

SENATE JUDICIARY COMMITTEE

FEBRUARY 26, 1970

ROOM 523

Bills considered:

House Bill No. 1996
House Concurrent Res. No. 1033
House Bill No. 1613
House Bill No. 1094

The Senate Judiciary Committee met February 26, 1970 in Room 523 at eleven o'clock A.M. with the chairman, Senator Steadman Ball, presiding. All members were present except Senator Herd.

Joe Bogle, a senior law student, was present to observe.

Stephen Sobiloff, Attorney at Law, and Mr. Stan Lind appeared in the interest of House Bill No. 1996. Mr. Sobiloff explained the Federal provisions relative to this bill. Senator Bennett and Robert Alderson made some comments. Senator Ball read Mr. Lind's suggested amendment, and appointed Senator Woodard and Senator Bennett to work with Mr. Sobiloff and report back to the full committee.

Mr. Emerson Lynn, Mr. Stewart Newlin and Mr. Larry Miller appeared to present their ideas regarding House Concurrent Res. No. 1033. Mr. Lynn talked on the times of publication notices and presented a suggested amendment to be considered by the committee. Senator Woodard suggested the committee check the fiscal note on the resolution. The committee voted to report the resolution back to the Senate with the recommendation that it be amended to provide for publication for five consecutive weeks preceding the next election and that the resolution be adopted, ^{as amended} A copy of the report is hereto attached.

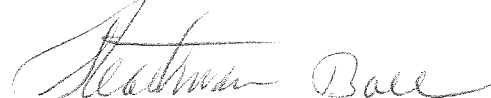
The committee also voted to amend House Bill No. 1613 (As amended by House Committee of the Whole) by substituting a new bill to be designated as "Senate Substitute for House Bill No. 1613 (As Amended by House Committee of the Whole)", as per copy of the report hereto attached and the substitute bill be passed. A copy of the substitute bill is hereto attached.

House Bill No. 1094 was taken up and the committee voted to amend the bill and to recommend it back to the Senate for passage. A copy of the report is hereto attached.

The committee adjourned to meet Tuesday, March 2, 1970 in Room 523 at eleven o'clock A.M.


Martha P. Welch, Recording Secretary

MINUTES APPROVED:


Steadman Ball, Chairman

3-2, 1970

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

Your committee on Judiciary

Recommends that HOUSE CONCURRENT RESOLUTION No. 1033. (As Further Amended by House Committee)

~~XXXXXX~~ A PROPOSITION to amend article 14 of the constitution of the state of Kansas, relating to constitutional amendment and revision."

Be amended:

On page 2, line 1, by striking by striking all before the word "preceding" and inserting in lieu thereof the following:
"each week for five (5) consecutive weeks immediately";

And the resolution be adopted as amended.

Chairman.

SENATE SUBSTITUTE FOR HOUSE BILL NO. 1613

By Committee on Judiciary

AN ACT relating to the criminal code; amending the crime of promoting obscenity; establishing the crime of promoting obscenity to minors; amending K. S. A. 1969 Supp. 21-4301, and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K. S. A. 1969 Supp. 21-4301 is hereby amended to read as follows: 21-4301. (1) Promoting obscenity is knowingly or recklessly:

(a) Manufacturing, issuing, selling, giving, providing, lending, mailing, delivering, transmitting, publishing, distributing, circulating, disseminating, presenting, exhibiting or advertising any obscene material; or

(b) Possessing any obscene material with intent to issue, sell, give, provide, lend, mail, deliver, transfer, ^{transmit,} publish, distribute, circulate, disseminate, present, exhibit or advertise such material; or

(c) Offering or agreeing to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise any obscene material; or

(d) Producing, presenting or directing an obscene performance or participating in a portion thereof which is obscene or which contributes to its obscenity.

Evidence that materials were promoted to emphasize their prurient appeal or sexually provocative aspect shall be relevant in determining the question of the obscenity of such materials, and shall create a presumption that the person promoting the same did so knowingly or recklessly.

(2) (a) Any material or performance is "obscene" if, considered as a whole, its predominant appeal is to prurient, shameful or morbid interest in nudity, sex, excretion, sadism or masochism, and the material is patently offensive and utterly without redeeming social value. Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be intended for distribution to children or any other especially susceptible audience.

(b) "Material" means any tangible thing which is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound or other manner.

(c) "Performance" means any play, motion picture, dance or other exhibition performed before an audience.

(3) It is a defense to a prosecution for obscenity that the persons to whom the allegedly obscene material was disseminated, or the audience to an allegedly obscene performance, consisted of persons or institutions having scientific, educational, governmental or other similar justification for possessing or viewing the same.

(4) The provisions of this section and the provisions of ordinances of any city prescribing a criminal penalty for exhibit of any obscene motion picture shown in a commercial showing to the general public shall not apply to a projectionist, or assistant projectionist, provided he has no financial interest in the show or in its place of presentation other than regular employment as a projectionist or assistant projectionist. The provisions of this section shall not exempt any projectionist or assistant projectionist from criminal liability for any act unrelated to projection of motion pictures in commercial showings to the general public.

(5) Promoting obscenity, for the first or second offense, is a class A misdemeanor, except that upon conviction for the second

such offense committed within two (2) years after conviction for the first offense, a fine shall be imposed in an amount not less than two thousand five hundred dollars (\$2,500) nor more than five thousand dollars (\$5,000) in addition to or instead of any confinement; and promoting obscenity, for a third or subsequent offense committed within two (2) years after a previous conviction for such offense, is a class E felony.

