Approved: April 10, 2002
Date

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Chairperson Joann Freeborn at 3:30 p.m. on March 12, 2002 in Room 231-N of the Capitol.

All members were present except: Representative Joann Freeborn - excused
Representative Vaughn Flora - excused
Representative Clay Aurand - excused
Representative Jeff Peterson - excused

Committee staff present: Raney Gilliland, Kansas Legislative Research Department
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Clint Riley, Department Attorney, KS Department Wildlife and Parks, 900 SW Jackson, Topeka, KS 66612
Whitney B. Damron, 800 SW Jackson, Suite 1100, Topeka, KS 66612-2205

Others attending: See Attached Sheet

Vice-Chairman Don Myers called the meeting to order at 3:30 p.m. He chaired the meeting in Chairperson Joann Freeborn's absent due to illness.

The Chairperson called the committee's attention to an Attorney General's Opinion that had been distributed in reference to the Kansas Tort Claims Act, which Raney Gilliland, Legislative Research briefly reviewed. (See attachment 1)

Chairman Myers asked if there was a motion to approve committee minutes that were distributed in the committee meeting on March 7. Minutes distributed were for January 29 and 31, and March 5 and 7.

Rep. Bill Light made a motion the minutes be approved. Rep. Tom Sloan seconded the motion. Motion carried.

The Chairman opened the hearing on **SB504.**

SB504: Repeals sunset provision allowing hunting in controlled shooting area without hunter education.

Whitney Damron, on behalf of Kansas Sport Hunting Association and Flint Oak Ranch, was welcomed to the committee. He testified in support of the bill which would extend current law exempting participants on a controlled shooting area from having to have passed a hunter safety program prior to hunting on a CSA. The Kansas Sport Hunting Association is a not for profit association of hunting service providers, including controlled shooting area owner/operators, guides and game bird producers. Flint Oak Ranch is considered to be one of the finest hunting and sporting clays facilities in the United States and is located near Fall River, Kansas. Included in his testimony are copies of letters of support of the bill from Pete Laughlin, Flint Oak Ranch; Kenneth Corbet, Ravenwood Lodge; and Keith Houghton, President, Kansas Sport Hunting Association, Ringneck Ranch. (See attachment 2)

Clint Riley, Kansas Department Wildlife and Parks, was welcomed to the committee. He testified on behalf the Department in a neutral position to the bill. The Department recognizes that the issues in the bill are not substantially new or different from those the legislature considered when creating the exemption two years ago. As originally proposed, **SB504** would have eliminated the sunset provision and made the exemption permanent. An amendment in the Senate Committee instead extended the provision by setting a new sunset in 2005. The Department understands this was done in part due to their concerns, and to allow additional time to determine the impact of the exemption. With this consideration, the Department does not oppose the bill. (See attachment 3) Discussion followed.

The Chairman closed the hearing on **SB504** and opened the hearing on **SB431.**

SB431: Issuance of wild turkey permits to person's under 14.

Clint Riley, Kansas Department Wildlife and Parks, was welcomed back to the podium. He testified in support of the bill and believes this bill would eliminate the minimum age for persons to hunt wild turkey. The bill is one of the Department's legislative initiatives and is supported by the Department. The Department has supported reducing the minimum age for hunting big game in the past, believing that determining the best age to begin hunting is a decision more appropriately made by a parent or guardian. Removing the age restriction for turkey is suggested partly because turkeys are hunted using a only a shotgun rather than a center fire rifle. The Department believes this bill would remove one unnecessary barrier to hunting in Kansas, and would help promote life-long participation in Kansas outdoor recreation. (See attachment 4) Discussion followed.

The Chairman closed the hearing on **SB431** and opened the hearing on **SB430.**

SB430: Physicians from other states to certify disabilities for hunting permits.

Clint Riley, Department Kansas Wildlife and Parks, was welcomed back to the podium. He testified in support of the bill and believes it would expand the category of physicians who may certify a person's disability when applying for certain Wildlife and Parks disability permits. The bill is one of the Department's legislative initiatives. By allowing certification by nonresident physicians, this bill would help remove one potential barrier facing a nonresident with disabilities who wished to hunt in Kansas, but who does not have contact with a Kansas physician. Consequently, the bill would be consistent with the Department's goal of increasing participation in Kansas outdoor recreation. (See attachment 5) Discussion followed.

The Chairman closed the hearing on **SB430.**

The meeting adjourned at 4:25 p.m. The next meeting is scheduled for Thursday, March 14, 2002.

HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: March 12, 2002

NAME	REPRESENTING
Clint Riley	KDWP
Whitney Damron	KS Sport Hunting Assn / Flint Oak Ranch, LLC
Robin Jennison	KS Sport Hunting Assn.
C. Benjamin	KS Sierra Club
[signature]	KRMCA

ATTORNEY GENERAL OPINION NO. 2000-58

November 13, 2000

Phyllis Gilmore
Executive Director
Behavioral Sciences Regulatory Board
712 S.W. Kansas Avenue
Topeka, Kansas 66603-3817

Re: State Departments; Public Officers and Employees> — Kansas <Tort> <Claims> <Act> — Definitions; Behavioral Sciences Regulatory Board's Advisory Committees; Whether Members Are Board <Employees>

Synopsis: Members of the various Behavioral Sciences Regulatory Board's advisory committees are considered <employees> of the Board for purposes of the Kansas <Tort> <Claims> <Act. Cited herein: K.S.A. 75-6101; 75-6102; 75-6103; 75-6108.

