

Approved March 25, 1988  
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Robert S. Wunsch at  
Chairperson

3:30 ~~xxx~~ a.m./p.m. on March 15, 1988 in room 313-S of the Capitol.

All members were present except:

Representatives Jenkins, Fuller and Peterson, who were excused

Committee staff present:

Jerry Donaldson, Legislative Research Department

Jill Wolters, Revisor of Statutes Office

Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Tom Keys, Russell County Sheriff, Russell

Matt Lynch, Judicial Council

Jim Robertson, Child Support Enforcement Administrator, Department of Social and Rehabilitation Services

Mike Hill, Sedgwick County Sheriff, Wichita

Major Lyman Reece, Sedgwick County Sheriff's Department, Wichita

James Fountain, Reno County Sheriff, Hutchinson

Walt Scott, Kansas Association of Credit Bureaus

Kathy Greenlee, Director, Kansas Association of Domestic Violence Programs

Jean Kutzley, Attorney General's Office

David Stremming, King Travel Agency

Ralph Watkins, National Tour Association & Goodwill Tours, Erie

Phil Oliver, Gateway Tours

Hearing on S.B. 584 -- Sheriffs duties in sale of property under execution

Sheriff Tom Keyes testified this bill amends 60-2415 by requiring that all taxes due or delinquent should be noted on the sheriffs return after the sale.

The hearing on S.B. 584 was closed.

Representative Kennard moved and Representative Douville seconded to report S.B. 584 favorable for passage. The motion passed.

Hearing on Substitute for S.B. 608 -- Fee for service of summons and petitions

Matt Lynch stated in regard to the original S.B. 608, there would be some problems in obtaining service on persons if all service had to be first attempted by mail. In regard to Substitute to S.B. 608, he suggested amending line 0123 by adding "except as otherwise provided by law". He said Sec. 2 should be clarified that when a petition is filed in one county and service is actually performed in another county that the \$15.00 fee goes to the county where the service is performed.

Jim Robertson testified the fiscal note for this bill could exceed one million dollars for the Kansas Child Support Enforcement Program unless 60-2005, state, cities and counties exempt from depositing court costs, exceptions, is amended to include "or fees for service of summons and petitions", (see Attachment I).

Sheriff Mike Hill testified he supports Substitute for S.B. 608. In regard to the original version of S.B. 608, he proposed an amendment to K.S.A. 60-314 which would change the word "shall" to "may" in regard to mailing a copy of the summons and of the petition by first class mail, postage prepaid, to the person to be served, (see Attachment II).

Major Lyman Reece explained Sedgwick County, due to the large volume of summons and petition, is always behind in serving papers. They could more effectively handle the service if they could serve only those that won't respond to service by mail.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,  
room 313-S, Statehouse, at 3:30 ~~xxx~~/p.m. on March 15, 1988

Sheriff James Fountain testified the ability to mail summons and petitions would be helpful in dealing with the increasing volume of summons and petitions.

Walt Scott questioned whether \$15.00 for each service is appropriate. He also questioned the advisability of mailing the summons and petitions.

Kathy Greenlee testified she was concerned with the effect this bill might have on the protection from abuse act. She suggested amending line 0120 of the bill by adding "people falling under the protection from abuse act are exempt", or on line 0123 by adding "except as otherwise provided by law".

The hearing was closed on Substitute for S.B. 608.

Hearing on S.B. 640 -- Rules of civil procedure

Matt Lynch testified S.B. 640 amends two statutes in the code of civil procedure to correct internal statutory references, and are technical amendments only.

The hearing was closed on S.B. 640.

Representative Allen moved and Representative Douville seconded to report S.B. 640 favorable for passage and that it be placed on the consent calendar. The motion passed.

Reopen hearing on H.B. 3000 -- An act regulating travel promoters

Jean Kutzley testified the liability insurance coverage for errors and omissions would not cover consumers who were victimized on purpose. She also said the travel promoters this bill attempts to regulate do not go bankrupt, they just close up and go somewhere else. She recommended adding language to line 0032 "Travel promoter means a person who through the use of a telephone or mail solicitation communicates an offer".

David Stremming testified this bill would discriminate against honest tour companies in Kansas that do not sell airline tickets. They operate bus tours and would not be exempt from this bill. He said the people in the travel industry would be willing to help with the wording of this bill.

