

KANSAS JUDICIAL COUNCIL BULLETIN

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PART 1—TWENTY-SEVENTH ANNUAL REPORT



MISS MILDRED OTIS

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FOREWORD

We are glad to present in this issue one of the promising young women lawyers of Kansas, Miss Mildred Otis of Phillipsburg, whose picture appears on the cover. Miss Otis, who is representative from Phillips county, has been kind enough to write an article for this issue of the BULLETIN, entitled "Toward a House Degree," in which she gives some of her early impressions and experiences as a legislator. Miss Otis was educated in the Fort Hays Kansas State College, from which she received her A. B. degree, after which she had two years graduate work at Indiana University, and was graduated from the University of Kansas School of Law in 1950 and was admitted to the bar in the same year.

One of the outstanding events of the year 1953 in legal circles is the publication of the Revised Edition of Kansas Probate Law and Practice by Samuel E. Bartlett of Wichita. The Judicial Council takes particular pride in the achievements of Mr. Bartlett, because it originally sponsored his work in drafting the Probate Code prior to its enactment in 1939. Mr. Bartlett also served as a member of the Council from 1941 to 1951, where he performed distinguished additional service in perfecting the Code and in a careful study of all the amendments and decisions of the Supreme Court relating to probate practice. His tireless work and study of probate law through all of this period has made the revised edition of his book a text which is and will be a necessity in the office of every practicing lawyer of Kansas. Each of the members of the Council would like to write a separate review of this revised edition, and the honor has fallen to Robert H. Cobean of Wellington who served several years with Mr. Bartlett on the Council and has the additional experience of his former service as a probate judge and is an alert and aggressive practicing lawyer.

Since the last issue of the BULLETIN, there have been changes in the membership of the Council as follows:

Judge Joseph J. Dawes of Leavenworth has succeeded Judge Franklin B. Hettinger of Hutchinson.

Senator George Templar of Arkansas City has succeeded Senator John Etling of Kinsley as chairman of the senate judiciary committee and ex officio member of the Council.

Representative John H. Murray of Leavenworth has succeeded Dale Bryant of Wichita as chairman of the house judiciary committee and ex officio member of the Council.

Senator Templar has served on the Council twice before, and has been a valuable member in the past as well as the present. Judge Dawes and Mr. Murray have already shown a keen interest in the work of the Council, and we have a well-balanced membership.

We regret that during the period since our last BULLETIN we have lost by death two of the outstanding lawyers in Kansas who were former members of the Judicial Council, Charles L. Hunt of Concordia, who died on February 23, 1953, and I. M. Platt of Junction City, who died on February 25, 1953. Mr. Hunt was one of the pioneer members of the Council who served from its

organization in 1927 until 1941 and had an important part in much of the work which was done during that period. Mr. Platt was a member of the Council from 1943 to 1945, when he was chairman of the house judiciary committee. Both Mr. Hunt and Mr. Platt were outstanding Kansas lawyers and will be greatly missed in Kansas legal circles.

This issue of the BULLETIN is necessarily delayed because of the late adjournment of the legislature and the desirability of printing a summary of the laws enacted which affect our work. The stormy session of 1953 produced much in the way of new legislation in other fields, but its outstanding achievement, as far as the bar is concerned, is the enactment of the judges retirement bill. We print this bill as it was enacted, without extended discussion, with the realization that there may be criticism of specific provisions and improvements may be made by future amendments, but at long last the public has recognized its obligation to those who have served it over a period of years in the judicial field.

Toward a House Degree

By MILDRED OTIS

It was during the last month of the 1953 legislative session that I was asked to write an article for the JUDICIAL COUNCIL BULLETIN. Although I was busy trying to read bills and keep up with the work of each legislative day, I knew that the privilege of writing for the BULLETIN was an honor I should not refuse. The suggestion that I write of my thoughts on this legislative session was well taken. The following discourse sets forth some of my own opinions and observations.

I came into the legislature one of the greenest of the green freshmen. My political experiences were slight and this was my first political office.

My first big task was to learn to attach the right name to the face of each of the one hundred twenty-one men and three women of the House. This was not easy, but as the session nears its adjournment I find that I've nearly completed this task.

The first few weeks of the session are most confusing to a newcomer. But ears open and eyes alert one soon learns his way around. The location of various departments, where and how to obtain some of the information desired soon became known. The Legislative Council Research Department is a valuable help.

It is astonishing what one forgets when knowledge lies inactive in the mind. I found that through disuse I had forgotten much of my parliamentary law and had to direct my attention to recalling it. By closely observing each day's legislative procedure and by studying rules of order I began to revive my dormant knowledge.

A most enlightening experience is the realization of how legislation is really made. In the main and on the surface, lawmaking follows the procedure taught in the textbooks of Kansas government. However, legislation of the people, by the people, for the people becomes an illusion when passage of bills becomes forced by pressure groups for pressure groups. Undercurrents of political maneuvering become more evident as one's legislative experience increases. Support of a bill on general orders can overnight become opposition to a bill on roll call. The theory "you scratch my back and I'll scratch yours" is not infallible. Support given to a co-worker's cherished bill may not be reciprocated. It is human to forget and some legislators have amazingly short memories.

