

Approved: April 28, 2000
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on March 7, 2000 in Room 313-S of the Capitol.

All members were present except:

Representative John Edmonds - Excused
Representative Andrew Howell - Excused
Representative Phill Kline - Excused
Representative Mike O'Neal - Excused
Representative Candy Ruff - Excused

Committee staff present:

Mike Heim, Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Lisa Wilson, Clerk of District Court, Jackson County
Jay Scott Emler, Chairman, Kansas Judicial Council Municipal Court Manual Advisory Committee
Lonie Addis, Labette County Commissioner
Larry Sharp, Reno County Commissioner
Ben Sciortino, Sedgwick County Commissioner
Glen Wiltse, Director of Code Enforcement, Sedgwick County
Tom Wiggins, Kansas Against Repressive Zoning
Kelly Wendeln, Chanute, Kansas
Rex & Sean Morley, Derby, Kansas

Hearings on **SB 448 - Docket fees for traffic offenses and certain other offenses**, were opened.

Lisa Wilson, Clerk of District Court, Jackson County, informed the committee that the bill would raise the docket fee for nonmoving traffic violations by \$1, which would go into a trauma fund. The increase would make the docket fee for nonmoving traffic offenses the same as moving violations. (Attachment 1)

Hearings on **SB 448** were closed.

Hearings on **SB 418 - Municipal court assessments in cases charging certain crimes**, was opened.

Jay Scott Emler, Chairman, Kansas Judicial Council Municipal Court Manual Advisory Committee, stated that the bill would require a \$7 assessment be made in all cases filed in municipal court except nonmoving traffic violations. This change will help clarify the intent of the law as to which offenses are subject to assessments in K.S.A. 12-4117. (Attachment 2)

Hearings on **SB 418** were closed.

Hearings on **SB 319 - Enforcement of county resolutions in district court**, was opened.

Lonie Addis, Labette County Commissioner, explained that the bill would extend the provisions of the Code of Enforcement of County Codes and Resolutions to counties by removing the mandatory limitation of 150,000 population. It would also allow the judge pro tem to order the costs of the abatement to be assessed against the property owner on which the nuisance was located. (Attachment 3)

Larry Sharp, Reno County Commissioner, suggested that local control could help counties resolve court code violations as each county sees fit. It would also protect the surrounding property values from going down. (Attachment 4)

CONTINUATION SHEET

Ben Sciortino, Sedgwick County Commissioner, & Glen Wiltse, Director of Code Enforcement, Sedgwick County, provided the committee with two examples of cases where Sedgwick County has not been able to complete the abatement process. The proposed bill would help alleviate the frustration of how counties have property owners clean-up their land. (Attachment 5)

Tom Wiggins, Kansas Against Repressive Zoning, appeared as an opponent of the bill. He was concerned with judges being able to abate nuisances and asset court costs. When they might not know all the sides to the case. He believes that zoning departments get carried away and don't allow citizens the time to clean up their property before filing charges. (Attachment 6)

Kelly Wendeln, Chanute, Kansas, was also concerned about the courts being allowed to determine the amount of time an individual would have to clean up their property. (Attachment 7)

Rex & Sean Morley, Derby, Kansas, appeared as opponents of the bill. They commented that everyone has junk sitting around their property but counties need to consider a way to make it work for all involved. He believes that people have a right to do whatever they want with their property as long as it doesn't impend upon anyone else. (Attachments 8 & 9)

Hearings on SB 319 were closed.

The committee meeting adjourned at 5:30 p.m. The next meeting was scheduled for March 8, 2000.

REMEMBER: YEAR 2000 JOINT KADCCA \ NACM

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**Senate Bill No. 448
TRAFFIC DOCKET FEES
K.S.A. 28-172a**

TESTIMONY

by: Lisa A. Wilson, Clerk of the District Court

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today to speak on behalf of the Kansas Association of District Court Clerks and Administrators regarding Senate Bill No. 448. This bill addresses docket fees assessed in traffic cases.

The 1999 Legislature amended K.S.A. 1998 Supp. 28-172a to increase docket fees for "moving" violations from \$45 to \$46. The \$1 increase goes into a trauma fund.

