

## VOLUME II

BEFORE THE SELECT COMMITTEE  
OF THE LEGISLATURE OF THE STATE OF KANSAS

In the Matter of

HOUSE CONCURRENT RESOLUTION NO. 1056T R A N S C R I P TProceedings held on April 11-12, 1973  
Statehouse  
Topeka, Kansas

Proceedings before the Select Committee of the Legislature of the State of Kansas at the Statehouse, City of Topeka, County of Shawnee and State of Kansas; on the 11th and 12th days of April, 1973; before the Members of the Committee as follows: Representative John F. Hayes, Chairman; Representative John C. Peterson; Representative William R. Novak; Senator Dan Bromley; Senator Bob W. Storey; Senator J. C. Tillotson; Representative G. T. Van Bebber; Senator John M. Simpson; Representative Walter W. Graber; Representative Paul Burke, Jr.; Representative Jim Parrish.

## VOLUME II

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REPRESENTATIVE HAYES: Gentlemen, I thought over night on this proposition and I think if we don't explore Mr. Brandt's statement a little more that we may be letting ourselves in for some criticism, and I didn't have time to contact all of you, but I did some members, and I've caused a subpoena to be issued for Mr. Sam Cohen to be here this morning to inquire into the subject of Mr. Brandt's statement.

(Documents used in prior testimony marked for identification by the reporter as Exhibits R, S, T, U, V, W and X.

KENNETH R. MCLAIN,

called as a witness on behalf of the Select Committee, being first duly sworn on his oath by Representative Hayes, Chairman, testifies as follows:

EXAMINATION BY REPRESENTATIVE HAYES:

Q And you are represented by Mr. Franklin D. Gaines?

A Yes.

Q Would you state your name, please?

A Kenneth R. McLain.

Q And where do you live?

A 6855 West 52nd Place, Mission, Kansas.

Q And what is your profession or occupation?

A. Architect.

Q. And by whom are you employed?

A. I am employed by the State of Kansas, the Secretary, Administration Department of the Division of Architectural Services.

QUESTIONS BY SENATOR TILLOTSON:

Q. The purpose of this hearing, I am sure you understand, is to determine whether there are any irregularities in the purchase of the New England Building.

A. Yes.

Q. Are you familiar with the facts and circumstances, the bill that was introduced into the Legislature?

A. I have read the bill, yes.

Q. You are familiar with that. You're ready to proceed to give your testimony to the committee?

A. Yes.

SENATOR TILLOTSON: Do any members of the committee have questions to ask Mr. McLain?

REPRESENTATIVE HAYES: Do you have an opening statement?

MR. MCLAIN: I have my office file that is on the building when this building came under consideration for purchase. It was felt it was my duty as the di-

rector of the Division of Architectural Services to have the building looked at from an architectural standpoint only and this was done by the gentlemen in my office and they have prepared a very short surface record of the architectural and mechanical and electrical conditions of the building, and this was done on March 26, 1973, and was submitted in memorandum form to Mr. Robert Brandt, secretary of our department of administration.

EXAMINATION BY REPRESENTATIVE HAYES:

Q You understand, Mr. McLain, that is beyond the scope of our assignment to inquire into the condition of the building for the value. We're only inquiring into any alleged improprieties or irregularities.

A Um-huh.

Q Do you have any knowledge of any alleged improprieties or irregularities?

A No, I do not.

Q Have you ever discussed this matter with Mr. Thomas M. Van Cleave, Jr.?

A Only on a surface situation, mostly after the building had been vetoed and then very surfacely.

Q After the bill had been vetoed?

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A. Yes.

Q. Could you state generally to the committee the nature of your consideration with Mr. Van Cleave?

A. Oh, the statements that I made were primarily that in a conversation, primarily again involved around the architectural considerations of the building, and we had discussed the fact that some brick had fallen off in the last month of the building, and things of that nature was what the conversation was.

Q. Was there any mention made of a particular option agreement for the purchase of the building?

A. Not with me, sir.

REPRESENTATIVE HAYES: Do members of the committee have questions?

QUESTIONS BY SENATOR SIMPSON:

Q. Did you ever discuss this matter with the Governor?

A. No, sir, never.

Q. Did you ever recommend to Mr. Brandt or anyone that the purchase be vetoed?

A. No, sir, I did not.

QUESTIONS BY REPRESENTATIVE VAN BEBBER:

Q. Were you contacted by any members or employees of the legislature about this building?



A. I was contacted by employees?

Q. Yes. That would be administrative assistants, persons of that kind, who would be employed in the Legislature.

A. No.

Q. Were you ever contacted by any members?

A. Yes, I was contacted by Representative Loux.

Q. Representative Loux?

A. Yes.

Q. And was that before you made your inspection and examination of the building?

A. No, it was after.

Q. What prompted you to make an inspection of the building?

A. In respect that the director of the division of architectural services is in charge of all properties that would house State agencies and that Mr. Brandt had asked me to go down and look at the building.

Q. He made a request?

A. Yes, verbal request.

Q. No member of the Legislature asked you to do this?

A. No.

Q. And the only person to whom you made a report is Mr. Brandt?

A. To Mr. Brandt.

Q The only other representative of the Governor's office or the executive branch with whom you had conversation is Mr. Van Cleave. Is that what you're saying?

A Oh, it was just a conversation is exactly what it was and there were, I believe, two or three members of the Governor's office sitting around and just kind of a casual conversation.

Q Where did that take place?

A At Mr. Van Cleave's desk.

Q And he asked you to come down there?

A No, no.

Q Had you gone to see him?

A Not on that matter. I had gone in there on other business.

QUESTIONS BY SENATOR BROMLEY:

Q Mr. McLain, as the architect, State architect for the State of Kansas, is it your duty to report to the Governor at various intervals, on different conditions of State structures and how they are operated?

A There is no set procedure on that, but it is my duty, yes, to keep the Secretary of Administration and the Governor's office informed of all conditions of all State buildings, yes.

Q Now, when Mr. Van Cleave inquired of you, this was before the Governor had vetoed the bill, right?

A Yes.

Q Did you have any other inquiries from anyone else like, for instance, Mr. C. Y. Thomas? Do you know C. Y. Thomas?

A I have met Mr. Thomas, yes.

Q Did he make any inquiries of you as to the structure?

A No, he did not.

Q Did Don Matlack discuss this situation with you prior to the Governor's veto message-- or do you know Don Matlack?

A Yes, I know Don Matlack, yes.

Q Have any of the Legislators inquired of you as to the structural soundness of this building since you have made this inspection? Would that material have been available to them as well as the Governor's office?

A Yes, Representative Loux did ask for the report that I had made and I did take it over to him.

Q Did he ask for this before the Governor's veto or after the Governor's veto?

A It was after the Governor's veto.

Q After the Governor's veto?

A. Yes.

Q Did Representative McGill inquire of you as to the soundness of the structure?

A. No.

Q In other words, the only one that did inquire of any information that you might have had regarding the structural soundness in this building, was Mr. Van Cleave?

A. Well, his-- like I say, I was in there on other business and this memorandum was requested by Mr. Brandt and it was just a conversation is all on just things in general with Mr. Van Cleave. It was not pertinent to this building, no.

Q Is it or is it not customary that as the State architect, you are in a position that you should give advice to Mr. Brandt or possibly the State Fire Marshall or other people?

A. Very definitely, very definitely.

Q You never did discuss this with the Governor personally?

A. No, no, sir.

Q Thank you.

QUESTIONS BY REPRESENTATIVE VAN BEBBER:

Q I'm a little confused, Mr. McLain. My notes say that a

few minutes ago you testified that you discussed this with Mr. Van Cleave after the veto. Is that-- did you say that?

A. It was all conversational.

Q. This was after the veto?

A. Yes.

Q. And a little later you stated that you had a conversation with Mr. Van Cleave before the veto?

A. You are asking me to go back memory-wise. It has never been a formal meeting with me and Tom Van Cleave on this building. There may have been some surface comments made. I just can't remember.

Q. Well, I understand that, but I just wanted to have the record clear as to when you had your conversation with him, whether it was before or after the veto. It seems to me you testified both ways and I think you should decide which way it was.

A. I think it's true and I just--

Q. (Interrupting) What's true?

A. That you don't remember.

Q. All right, so you're saying you don't remember whether it was before or after?

A. I before talked to several people in the Governor's

office on numerous times.

Q I'm not trying to embarrass you or put you on the spot.  
I just want the record to be clear.

A. I did talk with him very definitely in a conversational matter after the veto.

Q After the veto?

A. Yes, I imagine there was some conversation or statements made before the veto, but they would have been just conversation and very passive.

Q All right.

REPRESENTATIVE HAYES: Any other questions of Mr. McLain?

QUESTIONS BY SENATOR BROMLEY:

Q Have you had any conversation with any of the alleged owners of this building?

A. No, none whatsoever.

Q Has anybody-- do you know who the owners of the building are?

A. No, I do not. The name in the paper has an option on the building, Harbes, or something like this. This is all I know about that.

Q You know Mr. David Neiswanger?

A. No, I do not.

Q Do you know Mr. William Hall?

A No, I do not.

Q Do you know Mr. Steven Hall?

A No, I do not.

Q Has anyone whatsoever ever been a State Legislator, an agent employed by the State of Kansas, contacted you or tried to discuss this matter with you prior to or after the veto message?

A No.

SENATOR BROMLEY: Thank you.

QUESTIONS BY REPRESENTATIVE VAN BEBBER:

Q Well, how were you shown through the building? Who showed you through it?

A Well, I had Mr. Frank Amgate, who is head of the engineering department at the Division of Architectural Services, Mr. Lou Kruger who is the assistant director of the Division of Architectural Services, Mr. Pogomeier of the planning section, and Mr. Counter with the construction document section, just walked down there, made a survey, they did a surface investigation and they have talked to several of the tenants in this building and it was done in part of a day, and then, of course, Mr. Kruger came in and we went over the material and the re-

port was written from that.

REPRESENTATIVE GRAEBER: Who conducted, who took you through the building?

A. No one, they just went down there.

REPRESENTATIVE HAYES: As I understand, Mr. McLain, you did not go through the building?

A. No, I did not go down.

QUESTIONS BY SENATOR BROMLEY;

Q. To your knowledge, Mr. McLain, did this Mr. Lou Kruger or any of the people who supposedly are working under you as staff, did they make any formal report on the New England Building?

A. They made the report in memorandum form.

Q. Would you make this report available to this committee?

A. Certainly. And I also have in that report, I do have the fiscal notes that were prepared by the budget division on the amount of cost to retire the bonds on the building and things like that. Now, that, of course, is in answer to the bill, the fiscal note on the bill.

Q. Is it, to your knowledge, has any of your agents or assistants employed by you made any recommendations to any branch of the Kansas State government, executive or legislative?



A. To my knowledge, the only piece of material of the Division of Architectural Services is in this memorandum.

Q. Now, this material you have before you, is that available to public as well as private-- I mean, could the Governor's office search this or could the legislative branch, legislative aides, come to your office and avail themselves to that information?

A. Yes.

SENATOR BROMLEY: Thank you, Mr. McLain.

QUESTIONS BY REPRESENTATIVE VAN BEBBER:

Q. Is there any doubt that these men work for you?

A. The ones who--

Q. (Interrupting) Yes.

A. No, no doubt at all.

Q. Senator Bromley said that they supposedly worked for you. I just wondered if there would be any doubt about it.

A. No, there's no doubt about it at all.

REPRESENTATIVE HAYES: Mr. Connolly, yesterday, we elected to ask you during the interrogations if you had any questions. If you do want to question, why, feel free to do so.

MR. CONNOLLY: Thank you.

REPRESENTATIVE HAYES: Do you have any questions?

MR. CONNOLLY: I do not have any questions.

REPRESENTATIVE HAYES: I believe that's all the questions.

MR. MCLAIN: Thank you, gentlemen.

MR. GAINES: Mr. Chairman, Members of the Senate, Members of the House, I indicated to you yesterday on behalf of the Secretary of the Department of Administration and in behalf of the Director of Architectural Services, that I wanted to make a statement to the committee and I would like to proceed to make that statement at this particular time. Now, the first thing I want to say is that I counseled these gentlemen and I suggested to these gentlemen that they cooperate in every way with this committee's investigation. I think it's very important. I have great respect for C. Y. Thomas. Of course, he's not mentioned by name in that resolution, but at the same time I wanted the air cleared. At the same time, I appear here at the request of the Senator minority leader in my respective position known in many respects as a minority party whip and I appear in here because these gentlemen are appointees of the administration and

they needed counsel to the extent that I might relate to the legislative functions. Now, with complete respect to the Chairman, who I have complete, total, legal respect for, I do question these proceedings. I question them to the extent that going back to a basic law school concept that the legislature has the right to investigate, for the purpose of passing laws, but does not have the right to investigate to see whether or not crimes have been committed and criminal actions should follow. I will be making a request of the Kansas Attorney General's office as to the constitutionality of these proceedings because I feel that they are entirely unconstitutional, but at the same time, to bring these gentlemen into it and we would have done it without subpoena, we would have done it voluntarily, and provide any information you might want involving these transactions. Before closing, I might state that these gentlemen are somewhat under harm in the Senate chamber itself. I've been pushing for the confirmation and this confirmation has been held up and held up and held up and the dialogue still goes on and I feel that there has been a harm

at their head, that even without the harm at their head, I'm telling you they would have cooperated with you. I thank you for the courtesies you have extended to me and also to them.

REPRESENTATIVE HAYES: Thank you. Your remarks will be made part of the record.

ROBERT WOOLF,

called as a witness on behalf of the Select Committee, being first duly sworn on his oath by Representative Hayes, Chairman, testifies as follows:

EXAMINATION BY REPRESENTATIVE HAYES:

Q Would you state your name, please?

A Robert Woolf.

Q Where do you live, Mr. Woolf?

A Where do I live?

Q Yes, sir.

A I live in Kansas City, Kansas.

Q And what is your business or profession?

A State Fire Marshall.

Q Under the statute which these proceedings are being conducted, you have the right to have counsel with you at the hearing to advise you. Do you wish to waive your-

self of that right?

A. Yes, I feel Senator Gaines isn't here and I feel I can continue without him.

Q. Are you waiving the right to have counsel?

A. Yes.

Q. All right, sir, the purpose of the inquiry, as you probably know, is to inquire into any alleged improprieties or irregularities in the negotiations which may or may not lead to the purchase of the New England Building and adjacent properties. Are you aware of that?

A. Yes.

SENATOR TILLOTSON: I have no questions.

REPRESENTATIVE VAN BEBBER: I don't have any questions. Well, do you know of any improprieties?

A. No, sir.

QUESTIONS BY SENATOR BROMLEY:

Q. In the carrying out of your duties, are you, do you work closely with the public service director, the building inspector, so to speak, of the City of Topeka?

A. Yes, we do. We follow this policy in any corporate setting.

Q. Is he under your jurisdiction or--

A. (Interrupting) No, sir.

Q Do you know of any action that may have been taken recently regarding the New England Building in the way of an inspection?

A Yes, the building was inspected by the City Fire Marshall, and the Deputy State Fire Marshall.

Q Did you disclose the results of that inspection to any member of the legislature or any member of the executive department of the State of Kansas?

A The letter in the inspection was directed to Mr. Kenneth McLain, State Architect. It was at his request that we inspect the buildings.

Q Has any-- are you acquainted with or do you know any of the people that are the owners of the New England Building?

A No, I don't.

Q Do you know Mr. C. Y. Thomas, former State Senator?

A Yes, I know Senator Thomas.

Q Do you know Mr. Thomas Van Cleave?

A Yes, I do.

Q Don Matlack?

A Yes.

Q Have you discussed any of the conditions of this building with any of these three people you just mentioned?

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A. Yes.

Q. Was this before the Governor's veto message or after?

A. After.

Q. Who did you discuss it with?

A. Well, with Tom Van Cleave and the architect and so forth. They wanted to know basically if there was anything additional to the original fire inspection that we made that we wanted to impress upon them and we didn't have anything additional to add to our additional inspection.

Q. Did you make any formal report of any kind to the Governor's office directly?

A. No.

Q. The only reports you made were to the State Architect?

A. That's correct. I have plenty of copies of that, by the way, if you gentlemen don't have it. I would be happy to present them.

Q. Do you know of any reason why the Governor may have vetoed the bill that authorized the purchase of this building?

A. No, I don't, really. I know nothing more than what I read in his veto message and I didn't read that until the committee sent me a copy of it.

Q. Did anyone from the Governor's office contact you and

make any inquiries about the condition of the building before this action was taken?

A. No.

Q. Has any of them contacted you since the veto?

A. Regarding what, now?

Q. Regarding the condition of the building.

A. No, other than what I have stated briefly and that was when I received the communication from the committee. I had notified the Governor's office and made them aware of the fact that I was coming over to the committee and I was basically in the dark myself. I didn't know what it was all about.

Q. In the carrying out of your duties in inspecting this building, was there anything knowledgeable ascertained by you that would have disclosed that there were some improprieties regarding the cost of the building?

A. No, sir. The only thing that was discussed was my fire inspection report.

SENATOR BROMELY: I believe that's all I have.

REPRESENTATIVE HAYES: Any other questions?

QUESTIONS BY REPRESENTATIVE PETERSON:

Q. I'm interested if Mr. Van Cleave, after the bill had been vetoed, came and asked you if there were any addi-



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tional problems with the bill? Can you recall what-- or did he ask you to make a further inspection?

A. No.

Q. What exactly was his request?

A. He just-- basically it was a question he was asking if there was anything in addition to the fire safety inspection report from a fire protection, fire safety standpoint, and I told him no, that everything, to my knowledge-- I didn't inspect the building personally, and everything to my knowledge was included in the report which is--

Q. (Interrupting) Any additional impediments to the building, that is, problems with the fire safety?

A. Yes.

Q. Did he make any request like that before the--

A. (Interrupting) No.

Q. (continuing) bill was vetoed?

A. No.

REPRESENTATIVE HAYES: Any other questions? All right, thank you, Mr. Woolf.

(Mr. Thomas Van Cleave recalled to the stand, being advised he is still under oath, gave the following testimony:)

QUESTIONS BY SENATOR SIMPSON:

Q Last evening, Mr. Van Cleave, you and I had a fairly brief conversation in regard to this purchase of the New England Building, do you remember that conversation?

A I recall we had a conversation.

Q Okay. At that time you indicated to me that you wondered if there was some connection between the option that Mr. Harbes has on the New England Building and the possibility of him having an option on the property being purchased or considered for purchase for the State Historical Society. I think that's the property.

A I just merely asked a question. I don't have any information, as I recall. I just asked a question.

Q What was your question?

A Well, my question was, basically, who had the option on the Historical Society, if anybody does, I don't know.

Q Do you have any indication that Mr.--

A (Interrupting) No.

Q (continuing)..Harbes may have this?

A No, none whatever.

Q You didn't imply that at all?

A No, I certainly didn't intend to. Now, we haven't had that bill, but, of course, I am down in the office, but of course, I want to get all the facts on any kind of a

bill. I wasn't, and certainly didn't, have no intention of implying that at all.

Q You have no reason to believe that Mr. Harbes would have any connection at all?

A No, none. None, I don't know who owns that property, frankly.

Q Do you know anything about the arrangements Mr. Harbes made that he may be getting a commission out of the sale of this property? You indicated this to me last night.

A I don't know. That's the only thing that I know is that there could be, possibly, a commission. Now, whether it would go to Mr. Harbes or whether it would go to Mr. whatever the other gentleman's name, why, I don't know, but there could be a commission?

Q Well, I think there probably obviously will be.

A Right.

Q But you don't know?

A No.

Q That Mr. Harbes would have any interest in it at all?

A No.

Q Or no one has ever indicated to you that he would in any way?

- A. No.
- Q And you don't have any reason to believe that?
- A. No, I don't.
- Q You also discussed with me a matter of a finder's fee.
- A. Yes.
- Q Do you know anything about a finder's fee?
- A. No, I do not.
- Q Why did you--
- A. (Interrupting) Well, the only reason I brought it up was you were on the committee and I thought that you should determine this.
- Q You have no idea about any finder's fee?
- A. No, sir.
- Q That would go to Mr. Harbes?
- A. No, the only reason I brought it up to you, Senator, was so you could inquire.
- Q So, you have no knowledge other than that?
- A. No, only to discuss it with you, so you could inquire.
- Q On a little different subject, I was interested in your efforts about this option we discussed yesterday. You mentioned yesterday, I believe, that you talked with Mr. Taggart?
- A. I talked with he and my recollection was that was the

first that it had come to my attention to an option. Now, I might have read it in the paper. I'm just saying that there was my recollection of it, but I did discuss it with him, that I absolutely don't recall whether or not that was the first knowledge I had.

Q He also-- did you discuss the matter and find out some information about this option? Who did you discuss that with?

A Well, I asked Representative Loux and I asked-- well, and I talked to Bill Hall.

Q Anyone else?

A Not that I can recall on the option. I may have, but not to my recollection.

Q Did you ever attempt to contact Mr. Harbes?

A No.

Q Why did you not attempt to contact him?

A Well, because I talked to the owner or one of the owners.

Q Then, you felt that was far enough to pursue the matter?

A Well, he was very reluctant to discuss it and I figured that if they didn't want to do it, I mean, there was-- and I'm sure it had existed, but I wasn't certain that I could have gotten it from him because, of course, he would have to have a copy. There's no question about that,

if one existed.

QUESTIONS BY SENATOR TILLOTSON:

Q Mr. Van Cleave, you testified yesterday you've made some inquiry as to the option, who might hold the option.

Did you make any inquiry of the Ways & Means Committee as to who might hold the option?

A. Only Representative Loux. Senator Matlack talked to Senator Doyen to obtain a file, if he could.

Q Were you aware of the fact that on March the 20th, Mr. Harbes appeared before the Ways & Means Committee?

A. No, I'm not.

Q You didn't make any inquiry as to members of the minority party, members of the Senate committee, Ways & Means Committee? I'm talking about the Senate Ways & Means Committee.

A. Right.

Q You are not aware of the fact that he appeared at that time and stated that he had an option and what his option price was?

A. I'm not aware of it.

Q But you made no inquiry of the Senate Ways & Means Committee at that time?

A. No, I didn't, even though he had testified, sir.

QUESTIONS BY SENATOR STOREY:

Q · Mr. Van Cleave?

A. Yes, Senator.

Q Did you state yesterday that you didn't know Mr. Harbes had an option till you read it in the paper?

A. Well, I had-- frankly, I didn't know till Senator Tillotson just said now that there was an option. I didn't know that.

Q Didn't Mr. Bill Hall, William Hall, tell you that Mr. Harbes had an option on the property when you talked to him?

A. He indicated that he did, but I, of course, I inquired of him about the terms and so forth, and it wasn't clear to me as to whether he was on a commission status or whether he actually had an option.

Q You didn't understand Mr. Hall to tell you that there was an option?

A. I understood there was an arrangement, but that it wasn't clear from my conversation with him whether or not it was an actual option or it was a contract on a commission basis. That wasn't clear, and so I didn't get any definite impression from my conversation with him that there actually was one. There was some type of

arrangement, Senator, but I couldn't-- I didn't get clearly from his conversation what the actual arrangement was.

Q Now, this was before the veto, wasn't it?

A Yes.

Q Then, your testimony would still be that you didn't know anything about an option?

A Well, my testimony, yes, my testimony is that I knew there was some arrangement. Bill Hall said there was an arrangement, but I wasn't sure from my conversation whether it was an actual option to purchase or a real estate actual commission deal.

Q Did Mr. Hall tell you that you would have to talk to Mr. Harbes concerning the purchase?

A No, not that I recall.

Q At any time did Mr. Hall mention to you that Mr. Neiswanger was the agent of the building?

A No, I don't recall that. I had seen correspondence some time back about Neiswanger, but I don't recall that. I'm not saying he did or didn't, but I just don't recall it.

Q Let me ask you this. If you recollect, what did you ask Mr. Hall?



A. Well, I asked Mr. Hall what the arrangement was and as I understood the conversation at that time, there was a contract, but I wasn't sure from the conversation just what type of an arrangement it actually was and, of course, I said I wanted to get a copy and so I asked him what the terms of the arrangements were or when it was entered into and he said, "I can't give you that information," and then I asked him what was the arrangements, so to speak. I mean, was he going to actually purchase the property under purchase option agreement or was it just strictly on commission type of arrangement, and I'm not-- I can't recall now just exactly what the answer was, but it runs in my mind that he said, "Well, I would rather not discuss this with you," or words to that effect and I've known Bill and I wasn't going to push him.

Q Was Mr. Hall the first person you contacted about the purchase?

A. No, I talked to Representative Loux.

Q Okay, and did Mr. Loux tell you that Mr. Hall was the person to see?

A. No, now I knew Bill had an interest in it.

Q You knew Bill had an interest in it?

A. Sure, because of the conversation several years back.

Q. So, your original intent of going to Mr. Hall was to just find out from the owner if the building was for sale and what the circumstances were.

A. And because I had heard and I say it was hearsay, I heard there was an option agreement at that time and--

Q. (Interrupting) Do you remember when you first heard that?

A. I don't recall, as I say, whether it was my conversation with Senator Taggart, whether I read in the apper--

Q. (Interrupting) That would have been before the newspaper article?

A. Pardon?

Q. That would have been before the newspaper article, before the veto message?

A. Oh, it was before the veto message.

Q. Then, you had heard some place that there was a possible option?

A. Yes.

Q. So, you went to Mr. Hall to ask him about this option?

A. I did. I asked Representative Loux and Mr. Hall about some--

Q. (Interrupting) And Mr. Hall did say that Mr. Harbes--

A. (Interrupting) He said he represented him, yes. I mean,

that he was representing them in their transaction.

Q Do you know Mr. Harbes?

A No, never seen him.

Q Did you try to contact him after your conversation with Mr. Hall?

A No.

Q So, he had never refused to turn a copy of the option over to you?

A Not to me, no.

Q Had Mr. Hall stated whether or not that he didn't really have the option or know the terms of it?

A Well, he did want to discuss it and I can't remember whether he said he didn't know on the day it was signed or whatever, whatever the contract arrangement was. You see, before this, I had talked to Representative Loux. Representative Loux, either Representative Loux or his assistant or his secretary-- well, I had asked him if he would get the option for me and Representative Loux, or I mean one of his representatives, called me back and, as I recall, this was done on a Friday, and he called me back and said, "I'll have the agreement for you Monday morning."

Q That's when they tried to get it from Senator Thomas?

A. I don't know. I don't know who Representative Loux contacted.

Q Well, there was testimony yesterday that Representative Loux and an administrative aide went to Senator Thomas to obtain it and he didn't have it, so he called you and told you it wasn't available.

A. I can't remember that. I can't remember, I recall the first conversation when they said they would have it the following Monday morning.

Q Well, after Mr. Hall told you or didn't discuss the option and told you that Mr. Harbes had an arrangement on it, who next did you contact to obtain a copy of the option?

A. We didn't contact anyone. I mean, except Senator Matlack contacted Senator Doyen and asked for the file.

Q Any document introduced on that meeting on Ways & Means?

A. I wanted his file on this particular bill.

Q There weren't any documents introduced that day, to the best of my knowledge, to find out, so the option wasn't available to the Ways & Means Committee.

A. It was not?

Q Right. They didn't introduce a copy, as far as I know.

A. I say, I don't know.

Q After you requested that and you did not receive it from the Ways & Means, did you approach anyone else about obtaining this option?

A No.

Q So, that was the end of the option as far as you were concerned?

A Right.

Q And that was all before the veto?

A Right, all before the veto.

Q Then, at the time of the veto message, you had no copy or had never seen a copy of this option?

A That is absolutely correct.

Q Is it your testimony, Mr. Van Cleave, that you could not get a copy of the option?

A Well, I didn't-- I was, in my efforts, I was unable to get one, yes.

Q Now, did you talk to Mr. Hall in 1969 or 1970 about the possible purchase of the New England Building?

A I'm sure I did. I mean, it just runs in my mind I did.

Q Well, you stated yesterday that that could have been bought for four hundred thousand, I believe, in 1970?

A That's my recollection.

Q Do you remember where you got that information?

A. I'm not absolutely certain. I wouldn't want to say with certainty. It runs in my mind some place, there was some correspondence regarding that and I can't remember who it was from or my memory is-- I just can't recollect.

Q You don't remember who you talked to?

A. No, I don't, and I don't-- I talked to Bill Hall about it, as I recall now, and that may not be correct, but that's just my recollection. That was three years ago and I didn't take any notations or anything else, of course, I knew he was quite anxious and, of course, that was the time of the First National Bank transaction and both of them were interested in either selling or leasing.

Q Did you-- do you remember if you talked to Mr. Bob Brandt about the purchase?

A. Oh, I have, yes.

Q About the purchase price of the New England Building?

A. Yes.

Q And when was this?

A. Oh, I've talked to him-- oh, I think, I don't know. I've had several conversations, some recent, some not recent.

Q But your best recollection is that the building was

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tentatively offered for four hundred thousand to the State?

A. Yes, sir, four hundred thousand.

SENATOR STOREY: That's all I have.

REPRESENTATIVE HAYES: Any other questions?

QUESTIONS BY SENATOR SIMPSON:

Q Mr. Van Cleave, when did you first become concerned about this option or had some interest in it?

A. Well, as I say, if I could-- I mean, I can't recall whether or not the first information I had was from Taggart, the newspaper, or where, but I did get some information and I did talk to Senator Taggart about what knowledge he might have of an option and he didn't have any knowledge that such existed, frankly, and I hate to quote him because it's hearsay. He told me that-- if this is permissible....(trailing off)

REPRESENTATIVE HAYES: Yes.

A. He told me that Bill Hall had talked to him and had asked him his advise on giving an option. Now, that's all he said so I didn't have any information, actually, from him, that there was one in existence.

Q But you thought probably there was one or had some indication there was one?

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A. I thought some type of a paper, and I wasn't certain just what it was.

Q. Would this have been in January, February?

A. This year?

Q. Of this year.

A. I tell you I just hate to state. It was this year, after the first of the year.

Q. How important is this option in this deal to you?

A. Well, it was to me very important to get the terms of it. Number 1, I wanted to find out when it was signed; Number 2, what the consideration was and how much was paid for it among other things, because that, to me, would have a lot to do on how much the State should pay for the building, and that was a vital fact in my way of thinking.

Q. So, it's very important about the terms of this option as far as you are concerned?

A. It was to me.

Q. Perhaps the most important factor that was unknown?

A. It was.

Q. Well, then, on February 28 there was an article in the Topeka Journal or Topeka Capital, showed that Mr. Harbes had the option. Are you aware of that?



A. No, I'm sure there was an article, but I don't know when.

Q. There were articles on March 8th and March 14th and March 22nd, that indicated that he had the option. Were you aware of any of these articles?

A. I'll be frank, I don't read the newspapers when I'm up here in the session. I hate to tell this to my friends.

Q. But you knew there was considerable publicity about this option and matters about the option were in the paper, but you never contacted Mr. Harbes about this option?

A. No, never did. I contacted one of the owners of the property.

Q. Even though you admit it was extremely important to this particular transaction?

A. Yes, sir.

EXAMINATION BY REPRESENTATIVE HAYES:

Q. Mr. Van Cleave, I may have misunderstood you, but I thought you said that you learned of the existence of an option either from Senator Taggart or by reading it in the paper.

A. Well, I say undoubtedly I did, but when he was talking about all the days of the paper-- now, when I say I don't read the newspaper, it's very seldom that I do read anything concerning legislative activities and so

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forth.

Q Now, would you search your mental files and to the best of your ability, tell the committee at what point in time you learned of the existence of this option?

A Well, when you say learned--

Q (Interrupting) All right, heard of the existence.

A Heard of-- well, I would say it would have been in February sometime.

Q And--

A (Interrupting) I think it might have been the last, but I sure wouldn't want to say that.

Q All right. I'm not asking you to, but let's assume that you heard of it the last of February and did you hear that the optionee was a Mr. Harbes?

A Yes, I think I did. I think-- well, I'll put it this way. I think that my recollection is that Mr. Taggart said that that was who Mr. Hall said he might give an option, or was thinking about--

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Q All right, and from the last of February till the afternoon of April 3rd you made no effort of any type, kind, or nature to contact Mr. Harbes and ask him for the option?

A No, I did not. I don't know the gentleman.

Q And you did not at any time make any effort to contact Mr. Neiswanger?

A No, sir. I didn't really know what his connection was and, of course, I know of nothing about appearances before either the House or Senate Ways and Means Committee.

Q Now, yesterday you testified that you learned from a confidential source that former Senator Thomas and Mr. Harbes had had some association together in past years.

A On one project.

Q And you said you immediately proceeded to check that out. Now, can you tell the Committee when you learned of that supposed association and when you checked it out?

A Well, I think that was, if I recall correctly, around the last of February or the first of March and I checked it out immediately.

Q. So, somewhere around the first of March you knew without doubt that the confidential information you received was untrue?

A. Right.

REPRESENTATIVE HAYES: Representative Peterson, did you have some questions?

QUESTIONS BY REPRESENTATIVE PETERSON:

Q. Well, the confidential source that you refused to reveal was not a client of yours, we're not talking about attorney-client relationship?

A. No.

Q. It wasn't someone giving confessional?

A. No, no one confessed anything to me.

Q. That leaves it could be the Executive, Chief Executive of the State, in which case you probably would not have to state it, or what is your theory of law for refusing to tell us?

A. Well, I would prefer to keep this source confidential.

Q. It's obviously not a very reliable source.

A. No, it certainly wasn't. I would certainly agree with you on that.

Q. But, the problem is the Committee is trying to determine whether in fact there was any business--

there may be that we have not found out yet.

A. Well, I don't know. I mean, to my knowledge, there isn't.

Q. But there may be to the knowledge of someone that there is. All right, you stated yesterday that you had never, you have never stated to anyone that there was any innuendo of any business dealings between those two gentlemen or any wrongdoing?

A. My recollection is that I have never said anything on any wrongdoing or any dealings. That's my recollection.

Q. Nor that the Governor's Office or you or anyone to your knowledge had any other information?

A. No, no one in the Governor's Office had any other.

Q. Except our confidential source.

A. Nothing that I had any information about or anyone else.

Q. Do you recall the time at which you informed Senator Gaines that (a) the Governor had clearly determined to veto the bill and (b) that he was going to announce so at the press club.

A. Well, I think I told him that night, the night--(interrupted)

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- Q. Night of April 3rd?
- A. That's my recollection.
- Q. Could you, to the best of your ability, relate the entirety of what you informed Senator Gaines of at that time?
- A. Well, I think basically that I basically told him what was in the message.
- Q. Did you mention Senator Thomas' name in that discussion?
- A. I don't recall whether I did or not, but if I did it was only that he had gotten the figures that I have shown.
- Q. You did not mention any possible, even hint of wrongdoing on Senator Thomas' part?
- A. No, certainly didn't. That's my recollection, but the message had already been written.

REPRESENTATIVE HAYES: Have you concluded?

REPRESENTATIVE PETERSON: Yes.

QUESTIONS BY SENATOR BROMLEY:

- Q. Mr. Van Cleave?
- A. Yes, Senator.
- Q. Do you know who the members--oh, I suppose you would call them the arbitrators on the part of the State of

Kansas, do you know who the members were who were negotiating?

A. No, sir. No, sir, the only thing that I had seen was a memo which I say I hate to discuss because I don't know where it is.

Q. Do you have any knowledge of who was negotiating the transaction on the part of the people who owned the New England Building?

A. No, sir.

Q. Do you have any knowledge of the date that House Bill 1568 was introduced?

A. No, I checked it, but I don't have it as of now.

Q. Well, I'm a little bit concerned about the fact that this Rick Gammill--exactly, what are your duties?

A. What are my duties?

Q. Yes, sir, as Governor's Liaison Officer.

A. Well, that's, they're kind of hard to define, Senator, except that supposedly the relationship between the Executive and Legislative Branch of Government.

Q. Now, or are your services available to the House of Representatives and also the--(interrupted)

A. Yes.

Q. (Continuing) --Senate?

A. Yes, I have no specific duties as such. However, we have, Senator Matlack and myself, have divided it up where Senator Matlack does primarily be the liaison for the Senate and I'm primarily with the House.

Q. Well, do you know Mr. Rick Gammill?

A. Yes, I know him.

Q. And his capacity is administrative aide to Representative Loux?

A. That's correct, he was. I don't know whether he still is or not.

Q. Could you explain why Mr. Gammill testified that Mr. Loux asked him to get a copy of this option and he reported back to you and told you he couldn't get it?

A. Well, as I recall, he was in Mr. Loux' office when I went up to get the file and I think Mr. Loux asked him to give me the file and then I said that I wanted the option if one existed and Mr. Loux said, as I recall, they called me back and said one would be available the following Monday, then, I assumed. They called back and said they couldn't get it. I mean, that undoubtedly is true.

Q. Have you discussed this situation with anyone since



your yesterday's testimony and today?

A. Oh, I think I visited with Senator Steineger, Senator Matlack, and undoubtedly Senator Gaines. Senator Gaines, I think, my discussion with him was that this was unconstitutional and I told him that I hadn't looked up any law, but that was my basic conversation with him.

SENATOR BROMLEY: Thank you, Senator.

QUESTIONS BY SENATOR STOREY:

Q. Mr. Van Cleave, after two days or a day and a half of hearing, it seems to boil down that the real key to this is Mr. or Mrs. X or it, whatever it is, the confidential source.

A. Oh, well--(interrupted)

Q. Could you just let me ask you a subsequent question?

A. I'm not trying to protect anybody.

Q. Could you tell me whether the confidential source contacted you and told you this directly, did it or he or her say that you should check into this because it could be--(interrupted)

A. No.

Q. Well, how did that come about, the contact to you? What was said between you and Mr. or Mrs. Confidential?

- A. He said that Senator Thomas and Mr. Harbes were involved or had been involved in White Lakes Shopping Center together.
- Q. Would you agree with me that the implication of that statement to you would automatically throw some possibilities of some irregularities in this purchase?
- A. Well, no, it wouldn't because I've known Senator Thomas. I don't know Mr. Harbes, but I've known Senator Thomas. To me that wouldn't make any difference to him and if he were negotiating--(interrupted)
- Q. And it wouldn't to you?
- A. No.
- Q. But evidently the information came to you from someone who thought that might cause some irregularities.
- A. Yes, it wasn't--(interrupted)
- Q. You would agree with me, then, that that person told you that for the reason that they thought there might be some irregularities?
- A. Sure, but I wasn't gullible enough to agree with that.
- Q. You would agree with me, then, that that is probably what caused most of the turmoil about these proceedings?

A. Not to me.

Q. Well, I'm talking about to everyone else.

A. Yes, it could.

Q. Would you agree with me or would you not agree that part of the Governor's Message in requesting a special committee, part of that had to be contributed to an outside deal?

A. No, no.

Q. Not at all?

A. Not at all. All it was was trying, number one, as I tried to say yesterday the Governor's two concerns were: Number one, the advisability of buying the property; number two, was are they paying an exorbitant price or is an exorbitant price going to be paid.

Q. Well, Mr. Van Cleave, for the purpose of this Committee and certainly me, you know, is not to embarrass anyone.

A. Right.

Q. We have a job to do and in my opinion, it may not be that of the Chairman of the Committee, that that one person started quite a bit of turmoil about giving you this information and I would request that that be

disclosed.

A. Pardon?

Q. I would make a request that the name be disclosed.  
You may refuse.

A. Well, let me tell you this. I don't have any reason to protect anybody, but can I submit the name in some way to you?

Q. I don't know if the Chairman would desire to go into Executive Session or how you want to handle this, but I think this name has caused some of the trouble.

REPRESENTATIVE HAYES: The Chair shares your request and will entertain a motion to go into an Executive Session. All in favor raise your right hand. The motion fails.

EXAMINATION

BY REPRESENTATIVE HAYES:

Q. Mr. Van Cleave, let me ask you this. Is it going to be personally embarrassing to you?

A. That's the problem, frankly.

REPRESENTATIVE PETERSON: Mr. Chairman, I might explain my reason for not voting in favor of that. I don't think we're going to be available because I think immediately upon calling the name, we're going to want

to call the individual before the Committee and I don't think we're going to be able to keep this--to keep this secretive nor do I think we should. An individual calling the Governor's Office, giving information that that individual or some other individual certainly handed out to many other people if it went no further than Mr. Van Cleave.

