

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 p.m. on March 3, 2004 in Room 313-S of the Capitol.

All members were present except:

Representative Peggy Long-Mast- excused
Representative Dean Newton- excused
Representative Rick Rehorn- excused
Representative Dan Williams- excused

Committee staff present:

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

Conferees appearing before the committee:

Randy Hearrell, Kansas Judicial Council
Cindy Lash, Kansas Post Audit
Dan Riley, Chief Counsel, Kansas Department of Agricultural
Richard Cram, Department of Revenue

The hearing on **SB 421 - eminent domain; filing the appraisers report within 45 days after entry of order,** was opened.

Senator John Vratil requested the bill but was not able to attend the meeting. He provided written testimony which states that in most cases the 20 day time period is not long enough and it usually has to be extended. (Attachment 1)

The hearing on **SB 421** was closed.

The hearing on **SB 141 - phasing in the use of administrative hearings over years,** was opened.

Randy Hearrell, Kansas Judicial Council, explained that the Office of Administrative Hearings (OAH) was established in July 1998. It conducts adjudicative hearings for SRS and other state government entities. Over a period of several years the House has had bills which expanded the entities which would use OAH, but the Senate has not. Under this bill, the attorney, hearing officer and support personnel from the affected agency would be transferred to OAH. The expansion would take place over a five year period and anyone not listed under the phase-in would be included in 2009. (Attachment 2)

Cindy Lash, Kansas Post Audit, did an audit in 2001 and found that officials from the 8 agencies who'd voluntarily contracted with OAH were pleased with the quality of the work and thought the hearings officers were fair, efficient, and knowledgeable. 2 agency officials said they'd saved money. Post audit found that those officials who expressed concerns about such things as losing control over the process, hearing officers not having enough knowledge of an agency's particular issue or losing federal funding did not present significant barriers to further centralize the OAH.

Dan Riley, Chief Counsel, Kansas Department of Agricultural, appeared as an opponent to the bill. He feels that OAH is excessive in cost by charging a \$25 filing fee and \$70 per hour. The bill does not provide a source of revenue for additional costs to the agency. (Attachment 3)

Richard Cram, Department of Revenue, saw the proposed bill as adding another layer between those the Department is suppose to be regulating. While he opposed the bill he did request an amendment to clarify that KAPA hearings currently presided over the Director of ABC, Director of Taxation and Director of Motor Vehicles not be affected by this legislation. (Attachment 4)

The hearing on **SB 141** was closed.

The committee meeting adjourned. The next meeting was scheduled March 4, 2004.

State of Kansas

JOHN VRATIL
SENATOR, ELEVENTH DISTRICT
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COMMITTEE ASSIGNMENTS
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INTERSTATE COOPERATION

Vice President
Kansas Senate
House Judiciary Committee

March 3, 2004

Testimony of Senator John L. Vratil
in support of SB 421

Senate Bill No. 421 concerns eminent domain and the time for filing of the appraiser's report. Under current law, K.S.A. 26-504, the court is required to fix a time for the filing of the appraiser's report at a time not later than 20 days after the date the appraisers are appointed. The deadline for filing of the appraiser's report may be extended for good cause shown. Commonly, the parties request an extension of time for filing of the appraiser's report because 20 days is insufficient time for the appraisers to conduct a public hearing, view the property in question, and prepare their report. The need to request an extension of time results in added time and expense.

Senate Bill No. 421 amends K.S.A. 26-504 to provide that the deadline for filing of the appraiser's report will be not later than 45 days after the entry of the order appointing the appraisers, except for good cause shown. In other words, the deadline is extended from 20 days to 45 days. The added time will allow appraisers sufficient time to complete their duties and file their report. In many cases, an extension of time to file the appraiser's report will be unnecessary.

I urge your support for Senate Bill No. 421.

A handwritten signature in black ink that reads "John Vratil".

