

MINUTES

HOUSE COMMITTEE ON AGRICULTURE

October 27-28, 1993  
Room 331-S -- Statehouse

Members Present

Representative Eugene Shore, Chairperson  
Representative Steve Lloyd, Vice-Chairperson  
Representative Don Rezac, Ranking Minority Member  
Representative Richard Alldritt  
Representative Bill Bryant  
Representative Vernon Correll  
Representative Joann Flower  
Representative Joann Freeborn  
Representative Fred Gatlin  
Representative Jerry Henry  
Representative Joe Kejr  
Representative Doug Lawrence  
Representative Laura McClure  
Representative Melvin Neufeld  
Representative Ted Powers  
Representative Richard Reinhardt  
Representative Jene Vickrey  
Representative Galen Weiland

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Members Absent

Representative Greta Goodwin  
Representative Joel Rutledge  
Representative Forrest Swall

Staff Present

Raney Gilliland, Kansas Legislative Research Department  
Jill Wolters, Revisor of Statutes Office  
Lila McClafin, Committee Secretary

Conferees

Phillip Fishburn, Acting Secretary, Kansas Department of Agriculture  
Ken Wilke, General Counsel, Department of Agriculture  
Richard Levy, University of Kansas School of Law  
Attorney General Robert Stephan  
Thayne Larson, President of the former Kansas State Board of Agriculture  
Lynn Hellebust, Common Cause of Kansas  
Bill Craven, Kansas Sierra Club  
Vaughn Woolf, Kansas Swine Growers Association  
Warren Parker, Kansas Farm Bureau  
Dee Likes, Kansas Livestock Association  
Howard Tice, Kansas Association of Wheat Growers  
Marty Vanier, Kansas Agricultural Alliance  
Russell Frey, Kansas Veterinary Medical Association  
Franklin Williams, Kansas Territorial Agricultural Society  
Bernard Giefer, Jr., Attorney, WaKeeney  
Karen Hanzlicek, Kansas Territorial Agricultural Society  
Glenda Mellies, Kansas Territorial Agricultural Society  
Tom Tunnell, Kansas Fertilizer and Chemical Association and Kansas Grain and Feed Association  
Joe Lieber, Kansas Cooperative Council  
Dan Nagengast, Kansas Rural Center  
Ivan Wyatt, Kansas Farmers Union  
LeRoy Bower, Kansas National Farmers Organization  
Chris Wilson, Kansas Agri-Women  
Steve Baccus, Minneapolis  
Carol Maish, Jamestown

List of others in attendance is on file.

October 27, 1993  
Morning Session

**Briefings and Hearings on the Kansas State Board of Agriculture  
Legislative Response to Court Decisions**

The meeting was called to order by the Chairperson Eugene Shore at 9:00 a.m., in Room 313-S of the Statehouse. Brief announcements were made, and Acting Secretary Phillip Fishburn was introduced and called upon to address the Committee.

Mr. Fishburn thanked the staff of the Department of Agriculture and past board members and secretaries for the outstanding job they did and for their contributions to Kansas. He encouraged the Committee to address the future of the Department soon, as he thought the uncertainty is stressful for staff. Also, he was concerned that if the issue is not settled, it will widen the unproductive chasms which have occurred between the groups involved. He said Governor Finney soon would be announcing a proposal for the Department's future (Attachment 1).

Responding to questions, Mr. Fishburn stated agriculture must be consumer driven and that farmers must grow crops that are marketable. He stated that the state must strengthen its export markets, and it needs to continue to explore new markets and develop new uses for our agriculture products. Mr. Fishburn stated that he thought the Governor would recommend that the Secretary of Agriculture be an appointed position and indicated that the State Fair Board issue will be addressed by the Governor in her proposal. Finally, regarding the Department's stand on the North American Free Trade Agreement (NAFTA), he stated the Governor is undecided at this time. He stated that the Department is working with the Administration and the Governor, and information from both sides has been provided to the Governor and he expected she will have an announcement soon regarding NAFTA.

The Chairperson reviewed the agenda for the meeting and indicated that it would begin by a briefing by staff and with Committee discussion on the Kansas State Board of Agriculture and how the Board and Secretary are chosen. He stated it was to be an information hearing and he did not intend to introduce any legislation at this meeting. He expected at the December meeting it would be necessary to look at the State Fair Board as some decisions needed to be made regarding that Board.

For information purposes, the Chairperson informed the Committee that Judge Lungstrum had been invited to address the Committee and that he had declined. The Chairman stated three times in the past the Attorney General had been asked if the current system of selecting the Board and Secretary was constitutional. The Chairperson stated that three times the Attorney General had ruled that it was. The Chairperson also stated that one Governor had proposed an Executive Order that would have changed how the Board and the Secretary were chosen and that was defeated by the Legislature. He relayed this information to indicate that he did not think the Legislature had neglected its responsibilities regarding the issue.

Staff was called on for a briefing. Staff's memorandum reviews the history of the Kansas State Board of Agriculture, and outlines how the current Board and Secretary are selected. It also lists the seven divisions in the Department of Agriculture that the Secretary has the responsibility of administering. Also included in staff's memorandum were copies of the statutes governing the election and duties of the Board and a list of laws administered by the former Kansas State Board of Agriculture. The memorandum and attachments are on file in the Kansas Legislative Research Department.

A member of the Committee pointed out that there are three distinct issues that the Committee is discussing. Those issues are the selection of the delegates to the annual meeting, the election of the State Board, and selection of the Secretary.

Staff explained how the Supreme Court Nominating Commission was organized under the *Constitution*, and further stated some of the agencies the Attorney General mentioned as having questionable organizational structure when he addressed the Senate Agriculture Committee. Some of those mentioned were the Kansas Sheep Council, the Building Advisory Board, the Kansas Animal Health Commission, and Kansas Dental Board. Staff suggested the Committee might ask the Attorney General to address how the lawsuit might affect those entities.

Staff also reviewed the three bills which were introduced in the 1993 Session which were drafted to restructure the State Board of Agriculture. They are: H.B. 2134, H.B. 2292, and S.B. 85. Staff reported no hearings were held on these bills, but they will be carried over and could be acted

upon during the 1994 Session. This memorandum is on file in the Kansas Legislative Research Department.

Representative McClure stated she was looking at some options on how to redesign the Board and she intended to present them to the Committee when it meets in December.

Responding to questions, staff said if a bill were passed and the plaintiffs still do not believe that it is a constitutional way to organize the agency they will again bring this matter to the court's attention. One of the stated reasons for this is that the Department of Agriculture regulates pesticides and water. Staff indicated that the plaintiffs believe that these are areas which affect all Kansans and not just the agricultural community and the rural areas. Responding to a question regarding how the plaintiffs would select the Secretary, staff stated that they were interested in a Secretary appointed by the Governor, but suggested the question could best be addressed by Mr. Hellebust when he testified later in the day. Questions were asked regarding the Supreme Court Nominating Commission and how they were selected. Staff stated it was set up in statutes and would explain the details in a later report.

Ken Wilke, General Counsel, Department of Agriculture, briefed the Committee on the history of the federal court case, *Hellebust, et al. v. Sam Brownback, et al.*, in which the United States District Court for the District of Kansas declared the method of selection of the Board members and the Secretary of the State Board of Agriculture unconstitutional. A copy of the Court decision is attached to his testimony (Attachment 2). Mr. Wilke responded to several questions regarding the current selection system, and the methods used in other states. He stated New Jersey's method was the closest to Kansas' system, but he was not sure that the New Jersey method could pass the constitutional question.

Attorney General Stephan stated the 10th Circuit Court in Denver had denied the stay request by the defendants. He stated that when all of the briefs are in he intended to ask for the case to be expedited, and was hopeful it could be heard before the end of the 1994 Session. The Attorney General believes the Kansas Legislature or any state legislature should be able to carry out their laws as they have done for the past 125 years. He cautioned that a change in the structure of the agriculture agency could affect various other state agency boards that are filled largely with representatives of the industries that they regulate. He further cautioned if the selection procedure is changed by the Legislature, it could stop the appeal and the judgement would be moot. He stated that he hoped the Committee would consider this.

Responding to questions, the Attorney General suggested there are state commissions and boards which require the Governor to choose from a list of nominees that are submitted from members of the industry that they regulate. He stated that he would be glad to supply that list to the Committee. He responded to questions regarding the powers of the current Department of Agriculture, and the cost of filing the lawsuit. A final Committee member question concerned the State Fair Board, and he stated the Fair Board had three members other than those from the Board of Agriculture and it will continue to function.

Richard E. Levy, University of Kansas School of Law, reviewed the constitutional aspects of possible reorganization of the state's agricultural agency, and offered whatever assistance his constitutional law expertise might afford. He outlined some of the constitutional concerns that the Legislature must bear in mind when it deliberates the options for restructuring the agricultural agency, and also addressed the suggestions that it is improper for the Legislature to believe the federal court decision is an instance of improper judicial intervention. He suggested appointment



of the Secretary by the Governor is most likely to withstand any constitutional challenge (Attachment 3).

A lengthy question and answer period followed. Mr. Levy addressed the issue of how the professional boards are set up and stated they might be perceived as different than the Board of Agriculture because there probably is more expertise necessary in medicine than agriculture, for example. He said any ruling on the Board of Agriculture will not finally resolve questions surrounding those other bodies and stated that it would be necessary to adjudicate those separately. However, he stated that he thought the other agencies, boards, and commissions would be easier to defend in a court of law than the Board of Agriculture's responsibilities.

The meeting recessed for lunch at 12:10 p.m.

### Afternoon Session

The Chairperson reconvened the meeting at 1:30 p.m.

Thayne Larson, President of the former Kansas State Board of Agriculture, stated the former Board is firmly convinced that the decision of the U.S. District Court was in error, and that it had to be appealed for the good of all Kansans. He stated that the Board supports the Attorney General's opinion that the wide-ranging ramifications of this case may affect other boards and commissions of state government. Therefore, he discouraged any changes at this time, and asked that the judicial appeal be allowed to decide if the state Legislature and the State of Kansas can determine the form of government it desires (Attachment 4).

Responding to questions, Mr. Larson stated having the Board elected by people from the grass-roots level would be a more acceptable process than some that have been suggested. He said this was the case because the Board would be accountable to the people who elected them, as they are now. Mr. Larson stated that he would like to see some sort of process with input from the agricultural community stay in place, and indicated that he thinks the Board needs to be involved in the selection of the Secretary. He noted his opposition to a board that is strictly advisory in nature. He stated that he hoped the appeal would go on and that it could be expedited. But, if they lost at the appeals court level, he indicated his support for the case to be appealed even further. He said he opposed any splintering of the agency, or diminishing of its powers, as that has not been a complaint even from the plaintiffs. He stated that the former members of the Board are willing to work with the Legislature to develop a system that would be in the best interest of agriculture. Responding to another question, Mr. Larson stated he would rather have a correct decision than a quick one.

William Craven, Kansas Sierra Club, stated the most recent stay was denied in the 10th Circuit Court. He told the Committee that, "This is not a close case." He stated that the merits, in this case, relate to the one person, one vote issue, which is a basic principle of democracy. He related that states cannot have elections for state offices where only members of certain groups are allowed to vote. He stated that he thought it was time the Committee realized the appeal was a waste of time and stop wasting taxpayers money. He encouraged the enactment of legislation that complies with the ruling in the federal court and recommended 1993 H.B. 2292 as the appropriate vehicle (Attachment 5).

Responding to questions, Mr. Craven stated the lawsuit was brought to challenge the election method of the Board and the selection of the Secretary. Commenting on the Departments of Health and Environment and Social and Rehabilitation Services, he stated if he had a problem with these agencies he could go to the Governor and discuss it, but with the Board of Agriculture, you cannot do that because the Secretary is not responsible to the Governor.

Mr. Craven told the Committee he was looking at several other state agencies and their procedures for selection, as he thought it was very important that public officials and boards be accountable to all people. He stated that 12 people elected Sam Brownback as Secretary of the State Board and there are 2.5 million Kansans.

A member of the Committee commented that sometimes it is necessary to take in a broader view and not to focus on the narrow constitutional point of view when we are looking at the way we conduct the business of the nation and state.

The Chairman questioned Mr. Craven regarding the request for attorney fees as a result of the original lawsuit, and requested that Mr. Craven submit the testimony that he presented to the Senate Agriculture Committee regarding the request for attorney fees.

Lynn Hellebust, Common Cause of Kansas, stated the goal of Common Cause and the Kansas Natural Resource Council in filing the lawsuit challenging the constitutionality of the Kansas State Board of Agriculture (KSBA) was to make certain that government is accountable and accessible to ordinary men and women. He said they favor an appointed Secretary as this ensures that the Secretary's policies would not be in opposition to the executive branch. He stated that if the Legislature should decide to replace the Kansas State Board of Agriculture it should be advisory only. He also indicated that this advisory board should be appointed by the Governor, with equal representation from each congressional district (Attachment 6).

Responding to questions, Mr. Hellebust said the organization he represents may pursue the way some of the other state agencies are structured, and he explained how the board of Common Cause was structured. In answer to a Committee member question, he stated that his board did not poll its members before filing the lawsuit.

Mr. Hellebust further stated the State Board of Agriculture has been constitutionally suspect for some time. He stated his organization believes it should be structured more in line with other state agencies, and be responsible to the Governor. A Committee member asked if his organization looked for a friendly court when looking for a place to file this lawsuit. In responding to the court shopping issue, he said his organization wanted the case filed in the eastern part of the state, and he was not sure why Kansas City was selected over Topeka. He stated that he believes the judge's decision was very strong and it will not be reversed and the Legislature should get on with developing a plan to comply.

Vaughn Woolf, Kansas Swine Growers Association, made the following recommendations:

1. The Secretary of Agriculture should be appointed by the Governor and confirmed by the Senate.

2. A 12-person advisory committee should be selected by the Secretary. This committee would be chosen from a pool of delegates nominated by organized statewide commodity groups and agricultural organizations. Each organization would nominate one person from their membership to fill that pool. Only one nominee from any organization may serve on the advisory committee at any one time. Lengths of terms for the advisory committee would initially be staggered to allow a normal rotation of new members without a complete 12-person turnover. This advisory committee would also fill the vacant seats on the State Fair Board (Attachment 7).

In closing, Mr. Woolf stated that the Committee's agenda refers to the former president of the Board of Agriculture and the interim Secretary. He stated that this gives him a great deal of concern, and that it is important to him and his group that this issue be resolved quickly.

Warren Parker, Kansas Farm Bureau, appeared before the Committee and stated the latest poll of their members favored the current structure of the Board, as this system has served the state well. He noted that the policy will be reviewed again this year at their annual meeting in November, and they will have a formal policy position when the Legislature convenes in January. He stated that if the Legislature or the Court decides there should be some adjustments, his organization would be glad to work with the Committee on the issue (Attachment 8).

Dee Likes, Kansas Livestock Association, stated his organization supports the current system and urged caution and restraint in any changes until the appeals process is exhausted. He stated they opposed a system where the Secretary is appointed by the Governor or elected by popular vote. Mr. Likes noted that it is his organization's belief that Kansas farmers and ranchers are better off under the current structure than if there is a change to a more political system. But, he noted, if it becomes necessary to restructure the Board his organization will be glad to work with the Committee and other organizations to find an acceptable constitutional alternative (Attachment 9).

Mr. Likes answered several questions by stating that the Kansas Livestock Association will have a panel at its annual meeting that will discuss what would be best if the agency has to be restructured. He urged the Committee not to be hasty and that it would be better to get a decision from the courts before it proceeds.

Howard Tice, Kansas Association of Wheat Growers, appeared and stated because the issue continues to surface from time to time his organization has adopted an ongoing policy to continue to support the present system. Therefore, he recommended the Legislature take no action unless the appeals process fails to uphold the constitutionality of the present system. He responded to a concern that Sam Brownback was elected by only 12 persons, by noting that if the Governor appointed the Secretary that the appointee would be appointed by only one person. Attached to his testimony is a copy of a letter he wrote to the Editor of *The Salina Journal*; a copy of his editorial that appeared in *The Wichita Eagle*, which was in response to *The Eagle's* September 7 editorial concerning the Kansas State Board of Agriculture; and a copy of the editorial mentioned by Dee Likes (Attachment 10).

Marty Vanier, Kansas Agricultural Alliance, appeared before the Committee and stated her members recommend that the current system be maintained until the legal remedies are exhausted by all parties and a final decision is handed down. She stated that she hoped that the

federal court would provide some direction to the Legislature for resolution of the situation since the U.S. District Court did not (Attachment 11).

Russell Frey, Kansas Veterinary Medical Association, appeared before the Committee with written testimony prepared by Catharine Deever, Executive Director of their organization. He stated his organization's leadership was polled and recommended the Association take a neutral position on the issue (Attachment 12).

In response to a Committee question, Mr. Frey responded a neutral position means that his organization will wait for a court decision before having a formal position.

Frank Williams, Kansas Territorial Agricultural Society, offered exhibits in which he denied the interim study committee had valid and current oaths to conduct the briefings and hearings on the potential restructuring of the Kansas State Board of Agriculture (Attachment 13).

Bernard T. Giefer, Jr. of WaKeeney reviewed what he thought the proper role of the judiciary is. He expressed grave concern with allowing the judiciary to creep into the policy making aspects of our government. He suggested that we run the grave risk of ceding very basic and dear democratic principles to a branch of government that is not responsible to the citizens of the state and country. He suggested the founding fathers participating at the Federal Constitutional Conventions, were very concerned with limiting the powers of the judiciary and not permitting the judiciary to become the final arbiter of constitutional questions. He stated that to do so would give the judiciary a power of tyranny and despotism that would be difficult to check given the constitutional protection of a judge's lifetime tenure. He said "it is time for the legislatures of various states to reassert their constitutional prerogatives to represent the people by whom they were elected" (Attachment 14).

Karen Hanzlicek, Kansas Territorial Agricultural Society, told of some personal experiences she had in dealing with the Kansas State Board of Agriculture, and attached a copy of a letter and questionnaire she had sent to Mr. Wayne White of Kansas Legal Services, Inc., regarding the services of that agency. She said the major point she wished to make was "that all is not well on the farm" (Attachment 15).

Staff distributed a letter from Naomi King, in which she encouraged the Legislature to delay any action on the State Board of Agriculture issue until it has been heard in the Circuit Court in Denver (Attachment 16).

The meeting recessed at 5:00 p.m.

October 28, 1993  
Morning Session

The Chairperson reconvened the meeting at 9:04 a.m, and called on Glenda Mellies.

Glenda Mellies, Kansas Territorial Agricultural Society, told of some of her personal experiences with the FACTS program, and shared some of her hopes for agriculture in the future. She presented testimony that supported the views of Mr. Williams and the Kansas Territorial Agricultural Society (Attachment 17).

Tom Tunnell, Kansas Grain and Feed Association and the Kansas Fertilizer and Chemical Association, appeared before the Committee and stated his associations believe the system has worked well over the years and they encourage the Legislature to hold up on any changes to the agency's structure until all of the court opportunities to overturn Judge Lundstrom's decision are exhausted. However, if legislative action should be required, he stated that the members of the two organizations would like to see the Board continue to be nominated, selected, or elected and the Board continue to appoint the Secretary. If that proves to be constitutionally impossible, his organizations would prefer the Governor appoint the Secretary rather than to have a statewide election for Secretary of Agriculture. He said they would look at this issue further at their annual meetings in November and they would have a position on it for the 1994 Session (Attachment 18).

Joe Lieber, Kansas Cooperative Council, appeared and stated his organization thinks the KSBA has done an outstanding job in carrying out its duties as determined by the Legislature. He stated that the Kansas Cooperative Council further believes that the court decision is wrong and the appeal process will be successful. Therefore, his organization supports continuing the current structure of the Board and the selection of the Secretary (Attachment 19).

Responding to a Committee question, Mr. Lieber explained how the Kansas Cooperative Council was organized. He also responded to some questions regarding the general makeup of the Council.

Dan Nagengast, The Kansas Rural Center, appeared and stated the Center supports legislation that would change the Board of Agriculture to a Department of Agriculture, with the Secretary to be appointed by the Governor. The Center also has adopted a position which would encourage further direct public input into the Department of Agriculture policies through the establishment of issue specific ad hoc committees, task forces, and hearings (Attachment 20).

Mr. Nagengast responded to questions regarding what policies of the former board that he did not approve of and how his organization functions.

Ivan Wyatt, President, Kansas Farmers Union, appeared and stated the present policy is unacceptable and that it is time to broaden the focus and to let the people vote on a secretary or commissioner of agriculture. However, appointment by the Governor would be acceptable to his organization (Attachment 21).

A member of the Committee questioned Mr. Wyatt regarding an article he had read where Mr. Wyatt had stated he did not think the Board of Agriculture was doing a good job in the area of economic development. Mr. Wyatt gave examples of cooperatives in North Dakota and Canada which he thought were worthy of review. He indicated that these cooperatives use the products grown in the community and make products that are shipped out. He stated that this provides jobs in the rural areas and helps to keep the population in the rural communities. He stated that he would like to see Kansas do more of this. He suggested the Department of Agriculture needs to take stands on the issues before the Legislature, and mentioned NAFTA and the bill regarding amendments to the Kansas Corporate Farming law.

LeRoy Bower, President, Kansas National Farmers Organization, was unable to attend and asked that his written testimony be distributed. His testimony suggested the Committee sponsor and enact legislation which would result in the appointment of the Secretary of Agriculture (Attachment 22).

Chris Wilson, Kansas Agri-Women, appeared and supported the current structure and hoped the appeals court would rule in favor of the structure's constitutionality. She stated that her organization believes that the continuance of a board of agriculture; an annual meeting of interested citizens; and provision for continuity of leadership are characteristics of the current system which are important to the future of Kansas and Kansas agriculture (Attachment 23).

The Chairperson stated he thought the annual meeting was a very important part of the present system and he would hate to see it eliminated. Ms. Wilson said she thought the Board could be structured to meet the constitutional question and continue to have the annual meeting. She responded to questions regarding the membership of Kansas Agri-Women.

Steve Baccus, Minneapolis, Kansas, appeared and stated most of the farm organizations would be having annual meetings before the end of the year and suggested the Committee delay any action until these organizations have had an opportunity to discuss the issue at annual meetings. He stated he thought the people most affected by the State Board of Agriculture should have the opportunity to devise some compromise plans and present them to the Legislature later this year for consideration (Attachment 24).

Art Howell, Lincoln, appeared and expressed great concern that the citizens of Kansas would allow a federal judge, without superior court review, to undo in one day what it has taken Kansas government 120 years to create. His written testimony suggested two changes to the current statutes (Attachment 25).

Vernon McKinzie of the Kansas Pest Control Association submitted written testimony which was distributed. His testimony states that if reorganization legislation is drafted, that careful consideration be given to how staff changes would be affected each time a new Secretary is selected, and that consideration and protection of professional employees be addressed in statute (Attachment 26).

Fred J. Detrixhe, Ames, was not present but submitted testimony suggesting the Secretary of Agriculture should not be elected by the Board of Agriculture (Attachment 27).

The last conferee had not arrived, so the Chairperson called for Committee discussion. He said it was not his plan to introduce legislation at this time, but to discuss some of the options.

Representative Rezac said he thought it was important to have a plan regardless of when the Legislature acts. He was not sure it should be tied to a governor. He suggested a plan similar to the one used to select the Supreme Court Justices. He suggested that a state agriculture commission could be set up, with one representative from each congressional district selected by farmers, and one nonfarmer delegate appointed by the Governor. One member would be elected chairperson, and the Governor could appoint the Secretary, or the Commission could elect the secretary. He stated that if eight members were not enough, the Commission could be made broader. He stated that a way would have to be devised to define who is a farmer, but it could be researched and he was sure it could be done.

Representative McClure offered an option, using the ten districts set up for the Board of Education, which is divided by population, the current Secretary of Agriculture, who was appointed by the Governor would set up an open meeting in each of the districts. Anyone residing in the District after proving residency, could come and vote. Two people would be elected in each district, these 20 names would be submitted to the Governor, and the Governor would select ten people that would make up the Board of Agriculture, and those ten members would select the Secretary. She stated that this process should meet the one person-one vote requirements.

Representative Bryant requested that Staff draw up a memorandum outlining the various options that the Committee has heard, and indicated that this could be sent to the various agricultural groups for them to take to their annual meetings and get the response of their members.

Representative Rezac stated if we can define a farmer he would like to suggest a mail-in ballot.

Carol Maish, Jamestown, arrived and was called on to testify (Attachment 28).

Ms. Maish stated the current system for selection of the board and secretary was good. She stated that if changes must be made she would like to see a system where there still is a board and that the board should maintain control and elect the Secretary. She suggested that the Board members could be elected by the legislators within a district.

The public hearing was closed and Committee discussion continued.

Representative Lloyd brought up the need to change the State Fair Board. He suggested the former State Board of Agriculture members be allowed to continue on the Board.

The Chairperson suggested that might be an appropriate way to continue. He stated he had visited with Bob Gottschalk, General Manager of the State Fair, and there were no issues pressing at the present time but in January it is time to start making many decisions for the 1994 State Fair.

Representative Reinhardt stated he knew from personal experience the State Fair Board issue needs to be resolved because the General Manager needs to have help in making decisions. Representative Reinhardt stated that the Committee needed to come up with some recommendations to resolve the issue.

Representative Correll wondered if the Governor had the power to appoint the entire board. The Chairperson said there seemed to be some disagreement on that point.

Representative Gatlin stated he attended the news conference when the Governor announced her appointment as interim Secretary and she said she was going to appoint an advisory board and to make a decision regarding the State Fair Board.

Representative Lloyd made a conceptual motion that the State Fair Board be made up of the three statutory members, plus the interim Secretary of Agriculture, plus the 12 former State Board of Agriculture members, who would serve until such time as the lawsuit is settled or a solution is found. The motion was seconded by Representative Correll.

Discussion followed and several questions arose concerning when the suit might be settled.

Representative Rezac suggested October 1, 1994, as a sunset date for the State Fair Board as comprised under Representative Lloyd's motion. Representative Lloyd said he would accept that amendment to his motion if the second would. The motion was amended. The Committee then discussed the proposal. The Committee then discussed the motion and several Committee members indicated that the Legislature is not in session on October 1, and therefore suggested that the sunset date be amended in the motion to the end of the 1995 Session.

The Chairperson suggested the motion be withdrawn and restated. The motion was withdrawn. Representative Lloyd restated the motion to include the sunset date as the end of the 1995 Legislative Session. Representative Correll seconded the motion.

Representative McClure suggested the Governor might make her recommendations before the next meeting of the Committee.

The Chairperson called for the question. The motion carried.

The Chairperson suggested to Committee members that if any of them wanted a bill drafted they should talk with staff and get it done so it could be looked at during the next Committee meeting on December 2-3, 1993.

The Chairperson thanked the Committee members for their attention and the meeting was adjourned at 11:37 a.m.

Prepared by Raney Gilliland

Approved by Committee on:

December 3, 1993  
(Date)



**PRESENTATION  
to the HOUSE AGRICULTURE COMMITTEE**

by

**PHILLIP A. FISHBURN  
SECRETARY OF AGRICULTURE**

October 27, 1993

*House Ag. Co.  
10-27-1993  
Attachment 1 1-1*

Chairman Shore, members of the Committee, thank you for inviting me to testify before your hearing.

First, I would like to bring greetings to you from my staff at the Department. I truly believe Kansans should be proud of the outstanding job these folks do for rural Kansas. I am proud to be part of this team, and am honored to serve Kansas with them.

The second thing I want to do is to thank those who have left me a solid foundation on which to build. We as Kansans should not forget what past Board Members and Secretaries have contributed to Kansas. I appreciate the rich legacy which they have handed to me.

Also, it is important to remember that, in the aggregate, rural Kansas has much to be proud of. What rural Kansas contributes to the state's economy and society is incalculable. Rural Kansas is still the heart and soul of our state.

I believe our nation is on the verge of a new bio-revolution. The development of biotechnology/value-added agriculture, the introduction of new information technologies and new uses of old technologies have poised rural America for a new renaissance; a renaissance of growth and prosperity.

I cannot predict when this will happen, but it will happen, probably within the next ten years, providing -- we can meet the serious challenges facing rural Kansas. We are at a critical crossroad. A drive down most small town mainstreets or out in the country is alarming. Abandoned store fronts and abandoned farmsteads tell us not all is well in rural Kansas.

I am concerned about the depopulation of rural Kansas, the loss of rural businesses, and the decline of rural communities. We must stop the exodus of our youth, our future, from Kansas. The challenges facing us should be viewed as opportunities. I hope you will help me build a foundation on which rural Kansas can grow and prosper into the next century.

During my tenure, I intend to listen. I will value all input from anyone who cares about rural Kansas. We do not have the luxury of excluding any idea, voice, or helping hand from the process of revitalizing rural Kansas.

I believe that when developing policy for rural Kansas we must look at rural Kansas in its entirety. All of the resources of our state must be brought to bear on the problems facing rural Kansas.

It is important for you all to know that I am a consensus builder. I seek solutions, not divisive rhetoric. When presented a problem I ask questions, seek counsel, and try to do what I feel is best for the people I serve.

In closing, it is my hope that we can address the future of my department soon. While my staff professionally and efficiently carry out their duties, there is no doubt that uncertainty is stressful for them. Also, I am concerned that this issue, if left to simmer, will only widen unproductive chasms which have occurred between rural groups, geographical regions, and urban and rural areas.

Governor Finney will soon be announcing a proposal for the Department's future. I hope you will carefully consider this proposal, and that you will have the wisdom to act in a manner which is best for rural Kansas.

I hope that I will be remembered as someone who loves rural Kansas and as someone who fought to save a way of life we all cherish. I look forward to working with each of you. Thank you again for inviting me.

## LEGISLATIVE TESTIMONY

PRESENTED

TO THE

HOUSE COMMITTEE ON AGRICULTURE

Mr. Chairman, Members of the Committee, I am Kenneth M. Wilke, Chief Counsel for the Kansas State Board of Agriculture. I appreciate the opportunity to appear before you today.

I have been asked to brief this Committee on the history of the Federal Court Case, Hellebust, et al. v. Sam Brownback, et al., in which the United States District Court for the District of Kansas declared the method of selection of the Board Members and the Secretary of the State Board of Agriculture unconstitutional. I am here to offer a factual account of what transpired and not to editorialize on the case itself.

While I was Chief Counsel for the Agency during this period the Agency, the Secretary and the Board Members were represented by the Attorney General's office in this matter. As a result, I provided information to the Attorney General's office regarding agency operations, however, I was not a counsel of record. For these reasons, I can provide a general overview of the case based upon the court records filed. These remarks will outline some of the constitutional issues before the court; however, I would defer to either counsel of record for the parties or to Mr. Richard Levy regarding interpretations of law on such issues.

This lawsuit was brought by Lynn Hellebust, John R. Craft, The Kansas Natural Resource Council and Common Cause of Kansas against the Kansas State Board of Agriculture.

Basically speaking the plaintiffs initially requested the court to:

- (1) Enter a declaratory judgment declaring the present means of selecting the members of the Kansas State Board of Agriculture and its Secretary to be a violation of the fourteenth amendment to the United States Constitution.
- (2) Enter a declaratory judgment declaring that the delegation of executive branch authority to the Kansas State Board of Agriculture and its Secretary is unconstitutional as a violation of the separation of powers doctrine of the Kansas Constitution.
- (3) Order the defendant to submit a remedial plan for the selection of Board members and the Secretary which comports with the one person, one vote standard of the U.S. Constitution and the separation of powers doctrine of the Kansas Constitution.
- (4) Enjoin the defendant from conducting any election pursuant to K.S.A. 1991 Supp. 75-502 [sic].
- (5) Grant such other legal and equitable relief as may be deemed just and proper including awarding plaintiffs their expenses and attorneys' fees pursuant to 42 U.S.C. Section 1988.

Subsequently, the complaint was amended three times resulting in the removal of the state agency and substituting Sam Brownback, in his official capacity as Secretary of the Kansas State Board of Agriculture and also the individual Board Members in their respective official capacities as Members of the Kansas State Board of Agriculture.

During the Annual Meeting of the State Board of Agriculture in January of 1993, the plaintiffs requested that the court issue a preliminary injunction to prevent the election of the Board Members and the Secretary during that Annual Meeting. On January 13, 1993, a hearing was held which resulted in the Court issuing a preliminary injunction prohibiting the elections scheduled for the Annual Meeting.

After other proceedings in the case, the Court held a hearing on April 26, 1993, on Motions for Summary Judgment filed by the parties in the case. After hearing arguments by the parties, the Judge issued an Order declaring the method to elect Members and Secretary of the Kansas State Board of Agriculture, set forth in K.S.A. 74-502 and 503, violates the equal protection clause of the Fourteenth Amendment of the United States Constitution. The Court ordered that the preliminary injunction issued January 13 concerning conducting elections pursuant to K.S.A. 74-503 remain in effect. The Court also set a time for a hearing on appropriate remedies and a briefing schedule.

The main issue discussed in this particular order was the application of equal protection clause of the Fourteenth Amendment in the context of the one person-one vote doctrine.

Regarding the one person-one vote issue, the plaintiffs argue that the State Board of Agriculture has general governmental powers and therefore Board Members should be elected by a method complying with the one person-one vote doctrine. The defendants argued that the Agency is a special purpose agency whose activities cover primarily agriculture; and therefore the Agency is not subject to the one person-one vote doctrine by virtue of the exception to the one person-one vote rule where the government entity has a special limited purpose in the activities in the unit of government have a disproportionate affect on those who may vote for its officials. This exception is founded on basically two cases, Salzer Land Company v. Tulare Lake Basin Water Storage District, 410 U.S. 719 (1973) and Ball v. James, 451 U.S. 355 (1981). The plaintiffs' position is based on a line of cases, starting with Reynolds v. Sims, 377 U.S. 533 (1964), which first applied the constitutional requirement of one person-one vote to state government.

The Court found the Agency to have general governmental powers affecting all the people of Kansas and not just the agricultural community. Court specifically cites the regulation of water, dairy, pesticide, weights and measures, and gas pumps. The Court also found that the two individual plaintiffs, Lynn Hellebust and John R. Craft certainly had standing to bring the lawsuit and therefore the lawsuit was properly maintained.

Subsequently, on May 7, 1993, the Court issued an additional memorandum and order more fully detailing its analysis on the one person-one-vote issue and other legal issues in the case. In addition to the provisions found in the April 26 Order, which were also incorporated into this Order, the Court reaffirmed its judgment for the plaintiffs on their Fourteenth Amendment claim. The Court also granted the defendants' Motion for Summary Judgment with respect to overruling plaintiffs' claims regarding the State Constitutional issues.

On June 30, 1993, another hearing was held regarding the issue of an appropriate remedy in this case. After having received briefs from both sets of parties and hearing the arguments made by the parties, the Court made the following Order:

- (1) the positions of the Secretary and all other defendants or members of the Board of Agriculture are declared vacant;

- (2) the Court retained jurisdiction of the case during the pendency of the provisional remedies in order to effectuate them;
- (3) the Governor of the State of Kansas, in his or her official capacity, was appointed as receiver for the Kansas State Board of Agriculture;
- (4) the Governor is required to make a written report every three months detailing personnel hired and fired and any policy changes made within the Kansas State Board of Agriculture;
- (5) the preliminary injunction preventing elections, pursuant to the provisions of K.S.A. 74-502 and 503, is made permanent; and
- (6) the Defendants' motion for stay pending appeal is denied.

Note that the Court delayed implementation of all provisions of the Order except item 5 until October 1, 1993 in order to allow for a transition period involving the Board of Agriculture Members performing their duties as Members of the Kansas State Fair Board through the 1993 State Fair. The provisions enjoining elections became permanent on June 30.

The case is presently on appeal to the Tenth Circuit Court of Appeals in Denver, Colorado. It is my understanding that briefs have been filed by the defendants/appellants. Also a request for a stay has been filed with the Court of Appeals in Denver. I do not know whether or not it has been granted. *Motion was denied.*

The Court's Order issued on June 30, 1993, leaves the day-to-day operations of the Agency continuing under the guidance of a Receiver, appointed pursuant to the Court's Order. This Receiver continues to supervise the operations of the Agency until either:

- (1) this Order is set aside by a higher court;
- (2) the constitutional infirmities found by the U.S. District Court have been remedied by appropriate legislative or other process; or,
- (3) if there is change in Governor, there may also be a change in the receiver.

Regarding the appointment of a receiver for the Agency, the Court states at pages 10 - 12 of its Memorandum and Order dated June 30, 1993:

"Appointment of the Governor, in his or her official capacity, is, of course, a provisional remedy, although for an indefinite period of time, and will stay in place until such time as the state of Kansas enacts legislation concerning the KSBA which passes constitutional scrutiny. \* \* \*

The question may arise as to the scope of the authority conferred on the receiver. In answer to that question, the court turns to the plaintiffs' statement on page four of their recent reply brief that,

Plaintiffs envision that a special master would serve largely as a **caretaker**, administering the authority vested by the legislature in both the Board and the Secretary, until the legislature passes a constitutional form of governance. Whatever the Secretary and the Board are required to do, the special master will do. The work of the agency will continue. (emphasis added).

The court agrees with this view of the function of the receiver for the KSBA as a caretaker, at least until it is ultimately determined that no other permanent solution will be forthcoming (either on appeal or by legislative action). The appointment of the Governor, in his or her official capacity, is intended only to remedy the plaintiffs' injury of being unconstitutionally governed. This case is unlike those in which the receiver was intended to accomplish some policy-oriented result, such as cleaning up state prisons in *Newman v. State of Alabama* and making water treatment centers run properly in *United States v. City of Detroit*. To the contrary, absolutely no claim of malfeasance has been made by the plaintiffs nor any suggestion by them that the policies of the Board must be changed in order to rectify any constitutional deficiency. The court, then, has neither been presented with any evidence that would form the basis for determining that policy or personnel changes are in order nor does it make any such findings here. The receiver, then, should not make far-ranging policy or personnel changes in the KSBA until such time as a legislative solution is worked out or this case is determined on appeal."

This completes my testimony Mr. Chairman. I would be glad to answer any questions concerning the testimony. Questions regarding legal issues should be deferred to either the Attorney General's office, Mr. Bill Craven, one of Plaintiff's attorneys or to Mr. Richard Levy.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

LYNN HELLEBUST, JOHN R. CRAFT,  
KANSAS NATURAL RESOURCE COUNCIL,  
and COMMON CAUSE OF KANSAS,

Plaintiffs,

v.

SAM BROWNBACk, in his official capacity  
as Secretary of the Kansas State Board  
of Agriculture, and JAY ARMSTRONG,  
VICTOR KRAINBILL, ALVIN EPLER, ALTIS  
FERREE, THAYNE LARSON, RALPH H.  
RINDT, F.E. BLISS, LOIS SCHLICKAU,  
FLOYD O. COEN, BOB L. MOORE, ANNE  
MARIE WORLEY, and ART HOWELL in  
their official capacities as members  
of the Kansas Board of Agriculture,

Defendants.

CIVIL ACTION

No. 92-2374-JWL

MEMORANDUM AND ORDER

I. Introduction

This court has found that the method by which the Kansas State Board of Agriculture ("KSBA") and the Secretary of the KSBA are selected violates the equal protection clause of the Fourteenth Amendment of the United States Constitution because the KSBA "exercises general governmental powers which affect the lives of all Kansans but its membership is selected by a narrowly limited voting process." *Hellebust v. Brownback*, --- F. Supp. ---, 1993 WL 190346 (D. Kan. May 7, 1993). The matter of an appropriate remedy was the subject of a hearing held on June 30,



1993, following the submission of briefs by both sides and the passage of sufficient time for the Kansas Legislature to have addressed this matter had it so chosen.

The method of selection of the KSBA and the Secretary which was found to be unconstitutional is codified in K.S.A. §§ 74-502, 503 (1992). The defendants in this case, the members of the board and the Secretary of the KSBA, do not have the power to change those statutes. The members of the Kansas Legislature are not parties to this action and so those persons who could change the method by which the KSBA board members and Secretary are selected, by changing the statutes, are not before this court. Therefore, the remedy adopted by the court is, at least in part, provisional in nature because this court cannot, with the parties before it, order legislative changes which would provide full relief. The remedies ordered by the court will remain effective until the state of Kansas enacts legislation which passes constitutional scrutiny.<sup>1</sup>

## *II. Remedies*

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<sup>1</sup> Without considering all the ramifications, including the Kansas constitutional arguments raised by the plaintiffs, and thus without deciding their propriety in advance, the court notes that such legislation theoretically could include any of a number of potential solutions. The members of the board or the Secretary of the KSBA could be directly elected by the registered voters of Kansas. The members of the board or the Secretary could be appointed by the Governor of Kansas. The legislature might choose to remove the general governmental powers which make the KSBA subject to the one person, one vote rule and as such, the officials of the KSBA could possibly be selected by the method currently utilized. Other solutions might also exist which are not suggested here.

A remedy selected by the court must address the plaintiffs' injury. See *Milliken v. Bradley*, 418 U.S. 717, 744 (1974) ("The scope of the remedy is determined by the nature and extent of the constitutional violation.") The plaintiffs' injury is twofold: (1) the Secretary and the Board administer an unconstitutional election when selecting a new Secretary and board members, and (2) the KSBA governs the plaintiffs by exercising general governmental powers even though the Secretary and the members of the board of the KSBA are unconstitutionally elected.

On January 13, 1993, this court issued a preliminary injunction which enjoined the KSBA from holding elections until a final order was issued in this case. *Hellebust v. Brownback*, 812 F. Supp. 1136 (D. Kan. 1993). The preliminary injunction addresses the first element of the plaintiffs' injury, the administration of an unconstitutional election. That injunction was continued in this court's order of May 7, 1993. *Hellebust v. Brownback*, --- F. Supp. ---, 1993 WL 190346 (D. Kan. May 7, 1993). That injunction is now made permanent in order to restrain the KSBA from conducting unconstitutional elections until such time as the state of Kansas enacts legislation concerning the KSBA which passes constitutional scrutiny. The remainder of this order will consider remedies which address the plaintiffs' second injury, being governed and regulated by an unconstitutionally selected body.

The court has considered and rejected a number of remedies which are within its equitable powers and which might address the

plaintiffs' injury. "Once a [constitutional] right and a violation have been shown, the scope of a District Court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent equitable remedies." *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 15 (1971). In choosing a remedy, this court is guided by the admonition of the Supreme Court that "a district court should not pre-empt the legislative task nor intrude upon state policy any more than necessary." *White v. Weiser*, 412 U.S. 783, 795 (1973). Therefore, the court has considered and rejected as too intrusive into state policy the possible remedies of blocking appropriations to the KSBA, stripping away general governmental authority from the defendants, convening a special session of the Kansas Legislature, or blocking any further legislative action until a remedial legislative plan is enacted which makes the administration of the KSBA constitutional. This court deeply respects traditional notions of federalism and fervently believes that judicial restraint calls for the tailoring of remedies of the most limited scope necessary to discharge its constitutional function. It acts here not because it relishes exercising the power but because it would be an abdication of its solemn responsibility if it were not to do so.

Bearing these considerations in mind, the remedy which the court has decided upon is twofold: (1) declare the terms of the members of the board and the Secretary to have expired, and (2) appoint the Governor of the state of Kansas, in his or her

official capacity<sup>2</sup> as receiver for the Kansas State Board of Agriculture to serve until such time as the state devises a constitutional method for selection.<sup>3</sup> This remedy specifically addresses the harm of general governmental powers being exercised by unconstitutionally selected officials without presuming to impose a permanent alternative procedure.

A. *Terms of Defendants Expired*

Because the court enjoined the election of new board members which was scheduled to take place on January 13, 1993, that election never occurred. Members of the board of the KSBA are elected to staggered three year terms. K.S.A. § 74-503 (1992). The terms of some of the members of the Board would have expired on January 13, 1993, unless reelected, except that the statute provides that a board member shall remain in that position "until their successors are elected and qualified." *Id.* The Secretary of the KSBA is elected for a two year term. *Id.* It is not known whether the current Secretary and which board members were up for reelection on January 13, 1993. The court can deal with both those defendants whose terms would have normally expired and those who continue to serve their regular term because "the scope of a District Court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable

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<sup>2</sup> By this reference the court means that whoever may occupy the office of Governor of Kansas at any given time shall serve in this capacity so that the receivership can remain filled indefinitely until further order of the court.

<sup>3</sup> As addressed below, the court defers implementation of this remedial order until October 1, 1993.

remedies." *Swann v. Charlotte-Mecklenburg Bd. of Education*, 402 U.S. 1, 15 (1971). The court orders that the terms of those defendants whose positions were up for election on or about January 13, 1993 are expired. The offices of those defendants whose positions were not up for election on or about January 13, 1993 are declared vacant.

Although the court has not observed a case with a remedy exactly like this one ordered here, there is substantial precedent for federal courts setting aside state elections which violate constitutional requirements such as equal protection. Two of the most notable examples are *Hamer v. Campbell*, 358 F.2d 215, 221-22 (5th Cir. 1966) and *Bell v. Southwell*, 376 F.2d 659, 664 (5th Cir. 1967) in which the Fifth Circuit set aside two local elections in the 1960's because the plaintiffs showed that the elections were tainted by racial discrimination. Neither of those cases was reversed by the Supreme Court. In *Hamer*, like the present case, the plaintiffs complained that they had been deprived of the opportunity to vote for the local government rather than merely having their votes unconstitutionally diluted, the situation in most reapportionment cases.

The present remedy is not as drastic as the remedy which was utilized in *Hamer* and *Bell*. In both *Hamer* and *Bell*, the courts set aside elections in which the entire electorate had the opportunity to vote. The defendants in this action were elected by a limited electorate drawn from a few special organizations and groups. This remedy satisfies constitutional requirements.

B. Appointment of Receiver

The second element of the relief ordered by the court is that the Governor of the state of Kansas, in his or her official capacity, be appointed as receiver for the KSBA. This court has the inherent equitable powers to appoint such a receiver.

Courts have (at least in the absence of legislation to the contrary) inherent power to provide themselves with appropriate instruments required for the performance of their duties . . . . This power includes authority to appoint persons unconnected with the court to aid judges in the performance of specific judicial duties, as they may arise in the progress of a cause. From the commencement of our Government, it has been exercised by the federal courts, when sitting in equity, by appointing, either with or without the consent of the parties, special masters, auditors, examiners, and commissioners.

*Ex Parte Peterson*, 253 U.S. 300 (1920).

The appointment of a special master is also addressed by Rule 53 of the Federal Rules of Civil Procedure. Although this court appoints a receiver under its inherent equitable powers, it is guided by the provisions of Rule 53, which state that an order appointing a special master "shall be made only upon a showing that some exceptional condition requires it." Fed. R. Civ. P. 53(b). This court does not believe that judges should undertake to manage the day to day administration of a state agency and this court does not intend to do so. However, in light of the court's vacation of the defendants' offices, someone must have ultimate responsibility for operation of the Board and carrying out the functions delegated to it by the legislature. As one district court succinctly stated, "Rule 53's requirement that the case referred to a master be 'exceptional' is more than satisfied

when a court is faced with a *polycentric* problem that cannot easily be resolved through a traditional courtroom-bound adjudicative process." *Hart v. Community School Board of Brooklyn*, 383 F. Supp. 699, 766 (E.D.N.Y. 1974), *aff'd*, 512 F.2d 37 (2d Cir. 1975) (emphasis added). The daily administration of the KSBA is such a polycentric problem and the appointment of a receiver here is appropriate to help solve it.

The Governor, in his or her official capacity, is a logical choice for receiver of the KSBA. The appointment of the Governor as a receiver further addresses the plaintiffs' injury of being governed by unconstitutionally elected officials by permitting those officials' services to terminate without causing the agency to shut down or be rudderless in the process. This remedy closely approximates a constitutional manner in which the Secretary and the board of the KSBA could be selected, i.e., they could be appointed by the Governor of the state of Kansas who is himself or herself directly elected by the voters of Kansas in accordance with the "one person, one vote" requirements of the equal protection clause.

A state's governor, by dint of his or her office, is uniquely qualified to oversee a state agency with general governmental powers, much of which are executive in nature, such as enforcement of regulations relating to the healthfulness of meat and milk. In a practical sense, such designation is appealing because there is no need for specialized compensation as there would be for a master drawn from the ranks of private

citizens. This will simply be another duty of the Governor, who already is "hired" by the people of the state of Kansas, with actual operating authority carried out by the Board's professional staff and employees.

Appointing executive officials of state and local governments has precedent in the case law which points to this court's equitable powers to do so. In *Newman v. State of Alabama*, 466 F. Supp. 628 (M.D. Ala. 1979), the state of Alabama, though ordered to do so in 1972, failed to comply with a court order to conform its prisons with minimum Constitutional standards. Therefore, the court, obviously frustrated with the state's lack of compliance, appointed the Governor of Alabama as the receiver for the Alabama Prison System in order to bring the prisons up to constitutional standards.

In *U.S. v. City of Detroit*, 476 F. Supp. 512 (D. Mich. 1979), the district court appointed the Mayor of Detroit as an "administrator" of the city's water treatment plant in order to comply with a consent order entered into by the city and the EPA. The chief executive of the Detroit wastewater plants was elected by the public and the city continually failed to meet federal water pollution control requirements and was in eminent danger of losing large amounts of federal aid. The city and others, including the EPA, had entered a consent decree which required the wastewater plant to meet certain specific requirements, but the city failed to do so. The court appointed the mayor of Detroit, with his consent, to administer the wastewater plant for



one year. The mayor, as administrator, was given a number of listed powers and responsibilities related to the operation of the wastewater plant.

That court found the authority to make the above order in the inherent equitable powers of the court. The court stated:

The exercise of such authority is found in the broad range of equitable powers available to this court to enforce and effectuate its orders and judgments. The findings which I have set out above demonstrate the gravity of a situation which demands a more effective remedy than can be fashioned from the ordinary tools of equity. Where the more usual remedies -- contempt proceedings and further injunctions -- are plainly not very promising as they invite further confrontation and delay; and when the usual remedies are inadequate, a court of equity is justified, particularly in aid of an outstanding injunction, in turning to less common ones, such as a receivership.

*Id.* at 520. (citations omitted). The court went on to say:

Whenever a federal court is involved in the affairs of local government and a remedy is sought which may interfere with traditional notions of separation of powers, great care must be taken to reach a balance that does not summarily deny to such local government the full exercise of its authority over its affairs.

*Id.* at 520. This court also seeks to give the state of Kansas "full exercise of its authority over its affairs" by appointing the Governor, in his or her official capacity, as a receiver for the KSBA.

Appointment of the Governor, in his or her official capacity, is, of course, a provisional remedy, although for an indefinite period of time, and will stay in place until such time as the state of Kansas enacts legislation concerning the KSBA which passes constitutional scrutiny. The court has contacted the present Governor and she has indicated the likelihood of her

consent if the court were to adopt this remedy. In the event the Governor were to decline, however, the court would then seek an alternative which would next best fulfill those criteria which it has outlined above.

The question may arise as to the scope of the authority conferred on the receiver. In answer to that question, the court turns to the plaintiffs' statement on page four of their recent reply brief that,

Plaintiffs envision that a special master would serve largely as a caretaker, administering the authority vested by the legislature in both the Board and the Secretary, until the legislature passes a constitutional form of governance. Whatever the Secretary and the Board are required to do, the special master will do. The work of the agency will continue. (emphasis added).

The court agrees with this view of the function of the receiver for the KSBA as a caretaker, at least until it is ultimately determined that no other permanent solution will be forthcoming (either on appeal or by legislative action). The appointment of the Governor, in his or her official capacity, is intended only to remedy the plaintiffs' injury of being unconstitutionally governed. This case is unlike those in which the receiver was intended to accomplish some policy-oriented result, such as cleaning up state prisons in *Newman v. State of Alabama* and making water treatment centers run properly in *United States v. City of Detroit*. To the contrary, absolutely no claim of malfeasance has been made by the plaintiffs nor any suggestion by them that the policies of the Board must be changed in order to rectify any constitutional deficiency. The court, then, has

neither been presented with any evidence that would form the basis for determining that policy or personnel changes are in order nor does it make any such findings here. The receiver, then, should not make far-ranging policy or personnel changes in the KSBA until such time as a legislative solution is worked out or this case is determined on appeal.

### *III. Stay Pending Appeal*

The defendants have moved the court for a stay of further proceedings (Doc. #73) pending resolution of the defendants' appeal of this court's order of May 7, 1993. That motion had two alternative requests: (1) that the court stay any further proceedings including the hearing concerning remedies held June 30, 1993 and (2) that the court stay any order it issues concerning remedies until the appeal is decided. For the reasons set forth below, the defendants motion to stay pending appeal is denied.<sup>4</sup>

Fed. R. Civ. P. 62(d) grants the district court the authority to stay its orders pending appeal. The standard for a motion to stay pending appeal is

As a basis for a stay, the movant was required to show the district court: (1) its strong position on the merits of the appeal; (2) irreparable injury if the stay was denied; (3) that a stay would not substantially harm other parties to the litigation; and (4) that the public interests favor a stay.

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<sup>4</sup> The court previously held that it would not stay the June 30 hearing in light of its proximity and lack of prejudice to the defendants in proceeding as scheduled.

*Securities Investor Protection v. Blinder, Robinson & Co.*, 962 F.2d 960, 968 (10th Cir. 1992); *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). Although this decision is a somewhat close one and other courts faced with the same situation could decide differently, this court finds that the defendants have not met the burden of showing the requirements for a stay as set out above.

A. *Likelihood of Success on the Merits*

The defendants have not made a strong showing that they are likely to succeed on the merits of their appeal. The defendants argue that this case presents legal matters of first impression because courts have not addressed whether an administrative agency with state-wide jurisdiction may qualify for the limited franchise selection process addressed in Supreme Court cases such as *Salyer Land Co. v. Tulare Lake Basin Water Storage District*, 410 U.S. 719 (1973) and *Ball v. James*, 451 U.S. 355 (1981). As the court stated in its previous opinion, "there is no case to which the court was cited or which its own research has uncovered that shares the particular salient characteristics of this one." *Hellebust v. Brownback*, --- F. Supp. ---, 1993 WL 190346 (D. Kan. May 7, 1993). However, that does not mean that this court sees its decision, as the law presently stands, as anything but the necessary conclusion to be reached under all the circumstances here.

Courts sometimes will find that an appeal has a strong likelihood of success "where the legal questions were substantial

and matters of first impression." *Sweeney v. Bond*, 519 F.Supp. 124, 132 (E.D. Mo. 1981), *aff'd*, 669 F.2d 542 (8th Cir.), *cert. denied sub nom.*, *Schenberg v. Bond*, 459 U.S. 878 (1982).

Theoretically, a higher court could develop an exception or could broaden the application of the settled precedent in *Salyer and Ball* to result in an agency like the KSBA being allowed a limited franchise exception to the "one person, one vote" requirement of the Fourteenth Amendment. If such a court chooses to do so, so be it. However, this court does not think that the KSBA, which exercises general governmental powers, falls within the narrow exception for governmental entities which have a special limited purpose and the activities of which have a disproportionate effect on those who may vote for its officials under presently settled equal protection jurisprudence. *Avery v. Midland County*, 390 U.S. 474, 483-84 (1968). Although predicting the future is hazardous, neither does the court see any real indication that this is the case on which higher courts may seize to change the thrust of the voting rights decisions.

