

## MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on January 18, 1995 in Room 313-S of the Capitol.

All members were present except:  
Representative Candy Ruff

Committee staff present:  
Jerry Donaldson, Legislative Research Department  
Jill Wolters, Revisor of Statutes  
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:  
Rebecca Rice, Citizen  
Representative Gary Haulmark  
Representative Dee Yoh  
Carla Stovall, Attorney General  
Kyle Smith, Assistant Attorney General - Kansas Bureau of Investigation  
John McElroy, Kansas Bureau of Investigation  
Gwen Reider  
Paul Theroff, Assistant District Attorney, Wyandotte County  
Alvis Wade, Sheridan County Amusement Company  
Ron Smith, Kansas Bar Association  
Brenda Head, Kansas Trial Lawyers Association  
Representative Jim Morrison

Others attending: See attached list

Hearings on **HB 2030** - official misconduct, were opened.

Representative Gary Haulmark appeared before the committee as the sponsor of the bill. He stated that the State had an official misconduct statute until 1 1/2 years ago when the Supreme Court found it unconstitutional. This would force a public official upon a conviction of misuse of public funds to have to forfeit his position.

Carla Stovall, Attorney General, appeared before the committee as a proponent of the bill. She remarked that because the Kansas Supreme Court found the statute unconstitutional it left a big hole in the law. This is a good law and the issue needs to be addressed.

Kyle Smith, Assistant Attorney General Kansas Bureau of Investigation, appeared before the committee as a proponent of the bill. He commented that due to the nature of the offense the KBI is called to investigate the majority of these situations. Creating this statute would allow appropriate prosecution of those individuals who violate the public's trust. (Attachment 1)

Chairman O'Neal asked if this was modeled after any other states. Mr. Smith responded that he didn't believe that it was. The Chairman then asked if there were not similar provisions under federal law that would cover this. Mr. Smith commented that he was not aware of a federal provision.

John McElroy, Kansas Bureau of Investigation, appeared before the committee as a proponent of the bill and to answer questions that the committee members had. Chairman O'Neal asked what was the fatal defect in the existing law. Mr. McElroy stated that the language that was stricken "Intentionally and maliciously committing an act of misconduct or abuse of authority," was overly broad and did not advise public officials what was illegal and prohibited.

Representative Dee Yoh appeared before the committee as a sponsor of the bill. She stated that elected officials and state employees owe fair and honest dedication to the people of Kansas. (Attachment 2)

Hearings on **HB 2030** were closed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313-S Statehouse, at 3:30 p.m. on January 18, 1995.

Rebecca Rice, citizen, appeared before the committee with a bill request which would change the structure of the Administrative Procedures Act. It would take the hearing officers out of the agencies and create a central panel made up of full-time hearing officers, which would be funded through a billing system to the agency that uses the panel.

Representative Garner made a motion to have this bill request introduced as a committee bill. Representative Heinemann seconded the motion. The motion carried.

Hearings on HB 2002 - mitigating circumstances shall not include the physical health of the defendant, were opened.

Representative Gary Haulmark appeared before the committee as the sponsor of the proposed bill. He stated that if this bill passed judges would not be able to use a defendant's physical health as a mitigating circumstance, thereby deviating from the sentencing guidelines.

Gwen Reider, Kansas City, appeared before the committee as a proponent of the bill. She stated that if the person does the crime, they should have to serve their time regardless of their health. (Attachment 3)

Hearings on HB 2002 were closed.

Hearings on HB 2003 - criminal possession of a firearm, were opened.

Representative Gary Haulmark appeared before the committee as the sponsor of the proposed bill. He commented that this would close the loophole that persons convicted of a non-person felony and in possession of a firearm at the time, were not prohibited from purchasing firearms for a set period of time. This would add those persons and they would not be able to possess a firearm for 10 years. (Attachment 4)

Paul Theroff, Assistant District Attorney, Wyandotte County, appeared before the committee as a proponent of the bill. He stated that K.S.A. 21-4202 has a loophole. The statute imposes no penalty on those possessing firearms while they committed a non-person felony. This bill would close the loophole and make it illegal for one to possess a firearm for a period of 10 years. He suggested an amendment to the language in Sections (a)(2), (a)(3), & (a)(4)(B) be changed to read "under the laws of Kansas, or a felony under the laws of another jurisdiction which is substantially the same as such felony," (Attachment 5)

Hearings on HB 2003 were closed.

Hearings on HB 2001 - limited liability for damages caused by amusement rides owned by nonprofit groups.

Alvis Wade, Sheridan County Amusement Company, appeared before the committee as a proponent of the bill. He stated that liability issues are a constant concern with home owned carnivals. All the operators are volunteers and are very conscientious. All home owned carnivals are nonprofit organizations and the Sheridan County Amusement Company uses the income from the rides only for maintenance of the rides and grounds. They seem to find it more difficult to find insurance companies to sell them liability insurance at a price they can afford. (Attachment 6)

Ron Smith, Kansas Bar Association, appeared before the committee as an opponent to the bill. He stated that by granting immunity for ordinary negligence for a narrow class of mechanical rides the holding in *Noel v Menninger Foundation* is violated. HB 2001 appears to immunize negligent conduct for both the nonprofit organization and the amusement ride operator. If the private insurance market will not provide the coverage for this narrow area of liability, perhaps Kansas nonprofit groups should investigate a pool for self-insurance. (Attachment 7)

Brenda Head, Kansas Trial Lawyers Association, appeared before the committee as an opponent to the bill. She commented that this legislation was designed to allow civil wrongdoers to escape liability and responsibility for their actions. (Attachment 8)

Representative Jim Morrison appeared before the committee as the sponsor of the proposed bill. What the bill is aimed at is family operations or where they are working with very close friends. It is only operated a few days a year. He requested that the committee amend the bill so it would help ease the burden on the home carnivals.