The two different docket fees now assessed in traffic cases have caused confusion and extra effort by clerk personnel as well as law enforcement officers and attorneys. Extra time analyzing each traffic violation is needed to determine whether the charge is a "moving" or non-moving" violation and which docket fee needs assessed. Clerks only charge what the law enforcement officer indicates on the ticket, and many times there is a docket fee of \$45 when, in fact, it should be \$46. Not only are there discrepancies in the docket fee, but the state is losing money when law enforcement officers cite the \$45 docket fee.

It is our hope to change this language to have one uniform docket fee for all traffic offenses. Not only would this bill clear up any potential confusion or error in the assessment of the docket fee, but also benefit the state in receiving monies from the docket fees collected.

Again, thank you for your time and attention regarding this testimony on Senate Bill No. 448. I would be happy to answer any questions you may have.

JUDICIAL COUNCIL TESTIMONY
BEFORE THE HOUSE JUDICIARY COMMITTEE
ON 2000 S.B. 418

MARCH 7, 2000

Chairman O'Neal, members of the House Judiciary Committee, thank you for allowing me the opportunity to appear before you this morning.

My name is Jay Scott Emler. I am an attorney and currently in private practice in McPherson, Kansas. Since 1985 I have served on the Judicial Council Municipal Court Manual Advisory Committee and have acted as chairman for several years. Additionally, I have served on the Supreme Court Municipal Judges Testing and Education Committee since 1989.

Part of the function of both committees is to assist judges, especially lay judges, in understanding the laws which they are charged with administering in municipal courts throughout this state. Another function of both committees is to listen to the concerns of the judges. I appear today to testify in favor of the proposed changes to K.S.A. 12-4117 which the Municipal Court Manual Committee believes will clarify the intent of the law and will provide for uniform administration of the law throughout Kansas.

Municipal judges have expressed uncertainty regarding which offenses are subject to the assessments set forth in K.S.A. 12-4117. The terms "criminal or public offense" are not defined by law. Additionally, if "criminal or public offense" is defined to be a "crime," the term "or a moving violation" is redundant because traffic violations, whether moving or nonmoving, have been defined by case law to constitute crimes under K.S.A. 21-3105.

The Municipal Court Manual Committee believes the proposed amendment will cure the ambiguities and is consistent with the intent of the current statute.

Once again, thank you for allowing me the opportunity to testify this morning.

I will be happy to stand for any questions this Committee may have.

SB 319
PROPONET STATEMENT
KANSAS ASSOCIATION OF COUNTIES
KANSAS COUNTY COMMISSIONERS ASSOCIATION

Dear Chairman O'Neal and Members of the House Judiciary Committee:

At the Kansas Association of Counties Annual Meeting November 16th, 1999, our assembly, without a dissenting member, endorsed SB 319. On behalf of the Kansas Association of Counties and as President of the Kansas County Commissioners Association, I respectfully request a favorable endorsement of SB 319 by the House Judiciary Committee.

Counties in Kansas need the option to allow us to enforce our own Codes and Resolutions. With the diversity of the 105 Kansas Counties, commissioners can determine on an individual basis whether this procedure is the best for their county. We need the flexibility to address code issues as they pertain to our local areas. Deleting the limitation of 150,000 population by adopting SB 319 is essential to make the law uniform and equitable.

The cost to enforce and prosecute such code violations is a burden on the taxpayer. If SB 319 was enacted into law, counties could recover a portion of their costs through setting reasonable court costs. It has always been a policy of commissioners across the state to look for alternatives to property taxes. By making the very offender pay for such court costs, will lessen the tax burden on those who are in compliance with codes. It is simply a matter of fairness.

County Commissioners adopt resolutions to be in the best interest of the people they represent. It is critical that enforcement procedures are in place to allow that end; therefore, I respectfully request passage of SB 319 by this committee.

Sincerely,



Lonie R. Addis
Labette County and President
Kansas County Commissioners Association

640 Iowa
Oswego, Kansas 67356-2422
(316) 795-2826
addis@oswego.net

Larry R. Sharp, Member, Reno County Board of Commissioners

JUDICIARY COMMITTEE

SENATE BILL 319

This testimony is presented to the Committee in support of Senate Bill 319.

