

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 4, 1993 in room 313-S of the Statehouse.

All members were present except:

Representative Greta Goodwin - Excused

Committee staff present:

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

Conferees appearing before the Committee:

Chip Wheelen, Kansas Medical Society
John Bork, Deputy Attorney General, Criminal Division
Representative Alex Scott

Hearings on HB 2008 were opened relating to the district coroners duties, functions and compensation.

Chip Wheelen, Kansas Medical Society, appeared before the committee to offer an alternative approach regarding the selection of district coroners by the district court and compensation for district coroners. This proposed language would leave the authority to set the salary with the county commissioners and that it should not be less than the average salary or compensation paid to members of the board of county commissioners in their respective districts. (Attachment #1)

John Bork, Deputy Attorney General, Criminal Division, appeared before the committee to re-affirm the support of this bill by the Attorney General.

Representative Alex Scott appeared before the committee as a proponent to the bill. He recommends that we replace the present coroner laws which have not been substantially changed since the mid 1960's. (Attachment #2)

Hearings on HB 2008 were closed.

Committee discussion followed.

The committee took up consideration of Kansas Department of Health and Environment's balloon amendment. Representative Adkins recommended that the balloon be amended to provide on page 8 of the bill placing the words "...as pending." after the word "filed" in line 19.

Representative Carmody made a motion to adopt the balloon amendment from Kansas Department of Health and Environment with the change that Representative Adkins recommended on the second amendment on page 8. Representative Graeber seconded the motion. The motion carried.

Representative Everhart offered an amendment to place the district coroners under the tort claims act. (Attachment #3)

Chairman O'Neal explained that if the district coroner is a practicing physician in the community, his malpractice insurance does not cover him when he goes from the job of physician into that of a district coroner. He is required to pick up additional coverage which may or may not be available at an affordable price. Under this amendment they would be covered under the tort claims act, just like charitable health care providers.

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 4, 1993.

Representative Everhart made a motion to adopt her balloon amendment. Representative Pauls seconded the motion. Committee discussion followed. The motion carried.

Paul Shelby, Office of Judicial Administration, explained the balloon amendment he pass out at the January 27, 1993 meeting. (See January 27, 1993 minutes, attachment #6.)

Committee discussion followed.

In the proposed amendment, the selection of hiring is done by the district attorney or county attorney. They select names and submit them to the county commissioners and they select one name. The salary would be decided between the coroner and the district judge, with the board of county commissioners being responsible for payment to the coroner. This proposal would take this function away from the Medical Society and give to it the district attorneys.

Several members of the committee were concerned as to whether the smaller counties would have some say in who was going to be appointed and how much they were to be paid.

Chairman O'Neal proposed to take up a motion that addresses the problem of changing the judicial district to county where indicated and also the issue that we leave the recommendation with the Medical Society, then adopt the language from the Judicial Administrations amendment on who makes the selection, and who is responsible for payment.

Representative Scott made the motion to accept Chairman O'Neal's proposal. Representative Wells seconded the motion. The motion carried.

The next issue was the place of filing. The Office of Judicial Administration proposal is that instead of the report being filed with the clerk of the district court it would be filed with the district or county attorney for investigative purposes and when a prosecutor determines that there is no further investigative need for the report it would be filed with the office of the county clerk in the county in which the death occurred.

The proposed amendment also provides that the district coroner can withhold a report if in his opinion disclosing that report would interfere with an ongoing criminal investigation.

Representative Carmody stated that if this was defined as a criminal investigation record then there is already a procedure in the open records act. It's not subject to disclosure but the court can order it under certain circumstances.

Representative Carmody asked if the Office of Judicial Administration would have objections to allowing the district court to review the decision by the district attorney as to how long the report is going to held. Shelby said that he would have no objections to that.

Representative Rock stated that it is important in some cases, such as homicides, that the records be keep confidential.

Representative Plummer made the comment that the record could be sealed upon request of the prosecutor by the court until further notice from the prosecutor.