* * *

Dear Ms. Gilmore:

As Executive Director of the Behavioral Sciences Regulatory Board you inquire about the application of the Kansas Tort Claims Act[fn1] to members of the Board's advisory committees.

You inform us that the advisory committees are composed of licensed professionals of a given profession[fn2] who serve on a volunteer basis. The committees are established by Board policy. Members of the committees are appointed by the Board chair for a specified term of years. A Board member licensed in a particular profession is assigned to the corresponding advisory committee. That Board member schedules meetings, sets the agenda and chairs the meetings. The committees assist the Board in various advisory capacities. In one such capacity, a committee member (or members) review and consult with the Board member assigned to evaluate complaints filed against licensed professionals. [Such committee member is not later utilized as an expert witness in any subsequent disciplinary action.] You ask about the applicability of the Kansas Tort Claims Act (KTCA) to a committee member acting within this context.

Generally, the KTCA imposes liability on a governmental entity for damages caused by the negligent or wrongful acts or omissions of its employees while acting within the scope of their employment under the same circumstances that a private person would be liable.[fn3] In case of a lawsuit against a governmental entity, and upon sufficient request, the KTCA provides for representation by the Attorney General's office and payment of any ensuing settlement or judgment for damages caused by such acts or omissions of any employee of a governmental entity while acting with the scope of employment.[fn4]

Therefore, we must address whether members of the Board's advisory committees may be considered "employees" of the Board for purposes of the KTCA. The Act defines the term "employee" in pertinent part as:

"[A]ny officer, employee, servant or member of a board, commission, committee, division, department, branch or council of a governmental entity, including

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Attachment 1

> elected or appointed officials and persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation . . . but does not otherwise include any independent contractor under contract with a governmental entity. . . ."[fn5]

As pointed out by the Kansas Supreme Court in *Bonewell v. City of Derby*,[fn6] this statute "provides a broad definition of `employee,'"[fn7] excluding only independent contractors. In that case, the Court determined that for purposes of the KTCA, members of a private organization assisting a city in carrying out a public purpose were considered employees of the city. In the situation you present, members of a Board established advisory committee assist the Board in carrying out its public protection purpose by reviewing complaints and consulting with an assigned Board member. In this context we opine that the advisory committee members are acting in the service of a governmental entity in an official capacity, and thus may be considered Board employees for purposes of the KTCA.

Very truly yours,

CARLA J. STOVALL
Attorney General of Kansas

Camille Nohe
Assistant Attorney General

CJS:JLM:CN:jm

[fn1] K.S.A. 75-6101 *et seq.*

[fn2] Psychology advisory committee, masters level psychology advisory committee, professional counselor advisory committee, social work advisory committee, and marriage and family therapy advisory committee.

[fn3] K.S.A. 75-6103.

[fn4] K.S.A. 75-6108.

[fn5] K.S.A. 75-6102.

[fn6] 236 Kan. 589 (1985).

[fn7] *Id.*, at 593.

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ATTORNEY GENERAL OPINION NO. 99-41

September 2, 1999

The Honorable Melvin Minor
State Representative, 114th District
Route 2, Box 31
Stafford, Kansas 67578

Re: State Departments; Public Officers and Employees — Kansas Tort Claims Act — Groundwater Management District — Application of Kansas Tort Claims Act

Synopsis: A groundwater management district (GMD) organized pursuant to K.S.A. 82a-1020 *et seq.* as a body politic and corporate is a taxing subdivision of the State and the statutory functions of a GMD's board of directors and employees are governmental in nature. Accordingly, the Kansas Tort Claims Act applies to a GMD, its directors and employees.

Cited herein: K.S.A. 75-6101; 75-6103; 79-1814; 82a-1027; 82a-1028; 82a-1030.

* * *

Dear Representative Minor:

You inquire whether the Big Bend Groundwater Management District (GMD) is a governmental entity that is subject to the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.*

Your inquiry is important because the Kansas Tort Claims Act imposes liability on governmental entities for damages caused by employees while acting within the scope of their employment under circumstances where the governmental entity, if a private person, would be liable under the laws of this state.[fn1] The Act is open-ended, making governmental liability the rule and immunity the exception.[fn2] Whether an entity is subject to it depends on the entity's status as a governmental entity, defined by the Act to include the State or a municipality.[fn3] A municipality is defined as:

> "[A]ny county, township, city, school district or other political or taxing subdivision of this state, or any agency, authority, institution or other instrumentality thereof."[fn4]

A GMD is a body politic and corporate and has, among other powers, the power to sue and be sued, enter contracts, and acquire land and interests in land by gift, exchange, or eminent domain within the boundaries of the district.[fn5] Additionally, a GMD is authorized to assess an annual water user charge against every person who withdraws groundwater within the district. The assessment is collected in the same manner as any other tax and attaches to the real property as a lien in accordance with law.[fn6]

As a taxing subdivision of the State, Big Bend Groundwater Management District No. 5 is, in our opinion, a municipality and

thus a governmental entity subject to the Kansas Tort Claims Act.[fn7]

Your next question is whether members of the board of directors, the manager and other employees of a GMD are considered to be state employees for purposes of the Kansas Tort Claims Act.

