

Approved: 02/04/08
Date

MINUTES OF THE HOUSE VETERANS MILITARY AND HOMELAND SECURITY COMMITTEE

The meeting was called to order by Chairman Don Myers at 1:30 PM on January 31, 2008 in Room 784 of the Docking Building.

All members were present except
Bob Bethell - excused
Dan Johnson - excused
Eber Phelps - excused

Committee staff present:

Scott Wells, Revisor of Statutes Office
Athena Andaya, Kansas Legislative Research Department
Art Griggs, Revisor of Statutes Office
Jill Shelley, Kansas Legislative Research Department
Barbara Lewerenz, Committee Assistant

Conferees appearing before the committee:

Kenneth Stodgell, VFW
Ralph Snyder, Legislative Chairman, American Legion
George Webb, KCVA Director
Colonel Michael Neer, US Army (Retired), Commissioner KCVA (written testimony only)

Others attending:

See attached list.

The chairman announced that a new sound system for the Meeting Room 784 has been ordered.

The chairman called for bill introductions. There were none.

HB 2663 - An Act relating to veterans

Representative Ruff gave an overview of the evolution of the claims program for veterans and the policy of the intake function and use of power-of-attorney relating to the Kansas Commission on Veterans Affairs and service organizations including the American Legion and the Veterans of Foreign Wars.
(See Attachment #1)

The Chairman opened the public hearing.

Kenneth Stodgell, VFW, appeared in support of **HB 2663**. He stated the VFW is satisfied with the partnership. (Attachment 2)

Ralph Snyder, American Legion, appeared in support of **HB 2663**. He expressed appreciation for Rep. Ruff and her support of the issues. (Attachment 3)

George Webb, Executive Director, Kansas Commission on Veterans' Affairs, appeared in opposition of **HB 2663** indicating that the KCVA would be disadvantaged in processing claims for veterans by this bill.
(Attachment 4)

Colonel Michael Neer, US Army (Retired), Commissioner Kansas Commission on Veterans' Affairs, submitted written testimony opposing **HB 2663**. (Attachment 5)

Chairman Myers adjourned the meeting at 3:35 PM.

The next meeting will be February 4, 2008.

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HOUSE OF
 REPRESENTATIVES

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 HOMELAND SECURITY AFFAIRS
 MEMBER: COMMERCE & LABOR
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 CULTURAL RESOURCES

To: Committee on Veterans, Military Affairs and Homeland Security

From: Rep. L. Candy Ruff

Re: HB 2663

Date: Jan. 31, 2008

When last year's legislation House Substitute for SB 144 became law, I thought the Veterans Claims Assistance Program was settled. Our legislative intent was made clear. When it came to the Power of Attorney prohibition directed at employees and the agency of the Kansas Commission on Veterans Affairs, I felt confident that the language left little doubt. We intended to make it perfectly clear that when it comes to handling veterans seeking benefits in Kansas, the historical role of the Kansas Commission on Veterans Affairs was to remain an intake function.

Those serving as veteran service representatives (VSRs) for KCVA reach out to veterans in hospitals and communities to acquaint them with benefits and services offered by the Veterans Administration, and then complete in a thorough manner an application for benefits. Important to that function is making sure medical information is collected and explained fully so the veteran may qualify for benefits to the fullest extent possible. Those serving as VSRs for the Veterans Service Organizations (VSO) in the VA hospitals also serve that intake function but their responsibilities go further. When it comes to representing veterans before the VA, they signed as Power of Attorney (POA) for the veteran. Whether this occurred during the time of dual employment arrangements with the American Legion and VFW or since the grant program was initiated, the POA always rested with the VSO. In that way the state of Kansas was not legally obligated to provide legal and medical services to those veterans whose claims became complicated and involved multiple appeals.

And then the Kansas Attorney General weighed in. HB 2663 is in response to the opinion issued July 24, 2007, in which several short-comings, inconsistencies and ambiguities were mentioned. I had asked for an AG's ruling on KCVA's position in relation to the newly established Veterans Claims Assistance Program and the ability for its employees to serve as Power of Attorney for veterans seeking benefits through the Veterans Administration.

My question was whether the Legislature intended for the KCVA to prosecute claims itself or only to fund other veteran service organizations to prosecute claims. The short answer was that KSA 73-1211 must be considered with KSA 73-1210a in determining who can prosecute claims on behalf of veterans with the federal Veterans' Administration. Simply, that meant the KCVA could NOT prosecute claims that had been referred to veterans' service organizations participating in the grant program. However, it may prosecute other claims.

...d here's why. When it comes to the federal law and prosecuting claims, the VA recognizes KCVA as a veterans' organization and allows its 33 VRSs to be recognized and accredited. To further clarify our legislative intent, HB 2663 will add "chartered by Congress" to the statute which means that to prosecute claims in Kansas the Veteran Service Organization (whether it is KCVA or not) must be chartered by Congress. HB 2663 replaces the "recognized and accredited" federal standard for those prosecuting VA cases with a requirement that the veterans' service organization representing Kansas veterans be one chartered by Congress.

At the time the 1997 Legislature enacted KSA 73-1210a(c), the Veterans of Foreign Wars and the American Legion served in a dual employment arrangement with KCVA. This had been in effect from 1951 to until the veterans claims grant program was enacted in 2006. Under the dual employment agreement, KCVA employees performed duties for both the KCVA and the veterans service organizations and received a salary from the former and a stipend from the latter. The language that authorized the KCVA to represent veterans "in securing benefits from the federal government" appeared in that 1997 statute. However, an understanding prevailed at that time because when it came to the Power of Attorney agreement, the KCVA dual employees signed as representatives of their particular VSO and not as KCVA employees, which did not obligate the state of Kansas.

Either the AG didn't realize nor understand this nuisance when she said "[b]ecause it makes no reference to the funding of or the prosecution by other veterans service organizations, it is logical to assume that the KCVA employees can prosecute claims as representatives of their employer, the KCVA."

Even though the language in KSA 73-1211 "is not only ambiguous but inconsistent with the language in KSA 73-1210a," the Legislature didn't repeal or amend KSA 73-1211 in 1997 or in 2007. "Where an older statute conflicts with a newer statute, then the more specific, more recent statute controls because it is the later expression of the legislative intent. Thus the provisions in KSA 73-1210a now control with an expressed authorization for the KCVA to prosecute veterans claims." [quotes from the AG opinion] HB 2663 corrects this ambiguous language on page 2, lines 35-39 because the Attorney General's opinion is that no language in the 2006 legislation linked the language in KSA 73-1211 with the grant program.

But what effect did the 2007 House Substitute for Senate Bill 144 have when it said "no employee of the Kansas Commission on Veterans Affairs shall act as an agent with power of attorney for any claimant." The Attorney General's opinion says that "This addition prohibits the veterans service organizations participating in the grant program from using or employing KCVA employees to represent veterans on their claims," not the other way around. Nothing could have been further from the truth.

Because the 2007 bill amended neither KSA 73-1211 nor KSA 73-1210a, the KCVA was not precluded from prosecuting claims itself, in the AG's opinion. HB 2663 corrects that oversight. I have further solidified this intent in the balloon I have attached to this testimony.

To claim that the language in HB 2663 keeps KCVA from fully serving veterans is a misnomer. Veterans coming into any KCVA service location or into a Veterans Hospital may have their information processed by a KCVA employee or a VSO representative. To the fullest extent possible, forms will be completed and proper documentation secured. However, when it comes to signing off as the veterans' power of attorney, the only persons allowed to do so will be those representing a VSO and not the state of Kansas.

