next ten days to two weeks.

When researching relevant federal and state statutes we determined that there is nothing in federal statute or regulation which would prohibit a private organization from accepting the applicant/recipient as its client. Indeed 45 C.F.R. §302.12(a)(3) allows the state to purchase child support services from a private person or agency and 45 C.F.R. §304.22 allows federal financial participation as long as the fee paid to the private enforcement services is reasonable and necessary. Since KLS' fee is less than that proposed by the agency, the reasonableness of our fee should not be an issue. 45 C.F.R. §304.20(b)(1)(iii) also allows federal financial participation for an administration of state child support enforcement program which includes necessary agreements with private providers for child support services.

From Kansas Legal Services' point of view, it is indeed a major professional responsibility problem if we are required to represent the state agency rather than individual clients. We receive funding from many sources. While the child support contract provides an excellent opportunity for us to demonstrate to the legislature our ability in this arena and would further benefit the clients that we would serve, we cannot place our funding in jeopardy for the sake of this single contract. It is indisputable that signing a contract under which we would represent SRS as a state agency would put our other funding at risk. In addition, one of the significant features of our contract is to provide representation to clients with visitation and custody disputes. This work requires an attorney-client relationship.

We believe that House Bill 3212 will expressly permit KLS to contract with SRS to represent the individual client rather than the state. It is true that the relationship issues raised by Secretary Whiteman's letter will require a more careful prioritization of cases prior to referral to KLS; however, we do not believe the prioritization process will be one that will create any major reduction in the quality of the relationship between KLS and SRS. We believe that these particular issues can be fully delineated in our contract.

## CONCLUSION

The mission of KLS is to provide legal services for economically disadvantaged Kansans. In 1991 our attorneys provided advice and representation in the family law arena to 7,806 individuals. This group represents more than one-third of total caseload. A substantial majority of those cases involve issues of custody, visitation, division of property, child support establishment and enforcement. We believe that additional child support enforcement work on the part of KLS as envisioned by the House and Senate Subcommittees affords us an important opportunity to address poverty in a meaningful way. We firmly believe that we are in a position to provide significant contributions to the child support enforcement effort.

The language changes as set out by House Bill 3212 are narrowly drawn to achieve a specific purpose. If the Committee chooses today not to accept the language amendments this effectively closes the door to further KLS/SRS child support enforcement negotiations. We ask the Committee to support the amendments and to allow KLS and SRS the opportunity to resolve professional responsibility issues through contract language.

A KLS/SRS contract provides a real chance for this Committee to take a fresh look at child support operations through a KLS management system that has proven to be efficient and effective. If the real goal is to perpetuate the status quo there seems little or no need involve KLS at all. We believe that we can do the job and do it well.

**TESTIMONY OF LARRY R. RUTE  
KANSAS LEGAL SERVICES, INC.  
(913) 233-2068**

**HOUSE APPROPRIATIONS SUBCOMMITTEE #2  
(HUMAN SERVICES)**

**Henry Helgerson, Chairperson  
Thursday, March 26, 1992**

Mr. Chairman, members of the Subcommittee, I appreciate having the opportunity to appear before you once again. I am here today to discuss a proposal made a few weeks ago by the Senate Ways and Means Subcommittee on SRS. The Subcommittee report recommended that Kansas Legal Services (KLS) or another entity contract with SRS to provide certain child support enforcement legal functions. The recommended contract amount was \$1,350,000.

As you are aware, KLS is a private, non-profit corporation. Our mission is to provide legal services for economically disadvantaged Kansans. In 1991 KLS attorneys provided advice and representation in a wide variety of civil matters to approximately 20,000 low income Kansans. Our twelve field offices are strategically located throughout the state allowing us to serve all 105 counties. The location of field offices and counties served are found in Attachment number one.

We believe that an opportunity to provide child support enforcement assistance under a contract with SRS represents an important opportunity to further our mission. Poverty in Kansas disproportionately affects women and their children. For example, a recent study by the Census Bureau found that four months after a divorce, the average monthly income in households with custody of children drops \$900. This "fall" into poverty can often be attributed to the inability of the custodial parent to obtain an adequate child support order or to enforce and/or modify that order.

