Kansas Legislative Research Department October 18, 1976

M I N U T E S

SPECIAL COMMITTEE ON FEDERAL AND STATE AFFAIRS

October 5-6, 1976
Room 519-S, State House

Members Present

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

Staff Present

J. Russell Mills, Jr., Kansas Legislative Research Department
Donald L. Jacka, Jr., Kansas Legislative Research Department
Mary Torrence, Revisor of Statutes Office
Alan Alderson, Revisor of Statutes Office

Others Present

Dr. Dean Collins, Kansas Psychiatric Society, Topeka
Mark L. Bennett, American Insurance Association, Topeka
Mike Hrynewich, Kansas Savings and Loan League, Topeka
Charles Beardmore, Division of Architectural Services
Deb Krajnak, State Planning and Research
Dick Fontaine, Federal Energy Administration

October 5, 1976
Morning Session

Proposals No. 21 and 22

The meeting was called to order by the Vice Chairman at 10:00 a.m. He stated that the first item on the agenda was Committee discussion and action on Proposal No. 21 - Due Process Requirements for Defendants Found Not Guilty by Reason of Insanity, and Proposal No. 22 - Hearing Prior to Release of Certain Inmates. Staff noted that, although extensive recommendations had been made at the August meeting, no formal action had yet been taken by the Committee. It was moved by Representative Harris and seconded by Representative Ward that the Committee recommend legislation in this area. Motion carried.

Miss Torrence stated that, in her opinion, one bill could be drafted combining the provisions recommended for both Proposal No. 21 and Proposal No. 22. Miss Torrence distributed two alternative bill drafts concerning these proposals, Alternative A (Attachment I) and Alternative B (Attachment II). The two drafts contain similar provisions except with regard to the standard for release: Alternative A requires a court finding that the person is not mentally ill prior to release, while Alternative B requires a court finding that the person is not insane and not dangerous to self or others prior to release. Both alternatives require a court hearing, if requested, prior to the transfer, granting of convalescent leave, or discharge of a person acquitted by reason of insanity.

Miss Torrence also noted that in Alternative A, the term "mentally ill" is defined, while Alternative B uses the term "insanity", which is not defined either in the draft or in existing statutes. She stated that the definition of "mentally ill" parallels the definition of the term used in Senate Bill No. 26, although the additional phrase "mentally deficient" has been included in the draft's definition. Thus Alternative A would include the retarded offender, while existing law does not.

Dr. Dean Collins, Kansas Psychiatric Society, discussed the two terms used in the alternative drafts. Dr. Collins reminded the Committee that Senate Bill No. 26 defined "mentally ill" in the narrow sense, and that "insanity" is a legal term which is no longer directly related to the mental health code.

A member explained that a determination of insanity is a court finding which can relieve a person of criminal liability inasmuch as criminal intent cannot be proved if the person did not know right from wrong at the time the act was committed. A release standard based upon the finding of mental illness would be a broader standard than would a determination of insanity.

The Chairman distributed a brief analysis of the proposed drafts which had been prepared by the Department of Social and Rehabilitation Services (Attachment III). In this analysis, concern is expressed that some provisions of the drafts are in conflict with the concept of mental illness as described in Senate Bill No. 26 and that it is unclear whether the person is discharged from the hospital or from the court's jurisdiction.

The Committee discussed the possibility of establishing a two-tiered trial system, similar to the California approach, to deal with these offenders. However, it was decided that any such proposed legislation would be beyond the scope of the Committee's charge. A member noted that, if a person is acquitted by reason of insanity, there is no basis for punishment.

Dr. Collins stated his belief that Section 1(4) of the drafts should be clarified to indicate whether the person can be transferred to another hospital as a voluntary patient, involuntary patient, or on some other status. Otherwise, the hospitals may not possess the authority to detain a person or continue treatment if the person does not desire treatment. The hospitals may also be placed in the untenable legal situation of confining voluntary patients against their will. Dr. Collins felt that the drafts should indicate whether the patients' rights detailed in Senate Bill No. 26 also apply to persons who enter the hospitals through the criminal justice system.

Following further discussion of these points, it was moved by Senator Parrish and seconded by Senator Arasmith that the Committee recommend Alternative A for introduction. Motion carried.

A member inquired whether the state would be required to provide these persons with attorneys during the hearings. Staff expressed the view that the state would be required to provide attorneys, and that the court would probably try to appoint the same attorney who represented the person at the trial. It was moved by Representative Marshall and seconded by Representative Rodrock that, if necessary, appropriate language be inserted to require the appointment of attorneys. Motion carried.

A member suggested that the standard for transfer be modified from "dangerousness" to "in the best interests of the patient and not detrimental to the state's interest." It was moved by Senator Parrish and seconded by Representative Slattery that the release standard be modified. Motion carried. Miss Torrence agreed to insert appropriate language in the draft.

Senator Arasmith moved that the Committee: (1) recommend Alternative A, as amended, for introduction; (2) suggest that the bill be assigned to the House Judiciary Committee for consideration; and (3) further recommend in the report that additional study of this area, including a two-tiered trial system, be conducted by the appropriate committees. The motion was seconded by Representative Ward. Motion carried.

Proposal No. 20 - Alcoholic Liquor Price Affirmation

Senator Arasmith stated that, both during the 1976 Session and during the course of this study, much conflicting testimony had been presented by individuals on opposite sides of the issue. Despite these opposing views, Kansas appears to have a workable liquor

control program which has not led to the scandals noted in some other states. Senator Arasmith moved that the Committee recommend no legislation in this area and that no further studies be recommended. Representative Ward seconded the motion. Motion carried.

Proposal No. 60 - Steam Boiler Insurance and Inspections

The Committee resumed consideration of the draft bill concerning Proposal No. 60 (Attachment X, August minutes). Mr. Mark Bennett, American Insurance Association, suggested a clarifying amendment that the draft refer to steam heating boilers and noted that the repeal of K.S.A. 1975 Supp. 44-912 would delete the mandatory insurance requirement as the Committee directed. Mr. Bennett estimated that three personnel could administer the program and that, after the first year, the program should be self-supporting through the fees charged. Mr. Bennett urged that, in order to protect the public, some type of state inspection program be established.

Miss Torrence suggested that the Committee may wish to exempt antique and display boilers. It was moved by Senator Arasmith and seconded by Representative Ward that the exemptions in 1976 House Bill No. 2837 be included in this draft. Motion carried.

The meeting was recessed until 1:30 p.m.

Afternoon Session

Proposal No. 60 - Steam Boiler Insurance and Inspections

The Vice Chairman expressed concern that duplicate inspections may be permitted under Section 11(c) of the draft. Mr. Bennett felt that it was unlikely that insurance companies would inspect a boiler that had already been inspected by the state, except in unusual circumstances. He also noted that the insurance companies do not charge an inspection fee.

Staff suggested that the Committee act formally to include the repeal of the mandatory insurance requirement in the draft. It was moved by Representative Ward and seconded by Senator Booth that the repeal of K.S.A. 1975 Supp. 44-912 be included in the draft and that the draft be approved for introduction.

There was considerable discussion concerning the length of time between inspections for the various types of boilers. Representative Rodrock offered a substitute motion that all inspections mentioned in Section 11(b) of the draft be annual inspections, including an internal inspection of each boiler. The substitute motion was seconded by Representative Marshall and the subsequent vote was tied two to two. The Vice Chairman declared the substitute motion dead. The original motion was approved.

Representative Rodrick recommended that the Committee request that the bill originate in the Senate. There was no objection, except that Senator Parrish abstained from the recommendation.

Proposal No. 61 - Statewide Building Codes

Staff distributed a draft bill incorporating the suggestions made by Committee members at the September meeting (Attachment IV). Mr. Charles Beardmore, Division of Architectural Services, distributed a memorandum from Dennis C. McCartney, Chairman of the Advisory Committee on Statewide Building Codes (Attachment V). The memorandum offers suggestions on various points of the proposed draft. In response to a question, Mr. Beardmore stated that the Advisory Committee had recommended a mandatory code rather than the optional code now being considered, although he agreed that a mandatory code might not be as acceptable to some local areas.

Mr. Dick Fontaine, Federal Energy Administration, expressed the hope that energy conservation standards would be included in the statewide building code. Mr. Fontaine offered to assist the Committee in any way possible.

Mr. Alan Alderson discussed the proposed draft section by section. Mr. Alderson suggested that the definition in Section 2(j) be changed from "local government" to "municipality." The composition of the Building Code Advisory Council (Section 3) was acceptable to the Committee. Staff was directed to state in Section 3(c) that the Council must meet within the State of Kansas.

Following discussion concerning the appointment of an administrator, the Committee decided that the administrator should be in the unclassified service, appointed by the Director of Architectural Services. It was moved by Representative Ward and seconded by Representative Harris that the qualifications suggested in Mr. McCartney's memorandum be included in the draft, with the addition of "building contractor" in the experience requirement. Motion carried.

Senator Parrish moved that the Committee reconsider its previous action placing the administrator in the unclassified service. The Vice Chairman suggested that the Committee delay this decision until the next meeting. The motion was seconded by Representative Harris and carried.

Representative Rodrock suggested that the Standing Appeals Board created in Section 3(d) should be composed of members from different geographical districts of the state. In this manner, the Board would be more sensitive to differences in weather, soil condition, and local needs. Mr. Beardmore stated that the model codes are designed for application in multi-state regions and that localized problems can be taken into account in the engineering design stage. Mr. Alderson also noted that provision is made for local variations in Section 8.

Mr. Alderson stated that the utilities representative should be deleted in Section 3(d) since this position was eliminated in Section 3(a). He also stated that the rule-making authority in Section 5 should probably be transferred from the administrator to the Director of Architectural Services since the Director will be ultimately responsible for administration of the act.

Mr. Alderson mentioned that Section 6(d) is the new subsection which would make the code permissive, rather than mandatory as in the Advisory Committee's recommendation. He also expressed the concern that Section 7(a) would make the act of non-uniform application, which would permit localities to exempt themselves through charter ordinances. He suggested that Section 7(a), and possibly all of Section 7, be deleted. The act would then be of uniform application, although localities would be able to re-adopt their codes and then request variations under Section 8. It was moved by Senator Parrish and seconded by Representative Rodrock that staff modify this section to provide for uniform application of the act. Motion carried.

Mr. Alderson suggested that Section 9(b) be modified to state that the local enforcement agency will enforce the code if it is adopted by the locality. The Committee agreed that the local agency should be responsible for enforcing the code.

