

Approved: WJW

Date 7/22/92

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Senator Wint Winter Jr. at 10:05 a.m. on April 1, 1992 in room 514-S of the Capitol.

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

Committee staff present:
Mike Heim, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:
Representative Vincent Snowbarger
Dr. Stuart Frager, Topeka
Dorothy Frager, Topeka
Paul Shelby, Office of Judicial Administration

Chairman Winter called the meeting to order by opening the hearing for HB 2684.
HB 2684 - dues owed to home owner's association not subject to KSA 58-2254.

Representative Vincent Snowbarger explained HB 2684 would exempt enforcement actions from the 30-day time limit on liens filed for unpaid dues to a Homeowner's Association Declaration when the declaration contains the time limitation for action. He added that mortgages and mechanics liens would be exempt from this legislation.

Written materials from Christopher Bacon, Olathe, in support of HB 2684 were presented to the Committee. (ATTACHMENT 1)

Senator Martin moved to recommend HB 2684 favorable for passage. Senator Bond seconded the motion. The motion carried.

Chairman Winter opened the hearing for HB 2965.
HB 2965 - investigations of suspected child abuse by the Department of Social and Rehabilitation Services.

Dr. Stuart Frager, Topeka, testified in support of HB 2965. He noted that during his conversation with Roberta Sue McKenna, SRS, she stated they would not object to HB 2965 as the bill still allows for investigations by third parties. (ATTACHMENT 2)

Dorothy Frager, Topeka, testified in support of HB 2965 by stating deletion of the exclusion would provide children of SRS employees (her children) the same equal protection the law currently gives the rest of the children of Kansas.

This concluded the hearing on HB 2965.

The Chairman turned the Committee's attention to HB 2102.
HB 2102 - child support through high school.

Committee discussion addressed the question of limiting HB 2102 to children undertaking a traditional program of study or also to include GED programs.

Senator Oleen moved to conceptually amend HB 2102 to require full-time attendance by the student for the purpose of working toward a high school diploma. Senator Bond seconded the motion. The motion carried.

Senator Oleen moved to recommend HB 2102 favorable for passage as amended. Senator Bond seconded the motion. The motion carried.

The Committee turned its attention to HB 2832.
HB 2832 - creating a judicial branch education fund to educate judicial branch officers and employees.

Copies of a letter from Sherlyn Sampson, Kansas Association of District Court Clerks and Administrators, in support of HB 2832 were distributed to the Committee. (ATTACHMENT 3)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:05 a.m. on April 1, 1992.

Paul Shelby, Office of Judicial Administration, reviewed his previous written testimony on HB 2832 and stated that they were committed to ensuring all employees receive the appropriate education to complete their duties. He explained the difficulties involved in achieving that commitment when funding restrictions require elimination of training programs, as happened in the recent fiscal year. (See ATTACHMENT 10 of minutes dated March 24, 1992)

Responding to questions, Mr. Shelby stated that the education fund had come from the judiciary general budget. He added that the limited training currently provided to judiciary personnel would be further curtailed if not for assistance from the Kansas Bar Association and various grants.

The Committee expressed concern with the lack of specific accounting of monies spent on education. They expressed their interest in improving the education process for the Kansas court system but were concerned with the specific allotments.

Chairman Winter suspended discussion on HB 2832 and turned the Committee's attention to HB 2691.
HB 2691 - family court system pilot projects.

Chairman Winter suggested the possibility of combining HB 2832 and HB 2691 as a way to address the need for funding of the judicial branch education fund and a possible source of revenue for a renewed dedication to family courts. He withdrew HB 2832 from the Subcommittee on Civil Procedure and appointed a Subcommittee on Family Courts and Court Education to review both bills in further detail and report back to the Committee. Senator Petty was appointed Chairperson of the Subcommittee with Senators Parrish, Bond and Oleen as additional members. Paul Shelby and Judge James Buchele, Shawnee County District Court, were requested to assist the Subcommittee in their examination of the two measures.

The Committee turned to consideration of HB 2965, previously heard on this date.

