

Approved March 2, 1988  
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at  
Chairperson

10:00 a.m./~~pm~~ on February 29, 1988 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Frey, Hoferer, Burke, Feleciano, Gaines, Langworthy, Parrish, Winter and Yost.

Committee staff present:

Gordon Self, Office of Revisor of Statutes  
Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Lee Hornbaker, Junction City Attorney  
Matt Lynch, Kansas Judicial Council  
Judge Herbert W. Walton, District Judge, Olathe  
Don Jarrett, Johnson County Counselor  
Michael D. Pepoon, Sedgwick County Assistant County Counselor  
Marjorie Van Buren, Office of Judicial Administrator

Senate Bill 533 - Professional corporation, withdrawing or retiring shareholders.

Lee Hornbaker, Junction City Attorney, stated he had requested this bill at the suggestion of former Judge John Brookens. He explained he represented a firm of attorneys who split up, and in splitting the assets, he discovered there was something left out in the statute. The law does not apply to a voluntary withdrawal of a qualified person from a professional corporation nor does it cover an involuntary withdrawal. The Kansas Statute covers only dissolution caused by death or disqualification. A copy of his handout is attached (See Attachment I).

Following committee discussion, Senator Hoferer moved to report the bill favorably and placed on the consent calendar. Senator Parrish seconded the motion. The motion carried.

Senate Bill 640 - Rules of civil procedure.

Matt Lynch, Kansas Judicial Council, explained the technical problems that came before the civil code committee. He said there are no substantive changes in the bill. A copy of his handout is attached (See Attachment II).

Senator Hoferer moved to report the bill favorably and placed on the consent calendar. Senator Gaines seconded the motion. The motion carried.

Senate Bill 692 - Code for the enforcement of county resolutions.

Judge Herbert W. Walton, District Judge, Olathe, testified he has read the bill through, and it presents a good piece of legislation to recommend to the legislature. He said this will enable better control of health standards, building and fire codes, zoning, and sanitation. Committee discussion was held with Judge Walton concerning court costs.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

room 514-S, Statehouse, at 10:00 a.m./p.m. on February 29, 1988

Senate Bill 692 continued

Don Jarrett, Johnson County Counselor, explained this bill is directed at establishing a workable mechanism for the enforcement of county codes and resolutions through a simplified court procedure. Over the recent years, the county has evolved more and more into an urban environment. Growth and development have brought many benefits to the county and the state, but with them has come the need for government procedures to evolve. A copy of his testimony is attached (See Attachment III). Committee discussion was held with Mr. Jarrett concerning technical matters in the bill and fines provided.

Michael D. Pepoon, Sedgwick County Assistant County Counselor, appeared in support of the bill. He stated we feel the bill effectively addresses the current problems in enforcement of County resolutions and would provide urban counties such as Johnson County and Sedgwick County with the ability to process in a timely manner violations of county resolutions and codes similar to enforcement provisions now available to cities. A copy of his statement is attached (See Attachment IV).

Marjorie Van Buren, Office of Judicial Administrator, stated she spoke with the Chief Justice, and he still feels the bill, with new language in it, should go through the judicial council so they can review it. She said the chief justice is in support of the bill.

Senator Gaines made a conceptual motion to amend the bill to set up a minimum cost of \$29. Senator Parrish seconded the motion. The motion carried. Senator Burke moved to amend the bill to clean up the tax lid amendment, and in line 252 to replace "as" with "are required". Senator Feleciano seconded the motion. The motion carried. Senator Burke moved to amend the bill to provide the effective date be upon publication in the Kansas Register. Senator Langworthy seconded the motion. The motion carried. Senator Langworthy moved to report the bill favorably as amended. Senator Gaines seconded the motion. The motion carried.

The chairman announced because of the workload and the deadline coming up, an extra meeting will have to held during the lunch hour this week.

The meeting adjourned.

A copy of the guest list is attached (See Attachment V).



