

MINUTES OF THE HOUSE ETHICS AND ELECTIONS COMMITTEE

The meeting was called to order by Chairman Don Myers at 3:30 p.m. on February 18, 2004 in Room 526-S of the Capitol.

All members were present except:

Representative Steve Huebert- excused

Committee staff present:

Martha Dorsey, Legislative Research Department
Dennis Hodgins Legislative Research Department
Ken Wilke, Office of Revisor of Statutes
Shirley Weideman, Committee Secretary

Conferees appearing before the committee:

HB 2629

Proponents: Representative Dale Swenson
Harriet Lange, Kansas Association of Broadcasters
Daniel Clark, Wichita

HB 2811

Proponents: Representative Bonnie Huy
John Todd, Wichita
William T. Davitt, Wichita attorney
Greg Dye, Wichita
W. Paul Degener, Topeka
Walt Chappell, Wichita Citizens for Equal Law Enforcement
Benny Boman, Wichita
Matthew Goolsby, Wichita (written testimony)
Representative Daniel Thimesch

Opponents: Sandy Jacquot, League of Kansas Municipalities
Jim Clark, Kansas Bar Association (written testimony)
Jill Michaux, Rossville city attorney

Others attending: See Attached List.

Chairman Myers opened the hearing on **HB 2629 - Elections; presidential primary, change of date.**

Representative Dale Swenson appeared before the committee as a proponent for **HB 2629**. He said he believes that Kansas should have a presidential primary election and it should be one that counts. He also said that in the past we have had a primary that didn't count, and we simply have canceled it in order to save money. He indicated that this bill would provide the primary early enough that it really would matter nation wide and he would like to see the presidential candidates come to Kansas to campaign.

Representative Swenson told the committee that most presidential primaries now are decided in New Hampshire and Iowa. (Attachment 1)

Harriet Lange, Kansas Association of Broadcasters, appeared before the committee in support of **HB 2629**. She said that she is representing the KAB, which serves radio and television broadcast station members in Kansas. These stations provide more that \$110 million annually in community and public service time and fundraising for worthwhile organizations and causes in their local communities. She indicated that a presidential preference primary in Kansas would allow Kansas voters to be directly involved in the selection of the presidential candidates and much more important players in determining our national leadership. She also told the committee that an early presidential primary election in Kansas could bring more revenue into the state for media advertising and for other services like hotels and restaurants. (Attachment 2)

Daniel Clark, a citizen from Wichita, also was a proponent for **HB 2629**. He said his introduction to voting was in the presidential primary in 1980. He further said he believes that Kansas is an important state and this bill should be passed to have early presidential primary elections in Kansas.

CONTINUATION SHEET

MINUTES OF THE HOUSE ETHICS AND ELECTIONS COMMITTEE at 3:30 p.m. on February 18, 2004 in Room 526-S of the Capitol.

Chairman Myers asked Brad Bryant, Deputy Assistant Secretary of State to give the history of the past presidential primaries in Kansas. Mr. Bryant told the committee that Kansas had presidential primaries in 1980 and 1992. He said the Secretary of State's Office supports a presidential primary election, but it prefers the current law where the Secretary of State's Office has the ability to set the date on a multi-state (5 or more) primary day. He said their office believes that it is more inclusive and democratic having 100's of thousands of voters making those decisions, rather than 100's for a few party regulars. Mr. Bryant answered questions asked by committee members. He confirmed that the bill would change the month of the primary from April to January.

The hearing on **HB 2629** was closed by Chairman Myers.

Chairman Myers opened the hearing on **HB 2811 - Municipal court judges; election.**

The chairman requested that Ken Wilke, Revisor of Statutes, review the bill for committee members. Ken explained that this bill changes the existing statutes pertaining to municipal court judges from being appointed to being elected in cities of the 1st class, 2nd class and 3rd class. Committee members asked Ken whether some municipal court judges are appointed now and others are elected and he said that is a true statement.

The first proponent for **HB 2811** to appear before the committee was Representative Bonnie Huy. She said that a high percentage of the cases heard in municipal court have to do with nuisance ordinance violations, which are not health hazards and that many of the violators are low-income or disabled elderly or all of the aforementioned. Representative Huy told the committee that municipal court judges elected by citizens would be free of their obligation to local government and the pressure to assess fines to generate dollars for that governing body. She believes they should be elected for four years, instead of the present one-year appointment. She also said there should be separation of powers between the judicial and administrative branches of local government. Representative Huy mentioned that there are eleven states that elect municipal court judges. She believes the legislature has a responsibility to ensure that a citizen's encounter in the municipal court system is fair, independent and just. (Attachment 3)

John Todd, Wichita was a proponent for **HB 2811**. He indicated that he has been studying the Wichita Municipal Court since 1997. He has concerns that the court has more power over citizens than most people realize because they can levy hundreds of dollars in fines against citizens and send them to jail for up to one year. He told the committee that the municipal court judges are appointed by the city council and sign an employment contract with that governing body. Mr. Todd also indicated that there have been concerns over the years that municipal court judges are under pressure from the city council members to raise money for the city. He stressed the importance of citizens having a fair trial in a free and independent court. (Attachment 4)

Also appearing in support of **HB 2811** was William T. Davitt, an attorney in Wichita. He said he appreciated the opportunity to share with the committee the corruption in the municipal court in Wichita and it's branch, the environmental court. He told the committee that, currently, the municipal court judges are appointed by the city council and are under the supervision and control of the city manager. He encouraged the committee to allow the citizens of Wichita to elect their municipal court judges and limit the bill's jurisdiction to cities with a population over 100,000. Mr. Davitt said the Kansas Judicial Council has prepared The Kansas Municipal Court Manual so that practice will be uniform in all municipal courts across Kansas, but the municipal court in Wichita does not follow that manual. He had the manual available for any committee member wishing to look at it. In his last comment, Mr. Davitt said that he had information showing that Wichita city officials locked up seven thousand citizens in jail, violating their constitutional rights to due process and costing taxpayer nine million dollars in order to settle the class action. (Attachment 5)

Greg Dye, Wichita, appeared before the committee as a proponent for **HB 2811**. He had concerns that the voting rights of citizens were being taken away and that governmental power was being placed in the hands of the few. Mr. Dye said that the City of Wichita used it's home rule powers to opt out of the state statute requiring municipal court judges to be selected independent of the city government's influence. He

CONTINUATION SHEET

MINUTES OF THE HOUSE ETHICS AND ELECTIONS COMMITTEE at 3:30 p.m. on February 18, 2004 in Room 526-S of the Capitol.

added that the Kansas Constitution was amended in 1961 to add home rule power, giving cities the right to opt themselves out of state law through the use of Charter Ordinance. He believes that home rule power violates Article 4, Section 3 of the U.S. Constitution by creating a government (city) within a government (state) that is not accountable to the state government. Mr. Dye also cited a Supreme Court decision in 1982 finding home rule power unconstitutional. He emphasized the need for Wichita citizens to have the power to select their municipal judges. (Attachment 6)

W. Paul Degener, Topeka, was in favor of **HB 2811**. He said his concern is with the performance of some judges at all levels of government and he believes that all judges should be elected to office rather than appointed. Mr. Degener also indicated that he sees a trend for more appointments to government office instead of being elected by the people. (Attachment 7)

Appearing before the committee as a proponent for **HB 2811** was Walt Chappell, representing Wichita Citizens for Equal Law Enforcement. He said that he has been following the money trail in the municipal court in Wichita and it shows that 80,000 tickets per year are written with a 300% increase in revenue from 1992-1998. Mr. Chappell told the committee that the city manager appoints, and the city council confirms the appointment, of the municipal court judge in Wichita as do other cities in the state. He indicated that it took him three years to get the Wichita Municipal Court Review for 1999-2002. He also said that people need to have respect for the law, but unless they receive justice in the court, without manipulation, they will not have that respect. He believes that to have integrity in the court, judges must be elected. (Attachment 8)

Benny L. Boman, Wichita, came before the committee in support of **HB 2811**. He said that if you must appear before the court, the judge tells you to get a lawyer to represent you, but then the lawyer makes all your decisions for you. He told the committee that if you don't get a lawyer, the judge tells you that maximum fines and jail time will be imposed on you if you do not comply with the court's demands. When you go to trial, he indicated that you are prosecuted by three people; the city prosecutor, the witness for the prosecution-- a Central Inspection employee who wrote you up, and finally the judge who makes the decision on your fate. He believes all three of these people are given their orders from the city manager. He hopes the committee passes this bill to give the people brought before the court a fair trial. (Attachment 9)

Another proponent for **HB 2811** who presented written testimony only was Matthew Goolsby. He supports this bill because he believes it will provide a fair and unbiased municipal judge in Wichita. He said in his written testimony that he recently discovered that local judges are appointed by the city council, a situation which he believes causes a conflict of interest. (Attachment 10)

Representative Daniel Thimesch appeared before the committee in favor of **HB 2811**. He related an experience at a Wichita Area Legislative Coffee with the county commissioner and the legislators present and where the room full of people only wanted to talk about nuisances and code violations, and not other issues. Representative Thimesch said that all cases that were challenged in the District Court in Wichita were thrown out. He told the committee that he sees a definite need to separate the municipal court system from the county commission.

Representative Sawyer said that as a co-sponsor of **HB 2811**, he is a proponent also. Since serving in the legislature a second term, he has received an increased number of complaints regarding the municipal court from his constituents. He said that he has increased concerns about their receiving due process in the municipal court in Wichita.

The conferees who were proponents answered questions asked by committee members. Some questions asked were whether cities could charter out with Home Rule, and if a judge is above reproach when there is no court record. Other members wanted to know the procedure for an appeal to the district court and were told that with a 'not guilty' plea, the defendant must appear in municipal court 5 times before getting a ruling, and if you want to appeal that ruling, you must go to district court and pay a fee for that court. Several committee members wondered why this is a problem only noticed in the City of Wichita and why this issue was not taken up with the Wichita City Commission. One committee member questioned

CONTINUATION SHEET

MINUTES OF THE HOUSE ETHICS AND ELECTIONS COMMITTEE at 3:30 p.m. on February 18, 2004 in Room 526-S of the Capitol.

whether the election process would work better for electing judges than it does for electing city council members.

Sandy Jacquot, League of Kansas Municipalities, appeared before the committee as an opponent to **HB 2811**. She said she opposes the bill because it would impose a "one size fits all" approach on cities. She indicated that with 626 cities in Kansas, at least 500 with population under 1,000, and with 350 municipal courts in Kansas, this bill would not be appropriate for all of them. Ms. Jacquot indicated that only 6 cities in 2001 had full-time judges. She said that municipal courts are set up to enforce municipal ordinances, which are a misdemeanor under state law. Ms. Jacquot also said that municipal court judges are bound by a municipal code of ethics and complaints should be made to the Kansas Judicial Ethics Commission. She told the committee that it is difficult now to find municipal court judges and she believes this bill would make it even more difficult. (Attachment 11)

Written testimony was submitted by Jim Clark representing the Kansas Bar Association, opposing **HB 2811**. In his written testimony he said that he is an advocate for the merit selection of judges, sometimes called "The Missouri Plan" for two main reasons: 1) Merit selection assures an independent judiciary, allowing judges to make decisions that are fair and impartial based on the law, and not on what is politically popular, and it would assure that judicial candidates do not campaign on specific issues or seek support from special interest groups; and 2) Direct election would involve campaign financing, which could have a strong influence on those who seek and attain a judicial position. He also said in his written testimony that merit selection avoids not only the loss of confidence by the public, but also the influence of large campaign contributions. (Attachment 12)

Jill Michaux, city judge in Rossville, appeared before the committee as an opponent to **HB 2811**. She said that many small city courts meet infrequently, some only 4 times a year. She mentioned that in Wabaunsee County, a judge goes to 10 different courts, so these judges would not be willing to campaign in all these elections. Ms. Michaux said that she believes the City of Wichita could elect judges now by Charter Ordinance. As president-elect of the Kansas Municipal Judges Association, she told the committee that her group opposes this bill. In response to a committee member's question, she said that if you are aggrieved in Wichita, you can appeal your case with the district court or file a complaint against the judge with the Judicial Ethics Commission at the Judicial Administrator's Office at the Kansas Supreme Court.

Chairman Myers closed the hearing on **HB 2811**.

The meeting was adjourned at 5:05 p.m. The next scheduled meeting is February 23.

