

Approved March 13, 2000
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Acting Chairperson Vratil at 10:14 a.m. on March 8, 2000 in Room 123-S of the Capitol.

All members were present except: Senator Petty (excused)

Committee staff present:

Gordon Self, Revisor
Mike Heim, Research
Jerry Donaldson, Research
Mary Blair, Secretary

Conferees appearing before the committee:

Gerald Goodell, Kansas Judicial Council
Rich Hayse, Kansas Bar Association
Sgt. Oscar Thomasson, Sedgwick County Sheriff's Department

Others attending: see attached list

HB 2671—concerning the probate code; relating to estate taxes

Conferee Goodell testified in support of **HB 2671**. He described technical changes in the bill necessitated by the passage of the Kansas Estate Tax Act and discussed other clean up language. (attachment 1) Following discussion, Senator Pugh moved to pass the bill out favorably, Senator Goodwin seconded. Carried.

HB 2672—concerning taxation; relating to estates

Conferee Goodell testified in support of **HB 2672** describing the amendments to the Kansas Estate Tax Act which include the striking of confusing language, clarification of how certain concepts are stated and other technical changes. (attachment 2) Following discussion, Senator Goodwin moved to pass the bill out favorably, Senator Donovan seconded. Carried.

HB 2673—concerning the probate code

Conferee Goodell testified in support of **HB 2673**. He discussed a review done by the Judicial Council Probate Law Advisory Committee where it was determined that many of the dollar amounts contained in the code have not been changed for many years. The Committee used the consumer price index to review all dollar amounts contained in the Probate Code and recommended the amendments contained in this bill. (attachment 3) There was discussion regarding fiscal impact and no action was taken until further information could be obtained.

Written testimony in support of **HB 2673** was submitted by the Kansas Bankers Association. (attachment 4)

HB 2905—concerning civil procedure; relating to service of process

Conferee Hayse testified in support of **HB 2905**. He stated that this bill evolved out of concerns expressed by Kansas attorneys about "inherent limitations in using certified mail for [service of process] and a desire to make the procedure more flexible while retaining the present safeguards for the person being served." He described how the bill satisfies these concerns. (attachment 5)

Conferee Thomasson testified in support of **HB 2905** and discussed how the bill will improve service and reduce costs. (attachment 6) Following discussion Senator Oleen moved to amend **HB 2905** by deleting on page 4 line 18 everything on line 18 except the words "or as" and by deleting all of the bold print on line 21 and 22; also on page 5 line 36 by striking the word "plaintiff" and substituting the word "party"; on page 10 line 36 by striking everything on line 36 except the words "or as" and striking the bold print on lines 39 and 40; on page 12 line 8 by striking the word "plaintiff" and substituting the word "party", seconded by Senator Gilstrap. Carried. Senator Goodwin moved to pass the bill out favorably as amended and amend the effective date to publication in the Kansas Register, Senator Emert seconded. Carried.

The meeting adjourned at 10:40 a.m. The next scheduled meeting is March 9, 2000.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 8, 2010

NAME	REPRESENTING
Christy Molzen	Judicial Council
Gerald Goodell	Judicial Council
Paul BICKNELL	KDHR
Marilee Burthoff	KCCI
Therese Thornburgh	UDOT
Kathy Ponder	OJA
Julia Meyers	Kansas Farm Bureau
Shawn McKee	Kansas Farm Bureau
Paul Davis	Kansas Bar Assn.
Kyle Darse	" " "
Kathy Olson	Kansas Bankers Assn
Jeff Bo Henberg	Kansas Sports Ass'n
Sgt. Oscar Thomasson	Sedgwick County Sheriff's Dept.
Janice Neagle	Cowley County Leadership
ROBI NEAGLE	COWLEY COUNTY
Ken Sturges	KTLA

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March 8, 2000

**Judicial Council Testimony
on 2000 HB 2671**

This bill was recommended by the Judicial Council's Probate Law Advisory Committee whose members are Marvin E. Thompson, Chair, Russell; Cheryl C. Boushka, Overland Park; Hon. Sam K. Bruner, Olathe; Representative Tim Carmody, Leawood; Jack R. Euler, Troy; Gerald L. Goodell, Topeka; Senator Greta Goodwin, Winfield; Mark Knackendoffel, Manhattan; Hon. Edward Larson, Topeka; Richard L.D. Morse, Manhattan; Philip D. Ridenour, Cimarron; and Willard Thompson, Wichita. The bill was approved by the Kansas Judicial Council.

