

MINUTES

SENATE COMMITTEE ON AGRICULTURE

August 30-31, 1993
Room 526-S -- Statehouse

Members Present

Senator David Corbin, Chairperson
Senator Christine Downey, Ranking Minority Member
Senator Sheila Frahm
Senator Gerald Karr
Senator Don Sallee
Senator Don Steffes
Senator Carolyn Tillotson
Senator Bill Wisdom

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Member Absent

Senator Steve Morris, Vice-Chairperson

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Jill Wolters, Revisor's Office
Lila McClaflin, Committee Secretary

Conferees

David Plinsky, Attorney General's Office
Attorney General Robert Stephan
Thayne Larson, President, Kansas State Board of Agriculture
Michael Woolf, Common Cause of Kansas
Sam Brownback, Topeka
Bill Craven, Kansas Sierra Club
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, Inc.
Karen Hanzlicek, Dairy Farmer, Netawaka

Bernard Giefer, Jr. , Attorney, WaKeeney
Franklin Williams, Kansas Territorial Agricultural Society
Tom Tunnell, Kansas Grain and Feed Association and Kansas Fertilizer and Chemical Association
Joe Lieber, Kansas Cooperative Council
Dan Nagengast, The Kansas Rural Center
Ivan Wyatt, Kansas Farmers Union
LeRoy Bower, National Farmers Organization of Kansas
Chris Wilson, Kansas Agri-Women
Dwight Haddock, Associated Milk Producers of Kansas
Vernon McKinzie, Kansas Pest Control Association
Glenda Mellies, Kansas Territorial Agricultural Society

**August 30, 1993
Morning Session**

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

The meeting was called to order by the Chairperson David Corbin at 9:00 a.m. in Room 526-S of the Statehouse. He announced the agenda for the meeting would begin by having a briefing by staff on the history of the Kansas State Board of Agriculture, carryover bills on this topic that are before the Legislature, and an update on the lawsuit concerning the Board of Agriculture and the order of the U.S. District Judge. In addition, the Committee will hear from conferees and receive their recommendations for the future of the Board, and discussion by the Committee will take place on the afternoon of the second day regarding the direction the Legislature should take in response to the court decisions. The Chairperson said it was his intention to develop some suggestions from the hearings for a draft of a bill that could be reviewed at the November meeting. Staff was called on for a briefing.

Staff briefed the Committee regarding the history of the Kansas State Board of Agriculture (KSBOA) . The staff memorandum outlines how the current Board and Secretary are selected and lists the seven divisions in the agency that the Secretary has the responsibility of administering. Also attached to the memorandum were copies of the statutes governing the election and duties of the Board, membership of the State Fair Board, and a list of laws administered by the KSBOA. The memorandum and attachments are on file in the Kansas Legislative Research Department.

Staff 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 on during the 1994 Session. Staff's memorandum is on file in the Kansas Legislative Research Department.

The Chairperson remarked that the bills were not heard during the 1993 Session as they were waiting for the opinion of the court regarding the lawsuit. The Chairperson opened the hearing

on KSBOA -- Legislative Response to the Court Decisions, and called on David Plinsky to brief the Committee on the lawsuit and decision of the Court.

Mr. Plinsky reviewed the case *Hellebust vs. Brownback*. He stated U.S. District Judge John Lungstrum of Kansas concluded in June that the current method of selection of State Board members violates the one man, one vote policy required by the *U.S. Constitution*, and that his ruling was as of October 1, 1993 all Board seats and the position of Secretary would be vacated and the Department would be turned over to the Governor. The Governor would be responsible for appointing a person who would be in authority at the agency. A counter suit has been filed by the Attorney General in the U.S. 10th District Circuit Court in Denver. He mentioned the plaintiffs in the suit also had filed for attorney's fees of \$72,391.35 plus an additional \$10,000.00 for difficulties they encountered and another \$3,635.50 for the cost of postage, phone calls, facsimile, travel, and photocopying. A request was made to furnish the Committee with a copy of this filing.

In responding to questions regarding who the Chief Engineer of the Division of Water Resources reported to, Mr. Plinsky said he was hesitant to say, but according to the flow charts it did not show the Chief Engineer reporting to anyone. He asked that the question be referred to Kenneth Wilke from the State Board of Agriculture. Mr. Wilke responded to the question by stating that the Chief Engineer is hired by the Board and he is responsible to them.

Attorney General Stephan cautioned that a change in the structure of the State Board of Agriculture could affect various other state agencies or boards that are filled largely with representatives of the industries that they regulate. He further cautioned if the selection procedure is changed for the Board of Agriculture it could stop the appeal and the judgement would be moot.

Responding to questions, the Attorney General named several boards such as Workers Compensation, Board of Nursing, the Supreme Court Nominating Committee, all of these require the Governor to choose from a list of nominees. The Legislature needs to take note that notice has been given that the selection process of these boards needs to be reviewed.

Thayne Larson, President of the Kansas State Board of Agriculture, stated the Board is firmly convinced that the decision of the U.S. District Court was in error and it had to be appealed for the good of all Kansans. He also stated that the Board supports the Attorney General's opinion that the wide ranging ramifications of this case may affect other structures of state government. Therefore, he discouraged any changes at this time and asked that the judicial appeal be allowed to decide if the Legislature and the State of Kansas can determine the form of government it desires and govern itself for the good of all Kansans (Attachment 1).

Responding to questions, Mr. Larson stated having the Board elected by popular vote would be a more acceptable process than some of the others that have been suggested, because the Board would be accountable to the people who elected them, as they are now. He indicated, however, that he preferred the current system as it functions under the laws passed by the Legislature and therefore is accountable to the Legislature. He stated that it is a good system because it is less political and has more grassroots input. Responding to a question regarding removing the Weights and Measures Division, from the State Board of Agriculture, he said he opposed any splintering of the agency.

Mr. Larson referred to Don Jacka, Acting Secretary of the Board, to respond to some questions regarding national recognition of the Weights and Measures Division and a question regarding dairy production in the state.

Michael Woolf, the next conferee, stated the goal of Common Cause of Kansas and the Kansas Natural Resource Council in filing the lawsuit challenging the constitutionality of KSBOA was to make certain that government is accountable and accessible to the citizens it serves. He stated that they believe the current structure of KSBOA prevents it from being accountable to all of the citizens who must live with the results of the Board's decisions. He urged the Legislature to enact a remedy that meets the constitutional guideline requirements instead of pursuing it in the courts. He asked the Committee to introduce legislation that would set up a cabinet level KSBOA headed by a gubernatorially appointed secretary, who would be subject to Senate confirmation (Attachment 2).

Responding to questions, Mr. Woolf said he opposed statewide election of the Secretary as he thought that might tend to pit the rural interests against urban interests, and he thought the current system would still be unconstitutional even if it was broadened to allow more organizations to participate.

Several members of the Committee suggested that staff look at other states and see how their departments of agriculture are established. The Chairperson stated it was his intention by the end of the hearings for staff to have enough direction to draft a bill that could be looked at when the Committee meets in November.

The meeting recessed for lunch at 11:22 a.m.

Afternoon Session

The Chairperson reconvened the meeting at 1:36 p.m. He announced a letter from Lois M. Scott, Decatur County, supporting the current method of selecting the Board and Secretary had been distributed (Attachment 3), and at the request of the Committee, the Attorney General's office had provided copies of the lawsuit concerning the plaintiff's request for reimbursement for fees incurred was distributed (Attachment 4). He called on Sam Brownback as the next conferee.

Mr. Brownback said he was appearing as a private citizen concerned about the future of Kansas. He believes that a broad type of structure is the best system and that it could be designed to meet the constitutional requirement. He mentioned there was a chance that other agencies in state government might be sued on the same constitutional question, and encouraged the matter to be taken forward on appeal. He also stated that the 10th District Circuit Court be urged to expedite the hearing so that a clear ruling could be issued prior to the 1994 Legislative Session. He offered to work with the Committee to develop legislation along the lines he addressed (Attachment 5).

Responding to questions, Mr. Brownback stated that the functions of the agency would continue when the receiver comes in October 1. He urged the Committee to take the necessary time to address the issue.

William Craven, of the Kansas Sierra Club, testified that he believed there will not be a reversal on the opinion in the 10th District Circuit Court and that the Legislature should enact legislation that complies with the ruling in the federal court. He stated that 1993 H.B. 2292 is the appropriate vehicle and urged the Committee to recommend it favorably (Attachment 6).

In responding to questions, Mr. Craven stated if new legislation was enacted to carry out the decision of the federal court before the 10th District Circuit Court heard the appeal litigation would be stopped. He responded to some questions regarding the lawsuit which is requesting that attorney fees be permitted. The Chairperson reminded the Committee that it was not the purpose of the meeting and not a part of its charge.

Warren Parker of the Kansas Farm Bureau testified the latest poll of their members favored the current structure of the Board, as this system has served the state well. However, it 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 (Attachment 7).

Dee Likes of the Kansas Livestock Association stated his organization supports the current system and urged caution and restraint in any changes until the appeals process is exhausted. His organization opposes a system where the agriculture secretary is appointed by the Governor or elected by popular vote. He did state that 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 8).

Mr. Likes answered several questions by stating the current system has served his members well as it is a system very close to the people, and changing it to allow three or four counties with the large concentration of population rule the outcome would not be in the best interests of his organization's members.

Howard Tice of the Kansas Wheat Growers testified saying 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 (Attachment 9).

Responding to questions, Mr. Tice said he did not think special interest groups run the State Board of Agriculture, as the board members voted the wishes of their constituents just as legislators do, and other organizations have a voice by contacting the Governor. He thought the Board and department had done an outstanding job of promoting Kansas products.

Marty Vanier of the Kansas Agricultural Alliance said 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 courts would provide some direction to the Legislature for resolution of the situation since the District Court did not (Attachment 10).

Russell Frey of the Kansas Veterinary Medical Association stated that his testimony was prepared by Catharine Deever of the Association. He stated their leadership was polled and recommended their association take a neutral position on the issue (Attachment 11).

Catharine Deever, responding to a question, said 65 percent of their members are engaged in food animal practice, and 35 percent in companion animal practice.

Karen Hanzlicek of Netawaka told of some personal experiences she had in dealing with KSBOA, and attached a copy of a letter and questionnaire she had filled out and sent to Mr. White, at the Kansas Legal Services, Inc. regarding the services of that agency (Attachment 12).

Bernard T. Giefer, Jr., reviewed what he thought the proper role of the judiciary is. He expressed grave concern with allowing the judiciary to creep into the policymaking responsibility of the legislative branch function. He stated that we run the 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 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 13).

Several members of the Committee thanked Mr. Giefer for coming and for expressing his opinion.

Frank Williams offered exhibits in which he denied the interim study Committee had valid and current oaths to conduct the briefing and hearing on the potential restructure of KSBOA (Attachment 14). He recommended Glenda L. Mellies, Morganville, Kansas, for Secretary of Agriculture.

The meeting recessed at 4:58 p.m.

**August 31, 1993
Morning Session**

The Chairperson reconvened the meeting at 9:08 a.m., and announced the agenda for the day, and called on Tom Tunnell.

Mr. Tunnell of the Kansas Grain and Feed Association and the Kansas Fertilizer and Chemical Association said the associations that he represents believe the system has worked well over the years and they encourage the Legislature to hold up on any changes to the Board's structure until all of the court opportunities to overturn Judge Lungstrum's decision are exhausted. However, if legislative action should be required, they 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, they would prefer the Governor appoint the Secretary over statewide election (Attachment 15).

Mr. Tunnell said they would look at this further at their annual meetings in November and they would have a position on the issue for the 1994 Session.

Joe Lieber of the Kansas Cooperative Council testified that his organization thinks KSBOA has done an outstanding job in carrying out its duties as determined by the Legislature. He stated that the people in his organization further believe that the Court decision is wrong and the appeal process will be successful. Therefore, they support continuing the current structure of the Board and the selection of the Secretary (Attachment 16).

Dan Nagengast of the Kansas Rural Center said the position of Secretary should be made an appointed one and the Board be abolished as farmers who do not belong to a private trade group have no representation under the present structure (Attachment 17).

Mr. Nagengast responded to questions regarding the membership of the Center. In response to another question, he said that even if the base of the present structure were broadened he would still not support it.

A member of the Committee suggested Mr. Nagengast contact Karen Hanzlicek from Netawaka and see if the Center could be of help to her.

Ivan Wyatt of the Kansas Farmers Union stated the present policy is unacceptable and it is time to broaden the focus to let the people vote on a secretary or commissioner of agriculture. However, appointment by the Governor would be acceptable to them (Attachment 18).

Mr. Wyatt and members of the Committee discussed the various ways the present system could be broadened and a member of the Committee stated the present system has been under attack for years.

LeRoy Bower of the Kansas National Farmers Organization said it is time to act and not to continue to force the federal court system to do our work for us. He encouraged the Committee to sponsor and enact legislation which will result in an appointed secretary of agriculture. This would put KSBOA on the same level with other divisions of government and maintain the constitutional protection for all citizens. He opposed electing the secretary of agriculture because he thought that would be like putting the head of the agriculture leadership up for sale to the highest bidder (Attachment 19).

One senator said he resented the implication that they were bought by the highest bidder and he pointed out that the Governor also has fund raisers.

Chris Wilson, representing the Kansas Agri-Women, supported the current structure and hoped the appeals court would rule in favor of its constitutionality, as it provides for continuity of leadership which is important to the future of Kansas agriculture (Attachment 20).

Ms. Wilson said she thought the Board could be structured to meet the constitutional question, and she responded to questions regarding the membership of Kansas Agri-Women.

Dwight Haddock, representing the Associated Milk Producers, supported the present system, however, if changes were necessary his organization would recommend making the Board elected positions and to divide the state equally into ten districts (Attachment 21).

Vernon McKinzie of the Kansas Pest Control Association asked that during development of reorganization legislation that it be drafted to protect division directors and their technical staffs as tenured classified employees (Attachment 22).

Glenda Mellies of the 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 (Attachments 23 and 24).

The Chairperson closed the public hearing section of the meeting and recessed the meeting for lunch.

Afternoon Session

The Chairperson reconvened the meeting at 1:08 p.m. He again stated the charge of the Committee. He said he thought there were two options to consider: (1) let the courts decide or (2) draft legislation for the 1994 Session to adopt. He suggested the organizations representing various aspects of agriculture get together and work out something that would be acceptable to their members.

He reported a phone call he had received from Larry Abeldt, Hope, Kansas, in which Mr. Abeldt suggested an act similar to the one that created the Kansas Sheep Council.

The Chairperson suggested that each member share their views on the issue, and he said his recommendation was to draft legislation that could be looked at when the Committee meets in November.

Ken Wilke was asked to respond to who would be in charge of the Department of Agriculture as of October 1, and he replied the Governor was the receiver.

Staff stated the Governor will be in charge and she can appoint someone to be Secretary, and the Board and Sam Brownback still have the right to appeal. The Committee discussed how the Department will function and what changes they would like to see if any. There was no clear consensus of what action the Committee should take, so the Chairperson asked for a show of hands of who would like to wait for the appeal process. Senators Frahm and Sallee voted for this option. The Chairperson then asked for a show of hands of who would like to continue to work on a bill draft. Senators Karr, Steffes, Tillotson, and Wisdom supported this option. Senator Downey was in favor of expanding the base of the Board, and of developing a plan to allow more people to be involved in the election of the Board.

Senator Steffes expressed a desire to resolve the issue of how the state's agricultural agency should be organized. Senator Steffes explained that his position on the issue was based on his years of experience, including being involved when both former Governor Bennett and former Governor Carlin suggested that the state's agricultural agency be headed by a gubernatorially appointed Secretary. Senator Steffes argued at length that having a gubernatorially appointed Secretary was in the best interests of the agricultural community, as well as the general citizenry of the State of Kansas.

Senator Karr recommended working on the bills in Committee and before the Legislature. He suggested that in H.B. 2292, where the secretary would be appointed, that various points be considered. For example, Senator Karr suggested looking at the following:

1. the section concerning the classified and unclassified employees could be drafted to protect current employees;
2. an advisory committee similar to the current board could be elected, and the districts could be established in some form that would be similar to the current State Board of Education districts; and

3. look at the potential qualifications for the Secretary of Agriculture and examine the statutes that deal with the qualifications for being Secretary of Wildlife and Parks.

Senator Wisdom stated he would like to see the Board select their chair or secretary. He trusted the people to elect good people to the Board that would be able to select a good chair, as he thought that would be best for the agriculture industry in the state. Staff was directed to see how Senator Wisdom's recommendation could be drafted to meet constitutional tests.

The Chairperson announced the Committee would meet on November 1, and possibly November 2, to review the bill drafts. The meeting adjourned at 2:30 p.m.

Prepared by Raney Gilliland

Approved by Committee on:

October 20, 1993

(Date)

TESTIMONY

on the

**STRUCTURE OF THE
KANSAS STATE BOARD OF AGRICULTURE**

to the

SENATE COMMITTEE ON AGRICULTURE

August 30-31, 1993

**by Thayne Larson
Board President
Kansas State Board of Agriculture**

*Senate Ag. Co
8-30-93
attachment 1
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**Position of the Members of the Kansas State Board of Agriculture
Senate Agriculture Committee Hearings on Structure**

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.



COMMON CAUSE / KANSAS

701 Jackson, Room B-6 • Topeka, Kansas 66603 • (913) 235-3022

LEGISLATIVE TESTIMONY TO THE SENATE COMMITTEE ON AGRICULTURE

Michael Woolf, Executive Director
August 30, 1993

Thank you Mr. Chairman and Members of the Senate Agriculture Committee for allowing me to testify today on the structure of the Kansas State Board of Agriculture (KSBA) and the lawsuit challenging its constitutionality initiated by Common Cause of Kansas and the Kansas Natural Resource Council (KNRC).

As an organization that usually lobbies for stricter campaign finance, lobbying and governmental ethics laws, some may wonder why Common Cause is involved in this litigation against the KSBA. Common Cause has one overriding goal -- to make certain that government is open, accountable, and accessible to the citizens it serves. The current structure of the KSBA prevents it from being accountable to all of the citizens who must live with the results of the Board's decisions.

In addition, Common Cause works to guard against special interest groups acquiring undue influence in our state government. And in this instance a major state regulatory agency has been handed over to special interest groups since only members of these groups are allowed to participate in the KSBA elections.

Therefore, after studying the Attorney General opinions, the newspaper articles and testimony concerning the 1986 Executive Reorganization Order, and past case law, we decided to proceed with a lawsuit which was filed in October of last year.

On January 13, 1993 U.S. District Court Judge John W. Lungstrom found that we had a substantial likelihood of eventually prevailing on the merits of our case and therefore issued a preliminary injunction which stopped this year's KSBA elections. On April 26th the Judge agreed that the KSBA election structure violates the one person, one vote provision of the 14th Amendment and ruled that K.S.A. 74-502 and 74-503 were unconstitutional. Two months later Judge Lungstrom held a remedy hearing and agreed that the Board of Agriculture and the position of Secretary of the Board should be dissolved and the Governor should be ordered to run the agency until the Legislature creates a structure that meets the constitutional requirements.

*Senate Ag.
8-30-93
attachment 2
2-1*

The basis for our lawsuit is quite simple. Past case law clearly states that when a body has general governmental powers and is elected, then the individuals affected by those powers must be allowed to participate in the election. The KSBA has extremely broad powers that affect the lives of all Kansans on a daily basis, and yet, only members of certain agricultural trade organizations are allowed to participate.

Attorney General Stephan has repeatedly told reporters that this is a states' rights case and that "the Legislature has the authority to create an agency and instruct it on how to carry out the law." The Legislature does have that authority. But they do not have the authority to disregard the federal or state Constitutions in the process.

If there truly are states' rights issues involved then these arguments should have been raised in court under the 10th Amendment to the U.S. Constitution, not in the media. But it has never been raised in court.

The case is now under appeal in the 10th Circuit Court of Appeals in Denver and the Attorney General has indicated that he might appeal to the U.S. Supreme Court if necessary.

We do not believe that these appeals are necessary, nor will they reverse Judge Lungstrom's orders. Rather, they will only waste time, run up legal fees which the state will end up paying, and contribute to further confusion and insecurity among the staff of the Board of Agriculture and the citizens it serves.

To win on appeal, the defendants must first show that the powers of the KSBA are not "general" in nature, but that they are very narrow and specific. The power to grant water rights for agricultural, residential, or commercial use; the power to control pesticide use in urban as well as rural areas; the power to inspect meat, dairy, eggs, and other consumer products; the power to ensure the accuracy of weights and measures throughout the state; and the power to walk onto private property, conduct inspections, and issue stop use and stop sale orders are just a few of the general governmental powers exercised by the KSBA. And they cannot constitutionally be given to an agency that is controlled by private interests.

If the defendants are somehow able to prove that all of these powers are narrow and not general in nature they still have a second test to pass. They must also show that the individuals who are allowed to participate in the election process are disproportionately affected by the powers of the KSBA.

Since only members of agricultural trade organizations are allowed to participate, the defendants would have to prove that an individual who is a member of one of the privileged groups is affected by the powers of the Board to a much greater degree than an individual who is not a member of one of these groups.

That is clearly not the case. You simply cannot condition voting rights for public officials upon membership in a private organization. It is no different than charging a poll tax.

