Approved: 3-17-99
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Michael R. O'Neal at 3:30 p.m. on February 3, 1999 in Room 313-S of the Capitol.

All members were present except:
Representative Andrew Howell - Excused
Representative Ward Loyd - Excused
Representative Tony Powell - Excused
Representative Clark Schultz - Excused

Committee staff present:
Jerry Ann Donaldson, Legislative Research Department
Avis Swartzman, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:
Representative Becky Hutchins
Representative Sharon Schwartz
Nancy Lindberg, Attorney General's Office
Jim Clark, Kansas County & District Attorneys Association
Tim Madden, Chief Counsel, Department of Corrections
Daniel Moore, The Saints Francis Academy
Randy Hearrell, Kansas Judicial Council
David Ryan, Administrative Procedure Advisory Committee, Judicial Council
Ron Smith, Kansas Bar Association
Linda Fund, Assistant Secretary Department of Health & Environment
Dan Stanley, Department of Administration
Susan Cunningham, Kansas Corporation Commission
Derenda Mitchell, Department of Agriculture
Pat Johnson, Board of Nursing
Clark Duffy, Division of Water Office

Representative Becky Hutchins requested a committee bill that would make battery against a sports official a Class B Misdemeanor. Representative Carmody made the motion to have the request introduced as a committee bill. Representative Long seconded the motion. The motion carried.

Representative Sharon Schwartz appeared before the committee with a bill request that would clarify the residency requirements for becoming a district magistrate judge.(Attachment 1) Representative Wells made the motion to have the request introduced as a committee bill. Representative Carmody seconded the motion. The motion carried.

Daniel Moore, The Saints Francis Academy, appeared before the committee with a bill request that would allow chronic runaways to have access to secure care facilities.(Attachment 2) Representative Carmody made the motion to have the request introduced as a committee bill. Representative Swenson seconded the motion. The motion carried.

Nancy Lindberg, Attorney General's Office, appeared before the committee with several bill request. The first would amend K.S.A. 21-3608 to broaden the range of abusive acts and to enhance the penalty to severity level 5 person felony.(Attachment 3) Representative Adkins made the motion to have the request introduced as A committee bill. Representative Crow seconded the motion. The motion carried.

The Attorney General's Office had two other bill requests. The first would amend the auto lemon law and the second makes amendments to the Kansas Offender Registration Act.(Attachment 4) Representative Adkins made the motion to have the requests introduced as committee bills. Representative Swenson seconded the motion. The motion carried.

Jim Clark, Kansas County & District Attorneys Association, requested a bill that would make reference to the placement matrix in the Juvenile Offender Code. (Attachment 5) Representative Carmody made the

motion to have the request introduced as a committee bill. Representative Crow seconded the motion. The motion carried.

Mr. Clark also had a bill request that would change the arson statute to eliminate the value on the residence. Representative Lloyd made the motion to have the request introduced as a committee bill. Representative Adkins seconded the motion. The motion carried.

Tim Madden, Chief Counsel, Department of Corrections, appeared before the committee with a bill request that would amend the victim notification statute. (Attachment 6) Representative Carmody made the motion to have the request introduced as a committee bill. Representative Adkins seconded the motion. The motion carried.

Hearings on **HB 2126 - phasing in the use of the office of administrative hearings over five years**, were opened.

Randy Hearrell, Kansas Judicial Council, appeared before the committee to introduce David Ryan, Administrative Procedure Advisory Committee, Judicial Council, who spoke in favor of the proposed bill. Mr. Ryan explained that the Office of Administrative Hearings has the responsibility of conducting all adjudicative hearings for SRS. The proposed bill would expand that responsibility to all cabinet level agencies. These agencies would be phased in over a five year period. The bill provided that presiding hearing officers and their support staff be transferred to the Office of Administrative Hearings. The Judicial Council requested the bill because they believe that an independent hearing officer would promote fairness on the party of the state agency involved in the case. (Attachment 7)

Ron Smith, Kansas Bar Association, did not appear before the committee but requested his written testimony be included in the minutes. (Attachment 8)

Linda Fund, Assistant Secretary Department of Health & Environment, appeared before the committee in opposition to the bill. She stated that there are protections built into the law and that everyone has a remedy under current law. It was suggested that there would be an increase in costs for the state for having to set up a new office. (Attachment 9)

Dan Stanley, Department of Administration, appeared before the committee as an opponent of the bill. He was concerned that there was no way to determine the cost of the plan and believed that the fiscal note would be in the millions of dollars. (Attachment 10)

Susan Cunningham, Kansas Corporation Commission, appeared before the committee. While she opposed the bill she did like using a third party to overview the agencies. She suggested that the proposed bill wouldn't work well for KCCI because the cases they deal with are highly specialized and highly technical. She asked that if the committee work the bill an amendment be made to exempt the KCCI. (Attachment 11)

Derenda Mitchell, Department of Agriculture, appeared before the committee to oppose the implementation of a system that lacks accountability. She stated that there had been only one time when a hearing officer had acted inappropriately, but that was because he was new and didn't have the knowledge that was required to make a non-bias decision. (Attachment 12)

Pat Johnson, Board of Nursing, appeared before the committee in opposition of the bill. The Board of Nursing was concerned that the hearing officer would not have the working knowledge and education in the health care area that was needed to make decisions. (Attachment 13)

Clark Duffy, Division of Water Office, appeared before the committee in opposition to the bill. He also suggested that the Kansas Water Office needed highly specialized hearing officers and that the bill be not passed or that they be exempt from it. (Attachment 14)

Testimony of the Kansas Human Rights Commission was provided to the committee. (Attachment 15)

The committee meeting adjourned at 5:45 p.m. The next meeting is scheduled for February 4, 1999.

HOUSE JUDICIARY COMMITTEE
GUEST LIST

February 3, 1999

NAME	REPRESENTING
Bill Minner	KHRC
Mike Hollan	KHRC
Brandon Myers	"
Sharon Schwartz	#106 Representative
Susan Cunningham	KCC
[illegible]	Ks. Dept. of Agriculture
[illegible] Rogers	Ks. Judicial Council
Judy M. Harrell	Ks. Judicial Council
[illegible]	Kan. Sentencing Comm.
[illegible]	KSC
Tim Madden	KDOC
Pat [illegible]	KDHE
Bill [illegible]	KDHE
Linda Frank	KDHE
Jani Nohr	AG's office
Kelli Newton	AG's office
Steve Karrick	AG.
Clark Duffy	Ks Water Office
James [illegible]	KCDAA
Janice McKinnon	KPERS
Don Doesken	KDHR
Mike Hattles	SRS
[illegible]	KTLA

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January 15, 1999

To: Representative Sharon Schwartz **Office No.:** 110-S

From: Carolyn Rampey, Principal Analyst

Re: District Magistrate Judge Residency Requirements

You asked at what point a person must live in a judicial district to fulfill the residency requirements for becoming a district magistrate judge. Kathy Porter, Executive Assistant to the Judicial Administrator, assisted me in responding to your question.

The relevant statute is K.S.A. 20-334 (copy enclosed). Subsection (a) addresses district court judges and clearly states that a district judge must "be a resident of the judicial district for which elected or appointed to serve *at the time of taking the oath of office . . . .*" (Emphasis added.)

Subsection (b) pertains to district magistrate judges and only says that they "must be a resident of the county for which elected or appointed to serve." Thus, for district magistrate judges, the statutes do not state the specific point at which the judge must be a resident in order to serve. Ms. Porter says that the general interpretation of the statute is that the same residency requirement imposed on district court judges (residency at the time of taking the oath of office) is assumed to apply to district magistrate judges as well. She acknowledges, however, that the statute is not specific and allows for flexibility in the application of the residency requirement for district magistrate judges.

I hope this responds to your question. Please call me if you would like more information.

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election or appointment to the office of judge of the district court in any judicial district. If such person is not a resident of the judicial district at the time of nomination, election or appointment, such person shall establish residency in the judicial district before taking the oath of office and shall maintain residency while holding office.

(b) No person shall be eligible for nomination, election or appointment to the office of judge of the district court in any county of any judicial district for which there has been established residence requirements for the holding of such office if such person is not a resident of the county at the time of nomination, election or appointment.

History: L. 1968, ch. 385, § 36; L. 1976, ch. 145, § 85; L. 1978, ch. 111, § 1; L. 1980, ch. 94, § 6; L. 1981, ch. 132, § 1; July 1.

Attorney General's Opinions:

Residence requirements for district court judges; 20th judicial district. 92-30.

Residence requirements for district court judges. 93-26.

20-332.

History: L. 1968, ch. 385, § 37; Repealed, L. 1976, ch. 145, § 246; Jan. 10, 1977.

20-333. Abolishment of office of judge upon death, resignation or retirement in certain cases. Whenever under the provisions of this act [*] provision is made for the abolishment of the office of district judge in any judicial district, and the district judge holding any such office shall die, resign or retire during the four (4) years next preceding the date fixed for the abolishment of such office, such office shall be and is hereby abolished at the time of such death, resignation or retirement.

History: L. 1968, ch. 385, § 38; March 30.

* "This act," see, also, 4-201 to 4-230, 20-325, 20-327 to 20-332.

JUDICIAL REAPPORTIONMENT (1982)

Cross References to Related Sections:

Establishment of judicial districts, see 4-201 et seq.

20-333a.

History: L. 1982, ch. 130, § 12; Repealed, L. 1983, ch. 105, § 13; April 28.

20-333b. Transfer of pending proceedings to new district. All actions and proceedings pending in the district court of any county at the time the county is transferred from one judicial district to another, whether or not the issues are joined, shall proceed in the district court of the judicial district to which the county is transferred in the same manner as if the actions and proceedings had been commenced in that district, except when an action or proceeding pending in a district court has been tried and taken under advisement by a judge of the court, and is still undecided at the time the county is transferred to a different judicial district, it shall be the duty of the judge who tried the cause to make and render findings and judgment on the cause and to determine all motions in the case in all respects as though the county had not been transferred to a different judicial district.

History: L. 1982, ch. 130, § 13; L. 1983, ch. 105, § 5; April 28.

20-333c.

History: L. 1982, ch. 129, § 5; Repealed, L. 1983, ch. 105, § 13; April 28.

MISCELLANEOUS PROVISIONS

20-334. Qualifications of judges of the district court. (a) Subject to the provisions of K.S.A. 20-2909 and amendments thereto, any person who is elected, retained in office or appointed as a district judge shall:

(1) Have been regularly admitted to practice law in the state of Kansas;

(2) be a resident of the judicial district for which elected or appointed to serve at the time of taking the oath of office and shall maintain residency in the judicial district while holding office; and

(3) for a period of at least five years, have engaged in the active practice of law as a lawyer, judge of a court of record or any court in this state, full-time teacher of law in an accredited law school or any combination thereof.

(b) Any person who is elected, retained in office or appointed as a district magistrate judge shall:

(1) Be a graduate of a high school or secondary school or the equivalent thereof;

(2) be a resident of the county for which elected or appointed to serve; and

(3) if not regularly admitted to practice law in Kansas, be certified by the supreme court, in the manner prescribed by K.S.A. 20-337 and amendments thereto, as qualified to serve as a district magistrate judge.

History: L. 1976, ch. 146, § 14; L. 1978, ch. 111, § 2; L. 1979, ch. 82, § 1; L. 1980, ch. 94, § 7; L. 1986, ch. 115, § 37; Jan. 12, 1987.

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THE SAINT FRANCIS ACADEMY
INCORPORATED

Dear Representative O'Neal,

Please allow me to introduce myself. I am Daniel Moore, Client Service Coordinator for a secure treatment facility operated by the Saint Francis Academy, Incorporated. We work directly with the runaway youth population in Kansas and I need your help in an important legislative matter.

It would be helpful if you could study and support a revision to the Kansas Juvenile Justice code which at present denies adjudicated juvenile offenders access to our chronic runaway, secure care program in Atchison (one of only two such facilities in Kansas.) In short, section 38-1663 of the code needs a minor amendment to allow any chronic runaway youth an opportunity to enter and grow from our unique program which we have operated for the past seven years. Specifically, subsection(a) to part (3) of 38-1663 needs to state, " which are to include orders to secure care facilities for any chronic runaway youth." A rather simple change is needed in order to have a huge impact on this population of at high-risk young Kansans. It is not incidental that we at the Saint Francis Academy have had to deny admissions to 41 needed youth for this program from September 1st to November 1st 1998.

I met with Rep. Davis Adkins on December 9th and he suggested I approach you with this issue. He is in support of this statute change. I hope you will show equal backing as well. I will also be contacting Rep. Jerry Hanry, Rep. Jerry Henry, Rep. Jim Garner, and Sen. Emert in asking for their support on this important issue.

I realize your schedule will become extremely hectic once the session reconvenes, but if possible I would like to ask you for a brief visit at your convenience. I will contact your office in mid-January in hopes of arranging a time for further discussion of this topic. In closing, Best wishes to you and on your appointment as the Judiciary Chairperson.

Respectfully,

Daniel C. Moore

Daniel C. Moore
Client Services Coordinator
Saint Francis Academy, Incorporated
STAY Program

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indicate the educational needs of the juvenile offender. The order may direct that the school conduct an educational needs assessment of the juvenile offender and send a report thereof to the court. The educational needs assessment may include a meeting involving any of the following: (1) The juvenile offender's parents, (2) the juvenile offender's teacher or teachers, (3) the school psychologist, (4) a school special services representative, (5) a representative of the commissioner, (6) the juvenile offender's C.A.S.A., (7) the juvenile offender's foster parents or legal guardian and (8) other persons that the chief administrative officer of the school, or the officer's designee, deems appropriate.

