

M I N U T E S

SPECIAL COMMITTEE ON FEDERAL AND STATE AFFAIRS

September 15-16, 1976
Room 519-S, State House

Members Present

Representative Lloyd Buzzi, Chairman
Senator Neil Arasmith, Vice-Chairman
Senator Arden Booth
Senator Jim Parrish
Representative Fred Harris
Representative Ken Marshall
Representative Joseph Mikesic
Representative Jack Rodrock
Representative Tom Slattery
Representative Earl Ward
Senator Ed Reilly was excused.

Staff Present

J. Russell Mills, Kansas Legislative Research Department
Mary Torrence, Revisor of Statutes Office

Others Present

Lee Moriarty, Kansas Consulting Engineers, Topeka
Phil Marvin, Kansas Agricultural Aviation Association, Lincoln, Nebraska
Don Holmes, Kansas Agricultural Aviation Association, Clay Center
Bob Murphy, Kansas Agricultural Aviation Association, Ulysses
Janet Murphy, Kansas Agricultural Aviation Association, Ulysses
Bill Wempe, Kansas Insurance Department, Topeka
F. Dale Sayler, Department of Human Resources, Topeka
Debra Krajnak, State Planning & Research Division, Topeka
Kirk Baughan, Manhattan Chamber of Commerce, Manhattan
F.H. Rohles, Chamber of Commerce, Manhattan
O.D. Turner, Kansas Department of Transportation, Topeka
Vic Mosher, Kansas Department of Transportation, Topeka
Jim McFarlane, City-County Airport, Newton
H. Jay Setter, Wichita Airport Authority
Ray Arvin, Kansas Department of Transportation
Balis F. Bell, Wichita Airport Authority
Murl L. Johnson, Johnson Company Airports, Olathe
William B. Owins, Wamego
John E. White, Topeka
Harold Shoaf, Kansas Electric Cooperatives, Topeka
Larry Quinlan, Kansas Department of Transportation
Senator Joseph Harder, Moundridge
Dr. Willis Wollman, Moundridge Airport Board
David Bradbury, Moundridge
Roy Just, Hillsboro Airport Board
William E. Ferrill, Kansas Chapter, National Electrical Contractors Association,
Topeka
Edward Beach, Beach Electric, Hutchinson
Charles D. Carey, Jr., Mechanical Contractors Association, Topeka
George Dickerson, Kansas Chapter, National Electrical Contractors Association,
Wichita
W.E. Landers, Scott & Landers, Inc., Wichita
Richard B. Hayter, Kansas State University
Lamar "Bud" Weaver, Director, Kansas Energy Office
Dick MacRavey, League of Kansas Municipalities, Topeka
Dennis McCartney, Kansas Department of Economic Development, Topeka
Charles Beardmore, Division of Architectural Services, Topeka

In notebooks 10-4-167mm

Others Present (cont'd)

Gerald L. Imming, Department of Health & Environment
Louis J. Krueger, Director, Division of Architectural Services
J. Ross Martin, Kansas Society of Architects, Topeka
William J. Murphy, Hutchinson Building Official
Robert B. Feldner, Building Official, Wichita Building Inspection Department
Wallace Buck, Home Builders Association of Kansas, Topeka
Gerald Jones, Building Code Inspector, Overland Park
Representative Irving Niles, Lyndon
Bob Douglas, Douglas Construction Company, Topeka
LeRoy Dringmann, Amerine Electric Company, Great Bend

September 15, 1976

Proposal No. 60 - Steam Boiler Insurance and Inspection

The meeting was called to order by the Chairman who stated that the first order of business would be Proposal No. 60-Steam Boilers. He introduced Mr. Dale Sayler of the Department of Human Resources. Mr. Sayler stated that he had examined the proposed bill and had noted several problem areas. Mr. Sayler felt that some farm boilers, especially those used in corporate farming operations, should be included in the inspection requirement. Mr. Sayler also felt that there were inconsistencies between Section 4(b) and Section 5(a) of the draft, relating to construction standards. He stated that the inspection certificate mentioned in Section 13(a) is evidently not required for the special inspections authorized in Section 8(c) and the reimbursement figures cited in Section 14a(4) probably conflict with Department of Administration's per diem rates for state employees. Mr. Sayler felt that the special design exception of Section 5(a) was extremely vague and should be clarified.

Proposal No. 64 - Death Penalty

The Chairman advised the Committee that an additional proposal, Proposal No. 64 - Death Penalty, had been assigned. The Committee decided to hold future meetings on October 5-6 and November 9-10. The October meeting will be used to finalize as many proposals as possible; the November meeting will be devoted to testimony on the death penalty proposal.

Proposal No. 19 - Rural Airport Development

Mr. O.D. Turner, Secretary of the Kansas Department of Transportation, addressed the Committee. A proposed bill to be considered as a substitute for 1976 Sub. S.B. 916 was distributed to the Committee (Attachment I). Mr. Turner expressed his support for the proposed bill as it would provide funds which would permit the Kansas Department of Transportation to assist communities in airport planning and development.

Mr. Ray Arvin, Director of Aviation, Kansas Department of Transportation, presented a prepared statement (Attachment II). Mr. Arvin testified that it is his hope that the Kansas Department of Transportation can assist municipalities in the areas of airport engineering, planning, and funding. He stated that, regardless of what has been said about federal funding, the job is not being done. He stated that funds must also come from the state and local levels if airport development is to be effective. He stated that there are presently 125 publicly-owned airports and 100 privately-owned airports in the state. He expressed the opinion that 17 new airports are needed in Kansas to meet expected growth in the next 20 years.

Mr. Arvin stated that federal funds are available, some on a 90-10 matching basis, but that many smaller airports cannot qualify for these funds. He noted that Kansas is one of only three states which do not provide financial assistance to municipal airports. Mr. Arvin felt that, in the next 20 years, \$160 million would be needed to operate an adequate system of airports in Kansas. This money would have to be a combination of federal, state, and local funds. Mr. Arvin expressed his support for the proposed bill which has been prepared by the Kansas Department of Transportation.

Dr. Frederick Rohles, Director of Environmental Research at Kansas State University, appeared on behalf of the Airport Committee of the Manhattan Chamber of Commerce and urged favorable consideration of the proposal. He expressed concern that the state aviation fund which will be generated by the tax on fuel sold to aircraft might be allocated only to airports receiving federal funds. He pointed out that Sub. S.B. 916 is similar to the Missouri law. He stated that, if tax money is to be used, all public airports should have access to the moneys for planning.

A member explained that the exclusion of airports receiving federal funds had been done so that the large cities could not wipe out the entire fund and leave the rural areas without assistance. Staff pointed out that this exclusion is not in the latest Kansas Department of Transportation draft.

Dr. Roy Just, President of Tabor College, Hillsboro, appeared on behalf of the Hillsboro Airport Board. He reiterated the airport needs of small communities, and pointed out that Hillsboro has a fine industrial park but only a grass landing strip which is not usable during rainy periods. He pointed out that the costs of airport development are staggering and that he favors a plan for assisting rural airports. He offered to obtain a feasibility study for his area if the Committee wishes.

Mr. Larry Quinlan, Kansas Department of Transportation, stated that the latest draft is a substitute for both 1976 H.B. 2985 and 1976 Sub. S.B. 916. This draft provides funds only for planning up to a maximum of \$25,000. Mr. Quinlan felt that the draft could meet any test of its constitutionality.

Mr. Murl Johnston, Johnson County Director of Aviation, told the Committee that he is responsible for the air activities at both county airports; that he is not opposed to expansion of airports but feels that the financing mechanism proposed in Sub. S.B. 916 is bad; and that there is already too much government involvement in aviation (Attachment III). He stated his belief that any community can manage an airport program with a 90-10 matching fund arrangement. He urged that this proposal not receive favorable consideration.

Mr. H. Jay Setter, Director of Aviation, Wichita Airport Authority, appeared and stated that he has been responsible for the operation and development of the Wichita airport since 1971; that he and the authority do not oppose the concept of an airport planning and development division in the Kansas Department of Transportation, but that he does take exception to some aspects of the proposal. He stated that he had only recently seen a copy of the proposed bill and inquired if there was to be no further consideration of Sub. S.B. 916. The Vice-Chairman stated that the draft is only a combination of a number of suggestions and that the Committee is only discussing the most recent proposed legislation.

Mr. Setter stated that basically he agrees with almost everything Mr. Arvin had said. He stated that Article 11, Section 10, of the Constitution may have to be amended to include aviation fuels. He pointed out that Section 1 of the latest Kansas Department of Transportation draft defines municipalities very narrowly and he felt that this definition is restrictive and might not include everyone who is authorized to develop airports. He pointed out that legislation was approved in 1974 authorizing airport revenue bonds, and suggested he would like to see the term municipalities take on the broad definition as in that Act (K.S.A. 3-153). He stated that Section 3 seems to preclude a municipality which does not presently own an airport. Mr. Setter pointed out that there are some airports in operation which have no legal power to pass ordinances or enforce them. This may cause problems given the language of Section 3. Mr. Setter stated that Section 4 is unnecessary because all acts of the Kansas Department of Transportation are under the authority of the Secretary. He expressed the opinion that the provision in Section 5 dealing with re-allocation of monies would create problems because of different fiscal years. Mr. Setter had a number of additional suggestions and the Chairman inquired if he could give staff a written copy of those ideas. Mr. Setter agreed he would furnish this by the end of the week. The additional statement from Mr. Setter is appended as Attachment IV.

Mr. Don Holmes, Kansas Agricultural Aviation Association, Clay Center, stated that he had been prepared to primarily discuss Sub. S.B. 916 and that he had no comments on the new proposal. He did urge that duplication be avoided and that additional rules and regulations not be promulgated. He asked for an opportunity to appear again if the Committee is considering the favorable recommendation of the latest draft.

Mr. Philip H. Marvin, Executive Secretary of the Kansas Agricultural Aviation Association, stated that, although he had not had adequate time to look at the latest proposal, there are some things which he feels need clarification. He expressed concern about the words "including but not restricted to" in Section 2. He stated that Section 3 is unclear and inquired if it limits the federal grant matching funds to \$50,000.

Mr. Ray Arvin stated that the intention is to provide a 50 percent grant, whether or not federal funds are involved. If federal funds are involved, it is 50 percent of the airport's 90-10 share. If the airport is not in the federal program, the state could contribute 50 percent up to \$25,000. He agreed he would be willing to try to clarify the language.

Mr. Marvin stated that Section 7 needs clarification regarding the definition of "sponsor." He suggested that Section 7(5) needs additional clarification because the draft's thrust is toward "planning" and this section refers to "development." Mr. Marvin expressed reservations concerning the fuel tax provision in Section 8, and the reference to quantities of fuel. He urged that the members carefully examine the proposal.

Senator Joseph Harder stated that he had been a proponent of Sub. S.B. 916, and that he believes the proposal under discussion could provide assistance to rural airports. He introduced Dr. Willis Wollman of the Moundridge Airport Board. Dr. Wollman presented a prepared statement (Attachment V). Dr. Wollman stated that Moundridge has two manufacturing companies, a trucking firm, and other companies which utilize the airport. He stated that he had been prepared to discuss Sub. S.B. 916, which he felt was a good proposal and would provide the help which rural airports need.

Mr. David Bradbury testified that his manufacturing company in Moundridge has grown to be recognized in the manufacture of special machine tools. He believed that this growth resulted from the company's location and the extensive use of aircraft, even though the Moundridge airport is not equipped to handle many of the corporate aircraft. He stated that support to local airports will be a good tool for attracting industry because companies are looking for good locations such as Kansas.

A member inquired about the constitutional question regarding the draft. Staff explained that it is the "internal improvement" prohibition which is in question. However, the latest proposal is limited to planning and does not contemplate construction with state funds. The Chairman asked staff to prepare a request for an opinion from the Attorney General on the draft's constitutionality. Staff also expressed concern about the constitutionality of imposing a tax on aircraft fuels. The Chairman directed that the Attorney General also be asked to rule on this question. (Attachment VI)

Staff inquired which bill the Committee wished them to work with, Sub. S.B. 916 or the proposed draft. It was suggested that consideration be given to combining the two since one deals largely with development and the other with planning.

Proposal No. 23 - Regional Jails

The Chairman asked if members were ready to direct staff in regard to a final report concerning Proposal No. 23 - Regional Jails.

The Vice-Chairman stated that few conferees liked the concept of regional jails. He suggested that the report recommend a permissive concept: if a region wants to work out a cooperative arrangement, it could do so. The Chairman stated that the report should show that testimony indicated it would be preferable to emphasize local control as much as possible. A member inquired if authority exists for counties to make a mutual agreement to build jails. The Vice-Chairman stated he did not know whether it could come under home rule, but that a county with an appropriate facility could charge another county for housing prisoners.

It was moved by Senator Booth that the report recognize the problems encountered by jails, particularly in the less populated areas and that the Committee recommend that the decision-making be kept at the local level under home rule. He further moved that the report mention the possibility of counties contracting with each other for services and the option of two or more counties developing a plan for a jail to serve a larger area. If implementing legislation is needed, staff should prepare it.

Staff stated that it was possible for one county to pay another county for services, but expressed doubt about a joint bond issue. Mr. Mills expressed the opinion that counties may already build regional jails under the Intergovernmental Cooperation Act, but a problem arises in joint bond issues.

Senator Booth's motion was seconded by Mr. Harris and carried.

The Vice-Chairman stated that he had passed over the suggestion made by some conferees that these regional centers not be jails but "community correctional centers." He considered this to be a related program rather than the question on the proposal. The Chairman stated he would see no objection to encouraging flexibility. Senator Booth stated he would like to amend his suggestion to read "jail or community correctional center." The Vice-Chairman stated that, if a new jail facility is being planned, consideration should be given to the standards established by the Department of Corrections. There was no objection to this.

It was moved by Representative Harris and seconded by Representative Ward that the August minutes be approved. Motion carried.

The meeting was adjourned.

September 16, 1976

Proposal No. 61 - Statewide Building Codes

The meeting was reconvened by the Chairman, who stated that the first order of business was Proposal No. 61 - Statewide Building Codes.

Mr. Dennis McCartney appeared to discuss the study which had been conducted by the Advisory Committee on Statewide Building Codes. The directive of the Advisory Committee, as established by the legislature, was to survey the building codes being used throughout the state and to evaluate the need for a statewide building code. Mr. McCartney explained that the Advisory Committee had heard testimony from experts in other states and had surveyed the communities in Kansas. The Advisory Committee found that many of the smaller communities used the National Building Code, while many larger towns used the Uniform Building Code. In all areas, enforcement is sometimes a problem. He explained that some of the codes have not been updated since 1928 while others have been amended by local ordinances.

