

Approved Gary Blumenthal

Date

FEB 24 1992

MINUTES OF THE House COMMITTEE ON Governmental Organization

The meeting was called to order by Rep. Gary Blumenthal at
Chairperson

9:05 a.m./p.m. on February 17, 1992 in room 522-S of the Capitol.

All members were present except:

All present

Committee staff present:

Carolyn Rampey, Legislative Research Dept.
Avis Swartzman, Revisor of Statutes
Nita Shively, Committee Secretary

Conferees appearing before the committee:

Representative Don Smith
Chief Justice Richard W. Holmes
Rick Loveall, Legislative Assistant to the Governor

Chairman Blumenthal called the meeting to order when quorum was present.

Hearing on HCR 5037 - A proposition to amend section 2 of article 3 of the constitution of the state of Kansas, relating to the Supreme Court.

Representative Don Smith appeared as a proponent of HCR 5037, furnishing written testimony, (Attachment 1). He gave a brief overview of the judicial system in Kansas since its inception, noting several efforts to "modernize" it. Representative Smith feels that the current seniority system is outmoded and needs to be addressed. He observed that seniority does not necessarily equate with administrative ability, and since 75% of the Chief Justices' duties consist of administrative duties, he recommends that the proposed constitutional amendment requiring election of the Chief Justice by members of the Court, be adopted. Only 6 other states still have the seniority system.

Chair recognized Chief Justice Richard Holmes, who spoke as an opponent of HCR 5037, furnishing written testimony, (Attachment 2). Justice Holmes argued that the present system has been in effect for almost 100 years resulting in Kansas serving as a model for other states.

Justice Holmes elaborated on the numerous advantages of the seniority system, pointing out how the next-in-line Justice works directly with the Chief Justice while serving as the chairperson of the Judicial Council, thus affording the best possible training. Another complaint mentioned is that the proposed change would result in competing factions causing divisive splits, infighting, etc. The 2-year term has serious drawbacks also, even though there is no prohibition of successive terms. Justice Holmes noted the many efforts he undertook in order to better prepare himself for this office, i.e., seminars on management training and state judicial systems, some at his own expense. There would be little or no incentive to prepare for the position of Chief Justice when there is so much uncertainty.

Question and answer period followed including discussion about possible alternatives.

Hearing closed on HCR 5037.

Chair recognized Rick Loveall, who appeared on behalf of the Governor to request introduction of a bill establishing offices of State Treasurer and Commissioner of Insurance as constitutional offices of the State. Motion to introduce aforementioned bill was made by Representative Ramirez,

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Governmental Organization,
room 522-S, Statehouse, at 9:05 a.m./~~p.m.~~ on February 17, 1992

seconded by Representative Lawrence, motion carried.

Motion by Representative Dawson to approve minutes for February 10 and 11th,
motion seconded by Representative Watson, motion carried.

Meeting adjourned at 9:45 a.m.

DON C. SMITH
 REPRESENTATIVE, 116TH DISTRICT
 2206 ROANOKE RD.
 DODGE CITY, KANSAS 67801



TOPEKA

HOUSE OF
 REPRESENTATIVES
 February 17, 1992

COMMITTEE ASSIGNMENTS
 MEMBER: FEDERAL AND STATE AFFAIRS
 JUDICIARY
 LABOR AND INDUSTRY

TESTIMONY BEFORE THE HOUSE
 GOVERNMENTAL ORGANIZATIONS COMMITTEE

House Concurrent Resolution 5037
 Representative Don C. Smith

Mr. Chairman and Members of the Committee:

I am pleased to appear before this committee to speak in favor of the adoption of HCR 5037, the proposal to amend section 2 of article 3 of the Kansas Constitution. This resolution would change the method by which the Chief Justice of the Kansas Supreme Court is selected.

It would be helpful to the committee in the consideration of HCR 5037 to review briefly the court and its traditions in a historical perspective.

As we know Kansas adopted its constitution on October 4, 1859 by a vote of 10,421 for 5530 against. Article #3 created the court system. Under the original Constitution there were three justices on the Supreme Court, all to be elected by the people. The selection of the Chief Justice was also to be by election. In 1900, by a Constitutional amendment, the number of justices was raised to seven and the method of selecting the Chief Justice was changed to a system whereby the justice who is senior in continuous service shall be Chief Justice and in case there are two or more having served the same number of years, the justice who is senior in age shall be Chief Justice. This amendment was adopted by a vote of 123,721 to 35,477.

Article #3 remained pretty much the same until 1957 when the method of selecting Justices was radically changed. Instead of being selected by the electoral process -- they were to be selected by a non partisan nominating committee and appointed by the Governor; thus effectively denying the people any voice.

