

## MINUTES OF THE SENATE WAYS AND MEANS COMMITTEE

The meeting was called to order by Chairman Dwayne Umbarger at 10:35 A.M. on February 6, 2006, in Room 123-S of the Capitol.

All members were present except:

Senator Jim Barone- excused

Senator David Wysong- excused

Committee staff present:

Jill Wolters, Revisor of Statutes Office

Michael Corrigan, Revisor of Statutes Office

Alan Conroy, Director, Kansas Legislative Research Department

J. G. Scott, Kansas Legislative Research Department

Reagan Cussimano, Kansas Legislative Research Department

Amy Deckard, Kansas Legislative Research Department

Audrey Dunkel, Kansas Legislative Research Department

Judy Bromich, Chief of Staff

Mary Shaw, Committee Secretary

Conferees appearing before the committee:

Charles M. Yunker, Adjutant, The American Legion Department of Kansas

Darrell Bencken, Veterans of Foreign Wars

David Brader, Adjutant, Disabled American Veterans, Department of Kansas

James A. Bunker, Combat Veteran

George Webb, Executive Director, Kansas Commission on Veterans' Affairs

Edward F. Wieggers, Marysville, Kansas (written)

Others attending:

See attached list.

### Bill Introduction

Senator Schodorf moved, with a second by Senator Schmidt, to introduce a conceptual bill clarifying language that a principal of a school is informed of juvenile justice children if deemed necessary (No Revisor of Statutes Number). Motion carried on a voice vote.

The Chairman opened the public hearing on:

### **SB 428--Veterans service representatives, employment, compensation**

Staff briefed the Committee on the bill.

Chairman Umbarger welcomed the following conferees:

Charles Yunker, American Legion testified in support of the bill. (No written testimony was submitted.). Mr. Yunker mentioned that **SB 428** would restore the American Legion and Veterans of Foreign Wars ability to supplement the wages of veterans service representatives who are accredited by the respective organizations. He detailed information on what the bill would provide.

Darrell Bencken, State Adjutant, Kansas Veterans of Foreign Wars, testified in support of the bill (Attachment 1). Mr. Bencken explained that **SB 428** was developed in response to recent changes implemented by the KCVA that veterans, partnering Veteran's service organizations, some staff at the VA on the local and at the national level, and members of this body of legislators have found detrimental to veteran services in Kansas. He detailed these changes in his written testimony.

David Brader, Adjutant, Disabled American Veterans Department of Kansas, testified in opposition of the bill (Attachment 2). Mr. Brader explained that veterans are a big concern to the Disabled American Veterans

CONTINUATION SHEET

MINUTES OF THE Senate Ways and Means Committee at 10:35 A.M. on February 6, 2006, in Room 123-S of the Capitol.

that they are treated with honor and respect that they deserve in saying that **SB 428** should be about the veterans and not two service organizations. In closing, Mr. Brader mentioned that the State of Kansas should recognized all veterans organizations and not a select two. All veterans organizations should be treated equally.

James A. Bunker, Combat Veteran, testified as an opponent of the bill (Attachment 3). Mr. Bunker explained that there are many parts of **SB 428** that should be stricken and some parts that need to be changed are because of changes in other laws. These suggested changes are detailed in Mr. Bunker's written testimony. In closing, Mr. Bunker noted that there needs to be a quality control system working with the KCVA on all of the VSR's and this will help in setting training goals for all of the offices throughout Kansas. Copies of suggested amendments to **SB 428** were distributed by Mr. Bunker (Attachment 4).

George Webb, Executive Director, Kansas Commission on Veterans' Affairs, testified as a neutral conferee on the bill (Attachment 5). Mr. Webb submitted a suggested balloon amendment to **SB 428** (Attachment 6). Mr. Webb mentioned that he firmly believed that the changes proffered on the bill would have disastrous consequences for the Agency, for numerous veterans service organizations, and for the veterans of this state. Mr. Webb highlighted the primary criterion to any organizational decision must be the best interests of the veterans in the State of Kansas. However, other decision criteria should ensure that operations remain within the proper boundaries of legality, ethics and fairness. Mr. Webb noted that in addition to allowing poor management practices and statutory violations, the KCVA was not structured or organized to provide the best support to all veterans of Kansas. In closing, Mr. Webb noted that KCVA was not consulted on the bill when drafted, but they look forward to a positive, productive solution in which the KCVA can assist all veterans and veterans organizations in the best way possible—and in which the KCVA, as a state agency, functions within standards of conduct that are beyond reproach.

Written testimony was submitted by Edward F. Wieggers, Commissioner, Kansas Commission on Veterans' Affairs (Attachment 7).

There being no further conferees to come before the Committee, the Chairman closed the public hearing on **SB 428**.

The meeting adjourned at 12:00 p.m. The next meeting was scheduled for February 7, 2006.

**SENATE WAYS AND MEANS  
GUEST LIST**

Date February 6, 2006

NAME	REPRESENTING
Julie Thomas	
Ronnie Jefflen	
George Weik	KCVA
Michael Neer	KCVA
James Bunker	Self
CHRISTIAN KRAMER	DAV
Robert M. Font DSO	DAV
David W. Brader	Disabled American Veterans
Steven A. Henke	Disabled American Veterans
DARRELL BENCKEN	KANSAS VETERANS OF FOREIGN WARS
JEFFERSON D. LAWSON	KANSAS VETERANS OF FOREIGN WARS
Ken Stodgill	KS UFW
MARK BORANYAK	CAPITOL STATESIES
Charles M Yunkere	The American Legion
Kate Peck	KCUH
Wayne Bollig	KC VA
Jim Friedrich	KCVA
Kevin Young	Dept of Administration

TESTIMONY BY  
DARRELL BENCKEN, STATE ADJUTANT, KANSAS VETERANS OF FOREIGN WARS  
FOR THE SENATE AND FEDERAL STATE AFFAIRS COMMITTEE  
SUPPORTING THE PROPOSED CHANGES OUTLINED IN SB 428  
AND NOT THE AMENDED VERSION

Background to SB 428:

SB 428 was developed in response to recent changes implemented by the KCVA that veterans, partnering veteran's service organizations, some staff at the VA on the local and at the national level, and members of this body of legislators have found detrimental to veteran services in Kansas. Changes like:

***1) Leaving positions open in the service centers even after the legislature voted to restore funding to fill these positions.***

a) For two years running the Legislature has provided funding to rehire vacant VSR position and the KCVA chose to ignore the wishes of the legislature saying often "We need to consolidate offices or the Governor will continue to cut us." When asked for the reason not to fill the positions we were then told the JEA is under review. When that no longer was acceptable to Kansas veterans we heard, well, they have to be pure KCVA employees. There were always plenty of reasons not to do the right thing by Kansas veterans. Sadly in the meantime while this was going on, veterans currently in the system were not getting the service they deserved and those wanting to come into the system were being underserved by poorly training overworked (according to the executive director) VSR's. Even when directed by the Commission to fill these positions half hearted efforts were made to shift people in to these key regional office positions using untrained staff, temporary positions and staff from the least productive field office.

***2) Getting an ethics opinion that changed the way veteran services is operated in Kansas by providing those involved with inaccurate slanted information.***

a) When the question of stipends was brought up to the Ethics Commission, the director had a number of meetings with Ethics staff, not to provide them an unbiased question including all facts, but asking only if KSA 46-235 applied to Veteran service officers. What was not disclosed, in an unbiased way, is how the existing KSA 73-1211 fit. Whether because of the joint employment situation created by dual offices and shared services created an exemption for certain staff and allowed stipends. Because of this we feel a flawed opinion was given to the KCVA. As a result of that flawed opinion the veterans of the state of Kansas can no longer receive the best service possible from state employees. VFW asked for an opinion on KSA 73-1211 but have received nothing from the State Ethics Commission.

b) Stipends are not "that ugly little secret" some would have you believe, but part of the shared expense service organizations agreed to as part of the cost of their partnering with the State. Stipends have been a necessary part of this partnership not just because of duties performed after hours, while that may be part of it, stipends help the State compensate staff for duties that are essential to operating in a regional office under a service organization accreditation. Such as preparing an appeal, testifying before the BVA, providing meal tickets to veterans from the service organization. These are but a few of the extra duties of a Service Organization accredited employee that are not a part of this employee's duty description but are essential to work in the RO.

c) Some individuals would like you to believe these stipends were "gifts" to some VSR's and OA's. It has been long recognized that VSR's and their assigned OA's on any given day, because of their unique situation in a service center, do work for both the KCVA and the service organization. It is also the common understanding that the staffs should be compensated by both since this work could not be confined to after hours only and still serve and provide proper service to veterans. For example, if the individual was meeting with a member of the service organization to discuss a VFW/AL service office issue it could directly affect his KCVA job. Training specifically oriented towards VFW or AL POA's could have a direct impact on his/her State job. Training provided as a VFW requirement would directly benefit him/her in their State position. All of these and other overlaps in service to veterans "the KCVA's mission" constitute the need for a stipend.

**3) By misrepresenting the "Joint Employment" concept and the resulting MOU.**

a) In spite of what some might want you to think, Joint Employment does not stem from the MOU, but the MOU was as a result of FLSA saying that a joint employment arrangement was created by the working situation. While some would like you to believe that simply saying the JEA is dead and by not signing the MOU they can limit the states liability, previous commissioners understood that the environment and working situation created the joint employment and the MOU was an effort approved by the Attorney General's office as a solution to the issue. For this reason, we feel the MOU must be solidified in statute making it incumbent upon this commission and other commissions to maintain a workable MOU to protect the State, the KCVA, service organizations and these extremely hardworking employees.

b) It is not the extracurricular work that neither warrants the need for the MOU nor creates the JEA. A joint employment situation exists because the state and the service organization formed a partnership to deliver veterans services, so we say, lets acknowledge that we work well together, save taxpayer dollars and move forward with a forward thinking document. You can not sever the joint employment simply by saying we have no MOU, it is a very complex issue and thinking that it is easy creates a major liability for the State.

**4) For some reason the director thinks that just because KSA 73-1211 was written in 1953 it can be ignored or taken for granted. We have seen this same attitude with other State statutes. While this law was last reviewed then, it is still important to Kansas veterans. The executive director in his comments indicated that the verbiage is "unclear" and "no longer relevant". We strongly disagree, this statute was created to encourage a partnership between a State agency and private veterans service organizations. Why would a partnership that reduces the cost to the state, give better service to veterans and blocks an agency from becoming a bloated bureaucracy be no longer relevant.**

a) You will hear a lot of comments from people testifying making unsubstantiated claims like, "we do 50% of the appeals work", but they have no proof, or "70% of veterans do not belong to the AL and VFW so they don't want anything to do with them." This of course would also mean 95% of veterans don't belong to the DAV so they want nothing to do with it. We don't believe that, and neither do the 85,000 members of our service organizations believe that. It's truly sad that an individual feels they have credibility by making these ludicrous statements and expecting you to believe it just because they make these wild accusations without any factual proof.

**5) Does SB428 cut out the smaller service organizations with the provisions requiring them to be a 501©19, probably. So why would you want to do it? What is the best way to reach and assist the most Kansas Veterans? What is the best use of Kansas Commission on Veteran Affairs limited veteran services resources? Many members of the AL and VFW are also members of the DAV, Purple Heart, Ex-POW's and many other service organizations.**

AL/VFW 501 (c) 19's	Other Service Organizations	KCVA
500 Posts to distribute information, be a point of contact and support the community	0-1	14 State funded offices
Represented in multiple communities in all 105 counties	0-1 in Wichita Only	Regular trips to some communities in some counties at state expense often depend of free use of AL VFW posts
Represent over 85,000 veterans	DAV 9,500 Others less than 5,000	N/A
AL/VFW Entered into a contract and take all claims referred and provide all requested feedback to the KCVA, including information on specific veterans on request, work as true partners.	Will not enter into partnership nor will most report back to the KCVA, DAV national charter stops them from entering into agreement with the KCVA	Have their own accreditation and want others to accredit them
All eligible partnered service center employees receive accreditation, some staff have multiple accreditations, use our space and assets to support non-AL/VFW POA's currently at no cost to the state.	DAV National prohibits cross accreditation	Want National accreditation
Provide national quality training to all accredited service center VSR's and provide a free resource to all State VSR's. (see attachments A thru D)	Smaller organizations that are eligible to participate may or may not provide training. May or may not have the quality necessary	Can provide training depending on state budget, quality in the past depended on the service organizations.
\$2,000,000 Errors and omissions policy protects VSR's we share	Not sure	100% state liability

6) *If the state enters into a partnership shouldn't it try to get the most for it's dollars, the 501 © 1 are the organizations in your communities who to serve your veterans and who can provide the best use of state resources.*

7) *Grants.* One of the issues is, should the state start a grant program, and if so, how would it be funded? Would the state reduce the number of FTE or would this be new dollars? If it is new dollars, the state would have to increase funding. If you decide to go to the grant program you must be very careful in it's handling and administration. One of the pit falls that you were not made aware of with the grant programs is, one state was providing funds to service organizations for doing nothing. In another state, the agency gave grants to all service organizations in the RO without accountability on production. For example, in one state a VSO received a grant and only handled one claim. Now using this logic, some opponents would be here saying 20% of the states with grant programs had severe accountability problems and while that would be fact, it would not be in the best interest of Kansas veterans. The other piece of erroneous information is that a lot of states give grants. We wanted to see what a lot meant, and came up with 5 states that provide grants.

8) *You also heard that states were severing arrangements with service organizations,* we came up with 23 that indicate they have an arrangement with service organizations of some type. In 11 states, members of their boards or commissions are recommended by the service organizations. We feel this shows a trend just the opposite of what you were led to believe, most states realize the important roll service organizations play, and promote cooperation between the state agency and the service organizations.

9) *The VFW and it's partnership with Kansas.* A lot has been said or inferred that a partnership with the Kansas VFW would be detrimental to Kansas veterans. We totally and emphatically disagree. The Kansas Veterans of Foreign Wars was chartered by our National organization July 5, 1921. That is 86 years of tireless service to Kansas veterans, their widows and children, not to mention the communities in which we live. One of our founding principles is to assist the sick, the needy and the afflicted and we have done that and will continue to do so. This year alone, the Kansas VFW has expended some \$1,700,000.00 in veteran services and hospital work. In addition our VFW community based posts and auxiliaries (173) has provided well over \$1,000,000.00 in community service work. Service to Kansas veterans and their families is not just *lip service*, it is our mission and our obligation, one we do not take lightly. This is why the Kansas VFW is confused and dismayed as to why the Executive Director and his commission want to sever all ties. History reflects that Kansas VFW State Service Officers are among the elite when it comes to representing veterans in gaining their earned entitlements from the Department of Veterans Affairs. Their knowledge, training, and continuing education is the finest that can be provided (see attachments) and we take pride in their professional abilities to deliver services to veterans in one stop. The Kansas VFW will stand shoulder to shoulder with any service organization that wants to honestly and earnestly deliver services to Kansas veterans and their dependents. However, we will fiercely oppose anyone who wants to dismantle a tried and true veterans entitlement delivery package. We are more than willing to discuss and even comprise with the commission as long as it 1) does not affect the ability of Kansas veterans receiving the best possible representation that they deserve. 2) It is not for the purpose of satisfying ones ego.

VETERANS OF FOREIGN WAR  
NATIONAL VETERANS SERVICE TRAINING

1. VFW National Veterans Service expends \$400,000.00 annually for training state veterans service officers.
2. Training requirements are mandated by our NVS committee. The minimum requirements must be met in order to receive and maintain accreditation with the Department of Veterans Affairs.
  - a) Initial Training (new hires) mandatory 30 hours - Washington, D.C.
  - b) Basic Skill Level Training - less than 4 years experience - 40 hours (proficiency testing)
  - c) Advanced Skill Level Training - 4-12 years experience - 32 hours (proficiency testing)
  - d) Senior Skill Level Training - 12 years + experience - 28 hours (proficiency testing)

(see attached courses of study)



NATIONAL VETERANS SERVICE

PHASE 1

INITIAL TRAINING

WASHINGTON, D.C.

**TRAINING SCHEDULE**

**Monday**

**VFW WASHINGTON OFFICE**

8:15 a.m.-9:00 a.m.	DIRECTOR'S FORUM
9:00 a.m.-9:15 a.m.	BREAK
9:15 a.m.-10:10 a.m.	HISTORY OF THE VFW
10:10 a.m.-10:20 a.m.	BREAK
10:20 a.m.-11:00 a.m.	NVS HEALTH OPERATIONS (INCLUDING
11:05 a.m.-11:45 a.m.	THE TACTICAL ASSESSMENT CENTER)
11:45 a.m.-1:00 p.m.	LUNCH
1:00 p.m.-2:15 p.m.	COMPLETION OF VA FORMS
2:15 p.m.-2:30 p.m.	BREAK
2:30 p.m.-3:15 p.m.	VA FORMS (cont'd)
3:15 p.m.-3:25 p.m.	BREAK
3:25 p.m.-4:00 p.m.	NVS AUTHORITY AND FUNCTIONING

**Tuesday**

**VFW WASHINGTON OFFICE**

8:15 a.m.-9:15 a.m.	ISSUE IDENTIFICATION/CLAIMS SUBMISSION
9:15 a.m.-9:30 a.m.	BREAK
9:30 a.m.-10:30 a.m.	ISSUE IDENTIFICATION (cont'd)
10:30 a.m.-10:40 a.m.	BREAK
10:45 a.m.-11:45 a.m.	BASIC DEVELOPMENT
11:45 a.m.-1:00 p.m.	LUNCH
1:00 p.m.-2:15 p.m.	IMPORTANCE OF REFERENCE MATERIAL
2:15 p.m.-2:30 p.m.	BREAK
2:30 p.m.-3:15 p.m.	INTRODUCTION TO DECISIONS (RATING
	AND AUTHORIZATION)
3:15 p.m.-3:25 p.m.	BREAK
3:25 p.m.-4:00 p.m.	INTRODUCTION TO DECISIONS (cont'd)

**Wednesday**

8:15 a.m.-9:00 a.m.

**BOARD OF VETERANS APPEALS**

PROCESS OF CORRECTION OF DISCHARGE,  
OBTAINING MEDALS AND MILITARY  
VERIFICATION

9:00 a.m.-9:15 a.m.

BREAK

9:15 a.m.-10:15 a.m.

NATIONAL VETERANS SERVICE  
RESPONSIBILITIES

10:30 a.m.-11:45 a.m.