Representative Garner made the suggestion that we go back to the original bill proposal and allow the coroner, if they feel it might jeopardize an investigation with leave of court, to file a report under seal with the clerk of the district court. It would be up to the court to decide when it should be made a public record.

CONTINUATION SHEET

Minutes of the House Committee on Judiciary, Room 313-S, Statehouse, at 3:30 p.m. on February 4, 1993.

Chairman O'Neal made a proposal that the coroner be required to file the report, but have some power to suggest that there are circumstances that warrant nondisclosure, designating this as a criminal investigation record and filing it with the court.

Representative Carmody made a motion to accept Chairman O'Neal's proposal as an amendment. Representative Garner seconded the motion. The motion carried.

The proposed amendment from Kansas Medical Society, would leave the authority to set the salary with the county commissioners and that it should not be less than the average salary or compensation paid to members of the board of county commissioners in their respective districts. After committee discussion no motion was made to include this amendment in the bill.

A technical amendment on page 4 changes the word "attachment" in line 36 to the word "indirect".

Representative Everhart made a motion that we accept this change in the amendment. Representative Pauls seconded the motion. The motion carried.

Chairman O'Neal requested that we have a balloon of the bill prepared for each committee member before final action is taken.

The Committee adjourned at 5:30 p.m. The next Committee meeting is February 8, 1993 at 3:30 p.m. in room 313-S.

GUEST LIST

HOUSE JUDICIARY COMMITTEE

DATE February 4, 1993

[illegible]



KANSAS MEDICAL SOCIETY

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January 28, 1993

The Honorable Michael O'Neal
Chairman
House Judiciary Committee
426S, Statehouse
300 SW 10th Ave.
Topeka, KS 66612

Dear Chairman O'Neal:

On behalf of the Kansas District Coroners Association I want to express our sincere appreciation for the amount of time that you and your Committee have devoted to the subject of HB 2008. If we had known that there would be so much opposition expressed, we would have worked with those organizations in order to negotiate acceptable language in an effort to make quick work of the legislation during the 1993 Session. Because none of those organizations appeared at the hearings conducted during the 92-93 interim, we were not made aware of their concerns.

In view of the opposition expressed by the judicial branch regarding the "executive functions" contained in sections 2 and 3 of the bill, we would offer an alternative approach. We would recommend that the compensation authority remain within the jurisdiction of boards of county commissioners in the judicial district, but that minimum compensation for district coroners and deputy coroners be established in order to assure that competent physicians are recruited and retained to serve in those positions. Attached to this note is draft language which we would offer as substitute language for sections 2 and 3. This new section 2 would require that district coroners be compensated at a level equal to the average compensation paid to members of boards of county commissioners in the judicial district and deputy coroners would be paid at least half that amount. This language also provides for mileage allowances or vehicle allowances and describes how the cost therefore would be apportioned among the various counties in multi-county judicial districts.

It appears that another controversial aspect of HB 2008 is section 6 regarding the coroner's report in relation to a criminal investigation. If this section of the bill jeopardizes its passage, we would request that section 6 be stricken entirely.

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The Honorable Michael O'Neal
January 28, 1993
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We also recognize the controversial nature of the repeal of K.S.A. 1992 Supp. 22a-237 regarding alcohol and drug tests on accident victims. We do, however, maintain our position that it is inappropriate to impose such duties on district coroners when as a routine matter law enforcement personnel usually order such tests to be performed whenever a person is killed in an automobile or boating accident. In addition, the Federal Aviation Administration conducts similar tests whenever an aircraft crash results in a death. Perhaps HB 2008 should be amended in such a way that two new sections are added which would amend K.S.A. 8-1001 and K.S.A. 1992 Supp. 32-1132 to require that whenever an automobile or water vessel accident results in a death that the officer shall require that blood be withdrawn, and that the blood be sent to the KBI laboratory for analysis to determine whether the victim was under the influence of alcohol or drugs. This would avoid costly duplication that exists under current laws.

Again thank you for the opportunity to provide input on HB 2008. We are preparing multiple copies of this letter and attachment so that you may distribute it to committee members if you desire.