While the Act has the effect of waiving governmental immunity for the State of Kansas, the Act permits immunity for the State in certain instances and, more importantly, extends this immunity to employees acting within the scope of their employment in such instances.[fn8]

K.S.A. 75-6102(d) defines "employee" as:

> "[A]ny officer, employee or servant or any member of a board, commission or council of a governmental entity, including elected or appointed officials and persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation, but such term shall not include an independent contractor under contract with a governmental entity. The term `employee' shall include former employees for acts and omissions within the scope of their employment during their former employment with the governmental entity."

The board of directors and employees of a GMD come within the definition of employee because they act in the service of the State. The directors and employees perform functions which benefit the local geographical area and act as members of the collective effort to conserve the State's natural resources[fn9] and are not independent contractors.[fn10]

In conclusion, it is our opinion that a GMD organized pursuant to K.S.A. 82a-1020 *et seq.* is a municipality of the State for purposes of the Kansas Tort Claims Act. Additionally, even though GMD directors and employees perform their duties locally, they act as members of a collective effort to accomplish a state program and are therefore to be considered state employees for purposes of the Kansas Tort Claims Act.

Very truly yours,

CARLA J. STOVALL
Attorney General of Kansas

Guen Easley
Assistant Attorney General

CJS:JLM:GE:jm

[fn1] K.S.A. 75-6103.

[fn2] *Nichols v. U.S.D. No. 400*, 246 Kan. 93, 94 (1990).

[fn3] K.S.A. 75-6102(c).

[fn4] K.S.A. 75-6102(b).

[fn5] K.S.A. 82a-1028.

[fn6] K.S.A. 79-1804.

[fn7] *See Dougan V. Rossville Drainage District*, 243 Kan. 315, 318 (1988), (the power to tax and contract are governmental in

318 (1988), (the power to tax and contract are governmental in nature and support the finding that the entity is a govenrmental entity for purposes of the Kansas Tort Claims Act.)

[fn8] K.S.A. 75-6104.

[fn9] K.S.A. 82a-1020; *see generally* K.S.A. 82a-1028.

[fn10] *Bonewell v. City of Derby*, 236 Kan. 589 (1985).

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Kansas Case Law

BONEWELL v. CITY OF DERBY, *236 Kan. 589* (1984)

693 P.2d 1179

CAROL BONEWELL, *Appellant,* v. THE CITY OF DERBY, KANSAS, and THE DERBY JAYCEES, INC., *Appellees.*

No. 56,643

Supreme Court of Kansas

Opinion filed January 26, 1985.

SYLLABUS BY THE COURT

CITIES AND MUNICIPALITIES □ *Action for Personal Injury Sustained at City Softball Field* □ *Kansas Tort Claims Act* □ *Exemption of Governmental Employee.* In an action for damages for personal injuries sustained during a softball game at Riley Field, a municipal ballfield in Derby, Kansas, the record is examined and it is held: At the time of the injury, Riley Field was public property being used "as a park, playground or open area for recreational purposes" and, therefore, the City of Derby is not liable for damages pursuant to K.S.A. 1980 Supp. 75-6104(n); Kansas does not recognize a dangerous artificial condition exception to the exemption granted to governmental entities by the Kansas Tort Claims Act; and the Derby Jaycees, who were administering the softball program at Riley Field for the City, were "employees," as defined in K.S.A. 1980 Supp. 75-6102(d), of the city of Derby, and thus shared in the statutory exemption.

Appeal from Sedgwick District Court; NICHOLAS W. KLEIN, judge. Opinion filed January 26, 1984. Affirmed.

Stephen B. Plummer, of Rumsey, Richey & Plummer, of Wichita, argued the cause and was on the brief for appellant Carol Bonewell.

Bruce A. Swenson, city attorney, argued the cause, and *Daniel C. Bachmann,* of Wichita, was on the brief for appellee City of Derby, Kansas.

Eric E. Davis, of McDonald, Tinker, Skaer, Quinn & Herrington, of Wichita, argued the cause, and *Alvin D. Herrington,* of the same firm, was with him on the brief for appellee The Derby Jaycees, Inc.

The opinion of the court was delivered by

MILLER, J.:

Plaintiff, Carol Bonewell, broke her leg while sliding into home plate during a softball game at Riley Field, in Derby, Kansas. She brought this action against the City of Derby and the Derby Jaycees, Inc. (hereafter, the Jaycees), for damages which she claims she sustained because of their negligence in the maintenance of the ballfield. The trial court sustained motions of the defendants for summary judgment, and plaintiff appeals.

of the defendants for summary judgment, and plaintiff appeals.

