

Approved: 3-27-95  
Date

## MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:00 a.m. on March 17, 1995 in Room 514-S of the Capitol.

All members were present except:

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:

Hayden B. St. John, President, Lawyers Title of Topeka, Inc.: and Chairman of the Title Standards Committee of the Kansas Bar Association  
Paul Shelby, Assistant Judicial Administrator, Office of Judicial Administration  
Sherlyn Sampson, District Court, Douglas County  
Judge David McKesic, District Judge, Wyandotte County

Others attending: See attached list

### **HB 2023--Repeals statute that allows wills to be deposited in district court**

Sherlyn Sampson, District Court, Douglas County, spoke in support of **HB 2023** and stated that the purpose of this bill, which was requested by Kansas Association of District Court Clerks and Administrators, is to delete K.S.A. 59-620 which allows wills to be deposited with the clerk of the district court. Ms Sampson stated that this statute was established in 1939 and last amended 1977, and it is felt that this statute is outdated. This statute dates back to a time when the courts would call in the family and publicly read a will to them. This is no longer feasible due to the number of wills that could be deposited. Currently it is estimated there are at least 20,000 wills on deposit with the District Courts of Kansas with some courts having as many as 6,200 on file. A number of the wills date back to the 1800's. Ms Sampson expressed concern with K.S.A.59-620 in not meeting the needs of the people. Ms Sampson stated that these wills are indexed and filed away, and forgotten. The wills can be deposited with the county where that person currently resides. Only the maker of the will can pick up the will. After the testator's death, if the court is notified of the death, the court shall open the will publicly and retain the same. The problem is that most family members do not know a will is deposited with the court so they do not notify the court of the death of the testator; therefore, the testator's wishes are never known. In the mobile society of today, it is hard to know where a will is filed unless you have the exact date of the will and know where the testator resided on that date. Ms Sampson concluded that passage of these bills will not destroy the wills that are currently on deposit with the courts. After a committee has completed studying Supreme Court Rule 108, there will be a determination of what to do with the wills already on file.(Attachment 1)

Questions and discussion followed regarding the acceptance of wills by the county, and the county being a facilitator for public convenience, a role that no longer works for the good of the public, according to Ms Sampson..

Paul Shelby, OJA, testify in favor of **HB 2023** stating he knows of no opposition to this bill, and that the problem is that most people do not think to look in probate court for those documents.(Attachment 2)

Judge David McKesic testified in support of **HB 2023**. Judge McKesic stated that the problem is that there is a massive number of wills in Wyandotte County as in other counties, and the testator could live anywhere. Judge David McKesic stated that the next consideration will be what to do with the old wills. (Attachment 3)

Motion by Senator Bond, second by Senator Oleen to pass **HB 2023** favorably and place on the Consent Calendar. Motion carried.

### **HB 2426--Eliminates options for forming law libraries; all new law libraries will be formed**

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on March 17, 1995.

pursuant to statute.

Paul Shelby, OJA spoke in support of **HB 2426** regarding law libraries. Mr. Shelby gave some historical data on this bill and the issue. Mr. Shelby stated that during the 1994 legislature **SB 790** was approved and raised the registration fee in Sedgwick County and exempted Public Defender attorneys from the fees. During deliberation it was recommended that these statutes be reviewed. Mr. Shelby stated that OJA reviewed 16 statutes and recommends repealing nine statutes and keeping seven. OJA's recommendations are in **HB 2426**. In Section One, any new county law library will be formed and governed by the single remaining statute, K.S.A. 1994 Supp. 20-3126. Existing libraries will be grandfathered. Also in Section One, (c) the qualifier to register will be residing in the county as amended by the House Committee under Section One (e), page 2 of the bill where the attorney's principal office is located or where the attorney resides if the principal office is located in another state. Mr. Shelby requested an amendment to correct the spelling of "principal." In Section 2 (a), K.S.A. 1994 Supp. 20-3127 was amended, and development of guidelines for public access to the county law libraries was mandated. Mr. Shelby proceeded through the bill, describing the various changes or elimination of current language. Mr. Shelby stated that since the bill repeals so many statutes and only a few statutes remain, he has provided a package of the repealed laws. (Attachment 4) Mr. Shelby offered an additional amendment requested by Wichita, since in Sedgwick County the Bar pays the employees, and this amendment amends 20-3128 which we did not have in the bill, they want to increase the amount of money, \$2,700 the commissioners provide to the law library in Sedgwick County to \$5,000 this has been cleared with county counselor, this is to provide money for the maintenance and operation of the Sedgwick County Law Library. (Attachment 5)

Questions and discussion followed regarding county of residence, public accessibility and the publishing of docket fees.

Judge David Mckesic spoke in support of **HB 2426**, stating that law libraries developed over a period of time, and statutes governing them were written as new libraries were formed. The major impact of this bill takes the general idea of 15 or 10 statutes and put them into seven pages instead of half of a statute book that nobody understands. Judge Mckesic discussed the county of residency. Judge Mckesic referred to page 3, of the amendment on equal access, stating that there is no problem with granting access, as long as the libraries have some control over it. (Attachment 6)

Motion was made by Senator Rock, second by Senator Vancrum to approve the amendments.. Motion carried.

Motion was made by Senator Rock, second by Senator Petty to move the bill favorably as amended. Motion carried.

**HB 2318--Durable power of attorney may include power to convey homestead rights**

The Chair referred to the Revisor, Gordon Self, to explain this bill and noted that Representative Snowbarger, the sponsor, was out of town. Mr. Self explained that this bill expands the durable power of attorney by allowing for the transfer of principal's homestead rights to be mortgaged or conveyed as long as specific language granting the authority is in the written durable power of attorney. The sub-note indicates the bill addresses the need for such a measure due to a problem with Kansas Title Standard 6.12.

Hayden B. St. John, President, Lawyers Title, Inc. and Chairman of the Title Standards Committee of the Kansas Bar Association testified in opposition to **HB 2318**. Mr. St John stated that the Title Standards Committee has considered this problem over several years about power of attorneys to convey homesteads. There is a constitutional requirement that there be joint consent of both husband and wife to convey or alienate the homestead. This bill will appear to give power of attorney to the other spouse to accomplish that end. Mr. St. John cited several cases dealing with a concurrent of wills. The Title Standard took this into committee and there is a new Title Standard passed February 25, 1995. Mr. St. John continued stating that Title Standards are not law, but they do hold a fair amount of weight. This particular Title Standard it is specifically stated that if you are going to use a power of attorney for homestead, it should be executed by both husband and wife in the same instrument either granting to one spouse or a third person that authority to convey or to alienate homestead mortgage or whatever, it should also have a legal description of the property and the street address and that it was the intention that this constitutes the joint consent required by Article 15, Section 9 of the Kansas Constitution. (Attachment 7)

Mr. St. John referred to a sample Power of Attorney form attached to his testimony. The purpose of the Title Standard is to give some guidance and to have a form that can be used. Mr. St. John stated that what they are trying to accomplish is that both husband and wife are signed the same document at the same time specifically describing the property, specifically stating that it is their intent to convey or mortgage the homestead.. Mr.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on March 17, 1995.

