

## MINUTES OF THE HOUSE ETHICS AND ELECTIONS COMMITTEE:

The meeting was called to order by Chairperson Representative Tony Powell at 3:30 p.m. on February 12, 2001 in Room 521-S of the Capitol.

All members were present except: Rep. Welshimer, Excused

Committee staff present: Theresa Kiernan, Revisor  
Dennis Hodgins, Research  
Shirley Weideman, Secretary

Conferees appearing before the committee:

**HB 2299** Proponents: Harriett Lange, Kansas Association of Broadcasters  
Representative Jo Ann Pottorf

**HB 2334** Proponents: John Todd, John Todd & Associates, Wichita  
William T. Davitt, Wichita  
Steven Rosile, Wichita

Opponents: Sandy Jacquot, League of Kansas Municipalities  
John Pinegar, City of Topeka  
Mike Taylor, City of Wichita  
Paul Davis, Kansas Bar Association  
Via phone: Judge Brad Jantz, Newton

Others attending: See attached list

Chairman Powell opened the hearing on **HB 2299 - Advisory committees; open meetings.**

Representative Pottorf gave testimony in favor of **HB 2299**. She said that the K-12 Education Financing for Results Task Force appointed by Governor Graves had a meeting behind closed doors. She said the state law requiring open meetings of governmental bodies does not apply to task forces that are advisory boards with unpaid volunteers. Rep. Pottorf supports HB 2299, which will open all advisory committee or subcommittee meetings of advisory committees to the public. (attachment #1)

Harriett Lange, Kansas Association of Broadcasters gave testimony in favor of **HB 2299**. She indicated that the KAB favors taking HB 2299 a step further and clarifying "subordinate group" to mean *any* entity which is created by any public body subject to the act and would include all political and taxing subdivision groups as well. (attachment #2)

Chair Powell closed the hearing on **HB 2299**.

Chairman Powell opened the hearing on **HB 2334 - Municipal court judges; election.**

John Todd, Real Estate Broker, Wichita, appeared before the committee in favor of **HB 2334**. He reported on his experiences of visiting the Wichita Municipal Court frequently and visiting with citizens whom he feels have been victimized by the actions of the court. He suggests that, perhaps a study of the Municipal Court System would be in order. (attachment #3) Mr. Todd answered questions asked by committee members.

William Davitt gave testimony in favor of **HB 2334**. He said that he was a victim of the Municipal court in Wichita. First of all, he said he was intimidated by the room in the police station where the court was held. Then Mr. Davitt said the judge threatened him with 5 years in prison if he did not pay a \$2500 fine. He believes that the municipal court in Wichita needs some changes. (attachment #4)

Steven Rosile, a citizen of Wichita give testimony in support of **HB 2334**. He said that he has had problems with the municipal court in Wichita and believes that you should have a right to appeal without having to pay the basic cost of \$65.

CONTINUATION SHEET

Minutes of the Ethics & Elections Committee for February 12, 2001

Page 2 of 2

Judge Mark Jantz of Newton called to give his testimony in opposition to **HB 2334** via speaker phone. He indicated that his opposition is both practical and philosophical. Judge Jantz said that he has been a college professor, a prosecutor and has run for political office as well. He indicated that he has been a municipal court judge for 6 years. Judge Jantz said that it is hard to find people to serve on a part-time basis for municipal judge in small communities and it is not practical for a judge to run for office. In Judge Jantz's view, the public sees issues as "black and white" and you can't say what you believe or what you will do if elected.

Chairman Powell asked about eliminating the residency requirement and putting in a stipulation of elections only for full-time judges and for cities of a certain size. He also asked about solving the problem of judicial independence as many people see the municipal court judge working at the pleasure of the city council. Judge Jantz replied that you may end up substituting one set of problems for another by taking out the residency requirements as that may allow someone without the proper qualifications to run for office. He said that the city manager must be in tune with the public and that he gets very few questions as to why a particular judgement was made. Judge Jantz answered other questions from members of the committee.

Sandy Jaquot, Legal Counsel for the League of Kansas Municipalities, gave testimony in opposition to **HB 2334**. Her concern is that most municipal judges in the small communities of Kansas are in part-time positions. Ms. Jaquot said that municipal courts are mostly for local city issues. She also said that since municipal judges would have to campaign like any other candidate for local office and their judicial independence could be greatly undermined. Ms. Jaquot indicated that the residence requirement would be troublesome for the small cities. (attachment #5)

John Pinegar, City of Topeka, gave testimony in opposition to **HB 2334**. He said that the City of Topeka has the same concerns as the League of Kansas Municipalities. Mr. Pinegar also said that the City of Topeka supports local control of and judicial authority of municipal courts and the appointment of municipal judges. (attachment #6)

Also appearing in opposition to **HB 2334** was Mike Taylor of the City of Wichita. He stated that the city council cannot dictate to the municipal court judge the outcome of a particular case. Mr. Taylor also stated that municipal court judges in Wichita are nominated by a nominating commission and appointed by the city council. He indicated that Wichita selects judges based on merit and on the nominee's legal knowledge and abilities and he believes that HB 2334 threatens to politicize municipal court judges and the municipal court system. (attachment #7)

Paul Davis, Kansas Bar Association Legislative Counsel, appeared before the committee in opposition to **HB 2334**. He said that we want our judges to be impartial and unbiased and make decisions that are based on the law and not on considerations that are outside of the law. Mr. Davis was concerned that judges could not foster judicial independence from the election process when they are walking a tightrope between ethical considerations as judges versus being a candidate for political office and having to raise money from the very people who are appearing before them. He indicated that if there is a problem of removing a bad judge who is appointed, which is usually the reason people want to elect municipal court judges, then that issue should be addressed locally with the city commission. Mr. Davis said that if enough people feel strongly about an issue, then the city commissioners will do something about it. (attachment #8)

Chairman Powell called the committee's attention to the written comments from Carol Gonzales, Assistant City Manager of the City of Shawnee and that city's opposition to **HB 2334**. (attachment #9)

The conferees in opposition to HB 2334 answered questions asked by the committee.

The hearing on HB 2334 was closed.

Chairman Powell adjourned the meeting at 5:10 p.m. The next scheduled meeting is Wednesday, February 14 at 3:30 p.m.

House Ethics and Elections

GUEST LIST Date Feb. 12, 2001

Your Name	Representing
Brad Bryant	Sec. of State
Harriet Lange	Ks Assn of Broadcasters
Kelly Kuetala	City of Overland Park
John D. Pinegar	City of Topeka
<i>William A. Davitt</i>	<i>self</i>
John R Todd	myself as a private citizen
Sandy Gagnon	CKM
MIKE TAYLOR	City of Wichita
Paul Davis	KS Bar Assn.
Jill A. Michaux	municipal Court Judge City of Rossville
Steve Phillips	AG's office
Michael White	Kearney Law Office
Bruce Dimmitt	Independent - <sup>Kansas</sup> for life.
Steven A. Rosile (Sup)	Citizen of Wichita, KS



STATE OF KANSAS

JO ANN POTTORFF  
REPRESENTATIVE, EIGHTY-THIRD DISTRICT  
6321 E. 8TH STREET  
WICHITA, KANSAS 67208-3611

STATE CAPITOL  
ROOM 183-W  
TOPEKA, KANSAS 66612-1504

(785) 296-7501  
pottorff@house.state.ks.us



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

MEMBER: APPROPRIATIONS  
TOURISM

CHAIRMAN: BUDGET COMMITTEE ON GENERAL  
GOVERNMENT AND HUMAN RESOURCES

CHAIRMAN: ARTS & CULTURAL RESOURCES

CHAIRMAN: EDUCATION COMMITTEE  
NCSL ASSEMBLY ON STATE ISSUES

The reason for the introduction of HB 2299 is because I heard the K-12 Education Financing for Results Task Force appointed by Governor Graves had a meeting behind closed doors. Across our nation Kansas has a reputation for good government and it is due in part to the belief that Kansas has an open, accessible government. Having discussions in public is not always easy but most Kansans would not have it any other way. The Kansas Open Meetings Act has contained a body of minimum standards for conducting open government meetings. I feel closed meetings should be held in very limited circumstances. This is probably due to my days on the Wichita School Board when closed meetings (executive sessions) could be held for a limited number of reasons. In fact, one time I did not attend an executive session of the Wichita School Board because I did not feel it was a justified reason to have the meeting.

I have included a letter to the editor of the Wichita Eagle that I wrote sharing my opposition of the closed meeting.



## Letter to the Editor of **The Wichita Eagle**

I was disappointed to learn that a task force, appointed by Gov. Bill Graves to recommend changes to the school-finance formula, met behind closed doors ("School-finance team meets in private," Sept. 23 Eagle). Its rationale was that allowing public access to the deliberations would inhibit frank discussion among task-force members. Apparently, the attorney general's office said the task force could legally deliberate in private. Congratulations to task-force member Lew Ferguson, a retired journalist, who felt the public's business deserves to be heard by the public.

It appears the state law requiring open meetings of governmental bodies does not apply to task forces that are advisory boards with unpaid volunteers. There will be two more meetings of the task force: one in Emporia and the other in Topeka, according to David Brant, chairman of the task force. I hope the task force reconsiders and holds its meetings in public. The school-finance formula is too important to be discussed behind closed doors. All citizens have a right to hear the deliberations of the school-finance formula task force.

Rep. JO ANN POTTORFF  
Wichita



1916 SW Sieben Ct, Topeka KS 66611-1656  
(785) 235-1307 \* FAX (785) 233-3052  
Web site: [www.kab.net](http://www.kab.net) \* E-mail: [harriet@kab.net](mailto:harriet@kab.net)

---

Testimony  
RE: HB 2299  
Before House Committee on Ethics and Elections  
February 12, 2001

Mr. Chairman and Members of the Committee, I am Harriet Lange representing the Kansas Association of Broadcasters. KAB serves a membership of radio and television stations in Kansas. We appreciate the opportunity to appear before you today in support of HB 2299.

HB 2299 would strengthen Kansas Open Meetings Act by clarifying that meetings of state agency advisory committees and subcommittees be subject to the Act. We support that clarification and we support taking it a step further - by defining the term "subordinate group", a term used in the current law but not defined, to mean *any* entity which is created by any public body subject to the act. This would broaden the act to include not only advisory committees of state agencies, but all such groups of all political and taxing subdivisions.

The purpose of Kansas Open Meetings Act is to ensure that public bodies do the public's business in public view. A truly informed electorate must have access to not only the actions taken by public bodies, but also to the decision-making process and the rationale that enters into a particular action. That rationale many times is determined by advisory or subordinate groups.

We urge your support of including advisory groups at all levels of government under the purview of Kansas Open Meetings Act.

Thank you for your consideration.

House Ethics and Elections  
2-12-01  
Attachment 2

John R. Todd  
1559 Payne  
Wichita, Kansas 67203  
(316) 262-3681 office  
(316) 264-6295 residence  
e-mail: [john todd@fn.net](mailto:john todd@fn.net)

Date: February 12, 2001

To: Members of the HOUSE ETHICS & ELECTIONS COMMITTEE

Subject: **I SUPPORT HB# 2334, requiring the Election of Municipal Court Judges.**

My name is John Todd. I live in Wichita, and am here to speak as a *private citizen* who is interested in Municipal Court reform, and *favor* the passage of House Bill No. 2334 that would require the election of Municipal Court Judges. I am not an attorney. I am a real estate broker by profession.

I have been studying the Wichita Municipal Court as an interested citizen since 1997. As a frequent visitor to the Court I have witnessed the workings of the Court, and I have had the opportunity to visit with citizens, many of whom, in my opinion, have been victimized by the actions of the Court.

The Municipal Court is not a Court of record. There is no stenographic record of the Court proceedings. The Judge and the Prosecuting Attorney can therefore say or do anything they wish *with impunity!* I heard one Wichita Municipal Court Judge refer to his docket as the "*cattle call*". On another evening, a friend of mine was threatened with 5 years in prison by the Judge if he didn't follow the Judges wishes. The Municipal Court jurisdiction actually allows a maximum sentence of one year in jail!

I would call your attention to two Wichita Eagle newspaper articles that describe how the Wichita Municipal Court has been incarcerating their citizens in the Sedgwick County jail for collection of fines, reminiscent of the 17<sup>th</sup> Century English "*debtor's*

House Ethics and Elections  
2-12-01  
Attachment 3



*prisons*". The articles question if citizens are receiving "due process of law" as guaranteed by state statutes and the Constitution, and whether the Municipal Court is more interested in collecting revenue than in dispensing justice. In my opinion, the newspaper articles *clearly* explain the need for reform of the Wichita Municipal Court.

