Approved: 2-6-96
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Garry Boston at 1:30 p.m. on January 22, 1996 in Room 519-S of the Capitol.

All members were present except: Representative Clay Aurand, Excused
Representative Steve Lloyd, Excused
Representative Ellen Samuelson, Excused

Committee staff present: Mary Galligan, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee: Greg Ziemak, Executive Director, Kansas Lottery
Representative John Ballou

Others attending: See attached list

The Chairman directed the committee members attention to the minutes that were before them and stated they would be worked later in the meeting.

HB 2146: Lottery prize winner allowed to designate trust to receive prize money.

The Chairman opened the hearing on **HB 2146**.

Greg Ziemak, Executive Director, Kansas Lottery, stated he was not a tax attorney, but researched and attempted to get some background. Since the lottery has began in Kansas there have been 13 annuitized winners; 8 Lotto America and 5 Power Ball. Prizes are paid in installments once a year over 20 years. The current policy is that these prizes cannot be accelerated unless the winner dies and the estate can petition the multistate lottery association for acceleration of prizes and if that is done through Kansas the organization can accelerate the prize and pay the present value of that prize in one lump sum. That has been done in the past and to his knowledge, has never been refused by the multistate lottery association.

The irrevocable trust issue was discussed with the Colorado Lottery and during this past year the Colorado Legislature passed a law allowing the lottery winners to assign their prizes to other parties. When the Lottery received the statute, they asked the Internal Revenue Service for an Opinion about this and the Opinion they received from Joseph Page, Chief of the Examinations Division, was that if the winner had the right to an assigned annuitized prize, just the right to it, or the right to assign to someone else, then the present value of those payments becomes taxable whether or not they actually assign the annuity, under the construction receipt doctrine which is a doctrine of the IRS. That basically would mean if $20M were won at Power Ball, and had right to assign the prize, the winner is liable for taxes and in fact if it were not assigned, might still be liable for those taxes. The Colorado Lottery was concerned because they have winners that may not want to assign prizes and therefore they did want to penalize winners that did not want to assign and have to pay these taxes up front. The Colorado Lottery has requested another Opinion and they are expecting to receive that in late February.

In an additional letter that we came upon from an attorney, the IRS to a California attorney concerning the tax consequences on the proposed Colorado Construction Receipt Doctrine, and this attorney had further addressed the Economic Benefit Doctrine and under this Doctrine, a tax period was included gross income any economic or financial benefit derived from the asking right to encompass in the form of a fund that has been irrevocably set aside in trust and is beyond the reach of the past creditors so according to this attorney setting something up in an irrevocable trust would be the same as the right to assignment. At this point should just be aware there is the possibility that the IRS could state in its ruling that if a winner has the mere right to this, may be liable to pay taxes of the present value.

As far as the bill itself, the Lottery does not have a problem with the lottery winner doing whatever they wish with their money as it is their money. Our only concern is if someone doesn't want either of these two options

that they are not penalized.

Another item that was pointed out by the Colorado Lottery Director was if the winnings were put in a trust, it should be in the legislation the names of the members of the trust. That is because in that statute of the Lottery Act it prohibits lottery employees and any members of their families from playing the lottery and would need to know if a trust were set up if one of the persons named was an employee of the Lottery.

Mr. Ziemak recommended waiting to see how the IRS ruled in Colorado before approving further legislation.

Representative John Ballou, testified that a hearing was held on **HB 2146** last year allowing lottery winners to set up revocable or irrevocable trusts in order to keep their estates from having to go to probate court. After hearing Mr. Ziemak's testimony, Representative Ballou stated he was not opposed to waiting until received ruling from Colorado which was expected sometime in late February. (See Attachment #1)

Testimony was distributed from Eric L. Hansen, Holman, McCollum & Hansen, P.C., supporting **HB 2146** which allows lottery winnings to be distributed to beneficiaries of a lottery winner's estate without probate court administration. (See Attachment #2)

Mary Galligan, Principal Analyst, Kansas Legislative Research Department, gave a briefing on the Reports of the Special Committee on Federal and State Affairs interim committee. (See Attachments #3 & 4)

Representative Adkins moved and Representative Mason seconded to approve the minutes of January 16, 17 and 18. The motion carried.

The Chairman stated that meetings were on call the rest of the week.

The meeting adjourned at 2:10 p.m.

The next meeting is scheduled for January 30, 1996.

FEDERAL & STATE AFFAIRS COMMITTEE GUEST LIST

DATE: January 22, 1996

NAME	REPRESENTING
Gregory P. Zemek	Kansas Lottery

JOHN BALLOU
REPRESENTATIVE, FORTY-THIRD DISTRICT
HOME ADDRESS: 19180 SOUTH WAVERLY
GARDNER, KANSAS 66030
(913) 856-6355

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TOPEKA, KANSAS 66612-1504
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STATE OF KANSAS

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
AGRICULTURE
EDUCATION
FEDERAL AND STATE AFFAIRS

January 22, 1996

Mr. Chairman and Members of the House Committee on Federal & State Affairs:

I am speaking to you today in support of HB-2146. This bill will allow lottery winners to set up Revocable or Irrevocable Trusts in order to keep their estates from having to go to Probate Court.

HB-2146 will also allow the Estate to pay taxes on the winnings once a year, as the Estate is paid from the State. Otherwise the Estate would be forced to pay taxes on money that may not be collected for another 19, 18 or 17 years.

J. J. Ballou

Rep. John Ballou
43rd District

Fed & State
1-22-96
Atch #1

HOLMAN MCCOLLUM & HANSEN, P.C.

Letter in Support of House Bill No. 2146

I. I support House Bill No. 2146 for the following reasons:

1. The proposal allows lottery winnings to be distributed to beneficiaries of a lottery winner's estate without probate court administration. The negative aspects to a lottery winner's estate in being subjected to such administration include the following:

   (a) Court costs and legal fees of probate administration - these could be incurred over many years since lottery winnings are paid over a twenty year period of time.

   (b) Time delays necessitated by probate administration -again, a period of many years could be required before final distribution to the estate beneficiaries.

   (c) Loss of privacy to estate beneficiaries due to the public nature of probate court records.

2. House Bill No. 2146 will have no negative impact on the income tax revenues of the State of Kansas or the Internal Revenue Service.

II. I would also propose a brief addition to K.S.A. 74-8720, Section 1(b)(2). The addition would cause that subsection to read as follows:

> The prize of a deceased winner shall be paid to the duly-appointed representative of the estate of such winner, or to such other person or persons appearing to be legally entitled thereto (including the trustee of such deceased winner's revocable or irrevocable trust).

My purpose in proposing such amendment to K.S.A. 74-8720, Section 1(b)(2) is to insure that payments made after death of a lottery winner will receive the same confidentiality as those made prior to such winner's death. Adding the proposed clause to Section 1(b)(2) of K.S.A. 74-8720 will have the same positive effect as specified above stated in support of House Bill No. 2146. Further, this proposed amendment will, again, have no negative impact on the income tax revenues collected by the Kansas Department of Revenue or the Internal Revenue Service.

Respectfully submitted,

Eric L. Hansen

Kansas Legislature

Reports of
Special Committees
Legislative Budget Committee
and
Legislative Educational Planning Committee
to the
1996 Kansas Legislature

Legislative Research Department
December, 1995

Fed & State
1-22-96
Atch #3

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→ **FEDERAL AND STATE AFFAIRS, SPECIAL COMMITTEE ON** – Rep. Garry Boston, Chair; Sen. Lana Oleen, Vice-Chair; Sen. Sherman Jones; Sen. Alfred Ramirez; Sen. Carolyn Tillotson; Rep. Richard Alldritt; Rep. Richard M. Becker; Rep. Les Donovan; Rep. Phyllis Gilmore; Rep. Sabrina Standifer; Rep. Kenny A. Wilk

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LABOR AND INDUSTRY, SPECIAL COMMITTEE ON – Sen. Alicia Salisbury, Chair; Rep. Al Lane, Vice-Chair; Sen. Mike Harris; Sen. Anthony Hensley; Sen. Marian K. Reynolds; Rep. Joe D. Humerickhouse; Rep. Greg A. Packer; Rep. Janice Pauls; Rep. Don Smith; Rep. Dale Swenson; Rep. John M. Toplikar

LEGISLATIVE BUDGET – Rep. Robin Jennison, Chair; Sen. Dave Kerr, Vice-Chair; Sen. Gerald Karr; Sen. Alicia Salisbury; Rep. Henry Helgerson; Rep. Phill Kline; Rep. Tim Shallenburger

royalty, the Committee wishes to express its concern about the exemption for state and local units of government from the royalty payment. The Committee notes that the proceeds from the imposition of the sand royalty on local and state purchases could be used for the enhancement of various benefits along the River, whether they be recreational or environmental.

