

Approved: March 27, 2000
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairman Representative Tony Powell at 1:30 p.m. on March 1, 2000 in Room 313-S of the Capitol.

All members were present except: Representative Vining, excused.

Committee staff present: Theresa Kiernan, Revisor of Statutes
Russell Mills, Legislative Research
Mary Galligan, Legislative Research
Winnie Crapson, Secretary

Conferees appearing before the committee:

Proponents:

Representative Flower
Russ Jobbins, Convenience Store Operator, Winchester
Steve Kearney, Petroleum Marketers and Convenience Store Assn of Kansas

Opponents: None

Chairman Powell opened the hearing on:

HB 2917, Administrative fines for cigarette tobacco infractions; if more than three years passed between infractions, new occurrences considered first occurrence

Representative Joann Flower, sponsor of the bill, introduced Russ Jobbins who had called to her attention the need for this legislation,

Mr. Jobbins presented written testimony (Attachment #1). He noted that while he and other convenience store operators understand the need for such laws and provide constant training for their employees, he believes there should be time limitations in the statute to differentiate between a human error and pattern and practice. He suggests providing that an infraction after a lapse of three years should be regarded as a first occurrence.

Steve Kearney presented the written testimony of Tom Palace, Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas (Attachment #2). He stated retailers of tobacco products do not condone selling tobacco products to minors and work hard to educate employees about the state law. PMCA's position is that responsible retailers should have the opportunity to wipe the slate clean if they remain violation free similar to traffic infractions.

The Revisor distributed a balloon with technical amendments to Sec. 1 (f).

Hearing on **HB 2917** was closed.

Meeting adjourned at 1:50 p.m. Next meeting is scheduled for March 6.

Thank you Mr. Chairman and other committee members for giving me this opportunity to speak with you today. My name is Russell Jobbins and I own a convenience store in Winchester.

I am here today to discuss Representative Flower's proposed amendment to House Bill Number 2917 (Illegal Tobacco sales). Currently the bill has no time limitations in regard to any potential violation. The first offence results in a fine and each offence after that results in a steeper fine up to a point where a store's license to sell tobacco can be revoked.

We (C-Store owners) as responsible business men understand the need for such laws; and through constant training and retraining of our employees, do our best to abide by these laws. The problem is human error. With today's law, if you make an illegal sale of tobacco in the year 2000, 2004, and 2008 you have just committed your third offence. Offences in which several years have gone by do not represent a matter of pattern or practice, but a matter of human error.

In November one of my cashiers asked a customer for his ID, she made an error and read a 4 as a 1 and sold tobacco to a minor. The arresting officer, well trained in regards to the law, who should know more about it than most people filled out the citation wrong (copy attached). He signed the form waving my right to a hearing, something he can not legally do for my company. Did he do it on purpose? No. Did he make a mistake just as my cashier did? Yes, I think so.

Now if a highly trained officer can make a mistake in regards to the law, shouldn't a cashier be entitled to an error as well. My store has been investigated at least 3 times that I know of, once before the violation and once since, neither visit resulted in any further violations.

Simply put, it is my position that an occasional violation of this law does not represent a matter of pattern or practice. The need for some sort of time frame for any violation of this law needs to be in place, and I support the amendment made by Representative Flower.

Thank you for your time and do you wish to ask me any questions?

House Fed. &
State Affairs
Date 3/1/00
Attachment No. 1
Page 1 of 2

B McCay

296-7015

BEFORE THE STATE DIRECTOR OF TAXATION
KANSAS DEPARTMENT OF REVENUE
4 TOWNSITE PLAZA, SUITE 210
200 SE 6TH STREET
TOPEKA, KANSAS 66603-3512

June

In the Matter of:

Citation No. _____

KT'S Shortstop
300 Delaware St.
Winchester Ks 66097

Doane Swann
296-2381
Only one who knows
everything!

CIGARETTE RETAILER CITATION

YOU ARE HEREBY NOTIFIED by this citation of a violation in regard to your license as a Cigarette Retailer issued under the Kansas Cigarette and Tobacco Products Act, 79, K.S.A. Article 33.

The charge(s) or complaint(s) you are called upon to answer being that:

K.S.A. 79-3321(I) - Licensee did on or about 11-29-99 sell, furnish or distribute cigarettes or tobacco products to a person under 18 years of age.