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House Judiciary Committee
3-3-04
Attachment 1



FLEESON, GOOING,
COULSON & KITCH, L.L.C.
L A W Y E R S
EST. 1886

February 6, 2004

Sender's E-Mail Address:
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Gerrit H. Wormhoudt
Willard B. Thompson
Thomas D. Kitch
J. Eric Fngstrom
Stephen E. Robison
Ron Campbell
Gregory J. Stucky
Charles E. Millsap
Edward J. Healy
Linda K. Constable
Charles E. Cole, Jr.
William P. Tretbar
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John R. Gerdes
Kent A. Meyerhoff
Troy W. Purinton
Brian R. Collignon
Amy D. Fellows

Honorable John Vratil, Chairman
Senate Judiciary Committee
Statehouse
Topeka, Kansas 66612

Dear John:

I'm enclosing a copy of your Bill No. 421, which I support as being entirely realistic. I have one suggestion, and that is to insert the words "compensation and" where I have indicated on line 23. That language is consistent with other portions of the statutes, specifically K.S.A. 26-513.

Tell me if you need any testimonial support for your Bill. It has been my experience that within the past 20 years, there has been no case in which the appraisers did not obtain an extension of time beyond the first 20 days in which to file their report. Many of them simply get another 30 days, and so I think 45 days as an initial period is entirely reasonable and supportable. From the condemnor's standpoint, sending out notices of an extension of time and obtaining the appropriate order from the court is a big pain in the fundament, which they would like to be spared. From the landowner's standpoint, I would like those condemnor's lawyers to spend that time considering the merits of my client's position.

Best personal regards,

FLEESON, GOOING, COULSON & KITCH, L.L.C.

By

Phillip Mellor

PSM:ljb
Enc.

SENATE BILL No. 421

By Senator Vratil

2-2

9 AN ACT concerning eminent domain; relating to the filing of the ap-
10 praisers' report; amending K.S.A. 26-504 and repealing the existing
11 section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 26-504 is hereby amended to read as follows: 26-
15 504. If the judge to whom the proceeding has been assigned finds from
16 the petition: (1) The plaintiff has the power of eminent domain; and (2)
17 the taking is necessary to the lawful corporate purposes of the plaintiff,
18 the judge shall entertain suggestions from any party in interest relating
19 to the appointment of appraisers and the judge shall enter an order ap-
20 pointing three disinterested residents of the county in which the petition
21 is filed, at least two of the three of whom shall have experience in the
22 valuation of real estate, to view and appraise the value of the lots and
23 parcels of land found to be necessary, and to determine the damages to
24 the interested parties resulting from the taking. Such order shall also fix
25 the time for the filing of the appraisers' report at a time not later than ~~20~~
26 45 days after the entry of such order except for good cause shown, the
27 court may extend the time for filing by a subsequent order. The granting
28 of an order determining that the plaintiff has the power of eminent do-
29 main and that the taking is necessary to the lawful corporate purposes of
30 the plaintiff shall not be considered a final order for the purpose of appeal
31 to the supreme court, but an order denying the petition shall be consid-
32 ered such a final order.

33 Appeals to the supreme court may be taken from any final order under
34 the provisions of this act. Such appeals shall be prosecuted in like manner
35 as other appeals and shall take precedence over other cases, except cases
36 of a like character and other cases in which preference is granted by
37 statute.

38 Sec. 2. K.S.A. 26-504 is hereby repealed.

39 Sec. 3. This act shall take effect and be in force from and after its
40 publication in the statute book.

Appraisers' and

March 3, 2004

**JUDICIAL COUNCIL TESTIMONY
ON 2003 SB 141**

INTRODUCTION

Senate Bill 141 makes changes to the Kansas Administrative Procedure Act (KAPA) concerning state agencies and hearing officers (which are called presiding officers). Beginning July 1, 2005 and concluding July 1, 2009, all state agencies, boards and commissions subject to KAPA will be "phased-in" to the requirement that the Office of Administrative Hearings (OAH) provide presiding officers for their hearings. On July 1, 2009, the final group of agencies, board and commissions will be "phased-in." On and after July 1, 2009, the OAH will be a separate state agency.