Federal and State Affairs

Proposal No. 32 – Racing Commission. The Committee concluded that until the remainder of the scheduled audits of the Racing Commission and its licensees are completed, the Committee could not complete its charge. Other audits are expected to be available in December 1995 and January 1996 and can be reviewed by the standing Federal and State Affairs committees early during the 1996 Legislative Session. The Committee notes that many questions raised in the audit of the Woodlands regarding the filing of contracts and modifications to the contract between TRAK East and Sunflower Racing, Inc., will also be addressed in the audit of the Racing Commission. With the information provided in that audit, the standing committees will better be able to assess whether any statutory changes are necessary.

The Committee notes that several questions remain unanswered regarding the Racing Commission's implementation of recommendations made in the Linton report. The Committee requests that the Commission communicate its position regarding implementation of recommendations in that report in a letter to this Committee, or to the standing Federal and State Affairs committees early during the 1996 Session.

Proposal No. 33 – Term Limits for State and Local Officials. The Special Committee on Federal and State Affairs does not support any initiative to impose term limits on elected officials, particularly in light of recent turnover rate trends in Kansas.

Proposal No. 34 – Election of Judges. The Committee concludes that the present system of judicial selection, which allows the voters of a judicial district to determine whether district court judges will be elected or selected through the nonpartisan selection and retention method, is working well. The Committee recommends no changes to the present system.

The Committee recommends that judges and the Judicial Branch to explore methods of informing voters about candidates in judicial elections and judges standing for retention vote at both the district court and appellate court levels.

Proposal No. 35 – Monitoring Efforts of the Human Rights Commission to Reduce its Case Backlog. Based on information received during the interim, the Committee concludes that the Human Rights Commission has acted in good faith and made an effort to try to have cases settled in communities where they originate by contracting with local human rights agencies. The Committee notes that some cities are not currently able to accommodate additional cases so did not contract with the Commission. The Committee also concludes that recently enacted legislation is apparently having the desired effect. Finally, the Committee concludes that the new legislation in combination with management initiatives will reduce, but not eliminate, the Commission's case backlog.

The Committee therefore recommends that no changes be made at the present time and that the current operational and statutory changes be given time to work.

Proposal No. 66 – Review of Kansas' Liquor Law. Based on information provided by the ABC regarding its review of the entire body of liquor laws, the Committee concluded that the liquor issue would be best addressed during the 1996 Session when the Legislature would have the benefit of the work of the ABC Task Force. The Committee recommends that the Legislature review the recommendations of that Task Force and consider any amendments proposed in those recommendations.

Proposal No. 32

STUDY TOPIC: Racing Commission.

BACKGROUND

The Special Committee on Federal and State Affairs was directed by the Legislative Coordinating Council to review any audits and studies of the Racing Commission that become available during the 1995 interim. The impetus for this charge was authorization included in the 1995 Omnibus Appropriation Bill (L. 1995 Ch. 270, §5(k)) for the Racing Commission to make expenditures from the State Racing Fund during fiscal years 1995 and 1996 for one or more audits. Those audits were to be ". . . of any one or more licensees, race tracks, businesses involved in simulcasting to race tracks in Kansas, or other entities that are regulated or licensed by the Kansas racing commission, for the purposes of ascertaining current compliance with provisions of the Kansas parimutuel act and rules and regulations of the Kansas racing commission, reviewing matters relating to the activities of such entities with respect to revenues, expenditures, profits and losses, and other matters related thereto . . . ."

The audits were to be conducted under the auspices of the Legislative Post Audit Committee and could either be done by staff of, or by private firms under contract to, the Legislative Division of Post Audit (LDPA).

COMMITTEE ACTIVITIES

The Committee was briefed by staff of the Kansas Legislative Research Department regarding provisions of the Kansas Racing Act (K.S.A. 74-8801, *et seq.*). Research Department staff also reviewed briefly the approved budget and financing of the Commission for FY 1995 and FY 1996. Copies of background material provided to the Committee by the Research Department can be obtained from the Department.

The Committee was briefed by the Revisor of Statutes regarding bills that would amend the Kansas Parimutuel Racing Act that will carry over from the 1995 to 1996 Legislative Session. A copy of the bill summary presented to the Committee can be obtained from the Legislative Research Department.

The Committee also was briefed by staff of the LDPA regarding recent audits of the Racing Commission's operation. Copies of all audits discussed in this report can be obtained from the LDPA. The statutorily required financial and compliance audit of the Commission was completed in April, 1995 by a private firm under contract to the LDPA. That audit, like previous audits of the Racing Commission, identified some record keeping practices and procedures that could be improved. The follow-up on previous audits that was included in the 1995 financial audit shows that most prior deficiencies have been satisfactorily addressed.

A performance audit of the Racing Commission conducted in response to a request from the Senate Ways and Means Committee also was completed in April, 1995 (Audit No. 95-54). The Senate Committee wanted to determine whether records and information filed with the Racing Commission agreed with what the Legislature was being told about the financial stability of tracks in Kansas. The audit looked at one question: "Do the periodic reports the tracks have submitted to the Racing Commission indicate that the tracks have been having financial problems?"

The Post Auditor's examination of Racing Commission records found that financial reports submitted to the Commission by the Woodlands and Wichita Greyhound Park show that they have begun to experience some financial difficulty. This is particularly true for the Woodlands Racetrack located in Kansas City. That track has reported declines in revenues since 1990; audited figures for 1994 show its net losses that year totaled about $1.0 million The Wichita Greyhound Park also has reported declines in revenues since 1990, but records show that through 1994 the track remained profitable.

As reported by the Post Auditor, records on file with the Racing Commission also indicate that both the Woodlands and Wichita Greyhound Park owe large amounts each year for principal and interest payments on their long-term debt, and that both tracks' current financial needs significantly exceed their current financial resources. The Auditor concluded that these last two factors could make it difficult for these tracks to continue operating comfortably in the event that revenues drop off significantly.

The financial statements for the Woodlands show a loss of $6.0 million in 1994. However, that figure includes a $5.0 million income tax expense item reported during 1994 because of a new accounting rule. That expense item actually represents taxes attributable to prior years. Thus, the Auditor concluded the actual loss during 1994 was $1.0 million. Implementation of the new accounting rule apparently reduces the cumulative $8.2 million profit previously shown by the track to $3.2 million. The Auditor informed the Committee that this audit only provides information and does not include any recommendations.

At its September meeting the Committee was briefed by LDPA staff on the audit of the Woodlands Racetrack and Associated Licensees (Audit No. 95-57). The questions examined in that performance audit, and the summary findings were:

- **What entities or individuals have had significant involvement in the Woodlands' operation, and have they benefitted financially?**

  Two individuals – Richard Boushka and R. D. Hubbard – have had a major interest in the Woodlands. Mr. Boushka owned 40 percent and Mr. Hubbard owned 60 percent of Sunflower Racing, Inc., the facility owner/manager, before it was purchased by Hollywood Park in 1994. Both men benefitted primarily through the sale of Sunflower to Hollywood Park. They received Hollywood Park stock valued at about $15 million on the sale date for their $2 million equity investment in Sunflower. They also received money from substantial salaries, consulting agreements, and interest on loans to Sunflower.

  Hollywood Park issued about $15 million in stock to buy Sunflower, contributed $5 million in cash to help repay loans to R. D. Hubbard, and loaned about $2.5 million to the company. To date, Hollywood Park has not seen a financial benefit from owning the Woodlands, but would be the major beneficiary if slot machines were allowed at the facility.

  TRAK East, the nonprofit organization that holds the racing license [at the Woodlands], has received about $2.9 million to distribute to charities since 1990. However, in May, 1995 Sunflower Racing, Inc., suspended its charitable payments to TRAK East. TRAK East did not inform the Racing Commission of this situation.

  The banks that financed the track's construction have received $11.3 million in principal payments and $14.6 million in interest payments on the $40 million they loaned for the construction of the Woodlands. However, the Woodlands was unable to make its July, 1995 payment, and it has negotiated with the banks to delay, until July, 1996, a $27 million dollar [sic] payment due in January, 1996. The banks currently stand to lose much of their investment if the track closes.