Because the AG indicated that the word "representing" gave KCVA the right to service as Power of Attorney for veterans seeking benefits with the VA, that word was removed. However, by leaving the word "assisting" in statute, KCVA may continue its historic intake role. The policy before us in HB 2663 is simply this. Kansas and the Veterans Service Organizations have partnered for over 50 years to service veterans in Kansas. That partnership was enhanced with the creation of the Veterans Claims Assistance Program and will now be clarified in statute with passage of HB 2663.

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July 24, 2007

ATTORNEY GENERAL OPINION NO. **2007-20**

The Honorable L. Candy Ruff
State Representative 40th District
321 Arch
Leavenworth, Kansas 66048

Re: Soldiers, Sailors and Patriotic Emblems--Kansas Commission on Veterans Affairs--Prosecution of Claims Before Federal Veterans' Administration; Veterans Claims Assistance Program

Synopsis: K.S.A. 73-1211 is no longer the applicable statute in determining whether the Kansas Commission on Veterans Affairs itself can prosecute claims on behalf of veterans before the federal Veterans' Administration. As of 1997, K.S.A. 73-1210a, as amended by L. 2007, Ch. 43, § 1, applies in making that determination. This provision authorizes the Kansas Commission on Veterans Affairs to prosecute claims on behalf of veterans before the federal Veterans' Administration. Reading the provisions of K.S.A. 73-1210a, as amended by L. 2007, Ch. 43, § 1, *in pari materia* with the provisions of K.S.A. 2006 Supp. 73-1234, as amended by L. 2007, Ch. 151, § 1, the Kansas Commission on Veterans Affairs is not required to prosecute all veterans claims through the veterans service organizations that are participating in the grant program, but it is precluded from prosecuting those claims that have been referred to the veterans service organizations that are participating in the grant program. Cited herein: K.S.A. 2006 Supp. 73-1209; K.S.A. 73-1210a, as amended by L. 2007, Ch. 43, § 1; K.S.A. 73-1211; K.S.A. 2006 Supp. 73-1234, as amended by L. 2007, Ch. 151, § 1; 2007 HB 2210; 2006 HB 3015; 38 U.S.C. § 5902; 38 C.F.R. § 14.628.

* * *

Dear Representative Ruff:

You request our opinion on (1) whether K.S.A. 73-1211 precludes the Kansas Commission on Veterans Affairs (KCVA) itself from prosecuting claims on behalf of veterans before the federal Veterans' Administration, and (2) whether K.S.A. 2006 Supp. 73-1234, as amended by L. 2007, Ch. 151, § 1, requires the KCVA to prosecute all veterans claims only through other veterans service organizations that are participating in the service grant program administered by the KCVA.

I. Kansas statutes

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Both statutes about which you inquire address veterans service organizations prosecuting claims on behalf of veterans with the federal Veterans' Administration. K.S.A. 73-1211 provides:

"All claims filed with the federal veterans' administration by the Kansas veterans' commission shall be prosecuted by an accredited representative of one of the participating veterans' organizations. No employee of any veterans' organization shall participate in or receive any funds hereinafter appropriated or made available to the Kansas veterans' commission unless such employing veterans' organization shall prosecute any and all claims to the federal veterans' administration that are referred to them or their employees by the Kansas veterans' commission."

K.S.A. 2006 Supp. 73-1234, as amended by L. 2007, Ch. 151, § 1, provides in pertinent part:

"(a) The Kansas commission on veterans affairs shall establish and administer a veterans claims assistance program in accordance with this section to improve the coordination of veterans benefits counseling in Kansas to maximize the effective and efficient use of taxpayer dollars and to ensure that every veteran is served and receives claims counseling and assistance. . . . No employee of the Kansas commission on veterans affairs shall act as an agent with power of attorney for any claimant.

"(b) The veterans claims assistance program shall be implemented and administered through annual service grants to eligible veterans service organizations pursuant to grant agreements entered into with the Kansas commission on veterans affairs in accordance with this section."

II. Federal law

The Secretary of the United States Department of Veterans Affairs may recognize representatives of organizations that can act on behalf of veterans in the preparation and prosecution of claims before the federal Veterans' Administration.⁽¹⁾ The term recognition, as used in the regulations on representing claimants before the federal Veterans' Administration, means certification of organizations by the Department of Veterans Affairs to represent claimants.⁽²⁾ Similarly, accreditation refers to the Department's recognition of representatives or agents who represent claimants.⁽³⁾ A representative is a person who has been recommended by a recognized organization and accredited by the Department of Veterans Affairs.⁽⁴⁾ A representative or agent must file a power of attorney with each claim.⁽⁵⁾

An organization that is created and primarily funded by a state to serve the needs of veterans may be recognized as a veterans organization.⁽⁶⁾ The KCVA is recognized by the Secretary as a state veterans organization that may present and prosecute claims before the federal Veterans' Administration.⁽⁷⁾ Currently, the KCVA has thirty-three representatives who have been accredited by the Secretary.⁽⁸⁾

III. Rules of statutory interpretation

The resolution of both questions requires determining whether the Kansas legislature intended to authorize the KCVA as a recognized veterans service organization that could represent veterans in the prosecution of their claims with the federal Veterans' Administration; or alternatively, whether the legislature intended to authorize the KCVA only to fund other veterans service organizations that would represent veterans in the prosecution of claims with the federal Veterans Administration.

"In determining legislative intent, we are not limited to consideration of the language used in the statute. We may look to the historical background of the enactment, the circumstances attending its passage, the purpose to be accomplished, and the effect the statute may have under the various constructions suggested."⁽⁹⁾

Additionally, we must consider and construe together all parts of an act *in pari materia* and not isolate a part or parts of an act.⁽¹⁰⁾ "*When the interpretation of some one section of an act according to the exact and literal import of its words would contravene the manifest purpose of the legislature, the entire act should be construed according to its spirit and reason, disregarding so far as may be necessary the strict letter of the law.*"⁽¹¹⁾

IV. Kansas legislative history

In 1945, the Kansas legislature created the Office of Veterans' Affairs (OVA), the KCVA's predecessor, to assist veterans.⁽¹²⁾ G.S. 1945 Supp. 73-1206 provided: "The office of veterans' affairs shall not be empowered to file application for or to prosecute the claim of any individual for any benefit accruing to such individual under the laws administered by the United States veterans' administration." Thus, the OVA was expressly prohibited from representing veterans in their claims before the federal Veterans' Administration. The 1945 act was repealed six years later and new legislation was enacted at the same time.⁽¹³⁾

The 1951 legislation created the Kansas Veterans' Commission (KVC).⁽¹⁴⁾ Under G.S. 1951 Supp. 73-1209(7)-(8), (now K.S. A. 2006 Supp. 73-1209[7]-[8]), the KVC was to provide a central agency where veterans could obtain information and assistance and to maintain a field service to properly care for veterans' needs. G.S. 1951 Supp. 73-1210 stated:

"No employee of *any veterans' organization* shall participate in, or receive any funds hereafter appropriated or made available to the Kansas veterans' commission unless *said employing veterans' organization* shall recommend to the federal veterans' administration that the supervisor of the Kansas veterans' commission and not more than three (3) other male employees of the commission as may be designated by said supervisor, be accredited to prosecute claims before said federal veterans' administration as accredited representatives of *the veterans' organization concerned*."⁽¹⁵⁾

G.S. 1951 Supp. 73-1211 further provided:

"All claims for compensation filed with the federal veterans' administration by the Kansas veterans' commission shall be prosecuted by an accredited

representative of one of *the participating veterans' organizations*."⁽¹⁶⁾

Unfortunately, the above language is less than a model of clarity when referring to veterans service organizations. The two statutes utilized four different phrases to describe veterans organizations: "any veterans' organization," "said employing veterans' organization," "veterans' organization concerned," and "participating veterans' organizations." None of the phrases were defined. Thus, it is difficult to ascertain whether the KVC employees became accredited representatives of the KVC, the employing veterans organization that recommended accreditation, or both.

