Indebtedness and the statement of charges, and would you state whether or not—

A. Sir—

Q. Please let me ask the question. Would you state whether or not this is a work sheet, the way you fill them out?

A. No, sir, it is not a work sheet.

Q. How do you arrive at your charges, then?

A. Our charges are arrived at on a basis of what we feel—what effort we are going to put in the case.

Q. That would be the difficulty of the case—

A. Yes. We can't, obviously, get it down to a dollar or a dollar-and-cents thing. We try to give it a rough estimate and charge accordingly.

Mr. Weigand: If the Court please, the plaintiff fails to see the relevancy of the amount of the plaintiff's charges to the validity of this law. If he charges one penny consideration for the distribution of money, he violates this [fol. 183] law, and, whether he charges one penny or $10,000, it is still a violation of the law, and this is not up for consideration with respect to the reasonableness of a limitation on charges imposed by the legislature, which would have been a valid enactment by the legislature. They prohibited any consideration, so the adequacy or excessiveness of the consideration, I submit, is not properly before Your Honors in a determination of the constitutionality of this act.

Judge Huxman: Well, the exhibit hasn't been offered in evidence. A lot of questions have been asked about it.

Do you offer this in evidence?

Mr. Sanborn: I was trying to lay a foundation.

Judge Huxman: I think the witness has answered, it is not on his form. He has answered what it is. Now, if you are offering it in evidence, we are interested in it, so we can rule on the objection.

By Mr. Sanborn:

Q. Well, you recognize—this is one of your official receipts?

A. This receipt is, as far as I know, one of our receipts,

yes. This here is our letterhead, but this is not the form [fol. 184] on which we take down the person's indebtedness and his financial obligations. This is merely a sheet of paper with a lot of numbers on it. I don't know what that is.

Judge Huxman: I think that is clearly answered.

By Mr. Sanborn:

Q. Would you please refer to Exhibit K, then, which is the same file, is it not, as this receipt?

A. Yes. This is a gentleman by the name of Nickerson, right? Now, what can I tell you?

Q. Does this, by reference to his file and the receipt given to Mr. Nickerson in the course of your business—he would have the receipt, wouldn't he?—does that indicate to you that they are part of the same transaction?

A. I would say that this is a list that, possibly, he made before we took down a list, or something of the sort, yes, sir. He may have been sitting there waiting to talk to someone and just made this list himself; I don't know, but the two do match here, yes.

Q. Then, being familiar with the operation, having set up the operation of your business, are you able to tell us whether or not Exhibit I constitutes a part of the file of [fol. 185] Mr. Nickerson which is designated for identification as Exhibit K?

A. Did this come out of the file?

Q. I am not permitted to testify. You give the customer the receipt, don't you?

A. Certainly, the receipt is his. That still doesn't prove what this thing is.

Q. I was trying to get you to state whether this data on this matches what you have in your file.

A. This is much more important than this (indicating), as far as we are concerned.

Judge Huxman: Mr. Witness, does it match?

The Witness: Yes, sir, it does match.

Judge Huxman: All right, that answers the question, then.

By Mr. Sanborn:

Q. Thank you. What—does that "Chg" mean charge?

A. I couldn't tell you, but I can tell what the charge was made.

Q. Was the charge—

Mr. Weigand: Now we are coming to the relevancy of my objections, is the amount of the charges relevant to the [fol. 186] determination of the constitutionality of this act?

Judge Hill: It is admitted that they do charge a fee.

Mr. Weigand: Yes, they do.

Judge Hill: The amount, I think, is immaterial.

Judge Huxman: Mr. Attorney, do you offer that in evidence, that exhibit?

Mr. Sanborn: I would like to.

Judge Huxman: Well, you have that privilege.

Judge Hill: For what purpose?

Mr. Sanborn: What I was trying to establish is that this is a part of this transaction, and I want to ask some questions about his business card and what happened to the money—

Judge Huxman: You have an exhibit there. We ought to fix that exhibit. Either offer it in evidence or not, so the Court can rule on it.

Mr. Sanborn: I will offer in evidence Exhibit I.

Judge Hill: For what purpose?

Mr. Sanborn: Well, I believe it has been identified by the witness as a part of this transaction, in this File K, [fol. 187] which is Raymond Nickerson's file, and there is one notation on there, what I am trying to get around to, so I can ask him what this particular—if you see the addition on it at the end of their charges, there is a six-two-o-two added, and we want him to tell us, and "Pd" over at the left—

Judge Huxman: Now, the witness has several times testified that he knows nothing about that sheet of that exhibit.

Do I understand you correctly?

The Witness: That's right, sir.

Judge Huxman: And he has testified repeatedly he doesn't know anything about that.

Mr. Sanborn: I thought he might be familiar with the notations used.

Judge Huxman: Ask him whether he is familiar with the notation on it. It seems to me—

Mr. Coulson: Withdraw the offer.

Mr. Sanborn: May I just withdraw that and go on to his file?

Judge Huxman: Certainly.

By Mr. Sanborn:

Q. Now I am referring to Exhibit K, the file you brought to court today, called the Raymond Nickerson file.

[fol. 188] A. Yes.

Q. Now, in the file there is a card?

A. Right.

Q. With his wife's name on it. What does it show on 12-8? Does it show you received $70 from him?

A. The card shows we received $70, according to the way we keep books, yes, sir.

Q. And that was on December 8?

A. Right.

Q. That was the same as the reecipt?

A. Right. Well—

Judge Huxman: Now, you withdraw that—this is K. That doesn't have reference to K, does it?

Mr. Sanborn: He testified that they have duplicate receipts, Your Honor, and I withdrew that, and I assume he would have his duplicate receipt. Maybe it is just a redundant question.

Judge Huxman: Having withdrawn that, I don't think you ought to try to connect this with that. I was wondering if that is what you are—

Mr. Sanborn: I was trying to connect the date of it, and was thinking they had duplicate receipts—I don't [fol. 189] want to get in the position of arguing with the Court, Your Honor, because I don't think it is lawyer-like.

Judge Huxman: I am trying to find out what you are trying to do, sir, that's all.

Mr. Sanborn: I am trying to demonstrate to the Court, by this witness's testimony, what he knows about the files

of his business here, and the method that they used, and that is the purpose of this examination, as to what they do with the money.

Judge Huxman: Well, ask him.

By Mr. Sanborn:

Q. We have established you received $70 from Mr. Nickerson?

A. That's right.

Q. And what happened to Mr. Nickerson's case as reflected by your notation on your file card?

A. Mr. Nickerson later took bankruptcy.

Q. What happened to the $70?

A. Sixty-two dollars two cents of it was paid to the Commercial Credit Corporation on December 8, 1960.

Judge Stanley: Excuse me, was Commercial Credit Corporation one of the creditors listed there?

The Witness: Yes, sir.

[fol. 190] By Mr. Sanborn:

Q. Now, what happened to the rest of the money?

A. Seven dollars ninety-eight cents went towards our fee.

Judge Huxman: Went towards your fee?

The Witness: Yes, sir.

Mr. Weigand: Now, Your Honor, the purpose of all this is for them to demonstrate the amount of the charges which, we submit, is not a proper matter of inquiry. We've gotten one in there; if the Court wants them, we will stipulate to the other three.

Judge Hill: Why don't you stipulate to them?

Mr. Weigand: But I would like to reserve my objection.

Judge Hill: You may.

Mr. Weigand: We will stipulate the amount of those charges on each of those, as shown by those files.

Mr. Coulson: Can you tell us what happened to the money? I don't find any record in there about what happened to the money. Do you know anything about those?

[fol. 191] Mr. Weigand: The money was distributed, as shown in there, to respective creditors that were specified by the debtor, and the amount remaining between that and the amount reecived was their fee.

Judge Stanley: Mr. Weigand, I assume you are familiar with these files.