St. John stated that he is opposed to the statute as it is currently written, believing that more thought needs to go in to it.

Questions and discussion followed concerning the durable power of attorney regarding homesteads.

The Chair requested that the bill rest until Monday and discussion with Representative Snowbarger.

**HB 2111 --Provision for jails**

The Chair explained that this bill gives counties the opportunity to cooperate with cities to build jails in places other than the county seat. This changes the old law that stated that jails need to be built in county seats and prohibited jails from being built elsewhere.

Brief discussion followed relating to options this bill would provide to counties.

Motion to amend is to expand to permit the county commissioners to contract with another for purpose of constructing or conducting operations, or leasing made by Senator Bond, second by Senator Oleen. Motion carried.

Motion by Senator Martin, second by Senator Parkinson to report **HB 2111** favorably as amended. Motion carried.

Meeting adjourned at 11:00 a.m.

The next meeting is scheduled for March 20, 1995.



Attachment

HOUSE BILL NO. 2023  
Senate Judiciary Committee  
March 17, 1995

Testimony of Sherlyn Sampson  
Clerk of District Court, Douglas County  
for the KS Assoc of District Court Clerks & Administrators

Senator Emert & members of the committee:

I appreciate the opportunity to appear before you today to discuss House Bill No. 2023. The purpose of this bill, which was requested by the Clerk's Association, is to delete KSA 59-620 which allows wills to be deposited with the Clerk of District Court.

This statute was established in 1939 and last amended in 1977. We feel that in today's mobile society this statute is outdated. This law dates back to a time when the court knew everyone and would call in the family and publicly read a will to them. This is no longer feasible.

Each District Court in Kansas was surveyed and it is estimated there are at least 20,000 wills on deposit with the District Courts of Kansas with some courts having as many as 6200 on file. A lot of the wills on deposit with the court date back to the early 1800's.

Our concern with KSA 59-620 is the disservice the courts are doing to people. People place wills on deposit with the courts expecting the court to handle them with loving care. Instead the will is placed in a sealed envelope, indexed either numerically or alphabetically, filed away, and forgotten forever.

The statute allows a person to deposit a will with the Court in the county where that person currently resides. The court is required to issue a certificate of deposit at the time the will is deposited. Should a family member know the will is deposited with the court and come in to pick it up, they can't have it. The statute requires that during the testator's lifetime, only the person that deposited the will be allowed to pick it up. After the testator's death, if the court is notified of the death, the court shall open the will publicly and retain the same.

Tragically, most family members do not know a will is deposited with the court so they don't notify the court of the death of the testator; therefore, the testator's wishes are never known.

In our mobile society, it is very hard to know where a will is filed unless you have the exact date of the will and know where the testator resided on that date. Therefore, it makes

Senate Judiciary  
3-17-95  
Attachment 1

much more sense for a testator to keep the will with their other important family papers. The attorney that prepared the will should also have a copy in his file.

Passage of this bill will not destroy the wills that are currently on deposit with the courts. We are only asking that they no longer be deposited with the court. There is a committee currently studying Supreme Court Rule 108, "Reproduction & Disposition of Original Court Records". It is our recommendation that this committee study the matter and decide what should be done with the wills currently on deposit. It is my understanding the committee has discussed this matter and has referred it to Judicial Council Probate for further study.

For all of the above reasons, we ask that you help us put an end to the disservice we do to a testator by depositing their will with the Court. We ask that you pass this bill and delete KSA 59-620.

Thank you for allowing me to speak to you on behalf of the Clerks in Kansas. I urge your support of this bill.

2

**House Bill No. 2023**  
Senate Judiciary Committee  
March 17, 1995

Testimony of Paul Shelby  
Assistant Judicial Administrator  
Office of Judicial Administration

Mr. Chairman and members of the committee we appreciate the opportunity to appear today to discuss House Bill No. 2023 which relates to the deposit of wills in the district court.

This bill repeals a statute which has been in existence in one form or another since 1868, K.S.A. 59-620. Currently the statute permits deposit of wills in the safekeeping of the district court for a filing fee of \$1. The bill also deletes a companion requirement to keep an index of wills on file.

Over the years since 1868 a great many of the wills filed in the courts have accumulated as testators die and the court does not learn of the death. Currently, most will drafters keep the will in their law office, and file the will for probate on the death of the testator so that this service which was fairly successful in the early years of our state is no longer operating as originally envisioned.

Considerable savings will result to county governments which supply space and operating expenses to district courts. The saving will be realized over time as filing space, filing cabinets, and associated indices are no longer needed.

We support this bill and request favorable passage.

Senate Judiciary  
3-17-95  
Attachment 2

DISTRICT COURT OF KANSAS

CHAMBERS OF  
DAVID P. MIKESIC  
DISTRICT JUDGE



COURTHOUSE  
KANSAS CITY, KANSAS  
66101

WYANDOTTE COUNTY

March 15, 1995

Senator Tim Emert  
Chairman  
Senate Judiciary Committee  
State Capitol  
Topeka, Kansas 66612

RE: HB2023 An Act relating to Will Deposits

Dear Senator Emert:

I have reviewed HB2023 concerning Will deposits and I support passage of this measure. As you might imagine, quite often a testator or testatrix will bring his or her Will into our probate department for deposit. The testator might move to another county or state prior to death. If the family does not know of this existence of the deposited Will, the document often sits in our vault for years without ever being probated.

I believe the better practice is for the testator or testatrix to keep the Will in a safe place with all their other important papers so that upon death, family, friends or others might discover it in a timely period.

Our office obviously, does not know when a testator or testatrix passes away so we are not in a position to do anything with a Will until someone makes an inquiry. For these reasons I hope you will support passage of HB2023.

Sincerely,

*David P. Mikesic*

DAVID P MIKESIC  
DIVISION 10

DPM:kp

*Senate Judiciary  
3-17-95  
Attachment 3*



Attachment 4

**House Bill No. 2426**  
Senate Judiciary Committee  
March 17, 1995

Testimony of Paul Shelby  
Assistant Judicial Administrator  
Office of Judicial Administration

Mr. Chairman and members of the committee, we appreciate the opportunity to appear today to discuss House Bill No. 2426 concerning county law libraries.