A substantial proportion of KLS advice and representation already falls within the family law category. Last year we provided family law assistance to 7,806 individuals. This group represents more than a third of our total case load. A substantial majority of those cases involve issues of custody, visitation, division of property, child support establishment and enforcement.

The additional child support enforcement work on the part of KLS as envisioned by the Subcommittee report affords an important opportunity for us to address poverty in a meaningful way. We believe that we are in a position to make a useful contribution to the ongoing improvement in the operation and success of the child support enforcement system in Kansas.

## PLANNING

Since the Senate Subcommittee recommendations were issued, KLS has been engaged in an intensive examination of how we might best provide child support enforcement legal functions under contract with SRS.

1. KLS personnel have met with Jim Robertson, CSE Director, and his staff to discuss the overall needs for additional CSE work statewide;
2. KLS site visits have been made to both the Topeka and Manhattan CSE offices. During these site visits intensive interviews were conducted with SRS Section Chiefs, supervisors, staff attorneys, collection officers and secretarial staff;
3. A KLS/CSE task force has been formed, with the participation of field office managers, staff attorneys, paralegals and legal secretaries;
4. Interviews have been conducted with legal services managing attorneys in the state of New York who are presently contracted to provide CSE services.

The plan that has been developed by KLS is specifically designed to avoid the problems identified by SRS personnel with previous and current contracts for CSE work. Those problems include a tendency on the part of many contractors to be selective in the types of cases they will accept, slowness in initiating court actions, the inaccessibility and unresponsiveness of contractors to SRS collection officers, and a general unwillingness to take on caseloads comparable to those of SRS personnel.

KLS proposes to engage in the full range of CSE legal functions identified by the Senate Subcommittee including paternity establishments, child support and medical support obligation establishments, modification of support orders and enforcement actions.

KLS is prepared to fully comply with the time frames for legal actions specified in the Employee Performance Expectations issued to SRS/CSE staff attorneys. KLS recognizes that prompt and successful case action is dependent upon a close professional relationship with SRS collection officers. The KLS plan includes the willingness to commit to caseloads and outcomes comparable to those carried and achieved by SRS/CSE staff attorneys pursuant to all requirements under the Rules of Professional Responsibility.

## CONTRACT ASSUMPTIONS

1. That KLS and SRS will jointly develop a two year contract.
2. That contract implementation will be completed within 120 days from the date the contract is signed.

3. That SRS collection officers will provide adequate numbers of new case referrals of an agreed case mix to each of our CSE teams.
4. The case type mix for new cases will be approximately 50% paternity establishments, 25% child support and medical support obligation establishments, 15% enforcement actions (including garnishments, income withholding and contempt), and 10% modification of support orders. These percentages are rough statewide estimates. The mix may vary considerably among local areas.
5. KLS will maintain appropriate files on all cases and will periodically review each case for needed action. KLS will abide by the case review requirements expected of SRS/CSE attorneys.
6. Occasionally KLS will accept referrals that involve related issues of child custody and visitation as well as referrals requiring complex discovery techniques in those situations where the obligor may be hiding or under-reporting assets.
7. At all times KLS will work within the framework of the Rules of Professional Responsibility.

### **PROJECT ORGANIZATION AND CONCEPT: \$1,350,000 BUDGET**

#### **FY 1993**

The KLS CSE project will be organized into fourteen (14) teams consisting of an attorney, a paralegal and a secretary on each team. Statewide training and technical legal assistance will be provided to the teams by an experienced senior attorney/trainer. A program director will supervise the trainer and CSE teams, serve as liaison with SRS, and assure contract compliance.

KLS will use a total of forty-five (45) personnel to staff the project in the first year. Project staff will include sixteen (16) attorneys, fourteen (14) paralegals and fifteen (15) secretaries. Fourteen of the attorneys, paralegals and secretaries will work on CSE teams. The other two attorneys will serve as project director and as trainer. One secretary will work for the project director and trainer.

