

Approved: 11-23-05 Date

MINUTES OF THE HOUSE CORRECTIONS & JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Ward Loyd at 1:30 P.M. on February 16, 2005 in Room 241-N of the Capitol.

All members were present except:

Kathe Decker- excused
Dale Swenson- excused

Committee staff present:

Jill Wolters, Revisor of Statutes Office
Diana Lee, Revisor of Statutes Office
Jerry Ann Donaldson, Kansas Legislative Research
Connie Burns, Committee Secretary

Conferees appearing before the committee:

Julene Miller, Office of the Attorney General
Mike Jennings, KCDAA
Doug Anstaett, KS Press Association
Randall Hodgkinson

Others attending:

See attached list.

HB 2380 – Duties of the attorney general and assistants

Chairman Loyd opened the hearing on **HB 2380**.

Julene Miller, Deputy Attorney General, appeared in support of the bill. (Attachment 1) This bill was introduced at the request of the Attorney General to address two issues of importance to the office.

- Removing a requirement from KSA 75-704a, that the office prepare an annual index of Attorney General Opinions. All current opinions are now available on-line through other outside entities.
- Involves the ability of the Attorney General to assign to Assistant Attorneys General any task he is statutorily responsible for performing. The amendment is needed because of the difficulty, and often physical impossibility of the Attorney General to serve on boards and commissions; additionally, there are over 500 statutes that provide some role for the AG to play.

An opinion will be forth coming by the Attorney General's office on several issues concerning the ability of an agency head to assign or delegate to staff members the responsibility to serve on boards.

Chairman Loyd closed the hearing on **HB 2380**.

HB 2381 – Exception to Kansas Open Records Act regarding confidential personal information

Chairman Loyd opened the hearing on **HB 2381**.

Mike Jennings, KS County & district Attorneys Association, spoke in support of the bill. (Attachment 2) This bill if adopted as it relates to court records to protect crime victims from further possible victimization through exposure of their confidential personal information contained therein.

Doug Anstaett, Kansas Press Association, appeared as an opponent of the bill. (Attachment 3) He urged the committee to reject this bill for two reasons: provision exists already for courts to protect much of this information and, believes this shotgun approach very likely would not stand the test of a court challenge.

Chairman Loyd closed the hearing on **HB 2381**.

HB 2383 – Clarification of unavailability of a witness for a deposition

Chairman Loyd opened the hearing on **HB 2383**.

Mike Jennings, KCDA, appeared in support of the bill. (Attachment 4) Under this bill, prior non-privileged statements made in a deposition under oath, where the witness was subject to cross-examination, would be admissible for use in the criminal proceeding, preventing a failure of justice that would be caused by those who willfully subvert the criminal process by refusing to comply with lawful requirements of the court.

Randall Hodgkinson, Deputy Appellate Defender, asked the committee to be very cautious in working this bill.

Chairman Loyd closed the hearing on **HB 2383**.

HB 2385 – Admission of photographs of wrongfully taken property.

Chairman Loyd opened the hearing on **HB 2385**.

Mike Jennings, KCDA, spoke in favor of the bill. (Attachment 5) The bill seeks to amend KSA 60-472, related to photographic evidence of stolen property to eliminate the requirement of unnecessary and costly procedures that simply serve as a hindrance to the truth finding process without a legitimate purpose.

The chairman requested the recent case that was identified as State v. Mayes be made available to the committee.

Chairman Loyd closed the hearing on **HB 2385**.

HB 2262 – Legal holidays include holidays observed by the Supreme Court by order.

Chairman Loyd opened the hearing on **HB 2262**.

Randall Hodgkinson, Deputy Appellate Defender, appeared in support of the bill. (Attachment 6) The bill would change the statute to reflect that "observed" holidays as ordered by the Kansas Supreme Court are legal holidays for computing deadlines under KSA 60-206. The statute involves all sorts of statutory deadlines, not just court-filing deadlines.

Chairman Loyd closed the hearing on **HB 2262**.

The meeting was adjourned at 2:50 pm. The next meeting is February 17, 2005.

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE
GUEST LIST

DATE 2-16-05

NAME	REPRESENTING
Kevin Graham	A.G.
Julene Miller	A.G.
Doug Anstett	KPA
Philip Horsey	PAT HORSEY & CO.
David Roney	The People
Mary Tilley	KU School of Social Welfare
Eliticia Villar	KU School of Social Work
Susan Garrison	WSU School of Social Work
Sylvia Salgado	WSU School of Social Work
Kim Jay	WSU School of Social Work
Louisa A. ARELLANO	WSU School of Social Work
Debbie Lacy-Sisco	WSU " " "
Dorinda Becker	WSU " " "
Nicole Stafford	Park University
Kendra Nickson	Park University
Corie Rembrow	PARK UNIVERSITY
Mike Jennings	KCRRA
Pammy Whittley	KU School of Social Welfare
Kinsley Stephenson	KU School of Social Welfare
Lisa Gilliland	KU School of Social Welfare
Elisa Brooks	KU School of Social Welfare
A. Suzy Johnson	KU Sch of Soc. Welfare.
Sandra Myers	KU School of Social Welfare
Molly Nelson	KU School of Social Welfare

HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE
GUEST LIST

DATE 2-16-05

NAME	REPRESENTING
Kyra Johnson	KU School of Social Welfare
April Chronister	KU School of Social Welfare
Amy Kinney	WU Social Work
Abi Blaxham	KU Soc. Wel.
Laurie Dale Marshall	KU Soc. Wel.
Manda Barker	KU Soc. Wel.
Kate Lyon	KU Soc Wel
Randall Hodgkinson	N/A
Remy Haddeman	KU School of Social Welfare
Jayme Shilkrot	KU School of SW
Morgan Anpuckle	KU social welfare
Cerin Brooks	KU School of Social Welfare
Renee Hornet	" "
Nina Elliot	" "
Ashma Hakani	" "
Adrian Rodriguez	foster mom WSU
Melissa McCray	Bethany College ^{social work}
Rose Dillard	Wichita state University
Lisa Carter	Bethany College - SW
Dan Kuntling	KU School of Social Welfare
Rachael Nickerson	" "
Mark Gleason	Judicial Branch
Marcia Allen	self / social work
Jon Bryan	WSU Social Work

(1)

**HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE
WEDNESDAY, FEBRUARY 16, 2005
PRESENTATION BY
JULENE MILLER
DEPUTY ATTORNEY GENERAL**

Attorney General Phill Kline has asked me to appear before you today in support of House Bill No. 2380. This bill was introduced at the request of the Attorney General to address two issues of importance to our office.

The first involves removing a requirement from K.S.A. 75-704a that the office prepare an annual index of Attorney General Opinions. While this provision made much sense when it was originally enacted, several things have happened over the years that render the requirement unnecessary and thus an inefficiency. The main reason it is no longer needed is that all current opinions are now available on-line through other outside entities. These services allow key-word searching; thus an index wherein opinions are referenced by number is no longer necessary and not particularly useful. The Attorney General's website does provide links to these services. Secondly, the system on which we created and maintained the cumulative index for Opinions was the AS400. We have been making a concerted effort to move databases off of this system in anticipation of it no longer being supported, and this is one database that it does not make sense to spend the time and funds to move. Finally, it has been several years now since the Legislature removed our authority to print bound volumes containing all synopses of the Attorney General Opinions (the last volume was printed in 1997 and contained opinions from 1996). Therefore, the index of opinions by number is no longer needed for purposes of printing those volumes. Because it is no longer useful to our office, it would an expense to re-create and maintain, and because there has been no demand for such an index for years,

we respectfully request that the requirement be removed from the statute.

The second issue we bring to you in this bill involves the ability of the Attorney General to assign to Assistant Attorneys General any task he is statutorily responsible for performing. By statute, the Attorney General (like most other state-wide elected officials) is to serve on several boards and commissions; additionally, there are over 500 statutes that provide some role for the Attorney General to play. Some specifically state that this can be either the Attorney General or his designee; others do not. Because of the difficulty, and often physical impossibility, of the Attorney General to be personally present at every meeting of every board and committee of which he is statutorily a member, Attorneys General have historically allowed Assistant Attorneys General to act on their behalf. An Opinion we researched recently dealing with the Governor's authority to do this brought the tradition into question for all state-wide elected officials. This bill would clarify and codify that tradition that has been established in the Attorney General's Office. We believe this is a prudent and effective use of State resources and other state-wide elected officials may wish to consider doing something similar if they have not already.

We respectfully ask that you act favorably on these proposed amendments.



OFFICE OF THE DISTRICT ATTORNEY
EIGHTEENTH JUDICIAL DISTRICT

NOLA FOULSTON
District Attorney

SEDGWICK COUNTY COURTHOUSE
535 N. MAIN
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(316) 383-7281
FAX: (316) 383-7266

Wednesday, February 16, 2005

Mike Jennings
KCDDA

TESTIMONY IN SUPPORT OF HB 2381
SUBMITTED BY ANN SWEGLE, DEPUTY DISTRICT ATTORNEY
ON BEHALF OF NOLA TEDESCO FOULSTON, DISTRICT ATTORNEY
EIGHTEENTH JUDICIAL DISTRICT

Honorable Chairman Ward Loyd and Members of the House Committee on
Corrections and Juvenile Justice:

One of the growing trends in criminal activity in our nation is related to the use of confidential personal information of citizens that is obtained and used without the victims' knowledge or consent. Such information is used by criminals to purchase items in the name of unsuspecting victims, ultimately wreaking havoc with the victims' credit histories, or detrimentally impacting their lives in other ways. Information of this type – dates of birth, social security numbers, drivers license numbers, place of employment – is also routinely acquired by law enforcement during the course of the investigation of all types of crimes from crime victims. This information may be recorded in court records dealing with the crime and therefore would be regarded as public information and available to anyone who would seek it. Thus, our legal system can penalize crime victims, simply because they are recorded as crime victims, by exposing their confidential personal information through public documents. Our crime victims should have no less right than any other citizens to keep their confidential personal information exactly that – confidential.