Therefore, although the defendants raise a colorable argument in that sense, the court finds that they have not made a strong showing of likelihood of success on the merits of the appeal.

*B. Irreparable Injury to the Defendants*

The court does believe that the defendants have shown that they will be irreparably injured by the lack of a stay in this

case. The Sixth Circuit has addressed what is meant by irreparable injury in this instructive way:

In evaluating the degree of injury, it is important to remember that [t]he key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm. In addition, the harm alleged must be both certain and immediate, rather than speculative or theoretical. In order to substantiate a claim that irreparable injury is likely to occur, a movant must provide some evidence that the harm has occurred in the past and is likely to occur again.

*Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 154 (6th Cir. 1991) (citations omitted).

Although the court appreciates the defendants' concern that not staying the remedies ordered by the court will cause unnecessary disruption to the administration of the KSBA and the lives of those who work in that agency, that argument is not compelling here. On the contrary, divesting the defendants of their offices is, in fact, irreparable. They cannot be compensated for their loss of office in the event of a different outcome on appeal. That bell cannot be "un-rung" any more than could the court's having permitted the unconstitutional January election to have gone forward (to accomodate the assembled delegates) have been remedied.<sup>5</sup> This is tempered to some degree

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<sup>5</sup> The court has certainly never wanted to cause any unnecessary disruption to the lives of the defendants who the plaintiffs apparently concede are doing an exemplary job and seem to be caught in the middle of a precarious and, probably,

because it is a fact of life in public office that changes in administrations and agency heads do occur with some regularity. That is a risk that public officials always assume. The irreparable injury to the defendants which results from not staying this order concerning remedies is outweighed by the other factors of this analysis, especially the likelihood of success on the merits and substantial injury to the plaintiffs.

*C. Substantial Injury to the Plaintiffs*

The plaintiffs' injury, being governed and regulated by an unconstitutionally elected body, will continue if this stay is granted. The members of the Board who were unconstitutionally elected in the first place will continue to govern the plaintiffs by executing general governmental functions. The court cannot overstate the importance it attaches to this injury. Being governed unconstitutionally runs counter to the fundamental precepts upon which this nation was founded. "Tea parties" and rebellion have had their roots in such an injury. The defendants have failed in their attempt to show that the plaintiffs will not suffer substantial injury as a result of the stay.

*D. Public Interest*

The public interest, though certainly a closer call, on balance leads to denying the motion for a stay. In balancing the public interest, the court considers a number of factors. First of all, the public of the state of Kansas will continue to be governed and regulated by an unconstitutionally elected body  

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unforseen, situation.

unless the court's remedies go into effect. In contrast, not staying these remedies will cause a certain amount of disruption to the KSBA and therefore to the public which relies upon it. In the balance, the court must consider the injury to the public resulting from an ongoing constitutional violation to outweigh the administrative problems which will result from the unfortunate disruption these remedies will bring.<sup>6</sup> Therefore, the defendants have not shown that the stay is in the public interest.

*E. Awaiting Legislative Action*

The defendants also argue that the court should stay these proceedings awaiting action by the Kansas Legislature to rectify the unconstitutional nature of the KSBA. This court would have welcomed such action with open arms, having granted the preliminary injunction enjoining elections of board members on January 13, 1993, while there were still several months remaining in the regular session of the legislature. No bill addressing these issues even emerged from committee to be voted on by either house or senate. Moreover, on May 7, 1993, this court, in making its ultimate finding of unconstitutionality, only continued the preliminary injunction and set the hearing for remedies almost two months later. Again, no action was taken to effect a legislative solution. In each of these orders, the court

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<sup>6</sup> It should be noted that the defendants have proffered no actual evidence of what disruption to the public will occur or what its effect may be. Although a certain amount of disruption may be presumed, that is not enough to overcome the serious injury of permitting unconstitutional governance to continue.



specifically invited the legislature to act. Now, it is reported that something is scheduled in a Senate Committee at the end of August. However, the legislature has thus far demonstrated its lack of interest in addressing the unconstitutional selection process of the KSBA, as is its perfect right to do pending a final appellate mandate, and this court must then proceed to order a remedy to provisionally rectify the situation.

*E. A Short Stay for Administrative Purposes*

The court does stay the effective date of all aspects of this remedy order, other than rendering the injunction permanent, until October 1, 1993 in order to effect a smooth transition in administration. Such a delay will also allow the Governor to plan how to fulfill her responsibility as receiver for the KSBA, will give the legislature yet another opportunity to make the KSBA a constitutionally elected governmental entity and will permit the defendants to again seek a stay pending appeal from the Circuit Court should they desire to do so.<sup>7</sup>

*IV. Conclusion*

IT IS THEREFORE ORDERED BY THE COURT that the terms of those defendants whose positions as Secretary or members of the board of the Kansas State Board of Agriculture were up for election on or about January 13, 1993 are declared to have expired and the positions of all other defendants as Secretary or members of the

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<sup>7</sup> This stay shall also allow the members of the KSBA to function in their capacity as members of the Kansas State Fair Board throughout the 1993 state fair, a legitimate concern pressed on the court with some urgency at the hearing.

board of the Kansas State Board of Agriculture are declared to be vacant.

IT IS FURTHER ORDERED BY THE COURT that it shall retain jurisdiction hereof during the pendency of the provisional remedies ordered hereby for the purpose of effectuating them.

IT IS FURTHER ORDERED BY THE COURT that the Governor of the state of Kansas, in his or her official capacity, is appointed as receiver for the Kansas State Board of Agriculture.

IT IS FURTHER ORDERED BY THE COURT that the Governor of the state of Kansas shall make a written report every three months to this court detailing personnel hired and fired and any policy changes made within the Kansas State Board of Agriculture.

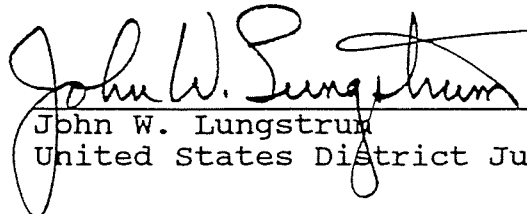
IT IS FURTHER ORDERED BY THE COURT that the preliminary injunction entered on January 13, 1993 is now permanent.

IT IS FURTHER ORDERED BY THE COURT that the defendants' motion for a stay pending appeal (Doc. #73) is denied.

IT IS FURTHER ORDERED BY THE COURT that this order shall be stayed until October 1, 1993, except for making the preliminary injunction permanent, which shall be effective immediately.

IT IS SO ORDERED.

Dated this 30th day of June, 1993 at Kansas City, Kansas.

  
John W. Lungstrum  
United States District Judge

**Written Testimony of Richard E. Levy\***  
**Before the House Agriculture Committee, State of Kansas**

October 27, 1993

Members of the Committee:

I am honored by your request that I comment on some of the constitutional issues raised in the aftermath of Hellebust v. Brownback, in which the federal district court invalidated the process used to select the State Board and Secretary of Agriculture. The court named the Governor as receiver of the Board's functions and left it to the legislature to devise a permanent solution to the defects in the Board's structure. This task is a sensitive one from both the constitutional and political perspective, and it is my pleasure to provide whatever assistance my constitutional law expertise might afford.

After discussing the one person one vote principle as it applied in Hellebust in order to highlight the issues presented in that case, I will outline some of the constitutional concerns that the legislature must bear in mind when it deliberates the options for restructuring the Board of Agriculture. In the process, I will also address the suggestion that it is incumbent upon the legislature to resist the federal court decision as an instance of improper judicial intervention.

**The One Person, One Vote Principle in Hellebust**

It is well established that the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution not only specifically prohibits racial discrimination, but also incorporates a general principle of equal treatment under the law. In a long line of cases, the United States Supreme Court has held that the principle of equal treatment applies with particular force when fundamental rights are involved. See, e.g., Skinner v. Oklahoma, 316 U.S. 535 (1942) (fundamental right of procreation invoked to invalidate compulsory sterilization of some repeat offenders); Griffin v. Illinois, 351 U.S. 12 (1956) (fundamental right of access to criminal appeal invoked to invalidate denial of appeal to indigent defendants unable to afford trial transcript); Shapiro v. Thompson, 394 U.S. 618 (1969) (fundamental right of travel invoked to invalidate unreasonable durational residency requirements for access to essential state programs).

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\* Professor of Constitutional Law, University of Kansas School of Law. This testimony reflects the personal views of its author. It does not represent the position of the University of Kansas or the Law School.

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*attachment 3*

Among those rights deemed "fundamental" for equal protection principles is the right to vote. In Reynolds v. Sims, 377 U.S. 533 (1964) the Supreme Court held that equal protection requires the votes of all persons to carry equal weight. In other words, the Court adopted the "one person, one vote" principle. Legislative districts with widely disparate populations and other arrangements that dilute or exclude the votes of some citizens thus violate the Equal Protection Clause. The Supreme Court has repeatedly reaffirmed this principle, most recently in Board of Estimate v. Morris, 489 U.S. 688 (1989), where it invalidated the longstanding election process for New York City's Board of Estimate (which has significant legislative functions) because the voting power of residents of the city's larger boroughs was substantially diluted. The one person, one vote requirement reflects both our general conception of democracy and basic constitutional principle. The essence of democratic institutions is their political accountability to citizens over whom they have governmental authority. Reynolds v. Sims recognized that political institutions are not truly democratic if some votes count more than others. It violates our basic sense of governmental legitimacy to subject individuals to regulatory authority without giving them a fair say in the selection of those who exercise that authority. This common sense understanding of democratic institutions is reinforced in two ways by constitutional jurisprudence. First, constitutional doctrine treats the right to vote as fundamental because it preserves other rights. Those whose voices are heard can protect their interests in the political system; those whose voices are muted cannot. Thus, unequal treatment with respect to voting rights is properly the subject of heightened concern under the Equal Protection Clause. Second, judicial action to correct distortions in the political process is generally regarded as consistent with the proper constitutional role of the courts. Judicial restraint requires respect for the decisions of politically accountable institutions, but not when their accountability is compromised by flaws in the political process.

In light of Supreme Court decisions developing these basic considerations, the law applied in Hellebust was clear. To survive the strict constitutional scrutiny accorded to measures affecting fundamental rights, significant departures from the one person, one vote principles must be necessary to serve a compelling government interest. A narrow exception to this constitutional requirement exists for governmental bodies with a special limited purpose and whose activities have a disproportionate effect on those who may vote. Under this doctrine, the constitutional deficiency of the selection process for the Board of Agriculture, and by extension the Secretary of Agriculture, was reasonably plain. In particular, the application of this law to the Board raised four issues.

Issue 1: Is K.S.A. 74-502 consistent with the one person, one vote principle? The district court correctly concluded that it is not. Although under K.S.A. 74-502 a wide array of agricultural groups and interests are represented in the selection process, nonagricultural interests are not. Thus, a large percentage of the population is totally excluded from the process of selecting the Board of Agriculture. Those entirely excluded clearly do not have an equal say in the selection of the Board. This problem is particularly acute given the potential for sharply divergent policy perspectives among agricultural and nonagricultural interests.

Issue 2: Can the departure from the one person, one vote principle be justified under the narrow exception for bodies with special purposes and a disproportional effect on its constituents? This issue is more difficult, but on balance I believe that the district court's conclusion on this point was also correct. Historically, it seems clear that the Board of Agriculture was intended to promote agricultural markets and as such might have functioned as a limited purpose body selected by those whose interests it affected. As the regulatory functions of Board expanded, however, this ceased to be true. The Board's authority to regulate water and pesticide usage throughout the state, for example, applies to residential and commercial activity in nonagricultural settings. Even if the Board's direct regulatory authority were confined to agricultural activity, its decisions would have a significant impact on all residents of the state. The regulation of agricultural uses of water and pesticides has a significant environmental impact on the entire population of the state, and the regulation of agricultural markets affects not only those directly involved, but also consumers throughout the state. Thus, given the breadth of agricultural activity, even a more limited Board of Agriculture would probably fall outside the exception. In light of the Board's current functions, the exception is clearly inapplicable.

Issue 3: Is K.S.A. 74-502 necessary to further a compelling governmental interest? Even though the statute violates the one person, one vote principle, it might be sustained if it passed this test. But no purpose for K.S.A. 74-502 was offered at all in Hellebust, much less a "compelling one." Even if a compelling purpose could be offered, the requirement that the process be "necessary" to serve that purpose is exceedingly difficult to meet. The state must show that the process is "narrowly tailored"; i.e., that it neither includes those who logically should be excluded under the stated purpose nor excludes those who should be included. In addition, the state must that the same purpose could not be accomplished through some other, less discriminatory means.

Issue 4: What is the appropriate judicial remedy? Having analyzed the statute under settled doctrine and concluded that it was unconstitutional, the final issue before the district court was how to remedy the constitutional defects without crippling state government or unduly interfering with the restructuring of the Board. As you know, the district court appointed the Governor, in her official capacity, as receiver to exercise the functions of the Board, and left it to the legislature to construct a long term solution. This strikes me as an appropriate response to a difficult situation, intended to preserve the prerogatives of the state to the extent possible in light of the unconstitutionality of K.S.A. 74-502.

In sum, then, the one person, one vote principle is well established and accords with both our basic understanding of democracy and fundamental constitutional doctrine. The application of established doctrine in Hellebust was reasonably straightforward and required the invalidation of K.S.A. 74-502. The remedy ordered was minimally intrusive given the constitutional violation, and put the ball back in the legislature's court. The question then becomes, what is the appropriate legislative response?

### The Legislative Response

While my comments to this point should make clear that I do not believe the Hellebust decision is an example of improper judicial interference with political prerogatives, I recognize that there are those who disagree. The debate over when it is proper for courts to intervene is the central problem of constitutional law; it is as old as the power of judicial review itself. When the courts' duty to "say what the law is" requires that they interpret and apply the Constitution to invalidate government action, they stand in the way of political decisions made elsewhere. Since the broad language of the Constitution does not lend itself to a single, unassailable interpretation in the complex reality of modern government, disagreements about the propriety of judicial decisions invalidating government action are inevitable.

But even if Hellebust and Reynolds v. Sims are "wrong" in this sense, that is irrelevant for the legislature as it goes about the task of responding to the decision. The Supremacy Clause (Art. IV, § 6) expressly states that the United States Constitution is the "supreme law of the land" binding on state government officials, including the legislature. United States Supreme Court decisions interpreting the Constitution are authoritative until they are overturned by that body or by constitutional amendment, and the district court decision in Hellebust applied well settled doctrine in a reasonably straightforward manner. Thus, whether or not we agree with Hellebust, we are bound to respect it unless and until it is overturned on appeal. If the legislature disagrees with the way the doctrine was applied or believes that Reynolds v. Sims should be overruled, the only appropriate recourse would be to press the state to appeal the district court decision, all the way to the Supreme Court if necessary. But such an effort is likely to be unavailing. There are no apparent errors in the Hellebust court's application of Reynolds v. Sims, and the Supreme Court is unlikely to overturn Reynolds in light of its recent reaffirmation of the one person, one vote principle in Board of Estimate v. Morris. Unless there is a successful appeal, the legislature is duty bound to act in good faith to implement the constitutional principles underlying the Hellebust decision.

This brings us at long last to the task at hand, the reorganization of the Board of Agriculture. In addressing this problem, the legislature must be concerned with not only the equal protection problems that led to the invalidation of K.S.A. 74-502, but also with state separation of powers principles that constrain the structure of administrative bodies. With respect to the equal protection concerns, the possible remedies grow out of the doctrine described above. It is important to bear in mind that the basic defect of the previous system is that it vested significant governmental authority in a Board that was accountable only to a limited segment of the voting population. Any effort to preserve this arrangement in some other form is likely to be unconstitutional. Instead, the regulatory authority previously exercised by the Board must be vested in a body (or bodies) that are politically accountable. Before discussing the possible alternatives, I will provide some background into the separation of powers issues that might be raised by those alternatives.

The separation of powers issues that might arise from potential solutions to the problem are distinct, and present only questions of state, rather than federal, constitutional law.\*\* Put simply, separation of powers requires that legislative, executive, and judicial power be divided among distinct branches of government whose structure is appropriate to their powers. This principle is reflected in the Kansas Constitution, which vests legislative power in a numerous and geographically representative legislature; executive power in an elected and "unitary" governor; and judicial power in an independent judiciary with jurisdiction to resolve cases and controversies. Separation of powers issues are present when one branch exercises powers not within its sphere or limits the essential powers of another. In the case of the Board of Agriculture, two main issues might arise.

First, the statute vesting regulatory authority in the Board of Agriculture (or any other body) must comply with the nondelegation doctrine, which protects the allocation of legislative power by prohibiting its delegation to administrative agencies or other bodies. See generally State ex rel. Schneider v. Bennett, 222 Kan. 11, 564 P.2d 1281 (1977). To pass muster under the nondelegation doctrine, the legislature must provide an "intelligible principle," or standard, to guide and control the administrative exercise of regulatory authority. In the absence of such a standard, the exercise of this authority would be a "legislative" function that cannot be delegated, rather than the "executive" function of implementing a statutory mandate. The intelligible principle requirement is very generous, however, and does not pose a significant problem for the legislature, especially insofar as satisfactory substantive standards are likely to already be written into the statutes administered by the Board of Agriculture or its successor.

Second, the legislature may not improperly interfere with the Governor's role as the "Supreme executive power of this state . . . who shall be responsible for the enforcement of the laws of this State." Kansas Constitution, Article I, § 3. This provision reflects the general separation of powers principle of the "unitary executive," which is necessary to secure prompt, effective, and uniform enforcement of the laws. Gubernatorial control over executive officers is implicit in both the language of Article 1, § 3 and in the general principle of the unitary executive. This control ordinarily includes the power to appoint executive officers, or at least a significant role in their appointment. Measures that place the power to appoint executive officers in another branch, or otherwise limit the governor's

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\*\* While the federal constitution incorporates separation of powers principles, these principles apply only to federal institutions. Any separation of powers constraints on state institutions arise from the State Constitution, although federal decisions may be persuasive by analogy as the considered application of basic principles by respected courts. Because the separation of powers issues arise from the state constitution, any problems identified in my testimony could be cured by a state constitutional amendment designed to implement the new process for selecting the Board or its successor(s). The equal protection violation that underlies the Hellebust decision, however, cannot be cured by a state constitutional amendment.

appointment power, therefore raise separation of powers concerns. Neither the unitary executive principle nor the Governor's appointment power is absolute, however. Indeed, Article 15, § 1 of the Kansas Constitution vests the power to provide for appointments in the legislature: "All officers whose election or appointment is not otherwise provided for, shall be chosen or appointed as may be prescribed by law." But this power must be exercised in accordance with separation of powers principles. In State ex rel. Anderson v. State Office Building Commission, 185 Kan. 563, 345 P.2d 674 (1959), the Kansas Supreme Court held that a statute requiring the Governor to appoint members of the legislature to the State Office Building Commission, which exercised executive functions, was invalid because it violated separation of powers principles.

The most authoritative treatment of these issues by the Kansas Supreme Court came in State ex rel. Schneider v. Bennett, 219 Kan. 285, 547 P.2d 1281 (1976) (Schneider I), and State ex rel. Schneider v. Bennett, 222 Kan. 11, 564 P.2d 1281 (1977) (Schneider II). In Schneider I, the Court invalidated on separation of powers grounds a statute that vested control of the state department of administration in the state finance council, a body on which individual legislators served. In Schneider II, however, the Court upheld the state finance council after it was stripped of its significant executive functions, ruling that legislative membership on the council was not invalid just because it exercised the limited and statutorily constrained executive function to transfer items of appropriation from the Kansas educational fund. Under these decisions, selection process for the Board of Agriculture may be constrained in light of its significant executive functions. Although neither Schneider decision is directly controlling, they do illustrate that the Kansas courts take a pragmatic approach to separation of powers. Strict separation of powers is not required, but measures that interfere in significant ways with the powers of other branches are likely to be overturned. This approach is reflected in the controlling test for evaluating such issues, which was articulated in Schneider I. To determine whether a measure usurps, or unduly interferes with, the powers of another branch, the Kansas courts consider:

- (1) the essential nature of the power being exercised;
- (2) the degree of control by one department over another;
- (3) the objective sought to be attained by the legislature; and
- (4) the practical result of the blending of powers as shown by actual experience over a period of time.

The application of this test to the State Board of Agriculture obviously varies depending upon the particular mode of selection eventually chosen by the legislature. I will therefore discuss the unitary executive issue in the context of specific options available to the legislature. These options include limiting the Board's powers, providing for direct elections, or providing for the appointment of the Board.



1. Limiting the Board's Powers: In response to the equal protection defects that rendered the Board of Agriculture invalid in Hellebust, the legislature might attempt to bring the current selection process under the narrow exception for special purpose bodies by stripping the Board of its regulatory functions. For example, if the Board's function was limited to promotion of Kansas agricultural products, it might pass constitutional muster. As a general matter, the greater the Board's regulatory authority, the less likely the prior selection process is to pass constitutional muster under the Equal Protection Clause. To be successful, this approach would require that the Board be stripped of its significant regulatory functions. If the Board's powers were limited in this fashion, that would also appear to preclude any separation of powers problems, as Schneider II illustrates. See also Marks v. Frantz, 179 Kan. 638, 298 P.2d 316 (1956) (pre Reynolds v. Sims case upholding in part delegation of regulatory authority to board of examiners in optometry appointed by governor from list of four names selected by Kansas optometric association). Note, however, that if this approach is taken, it would still be necessary to vest in some other body (or bodies) the powers taken from the Board. To the extent that these bodies already exist and present no constitutional issues of their own, this might be an effective solution, but many of the issues that arise in connection with the Board of Agriculture might simply be replayed in other contexts.

2. Direct Elections: The Board could be directly elected, either by statewide elections or as representatives of districts with approximately equal populations. This approach is responsive to the Hellebust decision and would satisfy the Equal Protection Clause, provided that the districts are properly drawn. Although this approach would probably also survive a separation of powers challenge, there is at least a potential argument that it would compromise the unitary executive in violation of Article I, § 3. Direct elections eliminate any gubernatorial role in the selection of Board, and its independent mandate would limit the Governor's ability to control the Board's exercise of executive powers. Nonetheless, direct elections would probably survive the Schneider test. First, although the Board's functions are executive, they are also "quasilegislative" insofar as they involve discretion to determine regulatory policy, which would give the legislature greater leeway in limiting the Governor's control over the Board. Second, direct elections do not give the legislature any control over the executive branch. Indeed, the Kansas Constitution does not treat direct election as fundamentally inconsistent with the unitary executive; it expressly provides for the direct election of some executive officers, such as the Attorney General.<sup>\*\*\*</sup> Third, to the extent that the legislature's action is intended to remedy a constitutional defect in the Board's selection, that objective would support the

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<sup>\*\*\*</sup> These provisions might be interpreted to create a negative inference, but given the legislative authority to provide for selection of officers, such an inference is unlikely given the broad language of Article 15, § 1. Although Article 15, § 1 uses the term "election" in reference to officers whose "election or appointment" is constitutionally mandated and conspicuously omits the term in stating that other officers "shall be chosen or appointed," the word "chosen" is broad enough to encompass elections.

action. Finally, the historical precedent for direct election of other executive officials, such as the Insurance Commissioner, suggests that practical experience would support this approach.

While this analysis does tend to support the validity of direct elections in separation of powers terms, a cautionary note is in order. Recent state Supreme Court decisions may reflect a stricter view of separation of powers. You are all probably familiar with State ex rel. Stephan v. Finney, 251 Kan. 559, 836 P.2d 1169 (1992), in which the Court invoked separation of powers to rule that the Governor lacked authority to enter a binding agreement with Indian tribes concerning gambling on reservations. Another decision, State v. Williamson, 253 Kan. 163, 853 P.2d 56 (1993), invoked separation of powers to overturn a trial judge's dismissal of criminal charges on the grounds that civil commitment was more appropriate interfered with the county attorney's executive power to exercise prosecutorial discretion. These decisions may signal the emergence of a stricter view of separation of powers which could make the Kansas Supreme Court more sympathetic to any eventual separation of powers challenge.

On balance, I suspect that the Kansas courts would uphold direct elections, but the issue is not entirely free from doubt. Before adopting the direct election alternative, the legislature should consider the possibility that litigation could further delay resolution of the Board of Agriculture issue, and--if successful--could draw into question other longstanding selection methods.

3. Appointment: Whether the appointment of the Board of Agriculture would be constitutional depends upon who does the appointing. It seems there are three basic possibilities: the Governor might appoint the Board and/or Secretary; the legislature might appoint the Board and/or Secretary; the appointment of the Board and/or Secretary might be vested in some private group or groups.

Let me discuss the last option first. Since the one person, one vote requirement was crafted in the context of "elections," supporters of the previous system might wish to avoid the Hellebust decision by cosmetic changes designed to recast the process as the "appointment" of government officials. This expedient is unlikely to be successful. Although the one person, one vote principle does not apply to appointments, this seems to be because the power of appointment is vested in politically accountable officials who ultimately trace their power to elections that do comply with that principle. Most states reject, under various doctrines, the vesting of significant governmental authority in private parties without ultimate control by elected officials. In any event, such a course of action would almost certainly result in a renewed challenge to the Board of Agriculture in which the federal district judge is unlikely to be sympathetic to the state's position. Even if the state were eventually successful, this would mean further disruption and delay in the important regulatory functions previously exercised by the Board.

The gubernatorial appointment option is the one most certain to pass constitutional muster. It is clearly permissible in equal protection terms for high level executive branch officials to be appointed by the Governor, who is popularly elected in compliance with the one person, one vote principle. Nor do there appear to be any apparent separation of powers problems, so long as there is no violation of the nondelegation doctrine, since the executive function remains in the executive branch. If the legislature is reluctant to vest unfettered discretion over the appointment in the Governor, his or her power to appoint might be limited. Most clearly, legislative consent to any appointment can be required. See Leek v. Theis, 217 Kan. 784, 539 P.2d 304 (1975). A more difficult question is whether the same groups that currently elect the Board of Agriculture might be given power to select a list of nominees from which the governor must choose. A number of statutes provide for this method of selecting administrative officials, particularly those involving regulation of professional activities. This practice was upheld in Marks v. Frantz, 179 Kan. 638, 298 P.2d 316 (1956), which validated the requirement that the Governor appoint the board of examiners in optometry from list of four names selected by Kansas optometric association. Although Marks v. Frantz seems to dispose of the separation of powers issues raised by such a selection process, the case is potentially distinguishable. The Board of Agriculture's executive functions are broader than the regulation of a single profession. In addition, a professional role in the selection of those who regulate professional activity is easily justifiable in terms of expertise.

This kind of limited access to the nominating process might be problematic under the Equal Protection Clause, however. Arguably, it is little better than vesting the appointment power directly in the agricultural interests who previously elected the Board. Although gubernatorial selection provides some popular accountability, the Governor's choice would be controlled by a nonrepresentational nomination process. And although Marks v. Frantz upholds such a process, it is not controlling on the equal protection issue because it was decided before Reynolds v. Sims. Indeed, the legislature might wish to be cautious in adopting this method, because a constitutional challenge is almost certain to follow, and if successful would throw a number of regulatory bodies into constitutional jeopardy.

The final option, legislative appointment, satisfies equal protection, but it would present serious separation of powers problems. Legislative appointment is particularly problematic under the second prong of the Schneider test because the legislature is not only limiting the Governor's power, but also taking that power unto itself. In contrast, direct elections or appointment of executive officers from a list of nominees limits executive power, but does not involve the legislative exercise of that power. Although Schneider I can be distinguished because legislators would not actually serve on the Board, the case is analogous because both situations involve the attempted legislative control over an executive function. Opponents of legislative appointment might also rely on Buckley v. Valeo, 424 U.S. 1 (1976), where the United States Supreme Court held that appointment of Federal Election Commission members by designated legislators violated the Appointments Clause. U.S. CONST., Art. II, § 2. Although Buckley rests on the specific

language of the United States Constitution for which there is no counterpart in Article 15, § 1 of the Kansas Constitution, the decision also reflects general separation of powers principles. Cf. Morrison v. Olson, 487 U.S. 654 (1988) (interbranch appointments permissible under Art. II, § 2, but must be otherwise consistent with separation of powers).

### Conclusion

In deliberating the options for restructuring the Board of Agriculture, the legislature should respond in good faith to the holding in Hellebust and the underlying equal protection principles it implements. In addition, there are potential separation of powers difficulties with many of the alternatives open to the legislature. Appointment by the governor is most likely to withstand any constitutional challenge under either provision. Mechanisms designed to retain an enhanced voice for agricultural interests or limit the governor's authority to appoint members (except for requiring legislative approval) present some constitutional difficulties. While such mechanisms may ultimately survive judicial scrutiny, there would be costs in terms of delay and uncertainty concerning the functions of the Board.

Thank you for your attention.

**Position of the Members of the Kansas State Board of Agriculture**  
**~~Senate~~ Agriculture Committee Hearings on Structure**  
*House*

The Kansas State Board of Agriculture, an agency of state government, is nearly 125 years old. Today and for more than a century it has been a mainstay of state government and a model for the entire country. It is an excellent example of government and the private sector cooperating to provide mindful regulation and effective agricultural promotion; at the same time guaranteeing a high and safe standard of goods and services for the consumer.

Due to the lawsuit filed in October 1992, the House and Senate Agriculture Committees have called for testimony regarding the structure of the Board of Agriculture. At this time, your State Board of Agriculture wishes to inform you of its steadfast conviction that the decision of the District Court was in error and that such ruling handed down must be appealed for the benefit of good government in the State of Kansas. The Attorney General has stated his opinion and continues to believe the wide ranging ramifications of this case on many other structures of Kansas state government make it vital that it be appealed to the highest level. The Board concurs.

However, at the present time, with its appeal pending review and action by the 10th Circuit Court of Appeals, the Board of Agriculture hesitates to actively pursue a change of structure. Instead, because of the far reaching ramifications of the lawsuit brought against the Board, this agency would discourage the legislature from making a change. Instead, for the good of all Kansans, let's continue the judicial appeal to finally decide if, indeed, the State Legislature and the State of Kansas can determine the form of government it desires and govern itself for the good of all Kansans. Through legislative action, the Board of

Agriculture has evolved throughout its history. It has been and is always open to new ideas that will make it a better agency.

When the Legislature created the Board of Agriculture there were some qualities built into the Board of Agriculture structure which have served Kansans well. These original tenets have allowed this agency to bring the state's largest industry to the forefront of American agriculture.

It is the position of the membership of the Board that these principles are of such importance that they must be upheld, not be compromised or deleted. This list, with brief descriptions following, is not all-inclusive nor it is by any means a ranking by importance.

- \* Continuity and stability of programs and personnel;
- \* Populist/grassroots involvement by informed, interested people;
- \* Accountable to all Kansans;
- \* Bipartisan operations;
- \* A private sector board that is not weighted or slotted to give any singular enterprise an unfair advantage;
- \* Regulatory oversight and formulation that is not given to one or a few people.

#### *Continuity and Stability*

The Board of Agriculture's success at solving long-term problems, building long-term relationships (e.g., export customers), and allowing enough time for programs (e.g., the FROM THE LAND OF KANSAS food program) to mature and work is evidence to prove the value of this vitally important attribute of the agency. Board members and personnel do not change with political elections or appointments.

Just as in business and society, when a state agency can be relied on for its consistency and dependability, it builds a trustworthy reputation. Such is the case with the

Kansas State Board of Agriculture.

The same philosophy works for acquiring professional staff. Upper management positions can be filled with high-quality people on a long-term basis because they know appointments are not subject to political whims or wishes of a gubernatorial appointment or elected official. Neutral competence is a valuable quality for public administrators.

This is comforting for businesses, companies and farmers since they can talk with and count on being listened to by familiar, politically neutral department staff.

Put succinctly: Continuity and stability bring likelihood of fairness and effectiveness; such likelihood of fairness and effectiveness allows planning for profits and success; and such profits and success you can take to the bank.

Any successful businessperson will tell you that uncertainty of change is their greatest fear. The stability of the Board of Agriculture has curbed those fears and cannot be lost if its high level of success is to continue.

#### *Populist/Grassroots Involvement of Informed, Interested People*

For nearly 125 years the Board of Agriculture has held an annual meeting that has brought together rank and file delegates representing a variety of farm, business and fair groups on a county-wide basis.

This local input has been vital to the members of the Board and the agency as it administers programs and regulations. At that one time during the year people who have taken the initiative to become active in their industry and community can come to Topeka, actually be a part of state government, feel their time is well invested and their input is heard.

Few will disagree that today's national government is removing itself further and further from the people. Such action is detrimental not only to the government but more

importantly, it is detrimental to the people themselves. But the annual meeting of the Kansas State Board of Agriculture allows people to be a part of government and feel like their government works for them instead of against them. A Board of Agriculture without a populist annual meeting which allows its delegates to participate in their government would be a less effective agency. The loss of the populist annual meeting would be a step backward, not forward, for Kansas state government as it should seek to involve citizens in its work for the common good.

#### *Accountability to All Kansans*

Accountability to a grassroots/populist annual meeting is only a small part of the oversight applied to the Board of Agriculture.

Its programs, regulations and budgets are all received and held in check from the people's elected representatives--not only on a state basis, but a national basis as well.

This agency needs and has always welcomed that kind of oversight. Because of it, efficiency has been documented through cost/benefit ratios and national award recognition. Accountability to all Kansans, especially at the local level, should not be forsaken.

#### *Bipartisan Operation*

While other agencies have provided positions for political supporters, this agency has stayed away from providing such positions so as to remain politically neutral. The accessibility for leaders from both political parties to work with the agency for its information and programs without the skewing of partisan politics has kept this agency above the bias of political parties.

Perhaps the benefit of being bipartisan can best be summed up by former Secretary Sam Brownback. When he was selected to lead the agency, he didn't bring with him a staff that would automatically obey his every order. He was able to work with a competent,



professional and politically neutral staff already in place. He led the agency from a position of persuasion through a knowledgeable, experienced staff.

In summary, this agency's bipartisanship confirms that it governs and administrates from the persuasion brought by good ideas, not politically pushed ones.

#### *A Private Sector Board*

The membership of this Board has never been individuals from identity-designed slots. Instead, it has been a board of interested people with a broad-based interest in agriculture. That is the secret to its success. Board members have not been elected for a certain issue they carried or certain group to which they belonged.

The private side's involvement with the public sector has proven that both can co-exist for the common good.

The board structure has been a major tenet contributing to the success of this agency. That success has been possible only because nowhere has any special interest been designated a board slot to provide unfair weighted advantage for the interest they may represent. Private sector involvement guarantees they will live under the rules and policies they enforce and use.

#### *Regulating Oversight by Many*

Regulations that work for their intended purpose must do two things: 1) be enforceable to provide safe quality goods and services; 2) be workable to ensure new entrants into the industry while providing a level of profitability to existing business. The fact that there are so many regulations in this world today just as in our agency makes it nearly impossible for a single person to be able to know if the above two purposes are being met.

The Board has 12 members representing different geographic areas of the state. Those areas have differing amounts of accessibility and access to services for companies expected to be able to afford to comply with regulations. Input from board members who understand their own districts has worked to the advantage of the state. This is just one small example of the ways a broad-based board can make regulations workable and effective. To lose this oversight is to lose the hands and feet of an agency which is recognized nationally for its efficiency.

In summary, it is the position of the members of the Board of Agriculture that a grassroots, broad-based annual meeting should be maintained to assist in the selection of a bipartisan, multiple-interest board comprised of a cross-section of the private sector. The Board, accountable to all Kansans, should select the Secretary of Agriculture and provide regulatory oversight to the agricultural industry for the success of the state of Kansas.

These tenets are not all-inclusive but represent what the current Board of Agriculture deems most vital if this agency is to maintain the respect and accolades it has enjoyed for nearly 125 years. They are all interrelated. To dilute or forgo just one of them is to leave this agency open to political perceptions.

The epitome of government is one in which its people are directly involved and trust it. The Board of Agriculture is trusted by those it serves. To lose any one of the above discussed tenets is to lose that trust.



# SIERRA CLUB

## Kansas Chapter

Testimony of William Craven  
Legislative Coordinator, Kansas Sierra Club

Attorney for plaintiffs Common Cause of Kansas and the  
Kansas Natural Resource Council

Kansas State Board of Agriculture  
Interim House Agriculture Committee  
October 27, 1993

Thank you for providing an opportunity to testify on this important matter. I am not going to spend my few minutes before you talking about the legal underpinnings of this lawsuit. Most of you are familiar with my remarks on this issue from last session. The latest development--which I learned about last Saturday--is that the 10th Circuit has denied the most recent request for a stay. This is the fifth time that a stay has been requested in this case, and the fifth time a stay has been denied. The entire order from the 10th Circuit reads as follows: "Defendants have filed a motion for a stay pending appeal. Upon consideration thereof, the motion for stay is denied."

To get a stay, one of the legal requirements is that the party seeking the stay show the court a likelihood of prevailing on the merits of the case. The merits, in this case, relate to the one person, one vote issue, which is the heart of the plaintiffs' case. The only way the defendants will win on appeal is if the cases which establish the right to an equal vote are substantially modified, if not reversed. No one seriously thinks that will happen. As Judge Lungstrum said on Oct. 1, "This is not a close case." This case simply acknowledged a basic principle of democracy: states can't have elections for state offices where only certain people get to vote.

I also think it is about time this committee understood that this appeal is a waste of time and a waste of taxpayers money. About the only people who are going to benefit from this appeal are my co-counsel and myself. As a taxpayer, I am upset that I have to help pay for establishing democracy and lawful government when it shouldn't cost one cent.

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I have watched this issue come to a screeching halt in the legislature last session, and during the interim hearings this year in the Senate Ag Committee. Because of the court order, you should know that legislative inaction means that the system of a governor appointing a receiver will remain in place indefinitely, which to me, is far preferable than the old system.

As for the legislative options available to you, most of you know that last session, the Sierra Club, Common Cause, the Kansas Rural Center, the Kansas Natural Resource Council, the Kansas Farmers Union, and other groups urged the legislature to adopt H.B. 2292, the Board of Ag reform proposal which would provide for the a Department of Agriculture headed by a secretary appointed by the governor and confirmed by the senate. Such a system is identical to how other Kansas cabinet secretaries are named, and how the vast majority of agricultural agency heads are selected in the nation. That is still our objective. The agricultural agency in state government must be accountable to all the people, because its actions affect all the people. It is that basic.

As I'm sure you know, because of the plaintiffs' victory in federal court, the Board was abolished on October 1, and the management of the agency was transferred to the governor, who will serve as receiver. The governor has named Philip Fishburn as her agent to operate the agency. So far, I have heard nothing but praise about Mr. Fishburn both from within the agency, and from many of the groups who used to elect the board members. As I said, the system ordered by the court will remain in effect until the legislature enacts a constitutional form of government, no matter whom is governor or whether a different agent is named by a different governor.

I am quite aware that the Attorney General is urging the legislature not to make any changes until after the appeal. I hope you disregard his advise. This is the same Attorney General who has issued three opinions saying that the election process was legal. The fact of the matter is that on the law of this case, he was wrong. And then he was wrong again. And then he was wrong once more. And he is compounding those errors by asking you not to enact any reform measure until after the appeal.

Two other bills have been proposed. They would also create illegal and unwise voting systems, in our opinion. The proposal (H.B. 2134) to elect the secretary statewide violates the fundamental principle of the Kansas constitution that all executive power is vested in the governor. And even if it were legal, that proposal is unwise because it would create the very real possibility that an urban-rural electoral split would occur. Only if you want urban voters

monopolizing the vote for the Secretary of Agriculture, should you consider that proposal. It also creates the likelihood that campaigns for this office would be dominated by contributions from special interests, much like the Insurance Commissioner's campaigns, and that is, in my opinion, not a very good example of Kansas democracy in action.

The pressures which confront the head of the agriculture agency should be diffused through the governor's office. After all, the governor is elected to represent all Kansans, and the governor has to sort through the competing interests which go into making state policy, agricultural or otherwise.

The proposal (S.B. 85) to elect the Board also violates the same state constitutional rule. In addition, this proposal would lower the visibility of the Board to about the same level as the Board of Education, and that seems to us to be unwise. How many of your constituents know who their member of the state Board of Education is?

The plaintiffs are prepared to challenge the constitutionality of either of these methods, if the legislature enacts them. I don't want to be accused of trying to control the outcome of this debate or of being open only to the proposal I have advocated today. I have indicated to the committee my preference, and what I think is wrong with the other two plans. It is important for each of you to realize that I remain open to other plans, which I haven't yet heard about.

However, the plaintiffs will not accept a plan which creates only the illusion of democracy. H.B. 2292 is the proper vehicle for reform. I urge you to scrutinize it closely, and to recommend it favorably. It is time for the agricultural agency of state government to reflect fairly the interests and voting strength of all of the citizens in Kansas.

Thank you for the opportunity to speak today.

Testimony to the Committee on Agriculture  
Kansas House of Representatives

October 27, 1993

by

Lynn Hellebust  
Chairman, Common Cause of Kansas

Mr. Chairman and members of the House Agriculture Committee, my name is Lynn Hellebust and I am chairman of Common Cause in Kansas. I want to thank you for the opportunity to speak with you about the future state governmental structure of agriculturally related programs in Kansas.

Common Cause is a nonprofit, nonpartisan citizens' lobbying organization that works to make our government more open, accountable and accessible to ordinary men and women. We have about 2,200 members in Kansas and our state board includes members from Dodge City to Overland Park and from Marysville to Wichita.

As you know Common Cause of Kansas, along with the Kansas Natural Resource Council, challenged the constitutionality of the manner in which the Kansas State Board of Agriculture was elected. We prevailed, which is why you are holding hearings to consider just how to proceed.

Our position was, and is, that the Legislature should act to replace the Kansas State Board of Agriculture and the present court ordered receivership with a Department of Agriculture headed by a secretary, appointed by the governor and confirmed by the Senate.

We have also suggested that if the Legislature chooses to replace the former board in some fashion, the new body should be advisory only, appointed by the governor, have equal representation from each congressional district, and broadly reflect the interests of all Kansans.

We favor an appointed secretary because appointment ensures that the secretary's policies would not be at cross purposes with those of the rest of the executive branch. And appointment avoids the possibility of a divisive statewide campaign for an elected secretary that would pit urban against rural interests, to the detriment of both.

Again, thank you for the opportunity to speak to you. I'd be happy to answer any questions you might have.

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# KANSAS SWINE GROWERS ASSOCIATION

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Promoting the swine industry and rural communities through family farming

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Good afternoon.

My name is Vaughn Woolf, President of the Kansas Swine Growers Association. I live in Sedgwick County where my wife and I own a 350-sow hog operation.

I thank Chairman Shore and the rest of the committee for this opportunity to speak.

The Kansas Swine Growers Association was incorporated in February of 1993. We are nearly 300 members strong with members in 46 counties statewide. Our purpose is to promote the swine industry and rural communities through family farming.

We would like to make the following recommendations:

- 1) The Secretary of Agriculture be appointed by the Governor and confirmed by the Senate.
- 2) A 12-person advisory committee be selected by the Secretary. This committee would be chosen from a pool of delegates nominated by recognized statewide commodity groups and agricultural organizations. Each organization would nominate one person from their membership to fill that pool. Only one nominee from any organization may serve on the advisory committee at any one time. Lengths of terms for the advisory committee would initially be staggered to allow a normal rotation of new members without a complete twelve-person turnover. This advisory committee would also fill the vacant seats on the State Fair Board.

Thank you for your time.

I would be happy to answer any questions you may have now or at a later date. I can be reached during the days at 1-316-542-3747 or 1-316-542-0596 in the evenings.

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# PUBLIC POLICY STATEMENT

House Agriculture Committee

Re: State Board of Agriculture

October 27, 1993

Topeka, Kansas

Presented by:

Warren Parker, Assistant Director

Public Affairs Division

Kansas Farm Bureau

**Mr. Chairman and members of the Committee:**

I am Warren Parker, Assistant Director of Public Affairs for Kansas Farm Bureau. Thank you for the opportunity to make some brief comments concerning the Kansas State Board of Agriculture.

You will find, attached to this testimony, the latest policy position our farmer and rancher voting delegates from each of the 105 counties have adopted concerning the Board of Agriculture structure. This policy was adopted in November of last year at our state annual meeting.

Our organization works from the grass roots up. I don't have the authority to come here and tell you absolutely what Farm Bureau will do in '94 when the legislature returns. That will be decided by the

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voting delegates next month at our upcoming annual meeting, and the flexibility they may give us is yet to be determined.

Our policy development process is underway. Questionnaires are in the country concerning this and other issues, and several have been returned. Based on present policy and some trends, some general beliefs by our members do surface.

There is a strong belief that the present structure which maintains a general continuity of leadership and programs that is separated from partisan politics has served not only agriculture, but the state as a whole very well. Our members feel the Agriculture agency and its service to all Kansans compares extremely well to other state agencies. There is an excellent record of consumer protection, innovative programs concerning the environment and protection of water, emphasis on new uses for agriculture products, and probably the most effective public relations program this state has going in the form of the "Land of Kansas" food promotion which has been seen both nationally and internationally.

Our members believe that wholesale changes, or "throwing the baby out with the bath water" not only endangers important nonpartisan continuity, but is premature considering the issue is still in the courts. There is no final answer yet from that branch of government to some very important constitutional questions.

Our members realize that the Agriculture agency has been given increased responsibilities over the years by the legislature, and their accountability to the legislature has also increased. These new duties affect all Kansans, as well as the \$6 billion dollar agriculture industry. Our members are not unwilling to look at

options which will benefit the agency, agriculture, and Kansas. We've been there when previous changes have been made, and if the legislature or the court decides there should be some adjustment, we'll be there again.

I would close with the reiteration of two basic points as our members see them and as you look at this issue:

1. A structure which provides continuity, accountability, and nonpartisanship has served the state well.
2. The issue is still in the courts, and major changes at this point are a case of "flying blind" in relation to court action and constitutionality, and also as to your beliefs as a legislature as to what is in the best interest of all Kansans, as well as the agriculture industry.

We look forward to working with you on this issue, and look forward to having in hand a formal policy position when you convene in January. We thank you for your time, and I would be happy to attempt to answer any questions.

## **State Board of Agriculture**

**AG-22**

The present Kansas method of electing a State Board of Agriculture, which board employs the administrative head of the State Department of Agriculture, is unique among the states. The State of Kansas, including agriculture, has been well served because the Department has never been placed in a partisan political position. For that reason, we support continuation of the present system which includes the election of the State Board of Agriculture and the selection of the Secretary of the State Board of Agriculture by the elected members of the Board.

The State Board of Agriculture is an effective administrative and regulatory body which has statutory authority granted by the legislature to do those things assigned by the Legislature. The State Board has performed well in administration and regulation. Appropriately, the State Board has not been involved in public policy formulation. We support the present role of the State Board of Agriculture.



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Owens and Publishes The Kansas STOCKMAN magazine and KLA News & Market Report newsletter.

STATEMENT  
OF THE  
KANSAS LIVESTOCK ASSOCIATION  
TO THE  
HOUSE AGRICULTURE COMMITTEE

Representative Gene Shore, Chairman  
With Respect to the  
Kansas State Board of Agriculture  
Presented By  
Dee Likes  
Executive Vice President  
October 27, 1993

The issue of reorganization of the Kansas State Board of Agriculture has come before the legislature on many previous occasions. To date, the legislature has elected to retain the basic structure of the State Board of Agriculture which has been in existence since its inception in 1872. Finally, two special interest groups brought a law suit challenging the constitutionality of the board's structure and a federal district court judge decided in their favor. That decision has been appealed to the Tenth Circuit Court of Appeals. We believe the appeals process should be exhausted before any significant legislative action is taken. Said a different way; until the appeal process has been allowed to work, and a decision rendered, legislative action seeking to restructure the State Board of Agriculture would be a hasty response to one judge's opinion which many believe to be erroneous. Recent experience with the legislature hurriedly enacting major changes in response to one judge's opinion has been and continues to be viewed as imprudent and unnecessary by many interest groups, citizens and legislators alike. While we join in this discussion and any future debates about the proper way to structure an agricultural department in this state, we do so while urging caution and restraint until this decision is either overturned or affirmed by a higher court.

The Kansas Livestock Association supports the current structure of the State Board of Agriculture and we oppose a system where the Agriculture Secretary is appointed by the Governor or elected by popular vote.

In fact, we view those two options as an analogous to having to choose between onion and garlic because either alternative will most assuredly bring an increasing influence of politics into the administration of the approximately 60 state laws administered by the current Board of Agriculture. We have several fears about politicizing the administration of laws affecting agriculture. With a possible change in the secretary at least once every election - or more often - there would be less consistency

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in the style and philosophy of administration and operation of the department. Imagine the type of political grandstanding it would possible to get from an ag secretary who is obligated to make a governor look good by splashing in the news, some tough, but unlargely unnecessary enforcement action regarding meat inspection, pesticides or water law. We are fearful that a dose of farmer and rancher pain in order to achieve some political gain would become a part of the new way of doing business in Topeka. What if we had a governor who appointed a vegetarian, an animal rights activist or an environmental zealot as Ag Secretary? What about a radical agriculturist who is negative towards larger commercialized operators or is an outspoken enemy of the traditional organizations which represent mainstream agriculture?

Most of us can remember the recent example from Texas where the Ag Commissioner was openly abrasive to mainstream agriculture but repeatedly won re-election by campaigning in urban areas. Do we really want three or four urban counties with large cities electing the agriculture secretary in Kansas?

Agriculture is a highly specialized but broadly misunderstood industry operated by a small minority of voters. We are fearful of being used as pawns for higher stakes in the game of politics.

In contrast, our current board of agriculture is knowledgeable about the industry and has been operated in a stable and consistent and prudent manner for 122 years. During that time only ten secretaries have headed the agency. Because the agency is overseen by a 12 member farmer and rancher board there is a degree of connection and understanding between the board and the industry that they regulate that is not present in other state agencies. There is a degree of common sense that is absent in other state agencies. The department heads for activities like meat inspection, water and pesticide law are not puffed up bureaucrats in office for a short period of time to make a name for themselves or for the secretary or the governor who appointed them and are inclined to play a cop with a badge. Rather they are professionals who are skilled but firm in achieving compliance without fanfare or political grandstanding.

It is our strongly held belief that Kansas farmers and ranchers are better off under the current structure than if we change to a more political system.

If it does become necessary to restructure the Board of Agriculture, we will work within the legislative process and with this committee to find an acceptable constitutional alternative.





# Kansas Association of Wheat Growers

ONE STRONG VOICE FOR WHEAT

P.O. Box 2349

Hutchinson, Ks 67504-2349

(316) 662-2367

## TESTIMONY

House Agriculture Committee  
Chairman: Representative Gene Shore

Subject: Kansas Board of Agriculture

Mr. Chairman and members of the committee, my name is Howard W. Tice, and I represent the Kansas Association of Wheat Growers. On behalf of our statewide membership, I appreciate the opportunity to participate in today's hearing.

In the past, there have been many attempts to change the way our Kansas Secretary of Agriculture is selected. The lawsuit that brought us to today's hearing is another outgrowth of that misguided effort. Some have proposed appointment by the Governor. Some prefer election by the general public. It has been suggested that the Board of Agriculture might be elected by the general public, in a manner similar to the Kansas Board of Education. Others feel the Board of Agriculture should be appointed, with the Governor, the Speaker of the House and the Senate President participating in the selection process. Under the last two proposals, the board would continue to hire the secretary.

Since this issue continues to surface from time to time, our organization has adopted an ongoing policy resolution, which was renewed at our last state convention. It is as follows:

The structure of the Kansas State Board of Agriculture, which dates back to 1872, is governed by farmers, and is devoted to agriculture. In addition to selecting the Secretary of Agriculture, the State Board of Agriculture has been an effective administrative and regulatory body.

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The State Board of Agriculture has authority granted by the Legislature, to do those things assigned to it by the Legislature.

The KAWG feels that one important reason the State Board of Agriculture has been successful is because it has never been placed in a partisan political position.

RESOLUTION: The KAWG supports continuation of the present system, which provides for the election of the State Board of Agriculture by agricultural producers, and the appointment of the Secretary of Agriculture by the Board of Agriculture.

Prior to the Senate Agriculture Committee's hearing, KAWG Board of Directors, thoroughly discussed this issue once again. It was unanimously agreed that the preferred course of action would be to allow the appeals process to function before making any major changes to the structure of this vital and effective agency.

It is clear that the vast majority of Kansans, who are involved in the industry of agriculture, feel that the Board of Agriculture has served our state well throughout its 122 year history. The agency is staffed by an outstanding group of skilled professionals who are dedicated to providing the highest level of service to the people of Kansas. Continuity, stability and responsiveness are commonplace.

The system of selecting the Secretary of Agriculture, is one of the keys to providing the stability and continuity of direction and service that is the hallmark of the Kansas Board of Agriculture. It also allows a degree of accountability to the industry served, that is not found in other official agencies in Kansas or other states. It provides grassroots input that assures farmers that they are served and regulated by an agency that has a real working knowledge of their business, and the problems they encounter. That working knowledge also results in a degree of fairness and objectivity that is unique to this agency.

One of the greatest strengths of our system is that it responds well to the needs of the industry, and the general public, through the active participation of informed citizens, aided by the expertise of a dedicated professional staff. History shows that to depart from that course would move Kansas away from the trend of downsizing government, and toward a larger, more entrenched bureaucracy.

Under the system that has served our state well for nearly a century and a quarter, the **Secretary of Agriculture** must have proven qualifications, and must meet guidelines established by people who are directly involved in the industry to be served and regulated. The small number of secretaries who have served the agency, and the high caliber of those individuals are ample evidence that the system produces both continuity and quality in departmental leadership. That leadership has also produced corresponding levels of responsiveness and performance throughout the agency.

In short, Kansas has an agricultural regulatory and service agency that is second to none. In fact, those who seek change have not questioned the quality of the agency itself. The disagreement is solely over the process of selecting the agency's administrator.

It doesn't matter to some, that 122 years of quality performance prove the system works. It doesn't matter to some, that the problems other agencies have, due to inconsistency of leadership, don't happen at the Kansas Board of Agriculture. These detractors fail to note that Kansas Secretaries of Agriculture have regularly been chosen to lead national efforts, in recognition of their abilities and the strength of the agency they head. The agency's track record is undeniable proof that we have a system that serves our state and its number one industry well.



The important thing to remember is that we have an outstanding agency that is effective and responsive to the people. Its strengths are worth preserving, and selection of the secretary by a working board, made up of informed and involved citizens is one of the main strengths.

Our conclusion is that, considering the proven strengths of the present system and the importance of agriculture to our state's economy, the legislature should take no action unless the appeals process fails to uphold the constitutionality of our present system. **THERE IS NO REASON FOR HASTY ACTION!** Should Judge Lungstrum's decision be upheld, there would still be plenty of time to make the very minor changes which would then be required. Our efforts now should be focused on supporting the agency and its staff, and studying potential alternatives so that, if it becomes necessary, we will make the proper decision.

Before wrapping up my testimony, I would like to touch on three important points that are related to perceptions of this issue, but have no bearing on performance by the agency.

