

MINUTES OF THE HOUSE FEDERAL & STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairperson Doug Mays at 1:40 p.m. on March 8, 2001 in Room 313-S of the Capitol.

All members were present.

Committee staff present: Theresa M. Kiernan, Revisor of Statutes  
Russell Mills, Legislative Research Department  
Shelia Pearman, Committee Secretary

Conferees appearing before the committee:

Senator Kay O'Connor  
Representative Mary Cook  
Representative Dale Swenson  
Dr. Larry Fisher  
Danielle Noe, Assistant Secretary of Administration  
Andy Sanchez, Kansas Association of Public Employees  
Mark Tallman, Kansas Association of School Boards

Others attending: See attached list

Without objection bill will be introduced as requested by Representative Ruff regarding liability of gun owners whose weapons have been stolen. [HB 2564]

Representative Hutchins updated the committee on actions taken by the Topeka/Shawnee County Public Library (TSCPL) regarding **HB 2108**. They plan to adopt section 1.55 (Attachment #1) prohibiting accessibility of potentially harmful obscenity as defined by KSA 21-4301, 21-4301a and 21-4301c to patrons under 18 years of age unless accompanied by a parent or legal guardian. This encompasses all material they cannot legally purchase when classified as a minor. The TSCPL Board of Trustees will meet March 15, 2001 meeting. Additionally, State Librarian Duane Johnson has advised that the Kansas Library Association will provide information regarding this policy during their upcoming Spring and Summer conferences. (Attachment #2)

Chairman Mays re-opened the hearing on SB 180 - Abolish the Kansas Performance Review Board. Ms. Noe provided additional details to questions posed by Committee members yesterday.

Mr. Sanchez opposed **SB 180** and cited the 1999 survey of the Foster Care privatization which continues to experience soaring costs. Eliminating the Kansas Performance Review Boards (KPRB) does away with yet another tool for providing efficiency in government. (Attachment #3) It is KAPE's contention that its members, State employees can provide better and cost efficient service.

The hearing on SB 180 was closed.

Chairman opened the hearing on HB 2067 - Certain animals; penalties for inflicting harm or death. Representative Swenson stated that search and rescue dogs used by a law enforcement or emergency response agency for the purpose of locating persons missing in disasters or other times of need do not have the same protection by K.S.A. 21-4318. as do police or arson dogs. With training costs of approximately \$3,000, this bill would make it a class A nonperson misdemeanor to harm or kill a search and rescue dog (Attachment #4)

Written testimony (Attachment #5) was submitted by Joseph Fehrenbacher, Kansas Search and Rescue Dog Association Director requesting inclusion in K.S.A. 21-4318. With approximate costs of \$3,000 for certification and almost 14 months of training, these dogs are difficult to replace due to their service to locate survivors or victims during post-tornado or post-explosions searches.

The hearing on HB 2067 was closed.

Representative Benlon moved that Committee recommend **HB 2067** favorable for passage.  
Representative Barnes seconded the motion. The motion passed.

Chairman Mays opened the hearing on **HB 2411 - Public schools, programs of patriotic exercises.**  
Representative Cook deemed that memorizing and reciting the leading principles of the Declaration of Independence will better prepare our students to become effective citizens. (Attachment #6)

Mr. Tallman opposed the bill and stated the Association believes a district's curriculum should be established by the local board of education, not by state statute, as long as the district meets state accreditation requirements. (Attachment #7)

The hearing on **HB 2411** was closed.

Representative Benlon moved that Committee conceptually amend to include all accredited schools.  
Representative Dahl seconded the motion. The motion passed.

Representative Cook moved **HB 2411** be recommended as amended favorable for passage.  
Representative Hutchins seconded the motion. Upon requested division, motion passed 10-6.

Chairman Mays opened the hearing on **SB 62 - Constitutional awareness act.**

Senator O'Connor expressed her desire to heighten awareness for elected officials to become more familiar with the Kansas and the United States Constitution. (Attachment #8) As Citizen Legislators, they will be working to pass laws which affect both documents and the citizens from their area. The Senate removed the Citizenship test requirement which would have published scores after the officials began their term of office.

Dr. Fisher supported **SB 62** in its original form. (Attachment #9) He stated it is reasonable for the agents in this agreement to acquire knowledge of the contract. He said ignorance, avarice or ambition can lead to dissolution of constitutions over time. He quoted James Madison and other famous statesmen in his written testimony.

The fiscal note from the Division of the Budget estimated the cost for printing to be \$3,100 and postage for handbooks, tests, and results from the tests to be \$2,100 for a two-year period.

The hearing on **SB 62** was closed.

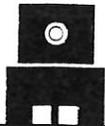
The committee meeting adjourned at 2:50 p.m. The next scheduled meeting is March 12, 2001.

# HOUSE FEDERAL & STATE AFFAIRS COMMITTEE

## COMMITTEE GUEST LIST

DATE: 3/8/61

NAME	REPRESENTING
Robert Stockwell	KPRB
George Peterson	KTN
Larry Fischer	CITIZEN
Glenda Fischer	CITIZEN
Barb Hinton	Post Audit
Bruce Dimmitt	Independent - AFL
Corrie Kangas	Sen. Brawnlee
Roger Franzio	KGC
Jesse Boj-	SOS
Charles M. Yunker	The American Legion, Dept of Ks.



**TOPEKA AND  
SHAWNEE COUNTY  
PUBLIC LIBRARY**

March 5, 2001

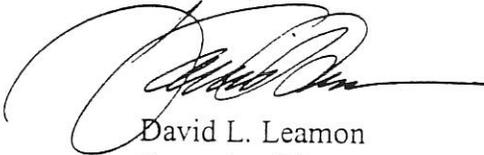
Representative Doug Mays, Chair  
Committee on Federal and State Affairs  
State Capitol Building  
Topeka, KS 66612

Dear Representative Mays:

I am enclosing for your perusal a revision of the Circulation Policy and Borrowing Privileges of patrons using the Topeka and Shawnee County Public Library. The Board of Trustees has reviewed the library laws and is placing an age limit with parental or legal guardian responsibility for accessing any periodical that could not be legally purchased by a minor from a retail establishment.