I wish to commence my remarks by presenting some historical data on this bill and the issue. The 1994 legislature had two bills before them on law libraries regarding increasing registration fees in Sedgwick County. During the process the bills were combined into one, Senate Bill 790 which was approved. The approved bill raised the registration fee in Sedgwick County and exempted Public Defender attorneys from the fees. During the conference committee deliberations it was noted that these statutes should be reviewed and recommendations submitted for the 1995 legislature.

We have reviewed those 16 statutes and we are recommending you repeal 9 statutes and keep 7. Our recommendations are in House Bill 2426. We shared our recommendations with the Kansas Bar Association's Bench/Bar committee and also with the Judicial Council.

We have eliminated the multiple options for forming and financing county law libraries. In Section One, we have grandfathered those existing libraries formed under the statutes we suggest be repealed. Any new county law libraries will be formed and governed by the single remaining statute, K.S.A. 1994 Supp. 20-3126.

Also in Section One, (c), we recommended the qualifier to register be residing in the county. As amended by the House Committee it now applies where the attorney's **principal** office is located or where the attorney resides if the principal office is located in another state. I would request an amendment to correct the spelling of principal.

Senate Judiciary  
3-16-95  
Attachment 4

We still exempt attorneys who are employed as public defenders by the state board of indigents' defense services. We also did not change the current amount of the registration fees. Also in Section One (c) Page 2, lines 18-24, the House Committee struck language regarding sanctions.

In Section 2, (a) we have amended K.S.A. 1994 Supp. 20-3127 and have mandated the board of trustees to develop guidelines for public access to the county law libraries. We have not been specific, but wished to address a public perception that filing fee moneys are used, in part, to finance the libraries so that the public which supplies the money should have access. The local trustees can craft guidelines pertinent to their areas. The House Committee made amendments which clarify access.

In Section 2, (b), we repeal K.S.A. 20-3113, but have left the language regarding the board's makeup as it was in that statute. Under (e) we repeal K.S.A. 20-3117, but maintain the current language that all attorneys registered under this act shall not be liable to pay any occupational tax or city license fees levied under the laws of this state by any municipality.

In Section 3, we amended K.S.A. 1994 Supp. 20-3129 and responded to the circumstance that docket fees are not uniform which is an issue with the Judicial Council and specifically to Judge David Knudson, Salina. We established a system whereby District Court filing fees, impacted by changes in law library fees, may only be altered once per calendar year as of July 1. Those filing fee changes must be filed with the Clerk of the Supreme Court in order to be effective. The Supreme Court will order a list of pertinent filing fees to be published annually.

The bill does not repeal the following statutes:

- K.S.A. 20-3128 - Maintenance of library
- K.S.A. 20-3110 - Use and investment of idle funds
- K.S.A. 20-3131 - Establishment of a branch library
- K.S.A. 20-3132 - Establishment of a joint law library

Since the bill repeals so many statutes, and only a few statutes remain, I am providing you a package of the repealed laws for your review.

We support the amendments to this bill and request favorable passage of House Bill No. 2426.

## LAW LIBRARY FEES REVISION

A SECTION COMPLETELY STRUCK OUT INDICATES THAT THE SECTION SHOULD BE REPEALED.

**20-3112. Registration of attorneys in certain counties; exceptions; fees.** ~~In all counties which now have or which may hereafter have a population of fifty thousand (50,000) or more and in all counties which may now or hereafter have a population of not more than forty thousand (40,000) and an assessed tangible valuation of more than ninety million dollars (\$90,000,000), and in all counties which may now or hereafter have a population of not less than fifteen thousand (15,000) nor more than twenty five thousand (25,000) and an assessed tangible valuation of not less than twenty two million dollars (\$22,000,000) nor more than twenty eight million dollars (\$28,000,000), and three (3) cities of the second class | In all counties which now have or which may hereafter have, a population located therein, and in all counties in which there is located a city of the first class having a population of less than fifteen thousand (15,000) and having an assessed tangible valuation of more than twelve million dollars (\$12,000,000), and in all counties having a population of more than twenty four thousand (24,000) and less than twenty eight thousand (28,000), and having an assessed tangible valuation of more than fifty million dollars (\$50,000,000) and less than sixty million dollars (\$60,000,000), and in all counties having a population of more than twelve thousand (12,000) and less than sixteen thousand (16,000) and in which there is located a city of the second class having a population of more than nine thousand (9,000), and in all counties which now have or which may hereafter have a population of not more than fifty thousand (50,000) in which there is located a city of the first class having a population of more than twenty one thousand (21,000), and in all counties having a population of more than twenty thousand (20,000) and less than thirty thousand (30,000) in which there are located five (5) or more cities of the second class, and in all counties having a population of more than thirteen thousand (13,000) and less than seventeen thousand (17,000) and having an assessed valuation of more than fifty million dollars (\$50,000,000) in which there are located two (2) cities of the second class, and in all counties having a population of more than twenty thousand (20,000) and not more than twenty six thousand (26,000) and having an assessed valuation of tangible property of more than sixty million dollars (\$60,000,000), as shown by the census returns of the county~~

~~assessor for the preceding year; all practicing attorneys at law therein shall register annually with the clerk of the district court in a register which said clerk shall keep for that purpose. The clerk shall enter in such register, the name, age, place of residence, location of office, firm connection, if any, and the date of admission of every such attorney to the bar, and shall specify the date he was licensed to practice law in the state of Kansas. All attorneys at law living within such county, who appear in any court of said county, and all who maintain or work for, or are connected with any firm or individuals maintaining an office in such county, shall register within thirty (30) days from the taking effect of this act and on or before January 15, of each year thereafter: Provided, That this act only shall become effective when a majority of the members of the bar of any such county shall elect to come under the provisions of this act, and shall not apply to any county where there is located a law library maintained by the state of Kansas. Each attorney shall pay to the said clerk at the time of registering an annual registration fee of ten dollars (\$10): Provided, however, That in counties having a population of more than one hundred eighty five thousand (185,000) and not more than two hundred thousand (200,000), each attorney shall pay to the said clerk at the time of registering an annual registration fee of fifteen dollars (\$15), except that in any such county the board of county commissioners shall pay the annual registration fee for the district attorney of such county and each of his assistant district attorneys and full time deputy district attorneys, with such fees to be considered as expenses of the office of district attorney within the meaning of subsection (a) of K.S.A. 22a 106: Provided further, That in counties having a population of more than two hundred thousand (200,000) and not more than two hundred fifty thousand (250,000), each attorney shall pay to the said clerk at the time of registering an annual registration fee of fifteen dollars (\$15): Provided further, That in counties having a population of more than two hundred fifty thousand (250,000), each attorney shall pay to the said clerk at the time of registering an annual registration fee of twenty five dollars (\$25): Provided further, That in counties having a population of more than fifty five thousand (55,000) and less than one hundred thousand (100,000), each attorney shall pay the said clerk at the time of registering, an annual registration fee of fifteen dollars (\$15), except that during the first five (5) years after admission to the practice of law, such fee shall be ten dollars (\$10). In all such counties the clerk of the district court shall not file in his office in any matter or action, any pleading or other papers signed by an attorney who has not registered and~~

