

Approved 1-30-92
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

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

3:30 a.m./p.m. on January 29, 1992 in room 313 of the Capitol.

All members were present except:

Representatives Carmody, Douville and Gregory who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research
Jill Wolters, Revisor of Statutes
Judy Goeden, Committee Secretary

Conferees appearing before the committee:

Kyle Smith, Crime Stoppers
Bob Frey, Kansas Trial Lawyers Association
Robert Eye, Department of Health & Environment
Christopher Bacon, Attorney, Quail Valley Homes Association
Rosalie Thornburgh, Kansas Department of Transportation
John Smith, Department of Revenue

Chairman John M. Solbach called the committee meeting to order.

Kyle Smith, Crimestoppers, requested the introduction of a bill concerning judges options at sentencing. (Attachment #1) Rep. Macy moved to introduce such legislation. Rep. Snowbarger seconded the motion. Motion carried.

Bob Frey, Kansas Trial Lawyers Association, requested introduction of two bills concerning product liability and ex parte communications between treating physician and attorney. Attachment #2) Rep. Garner moved to introduce requested bills. Rep. Parkinson seconded the motion, Motion carried.

Robert Eye, Department of Health & Environment, requested introduction of a bill concerning water pollution. (Attachment #3) Rep. Everhart moved to introduce requested legislation. Rep. Smith seconded the motion. Motion carried.

Hearings on HB 2684 relating to liens for unpaid dues were opened.

Christopher Bacon, testifying as an individual, Director of Quail Valley Homes Association, testified in favor of HB 2684, relating to liens for unpaid dues or assessments. (Attachment #4) He answered committee members questions.

Rosalie Thornburgh, Department of Transportation, reviewed criteria needed for additional highway funds. (Attachment #5) She explained how the additional funds would be allocated to each state. She answered committee members questions.

John Smith, Department of Revenue, said the prompt license suspension provision is prohibitive because of the appeal hearings timeliness. He said if all present hearing officers were fulltime the State would not need more hearing officers. He estimated that it would cost an additional \$50,000 to have all current hearing officers work on a fulltime basis. He said other states would have as much difficulty or perhaps more than Kansas getting into compliance with the basic grant eligibility. He was asked to report back to the committee with additional information.

Meeting adjourned at 4:45 p.m.

GUEST LIST

COMMITTEE:

House Judiciary

DATE:

1-29-92

NAME (PLEASE PRINT)

ADDRESS

6621D

COMPANY/ORGANIZATION

CHRIS BALON

11285 Craig
Overland Park KS

Lowe, Farmer, Bacon
tRok

Bob Eye

K.D.H.E. 900 SW Jackson
Topeka, KS 66612

K.D.H.E.

Kyle Smith

Topeka

KBST

Kay Hauser

~

Ks Crime Stop



JAMES G. MALSON
DIRECTOR

KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL
STATE OF KANSAS
1620 TYLER
TOPEKA, KANSAS 66612-1837
(913) 232-6000



ROBERT T. STEPHAN
ATTORNEY GENERAL

TESTIMONY
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
KAY HOUSER, VICE PRESIDENT
KANSAS STATE CRIME STOPPERS
PROPOSAL FOR LEGISLATION
JANUARY 29, 1992

Mr. Chairman and Members of the Committee:

I appear today on behalf of the Kansas State Crime Stoppers Board requesting legislation which would expand a judge's options at sentencing to include, in appropriate cases, ordering the defendant to repay society for extraordinary expenses that brought about the defendant's convictions. In particular, the court could order repayment of cash awards paid by a Crime Stoppers chapter or any other individual or public entity which directly lead to the defendant's conviction.

Second, we are proposing that the court could order repayment to law enforcement agencies of money spent in the undercover purchase of controlled substances, so called "buy funds", that were expended during the investigation.

One part of the criminal justice system is to assure defendants repay their "debt" to society. We believe that "debt" should include the cash payments of hundreds or even thousands of dollars that society, through either a law enforcement agency, a Crime Stoppers chapter or other reward program, has paid during the investigation to bring the defendant to justice. Certainly this should be an option when the defendant has the

HJC
1-29-92
Att # 1
1-2

Page 2

resources to repay those extraordinary investigative costs. Further, this would function to replenish the assets available to investigate other crimes.

I believe that this proposal could be easily incorporated by amending two statutes: K.S.A. 21-4603 which lists the authorized dispositions available to a court at sentencing; and K.S.A. 21-4610 which authorizes conditions of probation or suspended sentence. We would propose the following language be added to paragraphs K.S.A. 21-4603(2)(c)&(d) and to K.S.A. 21-4610(2)(g):

Such assessment may include repayment of rewards paid by any Crime Stoppers chapter, individual, corporation or public entity which materially aided in the apprehension or conviction of the defendant, or repayment of public funds utilized by a law enforcement agency to purchase controlled substances from the defendant during the investigation which lead to the defendant's conviction.

Thank you for your consideration.

#068

HJC
1-29-92
att # 1
2-2



KANSAS TRIAL LAWYERS ASSOCIATION

Jayhawk Tower, 700 S.W. Jackson, Suite 706, Topeka, Kansas 66603
(913) 232-7756 FAX (913) 232-7730

BEFORE THE JUDICIARY COMMITTEE
OF
THE HOUSE OF REPRESENTATIVES

BILL REQUEST #1

The Kansas Trial Lawyers Association requests that the House Judiciary Committee introduce a committee bill which will amend the law as it applies to the statute of repose for product liability claims and to reinstate the concept of "useful safe life".

BILL REQUEST #2

The Kansas Trial Lawyers Association requests introduction of a committee bill which would restrict ex parte communications between a treating physician and attorneys who represent a defendant in any civil action.

HJC
1-29-92
att # 2

BILL NO. _____

By xxx

AN ACT relating to water pollution; concerning intervention in legal actions relating thereto; amending K.S.A. 1991 Supp. 65-170e and repealing the existing section.

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

Section 1. K.S.A. 1991 Supp. 65-170e is hereby amended to read as follows: 65-170e. (a) The attorney general, upon the request of the secretary of health and environment, may bring an action in the name of the state of Kansas in the district court of the county in which any person who violates any of the provisions of this act may do business, to recover penalties or damages as provided by this act.