During the first year of the project we propose to place the fourteen CSE teams in existing KLS field offices except in the southeast region where a new office will be opened in Independence. The approximate distribution of those teams are as follows:

OFFICE LOCATION	STAFF	EXPECTED CASE LOAD CONCENTRATION
Garden City	2 teams	Garden City (Finney) Liberal (Seward)
Emporia	1 team	Council Grove (Morris) Emporia (Lyon)
Wichita	3 teams	Wichita (Sedgwick) El Dorado (Butler)
Kansas City	2 teams	Kansas City (Wyandotte) Leavenworth (Leavenworth)
Olathe	1 team	Olathe (Johnson)
Independence	2 teams	Independence (Montgomery) Chanute (Neosho)
Topeka	3 teams	Topeka (Shawnee) Lawrence (Douglas)

### **FY 1994**

Fixed asset expenses for office furniture and computers will be greatly reduced during the second contract year. If funding was held at \$1,350,000 for FY 1994, KLS could expand its number of CSE teams from fourteen (14) to seventeen (17). This addition of staff will allow KLS and SRS to expand service where needed.

### **FY 1993 CASELOAD ESTIMATES**

With 14 attorney, paralegal and secretary teams each accepting approximately 46 cases per month or 550 cases per year, a total of 7,700 new cases will be taken in the first 12 months of operation.

	PER TEAM	STATEWIDE
Paternity Establishments	275	3,850
Support Establishments	138	1,932
Enforcement Actions	82	1,148
Modifications	55	770
<b>TOTAL</b>	<b>550</b>	<b>7,700</b>

We estimate that KLS CSE teams will be able to obtain a support payment in a minimum of 75% of new paternity establishment cases undertaken. Some payment will be received in approximately 95% of support establishments. Over 80% of all garnishments and 90% of all income withholdings will result in actual payments being made. Depending on the area of the state, contempts are much less successful in terms of resulting in payment. Probably fewer than 25% of all contempts result in payment.

It is not possible to give an accurate estimate of the total dollar amount of collections during the first year of operations. When a child support enforcement team starts out with an entirely new caseload payments will develop gradually. The amount of payments obtained is heavily dependent on the number of enforcement cases that are referred to KLS CSE teams. In some areas almost all of the enforcement work is done through Trustee contracts. The continued existence and operation of Trustee and other contracts will also affect the dollar amount of support payments collected by KLS CSE teams.

We know, however, that existing caseloads among SRS CSE attorneys range from fewer than 400 open cases to as many as 1,500. Average collections per month range from less than \$30,000 to more than \$50,000. Assuming that a case mix of approximately 50% paternity establishment, 25% support establishment, 15% enforcement actions and 10% support modifications, and further assuming adequate numbers of new case referrals, we believe that our teams will be in a position to produce approximately \$42,000 in child support collections per month after one year of operation. This results in \$504,000 per team at the end of the second year. Total collections for year two (assuming only 14 teams) would be an estimated \$7,056,000.

The precise reimbursement from the federal government to the state however is still less clear. The reimbursement rate from the AFDC caseload is different from that of the non-AFDC caseload. The amount realized by the state would be dependent upon the mix of AFDC and non-AFDC. Last year AFDC collections accounted for about a third (36%) of all state CSE collections. KLS should be in a position to provide detailed reimbursement information as detailed program statistics are developed.

### ESTIMATE OF CASE OUTCOMES

	CASES	CHILD SUPPORT PAYMENTS OBTAINED
Paternity Establishments	3,850	(75%) 2,888
Support Establishments	1,932	(95%) 1,836
Enforcement Actions	1,148	(80%) 907
Modifications	770	(90%) 693
<b>TOTAL</b>	<b>7,700</b>	<b>6,324</b>



## **CONTRACT ADVANTAGES**

### **Client Satisfaction**

KLS has developed a prompt and efficient system for the resolution of client complaints. We were the first legal services organization in the nation to use client "focus groups" as a method of understanding client concerns. Focus groups and client satisfaction surveys will be used to adjust and improve service delivery.

### **Reporting**

KLS will be able, by using established time sheet and statistical reporting systems, to provide the legislature and SRS with detailed reports which will include:

1. Case types and case type mix.
2. Hours per case by type.
3. Actions filed.
4. Case disposition.
5. Monetary and other client benefits.

### **Training**

KLS will hire an experienced attorney to provide training to attorney, paralegal and support staff. This position will also provide litigation support and technical assistance statewide. In addition, KLS has in place an internal training system and extensive contacts to appropriate training resources in the state of Kansas and nationally. Kansas Legal Services will work cooperatively with SRS to best utilize and share the training resources of both organizations. Joint training events can be conducted to the mutual benefit of SRS and KLS.

