



JOHN M. SETTLE PAWNEE COUNTY ATTORNEY
PAWNEE COUNTY COURTHOUSE – LARNED, KANSAS 67550 – 620-285-2139

**TESTIMONY OF JOHN M. SETTLE, PAWNEE COUNTY ATTORNEY
IN SUPPORT OF SENATE BILL 217
House Corrections & Juvenile Justice Committee Hearing February 14, 2010**

Honorable Chairman Owens and Members of the Committee:

I have served as the Pawnee County Attorney since my appointment by Governor Graves in 1995. I am a Past President of the Kansas County and District Attorneys Association and I served on the KCDAAs Board of Directors from 1996 through 2004. I presently serve on the Criminal Law Advisory Committee of the Kansas Judicial Council. I also serve on the Board of Editors of *The Kansas Prosecutor*, a publication of the KCDAAs. In addition to my legal career, I own a newspaper publishing business which publishes five Kansas publications covering the Kansas communities of Larned, Lyons, Hoisington and Ellinwood. Those publications reach over 30,000 readers in the Central Kansas counties of Pawnee, Edwards, Barton, Rice and Stafford.

I appear today on behalf of myself as a Pawnee County taxpayer, as the Pawnee County Attorney and for the Pawnee County Commissioners and the citizens of Pawnee County, to ask for your support of Senate Bill 217.

Recently Kansas Attorney General Derek Schmidt's Office issued Attorney General Opinion No. 2011-3 in response to a request by Patricia A. Scalia, Executive Director of the State Board of Indigents' Defense Services. Executive Director Scalia had questioned the State Board of Indigents' Defense Services (BIDS) responsibility to pay the attorney fees of an indigent person confined pursuant to the Sexually Violent Predator Act (SVPA) who challenges the conditions of such confinement by filing a habeas corpus petition pursuant to K.S.A. 60-1501. I have attached a copy of Attorney General Opinion No. 2011-3 (the Opinion) to this testimony for your review.

Ultimately, after an analysis of the cases and Kansas statutes that apply to the question presented, the Opinion adopts a statement of the Kansas Supreme Court in *In re Care & Treatment of Rayborn*, 259 Kan. 813, at 821 (1996), that:

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“K.S.A. 20-348 makes each county responsible for all expenses incurred for the operation of its district court except expenses which the law requires the State to pay.... We conclude that the fees incurred in representing respondents in sexual predator proceedings are expenses incurred for the operation of the district court and, as such, are to be paid by the County.”

The ultimate conclusion of the Opinion follows the rationale of *Rayborn* concluding that:

“The rationale of *Rayborn* applies to the taxation of attorney fees in a habeas corpus proceeding filed by a person confined pursuant to the SVPA.

Based upon the above analysis, we conclude that K.S.A. 20-348 authorizes the court to tax the county for the fees of an attorney appointed to represent an indigent person confined pursuant to the SVPA in a habeas corpus proceeding under K.S.A. 60-1501.”

Each of you is aware that Kansas’ Sexual Predator Treatment Program is located on the Larned State Hospital campus in Pawnee County. There are currently approximately 300 sexual predator patients housed in the program.

In 2009 and 2010 a total of twenty-five (25) K.S.A. 60-1501 habeas corpus cases were appealed from the Pawnee County District Court to Kansas appellate courts after having been determined at the trial court level. I believe the bill that prompted the request for this Opinion was for approximately \$6500 relating to a patient’s 2007 case that had not yet even gone to trial. Obviously the potential costs of these type actions could total thousands of dollars annually. According to Attorney General Opinion 2011-3 these costs must be taxed against Pawnee County.

The Kansas legislature intended the State to be responsible for the costs of the prosecution of SVPA cases when it passed K.S.A 59-29a04a to create the Sexually Violent Predator Expense Fund. However, at the time the statute was passed the potential for collateral litigation from the SVPA patients was unknown. It is unreasonable to believe the legislature would intend that Pawnee County should be responsible for the potential cost of that litigation.

It is my understanding that the Kansas Attorney General's Office will also support SB 217 with a few amendments. I have also attached a copy of the bill with their mark-ups . Pawnee County has no objection to the Attorney General's proposed amendments to SB 217.

Senate Bill 217 will relieve Pawnee County of an unfair burden to pay for all of the collateral litigation which has resulted from the SVPA and I ask that you support the bill.

Sincerely,

John M. Settle
Pawnee County Attorney

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