Federal and state agencies were also surveyed and, while some duplication exists, there is also a level of cooperation. The Advisory Committee recommended that a statewide building code be adopted. Proposed legislation was included in the Advisory Committee's final report, pages 4-17 (Attachment VII).

The Vice-Chairman inquired whether a statewide building code would increase the cost of construction. Mr. McCartney stated that he did not feel it would necessarily increase costs and in fact he felt costs might be decreased because of uniformity. Mr. McCartney urged that cities and counties adopt the statewide code and cooperate in enforcement of the code.

Mr. William Landers, appeared on behalf of the Wichita Chapter of the National Electrical Contractors Association. He testified that the Kansas Builders' Forum, a group composed of architects, engineers, general contractors, and electrical contractors, had worked throughout the state to establish a uniform set of building codes. He explained that their success was somewhat limited because the Forum was unable to reach out into the less populous areas. He stated that he is in favor of the concept and that it would appear that the State Architect's office could administer a statewide code. He mentioned other state inspection agencies, such as the Fire Marshal and the Department of Health, and urged that coordination be maximized.

Mr. Lamar Weaver, Director of the Kansas Energy Office, presented a prepared statement (Attachment VIII) and urged that the statewide code contain energy conservation standards and requirements.

Mr. Charles Carey, representing the Mechanical Contractors Association of Kansas, presented a prepared statement (Attachment IX). He urged that a statewide building code be implemented and that the code include energy standards. Mr. Carey felt that all buildings intended for human occupancy, including rural construction, should be covered by the statewide code. He noted that local enforcement officials are subject to many pressures for variances. A statewide code would tend to eliminate this problem. Mr. Carey felt that a statewide code would be beneficial for the people of Kansas.

Mr. Richard D. MacRavey, League of Kansas Municipalities, presented a prepared statement (Attachment X). Mr. MacRavey stated that the League supports the concept of a statewide code, with local units maintaining control over location, foundation, utility connection, and related site matters. He also recommended that local units maintain the authority to adopt supplemental code regulations based on local conditions. Mr. MacRavey requested that the state provide adequate financial assistance to local governments for any expenditures resulting from the implementation of additional state requirements contained in the statewide code.

Representative Irving Niles addressed the Committee and urged that any statewide code contain adequate energy conservation and insulation standards.

Mr. Edward Beach, Beach Electric Company, Hutchinson, appeared in support of a statewide code. He noted that he had been a member of the Advisory Committee. Mr. Beach felt that licensure of craftsmen would also assist in code enforcement.

Mr. LeRoy Dringmann, Amerine Electric Company, Great Bend, testified that he had studied the final report of the Advisory Committee and that he supported the concept of a statewide code. Mr. Dringmann also submitted a prepared statement (Attachment XI). He suggested that the State Architect be given administrative responsibility for the statewide code and that the code be established as a minimum standard for all areas of the state.

In response to a question, Mr. Dennis McCartney suggested that the State Architect administer the code. He also stated that the Advisory Committee felt that inspection fees would generate enough revenue to operate the program.

Staff distributed a letter from the State Fire Marshal which was supportive of the statewide code concept (Attachment XII).

Dr. R.B. Hayter, Kansas State University, presented a prepared statement (Attachment XIII). Dr. Hayter discussed the federal "Energy Policy and Conservation Act" and stated that a statewide code, with energy conservation standards, would satisfy the requirements of the act in part.

Mr. Wallace Buck appeared on behalf of the Home Builders Association of Kansas in support of a statewide code. He urged that the Home Builders Association be allowed a representative on the Building Code Advisory Council contemplated in the proposed draft. Mr. Buck agreed to submit a written statement at a later date (Attachment XIV).

Mr. Gerald Imming, Department of Health and Environment, submitted a prepared statement (Attachment XV). Mr. Imming, who was a member of the Advisory Committee, stated that the Department of Health and Environment supports the concept of a statewide building code as consistent with its concern for protection of the health and enhancement of the well-being of the citizens of Kansas. A member inquired whether a statewide code could cause problems similar to those now experienced by nursing homes. Mr. Imming felt that these problems were caused by policy changes and resultant regulations issued by federal agencies which control medicare and medicaid funds.

Mr. William Ferrill, Kansas Sunflower Chapter, National Electrical Contractors Association, presented a prepared statement (Attachment XVI). Mr. Ferrill stated that the Kansas Chapter strongly supports enabling legislation to allow the establishment of statewide building codes.

Mr. Louis J. Krueger, Director of Architectural Services, presented a prepared statement (Attachment XVII). Mr. Krueger, who was a member of the Advisory Committee, questioned the necessity of establishing a statewide code at this time. He estimated that a statewide code would cost about \$200,000 in the first year. This figure would provide for 12 inspectors working from six regional offices. Future costs would probably increase. Mr. Krueger stated that, in lieu of a statewide code, perhaps consideration should be given to a program to train local inspectors statewide so that uniform

enforcement could be achieved. Mr. Krueger also stated that, if a statewide code is established, the Division of Architectural Services is willing to accept the responsibility for administering the program.

Mr. Robert B. Feldner, Superintendent of Central Inspection and Building Official for the City of Wichita, presented a prepared statement (Attachment XVIII). Mr. Feldner stated that adoption of a statewide code would be a giant step toward providing the public with safe, usable buildings at a reasonable cost while, at the same time, utilizing new techniques and materials. Mr. Feldner also noted several items of concern in the draft legislation proposed by the Advisory Committee.

Mr. Gerald Jones, Building Code Inspector for Overland Park, presented a resolution (No. 1211) which had recently been adopted by the Overland Park City Council (Attachment XIX). The resolution urges that any legislation include the following considerations:

1. Provide for the local administration of such regulations including but not limited to the review of plans and specifications, issuance of permits and certification, collection of fees, and the hearing of appeals by a local appeal board.
2. Limit consideration of any state code to the adoption of one of the three nationally recognized model code packages without substantial amendment.
3. Provide that local jurisdictions currently administering nationally recognized model codes without substantial amendment be allowed to continue the use of such regulations so long as they are kept current.
4. Provide that no rules or regulations cause an increase in approval time or permit fees when applications are handled by a local jurisdiction.
5. Provide that all state agencies having any involvement with building regulations utilize these same codes and standards without amendment.
6. Take into consideration the cost and availability of trained personnel to administer such regulations fairly, equitably and competently and to include consideration of the training programs necessary to accomplish said goal.
7. Provide that local jurisdictions continue to control zoning and site development regulations.

Mr. William J. Murphy, Hutchinson Building Official, testified in favor of a statewide building code. He urged that local inspections be retained within the standards set by the statewide code. Mr. Murphy felt that a statewide code need not raise construction costs. He also felt that licensure of craftsmen is necessary. Mr. Murphy was a member of the Advisory Committee.

Mr. Bob Douglas, Douglas Construction Company, Topeka, expressed his concerns that a new bureaucracy will be created; that rural areas will probably oppose the concept; that the code package must be modified to fit the Kansas situation; that there must be more cooperation between state inspection agencies; and that the licensure of craftsmen is acceptable if it is not used to restrict employment.

A letter was presented for consideration from Ronald Tremblay, Salina Building Inspector (Attachment XX). In his letter Mr. Tremblay expressed the following concerns:

1. A state-wide building code is not only desirable but an absolute necessity due to the dangers inherent in uncontrolled construction. The cost of housing or commercial construction will not be substantially increased if a building code is used to regulate such construction.
2. People who choose to build in suburban or rural areas are entitled to the same protection as urban dwellers. Fire hazards, plumbing or electrical hazards and slipshod building are dangerous regardless of location.

3. Control and administration of the minimum standards should remain in the hands of local units of government. State law should mandate the use of a nationally recognized set of construction codes in areas where no such codes are currently in use.

Staff was asked to summarize the legislation proposed by the Advisory Committee (See Attachment VII).

Mr. Ward stated that he thinks such a code is needed. It was moved by Senator Arasmith that legislation be drafted similar to the bill proposed by the Advisory Committee. Motion was seconded by Representative Ward and carried by a majority.

The Vice-Chairman stated he would like to see the responsibility placed in an existing agency, preferably the State Architect's Office. He noted that Mr. Weaver of the Energy office had suggested that his office would like to be represented on the Advisory Council. The Vice-Chairman supported this suggestion.

Other members agreed that the program should be administered by an existing state agency and that duplication of inspections be eliminated.

Representative Rodrock moved that the legislation be drafted on permissive basis which would require local units to adopt the statewide code if they adopted any code. However, the local units would still be free to not adopt a code. Motion was seconded by Representative Mikesic. Following discussion on the merits of a mandatory or permissive statewide code, the motion was approved by a vote of three to one.

Mr. Mills suggested that the Committee examine the proposed bill section-by-section in order to make amendments consistent with the previous motion.

The Committee decided to delete Section 2 entirely. In Section 3(g), the definition of "Director" was changed to indicate the Director of Architectural Services.

The Committee felt that the 25-member Building Code Advisory Council established by Section 4 should be a smaller group. It was suggested that several of the professional background requirements be combined; that the utility representative be replaced by a representative of the Kansas Energy Office; that the mobile home representative be eliminated; that the Secretary of Labor be eliminated; and that an attorney be placed on the Council. Staff was directed to suggest further modifications to the membership for Committee consideration at the next meeting.

It was decided that Appeals Board be composed of five members and that a time limit on the appeal process be established. The penalty provision of Section 16 was set as a Class C misdemeanor.

Staff was directed to make other appropriate changes consistent with the permissive approach approved by the Committee.

The meeting was adjourned.

Prepared by J. Russell Mills, Jr.

Approved by Committee on:

10-6-76

date

BILL NO. _____

AN ACT relating to airports and airway systems; providing for state financial assistance to municipalities for airport planning programs; creating an airport planning fund and providing for the administration of such fund; amending K.S.A. 3-604, 3-605 and 79-3453, and repealing the existing sections.

WHEREAS, The airports and airways systems within the state of Kansas are inadequate to meet the current and projected growth in aviation within the state, the demands of interstate commerce, the postal system and the national defense; and

WHEREAS, Federal legislation provides for federal aid to states for airport planning based on state planning programs already in existence; and

WHEREAS, It is essential to the safety and welfare of the state and the residents thereof to undertake a program to financially assist airport planning in cooperation with municipalities of the state of Kansas and the United States government and agencies thereof: Now, therefore,

Be it enacted by the Legislature of the State of Kansas:

Section 1. As used in this act, unless the context otherwise requires, the following words and phrases shall have the following meanings:

(a) "Municipality" means any city or county in this state; and

(b) "Federal airport and airway development act" means public law 91-258, commonly known as the airport and airway development act of 1970, or public law 94-353, commonly known as the airport and airway development act amendments of 1976.

Sec. 2. A fund to be known as the airport planning fund is hereby created in the state treasury to provide financial assistance to municipalities of this state for airport planning programs and

studies, including but not restricted to, those which qualify for federal aid and assistance under the provisions of the federal airport and airway development act. Said fund is to be used exclusively to make grants authorized under this act and defray the expenses incurred in administering the provisions thereof.

Sec. 3. The secretary of transportation is hereby authorized and empowered to approve and order grants to municipalities from the airport planning fund. Said grants may include those planning activities undertaken by a municipality in cooperation with the federal government pursuant to the provisions of the federal airport and airway development act, or any amendments thereto.

Each grant shall be made on a matching basis, not to exceed fifty per cent (50%) of the total cost of the proposed program or study, but in no event shall any individual grant exceed a maximum amount of twenty-five thousand dollars (\$25,000). Provided, however, That no grant shall be made by the state to any municipality for airport planning under the provisions of this act unless such municipality has at the time of making application therefor adopted and is enforcing zoning regulations to the extent reasonable to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations including landing and take-off of aircraft and has established a program whereby the aerial approaches to the airport will be adequately cleared and protected by removing, lowering, relocating, marking, lighting or otherwise lessening existing airport hazards and preventing the establishment or creation of future airport hazards.

Sec. 4. The secretary of transportation may adopt such rules and regulations as he deems necessary for the effective administration of this act. The secretary may also delegate any of the powers given to him or her by this act to a lawful representative. Such representative may exercise any of the powers so delegated as fully as if exercised by the secretary.

Sec. 5. Moneys allocated to a municipality shall be encumbered as an expenditure from this fund upon the letting of a contract for planning services regardless of the date on which actual payment is made of the state financial assistance. Provided, however, That the secretary may reallocate any of the moneys committed to a municipality which has not entered into contracts or otherwise committed said allocation for an approved project within the fiscal year for which it was allocated.

Sec. 6. K.S.A. 3-604 is hereby amended to read as follows:
3-604. As used in this act unless the context otherwise requires, the following words and phrases shall have the meanings respectively ascribed to them herein:

(a) "Municipality" means any city or county or any agency thereof; and

(b) "Federal airport act" means ~~the-aviation-facilities-expansion-act-of-1969-or~~ the airport and airway development act of ~~1969~~ 1970 ~~or-such-other-title-as-the-referred-to-acts-shall-be-finally-enacted-under-by-the-United-States-congress-during-its-1970-session~~ or the airport and airway development act amendments of 1976, and such other existing federal acts as are referred to therein.

Sec. 7. K.S.A. 3-605 is hereby amended to read as follows:
3-605. The secretary of transportation is hereby empowered to

(1) act as the agent of sponsors located in the state;

(2) accept in behalf of the sponsors and disburse to them all payments made pursuant to agreements under the federal airport act, including grants made to establish demonstration programs under the airport and airway development act amendments of 1976.

(3) acquire by purchase, gift, devise, lease, or otherwise, any property, real or personal, or any interest therein, including easements, necessary to establish or develop airports;

(4) engage in airport systems planning on a statewide basis;
and

(5) undertake airport development, or provide financial assistance to public agencies within the state for carrying it out.

Sec. 8. K.S.A. 79-3453 is hereby amended to read as follows: 79-3453. Any person who shall use any motor-vehicle fuels on which the motor-fuel tax imposed by law has been paid by him, for any purpose other than operating or propelling motor vehicles on the public highways, shall be entitled to be reimbursed and refunded the tax paid upon complying with the applicable conditions and provisions of this act: Provided, That any person holding a refund permit who shall use the motor-vehicle fuels, on which the motor-fuel tax has been paid by such person, for the operation of aircraft exclusively, except motor-vehicle fuels purchased and used by aircraft manufacturers for testing, demonstrating or any other uses which are exclusively non-transportation, shall only be entitled to a refund per gallon equal in amount to the tax per gallon less four cents (4¢). The remaining four cents (4¢) per gallon of tax collected on said motor fuels shall be paid by the director of revenue into the state treasury and the state treasurer shall credit the same to the airport planning fund. And provided further, That the director of revenue shall make payments of amounts due under this section to the airport planning fund as the result of applications for refund made, and which were paid during the preceding calendar month, on or before the tenth day of the following month. Such payments may be effected by transferring the proper amounts from the motor-vehicle tax refund fund to said airport planning fund. At the time of making any such payments or ordering any such transfers, the director of revenue shall notify the secretary of the department of transportation. And provided further, That no such person shall not be entitled to a any refund of such tax unless he purchases the

motor-vehicle fuel from a licensed distributor in quantities of forty (40) or more gallons. The words "licensed distributor," as used in this act, shall also include a licensed importer who is licensed as a distributor.