Two years later, G.S. 1951 Supp. 73-1210 was repealed⁽¹⁷⁾ and replacement language was added to G.S. 1953 Supp. 73-1211. The latter statute provided:

"All claims filed with the federal veterans' administration by the Kansas veterans' commission shall be prosecuted by an accredited representative of one of the participating veterans' organizations. No employee of any veterans' organization shall participate in or receive any funds hereinafter appropriated or made available to the Kansas veterans' commission unless such employing veterans' organization shall prosecute any and all claims to the federal veterans' administration that are referred to them or their employees by the Kansas veterans' commission."

This language now appearing in K.S.A. 73-1211 has remained unchanged since 1953.

In 1986, the legislature created the KCVA and enacted subsections (a) and (b) of K.S.A. 73-1210a.⁽¹⁸⁾ Under subsection (a), the KCVA's executive director is authorized to appoint employees so that the KCVA could perform its duties.

In 1997, subsection (c) was added to K.S.A. 73-1210a.⁽¹⁹⁾ It authorized the KCVA's executive director to appoint veterans service representatives, required that the veterans service representatives be veterans, and defined veterans service representatives as:

"[A]ny officer or employee appointed pursuant to this section whose primary duties include:

"(1) Assisting and *representing veterans* and their dependents *in securing benefits from the federal government* and the state of Kansas.

"(2) Providing information and assistance to veterans and dependents in obtaining special services and benefits based on knowledge of federal and state laws, policies and regulations pertaining to veterans benefits and services."⁽²⁰⁾

Thus, it appears that by 1997 the KCVA employees were clearly authorized to prosecute claims on behalf of veterans.

At the public hearing on the 1997 amendment, Mr. Don Myer, Executive Director of the KCVA, testified that for over 30 years veterans service representatives who were

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appointed by the KCVA's executive director were required to be veterans, but the Division of Personnel wanted to delete that requirement. He opposed such deletion, explaining:

"The federal benefits that Veteran Services Representatives attempt to obtain for Kansas citizens are based upon the veterans service in the U.S. Armed Forces. Knowledge and experience of what military service entails are vital to the service representative. It allows him to relate to the veteran, and accurately determine the critical information needed. *This is especially true when filing a claim, or pursuing an appeal for [a] service connected disability of any type with the Veterans Administration.*"⁽²¹⁾

Based upon Mr. Myer's testimony, it appears that, despite the somewhat ambiguous language of the 1951 and 1953 legislation, the KVC and its successor, the KCVA, had interpreted G.S. 73-1211 as authorizing the KVC and the KCVA to prosecute claims on behalf of veterans. Two representatives from the Kansas American Legion and Representative Dan Thimesch also supported the 1997 amendment requiring the veterans service representatives to be veterans.⁽²²⁾

In 2006, the Veterans Affairs Select Committee was briefed about a dual employment agreement between the KVC, and later the KCVA, and two other veterans service organizations.⁽²³⁾ This long-standing agreement was the apparent vehicle which reflected the parties' understanding of the language from the 1951 legislation. Mr. Charles M. Yunker, the Adjutant for the American Legion, Department of Kansas, explained that since 1951, the American Legion and the Veterans of Foreign Wars had a dual employment agreement with the KCVA and its predecessors. Under the agreement, KCVA employees performed duties for both the KCVA and the veterans service organizations and received a salary from the KCVA and a stipend from the veterans service organization. However, the KCVA had raised issues over potential liability under the Fair Labor Standards Act of 1938, 29 U.S.C. 201, *et seq.*, and complaints under the State Governmental Ethics Law, K.S.A. 46-214a, *et seq.*⁽²⁴⁾

The American Legion requested funding through a grant program so that it could hire its own staff to prosecute veterans claims.⁽²⁵⁾ In support of this position, Mr. Yunker provided a copy of e-mail correspondence from the American Legion's national office. It included a statement that the American Legion's attorney concurred with a memorandum dated January 30, 2006, from the Kansas Attorney General advising that "the KCVA is recognized by VA as a VSO [veterans service organization] and therefore KCVA representatives can fully prepare, prosecute, and present veterans' claims to the VA just like representatives of any other recognized VSO."⁽²⁶⁾

Mr. Jefferson D. Lawson, the Past State Commander of the Kansas Veterans of Foreign Wars, stated that the intent of K.S.A. 73-1211 was to create a partnership between the KCVA, the American Legion, and Veterans of Foreign Wars, but in the last few years the KCVA sought to sever this partnership.⁽²⁷⁾ Mr. Lawson believed a grant program with the American Legion and Veterans of Foreign Wars would strengthen the services provided to veterans.⁽²⁸⁾

Mr. Darrell Bencken, the State Adjutant with the Kansas Veterans of Foreign Wars,

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disagreed with the KCVA's concerns about potential liability under the FLSA and ethical complaints, but agreed changes were needed.⁽²⁹⁾

The following month the same committee heard public comments on 2006 House Bill 3015 concerning a veterans claims assistance program (also referred to as the grant program) to be administered by the KCVA.⁽³⁰⁾ In support of the bill, Mr. George S. Webb, KCVA's Executive Director, testified that K.S.A. 73-1211 should be amended because it was "scarcely understood or even relevant half a century later."⁽³¹⁾ Upon inquiry by the committee, another KCVA representative acknowledged there was disagreement whether K.S.A. 73-1211 authorized the KCVA to prosecute claims as a veterans service organization.

The committee also discussed whether K.S.A. 73-1211 should be amended to eliminate competition between the KCVA and the other veterans service organizations.⁽³²⁾ In her subcommittee report, Representative L. Candy Ruff said the legislature must decide as a matter of state policy whether the KCVA should act as a veterans service organization in processing veterans claims to completion.⁽³³⁾ In support of a policy excluding the KCVA from prosecuting claims of veterans, she made a motion to amend K.S.A. 73-1211 in a manner which eliminated the KCVA as an entity authorized to prosecute claims on behalf of veterans.⁽³⁴⁾ Representative Ruff withdrew her motion after the committee decided the consequences of amending K.S.A. 73-1211 should be reviewed further.⁽³⁵⁾

However, the grant program for veterans claims assistance was enacted and placed in K.S.A. 2006 Supp. 73-1234 through K.S.A. 2006 Supp. 73-1236.⁽³⁶⁾ None of these statutes state that all veterans claims must be prosecuted by the veterans service organizations participating in the grant program to the exclusion of the KCVA. Rather, K.S.A. 2006 Supp. 73-1234 set forth the eligibility requirements for a veterans service organization to receive a grant, one of which is that the veterans service organization must be "congressionally chartered by the United States Congress."⁽³⁷⁾ This requirement effectively made the KCVA ineligible to receive a grant.

In March 2007, a committee considered 2007 House Bill 2210 which amended K.S.A. 2006 Supp. 73-1234 by placing additional eligibility requirements on participating veterans service organizations.⁽³⁸⁾ At the hearing, Representative Ruff testified that the original legislation establishing the grant program was designed to: (1) dissolve the dual employment relationship between the state, the American Legion, and the Veterans of Foreign Wars; (2) have the participating veterans service organizations process claims taken at the three veterans hospitals and referred by the KCVA, and (3) allow the KCVA veterans service representatives to continue serving at its rural field offices "as points of intake in the process of veterans seeking benefits from the Veterans Administration."⁽³⁹⁾

Representative Ruff also testified that the bill affirmed the state's policy regarding the KCVA serving as its own veterans service organization, *i.e.*, to exclude the KCVA from prosecuting veterans' claims.⁽⁴⁰⁾ She indicated that although the KCVA had been advised by the Attorney General that it could prosecute veterans' claims, "this bill clarifies the state's policy" to the contrary.⁽⁴¹⁾ Representative Ruff testified that Vice Chairman Ed Wiegers stated at the KCVA commissioners' meeting on October 20,

2006, that it was not the Commission's intention to have KCVA handle claims from start to finish."⁽⁴²⁾ Representative Ruff further testified that 2007 House Bill 2210 took the veterans grant program into its second year by "clarifying the state's position on KCVA of not assuming the position of a veteran's service organization."⁽⁴³⁾

In the 2007 legislative session, the proposed amendments to K.S.A. 2006 Supp. 73-1234 were enacted.⁽⁴⁴⁾ Most notably, the following sentence was added to subsection (a): "No employee of the Kansas commission on veterans affairs shall act as an agent with power of attorney for any claimant."⁽⁴⁵⁾ However, despite Representative Ruff's assertions about the proposed amendments, no language was added to the grant program statutes requiring *all* claims to be prosecuted by the veterans service organizations participating in the grants program. Similarly, K.S.A. 73-1211 was not amended.

