

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman Michael R. O'Neal at 3:30 p.m. on March 11, 2003 in Room 313-S of the Capitol.

All members were present except:

Representative Dean Newton - Excused  
Representative Dale Swenson - Excused  
Representative Dan Williams - Excused

Committee staff present:

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

Conferees appearing before the committee:

Randy Hearrell, Kansas Judicial Council  
Justice Ed Larson

The hearing on **SB 37 - receipts from an interest in minerals & other natural resources pursuant to the uniform principal & income act**, was opened.

Justice Ed Larson appeared as a proponent to the bill, and explained that it would make Kansas law consistent with laws in surrounding states with regard to how gross receipts from oil & gas royalties are distributed between principal and income. (Attachment 1)

Hearing on **SB 37** was closed.

The hearing on **SB 36 - membership & duties of the Judicial Council**, was opened.

Randy Hearrell, Kansas Judicial Council, explained that the bill would expand the number of legislative members on the Council from two to four; by including the chairperson of the House Corrections & Juvenile Justice Committee and the ranking minority member of the Senate Judiciary Committee. He commented that the Judicial Council is a non-partisan committee that works on issues that are important to the courts, lawyers and legislators. The bill also would make the Judicial Council an independent agency of the Judicial Branch. (Attachment 2)

Hearing on **SB 36** was closed.

**HB 2418 - delay of phased in increase of court of appeals to 14 judges**

Committee discussion centered on the need of court of appeals judges and questioned the urgency for the bill. The committee showed no interest in working the bill.

**SB 21 - nomination & selection of justices & judges**

Representative Loyd made the motion to report SB 21 favorably for passage. Representative Goering seconded the motion.

Representative Pauls made a substitute motion to reinsert the language on page 11, lines 42 & 43. Representative Owens seconded the motion. The motion carried.

Representative Loyd renewed his motion which was seconded by Representative Goering. The motion to report SB 21 favorably, as amended, carried.

**SB 17 - appointment of clerks & non judicial personnel by the chief judge of each district**

Representative Goering made the motion to report SB 17 favorably for passage. Representative Yoder seconded the motion. The motion carried.

Committee minutes from February 17, 18, 20, 24 & 25 were distributed.



## KANSAS JUDICIAL COUNCIL

JUSTICE DONALD L. ALLEGRUCCI, CHAIR, TOPEKA  
JUDGE DAVID S. KNUDSON, SALINA  
JUDGE STEPHEN D. HILL, PAOLA  
JUDGE C. FRED LORENTZ, FREDONIA  
SEN. JOHN VRATIL, LEAWOOD  
REP. MICHAEL R. O'NEAL, HUTCHINSON  
J. NICK BADGEROW, OVERLAND PARK  
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### MEMORANDUM

**TO:** House Judiciary Committee  
**FROM:** Kansas Judicial Council -Edward Larson  
**DATE:** March 11, 2003  
**RE:** 2003 SB 37

My name is Edward Larson and I appear today as a member of the Judicial Council Probate Law Advisory Committee, in support of Senate Bill No. 37 which amends K.S.A. 58-9-411. Members of the Probate Law Advisory Committee are:

Gerald L. Goddell, Chair, Topeka  
Cheryl C. Boushka, Overland Park  
Judge Same K. Bruner, Overland Park  
Tim Carmody, Overland Park  
Michael L. Clutter, Topeka  
Peter A. Cotorceanu, Topeka  
Martin B. Dickinson, Jr. Lawrence  
Jack R. Euler, Troy  
Senator Greta Goodwin, Winfield  
Mark Knackendoffel, Manhattan  
Justice Edward Larson, Topeka  
Phillip D. Ridenour, Cimarron  
Willard B. Thompson, Wichita

When the 1997 revision of the Uniform Principal and Income Act was adopted by the 2000 Kansas Legislature (HB 2501), it was not reviewed section by section by the Probate Law Advisory Committee or the Judicial Council. One of the provisions substantially changed our previous law in Kansas, KSA 58-909 (a) (3), relating to how gross receipts from oil or gas royalty are apportioned between principal and income.

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Attachment: 1

Under the provisions of the law prior to the 2000 amendments, twenty two percent (22%) of the gross receipts were to be added to the principal as an allowance for depletion with the balance of the gross receipts, after payment therefrom of all expenses, considered income and payable to a life tenant.

The 2000 amendments essentially reversed the allocation and provided that 90 percent (90%) of the gross receipts must be allocated to principal and the balance ten percent (10%) is to be received by the life tenant as income. Copies of both provisions are attached to my testimony as Exhibits A & B.