(b) Any person having an identifiable interest which is or may be adversely affected shall have the right to intervene in any civil actions brought under this section or K.S.A. 65-171b, and amendments thereto, or in administrative actions subsequent to the issuance of an administrative order by the agency pursuant to K.S.A. 65-164, 65-170d or 65-171d and amendments thereto or article 6 of chapter 77 of the Kansas Statutes Annotated to enforce the provisions of the national pollutant discharge elimination system program as approved by the administrator of the United States environmental protection agency pursuant to sections 318, 402 and 405 of the clean water act, as in effect on January 1, 1989, which seek:

(1) Restraint of persons from engaging in unauthorized activity which is endangering or causing damage to public health or the environment;

(2) injunction of threatened or continuing violations of this act, rules and regulations promulgated thereunder and permit conditions;

HJC
1-29-92
Att #3
1-2

(3) assessment of civil penalties for violations of this act, rules and regulations promulgated thereunder, permit conditions or orders of the director of environment or secretary of health and environment.

Sec. 2. K.S.A. 1991 Supp. 65-170e is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

HJC
1-29-92
Att #3
2-2

TESTIMONY OF CHRISTOPHER B. BACON
IN SUPPORT OF HB2684

January 29, 1992

Christopher B. Bacon
Attorney with LOWE, FARMER BACON & ROE
110 West Loula, P.O. Box 580
Olathe, Kansas 66061-0580
Phone: (913) 782-0422
Kansas Supreme Court No. 08875

HB2684 contains an amendment to K.S.A. 58-2254. The proposed amendment would have the following advantages:

- (1) It would assist Kansas residential homeowners' associations in collecting delinquent dues and assessments without the necessity and expense of a foreclosure proceeding, thereby freeing collected dues for other uses beneficial to the neighborhood.

- (2) It permits public notice of unpaid homeowners' association dues and assessments, and the lien thereof, thereby reducing those situations where a home buyer and a title insurance company are surprised to learn of a lien because the seller did not pay the dues or assessment.

By way of background, I was on the board of directors for Quail Valley Homes Association (where I live in Overland Park) for three years, during which time I was involved with enforcing restrictions and collecting unpaid dues. There are over 300 homes in the subdivision. The dues are authorized under the Homes Association Declaration, a copy of which is enclosed. Under Section 6 of the Declaration, the dues become a lien on the lot against which they are assessed, and remain a lien for up to 5 years (or else until earlier paid or foreclosed). The dues are not a personal obligation of the homeowner. Section 6 authorizes the Association to file a "certificate of non-payment of assessment" with the Register of Deeds to provide public notice of the non-payment. The Declaration creates the lien, and the lien exists whether or not a certificate of non-payment is filed. However, the certificate serves the purpose of helping secure the payment in almost all cases without the necessity of instituting a foreclosure. This is done in the following manner: (a) when a home is sold or refinanced, or a second mortgage is created, the certificate appears on the title report and is usually paid at closing, whereas without the certificate, the lien of unpaid dues (which would only be discovered by reading the Declaration and then trying to identify and run down a board member who knows whether or not the dues have been paid) is often overlooked; (b) the filing of the certificate, and notification to the homeowner of such filing, is a motivation, in and of itself, to promote payment.

The Quail Valley Homes Association Declaration is not unique insofar as the provisions regarding liens and certificates of non-payment are concerned. An adjoining subdivision, Shannon Valley, with over 400 homes, has identical lien and certificate language in their Declaration. A copy of this Declaration is enclosed. The large Whispering Hills Subdivision in western Johnson County has similar provisions. Although I have not made a study of the matter, I suspect several other subdivisions have similar language since it appears the lien and certificate paragraphs are "standard."

K.S.A. 58-2254 has been construed recently by the Kansas Court of Appeals to mean that if a homeowners' association files a certificate of non-payment of assessment, then the association must proceed to foreclose its lien on the unpaid dues within 30 days after the certificate is filed, or the lien is lost. The case was Quail Valley Homes Association v. Martisin. I represented Quail Valley Homes Association in the proceedings. A copy of the decision is enclosed. A petition to the Supreme Court to review the Court of Appeals decision was denied.

The Court of Appeals construction of K.S.A. 58-2254 has several adverse consequences:

- (1) It nullifies the use of certificates of non-payment as an inexpensive tool to collect delinquent homeowners dues. Typically, unpaid dues are a lien on the homeowner's lot for 5 years, by virtue of the homeowners' declaration.

No filing (other than the original declaration) is necessary to perfect the lien. A foreclosure action may be instituted at any time within the 5 years. But, if a certificate of non-payment of assessment is filed, providing public notice of the unpaid dues and the lien, the lien must then be foreclosed within 30 days, or it is lost. There is no reason to go to the time and expense of filing a certificate of non-payment of assessment if such filing means that the lien must be foreclosed in 30 days or it is lost. The homeowners' association might as well proceed directly with foreclosure. Considering the amount of most homeowners' association dues, such dues can be quickly devoured by attorneys fees for foreclosure rather than being used for grounds maintenance, watering of common areas, tree and shrub plantings, directories, meetings, and other "constructive" association expenses.

- (2) It eliminates the convenient public notice that a certificate of non-payment affords a home buyer and a title insurance company. Without the use of a certificate of non-payment, the new home buyer and title company must first discover the lien provisions that are buried in a lengthy recorded homeowners' declaration, and then hope to identify and interview a member of the homes association who knows whether or not dues are unpaid on a particular lot.

The proposed amendment should not have any adverse effect on the purpose of K.S.A. 58-2254. The purpose of the statute was stated by the Kansas Supreme Court in Glimac Oil Company v. Weiner, 150 Kan. 430, 431-2 (1939):

"The evident purpose of the statute was to compel any person who claimed an interest in "any real property belonging to another," and who should file of record an affidavit or statement asserting such claim, to file his action promptly, so that such claim would not continue as a cloud on the title of the land.

...

..., it is a reasonable supposition that the statute was intended to clear the title as to claims set forth in an affidavit, filed for record, and which "continued without cessation to speak" as long as such instrument remained of record."

Since a lien for unpaid dues already exists by virtue of a homeowners' declaration that has a built-in statute of limitations, the certificate of non-payment does not create a "cloud on the title". Further, the certificate's effect lasts no longer than the lien created by the recorded declaration (i.e., the time limit contained within the declaration that requires foreclosure, or the lien is lost). The certificate of non-payment simply serves to provide public notice of a lien created in the declaration. This is not inconsistent with the goal of the original statute.

