

March 24, 1975

SENATOR LUEDTKE: In other words you're saying that LB 130 could have dealt with this just as well.

SENATOR CAVANAUGH: Well I'd assume that this is in addition to 130.

SENATOR LUEDTKE: It is. That's right.

SENATOR CAVANAUGH: Here they would be going from district court, after they have appealed from muny court, to the Supreme Court. But you set a different standard here than you did in 130 when you went from muny court to district court.

SENATOR LUEDTKE: No, no actually the reference in the amendment is to 29-2315.01 which is the error proceeding by the county attorney to the district court, which is the same. Caused by presenting to the trail court the application for leave to docket error proceedings which the county attorney intends to make to the Supreme Court. It is the same. What you're saying is that it goes beyond just the original appellate procedure. It goes up to the Supreme Court. Is that what you're saying? That is the reference that we made in the amendment. That's right.

SENATOR CAVANAUGH: Well the purpose of 130 was to arrive at a determination of law, rather than to arrive at a re prosecution of the individual. If you had a situation where the muny judge or county judge declared the 55 mile per hour speed limit unconstitutional they could take it up and appeal on the law. But you wouldn't go back and find that person guilty because he's already been tried and found not guilty. But I don't see that written into this provision and I was wondering why. Are they going to be able to pick up new issues? If you go to the Supreme Court can you reimpose a new trial?

SENATOR LUEDTKE: No, you couldn't retry it. No.

SENATOR CAVANAUGH: But the bill doesn't deal with that?

SENATOR LUEDTKE: No. Not as I understand it.

PRESIDENT: Senator Chambers.

SENATOR CHAMBERS: Counselor Luedtke, Senator Luedtke, would you help me out on this? If it's alright.

SENATOR LUEDTKE: I'll try.

SENATOR CHAMBERS: Now this bill deals with a misdemeanor.

SENATOR LUEDTKE: No, it doesn't . . . not necessarily. That's what it started out with, but that's what you could not do.

SENATOR CHAMBERS: Well I mean it drops all the way down to the misdemeanor now. It includes it as something which can be . . .

SENATOR LUEDTKE: Yes, it can deal with . . . includes misdemeanor, yeah.