The bill contains technical changes to K.S.A. Chapter 59 necessitated by the passage of the Kansas Estate Tax Act. When the Kansas Estate Tax Act passed, Kansas was left in a transitional period, which will continue for a number of years, in which estates of decedents who died on July 1, 1998 or thereafter fall under the Kansas Estate Tax Act and estates or persons dying prior to that date fall under the Kansas Inheritance Tax Act. The proposed amendments insert the July 1, 1998 date throughout the Inheritance Tax Act to clarify its applicability.

Section 1 amends K.S.A. 59-808 and relates to personal representatives of nonresident decedents. The insertion of the phrase "estate tax or" in line 35 recognizes that Kansas has both an estate tax and inheritance tax and a waiver of either may not be required by transfer agents.

In Sections 2 through 9 the phrase "for decedents dying before July 1, 1998" is inserted a number of times. This change clarifies that inheritance tax applies only to decedents dying before July 1, 1998.

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March 8, 2000

**Judicial Council Testimony
on 2000 HB 2672**

This bill was recommended by the Judicial Council's Estate Tax Advisory Committee whose members are Representative Tim Carmody, Chair, Leawood; Hon. Sam K. Bruner, Olathe; C.W. Cade, Topeka; Martin Dickinson, Jr., Lawrence; Joseph W. Jeter, Hays; John R. Luttjohann, Topeka; Joseph Murtha, Wichita; Austin Nothern, Topeka; Hayden St. John, Topeka; Susan Teson, Kansas City, Missouri; William P. Trenkle, Jr., Dodge City; and Jim Weisgerber, Topeka. The bill was approved by the Kansas Judicial Council.

Several amendments are proposed to the Kansas Estate Tax Act. They include the striking of confusing language, clarification of how certain concepts are stated and other technical changes.

Comment to Section 1

The amendment to subsection (a), relating to transferee liability, makes it clear that a surviving spouse will not be personally liable for the unpaid tax to the extent that a marital deduction was allowed for such property on the federal estate tax return.

The Committee recommends that subsections (b) and (c) of K.S.A. 79-15,107 be deleted.

K.S.A. 79-15,107 (b) and (c) are intended to set forth a process for the enforcement of collection of the Kansas Estate tax by issuance of tax warrants. The Committee is of the opinion there are numerous problems with the subsections. In the collective experience of the Committee, no one knew of, or had heard of, and instance when the procedure has been used. It is the consensus of the Committee that if it were used it would cause confusion and uncertainty.

The section states that the Director of Taxation can issue a warrant to the sheriff of the county directing the sheriff to levy and sell real and personal property of the "Estate" found within that county. The warrant apparently would list "the name of the Estate" and when the sheriff files this with the Clerk of the District Court, the amount of the warrant becomes a lien upon the property of the "Estate" in the same manner as a judgment. The Committee is concerned that the statute does not state how the property that is to be subject to the lien is to be identified.

In addition the Committee noted that the term "Estate" is defined in K.S.A. 15,101 as meaning: "the real, personal, and mixed property... of the testator be transferred to legatees, devisees, heirs, next of kin, grantees, donees, vendees, or successors..." The Committee questions what the term "vendees" means in this context, since the lien has previously been removed. This could be interpreted to imply that a new lien springs up against the property that has been sold. The Committee is of the opinion that this new lien was not intended.

In subsection (c), the statute states that the "Estate" shall have the right to redeem the real estate. While the language in this section may have made sense when most assets were transferred at death

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by means of a probate proceeding, the Committee is of the opinion that it does not work well with non-probate transfers.

It is the opinion of the Estate Tax Advisory Committee that the law will be improved if subsections (b) and (c) are stricken. It is the opinion of a committee member from the Department of Revenue that they could proceed under the statement of liability in subsection (a) if the need arose.

Comment to Section 2

The generation skipping transfer tax ("GSTT") imposed at the federal level allows a credit for a state GSTT equal to five percent of the federal tax. The credit is allowed only for the tax on a taxable termination or distribution that occurs at the same time and as a result of the death of an individual. If the transfer or distribution is made at the time of death of the person who originated the transfer, then the decedent's estate would be liable for the tax. However, if the event triggering the tax is the death of a person who did not originate the transfer, as when a trust is established by a parent for a child and grandchild and the child dies, then liability for the tax is imposed upon the Trustee rather than the original decedent's estate. By this amendment, Kansas will parallel federal laws by placing liability for payment of the Kansas tax upon the same persons or entities that are responsible for paying the federal GSTT.