**QUAIL VALLEY HOMES ASSOCIATION, INC.
HOMES ASSOCIATION DECLARATION**

THIS DECLARATION made this 1st day of May, 1978, by L & A DEVELOPMENT COMPANY, a Joint Venture of G. A. L. Corporation and Alpert Construction Co., Inc. WITNESSETH:

WHEREAS, L & A DEVELOPMENT COMPANY (hereinafter, for convenience, referred to as "Owner") is the owner of all of the lots shown on the Plat of QUAIL VALLEY, a subdivision in Johnson County, Kansas, filed for record on April 7, 1978, in the Office of the Register of Deeds of Johnson County, Kansas, and recorded in Book 44 of Plats, at Page 16; and

WHEREAS, Owner is now developing said subdivision for quality residential purposes and it is Owner's desire to continue the development of the subdivision and to create and maintain a residential neighborhood possessing features of more than ordinary value to a residential community.

NOW, THEREFORE, in order to assist Owner and Owner's grantees in providing the means necessary to bring this about, Owner does now and hereby subjects all of the Lots of QUAIL VALLEY, as shown on the recorded plat thereof, to the covenants, charges and assessments set forth and contained in this Declaration, subject, however, to the limitations hereinafter specified.

DEFINITIONS OF TERMS USED

The term "district" as used in this Declaration shall mean, unless and until extended as hereinafter provided, all of the lots on said plat of Quail Valley. If or when other land shall, in the manner hereinafter provided, be added to that described above, then the term "district" shall thereafter mean all land which shall from time to time be subjected to the terms of this Declaration, including any further modification thereof.

The term "improved property" as used herein shall be deemed to mean a single tract under a single ownership and use and on which tract a residence has been erected, or is in the process of erection. Any such tract may consist of one or more contiguous lots or part or parts thereof. Any other land covered by this Declaration shall be deemed to be vacant and unimproved.

The term "common area" as used herein shall be deemed to mean all streets and areas, the use of which is dedicated to or set aside for the general use of all the owners within the district.

The term "owners" as used herein shall mean those persons or corporations who may from time to time own land within the district.

SECTION 1. MEMBERSHIP IN ASSOCIATION.

The owners of all of the Lots of QUAIL VALLEY, as shown on the recorded plat thereof, together with the owners of any other land that may from time to time be made subject to all of the terms and provisions of this Declaration in the manner hereinafter provided for, shall be the members of an association which is hereby created and established, to be known as the QUAIL VALLEY HOMES ASSOCIATION. The Association is incorporated under the laws of the State of Kansas as a corporation not-for-profit. Membership in the Association shall be the sole judge of the qualification of its members and of their rights to participate in its meetings and proceedings.

SECTION 2. LAND ENTITLED TO BENEFITS.

No land shall be entitled to any of the benefits, improvements or services provided by this Association unless the owner or owners thereof shall have subjected their land to the terms of this Declaration and to the assessments herein provided for.

HJC
1-29-92
Att #4
6-21

SECTION 3. OTHER LANDS -- HOW THEY MAY BE ADDED.

L & A Development Company may, from time to time, add to the district such land as is now or hereafter owned or approved for addition by said Company; provided, that the land to be added to the district shall at that time be bound by all of the terms of this Declaration and any future modification thereof.

SECTION 4. POWERS AND DUTIES OF THE ASSOCIATION.

The Association shall have the following powers and duties which it may exercise and perform whenever, in its discretion, it may deem them necessary or desirable, to-wit:

(a) To enforce, either in its own name or in the name of any owner within the district, any or all building restrictions which may have been heretofore or may hereafter be imposed upon any of the land in such district, either in the form as originally placed thereon or as modified subsequently thereto; provided, however, that this right of enforcement shall not serve to prevent such changes, releases, or modifications as are permissible in the deeds, declarations, contracts or plats in which such restrictions and reservations as set forth, nor shall it serve to prevent the assignment of those rights by the proper parties, whenever and wherever such rights of assignment exist. The expenses and costs of any enforcement proceedings shall be paid out of the general fund of the Association, as herein provided for. Nothing herein contained shall be deemed or construed to prevent any owner having the contractual right to do so from enforcing, in his own name, any such restrictions.

(b) To manage and control, as trustee for its members, all common areas and the improvements located thereon in the district; provided that such management and control of said areas and improvements shall at all times be subject to that had and exercised by any city, township, county and state, or any of them in which the land within the district is located.

(c) To provide for the collection and dispersal of rubbish and garbage when adequate services of that type are not available from any public source.

(d) To care for, spray, trim, protect and replant trees on all streets and in other common areas where trees have once been planted when such services are not available from any public source, and to care for, protect, and replant shrubbery and replant grass and replace sod in the parts which are in the streets and in any common areas or parks set aside for the general use of the owners in the district or to which such owners have access and the use thereof.

(e) To mow, care for, maintain and remove rubbish from vacant and unimproved property and to do any other things necessary or desirable in the judgment of the officers of the Association to keep any vacant and unimproved property and the parking in front of any property in the district neat in appearance and in good order.

(f) To provide for the plowing and removal of snow from sidewalks and streets when such services are not available from any public source.

(g) To provide for the maintenance of any playgrounds, pedestrian ways, gateways, entrances, drinking fountains, and ornamental features now existing or which may hereafter be erected or created in said district in any common area or park, or on any land set aside for the general use of the owners in the district, or to which all of such owners have access and the use thereof, and also to provide for the maintenance of any streams and natural watercourses within the district.

(h) To provide such lights as the Association may deem advisable on streets, parks, parkings, pedestrian ways, gateways, entrances, or other features and in other common areas when such facilities are not available from any public source.

(i) To provide for the cleaning of streets, gutters, catch basins, sidewalks and pedestrian ways and for the repair and maintenance of streets, storm sewers and appurtenant drainage facilities when such services are not available from any public source.

(j) To erect and maintain signs for the marking of streets and safety signs for the protection of children and other persons when such signs are not available from

HJC
1-29-92
Att # 4
7-21

any public source.

(k) To employ duly qualified peace officers for the purpose of providing such police protection as the Association may deem necessary or desirable, in addition to that rendered by public sources.

(l) To exercise control over such easements as it may acquire from time to time.