Instead of pursuing a costly, time consuming and futile effort in the Courts we would strongly urge the Legislature to enact a remedy that meets constitutional guidelines. To that end, on January 21, 1993, immediately after Judge Lungstrom issued the preliminary injunction, Common Cause and KNRC called on the Legislature to replace the present Board with a Department of Agriculture headed by a Secretary appointed by the Governor and confirmed by the Senate. The two plaintiff organizations were supported in that position by the Kansas Rural Center, the Kansas Farmers Union, the Kansas Farmers Organization, the Kansas Sierra Club, and the Kansas Audubon Society.

Common Cause of Kansas supports this remedy for a number of reasons. It corrects the Fourteenth Amendment problems that exist under the current structure and it addresses the Kansas Constitutional concerns that we have raised. Gubernatorial appointment of secretaries for major state departments also corresponds with the generally accepted pattern of state government organization and we feel that standard should be applied with this agency. In addition, appointment ensures that the Secretary's policies will not be at cross purposes with those of the rest of the executive branch, and it avoids the possibility of a divisive statewide campaign for Secretary that would pit urban against rural interests, probably to the detriment of both in the long run.

In closing, I would simply ask this Committee to introduce legislation that will set up a cabinet level Department of Agriculture headed by a gubernatorially appointed Secretary of Agriculture, subject to Senate confirmation. If the Legislature refuses to act then it is our opinion that the Judge's order will withstand any appeal and the result will be very similar except that the Senate will not have the opportunity to confirm the Governor's appointee.

HC01, Box 30
Jennings, KS 67643-9319
August 21, 1993

Mr. Raney Gilliland
Legislative Research
State House, Room 545
Topeka, KS 66612

Dear Sir:

The method of selecting delegates to the State Board of Agriculture has been one of the most fair that I know of. Delegates have been elected from Agricultural related fields which it should be. I have served as a delegate two years. I would have served my third time this year except that the weather kept many of us home. I was very active in helping to get a new District Board member elected to replace a man that served us well but I felt that he had been on the Board long enough. This newly elected board member was not a Farm Bureau member either. Even I have a chance of being elected to the Board if I only want to. Where else is this possible?

Since State Board of Agriculture does not pick up the tab for the hotel and meals, many of those farm groups eligible to send a delegate just won't send delegates or those delegates won't pay their own way. The banquet is the only free meal for delegates.

For one example--Kansas Wheat Commission. They have a huge budget and send their board members all over the world at meetings. What chance do I have of ever serving on any of these boards or commissions? None. Are these fair? Should every board be elected by the people on the ballot? NO. Neither should they be appointed by the Governor. Lawyers and Doctors tend to their own affairs. I could give you many like this. Why shouldn't farmers have the chance to recommend what's good for Agriculture?

Because of a few sore heads, I hope you realize the minority can't always rule or else our country is going to be in even worse shape than what we're in at the present time.

The State Board of Agriculture only gives recommendations--they are not a law-making Board-- Legislators do that.

I wish we had more Boards comparable to the State Board of Agriculture as in the past. Kansas agriculture lost a good man with SAM Brownback's resignation.

Thank you.

Sincerely yours,

Lois M. Scott
Lois M. Scott, Decatur County
a widow still on farm

Senate Ag
8-30-93

attachment 3

EVERETT, SEATON, MILLER AND BELL
ATTORNEYS AT LAW
410 HUMBOLDT
POST OFFICE BOX 816
MANHATTAN, KANSAS 66502

RECEIVED
ATTORNEY GENERAL
AUG 30 8 51 AM '93

DONN J. EVERETT
RICHARD H. SEATON
ANNE BURKE MILLER
BRENDA BELL

TELEPHONE
(913) 776-4788
FAX
(913) 776-2449

August 27, 1993

Mr. Ralph L. DeLoach
Clerk of the Court
U.S. District Court
151 U.S. Courthouse
812 North 7th Street
Kansas City, Kansas 66101

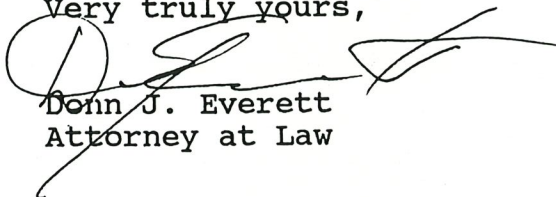
RE: Lynn Hellebust et al. v. Sam Brownback et al.
Case No. 92-237 4-L

Dear Mr. DeLoach:

Transmitted herewith is an Application for Attorney's Fees in the above captioned matter along with two copies. Please send one copy back filed stamped for our files in the envelope provided.

Thank you for your cooperation in this matter.

Very truly yours,


Donn J. Everett
Attorney at Law

DJE:crg
Encl:

cc: David Plinsky

Senate ag
8-30-93

attachment 4
4-1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Lynn Hellebust, John R. Craft,
Kansas Natural Resource Council, and
Common Cause of Kansas,
Plaintiffs,

vs.

Case No. 92-237 4-L

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.

APPLICATION FOR ATTORNEY'S FEES

Pursuant to 42 U.S.C. Section 1988, and Local Rule 220,
Plaintiffs hereby move the court for an order awarding
Plaintiffs attorney's fees and costs.

Prior to the filing of this motion, Plaintiffs have
conferred with defense counsel, pursuant to Local Rule 220, in
an attempt to resolve issues regarding attorney's fees. A copy
of Plaintiffs' itemized bill was sent to defense counsel, but
the parties have been unable to reach an agreement on the
appropriate amount of attorney's fees to be awarded.
Therefore, Plaintiffs are compelled to file this motion.

Plaintiffs request a lode star attorney's fee in the
amount of \$72,381.35. The bill is based upon work conducted by
the following: William Craven, an independent attorney with

EVERETT, SEATON,
MILLER & BELL
Attorneys At Law
410 Humboldt
P.O. Box 816
Manhattan, Kansas 66502
913-776-4788

extensive experience in civil rights litigation; Donn J. Everett senior partner in the firm of Everett, Seaton, Miller and Bell, an experienced trial lawyer; and Richard H. Seaton, also a partner in Everett, Seaton, Miller and Bell, an attorney with extensive experience in civil rights litigation. The time of all three attorneys is billed at the rate of \$150.00 per hour. This rate reflects comparable rates in the Kansas City area for attorneys with similar experience and ability. The Kansas City market is the relevant one in this matter, since the court sits there and all proceedings were conducted there. The statement for Craven's time is stated separately. The statement from Everett, Seaton, Miller and Bell itemizes Everett's time with the initials DJE and Seaton's time with the initials RHS.

The attorneys request an additional \$10,000.00 for the following reasons:

1. The difficulty and novelty of the issues involved;
2. The representation of clients who sought remedies in litigation which the plaintiffs attorney must underwrite in terms of time and costs;
3. The loss of revenue from rural clients and rural industries who misperceive the motives of the attorneys engaged in this litigation;
4. The intransigence of state officials in resolving the issues by settlement which would correct the consitutional flaws.

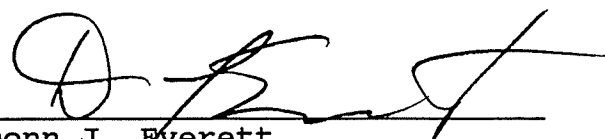
In addition to attorney's fees, plaintiffs request

reimbursement of costs and expenses advanced by their attorneys in the amount of \$3,635.50. Included in these expenses are the cost of postage, long distance telephone, fascimilie, travel and photocopying.

Plaintiffs are entitled to recover a full compensatory attorney fee in this case, encompassing all hours reasonably expended on the litigation, because plaintiffs have been successful on all issues actually litigated in this case. The state law claims were set aside early in the proceedings. Furthermore, they and the federal claims arose out of a common core of fact, and the state and federal claims are "part and parcel" of one another. Consequently, the time expended on the state law claims cannot be severed. Bruno v Western Electric Company 618 F. Supp. 398, 403 (D. Colo. 1985); Lamphere v. Brown University, 610 F2d 46, 47 (1st Cir. 1979).

As noted above, Plaintiff's counsel has attempted to negotiate an agreement relative to attorney's fees, but has so far been unsuccessful. The copies of all bills have been furnished to defendants' counsel, and William Craven has discussed the same with David Plinsky on August 27, 1993. In spite of these efforts, no agreement has been reached between counsel on the issue of attorney's fees.

WHEREFORE, Plaintiffs pray that this court award plaintiffs attorney's fees and costs in the full amounts reflected on the attached statements.



Donn J. Everett
EVERETT SEATON MILLER & BELL
410 Humboldt
P.O. Box 816
Manhattan, Kansas 66502
Attorney for Plaintiff

William J. Craven #09880
Associate Counsel
Rt #1 Box 195
Lecompton, Kansas 66050
(913) 887-6125
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Donn J. Everett, hereby certify that a copy of the above and foregoing **APPLICATION FOR ATTORNEY'S FEES** was mailed by first class United States mail, postage prepaid, on the 27th day of August, 1993, addressed to the following:

Mr. David D. Plinsky
Kansas Assistant Attorney General
301 SW 10th Avenue
Kansas Judicial Center, 2nd Floor
Topeka, Kansas 66612


Donn J. Everett

"AMENDED"

EVERETT, SEATON, MILLER & BELL
ATTORNEYS AT LAW
410 HUMBOLDT, P.O. BOX 816
MANHATTAN, KANSAS 66502

(913) 776-4788

KNRC

BILLING DATE 08-27-93

ACC'T NO. RHS0000KNRC-1A

RE: 322

PREVIOUS BALANCE \$0.00

DATE	PROFESSIONAL SERVICES RENDERED	TIME
	(SEE ATTACHED LIST)	
TOTAL FOR THE ABOVE SERVICES		218.03 \$32,631.35

DATE	EXPENSES
	(SEE ATTACHED LIST)
TOTAL FOR THE ABOVE EXPENSES \$1,497.15	

TOTAL \$34,128.50

PAYMENT RECEIVED	
TOTAL PAYMENTS	\$0.00

AMOUNT DUE \$34,128.50

Enhancement requested pursuant to the attached
exhibit A.

***** THANK YOU *****

KNRC

BILLING DATE 08-27-93

ACC'T NO. RHS0000KNRC-1A

DATE	PROFESSIONAL SERVICES RENDERED	INDIV	TIME	
07-17-92	Travel and conference in Topeka re: lawsuit	RHS	4.00	\$600.00
04-09-92	Conference with client(s).	RHS	1.75	\$262.50
05-15-92	Conference with client(s).	RHS	2.00	\$300.00
09-04-92	Review of pleadings(s).	RHS	0.50	\$75.00
09-04-92	Telephone conf. with Craven	RHS	0.17	\$25.50
09-03-92	Review of pleadings(s).	RHS	2.50	\$375.00
09-04-92	Telephone conf. with Craven (re: draft)	RHS	0.17	\$25.50
08-27-92	Research and review of memo	DJE	7.00	\$1,050.00
10-02-92	Review of draft complaint	RHS	0.50	\$75.00
10-02-92	Telephone conf. with Craven re: complaint	RHS	0.33	\$49.50
10-05-92	Review of complaint draft	RHS	0.25	\$37.50
10-01-92	Review of document(s).	RHS	0.25	\$37.50
10-02-92	Review of complaint	DJE	1.00	\$150.00
10-06-92	Conference with Linn Helebust; Calls from Bill Ward	DJE	0.33	\$49.50
10-07-92	Review of additions to complaint	DJE	1.00	\$150.00
10-07-92	Finalize complaint	DJE	2.75	\$412.50
10-08-92	Call from Craven re: suit and filing	DJE	0.33	\$49.50
10-08-92	Conference with DJE re: fees and service	RHS	0.25	\$37.50
10-14-92	Conference with Craven re: next action	DJE	0.33	\$49.50
10-15-92	Call from Craven re: conference with attorney general	DJE	0.50	\$75.00
10-19-92	Call to Craven and Shawn	DJE	0.33	\$49.50
10-15-92	Long distance conference with Craven	DJE	0.33	\$49.50
10-15-92	Revise complaint	DJE	0.50	\$75.00
10-22-92	Conference with Craven	DJE	0.42	\$63.00
10-26-92	Calls re: service; Service on defendant	DJE	1.25	\$187.50
10-30-92	Telephone conference with Bill Ward re: amending complaint	DJE	0.42	\$63.00
11-02-92	Call to Bill Craven	DJE	0.25	\$37.50
11-11-92	Review of amended complaint	RHS	0.33	\$49.50
11-02-92	Review of amended complaint and research re: separation	RHS	0.25	\$37.50
11-02-92	Telephone conf. with Bill Ward re: amendment to complaint	RHS	0.25	\$37.50
11-05-92	Research on separation of powers	DJE	1.33	\$199.50
11-10-92	Amendments to both complaints	DJE	1.00	\$150.00
11-10-92	Call from Bill Craven and Review of amended complaint	DJE	0.75	\$112.50
11-11-92	Research re: delegation question and			

KNRC

BILLING DATE 08-27-93

ACC'T NO. RHS0000KNRC-1A

DATE	PROFESSIONAL SERVICES RENDERED	INDIV	TIME	
	separation of powers	DJE	3.33	\$499.50
11-11-92	U.S. Board of Ag - service and filing of 1st amended complaint	DJE	0.67	\$100.50
11-09-92	Call from Craven re: bricks from other farm organizations	DJE	0.25	\$37.50
11-16-92	Call from Craven re: service	DJE	0.25	\$37.50
11-17-92	Additional service and correspondence	DJE	1.33	\$199.50
11-17-92	Telephone conf. with Craven	DJE	0.25	\$37.50
11-13-92	Call from Lynn Hellebust and filing of amended complaint	DJE	0.33	\$49.50
11-17-92	Telephone conf. with client(s).	RHS	0.25	\$37.50
11-17-92	Law research for client(s).	RHS	0.33	\$49.50
11-17-92	Conference with Seaton re: service	DJE	0.33	\$49.50
11-17-92	Preparation of 2d amended complaint	DJE	1.25	\$187.50
12-03-92	Call from reporter and explaining posture of lawsuit - Call to Craven	DJE	0.75	\$112.50
12-07-92	Call from Michael Wolf - common cause	DJE	0.33	\$49.50
12-07-92	Call from Lynn Hellebust; check file and call back	DJE	0.50	\$75.00
12-11-92	Review of motion	DJE	2.25	\$337.50
12-11-92	FAX materials to clients	DJE	0.75	\$112.50
12-12-92	Review of pleadings(s).	RHS	0.33	\$49.50
12-14-92	Telephone conf. with Craven re: motion	RHS	0.33	\$49.50
12-14-92	Long distance conference with Craven re: amending pleadings	DJE	0.33	\$49.50
12-18-92	Review of response	RHS	0.33	\$49.50
12-18-92	Telephone conf. with Craven	RHS	0.50	\$75.00
12-18-92	Telephone conf. with DJE (response)	RHS	0.17	\$25.50
12-22-92	Review of pleadings(s).	RHS	0.33	\$49.50
12-23-92	Revise pleadings	DJE	1.33	\$199.50
12-29-92	Review of motion.	RHS	0.33	\$49.50
12-29-92	Conference with DJE	RHS	0.17	\$25.50
12-27-92	Final revisions and call from Bill Ward	DJE	0.50	\$75.00
12-27-92	Conference with RHS re: procedure	DJE	0.25	\$37.50
12-28-92	Call from Bill Ward and conference with RHS re: temporary injunction	DJE	0.25	\$37.50
12-29-92	Review of motion for temporary injunction and redraft of portions thereof	DJE	0.50	\$75.00
12-29-92	Preparation of final motion	DJE	0.75	\$112.50
12-29-92	Preparation of affidavit for Hellebust	DJE	0.50	\$75.00
01-04-93	Review of drafts re: memo in support	RHS	0.58	\$87.00
01-04-93	Telephone conf. with client(s).	RHS	0.25	\$37.50

KNRC

BILLING DATE 08-27-93

ACC'T NO. RHS0000KNRC-1A

DATE	PROFESSIONAL SERVICES RENDERED	INDIV	TIME	
01-04-93	Revision to draft in support	RHS	0.50	\$75.00
01-06-93	Revision to memo	RHS	0.50	\$75.00
01-07-93	Law research for client re: memo	RHS	0.42	\$63.00
01-07-93	Review of memo	RHS	2.00	\$300.00
01-07-93	Telephone conf. with Craven re: memo	RHS	0.33	\$49.50
01-11-93	Review of affidavit of DJE	RHS	0.25	\$37.50
01-11-93	Telephone conf. with DJE re: motion	RHS	0.25	\$37.50
01-12-93	Conference with DJE re: hearing	RHS	0.25	\$37.50
01-12-93	Preparation of order	RHS	0.42	\$63.00
01-12-93	Telephone conf. with Craven re: order and bond	RHS	0.25	\$37.50
01-12-93	Telephone conf. with Craven re: order and bond	RHS	0.25	\$37.50
01-12-93	Conference with DJE re: agreement	RHS	0.33	\$49.50
01-12-93	Telephone conf. with Ward re: bond	RHS	0.25	\$37.50
01-12-93	Review of brief of defendant	RHS	0.33	\$49.50
01-25-93	Call to Bill Ward from Craven - FAX on news stories	DJE	0.75	\$112.50
01-26-93	Long distance to Craven and Ward	DJE	0.50	\$75.00
01-27-93	Conference call with Ward and Craven	DJE	0.33	\$49.50
01-27-93	Call from Woolf re: common cause	DJE	0.33	\$49.50
01-27-93	Letter from Woolf and call from Craven	DJE	0.33	\$49.50
01-26-93	Letter from Craven re: legislative solution	DJE	0.25	\$37.50
01-26-93	Long distance calls to Craven a.m.	DJE	0.42	\$63.00
01-26-93	Long distance calls to Craven p.m.	DJE	0.50	\$75.00
01-27-93	Review of letter to legislature and editorial	DJE	0.33	\$49.50
01-26-93	Review of document(s).	RHS	0.25	\$37.50
01-27-93	Conference with DJE re: letters	RHS	0.25	\$37.50
01-27-93	Review of letter to legislature	RHS	0.25	\$37.50
01-11-93	Finalize report for hearing and service	DJE	1.33	\$199.50
01-14-93	Conference with Ward - K.C. Story and Craven	DJE	1.25	\$187.50
01-06-93	2 conferences with Craven; Redraft of complaint - motion and order	DJE	2.75	\$412.50
01-07-93	Calls to Craven and call from Hellebust	DJE	0.67	\$100.50
01-07-93	3 calls in evening re: papers filing	DJE	1.00	\$150.00
01-08-93	Call re: filing	DJE	0.33	\$49.50
01-08-93	Calls re: motion and petition	DJE	1.00	\$150.00
12-31-92	Conference with Ward	DJE	0.25	\$37.50
12-31-92	Review of transmittal documents	DJE	0.33	\$49.50
12-31-92	Conference call (and call to Attorney			

KNRC

BILLING DATE 08-27-93

ACC'T NO. RHS0000KNRC-1A

DATE	PROFESSIONAL SERVICES RENDERED	INDIV	TIME	
	General's Office)	DJE	0.50	\$75.00
01-21-93	Calls to Craven and calls back re:	DJE	0.33	\$49.50
	Campbell appearance			
01-21-93	Calls to Craven, Ward and Woolf re:	DJE	0.50	\$75.00
	next move			
01-21-93	Proposed letter to Stephen re:	DJE	0.75	\$112.50
	settlement and review	DJE	0.50	\$75.00
01-22-93	Newspaper reports and decision			
01-22-93	Additional articles reviewed and letter	DJE	0.50	\$75.00
	to A.G.	DJE	7.00	\$1,050.00
01-12-93	Travel to KC and preparation			
01-13-93	Travel, appearance in court, awaiting	DJE	13.00	\$1,950.00
	court order			
01-08-93	Review of memo, finalize documents, sent			
	out packets for service on defendant;			
	review of 1991 ag booklet; typing of	DJE	9.50	\$1,425.00
	memo	DJE	0.33	\$49.50
01-15-93	Letter transmitting order	DJE	0.33	\$49.50
01-15-93	Conference re: next step			
01-16-93	Topeka Capitol story on efforts to	DJE	0.25	\$37.50
	correct	DJE	0.33	\$49.50
01-15-93	Conference with Michael Woolf	DJE	0.25	\$37.50
01-19-93	Craven called - next step - call A.G.	DJE	1.00	\$150.00
01-13-93	Staff Preparation	DJE	0.25	\$37.50
01-27-93	Calls to Bill Ward and Craven	DJE	0.25	\$37.50
01-29-93	Letter to Attorney General	DJE	0.25	\$37.50
01-08-93	Review of news clips	DJE	0.25	\$37.50
01-08-93	Call to Craven re: Thursday meeting			
	extension to plead	DJE	0.33	\$49.50
01-09-93	Clerk's order extending time to plead	DJE	0.42	\$63.00
02-01-93	Review of misc. news articles	DJE	0.33	\$49.50
02-02-93	Two calls to Craven and Ward			
01-04-93	Conference with Ward and Craven re:	DJE	0.50	\$75.00
	next move	DJE	0.25	\$37.50
01-05-93	Call to Ward and Craven	DJE	0.50	\$75.00
02-05-93	Review articles and call to co-counsel	DJE	3.00	\$450.00
02-05-93	Research on Quo Warranto	DJE	0.25	\$37.50
02-07-93	Board of AG call to Craven and Ward	DJE	0.25	\$37.50
01-09-93	Call re: transcript ordered	DJE	0.50	\$75.00
01-10-93	Call to Craven and Ward	DJE	0.50	\$75.00
02-10-93	File arranging with all new pleadings	DJE	0.25	\$37.50
02-13-93	Additional extension orders	DJE	0.25	\$37.50
02-15-93	Press review	DJE	0.25	\$37.50