Below is a waiver form which is required to be completed and returned to this office by the specified date or the citation will be set for a hearing before the Director of Taxation or his designee. Licensee will be notified of the hearing date

IT IS SO ORDERED.
Dated this 14th day of December, 1999.

Matthew W. Jell #301
Revenue Enforcement Agent/ID No.

Licensee Rep. Signature: [Signature]

Print Name & Title: Russell Jobbins Sec.

NOTICE OF WAIVER (READ CAREFULLY)

Except in cases involving certain types of offenses, you may pay the prescribed fine by mail. If you wish to plead guilty or no contest to the offense(s) charged against you, and you desire to dispose of your case, you may do so by signing this waiver of your right to a hearing, and mailing this form with your remittance within 15 business days from 11-29-99. If you wish to appear for a hearing check the space provided and return this form by the above deadline date.

Request Hearing Amount of Fine: \$ 250.00
Comments: Not Guilty, but can't win, 50 miles from store when done

Remittance payable to: Kansas Department of Revenue
(Cashier's Check or Investigation and Criminal Enforcement
Money Order only) Topeka, Kansas 66612-1584

WAIVER

I, the undersigned, do hereby waive my right to a hearing on the Citation(s) above. I have read and fully understand the foregoing, and I wish to enter a plea of:

check one 1. () Guilty 2. () No Contest

If this waiver is not received in this office on or before the date specified above, you will be notified by mail of the hearing date in regard to the Citation(s), in which you will be required to appear. No extension of the time period on the waiver form will be allowed.



House Fed. & State Affairs

Date 3/1/00

Attachment No. 1

Page 2 of 2

ICE-601 (Rev. 8/99)

Attachment No. 1 Licensee

Pink-LAA

Green-Agent)

This is your officer's signature not mine.
Does he wish to dispose of this case or did he make an error like we did. Selling tobacco to minors is not a matter of pattern or practice for our state the clerk made an error, just like officer #301 did with his own form.

Matthew W. Jell #301
(Signature of authorized agent)



Testimony: House Federal and State Affairs Committee
From: Thomas M. Palace
Date: March 1, 2000
RE: House Bill 2917

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

My name is Tom Palace, Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas (PMCA of Kansas), a statewide trade association representing over 360 independent petroleum companies and convenience stores throughout Kansas.

We appreciate the opportunity to appear before you in support of HB 2917.

HB 2917 amends the current tobacco statutes that provide for a "statute of limitations" on the penalties for tobacco sales to minors. Currently, if a retailer is caught selling tobacco products to minors, a first time offense would cost the retailer \$250, second offense \$500, third offense \$750 and a fourth offense \$1,000 and/or removal of tobacco license. Current statutes also provide for mitigating circumstance if a retailer has used a state-approved training program, like the We Card program, and, as a result, fines are reduced. However, the statute does not provide for any relief to the retailer if the store remains violation free for an extended period of time. If a retailer were to receive a violation today, the first offense, and remain free of any violations for 3-4 years, the next violation would be his second offense. Under HB 2917, if a retailer remained violation free for this same time period, a subsequent violation would be considered a first occurrence.

Retailers of tobacco products do not condone selling tobacco products to minors. They work hard educating employees about the state law and the consequences should the clerk sell tobacco to minors. However, mistakes happen, and both the clerk and the retailer are held accountable at both the state and federal level. Recently FDA has contracted with some state agencies to perform tobacco stings. Now retailers can be fined both by the state agency and FDA.

As Kansas continues its fight against underage consumption of tobacco products, increased spot checks or sting operations will take place. I was told by the state Alcohol Beverage Control that the agency will begin conducting 350 controlled buys per month in an attempt to step up the enforcement process. PMCA's position is not to stop the controlled buys. PMCA supports reduced consumption of tobacco products by minors, and controlled buy's act as a report card as to how well retailers train their employees. HB 2917 affords responsible retailers the opportunity to wipe the slate clean, just like a traffic infraction, if they remain violation free. Providing a statute of limitations is fair to those retailers who strive to do their best to stop the consumption of tobacco products by minors.

Petroleum Marketers and Convenience Store Association of Kansas
201 NW Highway 24 • Suite 320 • PO Box 8479
Topeka, KS 66608-0479
785-233-9655 Fax: 785-354-4374

House Fed. &
State Affairs
Date 3/1/00
Attachment No. 2
Page 1 of 2

Mr. Chairman, I appreciate the opportunity to appear before you today, and will stand for any questions you may have.