Those in favor cried out it was time to "modernize" the selection system. The system was "modernized" and the Judiciary Branch remained pretty much the same for 15 years.

*g o. 2-17-92
 attachment 1*

In 1972 reacting to concerns of those who wanted a unified court system, which would centralize the power in the Supreme Court, the Judicial article was completely changed vesting authority to administer all of courts in the Supreme Court. Once again those advocating the change suggested it was time to "modernize" the system. But there were those who were suspicious of granting such sweeping powers to the Supreme Court and urged that the status quo should be maintained.

- * Briefly here is what was created:
- * The Chief Justice was to be the Senior Judge.
- * A hierarchy was established consisting of 31 Judicial Districts.
- * Each District was to have an Administrative Judge appointed by the court and not on the basis of seniority.

The chief Justice was granted sweeping administrative powers and the cumbersome bureaucracy of a Judicial Administrator (the office of the O.J.A.) which now has 1,510 non judicial employees, 218 District Judges and 12 Appellate Judges was created.

This is substantially the situation 20 years later.

Now by HB 2673 the Chief Justice would be granted even more authority. The system has been continuously "modernizing", but has it really become any more effective?

The seniority system is about the only thing in the Judicial Branch which is still in place. No valid reason exists for its continuance. This court, which has been a model in many areas, clings to a method which serves no logical purpose and is used by only 6 other states. This method is not used in any other function of the government.

Up to 75% of the Chief Justice' time is spent on administrative duties. No one can seriously propose that because one has served on the Court a greater number of years one automatically has the ability to be a good Administrator. Nor can it be argued that seniority grants merit.

In closing I would strongly urge the committee to give serious thought to passing HCR 5037 which would truly bring Kansas into the mainstream of the court systems of this country.

I would be glad to answer any questions you might have.

*g.o. 2-17-92
attachment 1-2*



Supreme Court of Kansas

RICHARD W. HOLMES
Chief Justice

Kansas Judicial Center
Topeka, Kansas 66612-1507

(913) 296-4898

HCR 5037
House Governmental Organization Committee
February 17, 1992

Testimony of Chief Justice Richard W. Holmes

As Chief Justice of the Kansas Supreme Court, I am opposed to HCR 5037 which seeks an amendment to Article 3, Section 2, of the Kansas Constitution for the method of selection of the Chief Justice.

I fail to see any need or justification for the proposed change. For nearly 100 years the present method of selecting the Chief Justice by seniority has brought Kansas to the forefront of judicial systems throughout the United States. Absent some extremely serious problem with the present system, which cannot be remedied within the Court itself, the method of selection should not be changed. The seniority system of selecting the Chief Justice has served Kansas well by providing stability and continuity in the judicial branch.

The administration of the judicial branch is entrusted to the Supreme Court under the direction of the Chief Justice. The

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attachment 2*

Supreme Court works as a board of directors of the judicial branch of government, with the Chief Justice serving as Chairman of the Board and Chief Executive Officer. Policy decisions are made by the entire Court. Implementing policy and the daily administrative matters are the Chief Justice's responsibility.

The judicial branch is a complex organization made up of 105 district courts, two appellate courts, the Office of Judicial Administration, and numerous commissions and boards, and its administration is not something that can be learned quickly. The Kansas seniority system ensures that a Chief Justice will be familiar with each component of the judicial branch. When a justice first is appointed to the Court, he or she becomes responsible for one of the six geographical judicial departments of the state. The justice also becomes the liaison of the Court for one or more of its boards or commissions, such as Judicial Qualifications, the Board of Discipline or the Board of Law Examiners. With the retirement of a justice and appointment of a new member of the Court, the liaison assignments often change. During a Chief Justice's term, the justice next in line in seniority serves as chairperson of the Judicial Council and works closely with the Chief in his or her administrative duties, the best education the future Chief Justice could have. The seniority system affords a Chief Justice in-depth experience in each area of judicial branch administration before the Chief must exert general administrative powers over the entire branch.

The Kansas judicial branch is one of the best court systems in the country. The Society for the Improvement of Justice has recognized Kansas as having a model court system. Kansas was the first state to adopt time standards with the goal of reducing delay in our district courts, and now over half the states have followed our lead. We were the first state to adopt the American Bar Association's Jury Management Standards. Our courts often serve as the subjects of reports and studies because of their recognized excellence. None of this has happened by accident, and the national reputation of the Kansas judicial system can be traced directly to our existing procedure which assures that the justice with the most actual experience on the Supreme Court is responsible for its administration.

