

Approved: _____
Date 4/10/02

MINUTES OF THE SENATE COMMITTEE ON REAPPORTIONMENT.

The meeting was called to order by Vice-chairperson Senator Ed Pugh at 4:00 p.m. on March 12, 2002 in Room 235-N of the Capitol.

All members were present.

Committee staff present:

Mary Galligan, Kansas Legislative Research Department
Kathie Sparks, Kansas Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
Judy Swanson, Committee Secretary

Conferees appearing before the committee:

State Senator Jim Barnett
State Senator Jim Barone
State Senator Larry Salmans
State Senator Robert Tyson
State Senator John Vratil
State Senator Nancey Harrington
State Senator Lana Oleen
State Senator Jay Scott Emler
State Senator Kay O'Connor

Others attending:

See attached guest list

Senator Hensley passed out information concerning the legal requirements and compliance of **Sub.SB 379**. (Attachment 1) Chairman Adkins said that the Governor's veto message did not say that **Sub. SB 379** was illegal.

Senator Adkins made remarks concerning the Committee's efforts to solve the issue of reapportionment. He said that Senator Lee's district would go to other areas under the initial Republican caucus proposal, and it is evident that this was not acceptable. He said his interest is to be nonpartisan in coming up with a new plan. A list of items that would serve everyone's interest should be used as a starting point to come up with a new map. Some will feel their interest is being protected, and some will feel their interest is being violated. Previous mistakes that were made should be history, and all should be interested in moving forward.

State Senator Jim Barnett said that Anderson County stretches him too far, and he would be agreeable to looking at Greenwood County.

State Senator Jim Barone testified that Crawford County should not be split. (Attachment 2)

State Senator Larry Salmans said his concern is the great distance from the Nebraska line he represents because it is difficult to represent the constituents. He opposed splitting Pawnee County. He recognized the difficult job that the Committee has to accomplish. Senator Lee agreed with Senator Salmans' remarks. Some of the large districts are almost unworkable in terms of their physical size.

State Senator Robert Tyson testified that he liked the map passed by the Senate.

Senator Jenkins said there were some oversights in the 20th Senatorial District in the map passed by the Senate. The Westboro neighborhood should not have been taken out of the 20th District.

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State Senator John Vratil said he appreciated the Committee Chairman's remarks and urged the Committee to take heed to them. He supported the Johnson County districts as they were approved by this Committee. He said the Johnson County delegation met often, and each of them was allowed to draw their own district, then worked out a plan that was agreeable to all of them. His concern about the map that was passed by the Senate was District 11, because it created a new district in the Southeast corner and divided the City of Leawood. He felt Leawood should not be split. The Blue Valley school district is so large that it will have to be in more than one senatorial district. A much higher percentage of District 8 is retained under the Committee bill than under the Senate bill.

Senator Allen said she will be moving, and her new residence will be in the district she represents after the move.

Vratil said he does not want to thwart the efforts of any person who might want to run for public office. He said if Representative Merrick would rather be in the new district, he has no problem with that. His main concern is that there is a fair and reasonable mixture in districts. This would make for a fair and spirited election. Vratil said that the **Sub. SB 379** map had a corner carved out of Johnson County for Merrick, and he did not feel that was fair. He said there are more than thirteen incorporated cities in Johnson County. In the Committee map, Adkins would represent several cities, and Allen would represent Overland Park. Olathe is currently represented by O'Connor and Brownlee.

State Senator Nancey Harrington was concerned about people requesting that the Committee create specific districts for them. Chairman Adkins said that he had no personal contact from anyone about this issue. He further said that Shane Jones is the 3rd District Republican Chairman, but has not requested any district be drawn for him. Senator Harrington questioned whether or not the Governor's Chief of Staff was going to testify before the Committee. Chairman Adkins said he would welcome the Governor or his staff to testify with their input, but he felt that this Committee should act as the Legislative Branch on its own.

