

~~P R E L I M I N A R Y~~  
M I N U T E S

LEGISLATIVE BUDGET COMMITTEE

July 10, 1975

The Legislative Budget Committee convened at 10:00 a.m. in Room 510-S of the State House on July 10, 1975. All members were present except Senator Doyen, who arrived during the afternoon session. Staff members in attendance all or part of the time were Fred Carman, Arden Ensley, Ed Ahrens, Dr. Drury and R. W. Ryan.

Minutes of Last Meeting

The minutes of the meeting held on June 12, 1975, were approved without change.

Proposal No. 31 - State General Fund

The staff reviewed the preliminary and incomplete report on general fund receipts in FY 1975 which was mailed to the Committee on July 1. When the final report is prepared on receipts in FY 1975, Senator Steineger suggested that references be made to the inflation rate and Representative Lady requested that data be included to show the trend of receipts over the past several years.

Senator Steineger also requested the staff to explore the possibility of using charts, with overlays, when future monthly reports are presented on general fund receipts.

Proposal No. 32 - Investment of State  
Moneys

Five items in the Committee notebook were presented by Mr. Ryan. These are a memorandum on the History of Interest Rates on State Active, Inactive, and Time Deposit Bank Accounts, dated July 2, 1975, and four tables showing the average daily balance in state active accounts in the months of January through June of 1975, the amounts in time deposit/open accounts in calendar year 1975 to date, the average yield on 91-day U.S. treasury bills each week from March 14, 1974 through July 10, 1975, and data on repurchase agreements under 1975 S.B. 53 from May 6, 1975 through July 9, 1975.

Mr. Ryan also informed the Committee that the interest rate on state inactive accounts will be 5.39% for the quarter beginning August 1, 1975. (The rate for the period February 1, 1975 through July 31, 1975 is 7.36% on deposits of \$100,000 or more and 6% on deposits of under \$100,000.)

County Equalization and Adjustment  
Fund

Dr. Drury discussed the background of the creation of the County Equalization and Adjustment Fund in 1970 when revisions were made in the formulas for distribution of motor fuel taxes to local units of government. He explained that the Fund was established as sort of a "grandfather clause" so that counties (primarily rural) would not receive less under the new distributions than they did under the former formulas. It was estimated during the 1970 session that \$2.5 million would be sufficient to finance the "grandfather clause" fully, based on the data prepared at the time to estimate the effects of the new distribution formulas. Each annual distribution of the Fund in 1971 through 1975 was made according to the way the formula was explained in 1970.

Dr. Drury referred to the recent opinion of the Attorney General (a copy was given to the Committee members at the meeting on June 12) which, in effect, said that the precise language of K.S.A. 79-3425c(b) does not provide for distribution of the Equalization and Adjustment Fund in the manner which apparently was intended when that Fund was created in 1970. The potential consequences of the defective language are indicated in a letter dated July 8, 1975, from Lyell Ocobock of the State Treasurer's office to Richard Ryan, a copy of which was given to the Committee and was discussed by Dr. Drury.

Mr. Ensley distributed a draft bill, as requested by the Committee on June 12, to correct the deficient language of the statute in question and to ratify all prior distributions made from the County Equalization and Adjustment Fund. He advised the Committee that the draft bill was reviewed by John Martin of the Attorney General's office and the only change he suggested was incorporated in Section 2.

Representative Lady moved that the bill be approved and be pre-filed in the House of Representatives. The motion was seconded by Senator Rogers and carried without dissent.

State Architectural Advisory Committee

The Committee considered the reports from the director of architectural services dated June 12 and July 2 re change.

orders on state building projects. Concerning the report of June 12, the Committee decided to defer action until the subcommittee could explore the change order of \$37,884 relating to interior marble work for the Supreme Court building. There was no change order over \$25,000 in the report of July 2.

### Governmental Immunity

Conferees representing the Committee on Surety Bonds and Insurance were Don Hoffman, Attorney General's office; Larry Barry and Ray Rathert, Insurance Department; and Jim Tolbert, Purchasing Division.

Mr. Ryan mentioned that the following items are in the Committee notebook: the Notice to Bidders, dated June 18, 1975, inviting bids on a comprehensive liability insurance contract covering all state agencies; a memorandum of the Attorney General's office dated July 1, 1975, listing 120 active cases against state agencies or employees seeking money damages; and a staff memorandum dated July 10, 1975, outlining in general terms possible alternative courses of action that the Committee might consider in light of the recent decision of the Kansas Supreme Court in Brown, et al v. Wichita State University.

Mr. Hoffman then reviewed the role of the Committee on Surety Bonds and Insurance (hereafter referred to as CSBI) in purchasing various types of insurance coverages for the state and its agencies and employees. He said that the CSBI has received numerous requests from state agencies to purchase liability insurance covering individual employees and that it was in the process of preparing an invitation to bid on such insurance before the decision was handed down in the WSU case. Shortly thereafter, the proposed contract was expanded to include the state itself, i.e., all state agencies, in light of the WSU case, and invitations to bid thereon were sent out on June 18. No bids were received at the scheduled opening on July 2. Mr. Hoffman thought that the reason no bids were received was because it was a unique contract involving very broad coverage and a huge potential risk.