Comment to Section 3

This statutory section was enacted in 1999 and was intended to replicate certain provisions of the Internal Revenue Code which provide for a right of recovery of taxes against certain assets. This section currently states that the tax recoverable is a portion of the tax under Chapter 11 of the Internal Revenue Code. Because this is intended to be a right of recovery for the Kansas tax, it cannot be determined by the amount of the federal estate tax. If read literally, this section gives the possibility of recovering an amount substantially greater than the appropriate portion of the Kansas Estate Tax.

This proposed amendment permits the personal representative of a surviving spouse's estate to recover tax owed by that estate because qualified terminable interest property was included in the estate of the surviving spouse, and accurately states the drafting committee's intent.

Comment to Section 4

This section was enacted in 1999 and was intended to replicate certain provisions of the Internal Revenue Code which provide for a right of recovery of taxes against certain assets.

The section states that the tax recoverable is portion of the tax under Chapter 11 of the Internal Revenue Code. This is supposed to be a right of recovery for the Kansas tax, and cannot be determined by the amount of the federal estate tax. If read literally, this section gives the possibility of recovering an amount substantially greater than the appropriate portion of the Kansas Estate Tax.

The proposed amendment gives the personal representative the right of reimbursement for taxes attributable to the inclusion of IRC 2036 property (transfers with a retained life estate) in the decedent's taxable estate.

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March 8, 2000

**Judicial Council Testimony
on 2000 HB 2673**

The bill was recommended by the Judicial Council's Probate Law Advisory Committee whose members are Marvin E. Thompson, Chair, Russell; Cheryl C. Boushka, Overland Park; Hon. Sam K. Bruner, Olathe; Representative Tim Carmody, Leawood; Jack R. Euler, Troy; Gerald L. Goodell, Topeka; Senator Greta Goodwin, Winfield; Mark Knackendoffel, Manhattan; Hon. Edward Larson, Topeka; Richard L.D. Morse, Manhattan; Philip D. Ridenour, Cimarron; and Willard Thompson, Wichita. The bill was approved by the Kansas Judicial Council.

In its work with the Probate Code, the Judicial Council Probate law Advisory Committee noticed that many of the dollar amounts contained in the code have not been changed for many years. The Committee used the consumer price index to review all dollar amounts contained in the Probate Code and recommends the following amendments.

Section 1. The allowance to spouse and minor children was raised to \$25,000 effective July 1, 1989. The Committee is of the opinion that this amount is related to the cost of living index and should be reviewed periodically. The CPI has increased 31.3% from July 1, 1989 to July 1, 1999. The Committee proposes the allowance be increased to \$35,000.

Section 2. The Committee recommends the \$25,000 amount contained in this section be increased to \$35,000. The \$25,000 amount is the amount of the homestead allowance under K.S.A. 59-403 which is raised to \$35,000 by section 1 of this act.

Section 3. This statute has not been raised in dollar amount since its passage in 1967. The Committee notes that this statute, which allows certain categories of payors to pay monies to certain relatives only releases the payor from liability and does not say that the recipient of the payment necessarily keep the money. The Committee also noted that these affidavits are in wide use. The CPI has increased 389% from July 1967 to July 1999, and the Committee proposes this amount be increased to \$5,000.

Section 4. In addition to recommending that subsection (b) be amended by raising the \$10,000 amount to \$20,000 to respond to the 97.5% increase in the CPI from July 1980 to July 1999, the Committee recommends that subsection (a) be stricken.

The reason that the Committee recommends that subsection (a) be repealed is because it is narrower in scope than subsection (b). Subsection (a) is limited to use by banks, trust companies, savings and loan associations and credit unions located in this state. Subsection (b) may be used by

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"any corporation or person". Under Subsection (a) if the estate is \$10,000 or less, monies on deposit of up to \$1,000 may be distributed. Under subsection (b) the full \$10,000 can be distributed.

In addition, practitioners report there have been problems when attempting to persuade financial institutions to make a distribution under subsection (b), because they believe that they may only distribute under subsection (a). The Committee recommends subsection (a) be repealed because it overlaps the more broadly crafted subsection (b).

The amendment on page 3, line 23 was made in the House Judiciary Committee at the request of the Kansas Bankers Association and clarifies that the section refers to the probate estate of the decedent.

Section 5. The \$500 amount in this section was established when the statute passed in 1939. From July of 1939 to July of 1999, the CPI has increased 1,083%. The Committee recommends the statute be amended to \$5,000.