State Senator Lana Oleen, Majority Leader of the Senate, testified. She said reapportionment is a highly emotional issue. Her plea to the Committee was that the process should be open, not covert as she works hard to keep the legislative process open. She complimented Chairman Adkins on his willingness to do this. She said there are two other states which have vetoed their own reapportionment, and numerous states in court. She felt the Kansas Senate should settle its own business. She offered to help to facilitate with her caucus. After meeting with Senator Hensley, she said he agreed to work on the Johnson County concerns with her. She would like to mend the breakage between the conflict on the Committee map and the Senate map. In response to Senator Huelskamp, she clarified that covert means that there are individuals who have maps, and she would like to avoid these "surprise" maps. She said any meeting between her and Senator Hensley is an open meeting. Senator Vratil expressed an interest in working with Senator Oleen on the Johnson County issue.

Senator Lee said she does not want any map to have an incumbent opponent.

Senator Corbin said this Committee has worked hard, and he felt meetings should be a part of the Reapportionment Committee since this is the committee that must solve the problem. He said solutions should be worked out in this committee.

Chairman Adkins said this is a unique piece of legislation since each Senator has ownership and feels he/she is an expert on the issue of redistricting in their own area. Senator Hensley said the solution may be resolved in the Committee of the Whole rather than in this committee.

State Senator Jay Scott Emler testified that he would like to see Dickinson County remain whole.

Senator Allen concurred with Senator Vratil's comments. Senator Teichman said she would like to see Harper County remain whole, especially since it was split so badly in the House.

Senator Tyson said he had been drawn in and drawn out of Johnson County, but he felt that it was fair for

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MINUTES OF THE SENATE COMMITTEE ON REAPPORTIONMENT at on March 12, 2002 in Room 235-N of the Capitol.

districts to be drawn on projected growth, not drawn for personalities. He said Senators should look at the total map, not just their own districts. Chairman Adkins said he was in complete agreement with that sentiment.

State Senator Kay O'Connor said she had personally spoken to Rep. Merrick, and he told her that he only had interest in running for the Senate after the map had been drawn.

Senator Hensley said he supported the vetoed map because he felt the rationale behind that map was sound. Chairman Adkins said the Committee should start with that map and make adjustments using that map as a starting point. Senator Corbin agreed.

Chairman Adkins said that because the Committee is dealing with emotions, coalitions and the delicate nature of reapportionment, he did not want to force the issues by moving too quickly. He would like to have a map to the Governor by the end of March. His goal is to accommodate concerns, hear concerns and work across party lines.

Correspondence received by the Kansas Legislative Research Department concerning Senate reapportionment is attached. (Attachment 3)

The meeting adjourned at 5:15 p.m.

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MEMORANDUM

To: Senator Jim Barone
From: Mary Torrence, Assistant Revisor of Statutes *MAT*
Date: March 6, 2002
Subject: Legality of Substitute for Senate Bill No. 379

Legal Requirements

There are three basic legal requirements applicable to legislative redistricting in Kansas:

- (1) The total difference between the population of the most populous district and the population of the least populous district must not be more than 10% of the ideal district population.
- (2) Districts must not be drawn in a manner that violates section 2 of the federal Voting Rights Act.
- (3) The population data used for redistricting must be the most recent federal census data, adjusted to count military personnel and college students at their places of permanent residence.

Compliance of Bill

Substitute for Senate Bill No. 379, as it passed the Legislature, meets these requirements:

- (1) Under the bill, the most populous district exceeds the ideal Senate district population by 4.96% and the least populous district is 4.90% below the ideal population, for an overall range of 9.86%.
- (2) In-depth analysis of compliance with section 2 of the Voting Rights Act has not been conducted, but review of the bill indicates that minority voting strength is not diluted by the districts in the bill.
- (3) The population data used as a basis for the districts in the bill are the data required by law.

*Senate ReAppointment
March 12, 2002
Attachment 1*

Other Factors

Courts have recognized other factors which a legislature may consider in drawing legislative districts but which are not legal requirements. These include compactness and contiguity of districts, community of interests, preservation of political subdivision boundaries, preservation of the cores of existing districts, political competition and protection of incumbents.

Attached Memorandum

For more detailed analysis of the legal requirements for legislative redistricting and considerations which are permissible, please see the attached memorandum.