The committee meeting adjourned 5:00 p.m. The next meeting is scheduled for January 19, 1995.

# HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: January 18, 1995

NAME	REPRESENTING
Fon Smith	KS Bar Assoc
Amey Howell	
Steve Kumplice	
Brenda Head	KTRA
Lisa Moots	KSC
Myma Marca	KSC
Nancy Lindberg	AG office
Paul Shelby	OIA
Bruce Haugen	
Michael Haugen	
Gwen Buderer	
Karla Bulmark	
Zackary Starbird	
STEVE RODINA	KHP
Donna Schroweis	
Jon Newman	KS Governmental Consulting
Ben Coates	KPA
Mel Cathy	BIDS
James Pratt	

# HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: January 18, 1995

NAME	REPRESENTING
Bill Henry	KADC



LARRY WELCH  
DIRECTOR

KANSAS BUREAU OF INVESTIGATION  
DIVISION OF THE OFFICE OF ATTORNEY GENERAL  
STATE OF KANSAS



CARLA J. STOVALL  
ATTORNEY GENERAL

TESTIMONY  
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL  
KANSAS BUREAU OF INVESTIGATION  
BEFORE THE HOUSE JUDICIARY COMMITTEE  
IN SUPPORT OF HOUSE BILL 2030  
JANUARY 18, 1995

Mr. Chairman and Members of the Committee:

I am Kyle Smith, Assistant Attorney General assigned to the Kansas Bureau of Investigation (KBI). With me is Special Agent (SA) John McElroy who is assigned to a unit within the KBI which investigates offenses involving public misconduct and other "white collar" crimes. We appear today on behalf of Director Larry Welch and the KBI in support of HB 2030.

As the committee is aware, the Kansas Supreme Court declared our official misconduct statute to be unconstitutional as being overly broad and void for vagueness. It is as imperative as it is obvious that these violations of public trust be brought to justice, and HB 2030 would give us the constitutional tool to do just that.

Due to the nature of the offenses, the KBI is called into investigate the vast majority of these situations. As such, agents such as SA McElroy have developed a familiarity with the kinds of abuses that frequently occur in Kansas.

Over the summer, myself and SA McElroy have worked with Representative Haulmark and the Revisors Office in drafting what now appears as HB 2030 with the specific aim of creating a statute that allows appropriate prosecution of those individuals who violate the public's trust and provides clear notice as to what activities are prohibited.

House Judiciary  
1-18-95  
Attachment 1

If the committee wishes, either myself or SA McElroy would be happy to address each of the six of types of prohibited conduct covered by this bill. However, especially in light of past litigation, I am hoping that they are clear on their face. If the committee would like to hear testimony from SA McElroy as to whether these activities are really recurring problem in Kansas, he is prepared to give examples from his recent caseload.

HB 2030 also amends KSA 21-2505 regarding failure to perform duties and KSA 21-3910 regarding misuse of public funds by providing that convictions of either of these statutes also entails automatic forfeiture of a persons' official position.

I would be happy to stand for questions.

DEE YOH  
REPRESENTATIVE, SECOND DISTRICT  
2802 E. 12TH  
PITTSBURG, KANSAS 66762



COMMITTEE ASSIGNMENTS  
GOVERNMENTAL ORGANIZATION AND ELECTIONS  
HEALTH AND HUMAN SERVICES  
JUDICIARY

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STATE CAPITOL  
RM 174-W  
TOPEKA, KANSAS 66612-1504  
913-296-7655

TOPEKA

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HOUSE OF  
REPRESENTATIVES

January 18, 1995

Chairman O'Neal, Members of the Committee, thank you for allowing me to testify on behalf of the citizens of Kansas in Support of HB 2030.

I ask you all to think back to the November elections. The people of Kansas voted for change. Change demanding accountability of elected state officials, along with more responsible leadership. We, as state legislators, state officials, and state employees owe fair and honest dedication to our employers - the people of Kansas. We are accountable to our employer, not only at election time, but every day of the year.

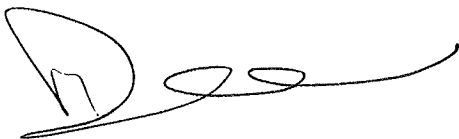
As we were elected by our constituency, we were entrusted to thoroughly represent them and to carry out the powers of State Government. Powers that currently lack necessary boundaries. HB 2030 provides those boundaries.

House Judiciary  
1-18-95  
Attachment 2

Common sense provides that state legislators, state officials, and state employees should NOT be exempt from the standard rules, regulations, laws or ethics that the legislature itself sets forth for the private sector to abide by. Put simply, if we violate public trust, we must pay. This bill ensures violators will indeed pay. I come before you today committed to unifying the relationship between the private and public sectors of this great state.