One of the powerful House committees is a calendar committee. This committee holds the whip hand and can keep bills from being discussed on the floor of the House. Adjournment just ahead of certain bills on the calendar can easily lead one into the belief that these bills will head the next day's calendar. Imagine the disappointment when they appear near the bottom of the next day's calendar. Thus, bills not looked upon with favor by a calendar committee may be shoved up and down and finally die on the calendar.

An enthusiastic legislator may introduce a commendable bill of benefit to the citizens of the state. The bill may be good but that doesn't guarantee that it will become a law. The bill may never get out of the committee. If it does, it may never get off the calendar. Or if it does get off the calendar, it may be pressured to defeat. Not all bills are discussed and passed on the merits of the

bill. Even the saying, "It's who you know" doesn't always hold true. Your support today may be your opposition tomorrow. Truly, politics makes strange companions.

A legislator may begin a session full of hope, and he may near the session's end with a heart calloused with disappointment and disillusionment. As I become more aware of the ways of politics I find some of my acute antagonism melting away. Time either mellows one or wears one down. Or maybe one reaches the conclusion, "What's the use."

Although some of my legislative days were bad, and some very good, my over-all picture of the session is that I've thoroughly enjoyed it. I like people. And I've made many new friends during the session. I now have a tie of friendship with every county in Kansas, because residing in each county is one or more new acquaintances. My salary as a legislator may be low, and it is true my finances have lessened during my stay in Topeka, but I'm not complaining. I believe my gain is over and above money, and cannot be termed in dollars. It matters not where I may go in Kansas, in every section of the state I will find an acquaintance. Money will not purchase friendships, and money is not a measure of riches. My pocketbook may have shrunk, but my treasure of friendships is great.

Another gain, not reckoned in terms of dollars, is the liberal education I've obtained during this legislative session. I've learned much in this short time. My observation of what goes on and how it is done is more acute. I have a much better understanding of the state departments and the organization of the state. I have a clearer understanding of where state funds come from and the channels to which they're allocated. I have a better appreciation of the great task confronting legislators each session and an admiration of the efficiency of our legislative organization.

After my return home I know that I'll often in memory recall segments of this session. And as I read tomorrow's state newspapers, many names in the news will not be merely names. I will attach the name to a certain known acquaintance and I will find in the news stories more interest and understanding.

And so I return home, richer than I came to Topeka—richer in friendships and richer in knowledge.

Working Tools

By ROBERT H. COBEAN

The working tools of the lawyer are of course his library and the lawyers of Kansas during the past six months have been furnished two most excellent working tools. I have specific reference to the revised editions of KANSAS PROBATE LAW AND PRACTICE by Samuel E. Bartlett, and HATCHER'S KANSAS DIGEST, by Earl Hatcher. The fact that these two outstanding Kansas lawyers found it desirable to revise their earlier works is in itself an indication of the growth of case law in Kansas. What every practicing Kansas lawyer desires are specialized resource materials with particular reference to our own Kansas statutory and case law. We have been furnished such specialized working tools by Mr. Bartlett and Mr. Hatcher.

The writer has been asked by the Judicial Council to contribute this article with particular emphasis upon the revised edition of KANSAS PROBATE LAW

AND PRACTICE by Mr. Bartlett. Mr. Bartlett, in addition to being the author of this revised and enlarged edition of his former work, was for ten years a most valuable member of the Judicial Council. The writer, having served with Mr. Bartlett on said Council, hereby personally testifies as to the value of Mr. Bartlett's services on the Council as a member and as to the advice which the Council has sought from Mr. Bartlett both prior to and since his serving upon the Council itself.

During each generation a vast amount of the property of Kansas passes through the probate courts of this state. In the foreword to the first edition of "Kansas Probate Law and Practice," Chief Justice W. W. Harvey, then Chairman of the Kansas Judicial Council, said: "While each is important in its sphere, those who have given the matter thought have come to realize that of our three state courts of record, the supreme court, district courts and probate courts, none is more important to the residents of any county in the state than is the probate court. These courts seem to be nearer to the people in many of their practical problems. It is of the highest importance also that the laws relating to the estates of decedents and to wards be as clear and as comprehensive as it is possible to make them." With the enactment of the probate code, the numerous supreme court decisions interpreting said code and the revised edition of "Kansas Probate Law and Practice," the lawyers and courts of Kansas have as clear and comprehensive analysis of the Kansas probate law as it is possible to have.

Because of the vast field of business conducted before the probate courts, every lawyer in Kansas should be most interested in the revised work of Mr. Bartlett. Most of us who have been practicing for a number of years have been quite familiar with the earlier edition and appreciate the value of the revised and enlarged edition. The younger members of the Bar will fast become acquainted with this work and with its value to them in their day to day practice.

The new edition, as was the earlier edition, is structurally divided into four parts. Part One, "Probate Law"; Part Two, "Probate Procedure"; Part Three, "Non-Probate Law and Procedure"; and Part Four, "Probate Forms." Twelve new chapters have been added to the revised edition to cover matters of current interest to those practicing before the probate courts. Some of the new chapters have been made necessary by reason of amendments to the Kansas probate code. Others of said chapters have been made necessary by reason of federal tax legislation. A vast amount of the new material in the revised edition is the result of our own supreme court cases interpreting the various and many provisions of the probate code.

