

M I N U T E S

LEGISLATIVE BUDGET COMMITTEE

August 5, 1976

The Legislative Budget Committee convened at 10:00 a.m. on August 5, 1976, in Room 510-S of the State House. All members were present except Representatives Carlin and Lady. Staff in attendance all or part of the time were R. W. Ryan, Fred Carman, Arden Ensley, Jim Wilson, and Ed Ahrens.

Morning SessionMinutes of Last Meeting

The minutes of the meeting held on June 10 were approved without any changes.

Proposal No. 50 - Legal Defense of Government
Employees

Conferees were Don Hoffman, Attorney General's office; E. A. Mosher and Frank Bien, League of Kansas Municipalities; John Dekker, city attorney of Wichita; and Arvid Jacobson, attorney, Kansas Association of School Boards.

Arden Ensley briefly explained two bills which are in the Committee notebook -- 1976 H.B. 3240, which was enacted, and 1976 H.B. 2685, which passed the House but died in the Senate Judiciary Committee after the Kansas Supreme Court handed down its decision following the rehearing of the Wichita State University case concerning governmental immunity. Mr. Ensley said the present policy issue relating to H.B. 2685 is whether or not the state and local units of government should provide for legal defense of their officers and employees and pay judgments against them, regardless of the governmental immunity issue.

Don Hoffman said legal defense of public offices and employees is still a serious problem. He guessed that roughly 350 cases are pending against state employees and stated that new cases are filed almost daily. Handling these cases, including many which apparently have little or no merit, is time consuming and costly. The Attorney General's office has five attorneys in its litigation section, but his office is assisted on certain cases by staff attorneys of agencies in which a defendant is employed.

Mr. Hoffman suggested that K.S.A. 75-4356 et seq. (a copy of which was given to the Committee) may have been overlooked when H.B. 3240 and H.B. 2685 were drafted and considered. He said that K.S.A. 75-4356 is a broad statute providing for legal defense of public employees and that under this statute the policy of the Attorney General is to defend all state officers and employees regardless of department or agency in which they work and regardless of the accusation. He also said that the final decision in the Wichita State University case has little or nothing to do with possible individual liability of public employees because that case dealt with the question of immunity of governmental entities as such.

In response to a question about the need for further legislative action, Mr. Hoffman replied that special legislation such as H.B. 3240 should be repealed and it is not necessary to enact H.B. 2685 because of the existence of K.S.A. 75-4356 et seq. However, there still is a problem relating to payments of costs of legal defense and of judgments. The 1976 Legislature appropriated \$30,000 for defense of state officers and employees pursuant to K.S.A. 48-241a and 75-4360, as amended by 1976 H.B. 3240. He urged that no consideration be given to using moneys in the Attorney General's antitrust special revenue fund for the purpose of defending state employees because that would weaken antitrust activities.

Senator Steineger asked whether or not purchase of liability insurance covering state officers and employees is a viable option. Mr. Hoffman said it might be, but this type of coverage is expensive. The Committee on Surety Bonds and Insurance had negotiated a policy in 1975 covering both the state as an entity and its employees for a premium of approximately \$2 million. He noted that this policy was not consummated and that at present there is no need to cover the state as an entity.

Mr. Mosher reported that he and a small group of attorneys representing cities, counties, and school boards met on August 4 to discuss Proposal No. 50 and H.B. 2685. He said that they agreed there is a serious need for uniform legislation covering defense of and judgments against local public employees. There is increasing anxiety at the local level, particularly by elected officials and administrative officers. The group which met on August 4 concluded that H.B. 2685 is totally unacceptable, especially because it would make local governments liable for judgments against their employees.

It was proposed by Mr. Mosher that (1) all local units should be required to provide legal defense for their officials and employees in cases where an alleged wrongful act or omission was within the scope of public employment and (2) local governing bodies be granted discretion to pay all, part or none of a judgment against their employees. He specifically suggested that K.S.A. 75-4356 be amended to (1) make the statute applicable to all local units, and all officers and employees, (2) mandate providing legal defense, and (3) allow discretion regarding payment of judgments. As to the latter, he said several methods of funding such payment should be considered, e.g., liability insurance, self-insurance, and a tax levy which would be exempt from the property tax lid law.

John Dekker stressed the large amount of work involved by his office in suits brought against city employees, even though many cases may not be a serious threat. Wichita provides a defense for any employee who so desires, except police officers confronted with a criminal charge.

Concerning the matter of obtaining liability insurance, Mr. Dekker said it has not been possible to buy such insurance that is worth the money. He commented that the International City Managers Association recently reported that, based on an actuarial investigation, it would not recommend any of three liability insurance policies that had been drawn for possible use by cities.

Mr. Dekker made several suggestions relating to prospective legislation in Kansas: (1) local units should defend even against allegations of willful and wanton action because many cases include such allegations and to not allow public defense of such action would be detrimental to many innocent employees, (2) local units should be authorized to establish a trust or self-insurance fund for payment of judgments against their employees, (3) efforts should be made to reduce the number of law suits filed against public employees if this can be done legally, and (4) consideration should be given to the multi-jurisdictional problem, i.e., cases against public employees being filed in more than one jurisdiction -- federal, state, etc.

