

Approved: March 5, 1997
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Mike Harris at 10:00 a.m. on February 21, 1997 in Room 514-S of the Capitol.

All members were present except: Senator Pugh (excused)
Senator Harrington (excused)
Senator Feleciano (excused)

Committee staff present: Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Mary Blair, Committee Secretary

Conferees appearing before the committee: John Peterson, Kansas Land & Title
Jerry Bump, Dir. of Law Enforcement, Dept. Wildlife and Parks
Steve Williams, Secretary, Dept. of Wildlife and Parks
Helen Stephens, Ks. Peace Officers Assn & Ks. Sheriffs Assn.
Paul Morrison, Johnson Co. Dist. Att'y
Larry Sharp, Reno Co. Commissioner
Nanette Kemmerly, President of KCDAA
Don Navinsky, Leavenworth Co. Comm.
Jim Clark, Ks. Co & D.A. Assn.
Randy Allen, Exec. Dir. of Counties

Others attending: See attached list

Minutes from the February 7, 11, 12, and 13 meetings were approved on a motion by Senator Oleen, seconded by Senator Bond. Motion carried.

SB 216 - Civil procedure for limited actions; application of code of civil procedure; renumbering of case

Conferee Peterson testified in favor of **SB 216**. He stated that the purpose of the bill is to be certain that anytime a Chapter 61 proceeding is changed to a Chapter 60 proceeding, the clerk of the district court will be required to assign the case a new Chapter 60 number. (attachment 1) Senator Emert made a motion that SB 216 pass out favorably and be placed on the consent calendar, Senator Bond seconded. Motion carried.

SB 292 - Law enforcement powers of conservation officers

Conferee Bump testified in favor of **SB 292**. He stated that this bill would define the authority of certified law enforcement officers employed by the Kansas Department of Wildlife and Parks (KDWP) to include all lands of the state. He related the inadequacy of the current jurisdictional authority of conservation officers and explained why this legislation was needed. (attachment 2) Senator Harris inquired on behalf of an absent committee member about cross deputizing. Mr. Bump stated it would be difficult to do because of liability and other complications involved. Committee members inquired about officers authority and duties in certain circumstances. Senator Petty inquired of Conferee Williams about fiscal issues and whether or not this legislation would allow the KDWP to "tap" into federal money, to which he replied in the negative. Conferee Williams stood for questions by other committee members.

Conferee Stephens testified in favor of **SB 292**, clarified a question asked earlier by a committee member and stated why the bill was necessary. (attachment 3). Written testimony was received by Sunflower Alcohol Safety Action Project, Inc. in favor of **SB 292** (attachment 4) and Mothers Against Drunk Driving in favor of **SB 292**. (attachment 5) With no further discussion Senator Bond made a motion to recommend SB 292 favorable for passage, Senator Oleen seconded. Motion carried.

SB 194 - Establishing county district attorney offices in certain counties

Conferee Morrison testified in support of **SB 194**. He reviewed for the committee the need for this legislation which would establish the office of district attorney in certain counties. He cited increased population along with increased criminal filings in these counties and pointed out the limited resources these counties have with which to address these cases. He stated that the bill raises the requirements to the county attorney in the twelve counties listed in the bill. (attachment 6).

Conferee Sharp testified in opposition to **SB 194**. He stated that Reno County opposes the bill for several reasons, the most important being the limited financial resources with which to provide the necessary services and unfunded mandates to Reno County and shared with the committee the fiscal impact this legislation would have on his county which is already facing a budget crisis by 1999. He stated Reno County opposed any change by which the county attorney's salary is established by state law. (attachment 7)

Conferee Kemmerly-Weber testified in support of **SB 194** reiterating the need for the bill as expressed by other supporters of it. She also cited some areas of the bill that needed to be cleaned up to avoid confusion. (attachment 8)

Conferee Navinsky testified in opposition to **SB 194** stating that Leavenworth County feels that this legislation usurps traditional and recognized county Home Rule powers and fixes compensation for county attorneys regardless of any change in case load, staffing or the financial resources of the county. (attachment 9)

Conferee Clark testified in support of **SB 194** reiterating the need for the bill as expressed by other supporters of it agreeing with Conferee Morrison that the bill raises qualifications of prosecutors in those counties with high population and criminal case load that do not already have a district attorney. (attachment 10)

Conferee Allen testified in opposition to **SB 194** and presented an estimate of the annual fiscal impact **SB 194** would have on the 12 counties listed in the bill. He detailed both the impact of the salary enhancement as well as related fringe benefit cost increases. (attachment 11)

Written testimony opposing **SB 194** was submitted by Lion County Commission Chairman Wayne Leffler. (attachment 12)

Hearing on **SB 194** closed by the chair. No action was taken at this time.