~~who is required to register under this act and paid to said clerk said registration fee, and if any pleadings or other papers signed by an attorney who has not complied with the provisions of this act, are filed by said clerk through his mistake or neglect, then said pleadings or papers so filed shall be stricken from the files of said matter or cause on the order of the district judge before whom such cause is pending upon motion of the adverse party or motion of any registered attorney of said county.~~

**20-3113. County law libraries; use of attorney registration fees for funding; officers; librarians.** ~~(a) The fees authorized by K.S.A. 20-3112 and amendments thereto shall be used to establish and maintain a law library in each county in which the provisions of that statute have been made applicable. Except as otherwise provided in subsection (b), the judges of the district court and two members of the bar appointed by such judges for terms of two years shall be trustees of the library. The trustees shall have the management and control of the library and shall use the fees paid by attorneys for registration, and all other sums donated or provided by law to establish and maintain a library in the county courthouse or other suitable place to be provided and maintained by the county commissioners of the county. In each such county, the judges of the district court, members of the bar who reside in the county and who have registered and paid the fee provided for in K.S.A. 19-1308 and amendments thereto and all county officials shall have the right to use the library in accordance with rules and regulations established by the trustees.~~

~~— The clerk of the district court of each such county shall be treasurer of the library and safely keep the funds of the library and disburse them in the manner directed by a majority of the trustees. The clerk shall be liable on the clerk's official bond for any failure, refusal or neglect in performing the clerk's duties under this section.~~

~~— (b) In Sedgwick and Johnson counties, there shall be five trustees of the law library. Two members shall be judges of the district court, appointed by all judges of the district court in the county, and three shall be members of the bar of the county, selected by the bar association of the county in the manner provided in its bylaws. In any such county, the trustees may release the board of county commissioners from the duty to maintain the library in the courthouse or other suitable place and may establish and maintain the library in some suitable place not provided by the county commissioners. In that case, the clerk of the district court~~

~~shall appoint a deputy in addition to those otherwise provided by law, and the deputy shall act as custodian and librarian of the library, assist the clerk in the performance of the duties of treasurer thereof and perform any other duties which are not inconsistent with those provided by this section and which are directed by the clerk. The deputy shall be paid a salary out of the county treasury, in equal monthly installments, of \$2,400 per year. The trustees shall have the power to rescind their action at any time, in which case it shall become the duty of the county commissioners to establish the library in the courthouse or another place provided and maintained by the county.~~

~~—— (c) In Wyandotte county, the board of trustees may pay the salary of the librarian in an amount established by the board, payable from funds of the library.~~

~~—— (d) The clerk of the district court of any county designated an urban area pursuant to K.S.A. 19-2654 and amendments thereto may appoint, subject to approval of the board of trustees of the law library of the county, a deputy who shall act as custodian and librarian of the law library of such county and shall assist the clerk in the performance of the clerk's duties as treasurer thereof. The deputy also shall perform such other duties as assigned by the clerk of the district court, with the approval of the board of trustees of the law library of deputy shall receive as compensation an annual salary, payable from the general fund of the county in equal monthly installments, as prescribed by the judges of the district court of such county, with the approval of the board of county commissioners of the county.~~

**20-3115. Same; collection of library fees in certain counties between 55,000 and 100,000.** ~~Except as otherwise provided by law, the clerks of all district courts established in counties having a population of more than fifty five thousand (55,000) and less than one hundred thousand (100,000), where a law library now or hereafter may be established, shall tax in all cases commenced pursuant to chapter 61 of the Kansas Statutes Annotated and in all misdemeanor cases, a library fee of fifty cents (50c). Said fees shall be deducted from the required docket fee, and when collected such fees shall be for the benefit and the account of the law library established in said county.~~

**20-3117. Same; registrants exempt from license taxes.**

~~— All attorneys registered under this act shall not be liable to pay any occupation tax or city license fees levied under the laws of this state by any municipality.~~

**20-3121. Law libraries in certain counties; registration of attorneys; election.** ~~In all counties that now have or may hereafter have a population of not less than thirty thousand (30,000) nor more than forty thousand (40,000) and an assessed tangible valuation of not less than seventy million dollars (\$70,000,000) nor more than ninety million dollars (\$90,000,000) and in all counties that now have or may hereafter have a population of not less than eleven thousand (11,000) and not more than fourteen thousand (14,000) and having an assessed taxable tangible valuation of not less than forty five million dollars (\$45,000,000) and not more than fifty six million dollars (\$56,000,000), and in all counties that now have or may hereafter have a population of not less than eight thousand five hundred (8,500) and not more than nine thousand five hundred (9,500) and having an assessed taxable tangible valuation of not less than thirty four million dollars (\$34,000,000) and not more than thirty seven million dollars (\$37,000,000), and in all counties having a population of not less than seven thousand (7,000) and not more than nine thousand (9,000) and having an assessed taxable tangible valuation of not less than forty three million dollars (\$43,000,000) and in all counties having a population of not less than twenty five thousand (25,000) and not more than thirty thousand (30,000), all practicing attorneys at law therein shall register with the clerk of the district court in a register which said clerk shall keep for that purpose.~~

~~— The clerk shall enter in such register the name, age, place of residence, location of office, firm connections, if any, the date of admission of every such attorney to the bar and shall specify the date he was licensed to practice law in the state of Kansas: Provided, This act shall not apply to or become effective in any such county until after a majority of the members of the bar of such county shall by resolution elect to come within the provisions, and shall not apply to any county where there is located a law library maintained by the state of Kansas.~~

**20-3122. Law libraries in certain counties; trustees, qualifications, powers; use of library; treasurer of fund; liability on bonds.** ~~After the members of the bar of any county~~

~~described in K.S.A. 20-3121 and amendments thereto have elected to come within the provisions of this act, the judge or judges of the district court ex officio, and three members of the bar of such county to be elected for a term of two years by the members of the bar whose registration fees have been paid, shall be the trustees of a law library that may be acquired, established and maintained in such county under the provisions of this act and shall have the supervision, management and control thereof.~~

~~—The judges of the district court, members of the bar who reside in such county and who have registered and paid the fees provided for herein, and all county officials in such county shall have the right to the use of such library in accordance with the rules and regulations established by the trustees.~~