Senator Parrish moved to recommend HB 2965 favorable for passage. Senator Yost seconded the motion. The motion carried.

HB 3017 - prohibiting discrimination against military personnel.

Senator Oleen offered balloon amendments to HB 3017 in an effort to address the sentiments expressed by proponents of the bill while satisfying opponents' concerns regarding decisions on credit worthiness.
(ATTACHMENT 4)

Senator Oleen moved to amend HB 3017 by adopting the balloon as offered. Senator Rock seconded the motion. The motion to amend carried.

Senator Bond moved to further conceptually amend HB 3017 to permit places of public accommodation and retailers to offer various promotional programs and/or sales so promotions would not be considered discriminatory nor would businesses be prohibited from offering sales promotions to specified groups. Senator Oleen seconded the motion. The motion to further amend carried.

Senator Morris expressed his opposition to HB 3017 as numerous 'perqs' already exist for military personnel. He stated that the bill would cause more problems than it would ever solve, if indeed those problems exist.

Senator Oleen moved to recommend HB 3017 favorable for passage as amended. Senator Rock seconded the motion. The motion carried.

SB 477 - Sub. for SB 477 by Committee on Judiciary--Requiring review of deaths of children and investigations thereof under certain circumstances.

Copies of a letter in support of SB 477 from James McHenry, Kansas Child Abuse Prevention Council, was presented to the Committee. (ATTACHMENT 5)

Senator Parrish moved to recommend SB 477 favorable for passage. Senator Petty seconded the motion. The motion carried.

The meeting was adjourned at 11:05 a.m.

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OF COUNSEL
ROY G. LOWE

March 27, 1992

Senator Wint Winter
Chairman
Senate Judiciary Committee
Capitol Building
Topeka, KS 66612

Re: HB2684

Dear Senator Winter:

On January 29, 1992, I presented testimony before a house committee on HB-2684. That bill is now before the Senate Judiciary Committee, and I understand it will be heard at 10:00 a.m. on April 1, 1992.

For your information, and in support of that bill, I enclose five copies of my comments.

Very truly yours,

LOWE, FARMER, BACON & ROE



Christopher B. Bacon

CBB:nm

Enclosures

cc: Representative Vince Snowbarger

Senate Judiciary Committee
April 1, 1992
Attachment 1 1/21

4-1-92
HB 2684

TESTIMONY OF CHRISTOPHER B. BACON
IN SUPPORT OF HB2684

January 29, 1992

Christopher B. Bacon
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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.

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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.

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

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 as 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

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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.

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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.

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SHANNON VALLEY

**DECLARATION OF RESTRICTIONS
AND
HOMES ASSOCIATION
DECLARATION**

1-11/21

1-12/21

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 part 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.

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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.

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(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

1-15/21

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

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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.

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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

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Shelley Martabin'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.

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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.

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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. 58-2254 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. 58-2254 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.

TESTIMONY - SENATE JUDICIARY COMMITTEE
APRIL 1, 1992

Request for Modification of KSA 38-1523(c)
Regarding Investigation of Certain Cases of Suspected Child
Abuse by the Department of S.R.S. (HB 2965)

The impetus for this request began when I learned that under the provision of KSA 38-1523(c) an allegation of suspected child abuse involving one of my children could not be investigated by SRS Child Protective Services. (I am employed by the Department of SRS.) The statute reads as follows:

KSA 38-1523(c) Investigation of certain cases.

Suspected child abuse or neglect which occurs in an institution operated by the secretary shall be investigated by an agent under the direction of the attorney general. Any other suspected child abuse or neglect by persons employed by or of children employed by the state department of social and rehabilitation services shall be investigated by the appropriate law enforcement agency under the direction of the appropriate county or district attorney, and not by the state department of social and rehabilitation services.

The allegation of abuse or neglect is not against myself or my spouse but involves allegations of events suspected to have occurred while my child was entrusted to the care of a licensed daycare facility. By current statute such investigations are referred to the local law enforcement agency. In our case the allegation involved a child care facility.