SB 254 - Conduct detrimental to state service when supervising attorney subject to professional discipline

Senator Emert gave a subcommittee report on **SB 254** after handing out written testimony from Patrick Lawless, Administrative Counsel, Kansas State Board of Indigents' Defense Services which addresses conduct and discipline issues. (attachment 13). Senator Emert stated it was the subcommittee's recommendation to pass the bill out favorably. There was no objection so Senator Emert moved to pass **SB 254** out favorably. Senator Bond seconded. Motion carried.

Meeting adjourned at 11:04 a.m.

The next scheduled meeting will be Monday, February 24, 1997.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/21/97

NAME	REPRESENTING
Paul Shelby	OFA
Jim Clare	KCDAA
Barry Sharp	Reno County
Jake Sharp	Reno County
Dilinda Sharp	" "
Nanette Kemmerly-Weber	Allen County - KCDAA
Randy Allen	Ks. Association of Counties
Sue Chase	KNEA
Matt Huel	AP
Jim [unclear]	SAP
Helen Stephens	RPOA / KSAF
Tim Madden	Ks Dept of Corrections
John Purvis	Ks. Wildlife Officers Association
Maal [unclear]	Ks Dept. of Wildlife & Parks
Amelia McIntyre	Ks Dept. of Wildlife & Parks
ROB MANES	Ks. DEPT. OF WILDLIFE & PARKS
STEVE WILLIAMS	KDWP
Jerry D. Bump	KDWP
Nancy Lindberg	AO

3400 2/21/97 00151



KANSAS LAND TITLE ASSOCIATION



Charles Stewart
President
P.O. Box 287
Oakley, KS 67748

Bill Regier
Vice President
P.O. Box 346
Newton, KS 67114

John M. Bell
Secretary-Treasurer
434 N. Main
Wichita, KS 67202

FEBRUARY 21, 1997

TO: SENATE JUDICIARY COMMITTEE

RE: TESTIMONY SENATE BILL NO. 216

FROM: KANSAS LAND TITLE ASSOCIATION

THIS BILL AMOUNTS TO CLEAN UP LEGISLATION TO BRING K.S.A. 61-1729 IN CONFORMITY WITH K.S.A. 60-2418.

THE PURPOSE OF THE LEGISLATION IS TO BE CERTAIN THAT ANYTIME A CHAPTER 61 PROCEEDING IS CHANGED TO A CHAPTER 60 PROCEEDING, THAT THE CLERK OF THE DISTRICT COURT WILL BE REQUIRED TO ASSIGN THE CASE A NEW CHAPTER 60 NUMBER.

K.S.A. 60-2418 ALREADY REQUIRES THAT A CHAPTER 61 JUDGMENT MUST BE ASSIGNED A CHAPTER 60 CASE NUMBER BEFORE IT BECOMES A LIEN ON REAL ESTATE.

HOWEVER, K.S.A. 61-1729 CONTAINS NO SUCH REQUIREMENT FOR PENDING CHAPTER 61 CASES THAT ARE MOVED TO CHAPTER 60 PROCEEDINGS.

ASSIGNING A NEW CHAPTER 60 NUMBER TO A PREVIOUS CHAPTER 61 PROCEEDING IS THE ONLY WAY FOR ABSTRACTERS/TITLE AGENTS TO KNOW THAT THE CASE IS GOVERNED BY CHAPTER 60 LIS PENDENS AND JUDGMENT LIEN LAWS.

RESPECTFULLY SUBMITTED,

Roy Worthington

KANSAS LAND TITLE ASSOCIATION

EXECUTIVE COMMITTEE

FIRST DISTRICT
Robert Schibi
Hays

David Elliot
Hill City

SECOND DISTRICT
Mary Rogge
Topeka

Steven Kimball
Westmoreland

THIRD DISTRICT
Polly Epling
Burlington

Stephen D. Wilkin
Independence

FOURTH DISTRICT
Randall Barbour
Winfield

R. J. Uplinger, Jr.
Great Bend

FIFTH DISTRICT
Suzan Kimball
Sublette

David Taylor
Dodge City

AT-LARGE
Glen McQueen
Hugoton

John Wheeler
Topeka

EX-OFFICIO
Richard Knowles
El Dorado

DISTRICT CHAIRMEN

FIRST DISTRICT
Lynn Fullon
Oakley

Noreen Gregory
Osborne

SECOND DISTRICT
Jeffrey J. Amrein
Topeka

S. Lee Sluzman
Manhattan

THIRD DISTRICT
Charles Emley
Emporia

J. Darcy Oomansy
Paola

FOURTH DISTRICT
Jell Foster
McPherson

Randal L. Waldorf
Augusta

FIFTH DISTRICT
Deboran Lewis
Lamed

Joyce Huddleston
Tribune

EDITOR,
KANSAS ABTRACTER
John M. Bell

*Senate Judiciary
Attachment 1
2/21/97*



STATE OF KANSAS

DEPARTMENT OF WILDLIFE & PARKS

Operations Office
512 SE 25th Avenue
Pratt, KS 67124-8174
316/672-5911 FAX 316/672-6020