HOUSE ETHICS AND ELECTIONS COMMITTEE

GUEST LIST DATE: February 18, 2004

Your Name	Representing
Paul DeGenerer	Self
Greg Day	Committee to Restore the Constitution Website
William A. Davitt	self
Daniel S. Clark	self
Bennett Bowman	self
John Todd	self
Emily Jacquet	LKM
Jill A. Michaux	Ks Municipal Judges Assn. Rossville Municipal Judge
Keith Taylor	Overland Park
Ken Lumsden	Waterville Muni. Judge
Walt Chappel	Citizens for Equal Law Enforcement
Hans Lunge	Ks Assn of Broadcasters
Robert E. Shubert	SHAKATPE to 02/11
Rep. David J. Thomas	State Rep

HOUSE OF
REPRESENTATIVES

REPRESENTATIVE, DISTRICT 97

STATE OF KANSAS
STATE CAPITOL—ROOM 281-W
TOPEKA, KANSAS 66612-1504
1-800-432-3924
swenson@house.state.ks.us

HOME ADDRESS:

3351 S.MCCOMAS
WICHITA, KANSAS 67217
(316) 304-7257



DALE A. SWENSON

COMMITTEE ASSIGNMENTS

COMMERCE & LABOR
CORRECTIONS & JUVENILE JUSTICE
JUDICIARY
JOINT COMMITTEE ON CORRECTIONS
& JUVENILE JUSTICE
SPECIAL CLAIMS AGAINST THE STATE

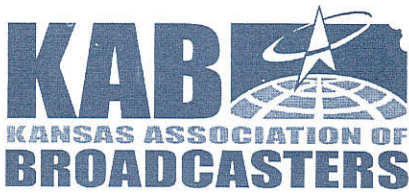
TESTIMONY ON HB 2629
TO ETHICS & ELECTIONS COMMITTEE
FEBRUARY 18, 2004

Kansans have not had an opportunity to choose their nominee for President since 1992. HB 2629 not only restores the voters' right to pick their candidate, it puts Kansas at the front of the pack so we can be the first primary in the Midwest.

In 1996, the Presidential Preference Primary was canceled because Bill Clinton ran unopposed for the Democratic nomination and Bob Dole was the prohibitive favorite to win the Republican nomination. The 2000 and 2004 primaries were canceled due to budget constraints.

This year, the Democrats will choose their nominee by caucus on March 13, long after most of the delegates to the national convention will be selected. The likelihood of the nomination still being contested by then is considered to be slim. The Republican Party State Committee will choose delegates to their convention this year instead of having a primary.

For too long now, Kansas has had a too little, too late attitude about selecting our candidates for President. Our voters deserve an opportunity to vote while it still matters.



1916 SW Sieben Ct, Topeka KS 66611-1656
(785) 235-1307 * FAX (785) 233-3052
Web site: www.kab.net * E-mail: harriet@kab.net

Testimony before House Committee on Ethics and Elections
Regarding HB 2629
February 19, 2004
Harriet Lange
President/Executive Director

Mr. Chairman, Members of the Committee, I am Harriet Lange with the Kansas Association of Broadcasters. KAB serves a membership of radio and television broadcast stations in Kansas – stations which serve the public interest and provide more than \$110 million annually in community and public service time and fundraising for worthwhile organizations and causes in their local communities.

It is because of our interest in serving the public interest that we support a presidential preference primary in Kansas. An early presidential primary in Kansas would be a good thing for the political process here. It would allow Kansas voters to be directly involved in the selection of the presidential candidates, and its passage would make Kansas a much more important player in determining our national leadership

A presidential preference primary would bring national attention to Kansas, and as one of my members put it, “it would allow our member stations to use the presidential primary as a ‘spring board’ to the state and local election process by being there at the primary appearances by the presidential candidates” and covering the candidates and the issues from not only a national perspective, but also from a local and state perspective.

An early presidential preference primary in Kansas also would have the potential of bringing revenues into the state by the various campaigns - not only for media advertising, but also for services like hotels and restaurants and other retail establishments which serve political campaigns and the traveling public.

We appreciate the opportunity to appear before you today in support of
your consideration.

House Ethics and Elections
2-18-04
Attachment 2

STATE OF KANSAS

Bonnie Huy
Representative, 87th District
1142 S. Gouverneur Ct.
Wichita, Kansas 67207
(316) 685-7958



Capitol Building
Room 110-S
Topeka, KS 66612
(785) 296-7644
Huy@house.state.ks.us

HOUSE OF REPRESENTATIVES
87TH DISTRICT

February 18, 2004

Testimony in Support of House Bill 2811
Before the Ethics and Elections Committee
“Election of Municipal Court Judges”

Mr. Chairman and Members of the Committee, I appreciate the opportunity to appear before you in support of House Bill 2811. This legislation is about accountability to the public, separation of powers and open government through the election of Municipal Court judges.

A high percentage of the cases that are heard in Municipal Court have to do with nuisance violations which thrive on the anonymous “snitch” process. Cities often have very stringent nuisance ordinances that often amount to “nit-picking” with only a ten-day turnaround to correct the cited violation. I’m not talking about health hazards here, but rather chipped paint, gutters that need to be cleaned, etc.

For example, a disabled senior constituent who resides in a mobile home in a primarily rural area contacted me about continuously being hauled into court for having a semi-trailer parked in her back yard that she uses for storage. She has had the trailer for years without a problem until a neighbor decided to call code inspection. I drove out to her property and the trailer was hidden from view by tall evergreen trees except for the very top. There was an open field behind the trailer, so it was not an eyesore to the neighborhood. This elderly, disabled woman had racked up close to \$1,500 in fines that she could not pay. The judge ordered her to find a part-time job to pay the fines and to get rid of the trailer. Further, she was to report back to the court to identify where she had applied for employment. In my view, this is over-reaching by a taxpayer-funded government entity.

I’ve sat in on a couple of hearings and observed that most of the people appearing before the Municipal Court for nuisance violations were low-income, disabled, elderly or all of the aforementioned. I’m told that those who can just pay the fine, and then recycle in and out of

House Ethics and Elections
2-18-04
Attachment 3

Municipal Court paying additional fines because they cannot afford the repairs or the beautification requirements of the stringent nuisance ordinance standards.

The power to judge should be an elected responsibility, not an appointed one. The public should have a direct say in who is given that office. HB 2811 would make a Municipal Court judge an elected position rather than an appointed one and would also require Municipal judges to be a resident of the city or territory in which they serve. Nonresidents and nonresident expert employees would no longer be eligible to hold this position. Municipal judges would run as an independent for a four-year term instead of the limited one-year of appointed officials.

With this legislation, elected judges would be less dependent upon political affiliation and, as a result, the public would experience a process that at least in theory is more attuned to justice.

Independent and impartial Municipal Court judges elected by citizens would be free of their obligation to local government and the pressure to assess fines to generate dollars for local government. A former Municipal Court judge told me that he was reprimanded for not generating enough money for the city.

We are not plowing new ground with this legislation. Eleven other states select Municipal Court judges through the election process; nine of them are nonpartisan and two are partisan elections. According to the Bureau of Justice Statistics, June 2000, those states are: Arkansas, California, Georgia, Louisiana, Michigan, Montana, New Mexico, New York, North Dakota, Washington and Wisconsin.

Selecting Municipal Court judges through local government appointments makes as much sense as the Legislature appointing district judges. In my view, the legislature has a responsibility to ensure that a citizen's encounter in the Municipal Court system is fair, independent and just and that the doctrine of separation of powers is preserved.

Thank you for your attention and I'll stand for questions.

Bonnie Huy

1559 Payne
Wichita, Kansas 67203
(316) 262-3681 office
(316) 264-6295 residence
(316) 312-7335 cell
(316) 262-0609 FAX

February 18, 2004

To: Members of the House Ethics and Elections Committee

Subject: Support for the passage of HB#2811, Election of Municipal Court Judges by the People.

My name is John Todd. I am a self-employed real estate broker from Wichita. I am here to speak as a *private citizen in favor* of the passage of House Bill No. 2811 that would allow the *people* to elect their Municipal Court Judges in the same manner and at the same time that they elect their City Council Members and Mayors.

I have been studying the Wichita Municipal Court since 1997. As a frequent visitor to the Court I have witnessed the workings of the Court, and I have had the opportunity to visit with citizens who have appeared before the Court. The Municipal Court has more *power* over citizens than most people know about. The Court can levy hundreds of dollars in fines against citizens, and can send them to jail for up to one year.

One of my first surprises was that there is no stenographic record of the Court proceedings. The Judge and the Prosecuting Attorney, both appointed city employees, can therefore say or do anything they wish *with impunity!* I heard one Municipal Court Judge refer to his docket as the "*cattle call*". On another occasion I observed a citizen threatened with 5 years in prison if he didn't follow the Judges wishes even though the Court jurisdiction only allows a maximum sentence of one year in jail.

I discovered that the Wichita Municipal Court Judges are actually appointed by the City Council. They actually work *at the pleasure* of the City Council from whom they receive their salary. There is no *separation of power* between the City Council (the Legislative Branch) and the Judge (the Judiciary Branch) of city government. The Municipal Court is therefore *not independent* from the *influence* of the City Council. In the late 1990's the Municipal Court Judges were actually required to sign employment contracts with the City Council. Can anyone imagine how difficult it would be for a citizen to protect their *rights* and receive *due process of law* in a Federal or State Court if Federal and State Court Judges worked at the *pleasure* of Congress or the State Legislature!

There are those who contend that the Municipal Courts are a *revenue source* for cities and towns with little thought of justice or doing what the law requires. One could see how a Municipal Court Judge who is appointed by the City Council might come


House Ethics and Elections
2-18-04
Attachment 4

under pressure from City Council members to *raise money*. A Wichita Eagle article reported that Wichita Municipal Court revenues increased from approximately \$4 million to \$9 million over a period of 4 years. That is an increase of over 100% during that time. It is interesting to note that during the same time period that Court fines increased, news media accounts gave no mention of a 100% increase in the crime rate. Does anyone really suspect that the Wichita Municipal Court was more interested in collecting revenue than in dispensing justice?

Why is the election of Municipal Court Judges so important? I would estimate that a huge majority of our citizens who have *their day in Court* do so in the Municipal Court system in our towns and cities across the state. Is it important that people receive a *fair trial in a free and independent Court*? Absolutely yes! Is the citizen's impression and perception as to the quality of justice that is dispensed important? As public servants, I believe you all know the answer to that question.

The election of Municipal Court Judges is the right thing to do. It returns control of the Municipal Courts to the people and makes the Judiciary branch of city government accountable to them. Please *support the passage* of House Bill No. 2811.

Sincerely,



John R. Todd

E-17

FRIDAY

The Wichita Eagle

AUGUST 6, 1999 • 50 CENTS

City court practices spark suit, criticism

■ Some say Wichita Municipal Court's practice of jailing people for failing to pay fines is unconstitutional. The city says it is legal.

By Robert Short
The Wichita Eagle

As Wichita's Municipal Court churns out record revenue, several legal challenges threaten some of the millions of dollars it raises every year.

At issue is whether the city can jail people for not paying long-overdue fines and whether it is providing due process when it does jail them.

Critics of city court include a higher court judge who compared the city's practice to using the jail as a debtor's prison, a defense attorney who says his client was denied his constitutional rights when the city ordered him to jail; and a citizen who says municipal court is used to raise revenue for the city, often at the expense of the poor and minorities.



Reinschmiedt

The city says that its process for jailing people with long-overdue fines is legal. If higher courts take that tool away, the city says, people simply won't pay.

"Year after year, they have no consequences for their actions," said chief Municipal Court Judge Julie Wright-Connolly. "The citizens would really be upset to know that a lot of people walk out of these courtrooms with no consequences for their crimes."

Among the critics of the city court issue is Sedgwick County District Judge Clark Owens.

"I sympathize with the city's position on this," Owens said. "We get tired of deadbeats over here, too. But you've got to find a legal method to force them to pay. You can't just lock them up."

There are several pending legal challenges:
■ David Reinschmiedt, a disabled man who spent more than two months in jail for \$500 in unpaid city fines, sued on July 30, claiming the city denied him several constitutional rights by sending him to jail. Reinschmiedt was jailed after walking away from a program that would allow him to work off his fine.