Riley Field is a part of Riley Park, a public park owned and maintained by the City of Derby. Since 1976, the Derby Jaycees have administered the softball leagues, which play their games on Riley Field, under a rather loose arrangement with the City Park Board. The November 22, 1976, minutes of that Board merely state that "Meidinger [a member of the Board] reported
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that Jaycees have agreed to manage" the men's softball league. This is apparently the only written entry concerning the matter. The Jaycees thereafter organized the leagues for both men and women, scheduled the games, collected entry fees from the teams and fees for signboard advertising, selected the umpires and paid them if they did not volunteer their services, and ran the softball program in an administrative capacity. The fees collected were used to pay umpires and to improve the field. The public was admitted to watch the games without charge. The concession stand at the park was operated by another person under contract with the city, and the Jaycees had nothing to do with that. The City was responsible for the maintenance of Riley Field, including watering the outfield, mowing it, dragging the infield, and maintaining the stands and the lights. At the start of each season, home plate and the pitcher's rubber, together with anchors for the bases, were set in place by a joint effort between the City and the Jaycees. During the season, the bases (first, second and third) were removed after each evening's play and were kept in a storage shed. The pitcher's rubber and home plate, however, remained in place throughout the season. The bases, home plate, the pitcher's rubber, the storage shed, and all equipment were the property of the City. If a base was damaged during play, the umpire could call for a replacement, and one would be brought in from the storage shed and installed. The Jaycees bought new bases as needed, and were reimbursed by the City. Plaintiff's injury was sustained during a regularly scheduled softball game on June 4, 1980.

Those provisions of the Kansas Tort Claims Act which are relevant to this proceeding are stated in K.S.A. 1980 Supp. as follows:

> "75-6102. **Definitions**. As used in K.S.A. 1979 Supp. 75-6101 to 75-6116, inclusive, unless the context clearly requires otherwise, the following words and phrases shall have the meanings respectively ascribed to them herein:
>
> "(a) `State' means the state of Kansas or any office, department, agency, authority, bureau, commission, board, institution, hospital, college, university or other instrumentality thereof.
>
> "(b) `Municipality' means any county, township, city, school district or other political or taxing subdivision of the state.
>
> "(c) `Governmental entity' means and includes state and municipality as hereinbefore defined.
>
> "(d) `Employee' means any officer, employee or servant or any member of a board, commission or council of a governmental entity, including elected or
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> appointed officials and *persons acting on behalf or in service of a governmental entity in any official*

in service of a governmental entity in any official capacity, whether with or without compensation, but such term shall not include an independent contractor under contract with a governmental entity. The term `employee' shall include former employees for acts and omissions within the scope of their employment during their former employment with the governmental entity. (Emphasis supplied.)

"75-6103. **Liability for damages of governmental entities for employee acts or omissions, when; applicable procedure.** (a) Subject to the limitations of this act, each governmental entity shall be liable for damages caused by the negligent or wrongful act or omission of any of its employees while acting within the scope of their employment under circumstances where the governmental entity, if a private person, would be liable under the laws of this state.

"(b)(1) Except as otherwise provided in this act, either the code of civil procedure or, subject to provision (2) of this subsection, the code of civil procedure for limited actions shall be applicable to actions within the scope of this act. Actions for claims within the scope of the Kansas tort claims act brought under the code of civil procedure for limited actions are subject to the limitations provided in K.S.A. 1980 Supp. 61-1603.

"(2) Actions within the scope of the Kansas tort claims act may not be brought under the small claims procedure act.

"75-6104. **Same; exceptions from liability.** A governmental entity or an employee acting within the scope of his or her employment shall not be liable for damages resulting from:

. . . .

"(n) any claim for injuries resulting from the use of any public property intended or permitted to be used as a park, playground or open area for recreational purposes, unless the governmental entity or an employee thereof is guilty of gross and wanton negligence proximately causing such injury. . . ."

75-6102 and -6104 have since been amended, but the amendments do not change materially the language here involved.

The trial court held that Riley Field is a public park intended, permitted and in fact used for recreational purposes within the meaning of 75-6104(n); that the City of Derby is a municipality and governmental entity within the meaning of 75-6102(b) and (c); and that the Derby Jaycees, Inc., was at all times and for the purposes of this case an employee of the City, acting within the scope of its employment, within the meaning of 75-6102(d) and -6104. The court then concluded that both the City and the Jaycees were immune from tort liability pursuant to 75-6104(n). It sustained the motions for summary judgment of both defendants.

Plaintiff contends that the trial court erred in sustaining the motions for summary judgment for two reasons. First, plaintiff

motions for summary judgment for two reasons. First, plaintiff claims that Riley Field is not a "public property intended or
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permitted to be used as a park, playground or open area for recreational purposes." Second, it contends that Derby Jaycees, Inc., was not an employee of the City under the definition included within 75-6102(d).