TESTIMONY on Senate Bill 292

Presented to: Senate Judiciary Committee
Provided by: Kansas Department of Wildlife & Parks
Date: February 21, 1997

Senate Bill 292 would define the authority of certified law enforcement officers employed by the Kansas Department of Wildlife and Parks to include all lands of the state. These personnel include 57 field officers primarily responsible for wildlife law enforcement, 54 park rangers and managers, and 27 public wildlife area managers. Under an October 1996 Attorney General's opinion, conservation officers may enforce all laws of the state, but *only on lands managed by the department* (which comprise only about 2% of Kansas). On all other lands, conservation officers may enforce only wildlife and park laws, which are found primarily in Chapter 32 of the Kansas Statutes, as well as a small number of provisions found in other statutes, such as criminal hunting, which is cited in Chapter 21. Prior to the issuance of this legal opinion -- since 1993 -- department employees, who are fully trained and qualified Kansas law enforcement officers, operated under the understanding that they held legal authority to enforce all Kansas laws, anywhere in the state. The recent attorney general's opinion held, however, that the law was silent regarding *where* conservation officers could act under this authority, and therefore, that their ability to make arrests and serve warrants under laws outside of Chapter 32 was limited to department-controlled lands and waters, which include state lakes, wildlife areas, parks, and similar recreation areas.

These circumstances are not in the best interest of Kansans, in part because people recognize uniformed department law enforcement employees as public servants, and rightfully expect these personnel to assist and protect them in cases where there is a threat to people or property. Conservation officers encounter serious violations of other crimes while in the routine pursuit of their duties, including DUI violations and assaults. Preventing occasional full use of department law enforcement personnel on other types of crimes is an inefficient use of state resources. These employees are fully trained and qualified through the Kansas Law Enforcement Training Center. It is important to note also that habitual wildlife criminals often involve themselves in more serious crimes, such as drug trafficking and burglary.

Conservation officers provide important supplemental support to understaffed local law enforcement agencies in most of rural Kansas; they are occasionally called upon to assist with felonies in progress, man hunts, and civil emergencies. Landowners also demand the support of department officers in pursuing trespass complaints, some of which may fall outside of their present jurisdiction. Though routine traffic violations incidentally discovered by department officers are now turned over to local authorities or Highway Patrol officers, department officers still may be civilly liable for their actions in such stops; and their protection under the authority of other entities, such as county sheriffs, is not certain. Without full territorial authority, department law enforcement personnel lack normal Tort Claims Act protection from possible law suits related to their actions regarding non-wildlife or -parks violations.

The department has not and does not intend for its law enforcement personnel to routinely conduct general police work, and will continue to direct them to focus on wildlife and park resource protection and public safety, as well as other duties. These officers' additional duties emphasize hunter education, boating safety education, outdoor skills education, wildlife resource management, public programs, and constituent involvement.

It is very important, however, that department law enforcement personnel have authority to enforce all of the laws of the state, regardless of location, for public safety, for officer safety, and for efficiency in the use of the state work force. In an era when the need for more law enforcement officers has been recognized, it seems critical that Department of Wildlife and Parks law enforcement personnel be authorized to function under the full authority of the law. The Department of Wildlife and Parks supports Senate Bill 292 and respectfully requests its favorable passage.

Senate Judiciary
Attachment 2
2-21-97

5700 2/21 12/13

KANSAS PEACE OFFICERS ASSOCIATION
and
KANSAS SHERIFFS ASSOCIATION

February 21, 1997
Senate Judiciary Committee
Senate Bill No. 292

Mr. Chairman and Members of the Committee:

My name is Helen Stephens, representing the Kansas Peace Officers Association (KPOA) and the Kansas Sheriffs Association (KSA).

KPOA sponsored a bill several years ago to give these officers statewide law enforcement powers. That bill was passed by the legislature. As you know, the recent AG's opinion states their powers are enforcement only on park property.

As mentioned then, criminal activity does occur in the parks of our state. If the criminal is about to leave park property, which is the case many times, a sheriff or his deputy cannot always be dispatched to the scene in a timely matter. Hence, the criminal gets away with his/her criminal activity.

Drug crimes, DUIs, and domestic battery are more than common occurrences in our parks today. Most Kansas citizens come to our parks and recreation areas to relax and enjoy themselves. By limiting their powers, some potential visitors could be in danger due to those leaving the park under less than perfect circumstances.