■ The day Reinschmiedt filed, a Sedgwick County District Court judge ordered the city to stop putting people in jail for unpaid fines.

Pay or be jailed

Millions of dollars could be at stake in a lawsuit filed recently against Wichita Municipal Court. If higher courts throw out the city's two-year-old policy of jailing offenders who don't pay their fines, the city could lose revenue as well as damages in the lawsuit. If they uphold the policy, residents could continue to face jail time that's not part of the original sentence for their offense.

Dec. 23, 1993: Police arrest David Reinschmiedt, a 31-year-old mentally and physically disabled man, on suspicion of DUI. Prosecutors later charge him with that offense.

April 26, 1996: Police arrest Reinschmiedt for petty larceny, and prosecutors later charge him with that offense.

Sept. 9, 1997: By this date, Reinschmiedt has pleaded guilty to both charges, been placed on probation and released from that probation, although he still owes more than \$500 in fines.



Reinschmiedt

Dec. 18, 1997: City officials place Reinschmiedt on the "time-to-pay" docket because he still had not paid the fines and issue a warrant for his arrest.

June 29, 1998: Sedgwick County District Judge Paul Buchanan orders the release of more than 70 prisoners held in jail because they were unable to pay city fines, saying the practice violated the prisoners' constitutional rights and was reminiscent of English debtors' prisons of centuries past. A 1999 state Supreme Court investigator's report says Buchanan did not have jurisdiction to release the inmates.

July 9, 1998: Buchanan responds to a request from inmate William C. Russ Jr., ruling the \$199 in fines he owes the city is not reason to keep him in jail. The 1999 state Supreme Court report supports Buchanan's decision, saying some parts of the city's process does not provide due process.

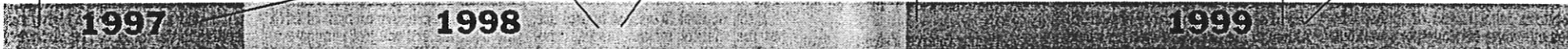
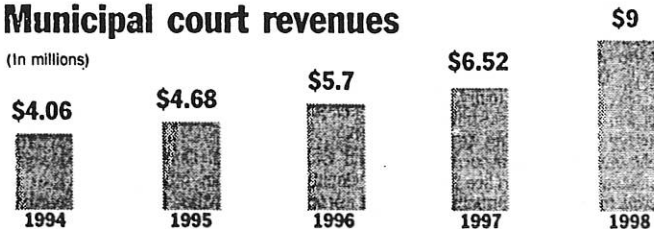
Jan. 8, 1999: Authorities arrest Reinschmiedt.

July 30, 1999: Reinschmiedt files a class-action suit against the city alleging it violated his rights to due process in the contempt process it used to jail him and others. Sedgwick County District Judge Paul Clark orders the city to temporarily stop imprisoning defendants for not paying fines.

Aug. 2, 1999: The Sedgwick County jail holds 64 inmates on a pay-before-release basis.

Municipal court revenues

(In millions)



Sources: City court records, city, county officials, Kansas Supreme Court, Reinschmiedt's lawsuit

COURT

From Page 1A

Attorneys return to the county courthouse Aug. 16 to discuss the order. The judge could eventually make the order permanent.

In June 1998, Sedgwick County District Judge Paul Buchanan ordered the release of more than 70 jail inmates who owed city fines because he thought the city practice was unconstitutional. The city appealed the judge's order to the Kansas Supreme Court, which will hear legal arguments on the issue Sept. 15.

After Buchanan released the inmates and the city appealed, the Supreme Court assigned an investigator to look into the dispute between the two courts. Stephen Hill, a Miami County judge, found Buchanan went beyond his authority, but Hill also sharply criticized the city, in a report filed April 7.

Buchanan declined to comment because the Supreme Court appeal is pending.

Hill said he believes the city, by finding people in contempt of court and sending them to jail, is denying them due process required state law.

The law requires that anyone cited for contempt of court be provided an attorney if needed and a record of the court proceeding. The city has failed to do so, he said.

"The municipal court's shocking lack of pro-

cedures in dealing with contempt appears to be punishing people for being poor and not (for) breaking the law," Hill wrote in his report.

Hill also says a city ordinance that allows judges to send people to jail for failing to pay fines is probably unconstitutional because it singles out poor people.

That is fuel for Reinschmiedt's attorney, Kiehl Rathbun, who makes the same points in his lawsuit. He has asked that the suit be classified as a class action, which potentially would allow hundreds of people who have been jailed for not paying fines to join the suit. That could push damage claims to more than \$1 million, Rathbun said.

Wright-Connolly said she cannot comment on Reinschmiedt's suit, but she defended "the integrity of Municipal Court and the commitment on the part of its judges to address due process concerns and mete out justice in individual cases."

Reinschmiedt's lawsuit comes at a time when Municipal Court is being stung by public criticism that it operates as a cash machine for the city. Annual city court revenues have grown 120 percent in five years, to nearly \$10 million in 1998.

Wright-Connolly says she is offended anyone would suggest the city's four judges, who make decisions concerning domestic battery, drunken driving and other misde-

meanors and traffic offenses every day, are more concerned with generating revenue than with fairness.

"That makes me absolutely livid," she said. "We are talking life-and-death issues. Anyone who would make that allegation demonstrates a complete lack of understanding of what we do here."

'Too poor to pay'

Reinschmiedt is a Wichitan who describes himself as a 36-year-old mentally and physically disabled man with little short-term memory and poor social skills. His attorney says Reinschmiedt can't hold a job.

Reinschmiedt, through his attorney, filed his lawsuit July 30 asking for damages in excess of \$75,000. He was in jail as recently as July 9.

The city policy, he alleges, "allows for the imprisonment of persons solely because they are too poor to pay fines imposed by the Municipal Court for traffic or misdemeanor offenses, which are only punishable by fines."

Rathbun criticized the city's efforts to collect money from people with no means to pay. He said the cost to the Sedgwick County Jail of keeping his client in jail two months — about \$3,000, or around \$50 a day — was six times more than his client's fine.

"The county would have come out ahead by paying his fine for him," Rathbun said. "They could have saved \$2,500."

Jail a last resort

Municipal Court revenues come from fines and fees assessed for traffic infractions, drunken driving, minor drug charges, domestic violence and other misdemeanors.

Wright-Connolly said jail is a last resort for people who won't comply with court fines. She cited one case that was nine years old.

If defendants don't have the ability to pay, they are given options beside jail to work off their fines, Wright-Connolly said. They can do public service hours at a local food bank or library, enter the county's work-release program or do menial labor for the city.

Some of the inmates in jail on the city warrants are waiting to enter one of those programs, records show, but the backlog is often more than a month.

Court records show Reinschmiedt entered the work-release program but walked away. His attorney said his client can't remember his court dates or fulfill his other obligations because of his multiple disabilities.

'Debtors' prison'

When Buchanan ordered the jail to release 76 people last year, he said the practice was reminiscent of English debtors' prisons of centuries past. In court records, he has described the lower court as a "disgrace."

Owens, the county's presiding criminal judge, also has expressed concerns about a

profit motive in Municipal Court.

"A number of judges that are sitting on the District Court bench feel as though the city is not handling the Municipal Court properly and that they are putting essentially quotas on the judges over there — that they are expected to raise revenue if they want to keep their jobs," Owens said during a court hearing earlier this year for Walt Chappell, who appealed a speeding conviction and won.

Chappell, who expressed his concerns about Municipal Court practices to the police chief, mayor and City Council members, said the city court's efforts to raise revenue are unfair and often done on the backs of the poor and minorities.

The lawsuit, he said, "is long overdue." When the Kansas Supreme Court hears arguments this fall, it will consider several issues:

- Did Buchanan have the authority to release inmates?

- Is the city following state law when it cites someone for contempt of court and sends them to jail?

- Is the city ordinance that allows municipal judges to put people in jail for failing to pay fines constitutional?

Wright-Connolly said the city will abide by whatever the court rules later this fall.

Reach Robert Short at 268-6340 or rshort@wichitaeagle.com.

4-4

Op-Ed Page

Due process tough to find in city courts

By Cathy Wilfong
Eagle editorial board

If you're confused by the legal struggle that has arisen between the Wichita Municipal Court and the Sedgwick County District Court, join the crowd. Almost anything involving Municipal Court can be confusing.

At the heart of the legal matter is whether, as two state judges say, the city is violating due process, guaranteed by state statutes and the Constitution, with its 2-year-old practice of jailing people if they fail to pay long-overdue fines or appear in court.

Beyond the legal issue, critics say the Municipal Court is more interested in making money than dispensing justice — often at the expense of poor and minority citizens.

The current dispute began in June 1998, when Sedgwick County District Judge Paul Buchanan ordered the release of approximately 70 jail inmates after learning that they were being held on what is commonly known as a "pay-before-release" basis.

The city denied Judge Buchanan's charge that the practice violated constitutional rights, continued its pay-before-release policy and appealed his actions to the Kansas Supreme Court, which will hear arguments Sept. 15.

The city has since been sued over much the same issue by an attorney representing a mentally disabled man who spent about two months in jail for not paying \$500 in fines. After the suit was filed, District Judge Paul Clark ordered the

stop jailing defendants on pay-before-release warrants until the Supreme Court makes its ruling.

The issues

As anyone who has ever been there knows, Municipal Court can be a head-spinning experi-

PERSPECTIVE

ence. Dockets filled with traffic violations, domestic incidents and other misdemeanors make for a crowded mix of people and lawyers often moving at high speed.

According to state law, when a person is found in indirect contempt of court — such as failure to pay fines — several things must happen before the defendant can be jailed:

- The contempt proceedings must be recorded and documented.

- The defendant must be served notice of any such rulings.

- The defendant has the right to an attorney and the opportunity to defend himself or herself against contempt findings.

According to a report by Stephen Hill, the Miami County judge appointed by the Kansas Supreme Court to look into the dispute between the two courts, the "city has failed to meet ... the due process requirements for indirect contempt of court."

Municipal Court Judge Greg Barker "testified that none of the contempt procedures set out in the Kansas Statutes were followed in the Municipal Court," according to Hill's report.

But the city defends its practices as legally sound. According to municipal judges and city officials, Municipal Court relies on a city ordinance that allows jail time for anyone who doesn't pay a fine.

"The city's position is legal," said Doug Moshier, a senior attorney for the City of Wichita who bases this reasoning on the "home-rule authority of cities in Kansas," which allows cities to request a charter ordinance for laws differing from state rule.

The Supreme Court will make that judgment.

as well as decide whether Judge Buchanan was within his jurisdiction when he ordered the release of inmates jailed for fines.

Robbing the poor?

Then there's the charge that Municipal Court — which last year generated revenues of more than \$9 million, more than double that of five years ago — is more concerned with making money than dispensing justice.

"They're cutting corners to try to save the expense of following the appropriate procedures," said Wichita public defender Phil Journey, who also said that it costs Municipal Court nothing to take people directly to jail.

"That court makes millions and millions of dollars each year for the City of Wichita," Journey said. "If they had to pay for lawyers, it would eat into their revenue."

Since Municipal Court is not a court of record, the proceedings aren't recorded — including contempt rulings. This, according to Hill, not only goes against state law, it discriminates against a certain group of people.

"By not preserving a record of the contempt proceedings, either electronically or stenographically, the city systematically denies a class of defendants from having a meaningful text on appeal," Hill said in his report.

Although Hill believes that Judge Buchanan was overstepping his jurisdiction by releasing the inmates, the Hill report strongly admonishes Municipal Court for its "shocking lack of procedures in dealing with contempt" and for appearing to punish people "for being poor ..."

Others snared by the Municipal Court system also have charged that it's unfair to minorities, and, in some cases, to people with physical or mental disabilities.

Jail records seem to support this accusation. As of Aug. 2, just before Judge Clark's order halting the city court's practice, the court had 64 people jailed on pay-before-release warrants. More than half of them were minorities.

Some attorneys, including Journey, liken the pay-before-release practice to a debtor's prison. "If you don't have the money, you just go to jail," he said.

The city and the Municipal Court judges have vigorously denied that the system's purpose is to generate money for the city or that they are tar-

getting specific groups. They say jail is used as a last resort.

The city points out that people have options besides jail for paying off their fines, including community service or entering the county's work-release program.

But the backlog for entering into one of these programs is often weeks or even months. In the meantime, some defendants with pay-before-release warrants must wait in jail, according to district judges and Hill's report.