January 13, 1988

Senator Robert G. Frey  
Kansas State Senate  
State Capitol Building  
Topeka, KS 66612

Re: Kansas Professional Corporation Law

Dear Senator:

Fortunately, the matter to which this letter refers does not frequently become a point of litigation. But, it recently became a point of litigation here in the District Court of Geary County, Kansas and I was involved in the matter. In my studies of our Kansas Professional Corporation law and particularly in my studies of the provisions made in that law for dissolution, I came across an omission. Fortunately, the matter was resolved without a full blown trial but the Judge, the Honorable John Brookens, became interested in my point and suggested that I might call it to your attention. It may be that an amendment to the law would be appropriate to take care of the situation.

First, I direct your attention to K.S.A. 17-2714 and just to assist you, I enclose a xerox copy of that statute. Next, rather than go into great length on this, I attach a portion of my "memorandum trial brief" which was submitted to the Court and wherein I discuss the apparent omission from our Kansas Statutes. You see the Kansas Statute covers only dissolution caused by

"death or disqualification".

There is nothing in the statute which says it applies in event of a voluntary withdrawal of a qualified person from a professional corporation nor does it cover an "involuntary withdrawal".

In our particular case we all agreed that the statute would be applied even though it was not applicable to the existing situation. The next case might not be so fortunate. You will note that the Florida court has held emphatically that under a similar statute it does not apply at all where a person voluntarily withdraws from a professional corporation.

Att. I

Senator Robert G. Frey  
January 13, 1988  
Page Two

Senator, it appears to me the statute could well be amended to read somewhat as follows:

"K.S.A. 17-2714 . . . If the articles of incorporation or bylaws of a corporation subject to this act fail to state a price or method of determining a price at which the corporation or its shareholders may purchase the shares of a withdrawing stockholder, or of a retiring stockholder or of a deceased stockholder or of a stockholder no longer qualified to own shares in the corporation . . . ."

I have added words as underlined to provide the statute would apply to a withdrawing or a retiring stockholder.

I call the matter to your attention and leave it to your good judgment.

Very truly yours,

LEE HORNBAKER

LH:lw

Enclosures

The Kansas Professional Corporation Law is found in K.S.A. 17-2706 through 2720. The transfer of its shares and who may hold its shares are governed by K.S.A. 17-2712 and may be owned only by a qualified person who is one duly licensed by the State of Kansas to practice in the designated professional field (K.S.A. 17-2707).

K.S.A. 17-2714 provides for the disposition of stock held by "a shareholder no longer qualified to own shares in the corporation" and provides that if no other agreement is in effect then the disqualified shareholder shall be entitled to the "fair value" of the stock at the time of the disqualification (K.S.A. 17-2714).

**17-2714. Professional corporation law; death or disqualification of shareholder.** If the articles of incorporation or bylaws of a corporation subject to this act fail to state a price or method of determining a price at which the corporation or its shareholders may purchase the shares of a deceased shareholder, or a shareholder no longer qualified to own shares in the corporation, then the price for such shares shall be determined by arbitration pursuant to the rules of the American arbitration association. Unless request in writing is made for arbitration hereunder within thirty (30) days after the death or disqualification of a shareholder, the fair value shall be determined by a district judge of the district court in which the principal place of business of the professional corporation is located, said determination to be had by the district judge without a jury. The election to incorporate under this act shall constitute a full and final waiver of the right of jury trial on all issues in respect to the price and fair value to be paid for such shares.

**History:** L. 1965, ch. 157, § 9; L. 1976, ch. 145, § 43; Jan. 10, 1977.

**Law Review and Bar Journal References:**

1963-65 survey of future interests and estate planning, James K. Logan, 14 K.L.R. 293, 294 (1965).

Comparison of provisions for continuity of professional corporations under this section with continuity of law partnerships, Donald A. Bell, 35 J.B.A.K. 173, 205 (1966).

**CASE ANNOTATIONS**

1. Declaratory judgment action to fix "fair value" of corporate stock within the meaning hereof. *Schaefer & Associates v. Schirmer*, 3 K.A.2d 114, 116, 590 P.2d 1087.