- **Has the Woodlands Race Track complied with applicable requirements for its operations?**

  The track appears to be meeting regulatory requirement in most of the areas we reviewed. However, a significant number of the Woodlands' contracts were not on file with the Kansas Racing Commission as required, and two of the tracks' 400-plus employees may not be properly licensed by the Commission. Sunflower

325

allowed one concessionaire to operate at the track before he was appropriately licensed. A member of the TRAK East Board may have violated state law when a firm he owns conducted business with both Sunflower and TRAK East in 1993. Also, one Sunflower employee owns a greyhound that is licensed to race in Kansas. If he enters a dog in a live race in Kansas, it will be a violation of State law.

Based on the findings of that audit, the Post Auditor made several recommendations regarding filing of contracts, employee licensure, and familiarizing officials and employees with requirements of the Racing Act and Commission regulations. Other recommendations were for TRAK East to inform the Commission about alterations in contract terms for charitable payments and for Sunflower to solicit bids for certain services to prevent paying unnecessarily fees for services.

After reviewing the audit, the Committee received the response from representatives of Sunflower Racing, Inc. The response is included as part of the audit document. The representative of Sunflower accepted the recommendations made in the Audit.

The Committee was informed that the audit of the Woodlands was the first of a series of audits to examine the state's three racetracks and the Kansas Racing Commission. The Legislative Post Audit Committee directed the Post Auditor to have LDPA staff conduct the audits of the Woodlands and the Racing Commission. Audits of Wichita Greyhound Park, Camptown Greyhound Park, and the parimutuel tote system provided to all three race tracks by United Tote Company will be conducted by private firms under contract to LDPA. The Committee was informed that those audits will be completed and available to the Legislature early during the 1996 Session.

The Committee also received a study entitled *the Structure of the Commission Staff and the Necessity for the Position of Director of Racing Operations,"* prepared by Bill Linton and Associates for the Racing Commission at a cost of $20,000 in July, 1994. The Committee learned from staff of the Racing Commission that for a variety of reasons the Commission had not implemented many recommendations made in that report. The Committee was advised that the Commission, many current members of which were appointed after the report was issued, would review the report and be prepared to respond to legislators' questions during the 1996 Session.

CONCLUSIONS AND RECOMMENDATIONS

The Committee concluded that until the remainder of the scheduled audits of the Racing Commission and its licensees are completed, the Committee could not complete its charge. Other audits are expected to be available in December 1995 and January 1996 and can be reviewed by the standing Federal and State Affairs committees early during the 1996 Legislative Session. The Committee notes that many questions raised in the audit of the Woodlands regarding the filing of contracts and modifications to the contract between TRAK East and Sunflower Racing, Inc., will also be addressed in the audit of the Racing Commission. With the information provided in that audit, the standing committees will better be able to assess whether any statutory changes are necessary.

The Committee notes that several questions remain unanswered regarding the Racing Commission's implementation of recommendations made in the Linton report. The Committee requests that the Commission communicate its position regarding implementation of recommendations in that report in a letter to this Committee, or to the standing Federal and State Affairs committees early during the 1996 Session.

Proposal No. 33

STUDY TOPIC: ***Term limits for state and local officials.***

BACKGROUND

The Committee was directed under Proposal No. 33 to review the options and implications of various proposals for imposing term limits on state and local officials with a recommendation to the 1996 Legislature.

Kansas Law

At present, the only term limitation for statewide elected officials in Kansas is for the Governor or Lieutenant Governor who are limited to two successive four-year terms (Article 1 , Sec. 1 of the *Kansas Constitution*). In order for term limitations to be imposed on legislators, the *Kansas Constitution* would have to be amended. The only reference to terms of legislators in the *Constitution* is Article 2, Sec. 2, which defines the length of terms of representatives as two years and senators as four years. Kansas statutes do not impose any conditions or restrictions on terms served by local officials.

Recent Kansas Legislative Action

Twelve legislative term limit proposals have been introduced in the Kansas Legislature since 1977. Two were introduced in 1994, and four were introduced in 1995. Attached Table I displays a summary of term limit resolutions introduced since 1992. None of these proposals have passed out of the house of origin, and only two resolutions, 1993 H.C.R. 5011 and 1995 H.C.R. 5010, have been debated on the floor of either chamber.

Legislative Term Limitations Among the States

Currently, 20 states limit terms of members of the state legislature. In each state, except Maine, term limits are prospective and not retroactive. In each state with the exception of Utah (where term limits were legislatively initiated), term limits resulted from a proposition placed on the ballot through the initiative process. Nevadans passed term limits in 1994 but a second vote is required in 1996 to ratify that decision. Attached Table II displays a summary of provisions of other states' legislative term limit laws. Two other states were scheduled to have legislative term limits on the ballot during 1995 – Louisiana in October and Mississippi in November.

Term Limits – Local Officials

A 1995 report by U.S. Term Limits Foundation on municipal term limits cites the existence of some form of local-level term limits in as many as 2,791 cities, counties, and towns and in 40 states. In many states without term limits, legislative approval is required for enactment. Consequently, cities are effectively barred from initiating local-level term limits. The U.S. Term Limits Foundation report further notes that eight of the ten most populous cities in the United States have term limits; of the largest 100 cities, 47 have municipal term limits, including New York City, Los Angeles, Houston, Dallas, Phoenix, San Francisco, Kansas City (Missouri), New Orleans, Denver, and Cincinnati. According to the report, the most common length of service is eight years and municipal term limits are most prevalent in Texas, California, and Florida. Municipal term limits have been subject to lawsuits in many states and have withstood judicial scrutiny in almost every challenge.

Currently, three cities in Kansas – Wichita, Hutchinson, and Mission Hills – impose term limits on local officials. In each city the method of limitation was by ordinance. In Wichita, term limits of two consecutive four-year terms apply to both the mayor and council members. In Hutchinson,

term limits apply only to council members (not mayors) since November 22, 1994. Members may not serve more than two consecutive four-year terms and no more than three consecutive terms regardless of length of term. After serving the maximum allotted time in office, one may not serve in that capacity for at least four years. In Mission Hills, term limits of two consecutive four-year terms apply to both the mayor and council members. Term limits in Wichita and Mission Hills have been in effect for all elections since April, 1991.

Court Decisions – Congressional Term Limits

A decision issued by the U.S. Supreme Court on May 22, 1995 effectively rendered moot state legislative efforts to limit the terms of members of Congress. This decision upheld a decision by the Arkansas Supreme Court which ruled in March 1994 that a 1992 ballot measure limiting congressional terms was unconstitutional. The measure banned anyone who has served three two-year terms in the U.S. House from being listed on the ballot as a candidate for that office. The measure also banned anyone who has served two six-year terms in the Senate from being listed on the ballot as a Senate candidate. The Arkansas Supreme Court found that the only qualifications for Congress are those specifically enumerated in the *U.S. Constitution* – age, citizenship, and state residency. The Arkansas Supreme Court further ruled that the state cannot add to those qualifications.

Arguments

Arguments cited in support of and in opposition to term limits relate to issues of: responsiveness to constituencies; susceptibility to special interests; the correlation of seniority in office with level of influence; the competitive nature of elections; the right of voters to elect whom they want; the trade-off between an infusion of energy associated with new officeholders and expertise and historical knowledge associated with senior officeholders; the implications of legislative tenure for the quality of legislation; and the implications of incumbency for challengers in elections.

Impact of Term Limits

The impact of term limits may never be absolutely clear because changes in legislatures can come from many directions simultaneously. In many states the 1992 election was the first election after legislative districts had been redrawn based on 1990 census results. In some states there were efforts to alter the composition of legislatures using redistricting as a tool. At the same time, discussions of term limits and general dissatisfaction with elected officials was growing throughout the country and may have manifested itself at the polls. Other changes that impact individual legislators, such as a loss of leadership position, family and job pressures on "citizen legislators," and increasing time demands and complexity of issues, can result in turnover regardless of term limits or voter preference. Isolating any one of these factors presents a challenge for those who will attempt to attribute legislative change to term limits alone. These caveats notwithstanding, a few recent studies provide preliminary observations about the impact of state legislative term limits. Below are several changes that, at least to some extent, appear to be attributable to term limits:

1. **Election and Mid-Election Turnover.** In 1990, California was one of the first states in the nation to adopt term limits for legislators. The 25 open-seat contests in California in 1992 was the largest since the state redrew district boundaries in the mid-1960s in the wake of *Reynolds v. Sims*. California legislators who are leaving for other jobs are setting off chain reactions of special elections. There are four times the number of vacancies in the Assembly and Senate for the 1996 election (36 in total), when compared to pre-term limits.