BOARD OF VETERAN'S APPEALS PROCEDURES

11:45 a.m.-12:45 p.m.

LUNCH

12:45 p.m.-1:50 p.m.

TOUR OF BVA FACILITIES AND VFW/BVA  
OFFICE (two groups)

2:00 p.m.-2:50 p.m.

THE VA'S APPEALS MANAGEMENT CENTER

2:50 p.m.-3:10 p.m.

BREAK

3:10 p.m.-4:00 p.m.

BOARD OF VETERANS' APPEALS BRIEFING

**Thursday**

**VFW WASHINGTON OFFICE**

8:15 a.m.-9:00 a.m.

LEGISLATIVE BRIEFING

9:00 a.m.-9:15 a.m.

BREAK

9:15 a.m.-10:00 a.m.

TOUR OF VFW WASHINGTON OFFICE

10:00 a.m.-10:10 a.m.

BREAK

10:10 a.m.-10:45 a.m.

SUBMISSION OF A FORMAL APPEAL

10:50 a.m.-11:45 a.m.

11:45 a.m.-1:00 p.m.

LUNCH

1:00 p.m.-2:00 p.m.

INTERVIEWING THE CLAIMANT

2:00 p.m.-2:15 p.m.

BREAK

2:15 p.m.-3:10 p.m.

EXPLANATION AND SIMPLIFICATION OF  
THE REGULATORY PROCESS

3:10 p.m.-3:20 p.m.

BREAK

3:20 p.m.-4:00 p.m.

THE REGULATORY PROCESS (cont'd)

**Friday**

**VFW WASHINGTON OFFICE**

8:15 a.m.-9:00 a.m.	OPERATION OF THE COURT OF APPEALS FOR VETERANS CLAIMS (CAVC)
9:00 a.m.-9:15 a.m.	BREAK
9:15 a.m.-10:00 a.m.	COURT OF APPEALS FOR VETERANS CLAIMS
10:00 a.m.-10:10 a.m.	BREAK
10:10 a.m.-11:10 a.m.	INTRODUCTION TO THE VETERANS INFORMATION MANAGEMENT SYSTEM (VIMS)
11:15 a.m.-11:45 a.m.	ANALYSIS OF RATING DECISIONS
11:45 a.m.-1:00 p.m.	LUNCH
1:00 p.m.-2:00 p.m.	ANALYSIS OF RATING DECISIONS (cont'd)
2:00 p.m.-2:10 p.m.	BREAK
2:10 p.m.-2:45 p.m.	REOPENING A CLAIM VS. CLEAR AND UNMISTAKABLE ERROR
2:45 p.m.-3:00 p.m.	BREAK
3:00 p.m.-3:30 p.m.	GENERAL REVIEW and CLOSING

NATIONAL VETERANS SERVICE  
BASIC SKILL LEVEL TRAINING SCHEDULE

**Sunday**

12:30 p.m.-1:00 p.m.	REGISTRATION
1:00 p.m.-2:20 p.m.	REVIEW OF 2005 BASIC SKILL LEVEL TEST
2:20 p.m.-2:40 p.m.	BREAK
2:40 p.m.-4:15 p.m.	REVIEW OF 2005 BASIC SKILL LEVEL TEST (cont'd)

**Monday**

8:15 a.m.-9:30 a.m.	WORKSHOPS (all day)
9:30 a.m.-9:50 a.m.	BREAK
9:50 a.m.-11:40 a.m.	WORKSHOPS (continued)
11:45 a.m.-1:00 p.m.	LUNCH
1:00 p.m.-2:40 p.m.	WORKSHOPS (continued)
2:40 p.m.-3:00 p.m.	BREAK
3:00 p.m.-4:15 p.m.	WORKSHOPS (continued)

**Tuesday**

8:15 a.m.-9:30 a.m.	WORKSHOPS (all day)
9:30 a.m.-9:50 a.m.	BREAK
9:50 a.m.-11:40 a.m.	WORKSHOPS (continued)
11:45 a.m.-1:00 p.m.	LUNCH
1:00 p.m.-2:40 p.m.	WORKSHOPS (continued)
2:40 p.m.-3:00 p.m.	BREAK
3:00 p.m.-4:15 p.m.	WORKSHOPS (continued)

**Wednesday**

8:15 a.m.-9:30 a.m.	WORKSHOPS (all day)
9:30 a.m.-9:50 a.m.	BREAK
9:50 a.m.-11:40 a.m.	WORKSHOPS (continued)
11:45 a.m.-1:00 p.m.	LUNCH
1:00 p.m.-2:40 p.m.	WORKSHOPS (continued)

**Wednesday (cont'd)**

2:40 p.m.-3:00 p.m. BREAK  
3:00 p.m.-4:15 p.m. WORKSHOPS (continued)

**Thursday**

8:15 a.m.-9:30 a.m. WORKSHOPS (all day)  
9:30 a.m.-9:50 a.m. BREAK  
9:50 a.m.-11:40 a.m. WORKSHOPS (continued)  
11:45 a.m.-1:00 p.m. LUNCH  
1:00 p.m.-2:40 p.m. WORKSHOPS (continued)  
2:40 p.m.-3:00 p.m. BREAK  
3:00 p.m.-4:15 p.m. WORKSHOPS (continued)

**Friday**

8:15 a.m.-9:00 a.m. NVS DIRECTOR FORUM  
9:00 a.m.-9:20 a.m. BREAK  
9:20 a.m.-10:00 a.m. DIRECTOR'S FORUM (continued)  
10:00 a.m.-11:15 a.m. VA CENTRAL OFFICE REVIEW OF PTSD AND  
INDIVIDUAL UNEMPLOYABILITY CASES  
11:15 a.m.-12:00 p.m. OPEN FORUM

**TOPICS FOR WORKSHOPS**

**WORKSHOP #1**

**Basic Pension Purpose**

Pension Eligibility (understanding wartime periods)  
Recognizing Countable Income  
Computation of Pension Rate (including medical expenses)  
Special Monthly Pension  
Conditions of Reduction  
Annual Reporting  
Operation of Pension Maintenance Centers  
Appropriate Reference Material  
Practical Examples  
Understanding Rate Charts

## **WORKSHOP #2**

- Gulf War Disabilities (eligibility)
- Gulf War Medical Research
- Character of Discharge
- Evaluation of Hearing Disabilities
- “Hospitalized” Rates
- Increases such as Paragraph 29 and 30
- Reduction of Special Monthly Compensation and Pension
- Disability Definitions within 38 CFR Part 4
- Civil Service Preference

## **WORKSHOP #3**

- Calculation of the Bilateral Factor and Amputation Rule
- Evaluating Visual Disabilities
- General Policy of Ratings (dissecting Part 4)
- Death Benefits
- Death Compensation and Dependency and Indemnity Compensation
- Death Pension
- Special Monthly Benefits
- Case Problems resulting in Creation of Ratings

## **WORKSHOP #4**

- Understanding Rating Schedule Reductions
- Dissecting 38 CFR/38 U.S.C./M21-1
- NVS Policy and Procedures
- Internet Research
- “Pot Luck” Problem Solving (including DeLuca ratings)
- VTMS
  - Basic Data Entry
  - Identifying Claims by Use of Diagnostic Codes
  - Completion of Forms
  - Monthly Reporting

ADVANCED VETERANS SERVICE  
ADVANCED SKILL LEVEL TRAINING SCHEDULE

**Sunday**

12:30 p.m.-12:50 p.m.	REGISTRATION
12:50 p.m.-1:00 p.m.	PLEDGE OF ALLEGIANCE and INVOCATION
1:00 p.m.-2:30 p.m.	REVIEW OF 2005 ADVANCED SKILL LEVEL TEST
2:20 p.m.-2:40 p.m.	BREAK
2:40 p.m.-4:15 p.m.	REVIEW OF 2005 ADVANCED SKILL LEVEL TEST

**Monday**

8:15 a.m.-9:30 a.m.	WORKSHOPS (all day)
9:30 a.m.-9:50 a.m.	BREAK
9:50 a.m.-11:40 a.m.	WORKSHOPS (continued)
11:45 a.m.-1:00 p.m.	LUNCH
1:00 p.m.-2:40 p.m.	WORKSHOPS (continued)
2:40 p.m.-3:00 p.m.	BREAK
3:00 p.m.-4:15 p.m.	WORKSHOPS (continued)

**Tuesday**

8:15 a.m.-9:30 a.m.	WORKSHOPS (all day)
9:30 a.m.-9:50 a.m.	BREAK
9:50 a.m.-11:40 a.m.	WORKSHOPS (continued)
11:45 a.m.-1:00 p.m.	LUNCH
1:00 p.m.-2:40 p.m.	WORKSHOPS (continued)
2:40 p.m.-3:00 p.m.	BREAK
3:00 p.m.-4:15 p.m.	WORKSHOPS (continued)

**Wednesday**

8:15 a.m.-9:30 a.m.	WORKSHOPS (all day)
9:30 a.m.-9:50 a.m.	BREAK
9:50 a.m.-11:40 a.m.	WORKSHOPS (continued)
11:45 a.m.-1:00 p.m.	LUNCH

### **Wednesday (cont'd)**

1:00 p.m.-2:40 p.m.            WORKSHOPS (continued)  
2:40 p.m.-3:00 p.m.            BREAK  
3:00 p.m.-4:15 p.m.            WORKSHOPS (continued)

### **Thursday**

8:15 a.m.-9:00 a.m.            NVS DIRECTOR'S FORUM  
9:00 a.m.-9:20 a.m.            BREAK  
9:20 a.m.-10:00 a.m.          DIRECTOR'S FORUM (continued)  
10:00 a.m.-11:15 a.m.        VA CENTRAL OFFICE REVIEW OF PTSD AND  
INDIVIDUAL UNEMPLOYABILITY CASES  
11:15 a.m.-12:00 p.m.        OPEN FORUM (any remaining issues from the test,  
workshops or training topics)

### **TOPICS FOR WORKSHOPS**

#### **WORKSHOP #1**

Calculation of Improved Pension Rates  
Unreimbursed Medical Expenses  
Determining Compensation Rates  
Powers of Attorney for Incompetent Veterans  
Basic Delimiting Dates for Education Programs  
Basic Rules Governing Chapter 32 Education Benefits  
VTMS

#### **WORKSHOP #2**

Explanation of Monthly Rates for DIC before and after 1993  
Calculation of Hearing Loss  
Types of Separation from Active Duty  
Reduced Evaluations Mandated by the Rating Schedule  
Reference Manuals for VA Programs  
Board of Veterans' Appeals Rules of Procedure  
Applicable Time Limits for Appeals  
NVS Policy and Procedure

#### **WORKSHOP #3**

Bilateral Factors and the Amputation Rule  
Special Monthly Compensation - entitlement, rates and codes  
Residuals of Cold Injuries  
Rules for Presumptive Service Connection  
Prisoner-of-War versus Internee Status  
Hospitalized Rates for Special Monthly Compensation and Special  
Monthly Pension  
Priority Categories for Health Care  
Denial of Medical Treatment based on Inability to pay Co-Payment  
Ranges of Motion in Orthopedic Claims



NATIONAL VETERANS SERVICE  
SENIOR SKILL LEVEL TRAINING SCHEDULE

**Sunday**

12:00 p.m.-12:30 p.m.	REGISTRATION, INVOCATION AND PLEDGE OF ALLEGIANCE
12:30 p.m.-1:40 p.m.	NVS DIRECTOR'S FORUM
1:40 p.m.-2:00 p.m.	BREAK
2:00 p.m.-3:00 p.m.	REVIEW OF 2005 SENIOR SKILL LEVEL
3:10 p.m.-4:15 p.m.	TEST

**Monday**

8:15 a.m.-9:30 a.m.	WORKSHOPS (all day)
9:30 a.m.-9:50 a.m.	BREAK
9:50 a.m.-11:45 a.m.	WORKSHOPS (continued)
11:45 a.m.-1:00 p.m.	LUNCH
1:00 p.m.-2:40 p.m.	WORKSHOPS (continued)
2:40 p.m.-3:00 p.m.	BREAK
3:00 p.m.-4:15 p.m.	WORKSHOPS (continued)

**Tuesday**

8:15 a.m.-9:30 a.m.	WORKSHOPS (all day)
9:30 a.m.-9:50 a.m.	BREAK
9:50 a.m.-11:45 a.m.	WORKSHOPS (continued)
11:45 a.m.-1:00 p.m.	LUNCH
1:00 p.m.-2:40 p.m.	WORKSHOPS (continued)
2:40 p.m.-3:00 p.m.	BREAK
3:00 p.m.-4:15 p.m.	WORKSHOPS (continued)

**Wednesday**

8:15 a.m.-9:30 a.m.	WORKSHOPS (all day)
9:30 a.m.-9:50 a.m.	BREAK
9:50 a.m.-11:45 a.m.	WORKSHOPS (continued)
11:45 a.m.-1:00 p.m.	LUNCH

**Wednesday (cont'd)**

1:30 p.m.-2:40 p.m.            WORKSHOPS (continued)  
2:40 p.m.-3:00 p.m.            BREAK  
3:00 p.m.-4:15 p.m.            WORKSHOPS (continued)

**TOPICS FOR WORKSHOPS**

**WORKSHOP #1**

Improved Pension  
    Recognizing Countable Income  
    Computation of Pension Rate (including medical expenses)  
Determining Compensation Rates  
Readjustment Pay and Severance Pay  
Understanding Delimiting Dates  
VIMS

**WORKSHOP #2**

Explanation of DIC Rates  
Separate Rating for Multiple Symptoms of a Disorder  
Evaluation of Hearing Disabilities  
Evaluating Skin Disorders  
Temporary Total Evaluations  
Time Limits for Appeals  
Reduced Evaluations mandated by the Rating Schedule  
Dependency  
NVS Policy and Procedures  
Protection of Service Connection

**WORKSHOP #3**

Calculation of the Bilateral Factor and Amputation Rule  
Evaluating Visual Disabilities  
General Policy of Ratings (dissecting Part 4)  
Special Monthly Compensation (including codes)  
Rules for Presumptive Service Connection  
Rating of Arthritis  
Rating Dental Conditions  
General Rating Formulas in the Rating Schedule  
Hospitalized Rates for SMC and SMP  
Eligibility for Dental Care  
Medical Definitions within the Rating Schedule  
Priority Categories for Health Care

TESTIMONY BY JEFFERSON D. LAWSON, PAST STATE COMMANDER  
KANSAS VETERANS OF FOREIGN WARS  
FOR HOUSE VETERANS AFFAIRS SELECT COMMITTEE

Chairman:

Members of the Committee:

Thank you for providing the veterans of the state of Kansas this opportunity to come before you today to speak about HB 2565, what it does and why it came about. Unlike what a few would have you believe, this bill is not about control, but about service to veterans. Veterans live in all 105 counties and virtually every community in Kansas. For 60 years now the State and the veterans' service organizations have worked together reaching and supporting veterans in filing claims. This has been a partnership that has worked well, making the best use of minimal state dollars by partnering with those service organizations that had the ability to reach the widest number of veterans in all counties. I would ask you to look at the information, especially that provided by the Director of the KCVA, and realize that while it might be well intended, there are few, if any verifiable facts to back up his statements, except information he feels you can only understand if he analyzes it for you. This is not about the KCVA, not the AL & VFW, its about a partnership and using the 85,000 plus members, their 500 plus posts and partnering with the state to serve all veterans.

Last year both the House and the Senate recognized this partnership with unanimous votes and resolutions read in this building on the floor of both the senate and the house. The veterans organizations were there to accept these gracious words of thanks and to commit ourselves to making efforts to continue and even improve on this partnership.

We were shocked and more than a little disappointed when the other partner in this relationship though invited, chose not to participate. We were further disappointed last October when the Director of the KCVA stood in front of the joint budget committee, some of those same Legislators who were insightful enough to applaud this relationship, and say, "you did not know what you were supporting." For one person to think he knows what is best for all veterans and knows better than you and the veteran citizens he is supposed to be committed to is, in the Veterans of Foreign Wars opinion wrong. Wrong because it is the wish of a large number of veterans in the state, wrong because it was at the direction of this commission that this initiative was started. HB 2565 supports the unanimous resolution you passed last year. HB 2565 complies with the wishes of the KCVA Commission who on numerous occasions have said "it's the law, if you don't like it, change it". So we ask for this bill to change the law. What is HB 2565 doing? It is simply putting into law what has served the Kansas veterans for 60 years now and creating opportunities for this partnership to grow to serve more veterans. When this partnership started, with the KCVA and the service organizations, offices were opened across the state to assist veterans. We supported the KCVA in getting donated space in many communities for offices, we also provided space in our posts for them to meet with veterans on their itinerant routes. Still today, many posts open their doors at no charge to these service officers so they can meet with veterans. To understand the changes we propose, lets look at the law it effects. KSA 73-1211 and it's intent. 73-1211 was written to allow the veterans and the Veterans commission to partner in providing services in a manner that guaranteed uninterrupted service to the veteran and gave them the best chance in getting their claim for earned entitlements approved. We provided post service officers in over 500 communities that were available to initiate the initial contact and refer individuals to KCVA offices across the state, we provide room for KCVA VSR's to work and meet with veterans, we provide a platform at our conventions and post

meetings for KCVA VSR's to reach veterans, we support the KCVA in their efforts to market the cemeteries and nursing homes. We donate to these programs as well as appearing before you to support adequate funding of these programs. But for some reason, in the last couple years, the KCVA has sought to sever this partnership. A partnership is not a one way street, in exchange for our support, we ask for something in return. We asked that we be allowed to use the VSR's under our accreditation. In doing, so, we found they were untrained so we asked that they be given time off from their daily duties for training. Training that makes them the experts, they go to guys for other KCVA staff. We also recognized they had additional assignments and workload compared to field office staff, both in the offices and in the VA hospitals and after hours for the service organization that accredited them. We also found that with this training they were ideal candidates for federal positions in these same hospitals and after expending money for training both the service organization and the State would lose them. So we decided to supplement these additional duties through a stipend. As you know, recently due to an ethics commission opinion, that we feel did not include all relevant facts, stipends were stopped, another reason for this bill. And as a direct result of this we have already had one individual resign his KCVA position for a job with the Federal VA hospital for more money to make up for his loss of the stipend. As we said earlier every partnership should have something to contribute, from a veterans organization standpoint, they should be able to bring to the table a platform for the KCVA to present from this means a presence in communities across the state, we have that. They should represent the veterans the KCVA serves, one state recently came under fire because they were giving grants to service organizations that had no members and did no claims work in that state. We feel this change will preclude that irresponsible situation from happening in Kansas.

