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March 8, 2012

RE: HB 2770 relating to the office of the securities commissioner

Dear Representative Schwartz:

I am writing to you on behalf of the Judicial Council's Administrative Procedure Advisory Committee. One part of that Committee's assignment is to monitor the Kansas Administrative Procedure Act (KAPA).

The Administrative Procedure Advisory Committee was recently informed of HB 2770, and it has a concern about Section 1 of the bill. The effect of Section 1 would be to exempt the Office of the Securities Commissioner of Kansas from the requirement of K.S.A. 77-514 that state agencies use their agency head, one or more members of the agency head, or a presiding officer from the Office of Administrative Hearings for proceedings under KAPA.

In 2004, the Legislature enacted 2004 SB 141, which established the Office of Administrative Hearings (OAH) and provided that nearly all state agencies would "phase-in" to using OAH hearing officers. The Administrative Procedure Advisory Committee supports the decision made in 2004 to use central-panel hearing officers as a general matter. While the Committee has not studied the specific request of the Office of the Securities Commissioner for an exemption, it does believe that allowing an agency to opt out of using OAH hearing officers sets a bad precedent and could lead to additional agencies seeking similar exemptions.

If you have any questions about this matter, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Christy Molzen".

Christy Molzen

crm

cc: Members, House Agriculture and Natural Resources Budget Committee