"We're not trying to make money," Moshier said. "These are people who have probably had a year or 18 months to pay."

What now?

In some cases, Moshier is right. Many of the people being held on pay-before-release warrants were given extended amounts of time to pay their fines — although usually closer to six months, Hill's report says.

But even scofflaws are entitled to due process. And from all indications, the Municipal Court system has failed that test in the pay-before-release cases.

If the Kansas Supreme Court finds that the city judges are violating due process or that the city ordinance is unconstitutional because it singles out poor people, Municipal Court will face a major overhaul.

The city has several options it ought to consider, whatever the outcome of the court case.

- Even Moshier admits that providing an attorney is "probably something we could accommodate right now."

- The city could expand its community service and work-release programs.

- The city could turn the most serious cases of traffic-fine scofflaws over to the state. That would bring into play the threat of suspension of driver's licenses by the Division of Motor Vehicles.

Of course, some form of punishment must remain in place for those who disobey the law. But currently there seems to be far too much emphasis on jail time.

The heart of the matter remains that the legal rights of all citizens should be respected.

Readers can reach Cathy Wilfong at (316) 268-6400 or cwilfong@wichitaonline.com.



Richard Crowson/The Wichita Eagle

SEPTEMBER 5, 1999 • \$1.50
 The Wichita Eagle



**KANSAS BAR
ASSOCIATION**

PRESIDENT

John C. Tillotson

606 Delaware

P.O. Box 10

Leavenworth, Kansas 66048-2645

Telephone 913-682-5894

FAX 913-682-2668

ASSOCIATION OFFICES

1200 SW Harrison St

P.O. Box 1037

Topeka, Kansas 66601-1037

Telephone 785-234-5696

FAX 785-234-3813

October 30, 1997

Mr. John R. Todd
John Todd & Associates
805 South Main, Suite 103
Wichita, Kansas 67213

Re: Kansas Citizens Justice Initiative

Dear Mr. Todd:

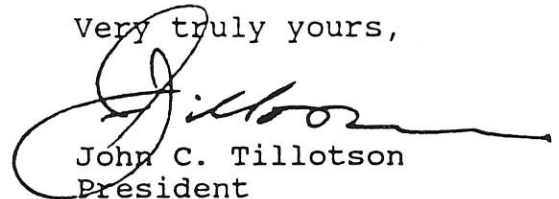
I read with interest your letter of October 23, 1997 describing your concern over the operations of municipal courts.

During the 1974 study of the organization of Kansas courts, the Study Committee recommended that municipal courts be brought into the state court system. This would mean that judges and court procedures would be under the supervision of the Kansas Supreme Court, as are all other general jurisdiction and magistrate courts in the state of Kansas. It would also mean that the proceeds of filings and court costs would be removed from the municipal coffers and placed into the general operations budget for the state court system. This proposal was vigorously resisted by the large municipalities at the time of the 1974 recommendations and it failed to become law. My suspicion is that this source of revenue has become even more important to certain first class cities in the 1990's.

I urge you, however, to approach the Commission members when they meet in Wichita and discuss this matter with them.

Thanks for your interest in our project.

Very truly yours,



John C. Tillotson
President

JCT:mkv

cc: Ms. Jill Docking

6-15-99
eff.

AGREEMENT

By and Between

THE CITY OF WICHITA, KANSAS

AND

GREGORY K. BARKER

MUNICIPAL COURT JUDGE AGREEMENT

THIS AGREEMENT made and entered into this 2nd day of April
_____, 1999, by and between THE CITY OF WICHITA, KANSAS, a municipal
corporation of the State of Kansas, having its principal office at 455 North Main Street, Wichita,
Kansas 67202 (hereinafter called "City"), acting for and on behalf of the CITY COUNCIL, and
GREGORY K. BARKER (hereinafter called "Judge");

WITNESSETH:

WHEREAS, the CITY COUNCIL previously appointed GREGORY K. BARKER as
Municipal Court Judge under an agreement dated June 24, 1997, and GREGORY K. BARKER
desires and agrees to perform the duties and continue such an appointment as Municipal Court Judge
under this new agreement and in accordance with the procedures and qualifications of City of
Wichita Charter Ordinance No. 90, as amended;

NOW, THEREFORE, IT IS MUTUALLY AGREED by and between the parties hereto as
follows:

1. JUDGE'S responsibilities shall include the following, which JUDGE agrees
to perform for the consideration herein set out:

5-4 Municipal Court - Judge
4-2-99

- a. Perform all of the duties and requirements of a Municipal Court Judge, as identified in the job description, attached hereto as Exhibit A, and incorporated herein by reference.
- b. Preside as a JUDGE at all dockets, hearings and all other courtroom assignments as may be scheduled by the Administrative Judge.
- c. Perform all non-courtroom assignments as may be scheduled by the Administrative Judge.
- d. Preside as a JUDGE in a professional manner, courteous to staff and citizens, and free of bias to the issues, parties, or counsel involved and in the best interest of jurisprudence, follow the penalty provisions prescribed by the City Code, and comply with all applicable provisions of state statutes, municipal ordinances, State and United States Constitutions and the Supreme Court Code of Judicial Conduct.
- e. Perform the duties of JUDGE by committing sufficient time to complete each docket assigned and other duties as assigned by the Administrative Judge; devoting sufficient time to complete a specific task rather than work a set number of hours. JUDGE shall diligently work each regular business day and devote no less than eight hours per day and five days per week to his or her official duties and responsibilities as set forth in Exhibit "A."

2. CITY agrees to compensate JUDGE in the amount of \$67,012.00 yearly for the period commencing June 15, 1998, through the term of office to expire the third Monday of April in the year 2001, including the employee benefits provided to City employees, unless otherwise terminated earlier as set out herein. The JUDGE'S compensation is payable at the same time, and in the same manner as employees are compensated through the CITY payroll system, with deductions as authorized. The employment of JUDGES will be governed by the applicable provisions of the City of Wichita Administrative Personnel Policy & Procedure Manual, as revised, for full time exempt City employees in the Management Pay Plan, including any periodic pay adjustments that may be authorized by the City Council for management employees.
3. JUDGE understands and agrees that he is a judicial officer of the CITY, subject to qualification, selection and appointment pursuant to City of Wichita Charter Ordinance No. 90, as amended and Charter Ordinance No. 142, as amended; and subject to rejection and removal by the City Council pursuant to City of Wichita Charter Ordinance No. 90, as amended, as well as suspension and removal as provided in the Rule of the Kansas Supreme Court regarding Judicial Conduct.
4. JUDGE further understands and agrees that he is an appointed judicial official of the City Council subject to suspension and/or removal by the City Council at any time for cause. Such suspension and/or removal for cause will not include the rulings, decisions, and orders on particular cases before the

Judge, the exercise of judicial discretion on particular cases, nor the interpretation of the law applicable to a particular case. JUDGE may withdraw from the appointment and terminate this agreement upon thirty (30) days written notice to the City Council which notice, in order to be effective, must be by certified mail addressed to the City Clerk, and/or the Mayor.

5. JUDGE understands and agrees that he will be subject to periodic performance reviews by the City Council regarding cooperation with the Administrative Judge as to courtroom and non-courtroom assignments, attendance, and devotion of time to assigned dockets. Such periodic review will not include the rulings, decisions and orders on cases before the Judge, the exercise of judicial discretion on cases, nor the interpretation of the law applicable to a case. JUDGE further agrees that he will be available at all reasonable times for conferences and consultation with the City Council, the City Manager, the City Attorney and any other City staff in connection with municipal court operational efficiencies, cooperation with the Administrative Judge as to courtroom and non-courtroom assignments, attendance and devotion of time to assigned dockets throughout the term of the appointment with no additional compensation. Such required conferences and consultation will not include the rulings, decisions, and orders on particular cases before the Judge, the exercise of judicial discretion on particular cases, nor the interpretation of the law applicable to a particular case. It is expressly understood that the City Attorney and/or the City's legal counsel may, to the

extent allowed by law and ethical considerations, present the City's position on the law and facts of a particular case to the Judge.

6. JUDGE understands and agrees that should he be unable to perform any of the duties of municipal court judge because of approved attendance by the Administrative Judge or by the City Manager for City-sponsored training or continuing legal education, or approved use of vacation, sick leave or other approved leave, pro tem judges selected to serve in the place of the JUDGE will be compensated by the City.
7. JUDGE understands and agrees that should he be unable to perform any of the duties of municipal court judge because of non-approved absences and a pro tem judge must be selected, it shall be the responsibility of the JUDGE to compensate the said pro tem for services rendered to the CITY.
8. JUDGE understands and agrees that the City Council will appoint the Administrative Judge. Further, JUDGE understands and agrees to follow the orders, directions, policies and court assignments established and implemented by the Administrative Judge of the municipal court regarding the judicial functions of the municipal court. Failure to follow the orders, directions and policies established by the Administrative Judge shall constitute grounds for termination of this agreement under Paragraph 4 above, except such grounds for termination shall not include the rulings, decisions, and orders on particular cases before the Judge, the exercise of judicial discretion on particular cases, nor the interpretation of the law applicable to a particular case.

9. All pro tem judges selected by the Administrative Judge of the Municipal Court to serve in place of JUDGE will be from a list of qualified attorneys approved by the City Council.
10. This Agreement may not be assigned, transferred, or amended without first having obtained written approval of the City Council of the City of Wichita, Kansas. Any amendment of the terms and conditions of the Agreement must be in writing and signed by the parties. The parties agree and understand that nothing contained herein is intended to confer any benefit upon any third party not a party hereto.
11. This Agreement and any amendments hereto constitute the complete and final expression of the agreement between the JUDGE and the CITY with respect to the JUDGE'S appointment as a Municipal Court Judge.
12. JUDGE agrees to perform under the terms and conditions set forth in this Agreement for the period of the appointment and any extension or hold-over period unless the Agreement is otherwise terminated by the CITY or by the JUDGE. It is expressly recognized that the terms of this agreement are contractual in nature and that the remedies contained herein are not exclusive to any other remedies that may be available at law.
13. If, for any reason, any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.
14. This Agreement shall take effect upon execution by the Mayor and shall continue during the term of the appointment, and any extension or hold-over


period, until such time as the appointment expires without extension, or until such time as either party shall cancel or terminate the same.

IN WITNESS WHEREOF, this Agreement has been executed the day and year first about written.


THE CITY OF WICHITA, KANSAS



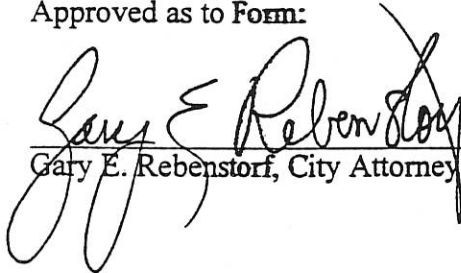
By



Bob Knight, Mayor

ATTEST:


Pat Burnett, City Clerk

Approved as to Form:


Gary E. Rebenstorf, City Attorney


Gregory K. Barker
Municipal Court Judge

(Testimony of William T. Davitt before the Kansas Senate
Judiciary Committee on Monday, March 17, 2003)

(Repeated on Wednesday, February 18, 2004 before House Ethics
and Elections Committee)

Thank you for this opportunity to visit about the
corruption in Wichita Municipal Court and its branch called
Enviromental Court.

And then I will offer my solution.

Several months ago, I saw a Wichita City Official
announce on television that they were going to try to PUSH through
the legislature a bill that will help them use a collection
agency to collect their Municipal Court fines. Another city
official recently stated in the Eagle that he is not going
to retire - gonna' keep on working as long as he is having FUN.

Wichita City Officials do not deserve any help from the
legislature. They do not come before this legislature with
clean hands. Wichita City Officials absolutely refuse to
follow the law and thumb their noses at the Kansas Judicial
Council.

FIRST: The Kansas Judicial Council has prepared THE
KANSAS MUNICIPAL COURT MANUAL so practice will be uniform in
all Municipal Courts across Kansas.

It calls for seperate tables for counsel, chair for
the witness, and a public address system. Wichita Enviromental
Court does not have any of these things. The manual declares
that the court should NOT be located in a police station or

sheriff's office or any location which would suggest the court is an arm of law enforcement. Wichita City Officials thumb their noses at the Kansas Judicial Council and locate Wichita Enviromental Court in a police squad room in a police sub station with a 3 by 5 foot gold and blue banner behind the judge reading: "Wichita Police Department." See attached page 2-5 of manual.