Mr. Beardmore stated that Section 9(g) should be revised to read "shall notify" and "may secure" so that projects would not be arbitrarily closed down. Staff was directed to make this revision.

The Committee discussed Section 12 dealing with inspection fees. Staff was directed to prepare several alternative methods for establishing and collecting these fees.

There was concern expressed with regard to the appeals procedures (Section 13). It was suggested that time limits be established at each stage of the appeal so that long construction delays would not be experienced. Staff was directed to establish the following time limits for the resolution of an appeal: seven working days for the local enforcement agency; ten days for the state administrator; and 15 days for the state appeals board.

Staff was directed to make appropriate revisions in the draft for final Committee approval at the November meeting.

The meeting was adjourned.

October 6, 1976
Morning Session

It was moved by Senator Booth and seconded by Representative Ward that the minutes of the September meeting be approved. Motion carried.

Proposal No. 19 - Rural Airport Development

The Chairman called attention to a letter from Dr. Willis Wollmann which had been received after the September meeting (Attachment VI). Dr. Wollmann states in the letter that the new draft recommended by the Kansas Department of Transportation at the September meeting will not aid the small municipality which is struggling to provide an adequate airport.

Miss Torrence distributed a memorandum from Mr. Ray Arvin, Director of Aviation, which requests that the proposed draft be amended to exempt the sale of aviation fuel from the sales tax (Attachment VII). Also distributed were copies of the Attorney General's opinion which had been requested by the Committee, Opinion No. 76-296 (Attachment VIII). This opinion concludes, in part, that:

> Article 11, §9 of the Kansas Constitution prohibits the use of state funds for the construction and development of municipal and county airports, although it does not prohibit the use of such funds for local aviation planning. The levy of a motor-fuel tax on aircraft fuel to fund such grants is constitutionally permissible.

Miss Torrence explained the changes made in the revised bill draft (Attachment IX). The Committee decided that the motor fuel tax refund should be set at 50 percent of the tax paid, rather than a cents per gallon figure. Miss Torrence discussed the limitations, established by the courts, with regard to taxation of jet fuels.

Mr. Mills distributed a fiscal note which had been prepared for 1976 Senate Bill No. 916 (Attachment X). The fiscal note estimated that the funding mechanism of Senate Bill No. 916, which is similar to the proposed draft, would produce $441,000 annually. Mr. Jacka noted that the Division of Aviation is financed totally from the highway general fund.

Senator Parrish moved that the sales tax exemption recommended by Mr. Arvin be included in the bill. The motion was seconded by Representative Rodrock and approved. Staff was directed to make the necessary changes in the draft.

It was moved by Representative Harris and seconded by Representative Rodrock that the draft, as amended, be approved for introduction. The Vice Chairman expressed his opposition to the bill because it will place a burden on local governments and will cause fuel costs to increase. The Chairman stated that the bill is needed as it will encourage airport and industrial expansion. The motion was approved, with Senator Arasmith voting no and Representative Mikesic abstaining.

Senator Parrish moved that the report urge that a constitutional amendment be explored to remove the "internal improvements" prohibition which bars, among other things, state involvement in airport construction. The motion was seconded by Representative Harris.

Senator Arasmith expressed the concern that this proposed amendment could lead to expanded state activity in various construction projects not limited to airport development.

Senator Booth offered a substitute motion that the report state that the Committee recognizes the existing constitutional limitations and suggests that future studies may need to be conducted with regard to both a constitutional amendment, as well as consideration of alternative means of funding airport construction. The motion was seconded by Senator Parrish and approved. The Committee agreed to request that this bill originate in the House.

Proposal No. 18 - Open Public Meetings Law

Mr. Mills distributed and discussed the draft report concerning Proposal No. 18 (Attachment XI). Senator Booth inquired whether the report could state that any motion to recess to an executive session must be made a part of the permanent minutes of the body. Mr. Mills explained that this requirement is not established in the amendments approved by the Committee.

It was moved by Senator Booth and seconded by Senator Parrish that the Committee reconsider its previous action with regard to the draft bill; that the draft bill be amended to require that the motion to recess to executive session be recorded in the minutes and maintained as a part of the permanent records of the body; and that the draft bill, as amended, be approved for introduction. Motion carried.

It was moved by Senator Arasmith and seconded by Representative Ward that the Committee report, which will be modified to reflect Senator Booth's amendment, be approved, and that the Committee request the bill be introduced in the Senate. Motion carried.

Proposal No. 23 - Regional Jails

Mr. Mills distributed and discussed the draft report concerning Proposal No. 23 (Attachment XII). Miss Torrence discussed a draft bill to authorize joint bond issues to fund regional jails or community correctional centers (Attachment XIII).

Senator Arasmith moved that the draft be amended to permit the pro-rating of costs among the various counties involved with the regional facility. The motion was seconded by Senator Parrish and approved.

Senator Parrish suggested that the report be revised to read "Committee believes" rather than "Committee feels."

It was moved by Senator Arasmith and seconded by Senator Booth that the draft bill, as amended, be approved and that the report, revised to reflect the pro-rating amendment, also be approved. Motion carried.

Proposal No. 64 - Death Penalty

Staff distributed copies of the September, 1976, Supreme Court Report dealing with capital punishment (Attachment XIV). Senator Booth distributed copies of a constituent's letter supporting capital punishment (Attachment XV).

The meeting was adjourned.

Prepared by J. Russell Mills, Jr.

Approved by the Committee on:

Nov. 9, 1976
(Date)

ALTERNATIVE A

Attachment 1

PROPOSED BILL NO. _____

By Special Committee on Federal and State Affairs

Re: Proposals Nos. 21 and 22

AN ACT relating to criminal procedure; concerning persons acquitted on the ground of insanity; amending K.S.A. 1976 Supp. 22-3428 and repealing the existing section.

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

Section 1. K.S.A. 1976 Supp. 22-3428 is hereby amended to read as follows: 22-3428. (1) When a person is acquitted on the ground that he or she was insane at the time of the commission of the alleged crime the verdict shall be "not guilty because of insanity," and the person so acquitted shall be committed to the state security hospital for safekeeping and treatment.

(2) Subject to the provisions of subsection (4) of this section, any person committed to the state security hospital under this section may be transferred to any other state hospital whenever it appears to the chief medical officer of the state security hospital that ~~a~~ such person ~~committed under this section~~ is not dangerous to other ~~patients, he or she may transfer such person to any state hospital~~ persons.

(3) Subject to the provisions of subsection (4) of this section, any person committed under this section may be granted convalescent leave or discharge ~~as an involuntary patient after thirty (30) days notice shall have been given to the district or county attorney, sheriff and district court of the county from which such person was committed~~ whenever it appears to the head of the state hospital where such person is currently under commitment that such person is not mentally ill.

~~(3)~~ (4) ~~Within fifteen (15) days after the receipt of the notice provided for in subsection (2), the county attorney may request that a hearing on the proposed leave or discharge be~~

~~held.---Upon--receiving-any-such-request~~ Prior to the transfer of or the grant of convalescent leave or discharge to any person committed under this section, thirty (30) days notice shall be given to the district or county attorney, sheriff and district court of the county from which such person was committed. Upon motion of the county or district attorney, or upon the district court's own motion, made within fifteen (15) days after receipt of such notice, the district court of the county from which the person was committed shall order that a hearing be held on the proposed transfer, leave or discharge~~,--giving.~~ Such hearing shall be held within thirty (30) days of the filing of such motion. Notice ~~thereof~~ of the hearing shall be given to the state hospital where the ~~patient-was-transferred~~ person is currently under commitment~~,--and.~~ The court shall order the ~~involuntary-patient~~ committed person to undergo a mental evaluation by a person designated by the court~~.---A-copy-of-all-orders-of-the court-shall-be-sent-to-the-involuntary-patient-and-such-patient's attorney.~~, and the report of ~~the-court-ordered-mental~~ such evaluation shall be given to the county or district attorney, the ~~involuntary--patient~~ committed person and such ~~patient's~~ person's attorney at least five (5) days prior to the hearing. ~~The--hearing--shall--be--held-within-thirty-(30)-days-after-the-receipt-by the-court-of-the--county--attorney's--request.~~ The ~~involuntary patient~~ committed person shall remain in the state hospital where such person is currently under commitment until the hearing on the proposed transfer, leave or discharge is to be held. ~~At-such hearing-the-court-shall-determine-whether-the-involuntary-patient continues-to-be-a-danger--to--himself,--herself--or--others.~~ The ~~patient~~ committed person shall have the right to present evidence at ~~such~~ the hearing and to cross-examine any witnesses called by the county or district attorney.

At the conclusion of the hearing, ~~if-the--court--finds--that the--patient--continues--to--be--a--danger-to-himself,-herself-or others~~ the court shall ~~order-the-patient-to-remain-in--the--state hospital,-otherwise-the-court-shall-order-the-patient-discharged.~~

make one of the following orders:

(a) If the hearing is held prior to the time that the maximum sentence for the alleged crime committed by the person would have expired if such person had not been acquitted, the court shall order that the person remain in the state hospital where currently under commitment unless:

(i) the person is under commitment in the state security hospital and the court finds beyond a reasonable doubt that the person is not dangerous to other persons, in which case the court shall order that the person be transferred to another state hospital or

(ii) the court finds beyond a reasonable doubt that the person is not mentally ill, in which case the court shall order that the person be granted convalescent leave or discharge.

(b) If the hearing is held after the time that the maximum sentence for the alleged crime committed by the person would have expired if such person had not been acquitted, the court shall order that such person remain in the state hospital where currently under commitment unless:

(i) the person is under commitment in the state security hospital and the court finds a reasonable doubt that the person is dangerous to other persons, in which case the court shall order that the person be transferred to another state hospital or

(ii) the court finds a reasonable doubt that the person is mentally ill, in which case the court shall order that the person be granted convalescent leave or discharge.

(5) A copy of all orders of the court made hereunder shall be sent to the committed person and such person's attorney.

(6) The costs of all proceedings and the mental evaluation authorized by this section shall be paid by the county from which ~~such~~ the person was committed.

~~(4)~~ (7) In any case where the defense of insanity is relied on the court shall instruct the jury on the substance of this section.

New Sec. 2. (1) Any person committed under K.S.A. 1976

Supp. 22-3428, as amended, or any person on behalf of a person committed under K.S.A. 1976 Supp. 22-3428, as amended, may file a verified application for transfer, convalescent leave or discharge at any time after the maximum sentence for the alleged crime committed by the person would have expired if the person had not been acquitted. The application shall be filed in the district court of the county from which the person was committed and shall state the name of the committed person and a request for discharge. Such an application may not be filed more often than once every six (6) months.