Kansas law provides many protections to victims of crime, from the acknowledgement of victims' rights set out in Article 15, Section 15 of the Kansas Constitution to statutory protections of various types. These protections are important to those who have been subject to injury and loss, insuring that their

interests might be heard and affording some relief from further victimization. A provision of House Bill 2381 would further these important interests by amending K.S.A. 45-221 to allow a public agency to not disclose crime victims' confidential personal contained in court records of criminal prosecutions brought by the State. This confidential personal information includes, but is not limited to, a person's address and telephone number, driver's license or state identification card number, social security number, date of birth, place of employment, employee identification number, mother's maiden name, demand deposit number, savings or checking account number or credit card number.

We urge you to adopt House Bill 2381 as it relates to court records to protect crime victims from further possible victimization through exposure of their confidential personal information contained therein.

Respectfully submitted,



Ann Swegle
Deputy District Attorney
Eighteenth Judicial District



Kansas Press Association, Inc.

Dedicated to serving and advancing the interests of Kansas newspapers

5423 SW Seventh Street • Topeka, Kansas 66606 • Phone (785) 271-5304 • Fax (785) 271-7341 • www.kspress.com

Feb. 16, 2005

To: Rep. Ward Loyd, chairman, House Corrections and Juvenile Justice Committee

From: Doug Anstaett, executive director, Kansas Press Association

Re: HB 2381

Mr. Chairman and Committee Members:

I'm not sure what precipitated the introduction of HB 2381. We have tried to get an answer in advance of this hearing, but have been unsuccessful.

On its face, this legislation appears designed to protect the confidential personal information of victims of crime from public consumption. Generally speaking, member newspapers I represent in the Kansas Press Association would not necessarily be interested in some of the kinds of information listed, such as social security number, driver's license or state identification number, demand deposit number, employee identification number or savings, checking and credit card numbers.

However, there are other types of information that are vital to the full and accurate reporting of crime and court news that are included as exclusions in this bill. In addition, the catch-all phrase "but is not limited to" gives far too much discretion to the handlers of public information.

Our attorney believes on first impression that this bill is totally unnecessary. The courts already have control of their own records and can seal whatever they deem necessary to protect the victim of a crime. They can seal the information listed above under current law.

Another concern of his is that this bill essentially tampers with evidence. If any or all of this information is introduced as evidence or is considered by a court in sentencing, it would create a conflict with the First Amendment to keep it secret.

Moreover, a crime victim is usually a witness in the proceeding. Maintaining secrecy about a witness in court records also creates constitutional problems for the confrontation and public trial clauses of the Sixth Amendment as well as the rights of the press and the public under the First Amendment.

We urge you to reject HB 2381 for two reasons: First, provision exists already for courts to protect much of this information and, second, we believe this shotgun approach very likely would not stand the test of a court challenge.

Thank you.

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OFFICE OF THE DISTRICT ATTORNEY
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FAX: (316) 383-7266

Wednesday, February 16, 2005

*Mike Jennings
KC D-DA*

TESTIMONY IN SUPPORT OF HB 2383
SUBMITTED BY ANN SWEGLE, DEPUTY DISTRICT ATTORNEY
ON BEHALF OF NOLA TEDESCO FOULSTON, DISTRICT ATTORNEY
EIGHTEENTH JUDICIAL DISTRICT

Honorable Chairman Ward Loyd and Members of the House Committee on
Corrections and Juvenile Justice:

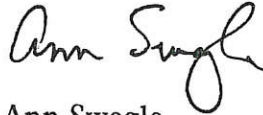
Kansas law provides parties to a criminal prosecution with the ability to depose a prospective witness in order to prevent a failure of justice if it appears that the witness may be unable to attend or prevented from attending a trial and that the witness' testimony is material. The deposition testimony is then preserved for possible use in a proceeding if the witness is unavailable to testify.

House Bill 2383 would amend the statute governing depositions in criminal proceedings, K.S.A. 22-3211, to expand the circumstances under which a deposition could be admitted as evidence. Currently, a deposition may be used, so far as otherwise admissible, if: (1) it appears the witness is dead; (2) the witness is out of state and the witness' appearance cannot be obtained, unless it appears the absence was procured by the party offering the deposition; (3) the witness is unable to attend or testify because of sickness or infirmity; (4) the party offering the deposition has not been able by subpoena or other process to secure the attendance of the witness. The amendment would allow for use of a deposition when a witness is "unavailable as a witness" as that term is currently defined in K.S.A. 60-459(g) dealing with out-of-court, or "hearsay" evidence. Use of this statutory definition would allow for the possible use of a deposition when the witness is "unavailable" such as when the witness is (1) exempted on a ground of privilege; (2) disqualified from testifying; (3) dead or physically or mentally ill; (4) outside the court's jurisdiction to compel

attendance; or (5) absent because the party offering the witness' statement does not know and cannot find the witness' location.