Ralph Watkins testified he is the Vice-President of Goodwill Tours. He stated the requirement that all travel promoters keep on deposit with the State Treasurer, or a bank in Kansas, cash or securities in the amount of \$500,000 would create a hardship on many tour operator companies. It would be virtually impossible for most small operators to comply, (see Attachment III).

Phil Oliver stated his tour company would be forced out of business if this bill passes. He said a \$100,000 surety bond would cost \$1,000 a year and require \$100,000 cash collateral.

The Committee meeting was adjourned at 5:30 p.m. The next meeting will be Wednesday, March 16, 1988, at 3:30 p.m. in room 313-S.



DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES  
Winston Barton, Secretary

TESTIMONY REGARDING SENATE BILL 608

SRS understands the difficulty most sheriff offices have in serving process in large numbers of cases and supports any method which will increase the efficiency of this endeavor. However, it is important to note that unless the state is clearly exempted from paying service of process fees, the fiscal note resulting from the enactment of this bill could exceed one million dollars for the Kansas Child Support Enforcement Program alone.

If SRS, court trustee and contract attorneys file only four legal actions requiring service per work day, the state cost would be \$1,008,000.

K.S.A. 60-2005 currently exempts the state and all cities and counties from the requirement of depositing court costs or docketing fees. It is arguable that the proposed service of process fee is a court cost. However, to make it perfectly clear, we urge the adoption of the attached amendment to K.S.A. 60-2005.

Submitted by: Jim Robertson  
CSE Administrator  
Dept. of Social and  
Rehabilitation Services  
296-4188

JAR:tmd  
Attachment

*Attachment I*

**60-2005.** State, cities and counties exempt from depositing court costs; exceptions. The state of Kansas and all cities and counties in this state are hereby exempt, in any civil action in which such state, city or county is involved, from depositing court costs or paying docket fees prescribed by any other law of this state, except that if the costs are assessed against the state of Kansas or any city or county in this state in any such action, such costs shall include the amount of the docket fee prescribed by K.S.A. 60-2001 together with any additional courts costs accrued in the action.

History: L. 1969, ch. 289, § 1; L. 1974, ch. 168, § 6; July 1.

#### CASE ANNOTATIONS

1. 60-2001(b) should parallel this section if docket fee to be taxed even if poverty affidavit filed (dissent-

or fees for service of summons and petitions



## SEDGWICK COUNTY, KANSAS

SHERIFF'S DEPARTMENT

MIKE HILL

Sheriff

COUNTY COURTHOUSE • 525 N. MAIN • WICHITA, KANSAS 67203 • TELEPHONE 268-7264

March 14, 1988

The Honorable Robert S. Wunsch  
Chairman - House Judiciary Committee  
Kansas House of Representatives  
State Capitol - Topeka, Kansas 66612

Dear Chairman Wunsch:

The purpose of this letter is to provide amplifying information for the amending or enacting of appropriate legislation pertaining to the method or execution of service regarding civil papers.

As an example, during 1987, the Sedgwick County Sheriff's Department delivered 148,608 civil papers. For 1988, the total should exceed 153,000. Currently, nine deputy sheriff's are dedicated solely to the delivery of civil papers. Using a 42.5 hour routine work week, each officer is expected to complete over 76 cases per day or 10.1 cases per hour or 2.5 each 15 minutes during 1988. When considering the constraints of travel time, individual service waiting time, weather and etc., the timely management of servicing civil papers is inefficient. Innovative alternatives are required to minimize already high local expenditures allotted for the service of civil papers. In short, to acquire added staffing is costly and not a viable alternative during the budget cycle process in County Government. However, a review of current state statutes affords a method to reduce costs and maintain an ability to improve service to the courts, attorneys, and most important, the citizens we serve.

It appears that Section 20, K.S.A. 61-1803 could be amended to afford a change for the current method of serving Chapter 61, Limited Action cases which represents approximately 30% of the present work load. On the surface, the statute has less restrictive guidelines for completing the requirements for service. Specifically, a change to the statute would reduce the amount of annual cases by approximately 50,000.

*Attachment II*

Based upon K.S.A. 1986 Supplement 61-1803 which in part states ". . . Summons; by whom served. . . ., by an attorney admitted to the practice of law before the Supreme Court of Kansas . . ." procedure could be established for Limited Action cases whereas the action or case is directly mailed to the defendant(s).