I appreciate your concern and your efforts to resolve this issue without having to undergo changes to the State Statutes. The Board of Library Trustees is very serious about its responsibility to the community and their role as leaders. Should you have any questions about the wording of the policy change, please contact me at your convenience at 580-4480. I would be happy to discuss it with you. The final action on this policy is on the agenda for the Board at their regular meeting Thursday, March 15<sup>th</sup>, 2001. Four Board members serve on the committee and the Board Chair attends in an ad hoc capacity. I am certain that this change will be incorporated into the revised Circulation Policy at the March meeting.

Sincerely,



David L. Leamon  
Executive Director

cc: Steve Schwarm, Board Chair  
Peg Chrisman, Chair, Governmental Affairs Committee

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Attachment No. 1

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- 1.52 The borrower's signature, on the library card issued to them, indicates that they Agree to return items within the established circulation loan period.
- 1.53 Borrower's privileges may be denied to any individual who has an unpaid account of at least \$100 and/or item(s) 12months or longer overdue.
- 1.54 All borrowing privileges may be denied to Interlibrary Loan borrowers for non-payment of charges or non-return of Interlibrary Loan materials. Privileges will resume when the account is resolved.

**[THE SECTION BELOW IS BEING ADDED TO THE BORROWING PRIVILEGES OF PERSONS USING THE TOPEKA AND SHAWNEE COUNTY PUBLIC LIBRARY.]**

1.55 Patrons under 18 years of age, unless accompanied by a parent or legal guardian, may not access or borrow library periodicals that they could not legally purchase from Kansas retail establishments. The library operates under the Statutes of the State of Kansas including 21-4301, 21-4301a and 21-4301c protecting minors from potentially harmful obscenity. Access to the item being requested is considered by the library to be made by the parent or legal guardian. Borrowers will be requested to verify their age with proper identification, when their age is not readily apparent.

February 23, 2001

Representative Doug Mays, Chairman  
Committee on Federal and State Affairs  
Capitol Building, Room 170-W  
Building Mail

Dear Representative Mays:

Thank you very much for the time allowed by the House Federal and State Affairs Committee for the State Library to work with libraries on the issues the committee has raised in House Bill 2108.

In specific response, the Director and Board of Trustees of the Topeka and Shawnee County Public Library have undertaken action using due process to reconsider library policy regarding the circulation of adult materials to young users of the library. A committee of the board is working on policy recommendations that will be on the board's agenda for consideration and action on Thursday, March 15. Points of consideration in this policy review are 1) the age 18 limit of access to some materials and 2) the format in which some materials may be owned by the library. Regarding format, as a provision in the library's acquisitions policy, it may be acceptable to use a microfilm or fiche format of a publication rather than a print copy. The microform format will allow the access necessary for research and adult interest in the publication, yet better support the management of access as it is required by K.S.A. 21-4301a and K.S.A. 21-4301c. I understand that the library board's action in this policy review will be completed on March 15.

For understanding of library policy elsewhere, I have communicated personally with the staff of libraries that might possibly have available materials in any way similar to those that are the concern of House Bill 2108. I find that one other urban public library owns one such publication. In this single instance, the microfiche format is used so that the information is available as necessary for research, but access to the publication is limited and easily managed.

Also in response to the committee's concerns, in library meetings and workshops this spring and summer we will discuss these issues with librarians and library trustees to be certain that they understand the requirements of K.S.A. 21-4301a and K.S.A. 21-4301c and to be certain that local library policy supports the objectives of these laws. I have discussed the importance of this policy development with the President of the Kansas Library Trustees Association and have a commitment that the association, with the participation of the State Library, will make this a high priority topic of education in the association.

Thank you again for the patience of the Federal and State Affairs Committee as we have addressed the issues you have raised. If you have additional suggestions, I will be pleased to receive them.

Respectfully yours,

  
Duane Johnson  
State Librarian

House Fed. &  
State Affairs  
Date 3/8/2001

Attachment No. 2  
Page 1 of 1

Before the House Federal and State Affairs Committee  
Testimony of Andy Sanchez, Executive Assistant to the President  
The Kansas Association of Public Employees, KAPE/AFT, AFL-CIO  
March 7, 2001

KAPE is opposed to SB180 because we contend it does away with yet another tool for providing efficiency in government. The neglect to use such a tool by administration should not be to the detriment of this government agency. It is our recommendation to instead seek ways of reassuring the use of the Kansas Performance Review Board.

The Kansas Performance Review Act (75-7101) provides for an oversight and accountability tool in statute. Such oversight is security to the citizens of Kansas, so that indeed, the change for providing a public function by a private contractor will provide a no-risk element to the public. The service will not lapse in quality and efficiency (cost).

The KPR Act means a great deal more to KAPE members than just being a safety check valve before privatizing. The Kansas Performance Review Board is the result of the Kansas Council on Privatization. The Council consisted of a unique blend of private business and public sector leaders, including some legislators. This is the fruition of their work. Truly, here is an instance in which a variety of backgrounds were involved to develop a strategy for assessing the possible privatization of certain public functions of government. It was an inclusive council that developed a methodical process tool which was to be continuous.

