



# Kansas Bureau of Investigation

Kirk D. Thompson  
Director

Derek Schmidt  
Attorney General

Testimony of Kyle Smith  
Assistant Attorney General/Deputy Director  
Kansas Bureau of Investigation  
In Support of SB 228  
Before the Senate Judiciary Committee  
March 11, 2013

Chairman King and Members of the Committee,

I appear today on behalf of Attorney General Derek Schmidt in support of SB 228, a bill to clarify the role of the office of attorney general. While the case law has been explicit that the attorney general is the chief law enforcement official of the state and ultimately responsible for representing the state of Kansas before the Kansas appellate and federal courts, the statutory law is more implicit and needs to be clarified.

The case law is well established that “Management and control of the state’s side of a criminal appeal is vested by [ ] statute in the Attorney General,” *Heinz v. Board of County Com’rs of Shawnee County*, 136 Kan. 104, 107 (1932). And “wherever the public interest is involved or the state is a party, the attorney general is primarily the proper counsel to appear.” *State ex rel. Foster v. City of Kansas City*, 186 Kan. 190, 194 (1960).

The Attorney General is the only state officer with the authority to petition the United States Supreme Court on behalf of the State in a criminal appeal. K.S.A. 19-702 and K.S.A. 22-3612. K.S.A. 75-702 authorizes the attorney general to represent the State in the Supreme Court in any civil or criminal matter. Clearly county and district attorneys are in charge of prosecutions within their counties (K.S.A. 22a-104) but once a matter is of statewide interest, i.e., before an appellate court with statewide consequences, it is essential that there be coordination and consistency.

In appellate litigation it is important for the State of Kansas to speak with a single voice in order to prevent confusion that wastes judicial resources and may impede the orderly administration of justice. See, e.g., *New York v. Uplinger*, 467 U.S. 246, 247 n.1 (1984) (dismissing case after grant of certiorari as improvidently granted due, in part, to conflicting positions in briefs filed on behalf of the State of New York by a district attorney and the Attorney General of New York).

That is the role of the elected attorney general. SB 228 clarifies that position and codifies it in statute.

I would be happy to stand for questions.