(m) To acquire by lease or own the title to such real estate as may be reasonably necessary in order to carry out the purpose of the Association, and to pay taxes on such real estate as may be owned or leased by it, and to pay such taxes as may be assessed against land in common areas within the district.

(n) To levy and collect the assessments which are provided for in this Declaration.

SECTION 5. METHOD OF PROVIDING GENERAL FUNDS.

(a) For the purpose of providing a general fund to enable the Association to exercise the powers and maintain the improvements and render the services herein provided for, all land within the boundaries of the district on the first day of each fiscal year of the Association, has hereinafter defined, shall be subject to an annual assessment which may be levied by the Association from year to year and shall be paid to the Association annually in advance by the respective owners of the assessable land subject thereto, which assessable land shall be deemed to be all of the lots in the aforesaid plat of Quail Valley, except as herein provided, together with such other land as may from time to time be added to said district as herein provided. The Association may, from year to year, fix and determine the total amount required in this general fund and may levy and collect an annual assessment not exceeding One Hundred Dollars (\$100.00) for each aforesaid assessable lot within the district as now or hereafter established.

(b) The annual assessment upon each lot as aforesaid may be increased by an amount not exceeding fifty percent (50%) of the One Hundred Dollars (\$100.00) maximum annual assessment which the Association may levy and collect from year to year; provided that, at a meeting of the members specially called for that purpose prior to the date on which the assessment is levied for the year for which such increase is proposed, two-thirds (2/3rds) of the members present at such meeting authorize such an increase by an affirmative vote therefore, and provided further that the annual assessment upon each lot or building site as aforesaid may be increased by an amount not exceeding two hundred percent (200%) of said One Hundred Dollars (\$100.00) maximum annual assessment; provided, further, that at a meeting of the members specially called for that purpose prior to the date on which the assessment is levied for the year for which such increase is proposed, three-fourths (3/4ths) of the members present at such meeting authorize such an increase by an affirmative vote therefore. Whenever the Association may deem it advisable to submit to the members a proposal for increasing the amount of the annual assessment for a particular year, it shall notify the members of the Association by mailing to such members at the last known address, with United States postage prepaid, a notice of such meeting, giving the time and place at which it is to be held and the fact that an increase in the amount of the annual assessment is to be voted upon at such meeting. No increase in the amount of the annual assessment may be made for more than one (1) year at a time.

(c) The first assessment shall become due on the first day of the month following the occupancy by the owner thereof of the fortieth (40th) home in the district as now or hereafter established. This initial assessment shall be in an amount not exceeding Eight Dollars (\$8.00) for each full calendar month beginning with said assessment date to and including the next succeeding month of May. Thereafter assessments shall be for the fiscal year beginning June 1 and they shall be fixed and levied prior to June 1st of each year and shall be payable on that date, and thereafter it shall be due and payable on June 1st of each year. It will be the duty of the Association to notify all owners whose addresses are listed with the Association on or before that

HJC
1-29-92
Att #4
8-21

date, giving the amount of the assessment on each tract of land owned by them and the date when such assessment is due. Failure of the Association to levy the assessment prior to June 1st of each year for the next succeeding fiscal year beginning on June 1st shall not invalidate any such assessment made for that particular year, nor shall failure to levy an assessment for any one year affect the right of the Association to do so for any subsequent year. When the assessment is made subsequent to June 1st of any year, then it shall become due and payable not later than thirty (30) days from the date of levying the assessment.

(d) A written or printed notice deposited in the United States Post Office with postage prepaid and addressed to the respective owners at the last address listed with the Association shall be deemed to be sufficient and proper notice for these purposes, or for any other purpose of this Declaration where notices are required.

SECTION 6. LIEN ON REAL ESTATE.

(a) The assessment provided for in Section 5 shall become a lien on the real estate against which it is levied as soon as it is due and payable, as above set forth; provided, however, that such lien shall be inferior and subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed on said real estate securing the payment of a loan. In the event of a failure of any owner to pay the assessment on or before the 30th day following the making of such assessment, then such assessment shall bear interest at the rate of ten percent (10%) per annum from the date of the assessment.

(b) Within thirty (30) days from the date of levying the assessment for the fiscal year during which and for which the assessment is levied, the assessment shall become delinquent and payment of both principal and interest may be enforced as a lien on said real estate in proceedings in any court in Johnson County, Kansas, having jurisdiction of suite for the enforcement of such liens. It shall be the duty of the Association to bring suits to enforce such liens before the expiration thereof. The Association may, at its discretion, file certificates of nonpayment of assessments in the Office of the Register of Deeds of Johnson County, Kansas at Olathe, whenever any such assessments are delinquent. For each certificate so filed, the Association shall be entitled to collect from the owner or owners of the property described therein a fee of Fifteen Dollars (\$15.00), which fee is hereby declared to be a lien upon the real estate so described in said certificate; provided that such lien be inferior and subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed on said real estate securing the payment of a loan. Such fee shall be collectible in the same manner as the original assessment provided for herein and in addition to the interest and principal due thereon.

(c) Such liens shall continue for a period of five (5) years from the date of delinquency and no longer, unless within such time, suit shall have been instituted for the collection of the assessment, in which case the lien shall continue until the termination of the suit and until the sale of the property under execution of the judgment establishing same.

SECTION 7. EXPENDITURES LIMITED TO ASSESSMENTS FOR CURRENT YEAR.

The Association shall at no time expend more money within one year than the total amount of the assessment for that particular year or any surplus which it may have on hand from previous assessments, nor shall said Association enter into any contract whatsoever binding the assessment of any future year to pay for any such obligation, and no such contract shall be valid or enforceable against the Association except for contracts for utilities, it being the intention that the assessment for each year shall be applied as far as practicable toward the payment of the obligations of that year and that the Association shall have no power to make a contract affecting the assessment of any future or subsequent year, except for utilities.

HJC
1-29-92
att #4
9-21

SECTION 8. ASSOCIATION TO NOTIFY MEMBERS OF ADDRESS.

The Association shall notify all owners of land in the district as it may exist from time to time, insofar as the addresses of such owners are listed with said Association, of the official address of said Association, the time and place of the regular meetings of the Association, and the place where payments shall be made and any other business in connection with said Association may be transacted, and in the case of any change of such address, the Association shall notify all the owners of the land in the district, insofar as their addresses are listed with the Association, of the new address.

SECTION 9. TEMPORARY TRUSTEE.