The primary problem inherent in the Wichita Municipal Court deals with the fact that there is no separation of power, between the Legislative (the City Council), the Executive (the City Manager), and the Judiciary (the Judge) Branches of Government. The City Council promulgates the Law. The City Council hires the City Manager who hires the City Attorney to prosecute violators of the Law. Then, The Judge, who is hired by the City Council, and who works under a signed contract with the City Council, tries the Case. A copy of a Municipal Court Judges' Contract is enclosed for your review. The paychecks of the City Manager, the City Attorney, and the Judge are issued under the authority of the City Council. The Municipal Court therefore is not independent!

Our republic was founded, among other things, upon judicial independence, and the following reading from the Declaration of Independence provides clear insight of the Founder's vision. ***"The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having, in direct object, the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world...*** There then follows a list of grievances against the king, including the following: ***"...He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries."***

James Madison, the father of our Constitution, thought an independent judiciary absolutely essential to individual rights. If a Bill of Rights *was "incorporated into the*

*constitution,” he observed, “independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the legislature or executive...”* branches of government.

The *passage* of House Bill 2334 will be a good *start* towards meaningful Municipal Court reform. I would *challenge the Legislature* to study the Wichita Municipal Court in order to find out what our city is doing to its citizens. Senate Bill No. 632, considered by the 2000 Legislature, would have placed the Municipal Courts under the supervision of the Kansas Supreme Court. Perhaps that idea needs to be re-visited. Should the Municipal Courts be allowed incarcerate citizens for non-payment of debt and operate a *debtor's prison*? Perhaps the Legislature needs to take a look at modifying the Home Rule provisions of the Kansas Constitution in such a manner that Cities could not “*opt*” themselves out of state statutes and the Constitution. And finally, should our Municipal Courts be a *revenue source* for local government?

By commissioning a study of the Municipal Court system, the Legislature could be in a unique position to reverse the relentless erosion of our freedoms at the hands of local governmental officials, many of whom unfortunately do not understand the difference between a *constitutional republic* and a *democracy*.

Thank you for allowing me to speak today. I would be glad to answer questions.

Sincerely,

  
John R. Todd

Enclosures

FRIDAY

# The Wichita Eagle

AUGUST 6, 1999 • 50 CENTS

## City court practices spark suit, criticism

■ Some say Wichita Municipal Court's practice of jailing people for failing to pay fines is unconstitutional. The city says it is legal.

By Robert Short  
*The Wichita Eagle*

As Wichita's Municipal Court churns out record revenue, several legal challenges threaten some of the millions of dollars it raises every year.

At issue is whether the city can jail people for not paying long-overdue fines and whether it is providing due process when it does jail them.

Critics of city court include a higher court judge who compared the city's practice to using the jail as a debtor's prison, a defense attorney who says his client was denied his constitutional rights when the city ordered him to jail; and a citizen who says municipal court is used to raise revenue for the city, often at the expense of the poor and minorities.

The city says that its process for jailing people with long-overdue fines is legal. If higher courts take that tool away, the city says, people simply won't pay.

"Year after year, they have no consequences for their actions," said chief Municipal Court Judge Julie Wright-Connolly. "The citizens would really be upset to know that a lot of people walk out of these courtrooms with no consequences for their crimes."

Among the critics of the city court issue is Sedgwick County District Judge Clark Owens.

"I sympathize with the city's position on this," Owens said. "We get tired of deadbeats over here, too. But you've got to find a legal method to force them to pay. You can't just lock them up."

There are several pending legal challenges:

■ David Reinschmiedt, a disabled man who spent more than two months in jail for \$500 in unpaid city fines, sued on July 30, claiming the city denied him several constitutional rights by sending him to jail. Reinschmiedt was jailed after walking away from a program that would allow him to work off his fine.

■ The day Reinschmiedt filed, a Sedgwick County District Court judge ordered the city to stop putting people in jail for unpaid fines.



Reinschmiedt



# Pay or be jailed

Millions of dollars could be at stake in a lawsuit filed recently against Wichita Municipal Court. If higher courts throw out the city's two-year-old policy of jailing offenders who don't pay their fines, the city could lose revenue as well as damages in the lawsuit. If they uphold the policy, residents could continue to face jail time that's not part of the original sentence for their offense.

**Dec. 23, 1993:** Police arrest David Reinschmiedt, a 31-year-old mentally and physically disabled man, on suspicion of DUI. Prosecutors later charge him with that offense.

**April 26, 1996:** Police arrest Reinschmiedt for petty larceny, and prosecutors later charge him with that offense.

**Sept. 9, 1997:** By this date, Reinschmiedt has pleaded guilty to both charges, been placed on probation and released from that probation, although he still owes more than \$500 in fines.



Reinschmiedt

**Dec. 18, 1997:** City officials place Reinschmiedt on the "time-to-pay" docket because he still had not paid the fines and issue a warrant for his arrest.

**June 29, 1998:** Sedgwick County District Judge Paul Buchanan orders the release of more than 70 prisoners held in jail because they were unable to pay city fines, saying the practice violated the prisoners' constitutional rights and was reminiscent of English debtors' prisons of centuries past. A 1999 state Supreme Court investigator's report says Buchanan did not have jurisdiction to release the inmates.

**July 9, 1998:** Buchanan responds to a request from inmate William C. Russ Jr., ruling the \$199 in fines he owes the city is not reason to keep him in jail. The 1999 state Supreme Court report supports Buchanan's decision, saying some parts of the city's process does not provide due process.

**Jan. 8, 1999:** Authorities arrest Reinschmiedt.

**July 30, 1999:** Reinschmiedt files a class-action suit against the city alleging it violated his rights to due process in the contempt process it used to jail him and others. Sedgwick County District Judge Paul Clark orders the city to temporarily stop imprisoning defendants for not paying fines.

**Aug. 2, 1999:** The Sedgwick County jail holds 64 inmates on a pay-before-release basis.

## Municipal court revenues

(In millions)

\$4.06



1994

\$4.68



1995

\$5.7



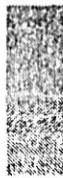
1996

\$6.52



1997

\$9



1998



Sources: City court records, city, county officials, Kansas Supreme Court, Reinschmiedt's lawsuit

## COURT

From Page 1A

Attorneys return to the county courthouse Aug. 16 to discuss the order. The judge could eventually make the order permanent.

In June 1998, Sedgwick County District Judge Paul Buchanan ordered the release of more than 70 jail inmates who owed city fines because he thought the city practice was unconstitutional. The city appealed the judge's order to the Kansas Supreme Court, which will hear legal arguments on the issue Sept. 15.

After Buchanan released the inmates and the city appealed, the Supreme Court assigned an investigator to look into the dispute between the two courts. Stephen Hill, a Miami County judge, found Buchanan went beyond his authority, but Hill also sharply criticized the city, in a report filed April 7.

Buchanan declined to comment because the Supreme Court appeal is pending.

Hill said he believes the city, by finding people in contempt of court and sending them to jail, is denying them due process required by state law.

State law requires that anyone cited for contempt of court be provided an attorney if needed and a record of the court proceeding. The city has failed to do so, he said.

"The municipal court's shocking lack of pro-

cedures in dealing with contempt appears to be punishing people for being poor and not (for) breaking the law," Hill wrote in his report.

Hill also says a city ordinance that allows judges to send people to jail for failing to pay fines is probably unconstitutional because it singles out poor people.

That is fuel for Reinschmiedt's attorney, Kiehl Rathbun, who makes the same points in his lawsuit. He has asked that the suit be classified as a class action, which potentially would allow hundreds of people who have been jailed for not paying fines to join the suit. That could push damage claims to more than \$1 million, Rathbun said.

Wright-Connolly said she cannot comment on Reinschmiedt's suit, but she defended "the integrity of Municipal Court and the commitment on the part of its judges to address due process concerns and mete out justice in individual cases."

Reinschmiedt's lawsuit comes at a time when Municipal Court is being stung by public criticism that it operates as a cash machine for the city. Annual city court revenues have grown 120 percent in five years, to nearly \$10 million in 1998.

Wright-Connolly says she is offended anyone would suggest the city's four judges, who make decisions concerning domestic battery, drunken driving and other misde-

meanors and traffic offenses every day, are more concerned with generating revenue than with fairness.

"That makes me absolutely livid," she said. "We are talking life-and-death issues. Anyone who would make that allegation demonstrates a complete lack of understanding of what we do here."

### 'Too poor to pay'

Reinschmiedt is a Wichitan who describes himself as a 36-year-old mentally and physically disabled man with little short-term memory and poor social skills. His attorney says Reinschmiedt can't hold a job.

Reinschmiedt, through his attorney, filed his lawsuit July 30 asking for damages in excess of \$75,000. He was in jail as recently as July 9.

The city policy, he alleges, "allows for the imprisonment of persons solely because they are too poor to pay fines imposed by the Municipal Court for traffic or misdemeanor offenses, which are only punishable by fines."

Rathbun criticized the city's efforts to collect money from people with no means to pay. He said the cost to the Sedgwick County Jail of keeping his client in jail two months — about \$3,000, or around \$50 a day — was six times more than his client's fine.

"The county would have come out ahead by paying his fine for him," Rathbun said. "They could have saved \$2,500."

### Jail a last resort

Municipal Court revenues come from fines and fees assessed for traffic infractions, drunken driving, minor drug charges, domestic violence and other misdemeanors.

Wright-Connolly said jail is a last resort for people who won't comply with court fines. She cited one case that was nine years old.

If defendants don't have the ability to pay, they are given options beside jail to work off their fines, Wright-Connolly said. They can do public service hours at a local food bank or library, enter the county's work-release program or do menial labor for the city.

Some of the inmates in jail on the city warrants are waiting to enter one of those programs, records show, but the backlog is often more than a month.

Court records show Reinschmiedt entered the work-release program but walked away. His attorney said his client can't remember his court dates or fulfill his other obligations because of his multiple disabilities.

### 'Debtors' prison'

When Buchanan ordered the jail to release 76 people last year, he said the practice was reminiscent of English debtors' prisons of centuries past. In court records, he has described the lower court as a "disgrace."

Owens, the county's presiding criminal judge, also has expressed concerns about a

profit motive in Municipal Court.

"A number of judges that are sitting on the District Court bench feel as though the city is not handling the Municipal Court properly and that they are putting essentially quotas on the judges over there — that they are expected to raise revenue if they want to keep their jobs," Owens said during a court hearing earlier this year for Walt Chappell, who appealed a speeding conviction and won.

Chappell, who expressed his concerns about Municipal Court practices to the police chief, mayor and City Council members, said the city court's efforts to raise revenue are unfair and often done on the backs of the poor and minorities.

The lawsuit, he said, "is long overdue."

When the Kansas Supreme Court hears arguments this fall, it will consider several issues:

- Did Buchanan have the authority to release inmates?

- Is the city following state law when it cites someone for contempt of court and sends them to jail?

- Is the city ordinance that allows municipal judges to put people in jail for failing to pay fines constitutional?

Wright-Connolly said the city will abide by whatever the court rules later this fall.

Reach Robert Short at 268-6340 or rshort@wichitaagle.com.

Op-Ed Page

# Due process tough to find in city courts

By Cathy Wilfong  
Eagle editorial board

If you're confused by the legal struggle that has arisen between the Wichita Municipal Court and the Sedgwick County District Court, join the crowd. Almost anything involving Municipal Court can be confusing.

At the heart of the legal matter is whether, as two state judges say, the city is violating due process, guaranteed by state statutes and the Constitution, with its 2-year-old practice of jailing people if they fail to pay long-overdue fines or appear in court.

Beyond the legal issue, critics say the Municipal Court is more interested in making money than dispensing justice — often at the expense of poor and minority citizens.

The current dispute began in June 1998, when Sedgwick County District Judge Paul Buchanan ordered the release of approximately 70 jail inmates after learning that they were being held on what is commonly known as a "pay-before-release" basis.

The city denied Judge Buchanan's charge that the practice violated constitutional rights, continued its pay-before-release policy and appealed his actions to the Kansas Supreme Court, which will hear arguments Sept. 15.

The city has since been sued over much the same issue by an attorney representing a mentally disabled man who spent about two months in jail for not paying \$500 in fines. After the suit was filed, District Judge Paul Clark ordered the city to stop jailing defendants on pay-before-release until the Supreme Court makes a decision.

## The issues

As anyone who has ever been there knows, Municipal Court can be a head-spinning experi-

## PERSPECTIVE

ence. Dockets filled with traffic violations, domestic incidents and other misdemeanors make for a crowded mix of people and lawyers often moving at high speed.

According to state law, when a person is found in indirect contempt of court — such as failure to pay fines — several things must happen before the defendant can be jailed:

- The contempt proceedings must be recorded and documented.

- The defendant must be served notice of any such rulings.

- The defendant has the right to an attorney and the opportunity to defend himself or herself against contempt findings.

According to a report by Stephen Hill, the Miami County judge appointed by the Kansas Supreme Court to look into the dispute between the two courts, the "city has failed to meet ... the due process requirements for indirect contempt of court."