KAPE is an organization that depends on the input of our members, State Employees. It is imperative we listen to their concerns in order to share them with lawmakers. KAPE conducted a survey in 1999 of the Foster Care privatization dealt out by the State, and in which costs continue to soar. We will always be critical of privatization because we believe our members can provide better and cost efficient service. We hear a wide variety of concerns from our members, but our members seem to be consistent on some concerns in particular, one of those is the States' failure to minimize problems before the implementation of new systems in Kansas State government. If we remove standards for privatization to measure up to, we will slip towards inefficiency.

This is too important to try to reinvent again later. It is the result of a full communication and cooperation effort. This effort (and the agency) sought out the recognition of employee organizations, and this is unusual for the State of Kansas. We should use a fair and predictable process for assessing privatization. This is just such a tool.

Thank you for your time and consideration

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Attachment No. 3  
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Senate Concurrent Resolution No. 1626

A CONCURRENT RESOLUTION creating the Council on Privatization; designating its membership, authority and responsibilities; and requiring a report to the 1995 Kansas Legislature on its findings and recommendations.

WHEREAS, The private sector should be encouraged to provide goods and services, traditionally provided by state government, when they can do so at a comparable quality and lower cost; and

WHEREAS, The use of private contracts can potentially save tax dollars and improve the efficiency and effectiveness of services to the public; and

WHEREAS, The State of Kansas and many other states, as well as the federal government, have undertaken initiatives with the goal of "reinventing government" and increasing the privatization of public services; and

WHEREAS, The Governor and the Legislature are in need of specific recommendations that will increase the efficiency and effectiveness of state government, strengthen the role of the private sector, and lead to cost savings and reduce the tax burden of Kansas citizens: Now, therefore,

*Be it resolved by the Senate of the State of Kansas, the House of Representatives concurring therein:* That there hereby is appointed the Kansas Council on Privatization; and

*Be it further resolved:* That the council shall consist of 15 members chosen in the following manner:

(a) The President of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives and the Minority Leader of the House of Representatives shall each appoint one member of the Kansas Legislature;

(b) the Governor shall appoint a member of the Governor's cabinet;

(c) the legislative coordinating council shall appoint jointly six members as follows:

(1) A member of the Kansas Chamber of Commerce and Industry;

(2) a person who has been distinguished as a leader of the business community in Kansas and represents small business;

(3) a representative of a Kansas taxpayers' association or organization;

(4) a certified public accountant with experience in governmental auditing, accounting and budgeting;

(5) an attorney who is a member of the Kansas Bar Association;

and  
(6) a member of a state public employees' union;

(d) the Board of Directors of Kansas, Inc. shall appoint a private sector member of the board;

(e) the Kansas Board of Regents shall appoint a faculty member of a Kansas regents university with experience in state government and a record of research in public administration;

(f) the league of Kansas municipalities shall appoint a local government official; and

(g) the Kansas association of counties shall appoint a local government official.

The chairperson of the council shall be a private sector member elected from among the members of the council; and

*Be it further resolved:* That the council shall have the following responsibilities:

(a) Identify and study state governmental activities that may be in competition with the private sector;

(b) study the desirability and feasibility of contracting for private sector performance of governmental services;

(c) identify methods by which members of the public and private sectors can work together to accomplish desirable public policy objectives;

(d) identify barriers to making public sector operations more competitive;

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- (e) recommend administrative changes and prepare legislation that will eliminate barriers to privatization and modify state statutes and regulations that impede the private contracting of public services;
- (f) study the possible impact of privatization on state employees;
- (g) prepare legislation to establish an on-going process and entity that will ensure maximum use of privatization and private contracting by Kansas state government, including, but not limited to, a private enterprise review board that can receive petitions of interest from private business desiring to provide a public service, and petitions from the private sector alleging competition from the public sector; and
- (h) provide the citizens of Kansas and members of the private sector an opportunity to give comments on these subjects through the conduct of public hearings; and

*Be it further resolved:* That the Council on Privatization shall be made a part of Kansas, Inc. Subject to appropriations acts relating thereto, Kansas, Inc. shall provide staff support to the council. Members of the council shall receive per diem and travel reimbursement for their attendance at meetings of the council or its committees. In addition, Kansas, Inc. shall provide private sector funds to support the council; and

*Be it further resolved:* That agencies of state government shall cooperate fully with the council and its staff in the provision of information and data as may be requested and required to accomplish its responsibilities. The council may call upon the Secretary of Administration and the Director of Legislative Research to provide staff support and assistance; and

*Be it further resolved:* That the council shall issue a final, written report to the Governor, President of the Senate and the Speaker of the House by January 20, 1995. The chairperson and members of the council shall testify before the Kansas Legislature on their findings and recommendations during the 1995 Legislature. The council shall be abolished on June 30, 1995.

I hereby certify that the above CONCURRENT RESOLUTION originated in the SENATE, and was adopted by that body

March 2, 1994

SENATE adopted  
Conference Committee Report April 7, 1994

Pat Saulle  
President of the Senate.  
Secretary of the Senate.

Adopted by the HOUSE  
as amended March 24, 1994

HOUSE adopted  
Conference Committee Report April 7, 1994

Just Jones  
Speaker of the House.  
Chief Clerk of the House.

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HOUSE OF  
REPRESENTATIVES

REPRESENTATIVE, DISTRICT 97  
STATE OF KANSAS  
STATE CAPITOL—ROOM 556-N  
TOPEKA, KANSAS 66612-1504  
(785) 296-7500

COMMITTEE ASSIGNMENTS  
BUSINESS, COMMERCE & LABOR  
HEALTH & HUMAN SERVICES  
JOINT COMMITTEE ON SPECIAL  
CLAIMS AGAINST THE STATE  
JUDICIARY



DALE A. SWENSON

HOME ADDRESS:  
3351 S. MCCOMAS  
WICHITA, KANSAS 67217  
(316) 945-5662

Testimony of HB 2067

House Federal & State Affairs Committee

As introduced HB 2067 amends current law which makes it a crime to intentionally inflict harm or death of a search and rescue dog. Current law only protects police and arson dogs. A violation of this status is a class A non-person misdemeanor.