History: L. 1982, ch. 182, § 101; L. 1990, ch. 147, § 9; L. 1991, ch. 113, § 2; L. 1996, ch. 229, § 80; L. 1997, ch. 156, § 62; July 1.

38-1663. Sentencing alternatives. [See Revisor's Note] (a) When a respondent has been adjudged to be a juvenile offender, the judge may select from the following alternatives:

(1) Place the juvenile offender on probation for a fixed period, subject to the terms and conditions the court deems appropriate, including a requirement of making restitution as required by subsection (d).
(2) Place the juvenile offender in the custody of a parent or other suitable person, subject to the terms and conditions the court orders, including a requirement of making restitution as required by subsection (d).
(3) Place the juvenile offender in the custody of a youth residential facility, subject to the terms and conditions the court orders.
(4) Place the juvenile offender in the custody of the commissioner.
(5) Impose any appropriate combination of subsections (a)(1) and (2), subsection (a)(3) or subsection (a)(4) and make other orders directed to the juvenile offender as the court deems appropriate.
(6) Commit the juvenile offender to a sanctions house for a period no longer than seven days. Following such period, the court shall review the placement. The court may continue to recommit the juvenile offender to a sanctions house for a period no longer than seven days followed by a court review. In no event shall such sanctions house commitment exceed 28 consecutive days.
(7) Commit the juvenile offender, if 18 years of age or less than 23 years of age, to the county jail for a period no longer than seven days and only when the juvenile offender has violated probation.
(8) Commit the juvenile offender to a community based program available in such judicial district subject to the terms and conditions the court orders.
(9) Commit the juvenile offender to a juvenile correctional facility if the juvenile offender:

(A) Has previously been adjudged as a juvenile offender under this code; or
(B) has been adjudicated a juvenile offender as a result of having committed an act which, if done by a person 18 years of age or over, would constitute a class A, B or C felony as defined by the Kansas criminal code or, if done on or after July 1, 1993, would constitute an off-grid crime or a nondrug crime ranked in severity level 1 through 5 or a drug crime ranked in severity level 1 through 3.

(10) Place the juvenile offender under a house arrest program administered by the court pursuant to K.S.A. 21-4603b and amendments thereto.

(b) (1) In addition to any other order authorized by this section, the court may order the: (A) Juvenile offender and the parents of the juvenile offender to:

(i) Attend counseling sessions as the court directs; or
(ii) participate in mediation as the court directs. Participants in such mediation may include, but shall not be limited to, the victim, the juvenile offender and the juvenile offender's parents. Mediation shall not be mandatory for the victim;

(B) parents of the juvenile offender to participate in parenting classes; or
(C) juvenile offender to successfully participate in a program of education offered by a local board of education including placement in an

Subsection (a) to be place here, to read: "which are to include orders to secure care facilities for chronic runaway youth"

2-2

State of Kansas
Office of the Attorney General
301 S.W. 10th Avenue, Topeka 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

MAIN PHONE: (785) 296-2215
FAX: 296-6296
TTY: 291-3767

TO: House Judiciary Committee
FROM: Nancy Lindberg, Assistant to the Attorney General
RE: Bill Introductions
DATE: February 3, 1999

As a result of issues presented and discussed at the Child Protection Symposium convened in September, 1997 by Governor Bill Graves, Chief Justice Kay McFarland, SRS Secretary Rochelle Chronister and Attorney General Carla Stovall, I ask for the following bill introductions:

1. **Abuse of a Child and Endangering a Child**

   (a) **Abuse of a Child** - Amend K.S.A. 21-3609 to broaden the range of abusive acts and specific injuries which constitute child abuse and set forth a range of penalties for these acts.

   (b) **Endangering a Child:** Amend K.S.A. 21-3608 to enhance the penalty to a severity level 5 person felony when persons have endangered a child while committing or attempting to commit any felony crime.

2. **Child in Need of Care** - Amend child in need of care provisions which will allow the court to quickly place runaway children in secured care and provide necessary services to them as well as allow SRS more time to arrange for necessary services for children who are in protective custody.

State of Kansas
Office of the Attorney General
301 S.W. 10th Avenue, Topeka 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

MAIN PHONE: (785) 296-2215
FAX: 296-6296
TTY: 291-3767

TO: House Judiciary Committee
FROM: Attorney General Carla Stovall
RE: Bill Introductions
DATE: February 3, 1999

1. Auto Lemon Law - The proposed amendment to the Kansas Lemon Law statute (K.S.A. 50-645) would do the following:

- Allow the consumer the option of either replacement or refund.
- Change the manufacturer's allowance for use by the consumer from the most recent edition of "Your Driving Costs" (which contains items unrelated to actual depreciation) to a reasonable allowance for a 120,000 mile useful life.
- Make the statute part of the Kansas Consumer Protection Act.

2. Amendments to the Kansas Offender Registration Act

- Create a lifetime registration requirement, with no possibility of relief, for offenders convicted (even if it is their first offense) of any "aggravated" offenses. (This change is required by the Pam Lychner Act, to be effective October 2, 1999, but is subject to a possible 2-year extension. Noncompliance with this mandated change will result in a 10% reduction in Byrne Grant Funding, which would be approximately $550,000).
- Require offenders who must register under the KORA to register within 10 days of their arrival in a new county or state. (This is not currently required by Jacob Wetterling, Megan's Law or the Pam Lychner Act, but the Department of Justice is strongly recommending states make this change, and we anticipate that it will soon be mandated).
- Delete the language in K.S.A. 22-4902, which states, "[u]pon such conviction, the court shall certify that the person is an offender subject to the provisions of K.S.A. 22-4901 *et seq.* and amendments thereto and shall include this certification in the order of commitment." This language has created confusion in Shawnee County because judges, based on their interpretation of this language, are relieving offenders of the duty to register upon a finding that no "certification" occurred at the time of conviction and sentencing.
- Include amendments from the 1998 Judiciary Interim Study (SB 407) relating to penalty enhancement, time periods and collection of specimens.

Kansas County & District Attorneys Association

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EXECUTIVE DIRECTOR, JAMES W. CLARK

February 3, 1999

TO: House Judiciary Committee

FROM: Kansas County and District Attorneys Association

RE: Request for Committee Bill

The Kansas County and District Attorneys Association respectfully requests a committee bill that would amend the Juvenile Offender Code by making the language simpler and more precise, especially with reference to the "placement matrix" (GRID). The attached revision to K.S.A. 38-16,129 and the matrix, illustrates these changes.

The KCDAA Legislative Committee recommended 14 legislative proposals for the 1999 Session. The Board of Directors made both a mail and telephone survey of our membership, and this proposal ranked 8th (and not all our members practice in juvenile court).

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K.S.A. 38-16,129. Sentencing juvenile offenders; placements based on offense committed; aftercare term. On and after July 1, 1999: (a) For the purpose of sentencing juvenile offenders, the following placements may be applied by the judge in felony or misdemeanor cases for offenses committed on or after July 1, 1999. If used, the court shall establish a specific term of commitment.

(1) *Violent Offenders.* (A) The violent offender I is defined as an offender adjudicated as a juvenile offender ~~if the~~ *for an* offense *which*, if committed by an adult, would ~~be~~ *constitute* an off-grid felony. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of 60 months and up to a maximum term of the offender reaching the age of 22 years, six months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of the offender reaching the age of 23 years. (B) The violent offender II is defined as an offender adjudicated as a juvenile offender ~~if the~~ *for an* offense *which*, if committed by an adult, would ~~be~~ *constitute* a nondrug level 1, 2 or 3 ~~person~~ felony. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of 24 months and up to a maximum term of the offender reaching the age 22 years, six months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of the offender reaching the of age 23 years.

(2) *Serious Offenders.* (A) The serious offender I is defined as an offender adjudicated as a juvenile offender ~~if the~~ *for an* offense *which*, if committed by an adult, would ~~be~~ *constitute* a nondrug severity level 4, 5 or 6 ~~person~~ felony or a *drug* severity level 1, ~~or~~ 2 *or 3* felony. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of 18 months and up to a maximum term of 36 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 24 months. (B) The serious offender II is defined as an offender adjudicated as a juvenile offender ~~if the~~ *for an* offense *which*, if committed by an adult, would ~~be~~ *constitute* a nondrug severity level 7, 8, 9 or 10 ~~person~~ felony *or a drug severity level 4 felony.* ~~with one prior felony adjudication~~ *with: (1) a criminal history resulting in presumed imprisonment as defined by K.S.A. 21-4701, et seq., and amendments thereto, or (2) a history of two or more "placement failures" as defined in this section.* Offenders in this category may be committed to a juvenile correctional facility for a minimum term of nine months and up to a maximum term of 18 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 24 months. *(C) The serious offender III is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute a nondrug severity level 7, 8, 9 or 10 felony or a drug severity level 4 felony, with a criminal history resulting in presumed probation as defined by K.S.A. 21-4701, et seq., and amendments thereto. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of six months and up to a maximum term of 12 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 12 months.*

~~(3) Chronic Offenders. (A) The chronic offender I, chronic felon is defined as an offender adjudicated as a juvenile offender if the offense, if committed by an adult, would be a: (i) One present nonperson felony adjudication and two prior felony adjudications; or (ii) one present severity level 3 drug felony adjudication and two prior felony adjudications.~~

~~Offenders in this category may be committed to a juvenile correctional facility for a minimum term of six months and up to a maximum term of 18 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 12 months.~~

~~(B) The chronic offender II, escalating felon is defined as an offender adjudicated as a juvenile offender if the offense, if committed by an adult, would be a:~~

~~(i) One present felony adjudication and two prior misdemeanor adjudications;~~

~~(ii) one present felony adjudication and two prior severity level 4 drug adjudications;~~

~~(iii) one present severity level 3 drug felony adjudication and two prior misdemeanor adjudications; or~~

~~(iv) one present severity level 3 drug felony adjudication and two prior severity level 4 drug adjudications.~~

~~Offenders in this category may be committed to a juvenile correctional facility for a minimum term of six months and up to a maximum term of 18 months. The aftercare term for this offender is set at a minimum term of six months and up to a maximum term of 12 months.~~

~~(C) The chronic offender III, escalating misdemeanant is defined as an offender adjudicated as a juvenile offender if the offense, if committed by an adult, would be a:~~

~~(i) One present misdemeanor adjudication and two prior misdemeanor adjudications and two out-of-home placement failures;~~

~~(ii) one present misdemeanor adjudication and two prior severity level 4 drug felony adjudications and two out-of-home placement failures;~~

~~(iii) one present severity level 4 drug felony adjudication and two prior misdemeanor adjudications and two out-of-home placement failures; or~~

~~(iv) one present severity level 4 drug felony adjudication and two prior severity level 4 felony adjudications and two out-of-home placement failures.~~

~~Offenders in this category may be committed to a juvenile correctional facility for a minimum term of three months and up to a maximum term of six months. The aftercare term for this offender is set at a minimum term of three months and up to a maximum term of six months.~~

(3) Misdemeanant Offenders. (A) The misdemeanant offender I is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute a misdemeanor with a history of one or more prior juvenile adjudications or "placement failures" as defined in this section. Offenders in this category may be committed to a juvenile correctional facility for a minimum term of three months and up to a maximum term of six months. The aftercare term for this offender is set at a minimum term of three months and up to a maximum term of six months.

(B) The misdemeanant offender II is defined as an offender adjudicated as a juvenile offender for an offense which, if committed by an adult, would constitute a misdemeanor with no prior history of juvenile adjudications or "placement failures" as defined in this section. Offenders in this category may not be committed to a juvenile correctional facility.

(4) Conditional Release Violators. Conditional release violators may be committed for a minimum term of three months and up to a maximum term of six months. The aftercare term for this offender is set at a minimum term of two months and up to a maximum term of six months, or the maximum term of the original aftercare term, whichever is longer.

(b) As used in this section: (1) "Placement failure" means a juvenile offender has been placed out-of-home on probation in a community placement accredited by the commissioner in a juvenile offender case and the offender has significantly violated the terms of probation in

that case.

(2) "Adjudication" includes out-of-state juvenile adjudications. An out-of-state offense which if done by an adult would constitute the commission of a felony or misdemeanor shall be classified as either a felony or a misdemeanor according to the adjudicating jurisdiction. If an offense which if done by an adult would constitute the commission of a felony is a felony in another state, it will be counted as a felony in Kansas. The state of Kansas shall classify the offense, which if done by an adult would constitute the commission of a felony or misdemeanor, as person or nonperson. In designating such offense as person or nonperson, comparable offenses shall be referred to. If the state of Kansas does not have a comparable offense, the out-of-state adjudication shall be classified as a nonperson offense.

(c) *(1) Except as provided in subsection (c)(2), the court shall consider all* ~~All~~ appropriate community placement options ~~shall have been exhausted~~ before *placing* ~~such juvenile~~ *an* offender ~~shall be placed~~ in a juvenile correctional facility. A court finding shall be made acknowledging that appropriate community placement options have been ~~pursued~~ *considered* and no such option is appropriate.

(2)(A) It is presumed, in the manner provided in K.S.A. 60-414 and amendments thereto, that a juvenile adjudicated as a violent offender I or II, or serious offender I, shall be committed to a juvenile correctional facility for the minimum and maximum terms prescribed for each respective classification.

(B) The burden of proof is on the respondent to rebut the presumption. In the absence of proof that an alternative, community placement option will promote offender reformation without unreasonably threatening community safety interests, the court shall forthwith commit said respondent to a juvenile correctional facility.

