

SENATE JUDICIARY COMMITTEE

MARCH 3, 1970

ROOM 523

The Senate Judiciary Committee met March 3, 1970 in Room 523 at eleven o'clock A.M. All members were present except Senators Bell, Foster, Hodge and Steineger. The chairman, Senator Steadman Ball called the meeting to order.

Senator Woodard was present to explain the amendments that had been prepared on House Bill No. 1638. Senator Woodard moved that the bill be amended to include 60-304 and 61-1805. Senator Storey seconded and the motion carried. Senator Woodard moved that the bill be reported back to the Senate with the recommendation that it be passed as amended. Senator Storey seconded and the motion carried. A copy of the report is hereto attached and made a part of these minutes.

House Bill No. 1991 was taken up and Senator Ball explained the bill section by section. The Wichita City Attorney, John Decker, was present to be heard on the bill. He stated he was opposed to certain provisions of HB 1991, namely: the court costs being increased. He questioned the legality of taxing the increase as court costs and said it would have an adverse effect on the city. Mr. Kenneth Kern, Commissioner of Finance and Revenue read a statement regarding the objections of the Board of Commissioners of the City of Topeka. A copy of his remarks is hereto attached and made a part of these minutes. Sgt. Ed Ritchie of the Topeka Police Department talked briefly on the bill stating that people already become upset with the present court costs, that the Police Department is against adding \$5.00 more and the passage and effect of this bill would place policemen in a bad light with the public.

Mr. Wright Crummett spoke briefly and expressed the view that court costs should be reasonably based on what it costs to run the court. Senator Ball stated that some Wichita attorneys still want to be heard on this subject and no final action was taken.

Senator Herd reported on House Bill No. 1714 and presented his prepared amendments to the committee. He moved the adoption of the amendments. Senator Pomeroy seconded and the motion carried. Senator Herd then moved that the bill be reported back to the Senate with the recommendation that it be passed as amended and the motion carried. It was amended as per copy attached.

Senator Woodard presented his suggested amendments on House Bill No. 1996 to the committee. Senator Bennett raised a question about the part under (d) and moved that the first portion of the report be adopted. Senator Gaar seconded. Senator Storey moved the adoption of the amendments in their entirety, Senator Tillotson seconded and the motion carried. Senator Storey moved that the bill be reported back to the Senate with the recommendation that it be passed as amended, Senator Woodard seconded and the motion carried.

Senator Smith explained Senate Bill 636 and the committee approved its introduction.

Senator Bennett explained House Bill No. 1993 and Senator Storey moved that the committee recommend its passage. Senator Bennett seconded and the motion carried.

The committee adjourned to meet March 4, 1970 at 11 A.M.


Steadman Ball, Chairman


Martha P. Welch, Recording Sec.

Minutes approved, March 9, 1970

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

Your committee on Judiciary

Recommends that House Bill No. 1996 (As Amended by House Committee)

"An Act relating to attachment and garnishment proceedings; providing certain exemptions and restrictions; amending K. S. A. 60-701, 60-702, 60-703 and 60-715 and K. S. A. 1969 Supp. 60-717, 60-718, 60-2310, 61-2003, 61-2005 and 61-2006, and repealing the existing sections; also amending Form No. 8 of the appendix of forms following K. S. A. 1969 Supp. 61-2605."

Be amended:

On page 2, in line 29, by inserting before "the" where it first appears in the line the following: "only the aggregate disposable earnings of an individual may be subjected to wage garnishment, and"; also in line 29, by striking "the" where it last appears in the line and inserting in lieu thereof "such";

On page 3, in line 6, by inserting after the period the following: "Nothing in this act shall be construed as charging the plaintiff in any garnishment action with the knowledge of the amount of any garnishee's earnings prior to the commencement of such garnishment action."; in line 20, by inserting after "garnishment" the following: ", unless such person, firm or corporation or the assignees of either shall utilize the services of a regularly admitted and general practicing attorney in this state to prosecute the collection of such account";

And the bill be passed as amended.

Chairman

REPORTS OF STANDING COMMITTEES

Mr. President:

Your committee on Judiciary

Recommends that House Bill No. 1993 by Committee on Judiciary

"An Act relating to estates of certain decedents; providing for dispensing with administration in certain cases and authorizing the refusal of letters of administration in such cases; amending K. S. A. 1969 Supp. 59-2287 and repealing the existing section."

Be passed.

