

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on January 10, 2001 in Room 313-S of the Capitol.

All members were present except:

- Representative Andrew Howell - Excused
- Representative Dale Swenson - Excused

Committee staff present:

- Jerry Ann Donaldson, Department of Legislative Research
- Jill Wolters, Department of Revisor of Statutes Office
- Cindy O'Neal, Committee Secretary

Chairman O'Neal provided the Committee copies of the Committee Rules and Rules for Conferees (Attachments 1 & 2)

Jerry Ann Donaldson, Department of Legislative Research, briefed the committee on the recommendations from the Special Committee on Judiciary which meet this past summer. (Attachment 3) The interim committee was assigned the following topics for review & discussion:

- Merit selection of judges
- Revisions of state court costs
- Increasing safety belt use, including seat belts on school buses
- Qualifications of members of the Legislature

Merit Selection of Judges

The Committee expressed support for the concept of allowing each county to decide whether they would either elect or select their judges. Further, the Committee recommended the Legislature study the qualifications of judges due to the fact that a judge is in an important critical position in society and should be the best qualified person for the position. The final suggestion was to have the Legislature review a system of evaluating judges so the public would be more informed when an election or selection of judge occurs.

Revision of State Court Costs

The Committee expressed appreciation for the efforts of the Judicial Council & Office of Judicial Administration to resolve funding issue. They stated that the belief that it is inappropriate for court funding to be driven by docket fees. The recommendation of the Committee is that court funding should be the responsibility of the state and the funding should come from the State General Fund.

Increasing Safety Belt Usage, Including Seat Belts on School Buses

The Committee believes that discussion of a primary seat belt law merits consideration by future legislators and recommended the introduction of a primary seat belt bill to the Legislature. They also stated that there needs to be more studies on the usage of seat belts on school buses and tabled the issue.

Qualifications of Members of the Legislature

The Committee recommended that no action be taken on the issue contained in **2000 HCR 5047** since there had been on clear showing of abuse.

They did, however, believe that the Legislature should continue to be vigilant of the potential for abuse in the whole separation of powers arena.

The committee meeting adjourned at 4:15. The next meeting was scheduled for January 16, 2001.

COMMITTEE RULES

1. All powers, duties and responsibilities not addressed herein are reserved to the chair.
2. The chair shall determine the committee agenda, including scheduling and the order of business.
3. The chair reserves the right to limit testimony that is cumulative in nature and may limit testimony, when necessary, to a specific number of minutes.
4. Committee members shall not address conferees until and unless permission is granted by the chair.
5. The chair reserves the right to limit questioning of conferees by committee members in the interest of time and in the interest of fairness to conferees and other committee members.
6. Committee members shall not be approached during committee hearings or deliberation by anyone other than fellow legislative members or legislative staff.
7. No conferee shall be interrupted during presentations of their testimony, except with the permission of the chair.
8. Questioning of a conferee shall be limited to the subject matter of the agenda item for the day, except as may otherwise be allowed by the chair.
9. No bill or resolution shall be taken up for a committee vote unless it is announced by the chair.
10. Amendments to motions are not in order.
11. A substitute motion is in order, but no additional substitute motion shall be in order until the prior substitute motion is disposed of.
12. A motion requires a second to be in order and cannot be withdrawn except upon consent of the member making the motion and his or her second.
13. A motion to table or take from the table shall be in order only when such item is on the agenda or is taken up by the chair. The motion requires a simple majority and is, unless otherwise determined by the chair, non-debatable.
14. A request from any member that their own vote be recorded shall be granted.
15. Granting excused absences is reserved by the chair.
16. The chair reserves the right to take such action as may be necessary to prevent disruptive behavior in the committee room during hearings and deliberations.
17. Adjournment is reserved to the chair.
18. Cellular phones and audible pagers are prohibited in the Judiciary Committee room.
19. There shall be no recording, audibly, photographically or otherwise, of committee voting, except the committee secretary shall, upon the request of a committee member, record for the minutes that member's vote on a particular measure.

NOTICE TO CONFEREES

It is the policy of the House Judiciary Committee to ensure and promote free and open discussion of matters coming before the Committee. Because of the important issues that are to be discussed certain rules are necessary. Just as there are rules relating to the conduct of committee business when matters are debated among committee members, the following rules apply to the hearing process itself. Any questions about these rules should be directed to the committee chairman.

By appearing before the Committee each conferee is presumed to have read the attached rules and to have agreed to be bound by said rules.

We thank you for your understanding of and compliance with these rules.