No telephone, no drinking water, no toilet facilities available to defendants. Two large signs on the door that opens into the hall that leads down to police locker room read: "This area for police officers only." By forcing defendants to hold their kidneys and hold their bowels, Wichita City Officials are thumbing their noses at the natural laws of Almighty God. That's the way they have their fun.

SECOND: Pages in this book show that Wichita City Officials locked **SEVEN THOUSAND CITIZENS** in jail, violating their constitutional rights to due process, costing taxpayers **NINE MILLION DOLLARS** to settle the class action. No accountability. No city employee lost his job. Y That's the way they have their FUN. CRUEL.

THIRD: The Wichita Enviromental Court refuses to follow criminal procedure as set out in the law books.

FOURTH: Several years ago, clerk of criminal division of Sedgwick County District Court told me that a large number of phone calls came in exclaiming that they had been convicted

of something minor in Municipal court like speeding -
but the collection agency that the city hired to collect
the fine had stated in the court file that their conviction
was for something very serious like aggravated battery or
armed robbery. That's the way the collection agency has its
FUN. FIFTH: When you walk into the Wichita Municipal Court
look around. The prosecuting attorney, the witnesses who
will testify against you - police officers and city inspectors -
and the judge who will hear the case are all working for the
same boss, the city manager. You don't have a chance.

SOLUTION: Pass a law requiring a city the size of Wichita
(that will get the League of Municipalities off of your back
.....let them go right on appointing their judges if that is
what they want) to let the people elect their Municipal Court
judges. That will make the judges free and independant of
the City Manager. Stop his FUN.

In Nazi Germany 6 million Jews were put to death because
Hitler controlled the courts. When you don't have free and
independant courts you don't have any way to enforce your rights.

CONCLUSION: Please kill this bill and send a message to
Wichita City Officials that this legislature is not going
to help them collect their fines until they stop THUMBING
their noses at the law and the Kansas Judicial Council.

3
Respectfully submitted,

William T. Davitt

William T. Davitt, Attorney At Law, 1205

Bitting Avenue, Wichita, Kansas 67203 ~~Cell phone 871-2135~~

316 263-9850

arranged in such a way as to facilitate the orderly transaction of business in the court.

The courtroom should be located in a well-kept, accessible building. City hall or some other public building is a good location. If possible, it is suggested that it not be located in the police or sheriff's offices or in any location which would suggest the court is an arm of law enforcement.

As a minimum, there should be at least one table large enough to accommodate the defendant and the prosecution and defense attorneys. It is better to have separate tables for prosecution and defense. There should be a table or desk for the judge and a chair for witnesses. There should be a place for observers to be seated in the courtroom as well.

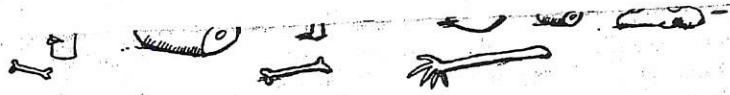
The courtroom should be large enough to accommodate the people who are due to appear on any particular day so no one will have to stand in line to get into the court. It should either be small enough that all can hear or there should be a public address system employed. The courtroom need not be elaborate, but it should be both functional and reasonably attractive. There should be a United States flag and a Kansas State flag in the courtroom if possible. While the degree of formality with which the court proceedings are conducted is a matter for the court to determine, the judge should keep in mind that both the physical appearance of the court and the procedure followed should enhance respect for the court. The traditional trappings of the court room—the elevated bench, the gavel, the flags, the robe, the bailiff and the ceremony—are designed for the psychological purpose of contributing to a well-ordered court and making sure that confidence in the administration of justice is not undermined. Many people will have contact with municipal court who will never appear in another court. Their whole outlook toward the court and the judicial system in general may depend on their observation of the municipal court.

2.08 OFFICES

If possible, the court clerk's office should be separate from the courtroom but close enough to facilitate the orderly transaction of business. The clerk should have ample space for file cabinets to hold court records. If possible, the prosecutor's files should not be kept with the other court records. This is because before trial the judge should not see police records and other documents which might be in the prosecutor's file. Furthermore, the court's records are public, but the prosecutor's records are not. Therefore, it is advisable for the prosecutor to have a separate office and filing system.

The judge should have an office or other work area near the courtroom which has access to state statute books and city ordinances.

THIS PAGE IS FROM "KANSAS MUNICIPAL
COURT MANUAL" (2000)
2-5



WHY WE TURNED OUT LIKE WE DID

JIM BRENNAN
© 2000 WICHITA EAGLE

READER VIEWS

Fiscal explanations

I am not the only Sedgwick County official to put meals on my county credit card. I am one of the few county officials to put copy toner and other office supplies on my credit card. The Eagle now seems to admit that my food expenses were less than 25 percent of what was suggested in the original news story.

I believe that I have already reimbursed the credit-card company for most, if not all, of the charges listed in the June 29 Eagle editorial. Those meals were at functions where several other people were present. Some of those present were not on my staff. Those individuals paid cash. When the bill came around the table, it was easier for me to pick up the tip at the end, along with any meals for my staff. The restaurants simply deducted the cash on the table from the total bill, and the remainder was placed on the credit card. For example, a \$50 food bill will only look like a \$20 food bill on the charge receipt, if \$30 had already been paid in cash. Of course, a 20 percent tip on that \$50 meal will be \$10, not \$4.

I have frequently attended Kansas County Clerk's Association meetings, as was the case at Gallaway's in Winfield. When everyone chipped in their portion at my table, it was easier for me to pick up the whole tip than to prorate it to all the six or eight people at my table. I did not realize that this would give a false impression that I was giving an exorbitant tip.

I notice, in the documents that I have requested, that I am the only official whose receipts have been turned over to the press. Only the copies of the actual credit-card bills from the other officials were made public.

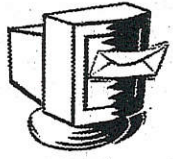
I call on Sedgwick County to make a full disclosure of all credit-card records, including receipts, for all county officials, elected and appointed.

JAMES ALFORD
Sedgwick County Clerk

Fiscal peccadilloes?

No doubt our county clerk, James Alford, has a logical explanation for his

HOW TO PARTICIPATE



Mail: Reader Views, The Wichita Eagle, P.O. Box 820, Wichita, KS 67201
E-mail: weedit@wichitaeagle.com
Fax: (316) 269-6799
For more information, contact Editorial Page Editor Randy Brown at (316) 268-6545, rbrown@wichitaeagle.com, or Commentary Editor Shannon Littlejohn at (316) 268-6367, slittlejohn@wichitaeagle.com.

The day after The Eagle ran its June 25 story about Mr. Alford's gross breach of the public trust, dozens of people received a fund-raising letter from his election committee. No doubt many folks returned it with a handwritten note: "Charge my contribution to your county credit card, Jim." Indeed.

STEVE PLUMMER
Wichita

Keep cycle cops

As a former Wichita police officer who worked as a cycle officer in the '70s, I urge the chief of police not to disband this vital unit. With vigorous traffic enforcement, lives will be saved.

One of our traffic sergeants, Jess Freeman, went to the California Highway Patrol's cycle school; he taught us how to ride and make the necessary defensive moves to avoid an accident. Accidents do happen, whether you are in a patrol car or on a cycle. By eliminating this program, much harm will come to the citizens of Wichita.

DON E. YOUNG
City Manager
Clarksville, Texas

Right on prayer

The Supreme Court's ruling that banned student-led prayer at games is a step forward for this country. Total religious freedom comes when people aren't forced to listen to prayers that don't follow their beliefs. In 1962 (mandatory)

thing. Prayers aren't always welcomed in the public arena. Therefore, they should be kept at home, in church, or in private. Other people might find them offensive, and this needs to be taken into consideration — especially when the prayers are conducted in front of a diverse group of students.

Schools and their related events are for learning and enjoyment. School officials need to make sure that these events are as enjoyable as possible for everyone. The minority has the exact same rights as the majority, and the Supreme Court realized this and made the best possible decision.

MEGAN MORIARTY
Wichita

The court monster

I am a 20-year veteran of law enforcement in Wichita and Sedgwick County. I was there when the Municipal Court system began deteriorating more than 20 years ago. It long ago ceased being about justice and due process, and became entrenched as a revenue source ("Wichita wants state to give city's court sharper teeth," June 23 Eagle).

Clearly, anyone would agree that fines for traffic infractions and misdemeanors are in order. Likewise, court costs are in order for those defendants who wish to go to trial on the merits of their case and do not prevail. But court fees and surcharges equal to court costs for most of us who say, "Hey, I was speeding. I got caught. I am going to pay my fine . . ." is ludicrous at best. It is highway robbery, no pun intended.

In its avaricious quest for revenue, the city has created a monster and is whining to the Legislature to slay the dragon. The Legislature cannot solve the problem. The Municipal Court must be overhauled from top to bottom and get back to the basics of justice and away from the city treasury.

PHILIP L. BOND
WPD Lieutenant, Retired
Wichita

For the moment, public applause is in order.

623 S. Grove
Wichita, Kansas 67211

February 18, 2004

To: House Ethics and Elections Committee

Subject: Testimony in *support* of HB#2811, Election of Municipal Court Judges.

My name is Greg Dye. I live in Wichita. Thank you for allowing me the opportunity to speak in favor of the passage of HB#2811.

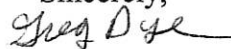
Something is happening that many people view with alarm. It appears to me that there is a movement alive in this country to take away the voting rights of citizens and replace voting rights with appointed representation. I believe this movement is an attempt by these people to take away the rights of citizens and to consolidate governmental power in the hands of the few. Something is terribly wrong with this movement and I believe it violates all the many principles upon which this country was founded.

Judges in the Municipal Court in Wichita are appointed by the City Council. Wichita Eagle Newspaper articles dating back to 1997 to 2000 explain how the Wichita Municipal Court jailed over 7,000 people who were too poor to pay for non-payment of Municipal Court fines without the hearing as required by our system of law to determine if they had the ability to pay those fines. I am of the opinion that this is what happens when the City Council exercises undue influence over Municipal Court Judges. The obvious solution to these types of problems would be for the Municipal Court Judges to be held accountable to the people through their vote.

How did this problem happen? The City of Wichita used it's Home Rule Powers to opt itself out of the State Statute requiring that Municipal Court Judges be selected independent of the City government's influence. By exercising their Home Rule Power, the City of Wichita was consolidating power into the hands of the City Council, rather than into the citizens who vote.

The Kansas Constitution was amended in 1961 to add Home Rule Power which gives cities the right to opt themselves out of state law through the use of Charter Ordinance. Home Rule Power violates Article 4 Section 3 of the U. S. Constitution, by creating a government (city government) within a government (state government) that is not accountable to state government. The U. S. Supreme Court has found Home Rule Power to be unconstitutional in a number of rulings, the latest dating to a 1982 Case No. 80-1380 Community Communications Co., Inc. v. City of Boulder, Colorado.

The Wichita City Council, as allowed under Home Rule bypassed state law by granting themselves the power to appoint Municipal Court Judges. A Court free of the political influence of the City Council and City Manager is essential if the public is to have a place to protect their rights and preserve the due process of law that is required under our system of government. The people need to have the power to select Municipal Court Judges. Let the people vote!

Sincerely,

Greg Dye

House Ethics and Elections
2-18-04
Attachment 6



Archibald E. Roberts
Archibald E. Roberts,
Lt. Col., AUS, ret., Director CRC

BULLETIN

COMMITTEE TO RESTORE THE CONSTITUTION™



#22B

MEMBERSHIP/SUBSCRIPTION: \$25.00
Fee helps mail monthly bulletin to state and county officials, newspaper, radio and television editors.

OCTOBER, 1982

Copyright © 1982
Committee to Restore the Constitution, Inc.
P.O. Box 986, Ft. Collins, CO 80522
Write for free CRC list:
books, cassettes, videotapes.
Colorado Non-Profit Corporation
P.O. Box 986, Ft. Collins, CO 80522
(970) 484-2575

SUPREME COURT DECISION DESTROYS 'HOME RULE' GOVERNANCE*

"As this Court stated long ago, all sovereign authority (within the geographical limits of the United States) resides either with 'The Government of the United States, or (with) The States of the Union'. There exists within the broad domain of sovereignty but these two. There may be cities, counties and other organized bodies with limited legislative functions, but they are all derived from or exist in, subordination to one or the other of these."