V. Analysis

A. K.S.A. 73-1211

Your first inquiry is whether K.S.A. 73-1211 precludes the KCVA itself from prosecuting claims on behalf of veterans before the federal Veterans' Administration. You also ask whether the phrase "one of the participating veterans' organizations" in K.S.A. 73-1211 is now defined as the veterans service organizations participating in the grant program that was created by the enactment of K.S.A. 2006 Supp. 73-1234.

As to the latter inquiry, K.S.A. 73-1211 has essentially remained unchanged since 1953, but its language originated in 1951. The legislature could not have intended in 1951 to define the phrase "participating veterans' organizations" as the veterans service organizations participating in a grant program that was not created until 2006. Moreover, no language was placed in either K.S.A. 2006 Supp. 73-1234 or K.S.A. 73-1211 to establish a link between the 1951 phrase "participating veterans' organizations" and the

2006 grant program. Thus, to determine what the legislature meant by the phrase "the participating veterans' organizations" in G.S. 1951 Supp. 73-1211 we must look to other action taken by the legislature in 1951.

In 1951, the legislature repealed G.S. 1945 Supp. 73-1206 which prohibited the KCVA's predecessor, the OVA, from filing or prosecuting claims on behalf of veterans before the federal Veterans' Administration. It replaced the repealed statute with G.S. 1951 Supp. 73-1210 and 73-1211.

When an existing law is revised, the presumption is the legislature intended to change the law.⁽⁴⁶⁾ This presumption can be weak or strong depending upon the circumstances. Additionally, a revision to an ambiguous statute may indicate legislative intent to correct the ambiguity rather than change the law.⁽⁴⁷⁾ Arguably, this presumption applies because the prohibitive language in G.S. 1945 Supp. 73-1206 was unambiguous, but was repealed and replaced with G.S. 1951 Supp. 73-1210 and 73-1211.

G.S. 1951 Supp. 73-1210 required veterans service organizations whose employees

received funds from the KVC to recommend to the federal Veterans' Administration that certain KVC employees be recognized to "prosecute claims before said federal Veterans' Administration as accredited representatives of the veterans' organization concerned." G.S. 1951 Supp. 73-1211 authorized the "accredited representative of one of the participating veterans' organizations" to prosecute all claims filed by the KVC with the federal Veterans' Administration. Reading these two statutes together, it appears the phrase "participating veterans' organizations" in G.S. 1951 Supp. 73-1211 referred to the veterans service organizations that recommended the accreditation of KVC employees to the federal Veterans' Administration pursuant to G.S. 1951 Supp. 73-1210.

As noted above, in 1953, the legislature repealed G.S. 1951 Supp. 73-1210 and amended G.S. 1951 Supp. 73-1211. In doing so, the language found in G.S. 1951 Supp. 73-1210 mandating the recommendation of accrediting KVC personnel was deleted. Its remaining language was amended and placed in G.S. 1953 Supp. 73-1211 so that the veterans service organizations whose employees received funds from the KVC were required to prosecute all claims that were referred to them by the KVC. However, the sentence found in G.S. 1951 Supp. 73-1211 was not amended when it was included in G.S. 1953 Supp. 73-1211; thus, the reference to "participating veterans' organizations" remained.

The intent behind the 1953 amendments is unknown. One possible explanation is the inclusion of the sentence found in G.S. 1951 Supp. 73-1211 was an oversight because KVC employees were now accredited representatives. Others may claim G.S. 1953 Supp. 73-1211 only authorized the dual employment between the KVC and the other veterans service organizations, *e.g.*, the KVC employee was also an accredited representative of one of the veterans' organization taking referrals from the KVC, but did not prohibit the KVC from prosecuting claims before the federal Veterans' Administration. Some might contend the inclusion of the sentence found in G.S. 1951 Supp. 73-1211 meant only other veterans service organization were authorized to prosecute claims before the federal Veterans' Administration.

The latter explanation is supported by statements that were made during the 2006 and 2007 legislative sessions. However, post-enactment statements, even those by legislators, are not considered when determining legislative intent. This principle is even more applicable where the statements were made years after the enactment of the statute.⁽⁴⁸⁾ Nevertheless, this issue is resolved by the legislative action taken in 1997.

In 1997, the legislature enacted K.S.A. 73-1210a(c) expressly authorizing the KCVA to hire veterans service representatives to represent veterans "in securing benefits from the federal government," *i.e.*, the prosecution of claims before the federal Veterans' Administration. Because K.S.A. 73-1210a(c) makes no reference to the funding of or the prosecution by other veterans service organizations, it is logical to assume that the KCVA employees can prosecute claims as representatives of their employer, the KCVA. Thus, K.S.A. 73-1210a(c) authorizes the KCVA and its employee veterans service representatives to file or prosecute claims before the federal Veterans' Administration.

At best, the language in K.S.A. 73-1211 is not only ambiguous but inconsistent with the language in K.S.A. 73-1210a(c), and at worst is in direct conflict. Yet, the legislature failed to repeal or amend K.S.A. 73-1211 in 1997 when it enacted K.S.A. 73-1210a(c)

and again in 2007 when it added subsections to K.S.A. 73-1210a.⁽⁴⁹⁾ Where an older statute conflicts with a newer statute, "then the more specific, more recent statute controls" because it "is the later expression of the legislative intent."⁽⁵⁰⁾ Thus, the provisions in K.S.A. 73-1210a now control with an express authorization for the KCVA to prosecute veterans' claims.

In summary, the legislative intent whether the KCVA itself is precluded from prosecuting claims is no longer determined by the unclear language of K.S.A. 73-1211. Rather, the legislative intent is determined by the more recent and specific statute, K.S.A. 73-1210a, as amended by L. 2007, Ch. 43, § 1. Pursuant to this statute, the legislature expressly authorized the KCVA and its employees to prosecute claims before the federal Veterans' Administration.

B. K.S.A. 2006 Supp. 73-1234(a), as amended by L. 2007, Ch. 151, § 1

Your second inquiry is whether K.S.A. 2006 Supp. 73-1234(a), as amended by L. 2007, Ch. 151, § 1, requires the KCVA to prosecute all claims on behalf of veterans only through the grant program.

When the legislature created the grant program in 2006, it did not place language in any statute requiring *all* claims of veterans to be filed and/or prosecuted through the grant program. Moreover, the legislature also failed to amend the provisions in K.S.A. 73-1210a(c) authorizing the KCVA's veterans service representatives to prosecute claims before the federal Veterans' Administration. This indicates that the legislature intended to provide two avenues for filing or prosecuting veterans claims, one through the KCVA and the other through the veterans service organizations participating in the grant program.

However, the 2007 amendments to K.S.A. 2006 Supp. 73-1234(a) added the following sentence: "No employee of the Kansas commission on veterans affairs shall act as an agent with power of attorney for any claimant."⁽⁵¹⁾ This provision appears to conflict with the provision in K.S.A. 73-1210a, as amended by L. 2007, Ch. 43, § 1, authorizing veterans service representatives employed by the KCVA to represent veterans in their claims before the federal Veterans' Administration.