(d) The commissioner shall work with the community to provide ongoing support and incentives for the development of additional community placements to ~~ensure that the chronic offender III, escalating misdemeanant sentencing category is not frequently utilized.~~ *minimize the need for court commitments to juvenile correctional facilities.*

KEY

Legend	Statutory Classification	JCF Commitment Range	Aftercare Range
Black Cell	Violent Offender II	24 mos. - Age 22 ½	6 mos. - Age 23
Checker Cell	Serious Offender I	18 - 36 mos.	6 - 24 mos.
Web Cell	Serious Offender II	9 - 18 mos.	6 - 24 mos.
White Cell	Serious Offender III	6 - 12 mos.	6 - 12 mos.

PROPOSED JUVENILE NONDRUG MATRIX

Category	A (3+pf)	B (2pf)	C (1pf-1npf)	D (1pf)	E (3+npf)	F (2npf)	G (1npf)	H (2+m)	I (1m/nr)
I									
II									
III									
IV									
V									
VI									
VII									
VIII									
IX									
X									

PROPOSED JUVENILE DRUG MATRIX

Category	A (3+pf)	B (2pf)	C (1pf-1npf)	D (1pf)	E (3+npf)	F (2npf)	G (1npf)	H (2+m)	I (1m/nr)
I									
II									
III									
IV									

STATE OF KANSAS

DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
Landon State Office Building
900 S.W. Jackson — Suite 400-N
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(785) 296-3317

Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

To: House Judiciary Committee

From: Charles E. Simmons, Secretary

Subject: Request for Bill Introduction

Date: February 3, 1999

I respectfully request that the House Judiciary Committee introduce a bill included in the Department of Corrections' 1999 legislative package. A brief summary of that measure is provided below:

Victim Notification

- This proposal amends K.S.A. 74-7338, K.S.A. 1998 Supp. 22-3717 and 74-7335 to allow notice to victims or their families regarding parole board public comment sessions to be provided by the Department of Corrections in lieu of county and district attorneys for offenders who have committed other than class A and off-grid felony offenses.

- While both county or district attorneys and the Department of Corrections would still be required to provide notice of parole board public comment sessions to victims or the victims' families when an offender has committed a class A or off-grid felony, the parole board would be required to postpone a decision for those offenders only if the Department of Corrections had failed to give timely notice.

- The Department of Corrections would be required to give notice of parole board public comment session for off-grid felonies in the same manner as current law provides for class A felonies.

A bill draft has been prepared by the Revisor of Statutes' office and is being made available to committee staff. (9rs0431). The Department appreciates your consideration of our request that this bill be introduced for consideration during the 1999 session.

CES/TGM/nd

House Judiciary
2-3-99
Attachment 6

JUDICIAL COUNCIL TESTIMONY
ON 1999 HOUSE BILL 2126
HOUSE JUDICIARY SUBCOMMITTEE
FEBRUARY 3, 1999

House Bill 2126 expands the newly authorized office of administrative hearings within the Department of Administration. The office would provide "Presiding Officers" (a/k/a administrative law judges) to conduct administrative hearings of state agencies.

In March 1995, then HB 2213 creating a central hearing office passed the House by a vote of 124-0. The House Judiciary Committee requested that the Judicial Council review the subject matter of HB 2213 and report its recommendations to the 1996 Legislature. The Judicial Council assigned the study to its Administrative Procedure Advisory Committee, which has held hearings on related proposals over the past four years.

The advisory committee and the Judicial Council support the creation of an office of administrative hearings and have proposed the basic structure of what is now HB 2126.

Most, but not all, adjudicative proceedings of state agencies are conducted in accordance with the Kansas Administrative Procedure Act (KAPA). Often, the agency head (secretary, board, commission, etc.) designates someone to serve as presiding officer for an administrative hearing. Typically, such presiding officer is a regular employee of the state agency or a private attorney hired by the agency on a contract basis. Occasionally, the presiding officer is furnished by another state agency, such as the Department of Administration.

If the presiding officer is not the agency head, the presiding officer renders an initial order. An initial order is subject to review by the agency head on the agency head's own motion or upon petition by any party.

The basic concept of the bill is that full-time attorney hearing officers from affected agencies would be transferred to the new office of administrative hearings within the Department of Administration. These state agencies would be required to use administrative law judges (ALJs) from the central office to serve as presiding officers for their administrative hearings under KAPA.

The Judicial Council supports the creation of a central office of administrative hearings, and recommends the office of administrative hearings be staffed and funded by transfer of appropriate personnel and associated budget from the affected agencies.

THE ADMINISTRATIVE PROCEDURE ADVISORY COMMITTEE

The Administrative Procedure Advisory Committee of the Judicial Council is comprised of state agency lawyers and attorneys who regularly represent private parties before state agencies. The advisory committee was largely responsible for the drafting of the Kansas Administrative Procedure Act (KAPA; K.S.A. 77-501 et seq.) and the Act for Judicial Review and Civil Enforcement of agency actions (KJRA; K.S.A. 77-601 et seq.) These acts were adopted by the Legislature in 1984

and have proved to work well, both for the public and state agencies. KAPA and KJRA generally follow the uniform law commissioners 1981 model state administrative procedure act with a number of modifications appropriate for Kansas. The main feature of the model act which was not adopted in 1984 related to an office of administrative hearings. Although a majority of the members of the advisory committee have long favored creation of an office of administrative hearings, this issue was not submitted to the 1984 Legislature due to the concern that debate over a central office might impede adoption of KAPA and KJRA. The proposed bill generally follows the relevant provision in the 1981 model state act.

REASONS FOR CENTRAL OFFICE

The basic purpose of a central office of administrative hearings ". . .is to give ALJs a certain amount of independence from agencies over whose proceedings they preside." Such independence should promote fairness in the hearing process and a perception of greater fairness on the part of parties in state agency proceedings. A central office should also reduce concerns of improper ex parte contacts.

Over 20 states have adopted some form of a central office of ALJs. Their experience indicates a central office can achieve certain cost efficiencies through sharing of resources and a more even distribution of the workload, which can fluctuate within a given agency. A central office can result in better evaluation of ALJ performance and enhance such performance through such matters as cross-training and peer consultation. There is also the potential that use of independent ALJs will cause agencies to more closely evaluate cases, thus promoting settlement and possibly reducing the number of hearings. A central office would likely promote consistency among agency proceedings and a coherent level of policy on a number of issues in common to state agencies.

In summary, change to a central independent hearing office will promote fairness, and the perception of fairness, in the execution of the many powers of state government over its people.

AGENCIES AFFECTED

The Judicial Council originally recommended in 1996 the mandatory use of central office ALJs. A majority of the members of the advisory committee prefer broad jurisdiction for the central office of administrative hearings.

Initially, the advisory committee contacted virtually every state agency with hearings under KAPA in an attempt to determine such agencies' hearing costs and practices with regard to presiding officers. A central office needs a sufficient caseload to achieve the benefits it offers in terms of management and efficiency. In addition, use of central office ALJs will be an option for other state agencies. With a sufficient caseload, the central office should be able to provide a quality service to other agencies on an optional basis at a reasonable cost.

Some agencies expressed concern that a central office will result in loss of agency "expertise." To the extent this concern relates to inability to reflect expertise through policy implementation, it is reduced by the recommended authority of the agency head to review orders

rendered by ALJs. To the extent the concern relates to loss of expertise by the hearing officer or ALJ, the personnel transferred to the central office will bring with them the special knowledge of each agency's types of cases, regulations and statutes and a central office offers the opportunity to impart this specialized knowledge to other ALJs through cross-training. In the opinion of the advisory committee, it is not unfair to place some burden on the agency to make known to the ALJ and indeed, to all parties, during the hearing process what the agency considers to be relevant matters of agency expertise or policy. Concerns with expertise of the ALJ should be balanced against concerns with the impartiality of the ALJ.

SUMMARY OF HB 2126

Effective July 1, 1998, the Office of Administrative Hearings (OAH) was created and placed within the Department of Administration. The Office of Administrative Hearings is charged with the responsibility of conducting all adjudicative hearings for SRS, and also may conduct adjudicative hearings for other governmental entities. Originally the OAH was staffed by transferring all the staff of the SRS Administrative Hearings Section to OAH.

1999 HB 2126 will expand the responsibilities of the Office of Administrative Hearings over a period of five years. Each year, one or two cabinet level agencies will be brought under the OAH. In addition to the cabinet level agencies, a group of small boards or commissions will be added each year. The bill provides that all presiding officers in the administrative hearings section of an agency and their support staff shall be transferred to the Office of Administrative Hearings in the year their hearing function is transferred to the OAH.

The bill provides that presiding officers must be either the agency head; one or more members of the agency head, if the agency head is a board or commission; or a presiding officer assigned by the OAH.

In FY 2003, the fifth year of the proposed plan, the bill establishes the Office of Administrative Hearings as an independent agency within the executive branch of government.

In addition to the expansion of the Office of Administrative Hearings, HB 2126 makes a number of amendments to K.S.A. 75-37,121. They are as follows:

a. Uses the term "presiding officer" in lieu of "administrative law judge."
b. Clarifies that the Office of Administrative Hearings is not required to hire court reporters as part of its staff.
c. Gives the Secretary permissive authority to adopt regulations to implement the section.
d. Eliminates a requirement to adopt a separate set of personnel regulations focused solely on presiding officers.
e. Permits non-attorneys who are supervised directly by an attorney to act as

presiding officers.

SB 2126 also amends 75-37,121 to clarify that the director of the OAH may furnish presiding officers on a contract basis to any governmental entity whether or not such governmental entity is subject to KAPA, and amends 77-505 to clarify language relating to settlement and to authorize the use of alternative dispute resolution.

The various agencies will come under the Office of Administrative Hearings as follows:

Year 1 -FY 2000 (beginning July 1, 1999)

Department of Social and Rehabilitation Services
Juvenile Justice Authority
Department of Aging
State Board of Pharmacy
Board of Nursing
Kansas Board of Examiners in Fitting and Dispensing of Hearing Aids
Board of Examiners in Optometry
Emergency Medical Services Board
Kansas Dental Board
Emergency Medical Services Council
Kansas Human Rights Commission

Year 2 - FY 2001 (beginning July 1, 2000)

Kansas Department of Wildlife and Parks
Department of Revenue
State Board of Veterinary Examiners
Behavioral Sciences Regulatory Board
Kansas Real Estate Commission
Real Estate Appraisal Board
State Board of Mortuary Arts
State Board of Cosmetology
Kansas Board of Barbering
State Board of Technical Professions
State Board of Tax Appeals

YEAR 3 - FY 2002 (beginning July 1, 2001)

Department of Health and Environment
State Board of Healing Arts
Kansas Lottery
Kansas Racing Commission
Kansas State Banking Board
Consumer Credit Commissioner
State Department of Credit Unions
Office of the Securities Commissioner of Kansas
Kansas Public Employees Retirement System
Board of Adult Care Home Administrators
State Treasurer
Board of Accountancy
Pooled Money Investment Board

YEAR 4 - FY 2003 (beginning July 1, 2002)

Department of Agriculture
Department of Human Rights
State Corporation Commission
State Conservation Commission
Kansas Water Office
Agriculture Labor Relations Board
Kansas Animal Health Department
Kansas State Grain Inspection Department
Kansas Wheat Commission
Citizens' Utility Rate Payor Board

YEAR 5 - FY 2003 (beginning July 1, 2003)

All other KAPA Hearings including:
Department of Administration
State Fire Marshal
Secretary of State
Kansas Insurance Department
Health Care Stabilization Fund
Kansas Commission on Governmental Standards and Conduct
Kansas Bureau of Investigation

Respectfully submitted,
David L. Ryan, Chair
Administrative Law Committee
Judicial Council

KANSAS BAR ASSOCIATION

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Legislative Testimony

TO: Members, House Judiciary Committee

FROM: Ron Smith,
General Counsel, KBA

SUBJ: HB 2126

DATE: February 3, 1999

KBA supports this legislation.

The perception of justice often is as important as justice itself. This is especially true when the government is both a party to the dispute and the decision-maker.

The original Kansas Administrative Procedures Act was premised on the federal act. The original KAPA contained a provision to create a single office that provided the administrative law judges instead of such judges being provided by the agencies themselves. That original concept was not adopted in the final KAPA in the early 1980s. While this bill takes a few years to phase in that concept, we think it is desirable and support this Judicial Council bill.

Thank you.

1999 Kansas Legislative Session

Testimony Presented To
The House Judiciary Committee
by
The Kansas Department of Health and Environment
Concerning House Bill 2126

I am pleased to be able to provide testimony to the Committee on HB 2126. Today I would like to talk briefly about the background of the bill, reasons why KDHE opposes the bill, a discussion of current agency practice and law and a summary and recommendations.

Background

House Bill 2126 (HB 2126) would expand the Office of Administrative Hearings within the Department of Administration (DOA) to include all state agencies by July 1, 2003. As part of comprehensive child support legislation passed very late in the 1998 Legislative Session, the administrative hearings unit within SRS was moved from SRS to the DOA. However, previous attempts to create an administrative court for all state agencies failed in 1995 and 1997. Passage of the SRS bill in 1998 was accomplished through a floor amendment without public hearings.

Under the provisions of HB 2126, the Office of Administrative Hearings within the DOA would eventually become independent of that agency on July 1, 2003. It would be headed by a director appointed by the governor. From now until 2003, state agencies would donate their individual hearings units to the central office on a phased-in schedule, with KDHE's administrative appeals section being merged on July 1, 2001.