HISTORY

The current Office of Administrative Hearings was established July 1, 1998, by the provisions of K.S.A. 75-37,121. The office is charged with the responsibility of conducting all adjudicative hearings for SRS. The Office of Administrative Hearings may also conduct adjudicative hearings for other governmental entities. The office was initially staffed by transferring all of the staff of SRS Administrative Hearings Section to the Office of Administrative Hearings. That staff consists of eleven employees, the director, five attorneys functioning as presiding officers and five support staff. The physical location of the current office is 1020 SW Kansas Avenue, Topeka, Kansas. In addition to meeting the responsibility mandated by statute, the Office of Administrative of Hearings has been retained by the Department of Administration, the Department of Aging, the Animal Health Department, the Board of Behavioral Sciences, the Department of Commerce and Housing, KPERs, the Juvenile Justice Authority, the Board of Cosmetology, the Board of Veterinary Examiners, the Civil Service Board and the Dental Board to provide presiding officers.

Bills to expand the OAH have been passed by the House of Representatives in 1995 (HB 2213), 1999 (HB 2126) and in 2002 (HB 2488). In addition, such legislation has received favorable recommendations from the Legislative interim committees in 1997 and 2001, and a favorable report from Legislative Post Audit in March 2001. The 1995 and 1999 bills were drafted to immediately transfer all hearings of KAPA agencies to the OAH. In 2001, the bill was redrafted to phase-in the transfer of the responsibility for such hearings over a five-year period, and SB 141 also phases in the transfer and delays until July 1, 2005 the beginning of such transfer.

BACKGROUND

Approximately one-half of administrative proceedings of state agencies are filed in accordance with KAPA. Often, the agency head (secretary, board, commission, etc.) designates someone to serve as presiding officer for an administrative hearing. Typically, such presiding officer is a regular employee of the state agency or a private attorney hired by the agency on a contract basis.

If the presiding officer is not the agency head, the presiding officer renders an initial order. An initial order is subject to review by the agency head on the agency head's motion or upon petition by any party. Under SB 141, attorney hearing officers and support personnel from affected agencies will be transferred to the Office of Administrative Hearings, along with all related property and records. These state agencies will be required to use hearing officers from the OAH to preside as hearing officers for their administrative hearings under KAPA.

THE ADMINISTRATIVE PROCEDURE ADVISORY COMMITTEE

The Administrative Procedure Advisory Committee of the Judicial Council is comprised of state agency lawyers and private attorneys who regularly represent private parties before state agencies. The advisory committee was responsible for the drafting of the Kansas Administrative Procedures Act (K.S.A. 77-501 *et seq.*) and the Act for Judicial Review and Civil Enforcement of Agency Actions (KJRA) (K.S.A. 77-601 *et seq.*). These acts were adopted by the Legislature in 1984 and have worked well, both for the public and state agencies.

KAPA and KJRA generally follow the Uniform Law Commissioners 1981 model state

administrative procedure act, with modifications appropriate for Kansas. A feature of the model act which was not adopted in 1984 related to an Office of Administrative Hearings. Although a majority of the members of the advisory committee have long favored creation of an Office of Administrative Hearings, the issue was not submitted to the 1984 legislature due to the concern that the debate over a central office might impede adoption of the KAPA and KJRA. The proposed bill generally follows the relevant provisions of the 1981 model state act.

REASONS FOR STATE CENTRAL OFFICE

The basic purpose of a central Office of Administrative Hearings is to give administrative hearing officers independence from agencies over whose proceedings they preside. Such independence will promote fairness in the hearing process and a perception of greater fairness, independence and impartiality if the presiding officer is not dependent on the agency for continued employment or advancement.

The central hearing office system consolidates a large number of hearing units into a professional, well-managed agency. This provides efficiency in implementing management systems for quality assurance, better performance evaluations, streamlined hearing processes, better training (including cross-training), opportunities for peer consultation and the opportunity to develop a code of professional ethics.

The central hearing office allows cost reduction by allowing a more even distribution of workload. There is also potential that use of independent hearing officers will cause agencies to more closely evaluate cases and perhaps promote settlements, thus reducing the number of hearings. A central office would likely promote consistency among agency proceedings and consistent policies on a number of issues common to state agencies.

