

MINUTES

SPECIAL COMMITTEE ON JUDICIARY

September 9-10, 2003
Room 514-S—Statehouse

Members Present

Senator John Vratil, Chairperson
Representative Michael R. O'Neal, Vice Chairperson
Senator David Adkins
Senator Derek Schmidt
Representative Marti Crow
Representative Jeff Jack
Representative Peggy Long-Mast
Representative Bill Mason
Representative Rick Rehorn
Representative Daniel Williams

Staff Present

Jerry Ann Donaldson, Kansas Legislative Research Department
Mike Heim, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Russell Mills, Kansas Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Mary Torrence, Revisor of Statutes Office

Conferees

Tuck Duncan, Kansas Wine & Spirits Wholesalers Association
David Owen, Topeka
Terry Presta, Presto Convenience Stores
Neil Whitaker, Kansas Beer Wholesalers Association
Michael Thornbush, Representative of Quick Trip Corporation
Amy Campbell, Kansas Association of Beverage Retailers
Bob Alderson, Casey General Stores
Gordon Yetter, Topeka, Liquor Store Owner
Byron Beaver, Overland Park
Jim Sheehan, Kansas Food Dealers Association and Retail Grocery Association
Clifford Kormer, Topeka Liquor Store Owner
Phillip Bradley, Kansas License Beverage Association
Martin Platt, Wichita Liquor Store Owner
Rebecca Rice, Kansas Beer Wholesalers Association
Kathy Porter, Office of Judicial Administration
Barbara Hinton, Legislative Division of Post Audit

Cindy Lash, Legislative Division of Post Audit
Chief Judge Patrick McAnany, Kansas District Judges Association, 10th Judicial District,
Johnson County
Judge Keith Hooper, District Magistrate Judge, 17th Judicial District, Smith Center
Doug Smith, Kansas Credit Attorneys Association
Larry Zimmerman, Kansas Credit Attorney Association,
Captain Dan Hamblin, Johnson County Sheriff's Office
Sergeant Oscar Thomasson, Sedgwick County Sheriff's Office
Randy Hearrell, Kansas Judicial Council
Jeff Bottenberg, Kansas Sheriff's Association

**Tuesday, September 9
Morning Session**

**Topic No. 2—Kansas Liquor Control Act
and Cereal Malt Beverage Act**

Mary Torrence, Kansas Revisor of Statutes Office, explained 2003 House Sub. for SB 2. The substitute bill would attempt to make the Kansas Liquor Control Act uniform and apply to all counties and cities. It is intended to bind cities and counties and to prevent them from using their home rule power to opt out of any part of the Act. The proposed bill would authorize licensing of retailers in any city unless within 60 days after the effective date of the bill the governing body adopts an ordinance prohibiting the licensing, or unless at any time the voters petition and vote to prohibit the licensing. It would also eliminate the distinctions between cities which have zoning ordinances and those that do not. Also included is a provision which broadens restrictions on places of consumption of alcoholic liquor to include those premises in any city.

The House Committee of the Whole further amended the bill to allow for Sunday sales of alcoholic liquor and cereal malt beverage, as long as a vote was allowed by the people in the county considering such action. The last amendment would allow the purchase and shipment of out-of-state wine ([Attachment 1](#)).

Chairman Vratil informed the Committee that 2003 House Sub. for SB 2 does not contain any provisions allowing sales of alcoholic liquor or cereal malt beverages on holidays. However, the only holiday that falls on Sunday is Easter, which could be in conflict with Sunday sales.

Senator Vratil questioned if one would be able to order or purchase wine on Sunday if the Sunday sales provision did not pass. Ms. Torrence responded that they would be able to order it but because it would have to pass through a liquor store, the person ordering it would not be able to actually purchase it until a weekday. The Senator also asked if one could use a credit card to purchase wine from an out-of-state retailer.