While many witnesses to criminal acts are innocent victims, others who have essential knowledge of crimes are involved with criminal enterprises. Often, those who are involved become unwilling to continue to cooperate with the criminal process through testimony. They may be physically available to attend a proceeding yet refuse to take an oath, thus disqualifying them from being able to testify. They may claim a privilege not to testify and also refuse to answer questions about non-privileged matters. In these situations, if House Bill 2383 is approved, prior non-privileged statements made in a deposition under oath, where the witness was subject to cross-examination, would be admissible for use in the criminal proceeding, preventing a failure of justice that would be caused by those who would willfully subvert the criminal process by refusing to comply with lawful requirements of the court. We ask that you support the passage of this bill.

Respectfully submitted,



Ann Swegle
Deputy District Attorney
Eighteenth Judicial District



OFFICE OF THE DISTRICT ATTORNEY
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Wednesday, February 16, 2005

Mike
Jennings
KCODA

TESTIMONY IN SUPPORT OF HB 2385
SUBMITTED BY ANN SWEGLE, DEPUTY DISTRICT ATTORNEY
ON BEHALF OF NOLA TEDESCO FOULSTON, DISTRICT ATTORNEY
EIGHTEENTH JUDICIAL DISTRICT

Honorable Chairman Ward Loyd and Members of the House Committee on
Corrections and Juvenile Justice:

House Bill 2385 seeks to amend a statute, K.S.A. 60-472, related to photographic evidence of stolen property to eliminate the requirement of unnecessary and costly procedures that simply serve as a hindrance to the truth-finding process without a legitimate purpose.

Photographic evidence is routinely used in criminal proceedings to establish facts, corroborate testimony or document a crime scene. Photographs are used to establish the nature of injuries in homicides, to show how a methamphetamine lab is laid out and the path of a fleeing robber. Photographs are taken of arson scenes, vandalism sites and homes that have been burglarized. Generally, the only requirement for the admission of photographic evidence is the foundation that the photographs accurately represent a relevant matter. If they do, they are admissible.

K.S.A. 60-472 requires that before photographs of stolen property can be admitted into evidence, that they bear a written description of the property alleged to be taken, the name of the property owner, the location of the taking, the name of the investigating law enforcement officer, the date the photograph was taken and the name of the photographer. This writing must be made under oath by the investigating officer and the photograph identified by the signature of the photographer. Once these measures are completed and the photograph and writing filed with the law enforcement agency or the court, the statute allows the stolen

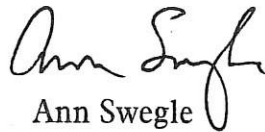
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Attachment 5

property to be returned to the lawful owner. Thus, K.S.A. 60-472 erects a higher barrier to the admission of photographic evidence of stolen property than exists for the admission of any other type of photographic evidence and imposes needless impediments to owners retrieving what has been wrongfully taken from them. There is no rational basis for this distinction or the extra work and resources it requires of law enforcement before they can restore stolen property its rightful owners.

House Bill 2385 would amend K.S.A. 60-472 to eliminate the unnecessary conditions precedent to the introduction of relevant photographic evidence and allow owners to regain their property quickly without fear that photographs of it will not be allowed in court.

Based on the foregoing, we urge you to pass House Bill 2385.

Respectfully submitted,



Ann Swegle
Deputy District Attorney
Eighteenth Judicial District

700 Jackson, Suite 900
Topeka, KS 66603

Testimony of

Randall L. Hodgkinson, Deputy Appellate Defender¹

Before the House Corrections and Juvenile Justice Committee

RE: HB 2262

February 16, 2005

Chairperson Loyd and Members of the Committee:

Thank you for the opportunity to appear today in support of House Bill 2262. ("HB 2262") My name is Randall Hodgkinson and I am a Deputy Appellate Defender here in Topeka. I am not testifying in my capacity as a Deputy Appellate Defender, but my background is relevant to my opinions about this bill. In fact, this bill is not particular to criminal law or appellate practice, but involves computation of time limits and filing deadlines in all type of cases (and even non-court legal deadlines). My practice is certainly affected by the situations affected by this bill, but it is not particularly exclusive to my practice.

Under the current version of K.S.A. 60-206, when computing legal deadlines involving a period of time less than 11 days, and for purposes of filing deadlines "intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation." In 2003, in *City of Lawrence v. McCormick*, 275 Kan. 509, 66 P.3d 854 (2003) (attached to testimony), the Kansas Supreme Court construed this statute to not include "deemed" or "observed" holidays, but only actual holidays. For example, this last year, Christmas and New Years fell on Saturday. Pursuant to the order of the Supreme Court, the Court observed Christmas and New Years on December 24 and December 31, respectively. Similarly, when Independence Day and/or Veteran's Day falls on a weekend, the holiday is usually observed on Monday or Friday. And finally, the governor and the Supreme Court observe the day after Thanksgiving as a holidays. Although one would think that the days that the state courts are closed would be legal holidays for purposes of computing legal deadlines, *McCormick* holds to the contrary. This introduces some confusion to attempting to calculate deadlines.