Your support on HB 2030 is essential. I challenge the skeptics of this bill to go home to your employer - the citizens of your district, and find someone who does not want accountability and responsibility of those who violate public trust. If you listen to your constituents, and to your conscious, I am confident that you will join with me in enthusiastically supporting HB 2030

Thank you

A handwritten signature in black ink, appearing to be 'D. De' followed by a long horizontal flourish.



On November 29, 1993 in the early hours of the morning I was called to Overland Park Regional Medical Center Emergency Room. At the hospital my husband and I were escorted to a very small waiting room separate from others who were waiting. At the time I didn't know why I was there except that it had to do with my brother Bruce Haugen. When the phone call came from a police officer asking that we come to the hospital my husband did not share the very little information he knew. He was concerned for me and knew he did not have answers for the questions I would ask. Detective Lewis-Jones of the Lenexa Police Department came to the waiting room, told me who he was and that my brother had been stabbed and was in very critical condition. He told me he had lost a lot of blood but that the doctors were trying to stabilize him and then they would talk to me. I could not imagine why anyone would do this to my brother. I was filled at the time with several emotions. I was scared for my brother and for my family. My heart ached at having to call our mother, who lives 650 miles away in North Dakota and tell her that her son had been stabbed, had nearly died and was in critical condition. Bruce had multiple stab wounds, suffered a collapsed lung as a result of two of the puncture wounds and had a long, deep slash across his left arm that could possibly leave that arm disabled. I was allowed to see Bruce before he went to surgery. There were several hospital personnel around him. A police detective tried to prepare me before letting me in the room. It is very difficult to find words to describe how a family feels during this time. I held his hand and tried to comfort and reassure him while inside I struggled to stay calm and hold myself together in order to be able to give him reassurance. I would have to be calm in order to call our mother and when I told our 17 year old son and 15 year old daughter. The reality that someone could do something so violent grabs you and you try to put things into some kind of perspective. I had left my children sleeping and while my brother went into surgery I left to go home to wake them and to tell them because this was not something I wanted them to hear on the television or on the radio on their way to school. It was very difficult news for my children. They did not understand and I could give them no reason that someone would try to hurt their uncle. I returned to the hospital and waited while Bruce was in surgery. A nurse let me know when Bruce went to recovery and said the doctor would come out to talk to me. When I talked to the doctor he said Bruce was in an ICU recovery and that if all went ok he would be transferred to a general recovery area where I could see him. At this point with Bruce out of surgery I called my mother to tell her what had happened to her son. There are not words for the pain my mother was caused by this phone call. Plans were made for my family to come to Lenexa immediately. My brother Mike, who's apartment Bruce shared, was flying back on that very day from North Dakota. They would try to fly my mother instead and other family members would drive. I returned to the surgery family waiting room. While I was waiting a nurse came to escort me to a small private waiting room as the doctor wanted to talk with me again. I waited a long time for the doctor only to discover that my brother had had to go back into surgery again due to more bleeding from the collapsed lung that had been repaired. These were very difficult hours. My brother, even though he was heavily sedated was in pain and having

trouble communicating with us. I felt very helpless and could only wait. My family had a twelve hour drive and would be here in the very early morning hours Wednesday morning. While waiting at the hospital the Detective informed me they had someone in custody they were questioning about the stabbing. This person had driven to St. Joseph, MO and had left my brother for dead. My brother when found by the police was very close to dead. He had passed out for a period of time and when he came to he had to crawl to the phone to call 911. Help arrived and he was put in a pressure suit because his blood pressure was so low and he had lost so much blood. Ernest Campbell was charged with Attempted Second Degree Murder. Our parents and three of our sisters arrived about 3:00 in the morning. Everyone was still in shock and unable to understand why this had happened. Over the next few days Bruce slowly began the physical healing process. Bruce stayed at my home during this time. He stayed for several weeks unable to stay in his apartment. Not only were the physical signs obvious but so were the emotional signs of the hurt and pain he felt and that the family felt. He had trouble eating and sleeping. The family surrounded Bruce trying to protect and shield him and to carry some his pain. He moved with great difficulty. When Bruce decided to move back to the apartment it was traumatic. For him he was in the environment where he was hurt. For me I was worried about how he could and would be able to handle things. He had started to see a counselor. The counselor also reached out to the family to help with the hurt, shock and anger. In March the trial began. It was difficult for time to heal emotional wounds that just kept being opened up. I sat in court and listened to testimony about the physical state Bruce was in when brought to the hospital. When the physical evidence was introduced in court I had to leave. My brother had been stabbed with the large butcher knife that comes with the kitchen set of knives. I cannot describe how I felt when I saw that knife, the sheer size of it and the fact that the knife had been used to put multiple stab wounds in my brother. Bruce had been stabbed eight times. We listened as Ernest testified that when he left the apartment he stopped to buy cigarettes but saw a police car and moved on because he had an outstanding traffic ticket. He did not tell them he had stabbed Bruce. When he returned to St. Joseph he told his roommate he thought he had stabbed Bruce. The roommate is a police officer and he called the police. Bruce was also on the phone then with 911. When I saw the knife in court I had to leave. There was much of the hearing I was unable to bear including listening to the 911 call. The pain was too much. Ernest was found guilty of Attempted Second Degree Murder by the jury. They were all in agreement and did not choose a lesser charge. In May Ernest was to be sentenced. At the time of the sentencing Bruce, Mike (our brother) and myself found out that Ernest had tested positive for HIV. That in fact he had known he was positive and had not shared that information before. When Ernest was asked if he had anything to say on his behalf he requested leniency because of his health and the fact that he was concerned he would not get adequate treatment. Ernest had been found guilty of trying to murder someone else by a jury. He left Bruce on the floor of the apartment to die. But he felt he was entitled to a more lenient sentence due to being HIV. I was outraged that he would even consider asking and was even more

