

Approved: MARCH 2, 1994
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Chairman Lana Oleen at 11:05 a.m. on February 9, 1994 in Room 254-E of the Capitol.

All members were present

Committee staff present: Mary Galligan, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
Jeanne Eudaley, Committee Secretary

Conferees appearing before the committee:
See attached agenda

Others attending: See attached list

Sen. Oleen announced the hearing for SB 627 and stated the bill was introduced at the request of Sen. Jones, who explained the concept came from Rep. Pat Pettey, who gave testimony (Attachment 1) to the committee supporting the bill. Mary Galligan briefed the committee on the bill. The following appeared before the committee as proponents:

Michael Connor, (Attachment 2);
Steve Pokrywka, (Attachment 3).

Written testimony (Attachment 4) from Nick Tomasic, Wyandotte County District Attorney, was distributed to committee members. Sen. Oleen questioned if Wyandotte County was the only county where the law enforcement officers for parks and recreational areas are called Park Rangers and are restricted as in K.S.A. 19-2858. Mr. Pokrywka answered that was the case; the statute relates only to Wyandotte County. Sen. Oleen asked if Park rangers receive the same training as deputy sheriffs. Mr. Pokrywka answered they receive 360 hours of training at the Law Enforcement Training Center in Hutchinson, Kansas - the same training as deputy sheriffs. He added the bill also gives park rangers authority to assist and investigate outside park boundaries if needed. Sen. Ramirez asked if Wyandotte County is the only county which classifies the law enforcement officers as Park Rangers, and Mr. Pokrywka answered that was the case and explained why the law enforcement officers prefer the park ranger title. He explained the Johnson County officers have the same responsibilities, but are titled deputy sheriffs. He explained the Park Rangers are deputized and have the same responsibilities as deputy sheriffs in other counties. Sen. Parkinson stated he understood why the change should be made, and Sen. Jones pointed out the uniqueness in the law that stipulates only Johnson and Wyandotte Counties. Mr. Pokrywka asked members to support the bill by striking language in Lines 20-27 of Page 1 of the bill. No opponents appeared.

Sen. Oleen announced the hearing for SB 631, and Mary Galligan briefed the committee on the bill. Sen. Gooch asked for clarification on the bill, except for the increase in fines. Mary Torrence referred to the language on Page 2, Line 8, and stated that, in her opinion, striking the words, "knowingly or unknowingly" does not change the intent of the bill. She also commented that the bill brings the state law into conformity with the Criminal Code. Sen. Oleen introduced Jim Conant, who presented testimony (Attachment 5), and stated the Alcoholic Beverage Control (ABC) has problems with striking the language on Page 2. He stated there is a serious problem when a person over 21 purchases drinks and gives it to minors. The licensees have been held responsible, but the ABC needs clarification as to who to hold responsible when minors have access to alcoholic beverages in an establishment. He called attention to a proposed amendment on Page 2 of his testimony which outlines administrative proceedings. Sen. Vidricksen stated that fake ID's are a serious problem in college towns, and those who are guilty of using them should be punished. He asked the chairman if the committee has a bill which could be amended to impose heavy fines on those who use fake IDs. Sen. Oleen answered she wanted to pin it down to specifics and that there are other IDs used other than drivers' licenses and that the bill under discussion provides that identification can be made using forms other than drivers' licenses. Mr. Conant stated there is a House Bill which is similar and provides stiffer penalties. Sen.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 254-E
Statehouse, at 11:05 a.m. on February 9, 1994.

Oleen asked when there is a violation, what the penalties are, and if it includes public service. Mr. Conant answered the minor is treated as a juvenile, and the penalty is at the discretion of the judge; alcohol treatment is not required.

Sen. Oleen introduced the following proponents:

Reed Brinton, (Attachment 6);
Randy McCalla, (Attachment 7).

