

April 15, 1973

TO: The Honorable Robert B. Docking, Governor of Kansas and  
The 1973 Kansas Legislature

In accordance with the provisions of HCR No. 1056, the Select Committee appointed under that resolution herewith submits its report relative to alleged impropriety by any member of the Kansas Legislature and alleged influence upon the Governor with respect to the subject of H.B. No. 1568 and the veto thereof. Senator Bromley dissents from the findings of fact, conclusions and all other portions of this report.

Respectfully submitted:



Representative John F. Hayes, Chairman  
Senator J. C. Tillotson, Vice-Chairman  
Senator Dan Bromley  
Senator John M. Simpson  
Senator Bob W. Storey  
Representative Paul Burke, Jr.  
Representative Walter W. Graber  
Representative William R. Novak  
Representative Jim Parrish  
Representative John Peterson  
Representative G. T. Van Bebber

REPORT OF SELECT COMMITTEE APPOINTED  
UNDER 1973 HOUSE CONCURRENT RESOLUTION NO. 1056

Background

On April 3, 1973 Governor Robert B. Docking vetoed House Bill No. 1568 which directed the Director of Architectural Services to negotiate on behalf of the State for the purchase of the New England Building and adjacent properties in the City of Topeka, Kansas. The bill provided that revenue bonds were to be issued for the purchase and were to be retired from funds derived from leasing the offices and parking spaces to state agencies. In addition, the bill would have created a state building advisory committee composed of the President and the Minority Leader of the Senate and the Speaker and the Minority Leader of the House (or their representatives) to advise and cooperate with the Director of Architectural Services in accomplishing the Act's intent.

In his veto message, Governor Docking requested "that a special legislative investigative committee be formed with the Attorney General's cooperation . . . (to) make a thorough investigation of all facts surrounding the proposed sale of the property as specified in House Bill No. 1568."

Pursuant to this request, the legislature on April 7, 1973 approved HCR No. 1056 which directed an investigation of "(1) any alleged impropriety by any member of the Kansas Legislature or employee of the legislative branch concerning the subject of H.B. No. 1568, and (2) 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." On April 7, 1973, this Committee was appointed by the Legislative Coordinating Council to conduct the investigation directed in HCR No. 1056.

As directed by the resolution, this Committee met on April 7, 1973, and elected Representative John F. Hayes as Chairman of the Committee and Senator J. C. Tillotson as Vice-Chairman. At that time the Committee determined to meet the next morning, Sunday April 8, 1973 to decide upon the course of action to be taken.

The next morning the Committee concluded that normally there would be no need to subpoena most of the individuals it would need to hear. However, because of the shortness of time due to the April 17, 1973, reporting deadline, the Committee members felt that there would be very little time left to subpoena those not appearing voluntarily at the next meeting.

Therefore, the Committee agreed to subpoena and receive under oath the testimony of all those that it wished to hear. Again, because of the shortness of time, the Committee felt that the three-day notice provision of KSA 1972 Supp. 46-1008 was not practicable. Therefore, it was properly moved, seconded and carried that the three day notice provision would not apply and that such notice as practicable would be given. Earlier the Committee had decided that it would proceed under the standards set out in KSA 1972 Supp. 46-1001 et seq., governing legislative compulsory process, which both HCR 1056 and the Legislative Coordinating Council had authorized the Committee to use.

In all the Committee heard thirty-eight witnesses. They were either: (1) members of the executive branch of state government, (2) legislators or legislative employees, (3) owners of the property proposed for purchase in HB 1568, (4) other private individuals involved with the proposed purchase, or (5) individuals whose names appeared on contracts leasing property in Topeka to state agencies. The Revisor of Statutes' Office was directed to prepare the subpoenas and they were also delegated authority to take any necessary administrative action in connection with the service of the subpoenas. In addition, the Attorney General was requested, in accord with HCR 1056, to provide the Legislative Research Department and the Revisor of Statutes' Office with legal advice and consultation, including review of the form of the subpoenas that were to be served.



The Committee conducted one and one-half days of hearings on April 11-12, 1973 in the State Capitol. In addition to the witnesses which were subpoenaed for these hearings, Governor Robert B. Docking was invited to begin the hearing inasmuch as it was his suggestion in the veto message relating to HB 1568 which resulted in this Committee being established. However, he declined the invitation.

Testimony during the hearing was restricted to those individuals who were subpoenaed as mentioned above. As required by KSA 1972 Supp. 46-1011 a verbatim record of the hearing was taken by a certified court reporter. This transcript and the minutes of the Committee's other meetings are available for review in the files of the Legislative Services and Facilities Committee.

#### Summary of Testimony

The testimony received by the Committee will be summarized in terms of the five categories of witnesses appearing before the Committee. A list of the names and addresses of all the witnesses is appended to this report.

#### Executive Branch Employees

Thomas M. Van Cleave, Jr. Mr. Van Cleave, legislative liaison for Governor Robert B. Docking, told the Committee that

when he first learned of the legislature's interest in obtaining the New England Building and adjacent property, he made a preliminary investigation to determine the facts involved. Initially in response to questioning, he noted that he first learned an option might exist from former Senator Robert C. Taggart. In later testimony, however, he said he may have read it in the newspaper. On another occasion, he said he hadn't known there actually was an option until a moment earlier when a member of the Committee told him of its existence. After learning that an option might exist, he said he then asked Representative Pete Loux to obtain a copy for him. He understood that Representative Loux had asked former Senator C. Y. Thomas for a copy, but that Mr. Thomas did not have a copy of the option either. He later asked William M. Hall, one of the owners of the New England Building, for the details of the option. He said Mr. Hall would not give him information about the option and was very reluctant even to discuss it. Because of this he said, his real fear was that someone could possibly make an exorbitant profit from the sale of the property to the detriment of the taxpayers of Kansas. In fact, he commented that the whole deal "smelled" to him because he was not able to get a copy of the option. He said he regarded the option as the one most important piece of information relating to the proposed purchase. He stated that the only thing he knew about the possible holder of the option was what he read in the newspaper, and that the story he had seen said a Mr. John F. Harbes held an option on the building.