~~—The clerk of the district court shall be ex officio treasurer of the library fund and shall safely keep all funds paid to the clerk under the provisions of this act and disburse them as the trustees or a majority of them direct. The clerk and the judge of the district court shall be liable on their respective official bonds for any failure, refusal or neglect in the performance of their respective duties as herein set forth.~~

**20-3123-. Same; registration; fee.** ~~All attorneys at law living within such county who appear as an attorney in any court in such county shall register with the clerk of such district court within thirty (30) days from the taking effect of this act, and on or before the fifteenth day of January in each year thereafter, and at the time of each such registration shall pay to the clerk of such court a fee of fifteen dollars (\$15) to be known as a registration fee.~~

**20-3124-. Same; collection of fees.** ~~The clerk of the district court shall tax as costs in each case docketed in his or her court for all cases commenced pursuant to chapter 60 of the Kansas Statutes Annotated and in all felony criminal cases, a filing fee of two dollars (\$2) and the clerk of the district court shall tax as costs in each, a case commenced pursuant to chapter 61 of the Kansas Statutes Annotated and each misdemeanor criminal case fee of one dollar (\$1), such fees to be known as library fees. All such fees shall be deducted from the required docket fee and shall be for the use and account of said trustees. In all criminal cases that are dismissed in the district court or upon the motion of the county attorney or a city attorney or in which there is a verdict or~~



~~judgment of not guilty, no filing fees shall be collected.~~

**20-3125. Same; use of fees for law library; housing.** ~~All fees paid by the attorneys as a registration fee, and all other fees paid as a filing fee, and all sums donated, or provided by law, shall be used by said trustees for the purpose of acquiring, purchasing, establishing, maintaining, providing and operating a law library, such library to be kept and maintained in the courthouse in such county or other suitable place to be provided and maintained by the board of county commissioners of such county: Provided, In counties having a population of not less than twenty-six thousand (26,000) and not more than thirty thousand (30,000) such law library shall be located in any city in such county having a population of more than ten thousand (10,000), and the governing body of the city in which such library is located may provide suitable housing therefor.~~

1 to register, except those employed solely as public defenders by the state  
2 board of indigents' defense services, shall pay to the clerk at the time of  
3 registering an annual registration fee of not less than \$10 nor more than  
4 \$75, as determined by the trustees of the law library, except that in Sedg-  
5 wick county, each attorney shall pay to such clerk at the time of registering  
6 an annual registration fee of not less than \$25 nor more than \$125, as  
7 determined by the trustees of the law library. Public defenders are ex-  
8 empt from the registration fee during their employment with the state  
9 board of indigents' defense services. A registration fee in excess of the  
10 amount prescribed in this subsection annually may be fixed by a majority  
11 of the attorneys registered under the provisions of this act. A schedule of  
12 current registration fees shall be filed with the clerk of the district court.

13 (d) Whenever a law library has been established in any county, the  
14 clerk of the district court, or the clerk of any inferior court within such  
15 county, shall not file in the clerk's office in any matter or action, any  
16 pleading or other papers signed by an attorney required to register under  
17 this act who has not so registered and paid to the clerk of the district  
18 court the required registration fee. If any pleadings or other papers signed  
19 by an attorney who has not complied with the provisions of this act are  
20 filed by the clerk of any court within the county through the clerk's mis-  
21 take or neglect, such pleadings or papers shall be stricken from the files  
22 on the order of the judge before whom such cause is pending upon mo-  
23 tion of the adverse party or motion of any registered attorney of the  
24 county.

25 (e) For the purposes of this section, an attorney shall be re-  
26 quired to be registered in the county: (1) Where the attorney's  
27 principle office is located, if such attorney is a resident of Kansas  
28 or a resident of another state; or (2) where the attorney resides, if  
29 such attorney's principle office is located in another state. The  
30 principle office shall be the principle office of the attorney and not  
31 the principle office of such attorney's firm.

32 Sec. 2. K.S.A. 1994 Supp. 20-3127 is hereby amended to read as  
33 follows: 20-3127. (a) All fees collected pursuant to K.S.A. 20-3126, and  
34 amendments thereto, shall be used to establish and maintain the county  
35 law library. A board of trustees, appointed as provided in this section,  
36 shall have the management and control of such library and shall use the  
37 fees paid for registration, and all other sums, books, or library materials  
38 or equipment donated or provided by law, for the purpose of establishing  
39 and maintaining such library in the county courthouse or other suitable  
40 place to be provided and maintained by the county commissioners of such  
41 county. The district judge or district judges of the district court, members  
42 of the bar who have registered and paid the fee provided for in K.S.A.  
43 20-3126, and amendments thereto, judges of all other courts in the county



1 and the county officials shall have the right to use the library in accordance  
2 with the rules and regulations established by the board of trustees. *The*  
3 *board of trustees shall develop guidelines to govern the conditions under*  
4 *which provide members of the public shall have reasonable access to*  
5 *the law library.*

6 (b) The board of trustees of the any law library established or gov-  
7 erned under this act or pursuant to K.S.A. 20-3113, and amendments  
8 thereto, in Johnson county and Sedgwick counties shall consist of five  
9 members, two of which shall be judges of the district court, appointed by  
10 a consensus of all judges of the district court in Johnson county those  
11 counties, and three of which shall be members of the Johnson or Sedgwick  
12 county bar association, appointed by selection of the Johnson county bar  
13 association pursuant to the Johnson or Sedgwick county bar association's  
14 bylaws for two-year terms. The board of trustees of the law library in all  
15 other counties; except as provided in K.S.A. 20-3113, and amendments  
16 thereto, shall consist of the district judge or judges of the district court  
17 presiding in such county and not less than two attorneys who shall be  
18 elected for two-year terms by a majority of the attorneys residing in the  
19 county.

20 (c) The clerk of the district court of the county shall be treasurer of  
21 the library and shall safely keep the funds of such library and disburse  
22 them as the trustees shall direct. The clerk shall be liable on an official  
23 bond for any failure, refusal or neglect in performing such duties.