The Director of the KCVA has met with a number of you and expressed his concerns about the MOU and these offices, indicating such issues as fairness. So we feel we need to address them also. He talks about FSLA and potential liability, we feel a proper MOU could address that by saying, yes, there is a joint employment relationship and we think it is good and we have an agreement that acknowledges it and compensates these employees accordingly. Is it fair that the KCVA partners with the two largest service organizations? Yes! There are a limited number of state dollars, what is the best way to spend them? Do you give money simply because someone has an office in the hospital or should you look at their strengths outside of just 3 cities in Kansas? How many VVA, PVA, MOPH programs have the ability to reach large numbers of veterans across the State? How many of them can provide the support we do. These are very good organizations, many of the members of these organizations are also AL/VFW members, so when you partner with us, you have the ability to serve them. What about the DAV, is excluding them unfair? No, because by their national bylaws, they can not participate. They choose to be excluded unless they are given a number of special considerations. The Director indicated that he felt he needed multiple accreditations, DAV can't give him that, but the two large service organizations already do. All VFW and AL accredited VSR's carry dual accreditation from the KCVA and the service organizations, some carry more than these two. The DAV and the Director have repeatedly said this system is unfair but in 1997 when the first MOU was drafted, the DAV said they did not want to participate because they did not want the accountability. We have no problem with accountability. The director says it is not fair because people coming into our offices in the hospital are tied to that service organization. We disagree, we will complete any claim for any veteran, never soliciting membership. Only one organization, that we are aware of, looks at potential membership and that is the DAV, who, on their forms have a specific question as to membership eligibility for membership in the DAV.

We can spend all day addressing our differences of opinion, but I would prefer to close with why should you pass HB 2565. It allows and strengthens a long standing partnership. It saves the state money in training, office space, equipment and staff. The AL and the VFW provides support in every post across the state for outreach, meetings etc. at no cost to the state. The AL and VFW have extensive legal and medical staffs in Washington DC. dedicated to helping veterans in the appeals process and available to answer questions to our accredited VSR's and through them every VSR in Kansas. The AL and the VFW provide multimillion dollar errors and omissions liability insurance policies to protect those VSR's we accredit. By approving these changes you will strengthen veteran services by supporting the wishes of Kansas veterans, keep in place a partnership that brings millions of dollars in benefits to the state and save the state large general fund expenditures, but mostly, you will be doing the right thing by veterans in every county in the State. Don't turn your backs on our 85,000 members, the spouses, dependents and widows that depend on this partnership, pass this bill out of committee and encourage the Executive Director and the Governor to follow the lead you started last year in supporting Kansas Veterans. When this partnership was forged 60 years ago there were an estimated 150,000 veterans in Kansas, they were served by 15 districts because of this partnership. While Kansas has almost 100,000 more veterans now than we did back then, we are able to serve them with an even greater level of care. This is happening, thanks to you, the Legislature, for your ongoing leadership and support, past KCVA Commissions and Directors that worked with the service organizations, and a true commitment not to build another bloated state agency, but the commitment to serving the needs of Kansas Veteran Citizens in a non-partisan, non-political atmosphere. Your passage of HB 2565 will assure the new Kansas veterans created by the ongoing war on terror returning home get the same or possibly even better service than veterans from WWII to the Gulf War received in Kansas.

**DISABLED AMERICAN VETERANS  
DEPARTMENT OF KANSAS  
P.O. BOX 99, OSWEGO, KS. 67356  
Phone: 620-795-4328 Fax: 620-795-4327**

February 6, 2006

Senator Umbarger, Senators, I would like to Thank You for the opportunity, to speak to you today.

Veterans are a very big concern to the Disabled American Veterans, that they are treated with honor and respect that they deserve, in saying that, Senate Bill 428 should be about the Veterans not two Service Organizations.

The American Legion and the VFW would be the only two Service Organizations that would be recognized by the State of Kansas.

The Disabled American Veterans, Department of Kansas membership is 9,998 of war time Disabled Veterans. We are doing 28% of the new claims work and over 50% the appeals in Wichita Regional Office, as of last week, that is more claims than any other Organization. We are doing these claims with 4 full-time Service Officers. The Disabled American Veterans take pride in helping Veterans, their Widows, Spouses and Dependents, getting what the Veteran has earned for serving this Great Country. The Disabled American Veterans will represent all Veterans, Widows, Spouses and Dependents at no charge. The Disabled American Veterans will take the outsourced claims from the KCVA at no charge to the State of Kansas.

The Service Organizations should employ there own Service Officers. The Kansas Commission on Veterans Affairs could outsourced there claims to the Service Organizations to be adjudicated. That way the KCVA would not be controlled by any one or two Service Organizations.

The State of Kansas should recognize ALL VETERANS ORGANIZATIONS and not a select two. All Veterans Organizations should be treated equally.

Veterans should come first not Organizations.

On the second page is a list of Veterans Population, year ending 2004, as this is the most recent numbers out by the VA.



Disabled American Veterans  
Department of Kansas, Adjutant  
David W. Brader

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Kansas

*Year Ending 2004*

Compensation and Pension

Estimated Veteran Population	246,359
Disability Compensation Recipients	23,485
Estimated Average Monthly Disability Compensation Costs by Residence	\$14,425,312
Estimated Annual Disability Compensation Costs by Residence	\$173,103,738
Disability Compensation by Age under 35	1,665
Disability Compensation by Age 35-54	7,834
Disability Compensation by Age 55-74	9,291
Disability Compensation by Age 75-84	3,733
Disability Compensation by Age 85 and over	962
Disability Pension Recipients by Residence	3,145
Estimated Average Monthly Disability Pension Costs by Residence	\$1,886,183
Estimated Annual Disability Pension Costs by Residence	\$22,634,194
Disability Pension by Age under 45	37
Disability Pension by Age 45-54	596
Disability Pension by Age 55-69	863
Disability Pension by Age 70-84	1,330
Disability Pension by Age 85 and over	319
Disability Compensation Recipients with Power of Attorney	16,320
Disability Pension Recipients with Power of Attorney	2,807

Testimony of James A. Bunker  
Before  
Committee on Ways and Means  
On Senate Bill 428  
Given on February 6, 2006

Mr Chairman and members of the committee thank you for allowing me to speak before this committee. My name is Jim Bunker, a combat veteran, who stands here in opposition to Senate Bill 428.

There are many parts of this bill that I feel need to be stricken out. Some parts that need to be changed because of changes in other laws.

About 2/3 of the veterans in the state of Kansas do not want to use the American Legion or the VFW to handle their claims before the VA. This should tell you that most veterans do not want to have them as the only Veteran Service Organization (VSO) that the Kansas Commission on Veterans Affairs Veterans Service Representative (VSR) can send their claims to as their power of attorney. This is just what line 30 to line 35 is doing. The American Legion and the VFW are the only VSOs that are a 501C19 and with membership over 10%. With the rate of the WWII veterans leaving us, in a few years, the American Legion will be the only VSO that the KCVA will be able to use.

From Line 35 to the end of the bill we see that it is going to set up a joint employment with the two largest VSO in our state, and allow them to run the KCVA. If one factors in that many of the members of the VFW are also members of the American Legion, then they only represent about 30% of the veterans of Kansas. This should tell you that 70% of the veterans do not want to be a part of them. In the same manner, it should tell you that 70% of the veterans do not want to have them running the state service program.

The joint employment in place now is the forerunner to this section and it did not work. Some have gone around saying that the joint employment is working and that there is no need to change it. If this is true, than why for over ten years has it been something that keeps rising up as a problem only to be swept back under the rug.

During the past year, the two largest service organizations in Kansas have been telling their members and members of the Kansas Commission on Veterans Affairs that with out a joint employment the service to veterans in Kansas would suffer. When the Director if the KCVA tried to improve service to veterans by moving some of his VSRs into the VA hospital offices to help with the workload and to cover for the state employees that were retiring, the VFW pulled all of the accreditations to those VSRs. What this did was to close off service to many of the veterans in Kansas. How can the VFW say they care about the service to veterans in Kansas when their actions show that it is not the case? When I found out that the VFW did this disservice to our states veterans, I sent the national commander a letter on this matter. In the letter, I included my membership and

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membership renewal card. I wrote on the cards "NO THANKS!" I informed him I no longer wanted to be a part of a VRO that would do this to veterans.

This is the best reason as to why we need to change how things are working. We do not need the VFW or any one for that matter, holding out veterans' hostage like this. The VFWs' national handbook on service officers, for the most part, says that the states VSO will accredit the state VSRs'. In most all other states, once the VSR are trained, the VSOs will accredit them; this is how it is done by not only the VFW and American Legion, but also most all of the other VSOs. What we need is not a joint employment, but a way that our states VSRs are better trained.

In 99% of all the other states, there is no joint employment, they found that it did not work and moved forward from that system, much the same way, as we should. In those states, the Veterans groups give the state VSR the accreditation for their organization and unlike Kansas, the American Legion, and VFW do cross accredit the state employees. I feel that in our state the American Legion and the VFW will not cross accredit is for their own political gains. By having all of our VSRs cross-accredited, we could improve the service to veterans and all of the VSOs working with the KCVA will look better. With the changes going on at the VA, all of our VSRs working in the outlying areas will need to be accredited by them or the KCVA will have to be doing it with out any of the VSOs.

Yes, the KCVA is accredited by the VA to do claims and does not need the support of the VSOs. In one state, that is how it is being done now. I feel that is the wrong course for us. While the KCVA sat up a committee at the bequest of the American Legion to look at how other states did thing, and to look at the many problems in the joint employment, I feel they along with the VFW worked more at seeing nothing changed. When you have any one saying something like, 'Why are we here? There is no problem.', than the committee will not work. At the same time, they worked at this bill, which will move the KCVA backwards on how we serve our veterans.

Of the six veterans groups that can represent claims at the regional offices, only the American legion and the VFW use the state paid employees. The rest of the Veterans organizations at the regional office pay for their own department or national service officers.

When you read the VFW website about the State Department Service program, you will see that the National VFW does have money for the Kansas Department of the VFW to employ a Department Service Officer that is not a part of the KCVA. Also to this end, one will see in the American Legion handbook that their Department Service Officer is someone that works for the American Legion (not a state employee) OR is a state VSR in the RO.

Many states send their new employees to training with one of the VSOs or they have their own training program. Some thing we should look at is a way for any VSO to donate money to the KCVA to help with training. This could be used to send them to VSO training or an instate program. I found a memo on the internet from a state that showed

they sent some of there VSRs for training with the American Legion and the VFW. Than VSOs state department cross-accredited them since they where trained. We should also work a system that places a new VSR in with a well-trained VSR for OJT until the next state or VSO training.

Changing our state laws on states employees receiving stipend for their work will open up a completely new assortment of problems that we do not even want to see. I like many others that under stand what the VRS workload is feel that this is not the answer to the problem. What the state needs to do is to improve the pay the VSRs get for the work they do. You should keep in mind that the VSRs working in the RO are under the most stress and workload thus the pay should not be by time but a system based on location of where they work. At the same time, we need to make sure we have a quality control system working with in the KCVA on all of the VSRs. This will help in setting training goals for all of the offices through out our state.

There is much more I could say, but I feel I have covered the main problems. I would like to close by saying that I would be happy to help you to rewrite this bill so that it will better serve our Kansas Veterans.

*James A. Bunker*

James A. Bunker  
A Kansas Veteran

**Suggested amendment to SB 428 regarding K.S.A 73-1211:**

Sec. 2. K.S.A. 73-1211 is hereby amended to read as follows: 73-1211. All claims filed with the ~~federal veterans' administration~~ US Department of Veterans Affairs by the Kansas ~~veterans' commission~~ on veterans affairs shall be prepared, presented, and prosecuted by an accredited representative of an organization, to include certified national organizations as well as the Kansas commission on veterans' affairs, which are recognized by the secretary of the department of veterans affairs for representing claimants. Claims prepared by Kansas commission on veterans' affairs accredited service representatives shall be forwarded to a state office in the veterans' affairs regional office for review before being passed to any other designated veterans organizations.

~~one of the participating congressionally chartered 501 C (19) veterans' organizations whose membership represents at least 10% of the current veterans population in Kansas.~~

No employee of any veterans' organization shall participate in or receive any funds hereinafter appropriated or made available to the Kansas ~~veterans' commission~~ on veterans affairs unless such employing veterans' organization shall prosecute any and all claims to the ~~federal veterans' administration~~ US Department of Veterans that are referred to them or their employees by the Kansas ~~veterans' commission~~ on veterans affairs. ~~It shall be the responsibility of the veterans' organization to determine if an individual is acceptable for accreditation as a veterans' service representative and a representative of the veterans' organization, selected by the veterans' organization, shall attend all interviews of prospective employees for positions of veterans' service representatives located in the veterans' organization's offices. The employing veterans' organizations may, at its discretion, utilize the services of such employees for the organization's educational, training and outreach programs for a maximum of 30 days per fiscal year for one employee designated by the veterans' organization as its department service officer and 15 days for all other employees. Such employees may accept supplemental payments from the employing veterans' organization for services performed on behalf of the organization.~~

The Kansas Commission on Veterans' Affairs shall be authorized to administer a grant program, using state general funds, to veterans' service organizations in Kansas that assist Kansas veterans with advice and claims. Grants shall be subject to amounts appropriated by the Kansas legislature and shall be apportioned in a manner specified in approved regulations.

Any veteran service organization may donate money to the Kansas commission on veterans affair for the porous of training the state service officers both in the state and at the veterans national training classes. The state employee that goes to the national training classes will help to put on that years state training class.

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The veterans' service organizations that have donated to the training funds may then also send their post or chapters service officers to the state training class.

Sec. 3. K.S.A. 46-235 and 73-1211 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.

**Testimony to the Senate Ways and Means Committee from Kansas Commission on Veterans' Affairs Executive Director George Webb, February 6<sup>th</sup>, 2006:**

Thank you for the opportunity to report to the committee on Senate Bill 428. I believe that a change could be in order to K.S.A. 46-235 regarding outside compensation for veteran service representatives, and I have included a proposed amendment to that statute. It differs from what is reflected in SB 428.

I believe that a change is certainly warranted in K.S.A. 73-1211, because that 1953 statute is an anachronism that no longer reflects that growth and capability of the Kansas Commission on Veterans' Affairs and other state organizations like it. But I firmly believe that the changes proffered on the bill will have disastrous consequences for the Agency, for numerous veteran service organizations, and for the veterans of this state. I have a proposed change to this statute as well.

I will share some old and then recent history about the Agency, I will explain what the Agency and its governing Commission have been studying for almost a year, I will describe briefly how most other states conduct veteran service support, and I will then explain where SB 428 is clearly off the mark if the Legislature expects the KCVA to be a fair and effective agency.

The KCVA has an ongoing review is about the best way to support Kansas veterans – and doing so as effectively, as efficiently, as fairly, and as professionally as possible. In a report to the Commission last March, I wrote: **The primary criterion to any organizational decision must be the best interests of the veterans in the State of Kansas. However, other decision criteria should ensure that operations remain within the proper boundaries of legality, ethics, and fairness.**

Over 50 years ago, the American Legion, the Veterans of Foreign Wars, and the Disabled American Veterans were instrumental in forming state agencies like the Kansas Veterans' Commission. That occurred all around the country, and the result was excellent support and assistance to veterans, especially those returning from WW II and Korea. Half a century ago, those embryonic state agencies were clearly overwatched – arguably even controlled – by the three largest veteran service organizations. Even today, the Kansas statute on commissioners still says that “not more than two members shall represent the same veterans' organization.” But in discussions with my counterparts around the country, I am convinced that as these state agencies have matured, they have grown independent from the Legion, VFW, and DAV and are now fully responsible to their governors and legislatures as they move forward in supporting their states' veterans. Many tell me that the separation period was ugly and vicious – but they uniformly tell me that once all parties moved past that, support to veterans and organizational cooperation improved markedly. States have gone through this change over different periods: some 20 years ago, some like Nebraska 14 years ago, and Illinois as recently as two years ago.

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Kansas is on the threshold of this change, and there is good evidence that Kansas is also the last to move forward.

More recently, what I found two years ago was a KCVA Veteran Services program that needed some significant improvements. Our service reps were hard-working and dedicated, but we were scarcely structured for success. The program was a flat organization with little interaction, crosstalk, or guidance; training for most VSRs was nonexistent; there was disdain from some KCVA personnel in the VARO for the VSRs in the field offices; there was an expectation from the American Legion and Veterans of Foreign Wars that per a joint employment agreement, accredited state VSRs were to do as those organizations wanted and the KCVA was automatically to oblige; and as my staff and others reported to me within my first few weeks on the job, we had some state employees who were violating the statute on conflict of interest by taking stipends from service organizations. The most senior and knowledgeable VSRs showed little interest in making the entire Agency better, rather focusing on their immediate roles and their aligned service organizations.

Worse, it soon became clear that we did not have the budget in Veteran Services for the fiscal year beginning in July, 2004 to even make payroll. We had a number of VSR vacancies in important locations that we could not fill, and we worked hard with DoB, the Governor, and the Legislature to solve our shortages. As you know, no supplement is certain until late March or early April, so much of FY 2005 was at a very reduced manning level. A decline in claim numbers was manifested because of this.

Anticipating these additional funds, and by now recognizing some inherent problems in our organizational and operational structure, I sent the Commission a report in March, 2005 seeking guidance so that we could put those funds in the places that the Agency and Commission felt to be most appropriate. In that letter, I described how we functioned, the five reasons that we should maintain the status quo, the 13 problems in our procedures, and five candidate courses of action to consider. Those problems ran from operational inadequacies to fairness among all people and service organizations to statutory violations to wholesale managerial shortcomings due to structure. They were real, and they persist today.

Because one consideration was reducing the assignment of state employees to the Legion and VFW, no sooner did I put my concerns in writing than the personal attacks began. They have been mendacious, incessant, and vile. I won't dwell it, but since many legislators have been given wholly untrue stories about me, my staff, and even the commissioners, I will simply say this: for doing nothing more than holding our procedures up to the light and asking if we could do better, certain people in some organizations made vilification their only tactic - - and they never addressed the cited problems on their merits.