The owner's of these animals assume significant risk as these dogs are very expensive to own and train. The loss of one of these animals could significantly harm in a search and rescue effort.

Search and Rescue dogs are invaluable when looking for a lost child or after a terrible disaster such as a tornado. I respectfully request favorable action on HB 2067 as introduced.

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Attachment No. 4  
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## **KANSAS SEARCH AND RESCUE DOG ASSOCIATION**

**3438 Hiram, Wichita, Kansas 67217  
Phone (316) 946-0114**

Wednesday, March 07, 2001

HB 2067

To Whom It May Concern:

Kansas Search and Rescue is seeking the inclusion of search and rescue dogs in Kansas Statute 21-4318. Search and Rescue dogs have played a vital role in Kansas. For example search dogs have been used in the DeBruce Grain Elevator explosion, the April 19<sup>th</sup> 2000 tornados in Parsons, Kansas and a 5 day search and live find of a missing female in Edwardsville Kansas just to name a few. Our dogs are trained for many areas i.e. Wilderness, water and land cadaver and disaster search. For Kansas Search and Rescue, it can take up to 14 months to train a dog for basic certification at a cost up to \$3000.00. That cost can be even higher for local governments. KSARDA is not the only agency with search dogs. A few local law enforcement and fire agencies have and use search dogs everyday. All the dogs in Kansas Search and Rescue are privately owned, so replacing a trained search dog would not an easy task, given the time and money. It would also be like losing a member of our family. All of our dogs are kept in kennels or in our homes. So please vote yes for House Bill 2067.

Sincerely

Joseph R. Fehrenbacher  
Director  
Kansas Search and Rescue Dog Association

Web site: <http://home.ksable.com/ksardak9s/>

E-mail: [ksarwichita@ksable.com](mailto:ksarwichita@ksable.com)

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MARY PILCHER COOK

REPRESENTATIVE, 18TH DISTRICT

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800-432-3924

STATE OF KANSAS



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

MEMBER: E-GOVERNMENT  
FEDERAL & STATE AFFAIRS  
HIGHER EDUCATION  
TAXATION

Civil Rights Tribute Act  
March 7, 2001

Mr. Chairman, thank you for allowing me to testify today on behalf of **HB 2411**. This bill will permit the edification of our students about a very important and underlying principle of our nation.

Thomas Jefferson set forth a statement of the fundamental principles of government upon which our nation was founded when he wrote the Declaration of Independence. He based it on the colonists' belief that governments were legitimate only when based on the consent of the governed.

Jefferson favored the abolition of slavery as consistent with the idea of natural rights. He was unsuccessful in overcoming the resistance of the southern colonies for the elimination of slavery. However, he believed that the potential for future social reforms were implicit in this language that set forth a declaration of faith in fundamental individual rights.

The Abolitionist movement before the Civil War used Jefferson's words in the Declaration as the basis for arguing for the elimination of slavery. In fact, the Republican party of 1860, which was dedicated to the antislavery cause, incorporated Jefferson's words into their platform.

In his first debate with Abraham Lincoln, Stephen Douglas noted that Lincoln "reads from the Declaration of Independence that all men were created equal, and then asks, How can you deprive a Negro of that equality which God and the Declaration of Independence awards to him?"

Daniel Webster, the great "Defender of the Constitution," asserted sentiments similar to President Lincoln's when he declared that the Declaration was the basis of our past, present, and future political rights. "The political rights of the United States had been asserted by the Declaration of Independence in 1776 and *stood*, and *stand*, and always *will stand*, upon that Declaration."<sup>1</sup>

As President Lincoln explained, the Declaration "established these great self-evident truths that when in the distant future some man, some faction, some interest, should set upon the doctrine that none but rich men, or none but white men, were entitled to life, liberty and the pursuit of happiness, their posterity might look up again to the Declaration of Independence and take courage to renew the battle which their fathers began.... Now, my countrymen, if you have been taught doctrines conflicting with the great landmarks of the Declaration of Independence; if you have listened to suggestions which would take away from its grandeur and mutilate the fair symmetry of its proportions; if you have been inclined to believe that all men are not created equal in those inalienable rights enumerated by our chart of liberty; let me entreat you to come back....[C]ome back to the truths that are in the Declaration of Independence."<sup>2</sup>

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President Abraham Lincoln declared, "I have never had a feeling politically that did not spring from the sentiments embodied in the Declaration of Independence."<sup>3</sup>

In the "Declaration of Sentiments" in 1848, the women's suffrage movement invoked the principles set forth in the Declaration of Independence. Proponents used it to argue for the equality of women. Senator Robert Owen of Oklahoma was a strong advocate of giving women the right to vote. In 1910 he invoked the Declaration of Independence.

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

The *Oxford Companion to the Supreme Court of the United States* explains that "the Declaration of Independence is the preamble of the Constitution,"<sup>4</sup> and *American Jurisprudence* states that "It has been said that it is always safe to read the letter of the Constitution in the spirit of the Declaration of Independence, and the courts sometime refer to the Declaration in determining constitutional questions."<sup>5</sup>

Memorizing and reciting the leading principles of the Declaration of Independence will better prepare our students to become effective citizens. It is a dangerous thing when our children believe that our natural unalienable rights come from government.

Our most basic freedoms and rights are not granted to us from the government but they are intrinsically ours. The Constitution does not grant Americans the right of freedom of speech. It recognizes that each of us is born with that right.

Mr. Chairman, I urge this committee to vote unanimously in favor of HB 2411. Thank you.