When he was recalled for further questioning, Mr. Van Cleave indicated that when he had talked to William Hall he was really uncertain, based on Hall's comments, as to whether or not Mr. Harbes had an option. He understood that there was certainly some sort of an arrangement, but he was unclear as to whether it was an actual option or contract involving a commission. He insisted that his testimony would have to be that he knew there was some arrangement although he was not aware whether it was an option or not. When asked whether Mr. Hall told him he would have to talk to Mr. Harbes concerning the purchase he said "No, not that I recall." He also said that Mr. Hall did not mention to him that David Neiswanger was the managing agent for the building. In response to questions he said that he had talked to Representative Loux before he had talked to William Hall concerning the proposed purchase. Under questioning Mr. Van Cleave said that he had not tried to contact Mr. Harbes after the conversation with Mr. Hall.

Also under questioning when he was recalled, Mr. Van Cleave said he thought he first heard of the option the latter part of February and at that time he was also aware that Mr. Harbes was supposed to be the holder of the option. He indicated during the course of the questioning that other than his conversations with Mr. Hall and Rep. Loux and the unfruitful request by Don Matlack to Senator Doyen for the Senate Ways and Means

Committee's file, no other attempt to obtain a copy of the option was made. All of this took place prior to the veto. And he again stated that knowledge of the option in the proposed purchase deal was very important. He said that first of all he wanted to find out when it was signed and second, what the option price was. He went on to say that this information would mean a lot to him in terms of how much the state should be paying for the building. Also in response to questioning he said he was unaware that at the Senate Ways and Means Committee meeting of March 20, 1973, Messrs. Harbes, Neiswanger, and Hall had appeared and discussed the building with the Committee, including the fact that Mr. Harbes had an option.

Mr. Van Cleave asserted in his initial appearance before the Committee that he had no knowledge of, nor did he know of anyone in the Governor's office who had any knowledge of, any impropriety by any member or employee of the legislature. When questioned, he said, that he had never made any statements about former Senator C. Y. Thomas. He said that information was given to him that Senator Thomas had been involved with Mr. Harbes in the White Lakes Shopping Center development. However, he stated that he had "checked it out" immediately and found it to be completely untrue. He initially insisted that his source of information on that point was confidential, but when specifically asked to disclose the source when he was recalled he said it was

Ray Morgan, a reporter with the Kansas City newspapers. He repeated that he did not pass on the rumor about Thomas and Harbes to anyone at any time. When questioned, he said he thought it was around the last of February or the first part of March that he was told of the possible relationship between the two men.

During his testimony the first day, Mr. Van Cleave, when questioned, said that neither he nor anyone in the Governor's office, to his knowledge, had been contacted by any landlord or property owner of any property in which a state agency is now leasing in the City of Topeka concerning the New England Building purchase and/or the veto.

In the course of his testimony, Mr. Van Cleave said that the Governor's request for a legislative investigating committee was based on the concern that someone might stand to make an exorbitant profit on the sale of the building or that an exorbitant price might be paid. While insisting that the decision to veto the bill was the Governor's and that he merely agreed with that decision, he conceded that upon the Governor's request he prepared the draft of the veto message which included the request for a legislative investigating committee.

Responding to a question, he indicated that his interpretation of H.B. 1568 was that the Director of Architectural Services was authorized and directed to negotiate for the building but that the final decision on the price of the building remained with the building advisory committee made up of four legislators or their representatives.

Don Matlack. Under questioning, Mr. Matlack, legislative liaison for Governor Docking, said that he had no knowledge of any impropriety on the part of any member of the legislature and in particular, he knew of no improprieties on the part of Senator Bennett's Administrative Assistant, C. Y. Thomas. He also said that he had asked Senator Ross Doyen, Chairman of the Senate Ways and Means Committee, to furnish him any documents relating to that Committee's consideration of H.B. 1568. He said that these documents were not forthcoming. Although, under questioning, he said that he had no idea what the documents might be, but he just wanted to see what was available. He commented that this request was the only actual direct involvement on his part.

Responding to a question, he said that he felt the reasons for the veto were that the Governor thought it was a bad purchase and not a good investment for the State at this time, and second, that the staff had been unable to acquire enough information to overcome the feeling that they might not be protecting the interests of the State if the bill became law. He also said that the request for a legislative investigating committee in the veto message was for the purpose of uncovering

facts that were not disclosed prior to the bill being sent to the Governor and to investigate in fact how much the building was worth.

He indicated during the questioning that Tom Van Cleave had discussed with him the possibility that John F. Harbes, who holds an option on the New England Building, and C. Y. Thomas might have been business associates at one time. But, he said Van Cleave told him that he had checked this out and found it to be untrue. This conversation with Van Cleave was sometime prior to the veto message.

Robert F. Brandt. Mr. Brandt, Secretary of the Department of Administration, said in response to questions that his office played no part in the recent discussions concerning the purchase of the New England Building. However, he said when he first came to work for the State in 1969, he spoke with Mr. Neiswanger concerning the possible rental of the building by the State, and at that time, he testified that Mr. Neiswanger told him that the building could be purchased for \$400,000. In fact, he said, Sam Cohen had told him rather recently that the building could be purchased for \$400,000.