Mr. Weigand: I am not, Your Honor. I didn't see them until this morning. Mr. Bell—

Judge Stanley: Mr. Bell, can you stipulate as to the amount received, the amount paid to the creditors and the amount that was charged?

Mr. Bell: Your Honor, we should first note for the record that the amount received by Credit Advisors as their charge was received by them to be applied on the total charge which was contracted for by them, and I will be glad to go through each of these files, reserving our objection to the relevancy of it, and state for the record exactly what was the situation on each of them.

Judge Stanley: It will save a lot of time on each of those.

[fol. 192] Mr. Bell: In the case of Raymond Nickerson, according to the files of Credit Advisors, Mr. Nickerson owed some $1972, for which he—and for Credit Advisors' services in disbursing money to the creditors which he specified, Credit Advisors was to receive a total sum of $165. Mr. Nickerson made a payment to Credit Advisors on December 8 of $70, sixty-two-o-two of which was distributed to Commercial Credit Corporation, one of the specified creditors of Mr. Nickerson, and $7.98 was retained by Credit Advisors to apply on their total fee.

Judge Huxman: Take the next case.

Mr. Coulson: Let's finish this one. How long was the plan in operation?

Mr. Bell: We will stipulate that Mr. Nickerson made no further payments and that he later took bankruptcy.

Mr. Coulson: How much later?

Mr. Bell: December 27, 1960.

Mr. Coulson: Now let's do the same as to these others.

Mr. Bell: In regard to—

Judge Huxman: Are we ready for the next case?

[fol. 193] Mr. Coulson: Yes, Your Honor, he has it.

Judge Huxman: All right, take it up and stipulate as to that.

Mr. Bell: With regard to Oliver Phillips, Credit Advisors entered into a contract with him on January 14, 1961, his total indebtedness, or total of the indebtedness to the creditors which Mr. Oliver Phillips wished Credit Advisors to distribute money to, was $3153. In consideration of the services of Credit Advisors, in distributing that money according to a plan, they were to receive a total fee of $275. Mr. Oliver—Mr. Phillips, under that plan, made a payment on February 7 of $50, March 11 of $15, March 21 of $25, April 12 of $75, May 16 of $50, June 17 of $60. The payment of June 16—June 17, which I mentioned, was a check in the amount of $60 drawn on the Valley State Bank of Belle Plaine, Kansas, payable to Credit Advisors; that, immediately after receiving this check, Credit Advisors paid out money on the basis of it to creditors, and a few days later received the check back from the bank "Payment Stopped". To apply on Credit Advisors' fee, [fol. 194] Credit Advisors, on February 7, I believe, took seven dollars, either seven or nine dollars, it looks like seven. On March 11 took two dollars, on March 21 took five dollars, on April 12 took seven dollars, on May 16, nine dollars, on June 17, seven dollars, and then they received no reimbursement of the $60 which had been credited, because of the insufficient fund check.

Mr. Coulson: When did he go into bankruptcy?

Mr. Bell: He went into bankruptcy on June 22, 1961, some six months after the initiation of the plan, and I might add that the plan required, according to the contract with Credit Advisors, the payment of the sum of $75 per month, which Mr. Phillips did not comply with.

Mr. Coulson: Let's have the next one.

Mr. Bell: Donna and Don F-a-r-n-u-m. On May 18, 1961, Credit Advisors entered into a contract with Mr. and Mrs. Farnum, listing a total—listing total debts to specified creditors of $2200, for which they agreed to pay Credit Advisors a maximum fee of $150, to be taken out of payments made, payments to be made at the rate of $28 per [fol. 195] week. That on May 20 these people made a credit —payment to Credit Advisors of $21 per week, that Credit

Advisors disbursed $19 of that to creditors specified and retained two dollars of that amount to apply on their fee.

Mr. Coulson: Did he go into bankruptcy, too?

Mr. Bell: No. According to our records, this person was garnisheed by an attorney at law, and she then—he or she went to the county attorney for help, and the county attorney then was to take over the handling of the matter.

Mr. Coulson: All right.

Mr. Bell: Jesse Epperson entered into a contract with Credit Advisors on April 24, 1961. The total indebtedness listed of $500, for which they were to pay Credit Advisors a total fee of $50, to be deducted from payments. They were to pay $20 every two weeks on their indebtedness. The file reflects that payment of $20 was made on April 29, May 15, May 29, June 15, July 10, July 27, that $50 of those payments was paid to Don Clark, attorney, who is one of the intervenors in this action, I believe, that he ac-
[fol. 196] cepted those, that $40 of the total amount paid was paid to B. W. Acceptance Company and that $30 was retained by Credit Advisors to be applied on the total fee.

Mr. Coulson: What happened to that plan, is it still in operation?

Mr. Bell: The last payment on that was made on July 27, and we have no further records indicating that anything has happened to it.

Judge Huxman: Is it agreed that these facts related by Mr. Bell, by all counsel, that they are the stipulated facts in these cases?

Mr. Weigand: Yes, Your Honor, subject to our objection as to their relevancy and materiality.

Judge Huxman: So stipulated.

Is there anything else of this witness, now?

Mr. Sanborn: We would like to inquire whether counsel has been able to ascertain from the records of Mr. Skrupa how many of these plans failed within 60 days.

Mr. Bell: No. In order to do that, we would have to go through each and every case since they have been in
[fol. 197] Wichita, and I believe there's 855 that have been signed since they have been in Wichita, and we have not attempted to go through each of those files to ascertain. I

believe the request that you made of us was made a day before yesterday.

Judge Huxman: Is there anything else of this witness?

Mr. Coulson: Does the witness know what percentage or anything about it?

Judge Huxman: Does the witness know what percentage of these 855 plans failed?

Can you anwser that?

The Witness: Your Honor, it depends upon the interpretation you put on the word "failed". Many of these people that come to us do not complete these plans. In fact, a very small percentage go all the way through with this. There is no good reason why they should go all the way through with it. Where they find themselves in a position where they no longer need our services, they quit, and that's fine by us; if we have done them some service, we are happy and they are happy. And we have dozens, or, in fact, hundreds of clients that have done this and would be glad to give us a recommendation.

[fol. 198] Mr. Coulson: We are trying to find out what percentage failed within the first 60 days.

The Witness: Sir, I don't know, very honestly, because I would be speaking about Wichita and I don't know what that is, sir.

Judge Huxman: That answers the question. The witness can't answer that.

Anything else?

Mr. Sanborn: I would like to offer in evidence Exhibit H.

Judge Huxman: What is that?

Mr. Sanborn: That is Judge Kline's memorandum opinion in that case.

Judge Huxman: I thought we received that in evidence, didn't we?

Judge Stanley: I thought we had.

Judge Huxman: If it hasn't been received, let it be offered. Are there any objections to its receipt?

Mr. Weigand: Yes, Your Honor. This is not, as I understand it, the journal entry of judgment entered by the Court. It is merely what purports to be a transcript of a statement which the Court made from the bench.

[fol. 199] Judge Huxman: Is the authenticity or correctness of the transcript challenged?

Mr. Weigand: I couldn't challenge it. I wasn't there. The counsel who was there, Mr. McRae, has made a statement to the Court as to what has transpired in that case.

Judge Huxman: It is not a certified transcript?

Mr. Weigand: Not a certified transcript, and, Your Honor—if Your Honor please, either a Justice of the Peace or a District Court of Kansas decision in an injunction case, with respect to the doctrine of unclean hands, regardless of what did it, we submit, is not relevant or material to any determination of the constitutionality of this statute.

Judge Huxman: Is that to your best knowledge?

Mr. McRae: I think that is what the Court said, Your Honor.

Judge Huxman: You think that is what the Court said. Then do you still object to it on the ground that it is irrelevant and immaterial?