outraged that the Judge allowed this to happen. Ernest recieved a shorter sentence. He recieved time off for good behavior off the top of the sentence and additional time off due to the HIV status. This man was found guilty and should pay the full price for the crime he committed regardless of whether he is or is not HIV positive. This was a terrible blow to Bruce and to Bruce's family. Bruce is still in counseling at this time. This will forever be with our family. The fear of what happens when he gets out does not leave and then to find out that he recieved special treatment is unfair. As the victim and the family we do not want to see this situation happen again to another family. Ernest gave no regard to Bruce's health when he attempted to murder him. This is a violent crime and should be punished to the full extent of the law. Bruce almost lost his life, period. We are united in our stand that there should be a bill that does not allow for HIV status to have any bearing on sentencing someone who has already been found guilty of a crime and especially one of such a violent nature.

TO: Rep. Haulmark

FROM: Jill Wolters, Assistant Revisor

Date: January 10, 1995

RE: 1995 HB 2003

\* KSA 21-4204 Criminal Possession of a firearm  
Current law

- (a) (1) lifetime prohibition persons addicted/unlawful user drugs
  - (a) (2) lifetime prohibition persons convicted of person felony/drug conviction AND in possession of firearm at time of crime
  - (a) (3) 5 year prohibition persons convicted of a felony , other than those listed in subsection (b), AND NOT in possession of firearm at time of crime
  - (a) (4) 10 year prohibition persons convicted of a felony, as listed in subsection (b), AND NOT in possession of a firearm at time of crime
- LOOPHOLE: persons convicted of a nonperson felony AND in possession of a firearm at time of crime

\* 1995 HB 2003

- (a) (1) same
- (a) (2) same
- (a) (3) same
- (a) (4) same AND 10 year prohibition persons convicted of a nonperson felony AND in possession of a firearm at time of crime

Office of The  
DISTRICT ATTORNEY  
Of The 29th Judicial District of Kansas

Wyandotte County Justice Complex  
710 N. 7th Kansas City, Kansas 66101  
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DISTRICT ATTORNEY  
Nick A. Tomasic

MEMORANDUM IN SUPPORT OF TESTIMONY SUPPORTING H.B.2003

I have been an assistant district attorney in Wyandotte County for thirteen years. During most of that time I have been the head warrant officer (charging attorney).

Last year I had occasion to deal with the 1994 amendments to K.S.A. 21-4204. Apparently the intent of the 1994 amendments was to make it illegal for a person convicted of a person or drug felony involving a gun ever to possess a firearm again. That was a good idea, but in the process of amending the statute a major loophole was opened.

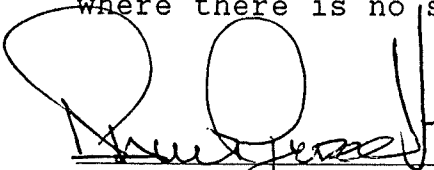
Various penalties were assigned to those possessing firearms who had been convicted of person felonies (whether or not guns had been involved in the prior cases) and those possessing firearms who had been convicted of nonperson felonies where no gun had been involved in the prior case. However, the amendments imposed no penalty on those possessing firearms who had been convicted of nonperson felonies where a gun HAD been involved in the prior case. This appears to be an anomalous and illogical result.

This loophole may have been created inadvertently, or it may have been assumed that guns would not be involved in nonperson felonies. Last fall, however, we were confronted with a case in which a person was found in possession of a firearm, and he had recently been convicted of the crime of Criminal Damage to Property, done by firing a gun at an unoccupied automobile. Clearly a gun had been involved in the prior conviction, so there was

nothing with which we could charge him. Had he damaged a vehicle with a sledge hammer, however, we could have prosecuted him for possessing a firearm.

H.B. 2003 closes this loophole. All prior felony convictions now would make it illegal for one so convicted to possess a firearm within so many years of the conviction. It is a much needed amendment if we are to have sensible and consistent criminal laws.

There is one slight change I would suggest. I believe that the language "under the laws of Kansas or any other jurisdiction" in Sections (a)(2), (a)(3) and (a)(4)(B) be changed to "under the laws of Kansas, or a felony under the laws of another jurisdiction which is substantially the same as such felony", as it is in Section (a)(4)(A). Otherwise, for example, the language in (a)(2) which says "a person who has been convicted of a person felony....under the laws of Kansas or any other jurisdiction" might be narrowly construed by the courts and held not to apply to felonies in states where there is no such classification as "person felonies".