(2) Whenever an application is filed pursuant to subsection (a) of this section, the district court of the county from which the person was committed shall order that a hearing be held on such application. Such hearing shall be held within thirty (30) days of the filing of the application. Notice of the hearing shall be given to the state hospital where the person is currently under commitment and to the district or county attorney and the sheriff of the county from which the person was committed. The court shall order the committed person to undergo a mental evaluation by a person designated by the court, and the report of such evaluation shall be given to the county or district attorney, the committed person and such person's attorney at least five (5) days prior to the hearing. The committed person shall remain in the state hospital where such person is currently under commitment until the hearing on the application is to be held. The committed person shall have the right to present evidence at the hearing and to cross-examine any witnesses called by the county or district attorney.

At the conclusion of the hearing, the court shall order that the person remain in the state hospital where currently under commitment unless:

(a) the person is under commitment in the state security hospital and the court finds a reasonable doubt that the person is dangerous to other persons, in which case the court shall order that the person be transferred to another state hospital or

(b) the court finds a reasonable doubt that the person is mentally ill, in which case the court shall order that the person be granted convalescent leave or discharge.

(3) A copy of all orders of the court made hereunder shall be sent to the committed person and such person's attorney.

(4) The costs of all proceedings and the mental evaluation authorized by this section shall be paid by the county from which the person was committed.

New Sec. 3. As used in K.S.A. 1976 Supp. 22-3428, as amended, and section 2 of this act:

(1) "Head of the state hospital" means the administrative director of a state hospital, if the administrative director is a physician, or the chief medical officer of a state hospital, if the administrative director is not a physician.

(2) "Mentally ill" means (a) mentally impaired or mentally deficient to the extent that treatment is needed and (b) dangerous to self or others and (c) lacking sufficient understanding or capacity to make responsible decisions with respect to own treatment and (d) refusing to seek treatment.

Sec. 4. K.S.A. 1976 Supp. 22-3428 is hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Attachmen I

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By Special Committee on Federal and State Affairs

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(2) Subject to the provisions of subsection (4) of this section, any person committed to the state security hospital under this section may be transferred to any other state hospital whenever it appears to the chief medical officer of the state security hospital that ~~a~~ such person ~~committed under this section~~ is not dangerous to other ~~patients, he or she may transfer such person to any state hospital~~ persons.

(3) Subject to the provisions of subsection (4) of this section, any person committed under this section may be granted convalescent leave or discharge ~~as an involuntary patient after thirty (30) days notice shall have been given to the district or county attorney, sheriff and district court of the county from which such person was committed~~ whenever it appears to the head of the state hospital where such person is currently under commitment that such person is insane and dangerous to self or others.

~~(3)~~ (4) ~~within fifteen (15) days after the receipt of the notice provided for in subsection (2), the county attorney may~~

~~request--that--a--hearing--on--the-proposed-leave-or-discharge-be held.--Upon-receiving-any-such-request~~ Prior to the transfer of or the grant of convalescent leave or discharge to any person committed under this section, thirty (30) days notice shall be given to the district or county attorney, sheriff and district court of the county from which such person was committed. Upon motion of the county or district attorney, or upon the district court's own motion, made within fifteen (15) days after receipt of such notice, the district court of the county from which the person was committed shall order that a hearing be held on the proposed transfer, leave or discharge~~,--giving~~. Such hearing shall be held within thirty (30) days of the filing of such motion. Notice ~~thereof~~ of the hearing shall be given to the state hospital where the ~~patient-was-transferred~~ person is currently under commitment~~,--and~~. The court shall order the ~~involuntary-patient~~ committed person to undergo a mental evaluation by a person designated by the court~~.--A-copy--of--all--orders--of--the court-shall-be-sent-to-the-involuntary-patient-and-such-patient's attorney.~~, and the report of ~~the-court-ordered-mental~~ such evaluation shall be given to the county or district attorney, the ~~involuntary-patient~~ committed person and such ~~patient's~~ person's attorney at least five (5) days prior to the hearing. ~~The-hearing-shall-be-held-within-thirty-(30)-days-after--the--receipt--by the--court--of--the--county--attorney's-request.~~ The ~~involuntary patient~~ committed person shall remain in the state hospital where such person is currently under commitment until the hearing on the proposed transfer, leave or discharge is to be held. ~~At-such hearing-the-court-shall-determine-whether-the-involuntary-patient continues--to--be--a--danger--to-himself,-herself-or-others.~~ The ~~patient~~ committed person shall have the right to present evidence at ~~such~~ the hearing and to cross-examine any witnesses called by the county or district attorney.

At the conclusion of the hearing, ~~if-the-court-finds-that the-patient-continues-to-be--a--danger--to--himself,--herself--or others~~ the court shall ~~order-the-patient-to-remain-in-the-state~~

~~hospital, otherwise the court shall order the patient discharged.~~ make one of the following orders:

(a) If the hearing is held prior to the time that the maximum sentence for the alleged crime committed by the person would have expired if such person had not been acquitted, the court shall order that the person remain in the state hospital where currently under commitment unless:

(i) the person is under commitment in the state security hospital and the court finds beyond a reasonable doubt that the person is not dangerous to other persons, in which case the court shall order that the person be transferred to another state hospital or

(ii) the court finds beyond a reasonable doubt that the person is not insane and dangerous to self or others, in which case the court shall order that the person be granted convalescent leave or discharge.

(b) If the hearing is held after the time that the maximum sentence for the alleged crime committed by the person would have expired if such person had not been acquitted, the court shall order that such person remain in the state hospital where currently under commitment unless:

(i) the person is under commitment in the state security hospital and the court finds a reasonable doubt that the person is dangerous to other persons, in which case the court shall order that the person be transferred to another state hospital or

(ii) the court finds a reasonable doubt that the person is insane and dangerous to self or others, in which case the court shall order that the person be granted convalescent leave or discharge.

(5) A copy of all orders of the court made hereunder shall be sent to the committed person and such person's attorney.

(6) The costs of all proceedings and the mental evaluation authorized by this section shall be paid by the county from which ~~such~~ the person was committed.

~~(4)~~ (7) In any case where the defense of insanity is relied

on the court shall instruct the jury on the substance of this section.

New Sec. 2. (1) Any person committed under K.S.A. 1976 Supp. 22-3428, as amended, or any person on behalf of a person committed under K.S.A. 1976 Supp. 22-3428, as amended, may file a verified application for transfer, convalescent leave or discharge at any time after the maximum sentence for the alleged crime committed by the person would have expired if the person had not been acquitted. The application shall be filed in the district court of the county from which the person was committed and shall state the name of the committed person and a request for discharge. Such an application may not be filed more often than once every six (6) months.

(2) Whenever an application is filed pursuant to subsection (a) of this section, the district court of the county from which the person was committed shall order that a hearing be held on such application. Such hearing shall be held within thirty (30) days of the filing of the application. Notice of the hearing shall be given to the state hospital where the person is currently under commitment and to the district or county attorney and the sheriff of the county from which the person was committed. The court shall order the committed person to undergo a mental evaluation by a person designated by the court, and the report of such evaluation shall be given to the county or district attorney, the committed person and such person's attorney at least five (5) days prior to the hearing. The committed person shall remain in the state hospital where such person is currently under commitment until the hearing on the application is to be held. The committed person shall have the right to present evidence at the hearing and to cross-examine any witnesses called by the county or district attorney.

At the conclusion of the hearing, the court shall order that the person remain in the state hospital where currently under commitment unless:

(a) the person is under commitment in the state security

hospital and the court finds a reasonable doubt that the person is dangerous to other persons, in which case the court shall order that the person be transferred to another state hospital or

(b) the court finds a reasonable doubt that the person is insane and dangerous to self or others, in which case the court shall order that the person be granted convalescent leave or discharge.

(3) A copy of all orders of the court made hereunder shall be sent to the committed person and such person's attorney.

(4) The costs of all proceedings and the mental evaluation authorized by this section shall be paid by the county from which the person was committed.

New Sec. 3. As used in K.S.A. 1976 Supp. 22-3428, as amended, and section 2 of this act, "head of the state hospital" means the administrative director of a state hospital, if the administrative director is a physician, or the chief medical officer of a state hospital, if the administrative director is not a physician.

Sec. 4. K.S.A. 1976 Supp. 22-3428 is hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

24

SRS

Attachment II

ANALYSIS OF PROPOSED LEGISLATION
(Proposals Nos. 21 and 22)

1. Before any patient (not guilty because of insanity) can be transferred, put on leave or be discharged, notice must go to local officials (district court).

2. Local officials have 15 days to object by way of the hearing procedure.

   (a) If this is invoked the sole discretion thereafter relating to transfer, leave or discharge rests in the court.

   (b) If local officials do not invoke 15 days notice of a hearing the hospital may proceed as planned.

3. If the court holds a hearing the court determines future course.

   1. If prior to the time the maximum sentence for the crime would be expired the court shall order patient to remain in the security hospital unless:

      (a) The court finds beyond a reasonable doubt that the patient is not dangerous the court shall order the patient transferred to another hospital.

      (b) The court finds beyond a reasonable doubt that the patient is not mentally ill the court shall grant convalescent leave or discharge.

This section is in conflict with the concept of mental illness as described in S.B.26. Part of the definition of mental illness is that the patient is dangerous. Here the court can find that the patient is not dangerous but still mentally ill. Also if the court finds beyond a reasonable doubt that the patient is not mentally ill, the court can still keep the patient in a convalescent leave status or may discharge the patient. Is that a discharge from the hsoptial or discharge from the court's jurisdiction? The reason for this question is that under this bill the court can require the patient that serves the maximum term for the alleged crime committed by the person for which the law has just acquitted him because of insanity. In other words, he is not really acquitted if the court can make him serve the maximum sentence.

Attachment I

_____ BILL NO. _____

By Special Committee on Federal and State Affairs

AN ACT

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

Section 1. This act shall be known and may be cited as the "Kansas Building Code Act."