No set of books is of more value than the index thereto. In the revised edition the index has been greatly expanded and the cross references will be found to be most helpful. At the head of each chapter is the comprehensive index to the contents of that chapter and there is also indicated the sections of the probate code contained in said chapter and likewise cross references to other portions of the work which pertain thereto.

Those who have used the former work are well aware of how Mr. Bartlett has built each chapter around a separate article of the probate code. Therefore, rather than to try and give a review of that portion of the work which has become known to so many of us, I will merely point out some of the additional chapters that appear in the revised edition.

Chapter 12, "Uniform Simultaneous Death Law," is an addition to the revised edition and is of course built around G. S. 58-701 to 707, inclusive, which was enacted by our legislature in 1947. With the current high highway accident rate, which is increasing annually, this law and this chapter will become of increasing use to the members of the Bench and Bar.

Chapter 58, "Joinder of Probate and Administration Proceedings," is built around G. S. 59-2281 to 2285. These provisions of the statute were likewise enacted in 1947 and have been the subject of increased interest by members of the Bar as evidence by recent correspondence from lawyers throughout the state to the Judicial Council. Chapter 92, "Proceedings for Joint Probate and Administration of Estates," is a chapter on forms which are applicable to joint administration proceedings. Therefore, chapter 92 is complementary to chapter 58.

Chapter 59, "Termination of Life Estates and Joint Tenancies," is built around the much discussed and maligned provisions of G. S. 59-2286, which was enacted by the legislature in 1951. Chapter 93, "Judicial Termination of Life Estates and Joint Tenancies," is another chapter on forms applicable to the judicial termination of life estates and joint tenancies and is complementary to chapter 59. The writer is aware that a bill was introduced in the 1953 legislature to repeal 59-2286, but the writer is not at this time informed as to the result of said proposed legislation. Irrespective thereof, citations under chapters 59 and 93 will be of interest to all members of the Bar.

One of the most valuable additions to the new work will be found in chapter 64, "Estate Planning," which challenges the attention of the careful lawyer to the advantages, tax wise and otherwise, to the planning in advance of how to dispose of an estate. A quick look at the chapter heading will call to attention the various matters to be considered in the planning of each separate estate, so that there will be the least shrinkage in the process of the transfer of property. This chapter alone, brief as it is, could be worth the price of this five volume work in many estates.

Another addition is chapter 65, "General Probate Practice," the contents of which are for the most part rather routine matters to be considered in general probate practice, but are so set out in said chapter as to remind the busy practitioner of details which should not be overlooked in careful preparation of wills and the many steps from the preparation of said wills to the ultimate probate thereof.

Another very interesting and valuable addition is chapter 66, "Probate Land Titles." This rather extensive chapter will be of great interest to practitioners in the probate court and to title examiners generally. A quick analysis of said chapter will reveal extensive footnotes, many of which cite the title standards approved by the Kansas Bar Association. This is another illustration of the thoroughness of the citations to be found in the revised edition.

The former chapters on trusts and trust powers, and inheritance and other taxes have been greatly expanded in this revised edition. This of course would be a necessity in view of the fact that every estate must be planned, tax wise, and that an increasing number of trusts are being used in the transfer of estates in order to take advantage of tax provisions. The subject matter of these chapters and the citations thereto are further examples of the very valuable material which Mr. Bartlett has made available to the Bench and Bar of Kansas on the matter of estate planning and conservation.

Chapter 72, "Wills and Will Clauses," contains over three hundred paragraphs or will clauses so systematically arranged as to be easy to find and so extensive in subject matter and so conveniently annotated as to cover most any testamentary instrument which the practicing lawyer could be called upon to prepare for a client. This very valuable chapter is specifically cited as an illustration of the very complete sets of forms that are found in the revised edition. In all, there are more than nine thousand forms included in this revised edition, most of which are cross indexed to the pertinent provisions of the code to which they apply, and with applicable citations thereto. Any practitioner interested in a form book on probate forms should find this revised edition worth the price thereof for the forms, cross references and citations to be found therein.

As the writer has heretofore stated, this article is not intended to be a book review and only the careful use of this fine work proves its value to those interested in probate matters. The Bench and Bar are indebted to Mr. Bartlett for his studious preparation of the revised edition to the *KANSAS PROBATE LAW AND PRACTICE*, which work will be found to be much more valuable than the first edition, by reason of the decisions that have been handed down during the thirteen years since the probate code became effective. The value of this work will increase through the years as the publishing company will keep said work current by annual pocket parts.

In closing, it is the writer's personal desire that both *KANSAS PROBATE LAW AND PRACTICE* and *HATCHER'S KANSAS DIGEST* will receive such financial support from the members of the Bench and Bar to make it possible for the respective publishing houses to keep these works current and thereby continuously valuable to the members of the Bench and Bar of Kansas.

STATUTES ENACTED BY THE LEGISLATURE OF 1953

The legislature of 1953 enacted a number of statutes which are of interest to courts and lawyers. This article is intended as a brief summary of these statutes, followed by the text of those which are of particular interest.