### **Experienced Staff**

KLS staff are committed to meeting the legal services needs of low income Kansans. Our staff attorneys, paralegals and support staff are accustomed to handling complex civil litigation and tight docket schedules. All attorney staff are required to keep detailed time sheets for all casework. This experience and the systems that have been developed to deal with high caseloads will be useful in undertaking CSE work.

### **Skilled Management System**

Placing CSE teams primarily in existing KLS offices results in minimal administrative and managerial expense. KLS has the needed administrative, research and accounting resources and procedures in place. Our managers are accustomed to developing detailed goals and objectives on an annual basis. When approved by central administrative staff, the goals and objectives serve as an important management tool to ensure contract compliance. KLS currently successfully manages more than 60 separate contracts through the use of this process.

## **Fiscal Accountability**

KLS is audited on an annual basis following generally accepted accounting standards by an independent certified public accounting firm. Annual audits will be available to SRS. In the fourteen years since Kansas Legal Services began service as a statewide legal services provider, our auditors have found no major deficiencies and have annually provided a "clean" unqualified opinion on our audits.

## **ADDITIONAL CONSIDERATIONS**

We concur with the Ways and Means Subcommittee recommendation that an interim study be conducted, particularly in reference to the status of the court trustee's use of a percentage fee add-on. In addition, we note that when the state collects current support for children receiving aid to families with dependent children (AFDC), it gives \$50 of the collection to the family. National figures indicate that of the \$1.6 billion in support collected for AFDC families only \$269 million (13%) went to the children. We would further propose that the interim study examine the viability of increasing the number of dollars provided to AFDC families in order to improve cooperation in child support collection and to improve the quality of life for Kansas children.

## **CONCLUSION**

We believe that KLS has the experience and specialized family law expertise to provide competent child support enforcement advocacy on behalf of our clients no matter where they reside. We are pleased to work with your committee and with the staff of SRS in developing a methodology by which a mutually agreeable referral mechanism may be developed.



JOAN FINNEY, GOVERNOR OF THE STATE OF KANSAS

KANSAS DEPARTMENT OF SOCIAL  
AND REHABILITATION SERVICES

DONNA WHITEMAN, SECRETARY

March 31, 1992

Larry Rute, Deputy Director  
Kansas Legal Services, Inc.  
712 S. Kansas Avenue  
Topeka, Kansas 66603

Dear Larry,

Thanks for an updated copy of your testimony concerning the potential KLS/Child Support contract. We're still anxious to discuss with you the feasibility of the location changes we talked about in our last meeting.

Overall, your proposal looks good to me. However, one issue which isn't specifically addressed is who the KLS client will be. As Jim Robertson and you have discussed on several occasions, I am of the opinion that KLS must accept the Secretary of SRS as client as required of any Title IV-D contract attorney in K.S.A. 39-756(e).

This principle is at the very heart of our program. The avoidance of a client relationship with the applicant/recipient (AR) facilitates more expedient case work and allows us to satisfy federal mandates which simply can't be complied with if the AR is regarded as the client. The federal Title IV-D Program is set up so that services are sought from and provided by the IV-D agency, not individual attorneys. In turn, the IV-D agency is held accountable for the service provided.

The CSE Program conflict of interest policy which was sent to you illustrates the type of complicated case circumstances which often arise. If KLS adopts a particular person as client, your usefulness as a contractor would be severely limited. For example, federal law requires that we establish support and paternity for an AFDC recipient even if the custodial parent is uncooperative. In such cases, the custodial parent's needs may be removed from the AFDC grant. The pursuit of paternity in such cases, although contrary to the wishes of the custodial parent, could benefit the child and does benefit state and federal government.

In many of our cases, a portion of an AR's arrearage belongs to him or her and part is assigned to SRS. If a dispute occurs concerning the respective claims, our contractors must represent federal, state, and agency policy and not the interests of the AR.