Mr. Weigand: Yes, Your Honor, and there is no basis [fol. 200] for the consideration of this Court as to a determination of the validity or the constitutionality of this statute.

Judge Huxman: The Court will receive it for whatever value it may have. That will be determined.

(Defendants' Exhibit H, having been marked for identification, was offered and received in evidence.)

Judge Huxman: Is there anything else?

By Mr. Sanborn:

Q. Would you please state, what was the purpose of having the person put on their form, the one being referred to is the financial statement, which is called in the record D, Defendants' Exhibit D, that this is a complete list of all of their creditors and that they are not insolvent or bankrupt?

A. Well, it is because we want a complete list of what their obligations are. We cannot assume that we know what we can do for them unless we know what their complete financial problem is. That is only to clarify—because we mail these things out.

Q. What is the purpose of this certification by them that they are not insolvent or bankrupt?

[fol. 201] Judge Huxman: That they are what?

Mr. Sanborn: Not insolvent or bankrupt.

A. Well, I can't actually answer your question, sir. We have used that form for so long, I would have no answer for it.

By Mr. Sanborn:

Q. Did you make up these forms?
A. Sir, part of these forms are the same forms that were used by a partner of mine, and they have been in use for quite a number of years. They have been changed through the years, to some degree, but some of the material on them just stayed on them.
Q. You did that?
A. I did what, sir?
Q. You have made the changes in them from time to time?
A. Yes, sir, I have.

Mr. Sanborn: We have no further questions, Your Honor.
Judge Huxman: Are there any further questions of this witness?

Redirect examination.

By Mr. Bell:

Q. I would just like to ask the witness, did you or your attorney change these forms, Mr. Skrupa?

Judge Huxman: I didn't get the question.
[fol. 202] Mr. Sanborn: That is objected to as leading.

By Mr. Bell:

Q. Did you or your attorney change these forms at any time when it was necessary to do so?
A. On the advice of counsel, they have been changed, yes.

Mr. Bell: That is all I have.
Judge Huxman: Is there anything else?
The witness is excused. You may step down.

(Witness excused.)

[fol. 203]

COLLOQUY BETWEEN COURT AND COUNSEL

Judge Huxman: Is there anything else to be offered, or is this it?

Mr. Weigand: That is all the evidence the plaintiff offers, Your Honor, except I have forgotten one thing. We have for identification here, under the heading "Memorandum Brief", it is really an actual copy of the Oklahoma Statutes Annotated, Title 24, Chapter 1, Section 15, which we think is evidence, Your Honor, with respect to one issue which they have raised, if it is material. I might say this in connection with the exhibit, when the Clerk finished marking it, I don't know whether this Court, being a court of the United States, can take judicial knowledge of the Oklahoma law. If it can, I don't have to offer—

Mr. Coulson: I will agree that they can, that they can take judicial notice of the law of all states.

Judge Huxman: I hope you are not asking us to pass on an Oklahoma statute, too.

Mr. Weigand: No, Judge. I wanted to call to the Court's attention, in the form of evidence, that the Oklahoma statute uses the same definition of debt pooling, they all put a different label on the deal, but they call the act the same, [fol. 204] and then, instead of calling it "the practice of law", they forbid lawyers to do it and let nobody but retail credit organizations do it.

Judge Huxman: Do you offer this exhibit?

Mr. Weigand: We offer this exhibit on the question of whether or not debt pooling is defined in the act as the practice of law—

Judge Huxman: Any objection?

Mr. Coulson: I object to introduction of the exhibit, but I agree that Your Honors can take judicial notice of the laws of all states.

Judge Huxman: We are supposed to take judicial knowledge of it, but I believe it will help us to know what the law is, if we have a copy of it, so it will be received for whatever it may be worth.

Mr. Weigand: That concludes our evidence.

Judge Huxman: That concludes the evidence of all the parties?

Mr. Henson: Your Honor, for the purposes of our motion to dismiss, we ask the Court to judicially notice the [fol. 205] Statutes of Kansas, the powers of the attorney general and the county attorney.

Judge Huxman: Does the defendant have anything—I thought the defendant said they rested, had nothing further to present, no further evidence. That is what I understood.

Mr. Weigand: We have segregated, as to legal propositions, five briefs which we are in a position to submit—

Judge Huxman: Mr. Weigand, I think the Court is in agreement that we may have an inkling of the issues as presented by the parties, and it is a difficult question, it is not easy, and I doubt whether you would care to make oral argument at this time. I think I speak for my two associates when I say that it would be more helpful to us if, after this hearing, the parties would submit written briefs in support of your various contentions.

Mr. Weigand: We are in a position to submit in triplicate, now, our initial brief, and then, if Your Honors are going to give them additional time, we would like to have five days to file a reply when we get their briefs. We will submit copies.

[fol. 206] Judge Huxman: Are you ready to submit your brief at this time in triplicate, in support of your position?

Mr. Weigand: Yes, Your Honor.

Judge Huxman: How long does the defendant want? And I suppose—will the defendant and amicus curiae work together in your brief, or are you going to file separate briefs?

Mr. Coulson: I think we will have to file separate briefs, Your Honor, because the one issue, the state court issue or the diversity issue, about the validity of the State of Kansas, is a problem we feel the bar association has no concern with.

Judge Huxman: And how long does the defendant county attorney want to submit a reply brief?

Mr. Coulson: I would like to know how long Mr. Weigand's brief is that we are going to have to reply to.

Mr. Weigand: As I say, we have five briefs, one segregated as to each proposition of law, so, if the Court don't like to consider one proposition, they won't have to read it all. We have divided it into the matters. We think that [fol. 207] this matter of the illegal practice of the law, for example, Your Honor, is one where they can't raise it, because it isn't in the title, and that act couldn't be—

Judge Huxman: Mr. Weigand, do you have a complete brief ready to file on your position?

Mr. Weigand: Yes, Your Honor.

Mr. Coulson: What I am trying to find out is how big is it, how many pages, in toto?

Judge Huxman: First, let me ask the defendant, the county attorney, how long do you want for your brief, if you are furnished a copy of the plaintiff's brief, now?

Mr. Sanborn: I'd like to have about 20 days, Your Honor, not because it will take that long to do the work, but because I am not going to be back in the office for a while.

Judge Huxman: Going on vacation?

Mr. Sanborn: Well, a few days.

Judge Huxman: The defendant, the county attorney, will be given 20 days from today to file a brief. That is on the assumption that you will be served with a copy of plaintiff's [fol. 208] brief at this time.

Mr. Sanborn: Your Honor, we raised something in this case in our answer. They posted a bond. It was supposed to secure the State of Kansas any costs occasioned by this, if the state should prevail, and I haven't briefed the law on it, but I did set out that we have undergone expense, and will, and I would like leave, after a brief of the law, if I think Your Honor should rule on that, to just submit what the expenses were; that will be in the nature of evidence, actually.

Judge Huxman: Well, I supposed that would come up when you asserted a claim against them on your bond.

Judge Hill: I think that will be after a decision in the case.

Judge Huxman: That wouldn't be raised until we reach a decision. If we rule for the plaintiffs, then they are not liable on the bond.

Mr. Sanborn: I realize that.

Judge Huxman: If we rule for you, then you can assert on that bond such items as are appropriate.

[fol. 209] Mr. Sanborn: Yes, sir. I didn't think you would want to come back together for—

Judge Hill: We can consider that matter.

Judge Huxman: In any event, we can't reach that now.

Now, how long does the attorney general want on its brief?

Mr. Henson: Your Honor, we feel we can have a brief on file within seven days on our motion to dismiss.

Judge Huxman: Take ten days from today. You mean from today, seven days?

Mr. Henson: From today.

Judge Huxman: The attorney general is given ten days from this date to file a brief in support of his position.

Now, Mr. Coulson, how long do you want for amicus curiae?