Currently, KDHE has an administrative appeals section composed of 1.6 FTE attorney hearing officers and 1 FTE non- attorney coordinator. The two hearing officers are routinely assigned to cases within their areas of specialization, and the coordinator provides case docketing and all other office support services for the section. The section is supervised by the Secretary, and is completely separate from program bureaus, the legal office, and the General Counsel.

Discussion

Current Law and Agency Practice

It has been a longstanding principle of administrative law that agencies may make adjudications involving individual private parties even though those same agencies were responsible for proposing adverse actions in the first place. Courts have consistently found that it is not a violation of due process for an agency to investigate, prosecute, and adjudicate alleged misconduct on the part of private individuals as long as the parties are afforded a hearing before an impartial finder of fact. Pork Motel, Corp. v. Kansas Dept. of Health and Environment, 234 Kan. 374, 673 P. 2d 1126 (1983). Practically speaking, this has traditionally meant that individuals serving as hearing officers (referred to as presiding officers under Kansas law) could

not be involved in the investigation or prosecution of individual enforcement actions.

Under the Kansas Administrative Procedure Act, any person serving as a presiding officer is subject to disqualification for administrative bias, prejudice, or interest. KSA 77-514(b) Moreover, presiding officers are prohibited from communicating, either directly or indirectly, with any party or person having an interest in the outcome of individual proceedings unless all parties are given an opportunity to participate in the discussion. KSA 77-525 Both of these provisions are designed to ensure that presiding officers, although agency employees, are completely separated from program staff and attorneys responsible for agency enforcement actions.

On July 1, 1993, KDHE established a separate and distinct Administrative Appeals Section (AAS) to better ensure that private parties are afforded impartial hearings and that hearings can be conducted as efficiently as possible. AAS staff have no other responsibilities within the agency. Presiding officers confer with parties only when both are available to participate in discussions, or when one of the parties has waived an appearance (usually in response to settlement negotiations then pending between the parties). To assist appellants in understanding the hearing process, presiding officers discuss procedural issues with the parties during the prehearing conference, and issue written prehearing orders following the completion of those conferences.

Reasons Offered by Those Who Support the Creation of a Central Hearings Pool

Several reasons have been offered by proponents for the creation of a central hearings unit. Those reasons have included saving money, promoting fairness, reducing *ex parte* contacts, increasing the number of settlements, and improving supervision of presiding officers. While all of these are important considerations which deserve careful thought, it is still uncertain whether the creation of a central pool will further their accomplishment. Moreover, the assertion that opposition is directed solely at "protecting turf" must also be addressed by parties favoring current law.

Reasons for Opposing the Creation of a Central Hearings Pool

1. Purpose of administrative law. No matter how it is presented, a central pool is still an "administrative court." However, administrative law is **agency law**. It exists because of the need to regulate a complex society where individuals live in close quarters with one another. The individual first deals with the agency, and then goes to court if he believes that the agency has been unfair. An administrative court, independent of the agency, does not fit the purpose for which agencies were created in the first place -- to regulate complex areas subject to judicial review. Severing the hearing process from the agency changes its nature from a balanced interpreter of legislative intent to a solely prosecutorial body.

2. Increased bureaucracy. Unless the new administrative court is afforded appellate jurisdiction, thus relieving district courts from reviewing agency decisions, a new bureaucracy will be established to do what is already being done without it. In addition, agency staff will undoubtedly be away

from their offices more in traveling to a centralized location than they would to a hearing room located close to their offices. Moreover, hearing officers working for only one agency are generally very accessible to parties for unplanned telephone conferences concerning discovery, settlement, and other prehearing matters. Counsel who frequently appear before a single agency, both on behalf of the agency and private parties, understand how to work most efficiently with presiding officers in settling cases or getting them to hearing. While some of this ability to work efficiently within an agency's current structure might be reestablished in a central unit, it would take time and unnecessary risk.

3. Benefits of specialization. Every agency benefits from the specialization of its hearing officers. KDHE's hearing officers have both had previous experience as staff attorneys and program directors in state agencies. They were also familiar with health and environmental law before they became hearing officers, and have acquired more understanding of their respective areas since 1993. While that specialization might be carried over to a central administrative court, all or some of it might be lost through reorganization. The ability to concentrate in a specialized area provides efficiencies which outweigh advantages gained from reassigning hearing officers to new areas.

4. Increased cost. KDHE meets its statutory hearing responsibilities with 2.6 FTE staff. Almost all hearings are held in Topeka, either in person or by telephone. Transcripts are never ordered by presiding officers before issuing initial orders, and court reporters are never employed. It has not been shown that a central hearings unit could perform the agency's work more competently, fairly, or efficiently. While presiding officers within KDHE are usually able to stay current with their work, this does not mean that their time is "idle" and should be spent on work with other agencies. When cases settle near the hearing date (or sometimes at hearing), presiding officers use the released time to prepare closure documents, conduct research on other pending cases, and read in the areas of law related to their assignments.

5. Budgetary Uncertainty.Through June 30, 2002, presiding officers from the office of administrative hearings will be employed through contracts with the requesting agency. Although the DOA may adopt regulations for fees to charge the requesting agency, the individual agency retains the ability to evaluate, through the voluntary contracting provision, the cost/benefit ratio of its administrative hearing function. This analysis provides predictability of the cost of administrative appeals to KDHE.

However subsequent to the proposed mandatory inclusion of KDHE effective, July 1, 2001, Section 36(j) transfers the administrative appeals section of KDHE to the office of administrative hearings within the DOA. Thereafter, under Section 36(g), the secretary of administration is authorized to adopt rules and regulations to establish fees to charge a state agency for the use of a presiding officer. KDHE at this point will have neither an option to use its own employees (other than the secretary) as presiding officers, nor the ability to determine the amount it is charged for such use.

KDHE is unique among governmental agencies as it has extremely broad and diverse statutory authority. Additionally the areas of health and environment are continually changing insofar as the addition of entire

new programs as well as components supplementing existing programs, proposed both from within and without the agency. From a budgetary perspective, KDHE has only a historical basis for estimating the number and length of administrative appeals; it has neither the ability nor the capacity to calculate, for budgetary estimates, the number of administrative appeals that a new program, or additional components to existing programs, could generate. Such evaluations are not routinely addressed in fiscal impact statements.

6. Reality of independent judgment. No presiding officer has ever been inappropriately contacted or pressured by an agency head, program director, or attorney to decide a case in their favor. Both agencies and private parties will continue to be disappointed by individual decisions if an administrative court is created. The Kansas Administrative Procedure Act is capable of dealing with any inappropriate *ex parte* contacts attempted by **either** party.

7. Encouraging settlement. Among the most significant factors in encouraging settlement are the attitudes of the parties, the agency's ability to conduct hearings, and the accessibility of hearing officers when special rulings are needed. Determining the resources needed to meet an agency's caseload may be easier for an agency head or chief presiding officer than for a multi-agency director less familiar with how the agency operates. Assigning a caseload which is too heavy for the complexities involved, just to even out the caseload with other hearing officers, could have harmful effects on the parties. The inability to obtain a discovery ruling, a timely continuance, or an informal conference with the presiding officer may cause the parties unnecessary work or a missed settlement opportunity. While the director of a central unit can be expected to take complexities into consideration when making assignments, there will be increased pressure to even out the caseloads. An agency which is accustomed to quick and informal access to hearing officers may find that access significantly diminished. The losers will be both the agency and the private parties it regulates.

SUMMARY AND RECOMMENDATIONS

The manner in which an agency conducts its administrative hearings is an important indicator of how seriously it considers its mission. Every hearing is a window on agency operations, a window through which the public, the regulated industry, and agency staff have the right to gaze and question. Every agency is responsible for ensuring that hearings are impartial, timely, and professionally conducted. Each agency must provide sufficient resources to meet its judicial obligations. As stated previously, severing the hearing process from the agency changes its nature from a balanced interpreter of legislative intent to a solely prosecutorial body. With no more need to conduct impartial hearings, an agency may be less likely to take a balanced view of disputed issues. This it has always been expected to do against the backdrop of judicial review.

While there may be reasons to support the concept of a centralized hearings unit, they are less attractive when the reality of Kansas administrative law is reviewed. The Kansas Administrative Procedure Act already provides a remedy against *ex parte* contacts, and neither the Secretary nor I are aware of any

effort to intimidate hearing officers in this state. Hearings in KDHE are conducted with a minimum of staff, and it is expected that the same is being accomplished in other agencies as well. Where further savings have been justified, vacant positions have not been filled, the practice of ordering transcripts has been eliminated, and travel has been discouraged. The creation of a new bureaucracy is usually discouraged in this state unless a compelling need can be established. Therefore, KDHE opposes mandatory inclusion within the office of administrative hearings as described in HB 2126.

Testimony presented by:

Linda Fund
Assistant Secretary and General Counsel
Kansas Department of Health and Environment
February 3, 1999

TESTIMONY BEFORE THE
HOUSE JUDICIARY COMMITTEE
By
Dan Stanley, Secretary of Administration
Regarding HB 2126

February 3, 1999

I am appearing today to testify on behalf of the Department of Administration in opposition to HB 2126.

For a number of years, this Committee has considered bills that, in various forms, would create or expand the scope of a centralized hearing office. The Department of Administration has consistently expressed grave concerns about the effects of such proposals with respect to both their cost and the increased complexity of managing administrative hearings that would result.

With the passage of K.S.A. 75-37,121, the Department of Social and Rehabilitation Services (SRS), Administrative Hearings Section was transferred on July 1, 1998, to a newly created Office of Administrative Hearings within the Department of Administration. HB 2126 would expand the scope of responsibilities for the Office of Administrative Hearings beyond SRS administrative hearings. After a five-year phase-in period, the presiding officer used by state agencies for all hearings that are subject to KAPA would be limited to the agency head, one or more members of the agency head (if the agency head is a board or commission), or a presiding officer assigned by the Office of Administrative Hearings. Therefore, the Office of Administrative Hearings would become responsible for conducting all hearings held under KAPA in which the agency head or one or more of its members did not personally act as presiding officer. In addition, the Office would be required to provide a presiding officer for non-KAPA hearings upon the request of any state agency. As agencies are brought under the law over a five-year period, "personnel in the administrative hearings section" of the affected agencies and "support personnel for such presiding officers" would be transferred to the Office of Administrative Hearings. Effective July 1, 2003, the Office of Administrative Hearings would be converted into an independent, free-standing agency.

Implementation Issues

Number of Affected Agencies. The transition of the SRS hearing section to the Department of Administration has been very successful. However, preparation for the transfer of the SRS Administrative Hearings Section to the Department of Administration involved numerous issues and discussions throughout the year between enactment of the legislation and its effective date. Significant amounts of planning and coordination were required even though the transfer was a straightforward shift of one organizational unit as a whole and did not involve any physical relocation of staff or integration of presiding officers and support staff from other state agencies. The scope of the work performed by the SRS Administrative Hearings Section and the size of its caseload did not change when the hearing section transferred; therefore, there were no uncertainties about the size of the staff needed. Moreover, there was no need to develop new funding sources and billing systems since the Office is funded solely through an interagency agreement with SRS.

In contrast, implementation of HB 2126 would be fraught with complex factors that were not issues

in the creation of the Office of Administrative Hearings. Beginning on July 1, 1999 and each fiscal year thereafter for five years, HB 2126 would dramatically and rapidly expand the responsibilities of the new Office of Administrative Hearings to include all of the approximately 40 state agencies that conduct KAPA hearings. At the end of that time, the Office would become a free-standing, independent state agency, responsible for all of the administrative support functions currently provided by the Department of Administration. Consequently, implementation of HB 2126 would be very complex, complicated, and time-consuming. Numerous issues would need to be identified and resolved relating to staffing, physical location, expanded facilities including hearing rooms and video conferencing, funding, billing, docketing and prioritizing cases, developing and preserving the presiding officers' subject expertise, and staffing an expanded office. At this time, there is virtually no information about the resources currently required to handle hearings in other agencies, which greatly hinders the Department's ability to develop reasonable assumptions about caseloads, staffing, needed facilities, and costs. As a result, the Office of Administrative Hearings would grapple with these difficulties anew each year for five years, creating an environment of constant uncertainty and the inevitable turmoil that accompanies transitions and major organizational change.

Ambiguities in Personnel Transfer Language. HB 2126 states that "personnel in the *administrative hearings section* of all agencies and support personnel for such presiding officers" would be transferred to the Office of Administrative Hearings (emphasis added). However, almost all of the state agencies responsible for one or more types of KAPA hearings do not have an "administrative hearings section." Therefore, it appears that the vast majority of agencies that hold KAPA hearings will not have any staff transferred to the Office of Administrative Hearings under HB 2126. Even if the bill were amended to provide for the transfer of all full-time presiding officers and their support personnel, there are many instances in which presiding officers are handling multiple functions within their agencies and, therefore, would not transfer under HB 2126. Therefore, the Office of Administrative Hearings would clearly need to hire new staff in addition to those transferred, and the number of FTE devoted to administrative hearings statewide would inevitably rise.

Office Consolidation. Upon its transfer to the Department of Administration, the SRS Administrative Hearings Section remained in its existing office space and will be able to do so indefinitely under the current law. However, HB 2126 creates an immediate need to establish a consolidated office, relocate the transferred staff, and make provisions for new positions. This consolidation would entail many new expenses, including moving costs; additional space rental charges; higher space rental rates; development of a compatible, unified information system, including new software and hardware; development of video conferencing capabilities to handle hearings that are currently assigned to contract attorneys or state agency presiding officers in the locale of the parties; and purchase of equipment or services currently shared with other programs in the transferring agencies. (HB 2126 does not address funding or the transfer of equipment and supplies.) However, the large number of affected agencies, as well as uncertainty about staffing requirements and the number of positions that would actually be transferred under HB 2126, would greatly complicate planning for creation of a single, unified office.