Sec. 2. The following words and phrases, when used in this act, shall have the meanings respectively ascribed to them herein: (a) "Administrative agency" means the division of architectural services of the department of administration;

(b) "administrator" means the administrator of the statewide building code, within the division of architectural services of the department of administration;

(c) "agricultural building" means a structure located on property used for agricultural purposes which is constructed for or used to shelter or contain farm implements, hay, grain, poultry, livestock or other horticultural products. Such term does not include any place used for human habitation or a place of employment where agricultural products are processed, treated or packaged; nor does such term include any place used by the public;

(d) "appeals board" means the state appeals board;

(e) "building" means any combination of materials, whether portable or fixed, which comprises a structure affording facilities or shelter for any use or occupancy, except as hereinafter provided. Such term shall include any part or parts of any such

structure and all equipment therein, but shall not mean or include any mobile home certified pursuant to the Kansas uniform standards code for mobile homes and recreational vehicles nor any agricultural building;

(f) "building code" mean those standards and requirements adopted by regulation for the design and construction of buildings under this act;

(g) "construction" means the erection, fabrication, reconstruction, demolition, alteration, conversion, relocation, preservation or repair of a building or the installation of equipment therein;

(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 buildings and to administer and enforce the laws, ordinances and regulations enacted by state or local governments which establish standards and requirements applicable to the construction of buildings;

(j) "local government" means any county or city or any other political subdivision with authority to establish standards and requirements applicable to the construction of buildings.

Sec. 3. (a) There is hereby created a building code advisory council, hereinafter referred to as "council", which shall be composed of the following individuals: the administrator of the statewide building code, who shall be chairman of the council and a non-voting member; the director of architectural services or his or her authorized representative; the secretary of health and environment or his or her authorized representative; the state fire marshal or his or her authorized representative; one representative of the Kansas energy office; three (3) representatives of the general public; one registered architect; one regis-

tered professional structural engineer; one registered professional mechanical engineer; one registered professional electrical engineer; one general contractor; one plumbing contractor; one mechanical contractor; one electrical contractor; one representative of the building trades; one home builder; one component modular building manufacturer; one building official employed by a city or county having a population of more than one hundred thousand (100,000); one building official employed by a city or county having a population of more than twenty-five thousand (25,000) and not more than one hundred thousand (100,000); one building official employed by a city or county having a population of less than twenty-five thousand (25,000); and one attorney qualified to practice law in the state of Kansas.

(b) Members of the council, except ex officio members and representatives of state agencies, shall be appointed by the governor for four-year terms and until successors are appointed and qualified, except that of those members first appointed, five (5) shall be appointed for terms of four (4) years, five (5) shall be appointed for terms of three (3) years, five (5) shall be appointed for terms of two (2) years, and two (2) shall be appointed for terms of one (1) year. Three (3) or more consecutive failures to attend meetings of the council by any member, without reasonable cause, shall constitute cause for removal by the governor or the chairman of the council with the concurrence of a majority of the members of the council. Vacancies shall be filled by appointment by the governor for the unexpired term, but a majority of the members of the council may appoint interim members to fill vacancies until the governor appoints a member for the unexpired term.

(c) The council shall meet at the written request of the administrator or three (3) or more members of the council, but the council shall meet no less than four (4) times a year. The council shall establish rules, regulations and bylaws for its operation and shall exercise all powers, duties and functions independently of the division of architectural services. No

member of the council may act or vote on any matter in which such member has a private interest. Members of the building code advisory council attending meetings of such board, or attending a subcommittee meeting thereof authorized by such board, shall be paid amounts provided in subsection (e) of K.S.A. 1976 Supp. 75-3223, and amendments thereto.

(d) The council shall appoint a standing appeals board from its membership for the purpose of hearing and deciding on appeals brought before it. The membership of the appeals board shall be represented by one (1) member from each of the five (5) major areas: (1) Local building code enforcement; (2) state agencies concerned with building construction; (3) builders, manufacturers or trades; (4) design professionals; and (5) utilities and the general public.

Sec. 4. There is hereby created, within the division of architectural services of the department of administration

Sec. 5. (a) The building code advisory council, and any other interested party, may propose rules and regulations or amendments thereto. The administrator shall have the power to adopt rules and regulations for the administration and enforcement of this act and for the regulation of: (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; and (5) fees for functions performed pursuant to this act.

(b) The administrator shall adopt, by rules and regula-

tions, codes, standards and requirements applicable 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 conference, council of American building officials, and other nationally recognized organizations including governmental agencies (hereinafter referred to as "model codes"), if the administrator determines that each such code meets the following requirements: (1) Its adoption will not substantially impair regional uniformity of building regulations; (2) such code does not discriminate against particular technologies, techniques and materials; (3) such code does not unnecessarily increase the cost of construction in the state; (4) such code will protect the public health, safety and welfare within the state; and (5) 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 administrator determines that all codes fail to meet one or more of the requirements, the administrator 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 administrator shall maintain rules and regulations current within two (2) years of research findings of the various model code organizations. Amendments to such rules and regulations shall be supported by findings of fact and shall be submitted to the appropriate code writing organizations for consideration of amendment to that code.

(d) The administrator shall continually study the operation of the Kansas building code and other laws relating to the construction of buildings to ascertain their effect on the cost of building construction and determine the effectiveness of their provisions. The administrator shall decide, upon application of any private party or local enforcement agency, that new technologies, techniques and materials which have been tested, if necessary, and found to meet the objectives of the Kansas build-

ing code shall be deemed to meet that code. Such determinations shall be binding on all local enforcement agencies within local governments which have adopted the Kansas building code.

(e) The administrator may also: (1) Require and 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 and enforcement of the Kansas building code.

Sec. 6. (a) The rules and regulations adopted pursuant to subsection (b) of section 5 shall comprise and collectively be known as the Kansas building code. Such code shall be so designed as to provide uniform standards and requirements for construction and construction materials within all jurisdictions in which the construction of buildings is regulated, and, 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.

(b) Subject to the provisions of section 7, building regulations adopted by a local government shall continue in effect for a period of one hundred eighty (180) days following the effective date of this act, unless sooner revoked or repealed. Thereafter, building regulations adopted by a local government which are inconsistent with the Kansas building code, or more stringent than such code, shall be void and of no effect, except as provided in section 11. A building permit validly issued within one hundred eighty (180) days after the effective date of this act is valid thereafter and the construction of a building may be completed pursuant to and in accordance with such permit. Any building construction started within such period in any area of the state not having building regulations may be completed without a building permit.

(c) Until the expiration of one hundred eighty (180) days after the effective date of this act, building code regulations

of any state agency, board, department or commission shall continue in effect unless sooner revoked or repealed. Thereafter, such 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.

(d) Except as hereinafter provided, following one hundred eighty (180) days after the effective date of this act, no local government shall adopt or enforce any building code regulations which are inconsistent with or do not encompass the entire scope of the Kansas building code. Thereafter, any local government seeking to adopt or enforce building code regulations shall, by ordinance or resolution, adopt the Kansas building code in total. Nothing in this subsection shall be deemed to prohibit any local government from adopting building code regulations which the administrator deems to be more stringent than the Kansas building code, nor shall any local government not desiring to regulate building construction be required to adopt the Kansas building code or any other building code.

Sec. 7. (a) Any local government which, prior to the effective date of this act, has adopted and is enforcing a nationally recognized model code as its building ordinance or resolution may apply to the administrator to be allowed to continue enforcement of its building ordinance or resolution and to be exempt from having to adopt the Kansas building code. Following approval of the administrator, or decision of a court of competent jurisdiction after appeal from the administrator's decision, such ordinance or resolution shall be deemed to be exempted. Any decision of the administrator shall be supported by findings of fact in accordance with the provisions of subsection (b) of this section.

(b) The administrator shall grant an exemption upon application as provided in subsection (a) if it can be established to the satisfaction of the administrator that: (1) The ordinance or resolution is sufficiently consistent with the Kansas building code such that its application will not substantially reduce

statewide or regional uniformity of building regulations;

(2) the ordinance or resolution does not discriminate with particular technologies, techniques or materials;

(3) the ordinance or resolution does not unnecessarily increase the cost of construction within the jurisdiction;

(4) the ordinance or resolution is the current edition of a nationally recognized model building code; and

(5) enforcement of the ordinance or resolution, as it may differ from the Kansas building code, is necessary to protect the public health, safety and welfare within the applicable jurisdiction.

In determining whether any such ordinance or resolution meets the requirements hereinabove set forth, the administrator shall obtain the advice and counsel of the building code advisory council.

(c) Any decision of the administrator approving or disapproving any application made pursuant to subsection (a), or failure of the administrator to act within a reasonable time, may be appealed in a court of competent jurisdiction.

(d) Upon approval of its application, a local government shall thereafter maintain its building ordinance or resolution up to date. The adoption, without change, of amendments to a nationally recognized model building code shall be deemed to keep any such building ordinance or resolution current. Any amendment to a building ordinance or resolution which deviates from a nationally recognized model building code, along with supporting findings of fact, shall be submitted to the administrator for approval. The administrator shall approve any such amendment which meets the criteria set forth in subsection (b) of this section and which is necessary to account for conditions peculiar to the jurisdiction. Failure of any local government to maintain an up-to-date building code, or any amendment thereof in violation of this section, shall constitute grounds for revocation of a local exemption, following reasonable time after due notice, and enforcement of the Kansas building code within such jurisdic-

tion. Any such decision of the administrator may be appealed as provided in section 13 of this act.

(e) Any local government which has been granted an exemption under this section may, upon one hundred eighty (180) days public notice, repeal its building ordinance or resolution and either elect to adopt the Kansas building code or to have no building code.

Sec. 8. Any local government which has adopted the Kansas building code, may make application to the administrator for variations in such code within its jurisdiction to cover special conditions. The administrator shall approve any such variation if it is established to the administrator's satisfaction that such variation meets the criteria set forth in subsection (b) of section 7. Any local government which has been granted a variation hereunder shall still be deemed to have adopted the Kansas building code.

Sec. 9. (a) The administrator shall not enforce the Kansas building code within any jurisdiction in which such code has not been adopted. Local enforcement agencies shall retain responsibility to enforce any building ordinance or resolution in force within such jurisdictions.

(b) Any local government adopting the Kansas building code may create a local enforcement agency and may employ and designate a building official and code enforcement officers. The administrator shall have authority to perform any functions necessary to enforce the Kansas building code in any such jurisdiction which has not appointed proper personnel pursuant to this subsection or established proper procedures therefor.

(c) Local governments shall appoint local appeals boards to hear appeals brought in accordance with subsection (b) of section 13. Until such board is established in jurisdictions having local enforcement agencies, appeals shall be heard pursuant to subsection (a) of section 13. A sufficient number of members shall be appointed to local appeals boards to allow appeals to be heard promptly by panels of three (3) members, all of whom shall

be free of any conflict of interest in cases before them. A local government shall be relieved of its duty to appoint a local appeals board if it is established to the administrator's satisfaction that a sufficient number of qualified persons cannot be found within any such local government jurisdiction or through cooperation with neighboring jurisdictions.