MR. VAN CLEAVE: Well, I'm sure I'm not the only one.

REPRESENTATIVE PETERSON: He obviously contacted many others or somebody else did.

QUESTIONS BY SENATOR BROMLEY:

- Q. Mr. Van Cleave, you stated that the concern was with an exorbitant price.
- A. Yes, sir.
- Q. Now, would you define exorbitant to me, please?
- A. Well, I'll put it this way, Senator. I was convinced from the information that I had two years ago that this property could have been purchased then for \$400,000 and maybe less and I think I actually think that figure over this, I can just give you my opinion as to the value of the property, that is a high figure.

Q. This is the way you describe exorbitant, then?

A. Right.

Q. You wouldn't say exorbitant would necessarily mean that there was someone making an outside view of it?

A. No, no. I think that the seller of the property is and I certainly have no objection to the seller making, getting the best price he can. On the other hand, you know it's the taxpayers' money and they should get the best price they can. I mean, that's my feeling on it.

SENATOR BROMLEY: I think that will be all for now.

REPRESENTATIVE HAYES: Mr. Van Cleave, I don't know what this hearing is going to cost in the final analysis, but it's also taxpayers' money and the time of the Committee and your time and I really think we've reached the point where I'm going to request you disclose the name of your confidential source.

MR. VAN CLEAVE: Well, when I say confidential it was told to me. Whether it was in confidence or not, I don't know. The only thing, I think that it may have been disclosed to some others, too, but--well, it was Ray Morgan. I thought you probably could have guessed that.

SENATOR BROMLEY: I move we subpoena Mr. Ray Morgan and also Mr. Cohen as additional witnesses.

REPRESENTATIVE HAYES: Well, just a minute, Senator. I have another question.

EXAMINATION

BY REPRESENTATIVE HAYES:

Q. You answered Mr. Peterson's question awhile ago that you told Mr. Gaines that the Governor had determined to veto. Do you know or do you recall where you told him that?

A. I'm not sure, but I know it was that evening.

Q. Could it have been at your apartment?

A. Could have been.

Q. Do you recall whether any other persons were present?

A. Yes, Senator Hess and Senator Wilson.

Q. Was any statement made about any political implications of the veto?

A. No, not that I saw.

Q. Would you search your mental files and see if any political implications were involved in the veto?

A. I don't really know. I don't understand your question.

Q. It might work to the advantage or disadvantage of one or the other political parties of this State.

A. No, I don't know. I don't know, I mean, the Governor vetoes the bill because he feels they're wrong.

Q. No, I was asking if you made a statement.

A. Well, it's possible, but--and it's possible that I didn't. I have no recollection.

Q. You could have or your could not have?

A. I could have, I could not have, that is right.

Q. Do you recall Senator Hess saying or someone in the group saying that Mr. Loux had an interest in this matter?

A. That what?

Q. That Mr. Loux has an interest.

A. No, I'm sure that wasn't said.

Q. I don't mean a financial interest, I mean an interest in the legislation.

A. No, I don't know. I don't recall that being said. The only interest that he had was to buy a building and I don't think it would make any difference whether it was this building or any other building.

Q. And you don't recall whether or not at the time you and Senator Wilson, Senator James, and Senator Hess were discussing the matter that Mr. Loux was mentioned?

A. I don't recall. I'm not saying it wasn't, it could



have been, but no, the only interest Mr. Loux has ever had in it is to get a building to allow for additional office space. I mean, that's his only interest.

Q. And it's your testimony that you do not recall making any objections about Mr. Loux at that meeting?

A. No, no. I don't recall making any objections about him. Pete's a very honorable gentleman.

REPRESENTATIVE HAYES: Are there any other questions for Mr. Van Cleave? Thank you, Mr. Van Cleave.

SENATOR SIMPSON: Mr. Chairman, one additional.

REPRESENTATIVE HAYES: Mr. Van Cleave, Senator Simpson has one additional question.

QUESTIONS BY SENATOR SIMPSON:

Q. You indicated that the Governor's veto message where it stated about the appointment of the legislative committee had nothing to do with any improprieties to be investigated?

A. That's right.

Q. I've never seen the Governor's Message where he's ever asked for a special legislative committee to be appointed after he's vetoed a bill.

A. Let me say this, Senator. If there had been any

question in anybody's mind of improprieties, he would have requested an Attorney General's investigation.

Q. Well, do you know of any others where he's ever asked for this?

A. No, I don't recall, but I said if there had've been any question in anybody's mind of any alleged improprieties, there would have been a request for an Attorney General's investigation.

QUESTIONS BY REPRESENTATIVE PETERSON:

Q. Why did not the veto message instead of saying a special legislative investigation with the Attorney General's Office assisting say a special legislative investigation with the Department of Valuation assisting?

A. Well, because the Attorney General's Office is the legal arm of the State.

Q. If we were only to determine whether it's a good purchase or not whether it's--(interrupted)

A. Well, but the Attorney General is the legal arm of the State.

QUESTIONS BY REPRESENTATIVE PARRISH:

Q. Mr. Van Cleave?

A. Yes?

Q. You stated yesterday that you drafted the veto message originally?

A. Well, yes. Now, I'm not sure whether Matlack had a draft, too.

Q. He indicated perhaps he corrected some grammatical errors.

A. Quite a few of those.

Q. But if that's the case, then, you drafted the message which suggested that this Committee be formed. Is that correct?

A. Well, Representative--let me put it this way. The Governor tells me what he wants in the message. I then write out in draft form and it's submitted to him. Now, there could have been two or three paragraphs additional in this that he cut out or he could have changed and I think he probably did.

Q. Do you recall on your draft proposal any mention of a committee of this type?

A. In the draft proposal, yes.

Q. And, then, you said today that you think that the Committee is being convened unconstitutionally. Now, this is a rather significant point that I want to make

here because, and frankly I don't share the views as some of the Committee members that Ray Morgan, who I suspected all along as the confidential source, and I suggested to the Committee Sunday that he be interviewed incidentally.

I never thought that he was the key to this situation and I think perhaps there is another key and I think it lies in your efforts to obtain this possible option that you were so unclear about prior to today or yesterday. Now, if you recommended the Committee which you thought at the time and think now is unconstitutional and you knew of an option and yet your duty as liaison is to get all the facts and you knew of the option and didn't pursue that as vigorously as you pursued information Ray Morgan gave to you, I suggest that you did not try to get all the facts and that this message and your actions here are a deliberate attempt to embarrass the legislature and your comment today that the Committee is unconstitutional is--(interrupted)

A. I did not say that it was unconstitutional, I said it was reported to me by my legal aide.

QUESTIONS BY SENATOR TILLOTSON:

Q. I would like to pursue this statement to the conversation that we had last night with Senator Simpson in which he dropped the name of and purchase of the property the legislature authorized for the purchase of the Historial Society. Now, you're the governor's liaison

in the legislature?

A. Right.

Q. As I recall, when the bill was presented on the floor in the Senate that the statement was made that the transaction for this property was being purchased for the Historical Society was made direct with the owner, Dale Carmean.

A. I don't know that.

Q. You don't know that?

A. No, sir.

SENATOR TILLOTSON: Thank you.

QUESTIONS BY SENATOR BROMLEY:

Q. Do you know, actually or otherwise, whether or not Mr. Harbes had anything to do with the purchase--  
(interrupted)

A. No, sir.

Q. (continuing) --of this Historical--(interrupted)

A. No, sir.

Q. Has anyone expressed or implied to you that Mr. Harbes might be involved?

A. I don't believe anybody has, sir.

Q. How much is your yearly salary?

A. You mean down here?

Q. Yes, sir.

REPRESENTATIVE HAYES: Well, Senator, now, I think that's--I think he would be happy to tell you privately and probably as a matter of record, but I don't think it's a proper question.

A. I get thousands.

REPRESENTATIVE HAYES: Well, if you don't mind telling him approximately--(trailing off)

A. I think it's twelve forty-five a month.

QUESTIONS BY SENATOR BROMLEY:

Q. Twelve forty-five a month?

A. Yes, only while I'm here.

Q. Is that substantial for you to exist on comfortably?

A. Oh, no, no, no. That's not what I exist on, Senator. Senator, I'm an attorney by trade and by profession.

SENATOR BROMLEY: Mr. Chairman, I simply want to clarify. My question is I think it is pertinent to the investigation as to what kind of salaries the people are being paid that are involved in this transaction and basically I would like to give notice that I'm attempting to lay the ground work for the same type of interrogation with other witnesses that will be called.

REPRESENTATIVE HAYES: Well, we'll take them on a one by one basis.

MR. VAN CLEAVE: Anything else?

REPRESENTATIVE HAYES: Any other questions of Mr. Van Cleave? Thank you.

RICHARD C. LOUX,

called as a witness on behalf of the Select Committee, being first duly sworn on his oath by the Chairman, Representative Hayes, testifies as follows:

DIRECT EXAMINATION

BY REPRESENTATIVE HAYES:

Q. Would you state your name, please?

A. Richard C. "Pete" Loux.

Q. And your address, Mr. Loux?

A. 237 South Custer, Wichita,

Q. And your business or profession?

A. CPA.

Q. I believe you're also the minority leader of the Kansas House of Representatives?

A. Yes, sir.

Q. The purpose of our investigation, as you know, is to inquire into any alleged improprieties or irregularities



in connection with negotiations for the possible purchase of the New England Building and adjacent property.

A. Yes, sir.

Q. Do you have a statement you'd like to make?

A. No, sir, not a prepared statement. I'll answer any questions, give you some background.

Q. All right. Would you like to give us the background prior to the questioning?

A. Yes. Back last fall after election about the latter part of November, I thought we'd need more space than this building and I think other buildings, too, we've got one on Harrison and so forth and it occurred to me that it might be possible that the New England Building could be acquired some similar way we did on the old First National Building. At that time I wrote a letter to Chairman Clyde Hill, since he and I were kind of involved in the First National Bank Building, that's what I was thinking with. Then, shortly before this action started I discussed it with McGill, Speaker, and the possibility. We decided to see what might, what could be developed and I think he checked with Senator Bennett and decided to do some development information for us and they

got some information memos which I've turned over to Representative Parrish and basically that's it.

REPRESENTATIVE HAYES: All right. Senator Tillotson?

SENATOR TILLOTSON: I have no questions at this time.

QUESTIONS BY REPRESENTATIVE VAN BEBBER:

Q. Mr. Loux, do you have any knowledge of any alleged improprieties on the part of any member of the Legislature?

A. Absolutely none.

Q. Or any employee of the Legislature?

A. Absolutely none.

Q. Do you have any knowledge or information of any influence by anyone upon the executive department to have House Bill 1568 vetoed?

A. Well, all I know is several conversations with Mr. Van Cleave in which he related to me some of the rumors he's heard.

Q. Well, would you relate to the Committee the conversations that you had with Mr. Van Cleave and give us some kind of a chronological order or the dates that might be involved approximately?

A. I think that would be impossible. I'll do the best I can. Shortly after we were trying for negotiation

purposes, when you're going to buy a farm or house or anything you don't go out and telegraph and tell the people you want it, but there was a story that some newspaper reporter dug up that we were looking at it, so that we did tell Mr. Van Cleave at that time that we were and the Governor that we were doing some investigating on the possibility of acquiring the building and shortly thereafter he told me that he had heard that Mr. Kit Thomas and Mr. Harbes, who I never met until yesterday, were involved as business associates and be very careful, and that someone would make a lot of money off the deal and I checked that out, not checked it out, I asked the Speaker. He asked, I think, Mr. Thomas and Senator Bennett assured him there was no such thing and I just dismissed it as being completely fiction instead of fact.

Q. Now, did Mr. Van Cleave ever inform you that he had checked the story out?

A. No, sir.

Q. Did he ever tell you that he had checked it out or had found it to be rumored to be utterly false?

A. No, sir.

Q. He never provided you with that information?

A. No, sir.

Q. Did he tell you about this rumor just on one occasion?

A. No, I think on several occasions. We meet constantly and at several occasions he mentioned that.

Q. When was the last time he told you that, if you have it in your recollection?

A. I'm not sure I can recall, but I would guess in my recollection, it would be the Monday or Tuesday before we adjourned.

Q. Would that be before or after the governor's veto?

A. It was the same, I think, just the same day or day before or day or two before.

Q. What?

A. I think it was probably the same day that the message was written, but it wasn't released until the next day.

Q. That's the last time when he repeated this rumor to you?

A. That's my recollection.

QUESTIONS BY SENATOR STOREY:

Q. Representative Loux, when you originally started to investigate the possibility of purchasing the building, you worked with Mr. Morgan?

A. Yes and Senator Thomas and Rick Gammill, my administrative assistant.

Q. Now, you didn't go with Mr. Thomas to find the owner of the building originally, did you?

A. No, we had a meeting and decided to let our administrative assistants do the leg work on it and since Mr. Thomas, from his vast business experience, we asked him kind of to take the lead.

Q. Did you at your first meeting sit and discuss who was the possible owner? Do you remember or who did you assume was the owner?

A. Oh, I assumed it was the Merchants National Bank people.

Q. And in relation to that, that's who Senator Thomas went to see?

A. I believe that's right.

Q. And you didn't ultimately end up with him in his discussions with Mr. Neiswanger and Mr. Harbes, did you?

A. No, I never met with them until yesterday.

Q. Did Senator Thomas discuss with you who he had been to see?

A. Yes, he gave us some memos and he told us when he checked it out they didn't own it, there was an option on it.

Q. And did he tell you after he had talked to the Merchants National Bank that there was an option by Mr. Harbes?

A. Yes.

Q. And that he was going to see Mr. Harbes?

A. At that time we didn't know whether this would preclude any possibility of acquiring it or not, so we directed him to follow up on it.

Q. When you directed him to follow up, did Senator Thomas convey to you whether or not he had ever met Mr. Harbes?

A. No, he never did.

Q. Did you ever get the impression whether he had or not?

A. No, I got the impression he never did.

Q. You got the impression he never met him?

A. Yes.

Q. And after his conversation with Mr. Harbes, did you or he or any members discuss the purchase of the building?

A. Well, at the time we thought it might be possible, so when Mr. Thomas and Borgen and Gammill and myself and after that we decided to have a bill drafted to authorize it. However, this was to authorize the negotiations.

Q. But at that time Senator Thomas did inform you that there was an option by Mr. Harbes?

A. Yes.

Q. He disclosed all the facts he had about the purchase of the building?

A. I believe so.

Q. Was there any time, Mr. Loux, that you doubted Senator Thomas' integrity and honesty in the purchase of this building?

A. No.

Q. The only reason I'm asking you, I try to show all the transactions.

A. No, I heard this rumor and I did tell the Speaker, who I think talked with Bennett and Mr. Thomas and they assured him that there was no truth to it, so I just proceeded as before.

Q. And I believe it was stated by Mr. Gammill yesterday that he did try to obtain a copy of the option from Senator Thomas?

A. Well, Mr. Van Cleave at some time said he wanted to see the option and he wanted my files, so I gave it to him and then he said that there wasn't an option and I said I heard there was one, but I don't have a copy of it and I told Rick Gammill to see if he could get one or check with Mr. Thomas.

Q. And did Mr. Gammill report back to you or Mr. Van Cleave about the option? Do you remember?

A. I don't remember.

Q. But he did?

A. I suppose both of them did.

Q. He did to the best of your knowledge try to obtain the option?

A. Yes.

Q. And do you remember whether or not at that time he had it or not?

A. I don't believe he had it. There was a question in my mind. I wasn't really concerned because I didn't think it was material.

Q. That's my next question, when you all were considering buying the New England Building even after you heard there was an option, did that enter into whether or not the building should be bought or could be bought?

A. Well, I think it entered into whether it could be.

Q. Other than getting around the option?

A. Getting around the option, but in my mind it didn't affect it one way because if it's a good deal the fact that someone has an option, it wouldn't have any bearing in my mind as long as you don't pay more than a fair price



for it, I don't care who gets the money.

Q. As a matter of fact, you weren't really concerned with the option as far as being an irregularity. You were just trying to find out how you could buy it?

A. Right.

REPRESENTATIVE HAYES: Any other questions?

QUESTIONS BY REPRESENTATIVE BURKE:

Q. Mr. Loux, you said that after the story developed in the papers that you talked it over and decided to at that point go to the governor and Mr. Van Cleave. Who did you talk it over with?

A. Well, it was after the story--before the story was published. We didn't want the governor to read about it in the newspaper. At that time I had a telephone conference with the governor and Van Cleave.

Q. Did you talk this over with Senator Steineger before you--(interrupted)

A. Before the conference?

Q. Before the conference?

A. I can't remember if he was present or not. I don't believe he was, but I--(trailing off)

Q. Okay. Well, then, you mentioned that when you talked it over with Van Cleave that he presented a number of

things that were concerning him with regard to somebody making a bundle of money off the deal. Is that right?

A. I don't think that's quite accurate to say, talked it over with Van Cleave or the Governor. The thing was we wanted to inform them there wasn't any question of getting their okay or we just wanted to inform them what we were doing and some time later is when Mr. Van Cleave indicated there might be something wrong with Mr. Thomas' association or late association with Harbes.

Q. And you said you dismissed that after checking it out. You dismissed that as some kind of a political--  
(interrupted)

A. Political strategy.

Q. What kind of strategy would that be?

A. Well, a couple of years ago when we purchase the First National Bank Building, the old one, the Capital Area Planning Authority at that time and the architects and a lot of people in the executive branch weren't too happy about it. They viewed this as a deterrent, at least in my opinion, as a deterrent to the building of the Capital Area of the Plaza and I assume that the same types of feelings would exist currently.

Q. This was not a partisan maneuvering that you're referring to

A. No, no. I think it's a question do we buy a building for five dollars a square foot or do we build one for fifty-five dollars a square foot.

QUESTIONS BY REPRESENTATIVE PARRISH:

Q. Yes, Mr. Loux, on House Bill 1568 what control, assuming the Bill passed and was signed by the governor, what control would the executive branch have over the negotiations in the acquisition of this building?

A. Well, as I interpret it, the state architect or director of architectural services would have the final say, so he would have to consult with the Advisory Committee, but that the final decision would be his.

Q. So, conceivably if he determined in his own mind in his job as a representative of the executive branch that buying this building was not a good bargain and that his negotiations were not satisfactory in the purchase of this building, he in essence could just simply refuse to buy the building, could he not?

A. That would be my interpretation.

Q. That's assuming that the Bill's passed, the executive branch does have a good deal of control over whether or not this building is purchased.

A. Yes, the final say so he would have to consult with and

advise with the Advisory Committee and that's an attempt to try to have some legislative inquest.

Q. In other words, this bill provided for a million three hundred thousand dollar ceiling which encompassed buying the building, remodeling the building, and buying certain tracts of land surrounding the building for parking and that the architect would still negotiate, then, for the price of these various items and maybe not have to spend that much?

A. Buy one or all of them or none of them.

QUESTIONS BY SENATOR STOREY:

Q. Representative Loux, I do want to ask you one more question. Do you remember or recall in a sequence of events the first time you heard Mr. Harbes' name mentioned?

A. Well, I heard when the option--and I'm sure at that time if I did not hear the name or just really didn't care.

Q. Did you and Mr. Van Cleave discuss Mr. Harbes?

A. Yes, I think as my recollection that's the first time, at least, that I remember the name.

Q. You remember approximately when this was in relation to the events?

A. Could have been about a week after the week or after

the bill's been introduced or something like that.

Q. Some period of time before the veto message?

A. Yes.

Q. There was no doubt in your mind that Mr. Van Cleave knew Mr. Harbes had the option?

A. Yes.

Q. He knew this?

A. Yes.

SENATOR STOREY: That's all I have.

QUESTIONS BY SENATOR BROMLEY:

Q. Who assisted you on negotiations with these people in the purchase of the building?

A. Well, we didn't have any negotiations of the purchase, Senator. What we had is we had our administrative assistants look into the possibility as to having the bill introduced with authorization for negotiations, but at no time did we negotiate.

Q. Did you encounter any opposition from the sellers of this building directly that you knew that you would have to take it by condemnation, that they didn't want to negotiate the sale?

A. I've never met with them, ever.

Q. You never have talked with Mr. Neiswanger?

A. No.

Q. C. Y. Thomas?

A. Mr. Thomas, he works as our employee.

Q. What date was it revealed to you that an option existed on the building?

A. Well, it was about a week after the bill was introduced. That's with Mr. Van Cleave--no, I take that back. The first one was about a week after we had that, we first knew an option existed after Mr. Thomas reported back to us that he checked on the legal ownership and so forth and found that there was an option and I suppose that would be the middle or the latter part of January.

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Q. Are you alluding to the fact that Mr. C. Y. Thomas was in fact the one who was negotiating in the terms?

A. No, he wasn't negotiating. He was gathering information, Mr. Borgen, Mr. Thomas, Mr. Gammill.

Q. Are you on the House Ways and Means Committee?

A. Yes, sir.

Q. How was the figure of one million three hundred thousand dollars arrived at?

A. Well, we had a list of things that we thought that might be possible and that as remodeling and everything came up to one million three hundred or two hundred

thousand for contingencies.

Q. Now, this is the New England Building itself?

A. No, no, this is for the New England Building and all the surrounding lots.

Q. And purchases?

A. And remodeling thereof and so forth.

Q. It was estimated by who that it would cost a million three hundred dollars?

A. Well, we wanted to give ourselves some leeway. This is the best estimate that Mr. Thomas had that he thought that it might be done for on the high side.

Q. Did you have anyone give you any appraisal of these costs?

A. I did before I wrote the letter to Mr. Hill back in November. The Property Assessing Department at this time reported back to me when it was reappraised by Mr. Taggart's firm. I think it was his firm that did the reappraisal of the property. The value for that firm was four hundred eighty six thousand.

Q. That was going to be for the New England Building and the lots that it was located on?

A. We didn't know until after the bill was passed and we negotiated, we just get the best price possible. If you

had been here, Senator, you would remember a couple of years ago on the First National Bank Building we had bought that. The way we did that is just one lot, of course, but we sent the basic--said that the state architect could buy it for X amount of dollars which was less than a fair market value, then he would go ahead and buy it and they took it and this was, we set no price. We would set a ball park figure, but you can't set a price until you start to negotiate and all we was trying to do was gather information to see if we wanted to negotiate.

Q. Are you telling me, then, that the other building that was purchased by the state was bought without appraisals and without condemnation proceedings?

A. Yes.

Q. It was bought in the same fashion?

A. It was appraised after the bill was passed, but it wasn't appraised before the bill was passed.

Q. Do you have any actual cost of the New England Building and the lots it was located on itself, a set figure?

A. Well, the Property Valuation Department figured--I think Mr. Parrish has those, the original cost for the New England Building itself was not a million three. I



believe that's it and then, of course, the depreciation takes less and so forth off of that to come down to the four hundred eighty-six thousand dollars fair market value.

Q. Were you lobbied by anyone, so to speak, to sell this business to the state?

A. Absolutely not.

Q. Let's see, now. Mr. C. Y. Thomas, that is president of the Senate, he's his legislative aide?

A. Yes, sir.

Q. Can you explain how you--the thing that I'd like to clear in my mind is how you came to be working closely with Mr. C. Y. Thomas who is on the other side of the party line, so to speak, regarding this building?

A. Well, it's very simple. I think that the leadership got together and discussed it and we said that we wanted some information developed and we didn't have the time to do it, as you will recall that there's a lot of work to be done by the leadership, and we had these administrative aides and we decided that this would be a good job for them to do and we just gave it to them.

Q. Incidentally, do you recall what date this bill was introduced by the House Ways and Means Committee?

A. Well, I look back, I think it was around March the 8th.

Q. And did Mr. C. Y. Thomas recommend to your committee that you do introduce this piece of legislation?

A. I don't know if he appeared before the committee. He certainly recommended a joint recommendation that we have the bill introduced.

Q. You did this first?

A. Yes.

Q. Did Mr. Van Cleave make any recommendation to you?

A. Well, he was throwing cold water on it.

Q. Did he give you any reason why he was throwing cold water on it?

A. Well, at that time he said that there was an option, or that same time frame, but I regarded it as political strategy and I thought it was the best interest of the legislature to move ahead on it.

Q. What was actually your main purpose of trying to accomplish this endeavor, Mr. Loux?

A. Well, Senator, I've been on the Ways & Means Committee for some years and I can remember back on this report here from the Capitol Area in which they wanted to build the State Office Building No. 2 for forty-seven million one hundred ninety thousand dollars and the State Office

Building No. 3 for thirty-four million three hundred ninety-eight thousand dollars and to me that sounded excessive and as an alternative that we're going to build these someday, but in the meantime that's ten years down the road, in my view, and we do need space. 801 Harrison, if you've ever been in it, is about ready to crumble and we need the space in here and I think the legislators need more facilities to do their job better and I think the legislature is an independent branch of government and they desire more space to do their job better. They ought to be able to do it and by buying this building and we had some control as to who occupied it so that they wouldn't be all swallowed up without the legislature receiving some more space. Then, we could accomplish my personal goal which is seeing the legislature be more effective by having better facilities and providing desk space for every legislator and senator. I have one, so it don't make any difference to me, but we need more hearing rooms, we need more desk space. The advisory office needs more space and I don't want to wait ten years until the Capitol Area Plaza is finished and as an intermediate step it seems to me that doing something

makes sense. Now, I know a lot of people say, "Well, if we do this, we don't build the Capital Area Plaza." I think this will help us build that sooner, but I can recall--I can't remember the exact figures, but in the First National Bank Building there were some sixty eight thousand square feet. We purchased it and were criticised in the press because we needed more room for legislators and so the executive branch criticised saying legislators want more room, but if you look, you'll find, I think, there are five agencies in the State Office Building that have the current space of twenty seven thousand square foot that moved in sixty thousand square foot. We moved ten thousand square feet in this building into twenty seven thousand feet in the State Office Building and in the ten thousand feet of this building I think the legislature ended up with thirty six hundred, so we're being criticised for buying more space. We didn't want that to happen again. I think that about covers it.

QUESTIONS BY REPRESENTATIVE PETERSON:

- Q. Several times, I think, was the phrase you used Mr. Van Cleave mentioned this rumor to you. Do he ever mention any hard facts he had to support it?

A. No, sir.

Q. Did--apparently several of these statements on his part took place or did they take place after he had spoken to the Speaker of the House or you had spoken to Mr. Thomas, found out they were unfounded. Did you tell him that at that time?

A. I didn't know it was unfounded, that he said it was unfounded until I read it in the paper this morning.

Q. No, did Mr. Van Cleave say it was unfounded, but you previous to that had determined yourself?

A. I checked for my own satisfaction that it was.

Q. What I was wondering if you stated to Mr. Van Cleave at any time at any of these later instances that he brought it up?

A. Yes, I told him that I checked with the Speaker and he checked and everybody that was involved in it was, as far as they personally were concerned, was clean as a hound's tooth.

Q. What did he say? What was his reaction to that?

A. Whatever's right.

Q. I can't argue with that.

A. No, I think--let me repeat it. He heard this rumor from a confidential source that there's something wrong with

the option and that there was a connection with Mr. Harbes and Mr. Thomas.

REPRESENTATIVE HAYES: If I understand the testimony correctly, Representative Loux, he was still making those statements up to today?

A. Yes.

QUESTIONS BY SENATOR SIMPSON:

Q. Mr. Van Cleave never indicated to you he had checked it out and found it to be without foundation?

A. No, sir.

REPRESENTATIVE HAYES: Any other questions of Representative Loux? Thank you, Mr. Loux. We appreciate your appearance.

(Thereupon, at this time a five minute recess was taken, after which the following proceedings were had, to-wit:)

REPRESENTATIVE HAYES: Gentlemen, let's call order resumed.

SAM COHEN,

called as a witness on behalf of the Select Committee, being first duly sworn on his oath by the Chairman, Representative Hayes, testifies as follows:

DIRECT EXAMINATION

BY REPRESENTATIVE HAYES:

Q. Would you state your name, please?

A. Sam Cohen.

Q. And where do you live, Mr. Cohen?

A. 530 Danbury Lane, Topeka, Kansas.

Q. And what is your business?

A. Businessman.

Q. You're the owner of--(interrupted

A. Ramada Inn and real estate.

Q. Some of us are your tenants.

A. Yes.

Q. Mr. Cohen, during our deliberations yesterday afternoon, we heard testimony that you had stated that the New England Building could be purchased for four hundred thousand dollars. I spoke to you before we went back into session and you indicated that you had a file on this matter and we'd be pleased to hear any comments you might have with respect to this. Incidentally, I do say that under our procedures you are entitled to have counsel here, if you wish, or you may waive that right.

A. I'll waive it.

Q. Thank you, sir.

A. We never made an offer on the property and so we wouldn't know what they would want for it. Our file here is dated 1968, February the 1st, which is information received from the Neiswanger Company. I think most of you have the brochure. This is the breakdown of the rents and tenants and all that in '68 which our office, of course, comprised with feasibility study of it. The only comment I made was if we was to make an offer that, after our study was made, we thought it should be bought for about four hundred thousand dollars.

Q. Do you recall making that statement to Mr. Robert Brandt?

A. Yes, sir.

Q. And it was if you were to make an offer it would be in that area?

A. Yes.

Q. And not that it could be purchased for that price?

A. There was no way--if you don't make an offer you don't know whether it can be bought or not. We did not make an offer.

Q. You did not make an offer.

REPRESENTATIVE HAYES: Are there any questions by members of the Committee?

SENATOR TILLOTSON: I have a question, yes.



QUESTIONS BY SENATOR TILLOTSON:

Q. Did you have a conversation with Representative Loux with reference to the purchase of this building?

A. No, not that I know of.

Q. Do you recall having stated to him you thought the price was probably too high and you were told that this price that was being negotiated by the State included other property. Do you recall that?

A. Would you repeat that, please.

Q. The price that was being contemplated or negotiated included other property besides the building itself?

A. Yes, this is true. Yes, I think that was true.

Q. And when you learned that, why you found that perhaps your statement that the purchase price was a little high was--(interrupted)

A. Well, there was no way for me to tell because I didn't know what was included. I had no knowledge of other buildings or other land. I knew there was some others, but we did not make appraisals so really I wouldn't know.

Q. And at that time would you say that if the State needed some rental property that you had some to rent?

A. Yes. Well, we had at times and always have rented to the

State. At the present time, I'm not sure if we have any or not. This is our business. This is the reason we were interested in the building to start with was for the State to use.

Q. My point is when you stated that the property was being priced a little high, you did not realize that this included other property?

A. I knew it had some other, but I didn't know how much.

SENATOR TILLOTSON: Thank you.

QUESTIONS BY SENATOR STOREY:

Q. Mr. Cohen, Mr. Neiswanger or any other representative of the New England Building had never submitted an offer to you to sell that for four hundred thousand dollars?

A. No.

Q. And isn't it true in your business dealings that you usually have a feasibility study on a building before you ever study?

A. No, the only feasibility study we had is what was given by us by Neiswanger.

Q. And that's just good business before you offer?

A. Always.

SENATOR STOREY: Thank you.

## QUESTIONS BY REPRESENTATIVE BURKE:

Q. Mr. Cohen, I wasn't sure. Did you say what date that was that you talked with Mr. Brandt?

A. We were called--I was called about six weeks, four weeks or six weeks ago.

Q. Four to six weeks ago?

A. I would say so, close to that.

REPRESENTATIVE HAYES: Any other questions?

## QUESTIONS BY REPRESENTATIVE HAYES:

Q. If I understand it, Mr. Cohen, at no time did you make the statement that the building could be purchased for four hundred thousand.

A. Well, there's no way, no, because I wouldn't know.

Q. All right, thank you.

A. This is my best judgment that we would have liked to buy it for four hundred thousand.

Q. But you made no statement that it could be bought for that?

A. I have no knowledge.

REPRESENTATIVE HAYES: Thank you. We appreciate your appearing. You don't need this file?

MR. COHEN: No, I don't think we'll need it.

REPRESENTATIVE HAYES: Mr. Harbes, Senator Bromley

asked that he be permitted to ask you a couple more questions. Senator, I'm calling Mr. Harbes at your request so you can ask him some more questions. I would remind you, Mr. Harbes, that you are still under oath.

MR. HARBES: Right.

QUESTIONS BY SENATOR BROMLEY:

- Q. Mr. Harbes, are you now or have you been employed by Mr. David Neiswanger?
- A. Employed?
- Q. Yes, sir.
- A. No, sir, I'm an independent broker.
- Q. Independent broker?
- A. Real estate broker.
- Q. On the proposed sale of the New England Building, are you to collect any finder's fee or broker's fee in the sale of this building?
- A. No.
- Q. Are you ready to blockade any movements by the State to purchase that building since you have an option on it?
- A. Blockade, did you say?
- Q. Yes, sir. I mean, since you expressed great feelings about

the building regarding your future and otherwise.

A. Well, as I stated yesterday, in essence I did register disappointment in the fact that the State had come in after I had obtained the option to purchase, but that in the light of the attitude of the feelings expressed to me by the owners and facts that we all recognized the State's power to exercise the right of eminent domain to take the property that there was one thing to do and that was to cooperate, which I was perfectly willing to do.

Q. Now, were you going to cooperate with the State so they may attain that by eminent domain? Were you going to cooperate with the owners?

A. Well, that, of course, the enabling legislation as I understood it has not yet been passed, so I can't speculate as to how the State might proceed.

Q. When you file your income tax report and your state income tax report, federal income tax report, are you on a cash or accrual basis?

REPRESENTATIVE HAYES: I'm going to rule that that question is beyond the scope of the resolution.

SENATOR BROMLEY: Well, Mr. Chairman, I believe this witness was subpoenaed duces tecum.

REPRESENTATIVE HAYES: Well, Senator, I fail to see the relevancy of his method of accounting; if you'll tell me what you're laying your foundation for--(trailing off) What information are you trying to get?

SENATOR BROMLEY: Well, I happened to find out that there may be some records that would disallow the fact that this man is an employee of Mr. Neiswanger or if he's a free lance operator of some sort or if he would have any records that would disclose that he has been paid a fee or at this point of his business activities.

REPRESENTATIVE HAYES: Well, the witness has testified under oath, Senator, that he is not now nor never has been, as I understand it, employed by the Neiswanger Company and--(interrupted)

SENATOR BROMLEY: That's very true, Mr. Chairman. He has testified to that.

REPRESENTATIVE HAYES: Do you have any evidence in your possession that the witness has not testified correctly?

SENATOR BROMLEY: No, I'm a little bit disturbed about whether or not this whole process that we're

encountering on right now is constitutional, but since we are empanelled and are supposed to dig into all the facts under this concurrent resolution, then I feel that it is our responsibility to search all means to either clear these people's names or find them guilty of some kind of impropriety. Now, I would like to ask at this time if Mr. Connolly as the attorney general's administrative, or whatever his capacity may be, has a ruling by the attorney general as to whether or not this hearing is constitutional or not.

MR. CONNOLLY: No, we do not.

REPRESENTATIVE HAYES: Before we get into that, I'm going to stand by my ruling, Senator, that your question as to what accounting methods the witness uses in his business is beyond the scope of the resolution.

SENATOR BROMLEY: I'll withdraw that.

REPRESENTATIVE HAYES: Mr. Connolly is here because of my request of the attorney general that that department furnish advice of counsel to the Committee. I think his answer will be that he does not now have an opinion as to the constitutionality; but I understand

Mr. Gaines will request an opinion.

MR. CONNOLLY: We have not prepared any formal opinion as to the constitutionality of this hearing.

Mr. Gaines had made statements that he would request one.

SENATOR BROMLEY: Mr. Chairman, I would rephrase my question to Mr. Harbes.

REPRESENTATIVE HAYES: All right, sir.

QUESTIONS BY SENATOR BROMLEY:

- Q. If we at the legislative investigating committee were to search on our own any records of income tax reports, would there be anything that would disclose whether you had been in the employ of Mr. Neiswanger or any of the members that are taking care of the New England Building?
- A. Senator, let me again state very positively that I am an independent real estate broker. I'm a civil engineer as I stated yesterday. I've been asked to consult at numerous times with various people which I have done. I have had absolutely no connection. I have had absolutely no connection in the way of employment with the Neiswanger Company. That's my statement.
- Q. Have you ever negotiated any business dealings for the



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State of Kansas in the legislative department or the executive department?

A. The only thing that I've ever done that had to do --keep in mind that I was state planning engineer many years ago, many, many years ago, that I served as Topeka's urban renewal director and that it was my duty to carry out the wishes of the legislature in the acquisition and the clearance of this land, five city blocks south of the State House, which I did. That's some two and a half million dollar savings to the State of Kansas because as a result from the use of federal funds through urban renewal and that's my total involvement.

Q. Have you had anything to do with the negotiations between the State Legislature and the tract of land that is going to be used for the Historical Building?

A. I very frankly didn't even know. I knew at one time Mr. Carmean owned that property out there, but at the present time I had no knowledge whether he did or didn't.

Q. Did you have anything to do with the negotiations of the purchase of that particular parcel of land?

A. I know absolutely nothing about it, absolutely nothing.

REPRESENTATIVE HAYES: Have you anything further?

Does Senator Storey have a question he wants to ask?

SENATOR BROMLEY: Senator Storey interrupted me last night.

SENATOR STOREY: And it's all I could do to keep from interrupting you quite a few times, Senator.

SENATOR BROMLEY: I simply--I feel like we're kind of in the same position here, Mr. Chairman, as McCarthy here whereby Communist people, their testimony which was unconstitutional and if we're not going to have the cooperation of all the members of the Committee to actually serve out and use every means possible to determine whether or not these people are involved in a conspiracy of some sort--(interrupted)

REPRESENTATIVE VAN BEBBER: Just what is your accusation, Senator? Let's be a little plain.

SENATOR BROMLEY: It's not an accusation, Mr. Van Bebbber. It's not an accusation, it's simply a statement.

REPRESENTATIVE VAN BEBBER: It sure sounds like one to me. I don't know what you'd call it.

SENATOR BROMLEY: I've been interfered with and ruled out of order several times here. Are we

going to have a good clean open hearing and interrogate all these witnesses properly or are we going to sweep everything under the rug?

REPRESENTATIVE HAYES: I made the statement yesterday to Senator Steineger that it was my intention to conduct this hearing on a fair and impartial basis and in the scope of the resolution. Now, any time I have ruled your questions out of order they have been, in my opinion, beyond the scope of our mandate from the legislature. I shall continue to do that if your questions are not germane. If you have questions which have relevancy, I will permit you to proceed uninterrupted. Do you have further questions of this witness?

SENATOR BROMLEY: Not at this time.

QUESTIONS BY SENATOR STOREY:

- Q. Mr. Harbes, when was the first time that you were made aware of the State trying to purchase the land west of Topeka that Mr. Carmean owns?
- A. I read something in the paper this week, was it this week?
- Q. This week. That's the only knowledge you have?

A. Yes.

Q. No one has ever contacted you to try to sell it to the State nor do you have an option on it?

A. Absolutely not.

REPRESENTATIVE HAYES: Are there questions?

QUESTIONS BY SENATOR SIMPSON:

Q. In connection with the sale of the New England Building, will you be entitled to receive any real estate commission?

A. No, this is out. I have an option to purchase.

Q. But you're not entitled to a real estate commission?

A. No, sir.

Q. Of any type or--(interrupted)

A. No, sir.

Q. And you stated, I believe, that you were not entitled to any finder's fee?

A. Well, I don't know what a finder's fee even is, but I have an option to purchase and if I can sell it to the State, that will result in some compensation for my efforts in connection with the rehabilitation studies. Then, I will be satisfied.

Q. It was indicated to me that I should inquire of you about finder's fees and commissions.

A. Yes, yes.

## QUESTIONS BY REPRESENTATIVE GRABER:

Q. Mr. Harbes, it's been implied that this option was sort of a secret. Has anyone asked you about the option?

A. Well, it was a private contract and I felt there was a time and place to make it available to those who cared to see it.

Q. But the information had not been denied?

A. It has not to this Committee.

Q. Or the Ways and Means Committee?

A. They didn't request it, as I recall.

REPRESENTATIVE HAYES: Senator Storey?

## QUESTIONS BY SENATOR STOREY:

Q. Mr. Harbes, let me just ask you one more question. I hope it will clear this. Other than your option, do you have any right, title, or interest at all in the New England Building?

A. No.

Q. That's your sole negotiable?

A. I have an option to purchase.

Q. And that's to purchase, not to sell?

A. Yes.

Q. Of course, you are a licensed broker for the State of

Kansas?

