

Approved: May 22, 2009

Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Thomas C. (Tim) Owens at 9:35 a.m. on February 6, 2009, in Room 545-N of the Capitol.

All members were present except:

Senator Laura Kelly - excused

Senator Terry Bruce - excused

Committee staff present:

Jason Thompson, Office of the Revisor of Statutes

Doug Taylor, Office of the Revisor of Statutes

Athena Andaya, Kansas Legislative Research Department

Jerry Donaldson, Kansas Legislative Research Department

Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Doug Smith, Kansas Credit Attorneys Assn. & Kansas Collectors Assn.

Michael Smith, Assistant Attorney General

Larry Baer, League of Kansas Municipalities

Others attending:

See attached list.

The Chairman reopened the hearing on **SB 134 - Court fees and costs; authorizing supreme court to establish additional charges for court procedures.**

Doug Smith testified in opposition stating concern on several points. Those included:

- The Court's ability to implement new surcharges without public comment or oversight,
- no limit on how the funds may be used,
- no limit on the amount of money that may be raised, and
- no time limit on the surcharge.

Mr. Smith requested a compromise addressing these concerns. (Attachment 1)

There being no further conferees, the hearing on **SB 134** was closed.

The Chairman reopened the hearing on **SB 135 - Kansas open meetings act; interactive communications constituting open meetings.**

Michael Smith appeared in support stating SB 135 would amend the Kansas Open Meetings Act to correct an oversight made during the drafting of the original legislation. The change would clarify that "serial meetings" are prohibited. (Attachment 2)

Larry Baer spoke in favor, stating the technical change in **SB 135** would clear up any confusion regarding the intent of the language in K.S.A. 75-4318(f). (Attachment 3)

Written testimony in support of **SB 135** was submitted by:

Rich Gannon, Kansas Press Association (Attachment 4)

There being no further conferees, the hearing on **SB 135** was closed.

Senator Schodorf, Senator Vratil seconded, to take Emergency Final Action on SB 134.

Senator Schmidt moved, Senator Pilcher-Cook seconded, to amend SB 134 by reducing an incoming judge salaries by 5%. Motion failed.

CONTINUATION SHEET

Minutes of the Senate Judiciary Committee at 9:35 a.m. on February 6, 2009, in Room 545-N of the Capitol.

Senator Vratil moved, Senator Schodorf seconded, to amend **SB 134** to make it effective upon publication in the *Kansas Register*. Motion carried.

Senator Vratil moved, Senator Umbarger seconded, to recommend **SB 134** as amended, favorably for passage.

Senator Schmidt made a substitute motion to postpone indefinitely consideration on **SB 134**, Senator Pilcher-Cook seconded. Motion failed.

Back on the original motion to recommend **SB 134** as amended, favorably for passage. Motion carried.

The Chairman called final action on **SB 68 - Docket fees; prosecuting attorneys' training fund.**

Senator Donovan moved, Senator Schmidt seconded, to recommend **SB 68** favorably for passage. Motion carried.

The next meeting is scheduled for February 7, 2009.

The meeting was adjourned at 10:30 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-6-09

NAME	REPRESENTING
Leigh Keck	Hein Law firm
Jerry Sloan	Judicial Branch
Linda Furd	KACCT
Doug Smith	KCA/KCAA
Kent Cornish	KAB
Rich Gannon	KPA
Larry R. Baer	LKIM
Laurel Klein Sparks	KCSDV
John J. Gannon	KS Bar Assn.
Martha Lee Smith	KMHIA
Matt Casey	GBA
Chip Wheeler	HCSF

**KANSAS CREDIT ATTORNEYS ASSOCIATION
AND KANSAS COLLECTORS ASSOCIATION, INC.**

REMARKS CONCERNING SENATE BILL NO. 134

SENATE JUDICIARY COMMITTEE

February 5, 2009

Chairman Owens and Members of the Senate Judiciary Committee:

Thank you for the opportunity to present remarks regarding Senate Bill No. 134 on behalf of the Kansas Credit Attorneys Association and Kansas Collectors Association, Inc. The Kansas Credit Attorneys Association is a statewide organization of attorneys, representing law firms, whose practice includes considerable collection work, and Kansas Collectors Association, Inc., which is an association of collection agencies in Kansas.

The KCAA and KCA appear today as opponents to Senate Bill No. 134, which seeks to grant the Supreme Court authority to establish surcharges for court services. Specifically, "Notwithstanding any provision of law to the contrary, the supreme court is hereby authorized to establish additional charges for court procedures."

We clearly understand the Court's desire to have this authority and do not believe it to be an unreasonable request in these tough budgetary times. However, we are concerned about the broad authority sought in Senate Bill No. 134.

