

## M I N U T E S

## LEGISLATIVE BUDGET COMMITTEE

November 12, 1976

The Legislative Budget Committee convened at 9:00 a.m. on November 12, 1976, in Room 528 of the State House. All members were present except Speaker McGill. Staff in attendance all or part of the time were Richard Ryan, Arden Ensley, Marlin Rein, and Ed Ahrens.

Minutes of Last Meeting

The minutes of the meeting held on November 4 were approved without change.

Proposal No. 50 - Legal Defense of  
Government Employees

Don Hoffman, Chief Assistant Attorney General, presented a memorandum dated November 3, 1976, which lists cases against public officials who are being defended by the Attorney General's office. There were about 175 cases seeking money damages. He also discussed the problem of the Attorney General representing multiple defendants, i.e., more than one officer or employee of the state and one or more officers or employees, when there may be a conflict of interest among such defendants. A recent advisory letter from the Kansas Bar Association said that an attorney employed by the state may not ethically represent multiple defendants when a conflict of interest may arise. The Attorney General's policy is to employ outside counsel in such cases from the \$30,000 appropriated by the 1976 Legislature for defense under K.S.A. 48-241a and 75-4360.

Mr. Hoffman pointed out that the Attorney General has no authority to settle a case or to commit state moneys for a settlement, even though it might be to the advantage of the state in certain cases. An individual officer or employee can agree to settle a case if he or she is willing to pay for the settlement personally.

Concerning the budgetary and staffing requirements of the Attorney General's office, Mr. Hoffman said there is no need for more personnel as things now stand. Its tentative budget will provide \$20,000 for FY 1978 to hire outside counsel under the two special statutes (48-241a and 75-4360) which require defense of specified officers and employees. It may be necessary, however, to request an additional \$15,000 to \$20,000 to employ outside counsel for some cases arising under the general permissive statute (75-4356), especially when there is a conflict of interest among defendants. He asked the Committee to consider amending K.S.A. 1976 Supp. 75-716 to delete authority to pay for defense of certain officers and employees from the Attorney General's antitrust special revenue fund.

Next, the Committee reviewed a memorandum from the Commissioner of Insurance relating to the possibility of obtaining liability insurance covering state officers and employees. (A copy is in the Committee notebook.) Based on the recent experience of several other states and on discussions with underwriters, the thrust of the memorandum was that it would be difficult to obtain such coverage and that it would be expensive if obtainable. Mr. Hoffman suggested, however, that it might be possible to negotiate a policy at a reasonable cost, especially if the state were willing to retain some risk by inclusion of a deductible clause in the policy. The Committee seemed to agree that further consideration should be given to the possibility of purchasing liability insurance with a deductible clause.

Arden Ensley presented a draft of the bill requested by the Committee at its meeting on November 4. After explanation of the bill and considerable discussion, the staff was instructed to amend the bill as follows:

Section 1. Provide for defense of former officers and employees for actions incurred during their term of employment, and amend K.S.A. 48-241a and 75-4360 accordingly.

Section 3. Restrict the authority to levy property taxes to provide for a defense fund to local units which now have authority to levy taxes.

Section 4. Delete the word "malfeasance" and delete authority of local units which cannot levy property taxes to issue no-fund warrants or bonds for the purpose of paying judgments against their officers or employees.

New Section. Amend K.S.A. 1976 Supp. 75-716 to eliminate use of the anti-trust special revenue fund to pay for the defense of certain state officers and employees.

#### Proposal No. 53 - Contracting for State Services

Conferees were Keith Weltmer, Secretary of Administration, and Henry Knouft, Director of the Division of Purchases. They discussed the various types of service contracts the state has entered into for both professional and other types of service, such as janitorial, food, refuse collection, etc. As to consulting or professional services (legal, health care, architectural, engineering, etc.), Mr. Weltmer reported that the state expended \$3,156,000 from September 1975 through June 30, 1976, and \$1,179,000 from July 1, 1976 to date. He said that the state is beginning to contract for some printing services which can be provided more economically than by the state printing plant.

Mr. Weltmer mentioned that he has explored the possibility of contracting for management of the central computer operation, under which an outside firm would take over all responsibility for personnel and equipment. There are many problems, he said, with the current operation, e.g., insufficient expertise, inadequate capacity of the computers, and operation of two types of computers (IBM and UNIVAC) which are not compatible. However, his legal counsel has advised that the present law is not broad enough to permit contracting for facilities management of the computer center and, therefore, Mr. Weltmer suggested that the law be amended. Mr. Knouft's testimony focused on janitorial, food service, refuse collection, and similar contracts. He said that most of the janitorial contracts have been reasonably successful, but they include a 30-day cancellation clause in case performance is unsatisfactory. Mr. Weltmer said there were problems with service at two state buildings in Topeka and that it was necessary to cancel the contracts and provide janitorial service by state employees.

Both conferees discussed certain problems that have arisen in connection with architectural services. Mr. Weltmer expressed concern over the number of change orders on buildings at the Medical Center.

The Committee asked Mr. Weltmer to submit in writing his recommendations with respect to contracting for services for possible inclusion in the Committee's report on Proposal No. 53.

Marlin Rein reported that the Special Committee at the KU Medical Center has devoted a considerable amount of time to analysis of housekeeping services at the Center. That Committee probably will recommend that serious consideration be given to contracting for such services. There are two alternatives. One is to contract for the whole operation and the other is to contract for supervision only, either of which has certain advantages and disadvantages.

#### Proposal No. 49 - Local Government

##### Investment Authority

Mr. Ensley distributed drafts of three bills, all of which had been discussed by the staff with representatives of local units of government and of banks and savings and loan associations. After explanation of these bills, the Committee approved them without change for introduction in 1977.

#### Proposal No. 51 - Judicial Compensation

The Committee decided that its report on this proposal will contain only one recommendation, namely, that the legislature should work toward the goal of phasing-out local supplements of the salaries of district court judges and associate district court judges.

Proposal No. 48 - State Finance Council

Mr. Ryan read a tentative Committee report to the effect that the Committee decided to do nothing on this proposal because a suit challenging the constitutionality of 1976 legislation concerning the Finance Council is before the courts. This report was approved by the Committee.

Proposal No. 52 - Joint Legislative Rules

Since new legislative leaders have not been selected, the Committee decided not to give any detailed consideration to joint rules of the next legislature. The Committee's report, however, should call attention to the subject matters contained in the 1975-76 joint rules and to the desirability of clarifying the rules relating to conference committee procedures and reports.

Next Meeting Date

The Committee agreed to change its next meeting from December 7 to December 9 because the Post Audit Committee has a meeting scheduled on December 7.

Prepared by Richard Ryan

Approved by Committee on

12-9-76

(Date)