A. Right.

Q. And a broker can buy and sell property at his disposal as long as he has a license?

A. Yes.

QUESTIONS BY REPRESENTATIVE PETERSON:

Q. If you had been requested by the Ways and Means Committee or if you had been requested by the executive branch of government to disclose that, would you have considered that the proper time to?

A. My attitude has been that this is a private contract. The State had not committed itself and for that reason I felt that it was a private contract and it should remain as a private transaction. It was a confidential document and I think that the owners felt the same way and I wrote a letter to, I believe, one of the chairmen of the Ways and Means Committee of the House, I believe it was, to the effect that this was a confidential document and they respected that confidence and that's been the attitude at this time.

Q. But you leased it to the Committee under negotiations-- my question is, if you would have received a request for

their own private use from the governor's office or from the executive branch whether you would have--  
(interrupted)

- A. I think I would have referred it to my counsel. I can't answer your question because it wasn't requested, so I can't answer that question just what I would have done, but I would have consulted with my attorney, certainly.

QUESTIONS BY SENATOR TILLOTSON:

- Q. As I recall the minutes of the March 20th meeting before the Senate Ways and Means Committee, you stated to the Committee at that time that you had an option and that was your only interest. Is that correct?
- A. Yes, that's correct.

REPRESENTATIVE HAYES: Are there any further questions of Mr. Harbes? Thank you, Mr. Harbes. We appreciate it.

MR. HARBES: Thank you.

REX BORGEN,

called as a witness on behalf of the Select Committee, being first duly sworn on his oath by the Chairman, Representative Hayes, testifies as follows:

DIRECT EXAMINATION

BY REPRESENTATIVE HAYES:

Q. Would you state your name, please?

A. Rex Borgen.

Q. And what is your business or occupation?

A. Principally a farmer.

Q. You have served as the administrative aide to the Speaker of the House in the 1973 Session?

A. Yes, sir.

Q. And you're aware that this Committee is charged with the responsibility of investigating any alleged improprieties or irregularities concerning the possible negotiations for the purchase of the New England Building and adjacent properties?

A. Yes, sir.

Q. And you are advised by the Chair that you have a right to be represented by counsel here today or you may waive that right.

A. I'll waive it.

Q. All right, sir. Do you have a preliminary statement you'd like to make to the Committee before they start questioning you?

A. No, sir.



Q. All right.

REPRESENTATIVE HAYES: Senator Tillotson, you may inquire.

QUESTIONS BY SENATOR TILLOTSON:

Q. Did you make some investigation in the company of former Senator Kit Thomas with reference to the negotiations on the purchase of the New England Building?

A. No, I wouldn't say that, Senator. The charge as I understand it to me and Senator Thomas was to develop some realistic figure at which the building might be acquired and we were not entering into any negotiations because there were no negotiations to be made. We were prepared to offer some sort of--(interrupted)

Q. And what was your part in this investigation?

A. Well, my part in it was the leadership asked us to start developing information to see who owned the buildings and what sort of figure they might want, be willing to sell if they were willing to sell and Senator Thomas and I started trying to find out who owned the building. The only one I contacted personally was Southwestern Bell Telephone, I contacted James Haag.

Q. And the proposal was for the purchase of the New England

Building and surrounding properties. Is that correct?

A. Parking lots.

Q. Were you ever contacted by anybody from the executive branch from the governor's office with reference to --(interrupted)

A. No, sir.

Q. --(continuing) any negotiations?

A. Not of any kind.

Q. Did you ever have any conversations with Tom Van Cleave?

A. No, sir.

Q. Matlack, former Senator Matlack?

A. Not on this subject, as I recall. I don't recall any conversation with anyone.

Q. The state architect, did you have any conversations with the state architect?

A. No, sir.

SENATOR TILLOTSON: I have no further questions.

REPRESENTATIVE HAYES: Any members of the Committee have questions?

QUESTIONS BY REPRESENTATIVE BURKE:

Q. Well, what was the result of your inquiry to Southwestern Bell when you learned there was some investigation?

A. Well, I don't know if any of the members of the Committee

recall, but the year before we had had a bidding to acquire the parking lot in Southwestern Bell at that time. Two hundred and fifty thousand dollars was their figure. When I contacted Mr. Haag, he said that he was not prepared to quote a figure any less than that and that if such a figure was quoted, it would have to go to a higher department as far as he was concerned. Mr. Haag left shortly after that and I have talked to no one except Max Klein and Max said that he was not authorized to do any less than that, two hundred and fifty thousand dollars.

REPRESENTATIVE HAYES: Any other questions for Mr. Borgen?

QUESTIONS BY SENATOR SIMPSON:

- Q. What contacts, if any, did you have with the owners of the building?
- A. None with the owners of the building. I had, as I recall, the one conversation with Mr. Harbes.
- Q. You talked with Mr. Harbes?
- A. One time. That was when we were finalizing the figures. As I recall, Mr. Harbes was kind of trying to tell us what he estimated the renovation to be because he had been working on it some eighteen months.

Q. Do you know of any improprieties of anybody in the legislature?

A. Surely not.

Q. Or anyone in the purchase of this building and other property?

A. No, sir.

REPRESENTATIVE HAYES: Any other questions?

QUESTIONS BY REPRESENTATIVE PARRISH:

Q. Just one thing, Mr. Borgen. Were you the subject of any pressures from anyone, not only in the legislature but other employees or any landlord or state agency in Topeka or anyone else that you can think of regarding the state's buying this building?

A. No, sir. No, sir.

Q. Any type of pressure whatsoever?

A. No, sir.

REPRESENTATIVE HAYES: Any other questions? Thank you Mr. Borgen. We appreciate your appearance.

DUANE S. MCGILL,

called as a witness on behalf of the Select Committee, being first duly sworn on his oath by the Chairman, Representative Hayes, testifies as follows:

DIRECT EXAMINATION

BY REPRESENTATIVE HAYES:

Q. Would you state your name, please?

A. My name is Duane S. McGill.

Q. Where do you live, Mr. McGill?

A. 1313 East 12th in Winfield, Kansas.

Q. What is your business?

A. I have different business interests.

Q. All right, sir, you're Speaker of the House of Representatives?

A. I'm Speaker of the House of Representatives.

Q. This Committee is operating under the statute which provides that you may have counsel of your choice at the hearing for advice and consultation. Do you waive your right to counsel?

A. I waive the right to counsel.

Q. We are charged with the responsibility of investigating whether or not there were any alleged improprieties or irregularities in connection with the proposal that the State undertake the negotiations to purchase the New England Building and adjacent properties. You're well aware of that, I'm sure, Mr. Speaker.

A. Yes, sir.

REPRESENTATIVE HAYES: Senator Tillotson, you may inquire.

SENATOR TILLOTSON: I have no questions at this time.

QUESTIONS BY REPRESENTATIVE VAN BEBBER:

Q. Mr. Speaker, do you have a statement or resume?

A. No, I have no statement or no resume. I was requested to bring all the information in my file with me and my file includes two letters from Senator Bennett and myself to the governor and one reply from the governor's office from Mr. Matlack and then another reply from the governor's office from Tom Van Cleave and Mr. Matlack and I will leave these with you. I assume the Committee may already have copies of them, but I won't bore you with the contents other than Senator Bennett and I did request the governor to grant us a special visit with him after he vetoed House Bill 1568. In relation to that particular bill, we did request an audience and this request was denied and indicated that we ought to talk to Van Cleave or Matlack.

Q. Mr. McGill, when did you first become aware--or, I'll rephrase that. When did you first consider the possibility of the State making an investigation relative to the

purchase of the New England Building?

A. After we received the veto message, I think along with that time, there were some innuendoes circulating.

Q. I think maybe you didn't understand my question. When did you first have anything to do with the--(interrupted)

A. The possible acquisition of the building?

Q. The possible acquisition of the building.

A. Representative Loux and I discussed this matter possibly towards the tail end of December when we up here on organizational activities or the first week of the Session, somewhere along the latter part of last year or the first part of this year. The date escapes me and I don't know exactly when, and Representative Loux did approach me with the possibility of acquiring or looking into the acquisition of the New England Building for office space. I had worked with Representative Loux on the Ways and Means Committee last year, the year before, and it had some part in putting together some figures and drafting legislation that acquired the First National Bank Building and Representative Loux and I had done a considerable amount of work on that and then he approached me with this possibility and I thought it was at least worthy and we did approach Senator

Bennett with the idea and I don't remember any of the other people present at that particular time, but Senator Bennett and I both agreed that we were too busy to do it and did suggest to Representative Loux that inasmuch as we did have some staff members that possibly we would delegate this responsibility to former Senator Thomas and Representative Borgen.

Q. Now, Mr. Borgen is your administrative assistant?

A. Yes.

Q. And former Senator Thomas is Senator Bennett's administrative assistant?

A. Yes, sir.

Q. And you gave them instructions, then, to make an investigation into the building?

A. No, not investigation into the building just as to the possibility of whether it was available, whether it could be acquired, and under what conditions and whether or not we should pursue it any further and Representative Borgen or Senator Thomas did this. Senator Thomas reported back on a rather regular basis the progress of the developments and did keep us informed as it progressed and this was in concurrence with Representative Lous, too.



Q. Did you yourself have any contact with the owners of the building?

A. I didn't even know who owns the building. I never contacted never been in contact with anybody.

Q. You have not?

A. No, not to my knowledge. If I had contacted them, it was in relation to this because I don't even know who owns it.

Q. And do you know Mr. Harbes?

A. No, I do not.

Q. Now, were you contacted at any time by anyone with respect to this study that was being made?

A. This study that's now being made?

Q. No, that was being made?

A. That was being made?

Q. Which led up to the introduction.

A. No one other than Senator Thomas and Representative Borgen and Representative Loux. Of course, we discussed it with him on numerous occasions.

Q. Were you ever contacted by anyone from the governor's office in connection with it?

A. Not directly until after the veto message was presented to me in the House. Mr. Van Cleave did admonish me on

April the 3rd against the advisability of attempting to override the governor's veto. I did ask him then if he had some facts or information that we didn't have and he said, "I'm just suggesting that you better leave it alone." That same evening in the presence of Lou Ferguson, a newsman, he made the same statement.

Q. Did he allude to any, or inform you of any impropriety or--(interrupted)

A. None whatsoever. I did ask him if he had and no response.

QUESTIONS BY SENATOR SIMPSON:

Q. You indicated Mr. Van Cleave made the statement about taking it easy on overriding the veto to you and Mr. Ferguson. Is that correct?

A. Yes.

Q. But did he go any further than that?

A. No, he didn't.

Q. What were his words, approximately?

A. To the effect that he had admonished me against considering overriding the veto.

Q. He didn't mention the matter of Mr. Harbes or Mr. Hall or Senator Thomas at that time in that relationship?

A. Mr. Ferguson did ask him questions, but I don't remember the exact questions he did ask him. If he had any facts

or something like that, but I left prior to the time that that answer was given.

QUESTIONS BY REPRESENTATIVE PARRISH:

Q. Speaker McGill, following the governor's veto message, did that particular message strike you as unusual in any way at all?

A. Very unusual, very unusual.

Q. The fact that he called for some kind of an investigation by the legislature?

A. Well, as I read the message I couldn't relate it to House Bill 1568 because the implication was that the legislators were going to acquire this building and the House Bill 1568 doesn't provide that.

Q. Would the comment of Mr. Van Cleave, then, that you should not attempt to override the veto; now, did that seem strange to you in light of the suggestion and the veto message that this Committee be formed?

A. Not at all. I'm used of Mr. Van Cleave innuendoes and this isn't the first time this happened.

QUESTIONS BY SENATOR STOREY:

Q. Mr. Speaker, when you and Mr. Loux originally got together to study the possibility or feasibility of purchasing this building, you said that was in December, approximately

A. December or January, just somewhere during the organizational stages of the legislature and I'm not sure exactly when we did discuss it for the first time.

Q. Do you remember, was it after the Session started that you contacted Senator Bennett?

A. Yes, it was, because we already had our liaison man on hand before we even approached Senator Bennett about it and it was at that time that he made the suggestion that the possibility of Senator Thomas and Mr. Borgen looking into all aspects of this and see what the feasibility of it was, so it had to be some time after the start of the Session that we first contacted him.

Q. Do you remember approximately, would that have been in February, January?

A. January.

Q. January?

A. Yes.

Q. And up until that time, did former Senator Thomas or Mr. Borgen have any knowledge of you even talking about --(interrupted)

A. Not to my knowledge, no.

Q. So, they really didn't get into it until after you had talked to Senator Bennett?

A. Not until we requested them to.

Q. Okay. And then they started their investigation and study?

A. Yes.

Q. You said Mr. Borgen and former Senator Thomas reported back to you regularly?

A. On a very regular basis, yes.

R7 Q. Did he tell you that he had been to see someone at the Merchants Bank Building?

A. At the what?

Q. At the Merchants National Bank Building about the possible acquisition.

A. Did who?

Q. Senator Thomas.

A. Yes.

Q. Did he finally, ultimately tell you that a man by the name of Mr. Harbes had an option?

A. Yes and that was announced to the press somewhere the middle of March that rumors were starting to circulate that the State was interested in a possible acquisition of the building. We thought that in order to clarify some of the rumors that were circulating at that time we did, somewhere around March 15th, give or take a few

days, announce publicly at a press conference that we were considering the possible acquisition and just at that point that's all it was. At this point, that's all it still is and it was noted at a press conference that day, I believe, Senator Thomas did make the statement at the press conference that there was an option on the building, but the amount of the option was never discussed. In fact, I think it probably would have been rather inappropriate for Senator Thomas to even inquire what the option was.

Q. But he did report back to you and through his investigations he did find out that there was an option?

A. Yes.

Q. And was it your impression he had known this before they started their investigation?

A. No.

Q. Did you ever hear him say whether or not he knew Mr. Harbes before he started?

A. No, I never did ask him and we never got into that part of the discussion at all. I had no way of knowing anything about that.

Q. Then, as far as the investigation that Mr. Borgen and Senator Thomas conducted, did you know of any wrongdoings

any irregularities?

- A. Absolutely not. If I had, they would have been presented to the Committee long before now and along about the middle of March when we were considering this bill, Senator Bennett did advise me that he had been in contact with the governor's office to see if they had any information that we didn't have about any alleged wrongdoings or improprieties and Senator Bennett said that he wasn't provided anything that indicated there was any wrongdoings in any way, shape, or form.

SENATOR STOREY: Thank you.

QUESTIONS BY REPRESENTATIVE NOVAK:

- Q. Mr. Speaker, I have a couple of questions here. Now, when Mr. Van Cleave, you say, admonished you to leave this alone, could you have interpreted this in any way, shape, or form a threat?
- A. No, once again, I'm some used to this. Mr. Van Cleave has done this on numerous occasions. No, he didn't-- I mean, I didn't take it in that manner because I'm quite used to getting these kind of messages from Mr. Van Cleave.
- Q. And just to clear up another point, you do have a letter from the governor refusing you as Speaker of the House

an audience with him concerning his veto?

- A. Yes, and I present these copies of these four letters to the Committee.

REPRESENTATIVE HAYES: We'll have them made part of the record.

(Exhibits Y, Z, AA and BB are marked for identification by the reporter.)

QUESTIONS BY MR. NOVAK:

- Q. Did this seem unusual or is that part of the program, too?

- A. It seemed most unusual that the Speaker of the House and the President of the Senate could not get an audience with the governor, particularly in light of the veto message and particularly in light of the last paragraph of the veto message. I thought it was very important that the Speaker of the House and the President of the Senate be granted an audience with the governor to discuss this matter. This was declined, as you know, and we have yet to have an opportunity to discuss this with the governor.

REPRESENTATIVE NOVAK: No further questions.

QUESTIONS BY SENATOR BROMLEY:

- Q. Mr. Speaker, were you ever invited by the governor to



give him an audience, you and Senator Bennett?

A. Were we ever invited by the governor to give him an audience?

Q. During this term of the legislature.

A. We were invited by the governor to come to his place of residence and we were invited by the governor on one other occasion to enter his office and to that extent is the only invitation that I've had from the governor during the entire Session.

Q. Did you honor his invitation?

A. Yes, we did. We went out to the governor's mansion the first time and advised him that after that, and I think we advised in writing, that we would prefer to conduct state business on state property and the next meeting was held in the governor's office.

Q. Was there any discussion at that time with the governor of the intentions of the legislature to purchase the New England Building?

A. None whatsoever because we didn't have any intentions at that time of doing it. The only thing we were doing was ascertaining whether or not it was even feasible and that was all that Senator Thomas and Mr. Borgen were charged with doing is the responsibility of assembling

a set of facts, accumulate all the information they could and then report back and see whether or not that would be feasible and after some deliberation the bill was drafted in the House to provide an opportunity for that acquisition, but the bill itself, as I call the Committee's attention to the director, the state architect to make the negotiations and proceed with the acquisition of it, not in the state legislature.

SENATOR BROMLEY: Thank you.

- A. Also, I would direct the Committee's attention to page 2 of the Bill that says that the state architect could discontinue negotiations if he was not able to negotiate satisfactorily after consultation with the advisory committee.

REPRESENTATIVE HAYES: Any other questions?

QUESTIONS BY REPRESENTATIVE PARRISH:

- Q. Yes, so for the record, Mr. Speaker, in your opinion the executive branch of the state government had, in essence, the final say over the acquisition of the building under the proposed Bill?
- A. Under the proposed Bill the state architect was directed to complete the negotiations and make the acquisition.
- Q. Yes, sir, and for the record I ask you were you in support

of House Resolution 1056 forming this Committee?

A. Yes, I was.

Q. And was it your impression from the governor's veto message that he suggested such a Committee?

A. I think the Committee constituted in exactly in the manner that I interpret the resolution to mean and the veto message. We discussed this and we think the Committee was properly constituted and I personally did not select any of the members of this Committee. I delegated that responsibility to my floor leader. Representative Loux did not personally select any members of the minority party. He delegated that responsibility to other members for that selection. Having been directly involved as far as the people, our aides, are concerned, I thought it would be more appropriate to have Mr. Everett make that selection for the members who would serve on this Committee.

QUESTIONS BY REPRESENTATIVE BURKE:

Q. Mr. Speaker, now, you mentioned that your aides collectively gathered this information to provide you with the basis for trying to determine whether or not it would be feasible before the Bill was drafted?

A. Yes, long before the Bill was drafted.

And apparently inasmuch as the Bill was drafted the figures that they came back with would support the feasibility of at least continuing to the negotiation stage?

A. This is absolutely correct. We are paying somewhere in the neighborhood of four hundred thousand dollars a year rent for other agencies distributed around the capital area and after a number of people, I think, explored this possibility and having participated in a study of the old First National Bank Building last year and the desirability of additional space in the capital building and the desirability of additional space for these state agencies, it was determined that we could probably pay for this building in a very short period of time. I think the figure was used, something like four years, and it would appear, if this were to be true, it would appear that the evidence would have been an excellent pusher.

Q. In your opinion would the purchase of this building have any detrimental effect on the development of the next new state office building?

A. I don't know why it should. This is still in the planning stages and in no way should deter the consideration of

that. We need space, we need space badly, and we need it now, and this is the only building that I know of large enough to accommodate the amount of space that is needed and consolidate some of these agencies that are scattered hither and yon around the capital area plaza.

REPRESENTATIVE HAYES: Any other questions?

Thank you, Mr. Speaker.

MR. MCGILL: Thank you, Mr. Chairman.

REPRESENTATIVE HAYES: Gentlemen, Mr. Carman is notifying Senator Bennett. We'll return to Mr. Bromley's motion that he made earlier in the morning concerning the request that Mr. Morgan be subpoenaed before the Committee. I don't believe there was a second to that, Senator.

REPRESENTATIVE BURKE: Mr. Chairman, I think I could support the motion. I would prefer that he be invited to appear voluntarily rather than subpoenaed here.

REPRESENTATIVE HAYES: Would you amend that motion?

SENATOR BROMLEY: Frankly, Mr. Chairman, I don't care what you do because it's pretty obvious to me right now that we're not going to be able to serve

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out and find all of the extenuating circumstances involved in the purchase of the New England Building.

REPRESENTATIVE HAYES: Do I understand that you're withdrawing your motion, then?

SENATOR BROMLEY: Yes, I withdraw, Mr. Chairman.

REPRESENTATIVE HAYES: All right.

ROBERT F. BENNETT

called as a witness on behalf of the Select Committee, being first duly sworn on his oath by the Chairman, Representative Hayes, testifies as follows:

DIRECT EXAMINATION

BY REPRESENTATIVE HAYES:

Q. Would you state your name, please?

A. Robert F. Bennett.

Q. And your address?

A. 5315 West 29th Terrace, Overland Park, Kansas.

Q. And your profession?

A. Legislator. My partners understand that I do practice law in my spare moments.

Q. In view of that, I would advise you, Senator, that in accordance with the provisions of the statute under which

we are operating, you are entitled to counsel of your own choice. Do you waive that right?

A. Certainly.

Q. Allright, sir. We are charged with the responsibility of investigating any possible alleged improprieties or irregularities surrounding the investigation into the possible negotiation for the purchase of the New England Building and adjacent properties. Are you aware of that?

A. I am indeed.

Q. All right, sir.

SENATOR TILLOTSON: No questions at this time.

REPRESENTATIVE VAN BEBBER: Do you have any statement that you would like to make to the Committee?

SENATOR BENNETT: Well, I don't want to take--  
(interrupted)

REPRESENTATIVE VAN BEBBER: Answer the question.

SENATOR BENNETT: Yes, I was going to say I don't want to take the Committee's time unnecessarily. You've had a long grueling ordeal, but perhaps I could simplify it a little bit by telling you of my participation in the prospective purchase of this

building. I first became aware that there was some interest in the building and that it might possibly be available some time in the early part of the legislative session. The Speaker of the House indicated to me after we'd had some discussion and as a matter of fact one of our rare disagreements over the allocation of space; I had some feelings about allocating it to some of the senators and he had a percentage of house members that didn't have office space and we worked out our little problem and in the progression of discussion it, as I recall, he mentioned to me the possibility of acquiring the New England Building and described it generally and wanted to know what I thought and I said, "Well, sounds like a good idea to me," thought it should be investigated which he had suggested. I don't believe we had any further discussion on the matter until shortly before or on the day that Senator Thomas became my administrative assistant and the speaker was over again to tell me some of his knowledge of the building and wondering whether I wanted to go over and see it and wanted to participate in seeing what it would cost perhaps



to acquire it, what kind of legislation we would have to pass, and at that time I told him that I didn't have time to be concerned with that particular area. He had indicated that Rex Borgen had done some work for him on it and I said, "Well why don't I just turn it over and ask Senator Thomas to represent the Senate with reference to getting the information together," and I think according to the memo that Senator Thomas had prepared for me, this occurred on January 16th, 1973, and at that time I called Mr. Thomas in. I told him what I knew of the proposal. I told him that we had two things, two questions to answer. First of all, was it a good buy and secondly, if it was a good buy should we proceed, enact legislation, and if so, what kind of authority should we have in that legislation for the purchase. I told him I knew nothing of the building, he would have to do all the foot work, examine it, because I hadn't seen the building, at least, not to pay much attention to it and based upon that he then proceeded to investigate it as my representative, you might say. He went over and I suppose he can tell you better

than I can because what I would be telling you would be hearsay. He did a great deal of investigation on the measure. He reported to me on a regular basis as to what was occurring, he talked as to potential purchase prices, as to the condition of the building. I told him if he continued to be satisfied then it was a good buy but he ought to try to decide what the purchase price might ultimately be because we would not be purchasing the building and he had no authority to negotiate on behalf of either the Senate or the State in purchasing the building, we had to have some clear idea of what the total cost would be. He gave me memorandums. They're here in the file and he has copies of those he can give to you and the Committee is at liberty to review the file which is about all we have on the building based upon his reports. As nearly as I could tell, the building was a good buy. It would offer a great deal of space, space at a cheaper price than we are paying in some of the other buildings throughout the city. It also would allow us to provide legislative space for our legislators which I have always felt is a

relatively important thing that we should do as quickly as possible. Along or about this time at a press conference after the Speaker had announced that we were considering the introduction of a bill which would authorize the negotiation for the purchase of this building, one of the reporters, and I can't tell the Committee words that the reporters asked me, whether or not there was any improprieties --I don't remember his exact words--with reference to the purchase of the building and I would consider it a relatively off the record approach at which most of our press conferences have been. I said, "Where did you hear that," and ask I recall he indicated that he heard it from the usual reliable source, the governor's liaison, Mr. Van Cleave. We didn't pay a great deal of attention to it, but on that particular day I happened to be approaching the senate--or, no, I was getting on the elevator and former Representative Van Cleave sidled up to me, as he so frequently did or does, used to anyway, and said, "Say, do you realize what's involved in the purchase of the New England Building?" And I said, "I realize you've been spreading some of your gossip with the

press and if you have anything, any facts or figures that the leader should be aware of, if there's anything amiss at all in the purchase of this building, you ought to advise us of that fact and do so immediately." That, as best I can recall, was a month or a month and a half or perhaps even two months ago. We heard nothing further about it until I, at a later date and I can't pinpoint this in time except it's pinpointed in a memo Senator Thomas has that is in this record, I talked to Senator Matlack about the purchase of the building and told him I had been hearing these bits of gossip and political graffiti that Representative Van Cleave was spreading throughout the capitol building and I said, "Is there anything wrong?" And at that time Representative Matlack said that he didn't know of anything specifically, that there was some question about the option and the advisability of the building and that he understood that Representative Van Cleave had talked to former Senator Taggart about it, but as far as he was concerned he knew nothing amiss. He questioned whether or not we needed to buy the building. This was on March 15th

and on that day I wrote Senator Thomas and said I have just talked to Don Matlack and he led me to believe that most of the rumors on the New England Building are as expected, spread by Van Cleave. He also indicated that Van Cleave may be getting some of his information from Bob Taggart. He said that he had heard that the Merchants National Bank offered the building for sale for less than we are proposing to pay. He said that he had also heard that the man who has the option has never exhibited that option to anyone and that in effect it was dated back after the legislature indicated any interest. I think we need to check out the so-called rumors as well as Garr's inquiry as to whether any of the gossips get that. I have told Matlack, otherwise these ridiculous bathroom comments should cease and after receiving that Senator Thomas did check into the matter further. As I recall, he advised me orally that he could find nothing wrong with the entire building and that's about the way it was left. The bill started winding its way to the legislature which finally passed and then on the night of the basketball after-party,

whatever night that was, I was in the room at the University Heights and Senator Harder called me quite late in the evening and said that he needed to talk to me immediately, so I invited him up to the room. We sat there and chatted. He said that Representative Van Cleave was down at the party and that he understood there was going to be some substantial scandal on the following day when the governor vetoed the bill or whenever he was going to veto the bill and that it involved Senator Thomas and that he wanted to know if I thought there was any substance to it and as I recall it I started laughing and I don't believe I gave him an immediate answer and told him that I thought it was just more Van Cleave's rumors, but he was sufficiently concerned. He said, "Would you mind calling Senator Thomas at home and being absolutely sure that coincidentally that there might not be some association between him and any of the principals on this building." So, I did place a call to Senator Thomas and I told him what we had heard as a result of this after-party rumoring and said that I understood something was forthcoming and

I told him at the time I was embarrassed to ask this question, but that I felt that I had to ask it. Was he absolutely confident that he had no involvement either past, present, or prospective with any of the principals with this purchase either as a business matter or any other matter.

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and he said, "Absolutely not. As I told you sometime ago, I was just doing your bidding," which he was and they said there's nothing involved in it and that was about the end of it. I communicated that fact to Senator Harder and he went back to gather more of these pearls of venom down at the University Heights after party and the next morning, I think that was the day the Governor vetoed the bill and from there on out why everything I've heard about the measure has been primarily rumor or statements that have been made in the press.

REPRESENTATIVE HAYES: Thank you, Senator. That's a very comprehensive review for us. Are there questions?

QUESTIONS BY REPRESENTATIVE BURKE:

- Q. I have one question. In your opinion, why are we here?
- A. Well, you're here because the Governor issued a veto message, if you'll pardon the partisan comment, which would indicate that he hasn't read the bill since the bill was not a purchase, but an authorization for his architect to negotiate for purchase and to abandon that negotiation if he wanted to, but you are here because in that veto message the Governor implied that



something was amiss with reference to the purchase of this building and that a legislative investigation should take place and this is the legislative investigation.

QUESTIONS BY SENATOR SIMPSON:

Q. When you say he implied that something was amiss, you mean some sort of impropriety or something wrong in just our assessment of economic value of the building?

A. Well, when you combine the rumors that were spread with the last paragraph of the gubernatorial veto, if I can find it here, where he asked for a thorough investigation of all facts surrounding the proposed sale of the property as specified in House Bill 1568 and when you compound that by the fact that on two separate occasions the Speaker and I requested an audience with His Eminence and on both occasions were denied that audience, I think that's where we felt there was an innuendo of impropriety.

REPRESENTATIVE HAYES: Any other questions?

QUESTIONS BY REPRESENTATIVE PARRISH:

Q. Yes, simply, Senator, do you feel that this Committee was the type of Committee that the Governor envisioned

in preparing his veto address?

A. Mr. Parrish, I have a great deal of difficulty in determining what the Governor envisions on practically anything, but whether or not this specific Committee was involved, I don't know. This is not an unusual procedure. It was one that was approved by both the House and the Senate and he did not structure his remarks any further than the ones that I've read to you and he refused to meet with and discuss the matter with either the Speaker or the President of the Senate, so whether this is what he envisioned or not, I don't know. This is what we envisioned from his message.

REPRESENTATIVE HAYES: Further questions?

Thank you very much, Senator.

SENATOR BENNETT: Thank you, Mr. Chairman.

C. Y. THOMAS,

called as a witness on behalf of the Select Committee, having been first duly sworn on his oath by Representative Hayes to tell the truth, the whole truth and nothing but the truth, testified as follows:

EXAMINATION

BY REPRESENTATIVE HAYES:

Q. Would you state your name, please?

A. My name is Christopher Yancy Thomas and I live at 5519 East Mission Drive in the City of Mission Hills which, of course, is in Johnson County. I'm a licensed professional engineer under the laws of Kansas, have been since 1935 and my license is still in very good standing, I might say. The past 25 years before my retirement, eight years ago, I was manager of a \$35 million ordinance works and then after we set up our chemical company, I was vice president of operations. We had five million works and about 20 satellite works, I suppose, that were worth around \$50 million, but more importantly, Mr. Chairman and gentlemen of the Committee, we set up the construction subsidiary and during the 15 years in which it was in operation before I was retired, we built probably a hundred and fifty million dollars worth of roads, railroads, buildings, chemical plants, and so forth, mainly in the field of chemical plants simply because there was nobody in the area who could do the chemical plant we needed. There were special alloys. There was the synthesis of ammonia which operates 500 pounds and

we needed 25,000 pounds or more and it was a very persnickety business, so we had to be careful about it. So, then, when this work was done, not only for our own company but we built power houses, oil plants, things like that for Standard Oil, Sinclair, and for ourselves. The last four years, Mr. Chairman and gentlemen, some of you know that I have served four years in the Kansas Senate and for the last three months I have been employed as administrative assistant to the President of the Senate, Robert F. Bennett. Well, I thought I'd better summarize this whole affair.

REPRESENTATIVE HAYES: That would be very satisfactory.

SENATOR THOMAS: So, may I read this?

REPRESENTATIVE HAYES: Prior to starting, Senator, I should advise you that the statute provides that you have the right to counsel. Do you waive that right?

SENATOR THOMAS: Oh, I certainly do. I don't need any counsel in this proceeding, Mr. Chairman. As a matter of fact, there have been few times in my life I've really needed counsel for anything I had done, but

certainly not today. So, this is a memorandum to Senator Bennett, the subject of the proposed purchase of the New England Building and adjacent parking lots, but when I get through I have copies of this plus the exhibits for each member of the Committee.

"Memorandum to: Senator Robert F. Bennett, April 10, 1973, Subject: Proposed Purchase of the New England Building and Adjacent Parking Lots.

"1. On January 16, 1973, the day after I reported for duty as your Administrative Assistant, you advised me that Speaker McGill and Minority Leader Loux thought the legislature should consider the above-mentioned project, and you instructed me to represent you in future committee meetings on the subject.

"2. On January 17, I first had a conversation with Mr. Borgen, the Speaker's Administrative Assistant, on the general subject. The next morning I visited with Messrs. McGill and Borgen about the matter, and then I walked over to the Merchants National Bank to make some inquiries. From Mr. William Buntten, Executive Vice President, I learned that the bank did not own the New

England Building -- that it was owned by a company controlled by the Hall and Thompson families. Mr. Bunten did confirm the fact that the bank did own the black-topped parking lot immediately west of the building and that I would probably have to deal with Mr. Robert Bunten, Chairman of the Merchants National Bank, on the parking lot and with Mr. Steve Hall, President of the Merchants National Bank, on the building, as Mr. Hall was the Vice President of the New England Building Company.

"3. Having learned from Mr. Bunten that Mr. David Neiswanger of the Neiswanger Realty Company was the rental agent for the building, I called on Mr. Neiswanger and Mr. Fuller of the same firm. Mr. Fuller showed me completely over the building. In this visit I learned for the first time that a Topeka developer, Mr. John F. Harbes, had a valid option on the building and that the option had been, in fact, in effect since May or June of 1972.

"4. On January 23, 1973, Mr. Neiswanger, Mr. Harbes and the writer attended a meeting which

was arranged by Mr. Neiswanger at his office. Again we looked over the New England Building and, afterward, inspected the adjacent parking lots. For the first time, we were able to identify the various parts of the project and the owners of the several parcels of real estate which are:

"(a) The New England Building (lots 145, 147, 149 and 151) is owned by the New England Building Company of which Mr. S. M. Hall, President of the Merchants National Bank, is Vice President. It is understood the stockholders are largely members of the Hall and Thompson families.

"(b) The parking lot west of the New England Building, formerly the Merchants National Bank drive-in area, consisting of lots 146, 148, 150 and 152, is owned by the Merchants National Bank.

"(c) The 3-story building next to the New England Building, lot 153, is owned by the Associated Credit Bureaus, Inc.

"(d) The Southwestern Bell Telephone Company owns Kansas Avenue lots Nos. 155,

157, 159, 161, 163, 165, 167 and 169.

"(e) The 1-story building on lot 171 is owned by Martha Stewart Yerkes, Los Angeles, California.

"(f) The 1-story building on lot 173, right up against the old First National Bank Building, is owned by Family Service Inc. of Topeka.

"(g) The present black-topped parking lot, lots 154, 156 and 158, is owned by Mr. Gleed Thompson and his sister who maintain residence in Denver."

Thinking that there might not be enough parking, we looked at the old Martin Lumber Company location. It's listed in this report. Mr. Lyal Dudley, I think, owns and controls that, lots 157, 159, 161, 163, and 165 and some of you might know this whole lumberyard has been raised and they're getting ready to black-top it and to lease it for parking. Now, back to my main area.

"5. The very next day Mr. Harbes called on me at my office and delivered a typed report describing the building in some detail. This may be described as Exhibit No. 1. Then Mr. Harbes



gave me a plat of the area showing the building and the proposed parking lots. This is identified as Exhibit No. 2. Based on data at hand, I made a preliminary report to you and to Speaker McGill in which I recommended that the investigation be continued by a small investigating party. This report is shown as Exhibit No. 3.

"6. On February 8, I sent you a note asking if you would like to inspect the building and the parking lots. I attach your reply as Exhibit No. 4. Since that time, I have tried my best to keep all concerned advised of developments largely by oral reports."

I want to read what he wrote me on the 8th day of February. "As far as I am concerned I would just as soon leave the inspections, tours, etcetera up to you and the others listed. At best, I am a stranger in Paradise in this area and would rely primarily on Pete McGill's recommendations." Now, as a matter of fact Mr. Chairman and members of the Committee, I think this started out to be a six-man committee and then as the work of the Legislature increased it kind of got down to four, then down to three and the first thing I

find I was pretty much carrying the ball by myself, so my file, considered a business file, is one and the same with Senator McGill's. Our first inspecting trip with Borgen, Loux, and I was on February 17.

"8. On February 19, I had a meeting with Mr. Harbes to get more information as requested by members of the investigating committee. Mr. Harbes sent much of the data to me in a letter written February 20 and to which he attached a plat of the area, marked as Exhibit No. 5.

"9. Attached as Exhibit No. 6 is a copy of your review of February 22, answering my preliminary report included as Exhibit No. 3. With Mr. Loux' help, the Director of Property Valuation obtained the 100 per cent valuation data on the building and lots under discussion. These data are included as Exhibit No. 7."

We soon found out that is usual in a case where there's quite a variation in valuation on lots, for example. The four lots under which the New England Building sits are valued, they're there on Kansas Avenue at \$525 per square foot and \$607 a front foot. The Bell Telephone lots between that building and the First

National Bank Building now owned are on the area at \$1,737 per front foot. A front foot at Jackson doesn't have as much value as Kansas and the Merchants National Bank parking lot are at \$525 per front foot, but I would say in passing, Mr. Chairman, from this exhibit that the valuations from the property values showed the building to have a value of \$419,230 and \$67,160 on the lots. Now, I think that any real estate man in the City of Topeka which say that there is something wrong with that valuation, I put my own valuation of a hundred and twenty-five thousand, about one hundred thousand so I came up with a value of the lots in the balancing of \$544,000. Now, in our county I don't know whether it's true elsewhere in the State of Kansas, ordinarily I think it's true that when you go to purchase property you'll find that you're going to have to pay 15 or 20, 25 percent more than the actual valuation on the books. That seems to be a set practice. So, the essentials of the case, 15 percent on top of \$544,000 makes \$559,000 to the valuation and to give them 25 percent extra on top of that would be \$590,000, so that kind of settled it.

"10. Mr. Borgen had a preliminary conversa-

I'm low on a couple of things and I may be high on some others, but nevertheless those are my figures and as is always the case when you do these things, in any estimate puts in something for contingencies and in this particular case we put in there for John Harbes \$75,000 to put in a new ceiling on the 4th floor and a few things like that. Well, I just arbitrarily raised that to a hundred thousand dollars. I think that I am a little high on the black-topping for the rest of the parking lot, Bell's parking lot, that big long area on Kansas Avenue about 65 percent of it is black-topped. I think it might cost 10 or \$12,000. I put in \$20,000 just to make sure for estimating purposes we get it. Then, after it got all through adding those things up in here and by the way, may I say this. The Topeka Credit Bureau Building is not a very good building. It's a three-story building. The only real good thing about it is on the first floor and in the basement. It's got a splendid concrete floor. The Family Service Building is pretty good, one of those two buildings down there had the floors heavied up so they could use them for computers and so forth, then we got all through, I came to a figure

of \$1,190,000 and one never knows what might happen and so forth, then, in our estimate in years past just to make sure I put a hundred and ten thousand dollars in for contingencies. I have no idea what they might be and I hope we don't have to spend them. I wouldn't spend \$65,000 for the Topeka Credit Bureau Building. I've heard other legislators want the whole block. If you do, that's in the deal.

"13. When I was visiting with Mr. R. M. Bunten, Chairman, Merchants National Bank, about the value of their four lots which would be needed for parking, he put a valuation on the lots considerably in excess of what I thought they were worth. In compliance with his request, I sent a longhand note to Mr. Bunten on March 9. See Exhibit No. 16."

"I have determined that I have no authority to make an offer, verbally or in writing, which would bind the State of Kansas. All I can say is that I will make a strong recommendation to the State concerning the above mentioned lots which the Merchants National Bank owns and which are directly west of the New England Building."

"In this memorandum I stated, as I did in conversa-

tion with all others, that I had no authority to make any firm offers. My task was to develop some realistic values of the properties so that a bill could be prepared. The final prices would have to be determined by the Director of Architectural Services as provided in HB No. 1568.

"14. On March 14, 1973, I took Messrs. Harbes and Max Klein of the Bell Company to lunch to discuss details of the project. I apprised them of the fact that, at a 9:00 a.m. press conference, Speaker McGill announced the possible acquisition of the New England Building and adjacent parking lots. There was a question from the press concerning a rumor emanating from Mr. Van Cleave to the effect that someone stood to pocket \$100,000 out of the deal. Attached as Exhibit No. 17 is a longhand note from Mr. Klein about the valuation of the Bell lots. It is to be noted that Bell paid \$318,500 for the lots, that the land is partially fenced and that an automobile service building, gasoline storage tank and gasoline pump are located on one of the lots.