Chairman

REPORTS OF STANDING COMMITTEES

Mr. President:

Your committee on Judiciary

Recommends that House Bill No. 1714 by Committee on Judiciary
 (As amended by House Committee)

"An Act concerning the code of civil procedure; amending K. S. A.
 60-601 and 60-2410 and repealing the existing sections."

be amended on page 2, in line 15, by striking all after "given"
and inserting in lieu thereof the following: "once each week for
three (3) consecutive weeks prior to"; in line 20 by striking all
after the word "therein"; by striking all of lines 21, 22, and 23; and in
line 24, by striking all before the period and inserting in lieu thereof
the following: ", with the last such publication to be not less than
seven (7) days prior to the day of sale";

And the bill be passed as amended.

Chairman

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

Your committee on Judiciary

Recommends that House Bill No. 1638

"AN ACT relating to the code of civil procedure; concerning proof of service; amending K. S. A. 1969 Supp. 60-312 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. 60-304 is hereby amended to read as follows: 60-304. The summons and petition shall be served together. The plaintiff shall furnish the clerk such copies of the petition as are necessary. Service shall be made as follows:

"(a) Individual. Upon an individual other than a minor or an incapacitated person, by delivering a copy of the summons and of the petition to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the petition to an agent authorized by appointment or by law to receive service of process, but if the agent is one designated by statute to receive service, such further notice as the statute requires shall be given. The judge, or in his absence the probate judge, upon a showing that service as prescribed above cannot be made with due diligence, may order service to be made by leaving a copy of the summons and of the petition at the defendant's dwelling house or usual place of abode.

"(b) Minor. Upon a minor, by delivering a copy of the summons and of the petition personally (1) to the minor and (2) also either to his guardian or conservator if he has one within the state or to his father or mother or other person having his care or control or with whom he resides, or if service cannot be made upon any of them, then as provided by order of the judge.

"(c) Incapacitated person. Upon an incapacitated person, by delivering a copy of the summons and of the petition personally (1) to

his guardian, conservator or a competent adult member of his family with whom he resides, or if he is living in an institution, then to the director or chief executive officer of the institution, or if service cannot be made upon any of them, then as provided by order of the judge and (2) unless the judge otherwise orders, also to the incapacitated person.

"(d) Governmental bodies. Upon a county, by delivering a copy of the summons and of the petition to one of the county commissioners or the county clerk or the county treasurer; upon a township, by delivering a copy of the summons and of the petition to the clerk or the trustee; upon a city, by delivering a copy of the summons and of the petition to the clerk or the mayor; upon any other public corporation, body politic, district or authority by delivering a copy of the summons and of the complaint to the clerk or secretary or, if not to be found, to any officer, director, or manager thereof; and upon the state or any governmental agency of the state, when subject to suit, by delivering a copy of the summons and petition to the attorney general or an assistant attorney general.

"(e) Corporations and partnerships. Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, when by law it may be sued as such, by delivering a copy of the summons and of the petition to an officer, partner or a managing or general agent, or by leaving the copies at any business office of the defendant with the person having charge thereof or by delivering copies to any other agent authorized by appointment or required by law to receive service of process, and if the agent is one authorized by law to receive service and the law so requires, by also mailing a copy to the defendant.

"(f) Foreign corporation--registered agent. Service of process or service of any notice or demand required or permitted by law to be served on a foreign corporation may also be made on such corporation by service thereof on the registered agent of such corporation. Whenever any foreign corporation authorized to transact business or transacting business without authority in this state shall fail to appoint or

maintain in this state a registered agent upon whom service of legal process or service of any such notice or demand may be had, or whenever any such registered agent of such corporation cannot with reasonable diligence be found at the registered office in this state, or whenever the certificate of authority of any foreign corporation shall be forfeited, then and in every such case the secretary of state shall be irrevocably authorized as the agent and representative of such foreign corporation to accept service of any process, or service of any notice or demand required or permitted by law to be served upon such corporation. Service on the secretary of state of any such process, notice or demand against any such foreign corporation shall be made by delivering to and leaving with him, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, and duplicate copies of the petition, notice or demand or the clerk of the court may send such duplicate copies directly to the secretary of state by restricted mail. In the event that any process, notice or demand is served on the secretary of state, he shall immediately cause a copy thereof to be forwarded by restricted mail, addressed to such corporation at its principal office as the same appears in the records of the secretary of state, or to the registered or principal office of such corporation in the state of its incorporation. The secretary of state shall keep a record of all processes, notices and demands served upon him under this rule, and shall record therein the time of such service and his action with reference thereto.

