

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on February 17, 2005, in Room 123-S of the Capitol.

All members were present except:

Donald Betts- excused

Committee staff present:

Mike Heim, Kansas Legislative Research Department

Jill Wolters, Office of Revisor of Statutes

Helen Pedigo, Office of Revisor of Statutes

Nancy Lister, Committee Secretary

Conferees appearing before the committee:

Phill Kline, Attorney General

Dan Sight, Kansas Association of Realtors

Kathy Olsen, Kansas Bankers Association

John Peterson, Kansas Land Title Association

Others attending:

See attached list.

Chairman Vratil opened the hearing on **SB 181**.

SB 181 Civil actions alleging violations of article 6 of Kansas constitution (education article) heard by three judge panel

Proponent:

General Kline testified in support of the bill. General Kline stated that there are 168 district court judges in Kansas and their jurisdiction is limited to their courtrooms. However, the impact of their decisions on public policy debate may be dramatic as is witnessed by recent school finance litigation. General Kline cited several considerably different court opinions on the same types of issues that occurred within the same time frame of this litigation. While the *Montoy* case was in the district court, the judge issued an opinion that was far reaching and quintessentially rendered local option budgets and local expenditures unconstitutional. At the same time the judge was rendering that opinion and threatening to shut down schools, in the district court in Johnson County, a case that was brought by Wyandotte County public schools against Johnson County, which alleged that local sales tax implemented under the economic development laws of the state and dedicated to the schools, was an unconstitutional delegation of authority for local fund-raising for education. The sales tax in Johnson County is the same approach that was first implemented by the Salina School District. The Salina District had a sales tax in place while the District was a plaintiff in the *Montoy* case. Its interests were in direct contradiction on that particular issue to the rulings in court, while in line with the interests of the Johnson County School Districts and the Johnson County School Case. The Johnson County district court judge ruled in favor of Johnson County and said that local authority is constitutional. So, in essence, we had two conflicting district court judge decisions.

General Kline stated that this example demonstrates the need to have a panel that is more contemplative and more representative in its interpretation of the Constitution. A single court judge should not have the impact that this district court judge had as it relates to school finance. General Kline supports a three-judge panel. **SB 181** preserves the right of appeal to the Kansas Supreme Court and legislative authority.

Chairman Vratil closed the hearing on **SB 181** and opened the hearing on **SB 215**.

SB 215 Commercial real estate broker lien act

Proponents:

Dan Sight, representing the Kansas Association of Realtors, testified in support of the bill. (Attachment 1) Currently, 21 other states have enacted this type of legislation. It is the goal of the National Association of Realtors to strengthen the legal rights of Kansas real estate brokers in order to collect commissions in a fair

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and timely manner. Real estate brokers have no statutory right to a lien on real property. They do have a contractual right to a commission based on a written agreement with the landlords and sellers of property. Mr. Sight stated commercial brokers are often pressed into reducing or negotiating new commissions at the closing table after a contractual amount was agreed upon in the sales process. **SB 215** seeks to provide a broker a way to place a lien on the property, since the value of the property was increased by the broker's efforts. Where this type of legislation has been enacted, the amount of commission law suits have been reduced.

Mr. Sight stated a brokerage claim is based on a written agreement signed by the involved parties. Pressure comes when the people who a broker has earned commission from do not pay because they know the broker cannot afford costly litigation. Most listing agreements call for a lease commission to be paid upon occupancy of the space by a tenant, and upon lease renewals as well. The bill covers this situation. The bill has very specific timing in regards to when a lien may be filed, recorded and released, and it provides protection by making the non-prevailing party pay for the legal fees.

Senator Allen asked about the commission closing on a lease. Mr. Sight stated that there really is no closing in a lease transaction. The tenant signs a lease, moves in on April 1, and the broker's commission is due that date. Sometimes the landlord decides not to pay the commission. Senator Allen questioned how often does this happen. Mr. Sight estimated in at least five percent of the transactions, and more often on lease renewals.

Chairman Vratil stated that the commission may be worth a few thousand dollars, but the process of suing to be paid the commission may cost tens of thousands of dollars, so the financial equities are not there to bring a lawsuit. Chairman Vratil stated that the bill was proposed last year, initiated in the House. The House passed it by a substantial majority, but when it came to conference committee, the conference committee discovered some problems, and the committee asked the interested parties to rework the bill during the summer, and they have done that.