We ask that you give favorable consideration to SB 292.

Thank you for this opportunity. I would stand for questions.

*Senate Judiciary
Attachment 3
2-21-97*

2/21/97 att 4



Sunflower Alcohol Safety Action Project, Inc.

Suite F, 112 S.E. 7th / Topeka, Kansas 66603 / Phone (913) 232-1415 / Fax (913) 232-5648

SENATE BILL 292

Senator Mike Harris
Chairman, Senate Judicial Committee

Dear Senator Harris,

The Kansas Community Alcohol Safety Action Project Coordination Association supports Senate Bill 292 as another measure to promote high-way safety in the State of Kansas.

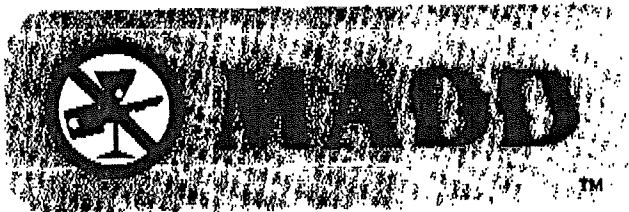
Many times those persons who participate in recreational activities in our state parks also participate in drinking alcoholic beverages or using illegal drugs. By giving our conservation officers the powers of arrest when our laws are being broken within the State promotes all around safety for the state of Kansas .

Respectfully,

Gene Johnson
Gene Johnson
Legislative Lobbyist

Kansas Community Alcohol Safety Action Project Coordination Association

*Senate Judiciary
Attachment 4
2-21-97*



Mothers Against Drunk Driving

3601 SW 29th Street • Topeka, KS 66614 • (913) 271-7525 • 1 (800) 228-6233

KANSAS STATE OFFICE

2/20/97

Senator Mike Harris, Chairman
Senate Judiciary Committee
Room 449-N
Statehouse
Topeka, Kansas 66612

Dear Senator Harris and Committee Members:

Kansas MADD regrets that we will be unable to have a representative present at the committee hearing February 21, regarding Senate Bill 292. Kansas MADD would like to be acknowledged as being in support of this bill.

Senate Bill 292 will clearly define the law enforcement powers of conservation officers and the territorial limits of a conservation officer's law enforcement authority.

Sincerely,

Diane Poot

Diane Poot
State Chairperson
Kansas MADD

Fax 296-6718
2/20/97

*Senate Judiciary
attachment 5
2-21-97*

TESTIMONY IN SUPPORT OF SENATE BILL 194

Paul J. Morrison, Johnson County, Kansas District Attorney

As we are all aware, crime has become one of the most important issues facing our society. Vast amounts of time and money are spent in attempting to control it. Legislatures continually pass laws in their attempts to grapple with this consuming problem. Historically, however, very little attention is paid to what is arguably the most important cog in the criminal justice machine: the prosecutor. As a career prosecutor for 17 years, I can attest to the fact that prosecutors' offices are generally the most under funded and overworked components in the criminal justice system. It is an issue that absolutely has affected our abilities to attract and retain quality people.

Back in the 1970s the State of Kansas made its first steps toward professionalizing prosecution by converting the five most populous counties (Wyandotte, Johnson, Sedgwick, Shawnee and Douglas) into district attorney systems. The large populations and accompanying caseloads necessitated the changes from part-time prosecutors to full-time professionals in these counties. It has worked well.

In the 20 odd years since these changes, many other counties in Kansas have experienced dramatic increases in both populations and criminal case filings. These counties, which are included as part of this Senate Bill, have experienced the greatest pressure from this growth in crime. In fact, some of these counties file almost as many criminal cases per year as some of the district attorneys' offices in the larger counties. Yet, they must operate with a fraction of the resources of larger offices such as mine. Add to this mix the fact that the state agencies that defend criminals on both a trial and appellate level are oftentimes better funded than these small, technically part-time county attorney offices. It is an issue of public safety, fairness and equity.

This bill significantly raises the requirements to the county attorney in these twelve counties.

*Senate Judiciary
Attachment 6
2-21-97*

While it raises pay only slightly, we believe it will increase the professionalism and morale significantly. Many of these counties handle the most serious cases filed in the State of Kansas. Several of these counties have recently handled death penalty cases. This change in the law is long overdue.

2.21.97 2/21/97 H.H. 7

**SENATE BILL NO. 194
TESTIMONY BEFORE SENATE JUDICIARY COMMITTEE
FRIDAY, FEBRUARY 21, 1997
10:00 A.M.
ROOM 526-S**

Chairperson Mike Harris and members of the Senate Judiciary Committee:

My name is Larry R. Sharp and I am a County Commissioner from Reno County speaking in opposition to SB 194. Thank you for the opportunity to address your Committee.