In the KANSAS MANUAL OF YOUTH SERVICES, Volume I Children in Need of Care, Section 2000, subsection 2255 it is stated that "A joint investigation of suspected abuse in a child care facility shall be made if possible" (by SRS and law enforcement agencies) indicating a perceived need for SRS to be involved in such investigations. Subsection 2222(A) dealing with interviewing the child states "Of equal importance are the worker's observations during the interview. The child's behaviors and interactions as well as the physical surroundings shall be documented." This would imply that someone who is skilled in the investigation of child abuse and that child's reaction to being interviewed should be performing the investigative interview which is, to my mind, a trained protective services worker. Perhaps the most pertinent point is seen in subsection 2300 dealing with Case Decision:

Senate Judiciary Committee
April 1, 1992
Attachment 2 1/2

"The case decision occurs when the investigation is completed and the determination is made as to the existence of child abuse/neglect and, if it exists, the degree of risk it represents to the child. This decision is a combination of factual information, professional judgment, and the application of appropriate child protection practice principles."

The implication is that to understand the nature of child abuse/neglect and to be competent in making such a decision specialized training and supervision is required.

When a law enforcement agency is required to be the sole investigator (under KSA 38-1523(c)) without this specialized training and supervision a situation may arise which is contrary to the principle of equal protection. Our law enforcement personnel are trained and supervised in the investigation of criminal activity, including misdemeanor and felony crimes, and therefore will be using a different "yardstick" in their investigation of child abuse/neglect. These personnel are well trained in looking for clues of serious criminal activity. Clues of child abuse/neglect may be more subtle; the type of information that child protective services personnel are skilled in obtaining. If one were to look at this from the other side the inequity becomes readily apparent i.e. if a felony crime was allegedly committed against a law enforcement officer or one of his/her children it is doubtful that using a child protective service worker to investigate the crime would be considered reasonable. (Again due to differences in training, experience, supervision and "yardstick".)

The assumption I would make is that the original intent of the statute was to avoid placing the Dept. of S.R.S. in a potential conflict of interest situation in the investigation of suspected child abuse/neglect of its own employees. The change which I would like to recommend, however, would only change the statute to allow the Department of S.R.S. to investigate complaints against "third parties" such as neighbors, child care centers and the like. By thus expanding the range of available protective services, the children of SRS employees would receive protection under the law equal to that afforded other children of Kansas in similar situations.

Please pass the statute amendments in HB 2965.



Dorothy C. Frager



Stuart M. Frager

John Sampson, President
Douglas County
111 E. 11th, Room 144
Lawrence, KS 66044
(913) 841-7700, Ext. 256

Darlene Stover, Pres. Elect
Ottawa County
307 N. Concord
Minneapolis, KS 67467
(913) 392-2917



Jane Heinen, Secretary
Nemaha County
607 Nemaha Street, P.O. Box 213
Seneca, KS 66538

Carolyn Burns, Treasurer
Barton County
1400 Maine, Room 306
Great Bend, KS 67530-4098

Diana Jones, Immed. Past Pres.
Finney County
P.O. Box 798
Garden City, KS 67846

March 17, 1992

Senator Wint Winter Jr.
State Capitol, Room 120-S
Topeka Ks 66612

RE: HB 2832 - Judicial Branch Education Fund

Dear Wint:

It is my understanding that a subcommittee of the Senate Judiciary Committee heard testimony on the above bill and will be working it soon.

I just wanted to drop you a note and let you know that I as a clerk and also as President of the Kansas Association of District Court Clerks & Administrators am in favor of this bill.

William Burns Jr., Court Administrator for the 29th Judicial District, testified before the house judiciary in favor of this bill. He made some very valid points as to why this legislation needs to be passed. I have attached a copy of his testimony for your consideration. I agree wholeheartedly with everything stated in his testimony.

The only training the non-judicial staff receives in regard to procedures, other than in-house training, is through a Clerical Procedures Workshop, Quarterly Regional Training, and the Clerk's Association Fall Conference.