Prior to the actual organization or incorporation of the Association contemplated by this Declaration, L & A Development Company had the right, at its option, to perform the duties, assume the obligations, levy and collect the assessments and otherwise exercise the powers herein given to the Association in the same way and manner as though such powers and duties were herein given directly to L & A Development Company.

SECTION 10. TO OBSERVE ALL LAWS.

Said Association shall at all times observe all state, county, city and other laws and if at any time any of the provisions of this Declaration shall be found to be in conflict therewith, then such parts of this Declaration as are in conflict with such laws shall become null and void, but no other part of this Declaration not in conflict therewith shall be affected thereby. The Association shall have the right to make such reasonable rules and regulations and provide such means and employ such agents as will enable it to adequately and properly carry out the provisions of this Declaration; subject, however, to the limitations of its rights to contract as are herein provided for.

SECTION 11. AMENDMENT.

By written consent of the owners of three-fourths (3/4ths) of the area of the land within the district as then constituted, evidenced by a Declaration duly executed and acknowledged by such owners and recorded in the Office of the Register of Deeds for Johnson County, Kansas, this instrument may be modified and amended; provided, however, that no right to exceed the maximum annual assessment herein provided for may be given.

SECTION 12. HOW TERMINATED.

This Declaration may be terminated and all of the land now or hereafter affected may be released from all the terms and provisions thereof by the owners of three-fourth (3/4ths) of the area then subject thereto executive and acknowledging an appropriate agreement or agreements for that purpose and filing the same for record in the Office of the Register of Deeds for Johnson County, Kansas.

SECTION 13. COVENANTS RUNNING WITH THE LAND.

All of the provisions of this Declaration shall be deemed to be covenants running with the land and shall be binding upon L & A Development Company and upon its successors and assigns.

HJC
1-29-92
Att # 4
10-21

SHANNON VALLEY

DECLARATION OF RESTRICTIONS
AND
HOMES ASSOCIATION
DECLARATION

HJC
1-29-92
Att #4
11-21

HJC
1-29-92
Att #4
12-21

HOMES ASSOCIATION DECLARATION
SHANNON VALLEY ESTATES

DEFINITIONS OF TERMS USED:

The term "district" as used in this Declaration shall mean, unless and until extended as hereinafter provided, all of the lots enumerated above and shown on said plat of Shannon Valley Estates. If or when other land shall, in the manner hereinafter provided, be added to that described above, then the term "district" shall thereafter mean all land which shall from time to time be subjected to the terms of this Declaration, including any future modification thereof. The term "improved property", as used herein, shall be deemed to mean a single tract under a single ownership and use, and on which tract a residence has been erected or is in the process of erection. Any such tract may consist of one or more contiguous lots or parts thereof. Any other land covered by this Declaration shall be deemed to be vacant and unimproved. The term "public place" as used herein shall be deemed to mean all streets, all parks at street intersections or elsewhere, and all similar places the use of which is dedicated to or set aside for the use of the general public, or for the general use of all of the owners within the district, or which may, with appropriate consent be used by all of the owners of the district. The term "owners" as used herein shall mean those persons or corporations who may from time to time own the land within the district. The term "restrictions" as used herein shall specifically include those contained in the "Declaration of Restrictions" of Shannon Valley Estates filed in the office of the Register of Deeds, Johnson County, Kansas, on August 18, 1977, beginning at Page 283 of Volume 1248, and all amendments thereto.

SECTION 1. MEMBERSHIP IN ASSOCIATION

The owners of all of the land hereinabove described, together with the owners of any other land that may from time to time be made subject to all of the terms and provisions of this Declaration in the manner hereinafter provided for, shall be the members of an association, which is hereby created and established, to be known as "SHANNON VALLEY ESTATES HOMES ASSOCIATION". The Association shall be incorporated under the laws of the State of Kansas as a corporation not for profit. Membership in the Association shall be limited to the owners of land within the boundaries of the district as it exists from time to time. The Association shall be the sole judge of the qualifications of its members and of their rights to participate in its meetings.

HJC
1-29-92
Att #4
13-21

SECTION 2. VOTING RIGHTS

The Shannon Valley Estates Homes Association, Inc. shall have two (2) classes of voting membership, as follows:

(1) Class A. Each owner, with the exception of the Developer, of a lot in Shannon Valley Estates, a subdivision in the City of Overland Park, Johnson County, Kansas, shall be a Class A member. Each Class A member shall be entitled to one vote for each lot upon which he holds fee simple title. When more than one person holds such interest in any lot, all such persons shall be members and the vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one lot.

(2) Class B. The Class B member shall be the Developer. The Class B member shall be entitled to ten (10) votes for each lot within the district in which the said Developer holds fee simple title.

SECTION 3. LAND ENTITLED TO BENEFITS

No land shall be entitled to any of the benefits, improvements or services provided by this Association unless the owner or owners thereof shall have subjected their land to the terms of this Declaration and to the assessments herein provided for.

SECTION 4. USE OF COMMON AREAS

The owners of land within the district as it may exist from time to time shall have the exclusive right to the use of all undedicated common areas as designated on the plat of Shannon Valley Estates or as may be designated on subsequent plats of Shannon Valley Estates or as may be created by separate document filed for that purpose with the Register of Deeds of Johnson County, Kansas, by the Developer or as otherwise designated herein.

The SHANNON VALLEY ESTATES HOMES ASSOCIATION shall have the right and the power to make reasonable rules and regulations which shall govern the use of the said undedicated common areas.

SECTION 5. OTHER LANDS - HOW THEY MAY BE ADDED

Shannon Valley Developments may from time to time add to the district such land as is now or hereafter owned or

approved for addition by said Company, provided that the land so added to the district shall be bound at that time by all of the terms of this Declaration and any future modifications thereof.

SECTION 6. POWERS AND DUTIES OF THE ASSOCIATION

(1) The Association shall have the following powers and mandatory duties:

(a) To care for, spray, trim, protect and replant trees on all streets and in other public places where trees have once been planted, when such services are not available from any public source; and to care for, protect and replant shrubbery, and resow grass and replace sod in the parks which are in the streets and in any parks set aside for the general use of the owners in the district, or to which such owners have access and the use thereof.