Reno County is opposed to SB 194 for a number of reasons. The most important reason for our opposition is the impact this legislation will have on already limited resources with which to provide necessary services and unfunded mandates to our County.

Under present law, the Board of County Commissioners sets the annual salary for all county-elected officials. We oppose any change by which the county attorney's salary is established by state law. Legislation which sets the county attorney's salary effects the salaries paid other staff attorneys. For example, the current salaries for the county attorney, the first assistant county attorney, and the assistant county attorneys are set out as:

*Senate Judiciary
Attachment 7
2-21-97*

**RENO COUNTY
1992 - 1997 SALARY HISTORY
COUNTY ATTORNEY**

ATTORNEY	NUMBER	1993	1994	1995	1996	1997
County Attorney	1	\$51,006.00	\$52,026.00	\$53,587.00	\$55,195.00	\$56,851.00
First Asst. Attorney	1	\$40,089.00	\$40,891.00	\$41,709.00	\$42,126.00	\$42,547.00
Asst.. Attorneys'	2 (3-1997)	\$72,938.00	\$74,396.00	\$75,884.00	\$76,644.00	\$116,112.00
TOTALS		\$164,033.00	\$167,313.00	\$171,180.00	\$173,965.00	\$215,510.00

The salary for a district judge for fiscal year beginning July 1, 1996 and ending June 30, 1997 is at \$79,069. Fiscal year beginning July 1, 1997 is set at \$81,046. If the salary for a district attorney stays at the same 80% level as previously noted, you can readily see the impact that would affect not only the elected official but also the other attorneys in the office. It should be noted and we fully understand this would occur with the general election in year 2000. K.S.A. 75-31201 indexes salary changes for district court judges to changes in the state's pay plan, so periodic changes would continue into the future.

This legislation is an example of one more unfunded mandate with significant fiscal consequences to this county.

Our County Attorney has publicly commented that, "he has been treated well by the County Commissioners." Historically, Reno County has benefitted from capable attorneys as county attorney and the electorate has had a choice during the elections.

In Reno County, the clock is ticking toward a budget crises. Since 1989, we have been using reserves to complete our budget. Last year, we spent \$300,000 of our reserves to fund the budget. It is projected that in 1999, we will exhaust our reserves and may have to address deficit spending with a reduction of employees and/or services. Although the legislators may provide us with an easy answer to these county employees who receive no pay raise or even lose their jobs in the near future about the value of a "District Attorney" and the increased salary forced upon us by the state, the average taxpayers will no doubt increase their cynicism about attorneys in general.

I would like to think there is still a desire for true "public service" from our attorneys across the state, but with this type of a bill, one still has to wonder if nobility and dedication are measured in terms of dollars.

When I questioned a prominent state legislator to address the benefit of this bill to Reno County as well as the other eleven counties named in the proposed

legislation, he was very evasive in his response that “quite frankly he could not see a benefit to be derived from a district attorney as opposed to a county attorney for Reno County.”

If the Committee does recommend the passage of SB 194, then please help us out by removing this function from the aggregate tax levy lid law.

Thank you for providing a committee hearing for this bill. I urge you to remember that financial control at the local level is important and necessary for good representative government.



MEMBERS

Nanette L. Kemmerly-Weber, President
William E. Kennedy, Vice-President
Julie McKenna, Sec.-Treasurer
Paul J. Morrison, Past President

3.30.8 2/21/97 12:57 PM 8
DIRECTOR

William B. Elliott
Jerome A. Gorman
David L. Miller
James T. Pringle

Kansas County & District Attorneys Association

827 S. Topeka Blvd., 2nd Floor • Topeka, Kansas 66612
(913) 357-6351 • FAX (913) 357-6352 • e-mail kcdaa01@ink.org
EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

February 20, 1997

Senate Committee on Judiciary
Kansas Statehouse
Topeka, KS

Re: Senate Bill 194

Dear Committee Members:

I am here today to speak in support of Senate Bill 194, the creation of twelve county district attorneys.

For far too long, our state has continued a system of part-time county attorneys, a hold over from our past when the crime rate was lower and a county attorney could effectively carry out the duties of his or her office and also have a private practice in order to make a decent living. That is now a memory. The counties listed in this bill are all medium size counties with sizeable caseloads which are expanding and which have seen increases in violent crime. Saline and Crawford counties both have capital murder cases pending. To continue in the belief that these elected prosecutors have the time to carry on a private practice is wrong and is a disservice to the dedication of these people and to their constituents who elect them with the understanding that they are full time prosecutors dedicated to justice.