With regard to this year, he said he had not talked to any member of the legislature or their employees about the New England Building. He did, when learning that the legislature was looking into the possible purchase of the building, ask the State



Architect, Mr. Kenneth McLain to look into the building and make a report. McLain's report in memorandum form was passed on to the Governor's office. However, he maintained that he had no formal discussions with either Mr. Van Cleave or Matlack prior to the veto. He further noted that he did not know Mr. Harbes and had not talked with C. Y. Thomas since the start of the year. While he had had no formal conversations with members of the Governor's staff, he said, in response to questions, that during informal conversations about the matter, he was not told of any irregularities or improprieties.

Kenneth R. McLain. Mr. McLain, Director of Architectural Services for the State, explained to the Committee that his office, at the request of the Secretary of the Department of Administration, sent several employees to the New England Building to evaluate the architectural, mechanical and electrical condition of the building. This was done on March 26, 1973, and a written report was prepared for Mr. Brandt. Mr. McLain said that he had discussed the proposed purchase of the New England Building with Mr. Van Cleave after the veto, but he was not sure whether he spoke with him before the veto. When questioned, he said he had no knowledge of any impropriety or irregularity involved in the circumstances surrounding the proposed purchase of the building.

Robert Wolfe. Mr. Wolfe, the State Fire Marshal told the Committee that he had been requested by the Director of Architectural Services to inspect the building. The building was later inspected by the City Fire Marshal and the Deputy State Fire Marshal. Their report was turned over to Mr. McLain. He said in response to a question that he knew of no improprieties involved in the proposed sale nor had anyone from the Governor's office contacted him prior to the veto. However, he said, Mr. Van Cleave had spoken to him about it afterwards.

Owners of the Property Proposed  
for Purchase

Stephen M. Hall. Mr. Hall, President of the Merchants National Bank and a stockholder in the New England Building Company, testified that, while he was aware of the discussions between David Neiswanger, C. Y. Thomas and John Harbes, he was not involved himself. He further stated that he had never discussed the possible purchase or the fact that an option was held by Mr. Harbes with anyone.

With regard to the option that Mr. Harbes held on the New England Building, he said that the agreement was dated January 5, and Mr. Harbes paid \$1 for the option. The option provided that Mr. Harbes could, within the six months the option runs, purchase the building for \$500,000. In order to set things in context, he commented that he wrote a letter

to the Chairman of the House Ways and Means Committee with a copy to the Chairman of the Senate Ways and Means Committee on March 12, 1973, in which he set out that Mr. Harbes, as far back as May, 1972, had been discussing with the owners the redevelopment of the New England Building. He said by the fall of 1972, the owners and Mr. Harbes had reached a complete understanding as to what the terms and conditions of the option would be when it was finally reduced to writing. He wrote this letter in response to a request from Mr. Harbes who thought that such a letter might clarify some of the misunderstanding that seemed to have been generated following the interest in the building exhibited by the state.

William M. Hall. Upon being questioned, Mr. Hall, a stockholder in the New England Building Company, said that he had known Tom Van Cleave for about five years and that to the best of his knowledge, about three weeks ago, he spoke with Mr. Van Cleave regarding the option held by Mr. Harbes. He said that Mr. Van Cleave had called to find out what Mr. Hall might be able to tell him. However, Mr. Hall responded that inasmuch as Mr. Harbes was the option holder it would be more proper if he would be the one to divulge the terms of the option. He said, in response to a question, that the name of former Senator C. Y. Thomas did not come up during the conversation. Upon further questioning, he reiterated that there

was no doubt in his mind that as a result of their conversation, Mr. Van Cleave knew Mr. Harbes was the option holder.

Other Owners or Representatives. Max Klein, General Staff Manager for Southwestern Bell Telephone Company in Topeka, Robert M. Buntin, Chairman of the Board for Merchants National Bank, Don A. Williams, President of Credit Bureau of Topeka, Inc., and Ron Lierz, Secretary of Credit Bureau of Topeka, Inc., all of whom are officers for corporations that own property adjacent to the New England Building, testified that they knew of no improprieties or pressures which were brought to bear relative to H.B. 1568 or its veto.

Other Private Individuals Involved  
With the Proposed Purchase

Robert C. Taggert. In his testimony Mr. Taggert, a real estate appraiser in Topeka, indicated that he had no knowledge of any impropriety by a member or employee of the Kansas Legislature concerning the subject of H.B. 1568. In addition, he said he had no knowledge of any influence exerted on the Governor to veto the bill. He explained that early in 1972, Mr. William Hall, one of the stockholders in the New England Building Company discussed with him whether giving an option on the New England Building would be in Mr. Hall's best interest. Mr. Taggert said he did not, at that time, discuss an option price with him. Further, he said he had not discussed the property with

Mr. C. Y. Thomas nor Mr. John Harbes. However, he said he had four or five conversations with Mr. Van Cleave since January with regard to the proposed purchase and the possibility that an option to purchase existed. He said he came to assume that an option had been given on the building because he had read about it in the paper. But he asserted that at no time had he known the purchase price contained in the option.

John F. Harbes. Mr. Harbes, a Topeka developer, explained that he did, in fact, have an option to purchase the New England Building. He said that for some time he had been interested in renovating the building. As early as May 1972, he had reached a verbal understanding with the owners of the building. Then, on September 11, 1972, he said that he and the owners reached an agreement on the amount that would be included in the option; that is, the amount that he would pay for the building. In December 1972, he wrote a letter to David Neiswanger listing those items he thought should be included in the written option. He affirmed that when he signed the option, on January 5, he had no other interest than to follow through, purchase the building and redevelop it as he had planned.

