Approved: 3-25-04
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 p.m. on March 8, 2003 in Room 313-S of the Capitol.

All members were present except:
Representative Dean Newton- excused
Representative Tim Owens- excused
Representative Dale Swenson- excused
Representative Dan Williams- excused

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

Conferees appearing before the committee:
Senator Jay Emler
Judge Pat Caffey, Municipal Court Judge, Manhattan
Tom Bell, Kansas Hospital Association
Ron Hein, HCA

The hearing on **SB 354 - municipal court pre-trial authority to detain**, was opened.

Senator Jay Emler explained that the proposed bill was an attempt to combine 3 statutes. He introduced Judge Pat Caffey, Municipal Court Judge, Manhattan, who spoke in favor of the bill. (Attachment 1) He stated that there are two substantiative changes in the bill:

1. Clarifies the procedure for the city attorney to cause a notice to appear to be issued or an arrest warrant if a municipal judge finds probable cause exists
2. Changes the procedure regarding holding a person after arrest and bond settings to 48 hours instead of 18 hours.

The hearing on **SB 354** was closed.

The hearing on **SB 321 - contempt powers of municipal court judges**, was opened.

Judge Pat Caffey, Municipal Court Judge, Manhattan, appeared as a proponent of the bill. He explained the bill expands the powers of municipal court judges to hold a person in contemp and makes clear the defendant can appeal the finding of contemp to the district court. (Attachment 2)

The hearing on **SB 354** was closed.

The hearing on **SB 343 - repeals K.S.A. 2003 Supplemental 65-441a concerning hospital**, was opened.

Tom Bell, Kansas Hospital Association, explained that the bill repeals law enacted in 2003 which required that when there is a proposed change in control of a not-for-profit hospital by sale, merger or any other event that may result in a change or loss of the hospital's federal tax exempt status or forfeiture or amendment of the hospital's articles of corporation that alters the original purpose of the hospital, a new foundation must be formed and all the assets of the hospital must be transferred to the foundation. The law was deemed unconstitutional by a Johnson County District Court Judge.(Attachment 3)

Ron Hein, HCA, appeared as a proponent of the bill. He reminded members that the 2003 legislation was passed to address one issue, the acquisition of Health Midwest and its system of hospitals in Missouri and Kansas by HCA. The acquisition is finished and there is no need for the statute anymore. (Attachment 4)

The hearing on **SB 343** was closed.

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on March 8, 2003 in Room 313-S of the Capitol.

Chairman O'Neal appointed the following members to a subcommittee on **HB 2741 - health care decisions made by a surrogate when agent is not available**,: O'Neal, Jack & Crow.

SB 421 - eminent domain; filing the appraisers' report within 45 days after entry of order

Representative Patterson made the motion to report **SB 421** favorably for passage. Representative Mast seconded the motion.

Representative Patterson provided the committee with a balloon amendment which would require displaced persons be paid 75% of relocation payment in advance and any remaining payment be due 30 days after the relocation has been completed. (Attachment 5) He made a substitute motion to adopt the balloon. Representative Long-Mast seconded the motion. The motion carried.

Representative Jack made the motion by adding "compensation and" to line 23. Representative Long-Mast seconded the motion. The motion carried.

Loyd made the motion to amend the 6th line in the balloon by replacing "letter" with "written notice". Representative Long-Mast seconded the motion. With permission of the seconded Representative Loyd amended his motion to change "letter" to "written notice" throughout New Section 4. The motion carried.

Representative Patterson made the motion to report **Substitute SB 421** favorably for passage. Representative Long-Mast seconded the motion. The motion carried.

SB 141 - phasing in the use of administrative hearings over years

Representative Long-Mast made the motion to strike the Senate amendments but include the technical updates. Representative Loyd seconded the motion. The motion carried.

Representative Patterson made the motion to report **SB 141** favorably for passage. Representative Crow seconded the motion. The motion carried.

SB 316 - requiring judges to sign executions and orders of sales

Representative Pauls made the motion to report **SB 316** favorably for passage. Representative Long-Mast seconded the motion. The motion carried.