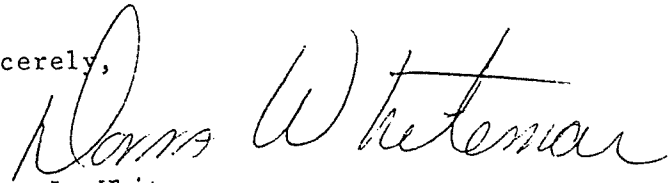
Mr. Larry Rute  
March 31, 1992  
Page Two

Because our program cannot reject applicants who are custodial parents, we must be prepared to provide services to both parents at different times if custody changes. Services in such cases could not be provided if one or the other is accepted as a IV-D attorney's client.

Before I can make a recommendation concerning the advisability of this contract, I need to know your position concerning this matter. I am concerned by the language in your testimony which refers to the AR as your client.

I would be happy to meet with you to discuss this issue in greater detail.

Sincerely,



Donna L. Whiteman  
Secretary

DLW:JAR:tmd  
cc: Robert Epps  
Jim Robertson

Department of Social and Rehabilitation Services  
Donna L. Whiteman, Secretary  
Re: KSA 39-756(c)  
Before House Appropriations

Federal Title IV-D child support laws and regulations require the Child Support Enforcement agency to provide a full range of support enforcement services to custodial parents. However, these same federal laws require the custodial parent to assign their right to receive support to the agency for purposes of reimbursing state and federal governments for the expense of providing assistance. Consequently, the legal interests of the state and custodial parents often do not coincide. Disagreements may develop concerning the amount of assigned support and the laws and policies concerning the Child Support Program. At times, the persons served are dissatisfied with the service, resulting in complaints, administrative appeals, and legal action in opposition to the agency position.

Providing legal services to a person while at the same time representing the interests of governmental entities can create a legal conflict of interest. To avoid this problem from occurring, K.S.A. 39-756(e) was enacted in 1982, to make the Secretary of SRS the client of all IV-D attorneys. The establishment of this client relationship is the only viable method of enabling our legal staff to provide federally required services to custodial parents while at the same time protecting state interests and state monetary claims.

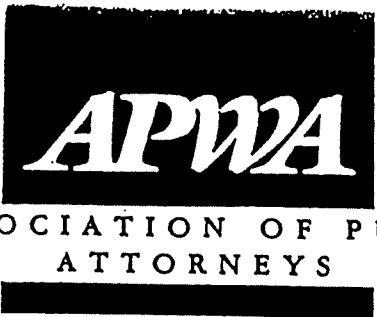
As Mr. Rute states, federal law does not say that the IV-D attorney's client must be the head of the IV-D agency. Rather, Congress left this difficult conflicts question for the states to resolve. After much trial and error over the past 17 years, the vast majority of other states concur with our policy of preventing an attorney-client relationship from occurring between our attorneys and custodial parents. The American Public Welfare Association (APWA) has thoroughly investigated who the IV-D attorney should represent, and they have concluded that it cannot be the custodial parent. (See attachment #1.)

To enhance our support enforcement effort and comply with federal mandates, SRS needs additional attorneys who are capable of providing full services, including protection of state interests. This is especially true if you are interested in increased state revenue production.

KLS would not be in a position to protect state interests and provide the legal services we require unless they are willing to avoid a client relationship with custodial parents. Following are several reasons why the proposed KLS contract would not be effective.

- 1) The most compelling reason for KLS to be treated as any other IV-D contractor is the federal requirement that all people served by the IV-D Child Support Program must be provided the same services and the same treatment, and the requirement for program uniformity. If the caseheads referred to KLS benefited by having an attorney-client relationship, it would constitute a violation of federal regulations and a denial of equal protection to those custodial parents who received a different type of service from an SRS attorney or a Court Trustee.

*H.A.  
4-30-92  
Attachment 4*



AMERICAN ASSOCIATION OF PUBLIC WELFARE ATTORNEYS

STATE DEPARTMENT  
SOCIAL & REHAB. SERVICES  
FEB 07 1991  
RECEIVED  
LEGAL SERVICES

TO: AAPWA Executive Committee Members  
Regional Representatives  
FROM: CATHLEEN TUCKER  
DATE: January 31, 1991  
RE: Who Does the IV-D Attorney Represent?

You will recall at the 1990 Annual Meeting in San Francisco that AAPWA agreed to develop a policy statement on its position as to who the IV-D attorney represents.