Billing and Funding. Because an entire organizational unit of SRS transferred to the Department of Administration at the beginning of FY 1999, the budgeting and funding for transfer of the SRS Administrative Hearings Section was relatively straightforward. A budget for the Administrative Hearings Section was already developed, and virtually all hearings conducted by the office during FY 1999 are on behalf of SRS. However, under HB 2126 it would be necessary to develop a new system of

funding and billing for presiding officers' services that takes into account such issues as complexity and length of hearings; the degree of expertise and specialized knowledge required of the presiding officer; the location of the parties; appropriate billing for cases that are dismissed, withdrawn, or settled prior to a formal hearing; projected caseloads; indirect costs; and cash flow requirements. This task is even more complex because state agencies can still hold their own KAPA hearings if the state agency head (or a board member) acts as the presiding officer. Consequently, the number of cases or hearings actually assigned to the Office of Administrative Hearings would depend upon decisions made by the 40 agencies affected.

Effect on parties to hearings. Under HB 2126, each party will be required to deal with two agencies and would need guidance as to which agency should receive communications at various points in the hearing process. Currently, each agency can tailor the hearing process to the needs of the individuals involved. However, the standardized procedures associated with the centralized hearing office might make it more difficult for appellants to represent themselves and might increase the need for applicants to obtain legal counsel. Therefore, with the use of a centralized hearing office, procedures might become more formal and complex, resulting in needless costs.

Conclusion

Although over the past five or six years there has been much discussion about the concept of a central hearing office, the proponents of the concept have failed to adequately acknowledge or address these implementation issues. The issue of funding that would be required for the Office has been overlooked. No serious attempts have been made to gather data about the real numbers involved in an expansion of the scope of the Office, either in terms of increased staff or increased costs to the state agencies using the services of the Office. The FY '99 budget for the Office of Administrative Hearings, which provides funding for sufficient staff to handle SRS hearings, is $783,185. While a realistic estimate of the long-term fiscal impact of HB 2126 cannot be calculated with data currently available, it is clear that the budget for the Office would ultimately be measured in millions of dollars, rather than in thousands of dollars.

The Department of Administration has worked very hard to provide a solid administrative framework for those offices and functions that have been transferred to the Department in recent years to ensure that quality services are provided to the citizens of Kansas. However, our customers are not benefitted by organizational changes that are implemented without careful consideration of their effects. Certainly, it is important that parties to administrative hearings feel that the matter will be heard by a neutral and objective presiding officer. However, it is equally important that the hearing process not be impaired by the disruption and turmoil that are likely to result from five years of continual expansion or by the loss of informality and flexibility often available in agency-administered hearings. I remain firmly convinced that the advantages of expanding the scope of the Office of Administrative Hearings do not outweigh the disadvantages of increasing the costs, complexity, and formality of the hearing process. I am convinced that the primary result of this bill would be to needlessly create additional bureaucracy and to grow big government. For these reasons, I respectfully oppose HB 2126.

Thank you for this opportunity to testify regarding HB 2126. I would be happy to stand for questions.

TESTIMONY ON HB 2126
BEFORE THE HOUSE JUDICIARY COMMITTEE

PRESENTED BY SUSAN B. CUNNINGHAM, ASSISTANT GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
FEBRUARY 3, 1999

I. Introduction

The Kansas Corporation Commission (KCC or Commission) requests that it be specifically exempted as an agency from the requirements of HB 2126.

II. KAPA Hearings - K.S.A. 77-513-532; HB 2126, Sect. 37(h)

Section 37(h) of HB 2126 has a significant effect upon the Commission's ability to conduct hearings efficiently and effectively. Nearly all Commission hearings are subject to KAPA, and occasionally the Commission appoints a member of its staff to serve as hearing examiner for prehearing conferences, discovery disputes, oral arguments and other matters presented to the Commission through the hearing process.

Hearings before the Commission involve highly technical issues regarding telecommunications, electric, gas and water utilities and conservation matters. It is not reasonable or efficient to assign an individual to preside over these hearings who has little or no knowledge about the underlying subject matter. Because of the very specialized and highly technical nature of the matters coming before the Commission, a presiding officer at a Commission hearing must understand the industries regulated by the Commission. Someone lacking a good understanding of the technical issues involved in a hearing would be unable to function as the presiding officer for the hearing.

While the Commission maintains that a hearing examiner must have a requisite degree of knowledge and technical expertise about the regulation of public utilities in order to perform competently and efficiently, the Commission also recognizes the need to balance such technical expertise with objectivity and independence. To that end, the Commission's legal staff has evolved over the past few years to include the position of Advisory Counsel whose role it is to assist the Commissioners in their adjudicative function, which includes presiding over hearings. Advisory Counsel are not advocates, which ensures that as a trier of fact they are a disinterested entity, yet they are full-time Commission employees who are exposed on a daily basis to utility regulation and nothing else.

In addition to making decisions on highly technical issues, the Commission is also responsible for considering politically sensitive issues. In that regard, it is the Commission's position that those who make politically sensitive policy decisions ought to be the ones who are politically responsible for outcomes.

Exempting the KCC from certain KAPA provisions is not unprecedented. KAPA already has special provisions for the KCC, recognizing that generalized, one-size-fits-all rules of procedure do not always work well for an agency which handles very technical issues. For example, K.S.A. 77-526(I) states that our hearing officers will not render initial orders, but only make recommendations to the Commissioners. As a result, applicants are not required to appeal to the Commissioners if they feel aggrieved by a decision of a hearing officer. Rather, the Commissioners themselves make the initial order, as well as any order on reconsideration.

III. Motor Carrier Certification Hearings - K.S.A. 66-1,117; HB 2126, Sect. 28

The KCC schedules motor carrier certification hearings on a bi-weekly basis; however, often times the parties stipulate to the evidence at issue and hearings are then canceled. When a hearing is held, an available Commission attorney is assigned to preside as hearing officer. This involves reviewing the prefiled testimony of applicants, presiding at the actual hearing, questioning applicants as deemed necessary and making recommendations to the Commissioners regarding applications. Although the issues are specialized, involving matters concerning the trucking industry, federal motor carrier safety regulations and Commission motor carrier laws and regulations are not so complicated that an outside hearing examiner could not learn them over a period of time. However, it should be noted that the present procedure used by the Commission has worked efficiently for many years, and the Commission has received no complaints from applicants or their attorneys regarding the Commission's appointment of staff attorneys as hearing examiners in the certification procedure.

HB 2126, Section 28, amends the Commission's motor carrier procedure to allow the Commission, at its option, to use a presiding officer from the Office of Administrative Hearings. From the Commission's perspective, the operative word in reading K.S.A. 66-1,117 is "may." Because of the somewhat specialized nature of the motor carrier certification hearings and because of the frequency of stipulated agreements which result in no need for a hearing, it is the Commission's position that its present procedure appears to be more efficient and cost effective. As a result, it is the Commission's preference that the statute remain unchanged enabling it to explicitly utilize its own staff in motor carrier certification hearings. Its preference notwithstanding, the Commission does not object to the permissive utilization of presiding officers from the Department of Administrative Hearings.

IV. Summary

The Commission respectfully requests that it be exempted as an agency from HB 2126. The Legislature has previously exempted the Commission from the requirement that presiding officers be appointed from the Department of Administrative Hearings. The Commission is hopeful that the Legislature will continue to understand the agency's need for the appointment of hearing examiners who are able to effectively serve in that capacity because of their unique expertise and knowledge of the technical subject matter which the Commission must address in its hearings.

TESTIMONY BEFORE THE
HOUSE JUDICIARY COMMITTEE
H.B. 2126
FEBRUARY 3, 1999
BY
DERENDA J. MITCHELL
ASSISTANT GENERAL COUNSEL, KANSAS DEPARTMENT OF AGRICULTURE

My name is Derenda J. Mitchell, and I am the Assistant General Counsel for the Kansas Department of Agriculture. I appear, on behalf of the Department, **in opposition** to this bill. The concerns that the Kansas Department of Agriculture has regarding this bill focus on the issues of accountability, specialized need, and expense.

Currently, KDA contracts with two local attorneys to provide hearing officer services. We are able to prioritize which cases should be heard first due to either a public health reason or a precedent setting issue and establish goals for the completion of the hearing process so that the department and public may have a reasonable conclusion to the hearing process. Under the provisions of this bill, even if we had a public health or safety issue, it is not within Secretary Devine's authority to establish time frames for performance. Timely resolution and the ability to prioritize issues are in the best interest of the department and the public. KDA has worked diligently to streamline our internal processes to accommodate prioritization and timeliness in decision-making. This bill could risk all of our efforts, and even frustrate the process.

With regard to specialized needs, we, like most of the other agencies and departments, have unique and specialized areas of regulation. The legal and technical issues surrounding the water and pesticides programs, for example, are complex issues and cannot be learned at a

moment's notice. Another example of the specialization under which we operate is the chemigation program. Oversight of nutrient management, not unlike other areas we regulate, is highly scientific and technical. Therefore, if this bill were to pass, the central hearing officer pool would either have to designate a certain staff person to handle specific topics, or assign cases based on work load. This latter method might be the most efficient approach, but then we would be confronted with more than one hearing officer having to learn various areas of our law and regulations and potentially arriving at inconsistent conclusions. The public is not well-served if inconsistency is the result. If the first method were followed, and we were assigned a hearing officer, work loads might be overwhelming or at other times very lean. Either approach would not be efficient management of the state's resources. The state loses the ability to tailor its resources to meet the public's needs.

Furthermore, the latter system requires KDA to pay for each hearing officer's learning curve. The bill states that we are contracting for presiding officer services. Normal contract principles require that each party must agree to the terms. However, this bill prohibits the agency from being able to reject a hearing officer. (See page 38, lines 8-10)

Additionally, we are concerned that H.B. 2126 interferes with a Department's ability to regulate matters of policy. The provisions of H.B. 2126, for example, relating to recommendations regarding dairy regulations, and to the water transfer act, interfere with the Department's ability to adhere to a comprehensive regulatory approach. As such, H.B. 2126 arguably arbitrarily "splits the baby" of regulatory functions between executive policy-making responsibilities and judicial tasks. We contend this is neither practical, nor appropriate to the business of governance.

We are also very concerned about section 51 dealing with the water transfer act (see page 53, lines 25-31) in which the bill strikes the statutorily created qualifications for a presiding officer. The qualifications and knowledge-base regarding water law and administrative law were items that were extensively debated and discussed by the legislature when the water transfer act was adopted and should not be disregarded so easily by the legislation. The current act allows the water transfer hearing panel to select the hearing officer they will ultimately rely on to make their decision. The bill would eliminate this choice.

Another grave concern of the Department's is Section 21 of the bill. It provides that the secretary of agriculture or a "presiding officer from the office of administrative hearings shall conduct" rule and regulation hearings to define the standards of identity and quality for frozen dairy desserts. Surely, the legislature does not intend to give the administrative hearing pool created by H.B. 2126 responsibility for holding hearings for adoption of rules and regulations. By the time of the public hearing on a rule or regulation, considerable effort has been undertaken by the Department to determine the public interest, to evaluate the economic and, if appropriate, the environmental impact of a proposal, and to consult the legislature via the Joint Committee on Rules and Regulations. To interrupt the measured statutory process by requiring that a presiding officer conduct the hearings and make the recommendations, when that presiding officer likely has no familiarity with the details of the regulations or what has transpired in leading up to the proposed regulations, only confuses and interrupts the process. We frankly wonder why rules and regulations for one program in our department are singled out by this proposal. Please delete this section from the bill before passing it out of committee.

In addition, Section 22 of the bill, by deleting the phrase "state board of agriculture" and

12-3

12-4

you oppose the passage of H.B. 2126. I would be glad to stand for any questions regarding this issue.

Kansas State Board of Nursing

Landon State Office Building
900 S.W. Jackson, Rm. 551 S
Topeka, Kansas 66612-1230
785-296-4929
FAX 785-296-3929

Patsy L. Johnson, R.N., M.N.
Executive Administrator
785-296-5752
ksbn0@ink.org

To: Representative Michael O'Neal Chairperson
and Members of the Judiciary Committee

From: Patsy L. Johnson, M.N., A.R.N.P.
Executive Administrator
Kansas State Board of Nursing

Date: February 2, 1999

Re: HB 2126

Thank you for allowing me to testify on HB 2126 for the Board of Nursing. The Board opposes this bill for the following reasons:

- Problem with availability of hearing officers. Currently we can project needed time and the hearing officer time is scheduled in advance. If he changes the schedule, then we have the flexibility in finding someone else. May need more than 200 hours of hearing officer time per year.

- Less consistency since another agency will be assigning the hearing officers. Probably several different hearing officers for assignment.

- Need a hearing officer with working knowledge and education in health care. Question if that type of hearing officer will be available.

Janette Pucci, R.N., M.S.N.
Education Specialist
296-3782
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Education Specialist
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Diane Glyn
Practice
296-

House Judiciary
2-3-99
Attachment 13

- Cost the Board more.

  With less consistency and lack of health care knowledge, then more cases will go to the full Board for review. Will cost more for Board members to be here to review cases. Will also use more of the Board's staff time for reviews.