<sup>1</sup> Daniel Webster, *The Writings and Speeches of Daniel Webster* (Boston: Little, Brown, & Company, 1903), Vol. III, pp. 145-146, from "The Northeastern Boundary," remarks made at a meeting of the New York Historical Society on April 15, 1843.

<sup>2</sup> Abraham Lincoln, *The Collected Works of Abraham Lincoln*, Roy P. Basler, editor (New Jersey: Rutgers University Press, 1953), Vol. II, p. 546, August 17, 1858.

<sup>3</sup> Abraham Lincoln, *The Collected Works of Abraham Lincoln*, Roy P. Basler, editor (New Jersey: Rutgers University Press, 1953), Vol. IV, p. 240, from his "Speech in Independence Hall, February 22, 1861."

<sup>4</sup> *The Oxford Companion to the Supreme Court of the United States*, Kermit L. Hall, editor (New York: Oxford University Press, 1992), s.v. "Constitutionalism."

<sup>5</sup> *American Jurisprudence Second Edition* (New York: The Lawyers Cooperative Publishing Co., 1979), p. 327, ¶ 14. See, for example, the Supreme Court cases *Gulf, C. & S. F. R. Co. v. Ellis*, 165 U.S. 150; *Butchers' Union, etc. Co. v. Crescent City, etc., Co.* 111 U.S. 746; *Scott v. Sandford*, 60 U. S. 393; et. al.



TO: House Committee on Federal and State Affairs  
FROM: Mark Tallman, Assistant Executive Director for Advocacy  
DATE: March 7, 2001

RE: **Testimony on H.B. 2411 – Patriotic Exercises in Public Schools**

Mr. Chairman, Members of the Committee:

Thank you for the opportunity to appear before you today on H.B. 2411. State law currently requires that every school district provide for a daily recitation of the pledge of allegiance to the flag. It appears to us that this bill will add a similar requirement that students recite a key section of the Declaration of Independence.

Because this bill would impose a new requirement on school districts, we believe we should comment on this bill. Because our Delegate Assembly has never considered this particular proposal, we must be guided by general policy statements that our members have adopted, including the following:

#### **Curriculum**

KASB believes a district's curriculum should be established by the local board of education, not by state statute, as long as the district meets state accreditation requirements.

Based on this policy, we raise opposition to this bill. Our objection is not to the importance of educating students about the Declaration of Independence and transmitting understanding and appreciation of the principles it embodies. Instead, it is based on the idea that curriculum and programs should be determined by local school boards, not the Legislature.

The bill presents a small step, but there is a larger principle. If we are going to require recitation of part of the Declaration of Independence, then why not the U.S. Constitution? Why not the Kansas Constitution? Why not the Gettysburg Address, or Washington's Farewell Address? It is important to remember that local school boards can and do make decisions about how to teach civics and foster patriotism. The Legislature and State Board can and should support and encourage these decisions, but should not make these decisions for them.

Thank you for your consideration.

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Attachment No. 7

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TOPEKA

KAY O'CONNOR

SENATE DISTRICT 9  
LENEXA, DESOTO, EDGERTON  
AND NORTHWESTERN OLATHE

DURING SESSION

STATE CAPITOL—143-N  
TOPEKA, KANSAS 66612-1504  
(785) 296-7382

HOTLINE—1-800-432-3924  
TTY 785-296-8430

KC AREA LOCAL CALL 715-5000

E-MAIL: o'connor@house.state.ks.us

March 8, 2001

## COMMITTEE ASSIGNMENTS

VICE CHAIR: ELECTIONS AND  
LOCAL GOVERNMENT  
MEMBER: FEDERAL AND STATE AFFAIRS  
JUDICIARY  
JOINT COMMITTEE ON CORRECTIONS  
AND JUVENILE JUSTICE OVERSIGHT

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E-MAIL: kayoisok@earthlink.net  
www.parentsincontrol.org

Mister Chair & members of the committee:

I want to thank you for the opportunity for a hearing on SB62, which I affectionately call the Constitutional Awareness Act.

I have been introducing this bill for the past 3 years and to my frustration, the usual response is a smile. But this proposed legislation is truly not a laughing matter. I take the need for people who deal in the writing and implementation of law very seriously as I'm sure you do.

The attached commentary by Thomas L. Jipping is very enlightening as to the need for legislation such as this. It is frightening to think that 41% of the general public does not know the number of branches of government. Even more frightening is that nearly 25% of the public cannot name one of the ten rights listed in the first ten Amendments (the Bill of Rights).

We duly elected legislators come from this "general public."

In its amended form the bill "makes available" four documents:

United States Constitution  
Kansas Constitution  
Citizenship test  
Answer sheet

The concept of this legislation is to improve the foundational knowledge necessary for the making of good laws so that lawmakers will be less likely to violate Kansas and U. S. Constitutional rights. Also implementers of our laws, it is hoped, will be less likely to get into the embarrassing position of possibly violating constitutional rights.

Our founding fathers deserve to have their profoundly excellent documents commonly read, understood, and adhered to. Please give your serious consideration and support to a bill that makes us all smile, but in reality, we know will be good for us, for Kansas and our citizens.

I will stand for questions at the pleasure of the Chair.

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# Constitutional Awareness Act, SB 62

Hearing, March 8, 2001

House Committee, Federal and State Affairs

My name is Larry Fischer. I live in Topeka. I am here as a citizen and **I am here to speak in favor of SB 62, but only if it is restored to its original form requiring open book examinations of a pass/pass nature with scores becoming public record.** The present bill received from the senate has had this provision removed. In the words of a newspaper columnist in a recent article,

“... The bill was given a hearing in the (Senate) Elections and Local Government Committee - and then hi-jacked by a majority of the committee. They kept the same title as a smoke-screen and sound-bite source, but changed the contents to be utterly meaningless. The test was thrown out, and with it, the need to publicize test results - we can't embarrass a politician, can we....