House bill No. 302 is the judges retirement act and is printed in full.

CIVIL PROCEDURE

House bill No. 25 amends G. S. 60-3419 and provides that execution sales may under certain conditions, be held on the land instead of in the courthouse. This act will not take effect until its publication in the statute book.

House bill No. 75, printed herein, amended G. S. 60-746a relating to defamation by radio, limiting the liability of the local stations. This act took effect upon its publication in the official state paper.

House bill No. 62 amends G. S. 60-1510 relating to custody of children in divorce cases and consent to adoption of such children under certain conditions. This act will take effect on its publication in the statute book.

Senate bill No. 31 amends G. S. 60-501; 60-502; 60-510; 60-1801; 60-2001 and 60-2101 with relation to actions involving mineral interests in land. This act will take effect upon its publication in the statute book.

Senate bill No. 287, printed herein, relates to the rights of persons to recover damages from physicians or technicians at state hospitals caused by

giving "shock" treatments. This act took effect upon its publication in the official state paper.

House bill No. 59 provides that in tax foreclosure cases where the county has purchased real estate prior to January 1, 1948, the conveyances to the county are validated unless attacked within one year. This statute will take effect upon its publication in the statute book.

CRIMINAL PROCEDURE

House bill No. 14, printed herein, provides that the trial judge shall have the power in sex crimes and cases involving public morals to refer the defendant to the state hospital for mental examination instead of imposing sentence in a penal institution. This statute will take effect upon its publication in the statute book.

House bill No. 256 amends G. S. 62-1304 and provides for the payment of attorney's fees to lawyers appointed by the court for taking appeals in cases where the death sentence is imposed. This statute will take effect upon its publication in the statute book.

PROBATE PRACTICE

House bill No. 61 amends G. S. 59-2102 relating to consent to adoption. This act will take effect upon its publication in the statute book.

House bill No. 463 amends G. S. 59-213 by providing for the filing of certified copies of probate proceedings in other counties. This statute will take effect on its publication in the statute book.

Senate bill No. 190, printed herein, provides that the courts of Kansas shall have exclusive jurisdiction in estates of residents of Kansas and that the director of revenue may commence proceedings for the administration of such estates when the heirs fail to do so. This act took effect on April 1, 1953, after its publication in the official state paper.

Senate bill No. 242 amends G. S. 59-2278 relating to adoption by providing that investigation by the social welfare department is discretionary when the petitioner is a step-parent. This act will take effect upon its publication in the statute book.

House bill No. 514 amends G. S. 59-401 by including house trailers as homesteads. This act will take effect after its publication in the statute book.

House bill No. 203 amends G. S. 59-620 providing for the deposit of wills in the probate court. This statute will take effect upon its publication in the statute book.

House bill No. 226 validates certain deeds and other instruments in Riley county arising out of probate proceedings where the records were destroyed in the 1951 flood. It will take effect on its publication in the statute book.

DISTRICT COURTS

A number of special laws were enacted concerning district courts in various parts of the state, which will be mentioned briefly. House bill No. 108 amends G. S. 20-419 and provides for two judges in counties between 70,000 and 90,000 population. House bill No. 171 detaches Douglas county from the Fourth Judicial District (now Anderson and Franklin counties) and creates the new Forty-first Judicial District composed of Douglas county alone, effective in January, 1955. Senate bill No. 33 amends G. S. 20-501 providing

for three divisions of the district court in counties from 90,000 to 128,000. Senate bill No. 168 provides for four divisions in counties from 128,000 to 250,000 population and for five divisions in counties over 250,000 population.

House bills Nos. 15 and 17 relate to boards of paroles in certain judicial districts, amending G. S. 20-2301, 20-2302, 20-2305 and 20-2311.

House bill No. 286 makes provision for drawing jurors in counties having a population of more than 225,000.

CITY, COUNTY AND MAGISTRATE COURTS

House bill No. 28 amends G. S. 20-1428 to increase the jurisdiction of certain city courts to include civil cases for the recovery of money not exceeding \$2,500. This statute will take effect upon its publication in the statute book.

House bill No. 260 amends G. S. 20-801a and 20-802 to provide that sessions of county courts may be held in any city of the first or second class more than fifteen miles from the county seat. This act will take effect upon its publication in the statute book.

House bill No. 363 amends G. S. 20-2001 by providing for three divisions of the city court in counties exceeding 220,000 population, which act will take effect upon publication in the statute book.

Senate bill No. 245 (printed herein), provides for proceedings in aid of execution in city, county and magistrate courts, amending G. S. 20-1443. This statute will take effect upon its publication in the statute book.

WORKMEN'S COMPENSATION

Senate bill No. 284 extends the workmen's compensation act to cover certain occupational diseases. This important statute will be printed in full in the statute book, at which time it will take effect.

Senate bill No. 177 amends G. S. 44-510 increasing the rate of compensation. This act took effect on April 1, 1953, upon its publication in the official state paper. Copies can be obtained from the Commissioner of Workmen's Compensation, 501 Jackson Street, Topeka.

GENERAL

House bill No. 464 provides remedies and procedure for the criminal and civil enforcement of legal obligations to support other persons. This statute repeals G. S. 23-401 *et seq.*, and provides a quite comprehensive procedure. It will be published in the statute book and will take effect at that time.

