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the Kansas House of Representatives

By C. Stewart Boertman

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In the Kansas House of Representatives**

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APPORTIONMENT IN THE KANSAS HOUSE OF REPRESENTATIVES

by

C. Stewart Boertman ¹

IT HAS long been known that by the present method of apportionment in the Kansas house of representatives rural areas are over-represented. Yet on the question of reapportionment attention has too often centered on the possibility of consolidating the more sparsely populated counties and awarding additional house seats to the underrepresented urban counties.

This paper addresses itself to the consideration (1) that for a number of reasons county consolidation will be difficult; (2) that because of this difficulty representation in the Kansas house will continue on the basis of at least one member for each county; and (3) that the existing twenty extra or "swing" members might be reapportioned to the more densely populated urban counties and thereby make for a more equitable representation for certain areas.

Present Situation

The Kansas Constitution now fixes the number of members in the Kansas house of representatives at 125.² Each county is guaranteed at least one representative (105), with the other twenty seats divided among those counties authorized to have them. Each county is divided into as many districts as it has representatives.³

To gain one representative a county must have cast 250 legal votes at the next preceding general election, and if an organized county has cast less than 200 legal votes at the next preceding general election the county will be attached to the county next adjacent to the east and they will constitute a representative district.⁴ This arrangement was added to the constitution by amendment in 1873 and is of no importance today for each of the 105 organized counties will cast more than 250 legal votes and is entitled to one representative.

1. Dr. Boertman is Professor of Social Science, Kansas State Teachers College, Emporia. This paper was presented by the author to the Conference of Kansas Teachers of History and Allied Subjects, Topeka, May, 1952.

2. *Kansas Constitution*, Art. 2, Sec. 2.

3. *Ibid.*, Art. 10, Sec. 1. Where a county has three members the tendency is to elect one representative from each county commissioner district.

4. *Ibid.*, Art. 2, Sec. 2.

The apportionment article of the constitution has an important reapportionment provision. This article states, "It shall be the duty of the first legislature to make an apportionment, based upon the census ordered by the last legislative assembly of the territory; and a new apportionment shall be made in the year 1866, and every five years thereafter, based upon the census of the preceding year."⁵ It seems, therefore, that the Kansas house of representatives *must* be reapportioned every five years. For the year ending in "6" the annual Kansas assessor's census for the preceding year could be used, while for the year ending in "1" the federal census of the preceding year might be used. The last reapportionment was ordered in 1945.⁶ This was not a real reapportionment for those counties showing increased population but only a rearrangement of townships and wards of cities within counties. The representation of the densely populated counties was not increased. The last significant House reapportionment was over forty years ago.⁷

Under the existing apportionment the rural counties are highly overrepresented. Based on the 1950 federal census, Greeley county has the smallest population (1,966) and receives one representative; while Sedgwick, the most populous county (256,860), elects three representatives. By the federal census of 1950, the population of the state was 1,942,060. Dividing this number by 125, the number of representatives permitted, the representative number is 15,536; one representative, therefore, should represent 15,536 persons. For Greeley county one representative represents 1,966 persons; for Sedgwick one representative represents 85,620 persons. Thus, if Greeley county receives one member for about 2,000 persons, Sedgwick should have approximately 128 representatives.

Recently a few efforts have been made to change this situation. Two efforts which have received comment in the press have been those proposals offered by Representatives Kuppinger and Townsley. On March 13, 1951, Representative Kuppinger of Mission (Johnson county) introduced a bill in the house reducing Bourbon county from two members to one member and increasing Johnson county's representation from one to two members. Representative Kuppinger was asked what Bourbon representatives thought of his bill and its chance of passage. To the first question Representative Kuppinger was quoted as saying, "They don't like it"; on the second

5. *Ibid.*, Art. 10, Sec. 2.

6. *Laws of Kansas*, Session Acts of 1945, Chap. 7, Pp. 15-24.