"15. On March 15, 1973, you advised me that

you had visited with Governor Docking's aide, former Senator Don Matlack, about some alleged irregularities in the project to purchase the New England Building and certain adjacent parking lots. This memorandum is attached as Exhibit No. 18."

I want to read to you gentlemen this memorandum from Senator Bennett to me, March the 15th, 1973.

"Memo to: C.Y. Thomas. I just talked to Don Matlack and he led me to believe that most of the rumors on the New England Building are, as expected, spread by Van Cleave. He also indicated that Van Cleave may be getting some of his information from Bob Taggart. He said that he had heard that the Merchants National Bank offered the building for sale for less than we are proposing to pay. He said that he had also heard that the man who has the option has never exhibited that option to anyone and that, in effect, it was dated back after the Legislature indicated an interest.

"I think we need to check out these so called rumors as well as Gaar's inquiry as to

whether or not any of the principals are big contributors to either party.

"I have told Matlack that if he has any proof, then we should have it forthwith. Otherwise, these ridiculous bathroom comments should cease."

I was at the office everyday and everybody knew where my place of business was and my home down here on the Senate floor. I have the file, Bennett didn't have a separate file in this thing, I had the file and all the papers, but at anytime even in this very minute, nobody from the Governor's Office or any other office in the Statehouse ever asked me for one single, solitary fact and I think probably I was in possession of more of these facts than anyone else.

"16. An item of considerable importance was the Senate Ways & Means Committee hearing on HB 1568 which was held on the morning of March 15, 1973, with Senator Doyen presiding. Senator Doyen called the following men to appear and testify concerning the proposal:

"(a) Mr. John Harbes, Topeka realtor and developer.



"(b) Mr. R. M. Buntten, Chairman,  
Merchants National Bank.

"(c) Mr. S. M. Hall, President,  
Merchants National Bank; Vice President,  
New England Building Company.

"(d) Mr. Max Klein, Southwestern Bell  
Telephone Company.

"(e) Mr. David Neiswanger, Neiswanger  
Realty Company.

"These men were questioned about their part of the project and particularly if they had made big contributions to any political party.

"17. On March 21, I called on Mr. Marcotte of the State Architect's Office, to find out how the state calculated operating costs of office buildings. I was furnished with a list of the office space being rented by the state in the city of Topeka. Mr. Cobler, the State Controller, added the expiration date of the leases. This interesting exhibit is numbered 19. Later in the day I spent a couple of hours with Mr. Culbertson of Mr. Bibb's office calculating payouts. As shown by Exhibit No. 20, prepared by Mr. Culbert-

son, with a generous estimate of operating expenses and with \$12,000 annually charged as a depreciation reserve, the project will pay out in ten years or less with agencies being charged \$4.00 per square foot for the first four years and \$4.25 per square foot for the last six years. Mr. Culbertson also prepared the bond retirement schedule shown as Exhibit No. 21.

"18. For the benefit of Senator Doyen and his Ways and Means Committee, I prepared a summary memorandum on March 22. This is attached as Exhibit No. 22. HB 1568 was approved by the Senate Ways & Means Committee on March 22, was approved by the Senate on General Orders on March 23 and passed on third reading by the Senate on March 26. HB 1568 went back to the House for concurrence on a technical amendment. The bill was sent to the Governor on March 30, and, on April 3 at 3:45 p.m., Governor Docking vetoed HB 1568. The veto message is attached as Exhibit No. 23.

"19. It is understood that the Governor discussed this veto with the Topeka Press Club on

Tuesday evening, April 3. Members of the press advised the writer that the Governor's aide, Tom Van Cleave, was saying that the plain fact of the veto was the allegation that I had negotiated with an old friend and former business associate so that he could make \$100,000 on the deal. The facts are that for the first time in my life I met John F. Harbes on January 23, 1973, so he is neither an old friend nor a former business associate."

Mr. Chairman, I sort of would like to extend my remarks a little bit on that thing. I won't forget that day very well. That was election day and I went home. I left the Statehouse before 5:00 o'clock, went home and voted and I was going through all the papers that I had accumulated in my absence and was just sound asleep when the phone rang and it was Senator Bennett conveying the news that the Governor vetoed the bill and the Senator told me that he had not had a chance to see the veto message, but that the Governor's aides were saying that the reason for it was my involvement. There are a couple more letters here, paragraphs, I won't read to you, but I'll conclude with

this paragraph:

"23. I am disturbed about the news in THE KANSAS CITY TIMES article of April 10 in which it is reported that the Governor has stated that he will not testify. When the Governor takes actions and makes recommendations such as he has done, there ought to be a way for a citizen to force him to testify. I believe this memorandum and record is a true and accurate statement of my involvement in this project."

REPRESENTATIVE HAYES: Thank you, Senator Thomas. Your report will be received as part of the record in the case.

MR. CARMEN: I'm handing the Reporter what you've quoted from and what you wish to have in the record.

(Exhibit CC marked for identification by the Reporter.)

SENATOR THOMAS: Right, Mr. Chairman. May I extend my remarks briefly about the bill itself?

REPRESENTATIVE HAYES: Yes, sir.

SENATOR THOMAS: I have this copy of House Bill 1568 before me. I had nothing to do with the preparation of this bill at all. It was introduced by the

Ways and Means Committee of the House and on the 8th day of March. As soon as it was published, printed, of course, I went over and got a copy of it because I wanted to make sure what was in the thing and I would like to just very briefly go through the bill. Section 1 has two principal parts. One, it directs the Director of Architectural Services to acquire the building in fee simple and secondly it says that he is authorized to issue revenue bonds to pay for it. In Section 2, there is the specifics about how we're going to want these bonds from the Board of Examiners and so forth and specifies what we're going to pay. Section 3, "The State Director of Architectural Services, in the acquisition of said tract or tracts and improvements thereon and then in the operation, management and leasing thereof as well as in the issuance of revenue bonds therefor shall have an exercise and be subject to all the powers, duties and authority and all the limitations conferred or placed upon him by K.S.A. 75-3608, 75-3611, 75-3612, 75-3613, 75-3615 and 75-3616." It goes on to say that upon the approval, the Attorney General approves them before they can pass the bill and be legal. Section 4 creates

the 5th and Kansas Avenue operating fund which will take care as a way to view and handle the county. Section 5, the State Director is authorized to lease the land to any State agency and so forth and he has to set up rental for advertising the purchase and so forth, but here is an interesting feature which some of you may not read as quickly as I have. It sets up the building advisory committee. "There is hereby established a state building advisory committee to the Director of Architectural Services, to be composed of the president of the Senate or his designee, the Speaker of the House of Representatives or his designee and the minority leader of the Senate or his designee and the minority leader of the House of Representatives or his designee. The Speaker of the House or his designee shall be the chairman of the advisory committee which shall meet once each month at the State Capitol Building in space provided by the secretary of the joint committee on legislative services on a date selected by the committee or on call of the chairman until the office building is acquired and is full occupied." Mr. Chairman, there isn't one single word in here that authorizes me or

Rex Borgen or those of us who have been trying to get the facts for the State of Kansas to do any negotiation of any kind. All we've done is obtain that information. Thank you, sir.

REPRESENTATIVE HAYES: Thank you, Senator Thomas.

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## QUESTIONS BY SENATOR BROMLEY:

- Q. Mr. Thomas, do you know Mr. Rick Gammill?
- A. Yes, sir, just casually. I was introduced because he was Mr. Loux' assistant.
- Q. You stated no one at any time ever asked you to avail your information to them that you had compiled on this building?
- A. Well, Mr. Gammill and Mr. Loux were part of the Committee, Senator Bromley. I thought, I mean, old Rick has ordered to see me several times and he got the valuations for the building for me. He got the plans of the office building and so forth, but I considered him as a part of the committee, but it was always available to him.
- Q. Did Mr. Van Cleave ever try to get a copy of an option from you?
- A. No, sir, never talked about it at anytime.

Q. Did you ever discuss this New England Building with Mr. Van Cleave?

A. No, sir, I never asked him about it. I never asked him and he never asked me.

QUESTIONS BY SENATOR TILLOTSON:

Q. Mr. Thomas, prior to your meeting on the 23rd, I believe you met Mr. Harbes?

A. January 23rd.

Q. Prior to that time, did you ever have any professional or social relationship with John Harbes?

A. Senator, I thought I had made myself clear of this thing. I had heard favorably of John Harbes around town, used to be with the Highway Department, but I had never laid eyes on the man and never seen him at all, had nothing to do with him until that very morning when in Dave Neiswanger's office.

SENATOR TILLOTSON: Thank you.

REPRESENTATIVE HAYES: Any other questions for Senator Thomas? Thank you very much, Senator. We appreciate your appearance for the Committee. Gentlemen, this concludes the list of witnesses which we've prepared at our meeting last Sunday. Before we close, I would ask each member of the Committee if they



have any other witnesses they would like to hear.

REPRESENTATIVE PARRISH: Mr. Chairman, I have one question which may not be important at all of Mr. Neiswanger. I'm wondering since he's in the room if it would be acceptable to ask him--(interrupted)

REPRESENTATIVE HAYES: I think so.

Mr. Neiswanger, would you come forward, please. I'll remind you that you are still under oath.

QUESTIONS BY REPRESENTATIVE PARRISH:

- Q. Pardon this inconvenience, Mr. Neiswanger, but I didn't recall yesterday if you testified whether or not you inserted the date in the option in your handwriting in the option which is held by Mr. Harbes?
- A. Yes, the dates were inserted by me.
- Q. Do you know approximately when you inserted those dates?
- A. The option, the effective date of the option as I recall was January the 15th and that is the date that I inserted it in the option to the best of my recollection.
- Q. And was this done prior to any knowledge by you and interest in the State purchasing properties?
- A. Yes, it was. We had no knowledge at all that the State

was interested.

REPRESENTATIVE PARRISH: Thank you. Mr. Chairman, that's all.

REPRESENTATIVE HAYES: Since there are no more witnesses to be called, Senator Tillotson has a statement he would like to make for the record.

SENATOR TILLOTSON: I would like to state for the record that on March the 23rd, 1973, the Senate Bill No. 571 was introduced at a later date than this bill which has reference to the purchase of a site west of town for Historical Society was carried on the floor of the Senate by Senator Doyen, Chairman of the Ways and Means Committee, at which time he stated that the purchase of this tract was being made directly with the owner thereof, Dale Carmean.

REPRESENTATIVE HAYES: Thank you gentlemen. I think now we should determine when we will meet again. I would hope that it would be possible for a full transcript to be mailed to each of you by the weekend so that you can have the time to go through it. I think it's customary that the drafting of the Committee's report will be by the Research Staff and the Chairman and vice Chairman and I'm going to suggest

to Senator Tillotson that he and I return to Topeka on Monday afternoon for that purpose and if any of you would like to be there in early afternoon, we would be happy to participate. I think that possibly late that afternoon all of you will no doubt be back at that time. Anyway, we should have a meeting to go over the draft of the report and if we get it prepared that evening and submitted to a meeting of the Committee to be held at approximately 9:00 o'clock on the day before the House and Senate convene. Does that sound like a satisfactory schedule?

REPRESENTATIVE PARRISH: Mr. Chairman, would you repeat that. Now, we're going to meet on the 16th, you say?

REPRESENTATIVE HAYES: I think we should meet on Monday. Senator Tillotson and I will be here Monday or early Monday afternoon to work on the draft which will be submitted to the Committee later that day and we'll finalize it that night and then have a meeting on the final report on Tuesday morning because we're submitting the report on April 17th. I might also state to each and every member of the Committee that you are free to write a minority report

disagreeing with any or all of the findings and the conclusions which will be contained in the report. Is there anything further? All right, we'll stand adjourned until an hour on Monday of which you will be notified.

\* \* \* \*

C E R T I F I C A T E

STATE OF KANSAS )  
 ) SS:  
COUNTY OF SHAWNEE )

I, Sherri L. Cunningham, Certified Shorthand Reporter in and for the State of Kansas, do hereby certify that at all times herein referred to I was present at and reported in shorthand the oral proceedings had on the 11th and 12th days of April, 1973, before the Select Committee of the Legislature of the State of Kansas.

I further certify that such notes taken aforesaid have since been transcribed under my supervision, and I further certify to the correctness of the foregoing transcript consisting of two separate volumes, except where omissions are specifically indicated.

IN WITNESS WHEREOF, I have hereunto set my hand at my office at 701 Jackson Street, Topeka, Kansas, this 14th day of April, 1973.

*Sherri L. Cunningham*  
Sherri L. Cunningham  
Certified Shorthand Reporter

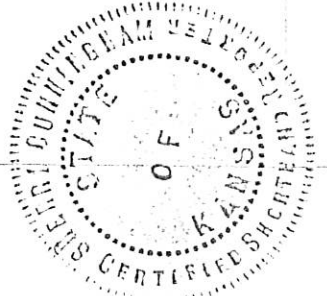



Exhibit A

C E R T I F I C A T E

This is to certify that the attached is a true copy of the minutes of April 7, 1973, of the Legislative Coordinating Council.

The attached copy is of minutes not yet approved by the Legislative Coordinating Council but prepared and distributed to Council members in accordance with its Rule 7.

This certificate is made this 11th day of April, 1973.

  
Assistant Revisor of Statutes.

M I N U T E S

LEGISLATIVE COORDINATING COUNCIL

April 7, 1973

Members present:

Senator Robert F. Bennett, President, Chairman  
Rep. Duane S. McGill, Speaker, Vice Chairman  
Senator Joseph C. Harder, Majority Floor Leader  
Rep. Kenith R. Howard, Speaker Pro Tem  
Rep. Donn J. Everett, Majority Floor Leader  
Rep. Richard C. Loux, Minority Floor Leader

Staff present:

John C. Weeks, Revisor of Statutes  
Fred J. Carman, Assistant Revisor of Statutes  
J. W. Drury, Director of Legislative Research  
William R. Bachman, Secretary, Joint Committee on Legislative  
Services and Facilities  
Mrs. Helen Marshall, Secretary to President

Chairman Bennett called the meeting to order in the office of President Bennett in the State Capitol Building.

Matters Relating to 1973 House Concurrent Resolution No. 1056

The Council considered matters relating to 1973 House Concurrent Resolution No. 1056. Senator Harder moved that Senators J. C. Tillotson, John M. Simpson, Bob W. Storey and Dan Bromley be appointed members of the Select Committee. Speaker McGill seconded the motion and the motion carried (Rep. Loux abstained). Rep. Everett moved that Representatives G. T. Van Bebber, John C. Peterson, Paul Burke, Jr., William R. Novak, John F. Hayes, Walter W. Graber and Jim Parrish be appointed members of the Select Committee. Speaker McGill seconded the motion and the motion carried (Rep. Loux abstained).

- 2 -

Senator Harder moved that the Select Committee be authorized to meet as many times as is determined necessary by its chairman. Speaker McGill seconded the motion and the motion carried (Rep. Loux abstained).

Senator Harder moved that the Select Committee be authorized to exercise compulsory process in relation to the subject of HCR 1056. Rep. Everett seconded the motion and the motion carried (Rep. Loux abstained).

The meeting adjourned.

Prepared by

Fred J. Carman, Assistant  
Revisor of Statutes

Approved by

Senator Robert F. Bennett, Chairman



*Exhibit B*

STATE OF KANSAS

JACK STEINEGER  
MINORITY LEADER  
SENATOR SIXTH DISTRICT  
NEW BROTHERHOOD BLDG.  
KANSAS CITY, KANSAS 66101



TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS  
VICE-CHAIRMAN: INTERSTATE COOPERATION  
MEMBER: COMMERCIAL FINANCIAL  
INSTITUTIONS  
GOVERNMENTAL ORGANIZATION  
LEGISLATIVE SERVICES AND  
FACILITIES

April 9, 1973

Representative John Hayes  
106 Crescent Street  
Hutchinson, Kansas 67501

Dear Representative Hayes:

I have today been advised by Mr. Fred Carmen that I will be subpoenaed by the special Investigating Committee regarding the purchase of the New England Building. I will be most happy to appear voluntarily, but since I have no idea as to why I am being subpoenaed, I must, in an abundance of caution, demand of you the following documents:

1. Production of all documents or copies thereof intended to be used in the hearing.
2. A list of persons to be subpoenaed with a view toward the taking of depositions.
3. Adequate time and authority to cause any other subpoenas that may be necessary to be issued -- subpoenas and subpoenas duces tecum.

We must also consider preliminary motions that should properly be raised concerning the propriety and constitutionality of the Coordinating Committee, appointing the members to hear evidence, particularly since it appears that this is going to be a political matter and the great preponderance and the composition of the special committee is made up of 8 Republicans and 3 Democrats.


Representative John Hayes  
April 9, 1973  
Page Two

You may know that as a member of the Coordinating Committee, I raised these various questions regarding inquisitional powers of the Legislature at the time this bill was passed and I request a copy of the committee notes made at that time.

I am sure it is not necessary for me to point out to you the distinction between the legislative, executive and judicial authority, but, to the extent the legislative authority attempts to abuse the constitutional or judicial responsibilities, then you may expect every objection from the undersigned.

Your early reply will be appreciated in order that we may determine whether it is necessary to seek action in the courts to obtain the above-referenced documents and answers to the questions raised above.

Very truly yours,

  
Jack F. Steineger  
Senate Minority Leader

JFS:cb

cc: Senator Robert F. Bennett  
Mr. Fred Carmen

JOHN F. HAYES  
REPRESENTATIVE 104TH DISTRICT  
RENO COUNTY  
106 CRESCENT BOULEVARD  
HUTCHINSON, KANSAS 67501



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
CHAIRMAN: JUDICIARY  
MEMBER: COMMERCIAL AND FINANCIAL  
INSTITUTIONS  
INSURANCE

April 10, 1973

Hon. Jack Steineger  
State Senator  
Senate Chamber  
State Capitol Building  
Topeka, Kansas

Dear Senator Steineger:

Your registered letter under date of April 9, 1973, was delivered to my home at approximately 1:30 p.m. this date. Since that time I have driven to Topeka and now am prepared to answer your letter.

The purpose of your having been subpoenaed is to ascertain if you have any information with respect to alleged improprieties in connection with the proposed state purchase of the New England Building and adjacent real estate. As you are aware, this select committee was appointed pursuant to a request contained in the veto message on House Bill 1568.

In connection with the demands contained in your letter I will state as follows:

1. I am not in possession of, nor does the committee have any documents intended to be used at the hearing other than copies of HCR 1056, the veto message of Governor Docking on H.B. 1568 dated April 3, 1973, a printed copy of H.B. 1568, and copies of newspaper clippings on file in the Research Department which bear on the subject.

April 10, 1973

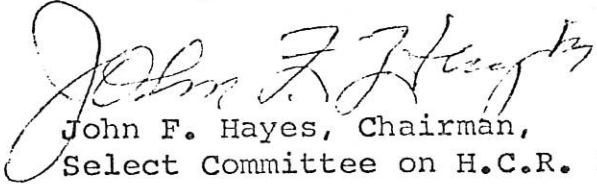
2. The list of persons being subpoenaed by the select committee will be made available to you on April 11, 1973. However, 46-1001 et seq. makes no provision for depositions and I will so rule.

3. If you feel that other subpoenas should be issued I will, upon your request and a showing of relevance, cause same to be issued instanter, upon a majority vote of the committee.

With respect to your statement ". . . this is going to be a political matter . . ." I can only reply that the request for this investigation was initiated by Governor Docking. In addition, it is my intention to conduct a fair and impartial hearing with a view to complying with the mandate of HCR 1056.

Insofar as your reference to seeking action in the courts I can only say that I view this as unnecessary, inadvisable and diametrically opposed to the intent of Governor Docking's request.

Sincerely,



John F. Hayes, Chairman,  
Select Committee on H.C.R. 1056

JFH:vl

Exhibit D

File

MESSAGE FROM THE GOVERNOR

TO: THE KANSAS HOUSE OF REPRESENTATIVES

I am returning House Bill 1568 unsigned, which I veto for the following reasons:

1. Section 1, House Bill 1568, authorizes and directs the State Director of Architectural Services to acquire the New England building title by negotiation to certain tracts of land and improvement thereon in the city of Topeka. In all negotiations for purchasing property, freedom of the parties to negotiate is vital to arriving at a fair price for the purchase of the property. House Bill 1568 would shackle the State Director of Architectural Services' ability to negotiate.

2. The State Director of Architectural Services and the State Fire Marshal have estimated that it would cost between \$473,200 and \$882,800 to renovate the New England Building.

3. Control of the purchase negotiations and the determination as to who would occupy this property is in the hands of four legislators to whom the legislature has given a \$1.3 million blank check. Placing in the hands of four legislators the control of the property's purchase and the department and agency relocations is an invasion of the constitutional functions and responsibilities of the executive branch of state government.

4. House Bill 1568 does not provide for the state to procure a property appraisal for the taxpayer protection. Sound business practice dictates that, in the public interest, an independent appraisal be conducted.

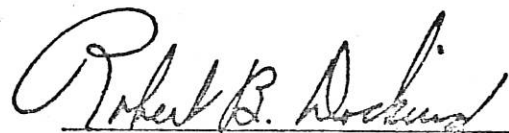
5. Purchasing the property will remove the property from Shawnee County property tax rolls. Property tax revenue losses will then be spread over the remaining property in Shawnee County -- including Shawnee County homeowners. Constructing a building on property already owned by the state will not remove property from the tax rolls. The state owns property directly south of the Capitol on which an office building is planned.

6. Purchasing this property to relocate a state agency of department is unnecessary. The obvious purpose of House Bill 1568 is to move agencies and departments out of the state capitol in order to provide offices for legislators.

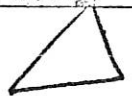
Message from the Governor  
To the Kansas House of Representatives  
Page 2

If the legislature proceeds with the purchase of this property, it should consider doing so by condemnation which would let a jury decide the fair market value of the property specifically described in House Bill 1568.

I am requesting that a special legislative investigative committee be formed with the attorney general's cooperation. The committee should make a thorough investigation of all facts surrounding the proposed sale of the property as specified in House Bill 1568. I urge each legislator to inspect thoroughly the property described in the bill before any further action is taken on House Bill 1568.



ROBERT B. DOCKING  
Governor of Kansas



Approved: Tuesday, April 3, 1973 at 3:45 p.m.

4/4/73  
R.S.

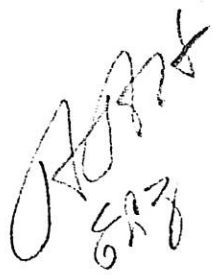


Exhibit E

STATE OF KANSAS



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

CHAIRMAN: JUDICIARY  
MEMBER: COMMERCIAL AND FINANCIAL  
INSTITUTIONS  
INSURANCE

JOHN F. HAYES  
REPRESENTATIVE 104TH DISTRICT  
RENO COUNTY  
106 CRESCENT BOULEVARD  
HUTCHINSON, KANSAS 67501

April 9, 1973

Mr. Thomas Van Cleave  
c/o Governor's Office  
2nd Floor  
State Capitol Building  
Topeka, Kansas

Dear Mr. Van Cleave:

I received your certified letter of April 8, 1973, at approximately 1:30 p.m. this date at my residence in Hutchinson. Since it was necessary for me to return to Topeka late today, I have delayed answering your letter until this evening.

It is, of course, pleasing to me to have assurance of your full cooperation and voluntary appearance before the select committee appointed pursuant to Governor Docking's request and H.C.R. 1056.

With respect to the request contained in the third paragraph of your said letter, I am advised by committee counsel and a representative of the attorney general that I need not accede to your wishes. I shall, however, be prepared to furnish to you a complete list of witnesses subpoenaed to appear before the committee on April 11, 1973.

This is as an immediate reply as I am able to give to you. I trust that it is satisfactory for your purposes.

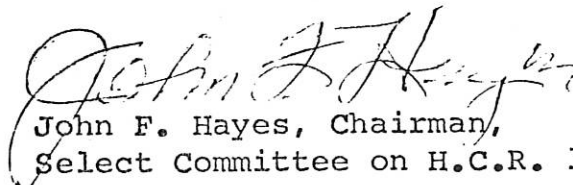
Thomas Van Cleave

- 2 -

April 9, 1973

In closing, let me assure you that it is my intention to conduct a fair and impartial hearing with a view to apprising the members of the legislature with all of the facts surrounding the proposal in question. Despite your statements to the press, which I view as unnecessary and premature, I do not intend this hearing to be adversary in nature or any trial of any individual.

Yours sincerely,

  
John F. Hayes, Chairman,  
Select Committee on H.C.R. 1056

JFH:vl



Exhibit F



STATE OF KANSAS  
Office of the Governor

STATE CAPITOL BUILDING  
TOPEKA, KANSAS 66612



ROBERT B. DOCKING  
GOVERNOR

April 8, 1973

The Honorable John Hayes  
State Representative  
State Capitol Building  
Topeka, Kansas 66612

Dear John:

I am in receipt of your letter of April 8 relative to your request for my cooperation and appearance before the Select Committee of the Kansas Legislature appointed to investigate alleged improprieties in connection with the negotiations for state purchase of the New England Building and adjacent real estate.

I am convinced that the doctrine of separation of powers between the executive, legislative and judicial branches of government would cast grave legal doubt on the service of a subpoena regarding the above matter on the undersigned. I will reject the service of the subpoena, but will, of course, assure you of my full cooperation and my voluntary appearance before your committee.

I do, however, respectfully request that I be permitted, prior to my appearance before your committee, to inspect all documents, memoranda, property options, etc., that were at any time in the possession of any member of the House or Senate Ways and Means Committee or any documents, memoranda, property options, etc., that were at any time in the possession of any member of the legislature other than members of the House and Senate Ways and Means Committees relative to the aforementioned property.

I also respectfully request that prior to my appearance before your committee that I be furnished a complete list of the individuals subpoenaed before your committee on April 11, 1973, and any other individuals that will be appearing before your committee on that date.

The Honorable John Hayes  
State Representative  
State Capitol Building  
Topeka, Kansas 66612

As I will be performing my duties as Legislative Liaison to Governor Docking on April 11, 1973, I would appreciate your cooperation in setting a specific time for my appearance before your committee.

Your immediate reply to the above will be appreciated in order that I might determine my future course of action in the above matters.

Sincerely,



Thomas M. Van Cleave, Jr.  
Legislative Liaison to the Governor

TMVC:rp

*Exhibit B*

Robert C. Jaggart, MAI

REALTOR • APPRAISER

MERCHANTS TOWERS, SUITE 1100  
EIGHTH & JACKSON  
TOPEKA, KANSAS 66601

TELEPHONE (913) 232-7751

April 11, 1973

Committee appointed by Legislative Coordinating Council  
1973 House Concurrent Resolution No. 1056

Re: House Bill No. 1568

Mr. Chairman & Members of the Committee:

Pursuant to your request of attendance at this hearing relative to the 1973 House Concurrent Resolution No. 1056, I make the following statements:

I have no knowledge of any alleged impropriety by any member of the Kansas legislature or employee of the legislative branch concerning the subject of House Bill No. 1568, nor do I have any knowledge of any alleged influence exerted upon the governor to veto said House Bill, by the landlord or property owner of any property in which any state agency is now located in the city of Topeka, or by the state agency heads of the executive branch, appointees thereof or appointees of the governor, whether such appointees have an official title or not, nor did I have occasion to read House Bill 1568 until it was included in the papers forwarded to me together with the subpoena duces tecum received April 9, 1973.

Early in 1972, Mr. William Hall, one of the owners of the building approached me for an opinion as to whether it would be in his best interest to give an option on the New England Building. I discussed the matter with him and gave him my views, and was not aware that he gave an option until January of 1973. I did not discuss an option price with him.

I have been approached by members of the legislature and employees of the governor, concerning my opinion

Page 2  
April 11, 1973

TO:  
Committee appointed by Legislative Coordinating Council  
1973 House Concurrent Resolution No. 1056

RE:  
House Bill No. 1568

as to the value of the property, whether I had made an appraisal of the property, and my opinion of the structural qualities of the building. I gave no opinion as to value, I have made no appraisal of the property other than the valuation for ad valorem tax purposes which was made by the company with which I was associated during the re-appraisal of Shawnee County in 1968, nor did I give an opinion of the building structurally other than to say that as far as I know it was structurally sound.

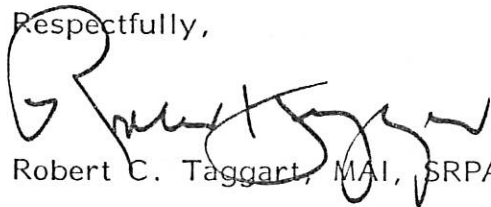
I have not discussed the property with Mr. C. Y. Thomas, nor with Mr. John Harbes who I understand has the option on the property. When Mr. Harbes left the Urban Renewal Agency of Topeka and obtained a real estate license, he left it in my office for a short period of time; we had no business dealings and I think he subsequently located with Kirk Realtors and moved his license to that firm office.

From time to time throughout this legislative session, I have discussed the status of the purchase by the state with Bill and/or Steve Hall.

I have no present or contemplated interest in the property.

I will be happy to answer questions of the committee.

Respectfully,



Robert C. Taggart, MAI, SRPA, CAE

RCT;nf

• No. 33,459

ROLLA W. COLEMAN, W. A. BARRON, CLAUDE C. BRADNEY, J. B. CARTER, WILFRID CAVANESS, KIRKE W. DALE, JESSE C. DENIOUS, BENJAMIN F. ENDRES, EWING HERBERT, W. E. IRELAND, WALTER F. JONES, WALTER E. KEEF, FRED R. NUZMAN, ERNST F. PIHLBLAD, C. W. SCHMIDT, THALE P. SKOVGARD, HARRY M. TOMPKINS, RAY C. TRIPP, ROBERT J. TYSON, N. B. WALL, RAIMON C. WALTERS, GEORGE W. PLUMMER, FRANK C. POMEROY and A. W. RELIHAN, *Plaintiffs*, v. CLARENCE W. MILLER, as Secretary of the Senate, WILLIAM M. LINDSAY, as Lieutenant Governor and President ex officio of the Senate, H. S. BUZICK, JR., as Speaker of the House of Representatives, W. T. BISHOP, as Chief Clerk of the House of Representatives, and FRANK J. RYAN, as Secretary of State; and THE STATE OF KANSAS, *Defendants*.

(71 P. 2d 518)

## SYLLABUS BY THE COURT

1. STATUTES—*Enactment of Bills and Resolutions—Lieutenant Governor's Right to Vote.* Upon the passage of a bill or joint resolution, where the senate is equally divided, the lieutenant governor, under section 12 of article 1, and section 13 of article 2 of the constitution, is not entitled to vote.
2. SAME—*Concurrent Resolutions—Nature and Effect.* Where, upon the passage of a senate concurrent resolution ratifying the proposed child-labor amendment to the constitution of the United States, the senate was equally divided, it is held that as such measure was not an act of legislation having the force of law, but a mere expression of assent of the legislature to the proposed amendment, under the above sections of the constitution of Kansas, the lieutenant governor was entitled to cast the deciding vote on such concurrent resolution.
3. CONSTITUTIONAL LAW — *Amendments—Ratification by States—Validity.* Where the legislature has rejected an amendment to the constitution of the United States proposed by congress, it may later reconsider its action and give its approval to such proposed amendment.
4. SAME—*Amendments—Time for Ratification.* The child-labor amendment to the constitution of the United States, proposed by congress by resolution adopted by that body on June 2, 1924, retained its vitality as a proposed amendment, and the action of the state senate on February 15, 1937, in adopting the senate concurrent resolution ratifying such proposed amendment was valid and binding.

Original proceeding in mandamus. Opinion filed September 16, 1937. Writ denied.

*Rolla W. Coleman, of Olathe, Robert Stone, James A. McClure, Robert L. Webb, Beryl R. Johnson and Ralph W. Oman, all of Topeka, for the plaintiffs.*

*E. R. Sloan*, of Topeka, for William M. Lindsay, lieutenant governor.

*Clarence V. Beck*, attorney general, *Payne H. Ratner*, of Parsons, *Wilford Riegler*, of Emporia, and *George Templar*, of Arkansas City, for Frank J. Ryan, secretary of state.

*Harry Fisher*, *J. S. Parker*, *C. V. Beck*, all of Topeka, for H. S. Buzick, speaker of the house, and W. T. Bishop, chief clerk.

The opinion of the court was delivered by

ALLEN, J.: This is an original proceeding in mandamus brought by twenty-one members of the state senate and three members of the house of representatives to compel Clarence W. Miller, secretary of the state senate, to erase an endorsement on senate concurrent resolution No. 3 (generally known as the child-labor amendment resolution) to the effect that the same was adopted by the senate, and to compel him to endorse thereon the words "was not passed."

There is no dispute as to the facts. On June 2, 1924, the sixty-eighth congress of the United States proposed the following amendment to the constitution of the United States:

"SECTION 1. The congress shall have power to limit, regulate, and prohibit the labor of persons under eighteen years of age.

"SECTION 2. The power of the several states is unimpaired by this article except that the operation of state laws shall be suspended to the extent necessary to give effect to legislation enacted by the congress."

On January 13, 1937, a resolution known as "senate concurrent resolution No. 3" was introduced into the state senate. This resolution, after the preamble setting forth the joint resolution of congress in proposing an amendment to the constitution of the United States, commonly known as the child-labor amendment, provided:

"Be it resolved by the senate of the state of Kansas, the house of representatives concurring therein, That the foregoing and above-cited amendment to the constitution of the United States be, and the same is hereby ratified by said legislature of the state of Kansas as a part of, and amendment to, the constitution of the United States."

On February 15, 1937, this resolution came up for consideration in the senate, and upon roll call twenty senators voted against the adoption and twenty senators voted in favor of the adoption of the resolution. Thereupon W. M. Lindsay, the lieutenant governor of the state, the presiding officer, over the protest of one of the senators, cast his vote in favor of the adoption of the resolution.

As stated, this proceeding in mandamus was brought to compel the secretary of the senate to erase the endorsement on the resolution

that the same was passed, and to make an endorsement thereon that it had not passed.

An alternative writ was allowed and answers filed by all the defendants except the state of Kansas.

At the threshold we are confronted with the question raised by the defendants as to the right of the plaintiffs to maintain this action. It appears that on March 30, 1937, the state senate adopted a resolution directing the attorney general to appear for the state of Kansas in this action. It further appears that on April 3, 1937, on application of the attorney general, an order was entered making the state of Kansas a party defendant. The state being a party to the proceedings, we think the right of the parties to maintain the action is beyond question. (G. S. 1935, 75-702; *State, ex rel., v. Public Service Comm.*, 135 Kan. 491, 11 P. 2d 999.)

Plaintiffs contend: First, the amendment was not ratified by the senate because the lieutenant governor was not a member of the senate and had no right to vote and that the resolution did not receive a vote of a majority of the members of the senate and was lost; second, when the legislature, on January 30, 1925, adopted a resolution to reject the amendment and filed notification thereof with the secretary of state, it exhausted its power with reference to the proposed amendment.

Did the lieutenant governor have the right to cast the deciding vote on senate concurrent resolution No. 3 when the senate was equally divided? In the solution of this question we first look to the constitution of the United States.

Article 5 of the constitution of the United States provides:

"The congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the congress; *provided*, That no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate."

It is settled beyond controversy that the function of a state legislature in ratifying a proposed amendment to the constitution of the United States, like the function of congress in proposing an amend-

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ment, is a federal function derived from the federal constitution; and it transcends any limitation sought to be imposed by the people of a state. The power to legislate in the enactment of the laws of a state is derived from the people of the state, but the power to ratify a proposed amendment to the federal constitution has its source in that instrument. The act of ratification by the state derives its authority from the federal constitution, to which the state and its people alike have assented. (*Leser v. Garnett*, 258 U. S. 130, 42 S. Ct. 217, 66 L. Ed. 505; *Hawke v. Smith*, 253 U. S. 221, 40 S. Ct. 495, 64 L. Ed. 871, 10 A. L. R. 1504; *Rhode Island v. Palmer*, 253 U. S. 350, 40 S. Ct. 486, 64 L. Ed. 946.)

If the legislature, in ratifying a proposed amendment, is performing a federal function, it would seem to follow that ratification is not an act of legislation in the proper sense of that term. It has been so held. In *Hawke v. Smith*, supra, it was said: "Ratification by a state of a constitutional amendment is not an act of legislation within the proper sense of the word. It is but the expression of the assent of the state to a proposed amendment." (p. 229.)

The function of the legislature being merely to register the assent or approbation of the state to such proposed amendment, in what manner must such assent be manifested? As the legislature of Kansas is a parliamentary body, we must look to the law by which proceedings in that body are governed.

Under section 2 of article 2 of the constitution of Kansas, and G. S. 1935, 4-101, the senate shall consist of forty members, and the house of representatives of one hundred and twenty-five members. (*State, ex rel., v. Francis, Treas.*, 26 Kan. 724.) As it is conceded that senate concurrent resolution No. 3 duly passed the house, our attention must be directed to the action in the senate.

Under the constitution of Kansas (sec. 1, art. 1) the lieutenant governor is a member of the executive department of the state. Parliamentary action in the senate is governed by two provisions of the constitution. These provisions are:

"The lieutenant governor shall be president of the senate, and shall vote only when the senate is equally divided . . ." (Sec. 12, art. 1.)  
 "A majority of all the members elected to each house, voting in the affirmative, shall be necessary to pass any bill or joint resolution." (Sec. 13, art. 2.)

It is argued on behalf of the plaintiffs that senate concurrent resolution No. 3 did not receive a vote of a majority of the members of the senate, that the lieutenant governor is not a member of the sen-



ate, hence the resolution did not pass. This view finds a conflict in the two sections, and by placing emphasis on section 13 of article 2, virtually expunges section 12 of article 1 from the constitution.

On the other hand, defendants contend that the lieutenant governor is entitled to vote as a member of the senate on the final passage of bills and joint resolutions. As he was not elected as a member of the senate, this theory writes with invisible ink an amendment to section 13 of article 2, and ignores section 1 of article 1, which specifies that the lieutenant governor is a member of the executive department of the state.

It is evident, therefore, that both plaintiffs and defendants in this controversy find an irreconcilable conflict in the two provisions of the state constitution.

In 1 Cooley's Constitutional Limitations, 8th ed., p. 128, the rule of construction is stated as follows:

"The rule applicable here is that *effect is to be given, if possible, to the whole instrument*, and to every section and clause. If different portions seem to conflict, the courts must harmonize them, if practicable, and must lean in favor of a construction which will render every word operative, rather than one which may make some words idle and nugatory.

"This rule is applicable with special force to written constitutions, in which the people will be presumed to have expressed themselves in careful and measured terms, corresponding with the immense importance of the powers delegated, leaving as little as possible to implication. It is scarcely conceivable that a case can arise where a court would be justified in declaring any portion of a written constitution nugatory because of ambiguity. One part may qualify another so as to restrict its operation, or apply it otherwise than the natural construction would require if it stood by itself; but one part is not to be allowed to defeat another, if by any reasonable construction the two can be made to stand together. Every provision should be construed, where possible, to give effect to every other provision."

Applying these rules of construction, we think the two provisions of the constitution may be harmonized, hence it is not necessary to make a choice between undesirable alternatives. We think the lieutenant governor had a right to vote on the concurrent resolution, for the simple reason that *the vote was not on a bill or joint resolution*, that is, it was not on an act of legislation having the force of law. The vote was merely on a measure expressing assent to the proposed amendment.

Under section 12 of article 1, the lieutenant governor "shall vote only when the senate is equally divided." He may vote, then, in some cases. When? Obviously in all cases of equal division of the

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senate, except when his right to vote is expressly denied. By section 13 of article 2, a majority of all members elected to the senate, voting in the affirmative, is necessary to pass any bill or joint resolution. The lieutenant governor was not elected to the senate. The constitution gives him the right to vote when the senate is equally divided, but denies this right in two cases—when the equal division is on a bill or a joint resolution.

The fundamental fallacy in the argument presented on behalf of plaintiffs is in the unwarranted assumption that because the lieutenant governor cannot vote on a bill or joint resolution, he is denied the right to vote in all cases. In effect, plaintiffs insist that the legislature in acting on the resolution for ratification of the proposed amendment to the federal constitution was engaged in an act of legislation having the force of law.