House bill No. 320 (printed herein), is entitled "An act making unlawful certain unfair practices in connection with real property." This act will not take effect until its publication in the statute book but is here printed in full so that our readers can figure out for themselves what it means.

House bill No. 473 provides for the introduction in evidence of photostatic and microfilm copies of business and public records, and the destruction in certain cases of the original records. It will take effect on its publication in the statute book.

Senate bill No. 244 relates to eminent domain, providing for appeals, amending G. S. 26-102, and will take effect upon its publication in the statute book.

HOUSE BILL No. 14

AN ACT relating to crimes and punishments, providing for the deferring of sentences in certain cases pending the mental examination of defendants, authorizing trial judges to refer such defendants to a state hospital for mental examination, providing for the commitment of defendants to certain mental institutions where the reports show the same to be advisable, and providing for the payment by individuals, counties, or the state of the cost of admission, care and discharge of such defendants.

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

SECTION 1. That in case of the conviction of any person for any offense against public morals and decency, as relating to crimes pertaining to sex, in which perversion or mental aberration, appears to be or is involved, or where the defendant appears to be mentally ill, the trial judge may, on his own initiative, or on the application of the county attorney, the defendant, or counsel for the defendant or other person acting for the defendant, defer sentence until the report of a mental examination of the defendant can be secured to guide the judge in determining what disposition shall be made of the defendant.

SEC. 2. The trial judge shall have power to refer said defendant to a state hospital for such mental examination and report thereof. Such report, when furnished to the judge, shall be available to counsel for defendant and to the county attorney.

SEC. 3. If the report of the examination by the psychiatrist shows that the defendant though not insane is so mentally ill or mentally deficient as to make it advisable for the welfare of the defendant or the protection of the community that he or she be committed to some institution other than the county jail, or the penitentiary, or industrial reformatory, the trial judge shall have power by virtue of this act to commit such defendant to any state or county institution provided for the reception, care, treatment and maintenance of such cases or similar mental cases, in lieu of a sentence to a county jail, the penitentiary or the industrial reformatory where required by law, and to direct the detaining of the defendant in such institution until further order of the court. The trial judge shall, at the time of such commitment, make an order upon the defendant, or such person or persons responsible for the support of the defendant, or upon the county or the state, as may be proper in such case, for the cost of admission, care and discharge of such defendant. From any order of commitment heretofore or hereafter made by the court to any state or county institution provided for the reception, care, treatment and maintenance of mental patients, an appeal shall lie in the same manner and with like effect as if sentence to a jail, the penitentiary or the industrial reformatory had been imposed in the case. Such appeal may be taken by either the defendant or the attorney for the defendant.

SEC. 4. If after commitment to any state or county institution, it appears that the defendant has been restored mentally, he shall be returned to the court where convicted, and be sentenced or paroled as the court deems best under the circumstances.

SEC. 5. This act shall take effect and be in force from and after its publication in the statute book.

HOUSE BILL No. 75

AN ACT relating to defamation by means of radio and limiting liability therefor, amending section 60-746a of the General Statutes of 1949, and repealing said original section.

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

SECTION 1. Section 60-746a of the General Statutes of 1949 is hereby amended to read as follows: Sec. 60-746a. The owner, licensee or operator of a visual or sound radio broadcasting station or network of stations, and the agents or employees of any owner, licensee or operator, shall not be liable for any damages for any defamatory statement or matter published or uttered in or as a part of a visual or sound radio broadcast, by one other than such owner, licensee or operator, or agent or employee thereof, unless it shall be alleged and proved by the complaining party, that such owner, licensee, operator or such agent or employee, has failed to exercise due care to prevent the publication or utterance of such statement or matter in such broadcast: *Provided, however,* That, in no event, shall any owner, licensee or operator,

or the agents or employees of any such owner, licensee or operator of such station or network of stations, be held liable for any damages for any defamatory statement or matter uttered over the facilities of such station or network of stations, by any candidate for public office, or by any other person speaking for or on behalf of, any candidate for public office where by any federal law, rule or regulation, censorship of such political statements in advance of such utterance or publication is prohibited.

SEC. 2. Section 60-746a of the General Statutes of 1949 is hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its publication in the official state paper.

HOUSE BILL No. 302

AN ACT relating to supreme court justices and district court judges, providing for a retirement system and retirement fund for said justices and judges, and creating a retirement board to administer said fund; and prescribing court fees to be taxed as costs in certain cases.

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

SECTION 1. *Definitions.* As used in this act the following words and terms shall have the following meaning, unless the context shall clearly indicate another or different meaning or intent.

(1) "Fund" shall mean the Kansas retirement fund for judges.

(2) "Judge" shall mean and include all duly elected or appointed justices of the supreme court or judges of the district courts of Kansas, who shall serve in such capacity on and after the effective date of this act.

(3) "Prior service" shall mean all the periods of time any judge shall have served in such capacity prior to the effective date of this act.

(4) "Current service" shall mean the period of service any judge shall serve in such capacity from and after the effective date of this act.