When the prosecutors in the largest counties were made district attorneys in 1972, I believe it was done to provide decent compensation for those prosecutors who had to devote all their time to their role as prosecutors and to assure that experienced people were elected to head these large offices. The twelve prosecutors in the counties listed in this bill deserve the same consideration.

I realize that the opposition by counties to this bill will be vehement since they categorize this as just another unfunded mandate. In a perfect world, the state would aid in the compensation of **all** prosecutors since we enforce state law in the name of the state, since indigent defendants are represented by attorneys paid by the state and since crime and the bringing of criminals to justice is of state concern. But we do not live in a perfect world. While this bill does require those counties to pay a salary of 80% of the district judge salary, it also assures the citizens in those counties that experienced attorneys are elected to the positions and that the prosecutors are able to devote all their time to their elected positions with adequate compensation.


*Senate Judiciary
attachment 8
2-21-97*

Page 2

Before I close, there are some clean-up matters. There is some confusion in the bill as to the effective date of the bill. My recommendation would be to make the effective date January 1, 1998 so that counties have some time to plan for these budget increases. The word "elected" needs to be deleted from the first line of subsection (b) so that there is no conflict within the bill.

I have appeared today as the President of the Kansas County and District Attorney Association, and as an elected prosecutor who does not benefit from this bill. The twelve prosecutors and the citizens in the counties in this bill do deserve the benefits of this bill. Thank you for your attention.

Respectfully

A handwritten signature in cursive script that reads "Nanette L. Kemmerly-Weber".

Nanette L. Kemmerly-Weber
Allen County Attorney
President, KCDA

COUNTY OF LEAVENWORTH

COURTHOUSE
300 WALNUT
LEAVENWORTH, KANSAS 66048
Area Code (913) 684-0400



FROM THE OFFICE OF:

BOARD OF COUNTY COMMISSIONERS
OF LEAVENWORTH COUNTY, KANSAS

February 20, 1997

To: Members of the Senate Judiciary Committee

Re: Opposition to Senate Bill 194; Legislation Establishing Special Compensation
For County Attorneys in Certain Counties

Dear Members of the Senate Judiciary Committee:

We, as the Board of County Commissioners of Leavenworth County, Kansas, one of the counties specifically affected by the proposed Senate Bill 194, write to you to express our adamant opposition to the approval of this Bill by your Committee. Our objections to this Bill are many but generally involve the usurpation of traditional and recognized County Home Rule Powers by actual legislation charted towards certain counties.

Our experience in conversations with other counties, both individually and through the Kansas Association of Counties, does not reveal any widespread problem with the compensation of County Attorneys in the affected counties. Moreover, the adoption of Senate Bill 194 would fix in place substantial compensation for County Attorneys in those counties affected regardless of any change in case load, staffing or the financial resources of the county. In essence, Senate Bill 194 not only severs traditional powers reserved to the Board of County Commissioners and the voters of the counties, but serves as an unfunded mandate from the State to the County.

We urge you to vote against the approval and adoption of Senate Bill 194 and to continue

City-County Probation
684-0760

Council on Aging
684-0777

Emergency Medical Service
684-0788

Noxious Weeds
684-0494

Community Corrections
684-0775

County Infirmary
684-1010

Health Department
684-0730

Sheriff
682-5724

*Senate Judiciary
Attachment 9*

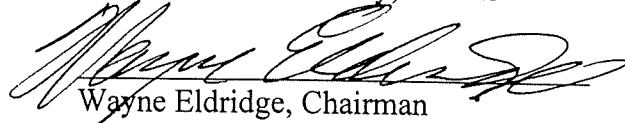
2-21-97

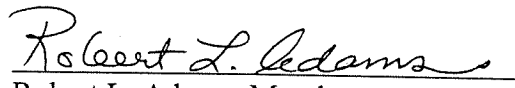
February 20, 1997


to allow the individual counties to exercise their sound discretion and Home Rule Powers on this matter.

Sincerely,

Board of County Commissioners
Of Leavenworth County, Kansas


Wayne Eldridge, Chairman


Robert L. Adams, Member


Donald Navinsky, Member

DCV:BOCC/rw

5,500 2/21/97 Oct 11 90

OFFICERS

Nanette L. Kemmerly-Weber, President
William E. Kennedy, Vice-President
Julie McKenna, Sec.-Treasurer
Paul J. Morrison, Past President



DIRECTORS

William B. Elliott
Jerome A. Gorman
David L. Miller
James T. Pringle

Kansas County & District Attorneys Association

827 S. Topeka Blvd., 2nd Floor • Topeka, Kansas 66612
(913) 357-6351 • FAX (913) 357-6352 • e-mail kcdaa01@ink.org
EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

Testimony in Support of

Senate Bill 194

Since 1864, Kansas has vested the prosecution of state law violations in the county attorney, an elected official funded by county general funds. With few exceptions, such as requiring admission to the bar, extending terms to four years, and mandating county attorneys to assist with appeals, the office remains the same in the 100 less-populated counties. The larger counties, Shawnee, Johnson, Sedgwick, Wyandotte and Douglas, have had their local prosecutor upgraded to the status of district attorney, with qualifications and salary the same as a district judge (i.e. no private practice and five-years experience). These offices are still locally elected and locally funded.