Municipal Court Judge Greg Barker "testified that none of the contempt procedures set out in the Kansas Statutes were followed in the Municipal Court," according to Hill's report.

But the city defends its practices as legally sound. According to municipal judges and city officials, Municipal Court relies on a city ordinance that allows jail time for anyone who doesn't pay a fine.

"The city's position is legal," said Doug Moshier, a senior attorney for the City of Wichita who bases this reasoning on the "home-rule authority of cities in Kansas," which allows cities to request a charter ordinance for laws differing from state rule.

The Supreme Court will make that judgment.

as well as decide whether Judge Buchanan was within his jurisdiction when he ordered the release of inmates jailed for fines.

## Robbing the poor?

Then there's the charge that Municipal Court — which last year generated revenues of more than \$9 million, more than double that of five years ago — is more concerned with making money than dispensing justice.

"They're cutting corners to try to save the expense of following the appropriate procedures," said Wichita public defender Phil Journey, who also said that it costs Municipal Court nothing to take people directly to jail.

"That court makes millions and millions of dollars each year for the City of Wichita," Journey said. "If they had to pay for lawyers, it would eat into their revenue."

Since Municipal Court is not a court of record, the proceedings aren't recorded — including contempt rulings. This, according to Hill, not only goes against state law, it discriminates against a certain group of people.

"By not preserving a record of the contempt proceedings, either electronically or stenographically, the city systematically denies a class of defendants from having a meaningful text on appeal," Hill said in his report.

Although Hill believes that Judge Buchanan was overstepping his jurisdiction by releasing the inmates, the Hill report strongly admonishes Municipal Court for its "shocking lack of procedures in dealing with contempt" and for appearing to punish people "for being poor ..."

Others snared by the Municipal Court system also have charged that it's unfair to minorities, and, in some cases, to people with physical or mental disabilities.

Jail records seem to support this accusation. As of Aug. 2, just before Judge Clark's order halting the city court's practice, the court had 64 people jailed on pay-before-release warrants. More than half of them were minorities.

Some attorneys, including Journey, liken the pay-before-release practice to a debtor's prison. "If you don't have the money, you just go to jail," he said.

The city and the Municipal Court judges have vigorously denied that the system's purpose is to generate money for the city or that they are tar-

getting specific groups. They say jail is used as a last resort.

The city points out that people have options besides jail for paying off their fines, including community service or entering the county's work-release program.

But the backlog for entering into one of these programs is often weeks or even months. In the meantime, some defendants with pay-before-release warrants must wait in jail, according to district judges and Hill's report.

"We're not trying to make money," Moshier said. "These are people who have probably had a year or 18 months to pay."

## What now?

In some cases, Moshier is right. Many of the people being held on pay-before-release warrants were given extended amounts of time to pay their fines — although usually closer to six months, Hill's report says.

But even scofflaws are entitled to due process. And from all indications, the Municipal Court system has failed that test in the pay-before-release cases.

If the Kansas Supreme Court finds that the city judges are violating due process or that the city ordinance is unconstitutional because it singles out poor people, Municipal Court will face a major overhaul.

The city has several options it ought to consider, whatever the outcome of the court case.

- Even Moshier admits that providing an attorney is "probably something we could accommodate right now."

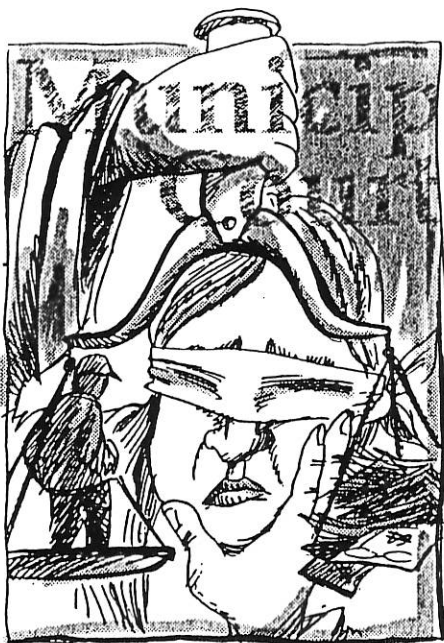
- The city could expand its community service and work-release programs.

- The city could turn the most serious cases of traffic-fine scofflaws over to the state. That would bring into play the threat of suspension of driver's licenses by the Division of Motor Vehicles.

Of course, some form of punishment must remain in place for those who disobey the law. But currently there seems to be far too much emphasis on jail time.

The heart of the matter remains that the legal rights of all citizens should be respected.

Readers can reach Cathy Wilfong at (316) 268-6400 or cwilfong@wichitaagle.com.



Richard Crowson/The Wichita Eagle

The Wichita Eagle  
 SEPTEMBER 5, 1999 • \$1.50

9-3

6-15 '99  
eff.

AGREEMENT

By and Between

THE CITY OF WICHITA, KANSAS

AND

GREGORY K. BARKER

MUNICIPAL COURT JUDGE AGREEMENT

THIS AGREEMENT made and entered into this 2nd day of April, 1999, by and between THE CITY OF WICHITA, KANSAS, a municipal corporation of the State of Kansas, having its principal office at 455 North Main Street, Wichita, Kansas 67202 (hereinafter called "City"), acting for and on behalf of the CITY COUNCIL, and GREGORY K. BARKER (hereinafter called "Judge");

WITNESSETH:

WHEREAS, the CITY COUNCIL previously appointed GREGORY K. BARKER as Municipal Court Judge under an agreement dated June 24, 1997, and GREGORY K. BARKER desires and agrees to perform the duties and continue such an appointment as Municipal Court Judge under this new agreement and in accordance with the procedures and qualifications of City of Wichita Charter Ordinance No. 90, as amended;

NOW, THEREFORE, IT IS MUTUALLY AGREED by and between the parties hereto as follows:

1. JUDGE'S responsibilities shall include the following, which JUDGE agrees to perform for the consideration herein set out:

5:4 Municipal Court - Judge  
4-2-99



- a. Perform all of the duties and requirements of a Municipal Court Judge, as identified in the job description, attached hereto as Exhibit A, and incorporated herein by reference.
- b. Preside as a JUDGE at all dockets, hearings and all other courtroom assignments as may be scheduled by the Administrative Judge.
- c. Perform all non-courtroom assignments as may be scheduled by the Administrative Judge.
- d. Preside as a JUDGE in a professional manner, courteous to staff and citizens, and free of bias to the issues, parties, or counsel involved and in the best interest of jurisprudence, follow the penalty provisions prescribed by the City Code, and comply with all applicable provisions of state statutes, municipal ordinances, State and United States Constitutions and the Supreme Court Code of Judicial Conduct.
- e. Perform the duties of JUDGE by committing sufficient time to complete each docket assigned and other duties as assigned by the Administrative Judge; devoting sufficient time to complete a specific task rather than work a set number of hours. JUDGE shall diligently work each regular business day and devote no less than eight hours per day and five days per week to his or her official duties and responsibilities as set forth in Exhibit "A."

2. CITY agrees to compensate JUDGE in the amount of \$67,012.00 yearly for the period commencing June 15, 1998, through the term of office to expire the third Monday of April in the year 2001, including the employee benefits provided to City employees, unless otherwise terminated earlier as set out herein. The JUDGE'S compensation is payable at the same time, and in the same manner as employees are compensated through the CITY payroll system, with deductions as authorized. The employment of JUDGES will be governed by the applicable provisions of the City of Wichita Administrative Personnel Policy & Procedure Manual, as revised, for full time exempt City employees in the Management Pay Plan, including any periodic pay adjustments that may be authorized by the City Council for management employees.
3. JUDGE understands and agrees that he is a judicial officer of the CITY, subject to qualification, selection and appointment pursuant to City of Wichita Charter Ordinance No. 90, as amended and Charter Ordinance No. 142, as amended; and subject to rejection and removal by the City Council pursuant to City of Wichita Charter Ordinance No. 90, as amended, as well as suspension and removal as provided in the Rule of the Kansas Supreme Court regarding Judicial Conduct.
4. JUDGE further understands and agrees that he is an appointed judicial official of the City Council subject to suspension and/or removal by the City Council at any time for cause. Such suspension and/or removal for cause will not include the rulings, decisions, and orders on particular cases before the

Judge, the exercise of judicial discretion on particular cases, nor the interpretation of the law applicable to a particular case. JUDGE may withdraw from the appointment and terminate this agreement upon thirty (30) days written notice to the City Council which notice, in order to be effective, must be by certified mail addressed to the City Clerk, and/or the Mayor.

5. JUDGE understands and agrees that he will be subject to periodic performance reviews by the City Council regarding cooperation with the Administrative Judge as to courtroom and non-courtroom assignments, attendance, and devotion of time to assigned dockets. Such periodic review will not include the rulings, decisions and orders on cases before the Judge, the exercise of judicial discretion on cases, nor the interpretation of the law applicable to a case. JUDGE further agrees that he will be available at all reasonable times for conferences and consultation with the City Council, the City Manager, the City Attorney and any other City staff in connection with municipal court operational efficiencies, cooperation with the Administrative Judge as to courtroom and non-courtroom assignments, attendance and devotion of time to assigned dockets throughout the term of the appointment with no additional compensation. Such required conferences and consultation will not include the rulings, decisions, and orders on particular cases before the Judge, the exercise of judicial discretion on particular cases, nor the interpretation of the law applicable to a particular case. It is expressly understood that the City Attorney and/or the City's legal counsel may, to the



extent allowed by law and ethical considerations, present the City's position on the law and facts of a particular case to the Judge.

6. JUDGE understands and agrees that should he be unable to perform any of the duties of municipal court judge because of approved attendance by the Administrative Judge or by the City Manager for City-sponsored training or continuing legal education, or approved use of vacation, sick leave or other approved leave, pro tem judges selected to serve in the place of the JUDGE will be compensated by the City.
7. JUDGE understands and agrees that should he be unable to perform any of the duties of municipal court judge because of non-approved absences and a pro tem judge must be selected, it shall be the responsibility of the JUDGE to compensate the said pro tem for services rendered to the CITY.
8. JUDGE understands and agrees that the City Council will appoint the Administrative Judge. Further, JUDGE understands and agrees to follow the orders, directions, policies and court assignments established and implemented by the Administrative Judge of the municipal court regarding the judicial functions of the municipal court. Failure to follow the orders, directions and policies established by the Administrative Judge shall constitute grounds for termination of this agreement under Paragraph 4 above, except such grounds for termination shall not include the rulings, decisions, and orders on particular cases before the Judge, the exercise of judicial discretion on particular cases, nor the interpretation of the law applicable to a particular case.

9. All pro tem judges selected by the Administrative Judge of the Municipal Court to serve in place of JUDGE will be from a list of qualified attorneys approved by the City Council.
10. This Agreement may not be assigned, transferred, or amended without first having obtained written approval of the City Council of the City of Wichita, Kansas. Any amendment of the terms and conditions of the Agreement must be in writing and signed by the parties. The parties agree and understand that nothing contained herein is intended to confer any benefit upon any third party not a party hereto.
11. This Agreement and any amendments hereto constitute the complete and final expression of the agreement between the JUDGE and the CITY with respect to the JUDGE'S appointment as a Municipal Court Judge.
12. JUDGE agrees to perform under the terms and conditions set forth in this Agreement for the period of the appointment and any extension or hold-over period unless the Agreement is otherwise terminated by the CITY or by the JUDGE. It is expressly recognized that the terms of this agreement are contractual in nature and that the remedies contained herein are not exclusive to any other remedies that may be available at law.
13. If, for any reason, any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.
14. This Agreement shall take effect upon execution by the Mayor and shall continue during the term of the appointment, and any extension or hold-over

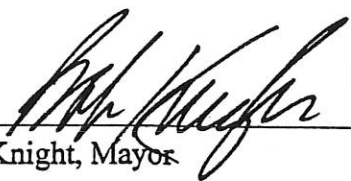
period, until such time as the appointment expires without extension, or until such time as either party shall cancel or terminate the same.

IN WITNESS WHEREOF, this Agreement has been executed the day and year first about written.


THE CITY OF WICHITA, KANSAS



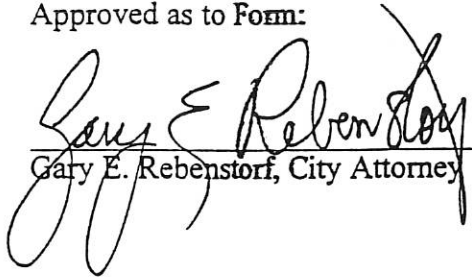
By


  
Bob Knight, Mayor

ATTEST:

  
Pat Burnett, City Clerk

Approved as to Form:

  
Gary E. Rebenstorf, City Attorney

  
Gregory K. Barker  
Municipal Court Judge

IN THE SUPREME COURT OF THE STATE OF KANSAS

WILLIAM T. DAVITT, Plaintiff,

VS

Case No.