KNRC

BILLING DATE 08-27-93

ACC'T NO. RHS0000KNRC-1A

DATE	PROFESSIONAL SERVICES RENDERED	INDIV	TIME	
02-18-93	Answers reviewed	DJE	0.75	\$112.50
02-18-93	Long distance calls to counsel	DJE	0.50	\$75.00
02-19-93	Responsive pleading review	DJE	0.42	\$63.00
02-25-93	Preparation of answer	DJE	0.42	\$63.00
02-22-93	Rough draft review and comments; review of answers and research	DJE	1.25	\$187.50
02-23-93	Review of 7 additional answers	DJE	0.50	\$75.00
02-22-93	Review of pleadings(s).	RHS	0.33	\$49.50
02-22-93	Long distance calls from Bill Ward and review of weekend pleadings	DJE	0.33	\$49.50
02-22-93	Charting of answers	DJE	0.17	\$25.50
02-22-93	Research re: malicious prosecution; phantom pleadings; news articles	RHS	1.33	\$199.50
02-23-93	Call to Ward and Craven	DJE	0.25	\$37.50
03-02-93	Calls from judge and calls to Ward and Craven	DJE	0.50	\$75.00
02-26-93	Final answer and motion to strike with letter of transmittal	DJE	0.25	\$37.50
02-26-93	Calls to Ward and Craven	DJE	0.33	\$49.50
02-26-93	Conference with Lynn Hellebust and correspondence to clients and review of filed answers	DJE	0.75	\$112.50
03-01-93	Amended answer of Brownback and call to Ward	DJE	0.50	\$75.00
03-01-93	Call to Craven	DJE	0.17	\$25.50
02-25-93	Preparation of answer/motion to strike	DJE	0.33	\$49.50
02-25-93	Research	DJE	0.50	\$75.00
03-11-93	Law research for clients (attorney fees discovery)	RHS	0.33	\$49.50
03-08-93	Review of interrogatories	RHS	0.33	\$49.50
03-08-93	Telephone conf. with DJE	RHS	0.25	\$37.50
03-07-93	Interrogatories	DJE	0.67	\$100.50
03-08-93	Calls to Craven and Ward re: scheduling conference	DJE	0.33	\$49.50
03-09-93	Calls re: scheduling conference	DJE	0.25	\$37.50
03-09-93	Research re: standing	DJE	0.67	\$100.50
03-09-93	Preparation for scheduling conference	DJE	1.25	\$187.50
03-10-93	Trip to KC	DJE	8.00	\$1,200.00
03-11-93	Affidavits and call from Michael Woolf; FAXed to all (Ward, Craven and Woolf)	DJE	0.50	\$75.00
03-11-93	Calls re: affidavits with Lynn Hellebust	DJE	0.33	\$49.50
03-11-93	Work on interrogatories and affidavits;			

KNRC

BILLING DATE 08-27-93

ACC'T NO. RHS0000KNRC-1A

DATE	PROFESSIONAL SERVICES RENDERED	INDIV	TIME	
	review of scheduling order	DJE	2.25	\$337.50
03-12-93	Re-check interrogatories	DJE	0.25	\$37.50
03-15-93	Call to Ward	DJE	0.25	\$37.50
03-15-93	Review of interrogatories	DJE	0.25	\$37.50
03-15-93	Call from Michael Woolf	DJE	0.17	\$25.50
03-22-93	Motion of state - review	DJE	3.00	\$450.00
03-18-93	Calls to Craven and Ward	DJE	0.50	\$75.00
03-21-93	Review of counterclaim and memorandum; Call to Ward	DJE	1.00	\$150.00
03-23-93	Call to Woolf re: corporate status	DJE	0.25	\$37.50
03-23-93	Revisions to interrogatories	DJE	0.42	\$63.00
03-23-93	Conference re: action	DJE	0.25	\$37.50
03-23-93	Research Board of AG and conference with attorneys	DJE	1.00	\$150.00
03-23-93	Research re: water laws	DJE	0.67	\$100.50
03-24-93	Review of state's brief	DJE	2.25	\$337.50
04-02-93	Calls to Craven to Woolf and to KNRC	DJE	2.00	\$300.00
03-31-93	Revising interrogatory answers	DJE	1.00	\$150.00
04-05-93	Call to Ward; Finish interrogatories	DJE	1.50	\$225.00
04-07-93	Calls re: interrogatories	DJE	1.50	\$225.00
04-05-93	Interrogatories final, copies	DJE	1.00	\$150.00
04-12-93	Calls from Craven	DJE	0.33	\$49.50
04-13-93	Receipt of response and review	DJE	2.67	\$400.50
04-21-93	Calls re: order overruling motion to dismiss	DJE	0.50	\$75.00
04-23-93	Review of reply	DJE	2.25	\$337.50
04-27-93	Review of pleadings(s).	RHS	0.25	\$37.50
04-25-93	Review of documents preparatory to hearing	DJE	3.25	\$487.50
04-26-93	Appear in court	DJE	8.00	\$1,200.00
04-27-93	Preliminary research on remedies; Calls to Ward and Craven	DJE	3.58	\$537.00
04-29-93	Conference w/Bill Craven re: status	DJE	0.50	\$75.00
04-29-93	4 calls to Ward	DJE	0.33	\$49.50
05-05-93	Conference with DJE re: remedies	RHS	0.25	\$37.50
05-10-93	Review of pleadings	DJE	0.67	\$100.50
05-10-93	Telephone conf. with client and Craven	RHS	0.42	\$63.00
05-19-93	Call to Ward re: relief	DJE	0.25	\$37.50
05-18-93	Telephone conf. with client(s).	DJE	0.33	\$49.50
05-18-93	Long distance to K.C. re: masters program	DJE	0.33	\$49.50
05-18-93	Long distance to Craven	DJE	0.33	\$49.50
05-20-93	Calls to Craven and Ward	DJE	0.33	\$49.50

KNRC

BILLING DATE 08-27-93

ACC'T NO. RHS0000KNRC-1A

DATE	PROFESSIONAL SERVICES RENDERED	INDIV	TIME	
05-20-93	Review of petition for governor to run agency	DJE	1.00	\$150.00
05-25-93	Review of pleadings(s).	RHS	0.25	\$37.50
06-07-93	Review of document(s).	RHS	0.33	\$49.50
06-01-93	Call from Craven re: final order			
		DJE	0.33	\$49.50
06-03-93	Call to Craven - Review of 10th Circuit Rules	DJE	1.33	\$126.35
06-07-93	Review of cases and memo to Lungstrom	DJE	1.33	\$199.50
05-27-93	Review of remedy brief	DJE	1.50	\$225.00
06-15-93	Call from Ward; Schedule conf w/10th Circuit			
		DJE	0.33	\$49.50
06-16-93	Call from Craven re: 10th Circuit	DJE	0.25	\$37.50
06-17-93	Motion of defendants; two calls to Ward	DJE	0.67	\$100.50
06-17-93	Conference with partner	DJE	0.42	\$63.00
06-22-93	Calls to Ward and Craven	DJE	0.33	\$49.50
06-22-93	Review of pleadings(s).	RHS	0.42	\$63.00
06-23-93	Call to Craven and to Ward	DJE	0.33	\$49.50
06-22-93	Calls from Craven to Ward to Michael Wulf			
		DJE	0.67	\$100.50
06-22-93	Review of state's remedy suggestions	DJE	0.75	\$112.50
06-22-93	More calls to Craven and Ward and M. Woolf			
		DJE	0.33	\$49.50
06-22-93	Calls re: remedies response and prepare suggestions			
		DJE	0.75	\$112.50
06-22-93	Board of Ag FAX of court order on stay and call			
		DJE	0.50	\$75.00
06-22-93	Call from Michael Woolf re: exhibits and FAX to Craven			
		DJE	0.33	\$49.50
06-21-93	Calls from Craven	DJE	0.33	\$49.50
06-21-93	Call to Craven	DJE	0.25	\$37.50
06-28-93	Review of state's motion for stay and briefs			
		DJE	1.25	\$187.50
06-28-93	Preparation for hearing	DJE	1.00	\$150.00
06-30-93	Court appearance in K.C. 10:30 - 7:00	DJE	8.50	\$1,275.00
07-01-93	Calls to Craven and review of attorney's fees eligibility			
		DJE	0.50	\$75.00
07-01-93	Calls re: Kansas Board of Ag Meetings	DJE	0.33	\$49.50
07-06-93	Board of Ag order of court received and reviewed			
		DJE	0.25	\$37.50
07-08-93	Attorney fees research and call to Craven			
		DJE	1.00	\$150.00
07-08-93	Send to judge	DJE	0.33	\$49.50

KNRC

BILLING DATE 08-27-93

ACC'T NO. RHS0000KNRC-1A

DATE	PROFESSIONAL SERVICES RENDERED	INDIV	TIME	
07-13-93	Brownback resignation and conference call	DJE	0.33	\$49.50
07-14-93	3 Calls from Craven re: interim appt.	DJE	0.42	\$63.00
07-26-93	Review of letter to Lungstrum; call from clerk re: conference call; Call to Craven re: letter and conference call	DJE	0.67	\$100.50
07-27-93	Memo from Plinsky	DJE	0.50	\$75.00
07-27-93	Call to Craven	DJE	0.25	\$37.50
07-28-93	Preparation for conference call	DJE	0.33	\$49.50
07-28-93	Call to Craven	DJE	0.25	\$37.50
07-28-93	Call from Craven re: strategy	DJE	0.33	\$49.50
07-28-93	Conference call and Craven following call to me	DJE	0.33	\$49.50
07-06-93	Call to 10th Circuit Court (re: registering) and call to Craven	DJE	0.33	\$49.50
07-06-93	Review of stay memo of plaintiffs	DJE	0.67	\$100.50
08-10-93	Law research for client re: finality of judgment without attorney's fees	RHS	0.50	\$75.00
08-05-93	Appeal review	DJE	0.75	\$112.50
08-02-93	Notice of appeal received and letter to Craven and Ward	DJE	0.25	\$37.50
08-22-93	Call to Craven	DJE	0.25	\$37.50
08-27-93	Preparation of fee application	RHS	2.00	\$300.00

DATE	EXPENSES	
09-04-92	Long distance call to Topeka	\$3.50
10-02-92	Long distance call to Topeka	\$8.00
11-02-92	Long distance to Lawrence	\$6.25
11-12-92	postage	\$2.71
11-10-92	FAX transmission to 551-7925	\$10.00
11-10-92	FAX transmission to 235-8707	\$10.00
12-18-92	Long distance call to Topeka	\$11.50
12-11-92	FAX Transmission 1-235-8707 (Craven)	\$25.00
12-31-92	FAX Transmission 305-351-2468 (Estler)	\$7.00
01-11-93	FAX Transmission 1-236-3942 (DeLoach)	\$6.00
01-11-93	FAX Transmission 1-236-2913 (Lungstrom)	\$6.00
01-11-93	FAX Transmission 1-296-6296 (Plinsky)	\$6.00
01-11-93	FAX Transmission 1-236-3924 (VanBebber)	\$2.00
01-11-93	FAX Transmission 1-235-8707 (Craven)	\$5.00
01-11-93	FAX Transmission 1-296-1028 (Herd)	\$2.00
01-11-93	FAX Transmission 316-669-9426	\$2.00

KNRC

BILLING DATE 08-27-93

ACC'T NO. RHS0000KNRC-1A

DATE	EXPENSES	
01-12-93	FAX Transmission 1-749-0426 (Everett)	\$24.00
01-04-93	Long distance calls to Topeka & KC	\$6.25
01-12-93	Long distance call to Topeka	\$6.00
01-12-93	Long distance call to Topeka	\$6.00
02-18-93	FAX transmission to 913-551-7923	\$13.00
02-18-93	FAX transmission to 913-235-8707	\$13.00
02-22-93	FAX transmission to 551-7925	\$2.00
02-22-93	FAX transmission to 551-7925	\$2.00
03-03-93	Donna Mellegard - transcript	\$30.00
03-05-93	FAX transmission to 551-7925	\$5.00
03-05-93	FAX transmission to 1-235-8707	\$5.00
03-08-93	FAX transmission to 1-235-8707	\$21.00
03-08-93	FAX transmission to 1-551-7925	\$21.00
03-11-93	FAX transmission to 551-7925	\$3.00
03-11-93	FAX transmission to 1-235-8707	\$3.00
03-11-93	FAX transmission to 1-232-1615	\$3.00
03-11-93	FAX transmission to 1-232-1615	\$3.00
03-15-93	FAX transmission to 1-235-8707	\$9.00
03-15-93	FAX transmission to 1-551-7925	\$9.00
03-22-93	FAX transmission to 1-232-1615	\$20.00
04-05-93	Copies	\$5.00
04-26-93	Highway tolls	\$4.10
04-21-93	FAX transmission to 1-749-0179	\$5.00
05-04-93	FAX transmission to 1-235-8707 (Craven)	\$2.00
05-04-93	FAX transmission to 1-551-7925 (Ward)	\$2.00
05-26-93	FAX transmission to 1-235-8707	\$3.00
05-26-93	FAX transmission to 1-551-7925 (Ward)	\$3.00
05-27-93	FAX transmission to 1-235-8707	\$3.00
06-17-93	FAX transmission to 1-303-844-6437	\$2.00
06-21-93	FAX transmission to 1-235-8707	\$2.00
06-23-93	FAX transmission to 1-235-8707	\$6.00
07-12-93	FAX transmission to 1-235-8707	\$3.00
08-10-93	FAX transmission 1-551-7925	\$4.00
08-12-93	FAX transmission 1-235-8707	\$4.00
07-17-92	Travel to Topeka	\$33.60
09-04-92	LD Tele Conf w/Craven re: draft	\$3.50
10-19-92	LD call to Craven and Shawn	\$8.00
10-15-92	LD conf. w/Craven	\$8.00
10-12-92	PHOTOCOPIES	\$4.80
10-12-92	POSTAGE	\$1.56
12-11-92	PHOTOCOPIES	\$13.05
12-11-92	POSTAGE	\$2.25
06-30-92	Parking Fees	\$3.50

4-15

KNRC

BILLING DATE 08-27-93

ACC'T NO. RHS0000KNRC-1A

DATE	EXPENSES	
03-10-93	Parking fees	\$2.00
01-12-93	Hotel expense	\$53.97
01-12-93	Parking fee	\$5.00
02-11-93	Hotel expense	\$32.05
01-11-93	PHOTOCOPIES	\$16.80
01-11-93	POSTAGE	\$29.77
01-11-93	EXPRESS MAIL	\$9.95
02-18-93	PHOTOCOPIES	\$1.80
02-18-93	POSTAGE	\$1.21
02-18-93	POSTAGE	\$1.80
02-20-93	PHOTOCOPIES	\$31.80
02-20-93	POSTAGE	\$11.60
03-05-93	PHOTOCOPIES	\$0.30
03-05-93	POSTAGE	\$0.29
03-05-93	PHOTOCOPIES	\$3.90
03-05-93	POSTAGE	\$1.50
03-01-93	PHOTOCOPIES	\$0.90
03-01-93	POSTAGE	\$0.58
03-04-93	PHOTOCOPIES	\$6.30
03-04-93	POSTAGE	\$3.64
03-11-93	PHOTOCOPIES	\$6.60
03-11-93	POSTAGE	\$2.66
03-22-93	PHOTOCOPIES	\$1.95
03-22-93	POSTAGE	\$0.75
03-22-93	PHOTOCOPIES	\$0.90
03-22-93	POSTAGE	\$0.52
03-25-93	PHOTOCOPIES	\$1.80
03-25-93	POSTAGE	\$1.90
03-25-93	PHOTOCOPIES	\$3.30
03-25-93	POSTAGE	\$2.90
04-11-93	PHOTOCOPIES	\$60.75
04-11-93	POSTAGE	\$20.50
04-11-93	EXPRESS MAIL	\$9.95
04-11-93	PHOTOCOPIES	\$0.60
04-11-93	POSTAGE	\$0.58
04-21-93	PHOTOCOPIES	\$0.60
04-21-93	POSTAGE	\$0.29
04-23-93	PHOTOCOPIES	\$3.90
04-23-93	POSTAGE	\$2.90
04-28-93	PHOTOCOPIES	\$2.10
04-28-93	POSTAGE	\$1.21
05-08-93	PHOTOCOPIES	\$4.95
05-08-93	POSTAGE	\$1.44

KNRC

BILLING DATE 08-27-93

ACC'T NO. RHS0000KNRC-1A

DATE	EXPENSES	
06-17-93	PHOTOCOPIES	\$3.75
06-17-93	POSTAGE	\$0.98
06-23-93	PHOTOCOPIES	\$0.60
06-23-93	POSTAGE	\$0.75
06-22-93	PHOTOCOPIES	\$4.20
06-22-93	POSTAGE	\$1.21
07-06-93	PHOTOCOPIES	\$2.85
07-06-93	POSTAGE	\$1.21
07-15-93	PHOTOCOPIES	\$0.30
07-15-93	POSTAGE	\$0.52
07-22-93	PHOTOCOPIES	\$3.00
07-22-93	POSTAGE	\$1.21
08-02-93	PHOTOCOPIES	\$0.75
08-02-93	POSTAGE	\$0.29
12-03-92	LD CALL TO CRAVEN	\$6.00
12-14-92	LD CONF W/CRAVEN RE: AMENDING PLEADINGS	\$8.00
01-26-93	LD TO CRAVEN AND WARD	\$11.50
01-26-93	LD TO CRAVEN (A.M. & P.M.)	\$21.25
01-07-93	LD TO CRAVEN	\$8.00
01-21-93	LD CALLS TO CRAVEN	\$8.00
01-21-93	CALLS TO CRAVEN, WARD & WOOLF	\$12.50
01-13-93	TRAVEL TO KC	\$62.40
01-27-93	CALLS TO WARD & CRAVEN	\$6.00
01-08-93	CALL TO CRAVEN RE: MEETING	\$8.00
02-02-93	CALLS TO CRAVEN & WARD	\$8.00
01-05-93	CALLS TO CRAVEN & WARD	\$6.00
01-10-93	CALLS TO CRAVEN & WARD	\$11.50
08-27-93	FAX TRANSMISSION TO 235-8707	\$4.00
02-18-93	LD CALLS TO COUNSEL	\$12.25
02-23-93	CALLS TO WARD & CRAVEN	\$6.00
03-02-93	CALLS TO WARD & CRAVEN	\$6.00
02-26-93	CALLS TO WARD & CRAVEN	\$8.00
03-01-93	CALL TO CRAVEN	\$3.50
03-08-93	CALLS TO CRAVEN & WARD RE: SCHED CONF	\$8.00
03-10-93	TRAVEL TO K.C.	\$62.40
03-15-93	CALL TO WARD	\$6.00
03-18-93	CALLS TO CRAVEN & WARD	\$11.50
03-21-93	CALL TO WARD	\$6.00
03-23-93	Call to Woolf re: corporation status	\$6.00
04-02-93	Calls to Craven, Woolf & KNRC	\$42.00
04-05-93	Call to Ward	\$6.00
04-27-93	Calls to Ward & Craven]	\$8.00
04-29-93	Four calls to Ward	\$8.00

KNRC

BILLING DATE 08-27-93

ACC'T NO. RHS0000KNRC-1A

DATE	EXPENSES	
05-19-93	Calls to Ward re: relief	\$6.00
05-18-93	Long distance to KC re: masters program	\$8.25
05-18-93	Long distance to Craven	\$8.00
05-20-93	Calls to Craven and Ward	\$8.00
06-01-93	Call from Craven re: final order	\$8.00
06-03-93	Call to Craven	\$8.00
06-22-93	Calls to Ward and Craven	\$8.00
06-23-93	Calls to Craven and Ward	\$8.00
06-22-93	More calls to Craven, Ward & Woolf	\$8.00
06-21-93	Call to Craven	\$6.00
07-01-93	Calls to Craven	\$6.00
07-08-93	Call to Craven	\$6.00
07-26-93	Call to Craven	\$6.00
07-27-93	Call to Craven	\$6.00
07-28-93	Call to Craven	\$6.00
07-06-93	Call to Craven	\$3.50
08-22-93	Call to Craven	\$6.00
01-12-93	Travel to K.C.	\$62.40
04-26-93	Mileage 250 miles	\$62.40
06-30-93	Travel to K.C.	\$62.40

Hellebust et al v. Brownback et. al Time Sheet
William J. Craven

<u>Date</u>	<u>Hours</u>	<u>Job</u>
3-27	1.5	Initial meeting at KNRC to discuss possibility of suit. Those in attendance included Bill Ward, Shaun McGrath, John Craft, Merle Duncan, and others.
4-10	2.0 + 2.0 driving	Meeting in Manhattan with Everett law firm. Presented one person, one vote memo.
4-21	4.25	Research standing of KNRC as environmental plaintiff association. Begin delegation research.
5-1	3.5	standing, and KSBA regulatory statutes
5-6	1.25	Ks Delegation cases
5-13	2.0	KSBA statutes
5-14		Delegation Memo finished. Add time before this.
5-15	2.0 + 2.0 driving	Manhattan meeting. Discussion of delegation and other issues.
6-11	3.0	Meeting with Bill Ward
7-11	4.5	Other state cases on delegation
7-12	7.0	Law Reviews on separation of powers; state delegation cases.
7-17	1.75	KSBA meeting at Common Cause.
8-2	6	Begin writing overview of case, including possible theories of relief. Also begin historical research on KSBA at State Lib. Include statutory revisions to KSBA voting structures, other groups added, possible analysis of why, and Prof. Stenels monograph. This continues until 10-5-99.
8-8	7	
8-9	7	
8-10	4.25	
8-11	3.75	

9-6	2.5	
9-7	4.5	Memo revisions with Bill Ward
9-24	2.5	
9-26	3.5	
10-3	3.75	Drafting complaint.
10-8	6.0	drafted materials for press release (questions and answers about KSBA litigation), cover sheet and summons for complaint.
10-9	2.5	Meet Craft and Hellebust et al at Common Cause. Prep for press conference. Go to Statehouse for press conference.
10-10	4.25	Clean out files. Make revisions in memo draft. Cite checking at KU law library. Prepare for meeting with Bob Stephan.
10-11	3.25	Revisions to memo.
10-14	2.0	Prep for meeting with Attorney General, reading AG opinions, T/C to Donn Everett, Bill Ward
10-15		TC with Donn Everett, Michael Woolf
12-11	2.5	Begin working on reply to defs. motion to dismiss.
12-13	6.25	Reviewing cited defs. cases and Wright and Miller Moore's. Work on standing, defacto officer doctrine
12-16	4.0	Not rational basis, compelling state interest, exceptions to one person, one vote
12-17	3.25	State cases on special purpose districts
12-18	3.75	Separation of powers and delegation sections of defs. motion.
12-19	4.75	State delegation cases
1-13-93	8.5	Travel to KC and back, in court, preliminary injunction hearing.
2-9-93	.50	Meeting with governor, discuss Bd. of Ag legislative options
3-10-93	6.5	Scheduling conf. w/ trial court in KC
3-13-93	2.25	Begin Pls. summary judgment memo. Distinguishing features

of Ball, Salyer, and related cases. Why KSBA is general purpose government which does not affect only those it regulates, and which statutory functions are of statewide applicability. Cases on why this voting scheme is not rationally related to structure at issue. This continues through 3-18-93.