7. *Your Government*, Vol. II, No. 4 (Dec. 15, 1946), Bulletin of the Bureau of Government Research, University of Kansas, Lawrence, Kansas. Article, "Legislative Apportionment," Pp. 3-4.

question the representative was of the opinion the bill had little chance of passage.⁸ The representative was correct on both questions. On March 21, 1952, Representative Townsley of Great Bend (Barton county) presented a proposal to the legislative council "requesting a study relating to counties entitled to more than one representative in the state legislature on the basis of population."⁹ The council referred the proposal to its state affairs committee.¹⁰ Editorials in the *Kansas City Times* and the *Emporia Gazette* discussed Representative Townsley's proposal. The editorials either opposed house and senate apportionment as it now exists in Kansas or hoped a county would retain its present representation.¹¹

Proposed Reapportionment

Conceding that the rural counties will continue to be overrepresented, this paper examines the prospect of reducing the grave underrepresentation of certain urban counties. On examining the counties which today have more than one representative, we find the situation described in Table I (situation in 1950).

By looking at Table II one may note those counties which in 1950 had but one representative in the house although having a population greater than Marshall county which had two representatives. (For Marshall county's population see Table I.)

Examination of the one-member county list (Table II—situation in 1950) shows interesting and revealing groups which are usable in the solution of our proposed problem. Harvey, Dickinson, Neosho and Franklin counties range in population from 21,170 to 20,066 and elect one member each to the Kansas house. If one representative is fair for that population range, then no county in the same population range should elect two representatives. Examination of the two-member county list (Table I) reveals that Marshall (18,552), Bourbon (20,275) and Atchison (20,598) are in a favored position. Reducing house membership of Marshall, Bourbon and Atchison from two to one provides three seats for redistribution.

How should these three seats be redistributed to provide the greatest relief for underrepresentation? It is proposed to give Johnson, Sedgwick and Wyandotte counties an extra representative each.

8. *Kansas City Times*, March 14, 1951. Story filed from Topeka on March 13, 1951, by Robert H. Clark, *Kansas City Star's* Topeka correspondent.

9. *Kansas Government Journal*, Vol. XXXVIII, No. 4 (April, 1952), p. 210. See proposal No. 25.

10. *Kansas City Times*, March 22, 1952. Story filed from Topeka on March 21 by Robert H. Clark. *Emporia Gazette*, March 21, 1952.

11. Editorials, *Emporia Gazette*, March 22, 1952; *Kansas City Times*, April 5, 1952.

EMPORIA STATE

TABLE I

SITUATION IN 1945

SITUATION IN 1950

COUNTY	No. of Rep.	1,793,066 State Assessor's Census, 1945	14,344 Rep. No.	COUNTY	No. of Rep.	1,942,060 Federal Census, 1950	15,536 Rep. No.
Sedgwick.....	3	203,398	67,799	Sedgwick.....	3	256,860	85,620
Wyandotte.....	3	159,864	53,288	Wyandotte.....	3	168,908	56,302
Shawnee.....	3	95,980	31,993	Shawnee.....	3	114,573	38,191
Reno.....	2	50,627	25,303	Reno.....	2	54,087	27,043
Montgomery.....	2	50,205	25,102	Montgomery...	2	50,417	25,208
Crawford.....	2	47,917	23,958	Crawford.....	2	49,387	24,693
Cowley.....	2	35,396	17,698	Cowley.....	2	35,762	17,881
Butler.....	2	32,801	16,400	Butler.....	2	32,889	16,444
Labette.....	2	31,624	15,812	Leavenworth...	2	32,472	16,236
Leavenworth.....	2	29,928	14,964	Labette.....	2	31,319	15,659
Cherokee.....	2	28,170	14,085	Douglas.....	2	29,044	14,522
Douglas.....	2	25,843	12,921	Cherokee.....	2	26,207	13,103
Sumner.....	2	25,404	12,702	Lyon.....	2	25,036	12,518
Lyon.....	2	24,219	12,109	Sumner.....	2	24,346	12,173
Atchison.....	2	20,363	10,181	Atchison.....	2	20,598	10,299
Marshall.....	2	20,066	10,033	Bourbon.....	2	20,275	10,137
Bourbon.....	2	19,414	9,707	Marshall.....	2	18,552	9,276

TABLE II

SITUATION IN 1945

SITUATION IN 1950

COUNTY	No. of Rep.	1,793,066 State Assessor's Census, 1945	14,344 Rep. No.	COUNTY	No. of Rep.	1,942,060 Federal Census, 1950	15,536 Rep. No.
Johnson.....	1	43,840	.....	Johnson.....	1	71,336	.....
Saline.....	1	29,103	.....	Saline.....	1	32,655	.....
Barton.....	1	26,597	.....	Barton.....	1	30,156	.....
McPherson.....	1	22,314	.....	McPherson....	1	23,311	.....
Dickinson.....	1	22,170	.....	Riley.....	1	23,209	.....
Neosho.....	1	21,754	.....	Harvey.....	1	21,170	.....
Harvey.....	1	21,030	.....	Dickinson....	1	21,151	.....
Riley.....	1	20,768	.....	Neosho.....	1	20,391	.....
Franklin.....	1	19,441	.....	Franklin.....	1	20,066	.....
				Ellis.....	1	18,550	.....
				Ford.....	1	18,537	.....