SB 317 - eliminating the requirement subpoenaed business records held indefinitely by the clerk of the district court

Representative Loyd made the motion to report **SB 317** favorably for passage. Representative Mast seconded the motion.

Representative Loyd made a substitute motion which would allow the court to waive attorney fees upon a finding that the amount tendered is sufficient to compensate the holder of the check. Representative Long-Mast seconded the motion. The motion carried.

Representative Loyd made the motion to insert the provisions of **HB 2655**. Representative Long-Mast seconded the motion. The motion carried.

Representative Loyd made the motion to report **SB 317** favorably for passage, as amended. Representative Long-Mast seconded the motion. The motion carried.

The Chairman adjourned the committee meeting. The next meeting was scheduled for March 10, 2004.

March 8, 2004

Testimony of Patrick Caffey, Municipal Court Judge of Manhattan, in Support of Senate Bill 354

This bill is designed to consolidate the rules about pretrial procedure in municipal courts. The changes are as follows:

(1) The findings required to issue a warrant would be the same as for district courts, to-wit:

a) probable cause that a crime has been committed
b) probable cause to believe the defendant committed such crime

Those findings have to be made based on the complaint, an affidavit, or other evidence.

At the present time in order to issue a warrant the court must conclude that there is probable cause that the defendant would not appear in response to a notice to appear. The proposed change still maintains the preference for issuing a notice to appear rather than a warrant, but on the city attorney's request the court could issue a warrant. Removal of this requirement is a subtle change, but it still preserves the preference for notice to appear. In district courts unless the county or district attorney requests a notice to appear the court issues a warrant. In municipal courts unless the city attorney requests a warrant, a notice to appear is issued.

2) The more important change involves a problem that municipal judges especially in small towns have struggled with for years. Currently if a defendant is arrested on a Friday or Saturday night for an offense, such as a DUI, and is unable – or in some cases just unwilling – to post bond, that person must be either brought before the municipal judge within eighteen (18) hours or released. This means that municipal court judges frequently spend weekends on call to hold court on Saturday or Sunday.

The same defendant, had he committed that offense outside the city limits, could be held up to forty eight (48) hours before being released or appearing before the district court.

We merely seek to apply the same time limit (48 hours) as is allowed in district court cases. This statute still provides that bond must be set within 18 hours of the person being placed in custody. Almost all courts, municipal or district, have a bond schedule which is standard. In my court, for example, a person charged with a first time DUI has a $750 bond and a person charged with a second DUI has a $1,500 bond. It is

very seldom that this provision about bond being set within 18 hours would ever come into play because bond is usually set when the person is first taken into custody.

This current 18 hour rule is of particular concern to small towns. Many small towns have no city jail. When judges have to hold court on Saturday or Sunday, that means that either the judge has to travel to the county seat to conduct court at the jail or the prisoner has to be transported to the court which is likely to be in the city hall building which is closed. This is a problem for both the jail staff and the judge and, in addition to the inconvenience, creates a potential security problem.

This bill is supported by the Kansas Judicial Council and is largely the same measure proposed by the Municipal Court Manual Committee which drafted and periodically revises a manual used by Municipal Court Judges.

Thank you for listening. I will be happy to answer your questions.

March 8, 2004

Testimony of Patrick Caffey, Municipal Court Judge of Manhattan, in Support of Senate Bill 321

There are two types of contempt of court which judges have to address:

(1) Direct contempt such as a disruptive defendant in the courtroom.

(2) Indirect contempt such as ignoring the orders of a court or failing to pay a fine.

My belief is that K.S.A.12-4106 gives the municipal court authority to use both. Currently the statute says "The municipal judge shall have the power to administer the oaths and enforce all orders, rules and judgments made by such municipal judge, and may fine or imprison for contempt committed in court or for failure to obey process issued by such municipal judge, in the same manner and to the same extent as a judge of the district court." The Kansas Supreme Court in a decision a few years ago in dicta (language mentioned in passing not the basis for the decision) cast some doubt about what the Supreme Court would conclude is the extent of a municipal judge's power with respect to indirect contempt.