In response to questions, he stressed that his option was not in any way involved with a possible sale to the

State. He hoped, he said, that his reluctance up to this time to reveal the terms of the option was understood, because for a developer to release the terms of an option is quite damaging to his position in negotiating with other parties. In addition, he said that when he was to appear before the Ways and Means Committee of the Senate, in lieu of revealing the terms of the option, he had requested that Mr. Stephen Hall write a letter to the chairmen of the two Ways and Means Committees explaining in general terms that an option did exist and who the holder was. Harbes told this Committee that the purchase price contained in the option was \$500,000.

He also noted that when he met with C. Y. Thomas on January 23, he did not disclose to Senator Thomas the terms of the option. Nor for that matter, he said, did he disclose the terms to anyone in state government. When questioned, he reiterated that the only one who had contacted him regarding the option was C. Y. Thomas. In particular, when asked, he said he was not contacted by Tom Van Cleave. Upon request, Mr. Harbes provided the members of the committee with a copy of the option.

During the questioning, Mr. Harbes went on to tell the Committee that the first time he had ever met C. Y. Thomas was on January 23, 1973, in the office of David Neiswanger, who arranged the meeting between himself and Mr. Thomas. In response to a question, he said this was the first time he and

Mr. Thomas had met. He said that the meeting had been arranged because Mr. Neiswanger told Mr. Thomas that he, Harbes, controlled the sale of the building because of an option. On the following day, January 24, he said he submitted to Senator Thomas a letter containing a complete rundown on the information about the building. Also on January 24 he wrote a separate letter to Mr. Thomas in which he said that the asking price for the building was \$550,000. He said he gave this figure to Mr. Thomas because he and the owners wanted to cooperate with the state and because they were aware the property could be taken by the exercise of the right of eminent domain.

...by the exercise of the right of eminent domain.

Also, several times during the testimony, it was pointed out that Mr. Harbes regarded the state as being in competition with him for the building. He said that he had invested seven months' work in the project, and he was very much interested in renovating the building.

When asked whether he had attempted to influence the Governor or any of his aides to veto the bill, he said that he had been around too long to try anything of that sort.



David M. Neiswanger. Mr. Neiswanger, President of Neiswanger Company, Inc. and building manager of the New England Building, explained that he was initially contacted by former Senator C. Y. Thomas on January 19, 1973, and spoke with him concerning the state's interest in the New England Building. He said as he understood the sequence of events, Mr. Thomas had gone to the Merchants National Bank, thinking that the bank owned the building, in an effort to talk with Mr. Robert Bunten or Mr. Stephen Hall about the property. Both were out at the time, so he spoke with Bill Bunten, Executive Vice-President of the bank, who advised him that the building was managed by Mr. Neiswanger. Mr. Neiswanger said that when Mr. Thomas spoke with him he had indicated that it was a preliminary investigation only that was being undertaken. Mr. Neiswanger said he also informed Thomas during that conversation that Mr. John Harbes held an option on the building. As a result of the first conversation, Mr. Neiswanger said he arranged for a meeting between Mr. Harbes and Mr. Thomas in his office on January 23, 1973. He said that after that, he did not meet again with the other two men, but he assumed that they held other meetings.

In response to a question, Mr. Neiswanger said he had not been contacted by any other member of the legislature nor any member of the executive branch, although he noted he did show two Senators the building on one occasion. In

particular, he said when questioned, he had never been contacted by Tom Van Cleave. He said that in January, 1970, he did talk with the state, in the person of the Director of Administration, with regard to the leasing of the building. At that time, his firm provided a sale price of \$600,000. In fact, to his knowledge, he said, the building had never been offered at any figure other than \$600,000 since it went on the market in 1967. He said his company had had the exclusive listing since that time.

In discussing Mr. Harbes' part in the possible sale of the building, he noted that Mr. Harbes has had an interest in the building since about the first part of 1972. He said that in September of 1972, the owners of the building and Mr. Harbes discussed an option. That option, he said was ultimately drawn up and signed on January 5, 1973 and is to terminate on July 16, 1973. When questioned, he said that to the best of his knowledge, former Senator Thomas and Mr. Harbes had not met each other until the afternoon of January 23, 1973.

Mr. Neiswanger also provided the January 1, 1972, 100% valuation which included the land at \$67,160; the improvements at \$419,230; for a total of \$486,390.

In response to a question, he said he knew nothing of the dealings between Mr. Thomas and Mr. Harbes that would indicate that they were carried out in any but a highly ethical manner.

When Mr. Neiswanger was recalled, he was asked if he remembered the conversation that Mr. Brandt had mentioned in previous testimony to the effect that he, Neiswanger, had made a verbal offer of the New England Building to Brandt for \$400,000. Mr. Neiswanger said that he had absolutely no recollection of having talked to Mr. Brandt about a price. He added that he would not have been authorized to quote such a price and he certainly would not have quoted a price of \$400,000 at the same time his office was writing a letter to Senator Van Sickle in January, 1970, indicating a purchase price of \$600,000. Again, upon questioning in relation to Mr. Brandt's reference to Sam Cohen having said that the building could be purchased for \$400,000, Mr. Neiswanger said that while three or four years ago, Mr. Cohen had made an inquiry, his recollection was that it did not get to the point where any offer was even mentioned.

