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HB 2003
Testimony to Senate
Committee on Local Government
By: Jason A. Gage on behalf of the Salina City Commission
February 17, 2015

Request

Thank you for the opportunity to provide the City of Salina's position on HB 2003. We are very appreciative of your time to consider this written testimony. With that said, we respectfully request that you support the amendment replacing the word "highway" with the phrase "right-of-way of any highway" in revised section 7(e) of the bill.

Bill Summary

This bill addresses the authority and role of the county commission to address the annexation of land by a city which is noncontiguous to the city limits. In revised section 7(e) of the bill, an amendment would correct the phrasing and keep the long-time intent of the statute with regard to the reference of the phrase "right-of-way of any highway" as previously used in the same subsection.

Reasons For Our Support

Our focus of support is strictly limited to the amended language in revised section 7(e). We support this amended language for the following reasons:

- Restores prior statute uniformity of terms. Prior to a change in this subsection that occurred approximately 7 years ago, the phrase "right-of-way of any highway" was used to properly reference the local government's owned portion of a roadway. This section was subsequently expanded to allow counties to provide notice to cities to annex the full width of roadways adjacent to any private property already annexed by the city. This change added the word "highway" to the very same section that already contained the phrase "right-of-way of any highway". We believe these two terms conflict and create

non-uniformity within the section. This appears to be an inadvertent wording mistake. The verbiage amendment included in revised section 7(e) of HB 2003 replaces the term “highway” with the original phrase of “right-of-way of any highway”, creating uniformity once again.

- Clarity of interpretation. Statutory interpretation is intended to be literal, unless ambiguity is present. Interpretation of revised section 7(e) appears to be ambiguous with the use of two separate terms (i.e., “highway” and “right-of-way of any highway”) referencing the same thing (i.e., an adjacent roadway). This correction will ensure there is no ambiguity of terms and ensure the statute can once again be consistently interpreted, thus eliminating unnecessary legal challenges between local government entities.
- Ensures due process for underlying private property owners. In Kansas law, “highway” refers to any roadway. Most county roadways are created through a road record instrument, which is very similar to an easement. As you may already know, an easement only addresses governmental rights of use and maintenance obligations, not underlying property ownership. With a road record, underlying private property owners retain their ownership and due process rights. Please note that if a notice under existing subsection 7(f) is sent by any county to its respective city, it legally forces the city to annex the roadway. If the roadway was created through a road record, the underlying private property owners affected will receive no due process with regard to the annexation of their underlying property. This authority given to counties is a serious concern and seems to be contrary to the due process rights afforded private property owners. Since right-of-way is property owned by a local government, changing the phrasing of this section from “highway” back to “right-of-way of any highway” would eliminate the current private property owner due process infringement.

Requested Action

We believe the amended language in revised section 7(e) to replace the word “highway” with the original phrase of “right-of-way of any highway” brings back uniformity of terms, ensure clarity of interpretation and ensure that the due process rights of underlying private property owners is preserved. As a result, we respectfully request that you support this phrasing amendment in revised section 7(e) of the original HB 2003. Thank you for considering our legislative request!