We pause to note that the Kansas law in fact covers only "death or disqualification" of a shareholder and does not cover "voluntary withdrawal" and in the absence of a provision covering the matter of "voluntary withdrawal" some states have held the Courts have no authority to set a value on the stock of a person "voluntarily withdrawing". We refer to the Florida case, Corlett, et al v. Merritt, 478 So. 2d 828, Florida (1985). That case involved the rights of a member of a professional corporation to compensation for his stock upon voluntary withdrawal.

Florida like Kansas has no provision which might be construed to compel a professional corporation to repurchase the shares of a withdrawing shareholder. The Florida Court stated that, absent a statutory provision for redemption, the obligation of a professional corporation to redeem its stock must be imposed either by its articles of incorporation or some other agreement between the shareholders. Corlett, Killian, Hardeman, McIntosh and Levi, P.A. v. Merritt, 478 So. 2d 828 (Fla. DCA 1985). Where no such provision is present in the corporate documents, one may not be implied by the Court. Thus, a professional corporation, absent an express statutory or contractual requirement, cannot be judicially compelled to redeem the shares of a withdrawing shareholder. The Court further stated in the opinion that:

"None of the ethical dilemmas or "[a]bsurdities [which] could result because of this unique position," 651 P.2d at 852, [i.e.-ownership of stock by a nonemployee] are so compelling as to warrant a court-imposed redemption obligation on the part of the corporation.

That a professional who resigns from the corporation could well be left in the unfortunate position of owning unmarketable shares of stock is generally true of the minority shareholders in all close corporations. But rather than being a compelling reason in favor of a court intervening, the distinct probability of this unfortunate state of affairs arising is a compelling reason why parties must agree in advance on a redemption provision. Where an employee who purchases such shares for valuable consideration either lacks the foresight or the bargaining power to insist upon a redemption agreement in the event of his resignation, it is not incumbent upon the courts to protect him from his own improvidence or lack of strength.

Likewise, that an ex-employee's shares may fall into or be in the hands of an attorney hostile to the law firm, or that ex-employees may own shares in more than one professional service corporation at the same time, are matters

Harper, Hornbaker  
& Altenhofen  
Chartered

LAWYERS

15 N. WASHINGTON ST.  
UNION CITY, KANSAS  
66441-0168  
(913) 762-2100

not before us, and while they might justify action by the Florida Bar, do not justify a court compelling redemption. Assuming, arguendo, that non-employee shareholders have a right of access to the corporation's books and records, that right of access is limited to financial and corporate records and will not include client files. The argument that a professional service corporation cannot engage in the practice of law except through its officers, agents and employees is, of course, answered by Section 621.06 which provides that one need not be an employee to be a shareholder. The spectre of protracted litigation between attorneys undermining the public's confidence in the bar, even if empirically shown to be true, is hardly justification for a court to end the litigation by imposing, rather than refusing to impose, the burden of redemption on the corporation."

This interesting conclusion could well be the law in Kansas, for our statute, like the Florida statute, relates only to "death or disqualification".

**60-259. New trial; amendment of judgments.** (a) *Grounds.* A new trial may be granted to all or any of the parties and on all or part of the issues when it appears that the rights of the party are substantially affected:

*First.* Because of abuse of discretion of the court, misconduct of the jury or party, or accident or surprise which ordinary prudence could not have guarded against, or for any other cause whereby the party was not afforded a reasonable opportunity to present his evidence and be heard on the merits of the case.

*Second.* Erroneous rulings or instructions of the court.

*Third.* That the verdict, report or decision was given under the influence of passion or prejudice.

*Fourth.* That the verdict, report or decision is in whole or in part contrary to the evidence.

*Fifth.* For newly discovered evidence material for the party applying, which he could not, with reasonable diligence, have discovered and produced at the trial.

*Sixth.* That the verdict, report or decision was procured by the corruption of the party obtaining it. In this case the new trial shall be granted as a matter of right, and all the costs made in the case up to the time of granting the new trial shall be charged to the party obtaining the decision, report or verdict.

On motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, and direct the entry of a new judgment.

(b) *Time for motion.* A motion for a new trial shall be served not later than 10 days after the entry of judgment. After a motion has been thus timely served, the court in its discretion may (1) upon application and notice while the motion is pending, permit the moving party to amend the motion to state different or additional grounds; (2) grant the pending motion upon grounds not stated by the moving party and in that case the court shall specify the grounds in its order.