The bill I have proposed simply does what the Court in *McCormick* said it would not do, change the statute to reflect that "observed" holidays are legal holidays for computing deadlines under K.S.A. 60-206. You should also keep in mind that K.S.A. 60-206 involves all sorts of statutory deadlines, not just court-filing deadlines.

¹This testimony is not necessarily the position of the Kansas Appellate Defender's Office or the Board of Indigent Services. This testimony reflects the personal opinions and conclusions of the witness.

I hasten to acknowledge that this is not a “cure-all.” I have attached a copy of the most recent Supreme Court order regarding holidays. As you can see, it allows chief judges to substitute other holidays for some of the listed holidays. So in those districts (which I am told are few), some “observed” holidays would still not be counted as legal holidays. This amendment also does not deal with situations in which a courthouse is closed for reasons other than an “observed” holiday (like inclement weather or other emergency situations). But I believe that most jurisdictions within the state observe holidays consistent with the Supreme Court order. In the alternative, the Legislature could also statutorily delineate holidays and “observed” holidays more clearly in K.S.A. 60-206. But the proposed bill would solve some of the confusion that currently exists as written and, therefore, merits consideration.

H

Supreme Court of Kansas.
CITY OF LAWRENCE, Appellee,
v.
Dale E. McCORMICK, Appellant.
Nos. 88,496, 88,497, 88,498, 88,499, 88,500.

April 18, 2003.

Following his conviction in municipal court, defendant filed notices of appeal to the district court. The District Court, Douglas County, Paula B. Martin, J., dismissed as untimely. Defendant appealed. The Court of Appeals affirmed. Defendant appealed. The Supreme Court, Larson, J., held that time allowed for defendant to appeal from a municipal court to the district court did not exclude those days that were "observed holidays" by administrative order, but rather only statutorily defined legal holidays were to be excluded in such time computation.

Affirmed.

West Headnotes

[1] Criminal Law ⚡1004

110k1004 Most Cited Cases

The right to appeal is entirely statutory and not a right vested in the United States or Kansas Constitutions; Kansas appellate courts have jurisdiction to entertain an appeal only if the appeal is taken within the time limitations and in the manner prescribed in the applicable statutes.

[2] Criminal Law ⚡1134(3)

110k1134(3) Most Cited Cases

Appellate courts have unlimited review over issues that involve questions of law and statutory interpretation.

[3] Statutes ⚡174

361k174 Most Cited Cases

[3] Statutes ⚡188

361k188 Most Cited Cases

In construing statutes, ordinary words are to be given their ordinary meaning, and a statute should not be so read as to add that which is not readily found therein or to read out what as a matter of ordinary English language is in it.

[4] Statutes ⚡176

361k176 Most Cited Cases

Courts must not read a statute so as to add something not readily found in it.

[5] Municipal Corporations ⚡642(1)

268k642(1) Most Cited Cases

[5] Time ⚡10(9)

378k10(9) Most Cited Cases

The 10-day time allowed for defendant to appeal from a municipal court to the district court did not exclude those days that were "observed holidays" by administrative order, but rather only statutorily defined legal holidays were to be excluded in such time computation. K.S.A. 35-107, 60-206.

****855 *509 Syllabus by the Court**

In this case involving computation of the allowed time for appeals from a municipal court to a district court, the applicable statutes are considered and construed. It is held: (a) legal holidays excluded in time computation include only those specific days which are statutorily designated by K.S.A. 35-107; (b) an "observed" or "deemed" holiday specified by an executive or judicial administrative order does not expand or add to those legal holidays specified by K.S.A. 35-107; (c) when Veterans Day, the 11th day in November, falls on a Saturday or a Sunday, the following Monday is not a legal holiday; and (d) the Friday following Thanksgiving Day, the fourth Thursday in November, is not a legal holiday.

Dale E. McCormick, of Lawrence, was on the brief for appellant.

Gerard E. Little, city prosecutor, was on the brief for appellee.

The opinion of the court was delivered by LARSON, J.:

In this appeal we decide if the time allowed to appeal from a municipal court to a district court excludes those days that are "observed holidays" by administrative order or whether the days to be excluded in the time computation are only those days designated "legal holidays" as statutorily defined.

The facts are not in dispute.

On Friday, November 9, 2001, Dale E. McCormick was found guilty and was sentenced in five separate cases in the Lawrence Municipal Court. He filed notices of appeal on November 27, 2001.

***510** The district court dismissed the appeals as not being timely filed. The Court of Appeals affirmed the district court. We granted McCormick's petition for review.

[1] It is our longstanding rule that "the right to appeal is entirely statutory and not a right vested in the United States or Kansas Constitutions; Kansas appellate courts have jurisdiction to entertain an appeal only if the appeal is taken within the time limitations and in the manner prescribed in the applicable statutes." Little Balkans Foundation, Inc. v. Kansas Racing Comm'n, 247 Kan. 180, 188, 795 P.2d 368 (1990); accord Tobin Constr. Co. v. Kemp, 239 Kan. 430, 437, 721 P.2d 278 (1986). It is equally well-settled that failure to perfect an appeal from a conviction in a municipal court to the district court by filing a timely notice of appeal as is required by K.S.A.2002 Supp. 22-3609(2) is a jurisdictional defect.