Sec. 9. If any provision of this act or the application thereof is held invalid, the invalidity shall not effect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 10. K.S.A. 3-604, 3-605 and 79-3453 are hereby repealed.

Sec. 11. This act shall take effect and be in force from and after its publication in the statute book.

Attachment I

**THE CASE
AGAINST
THE
DEATH PENALTY**

By Hugo A. Bedau

American Civil Liberties Union of Kansas

KAREN BLANK
EXECUTIVE DIRECTOR

629 Quincy
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913/235-2405

Topeka, Ks.
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Hugo A. Bedau is editor and author of the books *The Death Penalty in America* and *Justice and Equality*, among other works. President of the American League to Abolish Capital Punishment, he is professor of philosophy at Tufts University, Medford, Mass.

January, 1973

In its final action of the 1971 term, the U.S. Supreme Court announced its decision in Furman v. Georgia and two related cases. Directly at issue was whether the death penalty for felony murder and for rape, when imposed by a jury having discretion to mete out either death or imprisonment, was permissible under the U.S. Constitution. At stake were the lives of more than 600 persons under death sentence in 32 states. On June 29, the Court declared that "the imposition and carrying out of the death penalty . . . constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments." (Furman v. Georgia, 408 U.S. 238) To make the nationwide impact of its decision unmistakable, the Court also summarily reversed death sentences in some 120 other cases from 26 states encompassing a tremendous range of statutes, crimes and fact situations.

The Supreme Court has, in effect, outlawed capital punishment in the United States by its decision in *Furman v. Georgia*. Because of *Furman*, by the end of 1972, nearly two dozen states had overturned their death penalty statutes and ordered resentencing of persons awaiting execution. The ACLU, with the NAACP Legal Defense and Educational Fund, Inc. and other civil liberties and civil rights organizations, has properly pointed to the *Furman* decision as the watershed in its long struggle against capital punishment.

In the immediate aftermath of the Court's decision, many commentators made much of the narrowness of the victory and the lack of firm consensus among the five-man majority on the Court. This is understandable—but misleading. It obscures several major points of agreement:

- * The majority agreed that the death penalty is a cruel and unusual punishment because it is imposed infrequently and under no clear standards.

- * The majority agreed that the purpose of the death penalty, whether it be retribution or deterrence, cannot be achieved when it is so rarely and unpredictably used.

- * The majority agreed that one purpose of the Eighth and Fourteenth Amendments is to bar legislatures from imposing punishments like the death penalty which, because of the way they are administered, serve no valid social purpose.

- * All the Court, with the exception of Justice Rehnquist, indicated personal opposition to capital punishment.

- * All the Court, again excepting Justice Rehnquist, indicated substantial belief that capital sentencing is arbitrary and substantial disbelief that it is uniquely effective in deterring crime.

The ACLU's opposition to the death penalty has been based on several grounds,

including those which the Court found compelling:

* Capital punishment is cruel and unusual, in violation of the Eighth Amendment of the U.S. Constitution. It is a relic of the earliest days of penology, when slavery, branding and other corporal punishments were commonplace; like these other barbaric practices, it has no place in civilized society.

* Executions in prison gave the unmistakable message to all society that life ceases to be sacred when it is thought useful to take it and that violence is legitimate so long as it is thought justified by pragmatic concerns that appeal to those having power to kill.

* Capital punishment denies due process of law. Its imposition is arbitrary, and it forever deprives an individual of the benefits of new law or new evidence that might affect his conviction.

* The worst and most dangerous criminals are rarely the ones executed. The death penalty is applied randomly at best and discriminatorily at worst. It violates the constitutional guarantee of the equal protection of the laws because it is imposed almost exclusively against racial minorities, the poor, the uneducated—persons who are victims of overt discrimination in the sentencing process or who are unable to afford expert and dedicated legal counsel.

* Reliance on the death penalty obscures the true causes of crime and distracts attention from the effective resources of society to control it.

* Capital punishment is wasteful of resources, demanding a disproportionate expenditure of time and energy by courts, prosecuting attorneys, defense attorneys, juries, courtroom and correctional personnel; it burdens the system of criminal justice, and it is counter-productive as an

instrument for society's control of violent crime. It uniquely epitomizes the tragic inefficacy and brutality of a resort to violence rather than reason for the solution of difficult social problems.

Two facts—plainly recognized by the majority of the Supreme Court in *Furman*—buttress our entire case: *capital punishment does not deter crime*, and *the administration of the death penalty has been provably unfair*.

Deterrence

The argument against the deterrent efficacy of the death penalty takes three mutually supportive forms.

(1) Any punishment can be an effective deterrent only if it is consistently and promptly employed. Capital punishment does not meet those conditions. Only a small proportion of first degree murderers are sentenced to death, and even fewer are executed. Between 1930 and 1960, there was one execution for every 70 homicides. During the decade 1951-1960, nine out of ten persons convicted of first degree murder did not get executed;¹ and in the decade of the '60's executions became still rarer. The delay in carrying out the death sentence has become notorious. Between 1961 and 1970, the average time spent under death sentence rose from 14.4 months to 32.6 months.² The sobering lesson is that we must either abolish the death penalty or try to enhance its deterrent efficacy by abandoning the procedural safeguards and constitutional rights of suspects, defendants and convicts in order to reduce delay (with the attendant high risk of executing innocent persons).

1. See Bedau, ed., *The Death Penalty in America* [1967], p. 36.

2. See *National Prisoner Statistics* [1969].

The former alternative is surely the only tolerable one: Repeal the death penalty entirely in favor of a more efficiently administrable mode of punishment.

(2) Persons who commit murder and other crimes of personal violence either premeditate them or they do not. If they do not, then the requisite *mens rea* (criminal intent) of a capital crime is missing; and it is impossible to imagine how in such cases any punishment could deter. In cases where the crime is premeditated, the criminal ordinarily expects to escape detection, arrest and conviction. It is impossible to see how the threat of a severe punishment can deter an individual who does not expect to get caught. Gangland killings, air piracy, kidnapping for ransom are among the more obvious categories of capitally punishable crimes which continue to occur because some think they are too clever to get caught.

(3) Experience over the past three decades tends to establish that the death penalty as currently administered is no more effective than imprisonment in deterring crime and that it may even be an incitement to criminal violence:

(A) Use of the death penalty in a given state does not decrease the subsequent rate of criminal homicide in that state.³

(B) Use of the death penalty in a given state may increase the subsequent rate of criminal homicide in that state.⁴

(C) Death penalty states as a group do not have lower rates of criminal homicide than non-death penalty states.⁵

(D) States that abolish the death pen-

3. Dann, *The Deterrent Effect of Capital Punishment* [1935]; Savitz, in *J. Criminal Law, Criminology & Police Science* [1958].

4. Graves, in Bedau, ed., *The Death Penalty in America* [1967].

5. Schuessler, in *The Annals* [1952]; Reckless, in *Crime & Delinquency* [1969].

alty do not show an increased rate of criminal homicide after abolition.⁶

(E) States that have reinstated the death penalty after abolishing it have not shown a decreased rate of criminal homicide.⁷

(F) In two neighboring states—one with the death penalty and the other without it—the one with the death penalty does not show any consistently lower rate of criminal homicide.⁸

(G) Police officers on duty do not suffer a higher rate of criminal assault and homicide in states that have abolished the death penalty than they do in death penalty states.⁹

(H) Prisoners and prison personnel do not suffer a higher rate of criminal assault and homicide from life-term prisoners in abolition states than they do in death penalty states.¹⁰

Actual experience establishes these conclusions beyond reasonable doubt. No comparable body of evidence contradicts these views.

In addition, an increasing number of cases have been clinically documented where the death penalty actually incited the capital crimes that it was supposed to deter. These included cases of the so-called suicide-murder syndrome—persons who wanted but feared to take their own lives, and committed murder so that society would kill them—and the so-called executioner syndrome—persons who became the self-appointed ministers of death

6. Sellin, *The Death Penalty* [1959]; Wolfgang, in "Capital Punishment" *H.R. Hearings* [1972].

7. Sellin, *The Death Penalty* [1959]; Samuelson, in *J. Criminal Law, Criminology & Police Science* [1969].

8. Sellin, *The Death Penalty* [1959]; Wolfgang, in "Capital Punishment," *H.R. Hearings* [1972].

9. Sellin and Campion, in Bedau, ed., *The Death Penalty in America* [1967].

10. Sellin, ed., *Capital Punishment* [1967].

and used the ultimate weapon legitimated by society's acceptance of capital punishment to avenge real or fancied wrongs. Indeed, the more that is known about the mind of murderers, the more obvious it becomes that the picture of a rational and calculated decision to kill upon which the supposed deterrent efficacy of capital punishment entirely depends is almost never encountered in actual life.

Unfairness

Constitutional due process as well as elementary justice require that the judicial functions of trial and sentencing, especially where the irreversible sanction of the death penalty is involved, be conducted with fundamental fairness. In both rape and murder cases (since 1930, 99 per cent of all executions have been for these crimes), there has been substantial evidence to show that courts have been arbitrary, racially biased and unfair in the way in which they have tried and sentenced some persons to prison and others to death.

Nearly thirty years ago, Gunnar Myrdal, in his classic *An American Dilemma* (1944), reported that "the South makes the widest application of the death penalty, and Negro criminals come in for much more than their share of the executions." Statistics confirm this discrimination, only it is not confined to the South. Since 1930, 3,859 persons have been executed in the United States. Of these, 2,066, or 54 per cent, were black. For the crime of murder, 3,334 have been executed; 1,630, or 49 per cent, were black. During these years blacks were about one-eleventh of the population. For rape, punishable by death in 1972 in only sixteen states and by the federal government, a

total of 455 have been executed, all but two in the South; 405, or 90 per cent, were black.¹¹

More exact statistical studies show that the higher rate of executions of blacks for rape and homicide cannot be explained by any factor except the race of the defendant. In Pennsylvania, for example, it has been shown that only the defendant's race explains the fact that among individuals convicted of felony murder and sentenced to death a lower percentage of blacks than whites eventually have their sentences commuted to imprisonment.¹²

In New Jersey, it was shown that juries tended to bring in the death sentence for blacks convicted of felony murder more readily than they did for whites convicted of the same offense.¹³

Such statistically significant evidence of racial discrimination at both the trial and commutation phases of death penalty proceedings has not been shown in every state. Moreover, in some, e.g., California, studies have revealed no evidence of race discrimination.¹⁴ The California study did, however, show discrimination against the poor; and in our society racial minorities are, of course, disproportionately poor. Racial bias inevitably shows up in application of the death penalty.

No doubt the most thorough statistical proof of racial bias in capital punishment has been provided in connection with rape. In 1965, 3,000 rape convictions in 250 counties in 11 Southern states were carefully studied. The results consistently pointed to the race of the defendant (and the victim) as the decisive factor in how the courts would dispose of the case.

11. See *National Prisoner Statistics* [1969].

12. Wolfgang, Kelly and Nolde, in *J. Criminal Law, Criminology & Police Science* [1962].

13. Wolf, in *Rutgers Law Review* [1964].

14. *Stanford Law Review* [1969].

One analyst noted: "Negroes convicted of rape are disproportionately frequently sentenced to death compared with whites, and . . . Negroes convicted of raping white victims, particularly, are disproportionately frequently sentenced to death." Moreover, "of over two dozen possible aggravating non-racial variables that could account for the higher proportion of Negroes sentenced to death upon conviction of rape, not one of these non-racial factors has withstood the tests of statistical significance. . . . We are now prepared to assert that a significantly higher proportion of blacks are sentenced to death upon conviction of rape . . . because they are black . . . and the victims were white."¹⁵

Race is not the only morally and legally invidious factor which in practice plays a role in determining who gets executed and who does not. A defendant's poverty, lack of firm social roots in the community, inadequate legal representation at trial or on appeal—all these have in the past been common factors among "Death Row" populations. Race, however, has proved to be the most influential of them all. There is no reason to believe that were capital punishment once again permitted, it would prove to be less discriminatory in the future than it has been in the past.

Public Opinion

Despite the decision of the Supreme Court in the *Furman* case, and the widespread acceptance of our arguments on deterrence and unfairness, it is premature to conclude that the death penalty has been forever eliminated from our criminal law.

"Public support for capital punishment

15. Wolfgang, "Capital Punishment," *H.R. Hearings* [1972], pp. 178, 179.

is currently at its highest point in nearly two decades."¹⁶ The Gallup Poll reported that 57 per cent of all adults said they favored the death penalty for convicted murderers; 32 per cent said they opposed it; 11 per cent were undecided. This represents a loss of 15 per cent since 1966 among those declaring opposition to the death penalty. Influential public spokesmen, such as President Nixon, Attorney General Kleindienst, California Governor Ronald Reagan and Philadelphia Mayor Frank Rizzo all have openly endorsed capital punishment, and their endorsements may help to account for the resurgence of popular support for executions.

Public referenda on the death penalty in recent years have failed to abolish it (except in Oregon, in 1964). Last year in California, after the State Supreme Court ruled that the death penalty violated the state constitutional prohibitions against "cruel or unusual punishments," an initiative was devised by the State Attorney General to defy this ruling. Last November, by a vote of 2 to 1, the California electorate passed a measure to restore the death penalty as the mandatory punishment for several crimes and to deny the courts any review of the constitutionality of this action.

There is some colorable legal ground for attempts to preserve the death penalty in the wake of *Furman*. *Furman* left several crucial questions about the death penalty undecided. Therefore, some believe that "correctly" framed death penalty statutes may be found acceptable by the Supreme Court. Three kinds of statutes are being proposed: those that spell out explicit standards the jury must follow in choosing between death and imprisonment; those that allow the jury to

16. *New York Times*, Nov. 23, 1972, p. 18.

impose the death penalty at its discretion but only for a crime well-defined by a narrowly drawn statute; and statutes making the death penalty mandatory for certain crimes.