   Despite the increase in open-seat contests, only one lawmaker had been forced out of office by term limits from 1990 to 1994. In the 1992 election, the average number of competitors in incumbent races was marginally higher than in previous elections. This suggests that the presence of term limits has yet to discourage competition against incumbents.

3-8

2. **Voter Turnout.** Proponents argue that term limits will increase competition, thus increasing voter interest and turnout. However, findings of a study conducted on county legislative term limits in San Mateo County, California suggest that since 1980 (the year term limits were approved), there has been a continued downward trend in voter turnout. The one exception was the 1992 primary election, the first year an open seat was caused by term limits. That election was also the primary for the President, House and Senate congressional candidates, and state legislators. To what extent the San Mateo County example will be analogous to state legislative elections in the long term remains to be seen.

3. **Legislative Seniority.** One assumption is that term limits would make seniority virtually useless as a basis for allocating power within the legislature. There will be less incentive for members to follow a collective institutional leadership. Although an erosion of long-term leadership is not necessarily correlated to term limits, there is certainly anecdotal information to support the above assumption.

Turnover Rates in Kansas and Other Non-Term Limit States

There is much speculation about how the imposition of term limits will affect turnover rates. As we noted from California's example, turnover increased although, at least in part, that might be the result of redistricting and other factors. A comparative analysis of three states without term limits – Illinois, Minnesota, and West Virginia – revealed a correlation between length of term, the degree of professionalization (legislative salaries, staffing, length of annual session) and the turnover rate. The state with the highest level of professionalization (Illinois) had the lowest turnover rate (e.g., 8 percent in 1988) compared to the "citizen" legislature of West Virginia with low compensation, relatively short sessions, and high turnover. Minnesota's turnover rate was in the middle. Therefore, term limits should have a greater effect on Illinois than on Minnesota, and the least effect on West Virginia.

An understanding of a state's turnover rate seems to be a prerequisite for determining the maximum length of time an official should be allowed to serve if the intent is to increase open seat elections. For example, with respect to Congress, the median number of terms of House members has been four since 1957. Therefore, a 12-year term limit for House members would hardly increase the present turnover rate. A similar finding resulted from a study conducted on legislators serving in all 50 states who began their terms in 1979-1980. The research question posed was: how many state legislators currently serving would be affected by a term limit that had been imposed 12 years ago? The study concluded that only about 27 percent of all state legislators initially elected to the lower chamber in 1979 were still serving in that capacity 12 years later. Slightly more than half were still serving after six years. The state senate retention rates were higher than the state house rates for the same time period – 33.6 percent after 12 years and 62.2 percent after six years. In Kansas, the retention rate for the 1979-1980 legislators in the House was 25 percent after 12 years and 53.6 percent after six years. The Kansas House retention rate for the six-year period was slightly lower than that of the national average. In the Senate, it was 40 percent after 12 years and 66.7 percent after six years (slightly higher than the national average).

Turnover rates in Kansas have markedly increased in the past two elections.

Senate	Turnover Rate (Previous Term)	House	Turnover Rate (Previous Term)
1981-1984	27.5%	1981-1982	24.8%
1985-1988	25.0	1983-1984	26.4
1989-1992	25.0	1985-1986	19.2
1993-1996	60.0*	1987-1988	12.8
		1989-1990	19.2
		1991-1992	29.6
		1993-1994	32.0
		1995-1996	37.6*

* As of August 15, 1995

The increased turnover rate in the 1992 election (particularly Senate) may be attributed to a large extent to 1991 legislation which closed the KPERS Special State Elected Official Class on July 1, 1991. This had the effect of reducing legislative retirement benefits for persons who retired after that date. Although it is premature to draw any definitive conclusions about long-term turnover trends in the Kansas Legislature, the 1994 election continues a trend since 1990 of increased turnover. The turnover rate in the House has more than doubled since 1987. It is presently unclear whether this trend will continue and, if it does, whether greater turnover than over one-third in the House and over half in the Senate (1994 Kansas turnover rate) is desirable for the overall stability of the legislative process. Finally, it is still unclear whether the application of term limits in the current climate of anti-incumbent sentiment will lull voters into complacency that would change the term limit into a guaranteed term length.

COMMITTEE ACTIVITIES

The Committee received background information from staff of the Kansas Legislative Research Department on term limits for legislative and local officials (much of which is summarized above). In addition, the Committee received information from staff on another method of promoting turnover of elected officials – recall. The Committee was apprised that recall is a procedure that: allows voters to discharge and replace a public official; requires a petition process; generally requires more signatures than is required for other citizen initiatives; and almost always requires a special election. The Committee was informed about:

1. other states' recall practices for state and local officials;

2. the provisions of the *Kansas Recall of Elected Official Act* (K.S.A. 25-4301 *et seq.*) for state and local officials (all elected officials in the state, except judges, may be recalled, as authorized by Article 4, Sec. 3 of the *Kansas Constitution)*; and

3. the general profile of recall implementation at the national level (no information on recall elections has been collected systemically in Kansas at the state or local levels). Staff presented the Committee with a table which compared state recall provisions in laws of several states. Of particular interest to several Committee members was the signature threshold required for a petition to be filed to recall state officers. In Kansas, it is the number of signatures equal to 40 percent of the votes cast for all candidates for the office being recalled in the last general election. By comparison, in the states of Alaska, Arizona, and Colorado, the signature threshold was equal in number to 25 percent of votes cast in the last general election for such office.

CONCLUSIONS AND RECOMMENDATIONS

The Committee does not support any initiative to impose term limits on elected officials, particularly in light of recent turnover rate trends in Kansas.

TABLE I

MAXIMUM NUMBER OF TERMS

Resolution	Sponsor	House	Senate	Maximum Years	Final Status
1992 HCR 5051[a]	Judiciary	3, 4-year terms	2, 6-year terms	12 combined	Dead, first committee
1993 HCR 5011[b]	Bradley, *et al.*	6 terms	3 terms	24 years combined	Dead, HCOW
1994 SCR 1621[c]	Tiahrt, *et al.*			12 consecutive	Dead, first committee
1994 HCR 5041[d]	McKechnie	4 successive 4-year terms	3 successive 6-year terms		Dead, first committee
1995 SCR 1605[e]	Walker, *et al.*	2 successive 4-year terms	2 successive 8-year terms		In Senate Federal and State Affairs
1995 HCR 5002[f]	Glasscock	6 successive 2-year terms	3 successive 4-year terms		In House GO and Elections
1995 HCR 5010[f]	Glasscock, *et al.*	6 successive 2-year terms	3 successive 4-year terms		Not adopted by HCOW
1995 HCR 5013[g]	McKechnie	3 successive 4-year terms	2 successive 6-year terms		In House GO and Elections

a) Positions of President, Vice-President, Speaker, Speaker Pro Tem, and Majority and Minority leaders could only be held by the same person for one term.

b) The resolution would only have applied to persons elected at, or after the general election in 1994. The bill was amended by the House Committee of the Whole to apply the term limits to terms beginning after December 31, 1994.

c) The resolution would have amended the *Kansas Constitution* to place a 12-year limit on elected public service of all elected officials, state and local, except the Governor (whose term is limited by another constitutional provision).

d) The resolution would have created staggered House and Senate terms.

e) In addition to limiting legislator's terms, the resolution would amend the *Kansas Constitution* to double the length of terms to four years for the House and eight years for the Senate. The resolution also would establish staggered terms in both the House and Senate. Every two years, half of the House and one-quarter of the Senate would be up for election. The transition to staggered terms would begin with the 1996 election. Term limits would be applied to terms that begin after December 31, 1996.

f) The resolution would apply term limits to terms commencing after December 31, 1996.

g) The resolution would create staggered terms beginning at the 1998 general election. The resolution also would double House terms to four years and make Senate terms six years. Term limits would apply beginning in 1998. The resolution also would create a five-member legislative compensation commission.

Proposal No. 34

STUDY TOPIC: Election of Judges.