The one-day Clerical Procedures Workshop is held in June to review new procedures required because of new legislation. The regional training was held quarterly in three different locations statewide to teach clerks and deputies clerical procedures. The regional training has been cancelled because of lack of funding. We did not have the Association's fall conference in 1990 because of the funding cuts.

We had the people attending our 1991 Fall Conference evaluate it. They were also asked to give any suggestions for training at future conferences. Clerical procedural training was a high priority.

KANSAS ASSOCIATION OF DISTRICT COURT
CLERKS AND ADMINISTRATORS

Senate Judiciary Committee
April 1, 1992
Attachment 3 1/5

As President of the Association, I will be planning the fall conference for 1992. In order to help me plan that conference, I surveyed the association members. The survey definitely indicates that clerical procedural training is a high priority. I would be happy to send you a copy of that survey if you would like to see it.

At a recent coordinating committee meeting for the conference and also at an association board of directors meeting training was discussed. At both of these meetings association members requested we have a regional training session sometime in August. They are willing to have the Association pay whatever expenses are necessary in order to get this training. This regional training as well as the clerical procedural workshop is normally funded by the Judicial Branch Budget, not by the Association.

We have approximately 23 new Clerks of District Court since January 1990. Because of the cuts in education funds, these clerks had not received any training, other than what they learned in-house, until they attended the Association's Fall Conference in November 1991, and that conference dealt more with management issues than with procedural training.

During the hiring freeze over the last two years, I lost 8 of 11 clerical positions. Because of the mandated 4% cut by every judicial district, I have now been able to fill those positions, but it will be 6-8 months before everyone is trained and able to efficiently perform their duties. These new employees have had to learn a lot by trial and error as I have been the only person in several areas that could train these new employees. I have not been able to spend a lot of time with them on training. It would be nice to have the regional training available to send these employees to for training on clerical procedures.

I know there is a concern whether or not training for the Judicial Branch should be funded by the court. We have not been able to get funding through the normal budget process. It is very important that we receive training in order to do our job.

Right now deductions are made from the docket fees that we collect to fund various agencies and/or projects. I have attached a copy of the report we send to the State Treasurer each month showing the amount of fees we have collected that are due the State Treasurer. It shows what percentage of these fees are applied to the various funds. It would not seem out of line to allow us to deduct an amount for court training also. There are at least three bills proposed this year where funding is being sought through the courts by a deduction of the docket fee.

Courts cannot run efficiently if the clerical staff is not properly trained. Over the last couple of years, this training has been almost nonexistent. We really need this training fund established so that we can get back on track and give the judicial branch employees the training required for them to do their jobs efficiently and correctly. I urge your support of this bill.

If you have any questions or would like further information,
please let me know.

Sincerely,



Sherlyn K. Sampson
Clerk of District Court
President, KS Assoc. of District Court Clerks & Administrators

cc: Senator Rock
Paul Shelby

Please remit to:
Sally Thompson
State Treasurer
900 SW Jackson Suite 201
Topeka KS 66612-1235

REPORT AND PAYMENT OF DISTRICT COURT REVENUE AS
REQUIRED BY K.S.A. 8-2110 as amended by Section 6
of 1991 SB 345, K.S.A. 20-350, 20-362 as amended
by 1990 HB 3021, 20-2801, 21-4610a, 23-108b, 28-170,
28-172a, 28-172b and 59-104

- A. FINES, PENALTIES AND FORFEITURES:
 - 19% Crime Victims Compensation Fund
 - 4% Crime Victims Assistance Fund
 - 77% State General Fund
 - B. INTEREST ON INVESTMENT OF IDLE FUNDS:
 - C. CLERKS'S FEES:
 - 5.85% Juvenile Detention Facilities Fund
 - 94.15% State General Fund
 - D. LAW ENFORCEMENT TRAINING CENTER FUND:
 - E. INDIGENT DEFENSE SERVICE FUND
DEDUCTIONS FROM DOCKET FEES:
 - F. MARRIAGE LICENSE FEES:
 - 57.5% Protection From Abuse Fund
 - 22.4% Family and Childrens' Trust Fund
 - 20.1% State General Fund
 - G. DRIVERS LICENSE REINSTATEMENT FEES: (\$50)
 - 50.0% Vehicles Operating Fund
 - 37.5% Community Alcoholism and Intoxications Programs Fund
 - 12.5% Juvenile Detention Facilities Capital Improvements Fund
- TOTAL REMITTANCE