Section 6. Subsection (c) which contains the proposed amendment was new in 1987. From July of 1987 to July of 1999, the CPI increased 43.5%. The Committee recommends an increase above the CPI because it believes the increased amount is "consumer friendly" and benefits both the estate and the creditor.

Section 7. The amount in the refusal to grant letters of administration statutes has historically been tied to the homestead allowance, which is increased to \$35,000 by section 1 of this act.

Section 8. This amount has not been changed since 1939. The CPI has increased 1083% between July 1939 and July 1999, and the Committee recommends the increase to \$500.



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

*Written
5/14/3-8-00*

March 8, 2000

TO: Senate Judiciary Committee

FROM: Kathleen Taylor Olsen, Kansas Bankers Association

RE: **HB 2673**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the committee in general support of **HB 2673**, and specifically in support of an amendment made by the House Committee.

The amendment made was to KSA 59-1507b, regarding estates of less than \$10,000 (increased to \$20,000 in this bill). Questions about this statute come into our office quite frequently. Bank tellers are often faced with questions from a surviving spouse or another heir regarding the accounts left behind by a decedent.

This statute is available when the "total assets of the estate of the decedent do not exceed \$10,000". The problem is that the statute does not define "total assets of the estate". Questions about whether that means just "probate assets" or whether it includes non-probate assets such as life insurance policies are very frequent.

Having a definition in the statute will be greatly helpful to the surviving heirs who are trying to determine whether or not they fall under these provisions.

Thank you for your time and we urge you to look favorably upon **HB 2673** as amended.

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**KANSAS BAR
ASSOCIATION**

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P.O. Box 1037
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Telephone (785) 234-5696
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**TESTIMONY BY RICHARD F. HAYSE
ON BEHALF OF THE KANSAS BAR ASSOCIATION
IN SUPPORT OF HB 2905**

Kansas Senate Judiciary Committee
March 8, 2000

Statutes in the civil procedure code and in the procedure for limited actions presently authorize the use of certified mail for service of process. House Bill 2905 evolved out of concerns expressed by practicing Kansas attorneys about inherent limitations in using certified mail for this purpose and a desire to make the procedure more flexible while retaining the present safeguards for the person being served.

Using certified mail rather than personal service of process by the sheriff or a private process server is often desirable for reasons of economy and efficiency. However, the person to whom the envelope is addressed may not be at home when the postal service attempts delivery. In that case the postal service usually leaves a notice for the addressee to pick up the certified mail at the post office. If the individual fails or refuses to pick up the mail, then it is returned to the sender and any utility of certified mail is lost, along with a loss of several weeks of time.

HB 2905 retains the concept of restricting the delivery process to channels, which will provide evidence of who was served, and when and where, just as with the use of certified mail. But the bill expands the authorized means of delivery to include not only certified mail, but also priority mail, commercial courier service, overnight delivery service, or other reliable personal delivery service. This would allow service of process by means such as Federal Express or a reputable urban delivery company or other service that fits within the definitions of return receipt delivery.

The bill also clarifies the fallback use of first class mail when other methods have failed. This is currently authorized in the statutes, but HB 2905 adds safeguards to the present system. The serving party would be required to files a certificate of service with the clerk of the district court, as at present.

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But if the first class mail is returned to the serving party – and thus never received by the addressee – the amendments would require an amended certificate of service to document that no service was obtained. The amendments also clearly conform this procedure with the three-day rule now used in determining other service under the civil procedure code: Service by first class mail would be considered obtained three days *after* mailing.

The bill would make the statutes pertaining to in-state service, out-of-state service and service of limited action process identical regarding return receipt delivery to try to eliminate ambiguity and increase certainty of use across the board.

We have worked with the Kansas Sheriff's Association and incorporated the provisions of House Bill 2806 into this legislation. In addition there are several technical amendments that we wish to add to the bill. These amendments are listed as an attachment to my testimony.

On behalf of the Kansas Bar Association, we urge your favorable consideration of House Bill 2905. Thank you.

