

Approved: 2-21-06  
Date

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on February 7, 2006 in Room 231-N of the Capitol.

All members were present.

Committee staff present:

Athena Andaya, Kansas Legislative Research Department  
Dennis Hodgins, Kansas Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes Office  
Diana Lee, Revisor of Statutes Office  
Connie Burns, Committee Secretary

Conferees appearing before the committee:

Others attending:

See attached list.

Chairman Brungardt called for a motion to approve the minutes of January 10, 11, 12, 17, 18, and 19.

Senator Vratil moved to approve the committee minutes. Senator Gilstrap seconded the motion. The motion carried.

On the bench written testimony was presented by John Pinegar, Kansas Legislative Policy Group in support of **SB 379-Consolidation of municipalities.** (Attachment 1)

**Discussion and Final Action:**

**SB 403 - Alcoholic beverage licensees; procedures relating to violations; prohibition against employing certain persons**

Alcoholic Beverage Control (ABC) provided a response to questions asked by the committee on the bill. (Attachment 2)

Additional concerns were raised on page 1 line 21-27 on citation versus notice to appear. ABC will respond to this matter and get back with the committee.

**SB 418 - Personal and family protection act; licensing to carry concealed firearms**

The Revisor offered technical amendments, page 7 line 28 striking the word "or", page 8 line 25 (b) violation of this section and changing the wording to violation of a posted prohibition or restriction is a class B misdemeanor.

Senator Vratil moved to include the technical amendment provided by the Revisor. Senator Wilson seconded the motion. The motion carried.

Senator Wilson moved to pass SB 418 as amended. Senator Gilstrap seconded the motion. The motion carried.

**SB 421 - Unlawful picketing or protest march at funeral or memorial service**

Diana Lee, Revisor of Statutes, provided the committee an overview on Constitutional Issues in **SB 421.** (Attachment 3) She stated in order to withstand Constitutional scrutiny, a restriction on free speech in a public forum must:

1. Be content neutral

2. be a reasonable time, place, and manner restriction
3. leave alternate channels of communication open
4. be narrowly tailored to achieve a compelling governmental interest

Senator Vratil requested Ms. Lee to draft some language for the committee to review and Senator Hensley complimented Ms. Lee on a very informative memo.

The Chairman stated that this bill would not be worked today, and that next Tuesday, February 14, 2006, Professor Steve McAllister, KU Law, will present to the committee constitutionality of the bill.

### **SB 379-Consolidation of municipalities**

Senator Ostmeyer moved an amendment for a dual majority vote. Senator Wilson seconded the motion. The motion failed.

Senator Hensley moved an amendment for a super majority vote. Senator Ostmeyer seconded the motion. The motion failed.

Senator Brownelee moved an amendment on page 3, line 19 – 21, that the vote would be at the next general election, instead of the next general election when a governor is elected. Senator Vratil seconded the motion. The motion carried.

Senator Brownlee moved an amendment that if an elected office is to be eliminated or if the offices are to be eliminated and the duties transferred to a non-elective office, the elimination question will be submitted to the voters on a separate line item. Senator Ostmeyer seconded the motion. The motion carried.

Senator Vratil moved to pass **SB 379** as amended. Senator Reitz seconded the motion. The motion carried.

Senator Wilson recorded as a no vote.

The meeting was adjourned at 11:25 am. The next scheduled meeting is February 8, 2006.

**SENATE FEDERAL AND STATE AFFAIRS COMMITTEE**  
**GUEST LIST**

DATE 2-7-06

NAME	REPRESENTING
<del>Michael H. Hefner</del>	ABC
Brad Burke	ABC
Kerley Wilson	KSLIC
Keith Wood	NRA
Kiel Bronner	Intern
Dave Kerr	Self
Lindsey Douglas	Hein Law Firm
Ron Seebel	Hein Law Firm
MARK DEBETTI	KNEA
KEN DANIEL	KSSMALLBIZ.COM
Eric Wade	City of Lenexa
Beccay Wacham	City of Lenexa
Tom Groneman	ABC
R.E. DUNCAN	KWSWA
Andy Shaw	KCOA
Don Moler	LKM
Kim W. W.	LKM
Judith Moler	KAC
Amy Campbell	KABR
John A. Pinegar	Kansas Legislative Policy Group



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**KANSAS LEGISLATIVE POLICY GROUP**

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**Testimony**  
**Before the Senate Committee on Federal and State Affairs**  
**SENATE BILL NO. 379**  
**February 6, 2006**  
**Kansas Legislative Policy Group**  
**By: John D. Pinegar**

Mr. Chairman and members of the Senate Committee on Federal and State Affairs, thank you for allowing me to present written testimony. I am John Pinegar and represent Kansas Legislative Policy Group (KLPG), which is a coalition of over 30 western Kansas counties.