Reno County supports this legislation and feels strong enough about the issue that A Resolution in Support of Senate Bill No. 319 was adopted on January 12, 2000. A copy of our resolution is attached for your review.

Passage of this bill as presented will enable local jurisdictions with populations under 150,000 to enforce their own county codes and county resolutions. Local control will be enhanced because counties will be allowed to resolve court code violations as they deem reasonable. To summarize, we advocate for local control so Reno County can determine what is appropriate for our own county.

The ability to extend the authority of the code enforcement officer to sign, issue and execute notices to appear, uniform citations or uniform complaints and notices to appear will expedite the procedure for abatement of nuisances. Swift action and monetary penalties could enhance the compliance of violations. The time for a violation to move through the district court system will be reduced with the ability to have a judge pro tem appointed to hear cases involving public health issues and nuisances stemming from zoning violations.

The abatement of nuisances is difficult at best. The addition of SB 319 would be another tool for the counties to use not only to gain compliance with county resolutions but also to protect the property value of surrounding properties that are affected by these nuisances. More service can be provided to the county if an effective enforcement process is in place.

In Reno County, we've had issues that concern abandoned and junk vehicles, miscellaneous junk and debris, unsafe and dangerous abandoned structure violations. Remedies must be timely and expedient because of the public health and safety hazards that are present.

A RESOLUTION IN SUPPORT OF SENATE BILL NO. 319

WHEREAS, Senate Bill 319, a proposed legislative Act relating to the enforcement of county resolutions and codes and providing for the establishment of county court systems, is currently before the Kansas Legislature; and

WHEREAS, Senate Bill 319 addresses in particular the removal of population limitations for the establishment of county court systems, allows the board of county commissioners to determine court costs for violations of county codes and resolutions and provides that a judge pro tem shall have the authority to order abatements of nuisances; and

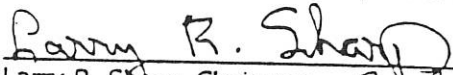
WHEREAS, Senate Bill 319 is an important piece of legislation empowering counties with the ability to enforce county resolutions and codes; and


WHEREAS, it is important for counties throughout the State of Kansas to support this legislation with the above particulars and to let the Kansas Legislature know of their support; and

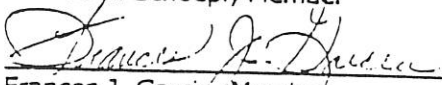
NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF RENO COUNTY, KANSAS, that Reno County strongly supports Senate Bill No. 319 and urges the Kansas Legislature to adopt said bill into law in the 2000 session.

ADOPTED IN REGULAR SESSION this 12 day of January, 2000.

BOARD OF COMMISSIONERS, RENO COUNTY, KANSAS


Larry R. Sharp, Chairman


Francis E. Schoepf, Member


Frances J. Garcia, Member

ATTEST:


County Clerk



DEPARTMENT OF CODE ENFORCEMENT
Sedgwick County, Kansas

1144 South Seneca
Wichita, Kansas 67213
Phone: (316) 383-7951
1-800-527-CODE
FAX: (316) 383-7502

Glen Wiltse, C.B.O., C.B.I.
Director

Zoning / Nuisance Inspection Yearly Totals

Year	# Zoning Cases	# Ct. Cases	Increase ^ Prev. Yr.
1995	24	Not Available	
1996	48	16	100%
1997	171	65	256%
1998	473	269	177%
1999	518	327	10%

CASE #- 1

On July 25, 1999 I received a complaint of inoperable vehicles in the 5700 block of South Mead, Wichita, Ks. On July 26, 1999 I inspected the property on South Mead. My inspection revealed a dark blue Ford Tempo without a license plate, a grey Mazda without a license plate, a white pickup that the electrical wiring was burned, and a red Pontiac Grand Prix with flat tires, no license plate and the trunk wired shut. Also found a vehicle engine lying on the ground in the back yard.

July 28, 1999 I sent a certified letter to the tenant on South Mead. This letter gave her three options to bring the property into compliance within 30 days. The three options were to remove all inoperable vehicles and vehicle parts from the property, store all vehicle parts and vehicles in an enclosed building and/or make the vehicles operable.