The situation now would be:

County	No. of Rep.	Rep. No.
Sedgwick	4	64,215
Wyandotte	4	42,227
Johnson	2	35,668

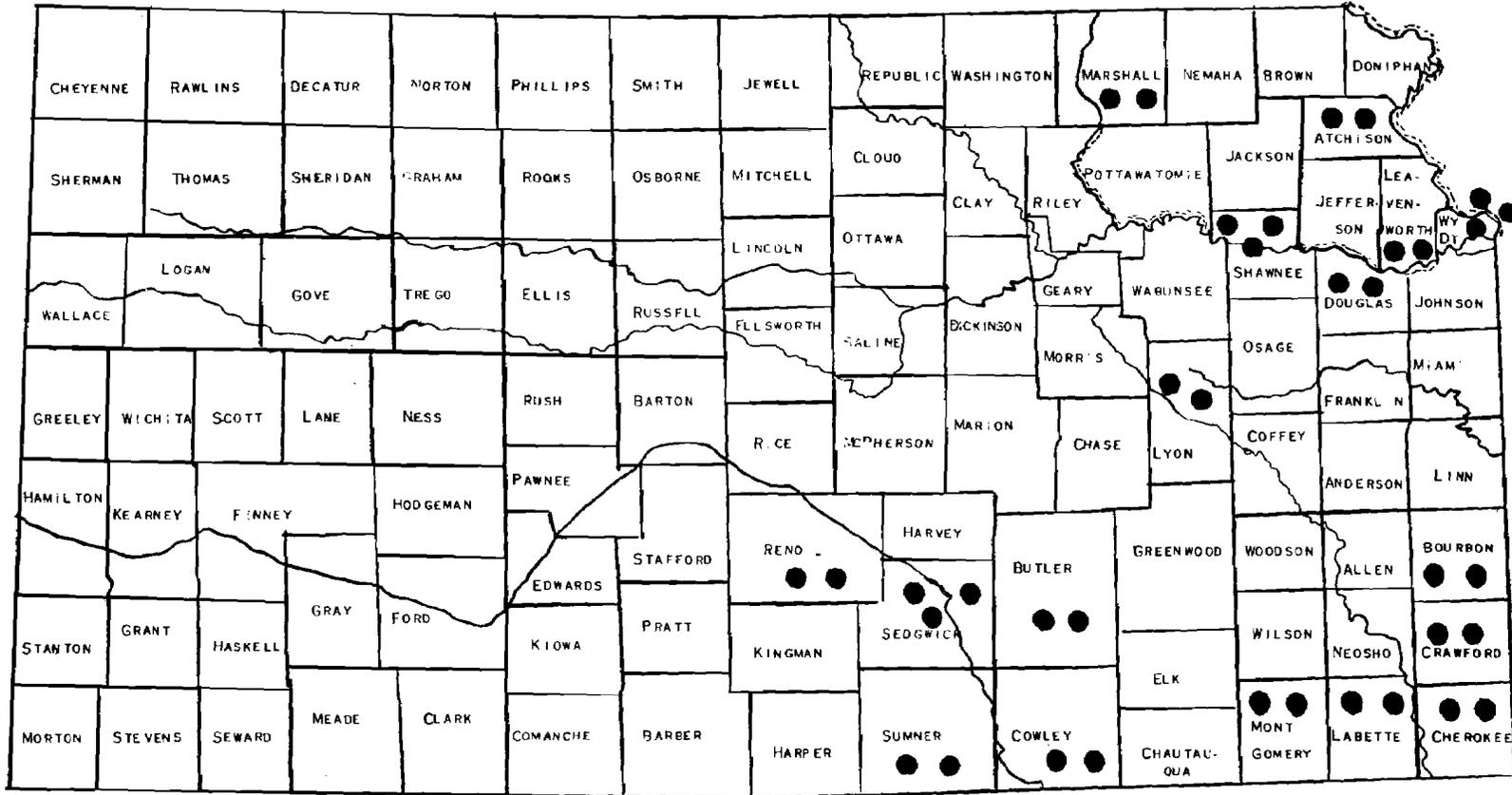
Marshall, Bourbon and Atchison would be left with one member each.