Article 5 of the constitution of the United States provides that congress, when two thirds of both houses deem it necessary, shall propose amendments to the constitution which, when ratified by the legislatures of three fourths of the states, shall become a part of the constitution. It is not necessary that such proposed amendment be approved by the president, nor that the act of ratification be approved by the governor of a state. Ratification is not an act of legislation; it is merely an expression of the assent of the state to the proposed amendment.

As stated above, the real question for our determination is how that assent may be manifested by the legislature. The vehicle used by the legislature was a concurrent resolution. While concurrent resolutions are not mentioned in the constitution, the constitution does use the expression "bill or joint resolution." In legislative practice a distinction is made between "joint resolutions" and "concurrent resolutions." Senate rule No. 48 reads as follows:

"Resolutions shall be of the following classes: (1) senate resolutions, (2) senate concurrent resolutions, and (3) senate joint resolutions. In acting on them, the senate shall observe the following procedure:

"1. Senate resolutions shall be in writing, shall be read and shall lie over one day; they shall not be printed unless ordered by the senate. There shall be no roll call unless ordered.

"2. Senate concurrent resolutions shall be in writing, shall be read, and shall lie over one day. All senate concurrent resolutions shall be printed, and shall require a roll call on motion to adopt. Propositions to amend the constitution shall be submitted by concurrent resolutions, to conform to section 1, article 14, of the constitution: *Provided*, That all concurrent resolutions amending the constitution shall be referred to the proper committee.

"3. Senate joint resolutions shall follow the same procedure as bills, shall be read a first, second and third time, and shall take the regular course of bills on the calendar, and shall when passed on roll call be signed by the governor."

In *Legislative Procedure in Kansas*, by Guild and Snider, pp. 77-80, it is said:

"Concurrent resolutions are used to express the will or sentiment of both houses of the legislature, and therefore must be acted upon by both houses. There has been considerable confusion in Kansas and in many other states concerning the distinction between concurrent and joint resolutions, and in Kansas the practice is far from standardized. A study of precedents, however, shows that concurrent resolutions are always used in two classes of cases. The first general group concerns the mere expression of an opinion or sentiment by the legislature. Resolutions memorializing congress, relating to the death of a public man, or expressing an opinion on any subject in contrast to passing a law thereon are regularly in the form of concurrent resolutions. In the second group, definite action is taken, binding, however, solely upon the legislature itself and its officers, and not affecting directly the rights of any persons not members of the legislature. Illustrations of such action are: Providing for a joint meeting of the two houses; the appointment of joint committees; agreeing upon final adjournment or setting a date for the introduction or consideration of bills; creating a commission of legislators to investigate public offices. In both of the above groups the general practice in Kansas appears to be to act by concurrent resolutions."

"A joint resolution pertains to business between the two branches of the legislature and must be acted upon by both houses. A joint resolution has the same binding effect as a law. It is, however, used to accomplish a temporary purpose, and its force is at an end when that purpose has been accomplished. Hence it is now the form prescribed by the rules for appropriations."

"Joint resolutions take the same course as bills, requiring three readings, roll call upon final passage, passage by a constitutional majority of both houses, enrollment and signature by the governor."

The constitution (sec. 20, art. 2) provides that no law shall be enacted except by bill. The structural part of a bill consists of the title, the enacting clause and the body or subject matter. Bills and joint resolutions must be signed by the governor. (Const., sec. 14, art. 2.) No bill shall contain more than one subject, which shall be clearly expressed in the title. (Const., sec. 16, art. 2.) The constitution provides for the form of the enacting clause of all laws (sec. 20, art. 2), and that no law of a general nature shall be in force until the same shall be published. (Sec. 19, art. 2.)

Thus, both by the constitution and by legislative practice, bills

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and joint resolutions when duly passed and signed by the governor become legislative enactments, with the force of law. If the senate, on the passage of a bill or joint resolution, should be equally divided, the lieutenant governor, under section 13 of article 2, cannot cast the deciding vote. But it is equally clear that if a proposition other than a bill or joint resolution is before the senate, and on the passage of such measure the senate should be equally divided, then, under section 12 of article 1 of the constitution, the lieutenant governor may cast the deciding vote. Otherwise, section 12 of article 1 would be as futile as a "painted ship on a painted sea."

In so holding we are far from intimating that the title of a resolution, whether "joint" or "concurrent," governs its nature. That must be determined by the purpose and object of the resolution. If the measure has the characteristics of a law, if it appears to have been passed by the law-making power within the scope of its authority as such, and to furnish a general rule of action binding upon individuals, it may be classed as an act of legislation. (Jameson on Constitutional Conventions, 4th ed., sec. 547.) Two cases will illustrate this proposition.

In *State, ex rel., v. Knapp*, 102 Kan. 701, 171 Pac. 639, a resolution entitled "house concurrent resolution" was held to be a bill—that as it had all the characteristics of a legislative act it was a bill within the meaning of the constitution. In that case the court said:

"The inference seems clear that a joint resolution which is approved by the governor after its adoption by the legislature thereby becomes a law, although this is not declared in so many words. If a law can be enacted only by a bill, and a joint resolution may become a law, it would seem that a joint resolution must be a bill, or may in some instances be regarded as a bill."

"Whether or not legislation may ordinarily be accomplished by means of adoption of a proposition submitted in the form of a resolution, we conclude that the process used in the case now under consideration amounted to the enactment of a law by bill. While the instrument acted upon by the two houses and the governor described itself as a concurrent resolution, it had every characteristic, in form and treatment, of such a bill as by the combined action of the legislature and the governor becomes a law. It had a title which clearly expressed its subject to be the appropriation of money to pay for the Lincoln statue. It was read on three separate days in each house. It contained a provision declaring that 'this act' should take effect upon its publication. In each house it received the votes of a majority of the members elected, and the result of the roll call was entered in full on the journal. It

was submitted to and approved by the governor, and published in the official state paper and in the statute book. 'Joint resolutions,' which may sometimes become laws, are required by the constitution to be adopted by a majority of the membership in each house (art. 2, § 13), by a recorded vote (art. 2, § 10), as well as to be approved by the governor, and 'acts' of the legislature must take effect at a prescribed time, and be published (art. 2, § 19); but, save for these requirements, no mere resolution needs to have a title, to be read on three separate days, to show when it takes effect, to be adopted by a ye-and-nay vote entered on the journal, to be approved by the governor, or to be published. The treatment given this measure seems to show that it was regarded by the legislature and the governor as a 'bill.' It ought to be given effect as such, unless some insuperable obstacle is interposed. The fact that it is styled a concurrent resolution, rather than a joint resolution or bill, is not in itself especially important. It should be classified by its essential qualities rather than by what it happens to have been called." (p. 704.)

But this construction did not meet the unanimous approval of the court; three members of the court dissented. In the dissenting opinion of Mr. Justice Dawson it was said:

"A house concurrent resolution is not a law. The constitution takes no cognizance of such a resolution and does not define it. A resolution is a declaration of opinion, or the expression of a purpose—nothing more. In the Session Laws of 1917 are concurrent resolutions expressing the compliments of the house and senate to Hon. Charles F. Scott (ch. 339), expressing condolences on the death of Frank Edimer McFarland (ch. 345), requesting the Kansas senators and representatives in congress to vote for woman suffrage (ch. 351), etc. There are twenty-eight pages of concurrent resolutions in the Session Laws of 1913, the subject matter ranging all the way from memorials to the president on the high cost of living (ch. 341), to denunciations of 'log rolling' and 'pork barrel' raids on the national treasury (ch. 340). And the decision in this case raises all that sort of stuff to the dignity of legislation." (p. 708.)

A similar question arose in the case of *Kelley v. Secretary of State*, 149 Mich. 343, 112 N. W. 978. The Michigan constitution provided:

"No bill or joint resolution shall become a law without the concurrence of a majority of all the members elected to each house."

"The lieutenant governor shall, by virtue of his office, be president of the senate. In committee of the whole he may debate all questions; and when there is an equal division he shall give the casting vote." (p. 346.)

Upon the passage of a resolution entitled "concurrent resolution" the senate, consisting of thirty-two members, was equally divided. Thereupon the lieutenant governor voted for the resolution and declared it adopted. The court held the title "concurrent resolution" was unimportant—that its nature and purpose showed that it was

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intended as a legislative act, and therefore the lieutenant governor could not vote thereon. The court said:

"But the resolution, if effective, is none the less a law. It is a law for the procurement of such information. If effective, it imposes legal duties upon the secretary of state (and, if it did not, relator is not entitled to relief), upon the clerks, sheriffs, and boards of election commissioners of the several counties of the state, and upon all the canvassing boards in the state. It undertakes—and, if effective, it succeeds in that undertaking—to provide a legal election not otherwise provided for, and to surround the same with all the safeguards of law." (p. 346.)

"It is also open to the construction—and this is the construction placed upon it by the attorney general—that the right of the lieutenant governor to give a casting vote is limited to the proceedings in the committee of the whole. *And it is, perhaps, open to the construction that he also has the right to give the casting vote upon the passage of resolutions which do not have the force of law, if, as relator contends, there are such resolutions.*" (p. 347.) (Italics inserted.)

"Whether his right to give such casting vote is limited to proceedings in committee of the whole, *or extends to resolutions, if there be such, which do not have the force of law, is a question which is not before us and which we do not determine.*" (p. 348.) (Italics inserted.)

But since there is no valid ground for the contention that senate concurrent resolution No. 3, now before us, was intended as an act of legislation with the force of law, neither the Kansas case of *State, ex rel., v. Knapp*, nor the Michigan case of *Kelley v. Secretary of State*, noted above, has any bearing on the question in this controversy. The distinction is not between a joint resolution and a concurrent resolution; the line is drawn between a measure that has the force of law, and a motion or resolution that is not an act of legislation.

Under article 5 of the constitution of the United States the legislature of Kansas had a right to express its assent to the proposed child-labor amendment. The method adopted was senate concurrent resolution No. 3. This was in no sense an act of legislation in the proper sense of that term; it was the mode in which the legislative assent or approbation was manifested. The senate being equally divided, the lieutenant governor was authorized to cast the deciding vote.

The next question to be considered arises out of the action of the legislature on the 30th day of January, 1925, in rejecting the proposed amendment. On that date the legislature adopted a resolution entitled "house concurrent resolution No. 5," which provided:

"That the said proposed amendment to the constitution of the United States of America be and the same is hereby rejected by the legislature of the state of Kansas."

Certified copies of this resolution were duly forwarded to the Secretary of State at Washington, D. C., and to the presiding officer of each house of congress.

Plaintiffs contend that when Kansas adopted this resolution rejecting the proposed child-labor amendment, it completed its action and exhausted its power with reference to the proposed amendment, and pray that this court enter a declaratory judgment declaring the law with respect to the right of the legislature of the state of Kansas to further consider any resolution, having once rejected said amendment.

It is generally agreed by lawyers, statesmen and publicists who have debated this question that a state legislature which has rejected an amendment proposed by congress may later reconsider its action and give its approval, but that a ratification once given cannot be withdrawn.

In Jameson on Constitutional Conventions, 4th edition, sections 576 and 577, a history of the adoption of the 13th and 14th amendments to the federal constitution is given:

"A question of much interest has several times arisen, whether, when a state legislature has once passed upon an amendment to the federal constitution proposed by congress, its action can afterwards be reconsidered by it, or by its successor, and reversed. It may be useful to consider this question in the two cases, 1, where the action of the legislature was negative, rejecting, and 2, where it was affirmative, ratifying, an amendment.

"1. The question in its negative form first arose, in 1865, in New Jersey, in relation to the thirteenth amendment.

"The amendment was rejected by the legislature of that state December 1, 1865, and notice thereof was duly given to the Secretary of State at Washington. That officer published his certificate December 18, 1865, declaring that the amendment had been adopted by the votes of twenty-seven states, and had become a part of the constitution. In this certificate no mention was made of New Jersey. January 23, 1866, the legislature of New Jersey reversed its previous action, and approved the amendment. The same question arose again in North Carolina, South Carolina, and Georgia, in relation to the fourteenth amendment, submitted by congress to the states on the 16th of June, 1866. The legislatures of those states, together with those of five others, Texas, Virginia, Kentucky, Delaware, and Maryland, rejected the amendment. Afterwards, the governments of ten of the rebel states, including the three first named, were, by the act of congress of March 2, 1867, and the acts supplementary thereto, declared to be illegal, and new governments were erected therein under the direction of congress. By the new legislatures of North Carolina and South Carolina, the former on the 4th and the latter on the 9th of July, 1868, resolutions were passed ratifying the fourteenth amendment. These resolutions were certified to the Secretary of State, and the votes of

those states were, in effect, as valid votes, and a certificate of that date by the new legislature of Georgia from its vote rejecting the amendment, and that state was included in a second certificate.

"Were the legislature of the states which rejected the amendment to be recognized as the legitimate government, and their subsequent recognition of the amendment as valid, must, we think,

It would seem, that the amendment proposed by congress would give its approval.

In a release from Jameson, 1935, attached as an exhibit to the status of the constitution of the states, Indiana, Michigan, Utah, after the proposed amendment was later adopted by the states later adopted and rejected the amendment proposed amendment would be void. Is it possible that a state could not count as one of the number of states necessary for the adoption of an amendment?

Thus it appears that the amendment proposed by congress would be void.

Aside from the history of the states as to the adoption of the amendment, Jameson argues that the amendment is valid. We quote from section 576 of Jameson's Constitutional Conventions:

"But, whether this doctrine is or not, the right of a state to ratify an amendment passed, to recede from its ratification, is a principle, unquestionable. The amendment proposed by congress, in relation to the purposes, as part of the three fourths of the states, by the national government, belonging to them originally, and exercised, as contemplated by the power, and any attempt

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those states were, in pursuance of a resolution of congress, counted by that officer as valid votes, and the amendment was on the 20th of July, 1868, in a certificate of that date, proclaimed by him to have been duly ratified. The new legislature of Georgia, in like manner, on the 21st of July, 1868, receded from its vote rejecting the amendment, and passed a resolution ratifying it, and that state was included by the Secretary of State amongst the ratifying states in a second certificate, issued July 28, 1868.

"Were the legislatures in receding thus, and ratifying after having once rejected the amendment, acting within the scope of their powers? The subsequent recognition of the votes by congress, and by the Secretary of State, as valid, must, we think, settle this question in the affirmative."

It would seem, then, that a state legislature which has rejected an amendment proposed by congress may later reconsider its action and give its approval. (Willoughby on the Constitution, sec. 329a.)

In a release from the department of state under date of April 20, 1935, attached as an exhibit to plaintiff's petition in this case, giving the status of the child-labor amendment, it appears that in five states, Indiana, Minnesota, New Hampshire, Pennsylvania and Utah, after the proposed amendment had been rejected, each of the states later adopted a resolution of ratification. When these states rejected the amendment, was their power with reference to the proposed amendment exhausted? If so, the subsequent ratification would be void. Is it to be seriously argued that the secretary of state could not count these five states in making up the total number of states necessary to adopt the amendment?

Thus it appears to be an historical fact that many states have rejected proposed amendments, and have later ratified them.

Aside from the historical facts, and the practical construction by the states as to the right to ratify after a former rejection, Judge Jameson argues that upon principle the right is unquestionable. We quote from sections 579, 581 and 584 of his work on Constitutional Conventions:

"But, whether this decision is authority upon the question now considered or not, the right of a state legislature, after a negative vote has once been passed, to recede from it and ratify an amendment, is, we think, upon principle, unquestionable. The language of the constitution is, that amendments proposed by congress, in the mode prescribed, 'shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three fourths of the several states,' etc. By this language is conferred upon the states, by the national constitution, a special power; it is not a power belonging to them originally by virtue of rights reserved or otherwise. When exercised, as contemplated by the constitution, by ratifying, it ceases to be a power, and any attempt to exercise it again must be a nullity. But, until so



exercised, the power undoubtedly, for a reasonable time at least, remains." (§ 579.)

"To the conclusion that rejection forms no barrier in the way of afterwards ratifying an amendment it may be objected that it recognizes power in the states to ratify, but no power to reject a proposed amendment. This objection is specious, but it has no real foundation. To say that a state has no power to reject would be untrue; for it is an historical fact that, in point of form, many states have rejected amendments, and it would be puerile to contend that a right to pass upon a proposition does not involve a right either to reject or to ratify it. The real question here is what, under the constitution, is the consequence of rejection? Does it, or does it not, as to the rejecting state, definitely settle the fate of the amendment? What we insist upon is, that a state has a right at some time to ratify an amendment submitted to it. That is precisely what is asked of it by congress, and it is that which the constitution empowers it to do. The authority charged with inspecting such votes, therefore, cannot refuse to receive one, certainly if offered within a reasonable time, until after a ratifying vote shall have been received. This view of the question was well presented by Governor Bramlette, of Kentucky, to whom the resolutions above mentioned rejecting the thirteenth amendment had been communicated for his approval, in a message to the legislature of that state. Declining to return the same with his dissent, on the ground that the action of the legislature was complete without his approval, but yet expressing his dissatisfaction with them, and his regret that the amendment had not been ratified, he undertook, as requested in the second resolution, to forward them to the President and to the presiding officers of the two houses of congress. In the course of his message he said:

"Rejection by the present legislative assembly only remits the question to the people and the succeeding legislature. Rejection no more precludes future ratification than refusal to adopt any other measure would preclude the action of your successors. When ratified by the legislatures of three fourths of the several states, the question will be finally withdrawn, and not before. Until ratified it will remain an open question for the ratification of the legislatures of the several states. When ratified by the legislature of a state, it will be final as to such state; and, when ratified by the legislatures of three fourths of the several states, will be final as to all. Nothing but ratification forecloses the right of action. When ratified all power is expended. Until ratified the right to ratify remains." (§ 581.)

On the question whether a state having once ratified an amendment can subsequently reject such ratification, Jameson says:

"Waiving the consideration of principles, however, the question may be regarded as settled by authority, if a resolution of congress upon it is to be taken as decisive. We have seen that when the votes upon the fourteenth amendment were canvassed by the Secretary of State, doubts were entertained by him whether those of New Jersey and Ohio, whose legislatures had first adopted, and then attempted to reject, that amendment, were to be counted as having adopted it. This doubt was settled by congress, which

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declared by resolution that they were to be counted among the ratifying states, which was accordingly done." (§ 584.)

From the foregoing and from historical precedents, it is also true that where a state has once ratified an amendment it has no power thereafter to withdraw such ratification. To hold otherwise would make article 5 of the federal constitution read that the amendment should be valid "when ratified by three fourths of the states, each adhering to its vote until three fourths of all the legislatures shall have voted to ratify."

It is clear, then, both on principle and authority, that a proposed amendment once rejected by the legislature of a state may by later action of the same legislature be ratified; and that when a proposed amendment has once been ratified the power to act on the proposed amendment ceases to exist.

We hold that the legislature of Kansas had power to act on senate concurrent resolution No. 3, and that the resolution having duly passed the house of representatives and the senate, the act of ratification of the proposed amendment by the legislature of Kansas was final and complete.

Finally it is urged that the proposed amendment has lost its potency by old age. This question was considered by Judge Jameson in his work on the constitution, and we quote from sections 585 and 586:

"The same consideration will, perhaps, furnish the answer to the second question. The constitution gives to congress the power to submit amendments to the states; that is, either to the state legislatures or to conventions called by the states for this purpose, but there it stops. No power is granted to prescribe conditions as to the time within which the amendments are to be ratified, and hence to do so would be to transcend the power given. The practice of congress in such cases has always conformed to the implied limitations of the constitution. It has contented itself with proposing amendments, to become valid as parts of the constitution, according to the terms of that instrument. It is, therefore, possible, though hardly probable, that an amendment, once proposed, is always open to adoption by the nonacting or non-ratifying states.

"The better opinion would seem to be that an alteration of the constitution proposed today has relation to the sentiment and the felt needs of today, and that, if not ratified early while that sentiment may fairly be supposed to exist, it ought to be regarded as waived, and not again to be voted upon, unless a second time proposed by congress. (§ 585.)

"We discuss this question here merely to emphasize the dangers involved in the constitution as it stands, and to show the necessity of legislation to make certain those points upon which doubts may arise in the employment

of the constitutional process for amending the fundamental law of the nation. A constitutional statute of limitation, prescribing the time within which proposed amendments shall be adopted or be treated as waived, ought by all means to be passed." (§ 586.)

In submitting the proposal for the eighteenth amendment, congress interpolated a limitation that it should be inoperative unless ratified "within seven years from the date of the submission hereof." A similar provision as to the time of ratification was contained in the submission of the twentieth and twenty-first amendments.

The power of congress to fix such a limitation was challenged in *Dillon v. Gloss*, 256 U. S. 368, 41 S. Ct. 510, 65 L. Ed. 994. The court held that congress had power to fix the limitation within some reasonable time and that seven years was a reasonable time. This was the decision in the case. The court, *obiter*, said:

"These considerations and the general purport and spirit of the article lead to the conclusion expressed by Judge Jameson 'that an alteration of the constitution proposed today has relation to the sentiment and the felt needs of today, and that, if not ratified early while that sentiment may fairly be supposed to exist, it ought to be regarded as waived, and not again to be voted upon, unless a second time proposed by congress.' That this is the better conclusion becomes even more manifest when what is comprehended in the other view is considered; for, according to it, four amendments proposed long ago—two in 1789, one in 1810 and one in 1861—are still pending and in a situation where their ratification in some of the states many years since by representatives of generations now largely forgotten may be effectively supplemented in enough more states to make three fourths by representatives of the present or some future generation. To that view few would be able to subscribe, and in our opinion it is quite untenable. We conclude that the fair inference or implication from article 5 is that the ratification must be within some reasonable time after the proposal.

"Of the power of congress, keeping within reasonable limits, to fix a definite period for the ratification we entertain no doubt. As a rule the constitution speaks in general terms, leaving the congress to deal with subsidiary matters of detail as the public interests and changing conditions may require; and article 5 is no exception to the rule. Whether a definite period for ratification shall be fixed, so that all may know what it is and speculation on what is a reasonable time may be avoided, is, in our opinion, a matter of detail which congress may determine as an incident of its power to designate the mode of ratification. It is not questioned that seven years, the period fixed in this instance, was reasonable, if power existed to fix a definite time; nor could it well be questioned considering the periods within which prior amendments were ratified." (p. 375.)

It will be observed that the supreme court in its opinion quoted with approval the statement of Jameson that a proposed amendment

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## Coleman v. Miller

"has relation to the sentiment and the felt needs of today, and that, if not ratified early while that sentiment may fairly be supposed to exist, it ought to be regarded as waived."

The struggle over the child-labor problem is a part of the recent history of the United States. The attempt of congress to solve the problem under the commerce clause of the constitution came before the supreme court in 1918 in *Hammer v. Dagenhart*, 247 U. S. 251, 38 S. Ct. 529, 162 L. Ed. 1101. The act was held unconstitutional.

Following its failure to control the evil of child labor under the commerce clause, congress turned to the taxing power. This second act of congress was declared unconstitutional in 1922 in *Bailey v. Drexel Furniture Co.*, 259 U. S. 20, 42 S. Ct. 449, 66 L. Ed. 817. Following these vain attempts to control the problem, congress in 1924 proposed the child-labor amendment.

The history of the agitation over the child-labor question since the proposed amendment is a matter of common knowledge. We have no concern with the wisdom of the proposed amendment, but of necessity must hold that the proposal "has relation to the sentiment and felt needs of today," which seems to be the criterion adopted by the supreme court in *Dillon v. Gloss*, supra. We therefore hold the proposed amendment retains its original vitality, and that the assent of the legislature was legally manifested by the adoption of senate concurrent resolution No. 3. The writ of mandamus is denied.

HUTCHINSON, J., dissenting.

SMITH, J. (concurring specially): I concur in the judgment that the writ should be denied, but do not agree altogether with what is said in the opinion as to the reasons therefor, especially with reference to the second paragraph of the syllabus.

The opinion in effect places its conclusion upon a distinction between a joint resolution and a concurrent resolution. The holding is that had this been a joint resolution the lieutenant governor could not have voted on its passage. I can see no reason why this should be true. What is there about a joint resolution that its passage should be expedited, while the passage of a concurrent resolution should be made more difficult? If any distinction should be made it seems to me that as important a step as a change in the federal constitution should be hedged about with more safeguards than a

resolution expressing the opinion of the two houses of the legislature on some public question.

I prefer the view that the president of the senate has the right to vote on any matter that comes before the senate when the senate is equally divided. I believe this position may be maintained by an examination of the language of the constitution.

In the first place, section 13 of article 2 does provide that a majority of all the members elected to each house voting in the affirmative shall be necessary to pass any bill or joint resolution. It is true that the president of the senate is not elected to the senate, that is, he is not elected to it as a senator, but it is hardly correct to say that he is not elected to it at all.

We must consider all the sections of the constitution. Section 1 of article 1 provides for the executive branches of the state and government. Among the officers provided for are the governor and lieutenant governor. Then follow some sections that define the duties and powers of the governor. Then section 11 of article 1 provides that in case of the death, impeachment, resignation, removal or other disability of the governor, the power and duties of the office for the residue of the term or until the disability shall be removed shall devolve upon the president of the senate. It should be noted that this section does not say "lieutenant governor"—it says "president of the senate." The next section is as follows:

"The lieutenant governor shall be president of the senate, and shall vote only when the senate is equally divided. The senate shall choose a president pro tempore, to preside in case of his absence or impeachment, or when he shall hold the office of governor."

The language should be noted carefully. The first statement is that the lieutenant governor "shall be president of the senate." With this provision in the constitution it is plain that when the people elect a lieutenant governor they are electing a president of the senate. Indeed, with a single exception, only one lieutenant governor ever did anything more than act as president of the senate. That was the occasion when Nathaniel Greene succeeded Governor Samuel J. Crawford, who resigned as governor in 1868 to accept a commission as colonel of the 19th Kansas Volunteers to fight Indians on the western frontier of our state.

Let us examine the next statement in the first sentence of this section. It says that the president of the senate shall vote only when the senate is equally divided. The section does not say that

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the president of the senate shall not vote on the passage of a bill or a joint resolution, but it says he shall vote only when the senate is evenly divided. A fair inference to be drawn from this language is that he could vote on any matter before the senate when the senate is equally divided.

We thus have a constitution, the various provisions of which it is our duty to construe together. When this is done I have no difficulty in reaching a conclusion that the lieutenant governor is a part of the senate and has the right to vote on any matter that comes before the senate where the senate is equally divided. I do not concur in the language in the opinion wherein it is stated that the action of the senate was not a legislative act. To my mind it was a legislative act of a high degree of importance.

No. 33,526

MARJORIE CLINTON, *Plaintiff*, v. THE STATE TAX COMMISSION OF THE STATE OF KANSAS, W. G. FINK, LESTER LUTHER and C. C. COGSWELL, *Defendants*.

(71 P. 2d 837)

SYLLABUS BY THE COURT

1. TAXATION—*Power of State—Employees of Federal Instrumentalities—Implied Immunity—Construction of Doctrine.* The doctrine of implied immunity is a necessary development of our dual system of state and federal government. It must be given a practical construction which permits both governments to function with the minimum of interference each with the other, and that limitation cannot be so varied or extended as seriously to impair the taxing power of the government imposing the tax or the appropriate exercise of the functions of government affected by it.
2. SAME—*Doctrine of Implied Immunity—Scope and Extent.* The doctrine of implied immunity has its inherent limitations. It is aimed at the protection of operations of government and the immunity does not extend to anything lying outside or beyond functions essentially governmental in character. Where the immunity exists it is absolute, resting upon an entire absence of power, but it does not exist where no direct burden is laid upon the governmental instrumentality, and there is only a remote, if any, influence upon the exercise of functions of government.
3. SAME—*Federal Instrumentalities—Basis of Immunity.* The fact a government has power to undertake and does undertake enterprises which it deems to be for the public benefit, does not establish immunity from taxation.
4. SAME—*Federal Instrumentalities—Exemptions—Intent of Congress.* In determining whether the salary, wages or compensation of an employee of certain federal instrumentalities is immune from a state income tax where the

ment for other purposes of security was not impaired. If not, the defendant cannot escape liability on this bond because neither was not also taken.

The judgment of the district court is affirmed.

No. 21,790.

THE STATE OF KANSAS, *ex rel.* S. M. BREWSTER, as Attorney-general, etc., *Plaintiff*, v. F. W. KNAPP, as State Auditor, etc., and WALTER L. PAYNE, as State Treasurer, etc., *Defendants*.

SYLLABUS BY THE COURT.

CONSTITUTIONAL LAW — *Enactment of Statute* — *When "House Concurrent Resolution" May Become a Law.* Under a constitution which provides that "no law shall be enacted except by bill," but which recognizes that a joint resolution passed by the senate and house of representatives may in some circumstances become a law, a proposition passed by both houses and approved by the governor may be regarded as a bill within the meaning of the provision quoted, where it has received the treatment of such a document and has every characteristic thereof except that it describes itself as a concurrent resolution, and contains the words "Be it resolved by the house of representatives of the state of Kansas, the senate concurring therein," instead of the constitutional formula for an enacting clause, "Be it enacted by the legislature of the state of Kansas."

Original proceeding in mandamus. Opinion filed March 9, 1918. Judgment for the plaintiff.

S. M. Brewster, attorney-general, for the plaintiff.  
F. W. Knapp, and Walter L. Payne, *pro se*.

The opinion of the court was delivered by

MASON, J.: Merrell Gage has presented to the auditor a claim against the state for \$1,500 on account of a statue of Lincoln recently erected on the statehouse lawn, and has requested its allowance. The auditor, being in doubt as to the legal authority for the payment of the claim, has declined to approve it until the question shall have been judicially determined. For the purpose of such determination this proceeding has been brought, a mandamus being asked by the attorney-general, requiring the auditor to approve the claim

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and issue a warrant therefor, and the state treasurer to pay it. The case is submitted upon the pleadings. It is agreed that the plaintiff has done everything possible on his part to entitle him to the payment asked, and the only doubt in the matter is whether any valid appropriation has been made therefor. If so, it is by virtue of action of the legislature which is recorded as chapter 346 of the Laws of 1917, reading as follows:

"HOUSE CONCURRENT RESOLUTION No. 25.

"RELATING to an appropriation for purchasing and aiding in the erection of the Merrell Gage statue of Abraham Lincoln upon the capitol square.

"WHEREAS, The sculptor, Merrell Gage, has produced an excellent statue of the great emancipator and typical American, Abraham Lincoln, the completed model of which is on exhibit at Mr. Gage's studio, 1027 Fillmore street, in the city of Topeka; and

"WHEREAS, Art critics, as well as persons who knew President Lincoln personally, declare the same to be an accurate and lifelike reproduction of President Lincoln; and,

"WHEREAS, The Woman's Club of the city of Topeka, and many other public spirited citizens of such city, have expressed the desire to have the statue erected on the capitol square, and have expressed a willingness to supply, or to procure the supply of by the city of Topeka, one-half of the cost of such statue and the erection thereof on the capitol square, provided the state of Kansas is willing to permit the same to be placed there, and to pay the other half for the cost and erection of such statue; therefore,

"*Be it resolved by the House of Representatives of the State of Kansas, the Senate concurring therein:*

"SECTION 1. That the sum of fifteen hundred dollars is hereby appropriated for the purpose of assisting in the purchase, erection and unveiling of a bronze statue of Abraham Lincoln, created by Merrell Gage, said statue to be erected and located upon the statehouse lawn or square, and at such place thereon as shall be designated by the Executive Council of the state, and the Executive Council are hereby authorized and empowered to permit the erection of said statue upon the statehouse lawn or square; provided, that the amount herein appropriated shall be in full of all claims or demands of every kind or character against the state; provided further, that said sum shall not be available or paid until the city of Topeka or the citizens of the city of Topeka shall have made provisions, in full, for the entire purchase price, erection and expenses incident to the unveiling of said statue; or, shall produce and file with the auditor of state a receipt in full from the said Merrell Gage together with a bill of sale transferring to the state of Kansas all of his right, title and interest in and to said statue;

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and, also, a receipt or receipts showing that all expenses of every kind or character incident to the erection and unveiling of said statue has been fully paid and satisfied by the city of Topeka or the citizens of the city of Topeka.

"SEC. 2. That the auditor of state is directed to draw his warrants in favor of Merrell Gage for the sum and the purposes herein named, and upon his verified voucher therefor, accompanied by the receipt and bill of sale provided for in section 1 of this act.

"SEC. 3. This act shall take effect and be in force from and after its publication in the official state paper.

"Approved [by the governor] March 3, 1917.

"Published in official state paper March 7, 1917."

Our constitution provides that "no money shall be drawn from the treasury except in pursuance of a specific appropriation made by law" (art. 2, § 24), and that "no law shall be enacted except by bill" (art. 2, § 20). The same article of the constitution, however, recognizes that a law may be created by joint resolution. The section relating to the exercise of the veto power of the governor reads as follows, the last sentence having been added in 1904:

"Every bill and joint resolution passed by the house of representatives and senate shall, within two days thereafter, be signed by the presiding officers, and presented to the governor; if he approve, he shall sign it; but if not, he shall return it to the house of representatives, which shall enter the objections at large upon its journal and proceed to reconsider the same. If, after such reconsideration, two-thirds of the members elected shall agree to pass the bill or resolution, it shall be sent, with the objections, to the senate, by which it shall likewise be reconsidered, and if approved by two-thirds of all the members elected, it shall become a law; but in all such cases the vote shall be taken by yeas and nays, and entered upon the journal of each house. If any bill shall not be returned within three days (Sundays excepted) after it shall have been presented to the governor, it shall become a law in like manner as if he had signed it, unless the legislature, by its adjournment, prevent its return, in which case it shall not become a law. If any bill presented to the governor contains several items of appropriation of money, he may object to one or more of such items, while approving the other portion of the bill; in such case he shall append to the bill, at the time of signing it, a statement of the item or items to which he objects, and the reasons therefor, and shall transmit such statement, or a copy thereof, to the house of representatives, and any appropriation so objected to shall not take effect unless reconsidered and approved by two-thirds of the members elected to each house, and, if so reconsidered and approved, shall take effect and become a part of the bill, in which case the presiding officers of each house shall certify on such bill such fact of reconsideration and approval." [Italics added.] (Const. art. 2, § 14.)

This section as originally framed resembled the corresponding section in a number of state constitutions, as well as that of the federal constitution, but the phrase "and joint resolution" was new, although in Michigan the words "and concurrent resolution" were used (art. 4, § 14), and in Maine "or resolution having the force of law" (art. 4, § 2). The veto clause of the federal constitution is made applicable to "every order, resolution, or vote to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment)" (art. 1, § 7). The section quoted expressly declares that if a joint resolution which has been disapproved by the governor afterwards receives a two-thirds vote in each house "it shall become a law." The inference seems clear that a joint resolution which is approved by the governor after its adoption by the legislature thereby becomes a law, although this is not declared in so many words. If a law can be enacted only by bill, and a joint resolution may become a law, it would seem that a joint resolution must be a bill, or may in some instances be regarded as a bill. And such is said to be the congressional practice in this section of a well-known work which dates back to 1856:

"A form of legislation, which is in frequent use in this country, chiefly for administrative purposes of a local or temporary character, sometimes for private purposes only, is variously known, in our legislative assemblies, as a joint resolution, a resolution, or a resolve. This form of legislation is recognized in most of our constitutions, in which, and in the rules and orders of our legislative bodies, it is put upon the same footing, and made subject to the same regulations, with bills properly so called. In congress, a joint resolution, which is the name given in that body to this kind of legislation, is there regarded as a bill." (Cushing's Law and Practice of Legislative Assemblies, 2d ed., § 2403.)

Whether or not legislation may ordinarily be accomplished by means of the adoption of a proposition submitted in the form of a resolution, we conclude that the process used in the case now under consideration amounted to the enactment of a law by bill. While the instrument acted upon by the two houses and the governor described itself as a concurrent resolution, it had every characteristic, in form and treatment, of such a bill as by the combined action of the legislature and the governor becomes a law. It had a title which clearly expressed its subject to be the appropriation of money to pay for the Lincoln

statue. It contained a call was entered and approved state paper may sometime to be adopted (art. 2, § 13) be approved must take effect (§ 19); but, needs to have when it taken entered on be published that it was "bill." It superable of concurrent not in itself its essential been called of a bill is enacting cl legislature of t In lieu of t the house of concurring question w a form of L. R. A. 19 tory hold note, p. 10 Swartz, Pe that rule necessary. point in the resolved by

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statue. It was read on three separate days in each house. It contained a provision declaring that "this act" should take effect upon its publication. In each house it received the votes of a majority of the members elected, and the result of the roll call was entered in full on the journal. It was submitted to and approved by the governor, and published in the official state paper and in the statute book. "Joint resolutions," which may sometimes become laws, are required by the constitution to be adopted by a majority of the membership in each house (art. 2, § 13), by a recorded vote (art. 2, § 10), as well as to be approved by the governor, and "acts" of the legislature must take effect at a prescribed time, and be published (art. 2, § 19); but, save for these requirements, no mere resolution needs to have a title, to be read on three separate days, to show when it takes effect, to be adopted by a yea and nay vote entered on the journal, to be approved by the governor, or to be published. The treatment given this measure seems to show that it was regarded by the legislature and the governor as a "bill." It ought to be given effect as such, unless some insuperable obstacle is interposed. The fact that it is styled a concurrent resolution, rather than a joint resolution or bill, is not in itself especially important. It should be classified by its essential qualities rather than by what it happens to have been called. All that it lacks of the necessary characteristics of a bill is a literal compliance with the requirement that "The enacting clause of all laws shall be 'Be it enacted by the legislature of the state of Kansas.'" (Constitution, art. 2, § 20.) In lieu of this, however, it has one reading "Be it resolved by the house of representatives of the state of Kansas, the senate concurring therein." The courts are divided in opinion on the question whether a provision of the constitution prescribing a form of enacting clause is mandatory or directory. (Note, L. R. A. 1915 B, 1060-1063.) Those which consider it mandatory hold the entire absence of the clause to be fatal (same note, p. 1061), and such is the practice in this state. (*In re Swartz, Petitioner*, 47 Kan. 157, 27 Pac. 839.) But even where that rule obtains, a substantial compliance is all that is deemed necessary. (Note, L. R. A. 1915 B, 1061-1062.) The turning point in the present controversy is whether the words: "Be it resolved by the house of representatives of the state of Kansas,

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the senate concurring therein," convey essentially the same meaning as "Be it enacted by the legislature of the state of Kansas." In a familiar case a conviction on a charge of felony was set aside because the word "the" was omitted from the concluding clause of an indictment, so that it read "against the peace and dignity of state" instead of "against the peace and dignity of *the* state." It was there conceded that a substantial conformity to the requirement of the constitution was all that was necessary, the court saying:

"It is plainly manifest that, the definite article 'the' which should immediately precede the word 'State' being omitted, the conclusion to the indictment in the case at bar falls far short of indicating the power or authority against which the facts charged in the body of the indictment constitute an offense. . . . It is clear that the omission of this word not only changes the sense but the very substance of the clause. . . . In the use of the definite article 'the' immediately preceding 'State' in the conclusion prescribed by the Constitution we have pointed out the State whose peace and dignity has been offended, and by the omission of such definite article we have a conclusion that does not designate the power or authority against which the offense is committed. . . . If this conclusion embraced language similar to that pointed out in the cases to which we have heretofore referred, such as 'against the peace and dignity of our said State,' or 'against the peace and dignity of State of Missouri,' it might be very properly ruled that such language was at least equivalent to the language prescribed by the Constitution, for the reason that it indicated the power and authority against which the offense as charged in the body of the indictment constitutes an offense." (*State v. Campbell*, 210 Mo. 202, 224, 225.)