Mr. Coulson: I will need, certainly, no more than 20 days allowed—

Judge Huxman: Twenty days is sufficient for you, sir?

Mr. Coulson: Twenty. I say I'll take no more than that.

[fol. 210] Once I can find out how big this thing is, I'll have a better idea.

Judge Huxman: Knowing you as I do, Mr. Coulson, I think you can answer any brief they could serve on you within 20 days.

Mr. Coulson: I'll file something, Your Honor. Your Honor will determine whether it is an answer.

Judge Huxman: If you find you can't, if you will ask the Court, we might give you 21, or such a matter.

Now, the plaintiff may have ten days, or which will be 30 days from this date, to file a reply brief, ten days after the defendant's and amicus curiae brief are served on plaintiff, to file a reply brief, if desired.

Judge Stanley: Mr. Weigand, you can include your answer to the attorney general's brief in your reply brief, can you?

Mr. Weigand: Yes.

Judge Huxman: So you will have 30 days from today to reply to the attorney general and to reply to the briefs on behalf of the defendants.

Upon the receipt of these briefs, the case will be submitted [fol. 211] to the Court on its merits for decision.

Is there anything remaining undisposed of that you wish to call the Court's attention to, gentlemen, before we adjourn?

Mr. Coulson: Not from us.

Mr. Weigand: Should I deliver these three copies of the brief to the Clerk?

Judge Huxman: Yes.

Mr. Sanborn: Will we get one of those?

Mr. Weigand: Yes.

Judge Hill: Do you have an original and three copies?

(Colloquy was here had off the record.)

Judge Huxman: If you will file the original and two copies, I, living here, I can take the original and the Clerk will send the two copies to Judge Stanley and Judge Hill.

Is there anything else, now?

Now, the Court does appreciate the efforts of the parties. I want you to know that we haven't been a bit impatient with anybody. Naturally, we have been somewhat confused, [fol. 212] but that is due to our ignorance of the issues. We do appreciate the presentation.

Upon receipt of these briefs, the problem becomes ours.

If nothing further, please announce the Court is in recess, subject to call.

(Thereupon, at the hour of 4:00 o'clock p. m., the Court stood at recess subject to call.)

Reporter's Certificate (omitted in printing).

[fol. 213] Clerk's Certificate (omitted in printing).

[fol. 213a]

PLAINTIFF'S EXHIBIT 1

MEMORANDUM BRIEF

OKLAHOMA STATUTES ANNOTATED, Title 24, Chapter 1, Section 15, reads as follows:

"Title of Act: An Act relating to debt pooling; prohibiting any person, firm, company or corporation from engaging in or operating a debt pooling business; making violation of Act a misdemeanor and fixing the penalty therefor; defining term debt pooling as used herein; and declaring an emergency. Laws 1957, p. 161 herein; and declaring an emergency. Laws 1957, p. 161."

"§ 15. *Debt pooling—Prohibition*

"No person, firm, company or corporation shall engage in or operate a business known as debt pooling. Laws 1957, p. 161, § 1. . . ."

Section 16 reads as follows:

"§ 16. *Debt pooling—Definition*

"Debt Pooling is defined as making a contract with a particular debtor whereby the debtor agrees to pay a sum or sums of money periodically to the person engaged in the debt pooling who shall distribute the same among certain specified creditors in accordance with a plan agreed upon and the debtor further agrees to pay such person any valuable consideration for such services or for any other services rendered in connection therewith. Laws 1957, p. 161, § 2.

"§ 17. *Debt Pooling—Penalties*

"Any person, firm, company or corporation violating any of the provisions of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or by im-

prisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment. Laws 1957, p. 161, § 3.

"§ 18. *Debt pooling—Application of Act*

"The provisions of this Act shall not apply to any retail merchants' trade association or a nonprofit association formed for the purpose of collecting accounts and exchanging credit information. Laws 1957, p. 161, § 4."

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[fol. 213b]

DEFENDANT'S EXHIBIT A

(Letterhead of Credit Advisors, Wichita, Kansas)

Gentlemen:

We are in Wichita to offer financial budgeting and management service to those who feel the need for such assistance.

Credit Advisors does not function as a lending or collection agency. What we do is to set up a budget for the debtor after having determined, with his assistance, what he reasonably needs for monthly living expenses. The remainder of his income is directed to us to pay his creditors, payments being made in terms of previous arrangements, wherever possible.

If the client-debtor is late with his payment to us we contact him by phone and letter urging him to meet his obligations. This relieves some of the burden from your own collection departments. We hasten to add that we do not expect to intervene in any rights you possess to protect your security of financial interest. We function merely as a helping hand. If we are not paying you promptly then you may be sure that the debtor is not paying us and we do not intend to operate as a shield for him without good cause. All we ask is that you contact us with questions concerning payment or other matters so long as you are being paid regularly.

By way of other information on our business we should like to state that our employees are bonded by the Maryland Casualty Company. Funds paid into us are, wherever possible, redistributed the same day by check. We have an office in Omaha and have done business with all of the banks, loan and collection companies as well as most of the merchandise houses. We are also connected by ties of ethics with Credit Advisors of Detroit, Chicago and Gary.

Please feel fee to call us at any time concerning any questions you might have.

Very truly yours,

Credit Advisors
....., Manager

GO/rlm

---

[fol. 213c]

DEFENDANT'S EXHIBIT B

(Letterhead of Credit Advisors, Wichita, Kansas)

We the undersigned do hereby request that you accept the terms set forth herein by Credit Advisors Company so that we can resolve our financial affairs.

A review of our indebtedness indicates that we may make a distribution to all our creditors by .....
your part being $.....

Your cooperation in participating in this arrangement will be appreciated. This will enable all of our creditors to receive their share of our income monthly until such time as our indebtedness may be refinanced or liquidated.

If this arrangement is unsatisfactory, please contact Credit Advisors.

.....

Address .....

Your Account #.....

.....

(Clip here and return lower section)

---

Our present balance .....

Our records have been posted .....

CA #..... Confirmed by .....

[fol. 213d]

DEFENDANT'S EXHIBIT C

(Letterhead of Credit Advisors, Wichita, Kansas)

In response to your request for information we will explain as briefly as possible the type of service we offer.

We are not a loan company, but we do have a new and successful plan of consolidating debts into one payment per payday. This method has all the advantages of a consolidation loan but you do not pay high rates of interest nor do you need to mortgage property or have co-signers.

All of your bills are combined so that you have just one place to pay. We then budget your income with you and arrange a payment plan with the people you owe at a payment you can afford. You make only one payment—to this office. We re-budget this money and promptly send it out to your creditors in such a way as to keep them satisfied.

A complete listing of all the creditors, addresses and amounts due must be given us so that we may contact them and inform them that we will be acting as your representative and that they will receive all payments from us and to contact us in the future.

If there are no judgments or repossessions pending we are able to perform this service for as low as:

| If You Owe: | You May Pay As Little As: |
|---|---|
| $1000 | $15.00 per week |
| $2000 | $25.00 per week |
| $3000 | $35.00 per week |

May we point out some of the advantages of our service if we receive REGULAR payments from you:

1. You have only one payment to make. We pay all creditors by check, thus saving you much time, postage and effort and giving a perfect record of all payments.
2. Your credit improves with regular payments.
3. Regular payments avoid garnishments and wage assignments.
4. Most important—You have peace of mind.

Enclosed is one of our forms for you to fill out if you feel we could be of any help. No obligation is incurred by coming in to see what we can do. Our service is confidential.

REMEMBER: YOU CANNOT BORROW YOUR WAY OUT OF DEBT.