KLPG is working in cooperation with the Kansas Association of Counties, the League of Kansas Municipalities and other proponents of Senate Bill 379. KLPG is in support of the measure.

For many years, in its legislative platform, KLPG has supported local units of government having the authority and ability to consolidate and streamline the delivery of government services within their jurisdiction. KLPG remains committed to that goal.

KLPG does not support an approach of one-size fits all. Local units of government are unique and city and county elected officials within those local units of government know what will and won't work within their communities. We do not want the State requiring, prescribing or dictating changes in the structure of local government. We support Senate Bill No. 379 as it provides the necessary mechanism for local units of government to achieve efficiencies in governance and economies in the delivery of government services and retain local control.

Many of the counties that are members of KLPG are located in less populated and of course, the rural area of western Kansas. Those counties face the unique financial challenge of providing necessary government services. All counties and particularly those counties less populated could benefit by Senate Bill No. 379.

Again, thank you for the opportunity to present testimony on this very important issue.

# Kansas Legislative Policy Group

# KLPG

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## Support Local Control

Local Control is based on one fundamental premise, that the citizens and representatives of a local area know the needs of that area, and what's best for that area, better than some committee hundreds of miles away.

Local control isn't about power, it's about common sense. From taxes to education, regardless of political party, it just makes sense to have the important decisions that face a community made in that community.

## Activities & Functions

KLPG represents the interests of Western Kansas:

Serves as the policy and decision making body establishing legislative priorities

Annual meeting held in the fall of each year

Annual legislative planning meeting

Annual government day held in Topeka.

Excellent speakers are scheduled to address KLPG members about the important topics of the day.

Annual legislative reception held in Topeka.

Attendance by legislators is excellent.

A chance to reunite with fellow commissioners at meetings and social events.

## About Us

The Kansas Legislative Policy Group is a bi-partisan coalition of western Kansas counties with the common interest in the preservation of the counties tax base and retention of local control.

Founded in 1979 as the Southwest Regional Planning Commission they represented 13 counties.



## Support the KLPG

The KLPG needs your support to ensure that we are duly represented and are able to ensure our ability to make those decisions that affect us. If you support local control, then you support the KLPG.

Join and/or Support your LOCAL KLPG representative.

Join today at [www.klpg.org](http://www.klpg.org) or call 781-235-6245 for more information.

## Western Kansas Counties Have Something in Common...

The KLPG is working to ensure the preservation of local control and the preservation of each individual county's tax base.

## Keep Local Money Local



Over 25 years later the KLPG represents the interests of over 30 counties in Western Kansas and is now recognized among legislators as one of the most respected and influential organizations in the entire state.

Find out more at  
[www.klpg.org](http://www.klpg.org)

# Member Counties

(as of September 2004)

Find out more about the KLPG  
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# KLPG

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Greeley	Hamilton	Harper
Haskell	Hodgeman	Kearny
Lane	Logan	Meade
Morton	Ness	Norton
Rawlins	Rice	Russell
Scott	Smith	Stanton
Stevens	Thomas	Trego
Wallace	Wichita	

- Weekly KLPG newsletter during the legislative session with up to the minute news of items of importance to KLPG members.
- Annual written summary of legislative activities impacting local government.
- Legislative Platform
- KLPG membership directory or visit us online at [www.klpg.org](http://www.klpg.org)