Mr. Brinton explained he represented other bar owners as well as his establishment in Lawrence. In answer to questions from committee members, Mr. Brinton explained if a minor is caught in possession and has used a fake ID in his bar, the owners will be found guilty.. He explained the surveillance system installed in his establishment as well as training for personnel, yet, if a fake ID is used, the bar owners are found guilty and have no current defense mechanism. He stated his establishment has cooperated with the ABC. Sen. Oleen asked what the fine would be, and Mr. Brinton answered they have been fined \$1,000 per offense. In answer to a question from Sen. Papay, he repeated that even if his establishment produces a picture of the minor using a fake identification, they are still found guilty on the administrative hearing level. He also stated after a minor is found in possession in an establishment and they have cooperated with police, they are then cited by the Municipal Court and receive a citation. Mr. Brinton stated it is impossible to tell which IDs are fake and emphasized the minors should be held responsible, because they know they are breaking the law. He stated the Court usually slaps the minor on the wrist with little or no penalty for breaking the law. He asked the committee to increase fines to minors and hold them accountable for breaking the law. Sen. Oleen added this bill doubles the fine from \$100 to \$200. Sen. Walker asked how many offenses of serving to minors Mr. Brinton's establishment had experienced, and Mr. Brinton answered they have five to six in the appeal process now. Mr. Conant stated the ABC receives records from towns throughout the state, and those records are routinely searched and citations issued to the bar, whether an agent was there or not. Mr. McCalla, who is an attorney for Benchwarmers, stated the current law is no incentive to card patrons at a bar, since the bar is always found guilty. He stated the bar has done all in its power to keep minors out. He stated the "knowingly, "unknowingly" language, which is stricken in the bill, was requested since the ABC attorneys rely on it for conviction. The objective of the bill is to provide a defense for bars and establishments, who are trying to abide by the law, but are found guilty in court. He also stated that the fines handed down are enormous. Sen. Praeger stated she has met with a group of establishment owners in Lawrence, and that they are doing a good job and attempting not to serve to minors. This bill is an outgrowth of those meetings and is an incentive to provide such establishments a defense. She urged the committee to support the bill.

Sen. Jones introduced pages from his district who have assisted the committee today. Sen. Gooch introduced his intern.

Meeting adjourned at 12:10.

GUEST LIST

COMMITTEE: Senate Federal & State Affairs

DATE: Feb. 9, 1994

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
DON BIRD	Topeka	KFLA/B
Jim Conant	Topeka	ABC
Robert Engler	Topeka	ABC
Gon Miller	Topeka	SIPS/ADIAS
Kooper Trautzel	"	Ks Qoo Const
Frances Kastner	Topeka	Ks food Dealers Assn
Matt Triebel	Topeka	AP
Bandy McCalla	Overland Park	Atty. for Benchwarmers
BEED C. BRENTON	LAWRENCE	BENCHWARMERS, INC.
Steve POKRZYWA	KANSASCITY	WYCO PARKS
MIKE CONNOR	K. C. K.	Wy. Co. PARKS
DAVID NORRIS	LAWRENCE	Intern for Rep. PETTAY
TREVA POTTER	TOPEKA	KS RETAIL LIQUOR DISASSN
Kelly P. Biscoll	LAWRENCE	Yacht Club Inc.
JOHN L. SCOTT	LAWRENCE	SCOTT ENT. INC.
JASON G. GRAF	LAWRENCE	LOUISI'S WEST INC.
Bria Conroy	LAWRENCE	THE SANDRAK
Neal Whiteley	Topeka	Ks Beer Wholesalers
Jack DWAN	Topeka	KSWA
STEVE KEARNEY	"	CSAK
Julie Hein	Topeka	Hein, Fholt & Cedar
John Cleveland	Jop	Starch Inter
Gary C. Burgess	Emporia	BRUFF'S
Whitney Damon	Topeka	McHill Assoc. / Kc, KS

Attach. 1

PAT HUGGINS PETTEY
REPRESENTATIVE, THIRTY-FIRST DISTRICT
WYANDOTTE COUNTY
3500 GIBBS
KANSAS CITY, KANSAS 66106
(913) 236-7463



COMMITTEE ASSIGNMENTS
MEMBER EDUCATION
LOCAL GOVERNMENT
JOINT COMMITTEE ON CHILDREN
AND FAMILIES

STATE CAPITOL—RM. 281-W
TOPEKA, KANSAS 66612-1504
(913) 296-7669

TOPEKA

HOUSE OF
REPRESENTATIVES

TESTIMONY

Pat Huggins Pettey
Before the Senate Federal & State Affairs Committee
on Senate Bill 627

Thank you for considering Senate Bill 627 on behalf of the Wyandotte County Delegation. I represent the Argentine and Turner areas of Wyandotte County.

In August of 1993 I was contacted by Chief Ranger Steve Pokrywka of the Wyandotte County Parks. He had received differing opinions on the authority of the "rangers" when they are not on park property. The district attorney of Kansas City, Kansas, Nick Tonasic believed that KSA 19-2858 controlled the enforcement authority of the Park Rangers to the parks. The legal counselor for the county, Wayne Tompson, had advised the sheriff, Bill Dillon, that KSA 74-5602 granted the rangers authority within Wyandotte County.

After further conversations with the sheriff, the district attorney, Secretary Ted Ensley and his chief counsel, I asked for an opinion from the state's attorney general. The attorney general's opinion agreed with the Kansas City's district attorney. I then proceeded with legislation to remedy this local need. Steve Pokrywka, Chief Ranger of the Wyandotte County Parks is here to discuss the details of this bill and the facts that make this legislation necessary.

Thank you for your consideration.