[2] The Court of Appeals has further held in City of Derby v. Haskins, 27 Kan.App.2d 250, 3 P.3d 557 (2000), that the provisions of what is now K.S.A.2002 Supp. 60-206(a) apply to appeals from municipal courts under 22-3609(2). These issues all involve questions of law and statutory interpretation over which we have unlimited review. KPERS v. Reimer & Koger Assocs., Inc., 262 Kan. 635, 643, 941 P.2d 1321 (1997).

We first set forth the wording of the various statutes

that govern this matter.

K.S.A.2002 Supp. 22-3609 relates to appeals from municipal courts and in applicable part provides:

"(2) An appeal to the district court shall be taken by filing, in the district court of the county in which the municipal court is located, a notice of appeal and any appearance bond required by the municipal court. Municipal court clerks are hereby authorized to accept notices of appeal and appearance bonds under this subsection and shall forward such notices and bonds to the district court. No appeal shall be taken more than 10 days after the date of the judgment appealed from."

The provisions of K.S.A.2002 Supp. 60-206(a) govern the computation of time and specifically define what a legal holiday is in this manner:

"(a) *Computation; legal holiday defined.* In computing any period of time prescribed or allowed by this chapter, by the local rules of any district court, by ***511** order of court, or by an applicable statute, the day of the act, event, or default from ****856** which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday. 'Legal holiday' includes any day designated as a holiday by the congress of the United States, or by the legislature of this state. When an act is to be performed within any prescribed time under any law of this state, or any rule or regulation lawfully promulgated thereunder, and the method for computing such time is not otherwise specifically provided, the method prescribed herein shall apply."

Legal public holidays are statutorily designated by K.S.A. 35-107, which states:

"(a) On and after January 1, 1976, the following days are declared to be legal public holidays and are to be observed as such:

"New Year's Day, January 1;
"Lincoln's Birthday, the twelfth day in February;
"Washington's Birthday, the third Monday in February;
"Memorial Day, the last Monday in May;
"Independence Day, July 4;
"Labor Day, the first Monday in September;
"Columbus Day, the second Monday in October;
"Veterans Day, the eleventh day in November;
"Thanksgiving Day, the fourth Thursday in November;
"Christmas Day, December 25.

"(b) Any reference in the laws of this state concerning observance of legal holidays shall on and after January 1, 1976, be considered as a reference to the day or days prescribed in subsection (a) hereof for the observance of such legal holiday or holidays."

Finally, we note K.S.A.2002 Supp. 60-206(a) defines a legal holiday as including any day designated as a holiday by the Congress of the United States. Rule 45 of the Federal Rules of Criminal Procedure defines "legal holiday" as including "New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day *512 appointed as a holiday by the President or the Congress of the United States, or by the state in which the district court is held."

McCormick argues that in the computation of the 10-day time period within which he has to appeal we must exclude "observed" legal holidays, giving him until November 28, 2001, to file his notices of appeal. He takes the position that because some offices were closed on the day after Veterans Day (Monday, November 12, 2001), and the day after Thanksgiving (Friday, November 23, 2001), these days should not have been counted in the computation of time under K.S.A.2002 Supp. 60-206.

The City of Lawrence (City) contends that the only "legal holidays" are those which are specifically designated by the legislature under K.S.A. 35-107. The legislature has not designated the day after Veterans Day, if it falls on a Saturday or a Sunday, as a "legal

holiday," nor has it designated the Friday after Thanksgiving as a "legal holiday." The City says the statutes must be construed as written and are not to be expanded by adding "observed" to their language and that the district court and the Court of Appeals correctly decided that McCormick's time to file his appeal expired on November 26, 2001.

Although the Kansas Supreme Court by Administrative Order No. 149 followed the executive memorandum issued by Governor Bill Graves on June 15, 2001, and designated Monday, November 12, 2001, and Friday, November 23, 2001, as 2001 holidays, this act must not be considered as attempting to usurp the legislature's right to declare and define what a "legal holiday" is for purposes of our appeal statute. In order to uphold **857 McCormick's contentions, we would be forced to conclude that the Governor by administrative order or our court by administrative order has the power and authority to amend legislative enactments. Such power does not exist with either the Executive or the Judicial branch of government.

[3] As we said in GT, Kansas, L.L.C. v. Riley County Register of Deeds, 271 Kan. 311, 316, 22 P.3d 600 (2001), in construing statutes "[o]rdinary words are to be given their ordinary meaning, and a statute should not be so read as to add that which is not readily found therein or to read out what is a matter of ordinary English *513 language is in it." Kansas has chosen to specify specific dates that are "legal holidays." Kansas has not chosen to extend those holidays to the next Monday if the chosen date falls on a Saturday or a Sunday. Nor has Kansas chosen to make the Friday after Thanksgiving a "legal holiday."

