

Approved: 2-11-93

Date

## MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairman, Representative Michael R. O' Neal at 3:30 p.m. on February 3, 1993 in room 313-S of the Statehouse.

All members were present except:

Representative Clyde Graeber - Excused  
Representative Joan Wagnon - Excused

Committee staff present:

Jerry Donaldson, Legislative Research  
Jill Wolters, Revisor of Statutes  
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the Committee:

Jim Clark, Kansas County and District Attorneys Association  
Richard Holmes, Chief Justice  
Terry Humphrey, Kansas Manufactured Housing Association  
Sherrie Harvey, Topeka  
Ed Dutton, Lawrence  
George Goebel, American Association of Retired Persons

Jim Clark, Kansas County and District Attorneys Association, appeared before the committee with a request for a bill introduction that would amend K.S.A. 22-3718 and 21-4610 to provide for restitution orders to become judgements enforceable under Chapter 60.

Representative Carmody made a motion to have this request introduced as a committee bill. Representative Bradley seconded the motion. The motion carried.

Hearings on HB 2130 were opened dealing with the temporary assignment of judges to the Supreme Court.

Chief Justice Richard Holmes appeared before the committee as a supporter of HB 2130. He stated that there is no valid reason why a retired judge or justice who is still an actively registered lawyer, and not engaged in practicing law, could not temporarily be assigned to the Supreme Court with full judicial authority. (Attachment #1)

Hearings on HB 2130 were closed.

Hearings on HB 2131 were dealing with that obscene devices, excluding devices used for medical or psychological purposes.

Jim Clark, Kansas County and District Attorneys Association, appeared as a proponent to the bill. This bill is an attempt to comply with the opinion of the Kansas Supreme Court in State v. Hughes by adding an exemption for devices used for medical or psychological therapy. (Attachment #2)

Hearings on HB 2131 were closed.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

## CONTINUATION SHEET

Minutes of the House Committee on Judiciary, Room 313-S, Statehouse, at 3:30 p.m. on February 3, 1993.

Hearings on HB 2132 were opened dealing with amending the Mobile Home Parks Residential Landlord and Tenant Act.

Terry Humphrey, Kansas Manufactured Housing Association, appeared before the committee as a proponent to the bill. HB 2132 fixes a problem that was discovered with the new Mobile Home Park Residential Landlord Tenant Act regarding the providing of services to their tenants. (Attachment #3)

A letter from Richard Benjes, Hutchinson, stated that he and other tenants at a lakefront park agree to provide their own services. Mr. Benjes and other tenants from this mobile home park would like to see this type of arrangement written into law so they could continue this agreement. (Attachment #4)

Sherrie Harvey, Topeka tenant, appeared before the committee as an opponent to the bill. She believes that if you pass this bill you are allowing landlords to get around their duty to provide for the health and safety of the tenants. (Attachment #5)

Ed Dutton, Lawrence tenant, appeared before the committee as an opponent to the bill. He believes that we should allow some time for the Mobile Home Park Residential Landlord Tenant Act to work its self out.

George Goebel, AARP, appeared before the committee neither as a proponent nor an opponent. He thinks that too much regulation and interference could escalate the cost of living in manufactured housing parks. (Attachment #6)

Hearings on HB 2132 were closed.

The Committee adjourned at 4:45 p.m. The next Committee meeting is February 4, 1993 at 3:30 p.m. in room 313-S.

## GUEST LIST

HOUSE JUDICIARY COMMITTEE

DATE February 3, 1993

[illegible]

House Bill No. 2130  
House Judiciary Committee  
February 3, 1993

Testimony of Chief Justice Richard W. Holmes

Thank you Mr. Chairman and members of the committee for allowing me to discuss with you HB 2130. This bill was requested by the Supreme Court.

This legislation would allow retired justices and judges to be assigned temporarily to the supreme court with full voting privileges and allow temporary service of an active court of appeals judge on the supreme court.

The proposed bill amends K.S.A. 20-2616 and K.S.A. 20-3002.

K.S.A. 20-2616 provides generally for the assignment of retired justices, as well as retired judges of the court of appeals and the district courts, to perform such judicial services and duties as they are willing to accept. The statute now allows those retired justices and judges full power and authority to decide all matters which come before them on assignment, except when the assignment involves service on the supreme court.

K.S.A. 20-2616(b) states: "A retired justice or judge so designated and assigned to perform judicial service or duties shall have the power and authority to hear and determine all matters covered by the assignment, but as to any matter pending in the supreme court the retired justice or judge shall act in an advisory capacity only."