(d) Any two (2) or more local governments which have adopted the Kansas building code may establish an area enforcement agency or an area appeals board and shall share expenses incurred thereby.

(e) The administrator may, upon request, assist a local enforcement agency in any matter relative to the interpretation or enforcement of the Kansas building code.

(f) Except as otherwise provided in the Kansas building code, within the jurisdiction in which any local government has adopted such code, the construction of a building shall not commence until a permit has been issued by the local enforcement agency upon submission of an application thereto. A permit shall be issued if the proposed building will comply with the Kansas building code, but such permit may be suspended or revoked at any time following issuance if any such building fails to comply with such code.

(g) A local enforcement agency shall periodically inspect all construction undertaken pursuant to permits issued by such agency to insure compliance with the code and this act. An applicant shall be deemed to consent to such inspection by applying for a building permit. Inspection of any building may also be made at any time a local enforcement agency has reasonable cause to believe that a condition hazardous to life or property exists. If a building is found not to be in compliance with the code, a local enforcement agency shall notify the permittee in writing to bring such building into compliance, secure it from entry or both. Failure to comply with such notification shall be grounds for revocation of the permit.

(h) No building except one and two-family dwellings, con-

structed after adoption of the Kansas building code by a local government, shall be used or occupied until a certificate of occupancy has been issued. Upon submission of an application for such certificate 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 building code and any other applicable laws, ordinances or resolutions.

Sec. 10. (a) The administrator 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 the administrator may cooperate and contract with educational institutions and local, regional, state or national building officials organizations and any other appropriate organizations.

(b) Within limits of appropriations therefor, the administrator 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 administrator.

Sec. 11. Except as otherwise provided by this act, land-use zone requirements, building set-back requirements, side and rear yard requirements, site development and property line requirements are hereby specifically reserved to units of local government.

Sec. 12.

Sec. 13. (a) The administrator 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 made pursuant to this act. Decisions of the administrator are reviewable on appeal to the appeals board. Decisions by the appeals board are reviewable on appeal by any court of competent jurisdiction.

(b) Prior to appeal to the administrator, appeals of decisions or rulings of local enforcement agencies shall be heard by the appropriate local appeals board. If there is no local appeals board in a local government jurisdiction, appeals shall be taken directly to the administrator.

Sec. 14. The administrator 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 governed by the provisions of this act, upon an affidavit of the administrator specifying the manner in which a building does not conform to the requirements of a building code or this act.

Sec. 15. (a) Notwithstanding any other remedy available, any person or party, individually 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 committing the violation. An award may include damages, costs and attorneys' fees.

(b) Any person employed or appointed by the state or a local government and who, in the course of such person's duties under this act, has charges brought against such person by an individual or other party on account of damages allegedly suffered due to the administration and enforcement of this act, shall be entitled to be provided with legal defense furnished by the state or local government by which such person was employed or appointed.

Sec. 16. Any person convicted of a violation of any of the provisions of this act or of the Kansas building code shall be

deemed guilty of a class C misdemeanor. A separate violation shall be deemed to have occurred with respect to each building not in compliance with the Kansas building code or the provisions of this act.

Sec. 17. If any provision of this act or the applicability thereof to any person or circumstance is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect those provisions of this act which can be given effect without such invalid provisions, and to this end the provisions of this act are declared to be severable.

Sec. 18. This act shall take effect and be in force from and after its publication in the statute book.

KANSAS DEPARTMENT OF ECONOMIC DEVELOPMENT
503 KANSAS—6th FLOOR, TOPEKA, KANSAS 66603
Phone (913) 296-3481

Attachment V

MEMORANDUM

TO: Alan Alderson
Revisor of Statutes

FROM: Dennis C. McCartney DCM

SUBJECT: Statewide Building Codes Proposal

DATE: October 1, 1976

This is in response to your request for assistance a few days ago regarding the following items:

1. Suggested qualifications for a state building codes administrator in the Division of Architectural Services.

2. Salary of the administrator.

3. Fiscal note for the setting up and operation of a statewide building codes office as a section of the Division of Architectural Services, Department of Administration.

4. Limitations on Section 5 (a) (5) "fees for functions pursuant to the Act."

While I have been in contact with a few of the members of the recent Advisory Committee on Statewide Building Codes relative to the above items the following comments are largely my own which are based for the most part on the experience that I gained while serving as Chairman of that Committee.

Suggested Qualifications of the Administrator of Building Codes

Should have at least five years administrative or management experience. Each year of graduate work towards a master's degree in public administration or business administration could be substituted for one year of work experience up to a maximum of two years. Should have at least a bachelor's degree in architecture, engineering (construction related), or closely related field. Should have at least eight years experience as a practicing architect, engineer, ~~or~~ building inspector during which time an extensive knowledge of building codes application has been obtained.

Salary of Administrator

In order to hire a competent person to carry out work required in this position the salary should be at least $25,000.00 per year.

Fiscal Note

The enactment of the Act proposed for a Statewide Building Codes program in Kansas is estimated to require the expenditures for staff and operating costs as provided below. These estimated expenditures are based on the assumption that the proposed Act will be amended to provide that only those city and/or counties that wish to adopt a building code will be required to adopt the Statewide Building Code but those that do not wish to adopt a building code will not have the statewide building code administrator in their governmental jurisdiction by the State. It is also assumed that the enforcement of the building code at the city and/or county levels of government will be accomplished without the use of state building inspectors. Therefore it is assumed that there will be no need for a large bureaucracy at the state level.

Estimated Staff and Operating Costs:

	First Year	Second Year
Statewide Building Codes Administrator	$ 25,000	$25,000
Assistant Administrator	18,000	18,900
Secretary I	7,000	7,350
Employee Benefits	10,000	10,250
Total Salary and Wages	$ 60,000	$61,500
Contractual Services for Training	$ 20,000	$20,000
Travel	5,000	5,000
Printing	5,000	5,000
Rent	4,000	4,000
Capital Outlay	5,500	500
Communication	1,000	1,000
Office Supplies	500	500
	$40,000	$36,000
	$100,000	$97,500

Limitation on Use of Fees

Regarding Section 5 (a) (5) of the proposed act the use of fees would be limited to the functions performed pursuant to the Act. The maximum amount of fees that could be charged could be established by providing by statute that the fees for building permits and plans-checking shall not exceed the fee schedule provided as a part of the Model Building Code adopted as the Statewide Building Code. As an example a copy of the fee schedules provided in the Uniform Building Code is attached for your information.

In addition to the above maximum fee schedule for building permits and plans-checking there could be a maximum limitation provided in the Act for a surcharge of 5 percent on all the building permit fees and plan-checking fees charge throughout the state. These fees could be placed in a special fund account to defray a part of the costs of operating the building codes office in the Division of Architectural Services and the costs of training building code officials throughout the state. Not knowing the distribution and amount of building permit fees and plans-checking fees that might be charged each year it is difficult to say how much money a 5 percent surcharge would yield but it should be an excessive amount. If there is concern about this an additional limitation could be provided that the surcharge could not be in excess of $150,000 annually.

I hope that these comments will be beneficial to you. If there are any questions I plan to be back in the office on October 8. In the meantime Mr. Charles Beardmore in the Division of Architectural Services who served as Secretary to the Advisory Committee on Statewide Building Codes will be available to answer questions and assist the interim committee.

DCM:vl

Attachment

cc: Mr. Charles Beardmore

(c) Validity. The issuance or granting of a permit or approval of plans and specifications shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this Code. No permit presuming to give authority to violate or cancel the provisions of this Code shall be valid, except insofar as the work or use which it authorizes is lawful.

The issuance of a permit based upon plans and specifications shall not prevent the Building Official from thereafter requiring the correction of errors in said plans and specifications or from preventing building operations being carried on thereunder when in violation of this Code or of any other ordinance of the city.

(d) Expiration. Every permit issued by the Building Official under the provisions of this Code shall expire by limitation and become null and void, if the building or work authorized by such permit is not commenced within 120 days from the date of such permit, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 120 days. Before such work can be recommenced a new permit shall be first obtained so to do, and the fee therefor shall be one-half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work; and provided, further, that such suspension or abandonment has not exceeded one year.

(e) Suspension or Revocation. The Building Official may, in writing, suspend or revoke a permit issued under provisions of this Code whenever the permit is issued in error or on the basis of incorrect information supplied, or in violation of any ordinance or regulation or any of the provisions of this Code.

Fees

Sec. 303. (a) Building Permit Fees. A fee for each building permit shall be paid to the Building Official as set forth in Table No. 3-A.

The determination of value or valuation under any of the provisions of this Code shall be made by the Building Official. The valuation to be used in computing the permit and plan-check fees shall be the total value of all construction work for which the permit is issued, as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire-extinguishing systems and any other permanent work or permanent equipment.

Where work for which a permit is required by this Code is started or proceeded with prior to obtaining said permit, the fees specified in Table No. 3-A shall be doubled, but the payment of such double fee shall not relieve any persons from fully complying with the requirements of this Code in the execution of the work nor from any other penalties prescribed herein.

TABLE NO. 3-A—BUILDING PERMIT FEES

TOTAL VALUATION	FEE
$1.00 to $500.00	$5.00
$501.00 to $2,000.00	$5.00 for the first $500.00 plus $1.00 for each additional $100.00 or fraction thereof, to and including $2,000.
$2,001.00 to $25,000.00	$20.00 for the first $2,000.00 plus $4.00 for each additional $1,000.00 or fraction thereof, to and including $25,000.00
$25,001.00 to $50,000.00	$112.00 for the first $25,000.00 plus $3.00 for each additional $1,000.00 or fraction thereof, to and including $50,000.00
$50,001.00 to $100,000.00	$187.00 for the first $50,000.00 plus $2.00 for each additional $1,000.00 or fraction thereof, to and including $100,000.00
$100,001.00 to $500,000.00	$287.00 for the first $100,000.00 plus $1.50 for each additional $1,000.00 or fraction thereof, to and including $500,000.00
$500,001.00 and up	$887.00 for the first $500,000.00 plus $1.00 for each additional $1,000.00 or fraction thereof

(b) **Plan-checking Fees.** When the valuation of the proposed construction exceeds $1,000.00 and a plan is required to be submitted by Subsection (c) of Section 301, a plan-checking fee shall be paid to the Building Official at the time of submitting plans and specifications for checking.