UNITED STATES SUPREME COURT

Protected by private guards, opponents of 'home rule' governance recently filed signatures of 18,177 registered voters with Summit County (Ohio) Board of Elections thus guaranteeing a position on the November ballot for their, "Petition to Repeal Summit County Charter".

Charter governance, home rule, metro and other forms of regional government are structured in compliance with 'models' published in the STATE LEGISLATIVE PROGRAM of the Advisory Commission on Intergovernmental Relations, a Washington-based think tank.

Representing labor organizations, deputy sheriffs, Fraternal Order of Police, county elected officials, professional societies, township trustees, clergy, farmers and housewives, a "Coalition for Elected Government", has given Summit County citizens the opportunity to strike a blow for representative government.

"Charter government has made Summit County a 'city state within a state', thus denying inhabitants the protection of state laws", declared Mrs. Marjorie Sofranko, Akron, President, Summit County Chapter, Committee to Restore the Constitution, and Chairman, "Coalition for Elected Government".

Charging that the present appointed form of charter governance violates their right to representative government provided by Article IV, Section 4, Constitution of the United States, and parallel authorities in the Ohio State Constitution, Summit County electors, "... believing that they can better govern themselves by returning to the statutory commissioner type of County Government now prevailing in all of the other 87 counties in the State of Ohio", demand repeal of Summit County Charter and its amendments.

The United States Supreme Court has enunciated this issue very clearly.

*SUPREME COURT OF THE UNITED STATES, Case No. 80-1350, "Community Communications Co., Inc. v. City of Boulder, Colorado, et al," decided January 13, 1982, published UNITED STATES REPORTS (Reporter of Decisions). Copy available from Members of Congress, or Committee to Restore the Constitution, Inc.

"Where rights secured by the Constitution are involved, there can be no rule-making or legislation which would abrogate them". Key No.73, Miranda vs. State of Arizona, 86, S. Ct. 1602, 1966

and,

"Law repugnant to the Constitution is void". Maybury vs. Madison, 1803, L Ed. 60; Cra. 137; ref 6 Whea: 246 & Wal 601

Tempted by the promise of 'free' revenue-sharing funds and federal grants, state lawmakers, in many instances, have adopted 'home rule' statutes prepared by the Advisory Commission on Intergovernmental Relations. These acts have had the effect of disfranchising the electorate and centralizing political power in the hands of regional government administrative appointees.

Summit County Charter, for example, divests elected officials of real political authority and reduces County Council to a perfunctory role. All real decision-making is held by the County Executive, who:

(1) Appoints, suspends, disciplines and removes county personnel, (2) Appoints officers and members of boards and agencies, (3) Approves or vetoes ordinances and resolutions, (4) Serves on the County Board of Revision, (5) Executes contracts, (6) Attends meetings of the County Council, (7) Submits to the Council operating budgets, and (8) Submits to the Council capital improvement programs.

Summit County citizens are considered submissive serfs under Charter governance, permitted little or no input in decisions affecting their lives, liberty and property.

How elected officials are induced to become agents in their own destruction is revealed in the ACIR STATE LEGISLATIVE PROGRAM, Book 2, "Local Government Modernization". Book 2 constitutes 196 pages of model statutes, resolutions and suggested procedure for creating a centralized government. Programs are designed for implementation by state and local governments.

"The suggested legislation", ACIR says assuringly in Book 2, "was circulated in draft form to the following national organizations for their review and comment: Council of State Governments, International City Management Association, National Association of Counties, National Conference of State Legislatures, National

(continued page 2)

Governors' Conference, National League of Cities, U.S. Conference of Mayors."

All of these organizations are interlocked with ACIR.

"Home Rule Powers of Local Governments", page 55 of Book 2, offers the following guidelines for transforming the Republic from a free society to a controlled society:

"The following suggested constitutional amendments (to the state constitution) would grant all functional powers to municipalities and counties, or selected units, that are not otherwise specifically denied in the state constitution or by law".

ACIR then thoughtfully provides a detailed model statute for adoption by the respective state legislatures. The "suggested legislation", is titled, "An Act to Provide for the Modernized Government of Counties; Providing Optional Forms of Government, Consolidation of County Officers, Authority to Perform Full Government Services in Both Unincorporated and Municipal Areas, and Authority to Establish Subordinate Service Areas".

This 'home rule' bill would permit the state legislature to grant all functional powers to the municipalities and counties, or selected units of government, that are not otherwise denied by the state constitution.

"While freeing the bonds of local (home rule) government", ACIR suggests, "the state should, at the same time, exert greater leadership in resolving problems that are interlocal or that affect many localities in the state".

Translation: Turn the burdensome duties of government over to ACIR sub-state regions and agencies.

ACIR objectives are clearly stated on page 66, "County Modernization", of the same book.

"The streamlining of county government is also impeded by the number of elective officers mandated by many state constitutions. 'Constitutionally protected' officers — such as the sheriff, county clerk, treasurer, auditor, coroner, attorney general, assessor, and county judicial officials — present the voter with an overly long ballot . . . In addition, many of these officials are virtually immune from direction by the county chief administrative officer. Placing all county officers . . . on a statutory rather than constitutional basis is a major way of streamlining county structure."

Summit County Charter governance reveals how, "constitutionally protected" county officials may be 'appointed, suspended, disciplined and removed' by the county executive officer.

ACIR claims that there are "several thousand" local jurisdictions with 'home rule' authority. Your city and/or county may be one of them.

Billions of dollars have been sent to ACIR sub-state units of government — linking towns and counties under regional governance — without involving state authorities. 'Home rule' officials thus appear to hold down taxes. At the same time, however, federal taxes and deficits skyrocket.

The scheme also gives ACIR agencies direct control over local affairs, with state governments having little or no say.

Summit County voters will, in November, decide whether they will be dictated to by Washington bureaucrats or live under constitutional laws of Ohio.

Of vital concern to the State Auditor, Attorney General, Secretary of State, and members of the Ohio State Legislature, Summit County campaign to repeal charter (home rule) governance has generated anxiety in adjoining counties, in Northeast Ohio Four-County Planning and Coordinating Agency (NEFCO), Federal Region V

(Chicago), and in Federal regional governmental agencies.

"This is democracy in action", said Summit County Clerk of Courts James McCarthy, head of the repeal group, as petitions were turned in to the Election Board.

William Bantz, the Coalition's lawyer, said that the organization is confident voters will repeal the Charter.

"The tendency to one-man government in this country is against all precepts of representative government", said Bantz. "It was about 200 years ago that the colonists dissented to one-man rule of King George III. We are not about to allow a new reign of King John I to head our county government", said Bantz referring to County Executive John Morgan.

The United States Supreme Court has, fortuitously, come to the aid of beleaguered Summit County citizens.

In the case before it, "Community Communications Company, Inc. v. City of Boulder (Colorado) S. Ct. 835, 13 January, 1982 (Case #80-1350), the Court declared:

"We find nothing in the language of the Sherman (Anti-trust) Act or in its history which suggests that its purpose was to restrain a state or its officers or agents from activities directed by its legislature. In a dual system of government in which, under the Constitution, the states are sovereign, save only as Congress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to the Congress", 317 U.S., at 350-351, 63, S. Ct. at 3313-14.

and,

"Cities are not themselves sovereign; they do not receive all the federal deference of the States that create them. Parker's limitation of the exemption to 'official action directed by the state,' is consistent with the fact that the States' subdivisions generally have not been treated as equivalents of the States themselves. In light of the serious economic dislocation which could result if cities were free to place their own parochial interests above the Nation's economic goals reflected in the anti-trust laws, we are especially unwilling to presume that Congress intended to exclude anticompetitive municipal action from their reach." 435 U.S. at 412-413, 98, S.Ct., at 1136-37.

ACIR MAGAZINE, Spring, 1982, admitted the 'home rule' crisis caused by the Court's decision. In an article, "A Legal Opinion", by Attorney Tom Madden, he stated:

"During the five months since the Supreme Court's controversial decision in Community Communications Co. v. Boulder, speculation about its effects on municipal (home rule) governance has run the gamut from sheer panic to relative sanguinity. To say the least, the January 13 decision sent shock waves through the nation's localities, for the Court held in Boulder that: "Ours is a 'dual system of government,' which has no place for sovereign cities. (Boulder's) ordinance cannot be exempt from (antitrust) scrutiny unless it constitutes either the action of the state itself in its sovereign capacity or municipal action in furtherance or implementation of clearly articulated and affirmatively expressed state policy'."

ACIR counsel Madden stated that the Court's decision has two significant effects. First, it appears to have reduced municipal 'home rule' authority and consequently, altered state-local relations. Second, it opens cities, already reeling under the weight of expensive lawsuits, to even more litigation. It is, he said, a potential Pandora's box of a case. He then concluded with these revealing remarks.

"What effect the Boulder decision will have upon municipal (home rule) governance and state-local relations can only be speculated. Despite legal

certainty, the decision's dissenting judge, Justice Rehnquist, believes it will be devastating. Apparently, broad blankets of granted authority such as home rule are insufficient to protect municipalities from anti-trust liability.

"In the view of Justice Rehnquist, the decision in Boulder 'effectively destroys the home rule movement in the country'."

A state that allows its municipalities to do as they please, said the Court in its decision, can hardly be said to have 'contemplated' the specific anti-competitive actions for which municipal liability is sought (in *Community Communications Co. v. Boulder*). Nor can these actions be truly described as 'comprehended within powers granted'

since the term 'granted' necessarily implies an affirmative addressing of the subject by the State, said the Court.

"Indeed", charged the Court, "respondent argues that as to local matters regulated by a home rule city, the Colorado General Assembly is without power to act . . . Acceptance of such a proposition — that the general grant of power to enact ordinances necessarily implies state authorization to enact specific anti-competitive ordinances — would wholly eviscerate the concepts of 'clear articulation and affirmative expression' that our precedents require".

Vigorous pursuit of the Supreme Court decision by citizens laboring under 'home rule' governance is anticipated.

A LEGAL OPINION*

*by Tom Madden, Attorney, Kaye, Scholer, Fierman, Hays and Handler, published in Spring edition, *A.C.I.R. (Advisory Commission on Intergovernmental Relations) Magazine*, 1982, Vol. 8, #2.

During the five months since the Supreme Court's controversial decision in *Community Communications Co. v. Boulder*,¹ speculation about its effects on municipal governance has run the gamut from sheer panic to relative sanguinity. To say the least, the January 13 decision sent shock waves throughout the nation's localities, for the Court held in Boulder that:

Ours is a "dual system of government," which has no place for sovereign cities. [Boulder's] ordinance cannot be exempt from [antitrust] scrutiny unless it constitutes either the action of the state itself in its sovereign capacity or municipal action in furtherance or implementation of clearly articulated and affirmatively expressed state policy.²

The decision initially has two significant effects. First, it appears to have reduced municipal "home rule" authority and, consequently, altered state-local relations. Second, it opens cities, already reeling under the weight of expensive lawsuits, to even more litigation. It is, if nothing else, a potential Pandora's box of a case.

At issue in the Boulder case was a revocable, nonexclusive, cable television service license assigned to *Community Communications Company, Inc.*, in 1966. In 1979, when *Community Communication* sought to expand its service area in Boulder, another cable provider, *Boulder Communication Company (BCC)*, asked the city's permission to enter the market as a competitor. The city, upon receiving the expansion request of *Community Communications*, enacted an "emergency" ordinance setting a three-month moratorium. The purpose of the moratorium was to prevent *Community Communications* from expanding further — and thereby discouraging potential competitors — while the city council drafted a model cable television ordinance and invited new cable companies to enter Boulder.

Community Communications sued the city in federal court, claiming that the imposition of the moratorium violated Section I of the *Sherman Antitrust Act*. The act provides, in pertinent part, that "every contract, combination . . . or conspiracy, in restraint of trade or commerce among the several states . . . is declared to be illegal."³ The company's suit alleged a conspiracy between *BCC* and the City of Boulder to restrict competition. The suit requested treble damages as provided by applicable antitrust statutes.