[4] There is no mention in the clear statutory language of any extension of the days designated to include any day which may be an "observed" holiday. To attempt to do so is contrary to our obligation to construe statutes as they are written, and we must not "read such a statute so as to add something not readily found in it." State ex rel. Stovall v. Meneley, 271 Kan. 355, 378, 22 P.3d 124 (2001).

The statutory term "legal holiday" was defined recently in In re Marriage of Riggle, 30 Kan.App.2d ----, Syl ¶

6, 52 P.3d 360 (2002). *Riggle* differs factually from our case, but the result it reaches is consistent with our decision herein.

A similar issue involving our Kansas statutes was decided in *In re Cascade Oil Co.*, 848 F.2d 1062 (10th Cir.1988). The court dismissed the appeal after it was held the notice of appeal was not filed within the required 30-day period after entry of the judgment appealed from.

In *Cascade Oil*, the district court judgment was entered October 28, 1987. The appellant argued that since the day after Thanksgiving, November 27, 1987, was a legal holiday in Kansas, the notice of appeal was timely filed on the succeeding Monday, November 30, 1987. It was appellant's contention that because state courts were closed by administrative order, the day after Thanksgiving was a designated legal state holiday.

The *Cascade Oil* opinion looked to the federal rules and said: "We believe the term 'legal holiday' as used in Rule 6(a) includes statutory state holidays." 848 F.2d at 1064. The opinion continued:

"Of particular relevance is the inclusion of *statutory* state holidays within the term 'legal holiday.' 'Statutory state holidays' are, as the term implies, those designated by the legislature through the enactment of statutes. Obviously, courts cannot establish statutory state holidays. Consequently, the Supreme Court for the State of Kansas cannot establish a legal holiday within the meaning of Fed. R.App. P. 26(a).

"Kan. Stat. Ann § 60-206 (1983) is the Kansas statute that governs the computation of time regarding the state rules of civil procedure. This statute provides, *514 in pertinent part: "'Legal holiday" includes any day designated as a holiday by the congress of the United States, or by the legislature of this state.' The Kansas state legislature has enumerated the state holidays in Kan. Stat. Ann. § 35-107 (1986). The day following Thanksgiving Day is not among them." 848 F.2d at 1064.

[5] The *Cascade Oil* reasoning is consistent with the manner in which we construe K.S.A.2002 Supp. 60-206(a). A "legal holiday" must be construed to be

defined as it is written. We will not attempt by judicial construction to add "deemed" or "observed" or any other expanded language to the statute as it is written. Monday, November 12, 2001, and Friday, November 23, 2001, were *not* legal holidays for the purposes of computing the time within which an appeal must have been filed under K.S.A.2002 Supp. 22-3609(2).

McCormick's time for appeal is computed beginning Monday, November 12, 2001. November 17 and 18 and 24 and 25 are excluded from the time calculations because they are Saturdays and Sundays. November 22 was Thanksgiving, a "legal holiday." This day *is* **858 excluded. Timely notices of appeal were due to be filed no later than Monday, November 26, 2001.

The appeals filed by McCormick on November 27, 2001, were untimely. The judgment of the Court of Appeals affirming the district court is affirmed. The district court properly dismissed the appeals and is affirmed.

ABBOTT and GERNON, JJ., not participating.

LARSON, S.J., and ALLEN, S.J., assigned. [FN1]

FN1. REPORTER'S NOTE: Judges Ed Larson and Adrian J. Allen were appointed to hear case No. 88,496 vice Justices Abbott and Gernon pursuant to the authority vested in the Supreme Court by K.S.A. 20-2616.

END OF DOCUMENT

IN THE SUPREME COURT OF THE STATE OF KANSAS

Administrative Order No. 187

Re: Calendar Year 2005 Holidays

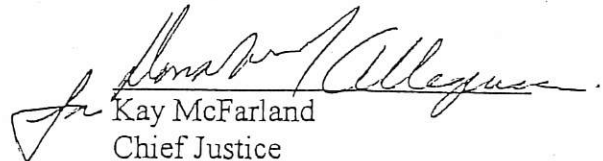
Pursuant to K.S.A. 35-107, Section 9.10 of the Kansas Court Personnel Rules, and the executive memorandum issued by Governor Kathleen Sebelius on August 9, 2004, the following dates have been approved for calendar year 2005 holidays:

New Year's Day	Friday, December 31, 2004
Martin Luther King Day	Monday, January 17, 2005
Presidents Day	Monday, February 21, 2005
Memorial Day	Monday, May 30, 2005
Independence Day	Monday, July 4, 2005
Labor Day	Monday, September 5, 2005
Columbus Day	Monday, October 10, 2005
Veterans Day	Friday, November 11, 2005
Thanksgiving Day	Thursday, November 24, 2005
	Friday, November 25, 2005
Christmas Day	Monday, December 26, 2005

Observance of these holidays by a district court may be deferred whenever observance of the holiday would interfere with judicial proceedings in progress.

At the discretion of the chief judge and approval of the judicial administrator, a district court may remain open on any of the above-designated holidays when the local county courthouse is open for business and observe as a substitute holiday a county designated holiday not otherwise observed by the Judicial Branch.