*Senate Fed. and State
Feb. 9, 1994
Attachment 1*

Proponent for Proposed Bill # 627

Mike Connor, Executive Manager
Wyandotte County Parks Department

Thank you for the opportunity to appear before you today. I have come in support of the Proposed Bill # 627 regarding Park Rangers authority outside park boundaries.

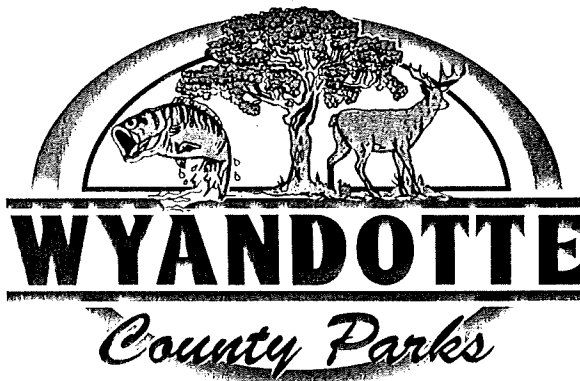
As the current statutes read the Park Ranger is not considered a law enforcement officer once outside the parks. This is despite the fact they are trained alongside other Kansas Law Enforcement Officers at Hutchinson, required to receive the same 40 hours of training per year, are certified and commissioned by the Sheriff as are all other deputies and have full arrest authority for violations of state law and local ordinances and resolutions.

This proposed bill will allow the park rangers to follow up on any necessary investigations, provide more law enforcement eyes and ears when traveling from park to park and give the rangers the necessary power to assist other agencies in times of emergencies.

I think in these trying times of increasing crime on our streets any opportunity to have added deterrents should be most welcome. The primary purpose of this proposed bill is not increased police presence on the streets but that will be a secondary benefit if passed.

Thank you for your time and consideration of this bill.

Senate Federal State
Feb. 9, 1994
Attachment # 2



Attach. 3

Senate Committee:

I am Chief Ranger Stephen Pokrywka, I am the Police Chief of Wyandotte County Parks, located in Kansas City, Kansas. I am here today as a proponent to proposed bill #627. The statute KSA 19-2858, which I hope will be amended by your vote, limits the deputies described in the statute, as having authority only inside the park boundaries. Statute KSA 74-5602, in part describes who is a law enforcement officer. This proposal will amend that part to include deputies as named in KSA 19-2858.

There are a few significant problems that are of concern when we discuss the deputies as not having any law enforcement authority outside the parks. I would like to share those problems, and express the need to amend the statutes to give these Deputies of Wyandotte County Parks, the authority outside the park boundaries.

Let me describe the Deputy Sheriffs in statute KSA 19-2858.

These Deputies, more commonly known as Park Rangers are state certified law enforcement personnel in Wyandotte County. They meet and exceed the necessary training required by the State of Kansas in statute KSA 74-5607. We make arrest, preform traffic stops, and have criminal investigations. We are our own police department. We are deputized by the sheriff, and carry commission cards to enforce the laws of the state and county. We carry a firearm to protect the public and ourselves from criminals. Here are the problems:

1. There are three county parks that exist in Wyandotte County. They are some distance from each other. As the statute reads now, the deputies are not able to carry their firearm outside the park boundaries. Thus, when they leave one park and go to another park, they are carrying their weapons illegally. They also have no authority to prevent or arrest if they should see a crime in progress. Furthermore, they have no authority to help at a accident scene should they be needed to do so. Likewise, when asked to assist outside agencies on calls they cannot do so because of the statute preventing them from leaving the park.

Michael J. Connor, Executive Manager

3488 West Drive

Kansas City, Kansas 66109

913-299-0550

Senate Fed. State
Feb. 9, 1994 - Attachment # 3
FAX 913-299-9051


2. As any other law enforcement agency would attest to, it is hard to conduct an investigation and stay in your jurisdiction. The Park Rangers are really confined by only having that authority to investigate inside the park boundaries. Investigating an assault in the park, in which the people involved have left the crime scene would end up in hours of paperwork just trying to interview the people through an outside agency. Plus, another agency has enough to do without conducting an investigation for another department.
3. Try investigating an applicant who has applied for a deputies position, and stay in the park boundaries. It becomes impossible to stay in the park when I need to conduct a thorough background investigation on a person in which I am about to hire, and give a gun.
4. As a law enforcement officer, protecting your parks and making them safe for your family and friends, I feel that after I get off duty I should be able to take my gun home, not just leave it in my locker. As the statute is now, I cannot take my gun out of the park because my authority is vanquished. I cannot protect myself or my family from the criminals I arrest, unless I am in the park boundaries. I can carry a gun as a private citizen, but not as the law enforcement officer that I worked all day as.