24 (d) The board of county commissioners of any county designated an  
25 urban area pursuant to K.S.A. 19-2654, and amendments thereto,  
26 wherein an election has been held to come under the provisions of this  
27 act is hereby authorized to appoint, by and with the advice and consent  
28 of the board of trustees of the law library of such county, a librarian, who  
29 shall act as custodian of the law library of such county and shall assist in  
30 the performance of the clerk's duties as treasurer thereof, and such as-  
31 sistants as are necessary to perform the duties of administering the law  
32 library. The librarian and any assistants so appointed shall be employees  
33 of the county under the supervision of the board of county commissioners,  
34 or the board's designated official, with the advice and recommendations  
35 of the board of trustees of the law library, and shall be subject to the  
36 personnel policies and procedures established by the board of county  
37 commissioners for all employees of the county. The librarian and any  
38 assistants shall receive as compensation such salaries and benefits as es-  
39 tablished by the law library board of trustees, subject to the approval of  
40 the board of county commissioners, which shall be payable from the gen-  
41 eral fund of the county, through the county payroll process, from funds  
42 budgeted and made available by the law library board of trustees for that  
43 purpose through the collection of fees or other funds authorized by this

01-4

1 act.  
2 (e) All attorneys registered under this act shall not be liable to pay  
3 any occupational tax or city license fees levied under the laws of this state  
4 by any municipality.

5 Sec. ~~3~~ K.S.A. 1994 Supp. 20-3129 is hereby amended to read as  
6 follows: 20-3129. (a) Subject to the limitations contained in this section,  
7 the clerks of the district courts shall tax a library fee in an amount deter-  
8 mined by the trustees of the law library in each county for the benefit  
9 and account of the law library in each county. Such library fee shall be  
10 not less than \$2 nor more than \$10 in all cases commenced pursuant to  
11 chapter 60 of the Kansas Statutes Annotated and in all felony criminal  
12 cases and shall be not less than \$.50 nor more than \$7 in all other cases.  
13 The trustee of the law library in each county may increase law library  
14 fees under this subsection once per calendar year as of July 1. Changed  
15 docket fees shall be effective as of that date and when filed with the clerk  
16 of the supreme court. The supreme court shall publish or make available  
17 a list of such docket fees. The trustees of the law library in each county  
18 shall file with the respective clerks the fees to be charged in that court.

19 (b) The fees provided for by subsection (a) shall be deducted from  
20 the docket fee, except that any library fee charged pursuant to this section  
21 which exceeds \$5 in all cases commenced pursuant to chapter 60 of the  
22 Kansas Statutes Annotated and in all felony criminal cases and \$4 in all  
23 other cases shall be added to the docket fee otherwise provided by law.

24 (c) In criminal cases where the case is dismissed by the state, the  
25 county shall be liable for the library fee. Where appeals from conviction  
26 in the municipal court are dismissed for want of prosecution, or by the  
27 defendant, the state or city shall collect the library fee. Upon failure of  
28 the state or city to do so within 90 days after the dismissal, the county  
29 from which the appeal is taken shall be liable therefor.

30 Sec. ~~4~~ K.S.A. 20-3113, 20-3115, 20-3117, 20-3121, 20-3122, 20-  
31 3124 and 20-3125 and K.S.A. 1994 Supp. 20-3112, 20-3123, 20-3126, 20-  
32 3127 and 20-3129 are hereby repealed.

33 Sec. ~~5~~ This act shall take effect and be in force from and after its  
34 publication in the statute book.

5

6

Sec. 3. K. S. A. 20-3128 is hereby amended to read as follows: 20-3128. The trustees of any county law library may release the board of county commissioners from the duty to maintain ~~said~~ the library in the county courthouse or at some other suitable place, and may establish and maintain ~~said~~ the library in some suitable place not provided by the board of county commissioners in which ~~event~~ case a deputy clerk of the ~~district court shall be appointed upon the approval thereof by said trustees, which deputy shall act as custodian and librarian of said library, assist said clerk in the performance of the duties of treasurer thereof, perform such other duties not inconsistent with those herein enumerated as said clerk shall direct, and shall be paid a salary by the trustees: Provided, however, That in all counties with a population in excess of one hundred thousand (100,000), the board of county commissioners shall pay to the board of trustees out of the from its general fund an amount not to exceed \$5,000 in excess of two thousand seven hundred dollars (\$2,700) annually to the said trustees, to be applied to the cost of maintaining and operating the said library as the board of discretion of said trustees is in its discretion may determined most determine to be proper. Said sum shall be paid in equal monthly installments.~~ The trustees shall have the power to rescind said action at any time, in which case it shall become the duty of the county commissioners to establish the said library in the courthouse or any other suitable place provided and maintained by the county. *Provided, however, if the board of trustees elects to establish and maintain the library at some place other than the county courthouse, or at some other suitable place not selected by the board of county commissioners, the board of trustees may also release the board of county commissioners from the duty to appoint a librarian and assistants for the library.*

Senate Judiciary  
Attachment 5  
3-17-95

4

20-3128

Supp



DISTRICT COURT OF KANSAS



WYANDOTTE COUNTY

*March 8*  
CHAMBERS OF  
DAVID P. MIKESIC  
DISTRICT JUDGE

COURTHOUSE  
KANSAS CITY, KANSAS  
66101

March 16, 1995

Senator Tim Emert, Chairman  
Senate Judiciary Committee  
State Capitol  
Topeka, KS 66612

RE: HB2426 AN ACT RELATING TO LAW LIBRARIES

Dear Chairman Emert:

Thank you for the opportunity to speak on HB2426. I have reviewed this proposal and feel that it deserves passage. In my opinion, the House Judiciary Committee took a good bill and made it better with the amendments on page 2, lines 25 thru 31, and on page 3, lines 2 thru 5.

This bill has tried to make sense out of the numerous law library statutes that are currently on the books. It eliminates many duplicitous statutes that were enacted on a county by county basis as law libraries were developed. The amendment on page 2 was added, due to a problem perhaps unique to the Wyandotte-Johnson County area.

Simply put, there are many lawyers that have their principle office in Wyandotte County and therefore use our law library, but reside in Johnson County. Current Johnson County law library statutes provide that all attorneys that reside in Johnson County pay the law library fee in Johnson County. Current Wyandotte County law library laws provide lawyers pay the law library fee where their office is located.

The House amendment is almost a middle ground approach. Using a Wisdom of Solomon type approach, the House decreed the attorney should pay the fee where their principle office is located. Therefore, each lawyer will pay the fee only once, and they will pay it in the county where they are most likely to use the law library.

This seems eminently fair to me and I hope this committee feels the same.

*Senate Judiciary  
3-17-95  
Attachment 6*

Page 2  
March 16, 1995

The judges of Wyandotte County have no objection to the amendment on page 3 concerning reasonable access.

I hope your committee recommends this measure for favorable passage.