BY ORDER OF THE COURT this 11th day of August, 2004.


Kay McFarland
Chief Justice

RESEARCH GUIDE

L Ed Digest:

Criminal Law §§ 46.3, 46.7.

Federal Procedure L Ed:

Criminal Procedure, Fed Proc, L Ed, §§ 22:532-22:683.

Forms:

7 Federal Procedural Forms L Ed, Criminal Procedure §§ 20:25-20:74.

CASE NOTES

In view of the applicability to the state courts or the Fourteenth rather than the Sixth Amendment, Rule 44 cannot be regarded as defining, even by analogy, the minimum requirement of due process for the states under the Fourteenth Amendment. The new rule is evidence only of what this Court considers suitable in the federal courts and the states, in their discretion, may or may not follow it. The states are free to determine their own practice as to the assistance of counsel, subject to the

general limitation that such practice shall not deprive the accused of life, liberty or property without due process of law. *Bute v Illinois*, 333 US 640, 92 L Ed 986, 68 S Ct 763.

Question raised, but not decided, as to whether it is proper under Rule 44 for prosecuting attorney, rather than judge, to inquire of the accused as to his waiver of the right to counsel. *Pollard v United States*, 352 US 354, 1 L Ed 2d 393, 77 S Ct 481.

Rule 45. Time

(a) **Computation.** In computing any period of time the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of some paper in court, a day on which weather or other conditions have made the office of the clerk of the district court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When a period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in these rules "legal holiday" includes New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the state in which the district court is held.

(b) **Enlargement.** When an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done if the failure to act was the result of excusable neglect; but the court may not extend the time for taking any action under Rules 29, 33, 34, and 35, except to the extent and under the conditions stated in them.

Laws: Cases and Codes : U.S. Code : Title 5 : Section 6103

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- [United States Code](#)
 - [TITLE 5 - GOVERNMENT ORGANIZATION AND EMPLOYEES](#)
 - [PART III - EMPLOYEES](#)
 - [SUBPART E - ATTENDANCE AND LEAVE](#)
 - [CHAPTER 61 - HOURS OF WORK](#)
 - [SUBCHAPTER I - GENERAL PROVISIONS](#)

U.S. Code as of: 01/06/03

Section 6103. Holidays**Related Resources**

(a) The following are legal public holidays:

New Year's Day, January 1.

Birthday of Martin Luther King, Jr., the third Monday in January.

Washington's Birthday, the third Monday in February.

Memorial Day, the last Monday in May.

Independence Day, July 4.

Labor Day, the first Monday in September.

Columbus Day, the second Monday in October.

Veterans Day, November 11.

Thanksgiving Day, the fourth Thursday in November.

Christmas Day, December 25.

(b) For the purpose of statutes relating to pay and leave of employees, with respect to a legal public holiday and any other day declared to be a holiday by Federal statute or Executive order, the following rules apply:

(1) Instead of a holiday that occurs on a Saturday, the Friday immediately before is a legal holiday for -

(A) employees whose basic workweek is Monday through Friday; and

(B) the purpose of section 6309 (FOOTNOTE 1) of this title. (FOOTNOTE 1) See References in Text note below.

(2) Instead of a holiday that occurs on a regular weekly non-workday of an employee whose basic workweek is other than Monday through Friday, except the regular weekly non-workday administratively scheduled for the employee instead of Sunday, the workday immediately before that regular weekly nonworkday is a legal public holiday for the employee.

(3) Instead of a holiday that is designated under subsection (a) to occur on a Monday, for an employee at a duty post outside the United States whose basic workweek is other than Monday through Friday, and for whom Monday is a regularly scheduled workday, the legal public holiday is the first workday of the workweek in which the Monday designated for the observance of such holiday under subsection (a) occurs.

This subsection, except subparagraph (B) of paragraph (1), does not apply to an employee whose basic workweek is Monday through Saturday.

(c) January 20 of each fourth year after 1965, Inauguration Day, is a legal public holiday for the purpose of statutes relating to

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pay and leave of employees as defined by section 2105 of this title and individuals employed by the government of the District of Columbia employed in the District of Columbia, Montgomery and Prince Georges Counties in Maryland, Arlington and Fairfax Counties in Virginia, and the cities of Alexandria and Falls Church in Virginia. When January 20 of any fourth year after 1965 falls on Sunday, the next succeeding day selected for the public observance of the inauguration of the President is a legal public holiday for the purpose of this subsection.

(d) (1) For purposes of this subsection -

(A) the term "compressed schedule" has the meaning given such term by section 6121(5); and

(B) the term "adverse agency impact" has the meaning given such term by section 6131(b).

(2) An agency may prescribe rules under which employees on a compressed schedule may, in the case of a holiday that occurs on a regularly scheduled non-workday for such employees, and notwithstanding any other provision of law or the terms of any collective bargaining agreement, be required to observe such holiday on a workday other than as provided by subsection (b), if the agency head determines that it is necessary to do so in order to prevent an adverse agency impact.

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