Very truly yours,

CREDIT ADVISORS

CREDIT ADVISORS

APPLICATION DATE_____

NAME_____WIFE_____DEPENDENTS_____

ADDRESS_____HOW LONG_____TELEPHONE_____

TOWN_____STATE_____RENTING_____BUYING_____

MORTGAGE WITH_____

EMPLOYER_____HOW LONG_____DAY PAID_____

OTHER PHONE_____TAKE HOME PAY_____

ALL OTHER INCOME_____

WHEN CAN YOU MAKE FIRST PAYMENT_____

WHERE IS WIFE EMPLOYED_____TAKE HOME PAY_____

LIST HERE YOUR MONTHLY EXPENSES. . . . . .BE COMPLETE

RENT OR MORTGAGE PAYMENT_____

FOOD AND GROCERIES_____

HOUSE GAS_____

ELECTRICITY_____

HEAT_____

INSURANCE (APART FROM WORK INSURANCE)_____

CAR FARE TO WORK_____

AUTO EXPENSES (GAS & OIL)_____

TELEPHONE BILL_____

MISCELLANEOUS_____

TOTAL MONTHLY EXPENSES_____

_____DO NOT WRITE BELOW THIS LINE_____

TOTAL INCOME_____

TOTAL EXPENSES_____

AVAILABILITY_____

[fol. 213e]

DEFENDANT'S EXHIBIT D

## FINANCIAL STATEMENT

NOTE: LIST BELOW ALL OUTSTANDING BILLS.
THIS OFFICE CANNOT BE RESPONSIBLE FOR ANY OMISSIONS.

| CREDITORS | TOTAL OWED | MONTHLY PAYMENT | ACCOUNT NUMBER | LAST PAID | ADDRESS |
|---|---|---|---|---|---|
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THIS IS A COMPLETE LIST OF MY CREDITORS AND I (WE) DO NOT OWE OTHER DEBTS OR JUDGEMENTS, NOR AM I (WE) INSOLVENT OR BANKRUPT.

120 [fol. 213ee]

[fol. 213f]

DEFENDANT'S EXHIBIT E

CREDIT ADVISORS

Date .....

AGREEMENT:

I (we) hereby employ the Credit Advisors to act as my (our) agent in arranging and making monthly payments to my (our) creditors who are listed in my application. I (we) hereby agree to cooperate with Credit Advisors Company in every respect, in the payment of these obligations, and to furnish the Credit Advisors Company with a complete and accurate list of all my (our) creditors, with addresses and amounts owing each creditor, together with the original and present status of each account.

I (we) hereby agree to pay to the Credit Advisors Company the sum of $..... per week (month) on ..... until the sum of $..... which is the total principal amount of my present indebtedness including the charges of the Credit Advisors has been paid. Any amount paid as interest to finance companies or others will be in addition to the above amount stated as total indebtedness.

I (we) hereby agree to pay to the Credit Advisors Company the sum of $..... as compensation for their services in acting as my (our) agent herein mentioned above. This contract is for one year, renewable at the option of the debtor.

In the event that I (we) default in my (our) payments, the Credit Advisors can at any time declare this contract terminated. Should this contract be terminated by me (us) at any time or the Credit Advisors, I (we) hereby agree to pay the Credit Advisors the amount of $25.00. This amount shall become due and payable to the Credit Advisors at their option, upon the notice of cancellation being sent to me at my last known address.

It is distinctly understood by me (us) that the services to be rendered to me (us) by the Credit Advisors is for

the purpose of enabling me (us) to pay off our creditors and that I (we) further understand that the Credit Advisors does not render any legal opinions or give any legal advice nor act as my (our) attorney in any manner or capacity whatsoever.

Signed in the presence of: Name .....

..... .....

Credit Advisors

Contract—Note Number .....

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[fol. 213g]

DEFENDANT'S EXHIBIT F

POWER OF ATTORNEY

I, ....., of ....., ..... County, ....., do hereby appoint, make and constitute the Credit Advisors, of ....., ....., and its duly designated and appointed officers and employees, my true and lawful attorney in fact and to act for and on my behalf in the following manner:

1.

Use so much of the funds as may be found necessary and is agreed upon and set forth in the budget prepared for me by Credit Advisors for the purposes set forth in said budget and contract.

2.

I agree to hold Credit Advisors, its officers and employees harmless for any act performed on my behalf pursuant to this Power of Attorney, and any instrument executed to carry out the intent hereof, and I hereby ratify all and any acts performed on my behalf pursuant hereto.

3.

It is understood and agreed that the appointment of Credit Advisors, its officers and employees my true and lawful attorney in fact in no way relieves me of any obligation to pay or meet any obligations now due or hereafter becoming due or incurred by me, nor does the acceptance of such Power of Attorney by Credit Advisors, bind it or its officers or employees to pay any of my obligations or become security or guarantor or grantor thereof.

.....

.....

Accepted by Credit Advisors, this ..... day of ..... ..... 1960.

CREDIT ADVISORS

BY: .....

---

[fol. 213h]

DEFENDANT'S EXHIBIT G

"Missouri Debt Pooler a Bankrupt"

DeForest Bush who was in the debt pooling business and hence a self-proclaimed expert at paying other people's bills couldn't pay $188,229 worth of his own bills.

A St. Louisan, Mr. Bush is a veteran of the "budget plan" type of debt service. Persons who are badly in debt can arrange for such a debt pooling service to take over in [fol. 213i] dealing with creditors. The debt adjustor arranges for a plan of payment—using the customer's money, of course—and charges him a fee for arranging the peace pact with his creditors.

In a voluntary petition in bankruptcy filed Thursday in Federal Court Mr. Bush said he had liabilities of $188,229.

And he listed assets of $452. Of this, $375, the valuation of his household goods, is exempt from use in meeting claims. So the assets for meeting the bills were given as $27 in the bank and $50 in accounts receivable.

Mr. Bush listed himself as debt adjustor with offices at 315 North Seventh St. and gave his home address as 4407 O'Neill Ave., Normandy. He said he had been in business for 21 years.

In 1959 he lost $24,143 on his operations, the petition said, and in 1960 his profit was $1474. It is noted that in 1955 he was doing business in Missouri, Texas, Georgia, West Virginia, Alabama, Indiana and Washington, D. C.

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[fol. 213j]

DEFENDANT'S EXHIBIT H

No. B-6975 10 Feb. 1961.

Frank C. Skrupa vs. Gordon Oliver

THE COURT:

In this case, as I understand it, the defendant was employed by the plaintiff and received training to the extent of a couple of months in Omaha, then was brought to Wichita, wherein a branch office, or another office, was opened by the plaintiff; that for some 8 months or so he worked there as manager of the office in Wichita, and then his employment was terminated. That after he had worked a couple of weeks in Omaha, he entered into a contract marked Plaintiff's Exhibit 1 in this case. He was trained from that of a person having worked in safety up in the position to manage the type of business that the plaintiff maintains in Wichita.

There is no evidence before this Court that the plaintiff has been damaged in any way by the defendant going to work for someone who is in a similar type of business. As a matter of fact, the evidence shows, in my opinion, that the plaintiff has not received any damages. There is no testimony here to show, and as a matter of fact to the contrary, that any of the plaintiff's clients as they refer to them, were taken by the defendant to his new employer. As a matter of fact, as I interpret the testimony he would have no reason, or could not attempt to take them because the agreement was already made between the socalled clients and the plaintiff.

[fol. 213k] I see no trade secrets involved here. I was trying to elicit it from the witnesses this morning wherein he obtained information that would be, by the use of it, would be detrimental to that of the plaintiff.

This is not the type of case of personal contact such as your route man that we have had cases here in Wichita where I have restrained route men from going back into the same area, and not restrained them from working for competitive company in a different area, as long as they did not interfere in the routes where they had been employed.

Injunction is an extraordinary remedy; it is to be brought only on rare occasions wherein the damages are irreparable. In addition to that, I am of the opinion that the plaintiff's business as conducted here in Wichita smacks of unauthorized practice of law, and for these reasons the demurrer to the evidence will be sustained.

