

CALVIN H. HAYDEN
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UNDERSHERIFF



DUTY HONOR SERVICE

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Proponent Testimony to the Senate Committee on Public Health and Welfare for SB489

March 8, 2022

Chairman Hilderbrand, Vice Chair Gossage, Ranking Member Pettey, and Members of the Committee:

The Johnson County Sheriff's Office supports **SB489 - Removing certain regulatory authority concerning infectious or contagious diseases from the secretary of health and environment**. Our support centers on the provision on page 4, lines 3-5 of the bill. The stricken language would take sheriffs, deputy sheriffs, and law enforcement out of the equation of possibly being entangled in a dangerous situation that could place the public and law enforcement at greater risk.

RECENT HISTORY

Providing law enforcement services during a pandemic proved to be a confusing and stressful experience. Many times, the confusion resulted from multiple Executive Orders that at times appeared to conflict with state and/or federal law or Constitutions. Other times the confusion resulted from which order or law had precedence. In a situation, such as the one we found ourselves in 2020 there are multiple disaster emergency plans in place – the state disaster emergency plan, multiple interjurisdictional disaster emergency plans, as well as county and city disaster emergency plans. All of these are binding on law enforcement.

The rapid issuance of, and sometimes nearly as rapid revocation of, emergency orders left the public confused and law enforcement responding to calls for service for circumstances that were not ours to enforce.

Guidance from the Kansas Attorney General was provided to law enforcement on four separate occasions:

1. *March 24, 2020*
2. *April 8, 2020*
3. *May 28, 2020*
4. *July 2, 2020*

The ability of the Attorney General's Office to provide guidance was appreciated in a world where the rules changed constantly.

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HISTORY OF K.S.A. 65-129b

March 16, 2005, **HB2264 – An act concerning the department of health and environment; relating to the director of health; amending K.S.A. 75-5603 and repealing the existing section** was heard in House Appropriations.

According to the committee minutes:

Representative Bethell, member of the Social Services Budget Committee, presented the Budget Committee report on HB 2264 and moved for the adoption of the Budget Committee report to recommend HB 2264 favorable for passage as amended. The motion was seconded by Representative Schwab. Motion carried. A technical amendment was made to the bill to more accurately reflect the intent of the Department of Health and Environment.¹

The bill passed the House on March 22, 2005 by a vote of 121 – 2.²

On March 30, the bill was heard in Senate Ways and Means.

There was one conferee on the bill – Roderick L. Bremby, Secretary, Kansas Department of health and environment. According to the committee minutes, Secretary Bremby's testimony *"explained the bill would allow the Director of the Division of Health, who also serves as the State Health Officer, to be appointed to serve a term of four years in case of a vacancy, and thereafter, at the pleasure of the Secretary. He noted that the bill would also provide job security for a period of four years – a key tool for recruiting superior candidates to fill the Health Director position."*

There were no other conferees.³

The bill passed out of committee with no amendments.⁴

March 31, 2005, the bill was on General Orders in the Senate. During floor debate a lengthy amendment was offered by Senator Barnett. The amendment added a new section 1, section 3, section 4, and section 5, as well as renumbering the original section 1 as section 6. The title of the bill was changed to **"AN ACT relating to public health; concerning the department of health and environment; concerning**

¹ Minutes of the House Appropriations Committee, Kansas House of Representatives, March 16, 2005.

² 2005 Senate and House Action Report and Subject Index, pg. 43 Kansas Legislative Information System, May 20, 2005

³ Minutes of the Senate Ways and Means Committee, Kansas Senate, March 30, 2005.

⁴ 2005 Senate and House Action Report and Subject Index, Kansas Legislative Information System, May 20, 2005

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infectious and contagious diseases; use of quarantine and isolation; requiring tuberculosis testing for certain students who enter college or university classrooms; relating to the director of health; amending K.S.A. 75-5603 and repealing the existing sections.”⁵

The bill was recommended for passage as amended.⁶

A vote took place later that day under Emergency Final Action. The bill, HB2264, as amended, passed by a vote of 39-0.⁷

On April 1, 2005, the House concurred on the amendment made by the Senate and passed the bill by a vote of 122-1.⁸

The bill became law upon publication in the Kansas Register, April 21, 2005.⁹

Considering what we have discovered, we find it difficult to believe that a floor amendment, which may or may not have been vetted in another committee, of the length and magnitude of the one added to HB2264 in 2005 that provides an extraordinary amount of power to an unelected official has stood for 17 years without any challenge.

PRACTICAL APPLICATION

K.S.A. 65-129b, states that a local health officer “may order any sheriff, deputy sheriff or other law enforcement officer of the state or any subdivision to assist in the execution or enforcement of any order issued under this section.”

There are problems with using the sheriff, deputy sheriffs or other law enforcement to physically impose a public health order on a person or persons.

1. Law enforcement officer(s) may run the risk of contracting the disease. (Safety Issue)
2. To take a person into custody requires probable cause under the Fourth Amendment to the U.S. Constitution and under the Kansas Constitution (§15 Kansas Bill of Rights) (Constitutional Issue)

⁵ Journal of the Senate, 55th Day, pgs. 510-512, Kansas Senate, March 31, 2005.

⁶ Journal of the Senate, 55th Day, pg. 512, Kansas Senate, March 31, 2005.

⁷ Journal of the Senate, 55th Day, pg. 521, Kansas Senate, March 31, 2005.

⁸ Journal of the House, 56th Day, pgs. 857-858, Kansas House of Representatives, April 1, 2005.

⁹ Kansas Register, Vol. 24, No.16, pgs. 567-568, Kansas Secretary of State’s Office, April 21, 2005

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CONCLUSION

Sheriffs in Kansas are charged under K.S.A. 19-813 with the duty “to keep and preserve the peace in their respective counties, and to quiet and suppress all affrays, riots and unlawful assemblies and insurrections.”

The optics of a sheriff’s deputy forcibly taking a child from a parent at the behest of a local health officer will do nothing to assist in the mission of keeping the peace especially during a time of unrest.

This type of action is not the way to gain the trust of the public and would put deputies and officers needlessly in harm’s way.

We would ask the committee to recommend SB489 favorable for passage.

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