We believe that the Court could have this authority with some limitations on its scope.

In SB 134, as drafted, we find:

1. The Court would have the ability to implement new surcharges without public comment or oversight. At least during the legislative appropriations process it is an open process weighing the pros and cons on each appropriation. If the Court language is adopted there will be no requirement for review by the public or the Legislature.

2. There is no limit on how money can be used by the Court once collected. At least the previous emergency surcharges stated that the money had to be used to make up deficits in the Court's maintenance budget. Any authority granted to the court should be limited to existing personnel and the cost associated with keeping the court "open and operating". The money should not be used to implement new programs, hire new staff or for salary increases. All state agencies have similar issues and are making tough budget decisions and attempting operating on reduced or limited resources. The financial impact to the Court can be mitigated but should not be granted funding increases when other parts of state and local government are struggling to meet their statutory obligations.

Senate Judiciary

2-6-09

Attachment 1

3. There is no limit on the amount of money that can be raised. The Court should clearly identify the target money needed to cover any funding gaps due to State General Fund shortfalls. Increases should be in a reasonable amount and not provide a windfall for the Court.

4. There is no time limit on how long this surcharge will be in place. The Court has stated in previous testimony to the legislature that they believe surcharges should only be in place during a budget crisis and should not be made permanent source of funding. Once proper funding levels from the State General Fund are restored the surcharge should be suspended.

We might offer that you consider a compromise that would remove the 2006 language prohibiting an emergency surcharge, and replace it with expressed authority being granted to the Court, by the legislature, to enact surcharges in only "extraordinary circumstances" to meet their statutory and constitutional obligations. The funding could be limited to the amounts authorized and approved in the Court's budget for the given fiscal year, which will not be attained due to unanticipated revenue shortfalls. The authority could lapse when budget funding returns to adequate levels.

Thank you for your time and consideration.

Douglas E. Smith
For the Kansas Credit Attorneys Association
and the Kansas Collectors Association, Inc.



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OFFICE OF THE ATTORNEY GENERAL

STEVE SIX
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Senate Judiciary Committee
Senate Bill 135
Assistant Attorney General Michael Smith
February 6, 2009

Mr. Chairman and members of the committee, thank you for allowing me to provide testimony in support of Senate Bill 135. I am the Assistant Attorney General responsible for enforcement of the Kansas Open Meetings Act (KOMA) in the office of Attorney General Steve Six.

Senate Bill 135 would amend the Kansas Open Meetings Act to correct an oversight in the drafting of House Bill 2947, enacted in the 2008 legislative session. The intent of SB 135 is to clarify that "serial meetings" are prohibited under KOMA. After we met with the interested parties to this legislation, including the Kansas League of Municipalities, the Kansas Association of Counties and the Kansas Press Association, we all came to the conclusion that SB 135 was necessary.

House Bill 2947, now L. 2008, Ch. 178, sought to codify the violation of KOMA by "serial communications."

The first portion of the new definition is "meetings in a series shall be open if they collectively involve a majority of the membership of the body or agency. . ." K.S.A. 75-4317a provides the definition of a meeting. It requires that a meeting must involve a majority of the body or agency. If there is less than a majority, there can be no meeting and a series of communications could occur. Unfortunately, this defeats the purpose of the newly adopted section.

By substituting the phrase "interactive communications" for "meetings" in section (f), the intent is retained and there would be no question that a series of communications, as defined in KOMA would be a violation.

As the chief law enforcement agency responsible for enforcement of the Kansas Open Meetings Act, the Attorney General's office strongly supports SB 135 and believes that it is necessary for effective enforcement of the prohibition on serial meetings in Kansas. Thank you for your consideration. I would be happy to answer any questions.

Senate Judiciary
2-6-09
Attachment 2



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League of Kansas Municipalities

To: Senate Judiciary Committee
From: Kim Winn, Director of Policy Development and Communications
Re: Support for SB 135
Date: February 6, 2009

Thank you for allowing the League of Kansas Municipalities to testify in support of SB 135 pertaining to the Kansas Open Meetings Act. The Attorney General identified a concern with the use of word “meetings” in the serial meeting portion of K.S.A. 75-4318(f) and is proposing to take that word out and substitute “interactive communications” in its place. LKM, along with the Kansas Association of Counties and the Kansas Press Association met with attorneys from the Attorney General’s office last summer regarding this issue and agreed to support the change in language. Because this is a technical change to clear up any confusion regarding the intent of the language, LKM urges this committee to support SB 135 and request that it be placed on the consent calendar.