Sam Cohen. In testifying before the Committee Mr. Cohen, of Topeka, said that he had had a conversation with Robert Brandt some four to six weeks ago, during which he commented that if he were to make an offer for the New England Building it would be an offer of around \$400,000. His comment

was based on what type of an offer his organization would make for the building, not that the building could in fact be purchased for that price. He stated that there was no way for him to know what it could be purchased for since he had not made an offer.

Individuals Leasing Property in  
Topeka to State Agencies

The Committee heard testimony from sixteen individuals who were either owners or representatives of owners of property leased to the State in Topeka, Kansas. Essentially, all of these people said that they had not contacted nor had they been contacted by any member or the legislative or the executive branches of government relative to the proposed purchase of the New England Building and the adjacent property. In addition, none of these witnesses exhibited any knowledge whatsoever of improprieties in connection with the discussions surrounding the proposed purchase.

Legislators and Legislative Employees

Representative Richard C. Loux. Prior to answering questions, Representative Loux explained the background, as he understood it, leading to the introduction of H.B. 1568. He

said that during or after the latter part of November, he began to think about the need for more space in the Capitol building for legislative offices and he wrote a letter to Chairman Clyde Hill of the House Ways and Means Committee advising him of his concern over the need for more space. He later spoke with Speaker McGill about the possibility of acquiring more space. They decided to check into what might be available in this regard and they talked to Senator Bennett about the matter. The three of them decided to have more information developed in order that they could consider the matter further. He also responded, when asked, that the administrative assistants, who were developing background material for the drafting of a bill to authorize negotiations, at no time were involved in negotiations themselves for the purchase of the building.

Responding to a question regarding his knowledge of alleged improprieties on the part of members of the legislature or any of its employees, Representative Loux said that he had absolutely no knowledge of anything in that regard.

He was also asked whether he had any knowledge regarding pressure applied to the Governor to have H.B. 1568 vetoed. He replied that all he knew was that in his several conversations with Mr. Van Cleave, he, Loux, had been told of rumors to the effect that C. Y. Thomas and Mr. Harbes were involved as business associates and that the legislature should proceed very carefully

in order that "someone would not make a lot of money off the deal." Representative Loux said he checked into this report through Speaker McGill and President Bennett and, finding nothing, dismissed it as being completely fiction. He was asked if Mr. Van Cleave informed him at any point whether he, Van Cleave, had checked the story out. Mr. Loux replied that Van Cleave had never mentioned anything of that sort. When asked how many times Mr. Van Cleave told him of this particular rumor, he responded that it had been mentioned on several occasions. In fact, when questioned further, he said he thought the last time Van Cleave mentioned the rumor to him was the day of, or the day before, the Governor's veto of H.B. 1568. He also said he thought the first time Mr. Van Cleave had mentioned Harbes and the option to him was about a week after the bill had been introduced. Representative Loux said he told Mr. Van Cleave that he had checked to his satisfaction and found the rumor relative to Mr. Thomas and Mr. Harbes to be unfounded. He said that Van Cleave responded that he had heard the rumor from a confidential source to the effect that there was something wrong with the option and that there was a connection between Mr. Harbes and Mr. Thomas.

Representative Loux also indicated that he dismissed as political strategy the rumor Van Cleave had told him regarding Senator Thomas and Mr. Harbes. He said he did not mean "political" in the partisan sense, however. He related this fact to when the

First National Bank Building was being purchased and a number of people in the executive branch were unhappy about it because they viewed the purchase as a deterrent to the completion of the Capitol Plaza Area. He assumes the same feeling prevails with regard to the New England Building purchase proposal.

Under questioning, Representative Loux indicated that when they started to investigate the possibility of purchasing the New England Building they worked with their administrative assistants, Rex Borgen, C. Y. Thomas and Rick Gammill. He noted as things developed, the burden of the work fell to Mr. Thomas due in part to his vast business experience. He also indicated in the course of his testimony that Mr. Thomas had kept them informed of all events, including his discussions with Mr. Neiswanger and Mr. Harbes, and the fact that Mr. Harbes held an option on the building. He said that based upon the information received, they decided to have a bill drafted to authorize the Director of Architectural Services to proceed to acquire the building through negotiations. Representative Loux was asked if, when he heard of the option, it was of concern to him or not. He replied that it concerned him only insofar as it affected the state's ability to acquire the building. It did not raise in his mind the possibility of an irregularity.



At one point he was asked what his interpretation of H.B. 1568 was. He replied that, as he understood it, the control would remain with the executive branch, specifically with the Director of Architectural Services who was authorized and directed to acquire the building through negotiation. While the Director of Architectural Services was to consult with the advisory committee, the final decision would nevertheless be his. In essence, he said that under the bill the Director of Architectural Services could, if he wished, simply refuse to purchase the building.

Senator Jack F. Steineger. In response to questions, Senator Steineger said he knew of no impropriety on the part of anyone concerning the proposed purchase. In fact, he felt that he was so little involved that he would have no way of knowing of any such activity. He said that the Governor did not solicit his opinion on the veto of H.B. 1568; however, he was very sure that it would be vetoed. Senator Steineger said that he had told Democratic members of the legislature that he felt the bill should be vetoed on the basis of the questionable practice of buying old buildings. He also felt the proper course of action was to go ahead with the development of the Capitol Plaza area.

Representative Duane S. (Pete) McGill. Representative, McGill in his initial comments, referred to the content of his file on H.B. 1568. Basically, he said, it contained correspondence from himself and Senator Bennett to the Governor requesting a visit with him after he vetoed H.B. 1568 and replies from Mr. Van Cleave and Mr. Matlack to the effect that the Governor would not be available to discuss the veto with them but that they, Van Cleave and Matlack, would be.