Whatever may be thought of the application there made of the rule, the statement of the general principle is obviously sound—that the test to be applied is whether the language employed conveys the same meaning as the language prescribed. In the matter now under consideration, if the expression used had been "Be it *legislated* by the legislature of the state of Kansas," or "Be it enacted by the house of representatives and senate of the state of Kansas," it would hardly be doubted that the requirement of the constitution was substantially met. We think that the clause, "Be it resolved by the house of representatives of the state of Kansas, the senate concurring therein," unequivocally indicates that the two houses comprising the Kansas legislature unite in giving their approval to the sections which follow it, with the purpose to give them the effect which they purport to have, and that this

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A requirement of the constitution that "The style of the laws of the state shall be, 'Be it enacted by the legislature of the state of Mississippi,'" was held to be met by the use of the word "resolved" in the place of "enacted," the court saying: "The word 'resolved' is as potent to declare the legislation with as the word 'enacted.'" (*Swann v. Buck*, 40 Miss. 268, 293.) That decision was followed, the language quoted being expressly approved, in *Smith v. Jennings*, 67 S. C. 324. In *May v. Rice, Auditor*, 91 Ind. 546, a joint resolution for the appropriation of money was held to be ineffective, but it was not in fact approved by the governor, and in the opinion stress was laid on the consideration that the constitution made no provision for the presentation of a joint resolution to the governor for his approval, the case of *Swann v. Buck*, supra, being distinguished on this ground and also upon a difference in the language of the provision regarding the enacting clause.

In at least two instances, the Kansas legislature has attempted to appropriate money by the adoption of a measure described as a joint resolution. (Laws of 1889, p. 421; Laws of 1891, p. 416.) It may be doubted whether either attempt was technically successful, for neither document contained any provision as to the time of its taking effect, or for its publication, although each was in fact published in the statute book. Here, however, inasmuch as we conclude that every requirement of the constitution has been substantially complied with, the result is a valid enactment.

Judgment is rendered in favor of the plaintiff, determining that the claim should be approved and a warrant issued and paid. The issuance of a writ will of course not be necessary.

MARSHALL, J. (dissenting): Neither the title to the resolution, nor its enacting clause, if it may be called such, pretends to say that what follows is intended to be a law. The title to every law, except one, enacted by the legislature in 1917 begins with the words, "An act." The one exception is chapter 91, the title to which, as printed in the statute book, begins with the words, "Relating to"; but on the back of the original bill the title reads: "An act relating to," etc. The constitutional requirement concerning the enacting clause was

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followed by the legislature, in 1917, in all instances when a law was being enacted. It is safe to say that every member of that legislature understood that both the title to an act and its enacting clause must give warning that what followed was intended to be a law. In the present instance, neither the title nor the enacting clause, nor both together, gave any such warning.

The constitutional requirement is simple. It is generally understood. It is easy to follow. There should be no refinements concerning it. Its simple requirements must be so obeyed, or they will cease to have any force or effect.

DAWSON, J. (dissenting): I cannot assent to the conclusions of the majority. The legislature will meet again in a few months and doubtless would pay the petitioner's claim in the regular way, by a specific appropriation made by law, as all other proper claims against the state are paid. A house concurrent resolution is not a law. The constitution takes no cognizance of such a resolution and does not define it. A resolution is a declaration of opinion, or the expression of a purpose—nothing more. In the Session Laws of 1917 are concurrent resolutions expressing the compliments of the house and senate to Hon. Charles F. Scott (ch. 339); expressing condolences on the death of Frank Edimer McFarland (ch. 345); requesting the Kansas senators and representatives in congress to vote for woman suffrage (ch. 351), etc. There are twenty-eight pages of concurrent resolutions in the Session Laws of 1913, the subject matter ranging all the way from memorials to the president on the high cost of living (ch. 341), to denunciations of "log rolling" and "pork barrel" raids on the national treasury (ch. 340). And the decision in this case raises all that sort of stuff to the dignity of legislation!

The constitution recognizes joint resolutions, but the resolution here under scrutiny does not pretend to be a joint resolution. What the constitution does say is that no money can be drawn out of the state treasury except pursuant to a specific appropriation made by law; and it says also that no law shall be enacted except by bill. (*In re Swartz, Petitioner*, 47 Kan. 157, 27 Pac. 839.) Again, the constitution says that every bill shall have an enacting clause, and that it shall plainly run like this: "Be it enacted by the legislature of the state of Kansas." Compliance with that provision of the con-

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stitution is wanting in the resolution. The familiar, effective and summary way of killing a bill in the legislature is by striking out its enacting clause.

I know quite well that the spirit of our time is to give regard to the substance and not to the form of things. I trust I am in accord with that spirit; but disregard of fundamentals is not a true interpretation of that spirit. Every change does not necessarily lead to progress. There are a few plain, positive restrictions upon the delectable task of getting money out of the state treasury which the constitution requires to be observed, and which it will be mischievous to disregard. A resolution of the two houses of the legislature to appropriate money is merely a declaration of the house and senate that they intend to see to it that a law to that effect will be duly enacted. The student who cares to investigate this subject will find that the Kansas legislative custom is to follow up these resolutions to draw money from the state treasury with specific items of appropriation to that effect. These are usually inserted in the miscellaneous appropriation acts. For example, a senate concurrent resolution to appropriate \$6,000 for a statue of Governor Glick (Laws 1913, ch. 364) was followed by an item in the miscellaneous appropriation act to the same effect. (Laws 1913, ch. 60, item 34.) In discussing the necessity of following up this resolution with a corresponding item in the miscellaneous appropriation bill, the member from Atchison (Hon. J. W. Orr) said: "All the resolution amounts to is three cheers for Governor Glick." In 1903, the house concurrent resolution authorizing a statue of John J. Ingalls (House Journal, 1535, 1612; Senate Journal, 843, 844) was followed by a specific item appropriating \$6,000 in a formal act of the legislature. (Laws 1903, ch. 35, item 138.) See, also, Laws 1913, ch. 364; and Laws 1913, ch. 60, item 54. Such illustrations could be indefinitely extended.

Mandamus is a discretionary writ. It should seldom issue in any gravely debatable case. The courts, the legislature and the executive officers are all solemnly sworn to uphold and defend the constitution. If we are to have and maintain a constitutional government, we must stand by it, and not whittle it away so that it will mean nothing but a few glittering generalities.

WEST, J., joins in the dissent.

Exhibit J

THE NEW ENGLAND BUILDING COMPANY  
503 Kansas Avenue  
Topeka, Kansas 66603

March 12, 1973

Mr. Clyde Hill, Chairman  
Ways and Means Committee  
House of Representatives  
Statehouse  
Topeka, Kansas 66612

Dear Mr. Hill:

This letter is being written in the interest of expediting your considerations concerning the possible acquisition of the New England Building situated at 503 Kansas Avenue in Topeka.

As a local stockholder and owner, I can advise you that The New England Building Company came to an understanding with Mr. John Harbes concerning the New England Building the latter part of May, 1972, and that Mr. Harbes has vigorously pursued the plans for rehabilitating the building since that time. The arrangement with Mr. Harbes is, of course, of a confidential nature and we therefore must respect that confidence.

Very truly yours,

THE NEW ENGLAND BUILDING COMPANY

Stephen M. Hall, Vice President

SMH:ser

cc: Mr. Ross O. Doyen, Chairman  
Senate Ways and Means Committee



*Exhibit K*

STATE OF KANSAS

TOM R. VAN SICKLE  
SENATOR SEVENTH DISTRICT  
FORT SCOTT, KANSAS



TOPEKA

SENATE CHAMBER

January 20, 1970

COMMITTEE ASSIGNMENTS

CHAIRMAN: WAYS AND MEANS  
VICE-CHAIRMAN: COMMITTEE ON COMMITTEES  
MEMBER: COMMERCIAL AND FINANCIAL  
INSTITUTIONS  
JUDICIARY  
LEGISLATIVE, CONGRESSIONAL AND  
JUDICIAL APPOINTMENT

Mr. Robert C. Fuller  
Property Manager  
Neiswanger Company, Inc.  
330 New England Building  
Topeka, Kansas 66603

Dear Mr. Fuller:

Thank you very much for the information concerning your property on Kansas Avenue. I appreciate this greatly and will be in touch with you further as things develop.

Best personal regards,

Sincerely,

A handwritten signature in cursive script, appearing to read "Tom R. Van Sickle".  
Tom R. Van Sickle

TRV:law

Exhibit 2

January 19, 1970

Senator Tom R. Van Sickle  
Chairman Ways and Means Committee  
State Capitol Building  
Topeka, Kansas

Dear Senator Van Sickle:

We are pleased to submit the following information concerning the New England Building, 503 Kansas Avenue, Topeka, Kansas:

Gross Building Area	94,386 sq. ft.
Net Rentable Area including unfinished basement storage	73,209 sq. ft.
Net Rentable Area less basement storage space	67,047 sq. ft.

Firm offering price for sale: \$600,000.00.

Please find enclosed five offering brochures concerning the subject property.

Very truly yours,

NEISWANGER COMPANY, INC.

Robert C. Fuller,  
Property Manager

RCF:hd  
Enclosures (5)

# OFFICE BUILDING

One of Topeka's Most Popular Office Addresses



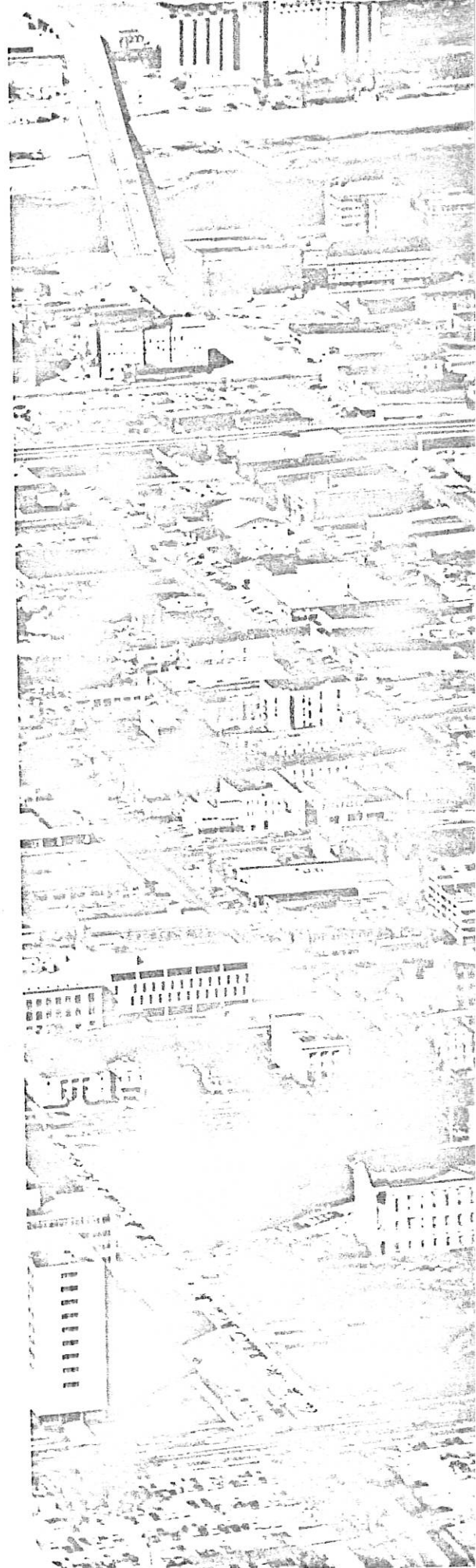
*Weiswanger Co. Inc.*  
INCORPORATED  
CENTRAL 2824

# A Promising Investment Opportunity\*

One of Topeka's more popular business addresses, the New England Building offers a promising investment opportunity in a downtown area of renewed importance.

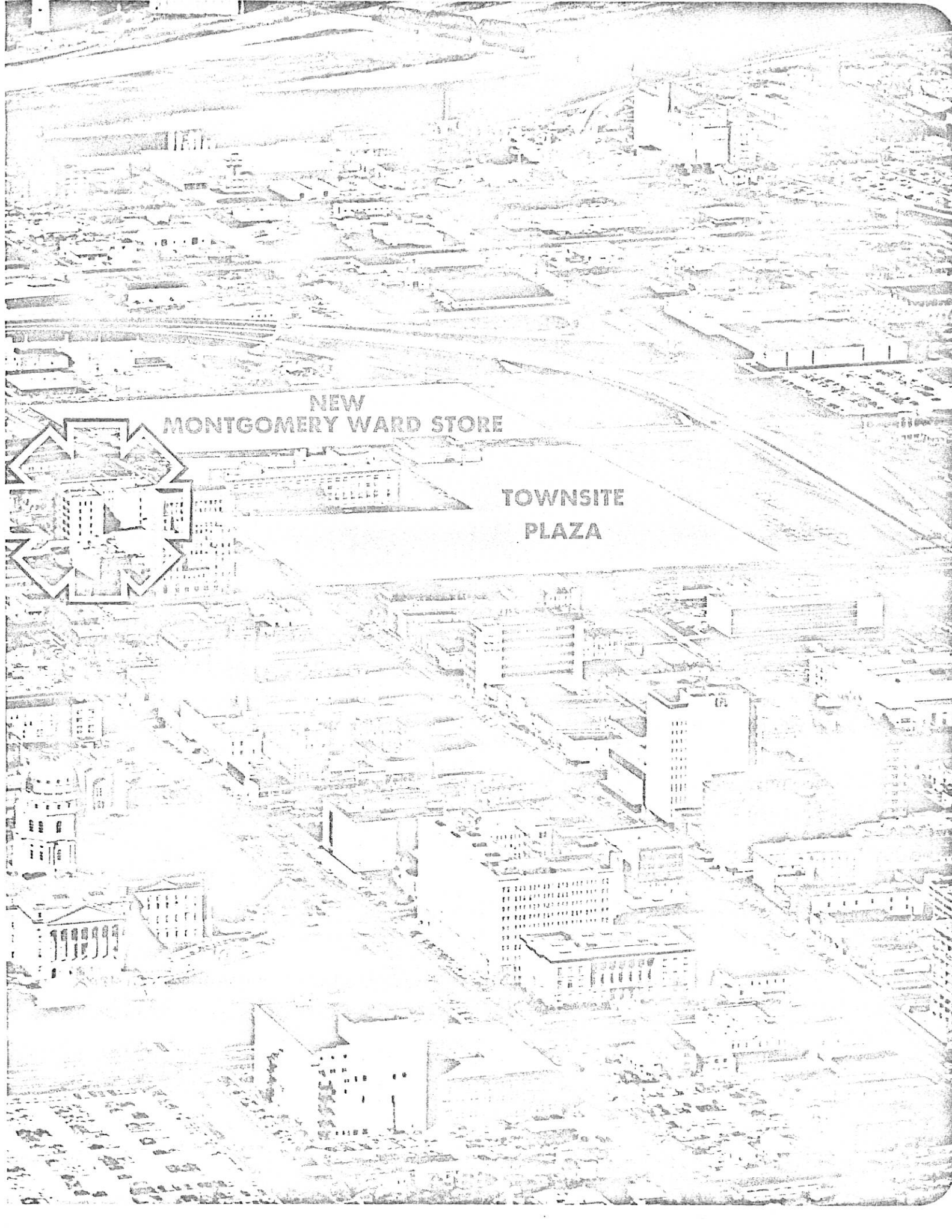
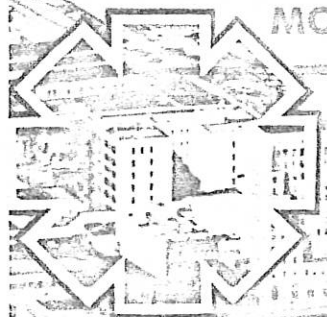
As the photo on the right shows, the New England Building is well located in Topeka's established downtown district that now includes the Keyway and Townsite Plaza Urban Renewal projects.

The Capital of Kansas, Topeka has a metropolitan area population of 158,900 (SR&DS-1967) and a stable, growing economy. Larger employers include the Santa Fe General offices and shops, Goodyear Tire and Rubber Company, Dupont, Southwestern Bell, Hallmark Cards and Forbes Air Base. Topeka is the home of the well-known Menninger Foundation and Washburn University. It is served by four major railroads, fifteen connecting airline flights daily, and excellent highway facilities including Interstate #70 and the Kansas Turnpike.

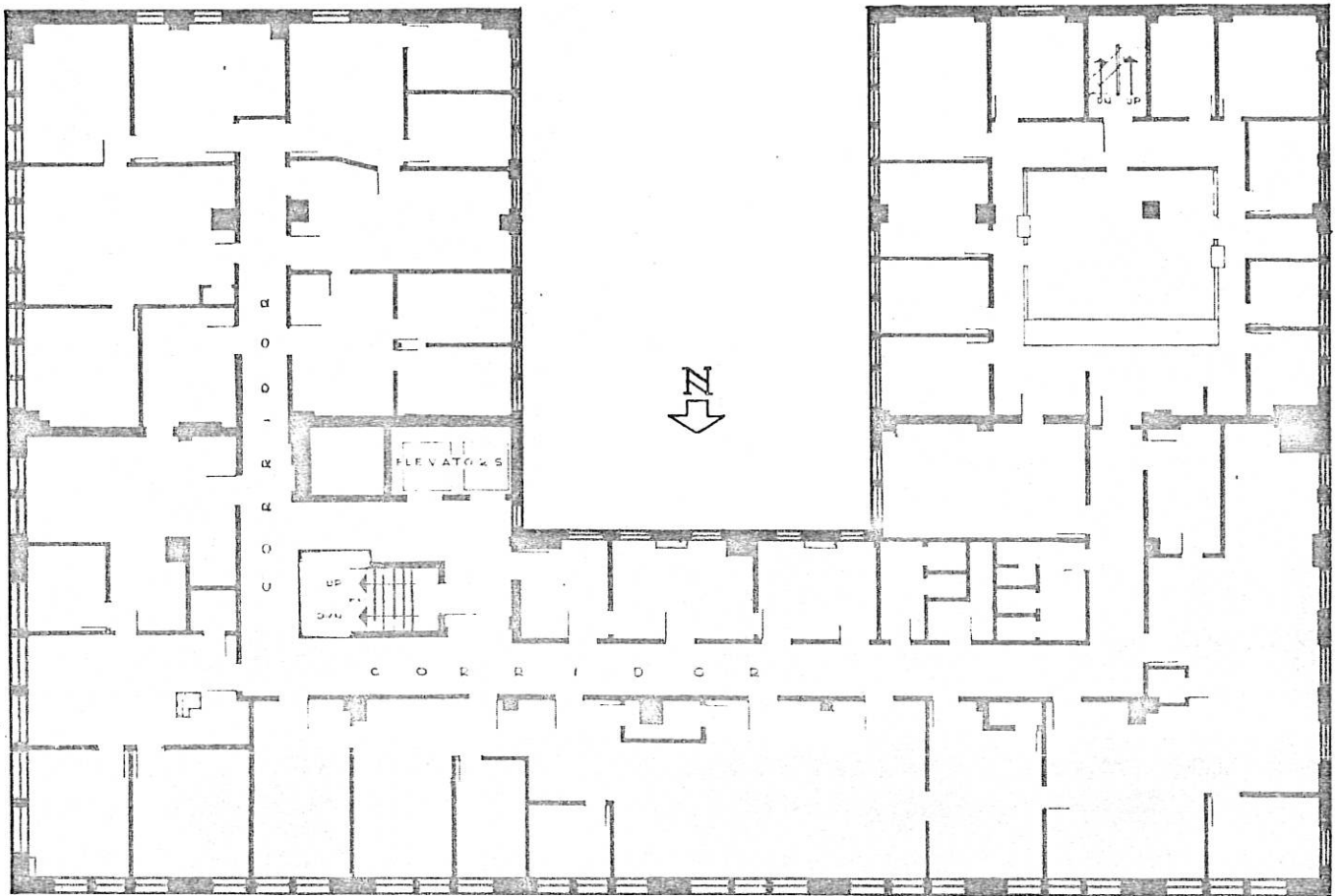


NEW  
MONTGOMERY WARD STORE

TOWNSITE  
PLAZA



# Facts About the New England Building



**THE NEW ENGLAND BUILDING**  
 Fifth and Kansas Avenue  
 Topeka, Kansas 66603

- \* Six story and basement, fire resistive building of reinforced concrete construction. Built-up tar and gravel roof.
- \* Elevators—Two passenger type completely modernized and automated by Dover Company in 1962.
- \* Air Conditioning—Recently installed "package" units on all floors except Fourth.
- \* Located in the Central Business District—across Kansas Avenue from the Federal Building, Post Office, and "Townsite Plaza"—a sixteen acre Urban Renewal project now in the initial stages of redevelopment.

\* Gross Building Area

Basement	14,868
First Floor	14,868
Second Floor	12,930
Third Floor	12,930
Fourth Floor	12,930
Fifth Floor	12,930
Sixth Floor	12,930

**Total 94,386 Square Feet**

\* Net Rentable Area

**62,867 Square Feet**

**BROKER COOPERATION INVITED**

*Wasserman Co. Inc.*  
*1000 Kansas Avenue*  
*Topeka, Kansas*

Exhibit M

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS

Held in the Ways and Means Room at the Statehouse at 10:00 a.m. on Tuesday, March 20, 1973.

All members were present with the exception of Senators Saar and Storey.

Conferees appearing before the Committee were:

- John Harbes, Realtor, on HB 1568
- Robert Bunten, Chairman of the Board, Merchants National Bank, Topeka, on HB 1568
- Max Klein, Southwestern Bell Telephone, on HB 1568
- Steve Hall, President, Merchants National Bank, Topeka, on HB 1568
- David Neiswanger, Neiswanger Realtors, on HB 1568
- James Snyder, Kansas Funeral Directors Assn., on HB 1039

The Committee considered the following items:

HB 1568 - RELATING TO THE ACQUISITION OF CERTAIN TRACTS OF LAND AND IMPROVEMENTS THEREON IN THE CITY OF TOPEKA BY THE STATE DIRECTOR OF ARCHITECTURAL SERVICES FOR USE OF THE STATE OF KANSAS AND AGENCIES THEREOF. Mr. Harbes told the Committee that early in the year last year he talked with the owners of the New England Building and their agents about the building. He took an option to purchase this building (not an option to sell) and spent several months making a feasibility study. He said he is convinced it is a good building. He stated that the state made contact with him about selling the building; he did not contact the state about selling it. In answer to questions from the committee he said he has not made a political contribution of more than \$100 to either political party.

Mr. Bunten said that Merchants National Bank owns a little piece of land in the 500 block of Kansas Avenue. He said they use this land for a parking lot since there is a very strong demand for parking in this area. He stated they are willing to sell this land but haven't offered it for sale at any time. He said Mr. Neiswanger had approached them in the past about selling this property but they hadn't been interested in selling it.

Mr. Klein told the Committee that Southwestern Bell owns several lots in the 500 block of Kansas Avenue and are anxious to sell these lots. He said they bought them about eight years ago and then decided to build elsewhere. He stated that they have made improvements but they are selling it for less than they paid for it. In answer to questions he stated that he has not made contributions to a central political party in excess of \$100.

Mr. Hall told the Committee that he is Vice-President of the New England Company, the corporation that owns the four lots of ground at the Southwest corner of 5th and Kansas. In answer to questions, Mr. Hall said he would prefer to defer any opinion of the value of the property to those who will be dealing directly with the state.

Mr. Neiswanger said he has acted as managing agent of the New England Building since 1944. In answer to questions from the committee, Mr. Neiswanger said he thinks this would be a good buy for the state. He said there has been a good deal of work done to the building in fairly recent years: it was completely rewired in 1952; air conditioning units were installed on the second, third, fifth and sixth floors in 1965; the elevators were modernized in 1952; and in 1970 approximately \$24,000 was expended in bringing the fire exits and stairways up to standards. He said the plumbing is okay as far as he knows. He said the cost of maintenance has been normal for a building of that age, the roof is in good condition, and there are a few windows that need some repair and a few that need to be replaced, but they are generally good.

HB 1039 - CONCERNING SOCIAL WELFARE; PROVIDING FOR STATE ADMINISTRATION OF SOCIAL WELFARE PROGRAMS. The committee discussed HB 1039. In answer to questions, Mr. Snyder told the committee that HB 1039 had been amended to increase funeral payments from \$300 to \$600 because \$300 is not a realistic figure these days. He said the cost for the average adult funeral is \$750 but the amendment to \$600 does not mean welfare will always pay that much.

The meeting adjourned at 11:00 a.m.

Sue Bauman  
Secretary

APPROVED:

\_\_\_\_\_  
Senator Ross Doyen  
Chairman

These minutes were read and approved by the Committee on \_\_\_\_\_.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.



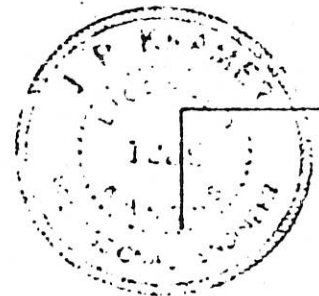
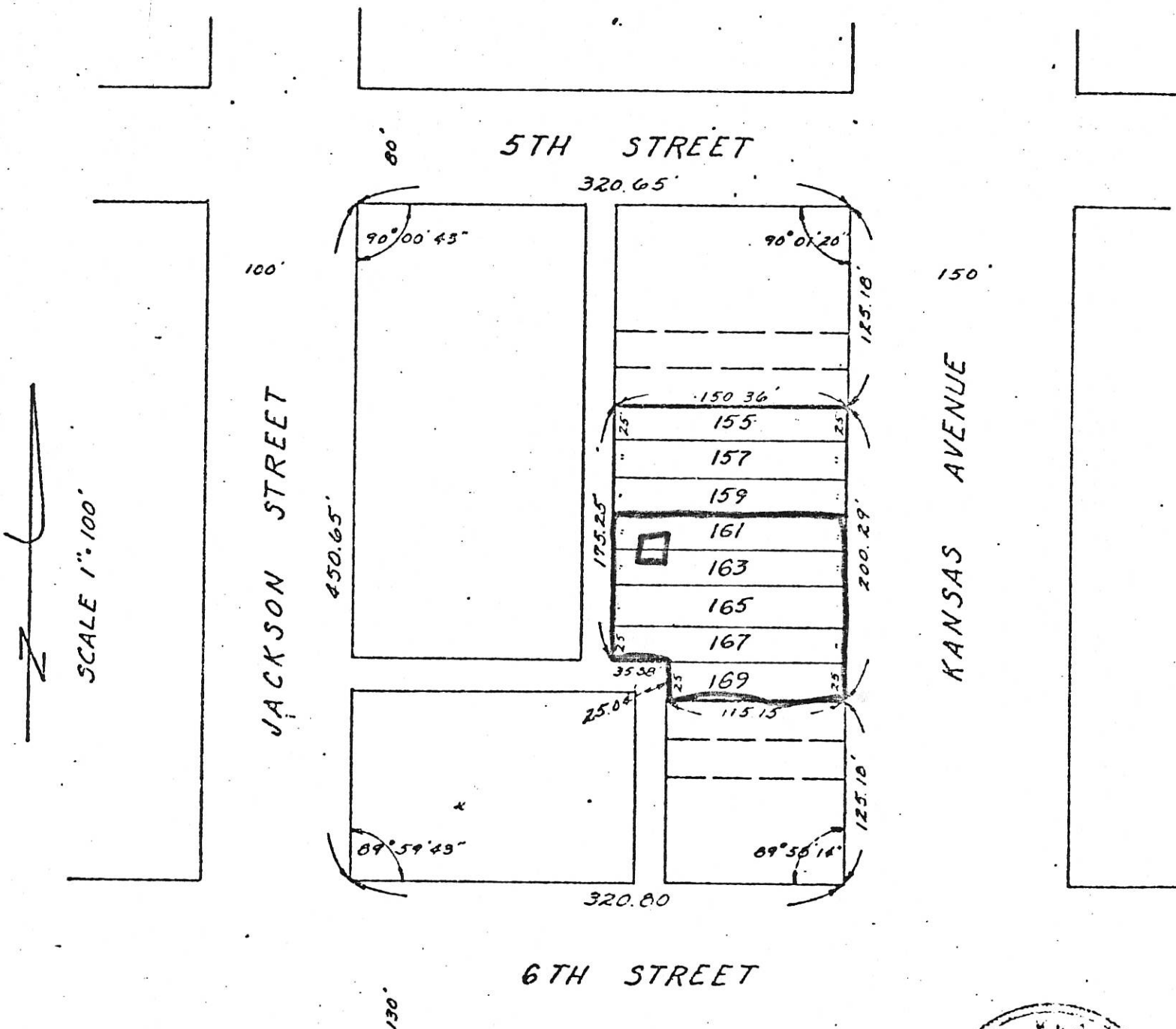
Exhibit N

# PLAT OF SURVEY

NO. 6411

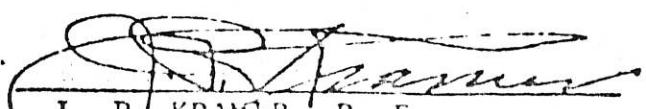
FOR SOUTHWESTERN BELL TELEPHONE BOOK C 7 - p. 56 - DATE August 4, 1964

DESCRIPTION: All of Lots 155, 157, 159, 161, 163, 165, 167, and 169 on Kansas Avenue, in Original Town, to the City of Topeka, Shawnee County, Kansas.



I HEREBY CERTIFY THAT THE ABOVE PLAT IS CORRECT AND IS THE TRUE FINDINGS OF A SURVEY MADE on the ground, under my direction.

DATED THIS: September 10, 1964

  
 J. P. KRAMER, P. E.

*File - Land - 500 Block Kansas*

January 20, 1970

Honorable Tom R. Van Sickle  
The State Senate  
State Capitol  
Topeka, Kansas 66612

Dear Tom:

This concerns our telephone conversation on the vacant property owned by Southwestern Bell in the 500 Block, Kansas Avenue, here in Topeka.

I have attached copies of the Plat Survey, showing legal description and size, together with an aerial photograph.

Our Company had previously optioned the property for sale to a party for \$270,390.00. However, the option expired and the land is for sale for an amount in the ball park of that amount.

The land is zoned commercial and although we do not adjoin the bank buildings, I feel that the property could be packaged quite easily.

Sincerely,



Vice President  
and General Manager

Attachments

*1/20 Ltr + attachments delivered  
by Mark Klein JMT*

F

~~MR. WALKER  
CALL TO  
CLYDE HILL  
MON. 3/27  
MLK~~

March 27, 1972

Representative Clyde Hill, Chairman  
House Ways and Means Committee  
Box 202  
Yates Center, Kansas 66783

Dear Clyde:

Regarding your inquiry about our property on Kansas Avenue, north of the First National Bank Building, I thought you would like to have the following information.

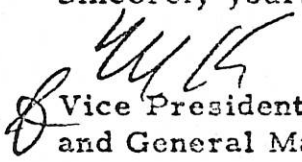
We purchased this lot in 1964 for \$330,000 in anticipation of placing our new area headquarters building on this site. Subsequently, we spent \$22,000 in connection with clearing this property and then, due to other considerations, we decided to build our building at 220 East Sixth Street. Since our decision to build on Sixth Street, we have had the property listed at various times and we are ready and willing to sell this site to the State of Kansas.

Recently because we had the property, we decided to move our car pool to this location. As a result of readying the lot for the car pool, we now have work in process that will cost about \$31,000. The work that has been done for our car pool arrangement certainly will be useful to the State of Kansas for their use of the lot as a parking facility.

As discussed with you, we are willing to sell the lot for \$250,000 which we feel is a very reasonable price. This offer to sell is subject to the approval of the Board of Directors of Southwestern Bell.

I hope this information will be helpful to you in your presentation to your Committee.

Sincerely yours,

  
Vice President  
and General Manager

3-10-13 Exhibit 0

FIFTH AND KANSAS STATE OFFICE BUILDING AND THREE PARKING LOTS

SCHEDULE FOR RETIREMENT OF \$1.3 MILLION IN BONDS  
(TO BE PURCHASED BY USE OF STATE INACTIVE FUNDS AT CURRENT INTEREST  
RATE OF 3.40%)

(Assumes 1/10th Retired Annually)

	<u>Annual Bond Retirement</u>	<u>3.40% Interest</u>	<u>Total Annual Payment</u>	<u>Principal Balance</u>
Beginning Balance				\$1,300,000
First Year	\$ 130,000	\$ 44,200	\$ 174,200	1,170,000
Second Year	130,000	39,780	169,780	1,040,000
Third Year	130,000	35,360	165,360	910,000
Fourth Year	130,000	30,940	160,940	780,000
Fifth Year	130,000	26,520	156,520	650,000
Sixth Year	130,000	22,100	152,100	520,000
Seventh Year	130,000	17,680	147,680	390,000
Eighth Year	130,000	13,260	143,260	260,000
Ninth Year	130,000	8,840	138,840	130,000
Tenth Year	<u>130,000</u>	<u>4,420</u>	<u>134,420</u>	0
Totals	<u>\$1,300,000</u>	<u>\$243,100</u>	<u>\$1,543,100</u>	

13.

ASSETS	Dollars	Cts.	LIABILITIES	Dollars	Cts.
Cash.....	24,496	34	Capital paid up.....	2,000	00
Real estate.....	218,965	32	Surplus.....	246,181	54
Personal property.....			Undivided profits.....	104,920	63
Accounts receivable.....			Notes payable.....		
Notes receivable.....			Accounts payable.....	16,704	97
Stocks, bonds and other securities.....	130,240	00	Bonded indebtedness.....		
Accrued Interest			Encumbrance on real estate or plant.....		
Receivable	1,602	74	Notes rediscounted.....		
			Deferred Credits	5,497	26
TOTAL,	375,304	40	TOTAL,	375,304	40

14. LIST OF STOCKHOLDERS BY CLASS OR CLASSES  
AND NUMBER OF SHARES OF STOCK OWNED BY EACH

NAME	P. O. ADDRESS	No. Shares	NAME	P. O. ADDRESS	No. Shares
Gleed Thompson	Bedford Hills New York	500			
Champa & Co.	Denver, Colorado	500			
Stephen M. Hall	Topeka, Ks.	500			
William M. Hall	Topeka, Ks.	500			
		<u>2,000</u>			

Shares of Treasury Stock must be included

Cooperative organizations need report only number of stockholders or members.

15. STATE OF KANSAS }  
Shawnee COUNTY } ss:

We, the President or Vice-President and Secretary or General Manager of lawful age, being first duly sworn, say: That we executed the foregoing report in the name and on behalf of THE NEW ENGLAND BUILDING COMPANY

Name of Corporation.

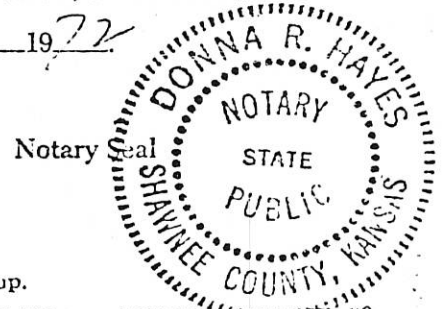
*[Signature]*  
Signature of President or Vice-President

*[Signature]*  
Signature of Secretary or General Manager

Subscribed and sworn to before me this 24<sup>th</sup> day of March 1972

*[Signature]*  
Signature of Notary Public

*[Signature]* 1974  
My commission expires



16. ANNUAL FEES REQUIRED

Annual fees are computed on basis of issued capital stock, paid up.

Over \$10,000 or less .....	\$10.00 ✓	Over \$250,000 to \$500,000 .....	\$500.00
Over \$10,000 to \$25,000 .....	\$25.00	Over \$500,000 to \$1,000,000 .....	\$500.00
Over \$25,000 to \$50,000 .....	\$50.00	Over \$1,000,000 to \$2,000,000 .....	\$1,000.00
Over \$50,000 to \$100,000 .....	\$100.00	Over \$2,000,000 to \$3,000,000 .....	\$1,500.00
Over \$100,000 to \$250,000 .....	\$125.00	Over \$3,000,000 to \$5,000,000 .....	\$2,000.00
		Over \$5,000,000 .....	\$2,500.00

Cooperative Marketing \$10.00.  
Mutual Telephone Companies 1/20 of 12.

ANNUAL REPORT

For the year ending 12-31-71

The New England Building  
Name of corporation Company

David M. Neiswanger  
Resident Agent

330 New England Building  
Street Address of Registered Office

Topeka, Kansas  
Town

Shawnee  
County

FILL IN ABOVE ITEMS

MAR 31 1 54500 \*\*\*10.0

Exhibit Q

FISCAL YEAR

2. Reports filed on fiscal year basis must state period covered.

From

Through

KANSAS CORPORATION

NOTE: This report must be filed and fee paid with the Secretary of State of Kansas on or before ninety (90) days after close of each calendar or fiscal year.

NOTE: If a change from a calendar year to a fiscal year filing is to be used, a statement electing a fiscal year date must be filed with the Secretary of State before December 31.

Organizations incorporated less than six (6) months prior to end of calendar or fiscal year are not required to file.

3. Address of principal office New England Building, Topeka, Kansas 66603  
Post Office Address (Zip Code)

4. Nature and kind of business Ownership and Operation of Office Building

5. Place or places of business New England Building, Topeka, Kansas

6. Changes in capital stock, registered office or resident agents since last report are None

7. Date of election of officers 1-9-71  
(Statutes require date of election of officers)

8. OFFICERS

NAME	STREET AND NUMBER	CITY
President <u>Gleed Thompson</u>	<u>40 Bedford Center Road</u>	<u>Bedford Hills, New York</u>
Secretary )		
Treasurer ) <u>William M. Hall</u>	<u>c/o Merchants Nat'l Bank</u>	<u>Topeka, Kansas</u>

9. BOARD OF DIRECTORS—(President must be listed as member of Board of Directors)

NAME	P. O. Address	NAME	P. O. Address
<u>Gleed Thompson</u>	<u>Bedford Hills, New York</u>		
<u>William M. Hall</u>	<u>Topeka, Kansas</u>		
<u>Stephen M. Hall</u>	<u>Topeka, Kansas</u>		

Statutes require three directors

10. The amount of AUTHORIZED capital stock is \$ 2,000.00

Authorized capital stock is as follows: 2,000 shares, Common Stock, Par Value ..... \$ 1.00  
per share

\_\_\_\_\_ shares, Preferred, Par Value ..... \$ \_\_\_\_\_  
per share

\_\_\_\_\_ shares, Common, without Par Value ..... \$ \_\_\_\_\_  
\_\_\_\_\_ shares, Preferred, without Par Value ..... \$ \_\_\_\_\_

11. Issued capital stock is: 2,000 shares, Common Stock, Par Value ..... \$ 1.00  
per share

\_\_\_\_\_ shares, Preferred, Par Value ..... \$ \_\_\_\_\_  
per share

\_\_\_\_\_ shares, Common, without Par Value ..... \$ \_\_\_\_\_  
\_\_\_\_\_ shares, Preferred, without Par Value ..... \$ \_\_\_\_\_

12. The amount of capital stock paid up \$ 2,000.00  
(must be same as capital paid up figure in your balance sheet)  
Treasury stock must be included

Reappropriation

Net Receipts:

17,000 Sq. Ft. Office @ \$ 5.50 ✓  
 Sq. Ft. Storage @ \$

100 parking stalls @ \$60/Year

Total Receipts

Total Available Resources

Less: Balance Forward

\* Trfd to Bond & Int Slnk

Trfd to Dep Reserve Fd

Subtotal - Deductions

Operating Expenditures

5400 (4 1/2%)  
 002 (6 3/4%)

\* Principal Payment

Interest (3 1/2%)

Total Transfer B&I Snd

EXHIBIT R

	FY 71	FY 75	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
Total Receipts	368500	368500	368500	368500	368500	368500	368500	368500	368500	368500
Total Available Resources	374500	374500	374500	374500	374500	374500	374500	374500	374500	374500
Less: Balance Forward	28300	53000	73760	90100	101579	107794	108149	102303	89570	6931
* Trfd to Bond & Int Slnk	174200	169780	165360	160910	156520	152100	147680	143260	138840	134420
Trfd to Dep Reserve Fd	12000	12000	12000	12000	12000	12000	12000	12000	12000	12000
Subtotal - Deductions	186200	181780	177360	172910	168520	164100	159680	155260	150840	146420
Operating Expenditures	160000	168000	176400	185220	194481	204205	214415	225136	236393	248213
Principal Payment	130000	130000	130000	130000	130000	130000	130000	130000	130000	130000
Interest (3 1/2%)	41200	39780	35360	30910	26520	22100	17680	13260	8810	4120
Total Transfer B&I Snd	171200	169780	165360	160910	156520	152100	147680	143260	138840	134420

MEMORANDUM

Date March 26, 1973

From: Kenneth McLain, Director  
To: Robert Brandt, Secretary, Dept. of Admin.  
Subject: 503 Kansas Avenue

We have reviewed the condition of the building at 503 Kansas Avenue and have determined those conditions which will need renovation or removing at such time that the state may occupy the building. Information was gathered by actual inspection of the building and by talking with other people who are familiar with the existing structure.