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### Response to SB 403

The intent of SB 403 is to prohibit those who have been deemed unwilling or incapable of complying with the Kansas liquor laws from managing or running a retail liquor establishment. The agency recognizes that by statute [K.S.A. 41-2610(f)] and by regulation [K.A.R. 14-21-9], an 18, 19 or 20 year old cannot serve liquor in a restaurant or bar unless they are “supervised” by an employee who is at least 21 years old. The hypothetical “problem” foreseen by the KLBA of where a bartender that has had a license revoked may find themselves “supervising” an 18, 19 or 20 year old server, because the on-duty manager is under 21 years old, cannot exist. Managers, by regulation, must be at least 21 years old. Pursuant to K.A.R. 14-21-1(j), “Manager means the manager or assistant manager, or both, of any licensed drinking establishment who is in charge of the daily operations of the licensed drinking establishment. A manager shall be deemed to be employed in connection with the dispensing, selling, mixing or serving of alcoholic liquor.” Additionally, pursuant to K.A.R. 14-21-9(b)(2): “A drinking establishment shall not employ or continue to employ any person: who is under the age of 21 to mix or dispense drinks containing alcoholic liquor or cereal malt beverage.” Therefore, the only situation that would cause a licensee a problem in this hypothetical is if the only employee at the bar or restaurant that is at least 21 years old has had a liquor license revoked. In that case, the agency feels that such a person should not be managing the establishment or supervising employees, and they would be in the KLBA’s hypothetical. The intent of SB 403 is to prohibit those with a revoked license from managing or running a retail liquor establishment.

KLBA’s second concern is not entirely clear to the agency. The time limitations on notice to the licensee remain at 30 days. The change in language merely clarifies that the director of ABC cannot take administrative action on the licensee if the 30 day notice requirement is not met.

KLBA’s final request is that the proposed prohibition on employees that have had a license revoked from managing the retail liquor establishment be given a two year time limitation on the prohibition. The agency is opposed to such a restriction and points out that those convicted of felonies or any morals charge are already indefinitely prohibited from being employed in connection with the dispensing mixing or serving alcoholic liquor, pursuant to K.S.A. 41-2610(b). The same indefinite prohibition should apply to those who have been deemed unwilling or incapable of complying with the Kansas liquor laws.

The Kansas Association of Beverage Retailers (KABR) has voiced concern regarding the need to maintain the 30 day notice requirement in K.S.A. 41-106. The agency is not asking that the 30 day notice requirement to licensees be reduced. ABC is simply asking to have the ability to personally hand deliver written notice of the alleged violation in addition to the already permitted method of mailing the notice. Any concern of notice to criminal defendants is already addressed in K.S.A. 21-3106.

# Office of the Revisor of Statutes

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**TO:** the Senate Federal and State Affairs Committee  
**FROM:** Diana E. Lee, Assistant Revisor of Statutes  
**DATE:** Tuesday, February 7, 2006

## Constitutional Issues in Senate Bill 421: The Kansas Funeral Picketing Act

To withstand Constitutional scrutiny, a restriction on free speech in a public forum must: (1) Be content neutral; (2) be a reasonable time, place, and manner restriction; (3) leave alternate channels of communication open, and (4) be narrowly tailored to achieve a compelling governmental interest.

### Content Neutral:

Unless a restriction on speech specifically targets a particular message on its face or a court has some evidence that the governmental entity's purpose for enacting a regulation was to silence a particular message, courts are generally likely to hold that the restriction is content neutral. This requirement would not seem to be any cause for concern with respect to Senate Bill 421.

### Reasonable Time, Place, and Manner Restriction:

Unfortunately, there is little guidance as to the reasonableness of a time, place, or manner restriction on picketing at a funeral. However, the restraining order granted in St. David's Episcopal Church v. Westboro Baptist Church, Inc., assists us in assessing the reasonableness of the restriction in Senate Bill 421 because the restraining order contained a restriction on "focused picketing" around St. David's Episcopal Church. (St. David's Episcopal Church v. Westboro Baptist Church, Inc., 22 Kan.App.2d 537, 921 P.2d 821 (Kan. Ct. App. 1996), cert. denied, 519 U.S. 1090 (1997).) The restriction prohibited the members of the Westboro Baptist Church from picketing within 36 feet to the east, 36 feet to the west, 36 feet to the north, and 215 feet to the south of church property owned and used for religious purposes by St. David's within a half hour before the beginning and a half hour after the end of a religious event. Of course, this in no way can be treated as a hard or fast rule as to the reasonableness of a time, place, and manner restriction. Further, the St. David's restraining order is different simply by virtue of the fact that it is a restraining order dealing with the conduct of a particular group under a very specific set of circumstances. So while the restriction is



enlightening, it is not in any way an example that gives us clear-cut guidance regarding how a court would view the reasonableness of a different restriction because reasonableness is ultimately a question of fact.