(b) To provide for the maintenance of any tennis courts, playgrounds, pedestrian ways, gateways, entrances, drinking fountains, and ornamental features now existing or which may hereafter be erected or created in said district in any public street or park, or on any land set aside for the general use of the owners in the district, or to which all of such owners have access and the use thereof; and also to provide for the maintenance of any streams and natural water-courses within the district.

(c) To provide for the operation and maintenance of swimming facilities which may hereafter be erected, for the exclusive use and enjoyment of members of the Association and members of their families who reside in the district, and establish rules for the use and management of such facilities.

(d) To acquire and own the title to such real estate as may be reasonably necessary in order to carry out the purposes of the Association, and to pay taxes on such real estate as may be owned by it; and to pay such taxes as may be assessed against land in the public, or semi-public places within the district.

(e) To levy and collect the assessments which are provided for in this Declaration.

(2) The Association shall have the following additional powers and duties which it may exercise and perform

whenever in its discretion it may deem it necessary or desirable, to-wit:

(a) To enforce, either in its own name or in the name of any owner within the district, any or all building restrictions which may have been heretofore or may hereafter be imposed upon any of the land in such district, either in the form as originally placed thereon or as modified subsequently thereto; provided, however, that this right of enforcement shall not serve to prevent such changes, releases or modifications of restrictions or reservations being made by the parties having the right to make such changes, releases or modifications as are permissible in the deeds, declarations, contracts or plats in which such restrictions and reservations are set forth, nor shall it serve to prevent the assignment of those rights by the proper parties, wherever and whenever such rights of assignment exist. The expenses and costs of any enforcement proceedings shall be paid out of the general fund of the Association as herein provided for. Nothing herein contained shall be deemed or construed to prevent any owner having the contractual right to do so from enforcing in his own name any such restrictions.

(b) To manage and control as trustee for its members all public improvements upon and to the land in the district, or improvements in public places, provided that such management and control of said improvements shall at all times be subject to that had and exercised by any City, Township, County and State, or any of them in which the land within the district is located.

(c) To provide for the collection and disposal of rubbish and garbage, when adequate services of that type are not available from any public source.

(d) To mow, care for, maintain and remove rubbish from vacant and unimproved property and to do any other things necessary or desirable in the judgment of the officers of the Association to keep any vacant and unimproved property and the parking in front of any property in the district neat in appearance and in good order.

(e) To provide for the plowing and removal of snow from sidewalks and streets, when such services are not available from any public source.

HJC
1-29-92
Att # 4
14-21

(f) To provide such lights as the Association may deem advisable on streets, parks, parkings, pedestrian ways, gateways, entrances or other features, and in other public or semi-public places, when such facilities are not available from any public source.

(g) To provide for the cleaning of streets, gutters, catch basins, sidewalks and pedestrian ways, and for the repair and maintenance of storm sewers and appurtenant drainage facilities, when such services are not available from any public source.

(h) To erect and maintain signs for the marking of streets and safety signs for the protection of children and other persons, when such signs are not available from any public source.

(i) To employ duly qualified peace officers for the purpose of providing such police protection as the Association may deem necessary or desirable in addition to that rendered by public authorities.

(j) To exercise control over such easements as it may acquire from time to time.

SECTION 7. METHOD OF PROVIDING GENERAL FUNDS

(1) For the purpose of providing a general fund to enable the Association to exercise the powers, and maintain the improvements and render the services herein provided for, all land within the boundaries of the district except that land owned by Shannon Valley Developments or Mid-America Properties Corporation, on the first day of each fiscal year of the Association as hereinafter defined, shall be subject to an annual assessment which may be levied by the Association from year to year and shall be paid to the Association annually in advance by the respective owners of the assessable land subject thereto, which assessable land shall be deemed to be all of the above-enumerated lots in the aforesaid plat of Shannon Valley Estates, except as herein provided, together with such other land as may from time to time be added to the said district as herein provided. The Association may from year to year fix and determine the total amount required in this general fund and may levy and collect an annual assessment not exceeding \$150.00 for each lot within the district as now or hereafter established, provided, however, that if in the sale of land within the district any lot or lots be divided into one or more building sites, each of which building sites shall be for a

single residence and may consist of a part or parts of one or more lots as platted, then for the purpose of levying this assessment each of such building sites shall constitute one assessment unit and shall be liable for each annual assessment in the same way and manner as one platted lot under a single ownership. For the purpose of levying this assessment, the Association shall be the sole judge as to what may from time to time constitute a building site under the provisions of this paragraph.

(2) The annual assessment upon each lot or building site as aforesaid may be increased by an amount not exceeding fifty percent of the \$150.00 maximum annual assessment which the Association may levy and collect from year to year, provided that at a meeting of the members specially called for that purpose, prior to the date on which the assessment is levied for the year for which such increase is proposed, fifty-one percent of the members present at such meeting may authorize such an increase by an affirmative vote therefor, and provided, further, that the annual assessment upon each lot or building site as aforesaid may be increased by an amount not exceeding one hundred percent of the said \$150.00 maximum annual assessment, provided that at a meeting of the members specially called for that purpose, prior to the date on which the assessment is levied for the year for which such increase is proposed, fifty-one percent of the members present at such meeting may authorize such an increase by an affirmative vote therefor. Whenever the Association may deem it advisable to submit to the members a proposal for increasing the amount of the annual assessment for a particular year, it shall notify the members of the Association by mailing to such members at the last known address, with United States postage thereon prepaid, a notice of such meeting, giving the time and place at which it is to be held and the fact that an increase in the amount of the annual assessment is to be voted upon at such meeting. No increase in the amount of the annual assessment may be made for more than one year at a time.

(3) The first assessment shall become due on the first day of the month following the conveyance of the home in Shannon Valley Estates, as shown in Plat Book 41, at Page 43, of the Register of Deeds of Johnson County, Kansas, aforesaid, from Shannon Valley Developments or a builder to a third-party owner-occupant; this initial assessment shall be in an amount not exceeding \$12.50 for each full calendar month beginning with said assessment date to and including the next succeeding month of May. Thereafter, assessments shall be for the fiscal year beginning June 1, and they

#JC
1-29-92
Att #4
15-21

shall be fixed and levied prior to June 1st of each such year and shall be payable on that date, and thereafter it shall be due and payable on June 1st of each year. It will be the duty of the Association to notify all owners whose address is listed with the Association on or before that date, giving the amount of the assessment on each tract of land owned by them, and the date when such assessment is due. Failure of the Association to levy the assessment prior to June 1st of each year for the next succeeding fiscal year beginning on June 1st shall not invalidate any such assessment made for that particular year; nor shall failure to levy an assessment for any one year affect the right of the Association to do so for any subsequent year. When the assessment is made subsequent to June 1st of any year, then it shall become due and payable not later than thirty days from the date of levying the assessment.