The Commission shared my concerns with a host of organizations and individuals in a document that went forward on April 15, 2005, seeking input from all parties.



A copy of that packet is included with this testimony. This is a “must read” start point for anyone who wants to render decisions on the KCVA’s structure. Three organizations responded almost immediately. The largest service organizations responded two months later – not on the cited issues but merely suggesting that a committee be formed to examine the concerns I had laid out. That committee met eight times under the Commission’s direction but never reached any consensus, and some never agreed that any problems existed. Unfortunately, besides getting no agreement, we lost 9-10 important months in which the Agency had no traction on improving operations or making appropriate new hires.

**The fact is that in addition to allowing poor management practices and statutory violations, the KCVA was not structured or organized to provide the best support to all veterans of Kansas.** It is inescapable that to a great extent, the structural problems we had centered on the joint employment agreement. I would suggest one example: because the Legion will only accredit “their” VSRs and the VFW will only accredit “theirs,” but they won’t cross accredit, we have state employees – which those VSRs are – who sit in adjacent offices but cannot provide full support to any veteran who walks in the door or calls on the phone. It is “either - or” for that veteran who seeks help, and if that veteran has a VFW POA and the KCVA’s VFW rep isn’t there that day, the veteran cannot get the full range of support he deserves.

Before and during the JEA committee’s work, some people insisted that a state agency was greatly limited in what it could do. Those people -- some KCVA employees and others from service organizations -- had a vested interest in preserving the status quo. They also were wrong. State agencies like the KCVA can function well, train well, establish offices in VA facilities, maintain files with different POAs within an office, represent claims for veterans right into the VARO, and even represent veterans in the appeals process. State VSRs all across this country carry multiple accreditations from numerous service organizations – including the AL and VFW – in order to help the widest number of veterans (but not in Kansas). And they can be fair with all service organizations within a state. I have included a letter from the Assistant Attorney General which clearly states that in the eyes of the VA, a state agency like the KCVA is entitled to conduct the same full range of support for veterans that a national service organization can perform.

Our concern was over how to provide the best support to the veterans of Kansas. But the immediate problem statement is whether or not the American Legion or Veterans of Foreign Wars should continue to be supported entirely by state employees in their offices who then exclusively represent that particular service organization. By denying other service organizations, the VFW and AL wish to continue maintaining exclusive offices in the three VAMCs in KS and have the state pay for them, and what has existed in a problematic MOA is now before us in a possible change to statute. The funding is not trivial. For current staff, the KCVA spends roughly \$450,000 per year so that the Legion and VFW can operate exclusive offices. If all FTE were filled – particularly to the degree that those organizations could use these state employees for organization business – it would exceed \$700,000.

I have been personally conducting a review with my counterparts in other states, and that contact is with the Department Secretary or Agency director or commissioner, as the structure dictates. I've spoken with leaders in 43 states and Puerto Rico thus far. Of those 44, only two have state employees who work exclusively for one service organization: Kansas, of course, and S.C. – which provides one state employee each to the AL, VFW, and DAV to serve as the department service officer. (I might mention that S.C. is under review.) The other states often explain how they used to operate that way, but they no longer do and everyone is the better for it. They also explain that change, though warranted, was extremely painful – but once the painful stage was over, cooperation and support to veterans improved markedly.

Every state has differences, but if there were a norm, it would be: (1) no state employees who work exclusively for one service organization, (2) a system of multiple accreditations carried by state VSRs so that they can fully assist a wide set of veterans, (3) offices and VSRs of the major national service organizations that are staffed, operated, and funded by those organizations, (4) and, in some cases, a system of grants from the state to selected national service organizations to help cover their office needs. Kansas remains in stark contrast to the “standard state.”

Finally, I want to reiterate that the Commission has spent considerable time over the last year reviewing the issues I have raised and considering various options for the Agency, the state, and service organizations. Allowing the Commission to complete that work before significant statutory changes are passed would best serve the veterans of Kansas.

Now I would like to address specific components of SB 428. There are three aspects: stipends, the processing of claims, and the role of state employees.

### **Stipends:**

For years, the AL and VFW have provided stipends and other benefits to those state employees who represented their service organization. The rationale for those stipends is elusive. Long-term employees state that the stipends were once for extra-curricular activities of the service organizations outside of the 40-hour work week. The US Department of Labor imposed constraints on the joint employment agreement in 1997 under the Fair Labor Standards Act, however. From that time forward, there was no such thing as an extra-curricular activity, because under the FLSA, the work assigned by one party (the AL or VFW) had to be accepted as work by the other party (the KCVA). Therefore, stipends could no longer be compensation for additional outside work. They were continued by the AL and VFW, using the rationale that since VSRs were not well paid by the state, these stipends were intended to bolster the take-home pay of the inadequately paid VSRs and their office assistants. However, no such comparable benefit was ever given to similar employees in the KCVA's field offices.

In September, 2005 the Kansas Governmental Ethics Commission concluded in a 7-0 vote that receiving such stipends would be in violation of K.S.A. 46-235. Stipends ceased. Now this bill would allow an exception to the statute, but only for those KCVA VSRs who work exclusively for the stated service organizations. The wording in SB 428 is unclear about whether or not stipends would be extra pay – on top of state salaries -- for work performed during the normal work week, and it avoids the important issue of the true purpose of any stipends. The Commission fully supports any compensation that VSRs might be due for extra-curricular work outside the normal duty week under the banner of a second employer. Permitting this might require an exception to the clause in K.S.A 46-235 regarding the performance of duties similar to state duties, and my change to the bill reflects that. However, if the Legislature is considering a statutory change simply to allow stipends layered on top of salaries in order to represent a private organization, there are important downsides. First, other state employees may soon demand similar treatment once Pandora's box is opened. Second, such an exception would reinforce the joint employment agreement which has potential liabilities for the state with the USDOL and the FLSA (and I strongly suggest that the committee receive a briefing on that from the Division of Personnel Services). Third, from what I experienced during my short tenure, the Legislature wrote a statute on conflict of interest for a very good reason; some employees do, when receiving outside compensation, place the interest of the state second. The best answer is to improve the salaries of state VSRs in order to remove any question about conflict of interest; the Agency and Commission fully support that, and we are working hard to that end.

**Processing of claims.** The change to K.S.A. 73-1211 would make a special allowance to organizations that meet three criteria: nationally chartered, a 501 C (19) status, and holding membership of 10% of the quarter million veterans in Kansas. The only two organizations that meet these criteria are the American Legion and the Veterans of Foreign Wars. These are fine organizations that do great things on behalf of veterans, but granting them this special status, as articulated, is a disaster. First, it completely cuts out other very fine, but smaller, veterans organizations that also work for veterans. Right now the Disabled American Veterans, the Vietnam Veterans of America, the Paralyzed Veterans of America, the American Veterans, and the Military Order of the Purple Heart all have one or more offices in the state where their service reps assist veterans, yet they receive no compensation from Kansas. That is wrong on the surface, and this bill would codify that exclusion. Second, this bill would completely emasculate the KCVA by voiding the federally authorized capability it has been given by the VA. As indicated in the earlier-cited memo from the Attorney General, the KCVA can prepare, present, and prosecute claims just like any national service organization – even representing veterans with appeals if necessary. This statute would reverse this capability and turn us back 50 years, forcing all claims developed by a KCVA representative to be then turned over to either the American Legion or the VFW for handling and processing. Even worse, this bill would deny a Kansas veteran his or her fair choice. Imagine a Soldiers' Home resident wanting to file a claim with a Purple Heart POA through our VSR at Fort Dodge. Our rep might have to tell him that he'll assist if he chooses a Legion or VFW claim, but if he really wants to use the Military Order of the Purple Heart, he'll have to call or drive

to Wichita. This is grossly unfair and a horrible handicap on other organizations, the KCVA, and most of all, the veterans of the state.

That said, K.S.A. 73-1211 is certainly due for a change. It is a 1953 statute that was written when fledgling state agencies were indeed incapable of fair and independent operation, and the intent likely was for certain service organizations to control the state functions – even for good reason in those days. Regardless, this old statute yet directs that claims from the Kansas Veterans Commission should be processed through a “participating veterans organization,” as if we are to know what those are (or were). The most logical remedy to this anachronistic confusion is to change the wording to require that KCVA-initiated claims must be processed through an organization that holds an accreditation from the US Department of Veterans Affairs (which also means the KCVA itself).

**Role of state employees:** This bill also would codify the use of state employees by selected service organizations – and perhaps only the American Legion and the Veterans of Foreign Wars. If the Commission ultimately determines that assigning state employees to exclusive offices of a particular organization is appropriate – in the short term or the long run – then it may make that decision already. Perpetuating this decision in a statute destroys flexibility and fairness. It denies similar treatment to other organizations which do provide for their own staffs, often at considerable expense. It would force the KCVA to seek additional funding for more personnel in order to make up for the absences of state VSRs when they are out doing Legion or VFW work. It reinforces the joint employment agreement which DPS sees as significantly problematic regarding the FLSA. And it again puts our state employees in the schizophrenic position of having two bosses, two missions, and two often-distinctly different roles with looming issues of liability and conflict of interest. These same stipulations are written in a 1998 MOA that the Agency has declined to resign every year since.

The right answer, one that is fair to all service organizations, is to institute a system of grants from state funds that would help any VSO with an office in the state. There are numerous ways to set this up: a set amount for an organization, a proportional amount based on claims work done, or a matching grant program. Any of these will work, and they are found routinely in other states. Using grants rather than state employees is fair, it is clean, and it eliminates any problems with conflict of interest. I will provide some numbers to the subcommittee that complement the estimates we made in the fiscal note. This recommendation has already been broached with the Division of the Budget and the Governor’s staff. I might even suggest that revenue received from the veterans scratch tickets go toward such a grant program, and make support to the homes an SGF-funded operation. I have included the authorization of a grant program in my suggested change to the bill.

Thank you for your consideration on this very important matter. Despite all of the imagined motivations for the genesis of this bill, the KCVA is really about only one

thing: how we can provide the best support to the largest number of veterans in Kansas. The KCVA was not consulted on this bill when it was drafted, or perhaps the concerns I have illustrated could have been incorporated. We look forward to a positive, productive solution in which the KCVA can assist all veterans and veterans organizations in the best way possible – and in which the KCVA, as a state agency, functions within standards of conduct that are beyond reproach.

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GEORGE S. WEBB  
Executive Director  
Kansas Commission on Veterans' Affairs



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## MEMORANDUM

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**TO:** GEORGE WEBB, KCVA EXECUTIVE DIRECTOR  
**FROM:** LAURA M. GRAHAM, ASSISTANT ATTORNEY GENERAL *LMG*  
**RE:** AUTHORITY OF KCVA VSRs IN HANDLING VETERANS' CLAIMS  
**DATE:** 1/30/2006

You have asked what Veterans Services Representatives (VSRs) of the Kansas Commission on Veterans Affairs (KCVA) are authorized to do in conjunction with handling veterans' claims. Specifically, you have queried whether KCVA VSRs are limited to *presenting* claims, as compared to *preparing and prosecuting* them.

The issue underlying your inquiry is whether there is any distinction between or among the terms "prepare," "prosecute" and "present" as used in the context of pursuing veterans' claims for benefits. For instance, the United States Department of Veterans Affairs ("VA") Form 21-22 (titled "Appointment of Veterans Service Organization as Claimant's Representative") uses different terms when referencing the different types of veterans service organizations (VSOs). The form lists "National Organizations recognized by the Secretary in the *preparation and prosecution* of claims under laws administered by the Department of Veterans Affairs." Then it lists States and possessions that "maintain veterans service agencies which are recognized to *present* claims."

While one might infer that some distinction is intended between *preparing and prosecuting* claims, and *presenting* them, that is not the case. Actually, the terms "prepare," "prosecute" and "present" are synonymous in the context of pursuing veterans' claims; they all essentially mean to handle or process veterans' claims. This is evident from a review of the underlying federal law; I also have confirmed it with the VA's Office of the General Counsel (OGC).

The provision at issue is 38 United States Code (U.S.C.) §5902(a)(1). It provides as follows:

Memorandum to George Webb  
January 30, 2006  
Page Two

"The Secretary may recognize representatives of the American National Red Cross, the American Legion, the Disabled American Veterans, the United Spanish War Veterans, the Veterans of Foreign Wars, *and such other organizations as the Secretary may approve*, in the *preparation, presentation, and prosecution* of claims under laws administered by the Secretary." (Emphasis added).

Notably, the VA Secretary's list of recognized organizations – posted on its website (<http://www1.va.gov/OGC/>) as "Bulletin 23" via a link along the left side of the homepage to "Recognized Veterans Service Organizations" – includes all types of VSOs, consisting of "national," "other" and "state" organizations. Furthermore, 38 Code of Federal Regulations (C.F.R.) §14.627(k) defines the term "recognition" – as used in regulations on representation of VA claimants – as "certification by the Department of Veterans Affairs of organizations to represent claimants."

In turn, 38 C.F.R. §14.628 sets forth the requirements for VA recognition of organizations. Subparagraph (b) of the regulation provides, "An organization created and primarily funded by a State government for the purpose of serving the needs of veterans of that State *may be recognized*." (Emphasis added). Subparagraph (d) of the regulation, which sets forth the specific requirements for gaining VA recognition, neither makes any distinctions nor differentiates requirements based on the kind of organization seeking the VA Secretary's recognition. Whether it is a Congressionally chartered VSO, a state governmental VSO, or some other type of VSO, the same requirements for recognition apply uniformly, and once recognized by the VA Secretary, all such organizations may prepare, prosecute and present veterans' claims.

In summary, the terms "prepare," "prosecute" and "present" are interchangeable in the context of pursuing veterans' claims and all essentially mean to handle or process veterans' claims. Therefore, the KCVA, which is recognized by the VA Secretary as a VSO, is authorized to do any and all tasks necessary to handle or process veterans' claims. Furthermore, KCVA's VSRs can and do gain VA accreditation in the same manner as VSRs of all other recognized VSOs, and once accredited, KCVA's VSRs can fully prepare, prosecute and present veterans' claims just as accredited VSRs of any other recognized VSO can.

I hope this information is helpful to you. If you have any other questions or concerns on this matter, please feel free to contact me.



# KANSAS COMMISSION ON VETERANS' AFFAIRS



Chairman Jack Fowler

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Executive Director George Webb

April 15, 2005

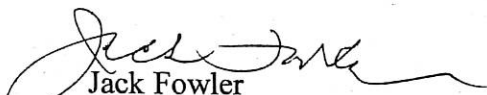
Memorandum For: See distribution


Dear Sir or Madame:


On March 15, 2005, the Executive Director of the Kansas Commission on Veterans' Affairs sent each commissioner a letter addressing the joint employment agreement that exists with the KCVA, the American Legion, and the Veterans of Foreign Wars. As instructed during the subsequent Commission meeting, Director Webb has updated his letter, and we now wish to distribute it for comments. In order to achieve a timely resolution, please respond back to the Commission Chairman, in writing, no later than May 16, 2005.


The relationships between the KCVA and all veteran service organizations are extremely important, and any change to what we are doing now will be considered with the utmost care. However, the concerns addressed by the Director are long-standing and pose legal challenges that demand a hard look and some form of resolution. Any ideas, opinions, background, and suggestions that you can offer are vital to the Commission. We fully expect that an open and positive dialogue will follow, and we will advise you of how that will occur.

Respectfully,

  
Jack Fowler  
Chairman, KCVA

  
Jack E. Walker  
Vice Chairman, KCVA

  
Cordell D. Meeks, Jr.  
Commissioner, KCVA

  
Edward F. Wiegars  
Commissioner, KCVA

  
James E. Buterbaugh  
Commissioner, KCVA

Distribution:

State commander, The American Legion  
State commander, Veterans of Foreign Wars  
(continued)



State commander, Disabled American Veterans  
State commander, AmVets  
State president, Paralyzed Veterans of America  
State president, Vietnam Veterans of America  
State commander, Military Order of the Purple Heart  
State commander, American Ex-Prisoners of War  
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State president, Air Force Sergeants Association  
State chairman, Pearl Harbor Survivors Association  
State president, Gold Star Wives of America  
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State president, Association of the United States Army  
State president, Military Officers Association of America  
State commander, Military Order of World Wars  
State commander, American G.I. Forum  
State president, Kansas Democratic Veterans Association  
State president, American Gold Star Mothers  
State chairman, Cold War Veterans Association  
State chairman, Non Commissioned Officers Association  
State president, Reserve Officers Association of Kansas  
Executive director, National Guard Association of Kansas  
State commander, National Association of Atomic Veterans  
Executive director, Kansas Governmental Ethics Commission  
Director, Kansas Department of Personnel Services  
The Attorney General of Kansas

Enclosures:

1. Letter from Executive Director Webb dated April 15, 2005
2. Chronology of MOA development
3. Memorandum of Agreement (Operational) dated August 1998
4. Annex to Memorandum of Agreement dated August/September 1999
5. Kansas Attorney General's opinion dated August 1, 1997
6. Letter from KS DPS to US DOL dated October 22, 1997
7. American Legion/Veterans of Foreign Wars letter to state legislators dated February 28, 2005
8. Division of Personnel Services Letter dated April 12, 2005



# KANSAS COMMISSION ON VETERANS' AFFAIRS



Chairman Jack Fowler

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Executive Director George Webb

April 12, 2005

Mr. Jack Fowler  
Chairman, Kansas Commission on Veterans' Affairs  
Topeka, Kansas

Dear Chairman Fowler:

This letter updates an earlier one that I sent to you and each commissioner on 15 March, 2005. During the last Commission meeting, you asked me to update that letter with new and forthcoming details and send it to interested parties once done.

As we discussed during the March 2005 Commission meeting, I had wanted to develop our "priority of fill" for vacant Veterans Service Representatives positions. That was the timeline I established a few months ago, and that is the guidance I had given Wayne Bollig to develop. I had expected that this would turn out to be simple, because the current wording in legislative committee reports echo the problems I have identified -- but with specific offices to be reopened. In effect, we are likely to get what we asked for: we highlighted the vacancy problems in Lawrence, Winfield, and Independence, and the Senate Ways and Means Committee has recommended filling those offices. This is good, but it also takes from our flexibility.