RULES FOR CONFEREES APPEARING BEFORE THE HOUSE JUDICIARY COMMITTEE

1. The chair shall determine the committee agenda, including scheduling and the order of business.
2. Individuals wishing to appear and provide verbal testimony before the committee **must** notify the committee secretary **24 hours** in advance of the hearing.
3. Testimony **must** be in written form and 30 copies made available to staff prior to testifying.
4. Conferees shall **not** read their testimony. Rather, testimony should be presented in summary fashion. Conferees shall introduce themselves, identify on whose behalf they appear, identify whether they appear as an opponent, proponent or interested neutral party and shall, as briefly as possible, state the reasons for their position. If suggestions for amendment(s) are to be offered, a proposed draft of the amendment(s) should be included in the written testimony.
5. Where the conferee is, or represents, the sponsor of the measure under consideration, the conferee is responsible for briefing the committee on the specific provisions of the legislation, section by section, where necessary.
6. Conferees shall address their remarks during testimony to committee members and staff only.
7. Where the number of hearings and/or conferees scheduled warrant time limitations, the Chairman may limit testimony to a specific number of minutes. The Chairman reserves the right to limit testimony that is cumulative in nature.
8. Testimony shall relate to the subject matter of the measure under consideration. Conferees testifying on unrelated subjects will be admonished and if unrelated testimony persists, the Chairman may terminate that conferee's testimony.
9. While the taking of testimony in committee is not preceded with the formality of an oath, by appearing before the committee every conferee hereby certifies that his or her testimony is truthful, based upon facts that are capable of verification and offered in good faith. Conferees shall bring to the committee's attention any qualifications or corrections in their testimony.
10. The Chairman reserves the right to take such action as may be necessary to prevent disruptive behavior in the committee room during hearings and deliberations.
11. The Committee reserves the right to take such action as may be necessary when a violation of the previous rule is suspected.
12. Cellular phones and pagers with audible ringers are prohibited in the Judiciary Committee room.
13. Committee members shall not be approached during committee hearings or deliberation by anyone other than fellow legislative members or legislative staff.
14. There shall be no recording, audibly, photographically or otherwise, of committee voting except by the committee secretary.

Reports of the
Special Committee on Judiciary
to the
2001 Kansas Legislature

CHAIRPERSON: Representative Mike O'Neal

VICE-CHAIRPERSON: Senator Tim Emert

RANKING MINORITY MEMBER: Representative Doug Spangler

OTHER MEMBERS: Senators Laurie Bleeker, Paul Feleciano, Jr., Greta Goodwin, and Ed Pugh; Representatives Bob Grant, Andrew Howell, David Huff, Peggy Long, Dixie Toelkes, and John Toplikar

STUDY TOPICS:

Merit selection of judges
Revision of state court costs
Increasing safety belt use, including seat belts on school buses
Qualifications of members of the Legislature (HCR 5047)

December 2000

SPECIAL COMMITTEE ON JUDICIARY

MERIT SELECTION OF JUDGES

CONCLUSIONS AND RECOMMENDATIONS

The Committee favors the concept of allowing each county to decide whether to elect or select a district court judge. The Committee recommends the Legislature study the qualifications of judges and also review a system of evaluating judges.

Proposed Legislation: None.

BACKGROUND

The *Constitution of the State of Kansas*, adopted in 1859, provided for the popular election of all judges, including Supreme Court justices and district court judges. Vacancies in office were to be filled by appointment of the Governor until the next regular election occurring more than 30 days after the judicial position became vacant. The 1957 Legislature decided to submit to the voters of the state a proposition to allow nonpartisan appointments to the Kansas Supreme Court. The proposition was approved in the 1958 general election. Kansas district court and magistrate judges were still popularly elected until the *Constitution* was again amended in 1972 to provide for the current system, which allows the voters of each judicial district to decide whether district court judges will be elected or appointed through a method of nonpartisan selection, which was to be provided by the Legislature.

Under the 1972 amendment the *Constitution* provides that each judicial district shall have at least one district judge and that judges are to serve a term of four years. District judges are to be chosen by the electors of each district unless the

electors of a judicial district have adopted a method of nonpartisan selection. The *Constitution* specifies that the Legislature is to provide a method of nonpartisan selection of district judges. Whenever a vacancy occurs in the office of district judge, it is to be filled by appointment by the Governor within the time and in the manner specified.

In the 1974 general election, 23 of the 29 judicial districts then in existence voted for the nonpartisan selection and retention system and 6 districts voted for the election system of selecting district court judges. Of the 31 judicial districts, 14 use the election method and 17 use the nonpartisan selection and retention method of selecting district court judges.