  The Board members are allowed to apply their basic nursing knowledge in decision making. Need few experts. A hearing officer with lack of health care knowledge will cause agencies to use more expert witnesses during hearing process.

  Currently Board pays only for hours worked. It will greatly increase cost if have to pay for hours scheduled but not worked. The agency has many defaults and stipulation agreements that shorten hours scheduled.

  Court reporter. The agency tapes all proceedings and a secretary transcribes record if needed. Hiring a court reporter will increase costs greatly.

  Additional cost per year could be more than $20,000.

I hope the committee will consider these issues while deliberating HB 2126.

Thank you. I am available for questions.

TESTIMONY OF KANSAS HUMAN RIGHTS COMMISSION
REGARDING H.B. 2126 BEFORE THE HOUSE JUDICIARY COMMITTEE,
FEBRUARY 3, 1999

William V. Minner, Executive Director
Robert M. Hollar, Assistant Director
Brandon L. Myers, Chief Legal Counsel

The Kansas Human Rights Commission requests that it be allowed to provide the following written testimony before the Committee, but does not request to address the Committee as a conferee during hearing on this bill.

H.B. 2126 is the latest draft of the proposal to compose a "pool" or centralized office of administrative law judges from which presiding officers for State administrative must be provided. The bill phases the proposal in over several years and transfers current presiding officers and support personnel from various agencies to the panel/pool each year, at which time those agencies are required to used presiding officers from the panel. KHRC is phased in beginning July 1, 1999.

KHRC does not oppose this bill. We currently use pro tem hearing officers under contract to preside at KHRC public hearings on complaints of discrimination. We no longer employ a hearing examiner/ALJ. We do have a secretary for the KHRC Office of Administrative Hearings that provides support services for the pro tem hearings officers, administers the office, accepts the filing of documents, etc. She would be transferred to the Department of Administration July 1, 1999, if H.B. 2126.

Attached hereto is the information and testimony we have provided as to this proposal in its previous forms. Our testimony remains essentially the same. If there is any cost increase to the agency by having to use ALJs from the panel, we would request such budgetary enhancements. We cannot predict that at this point. (See

Fiscal Note attached hereto). There would be some advantages to KHRC in the adoption of the bill insofar as our staff would not have to negotiate and have the agency enter into the pro tem contracts as we are now doing. One concern we would have is that the ALJs assigned to KHRC hearings from the panel have expertise in discrimination law, but we would presume the Department of Administration would insure that.

One very important consideration regarding this proposal from KHRC's perspective is that KHRC absolutely wishes to retain the Commission's authority to review the initial order of the hearing officer and to keep the authority for making the final order with the Commission itself as the law now mandates. H.B. 2126 retains the Commission's final order authority, so the Commission does not oppose the bill on that basis. Should the bill be amended to make that situation otherwise, the Commission could not support the bill.

Rather than restate all the data we have previously provided on this issue, we attached it hereto for the Committee's use and information.

BILL GRAVES, GOVERNOR
STATE OF KANSAS

KANSAS HUMAN RIGHTS COMMISSION
LANDON STATE OFFICE BLDG. - 8TH FLOOR
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(913) 296-3206

February 25, 1997

Elaine Frisbie, Senior Analyst
Division of the Budget
Room 152-E, State Capitol Bldg.
Topeka, Ks. 66612-1504

Re: Request for Fiscal and Operational Impact Information on HB 2254

Dear Ms. Frisbie:

Here are the Kansas Human Rights Commission's responses to the questions in your February 20, 1997 memorandum.

1. We currently have no position in our agency which acts as a hearing officer for the proceedings referred to in HB 2254. Such hearings are now being presided over by contract/pro tem hearing examiners/administrative law judges. The fulltime hearing examiner/administrative law judge position was eliminated by the Commission effective January 1, 1997. The rest of the points asked about in your memorandum's first question are therefore not applicable.

However, since these duties are now being performed by pro tem officers under contracts entered into for each case forwarded for hearing, if the Department of Administration "pool" ALJs began performing all such functions, KHRC would not have the contract expenses.

2. The Hearing Examiner's Secretary position remains in place despite the elimination of the Hearing Examiner position. That person staffs the Administrative Hearings Office, performing clerking services to facilitate the filing of pleadings, etc. in support of such hearings and performs other duties.

Classification, pay grade, FY 1998 funding and number of FTE positions associated with this function:

Secretary III $33,939 1 FTE

Portion of funding that is attributable to the State General Fund:

3. Not applicable. Functions are solely related to the hearings process.

4. We have had an autonomous office at 504-N of the Landon State Office Bldg., but have recently consolidated it in our main office. The office at 504-N, which we continue to have under lease from the Department of Administration until our upcoming budget and its plan to fund only the consolidated office space is final, contains 750 square feet. The space attributed to the Administrative Hearings Office within our main office at 851-S. in the Landon Building is 192 square feet.

5. In the autonomous office situation previously in place, there was little sharing between the two staffs; the Hearing Examiner had a tray in the main office in which messages, etc. could be left and which was checked by the Hearing Examiner's secretary. In the consolidated office, the Administrative Hearings Office is within the main office and it is anticipated that the Hearings secretary will utilize the main office's copier. The phone lines for the Hearings office are separate from those of the main office, however, and in most other regards the Hearings secretary will not share other facilities.

6. We indicated in support of 1995-96 Legislative session H.B. 2213 (the same basic bill as this) that our average over the course of several years (with large variation from year to year, however) was that 31 complaints were forwarded for public hearing per year. The majority of the cases tend to settle or be closed for other reasons short of a full public hearing. Some years no more than two full public hearings have been held, although the ALJ has done considerable work in issuing notices and rulings on prehearing matters. I attach our letters regarding H.B. 2213 for your more specific reference, although, as hereinabove noted, I would emphasize that our situation has changed in the last year due to the reorganization of the Hearings office and the ALJ position.

I hope this is sufficient to respond to your inquiries. Please let us know if you need anything further.

Sincerely,

Robert G Lay

ROBERT G. LAY
Executive Director

RGL:ch
Enclosures

TESTIMONY OF BRANDON L. MYERS, CHIEF LEGAL COUNSEL,
KANSAS HUMAN RIGHTS COMMISSION,
BEFORE THE SENATE JUDICIARY SUBCOMMITTEE,
MARCH 18, 1996, REGARDING H.B. 2213

During the 1995 Legislative session H.B. 2213 was referred for interim study by the Kansas Judicial Council. The Council today makes its report back to this subcommittee of the Senate Judiciary Committee. The Council recommends amendment of the bill as passed by the House during the 1995 session. The Kansas Human Rights Commission (KHRC) provided input to the Judicial Council during its interim study and has had an opportunity to review the proposed amended version of the bill. The bill proposes to establish an independent administrative law judge (ALJ) "pool" within the Kansas Department of Administration and require various state agencies to utilize "pool" ALJs (by contract with the Department of Administration) to conduct various administrative hearings for the agencies and/or adjudicative proceedings under the Kansas Administrative Procedures Act (KAPA). The proposal provides that the full-time Hearing Examiner/ALJ employed by KHRC would be transferred to the "pool" and the Department of Administration effective January 1, 1997, without loss of pay, status, seniority, etc. as a classified State of Kansas civil service employee. The proposal, if adopted, would allow KHRC to continue to utilize the expertise of that officer to preside at hearings periodically conducted by KHRC pursuant to KAPA regarding complaints filed under the Kansas Act Against Discrimination (KAAD) and Kansas Age Discrimination in Employment Act (KADEA). The proposal assures that KHRC would retain its authority to have the final order rendered by its Commissioners (after review of the ALJ/presiding officers initial order), rather than shifting the final order authority to the presiding ALJ. [Under the KAAD, KADEA and KAPA, KHRC is required to review such initial orders.

KHRC is an independent board, composed of commissioners appointed into policy-making positions by the Governor and confirmed by the Senate. A key facet of their policy-making duties is the authority to render final orders in hearings in discrimination cases under State law. The commission supports this proposal insofar as it preserves this final order authority of the Commission.]

The KHRC supports the Judicial Council's proposed amended version of H.B. 2213. KHRC supports such a proposal as long as the transfer of its current Hearing Examiner/ALJ assures the salary, benefits, classified civil service status, etc. of the current KHRC employee in the position, and as long as the proposal does not abrogate the Commissioners' current authority to render the final order in the public hearing process. The proposal, as we understand it, meets these requirements for KHRC support.

In recognition that the number of hearings before KHRC fluctuates, the Legislature last session removed the statutory requirement that KHRC employ a full-time hearing examiner/ALJ. However, expertise in the specialized field of discrimination law is a necessity for presiding officers in such hearings. Transfer of KHRC's ALJ would retain the availability to KHRC of such expertise for its hearings whenever such services were needed, but allow that officer to conduct other types of administrative hearings for the state as time allows. This would seem an idea designed to increase efficiency in State government without any loss of quality within the State's administrative hearings process.

KHRC would, however, suggest that the proposal's effective date for the transfers of personnel and implementation of the "pool" be changed from January 1, 1997 to July

1, 1996. The bill as passed last session by the House, proposed an effective date of July 1, 1995, which was the beginning of the State fiscal year next commencing after the end of that legislative session. The current Legislative session is working on agency budgets for the FY commencing July 1, 1996. If this bill passes, KHRC's budget (which now provides the funding of the Hearing Examiner's office, employees of functions), as well as that of the Department of Administration and other affected agencies, will have to be adjusted accordingly. It is suggested that the budgetary planning process to implement these changes would be much more easily done if the bill was effective commensurate with the fiscal year, rather than mid-year at January 1, 1997. It would seem that implementation of other plans, guidelines, etc. necessary to start up the pool could be accomplished by July 1, 1996. In short, if this is an idea for which the time has come, its implementation should be sooner rather than later.

cc: Commissioners
Robert G. Lay, Executive Director
Arthur W. Solis, Administrative Law Judge

TESTIMONY BEFORE THE
SENATE JUDICIARY SUB-COMMITTEE
By
Art Griggs, Department of Administration

I am appearing today to testify on behalf of the Department of Administration in opposition to HB 2213, as recommended by the Administrative Procedure Advisory Committee of the Kansas Judicial Council. Over the course of the fall, the Committee provided several opportunities for the Department of Administration and other state agencies to comment on the concept of a central hearing officer panel generally, as well as specific changes to HB 2213 proposed by the Committee. Those efforts are appreciated. The proposed amendments presented by the Committee do narrow the scope of HB 2213 and address several concerns previously raised by the Department of Administration and other state agencies. However, the proposal is still of concern to the Department in several fundamental respects, including cost, bureaucracy, accountability, and potential lack of subject matter expertise. These concerns, as well as several technical matters, are outlined below.

- Growth of bureaucracy

For those hearings that must be assigned under HB 2213 to an administrative law judge (ALJ) within the office of administrative hearings, the process is likely to become more formalized.

--By placing the appeal before an ALJ who is not a part of the agency, the agency becomes simply another party who must represent itself and its position, converting the process to one which is more likely to be adversarial.

--Appellants will be required to deal with two agencies and will need guidance as to which agency they should address communications to at various points in their attempt to resolve a problem. With centralization and standardization, procedures may tend to become more formal and complex. A central hearing panel is likely to make it more difficult for appellants to represent themselves and to increase the need for appellants to obtain legal counsel. Use of a central panel may increase the time, effort, and cost to the appellant associated with appeals.

- Growth of costs

As noted above, use of the central hearing panel may tend to increase the need for representation of the appellant. Similarly, any loss of expertise on the part of the presiding officer could have an impact on the costs of the hearing process as the agency will be responsible for the costs of the ALJ, an attorney to represent the agency, and any expert staff that must appear before the ALJ.

Beyond these costs, there are costs associated with establishing a new, independent office of administrative hearings. A revised fiscal note has not yet been developed that reflects the amendments to HB 2213 presented to the Committee today. However, there clearly would be additional costs associated with creation of a central hearing panel.

--A new level of management is created -- the director of the office of administrative hearings. The costs for this position would be above and beyond the costs for existing hearing officer

positions transferred from the four affected agencies to the new office.

--One initial decision that would have an effect on the cost is whether the newly created office would be located in one office or whether the hearing officers transferred to the office of administrative hearings would simply remain in their current locations. If they are not re-located, there would be administrative and managerial difficulties associated with supervising and coordinating the activities of the new office. Moreover, leaving the ALJ's in their current locations would seem to result in very few practical distinctions from current law. However, relocating the transferred staff to a single location would entail a number of new expenses, including:

--moving costs;
--additional space rental charges (particularly if the agencies are unable to dispose of space currently occupied by the hearing staff);
--development of a compatible, unified information system, including new software and hardware; and
--purchase of equipment that is currently shared with other programs.

Other issues involved in setting up such an office could have an impact on the costs to user state agencies and appellants, such as billing systems, how to bill for cases which are dismissed, withdrawn or settled prior to a formal hearing, and the assessment of court reporter costs.

- <u>Confusion of accountability</u>

Much of the rationale for a central hearing panel is premised upon the need for appellants to have confidence in the hearing process and the neutrality and judgment of the presiding officer. However, accountability for the decision-making process is less clear when the hearing is conducted by an independent ALJ in a central hearing office.

Ultimately, the ALJ is not accountable to the agency on whose behalf a decision is rendered, but to the director of the office of administrative hearings. This relationship is seen as one of the primary advantages of a central hearing panel by its proponents. However, an ALJ in a central hearing panel is no less likely than a state agency hearing officer to have a personal or philosophical agenda that has a consistent influence on decision-making. Nonetheless, the agency head, who is ultimately responsible for the outcome of the proceedings, has no direct means of addressing such a concern about an independent ALJ and has the burden of justifying any variance in the final order from the ALJ's initial order.