We look first to the character of Riley Field. It is owned by the City, and is within the confines of Riley Park, a public park. The Field's use for softball games is obviously a recreational purpose. Plaintiff argues, however, that the public is excluded from the field while games are in progress; that the field may then be used only by those persons playing on the league teams; and that the field thus loses its public character and becomes semi-private. This is too restrictive a view. The public finds recreation by watching the games, and members of the public who are on the teams participate in the recreational activity. The same argument could be made as to public tennis courts, to which some members of the public are denied access while others play tennis thereon, or to shelter houses in public parks, to which some members of the public are denied access while others, having made previous arrangements, hold family picnics or reunions therein. The ball diamond in Riley Park was obviously built with the intent that it be used by the public as a ball field, which is a recreational purpose. We find no merit to this argument.

Plaintiff also argues that the exception provided by 75-6104(n) should be construed to apply only to injuries resulting from natural conditions of public property, and that here injuries occurred due to a dangerous artificial condition that existed, a defective home plate. In support of this contention, she relies upon *Coleman v. Edison Tp.*, 95 N.J. Super. 600, 232 A.2d 187 (1967). That case is factually similar to this one. The New Jersey court found that Coleman had not been injured by the use of any public grounds, but instead had been injured because of defective equipment brought to the park □ a defective home plate. However persuasive the New Jersey court's reasoning may be, we think the issue was resolved in our case of *Willard v. City of Kansas City*, 235 Kan. 655, 681 P.2d 1067 (1984). Willard sought damages for injuries sustained when he collided with a chain link fence around a baseball field in a Kansas City park. The trial court granted summary judgment, holding the City immune from liability under 75-6104(n). We affirmed, holding that, in the absence of evidence establishing gross and wanton conduct, the
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City was immune from liability. Regardless of what causes an injury sustained in a public park, a claimant in this state must offer evidence of gross and wanton negligence; mere negligence on the part of a governmental entity is not sufficient to establish a compensable claim under the statute. We do not recognize the artificial condition or equipment exception which forms the basis of the New Jersey court's opinion in *Coleman*. The trial court was correct in sustaining the City's motion for summary judgment.

Finally, we turn to the claim that the Jaycees were not employees of the City □ or the Jaycee Corporation was not an employee of the City □ within the definition of 75-6102(d). The Jaycees did not have a lease; they were not granted the exclusive use of any property; they did not have a concession; they were not responsible for the maintenance or upkeep of the field. The City retained actual control over the care and maintenance of the area. The Jaycees simply scheduled softball games during the summer months and, in fact, organized the recreational use of Riley Field. We have carefully considered the cases cited by

Riley Field. We have carefully considered the cases cited by plaintiff, *Warren v. City of Topeka*, 125 Kan. 524, 265 P. 78 (1928); *Gage v. City of Topeka*, 205 Kan. 143, 468 P.2d 232 (1970), and other authorities cited. An extended discussion of those cases would not be helpful to the plaintiff's cause or aid in the understanding of our opinion here. We find the cases supportive of the trial court's ruling, not the plaintiff's theory.

The statute now before us, 75-6102(d), provides us with a broad definition of "employee." It includes persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation. The only exclusion from the definition is that of an independent contractor, and clearly the Jaycees do not fall within that exception. The Jaycees were simply assisting the City in carrying out the public purposes for which Riley Field was built and maintained. The Jaycees, in our opinion, clearly fall within the statutory definition of "employee." We conclude that the trial court was correct in so holding.

The judgment of the district court is affirmed.

PRAGER, J., concurring.
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WHITNEY B. DAMRON, P.A.
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TOPEKA, KANSAS 66612-2205
(785) 354-1354 ♦ 354-8092 (FAX)
E-MAIL: WBDAMRON@aol.com

TESTIMONY

TO: **The Honorable Joann Freeborn, Chair**
And Members Of The
House Environment Committee

FROM: **Whitney Damron**
On Behalf Of:

- **Kansas Sport Hunting Association**
- **Flint Oak Ranch, L.L.C.**

RE: **SB 504** **An Act Concerning Hunter Education; Controlled Shooting Areas**

DATE: **March 12, 2002**

Good afternoon Madam Chair Freeborn and Members of the House Environment Committee. I am Whitney Damron and I appear before you this afternoon on behalf of the Kansas Sport Hunting Association (KSHA) and Flint Oak Ranch, L.L.C., in support of SB 504, which would extend current law exempting participants on a controlled shooting area from having to have passed a hunter safety program prior to hunting on a CSA. With me today is Mr. Robin Jennison, who also represents the KSHA.

The Kansas Sport Hunting Association is a not-for-profit association of hunting service providers, including controlled shooting area owner/operators, guides and gamebird producers.

Flint Oak Ranch, L.L.C., is considered to be one of the finest hunting and sporting clays facilities in the United States and is located near Fall River, Kansas. Flint Oak Ranch is also a member of the KSHA.

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By way of a brief history on this issue, the 2000 legislature approved legislation authorizing Controlled Shooting Areas (CSA) to allow their clients to participate in hunting activities on their property without having first completed an approved hunter safety course (HB 2762/2000 Session). That change in state law included a sunset provision to allow the Legislature to revisit this issue and review the safety record of CSA's. That authority (sunset provision) is scheduled to expire on June 30, 2002. HB 2762 was a relatively non-controversial piece of legislation, originally passing the House 125-0, the Senate 37-3 and concurrence in the House 124-1.