**

The court is of the opinion, Mr. Mc Rae that when a person comes into this court asking for equitable relief in the form of an injunction that they must come into this court with clean hands. Therefore, I am of the opinion that this plaintiff's conduct of business in the city of Wichita is bordering on the unlawful practice of law and he is not entitled to come into this community and practice law. That is merely an additional reason, other than the two that [fol. 213 l] I have mentioned. This court is vitally interested, not only as a judge, but as President of this bar association that we not have unauthorized practice of law in the city of Wichita or any place else in the state, and I think that is part of the responsibility of the courts and judges thereof.

***

Eliminating that phase of it and going strictly to the pleadings and the testimony other than that with reference to possibly the unauthorized practice of law as I stated in my first two reasons, there were no trade secrets involved here that have been presented to this court. There was no loss by the plaintiff according to the testimony here, that

the defendant was not such that either his personal contacts with the plaintiff's clients as he referred to them, in a position to take them away from the plaintiff. I see from the evidence before me there has been no damage done to the plaintiff.

**

I don't see any testimony before this court wherein I can see that the plaintiff would ever be injured, from the testimony before this court.

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[fol. 214] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

Civil Action No. W-2434

---

FRANK C. SKRUPA, d/b/a CREDIT ADVISORS, Plaintiff,

vs.

KEITH SANBORN, County Attorney, for the County of Sedgwick, State of Kansas, and WILLIAM M. FERGUSON, Attorney General for the State of Kansas, Defendants.

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FINDINGS OF FACT, CONCLUSIONS OF LAW AND OPINION—
Filed November 27, 1961

This is an action to enjoin the enforcement, operation and execution of a statute of the State of Kansas, known as Senate Bill 366, passed by the 1961 Session of the Kansas Legislature. The grounds on which the action is predicated are that the act is void because it violates and infringes plaintiff's rights guaranteed by the due process clause of the Fourteenth Amendment to the United States Constitution.

The action being one to enjoin the enforcement of a state statute, a Three-Judge Court was convened. The cause came on regularly for hearing at Topeka, Kansas, on the

17th day of August, 1961, plaintiff being present by his attorneys, Lawrence Weigand, Don Bell and Ernest McRae, and the defendants being present by their attorneys, Charles Hanson, Assistant Attorney General; Keith Sanborn, County Attorney, Sedgwick County; William Tomilson, Assistant County Attorney, Sedgwick County; Arty Vaughn, Assistant County Attorney, Sedgwick County; and Wayne Coulson. At the conclusion of the hearing, the case was taken under advisement. Briefs were requested. These have been considered by the court. The court finds these facts.

[fol. 215] Findings of Fact

Plaintiff operates a business known as "Credit Advisors" with offices in Omaha, Nebraska, and Wichita, Kansas. The business consists of debt adjustment. In general, the business may be defined as consisting of making arrangements with persons in financial difficulties, by which, for a fee, plaintiff undertakes to marshal all his client's creditors and his assets and undertakes to effect an agreement by which the debtor shall pay plaintiff a certain percent of his earnings which are then paid, as agreed upon, to his creditors. This sketchy description of plaintiff's business is sufficient to pinpoint the questions presented in this case.

The 1961 Act referred to above deals with debt adjustment. Plaintiff's business falls within the provisions of the act. The act reads, as follows:

> "Section 1. For the purpose of this act, 'debt adjusting' means the making of a contract, express, or implied with a particular debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the debt adjusting business who shall for a consideration distribute the same among certain specified creditors in accordance with a plan agreed upon. Whoever engages in the business of debt adjusting shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars ($500), or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment: Provided, That the provisions of this act shall not apply to those

[fol. 216] situations involving debt adjusting as herein defined incurred incidentally in the lawful practice of law in this state."

Walter A. Huxman, United States Circuit Judge, Retired; Delmas C. Hill, United States Circuit Judge; Arthur J. Stanley, Jr., Chief Judge, United States District Court.

Conclusions of Law

The court concludes, as a matter of law, that the act in question is prohibitory and not regulatory; but even if construed as regulatory, it is an unreasonable and unwarranted regulation of a lawful business, and, therefore, constitutes a violation of the rights of plaintiff as guaranteed by the due process clause of the Fourteenth Amendment to the Federal Constitution.

Walter A. Huxman, United States Circuit Judge, Retired; Delmas C. Hill, United States Circuit Judge; Arthur J. Stanley, Jr., Chief Judge, United States District Court.

[fol. 217] Opinion

Debt adjustment is a business affected by a public interest and because of its nature is subject to regulation by a state under its police powers. State police powers are broad and comprehensive and it is held, without exception, that federal courts should be loath to interfere with the exercise of such powers. But, on the other hand, we have a clear duty and mandate to protect federal rights guaranteed by the Constitution, and this duty we must not shirk.

The Attorney General has filed a motion to dismiss as to him on the ground that he is not a proper party. There are a number of state cases of a similar nature in which the Attorney General was joined as a party defendant.[1] Apparently the propriety of joining him was not specifically

[1] Gilbert v. W. R. Matthews, Co. Attorney, and John Anderson, Atty. Gen., 352 P. 2d. 58.

challenged. It seems to have been generally accepted that he is a proper party defendant. The Attorney General of Kansas is the general law enforcement officer of the state. He supervises the activities of county attorneys. In proper cases, he may direct them to enforce the laws of the state. The motion to dismiss should be overruled.

The decision turns upon whether the act in question is regulatory or prohibitory, and if regulatory, whether it manifests a reasonable and necessary regulation of a business which, although subject to police power, is nonetheless a lawful business. A right to regulate does not carry with it the right to adopt unreasonable or unfair regulations.[2] Since there is no dispute in the principles of law which must be applied, and since we are here concerned with [fol. 218] the construction of the Kansas statute by application of these principles, no useful purpose would be served by citation and discussion of a number of decisions construing somewhat similar statutes of other states, especially where such statutes differ in material respects from the one under consideration here.

Kansas, in passing the act in question, apparently took it almost verbatim from a similar Pennsylvania statute. The wording of the two acts is almost identical. The Superior Court of Pennsylvania in a well reasoned opinion declared the Pennsylvania act unconstitutional. It held that the Pennsylvania act was not regulatory but prohibitory. It held that prohibiting engagement in a lawful business was an abuse of the police power.[3] We are in full accord with the reasoning and philosophy of the Pennsylvania court.

Debt adjustment by its very nature may lend itself to great abuses and because of this the state has power to regulate it to the end that its citizens may not be overreached by unscrupulous persons. No doubt, the state can, by proper regulations, set up standards and qualifications, and even limit the business to certain classes of qualified

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[2] Gilbert v. W. R. Matthews, Co. Attorney, and John Anderson, Atty. Gen., supra.

[3] See Commonwealth v. Stone, 155 A. 2d. 453.

persons. But such regulations must be founded on reason. Whatever the state does must bear a reasonable relation to what the state seeks to do—protect those in financial distress from exploitation by unscrupulous and dishonest operators.

A careful analysis of the act fails to show anything that can be denominated regulatory. After defining debt adjustment, the act states that anyone who "engages in the business of debt adjustment shall be guilty * * *" of an offense and punished as defined in the act.

The only exception is that the "act shall not apply to those situations involving debt adjusting as herein defined [fol. 219] incurred incidentally in the lawful practice of law in this state." This, in our opinion, is not a regulation, or if it is, it is an unreasonable regulation. To say that a lawyer may adjust debts only as an incident to a case which is otherwise before him, is most unreasonable. If a lawyer, engaged in the regular practice of the law, concluded there was a greater field for him in devoting all his time to debt adjustment, rather than to the general practice of law, he could not discontinue his general practice and devote his full time to debt adjustment. He could not do so because he can adjust debts only as an incident to his general law practice. We conclude, first, that the act is prohibitory and not regulatory; and that it prohibits anyone from engaging in the business of debt adjustment. But even if the exception is considered as regulatory, it is an unreasonable regulation of a lawful business. We know of no statute aside from the Pennsylvania statute which has gone that far.