"(g) Insurance companies or associations. Service of summons or other process may also be made on any insurance company or association, organized under the laws of the state of Kansas by service on the commissioner of insurance in the same manner as that provided for service on foreign insurance companies. All the requirements of law relating to service on foreign insurance companies so far as applicable shall also apply to domestic insurance companies.

"(h) Acknowledgment or appearance. An acknowledgment of service on the summons, or the voluntary general appearance of a defendant, is equivalent to service.

"(i) Refusal to accept service. In all cases when the person to be served, or an agent authorized by him to accept service of summonses and petitions, shall refuse to receive copies thereof, the offer of the duly authorized process server to deliver copies thereof, and such refusal, shall be a sufficient service of such summons and petition. If the plaintiff, his agent or attorney shall file an affidavit that to the best of the affiant's knowledge and belief the defendant is a nonresident who is employed in this state, or that the place of residence of the defendant is unknown, then the affiant may direct that the service of summons or other process shall be made by the sheriff, marshal or other duly authorized person by directing an officer, partner, managing or general agent or the person having charge of the office or place of employment at which the defendant is employed, to make the defendant available for the purpose of permitting the sheriff, marshal or such other duly authorized person to serve the summons or other process. ";

Also on page 1, in line 1, by striking "Section 1" and inserting in lieu thereof "Sec. 2";

On page 2, in line 2, by striking "promptly"; also in line 2, by inserting after "filed" the following: "within five (5) days after such mailing"; following line 21, by inserting a new section 3 to read as follows:

"Sec. 3. K. S. A. 1969 Supp. 61-1805 is hereby amended to read as follows: 61-1805. (a) The summons and petition shall be served together, and the plaintiff shall furnish the clerk of the court such copies of the petition as are necessary. In actions where all the defendants may be served personally in the county where the action is commenced, service shall be effected within not more than seven (7) days from the date the summons is issued. When all the defendants cannot be so served, and service is required in another county or in another state, service shall be effected within not more than fifteen (15) days from the date of the summons. Service shall be as follows:

"(1) Service upon an individual other than a minor or an incapacitated person, shall be made by delivering a copy of the summons

and of the petition to him personally or by leaving copies thereof at his usual place of residence or by delivering a copy of the summons and of the petition to an agent authorized by appointment or by law to receive service of process, but if the agent is one designated by statute to receive service, such further notice as the statute requires shall be given. Personal service upon an individual outside the state shall be made in substantial compliance with the applicable provisions of K. S. A. 60-308.

"(2) Service upon a minor, incapacitated person, foreign or domestic corporations, partnerships or insurance companies or associations shall be made in accordance with the applicable provisions of K. S. A. ~~1968~~ 1969 Supp. 60-304.

"(b) An acknowledgment of service on the summons, or the voluntary general appearance of a defendant, is equivalent to service. In all cases when the person is to be served, or an agent authorized by him to accept service of summonses and petitions, shall refuse to receive copies thereof, the offer of the duly authorized process server to deliver copies thereof, and such refusal, shall be a sufficient service of such summonses and petitions. If the plaintiff, his agent or attorney shall file an affidavit that to the best of the affiant's knowledge and belief the defendant is a nonresident who is employed in this state, or that the place of residence of the defendant is unknown, then the affiant may direct that the service of summons or other process shall be made by the sheriff, marshal or other duly authorized person by directing an officer, partner, managing or general agent or the person having charge of the office or place of employment at which the defendant is employed, to make the defendant available for the purpose of permitting the sheriff, marshal or such other duly authorized person to serve the summons or other process.";

And by renumbering original sections 2 and 3 as sections 4 and 5, respectively;

in line 22,
Also on page 2, by inserting "60-304," after "Supp."; also in line 22, by striking "is" and inserting in lieu thereof "and 61-1805 are";

In the title, in line 1, by striking "the code of civil procedure" and inserting in lieu thereof "service of civil process"; also in line 1, by inserting after the semicolon the following: "providing for personal or resident service;"; in line 2, by inserting "60-304," after "Supp."; also in line 2, by inserting "and 61-1805" after "60-312"; in line 3, by striking "section" and inserting in lieu thereof "sections";

And the bill be passed as amended.

Chairman.