“The creation of an informative handbook was thrown out. In its place was substituted the requirement that the candidates would be provided copies of the two constitutions, a copy of the naturalization examination, and a copy of the answers. Whoopee! Big Deal! The probable route for the material would not be from candidate's eyes to brain, but from candidate's hand to trash can...”

This scenario, of course, is unacceptable. The simple truth is that without teeth, this bill would be a waste of time and trees. With testing as a stimulus, it would bring commanding the ship of state to at least the level of driving a car, i.e. requiring a certain demonstrable knowledge. **The House Federal and State Affairs Committee must act to insert open-book, pass/pass, scores-for-public-record, take-as-many-times-as-you-want, testing.**

One illustration I can give of the need for testing occurred during my presentation to the senate committee on January 24<sup>th</sup> of this year. One senator made it known he was immediately against such a statute because it reminded him of a “head tax.” Ladies and gentlemen, let it be known that this senator exhibited the exact reason such a test is necessary. Knowledge of the Kansas and United States Constitutions has nothing to do with “head taxes,” either morally or ethically. The senator could not even make a correct analogy. Studying appropriate materials and taking an open book test, with no chance of failing, would make this senator's awareness more in line with his esteemed position.

## Executive Summary:

- Precept: “Indeed it is really amazing, that there should be no other state of life, no other occupation, art, or science, in which some method of instruction is not looked upon as requisite, except only the science of legislation, the noblest and most difficult of any. Apprenticeships are held necessary to almost every art, commercial or mechanical: a long course of reading and study must form the divine, the physician, and the practical professor of the laws: but every man of superior fortune thinks himself born a legislator.”--Sir **William Blackstone**, *Commentaries on the Laws of England*, pg. 9, Facsimile of the 1<sup>st</sup> Ed., The University of Chicago Press, 1979.

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A constitution is a written contract between those who govern and the governed. These legal instruments can represent many forms of rule. The constitutions of the United States and of the state of Kansas illustrate what has become known as a 'republican' form of government, not to be confused with the party of the same name.

- A constitution is the supreme law of the land. Writing in Federalist No. 78, **James Madison** tells us that  
“the prior act of a superior ought to be preferred to the subsequent act of an inferior and subordinate authority... They ought to regulate their decisions by the fundamental laws rather than by those which are not fundamental... [O]r, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents....”
- In a republican form of government all political power is vested in the people. A constitution usually lists the powers of the government, and, at the same time, limits that same power. A constitution incorporates the **Law of Agency** which simply says that the principals, or the governed, never give up more power than what they had before they entered into the agreement; that their representatives are their “agents” and have no power except that which is given. Without such an understanding the master becomes the slave.
- Constitutions in America do several identifiable things:
  1. They **recognize the people as sovereign**. [“All political power is inherent in the people, and all free governments are founded on their authority...” Kansas Bills of Rights No. 2].
  2. They recognize ‘**natural rights**.’ [“All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness (property).” Kansas Bills of Rights No. 1].
  3. They **enumerate**, and therefore limit, **the powers of government**. Government has no power beyond that which is granted. All powers not granted are retained by the people.
  4. They allow for **representation** of the people by leaders who have the confidence of the majority or quorum.
  5. They provide **basic rules for law**.
  6. They **protect minorities** from the acts of majoritarian democracy.
  7. They imply **individuality**, i.e., rights inhere to individuals, not to groups.
- A constitution, and its amendments, is the **only law in Kansas that is voted on by the people** (possible exception would be referendum). It is their law as principals.
- It is reasonable for the agents in this agreement should acquire knowledge of the contract. It is reasonable that principals should be able to measure that knowledge in their agents. And, it is also reasonable that the agents would want to demonstrate their understanding.
- The right of review of constitutionality must be apparent in the people, the legislators, the executive, and the judiciary. In sum, the knowledge of what is contained with the various constitutions is necessary for checks and balances at all levels of government. To be ignorant of powers and limitations is to be less of a citizen or elected official. In the words of **James Madison**, “Knowledge will forever govern ignorance, and a people who mean to be their own governors must arm themselves with the power that knowledge gives.”

Ignorance, avarice or ambition can lead to **dissolution of constitutions over time**. Changes, which are imperceptible to one generation, can often only be discerned by keen eyes and minds over an extended time. This is bad because constitutional principles, being those of contract, can only be rightly changed by amendment.

- History has shown that **empires have been destroyed by not adhering to the principles** of fundamental agreements. Besides the example of Rome, Sir William Blackstone noted:

And we have seen that these rights consist, primarily, in the free enjoyment of personal security, of personal liberty, and of private property. So long as these remain inviolate, the subject is perfectly free; for every species of compulsive tyranny and oppression must act in opposition to one or other of these rights, having no other object upon which it can possibly be employed. To preserve these from violation, it is necessary that the constitution... be supported in its full vigor; and its limits certainly known.---Pg. 136-140., Vol. 1, Commentaries on the Laws of England, Blackstone.

- The **time and expense** for the principal, in this case usually an individual, to prove unconstitutionality in court, is often **prohibitive**.
- The **comparison of complex laws to standards is a necessity** that can bring a **sharp sword** to the arena of politics. Will SB-62's 'testing' make our system errorless? No. Will 'testing' make our system better? Yes.

#### **DETAILED DISCUSSION:**

What is a constitution? Why would we ask anyone to become familiar with such an instrument?

A **constitution** is more than just a set of fundamental laws; it is a bundle of ideas. A constitution is defined as **an agreement or contract**. In America it is fundamental law voted on by the people who are known as "Principals." The principles choose their "Agents" and delegate their power to uphold the bundle of ideas contained in the document. The importance of a constitution within our government is immense because they are, with two notable exceptions (referendum and initiative), the only law voted on directly by the people. It is a manifestation of their sovereignty.