**Alternate Channels of Communication:**

There would seem to be ample alternate channels of communication for those who desire to picket at funerals if this restriction is enacted. Picketing would be permitted outside of the area in which picketing would be prohibited under the statute at any time, including within one hour before, during, and two hours after a funeral. Further, picketing would be permitted within that area at any time other than one hour before, during, or two hours after a funeral.

**Narrowly Tailored to Achieve a Compelling Governmental Interest:**

In striking down the City of Lincoln, Nebraska's ordinance against picketing outside churches in Olmer v. City of Lincoln, the Federal Court for the District of Nebraska said that the provision was overbroad, in other words, not narrowly tailored to achieve the identified government interest in protecting children from seeing scary or obscene pictures as they walked to and from their houses of worship (anti-abortion picketers carried signs with pictures of aborted fetuses on them that scared children and caused families to leave the church).

The Lincoln ordinance read, in pertinent part, "It shall be deemed an unlawful disturbance of the peace for any person intentionally or knowingly to engage in focused picketing of a scheduled religious activity at any time within the period from one-half hour before to one-half hour after the scheduled activity, at any place (1) on the religious organization's exterior premises, including its parking lots; or (2) on the portion of the right of way including any sidewalk on the same side of the street and adjoining the boundary of the religious premises, including its parking lots; or (3) on the portion of the right of way adjoining the boundary of the religious premises which is a street or roadway including any median within such street or roadway."

The Court said, "It goes beyond the church building and the church property, and seeks to forbid peaceful communication on property belonging to the public, even though the communication may be completely truthful, and even though there is absolutely no physical interference with access to the church." (Olmer v City of Lincoln, 23 F. Supp. 2d 1091 (D. Neb. 1998).)

Further, the Court said that the speech was not limited under the ordinance to that affecting children or that which was particularly likely to scare. Speech that communicated to adults was also impermissible, as was speech that would not be of the type of scare children.

The holding in Olmer v. City of Lincoln is likely distinguishable from the restriction contained in Senate Bill 421, however, because the restriction limiting picketing of funerals to one hour before and two hours after within 300 feet of the funeral seems narrowly tailored to meet the governmental interest in protecting mourners at a funeral from the disturbance of picketers. However, it is also worthy of note that not all speech that might be engaged in by picketers at a funeral would be of the variety that would emotionally disturb the mourners. Yet this speech is restricted along with picketing that would upset mourners. So the Committee may want to consider an amendment that

would somewhat narrow the restriction, disallowing only picketing that is likely to disrupt the ability of mourners to grieve their losses in peace.

Other states have statutes that ban the disruption of funerals. However, these laws do not focus on speech or the restriction of it. They instead create the crime of a disturbance of general order or a form of disorderly conduct. Massachusetts and Oklahoma both have this kind of statute. This might be an option that the Committee would be interested in considering to avoid the potential Constitutional issues related to the restriction of speech in a public area that could arise under Senate Bill 421.

The Massachusetts statute reads, “Whoever willfully interrupts or by fast driving or otherwise in any way disturbs a funeral assembly or procession shall be punished as provided in section forty,” (imprisonment for up to a month and/or a fine of up to \$50). (Mass. Ann. Laws ch. 272, § 42 (Law. Co-op. 1998).)

The Oklahoma statute reads, “Every person who willfully disturbs, interrupts or disquiets any assemblage of people met for the purpose of any funeral, or who, without authority of law, obstructs or detains any persons engaged in carrying or accompanying any dead body of a human being to a place of burial, is guilty of a misdemeanor.” (Okla. Stat. tit. 21, § 1166 (1997).)

#### **Sources:**

Mass. Ann. Laws ch. 272, § 42 (Law. Co-op. 1998).

Okla. Stat. tit. 21, § 1166 (1997).

City of Ladue v. Gilleo, 512 U.S. 43 (1994).

Perry Educ. Ass’n v. Perry Local Educators’ Ass’n, 460 U.S. 37 (1983).

Olmer v City of Lincoln, 23 F. Supp. 2d 1091 (D. Neb. 1998).

City of Prairie Village v. Hogan, 253 Kan. 423, 855 P.2d 949 (1993).

St. David’s Episcopal Church v. Westboro Baptist Church, Inc., 22 Kan.App.2d 537, 921 P.2d 821 (Kan. Ct. App. 1996), cert. denied, 519 U.S. 1090 (1997).

Phelps, Alan, *Picketing and Prayer: Restricting Freedom of Expression Outside Churches*, 85 Cornell L. Rev. 271 (1999).