While well drafted instruments, whether they be deeds establishing life estates, a provision in a will granting a life estate and remainder interest, or a revocable trust where the income for life is granted to a beneficiary often provide that all of the gross receipts from oil or gas production is to be treated as income, the statutory division must be applied to new production in the absence of specific directions in the applicable instrument to the contrary. The old doctrines of "open mines" and "closed mines" are specifically abolished by the Uniform Act, (see comment to ¶ 411, 7B Uniform Laws Annotated p. 175) although an almost 40 year old Kansas Supreme Court decision, Kimbark Exploration Co. v. Von Lintel, 192 Kan 791, 391 P. 2d 55 (1964) did not recognize this in our first Uniform Principal & Income Act case.

The change which is suggested by Senate Bill No. 37 is to adopt the current depletion allowance under the federal income tax code (15% of gross receipts in case of a royalty, shut in well payment, take or pay payment, bonus or more than nominal delay rental and 15% of the net amount received from a working interest) as the amount to be credited to principal and the balance (85%) to be allocated to income.

The suggested change which will be made if Senate Bill No. 37 is adopted simply strikes the "90" from lines 25 and 28 of the existing act and inserts in its place "15".

The suggested change which would be made by Senate Bill No. 37 is consistent with the approach taken by surrounding states with a substantial oil and gas industry when they adopted the 1997 version of the Uniform Principle and Income Act.

Oklahoma adopted the current IRS depletion rate of 15% to principal and 85% to income.

New Mexico tied its allocation to that made by the internal revenue code which is currently 15% to principal and 85% to income.

Wyoming substituted 27.5% for 90% throughout the revised Uniform Acts provisions.

We believe this to be in the best interest of life tenants and income trust beneficiaries while still providing realistic protection to remainder men.

## EXHIBIT "A" LAW PRIOR TO 2000 AMENDMENTS

**58-909. Disposition of natural resources.** (a) If any part of the principal consists

of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interest, or other interests in minerals or other natural resources in, on or under land, the receipts from taking the natural resources from the land shall be allocated as follows:

(1) If received as rent on a lease or extension payments on a lease, the receipts are income.

(2) If received from a production payment, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal the fraction of the balance of the receipts which the unrecovered cost of the production payment bears to the balance owed on the production payment, exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income.

(3) If received as a royalty, overriding or limited royalty, or bonus, or from a working net profit, or any other interest in minerals or other natural resources, receipts not provided for in the preceding paragraphs of this section shall be apportioned on a yearly basis in accordance with this paragraph whether or not any natural resource was being taken from the land at the time the trust was established. Twenty-two percent (22%) of the gross receipts (but not to exceed fifty percent (50%) of the net receipts remaining after payment of all expenses, direct and indirect, computed without allowance for depletion) shall be added to principal as an allowance for depletion. The balance of the gross receipts, after payment therefrom of all expenses, direct and indirect, is income.

(b) If a trustee, on the effective date of this act, held an item of depletable property of a type specified in this section, the trustee shall allocate receipts from the property in the manner used before the effective date of this act, but as to all depletable property acquired after the effective date of this act by an existing or new trust, the method of allocation provided herein shall be used.

(c) This section does not apply to timber, water, soil, sod, dirt, turf, or mosses.

**History:** L. 1951, ch. 509, § 9; L. 1965, ch. 344, § 9; L. 1972, ch. 211, § 1; July 1.

**53-9-411. Minerals, water and other natural resources.** (a) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

(1) If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income.

(2) If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.

(3) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, 90 percent must be allocated to principal and the balance to income.

(4) If an amount is received from a working interest or any other interest not provided for in subsection (1), (2), or (3), 90 percent of the net amount received must be allocated to principal and the balance to income.

(b) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, 90 percent of the amount must be allocated to principal and the balance to income.

(c) This act applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(d) If a trust owns an interest in minerals, water, or other natural resources on the effective date of this act, the trustee may allocate receipts from the interest as provided in this act or in the manner used by the trustee before the effective date of this act. If the trust acquires an interest in minerals, water, or other natural resources after the effective date of this act, the trustee shall allocate receipts from the interest as provided in this act.

**History:** L. 2000, ch. 61, § 20; July 1.



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**TO: House Judiciary Committee**

**FROM: Kansas Judicial Council - Randy M. Hearrell**

**DATE: March 11, 2003**

**RE: 2003 SB 36 - Kansas Judicial Council**

## Section 1

The language on page 1, at lines 19 to 22, places the Judicial Council in the Judicial Branch of government, but preserves its independence. The pay plan and personnel rules language acknowledges that since the Judicial Branch upgraded its pay plan, the Judicial Council has not had funding to follow it. The Judicial Council follows the Judicial Branch personnel rules, if at all possible.