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D. Paul Theroff  
Assistant District Attorney  
Wyandotte County, Kansas

DOCUMENTATION IN FAVOR OF  
PROPOSED BILL FOR  
LIMITING LIABILITY OF NONPROFIT CARNIVAL ORGANIZATIONS

JANUARY 18, 1995

SUBMITTED BY  
SHERIDAN COUNTY AMUSEMENT COMPANY, INC.  
BOX 153  
HOXIE, KS 67740

1. *The Sheridan County Amusement Company, Inc. is a Nonprofit Organization exempt from Federal Income Tax. We operate with the help of community volunteers. We do not employ any person on a regular basis. Our organization was founded in 1980, and has been a source of summer entertainment for our county and the surrounding area since that time.*
2. *Our average income over the last ten years has been approximately \$16,500.00. We make most of our money selling tickets for the carnival rides, although we also have a concession stand. This year a ticket cost 50 cents; most rides could be enjoyed for the price of two tickets. The income we incur from the carnival is used for maintenance of the rides and grounds.*
3. *We have been advised by a local attorney that it would not be wise to operate our carnival without Liability Insurance. We have obtained insurance each year, but have never submitted a claim. There have been some minor injuries over the years, but they have not resulted from faulty equipment or dangerous use.*
4. *From 1985 to 1990, Liability Insurance cost \$2,000 to \$2,500 annually. (This insurance was only for the time period that the carnival was in operation, three days.) Then, in 1991, our insurance cost began to rise significantly.*
5. *Each year, we find it more difficult to locate a company who will sell us Liability Insurance at a price that our small operation can afford. Several local insurance agents have tried to help us. Since we are a small entity, some companies will not cater to us. Other companies no long sell this type of insurance.*

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Attachment 6

6. *This past year, the original quote for three days of insurance was over \$6,500. We finally purchased the insurance with a \$2,500 Deductible and \$300,000 Limit for \$3,864. We had a good year; our annual income was around \$20,000. But our insurance took almost 20% of our income. This is money which we could otherwise use for maintenance on our rides.*
7. *We have already begun searching for insurance for the coming summer season of 1995. So far, not one company will give us a quote, not even the company which sold us insurance last year.*



HOXIE'S CARNIVAL PART OF COMMUNITY HISTORY

It can be compared to a ghost town of sorts at this time of year. The smell of popcorn and chili dogs is missing. Many of the rides have been disassembled; chair cushions and seats are gone. The carousel music can't be heard. The wind whistles around the empty concession stand. Voices of laughter and screams of delight are only a dim memory.

This is a quiet time at the Carnival grounds. The busy time comes in late June and the first part of July, as preparations are made for Fair time. Many people in our community know just how busy that time is and how much work it takes just to get Hoxie's Home-grown Carnival ready. When this time comes again, it will be for it's fourteenth year of service to this community.

The Sheridan County Amusement Company, Inc. is now the Non-profit organization's legal name. The home-grown and owned carnival was the brain child of several Hoxie businessmen. After a traveling carnival failed to show up in 1979 or 1980, the Hoxie Chamber of Commerce organized some booths and games to provide fair time enjoyment. Ideas for a community carnival were voiced during Hoxie Chamber meetings, of which Robert Mahanna was President. Bob, along with Louis (Tuffy) Taylor, Gene Deines, and Myron Dietz, began making inquiries about carnivals in the area. They visited carnivals in Oberlin and other towns and interrogated traveling carnivals. For liability purposes, the "carnival board" formed a separate organization from the Hoxie Chamber, and the Sheridan Amusement Company was born.

In October of 1980, word reached Hoxie that a flea market just outside of Peoria, Illinois, was selling their carnival rides. Tuffy, along with Bob, Myron, and Gene, flew to Peoria and purchased the first five rides: an 80 ft. by 40 ft. Ferris Wheel, the Sky Fighter (Children's plane ride), Race Car Ride, Roller Coaster, and Train Ride. Two area truckers drove to Peoria and returned with the rides. All of the rides had to be repaired and assembled. Max Cooper, Jerry Juenemann, and several other men in the community helped Tuffy and Gene paint and repair the rides. In January of 1981, two more rides were purchased from a Texas firm, the Octopus Arms and Loop-A-Plane.

The two Hoxie Banks loaned the Amusement Company approximately \$32,000 to purchase and repair the first seven carnival rides. Land to put the rides on was leased from the City of Hoxie. The lease is good for 99 years. The Sheridan County Fair Board agreed to build a Concession Stand with restrooms on the west side which could also be used by crews during summer harvest. Dave Patterson and Albert Mills constructed a large metal framework for the booths. Tuffy was largely in charge of repairs and mechanics on the rides. Gene Deines led the work and decisions in the Concession stand. Bob Mahanna had the arduous task of finding volunteers to run the rides and booths.

On June 6, 1981, Hoxie Chamber's Appreciation or FUN Day, the Sheridan Amusement Company made its debut. The Ribbon cutting ceremony was conducted at 7:00 P.M. that evening. All rides were free. The Concession Stand was also open for business. The carnival also ran that year during fair time and Homecoming. Tickets were used to ease the exchange of money for enjoyment; they sold for 25 cents each the first year.

In 1982, the Tent Shows were added thanks to the Neighborhood Entertainment Company. The NEC has provided shows for the carnival nearly every year since that time. Slab Dances were also added to the fair time agenda in 1988, but were terminated after 1992. The carnival's newest ride, the popular Carousel, was added in 1991.