In response to a question, he said that he first came to have something to do with the possible acquisition of the building in late December or the first part of January when he discussed the possibility with Representative Loux. Upon pursuing it further sometime during January with Senator Bennett, he and Senator Bennett agreed that they were too busy themselves and they directed former Senator C. Y. Thomas and former Representative Rex Borgen to pursue the matter. They were instructed to determine whether the building was available, under what conditions it could be acquired and whether the matter should be pursued further. Senator Thomas reported to them on a regular basis, keeping them informed of the developments as they occurred, including the fact that Harbes held an option on the property. Representative McGill said he personally had no contact with either the owners or Mr. Harbes. He also said he was not contacted by anybody from the

Governor's office on the matter until the day of the veto message when former Representative Van Cleave suggested to him that they should not attempt to override the veto. He said that when he asked Mr. Van Cleave if he had any information regarding impropriety, he received no response.

When questioned as to whether he thought the veto message was peculiar, he responded that it was quite unusual inasmuch as he couldn't relate it to the bill it was vetoing. The implication of the message was that a group of legislators were going to acquire the building, but the bill does not provide for that. He said that under the proposed bill, the state architect was directed to negotiate to acquire the property and in no way was the power of the executive branch limited by the bill.

When asked whether he supported H.C.R. 1056, he responded in the affirmative. And further, when questioned, he said it was his impression that the Governor's veto message requested an investigating committee such as the present one.

In response to a question as to whether or not there were any improprieties on the part of Mr. Borgen or Mr. Thomas, he replied "Absolutely not." He said that Senator Bennett had advised him that when he, Bennett, had contacted the Governor's office to see if they had any information the legislative leadership did not have concerning any wrongdoing or impropriety, the Governor's office produced no information.

Senator Robert F. Bennett. Senator Bennett began by explaining to the Committee the extent of his participation in the proposed purchase of the New England Building. He said he became aware of the possibility in the early part of the legislative session when he spoke with Speaker McGill on the matter. It was not discussed again until shortly before or on the day that Senator Thomas came to work for him when he and the Speaker turned the matter over to former Representative Borgen and former Senator Thomas to begin to put the necessary information together. He indicated, according to a memorandum that Senator Thomas had prepared for him, this assignment occurred on January 16, 1973. He told Senator Thomas that there were several questions that needed to be answered. First of all, was it a good buy, and secondly, if it was, should the legislature proceed to acquire the property. If so, what kind of authority should be included in the authorizing legislation. He said he further told Mr. Thomas that if, in pursuing the matter, he was satisfied that it was a good buy he should also try to decide what purchase price might be ultimately suggested as they would need a clear idea of what the total cost would be.

He went on to note that about the time they were considering the introduction of a bill, a reporter, he couldn't recall who, asked at one of their press conferences whether there were any improprieties relating to the proposed purchase.

When Senator Bennett asked where he heard that, the reporter replied that Mr. Van Cleave had told him. At that point, they did not pay a good deal of attention to it. But later that day, Van Cleave approached him and asked whether or not he knew just what all was involved in the proposed purchase. When he asked Van Cleave for any hard facts or figures with regard to what he was implying, he got no answer.

Senator Bennett also said that at a gathering the evening before the Governor vetoed the bill, Representative Van Cleave told Senator Harder that there was going to be a "substantial scandal" of some sort involving Senator Thomas the following day when the Governor vetoed the bill. As a result of this conversation, Senator Harder called Senator Bennett and Senator Bennett told him that he was sure that it was more of Van Cleave's rumors. But Senator Harder was concerned enough that he asked Senator Bennett to call Mr. Thomas and to ask him to be absolutely sure that there wasn't, coincidentally, some association between him and any of the principals involved with the building. Senator Bennett said he did place such a call and Mr. Thomas assured him that there was nothing.

In response to questioning, he indicated that he felt the Committee was established as a direct result of the Governor's request in his veto message. He further felt that when "you combine the rumors that were being spread by Mr. Van Cleave

with the last paragraph of the veto message", there certainly seemed to be an implication that some sort of impropriety was involved. That, and the Governor's refusal to speak with him and Speaker McGill further clouded the issue in his mind.

Senator Joseph C. Harder. Senator Harder, Majority Leader of the Kansas Senate, told the Committee that he really had very little knowledge of the proposed purchase of the New England Building other than being aware of who, on behalf of the legislature, was involved in gathering information. He noted that he knew that former Senator C. Y. Thomas had been asked by the President of the Senate to look at the building and report to him concerning it. Other than that, he said he had little first hand information.

Rex Borgen. Former Representative Borgen explained that the charge, as he understood it, to himself and C. Y. Thomas was to develop some realistic figure at which the building might be acquired. They were not engaging in any negotiations because there were none to be made, as he put it. They were also asked to develop information as to who owned the building and at what sort of figure they might be willing to sell. He said the only owner he contacted personally was Southwestern Bell Telephone. He stated in response to a question that he knew of no improprieties on the part of anyone in the legislature or employed by it, with

regard to the proposed purchase. He also said that he had not been the subject of any pressure from anyone in the legislature or anywhere else.

