

WAYS AND MEANS COMMITTEE
Minutes of Meeting
March 10, 1961

Meeting was called to order by the Vice-Chairman, Senator Smith, with all members present except Senator Lauterbach.

Senator Harper read an opinion from the Attorney General re the transporting of women prisoners to Missouri in the proposed Compact with the State of Missouri. Copy of opinion attached.

Senator Harper moved that a bill be introduced by the committee to remodel some buildings at the old Kansas technical institute. (Senate Bill #333). Senator Ward seconded the motion, which carried.

Senator Sanborn moved to amend Senate Bill #172 in Section 1, Line 1 by inserting after the word "money" the following: "of the general revenue fund"; and in Section 1, Lines 4 and 5 by striking after the word "of" the words and figures: "three hundred thousand dollars (\$300,000)", and inserting in lieu thereof the words and figures "two hundred twenty five thousand dollars (\$225,000)". Motion and the bill be passed as amended. Motion seconded by Senator Harper, and carried.

The following subcommittee reports were presented to the committee:

Centennial Commission
Eisenhower Presidential Library
Highland Presbyterian Mission
Historical Society
John Brown Memorial State Park
Kansas Frontier Historical Park
Marais Des Cygnes Massacre Memorial Park
Pawnee Rock Historical Park
Park & Resources Authority
Washington County Pony Express Station

Senator Sanborn moved these subcommittee reports be adopted as presented, and a bill be drafted and introduced embodying the recommendations therein. Senator Ward seconded the motion, which carried. (See copy of above reports attached). (SB #336).

Senator Warren moved that a bill be introduced by the committee to transfer equipment and capital for making license tags to the prison industries account." (SB#334). Motion seconded by Senator Glades, carried.

Meeting adjourned.



Glee S. Smith,
Vice-Chairman

SENATE WAYS AND MEANS COMMITTEE

Subcommittee Report

MARAIS DES CYGNES MASSACRE MEMORIAL PARK

Fiscal Year 1962

By Senators Sanborn and Van Sickle

Mr. Chairman:

Your subcommittee on Recreational and Historical recommends the following expenditures for the Marais des Cygnes Massacre Memorial Park for fiscal year 1962.

	<u>FY 1962</u>
Operations	\$ 4,400
Capital Improvements	
Renovate House	\$6,500
Provide Water	1,610
Historical Markers	1,000
Subtotal - Capital Improvements	<u>9,110</u>
Total Expenditures	<u>\$13,510</u>

Thos. A. Sanborn
Senator T. A. Sanborn

Tom R. Van Sickle
Senator T. R. Van Sickle

Trading Post
Park
Wildlife Refuge

SENATE WAYS AND MEANS COMMITTEE

Subcommittee Report

KANSAS STATE HISTORICAL SOCIETY

Fiscal Year 1962

By Senators Sanborn and Van Sickle

Mr. Chairman:

On page 488 of the Governor's Budget Report is shown the Governor's recommended budget for the Kansas State Historical Society for fiscal year 1962.

The 1960 Legislature appropriated \$38,000 to the State Historical Society for the installation of a new elevator and the enclosing of the east and west hatchways in the lobbies of the Memorial Building. Since this appropriation was made, and the budget request was submitted for fiscal year 1962, the Society has been informed by the private architectural firm which the state architect engaged to draw up the plans and recommendations for this project that the amount that was appropriated will not be sufficient to complete this work. The revised estimate of the cost of installing the new elevator and enclosing the east and west hatchways is shown as follows:

East shaft enclosure and machinery pit	\$11,000
East elevator machine, cab, doors, etc.	27,000
West shaft enclosure	7,000
West shaft elevator cab and doors	4,500
	<u>\$49,500</u>
Architect's fees	\$ 1,980
	<u>\$51,480</u>
Contingencies	\$ 2,500
Total revised estimated cost	<u>\$53,980</u>

The architect's fee, which was not budgeted, and the necessity of removing several water lines and electrical conduits which run up the east shaft caused the increase in the original estimate. Also, the west shaft will probably need new doors and a new cab for the old elevator.