Regarding any other reopenings or refills, our Veterans Services (V/S) budget will drive our options. However, I do not believe we can completely organize our VSR operations properly until we address the arrangement the KCVA has with the American Legion (AL) and the Veterans of Foreign Wars (VFW). In that, I ask for the Commission's guidance and direction. I have some concerns with the present arrangement, and I have shared those with each commissioner to one degree or another, just as I have with several veterans service organizations. It is important to note that after I sent my March letter to commissioners, I received a great deal of history on this subject from various sources. It was unknown to me until recently how much angst existed when this joint arrangement was launched starting back in 1997 and how much debate (some still unresolved) occurred with state and federal officials. I want to lay out the arrangement, as it exists today, in order for the Commission to develop any new marching orders for me and the rest of the Agency. Were I to start with a clean sheet of paper today, I likely would not design the system we now have, and the KCVA's anticipated emergence from its budgetary constraints may present the opportunity to reexamine what we are doing and then either reinforce or alter our modus operandi.

**The primary criterion to any organizational decision must be the best interests of the veterans in the State of Kansas. However, other decision criteria should ensure that operations remain within the proper boundaries of legality, ethics, and fairness.**

\* \* \*

*Encl 1*

## BACKGROUND:

Veterans services are provided by two types of agency representatives, working either in field offices or service centers.

Field offices: The KCVA has 15 authorized field offices throughout the state. In addition to operating from their designated offices, these reps also travel on an itinerant basis to towns throughout their designated areas. Offices have one or two FTE, all of whom are "pure KCVA" employees. Presently four of the 15 field offices are non-operational because funding shortages have precluded either fills or rehiring.

Service Centers: The KCVA pays the salaries and most office expenses for operations in each of the three VA hospitals in Kansas: Topeka, Leavenworth, and Wichita. These offices, which we call service centers, are comprised of KCVA-AL and KCVA-VFW employees; there are two separate offices in each hospital. It may be unclear to the casual observer who these service center personnel work for, because while they are clearly KCVA employees paid by the State of Kansas, they regularly advertise themselves as AL or VFW representatives. Indeed, the two service organizations generally refer to them as "their" employees and not KCVA employees. That directional dichotomy does not create a major challenge in daily operations, though there are other longer-term challenges.

Presently there are two of these service center employees in Leavenworth, both VSRs, one representing the AL and one the VFW. The office assistant position went vacant several years ago for fiscal reasons. In Topeka, each office (AL and VFW) has a VSR and an admin/office assistant (OA). And in Wichita, the KCVA-AL office has three VSRs and two OAs, while the KCVA-VFW office has one VSR and one OA. The staffing imbalance in Wichita is a product of loss timing (and a lack of replacements) rather than any intended design. For the filled positions in these service centers, salaries alone represent approximately \$450K. Adding benefits and office expenses, over half a million state dollars go to these American Legion and Veterans of Foreign Wars representatives annually. Other service organizations, most notably the Disabled American Veterans (DAV), have sought equal treatment from the KCVA, as their VSRs are paid with service organization funds (state and national) and receive no State of Kansas funds.

Organizationally, the V/S operations in Kansas have four essential functions. These are not official delineations, but they are one way to examine the various functions of our reps. These are:

1. Primary Assistance. This is the "walk in the door" assistance rendered to any veteran or dependent who seeks information, advice, guidance, or assistance regarding veterans benefits. It may cover educational assistance and home loans, for example, but in most cases, this involves advice about claims and assistance in preparing request forms. Doing this properly requires significant experience on the part of the VSR. All KCVA offices, including field offices and service centers, provide primary assistance.

2. Quality Control. Claims and other requests are processed through our operations in Wichita, because the Wichita VA is the location of the regional office center where claims from Kansas are assembled and adjudicated by the VA. In order to ensure that documents are prepared correctly and that all possible medical conditions are highlighted in a claim, experience-driven quality control is a vital component of our system. This is particularly true since our field office VSRs have not had any formal retraining for five years and generally work in one-man offices where cross-talk is limited. Quality control is not as formal as it should be with claims, but in any case, since there are no "pure KCVA" VSRs in Wichita, quality control is currently the province of the American Legion or Veterans of Foreign Wars rather than the KCVA.

3. Claims Tracking. Once a claim is turned in to the regional office in Wichita, it needs to be tracked continuously. Claims often take six months to a year to be adjudicated, and significantly longer if additional information is needed. This demands resolute tracking on our part. Additionally, adjudicators frequently request additional background or proof of service before a claim can be finished, and that requires contact with and advice to the veteran who initially submitted the claim. Thus, claim work is an iterative process rather than a clean, linear progression. Sometimes the VA adjudicator misses something in a claim or makes an improper call, and our people on the ground are able to identify the problem and correct it before a final decision is rendered, often "coaching" a new or inexperienced VA adjudicator along the way. Again, because there are no "pure KCVA" employees in Wichita, the KCVA's tracking activities with the VA regional office are handled by the AL or VFW.

4. Appeals. Once a decision is rendered by the VA regional office, a veteran who feels that the decision is wrong may submit an appeal. This may be reviewed locally -- a regional office hearing in Wichita -- or it may be passed to the VA's Board of Veterans Appeals in Washington (and often, a BVA appeal can be heard via video from Wichita). Per our current operations, the AL and VFW are again the KCVA's mechanism for formal appeal assistance, but field office VSRs frequently assist with getting the process started. Individuals may represent themselves in the appeal process, though nationally 90% of people who appeal to the federal Board of Veterans Appeals are represented by either a veterans service organization or a state veterans agency/department. Above the BVA is the United States Court of Veterans Appeals (a non-VA legal entity).

\* \* \*

There are five VSO offices in the Wichita VA hospital. All seven AL and VFW personnel are funded by the KCVA as state employees. The DAV has three VSRs and two secretaries, all funded by the service organization. Likewise, AmVets has two VSRs (one of whom is also a regional director) and one secretary, all funded by the service organization. The fifth VSO office in Wichita is the Paralyzed Veterans of America; it has one VSR and one secretary, again all funded by the service organization.

Neither the American Legion nor the Veterans of Foreign Wars have any full time, organization-funded VSRs; the KCVA funds all of them as state employees. The KCVA funds no VSRs for any other service organization.

Offices are provided by the respective VA hospitals at no cost. Therefore, the provision in the 1999 MOA annex that the VSOs provide office space is a neutral contribution.

The arrangement between the KCVA and the AL and VFW is laid out in a Memorandum of Agreement (MOA). An initial Memorandum of Understanding (MOU), which only established the joint means of hiring employees, was signed in February 1997 by Executive Director Don Myer, Mr. Chuck Yunker of the AL, and Mr. Darrell Bencken of the VFW. During its June 1997 meeting, the Commission agreed to accept an MOA "in substance" which was to be more comprehensive. Agency records reflect an arduous process immediately thereafter, partly because significant problems surfaced with the US Department of Labor and the Fair Labor Standards Act regarding joint employment (highlighted in a Kansas Attorney General's opinion). Progress stopped on the MOU/MOA, even to the point that Director Myer presented a decision briefing at the August 1997 meeting recommending that the joint employment relationship be terminated. The Commission voted to direct a plan to sever the KCVA/AL/VFW joint relationship. By the 24 October, 1997 meeting, Director Myer had identified some means that he believed might satisfy the USDOL; he opined that under certain circumstances, joint employees might be able to volunteer for VSO activities without compensation. This followed a 22 October, 1997 letter from the director of the Kansas Department of

sonnel Services to the U.S. Department of Labor seeking specific clarification of joint employment (which has never been answered by the USDOL). Director Myer informed the Commission that with this view and the expectation that the USDOL could be satisfied, he planned to return to the original MOA (joint employment agreement) and negotiate an MOA delineating responsibilities. The service organizations had various problems with the new plans, and it was not until the 21 August, 1998 Commission meeting 10 months later that Director Myer announced that the MOA had been signed (notwithstanding that to this present date, the USDOL issue has not been clarified). In June 1999 the Commission said that an annex delineating equipment provisions was required, and in Aug/Sep 99, a short MOU annex was signed that established responsibility for providing certain office materials: the KCVA would provide computers, software, office supplies, and professional books; the service organization would provide desks, chairs, copiers, printers, filing cabinets, and telephone services. The Agency has a copy of the MOA signed in August 1998 and a copy of the annex signed in August/September 1999, both with Executive Director Myer as Agency signatory. The Agency does not have a copy supposedly signed in 2000 by Director Stoney Wages at the beginning of his tenure, nor is there any reason to believe that any Agency representative has reaffirmed or resigned this MOA since then. Mr. Bollig advises that Executive Director Wages declined to resign the MOA during his four-year tenure. Neither Director Feliciano nor I have signed the MOA.

\* \* \*

**BENEFITS:** There are a number of benefits which accrue from this arrangement between the KCVA and the AL and VFW. These include:

1. Accreditation. The VA requires that a VSR or the VSR's organization be accredited before a claim can be filed. On the VA's web site, there are 46 organizations chartered by Congress and/or recognized by the VA for claims representation. These include the AL and VFW and also include lesser known organizations like the US Submarine Veterans of WW II and the Air Force Sergeants Association. The present arrangement means that there are two large, experienced, and powerful organizations through which Kansas veterans can file their claims.

The VA's list also includes the National Association of State Directors of Veterans Affairs (NASDVA), of which the director of the KCVA is a member, and this, if nothing else, allows our VRSs to submit claims independent of any veterans service organization, if preferred. Actually, any veteran can file his or her claim independent of any service organization, though experience is obviously preferred, or the veteran or dependent can select among the 46 listed organizations. In short, the VA's system makes pure KCVA reps qualified to submit claims without having to go through a VSO.

2. Training. The AL and VFW hold annual national-level training events for VSRs, and these bring in legal and medical experts from Washington who address current trends, veterans activities, and techniques for success in filing claims. Training of this type is critical for helping veterans, because inexperienced or misinformed (though well-meaning) service reps will miss benefits to which a veteran might be entitled, and they likewise will be marginally prepared to suggest or submit an appeal. The AL and VFW send "their" KCVA reps to this training, and while each VSR might not attend annually, they attend often enough to keep their expertise. Because of this training, quality control is maintained in the claims process. The AL and VFW pay the travel costs for service center reps to attend training (none local; recent training has occurred in Las Vegas, Orlando, and Washington), and the VSRs attend on state time. In addition, these reps conduct limited in-state training for AL and VFW volunteer service reps assigned in the various posts (who often serve as points of contact rather than dedicated, knowledgeable reps) during training/recruiting trips (e.g., the American Legion's ALVA Tour). However, the AL has declined to provide in-state training to the VFW reps, and vice versa.

3. Strong voice. Clearly, having qualified full-time service reps available to and considered to be part of the two largest veterans service organizations greatly benefits the state's veterans. These VSRs are engaged in service organization activities, sometimes author articles in the organizations' newspapers, and serve as an information source to state and post-level leaders in the AL and VFW. As a result, leaders in the AL and VFW are generally well versed in federal and state veterans benefits issues and therefore can articulate and push for increased benefits for veterans. There is little doubt that the Legislature pays attention to concerns and positions proffered by these two largest service organizations.

4. History. The American Legion has stated that one of the primary reasons for maintaining the current VSR arrangement is history: the American Legion was instrumental in convincing the state Legislature to form the Kansas Veterans Commission in 1953.

5. Budget saver. The current arrangement, as indicated earlier, saves the AL and VFW a half million dollars per year, were they to have to fund their own service reps in the manner that other VSOs and other states do. Conversely, the KCVA does not have to furnish some office equipment (desks, chairs, filing cabinets, printers) provided by the AL and VFW; to furnish new desks and chairs for the 13 assigned service center VSRs and OAs would create a one-time expense -- perhaps \$20-30K. In addition, the KCVA avoids the cost of sending VSRs to 3-7 days of out-of-state training on a periodic basis, since the AL and VFW pay for the travel costs of service center reps. This currently saves the KCVA \$3-5K per year.

\* \* \*

**PROBLEMS:** Just as there are benefits from the KCVA's arrangement with the AL and VFW, there are also a number of problems that ensue.

1. Compensatory Time. Our personnel, regardless of arrangement, work 40-hour weeks. The KCVA is obliged to give compensatory time to the service center reps if their absences exceed 40 hours in a week (sometimes at time and a half). Additionally, offices are obviously closed during their absences. This situation occurs during VSO national-level training, in-state service organization recruiting/training trips, and district, state, and national level conventions and conferences. The AL and VFW expect the service center VSRs to be present and in a state-paid status at their conferences, where they are employed as part of the operating team, so each episode is problematic to the Agency: close offices for 3-4 days to cover the comp time or disturb the service organization.

Moreover, there are legal constraints, since the Kansas Attorney General issued an opinion in 1997 regarding the Fair Labor Standards Act and this arrangement. The opinion states, "As long as KCVA and the VSOs remain in a joint employment arrangement, KCVA and the VSOs' cannot, in determining responsibilities under FLSA, exclude an employee's time in performing functions exclusively for the other entity." In short, the Agency and the VSOs were denied the prerogative of determining what were state functions that occurred beyond the 40-hour work week; if the AL or VFW determined that the rep had a function beyond the 40 hours, the Agency is obliged to provide compensation.

2. Training Imbalance. The service center AL and VFW VSRs, as mentioned, periodically attend out-of state training. However, the KCVA's field office reps receive no such national-level or even in-state training -- for budgetary reasons. Likewise, other veteran service organizations, like the DAV, are completely on their own for paying reps and funding their training. The Agency believes that \$5-10K annually would fund good refresher training for all VSRs and could even include training for

2. A robust training event would include all interested VSOs in Kansas as well as the KCVA's personnel.

3. Fairness to other VSRs. It is recognized that the AL and VFW pay stipends or bonuses to each VSR and OA assigned in the service centers. The exact amount is unknown to the Agency, but \$100-\$500 per month, depending on position, would be a reasonable guess. The service center VSRs do not perform any additional functions for the Agency to merit this stipend; in fact, the Agency remains bound to provide overtime pay or comp time to any VSR who exceeds a 40-hour week. In other words, the field office personnel (VSRs and OAs) work the same 40-hour week that the service center personnel do, but the latter group receives a considerable monthly stipend from the AL or VFW. While I personally set out a year ago looking for ways to address our operations without affecting our VSRs and causing them a "pay cut," it became clear that doing so would eliminate several good options. It appears that as long as the joint employment arrangement is in effect, USDOL interpretations block out any system by which reps could receive a second employer compensation and thus retain their stipends.

4. Ethics. It is quite likely that this stipend arrangement places the service center personnel in violation of state ethics laws regarding K.S.A. 46-235 and compensation. Previous queries regarding this situation going back to 2001 have been unresolved. Notes from two 2001 KCVA-Ethics Commission meetings highlight this conclusion. I asked the KCVA staff to assess the ethics of this situation over a year ago; they have not been able to develop a response, which tells me that an ethics problem is likely.

5. Fairness to other VSOs. It is impossible to explain to other veterans service organizations why the American Legion and Veterans of Foreign Wars have state-funded service reps and office assistants but they do not. Because state general funds are limited, the AL and VFW have what they have, but the Agency cannot afford a similar arrangement for the others. For example, the DAV has sought for over a year to have the KCVA fund one or more VSRs in the manner that it does for the AL and VFW. The DAV state commander made this formal request during two different Commission meetings last year. Short of a considerable SGF budget increase, the only way this could happen would be for the AL or VFW to reduce the KCVA-funded staff they currently enjoy, and no offers of that nature are forthcoming. Outside of Wichita, the DAV has one DAV-funded VSR who must split his time between the Leavenworth and Topeka VA hospitals, because the DAV cannot afford two reps. On the other hand, the AL and VFW enjoy four VSRs and two OAs in these two hospitals -- all funded by the KCVA. The town of Liberal even has a part-time VSR who is funded by the county and the United Way and is registered as a NACVS VSR. The problem is even more acute in Wichita, as described earlier.

6. Claim Feeding. The claims workload is heavy in the VA hospitals; those are the throughput points where a large number of veterans come for their care and assistance visits, when compared to the field offices, and a high number of claims logically ensues. In Leavenworth and Topeka, there is a KCVA-AL rep and a KCVA-VFW rep in each hospital, the DAV rep is present half time at each, and no other VSO rep is represented at either hospital. Therefore, Leavenworth and Topeka are feeder points for veterans' claims because the AL and VFW are significantly more available than other VSOs. Because VSOs "compete" to get claims, it is obvious that the KCVA-funded presence of VSRs in Leavenworth and Topeka unfairly edges out the other VSOs. Getting the veteran claimant to sign a Power of Attorney (POA) to a specific service organization legally locks out any other service organization.

7. Other states do it differently. In discussions with my counterparts in other states, I have yet to find any who have a comfortable arrangement similar to what we have in Kansas regarding state employees being under the control of a VSO. Most of my counterparts look at me in disbelief when I describe our operation. We have a study ongoing to assess each state and how it organizes for business with

.Rs, and there are some initial reports that arrangements (such as grants) with VSOs do exist. Certainly, each state has a different approach to how VSRs are funded. Many rely on county service reps, often with the state providing partial funding in the form of a grant to the county and expecting a county match (but not establishing county reps as state employees). Some states have exclusive state VSRs. Most have some combination of state reps, county reps, and VSO reps (funded by the VSO). Frequently -- and certainly in the states where county reps carry the weight -- the state's department or agency, like the KCVA, is responsible for training and certification of all VSRs.

8. Accountability. If a service rep misrepresents a client or fails to handle a claim properly, the client can sue. This rarely happens, but it is mentioned from time to time. Despite MOAs that may exist, accountability is uncertain between the KCVA and the State of Kansas, on the one hand, and either the AL or VFW on the other. Recently a veteran who was dissatisfied with his claim status threatened to sue, and his VSR was a KCVA-VFW rep with a VFW-filed claim. While the veteran's argument was specious, nonetheless the VFW took no ownership in the case and essentially passed it back to the KCVA as a state problem.

9. Governor's guidance on consolidation of offices. For several years, the Governor's budget recommendation to the KCVA included instructions for the Agency to consolidate offices and/or reorganize. A failure to do so -- or even attempt to -- has served as the basis of incremental budget cuts. The Agency has been unsuccessful in the past in justifying its veterans services budget to the Division of Budget and Governor's office, and as a consequence it has endured significant cuts over five successive years. Until a full KCVA organizational assessment is completed to the satisfaction of those two offices, it is likely that annual budgetary battles will continue.