Sincerely,



David P. Mikesic  
Division 10

DPM:kp

6-2

Hayden B. St. John  
President

# Lawyers Title of Topeka, Inc.

P.O. BOX 4046  
2214 WEST TENTH STREET  
TOPEKA, KANSAS 66604

Telephone  
(913)232-6934

To: Senate Judiciary Committee

From: Hayden B. St. John, President, Lawyers Title of Topeka, Inc.; and Chairman of the Title Standards Committee of the Kansas Bar Association

Re: House Bill No. 2318 - Concerning a Durable Power-of-Attorney; Relating to Homestead Rights

I wish to speak in opposition to House Bill No. 2318 as it is currently written. The Title Standards Committee of the Kansas Bar Association has been discussing the problem of using a Power of Attorney to convey homestead property, on and off for a period of about four years. On February 25, 1995, we passed a title standard on this very subject, a copy of which is attached. The basic problem confronting us is Article 15, Section 9, of the Kansas Constitution which requires "joint consent" of husband and wife to alienate the homestead property of the parties.

There are several old Kansas cases on the subject, one of which is Howell, Jewett & Co. vs. McCrie, 36 K 636, which states the following:

"Joint consent" means the "concurrence of wills". To alienate the homestead, the mind of the husband and wife must have concurred, and they must have jointly consented to the execution of the conveyance, or the creation of the lien, both assisting and both signing the instrument before delivery. It could be alienated by 2 separate instruments, when it was intended that such instruments should operate together as a single instrument, ie - that the separate consent of each had such a connection with each other, that they might together be considered as the joint consent of both. (27 K 620 Ott vs. Sprague).

(Continued on next page)

TITLE INSURANCE — ABSTRACTS



ESCROW - CLOSING SERVICE

Senate Judiciary  
3-17-95  
Attachment 7

If there had been a previous consultation between husband and wife, and both, with full knowledge of all the facts and circumstances, had consented to the alienation, and where there is an absence of fraud, intimidation or concealment of material facts from the wife or the husband, and where, from the temporary absence of either, or, being widely separated, and there being a necessity for prompt action to take advantage of a bargain conducive to the interests of both, an alienation of the homestead by separate instruments, but each containing a reference to the other, might be upheld. But, the safer and better rule to observe, is to have the joint consent of the husband and wife evidenced by their signatures to the same instrument at the same time and place, before the same officer, and in the presence of each other.

Also, the case of Georgia P. Wallace vs. The Travelers Insurance Company, et.al., 54 K 442, which states the following:

The preservation of homestead rights requires that there shall be the concurrent personal consent of each spouse when the conveyance or mortgage is executed. Under our Constitution, joint consent is indispensable. When a power of attorney is executed by one, only the consent of such a one is then expressed, and that when the conveyance is subsequently made by the other spouse, he or she only consents, and therefore there is a lack of that contemporaneous joint consent which the Constitution requires. Joint consent clearly implies the concurrent action and mental accord of husband and wife. The assent required by the Constitution is not a blind action, performed without knowledge or a fair opportunity to know the consequences, but must be an intelligent concurrence on the part of the wife in the conveyance. A homestead cannot be conveyed or incumbered by the husband and wife acting separately, at different times and places, through separate instruments.

It is necessary in all cases that the husband and wife assent jointly; that both shall assent to it; that each shall assent with the knowledge and concurrence of the other. One mind cannot be made through agency, or by any legal abdication of its rights, to vest in the other the power to act singly in fact with the same effect as the concurrent action of both. One mind clearly cannot act in a dual capacity.

---

(Continued on next page)

In conclusion, I feel and the Title Standards Committee felt that the best way to deal with the constitutional requirement of joint consent to alienate the homestead, when a power-of-attorney is being used, is to have both the husband and wife sign the same instrument/power-of-attorney, authorizing either spouse or a third party as attorney-in-fact to sell or mortgage the homestead, specifically stating that it is the homestead of the parties and giving both the legal description and street address of the property, and stating that it is the intention of the Grantors that said act shall constitute the joint consent required by Article 15, Section 9 of the Kansas Constitution to alienate their homestead property.

Therefore, I request that if the Judiciary Committee feels that a statute is needed in addition to the new title standard, which obviously is not law, that House Bill 2318 be amended to incorporate the methods set forth in the title standard. The Title Standards Committee clearly felt that a power-of-attorney from one spouse to the other to convey or mortgage homestead real estate was very questionable and very probably would not meet the constitutional requirement of joint consent required by Article 15, Section 9 of the Constitution.



#### IV. STANDARD 6.12: POWER TO CONVEY HOMESTEAD

(A) PROBLEM: Husband and wife, in the same instrument, grant to either spouse or to a third party a Power of Attorney, which is properly executed and which gives the attorney-in-fact, all of the required powers to sell, transfer and convey the homestead real estate of the parties, including the legal description and the street address of said homestead, and further states that by the execution of said Power of Attorney, it is the intention of the Grantors that said act shall constitute the joint consent required by Article 15, Section 9 of the Kansas Constitution. Should the Power of Attorney be accepted to convey the homestead of the husband and wife?

STANDARD 6.12: Yes

Article 15, Section 9, of the Kansas Constitution states in part as follows: "The homestead shall not be alienated without the joint consent of husband and wife when that relationship exists."

The Power of Attorney must specifically: (1) give the attorney-in-fact the power to sell, transfer and convey the homestead in question; (2) give the legal description and the street address of the property; (3) state that by the execution of said Power of Attorney, it is the intention of the parties that said act shall constitute the joint consent required by Article 15, Section 9 of the Kansas Constitution; and (4) The Power of Attorney must also be executed by both husband and wife in the same instrument. Do not accept separate powers of attorney executed by one spouse to the other or to a third party. (It is doubtful whether joint consent is present under those circumstances.) If the above requisites are not included in the Power of Attorney, then require both the husband and wife to personally execute a deed to the Purchasers.

This Standard also applies to a mortgage or any other voluntary incumbrance of the homestead, if such additional authorizing language to mortgage is included in the Power of Attorney.

NOTE: The Power of Attorney should be a Durable Power of Attorney. See Standard 6:14.

Wallace v. Insurance Co. of America, 54 Kan. 442, 38 P. 489

Howell Jewett and Company v. McCrie, 36 Kan. 636, 14 P. 257

Johnson V. Samuelson, 69 Kan. 263, 76 P. 867

Watson v. Watson, 106 Kan 693

STANDARD 6:12(a): FORM OF POWER OF ATTORNEY ACCEPTABLE TO  
CONVEY HOMESTEAD PROPERTY.