(5) "Military service" shall mean active service of any judge in any of the armed forces of the United States during a war or national emergency prior or subsequent to the effective date of this act, provided such service commenced while such judge was holding the office of judge. The board shall have the power to determine when a national emergency exists or has existed for the purpose of applying this definition and provision.

(6) "Total years of service" shall mean the total number of years served as a judge, including prior service, military service and current service as defined herein, computed to the nearest one-twelfth (1/12) year.

(7) "Salary" shall mean the statutory salary of a judge.

(8) "Beneficiary" shall mean a person so designated by a judge in the last written designation of beneficiary on file with the board; or if no person designated survives, or if no designation is on file, the estate of such judge.

(9) "Annuity" shall mean a series of equal monthly payments, payable at the end of each calendar month during the life of a retired judge; the first payment to be made as of the end of the calendar month in which such annuity was awarded and the last payment to be at the end of the calendar month in which such judge shall die. The first payment shall include all amounts accrued since the effective date of the award of annuities, including a pro rata portion of the monthly amount of any fraction of a month elapsing between the effective date of such annuity and the end of the calendar month in which such annuity began.

(10) "Board" shall mean the Kansas judges retirement board created by section 4 of this act.

SEC. 2. There is hereby created in the state treasury a fund to be known as the Kansas retirement fund for judges which shall be administered by the board and to which shall be credited all moneys appropriated or transferred by law thereto. Said fund is hereby appropriated and made available to the board for the uses and purposes prescribed by this act.

SEC. 3. Each judge shall contribute monthly four (4) percentum of his monthly salary to the fund. It shall be the duty of the controller of the state

department of administration to make a deduction of four (4) percentum on the monthly pay roll of each judge showing the amount to be deducted and its credit to the fund. The controller of the state department of administration and the state treasurer shall credit the four (4) percentum as shown on the pay roll to the fund and keep an accurate record of each judge's contribution. A judge's "retirement fund" fee of one dollar (\$1.00) shall be taxed as costs in each civil cause of action or proceeding filed in the district courts and when collected by the clerk of the district court shall be paid into the state treasury by said clerk, such payments to be made within ten (10) days after the close of each calendar quarter; and upon receipt thereof, the state treasurer shall credit the same to the Kansas retirement fund for judges. The fund shall be further supplemented by appropriation in the amount biennially determined necessary by the legislature to enable the fund to meet anticipated claims. All expenditures from the fund must be authorized by voucher in the manner prescribed in section 13. The fund shall be used only for the payment of all annuities and other benefits created herein, and shall not be used to pay the cost of administration of this act.

SEC. 4. There is hereby created a state board to be known as the Kansas judges retirement board which shall consist of the state insurance commissioner, the state treasurer, the state auditor and one justice of the supreme court and one district court judge, the last two mentioned members to be appointed by and serve at the pleasure of the governor. Annually, during the month of July, the board shall organize by electing a chairman and vice-chairman. The chairman shall perform the duties prescribed by this act and by the rules and regulations of the board. In case of the absence or disability of the chairman, the vice-chairman shall exercise the powers and perform the duties of the chairman. All members of the board shall serve without compensation, but shall be reimbursed for their actual expenses necessarily incurred in the performance of their official duties. The board shall have the control of and the general administration and management of the fund. It shall have authority to make all rules and regulations necessary to properly administer and manage the fund which are not inconsistent with the provisions of the act and shall have the power to administer oaths. The board shall be the trustee of the fund and shall have full power to invest in bonds of the United States, the state of Kansas, and political subdivisions thereof. The board shall have power to collect all interest and principal on investments and all interest and principal so collected shall, at all times, be paid into the state treasury and by the state treasurer credited to the fund.

SEC. 5. The board shall have the power to secure and employ the services of such technical and administrative employees as are necessary to carry out the provisions of this act. The board shall have a biennial report prepared by a competent actuary showing a complete valuation of the present and prospective assets and liabilities of the fund created by this act. The report shall further include a prospectus of the amount of the appropriation that will be required from the legislature for the succeeding two years. This report shall be furnished to the legislature at each regular session. The employees of the board shall not be subject to the Kansas civil service act and the persons so engaged by the board shall be paid at such rates as the board shall approve. All administrative expenses shall be paid from expense funds, appropriated for this purpose, and in no event shall the fund be used for the payment of administrative expenses.

SEC. 6. Any judge whose service is terminated prior to retirement, for any cause other than death, and whose total service as a judge at the time of termination of service is less than ten (10) years, may, upon written request to the board, have returned to him the total amount of contributions which he has made to the fund, and the return of such contributions to said judge shall preclude said judge from any benefits hereunder unless and until said judge again serves in such capacity: *Provided*, That any incumbent judge over seventy years of age and with a total service of at least eight years at the time his present term of office expires, or at the time of his retirement if he should retire before the end of his present term, shall, unless he requests a return of his contributions, receive

retirement annuities as provided in section 8, 9 and 10 of this act. Any judge whose service is terminated prior to retirement, for any cause other than death, and whose total service as a judge is ten (10) or more years, shall not be entitled to have returned contributions to the fund made by him but shall receive retirement annuities as provided in sections 8, 9 and 10 of this act.