97-79132-S

JUDGE RICHARD SCHULL,  
JUDGE CLARK OWENS,  
WICHITA CITY ATTORNEYS, Defendants.

Pursuant to articles 8 and 12  
of chapter 60, K.S.A.

PETITION FOR MANDAMUS AND QUO WARRANTO

1. When my father died, there was no one but me to take care of mother. I did not have heart to lock her away in a care home. So, I stayed around home taking care of mother for 25 years until she died at age 94. Income and everything went down.

Now, it is extremely **CRUEL**

of Wichita City Attorneys to be prosecuting me in a criminal case because I have not had money to repair this house where I have lived for past 51 years. City attorneys enjoy a substantial paycheck, paid sick leave, paid vacation, and paid retirement. I do not have any of these things. Richard Schull, Judge of Neighborhood Enviromental Court, has ordered me to pay a penalty of two thousand and five hundred dollars.

My social security check is \$326.00 per month. After Blue Cross and Blue Shield plan 65 and a small dental plan are paid, I am left with only \$239.28. Case has been appealed to district court where Judge Clark Owens is chief of Criminal Department. I petition the Supreme Court to dismiss this case against me for the following reasons.

NEIGHBORHOOD ENVIROMENTAL COURT IS NOT FREE AND  
INDEPENDENT. NO SEPERATION OF POWERS

2. Attached exhibit 1. is Charter Ordinance No. 142. It provides for a nominating commission of 5 members. Two are non-lawyers appointed by City Council. Bar association suggests another 3 members. But these 3 are also appointed by City Council. From names submitted by this commission, the City Council appoints the judge. If an incumbant judge is a candidate for reappointment, the City Council votes to retain or not retain that judge. And so, the City Council enacts ordinances and then selects the judge who will rule on those ordinances. No seperation between legislative and judicial branches of government. City Council also appoints City Manager who hires city staff. This is extremely serious.

Oh, maybe something like this does take place in other towns. That does not make it constitutional. When I started to practice law, collection attorneys ran garnishment at



same time they filed suit until appellate courts ruled that was unconstitutional.

3. Attached exhibit 2. shows that Carla Schull is administrative aide to Mayor and Council Members. She is the wife of Judge Richard Schull.

4. Attached exhibit 3. is from Midtowner newsletter wherein a bold prediction is made how judge of Enviromental Court will decide cases. Please ask federal judges what they would do if someone was distributing a newsletter to 4,000 homes predicting how federal judges will decide cases that might come before them in the future.

5. Attached exhibit 4. is a picture showing that Neighborhood Enviromental Court is held in a police sub-station with a large banner behind the judge reading: Wichita Police Department." This intimidates the poor and elderly.

GROSS MISCONDUCT OF JUDGE RICHARD SCHULL AND  
CITY ATTORNEYS

6. City inspectors do not have a legal right to enter my home because it is my private residence. When I first appeared in court, the room was packed with people including a large number of city staff. Judge Richard Schull ordered me to allow inspectors into my home. And then Judge Richard Schull made this outrageous threat: "Counsellor, you are facing 5 years in prison. And I do not think you can afford

to take 5 years out of your law practice." He did not say jail. He said prison. He said 5 years. I was standing right before him.

7. Case was filed against mein April of 1996. Over my strong objections every time I appeared in court, city attorneys and Judge Richard Schull continued and continued and continued my case and did not bring it to trial until February of 1997. That was 10 months. That was in direct violation of K.S.A.12-4501 which is on attached exhibit 5. and reads: "An accused person . . . shall be tried on the earliest practical day set by the Court . . . ' On attached exhibit 6. there are 5 cases regarding good cause for delay. Absolutely nothing like the reasons stated in those cases was present in my case.

8. 8. I ask the Supreme Court and Attorney General to examine all disposition sheets in Enviromental Court. See how city attorneys and Judge Richard Schull continue and continue and continue cases in direct violation of K.S.A. 12-4501 cited above. Please interview defendants in Enviromental Court. Hear the outrageous threats that are uttered against them. An elderly woman in my neighborhood told me that a city inspector threatened to lock her up in jail for 2 years. Out of fear, she quickly sold the house at a loss. A city staff member told me that Judge Richard has hung thousands of dollars in penalties on elderly people forcing them to sell their houses. City attorneys and

Judge Richard Schull continue and continue and continue cases forcing elderly and poor people to tap dance to tune of city staff, forcing defendants to do each and everything city staff requires. All this may or may not be really required by law. Health officers have been known to make up rules as they go along. Attached exhibit 7. shows how they filed false criminal complaints against an elderly man 3 times. He lived between a high police officer and a retired police officer.

9. I ask Attorney General to investigate the complaint I am making herein under K.S.A. 60-1206 on attached exhibit 8; and then institute ouster proceedings against City Attorneys and Judge Richard Schull under K.S.A. 60-1205 on attached exhibit 9. because of their continued bold violation of K.S.A. 12-4501 cited above as they have continued and continued and continued cases.

#### DISTRICT COURT HAS BEEN COMPROMISED

I am filing this petition directly in Supreme Court because District Court of Sedgwick County has been compromised.

10. Attached exhibit 10. shows that Joan Cole was instrumental in creating Neighborhood Court.

Attached exhibit 11 shows that Bill N. Fox openly endorsed Joan Cole for City Council.

Attached exhibit 12 shows that Bill N. Fox campaigned to be re-elected to the Citizen Participation Organization

which promotes prosecution of poor and elderly people in Neighborhood Court.

For years and years Bill N. Fox has been an administrative aide to district court judges with his desk in room next to judge's chambers. He is now an aide in criminal law department to which cases are appealed from Neighborhood Enviromental Court.

All of the above does not pass the smell test. Government employees stick together and cover for each other so they can keep their jobs and get their retirement. Those judges are not going to do anything to offend their longtime friend and working partner. They call him "Bill."

Please ask federal judges what they would do if their administrative aide openly endorsed a candidate for public office . . . . and then got himself elected to an organization that promotes filing criminal cases that could be appealed to those federal judges.

GROSS MISCONDUCT OF CITY STAFF

11. Several years ago, city inspector went all through my home. City staff led me to believe they would make a loan of federal money to me if I got rid of renter upstairs who was paying \$200.00 a month rent and had been there for many years. City staff told me they would remove sink

upstairs because I could not rent part of my home and have a federal loan. I made the renter move, doing what city staff required. But, they never made the loan.

Attached exhibit 13 shows that a grant of money to elderly is available. They wrote back to me stating who in this area is in charge. He is on city staff. He told me that city receives this money, but does not make grants because City Council uses this money for something else. I ask attorney general to investigate.

WHEREFORE, because of reasons stated above, I pray that Supreme Court will order Judge Richard Schull and Judge Clark Owens, chief of Criminal department in district court, to dismiss the criminal case against me.

I pray that the Supreme Court will shut down Neighborhood Environmental Court until a judge can be selected in a manner that will leave the judge free and independent of City Council.

And I pray that attorney general will institute ouster proceedings against Wichita City Attorneys and Judge Richard Schull.

It is a basic principle of public relations that once the general public has lost confidence and respect for the judicial system, it will be almost impossible for the judicial system to every win that confidence and respect back again.

Respectfully submitted,

*William T. Davitt*

---

Pro Se William T. Davitt 05023  
Attorney At Law  
1205 Bitting Avenue  
Wichita, Kansas 67203  
Phone 316 267-5560

CERTIFICATE OF SERVICE

On May 29, 1997 William T. Davitt mailed a copy of above petition, postage prepaid, to following:

Judge Richard Schull  
City Building Third Floor  
Central at Main Streets  
Wichita, Kansas 67202

Judge Clark Owens  
Sedgwick County Courthouse 6th Floor  
Central at Main Streets  
Wichita, Kansas 67203

City Attorneys  
Office of City Prosecutor  
City Building Second Floor  
Central at Main Streets  
Wichita, Kansas 67202

*William T. Davitt*  

---

William T. Davitt



## CHARTER ORDINANCE NO. 142

A CHARTER ORDINANCE OF THE CITY OF WICHITA AMENDING SECTION 8 OF THE CHARTER ORDINANCE NO. 90 PERTAINING TO THE APPOINTMENT OF MUNICIPAL COURT JUDGES, AND REPEALING THE ORIGINALS OF SAID SECTION.

BE IT SO ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. SECTION 8 of Charter Ordinance No. 90 shall be amended to read as follows:

"Section 8. (a) There is hereby established a Municipal Judge Nominating Commission, which shall consist of five (5) members. Two (2) non-lawyer members of the nominating commission shall be appointed by the City Council. The other three (3) members of the nominating commission shall be lawyers nominated by the governing body of the Wichita Bar Association and appointed by the City Council. In the event the Wichita Bar Association does not nominate members, three (3) lawyers shall be appointed by the City Council. Each member of the commission shall be a qualified elector of the City of Wichita. The commission shall appoint one of its members as chairperson and one as vice-chairperson under such procedures and for such term as the commission may determine by majority vote. The members of the commission shall serve for such term as is provided by ordinance for appointive boards and commissions. Vacancies shall be filled in the same manner as the original appointment.

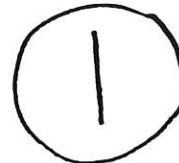
(b) Whenever a vacancy occurs in the office of Municipal Court Judge, or whenever a vacancy will occur in such office on a specified future date, the City Attorney shall give notice of such vacancy to the Chairperson of the nominating commission. The Chairperson shall call an organizing meeting of the commission to be held within five days after receipt of such notice for the purpose of nominating persons for appointment to such office. The commission shall determine the rules necessary for the conduct of its proceedings and the discharge of its duties. The commission shall not take any final action except at regularly scheduled meetings. A majority of the members of the commission shall constitute a quorum to do business, but no final action shall be taken except upon a vote of the majority of the members of the commission.

(c) Applications for the office of Municipal Court Judge shall be submitted to the City Clerk in such time, manner, and form as may be determined by the City Manager. The City Clerk shall forward the same to the nominating commission.

(d) It shall be the duty of the commission to nominate not less than three (3) persons for each municipal court judge office which is vacant, and shall submit the names of the persons so nominated to the City Council. Any person so nominated shall have the qualifications prescribed by statute and ordinance. In order that a vacancy in the office of municipal court judge does not exist for an inordinate length of time, the commission shall conduct the business of selecting nominees for appointment to such office and certifying the same to the City Council as promptly and expeditiously as possible, having due regard for the importance of selecting the best possible nominees. In no event shall the commission submit its nominations to the City Council more than thirty (30) days after notice of the vacancy, unless the City Council permits the extension of such time period.

(e) An incumbent municipal court judge shall be deemed to be a candidate for reappointment unless the judge notifies the City Clerk prior to sixty days from the end of his or her term that he or she does not seek to be reappointed. If there is no notification, it shall be assumed that the incumbent wishes to remain in office. If the judge is to be considered for reappointment, then the Municipal Judge Nominating Commission shall convene and determine whether it will recommend the incumbent judge for retention. The Commission's recommendation of retention or nonretention will be forwarded to the City Council. The City Council will then consider the recommendation of the Commission and vote to retain or not retain the municipal judge. Only if the Council votes to not retain the incumbent judge will the Commission seek applications and go through the procedure for filling a vacancy of Subsection (d).

(f) The City Council shall appoint one of the nominees so submitted, or reject all nominees and request the nomination by the commission of additional nominees. If the commission declines to nominate additional nominees within thirty (30) days after being so requested by the City Council, the City Council shall make the appointment from among the persons indicating an interest in the office. An appointee to the office of Municipal Court Judge shall take office for the term or remainder thereof provided herein, and until reappointed or until a successor is appointed."



CITIZEN PARTICIPATION(Cont.)

---

Citizen Part. Coord.

2582

Admn. Asst.

2586

Admn. Asst.

2585

Secretary

2572

Barry Carroll

*Jim Schriener*  
Elizabeth Johnson

Diane Mason

---

CITY COUNCIL OFFICE

---

1 st Floor, City Hall

268-4331

Mail Stop: 1-13

The City Council Office provides a contact point for citizens when they need assistance in obtaining governmental services.

Mayor and Council Members

4331

Administrative Aide

4331

Secretary

4331

✓  
Carla Schull

Pat Hodges

---

CITY MANAGER'S OFFICE

---

13th Floor, City Hall

268-4351

Mail Stop: 1-135

The City Manager's Office is responsible for all City government activities, directs fiscal internal

②

## How to Cure the Blues

Remodeling doesn't have to turn into a nightmare if you take a few precautions beforehand. Here are a few suggestions to help you stay sane.

First, acknowledge the great stress a remodel involves. When you get into the thick of things, recognize that some of the force behind your feelings is generated by stress, not the issue (or persons) at hand.