Along with this letter I enclosed copies of the Unified Zoning Code for Wichita-Sedgwick County which showed what was allowed on property zoned Single-Family District (SF-20), plus the definitions of inoperable vehicles and vehicle storage yard which specifically pertained to this situation. This letter gave a date of August 29, 1999 for reinspection of the property.

On August 31, 1999 I inspected the property for compliance. The Ford Tempo had been removed from the property. The Mazda and pickup were still on the property and in the same shape as before. The rear end of the Pontiac was being supported by jack stands and the rear tires and wheels had been removed from the vehicle. I talked to the tenant and gave her an extension to September 15, 1999 per her request. I explained to the tenant that if the property was not in compliance by September 15, 1999 she would receive a citation. The tenant agreed and said she understood.

On September 21, 1999 I returned to the property on South Mead to see if the vehicles were operable or removed from the property. The red Pontiac still did not have a license plate and the drivers side front tire and wheel was setting against the rear bumper of the vehicle. A citation was issued to the tenant for violation of Wichita-Sedgwick County Unified Zoning Code Article VIII, paragraph D. 4.

CASE # - 1

October 18, 1999 the tenant appeared in court and pled guilty. The judge gave her two weeks to get into compliance and told her to appear in court on November 1, 1999 to find out how much the fine would be. On October 29, 1999 checked with the tenant. The Pontiac was licensed but not running. The vehicle engine was still lying on the ground in the back yard.

November 1, 1999 checked with the tenant by her request. The engine in the back yard was gone but the Pontiac was still inoperable and the driver's side front tire was flat. The tenant appeared in court and the judge gave her a fifty-dollar fine and until November 12, 1999 to be in compliance. The judge explained that a citation could be issued for each day that the property is not in compliance.

November 12, 1999 the tenant appeared in court and stated the Pontiac still was not operable. The judge gave the tenant until November 22, 1999 to get the Pontiac operable or remove it from the property.

November 22, 1999 checked the property. The Pontiac was not operable, still had flat tire and trunk lid held shut with wire. The tenant failed to appear in court.

December 6, 1999 checked the property. The Pontiac was not operable, still had flat tire and the trunk lid held shut with wire. The tenant failed to appear in court.

December 15, 1999 checked the property. it was still not in compliance. Issued another citation for same violation.

December 20, 1999 the tenant appeared in court after receiving two failures to appear notices and another citation for the same violation. She told the judge that the Pontiac still would not run and that she had received another citation. The judge continued the case to February 14, 1999.

CASE # 2

On January 28, 1999, a complaint was received from a neighbor of numerous inoperable and stored vehicles in the 9700 block of N. Meridian, in Sedgwick County. On the same day I inspected the property from my vehicle and observed over 20 inoperable, stored, wrecked & dismantled vehicles.

On January 29, 1999, the property was researched for ownership and particular zoning for the property in question. The property was zoned "Rural Residential District", in which inoperable, stored, wrecked & dismantled vehicles are not allowed. In addition pursuant to K.S.A. 68-2203, Kansas Junkyard and Salvage Control Act, this property if not licensed by the state would be in violation of state law. I called Marvin K. Neukirch, Salvage Administrator and ascertained the property had no license.

In the second week of February 1999, an inspector went to the property and contacted the owner and discussed the violations, he assured me he would start cleaning the property.

On March 2, 1999 after going by the property and noting no change or improvement, in fact more salvage vehicles had been brought on the property, the required certified letter was sent to the property owner who also lives on the property.

After March 20, 1999, upon the U.S. Postal Services third attempt to make delivery, the certified letter was returned unclaimed.

On March 23, 1999, an inspector delivered to the property owner a copy of the contents of the certified letter along with the zoning regulations pertaining to the situation and a sheet from the State of Kansas defining K.S.A. 68-2203, Kansas Junkyard and Salvage Control Act. These were handed to the owner on the property.

On April 5, 1999 a citation was issued to the property owner for two counts of violations of the zoning code.

On April 19, 1999, the property owner call the Director of Code Enforcement and requested copies of what was handed to him on March 23, 1999 concerning the violations on his property. The information was mailed the same day.