BACKGROUND

The Legislative Coordinating Council (LCC) assigned the topic of election of judges to the Special Committee on Federal and State Affairs.

COMMITTEE ACTIVITIES

The Committee reviewed a staff memorandum about the current Kansas system of judicial selection and its historical background. Briefly summarized, current Kansas law provides for either election or nonpartisan selection and retention of district court judges. The voters of each judicial district determine which of the two methods is used, and current law provides a mechanism for a vote to change the method of selection on a periodic basis. Of the 31 judicial districts, 14 use the election method and 17 use the nonpartisan selection and retention system. Justices of the Supreme Court and judges of the Court of Appeals are appointed by the Governor from a list of three persons possessing the qualifications for office submitted to the Governor by the Supreme Court Nominating Commission. Justices and Court of Appeals judges then stand for a nonpartisan retention vote.

The Committee heard testimony from a former Chief Justice of the Supreme Court, a former Governor, a member of the Supreme Court Nominating Commission, the President of the Kansas Bar Association, the President of the Kansas District Court Judges Association, the President of the Kansas District Magistrate Judges Association, two administrative judges, an examiner for the Judicial Qualifications Commission, and an attorney who wrote a law review article on the election of judges from the viewpoint of a family member of a candidate in a partisan election for district court judge.

The staff memorandum is available from the Kansas Legislative Research Department. The majority of conferees submitted written testimony, copies of which are included as attachments to the Committee meeting minutes and are available from Legislative Administrative Services.

CONCLUSIONS AND RECOMMENDATIONS

The Committee concludes that the present system of judicial selection, which allows the voters of a judicial district to determine whether district court judges will be elected or selected through the nonpartisan selection and retention method, is working well. The Committee recommends no changes to the present system.

The Committee notes, however, that the present system could be improved if voters were better informed about judicial elections, including both partisan elections and nonpartisan retention elections. The Committee believes that a lack of information dissuades voters from participating in judicial elections or retention votes. For example, of those persons voting in the 1994 general elections, an average of 73.4 percent voted in the two statewide Supreme Court nonpartisan retention election questions. An average of 71.0 percent of persons voting in the same election participated in the eight Court of Appeals nonpartisan retention election questions listed on the ballot. In the 1992 statewide elections, even fewer voters participated in the nonpartisan judicial retention questions listed on the ballots. Of those persons voting, 69.0 percent voted in the Supreme Court retention question and an average of 66.9 percent voted in the three Court of Appeals retention questions. Although the percentages of voters participating in some district court elections or retention votes improve significantly, other district court retention questions show only slightly improved voter participation.

The Committee was informed that the Shawnee County District Court judges have compiled a brochure containing facts about the judicial system, judicial selection, and information about individual district court judges, such as their education and legal experience. Shawnee County District judges will discuss this brochure and other methods of disseminating information to the public at the statewide district judges conference. The Committee recommends that judges and the Judicial Branch continue to explore this and other methods of informing voters about candidates in judicial elections and judges standing for retention vote at both the district court and appellate court levels. Representatives of the Judicial Branch should inform the House and Senate Judiciary committees about these efforts.

TABLE II

LEGISLATIVE TERM LIMITS BY STATE

State	State Senators	State Representatives	Year Adopted	Year of Impact
Arizona	4 consecutive 2-year terms	4 consecutive 2-year terms	1992	2000 – both
Arkansas	2, 4-year terms	3, 2-year terms	1992	2002 – Senate; 1998 – House
California	2, 4-year terms[a]	3 terms, 2 years each[a]	1990	1998 – Senate; 1996 – House
Colorado	2 consecutive terms	4 consecutive terms	1990	2000 – Senate; 1998 – House
Florida	8 consecutive years	8 consecutive years	1992	2002 – Senate; 2000 – House
Idaho	8 years in a 15-year period	8 years in a 15-year period	1994	2002 – both
Maine	4 consecutive 2-year terms[b]	4 consecutive 2-year terms[b]	1994	1996 – both
Massachusetts	4 consecutive terms in 9 years	4 consecutive terms in 9 years	1994	2002 – both
Michigan	2, 4-year terms	3, 2-year terms	1992	2002 – Senate; 1998 – House
Missouri	8 years per chamber and 16 years total		1992	2002 – Senate; 2000 – House
Montana	8 years in a 16-year period	6 years in a 12-year period	1992	2002 – Senate; 2000 – House
Nebraska	2 consecutive terms	NA	1991	2004 – unicameral
Nevada	12 years or 3 terms	12 years or 6 terms	1994	2008 – Senate; 2006 – House
Ohio[c]	2 consecutive 4-year terms	4 consecutive 2-year terms	1992	2002 – Senate; 2000 – House
Oklahoma	12 years lifetime service, either or both houses[d]		1992	2004 – Senate; 2002 – House
Oregon	8 years[e]	6 years[e]	1992	2002 – Senate; 1998 – House
South Dakota	4 consecutive 2-year terms	4 consecutive 2-year terms	1992	2000 – both
Utah	12 consecutive years[f]	12 consecutive years[f]	1994	2008 – Senate; 2006 – House
Washington[g]	8 years in a 14-year period	6 years in a 12-year period	1992	2002 – Senate; 1998 – House
Wyoming	3 terms in a 24-year period	3 terms in a 12-year period	1992	2006 – Senate; 1998 – House

a) Lifetime service – maximum time is 14 years.
b) Effective with 1996 election and applies to persons currently in office.
c) The law restricts ballot access. Members may run again after a two-year break.
d) Terms are considered consecutive unless there is a four-year break.
e) Service does not have to be consecutive. Twelve-year combined House/Senate limit.
f) No more than 12 years combined service.
g) Terms served before November, 1992 will not count toward new limits.

3-14

Proposal No. 35

***STUDY TOPIC:** Monitoring efforts of the Human Rights Commission to reduce its case backlog.*

BACKGROUND

The Special Committee on Federal and State Affairs was directed under Proposal No. 35 to continue legislative efforts to monitor the efforts of the Human Rights Commission (HRC) to reduce its case backlog; determine the efficacy of the Commission's efforts; and identify any policy changes necessary to assist with backlog reduction.

Statutory History

The Kansas Act Against Discrimination (KAAD) was enacted in 1953 making Kansas the 12th state in the U.S. to have a law against discrimination. The agency created by KAAD was called the Kansas Antidiscrimination Commission. Statutory authority of the Commission has been changed by many amendments since its establishment:

- In **1961**, the Act was amended to add enforcement provisions and the name of the agency was changed to the Kansas Commission on Civil Rights.
- The Act was next amended in **1963** to prohibit discrimination by hotels, motels, cabin camps, and restaurants.
- The **1965** Legislature broadened the Act's coverage of employment practices and places of public accommodations.
- In **1967,** the Commission was empowered to initiate complaints of discrimination and the power of subpoena.
- Housing discrimination was prohibited in **1970** and the Commission was authorized to conduct investigations without the filing of a formal complaint.
- In **1972**, the Act was amended in three ways. The Commission was authorized to investigate complaints of sex discrimination, implement a contract compliance program, and use hearing examiners for public hearings.
- The prohibition against discrimination in employment and public accommodations because of physical handicap was added in **1974** but remedies for discrimination were limited.
- In **1983** the Age Discrimination in Employment Act (KADEA) was enacted. The Commission is the enforcement agency for that Act which made it illegal to discriminate against persons between the ages of 40 and 70 in employment.
- In **1988** KADEA was amended to protect persons over the age of 18.
- In **1991**, the KAAD was substantially amended to prohibit discrimination in employment, public accommodations, and housing on the basis of disability, and to also prohibit housing discrimination on the basis of familial status. This was the most extensive amendment to the Act since its enactment in 1953. The amendments were made in order to make the Kansas Act "substantially equivalent" to the federal Americans with Disabilities Act of 1990 (ADA). The name of the agency was also changed to the Kansas Human Rights Commission.
- **1995** H.B. 2559 (L. 1995 Ch. 247) amended the statutory requirement that the Commission employ at least one, but no more than three, full-time hearing examiners to make the provision permissive. This amendment will allow the agency to contract for hearing examiners when needed. The amendment was

enacted in response to the low number of public hearings actually held in the past.