Some of the basic information we have gathered may be of some interest and I am listing these conditions for your information:

The total floor area of the building is approximately 78,500 s.f.

The building is heated from the central power company steam plant.

Each of the floors above the first floor has its own air conditioning unit.

The two vaults which were in use when the Merchants National Bank occupied the main floor are no longer serviceable. The Merchants National Bank removed the vault doors and the steel plates inside the vault.

It is my understanding that the entire first floor would need to be air conditioned as it has not been serviceable since the bank moved out.

Some of the offices in the existing building still have the old globe light fixtures which should be updated with new fluorescent lighting to achieve a reasonable foot candle level.

Many of the offices still have old asphalt tile floors and in some cases painted concrete.

The heating is through old cast iron radiators and heating is controlled by either opening or closing the valve on the radiator

We have information which indicates that in 1969 figures were secured to renovate one floor of the office building for \$57,500.00.

It is my understanding that the electrical service and the distribution panels are antiquated or loaded to capacity.

The interior court of the "U" shaped building was faced with glazed brick. Within the last two or three weeks a large section of this brick veneer peeled off and collapsed onto the roof of the first floor section. I am



assuming that the present owners of the building will remedy this failure in the building and I am not figuring any cost for such renovation.

I am attaching two estimates for renovation of the building, one for what we would consider minimum renovation for moving in and the second cost for a total optimum renovation if all of the work were to be done immediately. It would be possible to move into the building but the unknown factor is what space would have to be re-planned to accommodate divisions of the state. At this point it would be very difficult to ascertain how much partitioning would have to be removed, what areas would need new ceilings and new light fixtures and what areas would require additional partitions to divide the floor space.

In the minimum renovation we have included a lump sum figure of \$250,000.00 for this general renovation of floor space. This is the one large item that may or may not be realistic.

If it was desirable for one of the state agencies to use the two vaults presently in the building it would cost approximately \$19,000.00 for each vault to place it back into service.

All the windows in the north and east side of the building are the original wood windows. They are very loose and create uncomfortable conditions on cold and windy days.

If the replacement of these windows was not accomplished at the outset, it would be most desirable to accomplish this work within the next five years at the most.

I would estimate that the requirements as outlined by the State Fire Marshal in the attached report to cost \$6,500.00 not including the sprinkler system which he suggest for the basement. Also enclosed is a letter from Mr. William G. Nace, Capitol Complex Manager, outlining some of the problems he encountered and extra expenses involved when 535 Kansas was taken into the state system. We have not tried to place a figure on those items in Mr. Nace's letter.

Should you have any further questions about any of the estimates we have included for renovating 503 Kansas Avenue, please do not hesitate to call us. Please keep in mind that this estimate is based on a preliminary analysis of the building and could not at this time be an indepth study of conditions.

Kenneth R. McLain

Estimate of Cost to Renovate 503 Kansas Avenue  
Minimum Renovation

Two new flag poles	\$ 1,200
Air conditioning, ground floor	75,000
General renovation for new uses	250,000
Electrical - some new fixtures & minimum service improvements	25,000
Hardware replacement	<u>2,500</u>
	\$353,700
If desirable to use two vaults in building	38,000
Old wood windows on north and east wall should be completely replaced within 5 years	75,000
Requirements of firemarshal (except sprinkler system)	<u>6,500</u>
Total - all above conditions	\$473,200

Estimates of Cost To Renove 503 Kansas Avenue General  
Optimum Condition

Two new flag poles on front	\$ 1,200
Air Conditiong, ground floor	112,500
Recondition 2 vaults	38,300
New ceilings in 50% of building	46,300
For remodeling spaces	350,000
New floor covering - 50% of building	38,000
Replace defective valves and misc. plumbing work	5,000
Rewiring and new fixtures where needed	196,000
Heating, minimum renovation	21,500
Replace old wood windows	71,500
Some hardware replacement	<u>2,500</u>

Total of renovation: \$882,800

State of Kansas



211 West 7th  
Topeka, Kansas 66603

PHONE 296-3401

March 26, 1973

Mr. Kenneth McLain, State Architect  
State Office Building - 12th floor  
Topeka, Kansas

Dear Mr. McLain:

Upon request of the office of the State Architect, a fire safety inspection was conducted March 26, 1973 on the New England Building, 503 Kansas Avenue, Topeka, Kansas by Mr. Paul Markley and Mr. Wm. Higgs of the Topeka Fire Prevention division and myself.

The following deficiencies were found that should be corrected prior to occupancy:

1. Provide 10# ABC extinguisher for elevator head house.
2. Provide 1 1/2" valve with National Standard threads for riser on roof.
3. Replace soda acid extinguishers (approximately 25) with 2 1/2 gallon pressurized water units.
4. Replace utility chase doors with rated metal door and frame with proper closure.
5. Provide National Standard 1 1/2" connections with hose and cabinets on all floors where valve connections presently exist.
6. Provide outside Fire Department siamese connection for existing stand-pipe.
7. If basement is to be used for storage, it is strongly recommended that this area be sprinklered.
8. A second exit should be provided from the basement area if storage is to be permitted as aisles are practically impassable at present.

Sincerely,

Russell Collins  
Chief Deputy Fire Marshal

Paul Markley  
City Fire Marshal

STATE OF KANSAS

Department of  Administration

Division of Architectural Services

State Office Building—Topeka 66612

March 19, 1973

Mr. Kenneth R. McLain, Director  
Division of Architectural Services  
12th floor  
STATE OFFICE-BUILDING

Dear Mr. McLain:

From the information in the newspaper, it would seem we may add another building to the Capitol Complex Management. From the experience of renovating 535 Kansas, I am listing the following items:

1. Because of the maintenance work we have to do in the State Office Building and State House, I believe the major part of the renovation for 505 Kansas would have to be handled by contractors.

2. Equipment needed:

Hand tools (plumbers, electrician, carpenter, painter)  
Step ladders  
Table saw

3. Contracts will have to be written and established on:

Pest Control	Window Washing
Custodial Service	Snow Removal
Elevator Maintenance	Trash Removal
Bird Control	

4. Cost to place the following items in operating condition must be considered:

Heating System	Air Conditioning
Elevators	Roof
Building exterior--windows (wood frame)	
Fire Hose	Fire Extinguishers
Water Supply System	Electrical Power--Lighting
Rest Rooms--number adequate (are new tissue holders needed?)	

5. Cost to paint and custodial clean-up before moving into space.

6. Will the building be provided with drapes, and will new or additional carpet be required?
7. Cost to install flag poles, entrance sign and building directory.
8. Cost to set up security and information desk and purchase emergency Plectron Receivers as necessary.
9. Estimated labor needed:  
Maintenance Engineer II  
Electrician  
Carpenter  
Painter
10. Because of the additional time-keeping, supplies and the many and varied materials to be ordered for the Capitol Complex, some additional help in the form of an additional clerical unit should be added to the Capitol Complex Management's staff. This will also require additional office space.

Very truly yours,



William G. Nace  
Capitol Complex Manager

WGN:em

Exhibit T

MEMORANDUM

DATE: December 23, 1969  
TO: Governor Robert Docking  
FROM: Robert F. Brandt, Executive Director  
RE: Space Options

The facts on the space options we discussed last evening are as follows:

1. The New England Building has 52,860 square feet available on an eight year lease. The cost is \$3.82 a square foot which amounts approximately to \$201,000 a year. A representative from Neiswanger advises that the building is available now and they could make the first four floors available to us. Almost all leases expire in 1970. He also indicated that parking was available at \$12.50 a month for employees. There is a possibility that the eight year lease could be scaled down.
2. The First National has 65,000 square feet available. The length of the lease has not been discussed nor has the price. Mr. Hale thought that it would be around approximately \$4.00. The disadvantage to this building is that there are two small elevators and two restroom facilities. Although Mr. Dlevenger advises me that the restroom facilities could be expanded.

3. Halsey Corporation has offered to build us a building in the area of East 8th Street. The area would be 57,900 square feet on an eight year basis; \$3.95 the first four years and \$4.20 the second four years. They indicated it could be finished by the first of July.

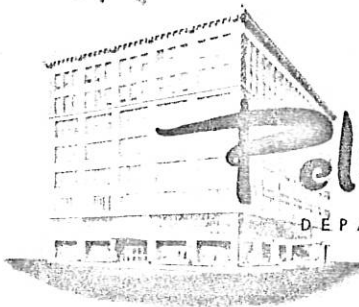


Exhibit A

NEW YORK OFFICE  
50 WEST 44TH STREET

LOS ANGELES OFFICE  
846 SOUTH BROADWAY

J. B. WALKER, CHAIRMAN OF BOARD  
J. O. WALKER, PRESIDENT  
G. A. WALKER, VICE PRESIDENT  
K. B. HOBBS, SECY.-TREAS.



Downtown

**Pelletier's**

DEPARTMENT STORE

KANSAS AVENUE AT 9TH STREET • CE 4-0401

*Topeka, Kansas*



Holliday Square

9 April 1973

Mr. Robert Brandt, Director of Administration  
Department of Administration, State of Kansas,  
State House,  
Topeka, Kansas.

Dear Mr. Brandt:

As I have suggested to you over the past few months, we at Pelletier's believe that some reduction in the size of our downtown store (coupled with the possible addition of one or more suburban stores) would have a beneficial effect on our operation.

We offer, therefore, for consideration of rental by the State of Kansas, one or two floors of our building space, a nominal 15,000 square feet each, a total of 30,000 square feet. (Actual net interior space is about 14,400 square feet per floor.) We understand that additionally available are other, smaller spaces controlled by the Mills Building Company and totalling perhaps 8,000 square feet. So we could make available, subject to Mills Building Company approval, about 38,000 square feet or any part thereof.

As you know, our space is centrally air conditioned, convenient to the State House and the State Office Building, and is in sound structural condition.

We estimate our actual costs of this space now as approximately \$2.20 a square foot, figured on the basis of 14,400 square feet per floor, this including rent, heat, air conditioning, lighting, repairs, insurance, taxes, etc. We would be glad to furnish a breakdown of the costs to the State if desired. We could, therefore, rent large blocks of space -- i. e. one floor, two floors or a major part of one or two floors -- for that figure if the State wished to take the space as loft space or wished to make its own improvements.

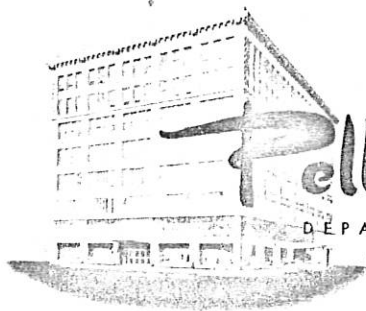
We would also be willing to undertake remodeling to the State's requirements, the cost to be amortized as rent over the term of any lease. (As an example, assuming the cost of remodeling one floor of space -- 14,400 square feet of space -- at \$85,000.00, on a five year lease the cost per year would be about \$1.45 per square foot for the improvements or a total of about \$3.65 a foot rental over the life of the lease.

The above figures do not include custodial services which could be supplied at our cost if desired. They do include, however, all utilities except telephones.

NEW YORK OFFICE  
50 WEST 44TH STREET

LOS ANGELES OFFICE  
846 SOUTH BROADWAY

J. B. WALKER, CHAIRMAN OF BOARD  
J. O. WALKER, PRESIDENT  
G. A. WALKER, VICE PRESIDENT  
K. B. HOBBS, SECY.-TREAS.



Downtown

**Pelletier's**

DEPARTMENT STORE

KANSAS AVENUE AT 9TH STREET • CE 4-0401

*Topeka, Kansas*



Holliday Square

(2)


We realize that the contemplated purchase of the New England Building might preclude any immediate need by the State for additional space. However, if the area available in that building is inadequate or if certain agencies would be better located in closer proximity to the State House, we hope that you will keep us in mind.

Thank you.

Yours very truly,

A handwritten signature in cursive script that reads "J.O. Walker".

The Pelletier Stores Company  
J.O. Walker, President

THE STATE  OF KANSAS

WATER RESOURCES BOARD

1134-S STATE OFFICE BUILDING

Phone 296-3185

TOPEKA, KANSAS 66612

July 30, 1969

Mr. William R. Hale  
State Architect  
Architectural Services Division  
12th Floor, State Office Bldg.  
Topeka, Kansas 66612

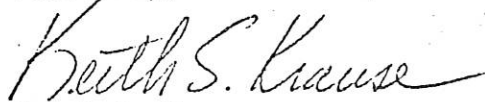
Dear Mr. Hale:

It has come to my attention that up to 4000 square feet of contiguous space is available for rent in the New England Building at either \$3.75 or \$4.00 a square foot, depending on the floor and furnishing.

As you know, our quarters have been exceedingly cramped now for three years, and if we were to fill our position roster it would be intolerable.

This is to request permission to negotiate for approximately 4000 square feet of suitable space outside the State Office Building on a comparatively long term basis (more than one year) in which to house the Kansas Water Resources Board staff. We would appreciate your assistance in the negotiations if permission is granted.

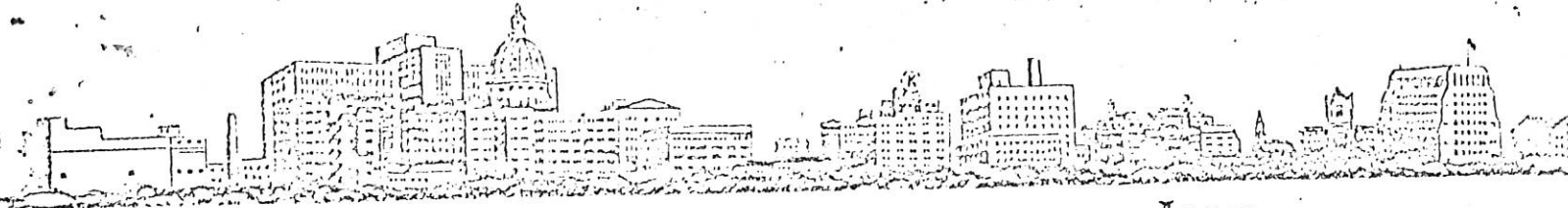
Sincerely,



Keith S. Krause  
Executive Director

KSK:dk

cc: Mr. Terence Scanlon  
Mr. Ward Johnson  
Mr. B. J. Brummel



# NEISWANGER COMPANY, INC.

REALTORS - PROPERTY MANAGERS - INSURORS

330 NEW ENGLAND BUILDING—PHONE 913-232-6243

TOPEKA, KANSAS 66603

August 6, 1969

Mr. Terry Scanlon, Executive Director  
Department of Administration  
Capitol Building  
State of Kansas  
Topeka, Kansas 66612

Dear Mr. Scanlon:

We are pleased to submit a tentative proposal for office space for the State of Kansas in the New England Building, 501 Kansas Avenue, Topeka, Kansas.

The New England Building is situated at the southwest corner of Fifth and Kansas Avenue diagonally across the intersection from the Federal Building and directly across the street from the new First National Bank of Topeka Building. It is a six story and basement, fire resistive building. It is centrally air-conditioned with the exception of the fourth floor which can be readily equipped. The elevators are modern and automatic ones. The Building has a gross area of 94,868 square feet and a net rentable area of approximately 63,500 square feet.

## FIRST FLOOR

The entire first floor of the New England Building is available now. It was occupied for many years by The Merchants National Bank of Topeka. The net rentable area is 13,903 square feet and the space contains five private offices, four of which are paneled, plus a paneled Directors room. The entire area is attractively decorated and the major portion is carpeted. An adequate number of ceramic tiled rest rooms are available. This space is offered in its present condition at the rate quoted below. Directly accessible from the first floor is a mezzanine containing approximately 1,800 square feet of area.

SECOND, THIRD, FOURTH, FIFTH AND SIXTH FLOORS - The upper floors of the New England Building, as mentioned earlier, will be centrally air-conditioned and serviced by two automatic elevators. A substantial area already has been modernized with dropped ceilings, fluorescent lighting, panelled offices and wall-to-wall carpeting.

Page 2  
 Mr. Terry Scanlon, Executive Director  
 Department of Administration  
 August 6, 1969

Each floor includes ceramic tiled mens' and ladies' rest rooms. A high percentage of the area on the upper floors is conventionally partitioned, although on the second floor, for instance, approximately 3,000 square feet is open and was formerly used as a computer room by The Merchants National Bank.

Twenty thousand square feet of office space is available now. As of November 15, 1969, the total space available will be 42,757 sq. feet. The rate and annual rental are shown below:

TENTATIVE RATES PER SQUARE FOOT OF RENTABLE AREA  
 AVAILABLE ON OR BEFORE NOVEMBER 15, 1969

<u>FLOOR</u>	<u>RENTABLE AREA</u>	<u>RATE PER SQ. FOOT</u>	<u>ANNUAL RENT</u>
First and Mezzanine	15,703 sq. ft.	\$ 3.85	\$ 60,456.55
Second	3,158	3.85	\$ 12,158.30
Third	5,859	3.85	\$ 22,557.15
Fourth	6,464	3.85	\$ 24,886.40
Fifth	3,884	3.85	\$ 14,953.40
Sixth	<u>7,689</u>	3.85	<u>\$ 29,602.65</u>
	42,757 sq. ft.		\$164,614.45

Area shown is on a net basis and does not include hallways, rest rooms, stairwells and elevator shafts.

The following additional upper floor space will be available on or before the dates indicated below:

<u>Date Available</u>	<u>Additional Rental Area</u>	<u>Rate Per Sq. Ft.</u>	<u>Annual Rent</u>
February 15, 1970	5,552 sq. ft.	\$ 3.85	\$21,375.20
April 15, 1970	<u>5,912</u> sq. ft.	3.85	<u>22,761.20</u>
	11,464 sq. ft.		\$44,136.40

Page 3

Mr. Terry Scanlon, Executive Director  
Department of Administration

From November 15, 1969, and increasing in amount through April 15, 1970, a minimum total of 54,221 sq. feet of office space will be available. Additional space becoming available after April 15, 1970 will be offered to the State at a rate of \$3.85 per square foot per year.

The New England Building Company will drop ceilings, install modern lighting in all upper floor areas that are not already so equipped and install air-conditioning equipment to service the fourth floor. All other floors are already so equipped. We will need specifications from the State as to its needs, if any, for partitioning, carpeting, and any other modifications to the Building before a final proposal can be submitted.

The New England Building will provide complete maintenance service of the Building including janitor service, rest room supplies, replacement of fluorescent lighting tubes and the Building will be adequately staffed with maintenance personnel from 6:30 a.m. to 11:00 p.m. Monday through Friday.

We tentatively suggest Rooms 437 through 444, an area of approximately 2,200 square feet as an employee canteen area where coffee, sandwiches and so forth can be purchased and consumed.

The New England Building Co. is agreeable to a five year lease term and will include three one year options to be exercised one year in advance of their inception. This would permit the State to have flexibility as to period of occupancy beyond the initial five year term. If the State desires a firm term of eight years, this would be acceptable to the Building Company. Terms of an escalator clause to apply after the initial year of occupancy covering any increase in real estate taxes, utilities and salaries of janitorial and maintenance service, and prorated on the basis of the percentage of rentable area occupied by the State, is desired by the Building Company. We are investigating the availability of automobile parking and this information will be submitted to you promptly.

We request the opportunity to show the New England Building to representatives of the State and also to have a meeting scheduled so that we may discuss this proposal before a decision is made on any other locations that may be under consideration. In the meantime, Robert C. Fuller, Building Manager, and I will be glad to provide any additional information that may be desired.

Sincerely,

NEISWANGER COMPANY, INC.

David M. Neiswanger,

# NEW ENGLAND BUILDING CO.

ROOM 336 NEW ENGLAND BLDG.

TOPEKA, KANSAS

September 8, 1969

Mr. Gary Carlat, Architect  
Architectural Services Division  
State of Kansas  
State Office Building  
Topeka, Kansas

Dear Mr. Carlat:

We are in receipt of the proposed office layout for the State Board of Water Resources as prepared by you and dated September 3, 1969 and wish to make the following proposal to the State of Kansas.

The New England Building Company will enter into a Lease Agreement with the State of Kansas on the space indicated in the said layout for the rooms numbered 620-22-24-26-28-30-32-34-36-37-39-41-43 consisting of 3,981 square feet by the New England Building Company schedule under the following terms and conditions:

- A. The lease rate will be \$3.85 per square foot per annum payable in monthly installments due the first of each calendar month. Complete janitor service, heat, air conditioning and electricity will be provided by Lessor.
- B. The standard New England Building Company lease form will be used, a copy of which is attached for your examination.
- C. The New England Building will:
  - (1) Partition the space as outlined on the drawing furnished us by the State Architect's Office using dry wall partitions.
  - (2) Install new suspended ceilings over the entire area except where suspended ceilings now exist.
  - (3) Install a new vinyl asbestos floor over the entire area excepting in areas where relatively new vinyl asbestos tile of the same design and quality now exists.

Mr. Gary Carlat, Architect  
September 8, 1969

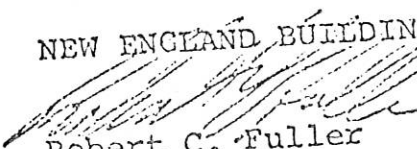
- (4) Install fluorescent light fixtures throughout the entire area. For the most part these fixtures will be of the recessed design.
  - (5) Conceal all radiators with natural finished wood and masonite.
  - (6) Paint the offices including interior woodwork in a color of the tenant's choice.
- D. The lease term may be for three, four or five years at the discretion of the State of Kansas.
- E. If the State desires to have carpeting installed in any of the private offices, the Building Company will amortize the cost in excess of the cost of installing new vinyl tile over the period of the lease.
- F. Any other improvements of a decorative nature desired by the State may be amortized over the period of the lease.
- G. The space will be centrally air-conditioned. Duct work and diffusers will be installed in each of the private offices as well as the open areas.
- H. Possession will be December 1, 1969. Brelsford, Hardesty & Batz, Inc. who now occupy part of this space have been informed that their space in the new Merchants National Bank Building will not be ready until October 20th. If it is possible to have the space ready prior to the December 1st date, we will give possession to the State on completion of the remodeling at the monthly rate provided in the lease.

Please contact me at my office by phoning 232-8243 if you have any questions concerning this proposal.

Thanking you, I am

Very sincerely yours,

NEW ENGLAND BUILDING CO.

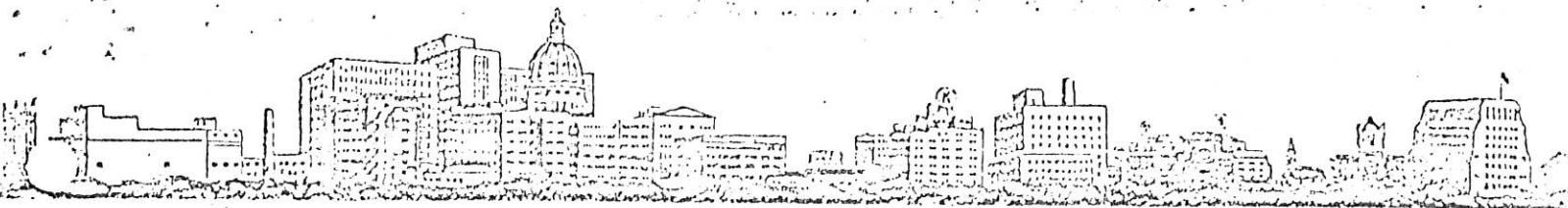
  
Robert C. Fuller  
Building Manager

Enclosure (1)

RCF:hd

cc: Mr. Keith Krause, Executive Director  
State Board of Water Resources





# NEISWANGER COMPANY, INC.

REALTORS - PROPERTY MANAGERS - INSURORS

330 NEW ENGLAND BUILDING - PHONE 913-232-8243

TOPEKA, KANSAS 66603

March 6, 1970

Mr. William R. Hale, State Architect  
State of Kansas  
State Office Building  
Topeka, Kansas

Please find herein our amendment to the proposal dated November 7, 1969 offering space in the New England Building for lease to the State of Kansas.

The original proposal remains unchanged, with the following exceptions:

- A. Lease term: Reduced from eight to five years.
- B. Total Lease Amount: Reduced to \$1,008,720.00, due to the shorter lease term.
- C. Space Offered: For purposes of simplicity, the offering remains the same. However, the New England Building Co. will allow the State to lease all or and part of the upper floor remodeled space at \$4.00 per net rentable square foot, partitioned to State specifications, as provided in original proposal, provided that at least a total of 50,000 square feet is leased throughout the building.
- D. There will be no participation or accelerator clauses required pertaining to the primary lease term.
- E. OCCUPANCY:  
The space will be made available for occupancy on the following schedule for planned possession:
  - 1. Third and Fifth floor space if taken as presented in the original proposal; within 45 days from date lease is executed.

C  
O  
P  
Y

2. Storage space in basement: Thirty days from date lease is executed.
3. First floor, Sixth floor, basement, Second floor space and First floor mezzanine; 75 days from date lease is executed with reservations on some second floor space, not originally offered, due to lease obligations.

If entire Third and Fifth floors are leased, every attempt would be made to have them available within this time schedule, but two extended leases (one on each floor) may necessitate delays depending on the cooperative attitude of the tenants.

4. Fourth floor - Occupancy by July 1, 1970. It is possible that occupancy may be delayed slightly or made ready sooner depending on the cooperative attitude of a tenant now leasing.
- F. The lease, if desired, could include two options for one year periods with provisions that six months' advance notice would be given to the New England Building Co. of the State's intention to exercise said options and that the lease rate could be adjusted based on operating costs and property taxes at the time.
- C. Reference to page 9 of the original offering.  
NOTE: It is our understanding that the Merchants National Bank plans to construct a new drive-in facility on the site mentioned in paragraph one. However, the present drive-in facility, along with two buildings directly behind the New England Building will be razed making an area of 100' x 150' that may be available for parking. If so, we feel that stalls would probably be offered in this area at a price of from \$12.50 to \$15.00 per month to building tenants. The New England Building Co. controls the 75' x 150' site directly south of the

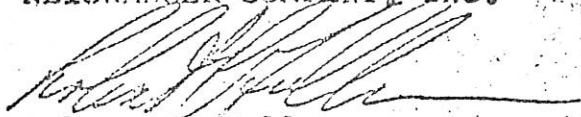
Page 3

Mr. William R. Hale, State Architect  
March 6, 1970

bank parcel referred to above and it will be  
available to building tenants.

Respectfully submitted this 6th day of March, 1970.


NEISWANGER COMPANY, INC.



Robert C. Fuller  
Property Manager

RCP:hd

cc: Governor Robert B. Docking  
cc: Robert Brandt, Director of Administration



# NEISWANGER COMPANY, INC.

REALTORS - PROPERTY MANAGERS - INSURORS

330 NEW ENGLAND BUILDING—PHONE 913-232-8243

TOPEKA, KANSAS 66603  
November 7, 1969

Mr. William R. Hale, State Architect  
State of Kansas  
State Office Building  
Topeka, Kansas

Dear Mr. Hale:

Please find enclosed our proposal offering space in the New England Building for lease to the State of Kansas. The essentials of this offering are as follows:

1. Total Area Offered 52,860 sq. ft.
2. Lease Rate Per Annum \$201,744.00
3. Average Rate \$3.82 per sq. ft.
4. Lease Term 8 years
5. Possession Date by April 1, 1970  
with reservations on some of the  
second floor space to July 1, 1970  
due to lease obligations.
6. Space will be freshly decorated and in most  
cases completely refurbished.
7. Office space in addition to 52,860 sq. ft.  
will be offered to the State as it  
becomes available.

Details of the proposal are enclosed.

We would be pleased to meet with you and other interested parties at your convenience to answer any questions that may arise concerning this offering.

Thanking you, I am

Very truly yours,

NEISWANGER COMPANY, INC.

Robert C. Fuller  
Building Manager

2. First Floor Area (continued)

685 linear feet of vinyl coated sheet rock movable partitioning will be installed as specified by the State Architect to ceiling height or partial height as directed.

140 electrical outlets will be provided where specified by the State Architect, it being understood that every effort will be made to use existing electrical outlets.

All space will be freshly painted, and thoroughly cleaned prior to occupancy.

b) Mezzanine level

New vinyl asbestos floors will be installed throughout. New fluorescent lighting will be installed on existing ceilings and the entire area will be freshly painted and thoroughly cleaned prior to occupancy.

3. Second Floor

All space offered will be cleared with the exception of existing hallways and existing hallway doors will be removed.

Ceilings will be dropped to 9' throughout the entire area.

Fluorescent light fixtures will be provided to give 100' candles of light at desk level. New vinyl asbestos tile floors will be provided except in that area where good quality tile now exists (Areas formerly occupied by Merchants National Bank). 212 wall electrical outlets will be installed where specified by the State.

The New England Building Company will close any existing door openings not desired by State Architect and install new birch doors in those openings specified.

455 linear feet of 9' vinyl coated sheet rock movable wall partitioning will be installed where specified by the State Architect. 17 birch doors will be provided for said partitioning.

NOTE: Square footage information has been assembled with care, but no liability is assumed for errors and omissions. Any minor variances in square footage will not effect the annual rental rate.

## II. Condition of Space Upon Occupancy

### 1. Basement Area

a) Dead Storage area is offered "as is" except that The Building Company will open the door in the southeast room to the area under the sidewalk and remove the old unusable stairway.

b) Office space will be one open area with one private office. Two birch doors will provide access to the hallway. 8' suspended ceilings will be provided with grid type fluorescent fixtures estimated to provide 100' candles of light at desk level.

The space will be air-conditioned with thermostat control. Floors will be new vinyl asbestos tile. Walls will be freshly painted.

### 2. First Floor Area

#### a) Street level:

New vinyl asbestos tile floors will be installed throughout the entire area with exception of the conference room and the two adjoining private offices. Existing carpets will be used in these areas.

The entire area will be cleared with the exception of existing toilet facilities and present paneled conference room and private offices.

Ceilings will be dropped to 10 feet throughout the entire area except in mentioned offices, conference room, and under mezzanine.

Fluorescent fixtures will be provided in new ceilings to provide 100' candles of light at desk level.

The Building Company will make use of present wood paneling and decorations where possible in cooperation with the State Architect.

52,860 sq. ft.

1. Space Offered

A. First floor space is computed on a "Full Floor Rentable Area" basis. All other space is computed on a "Net Rentable Area" basis.

1. This method of computing rentable area is in accordance with "The American Standard" for measurement of office area. SEE EXHIBIT A herein.

B. Space Offered by Floor.

1. Basement:

a) Dead Storage Area 3,230 sq. ft.  
1) North one-half of south one-half of Basement.

b) Office Area 915 sq. ft.  
SEE EXHIBIT B

Total Basement

4,145 sq. ft.

2. First Floor

a) Street level 13,759 sq. ft.  
SEE EXHIBIT C

b) Mezzanine 1,844 sq. ft.  
SEE EXHIBIT D

Total First Floor

15,603 sq. ft.

3. Second Floor

a) All Net Rentable Area - SEE EXHIBIT E

5,959 sq. ft.

4. Third Floor

a) All Net Rentable Area - SEE EXHIBIT F

5,205 sq. ft.

5. Fourth Floor

a) All Net Rentable Area - SEE EXHIBIT G

9,601 sq. ft.

6. Fifth Floor

a) Net Rentable Area - SEE EXHIBIT H

2,746 sq. ft.

7. Sixth Floor

All Net Rentable Area - SEE EXHIBIT I

9,601 sq. ft.

52,860 sq.

TOTAL SPACE OFFERED

### 3. Second Floor (continued)

The Building Company will make use of existing fin tube radiators where they presently exist. Where older radiators exist, they will be concealed with decorative cabinets.

All plaster walls and window sash will be freshly painted and the space thoroughly cleaned before occupancy.

### 4. Third Floor

This space is offered with existing partitioning. Certain attractive space which was previously occupied by a law firm and known as Suite 320 is offered for the most part "as is" with reception area, bookkeeping area and inner hall re-floored with vinyl asbestos tile.

Other space on this floor, which is designated as Suite 303 will be offered with ceilings dropped to 9 feet. Fluorescent fixtures will be installed to provide 100' candles of light at desk level. A new vinyl asbestos tile floor will be installed throughout. Radiators will be concealed where this has not already been accomplished. The entire Third Floor area will be freshly painted and thoroughly cleaned prior to occupancy.

### 5. Fourth Floor

New central air-conditioning equipment will be installed to service this space. The entire floor will be cleared of partitions with exception of existing hallways and new hallway to be constructed, to coincide with plans as presented to the State Architect. Space will be renewed with ceilings, floors and partitioning as described for Second Floor space and will include the following:

- 769 feet of vinyl coated drywall partitioning.
- 39 birch doors for inner office.
- 212 wall electrical outlets.
- Required fluorescent light fixtures to supply 100' candles of light at desk level.



5. Fourth Floor (continued)

The State Architect can specify which door openings in the hallway are to remain, and location of partitioning. Existing door openings will be closed as directed. New birch doors will be provided for doorways remaining.

6. Fifth Floor

This space will be offered as now partitioned with minor changes as agreed upon by the Building Company and the State Architect. Ceilings where not already dropped will be dropped to 8 feet. Where relatively new carpet does not already exist, vinyl asbestos floors will be provided. Fluorescent ceiling fixtures will be provided where the State requests existing incandescent fixtures to be replaced. Birch doors will replace the existing hall doors. Doorways not desired by the State will be closed. Radiators will be concealed where presently exposed. All space will be freshly painted and thoroughly cleaned prior to occupancy.

7. Sixth Floor

The entire floor will be cleared with the exception of existing hallways and renewed the same as Fourth floor.

8. General Building

1. If floor mounted electrical outlets are desired in upper floors, they will be installed at an adjusted lease rate based on \$50.00 per outlet amortized over the lease term.
2. Existing restroom facilities will be used throughout the building. All will be freshly painted.
3. All public hallways and stairways will be freshly painted.
4. Space for a Coffee Shop or Snack Bar in the Basement will be offered for lease by the New England Building Co. to a private operator. This space will be air-conditioned and suitably decorated for use by State Employees.

8. General Building (continued)

5. First Floor lobby will be remodeled and the lobby area to the stairwell will be carpeted. Lobby floor in stairwell area will be retiled.
6. All office space will be centrally air-conditioned.

III. Services Offered

- A. All utilities will be paid by Lessor.
- B. Five day janitor service will be provided by the Lessor for all space rented except dead storage area in the Basement.
- C. Building windows will be washed inside and out annually.
- D. Building will be open from 6:30 a.m. to 10:30 p.m. Monday through Friday and from 6:30 a.m. to 9:00 p.m. on Saturday. The building will be locked from 9:00 p.m. Saturday until 6:30 a.m. Sunday and on holidays. Front door keys will be available to State Employees who need access to the Building during those hours it is locked.

IV. Lease Rate

A. Gross Amount	\$1,613,952.00
B. Annual Rate	201,744.00
C. Monthly Rate	16,812.00
D. Square Foot Rate	
1. Entire area rented	3.82
2. Net Rentable Office, Upper Floors and Basement	4.00
3. First Floor and Mezzanine Full Floor Rentable Area	4.00
4. Dead Storage Space.	1.00

VI. Occupancy:

The space will be made available for occupancy on the scheduled dates for phased possession as follows:

- A. Third and Fifth Floor Space, 45 days from date lease is executed.
- B. Dead Storage Area - Basement. 30 days from date lease is executed.
- C. First Floor, Sixth floor, Basement and First Floor Mezzanine - By April 1, 1970.
- D. Fourth Floor - Second Floor.  
Occupancy July 1, 1970
  1. It is possible that this space may be made ready sooner depending on the cooperative attitudes of tenants now leasing.

VII. Rental Adjustment

The building owners desire an escalator clause to be effective at the end of each calendar year after the first full calendar year of occupancy by the State. This escalator clause would include advalorem taxes and special assessments and operating costs which would include the cost of cleaning, maintenance and utilities furnished to the space and would be determined by taking the same proportion of the total sum of such increases as the number of square feet of rentable space occupied by the State bears to the total number of square feet of rentable office space in the building with the New England Building Company having the right to increase or decrease the rent on the basis of those costs outlined above.

VIII. Parking:

We are indicating below a list of private parking lots within three blocks of the New England Building as well as the rental rates charged.

1. The Merchants National Bank parking lot is situated at the northeast corner of Fifth and Jackson Streets. Current monthly rental rate is \$12.50 and space is available although the corner is scheduled for redevelopment and will probably be closed to private parking within the next few months.

2. 408-410-412 Jackson Street will be available for private parking for tenants of the New England Building on or about July 1, 1970. This lot will accommodate approximately 30 cars and we would estimate that approximately 20 spaces could be made available to the State as of the above date at a monthly rate of \$12.50 to \$15.00.
3. The Townsite Plaza development contemplates public underground metered parking. This would be situated directly East of the new First National Bank of Topeka Building. Date of availability and rates to be charged are not known at this time.
4. The First National Bank of Topeka parking lot on Jackson Street (directly north of the Bus Station) may offer parking to private individuals after the Bank moves to its new building. We mention this only as a possibility as the Bank may have other commitments for this space.
5. Fourth and Jackson Streets - Off Street parking is available on the West side of Jackson Street, both north and south of Fourth Street. It is not possible for us to make any commitment at this time, but approximately 40 to 50 stalls were available recently ranging in rate from \$10.00 to \$15.00 per month.
6. The Southwestern Bell Telephone Company owns a 200' x 150' site on the west side of Kansas Avenue between Fifth and Sixth Streets. This site is on the market for sale and there are some practical problems for an owner to lease ground when the ultimate desire is to sell. It is however, estimated that this site situated 25 feet south of the New England Building could accommodate 75 to 100 cars.

We have attempted to cover all pertinent points in this proposal and we will be pleased to provide any additional information that might be desired.

We thank you for the opportunity to make this presentation.

Sincerely yours,

NEISWANGER COMPANY, INC.

Robert C. Fuller  
Building Manager

Exhibit V

MEMORANDUM

DATE: October 9, 1970

TO: Mr. Pat Burnau  
Governor's Office

FROM: Robert F. Brandt, Executive Director  
Department of Administration

SUBJECT: Chronology of Events Relating to Proposed Leasing  
of State Office Space

December 23, 1969: Memorandum to Governor Docking from  
Robert F. Brandt relating to three (3) space options. See  
Exhibit "A".

November 7, 1969

January 21, 1970

March 6, 1970: Correspondence from Neiswanger Company, Inc.  
to Mr. William R. Male, State Architect, offering space in the  
New England Building to the State of Kansas. See Exhibit C1,  
C2, and C3.

January 12, 1970

January 13, 1970

January 20, 1970: Exchange of correspondence between First  
National Bank, 535 Kansas Avenue, Topeka, Kansas, and  
Robert F. Brandt, relating to proposed lease. See Exhibits B1,  
B2, and B3.

June 19, 1970: Finance Council granted approval to the State  
Architect to continue negotiations concerning the leasing of the  
present First National Bank Building, 535 Kansas Avenue and the  
Mills Building, 109 West Ninth Street, Topeka, Kansas. See  
Exhibit "D"; rentable building comparison table, dated June 19,  
1970. Exhibit "D" was summarized orally to members of the Finance  
Council at this meeting and questions were answered at that time.

Memorandum  
Mr. Pat Burnau  
October 9, 1970  
Page 2

August 7, 1970: See memorandum from Robert F. Brandt to Governor Docking relating to proposed lease agreement for office space in the First National Bank Building, 535 Kansas Avenue, Topeka. Exhibit "E".

September 17, 1970: The Finance Council approved the proposed lease on the First National Bank, 535 Kansas Avenue, Topeka. See Minutes of that Finance Council and Exhibit "F".

Exhibit W

MEMORANDUM

DATE: August 7, 1970  
TO: The Honorable Robert Docking, Governor of Kansas  
FROM: Robert F. Brandt, Executive Director  
Department of Administration  
SUBJECT: Proposed Lease Agreement for Office Space in the  
First National Bank Building, Topeka

On June 19, 1970, the State Finance Council without dissent, granted approval to the State Architect to continue negotiations concerning the leasing of the present First National Bank building, 555 Kansas Avenue.