1. Those who seek change, and the newspaper editors who support them, always refer to the "special interest groups" that they say dictate ag-policy under the present system. They use that term in a derogatory manner, as if it is inherently bad to be a "special interest group." However, by definition, all associations, committees, organizations or other "groups," large or small, that monitor or attempt to take action on certain issues, are "special interest groups." If you have an interest in one or more issues, and you find someone who agrees with you and wants to be involved, you are a "special interest group." There is not only nothing wrong with "special interest groups," but they are an integral part of our political system.

2. Farm organizations which supply the mechanism for choosing delegates to participate in the annual **Board of Agriculture** convention, and elect the **Board**, do not control either the **Board** or its policy. First of all, each delegate votes his or her own conscience. None of the delegates is controlled by the organizations they represent. Secondly, once elected, the board members deliberate and vote on the issues they face, according to their own consciences, not according to the dictates of farm organizations.

3. The lawsuit that brought us here today is based on the one person/one vote concept of the **U.S. Constitution**. On the surface, the issue the plaintiffs raise is that of accountability to the public. However, under the present system, there is direct accountability to far more people than there would be under appointment by the governor. The only way to get more accountability than the present system, is direct election, and no one has seriously suggested that. In fact, those who brought the suit are strongly on record against direct election of the **Secretary of Agriculture**.

To bring my remarks to a close, I would like to refer to the papers attached to my testimony. I have included copies of the public forum letters we wrote to the **Salina Journal** and the **Wichita Eagle**. I would call special attention to the headline the **Eagle** put on our letter, and the statement they isolated in bold print.

In addition, I would call your attention to another editorial printed by the **Eagle**, which was published in early **September**. The author, **Steve Harper**, is an outdoor sportswriter for the **Eagle**. You should especially note his concern for the long-term future of the agency and its staff, who he says will be back on,



..."another long and hairy ride on what has become as roller coaster existence, since the top person in the agency was raised to as cabinet level position by Gov. Mike Hayden."

Mr. Harper puts the spotlight on the appointment of a retired postal worker to head the Department of Wildlife and Parks, not because of the individual's professional qualifications to head such an agency, but because of political patronage. He states that Kansans need and deserve someone who can look to the long-term future of the agency, and who can work with "special interest groups" and the legislature.

He goes on to recommend that the director should be hired by a nine to eleven member panel representing various professions, organizations and other groups who definitely fit the definition of "special interest groups."

It is very interesting to note that Mr. Harper's prescription for the ills facing the Department of Wildlife and Parks is perfectly modeled in the structure of the Kansas Board of Agriculture which was struck down by Judge John Lungstrum. Perhaps he looked, as we have, at the continuity and professionalism of the Board of Agriculture, which has served our state so well for 122 years.



# Kansas Association of Wheat Growers

ONE STRONG VOICE FOR WHEAT

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September 17, 1993

Letters to Editor  
Salina Journal  
P.O. Box 740  
333 S. 4th  
Salina, Kansas 67402-0740

I am writing in response to your recent editorial concerning the Kansas Board of Agriculture.

It never ceases to amaze me how newspaper editors, who sit in their ivory towers and rarely venture out into the real world, can make the pronouncements you people make. Anyone willing to expend the time and effort to visit our state capitol and observe our governmental agencies in action, will quickly learn that the Board of Agriculture is the most efficient, productive, effective and accountable agency in the system.

That didn't happen by accident. Instead of constantly reorganizing every time a governor decides to change an agency head, the Board of Agriculture has evolved into the kind of lean, professional agency that is the desire of most intelligent citizens. We want state agencies that listen to the public; that are willing to learn, from the people they serve, how best to enforce the regulations assigned to them. We want an agency that is responsive to real needs, in a realistic manner. We have all that and more in the Kansas Board of Agriculture. And we have all that because of active citizen involvement.

Is the Board of Agriculture really unconstitutional? Those of us who testified in favor of continuing the appeals process do not think so. When you cite Judge Lungstrum's decision, you must bear in mind two things. One, he refused to allow evidence to be presented, that would have clearly shown that the Board of Agriculture meets constitutional muster. Secondly, the appeals process is that part of our system that protects us against poor judicial decisions.

If the 10th Circuit Court upholds Judge Lungstrum's decision, there will be plenty of time to develop the minor changes that will be required. If he is reversed, changes can still be made to broaden participation in the elective process, without destroying an agency that been the shining jewel in Kansas state government for a century and a quarter.

It is important to note that if the Board of Agriculture had not changed over the years, the charge that it is outdated might apply. However, it is one of the most dynamic agencies you'll find anywhere.

Finally, when you write about cadavers and odors, perhaps you should make an attempt to learn which way the wind is blowing. Many of us are sick and tired of minorities using the courts to destroy what they don't agree with, when they fail to get their way through the legislative process.

If change is needed, it will come. If we do it right, we will retain the things that make the Kansas Board of Agriculture the best in the nation.

Sincerely,

Howard W. Tice  
Executive Director  
HWT/ht

# *Ag Board reflects best in democracy*

In response to The Eagle's Sept. 7 editorial concerning the Kansas State Board of Agriculture, it is quite apparent that The Eagle's editorial staff members are the ones who "don't get it," not the members of the Board of Agriculture.

The editorial writer agreed that the organization functions smoothly under its current setup, which was called "undemocratic governance." Then the writer repeats state arguments for changing a system that has given us an agency that is unmatched in productivity, professionalism, consistency, adaptability, responsiveness to public need and, yes, accountability.

The editorial also pointed out that the attorney for one of the minority groups that brought suit against the Ag Board feels an appeal is a waste of time. However, it is the way our judicial system polices itself against incorrect decisions. In addition, as Attorney General Bob Stephan noted, there is a deeper problem to be resolved that affects many other agencies — and our state's right to self-determination.

It is also about time The Eagle stopped printing the erroneous charge that the farm groups that provide the delegates to the Board of Agriculture

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**If change is needed, it will come. If we do it right, we will retain the things that make the Kansas Board of Agriculture the best in the nation.**

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convention control the board. First, the delegates make their own decisions; they are not bound by organizational dictates. Second, once elected, board members cast their votes according to their own consciences. They are not controlled by an organization or group of organizations. Using Eagle "logic," you could also claim the Methodist Church controls the board, since the majority of the sitting board members are Methodists.

The Eagle may enjoy freedom of the press, but it doesn't live up to its responsibility for accuracy when it continues to print such fiction on the editorial page.

The editorial staff's ignorance of the legislative process is showing when it chastises the Senate Agriculture Committee for not reaching a decision. Im-

portant and controversial matters are never decided on the same day as the hearing. The committee must have time to digest the material they received, and to follow up on questions raised. In addition, ignorance of association policy development procedures is also evident. We work from the grass-roots level up. For new policy to be developed, we have to wait for our annual conventions. What we shared with the committee is based on current policy, which does not allow us to propose any changes.

We should also point out that other minority groups have sought to change the Board of Agriculture structure in the past. The Legislature, which represents the entire citizenry, has consistently voted for the current system. That sounds pretty democratic to me.

If change is needed, it will come. If we do it right, we will retain the things that make the Kansas Board of Agriculture the best in the nation. The board, made up of concerned and involved citizens, is the key to that strength.

HOWARD W. TICE  
Executive Director  
Kansas Association of Wheat Growers  
Hutchinson

# A governor goes, so goes secretary of Wildlife and Parks

**W**hen Gov. Joan Finney announced that she would not seek another term, the spotlight quickly shifted to a very long list of folks who aspire to live in Cedar Crest.

What Finney's announcement means for Ted Ensley, secretary of the Kansas Department of Wildlife and Parks, is that his job will end in about 15½ months, even if a Democrat is elected. New governors always like to pick their own people; just ask any employee of a state agency.

What that means to the 400 employees of Wildlife and Parks is

another long and hairy ride on what has become a roller-coaster existence since the top person in the agency was raised to a cabinet level position by Gov. Mike Hayden.

Hayden's idea, and it was a good one when he was in the driver's seat, was to elevate natural resource and recreation management to a higher, more professional status. To do that, he melded the Fish and Game Commission and the Parks Resource Authority into a single agency in 1986, and created a cabinet level position to manage the new department.

That done, he made a nationwide search for a seasoned wildlife/natural resource professional to chart a long-term course for the new agency.

Hayden planned on being governor for eight years. He had hoped that by the end of that time the agency would be well-grounded in purpose and mission and that the concept of a professional manager would be firmly established.

Then Joan Finney surprised everyone by upsetting Hayden in 1990. And without so much as a thank you she dismissed Wildlife and Parks secretary Bob Meinen. As his replacement she hired Jack Lacey, a retired postal employee who had helped her carry southeast Kansas during the election.

Lacey liked to hunt and fish. So much for a qualified professional to head the agency.

He was forced to resign a year and a half after taking the job to avoid being prosecuted for illegally issuing hunter safety cards to three government officials.

After that debacle, Finney hired Ensley, a Wildlife and Parks commissioner and, like Finney, a Democrat.

Don't get me wrong. Ted Ensley is qualified to be secretary. He was the director of the Shawnee County Parks for most of his 35 years with the county and has a fisheries degree from Kansas State.

The problem is that whatever long term plans Ensley had had ended when Finney announced that she will not seek another term. At that time, Ensley became a lame duck and the people who work for him knew it.

The only way to fix this political patronage problem is to take it out of the political appointment loop so the new governor won't have the option of hiring friends who like to hunt and fish.

What Kansans need and deserve for \$70,000 a year is someone who can look to the long-term future of wildlife/natural resource management in Kansas. A director who is qualified, works well with the public and is politically savvy enough to deal with special interests groups and the Legislature.

That person should be hired by a nine- to 11-member panel of qualified persons, including biologists from academia as well as field biologists who deal with the day-to-day rigors of resource use.

The panel should also include members of the Kansas Wildlife and Parks Commission because they represent you and me when it comes to park/resource use, laws and regulations. Their numerical influence, however, should be limited to two representatives because they are political appointees.

A mix representing state conservation groups and at least one law enforcement person would round out the group, which would be in charge of searching for and selecting the Director of Wildlife and Parks.

The bottom line is that politics should hold no sway in determining whether the director holds on to the job. This system would allow that person to chart a long term course for the department. An annual review system would provide the checks and balances necessary to insure that the director is always moving forward.

Hayden had a good idea, but unfortunately there are not many governors who know beans about the outdoors or what it takes to properly deal with conflicts that arise between critters and people.

What most governors know best is where the favors are owed. And more often than not, the ones who receive those favors couldn't manage a flower bed, let alone more than 82,000 square miles of some of the most important natural resources in the Great Plains.



**STEVE  
HARPER**

# *Kansas Agricultural Alliance*

*Marty Vanier, DVM, Legislative Agent  
1728 Thomas Circle  
Manhattan, KS 66502  
(913) 539-9506*

**STATEMENT OF THE  
KANSAS AGRICULTURAL ALLIANCE  
BEFORE THE  
HOUSE AGRICULTURE COMMITTEE  
EUGENE SHORE, CHAIRMAN  
REGARDING THE KANSAS STATE BOARD OF AGRICULTURE  
OCTOBER 27 & 28, 1993**

The Kansas Agricultural Alliance (KAA), formerly the Committee of Kansas Farm Organizations, is a coalition of 26 agribusiness organizations that spans the full spectrum of Kansas agriculture, including crop, livestock and horticultural production, input suppliers, allied industries and professions.

The Alliance would like to offer some comments concerning a response to the recent court decision on the process of selecting the members of the Kansas State Board of Agriculture and the Secretary of Agriculture.

The District Court, in its decision of the case, agreed with the plaintiffs that the current method of selecting the Board and the Secretary of Agriculture was unconstitutional, however, the only remedy the Court offered was to cause the Board to go into receivership on October 1, at best a temporary action and certainly not meant to be a permanent solution. The Court, in its ruling, did not describe a new selection process nor did it list characteristics or qualities of a selection system that would satisfy the Court of the constitutionality of the process.

It is a waste of time and effort for the Legislature to create a new selection process to meet a goal that has yet to be defined. In light of the Board of Agriculture's and the Attorney General's decision to continue to pursue the case on appeal, we feel it would be premature for the legislature to create a process of

*House Ag Co  
10-27-93  
Attachment 11*

selection prior to the final disposition of the case and run the risk of future decisions on the case making the Legislature's efforts moot.

Therefore, the Kansas Agricultural Alliance recommends that the status quo be maintained until the legal remedies are exhausted by all parties and a final decision is handed down. One would also hope that the Courts will provide some direction to the Legislature for appropriate resolution of the situation.

Thank you for your time. I would be happy to respond to any questions.





# KANSAS VETERINARY MEDICAL ASSOCIATION, INC.

816 SW Tyler, Suite 200, Topeka, Kansas 66612, (913) 233-4141

FAX: (913) 233-2534

October 27, 1993

Dr. Michael L. Whitehair  
President  
Abilene Animal Hospital, PA  
320 NE 14th  
Abilene, Ks. 67410

Representative Eugene Shore, Chairman  
and Members of the House Committee on Agriculture  
State Capitol  
Topeka, KS 66612

Dr. Terry Turner  
President-Elect  
Ark Valley Veterinary Hospital  
1205 Patton Road  
Great Bend, Ks. 67530

Dear Representative Shore and House Committee Members:

Dr. Gary Modrcin  
Vice President  
College Blvd. Animal Hospital  
11733 College Blvd.  
Overland Park, Ks. 66210

Representatives of the Kansas Veterinary Medical Association were not present at the August 24 meeting of the Kansas Agricultural Alliance when the vote was taken to accept the position of supporting the current structure of the Board of Agriculture and opposing any legislative action to change the structure until the lawsuit and related appeals are final.

Dr. Duane M. Henrikson  
Trustee-at-Large  
Emporia Veterinary Hospital  
710 Anderson  
Emporia, Ks. 66801

The Legislative Committee of our organization has recommended that the Kansas Veterinary Medical Association take a neutral position on this issue and further, that our Association adopt a philosophy which would broaden the base of Kansas agriculture.

Dr. Vern Otte  
Treasurer  
State Line Animal Hospital  
2009 W. 104th  
Leawood, Ks. 66206

Should you have any questions, please feel free to contact me directly.

Catharine A. Deever  
Executive Director  
KVMA Office  
816 SW Tyler, Suite 200  
Topeka, Ks. 66612

Sincerely yours,

Catharine A. Deever  
Executive Director

House Agto.  
10-27-93  
attachment 12  
12-1



KANSAS TERRITORIAL AGRICULTURAL SOCIETY-Law Est. 1855

M E M O R A N D U M

TO: INTERIM STUDY COMMITTEE  
C/O HOUSE AGRICULTURE COMMITTEE  
WITH VALID AND CURRENT OATHS

FROM: FRANKLIN DEE WILLIAMS  
CURRENT AND ACTING PRESIDENT  
STATE AGRICULTURE SOCIETY

DATED: October 27, & 28, 1993

RE: BRIEFING & HEARINGS on Potential Re-  
structure of the KS State Bd. of Ag.  
Continued from August 30, & 31, 1993

FRANKLIN DEE WILLIAMS

3212 S.W. Eveningside Dr. # 31.  
Topeka, Kansas 66614  
(913) 272-5392

PRESIDENT

KAREN HANGLICK

ROUTE 1, BOX 37  
Metavaka, Kansas 66516  
(913) 632-3790

NORTHERN JUDICIAL DISTRICT  
VICE PRESIDENT

VIRGIL PREWITT

R.R. 2, Box 141  
Cherokee, Oklahoma 73728  
(404) 431-2334

SOUTHERN JUDICIAL DISTRICT  
VICE PRESIDENT

SCOTT STEELE

255 North Michigan  
Lawrence, Kansas 66044  
(913) 843-4667

EASTERN JUDICIAL DISTRICT  
VICE PRESIDENT

RUSSELL BAULSTON

508 East Oak  
Oberlin, Kansas 67749  
(913) 478-2303

WESTERN JUDICIAL DISTRICT  
VICE PRESIDENT

YOLANDA J. MARSHALL

884 S.E. Rice Rd.  
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(913) 233-2800

CORRESPONDING SECRETARY

GLYNDA L. MELLIES

Box 68  
Morganville, Kansas 67468  
(913) 296-3631

RECORDING SECRETARY

MARK DRAKE

R.R. 1.  
Winfield, Kansas 67156  
(316) 221-4688

TREASURER

ABRAHAM K. FRIESEN

R.R. 3, Box 33  
McPherson, Kansas 67460  
(316) 241-0055

PARLIAMENTARIAN

Thank you for the opportunity to appear and offer to further assist in support, of cooperation to establish and exercise the full powers and duties without obstruction to the charter of the Society:

1. Where Constitution has been once formally extended by Congress to territories, neither Congress nor territorial legislature can enact laws inconsistent therewith. [ See U.S. Territory or Property Art IV, Sec. 3 cl 2, n 8 - - Exhibits # 43 & 44]

I S S U E S   &   C O N S T I T U T I O N

- |  |                          |
|--|--------------------------|
| (A) POSITIVE ACTIONS                                 | (B) POSITIVE INACTIONS   |
| (C) OBSTRUCTION OF JUSTICE                           | (D) OBSTRUCTION OF DUTY  |
| (E) LEGAL RESPONSIBILITIES                           | (F) LEGAL AUTHORITIES    |
| (G) ETHICAL RESPONSIBILITY                           | (H) MORAL RESPONSIBILITY |
| (I) LACK OF RIGHTS, RESPONSIBILITIES NOR AUTHORITIES |                          |

BRIEF IN SUPPORT OF COOPERATION AND INVESTIGATION

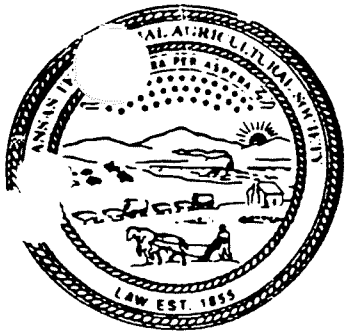
ADMISSIONS AND RESULTS ABSENT A INTERIM STUDY COMMITTEE

WITH OATH DUTY OR AUTHORITY PURSUANT TO ANY VACANCY

RE: Briefings & Hearings on Potential Re-structuring of the KS State Bd. of Ag. Dated Aug. 30 & 31, 1993 Rm. 526-S at 9:00 a.m. without proof of authority nor provable authority or permission: [SEE Exh offered 8-30-93]

*House Ag. Co*  
*10-27-93*

*Attachment 13*



**KANSAS TERRITORIAL AGRICULTURAL SOCIETY-Law Est: 1855**

**M E M O R A N D U M**

**TO: INTERIM STUDY COMMITTEE  
C/O SENATE AGRICULTURE COMMITTEE  
WITH VALID AND CURRENT OATHS**

**FROM: FRANKLIN DEE WILLIAMS  
CURRENT AND ACTING PRESIDENT  
STATE AGRICULTURE SOCIETY**

**DATED: August 30, 1993**

**RE: BRIEFING & HEARINGS on Potential Re-  
structure of the KS State Bd. of Ag.**

**FRANKLIN DEE WILLIAMS  
3212 S.W. Eveningside Dr. # 31.  
Topeka, Kansas 66614  
(913) 272-5392  
PRESIDENT**

**ALVIN MATEKE  
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(913) 456-7240  
NORTHERN JUDICIAL DISTRICT  
VICE PRESIDENT**

**VIRGIL PREWITT  
R.R. 2. Box 141  
Cherokee, Oklahoma 73728  
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SOUTHERN JUDICIAL DISTRICT  
VICE PRESIDENT**

**SCOTT STEELE  
255 North Michigan  
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EASTERN JUDICIAL DISTRICT  
VICE PRESIDENT**

**ELL RAULSTON  
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Oberlin, Kansas 67749  
(913) 478-2303  
WESTERN JUDICIAL DISTRICT  
VICE PRESIDENT**

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**MARK DRAKE  
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Winfield, Kansas 67156  
(316) 221-4688  
TREASURER**

**ABRAHAM K. FRIESEN  
R.R. 3. Box 33  
McPherson, Kansas 67460  
(316) 241-0055  
PARLIAMENTARIAN**

=====

**Thank you for the opportunity to appear and deny you have Oaths, Jurisdiction, or duty let alone any authority to continue further participation in this usurpation and improper acts.**

**1. Where Constitution has been once formally extended by Congress to territories, neither Congress nor territorial legislature can enact laws inconsistent therewith. [ See U.S. Territory or Property Art IV, Sec. 3 cl 2, n 8 - - Exhibits # ~~31~~ & ~~32~~ ]**

**I S S U E S   &   C O N S T I T U T I O N**

- |  |                          |
|--|--------------------------|
| (A) POSITIVE ACTIONS                                 | (B) POSITIVE INACTIONS   |
| (C) OBSTRUCTION OF JUSTICE                           | (D) OBSTRUCTION OF DUTY  |
| (E) LEGAL RESPONSIBILITIES                           | (F) LEGAL AUTHORITIES    |
| (G) ETHICAL RESPONSIBILITY                           | (H) MORAL RESPONSIBILITY |
| (I) LACK OF RIGHTS, RESPONSIBILITIES NOR AUTHORITIES |                          |

**BRIEF IN SUPPORT OF COOPERATION AND INVESTIGATION**

**ADMISSIONS AND RESULTS ABSENT A INTERIM STUDY COMMITTEE**

**WITH OATH DUTY OR AUTHORITY PURSUANT TO ANY VACANCY**

**RE: Briefings & Hearings on Potential Re-structuring of the KS State Bd. of Ag. Dated August 30, 1993 Rm. 526-S at 9:00 a.m. without proof of authority nor provable authority or permission: [SEE Exhibits Supra]**



KANSAS TERRITORIAL AGRICULTURAL SOCIETY-Law Est: 1855

PAGE 2.

WHETHER Art. IV, Section 3, cl 2, n 8 AS SHEPARDIZED AMOUNTS TO HAVING CONSTITUTION BEEN ONCE FORMALLY EXTENDED BY CONGRESS TO TERRITORY, NEITHER CONGRESS NOR TERRITORIAL LEGISLATURE CAN ENACT LAWS INCONSISTANT THEREWITH? (Pursuant to Downes v. Bidwell, (1901) 182 U.S. 244, 45 L. Ed. 1088, 21 S Ct. 770 )

It is respectfully submitted that it is understood that some will be encouraging an investigation and I can not deny that that is verylikely the best immediate approach to give an opportunity to know what is needed, and what would be proper.

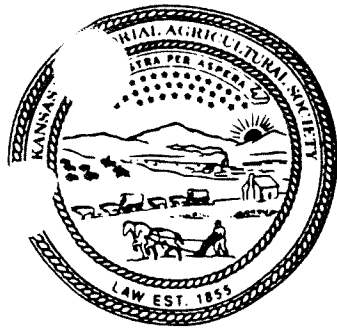
(a). The Official Office of The Secretary is neither vacant nor temporarily filled, nor can it be ordered filled by yet another vacant office by another vacant office occupied by only a party acquiring such de facto office by officer acquiring alleged office under false pretenses; and

(b). The alleged court in Kansas City may under the law be prevented from any such appointment of someone who is not qualified to act in such capacity before becoming Elector that has Qualifications to be elected or appointed; and

(c). Who is the person Qualified to swear such to the Order?

**FIRST:** Let me point your attention to the cover sheet our BOARDS Stationary and more specifically GLENDAL MELLIES Recording Secretary and if I might say one in tune with the needs of Agriculture and the other needs and duties of the charter.

Next refer to Exhibit # 33 465 SOUTHERN REPORTER 2d SERIES 1266 - - Oath at Key 5 "The key to a valid oath is that perjury will lie for its falsity."



KANSAS TERRITORIAL AGRICULTURAL SOCIETY-Law Est: 1855

PAGE 3.

Exhibits #s 1, 2, & 3 the publisized knowledge of William Colby former Director of our Central Intelligence Agency at page 344 of HONORABLE MEN. (i.e.) Quoted:

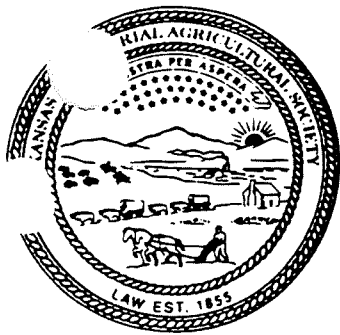
" . . . . . Because my nomination had been announced in early May, all the world knew I was meant to be the next CIA chief. But I wasn't able to accept the responsibility or exercise the authority of the position until I was Officially sworn in. In the meantime, I was, if not exactly a man without a job, then one without a title -- an absolutely befuddling situtation in official Washington, where titles are more important than gold -- in effect running the Agency without presuming to do so. . . . ."

**Second:** Exhibits #s 31 34 & 32 35 the publisized lawsuit of Kansas Natural Resource Council and Common Cause of Kansas and constitutional question of the clandestine Board & Secretary raises yet a serious question when can the constitution be violated supposedly their actions struck down and then be ordered to do the same acts yet for a time until October 1, 1993.

WHETHER OUR JUDICIARY CAN UNDER OUR CONSTITUTION DO THE FOLLOWING: (a) FAIL TO TAKE A TIMELY OATH: (b) YET ORDER ACT UNCONSTITUTIONAL AND TURN AROUND AND ALLOW THE SAME VIOLATORS TO CONTINUE DOING THE SAME FOR YET A PERIOD OF TIME WHEN THEY WERE ONLY IMPOSTORS: (c) IGNOR THE REAL LAW, CHARTER, VESTED RIGHTS, DUTIES AND AUTHORITIES?

**Third:** Exhibits #s 36 through 43 are self explanitory as to what is a valid oath that will supposedly stand the test of perjury:

**Fourth:** The Same above needs to be answered -- What was the name of the Officer authorized to attest and sign the above Oaths not



**KANSAS TERRITORIAL AGRICULTURAL SOCIETY-Law Est: 1855**

**PAGE 4.**

yet shown to be taken and by rule and Statute K.S.A. 7-124 et seq. prevented such order to become affective? and specifically K.S.A. 7-124 (h) before taking a duty oath? [ EXH #s 41 thro 43 ]

**Five:** That February 1991 in the Kansas Government Journal it was printed as published See page 50, 51, 52 and as pointed out as [EXH #s 5 th 7] Specifically shown as Model Oath or Affirmation of Office or

Employment: **NOTE:** "To swear an oath strike the language within the brackets []. To declare an affirmation strike the language within the parentheses ()."

It is respectfully shown and so stated that Rule 212. Admission to the bar found in K.S.A. 7-124 et seq. [See EXH #s 41 to 43]

It is further respectfully submitted that I can not be responsible for some figment of your imagination.

**PLEASE DIRECT YOU ATTENTION TO:**

1. [See - - 191 PACIFIC REPORTER, 2d SERIES at 690 Wash ]
9. Constitutional law - - Key at 125

Corporations - - Key at 40

**QUOTED:**

"A state may not pass laws altering or amending charters of corporations in such a way that will change their fundamental charater or impair the object of the grant or rights vested thereunder, or in such a way as will impair the contractual relations or rights of stockholders among themselves or existing between them and the corporation."

[See Exhibit # 44]

**Sixth:** That all is ask to **STOP** and ask yourselves is it not now time to determine what is by this the content of your character?



## KANSAS TERRITORIAL AGRICULTURAL SOCIETY-Law Est: 1855

PAGE 5.

**Seventh:** That on the otherhand is the determination to be that such positive inaction is the result of even your lack of any content of character?

**Eighth:** That appropriations for 1861, 1862, as well as 1863 by Statutory publication shows the Society Board to be the recognized Board of Agriculture and what other could be valid?

[See Exhibits #s 23 through # 27 ]

**Ninth:** That property and funds needed to be supported by all since Statehood for acccountablility is that which cannot be done without a full investigation and cooperation by all, and if not what?

**Tenth:** With example to: That which is found in the testimony of the clandestine Board and Secretary when testifying to the condition of Agriculture in Kansas and whether such testimony is shown to reflect that which the records have been provided or whether such testimony is contrary to Agriculture?

It is respectfully submitted that such testimony is and remains contrary to the recorded condition of agriculture and an invalid attack upon Kansas itself as well as upon Ag. and is so stated.

### WHETHER LEGISLATIVE RESEARCH NEEDS TO BRING ALL OF THE RECORD FACTS PREVIOUSLY OVERLOOKED, REFUSED, NEGLECTED OR OTHERWISE?

It is respectfully submitted that myself and others have attempted to Question required Qualifications of Executive, Legislative, and alleged Judiciary and that case law suggests that Rules provided of the tolling of such positive actions or  
[See EXHIBIT<sub>5</sub> 2413]



**KANSAS TERRITORIAL AGRICULTURAL SOCIETY-Law Est: 1855**

**PAGE 6.**

inactions in favor of the Questioner and it is so stated.





PAGE 8.

discretion to continue to refuse to perform their implied duties.

7. No oath should ever be filed in any file that is not open record, and no charge should be greater than the actual cost for reproducing and making available, such copies.

8. No document, purporting to be an oath, should ever be filed until it will stand the penalty test of perjury, and enforcement powers need to be mandatory and sufficient appropriations need to be made available to allow prosecution for noncompliance.

9. Making a false writing, is making or drawing or causing to be made or drawn any written instrument or entry in a book of account with knowledge that such writing falsely states or represents some material matter or is not what it purports to be, and with intent to defraud or induce official action, and is in violation of K.S.A. 21-3711, amounting to a class D felony.

#### ISSUES SINCE JANUARY, JUNE, AND SEPTEMBER 30, 1993

1. The Kansas City, Kansas Court in January had admittedly pendent jurisdiction in which to Order Sam Brownback and the alleged Officers of the unconstitutional state of Kansas Statutes and authority and duty to see that no further unconstitutional acts take place.

2. From that point forward the memorandum and order is clearly remise and for the parties to agree that they have been doing a good job as found in foot note 5 of Page \_\_\_\_ is just not true.

3. That Article 1 Section 6 prohibits any Governor of Kansas to act to re-organize any state board or state officer, yet this so-



called memorandum and order states that the receiver will be the acting Governor.

4. That the charter its officers and members deserves more respect and ethical acts by any alleged officer agent or employee of the state of Kansas, and if you don't know it you should.

5. That your and each of you must first be qualified to be elected or appointed and when Qualification is met then after election or appointment then the required Oath must be taken and subscribed by the Officer authorized to administer such oath.

6. You people are without any such Qualification and Oath.

7. Now just in case I am wrong all you have to do is bring us a certified copy and we will be glad to appologize for such error.

8. There is clearly no error here except for the ones you continue to make.

9. We have spent duty funds to protect the constitution the laws and the charter of such Corporate authority and it is time to ask what you and each of you are going to do about it.

10. We could have served cease and desist orders on you but since the K.C. court after 100 and some odd years finally recognized that Sam Brownback and others have been unconstitutional it is verylikely proper to allow you a chance to recognize and correct your errors, as well as admit what damages the charter and Society has suffered.

# HONORABLE MEN MY LIFE IN THE CIA BY WILLIAM COLBY

Former Director of  
Central Intelligence Agency  
and Peter Forbath



### III / HONORABLE MEN

disconcertingly casual in the process of elevating me to the top CIA job. At the Cabinet meeting the next morning, after a number of other items of business had been attended to and just before my nomination was announced, I noticed President Nixon lean over to whisper something to Haig and then Haig scribbled a note, which he passed over to me. It asked, "Did you have any connections with Watergate which would raise problems?" I looked across the room at Haig and shook my head no, but it seemed to me a poor way of conducting a security check, and if my answer had been different, poor timing too. A few minutes later, the President announced Schlesinger's and my nominations, and Elliot Richardson turned and congratulated me first.

The casual note about my elevation continued. Mississippi Senator John Stennis, who was Chairman of the Armed Services Committee and thus responsible for my confirmation hearings, had been shot in a holdup and was recuperating in Walter Reed Hospital and, although Stuart Symington was the committee's next senior member, he hadn't been authorized to act on Stennis's behalf in this matter. So it wasn't until July that the hearings were at last convened and the Senate didn't vote to confirm me until August 1. And then, after I had been confirmed, everybody seemed to forget all about the necessity of formally swearing me in as DCI, so that didn't happen until Dick Walters stirred the machinery and I was finally called down to the White House on September 4.

Throughout this four month period I was in a rather peculiar position. Because my nomination had been announced in early May, all the world knew I was meant to be the next CIA chief. But I wasn't able to accept the responsibility or exercise the authority of the position until I was officially sworn in. In the meantime, I was, if not exactly a man without a job, then one without a title -- an absolutely befuddling situation in official Washington, where titles are more important than gold -- in effect running the Agency without presuming to do so. For a brief time, while Schlesinger waited for his nomination to go through, he and I continued

to work to pressing. Vernon V. ever we that it co- ters, who good him did when he could after I was in the sp

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to work together pretty much as before on the Agency's most pressing matters. But he was gone by June, and after he left, Vernon Walters, as DDCI, became acting CIA chief so whatever we did then had to defer to *this* formality. I must say that it could have been an awful mess with anyone but Walters, who handled the odd situation with ease, grace and good humor. We agreed that I could work for him (which I did when I was Executive Director and DDO under him) or he could work for me (which we knew would be the case after I was sworn in) and that we could handle the transition in the spirit of good friendship we had long ago developed.

What was most immediately on my mind after my appointment was announced was still, of course, the family jewels. By May 21 the initial summary of them was available from the Inspector General. Schlesinger and I agreed that I should let our Congressional oversight committee chairmen in both the Senate and the House know that we had assembled them and that we were determined that CIA would remain within its proper limits in the future. In that way we felt that these chairmen could help prevent my confirmation hearings from going off into an anti-CIA extravaganza. Consequently, I visited the courtly Stennis at Walter Reed Hospital, and after a brief oral summary he agreed that I meet with Symington and give him the rundown as well. Similarly, I made an appointment with Edward Hebert, the excellent former Louisiana newsman who had become Chairman of the House Armed Services Committee; he in turn sent me to see Lucien Nedzi, the Michigan liberal Democrat he had selected to chair the Intelligence Subcommittee of Hebert's committee, in order to break out of the tradition of conservative Southern protection of CIA. Three of these men listened to my account of the family jewels without much excitement and accepted my assurances that I would see to it that CIA conducted its activities in full compliance with its charter in the future. There was a general consensus that these matters of the past should be left in the past in order that the Agency could continue to do its positive work in the present and future.

# Kansas Government Journal

FEBRUARY 1991



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Intergovernmental cooperation is the device by which two or more units voluntarily work together for some public purpose. It varies from the simple exchange of ideas and information to the creation of a complex organization to provide a public service.

See page 43

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There are currently 47 cities and 16 counties in Kansas with a transient guest tax. During 1990, these local units received about \$7.3 million from this revenue source.

See page 44

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Since 1868, all officers elected or appointed under any law of Kansas have been required to subscribe to an oath or affirmation.

See page 50

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**ATTACHMENT EXHIBIT # 4.**

# Loyalty Oaths of

The index of the Kansas Statutes Annotated is 913 pages, so it should not be surprising if, buried in the many K.S.A. volumes and supplements are provisions which directly affect local governments but are not widely known. This is the case of K.S.A. 75-4308, and related provisions, which require public employees as well as officers to subscribe to an oath.

K.S.A. 75-4308 provides as follows:

Before entering upon the duties of his or her office of employment, each person to be employed by the state or any agency thereof or by any county, city or other municipality of the state including any school, college or university supported in whole or in part by public funds collected under any tax law of the state or any municipality thereof shall be required to subscribe in writing to the oath set out in K.S.A. 54-106.

This statute is not a meaningless, casual provision. K.S.A. 75-4314 provides that any officer or employee of a public agency who knowingly receives payment for services without having subscribed and filed an oath will be deemed guilty of a felony. Further, K.S.A. 75-4313 prohibits the treasurer or disbursing officer of any city, county or any municipality or public school district from disbursing funds for services to any officer or employee covered by the act who has not subscribed and filed an oath. Violation of this section constitutes a class C misdemeanor.

## Local Practices

Some local units routinely require the filing of oaths as part of the employment process. The form is then retained in the employee's personnel file. In some cases, the completed oath is required prior to any payment for services to the employee. In other instances, it appears that obtaining the written oath is not made a part of the employment process, nor is any record kept as to who has filed an oath. Whether or not employee loyalty oaths make sense, they are required by law, even for the lowest paid or part-time employee.

## Form of Oath

The form of the required oath is set out at K.S.A. 54-106 and is the same for both elected or appointed officers and employees. K.S.A. 54-103 provides the option of affirming loyalty for "any person having conscientious scruples against taking an oath." The form of the oath or affirmation is as follows:

I do solemnly swear [or affirm, as the case may be] that I will support the constitution of the United States and the constitution of the state of Kansas, and faithfully discharge the duties of \_\_\_\_\_ So help me God.

The form should be signed, attested to, and filed as appropriate. A model form, meeting the statutory requirements, is included in this article.

## Administering the Oath

K.S.A. 75-4310 provides that oaths required under K.S.A. 75-4308 shall be administered before the officers and in the manner prescribed by K.S.A. 54-101, 54-102 and 54-103. K.S.A. 54-101 provides:

Notaries public, judges of courts in their respective jurisdictions, mayors of cities and towns in their respective cities and towns, clerks of courts of record, county clerks, and registers of deeds, are hereby authorized to administer oaths pertaining to all matters wherein an oath is required.

Additionally, the following local officers are also authorized to administer oaths: township trustees (K.S.A. 80-301, as amended); city clerks of cities of the second and third class (K.S.A. 54-110); city clerks of cities of the first class (K.S.A. 13-518 and 13-2106). These officers were not specifically designated by K.S.A. 54-101 to administer the loyalty oath. However, it is reasonable to assume that these officers are authorized to do so, within their jurisdictions, under other authority of law.

## Filing of Oaths

All loyalty oaths are to be filed (K.S.A. 75-4310). They are to be filed with the governing body or their duly authorized agent in the case of counties, cities or municipalities. The duly authorized agent would be the county clerk, city clerk, township clerk or secretary of a district, etc. All oaths of school officials and employees are to be filed with the superintendent of the school district. In the case of private schools and colleges receiving tax funds in whole or in part, oaths are to be filed in the office of the chief administrative officer.

## Application to Non-Employees

When is an individual deemed an employee for the purpose of this law? The primary test is whether the person receives public funds for services rendered, no matter how small an amount or infrequent or non-recurring. The fact that an individual is not considered an employee for fringe benefits or other purposes is not material; the question is whether public money was paid for personal services.

# Public Employees

Local units occasionally hire people on a one-time, one-job basis. This type of hiring may be informal, even on an emergency basis, without following the normal employment process, and without the creation of a personnel file. In this event, the oath requirement can best be met by requiring the employee to sign the oath as a condition of payment of compensation. Contractual service agreements may remove the service provider from the employee category. Otherwise, it appears even temporary, seasonal and one-time employees are required to subscribe to the loyalty oath.

## History

Since 1868, all officers elected or appointed under any law of Kansas have been required to subscribe to an oath or affirmation. This law, presently K.S.A. 54-106, did not apply to public employees until 1949. In 1949, the state legislature enacted a law (K.S.A. 21-305) which required every state, municipal and school officer and employee to subscribe to the following:

I, \_\_\_\_\_ swear [or affirm] that I do not advocate, nor am I a member of any political party or organization that advocates the overthrow of the government of the United States or of the state by force or violence; and that during such time as I am an officer or employee of the \_\_\_\_\_, I will not advocate nor become a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence.

This law remained in existence until 1967, when a federal district court in Kansas struck down the legislation as being in violation of the United States Constitution (*Ehrenreich v. Londerholm*, 273 F. Supp. 178). Specifically, the court held the 1949 law was unconstitutional in that it made it a prohibited act to belong to an organization advocating the overthrow of government even though there was no intent or knowledge by the member to overthrow the government.

The 1968 legislature repealed K.S.A. 21-305 after it was declared unconstitutional. This was done by Chapter 106, 1968 Session Laws of Kansas, and is now found in K.S.A. 75-4308, *et seq.* The form of the oath was changed to the oath required by K.S.A. 54-106. The 1949 provision requiring employees as well as officers to file an oath was continued in the 1968 revision.

## Conclusion

K.S.A. 75-4308 as it exists today appears to require that the oath or affirmation must be recited by the public officer or employee before an authorized person and then reduced to writing, signed by the maker and the authorized witness, and filed with the appropriate body. No case law exists in Kansas to determine what variance to these requirements may be made. However, other jurisdictions have interpreted that substantial compliance to the requirements has been met if a signed oath or affirmation is on file somewhere, at the time or before the disbursement of public funds is made to the employee. Substantial compliance should render the oath obligatory and binding on the officer or employee and eliminate any penalties or sanctions against the disbursing officer.

## Model Oath or Affirmation of Office or Employment

STATE OF KANSAS, \_\_\_\_\_ COUNTY

(Title of Tax Supported Unit)

(I do solemnly swear) [I do solemnly, sincerely and truly declare and affirm] that I will support the Constitution of the United States and the Constitution of the State of Kansas and faithfully discharge the duties of \_\_\_\_\_. (So help me God.)  
[And this I do under the pains and penalties of perjury.]

Signature \_\_\_\_\_

Subscribed and (sworn) [affirmed] before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Notary Public or Other Authorized Officer \_\_\_\_\_

NOTE: To swear an oath strike the language within the brackets [ ]. To declare an affirmation strike the language within the parentheses ( ).



# attorney general's

## OPINION

Opinions summarized in this section have been issued recently by the office of the Kansas attorney general and are of particular interest to local government officials.

### Group-Funded Liability Pools; Authorization of Municipalities

Based upon our review of specific interlocal agreements entered into pursuant to K.S.A. 12-1901 *et seq.* and K.S.A. 1990 Supp. 72-8230 it is our opinion that the separate legal entities created by these specific agreements may be characterized as an "agency, authority, institution or other instrumentality" of a school district and thus these entities meet the definition of a municipality pursuant to K.S.A. 1990 Supp. 12-2616 *et seq.* and K.S.A. 1990 Supp. 72-8230, may generally fall within the definition, each situation, agreement and relationship must be examined on its own merits. Cited herein: K.S.A. 1990 Supp. 12-2616; 12-2617; K.S.A. 12-2901; K.S.A. 1990 Supp. 72-8230; 75-6102. (A.G. Op. No. 91-4, 1-23-91)

### Group-Funded Liability Pools; Claims Fund Account

The Kansas Insurance Department has authority to review the proposed use of moneys in a claims fund established pursuant to K.S.A. 1989 Supp. 12-2616 *et seq.* The interpretation of the statute by the insurance department (allowing moneys deposited and maintained in the claims fund to be used to purchase specific and aggregate excess insurance) is not clearly erroneous. Cited herein: K.S.A. 1989 Supp. 12-2616; 12-2617, as amended by L. 1990, ch. 76, Sec. 1; 12-2618, as amended by L. 1990, ch. 76, Sec. 2; 12-2610; 12-2621, as amended by L. 1990, ch. 76, Sec. 3; K.S.A. 1989 Supp. 12-2624; 12-2626; 12-2627; 12-2629; K.S.A. 44-581; 44-5850; 77-201. (A.G. Op. No. 90-138, 12-26-90)

### Handicapped Accessibility Standards

Mandatory injunctive relief may be sought pursuant to K.S.A. 1990 Supp. 1308 to remedy facilities built in violation of the Handicapped Accessibility Standards found in K.S.A. 58-1301

*et seq.* Cited herein: K.S.A. 58-1301 *et seq.*; K.S.A. 1990 Supp. 58-1304; 58-1308; K.S.A. 60-901; K.S.A. 1990 Supp. 60-906. (A.G. Op. No. 91-7, 1-29-91)

### Home Rule; Issue of G.O. Bonds by County

K.S.A. 19-15,114 *et seq.* is a uniform act establishing the procedures by which Shawnee County may undertake the remodeling and equipping of the Shawnee County courthouse. Shawnee County may, however, validly issue general obligation bonds pursuant to Home Rule Resolution H.R. 89-11 as authorized in the Supreme Court decision *Blevins v. Hiebert*, 247 Kan. 1 (1990). Cited herein: K.S.A. 19-101; 19-101a; 19-15,114; 19-15,115. (A.G. Op. No. 91-3, 1-22-91)

### Recall of Local Officers; Affidavit

A petition seeking the recall of a local officer must be certified by an affidavit by the sponsor who personally circulated the petition. The oath or affirmation required for an affidavit may be administered by a notary public. The fact that an oath or affirmation has been administered may be proved by presence of a valid jurat or by evidence *aliunde* presented at the time the petition is filed with the county election officer. The jurat must be in one of the forms set forth in K.S.A. 1989 Supp. 53-508 and must include the date of the notarial act. If the jurat fails to meet either of these requirements, the jurat is invalid and the petition will lack the required affidavit. A petition seeking the recall of a local officer which lacks the affidavit by the sponsor who personally circulated the petition will be deemed insufficient. Cited herein: Kan. Const., art. 4, Sec. 3; K.S.A. 1989 Supp. 25-3601; K.S.A. 25-3602, as amended by L. 1990, ch. 129, Sec. 2; K.S.A. 25-4301; 25-4304; 25-4318; K.S.A. 1989 Supp. 25-4325; K.S.A. 25-4326; 25-4331; K.S.A. 1989 Supp. 53-502; 53-504; 53-508. (A.G. Op. No. 91-1, 1-10-91)

### Tax Lien; Release or Waiver

Release or waiver of a tax lien arising pursuant to K.S.A. 1990 Supp. 79-2017 does not violate the provisions of K.S.A. 79-1703. However, an unconditional waiver or release is outside the authority granted to Sedgwick County officials. Cited herein: K.S.A. 1989 Supp. 8-173; K.S.A. 1990 Supp. 19-101a; K.S.A. 79-1703; K.S.A. 1990 Supp. 79-2017. (A.G. Op. No. 91-5, 1-24-91)

### Taxation; Release, Discharge, Remission or Commutation of Taxes

A board of county commissioners is without authority to forgive interest and penalties lawfully owed as a result of unpaid taxes. Moreover, county officials and school district officials cannot decline receipt of tax moneys which should be received by operation of law. Tax moneys must be collected and distributed in the manner and to the entities prescribed by law. Once such collection and distribution has occurred and a county or school district receives tax moneys, such moneys may only be spent according to the procedures applicable to all expenditures by those entities. Unless statutorily exempted for a specified number of years, property need not be exempted on a yearly basis. Rather, K.S.A. 79-214 requires a property owner to notify taxing officials if the exempt use ceases. Cited herein: K.S.A. 79-201; 79-201a; K.S.A. 1990 Supp. 79-210; 79-213; K.S.A. 79-214; 79-301; 79-306; 79-1703; 79-1704; 79-2934; Kan. Const., art. 11, Sec. 13. (A.G. Op. No. 91-6, 1-29-91)

### Workers' Compensation Advisory Panel

The workers' compensation advisory panel established pursuant to K.S.A. 44-510, as amended by L. 1990, ch. 183, sec. 2 is authorized to conduct business in the absence of a member whose appointment is being challenged. Cited herein: K.S.A. 1989 Supp. 44-510, as amended by L. 1990, ch. 183, Sec. 2; K.S.A. 77-201. (A.G. Op. No. 91-2, 1-10-91)

# ROLL OF ATTORNEYS OF THE SUPREME COURT OF KANSAS

## OFFICIAL OATH

I do solemnly swear that I will support and bear true allegiance to the constitution of the United States and the constitution of the state of Kansas; that I will neither delay nor deny any man his right through malice, for lucre, or from any unworthy desire; that I will not knowingly foster or promote, or give my assent to, any fraudulent, groundless or unjust suit; that I will neither do, nor consent to the doing of, any falsehood in court; and that I will discharge my duties as an attorney and counselor of the supreme court and all inferior courts of the state of Kansas with fidelity both to the court and to my cause, and to the best of my knowledge and ability. So help me God.

DATE	NAME	POST-OFFICE	COUNTY	STATE
SEP 11 1982	Stephen L. Rose	14069 Marquies Way #117 B Marina del Rey, Ca. 90292	Los Angeles	California
SEP 21 1982	Daniel Jackson	13317 W 109th St. Overland Park 66210	Johnson	Ks.
	Mark W. Bransley	7517 E 4th Prairie V. KS. 66204	Johnson	KS
	Bob Gailly	3637 SE Hwy 40 #4-S	Shawnee	KS
	Bryce W. Baye	3637 Dewar Topeka	Shawnee	Ks
	Nancy J. Bideen	123 West Main Chanute	Neosho	KS
	Ann Fahrback Branden	2145 Ohio Lawrence	Douglas	KS
	Jeffrey Robert Brewer	10. Box 1179 Wichita, KS.	Sedgwick	KS
	Samuel Dale Brownback	Box 369 Manhattan, KS	Riley	KS
	Thomas Albert Borne	Box 711 Hays, KS 67601	Ellis	KS
	Shirley K. Calvin	1809 Hantoon Topeka, KS. 66604	Shawnee	Ks.
	John Leick Croucher	550 W. Court #101 Wichita, KS 67202	Sedgwick	KS
	Carl R. Clark	5509 Reed Dr P.O. Box 1784 Mission, KS	Johnson	KS.
	My P. Connor	1402 W. 75 Terr. Shawnee, KS. 66214	Johnson	Ks
	Joann M. Cook	10975 Grandview Dr. Suite 145 27 Corporate Woods O.P., KS. 66210	Johnson	Ks.
	John P. Cof	7507 Cana Ave Prairie Village	Johnson	Ks.
	Julia A. Craft	132 N. Nevada Wichita	Sedgwick	KS
	Ray L. Crouch	6435 Sogamore Mission Hills	Johnson	KS
	Derry L. Cunn	1600 N. Brunswick Wichita, KS	Sedgwick	KS
	Jeffrey A. Dehon	1322 N. Woodlawn Wichita K	Sedgwick	KS.
	Nancy Jo Dickinson	709 Cornwood Ln Horton, KS. 67114	Harvey	KS.
	Sherri Elaine Doff	3805 W. 24th St Lawrence, KS 66044	Douglas	KS.

THE STATE OF KANSAS,  
SUPREME COURT,

ss.

Subscribed in my presence and sworn to before me on the dates as above written.

ATTACHMENT EXHIBIT # 8.

Clerk Supreme Court.

13-17

# ROLL OF ATTORNEYS OF THE SUPREME COURT OF KANSAS

## OFFICIAL OATH

I do solemnly swear that I will support and bear true allegiance to the constitution of the United States and the constitution of the state of Kansas; that I will neither delay nor deny any man his right through malice, for lucre, or from any unworthy desire; that I will not knowingly foster or promote, or give my assent to, any fraudulent, groundless or unjust suit; that I will neither do, nor consent to the doing of, any falsehood in court; and that I will discharge my duties as an attorney and counselor of the supreme court and all inferior courts of the state of Kansas with fidelity both to the court and to my cause, and to the best of my knowledge and ability. So help me God.

DATE	NAME	POST-OFFICE	COUNTY	STATE
FEB 11 1970	Norman Eugene Shaw	3701 W 21th Ter Topeka, Kansas	Sedgwick	Kansas
	Glenn Delwayne Schiffman	417 Tyler Ave Topeka, Kansas 66604	Thomas	Kansas
	Henry Paul Perkins	201 S State Street Topeka, Kansas	Shawnee	Kansas
	Bruce Reed Kent	9335 Mackay Morton, Kansas	Dorton	Kansas
	Clarence Ralph Wiethaus	1678 W. 22nd Overland Park, Kansas	Nemaha	Kansas
	Robert Warren Menck	Topoka, Mo. 66611	St Lawrence	Kansas
	Richard James Brown	1140 Ash, Ks 66757	Wilson	Kansas
FEB 12 1970	Jan Aldon Way	1125 S. 78th Olathe, Mo. 66041	Wyandotte	Kansas
	William S. Hillebrand	927 Beacon Blvd Wichita, Kansas	Sedgwick	Kansas
FEB 18 1970	John Howard Bennett	933 Menard Road Leawood, Mo	Johnson	Ks.
JUN 22 1970	James Smith	811 N Washington Junction City, Mo	Gary	Kansas
	Gerald R. Jenkins	1801 N. Rainwater Liberal, Kansas 67941	Seward	Kansas
	Alvin Kruttschnitt	1616 Mackay Topeka, Kansas 66604	St Lawrence	Kansas
	John F. Murphy	201 N. Main Lawrence, Kansas	Douglas	Kansas
	William S. Richardson	Wichita, Kansas	Sedgwick	Kansas
	Walter H. Felt	2 Leonard St Newton, Kan.	Harvey	Kansas
	James J. Schmal	9214 Belinder Road Leawood	Kansas	Kansas
JUN 24 1970	George Richard Kufelbach Jr	3611 Nottingham Rd Shawnee	Kansas	Kansas
	John Watson Singsperg	1301 Louisiana Avenue Douglas	Kansas	Kansas

THE STATE OF KANSAS, }  
SUPREME COURT, } ss.

Subscribed in my presence and sworn to before me on the dates as above written.

ATTACHMENT EXHIBIT # 9.

Clerk Supreme Court.

13-18

# ROLL OF ATTORNEYS OF THE SUPREME COURT OF KANSAS

## OFFICIAL OATH

I do solemnly swear that I will support and bear true allegiance to the constitution of the United States and the constitution of the state of Kansas; that I will neither delay nor deny any man his right through malice, for lucre, or from any unworthy desire; that I will not knowingly foster or promote, or give my assent to, any fraudulent, groundless or unjust suit; that I will neither do, nor consent to the doing of, any falsehood in court; and that I will discharge my duties as an attorney and counselor of the supreme court and all inferior courts of the state of Kansas with fidelity both to the court and to my cause, and to the best of my knowledge and ability. So help me God.

DATE	NAME	POST-OFFICE	COUNTY	STATE
JUN 1919	R. Kent Shaver	901 E. (East 10th Ave) 1006 E. 11th St Wichita, Kansas 67202	Sedgwick	Kansas
	Edmund T. Kelly	2920 Gage Blvd. Rt. 115 Topeka, Kansas	Seward	Kansas
	Bruce C. Harrington	1535 Midland Topeka, Kansas	Shawnee	Kansas
	Laurence McDougall	5510 Plaza Lane Wichita, Kansas 1242 W. 11th St	Sedgwick	Kansas
	Lawrence A. Bennett	Topeka, Kansas	Wagoner	Kansas
	Richard E. McManis	1908 Wagoner 4308 G. 11th St Shawnee Mission, Kan	Shawnee	Kansas
	Byron Carroll London	411 E. 20th	Johnson	Kansas
	Robert Joseph Fleming	Thatcher, Kan. 2920 Gage St. 115	Cherokee	Kansas
	Thomas Raphael Coulter	Topeka, Kan. 606 College St	Shawnee	Kansas
	John Dennis Muench	Scott City, Kansas	Scott	Kansas
	Frank D. Dard	317 NORTH 10TH Independence	Montgomery	Kansas
	William Allen Wells	Ralph Foster, Attorney Central Bldg - Wichita 1307 W. 11th St	Cherokee	Kansas
	John James Bryan	143 11th Ave. 104 Wichita, Kansas 67210	Franklin	Kansas
	Roger Rex Higley	140 N. Kansas St Wichita, Kan. 67210	Sedgwick	Kansas
	James William Map	2405 Kansas Ave. Topeka, Kansas 66611	Santa Barbara	California
	Kenneth M. Wilke	3502 Del Lanno Wichita, Kansas	Shawnee	Kansas
	Robert Winter	610 S. Maple Ottawa, Kansas	Sedgwick	Kansas
	Harold Leo Jordan	3208 Euclid Side Dr Apt. #4 Topeka, Kansas	Barton	Kansas
	Benjamin James Neill	415 East 21st St B. 11th Sprng, Ks 66713	Lane	Kansas
	Daniel Frank Brewster	908 Euclid Garden City, Kan.	Cherokee	Kansas
	Harold E. Taylor	2001 Bowman Ct. Topeka, Kan.	Barber	Kansas
	Samuel L. Luttjohann	Topeka, Kan.	Shawnee	Kansas

THE STATE OF KANSAS, }  
SUPREME COURT, } ss.