We believe the sport hunting industry has demonstrated a remarkable record of safety and has responsibly implemented this change in state law and would support our efforts to continue this statutory authorization. As originally introduced at the request of the KSHA and Flint Oak Ranch, SB 504 would have simply removed the sunset provisions altogether. However, the Senate Committee on Natural Resources amended the bill to simply extend the current sunset by three years to 2005. We would respectfully suggest the intent of the 2000 Legislature has been met by allowing for a two-year review of this law and that no further sunset is needed. However, we leave it to the will of this Committee whether you would like to revisit this issue.

Prior to the enactment of HB 2762, under Kansas law, everyone born on or after July 1, 1957 had to have successfully completed a hunter safety course approved by the Kansas Department of Wildlife and Parks prior to hunting in our state (K.S.A. 32-920). That requirement created problems for CSA's that seek to attract customers both from within Kansas and beyond, including an international clientele. Since all states are different in this regard, many times a CSA operator had to tell a potential customer who did not have a hunter safety certificate that they could not hunt in Kansas on the CSA's property, even if such person was an experienced hunter and could lawfully hunt in their resident state or country. Furthermore, given the minimum hour course requirements for an approved hunter safety program, there was no reasonable way to "qualify" a

prospective hunter and provide a hunting experience on the same day, even if the hunter could find a willing hunter safety instructor to give a class (K.S.A. 32-921 requires a hunter safety program to be a minimum of ten hours of training).

For those of you who have a hunter safety card or are familiar with the courses taught in Kansas, you know that most are typically taught over several days and cover hunting safety, conservation, archery and other outdoor issues. Actually shooting or even handling a gun is not required under statute.

Prior to the changes made in 2000, CSA operators had suggested an amended hunter safety program that would have allowed the CSA operator make a determination as to whether their customer was qualified for hunting on their property, such as through the offering of a shorter class tailored to conditions present at a CSA. Rather than create a multi-tier hunter safety program, the requirement for hunter safety licensure was removed altogether in 2000 for those hunting on a CSA.

These changes made in 2000 do not mean CSA's have provided access for inexperienced hunters to circumvent hunter safety restrictions. To the contrary, most, if not all CSA's have employed their own safety programs designed to insure the safety for participants, employees and, most importantly for some people, their hunting dogs. The Kansas Sport Hunting Association has been a leader in this regard, providing a recommended training course for CSA customers. I have reproduced a copy of the Safe Hunter Instruction and review training document for your review and information, which is disseminated by the KSHA and utilized by their members.

The term "Controlled Shooting Area" is not an inappropriate description of these establishments. The owners of these properties closely monitor their customers' activities. Traditionally hunters are separated into small groups, generally with guides who closely monitor the hunt, keeping a watchful eye for safety concerns. It is certainly

in the best interests of all parties concerned for safe hunters and CSA operators are simply not going to provide services to their customers in an unsafe manner.

In addition to my written testimony, I have also included a copy of a letter that Flint Oak Ranch provided to the Senate Committee on Natural Resources for this legislation. You will see from their comments they have had tremendous success with their own hunter safety program and take safety very seriously at Flint Oak Ranch.

Finally, several years ago I looked at hunter safety numbers for Kansas. At that time, the most recent numbers available from the Kansas Department of Wildlife and Parks for Kansas were as follows:

2.36 accidents per 100,000 hunting days (1,861,000 hunting days in 1994)
1.47 accidents per 100,000 hunting days (1,432,000 hunting days in 1995)
1.77 accidents per 100,000 hunting days (1,300,000 hunting days in 1996)

Other information I have received from the Department shows a total of 25 accidents in 1998, with one fatality.

From graphs available from the Department, there appears to have been 21 hunting accidents in 1999.

In 2000, there were 19 hunting accidents, with no fatalities.

I would also note the information from the Department does not distinguish between those who were involved in accidents who had taken a hunter safety course and those who had not.

Any accidents involving hunting and a firearm are of a concern. However, the record clearly shows that hunting in Kansas is an extremely safe activity. The Controlled Shooting Area operators in Kansas have demonstrated an excellent safety record for their operations. As a result of the experience we have seen during the past two years since the passage of HB 2762, we believe it is appropriate to continue with this exemption for CSA's.

I think Mr. Wayne Doyle, the Kansas Department of Wildlife and Parks Hunter Education Coordinator, said it best in his 1999 Hunting Accident report to Kansas Hunter Education:

"…Hunting is safe and just keeps getting safer. No matter how you figure the accident rate it is still lower than just about any other form of outdoor recreation…"

On behalf of the Kansas Sport Hunting Association and Flint Oak Ranch, L.L.C., and their customers, we ask for your favorable consideration of SB 504.

I would be pleased to stand for questions at the appropriate time. Thank you.

Attachments.