SEC. 7. In the event of a judge's death prior to retirement, all contributions to the fund made by said judge shall be paid to his beneficiary and whenever a judge shall die subsequent to his retirement, the amount of annuities he has received under this act shall be computed and if such amount shall be less than the contributions to the fund made by such judge, the difference shall be paid to his beneficiary.

SEC. 8. Any judge may retire upon reaching age sixty-five (65) and upon making application to the board, and any judge upon reaching age seventy (70) shall retire, and upon retiring each such judge shall receive retirement annuities as provided in section 10 of this act: *Provided, however*, That when any incumbent judge attains the age of seventy (70), said judge may, if he so desires, finish serving the term during which he attains the age of seventy (70); and: *Provided further*, That the compulsory retirement provisions of this section shall not be applicable to any incumbent judge who is seventy (70) years old or older when this act becomes effective until the end of his present term.

SEC. 9. Any judge who has become permanently physically or mentally disabled may, upon being found so disabled by the supreme court, retire, and upon such retirement he shall be entitled to receive the retirement annuity as provided in section 10 of this act. Any judge, or the guardian of any judge, so permanently disabled desiring to so retire shall file an application for such retirement with the clerk of the supreme court, which application shall be in such form and contain such information as the supreme court shall require. The court may require such judge to be examined by a physician appointed by the court and may require such other evidence and proof of disability as it deems necessary to reach a determination as to whether such judge is so permanently disabled. If the supreme court shall determine that any such judge is so permanently disabled it shall promptly notify the board and thereupon such judge shall be placed on retirement by the board and monthly receive the retirement annuity as provided in section 10.

SEC. 10. The retirement annuity of a judge who retires under sections 8 or 9 of this act shall be computed as follows: Each such judge shall be entitled to receive an annuity, each monthly payment of which shall be in an amount equal to three and one-third (3 $\frac{1}{3}$) percentum of the monthly salary he was receiving when he last served as judge, multiplied by the number of his total years of service: *Provided, however*, That the amount provided hereunder shall be supplemental to any benefits received by such judge under the Kansas and federal (26 U. S. C. A. 1400, 1410; 42 U. S. C. A. 401 to 419) old-age and survivors insurance acts, but the monthly combined benefits received thereunder and hereunder shall not exceed sixty-five (65) percentum of the monthly salary such judge was receiving when he last served as judge: *Provided further*, That any such judge who has so retired and who shall receive more than seventy-five dollars (\$75) of income in a calendar month as the result of employment or self-employment shall not be entitled to receive any monthly payment of annuity for the month in which he receives such income.

SEC. 11. Any judge or guardian of a judge who retires under sections 8 or 9 of this act shall give to the board a statement of facts which shall include an accurate record of all service claimed by such judge, his salary when he last served as a judge, the amount of contributions he has made to the fund, the amounts of benefits he is receiving or shall be entitled to receive under the Kansas and federal old-age and survivors insurance acts, designation of beneficiary and any other information the board may request. The board shall determine the accuracy of all pertinent facts claimed and may call a hearing to determine any or all matters necessary in order to determine the amount of the annuity to which such judge is entitled. After obtaining all facts it deems necessary, the board shall render its decision as to the amount of the annuity, if any, to which such judge shall be entitled.

SEC. 12. Annuity payments to a judge who has retired under section 8 of this act shall continue until the end of the month in which such judge shall die. The last annuity payment and any other payments to which such judge shall be entitled and which have not been paid at the time of his death shall be paid to his beneficiary. A judge who is receiving annuity payments under section 9 of this act shall continue to receive such annuities as long as he is permanently disabled, and if such judge shall die while so disabled, payment of annuities shall be terminated in the same manner as hereinbefore provided for a judge who dies subsequent to his retirement. Any judge who is receiving annuities under section 9 of this act may be required by the supreme court to submit to a re-examination at any time. Any such judge shall have the right to re-examination upon application to the court but not more often than once every six months. A physician appointed by the court shall make such examinations and report his findings to the court which shall make a determination. In the event the court shall find that the permanent disability no longer exists the court shall so notify the board and thereupon said board shall discontinue annuity payments to such judge unless said judge has in the meantime qualified for retirement by reason of his age. If any judge refuses to submit to such re-examination the court shall so inform the board which shall immediately terminate all annuity payments to such judge. Costs incurred by the supreme court for the services of a physician as authorized by this act shall be paid by the board out of moneys appropriated to administer this act, and shall not be paid out of the fund.

SEC. 13. The auditor of state is directed to draw his warrants on the state treasurer against the fund for authorized expenditures upon duly itemized vouchers executed as now or hereafter provided by law and approved by the chairman of the board.

SEC. 14. When a justice of the supreme court, or judge of the district court, becomes retired under the provisions of this act he shall be relieved of further active duties on the court, and the governor may appoint a justice or judge to succeed him as when a vacancy exists on that court.

SEC. 15. This act shall take effect and be in force from and after July 1, 1953, and its publication in the statute book.

HOUSE BILL No. 320

AN ACT making unlawful certain unfair practices in connection with real property.