When the new Corrections and Juvenile Justice Committee was formed this year it was thought advisable to add the chair of that committee to the Judicial Council because the Council often conducts studies in the criminal and juvenile areas.

The Senate amended the bill to add a second Senator to the Judicial Council, in order to keep the number of House and Senate members on the Council equal. With the addition of the two new members the Council will have four judges, four lawyers and four legislators as members.

## Section 2

The changes are technical.

## Section 3

The proposed amendment modernizes the language relating to the duties of the Judicial Council and is more descriptive of what the duties of the Council have evolved to include.

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Attachment: 2

#### Section 4

During the time the Council published the *Bulletin* it was unique in that it was the only publication that was sent to every lawyer in Kansas. Once court days were repealed and the court statistics were gathered by the OJA, two of its functions disappeared.

In the 1980's, the Legislature quit funding the *Kansas Judicial Council Bulletin* which was the tool the Council used to meet the statutory reporting requirement. Since that time the Council has kept the legislature informed and furnished information to those who were interested or requested the information by other means.

#### Section 5

The changes are technical.

#### Section 6

In subsection (c), the word "may" was substituted for "shall", and the word "only" was stricken to allow publication fee fund monies to be used for expenses other than publications. Since passage of K.S.A. 20-2207, the legislature has passed yearly provisos which allows the statute to not apply. The intent is to remove the necessity for those yearly provisos. However, the proposed changes do not clearly state what is intended and the phrase:

"and for operating expenses that are not related to publication activities"

should be added to the end of subsection 6(c), in line 37, on page 3 of the bill. (See attached paste-up.)

#### K.S.A. 20-2205

The bill repeals K.S.A. 20-2205. A copy of the proposed section to be repealed is attached to the end of this testimony. The section should be repealed because the transition of gathering court statistics from the Judicial Council to the OJA has been completed more than 20 years.

#### Fiscal Note

The increase in Council membership has a small fiscal note which the Council intends to absorb within existing resources.

17 Sec. 6. K.S.A. 2002 Supp. 20-2207 is hereby amended to read as  
18 follows: 20-2207. (a) The judicial council may fix, charge and collect fees  
19 for sale and distribution of legal publications in order to recover direct  
20 and indirect costs incurred for preparation, publication and distribution  
21 of legal publications. The judicial council may request and accept gifts,  
22 grants and donations from any person, firm, association or corporation or  
23 from the federal government or any agency thereof for preparation, pub-  
24 lication or distribution of legal publications.

25 (b) The publications fee fund of the judicial council which was estab-  
26 lished in the state treasury pursuant to appropriation acts is hereby con-  
27 tinued in existence and shall be administered by the judicial council. Rev-  
28 enue from the following sources shall be deposited in the state treasury  
29 and credited to such fund:

30 (1) All moneys received by or for the judicial council from fees col-  
31 lected under this section; and

32 (2) all moneys received as gifts, grants or donations for preparation,  
33 publication or distribution of legal publications.

34 (c) Moneys deposited in the publications fee fund of the judicial  
35 council shall ~~may~~ be expended ~~only~~ for operating expenditures related  
36 to preparation, publication and distribution of legal publications of the  
37 judicial council.

38 (d) All expenditures from the publications fee fund shall be made in  
39 accordance with appropriation acts upon warrants of the director of ac-  
40 counts and reports issued pursuant to vouchers approved by the chair-  
41 person of the judicial council or the chairperson's designee.

“and for operating expenses that are not related to publication activities”



REPEAL

1 20-2205. Collection of information on the operation of state court system; duties of court clerks,  
2 sheriffs and police officers.

3 ~~The judicial council and the judicial administrator, in cooperation, shall collect, correlate and~~  
4 ~~disseminate information and statistics concerning the operations of the state court system. On~~  
5 ~~request of the judicial council or the judicial administrator, the clerks of the various courts in this~~  
6 ~~state, and sheriffs and police officers, shall furnish without charge such information relating to~~  
7 ~~rules, methods and procedure applicable in their respective courts, and the condition of legal~~  
8 ~~business therein as may be deemed necessary by the council or the judicial administrator.~~

9 History: L. 1927, ch. 187, § 5; L. 1976, ch. 146, § 8; Jan. 10, 1977.

10 Comment

11 This section should be repealed because the transition from the Judicial Council to the OJA  
12 gathering court statistics has been completed for more than 20 years.