Most states have adopted some form of a central hearing office and their experience is the central office has achieved cost efficiencies. The issue of cost is discussed later in this testimony.

ARGUMENTS AGAINST OAH

As you can see from the history of this concept, a central OAH has been considered by the legislature a number of times. The arguments against it have always been that first, "We are doing

a good job"; and secondly, creation of a central office will result in loss of agency "expertise."

Some agencies have expressed concern that a central office will result in a loss of agency "expertise." To the extent this concern relates to the inability to reflect expertise through policy implementation, it is reduced by the recommended authority of the agency head to review orders rendered by administrative hearing officers. To the extent the concern relates to loss of expertise of the hearing officer, the personnel transferred to the central office will bring along with them the special knowledge of each agency's type of cases, regulations and statutes, and a central office offers the opportunity to impart that specialized knowledge to other administrative hearing officers through cross training. In addition, the OAH has authority to contract with an outside hearing officer if necessary.

In the opinion of the advisory committee, it is not unfair to place the burden on the agency to make known to the administrative hearing officer, and all parties, during the hearing process what the agency considers to be relevant matters of agency expertise or policy. Concerns with expertise of the administrative hearing officer should be balanced against concerns with the impartiality of the administrative hearing officer.


EXPANSION PLAN UNDER SB 141

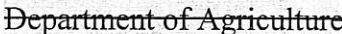
An incremental expansion of the responsibilities of the Office of Hearing examiners is contained in the bill. The expansion would take place over a period of five years. Most years, one or two cabinet level agencies would be added to the office. This allows for manageable expansion. In addition to the cabinet level agency, a group of small boards and commissions would be added each year.

* Denotes agencies currently using OAH

 Denotes agencies stricken by Senate

Year One (July 1, 2005)

 Behavioral Sciences Regulatory Board

 Department of Agriculture

* Department of Health and Environment

- * Department of Social and Rehabilitation Services
- * Juvenile Justice Authority
- * Kansas Animal Health Department
- ~~Kansas Board of Pharmacy~~
- * ~~Kansas Dental Board~~
- * Kansas Department on Aging
- Kansas Insurance Department
- * Kansas Public Employees Retirement System
- Kansas Water Office
- * ~~State Board of Cosmetology~~
- * ~~State Board of Veterinary Examiners~~

Year Two (July 1, 2006)

- ~~Board of Examiners in Optometry~~
- ~~Board of Nursing~~
- Emergency Medical Services Board
- Emergency Medical Services Council
- ~~Kansas Board of Barbering~~
- ~~Kansas Board of Examiners in Fitting & Dispensing of Hearing Aids~~
- Kansas Human Rights Commission
- * ~~Kansas Real Estate Commission~~
- ~~Real Estate Appraisal Board~~
- ~~State Board of Mortuary Arts~~

Year Three (July 1, 2007)

- ~~Consumer Credit Commissioner~~
- Kansas Department of Wildlife and Parks
- Kansas Lottery

Kansas Racing and Gaming Commission
~~Kansas State Banking Board~~
~~Office of the Securities Commissioner of Kansas~~
Pooled Money Investment Board
~~State Board of Healing Arts~~
State Board of Tax Appeals
~~State Board of Technical Professions~~
~~State Department of Credit Unions~~
State Treasurer

Year Four (July 1, 2008)

Agriculture Labor Relations Board
~~Board of Accountancy~~
Board of Adult Care Home Administrators
* Department of Administration
Department of Human Resources
Department of Revenue
Kansas State Grain Inspection Department
Kansas Wheat Commission
State Conservation Commission
State Corporation Commission

Year Five (July 1, 2009)

All Other KAPA Hearings, which includes the Secretary of State, and other miscellaneous boards.

COSTS

Proponents of the central panel system maintain that the system reduces costs by reducing staff and allowing for central computerization. Maryland, Minnesota, Missouri, New Jersey,

Tennessee and Wisconsin all realized savings as a result of implementing a central hearing officer system.

The March 2001 Legislative Post Audit Report states that Texas reported that by transferring six large agencies' hearings to the centralized administrative hearing office, the state realized an 18% saving which was \$600,000.