I hereby certify the above to be a true, complete and accurate report and payment of district court revenue as required to be remitted to the State Treasurer by K.S.A. 8-2110 as amended by Section 6 of 1991 SB 345, K.S.A. 20-350, 20-362 as amended by 1990 HB 3021, 20-2801, 21-4610a, 23-108b, 28-170, 28-172a, 28-172b and 59-104

For the Month of _____

District Court of _____

Treasurer's Use Only

Authorized Signature _____

Check # _____

Date: _____

Date _____

February 18, 1992

**TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE
REGARDING HB NO. 2832 - JUDICIAL BRANCH EDUCATION FUND**

Thank you for the opportunity to appear before you today concerning HB No. 2832 and the importance of the judicial branch education fund.

No one can deny the benefits continuing education has for our judicial branch. Regardless of educational background or years of experience in the system, one should always be open to learning more.

This should also hold true for non-judicial employees as well. These employees make the system work efficiently or hinder the process.

Budget reductions the last three years have stalled the continuing education of our 13 trial court administrators, 105 district court clerks and their support staffs. Regional clerk conferences held quarterly in three different locations statewide have temporarily been cancelled because of lack of funding.

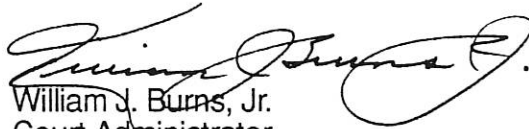
Since 1990 approximately 20 or more district court clerks have retired or resigned. It is not fair to their successors to blindly assume these important positions without proper training and education.

Many new laws have been created recently to meet the needs of the people when they turn to the courts for resolution. If our non-judicial employees are not aware of changing legislation or not adequately trained to carry out their duties, the judicial system fails those we are hired to serve.

I am confident the Supreme Court with the able assistance of the Office of Judicial Administration would provide equitable and competent training for the non-judicial employees through passage of this bill.

Judges and lawyers are now required to obtain continuing legal education annually. With proper funding the non-judicial employees of this state would serve the people in a more capable manner. The people who depend on the courts deserve no less.

Thank you for your kind consideration.


William J. Burns, Jr.
Court Administrator
29th Judicial District

HOUSE BILL No. 3017

By Representatives Hochhauser, Amos, Baker, Bishop, Blumenthal, Bowden, Bradford, Campbell, Carmody, Cozine, Empson, Flower, Garner, Gjerstad, Glasscock, Hamm, Heinemann, Hensley, Lahti, Lloyd, Long, Neufeld, Ramirez, Rezac, Sader, Scott, Shallenburger, Stephens, Wagle and Wisdom

2-12

13 AN ACT prohibiting discrimination against military personnel; providing penalties for violations.

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

Section 1. (a) The legislature finds and declares that military personnel in Kansas vitally affect the general economy and well-being of this state and that it is in the public interest and public welfare to ensure that no discrimination against military personnel is practiced.

(b) As used in this act, "military personnel" includes members of the armed forces or the national guard on active duty and members of active reserve units in the armed forces or the national guard.

Sec. 2. ~~No person shall discriminate against any officer, warrant officer or enlisted person of the military forces~~ military personnel of the state or of the United States because of their membership ~~therein~~ in the military forces. No member of such military forces shall be ~~prejudiced or injured~~ discriminated against by any person, employer, officer or agent of any corporation, company or firm with respect to their employment, position or status or denied or disqualified for employment by virtue of their membership or service in the military forces of this state or of the United States.

Sec. 3. No officer or employee of the state, or of any county, city, municipal corporation, school district, water district or other political subdivision of the state shall discriminate against any ~~officer, warrant officer or enlisted person of the military forces~~ military personnel of the state or of the United States because of their membership ~~therein~~ in the military forces. No member of the military forces shall be ~~prejudiced or injured~~ discriminated against by any officer or employee of the state, or of any county, city, municipal corporation, school district, water district or other political

(a)

(b) Nothing in this section shall be construed to prohibit consideration or application of characteristics directly affecting the credit worthiness of a member of the military forces.