Thus, your question becomes whether the prohibition in K.S.A. 2006 Supp. 73-1234(a), as amended by L. 2007, Ch. 151, § 1, applies to all claims or only claims that were referred to the veterans service organizations participating in the grant program?

There is no indication that the prohibition of KCVA employees prosecuting claims applied to all claims filed on behalf of veterans. The 2007 amendments to K.S.A. 73-1234(a) made no references to any other statute, such as K.S.A. 73-1211 or K.S.A. 73-1210a. Similarly, the 2007 amendments to K.S.A. 73-1210a did not repeal or amend subsection (c), but moved it to subsection (f).⁽⁵²⁾ Reading the 2007 amendments in conjunction with one another, as we are required to do, the prohibition in K.S.A. 2006 Supp. 73-1234(a), as amended by L. 2007, Ch. 151, § 1, applies only to the grant program and not to the provisions in K.S.A. 73-1210a, as amended by L. 2007, Ch. 43, § 1.

Moreover, the legislative history for the grant program leaves no doubt that the dual

employment agreement between the KCVA, the American Legion, and the Veterans of Foreign Wars had created problems and that the grant program was enacted to resolve those problems. By placing the prohibition only in the statute for the grant program, it abolished the dual employment relationship that previously existed. Now, the veterans service organizations participating in the grant program cannot use or employ KCVA employees to act as representatives of veterans in the prosecution of their claims.

In summary, K.S.A. 2006 Supp. 73-1234(a), as amended by L. 2007, Ch. 151, § 1, does not require the KCVA to prosecute *all* claims on behalf of veterans through the veterans service organizations participating in the grant program. Rather, it prohibits the veterans service organizations participating in the grant program from using or employing KCVA employees to represent veterans on their claims.

VI. Conclusion

In our opinion, the question of whether the legislature intended to preclude the KCVA from prosecuting claims before the federal Veterans' Administration, is not determined by K.S.A. 73-1211, but by K.S.A. 73-1210a, as amended by L. 2007, Ch. 43, § 1. Under the latter statute, the legislature expressly authorized the KCVA and its employees to prosecute claims before the federal Veterans' Administration.

It is also our opinion that, by enacting K.S.A. 73-1210a, as amended by L. 2007, Ch. 43, § 1, and K.S.A. 2006 Supp. 73-1234(a), as amended by L. 2007, Ch. 151, § 1, two routes were established to file and prosecute veterans' claims before the federal Veterans' Administration—one through the KCVA and the other through the veterans service organizations participating in the grant program. In doing so, the veterans service organizations participating in the grant program are prohibited from using or hiring KCVA employees to represent veterans in the prosecution of their claims.

Sincerely,

Paul J. Morrison
Attorney General

Janet L. Arndt
Assistant Attorney General

PJM:MF:JLA:jm

FOOTNOTES

Click footnote number to return to corresponding location in the text.

¹ 38 U.S.C. § 5902(a)(1).

² 38 C.F.R. § 14.627(k).

³ 38 C.F.R. § 14.627(a).

⁴ 38 C.F.R. § 14.627(l).

⁵ 38 U.S.C. § 5902(b)(1)(B).

⁶ 38 C.F.R. § 14.628(b).

⁷ United States Department of Veterans Affairs, Bulletin 23-S, January 2006.

⁸ United States Department of Veterans Affairs, Office of General Counsel, Information Bulletin 2-151, December 2006.

⁹ *Workers Compensation Fund v. Silicone Distributing, Inc.*, 248 Kan. 551, 556 (1991) (internal citation omitted).

¹⁰ *National Council on Compensation Ins. v. Todd*, 258 Kan. 535, 541 (1995).

¹¹ 258 Kan. at 541 (emphasis by court) (internal citation omitted).

¹² L. 1945, Ch. 302, § § 1-6.

¹³ L. 1951, Ch. 433, § § 1-8.

¹⁴ L. 1951, Ch. 433, § 2.

¹⁵ Emphasis added.

¹⁶ Emphasis added.

¹⁷ L. 1953, Ch. 361, §29.

¹⁸ L. 1986, Ch. 278, §§ 1, 5.

¹⁹ L. 1997, Ch. 28, § 1.

²⁰ Emphasis added.

²¹ *Minutes*, House Committee on Governmental Organization & Elections, January 21, 1997 (emphasis added).

²² *Minutes*, House Committee on Governmental Organization & Elections, January 21, 1997, Attachments 9 and 10.

²³ *Minutes*, Select Committee on Veterans Affairs, February 13, 2006.

²⁴ *Minutes*, Select Committee on Veterans Affairs, February 13, 2006, Attachment 5, pages 1-3.

25. *Minutes*, Select Committee on Veterans Affairs, February 13, 2006, Attachment 5, pages 3-4.
26. *Minutes*, Select Committee on Veterans Affairs, February 13, 2006, Attachment 5, page 5.
27. *Minutes*, Select Committee on Veterans Affairs, February 13, 2006, Attachment 6, pages 2-3.
28. *Minutes*, Select Committee on Veterans Affairs, February 13, 2006, Attachment 6, pages 4-5.
29. *Minutes*, Select Committee on Veterans Affairs, February 13, 2006, Attachment 6, pages 17-20.
30. *Minutes*, Select Committee on Veterans Affairs, March 22, 2006.
31. *Minutes*, Select Committee on Veterans Affairs, March 22, 2006, Attachment 5.
32. *Minutes*, Select Committee on Veterans Affairs, March 22, 2006.
33. *Minutes*, Select Committee on Veterans Affairs, March 22, 2006, Attachment 4, page 2.
34. *Minutes*, Select Committee on Veterans Affairs, March 22, 2006, Attachment 10, page 3.
35. *Minutes*, Select Committee on Veterans Affairs, March 22, 2006.
36. L. 2006, Ch. 153, §§ 1-3.
37. K.S.A. 2006 Supp. 73-1234(f)(1).
38. *Minutes*, House Taxation Committee, March 27, 2007.
39. *Minutes*, House Taxation Committee, March 27, 2007, Attachment 1, page 1.
40. *Minutes*, House Taxation Committee, March 27, 2007, Attachment 1, page 2.
41. *Minutes*, House Taxation Committee, March 27, 2007, Attachment 1, page 2.
42. *Minutes*, House Taxation Committee, March 27, 2007, Attachment 1, page 2.
43. *Minutes*, House Taxation Committee, March 27, 2007, Attachment 1, page 3.
44. L. 2007, Ch. 151, § 1.
45. L. 2007, Ch. 151, § 1.
46. *Kaul v. Kansas Dept. of Revenue*, 266 Kan. 464, 471 (1998), cert. denied 528 U.S. 812 (1999).

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^{47.} *State ex rel. Morrison v. Oshman Sporting Goods Co. Kansas*, 275 Kan. 763, 773 (2003).

^{48.} *McCarthy v. City of Leawood*, 257 Kan. 566, 574-75 (1995).

^{49.} The provisions in K.S.A. 73-1210a(c) were placed in a new subsection (f), but were not amended. See L. 2007, Ch. 43, § 1.

^{50.} *State ex rel. Tomasic v. Unified Gov. of Wyandotte Co./Kansas City*, 264 Kan. 293, 311 (1998) (internal citations omitted).

^{51.} L. 2007, Ch. 151, § 1.

^{52.} L. 2007, Ch. 43, § 1.



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Testimony before the
House Veterans, Military and Homeland Security Committee
By
Kenneth Stodgell, VFW

Over the past several years' legislators made a number of adjustments to the partnership between the KCVA and veteran service organizations. The changes started with the implementation of the grant program a program that has been in operation just over one year and has put over \$100 million dollars in benefits in the hands of veterans. Because of the changes it has assisted veterans in filing over 4,500 claims for benefits. This was not done alone it was done in partnership with the KCVA.