- <u>Loss of expertise</u>

Many hearings before state agencies involve complex legal issues, specialized bodies of law and highly technical or scientific matters. The expertise to capably address such issues has been developed in those agencies charged with administering hearings of this nature. Expertise in these substantive areas is essential in rendering informed decisions and carrying out the agency's statutory responsibilities.

--It may be possible under a central hearing panel to provide for some degree of specialization. However, ALJ's would be more isolated from routine interactions with program staff than an agency hearing officer. Those interactions may provide opportunities for agency hearing officers to stay abreast of developments in scientific, technical or legal issues that are integral to appeals, as well as agency policy developments and directions.

--The loss of specialized expertise could result in erroneous, confusing, and inconsistent decisions.

--With the loss of specialized expertise on the part of the presiding officer, agencies may be more likely to feel it is necessary to bring in agency staff to provide expert testimony.

- Technical issues

Due to the brief period of time available for review, the Department of Administration has not thoroughly evaluated the proposed amendments to HB 2213. The following initial technical issues are noted.

--Amendatory work has not been completed to harmonize HB 2213 with existing law. For example, K.S.A. 1995 Supp. 44-1003a requires the Kansas Human Rights Commission to employ one to three full-time hearing examiners to conduct hearings. Sections 1 and 4 of HB 2213 are inconsistent with this requirement.

--Amendments to HB 2213 provide for transfer of personnel from affected agencies to the office of administrative hearings, but do not address transfer of equipment, supplies or funding.

--In some instances, there are agency staff in the four affected agencies who provide hearing officer services or support on a part-time basis but are not part of the hearing section. These fractions of FTE would not be transferred.

--Under Section 12 of HB 2213, the duty to maintain and prepare a record of the proceedings is that of the presiding officer. For those hearings conducted by an ALJ, it is not clear who would be responsible for records relating to the hearing under the Open Records Act.

-- It appears paragraphs (e)(1) and (e)(4) of New Section 1 would need to be deleted because existing personnel regulations address these topics.

Thank you for the opportunity to speak in opposition to HB 2213 on behalf of Secretary of Administration Sheila Frahm and for your careful consideration of the Secretary's concerns regarding costs, growth of bureaucracy, loss of expertise, and accountability associated with HB 2213.

BILL GRAVES, GOVERNOR
STATE OF KANSAS

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March 19, 1996

Hon. Senator Michael Harris
Rm. 136-N Statehouse
Topeka, KS

RE: H.B. 2213

Dear Senator,

This is to supplement and follow up on the written testimony I provided on KHRC's behalf to your Senate Judiciary Sub-Committee on the above on March 18, 1996. I would request that this be distributed to the subcommittee members and made a part of the subcommittee's public record of testimony on this bill. I provide herewith several copies of this for the other subcommittee members and staff records.

In reviewing Art Griggs' written testimony on behalf of the Department of Administration, I noted a matter which needs clarification. In our testimony we mentioned that last year the Legislature removed the statutory requirement that KHRC employ a full-time hearing examiner. In Mr. Griggs' testimony at page three under "Technical Issues," he indicates that K.S.A. 44-1003a [of the Kansas Act Against Discrimination administered by KHRC] "requires the Kansas Human Rights Commission to employ one to three full-time hearing examiners to conduct hearings. Section 1 and 4 of HB 2213 are inconsistent with this requirement." During the 1995 session H.B. 2559 was passed. It removed the requirement Mr. Griggs is referring to within K.S.A. 44-1003(g) that said the Commission "...shall also employ at least one but not more than three full-time hearing examiners...[.]" In substitution of that language H.B. 2559 amended the statute to say that the Commission "...may also employ or may contract for the services of qualified hearing examiners to conduct hearings. In addition, the commission may employ or may contract for the services of qualified hearing examiners

pro tem when necessitated by the incapacity or disqualification of the other hearing examiners." That is how K.S.A. 44-1003 now reads and is the basis for my comment that the statutory requirement to employ a full-time hearing examiner was removed by last year's legislature. Given this language, H.B. 2213's provision that KHRC would contract for ALJ/hearing examiner services from the proposed ALJ pool within the Department of Administration would not conflict.

However, the 1995 legislative session also passed Substitute for S.B. 19. You will recall that that bill revised the appointment and confirmation procedures for various board and commission members (including KHRC commissioners). Although that bill had nothing intentionally to do with whether KHRC was required or allowed to choose to employ a full-time hearing examiner, to effectuate the amendments to the commissioner appointment and confirmation procedures, also contained within K.S.A. 44-1003, resulted in a conflicting amendment of the same statute. The confirmations bill inadvertently cited the version of 44-1003 that did not contain the H.B. 2559 amendments (which would become effective July 1, 1995). The result is the proverbial "statutory conflict," wherein the advice is that both versions of the statute exist to be followed. In the statute book both versions of the statute are cited, but each has a Revisor's Note indicating that the statute was amended twice during the 1995 legislative session, plus there is the 44-1003a version. My understanding of the caselaw in such situations is that you look to legislative intent to determine which version governs and is effective where there is such a conflict. It was the clear intent of H.B. 2559 to make employment by KHRC of a full-time hearing examiner permissive rather than mandatory. It was not the intent of the confirmations bill to undo what 2559 did. The conflict is inadvertent and K.S.A. 44-1003 as amended by H.B. 2559 governs on this issue. Thus it is our position that employment by KHRC of a full-time hearing examiner is permissive and not mandatory or required. Accordingly, there is no conflict in this provision of the KAAD and the H.B. 2213 provision. Should this subcommittee wish to remove the 44-1003 conflict as part of dealing with H.B. 2213, that could easily be done by inserting an amendment thereto which preserves the revised language as to the appointment/confirmation process and the revised language as to the employment of hearing examiners; the Revisor's staff could quickly and easily provide such a format and 2213 already proposes to amend K.S.A. 44-1005 of the KAAD anyway, so this would be easily accomplished within 2213, although it is not viewed as strictly necessary to implement the "pool" proposal of 2213 as it applies to KHRC.

I hope this clears up any confusion on this point.

If the other technical issues cited in the Department of Administration's testimony are as easily resolved as that posed regarding KHRC, it would seem that these issues should cause no delay in the subcommittee's recommendation to adopt the Judicial Council's proposed draft. Obviously, it takes little to block an otherwise good idea late in the legislative session, and one wonders why the various issues were not raised and resolved during the months in which this bill was under study by the Judicial Council.

However, all of these technical issues can easily be dealt with now by this subcommittee and this bill can move forward expeditiously.

With all due respect to Mr. Griggs, the Department of Administration and other opponents presenting written or other input to the subcommittee, there are a few other points arising from the March 18 testimony that we wish to address.

No lack of subject matter expertise will arise from the creation of the ALJ pool. Current expert hearing officers of the various agencies involved will be transferred to the pool and any existing expertise will be retained. In the future hiring for these civil service positions will, of necessity, be required around qualification-based criteria, so that those with expertise will be consistently employed in the pool. With the transfer of the current subject matter experts to the pool, they will be on the ground floor in terms of assisting in setting up procedures and governing regulations for the pool, and can assure that these concerns are addressed so that future hiring is based upon expertise and qualifications. Any concerns of this nature by opponents of this bill are without foundation.

Bureaucracy will in all likelihood be reduced by this proposal, not increased. With hearings functions centralized in the ALJ pool, the Legislature will be provided a much clearer picture about what personnel and resources are actually required to perform these functions across the spectrum of State agencies, rather than the piecemeal assessment of those functions as part of an otherwise agency-by-agency budgetary review during the course of focusing on the larger functions of each agency as now occurs. The Legislature could require statutorily or by other indices of legislative intent that a duty of the management of the pool would be to review each year just how many ALJs are actually needed. If any current underutilization of an agency ALJ exists, when the ALJ is transferred to the pool, they can preside in matters for other agencies. This all will lead to less, not more, bureaucracy.

Similarly, there is no reason to believe that hearings will become any more formal than they already are, particularly since hearings governed by KAPA will still be uniform and governed by KAPA whether presided over by an agency-employed ALJ or the same person who will merely be assigned from the ALJ pool. For the same basic reason there is no reason to expect costs of hearings (to the State or the parties) to increase.

Whether to move the current offices or leave them where they are (often in State agency space rented from the Department of Administration currently) is easily resolved, either on a temporary or permanent basis. These logistical details should not prevent the Legislature from making an otherwise appropriate policy decision.

Concerns about "accountability" of the pool ALJs seem similarly misplaced. These decision-makers will ultimately be accountable to the appellate process where their decisions will be reviewed and affirmed or rejected. This will not be adversely affected

by having a pool of independent ALJs. The whole point of having an independent panel is to assure that an agency head will not be perceived to interfere with the ALJ decisions and proceedings by virtue of their supervisory authority over the agency-employed ALJ, and to assure that an agency-employed ALJ is not so involved with the routine interactions within the agency as to lock independent credibility. Having an independent ALJ pool will assure the accountability of the ALJs to the impartial and independent enforcement of the laws and policies of the state and alleviate any appearance of impropriety or influence from an agency or department head. On a daily basis in terms of keeping proper office hours, efficient utilization of time, etc., the supervising ALJ will be much more able to oversee this from a centralized office with the ALJs than are agency heads now. Often, currently, the ALJs are in offices separate and independent from main offices of the agency, in order to help effectuate an appearance of independence, autonomy and neutrality. An agency head, commission, board, etc., of necessity, has less direct control and supervision of such an office's day-to-day activities under such circumstances than would a supervising ALJ in a central office. Transferring responsibility for ALJ budgets, office management, etc. to a pool, will allow the various agencies more time to focus on their other management and budgetary duties, which are their primary mission and concern. This is a move to efficiency for the agencies involved.

When the House Judiciary Committee dealt with this bill last session, there was what can only be described as a "territorial" reaction from various State agencies whose hearing officers might be transferred to the pool. Numerous questions and arguments (all easily answered and disposed of) were presented in an effort to block the bill, simply because individual agencies were trying to protect their various appointees from being added to the pool and perhaps were afraid of change, even if the change would be progressive in nature. Efforts were made to explain how, despite the appearance and concern that agency-employed ALJs might not make controversial rulings for fear of retribution by their agency or department who controlled their continued employment, that the ALJs go to great lengths to dispel such concerns. However, it is indisputable that there would be no such concerns whatsoever, and no such efforts to dispel such appearances would be necessary at all, if the independent ALJ pool were adopted into law. The Senate needs to look past any agency politics underlying this matter and recognize, as the House apparently did, that the ALJ pool is a move to assure fairness and impartiality in all State administrative hearings involved. It is good government which may ultimately reduce the need for some ALJs currently employed by the State, full-time or otherwise. It makes the administrative hearings process more amenable and accountable to Legislative scrutiny and provides an opportunity to ultimately reduce costs while retaining quality and efficiency in these hearings.

We would urge this subcommittee to favorably recommend this proposal. If a bit of simple fine-tuning and direction to agencies' staff to implement the logistics of the proposal is needed, that direction should be given and this matter should proceed this session. We believe it can and should be implemented commensurate with the

beginning of the next State fiscal year, July 1, 1996, in order for this legislative session to adjust the various affected agency budgets accordingly from the beginning of FY 97 rather than trying to make the change in the middle of the fiscal year.

Respectfully submitted,

BRANDON L. MYERS
Chief Legal Counsel

cc: Sen. Paul Feliciano
Sen. Phil Martin
Sen. Janis Lee
Commissioners
Robert G. Lay, Executive Director
Arthur W. Solis, Hearing Examiner
Mike Heim, Legislative Research
Matt Lynch, Judicial Council
Art Griggs, Dept. of Administration

BILL GRAVES, GOVERNOR
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October 19, 1995

Matt Lynch
Kansas Judicial Council
Kansas Judicial Center
301 West Tenth St., Suite 262
Topeka, KS 66612-1507

RE: H.B. 2213

Dear Mr. Lynch:

Per the request for information contained in your October 4, 1995 letter regarding the operation of the public hearing/adjudicative processes of the Kansas Human Rights Commission, we provide the following:

(1) The number of adjudicative hearings conducted by your agency on a yearly basis and the average length of such hearings (the committee would be interested in knowing both the number of such hearings under KAPA and those not under KAPA).

All the hearings/adjudicative proceedings conducted by our ALJ/Hearing Examiner or pro tems are formal adjudicative proceedings under KAPA. Pursuant to statute, the presiding officer is bound by rules of evidence. The number of such proceedings has varied over the years. All proceedings may involve potential discovery controversies and assertion of jurisdictional issues, may involve motions to dismiss or for summary judgment, and require conducting prehearing conferences, status conferences, discovery conferences, etc.

Often, as with all civil cases, the matters may be resolved by prehearing settlement after a considerable record of pleadings and rulings have been compiled, but without an actual evidentiary hearing (where admissibility is governed by the rules of evidence) being fully conducted on the merits of the complaint. Occasionally a case will settle in the midst of the evidentiary hearing on the merits of the case, but we tend to record those as cases as having a hearing conducted. Also, if a complainant chooses to exercise some option to file the same matter in court, the case will be administratively dismissed short of a full hearing. Looking only at the number of complaints in which an

evidentiary hearing was actually convened/conducted, the average number of hearings (administrative trials) since 1989 has been approximately 7 per year, although there has been significant variance from that average in a given year.