Another amendment included in the 1995 bill was suggested by the Commission as a means of eliminating some of the agency backlog. For claims filed with the Commission before July 1, 1996, the amendments will allow complaints more than 300 days old to be closed upon written request of the complainant and for this closure to constitute final administrative action. Previously, complainants could withdraw their complaints at any time, but such withdrawal did not constitute final action by the Commission and therefore did not exhaust the complainant's administrative remedies. Courts require that a plaintiff exhaust all administrative remedies before they will be allowed to file suit on a discrimination claim.

Complainants who file claims with the Commission after July 1, 1996 have the same option to request closure of their case after 300 days. In addition, the Commission can, on its own initiative and at its discretion, move to dismiss a complaint after 300 days if the Commission has not issued a finding of Probable Cause or No Probable Cause, or taken other administrative action dismissing the complaint. The Commission is required to notify the complainant of the dismissal action within five days of the dismissal. Closure by the Commission in this manner constitutes final administrative action and the complainant will be allowed to file suit in court.

Finally, the bill added provisions, applicable only to the KAAD, that require a person filing a complaint with the Commission to articulate a *prima facie* case, pursuant to a recognized legal theory of discrimination. Previously, the Commission had no power to prevent a person from filing a complaint, no matter how unsubstantiated or frivolous, if that person chose to do so.

Agency Mission

The mission of the Kansas Human Rights Commission is to eliminate and prevent segregation and discrimination because of race, religion, color, sex, disability, national origin, age, or ancestry in the areas of employment, housing, and public accommodations.

Agency Structure and Function

The Commission consists of seven members appointed by the Governor and confirmed by the Senate. By statute, two Commission members represent labor, two represent industry, one is a licensed attorney, one represents the real estate industry, and one is a member at large. No more than four members of the Commission can be from the same political party. Commissioners serve four-year terms that expire on January 15. At the end of the term, incumbent commissioners continue to serve until a successor is confirmed. Commissioners may serve more than one term.

Business of the agency is conducted by a professional staff under the supervision of the Executive Director. Currently, staff includes an Assistant Director, 17 investigators, one education specialist, three attorneys, three investigative supervisors, two intake workers, an office manager, and eight clerical workers. Public hearing proceedings are conducted by the Administrative Law Judge.

KAAD and KADEA provide that anyone claiming to be aggrieved under these laws has the right to file a complaint charging discrimination. The Commission is responsible for investigating all complaints filed and cannot prevent a person from filing a complaint if a *prima facie* case is articulated pursuant to a recognized legal theory of Discrimination. Prior to the 1995 amendments of the KAAD, the Commission had no power to restrict any person from filing a complaint if they wished to do so.

Currently, the KAAD and the KADEA have been declared substantially equivalent to Title VII of the Civil Rights Act of 1964, as amended; the Age Discrimination in Employment Act of 1967, as amended; and Title VIII of the Civil Rights Act of 1968, as amended. Because of this equivalency

determination, the Commission is able to enter into contractual agreements with the federal Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Housing and Urban Development (HUD).

The Commission also investigates discrimination complaints which are dually filed with the Commission and the EEOC under a contractual agreement with the EEOC. The contract provides that the EEOC pay the Commission a specified fee for each case the Commission investigates for the EEOC. In essence, the Commission is being reimbursed for investigating cases they would have to investigate anyway.

The Commission has had in the past a similar contractual relationship with HUD for investigation of housing complaints. Under the terms of the HUD contract the Commission was paid an annual fixed amount, which is based upon the number of investigations completed the previous year.

Funding

The approved FY 1996 budget for the Kansas Human Rights Commission is $1,981,137. Of that amount, approximately 75 percent goes for employee salaries for 38.0 FTE positions and 2.0 Special Projects Appointments. The remaining 25 percent is used for contractual services, commodities, capital outlay, outside investigative contracts, and mediation contracts.

The Commission's budget is financed from the State General Fund and federal funds. The federal funds are generated through contracts with federal agencies as discussed above.

Complaint Processing

When a member of the public comes to the HRC with a complaint of discrimination, the first process is Intake and Screening. Intake personnel ensure that all relevant information is recorded and put in the official complaint. The screening process is designed to eliminate cases that may be frivolous or unsubstantiated so that valuable investigation time is not wasted. In recent years the Commission has increased its efforts in the screening process in order to reduce the case backlog.

After the screening process, complaints are assigned to the Preliminary Investigation Conference (PIC) unit, which was established in 1981. The purpose of the PIC is to attempt resolution of cases within 60 days of filing by using voluntary mediation procedures with both parties present. However, the Commission cannot require the parties to participate in this mediation. Complaints alleging discrimination in housing are directly assigned for investigation and do not go through the PIC Unit due to the time sensitive nature of the cases.

If one or both parties is unwilling to mediate or the case is not resolved in mediation, the complaint is assigned for investigation. All cases that have not been assigned for investigation comprise the Commission's case backlog. At the start of FY 1996, there were approximately 2,600 cases awaiting investigation and the average length of time before investigation begins was approximately 16-22 months. Investigation began on cases in the order they are filed unless there are extenuating circumstances that require immediate action. The investigator examines all pertinent facts and evidence needed to make a determination of "No Probable Cause" or "Probable Cause." Once the investigation is completed, the case is assigned to a commissioner for the formal ruling regarding the existence of cause for further action.

If no probable cause is found that a discriminatory act occurred, the case is closed and the Commission takes no further action. The complainant would then be able to pursue further action on the case by filing a civil discrimination case in the court.

If probable cause is found, the Commission is required by statute to attempt to resolve the complaint, through conciliation. If the complaint remains unresolved after efforts at conciliation, the matter is referred to the public hearing examiner for resolution at a public hearing. Very few public hearings have ever been required or conducted. In light of the infrequent use of the hearing process, the 1995 Legislature amended the KAAD and the KADEA to allow the agency to

contract for hearing examiners instead of being required to employ a full-time examiner.

COMMITTEE ACTIVITIES

The Committee was briefed by staff of the Legislative Research Department regarding statutory history, functions, and structure of the Human Rights Commission, procedures used to process cases, funding, and performance measures. The memorandum used for that briefing is available from the Research Department. Table I displays legislative action during recent years that may have had an impact on the Commission's case backlog.

During the Committee's September meeting it was advised by the Director of the Commission that the number of complaints filed as a result of the 1991 and 1992 amendments to the KAAD peaked and began to decrease in the last months of FY 1995. The open case inventory had decreased every month since March, 1995. At that meeting the Committee also received information from staff of the Commission regarding management changes implemented to address the case backlog issue.

- The Commission developed new performance standards for investigators and increased the expected number of cases closed per caseworker to 8 per month. The increase was projected to effect a 26.4 percent increase in case closures in FY 1996 and an additional 2 percent in each of fiscal years 1997 and 1998. Focused technical training of the investigative staff was also planned for FY 1996. (See Table II.)

- A second follow-up letter is used to contact respondents who have not submitted a response to the charge within 21 days of the filing of the complaint.

- Legal staff is assigned to monitor the civil litigation docket to identify lawsuits filed on the same incidents alleged in complaints filed with the Commission.

- Soon after the 1995 amendments became effective, all persons with complaints on file with the Commission were notified of the new 300-day provision regarding closure of old complaints. That communication included a copy of a form for complainants to sign and return if they wanted their case dismissed. The Commission anticipates closure of 200 cases as a result of this effort.

- The Commission conducted a statewide employment seminar during the fall which was attended by 174 persons who primarily represented respondents to complaints. The Commission also has plans to purchase education and training materials, pamphlets, posters, and publish copies of the Act and of rules and regulations of the Commission.

- The Commission contracts with five local agencies in the municipal contract investigation program. Those are: Kansas City, Lawrence, Manhattan, Junction City, and Dodge City. The following cities were contacted, but would not enter into contracts: Salina, Olathe, Emporia, Wichita, Topeka, and Leavenworth. At the time of the Committee's discussion with the Commission, Hutchinson had not responded to inquiries about contracting. As a result of the contracting activity, the Commission anticipates closure of 50 cases during fiscal years 1996 and 1997.

- A housing discrimination mediation program operated by Kansas Legal Services began operating early in FY 1996. The Commission anticipates a maximum of 50 cases will be closed in fiscal years 1996 and 1997 through this program.

- More intensive screening during the intake process is eliminating complaints over which the Commission does not have jurisdiction, and frivolous or spurious complaints.