CASE # 2 (continued)

In July 1999, the inspector accompanied Kansas State R.O.W. Agents to the property and actually counted the inoperable, stored, wrecked & dismantled vehicles. The count was 101 vehicles on the property on that inspection, as on past occasions photos were taken.

August 19, 1999, the Salvage Administrator for the State of Kansas notified the owner of being in violation of state law concerning salvage. This letter gave the owner 45 days to remove the vehicles from the property.

August 30, 1999, the owner pleads guilty in Sedgwick County Court for the two violations on zoning regulations. The court gave additional time to clean the property of the vehicles.

Since August 30, 1999 a now total of eleven (11) citations have been issued to the owner of the property.

On January 10, 2000, the owner is set for county court to hear the last three citations. In December the first eight citations were heard in court and evidence submitted.

January 5, 2000, the above property is not yet in compliance with state law or county zoning regulations.

Mr. Chairman and Members of the Committee;

I am Tom Wiggins from Valley Center, Kansas. I am addressing you on Senate bill 319 concerning code enforcement.

I represent a group of citizens belonging to KARZ {Kansans Against Repressive Zoning}. Our members and myself have been abused and harrassed by Sedgwick County Code Enforcement officers. We are opposing this bill.

I would like to present to you a true a true experience one of our members in dealing with these people; On October 15 and 16, 1998 George Bloesing and other county empolyees went on this citizens property and removed the following items; 3 pickup trucks, 1 tractor with a flat tire, some Ibems, miss steel and iron, 1 outboard motor, 1 go cart, 1 weed eater, several antique horse drawn implements, and other items that are too numerous to list here. The citizen has seven mules that are his hobby.

In the process of doing all this, the county used a high loader to move a stack of square bales of hay so they could remove a pick up from open lean to shed. They destroyed the hay which should have been moved by manual labor.

The citizens parents came on the property and asked them what they were doing and did they have any court papers. A sheriffs deputy told them to get off the property or he would arrest them for obstruction of justice.

The citizen came home from a hunting trip to Colorado on october 24 and found this property gone. He made a complaint to the sheriffs department against George Bloesing for theft and destruction of property. The sheriff did not take any action on this.

The citizen went to county court on november 2, 1998. Mr Bloesing admitted that they had taken the property. It should be noted that there were never any papers shown or left on the property.

November 9, 1998, a mutual release agreement was presented to the citizen that said if he would agree to not to sue the county commisioners, county counslers, the judge, and any other county employee, and Bud Roat Tow Service, if he would sign this document, they would return his property. He asked who was going to pay Bud Roat Tow Service's bill. The county told the citizen that he would have to pay the bill. The citizen said like hell he would, they were responsible for hauling all his property off. The county decided to pay Bud Roat in excess of \$1000. But the citizen had to haul the vehicle back home on his trailer at his own expense. This was the first time the citizen had seen any court order to authorize this action. He did not recieve a copy. The citizen told them to write on the bottom of the release that his property was in full compliance on that date.

The document was signed by the county court Judge Richard Macias, who did not have the authority to order this action.

The citizen only recovered 2 pickups and the tractor. The rest was taken to Boque Iron & Metal and sold for scrap. The citizen went there to recover these items and was told that they had shredded the property. The county recieved \$400 for this and kept the money. The third pick up was not recovered because it belong to a brother who was out of the country at the time and was storing it on the property. The citizen did not have proof of ownership This vehicle was sold at a sheiffs auction for the storage charges. This vehicle had a current license tag on it.

In January, 1999, Mr Bloesing started writing more citations against the citizen for the same violations, starting the process over. This time the citizen paid a attorney \$1000 to represnt him in county court. The attorney asked the judge to have Mr. Bloesing to meet him at the property. The attorney had Mr Bloesing to inspect the property. The attorney said to Mr. Bloesing; Do you see how this property looks now. Mr. Bloesings answers yes sir. The attorney; this is exactly the way this property looked when this document was signed and this means that you are to leave this man alone and to bother him any more. Mr. Bloesing; "Yes Sir". They have not bothered him since.

I would like to note that the county engineer was asked to inspect the property and give his opinion. He reported that he did not see any problems with the property. The county employees stopped to visit the citizen and apoligized for what happened.