COMMITTEE ACTIVITIES

The Committee heard from several individuals on this topic. Conferees included Fred Logan, attorney, Shawnee Mission; Jill Docking, Wichita; Representative Tim Carmody; Jack Focht, The Appleseed Foundation of Kansas; District Court Judge Terry Bullock, Topeka; Ed Collister, Attorney, Lawrence; District Court Judge John Bukaty, Jr., Wyandotte

County; Joan Finney, former Kansas Governor; District Court Judge William Lyle, Reno County; District Court Judge Steve Leben, Johnson County; District Magistrate Court Judge John Bremmer, District Magistrate Judges Association; Tuck Duncan, Citizens to Keep Politics Out of Our Courts; Ralph Hiatt, Citizens for Voters' Rights; and Rita Cline, Shawnee County Treasurer.

Fred Logan expressed support for the nonpartisan selection of district court judges to ensure that the judges treat individuals who come before the court in a fair manner. Under this proposal the citizens of Kansas would vote on a constitutional amendment to establish a Kansas Judicial Evaluation Commission that would prepare and make available the evaluation of judges prior to a judicial retention election. The Commission would include lawyers, nonlawyers, and appointments by the Governor and the Kansas Supreme Court. Mr. Logan said those states with this type of system have expressed support for the process.

Jill Docking expressed the belief that, under the partisan election system, attorneys who contribute to a judge's election could get a more favorable treatment in the courtroom. Ms. Docking suggested that judges should not have to raise money for an election.

Ed Collister; District Court Judge Terry Bullock; District Court Judge John Bukaty, Jr.; and Tuck Duncan expressed support for the continuation of the current system in their districts.

District Court Judge Steve Leben indicated that there is no current crisis across the state that would call for one statewide

method regarding the determination of district court judges. District Magistrate Judge John Bremmer indicated that neither system, elective or appointive, is less political than the other.

Support for the election system statewide was expressed by Ralph Hiatt who stated a belief all counties need to return to the elective system of judges.

Joan Finney urged the recommendation that would allow all citizens to vote on the determination of a district court judge. Similar support for the election of judges was submitted by Rita Cline.

Another option was offered by Representative Tim Carmody who recommended provisions whereby the nonpartisan election of judges would occur. Under this mechanism, the Legislature would establish the methodology for financing elections so that party politics would not enter into the debate over the determination of a judgeship.

CONCLUSIONS AND RECOMMENDATIONS

The Committee, after discussion of the issue, expressed support for the concept of allowing each county to decide whether they would elect or select their judges. Further, the Committee recommended the Legislature study the qualifications of judges due to the fact that a judge is in an important critical position in society and should be the best qualified person for the position. Another Committee suggestion is that the Legislature review a system of evaluating judges so the public is more informed when the election or selection of judges occurs.

REVISION OF STATE COURT COSTS

CONCLUSIONS AND RECOMMENDATIONS

The Committee expressed appreciation for the efforts of the Judicial Council and the Office of Judicial Administration to resolve funding issues. The Committee further stated the belief that it is inappropriate for court funding to be driven by docket fees. The recommendation of the Committee is that court funding should be the responsibility of the state and the funding should come from the State General Fund.

Proposed Legislation: None.

BACKGROUND

In the 2000 Session, the Legislature approved funding of nonjudicial salaries from docket fees. The proposal to raise the needed funding (\$3.9 million) was resolved by a plan for the courts to raise certain docket fees, on a one-time basis, to cover the nonjudicial salaries for a number of years. As a result of the legislative suggestion for the courts to examine additional ways to fund nonjudicial salaries in lieu of using the State General Fund, which was accomplished in the Phase I proposal adopted by the 2000 Legislature, Phase II was brought before the Special Committee on Judiciary for study and review.

COMMITTEE ACTIVITIES

Those conferees who appeared before the Committee in support of additional increased docket fees included the Honorable Kay McFarland, Chief Justice, Kansas Supreme Court; District Court Judge Sam Bruner, Olathe; District Court Judge John White; and Jerry Goodell, Kansas Judicial Council.

Kathy Porter and Jerry Sloan, Office of Judicial Administration, provided information about the national averages for

nonjudicial salaries and increases as well as how much funding should be received from each docket fee.

Concern for the proposed increase in docket fees was expressed by Ron Smith, Credit Attorneys Association.