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MEMORANDUM

To: Senate Standing Committee on Reapportionment
House Select Committee on Redistricting

From: Mary Torrence, Assistant Revisor of Statutes

Date: March 8, 2001

Subject: Redistricting Guidelines

FEDERAL CONSTITUTIONAL AND STATUTORY REQUIREMENTS

There are two federal requirements that Kansas must meet in apportioning congressional and legislative districts: Districts must be based on equal population and they must be drawn in compliance with section 2 the Voting Rights Act.

Equal Population

In the 1960's the U.S. Supreme Court held that congressional districts and state legislative districts (both house and senate) must be apportioned on the basis of equal population. Wesberry v. Sanders, 376 U.S. 1 (1964); Reynolds v. Sims, 377 U.S. 533 (1964). Since then the Court has refined that principle to require nearly absolute population equality in a state's congressional districts and not more than 10% difference between the population of a state's most populous and least populous legislative districts. Kirkpatrick v. Preisler, 394 U.S. 526 (1969); White v. Weiser, 412 U.S. 783 (1973); Karcher v. Daggett, 462 U.S. 725 (1983); Gaffney v. Cummings, 412 U.S. 735 (1973); White v. Regester, 412 U.S. 755 (1973).

Voting Rights Act

Section 2 of the Voting Rights Act (42 U.S.C. 1973) prohibits states from imposing any voting qualification, standard, practice or procedure that results in the denial or abridgment of a citizen's right to vote on account of race, color or membership in a language minority group. The section enumerates factors for a court to consider when determining whether there is a violation of that prohibition. Generally, section 2 cases

involve claims that minority voters were denied equal access to the political process due to use of multimember districts, "packing" minorities into a single district or diluting minority voting strength by dividing minority voters among several districts.

In interpreting section 2, the U.S. Supreme Court has held that a court must determine whether a minority group has been denied equal access to the electoral process and whether: (1) The group is sufficiently large and geographically compact to constitute a majority in a district; (2) the group is politically cohesive; and (3) the majority usually votes as a bloc, defeating the group's preferred candidates. Thornburg v. Gingles, 478 U.S. 30 (1986); Grove v. Emison, 507 U.S. 25 (1993).

Recent Voting Rights Act litigation has focused on whether the Act allows or requires states to draw "majority-minority districts" (where a minority group constitutes a majority of the voters) or "influence districts" (where minority voters are less than a majority but have enough strength to influence elections) and the lengths to which a state must, or may, go to create these districts. The fundamental conclusions of the Court have been that:

(1) If a state does not violate the constitution or section 2 of the Voting Rights Act, a state may draw majority-minority districts and is not required to draw influence districts instead. Voinovich v. Quilter, 507 U.S. 146 (1994).

(2) Section 2 does not require a state to create the maximum number of majority-minority districts possible. Johnson v. DeGrandy, 114 S.Ct. 2647 (1994).

(3) If the predominate basis for district boundaries is racial or ethnic criteria, the redistricting plan will be subject to strict scrutiny and must be narrowly tailored to further a compelling state interest. Reno v. Shaw, 509 U.S. 630 (1993); Miller v. Johnson, 515 U.S. 900 (1995); Shaw v. Hunt, 116 S.Ct. 1894 (1996); Bush v. Vera, 116 S.Ct. 1941 (1996).

DATA USED FOR REDISTRICTING

Under federal and state law, congressional redistricting is based on the federal census. United States Constitution, Article 1, Section 2, Clause 3; K.S.A. 2000 Supp. 11-321. For legislative redistricting, however, Kansas provides for an adjustment to the federal census figures by counting military personnel and college students at their places of permanent residence rather than where they are counted for the federal census. Kansas Constitution, Article 10, Section 1; K.S.A. 11-301 et seq.

OTHER FACTORS

In Reynolds and Karcher the U.S. Supreme Court indicated that variations in district population may be justified if they are based on consideration of state policies other than population equality. However, these policies must be rational and consistently applied. (Although Karcher dealt with congressional districts, the minimal population deviation allowed by the Court in apportioning those districts makes it difficult to determine to under what circumstances these considerations would justify deviations in congressional district populations.)