Moreover, the only locations where the KCVA could easily consolidate offices are in the VA hospitals, since other locations (field offices) are geographically dispersed. And those hospital offices are only staffed by KCVA employees who are AL or VFW affiliated (the service centers). Therefore, to completely and effectively consolidate would be to dissolve the separate status of the AL and VFW from each other. Beside the fact that this would create a legal problem with Powers of Attorney (POAs) unless consolidated offices became only KCVA employees, the two service organizations are loath to accept any intertwining of operations and staff. I explained to the DOB and Governor's staff that consolidation has gone almost as far as it can under the present arrangement. In Leavenworth the two VSRs have offices separated only by workspace, now vacant, that once housed the OA whose position was lost due to funding. The two reps share information and work collegially, but they maintain separate files on claims. There are no budgetary efficiencies to be gained in Leavenworth by forcing consolidation, though there are some other benefits cited in the other paragraphs. In Topeka, the two offices are separate, and dialogue between the two is minimal. They could physically consolidate into one area, but it would be tight and the two operations are nowhere near as collegial as in Leavenworth. It is probable that the KCVA could save one FTE (an OA) by forcing consolidation, but the arrangement with the AL and VFW would have to be abolished. In Wichita, the two offices are adjacent but separate. There is a large number of files, and there would be a problem with POAs under the present arrangement. However, if these two offices were consolidated as a KCVA operation, it is likely that one or more FTE could be saved.

I believe that the years of instructions to "reorganize" actually had the intention of forcing the Agency to find ways to reduce its budget. To maintain the budgetary status quo, not to mention any attempt to increase veterans services' budget, the Agency must develop a legitimate reorganization product -- though there is no reason that it must show a reduction. In the current fiscal year, the Agency has several VSR shortages where reps left last summer and the budget was insufficient to hire replacements. The Agency has been successful thus far in seeking additional funds that would refill the lost field office positions, in part because local legislators can see the obvious impact of closed offices in their districts. There have been two losses in Wichita over the last eight months, but the



rent arrangement with the AL and VFW makes the impact of those lost positions in Wichita less obvious and more difficult to press.

10. Claims and Powers of Attorney. If a veteran chooses to file a claim through a specific veterans service organization rep, then he or she also signs a POA with that VSO. The POA means only that VSO can handle and access the claim unless later revoked. This procedure is not the case with a KCVA rep; should the veteran file a claim with a "pure" KCVA rep, then any other KCVA rep could participate in the handling and processing of that claim.

11. Conflict of interest. Service organizations "compete" for claims. Some other VSOs believe that it is a conflict of interest for the AL or VFW, as state funded offices, to have any role in fostering service organization membership while on state time. The situation is equally problematic regarding the solicitation for claims for "their" service organization -- rather than having a neutral approach -- while in their capacity as state employees.

12. Default on quality. Because quality control and claims tracking occur in the Wichita VA regional headquarters, and because there are no pure KCVA service reps in Wichita, the KCVA has effectively abdicated in any obligation regarding quality. As a result, any assessment on how well the Agency is performing its claims business has defaulted to the AL and VFW. Besides being an unacceptable management system, this frequently manifests itself as a "we-they" attitude between Wichita and the field offices. This shows up in overt ways, but it also creates an insidious cancer among certain reps and offices in which loyalty to the Commission and the Agency is clearly secondary to a particular veterans service organization.

13. The issue that counts. In my meetings with the AL and VFW, funding for "their" service reps is generally the only issue that raises any concerns. Seldom is there another contentious consideration; this is it. Therefore, the VSR arrangement continues to poison the well. I wrote a letter to several VSO state presidents/commanders in October 2004 explaining our situation with funding and VSR vacancies and, among other things, soliciting any ideas for the best way to handle this combined arrangement. Mr. Bollig and I even met with a number of American Legion leaders at their headquarters. Frankly, neither organization has offered any solution other than the KCVA continuing to fund their reps.

\* \* \*

**OTHER OPTIONS:** A detailed analysis of options can and will follow, per any guidance from the Commission. I believe they should be part and parcel of any "reorganization plan" such as that demanded by the Governor's office. Without going into too much detail, some options are:

1. Status quo. This would preserve the arrangements we currently have with the AL and VFW, albeit with some necessary rebalancing or refilling of vacant positions. The most acute is in the KCVA-VFW office in Wichita where there is but one VSR. Restaffing would require additional state funds. The Status Quo option would ensure that the AL and VFW are happy, but this would perpetuate the other problems cited. If more funds were available, the Agency could also pay for service reps for the DAV -- and any other VSO that asked (but those funds are not likely). The Agency should insist that stipends would only be to reward additional work on behalf of the VSO; the VSRs and OAs would work their expected 40-hour week as KCVA employees, and the stipends would be to cover any extra time (such as conventions, ALVA tours, and the like). However, this arrangement with separate work time and stipends would be in violation of the FLSA as currently interpreted. This course of action would maintain service to veterans.

Status quo (plus). Maintain the current arrangement with the current number of state-funded FTE. However, request that the AL and the VFW also pay for more VSRs and OAs in their offices with their own VSO funds. There seems to be no operational reason that those two organizations could not fund additional personnel themselves if they felt it necessary. This option would solve office shortages the AL and VFW are concerned about, but it would not resolve any other problems cited earlier. This course of action would maintain or improve service to veterans.

3. Status quo (light). Maintain the status quo in Wichita, because of the VA's regional office, but terminate any AL or VFW affiliation in the service centers in Topeka and Leavenworth and reflect that those are now KCVA field offices. Given the aforementioned problem with POAs, fairness, and a potential conflict of interest, there is no compelling reason that the offices in Leavenworth and Topeka could not be pure KCVA offices, just like the KCVA's offices elsewhere. This course of action would maintain service to veterans and start to address some of the problems associated with current arrangements.

4. County service reps. Develop a plan that would terminate state-level (or some state-level) VSRs and, over time, foster county service reps. The KCVA would only be engaged in training and certifying reps, and VSOs might have to pick up the claims thereafter (unless the KCVA maintained a larger office in Wichita). Doing so would likely require some form of grant or match of state funds to the counties, as other states do. It would take quite a bit of time to put this into effect, and it would effectively terminate state employees in the field offices. In the long run this could work if counties were willing to provide funds; in the short run, this would be detrimental to veterans and a terrible move for our KCVA employees.

5. Separation of functions. Establish a plan in which only some of the functions listed earlier for VSRs would actually be state/KCVA functions. For example, the KCVA would be responsible for *Primary Assistance*, the "walk in the door" assistance in all offices, including all field offices, Leavenworth, Topeka, and Wichita. It also would be responsible for *Quality Control*, most likely centered in Wichita, but perhaps also performed in regional centers, if established. The KCVA could also retain responsibility for *Claims Tracking* in Wichita. But the KCVA could declare itself incapable of addressing *Appeals* and allow that function to be performed by one or more VSOs. Frankly, appeals are outside the scope of the KCVA's expertise anyway; to be truly affective, an organization needs staff -- and attorneys -- in Washington, where they can focus on current laws and cases every day.

This course of action would require the KCVA to handle a claim all the way until a decision is rendered by the VA. At that point the veteran would be advised that he could, if he wished, file an appeal. The veteran would be given a list of VSOs that could handle the appeal for him. KCVA neutrality would be essential.

This could be accomplished with one or more contracts with available service organizations if funds are available: the appeals function, and perhaps the claims tracking function, could be performed by a number of VSOs in Wichita that compete for contracts annually. Selection criteria could be the number of claims filed historically, the success rate, the turn-around time, and the like. The contract would be for a set amount of dollars, and the VSO could then tackle its mission as it sees fit, with however many reps it deemed necessary. This would get the KCVA out of the appeals business, which it can't do well anyway; establish a regimen of fairness regarding all VSOs; award based on performance; ensure that KCVA employees are available in that capacity and not engaged in peripheral VSO business; and ultimately remove any hint of conflict of interest. It would, however, place high expectations for knowledge, ethics, and fairness on the shoulders of the KCVA leaders and contract representative who would have to manage the contract and assess performance. In all

likelihood, the Commission would become involved in contract selection. In the end, this course of action would likely improve service to veterans.

**MOVING FORWARD:** None of these "solutions" is easy to accomplish, none is likely to make everyone equally happy, and none would happen overnight. But if we are to find remedies to the current problems in our operations, the time to do so is now, before we attempt to rebuild offices and positions that are at their staffing ebbs.

Leaning a good bit on military operations manuals, I would suggest that we start with this question: What do we want it to look like when we are all done? We should have a framework that establishes, generally or specifically, a particular course of action for veterans services in Kansas. This would likely include locations, chains of command, a laydown of functions, the relationship between the KCVA and all service organizations, the budget required for that, and the ways in which this arrangement provides the best support to the veterans in the State of Kansas.

Once that is determined, we should ask the question: What resources are required to set up this course of action? This would include a detailed budget, special temporary funds, people, pay scale modifications, offices, office equipment, leaders, training, certification, and the like. This step will require negotiation with the Governor and the Legislature for funding and structure.

Finally, we must answer the question: What is the sequence in which we must apply the resources in order to get where we want to be? This demands that we identify legal constraints on claims and POAs, treat our employees fairly and only eliminate positions when we absolutely must, work closely with all VSOs, establish oversight systems (particularly if contracts are created), develop accurate timelines, ensure we have the budget to get us where we need to be, and put the right leaders in the right places at the right time.

**CONCLUSION:** I apologize for the length of this letter, but the content is important and the impact of our future direction is significant. The American Legion and the Veterans of Foreign Wars are quite anxious about any action that would reduce their current state-funded operations. Other service organizations are disturbed that they cannot be in on the state-funded arrangement. And on top of that, there are a host of other problems with the status quo that are potentially illegal, likely unethical, and certainly awkward.

A clean solution has eluded everyone who has attempted it, and in the year that I have served as director, the staff has been unable to complete an analysis or to offer any solution that is close to workable. This document serves, therefore, to seek the guidance of the Commission on the manner in which we proceed and according to the facts and limited analysis I have presented. I believe that everything I have described is accurate and factual, but if a correction is required, I will attend to it immediately.

Respectfully submitted,



George S. Webb  
Executive Director

CF:  
1 each commissioner

**CHRONOLOGY OF JOINT EMPLOYMENT AGREEMENT BETWEEN THE KCVA, THE  
AMERICAN LEGION, AND THE VETERANS OF FOREIGN WARS  
1997-2002**

Constructed from records, including KCVA Commission meeting minutes (CMM)  
Prepared by Executive Director Webb

- **Jan 1997:** (CMM) Executive Director (ED) reports KCVA, AL, & VFW agree to draft MOU on VSR hiring practices.
- **Feb 1997:** MOU signed by KCVA, AL, & VFW on interview and hiring method (only) for VSRs.
- **Feb 1997:** (CMM) ED reports MOU on hiring signed; DPS letter of concurrence received.
- **Mar 1997:** ED reports on formal investigation re. operations in KCVA-AL office in Wichita; recommends guidance on dual status state duties; delineation of state and VSO duties; and procedures for VSOs on these matters.
- **Apr 1997:** KS Attorney General (AG) issues opinion on joint employment and Fair Labor Standards Act (FLSA) holding each party (KCVA, AL, VFW) liable for all work in the employee's work week; discusses authority for dismissals.
- **May 1997:** ED sends out draft operational MOA for comment.
- **May 1997:** (CMM) ED reports AL & VFW committees had reviewed MOA and made comments.
- **Jun 1997:** Numerous revisions between ED and VSOs; copies sent to AG and Div of Personnel.
- **Jun 1997:** (CMM) Commission agrees "in substance" to draft MOA; cannot accept final because AL Adj Yunker reports AL did not yet have agreement from full committee.
- **Aug 1997:** AG sends letter re. issues from joint meeting with KCVA, AG, DPS, and USDOL. Reinforces point that under FLSA, KCVA and VSOs cannot exclude the work done for the other party in determining employee time.
- **Aug 1997:** ED sends commissioners a staff study on joint employment agreement and identified problems; recommends severing joint employment relationship with VSOs because of constraints of FLSA and staffing offices with KCVA personnel.
- **Aug 1997:** (CMM) Discussion on USDOL interpretation of FLSA and problems resulting; Commission votes for ED to develop a plan to sever joint employment relationship, report at next CM, and support VSO effort to get congressional exemption from FLSA and/or a change to US Code.
- **Oct 1997:** KS Director of Personnel Services sends letter to USDOL requesting clarification on how FLSA would apply to KCVA-VSO joint agreement and means for making it work.
- **Oct 1997:** (CMM) ED reports joint office reorganization is complex; new info appears to allow joint employees to "volunteer" for VSO activities w/o compensation; and unless all relationships are severed, USDOL will always assume joint employment exists. ED now asks to return to original MOA with VSOs and delineate responsibilities.
- **Nov 1997:** (CMM) ED reports meeting twice w/ VSOs on MOA; AL still evaluating proposal.
- **Dec 1997:** (CMM) ED reports meeting with AL; awaiting AL response to last draft MOA.
- **Jan 1998:** (CMM) ED reports two meetings w/ VSOs since last month; progress is slow; will meet w/ AL and VFW committees next week.
- **Feb 1998:** (CMM) ED reports operational MOA is tentatively agreed to by all parties. ED believes MOA addresses USDOL issues, but State of Kansas will be held responsible for any disagreements.
- **Mar 1998:** (CMM) ED reports MOA not signed by AL or VFW; Cmsnr Grant indicates AL has problems w/ impact on special programs like district/state conventions and ALVA tours. ED says state's

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“support of veterans” is the priority and employees have right to volunteer but should not receive compensation for attending state convention in a support role. Cmsnr Strukel says other VSOs do not get support for their state/district conventions, and this might create perception of unequal treatment.

- **Apr 1998:** (CMM) ED reports MOA not yet signed.
- **May 1998:** (CMM) ED reports MOA not yet signed.
- **Jun 1998:** (CMM) MOA not yet signed; AL VA&R Committee agreed but now must be approved by AL Department Executive Committee.
- **July 1998:** (CMM) ED reports MOA not yet signed. Cmsnr Grant indicates issues will be resolved by 13 Aug.
- **3 and 5 Aug 1998:** VSOs and KCVA sign operational MOA.
- **Aug 1998:** (CMM) ED reports operational MOA has been signed.
- **Sep 1998:** (CMM) ED reports need to request additional expenditure authority for Veterans Services to accommodate additional VSO requirements
- **June 1999:** (CMM) ED identifies need for an annex to operational MOA that delineates responsibilities for equipment and supplies; states that proposed annex was “agreed to in principal” by VSOs. Chmn Strukel says annex should be signed by VSOs. Cmsn votes to accept annex. DAV says DAV will support own offices rather than operating jointly.
- **Aug/Sep 1999:** ED and VSOs sign annex to MOA.
- **Jun 2001:** KCVA meets with attorney of KS Governmental Ethics Commission re. compensation issue. Notes indicate KSA 46-235 is a problem; stipend is a problem. Ethics Commission attorney suggests separate classification of VSRs; personnel should perform state duties only with no stipend.
- **Jun 2001:** KS Director of Personnel Services sends letter to US Secretary of Labor asking when earlier DPS letter of 22 Oct, 1997 will get a response.
- **Sep 2002:** KCVA HR director asks DPS about status of letter to USDOL. DPS reports letter to USDOL has “gone into a big black hole,” USDOL says “it’s under review,” he gets “stonewalled” with questions; and believes this is a “political hot potato.”

## MEMORANDUM OF AGREEMENT

This document is a memorandum of agreement (MOA) between the Kansas Commission on Veterans Affairs, The Kansas Department of the American Legion, and the Kansas Department of Veterans of Foreign Wars regarding the operations of joint offices located at the Dwight D. Eisenhower V.A. Medical Center, Leavenworth, Kansas; the Colmery-O'Neill V.A. Medical Center, Topeka, Kansas; and the Medical and Regional Office Center, Wichita, Kansas.

It has been determined that this memorandum of agreement is needed due to the joint employment status of these offices as determined by the federal Department of Labor. The Veteran Service Representatives in these offices are full-time employees of the State of Kansas, in accordance with K.S.A. 73-1210, and are accredited Veteran Service Representatives (VSR) of the Kansas Commission on Veterans Affairs in accordance with Title 38 of the US Code. These employees are also employed by the Department of a Congressionally chartered National Veteran Service Organization (VSO), and are accredited as a Veterans Affairs Representatives (American Legion) or Veteran Service Officers (VFW) of that VSO in accordance with Title 38 of the US Code. The administrative staff are employees of both the Kansas Commission on Veteran Affairs and the respective VSO.

The Joint Offices of the Kansas Commission on Veterans Affairs, The American Legion, and the Veterans of Foreign Wars shall exist as a partnership. The joint mission of these offices will be to represent veterans residing in the state of Kansas and their eligible family members in the preparation, presentation and prosecution of claims for veterans' benefits, and to support and guide the efforts of VSO Department Service Officers and Kansas Commission on Veteran Affairs VSRs and field offices in the accomplishment of these efforts.

Department Service Officer/Veteran Service Representative training and training evaluation, staff expertise, access to national information networks, and other special training and professional development programs will be a primary responsibility of the VSOs. The VSOs will designate an employee of the joint offices as their Department Service Officer. VSOs will have input into office operational policies through the Department Service Officer with review by the appropriate VSO committee.

Non-joint office employees of the Kansas Commission on Veteran Affairs (KCVA) may participate in training that utilizes any state resources, human, financial or materiel. Non-joint office employees of the KCVA may participate in VSO provided training on a space available and reimbursable basis as agreed to by the VSO and the KCVA.

The VSOs will procure the office space from the various VA facilities involved, and provide office equipment and furnishings in accordance with annex A. The state will provide supplies and equipment necessary to operate in accordance with annex B.

Employees requiring VSO accreditation to conduct their joint office duties will be hired and accredited in accordance with guidelines established by MOU between the

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VSOs and the KCVA. Those employees required will also be accredited with the KCVA.

All state employees will be paid salaries and benefits concomitant with their state rating. Individual employees may receive supplementary remuneration from the VSOs.

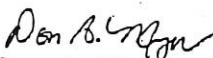
Operations and management functions of the Joint Offices will be directed by the state, as modified by other MOU/MOA. VSOs will coordinate all support requests through the Central Office of the KCVA. Operations will include, but will not be limited to, hiring and firing (as modified by other MOUs/MOAs), determination of staffing levels, discipline, job description and duty assignment, accountability for all compensation, pay and fringe benefits, and any other management functions needed to operate the offices. These actions to be coordinated with the VSOs.