Said plan-checking fees for buildings of Groups I and J Occupancies shall be one-half of the building permit fees. Plan-checking fees for all other buildings shall be 65 percent of the building permit fees as set forth in Table No. 3-A.

Where plans are incomplete, or changed so as to require additional plan checking, an additional plan-check fee shall be charged at a rate established by the Building Official

(c) **Expiration of Plan Check.** Applications for which no permit is issued within 180 days following the date of application shall expire by limitation and plans submitted for checking may thereafter be returned to the applicant or destroyed by the Building Official. The Building Official may extend the time for action by the applicant for a period not exceeding 180 days upon written request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken. In order to renew action on an application after expiration, the applicant shall resubmit plans and pay a new plan-check fee.

(d) **Reinspection Fee.** The fee for each reinspection shall be $10.00.

Inspection.

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Attachment V

DR. WILLIS J. WOLLMANN
DENTIST
MOUNDRIDGE, KANSAS 67107
PHONE 316 345-8200

September 16, 1976

Mr. J. Russel Mills, Jr.
Legislative Research Department
Room 551-N Statehouse
Topeka, Kansas 66612

Dear Mr. Mills:

I am writing you so there may be no confusion as to what we favored and what we did not favor when the delegation from Moundridge appeared before the Special Committee on Federal and State Affairs yesterday.

We were testifying in favor of substitute Senate Bill No. 916 in the form that it was sent to us before the hearing.

The new proposed bill that we received a copy of when we entered the hearing room was something we were not prepared for, and since we had not read it we could not testify intelligently on it.

After studying the new proposal I find that it is completely different than the bill we received in the mail. The new bill has nothing in it that would help the small municipality that is struggling to provide an adequate airport. In fact I can't see that it would be of much benefit to anyone. I certainly hope no one received the impression that we were testifying in favor of the new proposal because we were not. The substitute proposal that I believe was brought in by the Department of Transportation ignores the needs of the smaller rural communities and sets up another planning bureaucracy that Kansas does not need.

I would appreciate it if this clarification could be passed on to the members of the committee.

Sincerely,

Willis J. Wollmann

Willis J. Wollmann
Chairman Moundridge Airport Board
Chairman Moundridge City Council

WJW/mw

19

Kansas Department of Transportation

September 29, 1976

Attachment VII

MEMORANDUM TO: MARY TORRANCE
STAFF ATTORNEY
REVISOR OF STATUTES

FROM: Ray Arvin
Director of Aviation
Kansas Department of Transportation

RE: Amendment to Airport Planning Bill

We have reviewed the comments of H. Jay Setter from the Wichita Airport Authority which were made before the Interim Federal and State Affairs Committee on September 15. Some of these proposed changes were constructive and I understand our legal staff has worked them out with you. They have my endorsement. One change is substantive, however, and needs to be proposed as an amendment to the bill, I believe. Mr. Setter suggested that certain portions of the Substitute for S.B. 916 could be incorporated into the bill.

I feel that Section 16 of that bill should be made a part of our proposed airport planning legislation. By amending K.S.A. 79-3606(a) we can exempt the sale of aviation fuel from the sales tax it must now pay. This would soften the bill's impact of diverting 4¢ of the present motor fuel rebate into an aviation planning fund and would make it considerably easier for the general aviation public to accept and bear.

Would you please present this amendment to the Joint Interim Federal and State Affairs Committee for their consideration. After due consideration, I believe it is a necessary part of the Airport Planning bill and sincerely urge its adoption by the committee.

Sincerely,

Ray Arvin

RAY ARVIN
Director of Aviation

RA/LMQ/lp

Attachment VIII

STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

September 24, 1976

ATTORNEY GENERAL OPINION NO. 76-296

Honorable Lloyd Buzzi
Honorable Neil H. Arasmith
Special Committee on Federal and
State Affairs
State Capitol Building
Topeka, Kansas 66612

RE: Airports - State Grants - Constitutionality

SYNOPSIS: Article 11, §9 of the Kansas Constitution prohibits the use of state funds for the construction and development of municipal and county airports, although it does not prohibit the use of such funds for local aviation planning. The levy of a motor-fuel tax on aircraft fuel to fund such grants is constitutionally permissible.

* * *

Dear Gentlemen:

You advise that 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.

You inquire whether a state program of grants for the construction and development of airports which are owned and operated by cities would be constitutionally permissible. Article 11, §9 of the Kansas Constitution states thus:

"The state shall never be a party in carrying on any work of internal improvement except that: (1) It may adopt, construct, reconstruct

> and maintain a state system of highways, but no general property tax shall ever be laid nor general obligation bonds issued by the state for such highways; (2) it may be a party to flood control works and works for the conservation or development of water resources." [Emphasis supplied.]

In contrast to the prohibition against "internal improvements," Article 11, §6 expressly authorizes the state to undertake "public improvements." The distinction between the two was observed in *State ex rel. Boynton v. State Highway Comm'n.*, 138 Kan. 913, 28 P.2d 770 (1934) thus:

> "The term 'public improvements,' as used in section 5, meant public buildings which the state should need in carrying on its functions, such as the statehouse, state penal, educational and eleemosynary institutions (Wyandotte Constitutional Convention, p. 327), while the term 'internal improvements,' as used in section 8, applied to turnpikes, canals and the like." 138 Kan. at 919.

Thus, student dormitories at state universities are "public," and not "internal," improvements. Thus, as pointed out in Opinion No. 75-315, in which the question was treated at some length, the scope of the term "public improvement" was stated thus:

> "The term 'public improvement' describes, basically, improvements to property owned and used by the state in the discharge of its duties and responsibilities as a sovereign corporation, and is restricted to state buildings and improvements associated therewith."

We pointed out in that opinion that the constitutional prohibition was absolute and unqualified. In *Leavenworth County v. Miller*, 7 Kan. 479 (1871), the court stated thus:

> "The state as a state is absolutely prohibited from engaging in any works of internal improvement. We will concede that this prohibition does not extend to the building of a statehouse, penitentiary, state university, and such other public improvements as are used

> exclusively by and for the State, as a sovereign corporation; but it does extend to every other species of public improvement. It certainly extends to the construction of every species of public improvement which is used, or may be used, by the public generally . . . such as public roads, bridges, etc. . . . [I]t is prohibited from opening up or constructing any roads, highways, bridges, ferries, streets, sidewalks, pavements, wharfs, levees, drains, waterworks, gas-works, or the like." 7 Kan. at 493.

In *State ex rel. Hopkins v. Raub*, 106 Kan. 196 (1920), the court stated that the construction of highways was a work of internal improvement in which the state could not engage. (Construction of a "state system of highways" is now permitted by amendments to Article 11, §9.) An airport is equally a work of internal improvement, to which the state may not be a party. Certainly, the state is a party to the construction of an airport when it appropriates funds therefor. *State ex rel. Hopkins v. Raub, supra*, at 202. Accordingly, I can but conclude that the adoption of a state program of grants for the construction and development of municipal airports would constitute the state a party to works of internal improvement, in violation of Article 11, §9 of the Kansas Constitution.

Secondly, you ask whether a state program of grants for the planning of airports which are owned and operated by cities or counties would be constitutionally permissible. The direction that the state shall not be a "party in carrying on any work of internal improvement" does not prohibit all state involvement whatever with cities and counties in responding to their aviation needs. In providing funds to cities and counties to survey and assess local and regional aviation uses, to project future needs, and to determine the feasibility of alternative sites for aviation facilities, state funds are not used, in my judgment, to carry on any work of improvement, but rather, to assist local authorities to determine whether such improvements are in fact needed, and if so, precisely what facilities will best serve local needs. Thus, in my judgment, state funds may be made available for planning by cities and counties, regarding local aviation facilities, within the limits of the foregoing.

Lastly, you inquire whether the imposition of a state motor-fuel tax on fuels for aircraft to fund such grants would be constitutionally permissible. Article 11, §10 of the Kansas Constitution states thus:

> "The state shall have power to levy special taxes, for road and highway purposes, on motor vehicles and on motor vehicles."

In *State ex rel. Arn v. State Commission of Revenue and Taxation*, 163 Kan. 240, 181 P.2d 532 (1947), the court pointed out that this provision was superfluous:

> "We point out, however, that this constitutional provision was not necessary in order to give the legislature that authority. The state, in its sovereign capacity, has power, through its legislature, to levy excise taxes for revenue purposes, and in fact our legislature had done so before this constitutional amendment was adopted. One may inquire if this is true, why the amendment was submitted to and adopted by the people. Perhaps the reason was that many of our citizens had questioned previous legislative acts levying such a tax, and that it was done to quiet any feeling of that kind. But, irrespective of the reason for it, it must be interpreted in harmony with not only other provisions of the constitution, but with the fundamental inherent power of the state. This legislative power arises from the fact that our government is one of the people, who act through their legislatures in enacting laws, the only restriction being that the people so acting cannot exercise powers which have been granted to the federal government by the adoption of the federal constitution or limited by our state constitution. Section 10, article 11, is a recognition of an existing power. The legislature needed no grant of such power it had previously exercised, and it is not a limitation of legislative power." [163 Kan. at 249.]

Thus, no constitutional provision was needed to authorize the levy of motor fuel taxes for road and highway purposes. Similarly, no constitutional authority is required to authorize the levy of a motor-fuel tax on aircraft fuel for whatever purpose the legislature wishes to designate. Prior to 1928, when this provision of the constitution was adopted, the legislature was free to levy a tax on fuels for whatever purpose it deemed needful, and subsequent to that amendment, it remains just as free to do so. This provision does not forbid the use of any motor-fuel tax for any purpose other than roads and highways, so long as the statute under which the tax is levied

designates the purposes to which it is to be applied. Accordingly, in my judgment, the imposition of a state motor-fuel tax on fuels for aircraft to fund grants as described above would be constitutionally permissible.

Yours very truly,

Curt Schneider

CURT T. SCHNEIDER
Attorney General

CTS:JRM:en

Attachment

PROPOSED BILL NO. _____

By Special Committee on Federal and State Affairs

Re: Proposal No. 19

AN ACT relating to airports and airway systems; providing for state financial assistance to municipalities for airport planning programs; amending K.S.A. 3-604, 3-605, 79-3402 and 79-3453 and K.S.A. 1976 Supp. 79-3425 and repealing the existing sections.

WHEREAS, The airports and airway 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:

New Section 1. As used in this act, unless the context otherwise requires: (a) "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.

(b) "Municipality" means 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.

(c) "Secretary" means the secretary of transportation.