(6) Upon any conviction for promoting obscenity, the court may require, in addition to any fine or imprisonment imposed, that the defendant enter into a reasonable recognizance with good and sufficient surety, in such sum as the court may direct, but not to exceed fifty thousand dollars (\$50,000), conditioned to the effect that in the event the defendant is convicted of a subsequent offense of promoting obscenity within two (2) years after such conviction, he shall forfeit said recognizance.

Sec. 2. (1) Promoting obscenity to minors is promoting obscenity where the recipient of the obscene material or a member of the audience of an obscene performance is a child under the age of eighteen (18) years.

(2) Notwithstanding the provisions of K. S. A. 1969 Supp. 21-3202 to the contrary, it shall be an affirmative defense to any prosecution under this section that:

(a) The defendant had reasonable cause to believe that the minor involved was eighteen (18) years old or over, and such minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was eighteen (18) years old or more.

(b) The allegedly obscene material was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incident to an approved course or program of instruction at such school.

(3) Promoting obscenity to minors is a class A misdemeanor, for the first offense, with a mandatory fine of not less than two thousand five hundred dollars (\$2,500) nor more than five thousand dollars (\$5,000) in addition to or instead of any imprisonment imposed upon conviction; for the second such offense committed within two (2) years after conviction for the first such offense it shall be a class E felony; and for a third or subsequent offense committed within two (2) years after a previous conviction for such offense it shall be a class D felony.

(4) Upon any conviction for promoting obscenity to minors, the court may require, in addition to any fine or imprisonment imposed, that the defendant enter into a reasonable recognizance with good and sufficient surety, in such sum as the court may direct, but not to exceed fifty thousand dollars (\$50,000), conditioned to the effect that in the event the defendant is convicted of a subsequent offense of promoting obscenity to minors within two (2) years after such conviction, he shall forfeit said recognizance.

(5) This section shall be a part of and supplemental to the Kansas criminal code.

Sec. 3. If any provision of this act is declared unconstitutional, or the application thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be effected thereby.

Sec. 4. K. S. A. 1969 Supp. 21-4301 is hereby repealed.

Sec. 5. This act shall take effect and be in force from and after July 2, 1970, and its publication in the statute book.

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

Your committee on Judiciary

Recommends that House Bill No. 1613 (As Amended by House Committee of the Whole)

"AN ACT relating to the dissemination of indecent material to minors; defining certain terms; establishing certain presumptions; providing for certain defenses; declaring dissemination of indecent materials to minors to be a class A misdemeanor."

Be amended:

By substituting a new bill to be designated as "Senate Substitute for HOUSE BILL No. 1613 (As Amended by House Committee of the Whole)," as follows:

"Senate Substitute for HOUSE BILL NO. 1613

"AN ACT relating to the criminal code; amending the crime of promoting obscenity; establishing the crime of promoting obscenity to minors; amending K. S. A. 1969 Supp. 21-4301, and repealing the existing section."

And the substitute bill be passed.

MR. PRESIDENT:

Your committee on Judiciary

Recommends that House Bill No. 1094

"AN ACT relating to the professional corporation law of Kansas, and to corporate names of corporations organized thereunder; amending K. S. A. 1968 Supp. 17-2711 and repealing the existing section."

Be amended:

On page 1, following the enacting clause, by inserting a new section 1 to read as follows:

"Section 1. K. S. A. 1969 Supp. 17-2710 is hereby amended to read as follows: 17-2710. (a) A professional corporation may be organized only for the purpose of rendering one type of professional service and service ancillary thereto and shall not engage in any other business, except that a single professional corporation may be organized to and render professional services under both types set forth in items (5) and (9) or under both types set forth in items (2) and (6) or under both types set forth in items (7) and (9) of subsection (b) of K. S. A. ~~1965~~ 1969 Supp. 17-2707, but shall be deemed to have the following purposes, whether or not authorized by its articles of incorporation:

"1. To purchase, receive, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated;

"2. To purchase, receive, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares of other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships or individuals, insurance or annuities in any form, or direct or indirect obligations of the United States or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof;

"3. To pay pensions and establish pension plans, profit-sharing plans, stock bonus plans, stock option plans and other incentive plans for any or all of its directors, officers and employees;

"4. To do all things necessary or incidental to the practice of the profession which the professional corporation is authorized to practice.";

And by renumbering original sections 1, 2 and 3 as sections 2, 3 and 4, respectively;

Also on page 1, in line 1, by striking "1968" and inserting in lieu thereof "1969"; in line 3, by striking all after "hereunder"; by striking all of lines 4 to 7, inclusive; in line 8, by striking all before "and" and inserting in lieu thereof the following:

"may be any name not contrary to law or the ethics of the profession involved"; also in line 8, by striking "also"; in line 14, by striking all after "prohibited"; by striking all of lines 15 to 19, inclusive; in line 20, by striking all before the period;

On page 2, in line 1, by striking "1968 Supp." and inserting in lieu thereof "1969 Supp. 17-2710 and"; also in line 1, by striking "is" and inserting in lieu thereof "are";

In the title, in line 1, by striking the comma; in line 2, by striking "and to" and inserting in lieu thereof the following: "; providing for organization thereof; concerning"; in line 3, by striking "1968" and inserting in lieu thereof "1969"; also in line 3, by inserting "17-2710 and" after "Supp."; in line 4, by striking "section" and inserting in lieu thereof "sections";

And the bill be passed as amended.

Chairman.