The statute was introduced in 1945 and was amended once in 1955. It is now time to take another look at this statute and pass bill #627, which would give us the authority outside our parks boundaries. I have worked on this change for two years and cannot find any opposition. Frankly, everyone believed we had that authority outside the parks until it was researched.

Attached I have letters from Sheriff Dillion of Wyandotte County, District Attorney Nick Tomasic of Wyandotte County, a copy of the existing statute, with the section about authority outside park boundaries highlighted, and a copy of the proposed bill.

I would like to thank you for your time, and if you have any questions I will answer them at this time.

Stephen L. Pokrywka


Chief Ranger,
Wyandotte County Parks

President,
Kansas Park Law Enforcement Assn.



OFFICE of the SHERIFF
WYANDOTTE COUNTY
710 NORTH 7TH STREET
KANSAS CITY, KANSAS 66101
PHONE: (913) 573-2861

BILL E. DILLON
SHERIFF

August 5, 1993

Mr. Nick A. Tomasic
District Attorney
Wyandotte County Courthouse
710 North 7th
Kansas City, Kansas 66101

Re: Authority for Park Rangers- Outside of Parks

Dear Nick:

I am writing this letter at the request of Stephen Pokrywka, Chief Ranger at the Wyandotte County Parks. It has come to my attention that concerns have been raised as to the authority of the "rangers" when they are not on park property. By this letter I hope to set out the authority of the rangers.

After consultation with Wayne Lampson, County Counselor, it is my decision that the Wyandotte County Park Rangers are to be granted law enforcement authority within Wyandotte County, Kansas. Pursuant to K.S.A. 74-5602, the rangers qualify as law enforcement officers, have been given all required law enforcement training, and therefore I feel it appropriate for them to have the same jurisdiction as my deputies. Attached please find the list of the current rangers to whom this grant of authority currently applies.

If I can be of further assistance, please advise.

Respectfully,

A handwritten signature in cursive script that reads "Bill Dillon".

Bill Dillon, Sheriff

cc: Stephen Pokrywka
Mike Connor
Wayne Lampson

Office of The
DISTRICT ATTORNEY
Of The 29th Judicial District of Kansas

Wyandotte County Justice Complex
710 N. 7th Kansas City, Kansas 66101
(913) 573-2851



August 6, 1993

Sheriff Bill Dillon
Sheriff's Department
Criminal Justice Complex
710 North 7th Street
Kansas City, Kansas 66101

RE: Park Rangers Authority

Dear Bill:

Your letter of August 5, 1993 is acknowledged.

K.S.A. 19-2858 is the statute controlling the activities of a Park Ranger.

The last six lines of that statute specifically provides that they "have no enforcement authority outside the limits of the park", and they "shall receive no compensation as such deputy sheriffs".

Bill, you need to have the legislature "amend the statute" if you want to expand the rangers authority.

Please let me know if I can be of any assistance.

Yours truly,

Nick A. Tomasic
NICK A. TOMASIC
District Attorney

NAT/lkf

CC: Stephen Pokrywka
Mike Connor
Wayne Lampson

Office of The
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Of The 29th Judicial District of Kansas

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(913) 573-2851

DISTRICT ATTORNEY
Nick A. Tomasic

February 1, 1994

Representative Pat Pettey
House of Representatives
State Capitol Building
Topeka, Kansas 66612

RE: K.S.A. 74-5602
K.S.A. 19-2858

Dear Pat:

I have studied the proposed amendments to K.S.A. 74-5602 and K.S.A. 19-2858. The amendments are logical and necessary.

- (1) There are three parks in Wyandotte County, situated in three different areas of the County.
- (2) The crimes that are committed on the park grounds are not just violations of the County resolutions.
- (3) The victims, witnesses and suspects do not live on park property.
- (4) Very seldom is anyone apprehended during the commission of a crime on park property.

Under the existing law, the authority of the park ranger (who has the same law enforcement training and qualifications as other law enforcement officers), is restricted to the parks. This means that unless the rangers apprehend the suspect on park property or in hot pursuit, they are required to turn the investigation over to other sheriff's deputies.

The location of three parks also create a problem. When the rangers travel from one park to another, in uniform, carrying their service revolver, they are doing so as private citizens with no law enforcement authority. If someone committed an assault or battery,

Page Two
Letter to Representative Pettey
February 1, 1994

or if they came upon a crime in progress, their status would be no more than that of an ordinary citizen.

K.S.A. 74-5602(E) should be amended as proposed on lines seven and eight of the bill.

K.S.A. 19-2858 should be amended to eliminate the restrictions now existing relative to the enforcement authority.

If they are properly trained deputy sheriffs, they should have full law enforcement authority throughout the county.