Our attention is called to the case of American Budget Corp. v. Furman, 170 A. 2d 63, in which the New Jersey Superior Court reached a conclusion contrary to that of the Pennsylvania Court and held a somewhat similar act constitutional. No useful purpose would be served by a detailed analysis of the Furman case. It is sufficient to say that it differed in many particulars from the Pennsylvania case and from the act we have before us here. We adopt the reasoning of the Pennsylvania case, Commonwealth v. Stone, supra.

Our attention has also been called to the case of Williamson v. Lee Optical Company, 348 U.S. 483, in which the Supreme Court held constitutional a rather drastic act by the Oklahoma legislature regulating the business of fitting and selling glasses as a valid exercise of the police power. But that act did not outlaw the business of fitting lenses to a face or duplicating or replacing, into frames, lenses [fol. 220] or other optical appliances. The attack on the statute was that it was unlawfully discriminatory in its provisions as to who could engage in such business or the conditions under which the business could be carried on. Under the Kansas statute, no one can engage in debt adjustment as a business. Debt adjustment, though recognized as a lawful business, is declared unlawful.

Judgment will be entered denying the motion of the defendant, Attorney General, to be dismissed from the case. A further judgment will be entered permanently enjoining the enforcement of the act against plaintiff.

Walter A. Huxman, United States Circuit Judge, Retired; Delmas C. Hill, United States Circuit Judge; Arthur J. Stanley, Jr., Chief Judge, United States District Court.

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[fol. 221]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

No. W-2434

DISSENTING OPINION

Arthur J. Stanley, Jr., District Judge.

I cannot agree with the conclusion that the questioned statute is unconstitutional.

That debt adjustment is a business affecting the public interest is not questioned. It has been the subject of legislation in many states. (See the summary of state statutes appearing in the opinion in *American Budget Corp.* v. *Furman,* 67 N.J. Super. 134, 170 A.2d 63.) Regulation of the business, therefore, is a proper function of the state in the exercise of its police power. I believe that the Act under attack is an effort on the part of the legislature of

Kansas to impose reasonable and necessary regulations on a business affecting the financial stability of the citizens of Kansas.

The Act provides in effect that debt adjustment as therein defined may be engaged in only by attorneys, and then only when carried on "incidentally in the lawful practice of law." It is true that a lawyer who has abandoned his general practice to devote his full time to debt adjustment [fol. 222] would be in violation of the statute. I feel sure that this is exactly what the legislature intended. An attorney engaged in general practice, when consulted by a client whose financial affairs had become involved, would, quite naturally, explore all avenues open to his client. He would inquire as to the possibility of defenses to the claims, consider the applicability of exemption laws, explain the advantages and disadvantages of bankruptcy, and might or might not suggest the initiation of a debt adjustment scheme. One admitted to the Bar but who had chosen to become a debt adjuster and to limit himself to that one narrow field would be likely to adopt a different approach to the problem. He would not be expected to advise his client to seek relief through another means than that in which he specialized exclusively. (If he did, would he not by so doing bring himself within the proviso so that he would not then be barred by the statute?)

In arriving at a decision as to the necessity or reasonableness of the regulation, it is not essential that the court agree with the methods adopted by the lawmakers, or that it be concerned with the wisdom of the legislation. The scope of the court's inquiry should be limited to whether any state of facts, known or reasonably to be assumed, support the legislative judgment. *American Budget Corp.* v. *Furman, supra; Williamson* v. *Lee Optical Co.,* 348 U.S. 483.

I am more impressed by the reasoning of the Superior Court of New Jersey in *American Budget Corp.* v. *Furman, supra,* than by that of the Superior Court of Pennsylvania in *Commonwealth* v. *Stone,* 191 Pa. Super. 117, 155 A.2d 453. The Pennsylvania court leans heavily on *Adams* v. *Tanner,* 244 U.S. 590. As the New Jersey court points out, quoting *Staten Island Loaders, Inc.* v. *Waterfront Com-*

*mission,* 117 F.Supp. 308 (D.C. S.D.N.Y. 1953), " * * * the U. S. Supreme Court has withdrawn from this extreme [fol. 223] view of the Fourteenth Amendment ' * * * and has made it increasingly clear that it is not for the judiciary to decide whether the legislature has chosen the best remedy to meet an evil * * *.' "

I would hold that the Kansas Act is not invalid as in violation of the Fourteenth Amendment and could deny the injunction.

Arthur J. Stanley, Jr., District Judge.

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[fol. 224] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

Civil Action No. W-2434

---

FRANK C. SKRUPA, d/b/a Credit Advisors, Plaintiff,

vs.

KEITH SANBORN, County Attorney for the County of Sedgwick, State of Kansas, and WILLIAM M. FERGUSON, Attorney General for the State of Kansas, Defendants,

WILBUR D. GEEDING, et al., Amici Curiae.

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JOURNAL ENTRY OF JUDGMENT, PERMANENT INJUNCTION, AND RELEASE OF BOND—Filed January 8, 1962

This matter came on for trial on August 17, 1961, before a duly constituted three judge court consisting of Walter A. Huxman, United States Circuit Judge, retired, Delmas C. Hill, then United States District Judge and now United States Circuit Judge, and Arthur J. Stanley, Jr., United States District Judge, now Chief Judge, United States District Court for the District of Kansas; the plaintiff being present and represented by his attorneys Lawrence Weigand, Donald A. Bell, and Ernest McRae; the defendant

Keith Sanborn, County Attorney of Sedgwick County, Kansas, being present in person and appearing in his own behalf and also represented by Artie Vaughn, Assistant County Attorney and William Tomlinson, Assistant County Attorney; the defendant William M. Ferguson, Attorney General for the State of Kansas, being represented by Charles Henson, Jr., Assistant Attorney General; and Wilbur D. Geeding, et al., comprising unauthorized practice of law committee of Wichita Bar Association, represented by their Attorney, Wayne Coulson.

[fol. 225] Thereupon, the application of Wilbur D. Geeding, et al. to intervene was considered by the Court, and after hearing the arguments of counsel and being duly advised in the premises, the Court found that Wilbur D. Geeding, et al., comprising unauthorized practice of law committee of the Wichita Bar Association should be allowed to participate in this hearing as an Amici Curiae.

Thereupon, evidence was produced, and the Court took the matter under advisement with all parties to submit briefs in support of their position.

Now on this 27 day of November, 1961, after consideration of all the evidence and the briefs of counsel, Court finds that as a matter of law, Senate Bill No. 366, passed by the 1961 Session of the Kansas Legislature constitutes a violation of the rights of plaintiff as guaranteed by the Due Process clause of the Fourteenth Amendment to the federal constitution; and that judgment should be entered permanently enjoining the enforcement of said act against the plaintiff. The Court further finds that the motion of the defendant, Attorney General, to be dismissed from the case should be overruled.

It Is Therefore by the Court Considered, Ordered, Adjudged and Decreed That the motion of the defendant, William M. Ferguson, Attorney General for the State of Kansas, to be dismissed from this action is hereby overruled.

It Is Further by the Court Considered, Ordered, Adjudged and Decreed That the defendants, Keith Sanborn,

County Attorney of Sedgwick County, Kansas and William Ferguson, Attorney General of the State of Kansas, and their agents, associates, assistants, and all persons acting in their behalf be and are hereby enjoined permanently from filing any complaint against the plaintiff, his agents, servants, or employees for alleged violation of Senate Bill 366, Chapter 190, 1961 Kansas Session Laws or prosecut-[fol. 226] ing any acts for violation of same by said plaintiff, his agents, servants, or employees or in any way attempting to enforce any of the provisions of said Senate Bill against said plaintiff, his agents, servants, or employees.

