

HOUSE COMMITTEE ON JUDICIARY

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TESTIMONY ON HB 2719

PREPARED & PRESENTED

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SUMMARY

The bill before you would exempt duly-appointed District Court Trustees from contracting for court debt collection services within the district(s) they are appointed and where they are overseen by their chief administrative judge.

1. Collection of court debt is governed by state law.
2. Under existing law, any collector of court debt must submit a bid under state procurement procedures and be awarded a contract to collect the same.
3. District Court Trustees are appointed pursuant to statute and as such are officers of the court.
4. District Court Trustees have collected court debt for nearly 30 years.
5. Despite their statutory authority, existing law (passed in 2015) requires them to bid a contract with the very judicial districts they already serve.
6. Errors in the administration of the procurement process during the 2019 rebid effectively debarred one Trustee's office; the intervention of the Chief Justice was required to remedy the error.
7. District Court Trustees collecting court debt can and should be regulated by the court and the judicial administrator; HB 2719 only provides for their exemption from the procurement process by virtue of their pre-existing statutory authority.

In Kansas, district court trustees (DCTs) are governed by K.S.A. 2019 Supp. 20-377 through 380, which authorizes them, as officers of the court, to collect child support and restitution obligations. DCTs are appointed pursuant to K.S.A. § 20-377 and are required to be attorneys licensed to practice law in the state of Kansas. As such, DCTs work as part of the court system, fully integrated with the systems and practices of the local district court.

Although the majority of Kansas DCTs collect only child support obligations, eight judicial districts employ DCTs to collect court debt in 26 Kansas counties under the provisions of K.S.A. 2019 Supp. 20-169. As an example, the Fifth Judicial District Court Trustee headquartered in Emporia (which also contracts for court debt collection as the duly appointed DCT in the Twelfth Judicial District) employs a staff of four Kansas residents. In another example, the DCT for the Eighth, Twenty-First and Twenty-Eighth Judicial Districts, headquartered in Junction City, also collects court debt and employs a staff of five Kansas residents.

A CHANGE IN LAW

As an example of a typical court debt DCT, the Fifth Judicial District has collected court debt in Lyon and Chase counties, overseen by the chief judge of the district, since 2004. State oversight was initially provided by the Office of the Attorney General (AG) under K.S.A. § 75-719. Upon passage of K.S.A. § 20-169 in 2015, state oversight was transferred to the office of the judicial administrator (OJA). Further, under the new law, for-profit collection agencies were specifically authorized to contract for court debt collection, and courts were permitted to contract with Kansas or out-of-state commercial debt collectors for the collection of court debt, if desired.

Under the provisions of Chapter 75 K.S.A., as overseen by the AG, the yearly certification process authorizing the DCTs as "official" collectors of court debt was straightforward and seamless. Reporting requirements were uncomplicated and rationally related to reporting requirements for courts generally. However, under the new provisions of Chapter 20, K.S.A., DCTs, despite being officers of the court, were subject to the same procurement provisions as commercial, for-profit collectors, to include being required to contract with the judicial district for whom they already served, in many cases, for a decade or more. And while it is conceded that a rigorous competitive process is certainly necessary for contracts vis-à-vis private enterprise, the efficacy in retroactively applying the same standards to court personnel is questionable, and, we believe, a factor not considered in the passage of K.S.A. § 20-169.

Additionally, with the new statute came new reporting requirements, including mandatory reporting on methodology, which became a requirement for DCTs bidding to serve their own districts, despite such methodology having already received the approval of the chief administrative judge.

ERRORS & OMISSIONS

Despite the new regulations, DCTs active in court debt collection complied with the process, but within only a few years, serious problems have arisen. Although OJA initially oversaw the specifications of the bidding process, (at least for 2018-2019), OJA has outsourced the process to the Department of Administration Office of Procurement (OP).

1. 5th and 12th Judicial Districts (Lyon, Chase, Lincoln, Jewel, Republic, Washington, Cloud and Mitchell counties); 8th, 21st and 28th Judicial Districts (Riley, Clay, Saline, Ottawa, Geary, Dickinson, Marion, Morris counties); 16th Judicial District (Ford, Edwards, Kiowa, Comanche, Clark, Meade, and Gray counties); 9th judicial District (Harvey & McPherson counties); and the 7th Judicial District (Douglas county).

Since this shift, several serious problems have arisen in rebidding process, specifically in providing notice DCTs about re-bidding contracts. The most serious of these errors occurred in June 2019. In 2017, the Fifth Judicial District, along with other DCTs statewide, bid on, and was awarded, the contract for its judicial district as well as the Twelfth Judicial District. In 2018, OJA announced that the term of the contract would be extended for one year, before rebidding would occur. In March 2019, OJA instructed OP to open the 2019 contract for bids and to invite all current contract holders to bid by June 30. Although the Fifth Judicial District was a current contractor, it received no invitation to rebid, nor, in fact, any notice that the 2019 contract was to be let. As a consequence, the chief administrative judges of both the Fifth and the Twelfth districts were informed by OJA in June that the DCT was no longer an authorized collector because “it failed to bid.” Further, OJA advised both districts that a new collector must be chosen.