When this partnership was developed the idea was first to assist the largest number of veterans across the state with the lowest cost to the state. We believe the system you, the legislators, have put in place does this. By combining the resources of the State with the resources of large veteran's service organizations like the VFW, organizations that have a presence in communities across the state you not only assist veterans but support your local communities and you do it while saving money.

The HB-2663 before you does nothing to change the way veteran services in Kansas has been handled the last few years. As a matter of fact it does nothing to change the way veteran services has been handled by the State for over 60 years. It takes nothing away from the KCVA that they need to operate. It simply protects the state from unnecessary liability and expense.

The KCVA says they were given this authority by the federal Government but title 38 of the federal code actually gives this right to the State not the KCVA. The federal government often gives states the rights but it should always in the best interest of the State. The KCVA says all 50 states have this right and we agree and guess what even if you pass this change the federal right remains in place you still have the right to give this authority to a state agency or even a service organization. What this bill does is simply insure that one individual does not take it on himself to arbitrarily use federal law to create increased costs for the state, to increase the states liability and to destroy a partnership that has worked for veterans, reduced costs to the state, been instrumental in allowing service organizations to expand support for the KCVA and limit the states liability.

By passing this change the only way the KCVA can take POAs in its own name is to come before you. They would have to show the costs associated such as the cost of needed legal staff, the cost of staffing offices and hiring attorneys in Washington DC to handle appeals the cost of handling appeals in Kansas.

They would have to show you how the Veteran Service organizations they have partnered with for years are no longer able to serve veterans.

They would have to show the increased cost to the state due to the severing of this partnership. Things like how will they replace the donations service organizations make to the organizations?

They would have to show the legislature of Kansas why the state should absorb the liability risks now covered by the Service organizations million dollar liability policies.

They would like you to believe this is something every state does but that is distorted some states do not even have service officers. They do grants like Kansas or provide funds to counties to hire there own staffs.

While there may be a state or two out there that prosecute there own claims in front of the VA our research did not find any.

This simple change does not change the way the KCVA has operated since its inception, it takes nothing away from the KCVA they need or are now using. It does nothing to the federal law and it can be rescinded by the legislature ate any time. It simply gives you the legislature control over a process that could have costly impact on the KCVA budget.

With 42 chartered veterans service organizations the KCVA can use over 150 accredited organizations to work with veterans and the ability for veterans not satisfied with any of these resources to hire private attorneys if all else fails. This change simply insures that one careless individual does not create unnecessary expense and liability for the State. We along with all the other veteran service organizations in Kansas are willing to work with the KCVA in preparing, presenting and prosecuting claims. We provide legal staffs, top notch training and materials, liability insurance policies to support our accredited service officers. For those service organizations like the VFW that participate in the grant program this insurance coverage carries over to VSRs employed by the state and accredited by the service organizations but only if they use the service organization as POA.

Our staff in the VARO and in Washington provides advice and training to the State VSRs but only on claims where the veteran selects the VFW as POA.

This change keeps the KCVA from taking these resources from there VSRs and from the veterans they have a mission to serve. It keeps the KCVA from dong a disservice to veterans by not giving them access to there appeal rights throughout the process. It eliminates the need for the KCVA to inform in writing the limits of there ability to provide assistance. It keeps the veteran from having to hunt for a new POA at a critical time in the appeals process.

Passage does not reduce the states rights under federal law it simply allows the State the right to decide when and if it is necessary.

HOUSE BILL NO. 2663

By the Committee on Veterans, Military and Homeland Security
Thursday, January 31, 2008
Docking Office Building
Room 784

Testimony by Ralph Snyder
Department Legislative Chairman
The American Legion Department of Kansas

The American Legion Department of Kansas wishes to go on record in support of House Bill 2663. I would bring your attention to item (f) beginning on line 32 of page 2 of House Bill 2663. When the State of Kansas first enacted KSA 73-1211 it was not legislative intent for the State to take Power of Attorney in representing Kansas veterans in submitting claims to the federal government on behalf of veterans. KSA 73-1211 was the vehicle used to fashion a partnership with Veterans' Service Organizations (VSOs) with nationwide networks of Veterans' Service Representatives (VSRs) in representing veterans.

The reasons for the partnership are simple. Organizations like The American Legion have trained personnel at the national level to assist in the appeals whereas the State's resources end at our border. For example; The American Legion has over forty (40) full time employees whose task is to represent veterans during the appeals process in Washington, DC. In addition, the Legion has both medical and legal consultants on retainer to assist our accredited VSRs in processing appeals. It isn't hard to imagine how much it would cost the State of Kansas annually to duplicate even a small portion of The American Legion's Washington staff and office space, plus equipment.

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Further, since Veterans Service Organizations such as The American Legion monitor veteran's issues and lobby Congress for the proper and timely care of veterans and funding for veterans benefits it simply makes sense for the State of Kansas not to duplicate our efforts on the national level.

Lines 15 thru 29 on page 3 of House Bill 2663 simply update present day terms and names such as the "Kansas Veterans Commission" is now known as the "Kansas Commission on Veterans Affairs". Similarly the "Veterans Administration" is now known as the "Department of Veterans Affairs". Therefore The American Legion applauds updating this terminology thereby alleviating any doubt to what the statute implies or refers.

Thank you again for allowing me this opportunity to testify in favor of House Bill 2663; The American Legion urges your support and passage of the bill.

TESTIMONY REGARDING HB 2663
George Webb
Executive Director, Kansas Commission on Veterans' Affairs
January 31, 2008

Thank you for the opportunity to comment on HB 2663 which is before you. The components of this bill greatly concern my governing Commission.

The Commission fully supported the grant program (now the Veterans Claims Assistance Program) as a means of benefiting all Kansas veterans. HB 2663 appears to capitalize on the VCAP but takes things one step further in a way that the Commission finds objectionable and contrary to the KCVA's mission of supporting all veterans. I suspect that many of you are not aware of the true intent of this bill. Today I want to describe the claims process, explain to you what this bill really does in that process, and then tell you why the Commission and I are emphatically opposed to this bill.

First – how does the claims system work? A veteran can submit a claim to the VA through a variety of means. The vet can do so directly with the VA (and in today's snapshot, just under 20% of the pending claims in the Wichita Regional Office are unrepresented). A vet can submit that claim through a representative of a Veteran Service Organization. A veteran can submit a claim through an attorney authorized by the VA. And a vet can have a KCVA rep prepare his claim, after which the vet can ask that the claim be sent as a Power of Attorney to a particular Veteran Service Organization for submission to the VA, or the vet can ask that the claim be handled by the KCVA acting in its own right as the Power of Attorney. Bottom line – the process is designed to give the veteran his or her choice of representation. These options are federal law under Title 38, USC.

Some claims for benefits are sent by the preparer – most often a KCVA staff member -- straight to a VA office somewhere in the country. Most “traditional” claims -- such as service-connected disability compensation -- are sent by the veteran's representative to the Wichita VA Regional Office where they are adjudicated. The VA Regional Office is where much of the work occurs to get the claim to the VA adjudicators, where the adjudicators develop their recommendations, and where much of the informal and formal appeal work (if necessary) takes place. Regardless of who helps the vet prepare the claim, the rep who passes the claim to the VA and maintains the file is the Power of Attorney and the one who receives “credit” for the eventual award.

An individual VSR must be accredited by the organization serving as the Power of Attorney. To be accredited, the organization must train and approve the rep. Our KCVA service reps hold accreditations from the KCVA, the American Legion, and the Veterans of Foreign Wars, and some of our reps have additional accreditations.