Yours truly,


NICK A. TOMASIC
District Attorney

NAT/lkf

CC: Sheriff Bill Dillon

Chief Steve Pokrywka
Park Rangers

ch. 142, § 1; L. 1967, ch. 155, § 1; L. 1970, ch. 100, § 24; L. 1975, ch. 162, § 23; L. 1979, ch. 52, § 120; July 1.

Research and Practice Aids:

Counties ⇨ 81.

C.J.S. Counties § 131.

19-2856. Manager of parks; appointment; powers and duties; compensation of manager and employees. The county board of park commissioners shall appoint a manager of parks, who shall be the executive officer of the board. He shall manage, superintend and control all parks, parkways and recreational areas, county lakes, roads and park drives, including all buildings, grounds and other structures located within such county parks and recreational areas. He shall establish and negotiate all contracts, leases and concessions, which contracts, leases and concessions must be approved by the county board of park commissioners. The manager shall, by and with the consent of the county board of park commissioners, employ such personnel as is necessary for the efficient management of the office, the parks, parkways and recreational areas, county lakes, roads and park drives, including all buildings, grounds and other structures located within such county parks and recreational areas that are under his jurisdiction. The county board of park commissioners shall establish the rates of compensation for the manager and other employees. Compensation of all employees shall be paid monthly out of the park funds. The manager shall furnish a good and sufficient bond in the amount of twenty-five thousand dollars to the treasurer of the county for the faithful performance of his duties. Said manager shall make an annual report to the county board of park commissioners and the board of county commissioners of the park commission's proceedings, including a detailed statement of its expenditures, showing the financial conditions of all affairs under its control, which report shall be sworn to before a notary public.

History: L. 1945, ch. 177, § 4; June 28.

Research and Practice Aids:

Counties ⇨ 62, 69(2), 81.

C.J.S. Counties §§ 101, 109, 131.

19-2857. County park and recreation fund; annual budget; disbursements. There is

result of contracts, leases, concessions, gifts or otherwise in the operation of the said county parks, parkways, lakes and recreational areas, shall be credited to the county park and recreation fund. The county board of park commissioners shall meet on or before the first day of June in each year for the purpose of preparing the county park and recreation budget, which budget shall be filed with the board of county commissioners on or before the fifteenth day of June in each year. The board of county commissioners shall examine such budget and if the same shall be within the limitations of the statutes the board of county commissioners shall approve the same and cause such ad valorem levy to be made as provided by law. Disbursements of the fund thus created shall be by voucher, approved by the county board of park commissioners, and signed by the president or vice-president and the manager of the county board of park commissioners, which vouchers shall be paid in the same manner as are other county vouchers, and shall be subject to the same auditing procedure as are other county vouchers.

History: L. 1945, ch. 177, § 5; June 28.

19-2858. Deputy sheriffs for enforcement of park regulations. The manager of the county board of park commissioners shall recommend to the county sheriff such number of employees as he deems necessary to become deputy sheriffs of the county, and the duly elected and qualified sheriff of the county shall deputize such employees as deputy sheriffs with full authority to enforce the rules and regulations of the county board of park commissioners as recommended to and by resolution adopted by the board of county commissioners: *Provided, That the deputy sheriffs herein created shall have no enforcement authority outside the limits of the park and any recreational areas: Provided further,* The deputy sheriffs herein created shall receive no compensation as such deputy sheriffs.

History: L. 1945, ch. 177, § 6; L. 1955, ch. 166, § 3; June 30.

JOHNSON COUNTY PARK AND RECREATION DISTRICT

Revisor's Note:

Reasons for 1953 park district act are applicable to L.

posed of a portion or all of the townships of Mission and Shawnee in Johnson county, including not less than all of the cities, the boundaries of which are within the boundaries of such park district, is hereby authorized, and the government operation and financing set up as herein provided: *Provided, That no lands or improvements located within such district which are otherwise exempt by law from ad valorem taxes, shall be subject to payment of any taxes levied by said district.*

History: L. 1953, ch. 170, § 1; June 30.

Research and Practice Aids:

Taxation ⇨ 217.

C.J.S. Taxation §§ 254, 261.

Attorney General's Opinions:

General provisions; home rule powers; executive reorganization. 83-129.