While the system proposed by HCR 5037 is used in approximately 17 or 18 states, it has not been without serious drawbacks and problems. The proposed system can lead to competing factions within the court itself with disastrous results. New Mexico, Arizona and Missouri are just three examples of states in which the proposed method has resulted in divisive splits among members of the court. A supreme court is a small group which, to function properly, must be a cooperative and cohesive group. It is no place for factions and personal infighting such as has occurred in other states using a court selection process similar to that proposed by HCR 5037.

The proposed amendment, with no assurance of ever being chief justice and its two-year term, provides no incentive for a person to properly prepare for the extensive duties of the office of Chief Justice. A two-year term could degenerate into a situation where the Chief Justice, like some small town mayors, is a mere figurehead for two years, confining his duties to welcoming speeches and established routines with no long-range agenda and goals for improvement. In my own case, prior to becoming Chief Justice, I attended at least three seminars on management of a statewide judicial system put on by the Institute for Court Management of Denver. The I.C.M. is a branch of the National Center for State Courts and the recognized learning center for court administration and management. Incidentally, much of the expense incurred in attending those seminars, I paid personally. I also worked closely with former Chief Justice Miller for nearly a year prior to his retirement. Along with the assistance of the other members of the Supreme Court, and the staff of the Office of Judicial Administration, we are constantly looking to the future and establishing long-range plans to cope with the ever increasing problems which we know are forthcoming. There would have been little or no incentive for me to attempt to prepare myself for the position of Chief Justice if it were to be only a two-year term, or perhaps no term at all. The natural inclination, if HCR 5037 is adopted, will be to allow the administrative staff in OJA to make more and more decisions and

to actually run the judicial branch which is the duty of the Chief Justice and the entire Supreme Court.

While it is true that under HCR 5037 there is no prohibition or limit on successive terms, the office would naturally be viewed by any Chief Justice as only a two-year term with perhaps a possibility of serving longer. It is quite possible that a weak, do nothing Chief might serve longer, and less effectively, than a strong, aggressive Chief who was willing to promote and carry out necessary and progressive, but unpopular, reforms.

It is also true that seniority does not guarantee that the best possible justice may be the Chief at any given time, but in my opinion experience has shown that overall it is superior to the system proposed by HCR 5037 or any of the other systems used throughout the United States. My discussions with various Chief Justices across the country support my conclusions and opinions. Twice each year, I meet with the Chief Justices of all the states and since this proposed amendment first came up two years ago, I have made it a point to discuss with many of them the pros and cons of the various methods of selection. I am convinced that the consensus is that the seniority system, while not perfect, is superior to any of the others. Certainly, the states that have a seniority system have not experienced the internal strife and problems resulting, in many cases, from systems similar to that proposed by the present resolution. One

of the major benefits of the seniority system is the stability that it provides the courts in a unified system such as ours.

One other point which I believe is of paramount importance needs to be emphasized. The Constitution establishes long-range controls and directives which should not be tampered with on a whim or to address some perceived or possible future problem. We should not consider changing our state Constitution or the federal Constitution as a remedy every time a new problem arises. Recent experience has shown what havoc can result to our state from even long-studied constitutional amendments. It should be noted that the present constitutional provisions provide sufficient safeguards for the Supreme Court to address any problems which might arise if the Chief Justice was not able or willing to properly handle the duties of that office. The Constitution provides that the senior justice may refuse to serve as Chief or may step down from being Chief and still remain an active member of the Court. The Supreme Court operates by majority rule on all major policy decisions, and if it should ever come to pass that a sitting Chief Justice was not properly and effectively performing the duties of the office, the will of a majority of the court would surely rectify the situation and result in a different Chief. If such a situation arose, I have no doubt that the remedy already available would be utilized if necessary.

For nearly 100 years, the Chief Justice has been the justice with the longest seniority. During the tenure of this system, Kansas has had good courts, good law, and the respect of other states and of legal scholars. Suddenly, a proposal is made to alter this well-established practice. What problems exist that the legislature believes HCR 5037 will correct, or what deficiency will it cure? To my knowledge, no studies have been made which suggest a need for this change. I have talked with some of the sponsors of this resolution, members of the legislature, judges and attorneys from across the state and I have yet to hear one concrete, viable, valid reason for the proposed change.

Neither current need nor future benefit arising from the passage of HCR 5037 has been shown. Unless the proponents of this resolution can offer evidence which contradicts the experience of nearly a century, the resolution should not even come out of this committee. In short, "If it ain't broke, don't fix it."

Respectfully submitted,



Richard W. Holmes, Chief Justice