What seemed compelling in 1972, and in 1978 for Douglas County, to increase the status of local prosecutors in the five more populated counties is equally compelling to the next tier of counties by population, the 12 listed in the bill. It goes without saying that with the increase in crime alone, they have at least as high a case load as Douglas County did in 1978. In addition to increases in case volumes, these offices have also had additional duties imposed upon them, such as criminal record keeping, recall and protest election certification, as well as increased emphasis on DUI and child abuse prosecution. This is especially true regarding the increased rights of crime victims.

The State has added to their burden with a state funded public defender system, which spends nearly as much to defend indigent felons as the counties do to prosecute all felony cases, indigent or not; as well as misdemeanor, juvenile offender, child in need of care, and mental and alcohol care and treatment cases. Not only has the state created full-time appellate specialists, which has greatly increased the volume of appellate cases, but the trial level advocacy has been subject to increased motion practice. The real irony is that public defenders are required to be much more qualified in criminal law than are elected prosecutors.

In the past, two challengers, recent law school graduates employed by local law firms, have been successful in unseating an incumbent. In one case, the county was involved in a death penalty case. That can happen in any of the 100 counties that do not have the increased qualifications required for a district attorney. This item is offered not in support of incumbents, but in support of the belief that the chief law enforcement officer of the county should have at least five years experience before acquiring the power of the prosecuting attorney.

SB 194 does not solve all the problems of raising qualifications of prosecutors statewide. To do so would probably require painful consolidation efforts in the more sparsely populated counties, which is well beyond the scope of this bill. It merely raises those qualifications in those counties with high population and criminal case load that do not already have a district attorney.

*Senate Judiciary
Attachment 10
2-21-97*

TESTIMONY

concerning Senate Bill No. 194
Presented by Randy Allen, Executive Director
Kansas Association of Counties
February 21, 1997

Mr. Chairman and members of the Committee, I appreciate the opportunity to provide testimony today in behalf of 12 member counties of the Kansas Association of Counties in opposition to SB 194.

SB 194 would abolish the office of county attorney in 12 counties (*) and establish in its place the office of "county district attorney". The bill provides that, to qualify for the office of "county district attorney", a person must be admitted to the practice of law in Kansas for five years preceding his or her nomination for the office or have 3 years prior experience as a county attorney, assistant county attorney, or assistant district attorney. There is no minimum experience requirement for county attorneys. Incumbent county attorneys elected last November for a 4-year term would become "county district attorneys" upon publication of the statute.

The financial ramifications upon the twelve counties covered in this bill are substantial, as SB 194 provides that the "county district attorneys" shall receive annual salaries equal to 80% of the salary provided for district judges in K.S.A. 75-3120g and amendments thereto (i.e. 80% of \$81,046, or \$64,836). Below is an estimate of the annual fiscal impact of SB 194 on the twelve counties, detailing both the impact of the salary enhancement and related fringe benefit cost increases:

=====

ESTIMATED ANNUAL IMPACT OF SB 194 UPON COUNTY BUDGETS

=====

County *	Current Attorney Salary	Salary based on SB 194	Salary Change	Est. + Fringe Benefits	Total \$ Impact
Butler	\$ 54,000	\$ 64,836	\$ 10,836	\$ 1,262	\$ 12,098
Cowley	52,046	64,836	12,790	1,490	14,280
Crawford	52,674	64,836	12,162	1,417	13,579
Finney	56,243	64,836	8,593	1,001	9,594
Ford	51,000	64,836	13,836	1,612	15,448
Geary	55,230	64,836	9,606	1,119	10,725
Leavenworth	60,000	64,836	4,836	563	5,389
Lyon	41,745	64,836	23,091	2,690	25,781
Montgomery	42,038	64,836	22,798	2,656	25,454
Reno	55,195	64,836	9,641	1,123	10,764
Riley	61,800	64,836	3,036	354	3,390
Saline	55,141	64,836	9,695	1,129	10,824
Average	53,093	64,836	11,743	1,368	13,111

*Senate Judiciary
attachment II
2-21-97*

As the data show, the salaries of the twelve county attorneys covered under SB 194 would increase in a range from 4.9% in Riley County to 55.3% in Lyon County, with an average increase in the twelve counties of 22.1%.