In addition, the previous Attorney General, in 2002, issued an opinion that municipal courts do not have indirect contempt power. The Kansas Municipal Judges Association asks that the legislature modify the statute to clearly give municipal courts the same contempt power the district courts have. That is accomplished in S.B. 321 by deleting the words "committed in court or for failure to obey process issued by such municipal judge". That would clearly make the contempt authority the same for municipal courts and district courts.

We believe it was the legislative intent when K.S.A. 12-4106 was enacted to give municipal courts the complete authority to enforce its orders. The statute says municipal judges have the power to "enforce all orders, rules and judgments ..." It would significantly cripple municipal court's ability to enforce orders if they do not have indirect contempt power. For example, it would make it much more of a problem to collect unpaid fines.

We point out that before someone can be held in contempt for failure to pay a fine he must be given notice of the contempt proceedings, a chance to appear and have a hearing and an opportunity to have an attorney, including appointed counsel if he is indigent. In order for a defendant to be held in contempt for failure to pay a fine the court must find that the defendant has either been given an opportunity to work off the fine by doing community service, or that he has sufficient income and assets to pay the

fine and has chosen not to pay.

The other thing this bill would do is clearly permit a defendant to appeal a finding of contempt to the district court judge, just like he could appeal a conviction of speeding.

This bill is supported by the Kansas Municipal Court Manual Committee and Kansas Judicial Council.

Thank you for considering my testimony. I would be happy to answer your questions.

KANSAS HOSPITAL ASSOCIATION

Donald A. Wilson
President

TO: House Judiciary Committee

FROM: Thomas L. Bell
Executive Vice President

RE: SB 343

DATE: March 8, 2004

The Kansas Hospital Association appreciates the opportunity to comment in support of Senate Bill 343. This bill would repeal the provisions of SB 44, passed during the 2003 legislative session.

There are several reasons to pass SB 343. First, the legislation that was enacted last session was done so with the intent to quickly affect a specific case – the purchase of Health Midwest by HCA. That case is over, and SB 44 has served its main purpose.

Second, last year the Johnson County District Court declared that SB 44 was unconstitutional. The Court found that SB 44 purported to confiscate the assets of a nonprofit corporation and, as such, was in derogation of private property rights and rights of individual ownership. The Court also found that the legislation would constitute a taking without compensation under the Kansas and U.S. Constitutions.

Finally, while SB 44 served the short-term purposes of the Legislature, it does not establish good, long-term policy for the state of Kansas. SB 44 fails in several respects to achieve the legitimate goal of government to oversee the disposition of charitable trust assets in the event of a sale of a private, non-profit hospital. The Bill is vague with regard to definitions and process and overly specific with regard to resulting control of assets sold, not to mention the fact that it contains serious constitutional shortcomings as noted by Judge Foster.

Clearly, government has an interest here. The fact that Kansas law in this area is currently in a state of confusion also argues for some type of legislative intervention. At the same time, any legislation must provide for certainty of process, flexibility of results and analysis of the transaction against predetermined criteria. Ideally, appropriate legislation would permit the Attorney General to review the proposed sale of a non-profit

hospital in an organized, established process that permits public input, but provides for a decision in light of predetermined criteria. The parties to the transaction should be allowed to suggest methods for preserving the charitable trust for the beneficiaries of that trust, and the resulting organization should be structured in a manner to assure community input. That organization should be charged with fulfilling the charitable trust's original purpose to the extent possible.

Rather than the detailed approach of SB 44 in structuring a resulting foundation, ideal legislation should allow flexibility of structure. One size does not fit all in developing a mechanism to maintain the charitable assets for their original purpose. For example, the charitable purpose to be preserved may well be different for nonprofit hospitals associated with a faith community than one created from an individual donation or one that is an unaffiliated private nonprofit. Thus, the resultant organization created to manage the charitable trust after a sale would necessarily be organized differently in each instance.