Rick Gammill. Mr. Gammill who had been, until a little after the first of March, an administrative assistant to Representative Pete Loux testified that he had very little knowledge about the proposed purchase. On one occasion, he had gone with former Representative Rex Borgen, former Senator C. Y. Thomas and Representative Pete Loux to look at the New England Building during the latter part of February, but the possible purchase was not discussed in his presence. He told the Committee that on one occasion, he had been asked by Representative Loux to inquire of former Senator Thomas as to whether a copy of the option on the building could be obtained. He was to deliver this copy to Mr. Van Cleave. However, Mr. Thomas did not have a copy and he, Gammill, notified Mr. Van Cleave to that effect.

C. Y. Thomas. Prior to reading the statement he had prepared, Mr. Thomas, who had been serving as Senator Bennett's Administrative Assistant, explained that prior to his retirement eight years ago, he had been the manager of a \$35 million ordnance works and after they set up their chemical company, he was vice-president of operations. More importantly, he thought, he supervised their construction subsidiary during the fifteen years prior to his retirement. Having indicated his background he



read portions of a memorandum he had written to **chronicle** his knowledge of the events surrounding the proposed purchase.

Senator Thomas noted that on January 16, 1973, the day after he reported for duty as Senator Bennett's Administrative Assistant, he was advised of the leadership's interest in the New England Building and he was instructed to represent Senator Bennett in meetings regarding this subject.

On January 17, he made his first inquiries at the Merchant's National Bank, during which time he learned that Mr. Neiswanger was the managing agent for the New England Building. At that point, he contacted Mr. Neiswanger and learned from him that Mr. John F. Harbes had a valid option on the property.

On January 23, 1973, Mr. Neiswanger arranged for a meeting between Senator Thomas and Mr. Harbes in Mr. Neiswanger's office. This was the first time that he, Thomas, had met Mr. Harbes. At that time, they discussed the New England Building and identified the adjacent property and the owners. The next day, Mr. Harbes met with Senator Thomas in his office and delivered a report describing the building in some detail.

Senator Thomas also testified that by this time, what had started out as a committee of six men had dwindled down to the point where he was pretty much responsible for the whole

affair. On February 19, he had another meeting with Mr. Harbes to get more information. Much of the information he asked for was forwarded to him in a letter by Mr. Harbes the next day. Based on this information, Senator Thomas developed a figure of \$590,000 which he settled on as a reasonable estimate of the value of the New England Building and the property on which it is located.

Then on March 2, Mr. Borgen and Mr. Harbes met with him for the purpose of finalizing the preliminary estimate of the costs involved in acquiring and refurbishing the property. It was on the basis of these discussions and deliberations that the figure of \$1.3 million for the entire project was arrived at.

Senator Thomas said he constantly made clear to those he spoke with that he was not negotiating with anyone, but merely getting together figures on which a bill could be based.

Senator Thomas noted that on March 15, he was advised by Senator Bennett that former Senator Don Matlack had told Senator Bennett about alleged irregularities in the project. Senator Thomas noted that he was the one that had the file but he had never been asked by anybody in the Governor's office for facts concerning the proposed purchase. In response to questions, Senator Thomas reaffirmed that at no time did Mr. Van Cleave ever try to get a copy of the option from him nor did he talk to him about any part of the whole affair at any time.

Findings of Fact

1. At the request of the legislative leadership, including Representative Pete Loux, Mr. C. Y. Thomas and Mr. Rex Borgen undertook to ascertain whether the New England Building and adjacent real estate could be purchased and to ascertain a realistic price therefor.

2. Mr. John Harbes had, for in excess of one year, been working on a proposal whereby he would acquire title to the New England Building and renovate and modernize the same.

3. While the owner of the New England Building and Mr. Harbes did not sign a formal option until about January 5, 1973, a verbal agreement had been reached in September, 1972, and Mr. Harbes had expended considerable time and effort with respect to his plans for renovation. This included cash flow projections and the exploration of financing of the project.

4. Mr. C. Y. Thomas and Mr. John Harbes had never met until January 23, 1973, when they were introduced by Mr. David Neiswanger at the latter's office. Messrs. Thomas and Harbes have had no past business connections of any kind or type.

5. The Neiswanger Company, Inc. has had an exclusive real estate broker's listing for the sale or lease of the New England Building since 1967. Despite certain undocumented

testimony that the property could have been purchased for \$400,000, the Committee accepts the testimony of Mr. Neiswanger that the listing price was \$600,000 and that the building was offered at no other price. Harbes' option at \$500,000 was granted by the owner.

6. No owner presently renting space to the State of Kansas who was subpoenaed by the Committee exerted any influence resulting in the veto of H.B. 1568. Likewise, no agency heads or their appointees who were subpoenaed exerted any such influence.

7. There is no evidence of impropriety or irregularity on the part of any member of the Kansas Legislature, or employee of the legislative branch concerning the subject of H. B. 1568.

8. There is no evidence of impropriety or irregularity on the part of Mr. John Harbes or any owner or agents of the New England Building Company.

9. The testimony of Mr. Thomas M. Van Cleave, Jr. contained inconsistencies and conflicts when measured against the testimony of other witnesses.

10. Mr. Thomas M. Van Cleave, Jr. did, on April 11, 1973, after the conclusion of the first day of testimony, approach Senator John Simpson, a member of the Committee, suggesting that Mr. John Harbes had an option to purchase a tract of land being considered for state purchase as the site of the Historical Society Building. By Mr. Van Cleave's own testimony on April 12, 1973, there was no basis in fact for Mr. Van Cleave's suggestion.