3-14-93 5.25

3-16-93 2.75

3-18-93 4.0

3-27-93 8.0

Start work responding to Defs. motion for summary judgment (filed 3-25-93) Many of the same issues, but more research on delegation, separation of powers, and other state special benefit or special purpose district cases. Also questions of whether KSBA disproportionately affects only ag producers and suppliers. Added more statutes to list KSBA administers. This continues through 4-22-93

4-14-93 4.0

4-15-93 3.5

4-17-93 6.0

4-18-93 2.5

4-19-93 2.5

4-20-93 2.5

4-21-93 2.5

4-22-93 3.5

4-23-93 2.5

4-26-93 4.0

Prelim inj. cont'd after hearing in KC

5-11-93 2.5

Begin work on remedy brief. Whole new ball game. 14th Amendment school deseg. and other race cases as models? Extensive literature search on remedial powers of district courts. Law reviews, treatises, and literally dozens of cases. Very difficult area of the law. This section continues through 5-23-93

5-12-93 2.0

5-13-93 6.0

5-14-93 4.5

5-16-93 3.5

5-18-93 2.5

5-19-93 3.25

5-20-93 4.75

5-21-93 5.25

5-22-93 7.5

5-23-93 8.0

6-1-93 2.5

Opposing Notice of Appeal and Defs. Request for Stay. Basic research in Moore, Wright and Miller, and cases, plus writing. This ends on 6-5-93

6-4-93 6.5

6-5-93 5.5

6-30-93 5.5

Remedy hearing in KC (includes travel)

Total: 265.0

Exclusive of telephone and cost log, attached separately.

*Titled on October 8, 1992, after all plaintiffs named and case filed

KSBA PHONE LOG Bill Craven

Note: All calls to Donn Everett unless noted as BW, which stands for Bill Ward. Under "length of call," all numbers refer to minutes.

<u>Date</u>	<u>To</u>	<u>Time Made</u>	<u>Length of Call</u>	<u>Cost</u>
3-3-93	BW	8:45	7	1.95
3-17-92	BW	2:00	3:42	1.00
3-16-93	BW	11:15	3	.74
4-23-92	BW	9:25	11	3.19
4-28-92	BW	5:04	8	1.55
5-19-92		8:55	7	1.87
5-26-92		1:18	5	1.34
6-3-92		3:06	1	.85
6-5-92		1:26	1	.44
7-7-92		8:53	8	2.09
7-16-92		8:38	1	.27
7-22-92	BW	10:09	4	.92
7-24-92		8:56	9	2.53
7-21-92		1:42	15	4.20
8-17-92		10:21	3	.74
8-4-92		11:13	2	.38
9-1-92		1:15	2 min.	.64
9-3-92	BW	10:12	7	2.14
9-23-92		8:55	6.30	1.78
9-24-92		3:03	8	2.22
10-6-92	BW	11:10	1	.24
10-7-92		9:33	1	.24
10-8-92		4:24 (fax)	1	.37
10-8-92			3	.91
10-1-92		8:45	2	.64
same		3:23	1	.37
same		10:56	1	.37
10-7-92		3:51	3	.91
10-8-92		9:24	1	.37
10-22-92		12:50	1	.37
11-10-92		10:54	1	.37
11-9-92		10:32	2	.64
11-10-92		4:36	1	.38
11-16-92		2:51	2	.64

12-11-92	11:24	1	.38
12-7-92	11:14	3	.91
12-17-92	3:55	1	.37
12-4-92	12:11	7	1.99
12-9-92	11:14	4	1.18
12-11-92 BW	11:25	8	1.72
12-14-92	9:42	11	3.07
12-17-92	3:38	1	.37
12-17-92	3:29	1	.37
12-17-92	3:32	2	.64
12-17-92	3:37	1	.37

1993

1-6	11:29	3	.91
1-8	1:52	1	.37
1-11	12:09	1	.37
1-12	8:54	2	.64
1-15	11:00	5	1.45
1-6	2:07	3	.91
1-8	10:51	2	.64
1-8	3:40	4	1.18
1-21	11:42	5	1.45
1-25	1:55	4	1.18
1-27	12:20	1	.37
1-14	3:58	2	.64
1-7	11:36	1	.37
1-8 BW	2:58	5	1.12
1-8 BW	3:16	3	.72
1-8 BW	3:39	1	.32
1-11	8:53	2	.64
1-12	10:08	3	.72
1-27	12:41	2	.64
1-5	2:33	3	.37
1-11	9:05	1	.37
1-26	12:35	3	.91
2-2	11:30	3	.91
2-15 BW	12:54	11	2.32
2-20 BW	11:13	14	1.31
2-22	2:58	5	1.45
2-26	3:39	2	.64
2-25	9:35	6	1.72

2-23		2:09	2	.64
3-3		11:09	3	.91
3-23		11:49	1	.37
3-8		8:29	3	.91
3-9		10:20	3	.91
3-11		11:57	3	.91
3-11		1:37	2	.64
3-18		8:50	2	.64
3-24		11:14	4	1.18
4-2		1:20	1	.37
4-7		9:49	4	1.18
4-23		8:54	2	.64
4-5		12:32	2	.64
4-8		2:09	2	.64
4-11	BW	8:55	6	1.85
4-11	BW	9:04	5	.72
4-12	BW	2:12	11	2.32
4-12	BW	2:43	5	1.12
4-14		1:21	3	.91
4-18	BW	10:04	4	.41
4-18	BW	10:12	5	.50
4-21		10:08	1	.37
4-12	BW	2:40	1	.32
4-23		3:19	3	.91
5-5		1:11	4	1.18
5-15		8:47	23	2.12
5-25		1:50	1	.37
5-26		9:14	1	.37
5-27		8:46	2	.64
5-20 (FAX)		3:49	3	.91
6-4		11:47	3	.91
6-22		2:11	2	.64
6-24		9:31	4	1.18
6-1		9:29	3	.91
6-1	BW	1:30	1	.32
6-1	BW	1:32	2	.52
6-7		1:42	5	1.45
6-11		1:56	4	1.18
6-21		8:52	2	.64

6-21		8:58	2	.64
6-25	BW	1:20	3	.72
6-28	fax	9:47	2	.64
6-7		9:51	2	.64
6-24		9:37	3	.91
6-28		2:35	3	.91
6-28		2:43	1	.37
6-28		2:46	2	.64
6-28		2:55	2	.64
7-2		3:15	7	1.99
7-12		12:01	3	2.52
7-13		3:38	4	1.18
7-22		4:26	1	.37
7-28		1:41	1	.37
7-9		2:04	5	1.45
7-15		10:49	3	.91
7-15		9:38	2	.64
7-15		2:36	2	.64
7-23		9:59	3	.91
7-28		10:28	1	.37
7-28		1:42	2	.64
Other expenses:				
Kinko's, photocopying, 4-13-93,				\$9.40
Express Mail, U.S. Court of Appeals,				\$9.95
Copy Center,				\$19.22
Copy Center,				\$13.94
U.S. Mail,				\$ 7.15
Total time (phone) 9 hours (\$150)				\$1350.00
Total costs				\$188.35
Prepare bill (4 hours @\$150)				\$600.00
Total Time (from attached timesheet)				\$39,750.00
Total Bill				\$41,888.35

5-19-93 3.25

5-20-93 4.75

5-21-93 5.25

5-22-93 7.5

5-23-93 8.0

6-1-93 2.5

Opposing Notice of Appeal and Defs. Request for Stay. Basic
research in Moore, Wright and Miller, and cases, plus writing.
This ends on 6-5-93

6-4-93 6.5

6-5-93 5.5

6-30-93 5.5

Remedy hearing in KC (includes travel)

Total: 265.0

\$39,750.00

Exclusive of telephone and cost log, attached separately.

*Titled on October 8, 1992, after all plaintiffs named and case filed

EXHIBIT "A"

The attorneys request an additional \$10,000.00 for the following reasons:

1. The difficulty and novelty of the issues involved;
2. The representation of clients who sought remedies in litigation which the plaintiffs attorney must underwrite in terms of time and costs;
3. The loss of revenue from rural clients and rural industries who misperceive the motives of the attorneys engaged in this litigation;
4. The intransigence of state officials in resolving the issues by settlement which would correct the consitutional flaws.

TESTIMONY SENATE AGRICULTURAL COMMITTEE
By Sam Brownback

Mr. Chairman and members of the committee thank you very much for this opportunity to testify in front of your today. While I have testified to you a number of times, today is different. I am here today not as Sam Brownback, Kansas Secretary of Agriculture, but rather as Sam Brownback, private citizen, concerned about the future of Kansas.

Mr. Chairman, I would only make these comments:

1. I do continue to believe strongly that a board type of structure for the Agriculture Department is the best structure. This type of structure provides for more professional competency, long term focus, sensitivity to the needs of people and effective government. Government must do all it can to be effective and responsive to the citizenry.

2. I believe that a board structure can be crafted which would pass constitutional requirements of one person, one vote. I believe this can be done without dismembering the Agriculture Department and ultimately would lead to a strengthening of the agency and its support from the people of Kansas and its ability to accomplish its task.

3. There is a significant chance that other organizations in state government will be sued on the same constitutional question as the Board of Agriculture was. Therefore, I would continue to encourage that the matter be taken forward on appeal so that a clear ruling could be given by the Court rather than having only the benefit of one judge at the lower Court level issuing an

Senate Ag
8-30-93
attachment 5 *4-1*

opinion on an original area of the law. I would hope that the 10th Circuit Court of Appeals could be urged to expedite the hearing on this case so that a clear ruling could be issued prior to the 1994 Legislative Session.

There is a lot worth saving in a board structure involving the Agriculture Department. You have a professional, highly competent staff that has been doing a good job for you in agriculture and the areas regulated by the agency for years. I would hope that much of that competency can be retained for the good of the state. It will take your encouragement to keep these professionals in place but it will be well worth your time.

Mr. Chairman I would be delighted to work with the committee along the lines of what I have stated or assisting with the engagement of the process.

I would be happy to respond to questions.



SIERRA CLUB

Kansas Chapter

Kansas State Board of Agriculture
Response to the Court Decision

Testimony of William Craven
Legislative Coordinator, Kansas Sierra Club

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

Senate Agriculture Committee
Interim Meeting
August 30, 1993

Thank you for providing an opportunity to testify on this important matter. 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 cabinet secretaries are named. 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 will be abolished on October 1, and the management of the agency will be transferred to the governor, who will serve as receiver. The governor will likely name someone as her agent to operate the agency. This system will remain in effect until the legislature enacts a constitutional form of government.

The second bit of background information is this: the Tenth Circuit Court of Appeals has denied the defendants motion for a stay, which means that the system I just described will remain in effect either until the legislature acts, or until the case is reversed on appeal. As one of the plaintiffs' lawyers, I am here today to impress upon you as strongly as I can my belief that there won't be a reversal. This case simply acknowledged a basic principle of democracy: states can't have elections for state offices where only certain people get to vote.

*Senate Ag
8-30-93
attachment 66-1*

We are also here to urge that you start believing us when we say that. Last year, we heard endlessly from various defenders of the Board of Ag, "If it ain't broke, don't fix it." This slogan was also heard from the Attorney General, who had issued three opinions saying that the election process was constitutional. Like most Kansans, I enjoy the antics of the attorney general as much as anyone. But 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.

The "if it ain't broke, don't fix it" message ignores the very crucial fact that the system is illegal. It is that simple. So it is broke, it needs to be fixed, and it is the legislative obligation to fix it. Its alleged effectiveness is immaterial and irrelevant to the voting issues raised in the lawsuit. It should have been fixed last year, when the suit was filed. At some point, you need to consider that the taxpayers have to pay for this lawsuit—including the plaintiffs attorneys' fees both in federal district court and at the end of an unsuccessful appeal. As taxpayers, we are upset that we have to pay for establishing democracy and lawful government when it shouldn't cost us one cent.

The plaintiffs legal challenge was based on three arguments, only one of which was involved in the federal court decision. The one issue which was discussed was the "one person, one vote" argument. The court ruled that the state can't have an election for a Board and a Secretary for a statewide agency when only delegates of certain agribusiness groups get to vote. Road contractors and people with cars can't elect the secretary of transportation. People on welfare and foster parents can't elect the secretary of SRS. And agribusiness groups, standing alone, can't elect the Secretary and the Board of Agriculture.

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 voting for the Secretary of Agriculture, should you consider that proposal. 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? In addition, both proposals would mean that political contributions to candidates would come from special interests, and these elections would be as dominated by special interests as the present elections for insurance commissioner. The plaintiffs are prepared to challenge the constitutionality of either of these methods, if the legislature enacts them.

There have also been rumored reports of a proposal to allow the agribusiness groups to nominate a slate of candidates to the governor who would then have to pick a secretary from that slate. We haven't heard the details of that proposal, but if it is enacted in the form I just mentioned, it would also be challenged in court. Such systems create only the illusion of democracy. Equally important, they violate the state constitutional provision prohibiting the delegation of authority to private trade associations.

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 fairly reflect the interests and voting strength of all of the citizens in Kansas.

Thank you for the opportunity to speak today.



PUBLIC POLICY STATEMENT

Senate Agriculture Committee

Re: State Board of Agriculture

Topeka, Kansas

August 30, 1993

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

*Senate Ag
8-30-93*

*Attachment 7
7-1*

Our policy development process is underway. Questionnaires are in the country concerning this and other issues, and a very small number 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, whether with the FACTS program, the Division of Laboratories, Inspections, Plant Health, Marketing, Statistics, or Water Resources. Just a few of the accomplishments are 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 also believe that wholesale changes, or "throwing the baby out with the bath water" 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 that will benefit the agency, agriculture, and Kansas. We've

been there when previous changes have been made, and if the legislature, in its wisdom, 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 also as to your beliefs as a legislature as to what is in the best interest of all Kansans, as well as a \$6 billion dollar agriculture industry.

We look forward to working with you on this issue, and look forward to having in hand a formal policy position when the legislature convenes 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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Owns and Publishes The Kansas STOCKMAN magazine and KLA News & Market Report newsletter.

STATEMENT
OF THE
KANSAS LIVESTOCK ASSOCIATION
TO THE
SENATE AGRICULTURE COMMITTEE

Senator David Corbin, Chairman
With Respect to the
Kansas State Board of Agriculture
Presented By
Dee Likes
Executive Vice President
August 30, 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 in 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

*Senate Ag
8-30-93
attachment 8-1*

least once every election - or more often - there would be less consistency 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 commercial 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

Senate Agriculture Committee
Chairman: Senator David Corbin

Subject: Kansas Board of Agriculture

Mr. Chairman and members of the committee, my name is Howard W. Tice, and I have the privilege of serving as Executive Director of 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.

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.

At the last meeting of the KAWG Board of Directors, this issue was thoroughly discussed. 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.

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
SENATE AGRICULTURE COMMITTEE
DAVID CORBIN, CHAIRMAN
REGARDING THE KANSAS STATE BOARD OF AGRICULTURE
AUGUST 30 AND 31, 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

*Senate Ag Co
8-30-93
(attachment 10) 10-1*

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

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August 27, 1993

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

Senator Dave Corbin, Chairman
and Members of the Senate Committee on Agriculture
State Capitol
Topeka, KS 66612

Dear Senator Corbin and Senate Committee Members:

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.

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.

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

Sincerely yours,

Catharine A. Deever
Executive Director

*Senate Ag
8.30.93
Attachment 11*

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

Senate Ag
8-30-93

Attachment 12
12-1

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. anybody 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?
Your services did not assist me with anything

yes ☐ no ☒

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:

Larry Wanzlick

Signature (optional)

COST-RETURN BUDGET—FINISHING BEEF

	Steers		Heifers		Your Farm	
	Total	Cash Flow	Total	Cash Flow	Total	Cash Flow
VARIABLE COSTS PER HEAD:						
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		
A. TOTAL VARIABLE COSTS	\$ 216.09	\$ 187.66	\$ 199.01	\$ 172.54		
FIXED COSTS PER HEAD:						
16. Depreciation on Buildings and Equipment	\$ 15.00	\$ XXX	\$ 15.00	\$ XXX		
17. Interest on Buildings and Equipment ¹ @ 12%	11.40	17.57	11.40	17.57		
18. Insurance on Buildings and Facilities @ .25%	.48	.48	.48	.48		
B. TOTAL FIXED COSTS	\$ 26.88	\$ 18.05	\$ 26.88	\$ 18.05		
C. TOTAL COSTS PER HEAD (A + B)	\$ 242.97	\$ 205.71	\$ 225.89	\$ 190.59		
RETURNS PER HEAD						
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					
D. GROSS RETURN PER HEAD	\$ 159.85		\$ 156.87			
E. RETURNS OVER VARIABLE COSTS (D - A)	\$ -56.24	\$ -27.81	\$ -42.14	\$ -15.67		
F. RETURNS OVER TOTAL COSTS (D - C)	\$ -83.12	\$ -45.86	\$ -69.02	\$ -33.72		
G. AVERAGE SELLING PRICE NEEDED:						
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		
H. TOTAL FEED COST (Lines 1 through 7)	\$ 143.48	\$ 143.48	\$ 131.31	\$ 131.31		
24. Cwt. Produced:	4.00		3.50			
25. Feed Cost Cwt. (H ÷ 24)	\$ 35.87	\$ 35.87	\$ 37.52	\$ 37.52		
I. ASSET TURNOVER (D ÷ INVESTMENT) ²	18.16%		19.84%			
J. NET RETURN ON INVESTMENT (F ÷ 15 × 17) ÷ INVESTMENT ²	-4.22%		-3.53%			

¹Interest on the investment in buildings and equipment at an interest rate of 12 percent. The cash flow column assumes principal and interest payments on a 10-year amortized loan at an interest rate of 12 percent.

²Net return equals total cost of purchased animal and value of buildings and equipment.



COOPERATIVE EXTENSION SERVICE, MANHATTAN, KANSAS

ME 592 Revised

August 1991

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File Code: Farm Management 3-2

COST-RETURN BUDGET—DRYLOT BACKGROUNDING AND FINISHING BEEF

	Steers		Heifers		Your Farm	
	Total	Cash Flow	Total	Cash Flow	Total	Cash Flow
VARIABLE COSTS PER HEAD:						
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		
A. TOTAL VARIABLE COSTS	\$ 318.35	\$ 280.89	\$ 289.24	\$ 254.10		
FIXED COSTS PER HEAD:						
16. Depreciation on Equipment and Facilities	\$ 17.00	\$ XXX	\$ 17.00	\$ XXX		
17. Interest on Equipment and Facilities ¹ @ 12%	13.80	21.27	13.80	21.27		
18. Insurance on Equipment and Facilities @ .25% .....	.58	.58	.58	.58		
B. TOTAL FIXED COSTS	\$ 31.38	\$ 21.85	\$ 31.38	\$ 21.85		
C. TOTAL COSTS PER HEAD (A + B)	\$ 349.73	\$ 302.74	\$ 320.62	\$ 275.95		
RETURNS PER HEAD						
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					
D. GROSS RETURN/HEAD	\$ 298.50		\$ 259.94			
E. RETURNS OVER VARIABLE COSTS (D - A)	\$ -19.85	\$ 17.61	\$ -29.30	\$ 5.84		
F. RETURNS OVER TOTAL COSTS (D - C)	\$ -51.23	\$ -4.24	\$ -60.68	\$ -16.01		
G. AVERAGE SELLING PRICE NEEDED:						
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		
H. TOTAL FEED COST (Lines 1 through 7)	\$ 214.89	\$ 214.89	\$ 191.55	\$ 191.55		
24. Cwt. Produced:	6.00		5.25			
25. Feed Cost Cwt. (H ÷ 24)	\$ 35.82	\$ 35.82	\$ 36.49	\$ 36.49		
I. ASSET TURNOVER (D ÷ INVESTMENT) ² ..	38.27%		35.79%			
J. NET RETURN ON INVESTMENT (F ÷ 15 + 17) ÷ INVESTMENT) ²	1.55%		-.43%			

¹Interest 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 payments on a 5-year amortized loan at an interest rate of 12 percent.
²Investment equals total cost of purchased animal and value of buildings and equipment.