An organization or state agency must be recognized by the VA to engage in the claims process. This may take quite some time to achieve; Iowa just completed a four-year effort to be recognized by the VA as a state agency presenting claims for her veterans. So – agencies and organizations are recognized by the VA for claims work, and individuals are accredited by one or more recognized organizations. Currently 37 National Service Organizations are recognized by the VA, as are 46 states and five US territories. Those not recognized have no state VSRs or are building their programs. Kansas is recognized by the VA to prepare, present, and prosecute claims on behalf of her citizen veterans.

Second – what is this bill designed to do? Briefly, it is designed to force the KCVA to pass any claim developed by its own people on behalf of a veteran to a Veteran Service Organization for processing. In so doing, this bill is intended to prevent the KCVA from exercising its own federal recognition to serve as a

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Power of Attorney for a veteran, and that means that even if the veteran says, "I want the KCVA to represent me," the KCVA would not be able to do so and the veteran would be denied his choice of representation.

How is this established in HB 2663? Surreptitiously. By inserting the caveat that an organization must be chartered by Congress, the KCVA is precluded in this bill – and thus potentially by its own state government -- from exercising the privileges of its recognition by the VA. Yet a congressional charter has absolutely nothing to do with processing claims on behalf of veterans any more than would a requirement that the organization have a baseball team or a purple logo.

Last year I discussed federal or congressional charters with this committee. Of the 48 congressionally chartered veterans' organizations that the VA follows, only 26 are recognized by the VA to prepare, present and prosecute claims. Eleven other veterans organizations are recognized by the VA for processing claims, but they are not (and do not need to be) congressionally chartered. And of the 46 states plus five territories recognized by the VA to submit claims as a Power of Attorney, none have or ever will have a federal or congressional charter, yet they may work claims on behalf of veterans, from preparation through appeals with the Board of Veterans Appeals. The congressional charter caveat is completely irrelevant for claims work, and its insertion in HB 2663 is either a gross error or an intentional design to block the KCVA.

What is a congressional charter? Certainly it has been used by Congress to highlight noteworthy organizations. But even Congress has struggled to define the term or agree upon its effect. From the 2004 and 2005 Congressional Research Service reports, Congress concluded that a congressional charter was really an honorific which may confuse the public by implying – falsely – that there was some Congressional oversight or direct relationship with the federal government.

To arrest this trend, Congress's House Judiciary Committee issued a moratorium on new federal charters in 1994. While a few have since slipped through the cracks in the federal legislative process, it is clear that Congress realized that issuing federal or congressional charters was misleading and not particularly relevant to many functions. I cannot emphasize enough that inserting the requirement of a congressional charter into HB 2663 has one purpose only: to block the KCVA and any new veterans organizations that may arise from serving Kansas veterans as their Power of Attorney. A second requirement in the bill that the claim must be passed to a Veteran Service Organization is just as problematic though less well defined.

Finally -- Should the KCVA be prevented by its own state government from exercising its federal prerogative of serving as Power of Attorney for a Kansas veteran if that veteran so chooses? The Commission and I are adamant that it should not be.

When a similar attempt was made during the 2007 session, the Commission was concerned enough that it held a special session on March 1, 2007 to debate the pending bill. The Commission voted unanimously that I was to appear before the Senate committee and request that the committee strike the line restricting the KCVA from presenting claims, which I did.

What are the consequences of the KCVA having its federal recognition blocked by its own legislature?

* First, it would deny the Kansas veteran his or her right to be represented by whomever he or she chooses. In effect, you would be telling the veteran, "We don't trust our own state agency to look out for you, so we are requiring any work initiated by the KCVA be turned over to a private organization, even if you don't want that. We in the government know what's best for you."

* It would send a signal of non-support to Kansas veterans.


- * Because the KCVA VSRs in the Regional Office are substantially more experienced than those of any other Veteran Service Organization, it would be telling the veteran that he cannot have the best represent him.
- * Because the Congress last year passed a new law allowing veterans to be represented by attorneys much earlier in the claims process, this bill could conceivably deny due process to veterans who want to go that route. Similarly, this language would prevent any new Veteran Service Organizations from becoming a claims partner with the KCVA, because those organizations are unlikely to receive a congressional charter.
- * At the end of the day, government is the last line of defense for its citizens, but this bill would take state government's support off the table and put Kansas citizens at risk if any of these private organizations stood down or became unstaffed. The Commission recognized that state government will always be available to serve the citizens of Kansas, and the state's leadership can impose guidance that will be followed. Government has no such assurances from private organizations, regardless of good faith promises.
- * There are actions for vets and survivors that the KCVA staff processes routinely and sends directly to VA offices outside the VA Regional Office. But because the term "claim" is undefined, the letter of the law in this bill would require that any request for any benefit from the VA would have to be processed by one of the Veteran Service Organizations in the VA Regional Office. Our cemetery staffs now handle headstone and plot allowance requests for survivors; these are done smoothly and are sent directly to the VA for action, yet this bill would require that all such requests be sent to a veterans' organization in Wichita for another step in the process. Educational benefits for veterans which our field offices help prepare are now sent directly to St. Louis; this bill would require that they be sent through a Veteran Service Organization in Wichita, further delaying an already-too-long process. Life insurance applications and claims go directly from our service rep to the VA in Philadelphia. Our homes prepare per diem requests, overpayment assistance, pharmacy claims and billing, and adaptive housing requests – all on behalf of veteran or spouse residents. None of these go through a veteran service organization in the VA Regional Office, but that would change. Requiring that all KCVA-initiated claims be passed through a Veteran Service Organization is unnecessary, time-consuming, and a huge impact on paperwork. And frankly, no veteran service organization could handle the load.
- * Last, if this bill is passed, Kansas would stand alone as the only state government in the Nation to deny the use of federal recognition to its own veterans' agency. I have personally canvassed my counterparts – directors or department secretaries – in each state as well as the territories and the District of Columbia. None – not one single state or territory – has a statute or policy that prevents its own state agency from serving as a Power of Attorney to its state's veterans. Even in those states which do not currently have VA recognition and thus do not exercise this right, they have not shot their own agencies in the foot. My counterparts are stunned that our own state government would consider this. This is not the time to show the country that Kansas intends to back off on its commitment to its veterans and their families by becoming the only state to remove an important and hard-won federal prerogative.

In summary, by imposing this restriction on Powers of Attorney, the KCVA is potentially removed from important steps in assisting veterans; the choice of veterans who may wish to choose the KCVA or a new service organization as their Power of Attorney is taken from them; the KCVA is essentially emasculated in its operation; the Legislature would be taking a veterans assistance capability away from a state governmental agency and leaving in place only the option of a private organization; and the Legislature would put its own citizens at a potential risk by eliminating processes of the one agency over which it has direct authority.

I can scarcely conclude that this action would create a more efficient or perfect system of representing veterans. Rather, it is about numbers and who gets to claim them. We should not be worrying about getting credit, but rather, we should be finding ways to increase service.

I thank the Committee for its time and consideration, and on behalf of the Commission, I ask that this bill be rejected before it jeopardizes the support we render to our quarter million Kansas veterans.

Respectfully submitted on January 31, 2008,



GEORGE S. WEBB
Executive Director



Colonel Michael Neer, US Army (Retired), Commissioner
KANSAS COMMISSION ON VETERANS' AFFAIRS

January 30, 2008

Comments HB 2663

Presented to the House Veterans, Military and Homeland Security Committee, January 31, 2008.