The average length of such administrative trials, not including the number of hours required for conducting prehearing proceedings, or in deciding the case after the hearing, writing a proposed order, etc., is about one-and-a-half days, although that also varies greatly. The longest public hearing that I recall over the years has been about 4-5 days, but that is fairly unusual. Most administrative trials are set for two days. These cases involve complex civil litigation, with much more difficulty than some other matters in which a KAPA hearing might be held.

Perhaps a more important figure is that which addresses the number of cases processed through the public hearing process, including the cases settled or otherwise dismissed in addition to those in which an administrative trial on the factual merits of the case was actually held. The average of all such cases from FY 1989 - FY 1995 is approximately 33 per year. In each case an ALJ or pro tem would have been assigned. This figure more realistically reflects what might be forwarded to the ALJ "pool". However, some variation from the average in numbers of cases forwarded would likely occur.

(2) Information on who serves as presiding officer at such hearings (agency head, agency employee, person outside agency, person borrowed from another agency).

My previous letter to the Council addresses some of the information relevant to this regarding Commission authority and practice as to employing a full-time ALJ versus contract or pro tem examiners. Since July, 1975, the Commission has employed one full-time hearing examiner/ALJ and used pro tems when circumstances warranted. The "agency head" is the Commission composed of seven people appointed to the board. Even though they may sit as "hearing commissioners" on a panel of at least four Commissioners to preside over public hearings under the Kansas Act Against Discrimination and Kansas Age Discrimination in Employment Act, that was found to be generally infeasible. Therefore, they began employing a full-time State employee to preside over public hearings. In recent practice relevant to this question, when a pro tem ALJ/examiner is necessary, the Commission has sought a list of eligible persons from the Governor's office for selection for those duties as an unclassified salary position and there is a contract drawn up for those services on a case-by-case basis. In those instances the pro tem is from outside the agency. I don't believe we have ever borrowed an employee from another agency to preside at a KHRC public hearing, although

apparently that might be possible through arrangements with the Department of Administration. Most recently, pro tems have been paid $1,500.00 (30 hours at $50/hr. plus mileage, etc.) but that has often proven to cover less than the hours actually expended.

(3) Costs associated with such hearings, including costs associated with the presiding officer (salary of agency employee, hourly rates paid to outside persons, etc.), costs of any support staff (secretaries, reporters, etc.), and other incidental costs (supplies and equipment, rent, etc.).

I enclose copies of the portion of the agency's budget that is allocated to the ALJ function. Basically, for that purpose an ALJ is employed at Range 33 as a classified employee, together with a secretary III. An office is maintained in the Landon State Office Building in Topeka. Court reporters are contracted for services. All the associated costs for publications, travel, office equipment, etc. are noted in the budget. If pro tems are necessary, they are paid through allocations for Fees/Professional Services. In total the current FY 96 budget for that function and the court reporter services is $13,277.

I believe in my previous letter I have already addressed the other issues you raise as to which the Commission wished to have input.

If you have any further questions or need for information, please contact me. I would appreciate you keeping me updated and informed on this matter so that I can make sure all input the Commission wishes to provide is forwarded to the Council.

Sincerely,

Brandon L. Myers
Chief Legal Counsel

BLM/ms
cc: Commissioners
Robert G. Lay, Executive Director
Honorable Arthur W. Solis, Administrative Law Judge

KANSAS JUDICIAL COUNCIL

Kansas Judicial Center
301 West Tenth Street, Suite 262
Topeka, Kansas 66612-1507

Telephone (913) 296-2498
Facsimile (913) 296-1035

- 5 1995

October 4, 1995

Brandon L. Myers
Chief Legal Counsel
Human Rights Commission
Landon State Office Building
Suite 851-S
900 S.W. Jackson
Topeka, KS 66612

OCT - 5 1995

Dear Brandon:

At the request of the House Judiciary Committee, the Administrative Procedure Advisory Committee of the Kansas Judicial Council is reviewing the subject matter of 1995 HB 2213. As amended, HB 2213 would create an office of administrative hearings within the Department of Administration, transfer full-time attorney hearing officers from certain state agencies to such office and mandate the use of an administrative law judge assigned by the office of administrative hearings as presiding officer in certain state agency proceedings under the Kansas Administrative Procedure Act (KAPA). House Bill 2213 passed the House by a vote of 124-0 and was referred to the Senate Judiciary Committee. It is the intention of the advisory committee to develop recommendations on this matter for submission to the 1996 legislature.

At its meeting on September 29, the advisory committee determined to seek information from state agencies concerning the number of adjudicative hearings being conducted, the costs associated with such hearings and the presiding officers for such hearings. The advisory committee would also welcome state agency views on the issues raised by creation of a central office of administrative hearings and House Bill 2213. The next meeting of the advisory committee will be held Friday, October 20 in the Court of Appeals Courtroom, Room 275-N, Second Floor, Kansas Judicial Center beginning at 9:30 a.m. Meetings are also scheduled for November 15 and December 13.

Information in the following areas would be of considerable assistance to the advisory committee:

15-19

(1) The number of adjudicative hearings conducted by your agency on a yearly basis and the average length of such hearings (the committee would be interested in knowing both the number of such hearings under KAPA and those not under KAPA).

(2) Information on who serves as presiding officer at such hearings (agency head, agency employee, person outside agency, person borrowed from another agency).

(3) Costs associated with such hearings, including costs associated with the presiding officer (salary of agency employee, hourly rates paid to outside persons, etc.), costs of any support staff (secretaries, reporters, etc.), and other incidental costs (supplies and equipment, rent, etc.).

Without regard to the specifics of House Bill 2213, the advisory committee would also welcome your agency's views as to the appropriate coverage of any legislation in this area, specifically, what types of adjudicative hearings should be included and what types should be excluded, and the reasons therefore.

Another issue raised by House Bill 2213 which may have implications for appropriate coverage by any legislation in this area, concerns the role of the agency head in reviewing decisions of nonagency-head presiding officers. Generally under KAPA, a nonagency-head presiding officer renders an initial order which is subject to review by the agency head. Under House Bill 2213 where an agency is required to use an administrative law judge assigned by the office of administrative hearings, the administrative law judge renders a final order which is not subject to review by the agency head. The advisory committee will be reviewing this issue and other mechanisms aimed at giving weight to the decision of an administrative law judge, and would welcome your agency's views on this subject as well.

The advisory committee welcomes input on additional issues raised by the legislative proposal, including where any central panel of administrative hearings should be housed, who should be the appointing authority for the director of such central office and whether administrative law judges should be selected for a particular hearing from a rotating list or whether specialization should be promoted within the central office.

I recognize there is not much time until the next meeting of the advisory committee, however, any information your agency could provide on this subject would be helpful, no matter how rough or tentative. If you have any questions about the information we are seeking or if you would like to schedule a time for someone from your agency to meet with the advisory committee, please contact me at 296-2498.

Sincerely,

Matthew B. Lynch

MBL/jw

Brandon, This is the form letter we are sending to state agencies. I distributed your letter to our committee members. Matt

EXPENDITURES—DA 406

DIVISION OF THE BUDGET

DEPARTMENT OF ADMINISTRATION, STATE OF KANSAS

AGENCY NAME Kansas Human Rights Commission
AGENCY—SUBAGENCY CODES 058 FUNCTION NO. 1
PROGRAM TITLE AND CODE Promotion of Human Rights 7000
SUBPROGRAM TITLE AND CODE Public Hearing Examiner 70120

	OBJECT OF EXPENDITURE	OBJ. CODE	FY 19 95 ACTUAL	FY 19 96 ESTIMATE	DOB USE ONLY	FY 19 97 LEVEL A	FY 19 97 LEVEL B	FY 19 97 LEVEL C	DOB USE ONLY
01	OTAL SALARIES & WAGES	100	87,171	90,268		89,164	92,839	92,839	
05	COMMUNICATION	200	3,731	1,683		3,731	3,847	3,847	
05	FREIGHT & EXPRESS	210	—	—		—	—	—	
05	PRINTING & ADVERTISING	220	—	25		50	50	50	
05	RENTS	230	8,596	10,360		12,228	12,228	12,228	
05	REPAIRING & SERVICING	240	235	45		235	235	235	
05	TRAVEL & SUBSISTENCE	250	1,205	1,786		1,205	1,786	1,786	
05	FEES-OTHER SERVICES	260	—	98		100	100	100	
05	FEES-PROFESSIONAL SERVICES	270	3,582	13,277		13,277	13,277	13,277	
05	UTILITIES	280	—	—		—	—	—	
05	OTHER CONTRACTUAL SERVICES	290	1,483	1,314		1,483	1,529	1,529	
06	TOTAL CONTRACTUAL SERVICES		18,832	28,588		32,309	33,052	33,052	
10	CLOTHING	300							
10	FEED & FORAGE	310							
10	FOOD FOR HUMAN CONSUMPTION	320							
10	FUEL	330							
10	MAINT. MATERIALS, SUPPLIES, PARTS	340							
10	MOTOR VEHICLE PARTS, SUPPLIES	350							
10	PROFESSIONAL & SCIENTIFIC SUPPLIES	360	119						
10	STATIONERY & OFFICE SUPPLIES	370	450	1,005		569	1,005	1,005	
10	NTIFIC RESEARCH SUPPLIES	380							
10	SUPPLIES, MATERIALS, PARTS	390							
11	OTAL COMMODITIES		569	1,005		569	1,005	1,005	
15	TOTAL CAPITAL OUTLAY	400	675	705		1,275	1,275	1,275	
20	INSTITUTIONAL OR DEPT. DEBT	600							
25	TOTAL NONEXPENSE ITEMS	700							
30	SUBTOTAL—STATE OPERATIONS		107,247	120,566		123,317	128,171	128,171	
35	FEDERAL AID TO LOCAL UNITS	500							
35	STATE AID TO LOCAL UNITS	510							
36	TOTAL AID TO LOCAL UNITS								
37									
37									
37									
38	TOTAL OTHER ASSISTANCE, GRANTS AND BENEFITS								
40	EXPENDITURES		107,247	120,566		123,317	128,171	128,171	
45	R OF FULL TIME POSITIONS		2	2		2	2	2	

BILL GRAVES, GOVERNOR
STATE OF KANSAS

KANSAS HUMAN RIGHTS COMMISSION
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(785) 296-3206

January 29, 1999

Duane A. Goossen, Director of the Budget
Division of the Budget
State Capitol, Room 152-E
Topeka, Kansas 66612-1575

Dear Mr. Goossen:

Here is the Kansas Human Rights Commission's response to the Fiscal Note request for House Bill No. 2126.

1. House Bill No. 2126 would consolidate all administrative hearings and procedures into the Department of Administration.

2. Since the position of Hearing Examiner/Administrative Law Judge was eliminated effective January 1, 1997 from this Commission, there would be little impact on this Commission's responsibilities. These duties are now provided by pro tem officers under contracts entered into for each case forwarded for hearing to our Administrative Hearing Office. Money currently budgeted to contract with pro tem officers would be used for reimbursement of the Office of Administrative Hearings for hearings sent from this Commission. The number of cases approved for administrative hearings varies a good deal from year to year ranging from a high of nineteen in FY 1997 to a low of eight in FY 1998.

3. The detailed budgetary effect on this Commission is provided on the attached page. One Secretary III position would be transferred.

4. The Commission currently assumes no increase in cost or revenue if House Bill No. 2126 is passed. If the Department of Administration charges more than the Commission's current pro tem contract cost of $50.00 per hour with no minimum, an increase in expenditures could result.

5. Except as noted above, this bill will require no additional staff or increase in expenditures.

6. The long-range fiscal effect of this bill is provided on the attached page.

Sincerely,

William V. Minner

William V. Minner
Executive Director

WVM:ch
Attachment

FISCAL NOTE

A . Kansas Human Rights ission (05800) Date: Ja 15, 1999

Bill Number : HB 2126

Analysis: The Kansas Human Rights Commission currently contracts for the services of qualified hearing examiners. There is one FTE, a Secretary III, in the Administrative Hearing Office to schedule and coordinate hearings who would be transfered to the Office of Administrative Hearings. The contract costs of the hearings is $50.00 per hour with no minimum and a maximum of $2,000 per hearing. If the costs of the Office of Administrative Hearings is higher than the current contract costs additional money may be requested.

Expenditures

		FY 2000	FY 2001	FY 2002
Salaries and Wages	100	($36,645)	($37,011)	($37,382)
Communication	200			
Freight & Express	210			
Printing & Advertising	220	0	0	0
Rents	230			
Repairing & Servicing	240			
Travel & Subsistance	250			
Fee - Other Services	260	0	0	0
Fees - Pro. Services	270			
Other Contractual Services	290			
Total Contractual Services		0	0	0
Food For Human Cons.	320			
Professional Supplies	360			
Stationery & Office Supp.	370			
Other Supplies	390			
Total Commodities		0	0	0
Total Capital Outlay	400	0	0	0
TOTAL		($36,645)	($37,011)	($37,382)
FTE Positions		36.0	36.0	36.0
Unclassified Temp Positions		1.0	1.0	1.0
Total Authorized Positions		37.0	37.0	37.0

Financing

	FY 2000	FY 2001	FY 2002
State General Fund			
1000-03	($24,919)	($25,168)	($25,419)
Total State General Fund	(24,919)	(25,168)	(25,419)
Fee Funds			
2282-00			
2404-00			
Total Fee Funds	0	0	0
Federal Funds			
3016-00	(11,726)	(11,844)	(11,962)
Total Federal Funds	(11,726)	(11,844)	(11,962)
TOTAL	($36,645)	($37,011)	($37,382)

	FY 1997	FY 1998
Cases approved for Public Hearing	19	8
Costs	17,111	8,608