In its defense, Boulder maintained that it passed the emergency ordinance pursuant to home rule powers granted by the Colorado State Constitution and that, in regulating cable television, it therefore was acting as the state in local matters. Thus, Boulder argued that it was immune from

antitrust suits under the "state action" doctrine of *Parker v. Brown*.⁴

[W]e find nothing in the language of the *Sherman Act* or its history which suggests that its purpose was to restrain a state or its officers or agents from activities directed by its legislature. In a dual system of government in which, under the Constitution the states are sovereign save only as Congress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress.⁵

Boulder further contended that even allowing for certain ambiguities in *Parker*, its home rule "guarantee of local autonomy"⁶ was sufficient to meet the "clearly articulated and affirmatively expressed" state policy test of *New Motor Vehicle Board v. Orrin W. Fox C.*⁷

The Supreme Court rejected Boulder's arguments. Instead, Justice William Brennan's majority opinion noted that:

[P]lainly the requirement of "clear articulation and affirmative expression" is not satisfied when the state's position is one of mere neutrality respecting the municipal actions challenged as anticompetitive. A state that allows its municipalities to do as they please can hardly be said to have "contemplated" the specific anticompetitive actions for which municipal liability is sought. Nor can these actions be truly described as "comprehended within powers granted," since the term, "granted," necessarily implies an affirmative addressing of the subject by the state.⁸

Thereafter, the Court remanded the case back to the lower courts to determine whether Boulder had in fact violated antitrust law.

Although the Supreme Court had earlier held in the *City of Lafayette v. Louisiana Power and Light Co.*⁹ that a municipally operated power company, which allegedly engaged in predatory conduct aimed at its nonpublic competitors, could be sued for antitrust violations, it was assumed by many that this case was limited by the narrow fact that the City of Lafayette was operating a business which was in direct competition with public utility companies. In Boulder, however, the Supreme Court extended the decision in *City of Lafayette* to an action taken by a city acting in its sovereign capacity in furtherance of its traditional government powers to protect by regulatory action public health, safety, and welfare.

What effect the Boulder decision will have upon municipal governance and state-local relations can only be

(continued on page 4)

speculated. Despite legal uncertainty, the decision's dissenting judge, Justice Rehnquist, believes it will be devastating:

The Court's decision in this case . . . will . . . impede, if not paralyze, local governments' efforts to enact ordinances and regulations aimed at protecting public health, safety, and welfare, for fear of subjecting the local government to liability under the *Sherman Act* . . .¹⁰

Indeed, the ruling does not merely influence municipal regulation of cable television. Cities, after all, routinely regulate zoning, land use, housing, various professions, health care, sport and recreation facilities, the collection of trash — the list could go on for pages. Certainly, if localities were unable to perform such functions it would mean the end of viable municipal government. The problems engendered by Boulder are many and complex, but the "destruction-of-local-government" scenario seems highly unlikely. However, a range of less heinous effects is probable. These effects, and the potential for mitigating them, were the subject of a recent meeting of the National League of Cities (NLC).

A panel of attorneys at the NLC session first concluded that while cities probably will be flooded with lawsuits as a result of the decision, they have, at the same time, an excellent chance of winning in many cases. Moreover, cities have been given some assurance that the U.S. Justice Department does not intend to actively pursue municipal antitrust cases.

Just as important as the question of antitrust *qua* antitrust is the new twist Boulder has given state-local relations. The case exposes some strain in those relations since 23 state attorneys general filed briefs in support of Community Communications. Although the friction may be clear, practical reality of the situation remains somewhat opaque. Apparently, broad blankets of granted authority such as home rule are insufficient to protect municipalities from antitrust liability. In lieu of some federal exemption, states may therefore have to give statutory blessing to every single local decision in order to insure immunity. The latter scenario, according to former U.S. Attorney General Benjamin Civiletti, speaking at the NLC conference, may mean that cities will have to accept "difficult trade-offs" in exchange for state legislation.

The explanation for the Court's ruling in Boulder presumably lies in its historic concern for protection of the statutory policy favoring competition embodied in the antitrust laws. The state action doctrine of *Parker v. Brown* has been narrowly construed and the Supreme Court was certainly aware that there are several thousand local jurisdictions with home rule authority, all of whom could have been immune from the antitrust laws if they passed a patchwork of ordinances restricting competitions. Unfortunately the decision in Boulder appears to seriously undermine the more fundamental principle of federalism which is historical and Constitutional in nature. This principle has allowed states to determine the fundamental and essential ways in which they structure their operations. The home rule movement is in many respects an embodiment of that precept. In the view of Justice Rehnquist, the decision in Boulder "effectively destroys the home rule movement in the country."¹¹

In order to avoid an antitrust liability and the very real cost of such liability, the states will be required to pass new laws, amend constitutions, and perhaps even realign functions between state and local governments. In addition, under previous Supreme Court rulings, it is possible a state

may only be able to confer its antitrust immunity on *Parker v. Brown* to a city or county if the implementation of the policy that purports to create the immunity for a city or county is "actively supervised" by the state itself.¹² The Supreme Court reserved its judgment on this point for subsequent decisions.

(footnotes deleted)

CALL TO ACTION
DON'T STAND IDLE AS YOUR DREAMS TURN TO DUST! Be part of the 'solution' to national crisis. (1) Order copies of October CRC bulletin and mail to your state and county officials. (2) Retype press release below and mail (with Oct. Bltn) to newspapers, radio & television stations in your county. (3) Write to CRC for details on dismantling 'home rule' governance in your city/county.

FOR IMMEDIATE RELEASE

SUPREME COURT DECISION DESTROYS 'HOME RULE' GOVERNANCE

Protected by private guards, opponents of home rule governance recently filed signatures of 18,177 registered voters with Summit County (Ohio) Board of elections guaranteeing a position on the November ballot for their, "Petition to Repeal Summit County Charter."

Charter governance, home rule, metro and other forms of regional government are structured in compliance with 'models' published in the STATE LEGISLATIVE PROGRAM provided by the Advisory Commission on Intergovernmental Relations, a Washington-based think tank.

Representing labor organizations, deputy sheriffs, Fraternal Order of Police, county elected officials, professional societies, township trustees, clergy, farmers and housewives, a "Coalition for Elected Government," has given Summit County citizens the opportunity to strike a blow for representative government.

"Charter government has made Summit County a 'city state within a state,' thus denying inhabitants the protection of state laws," declared Mrs. Marjorie Sofranko, Akron, President, Summit County Chapter, Committee to Restore the Constitution, and Chairman, Coalition for Elected Government.

William Bantz, the Coalition's lawyer, said the organization is confident voters will repeal the Charter.

The United States Supreme Court has, fortuitously, come to the aid of beleaguered Summit County citizens.

Attorney Tom Madden, in an article published in ACIR Magazine, Spring, "A Legal Opinion," admitted that a recent Supreme Court decision has created a 'home rule' crisis.

"During the five months since the Supreme Court's controversial decision" (in the case of *Community Communications Co. v. Boulder*), he said, "speculation about its effects on municipal (home rule) government has run the gamut from sheer panic to relative sanguinity. To say the least, the January 13 decision sent shock waves throughout the nation's localities. . ."

In the view of dissenting judge, Justice Rehnquist, the decision ". . . effectively destroys the home rule movement in the country."

Vigorous pursuit of the Supreme Court decision in the case of *Community Communications Co. v. Boulder* by citizens seeking relief from 'home rule' regional governance is anticipated.

REF: "Supreme Court Decision Destroys 'Home Rule' Governance," October 1982 CRC bulletin.

W. Paul Degener
518 NW 56th St.
Topeka, KS 66617-1311
(785) 246-0215
willypeter@earthlink.net

SUBJECT: HB 2811, Election of Municipal Judges

Mr. Chairman, members of the committee, thank you for allowing me to appear before this panel. My name is Paul Degener, I am a resident of Shawnee County and I am here as a concerned citizen in support of this legislation.

In view of the performance of some judges at all levels of government, it would appear to me that judges should be elected to office rather than appointed. There was a time when I thought that judges held a distinguished place in our judicial system. However, in recent years, some of the decisions handed down by some of our judges have caused me to reconsider my evaluation of their distinguished position.

Some of the decisions handed down which frightens me are their findings on such issues as the so-called separation of church and state. This phraseology cannot be found in the constitution. Findings prohibiting the Pledge of Allegiance in our schools are unconscionable. Prohibiting the display of the Ten Commandments in public settings. There are countless examples of poor decisions by the judiciary.

More and more we are seeing trends toward appointment of government offices. Here in Topeka we just recently had two council members appointed to the city council. And there are instances of proposed legislation in the past that would allow appointment of all elective offices. This is a dangerous road to travel in a representative republic. Appointments to public offices lend themselves to mischief in government.

This legislation would not solve all of the problems we are experiencing nationwide. However, it would be a good start.

Thank you for your time.

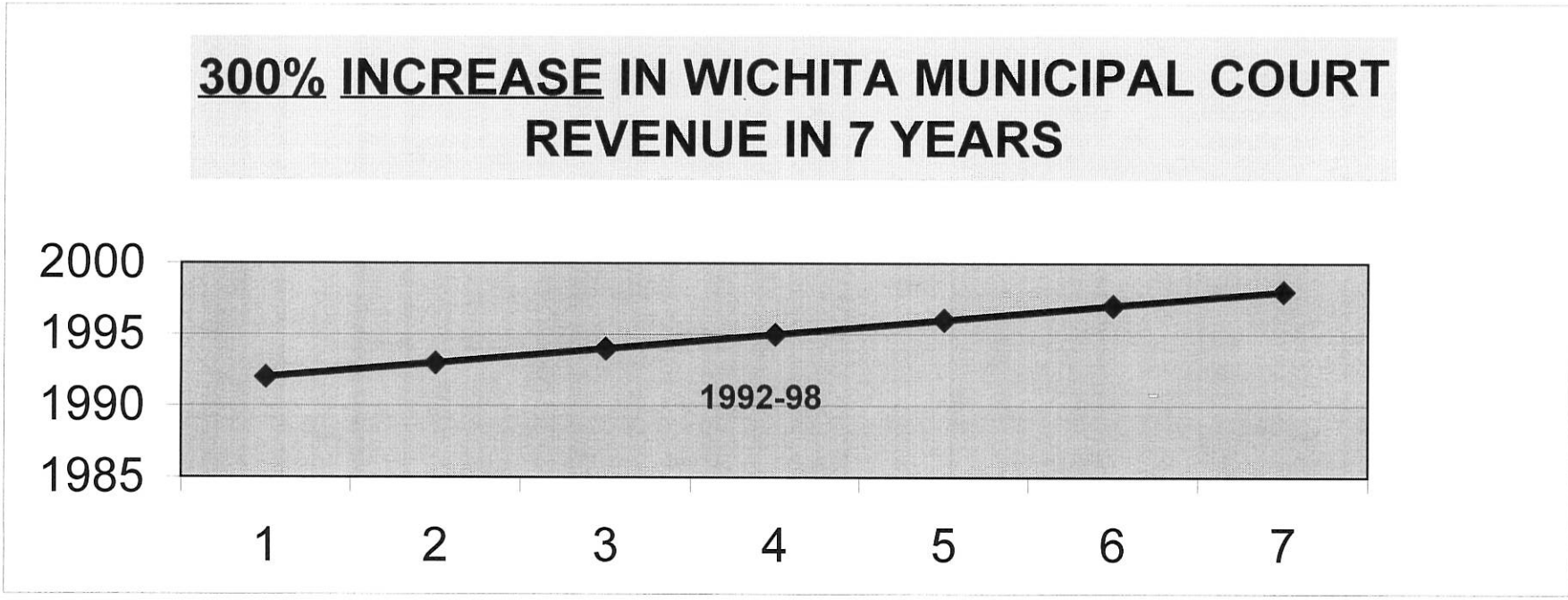
**TOTAL WICHITA MUNICIPAL COURT REVENUE
REPORTED BY WICHITA BUDGET OFFICE**

1992	1993	1994	1995	1996	1997	1998
\$ 3,109,995	\$ 4,091,866	\$ 4,089,170	\$ 4,678,628	\$ 5,714,735	\$ 6,537,205	\$ 9,070,183

Walt Chappell

House Ethics and Elections
2-18-04
Attachment 8

**300% INCREASE IN WICHITA MUNICIPAL COURT
REVENUE IN 7 YEARS**



For further information, contact *Wichita Citizens for Equal Law Enforcement* (316)838-7900