Honorable members of the Committee, please accept my appreciation for taking the time from your busy schedule to consider my observations and recommendations regarding HB 2663, an act relating to veterans. I am one of five commissioners in the Kansas Commission for Veterans' Affairs (KCVA). I am a lifelong soldier, retiring in 1996 from the United States Army after 31 years of service. I continue to work for the benefit of our men and women in uniform, active, NG/Reserve, retired, and veteran. I am the President of the Association of the United States Army (AUSA) in Kansas City (a bi-state organization), and a member of the 5th Region, AUSA, which undertakes coordinating actions in 9 states: KS, MO, NB, SD, ND, IA, MN, WI, and IL. I am also a member of the Executive Committee, Missouri, ESGR and serve in capacities on other military associations such as the Military Officer Association of America, and Special Forces Association. None of these organizations are Veteran Service Organizations and none stand to benefit or be penalized by this bill.

This paper outlines observations and concerns regarding HB2663.

I am fundamentally opposed to any action that negatively affects the men and women who give so much and receive so little for giving us our freedoms and security. If passed into law, this bill will penalize our veterans, limit their choices and opportunities to get assistance, and restrict state employees in such a manner that it unequivocally abandons our veterans to the care and assistance of private organizations.

This bill requires all claims assembled by State Veteran Service Representatives be submitted and/or prosecuted ONLY by **federally chartered**, private Veteran Service Organizations. No state employee will thereafter be allowed to represent a veteran, even when that is the veteran's choice. When this condition is unacceptable to our veterans, their only alternative is to seek the assistance of a private attorney or operate in a difficult, bureaucratic environment depending on their inexperienced wiles, skills, and self developed responses. This reduces their options and reduces the probability of receiving their full entitlements.

This bill may result in a demonstration to our veterans that the employees of this State are less capable or competent to assist our veterans. That is not the case. Veterans are fully capable of determining where and whom they would like to represent them. If our veterans not find state employees capable, their freedom to seek assistance elsewhere will be the telling fact. Secondly, restricting and reducing our service base is a *de facto* action demonstrating an unwillingness to expend Kansas resources to assist the men and women who have imperiled their lives and health in preserving our security.

Neither conclusion portrays our State as one that is Veteran Friendly.

The changes to statute by this legislation will prevent Kansas State Employees from acting with a Power of Attorney and requires claims be given to federally chartered Veteran's organizations. Proposed changes to Kansas law under HB2663 are: (Bold text denotes changes to current statute)

- Section 1, (f) "Any veterans service representative appointed by the executive director of the Kansas commission on veterans affairs shall be an honorably discharged veteran or retired from the United States Armed Forces. **Employees of the Kansas commission on veterans affairs shall act as an agent with power of attorney for any claimant only if the power of attorney is TAKEN IN THE NAME OF A VETERANS**

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Association of the United States Army – Kansas City

January 30, 2008

SERVICE ORGANIZATION CHARTERED BY CONGRESS and recognized by the federal department on veterans affairs for claim representation.

- For the purpose of this subsection, “veterans service representative” means any officer or employee appointed pursuant to this section whose primary duties include:
- (1) Assisting and **representing** veterans and their dependents in securing benefits from the federal government and the state of Kansas. (the change is to strike the word “representing thereby creating Veterans Assistance Officers”.)
- (2) Providing information and assistance to veterans and dependents in obtaining special services and benefits based on knowledge of federal and state laws, policies and regulations pertaining to veterans benefits and services.
- (3) **Providing assistance to veterans service organizations participating in the veterans claims assistance program.** (added)
- (g) Nothing in this act shall be construed to affect the status, rights or benefits of any officer or employee of the Kansas veterans’ commission employed by such commission on the effective date of this act.¹

- Sec. 2. K.S.A. 2007 Supp. 73-1211 is hereby amended to read as follows: 73-1211. All claims filed with the federal **veterans’ administration by the Kansas veterans’ commission shall be prosecuted by an accredited representative of one of the participating veterans’ organizations** (Strike the words underlined and add) **department of veterans affairs by the Kansas commission on veterans affairs shall be prepared, presented and prosecuted by an accredited representative of a veterans service organization CHARTERED BY CONGRESS and recognized by the federal department on veterans affairs for claims representation.**²

Congressionally chartering” of private patriotic and veteran organizations is misleading, irrelevant, and at best purely political. There are no standards for such charters, no central registry, no application process, and no control or federal oversight of the actions of the institutions so chartered. Chartering these organizations is simply a manner in which the Congress acknowledges the contributions of the members of these organizations in creating and preserving the freedoms and character of our society. There are currently over 100 such federally chartered bodies today. These charters are so problematic for the Congress and the Federal Government that some members of Congress have and continue to consider eliminating charters of patriotic and veteran organizations.³

“The awarding of a charter to an already existent fraternal or patriotic organization is purely honorific. Unlike other congressional charters, a Title 36 corporation charter does not create a corporate body where one did not previously exist. Yet, when a charter is awarded to such an entity, many members of the public perceive this action as an expression of congressional support for all of the group’s activities.

Thus, for example, when the congressionally chartered American Gold Star Mothers refused to admit to membership a non-U.S. citizen, some individuals and members of the media called upon Congress to intervene and rectify this situation. Approximately 100 Title 36 corporations exist, which raises the potential for more requests for congressional intervention in these groups’ activities.”⁴

¹ HB2663, Section 1, (f)

² HB2663, Section 2

³ **Congressional or Federal Charters: Overview and Current Issues**; Kevin R. Kosar, Analyst in American National Government and Finance Division

⁴ Sic.



Association of the United States Army – Kansas City

January 30, 2008

Adding the requirement to submit our state initiated claims to *Federally Chartered Organizations* only confounds a deceptive and irrelevant concept and may implicate and involve Kansas in litigation and charges against such corporations. This is the very reason why the Federal Government may distance or disenfranchise itself from this concept.

Kansas currently employs 13 of 15 authorized public Veterans Service Representatives. They work in harmony within the established veteran service structure, taking and assisting claims in remote regions of the State then referring them to accredited and VA recognized Veteran Service Organizations for submission and prosecution. Our veterans choose the VSO's and execute a power of attorney to empower them. Our state VSR's should not, and do not recommend any organization over another. Our veterans have full freedom of choice to choose.

In the month of January 2008 about 18 percent of 2,921 claims in Kansas claims were submitted by an individual without the assistance of any Veteran Service Organization, attorney, or the State of Kansas. In a small number of cases, currently about 5, the veteran has asked the State to submit his claim. This too, is freedom of choice.

States large and small have not implemented self restrictive laws prohibiting their agencies from serving their veterans. Missouri employs 40 state employees who fully assist their veterans with claims. Iowa is expanding their state provided services and last week received full accreditation from the Veteran's Administration to fully represent their veterans. Smaller states such as Maine process over 50 percent of all claims made by their veterans. Government VSR's in Puerto Rico represent over 85 percent of the claims of their veterans. States near and far are providing their vets with even greater services than is currently provided by Kansas, and in many are expanding even more. Our veterans' needs are no less demanding than those in other states.

This legislation is unnecessary and does not repair any contravention with State law or regulation. It is not beneficial to our veterans and ultimately decreases their choices for seeking assistance to receive benefits. The best barometer to determine if some or any part of our system is in need of overhaul is the commentary and actions of the men and women who required the services. There is no outcry of incompetent services from Kansas claimants.

Kansas operates in much the same manner as nearly every other State. Others have not self-restricted their own employees from assisting their own veterans. In these economically and security troubled times we should be sustaining our support for our veterans not reinventing our system through fiat or creating a fix for competent and proven processes.

I urge you,

- Table this legislation and gather factual indicators of the health of our system over the next year.
- Do not reduce our veterans' opportunities to receive assistance, compensation, or compel out of pocket expenses to pursue claims.
- Do not require claims be awarded only to "Chartered" organizations, restricting our vets choices, supporting a disingenuous connotation, and subjecting our State to litigation and lawsuit.
- Do not hasten to a potential error.

Thank you for your kind attention.

Michael Neer, Colonel, US Army (Retired), Commissioner, KCVA