Subscribed in my presence and sworn to before me on the dates as above written.

ATTACHMENT EXHIBIT # 10.

Clerk Supreme Court.

13-19

# ROLL OF ATTORNEYS OF THE SUPREME COURT OF KANSAS

## OFFICIAL OATH

I do solemnly swear that I will support and bear true allegiance to the constitution of the United States and the constitution of the state of Kansas; that I will neither delay nor deny any man his right through malice, for hire, or from any unworthy desire; that I will not knowingly foster or promote, or give my assent to, any fraudulent, groundless or unjust suit; that I will neither do, nor consent to the doing of, any falsehood in court; and that I will discharge my duties as an attorney and counselor of the supreme court and all inferior courts of the state of Kansas with fidelity both to the court and to my cause, and to the best of my knowledge and ability. So help me God.

DATE	NAME	POST-OFFICE	COUNTY	STATE
MAY 15 1981	Judy Lila Steele	9530 W. 35th Overland Park, KS 66212	Johnson	KS
MAY 15 1981	Lee Anne Jeday	475 E. 8th St. KC 64106	Jackson	MO
MAY 15 1981	David Bowers	1945 S.W. MacVicar Tulsa, OK 74104	Shawnee	KS
		1100 Milam Suite 500 Houston Texas 77002	Harris	Texas
JUL 10 1981	Thomas Randall Wright	100 N. Main, Ste 1000 Wichita, KS 67202	Sedgwick	KANSAS
AUG 3 1981	Deborah Albers Peterson	104 St James Lafayette, LA 70501	Lafayette	Louisiana
SEP 18 1981	John Richard Castiel	118 E. Pearl Padra, KS 66071	Miami	KS
SEP 25 1981	Jennifer R James	320 Woodbury Dr Topeka, KS 66606	Shawnee	Kansas
SEP 25 1981	David M. Poliquin	510 Buchanan St Topeka, KS 66606	Shawnee	Kansas
SEP 25 1981	Junia Robinson Kurn	1322 Sherman Dr. Wichita, KS 67207	Sedgwick	Kansas
SEP 30 1981	William James Cramer	1224 Sherman Lawrence, KS 66044	Douglas	Kansas
OCT -2 1981	Carolyn Anderson Adams	92 Popper Tree Lane Topeka, Kansas 66611	Shawnee	Kansas
	Marc Carlton Anderson	6332 Edinbrook Ln. Murfreesboro, TN 37130	Johnson	KANSAS
	Karen Marie Arnold Burger	5718 Outlook #204 Mission, KS 66202	Johnson	Kansas
	Kenneth Russell Beff	5605 22nd Plc Topeka, KS 66614	Shawnee	Kansas
	Thomas Lee Bell	5524 Skyline Pkwy Topeka, KS 66614	Shawnee	KANSAS
	Gregory J. Ben	5422 Jarline Terr Topeka, Kan. 66611	Shawnee	Kansas
	Joe L. Hardy Buck	228, Box 141-B Lawrence, KS. 66044	Douglas	Kansas
	Phil Fouse Boydard	226 WAPAK Bonner Springs, KS 66012	Wyandott	Kansas
	John F. Bosch	822 Grant Terr. Olathe, KS 66061	Johnson	Kansas
	Sh R Da	113 W 13th St Hays, KS 67601	Ellis	KANSAS
	Alan Kent Brown	1115 W. Forrester #34 Mission, KS 66202	Johnson	Kansas

THE STATE OF KANSAS, }  
SUPREME COURT, } ss.

Subscribed in my presence and sworn to before me on the dates as above written.

ATTACHMENT EXHIBIT # 11.

Clerk Supreme Court.

13-20

death in Massachusetts to inherit Massachusetts property, to a decree of a court in the Azores declaring the child an illegitimate child of the decedent and as illegitimate child to inherit from the decedent—the decree of the Azores court having been entered subsequent to the decedent's death in Massachusetts. The court said: "A decree of a court such as is here shown as to the status of his

illegitimate child, entered in a proceeding begun long after the date of the death of the decedent, to which his estate, his personal representatives, his heirs, his next of kin and those entitled to the distribution of his personal estate were not parties, cannot have effect upon the distribution of his personal property or the descent of his real estate in this commonwealth."

P. H. Vartanian.

MAGGIE DOTSON, Appt.,

v.

LEWIS BURCHETT et al.

Kentucky Court of Appeals — November 23, 1945  
(301 Ky 28, 162 ALR 636, 190 SW2d 697)

**Judges, § 14 — revocability of recusal.**

1. A judge who has disqualified himself to hear and decide a case may subsequently revoke his order and resume jurisdiction, though if a special judge has qualified and assumed jurisdiction the displaced judge has no authority in the case so long as that condition continues.

[See annotation on this question beginning on page 641.]

**Judges, § 14 — revocation of order disqualifying judge.**

2. Where the regular judge who has been disqualified revokes the order of recusal and objection is made to such revocation, it is not sufficient for him to enter an order merely saying that he is not disqualified, but the record should clearly reveal the facts upon which the revocation is made.

[See annotation on this question beginning on page 641.]

**Judges, § 24 — disqualification — power to waive.**

3. While an objection that a judge is disqualified raises a question of jurisdiction, it is one that may be waived by the failure to raise it seasonably.

[See Am Jur, "Judges," § 94.]

**Appeal, § 732 — Judgment, § 26 — failure of disqualified judge to vacate bench.**

4. Failure of judge to vacate the bench on disclosure of his disqualification to hear and decide a case is prejudicial error and renders subsequent orders erroneous and reversible, but not void, excepting possibly where a judge sits in his own case.

[See Am Jur, "Judges," § 97.]

**Judges, § 24 — disqualification — waiver by failure to raise objection.**

5. Where a judge recused himself, but subsequently resumed jurisdiction,

a party is not precluded from objecting that the judge is disqualified by failure to raise the objection at the outset.

[See Am Jur, "Judges," § 95.]

**Judges, § 14 — disqualification — effect.**

6. Disqualification of a judge to hear and decide a case suspends his powers only so far as discretionary action in the case is concerned, and does not preclude him from making orders of a ministerial nature or providing for the appointment of a special judge.

[See Am Jur, "Judges," § 99.]

**Motions and Orders, § 10 — power to set aside order.**

7. Jurisdiction to make an order necessarily carries with it the power of revision and revocation when it has been granted improvidently or erroneously.

**ATTACHMENT EXHIBIT # 12.**

13-21

DOTSON v. BURCHETT

(301 Ky 28, 182 ALR 636, 190 SW2d 697)

637

ously—particularly an interlocutory order.

[See Am Jur, "Motions, Rules, and Orders," § 32.]

**Appeal, § 732 — reversible error — revocation of order disqualifying judge.**

8. An order by which a judge who has disqualified himself has resumed jurisdiction, where it is not shown to have been proper for him to do so, is reversible error.

[See Am Jur, "Judges," § 97.]

**Evidence, § 256 — presumption — continuance of judge's disqualification.**

9. The act of a judge in disqualifying himself raises a presumption that the disqualification continues.

[See Am Jur, "Evidence," §§ 207, 208.]

**Judges, § 14 — qualification — resolution of doubt in favor of questioner.**

10. Any doubt as to the qualification of a judge to hear and decide a case should be resolved in favor of the party questioning it bona fide and upon grounds having substance and significance.

(Thomas, J., dissents.)

APPEAL by plaintiff from a judgment of the Circuit Court, Floyd County, for defendants in consolidated suits to set aside deeds. *Reversed.*

Joe Hobson, of Prestonsburg, for appellant.

Combs & Combs and W. W. Burchett, all of Prestonsburg, for appellees:

An order entered by the regular judge not upon the motion, request, or showing of any party but solely upon his own motion, in which he recites that he is disqualified to try a case, may be set aside upon his own motion, especially when the order has not been acted upon and no special judge has been appointed or commissioned to try it and when he has already entered orders in the case. *Dupoyster v. Ft. Jefferson*, 121 Ky 518, 89 SW 509; *Neace v. Com.* 233 Ky 545, 26 SW2d 489; *Roberts v. Sturgill*, 257 Ky 194, 77 SW2d 789.

Stanley, C.

Petitions to set aside three deeds of J. W. Burchett, deceased, to all of his land to two sons and a daughter were filed in the Floyd Circuit Court in June, 1940. The grounds are mental incapacity and undue influence of the grantor. The regular judge overruled demurrers to the petitions and entered several agreed orders relating to the disposition of the rents and profits. In February, 1942, he declined to preside in the case and the parties agreed upon Honorable Joseph D. Harkins, a member of the Floyd County bar, as a special judge. The cases were consolidated and many depositions were taken and filed with the clerk. At

the April term, 1942, Judge Harkins entered an order reciting that since he had agreed to serve as a special judge "there have arisen conditions which render it unsatisfactory to himself to determine such consolidated cases, and he, therefore, declines to do so." On the 14th day of the May term, 1942, an order was entered reciting that the regular judge "is disqualified to try the above entitled causes by reason of relationship and otherwise," and directing that that fact be certified to the Chief Justice of the Court of Appeals for the designation or appointment of a special judge to try the cases, which were by that order set for trial on June 2, 1942. However, on the fourth day thereafter the regular judge entered another order stating that he was not disqualified "by reason of relationship," and that since the entry of the order he had presided in the trial of a contest of the will of J. W. Burchett and had decided that he was not disqualified to try the cases involving the deeds. The order entered on the 14th day of the term was thereby set aside. The plaintiffs excepted.

On the very same day the judge overruled all exceptions to the depositions and rendered a judgment for the defendants. On the appeal by

*Wm A Haldeman*  
= THE STATUTES

OF THE

TERRITORY OF KANSAS;

PASSED AT THE FIRST SESSION OF THE LEGISLATIVE ASSEMBLY, ONE THOUSAND  
EIGHT HUNDRED AND FIFTY FIVE

TO WHICH ARE ATTACHED

THE DECLARATION OF INDEPENDENCE,

AND THE

CONSTITUTION OF THE U. STATES,

AND THE

ACT OF CONGRESS ORGANIZING SAID TERRITORY,

AND OTHER

ACTS OF CONGRESS

HAVING IMMEDIATE RELATION THERELO.

PRINTED IN PURSUANCE OF THE STATUTE IN SUCH CASE MADE AND PROVIDED.

SHAWNEE M. L. SCHOOL:  
JOHN T. BRADY, PUBLIC PRINTER.  
1855.

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NO 708

State of Kansas

County of Shawnee

SS.

I, Mary Lou Anderson

(Name of custodian of original document)

hereby swear (or affirm) that the attached reproduction of title page and  
pages 814-816, Statutes of the Territory of Kansas,  
Shawnee M. L. School: John T. Brady, Public Printer.  
1855.

(Description of original document with number of pages)

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Department of Archives

Kansas State Historical Society  
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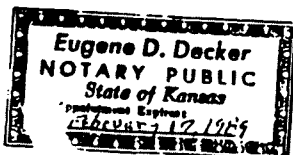
(Signature and address of custodian of original document)

Subscribed and sworn (or affirmed) to before me this

21st day of March

19 86

(Notary's Signature)



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ATTACHMENT EXHIBIT # 14.

13-23



## CHAPTER 58.

*An act to incorporate the Territorial Agricultural Society.*

- |  |   |
|--|---|
| <p>§ 1. Kansas Territorial Agricultural Society;<br/>powers of: by laws, &amp;c.<br/>2. Powers of the corporation.<br/>3. Annual meetings, when held.<br/>4. Under the control of certain officers;<br/>term of office.<br/>5. Names of officers for first year; duties.<br/>6. Who are members.</p> | <p>§ 7. Society to determine in what manner<br/>awards may be made, &amp;c.<br/>8. Duty of recording secretary.<br/>9. Of compensation.<br/>10. Powers of the society.<br/>11. May establish branch societies.<br/>12. President may appoint branch, when.<br/>13. In case of vacancy, who shall fill it.</p> |
|--|---|

*Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:*

Kansas Territorial  
Agricultural  
Society.

Powers of.

By-laws.

Powers of the  
corporation.

SECTION 1. There is hereby established and incorporated a society to be known and designated by the name and style of the "Kansas Territorial Agricultural Society," and by that name and style shall have perpetual succession, and by that name shall have power to contract and be contracted with, to sue and be sued, to plead and be impleaded in all courts, answer and be answered unto, defend and be defended in all courts and places, and in all matters whatsoever; and shall in like manner have authority to have and use a common seal, and the same at pleasure to change and alter; and may also make, ordain and establish and put in execution such by-laws, ordinances, rules and regulations as shall be proper and necessary for the good government of said society, and the prudent and efficient management of its affairs; *provided*, that said by-laws, ordinances, rules and regulations shall not be contrary to the provisions of this charter, nor to the laws of this territory or the laws and constitution of the United States.

SEC. 2. In addition to the powers above enumerated, the society shall, by its name and style aforesaid, have power to purchase and hold any quantity of land not exceeding twenty acres, and may sell and dispose of the same at pleasure; the said real estate shall be held by said society for the sole purpose of erecting enclosures, buildings and other improvements calculated and designed for the meeting of the society, and for an exhibition of various breeds of horses, cattle, mules and other stock, and of agricultural, mechanical and domestic manufactures and productions, and for no other purpose; and if from any cause said society shall be dissolved or fail to meet within a period of five consecutive years, then the real estate held by it, together with all buildings and appurtenances belonging to said real estate,

shall be sold as lands are now sold under execution, and the proceeds deposited in the territorial treasury, subject to the control of the legislative assembly.

SEC. 3. An annual meeting of the members of the society shall be held on the first Monday in October, annually, at such place as the said society shall determine upon at its first meeting.

Annual meeting,  
when held.

SEC. 4. The fiscal, presidential, and concerns of the society shall be under the control and management of a president and one vice president for each judicial district in the territory, a secretary, corresponding secretary and a treasurer, to be styled a board of directors, who shall be elected at the annual meeting of the members of the society; they shall hold their offices for one year and until their successors are duly chosen, and shall have power to fill all vacancies that may occur in said board.

Under the control  
of president and  
vice president of  
each district.

SEC. 5. For the purpose of carrying into effect this act, A. M. Coffey, of the county of Lykins, shall be the first president; William M. Tebbs, of the county of Jefferson, Joel Hyatt, of the county of Leavenworth, and Thomas Stinson, of the county of Shawnee, shall be the first vice presidents; Samuel A. Williams, of the county of Bourbon, shall be the first secretary; James Finley shall be the first corresponding secretary, and John W. Forman, of the county of Doniphan, shall be the first treasurer; who shall call the first meeting of the society, at the seat of government of the territory, at such time as they may agree upon, and at such first meeting any three members of the board shall constitute a quorum to do business, and each member of such board is hereby authorized to solicit and receive subscriptions to said society as hereinafter specified.

Term of office.

Names of officers,  
for first year.

Duties.

SEC. 6. The members of this society shall consist of such persons as shall pay annually, into the treasury thereof, the sum of one dollar; and such persons shall be members only for the year for which they shall have thus paid the amount aforesaid; *provided*, that at any annual meeting the society may, by a majority vote, increase the amount necessary for membership to any sum not exceeding six dollars per year.

Who are mem-  
bers.

SEC. 7. The members of the society, by a majority of the votes present, shall determine in what amount and on what subjects the funds of the society shall be awarded as premiums at the exhibition succeeding their meeting, of which notice shall be given in some newspaper printed in or nearest their place of meeting, and in such other papers as advisable.

Society to deter-  
mine in what  
manner awards  
shall be made, &c.

SEC. 8. It shall be the duty of the recording secretary to deposit annually in the office of auditor of public accounts a statement of the annual expenditures of the society.

Duty of recording  
secretary.

**ATTACHMENT EXHIBIT # 16.**

*Of compensation.* SEC. 9. No compensation shall be allowed to any officer of this society for his services, except to the corresponding and recording secretaries, nor to them until the board of directors shall so order, except for actual expenses paid out.

*Powers of society.* SEC. 10. The society may, by a majority of the voters at any annual meeting, prescribe the duties of and require bond and security from any of its officers.

*May establish branches.* SEC. 11. This society, at any annual meeting, may establish a branch society in any county in the territory, which, when organized by appointment of a president, three directors, recording secretary, corresponding secretary and treasurer, shall possess all the powers and privileges of this society.

*President may appoint a branch.* SEC. 12. The president of this society may, at any time in vacation of the meetings, appoint such branch society, and appoint the officers thereof, until the first annual meeting of this society. This society shall not forfeit this charter on account of not meeting as provided in this act; *provided*, the same shall meet and organize within twelve years from this date.

*In case of vacancy, who may appoint.* SEC. 13. In case of a failure or inability to serve of any of the persons mentioned in the fifth section of this act, the governor is hereby authorized to appoint some suitable person or persons to fill the vacancy or vacancies thus occasioned; and the persons herein named, as those above mentioned, shall not be required [to pay] their subscription before they shall have authority to act in the organization of this society.

This act to take effect and be in force from and after its passage.

## CHAPTER 59.

*An act to incorporate the Leavenworth Jail Association*

- |                              |                                  |
|------------------------------|----------------------------------|
| 1. Names of incorporators.   | 3. May open books for stock, &c. |
| 2. Capital stock of company. | 4. To hold meetings; how often.  |

*Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:*

*Names of incorporators.*

SECTION 1. Samuel D. Pitcher, J. Harvey Day, Isaac Vanvegton, Lewis N. Rees, Westcott D. Mitchler, and their associates and successors, are hereby created a body corporate by the name and style of the Leavenworth Jail Association, and by that name shall have perpetual succession, and may sue and be sued, implead and be impleaded, in any court having competent jurisdiction.

**ATTACHMENT EXHIBIT # 17.**

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 ., thirty-seven dollars and  
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 h Herald, six dollars and  
 eign, five dollars; to Tho-  
 the treasurer for use of the

territory, seventy-five dollars; to John Donaldson, for freight  
 and storage paid on books, seven dollars and fifty cents; for  
 the pay of extra services done by the chief and assistant clerks  
 of the council and house of representatives for the first session  
 of the legislative assembly of the territory of Kansas, in copy-  
 ing the journals and indexing the same, and for other services,  
 and for the pay of the adjutant general of Kansas territory, nine  
 hundred and fifty dollars.

Approved February 20th, 1857.

## ASSOCIATIONS—CHURCH, &c.

AN ACT in relation to Associations.

*Be it enacted by the Governor and Legislative Assembly of  
 the Territory of Kansas, as follows:*

SECTION 1. Any church or religious association, lodge of  
 Masons, Odd Fellows, divisions of Sons of Temperance, or  
 kindred orders, or any other association of persons for religious,  
 moral, benevolent or literary purposes, or town company, or  
 other association formed for any laudable or lawful purpose,  
 may receive and hold by purchase or otherwise, and lease or  
 convey the same, any amount of land necessary for the pur-  
 poses of their association by or through a trustee or trustees,  
 selected by any such association; and no conveyance to any  
 such trustee, for the use and benefit of such association, shall  
 vest the right of dower in any married woman in any way con-  
 nected with any such association.

Any association  
 may obtain any  
 necessary amount  
 of land.

SEC. 2. Any conveyance to or by any such association may  
 be made through a trustee for the use and benefit of such asso-  
 ciation, naming it, and all the recitals in any lease, deed or other  
 instrument, made to or by any such association, shall be taken  
 and deemed as evidence of any and all facts so recited, until  
 the contrary shall be proven by the party denying such facts  
 so recited.

Any convey-  
 ance, how made.

SEC. 3. That any such association may select a trustee by a  
 majority of their members or interests as they may determine,  
 and enter the same on the books of the association, and all va-

Of trustees.

**ATTACHMENT EXHIBIT # 18.**

cancies may be filled in the same way ; and such books being proven to be genuine, shall be evidence of the contents thereof.

This act to take effect and be in force from and after its passage.

Approved February 17th, 1857.

## BANKING ASSOCIATIONS.

AN ACT declaring certain Banking Associations unlawful.

*Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows :*

Every company without an act of legislature authorizing its purposes is unlawful.

SECTION 1. Every company or association of persons formed for banking purposes within this territory, and without an act of the legislature authorizing the same, shall be deemed unlawful.

Punishment.

SEC. 2. If any person shall subscribe to or become a member of such company or association, he shall be deemed guilty of a misdemeanor, and punished by fine not exceeding one thousand dollars, nor less than four hundred dollars, or by imprisonment in the county jail for a term not less than six nor more than twelve months, or by both such fine and imprisonment.

Punishment for aiding in carrying on the business of such a company.

SEC. 3. If any person shall be concerned in issuing notes or bank bills, receiving deposits, loaning, issuing or signing any such notes or bills, or in any way aiding in carrying on the business of such company or association, he shall be deemed guilty of a misdemeanor and punished by fine in the sum of one hundred dollars, or by imprisonment in the county jail for a term not less than one nor more than three months, or by both such fine and imprisonment.

After this act taking effect, all notes or securities of such company shall be null and void.

SEC. 4. From and after the taking effect of this act, all notes or securities for the payment of money, or the delivery of property, made, given, endorsed, or transferred to, or received by any such company or association for money or bills loaned, or discounts made, given, or transferred, or received by any persons for the benefit of such company or association, shall be null and void.

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# STATE OF KANSAS



OFFICE OF SECRETARY OF STATE  
JACK H. BRIER • SECRETARY OF STATE

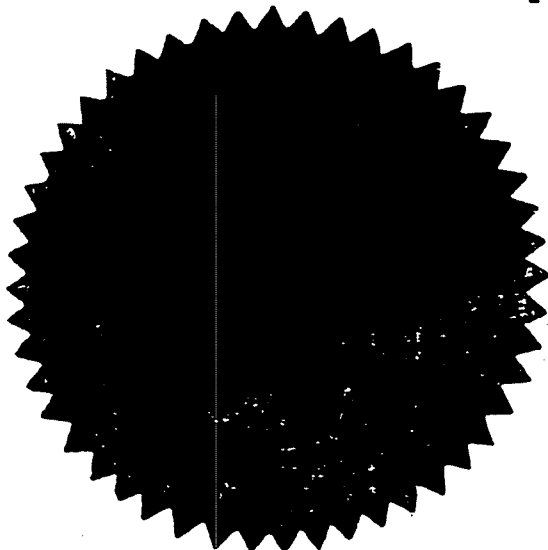
To all to whom these presents shall come, Greeting:

I, JACK H. BRIER, Secretary of State of the State of Kansas, do hereby certify that the attached is a true copy of ASSOCIATIONS-CHURCH, &c. An Act in relation to Associations, enacted by the Governor and Legislative Assembly of the Territory of Kansas, approved February 17th, 1857.

IN TESTIMONY WHEREOF:

I hereto set my hand and cause to be affixed my official seal.

Done at the City of Topeka, this 10th day of  
February A.D. 19 84



JACK H. BRIER  
SECRETARY OF STATE

By

ASSISTANT SECRETARY OF STATE

# ASSOCIATIONS—CHURCH.

territory, seventy-five dollars; to John Donaldson, for freight and storage paid on books, seven dollars and fifty cents; for the pay of extra services done by the chief and assistant clerks of the council and house of representatives for the first session of the legislative assembly of the territory of Kansas, in copying the journals and indexing the same, and for other services, and for the pay of the adjutant general of Kansas territory, nine hundred and fifty dollars.

Approved February 20th, 1857.

## ASSOCIATIONS—CHURCH, &c.

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*Be it enacted by the Governor and Legislative Assembly of the Territory of Kansas, as follows:*

SECTION 1. Any church or religious association, lodge of Masons, Odd Fellows, divisions of Sons of Temperance, or kindred orders, or any other association of persons for religious, moral, benevolent or literary purposes, or town company, or ~~other association formed for any laudable or lawful purpose,~~ may receive and hold by purchase or otherwise, and lease or convey the same ~~any amount of land necessary for the purpose of their association by or through a trustee or trustees,~~ selected by any such association; and no conveyance to any such trustee, for the use and benefit of such association, shall vest the right of dower in any married woman in any way connected with any such association.

Any association may obtain any necessary amount of land.

SEC. 2. ~~Any conveyance to or by any such association may be made through a trustee for the use and benefit of such association, naming it, and all the recitals in any lease, deed or other instrument, made to or by any such association, shall be taken and deemed as evidence of any and all facts so recited, until the contrary shall be proven by the party denying such facts so recited.~~

Any conveyance, how made.

SEC. 3. That any such association may select a trustee by a majority of their members or interests as they may determine, and enter the same on the books of the association, and all va-

Of trustees.

# BANKING ASSOCIATIONS.

163

cancies may be filled in the same way; and such books being proven to be genuine, shall be evidence of the contents thereof.

This act to take effect and be in force from and after its passage.

Approved February 17th, 1857.

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SEC. 2. If any person shall subscribe to or become a member of such company or association, he shall be deemed guilty of a misdemeanor, and punished by fine not exceeding one thousand dollars, nor less than four hundred dollars, or by imprisonment in the county jail for a term not less than six nor more than twelve months, or by both such fine and imprisonment.

Punishment for aiding in carrying on the business of such a company.

SEC. 3. If any person shall be concerned in issuing notes or bank bills, receiving deposits, loaning, issuing or signing any such notes or bills, or in any way aiding in carrying on the business of such company or association, he shall be deemed guilty of a misdemeanor and punished by fine in the sum of one hundred dollars, or by imprisonment in the county jail for a term not less than one nor more than three months, or by both such fine and imprisonment.

After this act taking effect, and notes or securities for such company shall be null and void.

SEC. 4. From and after the taking effect of this act, all notes or securities for the payment of money, or the delivery of property, made, given, endorsed, or transferred to, or received by any such company or association for money or bills loaned, or discounts made, given, or transferred, or received by any persons for the benefit of such company or association, shall be null and void.

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## CHAPTER VIII.

FOR CURRENT EXPENSES OF YEARS 1861, 1862 AND 1863

An Act making appropriations for the Current Expenses for the years  
A. D. 1861, 1862 and 1863.

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

SECTION 1. That the following sums, or so much thereof Appropriations  
for 1861 as may be necessary, are hereby appropriated out of any money in the treasury, not otherwise appropriated, for the purposes herein named for the year A. D. 1863:

For Executive Department—Governor's salary, two thousand dollars; office rent, one hundred and eighty dollars; contingent expenses, eight hundred dollars; furniture and repairs, two hundred dollars; private secretary, one thousand dollars; Adjutant General's department, five hundred dollars; Quartermaster-General's department, five hundred dollars.

Secretary of State's Department—Secretary's salary, fifteen hundred dollars; office rent, one hundred and eighty dollars; contingent expenses, two hundred dollars; postage, fifty dollars; furniture and fitting office, two hundred dollars; express charges, one hundred dollars; record books for State officers, two hundred dollars; salary of clerk one thousand dollars; stationary for 1862, five hundred dollars, for 1863, seven hundred dollars, to be drawn by the Secretary of State, with which to purchase stationary, section two of this act to the contrary notwithstanding; transportation of the laws to the counties, one hundred dollars, subject to order of the Secretary of State; seals for the District Courts of the various counties, one hundred and seventy-five dollars.

Auditor's Department—Auditor's salary, fifteen hundred dollars; office rent, three hundred dollars; contingent expenses, one hundred dollars; salary of clerk, one thousand dollars; librarian, two hundred dollars; catalogue and shelving for library, seventy-five dollars; furniture for office, one hundred and fifty dollars.

Treasury Department—Treasurer's salary, twelve hundred dollars; clerk hire, six hundred dollars; office rent,

one hundred and twenty-five dollars; contingent expenses, one hundred dollars; furniture for office, seventy-five dollars; for printing blank bonds, one hundred dollars.

Superintendent of Public Instruction's salary twelve hundred dollars; traveling expenses, three hundred dollars; contingent expenses and furniture, seventy dollars; office rent, sixty dollars.

Attorney General's Department—Salary, one thousand dollars; contingent expenses, seventy-five dollars; rent and furniture one hundred dollars; for expenses in cases of State of Kansas vs. R. S. Stevens, and others, five hundred dollars, to be paid on vouchers of the Attorney General, not to be drawn until the cases are prosecuted to final judgment.

Judiciary Department—Salary of Chief Justice, eighteen hundred dollars; salaries of two Associate Justices, three thousand dollars; Reporter of Supreme Court, five hundred dollars; clerk and crier, rent of court room, clerk's office and judges consultation room, and for furniture, stationary and contingent expenses of the Supreme Court for the year 1863, fifteen hundred dollars; for pay of law librarian, one hundred dollars; for shelving and moving law library, fifty dollars—said appropriations to be audited and warrants drawn on the treasury by the Auditor, upon vouchers properly certified by the Clerk of the Supreme Court; salaries of District Judges, seven thousand and five hundred dollars; salary of judge of Criminal Court of Leavenworth county, for 1863, five hundred dollars; salary of judge of Criminal Court of Leavenworth county for 1862, five hundred dollars.

Legislative expenses—Additional allowance of pay of members and officers, one thousand dollars; rent of Senate Chamber, two hundred dollars; rent of Representatives' Hall, one hundred and fifty dollars; room for storing furniture, sixty-five dollars; clerks' room, twenty-five dollars; transcribing journals of Senate and House of Representatives, six hundred and fifty dollars; contingent expenses, three hundred and fifty dollars; Chaplains of House and Senate, three hundred dollars; printing deficit for 1862, on compiled laws, five thousand two hundred and eighty dollars; on journals, two thousand and four hun-

dollars; outstanding claims for printing proclamation, &c., five hundred dollars; printing laws, journals, &c., for 1863, eleven thousand dollars; for binding laws and journals for 1863, two thousand three hundred dollars; for rent, one year, for temporary capitol building, fifteen hundred dollars, subject to the order of the Governor.

Miscellaneous—P. G. Adams, balance indexing compiled laws, two hundred and twenty-three dollars; to Leavenworth county, for boarding State convicts in 1862, three thousand five hundred and eighty-two dollars—for boarding State convicts for 1863, four thousand dollars, subject to the order of the Governor; to State Agricultural Society, one thousand dollars, subject to the order of the President of said society, countersigned by the Treasurer; S. R. Shepherd, for balance of salary as Secretary of State from January 1st to January 12th, inclusive, thirty-three dollars; for cash paid out as Secretary of State, thirty-seven dollars and sixty cents; to Dawson Hook and George C. Kingsley, for the apprehension and delivery of Bailey Smith to the sheriff of Leavenworth county, as per proclamation of the Governor, two hundred dollars; to G. J. Stebbins, for advertising reward for B. Smith, and Governor's proclamation directing the organization of the State Militia, thirty-two dollars; to E. A. Smith, for advertising amendment to constitution, ten dollars; to Trask & Lowman, for document and executive printing, one thousand and fifty-five dollars and ten cents; to Aaron Katzenstein, for binding and folding two hundred copies of Governor's General Order, thirteen dollars; P. H. Hubbell, for printing Governor's Proclamation relating to Militia, thirty-two dollars; to *Consercative* office for advertising General Orders two, three and four, Governor's proclamation offering reward for B. Smith, Governor's Militia proclamation, special order sixteen, and proposals for State printing, one hundred and eleven dollars; for seventy-eight copies of copy paper furnished House and Senate, ninety-seven dollars; to J. W. Roberts, for publishing General Halderman's general orders, one and two, and thanksgiving proclamation, twenty-four dollars; to *Union* office, for publishing Governor's proclamation and General Halderman's orders, seven dollars; G. T. Williams, for telegraphing, one

dollar and forty cents: to J. B. Woodward, for bill as examining surgeon, forty dollars: to S. B. Prentiss, for bill as examining surgeon, forty-five dollars: B. N. McQuitty, twelve dollars: J. Kemp Bartlett, for advertising, two hundred and forty-nine dollars: for thirty-five copies of *Daily Times*, furnished House and Senate, fifty-three dollars: D. B. Emmert, for bill of advertising, thirty-five dollars: to Jacob Smith, for hardware, one hundred and six dollars and two cents: to H. Kullak, for furniture, nineteen dollars and fifty cents: to E. Baker, for furniture and repairs, fifty-five dollars and fifty-five cents: to expenses of selecting site for penitentiary, three hundred and five dollars and seventy-five cents: to M. S. Adams, as Penitentiary Commissioner for 1862, eighteen dollars: Charles Starn, for the same, eighteen dollars: Cohen & Markson, for clothing for State convicts, five hundred and thirty-nine dollars and seventy-nine cents: S. W. Jones, for medical attendance upon convicts, ninety-five dollars and fifty cents: G. J. Parke, for medicine furnished convicts, eighteen dollars: to A. Whitney, for forty acres of land for Penitentiary site, six hundred and sixty dollars: W. P. Dutton, for conveying convicts to the State Prison in 1862, fifty-six dollars: *Inquirer* office, for advertising, twenty-three dollars: for eight copies of daily paper, furnished House and Senate, ten dollars: G. D. Swearington, for boarding State prisoners in 1861, seventy dollars, and for advertising, seven-teen dollars and fifty cents: to J. A. Halderman, for expenses in Millila, two hundred and five dollars and fifty cents: to T. Carney, for advancing money to pay interest on State bonds, in July, 1862, and January, 1863, four hundred and ninety dollars and fifty cents: to L. C. Wil-  
 marth, for collecting election returns from Chas. George and Butler counties, eighteen dollars: L. Weil, for trans-  
 lating and printing five hundred copies of the Governor's Message in German, one hundred and twenty-five dollars: F. W. Roberts, for iron safe, now in use by the State, to pay Territorial Warrant No. 1749, issued to said Roberts, one thousand seven hundred and fourteen dollars [and] ninety cents: to S. M. Thorp, for expenses incurred in contested case of Thorp vs. Beam, one hundred and sixty dollars sixty cents: to J. A. Beam, for expenses incurred

**ATTACHMENT EXHIBIT # 27.**

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THE  
GENERAL STATUTES  
OF  
KANSAS.

[ANNOTATED.]

CHAPTER 1.—ADMISSION.

Joint Resolution of the Legislature of the State of Kansas, accepting the terms imposed by Congress upon the admission of the State of Kansas into the Union.

PROPOSITIONS CONTAINED IN ACT OF ADMISSION ACCEPTED.

*Be it resolved by the Legislature of the State of Kansas:*

(1) That the propositions contained in the act of Congress, entitled "An act for the admission of Kansas into the Union," are hereby accepted, ratified, and confirmed, and shall remain irrevocable, without the consent of the United States. And it is hereby ordained, that this State shall never interfere with the primary disposal of the soil within the same by the United States, or with any regulations Congress may find necessary for securing the title to said soil, to bona fide purchasers thereof; and no tax shall be imposed on lands belonging to the United States. Approved, January 20, 1862.

Act of Congress, 12 U. S. Stat. at L., p. 126. Act of Admission, cited or construed, *The State v. Stringfellow*, 2 Kas. 263; *Clay v. State*, 4 Kas. 49; *McCullom v. Pipe*, 7 Kas. 195; *Parker v. Winsor*, 5 Kas. 367; *id.*, 372; *Douglas Co. v. U. P. R'y*, 5 Kas. 624; *Chase Co. v. Shipman*, 14 Kas. 637; *Organic Act, Organizing Territory of Kansas*, 10 U. S. Stat. at L., p. 283, cited or construed, *Simmons v. Garrett*, McClellan's R. 85; *Lochnane v. Martin*, *id.* 60; *Dewey v. Drer*, *id.* 77; *McCracken v. Todd*, 1 Kas. 16; *Reynolds v. Brackett*, 2 Kas. 234; *Burnes vs. Atchison*, 2 Kas. 484; *The State v. Young*, 3 Kas. 447; *Atchison v. Bartholow*, 4 Kas. 124.

3—KAS. STAT.

[17]

ATTACHMENT EXHIBIT # 28.

73-37

## CHAPTER 3.—AGRICULTURAL COLLEGE.

(This chapter embraces the law as published in the general statutes with subsequent amendments, and is inserted in this work in the same manner.)

### SECTION.

1. Acceptance of provisions of the act of congress.
2. Governor to transmit copies of this act.
3. Preamble.
4. Where located.
5. Title papers to be received by Governor.
6. Name.
7. Officers.
8. Board of regents to be a body corporate.
9. May enact ordinances, by-laws, etc.
10. College shall consist of four departments.
11. Government of departments.
12. College open to all persons.
13. Annual exhibit of board of regents.
14. Report of regents.
15. Board of visitors.
16. Secretary, librarian, treasurer, etc.
17. Further powers of regents.
18. Duties of regents.
19. First meeting of regents.
20. What constitutes quorum of board.

### SECTION.

21. Lands granted to college to be used for what purpose.
22. When act took effect.
23. Regents to sell lands.
24. Price and terms of sale, appointment of agent to sell.
25. Agent to give bond.
26. Receipts and patents to purchaser.
27. Proceeds of sale to be paid into college treasury.
28. Loan commissioner, his duties, etc.
29. State treasurer to transfer, etc.
30. Treasurer of college shall give bond; his duties.
31. Board of regents may dispose of bonds.
32. Purchasers forfeit lands, when?
33. Bonds to be issued.
34. Proceeds to be applied to use of college.
35. How moneys shall be applied.
36. Agents to make return.
37. Accounts of agents to be audited.

Joint resolution accepting the provisions of an act of congress, entitled "An act donating public lands to the several States and territories which may provide colleges for the benefit of agriculture and the mechanic arts." Approved July 2nd, 1862.

*Be it resolved by the Legislature of the State of Kansas:*

(6) § 1. Acceptance of provisions of the act.] § 1. That the provisions of the act of congress, entitled "An act donating public lands to the several States and territories which may provide colleges for the benefit of agriculture and the mechanic arts," approved July 2d, 1862, are hereby accepted by the State of Kansas; and the State hereby agrees and obligates itself to comply with all the provisions of said act.

(7) § 2. Governor to transmit copies of this act.] § 2. *Resolved*, That upon the approval of this act by the governor, he is hereby instructed to transmit a certified copy of the same to the Secretary of State and the Secretary of the Interior of the United States. Approved, February 3, 1863.

[19]

**ATTACHMENT EXHIBIT # 29.**

# CHAPTER 2 BANKING & COMMERCIAL LAW

Charles T. Engel



ENGEL

## I. Scope

Commercial jurisprudence advanced more through the appellate courts during the past year than through legislative action. Our review here focuses primarily on case law. The bills through which the 1991 Kansas Legislature adopted Article 2A and substantially amended Articles 3 and 4 of the UCC, became effective February 1, 1992. Those changes were addressed in the 1991 Annual Survey, but I urge you to consult the articles by William H. Lawrence appearing in the June and July 1992 issues of *The Journal of the Kansas Bar Association* for excellent reviews of Article 3 and 4 changes.

### A. UCC Remedies

In addition to providing a glimpse of the high-stakes world of Arabian horse trading, the Kansas Supreme Court in *Vanier v. Ponsoldt and Bethesda Farm, Inc.*, \_\_\_ Kan. \_\_\_, \_\_\_ P.2d \_\_\_ (1992) provides an excellent review of Article 2 of the Uniform Commercial Code. Vanier sold an Arabian stallion to Ponsoldt through a Kentucky auction house. Ponsoldt put \$50,000 down on the \$250,000 purchase price, and executed a promissory note for the balance, to be secured by the horse. More than a year following the sale, after Ponsoldt had failed to make several installment payments, Vanier filed suit in Saline County for money judgment, foreclosure of the security interest, and attorney's fees.

In addition to other defenses, Ponsoldt alleged the auction had been fraudulently conducted and that the security agreement improperly limited available remedies. Nevertheless, Vanier prevailed.

Although the court found the auction was conducted fraudulently, it denied the argument that Ponsoldt should have been able to avoid the sale or take the stallion at the price of the last good faith bid prior to the completion of the sale.<sup>1</sup> The court found that, under Kentucky law, Ponsoldt had waived the claim of auction fraud by subsequent acts to ratify the contract. Although the horse was improperly bid at the auction, Ponsoldt did not take steps to learn whether the auction was fraudulent, and then made payments pursuant to the promissory note. Ponsoldt effectively ratified the contract in failing to act properly to repudiate the transaction.

The installment purchase agreement and security agreement required Ponsoldt to first, make any claims regarding the sale within 30 days of the date of the contract, and second, to bring any suit within one year after the cause of action accrued. Ponsoldt complained that these provisions limited available remedies. The court reviewed the Uniform Commercial Code to find that such agreements may fix the time to bring actions if the time chosen by

the parties "is not manifestly unreasonable,"<sup>2</sup> that commercial agreements may provide for remedies in addition to or in substitution for those provided by the Code,<sup>3</sup> and although the statute of limitations and contract for sale must be commenced within four years after the cause of action accrued, the original agreement of the parties may reduce the period of limitation to not less than one year but may not extend it.<sup>4</sup>

The court agreed with Ponsoldt that the 30-day limitation was unreasonable and violated K.S.A. 84-2-725. Ponsoldt was still obligated to meet the one-year limitation, however, since the statute expressly allows reduction of the period of limitation to not less than one year.<sup>5</sup>

The issue before the court of appeals in *Tongish v. Thomas*, 16 Kan. App. 2d 809, \_\_\_ P.2d \_\_\_ (1992) required the court to determine which measure of damages is appropriate under the Kansas Uniform Commercial Code<sup>6</sup> for the seller's breach of a contract. A Coop agreed to purchase all the sunflower seeds grown by Tongish, and subsequently contracted with Bambino Bean & Seed, Inc., to sell it all the sunflower seeds the Coop purchased from farmers such as Tongish. The price to be paid by Bambino was the same price the Coop paid to the farmers, although the Coop retained fifty-five cents per hundred pounds as a handling charge. When the price of sunflowers increased seven dollars per hundred pounds, Tongish notified the Coop that he was not going to honor the contract, and contracted to sell the sunflower seeds to Thomas at the higher price. Tongish subsequently sued Thomas to collect the balance due under their contract, and the Coop intervened. The trial court determined that the Coop was entitled to damages of \$455.51, the expected profit from handling charges in the transaction. The Coop appealed on the basis that the damages should have been the difference between the market price of the sunflower seeds and the contract price pursuant to K.S.A. 84-2-713.

In agreeing with the Coop, the court of appeals found that K.S.A. 84-2-106(1), which provides that UCC remedies shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed, conflicted with the more special statute, K.S.A. 84-2-713, which provides that the measure of damages for nondelivery by the seller is the difference between the market price when the buyer learned of the breach and the contract price together with incidental and consequential damages. The court restated the general rule that when there is a conflict between general and special statutes the special statute prevails, unless it appears the legislature intended to make the general statute controlling.<sup>7</sup> The court seemed troubled that applying K.S.A. 84-2-713 to the facts would



# State ag board doesn't need fixing

Wich 7-23-93  
Regarding the July 1 editorial "Ag board: Judge's ruling can boost awareness of farming":

The editorial stated that the judge's action in abolishing the Kansas Board of Agriculture was long overdue and could lead to greater public support for the state's number one industry — agriculture.

I can't imagine how the judge's determination, which was exactly what many of us expected from that court, would gain support for the production of food. I thought that everyone appreciated the food that is available. At our house, we always bow our head and say thank you when we sit down to table.

The article stated: "The ag board has been a wholly owned subsidiary of the farm lobby, especially the Kansas Farm Bureau." KFB has always been a sore spot with The Eagle and that's their prerogative. But I am amazed that the paper would maintain such negative feelings for the people in far Northwest, Northeast, Southeast and Southwest Kansas. The 105 counties have county farm bureaus and elect one delegate each to represent them at the ag board convention each year.

The Eagle has for years criticized the Kansas Farm Bureau for controlling the ag board and never yet has KFB had a voting delegate there. The county association, yes. The state organization, no.

The Eagle has for some time complained that the farm bureau dominated the ag board; they had too many delegates. Now that is akin to complaining that in our state elections white people have too many votes. Well, there are just more of them.

**During the 60 some years I've been involved in the business, about the only people I've talked to who claim to understand agriculture are the persons who live in a city.**

The article also states, "The farm lobby said that it alone understood agriculture." It's difficult for me, at least, to believe that statement. During the 60 some years I've been involved in the business, about the only people I've talked to who claim to understand agriculture are the persons who live in a city. When they become aware that I am a farmer, they will say, "Well, I know about farming. My grandpa lived on a farm and I used to go out and spend a week with him every summer."

Now, this is not an isolated case. I've met a goodly number of people who, by this kind of experience, feel they understand farming.

The one who wrote the editorial seemed pleased that after Oct. 1, Gov. Flinney will be the ag department's caretaker — Lord help us all. Won't that be a yapper? The agriculture community might as well pucker up and get ready for some flip-flopping. I have a feeling we will all have an idea what riding a good cutting horse is like while under this regime.

If the governor has her way, accord-

ing to the editorial, she will appoint the secretary of agriculture and "(fold) the Agriculture Department into the state bureaucracy." I fail to see how another bureaucracy would enhance urban residents' awareness of the problems of rural Kansas or increase trust among Kansans and ease regional hostility in state politics. To be truthful, that kind of thing is as close to wall banging as I've heard in awhile.

Thank goodness the ag board is appealing Judge Lungstrum's order, as well it should. I don't mean to reflect suspicion of the farming community toward the people of Kansas, but to preserve a Department of Agriculture that has served the state remarkably well in a consistent manner.

Kansans, urban or rural, deserve to keep a Department of Agriculture that doesn't flip and flop in the political winds. Agriculture production is not turned off and on like electricity. Cropping plans are laid out two to three years in advance and producers need consistency.

I do appreciate the concern expressed in the editorial for the welfare of the ag community and hope that in the future more ag-related articles would appear on the farm and business pages. We keep looking, but seldom are rewarded. The Eagle could do a good service for the urban dweller as well by helping the urban reader understand what goes on down on the farm and why, but keep it factual.

DUANE SANDERS  
Valley Center

# Ag board to attend hearings on its structure

By Ray Hemman  
The Hutchinson News

Hutch  
7-10-93

## Will take part, but make no final decisions

TOPEKA — Members of the Kansas State Board of Agriculture decided Friday to participate in hearings later this summer that will focus on the board's structure. The board will not go to the meetings, however, with any sweeping proposal to change its structure.

On Aug. 30 and 31, Senate Agriculture Committee Chairman David Corbin, R-Towanda, will conduct hearings on the future structure of the board. The hearings, beginning at 9 a.m. each day, will be held in the statehouse.

The hearings are a result of a lawsuit filed last fall that challenged the method of electing members of the Kansas State Board of Agriculture and how the agriculture secretary is selected.

Common Cause of Kansas and the Kansas Natural Resource Council filed suit in U.S. District Court last fall. On June 30, Judge John Lungstrum sunsetted the governing structure of the board on Oct. 1.

The board is composed of 12 members who are elected during a special meeting each January. It consists of recognized groups, including farm groups, agribusiness associations and fair boards, are allowed under Kansas law to

send delegates to the meeting. A petition system also is in place to allow farmers who are unaffiliated with any farm group to attend.

The 12 board members, in turn, select a secretary of agriculture. The 12 board members, agriculture secretary and three other individuals also serve as the Kansas State Fair Board. Those three additional individuals are representatives appointed by the Kansas Chamber of Commerce and Industry, Kansas Technology Enterprise Corp. and the Travel Industry Association of Kansas.

On Friday, the agriculture board declined to discuss the future structure of the Kansas State Fair Board, opting to wait until the entire fair board meets July 25 in Hays.

The lawsuit alleged that the governing structure of the board violates the "one-man/one-vote" requirement of the U.S. Constitution. The state, in turn, holds that the board is an administrative agency that has powers granted to it by the Legislature.

Lungstrum's order removes the 12 members of the Agriculture Board and Agriculture Secretary

Sam Brownback from their posts Oct. 1. He appointed Gov. Joan Finney as caretaker of the agency until the Kansas Legislature can set up a structure that passes constitutional muster.

Finney has said she will appoint an interim agriculture secretary who will take over Oct. 1.

During Friday's meeting, members said it would hurt the agency if board members decided not to participate in the hearing process.

Altis Ferree, board member from Yates Center, said the group should not approach Corbin's committee with a formal package for restructuring the board. Instead, board members need to "point out to the legislative committee all the good points of the current structure and let them come to a conclusion."

Sam Brownback, agriculture secretary, reminded board members that the decision-making process on the future of the board was occurring at two distinct levels.

First, the board is continuing its appeal of Lungstrum's decision to the 10th District Court of Appeals in D... A three-judge

panel will hear the appeal. The board also has requested that the appeals court stay Lungstrum's decision until a decision is rendered on the appeal.

Second, the Legislature will have the opportunity to alter the board's structure as it sees fit.

"These are separate forums," Brownback said. "The judicial process goes on. We are pursuing that on the basis we already have put forward. This (the Legislature) is a different forum. We have always said we are subject to the Legislature every year."

Ralph Rindt, board member from Herington, said the board should keep in mind that even if Lungstrum's decision is overthrown, they should be willing to work to improve the agency in any way they can.

"If there is an area we need to improve regardless of the appeal, we need to proceed," Rindt said. "... Because the judge threw Sam (Brownback) and 12 board members out of a job, there's evidently a bigger problem than a lot of us saw."

During the meeting, board members listed some of the positive aspects of the current struc-

ture, including continuity, bipartisan decision making, accountability, grass-roots input from the people it serves, and the fact that the people who vote for the agriculture board are more likely to know the members.

While the board will be discussing testifying in front of Corbin's committee, it will not discuss how the agency might be split up to appease Lungstrum's objections to it. In his decision, Lungstrum said the board had general government powers, such as the regulation of water. If the agency lost these general government powers, it might be able to continue its current structure.

"It would be very presumptuous for us to say how this agency should be carved up in order to be constitutional," said Jay Armstrong, board member from Muscotah. "The Legislature has looked at us and said, 'You do this and this.' For us to say, 'It is better, Legislature, to carve us up,' is wrong."

"The way I am elected and selected is important, but not so important as to carve it (the agency) up."

The board will review its testimony before the Agriculture Committee when it holds its summer quarterly meeting July 26 and 27.

# vledge oath of office

1-12-1989



ELECTED COUNTY officials take the oath of office in Decatur County courtroom Monday noon, sworn in by 17th Judicial District Judge Charles Worden. In front (l-r) are Steve Hirsch, county attorney; Marilyn Horn, clerk; Pat Whetzel, register of deeds; John Bremer, magistrate judge. Back row: Ken Badsky, sheriff; Jack Noone, commissioner; Ralph Unger, commissioner.

STATE OF KANSAS )

) ss.

COUNTY OF DECATUR )

## OFFICIAL OATH

I, Steven W. Hirsch

do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the State of Kansas, and faithfully discharge the duties of \_\_\_\_\_

Decatur County Attorney

So help me God.

(Signed)

Steven W. Hirsch

★ ★ ★ ★ ★

Subscribed and sworn to before me this 9 day of Jan, 1989.



Charles E. Worden

Charles E. Worden, District Judge  
17th Judicial District

Officer Authorized to Administer Oath

K.S.A. 54-106. All officers elected or appointed under any law of the State Of Kansas shall, before entering upon the duties of their respective offices, take and subscribe an oath or affirmation, as above.

ATTACHMENT EXHIBIT # 33.

# ROLL OF ATTORNEYS OF THE SUPREME COURT OF KANSAS

## OFFICIAL OATH

I do solemnly swear that I will support and bear true allegiance to the constitution of the United States and the constitution of the state of Kansas; that I will neither delay nor deny any man his right through malice, for lucre, or from any unworthy desire; that I will not knowingly foster or promote, or give my assent to, any fraudulent, groundless or unjust suit; that I will neither do, nor consent to the doing of, any falsehood in court; and that I will discharge my duties as an attorney and counselor of the supreme court and all inferior courts of the state of Kansas with fidelity both to the court and to my cause, and to the best of my knowledge and ability. So help me God.

DATE	NAME	POST-OFFICE	COUNTY	STATE
APR 1 1912	Henry J. Brunkley	1058 EDWARD DALINA, KANSAS	DALINE	KANSAS
	Maryann M. Brundelt	4460 Lehighway Wichita, Kan.	Wichita	Kans
	Gertrude C. Harner	324 S. E. 10th Wichita, Kan.	Wichita	KANSAS
	William H. Henshaw	Wichita, Kan.	Barton	KANSAS
	John A. Henshaw	211 Box 222 Olathe	Johnson	Kansas
	John K. Kleinhekel	2113 Ratonas Shawnee, Kan.	Shawnee	Kansas
	Emmett W. McLaughlin	5520 Plaza Reno Wichita, Kansas	Sedgwick	Kansas
	Charles E. Chalken	5800 Richmond St. Shawnee Mission 5716 S. 10th St.	Johnson	Kansas
	Robert D. Smith	Norton, 342 W. 10th St.	Norton	Kansas
	John Terry Rame	Wichita, Kan.	Sedgwick	KANSAS
	Richard E. Fertig	725 S. 10th St. Wichita, Kansas	Sedgwick	Kansas
	Walter R. Rame	1420 W. 10th St. Lawrence, Kansas	Louglas	Kansas
	Myrtle Stuntz	1200 S. 10th St. Lawrence, Kansas	Louglas	KANSAS
	Daniel S. Harvety	3407 Edgemont Wichita, Kansas	Sedgwick	Kansas
	Loren E. Harvety	1530 S. 10th St. Wichita, Kan.	Johnson	Kansas
	Arvid Victor Jacobson	3121 Main Street Topeka	Shawnee	Kansas
	Hank J. J. J. J.	Wichita, Kan.	Sedgwick	KANSAS
	Paul Robert J. J.	Topeka, Kan.	Shawnee	KANSAS
	Benjamin L. J. J.	3100A S. 10th St. Hutchinson	Reno	Kansas
	Weyne Louis J. J.	Hutchinson	Sedgwick	Kansas
	Frederick J. J.	Wichita	Sedgwick	Kansas
	Mary W. J. J.	Empire	Johnson	Kansas

THE STATE OF KANSAS,  
SUPREME COURT,

Subscribed in my presence and sworn to before me on the dates as above written.  
true copy ATTEST  
Carol G. Green

Clerk Supreme Court

Clerk Supreme Court

(See K.S.A. 53-501, et seq.)

Employee's name CHARLES E. WORDEN  
(please type or print)

Social Security Number 512-48-4774

STATE OF KANSAS EMPLOYEE'S OATH

K.S.A. 75-4308, et seq., requires that the following oath from K.S.A. 54-106 be signed by new employees before entering into the duties of employment and before funds for services may be disbursed:

I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Kansas, and faithfully discharge the duties of my office or employment. So help me God.

*Charles E. Worden*  
(employee's signature)

Signed and sworn to (or affirmed) before me on January 11, 1993  
(date)



*Darbi D. Engel*  
(signature of notary public OR  
signature & title of affirming person)

~~My appointment expires:~~  
(to be filled in only if notary public verifies oath)

Send original to: Office of Judicial Administration  
ATTN: Personnel  
301 W. 10th Street  
Topeka, KS 66612

**ATTACHMENT EXHIBIT # 35.**

*Exhibit 20*

*1344*

# Oath of Office

FEB 4 1991

State of Kansas }  
County of Shawnee } ss.