Sec. 2. K.S.A. 79-3402 is hereby amended to read as follows: 79-3402. The tax imposed by this act is levied for the purpose of producing revenue to be used by the state of Kansas to defray, in whole, or in part, the cost of constructing, widening, purchasing ~~of~~ right-of-way, reconstructing, maintaining, surfacing, resurfacing and repairing the public highways, including the payment of bonds heretofore issued for highways included in the state system of this state; the cost of a program of aid to municipalities for airport planning; and the cost and expenses of the director of this state and ~~his~~ the director's agents and employees incurred in administration and enforcement of this act and for no other purpose whatever.

Sec. 3. K.S.A. 1976 Supp. 79-3425 is hereby amended to read as follows: 79-3425. All of the tax collected under the provisions of this act shall be paid into the state treasury by the director, and the state treasurer shall ~~place~~ credit one and seventy-five hundredths percent (1.75%) of all taxes so collected ~~in~~ to the state general fund. The state treasurer shall credit such amount of such taxes as certified by the director under K.S.A. 79-3453, as amended, to the airport planning fund created by section 5 and such amount ~~thereof~~ of such taxes as the director shall order ~~in~~ to the motor-vehicle fuel tax refund fund to be used for the purpose of paying motor-vehicle fuel tax refunds as provided by law. On July 1, October 1, January 1 and April 1 of each year, ~~beginning in the year 1970, or as soon thereafter as the money is available,~~ the state treasurer shall place six hundred twenty-five thousand dollars ($625,000) of the remaining tax moneys collected under the provisions of this act in the county equalization and adjustment fund, which fund is hereby created, to be apportioned and distributed in the manner provided in K.S.A. 1976 Supp. 79-3425c. Eighty-seven and fifty hundredths percent (87.50%) of the remainder of said tax moneys so collected shall be credited as follows: ~~On and after July 1, 1974,~~ Sixty-five percent (65%) thereof to the state freeway fund

which is hereby created, to be expended in the manner provided in K.S.A. 1976 Supp. 68-2301, and thirty-five percent (35%) thereof to a special city and county highway fund which is hereby created, to be apportioned and distributed in the manner provided in K.S.A. 1976 Supp. 79-3425c. The remaining twelve and fifty hundredths percent (12.50%) of the tax moneys so collected shall be credited to the highway fund.

~~On July 2, 1974, and on~~ Each day ~~thereafter~~, after the state treasurer has received certification from the secretary of transportation that provisions have been made for the payment of the pro rata share of the amount required to be paid on the next ensuing payment date of either the principal of or the interest on the outstanding highway bonds issued pursuant to K.S.A. 1976 Supp. 68-2304, the state treasurer shall transfer from the state freeway fund to the state highway fund an amount equal to sixty-nine and twenty-three hundredths percent (69.23%) of the moneys deposited in the state freeway fund on the preceding day.

Sec. 4. K.S.A. 79-3453 is hereby amended to read as follows: 79-3453. (a) Subject to the provisions of subsections (b) and (c) of this section, 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 motor-fuel tax paid by such person on such fuels upon complying with the applicable conditions and provisions of this act: ~~Provided, That such~~

(b) Any person entitled to a refund of motor-fuel tax paid on motor-vehicle fuels used for the operation of aircraft, except motor-vehicle fuels purchased and used by aircraft manufacturers for testing or demonstrating,

shall be entitled to a refund of only fifty percent (50%) of the motor-fuel tax paid by such person on such fuels. The remaining fifty percent (50%) of the motor-fuel tax collected on such fuels shall be paid into the state treasury and credited to the airport planning fund created by section 5. On

or before the tenth day of each month, the director of revenue shall certify to the state treasurer and the secretary of transportation the amount to be credited to such fund as the result of applications for refund made during the preceding calendar month.

(c) No person shall ~~not~~ be entitled to ~~a~~ any refund of ~~such~~ tax hereunder unless ~~he~~ such person 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.

New Sec. 5. 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. Such fund is to be used exclusively to make grants authorized under this act and to defray the expenses incurred in administering the provisions thereof. All expenditures from the airport planning fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary.

New Sec. 6. The secretary is hereby authorized and empowered to approve and order payment of grants to municipalities from the airport planning fund for airport planning programs and studies. Such grants may include grants for 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.

Any grant made hereunder shall be in an amount equal to fifty percent (50%) of that portion of the cost of the proposed planning program or study which would otherwise be paid by the municipality or twenty-five thousand dollars ($25,000), whichever is less.

New Sec. 7. The secretary shall adopt such rules and regulations as necessary for the effective administration of this

act. The secretary may also delegate any of the powers given to the secretary 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.

New Sec. 8. Moneys allocated to a municipality by a grant made pursuant to this act shall be encumbered as an expenditure from the airport planning fund upon the letting of a contract for the planning services for which the grant was approved regardless of the date on which actual payment of the grant is made, but the secretary may reallocate any of the moneys committed to a municipality which has not entered into contracts or otherwise committed such allocation for an approved project within the fiscal year for which it was allocated.

Sec. 9. 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~~, board, commission, airport authority or other governmental or quasi-governmental entity authorized by law to own and operate one or more airports.

(b) "Federal airport act" means ~~the--aviation--facilities expansion-act-of-1969-or~~ public law 91-258, commonly known as the airport and ~~airways~~ 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~~ public law 94-353, commonly known as the airport and airway development act amendments of 1976, and such other existing federal acts as are referred to therein.

Sec. 10. 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 pro-

grams 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.

New Sec. 11. 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. 12. K.S.A. 3-604, 3-605, 79-3402 and 79-3453 and K.S.A. 1976 Supp. 79-3425 are hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the statute book.

882 | 916
Fiscal Note Bill No.
1976 Session
February 24, 19

The Honorable Bob W. Storey, Chairman
Committee on Transportation and Utilities
Senate Chamber
Third Floor, Statehouse

Attachment X

Dear Senator Storey:

SUBJECT: Fiscal Note for Senate Bill No. 916 by Committee on Transportation and Utilities

In accordance with K.S.A. 75-3715a, the following fiscal note concerning Senate Bill No. 916 is respectfully submitted to your committee.

Senate Bill No. 916 is an act which proposes to amend the motor fuel tax law to include among the purposes of the law the financing of airport construction. The bill would eliminate refunds for aviation use of fuel and require the monthly report of motor vehicle fuel distributors to include the number of gallons distributed for use in aircraft. The Director of Taxation would be required to maintain records of the number of gallons of motor vehicle fuel sold and delivered for use in aircraft and to report the same to the State Treasurer. After two percent of gross motor vehicle fuel tax collections are credited to the State General Fund, the State Treasurer shall credit that portion of the remainder collected on fuel sold and delivered for use in aircraft to the "State Aviation Fund." The bill would make the use of tax refund motor vehicle fuel in an aircraft subject to the same penalties provided for using tax refund fuel in a highway vehicle.

It is estimated that enactment of this legislation would eliminate an estimated $450,000 of motor vehicle fuel tax refunds for aviation use annually. Estimated annual transfers to the State Aviation Fund would be $441,000. Approximately $9,000 is presently transferred to the State General Fund under existing law and the provisions of Senate Bill No. 916 would not alter this situation. However, due to the discontinuance of aviation motor fuel refunds, the following highway funds would distribute an additional $9,000 between them: the State Highway Fund, the State Freeway Fund, and the Special City and County Highway Fund.

K.S.A. 1975 Supp. 79-3906a exempts motor vehicle fuel from the sales tax when such motor vehicle fuel is not subject to refund. Presently, motor vehicle fuel intended for aviation use is sold subject to refund and, consequently, is subject to the sales tax. Since enactment of Senate Bill No. 916 would make such fuel no longer subject to refund, such sales tax could no longer be collected. The elimination of sales tax on aviation fuel will reduce State General Fund receipts by an estimated $116,000. The 1977 Governor's Budget Report anticipated this loss of receipts.

The Department of Revenue estimates that in order to implement the provisions of Senate Bill No. 916 it would incur additional expenses of $21,184 in FY 1977. Of this amount, $13,681 would be a one-time expense

incurred in preparing a new statistical report to compile a record of total gallons used in aircraft and the tax received thereon, to lengthen and rewrite existing files of motor fuel records and to modify the motor fuel computer programs. The remaining additional expense of $7,503 would be a continual annual expense for a Data Entry Operator II position to accommodate the input of additional detail which would be received under the provisions of this bill.

James W. Bibb
Director of the Budget

JWB:REK:mad

Attachment XI

DRAFT

COMMITTEE REPORT

TO: Legislative Coordinating Council

FROM: Special Committee on Federal and State Affairs

RE: Proposal No. 18 - Open Public Meetings Law

Proposal No. 18 directed the Special Committee on Federal and State Affairs to conduct "a review of the Kansas Open Public Meetings Law and its operation and effects upon public bodies subject to its provisions, the news media, and the general public."

Background

The Kansas Open Meetings Act (K.S.A. 1975 Supp. 75-4317 et seq.) was enacted in 1972 and was slightly amended in 1975. In brief, the act declares it to be the policy of this state that meetings for the conduct of governmental affairs and the transaction of governmental business will be open to the public. The act applies to virtually all public bodies which receive or expend or are supported by public funds. Closed or executive meetings are permitted under certain conditions, although they are not to be used as a subterfuge to defeat the purposes of the act. Violation of the Kansas Open Meetings Act is a Class C misdemeanor.

The Kansas Open Meetings Act, as enacted by the 1972 Legislature, is very similar to the proposed act recommended by the 1971 Special Committee on Federal and State Affairs which conducted an interim study of the concept (See 1971 Reports and Recommendations of Special, Standing, and Subcommittees to the

1972 Session of the Kansas Legislature, pages 354-357). The act was amended in 1975 (1) to strengthen the public policy declaration supportive of open meetings, (2) to require public bodies to furnish agendas to interested persons, and (3) to permit the use of cameras and recording devices at open meetings. During the 1976 Legislative Session, several amendments to the act were proposed by various groups, although none was actually introduced in bill form.

Committee Activity

In addition to a thorough study and review of the Kansas Open Meetings Act, the Committee heard testimony and received statements from representatives of the following groups: Common Cause of Kansas, the Kansas League of Women Voters, the Kansas Press Association, the Kansas Association of School Boards, the Kansas Civil Liberties Union, and various members of the broadcast and newspaper media.

Most conferees agreed that the Kansas Open Meetings Act is a workable statute which has required public bodies to make public policy in open sessions and has enhanced the concept of the public's right to know. However, some problem areas were noted and amendments were proposed by several conferees to strengthen various provisions of the act.