Since the old elevator, which is nearly fifty years old, in the west shaft is giving poor service, the Society is requesting a supplemental appropriation of \$16,000 for fiscal year 1961 in order to have sufficient funds to begin this project immediately.

The amount the Governor recommended for salaries and wages for fiscal year 1962 for the Historical Society proper includes funds for paying merit increases. The significant items in salaries and wages that were not recommended by the Governor are the requested Director of Field Services and a Maintenance Engineer I.

Your subcommittee on Recreational and Historical recommends that a supplemental appropriation of \$16,000 be appropriated to the Kansas State Historical Society for fiscal year 1961 in order to provide additional funds for installing the new elevator and enclosing the east and west hatchways in the Memorial Building, and that no change be made in the Governor's recommended budget for fiscal year 1962.

Thos. A. Sanborn
Senator T. A. Sanborn

Tom R. Van Sickle
Senator T. R. Van Sickle

SENATE WAYS AND MEANS COMMITTEE

Subcommittee Report

PAWNEE ROCK HISTORICAL PARK

Fiscal Year 1962

By Senators Sanborn and Van Sickle

Mr. Chairman:

On page 507 of the Governor's Budget Report is shown the Governor's Recommended budget for the Pawnee Rock Historical Park.

The Governor's recommended amount of \$1,000 for operating expenditures for fiscal year 1962 includes funds for paying a man who inspects the park, picks up the trash, and locks the gate each night.

The park board requested for capital improvements for fiscal year 1962 an amount of \$2,200 for the installation of a new fence for the park; an amount of \$2,000 to construct a new shelter house; and \$200 for the construction of a new picnic table, park benches, a barbecue, and a trash receptacle. The Governor's recommended budget includes \$200 for the miscellaneous capital improvement items.

Your subcommittee on Recreational and Historical recommends that the item of \$2,200 for the installation of a new fence be reinstated and that the remainder of the budget be approved as recommended by the Governor.

Thos. A. Sanborn Tom R. Van Sickle
Senator T. A. Sanborn Senator T. R. Van Sickle

SENATE WAYS AND MEANS COMMITTEE

Subcommittee Report

PARK AND RESOURCES AUTHORITY

Fiscal Year 1962

Mr. Chairman:

Your subcommittee assigned to the Park and Resources Authority submits the following report.

The following table includes expenditures for the years indicated for the Park and Resources Authority:

<u>Expenditures by Activity</u>	<u>Actual FY 1960</u>	<u>Estimated FY 1961</u>	<u>Requested FY 1962</u>	<u>Governor's Recommendation FY 1962</u>	<u>Recommended Over-Under FY 1961</u>
Administration	\$23,384	\$20,227	\$ 38,605	\$ 38,355	\$ 8,128
Kanopolis State Park	44,734	39,575	49,667	39,870	295
Fall River and Toronto State Parks		53,822	52,756	44,462	(9,360)
Cedar Bluff Reservoir			31,806		
Tuttle Creek Reservoir			55,455	45,200	45,200
Subtotal - Operating Expenditures	<u>\$67,118</u>	<u>\$123,624</u>	<u>\$228,489</u>	<u>\$167,887</u>	<u>\$ 44,263</u>
Capital Improvements					
Kanopolis State Park	\$28,023	\$ 40,500	\$118,350	\$ 3,350	\$(37,150)
Fall River and Toronto State Parks		67,500	156,000	79,500	12,000
Cedar Bluff Reservoir			91,000		
Tuttle Creek Reservoir			398,000	247,000	247,000
Subtotal - Capital Improvements	<u>\$28,023</u>	<u>\$108,000</u>	<u>\$765,350</u>	<u>\$329,850</u>	<u>\$221,850</u>
Total Expenditures	<u>\$95,141</u>	<u>\$231,624</u>	<u>\$993,839</u>	<u>\$497,737</u>	<u>\$266,113</u>

The Governor's recommended budget for fiscal year 1962 for the Park and Resources Authority includes \$292,200 to develop certain land adjacent to the Tuttle Creek Reservoir for a state park. The Corps of Engineers is authorized by the Federal Government to contract with private operators for concession purposes. If this is done before the state assumes control of the area, it would preclude the State of Kansas from receiving any revenue from this source or from exercising supervision over the operators during the period of the contracts. The Corps of Engineers has agreed to delay its concession negotiations until March 15, 1961, in order to give the State of Kansas an opportunity to accept responsibility for the areas it desires. The Park and Resources Authority would have the right of third party concession agreements when it assumes control of the area. However, the Corps of Engineers must be assured that state funds will be appropriated for development of park areas at the Tuttle Creek Reservoir before it can transfer responsibility for the concession in those areas.