Chief Justice McFarland addressed the two-phase initiative put together by the courts. Specifically, Phase I involves the increase in civil cases and court costs in criminal cases. Phase II deals with the reclassification and pay for performance plan. In addition, the Chief Justice commented that cost-of-living adjustments (COLAs) have not kept pace with inflationary costs and that without meaningful COLAs the courts cannot retain or attract qualified employees.

Judge Bruner directed his comments to proposed changes in court costs in the probate area. According to the conferee, the suggested increases are a result of studying other state courts.

Judge White discussed the work of the Nonjudicial Salary Initiative Committee that reviewed the present pay plan and recommended revisions to job classification and salaries; made recommendations for a future pay plan including development of a pay structure to implement the

plan; and recommended a review of court personnel rules affecting compensation.

Jerry Goodell indicated that the courts believe they must raise docket fees in order to attract qualified personnel.

Ms. Porter and Mr. Sloan stated that, although the amount of money from docket fees will vary each month, the amount should be adequate to cover salary costs. Information regarding the comparison of Kansas court costs with the national average showed that if Kansas court costs were raised, Kansas would be in line with the national average.

Ron Smith expressed concern over certain docket fee increases when the

amount of money involved in the case is higher.

CONCLUSIONS AND RECOMMENDATIONS

The Committee expressed appreciation for the efforts of the Judicial Council and the Office of Judicial Administration to resolve funding issues. The Committee further stated the belief that it is inappropriate for court funding to be driven by docket fees. The recommendation of the Committee is that court funding should be the responsibility of the state and the funding should come from the State General Fund.

INCREASING SAFETY BELT USE—INCLUDING SEAT BELTS ON SCHOOL BUSES

CONCLUSIONS AND RECOMMENDATIONS

On the issue of increasing safety belt use, the Committee recommends to the 2001 Legislature the introduction of primary seat belt legislation.

The Committee tabled the issue of seat belts on school buses.

Proposed Legislation: The Committee recommends one bill on this topic.

BACKGROUND

In 1997, President Clinton, Secretary of Transportation Rodney Slater, and National Highway Traffic Safety Administration's (NHTSA) Richard Martinez, set an ambitious goal for a national initiative to increase safety belt use from 68 percent in 1996 to 85 percent by 2000 and to 90 percent by 2005. To increase use rates NHTSA has advocated making all seat

belt laws subject to primary enforcement. Under this concept a citation can be written whenever a law enforcement officer observes an unbelted driver or passenger. Currently, many states, including Kansas, require a law enforcement officer to issue a citation for another violation in order to be able to issue a citation for a seat belt violation. These laws are called secondary seat belt laws. As of February 2000, 17 states and the

District of Columbia have enacted primary seat belt laws. During the 2000 Legislative Session, two primary seat belt bills were introduced in the Kansas Legislature. One bill introduced in the House Transportation Committee did not receive hearings, while the other bill introduced in the House Judiciary Committee was killed on Final Action in the Senate. The issue was subsequently made the topic of a 2000 Interim study.

COMMITTEE ACTIVITIES

Staff provided information which updated the Committee on seat belt related issues. The information included a summary of vehicle occupant protection laws, a state legislative FACT SHEET from NHTSA, information about the benefits of primary seat belt laws, concerns of opponents to seat belt laws, and data on use rates among the states.

Romell Cooks, Regional Administration, NHTSA, explained that in 1998, four of five fatalities were from people not wearing seat belts. She also said that:

- In 1999, the Midwest had the largest percent increase in seat belt use;
- Kansas usage is 62.6 percent, far below the national average of 71 percent;
- Increased use by 15 percent would save Kansas approximately \$69 million annually;
- Costs of not wearing seat belts include in-patient hospital expenses, vocational rehabilitation, workplace costs, insurance, legal expenses, and funeral costs;

- When a parent does not wear a seat belt, a child is 70 percent less likely to wear a seat belt.

David Geiger, Division Administrator, Federal Highway Administration, noted three basic components to highway safety: engineering, education, and enforcement. He said improvements to highways and automobile designs have added a measure of safety but that the public needs to be educated about the safety implications of buckling up. Mr. Geiger said mandatory seat belt laws would not result in additional costs to the public.

Secretary E. Dean Carlson, Kansas Department of Transportation, testified that in 1999, 451 vehicle occupants were killed in Kansas. Of those, 422 were in the front seat and 72 percent were reported not properly restrained. He also said that back seat occupants totaled 20 of which 85 percent were properly restrained. The Secretary said NHTSA studies show usage goes up when laws are enforced and fines raised to \$20-\$25.