The Carnival provides good, safe entertainment for the local community and many of their "away-from-home" families. They can relax and let their children and grandchildren "go" once they walk through the entrance. This past year, the carnival consisted of eleven operational rides, a Mini Golf Course, ten booths, the NEC's excellent tent show and a VERY busy concession stand. A ticket could be purchased for 50 cents, with a book of 15 tickets costing \$7.00. Any ride, show or booth could be enjoyed for the price of one or two tickets, a small price to pay in comparison to large city prices.

The 1994 Carnival was one of great success in many ways. The weather cooperated and there were perfect temperatures and wonderful crowds each evening. The Carnival had almost \$20,000 in ticket and concession stand sales. (This is very good, considering there is no longer a slab dance to bring in additional income and the Board didn't canvas the community asking for monetary donations.) The expenses this year came to over \$12,000, with nearly a third of that for liability insurance. (Liability insurance for small community carnivals has become a worrisome and expensive problem in recent years.) The Hoxie State Agency has donated their time and talents in helping the Board with this complicated problem the past several years. Expenses at the beginning of each year are financed with loans at the two Hoxie banks. After this year's expenses were paid, the total loan balance stands at \$5,000. Also this year, the Board purchased the tent used for the tent show. (This tent can be rented from the Board for a nominal fee.)

The time and talents donated to the Carnival each year are monumental. The hardest work usually comes before the Fair begins. There is repair work and lots of painting to do. Each ride needs to be checked and serviced. Several individuals spent hundreds of hours painting and repairing many of the rides and the booths for this past summer's carnival. Some individuals have special talents which they donate to the carnival. Without this handful of people, the carnival would never be ready for that first exciting night.

Each carnival night is normally split into two shifts; 7:00 to 9:00 and 9:00 to 11:00. (Of course, the crowd never seems to be ready to go home right at 11 p.m. so it's not unusual for the rides and concession stand to remain open until nearly midnight.) This year, it took approximately 60 individuals to run the ticket booth, concession stand, rides and booths on each shift--and that doesn't count the persons who starred in and helped with the tent show! Not one of those individuals is paid to do the work. Now that is community involvement!!

For the Board of Directors, the fiscal year ends on August 31st. The By-laws state the annual meeting is to be held the first Wednesday in September. The same officers that served on the board this past year were elected for another term. Those officers are Alvis Wade, President; Gregg Jones, Vice President; Janelle Cooper, Secretary; Diana Alstrom, Treasurer; and Board members, Mark Joslyn, Larry Alstrom, Kay Reedy, Alan Ackerman, and Bert Mosier.

The Board feels that the current midway serves the community quite well. The purchase of more rides is doubtful. They are planning the addition of a storage facility on the east side of the grounds that would also house a second concession stand and handicapped-accessible restrooms. This facility would meet the needs of an enclosed work area along with much needed storage for many of the rides and booths which are currently packed into two trailers and one of the 4-H buildings. The restroom facilities will be funded by the City. The Board has agreed that those facilities should be open during the summer months for use by anyone at the Kiddie Park, sand Volleyball Pit, or Rodeo Arena.

A fund for the storage building has been established at the First National Bank. The board would be grateful for any funds that individuals or businesses would like to donate. It is their hope that the facility will be in place before the 1995 fair.

The Board expressed appreciation for the many individuals and businesses that have donated their time and talents to the Carnival each year and particularly this past year. Individuals like Joan Taylor, Stephanie Schippers, and Elmer Boxler and businesses like Doris Geist's Upholstery and Meyer Electric, are hard-working examples of this past year's volunteer labor. Many businesses sell goods "at cost" to the carnival, which is also helpful. Gene Deines (Hoxie Stop 2 Shop and Gene's Bestyet) and Mark Joslyn (Joslyn's Food Center) have lent their expertise to the Concession Stand in the past and currently. The Board appreciates their efforts. The Board would like to recognize the first individuals who turned the dreams of a carnival into a reality: Bob Mahanna, Gene Deines, Tuffy Taylor and Myron Dietz.

If you haven't helped with preparation of the fair, watch for notices in the paper and on cable TV in June and the first of July. Even if you don't think you have a special talent, the Sheridan County Amusement Company can use your help. They urge you to become an active participant in this community affair. The smiles and laughter on Carnival nights make it all worth while!

**FAX**

**From: Wallace Couy Amusement Association**

**To: Whom it may Concern**

**Reference: Amendment 2001**

**To Whom It May Concern:**

**The Board Members of the Wallace County Amusement Association hereby support Amendment 2001 in reference to changing liability insurance for home owned carnivals.**

**Signed, Maxine Lucas  
Secretary Treasurer**

**CHEYENNE COUNTY AMUSEMENT AUTHORITY  
"HOME OWNED - HOME OPERATED"**

*January 17, 1995*

*Representative Jim Morrison  
Kansas House of Representatives  
State Capitol  
Topeka, Kansas*

*Dear Representative Morrison and Committee:*

*On behalf of the Cheyenne County Amusement Authority, in St. Francis, Kansas, I would like to submit this letter for support of House Bill No. 2001.*

*Liability issues are a constant concern with our home owned carnival. All of our operators are volunteers and although they are very conscientious they are not professional operators.*