The first two kinds of statutes are not especially threatening. The issues were canvassed in some detail by the Supreme Court during the 1970 term, and the problems in framing acceptable statutes seem to be substantial, perhaps insurmountable. Justice Harlan, writing for the Court in 1971, noted: ". . . the history of capital punishment for homicides . . . reveals continual efforts, uniformly unsuccessful, to identify before the fact those homicides for which the slayer should die. . . . Those who have come to grips with the hard task of actually attempting to draft means of channeling capital sentencing discretion have confirmed the lesson taught by history. . . . To identify before the fact those characteristics of criminal homicides and their perpetrators which call for the death penalty, and to express these characteristics in language which can be fairly understood and applied by the sentencing authority, appear to be tasks which are beyond present human ability." (*McGautha v. California*, 402 U.S. 183, 1971)

Chief Justice Burger, in his dissent from the majority in the *Furman* case, singled out these very words of Justice Harlan to express his own skepticism over the possibility of drawing up suitable standards to guide juries or of drafting capital statutes sufficiently narrowly.

Mandatory Death

Mandatory death penalty statutes present a larger problem. *Furman* did not explicitly establish the unconstitutionality of

any of the many mandatory death penalty statutes in force around the nation. Hence, in Delaware, for instance, the State Supreme Court last November, instead of nullifying Delaware's capital statute in response to the mandate of the U.S. Supreme Court in *Furman*, chose to retain the death penalty and did so by eliminating the provision for the jury's sentencing discretion (*State v. Dickerson*). The California initiative, a resolution by the National Association of Attorneys General to seek "appropriate legislation for the death penalty" and the avowed purpose of the Nixon administration to ask Congress to reinstate capital punishment for kidnapping, assassination, bombing of a public building, aircraft hijacking, and killing a prison guard—all these are efforts to reinstitute or extend the mandatory death penalty for selected categories of crime. One may expect such efforts to grow rather than to abate in the near future.

There is a strong practical case to be made against the mandatory death penalty. The history of capital punishment clearly shows that jury sentencing discretion was introduced over the past century in every jurisdiction in the United States in order to avoid hung juries and acquittals (or convictions of lesser included offenses) in the face of plain guilt. As often as not, it was prosecutors themselves who sought to give juries sentencing discretion so they could get convictions. There is no evidence that juries will respond differently in the future from the way they did during the past century.

Furthermore, mandatory death penalties do not eliminate discretion. They shift it from the trial jury to the prosecutor's office. Instead of leaving it up to the jury whether to sentence to death or to prison, mandatory death penalties allow

the prosecutor to decide whether to indict for a capital crime or for a lesser offense, in order to reduce the risk of the jury's refusal to convict. There is no reason to believe that such discretion would be exercised without bias, especially in death penalty cases, where aroused community sentiment and possible political advantage are involved. It is very unlikely that the Supreme Court would allow such discretion to prosecutors when it has denied comparable discretion to juries.

* * *

The ACLU takes the position that the moral and legal principles and the array of factual evidence that persuaded the majority of the Supreme Court in 1972 to rule against the death penalty as currently administered destroy the basis for reintroduction of the death penalty in *any* form for *any* crime. The death penalty, we believe, continues to be the symbolic representation of everything that is brutal and futile in our present system of criminal justice. We cannot rest until it is thoroughly uprooted and eliminated from our law.

For Further Reference

The basic source book on all aspects of capital punishment in the United States has been *The Death Penalty in America*, rev. ed. H. A. Bedau, 1967, Doubleday Anchor books. Two other volumes, also available in paperback, contain valuable supplementary information: *Capital Punishment*, ed. T. Sellin, Harper & Row, 1967; and *Capital Punishment*, ed. J. A. McCafferty, Aldine, 1972. The wealth of scholarly literature up to 1971 may be traced through the footnotes and bibliographies of these three volumes.

A useful booklet, thoroughly documented, is *The Case Against Capital Punishment*, 1971, available for \$1 from The Washington Research Project, 1823 Jefferson Pl., N.W., Washington, D.C. 20036.

The only reliable and continuing source of information on all aspects of the death penalty is the *CALM Newsletter*, ed. Douglas B. Lyons, and published at irregular intervals by Citizens Against Legalized Murder, Inc., P.O. Box 24, New York City 10024. At this writing the most recent issue is Vol. VI, No. 1, Oct. 1972.

The most influential scholarly essay anticipating the Supreme Court's decision in *Furman* is A. J. Goldberg and A. M. Dershowitz, "Declaring the Death Penalty Unconstitutional," *Harvard Law Review*, vol. 83, June 1970, pp. 1773-1819.

Among the many public documents published under various auspices, three contain information of general national interest: "Capital Punishment," *Hearings Before Subcommittee No. 3, Committee on the Judiciary, House of Representatives, 92nd Congress, 2nd Session, March-May 1972*; "To Abolish the Death Penalty," *Hearings Before Subcommittee on Criminal Laws and Procedures, Commit-*

tee on the Judiciary, U.S. Senate, 90th Congress, 2nd Session, March-June 1968; "Abolition of Capital Punishment," *Hearings Before Subcommittee No. 2, House of Representatives, 86th Congress, 2nd Session*, May 1960.

The general issue of deterrence for all crimes is reviewed by F. E. Zimring, *Perspectives on Deterrence*, National Institute of Mental Health, Crime and Delinquency Issues, 1971. The argument of this monograph has been expanded in the definitive work by Zimring and G. E. Hawkins, *Deterrence: The Legal Threat in Crime Control*, University of Chicago Press, 1973.

The most substantial single study of the crime of murder in urban America is by M. E. Wolfgang, *Patterns in Criminal Homicide*, University of Pennsylvania Press, 1958.

Statistical information on death sentences and executions since 1930 may be obtained in *National Prisoner Statistics*.

STATEMENT
RELATIVE TO

AIRPORT PLANNING AND DEVELOPMENT

IN THE
STATE OF KANSAS

FROM

RAY ARVIN, DIRECTOR
AVIATION DIVISION
KANSAS DEPARTMENT OF TRANSPORTATION

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The relatively new interest in multimodal transportation systems requires a closer look at each transportation mode. One such mode, aviation, has become of increasing importance in the transportation of persons and commodities in recent years.

The increased reliance on aviation has come about largely because of the need for quick dependable transportation services. These services are used by business, government and the general public. Where time is important, air transportation is vital.

As the nation continues to expand technologically, time constraints will continue to gain in importance. The need for an effective and efficient airport program will demand more and more attention.

This information attempts to point out the current purposes and programs carried out by the State in order to satisfy the need for air transportation.

The airports and airways systems within the State of Kansas are inadequate to meet the current and projected growth in aviation within the State, the demands of interstate commerce. We feel it is essential to the safety and welfare of the State and the residents thereof and advantageous to state and local government taxpayers to undertake a program to financially assist airport planning in cooperation with municipalities of the State and with the United States government and agencies thereof.

STATE NEEDS \$38 MILLION FOR AIRPORT DEVELOPMENT

The Federal Aviation Administration - Department of Transportation reports that Kansas will need \$38 millions in airport development over the next 20 years. This report issued by the FAA Planning Division is based on forecasts and data relative to the National Airport System Planning data (NASP).

Airport aviation activity in Kansas will require the construction of 17 new airports in addition to developing existing airports, the report states. Improvements include resurfacing runways, taxiways, nav-aids, lighting and land for clear zones.

The FAA and the various states coordinate data relative to the NASP annually.

Kansas Department of Transportation reveals that one-third of the airports here are in need of improvements. A total of 125 public airports are listed.

The FAA is also preparing a nationwide study of city and county resources and their ability to finance public airport needs over the next 20 years.

Airport financing is now accomplished from federal Airport Development Aid Program (ADAP) funds in deciding for the local community. Kansas does not make available any funds on direct assistance.

Kansas airports qualifying for federal funds are those designated by the federal government. There are 40 publicly owned airports that either don't qualify or don't want to use federal funds due to the cost involved.

At the present time, there are only twelve active planning grants underway.

There are no (to our knowledge) requests for aid at the present time.

Active Planning Grants

Atwood - 01	\$ 4,000
El Dorado - 01	9,760
Emporia - 01	9,406
Fort Scott - 01	8,727
Hoxie - 01	4,000
Independence - 01	12,280
Lawrence - 03	8,632
Manhattan - 01	13,076
Marion - 01	12,549
Olathe - 01	26,553
State of Kansas - 01	53,964
Topeka - 01(Forbes)	38,800
Topeka - 02(Billard)	19,114
Wellington - 02	<u>6,148</u>
	\$227,009

When President Ford signed the new Federal ADAP bill July 12, 1976, he said: "He supports the provisions of the Act because it will provide greater responsibilities to state government, and hopefully will continue to support efforts designed to give a greater role to the states in airport development."

He was not referring to Kansas. It is a fact, Kansas is one of three states in the United States that does not afford financial assistance to municipalities for airport development.

A study made by the firm of Burns and McDonnell, which was mandated by the Congress, revealed that the states can do as good a job or even better in some cases than the federal government in airport planning and development.

Here's a fact - the states have been involved in airport development long before the federal government. If it had not been for the states, we would not have the airport system we now have.

The feds "took over" when they started funding such projects.

Here's a fact - the states have proven they have the expertise to handle airport planning and development.

The Act creating the Kansas Department of Transportation empowers the Secretary to engage in airport systems planning on a state-wide basis, and undertake airport development or provide financial assistance to public agencies within the State.

We can't do the job as mandated by the Kansas legislature without the benefit of funds.

Many commentators believe that the states should program airport projects in accordance with local needs (note: Transportation Policy of the Administration).

This premise is also endorsed by:

National Governor's Conference

National Association of State Aviation Officials

League - cities - counties

Many members of Congress.

NATIONAL GOVERNORS' CONFERENCE AVIATION POLICY

'Transportation Committee of the National Governors' Conference last month adopted its 1974 aviation policy position. Included were the following elements:

Noted with satisfaction current DOT/FAA studies which would transfer certain aviation programs and responsibilities from federal to state administration.

Urged that general aviation ADAP and PGP funds accompany any transfer or delegation of these programs to state administration.

Urged all states to join the 27 which have adopted the "Uniform State Channeling of Federal Airport Funds Act."

Recommended that all states broaden their financial and technical assistance to airport sponsors.

Urged Congress to recognize the essential state role in national air transportation system development and to reflect that recognition within the Airport and Airway Development Act at the appropriate time.

Reaffirmed support for the development of a state airport system plan by each state, and noted that local and regional airport plans should be considered integral elements of the overall state plans.

Urged all states to encourage effective local airport zoning laws to achieve land use compatible with airport and aircraft operations.

DIVISION OF AVIATION

The Division of Aviation shall support the mission of the Department of Transportation by assisting in the development of an air transportation system consistent with the goals, objectives and priorities of local, regional and statewide comprehensive transportation system plans.

In fulfilling its responsibilities the Division's duties and functions shall include, but not be limited to, the following activities:

In cooperation with local, regional and federal agencies:

- a. Formulate an Air Transportation Policy for Kansas.
- b. Review and advise the Secretary on airport elements of local, regional and state transportation planning proposals.
- c. Develop planning design standards and criteria for the interface of airport facilities with other transportation modes.
- d. Study and evaluate the economic, social and environmental effects of airports and aviation and cooperate with airport and aircraft operators and with local, state and federal agencies in resolving environmental conflicts.
- e. Assist regional and local governmental entities in airport location studies.

My name is Murl Johnston. I am Director of Aviation for Johnson County, Kansas. My responsibilities are the air activities of both County-owned airports, one being the 7th busiest airport in the Kansas City Region, which includes Kansas, Missouri, Nebraska, and Iowa. I have been associated with airports and fixed base operators for the greater part of thirty years. I am also a commercial pilot with over 10,000 hours.

I am giving you this background information to establish my qualifications for giving the following statements:

Over the past thirty years aviation has grown in spite of all the roadblocks which have been placed on it, some of these being excessive taxes, government regulations, and high costs. The Federal Government has assumed the responsibility of regulating air navigation and airport development. Senate Bill No.916 proposes to establish a program of aviation development. We certainly do not need any more "red tape" nor do we need an additional governmental body to help in the development of aviation.

At the present time the Federal Government will finance 90% of the development and purchase of land for airports. Over a period of years, the FAA has developed a realistic program as to what is necessary in the way of runways, taxiways, lighting, and necessary land to have a good operational facility. I know some people will say it costs more. After having experienced several projects approved by the FAA, I can say that they have been structurally good for many years with minimum upkeep. Any community that cannot afford to pay the 10% which is required by the Federal Government cannot afford to own or operate an airport.

At the present time there is a 7¢ per gallon state tax on aviation fuel. This tax is paid for by the fixed base operator or airport and is returned to the fixed base operator or airport by the state. Senate Bill No.916 proposes that 50% of this tax would be credited to a State Aviation Fund for the purpose of making grants to any municipality undertaking the improvement or construction of a municipal airport except

those built or improved or to be built or improved with the assistance of Federal aid. In other words, any airport in the state that has received or is receiving Federal funds would not be eligible for any state funding, even though approximately 90% of the income into this state fund would come from the larger airports.

Senate Bill No. 916 also proposes that each aircraft be licensed at a cost of \$5.00 in spite of the fact that aircraft are already registered with the Federal Government. The elimination of 1/2 of the fuel taxes paid to the state would cause the price of gasoline to be raised at least 3-1/2¢ per gallon to make up for the loss in the supplier's profit. Already the aircraft owner is taxed to death. At the time he buys his airplane he pays a sales tax. Each year it costs him \$25.00 plus 2¢ per pound in excess of 2,500 pounds of its gross weight; personal property taxes; and Federal fuel tax 7¢ per gallon.

Refunding only 1/2 of the fuel tax would increase the cost of the product to the consumer 3-1/2¢ per gallon. Add the 50% refund of the state gasoline tax to the \$5.00 registration tax, you have a pretty healthy sum creating another "monster" which is not needed and is not requested by most aircraft owners.

Similar legislation such as SB-916 has been proposed several times in the last thirty years and it has never been found to be needed nor wanted. After being a F.B.O. and airport owner I strongly urge legislation such as SB-916 should not be favorably considered.

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Wichita Mid-Continent Airport
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Attachment IV

PROPOSED AIRPORT PLANNING GRANT FUND LEGISLATION

The title of the Act apparently limits its application to financial assistance for airport planning. It would appear, however, that there might still exist some constitutional problem in view of Article 11, Section 10 of the State Constitution, which states as follows:

"Special taxes for highway purposes. The state shall have power to levy special taxes, for roads and highway purposes, on motor vehicles and on motor fuels."

In any event, this matter should be researched prior to submitting the proposed legislation for passage.