RS - JThompson - 02/05/09

Session of 2009

SENATE BILL No. 68

By Committee on Judiciary

1-22

9 AN ACT concerning docket fees; relating to the prosecuting attorneys'
10 training fund; amending K.S.A. 20-362 and repealing the existing
11 section. ~~sections~~

and K.S.A.
2008 Supp.
28-172a

12

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

14 Section 1. K.S.A. 20-362 is hereby amended to read as follows: 20-
15 362. The clerk of the district court shall remit all revenues received from
16 docket fees as follows:

17 (a) At least monthly to the county treasurer, for deposit in the county
18 treasury and credit to the county general fund:

19 (1) A sum equal to \$10 for each docket fee paid pursuant to K.S.A.
20 60-2001 and 60-3005, and amendments thereto, during the preceding
21 calendar month;

22 (2) a sum equal to \$10 for each \$46 or \$76 docket fee paid pursuant
23 to K.S.A. 61-4001, or K.S.A. 61-2704 or 61-2709, and amendments
24 thereto; and

25 (3) a sum equal to \$5 for each \$26 docket fee paid pursuant to K.S.A.
26 61-4001 or K.S.A. 61-2704, and amendments thereto, during the preced-
27 ing calendar month.

28 (b) At least monthly to the board of trustees of the county law library
29 fund, for deposit in the fund, a sum equal to the library fees paid during
30 the preceding calendar month for cases filed in the county.

31 (c) At least monthly to the county treasurer, for deposit in the county
32 treasury and credit to the prosecuting attorneys' training fund, a sum
33 equal to ~~\$1~~ \$2 for each docket fee paid pursuant to K.S.A. 28-172a, and
34 amendments thereto, during the preceding calendar month for cases filed
35 in the county and for each fee paid pursuant to subsection (c) of K.S.A.
36 28-170, and amendments thereto, during the preceding calendar month
37 for cases filed in the county.

a sum equal
to \$1

38 (d) To the state treasurer, in accordance with the provisions of K.S.A.
39 75-4215, and amendments thereto, for deposit in the state treasury and
40 credit to the indigents' defense services fund, a sum equal to \$.50 for
41 each docket fee paid pursuant to K.S.A. 28-172a and subsection (d) of
42 K.S.A. 28-170, and amendments thereto, during the preceding calendar
43 month.

Senate Judiciary

2-6-09

Attachment 4

1 (e) To the state treasurer, in accordance with the provisions of K.S.A.
2 75-4215, and amendments thereto, for deposit in the state treasury and
3 credit to the law enforcement training center fund a sum equal to \$15
4 for each docket fee paid pursuant to K.S.A. 28-172a, and amendments
5 thereto, during the preceding calendar month.

6 (f) To the state treasurer, in accordance with the provisions of K.S.A.
7 75-4215, and amendments thereto, for deposit in the state treasury and
8 distribution according to K.S.A. 20-367, and amendments thereto, a sum
9 equal to the balance which remains from all docket fees paid during the
10 preceding calendar month after deduction of the amounts specified in
11 subsections (a), (b), (c), (d) and (e).

12 Sec. 2. K.S.A. 20-362 ~~is~~ hereby repealed.

13 Sec. 3. This act shall take effect and be in force from and after its
14 publication in the Kansas register.

and K.S.A.
2008 Supp.
28-172a are

After line 11, insert K.S.A. 2008 Supp. 28-172a
and renumber remaining sections

K.S.A. 2008 Supp.

28-172a. Docket fee in criminal proceedings; fees and charges in other actions involving violations of state laws; authorized only by legislative enactment. (a) Except as otherwise provided in this section, whenever the prosecuting witness or defendant is adjudged to pay the costs in a criminal proceeding in any county, a docket fee shall be taxed as follows:

(1) On and after July 1, 2008 through June 30, 2010:

Murder or manslaughter.....	\$181.50	\$182.50
Other felony.....	172.00	173.00
Misdemeanor.....	137.00	138.00
Forfeited recognizance.....	73.50	74.50
Appeals from other courts.....	73.50	74.50

(2) On and after July 1, 2010:

Murder or manslaughter.....	\$179.50	\$180.50
Other felony.....	170.00	171.00
Misdemeanor.....	135.00	136.00
Forfeited recognizance.....	71.50	72.50
Appeals from other courts.....	71.50	72.50