If there are two of you involved, set specific times for reviewing work and making decisions. This will help to keep the stress of remodeling from occupying all of your time together.

Talk frankly with friends who have gone through remodelings. Ask them what they did to cope and what they would do differently next time. There are also a few useful accounts of how to deal with the strain.

Don't hesitate to ask questions. You aren't expected to have in-depth knowledge about the materials and processes of construction, and most professionals are glad to explain if you approach with questions rather than accusations.

If you have a problem with the pace or quality of the work being done, address your contractor, not his carpenters or subcontractors. Try to meet regularly on the jobsite. This will eliminate the late-evening call that usually serves to just erode good communication.

Be clear about what is important to you. If you just can't handle being without a shower or tub for a week, say so. But do it in time for your contractor to make other arrangements.

Keep your own records. Your contractor is responsible for contract, change order (agreed-upon deviations), permits, etc., but keeping up with the job yourself will help maintain good communication and relieve you of nagging money doubts.

Recognize that building isn't a science but a craft. Even the best professionals can't anticipate all the problems that will come up. However, you may help minimize surprises if you can provide blueprints from the original builder that give foundation, framing and

wiring details.

If possible, remodel only one room at a time. Spreading it out is psychologically defeating and physically invasive. Seal off the area that is being altered with polyethylene sheeting. One sheet on each side of a doorway will create an airlock that keeps out some of the dust and noise, and sets up a kind of psychological moat.

Last but not least, get away during a remodeling project—for new perspectives as well as just plain relaxation. Many people are surprised at how reluctant they are to do this. If necessary, set a weekly date for going out to dinner, or make reservations for a weekend away and keep them no matter what. Home/Dec. 1987



## Environmental Court - It's A Whole

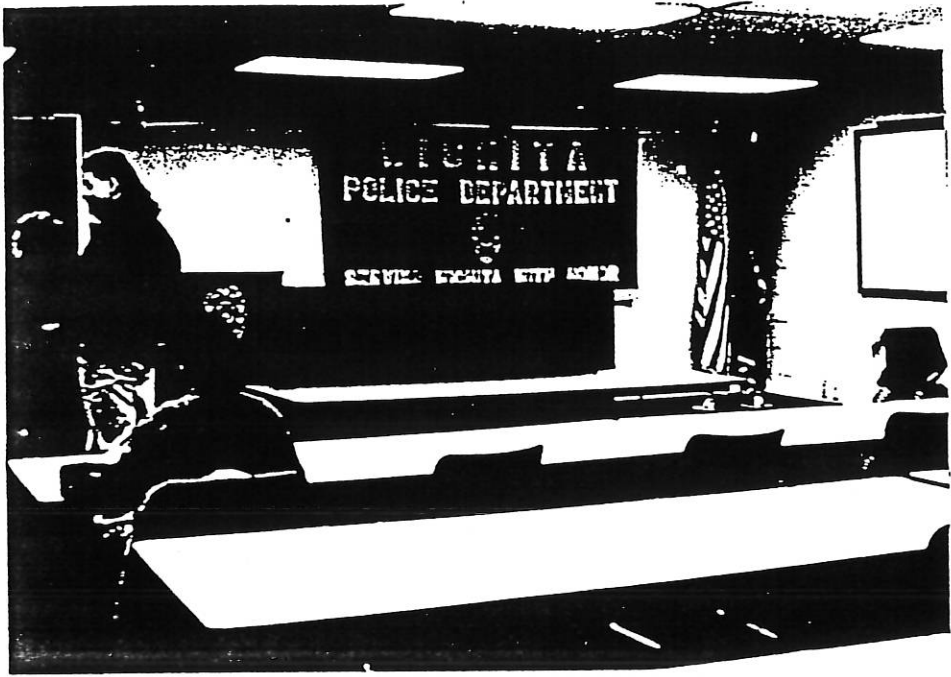
### New Game

On January 11th, I attended the first session of environmental court. In conjunction with a new ordinance that went into effect January 8th, we now live in one of the cleanest cities in the country. The Health Dept. is going to administer the laws as they now appear on the books. The court system is going to prosecute the offenders. Heads will roll.

From now on people without trash service, storing salvage materials, bulky waste, or inoperable vehicles, allowing weeds to grow 18" tall, or are illegally operating businesses (auto repair shops in residential neighborhoods) will get a notice from the Health Dept. Ten days later, if the condition still exists, you're in trouble! A fine of up to \$500 and six months in jail will be levied. It doesn't matter if it's not there anymore. Even if it got mowed or towed or hauled the next day. Even if it wasn't yours. No matter if there are flowers there now. You'll be guilty and the judge does not have the power to dismiss cases. He will have to sentence you—no choice.

For years the Health Dept. has been wasting it's funding citing people it cited last year. Well! No more! Salvagers, car mechanics, bad landlords, and just plain slobs, be forewarned! Change your ways, move, or go to jail! You choose! Dale R. Smith-President, MCA!

3



4



DUI conviction; alcohol and drug safety action program; diversion. 83-8.

Serious traffic offenses; driving under influence of alcohol or drugs; work release for multiple offenders. 84-9.

Qualifications for CMB retailer's license; conviction of DUI includes participation in diversion program. 84-21.

Diversion agreements involving restriction of driver's license. 85-1.

#### CASE ANNOTATIONS

1. Section, being integral part of whole subject of act (L. 1982, ch. 144), not violative of Kan. Const., art. 2, § 16. *State v. Reves*, 233 K. 972, 976, 980, 666 P.2d 1190 (1983).

2. Right to appeal a municipal court conviction not foreclosed by terms of particular diversion agreement nor by statute. *City of Wichita v. Ohlerking*, 10 K.A.2d 638, 639, 707 P.2d 1 (1985).

#### 12-4416a.

History: L. 1982, ch. 144, § 15; L. 1985, ch. 79, § 2; Repealed, L. 1986, ch. 131, § 3; July 1.

#### 12-4416b.

History: L. 1982, ch. 144, § 15; L. 1985, ch. 48, § 12; L. 1986, ch. 131, § 1; L. 1988, ch. 48, § 4; L. 1988, ch. 47, § 20; L. 1989, ch. 38, § 44; L. 1989, ch. 95, § 1; Repealed, L. 1990, ch. 77, § 2; July 1.

**12-4417.** Same; condition diversion on plea prohibited; nonadmissible evidence. No defendant shall be required to enter any plea to a criminal charge as a condition for diversion. No statements made by the defendant or counsel in any diversion conference or in any other discussion of a proposed diversion agreement shall be admissible as evidence in criminal proceedings on crimes charged or facts alleged in the complaint.

History: L. 1982, ch. 144, § 16; July 1.

**12-4418.** Failure to fulfill diversion agreement; satisfactory fulfillment; records. (a) If the city attorney finds at the termination of the diversion period or any time prior thereto that the defendant has failed to fulfill the terms of the specific diversion agreement, the city attorney shall inform the municipal court of such finding and the municipal court, after finding that the defendant has failed to fulfill the terms of the specific diversion agreement at a hearing thereon, shall resume the criminal proceedings on the complaint.

(b) If the defendant has fulfilled the terms of the diversion agreement, the municipal court shall dismiss with prejudice the criminal charges filed against the defendant.

(c) The city attorney shall forward to the division of vehicles of the state department of revenue a record of the fact that a defendant

did or did not fulfill the terms of a diversion agreement required to be filed under subsection (d) of K.S.A. 12-4416 and amendments thereto. Such record shall be made available to any county, district or city attorney or court.

History: L. 1982, ch. 144, § 17; L. 1985, ch. 79, § 3; July 1.

#### CASE ANNOTATIONS

1. Section, being integral part of whole subject of act (L. 1982, ch. 144), not violative of Kan. Const., art. 2, § 16. *State v. Reves*, 233 K. 972, 976, 980, 666 P.2d 1190 (1983).

**12-4419.** Defendants under 21 years, drug and alcohol evaluations. (a) Except as provided in subsection (b), if a diversion agreement between a city attorney and a defendant is entered into in lieu of further criminal proceedings alleging a violation by the defendant, while under 21 years of age, of an ordinance prohibiting an act prohibited by the uniform substances act (K.S.A. 65-4101 *et seq.* and amendments thereto) or K.S.A. 41-719, 41-727, 41-804, 41-2719, 41-2720, 65-4152, 65-4153, 65-4154 or 65-4155, and amendments thereto, the agreement shall require the defendant to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008 and amendments thereto and to pay a fee not to exceed the fee established by that statute for such evaluation. If the city attorney finds that the defendant is indigent, the fee may be waived.

(b) If the defendant is 18 or more years of age but less than 21 years of age and allegedly committed a violation of K.S.A. 41-727, and amendments thereto, involving cereal malt beverage, the provisions of subsection (a) are permissive and not mandatory.

History: L. 1989, ch. 95, § 2; July 1.

#### Article 45.—CODE FOR MUNICIPAL COURTS; TRIALS AND PROCEEDINGS INCIDENT THERETO

**12-4501.** Plea of not guilty; trial; time; continuance. An accused person entering a plea of not guilty, or for whom the court entered a plea of not guilty, shall be tried on the earliest practical day set by the court, unless trial is continued for good cause: *Provided*, That an accused person in custody shall be tried on the earliest day that the municipal court convenes, unless trial is continued upon motion of the accused person and for good cause.

5

For later cases, see same Topic and Key Number In Pocket Part

requested a continuance within the 90-day period from arraignment because of other cases set on the docket, where the trial judge, because of the crowded docket, ordered the case continued until date which was six days past the 90-day period, where the case was by agreement continued two more days, and where, furthermore, it could be said that the delay in setting the case for trial was the fault of defendant who discharged his retained attorney two weeks prior to the expiration of the 90-day period and requested that the court appoint another attorney for him. K.S.A. 22-3402.

State v. McCollum, 507 P.2d 196, 211 Kan. 631.

577.10(4). Cause for delay, "good cause", and excuse or justification in general.

C.A.10 (Kan.) 1993. Delay of 28 days attributable to government's motion for continuance was excludable from 70-day period under Speedy Trial Act, as continuance necessary to allow government sufficient time to prepare for trial, based upon government's representation that it expected trial to last 10 to 15 days, that counsel for government was already currently scheduled for three other trials over course of two months, and because of those trials it would not have adequate time to prepare for instant trial. 18 U.S.C.A. § 3161(h)(8)(A-C).

U.S. v. Occhipinti, 998 F.2d 791.

District court may grant continuance excludable from calculations under Speedy Trial Act if government needs additional time to prepare, so long as government has not created that need itself through lack of diligence. 18 U.S.C.A. § 3161(h)(8)(B)(ii, iv), (h)(8)(C).

U.S. v. Occhipinti, 998 F.2d 791.

Kan. 1991. Trial court properly ruled that DNA test results were unavailable material evidence and granted continuance requested by State to allow taking of DNA test, and thus 50 days required to obtain DNA test results were not charged against State for purposes of speedy trial statute; trial judge reasoned that if evidence was tested, test results could produce either exculpatory evidence material to defense or evidence material to identity of defendant as murderer. K.S.A. 22-3402(3)(c).

Smith v. Deppish, 807 P.2d 144, 248 Kan. 217.

Kan. 1990. Delay of 287 days between defendant's arrest and trial was not unreasonable and defendant, who showed no prejudice, was not denied constitutional right to speedy trial, where five and one-half month delay in filing complaint was due to necessity of obtaining defendant's driving record from Department of Motor Vehicles and prosecutor's large case load. U.S.C.A. Const. Amend. 6; K.S.A. Const. Bill of Rights, § 10.

State v. Smith, 799 P.2d 497, 247 Kan. 455.

Kan. 1978. Delay of 23 days before transcript could be prepared and delivered to defendant's newly appointed counsel, who after first trial applied for and was authorized to obtain transcript of proceedings at first trial, together with delays caused by defendant in requesting changes of counsel, could not be charged to State and thus, since less than 73 days could be charged to State, defendant was brought to trial within 90 days as required following declaration of a mistrial. K.S.A. 22-3402.

State v. McClain, 580 P.2d 1334, 224 Kan. 464.

577.10(5). Multiple charges or defendants.

C.A.10 (Kan.) 1993. Defendant's statutory right to speedy trial was not violated by 159-day delay between arrest and trial where delays were due to defendant's own motions, and delay resulting from addition of codefendant was properly excluded when calculating 70 days. 18 U.S.C.A. § 3161(h)(1)(F), (h)(7).

U.S. v. Davis, 1 F.3d 1014.

C.A.10 (Kan.) 1990. For purposes of Speedy Trial Act, reasonable period of delay excludable as to codefendant due to fact that she was fugitive was excludable as to defendants as well, particularly in view of fact that defendants were already incarcerated and delay did not affect their liberty. 18 U.S.C.A. §§ 3161-3174.