Kathy Olsen, Kansas Bankers Association (KBA), offered two amendments. The first amendment would require a broker to record a lien release with the Register of Deeds in the county where the notice of lien was recorded. The second amendment was regarding line 43, page 4 of the bill. It would require a broker who knows that he or she is not going to take action to collect a brokerage fee, to give the property owner or the lender with a security interest in the property a lien waiver or lien subordination to signify that he or she no longer has a claim to the property. Ms. Olsen also stated that the KBA believes the statute should acknowledge the possibility that something other than payment in full could discharge the lien of the broker. The KBA requested that the Committee consider adding the language suggested in the attached balloon amendment to cover this possibility. (Attachment 2)

Opponent:

John Peterson, representing the Kansas Land Title Association (KLTA), expressed opposition to the bill stating that the KLTA felt that the proposal may result in erroneous liens being filed by brokers, which would needlessly encumber real estate. (Attachment 3) Additionally, brokers with a contract may sue an owner for up to five years. Mr. Peterson stated that he believed this bill was an improvement over the bill from last year. He suggested changes on page 2, lines 25 and 27 to strike, "and if," and replace with, "so long as", and on line 32, in talking about installments, "conveyance of the commercial estate," proposed to insert, "on behalf of a broker who represented the current owner of the real estate". This would prevent the situation under an installment payment of the fees, an innocent buyer or owner would get the blame for a second or third payment that the seller had not paid to his broker, that he might not even know about. On page 3, line 7, where it states, "the lien attaches when the prospective buyer purchases or otherwise accepts a conveyance or transfer," better verbiage would be, "the lien attaches when the prospective buyer takes title to or otherwise accepts a conveyance or transfer." Mr. Peterson agreed to provide a balloon amendment that included the proposed changes to the bill.

Senator Allen asked for clarification regarding item three on the attachment. Chairman Vratil summarized, if a seller has an agreement with the broker for payment of commission and the seller disputes that the seller owes the commission to the broker, if that dispute arises before the closing of the transaction, a lien must be filed. In order to foreclose that lien, the broker would have to file a lawsuit or the seller would have to pay the commission. If the dispute doesn't arise until after the closing, the lien could be filed and a lawsuit would

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have to be filed to foreclose that lien. In either event, the non-prevailing party in litigation would have to pay attorneys fees.

Neutral:

Suzanne Simon, the Registrar of Deeds for Wabunsee County, representing the Register of Deeds Association, was neutral on the bill.

Chairman Vratil closed the hearing on **SB 215** and asked the Committee to consider final action on **SB 181**.

Final Action:

SB 181 Civil actions alleging violations of article 6 of Kansas constitution (education article) heard by three judge panel

Senator Donovan clarified that the panel would be appointed by the chief justice. Senator Goodwin questioned where the salaries would come from for the panel. Chairman Vratil stated that the judges are paid by the state now, so the state would continue to pay their salaries. A motion was made to recommend the bill favorably for passage. Senator O'Connor moved, seconded by Senator Donovan, and the motion carried.

Chairman Vratil asked the Committee to consider final action on **SB 72**.

Final Action:

SB 72 Worthless checks, more than once in a seven-day period, increased penalty

Chairman Vratil noted that the bed space impact report for fiscal year 2006 was 2-3 fewer prison admissions, and in 2015, 2-4 fewer prison admissions. Senator Umbarger asked for clarification that persons who “make right” the worthless checks would not be subject to felony charges. Senator Journey stated that under the current statute, the person who receives the bad check, sends a registered letter that tells the writer that he or she has 21 days to pick it up. If the check is not made right in that time, criminal intent is presumed. However, it is still a rebuttable presumption. The intent of the law is to give people the opportunity to make a worthless check good. Senator Donovan clarified that the bill has nothing to do with someone writing a check and then stopping payment on the check.

Chairman Vratil noted that there was a small technical correction. The revisors have been advised. On page 2, line 21, the first comma should be deleted. A motion was made to recommend the bill favorably with the technical correction amendment made. Senator Bruce moved, seconded by Senator Umbarger, and the motion carried.

Chairman Vratil adjourned the meeting at 10:30 A.M. The next meeting is scheduled for February 18, 2005.