(b) (1) Except as provided in paragraph (2), in actions involving the violation of any of the laws of this state regulating traffic on highways (including those listed in subsection (c) of K.S.A. 8-2118, and amendments thereto), a cigarette or tobacco infraction, any act declared a crime pursuant to the statutes contained in chapter 32 of Kansas Statutes Annotated and amendments thereto or any act declared a crime pursuant to the statutes contained in article 8 of chapter 82a of the Kansas Statutes Annotated, and amendments thereto, whenever the prosecuting witness or defendant is adjudged to pay the costs in the action, on and after July 1, 2008 through June 30, 2010, a docket fee of ~~\$75~~ **\$74** shall be charged, and on and after July 1, 2010, a docket fee of ~~\$73~~ shall be charged. When an action is disposed of under subsections (a) and (b) of K.S.A. 8-2118 or subsection (f) of K.S.A. 79-3393, and amendments thereto, whether by mail or in person, on and after July 1, 2008 through June 30, 2010, the docket fee to be paid as court costs shall be ~~\$75~~ **\$76**, and on and after July 1, 2010, the docket fee to be paid as court costs shall be ~~\$73~~ **\$74**.

(2) In actions involving the violation of a moving traffic violation under K.S.A. 8-2118, and amendments thereto, as defined by rules and regulations adopted under K.S.A. 8-249, and amendments thereto, whenever the prosecuting witness or defendant is adjudged to pay the costs in the action, on and after July 1, 2008 through June 30, 2010, a docket fee of ~~\$75~~ shall be charged, and on and after July 1, 2010, a docket fee of ~~\$73~~ shall be charged. When an action is disposed of under subsection (a) and (b) of K.S.A. 8-2118, and amendments thereto, whether by mail or in person, on and after July 1, 2008 through June 30, 2010, the docket fee to be paid as court costs shall be ~~\$75~~ **\$76**, and on and after July 1, 2010, the docket fee to be paid as court costs shall be ~~\$73~~ **\$74**.

(c) If a conviction is on more than one count, the docket fee shall be the highest one applicable to any one of the counts. The prosecuting witness or defendant, if assessed the costs, shall pay only one fee. Multiple defendants shall each pay one fee.

(d) Statutory charges for law library funds, the law enforcement training center fund, the prosecuting attorneys' training fund, the juvenile detention facilities fund, the judicial branch education fund, the emergency medical services operating fund and the judiciary technology fund shall be paid from the docket fee; the family violence and child abuse and neglect assistance and

\$76

\$74

\$76

\$74

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\$74

\$76

\$74

prevention fund fee shall be paid from criminal proceedings docket fees. All other fees and expenses to be assessed as additional court costs shall be approved by the court, unless specifically fixed by statute. Additional fees shall include, but are not limited to, fees for Kansas bureau of investigation forensic or laboratory analyses, fees for detention facility processing pursuant to K.S.A. 12-16,119, and amendments thereto, fees for the sexual assault evidence collection kit, fees for conducting an examination of a sexual assault victim, fees for service of process outside the state, witness fees, fees for transcripts and depositions, costs from other courts, doctors' fees and examination and evaluation fees. No sheriff in this state shall charge any district court of this state a fee or mileage for serving any paper or process.

(e) In each case charging a violation of the laws relating to parking of motor vehicles on the statehouse grounds or other state-owned or operated property in Shawnee county, Kansas, as specified in K.S.A. 75-4510a, and amendments thereto, or as specified in K.S.A. 75-4508, and amendments thereto, the clerk shall tax a fee of \$2 which shall constitute the entire costs in the case, except that witness fees, mileage and expenses incurred in serving a warrant shall be in addition to the fee. Appearance bond for a parking violation of K.S.A. 75-4508 or 75-4510a, and amendments thereto, shall be \$3, unless a warrant is issued. The judge may order the bond forfeited upon the defendant's failure to appear, and \$2 of any bond so forfeited shall be regarded as court costs.

(f) The docket fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for the docket fee. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee.

History: L. 1974, ch. 168, § 9;L. 1975, ch. 218, § 2;L. 1976, ch. 163, § 28;L. 1977, ch. 145, § 2;L. 1982, ch. 167, § 2;L. 1982, ch. 116, § 7;L. 1984, ch. 148, § 2;L. 1984, ch. 39, § 45;L. 1985, ch. 106, § 2;L. 1986, ch. 146, § 3;L. 1987, ch. 134, § 5;L. 1989, ch. 239, § 6;L. 1990, ch. 134, § 1;L. 1992, ch. 315, § 8;L. 1993, ch. 291, § 217;L. 1994, ch. 335, § 5;L. 1996, ch. 214, § 37;L. 1998, ch. 155, § 4;L. 1999, ch. 127, § 11;L. 2000, ch. 177, § 5;L. 2003, ch. 101, § 9;L. 2004, ch. 95, § 2;L. 2006, ch. 195, § 14;L. 2006, ch. 218, § 2;L. 2007, ch. 195, § 17;L. 2008, ch. 95, § 8; July 1.