*The idea of a home owned carnival for our community came about from the fact that our county has a small population with limited financial resources. This carnival provides entertainment to the folks in the tri-state area and any legislation that would help reduce liability and possibly insurance costs would be of great importance to us.*

*Thank you very much for trying to help us with this concern.*

*Sincerely,*



*Gary Cooper, President  
Cheyenne County Amusement Authority*

## INSURANCE FOR THE CARNIVAL

YEAR	NAME OF COMPANY	SERVICED THROUGH:	COST
1985		First Ins. Agency	2,230.00
1986		First Ins. Agency	2,175.00
1987	Western World Insurance Co.	First Ins. Agency	2,525.00
1988	Lincoln Insurance Company	Hoxie State Agency	2,055.92
1989		Hoxie State Agency	2,005.92
1990		Hoxie State Agency	2,010.32
1991		Hoxie State Agency	2,820.60
1992			2,900.00
1993	R J Salisbury & Assoc.	Hoxie State Agency	2,464.50
1994	Mendel S. Kaliff Ins.	Hoxie State Agency	3,863.70
1995			

TRI-COUNTY AMUSEMENT ASSOCIATION  
313 Center  
OAKLEY, KS. 67748

Janauary 16, 1995

Sheridan Amusement Company  
P. O. Box 153  
Hoxie, Ks. 67740

Dear Members of the Amusement Company:

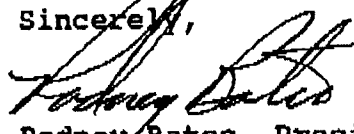
We are in receipt of the proposed HB 2001, which we understand has been filed by Representative Morrison.

This letter is to lend our support to your effort to have such legislation passed to further our goals of providing community owned activities consisting of rides. We are in the early stages of establishing a non-profit organization to operate these types of rides for our community and we have been told the liability insurance costs are the main obstacle in making this enterprise a "going concern" so to speak. The figures we have been quoted as costs for this type of coverage appears to be very unreasonable when compared to other types of liability costs, and this action would be of great benefit to many communities who are working to better their communities.

You may use our names in your public support of this legislation, and if we can be of assistance please let us know. We will, of course, contact our representatives with copies of this letter to inform them of our interest in this bill.

Thank you for informing us of this action.

Sincerely,



Rodney Bates, President

**Kansas Bar Association**  
**Legislative Testimony**  
**By Ron Smith, General Counsel**  
**January 18, 1995**

**KANSAS BAR ASSOCIATION**

1200 SW Harrison St.  
P.O. Box 1037  
Topeka, Kansas 66601-1037  
Telephone (913) 234-5696  
FAX (913) 234-3813

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Ronald Smith, General Counsel  
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IOLTA Director

re: **HB 2001**

**Position:** The KBA generally opposes legislation which changes the tort law of the state unless the proponents can show a clear public benefit to this law, and that the public generally believes the law is justified. We fail to see the "public" benefit to this law.

Let's assume that Worlds of Fun is located in Kansas. Under this bill Worlds of Fun, a for-profit amusement park, remains liable for ordinary negligence. However, if under this law Worlds of Fun leased the same premises to the Kansas Bar Foundation and that Foundation invited children to a fun day at Worlds of Fun and used part of the admission proceeds as a fund-raiser, if one of the kids is injured, why should Worlds of Fun be held to different standard of liability because the premises are owned or leased by a nonprofit foundation? Further, why should the Bar Foundation, that makes money from the lease, be given this immunity?

The bill doesn't make internal sense. If in our example, the Bar Foundation leased Worlds of Fun and someone is injured, both the Foundation and the amusement park are liable if the injury does not occur on a mechanical ride, but are immune if the injury is from such a ride. This creates some unusual hair-splitting.<sup>1</sup>

In 1954, the Kansas Supreme Court decided in *Noel v. Menninger Foundation* that the distinction in tort liability between for profit and nonprofit organizations is constitutionally unsound, and that the old common law charitable immunity doctrine did not any longer apply in Kansas. I do not see how this change would pass muster with the *Noel* case. The controlling principle in *Noel* was that with the common presence of liability insurance, the old common law charitable immunity doctrine was unnecessary. However, by granting immunity for ordinary negligence in HB 2001 for the narrow class of mechanical rides, a part of that case is repealed

<sup>1</sup> Assume a gondola filled with teenagers is riding high across the Park. If because of ordinary negligence, the gondola falls on the crowd below, injuring people in the gondola and below, the children riding in the gondola cannot sue under HB 2001 unless they can show willful and wanton negligence. The people on the walkway injured by the fall of the Gondola can sue, because they were not on the ride at the time. Why two different policies for the same incident?



and a part of the old doctrine reimposed (for amusement mechanical rides). Since ordinarily punitive damages cannot be insured, and the nonprofit would remain liable only for acts of intentional or willful or wanton conduct, essentially it is judgment proof in most cases of injury from mechanical rides. This reimposes through a back-door, part of the old charitable immunity doctrine -- contrary to the *Noel* doctrine.