- A review of cases backlogged in the PIC resulted in reduction of that backlog by

23 percent. The reduction was achieved by removing from the backlog those cases in which the respondent has indicated no interest in participating in the voluntary PIC. The Commission's goal is to complete a PIC, in those cases in which that step is used, within 60 days of the filing of a complaint.

- The Commission discontinued its contract with the Federal Department of Housing and Urban Development (HUD) for federal fiscal year 1996. No cases will be eliminated by this decision, because all housing discrimination cases are dually filed with HUD and the Commission. While the Commission lost $80,000 by dropping the contract with HUD, that will be partially offset by receipt of $50,000 from EEO which would not have been received if the HUD contract had been maintained. In the opinion of the Executive Director, the Commission can complete investigations quicker and more efficiently without HUD.

- The Commission revised its case assignment and monitoring procedure to assign all open cases to the investigative staff. Each case will be assigned to a person who will have primary responsibility for that case.

The Executive Director of the Commission informed the Committee that based on these management initiatives, the Commission plans to have the backlog reduced to the 1991 level by the close of FY 1998.

CONCLUSIONS AND RECOMMENDATIONS

Based on information received during the interim, the Committee concludes that the Human Rights Commission has acted in good faith and made an effort to try to have cases settled in communities where they originate by contracting with local human rights agencies. The Committee notes that some cities are not currently able to accommodate additional cases so did not contract with the Commission. The Committee also concludes that recently enacted legislation is apparently having the desired effect. Finally, the Committee concludes that the new legislation in combination with management initiatives will reduce, but not eliminate, the Commission's case backlog.

The Committee therefore recommends that no changes be made at the present time and that the current operational and statutory changes be given time to work.

TABLE I

LEGISLATIVE ACTIONS

The following table summarizes legislative action that might have directly impacted the Commission's ability to address the case backlog from the 1991 Session through the 1995 Session:

Session	Fiscal Year	Legislative Staffing Adjustments	Other Adjustments	Final Approved Budget	Percent Change in App. Budget	Percent Change in Complaints Filed
1991	1992	Delete 1.0 Investigator	–	$ 1,520,726	1.1%	32.7%
1992	1993	Add 1.0 FTE Investigator and 2.0 Special Projects	–	1,625,712	6.9	21.9
1993	1994	–	–	1,803,037	10.9	5.6
1994	1995	Convert 3.0 Special Projects to FTE positions	1) Approved money for outside investigative services.	1,963,286	8.9	(13.5)
1995	1996	Delete 5.0 FTE positions (4.0 Investigators and 1.0 Clerical)	1) H.B. 2559 2) Approved money for mediation contract. 3) Shifted money for municipal investigation contracts.	1,981,137	0.9	–

3-20

TABLE II

PERFORMANCE MEASURES

The following chart illustrates some of the agency performance measures beginning in FY 1991:

Performance Measures	Actual FY 91	Actual FY 92	Actual FY 93	Actual FY 94	Actual FY 95	Est. FY 96**
Number of public contacts	4,313	5,181	7,059	6,866	6,850	6,113
Number of complaints filed	1,098	1,457	1,776	1,876	1,622	1,489
Percent change in complaints filed	(7.1)	32.7	21.9	5.6	(13.5)	(8.2)
Cases assigned to PIC unit	945	848	1,523	1,263	1,096	–
Cases resolved by PIC unit	394	434	551	734	641	–
Number of cases closed	1,115	1,176	1,418	1,352	1,622	1,744***
Cases sent for complete investigation	551	414	972	529	455	–
Percent of cases filed that are sent for complete investigation	50.1	28.4	54.7	28.2	28.1	–
Open cases awaiting investigation	609	1,243	1,888	2,416	2,667	–
Processing delay time (in months)*	13.3	14.3	16.8	19.7	16-22	–

* Months between date case filed to date of assignment for complete investigation.
** Agency estimate as of 8-29-95
*** Includes cases closed by 1995 House Substitute for S.B. 376
– Agency did not have updated estimates as of 8-29-95. Original FY 1996 estimates from the prepared budget will have to be adjusted to account for the loss of 5.0 FTE positions including 4.0 investigators.

Proposal No. 66

STUDY TOPIC: Review of Kansas' liquor laws.

BACKGROUND

The Committee was directed under Proposal No. 66 to review Kansas' liquor laws and to make a recommendation that would increase consistency and improve the enforcement efficiency and effectiveness of Kansas' liquor laws.

During the 1995 Legislative Session, several issues were raised regarding consistency within the body of liquor laws. The workload of the Session precluded a systematic review of those issues and the policy implications of creating laws with more uniform application.

The following bills were considered during the 1995 Session and will be carried over to the 1996 Session:

H.B. 2557 by Committee on Federal and State Affairs

The bill would amend existing law to:

- allow licensed liquor or wine distributors (wholesalers) to sell their products directly to licensed caterers, clubs, and drinking establishments;
- allow liquor, beer, and wine distributors to store and deliver to licensed retailers, on the distributor's premises, products of another distributor authorized to sell to those retailers;
- repeal existing authority for licensed beer manufacturers in Kansas to distribute directly to licensed retailers;
- allow distributors to take from their inventory alcoholic liquor or cereal malt beverage (CMB) to use as samples in the course of the distributor's business or at industry seminars in accordance with rules and regulations; and
- prohibit distributors from selling liquor or cereal malt beverage at a discount for multiple case lots.

The bill also includes provisions subsequently enacted in S.B. 256, regarding issuance of temporary permits for the sale of liquor in certain circumstances (see discussion of S.B. 256 below).

The bill was in the House Committee on Federal and State Affairs at the end of the 1995 Session.

H.B. 2560 by Committee on Appropriations

The bill would add limited liability company, limited partnership, and limited liability partnership to the definition of "person" in the Liquor Control Act. With this amendment and other related amendments regarding qualification for licensure, the law would extend to business arrangements that did not commonly exist until recently. Existing requirements for qualification and conduct of licensees would apply to these business entities as they do to other types of businesses that can be licensed.

Other provisions of the bill would repeal:

- the requirement that corporate applicants for liquor licenses in Kansas be domestic corporations;
- the prohibition against liquor stores having an inside entrance or opening into another place of business; and
- a requirement that licensees frame their liquor licenses. The law would continue to require that licenses be displayed.

The bill was in the House Committee on Federal and State Affairs at the end of the 1995 Session.

S.B. 364 by Committee on Federal and State Affairs

The bill would allow microbreweries to sell directly to retailers, clubs, drinking establishments, and caterers, as well as to beer distributors.

The bill was in the Senate Committee on Federal and State Affairs at the end of the 1995 Session.

The Legislature enacted three bills pertaining to liquor distribution and consumption.

S.B. 256 (L. 1995, Ch. 258) amends several liquor statutes. The bill:

- increases from 5,000 to 15,000 the maximum number of barrels of domestic beer that may be produced annually by a microbrewery;
- reduces from five years to one year the state residency requirement for a beer distributor license; and
- prohibits distributors from selling liquor or CMB at a discount for multiple case lots.

The bill enacts a new statute to authorize, but not require, the Director of the Alcoholic Beverage Control (ABC) to issue temporary permits to charitable organizations to sell liquor at an auction. Temporary permits may be issued to individuals to authorize the sale of limited issue porcelain containers of alcohol. Applications for temporary permits must be filed at least 14 days prior to the event at which the sale will take place. The application fee for the permit is $25 for each day the permit is issued. Temporary permits can be issued for no more than three consecutive days, and a single applicant can only receive one temporary permit per year.

The application for a temporary permit must specify the purpose for which the proceeds will be used and all proceeds must be used for the stated purpose. Temporary permits are not assignable or transferable.

Finally, the bill contains the same provision as that enacted in H.B. 2527, prohibiting employment by CMB retailers of felons or persons who have violated liquor laws.

H.B. 2527 (L. 1995, Ch. 266) amends a statute in the CMB law to prohibit CMB retailers from employing or continuing to employ persons who have been convicted within the two preceding years of a felony or a violation of liquor laws to sell, serve, or dispense CMB.

The bill also authorizes hotels, the entire premises of which are licensed as a drinking establishment or as a drinking establishment/caterer, to have minibars in guest rooms. Serving, mixing, and consumption of liquor and CMB from those minibars are permitted for guests registered to stay at the hotel and their guests.

A minibar is defined to be a closed, lockable cabinet to which access is restricted to persons with a key of some kind. The key to the minibar may be provided only to registered guests who are over the age of 21. Packages of liquor and wine in a minibar cannot hold less than 50 nor more than 200 milliliters of liquor or wine.