The Kansas Constitution, Article 3, subsection 6, which applies to the district court, allows the supreme court to assign a district judge to serve temporarily on the supreme court. It has been our practice that any district judge assigned under this constitutional provision would be an active district judge who has full judicial authority to vote and participate as a supreme court justice when so assigned. Under K.S.A. 20-2616(b), district judges who have already retired are restricted to acting in an advisory capacity only, if assigned to the supreme court.

Presently, if we wish to avoid the possibility of a deadlock in the absence of one of our justices (whether because of an illness, a disqualification, etc.) we must temporarily fill the position with an active district court judge. In doing so, we must disrupt the operation of the district court. It may take a significant amount of the trial judge's valuable time to prepare for and attend to the supreme court functions.

There is no valid or constitutional reason, why a retired judge or justice who is still an actively registered lawyer, not otherwise engaged in practicing law, could not be temporarily assigned to the supreme court with full judicial authority.

It is indeed odd that a district judge, having barely five years of legal experience before assuming the judicial office (K.S.A. 20-334(a)(3) can, under Article 3, subsection 6(f), be temporarily lifted to the supreme court with full voting authority while a retired justice or court of appeals judge, who had to have more legal experience to begin with (K.S.A. 20-105), can only be assigned to serve as an advisor.

Our proposed amendment to K.S.A. 20-3002 would allow the supreme court to assign an active judge of the court of appeals to serve temporarily on the supreme court.

Court of Appeals judges must possess the same qualifications as supreme court justices [K.S.A. 20-3002(a)]. And, court of appeals judges are selected in the same manner as supreme court justices. K.S.A. 20-3004. Court of Appeals judges are judges with full constitutional judicial authority. Under the statutory scheme, a retired court of appeals judge may be assigned to sit in a district court or on the court of appeals and, just like any other constitutional judicial officer or judge pro tempore, fully determine any case which comes before him or her. K.S.A. 20-2616.

In the event of a sudden absence of a supreme court justice, it would be expedient and efficient to simply call a court of appeals judge, officing in the same building, to temporarily fill the spot.

If HB 2130 is adopted, we see no constitutional bar to assigning any retired supreme court justice, retired court of appeals judge, retired district judge, or active court of appeals judge (all of whom have otherwise met the constitutional qualifications for the judicial position which they hold or have held) to sit temporarily on the supreme court with full judicial power and authority, including voting privileges.

I anticipate the procedure we would follow would be relatively simply. We will prepare a list of qualified retired justices and judges who are willing to serve, that the court could use in selecting a temporary assignment.

Whenever the need for disqualification or recusal of a justice arises, that need will be conveyed to the Chief Justice or to the court in conference as soon as practicable in order to arrange for temporary assignment of a qualified jurist, if such assignment is desired by the court.

The court, by the concurrence of four justices, will select a qualified and available replacement for temporary assignment to the court to hear the case or cases for which the justice is disqualified or recused. The temporary assignments will be on an individual case-by-case basis.

The same procedure will be used to make judicial assignment(s) in case of a justice's temporary inability to attend court business due to illness, injury, or other excusable absence.

At the discretion of the Chief Justice, the temporary assignments may include responsibility for presentation in conference and opinion writing, but will not include general administrative duties of a justice.

In addition we would continue to use active district judges when appropriate and convenient.

We would appreciate your favorable consideration of  
HB 2103.

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EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

Testimony in Support of

### HOUSE BILL NO. 2131

James W. Clark, KCDA Executive Director  
House Judiciary Committee

February 3, 1993

House Bill No. 2131 was requested by the Kansas County and District Attorneys Association not, as the bill's title suggests, to promote obscenity, but to revive K.S.A. '92 Supp. 21-4301, which makes the promotion of obscenity a class A nonperson misdemeanor for first offenders, and a level 9 person felony for second and subsequent offenses. The bill is required because of the Kansas Supreme Court opinion in State v. Hughes, 246 Kan. 607, 792 P.2d 1023 (1990), which affirms a Sedgwick County District Court order holding 21-4301(1), (2) and (3)(c) unconstitutionally overbroad. While the statute has been renumbered, the corresponding sections are now (a), (b), and (c)(3), there has been no substantive revision since the decision.

The basis for the Court's decision is that uncorroborated medical evidence supported a finding that certain devices were used in legitimate medical treatment, and the statute made no exception for such treatment. Citing a long line of U.S. Supreme Court cases, the Kansas Supreme Court held that there is a liberty interest in the right of privacy, which encompasses medical and psychological treatment. The statute contains no exception for such treatment, and, since the Court made no effort to limit its holding to only cases involving medical or psychological treatment, those sections of the statute, as applied to obscene devices, remain unconstitutional under the Fourteenth Amendment.