19-2860. Same; definitions. As used in this act:

(a) The term "incorporated city" or "city" shall mean any city of any class without regard to its status as a separate township, if such it be, and now or hereafter located within the area originally comprising either Shawnee or Mission townships in Johnson county, Kansas, at the time such township was established;

(b) the term "Mission township" shall mean the entire area as originally established, outside incorporated cities and within incorporated cities of any class;

(c) the term "Shawnee township" shall mean the entire area as originally established, outside incorporated cities and within incorporated cities of any class;

(d) the terms "county commissioners," "county clerk," and "county treasurer" shall mean, respectively, board of county commissioners, county clerk and county treasurer of Johnson county;

(e) the terms "board" or "park board," "board of commissioners" or "governing board" shall mean the park and recreation board of commissioners herein provided for;

(f) the terms "district," "park district" and "park and recreation district" shall mean the Johnson county park and recreation district herein authorized to be created;

(g) the word "park" shall mean not only park but also playground unless by the context

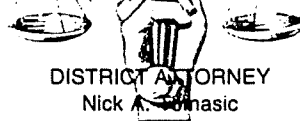
Research and
Municipal
C.J.S. M

19-2859. Hearing; creation of park district. The board of county commissioners, upon petition, proposed legal description of the area, requesting park district, by not less than all of the cities, the boundaries of which are within the boundaries of such park district, is hereby authorized, and the government operation and financing set up as herein provided: *Provided, That no lands or improvements located within such district which are otherwise exempt by law from ad valorem taxes, shall be subject to payment of any taxes levied by said district.*

History: L. 1953, ch. 170, § 1; June 30.

Office of The
DISTRICT ATTORNEY
Of The 29th Judicial District of Kansas

Wyandotte County Justice Complex
710 N. 7th Kansas City, Kansas 66101
(913) 573-2851



ATTACHED
Rec 2-4-94

February 1, 1994

Representative Pat Pettey
House of Representatives
State Capitol Building
Topeka, Kansas 66612

RE: K.S.A. 74-5602
K.S.A. 19-2858

Dear Pat:

I have studied the proposed amendments to K.S.A. 74-5602 and K.S.A. 19-2858. The amendments are logical and necessary.

- (1) There are three parks in Wyandotte County, situated in three different areas of the County.
- (2) The crimes that are committed on the park grounds are not just violations of the County resolutions.
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Under the existing law, the authority of the park ranger (who has the same law enforcement training and qualifications as other law enforcement officers), is restricted to the parks. This means that unless the rangers apprehend the suspect on park property or in hot pursuit, they are required to turn the investigation over to other sheriff's deputies.

The location of three parks also create a problem. When the rangers travel from one park to another, in uniform, carrying their service revolver, they are doing so as private citizens with no law enforcement authority. If someone committed an assault or battery,

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Letter to Representative Pettey
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or if they came upon a crime in progress, their status would be no more than that of an ordinary citizen.

K.S.A. 74-5602(E) should be amended as proposed on lines seven and eight of the bill.

K.S.A. 19-2858 should be amended to eliminate the restrictions now existing relative to the enforcement authority.

If they are properly trained deputy sheriffs, they should have full law enforcement authority throughout the county.

Yours truly,


NICK A. TOMASIC
District Attorney

NAT/lkf

CC: Sheriff Bill Dillon

Chief Steve Pokrywka
Park Rangers

Attach. 5

STATE OF KANSAS

Robert A. Engler, Director
4 Townsite Plaza Suite 210
200 S.E. 6th Street
Topeka, Kansas 66603-3512



(913) 296-3946
FAX (913) 296-0922

Department of Revenue
Division of Alcoholic Beverage Control

MEMORANDUM

TO: The Honorable Lana Oleen, Chairperson
Senate Committee on Federal & State Affairs

FROM: Jim Conant, Chief Administrative Officer
Alcoholic Beverage Control Division

DATE: February 9, 1994

SUBJECT: Senate Bill 631

Thank you for the opportunity to appear before the committee today regarding Senate Bill 631. The ABC Division is generally supportive of any measure intended to reduce underage access to alcoholic beverages. Senate Bill 631 accomplishes this by providing increased penalties when a minor is apprehended in possession of an alcoholic beverage (Section 1) and an incentive to licensees to check identification (Section 2).

The inclusion of a defense to prosecution under K.S.A. 41-2615 recognizes the growing problem with use of false identification by minors. The opportunity for a defense actually provides increased incentive for all licensees to make a thorough ID check when there is any question of the purchaser's age. Since K.S.A. 41-2615 is normally cited in administrative citations to on-premise licensees for underage violations, we would respectfully recommend that additional language be added to clarify the availability of a defense in administrative hearings. A balloon draft of an amendment which would establish an affirmative defense for administrative hearings is included with this testimony.

The Division also recommends that the bill be amended on page 2 at line 8 to retain the words "knowingly or unknowingly." Removal of this language from K.S.A. 41-2615(a) would seriously hamper the Division's ability to hold licensees responsible for underage violations on licensed premises. As introduced, it would appear that the bill would require evidence of the licensee's or employee's actual intent or active participation in permitting a minor to possess or consume. While the minor in unlawful possession would be in violation of K.S.A. 41-727, no one could be held responsible for furnishing the alcoholic beverage unless the act of furnishing had been observed by the investigating officer. Removal of the knowing or unknowing provisions effectively eliminates the licensee's responsibility for illegal activity on the premises beyond the actual point of sale or service of alcoholic beverages. Reinstatement of these terms would not preclude use of the proposed defense by licensees who check IDs in an effort to comply with the law.

