

M I N U T E S

LEGISLATIVE BUDGET COMMITTEE

September 4, 1975

The Legislative Budget Committee convened at 10:00 a.m. on September 4, 1975, in Room 510-S of the State House. Senator Doyen, the vice-chairman, presided. Also present were Representatives Bunten and Lady and Senator Steineger. Staff members in attendance were Fred Carman, Arden Ensley, R. W. Ryan and Ed Ahrens.

Minutes of Last Meeting

The minutes of the meeting held on August 7 were approved without change.

Proposal No. 31 - General Fund  
Receipts

The staff presented an oral report on general fund receipts in July and August. Based on preliminary figures and excluding agency earnings and miscellaneous revenue, receipts in the first two months of FY 1976 were about \$3.2 million, or 3.1%, over the budget estimate. (A written report on receipts through August will be prepared for the Committee when the final and complete figures become available.)

Proposal No. 32 - Investment of  
State Moneys

Lyell Ocobock, special assistant to the state treasurer, was the conferee on this proposal.

Mr. Ryan and Mr. Ocobock discussed the tables in the Committee notebook on active accounts and inactive accounts awards for the period August 1, 1975 through July 31, 1976; on the average daily balance in active accounts in the first eight months of 1975; on deposits in TD/OA's in 1975 to date; on the average yield on 91-day treasury bills from March 14, 1974 through September 4, 1975; and on repurchase agreements made under 1975 SB 53 from May 6 through September 3, 1975.

In response to a question by Senator Doyen, Mr. Ocobock said that the state moneys law as amended by 1975 SB 53 has been working satisfactorily and that there are no administrative or mechanical problems with respect to repurchase agreements under that bill. At first, the state was receiving only a joint custody receipt for the securities obtained under repurchase agreements. That was not considered to be adequate, so the state has arranged for a safekeeping account with the Federal Reserve Bank in Kansas City. Now, the state treasurer's office receives a safekeeping receipt for the securities, which can be released only on the signature of the state treasurer or Mr. Ocobock.

Mr. Ryan pointed out that 1975 SB 53 and SB 54 authorized repurchase agreements with respect to a number of different state accounts or funds, but not for the Federal Revenue Sharing Fund. The staff was directed to draft a bill adding repurchase agreements to the list of authorized investments of that Fund, on the same basis as provided in SB 53 and SB 54.

#### County Equalization and Adjustment Fund

A draft of a final report concerning the County Equalization and Adjustment Fund was approved by the Committee without change. The Committee had decided on its recommendations and approved a draft bill on this subject at the meeting held on July 10.

#### Proposal No. 33 - Administrative Rules and Regulations

Mr. Ensley discussed materials he prepared concerning present requirements and procedures for adoption of administrative rules and regulations. (Copies are in the Committee notebook.) He said there are three main areas of concern: (1) mechanical problems caused by the time frame relating to the filing and effective date under present law, (2) a question as to which agency should be responsible for administration of the rules and regulations law, and (3) potential problems involved in complete republication of the rules and regulations.

With regard to the time frame, Mr. Ensley noted that the requirements for filing between May 1 and August 1 and for taking effect the following May 1 will encourage "emergency" regulations due to that lengthy interval and to the fact that most laws take effect on July 1. It is virtually impossible to complete the required procedures between July 1 and August 1.

Ensley suggested that the duties now performed by the Revisory of Statutes' Office are more appropriately a function of an agency in the executive branch, such as the Department of Administration, because administrative rules and regulations relate to the operations and programs of executive-branch agencies. Senator Steineger thought that transferring the Revisor's present function to an executive agency is a good idea because such an agency could review rules and regulations and eliminate unnecessary provisions, thereby reducing the quantity. In that connection, Mr. Carman reported that the rules and regulations contain approximately 2.1 million words, or about half of the total words in the Kansas statutes.

Representative Lady said that the Committee should not ignore the legislature's interest in making certain that the rules and regulations conform with legislative intent. It was generally agreed that some form of legislative oversight and review should be continued if an executive agency is given responsibility for the rules and regulations.

Tom Pitner, attorney for the Department of Administration, indicated that he agreed with the philosophy that responsibility for general administration of rules and regulations is an executive function and with the point that the volume of rules and regulations could be reduced. He was uncertain where that function should be located in the executive branch, noting that costs would be incurred if the function were transferred from the Revisor. Mr. Ensley said that if no change is made costs would increase anyway because the Revisor's office cannot do an adequate job in processing the rules and regulations under present procedures.

Representative Lady moved that (1) the Revisor's office be relieved of its present duties with regard to rules and regulations, (2) the staff draft alternatives for review and screening of the rules and regulations by an executive agency, with some form of continued legislative oversight, and (3) the staff prepare suggestions for revision and clean-up of the rules and regulations law. The motion was seconded by Senator Steineger and it was adopted.

### Governmental Immunity

Conferees from the Insurance Department were Mike Mullen, Larry Barry, Nancy Scherer, and Richard Brock. Mr. Mullen presented a "Proposed Kansas Tort Claims Act and Outline," a copy of which was given each Committee member. This draft, patterned after the New Jersey law, would establish immunity as the general rule, makes an exception so that liability would apply to the same extent as to a private individual in like circumstances, and lists or classifies a number of functions as "governmental activities" to which liability would not apply.

Both Mr. Mullen and Mr. Barry stressed that the draft prepared by the Insurance Department is only one possible approach to the problem arising from the Kansas Supreme Court's recent decision in Brown v. Wichita State University. Other approaches include establishing a liability rule with certain exceptions and adapting the Federal Tort Claims Act to Kansas. Mr. Barry also pointed out that the Insurance Department's draft does not speak to "funding" arrangements to cover liability of governmental entities and their employees, e.g., commercial liability insurance, self-insurance, or legislative appropriations to pay claims or judgments.

Mr. Ensley, in commenting on the proposed draft, said he thought not much would be gained by the use of a number of narrow classifications instead of a broad classification because the Supreme Court in effect held that the Kansas law struck down denied the right of persons to have their day in court to determine liability. The invalidated law was said to be arbitrary by the Court in that the state government was not liable for proprietary functions while local governments are.

Ensley indicated that a law along the lines of the Federal Tort Claims Act would be more responsive to the Brown case. That is, if a private individual or firm is liable, then the state and local governments and their employees would be liable in like circumstances. He also noted that some states have imposed dollar limitations on governmental liability in their tort claims or immunity laws, as well as imposing procedural requirements with respect to filing claims. Senator Steineger questioned whether Kansas could lawfully establish dollar limitations restricting money damages levied against governmental entities or employees, when no such limitations apply to private individuals or firms.

After further discussion of which approach would be the best one for Kansas to adopt from a legal standpoint, it was agreed (at the suggestion of Representatives Bunten and Lady) that the Legislative Coordinating Council should be requested to create a Special Committee consisting mainly of lawyers to study the matter and to draft an appropriate tort claims bill.

#### Architectural Services Advisory Committee

No change orders of over \$25,000 were submitted for Committee consideration by the Division of Architectural Services.

#### Plans for Next Meeting

The next meeting of the Committee is scheduled on October 2. It was decided that the agenda for that meeting should include

monthly staff reports on Proposals No. 31 and 32, Proposal No. 33 - Administrative Rules and Regulations, Proposal No. 34 - Rules of the Legislature, and Proposal No. 35 - Recall of Public Officials.

Prepared by Richard Ryan

Approved by Committee on:

Oct. 2, 1975  
Date