As an example; the issuing attorney would first file the civil action with the Clerk of the District Court (currently being accomplished). The Clerk would affix a court date allowing sufficient time for mailing of appropriate legal documents. The Clerk delivers the Civil Action to the Sheriff's Department for service and/or mailing. An enclosed post card, or registered mail with a return standard format for summons receipt could be easily implemented. When the Clerk's Office receives acknowledgement from the defendant, the clerk would make the proper return entry and notify the courts and issuing attorney. Accordingly, both the defendant and the attorney have a mutual understanding of the timing requirements for court appearance. The entire evolution should require about 20 days or less.

In the event the defendant(s) did not respond within a prescribed time period, other courses of action would be available by the attorney in accordance with K.S.A. 61-1805. That is; using the Sheriff's Department resources to serve the document as now being accomplished.

The benefits attained for a change to the statute are many-fold and cost effective. They are as follows:

- . Officers have additional time serving papers requiring personal service or other appropriate actions.

- . The daily rate of papers to be served would be reduced from 76 to approximately 45.

- . Neutralize the continual rise in total numbers of papers being served annually.

- . Helpful to lower staffed Sheriff's Departments in smaller counties.

- . Significantly reduce the administrative handling of papers during the pre and post service of papers.

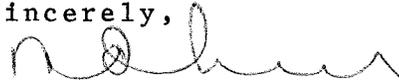
- . Eliminate the need to increase staffing to accommodate an ever increasing annual work load.

By effecting a change to the statute, greater flexibility is afforded the issuing attorneys to better manage his court time. Also, the defendant(s) are given the opportunity to contact the issuing attorney several days prior to a scheduled court appearance.

The current method of service requires streamlining to reduce the volume of annual papers served. With the present staffing, the current service system is counterproductive and time consuming. It should be noted that both K.S.A. 60-314 and 61-186 could easily be changed to upgrade the system. The only action required would be a change of the words SHALL for MAY in both above statutes. The attachment is germane.

Thank you for your attention in this matter.

Sincerely,



MICHAEL D. HILL  
SHERIFF

MDH:kg  
attachment  
cc: House Judiciary Committee  
Members

PROPOSED CHANGES TO K.S.A. 60-314: Summons and petition; service by first-class main on individual, corporation or partnership.

The following is a guideline for re-writing of the current statute. Key words that we feel should be in any new statute are underlined.

60-314

(a) Notwithstanding any other method of serving the summons and petition upon a defendant, a summons and petition may be served upon a defendant of any class referred to in subsections (a) and (e) of K.S.A. 60-304 and amendments thereto by mailing a copy of the summons and of the petition by first--class mail, postage prepaid, to the person to be served, together with two copies of a notice and acknowledgment of receipt of summons and petition and a return envelope, postage prepaid, addressed to the sender.

(b) Unless good cause is shown for not doing so, the court shall order the payment of the reasonable costs of obtaining personal service by the person served, if such person does not complete and return the notice and acknowledgment of receipt of summons and petition within 20 days after its mailing.

(c) If service is made under subsection (a), return shall be made by the sender's filing with the court of acknowledgment of receipt of summons and petition.

(d) Service of process shall be considered obtained under K.S.A. 60203 and amendments thereto upon the execution of the acknowledgment of receipt of summons and petition in order for an action to be deemed commenced.

(e) The notice and acknowledgment of receipt of summons and petition referred to in subsection (a) shall be in substantially the same form as is currently shown in K.S.A. 60-314 subsection (e).

STATEMENT OF THE NATIONAL TOUR ASSOCIATION

PRESENTED BY MR. RALPH WATKINS

BEFORE THE

KANSAS HOUSE COMMITTEE ON JUDICIARY

TUESDAY, MARCH 15, 1988

*Attachment III*

MY NAME IS RALPH WATKINS. I AM THE VICE PRESIDENT OF GOODWILL TOURS LOCATED IN ERIE, KANSAS. I AM ALSO AN ACTIVE MEMBER OF THE NATIONAL TOUR ASSOCIATION (NTA). I AM APPEARING HERE TODAY ON BEHALF OF NTA TO PRESENT OUR VIEWS ON HOUSE BILL 3000.

BEFORE I DISCUSS THOSE PARTICULAR VIEWS, I THINK IT WOULD BE HELPFUL IF I PROVIDED YOU WITH SOME BACKGROUND INFORMATION ON NTA. THIS ORGANIZATION, WHICH HAS BEEN IN EXISTENCE FOR 36 YEARS, CURRENTLY HAS A MEMBERSHIP IN EXCESS OF 3,100 BUSINESSES AND ORGANIZATIONS INVOLVED IN THE GROUP TRAVEL INDUSTRY.