EDITH GRAVES  
SECRETARY OF STATE

I do solemnly swear, or affirm, that I will support the Constitution of the United States, and the Constitution of the State of Kansas, and will faithfully discharge the duties of the office of  
Treasurer

Office

So help me God.

Sally Thompson

Name

*Sally Thompson*

Signature

Subscribed and Sworn to, or Affirmed, before me, this 14th day  
of January, 1991.

*Richard W. Smith*

Signature - Notary Public

Supreme Court Chief Justice

Title

(Seal)

My notarial appointment expires \_\_\_\_\_.

\*Or other officer authorized to administer oaths.

ATTACHMENT EXHIBIT # 36.

13-45

**§ 453. Oaths of justices and judges**

Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: "I, \_\_\_\_\_, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as \_\_\_\_\_ according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States. So help me God."

**REVISION NOTES**

Based on title 28, U.S.C., 1940 ed., §§ 241, 372, and District of Columbia Code, 1940 ed., §§ 11-203, 11-303 (R.S.D.C. § 752, 18 Stat. pt. II, 90; Feb. 9, 1893, ch. 74, § 3, 27 Stat. 435; Mar. 3, 1901, ch. 854, § 223, 31 Stat. 1224; Mar. 3, 1911, ch. 231, §§ 136, 137, 257, 36 Stat. 1135, 1161; Feb. 25, 1919, ch. 29, § 4, 40 Stat. 1157).

This section consolidates sections 11-203 and 11-303 of District of Columbia Code, 1940 ed., and section 372 of title 28, U.S.C., 1940 ed., with that portion of section 241 of said title 28 providing that judges of the Court of Claims shall take an oath of office. The remainder of said section 241 comprises sections 171 and 173 of this title.

The phrase "justice or judge of the United States" was substituted for "justices of the Supreme Court, the circuit judges, and the district judges" appearing in said section 372, in order to extend the provisions of this section to judges of the Court of Claims, Customs Court, and Court of Customs and Patent Appeals and to all judges of any court which may be created by enactment of Congress. See definition in section 451 of this title.

The Attorney General has ruled that the expression "any judge of any court of the United States" applied to the Chief Justice and all judges of the Court of Claims. (21 Op. Atty. Gen. 449.)

**OATH OF OFFICE FOR DISTRICT JUDGE AND MAGISTRATE**

be paid their actual and necessary expenses incurred in performance of their duties, and may be paid such compensation for their services as may be approved by the court. (3) Attorneys appointed as members of hearing panels shall be paid the sum of fifty dollars (\$50.00) per day for all time employed, and all actual and necessary expenses incurred in conducting hearings of complaints of unprofessional conduct. [Adopted by the supreme court May 4, 1973; effective upon publication in the Kan. Reports.]

**Rule No. 212. Admission to the bar.** (a) *Examinations.* Applicants of good moral character and the requisite general education, who are residents of the state of Kansas, who have complied with the rules of the supreme court and of the state of Kansas, being graduates of the law department of the university of Kansas or some other accredited law school of equal requirements and reputation, will be admitted to examination in the law at such times as examinations shall be held by the board. *Provided,* That a resident of another state who has been graduated from an accredited law school in this state may be admitted to the first or second examination held by the board after such graduation.

(b) The board shall conduct examinations of applicants for admission to the bar, and shall conduct such preliminary inquiries and investigations as may be necessary or proper to determine the qualifications of applicants to be examined and to be admitted. The board shall be satisfied that all such applicants are (1) of good moral character, and (2) possessed of the requisite general education.

Such examinations shall be held regularly by the board two times each year at dates to be determined by the board, and subject to the prior approval of the court. Special examinations may be held at the discretion of the board.

(c) Any practicing attorney of any state or territory having professional business in this court may be admitted for the time and purpose of such business upon taking the oath hereinafter set out, or such attorney may be heard by permission of the court, on motion, without formal admission.

(d) *Petition contents.* All applications for admission to the bar shall be by petition to this court, made in duplicate, and filed with the clerk of this court, at least ninety (90) days prior to the next ensuing examination. Every petition shall be made on forms to be

procured from the clerk, shall be verified by the applicant, shall state his full name, his date and place of birth, the facts showing his citizenship, the state of his residence, and such other information as may be required to complete fully the forms of the petition.

In addition to the foregoing, each applicant for admission to the bar as provided by rule 212 (i) shall also file with the clerk, in duplicate, his answers to a questionnaire to be procured from the clerk, showing his educational qualifications, his study of the law, the date or dates of his admission to the bar of the highest court of another jurisdiction, the places where and occupations and employments in which he has been engaged, and other information elicited on such questionnaire. Every applicant for examination for admission to the bar will also be required to produce and file with the petition a written certificate signed by a judge of the district court and three members of the bar of the county where he resides or has lately resided, or other evidence satisfactory to the board showing that he is a person of good moral character.

No applicant to take the bar examination shall be examined until his application has been considered and approved by the board of law examiners.

Prior to granting approval to take the bar examination, it shall be the duty of the board of law examiners, in each instance, to investigate the moral character of the applicant, and in so doing it may call upon any state or local bar association or one or more members of the bar of the judicial district where the applicant resides, to make such investigation and report the results of the investigation to the board, and it may make such further investigations as may be necessary fully to inform itself concerning the moral fitness of the applicant.

The board may require applicants to submit fingerprints. In no event will permission be granted to take the bar examination until the investigation as to moral character has been completed.

In every such investigation the board may obtain such information as bears upon the character, fitness and general qualifications of the candidate, and take and hear testimony, administer oaths and affirmations, and compel by subpoena at the request of the applicant or of the board, the attendance of witnesses and the production of books, papers and documents. Any member of the board may administer such oaths and affirmations. The



practice of law is a privilege, and the burden of establishing his eligibility shall rest on the applicant.

(e) On the filing of a petition, the clerk shall immediately send to the disciplinary administrator one of the duplicates, and shall post the name and address of the applicant in a conspicuous place in his office for a period of sixty (60) days.

(f) Applicants will be required to pass a satisfactory examination as to their learning in the law upon such of the following, or other subjects, as the board may require: Personal property, domestic relations and family law, noncorporate business organizations and voluntary associations, agency and employment, U. C. C. and commercial transactions, legal ethics, contracts, corporations, real property, constitutional law, criminal law, civil and criminal procedure, torts, wills, trusts and administration, and evidence.

(g) *Method of examination.* At every examination each applicant shall draw a number on a slip of paper on which he shall write his name and deposit it in a sealed envelope with the clerk of the supreme court. When the applicant shall have finished any book, he shall sign it with his number only, and mark it as directed by the board, and any other mark of identification placed upon the book shall disqualify it, and the board may refuse to read or consider it.

(h) *Admission to practice.* As soon as practicable after the completion of an examination, the board shall file a report with the clerk of the court recommending the granting or the denial of the petition of the applicant. Whenever such report shall recommend the granting of a petition, unless some reason shall appear to the contrary, the court will make an order admitting the applicant to practice in all the courts of the state, which order shall become effective upon his taking an oath, the form of which shall be in substance as follows:

"You do solemnly swear that you will support and bear true allegiance to the Constitution of the United States and the Constitution of the state of Kansas; that you will neither delay nor deny any man his right through malice, for lucre, or from any unworthy desire; that you will not knowingly foster or promote, or give your assent to any fraudulent, groundless or unjust suit; that you will neither do, nor consent to the doing of any falsehood in court; and that you will discharge your duties as an attorney and counselor of the supreme court and all inferior courts of the state of Kansas with fidelity

both to the court and to your cause, and to the best of your knowledge and ability. So help you God."

Upon the making of such order the clerk shall issue to such applicant a certificate of his authority to practice law in this and all inferior courts of the state, upon his signing his name on the roll of attorneys of the court. Whenever the board shall recommend a denial of the petition, an order will be made to that effect.

*Provided further, however,* the authority granted to practice law shall not be exercised except as provided under rule 109[\*], when the licensee herein has been admitted to the bar of another state or territory and is regularly engaged in the practice of law in such other state or territory. (Note: See rule 109 of rules relating to district courts.)

(i) *Applicants admitted in other states.* Any applicant for admission to the bar of Kansas who was duly admitted to the practice of law by the highest court of another jurisdiction, who practiced there continuously for a period of five (5) years, and continued to practice there or elsewhere until within six (6) months of his making application for admission here, may be admitted to practice in this state without written examination as to his learning in the law upon showing by his application made in accordance with rule 214 (2):

(1) That he is or will become a bona fide resident of the state of Kansas prior to the time he is admitted to the bar of Kansas;

(2) That at the time he was first admitted in another jurisdiction he was fully qualified to have taken the bar examination in this state under the rules of this court then in effect;

(3) That he is now and has been a person of good moral character and is a proper person to be admitted to the bar of Kansas; and

(4) That he will furnish to the board of law examiners such other and further information as the board may require in the consideration of his application.

Upon final consideration of the application the board will report in writing to the court its recommendation as to whether the applicant shall be admitted.

All such applicants shall present themselves before the board of law examiners at the preliminary meeting preceding the regular semi-annual meeting at which they seek admission under this rule.

(j) *Temporary permit to practice.* Any applicant for admission to the bar who is a graduate of an approved law school or who has

been admitted to practice in the highest court of any other state, may, pending the hearing of his application, also file with the clerk of this court a request for a temporary permit to practice law. If the court shall find the applicant has had no opportunity to take an earlier examination, and that the circumstances are such as to justify it, a temporary permit will be granted, expiring at the date the results of the next examination are announced if unsuccessful, or if successful on the date he is regularly admitted to the bar, or until the date application under rule 212 (i) is acted upon by the court, effective upon his taking an oath to support the constitution of the United States, and the constitution of the state of Kansas, and conform to the requirements of the attorney's oath prescribed by the rules of the court.

(k) In the event the board shall recommend denial of an application filed under rule 212 (i), a copy of the board's report shall be furnished the applicant. The applicant may, within ten (10) days or such other period as the court might prescribe, file with the clerk of this court his exceptions to the board's report or he may elect to make no filing.

(l) Upon receipt of a copy of the exceptions of the applicant, the board shall file such additional material as it might deem appropriate, whereupon the matter shall stand submitted and the court shall proceed to consider the matter.

(m) Registration costs referred to in rule 214 shall constitute a fund to be known as the bar admission fee fund. Disbursements for compensation and expenses in connection with admissions shall be from this fund. Any unused balance may be applied to any deficiency in the bar disciplinary fee fund.

(n) Any applicant denied admission to the bar because of failure to make a satisfactory grade as a result of taking the examination provided in subparagraphs (f) and (g), shall have the right to inspect his examination papers at the office of the clerk of the supreme court if such a request is made not later than the thirtieth day after the mailing of the notice of denial of admission by the clerk of the supreme court. [Adopted by the supreme court May 4, 1973; amended June 7, 1974; effective upon publication in the Kan. Reports.]

\* Rule No. 109 appears in K. S. A. 60-2702.

Rule No. 213. *Educational and moral qualifications.* (a) *Examination—moral qualifications—general learning—learning law.* Examinations relative to the qualifications of applicants shall be oral or in writing, or partly

oral and partly in writing, in the discretion of the board. They shall include an inquiry into the moral qualifications and general learning of each applicant as well as into his learning in the law. Each applicant shall satisfy the board that he has completed a full course of study in both an accredited college and an accredited law school and that he has been granted and holds a baccalaureate degree and a bachelor of laws or juris doctor degree or their equivalent or higher degrees. A full course of study means the satisfactory completion of the requirements for the baccalaureate degree and the completion of at least six additional semesters or the equivalent, in an accredited law school. The standard for determining sufficiency of any educational requirement, or of courses of study leading to the granting of the degrees above mentioned, shall be that fixed and recognized by the university of Kansas.

(b) Correspondence schools are not recognized and applicants for admission to the bar will receive no credit for studies in such institutions.

(c) *Proof of education.* Diplomas showing that the applicant has earned and holds a baccalaureate degree and a bachelor of laws or juris doctor degree from accredited colleges, universities or schools will be accepted as prima facie evidence that he has complied with all the requirements of rule 213 (a). A certificate of graduation may be furnished in lieu of such diploma.

(d) In the event it shall be deemed necessary by the board, as a result of the number of persons taking the examinations or by reason of the absence of one or more members of the board, the board of law examiners may employ or otherwise obtain the services of one or more members of the Kansas bar to assist the board in the grading of bar examinations. Compensation for any member so employed shall be that agreed upon between such person and the board, subject to the prior approval of the court, and shall be paid from the board of law examiners' fund. [Adopted by the supreme court May 4, 1973; amended March 6 and June 7, 1974; effective upon publication in the Kan. Reports.]

Rule No. 214. *Application costs.* (1) Excepting applicants under subdivision (2) hereof, each applicant shall pay to the clerk of this court the sum of fifty dollars (\$50.00) as costs of the proceedings for admission to the bar. If the board of law examiners, after investigation, is of the opinion the applicant

was impliedly repealed by section of the uniform business corporations act providing that all acts or parts of acts inconsistent therewith were repealed, in view of provisions of act for cumulative voting. Rem.Rev.Stat. §§ 3803—28, 3803—62, 3812; Const. art. 12, § 1.

### 3. Corporations ⇨18

The charter of a corporation or articles of incorporation constitute contracts having a fourfold character, consisting of a contract between the state and the corporation, between the state and the stockholders, between the corporation and the stockholders, and between the stockholders themselves.

### 4. Corporations ⇨13

The laws of the state in which a corporation is organized, whether such laws be of constitutional or statutory origin, enter into and become a part of the corporation's articles of incorporation.

### 5. Corporations ⇨13, 18

The charter of a corporation organized under general law consists of its articles of incorporation, the existing state Constitution, the particular statute under which the corporation was formed, and all other general laws applicable thereto.

### 6. Statutes ⇨277

When the Legislature included in Uniform Business Corporation Act a section constituting a saving clause, conclusive presumption obtained that the Legislature deliberately intended to incorporate the clause, and that it had some purpose in mind in adopting the clause. Rem.Rev.Stat. §§ 3803—28, subd. 3, 3803—63.

### 7. Corporations ⇨283(1)

Right of stockholder to vote for director of corporation was a valuable "vested property right" arising out of the contract of incorporation, and was therefore a right saved and protected by saving clause of the Uniform Business Corporation Act, and was not impaired or affected by provisions of the act providing for voting of shares of stock cumulatively. Rem.Rev.Stat. §§ 3803—28(3), 3803—63.

See Words and Phrases, Permanent Edition, for all other definitions of "Vested Property Right".

### 8. Corporations ⇨283(1)

Provision of the Uniform Business Corporation Act authorizing cumulative voting for election of directors was not applicable to election for directors in corporation, which was incorporated prior to the enactment of the act, and the by-laws and the articles of incorporation of which provided for straight voting, and therefore majority stockholders were not divested of their vested right to elect all directors of the corporation by the straight voting method. Rem.Rev.Stat. §§ 3803—28(3), 3803—63.

### 9. Constitutional law ⇨125 Corporations ⇨40

A state may not pass laws altering or amending charters of corporations in such a way that will change their fundamental character or impair the object of the grant or rights vested thereunder, or in such a way as will impair the contractual relations or rights of stockholders among themselves or existing between them and the corporation.

Appeal from Superior Court, Yakima County; Jay Whitfield, Judge.

Suit by the State of Washington, on the relation of Walter V. Swanson and others, against Ben Perham, Sr., and others to compel recognition of the relators' right of cumulative voting. From a judgment for the defendants, the plaintiffs appeal.

Judgment affirmed.

Walter V. Swanson, of Yakima, for appellants.

Grady & Grady and Gavin & Robinson, all of Yakima, for respondents.

STEINERT, Justice.

The basic question presented to us for decision is this: Are stockholders of a private corporation, organized under the General Business Corporation Act in 1919, the by-laws of which corporation provide for straight voting of stock, entitled, solely by virtue of the adoption of the Uniform Business Corporation Act of 1933, Rem. Rev.Stat. § 3803—1 et seq., to vote their stock cumulatively, over the objection of

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FRANKLIN DEE WILLIAMS  
3212 S.W. Eveningside Drive # 31.  
Topeka, Kansas 66614  
(913) 272-5392

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November 6, 1992

FILED

OFFICES OF: Secretary of State of Kansas FAX 913-296-4570  
c/o John Reinhart and  
Joe De La Torre  
Capitol Building  
Topeka, Kansas 66612 ; and

BILL GRAVES  
ATTORNEY OF STATE

Office of Shawnee County Elections FAX 913-266-0299  
911 S.W. 37th  
Topeka, Kansas 66611

Re: Continued Objections to any implied count of  
illegal votes while disregarding the legal  
Petitioned or written votes until Objection  
hearing noticed, held and determined do to  
Vacant Offices of Kansas Senate, Legislature  
and courts; and where General Election had  
alleged Constitutional amendment Questions:


To Whom It May Concern:

This is an Objection continuing and ongoing that follows other  
previously submitted and acknowledged Objections not yet to date  
noticed, heard or determined according to constitution or law.

This comes to you on behalf of Franklin Dee Williams and all  
parties similarly situated, under the U.S. Constitution as well  
as Kansas Constitution and Statutes in place as they were or now  
on each General Election day.

Each being pursuant to K.S.A. 25-308a and/or 208 Objection, and  
as you know I appeared at 2:30 p.m. today at the above address of  
the Shawnee County Election Office to review the supposed canvas  
and was told they were still out on lunch break. I am seeking  
the names of the Objection canvassers so as to establish positive  
actions and/or positive inactions. Statutory language is clear  
as to who makes up the Objection Board under the facts and  
circumstances in this for proper resolve.

Sincerely,

  
Franklin Dee Williams  
Individually and Officially

cc: Melvin L. Johnson  
David Horn  
Others

ATTACHMENT EXHIBIT # 42.

13-51

## Art IV, § 3, cl 2, n 6

## CONSTITUTION

Regulations of traffic on highways within Rocky Mountain National Park were authorized. *Robbins v United States* (1922, CA8 Colo) 284 F 39.

Regulation of Secretary of Agriculture authorizing impounding and sale of livestock found to be trespassing on national forests was proper exercise of powers conferred upon Secretary of Agriculture by Constitution. *McVay v United States* (1973, CA5 La) 481 F2d 615.

### 7. Power over adjacent non-federal lands

Congress has power to prohibit building of fires near timber on public domain, though fire is made on private land. *United States v Alford* (1927) 274 US 264, 71 L. Ed 1010, 47 S Ct 597.

Congress has power to exercise regulatory control over campers whose campsite was located on state lands surrounded by national forests since United States has power to regulate conduct on nonfederal land when reasonably necessary to protect adjacent federal property or navigable waters. *United States v Lindsey* (1979, CA9 Idaho) 595 F2d 5.

Under its authority to protect public land, Congress' power must extend to regulation of conduct on or off public land that would threaten designated purpose of federal lands; Congress has power to dedicate federal land for particular purposes and as necessary incident of that power, Congress must have ability to ensure that these lands are protected against interference with their intended purposes. *Minnesota by Alexander v Block* (1981, CA8 Minn) 660 F2d 1240, cert den 455 US 1007, 71 L. Ed 2d 876, 102 S Ct 1645.

United States forest ranger had authority to conduct compliance inspection on defendant's non federal claim and arrest defendant for violation of statute and regulation prohibiting interference with any forest officer engaged in performance of his official duties in protection of National Forest System (16 USC § 551 and 36 CFR § 261.3(a)) since officer's compliance inspection was necessary to insure that practices on defendant's claim did not pose fire or health risk to adjacent federal land. *United States v Arbo* (1982, CA9 Cal) 691 F2d 862.

### 8. Government of territories, generally

While, under treaty with Spain, ceding Florida to United States, its inhabitants enjoyed privileges, rights, and immunities of citizens, prior to time it became state, it remained territory, governed by virtue of Art IV, § 3, cl 2, of Constitution. *American Ins. Co v 356 Bales of Cotton* (1828) 26 US 511, 7 L. Ed 242.

Civil government in California was formed as exercise of belligerent right over conquered territory, and was rightfully continued after peace was made with Mexico, until Congress legislated otherwise under Art IV, § 3, cl 2. *Cross v Harrison* (1854) 57 US 164, 14 L. Ed 889.

Government of territories belongs primarily to Congress and secondarily to such agencies as Congress may establish for that purpose. *Snow v United States* (1873) 85 US 317, 21 L. Ed 784.

Territories are but political subdivisions of outlying dominion of United States, and Congress may legislate for them as states do for their respective municipal organizations. *National Bank v County of Yankton* (1880) 101 US 129, 25 L. Ed 1016.

In ordaining government for territories and people who inhabit them, all discretion which belongs to legislative power is vested in Congress. *Murphy v Ramsey* (1885) 114 US 15, 29 L. Ed 47, 5 S Ct 747.

Power of Congress to organize territorial governments and make laws for inhabitants arises, not so much from Art IV, § 3, cl 2, as from ownership of country in which territories are, and right of exclusive sovereignty which must exist in national government and can be found nowhere else. *United States v Kagama* (1886) 118 US 375, 30 L. Ed 228, 6 S Ct 1109.

Congress has plenary legislative power over territories and their inhabitants. *Boyd v Nebraska* (1892) 143 US 135, 36 L. Ed 103, 12 S Ct 375.

Congress has entire dominion and sovereignty, national and municipal, federal and state, over territories of United States. *United States v McMillan* (1897) 165 US 504, 41 L. Ed 805, 17 S Ct 395.

In territory, legislature has all legislative power except as limited by Constitution of United States and organic act and laws of Congress appertaining thereto. *Walker v New Mexico & S. P. R. Co.* (1897) 165 US 593, 41 L. Ed 837, 17 S Ct 421.

Congress has power to validate municipal bonds issued in aid of a railroad in territory, where their only defect was that they had been issued in excess of powers conferred upon territorial municipalities by act of Congress. *Utter v Franklin* (1899) 172 US 416, 43 L. Ed 498, 19 S Ct 183.

In territories of United States, Congress has entire dominion and sovereignty, national and local, federal and state, has full legislative power over all subjects upon which legislature of state might legislate within state, and may, at its discretion, intrust that power to legislative assembly of territory. *Simms v Simms* (1899) 175 US 162, 44 L. Ed 115, 20 S Ct 58.

Power over territories is vested in Congress without limitation, and this power has been

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Dated 8/27/93 Signed My My Kandy Danner  
Washburn Law School Librarian

13-52

## U.S. TERRITORY OR PROPERTY

## Art IV, § 3, cl 2, n 9

considered foundation upon which territorial governments rest; where Constitution has been once formally extended by Congress to territories, neither Congress nor territorial legislature can enact laws inconsistent therewith. *Downes v Bidwell* (1901) 182 US 244, 45 L. Ed 1088, 21 S Ct 770.

Governmental powers of Congress over territory and its inhabitants are exclusive and paramount, there being no restrictions upon exercise of that power, except such as are imposed by supreme law of land. *Oklahoma v Atchison, T. & S. F. R. Co.* (1911) 220 US 277, 55 L. Ed 465, 31 S Ct 434.

Erection of local legislature in territory and grant of legislative powers do not deprive Congress of power to legislate for territory or abrogate existing congressional legislation in force therein. *Asiatic Petroleum Co. v Insular Collector of Customs* (1936) 297 US 666, 80 L. Ed 967, 56 S Ct 651.

In general, guaranties of Constitution, save as they are limitations upon exercise of executive and legislative power over insular possessions, extend to them only as Congress, in exercise of its legislative power over territory belonging to United States, has made those guaranties applicable. *Hooven & Allison Co. v Elyatt* (1915) 324 US 652, 89 L. Ed 1252, 65 S Ct 870, reh den 325 US 892, 89 L. Ed 2004, 65 S Ct 1198 and (overlaid on other grounds) *Limbach v Hooven & Allison Co.*, 466 US 353, 80 L. Ed 2d 356, 104 S Ct 1837).

Under Article IV, § 3, cl 2, of Constitution, Congress has plenary power over territories. *District of Columbia v Carter* (1973) 409 US 418, 34 L. Ed 2d 613, 93 S Ct 602, reh den 410 US 959, 35 L. Ed 2d 694, 93 S Ct 1411 and (superseded by statute as stated in *Holson v Wilson*, 237 App DC 219, 737 F2d 1, cert den (US) 85 L. Ed 2d 142, 105 S Ct 1843 and (disagreed with *Harrison v KVAI Food Management, Inc.* (CA4 Va) 766 F2d 155)) and (superseded by statute as stated in *Brown v United States*, 239 App DC 345, 742 F2d 1498, cert den (US) 85 L. Ed 2d 509, 105 S Ct 2153).

Congress may make constitutional provisions applicable to territories in which they would not otherwise be controlling, and because limitation on application of Federal Constitution in unincorporated territories is based in part on need to preserve Congress' ability to govern such possessions, and may be overruled by Congress, legislative determination that constitutional provision practically and beneficially may be implemented in territory is entitled to great weight. *Torres v Puerto Rico* (1979) 442 US 465, 61 L. Ed 2d 1, 99 S Ct 2425.

Although Puerto Rico is completely organized territory, it is not territory incorporated into

United States, and Congress has full power to make all needful rules and regulations respecting it, subject only to such constitutional restrictions as are applicable to situation; constitutional restriction of power of Congress to pass ex post facto laws (Art I, § 9) is applicable generally to power of Congress to legislate for territories, but Congress is not fettered by Commerce Clause (Art I, § 8, cl 3) in its power to legislate for Puerto Rico. *Cases v United States* (1942, CA1 Puerto Rico) 131 F2d 916, cert den 319 US 770, 87 L. Ed 1718, 63 S Ct 1431, reh den 324 US 889, 89 L. Ed 1437, 65 S Ct 1010 and (disagreed with *United States v Isaacs* (CA9 Wash) 539 F2d 686).

Although Organic Act does not contain specific delegation of power of eminent domain, that power, as one characteristically governmental and not dependent upon specific grant, is by that act vested in Puerto Rican legislature, but legislative power in this respect is not unlimited. *Puerto Rico v Eastern Sugar Associates* (1946, CA1 Puerto Rico) 156 F2d 316, cert den 329 US 772, 91 L. Ed 664, 67 S Ct 190.

Commerce Clause of Constitution (Art I, § 8, cl 3) has no effect upon Puerto Rico either as grant of federal power or as limitation upon state power; it adds nothing to comprehensive power given to Congress by Art IV, § 3, cl 2; it does not limit territorial action, since Congress already has power to limit such action to any extent it chooses, even to extent of annulling local legislation. *Buscaglia v Ballester* (1947, CA1 Puerto Rico) 162 F2d 805, cert den 332 US 816, 92 L. Ed 393, 68 S Ct 154.

Under Article 4, § 3, Clause 2, Congress has power to legislate directly for Guam, or to establish government for Guam subject to congressional control, and thus, Guam has no inherent right to govern itself. *Guam v Okada* (1982, CA9 Guam) 694 F2d 565, and on other grounds, reh den (CA9) 715 F2d 1347, cert den (US) 83 L. Ed 2d 367, 105 S Ct 441.

### 9. — Courts; judicial proceedings

Congress may directly define jurisdiction of territorial courts or delegate requisite authority for that purpose to territorial government. *Leitensdorfer v Webb* (1858) 61 US 176, 15 L. Ed 891.

Territorial government is entirely creation of Congress, and its judicial tribunals exert all their powers by authority of United States; when territorial government enacts and enforces criminal laws to govern its inhabitants, it is not acting as independent political community, but as agency of federal government. *United States v Wheeler* (1978) 435 US 313, 55 L. Ed 2d 303, 98 S Ct 1079.

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Dated 8/27/93 Signed Wm J. Hoelgerman  
Washburn Law School Librarian

So.2d 280 (Fla. 2d DCA 1959)], forfeiture of a \$1,500 deposit on a \$10,440 contract could be tolerated. However, in *Hook v. Bomar*, 320 F.2d 536 [(5th Cir.1968)], loss of a \$30,000 deposit on a \$95,000 contract was found unconscionable. In the case at bar the contract was for \$173,800, and the deposit [\$7,200] was only slightly more than 4% of that sum. Thus, based upon precedent the amount is not shocking to "the court's conscience."

317 So.2d at 870. See also *McNorton v. Pan American Bank of Orlando*, 387 So.2d 393 (Fla. 5th DCA 1980), petition for review denied, 392 So.2d 1377 (Fla.1981) (retention of fifty percent of the purchase price paid as a deposit was sufficiently shocking to state a cause of action for its recovery).

[4] In the present case the Berndts deposited an initial amount of \$10,000. While this would appear to have been a reasonable amount subject to forfeiture under paragraph 19, the seller's reservation to retain this amount plus all subsequent deposits by the Berndts made the forfeiture provision unreasonable. Bieberstein ended up retaining over fifty-five percent of the purchase price which had been deposited by the buyer. We hold that under these circumstances the forfeiture was unconscionable.

Accordingly, we reverse the award of damages and remand with directions for the trial court to entertain further pleadings and proof as to the actual damages sustained by Bieberstein and enter judgment in that amount. See *Secrist v. National Service Industries, Inc.*, 395 So.2d 1280 (Fla. 2d DCA 1981); *South Florida Regional Planning Council v. Board of County Commissioners of Palm Beach County*, 372 So.2d 1142 (Fla. 4th DCA 1979), cert. denied, 385 So.2d 761 (Fla. 1980).

Affirmed in part, reversed in part and remanded.

SCHOONOVER, J., and BENTLEY, E. RANDOLPH, Associate Judge, concur.

Wayne COLLINS, Appellant,

v.

STATE of Florida, Appellee.

No. 84-243.

District Court of Appeal of Florida,  
Second District.

Feb. 22, 1985.

Rehearing Denied March 28, 1985.

Defendant was convicted in the Circuit Court of Collier County, Ted H. Brousseau, J., for trafficking in marijuana, and defendant appealed. The District Court of Appeal, Ryder, C.J., held that: (1) failure of police officer to swear to truth of supporting affidavit invalidated search warrant, and (2) officer's good faith belief that his obligation to tell truth to judge was a sufficient oath did not prevent operation of exclusionary rule.

Reversed and remanded.

#### 1. Oath ⇐5

The key to a valid oath is that perjury will lie for its falsity.

#### 2. Oath ⇐5

A valid oath must be an unequivocal act in the presence of an officer authorized to administer oaths by which declarant knowingly attests the truth of a statement and assumes the obligations of an oath.

#### 3. Perjury ⇐10

It is essential to the offense of perjury that statement considered perjurious was given under an oath actually administered.

#### 4. Oath ⇐1

Police officer's answer to judge's questions about contents of affidavit submitted with request for search warrant and about reliability of informant constituted a mere assertion of truth, not an "oath."

See publication Words and Phrases for other judicial constructions and definitions.

RECEIVED

JAN 14 1991

BILL GRAVES  
SECRETARY OF STATE  
STATE OF KANSAS )  
COUNTY OF SHAWNEE )

AFFIDAVIT

SP  
JAN 14 1991  
BILL GRAVES  
SECRETARY OF STATE

I, Franklin Dee Williams being first sworn upon oath  
state:

That I, Franklin Dee Williams with David Horn filed  
Objections and Appended Affidavits after the General  
Election 1986 of which I also filed the oath of Office with  
the same said Office shortly after the election on the  
grounds that the write-ins were the only validly cast votes  
by the only validly Qualified Electors.

That I, Franklin Dee Williams gives this Affidavit of my  
own free will and without any mental reservation and that  
the following is my sworn oath do to the fact that record  
evidence shows that the Democratic and Republican parties  
are shown not to have held the Constitutional and Statutory  
mandate for the Platform Committee meetings and the  
Certified document provided me earlier shows that they  
remain without any valid petition for re-enstatement to  
date.

That I, Franklin Dee Williams has reason to believe and  
that I do believe that Article 15 Section 14 of the  
Constitution of the State of Kansas requires and has

1-14-91

DATED

*Franklin Dee Williams*  
FRANKLIN DEE WILLIAMS



POSITIVE

JAN 14 1991

BILL GRAVES  
SECRETARY OF STATE

AFFIDAVIT OF FRANKLIN DEE WILLIAMS Continued Page 2 of 4.

required all state officers before entering upon their respective duties to take and subscribe an oath or affirmation to support the constitution of the United States and of this state, and to faithfully discharge the duties of their respective offices, as I have earlier done as above stated, and is quoted as follows:

Section 14 of Artical 15 as follows:

"( 14. Oaths of state officers. All state officers before enteringt upon their respective duties shall take and subscribe an oath or affirmation to support the constitution of this state, and faithfully to discharge the duties of their respective offices."

That as follows:


"K.S.A. 54-106 provides for the Form of Oath to be taken by officer, whether they be elected or appointed under any law of the state of Kansas shall, before entering upon the duties of their respective offices, take and subscribe an oath or affirmation, as follows:"

"I do solemnly swear [or affirm, as the case may be ] that I will support the constitution of the United States and the constitution of the state of Kansas, and faithfully discharge the duties of \_\_\_\_\_, So help me God."

That I, Franklin Dee Williams has reason to believe and that he does believe that any of the so-called oaths of office allegedly filed with the office of the Kansas Secretary of State, are invalid and further violate K.S.A. 54-105 et seq.

1-14-91

DATED

  
FRANKLIN DEE WILLIAMS

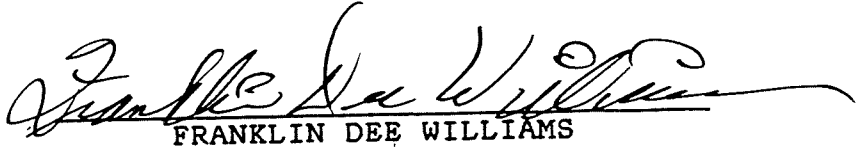
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JAN 14 1991

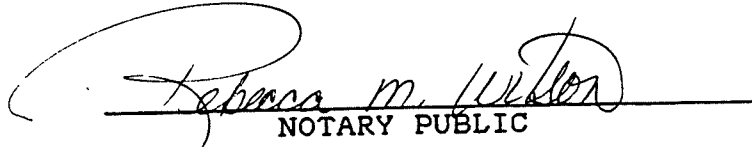
AFFIDAVIT OF FRANKLIN DEE WILLIAMS Continued Page 3 of 4 ~~GRAVES~~ ~~SECRETARY OF STATE~~

That I, Franklin Dee Williams do herein take and have subscribed this Oath of Office of Kansas Attorney General for all of the above reasons and more not herein stated.

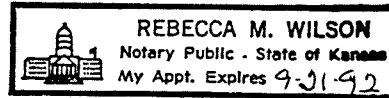
"I FRANKLIN DEE WILLIAMS do solemnly swear that I will support the constitution of the United States and the constitution of the state of Kansas, and faithfully discharge the duties of Kansas Attorney General, So help me God."

  
FRANKLIN DEE WILLIAMS

Subscribed and sworn to before me this 14 day of January, 1991.

  
NOTARY PUBLIC

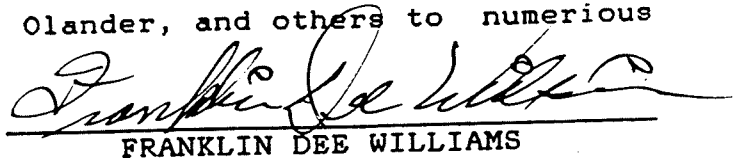
My Commission Expires:



9-21-92

That I, Franklin Dee Williams have discussed this subject matter with Mr. John Wine of the so-called above office and Mr. Sherman Parks Jr. as well as Mr. Bill Graves and the relief that I have been seeking has been circumvented by one Robert T. Stephan, John W. Campbell, Steve A. Schwarm, Daniel P. Kolditz, Gene M. Olander, and others to numerous

1-14-91  
DATED

  
FRANKLIN DEE WILLIAMS

RECEIVED

JAN 14 1991

AFFIDAVIT OF FRANKLIN DEE WILLIAMS Continued Page 4 of 4.


BILL GRAVES  
SECRETARY OF STATE

to mention at this time.

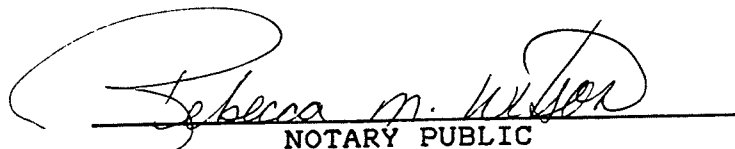
That I, have had a conversation this last week with Mr. Sherman Parks Jr. who said I may well be correct but they disagree with me and that I must obtain an Order of mandamus from some competent Court of Jurisdiction and signed by some Judge with the power and authority to do so, even though he (PARKS) acknowledged that K.S.A. 25-208a and K.S.A. 25-308 have not been declared unconstitutional, and I, Franklin Dee Williams has reason to believe and that I do believe that that is the very reason for the Statutes and for their needed passage and that the records shows that section (c) provided for and who had to consider the objection of the failure to call, and comply with the statutory requirements of the Party Platforms Committee so as to allow ballot status.

That I, Franklin Dee Williams could not with due diligence done a better job in the past nor can I now.

Further Affiant Saught Naught.

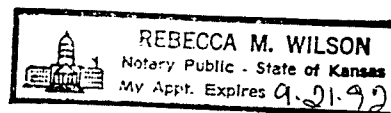
  
FRANKLIN DEE WILLIAMS

Subscribed and sworn to before me this 14<sup>th</sup> day of January, 1991.

  
NOTARY PUBLIC

My Commission Expires:

9.21.92



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perly made  
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nd reverse the  
v Taylor, 87  
Thompson, 79

assers, 50 Kan  
Lewis v Mar-

NY 460, 82 NE

16, 27 NE 422;  
5 Kan 102.

1.  
application for  
JUR PL & PR

supra.

Ind 16, 27 NE

may issue to compel the canvassers to reassemble and make a complete canvass of all the returns.<sup>4</sup> But it seems clear that a board will not be compelled to reconvene where the result of its recanvass would be a declaration of the election of a candidate not eligible for office under the constitution;<sup>5</sup> and if the term of office of the members of the canvassing board has expired and others have succeeded to their offices, such former members cannot of course be compelled to reassemble.<sup>6</sup>

Where precinct officers have in effect changed the result of an election by amending their original return or certificate, the canvassing board may be compelled to recanvass the votes based on the original returns, or to disregard the second return and issue a certificate of election based on such original returns.<sup>7</sup>

#### C. CERTIFICATE OF ELECTION

#### § 304. Generally.

The legislature has the power, within constitutional limitations, to provide for the manner in which the result of an election shall be determined and declared and, where the legislature has so provided, the election is not complete until the legislative mandate is obeyed.<sup>8</sup> The declaration of the result of an election is an indispensable adjunct to the election process.<sup>9</sup> The declaration furnishes the only authentic evidence of what the choice is and by which the person can know that he is entitled to the office, or the former incumbent know that his term has expired.<sup>10</sup> Accordingly, prior to the declaration of the results of the canvass, the incumbent of an office holding over remains the de jure as well as the de facto officer.<sup>11</sup> But it has been held that the wrongful failure of the duly authorized canvassers to issue the declaration may

4. Hunt v Campbell, 19 Ariz 254, 169 P 596; State ex rel. Knott v Haskell, 72 Fla 176, 72 So 651; Johnston v State, 128 Ind 16, 27 NE 422; Rosenthal v State Canvassers, 50 Kan 129, 32 P 129; State ex rel. Hudson v Pigott, 97 Miss 599, 54 So 257; People ex rel. Daley v Rice, 129 NY 449, 29 NE 355; Curtis v State, 163 Tenn 220, 43 SW2d 391; Holdermann v Schane, 56 W Va 11, 48 SE 512.

5. People ex rel. Sherwood v State Canvassers, 129 NY 360, 29 NE 345.

6. State ex rel. Stranahan v State Canvassers, 32 Mont 13, 79 P 402; Holdermann v Schane, 56 W Va 11, 48 SE 512.

7. Hopkins v Waycross, 160 Ga 217, 127 SE 862; Roemer v Detroit Board of Canvassers, 90 Mich 27, 51 NW 267; McKinney v Peers, 91 Va 684, 22 SE 506.

**Annotation:** 168 ALR 857.

8. State ex rel. Thorp v Devin, 26 Wash 2d 333, 173 P2d 994.

9. State ex rel. Wulf v McGrath, 111 Mont

96, 106 P2d 183; Gragg v Dudley, 143 Okla 281, 289 P 254; Green v Jones, 144 W Va 276, 108 SE2d 1, on reh 144 W Va 295, 110 SE2d 329.

An election is not deemed to be complete until the result is determined and declared. State ex rel. Morris v Bulkeley, 61 Conn 287, 23 A 186; State ex rel. Wulf v McGrath, 111 Mont 96, 106 P2d 183; Gragg v Dudley, 143 Okla 281, 289 P 254; O'Neil v State, 185 Tenn 534, 206 SW2d 780; State ex rel. Thorp v Devin, 26 Wash 2d 333, 173 P2d 994; Daugherty v Mabscott, 131 W Va 500, 48 SE2d 342.

10. The courts can take judicial notice of the fact of an election, but generally not of the result thereof. State ex rel. Morris v Bulkeley, 61 Conn 287, 23 A 186. But see Jay v O'Donnell, 178 Ind 282, 98 NE 349, to effect that court can judicially notice result of local option election.

11. State ex rel. Morris v Bulkeley, 61 Conn 287, 23 A 186; O'Neil v State, 185 Tenn 534, 206 SW2d 780. See PUBLIC OFFICERS AND EMPLOYEES (1st ed §§ 161-164).

FRANKLIN DEE WILLIAMS

6024 S.W. 25th Street  
Topeka, Kansas 66614  
(913) 272-5392

September 7, 1990

**FILE**

SEP 7 1990

**LEWIS C. CART**  
CLERK APPELLATE COURT

Clerk of the Supreme Court  
Appellate Court Clerk  
Kansas Judicial Center  
301 W. 10th Street  
Topeka, Kansas 66612-1507

Re: All Orders from the Court of Appeals of Kansas:  
Case No. 89-64537-A & 89-64537-AS & 89-63765-S  
85-57820-A & 85-57820-AS:

Dear Clerk:

I am requesting for you to provide all orders in the above actions provided from your office and will need them for attachment, for appeal.

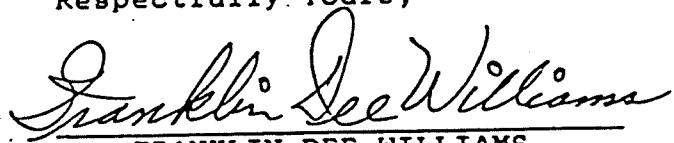
Please be advised that I will be personally delivering this request and that I do offer to pay for the same at the time of delivery.

I am also asking for the same at your earliest convenience all orders 85-57820-A & 85-57820-AS and will be offering to pay at the same time as above.

Thanking You In Advance

"I AM"

Respectfully Yours,



FRANKLIN DEE WILLIAMS  
individually and pro se

cc: Clerk Supreme Court of the United States  
"Kansas Territorial Agricultural Society Board"  
Others.

P.S. I am also requesting copies of the Docket sheets and likewise I am also offering to pay at this time.

*Frank*  
"FRANK"

Sept 10, 1980  
(date)

OFFICE OF JUDICIAL ADMINISTRATION  
REQUEST FOR RECORD INSPECTION OR FOR A COPY

(TO BE COMPLETED BY REQUESTER)

NAME: FRANKLIN Dee Williams (Requester)  
6024 S.W. 25<sup>th</sup> STREET (Street)  
TOPEKA, KANSAS 66614 (City, State, Zip)

I certify that I do not intend to, and will not: (1) Use any list of names or addresses contained in or derived from the records or information requested for the purpose of selling or offering for sale any property or service to any person listed or to any person who resides at any address listed; or (2) sell, give or otherwise make available to any person any list of names or addresses contained in or derived from the records or information for the purpose of allowing that person to sell or offer for sale any property or service to any person listed or to any person who resides at any address listed.

SIGNATURE: Franklin Dee Williams

**RECORD SOUGHT:** Please provide as specific a description as possible of the record you desire to inspect or for which you request a copy. Include record titles and dates, if possible.

No. of Copies Desired

- [SEE LETTER dated Sept. 7, 1980]
2. COPIES provided that date
3. \_\_\_\_\_

ALL

**CHARGES:** A charge for providing access to public records is authorized by state law and has been established by the State Supreme Court. Charges are set to compensate for the actual costs incurred in honoring your request. The fee schedule established for the Office of Judicial Administration is posted in the office. The charge for access to or copies of the record (s) you have requested is estimated at \$\_\_\_\_\_.

Prepayment of the above amount is required.

(TO BE COMPLETED BY RECORD CUSTODIAN)

Time of Request: \_\_\_\_\_ (date) \_\_\_\_\_ (time) \_\_\_\_\_ (person receiving request)

Records Provided: \_\_\_\_\_ (date) \_\_\_\_\_ (time) \_\_\_\_\_ (person providing record)

Staff Time Involved: \_\_\_\_\_ hours, \_\_\_\_\_ minutes for a charge of \$\_\_\_\_\_

Charge for Copies Made: \$\_\_\_\_\_.

Total Charges: \$\_\_\_\_\_.

Amount Remaining Due: \$\_\_\_\_\_.

OR

Refund of Prepayment: \$\_\_\_\_\_.

FRANKLIN DEE WILLIAMS

RECEIVED

6024 S.W. 25th Street  
Topeka, Kansas 66614  
(913) 272-5392

September 13, 1990

SEP 13 3 26 PM '90

LEWIS G. BAKER  
CLERK APPELLATE COURTS

Clerk of the Supreme Court  
Appellate Court Clerk  
Kansas Judicial Center  
301 W. 10th Street  
Topeka, Kansas 66612-1507

Re: Letter of September 7, 1990  
and appearance at the Appellate  
Court Clerks Office Sept. 10, 1990,  
and refusal to provide document for  
request to inspect until the latter  
and latter without form number and the  
lack of any statutory authority for  
such untimely belated request.

Dear Clerk:

Please find enclosed and attached a copy of my September 7, 1990 letter request and accept this as to confirm my appearance at your office September 10, 1990 to pick up the requested documents and review file, and that James Pritchard provided me with a paper purported to be a form without any number or statutory designation and ask that I only take such with me as I was leaving.

Please also accept this as to confirm my conversation with Mr. Pritchard that the files and Orders that I requested in part were to have been taken to or turned over to the Historical Society, in Appeal No. 85-57820-A & 85-57820-AS when it is not known of any statute that provided for such and that I have gone to the Historical Society and failed to be provided such documents or Copies upon written request, and that I further did not find such.

Please further find that I am seeking from you in writing that which you intend to provided me and separately that which you may claim not to be able to provided me and as good as an explanation as to why you will not timely be able to provide me such copies as requested.

This is to also confirm that no amount has been estimated to me as to the cost on either of the occasions that I have appeared at your office on September 7 or 10 1990 nor on earlier occasions.

Sincerely,



FRANKLIN DEE WILLIAMS  
individually and pro se,

cc: Clerk of the Supreme Court of the United States; and  
Byron R. White Justice of same  
Others

13-62

# APPOINTMENT AS DEPUTY

STATE OF KANSAS, Shawnee County, ss.

I, F. T. "Jim" Chaffee, of Shawnee

County, Kansas, do hereby appoint Frank Williams my true and lawful deputy, to do and perform any and all lawful acts pertaining to the office of Special Deputy (SP) of said County.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of my office,

this 15th day of January, 1971

Signed, F. T. Chaffee  
Sheriff

## OATH

STATE OF KANSAS, Shawnee County, ss.

I, Frank Williams, do solemnly swear that I will support the Constitution and laws of the United States and the Constitution and laws of the State of Kansas, and faithfully and to the best of my ability discharge the duties devolving upon me as Deputy Special Deputy (SP) of said County. I further swear (or affirm) that I do not advocate, nor am I a member of any political party or organization that advocates the overthrow of the government of the United States or of the state by force or violence; and that during such time as I am an officer or employee, I will not advocate nor become a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence. So help me God.

Signed, Frank Williams

Subscribed in my presence and sworn to before me, this 15th day of January, 1971

## CERTIFICATION

STATE OF KANSAS )  
COUNTY OF SHAWNEE ) ss

I, Patsy A. McDonald, County Clerk of Shawnee County, Kansas, do hereby certify that the above is a true and correct copy of the Appointment of Deputy of Frank Williams on January 15, 1971 as on file in the office of the Shawnee County Clerk.

WITNESS MY HAND and OFFICIAL SEAL this 10th day of April, 1992.

Patsy A. McDonald  
Patsy A. McDonald, County Clerk

(SEAL)

13-63

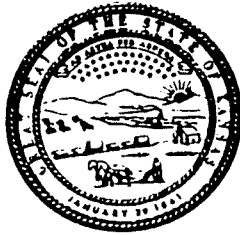




CONSTITUTIONS VOLUME

# Kansas Statutes Annotated

CONTAINING  
THE ORGANIC ACT; THE ACT FOR ADMISSION; THE CONSTITUTION OF KANSAS;  
THE DECLARATION OF INDEPENDENCE; THE CONSTITUTION OF THE UNITED STATES;  
AND THE COMPARATIVE TABLE OF SECTIONS



*Compiled and Edited by*  
*Office of Revisor of Statutes of Kansas*  
ARDEN K. ENSLEY, REVISOR OF STATUTES

UNDER AUTHORITY OF  
K.S.A. 77-151

PRINTED AND BOUND BY  
DIVISION OF PRINTING—DEPARTMENT OF ADMINISTRATION  
TOPEKA, KANSAS, 1988

## WASHBURN LAW LIBRARY

I hereby certify that these pages 45 and 46 of the Kansas Statutes Annotated, Table of Sections, 1988, are accurate reproductions of the copies held in this Washburn Law School Library and that I am the Librarian herein as dated and signed.

Dated 10-26-93 Signed my my Holly Ann  
Washburn Law School Librarian

council not violative of separation of powers doctrine. State, ex rel., v. Bennett, 222 K. 12, 17, 564 P.2d 1281.

**§ 4. Reports to governor.** The governor may require information in writing from the officers of the executive department, upon any subject relating to their respective duties. The officers of the executive department, and of all public state institutions, shall, at least ten days preceding each regular session of the legislature, severally report to the governor, who shall transmit such reports to the legislature.

**History:** Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 50; L. 1972, ch. 390, § 1; Nov. 7, 1972.

**Revisor's Note:**

Provision for reports by officers to governor appeared in § 16, prior to 1972 revision of article.

**Research and Practice Aids:**

States — 41.

Hatcher's Digest, Attorney General §§ 1, 2.

C.J.S. States §§ 60, 74.

**Attorney General's Opinions:**

Dept. of administration; inclusion of state agencies' budget requests in governor's budget report. 82-20.

**CASE ANNOTATIONS**

1. Governor may require attorney general to examine witnesses under prohibitory law. The State, ex rel., v. Dawson, 86 K. 180, 187, 119 P. 360.

2. Mentioned; 1972 amendment to article held properly submitted and adopted. Van Sickel v. Shanahan, 212 K. 426, 430, 511 P.2d 223.

**§ 5. Governor's duties for legislature; messages; special sessions; adjournment.** The governor may, on extraordinary occasions, call the legislature into special session by proclamation; and shall call the legislature into special session, upon petition signed by at least two-thirds of the members elected to each house. At every session of the legislature the governor shall communicate in writing information in reference to the condition of the state, and recommend such measures as he deems expedient. In case of disagreement between the two houses in respect of the time of adjournment, the governor may adjourn the legislature to such time as he deems proper, not beyond its next regular session.

**History:** Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 50; L. 1972, ch. 390, § 1; Nov. 7, 1972.

**Revisor's Note:**

Provision for adjournment in case of disagreement between houses prior to 1972, appeared in § 6 of this article.

**Cross References to Related Sections:**

Adjournment for more than two days; consent of other house required, see Kans. Const. Art. 2, § 8.

Legislative petition for special session, see 46-1401 et seq.

Messages and reports to legislature, see 75-102, 75-3721.

Record of petitions for special sessions maintained, see 75-104.

**Research and Practice Aids:**

States — 41.

Hatcher's Digest, Constitutional Law, § 20; States §§ 14 to 16.

C.J.S. States §§ 60, 74.

**Attorney General's Opinions:**

There is no limitation on subject matter to be dealt with at special session. 87-92.

**CASE ANNOTATIONS**

1. Governor must necessarily decide which body constitutes house. (Dissenting opinion.) In re Gunn, Petitioner, 50 K. 155, 250, 32 P. 470.

2. Legislation demanded respecting freight rates, authorized governor to convene legislature. Farrelly v. Cole, 60 K. 356, 362, 366, 370, 56 P. 492.

3. Mentioned, legislature at budget session has no power to appoint interim investigating committee. State, ex rel., v. Anderson, 180 K. 120, 123, 126, 299 P.2d 1078.

4. Finance council and emergency fund laws (75-3708 to 75-3714) not encroachment on power of executive. State, ex rel., v. Fadely, 180 K. 652, 667, 676, 686, 696, 308 P.2d 537.

5. Governor may call special session so legislature can lawfully apportion legislative districts. Harris v. Shanahan, 192 K. 183, 213, 387 P.2d 771.

6. Mentioned in holding 1968 reapportionment of senate unconstitutional. Long v. Docking, 283 F. Supp. 539, 543.

**§ 6. Reorganization of state agencies of executive branch.** (a) For the purpose of transferring, abolishing, consolidating or coordinating the whole or any part of any state agency, or the functions thereof, within the executive branch of state government, when the governor considers the same necessary for efficient administration, he may issue one or more executive reorganization orders, each bearing an identifying number, and transmit the same to the legislature within the first thirty calendar days of any regular session. Agencies and functions of the legislative and judicial branches, and constitutionally delegated functions of state officers and state boards shall be exempt from executive reorganization orders.

(b) The governor shall transmit each executive reorganization order to both houses of the legislature on the same day, and each such order shall be accompanied by a governor's message which shall specify with respect to each abolition of a function included in the order the statutory authority for the exercise

of the function. Every executive reorganization order shall provide for the transfer or other disposition of the records, property and personnel affected by the order. Every executive reorganization order shall provide for all necessary transfers of unexpended balances of appropriations of agencies affected by such order, and such changes in responsibility for and handling of special funds as may be necessary to accomplish the purpose of such order. Transferred balances of appropriations may be used only for the purposes for which the appropriation was originally made.

(c) Each executive reorganization order transmitted to the legislature as provided in this section shall take effect and have the force of general law on the July 1 following its transmittal to the legislature, unless within sixty calendar days and before the adjournment of the legislative session either the senate or the house of representatives adopts by a majority vote of the members elected thereto a resolution disapproving such executive reorganization order. Under the provisions of an executive reorganization order a portion of the order may be effective at a time later than the date on which the order is otherwise effective.

(d) An executive reorganization order which is effective shall be published as and with the acts of the legislature and the statutes of the state. Any executive reorganization order which is or is to become effective may be amended or repealed as statutes of the state are amended or repealed.

**History:** Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 50; original subject matter stricken by revision and new subject substituted, L. 1972, ch. 390, § 1; Nov. 7, 1972.

**Revisor's Note:**

Prior to 1972 revision, section provided for adjournment of legislature by governor in case of disagreement between houses of legislature. This authority of governor was included in § 5 of article by revision.

**Research and Practice Aids:**

States ⇨ 41.

C.J.S. States §§ 60, 74.

**Law Review and Bar Journal References:**

Discussed in comment on executive reorganization, 13 W.L.J. 530 (1974).