It Is Further by the Court Considered, Ordered, Adjudged and Decreed That the bond in the amount of $2500.00 posted by the plaintiff as security for restraining order and filed in this Court on the 30th day of June, 1961, is hereby released in its entirety; and the plaintiff and his surety thereon are fully released from any and all obligations contained in said bond.

Walter A. Huxman, United States Circuit Judge, Retired; Delmas C. Hill, United States Circuit Judge; Arthur J. Stanley, Jr., Chief Judge, United States District Court.

Approved:

Ernest McRae, Weigand Curfman Brainerd Harris & Kaufman, By Laurence Weigand.

Keith Sanborn, County Attorney, Sedgwick County, Kansas, Defendant, By William I. Tomlinson.

William M. Ferguson, Attorney General for the State of Kansas, By Charles N. Henson.

Wilbur D. Geeding, et al., on behalf of unauthorized practice of law committee of the Wichita Bar Association, Amici Curiae, By Wayne Coulson.

[fol. 227] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Civil Action Number W-2434

---

FRANK C. SCRUPA, d/b/a CREDIT ADVISORS, Plaintiff,

vs.

KEITH SANBORN, County Attorney, for the County of Sedgwick, State of Kansas, and WILLIAM M. FERGUSON, Attorney General for the State of Kansas, Defendant.

---

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed January 26, 1962

I. Notice is hereby given that Keith Sanborn, County Attorney for the County of Sedgwick, State of Kansas, and William M. Ferguson, Attorney General for the State of Kansas, the defendant's above named, hereby appeal to the Supreme Court, of the United States from the final judgment permanently enjoining the enforcement of Senate Bill (366), passed by the 1961 Session of the Kansas Legislature, entered in this action on November 27th, 1961.

This appeal is taken pursuant to 28 U.S.C.A. §1253.

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States and include in the said transcript the following:

1. Complaint of Plaintiff.
2. Temporary Restraining Order, Hill, C. J.
3. Order, Judges Huxman, Hill and Stanley to constitute a three Judge Court.
4. Motion of Defendant, William F. Ferguson, Attor- [fol. 228] ney General of Kansas to dismiss.

5. Reporters transcript of proceedings had on June 28th, 1961, hearing on application for restraining order.

6. Application to intervene, Wilbur D. Geeding, Wichita Bar Association Committee on unauthorized practice of law.

7. Answer of defendant, William F. Ferguson, Attorney General for the State of Kansas.

8. Answer of defendant, Keith Sanborn, County Attorney, for Sedgwick County, Kansas.

9. All briefs of plaintiff, defendant's and intervening defendant's and Amici Curiae.

10. Reporters transcript of proceedings had on August 17th, 1961, Topeka, Kansas.

11. Findings of fact and conclusions of law and opinions Huxman, Hill, Judges.

12. Dissenting opinion of Judge Stanley.

13. Journal Entry of Judgment, Permanent Injunction and Release of Bond.

14. All exhibits introduced by both plaintiff and defendant.

15. Notice of appeal and Service thereof.

III. The following questions are presented by this appeal:

A. The Act (Senate Bill 366) in question is not prohibitory but regulatory, and in either case the action of the Kansas Legislature is not so unreasonable, arbitrary, capricious and unrelated to any valid objective as to fall under the constitutional interdictions relied upon by the plaintiff?

B. The Act in question is not violative of Article I, Sec- [fol. 229] tion 10 of the Constitution and of Amendment Fourteen, Section I as depriving plaintiff of property without due process of law, denying the

equal protection of the laws and as impairing the obligations of existing contracts.

C. The Court erroneously overruled the legislative judgment in regulating the commercial pursuit known as "debt adjusting" when the subject is comprehended in the police power of the State, and debatable questions as to reasonableness are not for the Court but for the Legislature which is entitled to form its own judgment?

D. The United States District Court for the District of Kansas erred in declaring unconstitutional Senate Bill 366 which codified and clarified existing power of the Supreme Court of the State of Kansas, the statute is merely in aid of and does not supercede or detract from authority of the judicial department to control the practice of law. By judicial act the Supreme Court of the State of Kansas, as long ago as 1935, declared the business, so-called, of debt-adjusting, both at that time and later with respect to this same defendant, prior to the passage of the statute about which complaint is made, the District Court of Sedgwick County, Kansas declared this to be the unauthorized practice of law and the statute [fol. 230] merely gives an additional remedy to the inherent authority vested in the Court to govern persons who would be practitioners of the law and declared the public policy as expressed by the legislature of the State of Kansas, to be that a criminal sanction would attach to this unauthorized practice of law.

E. The plaintiff has no legal right to engage in the "debt adjusting" business which is prohibited by the statute and that, therefore, the statute could not have deprived plaintiff of any property rights of any kind or character, or of any of his personal rights.

F. The Legislature had the right to determine that, whether or not this was the practice of law it required for the protection of its citizens the giving of advice, which the plaintiff does not, or claims it

does not, give, and was a lawful exercise of the police powers of the State of Kansas, and the Constitutional provisions relied upon by plaintiff must yield to the legitimate police power of the State of Kansas.

G. The Court erred in overruling the motion of the defendant, Attorney General of the State of Kansas, to dismiss the action as to him because he was not a proper party defendant.

Keith Sanborn, County Attorney

[fol. 231] Proof of Service (omitted in printing).

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[fol. 233]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

[Title omitted]

ORDER EXTENDING TIME WITHIN WHICH TO DOCKET APPEAL—March 23, 1962

Now, on this 23rd day of March, 1962, upon the timely application and motion of the defendants, and upon good cause being shown, it is ordered that the time for the defendants-appellants to docket the case on appeal in the Supreme Court of the United States, be extended pursuant to Rule 13, Rules of the Supreme Court of the United States, to and including April 23, 1962.

Delmas C. Hill, Judge.

Approved: Keith Sanborn, County Attorney for Sedgwick County, Kansas, By: Melvin M. Gradert, Deputy County Attorney.

Certificate of service (omitted in printing).

[fol. 238] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

[Title omitted]

ORDER EXTENDING TIME WITHIN WHICH TO DOCKET APPEAL—April 23, 1962

Now, on this 23rd day of April, 1962, upon the timely application and motion of the defendants, and upon good cause being shown it is ordered that the time for the defendants-appellants to docket the case on appeal in the Supreme Court of the United States, be extended pursuant to Rule 13, Rule of Supreme Court of the United States, to and including May 7, 1962.

Delmas C. Hill, United States Circuit Judge.

Approved: Keith Sanborn, County Attorney, By Melvin M. Gradert, Deputy County Attorney.

Certificate of service (omitted in printing).

[fol. 239] Clerk's certificate (omitted in printing).

[fol. 240]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

[Title omitted]

ORDER TO TRANSMIT ORIGINAL EXHIBITS TO SUPREME COURT PENDING APPEAL—March 1, 1962

Now, on this 1st day of March, 1962, for good cause shown, it is by the Court

Ordered that the original exhibits admitted in evidence in the trial of the above action be transmitted in lieu of copies thereof to the United States Supreme Court.

Arthur J. Stanley, Jr., Judge.

[fol. 245] Clerk's certificate (omitted in printing).

[fol. 246]

SUPREME COURT OF THE UNITED STATES

No. 111—October Term, 1962

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WILLIAM M. FERGUSON, Attorney General for the State of Kansas, et al., Appellants,

vs.

FRANK C. SKRUPA, d/b/a Credit Advisors.

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Appeal from the United States District Court for the District of Kansas.

ORDER NOTING PROBABLE JURISDICTION—October 8, 1960

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary calendar.

Mr. Justice Goldberg took no part in the consideration or decision of this case.