In Kansas, there may be some unanticipated savings. An example is that the FY 2004 budget eliminated the Appeals Section of the Department of Health and Environment. That Section had a budget of \$150,000 and 2.5 FTE's. Functions of that office were transferred to the OAH. OAH contracted to provide all hearing services for \$50,000 in FY 2004, a savings of \$100,000. Had SB 141 passed last year, the passage of the bill would have been credited with such savings.

SENATE COMMITTEE

- Made amendments suggested by Judicial Council, which moves effective date back one year and makes other amendments which are nearly all technical.
- Made amendments suggested by Department of Agriculture, which sets up a dual tract system that lets parties use a hearing officer from the Department of Agriculture or request a presiding officer from the Office of Administrative Hearings hear the matter.
- Amended K.S.A. 74-4904 to allow KPERS to either appoint its executive director or use a presiding officer from the Office of Administrative Hearings to hear matters.

SENATE COMMITTEE OF THE WHOLE

- Made amendment that struck the licensing and fee agencies from the bill.



KANSAS

DEPARTMENT OF AGRICULTURE
ADRIAN J. POLANSKY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on Senate Bill 141

to

The House Judiciary Committee

**by Dan Riley
Chief Counsel
Kansas Department of Agriculture**

March 3, 2004

Chairman O'Neal and committee members. Thank you for allowing the Kansas Department of Agriculture to submit testimony on Senate Bill 141.

Senate Bill 141 raises very serious concerns within the Kansas Department of Agriculture, both in terms, its monetary impact on the agency and the detriment to our regulatory processes.

In calendar year 2003, the Department of Agriculture conducted more than 300 legal processes involving a hearing officer. This number includes the entire spectrum from preliminary matters to full formal hearings, and it includes matters from the diverse programs in one department — Division of Water Resources, Pesticide and Fertilizer, Weights and Measures, Meat and Poultry Inspection, Dairy Inspection, Agricultural Commodities Assurance and Plant Protection and Weed Control. The procedures varied in complexity from very straightforward matters of noncompliance to complex, protracted and involved administrative litigation in others. The hearing officers used by the department were assigned based on their knowledge of the subject matter and the complexity of the issues involved.

The department uses two contract hearing officers who are licensed attorneys with a background in the specific law the cases involve. We use in-house hearing officers for administrative matters that are less complicated. In-house hearing officers are selected from program managers who exhibit the ability to conduct a full and fair hearing, and they are provided instruction to enhance their abilities. Each is assigned a staff attorney to help with the hearing or to help draft orders. The in-house hearing officers function in a manner akin to magistrates in the district court system.

House Judiciary Committee

3-3-04

Attachment 3

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By using hearing officers dedicated to the particular area of law involved, the administrative process is carried out with a degree of flexibility that is needed to best serve the Kansans we regulate. Many of those individuals appear without an attorney, and they have very little experience with the legal process. Many are located in remote areas of the state, and their location or vocation makes traveling to Topeka for a hearing a challenge. By using our own hearing officers, we are able to schedule matters to accommodate the needs of our regulated community, schedule hearings in remote locations to limit long-distance travel, and tailor the process to make it the most conducive to resolution and cause least inconvenience for all involved.

The quality of our process is reflected by the infrequency of appeals or further challenges to agency-level adjudications. In calendar year 2003, a total of nine petitions for judicial review of department orders were filed in the district courts. Of those, four are pending and five were either dismissed or the agency ruling was upheld by the court. These numbers reflect that the hearing process, and hearing officers particularly, conduct full, fair hearings and issue decisions based on the facts presented. As an agency, we take pride in the quality of our process.

Senate Bill 141 transfers the current functions of the Department of Administration's office of administrative hearings to what would eventually become an independent agency. The bill is silent on the fees that would be charged for providing hearing services. The Department of Agriculture has, on a few cases, asked the office of administrative hearings to preside. The cost in those few cases greatly exceeded the cost of conducting the process by any other method. In those cases, OAH assesses a \$25 filing fee and charges another \$70 an hour, billed in quarter-hour increments, for services provided. In addition to excessive costs, the hearing officers often had little background in the particular area of law, little flexibility in scheduling for either party, and little interest in facilitating settlement.