(c) *Definite statement of grounds.* The motion shall not follow the general language of the statute in stating the grounds for a new trial, but shall state specifically the alleged error or other grounds relied on.

(d) *Time for serving affidavits.* When a motion for a new trial is based upon affidavits they shall be served with the motion. The opposing party has ten (10) days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding twenty (20) days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(e) *On initiative of court.* Not later than ten (10) days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party, and in the order shall specify the grounds therefor.

(f) *Motion to alter or amend a judgment.* A motion to alter or amend the judgment shall be served and filed not later than ten (10) days after entry of the judgment.

(g) *Production of evidence.* In all cases where the ground of the motion is error in the exclusion of evidence, want of fair opportunity to produce evidence, or newly discovered evidence, such evidence shall be produced at the hearing of the motion by affidavit, or when authorized by the judge by deposition or oral testimony of the witnesses, and the opposing party may rebut the same in like manner.

## Rule 59. New Trials; Amendment of Judgments

(a) *Grounds.* A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) *Time for Motion.* A motion for a new trial shall be served not later than 10 days after the entry of the judgment.

(c) *Time for Serving Affidavits.* When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d) *On Initiative of Court.* Not later than 10 days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

(e) *Motion to Alter or Amend a Judgment.* A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment.

STATEMENT IN SUPPORT OF  
SENATE BILL NO. 692  
PRESENTED BY  
BOARD OF COUNTY COMMISSIONERS  
JOHNSON COUNTY, KANSAS  
BEFORE THE SENATE COMMITTEE ON JUDICIARY  
FEBRUARY 29, 1988

Att. III

## I. INTRODUCTION

The Board of County Commissioners of Johnson County, Kansas wishes, first, to express its sincere appreciation for the consideration given by the members of this committee to the proposal embodied within Senate Bill No. 692 and for the opportunity to once again appear before the committee to urge passage of this legislation. For several years now, the Board has placed a very high priority upon upgrading the quality of governmental services within Johnson County. One of the primary areas of focus by the Board has been the enforcement of county codes and resolutions. After considerable study, the Board implemented a program to revise and codify its administrative and regulatory resolutions and to establish a simplified process for enforcement. A key ingredient of that program, however, was to establish a court or judicial process that related more directly to code enforcement rather than to the criminal code.

The Board, therefore, proposed Senate Bill No. 294 during the last legislative session, which would have allowed the Board to adopt portions of the Code for Municipal Courts. That bill was referred to an interim committee for study, and the interim committee report supported the proposal, although in a slightly different form, which resulted in the drafting of Senate Bill No. 458.

The Bill presently under consideration, 692, was drafted in response to comments from the State Supreme Court and the Office of the Judicial Administrator. It is again a modified form of the prior drafts in 294 and 458.

## II. PROVISIONS OF THE BILL

Like the prior drafts, Senate Bill No. 692 is directed at establishing a workable mechanism for the enforcement of county codes and resolutions through a simplified court procedure.

The Bill, first, amends K.S.A. 19-101d to provide that, in counties with a population in excess of 300,000, prosecutions for violations of codes and resolutions may be commenced in the district court and conducted in the manner provided in the code for the enforcement of county codes and resolutions. Thus, the bill, as drafted, does provide for an alternative procedure, but leaves the process within the current court structure. Further, it is limited in application to counties with a population in excess of 300,000.

Secondly, the bill authorizes the Board of County Commissioners to appoint code enforcement officers, who have powers to issue "tickets" but not make arrests, which is a very key element to the enforcement program. Further, the bill provides that the costs shall be paid by the county, but the bill does then provide that the county may retain all fines levied in the enforcement process - except the fines for traffic offenses. Finally, the bill does limit the

application of the new procedure, providing that it may not be used for violations that may result in arrest or imprisonment.

\*Finally, the bill adopts a procedural code, which is similar to the code for municipal courts, which may be utilized in the district court.

