

MINUTES

LEGISLATIVE COORDINATING COUNCIL

April 29, 2005

Members present:

President Steve Morris, Chairperson
Speaker Doug Mays, Vice-Chairperson
Senator Derek Schmidt, Majority Leader
Senator Anthony Hensley, Minority Leader
Representative Clay Aurand, Majority Leader
Representative Ray Merrick, Speaker Pro Tem
Representative Dennis McKinney, Minority Leader

The meeting was called to order by President Morris at 7:55 a.m. in Room 423-S, State Capitol. President Morris explained that the purpose of the meeting of the Council was to consider participation in the case of *Montoy v. State of Kansas*. President Morris called on Mr. Furse to provide information to the Council concerning legislative participation in this case.

Mr. Furse reviewed with the Council 2005 Senate Resolution No. 1859 which was adopted by the Senate on April 27, 2005. This resolution, pursuant to K.S.A. 46-1224, authorized the Legislative Coordinating Council to file an amicus curiae brief or otherwise participate in the case *Montoy v. State of Kansas*. Mr. Furse reviewed with the Council one form of participation which would be for a "Motion for Permission to Address the Court" which would be a motion by the Legislative Coordinating Council for the Kansas Supreme Court to authorize Senator Vratil and Representative O'Neal to orally present information to the court concerning 2005 House Bill No. 2247 in light of the court's decision in the *Montoy* case. (See the complete motion in Appendix I.)

After discussion in which Speaker Mays supported the concept of requesting the Kansas Supreme Court to authorize Senator Vratil and Representative O'Neal to orally present information to the court concerning 2005 House Bill No. 2247, Representative McKinney commented that the state's attorney general has been representing the state in this matter. Senator Schmidt pointed out that the two members who would be requested to address the court are both attorneys and vice-chairpersons of the educational committees of

the house of which they are a member. Senator Hensley moved that the Motion for Permission to Address the Court be modified in point "1." by deleting "to act on behalf of the Legislature" and inserting "to act on behalf of a majority of the Legislature" and that point "3." be amended to delete "urging" and inserting "directing"; the motion was seconded by Representative McKinney and the motion failed on a vote of two members in favor and five members opposed.

Representative McKinney inquired as to whether there were any provisions in the motion to address the court to allow representatives of the minority to orally provide information to the Kansas Supreme Court. Speaker Mays commented that 2005 House Bill No. 2247 was the work product of the whole legislature and not just part of the legislature. Senator Schmidt pointed out that the Kansas Constitution through the provision allowing protests protected minority rights and many members of the legislature on the nonprevailing side exercised the right to protest and that those who voted on the prevailing side did not have this opportunity. Representative McKinney expressed concern that the minority view would not be represented under the motion as proposed.

Representative McKinney moved that Representative Crow be added to the list of legislators who would be requested to orally present information to the Kansas Supreme Court in the *Montoy* case. Representative McKinney noted that Representative Crow is an attorney and was a member of the Select Committee on School Finance. Speaker Mays explained that there were many reasons people voted against the law and that in this case the legislature is defending the law as the work product of the legislature. Senator Hensley pointed out that there are two sides to the issue involved in this matter. Senator Schmidt commented that the motion for permission to address the court is to defend the constitutionality of the legislature's action. Representative Aurand commented that the legislature passed the bill and it is the legislature's work product. The motion failed on a vote of two members in favor and five members opposed.

Representative McKinney moved to strike the names of Senator Vratil and Representative O'Neal from the motion and to insert in lieu thereof the Revisor's Office. Senator Hensley seconded the motion. Senator Hensley discussed the background of the legislative counsel, and Mr. Furse answered questions with regard to background of the Revisor's Office representing the legislature in the past. Speaker Mays commented that the court needs to have the information which could be provided by Senator Vratil and Representative O'Neal before the court in the consideration of this matter.

Representative McKinney expressed concern that legislators representing the legislature would be difficult because they represent different constituencies. Senator Hensley concurred that representation by legislators is not appropriate because of their particular interests. The motion failed on a vote of two members in favor and five members opposed.

Speaker Mays moved that the "Motion for Permission to Address the Court" be filed with the Kansas Supreme Court on behalf of the Legislative Coordinating Council. Senator Schmidt seconded the motion. Speaker Mays in support of the motion commented that there are various opinions and sides to the matter and that the Council was not trying to defend opinions or sides but to defend the action of the legislature in the passage of 2005 House Bill No. 2247. The motion was adopted on a vote of five members in favor and two members opposed.

On motion the meeting was adjourned.

Prepared by

Norman J. Furse,
Revisor of Statutes,
as Secretary

Approved by

President Steve Morris, Chairperson

APPENDIX I

MOTION FOR PERMISSION TO ADDRESS THE COURT

COMES NOW, the Legislative Coordinating Council (LCC) by and through its counsel, Norman J. Furse, Revisor of Statutes, and moves this Court for an order granting special permission for Senator John Vratil and Representative Michael O'Neal to orally present to the Court information concerning 2005 House Bill No. 2247. In support of its motion, the LCC shows this Court as follows:

1. On April 27, 2005, the Senate passed Senate Resolution No. 1859 authorizing the Legislative Coordinating Council to act on behalf of the Legislature in the above captioned case.
2. The LCC has the power and authority to speak on behalf of the Legislature and has done so in the past. Legislative Coordinating Council v. Frahm, 262 Kan. 144 Syl. ¶ 1, 148, 154, 936 P.2d 267 (1997).
3. On January 3, 2005, this Court issued its opinion in Montoy v. State of Kansas, 278 Kan. 769, 102 P.3d 1160 (2005) urging the Legislature to take action regarding the provision of a suitable education by April 12, 2005.
4. The Legislature in light of this Court's opinion enacted 2005 House Bill No. 2247.
5. The LCC recognizes that this Court's decision regarding 2005 House Bill No. 2247 will have a profound and lasting impact on the state, its citizenry, its schools and its budget and feels it has a responsibility to fully inform the Court of the Legislature's actions and the reason therefor.
6. Senator Vratil and Representative O'Neal have first-hand knowledge of the planning and concerns that went into 2005 House Bill No. 2247 and are willing to address the Court on behalf of the LCC and the Legislature.

WHEREFORE, the Legislative Coordinating Counsel prays for an order granting special permission for Senator Vratil and Representative O'Neal to address the Court on May 11, 2005, concerning 2005 House Bill No. 2247 in light of this Court's January 3, 2005, decision and to address any concerns this court has concerning the bill.