Thank you for your consideration of these issues. I would be happy to answer any questions the committee may have.

Senate Fed + State
Feb 9, 1994
Attachment #5

1 (f) Any city ordinance or county resolution prohibiting the acts
2 prohibited by this section shall provide a minimum penalty which
3 is not less than the minimum penalty prescribed by this section.

4 (g) This section shall be part of and supplemental to the Kansas
5 liquor control act.

6 Sec. 2. K.S.A. 41-2615 is hereby amended to read as follows:

7 41-2615. (a) No licensee or permit holder, or any owner, officer or
8 employee thereof, shall ~~knowingly or unknowingly~~ permit the
9 possession or consumption of alcoholic liquor or cereal malt beverage
10 by a minor on premises where alcoholic beverages are sold by such
11 licensee or permit holder, except that a licensee's or permit holder's
12 employee who is not less than 18 years of age may serve alcoholic
13 liquor or cereal malt beverage under the on-premises supervision of
14 the licensee or permit holder, or an employee who is 21 years of
15 age or older.

16 (b) Violation of this section is a misdemeanor punishable by a
17 fine of not less than \$100 and not more than \$250 or imprisonment
18 not exceeding 30 days, or both.

19 (c) *It shall be a defense to a prosecution under this section if:*

20 *(1) The defendant permitted the minor to possess or consume the*
21 *alcoholic liquor or cereal malt beverage with reasonable cause to*
22 *believe that the minor was 21 or more years of age; and (2) to*
23 *possess or consume the alcoholic liquor or cereal malt beverage, the*
24 *minor exhibited to the defendant a driver's license, Kansas non-*
25 *driver's identification card or other official or apparently official*
26 *document, containing a photograph of the minor and purporting to*
27 *establish that such minor was 21 or more years of age.*

28 Sec. 3. K.S.A. 41-727 and 41-2615 are hereby repealed.

29 Sec. 4. This act shall take effect and be in force from and after
30 its publication in the statute book.

(d) In any administrative proceeding pursuant to the Kansas liquor control act to suspend or revoke a license or to impose a civil fine for a violation of this section, it shall be a defense if evidence is presented which indicates that: (1) The defendant permitted the minor to possess or consume alcoholic liquor or cereal malt beverage with reasonable cause to believe that the minor was 21 or more years of age; and (2) to possess or consume the alcoholic liquor or cereal malt beverage, the minor exhibited to the defendant a driver's license, Kansas nondriver's identification card or other official or apparently official document, containing a photograph of the minor and purporting to establish that such minor was 21 or more years of age.

Attach. 6

BENCHWARMERS

SPORTS BAR
& GRILL

1601 West 23rd
Lawrence, KS 66046 USA
913-841-9111
913-841-0505 Fax

My interest in this hearing is that of a Restaurant and Bar owner. I feel that a grave injustice has been created with respect to K.S.A. 41-2615. My restaurant bar has gone above and beyond the normal measures to assure that we have eliminated under age drinking. We have provided a surveillance system at considerable cost to film every patron that comes through our doors to prove that they have shown proper identification to enter the establishment. We have also provided our door staff with additional training, seminars, and references to help them determine which I.D.'s are fake and which are real. We have cooperated with all enforcement agencies to the fullest in an attempt to rectify the on going problem of underage drinking and the passing of false identification.

What it comes down to is this, in many instances the only person who knows they are breaking the law is the minor using false identification. However, we as business people that happen to serve cereal malt beverage or liquor, are being held financially liable for someone else's crime. It is extremely frustrating when you have provided sufficient evidence proving a minor has used a false form of identification, yet we are still found guilty by the Alcohol Beverage Control for serving the minor in question. Our industry is already one of the most heavily taxed and regulated making it very difficult to run a successful operation concentrating on the things we can control, yet we are faced with the additional burden of trying to win a battle that we can not possibly win. I feel that the burden should be placed on the minor that has used an unlawful means to enter drinking establishments.

Sincerely,

Reed C. Brinton, Owner
Benchwarmers Inc.

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TESTIMONY PRESENTED ON
BEHALF OF BENCHWARMERS, INC.