In the United States, **constitutions**, state and central, **do several identifiable things**:

1. They recognize the people as sovereign. ["All political power is inherent in the people, and all free governments are founded on their authority..." Kansas Bills of Rights No. 2].
2. They recognize 'natural rights.' ["All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness (property)." Kansas Bills of Rights No. 1].
3. They enumerate, and therefore limit, the powers of government. Government has no power beyond that which is granted. All powers not granted are retained by the people. This is a very important concept.
4. They allow for representation of the people by leaders who have the confidence of the majority or quorum.
5. They provide basic rules for law.
6. They protect minorities from the acts of majoritarian democracy.
7. They imply individuality, i.e., rights inhere to individuals, not to groups.

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**History** provides an example how the Roman senate was relieved of power:

"...The senate of Rome, losing all connection with the Imperial court and the actual constitution, was left a venerable but useless monument of antiquity.."---Edward Gibbon, *Decline and Fall of the Roman Empire*, ISBN 0-679-42308-7, Vol. 1, pg. 420.

Gibbon also observed that avarice and ambition are always enemies of fundamental law:

"By declaring themselves the protectors of the people, Marius and Caesar had subverted the constitution of their country." Vol. 1 pg. 78.

Gibbon even gives us the solution:

"A martial nobility and stubborn commons, possessed of arms, tenacious of property, and collected into constitutional assemblies, form the only balance capable of preserving a free constitution against enterprises of an aspiring prince." Vol. 1, pg. 68.

These three examples allow the thoughtful mind to easily realize that **unauthorized changes in constitutions are to be feared**. An open book test for elected government officials erects another barrier between "aspiring princes" and the contract with the people. This is the value of SB-62.

### Law of Agency:

**Fundamental political principles are seldom taught in modern society. Yet such principles were of great interest at the founding of this country.** The Founders were familiar with the Ancients and the Moderns with regards to what constitutes good government. One writer who found favor with early Americans was **Algernon Sidney**. He spoke of the Law of Agency.

"How full soever the power of any person or people may be, he or they are obliged to give only so much to their delegates, as seems convenient to themselves, or conducing to the ends they desire to attain; but the delegate can have none except what is conferred upon him by his principal.... (The delegates) are to be regulated by the law, not the law by them..."

--- Source: *Discourses Concerning Government* by Algernon Sidney, Liberty Fund, ISBN 0-86597-089-1, Pg. 563.

Writing in "*View of the Constitution of the United States with Selected Writings Of St. George Tucker*" (ISBN 0-86597-201-X, 1999), **Tucker** says,

"Neglect of the principles of the constitution by the public functionary is a substitution of aristocracy, for a representative democracy: such a person no longer regards himself as the trustee, and agent of the people, but as a ruler whose authority is independent of the people,

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to whom he holds himself in no manner accountable; and he so degenerates into an oppressor and a tyrant.” Pg. 42

Even the person most active in creating and explaining our central constitution, **James Madison**, took time to make sure constitutional principles were understood with relation to law making.

“It not uncommonly happens that there are two statutes existing at the same time, clashing in whole or in part with each other and neither of them containing any repealing clause or expression. In such case, it is the province of the courts to liquidate and fix their meaning and operation. So far as they can, by fair construction, be reconciled to each other, reason and law conspire to dictate that this should be done; where this is impracticable, it becomes a matter of necessity to give effect to one in exclusion of the other. The rule which has obtained in the courts for determining their relative validity is that the last in order of time shall be preferred to the first. But this is a mere rule of construction, not derived from any positive law but from the nature and reason of the thing....

“But in regards to the interfering acts of a superior and subordinate authority of an original and derivative power, the nature and reason of the thing indicate **the converse of that rule as proper to be followed**. They teach us that the prior act of a superior ought to be preferred to the subsequent act of an inferior and subordinate authority... They ought to regulate their decisions by the fundamental laws rather than by those which are not fundamental... [O]r, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents....

“There is no position which depends on clearer principles than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is **void**. To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; ....”

—Source: *Federalist No. 78*. Text is reversed from the original for clarity.

Even preachers of the American Founding Era spoke of these fundamental principles:

“...[T]he following things are demonstrated:

- 1> That the law was not made for a righteous man, but for the disobedient.
- 2> That righteous men have to part with a little of their liberty and property to preserve the rest.
- 3> That all power is vested in and consequently derived from the people.
- 4> That the law should rule over the rulers, and not rulers over the law.
- 5> That government is founded on compact.
- 6> That every law made by the legislators is inconsistent with the compact, modernly (sic) called the constitution, is usurptive (sic) in the legislators and not binding on the people.
- 7> That whenever government is found inadequate to preserve the liberty and property of the people they have an indubitable right to alter it so as to answer those purposes.
- 8> That legislators in their legislative capacity cannot alter the constitution, for they are hired servants of the people to act within the limits of the constitution...

Source: **John Leland** (1754-1841); speech given in 1802, *Political Sermons of the American Founding Era*, Liberty Fund, ISBN 0-86597-091-2.

From the aforementioned study of an elementary constitutional concept, the **Law of Agency**, it should be obvious that law-making and being an elected public servant (agent) is an awesome responsibility. It is also evident that the more knowledge public servants have of what is expected, the better suited they are to do the job and protect their constituents from what should not be done. Again, this is the value of SB-62.

To continue, certainly the creation of unconstitutional law is reduced through review by the attorney general. They review bills for constitutionality. Yet it is a fact that unconstitutional statutes do occur. The education of those who aspire to make laws, or who are elected to other offices, represents another safeguard. Spreading the knowledge of what fundamental law is the function of SB-62.