Based on calendar year 2003 numbers, if all 300 of our legal procedures had been conducted by OAH, the cost would have exceeded \$7,500 in filing fees alone. If a conservative estimate of three hours of billable time per case was assessed, it would cost an additional \$67,500 in fees for hearing officer costs. That's a very conservative total estimate of \$75,000 if these procedures had been conducted by OAH. In contrast, in 2003, the Kansas Department of Agriculture spent \$10,900 on hearing officers for the 300 procedures we conducted.

The Senate Judiciary Committee amended the bill following our testimony by making a hearing before the office of judicial administration an option for any individual or entity either with the right to or obligated to appear before the department of agriculture in a hearing subject to KAPA. That action was a step in the right direction, but doesn't resolve the problem this bill would create if it became law. The bill contains no provision or commitment of a source of revenue for the additional costs it would create for the agency. The fiscal note that accompanies the bill includes only a fraction of the costs related to start-up costs for OJA. None of the additional costs to the agency, conservatively estimated to be nearly \$70,000 annually, are included in the fiscal note. At a time when every dollar available to the agency becomes tougher to come by, the additional revenue that SB 141 would require from KDA would only worsen our situation.

The OJA provides a necessary service for those agencies that desire or require their services because they either can't, or prefer not to, conduct hearings within their agencies. It should not, however, be mandatorily imposed on agencies that do not desire their services. Any such mandatory provision that includes a substantial increase in costs to the agency should also include a source of revenue.

Thank you for again for the opportunity to present this testimony.



K A N S A S

JOAN WAGNON, SECRETARY

DEPARTMENT OF REVENUE
POLICY AND RESEARCH

KATHLEEN SEBELIUS, GOVERNOR

March 3, 2004

Testimony to the House Judiciary Committee, 3:30 p.m., Room 313-S
Richard Cram, Director of Policy and Research

Senate Bill 141

Chairman O'Neal and Members of the Committee:

Senate Bill 141 proposes to create an office of administrative hearings independent of the Department of Administration. This bill raises some serious concerns for the Department of Revenue.

This proposal would add another layer of bureaucracy (the proposed office of administrative hearings) between the affected state agency and those persons the agency must regulate--**without any showing of deficiency or failure by the state agency** justifying this drastic change. **This proposal will increase costs and cause unnecessary delays in the Department's actions concerning licenses it regulates, possibly undermining the Department's efforts to collect delinquent taxes owed by licensees.**

Interpretation of Subsection 34(i)(4)

Subsection 34(i)(4) provides that on or after July 1, 2008, the Department must utilize the office of administrative hearings for "adjudicative proceedings in which the presiding officer is not the agency head or one or more members of the agency head." Under the definitions in K.S.A. 77-502(a) and (b), it appears that the term "agency head" should include the Secretary of Revenue, and the various division directors, including the Director of Taxation, Director of Motor Vehicles, and Director of Alcohol Beverage Control. Subsection 34(i)(4) of Senate Bill 141 should mean that, so long as the presiding officer of an adjudicative proceeding is the Secretary or the appropriate division or bureau director, the adjudicative proceeding under KAPA would remain with the Department, even after July 1, 2008. Proponents of this bill have indicated that this interpretation differs from theirs—only KAPA hearings conducted by the Secretary of Revenue would remain within the Department. If the proponents' interpretation is correct and our interpretation is incorrect, we would request adoption of the attached balloon amendment, in order to make clear that KAPA hearings now being conducted by the Director of Motor Vehicles, Director of Taxation, or Director of Alcohol Beverage Control should remain within the Department.

Several officials in the Department currently conduct KAPA hearings for administrative appeals of various types of license suspensions, revocations or fines, including: the Alcohol

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House Judiciary Committee

3-3-04

Attachment 4

Beverage Control Director (liquor licenses), Director of Taxation (LP gas dealer and motor vehicle fuel distributor licenses; cigarette licenses), Director of Motor Vehicles (motor vehicle dealer licenses), and Bingo Administrator (bingo licenses). KAPA hearings for drug tax assessment appeals are the responsibility of the Director of Taxation. With regard to bingo, K.S.A. 79-4707 specifically assigns the duties of hearing officer for appeals of fines, suspensions and revocation of licenses and registration certificates to the administrator of charitable gaming.