**WICHITA MUNICIPAL COURT REVENUE
1999-2002**

OL3	Description	1999	2000	2001	2002
7600	Traffic court fines	1,752,794.87	1,012,734.36	1,011,308.61	1,205,204.31
7601	DUI fines	278,401.14	256,064.45	269,779.53	286,660.25
7602	DUI diversion fines	101,614.00	118,116.75	115,067.00	200,667.26
7603	Speeding diversion fines	21,453.00	11,431.00	15,834.00	47,413.00
7604	Criminal court fines	599,480.17	548,112.79	544,293.55	401,960.29
7605	Domestic violence fines	13,813.25	7,032.00	25,624.75	88,276.07
7606	DV deferred judgment fine	17,752.00	22,542.50	23,911.50	17,960.00
7607	Petit larceny deferred judgment	15,646.00	16,753.50	15,149.00	16,330.00
7608	Drug court deferred judgment fi	9,273.00	21,649.27	15,099.50	10,659.50
7609	Health, Fire, OCI fines	43,852.25	35,421.84	29,877.25	25,736.00
7620	Traffic court costs	949,674.24	471,268.21	420,068.87	464,004.74
7621	Criminal court costs	272,755.02	270,156.75	271,425.81	229,922.78
7622	Moving tickets court costs	779,094.50	832,957.00	727,002.50	994,230.50
7623	Health, Fire, OCI court costs	15,946.00	11,742.50	12,400.00	9,071.00
7624	Parking late fees	39,025.00	66,951.00	48,778.00	40,260.00
7625	Fire, Health, OCI late fees	3,425.00	3,645.00	3,290.00	2,720.00
7630	Moving violation fines	1,673,014.78	1,470,413.88	1,298,046.56	2,086,237.06
7631	Parking violation fines	334,226.00	406,055.76	304,971.83	291,636.70
7642	Moving ticket warrant fees	35,151.00	38,140.00	29,200.00	29,530.00
7643	Parking ticket warrant fees	28,245.00	71,060.00	36,775.00	33,525.00
7644	Fire, Health, OCI warrant fees	5,370.00	4,882.00	3,911.50	2,810.00
7650	DUI diversion fees	59,830.68	68,769.00	62,085.00	50,842.00
7651	Speeding diversion fees	40,036.66	52,329.50	44,575.26	49,425.00
7652	DV deferred judgment fee	68,335.50	81,024.00	78,451.50	69,614.50
7653	Petit larceny deferred fees	27,816.00	24,757.00	23,403.00	24,564.00
7654	Drug diversion fees	32,446.50	16,325.00	22,256.00	47,210.74
7660	City public defender	266,791.24	220,908.94	199,121.23	246,116.21
7661	CPD fees	36,755.50	30,914.09	45,150.43	53,446.41
7662	Wichita Intervention Program	222,486.91	239,402.29	212,699.66	196,082.31
7663	Docketing fees	172,171.25	158,286.50	149,994.39	161,187.82
7664	DV program fees	337,100.81	168,846.86	151,034.66	185,699.29
7665	Bench warrant/SC fees	348,813.37	174,676.58	162,070.17	119,946.66
7666	Extension fees	32,872.00	21,731.50	12,900.50	20,093.00
7667	Probation fees	75,095.24	70,107.64	78,744.07	56,057.57
7668	Miscellaneous fees	78,982.99	41,273.34	36,778.49	31,538.30
7669	Expungement fees	4,550.00	2,450.00	4,350.00	4,800.00
7670	UA test fees	13,899.50	14,518.00	17,210.25	13,267.84
7671	Fingerprint fees	39,697.99	925.80	20,774.42	19,111.33
9040	Spider - Sedgwick County	(105.50)			
9179	Plant equity fees	1,500.00			
9840	Cash over (short)	(2,348.98)	(613.30)	(493.58)	1,024.01
		\$ 8,846,733.88	\$ 7,083,763.30	\$ 6,542,920.21	\$ 7,834,841.45

Wichita Municipal Court Statistics 1999-2002

Case Description	1999	2000	2001	2002
Moving Tickets Filed	86,304	75,375	63,756	79,426
Moving Citations Paid (Guilty)	46,295	40,519	33,920	45,198
Percent of Moving Citations Paid	53.64%	53.76%	53.20%	56.90%
Parking Tickets Filed	24,460	35,878	24,870	20,250
Parking Citations Paid (Guilty)	18,027	26,885	17,899	14,449
Percent of Parking Citations Paid	73.70%	74.93%	71.97%	71.35%
Moving Warrants Received	11,408	10,677	6,169	8,202
Parking Warrants Received	4,450	9,152	4,503	4,075
Traffic Court Cases Filed	18,235	15,689	14,158	15,911
Criminal Court Cases Filed	7,353	8,250	7,620	7,691
Domestic Violence Cases Filed (Criminal)	4,014	4,071	4,398	4,320
Environmental Cases Filed (Criminal)	1,160	1,250	1,656	1,460
DUI Cases Filed (Traffic)	2,403	2,290	2,191	1,864
Source: Wichita Finance Department				

Municipal Court Judges

February 18, 2004

TO: House Ethics Committee

Subject: HB #2811

My name is Benny L Boman, I live in Wichita {same residence for 47 years}. Thank you for allowing me to speak in favor of the passage of HB #2811.

I would like to sort of walk you through the Municipal Court. If you are unfortunate to be ordered to appear in Court the first thing the judge hits you is get a lawyer to represent you and if you do then the lawyer will make the decisions for you. If you refuse to get a lawyer then the Judge will turn very nasty and tell you that maximum fines and jail time will be imposed on you if you do not comply with their demands.

If you ask to go to trial then things just get even nastier. So you get a trial- then you are prosecuted by a city prosecutor, the witness (Central Inspection employee) for the prosecution who wrote you up testifies against you and then the Judge makes the decision on your fate. All three of these people you face are as far as I know are given their marching orders and paid by the City Manager. At this point it should be obvious to all that it doesn't take a rocket scientist to figure out that it would be nothing short of a miracle if you got justice.

Maybe it is just the appearance of things but it looks like that the former Mayor and city manager is giving every one of the former mayor's campaign donor's in the city of Wichita sweetheart deals then dregging in every poor soul into these Courts and fining them to make up the difference. I hope we can give HB #2811 a try and maybe it will help our children and grandchildren.

Benny L. Boman
1914 Euclid
Wichita Ks 67213
(316)945-0771

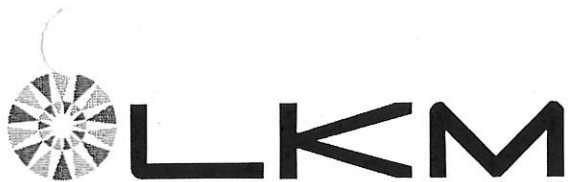
Matthew J E Goolsby
10705 W Ringer
Wichita, KS 67209
316-393-7476 Cell Phone

February 18th 2004

To: Members of the House Ethics and Elections Committee

I am a firm believer in the fact of our Nation was founded on Separation of Powers. I've lived in Wichita all my life and only found out last year our local judges served at the pleasure of our City Council. This is creating a direct conflict of interest in our local Courtrooms. Everyday a Judge has to rule in cases involving citizens and the City. There's no sure way to tell if the ruling will be influenced by the Judge's knowledge that his or her employment could be based on their decision. I've had many conversations with our local Council members. Over and over again I explain what a terrible situation we have in our local courts. I send this testimony in my absence pleading for your passage of House Bill No. 2811, so that we can have a 100% fair and unbiased Judge presiding over cases against one another.

Thank you,
Matthew J E Goolsby



League of Kansas Municipalities

To: House Ethics and Elections Committee
From: Sandy Jacquot, General Counsel
Date: February 18, 2004
Re: Opposition to HB 2811

I would like to thank the Committee for allowing the League of Kansas Municipalities to testify today in opposition to HB 2811. The League opposes this bill because it would affect the way many cities in Kansas have chosen to select their municipal court judges. This bill would impose a "one size fits all" kind of approach on cities. Because of the diversity of our communities, what is appropriate for one city may not be appropriate for all. To put this issue in perspective, there are about 350 municipal courts in Kansas.

Currently, cities have a variety of methods for selecting municipal judges, very few of which are full-time judges. Most are part-time and meet for a varying number of hours per month depending on their caseload. In most cities, the mayor appoints the municipal judge with the approval of the council. HB 2811 takes this power away from the governing body. Instead, municipal judges would be elected by cities at-large for terms of four years. I often hear from city officials about how difficult it is to find a qualified person willing to serve in this position, particularly where it is important for someone to be impartial. Imagine the outcome if municipal judges in small cities had to campaign to their friends and neighbors for what is supposed to be an impartial and independent position. Because municipal judges would have to campaign like any other candidate for local office, their judicial independence could be greatly undermined. Further, in small communities, the distinct possibility exists that no one may run for the office.

Perhaps the most troublesome part of HB 2811 is that elected judges would have to be residents of the city. Numerous cities in Kansas share a municipal judge or at least have a non-resident serving in the position. This is because it is often difficult to find a resident with the time and interest to serve as judge. Again, this raises the possibility that no one in the community may run for the office of municipal judge. Moreover, many communities value the judicial independence they have with a non-resident, where the municipal judge is not judging his or her friends and neighbors. In addition, although only cities of the first class must hire attorneys as municipal judges, the majority of cities try to hire attorneys for that position. Many cities, however, do not have any attorney residents. It is entirely possible that this bill will make it difficult for many cities to continue to have municipal courts.

Once again, I would like to thank the Committee for the opportunity to appear before you today in opposition of HB 2811 and I urge the committee to defeat the bill.

House Ethics and Elections
2-18-04
Attachment 11



**KANSAS BAR
ASSOCIATION**

1200 SW Harrison St.
PO Box 1037
Topeka, Kansas 66601-1037
Phone: (785) 234-5696
Fax: (785) 234-3813
E-mail: info@ksbar.org
Website: www.ksbar.org

February 18, 2004

TO: Members of the House Ethics & Elections Committee

FROM: Jim Clark, Legislative Counsel, Kansas Bar Association

RE: Opposition to **HB 2811**

First, let me apologize for not appearing in person on this bill, but I have a conflicting appearance before the House Judiciary Committee.

Second, please do not consider the lack of personal appearance as an indication of a lack of interest in this bill. The Kansas Bar Association, and its members, considers the process of selecting those who will preside over our cases, and render decisions that drastically affect the lives of our clients, to be a matter of extreme importance.

Because judicial selection is so important, the Kansas Bar Association has long advocated for the merit selection of judges, sometimes called "The Missouri Plan." While the merit selection plan is not always perfect, it is better than the alternatives. Our position is based on two main premises:

1. Merit selection assures an independent judiciary. Our founding fathers had it right. They designed a government with three separate, but equal, branches of government. Each branch of government provides a check and balance to the other two branches. The genius of the judicial branch is that it protects the rights of the individual or the minority against the majority, against the rich, and against the power of government. Our founding fathers deliberately established an independent judiciary so that minority rights could be protected by a branch of government that would not be subject to the whims of the political majority. Judges need make decisions based on the law and not on what is politically popular. Judges should guarantee that neither political majorities nor overzealous officials violate our constitutional rights. Under merit selection, judges, or judicial candidates, are not required to campaign on specific issues, or to seek support from special interest groups. While such campaigns are important in electing members of the legislative or executive branches of government who decide policy issues, they are not appropriate for judges, whose main function is to conduct fair and impartial hearings and to render a decision based on the specific facts and applicable law.
2. Merit selection, as opposed to direct elections, also avoids one of the more controversial political issues of the day: campaign financing. We only have to look at states like Texas and Ohio where millions of dollars are now pumped into judicial campaigns by various interest groups who seek to manipulate the judicial process. These campaigns have a strong influence on those who seek, and those who attain, a judicial position. Just as important, such campaigns have an effect on individual litigants and the confidence of the public in the judicial system. The late Robert Bennett, former Governor and an attorney in private practice, often told the story of a client who pulled him aside just before they entered a courtroom and asked him how much money he had contributed to the judge's election campaign. Merit selection avoids not only the influence of large campaign contributions, but the resulting loss of confidence of the public.

The Kansas Bar Association respectfully requests that this Committee take no action on this bill, or in the alternative, report it unfavorably. Thank you.

House Ethics and Elections
2-18-04
Attachment 12