### III. RESULT OF THE BILL

As drafted, Senate Bill No. 692, does provide all of the key elements sought and deemed necessary by the Board of County Commissioners. It provides for a court forum under a simplified procedure to hear and determine code enforcement actions. It provides for the authority to use "tickets" rather than more elaborate criminal proceedings. And it allows a method to finance the enforcement efforts.

Moreover, the bill meets each of the concerns raised by the judiciary. It does not create a new level of courts. It does utilize the existing court system. It does not affect the process for traffic offenses. And it functions under the authority of the district court administrative judge.

The resultant affect of the bill will, therefore, be a very positive and influential method for the enforcement of essential county regulatory codes, with no major impact upon the current judicial system.

### IV. NEED FOR THE BILL

Throughout the entire process of the last legislative session, the interim study, and the proceedings before this committee, the one constant factor, upon which all participants have agreed, is that the legislation, in some form, was needed. That need is very real in Johnson County, as fully supported even through the testimony of the district judges from the county. Over the recent years, the county has evolved more and more into an urban environment. Growth and development have brought many benefits to the county and the State, but with them has come the need for government procedures to evolve also - to better control matters of zoning, sanitation, animal control, safety and health standards, building and fire codes, etc.. This bill will greatly help in that evolution.

### V. FISCAL IMPACT

Implementation of the provisions of Senate Bill 692 is not anticipated to have any appreciable fiscal impact upon the State, the county, or the residents. The bill, indeed, provides a better method to accomplish functions that now must be performed, but are performed in a dis-jointed fashion. Initial implementation will be accomplished through existing staff by reassignment of some duties, and through the use of existing procedures for the appointment of pro-tem judges. Revenue generated through fines will help support development and operation of the program.

VI. CONCLUSION

The Board of County Commissioners strongly urges this Committee on Judiciary to support Senate Bill No. 692 and to work for its adoption. The bill is the result of much study, much discussion, and much cooperation by all participants. It has been reviewed and commented upon favorably by the State judiciary. It is greatly needed by Johnson County, and has the full endorsement, support, and recommendation of the Board.

RESPECTFULLY SUBMITTED,

BOARD OF COUNTY COMMISSIONERS  
JOHNSON COUNTY, KANSAS



SEDGWICK COUNTY, KANSAS

**LEGAL DEPARTMENT**

MICHAEL D. PEPOON  
ASSISTANT COUNTY COUNSELOR

COURTHOUSE • SUITE 315 • WICHITA, KANSAS 67203-3790 • TELEPHONE (316) 268-7111

**TESTIMONY OF MICHAEL D. PEPOON**

TO: Senate Judiciary Committee  
FROM: Michael D. Pepoon, Assistant County Counselor  
RE: Senate Bill No. 692  
DATE: February 29, 1988

Mr. Chairman and members of the Judiciary Committee, in behalf of the Board of County Commissioners of Sedgwick County, Kansas, I appear in support of Senate Bill No. 692 relating to the improvement of enforcement of county codes and resolutions. As in Johnson County, Sedgwick County has experienced difficulties in enforcement of county codes and regulations primarily resulting from the fact that the current method of enforcement of county resolutions is both cumbersome and costly to the County, and thus enforcement is seldom utilized. This is especially true if already overworked law enforcement personnel have to be involved in such enforcement and administration when they have much more important matters to consider from a staffing perspective. We especially support the provision allowing for the appointment of a code enforcement officer. And although the Sedgwick County District Attorney's Office has been very supportive, this proposal would also alleviate their involvement with County code enforcement, which is likewise not high on their priority list.

Too often county resolutions and enforcement legislation passed by the Board of County Commissioners is ignored by the public because of the perception that there will be a lack of county enforcement. This is true throughout our County park system, at the Kansas Coliseum, and especially in regard to building and zoning violations. We feel this perception will change when citations are issued and small fines levied for such infractions. We feel that Senate Bill No. 692 effectively addresses the current problems in enforcement of County resolutions and would provide urban counties such as Johnson County and Sedgwick County with the ability to process in a timely manner violations of county resolutions and codes similar to enforcement provisions now available to cities.

Att. IV