In my reading of SB 194, it is my understanding that the scope of duties associated with the "County District Attorney" position would be little or no different from the scope of duties associated with the "County Attorney" position. Yet, taxpayers in these twelve counties would be asked to pay for these additional costs, or the additional costs would reduce other county services.

Of the twelve counties addressed in SB 194, nine counties are still fully subject to the aggregate tax lid law. One county (Riley) has exempted its law enforcement costs from the tax lid and two counties (Butler and Finney) are no longer subject to the tax lid. As such, this bill places county commissioners in the position of having to either increase taxes or reduce vital county services in other areas to finance an increase in the salary of the new "county district attorney", without any appreciable change in the scope of services from what is currently provided by the county attorney.

This bill would replace local financial control by county commissioners with a state-imposed, yet locally-financed formula of determining a local official's salary. For these reasons, I urge the committee to kill this bill.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to the KAC by calling (913) 233-2271.

S. 300 2/21/97 att # 12

TESTIMONY OF LYON COUNTY
COMMISSION CHAIRMAN WAYNE LEFFLER
CONCERNING SENATE BILL NO. 194

Mr./Mrs. Chairman:

I am here to testify in opposition to Senate Bill No. 194, a bill establishing the office of county district attorney in certain counties. Lyon County is one of those counties.

Many years ago the State legislature in its wisdom, decided that it made more sense to have the county commissioners establish the salaries for elected county officials than for the State legislature to establish those salaries and change them each time State legislature met. The present bill goes back to the old system of the State legislature establishing those salaries, albeit in a slightly more indirect way. The bill would provide for a salary of 80% of the district judge's salary. In Lyon County, the county attorney at present, receives a salary of \$41,746.60 plus briefs. This would increase the amount that the Lyon County attorney receives by approximately \$30,000. Obviously, if this bill becomes law, it will not only increase the person now holding the Lyon County attorney's salary by a substantial amount, but will also increase assistant attorneys in that office.

This is not a district attorney's bill. District attorneys in judicial districts cover the entire judicial district. This bill, which is the first bill dealing with multi-county districts, covers only one county in the district. If the district attorney were to provide supervision for the entire district, there would be some justification for the bill in improving the criminal and juvenile justice system. However, it appears that the only thing this bill does is to increase the salary. While it is true that the bill provides for five years of experience which is not now required, there is no provision in the bill that there is any criminal law

*Senate Judiciary
Attachment 12
2/21/97*

experience required, and in many of the counties that this bill affects, there has been no dearth of qualified candidates for county attorney under the present statutory system, nor is it likely to add any further professionalism to the system now in force and affect. Lyon County's county attorney has, as a practical matter, been a full-time position for several years.

And lastly, but not least, I should call this committee's attention to the fact that this if it is passed, is yet another unfunded State mandate which would still be under the tax lid. Although the counties have requested that law enforcement be taken out from under the lid, the legislature has shown no intent in doing so, and it appears that the same continues to be true.

I would, therefore, respectfully ask this committee not to report favorably on this bill.

Thank you.

12-2

TESTIMONY
STATE BOARD OF INDIGENTS' DEFENSE SERVICES
BEFORE THE SENATE JUDICIARY COMMITTEE

Patrick Lawless, Administrative Counsel, Kansas State Board of Indigents' Defense Services.

Members of the Subcommittee and Staff:

Thank you for the opportunity to address you regarding Senate Bill 254. My name is Patrick Lawless and I am administrative counsel for the Kansas State Board of Indigents' Defense Services.

The Board supports the enactment of Senate Bill 254. The attorneys employed by the agency are somewhat unique in the state system, in that their clients are individuals rather than the State of Kansas or a state agency. Like members of the private bar, they are subject to all the rules pertaining to client representation under the model rules of professional conduct. Under Rule 5.3 of the model code they are responsible for the conduct of their support staff.

There have been instances in the past where support staff, who are in the classified service, have engaged in conduct which could have subjected the supervising attorney to discipline under the model rules. The most frequently recurring problem is neglecting a legal matter under Rule 1.3. The agency has had support staff in the past who have simply not filed motions or other pleadings with the court when their supervising attorney has directed them to do so. Because of the nature of the agency's attorneys' work, there is always the potential for support staff to disclose client confidences or violate other rules contained in the model code.

Any conduct which would subject the classified employee's supervising attorney to discipline directly harms the attorney's client's case. Such conduct should be a per se cause of discipline under K.S.A. 75-2949f. Senate Bill 254 recognizes that this conduct constitutes a per se cause for discipline and sends a message that such conduct will not be tolerated.

Thank you for your time and consideration.

*Senate Judiciary
Attachment 13
2/21/97*