Section 1 (a) of the Act, which defines "municipalities", seems unduly restrictive, and may not include all those governmental entities which are authorized by law to own and operate airports, i.e., airport authorities, boards of park commissioners, etc. Even the language included in K.S.A. 3-604 and in Section 6 of the bill leaves something to be desired. It is suggested that the language used in existing K.S.A. 3-153 would be more appropriate, namely:

"Municipalities defined. For the purposes of this act the term 'municipality' shall be construed to mean any city, county, board, commission, airport authority, or other governmental or quasi-governmental entity authorized by law to own and operate one or more airports."

Section 2 provides for the creation of the Airport Planning Fund. If it is intended that any municipality authorized to own and operate airports is eligible to receive planning grants from this fund -- then the language ". . . including, but not restricted to, those which qualify for said aid and assistance under the provisions of the Federal Airport and Airway Development Act", is clearly unnecessary.

Section 3 of the Act is well meaning, but would appear to preclude a planning grant to a municipality which does not presently have an airport. It would seem to me that a very valid and important purpose of these planning grants should include such things as site location studies for new airports. The restrictions contained in Section 3, although generally valid and reasonable, are somewhat arbitrary, plus the fact that many airport owners in Kansas, i.e., boards, commissions, airport authorities, etc., have no legal power or authority to pass or enforce ordinances or zoning regulations. This section needs additional research and consideration along these lines.

Section 4 - the delegation of powers and authorities of the Secretary of Transportation seems to be wholly unnecessary. Any and all things done under the authority of the State Department of Transportation are through the Secretary.

Section 5 - The provisions permitting the reallocation of monies committed to municipalities who have not entered into contracts within the fiscal year for which it was allocated could create problems if the projects were commenced at the end of the current fiscal year in point. It would be suggested that possibly a definite period of time be stated within which said municipality must enter into contracts or lose the funds.

Section 6 - Since K.S.A. 3-604 is being amended, it would seem appropriate to redefine "municipality" as suggested in Section 1 of this Bill.

Section 7 - the proposed amendment to K.S.A. 3-605 in Subsection (2) would be necessary in order to comply with Section 28 (b) (2) of the Federal Airport Development Legislation as amended in 1976. However, the above section of the ADAP law also includes the following certification requirements:

"(3) such state's legislature has authorized the appropriation of state funds for the development of general aviation airports in such state during the period for which funds are sought under this section."

Although K.S.A. 3-605, Sections (3) and (5) thereof provide for state airport development, (Section 7, Subsections (3) and (5) of this proposed bill), these provisions have not to my knowledge ever been tested or considered as to constitutionality.

The question as to whether the State Legislature could or would, in fact, appropriate State funds for the development of general aviation airports could not be resolved until at least the beginning of the 1977 Legislative Session. One of the restrictions contained in the Federal ADAP Law, Section 28 (c) (3), states that the Secretary (U.S. DOT) shall not initiate any demonstration program after January 1, 1977. This time limitation expires before the 1977 Kansas Legislative Session will begin.

It would also appear that other existing statutes would need to be considered and possibly amended.

K.S.A. 79-3402 provides for the purpose of the motor vehicle fuel tax, and states in part that revenues may be used for building and maintaining public highways, etc., and the expenses incurred in the administration of the act and "for no other purposes".

This statute would appear to prohibit the use of motor vehicle fuel tax revenues for airport planning or development.

K.S.A. 79-3425 (1975 Supp.) provides for the distribution of all of the motor vehicle fuel taxes collected. This statute should be reviewed in view of the additional provisions contained in Section 8 of this new legislation (amending K.S.A. 79-3453) wherein the Director of Revenue and the State Treasurer are given directions which are possibly not consistent with the provisions of K.S.A. 79-3425, 1975 Supp.

In order to be completely fair and equitable to all general aviation fuel users, it would be necessary to include jet fuel in addition to aviation gasoline, which heretofore is the only type of general aviation fuel considered for taxation. In order to include jet fuel, it would appear that several additional statutes would require amending. Possibly it could be included in the Special Fuel Tax Law, but again additional statutes and definitions would need to be revised. This, of course, would only apply to general aviation fuel and not fuel purchased by certificated air carriers.

Additional matters which were not considered in the original proposed legislation include the following:

1. The percentage of the state and local share of planning grants. It is assumed that a 50-50 match would be appropriate. This subject is now covered in the amendment submitted at the Committee hearing.
2. The limitations on the amount of the grants are not mentioned. Possibly a minimum and maximum amount both should be spelled out, as well as the time period within which the amounts are available. This subject is now covered in the amendment submitted at the Committee hearing.
3. The sales tax exemption on motor vehicle fuel, as was mentioned in the previous proposed legislation (Substitute for Senate Bill 916, Section 16 a).
4. The various other subjects covered in the previous legislation (Substitute for Senate Bill 916).

It is suggested that some of the provisions now contained in K.S.A. 3-605 are not proper subjects to be included in ARTICLE 6, FEDERAL AND OTHER MONEYS". These include the original provisions placed therein in 1970, and amended in 1975 to change the name from the Department of Economic Development to the Secretary of Transportation.

Subsection 1 is proper and relates to grants under the ADAP Laws of 1970 and 1976.

Subsection 2 is also proper and relates to the Federal Acts.

Subsection 3 seems completely unrelated to the intended purposes of Article 6 (K.S.A. 3-601, et seq.). If it is or becomes legally possible for the Department of Transportation of the State to do these things, it would appear that they should more properly be included in ARTICLE 50, DEPARTMENT OF TRANSPORTATION. K.S.A. 75-5023 spells out the specific powers of the Secretary of Transportation. Also, K.S.A. 75-5011 provides for the transfer of power to the Secretary of Transportation, which relates to aviation.

Subsection 4 and Subsection 5 are similar to Subsection 3, and should be included in K.S.A. 75-5023.

The foregoing is not intended to be a complete or exhaustive study of the proposed legislation, but it does point out that further study and research are needed.

DR. WILLIS J. WOLLMANN

DENTIST

MOUNDRIDGE, KANSAS 67107

PHONE 316 345-8200

September 15, 1976

To the Special Committee on Federal and State Affairs:

The Moundridge Airport Board and the Moundridge City Council feel that the enactment of substitute Senate Bill number 916 or some similar piece of legislation is essential to the existence of a uniform distribution of airports throughout Kansas.

Only a few major airports are eligible for federal funds. Many of the airports in rural Kansas are short, rough, and even seas of mud in the wet seasons. Local funds alone cannot correct this dangerous situation.

On May 25 of this year the city of Moundridge held a \$75,000 airport bond election. \$25,000 had been pledged by local businesses, so together with the pledges and the bond election, we planned for a \$100,000 project to provide a 3,000 foot hard surface runway on our airport. The proposal failed. Had matching state funds been available, the election probably would have carried.

Although this is not a major issue, I wonder about the necessity of lines 28-31 on page 4, 1-5 on page 5, and 11-20 on page 6. These deal with regulation of pilots and aircraft and in a sense duplicate something that is being adequately handled by the Federal Aviation Administration.

Also on page 18, line 4, \$50,000 is listed as the maximum grant. With the present inflationary trend this might be a little low. Perhaps \$60,000 might be better.

In conclusion may I point out that a bill like this can help aviation at all Kansas airports, even those ineligible for state funds because they are receiving federal aid. An aircraft parked by a good runway at Topeka or Wichita is not of much value in getting across the state, when the runway at the destination is too muddy for landing.

Willis J. Wollmann
Willis J. Wollmann, D.D.S.
Chairman, Moundridge Airport Board
Chairman, Moundridge City Council
Secretary, McPherson County Airport Board



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September 16, 1976

Honorable Curt T. Schneider
Attorney General
Capitol Building
Topeka, Kansas 66612

Dear General:

The Special Committee on Federal and State Affairs is considering, as an interim study proposal, the desirability of establishing a state program of rural airport aid and development. Several questions have been raised concerning the constitutionality of legislation to establish such a program.

On behalf of the committee, we request your opinion on the following:

1. Would the establishment of a program of state grants for construction and development of airports which are owned and operated by cities or counties be constitutionally valid?
2. Would the establishment of a program of state grants for planning of airports which are owned and operated by cities or counties be constitutionally valid?
3. Would the imposition of a state motor-fuel tax on fuels for aircraft, to fund such state grants, be constitutionally valid?

Thank you.

Sincerely,

Rep. Lloyd Buzzi, Chairman
Sen. Neil H. Arasmith, Vice Chairman

This could attract new industries to an area because of reasonable rents and capital expenditures.

Insurance rates could be reduced for both municipalities and private owners through the protection afforded by a state code which reduced fire losses, personal injury and property damage.

Building officials can be appointed jointly by two or more jurisdictions to make inspections, issue permits and certificates, and perform other essential enforcement duties in communities which previously had no building standards or enforcement. Administration, inspection and enforcement will become more uniform.

A state code will reduce over design or construction resulting from a confusion of code requirements. It will promote efficiency in the construction industry and in the utilization of mass production techniques such as prefabrication, use of components, mechanical cores, prefinished materials, and modular construction. It is hoped that one of the most significant benefits will be the enhancement of state and local mutual support and cooperation.

In the interest of fairness and consistency, the state building code would provide for a body to hear appeals of administrative decisions.

Building officials of communities may turn to the technical staff of the administrative agency for answers to many questions and problems. The answers in some cases may be only advisory or they may be obligatory. In any event, such mechanisms will relieve many of the pressures exerted by special interests on local governing bodies and local appeals boards.

E. PROPOSED LEGISLATION FOR A STATEWIDE BUILDING CODE ACT

Proposed legislation for a statewide building code act is submitted in eighteen (18) sections which are identified and detailed as follows:

- Section 1 - Title
- Section 2 - Legislative Findings and Intent
- Section 3 - Definitions
- Section 4 - Building Code Advisory Council and Appeals Board
- Section 5 - Powers of Council and Administrative Agency
- Section 6 - State Building Code
- Section 7 - Local Exemptions
- Section 8 - Local Variations
- Section 9 - Administration
- Section 10 - Training Programs

- Section 11 - Reservation of Local Zoning and Related Powers
- Section 12 - Fees
- Section 13 - Appeals
- Section 14 - Injunctive Relief
- Section 15 - Statutory Civil Action
- Section 16 - Criminal Penalties
- Section 17 - Severability
- Section 18 - Effective Date

Section 1. Title

This Act may be cited as the Kansas Building Codes Act.

Section 2. Legislative Findings and Intent

Conditions exist in this state which reveal a shortage of decent, safe and sanitary housing and other buildings such as schools and hospitals at prices which residents, private organizations and public agencies of this state can afford. Adequate facilities help alleviate community tension and blight, reduce crime, increase employment, attract new industries, and materially improve the health, safety and welfare of the residents of this state.

Uniformity of building codes and uniformity in procedures for administering and enforcing codes throughout the nation and the state are matters of widespread interest and concern. This uniformity is found to increase the efficiency of the building industry and promote the safety of its products.

The opportunity to improve quality and reduce cost by the new technologies, techniques, and materials is enhanced by the utilization and application of uniform building codes and uniform procedures for administering and enforcing building codes throughout a large area. It is further enhanced by widespread reliance upon uniform and reasonable material specifications and performance criteria.

The Legislature intends, by this Act, to create conditions in this state which will foster uniform standards and enforcement and facilitate the development and use of new technologies, techniques and materials consistent with the requirements of health, safety and welfare.

The Legislature intends that the administration and enforcement of this Act shall be within the jurisdiction of a single administrative agency.

Section 3. Definitions

Wherever used or referred to in this Act, the terms defined herein have the meanings assigned to them unless a different meaning is clearly indicated by the context.

- (a) "Administrative agency" means the Division of Building Codes, Department of Administration, which is charged with the administration and enforcement of this Act.
- (b) "Agricultural Building" is a structure located on agricultural property designed, constructed or used to shelter or contain farm implements, hay, grain, poultry, livestock or other horticultural products. This structure shall not be a place of human habitation or a place of employment where agricultural products are processed, treated, or packaged; nor shall it be a place used by the public.
- (c) "Appeals Board" means the State Appeals Board unless stated otherwise.
- (d) "Building" means any combination of materials, whether portable or fixed, which comprises a structure affording facilities or shelter for any use or occupancy. The word "building" shall be construed wherever used herein as if followed by the words "or part or parts thereof and all equipment therein" unless the context clearly requires a different meaning. "Building" shall not mean a mobile home certified pursuant to the Kansas Uniform Standards Code for mobile homes and recreational vehicles and shall not mean agricultural buildings.
- (e) "Building Code(s)" mean those standards and requirements adopted by regulation for the design and construction of buildings under this Act.
- (f) "Construction" means the erection, fabrication, reconstruction, demolition, alteration, conversion, relocation, preservation or repair of a building, or the installation of equipment therein.
- (g) "Director" means the director of the Division of Building Codes, Department of Administration.
- (h) "Equipment" means facilities or installations including, but not limited to, plumbing, heating, electrical, ventilating, air conditioning, and refrigerating facilities or installations,

and elevators, dumbwaiters, escalators, boilers, and pressure vessels.

- (i) "Local enforcement agency" means the agency or agencies established by one or more units of local government and having authority to make inspections of building and to administer and enforce the laws, ordinances, and regulations enacted by the state and by the local government which establish standards and requirements applicable to the construction of buildings.
- (j) "Local government" means any county, city, municipal corporation, town, or other political subdivision of this state with authority to establish standards and requirements applicable to the construction of buildings.

Section 4. Building Code Advisory Council and Appeals Board

- (a) A Building Code Advisory Council, hereinafter called the "Council" is created. The Council shall consist of twenty-five (25) qualified persons: the Director of Building Codes (non voting), three (3) representatives of the general public, one (1) registered architect, one (1) registered professional engineer (structural), one (1) registered professional engineer (mechanical), one (1) registered professional engineer (electrical), one (1) general contractor, one (1) plumbing contractor, one (1) mechanical contractor, one (1) electrical contractor, one (1) representative of the building trades, one (1) home builder, one (1) mobile home manufacturer, one (1) component or modular building manufacturer, one (1) building official employed by a city or county having a population of more than one hundred thousand (100,000), one (1) building official employed by a city or county having a population of more than twenty-five thousand (25,000) but not more than one-hundred thousand (100,000), one (1) building official employed by a city or county having a population of not more than twenty-five thousand (25,000), one (1) insurance official, one (1) gas or electric utility official, the Director of Architectural Services, Department of Administration, or his authorized representative, the Secretary of Health and Environment or his authorized representative, the Secretary of Labor or his authorized representative and the State Fire Marshal or his authorized representative.
- (b) Members of the Council, except the Director and representatives of state agencies named herein, shall be appointed by the

Governor for four-year terms of office and serve until qualified successors are appointed, except that the Governor, for the first appointments to the Council, shall appoint five members for terms of four years, five members for terms of three years, five members for terms of two years, and five members for terms of one year. Three or more consecutive failures by a member to attend meetings of the Council, without reasonable cause constitute cause for removal of the member from the Council by the Governor or by the chairman with concurrence by a majority of the Council. The Governor shall appoint a new member when a vacancy occurs. When a vacancy occurs, a majority of the remaining members of the Council may appoint an interim member to fill the vacancy for the remainder of the term or until the Governor appoints a permanent member.