**CASE ANNOTATIONS**

1. Discussed; 1972 amendment of section does not conflict with Article IV, Section 4, of the U.S. Constitution, guaranteeing to every state a republican form of government. *Van Sickle v. Shanahan*, 212 K. 426, 430, 431, 434, 439, 447, 448, 449, 450, 451, 452, 511 P.2d 223.

**§ 7. Pardons.** The pardoning power shall be vested in the governor, under regulations and restrictions prescribed by law.

**History:** Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 50; L. 1972, ch. 390, § 1; Nov. 7, 1972.

**Revisor's Note:**

No change was made in this section by the 1972 revision of this article.

**Research and Practice Aids:**

Pardon and Parole ⇨ 4.

Hatcher's Digest, Pardon, Parole and Commutation §§ 1, 2, 6 to 9.

C.J.S. Pardons §§ 3, 5, 14, 15, 19.

**Attorney General's Opinions:**

Criminal procedure; release procedure; pardons and commutations. 79-131.

Schools; teachers' contracts; constitutionality of binding arbitration provision in Senate Bill No. 718. 80-63.

Office of governor; power to accept delegated presidential authority. 80-140.

Law enforcement training center; qualifications of applicant. 85-165.

**CASE ANNOTATIONS**

1. Not violated by "parole law" conferring power on district court. *Mikesell v. Wilson County*, 82 K. 502, 504, 108 P. 829.

2. Section cited in distinguishing commutation of sentence and conditional pardon. *In re Charles*, 115 K. 323, 222 P. 606.

3. Section includes power to grant commutation of sentence and remit fines and forfeitures. *Jamison v. Flanner*, 116 K. 624, 228 P. 82.

4. Section includes power to parole and commute sentences under laws. *Lynn v. Schneek*, 139 K. 138, 140, 30 P.2d 117.

5. Reprieve of execution of death sentence granted to allow time to present application for executive clemency. *State v. Miller*, 169 K. 1, 217 P.2d 287.

6. Court expungement of criminal records no infringement on pardoning power of executive. *Stephens v. Van Arsdale*, 227 K. 676, 694, 608 P.2d 972.

**§ 8.**

**History:** Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 50; eliminated by revision, L. 1972, ch. 390; Nov. 7, 1972.

**Revisor's Note:**

Section related to great seal of Kansas. Subject matter was included in § 9 of this article by revision in 1972.

**§ 9. State seal and commissions.** There shall be a seal of the state, which shall be kept by the governor, and used by him officially, and which shall be the great seal of Kansas. All commissions shall be issued in the name of the state of Kansas; and shall be signed by

# Voting method for ag board violates law, Stephan rules

By the Associated Press

The traditional secret ballot procedure for electing members of the Kansas State Board of Agriculture violates the Kansas Open Meetings Act, Attorney General Robert T. Stephan ruled Wednesday.

Stephan said in a non-binding legal opinion that the apparent violations of the open meetings act take place during district caucuses that precede the board's annual meetings in mid-January.

"We must conclude that the voting procedure currently employed by the district caucuses violates the open meetings law as the public has no way to determine how each delegate voted," the opinion said.

However, the attorney general said it would be acceptable if delegates would sign their names to the ballots, which would be retained as part of the permanent record of the caucuses.

The system of electing delegates and board members is unique to

Kansas, according to Stephan. Farm organizations across the state first select delegates to the annual meeting, which elects two board members from each of the six agricultural districts. This year, five positions on the board are up for election.

In a request for the opinion, board lawyer Kenneth Wilke said about 170 delegates that attend the annual meeting first split into the district caucuses to select candidates for any openings on the board.

Wilke said each delegate is given a slip of paper upon which to vote and the ballots are counted in view of everyone attending the particular caucus. He said the person who receives a plurality of votes in a caucus becomes the district's nominee.

But Wilke added that the caucus action "is not binding upon the delegate body as a whole" when it convenes later to consider election of board members.

During the business session, Wilke said, the names of the people selected by the caucuses are placed in nomination and the chairman asks if there are other nominations. He said

when no other nominations occur, the people selected by the district caucuses usually are elected by unanimous consent.

Stephan responded that the open meetings law requires no binding action be taken by secret ballot. He said the Kansas Supreme Court has ruled the purpose of the secret ballot prohibition "is to make public every official's vote on the public's business."

The attorney general acknowledged Wilke's argument that action in the caucuses does not constitute a binding decision because the delegate assembly may select someone else.

"Historically, however, the person who wins the district caucus is the only person nominated for that position at the annual meeting," Stephan said.

Moreover, Stephan said the selection of a nominee by the caucuses constitutes the final actions of those meetings, which also are under the jurisdiction of the open meetings law.

## Cases against 9 attorneys over tax returns dismissed

Cases against nine of the 37 Kansas attorneys facing legal action because they allegedly failed to file individual tax returns have been dismissed.

Cases against the other 28 still are pending, according to James Bartle, a state attorney who is handling the cases for the Department of Revenue.

Bartle said the nine have been dismissed because the state got what it wanted from the nine attorneys —

themselves from the cases.

Another judge, Floyd Coffman of Ottawa, is handling several of the cases that Hoobler has had to disqualify himself from.

Included in the nine whose cases have been dismissed is Topeka attorney Henry L. Hiebert. Legal action against four other Topeka attorneys is pending, according to Bartle.

The state Department of Revenue filed the 37 cases in November.

## Democrats oust Rep. Aspin from panel post

WASHINGTON (AP) — House Democrats voted narrowly Wednesday to oust Rep. Les Aspin as chairman of the Armed Services Committee, a defeat caused by Aspin's support of the Reagan administration on the MX nuclear missile



TESTIMONY OF BERNARD T. GIEFER, JR.  
BEFORE THE HOUSE AGRICULTURE COMMITTEE  
OCTOBER 27, 1993

My name is Bernard T. Giefer, Jr. I reside in WaKeeney, Kansas where I practice law. I am currently, among other things, the Trego County Attorney.

I come before you today not to argue the practical consequences of any particular organization of the State Board of Agriculture. Rather, I come before you to express my deep concern that Judge John Lungstrum's ruling in *Lynn Hellebust, et al v. Sam Brownback, in his official capacity as Secretary of the State Board of Agriculture, et al*, is just one more example of judicial overreach. Why do I consider this issue so important that I drive from WaKeeney to Topeka today simply to be before this committee? It is because that I truly believe that if we, as citizens of this state and of this country, continue to allow the judiciary to pervasively creep into the policy making conduct of our governmental functions, we run the grave risk of ceding very basic and dear democratic principles to a branch of government that is not, for the most part, popularly responsible to the public.

The entire issue of the proper role of the judiciary has been much debated, and I do not intend to make this a long and lengthy expose on the various political arguments both pro and con, but it is important to interject some historical perspective. James Madison, at the Federal Constitutional Convention assembled in Philadelphia in 1787, was torn between the necessity for some judicial oversight, while preserving democratic principles to the citizenry. In this concern James Madison was not alone. Out of such discussion, the notion of a "Madisonian Dilemma" developed: That being, how does a democratic society preserve fundamental democratic principles yet achieve final judicial interpretation in questions in which there are fundamental disagreements in a purely constitutional or statutory context. The whole notion of a judiciary in 1787 sent shivers up the spines of many. The great fear of course was that the judiciary would be close to a totalitarian form of government, a form of government that the American rebels had just recently ridded from the thirteen American colonies. As John Rutledge noted at the Constitutional Convention the whole issue of appointment of federal judges in itself was a touchy topic, because if appointment was vested in one or several persons "the people would think we are leaning too much towards monarchy." Indeed Thomas Jefferson, though not a participant at the Federal Constitutional Convention, strongly urged Madison to limit the powers of the judiciary and not permit the judiciary to become the final arbiter of constitutional questions, because to do so would give the judiciary a power of tyranny and despotism that would be difficult to check given the constitutional protections of a judge's lifetime tenure.

I do not believe that I need to recite or to draw particular attention to any aspects of Judge Lungstrum's decision. But with your knowledge of that decision I wish to offer the following comments and observations of Justice Harlan in his dissent in *Reynolds v. Simms*, which is perhaps the seminal case in what has become a sad tale of judicial intervention in a very basic democratic prerogative of our state legislatures.

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attachment 14  
14-1

But first, permit me to address a very basic question many persons have posed to me: that being, isn't the issue of a state's right to enact unique schemes of representative government that deviate from the principle of one person one vote a dead letter since the United States Supreme Court decided the case of *Reynolds v. Simms*? My answer, quite simply, is no, because: (1) I believe the Supreme Court's opinion in *Reynolds v. Simms* is legally and historically flawed, which I will briefly develop in succeeding comments, (2) The case of *Reynolds v. Simms* was decided in 1964, and therefore is only a generation old; there are many among us who recall how representative government was constituted prior to 1964, and as such, it is within the life experience of many citizens to recall pre-*Reynolds v. Simms* government, and (3) The present legislatively enacted scheme for selection of the Kansas Secretary of Agriculture is one of the last remaining examples in the nation of a government official with statewide jurisdiction who was not either appointed by an elected governor, appointed by an elected legislature, or elected directly by the voting public.

Justice Harlan in his dissent in *Reynolds v. Simms*, 84 S.Ct. 1362 (1964) noted, that "had the Court paused to probe more deeply into the matter, it would have found that the equal protection clause was never intended to inhibit the states in choosing any democratic method they pleased for the apportionment of their legislatures. This is shown by the language of the Fourteenth Amendment taken as a whole, by the understanding of those who proposed and ratified it, and by the political practices of the states at the time the amendment was adopted. It is confirmed by numerous state and congressional actions since the adoption of the Fourteenth Amendment, and by the common understanding of the amendment as evidenced by subsequent constitutional amendments and decisions of this Court before *Baker v. Carr*, 82 S.Ct. 691 (1962) made an abrupt break with the past in 1962."

Congressman Thaddeus Stevens noted in debate on the Fourteenth Amendment "if any state shall exclude any of her adult male citizens from the elected franchise, or abridge that right, she shall forfeit her right to representation in the same proportion. The effect of this provision will be either to compel the states to grant universal suffrage or so to sheer them with their powers to keep them forever in a hopeless minority in the national government, both legislative and executive."

Another leading proponent of the Fourteenth Amendment, Senator Bingham, said "the amendment does not give, as the second section shows, the power to Congress of regulating suffrage in the several states. The second section excludes the conclusion that by the first section suffrage is subjected to congressional law; save, indeed, with this exception, that as the right in the people of each state to a republican government and to choose the representatives in Congress is of the guarantees of the Constitution, by this amendment a remedy might be given directly for a case proposed by Madison, where treason might change a state government from a republican to a despotic government, and thereby deny suffrage to the people." Senator Bingham further pointed out that "to be sure we all agree, and the great body of the people of this country agree, and the committee thus far in reporting measures of reconstruction agree, that the exercise of the elective franchise, though it be one of the privileges of a citizen of the republic, is exclusively under the control of the states."

It is plain that the purpose and thrust of the Fourteenth Amendment was to abolish any discrimination within the states based upon race or other class distinction. As Senator Howard, speaking for the Senate Chairman of the Reconstruction Committee, stated, the Fourteenth Amendment "abolishes all class legislation in the states and does away with the injustice of subjecting one caste of persons to a code not applicable to another. It prohibits the hanging of a black man for a crime for which a white man is not to be hanged. It protects the black man in his fundamental rights as a citizen with the same shield which it throws over the white man. . . . The first section of the proposed amendment does not give to either of these classes the right of voting. The right of suffrage is not, in law, one of the privileges or immunities thus secured by the Constitution. It is merely the creature of law." Senator Howard further noted that "the second section leaves the right to regulate the elective franchise still with the states, and does not meddle with that right."

Twenty-three states ratified the Fourteenth Amendment prior to 1870. Recall at that time that only "loyal" states were entitled to vote on the amendment. Five of those states had provisions for apportionment where at least one house was based entirely without regard to population shifts. Ten more of those approving states had various formulas in which reapportionment was enacted. Therefore, fifteen of the twenty-three ratifying states had, at the time that the state legislatures approved the Fourteenth Amendment, legislative reapportionment schemes that, if *Reynolds v. Simms* and its progeny were the rule then, would have immediately been unconstitutional. It is interesting to note that even after ratification, the fifteen state legislatures that I have just referred did not redraft their methods for redividing political subdivisions.

The notion that demographic shifts in American society since the adoption of the Fourteenth Amendment somehow obviate what was then the understanding of the Fourteenth Amendment are not borne by statistical facts. In fact, at the adoption of the 14th amendment there were wide population disparities in state legislatures in those systems in which political representation was based wholly or in part on geographic area. For instance, in New Jersey at the time of the adoption of the Fourteenth Amendment, one state Senator represented a county of population of 8,349 (i.e. Capes May County), while another state Senator was elected to represent Essex County of population 143,839. There is a plethora of other examples in which similar proportional disparities are prevalent.

I do not want to reargue all the legal fine points of the Fourteenth Amendment as presented to the United States Supreme Court in *Baker v. Carr* or *Reynolds v. Simms*, and its progeny. I think it is very important, however to recognize that there must be limitations upon the exercise of judicial power. As Justice Harlan noted in his dissent in *Reynolds v. Simms* "the Court's elaboration of its new "Constitutional" doctrine indicates how far - and how unwisely - it has strayed from the appropriate bounds of its authority. The consequence of today's decision is that in all but the handful of states which may already satisfy the new requirements the local district court or, it may be the state courts, are given blanket authority and the constitutional duty to supervise apportionment of the state legislatures. It is difficult to imagine a more intolerable and inappropriate interference by the judiciary with the independent legislatures of the states."



The state legislature of this very state recently witnessed, in its attempt to reapportion the federal congressional districts for the State of Kansas, the extent to which the judiciary is willing to meddle in the particularities of congressional reapportionment. Can you as legislators really stand by while judges redesign and juggle your legislatively enacted congressional boundaries by permitting judges to take part of Douglas County and switch it from one district to another, and take part of Marion County and switch it from one district to another, without regard to any demographic or political rationale, but solely for the purpose of getting within some previously (judicially) recognized "acceptable" population deviation? Again quoting Justice Harlan, this kind of intermeddling permits courts to "take action in an area which they have no business entering, inevitably on the basis of political judgments which they are incompetent to make. (It causes legislatures) of the states meeting in haste and deliberating and deciding in haste to avoid the threat of judicial interference." Look at us here and now; are we not in fact meeting in haste and deliberating and deciding in haste to avoid interference from John Lungstrum? Would we even be here today had John Lungstrum not ruled adverse to laws enacted by the legislature, a legislature, by the way, that is elected upon a "one person - one vote" premise?

Justice Harlan recognized that *Baker v. Carr* and *Reynolds v. Simms* were not in fact the end of the apportionment legal battles, but because of the decisions rendered therein they prompted more court cases, and therefore invited more judicial intervention into an area that at least prior to *Baker v. Carr*, was largely viewed as being the sole domain of the various state legislatures. In view of the aforementioned intermeddling of a Federal District Judge in the reapportionment of the U.S. Congressional Districts in the State of Kansas last year, it is interesting to note another observation by Justice Harlan: "Generalities cannot obscure the cold truth that cases of this type are not amenable to the development of judicial standards. No set of standards can guide a court which has to decide how many legislative districts a state shall have, or what the shape of the districts shall be, or where to draw a particular district line. No judicially manageable standard can determine whether a state should have single-member districts or multi-member districts or some combination of both. No such standard can control the balance between keeping up with population shifts and having stable districts. In all these respects, the Courts will be called upon to make particular decisions with respect to which the principle of equally populated districts will be of no assistance whatsoever. Quite obviously, there are limitless possibilities for districting consistent with such a principle. Nor can these problems be avoided by judicial reliance on legislative judgments so far as possible. Reshaping or combining one or two districts, or modifying just a few district lines, is no less a matter of choosing among many possible solutions, with varying political consequences, than reapportionment broadside."

Perhaps what's most telling, is that I believe there has become a legislative over reliance on judicial intervention in questions of any political import. We have encouraged, indeed we *sanction*, court cases to determine politically sensitive or politically tough questions of policy. After all, a judge's ruling provides political "cover" for popularly elected representatives. Some may contend that, yes, one-person one vote really was not contemplated by our founding fathers or the states when they ratified the Federal Constitution and thereafter its various amendments, but we somehow get a "better" government. But I do not believe

history supports that conclusion. I contend that Justice Harlan had it dead on when he noted that judicial intervention in reapportionment cases does not encourage better, more responsive government. Rather, Justice Harlan stated that "I believe that the vitality of our political system, on which in the last analysis all else depends, is weakened by reliance on the judiciary for political reform; in time a complacent body politic may result." The question for you legislators today, and hereafter, is whether in fact you are willing to maintain your vitality, to maintain your constitutional prerogatives to represent the people of the State of Kansas as the people of the State of Kansas see fit, and not allow some judge sitting on a bench far removed from the every day practicalities of society to make such far reaching policy decisions. It is time for the legislatures of the various states to reassert their constitutional prerogatives to represent the people by whom they were elected. To paraphrase Teddy Roosevelt, it is your duty, in fact it is patriotic, to resist when a government official has erred. It is time for this state legislature to resist judicial fiats that lack sound constitutional or other legal basis. The state legislature, or for that matter any other legislature, is a co-equal under our system of tri-partite government in determination of constitutional issues. I urge this state legislature to not become a complacent body politic and therefore not become one more example of Justice Harlan's prophecy. Resist Judge Lungstrum's edict with full vigor and reassert the ultimate authority in this country, that being not somebody cloaked in a black robe, but those somebodies that are executing ballots on election days.



M E M O R A N D U M

TO: INTERIM STUDY COMMITTEE  
C/O HOUSE AGRICULTURE COMMITTEE  
WITH VALID AND CURRENT OATHS

FROM: KAREN HANZLICEK  
CURRENT AND ACTING NORTHERN JUDICIAL  
DIST V.P. STATE AGRICULTURE SOCIETY

DATED: October 27 & 28, 1993

RE: BRIEFING & HEARINGS on Potential Re-  
structure of the KS State Bd. of Ag.  
Continued from August 30, & 31, 1993

FRANKLIN DEE WILLIAMS  
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NORTHERN JUDICIAL DISTRICT  
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(316) 241-0055  
PARLIAMENTARIAN

=====

Thank you for the opportunity to appear and offer to further assist in support, of cooperation to establish and exercise the full powers and duties without obstruction to the charter of the Society:

1. Where Constitution has been once formally extended by Congress to territories, neither Congress nor territorial legislature can enact laws inconsistent therewith. [ See U.S. Territory or Property Art IV, Sec. 3 cl 2, n 8 - - Exhibits # 43 & 44 ]

I S S U E S   &   C O N S T I T U T I O N

- |  |                          |
|--|--------------------------|
| (A) POSITIVE ACTIONS                                 | (B) POSITIVE INACTIONS   |
| (C) OBSTRUCTION OF JUSTICE                           | (D) OBSTRUCTION OF DUTY  |
| (E) LEGAL RESPONSIBILITIES                           | (F) LEGAL AUTHORITIES    |
| (G) ETHICAL RESPONSIBILITY                           | (H) MORAL RESPONSIBILITY |
| (I) LACK OF RIGHTS, RESPONSIBILITIES NOR AUTHORITIES |                          |

BRIEF IN SUPPORT OF COOPERATION AND INVESTIGATION

ADMISSIONS AND RESULTS ABSENT A INTERIM STUDY COMMITTEE

WITH OATH DUTY OR AUTHORITY PURSUANT TO ANY VACANCY

RE: Briefings & Hearings on Potential Re-structuring of the KS State Bd. of Ag. Dated August 31, 1993 Rm. 526-S at 9:00 a.m. without proof of authority nor

provable authority or permission: [SEE Exh offered 8-30-93]

*House Ag Co*  
*OCT 27, 1993*

*attachment 15*  
*15-1*

TO: SENATE COMMITTEE ON AGRICULTURE

FROM: KAREN HANZLICEK, DAIRY FARMER  
NETAWAKA, KANSAS

DATE: AUGUST 30, 1993

RE: COMMITTEE HEARINGS ON POTENTIAL RESTRUCTURE OF THE  
KANSAS STATE BOARD OF AGRICULTURE

Thank you, Mr. Chairman and Committee Members, for allowing me to testify before you today.

I am going to tell you what I think the alleged, so-called Kansas State Board of Agriculture has done for me and my family.

#### ISSUES

1. Statistics-The 1991 Stats from Kansas State University, which I have attached, show that there is no net income in any phase of Kansas Farming Operations. Upon receiving a new set of stats from Kansas State, the figures are still dated 1991, but are a totally different set of numbers. I don't see how they can get two sets of figures from one year's production. Did the department juggle or change the figures for a reason?

2. Insecticides and Manmade Chemicals-A lot of farmers are not chemical farmers and are just as tired of having their farms, families and animals contaminated as are the urban people. For this reason, they do not subscribe to membership in the Farm Bureau and other Agricultural Trade Organizations, who I feel are unduly influenced by the chemical companies and other corporate farm advocates. Why would any farmer want to be a member of any organization who is guilty of violating their Constitutional Rights and Protections? And why would anyone vote anyone into office, if that person was known to have violated the People's Rights?

3. Drugs-Even drugs are a danger of becoming financially mandated to meat and milk producers. An example of this would be in milk production. The farmers who choose not to use the new hormone which will increase milk production, will not be able to keep up with the ones who do, and will eventually be pushed out the door.

4. Inspections-I've gone to the state lab for testing, concerning pesticides in alfalfa hay that we had bought, and they wouldn't even test the hay; although they did say that pesticide contamination in hay could get through to the milk and thus to the consumer. They told me that our hay probably wasn't contaminated because the pesticide had never shown up in our milk samples. When I asked how often our milk was tested for this, the reply was, "Maybe once a year"! People, I contend that you're not allergic to milk, but to the contaminants in it, and

that's not the dairy farmers fault.

5. Why do unemployment records never include farmers? No wonder the Agricultural State of Kansas has such low unemployment.

6. Brands-The main purpose of brands was for inventory by the government.

7. Why are Kansas Farmers still going out of business and why has Sam Brownback said that everything is well with the Kansas Farmer? Why do Kansas Farm Producers have to bow to Federal and International Pricing which is below the cost of production year after year? Why is the Kansas Farmer labeled as a poor manager when he goes broke? How many, here or anywhere else, can keep a business operating, as long as a farmer, even though he is at a loss in everything he does? ...and all for the cause of a cheap food policy...

8. I ask you, who may have thought that you were impressed with the functions of the Kansas Board of Agriculture, what have they done for the Kansas Farmer? Now, I am not bringing you anything negative, for everything I have to say, I know to be positively true!

I ask you, why are you impressed with "new dairies being built in Southwestern Kansas, when there were two more top-notch dairies, that I know of personally, that went out of business in Northeast Kansas just this last week.

I ask you, why do government entities put experienced, good farmers out of business every day and then advertise to the young first time farmers, that FmHA will set them up in farming at as little as 5% interest?

Farmers are so unhappy, that they don't even come to government, legislature, or anyone in authority anymore! WHY? Because those entities have been the problem and therefore refuse us a solution...

Finally, I would like to read you a letter (that I have attached), that I have sent to the FACTS program in response to a questionnaire that they recently sent to me. I have had several people, over the state, request a blank copy of the questionnaire from me, so that they could send it in too, with their negative comments! ...

So, if the FACTS program has indeed received lots of recommendations from across the state, then those must have been from people who were tired of farming at a loss, tired of fighting the system, or were afraid for their lives, the lives of their children and animals, and I'm sure that the Facts people helped them to get out with nothing but their person, more quickly than anyone else could have. Thank you.

Karen Hanzlicek

KAREN HANZLICEK  
% ROUTE 1, BOX 37  
NETAWAKA, KANSAS  
POSTAL ZONE 66516

August 26, 1993

Kansas Legal Services, Inc.  
712 South Kansas Avenue, Second Floor  
Topeka, Kansas 66603  
Telephone 913/233-2068

Re: Letter and Questionnaire  
dated August 19, 1993,  
from Wayne A. White, Director  
Research and Program Development

Dear Mr. White:

I recently received a letter and questionnaire from you, in which you asked for my assistance in evaluating and improving your services to Kansas farmers.

First of all, I will offer some "food for thought" regarding this farm wife. If I didn't think the opportunity to answer your questionnaire was very important to all Kansas farmers, then I wouldn't have even bothered with it, simply because it was addressed to Ms. Hanzlicek. I have never claimed to be a Ms. any body and using that term to address a Christian, family woman who has been married for over thirty years is an even further insult to her person and position. I am Mrs. Hanzlicek, and my husband, Bill, is the head of our family unit. Obviously, this whole concept of a family unit seems archaic and out of place in the modern business world in this country and particularly in the modern field of education. Now I realize that a person does not know how he is to address a woman these days, but I have remained faithful to the one and only husband that I have ever had, and therefore, since he has never had any wife other than me, I don't see that I should ever be called by anything but the title that I have earned; that being, either, Karen or Mrs. I hope I haven't turned you off before I've had a chance to get down to business, but I also hope that you'll consider the above as constructive criticism.

As to the manner in which my husband and I were served by the "Project", I would say that the staff was always willing to listen, return calls, refer us to "counsel", and those types of things: However, the counsel that you referred us to does not even have a valid attorney's oath. Basically, what he was willing to do, was to further the cause of the New World Order, (which George Bush was so fond of), by helping the alleged Farm Credit Services, the so-called judges, and the other purported attorneys to steal our farm; all for the purpose of preventing us from paying off the mortgage early, since they knew that they

couldn't return the original note and mortgage since it was needed to secure their no-call bonds, which couldn't be paid off early. As soon as any farmer becomes educated as to the FRAUD that the FLB has been committing since their very beginning, when they claimed to have gotten a charter (which in fact, they did not); then that farmer is marked for "erasure from society" because he has become a real threat to the New World Order Plan.

I have visited with great numbers of Kansas farmers, and they all seem to be of the same opinion as my husband and I: that since there were so many irate farmers in the state of Kansas who were beginning to catch the public's ear, then a program was needed to be set up, that would appear to everyone as if it were really going to help the farmers with their problems; when actually, it (the FACTS Program) must have been set up as a way of quieting things down, while helping with the emptying of the land in a quicker, quieter, less bloody... an even more deceitful manner than before.

Question Number Five asked, would I recommend your services to other farmers: I am not of the formal education or position to advise or to make recommendations to anyone, but I would tell them that my opinion is, that if they are tired of farming at a loss, if they are tired of fighting the system or if they are afraid for their lives and the lives of their children and animals, then they should call the FACTS number and the people there would help them get out with nothing but their person, more quickly than anyone else could.

Question Number Six asked, in my opinion, is the "farm crisis" over? The fact that, whoever wrote the questionnaire, put the words farm crisis in quotation marks, makes me wonder if he/she even thinks that there ever was a farm crisis. Here is my answer to the question: How could anyone from Kansas State University even think that there was a possibility that the "FARM CRISIS" could be over, when the latest records put out by K State were in 1991, and they show that there was NO NET PROFIT to be made in any phase of Kansas Farming Operations and the last two years have certainly gotten only worse.

My recommendations for the "Program": Either disband and quit collecting taxes from us, to pay for a program that was set up to put us into extinction, or GET REAL! Get real by committing yourselves and your program to keeping ALL Kansas Farmers on their Farms. There are NO Kansas Farmers who are not hard working, conscientious, nature loving human beings who are also the very best at MANAGING any situation involving their farm and who also know in their hearts, what is the best way and what are the best things to do for their farm, if government and New World Order were not involved. Since there is management, money, and wonderful bounty set on the Kansas Farm Scene, then there will always be those, who like vultures, are only there to feed and thrive at others' expense.

**GET REAL!** Get some attorneys who are for real; ones who have taken an oath to uphold the Constitution of the United States and the Kansas Constitution...ones who will live up to that oath (contract), by defending the Farmers against the continuing plunder, instead of having conflicts of interest which require their commitment to their **BAR BUDDIES** (the other purported attorneys and purported Judges).

Thank you for the opportunity of stating my ideas and opinions.

Sincerely,

*Mrs. Bill Hanzlicek*

Mrs. Bill Hanzlicek

cc: Bob Dole  
Nancy Kassebaum  
Jim Slattery  
David Corbin  
Others



**KANSAS LEGAL SERVICES FARM ADVOCACY PROGRAM**  
**Confidential Questionnaire**

1. What was the primary legal problem that brought you to the Kansas Legal (KLS) Services Farm Advocacy Program?

Foreclosure, without due process, by Farm  
Credit Services a/k/a

2. Was this problem satisfactorily acted upon by the KLS Advocacy staff? yes ☐ no ☒

3. Did the KLS Farm Advocacy Program staff provide **additional** Legal advice or representation that was valuable to you? yes ☐ no ☒

4. Were you satisfied with the services rendered by the KLS Farm Advocacy staff? yes ☐ no ☒

5. Would you recommend our services to other farmers? yes ☐ no ☒

6. In your opinion, is the "farm crisis" over? yes ☐ no ☒

7. Do you believe the KLS Farm Advocacy Program should be continued? yes ☐ no ☒

8. a) When you contacted the KLS Farm Advocacy Program for services, were you about to lose your farm? ☒ yes ☐ no ?

*How does one answer this?*  
*No I did not expect to lose our farm.*

- b) If so, did our services assist you to retain your farm? ☐ yes ☒ no

*Your services did not assist me with anything*

9. If you were about to lose your farm, how soon (in how many months) did you expect to do so? \_\_\_\_\_

10. How long do you now expect to be able to remain in farming?

*I do not expect to be*  
*illegally removed from our farm.*

Less than 1 year \_\_\_\_\_  
1 to 3 years \_\_\_\_\_  
More than 3 years ☒

Please make any comments you wish regarding our staff or services:

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Loren Wanzlick

Signature (optional)

# COST-RETURN BUDGET—FINISHING BEEF

	Steers		Heifers		Your Farm	
	Total	Cash Flow	Total	Cash Flow	Total	Cash Flow
<b>VARIABLE COSTS PER HEAD:</b>						
1. Pasture (___ months @ ___/mo.)	\$	\$	\$	\$		
2. Silage (___ lbs. @ \$16/T.)	11.80	11.80	10.80	10.80		
3. Hay (___ lbs. @ \$80/T.)						
4. Grain (___ lbs. @ \$2.30/bu.)	110.88	110.88	101.66	101.66		
5. Supplement (___ lbs. @ \$260 T.)	20.80	20.80	18.85	18.85		
6. ....						
7. ....						
8. Labor (2.0 hrs. @ \$8.00/hr.)	16.00	1.60	16.00	1.60		
9. Veterinary, Drugs, and Supplies	6.00	6.00	6.00	6.00		
10. Marketing Costs	4.00	4.00	4.00	4.00		
11. Hauling						
12. Utilities, Fuel, Oil	3.50	3.50	3.50	3.50		
13. Buildings—Equipment Repairs	6.00	6.00	6.00	6.00		
14. Miscellaneous	2.50	2.50	2.50	2.50		
15. Interest on Purchased Livestock + 1/2 Variable Costs @ 12% (133-130 days)	34.61	20.58	29.70	17.63		
<b>A. TOTAL VARIABLE COSTS</b>	<b>\$ 216.09</b>	<b>\$ 187.66</b>	<b>\$ 199.01</b>	<b>\$ 172.54</b>		
<b>FIXED COSTS PER HEAD:</b>						
16. Depreciation on Buildings and Equipment	\$ 15.00	\$ XXX	\$ 15.00	\$ XXX		
17. Interest on Buildings and Equipment <sup>1</sup> @ 12%	11.40	17.57	11.40	17.57		
18. Insurance on Buildings and Facilities @ .25%	.48	.48	.48	.48		
<b>B. TOTAL FIXED COSTS</b>	<b>\$ 26.88</b>	<b>\$ 18.05</b>	<b>\$ 26.88</b>	<b>\$ 18.05</b>		
<b>C. TOTAL COSTS PER HEAD (A + B)</b>	<b>\$ 242.97</b>	<b>\$ 205.71</b>	<b>\$ 225.89</b>	<b>\$ 190.59</b>		
<b>RETURNS PER HEAD</b>						
19. Market Animal:						
Steers: 1,150 lbs. @ \$74.50/cwt.	\$ 856.75		\$ 763.63			
Heifers: 1,025 lbs. @ \$74.50/cwt.						
20. Less Cost of Animal:						
Steers: 750 lbs @ \$92/cwt.	-690.00		-600.75			
Heifers: 675 lbs. @ \$89/cwt.			-6.01			
21. Less Death Loss: 1% of Line 20	-6.90					
<b>D. GROSS RETURN PER HEAD</b>	<b>\$ 159.85</b>		<b>\$ 156.87</b>			
<b>E. RETURNS OVER VARIABLE COSTS (D - A)</b>	<b>\$ -56.24</b>	<b>\$ -27.81</b>	<b>\$ -42.14</b>	<b>\$ -15.67</b>		
<b>F. RETURNS OVER TOTAL COSTS (D - C)</b>	<b>\$ -83.12</b>	<b>\$ -45.86</b>	<b>\$ -69.02</b>	<b>\$ -33.72</b>		
<b>G. AVERAGE SELLING PRICE NEEDED:</b>						
22. To Cover Variable Cost and Feeder (A + 20 + 21) ÷ (Selling Wt.)	\$ 79.39	\$ 76.92	\$ 78.61	\$ 76.03		
23. To Cover Total Cost and Feeder (C + 20 + 21) ÷ (Selling Wt.)	\$ 81.73	\$ 78.49	\$ 81.23	\$ 77.79		
<b>H. TOTAL FEED COST (Lines 1 through 7)</b>	<b>\$ 143.48</b>	<b>\$ 143.48</b>	<b>\$ 131.31</b>	<b>\$ 131.31</b>		
24. Cwt. Produced:	4.00		3.50			
25. Feed Cost Cwt. (H ÷ 24)	\$ 35.87	\$ 35.87	\$ 37.52	\$ 37.52		
<b>I. ASSET TURNOVER (D ÷ INVESTMENT)<sup>2</sup></b>	<b>18.16%</b>		<b>19.84%</b>			
<b>J. NET RETURN ON INVESTMENT (F ÷ 15 ÷ 17) ÷ INVESTMENT<sup>3</sup></b>	<b>-4.22%</b>		<b>-3.53%</b>			

<sup>1</sup>Interest on the investment in buildings and equipment at an interest rate of 12 percent. The cash flow column assumes principal and interest on a year amortized loan at an interest rate of 12 percent.

<sup>2</sup>Assumes total cost of purchased animal and value of buildings and equipment.



## COOPERATIVE EXTENSION SERVICE, MANHATTAN, KANSAS

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File Code: Farm Management 3-2

158

# **COST-RETURN BUDGET—DRYLOT BACKGROUNDING AND FINISHING BEEF**

	Steers		Heifers		Your Farm	
	Total	Cash Flow	Total	Cash Flow	Total	Cash Flow
<b>VARIABLE COSTS PER HEAD:</b>						
1. Pasture (___ months @ ___/mo.) .....	\$	\$	\$	\$		
2. Silage (___ lbs. @ \$16/T.) .....	27.80	27.80	25.60	25.60		
3. Hay (___ lbs. @ \$80/T.) .....						
4. Grain (___ lbs. @ \$2.30/bu.) .....	150.95	150.95	133.49	133.49		
5. Supplement (___ lbs. @ \$245/T.) .....	36.14	36.14	32.46	32.46		
6. ....						
7. ....						
8. Labor (2.40 hrs. @ \$8.00/hr.) .....	19.20	1.92	19.20	1.92		
9. Veterinary, Drugs, and Supplies .....	10.00	10.00	10.00	10.00		
10. Marketing Costs .....	6.00	6.00	6.00	6.00		
11. Hauling .....						
12. Utilities, Fuel, Oil .....	5.75	5.75	5.75	5.75		
13. Buildings-Equipment Repairs .....	10.50	10.50	10.50	10.50		
14. Miscellaneous .....	2.50	2.50	2.50	2.50		
15. Interest on Purchased Livestock + 1/2 Variable Costs @ 12% (217-212 days) .....	49.51	29.33	43.74	25.88		
<b>A. TOTAL VARIABLE COSTS</b> .....	<b>\$ 318.35</b>	<b>\$ 280.89</b>	<b>\$ 289.24</b>	<b>\$ 254.10</b>		
<b>FIXED COSTS PER HEAD:</b>						
16. Depreciation on Equipment and Facilities .....	\$ 17.00	\$ XXX	\$ 17.00	\$ XXX		
17. Interest on Equipment and Facilities <sup>1</sup> @ 12% .....	13.80	21.27	13.80	21.27		
18. Insurance on Equipment and Facilities @ .25% .....	.58	.58	.58	.58		
<b>B. TOTAL FIXED COSTS</b> .....	<b>\$ 31.38</b>	<b>\$ 21.85</b>	<b>\$ 31.38</b>	<b>\$ 21.85</b>		
<b>C. TOTAL COSTS PER HEAD (A + B)</b> .....	<b>\$ 349.73</b>	<b>\$ 302.74</b>	<b>\$ 320.62</b>	<b>\$ 275.95</b>		
<b>RETURNS PER HEAD</b>						
19. Market Animal:						
Steers: 1,150 lbs. @ \$74.50/cwt. ....	\$ 856.75		\$ 763.63			
Heifers: 1,025 lbs. @ \$74.50/cwt. ....						
20. Less Cost of Animal:						
Steers 550 lbs. @ \$100/cwt. ....	-550.00		-496.25			
Heifers 500 lbs. @ \$99.25/cwt. ....			-7.44			
21. Less Death Loss: 1.5% of Line 20 .....	-8.25					
<b>D. GROSS RETURN/HEAD</b> .....	<b>\$ 298.50</b>		<b>\$ 259.94</b>			
<b>E. RETURNS OVER VARIABLE COSTS</b> (D - A) .....	<b>\$ -19.85</b>	<b>\$ 17.61</b>	<b>\$ -29.30</b>	<b>\$ 5.84</b>		
<b>F. RETURNS OVER TOTAL COSTS</b> (D - C) .....	<b>\$ -51.23</b>	<b>\$ -4.24</b>	<b>\$ -60.68</b>	<b>\$ -16.01</b>		
<b>G. AVERAGE SELLING PRICE NEEDED:</b>						
22. To Cover Variable Cost and Feeder (A + 20 + 21) ÷ (Selling Wt.) .....	\$ 76.23	\$ 72.97	\$ 77.36	\$ 73.93		
23. To Cover Total Cost and feeder (C + 20 + 21) ÷ (Selling Wt.) .....	\$ 78.95	\$ 74.87	\$ 80.42	\$ 76.06		
<b>H. TOTAL FEED COST (Lines 1 through 7)</b> ....	<b>\$ 214.89</b>	<b>\$ 214.89</b>	<b>\$ 191.55</b>	<b>\$ 191.55</b>		
24. Cwt. Produced: .....	6.00		5.25			
25. Feed Cost Cwt. (H ÷ 24) .....	\$ 35.82	\$ 35.82	\$ 36.49	\$ 36.49		
<b>I. ASSET TURNOVER (D ÷ INVESTMENT)<sup>2</sup></b> .....	<b>38.27%</b>		<b>35.79%</b>			
<b>J. NET RETURN ON INVESTMENT</b> (F - 15 + 17) ÷ INVESTMENT) <sup>2</sup> .....	<b>1.55%</b>		<b>-4.3%</b>			

<sup>1</sup> Depreciation is one-half the investment in buildings and facilities at an interest rate of 12 percent. The cash flow column assumes principal and interest payments on a 5-year amortized loan at an interest rate of 12 percent.  
<sup>2</sup> Investment equals total cost of purchased animal and value of buildings and equipment.



## **COOPERATIVE EXTENSION SERVICE, MANHATTAN, KANSAS**

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File Code: Farm Management 3-2

8-91-1.5M

15-9

# COST-RETURN BUDGET—DRYLOT BACKGROUNDING OF BEEF

	Steers		Heifers		Your Farm	
	Total	Cash Flow	Total	Cash Flow	Total	Cash Flow
<b>VARIABLE COSTS PER HEAD:</b>						
1. Pasture (___ months @ ___/mo.) .....	\$	\$	\$	\$		
2. Silage (___ lbs. @ \$16/T.) .....	41.60	41.60	38.40	38.40		
3. Hay (___ lbs. @ \$80/T.) .....						
4. Grain (___ lbs. @ \$2.30/bu.) .....	35.95	35.95	33.88	33.88		
5. Supplement (___ lbs. @ \$210/T.) .....	30.98	30.98	28.35	28.35		
6. ....						
7. ....						
8. Labor (1.85 hrs. @ \$8.00/hr.) .....	14.80	1.48	14.80	1.48		
9. Veterinary, Drugs, and Supplies .....	9.35	9.35	9.35	9.35		
10. Marketing costs .....	3.50	3.50	3.50	3.50		
11. Hauling .....						
12. Utilities, Fuel, Oil .....	4.00	4.00	4.00	4.00		
13. Buildings-Equipment Repairs .....	5.70	5.70	5.70	5.70		
14. Miscellaneous .....	1.50	1.50	1.50	1.50		
15. Interest on Purchased Livestock + 1/2 Variable Costs @ 12% (167/162 days) .....	32.16	19.07	27.40	16.23		
<b>A. TOTAL VARIABLE COSTS</b> .....	<b>\$ 179.54</b>	<b>\$ 153.13</b>	<b>\$ 166.88</b>	<b>\$ 142.39</b>		
<b>FIXED COSTS PER HEAD:</b>						
16. Depreciation on Equipment and Facilities .....	\$ 14.25	\$ XXX	\$ 14.25	\$ XXX		
17. Interest on Equipment and Facilities <sup>1</sup> @ 12% .....	11.10	17.11	11.10	17.11		
18. Insurance on Equipment and Facilities @ .25% .....	.46	.46	.46	.46		
<b>B. TOTAL FIXED COSTS</b> .....	<b>\$ 25.81</b>	<b>\$ 17.57</b>	<b>\$ 25.81</b>	<b>\$ 17.57</b>		
<b>C. TOTAL COSTS PER HEAD (A + B)</b> .....	<b>\$ 205.35</b>	<b>\$ 170.70</b>	<b>\$ 192.69</b>	<b>\$ 159.96</b>		
<b>RETURNS PER HEAD</b>						
19. Market Animal:						
Steers: 750 lbs. @ \$92/cwt. ....	\$ 690.00		\$ 616.00			
Heifers: 700 lbs. @ \$88/cwt. ....						
20. Less cost of Animal:						
Steers: 450 lbs @ \$112/cwt. ....	-504.00		-437.75			
Heifers: 425 lbs. @ \$103/cwt. ....			-8.76			
21. Less Death Loss: 2% of Line 20 .....	-10.08					
<b>D. GROSS RETURN/HEAD</b> .....	<b>\$ 175.92</b>		<b>\$ 169.49</b>			
<b>E. RETURNS OVER VARIABLE COSTS</b> (D - A) .....	<b>\$ -3.62</b>	<b>\$ 22.79</b>	<b>\$ 2.61</b>	<b>\$ 27.10</b>		
<b>F. RETURNS OVER TOTAL COSTS</b> (D - C) .....	<b>\$ -29.43</b>	<b>\$ 5.22</b>	<b>\$ -23.20</b>	<b>\$ 9.53</b>		
<b>G. AVERAGE SELLING PRICE NEEDED:</b>						
22. To Cover Variable Cost and Feeder (A + 20 + 21) ÷ (Selling Wt.) .....	\$ 92.48	\$ 88.96	\$ 87.63	\$ 84.13		
23. To Cover Total Cost and Feeder (C + 20 + 21) ÷ (Selling Wt.) .....	\$ 95.92	\$ 91.30	\$ 91.31	\$ 86.64		
<b>H. TOTAL FEED COST (Lines 1 through 7)</b> .....	<b>\$ 108.53</b>	<b>\$ 108.53</b>	<b>\$ 100.63</b>	<b>\$ 100.63</b>		
24. Cost Produced .....		1.0		2.75		
25. Feed Cost per H. 24 .....	\$ 36.18	\$ 36.18	\$ 36.59	\$ 36.59		
<b>NET RECOVERED INVESTMENT</b> .....			27.22%			
<b>NET RETURN ON INVESTMENT</b> .....			2.46%			

<sup>1</sup> Interest on the investment in buildings and facilities at an interest rate of 12 percent. The cash flow column assumes principal and interest payments on the investment in buildings and facilities at an interest rate of 12 percent.  
<sup>2</sup> Investment equals total cost of purchased animal and value of buildings and facilities.



COOPERATIVE EXTENSION SERVICE, MANHATTAN, KANSAS

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File Code: Farm Management 3-2

8-91-1.5M

15-10

## COST-RETURN PROJECTION—GRAZING YEARLING BEEF

	Steers		Heifers		Your Farm	
	Total	Cash Flow	Total	Cash Flow	Total	Cash Flow
<b>VARIABLE COSTS PER HEAD:</b>						
1. Pasture (5 months @ \$12/mo.)	\$ 60.00	\$ 60.00	\$ 60.00	\$ 60.00		
2. Silage (___ lbs. @ \$___/T.)						
3. Hay (___ lbs. @ \$___/T.)						
4. Grain (___ lbs. @ \$___/bu.)						
5. Protein (___ lbs. @ ___/T.)						
6. Vitamins—Minerals (20 lbs. @ \$.03/lb.)	.60	.60	.60	.60		
7. Feed Processing (___ bu. @ \$.25/bu.)						
8. Labor (.75 hr. @ \$6.00/hr.)	4.50	.45	4.50	.45		
9. Veterinary, Drugs, and Supplies	6.00	6.00	6.00	6.00		
10. Marketing Costs						
11. Hauling						
12. Utilities, Fuel, Oil	1.50	1.50	1.50	1.50		
13. Buildings—Equipment Repairs	1.00	1.00	1.00	1.00		
14. Miscellaneous	2.25	2.25	2.25	2.25		
15. Interest on Purchased Livestock + 1/2 Variable Costs @ 12% (150 days)	28.87	17.26	26.84	16.04		
<b>A. TOTAL VARIABLE COSTS</b>	<b>\$ 104.72</b>	<b>\$ 89.06</b>	<b>\$ 102.69</b>	<b>\$ 87.84</b>		
<b>FIXED COSTS PER HEAD:</b>						
16. Depreciation on Equipment and Facilities	\$ 2.00	\$ XXX	\$ 2.00	\$ XXX		
17. Interest on Equipment and Facilities <sup>1</sup> @ 12%	1.80	2.77	1.80	2.77		
18. Insurance on Equipment and Facilities @ .25%	.08	.08	.08	.08		
<b>B. TOTAL FIXED COSTS</b>	<b>\$ 3.88</b>	<b>\$ 2.85</b>	<b>\$ 3.88</b>	<b>\$ 2.85</b>		
<b>C. TOTAL COSTS PER HEAD (A + B)</b>	<b>\$ 108.60</b>	<b>\$ 91.91</b>	<b>\$ 106.57</b>	<b>\$ 90.69</b>		
<b>RETURNS PER HEAD</b>						
19. Market Animal:						
Steers: 775 lbs. @ \$84/cwt.	\$ 651.00		\$ 620.00			
Heifers: 775 lbs. @ \$80/cwt.						
20. Less Cost of Animal:						
Steers: 580 lbs @ \$93/cwt.	-539.40		-498.80			
Heifers: 580 lbs. @ \$86/cwt.			-9.98			
21. Less Death Loss: 2% of Line 20	-10.79					
<b>D. GROSS RETURN/HEAD</b>	<b>\$ 100.81</b>		<b>\$ 111.22</b>			
<b>E. RETURNS OVER VARIABLE COSTS</b> (D - A)	<b>\$ -3.91</b>	<b>\$ 11.75</b>	<b>\$ 8.53</b>	<b>\$ 23.38</b>		
<b>F. RETURNS OVER TOTAL COSTS</b> (D - C)	<b>\$ -7.79</b>	<b>\$ 8.90</b>	<b>\$ 4.65</b>	<b>\$ 20.53</b>		
<b>G. AVERAGE SELLING PRICE NEEDED:</b>						
22. To Cover Variable Cost and Feeder (A + 20 + 21) ÷ (Selling Wt.)	\$ 84.50	\$ 82.49	\$ 78.90	\$ 76.98		
23. To Cover Total Cost and Feeder (C + 20 + 21) ÷ (Selling Wt.)	\$ 85.01	\$ 82.85	\$ 79.40	\$ 77.35		
<b>H. TOTAL FEED COST (Lines 1 through 7)</b>	<b>\$ 60.60</b>	<b>\$ 60.60</b>	<b>\$ 60.60</b>	<b>\$ 60.60</b>		
24. Cwt. Produced:	1.95		1.95			
25. Feed Cost Cwt. (H ÷ 24)	\$ 31.08	\$ 31.08	\$ 31.08	\$ 31.08		
<b>I. ASSET TURNOVER (D ÷ INVESTMENT)<sup>2</sup></b>	<b>17.70%</b>		<b>21.03%</b>			
<b>J. NET RETURN ON INVESTMENT</b> ((F + 15 + 17) ÷ INVESTMENT) <sup>2</sup>	<b>4.02%</b>		<b>6.30%</b>			

<sup>1</sup>Total column is one-half the investment in equipment and corrals at an interest rate of 12 percent. The cash flow column assumes principal and interest to be 33 percent of a 5-year amortized loan at an interest rate of 12 percent.

<sup>2</sup>Investment equals total cost of purchased animal and value of equipment and corrals.



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10-90-2M

File Code: Farm Management 3-2

15-11

## COST-RETURN PROJECTION FOR BEEF COWS (PER COW)

	EXAMPLES		YOUR FARM	
	Total	Cash Flow	Total	Cash Flow
<b>VARIABLE COSTS PER COW:</b>				
1. Summer Pasture (6 months) .....	\$ 107.05	\$ 107.05		
2. Crop Residue (1,240 lbs. × \$.005/lb.) .....	6.20			
3. Hay-Forage (3,010 lbs. × \$80/ton) .....	120.40	120.40		
4. Grain .....				
5. Protein (120 lbs.) and Salt-Minerals (60 lbs.) .....	20.40	20.40		
6. Labor (7.25 hrs. × \$8.00/hr.) .....	58.00	5.80		
7. Veterinary, Drugs, and Supplies .....	6.25	6.25		
8. Breeding Charge .....	10.00			
9. Marketing Costs .....				
10. Utilities, Fuel and Oil .....	12.50	12.50		
11. Building and Equipment Repairs .....	20.00	20.00		
12. Miscellaneous .....	5.50	5.50		
13. Interest on 1/2 Variable Costs @ 12% .....	21.98	10.72		
<b>A. TOTAL VARIABLE COSTS .....</b>	<b>\$ 388.28</b>	<b>\$ 308.61</b>		
<b>FIXED COSTS PER COW:</b>				
14. Depreciation on Buildings and Equipment .....	\$ 53.50	\$ XXX		
15. Interest on Buildings and Equipment <sup>1</sup> @ 12% .....	40.50	62.42		
16. Insurance on Buildings and Equipment @ .25% .....	1.69	1.69		
17. Interest on Breeding Stock @ 12% .....	75.84	45.50		
18. Insurance on Breeding Stock @ 1% .....	6.32	6.32		
<b>B. TOTAL FIXED COSTS .....</b>	<b>\$ 177.85</b>	<b>\$ 115.93</b>		
<b>C. TOTAL COSTS PER COW (A + B) .....</b>	<b>\$ 566.13</b>	<b>\$ 424.54</b>		
<b>RETURNS PER COW:</b>				
19. Steers: 525 lbs. × 46% × \$103/cwt. ....	\$ 248.75			
20. Heifers: 500 lbs. × 30% × \$99.50/cwt. ....	149.25			
21. Cull Cows: 1,000 × 14% × \$53.50/cwt. ....	74.90			
<b>D. GROSS RETURNS/COW .....</b>	<b>\$ 472.90</b>			
<b>E. RETURN OVER VARIABLE COSTS (D - A) .....</b>	<b>\$ 84.62</b>	<b>\$ 164.29</b>		
<b>F. RETURN OVER TOTAL COSTS (D - C) .....</b>	<b>\$ -93.23</b>	<b>\$ 48.36</b>		
<b>G. AVERAGE SELLING PRICE NEEDED/CWT. ....</b>				
22. To Cover Variable Costs (A - 21) ÷ 24 .....	\$ 79.94	\$ 59.62		
23. To Cover Total Costs (C - 21) ÷ 24 .....	\$ 125.31	\$ 89.19		
<b>H. TOTAL FEED COSTS (Lines 1-5) .....</b>	<b>\$ 254.04</b>	<b>\$ 247.84</b>		
24. Cwt. of Calf Sold Per Cow .....		3.92		
<b>I. ASSET TURNOVER (D ÷ INVESTMENT)<sup>2</sup> .....</b>	<b>36.18%</b>			
<b>J. NET RETURN ON INVESTMENT</b>				
((F + 13 + 15 + 17) ÷ INVESTMENT) <sup>2</sup> .....		3.45%		

<sup>1</sup>Total budget assumes one-half the original cost of buildings and equipment at an interest rate of 12 percent. The cash flow column assumes principal and interest on buildings and equipment to be 33 percent of a 5-year amortized loan at an interest rate of 12 percent.

<sup>2</sup>Investment equals total value of breeding stock and buildings-equipment.

# RETURN PROJECTION—SUMMER FALLOW WHEAT (W-F ROTATION) IN WESTERN KANSAS

	EXAMPLES		YOUR FARM	
	Total	Cash Flow	Total	Cash Flow
VARIABLE COSTS PER ACRE:				
1. Labor (1.20 hrs. × \$8.00/hr.)	\$ 9.60	\$ .96		
2. Seed (40 lbs. × \$.095/lb.)	3.80	3.80		
3. Herbicide (\$7.85) and Insecticide	7.85	7.85		
4. Fertilizer and Lime (30 lbs. N)	3.60	3.60		
5. Fuel and Oil	5.93	5.93		
6.				
7. Machinery and Equipment Repairs	11.90	11.90		
8.				
9. Crop Insurance	6.25	6.25		
10. Drying				
11. Custom Hire				
12. Crop Consulting				
13. Miscellaneous	4.00	4.00		
14. Interest on 1/2 Variable Costs @ 12%	3.18	1.59		
A. TOTAL VARIABLE COSTS	\$ 56.11	\$ 45.88		
FIXED COSTS PER ACRE:				
15. Real Estate Taxes @ 1%	\$ 9.00	\$ 9.00		
16. Interest on Land (\$450/A × 2 × 6%) <sup>1</sup>	54.00	31.82		
17. Rent for Rented Land				
18. Depreciation on Crop Machinery	16.50	XXX		
19. Interest on Crop Machinery <sup>2</sup> @ 12%	9.90	15.26		
20.				
21.				
22. Insurance on Machinery @ .25%	.41	.41		
B. TOTAL FIXED COSTS	\$ 89.81	\$ 56.49		
C. TOTAL COSTS (A + B)	\$ 145.92	\$ 102.37		
D. YIELD PER ACRE	35 bu.			
E. PRICE PER BUSHEL	\$ 2.60			
F. NET GOVERNMENT PAYMENT <sup>3</sup>	\$ 41.35			
G. RETURNS PER ACRE ((D × E) + F)	\$ 132.35			
H. RETURNS OVER VARIABLE COSTS (G — A)	\$ 76.24	\$ 86.47		
I. RETURNS OVER TOTAL COSTS (G — C)	\$ -13.57	\$ 29.98		
J. VARIABLE COSTS/BUSHEL (A ÷ D)	\$ 1.60	\$ 1.31		
K. FIXED COSTS/BUSHEL (B ÷ D)	\$ 2.57	\$ 1.61		
L. TOTAL COSTS/BUSHEL (C ÷ D)	\$ 4.17	\$ 2.92		
M. ASSET TURNOVER (G ÷ INVESTMENT) <sup>4</sup>	12.43%			
N. NET RETURN ON INVESTMENT ((I + 14 + 16 + 19) ÷ INVESTMENT) <sup>4</sup>	5.02%			

<sup>1</sup>Total column assumes interest rate shown in Table A. Cash flow column assumes principal and interest to be 33% of a 30-year amortized loan at the interest rate shown in Table A. <sup>2</sup>Total column is one-half the original cost at the interest rate shown in Table A. Cash flow column assumes principal and interest to be 33% of a 5-year amortized loan at the interest rate shown in Table A. <sup>3</sup>Net government payment equals yield per acre (D) times expected deficiency payment minus prorated cost of set-aside acres. Based on 15% flex acres and 5% ARP. <sup>4</sup>Investment equals total of all fixed assets shown in Table A.