The Governor has included in his budget recommendation for fiscal year 1962 an amount of \$25,000 for a bathhouse and beach development at the Tuttle Creek Reservoir. An amount of \$25,000 has also been recommended for a bathhouse and beach development at the Fall River Park.

Your subcommittee recommends that instead of expending \$50,000 for two bathhouses and beach developments at the Tuttle Creek Reservoir and the Fall River Park, an amount of \$30,000 be appropriated for construction of three bathhouses: one at Fall River; one at Toronto; one at Tuttle Creek Reservoir. It is also recommended that the other items in the budget be approved as recommended by the Governor.

Theo. A. Sanborn

Senator Theo. A. Sanborn

Tom R. Van Sickle

Senator Tom R. Van Sickle

SENATE WAYS AND MEANS COMMITTEE

Sub-Committee Report

WASHINGTON COUNTY HISTORIC PONY EXPRESS STATION

Fiscal Year 1962

Mr. Chairman:

Your sub-committee assigned to the Washington County Historic Pony Express Station submits the following report.

On page 508 of the Governor's Budget Report is shown the Governor's recommended expenditure budget for the Washington County Historic Pony Express Station for fiscal year 1962.

Your sub-committee recommends that the budget of the Washington County Historic Pony Express Station be approved as recommended by the Governor.


Theo. A. Sanborn


Tom R. Van Sickle

SENATE WAYS AND MEANS COMMITTEE

Subcommittee Report

KANSAS FRONTIER HISTORICAL PARK

Fiscal Year 1962

Mr. Chairman:

Your subcommittee assigned to the Kansas Frontier Historical Park submits the following report.

On page 498 of the Governor's Budget Report is shown the Governor's recommended expenditure budget for the Kansas Frontier Historical Park for fiscal year 1962.

Your subcommittee recommends, that the budget of the Kansas Frontier Historical Park be approved as recommended by the Governor.

Theo. A. Sanborn
Senator Theo A. Sanborn

Tom R. VanSickle
Senator Tom R. VanSickle

SENATE WAYS AND MEANS COMMITTEE

Subcommittee Report

JOHN BROWN MEMORIAL STATE PARK

Fiscal Year 1962

Mr. Chairman:

Your subcommittee assigned to the John Brown Memorial State Park submits the following report.

On page 496 of the Governor's Budget Report is shown the Governor's recommended expenditure budget for the John Brown Memorial State Park for fiscal year 1962.

Your subcommittee recommends that the budget of the John Brown Memorial State Park be approved as recommended by the Governor.

Theo. A. Sanborn

Senator Theo A. Sanborn

Tom R. VanSickle

Senator Tom R. VanSickle

SENATE WAYS AND MEANS COMMITTEE

Sub-Committee Report

HIGHLAND PRESBYTERIAN MISSION

Fiscal Year 1962

Mr. Chairman:

Your Sub-committee assigned to the Highland Presbyterian Mission submits the following report.

On page 456 of the Governor's Budget Report is shown the Governor's recommended expenditure budget for the Highland Presbyterian Mission for fiscal year 1962.

Your Sub-committee recommends that the budget of the Highland Presbyterian Mission be approved as recommended by the Governor.

Theo. A. Sanborn
Theo. A. Sanborn

Tom R. Van Sickle
Tom R. Van Sickle



State of Kansas
Office of the Attorney General
Topeka, Kansas

William A. Ferguson
Attorney General

March 9, 1961

Senator August W. Lauterbach
Chairman, Senate Ways and Means Committee
Senate Chamber
Topeka, Kansas

Dear Senator Lauterbach:

I have given careful consideration to Sec. 12 of the Bill of Rights in the Kansas Constitution because of the current proposal that an arrangement be made by which women whom our statutes require to be sentenced to our Womens Industrial Farm be incarcerated in the womens institution of the State of Missouri - the so called "Tipton" proposal.