Existing limitations on the hours during which drinking establishments may serve liquor do not apply to minibars. However, minibars may only be restocked during hours when a drinking establishment is permitted to sell liquor (between 9:00 a.m. and 2:00 a.m. the following day).

The bill also permits licensed liquor and CMB retailers, microbreweries, and farm wineries to accept credit cards for sale of alcoholic beverages. Credit cards that may be used under the bill must entitle the user to purchase goods or services from at least 100 persons not related to the issuer of the credit card.

H.B. 2282 (L. 1995, Ch. 59) amends existing law to permit the Washburn University Board of Regents to establish policies for consumption of liquor at the Mulvane Art Center and the Bradbury Thompson Alumni Center on the campus. The bill provides a specific exception to the provision in existing law that authorizes the Board to establish such policies only for property that is not used for classroom instruction.

The bill also prohibits drinking or consuming CMB (3.2 beer) in or on the grounds of the Capitol Building. Violation of that provision would be a misdemeanor punishable by a fine of between $50 and $200, or imprisonment for a maximum of six months, or both. The penalty is that currently imposed for consumption of alcoholic liquor on any public property.

COMMITTEE ACTIVITIES

The Committee was briefed by staff of the Legislative Research Department regarding the history of liquor regulation in Kansas, and provisions of current law regarding liquor sale, taxation, and regulation. (A copy of the memorandum presented by the Research Department is available at the Department.)

The Committee also was briefed by a representative of the Division of ABC of the Department of Revenue regarding the Division's duties and organization and activities to review the body of liquor control laws. The Director of the ABC appointed a Beverage Alcohol Advisory Task Force to meet during the summer and fall of 1995 with the Division to review liquor laws and make recommendations to streamline those laws. The task force is composed of staff of the ABC and representatives of the liquor industry including:

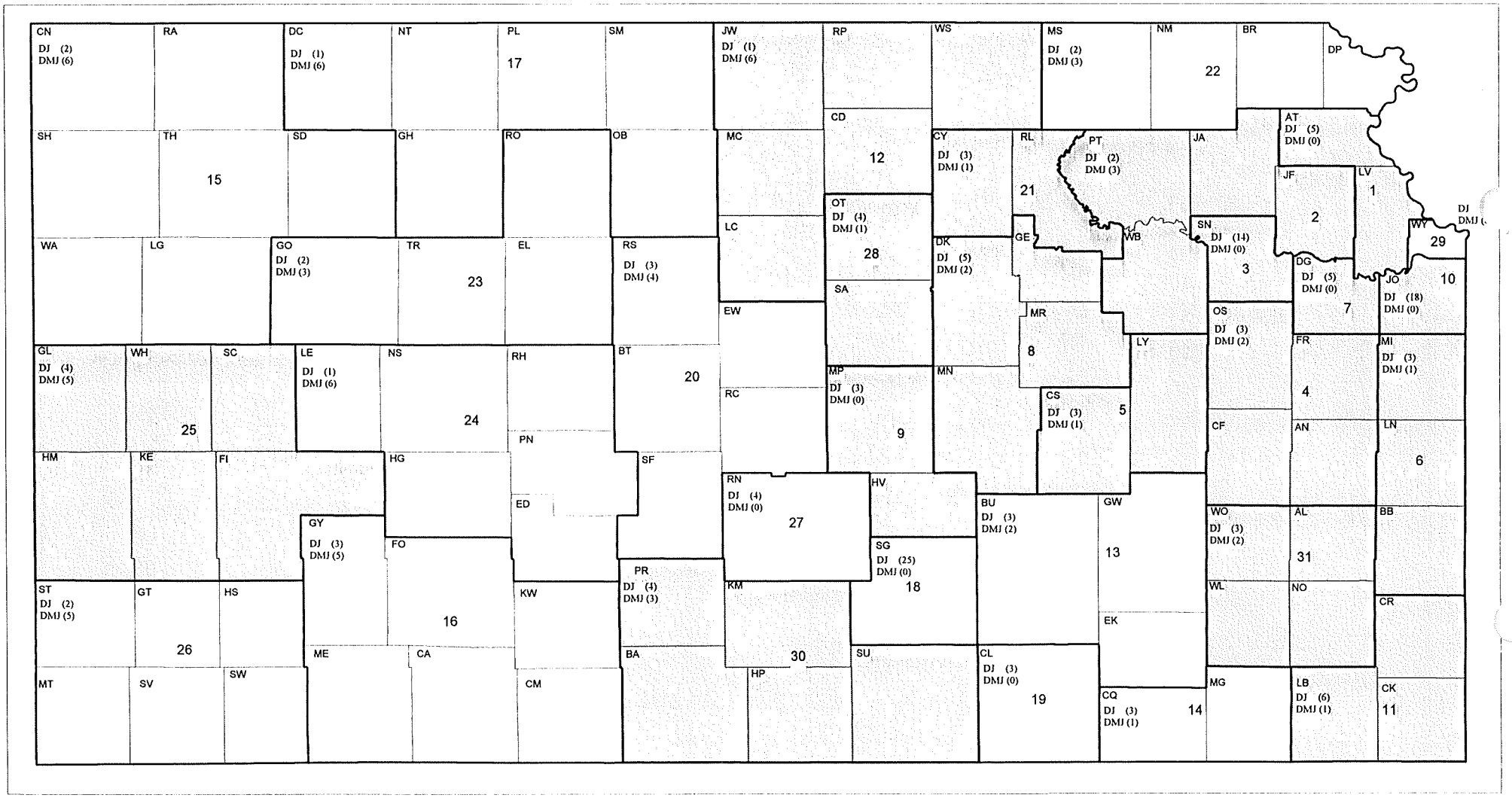
- Distilled Spirits Council of the United States (DISCUS)
- Wine Institute
- Kansas Wine and Spirits Wholesaler's Association
- Kansas Beer Wholesaler's Association
- Kansas Food Dealer's Association
- Kansas Restaurant and Hospitality Association

Task Force recommendations, if approved by the Secretary of Revenue and the Governor, will be presented to the 1996 Legislature for consideration. The Director's goal is to make the body of liquor control law more understandable and consistent through recodification, but not to propose policy changes as part of this effort.

CONCLUSIONS AND RECOMMENDATIONS

Based on information provided by the ABC regarding its review of the entire body of liquor laws, the Committee concluded that the liquor issue would be best addressed during the 1996 Session when the Legislature would have the benefit of the work of the ABC Task Force. The Committee recommends that the Legislature review the recommendations of that Task Force and consider any amendments proposed in those recommendations.

Kansas Judicial Districts



- ☐ Political Process 14 Districts or 45% (Counties = 53)
- ☐ Merit Selection Process 17 Districts or 55% (Counties = 52)

DJ = District Judge 156
DMJ = District Magistrate Judge . . 69
225

Elected Judges: DJ's 70
DMJ's 41
111 or 49%

Selected Judges: DJ's 86
DMJ's 28
114 or 51%

Kansas Legislative Research Dep
August 16, 1995

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Kansas Judicial Districts

Election Process

Judicial District	Population*	Number of Judges**	Population per Judge
18	403,662	25	16,146
27	62,389	4	15,597
13	61,754	5	12,351
19	36,915	3	12,305
14	43,223	4	10,806
29	161,993	16	10,125
20	59,778	7	8,540
22	41,413	5	8,283
23	38,968	5	7,794
26	40,649	7	5,807
16	45,497	8	5,687
17	30,046	7	4,292
15	29,776	8	3,722
24	23,769	7	3,396
Total	1,079,832	111	9,728

Merit Process

Judicial District	Population*	Number of Judges**	Population per Judge
10	355,054	18	19,725
9	58,296	3	19,432
21	76,297	4	19,074
7	81,798	5	16,360
1	81,303	5	16,261
6	46,686	4	11,672
11	80,635	7	11,519
3	160,976	14	11,498
28	54,935	5	10,987
4	53,449	5	10,690
2	50,161	5	10,032
8	68,497	7	9,785
5	37,753	4	9,438
31	46,078	5	9,216
30	56,833	7	8,119
12	39,685	7	5,669
25	49,306	9	5,478
Total	1,397,742	114	12,261

* 1990 U.S. Census

** Total of District Judges and District Magistrate Judges

Kansas Legislative Research Department

Autgust 4, 1995