Another comparison of the one-member county list with the two-member county list reveals a new and interesting situation. If Barton county (30,156) elects one representative, all counties with less than 30,000 persons should be entitled to only one representative. On the two-member county list, four counties, Sumner (24,346), Lyon (25,036), Cherokee (26,207) and Douglas (29,044) are below the Barton county population. By reducing the representation of Sumner, Lyon, Cherokee and Douglas counties from two to one, four additional seats are gained for redistribution to the worst underrepresented counties. It is suggested that the four seats gained by this reduction be distributed as follows:

County	Additional Rep.	Total Rep.	Rep. No.
Sedgwick	2	6	42,810
Wyandotte	1	5	33,781
Shawnee	1	4	28,643

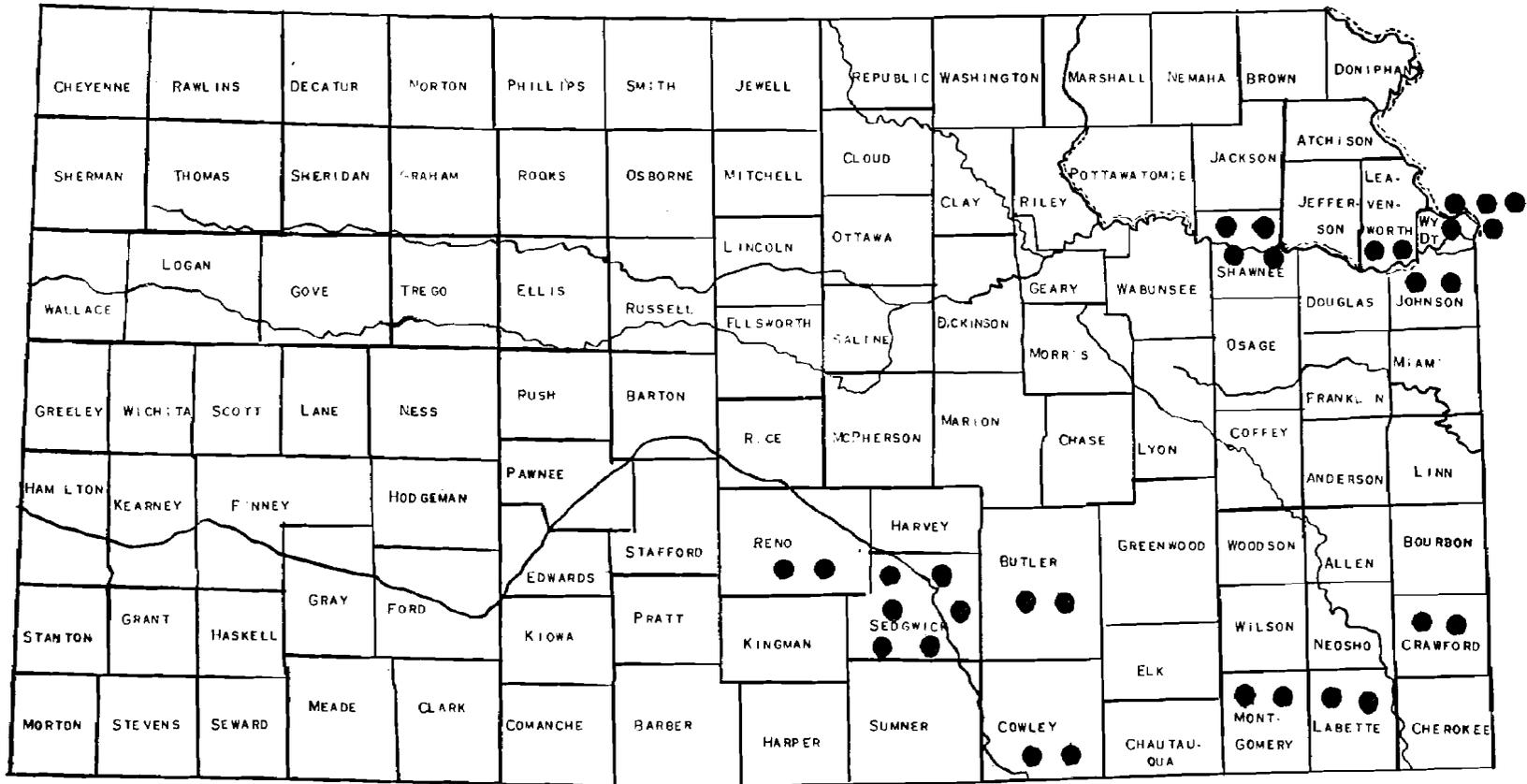
Objection can be raised for assigning Shawnee county an additional representative, making its representative number 28,643. Douglas county, yielding the last reassigned seat, would have a representative number of 29,044, which is higher than Shawnee's new representative number. This shift seems unfair. It is easy to concede that a representative number from 28,000 to 30,000 is the fairest obtainable under present conditions, whereas the ideal number of 15,536 is impossible under the present constitution. If Douglas is reduced to one representative, its representative number is high; if Douglas retains its two members, its representative number is 14,522 and below the ideal. This is a difficult situation to resolve. Should Douglas's representation be reduced or should Shawnee's be increased? If Douglas is reduced to one representative and the extra number is not assigned to Shawnee, it can be assigned fairly only to Sedgwick for it is the only county having a higher representative number (42,810 for Sedgwick to 38,191 for Shawnee). Such reapportionment would bring the Sedgwick representative number down to 34,694. If the extra member were assigned to Barton county, then the Barton representative number