Respectfully yours,



Chip Wheelen
Director of Public Affairs

CW/cb

Attachment

CC: Alan Hancock, M.D.

Substitute for sections 2 and 3; HB 2008

Sec. 2. K.S.A. 22a-227 is hereby amended to read as follows: 22a-227. (a) The district coroner shall receive compensation for serving as district coroner in an amount established by resolution of the board of county commissioners of the county comprising the judicial district, or in those judicial districts comprised of more than one county, by resolution of the board of county commissioners of the county having the largest population of the counties in such judicial district. The amount of compensation paid to district coroners shall be not less than the average compensation paid for an equivalent period of time to a member of the board or boards of county commissioners in the judicial district.

(b) Deputy district coroners shall receive compensation for serving as deputy district coroner in an amount established by resolution of the board of county commissioners of the county comprising the judicial district, or in those judicial districts comprised of more than one county, by resolution of the board of county commissioners of the county having the largest population of the counties in the judicial district. The amount of compensation paid to deputy district coroners shall be not less than half the compensation paid for an equivalent period of time to the district coroner.

(c) In addition to other compensation paid, district coroners and deputy district coroners shall be paid the allowance prescribed under the provisions of K.S.A. 75-3203a, and

amendments thereto, for each mile necessarily and actually traveled in the course of performing official duties when such travel requires the use of a privately owned vehicle. In lieu of the allowance prescribed under the provisions of K.S.A. 75-3203a, and amendments thereto, the district coroner or deputy district coroner may agree to accept a regular periodic allowance for the use of a privately owned vehicle in performing official duties.

(d) The compensation to be paid to district coroners and deputy district coroners under this section, the compensation to be paid to a district coroner for conducting an inquest pursuant to K.S.A. 22a-230 and amendments thereto, and any other fees and allowances for expenses authorized to be paid to district coroners and deputy district coroners shall be paid by each of the counties in the judicial district in the proportion that the population of the county bears to the total population of the judicial district. The board of county commissioners of the county having the largest population of the counties in the judicial district shall provide for the payment of such compensation and other fees and allowances for expenses from a fund to be set aside by the board of county commissioners and to which each county in the ^{judicial} district shall contribute its share of such payments on a monthly basis.

drafted by Chip Wheelen, KMS, 1/28/93

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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: ELECTIONS
JUDICIARY
PUBLIC HEALTH AND WELFARE

Testimony on H.B. 2008

By Representative Alex Scott, M. D.

I appear before you today to recommend the adoption of H. B. 2208 to replace a number of previous coroner laws which have not been substantially changed since the mid 1960's. As we have moved into the more sophisticated world, socially as well as criminally, this legislation needs to be updated to fit the present time.

Kansas is at the present time the domicile of only one forensic pathologist who is board certified. There are a number of capable pathologists in the state who do excellent autopsies but they do not have the extra training for forensic skills. There has been no changes in the coroners fees and salaries since the mid 1960's and this bill addresses this fact and changes the pay system to the jurisdiction of the District Administrative Judge who has the right to negotiate with the coroner to establish fees, mileage and salaries. This should allow for variations in the cost and economy of the various areas of the state and supply a much more equitable system than presently exists.

A number of updates in how and when the coroner files reports,
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and a new system for summoning jurors for an inquest is outlined. The coroner also is directed how and when inquests are held and how jurors are selected. There are also provisions for confidentiality until after arrest warrants have been prepared and issued, if, in the opinion of the coroner, there would be interference in apprehending the miscreants. Many of the previous portions of the coroners law have been retained and some parts of the coroners law have been specified and clarified, particularly in the matter of death certificates and reports. The handling and disposition of the deceased is also specified in this act.

I believe this to be a good law as it constructively amends the previous statutes. I believe it will help Kansas attract forensic pathologist to the state. It is hoped that as a spin-off of this change in the law a Department of Forensic Pathology may be established, if the appropriations are available at the University of Kansas Medical Center as part of the College of Health Sciences.