Note: Submitting comments in support of SB 504 is Mr. Ken Corbet, owner of Ravenwood Hunting Preserve and Sporting Clays and the Vice President of the Kansas Sport Hunting Association. Mr. Keith Houghton, owner of Ringneck Ranch located near Tipton and President of the KSHA also presented testimony in support of SB 504 to the Senate Committee on Natural Resources.

· FLINT · OAK ·

RR 1, Box 262 Fall River, KS 67047-9515 (620) 658-4401
Fax (620) 658-4806

February 8, 2002

Mr. Whitney Dameron
1100 Mercantile Bank Tower
800 S.W. Jackson Street
Topeka, KS 66612-2205

Dear Whitney,

During the 2000/2001 hunting season, Flint Oak administered 174 Hunter Safety courses to out of state guests who did not realize the Kansas Hunter Safety requirements (2 of these guests did not pass).

Thus far in the 2001/2002 hunting season, Flint Oak has administered 112 Hunter safety courses to guests.

Some observations:

1. Flint Oak has not had an accident since administering the hunter safety program.
2. Many of our corporate members require all of their guests to take the course regardless if they have taken a course before in their own state.
3. The course is, and is administered, serious enough that some guests realize they are not qualified to hunt safely. So they decide not to hunt.
4. We have not had the extremely disappointed guests (often irate) who come to Kansas and could not hunt.
5. Our insurance underwriters have reviewed this program and were very pleased as they saw it as reducing risk.

I have enclosed a copy of the Hunter Safety manual used by the Kansas Sport Hunting Association. I am sure next season the manual will be reviewed for improvements.

Sincerely,

Pete Laughlin

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TESTIMONY

TO: The Honorable Joann Freeborn
And Members of The House Environment

FROM: Kenneth L. Corbet
Owner of The
Ravenwood Lodge, Shawnee County, KS and
Vice President of
Kansas Sport Hunting Association

RE: SB 504 An Act Concerning Hunter Education; Controlled Shooting Areas

DATE: March 12, 2002

Good Afternoon, my name is Ken Corbet. I am owner of Ravenwood Lodge located in Southwest Shawnee County about twenty minutes from Topeka. We are in our seventeenth year of operation. Some of the ground we hunt and farm today has been in our family since the 1860's. I believe that hunting could be to Kansas what Pike's Peak is to Colorado. A travel and tourism study in Georgia stated that a single Bob White Quail was worth $208 in revenue to industry in the state. Kansas is setting on a goldmine of economic possibilities when it comes to hunting and outdoor recreation

I am here to testify in support of SB 504. This minor change of eliminating the sunset provision will continue to allow out-of-state hunters and world visitors here on business or recreation to enjoy our state's great hospitality and hunting experience.

I hope you agree and would like to see tourism and tax dollars come to Kansas. I urge your support of SB 504. The 150 Kansas Sport Hunting Association's small business owners are working hard to keep tourism and tax dollars to Kansas. Please vote to elimiate the sunset provision.

Sincerely,

Kenneth L. Corbet

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KEITH and DEBRA HOUGHTON
HOUGHTON RANCH

H.C. 61, Box 7
Tipton, Kansas 67485
Telephone (785) 373-4835

March 12, 2002

Testimony on SB 504
by Keith Houghton, President,
Kansas Sport Hunting Association

To: The Honorable Joann Freeborn, Chair
And Members of the House Environment Committee

Dear Madam/Sir:

As President of the Kansas Sport Hunting Association representing 150 plus Kansas hunting services and organizations, I would like advise the committee that we support Senate Bill 504, which will continue to allow us to accept international guests that have no practical way to complete traditional hunter safety certification.

We would add that this provision allows guests to only participate within the confines of CSA operations, and we would still like to explore alternative delivery methods of hunter safety training & international reciprocity. As proprietor of Ringneck Ranch, Inc., a licensed Controlled Shooting Areas near Tipton that has completed over 2,000 hunter days each of the last two seasons, I know that this measure will continue to enable international guests who presently have no practical way to obtain hunter safety certification to participate in hunting in Kansas.

The exemption of the last two years has allowed our businesses and member organizations to accept guests that we previously were not permitted to accommodate. This exemption should be continued for its substantial economic benefit to CSA operators and Kansas Tourism.

Thank you for your time and attention to this matter. I am gladly available to answer any questions you may have about the effects of SB 504 upon our industry.

Sincerely yours,

Keith W. Houghton, President
Kansas Sport Hunting Association
Ringneck Ranch, Inc.

KsSB504comm.doc

FAX (785) 373-4059 • E-Mail: ringneck@wtciweb.com • www.ringneckranch.net

STATE OF KANSAS
DEPARTMENT OF WILDLIFE & PARKS
Office of the Secretary
900 SW Jackson, Suite 502
Topeka, KS 66612-1233
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SENATE BILL NO. 504

Testimony Provided to
House Committee on Environment
March 12, 2002

Senate Bill No. 504 would extend the sunset concerning a provision that currently exempts hunters from being required to have a hunter education certificate while hunting using a controlled shooting area (CSA) hunting license, valid only on a CSA. Although the department believes it is important to express certain reservations about this exemption, we recognize that it is current law, and therefore do not oppose this proposal to extend the exemption.