MAP I—APPORTIONMENT IN 1950



No dot means county has one representative. Each dot equals one representative.

MAP II—REAPPORTIONMENT UNDER SUGGESTIONS OF THIS PAPER



RESEARCH STUDIES

No dot means county has one representative. Each dot equals one representative.

would become 15,078, a little better than Douglas, if Douglas retained its two representatives. But it would still be below the ideal representative number. To go below the ideal representative number of 15,536 when other counties have high representative numbers seems unfair.

The situation in the Kansas house of representatives, if the above suggestions were enacted into law, would be that shown in Table III. The counties are listed in order of their representative numbers.

TABLE III—*Situation If Suggestions of This Paper Are Followed.*

Counties placed in order of Representative Number

COUNTY	Population 1950 Census	No. of Rep.	Rep. No.
Sedgwick.....	256,860	6	42,810
Johnson.....	71,336	2	35,668
Wyandotte.....	168,908	5	33,781
Saline.....	32,655	1	32,655
Barton.....	30,156	1	30,156
Douglas.....	29,044	1	29,044
Shawnee.....	114,573	4	28,643
Reno.....	54,087	2	27,043
Cherokee.....	26,207	1	26,207
Montgomery.....	50,417	2	25,208
Lyon.....	25,036	1	25,036
Crawford.....	49,387	2	24,693
Sumner.....	24,346	1	24,346
McPherson.....	23,311	1	23,311
Riley.....	23,209	1	23,209
Harvey.....	21,170	1	21,170
Dickinson.....	21,151	1	21,151
Atchison.....	20,598	1	20,598
Neosho.....	20,391	1	20,391
Bourbon.....	20,275	1	20,275
Franklin.....	20,066	1	20,066
Marshall.....	18,552	1	18,552
Ellis.....	18,550	1	18,550
Ford.....	18,537	1	18,537
Cowley.....	35,762	2	17,881
Butler.....	32,889	2	16,444
Leavenworth.....	32,472	2	16,236
Labette.....	31,319	2	15,659

An examination of representative numbers of certain two-member counties reveals they are still overrepresented if their representative number is placed against certain one-member counties. If the members were taken from the lowest two-member counties, however, and given to the highest one-member counties the situation would be reversed and new inequalities would arise. Yet it appears possible to shift one seat from Labette county to Saline county. The new representative numbers would be 31,319 (Labette) and 16,327 (Saline). Labette would take Saline's place on Table III, while Saline would go between Butler and Leavenworth. This, it would seem, is the stopping point in reapportionment.