House Bill 2131 does not take issue with the Court's opinion. It merely attempts to comply with the opinion by amending Section (c)(3), defining "obscene device", by adding an exemption for devices used for medical or psychological therapy. While the opinion seems to display something of a gender bias regarding therapy, the proposed language in the bill is gender neutral.

**KANSAS MANUFACTURED HOUSING ASSOCIATION**

**TESTIMONY BEFORE THE  
HOUSE JUDICIARY COMMITTEE**

**TO:** Representative O'Neal, Chairman and  
Members of the Committee

**FROM:** Terry Humphrey, Executive Director

**DATE:** February 3, 1993

**RE:** HB 2132

Mr. Chairman and members of the Committee the Kansas Manufactured Housing Association supports HB 2132. HB 2132 fixes a problem that was discovered with the new Mobile Home Park Residential Landlord Tenant Act last summer.

Specifically the new Act that became effective January 1, 1993, requires that all manufactured home park owners provide services to their tenants such as: removal of garbage and outlets for electric, water and sewer services.

However, after the Act was passed by the Legislature I was notified by Richard Benjes of Hutchinson that he has a lake home in a mobile home park in the area of Kanopolis Lake and he and other tenants are required to provide and maintain their own services. Mr. Benjes stated that the tenants have provided these services from the beginning and this situation is acceptable. Consequently, these tenants and the property owner would like to see the language of HB 2132 written into law allowing their tenant-landlord arrangement regarding services to continue.

The Kansas Manufactured Housing Association supports HB 2132 and we believe that the Kanopolis Lake situation is not unique and that tenants probably provide these types of services at other recreation developments in the State. Thank you.



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December 9, 1992

Mr. Michael R. O'Neal  
Gilliland & Hayes, P.A.  
P. O. Box 2977  
Hutchinson, KS 67504-2977

Re: Yankee Run (Kanopolis Lake);  
Senate Bill 757

Dear Mike:

I had previously visited with you concerning problems with the Mobile Home Parks Residential Landlord and Tenant Act. In particular, I advised you that I represent Mr. Wayne Feist, who inherited property from Alta Robinson in the Yankee Run area of Kanopolis Lake. Since I think you are familiar with Yankee Run, the area of concern is the mobile home portion.

Even before Kanopolis Lake was developed, a number of hunters and fishermen leased campsite or cabin areas from Alta Robinson. When the lake developed, a number of the sites were eventually converted to mobile homes. At the present time, there are approximately 120 sites, which would include approximately 25 mobile homes, in addition to a few R.V.'s and, a few "cabins".

The arrangement with Mrs. Robinson, and now with Wayne Feist, has been to lease a space or lot, on an annual basis, or on some occasions, 5 year leases. The lease is for the space only, with no services provided. Space rent had previously been \$85.00 per year, but with the effect of reappraisal, space rent is now \$120.00 per year.

When a person initially rents a space, he or she is quite aware that the lessee is responsible for all utilities and services. On a personal basis, I would note that my wife recently sold our mobile home which was located in the Yankee Run area and, has acquired a different mobile home which has now been moved onto a space rented from Wayne Feist. As lessee the responsibilities are:

HOUSE JUDICIARY  
Attachment #4  
02-03-93

- a. Electrical service. The area is served by Ark Valley Electric Cooperative, and, I will need to make arrangements for electrical service.
- b. The space does not have a septic tank, and, it will be my responsibility for installing the septic tank.
- c. A water connection will need to be made. Although Post Rock Water District now serves the area, the connection charges are fairly high. Therefore I have made arrangements with another lessee to connect to his well and will pay that person annually for the water well connection.
- d. Trash and rubbish removal. Although a company out of Kanopolis will contract to provide a barrel and haul trash, we bag our trash, and haul it back to Hutchinson for disposal.
- e. Propane. Several propane dealers service the area, and I will make arrangements with one of the dealers to get a tank, and to provide propane.

Obviously the requirements for providing services, and for maintaining those services, remain our responsibility as lessee, and with those companies contracting to provide the services.

Several mobile homes are sold each year. When the mobile homes are sold, matters affecting price, include whether the space has a Post Rock water connection, or its own well, septic tank, and such items as additional structures and landscaping.

I believe that Wayne Feist's situation is not unique, in that similar arrangements and facilities probably exist across the state, particularly where the mobile home park would have come into existence. It is not uncommon in this area for similar facilities to be located around sand pits, ponds, and lakes.

Before I visited with you, Wayne Feist reviewed the new bill, to determine if there were any substantial problems, other than the requirements of Section 13 requiring the landlord to provide and maintain services. In his review and mine, the only substantial problems appear to be with Section 13, and the rest of the provisions appear generally to be workable, mainly requiring drafting changes in the rental agreement.