- (c) Members of the Council shall receive an allowance as provided in (appropriate statutory reference) per day or part of a day actually spent attending to the business of the Council and be compensated for traveling expenses as provided in (appropriate statutory reference).
- (d) The Council shall meet at the written request of the Director or of three or more members of the Council; but the Council shall meet no fewer than four times per year.
- (e) The Council shall establish rules, regulations and bylaws for its internal operation.
- (f) The Council shall be part of the Division of Building Codes but shall exercise its powers, duties and functions independently of the Division of Building Codes, except that all budgeting, procurement and related functions shall be under the direction and supervision of the Director of Building Codes.
- (g) No member may act as a member of the Council or vote as such in connection with any matter in which he has a private interest.
- (h) The Council shall appoint a standing Appeals Board from its membership for the purposes of hearing and deciding upon appeals brought before them. The membership of the Appeals Board shall be representative of each of the following five major areas:
 - (1) Local building code enforcement
 - (2) State agencies concerned with building construction

- (3) Builders, manufacturers or trades
- (4) Design professionals (engineers, architects, etc.)
- (5) Insurance, utilities and general public

Section 5. Powers of Council and Administrative Agency

- (a) The Council and any other interested party may propose rules and regulations and amendments thereto. The Director shall adopt and may amend or repeal rules and regulations. After adoption the rules and regulations shall be published, administered, and enforced by the Director. The rules and regulations shall cover the following:
 - (1) the construction of all buildings and inspection thereof for compliance with the Kansas Building Code;
 - (2) the issuance and revocation of permits or licenses for construction of buildings;
 - (3) the use or occupancy of buildings;
 - (4) the standards and requirements for materials and equipment to be used in buildings including, but not limited to, standards and requirements for safety, noise insulation and abatement, energy conservation, ingress and egress, fire zones and sanitary conditions;
 - (5) fees for functions performed pursuant to this Act;
 - (6) the administration and enforcement of this Act.
- (b) The Director shall adopt the codes, standards and requirements which apply to buildings and which are promulgated by such organizations as the Building Officials and Code Administrators International, Inc., International Conference of Building Officials, Southern Building Code Congress, Council of American Building Officials, and other nationally recognized organizations including governmental agencies (hereinafter referred to as "model codes"), if the Director determines that each such code meets the following requirements:
 - (1) that its adoption will not substantially impair regional uniformity of building regulations;
 - (2) that such code does not discriminate against particular technologies, techniques and materials.

- (3) that such code does not unnecessarily increase the cost of construction in the state;
- (4) that such code will protect the public health, safety and welfare within the state; and
- (5) that the state will be adequately represented in the code modification proceedings of the model code group whose code is proposed to be adopted.

If the Director determines that all of the codes fail to meet one or more of the requirements, the Director shall adopt a code package which is comprised of one or more of the model codes, or which is amended to the extent necessary to meet the requirements.

- (c) The Director shall endeavor to maintain the rules and regulations current with the state of the art. The Director shall be deemed to have done so if he adopts, without change, such improvements, amendments and research findings as may be issued by the national model code organization within two years of the issuance. Any other amendments adopted by the Director shall meet the criteria set forth in subsection (b) above and be supported by written findings of fact. Such amendments and findings of fact in support thereof shall be submitted to the appropriate code writing organization for consideration of amendment to that code.
- (d) The Director shall also:
 - (1) hold a public hearing prior to adopting any rule or regulation or amendment thereto, following adequate public notice;
 - (2) make a continual study of the operation of the Kansas Building Code and other laws relating to the construction of buildings to ascertain their effect upon the cost of building construction and determine the effectiveness of their provisions;
 - (3) hear appeals pursuant to Section 13 hereof;
 - (4) decide, upon application by a private party or a local enforcement agency, that new technologies, techniques and materials which have been tested if necessary and found to meet the objectives of the Kansas Building Code shall be deemed to meet that code. These determinations are binding upon all local enforcement agencies throughout the state.

- (e) The Director may also:
 - (1) require or provide for the testing of materials, devices and methods of construction; and
 - (2) engage experts, consultants and technical advisers for assistance and recommendations relative to the adoption, promulgation, application and enforcement of the Building Code.

Section 6. Kansas Building Code

- (a) The rules and regulations published pursuant to Section 5 hereof shall comprise and collectively be known as the Kansas Building Code.
- (b) The Kansas Building Code shall be designed to achieve the following specific objectives:
 - (1) provide uniform standards and requirements for construction and construction materials;
 - (2) to the extent practicable, set forth the standards, specifications, and requirements in terms of performance objectives which among other things facilitate the use of new technologies, techniques and materials. Preference shall be given to standards reasonably consistent with those of other states.
- (c) Subject to the provisions of Section 7 hereof, building regulations adopted by a local government shall continue in effect, unless repealed, until 180 days. Thereafter, building regulations adopted by a local government shall be void and of no effect, except as reserved to local government in Section 11 of this Act. A building permit validly issued pursuant to local building regulations within 180 days after adoption of the Kansas Building Code is valid thereafter and the construction of a building may be completed pursuant to and in accordance with the permit. In areas of the state having no building regulations or not requiring building permits, the construction of a building started before adoption of the Kansas Building Code may be completed without a building permit.
- (d) Until 180 days after adoption of the Kansas Building Code, building code regulations promulgated by any state board, department, commission, or agency shall continue in effect unless repealed. Thereafter, such building code regulations

shall be void and of no effect, except that rules and regulations adopted pursuant to the uniform standards code for mobile homes and recreational vehicles shall continue in effect.

Section 7. Local Exemptions

- (a) A local government which, prior to the adoption of this Act, has adopted and is enforcing a nationally recognized model building code as its building ordinance, may apply to the Director to be allowed to continue to enforce its building ordinance and to be exempted from the provisions of the Kansas Building Code. After approval by the Director or by final decision by the court of competent jurisdiction after appeal of a decision by the Director, the ordinance shall be so exempted. The Director shall support his decisions on such applications with written findings in accordance with the provisions of subsection (b) of this section.
- (b) The Director shall grant such exemption if it can be established to the satisfaction of the Director that:
 - (1) the ordinance is sufficiently consistent with the Building Code so that its application will not substantially reduce statewide or regional uniformity of building regulations;
 - (2) the ordinance does not discriminate against particular technologies, techniques or materials;
 - (3) the ordinance does not unnecessarily increase the cost of construction in the jurisdiction;
 - (4) the ordinance is the current edition of a nationally recognized model building code; and
 - (5) enforcement of the ordinance, as it may differ from the Building Code, is necessary to protect the public health, safety and welfare within the applicable jurisdiction. In determining whether the ordinance meets the above requirements, the Director shall obtain the advice and counsel of the Council.
- (c) Any decision of the Director approving or disapproving such an application, or failure of the Director to act within a reasonable time, may be appealed in the court(s) of competent jurisdiction.

- (d) If such application is approved, the local government shall thereafter maintain its building ordinance up to date. The local government may do so by adopting, without change, such improvements, amendments, and research findings, as may be issued by the national model code organization within two years of the issuance thereof. If the local government wishes to amend the nationally recognized model code in any other manner, it shall submit the proposed amendment, and findings of fact in support thereof, to the Director. The Director shall approve the amendment if the local government establishes to the Director's satisfaction that it meets the five criteria set forth above and is necessary to account for conditions peculiar to the jurisdiction. Should an exempted local government fail to maintain its code up to date or amend its code in violation of this section, and fail to remedy the situation within a reasonable time after due notice, the Director shall revoke the local government's exemption and the Kansas Building Code shall be enforced in that jurisdiction. Any decision of the Director approving or disapproving such an amendment or revoking a local government's exemption may be appealed.
- (e) A local government which has been exempted under this Section may upon 180 days public notice repeal its building ordinance and will thereafter be covered by the Kansas Building Code.

Section 8. Local Variations

A local enforcement agency may propose to the Director variation(s) in the Kansas Building Code, for application within its jurisdiction, to cover special local conditions requiring special or different building standards. The Director shall approve such variation(s) if it is established to the Director's satisfaction that:

- (a) the proposed variation is sufficiently consistent with the Kansas Building Code so that its application will not substantially reduce statewide uniformity of building regulations;
- (b) the proposed variation does not discriminate against particular technologies, techniques or materials;
- (c) the proposed variation does not unnecessarily increase the cost of construction in the jurisdiction; and
- (d) the proposed variation is necessary to protect the public health, safety and welfare within the jurisdiction.

Section 9. Administration

- (a) In areas where local enforcement agencies have jurisdiction and enforcement, the Director shall not enforce the Kansas Building Code. In such areas, the local enforcement agencies are responsible for the examination and approval or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates and similar documents, and the inspection of buildings pursuant to the provisions of the Kansas Building Code.
- (b) Local governments may create after the adoption of the Kansas Building Code, a local enforcement agency and may employ and designate a building official as well as code enforcement officers deemed necessary to assist the enforcement agency in carrying out its functions under Section 9 (a) hereof. The administrative chief of the local enforcement agency shall be called the building official, and any additional local inspectors shall be called code enforcement officers.
- (c) If a local government is not carrying out the provisions of Section 9 (b) of this Act, the Director shall perform those functions in that jurisdiction until the local government has appointed the necessary personnel and established the necessary procedures.
- (d) Local governments having enforcement agencies shall appoint local appeals boards to hear appeals brought in accordance with Section 13 (b) of this Act. Until the boards are established, appeals shall be heard in accordance with Section 13 of this Act. A sufficient number of members shall be appointed to allow appeals to be heard promptly by panels of three members, all of whom shall be free of conflicts of interest in the cases before them. A local government shall be relieved of the duty to appoint local appeals boards if it establishes to the satisfaction of the Director that a sufficient number of qualified people cannot be found in the jurisdiction or through cooperation with neighboring jurisdictions.
- (e) Two or more local governments may establish an area enforcement agency or an area appeals board to serve their jurisdictions, and in this event they shall share the expenses incurred.
- (f) The Director may, upon request, assist a local enforcement agency in such matters as technical assistance, code interpretation, education, training, and information collection and dissemination.

- (g) Except as otherwise provided in the Kansas Building Code, the construction of a building shall not begin until a building permit is issued. Upon submission of an application to a local enforcement agency, if the building proposed to be erected will comply with this Act and the Kansas Building Code, a permit shall be issued. A local enforcement agency may suspend or revoke a building permit if the building under construction pursuant thereto does not comply with this Act or the Kansas Building Code.
- (h) A local enforcement agency shall periodically inspect all construction undertaken pursuant to building permits issued by that agency to assure compliance with this Act and the Kansas Building Code. The applicant for a building permit of a building under construction is deemed to have consented to inspection by a local enforcement agency by the act of applying for a building permit. In addition to other inspections provided for in this Act, an inspection may be made of any building at any time if a local enforcement agency has probable cause to believe that a condition hazardous to life or property exists. If a building is found not to comply with the Kansas Building Code, the local enforcement agency shall notify the permittee in writing to bring the building into compliance with the Kansas Building Code, or to secure it from entry, or both. If the permittee fails to comply with the notification, the local enforcement agency shall revoke the permit.
- (i) No building, except one and two-family dwellings, constructed after the effective date of the Kansas Building Code shall be used or occupied until a certificate of occupancy has been issued. Upon submission of an application for a certificate of occupancy to a local enforcement agency, a certificate of occupancy shall be issued if the building to which the application pertains has been constructed in accordance with the building permit, the Kansas Building Code, and other applicable laws and ordinances.

Section 10. Training Programs

- (a) The Director may conduct or sponsor pre-entry and in-service education and training programs on the technical, legal and administrative aspects of building code administration and enforcement. For this purpose he may cooperate and contract with educational institutions, local, regional, state or national building officials' organizations, and any other appropriate organization.

- (b) The Director may reimburse code enforcement officers and other employees of the state and its subdivisions for related expenses incurred by them for attendance at in-service training programs approved by the Director.

Section 11. Reservation of Local Zoning and Related Powers

Except as provided by or pursuant to this Act, land-use zone requirements, building setback requirements, side and rear yard requirements, site development, and property-line requirements are specifically and entirely reserved to local government.

Section 12. Fees

- (a) The Director shall establish by regulation a schedule of fees for the functions performed by the Division of Building Codes in connection with the administration and enforcement of this Act. The amount of the fees shall be based, to the extent reasonable, on the cost of performing functions undertaken pursuant to this Act.
- (b) Each local government may establish by ordinance or resolution a schedule of fees for the functions performed by the local enforcement agency in connection with the enforcement of this Act.

Section 13. Appeals

- (a) The Director shall promptly hear and decide appeals brought by any person or party in an individual capacity, or on behalf of a class of persons or parties, affected by any rule, regulation or decision pursuant to this Act. Decisions by the Director are reviewable on appeal to the Appeals Board. Decisions by the Appeals Board are reviewable on appeal or successive appeals in the courts of competent jurisdiction.
- (b) Prior to appeal to the Director appeals of decisions or rulings of a local enforcement agency shall be heard by the appropriate local appeals board. If there is no local appeals board for the jurisdiction, appeals shall be taken directly to the Director.

Section 14. Injunctive Relief

The Director may obtain injunctive relief from any court of competent jurisdiction to enjoin the offering for sale, sale, delivery, use, occupancy, erection, alteration, or installation of any building covered by this Act, upon an affidavit of the Director specifying the

manner in which the building does not conform to the requirements of this Act or the Kansas Building Code.

Section 15. Statutory Civil Action

- (a) Notwithstanding any other remedies available, any person or party, in an individual capacity or on behalf of a class of persons or parties, damaged as a result of a violation of this Act or the Kansas Building Code, has a cause of action in any court of competent jurisdiction against the person or party who committed the violation. An award may include damages and the cost of litigation, including reasonable attorneys' fees. (The cause of action created by this section is subject to the same limitations period applicable in the state for causes of action of similar nature.)
- (b) A person who is an employee or appointee of state or local government and who in the course of carrying out his duties and responsibilities under this Act has charges brought against him by any individual or parties for damages allegedly to have been suffered under the administration and enforcement of this Act shall be entitled to and provided with legal defense furnished by the state or local government by which he was employed or appointed.

Section 16. Criminal Penalties

- (a) Any person who violates any provision of this Act or the Kansas Building Code is guilty of a Class _____ misdemeanor.
- (b) A separate violation is deemed to have occurred with respect to each building not in compliance with the Act or the Kansas Building Code. Each day the violation continues constitutes a separate violation.