Joint employees may volunteer to perform non-joint office mission related duties at official VSO functions. Joint employees cannot volunteer their professional services to either the KCVA or the VSOs. Any joint office related duties must be accounted for and compensated in accordance with the Fair Labor Standard Act.


Utilization of state or organizational assets to accomplish other than joint office mission duties, or in direct support of that mission as mentioned in this MOA must be agreed to by the organizations involved. The VSOs may appeal to the commissioners of the KCVA should a disagreement occur between the VSOs and the KCVA Central Office. Additional MOAs, standard operating procedures, and agreements may be necessary to support future circumstances.

The signatures by the parties below indicate acceptance of this memorandum of agreement by the organization or entity which they represent.

This MOA will be reviewed annually for continued acceptability to all parties concerned. It will not be modified without consultation of all signatory organizations.

  
Don A. Myer  
Executive Director  
KCVA

  
Charles M. Yunker  
Adjutant  
The American Legion,  
Department of Kansas

  
Darrel Bencken  
Adjutant/Quartermaster  
Veterans of Foreign Wars,  
Department of Kansas

Date: 3 AUGUST 1998

Date: 8-3-98

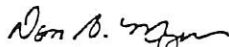
Date: 8/3/98


## Annex


This annex delineates the areas of primary responsibility beginning in FY 2000 (July 1 1999 to 30 June 2000) for the state of Kansas and the individual Veteran Service Organizations in supporting their Joint Offices. Organizations will purchase all consumable supplies and services not otherwise listed for the items and equipment they are responsible for, as well as any maintenance and repairs.

Due to the variance in organizational fiscal planning cycles and policies, individual organization are free to make purchases not in their area of responsibility when circumstances dictate. These purchases should be coordinated with the concerned partner(s) to maximize effectiveness and efficiency of equipment and supplies.

Item	State	VSO
Automation Equipment: Computers, Monitors, Software, Modems, expansion cards. Materials and equipment needed to network computers.	X	
Office Supplies: Paper, including plain bond and KCVA letterhead Envelopes, markers, pens, pencils, scissors, paper clips, staplers, staples, rubber bands, glue, rulers, and labels. Professional books and research materials.	X	
Special Equipment Postage meters, scales, typewriters.	X	
Office Equipment: Copy machines, calculators, computer printers, and fax machines. Software, connectors, and drivers for these items.		X
Office Furniture and Services Desks, chairs, wall dividers, bookcases, tables rugs, and filing cabinets. Telephone and custodial services.		X
Office Space Appropriate space for employees assigned		X
VSO specific items: Letterhead, business cards, promotional materials.		X

  
 Don A. Myer  
 Executive Director  
 KCVA

  
 Charles M. Yunker  
 Adjutant  
 The American Legion,  
 Department of Kansas

  
 Darrel Bencken  
 State Adjutant/Quartermaster  
 Veterans of Foreign Wars,  
 Department of Kansas

Date: 23 AUGUST 99

Date: 8/27/1999

Date: 9/13-99

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State of Kansas

Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL  
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
FAX: 296-6296

MEMORANDUM

TO: Don Myer, Executive Director  
Kansas Commission on Veterans' Affairs

FR: Richard D. Smith, Assistant Attorney General

DT: August 1, 1997

RE: FLSA; FMLA; "Joint Employment"; Review

After meetings on July 22 and 23 with Jim Bachert, Compliance Officer with the U.S. Department of Labor, and Ken Otte, Department of Administration, it appears some employees of KCVA who also perform duties for veterans service organizations (VSOs) will be viewed as joint employees under FLSA and FMLA. KCVA, as primary employer of the joint employees, will be viewed as the entity responsible for ensuring the joint employees receive compensation and notices pursuant to FLSA and FMLA.

On July 22, Mr. Bachert, Mr. Otte, Randy Scott, you, and I met to discuss aspects of joint employment under FLSA. For purposes of FLSA, joint employment is deemed to occur in situations: (1) where there is an arrangement between employers to share an employee's services; (2) where one employer is acting directly or indirectly in the interest of the other employer in relation to the employee; or (3) where the employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reasons of the fact that one employer controls, is controlled by, or is under common control with the other employer. See 29 C.F.R. § 791.2. Given the arrangement between KCVA and the VSOs regarding operation of the field offices, the Department of Labor views KCVA and the VSOs as joint employers.

When Mr. Bachert was contacted regarding the employment situation, he believed that joint employees of KCVA and the VSOs would be joint employees only during those times in which the employees were performing tasks beneficial to both KCVA and the VSOs. Therefore, KCVA and the VSOs could enter into an agreement designating tasks that were not being performed for the

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benefit of both employers, and thereby limit potential liability under FLSA. With this understanding, KCVA and the VSOs began negotiating the terms of a memorandum of understanding and a memorandum of agreement. However, the U.S. Department of Labor regional office located in Kansas City notified Mr. Bachert that this type of limitation was not possible.

*"[I]f an individual is employed jointly by two or more employers, all of the employee's work for all of the joint employers during the workweek is considered as one employment for purposes of the FLSA, and the employers are jointly and severally responsible for complying with all the applicable provisions of the FLSA for the particular workweek in which the joint employment occurs." 48A Am.Jur.2d Labor and Labor Relations § 3829 (1994) (emphasis added).*

As long as KCVA and the VSOs remain in a joint employment arrangement, KCVA and the VSOs cannot, in determining responsibilities under FLSA, exclude an employee's time in performing functions exclusively for the other entity.

Mr. Bachert noted that an individual was attempting to locate a written opinion from the U.S. Department of Labor which addressed this issue. It appeared, however, that there was no written opinion. KCVA could request an opinion regarding the joint employment issue.

On July 23, Mr. Otte, Mr. Scott, Wendy Fritz (Division of Personnel Services), you, and I met to discuss options available to KCVA. KCVA could attempt to enter into agreements with the VSOs which would establish the obligations of the entities. A second option available to KCVA was to attempt to sever the joint employment status.

Both options had disadvantages. Continuing the joint employment would result in additional record keeping duties for KCVA. It is likely the additional record keeping could not be performed through the State's computer system. Also, KCVA would continue to be viewed as the primary employer. If the VSOs did not comply with the terms of the agreements, the U.S. Department of Labor would hold the State responsible.

Severing the joint employment would require KCVA to acquire office space for its field offices. Additionally, all the records related to representation of veterans in claims filed with the Veterans' Administration are stored in the offices of the VSOs.

Mr. Otte stated he would assist in drafting a request for an opinion from the U.S. Department of Labor. He believed it would take several months before any opinion would be issued.





DEPARTMENT OF ADMINISTRATION  
Division of Personnel Services

BILL GRAVES  
Governor

DAN STANLEY  
Secretary of Administration

WILLIAM B. McGLASSON  
Director of Personnel Services  
900 S.W. Jackson, Room 951-S  
Landon State Office Building  
Topeka, KS 66612-1251  
(785) 296-4278  
FAX (785) 296-6793

October 22, 1997

U.S. Department of Labor  
Wage and Hour Division, District Office  
Gateway II  
400 State Avenue, Suite 706  
Kansas City, KS 66101

Dear U. S. Department of Labor:

I am requesting your opinion as to whether a "joint employment" situation would exist in the scenarios described in the following paragraphs. In addition, if a "joint employment" situation exists, I am seeking your opinion concerning any responsibilities of the employers with respect to complying with all federal employments laws, such as the Fair Labor Standards Act and the Family Medical Leave Act, which are administered by the U.S. Department of Labor.

The Kansas Commission of Veterans' Affairs (K.C.V.A.) is a state agency with a Veteran Service Program which is responsible for providing Kansas veterans, their relatives, and dependents information, advice, direction, and assistance through the coordination of programs and services in the fields of education, health, vocational guidance and placement, mental care and economic security. Veteran Service Program employees consist primarily of Veteran Service Representatives and clerical employees. The question of potential "joint employment" for the Veterans Service Representative employees and clerical employees will be discussed individually because the work of Veteran Service Representative employees and clerical employees differ, as does their relationship with various other veterans' service organizations, such as the American Legion and Veterans of Foreign War.

**Veteran Service Representative employees**

The work of Veterans Service Representative employees of the K.C.V.A. consists of assisting and representing veterans and their dependents in securing benefits from the federal government and the State of Kansas. This work involves interviewing veterans and their

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dependents to determine their eligibility for federal or state benefits, explaining eligibility requirements, assisting them in preparing documents to obtain benefits, preparing and presenting appeals to hearing officers when claimants are not satisfied with determinations, speaking before veterans' groups to explain veterans benefits, and assisting claimants in obtaining admission and outpatient treatment at medical centers for veterans.

Pursuant to Title 38 of the US Code, an individual must be accredited by a veterans' service organization in order to represent veterans in appeals before the Federal Veterans' Administration. For this reason, employees in some Veteran Service Representative positions must meet the membership requirements of either the American Legion or the Veterans of Foreign Wars.

In six offices operated by the K.C.V.A., employees are members of various veterans' service organizations and are paid by that organization to perform various duties for that veterans' service organization. Payments range from \$150 to \$450 per month. The mission of these six Joint Offices of the Kansas Commission on Veterans Affairs, The American Legion, and the Veterans of Foreign Wars is to represent veterans of the state of Kansas and their eligible family members in the preparation, presentation and prosecution of claims for veterans' benefits, and to support and guide the efforts of veteran service organization Department Service Officers and K.C.V.A. Veterans Service Representatives and field offices in the accomplishment of these efforts.

Some of their duties with the veterans' service organization are similar to their duties with the K.C.V.A., e.g. informing veterans of their benefit rights and the procedures involved in obtaining veteran's benefits. Sometimes the veterans' service organization contacts the Director of the K.C.V.A. to arrange for these services. If the Director approves their participation in such activities, the employees are provided regular and overtime pay or are provided compensatory time by the K.C.V.A. At other times, the veterans' service organization directly contacts the Veterans Service Representative to arrange for their services with the veterans' service organization. The K.C.V.A. has no involvement during these times so they do not pay the employee.

On some occasions, the Veteran Service Representatives perform work for the veterans' service organization which is dissimilar to their work with K.C.V.A., such as marching in parades and serving drinks. The veterans' service organization may arrange for the services of the Veterans Service Representative through the Director of the K.C.V.A. or may directly contact the Veterans Service Representative. During some of these activities the Veterans Service Representative employees may be distinguished from other members with distinctive hats which identify them as experts of veteran service programs and benefits for that veterans' organization. On some occasions, veteran service representatives who are also veterans service organization members perform duties and attend official functions of the veteran service organizations as

members and/or officers of that organization. For example, member at a district convention; post commander at a monthly meeting; coach at a youth activity sponsored by the organization.

The veterans' service organizations provide training, office space and equipment for several work locations of the K.C.V.A. In addition, a Veterans Service Representative of K.C.V.A. "represents" the veterans' service organization during interviews for vacant Veteran Service Representative jobs with K.C.V.A., but the Director of the K.C.V.A. has final authority with respect to all employee selections.

### Clerical employees

Some clerical employees of the K.C.V.A., who are not members of any veterans' service organization, perform clerical work for a veterans' service organization and are paid a small fee, e.g. \$50.00 per month, for their services. This work may be performed during the employee's time at work with the K.C.V.A. using equipment and supplies of the K.C.V.A. The K.C.V.A. pays these clerical employees their regular pay while they are performing clerical work for the veterans' service organizations while at work for the K.C.V.A..

### General "joint employment" Questions

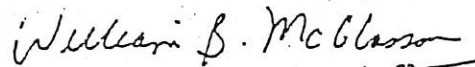
1. If the above situations would involve "joint employment," how would it restrict the ability of a Veterans Service Representative to voluntarily participate in veterans service organization activities on their own time without incurring a liability for the K.C.V.A.?
2. Can one employer "divorce" itself of responsibility to provide compensation to employees for duties performed on behalf of either employer in a "joint employment" situation? Please explain.
3. In a "joint employment" situation can either of the employers limit the duties to be performed by joint employees on behalf of the other employer?
4. In a "joint employment" situation, must overtime liability be calculated for all employers on the basis of the same workweek?
5. As a state agency, the K.C.V.A. may provide compensatory time in lieu of overtime pay, as provided for in CFR 553.20. Can the veterans' service organization use compensatory time in lieu of overtime pay? If the veterans' service organizations are unable to use compensatory time, please explain how this may or may not effect the K.C.V.A.'s ability to provide compensatory time off in weeks during which the hours of work for both employers exceeds 40.

Department of Labor  
October 22, 1997  
Page four

6. Please explain the method for calculating the "regular rate" when the employee receives pay from both the K.C.V.A. and a veterans' service organization.
7. Please explain the responsibility of the "primary employer" in a joint employment situation, e.g. is the primary employer responsible for all overtime obligations incurred in a "joint employment," or are they responsible solely for the overtime performed at their direction? Please provide your opinion as to who would be the "primary employer" in the situation previously described.
8. Please explain the difference between a "joint employment" situation and one in which several employers may mutually be involved in a situation where they work toward a common goal without engaging in a "joint employment" situation.
9. Does the "Primary Employer" enjoy any operational, directive, supervisory, or any other rights in respect to the joint employers?

I appreciate your assistance in responding to our inquiry. If you have any questions concerning this issue, please contact Ken Otte at 785-296-4383.

Sincerely,



William B. McGlasson, Director  
Division of Personnel Services

TDB:keo

cc: Don Meyers

C: October 15, 1997; (2:41); vetdol



**KANSAS DEPT. AMERICAN LEGION**  
**1314 SW TOPEKA BLVD**  
**TOPEKA, KANSAS 66612**  
**785-232-9315**

**KANSAS DEPARTMENT VFW**  
**PO BOX 1008**  
**TOPEKA, KANSAS 66601**  
**785-272-6463**

February 28, 2005

Senator Mark Taddiken  
State Capitol Bldg., Room 422-S  
300 W 10th St.  
Topeka, KS 66612

Dear Senator Taddiken:

The American Legion and Veterans of Foreign Wars respectfully request your reconsideration of the proposed budget for the Kansas Commission on Veterans Affairs as it pertains to the Veterans Service portion of the KCVA budget. We offer you the following brief history of private and government cooperation between the American Legion, VFW, and the State of Kansas along with the results of budget cuts in recent years and their impact upon Kansas' veteran community as justification for our appeal for increased funding.

In 1945 Governor Andrew Schoeppel appointed an eight person advisory committee which, in lieu of a WWII bonus, created the Kansas Officer of Veterans' Affairs for the purpose of assisting veterans and their families in filing for Federal VA benefits. The present day Kansas Commission on Veterans Affairs evolved from the Office on Veterans Affairs. Throughout that history the American Legion and VFW have provided our office space in Kansas' three VA Medical Centers to the State of Kansas in a joint effort to serve veterans in the best way possible: the State has provided personnel in the form of Veteran Service Representatives (VSR) and Office Assistants (OA); in addition to office space we provide training, accreditation, computers, copy and fax machines, and other office equipment in addition to our organization's Veterans Affairs networks which provide an appeals process beyond the Kansas border which includes offices funded and staffed by our respective organizations in Washington, DC, Philadelphia, PA and St. Paul, MN. The State of Kansas can not duplicate such networks without incurring the annual expense of full time attorneys, support staff, office space and related equipment.

During the past five years the American Legion and VFW offices have been decimated by KCVA allowing VSR and OA positions to remain vacant then eventually abolished or by transferring personnel to KCVA Central Office and the Ft. Dodge Cemetery. These actions and their results are outlined on the enclosure accompanying this letter. Please take a few minutes to review them to fully understand the extent and effect of under staffing these offices.

In addition to the cuts, transfers and vacancies incurred by our offices the KCVA Field Offices have suffered similar fates during the past five years. An FY 2001 budget cut resulted in a 50%

Encl 7

MAR 02 2005 5-33

reduction in Field Office travel which saved the KCVA two thousand dollars. The direct result was a drop of \$2.6 million in Federal pension and compensation claims for the neediest of Kansas' veterans. That loss would have been much greater however one Field Office was allowed an additional \$141.00 in travel which resulted in \$2 million in new claims.

Recently the KCVA disclosed a drop of \$13, 520,000 in approved claims so far in this the seventh month of the current fiscal year compared to the last FY. That is more than \$13.5 million of Federal tax dollars which are not returning to the Kansas economy because our state is under serving its neediest veterans, their widows, and in many cases, their orphaned children. Those being under served are either forced to do without, or they turn to other state agencies thereby placing an unnecessary additional burden on the state.

Currently less than 10% of Kansas' 250,000 veterans are being served by the KCVA--far below the national average. In the coming months we expect at least 5000 new veterans will return to Kansas <sup>from</sup> current military operations; coupled with the 118,000 Kansas veterans who are beyond the age of retirement it is easy to conclude an increase in demand for Veterans Service is eminent. We are asking you to help insure properly trained VSR's are available to assist them.

Less than two years ago Veterans Services was able to return \$98 Federal dollars back into the Kansas economy for every state dollar spent. Today that ration has fallen to \$61 for every dollar spent and is directly attributable to under staffing.

This fiscal year the Governor's budget recommendation provided slightly over eighty thousand dollars to fill vacant positions. In FY 2006 the Governor is recommending an increase of \$162,000 which is a step in the right direction by bringing staff levels close to 2004 FY funding. However it does not address the vacancies described in the VA Medical Centers and Regional Office. The only vacancies the KCVA intends to fill are three Field Offices which were closed recently due to under funding during the last fiscal year. Clearly more funding is needed for Veterans Services in the KCVA budget and we hope you will agree. We ask you to raise the Governor's FY 2006 proposed increase to \$500,000 and stipulate it is to be used to restore all VSR and OA FTE positions in the Veterans Services offices in addition to the Field Offices, restore itinerant travel to FY 2001 levels, and provide for training in that order.

Sincerely,



Charles M. Yunker, Adjutant  
The American Legion  
Department of Kansas



Darrell Bencken, Adjutant/Quartermaster  
The Veterans of Foreign Wars  
Department of Kansas



## KCVA PERSONNEL UNDER STAFFING IN VETERANS SERVICE ORGANIZATION OFFICES IN VA FACILITIES AND THEIR ADVERSE RESULTS

Leavenworth VA Medical Center– the abolishment of two OA positions (one each in the Legion and VFW offices) resulting in the respective VSR's being forced to lock their doors and stop answering their telephones, thus turning away veterans while the VSR completes and files claim forms with the VA and performs the duties normally assigned to the OA.