11. Mr. Van Cleave testified before the Committee (1) that he investigated the story of the prior business association of Messrs. Thomas and Harbes in late February or early March; (2) that he found said story to be false; and (3) that he did not repeat said story. Despite said testimony by Mr. Van Cleave, the Committee finds, based primarily upon the testimony of Representative Loux, Senator Bennett, and Mr. Thomas, that Mr. Van Cleave did, in fact, repeat said story, and continued to disseminate unfounded rumors and innuendo, with the apparent intent to insure the veto of H. B. 1568 and to secure the sustaining of said veto by the legislature.

#### Conclusion

It is the earnest hope of the Committee that its findings of fact will erase the unjust and unfounded rumor which indicated some impropriety on the part of former Senator C. Y. Thomas. We trust that this report will remove any possible doubt harbored by any person as to his integrity.

On the other hand, we are compelled to conclude that the pattern of behavior of Mr. Van Cleave, as it unfolded before the Committee, was unwarranted. Such conduct, in light of the conflicts in his testimony with that of other witnesses, would seem to have exceeded the scope of duties appropriate to a legislative liaison representative of the Chief Executive of the State.

APPENDIX

Witnesses Subpoenaed for the April 11-12, 1973 Hearing

Executive Branch Employees

Robert F. Brandt, Secretary  
Department of Administration  
Second Floor - State House  
Topeka, Kansas

Don Matlack  
Governor's Office  
Second Floor - State House  
Topeka, Kansas

Kenneth R. McLain, Director  
Division of Architectural Services  
Department of Administration  
12th Floor - State Office Building  
Topeka, Kansas

Tom Van Cleave  
Governor's Office  
Second Floor - State House  
Topeka, Kansas

Robert W. Wolfe  
State Fire Marshal  
211 West 7th Street  
Topeka, Kansas

Owners of the Property Proposed for  
Purchase

Robert Buntten, Sr.  
Merchants National Bank  
8th and Jackson Streets  
Topeka, Kansas

Stephen M. Hall  
Merchants National Bank  
8th and Jackson  
Topeka, Kansas

William M. Hall, Treasurer  
RFD 1  
Topeka, Kansas

Owners of the Property Proposed for  
Purchase (Cont'd)

Max Klein  
Southwestern Bell Telephone Company  
823 Quincy Street  
Topeka, Kansas

Ron Lierz, Secretary  
2232 Edgewater Terrace  
Topeka, Kansas

Don A. Williams, President  
5437 West 12th Street Terrace  
Topeka, Kansas

Other Private Individuals Involved With  
the Proposed Purchase

Sam Cohen  
530 Danbury Lane  
Topeka, Kansas

John Harbes  
1730 High Street  
Topeka, Kansas

David Neiswanger  
Neiswanger Company, Inc.  
503 Kansas Avenue  
Topeka, Kansas

Robert C. Taggart  
2101 Wildwood Lane  
Topeka, Kansas

Individuals Leasing Property in Topeka  
to State Agencies

L. M. Ascough  
Room 300  
701 Jackson Street  
Topeka, Kansas

S. N. Belden, Treasurer  
The Mills Building Co.  
109 West 9th Street  
Topeka, Kansas

Individuals Leasing Property in Topeka  
to State Agencies (Cont'd)

John L. Casson  
603 Topeka Avenue  
Casson Building  
Topeka, Kansas

John D. Dunigan  
1320 North Kansas Avenue  
Topeka, Kansas

H. W. Gerlach, President  
Crestwood Investment Co., Inc.  
3300 West 29th Street  
Topeka, Kansas

Robert C. Guthrie  
Vice-President and Trust Officer  
Trust Department  
The First National Bank Of Topeka  
534 Kansas Avenue  
Topeka, Kansas

William R. Kiene, Secretary/Treasurer  
Sunflower Building Corporation  
925 First National Bank Building  
Topeka, Kansas

Lawrence Litwin  
Business Real Estate, Inc.  
451 East 29th Street  
Topeka, Kansas

Edmund N. Morrill  
Senior Vice-President  
Capital Federal Savings and Loan Association  
700 Kansas Avenue  
Topeka, Kansas

Thomas M. Pickford, District Manager  
Armco Steel Corporation  
3420 Van Buren Street  
Topeka, Kansas

J. David Rasure, Building Manager  
The First National Bank of Topeka  
534 Kansas Avenue  
Topeka, Kansas



Individuals Leasing Property in Topeka  
to State Agencies (Cont'd)

Bill Rinner, President  
Rinner Construction Corporation  
234 Kansas Avenue  
Topeka, Kansas

E. O. Royer, Assistant Vice-President  
and Trust Real Estate Officer  
The First National Bank of Topeka  
534 Kansas Avenue  
Topeka, Kansas

J. O. Walker, President  
The Pelletiers Stores Company  
901 Kansas Avenue  
Topeka, Kansas

L. Duane Walrafen  
Vice-President  
Kansas Power and Light Company  
818 Kansas Avenue  
Topeka, Kansas

M. O. Wray, Manager  
Kansas Highway Credit Union  
1010 Tyler Street  
Topeka, Kansas

Legislators and Legislative Employees

Senator Robert Bennett  
5315 West 95th Terrace  
Shawnee Mission, Kansas

Rex Borgen  
Asherville, Kansas

Rick Gammill  
1121 Locust Street  
Eudora, Kansas

Senator Joseph Harder  
P.O. Box 317  
Moundridge, Kansas

Legislators and Legislative Employees (Cont'd.)

Representative Pete Loux  
237 South Custer Street  
Wichita, Kansas

Representative Duane S. McGill  
1313 East 12th Street  
Winfield, Kansas

Senator Jack Steineger  
6400 Valley View Road  
Kansas City, Kansas

C. Y. Thomas  
5519 East Mission Drive  
Shawnee Mission, Kansas