

Approved: 4-7-95
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:00 a.m. on February 3, 1995 in Room 514-S of the Capitol.

All members were present except: Senator Martin (excused)
Senator Rock (excused)
Senator Parkinson (excused)
Senator Feleciano (excused)
Senator Moran (excused)

Committee staff present: Michael Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Janice Brasher, Committee Secretary

Conferees appearing before the committee:
Ron Hein, Legislative Counsel for EVCO Wholesale Food Corp.
Bob Corkins, Director of Taxation for the Kansas Chamber of Commerce and Industry

Others attending: See attached list

The Chair called the meeting to order at 10:00 a.m. and introduced Ron Hein to explain SB 72.

SB 72--Civil procedure, venue in actions against corporations

Mr. Ron Hein, Legislative Counsel for EVCO Wholesale Food Corp., explained that SB 72 is supported by EVCO. Mr. Hein related that historically, venue has been permissible where the defendant can be summoned or where the cause of action arose. The code of civil procedure was adopted in 1963, K.S.A. 60-603. In K.S.A. 60-604 subsection (3) deviated from common law by permitting the action to be brought in a county in which the cause of action may not have arisen or in which the defendant may not have been subject to summons. Mr. Hein referred to corporations like EVCO which are based primarily in one city, but through their transportation of goods, may be sued in any county in the state. While the law does not encourage forum shopping, forum shopping is permitted. Mr. Hein gave an example of a business located in Liberal being sued by a resident of Liberal with a cause of action occurring in Liberal yet the forum could be in Doniphan County, 500 miles away, if the plaintiff chose. Mr. Hein continued that SB 72 would help to solve this problem for defendants while protecting the plaintiffs. Mr. Hein concluded that the House Judiciary has already worked HB 2177 and HB 2111 which also deal with venue. HB 2177 is exactly like SB 72. (Attachment 1)

Bob Corkins, director of taxation for the Kansas Chamber of Commerce and Industry spoke in support of SB 72. Mr. Corkins stated that this bill would be helpful to businesses, particularly small businesses who have limited resources with which to pay for legal representation and travel expenses of counsel. Mr. Corkins stated that current law in K.S.A. 60-604 gives an added advantage to plaintiffs by greatly expanding the forums in which a plaintiff may choose to sue a defendant corporation. KCCI contends that the phrase "transacting business" is far too broad to serve equity in this context. SB 72 offers a resolution to the venue problem while avoiding the problem of defining "transacting business." (Attachment 2)

As there were no opponents, the Chair determined to let this bill rest pending action on HB 2177, and closed the hearing on SB 72.

Sex predators, payment of indigent person's counsel and experts by state board of indigents' defense services.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on February 3, 1995.

The Chair directed the Committee's attention to **SB 131**, which was heard yesterday, it is the Sedgwick County bill regarding payment from the indigents' defense fund on the sexual predator cases. The Chair inquired as to the Committee's comfort level with the information heard yesterday. The Chair asked if more information was needed. It was suggested that this bill be referred to a subcommittee, primarily because the package of funding and those questions regarding the state's responsibility could possibly be addressed. Committee members discussed the bill and determined that either the state or the county needs to pay for the defense of a sex predator when the defendant can not. Several other issues regarding **SB 131** were discussed such as--should the state and the county proportion the expenses. How would that be administrated. Concerns regarding the Attorney General's amendment that would require the Indigents' Defense Fund to also pay for prosecution were discussed in context of inadequate funding for the Indigents Defense Fund. Reference was made to a post-audit report that could provide information.

Motion was made by Senator Parkinson to table this bill, and seconded.

Concerns were discussed about setting a precedent regarding the state being mandated to pay for prosecution for other crimes as well. The difficulties attorneys face with this type of case mainly due to the limit of 45 days to bring it to trial was discussed.

Motion and second to table **SB 131** was withdrawn.

Bill introduction:

The Chair proposed to introduce as a Committee bill, a bill that would amend the burglary definition to include an enclosed salvage yard.

Motion made and seconded to introduce a bill that would amend the burglary definition to include an enclosed salvage yard. Motion carried.

Meeting adjourned at 11:00 a.m.

The next meeting is scheduled for February 6, 1995.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-3-95

NAME	REPRESENTING
Bob Corkins	Ks Chamber of Commerce & Ind.
Stacey Empson	EVCO
Clara Weaver	Hein Ebert & Weir

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*Ronald R. Hein
William F. Ebert
Stephen P. Weir
Stacey R. Empson*

SENATE JUDICIARY COMMITTEE

TESTIMONY RE: SB 72

Presented by Ronald R. Hein

on behalf of

EVCO WHOLESALE FOOD CORP

February 3, 1995

Mr. Chairman, Members of the Committee:

I am Ron Hein, legislative counsel for EVCO Wholesale Food Corp., an institutional food distributor based in Emporia. EVCO distributes food by truck to numerous institutions such as jails, schools, etc. throughout the state of Kansas.

Evco strongly urges the Committee to approve SB 72.