If this bill transfers to the office of administrative hearings any KAPA hearings currently being conducted by the Alcohol Beverage Control Director, Director of Taxation, or Director of Motor Vehicles, then this bill could have significant adverse cost impact on the Department and could also negatively affect the Department's ability to administer particularly the licensing provisions discussed above.

Motor Vehicles Division

The Director of Motor Vehicles administers the motor vehicle dealer licensing laws and currently acts as the presiding officer for motor vehicle dealer license revocation hearings. These license revocation hearing is an important and very effective enforcement tool in requiring motor vehicle dealers to stay current on their sales tax and withholding tax liability to the state. Dealers who become delinquent in their tax obligations face a license revocation hearing in from of the Director of Motor Vehicles. This was a subject of a recent Legislative Post Audit Performance Report, recommending that dealer license revocation be used as an effective tax collection mechanism. Also, the Director, and the Division of Motor Vehicles, have developed special expertise in administering the motor vehicle dealer license laws. Moving dealer license revocation hearings to the Office of Administrative Hearings will offer tax-delinquent dealers a means to further delay or defeat the Department's tax compliance efforts, and it may also delay and impede the Director's ability to effectively administer the motor vehicle dealer licensing laws.

Alcohol Beverage Control (ABC) Division

This proposal could have a profoundly negative effect on ABC's ability to administer the liquor laws. For example, renewal of a liquor license can be denied by the Alcohol Beverage Control Director for failure to remain current in liquor taxes. As discussed above, moving the KAPA hearing outside of ABC on action taken to deny renewal of a liquor license for nonpayment of liquor taxes could delay or thwart compliance efforts. The ABC Director is uniquely situated to have in-depth knowledge of the liquor laws and their appropriate application. His awareness of the gamut of liquor issues -- and his regular and ongoing contact with both the liquor industry and the field agents who enforce the liquor laws -- enhances his ability to understand cases and to be fair in rendering judgment. The same would generally be true with regard to other "ABC" hearings, including tobacco, bingo and drug tax hearings. Furthermore, this would complicate the administrative tasks preliminary to and in support of such hearings. Licensees who receive citations or summary orders charging them with violations frequently contact the ABC office (and particularly the Licensee Administrative Actions section) with questions about the hearing process, to request continuances, and to discuss settlement opportunities. This could create logistical difficulties if the hearings were scheduled externally.

Drug Tax Appeals

Currently, the hearing officer and attorney handling drug tax appeals permit the taxpayer's attorney to delay resolution until after the associated criminal case is resolved. This results in over 95% of the appeals ending in settlement and only about 2 or 3 appeals going to formal

hearing each year. If the new office of administrative hearings created by the bill chooses to strictly enforce subsection (b)(2) of K.S.A. 77-511 (KAPA time limits), then the number of drug tax appeals going to formal hearing could increase drastically (probably to 40 or 50 or more per year). This will take more preparation time for the department's drug tax attorney. In addition, the hearing officer time, court reporter time and overhead expense passed on by the office of administrative hearings to the Department will result in substantially increased costs.

If KAPA hearings are moved, this bill could increase the department's administrative costs.

If the intent of this bill is to move all of the above hearings to the office of administrative hearings and if the Department would be required, under Subsection 34(g), page 36, lines 32 through 34, to pay that office for such services, then the Department will require additional funding for those costs. For purposes of cost estimation, it is assumed that a fee schedule of \$100 per hour for hearing officer time would be used.

The Department estimates that approximately 256 hours per year are expended in preparing for and conducting administrative hearings in the bingo, drug tax and vehicle dealer licensing areas of the agency. If we assume a reimbursement level of \$100 per hour to be paid to the office of administrative hearings, the cost to the Department would be \$25,600 in FY08, based on recent past experience. The Department estimates that approximately 240 hours per year are expended in preparation for and the holding of administrative hearings that are ABC related. Assuming the same \$100 reimbursement level as above would result in a cost to the Department of an additional \$24,000 in FY08.