I have previously asserted that unconstitutional law is not binding upon the 'principal', meaning the people. However, it isn't that simple. The time and expense for the principal, in this case usually an individual, to prove in court such unconstitutionality, is often prohibitive. As a safeguard, lawmakers should realize this probable legal imposition upon their constituents, often implemented by the "spirit of the moment," is very onerous. With this in mind, conscientious elected officials should be proud to be educated in constitutional fundamentals. It is sheer hubris to think otherwise.

In the weeks that follow, debates over this bill will undoubtedly say that such "test" requirements were struck down by the Founders of our government. My knowledge of this subject indicates the only "tests" that were discussed and prohibited were 'religious' tests. These tests should not be confused with the mission of SB-62. Over and over again, the cry that "knowledge is power" resounded over our land in its infancy. It is hard to believe our forebears would not have wanted their "agents", i.e. statespersons, to be of the same ilk.

Why weren't tests administered from the outset? My answer is in three parts: First, very informed people created the framework of our government. As time passed the quality of the people seeking public service was not as astute. Writing in the early 1830's, **Alexis de Tocqueville** observed in his work, *Democracy in America*, that "... It is a constant fact that at the present day the ablest men in the United States are rarely placed at the head of affairs ... The race of American statesmen has evidently dwindled remarkably in the course of the last fifty years." This by not means reflects on the esteemed audience this morning (grins). In short, historically the level of knowledge about constitutionalism was at such a height that no one could imagine a people would not continue is such precious mind-set.

Secondly, it must be realized that fundamental principles are often lost in the hustle and bustle of modern civilization. In physics such a phenomenon is called 'entropy'. It is a condition where order gives way to degeneration. This can be dangerous in the moral world also. Nothing is to be feared more than a change in laws that undergird society. Plucknett, quoting the political thinker **Montesquieu**, observed that

"Different forms of government [are] assigned to each its characteristic principle... The really vicious situation is when institutions which are fitted for one principle of government are forced to work although that principle has been replaced by another." (Montesquieu, *Eprit des Lois*, as quoted in A Concise History of the Common Law by Theodore F.T. Plucknett, pg. 70.)

The "characteristic principles" of Montesquieu are embodied in constitutions. Consequently, to prevent "the really vicious situation," from being manifest, those who wish to rule must be aware of those maxims embodied in fundamentals. This is another value of SB-62.

The third reason why we need testing now, as opposed to times passed, is the switch from 'common law' to 'positive law.' Most here will realize the laws of our country were based on English Common Law

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about 1920. In the early part of the 20<sup>th</sup> century, law schools began teaching case law. Case law allows 'precedent' to set a standard. This can be a tool to abruptly change laws.

The term "positive" law means only the will of the maker. "Positive law" can agree or disagree with "natural law." The word "positive" with regards to law has nothing to do with goodness. Please realize early legislators found law; they did not make law. As a corollary, citizens were also aware of the source of their laws, and they had an advantage of a fairly homogenous culture with regards to ideas.

Times have changed. One result of modern 'diversity' is its effect on ideology. This means simply that there is no common grounds where law can easily be found. As a result, laws are more often made than found. This is neither good nor bad until such law is compared to an icon. That icon must always be the constitution. It follows that without knowledge of what that fundamental law says, no other law can be measured. Under such circumstances law can only be equated with power—not contract.

Following this thought, SB-62 would help more informed leaders to identify unauthorized positive laws. Why is this important? Because relativism and constitutionalism are diametrically opposed.

"... (R)elativism urges suspension of judgment of what is right or wrong. Relativism, when applied through the court, is called **legal positivism** and is easily recognized by its major tenets:

1. There are no objective, ... standards of law.
2. Law is law simply because the highest human authority, the state, has said it is law and is able to back it up.
3. Since man and society evolve, law must evolve also.
4. Judges, through their decisions, guide the evolution of law.
5. The use of "case law" method of teaching. Under the study of case law it is possible to obtain a law degree without ever having read the Constitution."

Source: **David Barton**, *The Myth of Separation*, pg. 201-3.

One last advantage of an informed and trained cadre of elected officials is the idea that that the judiciary is not necessarily the last word in interpreting the Constitution. Notable historical events have shown other parts of government can decide such issues. Lincoln's Emancipation Proclamation is an example. This concept was addressed in the United States Senate by **Dr. Casper**:

"However, it is very important... to remember that the Constitution, contrary to popular beliefs, widespread among lawyers in this country, is not just what the Supreme Court says it is. The Constitution is generally obligatory and we should rely on constitutional arguments and should invoke them even if we cannot get court determinations. The courts are of secondary importance as far as I am concerned. Neglect of the Constitution outside litigation is a very unfortunate development which I think is due to that school known as legal realism which took hold in the early twenties among law professors who tried to take a behavioral approach to law. The legal realists' theoretical fascination with prediction made them concentrate on the courts... There are entire areas where the courts have nothing to say, and this position would lead us to the conclusion that as long as the Supreme Court does not interpret the Constitution, the Constitution is not law, which is obviously an absurd conclusion..."

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Source: National Emergency Hearings Before the Special Committee on the Termination of the National Emergency, United States Senate, 93<sup>rd</sup> Congress, First Session, Washington, D.C. April, 11, 12, 1973, pg. 85

In closing, I would say this is a complex, but at the same moment, a simple, subject. Libraries are replete with volumes concerning the issue of 'constitutions.' Yet on the simple side it is hard to argue that testing should be done prior to driving an automobile and none should be done when driving the ship of state. Fundamentals are easy to memorize and to understand. The comparison of complex laws to standards is a necessity that can bring a sharp sword to the arena of politics. Will SB-62's 'testing' make our system errorless? No. Will 'testing' make our system better? Yes.

I will stand for questions.

Respectfully submitted,

*Larry Fischer, D.V.M.*

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