U.S. v. Mayes, 917 F.2d 457, certiorari denied 111 S.Ct. 1087, 498 U.S. 1125, 112 L.Ed.2d 1192, denial of post-conviction relief affirmed 844 F.Supp. 677.

C.A.10 (Kan.) 1986. Under provision of Speedy Trial Act [18 U.S.C.A. § 3164(c)], which states that periods of delay enumerated in 18 U.S.C.A. § 3161(h) are excluded in computing 90-day time limitation for bringing detained person to trial, not only are delays occasioned by defendant excluded, but also those delays that result from actions of codefendants.

U.S. v. Theron, 782 F.2d 1510.

D.Kan. 1994. For purpose of defendant's right to speedy trial, period of delay caused by codefendant's flight from pretrial release supervision was excludable in computing time within which trial must commence. 18 U.S.C.A. § 3161(h).

U.S. v. Ramos, 846 F.Supp. 927.

D.Kan. 1989. Time resulting from discovery motions filed by one of two codefendants was excludable for speedy trial purposes with respect to both defendants. 18 U.S.C.A. § 3161(h)(1)(F), (h)(7).

U.S. v. Mayes, 729 F.Supp. 87, on subsequent appeal 917 F.2d 457, certiorari denied 111 S.Ct. 1087, 498 U.S. 1125, 112 L.Ed.2d 1192, denial of post-conviction relief affirmed 844 F.Supp. 677.

Kan. 1991. Termination of him l...  
tion for tri...

State v. 619.

One wh... more states should be t... justice leave prosecuting

State v. 619.

By rele... Kansas to... charges, Ka... as to which... proper mat... fact that Ca... ty of death... harassment... mining whe... in Kansas a... ed denial c... U.S.C.A.Co... of Rights, §

State v. 619.

Discret... reasons co... defer trial... dled to con... 14.

State v. 619.

577.10(6)

Kan. 1... nesses may... violation o... defendant c... es, no subp... showing th... earlier trial... speedy tria... nesses we... Amend. 6.

State v. 329, 237, 575, habe 788, cert. L.Ed

Kan. A... that permi... of trial date... trial beyon... required to... remaining

6.



AFFIDAVIT

State Of Kansas, Sedgwick County, ss:

Robert Henry Waldraven, of lawful age, being first  
duly sworn, states that:

1. Three times, without first giving me an opportunity  
to show that motor vehicles at my residence would operate,  
Wichita City Health Officers filed FASLE criminal complaints  
against me claiming that said motor vehicles would not  
operate.

2. The truth is that said motor vehicles were in good  
operating and driving condition at the time said three FALSE  
criminal complaints were filed against me.

3. All three times the City Attorney dismissed the case  
when I showed him that I had paid up tags and paid up insurance  
on said motor vehicles.

*Robert Henry Waldraven*  
ROBERT HENRY WALDRAVEN

Subscribed and sworn to before me on this 10 DAY OF  
march, 1994.

*Shirley LeForce*  
NOTARY Public

My appointment expires 5-3-97



7

"Open Meetings Profile: The Prosecutor's View," Bradley J. Smoot and Louis M. Clothier, 20 W.L.J. 241, 285 (1981).  
 "Treatment of the Separation of Powers Doctrine in Kansas," Marc E. Elkins, 29 K.L.R. 243, 265 (1981).  
 "S.B. 699—A Comment on Kansas' New 'Drunk Driving' Law," Joseph Brian Cox and Donald G. Strole, 51 J.K.B.A. 230, 234 (1982).  
 "The New Kansas DUI Law: Constitutional Issues and Practical Problems," Gerard Little, Jr., 22 W.L.J. 340, 353 (1983).

Attorney General's Opinions:  
 Quo Warranto—grounds for public office forfeiture—grounds for recall. 88-154.

CASE ANNOTATIONS

Prior law cases, see C.S. 1949, 60-1609 and the 1961 Supp. thereto.

1. Sheriff permitting prisoner to spend nights at home unsupervised guilty of willful misconduct and neglect of duty. State, ex rel., v. Robinson, 193 K. 480, 483, 489, 394 P.2d 48.
2. Direct conflict of interest sales by county commissioner to county held grounds for ouster; "present term rule" discussed and applied. State, ex rel., v. Schroeder, 199 K. 403, 430 P.2d 304.
3. Presentment of a false and excessive claim, knowingly padded; willful misconduct in office. State, ex rel., v. Cahill, 222 K. 570, 575, 567 P.2d 1329.
4. Failure to follow personnel and sexual harassment policies constitute willful misconduct in office; removal from office of county treasurer affirmed. State ex rel. Miller v. Richardson, 229 K. 234, 235, 623 P.2d 1317.
5. Cited; absence of tort action by county employee against commissioners for violation of cash-basis or budget laws examined. Greenlee v. Board of Clay County Comm'rs, 241 K. 802, 808, 740 P.2d 606 (1987).

**60-1206.** Instituting ouster proceedings. (a) *On complaint.* The attorney general or any county attorney in the county of his or her jurisdiction, upon receiving written notice that an officer covered by K.S.A. 60-1205 has violated any of the provisions thereof, shall investigate the complaint. If reasonable cause is found for the complaint, proceedings shall be instituted to oust such officer, but proceedings may be initiated by the attorney general or the county attorney without complaint having been made.

(b) *Proceedings against state officers.* Proceedings to oust a state officer shall be commenced only by the attorney general. If a complaint is made to a county attorney against a state officer, he or she shall immediately transmit such complaint to the attorney general.

History: L. 1963, ch. 303, 60-1206; Jan. 1, 1964.

Source or prior law:  
 (a) L. 1911, ch. 237, § 2; R.S. 1923, 60-1610.  
 (b) L. 1911, ch. 237, § 3; R.S. 1923, 60-1611.

Research and Practice Aids:  
 Counties = 104; Municipal Corporations = 268; Officers = 283; Quo Warranto = 319; States = 360.  
 Hatcher's Digest, Officers §§ 13 to 16.  
 C.J.S. Counties §§ 78, 108; Municipal Corporations § 505 et seq.; Officers § 64; Quo Warranto § 25; States §§ 49, 79, 95.  
 Gard's Kansas C.C.P. 60-1206.  
 Vernon's Kansas C.C.P.—Fowks, Harvey & Thomas, 60-1206.  
 Vernon's Kansas Forms, C.C.P.—Hatcher §§ 12.21, 12.22.  
 Attorney General's Opinions:  
 Property valuation director's power to require use of assessment tools by county and district appraisers..91-136.

CASE ANNOTATIONS

- Prior law cases, see C.S. 1949, 60-1610.
1. Section cited; life tenant has no interest in crops planted after death. Rewerts v. Whittington, 1 K.A.2d 557, 561, 571 P.2d 58.
  2. Cited; absence of tort action by county employee against commissioners for violation of cash-basis or budget laws examined. Greenlee v. Board of Clay County Comm'rs, 241 K. 802, 808, 740 P.2d 606 (1987).

**60-1207.** Suspension of officer during hearing. Upon application to the court before which the petition for ouster is pending, an officer may be suspended from performing any of the duties of his or her office, pending a final hearing and determination of the matter; and the authority having the power of appointment to fill vacancies in such office, shall upon such suspension appoint some proper person temporarily to fill said office and to carry on its duties until such matter shall be finally determined or until the successor of the officer so suspended shall be elected and shall have qualified. No person shall be suspended from office under the provisions of this act until at least five (5) days' notice of the application for the order of suspension shall be served upon such person, which notice shall set forth the time and place of the hearing of said application and said officer shall have the right to appear and make any defense that he or she may have and shall be entitled to a full hearing upon the charges contained in the complaint and upon the application for the order. No suspension shall be made except upon finding of good cause therefor. If on the final hearing the officer is not removed from office, the officer shall receive the salary allowed by law during the time of his or her suspension. The officer so temporarily appointed shall receive the same salary as is provided by law to be paid the officer filling such position.

History: L. 1963, ch. 303, 60-1207; Jan. 1, 1964.

Source or prior law:  
 L. 1911, ch. 237, § 8; R.S. 1923, 60-1616.



unauthorized practice of law. State ex rel. Stephan v. Williams, 246 K. 681, 686, 793 P.2d 234 (1990).

**60-1203.** Name in which action prosecuted; damages. Where the action is brought by a person claiming an interest in an office, franchise or corporation, or claiming an interest adverse to a resolution, ordinance, franchise, gift or grant, which is the subject of the action, it shall be prosecuted in the name and under the direction of such person, otherwise it shall be prosecuted in the name of the state by the attorney general or county attorney. Whenever the action is brought by the attorney general or the county attorney against a person for usurping an office, the petition shall state the name of the person rightfully entitled to the office. When the action in such case is brought by the person claiming title, such person may claim and recover any damage he or she may have sustained.

History: L. 1963, ch. 303, 60-1203; Jan. 1, 1964.

Source or prior law:

C.S. 1868, ch. 80, § 654; L. 1871, ch. 116, § 2; L. 1909, ch. 182, § 681; R.S. 1923, 60-1603.

Research and Practice Aids:

Quo Warranto = 30 et seq.  
Hatcher's Digest, Quo Warranto §§ 7, 8.  
C.J.S. Quo Warranto § 25 et seq.  
Gard's Kansas C.C.P. 60-1203.  
Vernon's Kansas C.C.P.—Fowks, Harvey & Thomas, 60-1203.

CASE ANNOTATIONS

Prior law cases, see C.S. 1949, 60-1603 and the 1961 Supp. thereto.

1. Private individual cannot maintain action attacking city annexation. Babcock v. City of Kansas City, 197 K. 610, 611, 613, 614, 617, 618, 419 P.2d 882.

**60-1204.** Judgments. (a) *Where party claims office.* If judgment be rendered in favor of a party claiming an office he or she shall proceed to exercise the functions of the office, after he or she has been qualified as required by law, and the court shall order the defendant to deliver over all the books and papers in his or her custody or within his or her power, belonging to the office from which the defendant shall have been ousted.

(b) *Against corporations.* If judgment be rendered against a corporation, or any persons claiming to be a corporation, the court may restrain any disposition of the effects of the corporation, appoint a receiver of its property and effects, take an account, and make a distribution

thereof among the creditors and persons entitled, and the corporation will be dissolved.

History: L. 1963, ch. 303, 60-1204; Jan. 1, 1964.

Source or prior law:

(a). C.S. 1868, ch. 80, § 656; L. 1909, ch. 182, § 683; R.S. 1923, 60-1605.  
(b). C.S. 1868, ch. 80, §§ 658, 659; L. 1909, ch. 182, §§ 685, 686; R.S. 1923, 60-1607, 60-1608.

Research and Practice Aids:

Quo Warranto = 61.  
Hatcher's Digest, Quo Warranto §§ 15, 16.  
C.J.S. Quo Warranto §§ 44, 46.  
Gard's Kansas C.C.P. 60-1204.  
Vernon's Kansas C.C.P.—Fowks, Harvey & Thomas, 60-1204.  
Vernon's Kansas Forms, C.C.P.—Hatcher § 12.1 et seq.

CASE ANNOTATIONS

Prior law cases, see C.S. 1949, 60-1605, 60-1607, 60-1608 and the 1961 Supp. thereto.

1. Applied; defendant ousted from membership on Kansas Adult Authority; 22-3707 not constitutionally infirm. Leek v. Theis, 217 K. 277, 538 P.2d 1407.

**60-1205.** Grounds for forfeiture of public office. Every person holding any office of trust or profit, under and by virtue of any of the laws of the state of Kansas, either state, district, county, township or city office, except those subject to removal from office only by impeachment, who shall (1) willfully misconduct himself or herself in office, (2) willfully neglect to perform any duty enjoined upon him or her by law, or (3) who shall commit any act constituting a violation of any penal statute involving moral turpitude, shall forfeit his or her office and shall be ousted from such office in the manner herein-after provided.

History: L. 1963, ch. 303, 60-1205; Jan. 1, 1964.

Source or prior law:

L. 1911, ch. 237, §§ 1, 16; R.S. 1923, 60-1609, 60-1624.

Research and Practice Aids:

Counties = 44; Municipal Corporations = 151; Officers = 64; Quo Warranto = 12.  
C.J.S. Counties §§ 78, 108; Municipal Corporations § 503; Officers § 57; Quo Warranto § 11.  
Gard's Kansas C.C.P. 60-1205.  
Vernon's Kansas C.C.P.—Fowks, Harvey & Thomas, 60-1205.  
Vernon's Kansas Forms, C.C.P.—Hatcher § 12.21 et seq.

Law Review and Bar Journal References:

C.S. 1949, 60-1609 discussed in survey of constitutional and administrative law, Glenn E. Opie, 12 K.L.R. 143, 154 (1963).

"The Kansas Open Meeting Act: Sunshine on the Sunflower State?" Deanell R. Tacha, 25 K.L.R. 169, 203 (1977).