SENATE BILL 631

Presented at the Federal and State Affairs Committee Hearing On
February 9, 1994

My name is Randy McCalla. I am an attorney with Speer, Austin, Holliday & Zimmerman in Olathe, Kansas. I am one of the attorneys for Benchwarmers, Inc., and have represented Benchwarmers, Inc. in the City of Lawrence, District Court for Douglas County and before the Alcoholic Bureau Control Hearing Officer with regard to charges relating to furnishing alcoholic beverages to minors. Benchwarmers, Inc. is a club and restaurant in Lawrence, Kansas, owned by Reed C. Brinton who is also testifying before the Hearing Committee today. Mr. Brinton and I requested Senator Oleen to introduce Senate Bill 631.

Benchwarmers, Inc., as well as other restaurants and clubs in Kansas, are faced with the difficult burden of prohibiting underage individuals from attempting to get into their establishments through the use of false identification. As you are aware, K.S.A. §21-3610 makes it a criminal offense to furnish alcoholic beverages to a minor. K.S.A. §21-3610 was amended in 1988 and then again this past year to allow a defense to the licensed retailer, club drinking establishment or caterer if a minor is found consuming alcoholic beverages. This defense, found in Subsection (d), is identical to the one we have requested in Bill 631.

The majority of the minors who are able to obtain access into my client's establishment do so with the use of false identification. The authentic nature of these false identifications is remarkable and it is extremely difficult to differentiate between an authentic and false identification in many instances. Benchwarmers, Inc. has used a number of techniques to reduce the number of minors who enter the establishment, including the use of video cameras at the door and training the individuals at the door on the differences between authentic and false identification. When the local police officers conduct bar checks, the majority of the minors who are questioned claim to have been allowed entrance without showing any identification and either hide their false identification or give it to a friend.

By and large, the local police officers who are familiar with Benchwarmers, Inc. are aware of what the minors are doing and rarely issue my client citations pursuant to K.S.A. §21-3610 or the similarly worded City Ordinance. The police officers are aware of the defense available under this statute and realize that it is applicable to these situations in a large number of instances and recognize the effort Benchwarmers, Inc. has engaged in to prohibit minors from entering the

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establishment. The police officers are also aware that the minors themselves are the only ones who are knowingly violating the Kansas statutes.

However, in the statutory provisions which the Alcoholic Bureau Control ("ABC") relies on to issue their citations, there is no defense as provided for in K.S.A. §21-3610(d). The ABC relies on K.S.A. §41-2615 to prosecute drinking establishments for allowing a minor to consume. While this provision concerns only consumption by a minor, the ABC, pursuant to an unpublished Court of Appeals decision, has determined that the same "knowingly or unknowingly" language in the consumption statute, (K.S.A. §41-2615) also applies to those offenses dealing with mere possession by a minor. The ABC does not recognize the defense in K.S.A. §21-3610 and consequently no "good faith" defense is available to restaurants and clubs in Kansas.

Therefore, restaurants and clubs in Kansas can be found to have violated a provision in their license as a drinking establishment even though they are not guilty of any criminal act and have done everything within their means to prohibit the alleged offense from occurring. The minors are given a citation and usually punished through a small token fine. Restaurants and clubs in Kansas, however, are faced with administrative fines of up to \$1,000.00 per minor who is found in their establishment and can face the possibility of losing their drinking license. These fines are financially crippling a number of restaurant and clubs and we are, therefore, in dire need of your assistance in adopting the proposed Bill.

Allowing this amendment would not encourage underage drinking, as the restaurant and clubs would still be required to prove that the minor was allowed entrance based upon the minor "exhibiting to the establishment a drivers license, Kansas non-driver identification card or other official, or apparently official, document, containing a photograph of the minor and purporting to establish that such minor was twenty-one or more years of age."

At the present time, Benchwarmers, Inc. has not been found guilty of a violation of K.S.A. §21-3610 or K.S.A. §21-3610a. However, there are currently a number of pending cases before the Alcoholic Bureau Control concerning violations of allegedly allowing a minor to consume alcoholic beverages or posses alcoholic beverages. In each of those cases, the defense available in K.S.A. §21-3610 and K.S.A. §21-3610a would be applicable and possibly exonerate Benchwarmers, Inc. from any penalties. It is very difficult as an attorney to explain to your client how you can be completely innocent of an alleged crime in one forum and yet guilty without any means of defense in another.

Restaurant and club owners, such as Mr. Brinton, are also extremely frustrated as they have engaged in every means possible to eliminate minors from their drinking establishments, only to be found guilty of violating a provision in their

license as a drinking establishment which subjects them to enormous fines and the possibility of losing their licenses.

In conclusion, should the Committee determine that this defense should have been included in K.S.A. §41-2615 at the same time that it was included in K.S.A. §21-3610, we request that this legislation be held as retroactive to that time period in which the defense was adopted in K.S.A. §21-3610. At the very least, we respectfully request the Committee's support of this Bill as currently drafted, so that in the future, restaurants and clubs in Kansas can fairly defend themselves against allegations of wrong doing for which they are not responsible.