I would urge you to approve this bill within the committee for advancement to the House for action,

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HOUSE OF
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Addendum to Testimony on H.B. 2008

by Representative Dr. Alex Scott

February 4, 1993

I am sorry that H.B. 2008 updating the coroner's system has met with so many objections. However the coroner's system has served the people for approximately 30 years with substantially some of the same provisions that are in the updated bill. I refer to appointment of the coroners by the district judges of the judicial districts. This has focused the responsibility in one office and has not created a need to repeatedly go before a county commission to negotiate for fees and costs. Particularly in rural districts there are problems when a coroner from one county has to serve another county in the absence of the local coroner who may be away to get post graduate education or for a rare vacation. In this case it is very easy for the county commissioners of the second county to not pay for the coroners services when the coroner is from out of the county. Obviously this creates a problem the next time an unattended death occurs under these circumstances. With the increased costs of conducting a medical office it is going to require considerably more money to get people to serve as coroners. I need not delineate these costs as they probably are familiar to most of you in your own businesses but there's been no adjustment for inflation in thirty years and that is untenable in this system. It is only through the good graces and the public spirit of Kansas physicians that the system has worked this well and this long.

In regard to the filing of death certificates: a filing of a incomplete death certificate where the final diagnosis is pending seems appropriate in this day when there may be a period of several weeks before definitive laboratory diagnosis can be established. To file and refile repeatedly seems untenable. There are problems with filing death certificates because of double indemnity on insurance policies so that the cause of death, whether it be accidental or by other means, other causes, is one of the problems.

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We heard graphically described before this committee a truly difficult situation that had arisen in one of the western Kansas counties. We have heard testimony from the funeral directors that they wish to get on with the business of the funeral and to get arrangements made so that the family can get a financial settlement and I think indirectly collect their fees for the burial services. I do not blame these people for looking out for their own economic interests but the prevention of crime through the apprehension of miscreants has a higher priority perhaps than the early disposition of the remains. After hearing the description of that case surely no one that heard the testimony can fault a system that tries to prevent that sort of thing from happening. The fact that this family could not come to grips with the grief created by an unexplained death is not unknown.

Testimony prepared is almost inaccurate in saying that we have one forensic pathologist in Kansas. Within the week there will be at least three and probably a fourth such person is on the way.

The addition of forensic pathologists to the armamentarium of medical practice is extremely important and is a great step to a state medical examiners system which may be a reality within two to four years.

I look forward to that situation obtaining at the earliest possible date, even though it will be somewhat more expensive, but in these days when the death rate from homicide is increasing the coroners office is a bulwark against this onslaught.

I would ask you to support and modify this bill to put it in a form that will close the interium until we can act on a much better system probably within five years.

Thank you for the opportunity to testify before you and I shall stand for questions.

HOUSE BILL NO. _____

By Representative Everhart

AN ACT concerning the tort claims act; relating to coverage of district coroners; amending K.S.A. 1992 Supp. 75-6115 and repealing the existing section.

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

Section 1. K.S.A. 1992 Supp. 75-6115 is hereby amended to read as follows: 75-6115. (a) The Kansas tort claims act shall not be applicable to claims arising from the rendering of or failure to render professional services by a health care provider other than a charitable health care provider, a district coroner appointed pursuant to K.S.A. 22a-226, and amendments thereto, or a hospital owned by a municipality and the employees thereof. Claims for damages against a health care provider that is a governmental entity or an employee of a governmental entity other than a charitable health care provider, a district coroner appointed pursuant to K.S.A. 22a-226, and amendments thereto, or a hospital owned by a municipality and the employees thereof, arising out of the rendering of or failure to render professional services by such health care provider, may be recovered in the same manner as claims for damages against any other health care provider.

(b) As used in this section:

(1) "Charitable health care provider" shall have the meaning provided by K.S.A. 75-6102, and amendments thereto.

(2) "Health care provider" shall have the meaning provided by K.S.A. 40-3401, and amendments thereto.

(3) "Hospital" means a medical care facility as defined in K.S.A. 65-425, and amendments thereto, and includes within its meaning any clinic, school of nursing, long-term care facility, child-care facility and emergency medical or ambulance service