Section 17. Severability

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect any provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Section 18. Effective Date

This Act shall take effect _____, 19 _____.

S T A T E M E N T

PRESENTED TO THE INTERIM COMMITTEE
ON FEDERAL AND STATE AFFAIRS

September 16, 1976

By Lamar Weaver, Jr.
Director, Kansas Energy Office

I am Lamar Weaver, Jr., Director of the Kansas Energy Office. I come before this interim committee for the purpose of presenting testimony with regard to the feasibility of adopting a statewide building code. More specifically, however, I wish to comment on the contents of such a code. My interest is parochial. I am concerned with energy conservation. I know that I need not point out to this committee that our nation and our state is faced with energy problems due in large measure to our declining energy resources. Since the state is concerned with the question of adopting a building code, it is my hope that the opportunity to conserve energy through the adoption of a code with adequate standards designed to conserve energy is not lost. Approximately 18% of the net energy in the United States is consumed in the residential sector, hence how we regulate new structures in this state is vital to energy conservation.

I wish to make a strong appeal that any statewide code enacted or developed for the State of Kansas include the standards and requirements which will ensure that our energy use is conserved. I am cognizant of the report on statewide building codes prepared by an advisory committee for the Governor and the Kansas Legislature. I have studied the committee's recommendations and I conclude that this report can lead to

the development of an adequate building code for Kansas. I would only stress that standards which promote energy conservation not be omitted from the code.

I believe it is also appropriate for me to point out to this committee that the state is embarked upon a federal/state program which entails the development and implementation of a State Energy Conservation Plan. If the state plan is to be acceptable to the federal authorities (FEA) and thereby eligible for federal financial assistance, it must contain certain mandatory program measures. Among these are:

- a. Mandatory lighting efficiency standards for public buildings.
- b. Mandatory thermal efficiency for new and renovated buildings.

For each of these mandatory programs, certain minimum criteria have been established. For mandatory lighting efficiency standards, these criteria are:

- (1) The standards must be in place and ready for implementation throughout all political subdivisions of the state by January 1, 1978, unless an extension has been granted by FEA.

- (2) Apply to all public buildings above a certain size as determined by the state.

- (3) For new public buildings be no less stringent than a standard consistent with the provisions of Section 9 of ASHRAE 90-75.

As regards mandatory thermal efficiency standards, the minimum criteria are:

- (1) Be in place and be ready for implementation with respect to all buildings other than exempted buildings throughout all political subdivisions of the state by January 1, 1978, unless an extension of time has been granted by FEA.

(2) Take into account the exterior envelope physical characteristics, HVAC system selection and configuration, HVAC equipment performance and service water heating design and equipment selection.

(3) For all new non-residential buildings, be no less stringent than a standard consistent with provisions of Sections 4-9 of ASHRAE 90-75

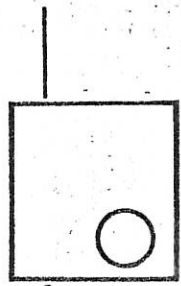
(4) For all new residential buildings, be no less stringent than the HUD Minimum Property Standards, or a standard consistent with the provisions of Sections 4-9 of ASHRAE 90-75.

(5) For renovated buildings,

(1) Apply to those buildings determined by the state to be renovated buildings; and (2) contain the elements deemed appropriate by the state regarding thermal efficiency standards for renovated buildings.

As the Director of Energy, I am concerned that the state have a building code that includes thermal standards. I believe it is for the benefit and welfare of the state that it has such a code. Secondly, I believe that the State of Kansas can benefit from federal financial assistance if it meets minimum criteria established by the Federal Energy Administration.

Attachment - I



MECHANICAL CONTRACTORS Industrial Development Fund of Kansas

PHONE 913/354-1130 • 325 FIRST NATIONAL BANK TOWER • ONE TOWNSITE PLAZA • TOPEKA, KANSAS 66603

September 16, 1976

TO: Chmn. Repr. Lloyd Buzzi and members of the Special Committee on Federal and State Affairs. (Proposal #61 - Statewide Bldg. Code)
FROM: Charles D. Carey, Jr., Executive Director of Mechanical Contractors Association of Kansas. (MCAK)

Thank you for this opportunity to speak in favor of a Statewide Building Code as recommended on page 1 of the 67 page FINAL REPORT dated January 1, 1976 by the ADVISORY COMMITTEE ON STATEWIDE BUILDING CODES, and in addition, I would like to encourage inclusion of ENERGY STANDARDS.

As Executive Director of MCAK, with 25 years experience as a mechanical contractor and a licensed Master and Journeyman plumber, who has worked with the tools, in addition to being a graduate engineer, I believe I have some qualifications for speaking in favor of a statewide code on behalf of our membership with respect to plumbing, gas piping, heating and air conditioning.

Basically, I have three points to make:

- 1. The health and safety of the public.
2. The extra cost paid by the public in the absence of codes or enforcement.
3. The need and practicability of including Energy Standards in codes.

First, let's look at health and safety and extra cost for not having or enforcing a code. Without going into many personal experiences, I would like to cite an example.

A. Floor furnace fumes were reported in a minimum type house occupied by a mother and a child. It was on a very cold day and I found that the exposed single wall vent on the north side of the house which terminated under the eave and which condensed the water vapor products of combustion so rapidly that a downdraft in the vent actually prevented the "products of combustion" from being vented. There was no solution except to throwaway the previous work and material and do it over correctly as should have been done in the first place. Did it really save money by not conforming to a code? Did it really protect the health and safety of the occupants by not conforming to a code?

B. Improper combustion venting and introduction of combustion air into furnace rooms, installation of gas lines without dirt traps and swing joints to prevent rupture from building or earth movement, etc., are needless hazards to health and safety and could be minimized with codes and proper enforcement. I do not have accident statistics to quantify the frequency of improper installations, perhaps insurance companies could provide helpful information. Actually, one case should be too many, and fortunately many are discovered and corrected by another mechanic sometime after installation at an EXTRA ADDITIONAL cost to someone.

C. Why should anyone regardless of geographic location be exempt from codes? So that he can be free to pollute streams or air, conceal improper venting and piping behind closed walls so that some unsuspecting buyer will inherit a sanitary waste system that gurgles and smells, without accesible cleanout locations, or water piping that rattles and bangs from improper support and lack of air chambers, or the contamination of water mains by incorrect piping with the potential of a cross-connection.

Buildings just outside the city limits or in rural areas should not be exempt from requirements that affect the health and safety of others. With our continued increase in population from birth rate plus legal and illegal immigration, personal freedom will continue to decrease regardless of campaign promises. What was once strictly my business just isn't so anymore because it now affects others.

D. The additional cost to the consumer of better and safer plumbing, gas piping, venting, heating and cooling systems required by codes is not all that much. Sure we all know that usually the first cost of a "botch job" is less than a "properly installed system". However, is the first cost so "sacred" that we will ignore the extra cost for correction of intolerable conditions or living with the misery of tolerating a system that is too costly to correct because it is behind finished walls or under concrete slabs.

When people become unhappy with building costs they often attack building codes to vent their frustrations. In the total cost of a typical building the cost of conforming to codes is small. It would be better that the gingerbread and expensive wall paper be deleted which can be added later than to "mess up" concealed, inaccessible piping. It doesn't take much more material or labor to do it right during original construction.

E. A statewide code would reduce the biased influence of a local Mr. Big or a city commissioner who wants to get re-elected by using codes and building costs as his platform.

Sometimes a smaller city plbg. board consists of the mayor, a health officer and one plumber. If the plumber conscientiously resists the breakdown of codes he will often find himself out voted on matters of which he has special knowledge or replaced by appointment of someone else.

Last, let's take a look at Energy. Although the majority at this time seem to ignore the energy problem by blaming oil companies, government, utilities, etc., surely deep down in their hearts they must know that our energy resources are limited, that our growth in demand for energy is exceeding growth in energy reserves, and that without energy our cherished way of life will cease to exist.

It's doubtful that the energy problem will ever be solved. It is just something that we will work at henceforth and forever in order to minimize the detrimental effects of insufficient and high cost energy.

The unending increase of the cost of energy will take a larger piece of the family budget, increase the cost of goods and services and will eventually be recognized as one of the highest priority concerns of this country. To do nothing during our lead time opportunity only accelerates and makes more painful, future adjustments.

The Statewide Building Code offers an organizational vehicle that can be used to reduce energy consumption in new and remodeled buildings in a least cost way at the time of construction.

Several Model Building Codes are incorporating the equivalent of the consensus standards developed by ASHRAE, The American Society of Heating, Refrigeration and Air Conditioning Engineers in their ASHRAE - 90 - 75 standard.

Thank you.

STATEMENT ON STATEWIDE BUILDING CODES

By

Richard D. MacRavey, Associate Director
League of Kansas Municipalities

I am, Dick MacRavey, Associate Director of the League of Kansas Municipalities.

The 1975-1976 Statement of Municipal Policy of the League states the following on building regulations:

I-4. Building Regulations.

I-4a. Building Codes. The state should adopt a minimum code, with building, plumbing, electrical and mechanical provisions, based on one of the three nationally accepted codes, with local units maintaining control over location, foundation, utility connection and related site matters and the authority to adopt supplemental code regulations based on local conditions. Local governments should review and modernize their housing and construction codes, and insure that their codes are fairly administered. We further urge that state laws require all state agencies working with building regulations to utilize the same code.

I-4b. Counties should adopt and enforce comprehensive building and related regulations in areas adjacent to cities in order to prevent substandard developments. Where counties have failed to take such action, cities should be authorized to enforce their building regulations within their extraterritorial planning jurisdiction.

Notwithstanding modest revisions to this policy statement at the forthcoming League convention in Topeka, October 3-5, 1976, the concept of a statewide building code will undoubtedly be supported by the League at the convention.

Since the League wants any proposed state building code to be workable and meaningful at all levels of government, the League is more than anxious to assist, if called upon, to achieve these goals.

Finally, the League respectfully calls your attention to the financial hardships caused

by state mandated programs regardless of how meritorious. The League, therefore, requests that the state provide adequate financial assistance to local governments for any expenditures resulting from their implementation of additional state requirements contained in any state code adopted.

Thank you for this opportunity to express these general comments.

Gentlemen & Ladies

9/16/26

Attachment 1

I am, J. Ray Dingman
an electrical contractor from Great Bend
a city of 29,000 population. We are non-
union and operate in the western $\frac{1}{2}$ of Kansas.

I have studied the final report of the advisory
committee and am in favor of the report. I
have visited with other contractors, builders,
developers and material distributors in our
area. A uniform building code is one of
the major problems concerning these persons.

I feel there is inconsistency in the "requirements
of Life Safety". The fire and loss of life
at Tulsa is a good example. The State
Architects office has been correcting situations
such as this in buildings under his jurisdiction,
yet many, many private institutions are
ignoring these warnings. I feel there is no
real enforcement agency until a tragedy
occurs.

The "State Building Code" is intended to be
a minimum standard and not a maximum
standard.

Respectfully,
J. Ray Dingman

XI



211 West 7th
Topeka, Kansas 66603
PHONE 296-3401
September 15, 1976

9-16
Attachment VII

Honorable Lloyd Buzzi
Statehouse
Topeka, KS 66612

Dear Representative Buzzi:

Due to prior commitments, it is impossible for me or Mr. Markley to be present at your committee meeting relating to Proposal No. 61 on Statewide Building Codes.

I would like to relate to the Committee the position our office takes on this issue: We are very much in favor of having a Statewide Building Code for all types of construction except buildings used for agriculture purposes. There are many areas in the state where the codes are antiquated, or do not have a code at all. We feel that the people of Kansas would receive better-constructed and safer buildings if they were built in conformance with some Code.

There would undoubtedly be many instances where this office would be better equipped to render recommendations and consultations concerning fire safety features to be incorporated into building construction if specific guidelines were established by a statewide building code.

Sincerely,

FLOYD H. DIBBERN
State Fire Marshal

FHD:eb

R.B. Hayter Kansas State University

I. Energy Policy and Conservation Act

17. Each state will prepare an implementation plan which will satisfy the intent of the referenced act.

1. The College of Engineering, Kansas State University, will assist the Kansas Energy Office in developing this plan.

2. When the plan is submitted, the state is not obligated to follow it unless they desire to receive federal assistance for implementation of an energy conservation program.

3. The plan will include 5 points, two of which will be affected by a statewide building code.

a) Illumination

b) Thermal Efficiency Standards and Insulation Requirements for New and Renovated Buildings

B. The recommendations for state implementation of the thermal efficiency plan is via legislative act

1. This could be an act directed toward energy conservation or

2. An act such as the proposed building code which would be written to include energy conserving concepts

a. By the code procedure, new technology could be implemented without the need for legislative action.

3. There will be need for coordination between the College of Engineering, KSU, and the legislature to prevent the development of a plan by KSU that would be totally unacceptable to the legislature

II Renovated Buildings

One approach suggested by FFA for inclusion of renovated buildings is

"... Typical existing building code practice requires that the entire building be brought up to code if 50 percent of its value is involved in the renovation. Renovations which involve 25 percent to 50 percent of the building value need to comply with the code for the renovated portion only.

Renovations not exceeding 25 percent of the building value may be accomplished with the original type of construction, unless fire code resistance and structural ~~provisions~~ provisions are violated...."

LAW OFFICES
PROBASCO & BUCK
708 MERCHANTS TOWER
TOPEKA, KANSAS 66612

WAYNE PROBASCO
WALLACE M. BUCK, JR.

September 16, 1976

TELEPHONE 354-7611
AREA CODE 913

REP. LLOYD BUZZI
Chairman, Special Committee on
Federal and State Affairs
State House
Topeka, Kansas

Re: Proposal No. 61-State-
wide Building Codes

Dear Lloyd:

I enjoyed appearing before your committee this morning and making comments on behalf of the Home Builders Association of Kansas, Inc., reference being to the above captioned matter.

This presentation was made in response to your invitation to appear by letter of August 26, 1976.

So that the comments given maybe made a part of your record, I will set forth these views, as follows:

- (1) The Kansas Home Builders Association would hope and urge that the committee involved in the administration of a statewide building code include a representative of the Home Builders Association.
- (2) It is important to us and we would hope that in the establishment of this proposal that a new level of bureaucracy in the state not be created. It would be hoped that the administration of the proposed law be administered through an existing agency.
- (3) We would generally support this proposal, and would cite the following:
 - (a) It would give uniformity of building for all builders and consumers in the state.
 - (b) It would have a tendency to stabilize costs.