**COST-RETURN BUDGET—PER DAIRY COW AT 17,500 POUNDS  
OF MILK SOLD (REPLACEMENTS RAISED)**

	EXAMPLE		YOUR FARM	
	Total	Cash Flow	Total	Cash Flow
<b>VARIABLE COSTS PER COW:</b>				
1. Feed (From Table 1) .....	\$1,296.46	\$1,296.46	_____	_____
2. Labor (40 hrs. × \$6.00/hr.) .....	320.00	32.00	_____	_____
3. Veterinary, Drugs, and Supplies .....	55.00	55.00	_____	_____
4. Breeding Charge* .....	25.00	25.00	_____	_____
5. Marketing and Hauling Costs* .....	250.00	250.00	_____	_____
6. Utilities* .....	76.00	76.00	_____	_____
7. Fuel, Oil, and Auto Expense* .....	30.00	30.00	_____	_____
8. Building and Equipment Repairs* .....	126.00	126.00	_____	_____
9. Dues and Fees* .....	38.00	38.00	_____	_____
10. Interest on 1/2 Variable Costs @ 12% .....	132.99	69.42	_____	_____
<b>A. TOTAL VARIABLE COSTS .....</b>	<b>\$2,349.45</b>	<b>\$1,997.88</b>	_____	_____
<b>FIXED COSTS PER COW:</b>				
11. Depreciation on Buildings and Equipment .....	\$ 261.26	\$ XXXX	_____	_____
12. Interest on Buildings and Equipment <sup>1</sup> @ 12% .....	162.00	249.67	_____	_____
13. Insurance on Buildings and Equipment @ .25% .....	6.75	6.75	_____	_____
14. Interest on Breeding Stock @ 12% .....	168.00	100.80	_____	_____
15. Insurance on Breeding Stock @ 1% .....	14.00	14.00	_____	_____
<b>B. TOTAL FIXED COSTS .....</b>	<b>\$ 612.01</b>	<b>\$ 371.22</b>	_____	_____
<b>C. TOTAL COSTS PER COW (A + B) .....</b>	<b>\$2,961.46</b>	<b>\$2,369.10</b>	_____	_____
<b>RETURNS PER COW</b>				
16. Milk Sales: 17,500# × \$12.00/cwt. ....	\$ 2,100.00		_____	_____
17. Calves Sold: 40% × \$100 .....	40.00		_____	_____
18. Cull Cows: 1,300# × 1/3 × \$53.50/cwt. ....	229.52		_____	_____
<b>D. GROSS RETURNS/COW .....</b>	<b>\$ 2,369.52</b>		_____	_____
<b>E. RETURNS OVER VARIABLE COSTS (D — A) .....</b>	<b>\$ 20.07</b>	<b>\$ 371.64</b>	_____	_____
<b>F. RETURNS OVER TOTAL COSTS (D — C) .....</b>	<b>\$ -591.94</b>	<b>\$ .42</b>	_____	_____
<b>G. TOTAL RETURN PER CWT. OF MILK SOLD (D ÷ 175 CWT.) .....</b>	<b>\$ 13.54</b>	<b>\$ 13.54</b>	_____	_____
<b>H. TOTAL COST/CWT. MILK SOLD (C ÷ 175 CWT.) ...</b>	<b>\$ 16.92</b>	<b>\$ 13.54</b>	_____	_____
<b>I. ASSET TURNOVER (D ÷ INVESTMENT)<sup>2</sup> .....</b>	<b>57.79%</b>		_____	_____
<b>J. NET RETURN ON INVESTMENT ((F + 10 + 12 + 14) ÷ INVESTMENT)<sup>2</sup> .....</b>	<b>-3.15%</b>		_____	_____

\* Based on 1990 Farm Management Association farms plus inflation from 1990 to 1992.

<sup>1</sup>Total column is one-half the original cost of buildings and equipment at an interest rate of 12 percent. The cash flow column assumes principal and interest on buildings and equipment to be 33 percent of a 5-year amortized loan at an interest rate of 12 percent.

<sup>2</sup>Investment equals total value of breeding stock and buildings-equipment.



# COST RETURN PROJECTION—DAIRY HERD REPLACEMENT

	EXAMPLE		YOUR FARM	
	Total	Cash Flow	Total	Cash Flow
<b>VARIABLE COST PER HEIFER</b>				
1. Feed—to 24 Months of Age (Table 1) .....	\$ 555.75	\$ 555.75		
2. Labor (15 hours × \$8.00/hr.) .....	120.00	12.00		
3. Veterinary, Drugs and Supplies .....	6.50	6.50		
4. Breeding Costs for A.I. Services .....	16.00	16.00		
5. Transportation and Marketing Costs .....				
6. Fuel, Oil and Repairs .....	8.50	8.50		
7. Building Repairs .....	3.50	3.50		
8. Interest on 1/2 of Variable Costs @ 12% .....	42.62	21.68		
<b>A. TOTAL VARIABLE COSTS .....</b>	<b>\$ 752.87</b>	<b>\$ 623.93</b>		
<b>FIXED COST PER HEIFER:</b>				
9. Depreciation on Buildings and Equipment .....	\$ 15.00	\$ XXXX		
10. Interest on Buildings and Equipment <sup>1</sup> @ 12% .....	18.00	27.74		
11. Insurance on Buildings and Equipment @ .25% .....	.75	.75		
12. Interest on Average Investment in Heifer @ 12% .....	78.00	46.80		
<b>B. TOTAL FIXED COSTS .....</b>	<b>\$ 111.75</b>	<b>\$ 75.29</b>		
<b>C. TOTAL COSTS PER HEIFER (A + B) .....</b>	<b>\$ 864.62</b>	<b>\$ 699.22</b>		
<b>RETURNS PER HEIFER</b>				
13. Spring Heifer: .9 head × \$900 .....	\$ 810.00			
14. Non-Breeder or Cull: .1 hd. × 900 lbs. at \$74 .....	66.60			
15. Calf Purchased or Raised: .....	-100.00			
16. Less Death Loss: 15% of Line 15 .....	-15.00			
<b>D. GROSS RETURNS PER HEIFER .....</b>	<b>\$ 761.60</b>			
<b>E. RETURN OVER VARIABLE COSTS (D - A) .....</b>	<b>\$ 8.73</b>	<b>\$ 137.67</b>		
<b>F. RETURN OVER TOTAL COSTS (D - C) .....</b>	<b>\$ -103.02</b>	<b>\$ 62.38</b>		
<b>G. ASSET TURNOVER (D ÷ INVESTMENT)<sup>2</sup> .....</b>	<b>80.02%</b>			
<b>H. NET RETURN ON INVESTMENT</b>				
((F + 8 + 10 + 12) ÷ INVESTMENT) <sup>2</sup> .....	<b>3.75%</b>			

<sup>1</sup>Total column is one-half the investment in buildings and facilities at an interest rate of 12 percent. The cash flow column assumes principal and interest to be 33 percent of a 5-year amortized loan at an interest rate of 12 percent.

<sup>2</sup>Investment equals total investment in dairy heifer and value of buildings and facilities for the two year period.



**COOPERATIVE EXTENSION SERVICE, MANHATTAN, KANSAS**  
MF-399 Revised

August 1991

Issued in furtherance of Cooperative Extension Work, Acts of May 8 and June 30, 1914, as amended. Kansas State University, County Extension Councils, and United States Department of Agriculture Cooperating. Walter R. Woods, Director. All educational programs and materials available without discrimination on the basis of race, color, national origin, sex, age, or handicap.

8-91-1.5M

File Code: Farm Management 3-2

15-15

# COST-RETURN BUDGET—EWE AND LAMB

	EXAMPLES		YOUR FARM	
	Total	Cash	Total	Cash
<b>VARIABLE COSTS PER EWE</b>				
1. Pasture (1.4 aum × \$12/aum) .....	\$ 16.80	\$ 16.80		
2. Sorghum Silage (.39T × \$16/Ton) .....	6.24	6.24		
3. Alfalfa Hay (.21T × \$80/Ton) .....	16.80	16.80		
4. Grain Sorghum (7.73 bu. × \$2.30/bu.) .....	17.78	17.78		
5. Protein (101 lbs. × \$.113/lb.) .....	11.41	11.41		
6. Labor (2 hrs. × \$8.00/hr.) .....	16.00	1.60		
7. Veterinary, Drugs, and Supplies .....	4.00	4.00		
8. Breeding Costs .....	3.00	3.00		
9. Marketing Costs (3% of Sales) .....	2.75	2.75		
10. Shearing .....	2.00	2.00		
11. Utilities, Fuel, Oil .....	3.00	3.00		
12. Building and Equipment Repairs .....	2.35	2.35		
13. Taxes and Insurance .....	.60	.60		
14. Miscellaneous .....	.50	.50		
15. Interest on 1/2 Variable Costs @ 12% .....	6.19	3.20		
<b>A. TOTAL VARIABLE COSTS</b> .....	<b>\$ 109.42</b>	<b>\$ 92.03</b>		
<b>FIXED COSTS PER EWE</b>				
16. Depreciation on Buildings and Equipment .....	\$ 11.25	\$ XXX		
17. Interest on Buildings and Equipment <sup>1</sup> @ 12% .....	10.20	15.72		
18. Insurance on Building and Equipment @ .25% .....	.43	.43		
19. Interest on Breeding Flock @ 12% .....	12.00	7.20		
20. Insurance on Breeding Flock @ 1% .....	1.00	1.00		
<b>B. TOTAL FIXED COSTS</b> .....	<b>\$ 34.88</b>	<b>\$ 24.35</b>		
<b>C. TOTAL COSTS PER EWE (A + B)</b> .....	<b>\$ 144.30</b>	<b>\$ 116.38</b>		
<b>RETURNS PER EWE</b>				
21. Market Lambs: 120 lbs. × 115% × \$63/cwt. ....	\$ 86.94			
22. Cull Ewes: 12 × 125 lbs. × \$16.90/cwt. ....	4.23			
23. Wool and Incentive: 8.5 lbs. × \$1.25/lb. ....	10.63			
24. Ewe Replacement .....	-16.67			
<b>D. GROSS RETURNS/EWE</b> .....	<b>\$ 85.13</b>			
<b>E. RETURN OVER VARIABLE COST (D - A)</b> .....	<b>\$ -24.29</b>	<b>\$ -6.90</b>		
<b>F. RETURN OVER TOTAL COSTS (D - C)</b> .....	<b>\$ -59.17</b>	<b>\$ -31.25</b>		
<b>G. AVERAGE SELLING PRICE NEEDED/CWT.</b>				
25. To Cover Variable Costs (A - 22 - 23 + 24) ÷ 27 .....	\$ 80.60	\$ 68.00		
26. To Cover Total Costs (C - 22 + 23 + 24) ÷ 27 .....	\$ 105.88	\$ 85.64		
<b>H. TOTAL FEED COSTS (Lines 1-5)</b> .....	<b>\$ 69.03</b>	<b>\$ 69.03</b>		
27. Cwt. Produced .....	1.38			
28. Feed Cost/Cwt. Lamb Marketed (H ÷ 27) .....	\$ 50.02	\$ 50.02		
<b>I. ASSET TURNOVER (D ÷ INVESTMENT)<sup>2</sup></b> .....	<b>\$ 31.53%</b>			
<b>J. NET RETURN ON INVESTMENT</b> ((F + 15 + 17 + 19) ÷ INVESTMENT) <sup>2</sup> .....	<b>-11.40%</b>			

<sup>1</sup>Total column assumes one-half the original cost in buildings and equipment at an interest rate of 12 percent. The cash flow column assumes principal and interest on buildings and equipment to be 33 percent of a 5-year amortized loan at an interest rate of 12 percent.

<sup>2</sup>Investment equals total value of breeding stock and buildings-equipment.

KAREN HANZLICEK  
% ROUTE 1, BOX 37  
NETAWAKA, KANSAS  
POSTAL ZONE 66516

September 2, 1993

DAVID CORBIN  
RR 1, Box 73  
Towanda, KS 67144

Re: Committee Hearings on Reorganization  
of the State Board of Agriculture

Dear David:

Once again, I thank you for allowing me the time to testify before your committee on August 30, 1993.

What I am concerned about, and feel that I need to rebut or clarify is the testimony that was given on Tuesday, the 31st, by Mr. Dwight Haddock, of Associated Milk Producers. When Gerald Karr asked him about my testimony regarding the dairy inspections Mr. Haddock replied that I had told a "falsehood". I don't think it's very nice, or proper, to interfere with someone else's testimony. Let me tell you right now, that I don't lie and that I took the opportunity to testify before your committee very seriously.

When Gerald asked Mr. Haddock about the inspections, with Mr. Haddock having been in the dairy industry for so many years, he knew and could have taken the opportunity to correct Gerald on his choice of words in his question. Under the category of inspections, I testified about the laboratory tests, etc. If either the committee, or Mr. Haddock, understood that I was talking against the on farm inspectors, then I feel that it is necessary for me to correct the misunderstanding now, and for the record. The area of on farm inspections is one area where we never, personally, had even one problem or complaint.

However, I do feel that there is a problem, when milk samples are taken from the milk bulk tank at every pick up and yet the state lab only checks for contaminants such as pesticide, once a year. I also know of one past producer, who got a notice that there was evidence of a brucellosis carrier in their herd. This evidence was shown as a result of a sample that had been picked up from their tank just a few days before, even though they had sold all of their cows and quit milking over eight months' previous! Now this kind of false test is enough to force a dairy out of business, because of the cost and time and harassment to the herd and it's owner, just to prove their innocence.

Another area of testing, which affects every dairy, is in

the area of butter fat tests and particularly, somatic cell count tests. The farmer gets paid according to the results of these tests and yet, my neighbor had four samples of the same milk taken from his tank at the same time and labeled them, as though they had come from different sources. The results should have been within an identical range, but instead they were, each of the four, way far apart. Now remember, the farmer gets paid, according to the range where his sample falls! I guess it's a good way to weed out the farmer who doesn't gross \$250,000, as Mr. Steffes said was needed to be in farming.

That raises two more questions: If Mr. Steffes knew that a farmer must gross a minimum of \$250,000, in order to succeed, then why have banks continued to loan their depositors' money, on investments that they knew would be impossible to repay? AND Wasn't/isn't it unjust enrichment to write off 80% of the appraised value of the loan and then take 100% of the collateral besides?

I understand that yesterday, in Federal District Court in Topeka, in regard to a Federal Land Bank matter, an attorney said we may use as a defense, that we are going to challenge the transaction--then the bench spoke, to knowing how the laws are dealt with in Kansas Courts, "You may overcome the notes, but you are not allowed to overcome the mortgage." It seems to me, that if a note is invalid, then how could there be a mortgage, except that the Federal Land Bank Mortgages have been used for collateral to the International Monetary Fund to secure No Fault Bonds which cannot be paid off early, and so the mortgages cannot be released until the date(s) when the bonds can be paid off. Of course you realize, that our mortgage said that we could pay off early, if we chose to do so. You should also know that after illegal foreclosure and all the travesty that has followed our ordeal, Federal Land Bank got judgment, resold the land and got their money from that, took back our stock and got the value from that (insurance payment), and yet, still refuse to return the original note and mortgage marked paid. I'll bet you wouldn't pay off your car at the bank and not demand a paid receipt!

Sincerely,

*Karen Hanzlicek*

Karen Hanzlicek

cc: Raney Gilliland  
Gerald Karr  
Don Steffes  
Dwight Haddock  
Jill Wolters, Reviser of Statutes



## WIFE Women Involved In Farm Economics

RR # 1 Box 95  
Jetmore, Kansas 67854  
October 1, 1993

Chairman House Ag. Committee  
Eugene Shore  
Rt. 2  
Johnson, Ks. 67855

Dear Rep. Shore.

I am writing in regard to the State Board of Agriculture.

As a farmer/stockman yourself, I am sure you are aware that agriculture representation is becoming smaller and smaller. I am writing to encourage you to delay any action by the legislature on the State Board of Agriculture issue until it has been heard by the court of appeals in Denver.

The legislature should act on this issue only if it becomes necessary.

Sincerely

*Naomi King*  
Naomi King

*House Ag. Com  
10-27-93  
Attachment 16*



# KANSAS TERRITORIAL AGRICULTURAL SOCIETY-Law Est: 1855

## MEMORANDUM

TO: INTERIM STUDY COMMITTEE  
C/O HOUSE AGRICULTURE COMMITTEE  
WITH VALID AND CURRENT OATHS

FROM: GLENDA L. MELLIES  
CURRENT AND ACTING RECORDING SECRETARY  
STATE AGRICULTURE SOCIETY

DATED: October 27 & 28, 1993

RE: BRIEFING & HEARINGS on Potential Re-  
structure of the KS State Bd. of Ag.  
Continued from August 30, & 31, 1993

FRANKLIN DEE WILLIAMS

3212 S.W. Eveningside Dr. # 31.  
Topeka, Kansas 66614  
(913) 272-5392

PRESIDENT

KAREN HAMELICK

ROUTE 1, BOX 37  
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NORTHERN JUDICIAL DISTRICT  
VICE PRESIDENT

VIRGIL PREWITT

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(404) 431-2334

SOUTHERN JUDICIAL DISTRICT  
VICE PRESIDENT

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VICE PRESIDENT

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CORRESPONDING SECRETARY

GLENDA L. MELLIES

C/O Box 68  
Morganville, Kansas 67468  
(913) 296-3631

RECORDING SECRETARY

MARK DRAKE

R.R. 1,  
Winfield, Kansas 67156  
(316) 221-4688

TREASURER

ABRAHAM R. FRIESEN

R.R. 3, Box 33  
McPherson, Kansas 67460  
(316) 241-0055

PARLIAMENTARIAN

Thank you for the opportunity to appear and offer to further assist in support, of cooperation to establish and exercise the full powers and duties without obstruction to the charter of the Society:

1. Where Constitution has been once formally extended by Congress to territories, neither Congress nor territorial legislature can enact laws inconsistent therewith. [ See U.S. Territory or Property Art IV, Sec. 3 cl 2, n 8 - - Exhibits # 43 & 44 ]

### ISSUES & CONSTITUTION

- |  |                          |
|--|--------------------------|
| (A) POSITIVE ACTIONS                                 | (B) POSITIVE INACTIONS   |
| (C) OBSTRUCTION OF JUSTICE                           | (D) OBSTRUCTION OF DUTY  |
| (E) LEGAL RESPONSIBILITIES                           | (F) LEGAL AUTHORITIES    |
| (G) ETHICAL RESPONSIBILITY                           | (H) MORAL RESPONSIBILITY |
| (I) LACK OF RIGHTS, RESPONSIBILITIES NOR AUTHORITIES |                          |

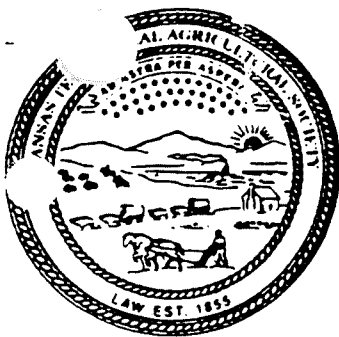
### BRIEF IN SUPPORT OF COOPERATION AND INVESTIGATION

### ADMISSIONS AND RESULTS ABSENT A INTERIM STUDY COMMITTEE

### WITH OATH DUTY OR AUTHORITY PURSUANT TO ANY VACANCY

RE: Briefings & Hearings on Potential Re-structuring of the KS State Bd. of Ag. Dated August 31, 1993 Rm. 526-S at 9:00 a.m. without proof of authority nor provable authority or permission: [SEE Exh offered 8-30-93]

*House Ag Co  
10-27-93  
Attachment 17*



# KANSAS TERRITORIAL AGRICULTURAL SOCIETY-Law Est: 1855

## MEMORANDUM

TO: INTERIM STUDY COMMITTEE  
C/O SENATE AGRICULTURE COMMITTEE  
WITH VALID AND CURRENT OATHS

FROM: GLENDA L. MELLIES  
CURRENT AND ACTING RECORDING SECRETARY  
STATE AGRICULTURE SOCIETY

DATED: August 31, 1993

RE: BRIEFING & HEARINGS on Potential Re-  
structure of the KS State Bd. of Ag.  
Continued from August 30, 1993

FRANKLIN DEE WILLIAMS  
3212 S.W. Eveningside Dr. # 31.  
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(913) 272-5392

PRESIDENT

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VICE PRESIDENT

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VICE PRESIDENT

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EASTERN JUDICIAL DISTRICT  
VICE PRESIDENT

RUSSELL RAULSTON  
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VICE PRESIDENT

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ABRAHAM K. FRIESEN  
R.R. 3. Box 33  
McPherson, Kansas 67460  
(316) 241-0055

PARLIAMENTARIAN

Thank you for the opportunity to appear and offer to further assist in support, of cooperation to establish and exercise the full powers and duties without obstruction to the charter of the Society:

1. Where Constitution has been once formally extended by Congress to territories, neither Congress nor territorial legislature can enact laws inconsistent therewith. [ See U.S. Territory or Property Art IV, Sec. 3 cl 2, n 8 - - Exhibits # 31 & 32 ]

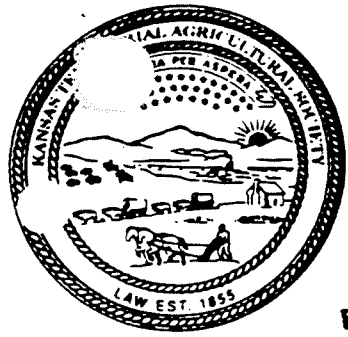
## ISSUES & CONSTITUTION

- |  |                          |
|--|--------------------------|
| (A) POSITIVE ACTIONS                                 | (B) POSITIVE INACTIONS   |
| (C) OBSTRUCTION OF JUSTICE                           | (D) OBSTRUCTION OF DUTY  |
| (E) LEGAL RESPONSIBILITIES                           | (F) LEGAL AUTHORITIES    |
| (G) ETHICAL RESPONSIBILITY                           | (H) MORAL RESPONSIBILITY |
| (I) LACK OF RIGHTS, RESPONSIBILITIES NOR AUTHORITIES |                          |

## BRIEF IN SUPPORT OF COOPERATION AND INVESTIGATION

## ADMISSIONS AND RESULTS ABSENT A INTERIM STUDY COMMITTEE WITH OATH DUTY OR AUTHORITY PURSUANT TO ANY VACANCY

RE: Briefings & Hearings on Potential Re-structuring  
of the KS State Bd. of Ag. Dated August 31, 1993 Rm.  
526-S at 9:00 a.m. without proof of authority nor  
provable authority or permission: [SEE Exh offered 8-30-93]



**KANSAS TERRITORIAL AGRICULTURAL SOCIETY-Law Est: 1855**

**PAGE 2.**

**WHETHER Art. IV, Section 3, cl 2, n 8 AS SHEPARDIZED AMOUNTS TO HAVING CONSTITUTION BEEN ONCE FORMALLY EXTENDED BY CONGRESS TO TERRITORY, NEITHER CONGRESS NOR TERRITORIAL LEGISLATURE CAN ENACT LAWS INCONSISTANT THEREWITH? (Pursuant to Downes v. Bidwell, (1901) 182 U.S. 244, 45 L. Ed. 1088, 21 S Ct. 770 )**

It is respectfully submitted that it is understood that some will be encouraging an investigation and I likewise can not deny that that is verylikely the best immediate approach to give an opportunity to know what is needed, and what would be proper.

(a) Yesterday you heard testimony that the Official Office of the Secretary is neither vacant nor temporarily filled, nor should it be ordered filled.

(b). The alleged court in Kansas City may under the law be prevented from any such appointment of someone who is not qualified to act in such capacity before becoming Elector that has Qualifications to be elected or appointed; and

(c). Who is the person Qualified to swear such to the Order?

**FIRST:** Let me point your attention to the cover sheet our BOARDS Stationary and more specifically the establishment of this Society in 1855 with all the authority and duties of the Chartered purposes. [See Exhibit Attachments #s 14 through 22 ]

Next refer to Exhibit # 33 465 SOUTHERN REPORTER 2d SERIES 1266 - - Oath at Key 5 "The key to a valid oath is that perjury will lie for its falsity."





**KANSAS TERRITORIAL AGRICULTURAL SOCIETY-Law Est: 1855**

**PAGE 3.**

Exhibits #s 1, 2, & 3 the publisized knowledge of William Colby former Director of our Central Intelligence Agency at page 344 of HONORABLE MEN. (i.e.) Quoted:

" . . . . . Because my nomination had been announced in early May, all the world knew I was meant to be the next CIA chief. But I wasn't able to accept the responsibility or exercise the authority of the position until I was Officially sworn in. In the meantime, I was, if not exactly a man without a job, then one without a title -- an absolutely befuddling situtation in official Washington, where titles are more important than gold -- in effect running the Agency without presuming to do so. . . . ."

**Second:** Exhibits #s 31 & 32 the publisized lawsuit of Kansas Natural Resource Council and Common Cause of Kansas and constitutional question of the clandestine Board & Secretary raises yet a serious question when can the constitution be violated supposedly their actions struck down and then be ordered to do the same acts yet for a time until October 1, 1993.

**WHETHER OUR JUDICIARY CAN UNDER OUR CONSTITUTION DO THE FOLLOWING: (a) FAIL TO TAKE A TIMELY OATH: (b) YET ORDER ACT UNCONSTITUTIONAL AND TURN AROUND AND ALLOW THE SAME VIOLATORS TO CONTINUE DOING THE SAME FOR YET A PERIOD OF TIME WHEN THEY WERE ONLY IMPOSTORS: (c) IGNOR THE REAL LAW, CHARTER, VESTED RIGHTS, DUTIES AND AUTHORITIES?**

**Third:** Exhibits #s 36 through 43 are self explanitory as to what is a valid oath that will supposedly stand the test of perjury:

**Fourth:** The Same above needs to be answered -- What was the name of the Officer authorized to attest and sign the above Oaths not



PAGE 4.

yet shown to be taken and by rule and Statute K.S.A. 7-124 et seq. prevented such order to become affective? and specifically K.S.A. 7-124 (h) before taking a duty oath? [ EXH #s 41 thro 43 ]

**Five:** That February 1991 in the Kansas Government Journal it was printed as published See page 50, 51, 52 and as pointed out as [EXH #s 5 th 7]  
Specifically shown as Model Oath or Affirmation of Office or

Employment: **NOTE:** "To swear an oath strike the language within the brackets []. To declare an affirmation strike the language within the parentheses ()."

It is respectfully shown and so stated that Rule 212. Admission to the bar found in K.S.A. 7-124 et seq. [See EXH #s 41 to 43]

It is further respectfully submitted that I can not be responsible for some figment of your imagination.

**PLEASE DIRECT YOUR ATTENTION TO:**

1. [See - - 191 PACIFIC REPORTER, 2d SERIES at 690 Wash ]

9. Constitutional law - - Key at 125

Corporations - - Key at 40

QUOTED:

"A state may not pass laws altering or amending charters of corporations in such a way that will change their fundamental charater or impair the object of the grant or rights vested thereunder, or in such a way as will impair the contractual relations or rights of stockholders among themselves or existing between them and the corporation."

[See Exhibit # 44 ]

**Sixth:** That all is ask to STOP and ask yourselves is it not now time to determine what is by this the content of your character?

17-5  
H-5



PAGE 5.

**Seventh:** That on the otherhand is the determination to be that such positive inaction is the result of even those earlier lack of any content of character?

**Eighth:** That appropriations for 1861, 1862, as well as 1863 by Statutory publication shows the Society Board to be the recognized Board of Agriculture and what others could be valid?

[See Exhibits #s 23 through # 27 ]

**Ninth:** That property and funds needed to be supported by all since Statehood for accountablility is that which cannot be done without a full investigation and cooperation by all, and if not what?

**Tenth:** With example to: That which is found in the testimony of the clandestine Board and Secretary when testifying to the condition of Agriculture in Kansas and whether such testimony is shown to reflect that which the records have been provided or whether such testimony is contrary to Agriculture?

It is respectfully submitted that such testimony is and remains contrary to the recorded condition of agriculture and an invalid attack upon Kansas itself as well as upon Ag. and is so stated.

**WHETHER LEGISLATIVE RESEARCH NEEDS TO BRING ALL OF THE  
RECORD FACTS PREVIOUSLY OVERLOOKED, REFUSED, NEGLECTED  
OR OTHERWISE?**

It is respectfully submitted that myself and others have attempted to Question required Qualifications of Executive, Legislative, and alleged Judiciary and that case law suggests that Rules provided of the tolling of such positive actions or  
[See EXHIBIT # 42 ]



PAGE 6.

inactions in favor of the Questioner and it is so stated.

[See Exhibits # 12 & 13 ]

**Eleventh** On more than one occasion meself and others traveled to the Capitol and specifically the Office of Kansas Treasurer and requested the accountings of Agriculture yet no accountings came forward and now I direct your attention to yesterdays Exhibit # 36 and the requirements Exhibits # 1 through # 7.

**Twelveth** I now draw your attention to Attachment Exhibit # 39 and specifically K.S.A 7-124 (h) which order shall become effective upon his taking an oath and now K.S.A. 54-106 for all such state officers.

**thirteenth** You can find Oath requirements at Attachment Exhibit # 45.

**Fourtheenth** You can review Exhibit # 12 and # 13 and know and understand what Qualifications are and should remain under the same issues and constitutions herein set out.

**Fifteen** You can review Exhibits # 14 through 30 and know and understand the issues being raised here and how such applies to the constitutions both federal and state.

(a). This Society Officer with other Officers have been refused funds or accountings of Agriculture and in view of this exhibit # 36, it seems clear and understandable that this is nothing more than a mere scrap of paper.

(i) It seems to amount to a partial preperation of an official document that:

(A) That lacks Oath Sworn to nor in the alternative



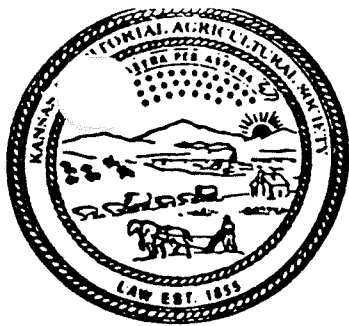
likewise not affirmed.

(B) That it is likewise seems to be signed by an unauthorized party with no qualifications, and no official duty or authority as what seem to be required.

Sixteen You must first examine these issues and constitutional provisions and just how each of your oaths appear in the record.

C O N C L U S I O N

1. As Secretary of the Society as herein set out I seek your full and complete investigation and results.
2. When your oath is in place, you need to examine what laws are in place and if they are adequately founded and if they can be reasonably expected to be enforced.
3. You also must now know that open records requests are a joke.
4. Taxpayers' property and funds are used by those who are not owners and not entitled to use such property and funds and if you do not know that, then this has been one more day of wasted time for all of us.
5. Given due consideration to demand that the media get involved, as evidence, now made known by the media, inquiring about the World War II Memorial; some evidence has surfaced and more investigation is needed. This World War II Memorial needs to be returned to it's original, intended display site on the "Kansas Territorial Agricultural Society" property.
6. Those who hold, at least defacto offices, should not have



PAGE 8.

discretion to continue to refuse to perform their implied duties.

7. No oath should ever be filed in any file that is not open record, and no charge should be greater than the actual cost for reproducing and making available, such copies.

8. No document, purporting to be an oath, should ever be filed until it will stand the penalty test of perjury, and enforcement powers need to be mandatory and sufficient appropriations need to be made available to allow prosecution for noncompliance.

9. Making a false writing, is making or drawing or causing to be made or drawn any written instrument or entry in a book of account with knowledge that such writing falsely states or represents some material matter or is not what it purports to be, and with intent to defraud or induce official action, and is in violation of K.S.A. 21-3711, amounting to a class D felony.

SUPPLEMENTAL MEMORANDUM TO THE ABOVE

1. Art. 1. Section 6. page 45 & 46 of the CONSTITUTION OF THE STATE OF KANSAS - - Prohibits any alleged Governor of Kansas from acting in violation of this prohibition and no Memorandum or Court Order can circumvent such without first putting the same before the Electors of Kansas for their approval or rejection.

[See Exhibit \_\_\_\_ & \_\_\_\_ Attached]

2. Section 3. of Charter mandates annual meeting of the Society  
It was voted that the Officers act in the absents of the annual meeting and to prescribe the duties and the Corresponding and



PAGE 9.

Recording Secretary are being denied compensation and you and each of you are through your positive actions and positive inactions and by your meeting here today are evidence that you intended to do so and the laws and Constitution show you are liable for your wrongful acts when they are drawn to your attention and you refuse to assist in such corrections.

3. Publication are of record and each of you have a duty to obey and comply with the laws, you need only to produce your oaths and your qualifications.

4. That we ask that you speak out and do all possible to see that all unconstitutional enactments since statehood be rescinded and that no further enactments be drafted or proposed that will impair the original charter or current by-laws of the "Society".

5. That even if they need not be rescinded because of there being void then speak out so as to not impair from this point the purpose of the "Society".

I hereby certify that this reproduction is a true and correct copy  
of materials in the custody of the Library of the Kansas State Historical  
Society.

July 1, 1991

*Beth McKee*  
Library Reading Room Attendant

KANSAS STATE HISTORICAL SOCIETY

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EMPIRE STATE BUILDING

**BY RAY MORGAN**  
**The Kansas Free Fair is**  
**on!**

Thousands of people streamed from all parts of the Middle West Saturday to see the 68th annual exposition open on a note of solemnity with the dedication of a newly-built memorial tower to the men and women who served in World War II and then burst into a blaze of color and gayety.

By nightfall, an estimated 55,000 people had streamed thru the grounds to set a new opening day attendance record to see motorcycle races, the night show, the midway, and hundreds of exhibits.

In the solemn opening of the fair with some 3,000 people clustered around the base of the memorial tower at the 18th and Tappan entrance, Rene Gagnon, Manchester, N. H., who participated in the historic flag raising on Mount Suribachi on Iwo Jima in World War II, called for an end to war.

"I have heard it said that people want to outlaw the atomic bomb and poisonous gasses in war," said Gagnon, clad in his Marine uniform. "War is no longer fought by rules. It is a deadly and bloody horror to be won."

Col. Cornelius Van Ness, famed World War II Marine commander in the South Pacific, said the memorial will live as a constant reminder of freedom.

"It must stand not only as a memorial but what is far more important as a living, indestructible promise that the spirit of free men will never be questioned as long as we have the power and the strength and the abundance to fight to keep it living," he said.



BOX 119 • TOPEKA, KANSAS 66601 • 913/272-3456

18 E

ROBERT L. KEARNS  
Director of Community Relations

February 15, 1982

RECEIVED

FEB 16 1982

BOARD OF COUNTY  
COMMISSIONERS

Mrs. Velma Paris  
County Commissioner  
Shawnee County Court House  
Topeka, KS 66603

Velma ...

Don't spend money on a search as to who owns the Fairgrounds.

A. J. Ryan gave a section of the ground to Shawnee County  
on August 11, 1870.

I believe the document is on microfilm at the Historical  
Society.

You may want to check the package of land identified in  
this Ryan document. The enclosed is something I found  
years ago.

Regards

  
Bob Kearns

BK:ap

Enc.

cc George Logan

BROADCAST SERVICES OF STAUFFER COMMUNICATIONS, INC.

WIBW TV AM FM  
CBS Topeka

KCOY TV  
CBS Santa Maria, Calif.

KARZ RADIO  
CBS Phoenix

KRNT KRNO  
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KGNC AM FM  
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KGBX RADIO  
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KANSAS CITY ROYALS BASEBALL NETWORK

STAUFFER SPORTS NETWORK

17-13

pose additional burdens on, or otherwise affect existing corporations without their consent, unless they are within the inalienable powers of the state, such as the police power or the power of eminent domain, or unless the power to alter, amend, or repeal the charter of the complaining corporation has been reserved.<sup>92</sup> Therefore constitutional provisions affecting the creation of corporations or their powers, not within the reserved power of the state, will not affect charters of corporations which have been granted prior to the adoption of such provisions and which have been accepted and acted on in good faith.<sup>93</sup> A constitutional provision which prohibits the granting of corporate powers or privileges by special laws, and directs the legislature to provide general laws for such purposes, relates only to acts of incorporation thereafter to be granted,<sup>94</sup> and a corporation created under a special act cannot, after the establishment of such a constitutional prohibition, accept its charter and reorganize so as to create a valid corporation.<sup>95</sup> A charter which is granted under one constitution, and is extended, by act of the legislature, under another, and when the time arrives for such extension to take effect there is a third constitution in force, the act in question can confer no additional privileges not authorized by the constitution in force at the time of its adoption, and is regulated, with respect to those granted by it, by the constitution in force when it takes effect.<sup>96</sup>

*Unconstitutional statute operating as license.* A statute incorporating a company, although void as

being passed by a special act in violation of the constitution, may operate as a legislative license to do the act authorized by the statute, such as to carry on a lottery, so as to estop the state from punishing the incorporators for doing the act.<sup>97</sup>

*Charters exempting corporations from general laws.* A constitutional provision empowering the legislature to grant "such charters of incorporation as they may deem expedient for the public good" does not empower them to grant a charter of incorporation exempting the corporation from restrictions imposed by other clauses of the constitution.<sup>98</sup>

*Violating federal constitution.* A state cannot create a corporation or confer corporate powers or privileges in conflict with any provision of the constitution of the United States.<sup>99</sup>

## § 29. Power of Congress

Congress has power to create corporations as an appropriate means of executing powers conferred by the constitution on it or on the general government or any department or officer thereof. This power may be exercised as to the creation of corporations in the District of Columbia, in the territories, and within the states.

Under the provision of the constitution of the United States, which, after enumerating various powers conferred on congress, provides, in article 1 § 8 clause 18, U.S.C.A.Const. part 1 p 448, that it shall have power "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested

92. U.S.—Dartmouth College v. Woodward, N.H., 4 Wheat.U.S. 513, 4 L.Ed. 629.

Wis.—Black River Imp. Co. v. Holway, 59 N.W. 126, 87 Wis. 584—Atty.-Gen. v. Chicago & N. W. R. Co., 35 Wis. 425.

### *As part of contract*

A constitutional provision that corporations may be formed under general laws, and that all general and special laws thereunder may be altered or repealed, became one of terms of contract between state and corporation binding corporation and its stockholders in actions brought by them against it, and also binding stockholders inter se; and, under such provision, a statute relating to changes of purposes and powers of corporations applies to all corporations whether organized prior or subsequent to its enactment, and is not in derogation of constitutional rights of minority stockholders.—Hollender v. Rochester Food Products Corporation, 207 N.Y.S. 319, 124 Misc. 130, affirmed 212 N.Y.S. 833, 215 App.Div. 751, affirmed 152 N.E. 271, 242 N.Y. 490.

93. Me.—State v. Bangor, 56 A. 539, 98 Me. 114.  
14 C.J. p 96 note 79.

### *As applying only to unorganized corporations*

A constitutional provision that all existing charters or grants of special or exclusive privileges under which organization shall not have taken place, or which shall not have been in operation within ten days of the time of the taking effect of the new constitution, shall thereafter have no validity, was held to refer only to corporations which were then unorganized, or which were not then in operation, and was not so interpreted as to take away special or exclusive privileges granted to corporations organized and in operation.—Illinois v. Illinois Cent. R. Co., C.C. Ill., 33 F. 730 modified on other grounds 13 S.Ct. 110, 146 U.S. 387, 38 L.Ed. 1018.

94. Wis.—Atty Gen v. Chicago & N. W. R. Co 35 Wis 425.

95. Ind.—Gillespie v. Ft. Wayne, etc., R. Co 17 Ind 343—State v. Dawson, 18 Ind 42.

96. La.—State v. Citizens' Bank, 27 So. 709, 52 La. Ann. 1086, reversed on other grounds 24 S.Ct. 181, 192 U.S. 73, 48 L.Ed. 346.

97. Ala.—Brent v. State, 43 Ala. 297.

98. Tenn.—McKinney v. Memphis Overton Hotel Co., 12 Heisk. 104.

99. U.S.—Phillips Petroleum Co. v. Jenkins, Ark., 56 S.Ct. 611, 297 U.S. 629, 80 L.Ed. 943, affirming 82 S.W.2d 264, 190 Ark. 964, rehearing denied 56 S.Ct. 745, 298 U.S. 691, 80 L.Ed. 1409.

Utah.—Keetch v. Cordner, 62 P.2d 273, 90 Utah 423, 108 A.L.R. 52.  
14 C.J. p 95 note 76.

### *Corporation to apply single tax principle*

A statute authorizing the incorporation of associates to own and lease land, to apply and demonstrate the single tax principle of taxation, has been held not to violate U.S. Const. Amendm. XVI, U.S.C.A.Const. pt 3 p 434, granting congress power to impose income taxes.—Fairhope Single Tax Corporation v. Melville, 69 So. 466, 193 Ala. 239.

special acts,<sup>13</sup> although they "may, by general incorporation acts, permit persons to associate themselves together as bodies corporate,"<sup>14</sup> for certain purposes specified in the act, as explained *infra* § 47.

*Status.* A corporation created by or under an act of a territorial legislature, although such act is necessarily passed under a power conferred by congress, is a territorial, and not a national or federal, corporation.<sup>15</sup> However, such a corporation has been held to be included in the words, "any . . . corporation organized by authority of any laws of Congress," in an act of congress;<sup>16</sup> and when a territory is admitted into the Union as a state, the corporations lawfully created and existing therein become, to all intents and purposes, state corporations.<sup>17</sup>

### § 31. In Hawaii, Puerto Rico, and Philippine Islands

The local legislatures of Hawaii, Puerto Rico, and the Philippine Islands, have power to create corporations to the extent that they are authorized thereto by the act of congress providing for such governments; and to this extent also corporations previously created under the laws of the territory or possession may continue in existence.

In Hawaii, in accordance with the rules stated *supra* § 30, as to the powers of territorial legislatures to create corporations, under the provisions of the Organic Act that "the legislature shall not grant to any corporation, association, or individual any special or exclusive privilege, immunity, or franchise without the approval of Congress; nor shall it grant private charters, but it may by a general act permit persons to associate themselves together as bodies corporate" for certain purposes specified in the Act, the territorial legislature can provide for the formation of corporations only by general laws; and the further provision of the Act, that the preëxisting laws of Hawaii not inconsistent with the constitution of the United States or the

provisions of the Organic Act are continued in force, subject to repeal or to amendment by the territorial legislature of Hawaii, or the congress of the United States, continued in existence corporations previously created or existing by or under the laws of Hawaii.<sup>18</sup> Hawaiian corporations so continued in force are not corporations "organized by authority of any laws of Congress," but it is otherwise of corporations created by or under an act of the territorial legislature enacted in pursuance of the organic act of congress.<sup>19</sup>

In Puerto Rico, under the provisions of the act of congress for the government of Puerto Rico, the creation and control of corporations is exclusively a legislative act and is vested in the legislature of Puerto Rico subject to the restrictions imposed in the act.<sup>20</sup>

Spanish corporations existing in Puerto Rico at the time it was acquired by the United States were continued in force, at least *de facto*, and subject to the legislative power of the Puerto Rican legislature; but they ceased to be Spanish corporations after the change of sovereignty, even though they did nothing to reorganize under the laws of any American state or under the present laws of Puerto Rico. Such corporations are not corporations of the United States, but of Puerto Rico.<sup>21</sup>

In the Philippine Islands, under the act of congress for the government of the Philippine Islands and subject to the restrictions of such act, the legislature has power to create corporations;<sup>22</sup> and corporations organized according to the laws of the former regime continue to exist.<sup>23</sup>

### § 32. Incorporation by or under Laws of Different States

The legislatures of two or more states cannot by concurrent legislation unite in creating a corporation as the same corporate entity in each state.

13. U.S.—Wells v. Northern Pac. R. Co., C.C.Or., 23 F. 469, 10 Sawy. 441.

14. U.S.—Colorado Springs Co. v. American Pub. Co., Colo., 97 F. 842, 38 C.C.A. 433.

14 C.J. p 98 note 19.

Congress may cure defective corporation

U.S.—Colorado Springs Co. v. American Pub. Co., *supra*.

Cure of defects or failure to incorporate generally see *infra* §§ 90-92.

15. U.S.—Adams Express Co. v. Denver, etc., R. Co., C.C.Colo., 16 F. 712, 4 McCrary 77.

16. Hawaii.—U. S. v. Haleakala Ranch Co., 3 Hawaii Fed. 299.

17. U.S.—Kansas Pac. R. Co. v. Atchison, etc., R. Co., Kan., 5 S. Ct. 208, 112 U.S. 414, 28 L.Ed. 794. Kan.—State v. Stormont, 24 Kan. 686. 14 C.J. p 99 note 26.

*Presumption*

The supreme court may presume that corporation law of Oklahoma has full application to corporation created before statehood by law of Indian Territory.—Oklahoma Natural Gas Co. v. State of Oklahoma, Okl., 47 S.Ct. 391, 273 U.S. 257, 71 L.Ed. 634.

18. Hawaii.—U. S. v. Haleakala Ranch Co., 3 Hawaii Fed. 299. 14 C.J. p 99 notes 27-31.

19. Hawaii.—U. S. v. Haleakala Ranch Co., *supra*.

20. U.S.—Martinez v. La Asociacion de Senoras, Tex., 29 S.Ct. 327, 213 U.S. 20, 53 L.Ed. 679.

14 C.J. p 99 notes 35-45.

21. U.S.—Martinez v. La Asociacion de Senoras, *supra*.

Porto Rico.—Cuebas v. Banco Territorial, 4 Porto Rico Fed. 203, overruled on other grounds 4 Porto Rico Fed. 509, and also overruling in effect Borrero v. Compania Anonyma, 1 Porto Rico Fed. 142.

22. U.S.—Springer v. Government of the Philippine Islands, Philippine, 48 S.Ct. 480, 277 U.S. 189, 72 L. Ed. 845, affirming 50 Philippine 259. 14 C.J. p 100 notes 49-55.

23. Philippine.—Philippine Islands v. Avila, 38 Philippine 383.

For later cases see same Topic and Key Number in Pocket Part

## I. INCORPORATION AND ORGANIZATION.

### 1. Nature and theory of Incorporation.

#### Library references

C.J.S. Corporations § 1 et seq.

**U.S.Kan. 1885.** On the admission of a territory as a state into the Union, corporations created by the legislature of the territory become corporations of the state.

**Kansas Pac. Ry. Co. v. Atchison, T. & S.F.R. Co.,** 5 S.Ct. 208, 112 U.S. 414, 28 L.Ed. 797.

**Kan.App. 1981.** Included among commonly-accepted corporate characteristics are: usage of an adopted corporate name; issued and paid-for transferrable units of ownership interest held by stockholders; a board of directors, elected and vested with such powers as are delegated by the stockholders, which manages the business and affairs of corporation; bylaws adopted by stockholders or by board of directors if delegated such power by stockholders; officers elected by board of directors; and conduct of business in name and on behalf of corporation.

**Appeal of Armed Forces Co-op. Insuring Ass'n,** 625 P.2d 11, 5 Kan.App.2d 787.

1.1-1.1(1). *For other cases see the Decennial Digests and WESTLAW.*

#### Library references

C.J.S. Corporations.

### 1.1. Status of corporation in general.

#### Library references

C.J.S. Corporations § 1 et seq.

### 1.1(2). Creature of law, fiction or artificial being.

**Kan. 1870.** A corporation, being an artificial person, can have no legal existence out of the boundaries of the sovereignty by which it is created, and cannot emigrate to another sovereignty.

**Land Grant Ry. & Trust Co. v. Coffey County Com'rs,** 6 Kan. 245.

1.1(3)-1.2. *For other cases see the Decennial Digests and WESTLAW.*

#### Library references

C.J.S. Corporations.

### 1.3. Distinct entity in general, corporation as.

#### Library references

C.J.S. Corporations §§ 4, 5.

**D.C.Kan. 1982.** Under Kansas law, basic premise is that a corporation and its stockholders are presumed separate and distinct, whether corporation has many stockholders or only one.

**Schmid v. Roehm GmbH,** 544 F.Supp. 272.

**Kan. 1983.** Corporation is separate and distinct legal entity, and corporation and its stockholders are presumed separate and distinct whether corporation has many stockholders or just one; debts of corporation are not individual indebtedness of its stockholders.

**Iola State Bank v. Biggs,** 662 P.2d 563, 233 Kan. 450.

**Kan. 1981.** Corporation and its stockholders are presumed separate and distinct, and debts of corporation are not individual indebtedness of its stockholders, directors or officers.

**Speer v. Dighton Grain, Inc.,** 624 P.2d 952, 229 Kan. 272.

### 1.4. Disregarding corporate entity in general.

#### Library references

C.J.S. Corporations §§ 6, 7.

### 1.4(1). General considerations.

**C.A.Kan. 1984.** Assuming that corporation's failure to pay dividends during period in question was "a normal and expected development," the failure to pay dividends was still a proper factor to consider in deciding whether to pierce the corporate veil under Kansas law.

**Mackey v. Burke,** 751 F.2d 322.

**C.A.Kan. 1980.** Mere ownership of stock is not enough to pierce the corporate veil; there must also be enough commingling of business and assets that honoring the legal fiction of separateness results in injustice.

**Milgo Electronic Corp. v. United Business Communications, Inc.,** 623 F.2d 645, certiorari denied 101 S.Ct. 794, 449 U.S. 1066, 66 L.Ed.2d 611.

**C.A.Kan. 1971.** The corporate entity will sometimes be pierced when it is used to evade legal responsibility, but it will not be pierced to protect it against its own wrongdoing.

**N. L. R. B. v. Miller Trucking Service, Inc.,** 445 F.2d 927.

**C.A.Kan. 1964.** Corporate entity may be disregarded in cases where not to do so will defeat public convenience, justify wrong, protect fraud, or defend crime.

**Sell v. U. S.,** 336 F.2d 467.

**C.C.A.Kan. 1938.** Corporate entity may be disregarded where not to do so will defeat public convenience, justify wrong, protect fraud or defend crime.

**Henry v. Dolley,** 99 F.2d 94.

**C.C.A.Kan. 1931.** Generally, corporation and its stockholders are deemed separate entities, but such identity may be disregarded in exceptional situations where it would present

C.C. Kan. 1894. As corporate charter granted by a special act of the territorial legislature of Kansas cannot be varied, without the consent of the corporation, by a subsequent general act providing for cumulative voting in elections for directors, though the state constitution, article 12, § 1, promulgated in the meantime, prohibits special acts conferring corporate powers, but, Schedule, § 4, preserves all rights which arose under the territorial government.

Smith v. Atchison, T. & S. F. R. Co., 64 F. 272.

Kan. 1860. The charter of a corporation created by the state is a contract, and is in all particulars inviolable, unless in the charter itself, or in some general or special law to which it was taken subject, there is a power reserved to the legislature to alter or amend.

Territory v. Reyburn, McCahon, 134, 1 Kan., Dass.Ed., 551.

An act of the territorial legislature granting a ferry franchise is a contract between the legislature and the grantee and his assignees, the obligation of which cannot be constitutionally impaired by a subsequent act of the Legislature requiring a license from a county tribunal.

Territory v. Reyburn, McCahon, 134, 1 Kan., Dass.Ed., 551.

does not contemplate a view to authority, and overlapping must not be permitted in response to convenience.

26. Ala.—Fox v. McDonald, 13 F. 416, 101 Ala. 51, 46 Am.R. 91, 21 L.R.A. 622.

Impeachment, which vested by the constitution.

RICHARD HOPEWELL\*  
WENDY ALISON NORA\*\*

\*ADMITTED TO PRACTICE IN SOUTH DAKOTA  
\*\*ADMITTED TO PRACTICE IN WISCONSIN AND MINNESOTA

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SIoux FALLS OFFICE  
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(605) 334-0982

REPLY TO:  
P.O. Box 19336  
Minneapolis, MN 55419-0336  
(612) 824-1104

February 5, 1988

Earl C. Moore, Esquire  
1724 S. Hillside  
Wichita, KS 67211

Re: Kansas Territorial Agricultural Society

Dear Mr. Moore:

Frank Williams has indicated that you might be willing to assist the Agricultural Society in defending its territorial charter. We are requesting reconsideration of an erroneous order issued by a trial court holding the charter invalid as created before Kansas became a state. I have obtained local counsel in the mid-state region who is closer to the site of the proposed hearing than you would be. This is because I have heard you have been ill and the travel might be difficult for you.

In the event that we are required to pursue an appeal of an adverse ruling or defend a favorable ruling in the Court of Appeals, I would greatly appreciate the opportunity to discuss the terms of your involvement. Frank has conveyed the highest of compliments concerning your legal skills and concern for the proper application of the law.

I look forward to talking with you in the future.

Very truly yours,

  
Wendy Alison Nora

cc: Frank Williams

**20-330.** Powers, rights and authority of district judges in districts with more than one district judge. Each of the district judges in judicial districts having more than one district judge shall have all the rights, powers and authority throughout said district possessed by district judges, the same as if each judge was the sole judge of such district, and such powers, rights and authority may be exercised by each of said district judges in the same or different counties in their district at the same time.

History: L. 1968, ch. 385, § 35; L. 1976, ch. 146, § 29; Jan. 10, 1977.

**20-331.** Residence requirements of judges of the district court. (a) Except as provided in subsection (b), any person who has the qualifications prescribed for a district judge by K.S.A. 20-334 shall be eligible for nomination, election or appointment to the office of judge of the district court in any judicial district. If such person is not a resident of the judicial district at the time of nomination, election or appointment, such person shall establish residency in the judicial district before taking the oath of office and shall maintain residency while holding office.

(b) No person shall be eligible for nomination, election or appointment to the office of judge of the district court in any county of any judicial district for which there has been established residence requirements for the holding of such office if such person is not a resident of the county at the time of nomination, election or appointment.

History: L. 1968, ch. 385, § 36; L. 1976, ch. 145, § 85; L. 1978, ch. 111, § 1; L. 1980, ch. 94, § 6; L. 1981, ch. 132, § 1; July 1.

**20-332.**

History: L. 1968, ch. 385, § 37; Repealed, L. 1976, ch. 145, § 246; Jan. 10, 1977.