COOPERATIVE EXTENSION SERVICE, MANHATTAN, KANSAS

MF-593 Revised

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File Code: Farm Management 3-2

COST-RETURN BUDGET—DRYLOT BACKGROUNDING OF BEEF

	Steers		Heifers		Your Farm	
	Total	Cash Flow	Total	Cash Flow	Total	Cash Flow
VARIABLE COSTS PER HEAD:						
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		
A. TOTAL VARIABLE COSTS	\$ 179.54	\$ 153.13	\$ 166.88	\$ 142.39		
FIXED COSTS PER HEAD:						
16. Depreciation on Equipment and Facilities	\$ 14.25	\$ XXX	\$ 14.25	\$ XXX		
17. Interest on Equipment and Facilities ¹ @ 12%	11.10	17.11	11.10	17.11		
18. Insurance on Equipment and Facilities @ .25% .....	.46	.46	.46	.46		
B. TOTAL FIXED COSTS	\$ 25.81	\$ 17.57	\$ 25.81	\$ 17.57		
C. TOTAL COSTS PER HEAD (A + B)	\$ 205.35	\$ 170.70	\$ 192.69	\$ 159.96		
RETURNS PER HEAD						
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					
D. GROSS RETURN/HEAD	\$ 175.92		\$ 169.49			
E. RETURNS OVER VARIABLE COSTS (D — A)	\$ -3.62	\$ 22.79	\$ 2.61	\$ 27.10		
F. RETURNS OVER TOTAL COSTS (D — C)	\$ -29.43	\$ 5.22	\$ -23.20	\$ 9.53		
G. AVERAGE SELLING PRICE NEEDED:						
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		
H. TOTAL FEED COST (Lines 1 through 7)	\$ 108.53	\$ 108.53	\$ 100.63	\$ 100.63		
24. Cwt. Purchased	3.0		2.75			
25. Feed Cost @ C + H	\$ 36.18	\$ 36.18	\$ 36.59	\$ 36.59		
I. ANNUAL KNOWLEDGE INVESTMENT	25.83%		27.22%			
J. NET RETURN ON INVESTMENT						
K. PERCENT ON INVESTMENT	2.01%		2.46%			

¹ Interest on the investment in buildings and facilities at an interest rate of 12 percent. The cash flow column assumes principal and interest on the investment in buildings and facilities at an interest rate of 12 percent.
Investment equals total cost of purchased animal and value of buildings and facilities.



COOPERATIVE EXTENSION SERVICE, MANHATTAN, KANSAS

MF-600 Revised

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8-91—1.5M

File Code: Farm Management 3-2

COST-RETURN PROJECTION—GRAZING YEARLING BEEF

	Steers		Heifers		Your Farm	
	Total	Cash Flow	Total	Cash Flow	Total	Cash Flow
VARIABLE COSTS PER HEAD:						
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		
A. TOTAL VARIABLE COSTS	\$ 104.72	\$ 89.06	\$ 102.69	\$ 87.84		
FIXED COSTS PER HEAD:						
16. Depreciation on Equipment and Facilities	\$ 2.00	\$ XXX	\$ 2.00	\$ XXX		
17. Interest on Equipment and Facilities ¹ @ 12%	1.80	2.77	1.80	2.77		
18. Insurance on Equipment and Facilities @ .25%	.08	.08	.08	.08		
B. TOTAL FIXED COSTS	\$ 3.88	\$ 2.85	\$ 3.88	\$ 2.85		
C. TOTAL COSTS PER HEAD (A + B)	\$ 108.60	\$ 91.91	\$ 106.57	\$ 90.69		
RETURNS PER HEAD						
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					
D. GROSS RETURN/HEAD	\$ 100.81		\$ 111.22			
E. RETURNS OVER VARIABLE COSTS (D - A)	\$ -3.91	\$ 11.75	\$ 8.53	\$ 23.38		
F. RETURNS OVER TOTAL COSTS (D - C)	\$ -7.79	\$ 8.90	\$ 4.65	\$ 20.53		
G. AVERAGE SELLING PRICE NEEDED:						
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		
H. TOTAL FEED COST (Lines 1 through 7)	\$ 60.60	\$ 60.60	\$ 60.60	\$ 60.60		
24. Cwt. Produced:	1.95		1.95			
25. Feed Cost Cwt. (H ÷ 24)	\$ 31.08	\$ 31.08	\$ 31.08	\$ 31.08		
I. ASSET TURNOVER (D ÷ INVESTMENT)²	17.70%		21.03%			
J. NET RETURN ON INVESTMENT ((F + 15 + 17) ÷ INVESTMENT) ²	4.02%		6.30%			

¹Total 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.

²Investment equals total cost of purchased animal and value of equipment and corrals.



COOPERATIVE EXTENSION SERVICE, MANHATTAN, KANSAS

MF-591 Revised

October 1990

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10-90-2M

File Code: Farm Management 3-2

COST-RETURN PROJECTION FOR BEEF COWS (PER COW)

	EXAMPLES		YOUR FARM	
	Total	Cash Flow	Total	Cash Flow
VARIABLE COSTS PER COW:				
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 ½ Variable Costs @ 12%	21.98	10.72		
A. TOTAL VARIABLE COSTS	\$ 388.28	\$ 308.61		
FIXED COSTS PER COW:				
14. Depreciation on Buildings and Equipment	\$ 53.50	\$ XXX		
15. Interest on Buildings and Equipment ¹ @ 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. TOTAL FIXED COSTS	\$ 177.85	\$ 115.93		
C. TOTAL COSTS PER COW (A + B)	\$ 566.13	\$ 424.54		
RETURNS PER COW:				
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			
D. GROSS RETURNS/COW	\$ 472.90			
E. RETURN OVER VARIABLE COSTS (D — A)	\$ 84.62	\$ 164.29		
F. RETURN OVER TOTAL COSTS (D — C)	\$ -93.23	\$ 48.36		
G. AVERAGE SELLING PRICE NEEDED/CWT.				
22. To Cover Variable Costs (A - 21) ÷ 24	\$ 79.94	\$ 59.62		
23. To Cover Total Costs (C - 21) ÷ 24	\$ 125.31	\$ 89.19		
H. TOTAL FEED COSTS (Lines 1-5)	\$ 254.04	\$ 247.84		
24. Cwt. of Calf Sold Per Cow		3.92		
I. ASSET TURNOVER (D ÷ INVESTMENT) ²		36.18%		
J. NET RETURN ON INVESTMENT ((F + 13 + 15 + 17) ÷ INVESTMENT) ²		3.45%		

¹Total 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.

²Investment 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%) ¹	54.00	31.82		
17. Rent for Rented Land				
18. Depreciation on Crop Machinery	16.50	XXX		
19. Interest on Crop Machinery ² @ 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 ³	\$ 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) ⁴	12.43%			
N. NET RETURN ON INVESTMENT ((I + 14 + 16 + 19) ÷ INVESTMENT) ⁴	5.02%			

¹Total 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. ²Total 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. ³Net 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. ⁴Investment 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
VARIABLE COSTS PER COW:				
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 ½ Variable Costs @ 12%	132.99	69.42	_____	_____
A. TOTAL VARIABLE COSTS	\$2,349.45	\$1,997.88	_____	_____
FIXED COSTS PER COW:				
11. Depreciation on Buildings and Equipment	\$ 261.26	\$ XXXX	_____	_____
12. Interest on Buildings and Equipment ¹ @ 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. TOTAL FIXED COSTS	\$ 612.01	\$ 371.22	_____	_____
C. TOTAL COSTS PER COW (A + B)	\$2,961.46	\$2,369.10	_____	_____
RETURNS PER COW				
16. Milk Sales: 17,500# × \$12.00/cwt.	\$ 2,100.00		_____	_____
17. Calves Sold: 40% × \$100	40.00		_____	_____
18. Cull Cows: 1,300# × ⅓ × \$53.50/cwt.	229.52		_____	_____
D. GROSS RETURNS/COW	\$ 2,369.52		_____	_____
E. RETURNS OVER VARIABLE COSTS (D — A)	\$ 20.07	\$ 371.64	_____	_____
F. RETURNS OVER TOTAL COSTS (D — C)	\$ -591.94	\$.42	_____	_____
G. TOTAL RETURN PER CWT. OF MILK SOLD (D ÷ 175 CWT.)	\$ 13.54	\$ 13.54	_____	_____
H. TOTAL COST/CWT. MILK SOLD (C ÷ 175 CWT.) ...	\$ 16.92	\$ 13.54	_____	_____
I. ASSET TURNOVER (D ÷ INVESTMENT) ²	57.79%		_____	_____
J. NET RETURN ON INVESTMENT ((F + 10 + 12 + 14) ÷ INVESTMENT) ²	-3.15%		_____	_____

* Based on 1990 Farm Management Association farms plus inflation from 1990 to 1992.

¹Total 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.

²Investment equals total value of breeding stock and buildings-equipment.

COST RETURN PROJECTION—DAIRY HERD REPLACEMENT

	EXAMPLE		YOUR FARM	
	Total	Cash Flow	Total	Cash Flow
VARIABLE COST PER HEIFER				
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	_____	_____
A. TOTAL VARIABLE COSTS	\$ 752.87	\$ 623.93	_____	_____
FIXED COST PER HEIFER:				
9. Depreciation on Buildings and Equipment	\$ 15.00	\$ XXXX	_____	_____
10. Interest on Buildings and Equipment ¹ @ 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. TOTAL FIXED COSTS	\$ 111.75	\$ 75.29	_____	_____
C. TOTAL COSTS PER HEIFER (A + B)	\$ 864.62	\$ 699.22	_____	_____
RETURNS PER HEIFER				
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	_____	_____	_____
D. GROSS RETURNS PER HEIFER	\$ 761.60	_____	_____	_____
E. RETURN OVER VARIABLE COSTS (D - A)	\$ 8.73	\$ 137.67	_____	_____
F. RETURN OVER TOTAL COSTS (D - C)	\$ -103.02	\$ 62.38	_____	_____
G. ASSET TURNOVER (D ÷ INVESTMENT) ²	80.02%	_____	_____	_____
H. NET RETURN ON INVESTMENT ((F + 8 + 10 + 12) ÷ INVESTMENT) ²	3.75%	_____	_____	_____

¹Total 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.

²Investment equals total investment in dairy heifer and value of buildings and facilities for the two year period.



COOPERATIVE EXTENSION SERVICE, MANHATTAN, KANSAS

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File Code: Farm Management 3-2

8-91-1.5M

COST-RETURN BUDGET—EWE AND LAMB

	EXAMPLES		YOUR FARM	
	Total	Cash	Total	Cash
VARIABLE COSTS PER EWE				
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		
A. TOTAL VARIABLE COSTS	\$ 109.42	\$ 92.03		
FIXED COSTS PER EWE				
16. Depreciation on Buildings and Equipment	\$ 11.25	\$ XXX		
17. Interest on Buildings and Equipment ¹ @ 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. TOTAL FIXED COSTS	\$ 34.88	\$ 24.35		
C. TOTAL COSTS PER EWE (A + B)	\$ 144.30	\$ 116.38		
RETURNS PER EWE				
21. Market Lambs: 120 lbs. × 115% × \$63/cwt.	\$ 86.94			
22. Cull Ewes: .2 × 125 lbs. × \$16.90/cwt.	4.23			
23. Wool and Incentive: 8.5 lbs. × \$1.25/lb.	10.63			
24. Ewe Replacement	-16.67			
D. GROSS RETURNS/EWE	\$ 85.13			
E. RETURN OVER VARIABLE COST (D — A)	\$ -24.29	\$ -6.90		
F. RETURN OVER TOTAL COSTS (D — C)	\$ -59.17	\$ -31.25		
G. AVERAGE SELLING PRICE NEEDED/CWT.				
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		
H. TOTAL FEED COSTS (Lines 1-5)	\$ 69.03	\$ 69.03		
27. Cwt. Produced	1.38			
28. Feed Cost/Cwt. Lamb Marketed (H ÷ 27)	\$ 50.02	\$ 50.02		
I. ASSET TURNOVER (D ÷ INVESTMENT) ²	\$ 31.53%			
J. NET RETURN ON INVESTMENT ((F + 15 + 17 + 19) ÷ INVESTMENT) ²	-11.40%			

¹Total 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.

²Investment equals total value of breeding stock and buildings-equipment.

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 of 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 popularly responsible to the citizens of this state and country.

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 on 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 rided 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 issue, 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 Justin Harlin 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.

Justin Harlin 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

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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 leads 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, 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 cited 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 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 don't 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's very important, however to recognize that there must be limitations upon the exercise of judicial power. As Justin Harlin 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 fine points 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 recognized "acceptable" population deviation? Again quoting Justice Harlin in his dissent in *Reynolds v. Simms*, 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?

Justin Harlin 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 Justin Harlin: "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. The question therefore is do we get a "better" government. I contend that Justin Harlin had it dead on when he noted that judicial intervention in reapportionment cases does not encourage better, more responsive government. Rather, Justice Harlin 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. 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 Justin Harlin'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.



KANSAS TERRITORIAL AGRICULTURAL SOCIETY-Law Est: 1855

MEMORANDUM

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.

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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 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]

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 | |

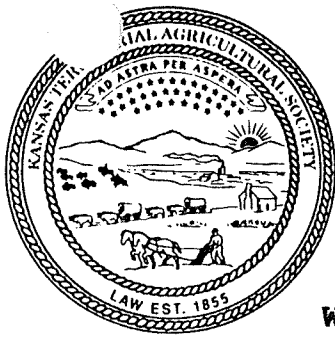
BRIEF IN SUPPORT OF COOPERATION AND INVESTIGATION

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 30, 1993 Rm. 526-S at 9:00 a.m. without proof of authority nor provable authority or permission: [SEE Exhibits Supra]

Senate Ag
8-30-93
Attachment 14
14-1



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

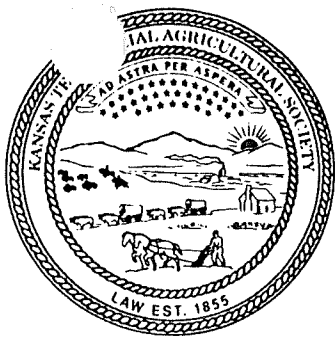
Corporations - - Key at 40

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 _____]

14-5



KANSAS TERRITORIAL AGRICULTURAL SOCIETY-Law Est: 1855

PAGE 6.

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

HONORABLE MEN MY LIFE IN THE CIA BY WILLIAM COLBY

Former Director of
Central Intelligence Agency
and Peter Forbath



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 but did when he could after I was in the sp


What v ment wa By May the Insp should be in both t bled the main wi felt that hearings sequentl pital, an with Sy larly, I excellent I man of sent me erat he I of Hebe of conse men list much ex see to it with its that the order th in the pi

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 DDGI, 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 comtly 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



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

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

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

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. 58-1308 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 14 1982	Stephen J. Rose	1406A Marquesas Way #1176 Marina Del Rey, Ca. 90230	Los Angeles	California
SEP 21 1982	Diane J. Acker	13317 W 109th St. Overland Park 66210	Johnson	Ks.
	Mark W. Cronley	7517 E 61st Prairie V. KS. 66208	Johnson	KS
	Bob Givley	3637 SE Hwy 40 #H-5	Shawnee	KS
	Bryce W. Boye	3637 Devon Topeka	Shawnee	Ks
	Vance J. Bidew	123 West Main Chanute	Weosho	KS
	Ann Fahrback Branden	2145 Ohio Lawrence	Douglas	KS
	Jeffrey Robert Brewer	P.O. Box 1179 Wichita, KS. Box 369	Sedgwick	KS
	Samuel Dale Brown	Manhattan, KS	Riley	KS
	Thomas Calhoun Boone	Box 711 Hays, KS 67601	Ellis	KS
	Shirley K. Calvin	1809 Huntoon Topeka, Ks. 66604	Shawnee	Ks.
	John Leik Cauchey	550 W. Court #101 Wichita, KS 67202	Sedgwick	KS
	Carl R. Clark	5507 Reeds Rd Box 1704 Mission, KS	Johnson	KS.
	Mr. P. Lynn	10602 W. 75 Terr. Shawnee, Ks. 66214	Johnson	Ks.
	Joann M. Cook	10975 Grandview Dr. Suite 145 27 Corporate O.P., KS. 66210	Woods Johnson	Ks.
	John P. Cof	7507 Lamar Ave Prairie Village	Johnson	Ks.
	Julia A. Craft	132 N. Nevada Wichita	Sedgwick	KS
	Ray L. Crevier	6435 Sogomere Mission Hills	Johnson	KS
	Larry C. Lynn	1600 N. Brunswick Wichita, Ks.	Sedgwick	KS
	Jeffrey A. Dehon	1322 N. Woodlawn Wichita K	Sedgwick	KS.
	Marty J. Dickinson	708 Cornwood Ln Newton, KS. 67114	Harvey	KS.
	Sherry Elaine Dug	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.

14-14

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 Light Hanner	3701 W. 29th Terr. Topeka, Kansas	Sedgwick	Kansas
	Glenn Delwayne Schiffner	8800 Everingham Dr., Wichita, apt. 15 Topeka, Kansas 66611	Thomas	Kansas
	Henry Paul Watkins	417 TULEO AVE TOPEKA, KANSAS	Shawnee	Kansas
	Bruce Reed Kent	201 S. State Street Norton, Kansas	Norton	Kansas
	Clarence Ralph Witham	8335 Mackay Orcutt Park, Kansas	Nemaha	Kansas
	Robert Warren Menck	1678 W. 22nd Topeka, Ks. 66611	Shawnee	Kansas
	Richard James Baron	355 N. 6th Hodsdon, Ks 66257	Wilson	Kansas
	Jan Aldon Way	1125 S. 78th 40 Local Aid Society 927 Beacon Blvd Wichita, Kansas	Wyandotte	Kansas
FEB 12 1970	William S. Hittcave Jr.		Sedgwick	Kansas
FEB 18 1970	John Howard Burnett	9133 Manor Road Leawood, Ks	Johnson	Ks.
JUN 22 1970	James Smith	811 N. Woodbury Ave Junction City, Ks	Gary	Kansas
	Gerald R. Jenkins	1801 N. Rainwater Ave Liberal, Kansas 67901	Seward	Kansas
	Udo Kretschmer	1616 Mackay Topeka, Kansas 66604	Shawnee	Kansas
	John F. Murphy	APT 51, Hardoullard LOWFANCE, KANSAS	Douglas	Kansas
	William S. Richardson	201 N. MAIN WICHITA, KANSAS	Sedgwick	Kansas
	Walter H. Foltz	2200 1/2 S. 10th Newton, Kan.	Harvey	Kansas
	James S. Schmal	9214 Belinder Blvd	Leawood	Kansas
JUN 24 1970	George Richard Kozembach Jr.	3611 Nottingham Rd	Shawnee	Kansas
	John Watson Sengstuen	1301 Louisiana	Douglas	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.