Historically, venue has been permissible where the defendant can be summoned or where the cause of action arose. When the code of civil procedure was adopted in 1963, K.S.A. 60-603 provided for individuals who were defendants to be sued in the county 1) where the defendant resides, 2) in which the plaintiff resides if the defendant is served therein, 3) in which the cause of action arose, 4) in the county where the plaintiff had a place of business if the defendant was served therein, and 5) two additional sections relating specifically to probate and the location of tangible personal property. This section preserved all of the requirements existing at common law, namely that the action be brought where the cause of action arose or where the defendant could be summoned.

However, K.S.A. 60-604 with regards to corporations was handled slightly differently. It provided for service in the county where the registered office of the corporation is located, in which the cause of action arose, or in which the defendant is transacting business at the time of the filing of the petition. The first two subsections still conformed to the common law, but subsection 3 deviated by permitting the action to be brought in a county in which the cause of action may not have arisen or in which the defendant may not have been subject to summons. There was no requirement when suing corporations that there be a place of business as with an individual doing business.

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Attachment 1*

In light of national and even international corporations, where the registered office may be in Topeka or Kansas City or in Wichita, but which might have businesses located all over the state, the "transacting business" subsection seemed to make sense. An individual who resided in that location should be able to sue the business in his or her home county without having to travel at great cost or expense to the plaintiff to the urban area where the corporation has its registered office (legal residence).

Some lawyers have figured out a loop-hole in this language, and a few judges have permitted the venue to be proper utilizing this loop-hole. A corporation such as EVCO, which is based primarily in one city, but which "touches" numerous locations throughout the state simply by driving a truck up to a loading dock and unloading food, under current law, may be sued in virtually any county in the state. It is not necessary that the cause of action arose there, that there be a place of business there, nor that the defendant be served there. The common law rules have been cast to the wind, and forum shopping is permitted.

The law does not encourage forum shopping, but does encourage the forum most appropriate to the convenience of the parties.

A plaintiff who is forced to sue an out of state corporation which simply transacts business in this state, should be permitted to sue where the plaintiff resides so that the plaintiff will not be inconvenienced nor be forced to incur additional costs to go across the state to bring his or her action.

However, by the same token, the plaintiff should not be able to forum shop simply to have leverage against the defendant. Under current law, a business located in Liberal could be sued by a resident of Liberal with a cause of action which arose in Liberal, in Doniphan County, 500 miles away. If the suit is for a small amount of money, it gives the plaintiff considerable leverage on negotiating a nuisance settlement, even if there is no liability, simply because of the cost of the defendant transporting its lawyer, witnesses, and records to the county where the matter will be tried. This is inefficient and costly to the defendant, and serves no purpose other than to give the plaintiff an undue advantage.

SB 72 helps solve this problem for defendants, while still protecting plaintiffs. This bill will insure the proper balance is maintained between the plaintiff and the defendant, and yet permit the judicial system to operate as efficiently and expeditiously as possible for the mutual convenience of the parties.

EVCO strongly urges your approval of SB 72, and believes that the language will help insure that this proper balance is maintained.

The House Judiciary Committee has already worked HB 2177 and HB 2111 which also deal with venue. HB 2177 is exactly like SB 72. The House added HB 2111 to HB 2177. I have advised the Chairman of this so that the chambers may determine which bill to run.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

60-603. Actions against residents. An action against a resident of this state, other than an action for which venue is otherwise specifically prescribed by law may be brought in the county,

- (1) in which the defendant resides, or
- (2) in which the plaintiff resides if the defendant is served therein, or
- (3) in which the cause of action arose, or
- (4) in which the defendant has a place of business or of employment if said defendant is served therein, or

(5) in which the estate of a deceased person is being probated if such deceased person was jointly liable with the defendant and a demand to enforce such liability has been duly exhibited in the probate proceedings, or

(6) in which there is located tangible personal property which is the subject of an action for the possession thereof if immediate possession is sought in accordance with K.S.A. 60-1005 at the time of the filing of the action.

History: L. 1963, ch. 303, 60-603; L. 1965, ch. 355, § 2; L. 1976, ch. 251, § 16; Jan. 10, 1977.

Source or prior law:

L. 1865, ch. 55, § 1; G.S. 1868, ch. 80, § 55; L. 1903, ch. 379, § 2; L. 1909, ch. 182, § 55; R.S. 1923, 60-509.

Cross References to Related Sections:

Multiple parties, see 60-608.

Identical provision in code of civil procedure for limited actions, see 61-1902.

Research and Practice Aids:

Venue—10, 23 et seq.

Hatcher's Digest, Venue §§ 1, 2.

C.J.S. Venue §§ 58-60, 83.

Gard's Kansas C.C.P. 60-603.

Vernon's Kansas C.C.P.—Fowks, Harvey & Thomas, 60-603.

Law Review and Bar Journal References:

"Cause of Action Under K.S.A. 60-308 and K.S.A. 60-603(3)," Robert J. Fowks, 38 J.B.A.K. 291, 292, 293, 294 (1969).

CASE ANNOTATIONS

Prior law cases, see G.S. 1949, 60-509 and the 1961 Supp. thereto.