**20-333.** Abolishment of office of judge upon death, resignation or retirement in certain cases. Whenever under the provisions of this act [\*] provision is made for the abolishment of the office of district judge in any judicial district, and the district judge holding any such office shall die, resign or retire during the four (4) years next preceding the date fixed for the abolishment of such office, such office shall be and is hereby abolished at the time of such death, resignation or retirement.

History: L. 1968, ch. 385, § 38; March 30.

\* "This act," see, also, 4-201 to 4-230, 20-325, 20-327 to 20-332.

JUDICIAL REAPPORTIONMENT, (1982)

Cross References to Related Sections:

Establishment of judicial districts, see 4-201 et seq.

**20-333a.**

History: L. 1982, ch. 130, § 12; Repealed, L. 1983, ch. 105, § 13; April 28.

**20-333b.** Transfer of pending proceedings to new district. All actions and proceedings pending in the district court of any county at the time the county is transferred from one judicial district to another, whether or not the issues are joined, shall proceed in the district court of the judicial district to which the county is transferred in the same manner as if the actions and proceedings had been commenced in that district, except when an action or proceeding pending in a district court has been tried and taken under advisement by a judge of the court, and is still undecided at the time the county is transferred to a different judicial district, it shall be the duty of the judge who tried the cause to make and render findings and judgment on the cause and to determine all motions in the case in all respects as though the county had not been transferred to a different judicial district.

History: L. 1982, ch. 130, § 13; L. 1983, ch. 105, § 5; April 28.

**20-333c.**

History: L. 1982, ch. 129, § 5; Repealed, L. 1983, ch. 105, § 13; April 28.

MISCELLANEOUS PROVISIONS

**20-334.** Qualifications of judges of the district court. (a) Subject to the provisions of K.S.A. 20-2909 and amendments thereto, any person who is elected, retained in office or appointed as a district judge shall:

(1) Have been regularly admitted to practice law in the state of Kansas;

(2) be a resident of the judicial district for which elected or appointed to serve at the time of taking the oath of office and shall maintain residency in the judicial district while holding office; and

(3) for a period of at least five years, have engaged in the active practice of law as a lawyer, judge of a court of record or any court in this state, full-time teacher of law in an accredited law school or any combination thereof.

(b) Any person who is elected, retained in office or appointed as a district magistrate judge shall:

(1) Be a graduate of a high school or secondary school or the equivalent thereof;



# ROLL OF ATTORNEYS OF THE SUPREME COURT OF KANSAS

## OFFICIAL OATH

I do solemnly swear that I will support and bear true allegiance to the constitution of the United States and the constitution of the state of Kansas; that I will neither delay nor deny any man his right through malice, for lucre, or from any unworthy desire; that I will not knowingly foster or promote, or give my assent to, any fraudulent, groundless or unjust suit; that I will neither do, nor consent to the doing of, any falsehood in court; and that I will discharge my duties as an attorney and counselor of the supreme court and all inferior courts of the state of Kansas with fidelity both to the court and to my cause, and to the best of my knowledge and ability. So help me God.

DATE	NAME	POST-OFFICE	COUNTY	STATE
DEC 13 1958	Francis Neal Ellis Charles W. Cook Jr. Leslie Adams White John Staples Esq. Jr.	Platte 2316 W. 84th Kansas City, Mo. 4807 W. 64th Missouri 208 Westminster Independence,	Johnson Johnson Johnson Montgomery	Kansas Missouri Kansas Missouri
FEB 12 1958	Calvin L. McMillen David Edwin Heltzel Jr. La Vone Annette Daily Bernard Joseph Schulte Eugene Edgar Fay Robert Toft Stephen Alvin Dale Herrington C. Dexter Galloway Jr. Mervin Charles Fejelson Alvin D. Dumas Charles W. Shaver Allen Jay Garfinkle Dennis William Schmidt Herman Howard Stephenson William Jesse Hucks Robert Lee Tanner Ruth Elvira Schubert	Wichita 1037 Lovell 1419 Olcott Blvd Kansas City 1048 S. W. 10th Kansas City, Kansas 768 East 10th Elizabeth, N.J. 874 1/2 E. 10th Wichita, Kansas 1821 University 1318 Stachman Wichita, Kansas Hatchinson 912 Jewell Topeka, Kansas Emporia 8327 Belvidere Prairie Village, Mo. 522 Miami Lawrence 775 1/2 E. 10th 9329 Ash Prairie Village 7339 LARBAR OVERLAND PARK 15th & 7th Hatchinson, Kansas Sylvan Grove	Logan Wichita Wichita Union Logan Sedgwick Sedgwick Reno Shawnee Logan Johnson Lawrence Jefferson Johnson JOHNSON Reno Lincoln	Kansas Kansas Kansas New Jersey Kansas Kansas Kansas Kansas Kansas Kansas Kansas Kansas Kansas Kansas Kansas Kansas Kansas Kansas

THE STATE OF KANSAS, }  
SUPREME COURT, } ss.

A true copy ATTEST:

*Lewis C. Carter*

Clerk Supreme Court  
MAY 5 1959

Subscribed in my presence and sworn to before me on the dates as above written.

Clerk Supreme Court.

17-20

**RICHARD W. HOLMES**  
**Justice, Kansas Supreme Court**



Kansas Supreme Court, appointed, 1977  
Private legal practice, Wichita, 1953 to 1977  
Municipal Court Judge, Wichita, 1959 to 1961  
Wichita State University, business law lecturer, 1958 to 1959  
Born: Wichita; February 23, 1923  
Married: Gwen Sand  
Children: Robert and David  
Wichita North High School, 1941  
Kansas State University, bachelor's degree,  
business administration, 1950  
Washburn University School of Law, 1953  
U.S. Navy, 1943 to 1946  
Member: American Judges Association (founder and member  
of board of governors)

# ROLL OF ATTORNEYS OF THE SUPREME COURT OF KANSAS

## OFFICIAL OATH

I do solemnly swear that I will support and bear true allegiance to the constitution of the United States and the constitution of the state of Kansas; that I will neither delay nor deny any man his right through malice, for lucre, or from any unworthy desire; that I will not knowingly foster or promote, or give my assent to, any fraudulent, groundless or unjust suit; that I will neither do, nor consent to the doing of, any falsehood in court; and that I will discharge my duties as an attorney and counselor of the supreme court and all inferior courts of the state of Kansas with fidelity both to the court and to my cause, and to the best of my knowledge and ability. So help me God.

DATE	NAME	POST-OFFICE	COUNTY	STATE
	Richard Wian Holmes	523 Beacon Bldg. Wichita 2, Kan. 1308 S. Vermont	Sedgewick	Kansas
	Scott Reuben Traylor	Springfield 1001 E. 5th St.	Greene	Missouri
	James Earl Spear	Stelena	Cherokee	Kansas
	Luane Clay Karam	1208 Connecticut Lawrence, Kansas	Langdon	Kansas
	Edwin Atkins Lee	Louisburg, Kansas	Miami	Kansas
	L. H. Weltmer	Manhattan, Kansas	Jewell	Kansas
	Lawrence D. Brown	Garnett	Anderson	Kansas
	Paul R. Courad	521 Westburn Topeka	Shawnee	Kansas
	James Lawrence Berlin	1630 Maple Ave Twin Falls, 203 E. Tanager	Twin Falls	Idaho
	Maurice Patrick C. Keefe Jr.	Atchison, Kansas	Atchison	Kansas
	Harvey Joseph Kondella	RR 2 Pittsburg, Kan.	Crawford	Kansas
	Charles Donald Baxter	Stanton, Kansas	Rooks	Kansas
	Kenneth M. Loy	504 S. Georgia St. Pittsburg, Kan.	Crawford	Kansas
	James Roland James	Pleasanton, Ks.	Linn	Kansas
	William Parsons Sheldon	Salathia, Kansas	Nemaha	Kansas
	Alfred (S.R. Rose)	R.T.W. 8, Topeka 909 Topeka	Shawnee	Kansas
	Richard C. Cottle	Topeka, Kansas	Shawnee	Kansas
	Ray H. Calkins Jr.	Garden City	Finney	Kansas
	Chester A. Lewis Jr.	840 Cleveland Wichita, Kansas	Sedgewick	Kansas
	Sam Mac Prochaska	Ellsworth, Kans.	Ellsworth	Kansas
	Frank Whitaker Hush	1605 Washington Bldg. Kansas City, Kansas 2905 Wadley Ave	Wyandotte	Kansas
	Joseph Adams Baskin	Kansas City, Kansas	Wyandotte	Kansas

THE STATE OF KANSAS, }  
SUPREME COURT, } ss.

Subscribed in my presence and sworn to before me on the dates as above written.

# CLERK OF ATTORNEYS OF THE SUPREME COURT OF KANSAS

## OFFICIAL OATH

I do solemnly swear that I will support and bear true allegiance to the constitution of the United States and the constitution of the State of Kansas; that I will neither delay nor deny any man his right through malice, for lucre, or from any unworthy desire; that I will not knowingly foster or promote, or give my assent to, any fraudulent, groundless or unjust suit; that I will neither do, nor consent to the doing of, falsehood in court; and that I will discharge my duties as an attorney and counselor of the supreme court and all inferior courts of the state of Kansas with fidelity both to the court and to my cause, and to the best of my knowledge and ability. So help me God.

DATE	NAME	POST-OFFICE	COUNTY	STATE
JUN 29 1949	Eugene T. Hunkeler	Wetche, Kansas	Johnson	Kan
	John W. Wood Jr.	Hot and Cold	Leward	Kan
	Ira Marine Walker Wood	Liberal, Kansas	Leward	Kansas
	James H. Hunsicker	Liberal, Kansas	Leward	Kansas
	Eric Frank Butcher	Liberal, Kansas	Leward	Kansas
	Robert Frank Butcher	Liberal, Kansas	Leward	Kansas
	John Oliver Moore	932 Spaulding	Sedgwick	Kansas
	Robert J. Sinden	2218 S. Central	Sedgwick	Kansas
	Joseph H. Roth	1184 MacArthur	Sedgwick	Kansas
	Robert M. Ross	2012 Central	Sedgwick	Kansas
	Martin A. Belmore	1400 N. Main	Sedgwick	Kansas
	Lloyd H. Hoag	2012 Central	Sedgwick	Kansas
	Leo J. Callahan	2012 Central	Sedgwick	Kansas
	Paul Edward Evans, Jr.	2012 Central	Sedgwick	Kansas
	Dalton Telford Holland	2012 Central	Sedgwick	Kansas
	Kenneth Martin Noble	2012 Central	Sedgwick	Kansas
	Clyde Elmer Milligen	2012 Central	Sedgwick	Kansas
	Robert Patrick Luman	2012 Central	Sedgwick	Kansas
	Harvey J. Snapp	2012 Central	Sedgwick	Kansas
	Thomas Hyde Couray	2012 Central	Sedgwick	Kansas
	Ed Mitchellson	2012 Central	Sedgwick	Kansas
	Frank Dean Mitchellson	2012 Central	Sedgwick	Kansas

THE STATE OF KANSAS, }  
SUPREME COURT, }

Subscribed in my presence and sworn to before me on the dates as above written.

Walter Heitzinger  
Clerk of the Court.

*State ex rel. Stephan v. Williams*

as an attorney from the KTAS, which was originally established by 1855 Kansas Territorial Laws, ch. 58, § 1 *et seq.* Respondent asserts § 1 of the said laws grants the KTAS authority to name persons as attorneys entitled to practice law on its behalf even though such persons are not admitted to practice law by the Kansas Supreme Court. In fact, the language respondent relies upon is found in the by-laws of the KTAS and not in the territorial laws.

Commissioner Woleslagel's report reads:

"FINDINGS OF FACT

"1. This is an original action in quo warranto brought by the State of Kansas (State) on relation of the attorney general alleging that Franklin Dee Williams (Williams) has engaged in the unauthorized practice of law within this state.

"The petition requests this court to issue its order enjoining him from the unauthorized practice of law within the state in appearing as counsel or filing papers for others in any courts thereof, or in so assisting any other unauthorized persons to appear as counsel or file papers for others.

"In its petition, and its petition as later amended, the State asked that the Kansas Territorial Agricultural Society (KTAS) be declared a non-entity and similarly enjoined. During the October 25 hearing, the State withdrew its requests for action against KTAS.

"In his answer consisting of 88 numbered paragraphs and many attachments Williams appeared to deny all or some allegations of the petition. He also gratuitously amended the caption of the case to show that he was 'Contestee, and Cross-Claimant' and added 'ROBERT TAFT STEPHAN; and JOHN AND JANE DOES B to Z' as third party defendants. No permission has been granted to add any third parties.

"Further, he denied that this court had jurisdiction; he asserted that the attorneys representing the State were not entitled to do so; he alleged that he was the attorney general of this state; he claimed KTAS authority for his action; he counterclaimed and cross-claimed for actual and punitive damages and asked for an order of mandamus against an unnamed 'lower Court Judge.'

"2. Williams started filing pleadings in the District Court of Morris County on March 23, 1989, in Case Number 88-C-20, *The Federal Land Bank of Wichita v. J.A. Linn, et al.* (the Morris County case) filing 31 pleadings by October 30.

"The nature of the papers filed by Williams is indicated by the following index copied without any editing and with filing dates;

. . . . [The detailed index of pleadings has been omitted.]

"There was also evidence introduced which suggested that Williams appeared in two other courts on behalf of others. In those instances, however,

I hereby certify that this page 684 of REPORTS of Cases argued and determined in the SUPREME COURT of the state of Kansas Vol. CCXLVI dated December 9, 1989-July 12, 1990 is an accurate reproduction of the copy held in this Washburn Law School Library and that I am the Librarian herein as dated and signed.

Dated 10-28-93

Signed John E. Chrysler

Washburn Law School Librarian

ATTACHMENT EXHIBIT # \_\_\_\_\_

Publisher's

Fee \$ 16.40

**PAL**

# THE TOPEKA METRO NEWS

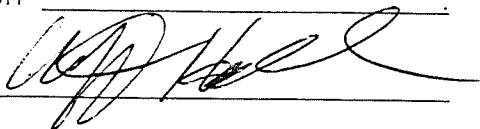
(formerly THE TOPEKA LEGAL NEWS)

## Affidavit of Publication

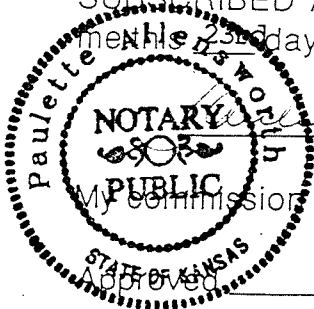
State of Kansas, Shawnee County, ss.

CLIFF HALL being duly sworn, says that he/she is duly authorized representative of **THE TOPEKA METRO NEWS** (formerly THE TOPEKA LEGAL NEWS), and that he/she knows that it is a newspaper which is continuously and uninterruptedly printed and published in Shawnee County, Kansas at least weekly fifty (50) times a year, and has been so published for more than one year prior to the first publication of the attached notice, and which is of general paid circulation on a bi-weekly basis, in said County and State; and is not a trade, religious or fraternal publication: and has been admitted to the mails as second class matter in said county and that the notice, of which the attached is a true copy, was published for 4 insertions in said newspaper, as follows:

1st insertion September 2, 1992  
2nd insertion September 9, 1992  
3rd insertion September 16, 1992  
4th insertion September 23, 1992  
5th insertion \_\_\_\_\_  
6th insertion \_\_\_\_\_



SUBSCRIBED AND SWORN TO before me this 23rd day of September A.D. 1992



Paulette H. Alpersworth  
Notary Public

My commission expires Sept 24, 1996

\_\_\_\_\_  
Judge

Published in  
**THE TOPEKA METRO NEWS**  
(formerly The Topeka Legal News)  
September 2, 9, 16, & 23, 1992  
**Annual Meeting**  
**"KANSAS TERRITORIAL**  
**AGRICULTURAL SOCIETY"**  
DATE: Monday, October 5, 1992  
WHERE: State Capitol  
Topeka, Kansas  
TIME: 10:00 A.M., 2nd Floor

THE EFFICIENCY LINE™ AN AMPAD PRODUCT

Account Total \$ 1.00  
Amount Paid \$ 1.00  
Balance Due \$ 0.00

RECEIVED FROM Frank Williams  
One and 00/100 Additional affidavit copy 19 DOLLARS

NO. \_\_\_\_\_

19

17-25

I wish to thank you for your kind attention and would now like to draw your further attention to Facts that seem to be valid of record:

1. The Society by Charter and Statute has Published the required Notice of Annual meeting at all times during at least 1992-93 and 1993-94 in the Topeka Metro News as remains required within Sec. 7. of Chapter 58 Law 1855 and can be found of Certified Record upon notice of request and the appropriate fee paid.

2. That according to Exhibit Attachment # \_\_\_\_\_ it is shown that "Findings of Fact page 684 clearly states that:

"In its petition, and its petition as later amended, the State asked that the Kansas Territorial Agricultural Society (KTAS) be declared a non-entity and similarly enjoined. During the October 25 hearing, the State withdrew its request for action against KTAS."

I can tell you that the Publications were made and that all members present elected the current late of Officers for 1993-94.

I ask that you recognize the Society "Charter" for what it is, and if you find that, and I so state that never has there been to my knowledge and Belief any attempt to repeal the charter and each of us should honor what has never been repealed or repealable.

With this much said I would ask that each of you assist in placing access to both real and personal property and funds of the Society, and further assist in Identifying both and see that they are placed back in our possession forthwith.

I would also like to know of any reason why any of you might have a problem with that under the circumstances so we will know how to proceed.

STATEMENT OF THE  
KANSAS GRAIN AND FEED ASSOCIATION AND THE  
KANSAS FERTILIZER AND CHEMICAL ASSOCIATION  
BEFORE THE  
HOUSE AGRICULTURE COMMITTEE  
REP. EUGENE SHORE, CHAIRMAN  
OCTOBER 28, 1993

My testimony is presented today on behalf of the members of both the Kansas Grain and Feed Association and the Kansas Fertilizer and Chemical Association. These two agribusiness organizations are comprised of 1,200 individual business locations across the state.

The Kansas State Board of Agriculture, through the over 70 laws it enforces, is the major regulatory agency that oversees the operation of our businesses. To list some examples, the Board of Agriculture checks the accuracy of our large truck scales; it certifies that the fertilizer, feed and seed we sell meet the guaranteed analysis; it assures our anhydrous ammonia equipment is safe; it verifies our fertilizer bulk containment dikes, loadout pads, etc. meet state regulations; and it audits our records to make sure the pesticides we sell and/or custom apply is done so in accordance with the state pesticide act. Obviously, we have a vested interest in the restructuring of the Board of Agriculture should it become necessary.

For those who have argued that the present structure of the Board of Agriculture is a situation where the "fox is guarding the chicken coop" our two organizations are good examples of how

House Ag. Co.  
10-28-93  
attachment #8



this simply is not true. For the first time in 1987, the legislature approved a change in the law allowing both KGFA and KFCA to send their respective organization's first delegate to the Board of Agriculture's annual meeting; and to this day, we only have one delegate each, among the hundreds empowered to elect the members to the board.

Having said this, we too believe the system has worked well over the years and would encourage the legislature to hold up any proposed changes to the Board's structure until such time as all court opportunities to overturn Judge Lungstrum's decision are exhausted. However, if legislative action becomes necessary we would encourage that some governing board be nominated, selected or elected, which would be as non-politically partisan as possible and would represent all constituency's who are impacted by the laws and regulations enforced by the agency. This governing board should then be empowered to hire the Secretary of Agriculture.

If such a board proves to be unconstitutionally achievable, then we would prefer a Governor-appointed Secretary rather than a statewide elected Secretary.

KGFA and KFCA's annual meeting will be held next month to finalize our position on this issue.

Thank you and I will be happy to respond to any questions you may have.

Testimony on  
State Board of Agriculture  
House Committee on Agriculture  
October 28, 1993  
Prepared by Joe Lieber  
Kansas Cooperative Council

Mr. Chairman and members of the Committee, for the record I'm Joe Lieber, Executive Vice President of the Kansas Cooperative Council. The Council has a membership of over 200 cooperatives. Of these, nearly 3/4 are farm supply cooperatives.

The Council feels that the State Board of Agriculture has done an outstanding job representing, supporting and promoting agriculture in Kansas. But more importantly, they have done just as good a job representing all Kansans when it comes to carrying out its responsibilities as determined by the legislature.

The reason I say this is because the department is involved in so many non-agricultural activities. Activities such as: inspecting our fuel pumps, flood control and clean water, inspecting the scales where we purchase our food. The department has done an outstanding job not only in promoting Kansas products but in consumer protection.

The State Board of Agriculture has been providing these services to all Kansans for over 122 years. It has been able to do this because of its current structure; a structure that insures continuity. The current structure has obtained this stability because the board is selected through a grass roots procedure and is regulated by the legislature that is elected by the people.

*House Ag Co  
10-28-93  
attachment 19  
19-1*



We are extremely disappointed that certain organizations have challenged the board's success and selection procedures. It would appear that with all the problems facing the world, the county and the state, their time, money and efforts could be put to better use.

The Council is happy with the current selection process and feel that the Court's decision is wrong, and the appeal process will be successful. The Council supports continuing the current structure of the board and the selection of the Secretary.

Thank you for your interest, and I'll be happy to attempt to answer any questions.

*Don Nagengast*  
*Kansas Rural Center*

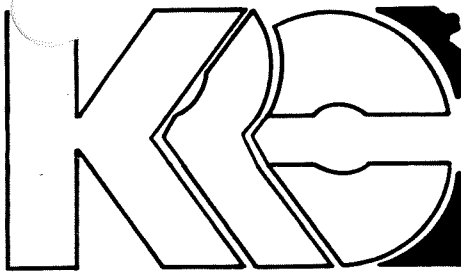
## The Kansas Rural Center

**P.O.Box 133  
Whiting, KS 66552  
(913) 256-2661**

The Kansas Rural Center continues to urge legislation that would change the Board of Agriculture to a Department of Agriculture, with the Secretary to be appointed by the Governor. We feel that this would create the means for all Kansans to provide input into decisions confronting Kansas agriculture, as well as providing a means to address disagreements about the regulatory policies of the Department.

Since the Senate hearings this summer, the Board of The Kansas Rural Center has adopted a position which would encourage further direct public input into Department of Agriculture policies through the establishment of issue specific *ad hoc* committees, task forces, or hearings. We do not support the creation of a permanent standing advisory board to the Secretary.

*House Ag Co*  
*10-28-83*  
*attachment 20*



**KANSAS RURAL CENTER**

# *RURAL PAPERS*

*Reporting with commentary on agricultural  
and rural issues*

No. 102

July/August 1993

## **The Lawsuit That Wouldn't Go Away**

Much to the dismay of status quo proponents, it looks like change is coming to the way Kansas organizes its agricultural politics. In response to the late June U.S. District Court order abolishing the Kansas State Board of Agriculture (KSBA) and the office of KSBA secretary, the Senate Agriculture Committee has scheduled interim hearings on the structure of the Kansas State Board of Agriculture and possible options. Hearings will be August 30 and 31 in Room 526 of the Statehouse beginning at 9 a.m. on both days.

Last April, responding to a lawsuit brought by the Kansas Natural Resource Council (KNRC) and Common Cause of Kansas, U.S. District Court Judge John Lungstrum of Kansas City declared that the board's selection process violates the one-person, one vote principle of the U.S. Constitution. On June 30, 1993, because the Legislature declined to address the issue before the end of the 1993 session, the Judge issued an order abolishing the board the office of the KSBA secretary, effective October 1, 1993. The court order names the Governor as receiver for the board until the State Legislature decides on a new structure or replacement body.

**Options.** The legislative discussion promises to be interesting as players and special interests start lining up behind the option of their choice. Although three bills addressing the issue were introduced fairly early in the 1993 session, legislative leadership refused to hold hearings on any of them. The options laid out in these bills will be among those discussed at the Senate Ag Committee hearings.

SB 85 provides for election of board members from districts similar to Board of Education districts; these members would then select the secretary. HB 2292 would make the secretary a gubernatorial appointment and abolish the board. HB 2134 would make it an elected position, much as, for instance, State Insurance Commissioner. It would establish an advisory board

elected just as it is now with current members filling out their term. Its duties would be advisory only. The Governor has stated she supports appointing the position. According to various reports, the Chairman of the Senate Ag Committee, David Corbin, has stated that he supports election of a statewide board and House Ag Committee Chair Eugene Shore supports gubernatorial appointment.

---

**To argue that we are making the discussion of agricultural issues political is absolutely right.**

---

The plaintiffs in the original lawsuit maintain that only two of the above options would satisfy both the federal and state constitutional issues: electing the state's chief agricultural official in a statewide election or allowing the governor to appoint a secretary of agriculture. According to Bill Ward, KNRC board member, election of statewide board members violates a state constitutional requirement that all state laws be implemented by the executive branch of government.

The KSBA board, though, is still fighting the decision. Represented by the State's Attorney General and hoping to maintain the status quo, the board has filed an appeal with the U.S. District Court of Appeals in Denver. At a minimum, the board appears to want to maintain as much of the existing system as possible.

**Comments.** Last spring, the Kansas Rural Center went on record supporting the gubernatorial appointment of a secretary of agriculture and abolishing the board. This still looks like the best option to us.

*continued on page 8*

**Lawsuit.... Continued from page 1**

Diminishing numbers of farmers make a statewide election of a secretary unappealing, as this would give urban voters more say than their rural counterparts. Special interests with large amounts of money would effect elections leaving all of those left out now, still left out. Maintaining even an "advisory" board leaves too much of the old network in place and would create tensions between the new secretary and the old board.

Supporters of the "if it ain't broke, don't fix it" position, express concern that change will make the secretary of agriculture position "political". This is almost an admission that the present system is undemocratic. Democracy is by nature "political." It is a system of government that ensures representation, equality of rights, opportunities and treatment. To argue that we are making the discussion of agricultural issues political is absolutely right. As with any political decision, there is bound to be good and bad, winners and losers. But at least, with a change, there is equality of opportunity. And that is what the lawsuit was all about.#MF



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***Kansas Farm Women:***

***Growing Out of the Tilt***

are available for borrowing from the KRC office. A \$2.50 fee to cover postage & handling is requested. For information on the 20 minute cassette, contact Diane at the KRC office: 913-873-3431.

The Kansas Rural Center (KRC) is a non-profit organization that promotes the long-term health of the land and its people through research, education and advocacy. The KRC cultivates grassroots support for public policies that encourage family farming and stewardship of soil and water. The KRC is committed to economically viable, environmentally sound and socially sustainable rural culture. **Rural Papers** is published bi-monthly by the Kansas Rural Center., Inc. Editor: Mary Fund. The KRC is funded by foundations, churches, and individuals. Staff include: Diane Dysart, Mary Fund, Jerry Jost, Dan Nagengast, and Ed Reznicek. Reprints of articles are encouraged with acknowledgement given to KRC.



Kansas Rural Center  
P.O. Box 133

Whiting, Kansas 66552  
(913) 873-3431

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393

Dan Nagengast  
Lynn Byczyansky  
10630 Hoch Road  
Auburn, KS 66402

STATEMENT  
OF  
IVAN W. WYATT, PRESIDENT  
KANSAS FARMERS UNION  
ON  
S.H.L. RESOLUTION NO. 1012  
(RESTRUCTURING THE STATE'S AGRICULTURE AGENCY)  
BEFORE  
THE HOUSE COMMITTEE ON AGRICULTURE  
OCTOBER 28, 1993

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I AM IVAN W. WYATT,  
PRESIDENT OF THE KANSAS FARMERS UNION.

FOR TWENTY YEARS, THE MEMBERS OF THE KANSAS FARMERS UNION HAVE  
RECOGNIZED THE CONSTITUTIONAL FLAW IN THE PRESENT STRUCTURE OF THE STATE'S  
AGRICULTURE AGENCY. NEEDLESS TO SAY, THE MEMBERS HAVE DISCUSSED THIS  
ISSUE IN DEPTH MANY TIMES.

THE FARMERS UNION HAS, OVER THE YEARS, OFFERED SEVERAL DIFFERENT  
APPROACHES TO THE SELECTION OF AN AGRICULTURAL COMMISSIONER OR SECRETARY  
THAT WOULD HAVE PROVIDED AN EQUAL OPPORTUNITY FOR ALL PERSONS IN  
PRODUCTION AGRICULTURE TO PARTICIPATE. OUR PRIME CONCERN HAS BEEN THE  
LONGER WE STALLED OR IGNORED THE ISSUE, THE MORE DIFFICULT IT WOULD BE TO  
MAKE THAT CHANGE.

THAT DAY HAS ARRIVED. BECAUSE OF ADDED RESPONSIBILITIES AND  
DUTIES IN REGULATION ENFORCEMENT AND POLICY MAKING, JUDGE LUNGSTRUM'S  
ORDER NOW LIMITS THE ALTERNATIVES.

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I REALIZE THAT SOME PERSONS IN AGRICULTURE HAVE DECLARED THAT "A CONSTITUTIONAL APPOINTED OR ELECTED POSITION IS A POOR ANSWER FOR A STATE LIKE KANSAS IN A COMPETITIVE GLOBAL MARKET PLACE". THAT STATEMENT RAISES TWO QUESTIONS.

FIRST, IF CONSTITUTIONAL AGRICULTURAL LAW IS NOT GOOD FOR KANSAS, WHAT ALTERNATIVE IS THERE ... AN AG-CZAR, ANARCHY, LAW BY SPECIAL INTEREST?

SECONDLY, IF "CONSTITUTIONAL LAW" IS A POOR ANSWER FOR A STATE LIKE KANSAS IN A COMPETITIVE GLOBAL MARKET PLACE, IS THERE SOMETHING "UNCONSTITUTIONAL" IN NAFTA THAT MAKES IT A GOOD ANSWER FOR KANSAS AND THE NATION IN A COMPETITIVE GLOBAL MARKET PLACE?

SOME ARGUE A CONSTITUTIONAL AGRICULTURAL DEPARTMENT MIGHT BE LESS FARMER-FRIENDLY. THE PAST DECADE HAS CERTAINLY NOT BEEN FARMER-FRIENDLY FOR THOUSANDS OF KANSAS FARM FAMILIES AND RURAL BUSINESSES. THIS RAISES THE ISSUE, HAS THE STATE BOARD OF AGRICULTURE DONE A POOR JOB? IN MY OPINION, OVER THE PAST DECADE, THE BOARD'S POLICY HAS BEEN A "VACILLATING" POLICY. ONE FOR NOT RECOGNIZING THE DISASTER OF THE 80'S. I BELIEVE I AM CORRECT THAT EVERY REPORT OF THE BOARD'S SECRETARY TO THE LEGISLATURE OVER THE YEARS HAS BEEN IN THE TONE THAT EVERYTHING IS FINE IN KANSAS AGRICULTURE. MR. BROWNBACK POINTED OUT IN HIS RESIGNATION STATEMENT, "IT IS TIME TO SOUND THE ALARM" FOR AGRICULTURE, POINTING OUT THERE ARE RURAL COUNTIES THAT HAVE LOST MORE THAN 18% OF THEIR POPULATION. THAT INDICATES AN OCCURRING DISASTER THAT NEEDS IMMEDIATE ATTENTION.

I ASK YOU, THE MEMBERS OF THIS COMMITTEE: WHAT DO YOU THINK WE OUGHT TO DO ABOUT THE DECLINING ECONOMY OF OUR FARM FAMILIES AND RURAL



COMMUNITIES? VACILLATE? CONTINUE THE SAME FOCUS? OR ARE WE GOING TO  
BROADEN THE FOCUS OF STATE GOVERNMENT AND SEEK NEW SOLUTIONS? IS IT TIME  
TO LOOK FOR NEW SOLUTIONS, NEW SOLUTIONS FOR OLD PROBLEMS?

THE FORMER SECRETARY OF AGRICULTURE WAS QUOTED AS INDICATING THE  
LOSS OF "CONTINUITY OF FOCUS" MIGHT NOT BE GOOD, STATING, "IF YOU GO TO A  
POLITICAL SYSTEM, YOU LOSE THAT." IS NOT OUR POLITICAL SYSTEM THE LIFE  
BLOOD OF OUR DEMOCRACY? IF IT WAS NOT FOR OUR POLITICAL SYSTEM, WOULD YOU  
LADIES AND GENTLEMEN OF THIS COMMITTEE BE HERE TODAY? IF IT WAS NOT FOR  
OUR WORKING POLITICAL SYSTEM, WOULD WE NOT BE A NATION LIKE MANY OF THE  
SOUTH AND CENTRAL AMERICA COUNTRIES? EVERY OTHER SYSTEM OF GOVERNMENT HAS  
EVENTUALLY FAILED, WHETHER IT BE ANARCHY, DICTATORSHIP, COMMUNISM OR  
SOCIALISM, CORPORATE OR OTHERWISE.

SOME GROUPS VOICE CONCERN THAT AN APPOINTED OR ELECTED SECRETARY  
OR COMMISSIONER WOULD BE TOO POLITICAL. IS NOT A POLICY OF VACILLATION OR  
DOING NOTHING A POLITICAL DECISION OR POSITION?

THE MEMBERS OF THE FARMERS UNION BELIEVE IT IS TIME TO TAKE OFF  
THE BLINDERS, TIME TO BROADEN THE FOCUS, TIME TO LET DEMOCRACY WORK, LET  
THE PEOPLE SPEAK, LET THE PEOPLE VOTE.

OUR POSITION ON THIS ISSUE BEFORE US IS THAT EITHER THE  
APPOINTMENT OF A SECRETARY OF AGRICULTURE, OR THE ELECTION OF AN AG  
COMMISSIONER WOULD BE ACCEPTABLE.

PRESENTLY OUR POLICY CALLS FOR THE ELECTION OF A SECRETARY OR  
COMMISSIONER OF AGRICULTURE.

THANK YOU.



**KANSAS  
NATIONAL  
FARMERS  
ORGANIZATION**

Collective Bargaining  
FOR AGRICULTURE

**HOUSE AGRICULTURE COMMITTEE**

October 28, 1993

**TESTIMONY BY LEROY BOWER, PRESIDENT  
NATIONAL FARMERS ORGANIZATION OF KANSAS**

Good Morning. I am LeRoy Bower, President of the Kansas NFO. Thank you for providing me a few minutes to address a matter of extreme importance to all Kansas citizens and an item of criticality to Kansas agriculture. I have particularly enjoyed the presentations and the richness of the diversity of opinions and of philosophy. As Kansans, We should be uniquely proud of our abilities. We should reflect from time-to-time on the tenacity and drive of our people, especially when we are faced with difficult circumstances which require decisions to be made at a point when risk is involved. When analyzing an issue as complex as "LEGISLATIVE RESPONSE TO COURT DECISIONS", the future organization and structure of the Kansas State Board of Agriculture, one approaches that task with a certain amount of trepidation. Decisions made, or the intentional act of not making a decision today, will be felt in numerous sectors of this State for years to follow. I do not envy you, the members of this committee, in your task of deciding what to do, and more importantly deciding the "WHEN" and the "HOW" of the issue. Please allow me to suggest some points for your consideration as you go through that process.

As I see the issue, We are faced with a two-part question which is interdependent. A decision on the first part of the Question directly influences our course of action on the second part of the Question. Succinctly stated you must decide "DO WE ACT OR DO WE NOT ACT"? The challenge which has brought us to this point was simple and direct; the judicial process has been swift and to the point, now We must decide. Should we pursue a progressive role, embrace change, and boldly step into the unknown? Should We conservatively stay the course, take no action, and await the eventual decision by the court? Should We examine the possibility of filing additional legal documents and extend the judicial review process? While those may seem to be choices available to this group, only one of those remains a viable alternative--embrace change and proactively work together to craft an organization which will best suit the needs of Kansans and meet the federal court test. Any other path is surely one which will lead to a continuation of what Sam Brownback referred to in his statement of resignation as being a state of being "STUCK IN THE MUD" at a time when direction and leadership is needed. We can ill afford to lose ground and stagnate while the court drama is played out to the tune of appeal after appeal. Kansas agriculture and the World of which it is a part has fundamentally changed since the inception of the State Board of Agriculture. It is time We change also.

If you concur that responsible governance dictates positive action, then we are faced with three primary conditions: One, an elected official; Two, an appointed official; and Three, another form of selection. Let's look at these one at a time. Our third alternative is what is currently being examined. It appears that our embodiment of law precludes continuation of selection by a sub-set of the general

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population. I can see no merit in designing a continuation of the conditions that have brought us to this juncture. It is strongly recommended that this body not seriously consider this type of situation. We are left with appointed or elected. Either situation places agriculture on an equal footing with our other departments of government. In either case, an expression of the will of the general population, either as a part of forming an administration or as a part of the general electoral process, the Kansas citizen of all localities, all communities, and of all persuasions has a voice. Here is where we need to concentrate our efforts. Certainly there is strong rationale to have an elected official. By the electoral process, the essential elements of a democracy are guaranteed to all citizens. In the political process, the concept of loyalties and philosophies comes into play. As candidates pass from the primary to the general election process, one oftentimes wonders if the population is voting for (A). The best candidate, or (B). The least offensive of the candidates. I would surely hate to preceive of such a set of conditions surrounding agriculture. It is also a well known fact that the best available candidate does not necessarily gain public office. It appears more and more that success is keyed directly to fund raising activities. I for one would not like to admit that this State thinks so little of the field of agriculture that we would place its' leadership up for sale to the highest bidder. You and I have more important responsibilities to discharge than to place that type of burden upon our successive generations of Kansas citizens.

We are left with the final choice, that of appointive office by the prevailing administration. While it could be argued that this is a less than perfect choice, The long term effects of such a policy lead to a parity with other divisions of government and maintain the constitutional protections for all citizens. Let me assure this assembly that agriculture in all of its' aspects will become more involved with governmental process. Rather that is good or bad remains to be seen. Within the confines of our current situation, this remains the best possible decision that can be reached.

It is the position of the Kansas NFO that legislative action is necessitated at this point and we encourage this body to act with strength and conviction; take a leadership role, seize an opportunity, strike down obstructionist views, and ACT!! Do not continue to force the federal court system to do our work for us. Sponsor and enact legislation which will result in an appointed Secretary of Agriculture that reflects the wishes of the Kansas citizen through democratic process. To do less would be harmful to a way of life that we all love. Mr. Chairman, that completes my testimony. Thank you for this opportunity. I stand to any questions you might have?

LeRoy Bower, President Kansas NFO  
R. # 5, Box 388, Pittsburg, Ks. 66762  
316 643 5391



**STATEMENT OF KANSAS AGRI-WOMEN  
TO THE HOUSE AGRICULTURE COMMITTEE  
REPRESENTATIVE EUGENE SHORE, CHAIRMAN  
REGARDING THE STRUCTURE OF THE  
STATE BOARD OF AGRICULTURE  
OCTOBER 28, 1993**

Mr. Chairman and Members of the Committee, I am Chris Wilson, appearing today on behalf of Kansas Agri-Women (KAW). Kansas Agri-Women is a statewide organization of women involved in agriculture. We are one of 49 affiliate organizations of American Agri-Women (AAW), the nation's largest coalition of farm, ranch and agribusiness women. I am currently serving as the National Vice-President for Communications of AAW and am a past state president of KAW. Kansas Agri-Women appreciates the opportunity to come before you today concerning the structure of the State Board of Agriculture.

First, we would like to commend you, Mr. Chairman, and your Committee for holding these hearings. The issue of the future structure of the state's agricultural agency is of such importance that we feel it merits the time you have committed to it. We also believe that it is important to address this subject at this time, while there is the opportunity for you to obtain extensive input from a variety of groups and individuals and to carefully consider a course of action. While we agree with many others that the best course of action in the immediate future may be no action, these hearings provide the necessary opportunity to study the current situation and determine what is best for Kansas agriculture and the whole state.

We believe the current basic structure of the State Board of Agriculture has worked well for all Kansans throughout its history, and we believe it to be constitutional. Rather than allow a judge to dictate to the Legislature how state agencies will be administered, we would like for the appeal to be pursued. The result of the appeal of this case has significant implications for the future of the state's largest industry and for a number of other state agencies, and perhaps other states, as well.

Kansas Agri-Women would like to emphasize some of the characteristics of the current law which we believe have contributed to the effectiveness of the State Board of Agriculture and which are necessary to be continued. We are committed to the continuance of a board of private citizens who are affected by the programs administered by the agency. Having such a board provides for greater public involvement in state government and ensures that the agency has the benefit of private sector expertise.

KAW is also committed to the continuance of an annual meeting of citizens interested in the work of the agency. This annual meeting further broadens the circle of public participation, providing valuable input to the agency and information to the public. This communication enhances the quality of agency programs, program delivery and decision-making.

Finally, a characteristic of the current structure which we believe to be most important is the provision for continuity of staff. The members of Kansas Agri-Women recognize that this continuity has contributed to the strength of the programs of the State Board of Agriculture, which in turn have added to the strength of the state's agricultural, and therefore total, economy. As an example, the continuity in the marketing programs has allowed Kansas companies to expand their efforts to market Kansas

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products worldwide.

As we compared our state's programs with those of other American Agri-Women affiliates, we have realized what outstanding programs we have and how fortunate we are to have the structure which currently exists. Other AAW members have often commented on their envy of Kansas' system.

My personal experience underscores these beliefs of Kansas Agri-Women. I am a native Illinoisan and worked for 3 1/2 years for the Illinois Department of Agriculture and for 4 1/2 years for the U.S. Department of Agriculture. With that background, and being familiar with the various state departments of agriculture, I believed that having an administratively appointed head of the agency worked well. When I moved to Kansas eight years ago, I thought the Kansas system was cumbersome and the board of agriculture unnecessary.

However, I have come to appreciate the strengths of Kansas' system. During the time I have lived here, there have been five USDA secretaries and three directors of the Illinois Department. Not only those positions have changed, but with each new secretary or director, all of the key staff members in the agencies have changed. Each new regime has taken considerable time to get people in place and trained. Then they reorganize, reset priorities and design new programs. By the time the programs begin to be implemented, the next administration comes in.

I have been amazed since leaving USDA that new secretaries of agriculture have come in, espousing the same ideas that were discussed or worked on while I was there, as if they were new. Former USDA Secretary Dick Lyng used to say that there were no new ideas or issues, they just resurfaced periodically. Unfortunately, this is a product of the political system which provides for frequent changes in leadership. It is uncommon for an administration to have the continuity to put a program in place and see it through to completion.

In contrast, the Kansas State Board of Agriculture has provided the continuity of leadership and staff to develop, implement and work with programs over time. An example of this which I've seen is the effort to create new uses for agricultural products. This is a very important effort which directly increases farm income and economic benefits for the whole state and country. When I was at USDA, this was an issue we worked on a great deal. When we left, the priorities shifted away from new uses. USDA has had numerous starts and stops and shifts over many years in its work on the development of new uses. The result has been ineffectiveness and lack of progress in this important area.

The Kansas State Board of Agriculture, however, seized on the idea of development of new uses for ag products and went to work. With consistent leadership over a period of years, they have been able to make significant strides in this area. Kansas was largely responsible for the establishment of the national New Uses Council and for the new uses provisions in the last farm bill passed by Congress.

In summary, Kansas Agri-Women supports the current structure and hopes the appeals court will rule in favor of its constitutionality. We believe that the continuance of a board of agriculture; an annual meeting of interested citizens; and provision for continuity of leadership are characteristics of the current system which are important to the future of Kansas and Kansas agriculture.

Thank you for this opportunity. I would be glad to respond to any questions you may have.

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Testimony before House Agriculture Committee  
October 28, 1993  
Steve Baccus  
Minneapolis, Kansas

I sat in a milo field this past week with the combines running around feverishly, while I was trying to jot down some comments to present to you all today. I couldn't help but think as I looked at that milo field, just how much I am affected by actions of the State Board of Agriculture, seed laws, grain inspection, etc., but also, just how difficult it is for me, as an individual to have any impact on any of that policy affecting me. Because of that is why I wanted to be here today.

First I would like to thank you all for the opportunity to present my viewpoints to your committee. I do want to say from the outset that I am here representing only myself. I am active in many agriculture organizations and I have discussed this issue at length with many people involved in agribusiness and would like to coalesce some of what I have learned into this presentation.

Two opinions seem to be prevalent. The first opinion is to stand firm and do nothing until all appeals are exhausted. This is the type of attitude that has gotten us where we are now. The second opinion ranges from throwing the wash out with the water and starting all over to a variety of compromise plans. The State Board of Agriculture is a wonderful organization and has preformed its functions admirably in the last 105 years. The make up of our Kansas State Board has been the envy of many states for quite some time. However, as we all know, times changed and the State Board did not. There were some in the ag community who had been saying the Board did not represent all those it regulated and thus it needed some changes. Their voices were to few and to faint to have the needed impact. And although I don't believe the courts are the place to take all of our problems, in this instance at least, it is moving people to action.

I, too, am one of those people who would like to see the appeal process carried through. I would like to know if other courts agree with this one and whether there is a court somewhere that is willing to admit that our judicial system is beginning to make laws instead of just interpreting laws as set forth in our constitution.

But beyond that initial step, I also believe we need some changes in the structure of the State Board of Agriculture. The people the Board regulates, in addition to agriculture, need also to be represented. The grocery store produce manager, the gas pump operator, water rights users, as well as environmental and natural resources issues all should have a say in the regulation process. The State Board of Agriculture, the courts, the plaintiffs all have had their say on the future structure of the Board. But, the people most affected by any State Board of Ag have not. Of course I'm referring to the individual farmers that make up Kansas Agriculture. Most of these people belong to one or more state farm organizations which are grass roots run. In other words the members dictate organization policy and positions.

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Since most of these organizations will be having their annual member meetings in the next two months, I propose to you that any recommendations concerning future structure of the Kansas State Board of Agriculture be postponed until the individual Kansas farmer can be heard. There are many compromise plans floating around out there and most will be discussed at these annual meetings. Hardly anyone is interested in a publicly elected board and Secretary, and even less people are interested in a totally appointed board and Secretary. Let the people most affected by the State Board of Ag devise some compromise plans and bring them to the legislature later this year for your consideration. To make a recommendation now would undercut the ability of the individual to have any affect on governmental policy.

Thank you for your time, consideration and interest.

PRESENTATION  
to  
HOUSE COMMITTEE ON AGRICULTURE  
regarding the  
KANSAS STATE BOARD OF AGRICULTURE

Good Morning Mr. Chairman and members of the House Committee on Agriculture, my name is Art Howell I am a century farmer from Lincoln, Kansas.

I come before you today to express my deep concern regarding the interference by the federal judiciary with fundamental rights of state government guaranteed within the frame-work of the United States Constitution.

I firmly believe it is time for state legislature's to resist judicial fiats that lack sound constitutional or other legal basis.

Originally the First Amendment, as well as the entire Bill of Rights placed restrictions on the federal government and not the states. The Supreme Court, however, through interpretation of the 14th Amendment has determined that the Bill of Rights should restrict the individual states in many of their actions. The series of Supreme Court rulings on this subject grew out of cases of manifest injustice to large groups of U.S. citizens. It seemed to many that there was no other way for the U.S. government to be able to assert itself to protect people from such injustice. However well intentioned the reason, it appears that this was in direct contradiction to the actual intent of those who drafted the First Amendment. The Supreme Court dictates in these areas are not unconstitutional in and of themselves, since the interpretation of the constitution in our government is expressly reserved to the United States Supreme Court, but the logical consequences of this tortured reasoning is now coming to roost in an area far removed from the intentions of those who, the 1950's and 1960's, caused it to happen. The latest expression is the declaration that the 120 year old KSBA is unconstitutional, despite a lack of popular outcry and its distinguished history of service to Kansas.

American government has become radically different today with the Supreme Court acting as our Constitution, deciding an issue, applying it universally, and trampling years of tradition and precedent.

Broad unlimited power to hold laws unconstitutional because they offend what the federal courts conceive to be the "conscience of our people" was not given by the Framers of the Constitution.

In Kansas, we are facing one of the most dramatic examples of the courts going logically, step by step, from redressing heart-wrenching wrongs to overturning a functioning, working state institution that was first established legally in 1872,

Self-government by we the people in Kansas is literally being wrestled from us by a legislating judiciary.

Intellectually, the Supreme Court justices have been sensitive to the philosophical currents of the day, and they have reflected with consistency what most people believe without consistency. In fact, it would not be too much to say that the Supreme Court has now descended to the level of a popular poll-taking agency, reacting to the whims of the many or to the pressures of the few. It certainly can no longer be regarded as a court of justice---divine, natural, or constitutional.

Thomas Jeffersons worst fears were that the courts would fail to declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGEMENT, the consequence would equally be the

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substitution of their pleasure to that of the legislative body.

The Courts have replaced law with opinions, the only absolute that remains in the system of law is the insistence that there is no absolutes.

Because of our fear of the consequences of a Constitutional Convention we must avail ourselves of every opportunity to give the Supreme Court a chance to confine and restrict further judicial activism. Judge Lungstrum has provided such an opportunity.

The Kansas Senate Committee on Agriculture, met August 30 & 31, 1993 and heard testimony on the structure of the Kansas State Board of Agriculture (KSBA). Most of those testifying requested that no action be taken regarding future KSBA structure pending the higher courts ruling on the appeal of Judge Lungstrum's opinion that the KSBA is unconstitutional.

The KSBA's present structure was created, over time, by the elected representatives of Kansas Government, they also carefully chose what laws the KSBA should administer.

Mr. Chairman, members of the House Committee on Agriculture, it is unthinkable that we allow a federal judge, **without superior court review**, to undo in one day what it has taken Kansas Government 120 years to create.

The KSBA, during its 120 year history has "met the challenge" and led the nation in adopting needed changes required by rapidly changing science and technology.

Change may again be necessary regardless of whether the present structure is ultimately found to be constitutional.

The changes I would propose for KSA 74-502 and KSA 74-502(b) are minor in nature and address the voting membership requirements. (50)

I would propose two changes to KSA 74-503 as follows:

1. Presently the statute provides that members of the Board are elected to represent their districts for terms of three years by vote of the entire delegate body, following nomination by district caucus. The statute would be changed to provide that members of the Board are appointed, to represent their districts for terms of four years, by the governor following nomination by district caucus.
2. The second change would require elections on the question of retention of members of the state board of agriculture. Upon declaration, the member's name would be submitted at the next general election to the electors of the state on a separate agriculture ballot, without party designation.

Art Howell PE is a century farmer, and a purebred beef cattle breeder from Lincoln, Kansas.

S T A T E M E N T   T O  
House Agriculture Committee

by  
Vernon McKinzie

October 26, 1993

KANSAS PEST CONTROL ASSOCIATION GOVERNMENT AFFAIRS CHAIR

Thank you for the opportunity to present this statement. Because I am participating at the National Pest Control Association Annual Meeting in Washington, D. C., I have asked Mr. Burgess of Burgess and Associates to represent us and be present to take questions. I will provide written response to any questions Mr. Burgess is unable to respond to.

I am a board certified Entomologist and operate pest control businesses in Emporia, Manhattan & Parsons. I am chair of the Kansas Pest Control Association Government Affairs Committee, and I present this statement on behalf of the Association. Our Association members provide services for pest management in structures, and we are regulated by the Kansas Board of Agriculture Plant-Health Division. I have also served as a voting delegate to the Annual Board meeting for about the past six years.

During the development of reorganization legislation, we ask you to give careful consideration to how staff changes would be affected any time a new Secretary is selected. The three bills introduced in the 1993 legislative session failed to address protection of directors and field staff personnel. Unless the Legislature expresses an intent on the issue, we fear a very chaotic situation could develop.

Because of the technical nature of the work involved in plant and insect management, pesticide regulations, meat-poultry-dairy inspections, water resources, weights & measures, chemical analysis, marketing and other division responsibilities, we believe it is of the utmost importance to have skilled, technically competent persons staffing the agency. You could insure that technically knowledgeable persons will continue to serve the citizens of Kansas by drafting legislation which protects classified employees. We believe only the Secretary, Assistant Secretaries, Attorneys and others in the administrative echelon of the agency should be subject to change when a new Secretary assumes office. We believe division directors and their technical staffs should be protected as tenured classified employees. We further believe staff stability at the director level and below is imperative to good enforcement. We fear frequent changes of division directors at the pleasure of a new Secretary would result in confusion and complicate dealing with the agency, and adversely affect enforcement activities.

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In drafting reorganization language, please consider writing some protection for the tenured classified technically educated employee. I believe such protections already exist in other agencies and the precedent has been established in such agencies as Insurance, Health, Commerce, etc.

I want to recognize Mr. Ranney Gilliland who contacted me to advise me of this meeting and thank him for the invitation.

Do you have any questions for us? Thank you.

Rt. 3 Box 320  
Ames, Ks 66901  
Oct. 17, 1993

Re: Secretary of Agriculture and the Kansas Board of Ag.

The secretary of Ag. should not be elected by the Board of Ag. and the Board of Ag. should not be elected by farm organizations.

1. The Kansas Board of Ag.'s annual meeting is made up of primarily Farm bureau and Kansas Livestock Association delegates.
2. Board members are either Farm Bureau or K.L.A.
3. I feel that not all farm organizations and not all farmers are being represented.

They should not be elected by the public.

1. Generally the public are not informed or don't care about candidates on the State lower positions.
  - A. When election comes, people usually have never heard of the candidates for Appeals Court, District Court, and the Kansas Board of Education.
  - B. They normally vote party and not on the individual credit.
  - C. The candidate with the largest campaign contributions for advertisement from certain organizations or companies can sway people for their vote.
2. The same thing would apply to board members if they were elected from districts.
3. If elected by the public, the Secretary of Ag. and the Board would be like another branch of government. They'd be like the Board of Education and not have to answer to the Govenor or legislatures for their actions.

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The Secretary of Ag. should be cabinet appointee by the Governor and approved by the Legislation.

1. The Governor needs to be able to work with the Secretary of Ag. and by him/her selecting the Secretary, this is more likely to happen.
2. The Governor should be able to pick his/her team (cabinet). He/she was elected by the public so if any of his/her team (cabinet) isn't doing their job good enough, he/she can either fix it or take the chance of not getting reelected.
3. The Legislature should approve the nomination of all cabinet appointees for a check and balance.
4. Four years should be sufficient for the Secretary of Ag. to accomplish a fair amount of things if the Govenor is not reelected.



Fred J. Detrixhe

October 28, 1993

Presented to: House Committee on Agriculture

From: Carol Maish

RE: State Board of Agriculture

- I. The system in use prior to the court ruling was good.
  - A. It met the needs of both farmers and ranchers and the agency divisions it regulated.
- II. If changes must be made, let's keep a State Board of Agriculture, not just a Secretary of Agriculture.
  - A. It will provide continuity to the programs the agency administers.
  - B. Agricultural diversity within Kansas must be a strong consideration.
    - 1. Our state's agriculture is diverse and has a wide range of requirements.
    - 2. Because members of the board are selected from districts, different perspectives are brought by each board member.
  - C. A Board of Agriculture must maintain control.
    - 1. It must have the power to elect or select the Secretary.
    - 2. It should not be overturned by a single individual or in a single period of time.
  - D. Board members must have expertise relevant to agriculture.
    - 1. The Board should have members from agriculture.
- III. Legislature could select board members keeping diversity and expertise in mind.
  - A. Legislators, as elected officials, should fit within the law. (One man, one vote)

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- B. All legislators within a district select that district's board member(s).
- IV. The Board of Agriculture should not be elected by the general population.
- A. General apathy from the voters is not conducive to dedicated representation.