Tuck Duncan, Kansas Wine & Spirits Wholesalers Association, responded that people have been using credit cards for about ten years to purchase alcoholic beverages. He proceeded to explain that a person could order wine from an out-of-state supplier and pay with a credit card. The wine would then be shipped to a local retail liquor store; when the product arrives, they would pay all the taxes on the product, just as if one were purchasing it from that liquor store. He provided the Committee with testimony he had provided in the past relating to many alcohol issues ([Attachment 2](#)).

Chairman Vratil asked if there was anyone else present who would like to speak.

David Owen, Topeka, has been working with homeless individuals for many years. He was opposed to Sunday sales because it would give an alcoholic another day to purchase alcohol and therefore would be pushing them further away from "getting home."

Terry Presta, Presto Convenience Stores, supported Sunday sales as long as it applied to convenience stores and not just liquor stores. He suggested that there was not much difference between the beer sold at a convenience store and that sold in a liquor store. He commented that if one purchased a six pack at a convenience store it would take only one more beer to equal a six pack purchased at a liquor store.

Neil Whitaker, Kansas Beer Wholesalers Association, responded that the difference is that 3.2 percent beer is less than 3.2 percent alcohol by weight; liquor store beer alcohol content is measured by another method, but has more than 3.2 percent alcohol by weight. They usually run between 3.2 percent and 4.5 percent. Approximately 25 percent of sales today is cereal malt beverage. Most recently, South Dakota has done away with 3.2 percent beer and put "regular strength" beer in grocery stores.

Clifford Korner, an owner of a retail liquor store in Topeka, informed the Committee that there are many specialty beer beverages that go as high as 9 percent.

Michael Thornbush, Quick Trip Corporation, disagreed with the suggestion that 25 percent of beer being purchased is cereal malt beverages.

Amy Campbell, Kansas Association of Beverage Retailers, reminded the Committee of all the regulations that retail liquor stores operate under. They are more than willing to have convenience stores sell beer, but on the same playing field, as long as they can meet all the regulations which are currently used. The strong beer issue was not their only concern; they want to ensure that the rules are uniform across the state.

Bob Alderson, Casey General Stores, supported Mr. Thornbush's position. If products which are sold in the liquor stores were of substantially more alcohol, then he could see a problem selling it in convenience stores, but they are not. Mr. Alderson said this would make it easier to control and regulate the alcohol industry as a whole.

Gordon Yetter, Topeka, said that he met with the Secretary of Revenue and discussed the Cereal Malt Beverage Act and that the issue of home rule needed to be addressed. Allowing convenience stores to sell all types of liquor would cost the state a tremendous amount of money. The Committee might want to consider doing the opposite, bringing all alcohol beverages into the liquor stores, so the state would have better control.

Byron Beaver, Overland Park, stated that his company works with about 100 convenience stores in the training and education of those who operate convenience stores, who may not have opportunities like the larger stores. The Legislature needs to enact legislation which is in the best interest of the public—not the convenience stores or retail liquor stores, but the public.

Jim Sheehan, Kansas Food Dealers Association and Retail Grocery Association, commented that there had been a lot of discussion about changing liquor laws in Kansas. He said that he understands why the retail liquor stores do not want convenience stores to sell "strong" beer, because it is a big part of their business. There are retailers who do not care whether they sell strong beer and others who would like to sell everything. He agreed with Mr. Beaver when he said the Legislature should do what is right for the public. A lot of stores will not allow anyone under the age of 21 to check someone out if they are purchasing beer, but the state law is if one is 18 years of age or older they are allowed to check out the customer, as long as it is not consumed at the grocery store.

Phillip Bradley, Kansas License Beverage Association, said that state law does allow one to serve alcohol if they are 18 years or older. However, it does not allow them to mix it or pull a tab.

Martin Platt, Wichita liquor store owner, said that the Liquor Control Act needed to be uniform and cities and counties should not be able to provide local rules.

Rebecca Rice, Kansas Beer Wholesalers Association, said food establishments which sell alcoholic beverages may hire people under the age of 21. She also opposed dram shop legislation.

Tuck Duncan responded that it was the so called "Pizza Hut" amendment which allows college kids to work at restaurants at age 18 and over and to serve alcoholic beverages.