1. Noted; trial court acted prematurely in sustaining motion to transfer venue. *Lambertz v. Abilene Flour Mills Co., Inc.*, 209 K. 93, 95, 495 P.2d 914.

2. Paragraph (3) referred to in determining venue of action to construe insurance policy; based on statute. *Alliance Life Ins. Co. v. Ulysses Volunteer Firemen's Relief Assn.*, 215 K. 937, 939, 529 P.2d 171.

3. Error for trial court to permit defendant to challenge amended motion service of process after alleging service of process for purpose of fixing venue. *Bray v. Bayles*, 228 K. 481, 488, 618 P.2d 807.

60-604. Actions against corporations. An action against a domestic corporation, or against a foreign corporation which is qualified to do business in this state, other than an action for which venue is otherwise specifically prescribed by law, may be brought in the county in which:

- (1) Its registered office is located;
- (2) the cause of action arose;
- (3) the defendant is transacting business at the time of the filing of the petition;
- (4) there is located tangible personal property which is the subject of an action for the possession thereof if immediate possession is sought in accordance with K.S.A. 60-1005 and amendments thereto at the time of the filing of the action; or
- (5) equipment or facilities for use in the supply of transportation services, or communication services, including, without limitation, telephonic communication services, are located, where the subject of such action relates to transportation services or communication services supplied or rendered, in whole or in part, using such equipment or facilities.

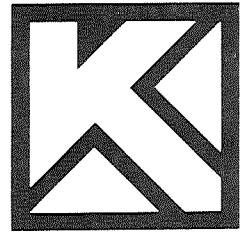
History: L. 1963, ch. 303, 60-604; L. 1965, ch. 355, § 3; L. 1989, ch. 178, § 2; July 1.

CASE ANNOTATIONS

5. Venue where surety company sued on fidelity bond examined. *First Hays Banshares, Inc. v. Kansas Bankers Surety Co.*, 244 K. 576, 589, 769 P.2d 1184 (1989).

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



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SB 72

February 3, 1995

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the
Senate Committee on Judiciary

by
Bob Corkins
Director of Taxation

Honorable Chairman and members of the Committee:

My name is Bob Corkins, director of taxation for the Kansas Chamber of Commerce and Industry, and I appreciate the opportunity to express our members support for SB 72 regarding a reform to Kansas' venue statute for bringing civil claims.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

The business community's concern with this area of law should be apparent to everyone. For many decades, our organization has been an active force in working to restrain business costs through fair judicial reforms, thereby protecting jobs, creating jobs, curbing inflation, and developing the earning power of Kansans at large.

We view these proposals as embracing those efforts -- goals which are as important to our small businesses as they are to large. In fact, small businesses can be particularly disadvantaged

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plaintiffs seeking to file suit against them in distant counties. The cost of legal representation significantly increases to a small defendant business with limited resources when it is forced to pay the travel expenses of counsel. Even larger enterprises, or those small firms with a greater ability to absorb litigation costs, are nevertheless harmed by overly broad venue guidelines.

The most important policy to consider in evaluating our forum rules is the merit of avoiding bias. Current law in KSA 60-604, however, gives an added advantage to plaintiffs by greatly expanding the forums in which a plaintiff may choose to sue a defendant corporation. KCCI contends that the phrase "transacting business" is far too broad to serve equity in this context. A defendant manufacturer, for example, could be sued in any district court jurisdiction in which its product is sold...perhaps in all 105 counties. This language permits suit in a county which has no connection to the litigation other than a fortuitous, unrelated and isolated sale within its boundaries. Again we find an open invitation for forum shopping in order to garner the most plaintiff favorable court or jury pool.

An analogous situation appears in the Bellas Hess and Quill line of cases which have received a great deal of notoriety. The issue there is whether an out-of-state retailer has sufficient "contacts" or "nexus" with *State X* in order for *State X* to require the retailer to collect its sales tax. Kansas addressed this issue in 1990 when it redefined the meaning of "retailer doing business in this state" for purposes of Kansas compensating use tax. The 1990 legislature, in an attempt to get non-Kansas retailers to collect tax on their sales within Kansas, elaborated on what constitutes "doing business".

The statute in question, KSA 79-3702(h), now considers an entity to be doing business in Kansas if it maintains here some type of real estate facility, if it employs here an agent or other representative, or if it engages in a regular or systematic solicitation of sales. This definition was crafted to be very broad in order to impose tax collection duties upon the greatest number of retailers. As expansive as this definition is, our corporate venue statute is even broader by comparison.

SB 72 offers a resolution to the venue problem while avoiding the Pandora's box scenario of defining "transacting business". Although a clarification of that phrase is desirable, the venue inequities which it creates can be substantially removed -- and with a test which is infinitely easier to administer -- by doing just what SB 72 proposes. Clarity would be achieved, forum shopping would be greatly reduced, and plaintiffs would still have venue options from which to choose.

KCCI views this proposal as a measured and reasonable litigation reform and we urge you to recommend it favorably for passage. Thank you for your time and consideration.