Any legislation should set forth an application and disclosure process, which would include information such as: the names of the buyer and seller; the purchase price and other terms; a financial and economic analysis from an independent appraiser; and the acquisition agreement. The legislation should also provide criteria for the Attorney General to use to determine whether the hospital board exercised due diligence in deciding to sell, selecting the purchaser, and negotiating the terms of the sale and whether the acquisition affects the continued existence of accessible, affordable health care facilities that are responsive to the needs of the community.

The first step in the establishment of an efficient and appropriate long-term policy for our state is the repeal of SB 44. We look forward to providing any assistance we can as the Legislature moves forward. Thank you for your consideration of our comments.

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Ronald R. Hein
Attorney-at-Law
Email: rhein@heinlaw.com

Testimony re: SB 343
House Judiciary Committee
Presented by Ronald R. Hein
on behalf of
HCA, Inc.
March 8, 2004

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for HCA, Inc. which is the nation's leading provider of healthcare services, composed of approximately 191 locally managed hospitals and 82 outpatient surgery centers, including four hospitals in Kansas, Wesley Medical Center, Menorah Medical Center, Overland Park Regional Medical , and Allen County Hospital.

HCA supports SB 343, which repeals K.S.A. 2003 Supp 65-441a, the hospital conversion law which was passed in 2003.

As you probably recall, this legislation was enacted during the period of the acquisition of Health Midwest, and its system of hospitals in Missouri and Kansas, by HCA. The bill was conceptualized, drafted, and passed in an inordinately fast period of time. Time was of the essence at that point because there were concerns that the Missouri Attorney General was going to be able to exert greater control over the proceeds of the sale of the assets than was appropriate. Kansas wanted to insure that any foundation created with proceeds applicable to the sale of HMW assets on the Kansas side of the border was appropriate for the fair market value of those assets located in Kansas.

In light of the urgency at that time, there were provisions put in the legislation which we believe are not sound public policy. At the time the legislation was being enacted, we communicated our concerns with the legislation to legislators, the Governor's staff, and others. However, HCA did not take a position on the bill, and made no effort to oppose the legislation because we understood the need for Kansas to protect their rights vis-a-vis the State of Missouri.

I also want to make it clear that HCA's interest in this type of legislation is not with the proceeds or the disposition of the proceeds. HCA's concern is with the process that governs any attempt at a merger and acquisition between two or more hospitals. Oftentimes, timing is very important in these types of transactions in order to protect the value of the assets during what is oftentimes a tumultuous time for the hospital which is

for sale. A process which takes too long can jeopardize the sale itself and ultimately can adversely affect the value of the assets, causing harm to all the parties involved, including the State of Kansas and any potential beneficiaries of the proceeds of the sale.

We strongly urge the legislature to pass this legislation, thus repealing the current conversion statute. There is already in existence common law which permits the Attorney General to intervene in hospital conversions, to review the transaction to insure that the process and the value being paid are fair and equitable, and to protect the state's interests. Therefore, the repeal of this statute will not leave the state or the Attorney General without a remedy.

However, with that said, we have already conveyed to the Attorney General, and convey now to the legislature, our willingness to meet with General Kline, the Governor, the legislature, and others, to help craft legislation to deal with the conversion process. Since our company has been involved in this process in this state and others on numerous occasions, we would offer to bring our expertise to the table and to provide whatever information we can to help insure that any legislation which is enacted provides an appropriate process for all of the parties involved, including the state of Kansas.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

Proposed Amendment
Vice-chairman Patterson
March 3, 2004

Session of 2004

SENATE BILL No. 421

By Senator Vratil

2-2

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

concerning relocation assistance; and K.S.A. 2003 Supp. 58-3502

sections

Be it enacted by the Legislature of the State of Kansas:

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

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

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

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

Sec. 2. K.S.A. 2003 Supp. 58-3502 is hereby amended to read as follows: [see attached]

New Sec. 3. [see attached]

New Sec. 4. [see attached]

Renumber remaining sections accordingly.

