

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Bill Mason at 1:30 p.m. on January 28, 2003 in Room 313-S of the Capitol.

All members were present except: All present

Committee staff present: Russell Mills, Legislative Research Department
Mary Torrence, Office of Revisor of Statutes
Rose Marie Glatt, Committee Secretary

Conferees appearing before the committee: Representative R.J. Wilson
Steve Kearney, Kansas State Troopers Association
Fraternal Order of Police
Kansas Association of Licensed Investigators

Others attending: See Attached

Without objection, a bill was introduced as requested by Representative Wilson, regarding law enforcement officers on Indian reservations The Joint Committee on Tribal Affairs passed out recommendations concerning this subject and the bill is currently in the Senate Judiciary Committee.

Without objection, a bill was introduced as requested by Steve Kearney, Kansas State Trooper Association and Fraternal Order of Police, that would allow a retired police or law enforcement officer the right to concealed carry.

Without objection, a bill was introduced as requested by Steve Kearney, Kansas Association of Licensed Investigators, regarding the adoption of continuing education requirements for private investigators in the Kansas.

Robert Longino, Director, Alcoholic Beverage Control Division briefed the committee on ABC topics (Attachment 1). (Copies of brochures/ABC Industry Bulletin on file at Department of Revenue).

- Regulatory issues: on and off-premise liquor licenses and the status of drinking regulations by Kansas counties, keg registration implementation update, ABC Forums, policy memo program and revenue collected from three liquor taxes
- Sunday sales issues: the procedure that occurred when Wyandotte County, Kansas City, and Edwardsville passed charter ordinances opting out of a provision relating to the prohibition of Sunday sales by retail liquor stores.
- ABC's actions involving underage drinking: Reviewed ABC's activities to educate the public, provide training to various schools and work with licensees, law enforcement, community coalitions and media.
- Governor's proposed FY04 Budget: Implementation of the Governor's proposal to move funding for ABC and its positions to the Kansas Highway Patrol.

At the Committee request, the Director agreed to provide additional information on (1) whether compacts would allow Harrah's to serve alcohol or cereal malt beverage on the gaming floor (2) variance of statistics on DUI arrests of people leaving establishments that provide food service verses establishments serving no food.

The meeting adjourned at 2:20 p.m. with the next meeting scheduled at 12:30 p.m. in Room 313-S on January 30, 2003.



K A N S A S

JOAN WAGNON, ACTING SECRETARY

DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL

KATHLEEN SEBELIUS, GOVERNOR

To: Representative Bill Mason, Chairperson, House Federal and State Affairs Committee

From: Robert Longino, Director, Alcoholic Beverage Control Division

Date: January 28, 2003

Subj: Division of Alcoholic Beverage Control Update

Mister Chairman and Distinguished Committee Members, it is my pleasure to visit with you for a few minutes this afternoon to provide an update on several issues surrounding liquor regulation and on the activities of the Division of Alcoholic Beverage Control.

I will be reviewing several topics this afternoon. Additional materials are provided to support this testimony. Where appropriate, I will refer to the specific document during my comments.

1. Regulatory Issues

- Current number of liquor licensees
- Liquor-by-the-drink update
- Keg Registration Implementation Update
- Semiannual Industry Bulletin
- ABC Forums – last year we conducted ABC Forums in Salina, Wichita, Johnson County, Liberal, Garden City, and Dodge City. We are currently finalizing plans for this year's forums.
- Policy Memo program
- Kansas Administrative Regulation update activity
- Liquor Taxes – the total tax collected from the three liquor taxes in FY02 was \$81.9 million up from \$77.9 million in FY01 – approximately a 5 % increase.

2. Sunday Sales Issue. During August of 2002, the Unified Government of Wyandotte County and Kansas City, Kansas and the City of Edwardsville, passed charter ordinances opting out of a provision of K.S.A. 41-712 – the prohibition of Sunday sales by retail liquor stores. These units of local government used their home rule powers to arguably exempt themselves from this statute. The following is an overview of the events occurring on this issue:

- **August 26, 2002:** The City of Edwardsville (“Edwardsville”) passed a charter ordinance to exempt Edwardsville from the Sunday sales prohibition of K.S.A. 41-712.