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

SECTION 1. It shall be unlawful for any licensed abstracter to pay any portion of the charge made for making, extending or certifying an abstract of title to real estate or for any corporation authorized to insure titles to real property to pay any portion of the premium charged for the issuance of a policy of title insurance, to (a) any owner, mortgagee or lessee of the real property covered by said abstract of title or title insurance policy, or of any right, title or interest in, or lien upon the same; (b) any principal, broker, agent or attorney who acts as such in connection with a sale or lease of such real property or the making or obtaining of a mortgage loan thereon, in connection with which said abstract of title or title insurance policy is required, used or furnished; (c) any spouse, child, employee, ward, officer, director, subsidiary, affiliate, parent, relative within the fifth degree, personal representative, or partner of any person, firm or corporation included in either (a) or (b) hereof; or to permit any deduction from such charge or premium in lieu of such payment: *Provided*, That nothing herein contained shall make it unlawful to pay a licensed abstracter for any services performed.

SEC. 2. This act shall take effect and be in force from and after its publication in the statute book.

SENATE BILL No. 190

AN ACT relating to estates of certain decedents, prescribing jurisdiction of courts, authorizing the director of revenue to commence proceedings for the administration of certain estates.

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

SECTION 1. The courts of Kansas shall have exclusive jurisdiction to determine the devolution of property by will or by descent of all persons who are residents of Kansas at the time of death as to real property located in Kansas and tangible or intangible personal property wherever located. Any determination with regard to the devolution of such property by other courts except federal courts having jurisdiction by reason of removal and appeals from Kansas courts, shall be void and of no effect, and in all such cases, the director of revenue and taxation of the state of Kansas shall refuse to issue any inheritance tax order, waiver or clearance. In any case where a resident of Kansas shall die owning real estate in Kansas, or tangible or intangible personal property wherever located, exceeding the statutory inheritance tax exemption for his heirs at law, and the heirs at law or others entitled to commence administration proceedings in Kansas shall fail to do so, or shall commence administration proceedings in any other state, the director of revenue of the state of Kansas provided no order has been made for the payment of inheritance taxes shall be authorized to commence administration proceedings in the county where such person was a resident at the time of death, and upon notices provided by law, the probate court shall appoint an executor or administrator upon such petition for administration as in other cases. Such executor or administrator shall take possession of all tangible and intangible personal property owned by the decedent, wherever located, and of all real estate owned by the decedent located in the state of Kansas, and shall make full inventory thereof for the director of revenue as provided by law.

SEC. 2. This act shall take effect and be in force from and after April 1, 1953, and its publication in the official state paper.

SENATE BILL No. 245

AN ACT relating to city, county and magistrate courts; granting the judges thereof the power to hold hearings in proceedings in aid of executions; and authorizing the judges of such courts to punish violators of said act by contempt proceedings, amending section 20-1443 of the General Statutes of 1949, and repealing said original section, and also repealing section 20-2120 of the General Statutes of 1949.

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

SECTION 1. Section 20-1443 of the General Statutes of 1949 is hereby amended to read as follows: Sec. 20-1443. That in any city, county or magistrate court in this state, when an execution against a judgment debtor, or against several debtors in the same judgment, has been issued to the marshal of said court or sheriff of the county in which said court is situated, and is returned unsatisfied in whole or in part, the judge or judges of said city, county or magistrate court shall have the right and power to make an order requiring such debtor or debtors to appear and answer concerning his or their property before such judge at a time and place specified in such order within the county where the court is situated, and witnesses may also be subpoenaed to testify at such hearing. If any person fails, neglects or refuses to so appear and answer concerning his property before such judge at the time and place specified in such order, or, if any person so subpoenaed as a witness in said proceeding shall fail, neglect or refuse to appear or to testify concerning anything about which he can lawfully be interrogated, he shall be guilty of contempt of court; and the court or judge shall issue a citation requiring him, at an early day therein to be appointed, to appear before the court and show cause, if any he has, why he should not be punished for contempt. If, after personal service of citation by any officer or other person, such person shall not on the day appointed appear before the court, or if it appears to the court that he is secreting himself to avoid the process of the court or is about to

leave the county for that purpose, the court may issue an attachment or bench warrant commanding the officer to whom it is directed to bring such person before the court to answer for contempt. If the court shall determine that any such person is guilty of contempt the court may punish him by a fine of not more than fifty dollars (\$50) or by imprisonment in the county jail for a period of not to exceed thirty (30) days or by both such fine and imprisonment.

SEC. 2. Sections 20-1443 and 20-2120 of the General Statutes of 1949 are hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its publication in the statute book.

SENATE BILL No. 287

AN ACT relating to the right of a person to recover damages from a physician or technician of any state hospital caused by the giving of psychiatric "shock" treatments to any such person.

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

SECTION 1. No person who, while a patient at any state hospital, receives psychiatric "shock" treatment, and as a result thereof suffers physical or mental injury or death, nor the personal representative or guardian of any such person, shall thereafter have a cause of action for damages against any physician or technician of such hospital unless injury or death shall have resulted from the gross negligence of such physician or technician giving or supervising the giving of such "shock" treatment: *Provided*, That approved and accepted methods and techniques of administering such "shock" treatment are used. It is hereby made the duty of the attorney general of this state to defend any such action brought against any such physician or technician.

SEC. 2. This act shall take effect and be in force from and after its publication in the official state paper.

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