As a result of an informal investigation launched by this office and according to OP personnel interviewed, OP had no record of this office as a contractor (having listed it under another name) and no valid email address, despite its status as a current contractor. Thus no notice was sent. OJA personnel would not respond in any detail to our inquiry, referring us to OP. OP personnel advised that they provided a list of current contractors to OJA and received OJA approval to send notices. OP personnel confirmed that the Fifth Judicial District was not on the “approved” list. Only the intervention of (then) Chief Justice Lawton Nuss prevented the closing of this office and the termination of four employees.

Finally, it must be noted that under the current system, there is no single point of contact for DCTs. Calls placed to OJA personnel are referred to procurement staff. But in a *Catch-22*, because of the rules accompanying the procurement process, OP personnel cannot address questions or concerns about requirements/procedures, resulting in confusion. By eliminating the procurement process for duly appointed DCTs, the legislature would streamline the process immeasurably.

THE EFFECTIVENESS OF DISTRICT COURT TRUSTEES

As opposed to commercial debt collectors, DCT’s are effective in collecting debts owed to courts and their job performance merits the attention of lawmakers. Due to their unique powers, which mirror child support collection practices, DCT’s rely on payment enforcement in the original criminal case—not merely post-judgment collection through the restitution order. Representing the State of Kansas in the original caption, DCTs may intervene before the court loses jurisdiction over criminal defendants/obligors using the contempt powers of the court under K.S.A. 2019 Supp. 20-1204a much more powerful tool and one not normally available to collection agencies. As such, DCTs can and do conduct dockets where the court routinely monitors the payment plans entered into by the obligors. It is very rare to see a debt collector conduct any docket except under the provisions of K.S.A. Chapter 60 aid in execution; by collecting court debt as we collect child support, and not as we collect civil judgments, DCTs need not be concerned with only collecting the low-hanging fruit. As a proof of the effectiveness of these practices, the Fifth Judicial District’s collections for 2019 exceeded half a million dollars (for a judicial district with less than 40,00 people).

Further, because DCT’s have no profit motive, there is no rush to resolve a case. DCTs enforce court orders allowing the court to monitor payment plans over considerable periods of time, and to provide incentives for defendants/obligors to obtain and maintain employment, budget expenses to allow for sustainable payments to restitution victims, and to oversee and assign tax refunds toward the payment of court-ordered debt. Just as probation officers get to know and work closely with their clients, DCTs, work closely, albeit in an adversarial relationship, with defendants/obligors and their counsel; regular review hearings ensure that court debt is taken seriously.

THE CASE FOR INDEPENDENCE FROM PROCUREMENT

HB 2719 would exempt duly appointed DCTs from the procurement process. Because DCTs are appointed by the court in each judicial district where they serve (unlike for-profit collectors), we believe the legislature can and should consider them analogous to existing court personnel (e.g. district court clerk, court services). DCT’s have reported, and will continue to report, on their operations to the chief administrative judge, as well as to OJA (pursuant to K.S.A. 2019 Supp. 20-169), via monthly reporting. This reporting makes regular accounting of their productivity and guards against abuse, malfeasance, or neglect. That said, the requirements that existing court personnel, given express authority by statute, should qualify and bid for the jobs their appointments currently authorize is both redundant, and, as has been shown, a recipe for unintended consequences.

AMENDING LANGUAGE TO HB 2719

This office is aware of concerns expressed by representatives of OJA that the language currently before you could be construed as exempting DCTs from OJA oversight. This critique is not without merit, and while the intent of the proposal is not to exempt DCTs from anything other than the procurement process, we understand that amending the language

to underscore the DCT's fidelity to the reporting processes currently in force may be required. To that end, we have forwarded the following amending language to OJA and submit it herewith for the committee's consideration:

PROPOSED AMENDMENT TO HB 2719

[Affecting the proposed language contained within Sec. 3. K.S.A. 2019 Supp. 20-379]

38 (5) to enter into contracts pursuant to K.S.A. ~~75-719~~ 20-169, and
39 amendments thereto, with the ~~attorney general~~ *judicial administrator* for
40 the collection of debts owed to courts or restitution owed to obligees,
41 *except that no court trustee shall be required to contract for collections in*
42 *any judicial district where the court trustee is appointed. **Collection of***
43 ***court debt under this section shall be subject to the procedures of the judicial***
44 ***administrator pursuant to K.S.A. 20-169 (c)(3) and amendments thereto.***

Finally, it should be noted that nothing contained within the bill or the amending language would prohibit private enterprise from submitting bids for court debt collections in any of the 31 judicial districts in Kansas.

CONCLUSION

In conclusion, we believe that HB 2719 (to include the proposed amendment) reinforces what is already a vigorous court debt collection practice of the DCTs. Although we do not quarrel with the procurement requirements for outside contractors, duly-appointed DCTs are on the same team as the district courts, just as are court staff. Indeed, as officers of the court, we argue that DCTs are held to an even higher standard of accountability than commercial contractors; by exempting DCTs from the procurement process, HB 2719 eliminates redundancy, and the possibility of more administrative error, but does not sacrifice accountability.

For these reasons, we request your votes in moving HB 2719 forward in the process.