and K.S.A. 2003 Supp. 58-3502 are

Sec. 2. K.S.A. 2003 Supp. 58-3502 is hereby amended to read as follows: 58-3502. Whenever any program or project is undertaken by the state of Kansas, any agency or political subdivision thereof, under which federal financial assistance will be available to pay all or part of the cost of such program by reason of a grant from or contract or agreement with the federal government, and which program or project will result in the displacement of any person by acquisition of real property, or by the direct result of building code enforcement activities, rehabilitation or demolition programs, the state, agency, or political subdivision shall:

(1) Provide fair and reasonable relocation payments and assistance to or for displaced persons as are required under sections 202, 203 and 204 of the federal act;

(2) Provide relocation assistance programs offering to displaced persons and others occupying property immediately adjacent to the real property acquired, the services described in section 205 of the federal act on the conditions prescribed therein;

(3) In acquiring the real property be guided to the greatest extent practicable under state law by the land acquisition policies in section 301 and the provisions of section 302 of the federal act;

(4) Pay or reimburse property owners for necessary expenses as specified in sections 303 and 304 of the federal act;

(5) Share costs of providing payments and assistance with the federal government in the manner and to the extent required by sections 211 (a) and (b) of the federal act; ~~and~~

(6) Appoint such officers, enter into such contracts, utilize federal funds for planning and providing comparable replacement housing, and take such other actions as may be necessary to comply with the conditions and requirements of the federal act;

(7) Under circumstances where a displaced person demonstrates that receipt of such payments, in advance of the actual relocation, is required to enable the relocation and estimates are provided by the displaced person to the state, agency or political subdivision that will allow such governmental entity to estimate with reasonable accuracy the relocation payments, 75% of such amount shall be advanced to the displaced person or paid to third parties on behalf of the displaced person to facilitate the relocation. Any remaining payment due shall be made within 30 days after the relocation has been completed.

New Sec. 3. (a) Whenever federal funding is not involved, and real property is acquired by any condemning authority through negotiation in advance of a condemnation action or through a condemnation action, and which acquisition will result in the displacement of any person, the condemning authority shall:

(1) Provide the displaced person, as defined in the federal uniform relocation assistance and real property acquisition policies act of 1970, fair and reasonable relocation payments and assistance to or for displaced persons.

(2) Fair and reasonable relocation payments and assistance to or for displaced persons as provided under sections 202, 203 and 204 of the federal uniform relocation assistance and real property acquisition policies act of 1970, and amendments thereto, shall be deemed fair and reasonable relocation payments and assistance pursuant to this section.

(3) Nothing in this section shall preclude the voluntary negotiation of fair and reasonable relocation payments and assistance between the displaced person and condemning authority. If such negotiations lead to agreement between the displaced person and the condemning authority, that agreement shall be deemed fair and reasonable.

(4) Under circumstances where a displaced person demonstrates that receipt of such payments, in advance of the actual relocation, is required to enable the relocation and estimates are provided by the displaced person to the condemning authority that will allow such authority to estimate with reasonable accuracy the relocation payments, 75% of such amount shall be advanced to the displaced person or paid to third parties on behalf of the displaced person to facilitate the relocation. Any remaining payment due will be made within 30 days after the relocation has been completed.

(b) This section shall be a part of and supplemental to Article 35 of Chapter 58 of the Kansas Statutes Annotated, and amendments thereto.

New Sec. 4. (a) Any displaced person entitled to benefits under this article may appeal the state, agency or political subdivision determination of relocation payments. If such an appeal is made by letter to the state, agency or political subdivision within 60 days of the receiving notice of the determination being appealed, an independent hearing examiner shall be appointed by the state, agency or political subdivision within 10 days and a determination of the appeal made within 60 days. Any party wishing to appeal the ruling of the hearing examiner may do so by filing a written notice of appeal with the clerk of the district court within 30 days of the hearing examiners decision. In the event any parties shall perfect an appeal to district court, copies of such notice of appeal shall be mailed to all parties affected by such appeal, within three days after the date of perfection thereof. Any such appeal to district court shall be a trial de novo only on the issue of relocation benefits .

(b) This section shall be a part of and supplemental to Article 35 of Chapter 58 of the Kansas Statutes Annotated, and amendments thereto.