Afternoon Session

Staff distributed an issues memo that the Committee might have concerns about (Attachment 3).

Chairman Vratil took the issues up one by one for discussion and polled each Committee member present for their position on each item included in the issues memo. The following Committee members favored Sunday sales of alcoholic liquor and cereal malt beverages: Representatives Rehorn and Crow; Senators Vratil, Adkins, and Schmidt. The following opposed Sunday sales: Representatives Long-Mast, Mason, and Williams.

The consensus of Committee members present was that the state law regarding alcoholic liquor and cereal malt beverages should be uniformly applicable to all cities and counties.

After Committee discussion and a Committee vote, staff was instructed to draft a report recommending that the Legislature allow local-option Sunday sales of liquor and cereal malt beverages, which essentially codifies what is currently happening in the state, add Sunday sales of cereal malt beverage to convenience/grocery stores, and allow beer taverns to be opened on Sunday. The report will also include a recommendation for a pre-emption section in the recommended bill which would prohibit local units of government from loosening or tightening state-authorized regulation of alcoholic beverages.

While the Committee discussed holiday sales, single-strength beer, and eliminating the category of cereal malt beverages, it did not reach a consensus and therefore, did not make any recommendations on those issues.

The Committee discussed restricting credit card sales, abolishing the age restrictions for persons who sell alcoholic beverages, altering the prohibition regarding the consumption of alcoholic liquor and cereal malt beverages, and changing the restrictions on advertising alcohol. They concluded that current statutes are adequate in the above-mentioned areas.

The Committee discussed the hours of operations for those that sell cereal malt beverages and alcoholic liquor, and concluded that there is little rationality in the current operating hours. They recommended that the Legislature conduct further hearings on the issue of hours of operation for the sale of such products.

The Committee report was also to reflect that a majority of the Committee did not support any changes in the current law regarding cereal malt beverages and strong beer, but the consensus of the Committee was that they thought eliminating the distinction between cereal malt beverage and beer should be further studied, along with what impact a change in the law would have on existing businesses currently established under different state laws, and how changing the distinction would affect those businesses.

The Committee report should also reflect that the Legislature recommends repealing the statutes relating to advertising, since there is an Attorney General's opinion that these laws are unenforceable and recommending repealing the minimum mark-up statute, because they are not being used nor are they being enforced.

The report will include the purchasing of out-of-state wine as drafted in the balloon. The Chairman directed staff to draft a bill regarding the issues agreed to today.

Wednesday, September 10 Morning Session

Topic No. 3—Allocation of Judicial Resources

Jill Wolters, Revisor of Statutes Office, explained 2003 HB 2307 would repeal the one judge, one county statute, to provide that the Supreme Court would determine if a district magistrate judge position is unnecessary. Currently, the Supreme Court can make that decision upon death, resignation, retirement, or removal, if a county has two or more district magistrates or district court judges.

Substitute for HB 2307 would allow the Supreme Court to determine if a district magistrate position is unnecessary due to the yearly average caseload being under 1,200 cases and the ability of other judges picking up those cases. All other provisions are the same as the original bill. On the House floor, the number of cases was changed from 1,200 to 600, to allow counties to retain the position and pay the salary, and provisions clarification was added, stating that the yearly caseload average did not include traffic violations, but would include child in need of care cases, juvenile offender cases, and probate cases. It would also allow the Supreme Court to eliminate a district court judge position and replace it with one or more district magistrate judge (Attachment 4).

Representative O'Neal informed the Committee that there were only four judicial districts affected under the initial threshold, but when traffic cases were taken out of the caseload, one judicial district was swapped for another. The 22nd Judicial District was under the original bill, but now the 15th Judicial District is included, instead. An amendment which should have been considered, but was not, would have allowed part-time judges, so one judge per county could be retained.