The following are factors that the Court has recognized as legitimate considerations in redistricting:

1. Compactness and Contiguity

A state policy of drawing compact and contiguous districts is one of the factors mentioned in Karcher that may justify population deviations among districts. Although not an independent requirement, in the 1990's Voting Rights Act cases the Court consistently has noted states' disregard of compactness and contiguity in rejected bizarrely shaped race based districts.

2. Communities of Interest

The Court has recognized communities of interest (populations having similar socioeconomic characteristics and other common interests) as a legitimate consideration in drawing district boundaries, but has indicated that care must be taken that this does not amount to racial and ethnic stereotyping. Miller v. Johnson; Bush v. Vera.

3. Preservation of Political Subdivision Boundaries

This factor is mentioned in Karcher and is a factor that the Court has repeatedly recognized as a rational policy for states to consider in legislative redistricting. Mahan v. Howell, 410 U.S. 315 (1973); Brown v. Thomson, 462 U.S. 835 (1983).

4. Preservation of Cores of Districts

This another factor that Karcher indicates may justify population deviations and it is again mentioned in Abrams v. Johnson, 65 U.S.L.W. 4478 (June 19, 1997).

5. Political Competition

In Gaffney the Court upheld a legislative redistricting plan designed to reflect the relative strengths of the major political parties to give the political parties (but population deviations were within the 10% limit).

6. Incumbent Protection

The Court in Karcher recognizes this as a factor that may justify population deviations among districts.

TESTIMONY TO THE JOINT COMMITTEE ON REDISTRICTING

January 29, 2002
Topeka, Kansas

Mr. Chairman:

Thank you, Mr. Chairman and all the members of the Committee for your efforts in this very important work. In my previous testimony delivered on June 5, 2001, at Independence, Kansas, I said: "Crawford County has a long tradition and history of being represented by one Congressman and one Senator, and I believe that no matter what, that tradition should continue. In addition, it's best for Crawford County to be represented by as few State Representatives as possible. Mr. Chairman, that testimony was on target in June, and it is even more on target today. I am very proud of the people of Southeast Kansas, and particularly Crawford County, for the way they have all come together for the good of the citizens, not the politicians. The county, virtually every city in the county, Chambers of Commerce, Southeast Kansas, Inc., and school districts have all joined in one voice. Republicans, Democrats, and Independents all have one common message, and that message, Mr. Chairman, without exception—and let me repeat that, without exception—is that Crawford County doesn't have to be split, and Crawford County shouldn't be split.

Mr. Chairman, members of the Committee, the record is full of resolutions, letters, statements, and other notices; and every piece of input this Committee has heard articulates that common message: Crawford County should continue to be represented by one State Senate district and two State Representative districts. Mr. Chairman, I urge you and this Committee to hear the voices of our constituents, not the voices of our colleagues.

Thank you, Mr. Chairman. I will stand for questions if you have any.

Senator Jim Barone
District #13

*Senate Reapportionment
March 11, 2002
Attachment 2*

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

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February 26, 2002

To: Senate Committee on Reapportionment
From: Kathie Sparks, Principal Analyst
Re: Letter from Sister Therese Bangert

Enclosed please find a copy of a letter received by the Kansas Legislative Research Department regarding reapportionment of the state Senate.

KS/dg

Enclosure

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*Senate Reapportionment
March 12, 2002
Attachment 3*

January 29, 2002

To: Senate Redistricting Committee

From: Sister Therese Bangert
Resident of Wyandotte County

My name is Sister Therese Bangert. Since 1987 I have been actively involved in this democracy in which I am privileged to live. I believe wholeheartedly in the responsibility of citizens to be involved in the creation of policy.

I have been a resident of Wyandotte County for almost six years. I believe that many of the challenges that we face in our diverse community resulted because many policy makers during the past decades worked out of self-interest instead of considering the common good. I consider myself an active citizen in working for policy that promotes that common good.

I do not understand why Senators Steineger and Gilstrap who currently represent Senate Districts 5 & 6 have been placed in the same district in the proposed redistricting plan. This apparently violates Guideline 4e adopted by the Senate committee on Reapportionment in April of 2001 which states "Contests between incumbent members of the Legislature or the State Board of Education will be avoided whenever possible."

Thank You for hearing my testimony.