TECHNICAL AMENDMENTS TO HOUSE BILL 2905

- 1) Delete the words “by K.S.A. 60-903, 60-2401 or 60-3104” on page 4, line 18 and on page 10, line 36.
- 2) Delete the words “or requests personal or residence service pursuant to subsection (d)” on page 4, lines 21-22 and on page 10, lines 39-40.
- 3) Delete the word “plaintiff” and replace it with the word “party” on page 5, line 36 and on page 12, line 8

2905

Sgt. Thomasson

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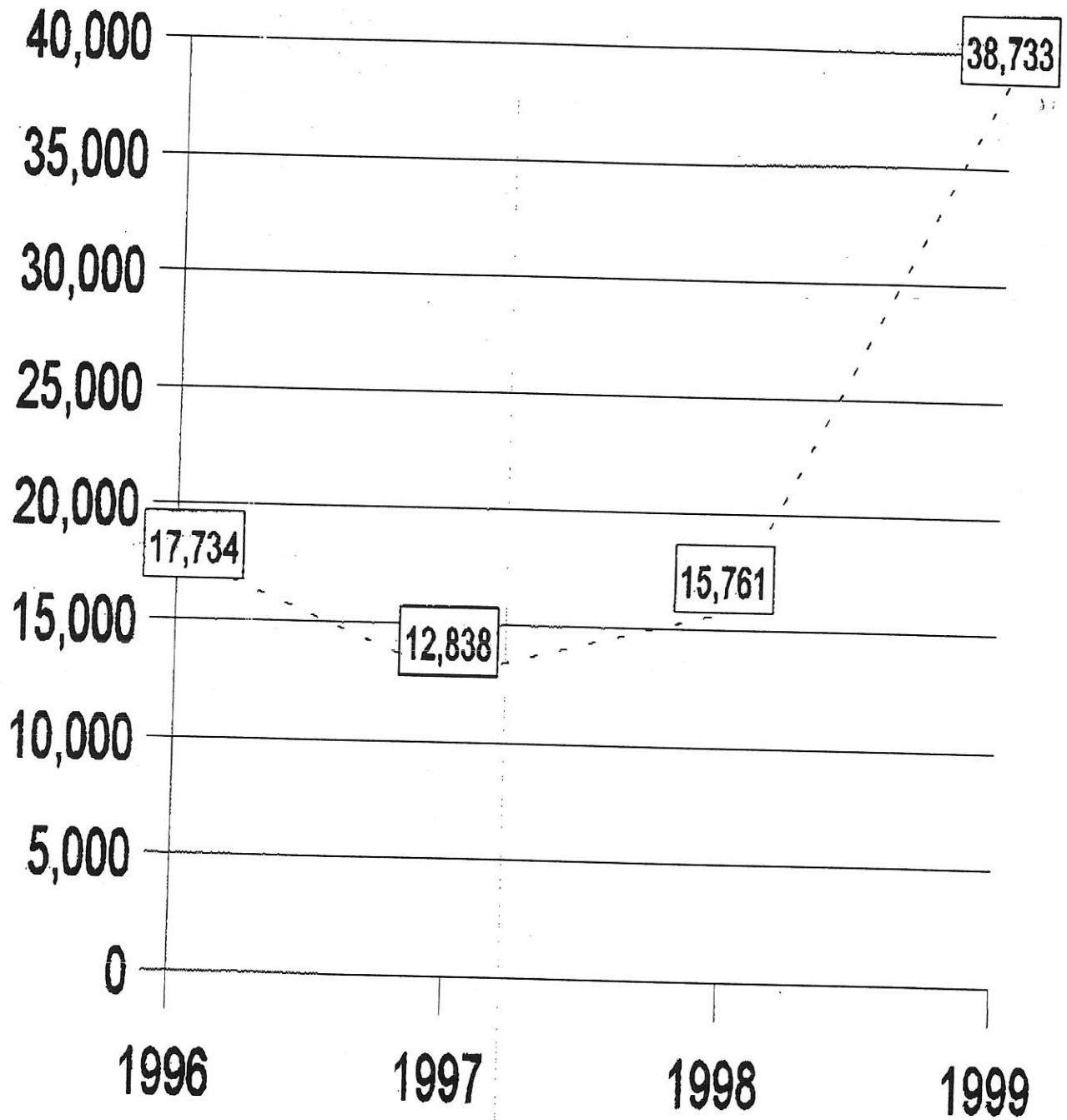
Civil Process in Kansas

Improving Service and Reducing Costs by Changing K. S. A. 60-303 and 61-1803

- Certified Mail Service is the "default" for service of process in Kansas by wording of K. S. A. 60-303 and 61-1803.
- These statutes require Certified Mail Service whenever no other form of service is specified at the time of filing. Local sheriffs are therefore required to expend funds to mail civil process--even to recipients housed in the same building as their offices.
- Compliance with the "default" required by both statutes will cost the taxpayers of Sedgwick County an estimated \$40,000 to \$55,000 dollars in FY 2000 for certified mailing of process which could be served more cost effectively by either personal or residential service methods.
- The *actual* cost of serving twenty documents by Certified Mail Service to an address in downtown Wichita is over \$160.00. The *actual* cost of serving the same papers by personal service is under \$30.00.
- The change proposed by the Kansas Sheriff's Association will allow sheriffs to avoid this added expense, while continuing to provide service of process as specified by law.