Kathy Porter, Office of Judicial Administration, provided a packet of background information regarding the topic (Attachment 5). There are currently 74 district magistrate judges and 160 district judges. The salaries are \$100,225 for a district judge and \$47,416 for a district magistrate judge, both excluding fringe benefits. The caseload per district magistrate judge runs from 668 to 2,960, including traffic; whereas, the caseload per district judge runs from 1,786 to 3,752, also including traffic. She reminded the Committee that with the increase in court caseload, comes the need to increase court staff and that each year, the court has requested more positions and has not received funding for those requests. Three district judges have been requested repeatedly for the 9th (Harvey/McPherson), 8th (Geary/Morris/Marion/Dickinson) and 7th (Douglas) Districts and the court is now needing a new district judge in the 7th (Reno) district. These four requests will be included in the Judicial Branch Budget for funding in the 2005 Session.

Chairman Vratil asked Ms. Porter to provide financial information as to what was paid for travel to and from the semi-annual meetings and travel of personnel outside of their judicial district for which they were assigned. The Committee also asked for a plan from the Judiciary as to how to maximize judicial outcomes and how to use resources as efficiently and effectively as possible.

Members of the Committee expressed support they for the Judicial Branch and yet said they felt frustrated by the Court for not taking a position on these types of issues. Some said the Judicial Branch was using the Legislature for “cover.” Everything in the legislative process is political, whether it is funding or positions. Several members agreed that it was time for the Court to step forward and make the hard choices it needs to make, instead of waiting for the Legislature to take action.

Barbara Hinton, Legislative Division of Post Audit, provided the Committee with a copy of a 1997 audit entitled “Reviewing the Kansas Court System’s Allocation of Staff Resources to the District Courts.”

Cindy Lash, Legislative Division of Post Audit, started by explaining that some of the data is outdated but that one can see a trend. The conclusions of the audit were:

- State statutes specify where and what type of judge will be located in each county or district, and therefore, the court's ability to reassign judges and staff is extremely limited. Any change in this statute would require strong support and cooperation between the Legislature and courts.
- The court is hampered by a lack of workload data, which would give a much better picture of each judge’s actual effort in carrying out his responsibilities. While it would not allow the reassignment of judges, it would show the areas of greatest need and would help when considering the need to request additional judges.
- While there is significant difference in judges’ caseloads, with urban districts having significantly higher caseloads, all districts are now handling an average of 34percent more cases than they did 10 years ago.

Chief Judge Patrick McAnany, Johnson County and representing the Kansas District Judges Association, said the Supreme Court has the duty of managing their branch of government. The Court can only be held accountable for the sound and efficient management of the courts if it is given the responsibility of managing its own resources. Because of the political nature of this issue, the Legislature is the proper venue for the issue of reassigning district magistrate and district judges, to be decided (Attachment 6). Once this is decided, the courts will have the ability to manage their branch more efficiently.

Chairman O’Neal asked why it should be the Legislature’s decision regarding the one-judge-per-county issue. Is it really seen as a political issue, as opposed to a practical one, as to what is most efficient for the judicial system?

Judge McAnany responded that everyone would agree that it is more efficient not to have one judge per county, but the overriding factors require the court to maintain them. The courts can draw the line as to when access to the courts has been denied, but the current issue is above that threshold. Judge McAnany said that it was really an issue of when and how the court can provide services to the citizens of the state and how efficient those services are to be. He said this is why it was better solved by the legislators, which are elected by those citizens.

Representative O’Neal suggested that if there was no statute that inhibited the ability of the reassignment of judges, the court would have a plan in place to do so. He asked what was wrong with asking for a plan now so the statutes could be changed to meet the court's suggestions. Representative O’Neal noted that the District Judges Association has opposed the caseload threshold and wondered why they have not offered an alternative. The real issue, he said, next session was not going to be more money but the reallocation. Judge McAnany responded that he

believed that the managing of judicial resources should be totally up to the Judiciary and no one else.

Judge Keith Hooper, District Magistrate Judge, 17th Judicial District, Smith Center, opposed the repeal of the one-judge-per-county statute but agreed that there needs to be a plan for managing the limited resources efficiently (Attachment 7). He suggested three options:

- Decrease the number of district judges in urban areas and increase the number of magistrate judges which could result in an annual savings of \$2.5 million a year;
- Redraw the judicial districts to align rural counties with urban counties and develop inter-district agreements which would allow magistrate judges to travel to urban counties; or
- Reinstate inter-district travel and develop partnerships between the four judicial districts identified in HB 2307 and the four urban districts.