James Graves, J.B. McReynolds, Jon Merseaeru and Dave Hogan staffed the committee assigned to formulate the attached proposed policy position. Please take a few moments to review it and note any questions/comments you have. The Executive Committee will discuss and act on the issue at its March 1st meeting.

## LEGAL ETHICS AND TITLE IV-D

### WHO DOES THE IV-D ATTORNEY REPRESENT?

Considerable discussion has been devoted to the issue of ethics and the IV-D attorney. Particular emphasis has been given to the issue as to whom the IV-D attorney ethically represents. For this reason the AAPWA feels it imperative that it formally state its position on this issue.

The IV-D agency and the IV-D attorney fulfill a number of roles. In government they fulfill the role of shifting certain financial burdens from the taxpayer. In society they fulfill the role of obtaining support for children. Both roles are of extreme importance, yet sometimes conflicting. However, there can be no conflict as to whom the IV-D attorney represents.

The AAPWA takes the firm position that the IV-D attorney represents only the IV-D agency and that no attorney-client relationship exists between the IV-D agency and the IV-D recipient. This position is taken because the services of the IV-D agency and the IV-D attorney enure to the recipient as a by-product of a government program, and not as the result of an attorney-client relationship.

This arrangement is similar to the arrangement between a prosecutor and his witnesses and is a model upon which many IV-D programs are organized. Similar "services" are rendered and roles fulfilled in both situations.

The position of AAPWA on this issue appears to be in the best interest of the children, the IV-D agency and the IV-D attorney. In conjunction with this position, the AAPWA recommends that the IV-D agency seek appropriate legislation to this effect and likewise explain its position on this issue to the IV-D recipient at every stage of the IV-D process. In this way the ultimate goal of providing IV-D services to as many IV-D recipients as possible will be achieved without misunderstanding, conflict or delay. The AAPWA feels that both the taxpayer and the IV-D child deserve nothing less.



Attach  
t 2

#### IV-D ATTORNEYS WARNED AGAINST POSSIBLE CONFLICTS OF INTEREST

*ABA ethics committee says lawyers assigned to assist former AFDC recipients in support cases must make clear the nature of their representation.*

Lawyers who are called on to represent the interests of both the state and of custodial parents in child support enforcement programs under Title IV-D of the Social Security Act must comply with pertinent Model Rules requiring that information relating to representation of the custodial parent be kept in confidence, the ABA Standing Committee on Ethics and Professional Responsibility has declared in an informal opinion. Addressing the implications of various situations that can arise when a lawyer in a state IV-D office is assigned to assist a custodial parent in obtaining support, the committee explained that conflicts of interest may occur where the custodial parent has received AFDC support and such support has not been fully recouped by the state. In such a case, it said, the IV-D lawyer must make clear that he or she is not representing the custodial parent and that no duty of confidentiality exists.

*Digest of Opinion:* This opinion involves lawyers who work in conjunction with a child support enforcement office operating pursuant to Title IV-D of the Social Security Act (see FLR Ref. File 125:001). Under Title IV-D, each state that operates

an Aid to Families with Dependent Children (AFDC) program must also administer a child support enforcement program. Each state child support program is required to provide four basic services; locating absent parents, establishing paternity, establishing support, and enforcing support.

These services are provided at no charge to AFDC custodial parents who assign their support claims to the state. However, custodial parents who are not receiving AFDC support but who have applied for help in obtaining child support from the non-custodial parent are, in most states, required to pay a nominal application fee and, in some instances, actual costs.

Three factual situations illustrate potential ethical problems that arise in the course of the relationship between custodial parents and lawyers working in conjunction with IV-D offices.

The first deals with a custodial parent who is receiving AFDC support and who assigned the child support claims to the state. If the parent discloses to the lawyer that while receiving AFDC support he or she has received some support from the non-custodial parent and has not notified the IV-D office about it, may the lawyer reveal this information to the director of the IV-D office?

The second question is whether the lawyer may reveal this information where the custodial parent no longer receives AFDC support and has applied to the IV-D office for help in obtaining child support, and where the state has not recouped from the non-custodial parent all the AFDC support that had been paid earlier.

The third question is whether the IV-D lawyer may represent the custodial parent where the custodial parent no longer receives AFDC support, has applied to the IV-D office for help in obtaining child support, and has received some support from the non-custodial parent, but the state has recouped all AFDC support that has been paid earlier.