Frank Bien stated that H.B. 2685 is objectionable for the reason given by Mr. Mosher and also because it effectively eliminates governmental immunity and immunity for certain officers as it now exists. He agreed that amendments to K.S.A. 75-4356, as outlined by Mr. Mosher, would cover local units adequately.

Representative Buntin urged the Committee to give attention to possible means of discouraging cases which lack merit being filed against public employees. H.B. 2656, which he introduced in 1976, would have authorized the award of attorney's fees in civil actions to the prevailing party. It was agreed that the concept of this bill would be considered by the Committee.

Proposal No. 54 - State Personnel System

Conferees were Keith Weltmer, Secretary of Administration, and Norman Hanson, who was employed by Mr. Weltmer as the executive staff director of the personnel study. First, Mr. Weltmer reported that the executive staff will have some policy questions to raise and will assemble personnel officers from state agencies and the private sector whenever the Committee wants to schedule a meeting devoted to Proposal No. 54. Next, Mr. Hanson made an oral report on his activities and future plans. Two staff members (a secretary and a researcher) will start work on August 9. Three other prospective staff members were being considered. However, Mr. Hanson said additional staff will not be employed if he and one or two others can do the job.

Speaker McGill expressed disappointment about the delay in starting the personnel study and seriously questioned whether the small staff apparently contemplated by Mr. Hanson would be adequate to make a comprehensive and effective study. The Speaker commented on the concern of many legislators about the existing personnel system. He also indicated that rank and file state employees share that concern and suggested that they should have some input in the study by means of interviews conducted by the executive staff.

Mr. Hanson said that he is using past studies of the personnel system as a starting point for the present study; that Tasks 1 and 2, as outlined in the memorandum presented to the Committee on June 9 by Mr. Weltmer, will be completed in the next week or two; that he plans to review existing Kansas statutes and regulations and federal regulations; that an analysis of present operating procedures will be made; that he will meet with agency heads, personnel officers of state agencies, and employees to obtain their views regarding the personnel system; and that model personnel plans and laws of other states will be examined.

Afternoon Session

Interstate Motor Fuel User Tax Law

Kent Kalb, Secretary of Revenue, presented a written report on the effect of the interstate motor fuel user tax law on small interstate users, particularly with regard to whether or not such users are required to keep burdensome records in relation to the amount of tax owed the state. A copy of the report is in the Committee notebook. Although the report contained two alternatives under which some relief might be granted, Mr. Kalb did not advocate any particular change in the present law.

Mary Turkington, representing the Kansas Motor Carriers Association, urged the Committee to be very cautious in consideration of possible changes in the law. She said that the present interstate user law is the result of a lot of work over the years to make sure that Kansas receives its fair share of tax revenue and to encourage purchases of fuel in Kansas by interstate carriers. She had no recommendations for changing the law in light of Mr. Kalb's report.

Proposal No. 49 - Local Government Investment Authority

The staff presented a memorandum entitled, "Alternative Policies for Committee Consideration," August 5, 1976, and a set of existing statutes illustrating the lack of uniformity or a consistent pattern in statutes which authorize local units to invest certain types of funds. After discussion of these items, the Committee instructed the staff to prepare a draft bill amending K.S.A. 1976 Supp. 12-1675 to make it clear that this general investment law applies only to short-term investments of operational idle or inactive moneys, to allow investments by local units which do not have authority to levy taxes on their own behalf, and to devise a workable definition of a local unit or political subdivision which would have authority to invest such moneys.

The staff also was requested to examine other investment statutes which should receive some attention and to prepare tentative amendments thereto for consideration by the Committee.

Proposal No. 47 - State General Fund

A table showing state general fund receipts in FY 1976 was presented by the staff. Such receipts were 11.7 percent above collections in FY 1975, and were \$1.4 million, or 0.2 percent, over the revised budget estimate.

The staff also reported orally that, based on tentative and incomplete data, receipts in July of FY 1977 were approximately \$1.2 million below the estimate. It was stressed that receipts in only one month have little meaning in terms of indicating a trend.

Publication of Enrolled Bills

Mr. Carman told the Committee that the bound volumes of 1976 enrolled bills were distributed only about two weeks before the 1976 Session Laws of Kansas were available and the cost of preparing such bound volumes was about \$5,000. He suggested three alternatives for consideration: prepare unofficial "slip laws" for use by those who need them prior to publication of the session laws, have the Secretary of State continue providing individual copies of enrolled bills to persons who request them, or continue the present procedure. He favored publication of "slip laws."

The Committee asked the staff to prepare a draft bill providing for the publication of "slip laws" and to determine the cost thereof.

Architectural Services Advisory Committee

Two change orders of over \$25,000 were transmitted by the Division of Architectural Services, dated June 28, 1976. One was in the amount of \$40,379 for paving of a parking area at the University of Kansas. The other was for \$72,682 relating to the clinical facility (mechanical) at the Medical Center. It was agreed that the Advisory Committee considers it having been "advised and consulted with" on these change orders, as required by K.S.A. 1975 Supp. 75-5411.

Next Meeting

The Committee scheduled its next meeting on September 9, 1976, beginning at 10:00 a.m. No final decision was made as to whether or not the Committee will also meet on September 8 to consider Proposal No. 54 - State Personnel System.

Prepared by Richard Ryan

Approved by Committee on:

Sept. 9, 1976
Date