(4) A written or printed notice, deposited in the United States Post Office, with postage thereon prepaid, and addressed to the respective owners at the last address listed with the Association, shall be deemed to be sufficient and proper notice for these purposes, or for any other purpose of this Declaration where notices are required.

SECTION 8. LIEN ON REAL ESTATE

(1) The assessment shall become a lien on the real estate against which it is levied as soon as it is due and payable as above set forth, provided, however, that such lien shall be inferior and subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed on said real estate securing the payment of a loan which is insured or guaranteed by any agency of the United States government. In the event of the failure of any owner to pay the assessment on or before the 30th day following the making of such assessment, then such assessment shall bear interest at the rate of eight percent per annum from the date of assessment.

(2) Within thirty days from the date of levying the assessment for the fiscal year during which and for which the assessment is levied, the assessment shall become delinquent and payment of both principal and interest may be enforced as a lien on said real estate, in proceedings in any court in Johnson County, Kansas, having jurisdiction of suits for the enforcement of such liens. It shall be the duty of the Association to bring suits to enforce such liens before the expiration thereof. The Association may at its discretion file a certificate of nonpayment of assessments

in the Office of the Register of Deeds whenever any such assessments are delinquent. For each certificate so filed, the Association shall be entitled to collect from the owner or owners of the property described therein a fee of \$30.00, which fee is hereby declared to be a lien upon the real estate so described in said certificate, provided that such lien shall be inferior and subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed on said real estate securing the payment of a loan which is insured or guaranteed by any agency of the United States government. Such fee shall be collectible in the same manner as the original assessments provided for herein and in addition to the interest and principal due thereon.

(3) Such liens shall continue for a period of five years from the date of delinquency and no longer, unless within such time suit shall have been instituted for the collection of the assessment, in which case the lien shall continue until the termination of the suit and until the sale of the property under execution of the judgment establishing same.

SECTION 9. EXPENDITURES LIMITED TO ASSESSMENTS FOR CURRENT YEAR

The Association shall at no time expend more money within any one year than the total amount of the assessment for that particular year, or any surplus which it may have on hand from previous assessments; nor shall said Association enter into any contract whatsoever, binding the assessment of any future year to pay for any such obligation, and no such contract shall be valid or enforceable against the Association except for contracts for utilities; it being the intention that the assessment for each year shall be applied as far as practicable toward payment of the obligation of that year, and that the Association shall have no power to make a contract affecting the assessment of any future or subsequent year except for utilities.

SECTION 10. ASSOCIATION TO NOTIFY MEMBERS OF ADDRESS

The Association shall notify all owners of land in the district as it may exist from time to time, insofar as the addresses of such owners are listed with said Association, of the official address of said Association, the place and time of the regular meetings of the Association, and the

place where payments shall be made and any other business in connection with said Association may be transacted, and in the case of any change of such address, the Association shall notify all the owners of the land in the district, insofar as their addresses are listed with the Association, of the new address.

SECTION 11. TEMPORARY TRUSTEE

Prior to the actual organization or incorporation of the Association contemplated by the terms of this Declaration, Shannon Valley Developments shall have the right at its option to perform the duties, assume the obligations, levy and collect the assessments, and otherwise exercise the powers herein given to the Association, in the same way and manner as though all of such powers and duties were herein given directly to Shannon Valley Developments. The Association contemplated by the terms of this Declaration shall not assume any of the rights herein provided for without the consent of Shannon Valley Developments and its relinquishment of its rights as temporary trustee.

SECTION 12. TO OBSERVE ALL LAWS

Said Association shall at all times observe all State, County, City and other laws, and if at any time any of the provisions of this Declaration shall be found to be in conflict therewith then such parts of this Declaration as are in conflict with such laws shall become null and void, but no other part of this Declaration not in conflict therewith shall be affected thereby. The Association shall have the right to make such reasonable rules and regulations, and provide such means and employ such agents as will enable it to adequately and properly carry out the provisions of this Declaration, subject, however, to the limitations of its rights to contract as are herein provided for.

SECTION 13. AMENDMENT

By written consent of the owners of three-fourths of the area of the land within the district as then constituted, evidenced by a Declaration duly executed and acknowledged by such owners and recorded in the office of the Register of Deeds of Johnson County, Kansas, this instrument may be modified and amended, provided, however, that no right to exceed the maximum annual assessment herein provided for may be given.

#JC
1-29-92
ATT #4
16-2-1

HJC
1-29-92
Att #4
17-21

SECTION 14. HOW TERMINATED

This Declaration may be terminated and all of the land now or hereafter affected may be released from all of the terms and provisions thereof by owners of two-thirds of the area then subject thereto executing and acknowledging an appropriate agreement or agreements for that purpose and filing the same for record in the office of the Register of Deeds of Johnson County, Kansas.

SECTION 15. COVENANTS RUNNING WITH THE LAND

All of the provisions of this Declaration shall be deemed to be covenants running with the land, and shall be binding upon Shannon Valley Developments, and upon its successors and assigns.

NOT DESIGNATED FOR PUBLICATION

No. 63,111

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

QUAIL VALLEY HOMES ASSOCIATION, INC.,
Appellant,

v.

GARY A. MARTASIN, *et al.*,
Appellees.

MEMORANDUM OPINION

Appeal from Johnson District Court: LARRY
McCLAIN, Judge. Opinion filed May 12, 1989. Affirmed.

Christopher B. Bacon, of Lowe, Farmer, Bacon
and Roe, of Olathe, for the appellant.

Lewis A. Heaven, Jr., of Holbrook, Ellis and
Heaven, P.A., of Merriam, for the appellees.

Before ABBOTT, C.J., LEWIS, J., and C. FRED
LORENTZ, District Judge, assigned.

Per Curiam: This is an appeal by Quail Valley
Homes Association, Inc., from a decision granting Gary and

HJC
1-29-92
att # 4
18-21

Shelley Martasin's motion for summary judgment and denying Quail Valley's motion for summary judgment.