THE NUCLEUS AND FOCAL POINT OF THE ASSOCIATION IS THE OVER 500 TOUR COMPANIES WHICH SELL PRE-PACKAGED OR SPECIALIZED TOURS TO THE GENERAL PUBLIC AND TO PRE-FORMED GROUPS.

IN ADDITION TO OUR TOUR COMPANIES, WE ALSO HAVE OVER 2,000 TOUR SUPPLIER MEMBERS. THESE INCLUDE HOTELS, RESTAURANTS, SIGHTSEEING ATTRACTIONS, BUS COMPANIES, AIRLINES, ETC., ALL OF WHICH PROVIDE ESSENTIAL COMPONENTS OF GROUP TOURS. OUR THIRD MEMBER CATEGORY IS REFERRED TO AS DESTINATION MARKETING ORGANIZATIONS, AND INCLUDES LOCAL CONVENTION AND VISITORS BUREAUS, CHAMBERS OF COMMERCE AND ALL 50 STATE TRAVEL OFFICES.

NTA AND OUR TOUR COMPANY MEMBERS PLACE A VERY HIGH PRIORITY ON PROVIDING PROFESSIONAL AND ETHICAL SERVICES. OPERATOR MEMBERS ABIDE BY A STRICT NTA CODE OF ETHICS AND ARE EXTREMELY PROUD OF THE PROFESSIONAL REPUTATION THAT THE ASSOCIATION MEMBERSHIP HAS THROUGHOUT OUR COUNTRY.

A PRIMARY METHOD THAT WE USE IN PUTTING THIS PRIORITY INTO ACTION IS THROUGH THE MEMBERSHIP REQUIREMENTS WE HAVE ESTABLISHED FOR TOUR COMPANIES AND MEMBER SERVICES THEY RECEIVE UPON BEING ADMITTED TO THE ASSOCIATION.

IN TERMS OF NTA MEMBERSHIP REQUIREMENTS, A TOUR COMPANY MUST HAVE BEEN IN THE BUSINESS AT LEAST ONE YEAR, AND MUST HAVE IN ITS EMPLOY SOMEONE WHO HAS WORKED IN ALL FACETS OF GROUP TRAVEL FOR AT LEAST TWO YEARS. WITH REGARD TO MEMBER SERVICES, IN ADDITION TO A COMPREHENSIVE EDUCATION AND CERTIFICATION PROGRAM, NTA IMPLEMENTED ON JANUARY 1, 1988 A MAJOR NEW CONSUMER PROTECTION PROGRAM. THROUGH THIS PROGRAM, EVERY NTA OPERATOR IS PROVIDED WITH UP TO \$100,000 IN CONSUMER PROTECTION. IN THE EVENT OF A BANKRUPTCY BY A TOUR OPERATOR MEMBER OF NTA, CONSUMERS' DEPOSITS AND ADVANCE PAYMENTS WILL BE REPAID TO THE CONSUMERS UP TO A TOTAL OF \$100,000. THIS PROGRAM IS SUPPORTED BY A RESERVE OF ONE MILLION DOLLARS OF NTA FUNDS.

ANOTHER IMPORTANT REQUIREMENT IS THAT ALL NTA TOUR OPERATOR MEMBERS MUST MAINTAIN AT LEAST ONE MILLION DOLLARS COVERAGE IN PROFESSIONAL LIABILITY, ERRORS AND OMISSIONS INSURANCE. PROFESSIONAL LIABILITY, ERRORS AND OMISSIONS INSURANCE IS ALSO KNOWN AS "MALPRACTICE" INSURANCE AND BASICALLY IS INSURANCE WHICH PROTECTS AGAINST CLAIMS ARISING OUT OF A NEGLIGENT ACT, ERROR OR OMISSION IN THE PROFESSIONAL SERVICE RENDERED BY THE TOUR OPERATOR OR ITS EMPLOYEES.

THESE PROGRAMS REPRESENT FORMS OF CONSUMER PROTECTION WHICH ARE NOT AVAILABLE TO FLY-BY-NIGHT OPERATORS THAT ATTEMPT TO DEFRAUD THE CONSUMER.