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 11 1934	R. Kent Shaver	907 E. (Eastburg Ave.) 7006 E. Kilgus Wichita, Kansas 67207	Sedgwick	Kansas
	Edwin S. Kelly	2920 S. Gage Blvd. Rt. 115 Topeka, Kansas	Seward	Kansas
	Bruce C. Harrington	1535 Medford Topeka, Kansas	Shawnee	Kansas
	Laurence McDougall	5510 Plaza Lane Wichita, Kansas 1242 W. Elliston	Sedgwick	Kansas
	Laurie M. P. P. P.	Shawnee, Kansas	Waggoner	Kansas
	Richard E. McMass	Topeka, Kan. 1908 W. Parkway 4308 S. 1st St.	Shawnee	Kansas
	Byron Carroll London	Shawnee Mission, Kan.	Johnson	Kansas
	Robert Joseph Lehman	411 E. 20th Atchison, Kan.	Leavenworth	Kansas
	Thomas Raphael Coulter	2930 S. Gage Rt. 115 Topeka, Kan.	Shawnee	Kansas
	John Dennis Muench	606 College St. Scott City, Kansas	Scott	Kansas
	Frank D. Davis	317 NORTH 10TH Independence	Montgomery	Kansas
	William Allen Wells	Ralph Foster Attorney Central Bldg - Wichita 1307 W. 10th	Cherokee	Kansas
	John James Bryan	1307 W. 10th Topeka, Kan. 66604	Shawnee	Kansas
	Roger Poe Hickey	145 1st Oak Rd. Wichita, Kansas 67202	Sedgwick	Kansas
	James Wilson Map	145 1st Oak Rd. Wichita, Kan. 67212	Santa Barbara	California
	Kenneth M. Wilke	2405 Kansas Ave. Topeka, Kansas 66611	Shawnee	Kansas
	Robert Minter	3502 Del Sianno Wichita, Kansas	Sedgwick	Kansas
	Mary Leo Jordan	610 S. Maple Ottawa, Kansas	Barton	Kansas
	Benjamin James Neill	3208 Euclid, De DR Apt. #4 Topeka, Kansas	Lane	Kansas
	David Frank Brewster	415 East 21st St. Belle Springs, Kan. 66713	Cherokee	Kansas
	Walter E. Floyd	908 Euclid Garden City, Kan.	Barber	Kansas
	Larry L. Lattinham	2001 Bowman Ct. 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,

14-16

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. 85th Overland Park, KS 66212	Johnson	KS
MAY 15 1981	Wendy Anne Jeday	975 E. 84th KC 140 64131	Jackson	MO
MAY 15 1981	Tom A. [unclear]	1945 S.W. Maclean Topeka, KS 66604	Shawnee	Kan
MAY 15 1981	David Bowers	1100 Milam Suite 1500 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	Christopher R. James	320 Woodbury Ln Topeka 66606	Shawnee	Kansas
SEP 25 1981	David M. [unclear]	510 Buchanan St Topeka KS 66606	Shawnee	Kansas
SEP 25 1981	James Robison Kunn	1322 Stickney Dr. Wichita, KS 67207	Sedgwick	Kansas
SEP 30 1981	William James Cramer	1324 [unclear] Lawrence KS 66044	Douglas	Kansas
OCT -2 1981	Carolyn Anderson Adams	92 Popper Tree Lane Topeka, Kansas 66611	Shawnee	Kansas
	Marc Carlton Anderson	6332 Finkwood Ln. Murfreesboro KS 66203	Johnson	Kansas
	Karen Marie Arnold Bruger	5718 Outlook #204 Mission, KS 66202	Johnson	Kansas
	Kenneth Russell Beeg	5605 22nd Plc Topeka, KS 66614	Shawnee	Kansas
	Thomas Lee Bell	3524 Skyline Pkwy Topeka, KS 66614	Shawnee	KANSAS
	Gregory J. Ben	3422 Javline Terr Topeka, Kan. 66611	Shawnee	Kansas
	Joe L. Hardy Bueta	22 E. Box 141-B Lawrence, KS. 66044	Douglas	Kansas
	Michael Louise Boyard	226 WAPNEK Bonner Springs KS 66012	Wyandott	Kansas
	John F. Borch	822 Grant Terr. Olathe KS 66061	Johnson	Kansas
	Sh R [unclear]	113 W 13th St Hays, KS 67601	Ellis	KANSAS
	Alan Kent Brown	6515 W. Fortiche 13th 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.

14-17

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 recusation.

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 recusation 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 jurisdic-

tion, 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 errone-

DOTSON v. BURCHETT

637

(301 Ky 28, 102 ALR 636, 190 SW2d 697)

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

John A. Haderman

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 THEREIN.

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

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

KANSAS STATE
HISTORICAL SOCIETY

COPY CERTIFICATION BY DOCUMENT CUSTODIAN

NO. 208

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 834-836, Statutes of the Territory of Kansas,
Shawnee M. L. School: John T. Brady, Public Printer.
1855.

(Description of original document with number of pages)

is a true, correct, and complete photocopy of a document in my possession.

Department of Archives

Kansas State Historical Society

Topeka, Kansas

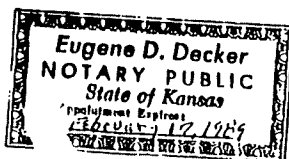
(Signature and address of custodian of original document)

Subscribed and sworn (or affirmed) to before me this

21st day of March

19 86

(Notary's Signature)



7180 122

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ATTACHMENT EXHIBIT # 14.

14-20

CHAPTER 58.

An act to incorporate the Territorial Agricultural Society.

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

*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.

Term of office.

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.

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 corporators.
2. Capital stock of company.

- § 3. May open books for stock, &c.
4. To hold meetings; how often.

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

Names of corporators.

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.

y room, one hundred dol-
 ng and enrolling clerks for
 ty dollars ; for compensa-
 rks and one assistant clerk
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 s and collectors of the reve-
 mpensation for the adjutant
 e hundred dollars ; for ex-
 housand dollars ; for con-
 sions of law, and for which
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orce from and after its pas-

ears eighteen hundred and fifty-
 l and fifty-six.

d Legislative Assembly of
 follows :

of meeting the expenses of
 ars one thousand eight hun-
 owing sums are hereby ap-
 ditor's office, one hundred
 e, one hundred dollars ; for
 the treasury and treasurer's
 d appurtenances, seventy-
 ill of books furnished audi-
 e cents ; Amos H. Shultz,
 e., thirty-seven dollars and
 , for bill of printing, three
 th Herald, six dollars and
 eign, five dollars ; to Tho-
 l 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-
 anco, 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.

14-24

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 to 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.

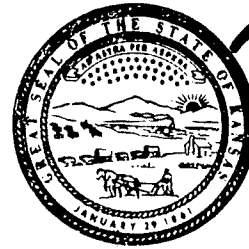
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AN ACT

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STATE OF KANSAS



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

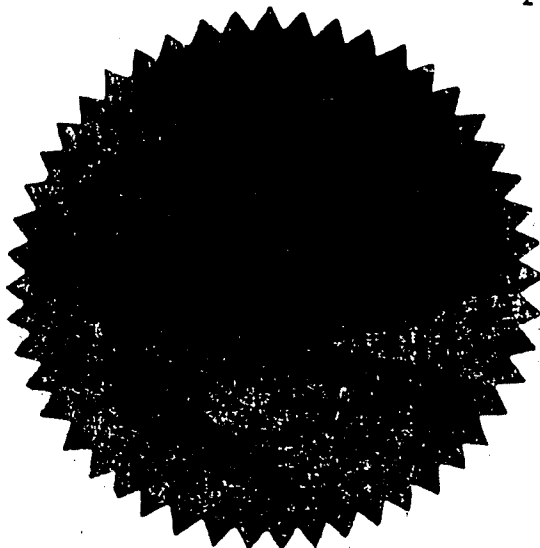
To all to whom these presents shall come, Greeting:

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.

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 purposes 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.

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 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.

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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INDEX TO CHAPTERS.

AGENTS.

- CHAPTER 1. An act to authorize a certain Agent, and provide for his payment, PAGE. 9

AGRICULTURE AND MECHANICS.

- CHAPTER 2. 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, 10
- CHAPTER 3. An Act to locate and establish a College for the benefit of agriculture and the Mechanic Arts, 11
- CHAPTER 4. An Act for the Government of the Kansas State Agricultural College for the benefit of Agriculture and the Mechanic Arts, 12
- CHAPTER 5. An Act to provide for the Location of Lands granted to the State by act of Congress, approved July 2d, 1862, and making an appropriation therefor, 16

APPROPRIATIONS.

- CHAPTER 6. An Act making appropriations for the current Legislative expenses for the year 1863, 17
- CHAPTER 7. An Act making an appropriation for educating the Deaf and Dumb Children of the State of Kansas for the year 1863, 18
- CHAPTER 8. An Act making appropriations for the Current Expenses for the years A. D. 1861, 1862 and 1863, 19

ASSESSORS.

- CHAPTER 9. An Act prescribing the duties of the County Assessors, and requiring them to furnish certain Statistics, 26

BONDS.

- CHAPTER 10. An Act to provide for canceling certain State Bonds, 27
- CHAPTER 11. An Act to provide for the issue and negotiation of Bonds of the State of Kansas, and to Legalize those Bonds of the State heretofore sold to the Department of the Interior of the United States, 28
- CHAPTER 12. An Act to Fund the Territorial Debt, 32

ATTACHMENT EXHIBIT # 23.

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 1863. 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,

ATTACHMENT EXHIBIT # 24.

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, stationery 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-

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dreu 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—F. 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 cement and executive printing, one thousand and fifty-three dollars and ten cents; to Aaron Katzenstein, for teaching 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 *Conservative* 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 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 Starr, 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, seventeen dollars and fifty cents; to J. A. Halderman, for expenses in militia, 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. Wilmarth, for collecting election returns from Chase, Osage and Butler counties, eighteen dollars; L. Weil, for translating 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

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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. Spring-ellow*, 2 Kas. 263; *Clay v. State*, 4 Kas. 49; *McCullom v. Pipe*, 7 Kas. 195; *Parker v. Winsor*, 6 Kas. 367; *id.*, 372; *Douglas Co. v. U. P. R'y*, 5 Kas. 624; *Chase Co. v. Shipman*, 14 Kas. 657; Organic Act, organizing Territory of Kansas, 10 U. S. Stat. at L., p. 283, cited or construed, *Simmons v. Garrett*, McCahon's R. 85; *Lochnane v. Martin*, *id.* 60; *Dewey v. Dyer*, *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.

14-34

CHAPTER 3.—AGRICULTURAL COLLEGE.

(This chapter embraces the laws 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.

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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.¹ 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,"² that commercial agreements may provide for remedies in addition to or in substitution for those provided by the Code,³ 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.⁴

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.⁵

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 Code⁶ 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.⁷ The court seemed troubled that applying K.S.A. 84-2-713 to the facts would

ate ag board doesn't need fixing

Wich 7-23-93
Regarding the July 6 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. Finney 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

14-38

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 annual meeting each January. Members 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 Circuit Court of Appeals in Denver. 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 overturned, 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 in Hays.

pledge 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, 19 89.



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.

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 14 1912	Henry J. Brundage	2058 EDWARD DALINA, KANSAS	DALINE	KANSAS
	Margaret M. Brundage	4460 Lehigh Ave. Burlington, N. J.	Michigan	Kansas
	James C. Harner	3208 S. Chicago St. Chicago, Ill.	Barton	KANSAS
	William H. Harner	Oneida, N. Y.	Johnson	Kansas
	John A. Harner	211 Box 202 Olathe	Johnson	Kansas
	John A. Harner	2113 Ralston Topeka, Kan.	Shawnee	Kansas
	John K. Kleinknecht	5526 Plaza Reno Wichita, Kansas	Sedgwick	Kansas
	Ernest W. McLaughlin	5800 Kansas St. Shawnee Mission 5016 Kansas St.	Johnson	Kansas
	Charles E. Wicken	Norton, 342 W. 12th St.	Norton	Kansas
	Robert A. Smith	Wichita, Kansas	Sedgwick	Kansas
	John Henry Smith	725 5th St. Wichita, Kansas	Sedgwick	Kansas
	Richard E. Smith	1420 W. 12th St. Lawrence, Kansas	Louis	Kansas
	William R. Smith	101 W. 12th St. Lawrence, Kansas	Louis	Kansas
	Angela Stouthamer	1420 W. 12th St. Lawrence, Kansas	Lawrence	Kansas
	Daniel S. Haristy	3407 Edgemoor Wichita, Kansas	Sedgwick	Kansas
	Lillian Petrus W. Co. Jr.	10-20 1st St. Olathe, Kan.	Johnson	Kansas
	Arvid Victor Jacobson	3121 Main Street Topeka	Shawnee	Kansas
	Mark Frederick Johnson	Wichita 1011 W. 12th St.	Sedgwick	Kansas
	Paul Robert Bergant	Topeka, Kan. 1309A Jackson St.	Shawnee	Kansas
	Benjamin L. Burgess, Jr.	Hutchinson	Reno	Kansas
	Wayne Louis Sanchez	Wichita	Sedgwick	Kansas
	Victor H. Lyons	Wichita	Sedgwick	Kansas
	George W. Kilow	Emporia	Wagon	Kansas

THE STATE OF KANSAS,
SUPREME COURT,

Attest:
Carol G. Green

Clerk Supreme Court

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

Clerk Supreme Court.

ATTACHMENT EXHIBIT # 34.

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

Employee's name CHARLES E. WORDEN
(please type or print)
Social Security Number 512-48-4774

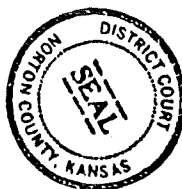
STATE OF KANSAS EMPLOYEE'S OATH

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)



David 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.

Exh. 10

14-41

Oath of Office

FEB 4 1991

State of Kansas }
County of Shawnee } ss.

EDDIE 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.

[Signature]

Signature - Notary Public

Supreme Court Chief Justice

Title

(Seal)

My notarial appointment expires _____.

*Or other officer authorized to administer oaths.

ATTACHMENT EXHIBIT # 36.

§ 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

14-46

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

the majority
ers' meeting
ing directors?

Relators, co-
holders of a
suit to compel
cumulative va
fendants, con
stockholders,
claim. The t
jury, held tha
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appealed.

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and Frank E. I
of Ben Perham
lants, Walter V
Herbert Crook
Turner, John A
Merritt Bloxon
om, together h
stock, or 49.3
amount of stock

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
SECRETARY 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

ATTACHEMNT EXHIBIT # 42.

14-48

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 Ia) 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 terri-

tory, 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

I hereby certify that this page 110 of UNITED STATES CODE SERVICE Lawyer Edition Constitution Article IV, Section 3, cl 2, n 6 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.

ATTACHMENT EXHIBIT # 43.

Dated 8/27/93

Signed

My My [Signature]
Washburn Law School Librarian

14-49

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. *Hooen & Allison Co. v Evatt* (1915) 324 US 652, 89 L. Ed 1252, 65 S Ct 870, reh den 325 US 892, 89 L. Ed 2001, 65 S Ct 1198 and (ovrid on other grounds *Limbach v Hooen & 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 *Hobson 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.

I hereby certify that this page 111 of UNITED STATES CODE SERVICE Lawyer Edition Constitution Article IV, Section 3, cl 2, n 9 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.

ATTACHMENT EXHIBIT # 44.

Dated 8/27/93

Signed Myra Hoelgerman
Washburn Law School Librarian

14-50

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 \$178,800, 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 898 (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.

SENATE AGRICULTURE COMMITTEE
SENATOR DAVID CORBIN, CHAIRMAN
STATE BOARD OF AGRICULTURE STRUCTURE

AUGUST 31, 1993

Presented By

Tom R. Tunnell, Executive Vice President
Kansas Grain and Feed Association
Kansas Fertilizer and Chemical Association

Chairman Corbin and Members of the Committee, 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 over 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 Ag checks the accuracy of our large truck scales, it certifies that the fertilizer, feed and seed we sell meets the guaranteed analysis, it assures our anhydrous ammonia equipment is safe; it verifies our fertilizer bulk containment--dikes, loadout pads, etc., meets 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 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 organizations first delegate to the Board of Agriculture's annual meeting; and to this day we only

Senate ag
8-31-93

attachment 15
15-1

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 constituencies 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 does not prove to be constitutionally achievable then we would prefer the onion over the garlic. That is, a governor-appointed Secretary would be preferable to a statewide elected Secretary.

KGFA and KFCA's annual meeting will be held in November to finalize our position on this issue. Thank you. I will be happy to respond to questions.

Testimony on
State Board of Agriculture
Senate Committee on Agriculture
August 31, 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.

*Senate Ag
8-31-93
16-1 Attachment 16*

Because of this selection process we 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.

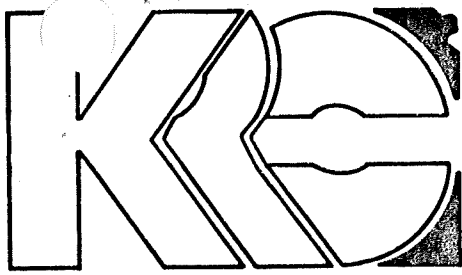
The Kansas Rural Center Position on the Accountability of the State Board of Agriculture

January 13, 1992

It is the position of the Kansas Rural Center that the manner in which the Kansas State Board of Agriculture is organized, and its members selected, provides no means for the representation of all Kansas citizens. The regulatory powers granted to the agency over agriculture, consumer protection, water quality and appropriation, and environmental regulation extend into the lives of all Kansans, both urban and rural, regardless of their relation to farming. Moreover, farmers who wish not to belong to any of the enfranchised private trade groups have no representation within the Board of Agriculture, and consequently, have no say over policy matters. Therefore, the Kansas Rural Center proposes that the position of Secretary be made an appointive one and the Board of Agriculture be abolished with the agency to become the Department of Agriculture. It is the feeling of the Kansas Rural Center that this would strengthen the agency and make it a more creditable advocate for agriculture within the state.

*Senate Ag
8-31-93*

attachment 17 17-1



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.

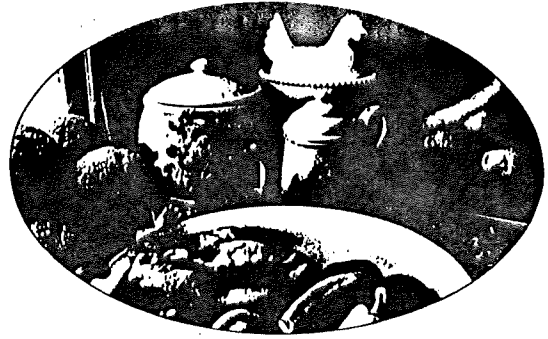
Comments. Last spring, the Kansas Rural Center went on record supporting the gubernatorial appointment of a secretary of agriculture and abolishing the board. This still looks like the best option to us.

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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Growing Out of the Tilt

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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.



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STATEMENT
OF
IVAN W. WYATT, PRESIDENT
KANSAS FARMERS UNION
ON
RESTRUCTURING THE STATE'S AGRICULTURE AGENCY
BEFORE
THE SENATE COMMITTEE ON AGRICULTURE
AUGUST 30-31, 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.

*Senate of
8-31-93
attachment 18
18-1*

Constitutionally
I REALIZE THAT SOME PERSONS IN AGRICULTURE HAVE DECLARED THAT "A 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

T OK 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

SENATE AGRICULTURE COMMITTEE

August 31, 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

*Senate Ag
8-31-93
Attachment 19
19-1*

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 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 sucessive generations of Kansas citizens.

We are left with the final choice, that of appointive office by the prevailling 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 SENATE AGRICULTURE COMMITTEE
SENATOR DAVID R. CORBIN, CHAIRMAN
REGARDING THE STRUCTURE OF THE
STATE BOARD OF AGRICULTURE
AUGUST 31, 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.

*Senate of
8-31-93
Attachment 20 20-1*

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 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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AUGUST 31, 1993

TESTIMONY BEFORE KANSAS SENATE AGRICULTURAL COMMITTEE
REGARDING CHANGES IN THE STATE BOARD OF AGRICULTURE

GOOD MORNING!

MR. CHAIRMAN AND MEMBERS OF THE SENATE AG COMMITTEE, I WOULD LIKE TO INTRODUCE MYSELF....MY NAME IS DWIGHT HADDOCK THE KANSAS DIVISION MANAGER OF ASSOCIATED MILK PRODUCERS, INC. WE REPRESENT APPROXIMATELY 450 DAIRY FARMERS THROUGHOUT THE SOUTHERN HALF OF KANSAS. THEY ARE EXTREMELY INTERESTED IN WHAT HAPPENS TO THE BOARD OF AGRICULTURE AND PARTICULARLY THE AGRICULTURAL DEPARTMENT OF THE STATE OF KANSAS.

THE PRESENT SYSTEM HAS SERVED US WELL OVER THE PAST 120-SOME YEARS. WE FEEL THAT WE HAVE HAD AS CONSISTENT REGULATION AS POSSIBLE UNDER ANY SYSTEM. OUR PRODUCERS WORK EXTREMELY CLOSE WITH THE INSPECTION DIVISION OF THE STATE DEPARTMENT OF AGRICULTURE. THE RULES HAVE CHANGED DOWN THROUGH THE YEARS AS TO THE REQUIREMENTS BROUGHT ON

Senate ag
8-31-93
21-1 *attachment 21*

THROUGH RESEARCH IN PRODUCING THE HIGHEST QUALITY PRODUCT FOR THE CONSUMING PUBLIC OF KANSAS. THESE INSPECTORS HAVE ALWAYS INSISTED THAT OUR PRODUCERS MEET THE HIGHEST OF STANDARDS SET BY FEDERAL FOOD AND DRUG. WITH THE STABILITY IN PLACE IN THE BOARD OF AGRICULTURE, OUR PRODUCERS KNOW THAT THESE REQUIREMENTS WILL BE ENFORCED UNIFORMLY ACROSS THE ENTIRE STATE. THESE REQUIREMENTS WILL BE CONSISTENTLY INTERPRETED BASED ON THE FEDERAL STANDARDS AND WILL NOT FLUCTUATE WITH THE POLITICAL WINDS IN THE STATE OF KANSAS. WE FEEL THAT THE PRESENT SYSTEM IS AS NEAR PERFECT AS POSSIBLE TO HELP ASSURE THE STATES POPULATION WILL RECEIVE A SAFE, WHOLESOME DAIRY PRODUCT, FOR KANSAS CITIZENS TO PLACE ON THEIR DINNER TABLE THREE TIMES A DAY.

AT THE PRESENT TIME, THE ACTION OF THE CIRCUIT JUDGE IS BEING APPEALED. WE FEEL THAT IT WOULD BE IN THE BEST INTERESTS OF OUR PRODUCERS TO LET THE LEGAL SYSTEM PROCEED UNTIL ALL APPEALS HAVE BEEN EXHAUSTED. IT MAKES IT HARD FOR THE DAIRYMEN IN OUR ORGANIZATION TO UNDERSTAND WHY A SUCCESSFUL POLITICAL OPERATION SUCH AS OUR STATE DEPARTMENT OF AGRICULTURE NEEDS TO BE CHANGED, FOLLOWING OVER A HUNDRED YEARS OF BEING IN EXISTENCE.