In 1978, the owners of the lots within the residential subdivision now known as Quail Valley filed a declaration establishing the Homes Association and giving to the association the power to manage the development. Included among these powers is the right to levy and collect assessments for improvements and services. Specifically, section 6 of the declaration provides for assessments to be liens on the real estate levied against, with the liens to be valid for a period of five years. Quail Valley, under the terms of the declaration, could sue for foreclosure of the liens, or, in its discretion, could file a certificate of nonpayment of assessment with the register of deeds when payment of any assessment became delinquent.

In March 1984, Steven and Nancy Krider purchased a lot in Quail Valley. In June 1985, Quail Valley levied an \$85 assessment against the lot. The assessment was not paid. On August 15, 1985, Quail Valley filed a certificate of nonpayment of assessment with the Johnson County register of deeds. In September 1985, the Kriders sold the lot to Nor-Am Service Corporation which, subsequently, sold the lot to the defendants Martasin.

On August 4, 1988, Quail Valley foreclosed the lien for nonpayment of assessment. The lawsuit was within five years of the assessment, but was eleven days short of three years after the filing of the certificate of nonpayment.

HJC
1-29-92
att #4
19-21

The trial court granted summary judgment for defendants, finding that K.S.A. 58-2254 required an action for foreclosure of a lien to be filed within 30 days of the recording of the certificate of nonpayment of assessment with the register of deeds.

Quail Valley first contends K.S.A. 58-2254 does not apply because this case involves a covenant running with the land. It is not disputed that the declaration runs with the land and that nonpayment of an assessment can be enforced as a lien against the property. The issue is whether K.S.A. 58-2254 applies to the circumstances of this case. The statute reads as follows:

"Whenever any person shall file in the office of register of deeds any affidavit, caveat or statement of any kind, signed by or on behalf of the claimant only, whether acknowledged or not, purporting to set forth any claim against, interest in or lien upon any real property belonging to another, if not based on a written instrument signed by the party to be charged, such claim, interest or lien shall, after expiration of thirty days from date of filing the same, no longer constitute any claim against, interest in or lien upon such real property, unless, within such time, the claimant shall begin an action in a court of competent jurisdiction to enforce such claim."

When filed, the certificate gives notice to all persons that there is an unpaid assessment on the real property described and is signed on behalf of the claimant. Under any reasonable reading, it purports to set forth a "claim against, interest in, or lien upon" the particular real property. Accordingly, it falls squarely within the statute.

Quail Valley argues that the Martasins impliedly agreed to the terms of the "declaration" by accepting their deed. The question, however, is not whether there is a valid lien, but whether K.S.A. 50-2254 applies. The Martasins clearly did not sign the certificate of nonassessment, and, by filing it, Quail Valley subjected itself to the statute which required it to initiate its foreclosure within 30 days.

Quail Valley's final argument is that it is not equitable to allow K.S.A. 50-2254 to nullify the effect of a covenant running with the land. The statute does not go that far. It does not deal with the underlying Quail Valley Homes Association covenant. Under its declaration, Quail Valley may levy its assessment, and, if *not* paid, the assessment becomes a lien on the real estate which runs for five years. The declaration does not require that a certificate of nonpayment of assessment be filed to perfect the lien. The filing is discretionary. The statute simply requires the lienholder to act promptly once it does make such a filing.

The certificate of nonpayment of assessment was filed with the register of deeds in order to give constructive notice of the claim to people acquiring an interest in the property. Quail Valley protected its claim and benefited by filing the certificate, and the certificate placed a cloud upon the title to the real estate. To require Quail Valley to act to resolve its claim within 30 days does not appear to be inequitable under these circumstances.

Affirmed.

SECTION 410 ALCOHOL-IMPAIRED DRIVING COUNTERMEASURES:

The Anti-Drug Abuse Act of 1988 created the program, which was re-authorized in the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, but because of its strict criteria no state could qualify for it. New Mexico and Indiana just recently qualified as the first in the nation.

Availability of Funds

Five year program with funding FY 92 - FY 97.

Basic Grant Eligibility:

A state is eligible if four of five following criteria is met:

- 1) Prompt license suspension: requires administrative revocation of drivers license and the arrest to suspension time of an average of 30 days. Establishes suspension periods.
- **2) Per Se law: requires .10 BAC first three years of program, .08 BAC by the 4th year of the grant program
- **3) Roadside sobriety checks - statewide program
- 4) Self-sustaining drunk driving prevention program - requires significant portion of fines/surcharges (or equiv. amt.) collected from those apprehended and ~~convicted~~ ^{fined} be returned to communities with comprehensive programs
- **5) Underage 21 prevention program: requires "effective system" for prevention of purchasing by under 21, e.g. distinguishable licenses

**indicates current eligibility.

Amount of Basic Grant:

65% of the amount of funds apportioned to such state in such fiscal under this section.
Estimated annual amount \$228,000.

Supplemental Grant:

- 1) Per se law for under 21: requires .02 BAC for persons under age 21
- **2) Open container law
- 3) Suspension of registration and return of license plates: requires susp of regis. and plates, applies to repeat offenders in addition to driving on susp or revoked license
- **4) Mandatory blood alcohol testing programs
- 5) Drugged driving prevention: requires DUI laws to apply to controlled substances, plus enhances penalties beyond for both on 3rd or subsequent offenses. Provides for effective system, including prosecution, training, and rehab and treatment.
- 6) Per se law: .08 BAC first three years of program
- 7) Video equipment for detection of drunk and drugged drivers: state provides a program to acquire equipment for detection and prosecution with training.

**indicates current eligibility.

HJC
1-29-92
Att #5
1-2

Kansas Department of Transportation
January 29, 1992
Page Two

Amount of Supplemental Grant:

Each supplemental grant criteria provides 5% of the amount apportioned to the state in the fiscal year under this section.

Estimated annual amount based on two qualifying criteria \$35,200.

Total Estimated Annual Amount \$264,000.

Reapportionment of Noneligible State Funds:

The amount(s) not apportioned to a state(s) because of non-eligibility shall be reapportioned to the other states eligible to receive a grant. This shall be made on the first day of the succeeding fiscal year.

NOTE: The estimated grant amounts were derived from the allocation formula received from the National Highway Traffic Safety Administration (NHTSA) Headquarters as of this date. This formula has not been officially approved.

45C
1-29-92
Att # 5
2-2