Sec. 12 provides: "No person shall be transported from the state for any offense committed within the same". The question is whether the proposed arrangement would be in contravention of said Sec. 12. This calls for interpretation of the language used in said Sec. 12, in doing which it is a cardinal principle that the intent of the framers of the constitution must govern. As said in Hunt v. Eddy, 150 Kan. 1, this intent is the "pole star" of constitutional construction. It is not always easy to ascertain what the intent of the Wyandotte Convention was after the lapse of more than a century.

At the Bloody Assizes, the notorious Jeffreys sentenced to be transported to the West Indies hundreds of British subjects convicted of supporting the abortive insurrection of the Duke of Monmouth. It is also true that the white settlement of Australia began with convicts transported thither as a punishment for crimes. According to the Encyclopedia Britannica this use of that remote land began with an order in council in 1786 and ended in 1840. It may be noted that the United States Constitution written during this period contains no prohibition of transportation as a punishment for crime. Coming closer home, Roger Williams was banished from Massachusetts in 1635 by order of the General Court of that colony.

Even in our own time the penal colony on Devil's Isle in the Caribbean Sea has been a well known fact, but there is no evidence that Sec. 12 of our Bill of Rights was inspired by opposition to the French penal code. On the whole, it does not seem likely that the penalty of transportation as a punishment for crime explains that section.

A more probable explanation may be that this measure was intended as a protection for runaway slaves who might be convicted of crimes in this state. In 1859 slavery was the burning issue of the day, and the status of escaped slaves was of especial interest in those free states which bordered on slave states, particularly in view of the Fugitive Slave Act and the decision in the Dred Scott case. Ohio was such a free state and our Sec. 12 is copied from the constitution of that state. In these states it was recognized that exclusion from their borders of persons of color convicted of crime, exposed them to the danger of being again subjected to their former condition of servitude. To the free states this hazard made transportation an unduly harsh penalty for crime. It may be noted that these constitutional provisions tie together the ideas of conviction of crime and of transportation.

Although these are possible interpretations of the section, to my mind the proper construction of Sec. 12 is to give its language the usual and ordinary meaning attributed to the words used. So viewed, Sec. 12 forbids removal from this state of persons convicted of crime.

There is a striking lack of decisions precisely in point on the subject. There are cases which uphold acts of territorial legislatures directing imprisonment in the penal institutions of Kansas and Illinois of persons convicted in the territories of Oklahoma and Wyoming respectively. However two facts must be kept in mind: The territories had no constitutions of their own and the federal constitution contains no language such as our Section 12. On the other hand, the Texas Constitution uses the same language as ours, and in the interpretative commentary thereon in I Vernons annotated Constitution of Texas, p. 487, speaking of the punishment of transportation, it is said that the Texas Bill of Rights "by a broad prohibition effectively prohibits these practices as punishment for offenses committed in Texas."

Only the Supreme Court of this state can render a decisive construction of Sec. 12 and explain its meaning and its application to the proposed plan, but I can see no way by which such a decision can be had so long as the plan is only a proposal and no definite action is taken thereon. If the legislature thinks well of the plan and passes the proposed bill, I would deem it my duty to commence an action to test its validity without delay. In this way a determination of the legality can be effected prior to any substantial expenditure by the state under the act. Certainly it would be regrettable if a final decision of the question had to await the time when some Kansas prisoner confined in the Missouri institution tested the law by a proceeding after the time, effort and expense involved in carrying out the provisions of the new act.

It is my further opinion that if the compact is duly approved by congress and if the Supreme Court of Kansas finds the proposed legislation to be valid in so far as the Kansas Constitution is concerned, that would lay the matter to rest because I can see no federal constitutional question involved.

Very truly yours,

WILLIAM M. FERGUSON
Attorney General

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