If a lawyer-client relationship exists between the lawyer and the custodial parent, the information received by the lawyer

8-1-89

from the client is protected by Model Rule 1.6 and may not be disclosed.

If there is no lawyer-client relationship, the information may be disclosed unless the lawyer has failed to make reasonable efforts to correct any misunderstanding on the part of the custodial parent that a lawyer-client relationship existed, as required by Rule 4.3. The lawyer is required under Rule 4.3 to make reasonable efforts at the outset to avoid any misunderstanding.

There is no direct counterpart to Model Rule 4.3 in the predecessor Model Code of Professional Responsibility. However, the committee is of the opinion that the outcome with regard to communications made by the custodial parent to the lawyer under the circumstances discussed above would be no different.

In the second situation, the lawyer has a conflict of interest. Under Rule 1.7(a) and (b), it is unlikely, even if each client consented after consultation, that the lawyer could reasonably believe that the representation of the custodial parent for child support payments would not adversely affect the relationship with or the representation of the other client, the state, for which the lawyer is obligated to recoup from the custodial parent AFDC support funds previously provided by the state. The lawyer should advise the custodial parent that he cannot represent him or her and that other counsel should be obtained unless the custodial parent and the state agree that the state is to retain from support funds a specific amount in satisfaction of the AFDC support owed to the state.

In the third situation, the lawyer assigned by the IV-D office to help the custodial parent obtain child support represents the custodial parent as his or her lawyer, and not the state. The information that the custodial parent previously has received support from the non-custodial parent is information relating to the representation of the custodial parent and is protected from disclosure by Rule 1.6. As long as the state has been fully repaid, there is no conflict between the interests of the state and the custodial parent.

Therefore, in this situation, the lawyer should clearly explain to the custodial parent at the outset that, although assigned by the IV-D office, the lawyer is representing the custodial parent and is bound to maintain the confidentiality of client disclosures. Since this result depends upon the state's having fully recouped the support funds it had provided the custodial parent, the lawyer has an obligation to obtain this information from the IV-D office, preferably in writing, before meeting with the custodial parent.

**(Informal Opinion No. 89-1528, ABA Standing Committee on Ethics and Professional Responsibility, 6/5/89).** □

### **ATTORNEY SHOULD NOT TAKE MORTGAGE ON CLIENT'S INTEREST IN MARITAL HOME**

*Maine ethics commission finds that lien on client's marital residence to secure fee for divorce action violates prohibition on acquiring interest in subject of suit.*

An attorney's agreement to take a mortgage on a client's one-half interest in the client's marital residence to secure his or her legal fee in a divorce proceeding violates the Code of Professional Responsibility's prohibition against acquiring a proprietary interest in the

client except that he may against the proceeds of suit his fee or expenses." The concluded, does not authorize a lien on the home, which important part of the litigation attorney and his or her reaching its decision, the on the issue from other sources.

*Digest of Opinion:* A husband commenced, retains a lawyer the husband offers to give the half interest in his marital home, is not aware of this physical placement of the court agree to the sale of the home court for primary residence band's lawyer brings an action claiming that the wife is co-owner for property taxes and insurance.

The question presented is Code of Professional Responsibility security interest in the marital fees of a client in a divorce all property acquired by property, subject to disposition narrowly defined exceptions. wife is clearly subject to disposition of a proceeding for divorce.

Rule 3.7(c) provides that proprietary interest in the litigation he is conducting for assert a lien granted by law or litigation to secure his fee this commission that acquired marital home in a divorce action Rule 3.7(c).

Among the many issues in to be awarded a substantial commonly a principal motivation legally cognizable interest constitutes an interest in the Rule 3.7(c). The provisions of a lawyer to "assert a lien granting permitting a lawyer to assert charging lien on the proceeds does not read this provision consensual contractual creation and client with respect to the

Other states have reached Mississippi Ethics Opinion 152 (1986-7). Connecticut has adopted ground, holding that although permissible, the taking of the to the further orders of the court of the property, and that to of the court, the lawyer was to dispose of the mortgage to cut Ethics Opinion 87-3 (1986).

In light of the breadth of the and the plain language of Rule 4.6 in the marital property by