MR. CHAIRMAN, WE WOULD LIKE TO THANK THE COMMITTEE FOR INCLUDING LANGUAGE IN HOUSE BILL 3000 THAT INCLUDES THE \$300,000 OR MORE OF LIABILITY INSURANCE COVERAGE FOR PROFESSIONAL ERRORS AND OMISSIONS AND A SURETY BOND OR EQUIVALENT IN THE AMOUNT OF \$100,000 OR MORE FOR THE BENEFIT OF CONSUMERS IN THE EVENT OF A BANKRUPTCY ON THE PART OF A TRAVEL PROMOTER. THIS LANGUAGE ACKNOWLEDGES THE APPROACH NTA HAS TAKEN IN REGARD TO THE PRIORITY WE PLACE ON EFFECTIVE CONSUMER PROTECTION.

THERE ARE, HOWEVER, TWO MODIFICATIONS THAT WE WOULD SUGGEST IN REGARD TO THIS AMENDMENT. THE FIRST IS THAT THE MINIMUM LEVEL OF PROFESSIONAL LIABILITY INSURANCE BE INCREASED FROM \$300,000 TO \$1 MILLION. IN THE CURRENT LIABILITY INSURANCE MARKET, THIS LEVEL OF COVERAGE IS NOT EASY TO OBTAIN AND WOULD NOT BE AVAILABLE TO COMPANIES THAT ARE UNABLE TO DEMONSTRATE SOME DEGREE OF FINANCIAL STABILITY. THIS WOULD SERVE TO DISTINGUISH THE LEGITIMATE OPERATOR FROM THE FRAUDULENT OPERATOR AND WOULD STRENGTHEN THIS LEGISLATION. THE SECOND MODIFICATION DEALS WITH THE REQUIREMENT THAT ALL TRAVEL PROMOTERS KEEP ON DEPOSIT WITH THE STATE TREASURER OR A BANK IN KANSAS, CASH OR SECURITIES IN THE AMOUNT OF \$500,000 OR IN LIEU OF THE CASH AND SECURITIES A SURETY BOND IN THE SAME AMOUNT. WE FEEL THIS REQUIREMENT WOULD CREATE A

HARDSHIP ON MANY LEGITIMATE TOUR OPERATOR COMPANIES. ONLY THE LARGEST OF OPERATORS COULD MEET THIS REQUIREMENT AND EVEN THEY MAY ENCOUNTER SOME DIFFICULTIES IN COMPLYING WITH THE LEGISLATION. IT WOULD BE VIRTUALLY IMPOSSIBLE FOR MOST SMALL OPERATORS, EVEN THOUGH THEY ARE LEGITIMATE BUSINESSES, TO COMPLY. WE WOULD ASK THAT THIS REQUIREMENT BE REDUCED TO A MORE REASONABLE AND SIGNIFICANTLY LOWER AMOUNT.

SMALL BUSINESSES ARE THE BACKBONE OF OUR NATION. EACH DAY MORE SMALL BUSINESSES ENCOUNTER SITUATIONS WHICH FORCE THEM TO CEASE OPERATIONS. WE SINCERELY HOPE THAT THIS LEGISLATURE DOES NOT BELIEVE THAT SMALL BUSINESS MEANS UNNECESSARY BUSINESS AND THAT YOU WILL CONSIDER OUR REQUESTS FOR MODIFICATIONS WHICH STRENGTHEN THIS BILL WITHOUT CAUSING UNDUE HARDSHIP ON THE SMALL BUT LEGITIMATE OPERATORS IN OUR STATE.

NTA IS EXTREMELY PROUD OF THE SUCCESSFUL EFFORTS ITS MEMBERS HAVE UNDERTAKEN TO PROMOTE CONSUMER PROTECTION, QUALITY AND ETHICAL SERVICES TO THE TRAVELLING PUBLIC. THIS APPROACH IS REINFORCED BY AN AGGRESSIVE CONSUMER INFORMATION CAMPAIGN TO PROMOTE NTA MEMBERS AS PROVIDERS OF TRAVEL SERVICES IN WHICH THE PUBLIC CAN HAVE FULL AND TOTAL CONFIDENCE.

AGAIN, MR. CHAIRMAN, WE COMMEND YOU AND THE COMMITTEE FOR INCLUDING LANGUAGE IN THE LEGISLATION REGARDING ERRORS AND OMISSIONS INSURANCE AND HOPE YOU WILL KEEP THAT LANGUAGE IN THE BILL. I AM VERY APPRECIATIVE OF YOUR TIME AND YOUR CONSIDERATION OF OUR VIEWS.