- **August 29, 2002:** The Unified Government of Wyandotte County and Kansas City, Kansas (“Unified Government”), passed an ordinance to put a charter ordinance to a vote in the November 5, 2002, election. The charter ordinance was to exempt Kansas City, Kansas, from the Sunday sales prohibition of K.S.A. 41-712.
- **November 5, 2002:** A majority of electors voting on the Unified Government’s charter ordinance voted in favor thereof.
- **November 8, 2002:** The Unified Government’s charter ordinance took effect upon certification of the results of the election.
- **November 12, 2002:** Edwardsville’s charter ordinance took effect.
- **November 15, 2002:** Kansas Attorney General Carla J. Stovall issued a press release, expressing her intent to challenge the charter ordinances in court. The Kansas Department of Revenue (“KDOR”) also issued a press release, indicating that pending a court decision on the issue, the ABC recommended that retail liquor stores remain closed on Sundays.
- **November 21, 2002:** The Unified Government filed a Petition for Declaratory Judgment in Wyandotte County District Court. Along with its Petition, the Unified Government obtained an *ex parte* Temporary Restraining Order prohibiting the State from taking any action to enforce K.S.A. 41-712. On the same date, the Attorney General’s Office also filed a Petition in Wyandotte County District Court, for Quo Warranto and Declaratory Judgment.
- **December 2, 2002:** The Unified Government voluntarily dismissed its petition pursuant to an agreement between the parties that the issue should be addressed pursuant to the State’s petition. In addition, the Court adopted a scheduling order:
 - The State was to file its brief on or before **January 3, 2003**.
 - The Unified Government and Edwardsville were to file their responsive briefs by **January 24, 2003**.

The UG and Edwardsville were given an extension until February 5th to file their brief.

 - The State was granted **10 days following service** of the Unified Government’s and Edwardsville’s responses in which to file a reply brief.
- **January 2, 2003:** The Attorney General’s Office filed the State’s brief on the issues. Basically, the State proffered three questions for judicial determination. The questions involved whether the Unified Government’s and Edwardsville’s charter ordinances were void and ineffective as beyond the scope of authority granted to cities under Article 12, Section 5 of the Kansas Constitution, in that:

- They attempted to charter out of a State statute that is inapplicable to cities, and instead – as part of the Liquor Control Act, a comprehensive and preemptive regulatory scheme dealing with the licensing relationship between the State and liquor licensees – is applicable to individual liquor retailers.
 - Enforcement of the Kansas Liquor Control Act is a matter of statewide concern requiring uniformity in application and is not a local affair within the purview of cities' home rule authority.
 - They attempted to charter out of a uniform enactment of the Kansas Legislature.
 - **February 21, 2003:** A hearing is scheduled before Wyandotte County District Court for oral argument on the matter.
3. ABC's Actions Involving Underage Drinking. The following comments describe some of the activities of the Division addressing underage drinking:

- Educating the public
 - Underage Costs, Consequences and Enforcement Brochure
 - Underage newsletter
 - Web site (<http://www.ksrevenue.org/abcunderage.htm>)
- Working with Campus Groups and Coalitions
 - Provide training and assistance to colleges and universities
- Working with Grades K-12
 - Support to youth forums and conferences
 - Operation Prom and Graduation Watch
- Working with Licensees
 - Implementation and oversight of Keg Registration Law
 - Encourage use of technology and efforts to verify IDs at the point of sale
 - Industry Bulletin Newsletter
 - Server / Seller Training Program
 - ABC Forums
 - Training to large public venues
- Working with Law Enforcement
 - Training program to educate local law enforcement agencies and officers
 - Enforcing Drinking Laws Advisory Task Force
 - Increase collaboration and cooperation

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- Working with Community and State Coalitions
 - Support to Kansas Leadership to Keep Children Alcohol Free
 - Support to Regional Prevention Centers
 - Involvement with the Governor's Substance Abuse Prevention Council

- Working with the Media
 - Press releases
 - "Ride Along Program"

4. Governor's Proposed FY04 Budget. The recently released Governor's proposed budget recommended the funding for ABC and its positions be moved to the Kansas Highway Patrol. We are currently working with the Governor's office on the details of implementing this proposal.

In closing, I appreciate the attentiveness and support of this committee to the Division. If at anytime you have any other issues or concerns, I would be glad to visit with you at your convenience. Thank you for your time this afternoon and I'll make myself available for any questions.