The public policy being changed here is no better summed up than from the *Noel* case itself:

Limitations on liability such as the Charitable Immunity Doctrine ". . . undertakes to clothe "special interests" with special privileges denied to other corporations, and society. It takes from individuals the right to assert in the courts claims against all who tortuously assail their person and property and to recovery judgment for injuries done. It prevents all persons from having recourse to law for vindication of rights or reparation for wrongs against the privileged charitable, nonprofit organization. It frees one set of corporations from obligations to which their competitors and individuals are subjected. In short, it destroys equality and creates special privilege. *In re Opinion of the Justices*, 211 Mass. 618, 98 N.E. 337." *Noel v Menninger Foundation*, 175 Kan 751, 763, 267 P. 2d 934 (1954).

HB 2001 appears to immunize negligent conduct for both the nonprofit organization and the amusement ride operator arising from a mechanical ride accident. We fail to see the public policy behind this preference. *Some amusement rides are local, but many affected by this bill are gypsies, moving from town to town, state to state. Why do we give them preference in our tort laws when many are not Kansans and it is Kansans they may injure?*

### Constitutionality

Having abolished charitable immunity doctrine in 1954, a fundamental question you must now answer under HB 2001 is what does the injured party get in return for giving up the right to sue for ordinary negligence?

Since 1990, in *Samsel v. Wheeling Trucking Co. Inc.*, our Supreme Court has said to have a constitutionally valid limitation on the common law right of recovery, the law must contain a benefit to the plaintiff. If the legislature is going to reduce the remedy available, then it must enact a *quid pro quo*, that the plaintiff must realize some benefit from the change.<sup>2</sup>

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<sup>2</sup> *Samsel v. Wheeler Transport Services, Inc.*, 246 Kan. 336, 341 (1990) ("In the past, we have recognized that the legislature, under its power to act for the general welfare, may alter common-law causes of action and constitutional rights if it provides an adequate *quid pro quo*...")

In *Samsel* the justification that the limitation would reduce insurance costs to *defendants* was NOT a *quid pro quo* to the injured *plaintiff*. The court essentially stated that while the legislature provided a cap on pain and suffering, the *quid pro quo* was that a judge could not use inherent powers of remittitur to reduce the pain and suffering verdict below \$250,000. Where is the similar *quid pro quo* for the injured plaintiff in this bill?

The fact that immunity would make it easier for nonprofit organizations to hire and use mechanical rides as inducement to get the public to attend fundraising events also unwittingly subjects the public to unsafe rides and perhaps injuries. That might be valid in the eyes of defendants and their insurance companies, but it is not a valid reason to deny plaintiffs a remedy. Surely nonprofit organizations can raise money for their charitable functions without subjecting the public to unsafe rides, and buy insurance to cover such events. This bill says "no matter how unsafe the operator of a mechanical ride might be, we reserve the right to take your money and leave you without a remedy if you are injured." Is that the policy you want Kansas nonprofit organizations to give the public? I'll stand for questions.

If the private insurance market will not provide the coverage for this narrow area of liability (perhaps resulting from litigation in other states), perhaps Kansas nonprofits should investigate a pool for self-insurance for this narrow area of liability.

TESTIMONY IN OPPOSITION TO HOUSE BILL 2001  
Presented by Brenda L. Head on Behalf of  
the Kansas Trial Lawyers Association

This legislation is designed to allow civil wrongdoers to escape liability and responsibility for their actions. It does not represent sound public policy. While it may be charitable to insulate nonprofit organizations from being bankrupted by a negligent mistake, the owners and operators of amusement rides must nevertheless be responsible for the safety of their mechanical devices. One way to accomplish both goals would be to require a certain amount of liability insurance be possessed by nonprofit organizations that operate amusement rides, but to shield those organizations from civil damage liability in amounts above the liability insurance limits (at a level specified by the Legislature).

An important goal of the civil justice system is to encourage the owners and operators of potentially dangerous machinery to maintain and operate that machinery in a reasonably safe condition. It should also be the responsibility of any owner or operator of an amusement ride to make certain that its employees are properly trained in how to operate the machine, and in necessary safety procedures. Please understand that most amusement rides are attractive and, therefore, profitable because of the apparent dangers to which riders are exposed. The public expects and entrusts the owners and operators of amusement rides to make certain that they are protected from actual danger. Does it represent sound public policy to remove the incentive that these amusement ride operators have to safely maintain and operate their equipment, and to train their employees? Some of the "rides" which would be insulated from civil liability would be bungee jumps (a mechanical device which conveys passengers over a fixed route for the purpose of excitement), roller coasters (including those that turn us upside down), and miniature racetracks. Can you imagine how dangerous some of these rides can be under certain circumstances? Can you imagine how serious could be some of the injuries resulting from unsafe rides of this nature?

Another goal of the civil justice system is to make certain that a family's financial ability to take care of itself can be restored in the event it is damaged or destroyed because of the civil wrongdoing of another person or entity. This society is grounded upon principles of self-reliance, economic independence and the will to improve one's standing in life. Should families that are suddenly and unexpectedly overburdened by the costs of a serious injury sustained, while riding one of these nonprofit amusement rides be forced to do without remuneration? Indeed, is it the state or federal governments' responsibility to step into the shoes of the negligent amusement ride operator, and provide the remuneration that would otherwise be the responsibility of the wrongdoer? A clear message of the 1994 elections was that it is not the responsibility of government to play this role.

At a minimum, general liability insurance for the owners, operators, lessors and contractors of amusement rides should be required in return for immunity from civil liability for amounts above and beyond those limits.