IF YOU FEEL IT IS NECESSARY TO PROCEED WITH LEGISLATIVE CHANGES TO SATISFY THE LIMITED NUMBER OF PEOPLE COMPLAINING, THEN WE HOPE YOU WILL CONSIDER MAKING THE BOARD OF AGRICULTURE AN ELECTIVE POSITION DIVIDING THE STATE EQUALLY INTO 10 DISTRICTS. BY DOING THIS IT WILL HELP ESTABLISH THE SAME CONSISTENT REGULATIONS AND REQUIREMENTS BY NOT ONLY THE STATE, BUT THE FEDERAL GOVERNMENT, ELIMINATING MANY OF THE COSTLY CHANGES BROUGHT ON BY INDIVIDUALS PLACED INTO

THIS DEPARTMENT EITHER THROUGH ELECTION OR APPOINTMENT BY OUR GOVERNOR. AT THE PRESENT TIME, THIS IS BEING DONE BY SEVERAL OF THE SURROUNDING STATES, AND IT HAS PROVED TO BE A VERY UNSUCCESSFUL METHOD OF APPOINTING A POLITICAL PLUM. WITHOUT THE KNOWLEDGE OF WHAT IT TAKES TO MAINTAIN THE CHANGES REQUIRED TO IMPROVE THE DAIRY BUSINESS OF KANSAS, AND NOT BE A FINANCIAL BURDEN ON THE MANY SMALL DAIRIES WE HAVE LOCATED WITHIN OUR STATE.

WE THANK YOU FOR TAKING YOUR VALUABLE TIME TO CONSIDER THIS UNFORTUNATE CHANGE BROUGHT ON BY OUR COURT SYSTEM. WE FEEL THAT THROUGH THE COOPERATION OF THE VARIOUS ORGANIZATIONS IN THE STATE OF KANSAS AND THE FINE MEMBERS OF OUR LEGISLATURE, THE PROPER SOLUTION CAN BE REACHED TO MAINTAIN A QUALITY PRODUCT AND ASSURE THE PEOPLE OF KANSAS A CONSISTENT SOURCE OF NATURES MOST PERFECT DRINK, FOR ALL OF OUR TABLES EACH AND EVERY DAY.

S T A T E M E N T T O
SENATE AGRICULTURE COMMITTEE

By
Vernon McKinzie
KANSAS PEST CONTROL ASSOCIATION GOVERNMENT AFFAIRS CHAIR

Thank you for allowing me to appear and comment on the reorganization of the Kansas State Board of Agriculture. My name is Vernon mckinzie. I am a Board Certified Entomolgist and operate pest control businesses in Emporia, Manahattan and Parsons. I am the chair of the Kansas Pest Control Association Government Affairs Committee, and I appear in that capacity today. I have also served as a voting delegate to the Annual Meeting of the KSBA representing the approximately 150 Kansas Pest Control Association members for about the past six years.

During the development of reorganization legislation, we want to 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. 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 and 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 serve the citizens of Kansas by protecting classified employees. We believe only the Secretary, Assistant Secretaries, Attornies and others in the administrative eschelon should be subject to change when a new Secretary is chosen. We believe division directors and their technical staffs should be protected as tenured classified employees.

We 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.

In drafting reorganization language, please consider writing in some protecction for the tenured classified employee. I believe such protection already exists in other agencies such as Insurance, Health, Commerce, etc. Thank you.

*Senate Ag
8-31-93
attachment 22*

TO: SENATE COMMITTEE ON AGRICULTURE

FROM: GLENDA L. MELLIES
CURRENT AND ACTING RECORDING SECRETARY
TERRITORIAL AGRICULTURE SOCIETY

DATED: AUGUST 31, 1993

RE: COMMITTEE HEARINGS ON POTENTIAL RESTRUCTURE OF THE
KANSAS STATE BOARD OF AGRICULTURE

I thank you for this opportunity to speak before this committee.

I would like to tell this committee some of my own experiences and my hope for agriculture in the future. We have reached a very serious time for agriculture and since one of you has already stated that agriculture is the backbone of the state economy, it is also the backbone of the nation's economy.

The time is now for the country to realize that if agriculture does not prosper, the nation will fail, (if it hasn't already).

My husband, Dwaine, and I have been married for 34 years and have four sons. When our sons were growing up, our dream was that some day we could retire and turn the farming over to them. As the years went by, we realized that there was no way this was going to happen because we could not make a profit, so we could not expect them to start out with their families under those circumstances. They are now raising their young families in town with 9 to 5 jobs.

In 1977, the day after New Year's, we lost our home, everything in it, and the garage nearby, in a fire. In 1979, we renewed our loan (at approx. 9.5% int.) with Federal Land Bank, to build a home so we could keep our family in the country. By 1982, (just three short years), our interest had gone up to 13.75% interest.

When we could no longer make our payments, we did what we thought we had to do and contacted an attorney. He convinced us that we should file a Chapter 11 reorganization to save our homestead. Since that time, my Mother-in-law, my husband and I have had five different attorneys; and still lost everything we had.

The Land Bank, the State Bank, and Commodity Credit Corporation were allowed to carry out an unlawful foreclosure in State District Court in violation of K.S.A. 17-7301 et seq. They also sold our homestead to a Bankruptcy Clerk in violation of Kansas Bankruptcy Rule 6004.1.

We are just one of the hundreds of horror stories that have taken place in this state and I'm sure that you legislators have heard many similar stories.

In one of our many desperate moments, my husband called FACTS.

Senate Ag
8-31-93
Attachment 23
23-1

They only recommended that we get an attorney. We had a close friend that was told by "FACTS" that he would be lucky to get out of his foreclosure with his underwear. FACTS, in my opinion, was set up to make the foreclosures go smoother and faster for the bankers.

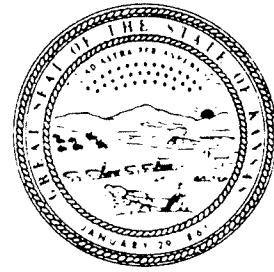
It appears to me that the clandestine Board of Agriculture, has done nothing but support the grain cartels, chemical companies and the special interest groups, that have made recommendations which have only hurt and injured the Kansas Farmers.

We can no longer sit idly by and watch the broken homes, divorces, suicides, harrassment and yes, even murders of our farmers, that have been caused by the tyranny inflicted upon the farmers by so-called elected officials, attorneys, and judges, (without valid oaths), and other illegal/invalid entities, such as Foreign Corporations who operate in this state, without being duly registered with the Secretary of State, and yet continue to use the Kansas Courts in violation of the Kansas Statutes.

Agriculture must be put back into the hands of the ones responsible for agriculture and it must be returned to the profitable way of life that it should have always been for our state and nation to survive.

STATE OF KANSAS

OFFICE OF
SECRETARY OF STATE
BILL GRAVES

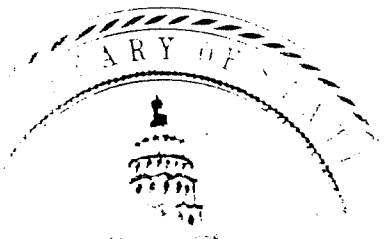


To all to whom these presents shall come, Greetings:

I, BILL GRAVES, Secretary of State of the State of Kansas, do hereby certify that I am the custodian of records of the state of Kansas relating to corporations, and that I am the proper official to execute this certificate.

I FURTHER CERTIFY that a search of our files fails to reveal that a corporation by the name of FARM CREDIT BANK OF WICHITA is registered to do business in Kansas as a foreign corporation or that a corporation by that name is incorporated in Kansas as of this date.

In testimony whereof:
I hereto set my hand and cause to be
affixed my official seal. Done at the
City of Topeka, this 22nd day of
September, A.D. 1992



BILL GRAVES
SECRETARY OF STATE

BY 
ASSISTANT SECRETARY OF STATE

(c) Upon the issuance of the certificates by the secretary of state, the appointment of the resident agent of the corporation in this state, upon whom process against the corporation may be served, shall be revoked, and the corporation shall be deemed to have consented that service of process in any action, suit or proceeding based upon any cause of action arising in this state, during the time the corporation was authorized to transact business in this state, may thereafter be made by service upon the secretary of state in the manner prescribed by K.S.A. 60-304.

History: L. 1972, ch. 52, § 146; July 1.

Source or prior law:

17-511, 17-512 and 17-513.

KANSAS COMMENT

Pursuant to former K.S.A. 17-511, in order for a foreign corporation to "withdraw" from Kansas, it had to:

(a) Publish notice of its intention to withdraw at least once each week for four consecutive weeks; and

(b) File with the secretary of state: (1) An application for withdrawal; (2) proof by affidavit of publication of notice; and (3) an affidavit that all unsecured debts and liabilities in Kansas have been discharged. A fee of \$2.50 was required.

The secretary of state was given discretion in granting such application by former K.S.A. 17-512. If his investigation showed good faith by the corporation as to the application and the liquidation of unsecured obligations, he could order the corporation's "license" revoked, which order is effective upon its publication in the official state paper.

After withdrawal, 17-513 provided that the corporation's consent to be sued in Kansas and the jurisdiction of Kansas courts continued as to any cause of action arising out of any act or transaction prior to withdrawal.

In contrast to these statutes, Delaware § 381 (a) provides that a foreign corporation may surrender its authority to do business in Delaware by filing with the secretary of state:

(1) A certificate surrendering such authority and listing an address for service of process; or

(2) A certificate of dissolution and a certificate stating an address for service of process as in paragraph (1); or

(3) A copy of a court's order or decree of dissolution and a certificate stating an address for service of process as in paragraph (1).

Subsection (b) of the Delaware section requires the secretary of state, upon compliance with subsection (a), to issue certificates of withdrawal. One of the certificates is furnished to the corporation and one is given the "agent of the corporation."

Pursuant to Delaware § 381 (c), after withdrawal, the appointment of the corporation's resident agent is revoked, and service of process on the corporation thereafter may be made on the secretary of state.

The new section is nearly identical to subsections (a), (b) and (c) of Delaware § 381. However, subsection (d) of the Delaware statute relating to service of process was not adopted. Instead, a provision requiring service in the manner required by 60-304 was included in subsection (c).

Cross References to Related Sections:

Filing corporate instruments, see 17-6003.

Resignation of resident agent, see 17-6205, 17-6206.

Fees for issuing or filing and indexing corporate documents, see 17-7506.

Research and Practice Aids:

Corporations—651.

C.J.S. Corporations § 1843.

Law Review and Bar Journal References:

Personal jurisdiction over a foreign corporation based on acts of parent, 25 K.L.R. 109, 113, 115 (1976).

17-7307. Actions by and against unqualified foreign corporations. (a) A foreign corporation which is required to comply with the provisions of K.S.A. 17-7301 and 17-7302 and which has done business in this state without authority shall not maintain any action or special proceeding in this state, unless and until such corporation has been authorized to do business in this state and has paid to the state all taxes, fees and penalties which would have been due for the years or parts thereof during which it did business in this state without authority. This prohibition shall not apply to any successor in interest of any such foreign corporation.

(b) The failure of a foreign corporation to obtain authority to do business in this state shall not impair the validity of any contract or act of the foreign corporation or the right of any other party to the contract to maintain any action or special proceeding thereon, and shall not prevent the foreign corporation from defending any action or special proceeding in this state.

(c) Any person having a cause of action against any foreign corporation, whether or not such corporation is qualified to do business in this state, which cause of action arose in Kansas out of such corporation doing business in Kansas, or arose while such corporation was doing business in Kansas, may file suit against the corporation in the proper court of a county in which there is proper venue. Service of process in any action shall be made in the manner prescribed by K.S.A. 60-304.

History: L. 1972, ch. 52, § 147; L. 1973, ch. 100, § 21; July 1.

Source or prior law:

17-504, 17-505 and 17-509.

KANSAS COMMENT

Subsections (a) and (b) are substantially the same as the corresponding subsections of Delaware § 383. Subsection (a) denies to a foreign corporation the right to maintain actions or proceedings in Kansas until it has authority to do business therein.

Subsection (b) provides that the validity of a contract or other act of an unqualified corporation shall not be impaired by reason of the corporation's failure to qualify, and that an action or proceeding thereon may be maintained in Kansas, with such corporation having the right to defend the action or proceeding.

Subsection (c) authorizes the commencement of actions against foreign corporations, whether or not authorized to do business in Kansas, and it provides for service of process in such actions in the manner prescribed by 60-304. This subsection replaces 17-509, prescribing the procedure for commencement of actions against and service of process on foreign corporations failing to comply with the laws of Kansas, by adopting by reference the provisions of the civil code which were enacted subsequent to the enactment of 17-509. This subsection was included in lieu of adopting sections 376 and 381 of the Delaware code, since the procedures in the civil code for service of process are sufficient.

Cross References to Related Sections:

Assertion of corporation's lack of corporate capacity or power, see 17-6104.

Actions against corporations, see ch. 17, art. 71.

Consent to service of process on secretary of state by foreign corporation authorized to do business in Kansas, see 17-7301.

Research and Practice Aids:

Corporations—661, 662.

C.J.S. Corporations §§ 1791, 1843 et seq., 1917.

Law Review and Bar Journal References:

"The Kansas Corporation Code of 1972," William E. Treadway, 40 J.B.A.K. 301, 350 (1971).

Personal jurisdiction over a foreign corporation based on acts of parent, 25 K.L.R. 109, 113, 114, 117 (1976).

CASE ANNOTATIONS

1. Service of process pursuant to former section (17-509); action asserting subrogation claims. Reliance Insurance Companies v. Thompson-Hayward Chemical Co., 214 K. 110, 111, 519 P.2d 730.

2. Cause of action did not arise while the defendant was doing business in this state. Scrivner v. Twin Americas Agricultural & Industrial Developers, Inc., 1 K.A.2d 404, 408, 414, 573 P.2d 614.

17-7308. Enjoining foreign corporation from transacting business in state for violation of code. The district court shall have jurisdiction to enjoin any foreign corporation, or any agent thereof, from transacting any business in this state if such corporation has failed to comply with any section of this act applicable to it, or if such corporation has secured a certificate of the secretary of state under K.S.A. 17-7301 on the basis of false or misleading representations. The attorney general, upon his own motion or upon the relation of proper parties, shall proceed for this purpose by an action commenced in any county in which such corporation is doing business.

History: L. 1972, ch. 52, § 148; July 1.

KANSAS COMMENT

This section is identical to Delaware § 384, authorizing the attorney general to bring an action to enjoin any foreign corporation or agent thereof from transacting business within the state if such corporation has failed to comply with any section of the code applicable to it, or if it has received such authority to do business under any false or misleading representations.

Cross References to Related Sections:

Assertion of corporation's lack of corporate capacity or power, see 17-6104.

Actions against corporations, see ch. 17, art. 71.

Doing business in Kansas defined, see 17-7303.

Unqualified corporations, see 17-7307.

Action to forfeit foreign corporation's authority to do business in Kansas for failure to file annual report or pay franchise taxes, see 17-7510.

Injunctions, see ch. 60, art. 9.

Research and Practice Aids:

Injunctions—67.

C.J.S. Injunctions § 98 et seq.; Public Utilities § 8.

Law Review and Bar Journal References:

"The Kansas Corporation Code of 1972," William E. Treadway, 40 J.B.A.K. 301, 350 (1971).

Article 74.—MISCELLANEOUS PROVISIONS

Law Review and Bar Journal References:

Cited in "Legal Framework Governing the Kansas Non-Profit Corporation," Fred Lovitch, 48 J.B.A.K. 217 219 (1979).

17-7401. Improperly recorded certificates or documents; effect. In case any certificate or other document of any kind required by any of the provisions of this act to be recorded in the office of any of the registers of deeds of the several counties of this state shall have heretofore been, or shall hereafter be, recorded in the office of the register of deeds of a county of this state other than the county in which the certificate or other document is required to be recorded, the subsequent recording of the document in the office of the register of deeds in which the certificate or other document should have been recorded shall validate and confirm all acts done under or pursuant to the certificate or document, with like force and effect as if the certificate or document had been originally recorded as required by the provisions of this act.

History: L. 1972, ch. 52, § 149; July 1.

KANSAS COMMENT

This section validates corporate acts done under or pursuant to certificates or instruments filed in the office of a register of deeds, other than the office required by law for such filing, if the certificates or instruments are subsequently filed in the proper office. Section 392 of the Delaware code is identical to this section, except for

minor variances in wording corresponding prior statute.

Cross References to Related Sections:
Recordation of corporations, see 17-6003.

Research and Practice Aids:
Records—10.
C.J.S. Records §§ 23

17-7402. Right to corporate name transfer. The exclusive right to the corporate name of a person intending to transfer the right to the corporate name under this act;

(b) any domestic corporation intending to change its name;

(c) any foreign corporation intending to make application to transact business in this state;

(d) any foreign corporation intending to transact business in this state;

(e) any person intending to change its name.

The reservation of the right to the corporate name of such corporation shall be a condition of the certificate of authority to do business in this state.

The reservation of the right to the corporate name of such corporation shall be a condition of the certificate of authority to do business in this state.

The right to the corporate name of such corporation shall be a condition of the certificate of authority to do business in this state.

History: L. 1972, ch. 52, § 150; July 1.

Source or prior law: L. 1972, ch. 52, § 150.

Cross References to Related Sections:
Words permitted—1.

Change of corporate name of parent and subsidiary, see 17-7403 (b).

Name of corporation for dissolution, see 17-7404.

Name of corporation for new or revival, see 17-7405 (e).

Fee for reservation of name, see 17-7406.

Discussed in "Legal Framework Governing the Kansas Non-Profit Corporation," Fred Lovitch, 48 J.B.A.K. 217 (1979).

17-7501. Definitions. As used in this act [°], the following words and phrases shall have the meanings respectively ascribed to them herein:

(a) "Domestic corporation" means any corporation organized under the laws of this state, irrespective of whether such corporation is organized for profit;

(b) "Foreign corporation" means any corporation organized under the laws of any jurisdiction other than this state;

(c) "Articles of incorporation" means the original articles of incorporation filed to create a corporation, but such term also includes the charter, articles of association and any other instrument by whatever name known under which a corporation has been or may be lawfully formed;

(d) "Shareholder's equity" means the sum of: (1) Paid-in capital stock, except that paid-in capital stock shall not include any capital stock issued by a corporation and reacquired by such corporation through gift, purchase or otherwise and available for resale or retirement; (2) capital paid in, in excess of par; and (3) retained earnings, except that any moneys which have been allocated and are payable to the members of any corporation which is organized as a cooperative association or society shall not be included as part of the retained earnings of such corporation for the purpose of this act;

(e) "Shareholder's equity attributable to Kansas" means the shareholder's equity of a corporation multiplied by a fraction, the numerator of which is the sum of: (1) The average value of the corporation's real and tangible personal property owned or rented and used in this state during the next preceding tax period; (2) the total amount of compensation paid by the corporation in this state during the next preceding tax period; and (3) the total sales of the corporation in this state during the next preceding tax period; and the denominator of which is the sum of: (1) The average value of all of the corporation's real and tangible personal property owned or rented and used during the next preceding tax period; (2) the total amount of compensation paid everywhere by the corporation during the next preceding tax period; and (3) the total sales of the corporation everywhere during the next pre-

ceding tax period. In determining the amount of each of the factors in the foregoing formula, the provisions of K.S.A. 79-3281, 79-3282, 79-3284, 79-3286 and 79-3287 shall be applicable; and

(f) "Tax period" means a corporation's taxable year under the Kansas income tax act.

History: L. 1972, ch. 54, § 1; L. 1973, ch. 101, § 1; April 25.

* "This act," see, also, 17-1508, 17-1513, 17-1618, 17-1625, 17-2709, 17-2718, 17-4634, 17-7502 to 17-7513, 56-123, 56-123a, 75-409.

Revisor's Note:

Act inapplicable to certain corporations, see 17-7512. "Tax period" referred to in 17-1741, 17-1742.

Cross References to Related Sections:

Contents of articles of incorporation, see 17-6002. Definition of "articles of incorporation" in general corporation code, see 17-6004.

"Surplus" and "net assets" defined for purpose of designating part of consideration for issuance of stock as capital, see 17-6404.

Amendment of articles of incorporation, see 17-6602.

Reduction of capital, see 17-6604.

Restated articles of incorporation, see 17-6605.

Extension, restoration, renewal or revival of articles of incorporation, see 17-7002.

Definition of "foreign corporation" in general corporation code, see 17-7301.

17-7502. Application and recording fee of domestic corporations; foreign corporation fees. (a) At the time of filing its articles of incorporation, each domestic corporation shall pay to the secretary of state an application and recording fee of fifty dollars (\$50).

(b) Before any foreign corporation shall be authorized to do business in this state, such corporation shall pay to the secretary of state a filing fee of fifty dollars (\$50) and the fee prescribed by K.S.A. 17-7506, and any amendments thereto, for issuing the certificate of authority to do business in Kansas.

History: L. 1972, ch. 54, § 2; L. 1972, ch. 55, § 1; L. 1973, ch. 101, § 2; April 25.

Source or prior law:

17-221.