Accomplishment of This Paper's Proposals

Re-examining the proposed question, we might ask ourselves what has been accomplished if the proposals of this paper were enacted into law? County-wise the most densely populated counties have been assisted. Under the present distribution, 17 counties with a population of 990,736 elect 37 members to the House. If the above proposals were enacted into law, 11 counties with a population of 898,010 would elect 31 members. However, percentagewise the densely populated counties lose. Under the present distribution 51 percent of the people of the State of Kansas elect 29.6 percent of the representatives. Under the suggestions offered in this paper 46.2 percent of the people would elect only 24.8 percent of the representatives. Looking at the matter from the position of the 1-member counties, the present situation permits 49 percent of the people to elect 70.4 percent of the representatives while under the proposals 53.6 percent of the population would elect 75.2 percent of the representatives.

Prospects for Enacting the Proposals

Prospects for enacting these suggestions into law seem extremely remote. Six reasons can be stated why the plan may not be adopted as circumstances now exist:

1. The legislature has not been too interested in the past in such a reapportionment program.
2. Rural counties dislike the idea of new members being elected from cities where there is an excellent possibility of those members agreeing on city programs. This is not a valid reason, for 11 counties would control only 31 votes while 94 counties would control 94 votes.

3. Counties losing members strongly object to the loss.
4. Thinly populated counties believe that tampering with the distribution of representatives as it now exists would be an opening wedge for the legislature to consolidate counties to obtain additional seats which would be assigned to more densely populated counties.¹²
5. The legislature might agree to call a constitutional convention where the rural counties would have to struggle against a greater loss in representation.
6. Practical politics would have a bearing on the proposals; is this a wise and practical thing to do?

The possibility of a constitutional amendment should be reviewed. An amendment might increase the number of representatives from 125 to a suggested 150. The extra twenty-five seats would be distributed to the most populous counties. An amendment of this type probably would be difficult to push through the legislature. Equal difficulty in ratification might be encountered.

Since a constitutional convention has been discussed, the apportionment problem should be reviewed from the point of view of a convention. Basically the problem is associated with the make-up of the convention. Experience of other states has been that the convention is arranged so rural areas can control the proceedings on vital issues. On the apportionment issue conventions of other states, while giving some ground on representation to populous urban areas, have worded the new constitution in such a way that populous areas cannot control the house of representatives or the senate or both. The expectation that a Kansas constitutional convention would do better than constitutional conventions in other states should not be anticipated. Even the calling, in the near future, of a constitutional convention for Kansas should be thought rather remote.

Thus it seems that, in the future, people of Kansas must become accustomed to the idea that the Kansas house of representatives represents areas and not people, that the Kansas senate represents people and not areas. The population of state senatorial districts is not evenly distributed for the idea has developed that one county cannot have more than one senator regardless of its population, *e. g.*,

12. What the legislature creates the legislature can destroy. Counties are created by the legislature so counties can be destroyed or consolidated by legislative action. The Kansas Constitution, Art. 9, Sec. 1, states the minimum size of counties in square miles but not the maximum size. See, also, *Division of Howard County*, 15 K. 195; *Gratney v. Wyandotte County*, 111 K. 160, 167, and *The State, ex rel., v. Commissioners of Garfield County*, 54 K. 372.

the thirty-first district (Jewell and Mitchell counties) has 20,141 people while the twenty-seventh district (Sedgwick county) has 256,860 people. However, the new senatorial district law of 1947¹³ (used for the election of senators in 1948) removed some of the inequalities but did not break the rule of more than one senator from a county. The problem of approximate equal population in state senatorial districts should be the subject of another paper.

General Observations

1. The legislature may only tamper with reapportionment and remove a few of the major inequities, such as reducing Marshall, Bourbon and Atchison counties to one seat each and redistributing these seats to Johnson, Barton and Saline counties.¹⁴ This would not make a substantial reapportionment as suggested by this paper.
2. More likely the legislature will ignore the issue for the time being.
3. The people of Kansas will continue to believe that the most numerous branch of the state legislature represents people as does the most numerous branch of Congress.

13. *Laws of Kansas*, Session Acts of 1947, chap. 19, pp. 32-34. Population figures are from the 1950 federal census.

14. This would retain the idea that no county should have more than three representatives regardless of population and permit the representative district to be the same as the county commissioner district.

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