Lieutenant John Eichkorn, Kansas Highway Patrol, said some opponents of a primary seat belt law have expressed fears that law enforcement will use such a law as an excuse to harass minorities. He said that if an officer wants to do that there are many existing laws which could be used. He favored adopting a primary seat belt law instead of waiting for most of the nation to do so. He also said fine increases for not wearing a seat belt would be acceptable to the Patrol.

Chris Collins, Director of Government Affairs and Associate General Counsel, Kansas Medical Society, said the Society supports efforts to save lives and reduce injuries. She said refusal to wear seat belts by some drivers is costing Kansans

an enormous amount of money. According to Ms. Collins, the average costs for in-patient treatment of crash victims wearing seat belts was \$8,174 while the cost for nonusage victims was \$13,144.

Gordon Smith, Hutchinson Police Department, said he used his summer vacation to promote Buckle-Up Kansas. He said estimates indicate seat belt laws save 9,500 lives each year, yet only 68 percent of drivers buckle up. Mr. Smith noted most officers do not issue citations because not wearing a seat belt is a secondary offense. He also indicated most resistance to primary seat belt legislation is in northeast and southeast Kansas.

Debbie McConell, Hutchinson, spoke about a motor vehicle accident which involved Ms. McConell and her daughter. She said they failed to fasten their seat

belts because they were only a few blocks from home. When the accident occurred her daughter was thrown from the car and killed.

Ken McNeil, ABATE, commented that he does not need law enforcement to protect him. ABATE believes that the decision to wear a seat belt should be left up to the driver.

CONCLUSIONS AND RECOMMENDATIONS

The Committee believes that discussion of a primary seat belt law merits consideration by future legislators. The Committee recommends the introduction of a primary seat belt bill to the 2001 Legislature.

SEPARATION OF POWERS

CONCLUSIONS AND RECOMMENDATIONS

The Committee believes no action is needed at this time in regard to the issue of legislators serving on Executive and Judicial Branch boards and commissions.

Proposed Legislation: None.

BACKGROUND

The Special Committee on Judiciary was assigned a study directing it to review the issue of recommending a state constitutional amendment to prohibit state legislators from holding any office, membership, or employment in the Executive Branch and Judicial Branch of state government or any instrumentality thereof. The proposal, originating from 2000 HCR 5047 which would amend

Article 2, Section 5 of the *Kansas Constitution* to prohibit legislators from holding any office, employment, or membership in the Judicial or Executive branches of government, was assigned to the 2000 Select Committee. A hearing was held in March but no action was taken and the concurrent resolution died in the Select Committee.

COMMITTEE ACTIVITIES

The Committee held a hearing on the issue contained in HCR 5047. Proponents included a former Kansas Supreme Court Justice, a former Lieutenant Governor and state agency head, and a Wichita State University political science professor. A University of Kansas political science professor also submitted testimony.

A former Justice of the Kansas Supreme Court reviewed the history of the separation of powers issue and its application in both federal and state governments. He advised that the *Kansas Constitution* does not specifically provide for separation of powers but accomplishes it by placing each of the branches of government and their power in separate articles in the *Constitution*. He noted that the Kansas Supreme Court has held that the separation of powers doctrine does not prevent a legislator from serving on administrative boards or commissions except when such service results in the usurpation of power. He supported legislators serving on Executive or Judicial Branch boards as long as their number does not allow them to control the boards.

A Wichita State University professor of political science said the proposal would strengthen the three branches of government, but saw no harm with having legislators serve on Executive and Judicial Branch committees or groups that only study issues but which do not have authority to make decisions.

A University of Kansas political science professor in his written testimony said that legislators should be responsible

to their own constituents and to the Legislature itself, and should not hold allegiance to another branch of government. He urged the Legislature to allow the citizens to vote on HCR 5047.

A former Lieutenant Governor and secretary of several Executive Branch agencies said to allow legislators to serve on Executive and Judicial Branch boards or groups causes undue influence, conflicts of interest, and potential corruption. He suggested a clarifying amendment to HCR 5047 that would allow legislators to serve on study groups that have only advisory powers but not on boards that have authority to make decisions in the Executive or Judicial Branches.

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommended that no action be taken on the issue contained in 2000 HCR 5047 since there had been no clear showing of abuse.

The Committee, however, believes the Legislature should continue to be vigilant of the potential for abuse in the whole separation of powers arena.

Several members of the Committee expressed concern about legislative groups which attempt to micro manage certain state agencies such as the Juvenile Justice Authority. Others expressed concern about the Executive Branch intruding into the purview of the Judicial Branch in reference to handling child support disputes. The Kansas Turnpike Authority which has legislators as members was also pointed out as an area of potential concern.