Senate Judiciary Committee
April 1, 1992
Attachment 4 1/2

1 subdivision of the state with respect to their employment, appoint-
2 ment, position or status or denied or disqualified for or discharged
3 from their employment or position by virtue of their membership
4 or service in the military forces of this state or of the United States.

5 Sec. 4. No person shall prohibit or refuse entrance to any of-
6 ficer, warrant officer or enlisted person of the military forces
7 or otherwise discriminate against any military personnel of this state
8 or of the United States ~~into in any public place of entertainment,~~
9 ~~public amusement or, public accommodation or private housing/~~ be-
10 cause the officer or enlisted person such military personnel is
11 wearing the uniform of the organization to which they belong such
12 military personnel belongs or because of their such military per-
13 sonnel's membership or service in the military forces of this state
14 or of the United States.

15 Sec. 5. No employer or officer or agent of any corporation, com-
16 pany, firm or other person shall discharge any person from em-
17 ployment because of the performance of any emergency military duty
18 by reason of being an officer, warrant officer or enlisted person
19 a member of the military forces of this state or the United States.

20 Sec. 6. Any person who violates the provisions of this act shall
21 be guilty of a class B Misdemeanor. ~~Each violation shall con-~~
22 ~~stitute a separate offense liable for a civil penalty in the amount~~
23 ~~of actual damages or \$500, whichever is greater, for each violation.~~
24 ~~The prevailing party shall be awarded incurred court costs and~~
25 ~~reasonable attorney fees.~~

26 Sec. 7. This act shall take effect and be in force from and after
27 its publication in the statute book.

place of public accommodations, as defined by
K.S.A. 44-1002 and amendments thereto,

liable to the aggrieved person for the payment of
a civil penalty, recoverable in an individual
action brought by the aggrieved person,

\$250



**Kansas
Child Abuse
Prevention Council**

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Topeka, Kansas 66612
(913) 354-7738

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Wichita, Kansas 67202
(316) 262-8434

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EXECUTIVE DIRECTOR
James McHenry, Ph.D.

March 31, 1992

Senator Wint Winter, Jr.
State Capitol Building
Topeka, Ks. 66612

Dear Wint:

I am writing to express the hope that the Senate Judiciary Committee will soon act favorably on Sen. Sub. Bill 477, a measure establishing an active surveillance process for child deaths in Kansas.

KCAPC has followed this issue for the past several years, and we believe Kansas should follow the lead of other states that have established active surveillance systems. Most recently, Missouri took this step, and I'm attaching a copy of a letter to Senator Bogina from Alinda Dennis describing the benefits they've encountered thus far. Also attached is a critique we received from a national organization serving local prosecutors, offering useful suggestions on ways to further improve Sen. Sub. 477.

The bottom line is that the Department of Health and Environment used to do a form of active surveillance, but discontinued the practice in recent years, citing budgetary constraints. KCAPC believes the process need not be cumbersome, time-consuming or expensive. Whether it is reinstated with Health and Environment, or established as an interagency, multidisciplinary team as proposed by Sen. Sub. 477, the potential outcomes will be beneficial.

Recently, three Kansans authored a study on active surveillance, using Kansas data, which was published in a prestigious international journal on child abuse and neglect. (See attached copy) Surely we are capable of following a roadmap so clearly drawn for us by fellow Kansans. Representative Joan Wagnon has given strong leadership to this issue on the House side, and she is prepared to follow through when the measure has cleared the Senate. I hope you will visit with her or with us regarding any unresolved issues you see.

Thanks, Wint, for understanding our keen interest in this bill. We'll be glad to continue working with you.

Sincerely, 
James McHenry, Ph.D.

cc. Representative Joan Wagnon
John Wine

*Senate Judiciary Committee
April 1, 1992
Attachment 5*