Bill 319 should not become law because of the following reasons,
This bill will give a judge pro tem the power to issue a abatement of nuisances when he might not know all the facts of each situation. When there is an overzealous code enforcement officer that is over enforcing the code, he may tell the judge to sign an order of abatement with out due process for the citizen.

The Sedgwick County judge pro tem is hired by the county, therefore he is likely to rule in favor of his fellow employees. The judge is under a contract being paid \$200 per day for his services. If he doesn't perform the the satisfaction of the county counsler, his contract might be in jeopardy. Therefore a judge pro tem is not like an elected official.


The present laws now in place are adequate enough. If the county needs to issue an order of abatement, they now have the means to do so in the district court system. This will give the citizen an equal chance at due process of law.

A private citizen would not have an equal opportunity of being treated fairly under Bill 319.

The present Sedgwick County Judge Richard Macias has been making up his own laws as he sees necessary to find some one guilty and fine them. A case exaple; He has ruled that in order for a vehicle to be operable, it has to be tagged and insured. There is no such law in this state that says this. He also has made other rulings that are not legal law. He has openly admitted this.

In Sedgwick County, if a citizen has an inoperable vehicle, it has to be kept inside an enclosed building. This even includes a farm tractor that is operable and has a flat tire.

I will furnish the citizen name on request.


Signed by_Thomas Wiggins
9764 N. Meridian
Valley Center, Ks 67147

Testimony in opposition to SB 319 on Tuesday, March 7, 2000 at 3:30 p.m. to the Kansas House Judiciary Committee from Kelly Wendeln, 919 S. Highland, Chanute, Kansas, 66720.

I want to thank Chairman O'Neal and this committee for this opportunity to testify. I want to thank you for showing concern for the property owners who have genuine problems next door to them.

On page 4 starting with line 11 of 319 a new change in this zoning law states that if a property owner doesn't comply with removing a perceived nuisance, a court will order its own agents to rectify the situation and bill the landowner.

I have a retired elderly disabled friend in this situation right now. While this friend is making progress, it is not fast enough for zoning and court authorities and this kind of change in the law would cause loss of valuable property and severe financial problems. They are not giving my friend enough time.

From what I have seen, zoning authorities have no regard for grandfather clauses, handicapped property owners and limited income citizens. I have found that court officials will do anything to derail a property owner's court case. I have seen authorities get extremely petty. Zoning personnel act like a pit bull inside a cage full of bunny rabbits.

I notice this bill is supported by various governmental zoning, planning and health officials. I and a lot of other citizens are disturbed that these authorities use our tax money to cause us problems. The more laws you pass, the less freedom everyone has, and this law is a very good example of that.

George Washington once said, "Government is not reason. It is not eloquence. It is force! Like fire, it is a dangerous servant, and a fearful master." We are quickly heading toward the latter.

Chairperson and members of the committee:

My name is Rex Morley from Derby, Ks. in Sedgwick Co. and I was born in Oketo, Ks. in 1944 and with the exception of my service in the Vietnam war and a few years during layoffs from aircraft industry I have lived in Kansas all of my life. My Kansas roots stretch back four generations. I am addressing you with great concern about the impact of senate Bill 319 and other bills which may affect my life and the lives of others to great detriment. I, as well as many others, believe that the state should not be more restrictive than the federal regulations that already exist. These are the points that I will attempt to address before you today.

1. Abatement
2. Necessity of Bill 319
3. Impact of Bill 319
 - a. fiscal
 - b. freedom
4. Rights of individuals
5. Solutions
 - a. disolvement
 - b. comprimising
 - c. health and welfare

In conclusion I thank you for your time and hope you will vote down Bill 319 in favor of the rights of the people and personal responsibility.

Chairperson and Members of the Committee:

My name is Sean Morley from Derby, Ks. in Sedgwick Co. and although I was born in georgia only two years of my life have been spent outside of Kansas. I am a fifth generation Kansan and am concerned about my rights and the future I will have should Bill 319 and other bills like it will leave me. Here are a few points that I would like to touch on today.

1. How Code Enforcement affects my life
 - a. financially
 - b. my hobbies
 - c. emotionally
 - d. my rights
2. My views on a comprmise that all can live with

Again I thank you for your time and hope you will vote Bill 319 down