Cross References to Related Sections:

Filing of articles of incorporation, see 17-6001.

Contents of articles of incorporation, see 17-6002.

Filing of articles of incorporation, see 17-6003.

"Articles of incorporation" defined, see 17-6004, 17-7501.

Commencement of corporate existence, see 17-6006.

Extension, restoration, renewal or revival of articles of incorporation, see 17-7002.

Authorization for foreign corporation to do business in Kansas, see 17-7301.

Fees for issuing instruments and doc

17-7503. An taxes of domestic profit. (a) Every nized for profit s in writing to the the financial con the close of busin period next preced if a corporation's calendar year, it the secretary of s the year it comm reports shall be by the secretary filed at the time the corporation's return, except th shall apply for an its annual incor ternal revenue s (c) of K.S.A. 79-3 also apply, prior report, to the sec sion of the time this section and corresponding ti 3221. Such appl of the applicatio The report shall formation:

- (1) The name
- (2) the locat
- (3) the name treasurer and m rectors, with the
- (4) the numb authorized capit each share, if a
- (5) the date officers and dire
- (6) the numb issued and the a up;
- (7) the natur which the corp place or places
- (8) a comple the assets, liab corporation; and
- (9) a list of s 5% of the capit with the post-of number of share
- (b) Every co

LOCAL BANKRUPTCY RULE 6004.1

PERSONS PROHIBITED FROM PURCHASING AT SALES

The following persons and their spouses shall not, directly or indirectly, purchase property from any bankruptcy estate: employees of a bankruptcy judge; the clerk of the court; and any person who shall then be serving as trustee, examiner, disbursing agent, appraiser, auctioneer, accountant or attorney for a trustee in any matter before the court, and employees of such persons. Any person and spouse of such person who has served as trustee, disbursing agent, appraiser, auctioneer, accountant, or attorney for a trustee or employee of such person, shall not directly or indirectly purchase property from the bankruptcy estate in which such person or such person's spouse was appointed or acted.

of any specified number or percentage of shares of any class of stock, an option to have the corporation dissolved at will or upon the occurrence of any specified event or contingency. Whenever any such option to dissolve is exercised, the stockholders exercising such option shall give written notice thereof to all other stockholders. After the expiration of thirty (30) days following the sending of such notice, the dissolution of the corporation shall proceed as if the required number of stockholders having voting power had voted in favor thereof.

(b) If the articles of incorporation, as originally filed, do not contain a provision authorized by subsection (a), the articles may be amended to include such provision if adopted by the affirmative vote of the holders of all the outstanding stock, whether or not entitled to vote, unless the articles of incorporation specifically authorize such an amendment by a vote which shall be not less than two-thirds (2/3) of all the outstanding stock whether or not entitled to vote.

(c) Each stock certificate in any corporation whose articles of incorporation authorize dissolution, as permitted by this section, shall conspicuously note on the face thereof the existence of the provision. Unless noted conspicuously on the face of the stock certificate, the provision is ineffective.

History: L. 1972, ch. 52, § 139; July 1.

KANSAS COMMENT

The articles of incorporation of a close corporation may contain a provision granting to any stockholder, or to the holders of a specified number or percentage of shares of any class of stock, the right to dissolve the corporation at will or upon the occurrence of a specified event or contingency. This provision may be inserted in the articles by amendment. To be effective, the provision must be noted conspicuously on each stock certificate of the corporation. (See Delaware § 355.)

Cross References to Related Sections:

Contents of articles of incorporation, see 17-6002.
 Limitations on duration of corporation's existence, see 17-6102 (1).
 Stock certificate, see 17-6408.
 Voting of stock, see 17-6502.
 Notice to stockholders, see 17-6512, 17-6519, 17-6520.
 Amendment of articles of incorporation, see 17-6601, 17-6602.
 Restated articles of incorporation, see 17-6605.
 Dissolution, see 17-6803 to 17-6806.

Research and Practice Aids:

Corporations \Leftrightarrow 95, 595, 606.
 C.J.S. Corporations §§ 262, 1642, 1655, 1672.

17-7216. Effect of close corporation pro-

visions on other laws. The provisions of K.S.A. 17-7201 to 17-7215, inclusive, and any amendments thereto shall not be deemed to repeal any statute or rule of law which is or would be applicable to any corporation which is organized under the provisions of this act, but which is not a close corporation.

History: L. 1972, ch. 52, § 140; L. 1973, ch. 100, § 17; July 1.

KANSAS COMMENT

This section states that the sections relating to close corporations do not repeal any law applicable to corporations organized under the code, but which are not close corporations. (See Delaware § 356.)

Cross References to Related Sections:

Application of code, see 17-6101 (b), 17-7403.
 Application of 17-7201 to 17-7216, see 17-7201.
 Application of code to foreign corporations, see 17-7305 (c).

Research and Practice Aids:

Corporations \Leftrightarrow 13.
 C.J.S. Corporation § 41 et seq.

Article 73.—FOREIGN CORPORATIONS

Law Review and Bar Journal References:

"The Kansas Corporation Code of 1972," William E. Treadway, 40 J.B.A.K. 301, 349 (1971).
 "Legislation 1978," David J. Heinemann, 47 J.B.A.K. 81, 86 (1978).
 "Legal Framework Governing the Kansas Non-Profit Corporation," Fred Lovitch, 48 J.B.A.K. 217, 219 (1979).
 "Corporate Tug O' War: A Market Approach to Keeping Shareholders Out of the Mud," Brad Stanley, Don Whitney, 26 W.L.J. 98 (1986).

17-7301. Foreign corporations; application to do business in Kansas; contents of application; issuance of certificate by secretary of state, conditions. (a) As used in this act, the words "foreign corporation" mean a corporation organized under the laws of any jurisdiction other than this state.

(b) No foreign corporation shall do any business in this state, through or by branch offices, agents or representatives located in this state, until it has filed in the office of the secretary of state of this state an application for authority to engage in business in this state as a foreign corporation. Such application shall be filed in accordance with K.S.A. 17-6003 and amendments thereto and shall set forth:

(1) A certificate issued within 90 days of the date of application by the proper officer of the jurisdiction where such corporation is incorporated attesting to the fact that such corporation is a corporation in good standing in such jurisdiction;

(2) the address of the principal office of the corporation is located;

(3) the address of the principal office or place of business in this state is to be located, if known;

(4) the full nature and character of the business the corporation proposes to conduct in this state;

(5) the name and address of each of the officers and trustees or directors of the corporation;

(6) a statement as to when the corporate existence of the corporation will expire in the state of incorporation;

(7) a detailed statement of the assets and liabilities of the corporation, as of a date not earlier than 12 months prior to the filing date;

(8) the location of the registered office of the corporation in this state and the name of its resident agent in charge of the registered office; and

(9) the date on which the corporation commenced, or intends to commence, doing business in this state.

The application shall be subscribed and sworn to by the president or a vice-president and the secretary or an assistant secretary of the corporation, and it shall be accompanied by the written consent of the corporation, irrevocable, that actions may be commenced against it in the proper court of any county where there is proper venue by the service of process on the secretary of state as provided for in K.S.A. 17-7307 and amendments thereto and stipulating and agreeing that such service shall be taken and held, in all courts, to be as valid and binding as if due service had been made upon the president and secretary of the corporation. Such consent shall be executed by the president or a vice-president and the secretary or an assistant secretary of the corporation and shall be accompanied by a duly certified copy of the order or resolution of the board of directors, trustees or managers of the corporation authorizing the secretary or an assistant secretary and the president or a vice-president to execute it. Nothing in this act or the act of which this section is amendatory shall be construed as requiring such consent or the order or resolution of the board of directors to be recorded in the office of the register of deeds.

(c) After receipt of any such application, if the secretary of state finds that it complies with the provisions of this section, the secretary of state shall issue a certificate authorizing the

foreign corporation to do business in this state, except that the secretary of state shall not issue such certificate unless:

(1) The name of the corporation is such as to distinguish it upon the records of the office of the secretary of state from the name of each other corporation organized under the laws of this state or reserved or registered as a foreign corporation under the laws of this state;

(2) the corporation has obtained the written consent of such other corporation, which has the same name, for the corporation to do business in this state under such name and such consent has been executed, acknowledged and filed with the secretary of state in accordance with K.S.A. 17-6003 and amendments thereto; or

(3) the corporation indicates, as a means of identification and in its advertising within this state, the state in which it is incorporated. The certificate of the secretary of state, under the seal of the office of the secretary of state, shall be delivered to the resident agent upon the payment to the secretary of state of the fee prescribed therefor, and the certificate shall be prima facie evidence of the right of the corporation to do business in this state.

History: L. 1972, ch. 52, § 141; L. 1973, ch. 100, § 18; L. 1975, ch. 144, § 2; L. 1987, ch. 89, § 2; July 1.

Source or prior law:

17-501, 17-503 and 17-515.

KANSAS COMMENT

As defined in subsection (a) of this section, a foreign corporation is one organized under the laws of any jurisdiction other than Kansas. Although this term was not defined in the 1939 code, it is apparent that this term had the same meaning under that code and the other prior corporation laws of Kansas.

Although a few changes were made, subsection (b) is essentially a restatement of former K.S.A. 17-501. The principal change effected was the elimination of the state charter board as the authority responsible for approving applications of foreign corporations to do business in this state. K.S.A. 17-401, which created the charter board, was repealed by the new code (see L. 1972, ch. 52, § 153). The corresponding provisions of the Delaware code (§ 371) prohibits a foreign corporation from doing business in Delaware unless it has filed with the secretary of state (1) a certified copy of its charter, (2) the name and address of its registered agent and (3) a sworn statement of the corporation's assets and liabilities.

In contrast, this section, as did K.S.A. 17-501, requires more detailed information in the application than is required by § 371 (a), and it must be subscribed and sworn to by the president or vice-president and the secretary or assistant secretary of the corporation. In addition, this section retains the provision in 17-501 requiring that the application must be accompanied by a duly executed, writ-



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.
Topeka, Kansas 66614
(913) 272-5392

PRESIDENT

ALVIN MATZKE

R.R. 1. Box 110
Westmoreland, Kansas 66549
(913) 456-7240

NORTHERN JUDICIAL DISTRICT
VICE PRESIDENT

VIRGIL PREWETT

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 RAULSTON

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

WESTERN JUDICIAL DISTRICT
VICE PRESIDENT

YOLANDA J. MARSHALL

884 S.E. Rice Rd.
Topeka, Kansas 66607
(913) 233-6770

CORRESPONDING SECRETARY

GLENDA L. MELLIES

R.R. 1.
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 # 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 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]

Senate Ag
8-31-93
Attachment 24
24-1



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."



PAGE 3.

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

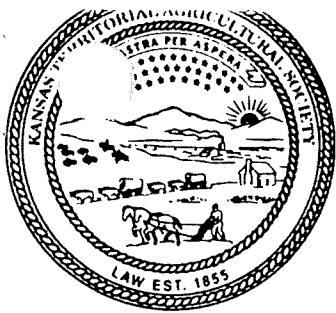
" Because my nomination had been announced in early May, all the world knew I was meant to be the next CIA chief. But I wasn't able to accept the responsibility or exercise the authority of the position until I was Officially sworn in. In the meantime, I was, if not exactly a man without a job, then 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 publized 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 YOU ATTENTION TO:

1. [See - - 191 PACIFIC REPORTER, 2d SERIES at 690 Wash]

9. Constitutional law - - Key at 125

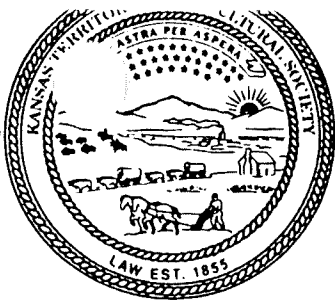
Corporations - - Key at 40

QUOTED:

"A state may not pass laws altering or amending charters of corporations in such a way that will change their fundamental charàter 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?



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]

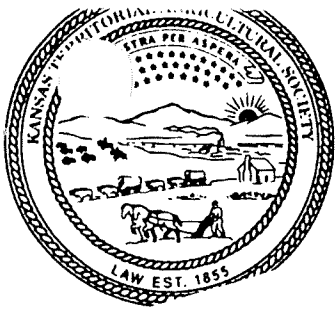
Ninth: That property and funds needed to be supported by all since Statehood for acccountablility is that which cannot be done without a full investigation and cooperation by all, and if not what?

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 # 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.

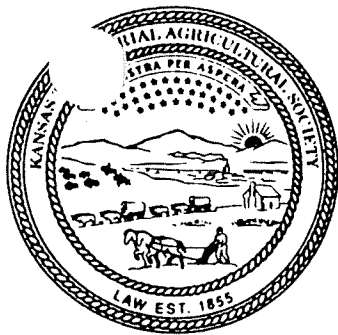
Fourteenth You can review Exhibit # 12 and # 13 and know and understand what Qualifications are and should remain under the same issues and constitutions herein set out.

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



KANSAS TERRITORIAL AGRICULTURAL SOCIETY-Law Est: 1855

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.

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

First Day

Crowds Surge Onto Grounds as Solemn Dedication Finishes

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.

Calls for End of War

In the solemn opening of the fair with some 3,000 people clustered around the base of the memorial tower at the 18th and Topeka 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.

KANSAS FREE FAIR



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

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24-14

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.⁹² 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.⁹³ 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,⁹⁴ 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.⁹⁵ 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.⁹⁶

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.⁹⁷

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.⁹⁸

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.⁹⁹

§ 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. 518, 4 L.Ed. 629.

Wis.—Black River Imp. Co. v. Holway, 59 N.W. 126, 87 Wis. 584—Att'y-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. 589, 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, 36 L.Ed. 1018.

94. Wis.—Att'y-Gen. v. Chicago & N. W. R. Co., 35 Wis. 425.

95. Ind.—Gillespie v. Ft. Wayne, etc., R. Co., 17 Ind. 243—State v. Dawson, 16 Ind. 40.

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. 289.

special acts,¹³ although they "may, by general incorporation acts, permit persons to associate themselves together as bodies corporate,"¹⁴ 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.¹⁵ 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;¹⁶ 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.¹⁷

§ 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.¹⁸ 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.¹⁹

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.²⁰

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.²¹

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;²² and corporations organized according to the laws of the former regime continue to exist.²³

§ 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. 843, 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. 208, overruled on other grounds 4 Porto Rico Fed. 509, and also overruling in effect Borrero v. Compania Anonima, 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). *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 situation of authority, and overlapping must not be permitted in response to convenience.

24. Ala.—Fox v. McDonald, 13 So. 416, 101 Ala. 51, 46 Am.St.L. 91, 21 L.R.A. 622.

is not a mere right of impeachment, which is vested by the constitution.

EXHIBIT
18

24-15

273 4344
Taka

RICHARD HOPEWELL*
WENDY ALISON NORA**

*ADMITTED TO PRACTICE IN SOUTH DAKOTA
**ADMITTED TO PRACTICE IN WISCONSIN AND MINNESOTA

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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
FEB 10 1958	Francis Neal Ellis Charles W. Cook Jr. Leslie Adams White John Staples Esq. Jr.	Platte 2316 W. 84th Kansas City 15 Mo. 4807 W. 61st Missouri 208 Westminster Independence,	Johnson Johnson Johnson Montgomery	Kansas Missouri Kansas Kansas
FEB 12 1958	Calvin L. McMillen David Marvin Keltz Jr. La Vone Annette Daily Bernard Joseph Schulte Richard Engler - Esq. Robert Toft Stephens Alvin Dale Herrington C. Dexter Galloway, Jr. Marian Chasli Feijelson Al Edward Jones Charles W. Shreuer Allan Jay Garfinkle Dietrich William Schmidt Herman Howard Stephenson William Todd Hucksin Robert Lee Tanner Ruth Elvira DeLeonard	Wichita 1037 Lavelle 1419 01st St. Kansas City 1048 Zuni Kansas City 768 Canton St. Elizabeth, Mo. 874 1/2 Wichita 1821 University 1318 Stachman Wichita, Kansas Hutchinson 912 Jewell Topeka, Kansas Emporia 832 D Belinder Prairie Village, Mo. 522 Miami Lawrence 775 1/2 7329 Oak Prairie Village 7339 LARKAR OVERLAND PARK 15 W 7th Hutchinson, Kansas Sylvan Grove	LeFlore Wichita Wichita Union Lincoln Sedgwick Sedgwick Reno Shawnee Reno 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

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

A true copy ATTEST:

Lewis C Carter

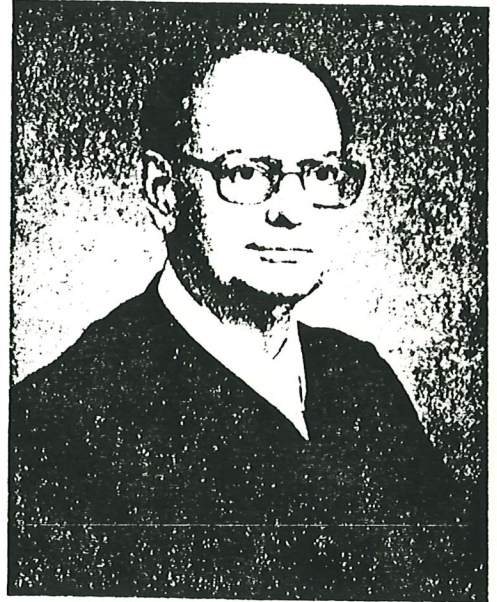
Clerk Supreme Court
MAY 1958

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

Clerk Supreme Court.

24-18

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)

24-19

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 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 Wiam Holmes	523 Beacon Bldg. Wichita 2, Kan. 1308 S. Vermont	Sedgwick	Kansas
	Scott Reuben Traylor	Springfield 101 E 5th St.	Greene	Missouri
	James Earl Spaw	Atena	Crowfoot	Kansas
	Quane Clay Karam	1208 Connecticut Lawrence, Kansas	Langlas	Kansas
	Edwin Arthur Lee	Louisburg, Kansas	Miami	Kansas
	L. M. Weltmer	Manhattan, Kansas	Jewell	Kansas
	Tawin D. Brown	Garnett	Anderson	Kansas
	Paul R. Courad	521 Washburn Topeka	Shawnee	Kansas
	James Lawrence Berlin	1630 Maple Ave Twin Falls,	Twin Falls	Idaho
	Maurice Patrick C. Keefe Jr.	203 E. Tansie Atchison, Kansas	Atchison	Kansas
	Charles Joseph Kondella	RR 2 Pittsburg, Ks.	Crawford	Kansas
	Charles Donald Bapfer	Stokton, Kansas	Rooks	Kansas
	Kenneth M. Loy	504 S. Georgia St. Pittsburg, Ks.	Crawford	Kansas
	James Roland James	Pleasanton, Ks.	Linn	Kansas
	Zilman Parsons Sheldon	Salatha, Kansas	Nemaha	Kansas
	Al Moore (S. R. Moore)	Rt. 1, W. 8, Topeka 909 Topeka	Shawnee	Kansas
	Richard C. Cattle	Topeka, Kansas	Shawnee	Kansas
	Ray H. Calahan Jr.	Garden City	Finney	Kansas
	Chester A. Lewis Jr.	840 Cleveland Wichita, Kansas	Sedgwick	Kansas
	Sam Mac Prochaska	Ellsworth, Kans.	Ellsworth	Kansas
	Frank Whitaker Hush	1605 Washington Bldg. Kansas City, Kansas 2905 Wavelly Ave	Wyandotte	Kansas
	Joseph Adam Butky	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.

24-20

CL 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 1948	Eugene T. Huchler	Wichita, Kans.	Lincoln	Kans.
	John W. Wood Jr.	Wichita, Kans.	Lincoln	Kans.
	Ira Marine Walker Wood	Wichita, Kans.	Lincoln	Kans.
	James H. Hunsicker	Wichita, Kans.	Lincoln	Kans.
	Oris Pauline Buntcher	Wichita, Kans.	Lincoln	Kans.
	Robert Earl Buntcher	Wichita, Kans.	Lincoln	Kans.
	Jean Oliver Maure	Wichita, Kans.	Lincoln	Kans.
	Robert H. Sinden	Wichita, Kans.	Lincoln	Kans.
	Joseph H. Doth	Wichita, Kans.	Lincoln	Kans.
	Robert M. Ross	Wichita, Kans.	Lincoln	Kans.
	Martin A. Aelmore	Wichita, Kans.	Lincoln	Kans.
	Lloyd H. Hoag	Wichita, Kans.	Lincoln	Kans.
	Leo J. Callahan	Wichita, Kans.	Lincoln	Kans.
	Ford Edward Evans, Jr.	Wichita, Kans.	Lincoln	Kans.
	Dalton Tiford Holland	Wichita, Kans.	Lincoln	Kans.
	Kenneth Martin Noble	Wichita, Kans.	Lincoln	Kans.
	Clyde Elmer Milligen	Wichita, Kans.	Lincoln	Kans.
	Robert Patrick Kenan	Wichita, Kans.	Lincoln	Kans.
	Harvey J. Shuff	Wichita, Kans.	Lincoln	Kans.
	Thomas Hyle Conway	Wichita, Kans.	Lincoln	Kans.
	Erud Mitchelson	Wichita, Kans.	Lincoln	Kans.
	Stuart Dean Dritchman	Wichita, Kans.	Lincoln	Kans.

THE STATE OF KANSAS, }
SUPREME COURT, } 88.

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

Walt Weibarger
Clerk Supreme Court.

24-21