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MEMORANDUM

To: Chairman King and members of the Senate Judiciary Committee

From: Jill A. Wolters, First Assistant Revisor

Date: January 14, 2016

Subject: SB 320, Judicial branch, nonseverability clause of 2015 HB 2005

Senate Bill No. 320 repeals the nonseverability clause of 2015 HB 2005, codified at K.S.A. 2015 Supp. 20-1a18 (see following page), and declares that the remainder of the provisions of 2015 HB 2005 shall remain in force.

The bill is in response to *Solomon v. State*, No. 114,573, 2015 WL 9311523 (Kan. Dec. 23, 2015). The case was filed (in Shawnee County) by Chief Judge Larry Solomon, 30th Judicial District, arguing that section 11 of 2014 HB 2338, allowing the district judges in each judicial district to elect a chief judge of such district court, was a violation of the separation of powers doctrine and that the Kansas Supreme Court retains the general administrative authority over the administration of the Courts. The Judge further argued that the entire bill was invalid based on the nonseverability clause in section 43 of 2014 HB 2338.

The State argued that the Judge did not have a cognizable injury and thus did not have standing to sue. Further, the State argued that the election of the chief judge of the district court by the district judges did not “constitute a ‘significant interference’ with the Kansas Supreme Court’s ‘general administrative authority’”¹ and therefore was not a violation of the separation of powers doctrine.

The District Court found that the Judge did have standing, and that section 11 of 2014 HB 2338 was an unconstitutional violation of the separation of powers doctrine. Further, the District Court invalidated the entire bill based on the nonseverability clause in section 43 of 2014 HB 2338.

On December 23, 2015, the Kansas Supreme Court agreed with the District Court, that the Judge did have standing, that section 11 of 2014 HB 2338 was an unconstitutional violation of the separation of powers doctrine and that the Kansas Supreme Court has the general administrative authority over the administration of the Courts. The Supreme Court did not address the invalidity of the entire bill based on the nonseverability clause because it was not challenged by either party. Thus, the ruling of the District Court invalidating the entire bill stands.

¹ *Solomon v. State*, No. 2015-CV-156, at 18 (Kan. D. Ct. Sept. 2, 2015),
<http://www.shawneecourt.org/DocumentCenter/View/540>.

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During the 2015 Session, the Legislature enacted HB 2005, which contained the judicial branch budget and amendments to various statutes concerning docket fees. That bill also contained a nonseverability clause that was tied to the provisions of 2014 HB 2338. In Neosho County, the State filed for and was granted a temporary injunction thus being enjoined from enforcing the HB 2005 nonseverability clause through March 15, 2016.²

K.S.A. 2015 Supp. 20-1a18. **Nonseverable provision, includes chapter 82 of the 2014 Session Laws of Kansas.** Except as provided further, the provisions of this act are not severable, nor are they severable from the provisions of 2014 Senate Substitute for House Bill No. 2338, chapter 82 of the 2014 Session Laws of Kansas. If any provision of this act or of 2014 Senate Substitute for House Bill No. 2338, chapter 82 of the 2014 Session Laws of Kansas, is stayed or is held to be invalid or unconstitutional, it shall be presumed conclusively that the legislature would not have enacted the remainder of this act without such stayed, invalid or unconstitutional provision and the provisions of this act are hereby declared to be null and void and shall have no force and effect. If the appropriations to the judicial branch for fiscal year 2016 or fiscal year 2017 are reduced below the amounts appropriated in this act by any other act of the 2015 or 2016 regular session of the legislature, the provisions of this section are hereby declared to be null and void and shall have no force and effect and the provisions of this act and of 2014 Senate Substitute for House Bill No. 2338, chapter 82 of the 2014 Session Laws of Kansas, are declared to be severable.

History: L. 2015, ch. 81, § 29; June 5.

² *State v. Shipman*, No. 2015-CV-73 (Kan. D. Ct. Sept. 22, 2015).