Representative O'Neal reminded those in attendance that not only did some legislators vote against funding the Judicial Branch adequately, but they also voted against repealing the one-judge-per-county provision. He asked Kathy Porter to prepare information on the disparity of judicial and non-judicial personnel between judicial districts, what needed to be done to redraw the judicial districts, and tracking of closed cases.

Ms. Porter responded that at the time of court unification, each county was fully funded and therefore, the number of personnel at that time was what they have today plus what few have been added. She stated that they are required to keep the county courthouses opened and they need to hire non-judicial personnel. Each courthouse needs to have at least one half-time clerk per county. The Judicial Branch is currently short 31 administrative assistants and secretaries for district judges.

Afternoon Session

Topic No. 4—Judicial Docket Fees

Ms. Porter said that the amount charged for docket fees and distribution of the fees are set by statute. Docket fees are collected from the petitioner as each case is filed. However, cities, counties, and the state do not pay docket fees. A portion of the fee stays with the local unit while other parts are remitted to the State Treasurer for distribution as specified by statute. She provided a list of those distributions (Attachment 8).

Committee members asked why there was a 3.22 percent docket fee going toward a Protection From Abuse Fund when docket fees are not charged for these types of cases, and when the state collects .67 percent for the Crime Victims Assistance Fund, which could be used for the same thing. The Committee requested information in regard to the amount of funds the state receives from the federal government and what the total number of Protection From Abuse (PFA) and Protection From Stalking (PFS) cases filed is for this year. Ms. Porter responded that so far this year, PFS cases were around 2,000 and PFA cases around 9,000.

The courts also collect fines in criminal cases, civil penalties, and bail forfeitures. The fines, penalties, and forfeitures are also distributed to four different funds and the bail forfeitures are split with 40 percent going to the county general fund and the balance to the state treasury.

The National Center for State Courts is in the process of collecting and disseminating information on court fees in the 50 states. Most states have increased their docket fees since 1995 and do not collect it in the same manner.

Judge McAnany said that both the one-judge-per-county issue and the judicial docket fee system are linked, since access to justice will be diminished if the fees keep increasing (Attachment 9).

Doug Smith, Kansas Credit Attorneys Association, stated that all docket fees collected should be retained for the exclusive use of the Judicial Branch. His association does not support funding the Judiciary only through user fees (Attachment 10).

Larry Zimmerman, Kansas Credit Attorney Association, said that a \$5 fee for garnishments is currently being charged. Now, instead of a monthly garnishment being filed, there is one filed and the fee is charged up front.

Captain Dan Hamblin, Johnson County Sheriff's Office, supported increased funding for sheriffs' offices to help cover civil process expenses. He supports a portion of the docket fee collected going to the counties and sheriffs' offices (Attachment 11).

Sergeant Oscar Thomasson, Sedgwick County Sheriff's Office, supported 2003 HB 2293, which would shift the burden from taxpayers to individuals who are actually involved in lawsuits. He said that he would be open to exploring alternative methods of increased funding for service of process, including earmarking part of the docket fee for this purpose. Last year, 545,220 papers were served in Sedgwick County (Attachment 12).

Randy Hearrell, Kansas Judicial Council, thanked the legislators for extending funding though a docket fee increase for the Judicial Council and encouraged them to continue doing so.

Jeff Bottenberg, Kansas Sheriff's Association, said his association was willing to work with the collection attorneys and the legislators to arrive at a compromise.

Representative O'Neal said funding always is taken care of by raising the docket fee, but maybe the Legislature should consider lowering the percentages that go into these funds.

The next Committee meeting was scheduled for October 14 and 15, 2003. The October 15, 2003, meeting day was cancelled. The Committee meeting adjourned.

Prepared by Cindy O'Neal
Edited by Mike Heim

Approved by Committee on:

October 14, 2003