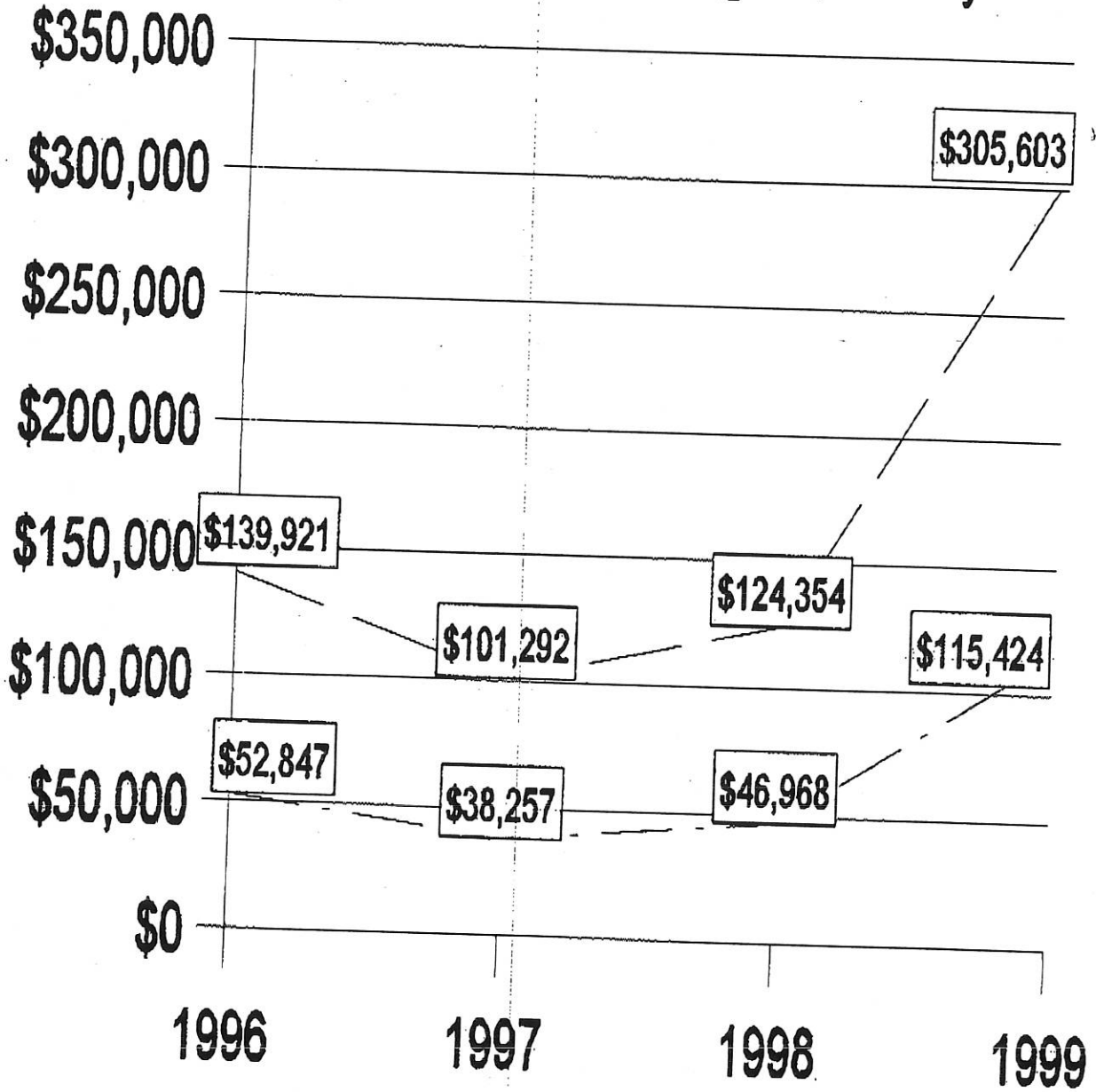
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Certified Mail Service in Sedgwick County



Papers Served by Certified Mail

Postage Costs for Sedgwick County



— — Postage @ \$7.89 each (maximum)

- - - Postage @ \$2.98 each (minimum)