Topeka VA Medical Center – One VSR position has essentially been vacant for more than three years forcing the remaining VSR and OA to lock their door and not answer the telephone while they catch up with filing VA claim forms several times a month. American Legion Headquarters receives numerous calls from veterans asking why the office is closed each time this occurs, including at least two calls today.

Wichita VA Regional Office – NOTE: All VA claims filled in the State of Kansas must pass through this facility. The VSR II position in the VFW office has been vacant for over a year, another VSR position was transferred to the KCVA's Central Office, leaving one VSR (on "loan" from the American Legion office for the past three years to fill the third VSR position in that office). Additionally the VFW has an OA position that KCVA has allowed to remain vacant. The American Legion office in Wichita has a ¾ time OA position vacant, one OA position was transferred to the Ft. Dodge Veterans Cemetery, one VSR on loan to the VFW and due to a recent death, another VSR position is vacant and the KCVA has no plans to replace that person.

*In addition to assisting veterans and their survivors in filing for Federal VA benefits and entitlements VSR's in the offices described on this page visit hospitalized veterans and are used in outreach programs fully funded by The American Legion and Veterans of Foreign Wars.*



# KANSAS

JACK RICKERSON, DIRECTOR

DEPARTMENT OF ADMINISTRATION  
DIVISION OF PERSONNEL SERVICES

KATHLEEN SEBELIUS, GOVERNOR  
DUANE A. GOOSSEN, SECRETARY  
CAROL L. FOREMAN, DEPUTY SECRETARY

April 12, 2005

George Webb, Executive Director  
Kansas Commission on Veterans' Affairs  
Jayhawk Towers  
700 SW Jackson, Suite 701  
Topeka, KS 66603-3758

Dear Mr. Webb:

This letter is in response to the March 29, 2005 letter from Kim Tatum and a follow-up to our meeting of March 31, 2005 in regards to the situation involving state employees from the Kansas Commission on Veterans' Affairs (KCVA) who also perform duties for the American Legion (AL) and the Veterans' of Foreign Wars (VFW) organizations. At your agency's request, the matter was submitted to the U.S. Department of Labor (DOL) in 1997 for clarification of potential issues with regard to the compensation of these employees.

As mentioned in the letter and discussed at the meeting, despite repeated attempts to elicit a response from DOL, to date we have received no guidance or even an estimate of when such guidance may be forthcoming. Because of this, we feel that the likelihood of receiving a response from DOL on this matter is very remote but we are confident that given the situation, DOL would indeed find that the situation is one of "joint employment."

The basic implications of a finding of joint employment would be that the Veterans' Service Organizations and the KCVA would be mutually liable for compliance with the Fair Labor Standards Act (FLSA). This would mean that all time "worked" with the AL, the VFW and the KCVA would count against the overtime limitation of 40 hours per week. In addition, the amount received by the employees from both wages and stipends or similar payments from the Veterans' Service Organizations would need to be included in the calculation of overtime pay. It would also be critical to accurately report all hours "worked" for the AL, the VFW and the KCVA each work week, as required by the FLSA. Non-compliance with the FLSA could result in legal liability for each of these organizations and personal liability for those in a position to control the work activities of the employees within each organization.

At the meeting on the 31<sup>st</sup>, you also mentioned that you have concerns that the stipends or payments paid by veterans' service organizations to employees of the KCVA could potentially

George Webb  
April 12, 2005  
Page 2

violate Kansas ethics laws. While we are not authorized to make such determinations, we share your concerns that these payments could be construed as violations of provisions of the Kansas Ethics Act.

As we discussed at our meeting, we believe that there are alternatives to the current arrangement that can be implemented which would alleviate the worst of the concerns with regard to potential ethics and FLSA issues. First and foremost, it would be much more preferable if all payments to KCVA employees came from the State of Kansas. This could be accomplished by simply not allowing the KCVA employees to receive a stipend from the Veterans' Service Organizations.

As we discussed, stopping the stipends would dramatically affect the pay of a number of Veterans Service Representatives. To help mitigate that circumstance, you could look at the option of an arrangement whereby the Veterans' Service Organizations would contribute money to the KCVA which could in turn use that money to compensate the employees for hours worked (including overtime hours) on behalf of the veterans' organizations. Since KCVA would, with this option, be the only employer, it would be necessary to establish a method for recording all hours of work KCVA employees performed each week for each service organization.

If an amendment to the current payment situation is not feasible, the KCVA could continue to utilize the practice of requiring KCVA employees to rearrange time during workweeks where they will be providing services to the veterans' organizations. As the primary employer, the KCVA can direct the work schedules of its employees and take appropriate action against any employees that do not adhere to such directions. A more aggressive approach to enforcing the scheduling of work could limit the amount of overtime incurred by these employees, thereby alleviating concerns over FLSA violations.

Another option is to end the joint employment by formally rescinding the "agreement," by sending the Veterans Service Organizations a letter that explains the potential liabilities of the current circumstance and advising them that (from a certain point forward) 1) KCVA employees will not be able to hand out KCVA materials or provide KCVA services while working for the VSO; 2) the VSO's should directly make arrangements for services with the VSR with no involvement with the KCVA; 3) the VSO's cannot serve in any capacity with respect to the hiring (interviewing), performance appraisal, or discipline of VSR's for work they perform while employed by KCVA; and 4) the KCVA will pay for the offices, equipment and supplies used by the VSR rather than receiving these products from the VSO. In effect, whatever work these individuals would do for a VSO would be in the form of a completely separate arrangement with a second employer. While the focus of these comments is towards VSR's, the same considerations apply to the joint employment of clerical staff.

Finally (making perhaps the most radical move), the KCVA could contract with the Veterans Services Organizations for the services of Veteran Service Representatives, or at least contract with those VSO's that could afford to pay for Representatives. Veterans would then be represented by a mix of KCVA and VSO employees.

George Webb  
April 12, 2005  
Page 3

Very honestly, from my perspective, choosing the option to formally sever the joint employment agreement would be the best solution in terms of avoiding potentially problematic FLSA and ethics issues.

I hope this information is helpful. I welcome any comments or questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack Rickerson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jack Rickerson

**SUGGESTED BALLOON AMENDMENT TO SB 428**  
**KCVA Executive Director Webb, February 6, 2006**

**Background to K.S.A 46-235:**

- Statute prohibits outside compensation for performing official state duties and especially during state work duty periods. Intent is to prevent conflict of interest.
- Some state VSRs and OAs have received payment and gifts from American Legion and VFW for work done during the 40-hour state work week. Rationale was unclear.
- State Governmental Ethics Commission opinion Sep 05 terminated stipends and gifts from AL and VFW to state employee VSRs and OAs.
- Joint Employment Agreement (1998) between KCVA, AL, and VFW prevents second employer status under Fair Labor Standards Act. Therefore, no extra-curricular work.
- JEA is under review by KCVA commissioners. If JEA is maintained, FLSA still prohibits extra-curricular work. Changing statute per SB 428 would allow additional compensation for work done on state time and make KCVA VSRs sole exception to state ethics statute. Conflict of interest likely to resume.
- If JEA is severed, FLSA problems would be avoided and outside extracurricular work could be authorized except for limitation on duties similar to state duties (e.g., briefings and advice). Allowance for "similar duties" is small exception that would then permit second employer status under both FLSA and K.S.A. 46-235.
- KCVA has ongoing review to improve VSR salaries and realign class specifications.

**Suggested amendment to SB 428 regarding K.S.A 46-235:**

AN ACT relating to state employees; concerning veterans service representatives; relating to compensation; amending K.S.A. 46-235 and 73-1211 and repealing the existing sections.

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

Section 1. K.S.A. 46-235 is hereby amended to read as follows: 46- 235. (a) *Except as provided in subsection (b), no state officer or employee shall accept compensation for performance of official duties, other than that to which such person is entitled for such performance. No person shall pay or offer to pay any state officer or employee any compensation for performance of official duties, except a state officer or employee performing official duties in making payments to state officers and employees. The receipt of wages or salary from an individual's non-state employer during a period of service as a state officer or employee shall not be construed as compensation for performance of official duties.*

*(b) Veteran service representatives of the Kansas commission on veterans affairs may receive ~~a monthly stipend~~ payment from any veterans' service organization in addition to their full-time compensation from the Kansas commission on veterans affairs for the performance of duties for such veterans' service organizations that are similar to the duties performed for the Kansas commission on veterans affairs provided that those duties occur outside the established work period of the state and provided that said veterans' service organizations render monthly reports on such payment to the Kansas commission on veterans' affairs.*

Senate Ways and Means  
2-6-06  
Attachment 6

## Background to K.S.A. 73-1211:

- This is 1953 statute when KCVA was new. Requirement for KCVA claims to be “prosecuted by an accredited representative of one of the participating veterans' organizations” is unclear in 2006 and no longer relevant (per KCVA and AG review). Other requirement to process all claims is still valid.
- Kansas Veterans Commission = Kansas Commission on Veterans' Affairs; federal Veterans' Administration = US Department of Veterans Affairs.
- SB 428 restriction to (a) nationally chartered (b) 501 C (19) veterans organizations and (c) whose membership is 10% of the current veteran population in Kansas only applies to the American Legion and the Veteran of Foreign Wars. This cuts out DAV, AmVets, VVA, MOPH, and PVA (all with offices in Kansas) from similar state assistance.
- Per AG, KCVA is recognized by the VA to prepare, present, and prosecute veterans' claims but is a state (vice “nationally chartered” organization). SB 428 restriction above means KCVA cannot file its own claims, as it is entitled to do by the VA, and emasculates the Agency by subordinating the KCVA to the AL or VFW.
- SB 428 restriction above means all claims filed by or through any KCVA VSR would have to go to either the AL or VFW, regardless of veteran's choice of power of attorney.
- SB 428 perpetuates 1998 Joint Employment Agreement under review by the KCVA Commission. Hasty statutory change would invalidate a year's study by the Commission before a final conclusion is rendered. The JEA creates liability issues with FLSA and other fiscal and supervisory problems.
- No need for statutory guidance that service organizations must approve new VSRs for accreditation. Title 38 already gives that prerogative to VSOs.
- SB 428 continues to put state employees in awkward position of having two bosses.
- SB 428 loosely implies that some exclusive veterans' organizations' offices are staffed with state employees, which is not a foregone conclusion. The term “all other employees” is completely undefined. If fully developed, state will have to hire more FTE at considerable cost (see fiscal note).
- KCVA has no office in the VA's regional office where quality control is performed.
- Per ongoing review (43 states & Puerto Rico), only one other state has state employees who work exclusively for one service organization; that state policy is under review. In all other states, state employees are strictly that and service organizations staff their own offices; almost all other state employees carry multiple accreditations to assist all veterans of the state.
- In Kansas, AL declines to accredit state employees who have VFW accreditation; VFW declines to accredit state employees who have AL accreditation – to the detriment of serving veterans.
- Many states have grant programs to assist service organizations with their operations. This is the cleanest, fairest way to compensate service organizations for the work they do and help defray their costs. Grant programs with SGF are successful and avoid sticky issues of some state employees working for one exclusive organization.
- Issues regarding stipends or payments are discussed in the section above on K.S.A. 46-235.

**Suggested amendment to SB 428 regarding K.S.A 73-1211:**

Sec. 2. K.S.A. 73-1211 is hereby amended to read as follows: 73-1211. All claims filed with the ~~federal veterans' administration~~ US Department of Veterans Affairs by the Kansas ~~veterans' commission on veterans affairs~~ shall be prepared, presented, and prosecuted by an accredited representative of an organization, to include certified national organizations as well as the Kansas commission on veterans' affairs, which are recognized by the secretary of the department of veterans affairs for representing claimants. Claims prepared by Kansas commission on veterans' affairs accredited service representatives shall be forwarded to a state office in the veterans affairs regional office for review before being passed to any other designated veterans organizations.

~~one of the participating congressionally chartered 501 C (19) veterans' organizations whose membership represents at least 10% of the current veterans population in Kansas.~~

No employee of any veterans' organization shall participate in or receive any funds hereinafter appropriated or made available to the Kansas ~~veterans' commission on veterans affairs~~ unless such employing veterans' organization shall prosecute any and all claims to the ~~federal veterans' administration~~ US Department of Veterans that are referred to them or their employees by the Kansas ~~veterans' commission on veterans affairs~~. ~~It shall be the responsibility of the veterans' organization to determine if an individual is acceptable for accreditation as a veterans' service representative and a representative of the veterans' organization, selected by the veterans' organization, shall attend all interviews of prospective employees for positions of veterans' service representatives located in the veterans' organization's offices. The employing veterans' organizations may, at its discretion, utilize the services of such employees for the organization's educational, training and outreach programs for a maximum of 30 days per fiscal year for one employee designated by the veterans' organization as its department service officer and 15 days for all other employees. Such employees may accept supplemental payments from the employing veterans' organization for services performed on behalf of the organization.~~

The Kansas commission on veterans' affairs shall be authorized to administer a program of grant state general funds to veterans' service organizations in Kansas which assist Kansas veterans with advice and claims. Grants shall be subject to amounts appropriated by the Kansas legislature and shall be apportioned in a manner specified in approved regulations.

Sec. 3. K.S.A. 46-235 and 73-1211 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.

**EDWARD F. WIEGERS**  
2602 NORTH STREET  
MARYSVILLE, KANSAS 66508

MEMO TO: Kansas Commission of Veterans' Affairs

DATE: January 18, 2006

SUBJECT: Committee Report

1. On April 15, 2005 the Commission forwarded a copy of the Executive Director's April 12, 2005 letter to Kansas veterans organizations requesting ideas, opinions, background and suggestions for future operations.

2. By letter of June 10<sup>th</sup> the American Legion suggested the appointment of a committee to study and investigate the points raised in the Executive Director's letter and to review the procedures employed by other states similar in size and scope to Kansas with the goal of recommending a course of action. The Commission accepted the recommendation and a committee consisting of myself, the Executive Director and a representative from the American Legion, Veterans of Foreign Wars and Disabled American Veterans was appointed.

3. In my initial letter of July 9<sup>th</sup> and at the first committee meeting on July 14<sup>th</sup> we discussed the legality and advisability of continued joint employment and the ability of employees to accept additional compensation from the VFW and AL for state services. The second area of discussion was the repeated recommendation in the Governor's budget that the offices in each hospital be consolidated.

4. It was my impression following the August 5<sup>th</sup> meeting that the issue of joint employment was settled and that we could as stated in my September 14<sup>th</sup> letter move on to the issue of consolidation of offices. My September 15<sup>th</sup> letter put the issue of joint employment on hold pending receipt of an opinion from the Governmental Ethics Commission.

5. It seemed reasonable to be able to discuss with the Budget Division the amount expended by the VSO's for veterans services. It is my understanding that each of the organizations have a substantial veterans service budget. A continuing request for a breakdown of average annual expenses for the various categories such as salaries, travel, communications, supplies and other operating expenses was ignored. No details were furnished.

6. My letter of November 14<sup>th</sup> the question of whether the VFW and American Legion were willing to allocate a substantial portion of their veterans services budget to reimburse the state for basic salaries and/or overtime in Wichita and possibly in Leavenworth and Topeka. The response was non-committal to negative.

7. The question of why is not practical to consolidate the

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Attachment 7



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offices was asked in the November 14<sup>th</sup> letter. The objections prior to this date and at our November 18<sup>th</sup> meeting centered around the privacy issue. It seemed at the time and still seems that the privacy issue could be settled with joint accreditation of the individual VSR by both the American Legion and VFW.

8. We asked on several occasions whether there was a national rule or regulation which prohibited dual, cross or joint accreditation. No satisfactory evidence of the existence of such a rule was produced. The only national requirement seems to be that the person serving as Department Service Officer and possibly a principal assistant must be members of the organization.

9. The December 12<sup>th</sup> letter pointed out that the budget for veterans services for SFY 2006 is \$1,391,256 with a request for SFY 2007 at \$1,567,218. The question asked was "Can we assure those who set the budget that our veterans service operation is 100 percent efficient and there is no room for improvement." The question was not answered.

10. A statement of total claims pending on November 17, 2005 indicates that 16.75% of all claims are handled by the VFW. 20.17% of all claims are handled by the American Legion. 24.09% of all claims are handled by the DAV. The figures for August were as I recall substantially the same. The DAV takes the position that it should receive assistance to help cover its overhead. The question asked was whether the DAV was entitled to such assistance. Strong or even moderate support for this was not indicated by the American Legion or VFW.

11. Dr. Marvin Stottlemier met with the committee at its 9:00 a.m. meeting on November 18<sup>th</sup> and again on December 16. It seemed there was some movement at the December 16<sup>th</sup> meeting. My memory and notes prepared by Wayne Bollig indicate that the committee members seemed to agree in concept:

A. Employees of the KCVA will not work as joint employees with a service organization; supervision, hiring etc are the sole responsibility of the KCVA.

B. The KCVA will continue to staff offices in the three service centers, but they will be consolidated offices.

C. State employees will support all service organizations for which they have given accreditation. All service organizations that wish to participate with the state will comply with state standards, including allowing multiple accreditations for these supporting

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state employees.

D. The KCVA will seek funding for two separate appropriations issues: (s) funds to fully staff all necessary positions in the service centers and (b) funds to support a grant system for selected veteran service organizations.

12. I was asked to make a suggestion on system operation. A copy of my e-mail stating my suggestions is attached. The response to the suggestions was generally negative. The result is that we are no closer to an agreement about future operations than we were in the spring of 2005.

CONCLUSION: I hear the American Legion and VFW tell me that the present system has worked for 50 to 60 years and there is no reason to change. Both organizations have given every indication that they will continue to resist change. We have moved from a manual typewriter type of operation to the possibility of a modern computer system. Operating methods have changed in law offices, factories, retail stores, and federal and state agencies. I recommend that as a start the commission consider the following changes:

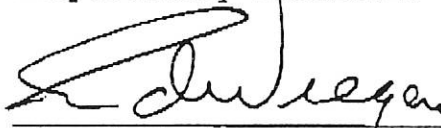
A. The offices in Leavenworth, Topeka and Wichita would each be operated as a combined KCVA office with its logo and the logo of the participating organization on the door.

B. The telephone in each office will be answered by a KCVA employee who would direct calls to the proper VSR or other proper place.

C. Clerical duties in each office would be provided by a KCVA employee with assistance to each the various VSR's as needed.

D. The KCVA will recommend to the Legislature in future budget years that a line item be included to assist the DAV in its work with veterans.

Respectfully submitted



Edward F. Wieggers