The current hunter education program, which requires that any individual born after July 1, 1957 complete hunter education in order to hunt in Kansas (notwithstanding exemptions such as the one in question), has been credited with a general decrease in hunting accidents since established in 1972. The department certifies approximately 13,000 students each year, largely through the use of certified volunteer instructors. Creating exemptions from the hunter education requirements raises the concern that these positive results could slowly be eroded. This is especially true as more and more hunting occurs on private CSAs, and therefore an increasing proportion of the hunting public may be exempt from the hunter education requirement.

The department recognizes that a CSA has a business interest in ensuring the safety of its customers, and that some CSAs voluntarily conduct a short hunter safety course for all visiting hunters. The one and one-half years since hunters on CSAs became exempt from traditional hunter education is probably too small a sample to determine whether this exemption creates a safety concern. Nonetheless, of the 18 hunting accidents reported in 2001, three occurred on CSAs. One of these three accidents involved a hunter who would have been required to have taken hunter education if he had not been on a CSA. By comparison, a total of five reported hunting accidents occurred on CSAs over the five previous years, and of these, two involved hunters who had not taken hunter education, but who were otherwise exempt based on their age.

Perhaps just as important, current hunter education addresses more than just hunter safety. Hunter education courses also emphasize respect for wildlife and habitat and an understanding of the history and traditions of hunting, as well as issues such as respect for the rights of landowners who provide hunting opportunities. New hunters who hunt only on a CSA and do not take hunter education may not be exposed to these important ideas.

We recognize that these issues are not substantially new or different from those the legislature considered when creating the exemption two years ago. As originally proposed, SB 504 would have eliminated the sunset provision and made the exemption permanent. An amendment in the Senate Committee instead extended the provision by setting a new sunset in 2005. Our department's understands this was done in part due to our concerns, and to allow additional time to determine the impact of the exemption. With this consideration, the department does not oppose SB 504.

House Environment
3-12-02
Attachment 3

STATE OF KANSAS
DEPARTMENT OF WILDLIFE & PARKS

Office of the Secretary
900 SW Jackson, Suite 502
Topeka, KS 66612-1233
785/296-2281 FAX 785/296-6953

SENATE BILL NO. 431

Testimony Provided to
House Committee on Environment
March 12, 2002

Senate Bill No. 431 would eliminate the minimum age for persons to hunt wild turkey. The bill is one of the department's legislative initiatives and is supported by the department.

Currently, only person's 12 years of age or older may hunt big game in Kansas. Turkey is one of the four species classified as big game (in addition to deer, elk, and antelope). This proposal would eliminate the minimum age requirement only as is applies to hunting turkey. Anyone born after 1957 would continued to be required to complete a hunter education course before hunting (with exceptions such as persons hunting on their own land), and turkey hunters under the age of 14 would still be required to be accompanied by an adult.

The department has supported reducing the minimum age for hunting big game in the past, believing that determining the best age to begin hunting is a decision more appropriately made by a parent or guardian. Removing the age restriction for turkey is suggested partly because turkeys are hunted using a only a shotgun rather than a centerfire rifle. The department believes SB 431 would remove one unnecessary barrier to hunting in Kansas, and would help promote life-long participation in Kansas outdoor recreation. We respectfully request the committee's support for SB 431.

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House Environment
3-12-02
Attachment 4

STATE OF KANSAS
DEPARTMENT OF WILDLIFE & PARKS
Office of the Secretary
900 SW Jackson, Suite 502
Topeka, KS 66612-1233
785/296-2281 FAX 785/296-6953

SENATE BILL NO. 430

Testimony Provided to
House Committee on Environment
March 12, 2002

Senate Bill No. 430 would expand the category of physicians who may certify a person's disability when applying for certain Wildlife and Parks disability permits. The bill is one of the department's legislative initiatives, and is supported by the department.

Current law provides that persons with qualifying disabilities may obtain permits allowing them to use a crossbow in place of a conventional bow, or allowing them to designate a person who may accompany them in the field and actually take the game on their behalf. These statutes require that a permit applicant's disability be certified by a person certified to practice medicine or surgery, or in one case optometry, in this state. SB 430 would allow certification by a physician licensed in any state. A similar amendment was made in 1999 concerning issuance of special license plates or placards to persons with qualifying disabilities (K.S.A. 8-1,125).

By allowing certification by nonresident physicians, SB 430 would help remove one potential barrier facing a nonresident with disabilities who wishes to hunt in Kansas, but who does not have contact with a Kansas physician. Consequently, the bill would be consistent with the department's goal of increasing participation in Kansas outdoor recreation.

As introduced, SB 430 would have also authorized a Christian Science pracitioner to certify to a person's disability (which is allowed in K.S.A. 8-1,125), in recognition of another category of persons who do not have contact with a Kansas physician. During hearings in the Senate Committee, it became clear that this provision would not be immediately useful for Christian Scientists unless the term "permanent" disability was also stricken. The department helped prepare such an amendment, but the Senate Committee instead decided to remove reference to Christian Science practitioners.

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House Environment
3-12-02
Attachment 5