I would suggest that a feasible solution to this situation

Mr. Michael R. O'Neal  
December 9, 1992  
Page 3

would be to amend the legislation to provide that when a tenant leases a space, or, renews a lease, and, knowingly agrees that certain services are not being provided by the landlord, but, will be provided by the tenant, the provisions of Section 13 could be waived. Perhaps there might be a requirement that the tenant might be required to knowingly and affirmatively agree in writing that the tenant will provide and maintain such services before the provisions of Section 13 would be waived. I would further see no problem with a provision that if the landlord has been providing services, no waiver would be effective as to those services.

I have discussed change in the statute with the Kansas Manufactured Housing Association, and, find that the Association is supportive of the change, but did not wish for the Association to re-open the legislation. Therefore, the suggestion was made that I work through you, to see that legislation is introduced as promptly as possible. I will visit with you within the next several days on this concern.

Sincerely,

  
Richard A. Benjes

RAB:bsb

cc: Mr. Wayne Feist

58-25,100

2\_3,93

We would like the Representatives to refer to statute 58-25,106. Which states a rental agreement shall not provide that the tenant or landlord does any of the following; agree to waive or to forego rights or remedies under this act. There are five more parts to this statute.

By allowing subsection A to be deleted, you are allowing landlords to be held not responsible for the health and safety of the tenants.

Let me tell you the story of the landlord who would turn off the water if he got angry at his tenants.

Statute 58-25,111 as it stands sets guidelines for the owners to follow. Even in a rental agreement, the law is a safeguard for the tenants that their health and safety and rights are protected.

Each one of you I know, can think of one mobile home court in your district that is an eyesore, and health and safety of the tenants are not being enforced right now.

Statute 58-25,113 states what tenants are to do and guidelines to follow. In section C, the phrase states specifically which services the tenant will be providing. Please explain what you mean by this phrase.

We ask that statutes 58-25,107 and 58-25,111 not be amended. And that this bill be sent to sub committee. I ask that I be allowed to sit in on the comments.

If you are wondering who I am, I helped to write the law, by setting a precedent with the California Act.

Madeline Robinson  
1441 N. Taylor #915  
Topeka, Kansas

Harold Asker  
1112 Starlight Cir  
Topeka Kan.

Thank You

Sherrie J. Harvey

Shirley J. Harvey  
1441 N. Taylor Apt 206

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# Kansas State Legislative Committee

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## 1993 Support Item Position Paper

### DETERMINE HOUSING NEEDS OF OLDER CITIZENS AND OTHERS AND SUPPORT LEGISLATION PROVIDING FOR THE SAFETY OF MOBILE HOME RESIDENTS

**POSITION:** AARP supports an upgrading of the federal construction and safety standards for manufactured housing with specific emphasis on life safety, durability and long-term affordability. In addition, AARP supports an improved manufactured housing inspection program to emphasize quality and durability as well as safety considerations. The Association also supports amendment of Title VI of the Housing Act of 1974 to require written service agreements that clearly establish responsibility for warranty repairs, including those resulting from transportation and installation.

**PROBLEM:** The fastest growing type of housing nationwide in the past decade is manufactured housing (including mobile homes). These figures from an analysis of the (USA Today article) 1990 census indicate a 59% increase in this type of housing. The average cost of a manufactured home in 1990 was \$27,800 (AARP study). This makes this type of home affordable for those Americans who could not otherwise afford conventional new homes in an average price range of more than \$100,000. According to the 1987 American Housing Survey almost 6% of older households live in manufactured housing parks. This mushrooming growth has revealed some problems. First, once in place, the cost of moving a mobile home is prohibitive. This places tenants at a disadvantage when they are displaced for land sale or other reasons. Secondly, some manufactured home residents are finding manufactured home parks a preferred place to live but at the same time are fighting to gain respectability in the housing world. Some regulations are necessary to protect tenants as well as manufactured housing park owners. Too much regulation and interference could conceivably escalate the cost of living in manufactured housing parks. Many manufactured housing parks are well-managed, and the park owners show utmost concern for residents in terms of durability, economy, esthetic appeal, and safety. On the other hand, there are manufactured housing parks in which management has much less caring for the tenants.

**SOLUTION:** Senate Bill 757 did become law in Kansas in 1992. This bill enacts the mobile home parks residential landlord and tenant act. While perhaps not satisfactory in some respects to either tenants or owners of manufactured home parks, this law does constitute a beginning in rental agreements in Kansas. The law also indicated that Kansas legislators know now that concerns can and do exist in regard to living in manufactured home parks. It would seem feasible to monitor the ramifications of this new rental agreement as it affects both tenants and owners of manufactured home parks in Kansas.

**CONTACT:** For more information:

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