

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:31 A.M. on March 19, 2007, in Room 123-S of the Capitol.

All members were present except:

Terry Bruce arrived, 9:34 A.M.  
Barbara Allen arrived, 9:37 A.M.  
Phil Journey arrived, 9:49 A.M.  
Derek Schmidt arrived, 9:33 A.M.

Committee staff present:

Athena Anadaya, Kansas Legislative Research Department  
Bruce Kinzie, Office of Revisor of Statutes  
Nobuko Folmsbee, Office of Revisor of Statutes  
Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Rod Richardson, Attorney, Johnson County  
Larry McAulay, Director of Legal Services, Johnson County Legal Department  
Delores Furtado  
Jerome Gorman, Wyandotte County District Attorney  
Robert Hecht, Shawnee County District Attorney

Others attending:

See attached list.

Approval of Minutes

Senator Goodwin moved, Senator Donovan seconded, to approve the committee minutes of February 5, 2007, and February 6, 2007. Motion carried.

The Chairman opened the hearing on **SB 374--County and district attorneys; compliance with county commission policies, when required.**

Rod Richardson appeared in support, providing background on the formation of the Johnson County Charter of Government and adoption of the Home Rule Charter. Since implementation in 2000, the provisions of the Charter have been followed consistently with the exception of the current District Attorney. This has resulted in employment policies and procedures inconsistent with established county policies subjecting the county to litigation, therefore, making this bill necessary. Enactment of the bill will assure the citizens of Johnson County that previously adopted provisions for the successful governing and managing of the County are not subject to being declared optional (Attachment 1).

Larry McAulay spoke in support indicating enactment of **SB 374** would codify the historical administrative policies and procedures Johnson County used over the last twenty years. This bill will ensure taxpayers that county resources are used properly including the office of the District Attorney (Attachment 2).

Delores Furtado appeared as a proponent indicating that the bill affirms the intent of the Charter approved by the voters of Johnson County in 2000. The Johnson County Government provides the administrative systems necessary to the operation of the District Attorney's Office including computer systems and support, state and federal reporting requirements, payroll, retirement and benefits management. Ms. Furtado stated that it is unrealistic and unfair to expect the County to provide and administer systems for the District Attorney without expecting the District Attorney to comply with necessary policies and procedures that ensure the systems are run legally and effectively (Attachment 3).

Jerome Gorman spoke in opposition stating this bill is an attempt by a county's legislative body to control a state official and, as drafted, is unlikely to withstand constitutional scrutiny. One potential problem is that not all District Attorney offices are included in the bill. Another potential problem is judicial interpretation could require **SB 374** to apply to Shawnee County. It appears that any county commission that disapproves of its District Attorney's activities would only need to designate the office as an "urban area" and to gain control of a State office. Mr. Gorman noted that local governments have the power to limit the appropriations

CONTINUATION SHEET

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of the District Attorney's office through budget approval and stressed independent prosecutors should remain independent in order to exercise the judgement and discretion required for their job (Attachment 4).

Charles Branson spoke in opposition, relating the same concerns as Mr. Gorman (No written testimony).

Robert Hecht appeared in opposition, reiterating the issues presented by Mr. Gorman. Mr. Hecht stated concern that **SB 374** violates separation of power. District Attorneys are legally and ethically responsible for the acts of commission and omission of their employees, lawyers, investigators and support staff and can be sanctioned for failure to make proper discovery or disclosure, for improper public comment, and for ill motive in pursuing litigation. District Attorneys must be able to confidently have trust and reliability that their staff shares the same legal, prosecutorial and professional philosophy and dedication as the District Attorney. All elected officials must have the right to obtain and/or retain staff without intrusion from county commissioners or others who do not have responsibility for the office or its conduct or performance (Attachment 5).

Written testimony in support of **SB 374** was submitted by:

Annabeth Surbaugh, Chairman, Johnson County Board of County Commissioners (Attachment 6)

Written testimony in opposition of **SB 374** was submitted by:

Nola Tedesco Foulston, District Attorney, 18<sup>th</sup> Judicial District of Kansas (Attachment 7)

Phil Kline, District Attorney, 10<sup>th</sup> Judicial District of Kansas (Attachment 8)

There being no further conferees, the hearing on **SB 374** was closed.

The meeting adjourned at 10:31 A.M. The next scheduled meeting is March 20, 2006.