9

"Op  
J. Smo  
"Tre  
sas," N  
"S.B  
Law,"  
230, 2  
"The  
Practic  
(1983).  
Attorn  
Quo  
ground

Prior  
thereto  
1. S  
supervi  
State,  
48.  
2. D  
to cou  
cussed  
430 P.  
3. P  
padded  
222 K.  
4. F  
ices of  
office of  
ardson.  
5. C  
commi  
aminec  
802, 80

60  
ings.  
any c  
jurisd  
office  
any o  
comp  
comp  
such  
the at  
out c  
(b)  
ceedi  
menc  
plaint  
office  
comp  
Hi:  
1964.

Source  
(a).  
(b).

Dear Historic Midtown Neighbor:

The April 1 city election is critical to the continued well being of our neighborhood. I urge you to do your part to insure that the support we need stays on the City Council. I am asking you to vote for Joan Cole for City Council.

Four years ago Joan Cole ran for City Council on a platform of being a voice for neighborhoods. She served for 15 years on the board of Historic Midtown Citizens Association. Cole continues to attend the HMCA Board and General Membership Meetings as well as other neighborhood and CPO meetings. Cole has also worked numerous volunteer hours on the home HMCA is restoring. In addition, Joan Cole is the person responsible for creating the Wichita Independent Neighborhoods by assembling various neighborhood leaders and encouraging them to work together. We have made progress in our neighborhood as a direct result of Joan Cole's efforts. I have only seen her opponent twice and once was at our political forum for 6th District City Council candidates.

I believe that the effort to improve problem properties in our area will be seriously jeopardized if Joan's opponent is elected. You may have noticed that many of Joan's opponent's yard signs are placed on some of the worst property in our area. That is because her opponent is financed and supported by people whose rental properties have been cited many times for serious violations. (One of them even spent a weekend in jail over these violations.) Joan Cole, on the other hand, was instrumental in creating Neighborhood Initiative programs such as the Clean Team, Neighbor-to-Neighbor, and the Neighborhood Court. These programs have led to neighborhood clean-ups, graffiti paint-outs, and health and safety code enforcements.

Until Joan Cole stepped in, halfway houses for persons coming out of correctional facilities were appearing overnight and threatening the safety of our neighborhood. Cole brought the City and the County together to deal with this problem and halted this proliferation.

Crime has decreased because Joan Cole voted to implement Community Policing and hire 139 new police officers. Cole's opponent has said that we cannot afford these police officers and hiring them was a mistake. The Wichita Eagle reported this same opponent stated that she probably would have opposed the city's gun control ordinance. This ordinance was supported by the majority of District 6 voters. Her posture is "have gun--will shoot" according to the paper.

Joan Cole has held the line on taxes. The city's property tax is more than 4 mills below its tax lid and Joan Cole would never vote to override a state imposed property tax lid. Cole has been able to do this while developing private and public partnerships to bring new, family-oriented activities such as the ice rink to downtown. Joan Cole will continue using these kinds of partnerships to return downtown Wichita to a thriving business and entertainment district with a broad tax base. The City Council's commitment of a \$75 million investment downtown has been the catalyst of \$250 million dollars in development. This is the type of progress we need. Cole's opponent has stated emphatically that she will not spend one more tax dollar downtown. This is short sighted and will lead to the decay of inner city neighborhoods such as ours.

Joan Cole is everywhere we need her to be. Join me in voting for Joan Cole April 1. Thank you

Best regards,

  
Cathy Landwehr





# Re-Elect Joan Cole for City Council

Dear Friends and Neighbors,

Thank you for helping me through the primary election as the top vote-getter. As you may have heard, this primary election was the smallest voter turnout in years. My "majority" amounted to only 2,048 votes out of over 25,000 registered voters in our District. This situation indicates that people are comfortable with what is happening today in District Six.

It is important that you vote for me to continue the progress District Six has experienced these past four years. There is a challenge that we face for the General Election April 1 because of the County tax issue. The people who are unhappy with government or focus on a single issue are often the ones who make the effort to vote in city and/or county elections. Many times they vote against the incumbent as a "statement" regardless of the incumbent's record.

Voters who look at my record will find proof that I was instrumental in holding the line on taxes, improving our neighborhoods, replacing and repairing bridges and streets and developing downtown. To keep moving forward, it's also important that we find ways to bring additional Cole supporters out to vote on April 1.

Under our city ordinance that defines term limits, I can only serve one more term. I feel I have made improvements in District Six and believe there is more to be done. I want to continue working on projects that encourage joint efforts of citizens, businesses, city staff, police officers and firefighters to improve our quality of life. I want to find ways to provide needed sewer, water, and street improvements in our District. I want to work towards a solution for Wichita's trash disposal and the threat of increased train traffic. I want to continue working full-time on issues that affect our every day life while continuing to hold the line on taxes.

I ask for your vote in the April 1 General Election. Your vote can make a difference. Thank you.

Best Regards,

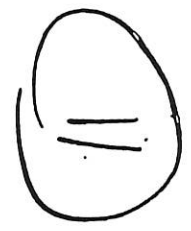
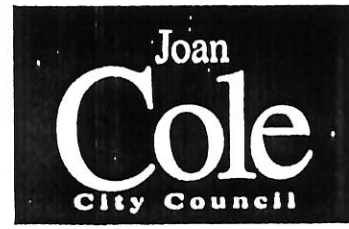


Let's continue to have City Government responding to our neighborhood needs.

Join us in voting for Joan Cole for City Council.

- |                                |                         |
|--------------------------------|-------------------------|
| Georgia M. & Dwight Burge      | Patric & Betty Rowley   |
| Cathy Landwehr                 | Diane Wahto             |
| Helen Babich                   | Helen Trigg             |
| Alan & Sharon Fearey           | Richard & Betty Minkler |
| J.W. & Annabelle Haupt         | Jerry Layman            |
| C. Bickley & G. Valerie Foster | Delora Donovan          |
| Sharon Mallory                 | Jack T & Mary F. Vaughn |
| Bill N. Fox                    | Joan & Bill Edwards     |
| Janet Miller                   | Jae Pierce-Baba         |
| Nile Dillmore                  | Monica Cedeno           |
| Mildred & Spencer Delamater    | Mary Jabara             |
| Margaret Mullikin              | Jeanette Moore          |
| Margalee Wright                | Emma Lou Wix            |
| Larry & Nicki Soice            | Tom & Doris Raum        |
| Sharon Gaugler                 | Your Name Here _____    |
| Conner Lindsey                 |                         |

City Government affects your life every day.  
Let's keep it responsive to your needs.



Vote for Joan Cole April 1st





## NEWS IN YOUR NEIGHBORHOOD

### April Fools' Party To Benefit Organ Donor Groups

In the early morning hours of April 1, 19481, Wichitan Harry Dobbin was just getting out of bed, getting ready for classes at Wichita State University, when he received a call from his physician's office. Dobbin, who had been seeing the kidney specialist for more than a year, was asked to wait for a call from the doctor himself. Finally the phone rang, and the news was good: A kidney was available for transplant in Kansas City. But by the time Dobbin reached the University of Kansas Medical Center, infection had been found in the donor kidney. It could not be used as a transplant. April Fool, Harry Dobbin.

Ultimately, fate's cruel joke had a more pleasant punch line. Another donor organ was found early the next morning, and Dobbin eventually received his new kidney.

Ever since that lifesaving operation, Dobbin has held an April Fools' celebration to benefit organ donor awareness. This year is no exception.

The 16th Annual April Fools' Party will take place April 6 at Big Fish Banquet Hall, 305 S. St. Francis. Four bands are scheduled to appear: Nikita Prozac, Confession, Shine and The Fun Tones (of which Dobbin is a member). Doors to Big Fish will open at 6 p.m.; the music begins at 7. There will be cash bar, and food will be available for purchase.

Each year, proceeds from the event go to organizations dedicated to organ donation. The funds from this year's April Fools' party will benefit the Via Christi Foundation.

"The primary purpose of the party is to help make the public aware of the fact that organ donations improve and save lives," Dobbin said. "But celebrating life and having fun run a close second."

### Botanica Announces World Wide Web Site

Botanica, The Wichita Gardens now has a presence on the Internet's World Wide Web with its website, located at <http://www.botanica.org>.

Southwind Internet Access, Inc. is the host of Botanica's website.

*We have  
80,000  
nurses  
working  
here.*



Across this country, more and more people are going someplace new to get well. They are going home. And we're going with them.

For years, we have provided more nurses, for more hospitals, than anyone in the United States and Canada. And today, we have more than 80,000 dedicated professionals specializing in home care. From the most technical assignments to the most basic. From coast to coast.

For more information on Interim HealthCare services, call: **265-4295**

333 S. Broadway, Suite 200

**Interim**  
HEALTH CARE

12

RE-ELECT  
BILL N. FOX  
Citizen Participation Organization  
North Central District Six  
APRIL 1, 1997

the Service Coordinators are an eligible expense under this program.

Contact the HUD field office nearest you to learn how you can apply. The HUD Field Offices for each state are listed in the Directory of State Information in the back of this book.

☆☆☆

## A Thousand Bucks To Fix Up Your House

Need money to widen your doorway for wheelchairs, install ramps or grab bars, or even put on a new roof? There's a free money program that awards grants of AT LEAST \$1,000 to help a senior citizen fix up and repair their home.

As part of the HOME Investment Partnership Program, the HOME Repair/Modification Programs For Elderly Homeowners program makes funds available to low-income individuals for home repair services. Money is distributed through over 500 sites, so to locate the closest program and application information, contact the American Communities, P.O. Box 7189, Gaithersburg, MD 20898; 800-998-9999.

13

4-21

# Wichita may put judges on contract

FRIDAY June 6, 1997

## JUDGES

From Page 15A

■ Bar association questions whether contract would violate independence of Municipal Court judges.

By Jim Cross

The Wichita Eagle

Wichita Municipal Court judges would have to sign a contract saying they serve "at the pleasure" of the City Council under a proposal the council is considering.

The plan has drawn protest from officials of the Wichita Bar Association.

Members of the bar are worried, some say, that the contract would create the appearance, if not the fact, that judges are subject to political pressures.

"We want people to be confident that Municipal Court is set up to be a real court," said Jim Oliver, president of the Wichita Bar Association, "and you will get a fair deal there."

Council members say they only want enough control over judges to

assure that Municipal Court runs smoothly.

"We just want to make sure that everybody is always on the same page and there is no misunderstanding about what the duties of the judges are," said Greg Ferris, a council member.

Council members have been talking about a "crisis" in Municipal Court for the past two years as the number of cases filed annually skyrocketed to more than 45,000 and each of the judges presided over more than 34,000 appearances every year.

Now, nine lawyers have applied for appointment to three municipal court judge positions — the job pays about \$65,000 a year — and the council may reach a decision as soon as next week.

The three judges who already hold the seats — Harold Flaigle, Janet Arndt and Geary Gorup — have applied to be reappointed.

A draft contract prepared by the city of Wichita's legal department

See JUDGES, Page 19A

was discussed at Tuesday's City Council meeting

Under that plan:

■ Judges could be suspended or fired at any time in their four-year terms for incompetence, malfeasance or other conditions that council members believed impaired their performance.

■ The council would conduct periodic performance reviews to determine each judge's fitness for office.

■ Judges would be required to make themselves "available at reasonable times" for meetings with the council, the city manager, the city attorney and any other city official.

It may be tempting, Oliver said, for council members to think that Municipal Court "ought to be run like any other city department."

But it would be wrong to draw that conclusion, he said.

"Judges can't just be treated like any other employee," he said. "When you review a judge's performance, what are you reviewing? How many dollars of fines the judge imposed? How fast the judge ran the cases through?"

Council members should be very concerned, Oliver said, about how the public perceives the court.

"The public could get the wrong impression that a judge might rule a certain way because he's got a performance review coming up the next week," Oliver said.

At Tuesday's meeting, council members agreed with some of what Oliver said. They told City Attorney Gary Rebenstorf to try to modify the contract to respond to Oliver's objections.

"I don't think we should have that much control over the judiciary," council member Sheldon Kamen said at a news conference Thursday.

Council members probably are not willing, however, to drop the idea of a contract completely.

"I've talked to all nine candidates," Ferris said. "And only two of them it like it went too far, that it was an intrusion."

Judge Gorup said he has proposed his own version of the employment contract and he is optimistic that an agreement will be reached.

"I don't think it's going to be a big deal," he said. "I think a contract can be worked out that any of the candidates would be willing to sign."

Rebenstorf said he is not sure whether he will have a new version of the contract ready by next week's meeting.

"The council has asked me to look at the language and make sure you wouldn't read into it that the council is trying to interfere with the judges," he said. "And I'm working on it."

Jim Cross writes about politics and public issues. He can be reached at 38-6574.