The next step, Hoffman said, will be for the CSBI to attempt to negotiate an insurance contract, which can be done under existing law. He indicated that the state will have to settle for less coverage than provided in the proposed contract for which no bids were received, e.g., elimination of coverage of reservoirs and medical malpractice and consideration of a deductible clause. He thought negotiations would begin soon, but no contract would be signed without a consensus of the appropriate executive and legislative leaders. In addition to the need for coverage arising out of

the WSU case, Hoffman said the CSBI has interpreted KSA 75-4114, as amended in 1974, as a direction from the legislature to the CSBI to purchase liability insurance.

Even a negotiated policy would be expensive, Hoffman said, because state liability insurance of the type needed is difficult to rate and there has been no experience with such a policy. He and other conferees made a rough guess that the annual premium would be at least \$2.5 million, but it could be substantially more.

A question was raised as to how such a premium would be paid for. Hoffman said it would be prorated among the state agencies covered by the policy. Both Speaker McGill and Representative Lady pointed out that there was no appropriation specifically for such purpose. Even if the expenditure could be made legally, they questioned whether it would be good public policy to do so in the absence of express legislative approval.

There was discussion about whether or not a special session of the legislature might be necessary to specifically authorize expenditures for liability insurance and to enact some type of substantive legislation re governmental immunity, such as a tort claims act. Both Hoffman and Barry said they thought valid substantive legislation could have a favorable impact on the cost of liability insurance, the question being whether such impact would be immediate or prospective.

Hoffman mentioned the possibility that a statutory limit on money damages that could be paid by the state and local units would run the risk of being held invalid by the courts because there would be a difference between damages that could be awarded to persons injured by governmental entities and persons injured by non-governmental parties or firms. On the other hand, he said if a reasonable limitation were applied uniformly to state and local government it could be argued under the WSU case that such a limitation would be valid.

Hoffman referred to the fact that for many years the state has had liability insurance covering motor vehicles, but now in view of the WSU case and under present statutes the state could be liable for more than the insurance coverage if a proprietary function of the state is involved. The problem is trying to determine what are governmental functions and what are proprietary functions. The Court, in the WSU case, did not abolish immunity re governmental functions, but it apparently expanded the scope of functions that will or could be considered proprietary in nature.

Speaker McGill asked Mr. Hoffman if he had a specific suggestion as to what should be done. In reply, Hoffman said he thought (1) the state should try to obtain liability insurance from the private sector and (2) that a law should be enacted providing that

the state is immune re governmental functions and that immunity is not waived for such functions if the state obtains commercial liability insurance coverage. Hoffman thought that, over a period of time, the cost of insurance would decrease as experience showed the state is not actually liable for torts to the degree some people might think and as the distinction between governmental and proprietary functions becomes more clear in future court decisions.

Representative Buntten asked who would defend the state if commercial liability insurance is obtained. Hoffman replied that the defense should be coordinated between the attorneys for the insurance carrier and the Attorney General's office. That office should be involved, particularly when a state law is challenged as is often the case when the state or its agencies or employees are sued for money damages for alleged torts.

Mr. Ensley then discussed some of the legal aspects of the WSU case and reviewed the memorandum of July 10 re possible alternative courses of action. In connection with the latter, he stressed the point that the Committee should keep in mind that local units could be involved in certain of the alternatives and that there are vast ramifications of attempting to deal with both the state and its local units in response to the WSU case. The memorandum states, in part, that "It would appear that any deviation from a uniform application of the doctrine of governmental immunity to the state, its agencies and its political subdivisions must be for a necessary and reasonable public purpose and applied on the basis of a reasonable classification."

Representatives of the CSBI were requested to explore what effect enactment of substantive legislation, either a tort claims act or Hoffman's proposal, would have on the cost of liability insurance in their negotiations with private carriers and to report back to the Committee. They thought there could be something to report on in approximately two weeks. Speaker McGill said there might have to be a special meeting of the Committee before the next regular meeting to consider such report and whether or not a special session of the legislature would be required.

Speaker McGill asked the Revisor's office to begin work on draft bills re alternative courses of action for consideration by a special session, if called, or by the Committee if a special session is not held.

#### Plans for Meeting on August 7

The next regular meeting is scheduled on August 7. It was decided by the Committee that the agenda should include the



monthly staff reports on Proposals No. 31 and 32, preliminary consideration of Proposal No. 33 re Administrative Rules and Regulations, and further consideration of Governmental Immunity.

Prepared by Richard Ryan

Approved by Committee on:

\_\_\_\_\_ Date