POWER OF ATTORNEY FOR HOMESTEAD PROPERTY

KNOW ALL PERSONS BY THESE PRESENTS:

That the undersigned, \_\_\_\_\_ and \_\_\_\_\_, husband and wife, and residents of \_\_\_\_\_ County, Kansas, do hereby appoint \_\_\_\_\_ of \_\_\_\_\_ County, Kansas, as their attorney-in-fact, to act for the undersigned in their names and stead to grant, bargain and sell and convey their homestead, legally described as follows:

Lot 1, Block A, Green Acres Subdivision, in \_\_\_\_\_, County, Kansas.  
(Commonly known as 1000 Maple Street, Topeka, Kansas.)

or any part thereof, for such price and on such terms as to him shall seem acceptable and for them in their names to make, execute, acknowledge and deliver a good and sufficient deed of conveyance for the same, with or without covenants of warranty, as fully and to all intents and purposes as the undersigned might or could do it personally present. It is the intention of the Grantors that the execution of this Power of Attorney shall constitute the joint consent of the grantors required by Article 15, Section 9, of the Kansas Constitution to alienate and convey their homestead property.

The undersigned do hereby ratify and confirm all that the said attorney shall lawfully do, or cause to be done hereunder.

The undersigned declare that this Power of Attorney shall not be affected by the subsequent disability or incapacity of the principals and shall remain in full force and effect until revoked in writing by either of the undersigned, and such revocation is filed in the office of the Register of Deeds.

\_\_\_\_\_  
\_\_\_\_\_

STATE OF KANSAS        )  
                                  ) ss  
SHAWNEE COUNTY        )

BE IT REMEMBERED, That on this \_\_\_\_\_ day of \_\_\_\_\_  
A.D., 19\_\_\_\_, before me, the undersigned a Notary Public in and for the County and State  
aforesaid came \_\_\_\_\_ and \_\_\_\_\_, husband and wife, who are  
personally known to me to be the same person who executed the within instrument of  
writing, and such person duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal the day  
and year last above written.

\_\_\_\_\_  
Notary Public

My Term expires: \_\_\_\_\_

NOTE:        If the Power of Attorney is over 1 year old, the examiner should inquire as to  
whether said Power of Attorney is still in effect. The Power of Attorney must  
be recorded in office of the Register of Deeds.

NOTE:        The above Standard was adopted by the Title Standards Committee on  
February 25, 1995. Previous Standard 6.12 was repeated.

Officers, who shall neglect the performance of any legal duty.

**History:** Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 66; Jan. 29, 1861.

**Research and Practice Aids:**

Officers ⇨ 100(1); States ⇨ 58, 60.2.  
Hatcher's Digest, Constitutional Law § 37.  
C.J.S. Officers §§ 94 to 96; States §§ 89 to 99.

**CASE ANNOTATIONS**

1. Salaries of county officers; constitution does not forbid legislative control. *Hiner v. Miami County*, 9 K.A. 542, 543, 59 P. 382.

**§ 8. Location of state capital.** The temporary seat of government is hereby located at the city of Topeka, county of Shawnee. The first legislature under this constitution shall provide by law for submitting the question of the permanent location of the capital to a popular vote, and a majority of all the votes cast at some general election shall be necessary for such location.

**History:** Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 66; Jan. 29, 1861.

**Research and Practice Aids:**

States ⇨ 22.  
C.J.S. States § 27.

**CASE ANNOTATIONS**

1. Section cited in considering "location" of rural high school. *Miely v. Metzger*, 97 K. 804, 807, 156 P. 753.

**§ 9. Homestead exemption.** A homestead to the extent of one hundred and sixty acres of farming land, or of one acre within the limits of an incorporated town or city, occupied as a residence by the family of the owner, together with all the improvements on the same, shall be exempted from forced sale under any process of law, and shall not be alienated without the joint consent of husband and wife, when that relation exists; but no property shall be exempt from sale for taxes, or for the payment of obligations contracted for the purchase of said premises, or for the erection of improvements thereon: *Provided*, That provisions of this section shall not apply to any process of law obtained by virtue of a lien given by the consent of both husband and wife: *And provided further*, That the legislature by an appropriate act or acts, clearly framed to avoid abuses, may provide that when it is shown the husband or wife while occupying a homestead is adjudged to be insane, the duly appointed guardian of the insane spouse may be authorized to join with the sane spouse in executing

a mortgage upon the homestead, renewing or refinancing an encumbrance thereon which is likely to cause its loss, or in executing a lease thereon authorizing the lessee to explore and produce therefrom oil, gas, coal, lead, zinc, or other minerals.

**History:** Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 66; L. 1943, ch. 161, § 1; Nov. 7, 1944.

**Revisor's Note:**

At the election upon the ratification or rejection of the constitution, the electors were allowed to cast a separate ballot on the ratification or rejection of the homestead provision, see § 25 of the schedule following this article.

**Cross References to Related Sections:**

Execution of mortgages and mineral leases on the homestead where one spouse incapacitated, see 59-2314 to 59-2322.

**Research and Practice Aids:**

Homestead ⇨ 3 et seq.  
Hatcher's Digest, Homestead §§ 1 to 42.  
C.J.S. Homesteads § 6 et seq.

**Judicial Council Bulletin References:**

Articles on the law of homestead, James W. Taylor, 1935 J.C.B. 52 to 83; William Porter, 1951 J.C.B. 7 to 52.

**Law Review and Bar Journal References:**

Execution of oil and gas leases, George B. Collins, 8 J.B.A.K. 25, 27 (1939).

Ward's homestead cannot be sold by guardian to pay debts, Samuel E. Bartlett, 19 J.B.A.K. 146, 151 (1950).

Effect of land trust upon homestead exemption discussed, Richard L. Zinn, 14 K.L.R. 97, 107 (1965).

Discussed application to 41-806, John H. Johtz, Jr., 14 K.L.R. 193, 208 (1965).

Cited in comment on illegal use and alienation of homestead, Daniel C. Sullivan, 5 W.L.J. 296, 297 (1966).

Real estate lease in Kansas, Richard L. Zinn, 17 K.L.R. 707, 719 (1969).

"Survey of Kansas Homestead Law," 13 W.L.J. 447 (1974).

Foreclosing federal tax liens on homesteads, 13 W.L.J. 542 (1974).

"Consumer Law-Limitations on the Validity of Future Advance Clauses in Mortgage Contracts," 23 K.L.R. 745, 747 (1975).

"Bankruptcy: The Duplex-A Minority View of the Homestead Exemption," Kay Y. Rute, 18 W.L.J. 342 (1979).

"Bankruptcies in Kansas: A Need to Reform Our Exemption Laws?" Stuart A. Haney, 22 W.L.J. 286, 290, 292 (1983).

"Barring the Slayer's Bounty: An Analysis of Kansas' Troubled Experience," John F. Kuether, 23 W.L.J. 494, 511, 512, 513 (1984).

"No Mere Yeoman: Incorporating the Family Farm-Considerations and Consequences," Eric Melgren, 24 W.L.J. 546, 569 (1985).

**Attorney General's Opinions:**

Miscellaneous; homestead exemption. 83-28.