FAX NO.

1 913  
296 1028



WEDNESDAY June 11, 1997

# JUDGES

From Page 11A

On Tuesday, the entire council interviewed the five finalists and selected Flaigle, Connolly and Barker to serve in the \$65,000-a-year positions.

The three judges appointed Tuesday emphasized the importance of teamwork in alleviating the backlog of cases.

"We need to be efficient, we need to be decisive, and we need to work as a team," Connolly said.

Flaigle said he planned to sit down with the new judges and begin outlining goals and plans for dealing with the backlog.

The judges will begin their four-year terms on June 24. But first, they

**"We need to be efficient, we need to be decisive, and we need to work as a team."**

**Julie Wright Connolly, appointed Tuesday as a Municipal Court judge**

must finalize details of their contracts. Mayor Bob Knight said each judge would meet with City Manager Chris Cherches and council members George Rogers and Joan Cole to discuss their contracts.

Officials of the Wichita Bar Association took issue with language in a draft of the judges' contract that said

the judges serve "at the pleasure" of the City Council and could be fired or suspended.

Lambke said some of the applicants were not comfortable with the phrase "at the pleasure of the council," and that wording had been changed.

Barker, one of the newly appointed judges, said a draft of the contract that he had seen said judges could be dismissed if they violated the model rules of judicial conduct.

"I have no objection to that, as I would comply with the model rules of judicial conduct in any event," Barker said. "The community is entitled to expect that from judges."

**Colleen McCain covers local government and public life. She can be reached at 269-6752.**

# Council appoints judges

■ Two new faces will serve four-year terms and tackle the backlog of cases.

By Colleen McCain

The Wichita Eagle

The Wichita City Council decided it was time for a change in the Municipal Court and appointed two new judges Tuesday.

Administrative Judge Harold Flaigle was reappointed. But current Municipal Court judges Janet Arndt and Geary Gorup were not reappointed, nor were they selected as finalists for the positions.

The council appointed Julie Wright Connolly and Greg Barker to serve as judges.

"The City Council members have a lot of concerns about the current backlog of cases in Municipal Court," said council member Phil Lambke. "Maybe everybody figures that these new faces will work harder."

Council members have called the backlog a crisis, as the number of cases filed has skyrocketed in recent years. Lambke said council members think that the backlog may be caused in part by the number of continuances granted by the current judges.

"The people we selected appeared to be a little more decisive," Lambke said.

Last week, Lambke and three other council members interviewed nine candidates for the positions and narrowed the list to five finalists.

See JUDGES, Page 14A

FAX NO.

1 913 296 1028



---

League of Kansas Municipalities

**To:** House Ethics and Elections Committee  
**From:** Sandy Jacquot, Legal Counsel  
**Date:** February 12, 2001  
**Re:** Opposition to HB 2334

I would like to thank the Committee for allowing the League of Kansas Municipalities to testify today in opposition to HB 2334. The League opposes this bill because it would affect the way many cities in Kansas have chosen to select their municipal court judges. This bill would impose a “one size fits all” kind of approach on cities. Because of the diversity of our communities, what is appropriate for one city may not be appropriate for all.

Currently, cities have a variety of methods for selecting municipal judges – very few of which are full-time judges. Most are part-time and meet for a varying number of hours per month depending on their caseload. In most cities, the mayor appoints the municipal judge with the approval of the council. HB 2334 takes this power away from the governing body. Instead, municipal judges would be elected by cities at-large for terms of four years. I often hear from local government officials about how difficult it is to find a qualified person willing to serve in this position – where it is important for someone to be impartial. Imagine the outcome if municipal judges had to campaign to their friends and neighbors for what is supposed to be an impartial and independent position. Because municipal judges would have to campaign like any other candidate for local office, their judicial independence could be greatly undermined. Further, in small communities, the distinct possibility exists that no one may run for the office.

Perhaps the most troublesome part of HB 2334 is that elected judges would have to be residents of the city. Numerous cities in Kansas share a municipal judge or at least have a non-resident serving in the position. This is because it is often difficult to find a resident with the time and interest to serve as judge. Again, this raises the possibility that no one in the community may run for the office of municipal judge. Moreover, many communities value the judicial independence they have with a non-resident – where the municipal judge is not judging his or her friends and neighbors. In addition, although only cities of the first class must hire attorneys as municipal judges, the majority of cities try to hire attorneys for that position. Many cities, however, do not have any attorney residents.

Once again, I would like to thank the Committee for the opportunity to appear before you today in opposition of HB 2334.

House Ethics and Elections  
2-12-01  
Attachment 5

Testimony to the  
House Ethics and Elections Committee  
House Bill No.: 2334  
by John D. Pinegar  
Lobbyist  
City of Topeka  
February 12, 2001

Mr. Chairman, Members of the Committee:

It is my pleasure to appear before you today. I am John Pinegar, a member of the firm of Pinegar Smith Company. Our firm represents the City of Topeka before the Kansas Legislature.

I appear in opposition to House Bill No.: 2334.

The City of Topeka strongly supports the testimony presented today by the League of Kansas Municipalities.

The City of Topeka supports the local control of and judicial authority of municipal courts and the appointment of municipal judges.

Thank you for allowing me to appear.





# ***TESTIMONY***

City of Wichita  
Mike Taylor, Government Relations Director  
455 N Main, Wichita, KS. 67202  
Phone: 316.268.4351 Fax: 316.268.4519  
Taylor\_m@ci.wichita.ks.us

---

## **House Bill 2334 Election of Municipal Court Judges**

**Delivered February 12, 2001  
House Ethics and Elections Committee**

The City of Wichita opposes House Bill 2334.

First, the bill is a solution in search of a problem. There has been no study or report showing a need for this type of mandated change. There have been no significant concerns raised about the quality of municipal judges, either by attorneys or the citizens appearing before the judges.

Second, this bill attempts to impose a one size fits all formula on cities across Kansas. Not only is it an infringement on Constitutional Home Rule and an attack on local control, it is unworkable. Cities and their citizens have different needs and different expectations. A city of 350,000 people needs different systems than a city of 350 people. This bill fails to recognize that.

Wichita Municipal Court has four judges and divisions. Judges are selected for four year terms in April. Judge candidates are nominated by a Nominating Commission made up of three attorneys appointed by the Wichita Bar Association and two citizens appointed by the City Council. The Commission nominates three attorneys for each position, and the City Council selects a judge from those nominees. Incumbents are not guaranteed reappointment, but are automatically considered for nomination if they do not withdraw. A judge must be a lawyer and a resident in Sedgwick County.

Under current Home Rule authority, a city can choose to have elected municipal judges. Under House Bill 2334, cities would be forced to have elected judges. The bill also mandates the election be at-large rather than by position and it mandates the term of judges and the manner of filling vacancies. This bill could make it more difficult to find qualified judges for Municipal Courts, especially in smaller cities.

Wichita now has a system of selecting judges based on merit, based on the nominees legal knowledge and abilities, rather than their ability to raise campaign funds or pander to popular political opinion. The timing of this bill is interesting because it comes as the State of Kansas is seriously looking at appointing all District Court Judges. In fact, half the District Court Judges in Kansas are already appointed instead of elected and three districts just voted to retain the merit selection process over the political election process. The Kansas Justice Commission, made up of members appointed by the Supreme Court, Governor Graves, and the Legislature in 1997, recently strongly recommended that all district judges be appointed based upon merit. The Senate Judiciary Committee heard from members of that Commission a few weeks ago on a proposal to let citizens vote on a Constitutional Amendment to provide for merit selection of judges.

Wichita Municipal Court is already a professional court system where judges are selected on merit and ability. House Bill 2334 threatens to politicize Municipal Court Judges and the Municipal C

House Ethics and Elections  
2-12-01  
Attachment 7



**KANSAS BAR  
ASSOCIATION**

1200 SW Harrison St.  
P.O. Box 1037  
Topeka, Kansas 66601-1037  
Telephone (785) 234-5696  
FAX (785) 234-3813  
Email: ksbar@ink.org

**LEGISLATIVE TESTIMONY  
HOUSE BILL 2334**

February 12, 2001

TO: CHAIRMAN TONY POWELL AND MEMBERS OF  
THE HOUSE COMMITTEE ON ETHICS AND  
ELECTIONS

FROM: PAUL DAVIS, KBA LEGISLATIVE COUNSEL

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to present testimony on House Bill 2334. My name is Paul Davis and I serve as Legislative Counsel to the Kansas Bar Association. The Kansas Bar Association is an organization of over 6,000 attorneys, judges, legal assistants and law students. The KBA appears before you today as an opponent of House Bill 2334.

Under current law, the governing body of a municipality is allowed to appoint a municipal judge subject to guidelines spelled out in Kansas statute. Almost always, a municipal judge is a lawyer who maintains a private practice in addition to serving as a municipal judge. Obviously, this is only a part-time job. House Bill 2334 would substantially alter the method by which municipal judges are selected by requiring every municipal judge in the state of Kansas to be elected. Furthermore, the bill would require that a municipal judge reside in the same city in which he or she serves as a judge.

What do we want from our judges? We want them to be impartial and unbiased. We want them to make decisions based on the law and not outside considerations. Does an elected or merit-selected judge better fulfill these obligations? The Kansas Bar Association strongly believes that merit-selected judges do a better job of protecting the integrity of our judicial system. Elections require judges to be politicians and raise campaign funds. Who are they going to get to contribute to their

House Ethics and Elections  
2-12-01  
Attachment 8

campaigns? The lawyers that practice before them and other parties that may have in an interest in the outcome of cases before the court. This process simply erodes the independence of the judiciary and diminishes public confidence in the integrity of the system. A survey conducted by the Kansas Justice Commission asked Kansas judges if the election of judges creates a potential for conflict of interest when an attorney or litigant has supported the judge by contributing to his or her campaign. 80% of judges said yes.

How do we get rid of a bad judge who is appointed? This is the frustration that those who support electing judges want to address. In the case of municipal judges, we have to look to who employs the judge. My observation has been that city commissioners are almost always highly responsive to the concerns of their constituents. If there is a problem with a certain judge and enough people feel strongly about it, then I'm sure that the city commissioners will do something about it. Parties in municipal court can also appeal decisions of a municipal judge that they don't agree with.

With this said, I know that some of you are proponents of electing judges and the arguments that I have made to you so far may not be persuasive. I believe there are other considerations unrelated to the theoretical debate of whether judges should be elected or appointed that make this proposal unworkable. As I mentioned, being a municipal court judge is a part-time position. Your position as a legislator is technically a part-time position, but I bet most of you feel like it's a full-time job. The fact that you have to stand for election contributes significantly the workload of your job. If a municipal judge is going to be elected, I believe the job will become closer to a full-time job. This will probably cause a lot of good lawyers who would normally be interested in the position to take a pass because of the time demands.

Lastly, with all the legislation that is proposed to you, you must ask the question: Is there a problem that requires this legislation? I submit to you that the current system works pretty darn well. I spend a lot of time talking with judges, lawyers and citizens who interact with the legal system. I do hear complaints that district court judges ought to be elected, but I have never heard the same complaint about municipal court judges.

I thank you for your time and respectfully ask that you not act favorably upon this legislation.

**From:** <Carol\_Gonzales/Shawnee@cityofshawnee.org>  
**To:** <huff@house.state.ks.us>, <ray@house.state.ks.us>, <powell@house.state.ks.us>, <powers@house.state.ks.us>, <hermes@house.state.ks.us>, <huebert@house.state.ks.us>, <mayans@house.state.ks.us>, <morrison@house.state.ks.us>, <toplkar@house.state.ks.us>, <alldritt@house.state.ks.us>, <barnes@house.state.ks.us>, <findley@house.state.ks.us>, <gilbert@house.state.ks.us>, <welshimer@house.state.ks.us>, <wilson@house.state.ks.us>  
**Date:** Mon, Feb 12, 2001 12:08 PM  
**Subject:** HB2334

Ethics and Elections Committee:

I wanted to express the City of Shawnee's concerns related to HB2334 regarding the election of municipal judges, which you will hear discussion on at 3:30 today. Taking away cities' ability to appoint municipal judges will greatly undermine the professionalism that we see today in those positions. It has been my experience that most cities do competitive recruitment processes for municipal judge positions to ensure they are appointing the most qualified candidate. Additionally, they engage those persons with contracts which include specific language regarding expectations, specifically addressing conflicts of interest. An elective process would have neither of these critical safeguards. Additionally, a process that is restricted by residency would severely curtail the cities' ability to appoint the most qualified candidate.

Because we just became aware of today's hearing, no one from the City of Shawnee is able to attend this afternoon; however, I wanted to make sure you were aware of our position. If we can be of any assistance with this issue please feel free to call me.

Carol Gonzales  
Assistant City Manager  
913/248-2328

**CC:** <GMontague@cityofshawnee.org>