Section 4(b)

This Subsection encompasses property and records pertaining to the powers, duties and functions transferred to the office of administrative hearings. The records used for conducting car dealer's licensing hearings (administered by the Director of Motor Vehicles) are maintained on the licensing bureau's imaging system in the Division of Motor Vehicles. Transferring these to the office of administrative hearings will require duplication of records and will complicate record maintenance and upkeep. In addition, the results of all hearings will need to be reported to the dealer licensing bureau so that records for the dealership being reviewed can be updated to reflect the results of the hearings. Assuming the field investigators are not transferred, they will need to be informed of hearing dates and when they must testify. The field investigators will also need to be timely informed of the results of all hearings. Confidentiality of records issues may also arise. The confidentiality laws bar the Department from disclosing certain records to persons outside the agency.

Conclusion

The Department requests that the bill be amended to clarify that the KAPA hearings currently presided over by the Director of ABC, Director of Taxation and Director of Motor Vehicles are not to be affected by this legislation.

1 —~~(5)~~ (3) to facilitate the performance of the responsibilities conferred
2 upon the office by the Kansas administrative procedure act.

3 ~~(f)~~ (g) The director may:

4 —~~(1)~~ Maintain a staff of reporters and other personnel, and

5 —~~(2)~~ implement the provisions of this section and rules and regulations
6 adopted under its authority.

7 ~~(g)~~ (h) The department secretary of administration may adopt rules
8 and regulations to establish fees to charge a state agency for the cost of
9 using an administrative law judge a presiding officer.

10 ~~(h)~~ (i) The following state agencies, boards and commissions shall
11 utilize the office of administrative hearings for ~~adjudicative proceedings~~
12 **conducting adjudicative hearings under the Kansas administrative**
13 **procedures act** in which the presiding officer is not the agency head or
14 one or more members of the agency head:

15 (1) On and after July 1, ~~2004~~ 2005: Department of social and reha-
16 bilitation services, juvenile justice authority, department on aging, ~~de-~~
17 **partment of health and environment**, state board of pharmacy, Kansas
18 dental board, state board of veterinary examiners, behavioral sciences
19 regulatory board, state board of cosmetology, Kansas public employees
20 retirement system, ~~the department of agriculture~~, Kansas water office,
21 Kansas animal health department and Kansas insurance department.

22 (2) On and after July 1, ~~2005~~ 2006: Kansas real estate commission,
23 real estate appraisal board, state board of mortuary arts, Kansas board
24 of barbering, board of nursing, Kansas board of examiners in fitting and
25 dispensing of hearing aids, board of examiners in optometry, emergency
26 **[Emergency]** medical services board, emergency medical services council
27 and Kansas human rights commission.

28 (3) On and after July 1, ~~2006~~: Department of health and environment,
29 state **2007: State** board of healing arts, Kansas lottery, Kansas racing
30 and gaming commission, ~~Kansas state banking board~~, consumer credit
31 commissioner, state department of credit unions, office of the securities
32 commissioner of Kansas, state treasurer, pooled money investment board,
33 Kansas department of wildlife and parks, ~~state board of technical profes-~~
34 ~~sions~~ and state board of tax appeals.

35 (4) On and after July 1, ~~2007~~ 2008: Department of human resources,
36 state corporation commission, state conservation commission, agricultural
37 labor relations board, ~~citizens' utility rate payor board~~ department of
38 administration, department of revenue, board of adult care home admin-
39 istrators, ~~board of accountancy~~, Kansas state grain inspection department
40 and Kansas wheat commission.

41 (5) On and after July 1, ~~2008~~ 2009: All other Kansas administrative
42 procedure act hearings not mentioned in ~~the above subsections~~ **subsec-**
43 **tions (1), (2), (3) and (4):**

except for adjudicative
hearings under the Kansas
administrative procedures
act conducted by the
director of taxation,
director of motor vehicles,
or the director of alcohol
beverage control