After the cancellation of the lease for the building at Tenth and Quincy, in October, 1969, numerous realtors called to advise of other office spaces available in the City of Topeka for the use by the State. In December, 1969, space options had narrowed to three buildings: (1) The New England Building, which had 52,860 square feet, available on an eight-year lease at a cost of \$3.32 per square foot; (2) the First National Bank building with approximately 65,000 square feet available, at an estimated cost of approximately \$4.00 per square foot; (3) a building to be constructed in the area of Last and Street, with 57,900 square feet on an eight-year basis - \$3.95 the first four years and \$4.20 the second four years per square foot.

The purchase arrangement was discarded due to the unsuitable location of the building and the probable difficulty of arranging suitable financing to have the building constructed in a reasonable time. Further review was made of both the New England Building and the First National Bank Building. The people representing the New England building made a new proposal for a five-year lease at \$4.00 per square foot. The First National in the meantime, made a firm proposal for some 64,000 square feet at \$4.00 per square foot. Both Mr. Hale and myself made personal inspections of both buildings and decided to recommend the First National on the basis of better facilities. The

Memorandum  
Governor Robert Docking  
August 7, 1970  
Page two

New England Building was constructed in 1911. The First National was constructed in 1932. Other considerations were the lack of availability of a suitable parking area at the New England Building, and the fact that it is in a less desirable location and further from the Statehouse than the First National.

We are presently in the process of finalizing the lease for the First National. Mr. Robert Hoffman has reviewed a preliminary draft of the lease with bank representatives and has recommended certain changes which are being reviewed; a new lease will be submitted. Both Mr. Hale and I have concluded that everything considered, the First National Bank Building has the most suitable space for state office building needs in Topeka.



Exhibit Y

INDEX OF EXHIBITS

- A. A-1 through A-5.  
Explanation of "Standard Method of Floor Measurement" as used by The Building Owners and Managers Association.
- B. Floor Plan of North One-Half of Building Basement.
- C. Floor Plan of First Floor.
- D. Floor Plan of First Floor Mezzanine.
- E. Second Floor Plan.
- F. Third Floor Plan.
- G. Fourth Floor Plan.
- H. Fifth Floor Plan.
- I. Sixth Floor Plan.



Exhibit Y

STATE OF KANSAS  
Office of the Governor

STATE CAPITOL BUILDING  
TOPEKA, KANSAS 66612



ROBERT B. DOCKING  
GOVERNOR

April 6, 1973

The Honorable Robert Bennett  
President Pro Tem of the Kansas Senate  
Third Floor, State Capitol

The Honorable Duane McGill  
Speaker of the House of Representatives  
Third Floor, State Capitol

Gentlemen:

Your most recent correspondence with Governor Docking has been referred to me.

The Governor's veto message on House Bill 1568 stands by itself. An investigation of the whole issue of the proposed purchase of the New England building hopefully will answer questions. We urge that the investigation be undertaken. The purpose of an investigation is to determine the facts.

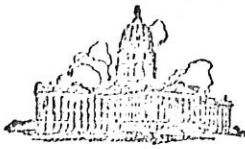
A recent news article reports that you are considering exercising the legislature's power of subpoena. Please be informed that Mr. Van Cleave and myself stand ready to meet informally with you or formally under subpoena and under oath to answer the legislature's questions.

Please do not hesitate to contact me or Mr. Van Cleave at any time.

Sincerely,

Don Matlack  
Legislative Liaison to the Governor

DM:rp



STATE OF KANSAS  
Office of the Governor

STATE CAPITOL BUILDING  
TOPEKA, KANSAS 66612



ROBERT B. DOCKING  
GOVERNOR

April 6, 1973

The Honorable Robert Bennett  
President Pro Tem of the Kansas Senate  
Third Floor, State Capitol

The Honorable Duane McGill  
Speaker of the House of Representatives  
Third Floor, State Capitol

Gentlemen:

Governor Docking has received your recent letter in which you asked to meet with the Governor's Office to discuss House Bill 1568.

The Governor has asked that we meet with you at your convenience.

Please inform us when you would like to discuss this matter.

Sincerely,

Thomas M. Van Cleave, Jr.  
Legislative Liaison to the Governor

Don Matlack  
Legislative Liaison to the Governor

TMVC/DM:rp

cc: The Honorable Jack Steineger  
Minority Leader of the Kansas Senate

The Honorable Richard C. Loux  
Minority Leader of the Kansas House of Representatives

The Honorable Joe Warren  
Minority Leader of the Kansas Senate

Exhibit AA

ROBERT F. BENNETT  
PRESIDENT OF THE SENATE  
SENATOR NINTH DISTRICT  
P. O. BOX 8030  
PRAIRIE VILLAGE, KANSAS 66208



TOPEKA

SENATE CHAMBER  
April 4, 1973

COMMITTEE ASSIGNMENTS  
CHAIRMAN: LEGISLATIVE COORDINATING COUNCIL  
CHAIRMAN: ORGANIZATION, CALENDAR AND RULES  
CHAIRMAN: INTERSTATE COOPERATION COMMISSION  
MEMBER: JOINT COMMITTEE ON SCHOOL FINANCE  
JUDICIARY  
LEGISLATIVE SERVICES AND FACILITIES

Robert B. Docking, Governor  
State Capitol Building  
Topeka, Kansas

Dear Governor:

This will acknowledge receipt of your message with reference to the veto of HB 1568. Little would be gained in our debating in this letter the merits, or lack of them, in your veto.

We are particularly concerned, however, with the innuendo contained in the last paragraph of your message. Many weeks ago Senator Bennett advised your liaison representative, Mr. Van Cleave, after hearing of some of the incredulous rumors which he was spreading, that if he had any indication that anything was amiss in the purchase of this building then those facts should be communicated at once to the leadership of the House and Senate. No facts were communicated and we feel that undoubtedly that is because no evidence exists which would support these scurilous accusations.

We welcome both legislative and executive investigation into the purchase of this building and we respectfully urge that we be granted immediate audience with reference to the last paragraph of your veto message of April 3, with reference to HB 1568, so that you may present either rumor or fact which would in any way support the implications set forth in that paragraph.

We request this audience for this limited purpose alone and request that you meet with the undersigned, your liaison representatives, former Senator Matlack and Mr. Van Cleave, the Chairman of the House and Senate Ways and Means Committees and the minority and majority leaders of the House and Senate

Very truly yours,

Robert F. Bennett  
President, Kansas Senate

Duane S. McGill  
Speaker of the House

Exhibit BB

STATE OF KANSAS

ROBERT F. BENNETT  
PRESIDENT OF THE SENATE  
SENATOR NINTH DISTRICT  
P. O. BOX 8930  
PRAIRIE VILLAGE, KANSAS 66208



TOPEKA

SENATE CHAMBER

April 6, 1973

COMMITTEE ASSIGNMENTS  
CHAIRMAN: LEGISLATIVE COORDINATING COUNCIL  
CHAIRMAN: ORGANIZATION, CALENDAR AND RULES  
CHAIRMAN: INTERSTATE COOPERATION COMMISSION  
MEMBER: JOINT COMMITTEE ON SCHOOL FINANCE  
JUDICIARY  
LEGISLATIVE SERVICES AND FACILITIES

Robert B. Docking, Governor  
State Capitol Building  
Topeka, Kansas

Dear Governor:

We stand astounded and dismayed that you, the chief executive of this state, would refuse to meet with the democratic and republican legislative leaders of this session on the limited area of the last paragraph of your veto message on the purchase of the New England Building, authorized pursuant to House Bill 1568.

It was you, not us, that inserted an innuendo of impropriety in your message. It is you, not us, that has implied that something is amiss in the purchase of this building. It was you, not your legislative liaison, that signed the message.

As leaders of the legislative branch of government, we feel we are entitled to meet with you, not your liaison officers, on this matter. We realize that you have continually demonstrated desire to avoid personal contact with the legislative leaders in this session and this, of course, rests within your sound prerogative.

In this instance, however, through your message and through innuendo and rumors spread by one of your legislative liaison officers, Mr. Van Cleave, you have attempted or at least allowed, the reputation of a former senator to be besmirched. You should be willing to face up to your own innuendo.

Again, we respectfully request the audience requested in our previous letter on this subject.

Very truly yours,

Robert F. Bennett  
President, Kansas Senate

Duane S. McCall  
Speaker of the House

Exhibit CC

C. Y. THOMAS  
5519 E. MISSION DRIVE  
SHAWNEE MISSION, KANSAS  
66208

MEMORANDUM TO: Senator Robert F. Bennett April 10, 1973

SUBJECT: Proposed Purchase of the  
New England Building and  
Adjacent Parking Lots

1. On January 16, 1973, the day after I reported for duty as your Administrative Assistant, you advised me that Speaker McGill and Minority Leader Loux thought the legislature should consider the above-mentioned project, and you instructed me to represent you in future committee meetings on the subject.
2. On January 17, I first had a conversation with Mr. Borgen, the Speaker's Administrative Assistant, on the general subject. The next morning I visited with Messrs. McGill and Borgen about the matter, and then I walked over to the Merchants National Bank to make some inquiries. From Mr. William Bunten, Executive Vice President, I learned that the bank did not own the New England Building -- that it was owned by a company controlled by the Hall and Thompson families. Mr. Bunten did confirm the fact that the bank did own the black-topped parking lot immediately west of the building and that I would probably have to deal with Mr. Robert Bunten, Chairman of the Merchants National Bank, on the parking lot and with Mr. Steve Hall, President of the Merchants National Bank, on the building, as Mr. Hall was the Vice President of the New England Building Company.
3. Having learned from Mr. Bunten that Mr. David Neiswanger of the Neiswanger Realty Company was the rental agent for the building, I called on Mr. Neiswanger and Mr. Fuller of the same firm. Mr. Fuller showed me completely over the building. In this visit I learned for the first time that a Topeka developer, Mr. John F. Harbes, had a valid option on the building and that the option had been, in fact, in effect since May or June of 1972.
4. On January 23, 1973, Mr. Neiswanger, Mr. Harbes and the writer attended a meeting which was arranged by Mr. Neiswanger at his office. Again we looked over the New England Building and, afterward, inspected the adjacent parking lots. For the first time, we were able to identify the various parts of the project and the owners of the several parcels of real estate which are:

Senator Robert F. Bennett

April 10, 1973

- (a) The New England Building (lots 145, 147, 149 and 151) is owned by the New England Building Company of which Mr. S. M. Hall, President of the Merchants National Bank, is Vice President. It is understood the stockholders are largely members of the Hall and Thompson families.
  - (b) The parking lot west of the New England Building, formerly the Merchants National Bank drive-in area, consisting of lots 146, 148, 150 and 152, is owned by the Merchants National Bank.
  - (c) The 3-story building next to the New England Building, lot 153, is owned by the Associated Credit Bureaus, Inc.
  - (d) The Southwestern Bell Telephone Company owns Kansas Avenue lots Nos. 155, 157, 159, 161, 163, 165, 167 and 169.
  - (e) The 1-story building on lot 171 is owned by Martha Stewart Yerkes, Los Angeles, California.
  - (f) The 1-story building on lot 173, right up against the old First National Bank Building, is owned by Family Service Inc. of Topeka.
  - (g) The present black-topped parking lot, lots 154, 156 and 158, is owned by Mr. Gleed Thompson and his sister who maintain residence in Denver.
  - (h) The old Martin Lumber Company area, located on the west side of Jackson Street in the 500 block, now razed and soon to be made into a black-topped parking lot, is owned by Mr. Lyal H. Dudley, 124 Fairlawn Road, Topeka. This area includes lots 157, 159, 161, 163 and 165 of this block. This parcel is represented by Mr. Neiswanger. I have had no contact with the owner. We have learned, however, that the owner does not wish to sell. Accordingly, if the state, on further investigation, finds that the old Martin Lumber tract is necessary, it can either negotiate a lease or buy the property by condemnation. A copy of a proposed lease is attached as Exhibit No. 12.
5. The very next day Mr. Harbes called on me at my office and delivered a typed report describing the building in some detail. This may be described as Exhibit No. 1. Then Mr. Harbes gave me a plat of the area showing the building and

Senator Robert F. Bennett

April 10, 1973

- the proposed parking lots. This is identified as Exhibit No. 2. Based on data at hand, I made a preliminary report to you and to Speaker McGill in which I recommended that the investigation be continued by a small investigating party. This report is shown as Exhibit No. 3.
6. On February 8, I sent you a note asking if you would like to inspect the building and the parking lots. I attach your reply as Exhibit No. 4. Since that time, I have tried my best to keep all concerned advised of developments largely by oral reports.
  7. The first inspection trip through the building was made by Messrs. Borgen, Loux and Thomas. On February 16 I escorted Senator Ross Doyen over the building and lots. Mr. Harbes was unable to go along with us because, as I found out later, he was working with his architect on his plans for rehabilitating the building.
  8. On February 19, I had a meeting with Mr. Harbes to get more information as requested by members of the investigating committee. Mr. Harbes sent much of the data to me in a letter written February 20 and to which he attached a plat of the area, marked as Exhibit No. 5.
  9. Attached as Exhibit No. 6 is a copy of your review of February 22, answering my preliminary report included as Exhibit No. 3. With Mr. Loux' help, the Director of Property Valuation obtained the 100 per cent valuation data on the building and lots under discussion. These data are included as Exhibit No. 7.
  10. Mr. Borgen had a preliminary conversation with Southwestern Bell Telephone officials concerning the Bell-owned lots on Kansas Avenue. Mr. Borgen was furnished a survey plat, Exhibit No. 8, and some colored aerial photographs of the New England Building and the Bell lots. These are included as Exhibits No. 9, No. 10 and No. 11. On February 23, I sent a personal and confidential memorandum to all concerned. See Exhibit No. 13.
  11. On March 2, at my office, Mr. Borgen and I met with Mr. Harbes for the purpose of finalizing a preliminary estimate of acquiring and refurbishing the properties. As was true of this entire project to preserve confidentiality, I made up the estimate in longhand. It is attached as Exhibit No. 14.
  12. On the basis of the estimate, Messrs. McGill, Borgen and Loux had HB No. 1568 prepared. This bill is attached as Exhibit No. 15. This bill was introduced by the House Ways & Means Committee on March 8, 1973.



Senator Robert F. Bennett

April 10, 1973

13. When I was visiting with Mr. R. M. Bunten, Chairman, Merchants National Bank, about the value of their four lots which would be needed for parking, he put a valuation on the lots considerably in excess of what I thought they were worth. In compliance with his request, I sent a long-hand note to Mr. Bunten on March 9. See Exhibit No. 16. In this memorandum I stated, as I did in conversation with all others, that I had no authority to make any firm offers. My task was to develop some realistic values of the properties so that a bill could be prepared. The final prices would have to be determined by the Director of Architectural Services as provided in HB No. 1568.
14. On March 14, 1973, I took Messrs. Harbes and Max Klein of the Bell Company to lunch to discuss details of the project. I apprised them of the fact that, at a 9:00 a.m. press conference, Speaker McGill announced the possible acquisition of the New England Building and adjacent parking lots. There was a question from the press concerning a rumor emanating from Mr. Van Cleave to the effect that someone stood to pocket \$100,000 out of the deal. Attached as Exhibit No. 17 is a longhand note from Mr. Klein about the valuation of the Bell lots. It is to be noted that Bell paid \$318,500 for the lots, that the land is partially fenced and that an automobile service building, gasoline storage tank and gasoline pump are located on one of the lots.
15. On March 15, 1973, you advised me that you had visited with Governor Docking's aide, former Senator Don Matlack, about some alleged irregularities in the project to purchase the New England Building and certain adjacent parking lots. This memorandum is attached as Exhibit No. 18.
16. An item of considerable importance was the Senate Ways & Means Committee hearing on HB 1568 which was held on the morning of March 15, 1973, with Senator Doyen presiding. Senator Doyen called the following men to appear and testify concerning the proposal:
  - (a) Mr. John Harbes, Topeka realtor and developer.
  - (b) Mr. R. M. Bunten, Chairman, Merchants National Bank.
  - (c) Mr. S. M. Hall, President, Merchants National Bank; Vice President, New England Building Company.
  - (d) Mr. Max Klein, Southwestern Bell Telephone Company.
  - (e) Mr. David Neiswanger, Neiswanger Realty Company.

Senator Robert F. Bennett

April 10, 1973

These men were questioned about their part of the project and particularly if they had made big contributions to any political party.

17. On March 21, I called on Mr. Marcotte of the State Architect's office, to find out how the state calculated operating costs of office buildings. I was furnished with a list of the office space being rented by the state in the city of Topeka. Mr. Cobler, the State Controller, added the expiration date of the leases. This interesting exhibit is numbered 19. Later in the day I spent a couple of hours with Mr. Culbertson of Mr. Bibb's office calculating payouts. As shown by Exhibit No. 20, prepared by Mr. Culbertson, with a generous estimate of operating expenses and with \$12,000 annually charged as a depreciation reserve, the project will pay out in ten years or less with agencies being charged \$4.00 per square foot for the first four years and \$4.25 per square foot for the last six years. Mr. Culbertson also prepared the bond retirement schedule shown as Exhibit No. 21.
18. For the benefit of Senator Doyen and his Ways & Means Committee, I prepared a summary memorandum on March 22. This is attached as Exhibit No. 22. HB 1568 was approved by the Senate Ways & Means Committee on March 22, was approved by the Senate on General Orders on March 23 and passed on third reading by the Senate on March 26. HB 1568 went back to the House for concurrence on a technical amendment. The bill was sent to the Governor on March 30, and, on April 3 at 3:45 p.m., Governor Docking vetoed HB 1568. The veto message is attached as Exhibit No. 23.
19. It is understood that the Governor discussed this veto with the Topeka Press Club on Tuesday evening, April 3. Members of the press advised the writer that the Governor's aide, Tom Van Cleave, was saying that the plain fact of the veto was the allegation that I had negotiated with an old friend and former business associate so that he could make \$100,000 on the deal. The facts are that for the first time in my life I met John F. Harbes on January 23, 1973, so he is neither an old friend nor a former business associate.
20. You and Speaker McGill responded to the veto message with a letter identified as Exhibit No. 24. Though this letter asked for an immediate response, none was forthcoming from the Governor. In fact, the first word came in a small story on the front page of THE TOPEKA JOURNAL on Thursday afternoon, April 5. This article is a part of my memorandum to you and to Speaker McGill dated April 6, 1973. See Exhibit No. 25. The press handling of the matter is shown as Exhibit No. 26.

Senator Robert F. Bennett

April 10, 1973

21. On Friday morning, April 6, you received a reply to your letter to the Governor from Messrs. Matlack and Van Cleave. This is attached as Exhibit No. 27. Immediately thereafter you wrote the Governor another letter requesting an interview. See Exhibit No. 28.
22. On April 9, 1973, I received a letter from Representative John Hayes advising that a subpoena would be served on me to appear at the hearing held by the Select Committee of eleven legislators appointed by the Legislative Coordinating Council. Later that same day I received a telephone call from Fred Carman about the subpoena. This whole matter has been publicized throughout the state. As one bit of evidence, please see Exhibit No. 31.
23. I am disturbed about the news in THE KANSAS CITY TIMES article of April 10 in which it is reported that the Governor has stated that he will not testify. When the Governor takes actions and makes recommendations such as he has done, there ought to be a way for a citizen to force him to testify. I believe this memorandum and record is a true and accurate statement of my involvement in this project.

  
C. J. THOMAS

CYT:hss

EXHIBITS - MEMORANDUM TO SENATOR BENNETT - APRIL 10, 1973

No.

- 1 Five-page letter from Mr. Harbes
- 2 Plat of lots in New England Building area - city of Topeka
- 3 Memorandum from C. Y. Thomas to Messrs. Bennett and McGill on the project
- 4 Memorandum from Senator Bennett to C. Y. Thomas to carry on
- 5 Letter from Mr. Harbes concerning ownership
- 6 Memorandum from Senator Bennett about property values
- 7 Property value listing from Mr. Loux
- 8 Plat of lots owned by Southwestern Bell Telephone Company on Kansas Avenue
- 9 Colored photograph of Southwestern Bell lots on Kansas Avenue
- 10 Colored photograph of Southwestern Bell lots on Kansas Avenue
- 11 Colored photograph of Southwestern Bell lots on Kansas Avenue
- 12 Copy of lease proposed by Lyal H. Dudley (old Martin tract)
- 13 Memorandum from C. Y. Thomas to all concerned
- 14 Estimate of costs for bill drafting purposes by Messrs. Borgen, Harbes and Thomas
- 15 Copy of HB 1568
- 16 Longhand note from C. Y. Thomas to R. M. Bunten about the New England Building parking lot
- 17 Longhand note from Max Klein, Southwestern Bell Telephone Company about Bell's lots
- 18 Memorandum, Senator Bennett to C. Y. Thomas concerning the project
- 19 Tabulation of state rental properties in downtown Topeka
- 20 Payout calculation by Mr. Culbertson
- 21 Schedule of bond retirement, prepared by Mr. Culbertson
- 22 Memorandum, C. Y. Thomas to Senator Ross O. Doyen
- 23 Governor Docking's veto message
- 24 Bennett-McGill letter to the Governor on the veto message dated April 4, 1973
- 25 Thomas memorandum to Messrs. Bennett and McGill
- 26 Front page TOPEKA JOURNAL story about the project
- 27 Letter to Bennett and McGill from Matlack and Van Cleave
- 28 Letter from Bennett and McGill to Governor Docking
- 29 Front page article, TOPEKA STATE JOURNAL, April 4, 1973
- 30 Article appearing in THE TOPEKA DAILY CAPITAL, April 5, 1973
- 31 Article appearing in THE PITTSBURG HEADLIGHT-SUN, April 7, 1973
- 32 Letter from John F. Hayes about a forthcoming subpoena
- 33 Article from THE KANSAS CITY TIMES, April 10, 1973, concerning the hearing scheduled for April 11 in which Governor Docking says he will not testify

January 24, 1973

Mr. C.Y. Thomas  
State Senate Chambers  
State House  
Topeka, Kansas

Dear Mr. Thomas:

With further reference to the New England Building, 503 Kansas Avenue, Topeka, Kansas please be advised that the firm offering price for sale is: \$550,000.00.

Please find enclosed a brochure covering the subject property. Substantial improvements have been made in the building since it was first offered to the public.

Sincerely yours,

The J. F. Harbes Company

By

*John H. Harbes*

EXHIBIT #1

January 24, 1973

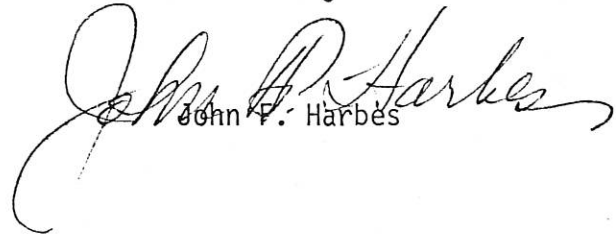
MEMORANDUM To Mr. C. Y. Thomas

Following up our conversation of January 23rd, 1973, I am handing you herewith the floor plans of the New England Building along with pertinent information including the availability of space at various dates. This information has been furnished by the Neiswanger Company, managers of the building. You will note the entire building can be vacated by present tenants on or before July 1, 1974, provided all tenants comply with the terms of existing leases.

Based on best estimates available at this time, it is believed an expenditure of approximately \$75,000.00 should put this fully air conditioned structure (except basement) in a desirable condition for State occupancy.

At such time as it has been determined that the building can be of use to the State, we will be glad to discuss the asking price for this property based on its present condition.

If you have questions, please advise and I will arrange to meet with you at your convenience.

  
John F. Harbes

## THE NEW ENGLAND BUILDING

### Street Address

501-507 Kansas Avenue, Topeka, Kansas, 66603

### Legal Description

All of Lots 145, 147, 149 and the north 24 feet 1½ inches of Lot 151, Kansas Avenue, as platted, in the City of Topeka, Shawnee County, Kansas.

### Description of Land

Fronts 99 feet 1½ inches on Kansas Avenue with a depth along West 5th Street of 150 feet containing an area of 14,868.75 sq. ft. The west boundary of the property is about 7 feet below the grade of Kansas Avenue.

There is a 20 foot paved alley along the west boundary. Kansas Avenue has a right-of-way of 130 feet. West 5th Street has a right-of-way of 80 feet.

### Description of Improvements

Six story and basement office building of reinforced concrete construction which would be considered fire resistive.

Total area is as follows:

Basement	-	14,868.75	sq. ft.
1st Floor	-	14,868.75	" "
2nd Floor	-	12,930.00	" "
3rd Floor	-	12,930.00	" "
4th Floor	-	12,930.00	" "
5th Floor	-	12,930.00	" "
6th Floor	-	12,930.00	" "
		<u>94,387.50</u>	sq. ft.

The net rentable area may vary slightly due to the arrangement of offices and use of corridors. Presently, it is 68,689 sq. ft. excluding mezzanine space over the first floor, the cigar stand in the lobby and certain space in the basement level which could be rented, but is used for building purposes.

The roofs are built-up tar and gravel, which were new in 1962. Flashings appear to be in good condition. The roof is concrete slab with exception of the east 57 feet of the south 47 feet of the building, which is a wood deck over cinder installation.

Restrooms are as follows: Basement - 1 men's room; 1st floor - 2 private, 1 men's and 1 women's; Mezzanine - 1 men's and 1 women's and small kitchen. There is a men's and women's restroom on each of the upper floors.

Heat is purchased steam from Kansas Power & Light Company. There is a boiler that has never been used in the basement. It has recently been examined and can be put into working order.

Air conditioning equipment of water type was installed for the first floor. The second, third, fifth and sixth floors are centrally air conditioned. A Carrier 30-ton unit and Chrysler 40-ton unit cool the first floor rooms. Second, third and fifth floor units are 38-ton and sixth floor is cooled by a 51-ton unit.

EXHIBIT <sup>41</sup>  
SHEET #3

THE NEW ENGLAND BUILDING  
(Continued)

There are air handling units on each floor for the upper units. Duct work is completed for the fourth floor and the ceilings in the corridors have been lowered. The estimate of desirable improvements provides for fourth floor air conditioning.

There is an 800 amperage, 110-220 volt alternating current service to the building serving the basement and upper floors. This installation and rewiring of the building has been completed. A separate 800 amperage service fused for 600 amps serves the first floor.

There are two passenger elevators serving the basement and sixth floor inclusive. Elevators are automatic units. Cabs and control system are manufactured by the Dover Elevator Company. Each cab is 5'6" by 5' with a capacity of 2000 lbs. There is a shaft to the east of the existing elevators for installation of a third elevator, if necessary. However, the existing equipment has served the building well when 98% occupied. There is no freight elevator.

In 1970 the two stairwells at the front and rear of the building were remodeled to form fire stairs and corridors to provide adequate fire exit protection for the building occupants. This improvement was examined and approved by the Federal Government so the building could be used for Federal offices.

Space Available for Possession:

As Of June 1, 1973

Basement:		180 sq. ft.
1st Floor:	All (To be reconditioned based on cost estimate)	12,525 " "
2nd Floor:	All (To be reconditioned based on cost estimate)	9,601 " "
3rd Floor:		685 " "
4th Floor:	All (To be reconditioned based on cost estimate,	9,506 " "
5th Floor:	including air conditioning)	1,084 " "
6th Floor:		<u>2,194 " "</u>
TOTAL		33,725 sq. ft.

As Of July 1, 1973

Basement:		692 sq. ft.
1st Floor:	All + Cigar Stand	12,525 sq. ft.
2nd Floor:	All	9,601 " "
3rd Floor:		5,494 " "
4th Floor:	All	9,506 " "
5th Floor:		5,499 " "
6th Floor:		<u>8,339 " "</u>
TOTAL		51,656 sq. ft.

*EXHIBIT #1  
SHEET #4*



Space Available for Possession: (Cont.)

As Of August 1, 1973

Basement:	(Includes 4,018 sq. ft. storage)	4,710 sq. ft.
1st Floor:	All	12,525 " "
2nd Floor:	All	9,601 " "
3rd Floor:		5,494 " "
4th Floor:	All	9,506 " "
5th Floor:		5,757 " "
6th Floor:		8,339 " "
TOTAL		55,935 sq. ft.

As Of January 1, 1974

Basement:		4,710 sq. ft.
1st Floor:	All	12,525 " "
2nd Floor:	All	9,601 " "
3rd Floor:		5,880 " "
4th Floor:	All	9,506 " "
5th Floor:	All	9,298 " "
6th Floor:		8,339 " "
TOTAL		59,859 sq. ft.

Basement becomes available February 28, 1974  
3rd Floor becomes available June 30, 1974  
6th Floor becomes available February 28, 1974

As Of July 1, 1974

Basement:	All (Includes 4,018 sq. ft. storage)	8,724 sq. ft.
1st Floor:	All	12,525 " "
2nd Floor:	All	9,601 " "
3rd Floor:	All	9,560 " "
4th Floor:	All	9,506 " "
5th Floor:	All	9,298 " "
6th Floor:	All	9,475 " "
TOTAL		68,689 sq. ft.

All measurements given are net rentable as partitions presently exist.

Dates given are based on expiration of existing leases, assuming no renewals or new tenants. This information has been assembled with care, but no liability is assumed for errors and omissions.

NEW ENGLAND BUILDING COMPANY  
Room 330  
503 Kansas Avenue, Topeka, Kansas

EXHIBIT #1  
SHEET #5



Personal & Confidential

C. Y. THOMAS  
5519 EAST MISSION DRIVE  
SHAWNEE MISSION, KANSAS 66208

Memo To: - Sen R.F. Bennett  
Speaker S.S. McGill

Jan 25, 1973

Subject :- Proposed Purchase of New England Bldg

1. At your request I have been looking into the assembling of an office space area on the west side of Kansas Ave., from 5<sup>th</sup> to 6<sup>th</sup> St. I have talked with owners or representatives and I could summarize the project as follows -

a. Purchase the New England Bldg. Asking price \$550,000 would offer \$475,000

This 6 story building is in good shape. Estimate new air conditioning 4<sup>th</sup> floor, new ceilings, beams, some new lights - fire alarm in all vault etc etc

75,000

b. Purchase Merchants National Bank parking lot behind the New England Bldg - space for 45 cars

100,000

c. Purchase Sw Bell's lots on Kansas Ave - space for 85 cars

175,000

d. Purchase Martin Lunde Co area on Quincy St. Parking for 62 cars

75,000

\$ 900,000

2. The total floor area of the N.E Bldg is 94,388 sq. ft. The space available for offices, storage etc is 68,689. The 1st, 2nd & 4th floors are immediately available (this is where the refurbishing money would be spent) The 5<sup>th</sup> floor would be available by Jan 1, 1974 and the entire building would be available as of July 1, 1974. Total car parking available for 224 cars.

3. I recommend as a next step, a small investigating party. I have lots of detail material if you wish to see it now.

EXHIBIT #3

C.Y.T.

M E M O R A N D U M

*File  
NE Bldg*

TO: C. Y. (Kit) Thomas

FROM: Robert F. Bennett

DATE: 8 February 73

As far as I am concerned I would just as soon leave the inspections, tours, etc. up to you and the others listed. At best, I am a stranger in paradise in this area and would rely primarily on Pete McGill's recommendations.

RFB

j

*EXHIBIT #A*

February 20, 1973

Mr. C. Y. Thomas  
State Senate Chambers  
State House  
Topeka, Kansas

Dear Mr. Thomas:

I am enclosing herewith a sketch showing the ownership of real estate in the five hundred block on Kansas Avenue and Jackson Street in the City of Topeka. This area involves the properties in which you have shown an interest. The solid red lines indicate building locations and the red hatched areas are presently used or may be used for automobile surface parking.

As suggested, we have made inquiry over the weekend concerning the availability of all these properties for purchase by others.


It is our considered opinion at this time that the property shown in red and located in the block bordered by Kansas Avenue, Jackson Street, Fifth and Sixth Streets can be purchased for One Million Two Hundred Twelve Thousand Dollars (\$1,212,000.00). This estimated cost includes assemblage and is necessarily qualified as follows:

1. A firm offering price is established for the New England Building and is final.
2. A firm offering price is established for the Southwestern Bell Telephone Company property on Kansas Avenue subject to final approval of sale by the central office of Southwestern Bell situated in St. Louis, Missouri.
3. A firm offering price is established for the four lots on Jackson Street immediately west of the New England Building.
4. The small building occupied by the Credit Bureau of Topeka, Inc. is located at 509 Kansas Avenue. The establishment of an offering price for this property will require group action and therefore an estimate only is included for its cost. A negotiated price is considered a good possibility.

5. The properties located at 527-529 Kansas Avenue represents a dual ownership involving land and buildings. The dual ownership situation may necessitate some additional time for final negotiations, however, it appears that the period involved would not be unreasonable. Cost of properties has been estimated after conferring with owner representatives.
6. The property located at 510-514 Jackson Street is owned by two non-resident individuals who have previously offered to sell their holdings and we are therefore confident of their continued willingness to do so. The owners are presently out of the country for a brief time and could not be contacted. An estimated cost is included.
7. The properties at 513-523 Jackson Street can probably be purchased, however the owner, for personal reasons, would prefer to lease on long term---64 spaces at prevailing monthly rates for parking in the area. Cost of purchase has not, therefore, been established and no estimate included.

Very truly yours,

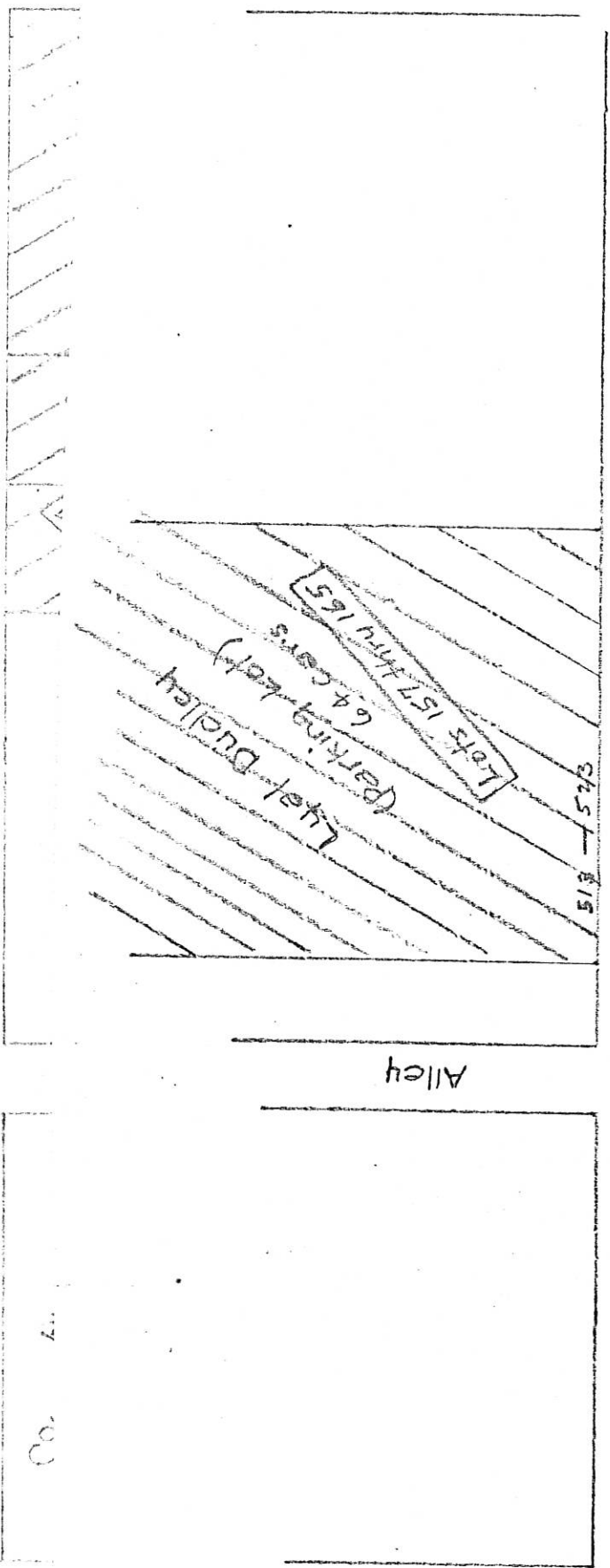
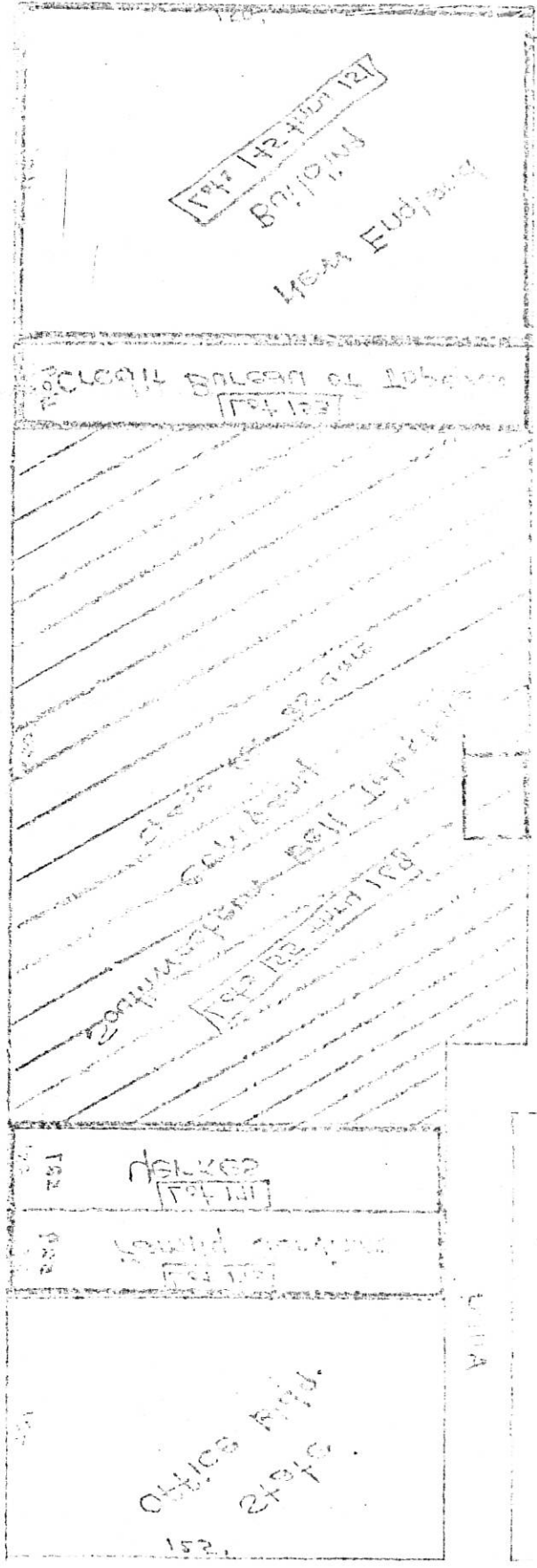
THE J. F. HARBES COMPANY

By:   
John F. Harbes

JFH:dh

EXHIBIT #5  
SHEET 2





157

157

158

159

525  
115



M E M O R A N D U M

TO: C. Y. Thomas  
FROM: Robert F. Bennett  
DATE: 22 February '73  
RE: Building Acquisition

I have read your memo on the above matter and it looks all right to me. Can you tell me what the appraised value for tax purposes is on this land. As far as I am concerned, if the others are all in agreement, we should next explore how we would finance the purchase by a meeting of the legislators whom you have listed. At that point, if everyone is in agreement, I would think we could go ahead with the announcement and that this should be done before there is any examination of title, etc.

RFB

j

cc: Those people listed on your original memo.

EXHIBIT #6

Assessed Valuation 100%

Gleed Thompson	\$19,330	land
	<u>1,620</u>	building (pavement)
	20,950	
Martin Lumber Co.	\$71,550	land
	<u>18,430</u>	building
	89,980	
Old Merchants	\$50,880	land
National Bank	<u>1,470</u>	building (pavement)
	52,350	
New England Bldg.	\$67,160	land
	<u>419,230</u>	building
	486,390	
S-W Bell Telephone Lot	\$337,000	land

\$ 347,000 - Valuation from Harold Rohmiller 3-5-73

From Mr Loux 2/27/73

Lots 146 }  
 148 } valuation \$ 52,350  
 150 }  
 152 }

\$ taxer 1,417

Note from Pete Loux

Area per Representative in new 1st Floor offices is 71.8 sq.ft  
 Presently Committee Chmn & Steno have an avg of 180 sq.ft  
 Probably should provide space for 110 Representatives and 22 secretaries

From Mr. Loux 2/27/73

EXHIBIT #7