REP. LLOYD BUZZI
September 16, 1976
Page 2

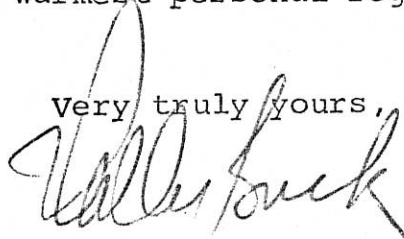
- (c) It would be a protection to the consumer as well as the builder and establish standards and levels of construction which would protect everyone.
- (d) In other states where a state building code law has gone into effect, such as Indiana, it has tended to bring order out of chaos in the home building industry.

We would appreciate being kept advised as to any further action on behalf of your committee and would be pleased to be asked for any responses we might give relative to any data or information we might possess that would assist you and your committee in your efforts.

I am sending a copy of this letter to your Research Analyst, J. Russell Mills, Jr. for his interest.

With my every good wish and warmest personal regards to you, I remain.

Very truly yours,



WALLACE M. BUCK, JR.

WMB/jc

cc: J. Russell Mills, Jr.
Clients

Comments by Gerald Imming before the Special Committee on Federal and State Affairs, September 16, 1976, concerning Proposal No. 61 - State-wide Building Codes.

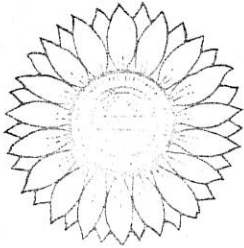
I am employed as Architect for the Medical Facilities Section of the Kansas Department of Health and Environment. I was honored to serve on the Advisory Committee whose report you have before you.

On the premise that consensus model building codes establish minimum standards of construction and equipment of structural environment, which in the light of current knowledge provide safe and healthful environs for people, the Department of Health and Environment ~~accepts~~ *supports* the concept of a statewide building code as consistent with its concern for protection of the health and enhancement of the well being of the citizens of Kansas.

Adoption of ^a statewide building code ~~neither conflicts with, nor duplicates~~ any current regulations or activities of this department. Rather, enforcement of such a uniform code which provides equal protection for all of our citizens should complement the department's efforts in discharge of its responsibility to the people.

My involvement with facilities for the health care delivery system under both State and Federal programs shows that all applicable regulations start or build on the assumption or requirement that a basic building code is enforced. A serious gap in project development results in locales where no code exists or is weakly enforced. Special problems and lack of uniformity are observed in other areas due to the different codes and editions of codes which are in effect at a given time. On the other hand, projects in those communities with successful active code programs are found to better provide for the safety and health of the people.

in my opinion



NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION, INC.

234 KANSAS, TOPEKA, KANSAS 66603 • TELEPHONE 913/232-9795

September 16, 1976

WILLIAM E. FERRILL, SECRETARY-MANAGER

To: The Hon. Representative Lloyd Buzzi, Chairman
Special Committee on Federal and State Affairs

Re: Proposal No. 61 - Statewide Building Codes

Dear Representative Buzzi:

This is to inform you that the Kansas (Topeka) Chapter of the National Electrical Contractor's Association, Inc. stands in support of enabling legislation allowing the establishment of statewide building codes.

For years, we in the electrical industry have recognized that due to the nature of electrical energy and its ever increasing uses, the need exists to provide a means of protecting the public from hazards to life and property arising from improper installations.

In our judgement such protection to the public is accomplished by:

1. Requiring that electrical installations be made in accordance with a recognized set of standards.
2. Requiring that electrical installations be inspected and reinspected by competent enforcement authority in order to ascertain that they comply with the requirements of the standards which have been adopted.
3. Requiring that electrical installations be made by competent and responsible persons or organizations capable of making the installations in accordance with the standards which have been adopted.

We look upon the final report and recommendations of the Advisory Committee on Statewide Building Codes as the first step of a modern day Kansas toward providing all citizens of the state equal and uniform protection under the law.

We support legislation which accomplishes this long needed objective and ask that the Special Committee on Federal and State Affairs favorably report to the full legislature as to the need for such legislation.

Very Truly Yours,

William E. Ferrill

William E. Ferrill, Secretary-Manager
Kansas (Topeka) Chapter
National Electrical Contractor's Asso.

cc: Committee members

Department of  Administration

Division of Architectural Services

State Office Building—Topeka 66612

REMARKS TO:
SPECIAL COMMITTEE ON FEDERAL AND STATE AFFAIRS

Proposal No. 61-Statewide Building Codes

September 16, 1976

Mr. Chairman and Members of the Committee:

I am basically a conservative. I appear here today to present a minority report as a member of the Statewide Building Code Committee. I question the necessity at this time to establish a statewide building code.

There are three basic questions that must be answered in considering this important piece of legislation:

1. Is there a real need for such legislation?
2. What will be the cost to establish this program?
3. What will it lead to in future agency growth patterns?

I know it is easy to say that a statewide building code should be established "for the health, safety, and welfare of the public". These are terms that are applicable and can be applied to a broad range of needs. However, the fundamental question has not been answered since it has not been clearly demonstrated that there is, in fact, a serious need to establish the statewide building code. If that need can be singularly demonstrated, I will be the first to promote the establishment of this legislation.

I would anticipate that the cost to establish a statewide building code program to be in the neighborhood of \$200,000.00 the first year. This figure would provide for approximately 12 inspectors working from six regional offices of the state. With this as a beginning point in the budget estimate, we could only anticipate that each additional year will increase the need for inspectors to cover the state.

The need for 12 inspectors does not infer that there is a real need for this program but only substantiates that if a statewide building code is established the state must back that code up with responsibility of inspections. If the responsibility is not there, it will not remove the liability to the state for an inspection program.

The growth of such an agency will lead to demands that requirements be established for licensing electrical contractors, mechanical contractors, and general contractors. Keep in mind that a licensing program and issuing a certificate to contractors does not eliminate the unscrupulous contractor. In fact, a certificate of registration gives the unscrupulous contractor a status of respectability.

You can easily see that establishing a statewide building code carries with it many responsibilities and with these responsibilities, ballooning costs. It also places the state in the position of regulating and controlling an activity duely committed to local rights.

If there is any real need in the area of building code enforcement, it is in the area of equal interpretation by all local jurisdictions. Perhaps in lieu of a statewide building code, consideration should be given to a single program to train and educate local inspectors statewide so that uniform enforcement could be achieved.

Should the committee find that a statewide building code is desirable, the administration of the code should be placed under an existing division of the state. The Division of Architectural Services is willing to accept this responsibility.

I appreciate the opportunity to present my views to the committee.

Respectfully submitted,

Louis J. Krueger
Director

Attachment XVII
9-16

THE CITY OF WICHITA



DEPARTMENT OF PUBLIC WORKS
CENTRAL INSPECTION DIVISION
CITY HALL — SEVENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202

September 16, 1976

Mr. Chairman, Members of the Special Committee
on Federal and State Affairs:

I appreciate this opportunity to appear before this committee and present some comments relating to Proposal No. 61 - Statewide Building Codes.

I am Robert B. Feldner, Superintendent of Central Inspection and Building Official for the City of Wichita. I have held this position for the past 8½ years. Prior to this I was engaged in the practice of Architecture and Engineering in Wichita for 19 years. I am an Architectural Engineering graduate from Kansas State University and a licensed architect and a licensed engineer in the State of Kansas.

I have followed the activities of the Advisory Committee on Statewide Building Codes and have reviewed the committee's final report submitted to the Governor in January of this year. I feel that the committee has done a commendable job in collecting information and analyzing the purpose and scope of adopting a Statewide Building Code.

The adoption of a statewide building code for Kansas would be a giant step toward providing the consumer, that is the public, with safe, usable buildings at a reasonable cost while at the same time utilizing new techniques and materials developed in the construction industry.

The comment is often heard that building codes make buildings cost more. This is not true. When architects, engineers and contractors know that whether they are building in Topeka, Wichita or Dodge City the codes will be the same, they can be more sure of final construction costs and not pad their bids with contingencies for unknown requirements.

There are a few specific items of concern in the proposed legislation that I would like to comment on if this is proper at this time:

Page 7, Sec. 4(a)

It would seem appropriate that one member of the council be an attorney.

Page 8, Sec. 4(h)

Specific number of members should be established for Appeals Board.

Page 9, Sec. 5(a)

It appears that the Director has more than just administrative authority.

Page 9, Sec. 5(b)

The Director can adopt without any Council approval.

Page 10, Sec. 5(b) (5)

Director can adopt a mixture of codes with amendments which negate the advantages of a model code package.

Amendments should be adopted within one year maximum.

Page 12, Sec. 7

The allowance of local adoption exemptions will defeat the purpose of a Statewide Code. This is evident in other states such as Michigan.

Page 15, Sec. 10

A comprehensive training program is essential to good statewide enforcement.

Page 16, Sec. 13

A time frame should be established for the hearing of appeals.

Page 19

Item 9. Life Safety Code, NFPA No. 101 should be deleted and the Uniform Fire Code added.

In summary, the model codes make it possible to control construction, for the first time, in many communities that presently find it physically impossible or financially impractical to produce codes of their own. It also makes it possible for those communities utilizing archaic codes to replace them with well written and maintained model codes.

Codes are not static. They are viable, living documents that must keep pace with the changes constantly accruing in the construction industry. They must not inhibit or prohibit such progress, and must restrict their authority to that which will provide adequate coverage in the areas of public health, safety and welfare. The primary beneficiary will be-- the public.

Thank you very much for your time.

A handwritten signature in cursive script that reads "Robert B. Feldner". The signature is written in dark ink and extends across the width of the page.

Robert B. Feldner, P.E., R. A.
Building Official
Wichita, Kansas

RBF:cj

RESOLUTION NO. 1211

A RESOLUTION ESTABLISHING POLICY ON THE ADOPTION OF STATEWIDE BUILDING CODES.

WHEREAS, the City of Overland Park recognizes the need for the protection of the health, safety and welfare of its citizens through regulations controlling construction of buildings and

WHEREAS, the City has adopted nationally recognized codes and standards which effectively and efficiently accomplish said protection and

WHEREAS, the City desires that the administration of said regulations be accomplished at the least practical cost in terms of time and money.

NOW, THEREFORE BE IT RESOLVED by the Governing Body of the City of Overland Park, Kansas:

That any legislation proposed for enactment at the state level include the following considerations:

1. Provide for the local administration of such regulations including but not limited to the review of plans and specifications, issuance of permits and certification, collection of fees, and the hearing of appeals by a local appeal board.
2. Limit consideration of any state code to the adoption of one of the three nationally recognized model code packages without substantial amendment.
3. Provide that local jurisdictions currently administering nationally recognized model codes without substantial amendment be allowed to continue the use of such regulations so long as they are kept current.
4. Provide that no rules or regulations cause an increase in approval time or permit fees when applications are handled by a local jurisdiction.
5. Provide that all state agencies having any involvement with building regulations utilize these same codes and standards without amendment.
6. Take into consideration the cost and availability of trained personnel to administer such regulations fairly, equitably and competently and to include consideration of the training programs necessary to accomplish said goal.
7. Provide that local jurisdictions continue to control zoning and site development regulations.

ADOPTED by the City Council of the City of Overland Park, Kansas this 13th day of September 1976.

(s) Richard Landtiser

Richard Landtiser, Council President

ATTEST:

(s) Bernice Crummett

Bernice Crummett, Finance Director/City Clerk

APPROVED AS TO FORM:

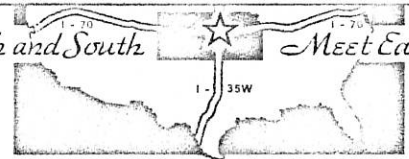
(s) Phillip L. Harris

Phillip L. Harris, City Attorney

Attachment XX

CITY OF SALINA

Where North and South Meet East and West



DEAN BOYER, P. E.
CITY ENGINEER
BUILDING OFFICIAL

CITY - COUNTY BUILDING
300 WEST ASH STREET
P. O. BOX 746
SALINA, KANSAS 67401

D. W. BASSETT
ASST. CITY ENGINEER
RON TREMBLAY
DEPUTY BUILDING OFFICIAL

September 13, 1976

9-16

Mr. William J. Murphy
Building Inspector
City of Hutchinson
City Hall
Hutchinson, Kansas 67501

Dear Bill:

Although I am unable to be present for the Federal and State Affairs Committee meeting in Topeka on September 16th, I feel that I should give you my feelings on the proposal for a state-wide building code so that you can relay them to the members of the committee.

A state-wide building code is not only desirable but an absolute necessity due to the dangers inherent in uncontrolled construction. The cost of housing or commercial construction will not be substantially increased if a building code is used to regulate such construction.

People who choose to build in suburban or rural areas are entitled to the same protection as urban dwellers. Fire hazards, plumbing or electrical hazards and slipshod building are dangerous regardless of location.

Control and administration of the minimum standards should remain in the hands of local units of government. State law should mandate the use of a nationally recognized set of construction codes in areas where no such codes are currently in use.

I wish you all the best in your presentation to the committee.

Sincerely,

Ronald R. Tremblay
Ronald R. Tremblay
Building Inspector

RRT/np

State of Kansas

Bill Bachma

CHAIRMAN
REPRESENTATIVE DUANE S. MCGILL,
SPEAKER OF THE HOUSE

VICE-CHAIRMAN
ROSS O. DOYEN
PRESIDENT OF THE SENATE

ROOM 325
ROOM 3175, STATEHOUSE
TOPEKA, KANSAS 66612
PHONE: (913) 296-2397

Room 325
2321



Legislative Coordinating Council

SENATOR
JOSEPH C. HARDER,
MAJORITY LEADER
JACK STEINER,
MINORITY LEADER
REPRESENTATIVES
JIM HARRIS, John Bower
SPEAKER PRO TEM
JOHN F. HAYES,
MAJORITY LEADER
JOHN CARLIN,
MINORITY LEADER

September 23, 1976

FILE

Representative Lloyd Buzzi, Chairman
and Members of the Special Committee on
Federal and State Affairs

Dear Chairman Buzzi:

The Legislative Coordinating Council at its meeting on
September 10, 1976, adopted a motion approving Proposal No.
64 relating to the death penalty to read as follows and
assigned the same to your committee for study.

Proposal No. 64

Short Title: Death Penalty

Subject of Study: A study of the recommendations of Governor
Bennett as embodied in a letter submitted to Speaker
McGill and President Doyen relating to the imposition of
the death penalty in Kansas taking into consideration
recent decisions of the United States Supreme Court and
laws enacted by other states.

Assigned To: Special Committee on Federal and State Affairs

This letter is written on behalf of the LCC and at its
direction to inform you of the above action.

Very truly yours,

LEGISLATIVE COORDINATING COUNCIL

Arden K. Ensley, Assistant Revisor of Statutes,
as Acting Secretary

AKE/mt

cc - LCC Members