Testimony was received that some public bodies, such as city commissions, county commissions, and school boards, were

abusing the executive session provision of the act in order to bar the public from the policy-making process. Several conferees noted specific instances in which they felt the public bodies were using the executive session provision as a subterfuge to defeat the purposes of the act. It was suggested that an itemized listing of those situations in which closed meetings would be permitted should be included in the act.

It was also suggested that the notification provision of the act be strengthened by requiring public bodies to give advance notice of all regular and special meetings to any interested person, perhaps 24 or 72 hours in advance of the meeting. Other conferees felt that the enforcement provisions of the act should be strengthened so that a private citizen could force a public body to observe the open meetings requirement.

Other changes proposed in the Kansas Open Meetings Act included the following: Define the term "meeting" as any coming together of a quorum of the members of any public body; require the keeping of detailed minutes which would be available to the public; require the reason for holding an executive session to be stated publicly; require that the Senate Caucus meetings and all conference committee meetings be open to the public; and establish greater penalties for those officials who violate the provisions of the act.

Conclusions and Recommendations

The final report of the 1971 Special Committee on Federal and State Affairs mentioned previously contains the

following statement:

> The basic argument for open public meetings is that public knowledge of the considerations upon which governmental action is based is essential to the democratic process. The people must have access to the information upon which decisions are based if they are to make sound judgments upon questions of policy and if they are to select their representatives wisely.

This Committee reaffirms that statement. Open public meetings are the declared policy of this state and abuses of that policy must not be tolerated.

However, the Committee feels strongly that the open meetings requirement should not become a barrier to citizen access to elected officials. For example, under the definition of "meeting" proposed by some conferees, any two county commissioners might be reluctant to discuss a problem with an interested constituent since this action would fall under the provisions of the Open Meetings Act. An overly strict open meetings requirement which could serve to curtail communication between elected officials and their constituents is clearly a step in the wrong direction.

The Committee feels that it is the responsibility of interested citizens to challenge abuses of the open meetings requirement. Even though the Kansas Legislature can declare open meetings to be the public policy of this state, only the actions of an informed citizenry can assure that public bodies meet both the spirit and the letter of the law.

The Committee recommends that the 1977 Legislature take favorable action on _____ Bill _____ in order to strengthen the open meetings requirement, eliminate abuses of the executive session provision, and insure that all public bodies recognize and protect the public's right to know. The major provisions of the bill are as follows:

1. K.S.A. 1975 Supp. 75-4317 would be amended to provide that "No chance meeting, social meeting, or electronic or written communication shall be used in circumvention of the spirit or requirements of this act."

2. K.S.A. 1975 Supp. 75-4318 would be amended to permit the use of photographic lights, in addition to cameras and recording devices, in all public meetings, subject to reasonable rules.

3. K.S.A. 1975 Supp. 75-4319 would be amended to require any motion to recess to an executive meeting to include a statement of the justification for closing the meeting, the specific subjects to be discussed during the executive meeting, and the time and place at which the open meeting will resume. Discussion during the executive meeting would be limited to those subjects stated in the motion, and the motion to recess and the subjects discussed during the executive meeting would be recorded in the minutes of the meeting.

Respectfully submitted,

_____, 1976

Representative Lloyd Buzzi
Chairman
Special Committee on Federal and State Affairs

Attachment XI

DRAFT

COMMITTEE REPORT

TO: Legislative Coordinating Council

FROM: Special Committee on Federal and State Affairs

RE: Proposal No. 18 - Open Public Meetings Law

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Most conferees agreed that the Kansas Open Meetings Act is a workable statute which has required public bodies to make public policy in open sessions and has enhanced the concept of the public's right to know. However, some problem areas were noted and amendments were proposed by several conferees to strengthen various provisions of the act.

Testimony was received that some public bodies, such as city commissions, county commissions, and school boards, were

abusing the executive session provision of the act in order to bar the public from the policy-making process. Several conferees noted specific instances in which they felt the public bodies were using the executive session provision as a subterfuge to defeat the purposes of the act. It was suggested that an itemized listing of those situations in which closed meetings would be permitted should be included in the act.

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This Committee reaffirms that statement. Open public meetings are the declared policy of this state and abuses of that policy must not be tolerated.

However, the Committee feels strongly that the open meetings requirement should not become a barrier to citizen access to elected officials. For example, under the definition of "meeting" proposed by some conferees, any two county commissioners might be reluctant to discuss a problem with an interested constituent since this action would fall under the provisions of the Open Meetings Act. An overly strict open meetings requirement which could serve to curtail communication between elected officials and their constituents is clearly a step in the wrong direction.

The Committee feels that it is the responsibility of interested citizens to challenge abuses of the open meetings requirement. Even though the Kansas Legislature can declare open meetings to be the public policy of this state, only the actions of an informed citizenry can assure that public bodies meet both the spirit and the letter of the law.

The Committee recommends that the 1977 Legislature take favorable action on _____ Bill _____ in order to strengthen the open meetings requirement, eliminate abuses of the executive session provision, and insure that all public bodies recognize and protect the public's right to know. The major provisions of the bill are as follows:

1. K.S.A. 1975 Supp. 75-4317 would be amended to provide that "No chance meeting, social meeting, or electronic or written communication shall be used in circumvention of the spirit or requirements of this act."

2. K.S.A. 1975 Supp. 75-4318 would be amended to permit the use of photographic lights, in addition to cameras and recording devices, in all public meetings, subject to reasonable rules.

3. K.S.A. 1975 Supp. 75-4319 would be amended to require any motion to recess to an executive meeting to include a statement of the justification for closing the meeting, the specific subjects to be discussed during the executive meeting, and the time and place at which the open meeting will resume. Discussion during the executive meeting would be limited to those subjects stated in the motion, and the motion to recess and the subjects discussed during the executive meeting would be recorded in the minutes of the meeting.

Respectfully submitted,

_____, 1976

Representative Lloyd Buzzi
Chairman
Special Committee on Federal and State Affairs

Attachment XII

DRAFT

COMMITTEE REPORT

TO: Legislative Coordinating Council

FROM: Special Committee on Federal and State Affairs

SUBJECT: Proposal No. 23 - Regional Jails

Under Proposal No. 23, the Special Committee on Federal and State Affairs was directed to conduct "an examination of the feasibility of establishing regional jails throughout the state."

Committee Activity

In conducting this study of the regional jail concept, the Committee heard testimony and received statements from the League of Women Voters, the Kansas County and District Attorneys' Association, the Kansas Mental Health Association, the Kansas Council on Crime and Delinquency, the Kansas Trial Lawyers Association, the Kansas Sheriffs Association, the Kansas Civil Liberties Union, the Catholic Social Service, and several county attorneys.

Virtually none of the testimony received by the Committee was supportive of the concept of regional jails. Most of the conferees felt that the building of larger regional facilities to "warehouse" more people would not solve any of the problems being experienced by city and county jails in Kansas. It was stated that the construction of regional jail facilities would require additional financial resources and the action of housing more prisoners in one facility, with no effort at rehabilitation, would be worse than making any change in the present situation.

It was suggested that the Legislature provide for the establishment of "community correctional centers" to replace those jails that are in need of replacing as an alternative to the construction of regional jail facilities. It was felt that community correctional centers should be built as needed, in each judicial district, in areas that have access to available community resources, such as mental health centers, educational opportunities, counseling, health care, and legal services.

Other conferees opposed the concept of regional jails but supported instead the concept of "regional correctional services." It was contended that the regionalization of correctional services, which could provide counseling, social integration, health services, work release, and other needed services, would be a much better use of state and local funds than would be the construction of large regional jail facilities. It was suggested that this regionalization of correctional services could occur on the basis of judicial districts, mental health districts, or other established districts.

Other testimony indicated that the regionalization of jail facilities would create problems for attorneys who would be forced to travel long distances to confer with their clients and could also create security problems for law enforcement personnel who would be forced to transport prisoners from the regional facility to the various courts. The use of regional jail facilities could also place offenders at great distances from their families and children, which would be detrimental to family unity and rehabilitation efforts.

It was also noted that some regionalization of jail facilities is occuring under present Kansas statutes. For example, the Ellis County jail is presently receiving prisoners from an eight-county area and is, in effect, functioning as a regional facility. Under cooperative agreements, the eight counties involved reimburse the Ellis County facility for the costs of housing and confining prisoners.

Several conferees also noted the problems being encountered by city and county jails in Kansas as a result of the jail standards promulgated by the Secretary of Corrections, even though these standards were made advisory rather than mandatory through the enactment of 1976 H.B. 3034.

Conclusions and Recommendations

The Committee concludes that legislation mandating the construction of regional jail facilities in Kansas is not appropriate at this time. The Committee recognizes the problems being encountered by many jails in the state. However, the Committee feels that the management of city and county jails is a local responsibility which should remain with the local elected officials.

Under existing statutes and through the use of interlocal agreements, counties may, if they wish, establish regional jail facilities or community correctional centers. The Committee encourages this type of regionalization when it would reduce costs and better serve a multi-county area. Under this type of arrangement, control and responsibility for the operation of the facility

would remain with the local officials involved. The Committee feels that this is a much better approach than a mandatory legislative enactment which would require the construction of regional jail facilities or community correctional centers.

The Committee also recommends that all new jail facilities be constructed in accordance with the standards established by the Secretary of Corrections, even though these standards are now advisory and not mandatory.

The Committee feels that the establishment of regional jails or community correctional centers should be the result of local initiative rather than legislative mandate. Therefore, no legislation is recommended with regard to the mandatory construction of regional jail facilities or community correctional facilities.

Respectfully submitted,

_____, 1976

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

Attachment III

PROPOSED BILL NO. _____

By Special Committee on Federal and State Affairs

Re: Proposal No. 23

AN ACT authorizing joint establishment and operation of regional jails or community correctional centers by counties; providing for issuance of general obligation bonds to pay the costs of construction thereof; providing for a tax levy to retire said bonds.

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

Section 1. (a) The boards of county commissioners of two (2) or more counties jointly may establish a regional jail or community correctional center and provide for the operation thereof in a manner supplementary to the operation of the county jails in each of the counties participating in the joint establishment and operation of said regional jail or community correctional center. Subject to the provisions of subsection (b), the board of county commissioners of each county desiring to participate in the joint establishment and operation of a regional jail or community correctional center is hereby authorized to issue and sell general obligation bonds for the purpose of paying that county's share of the cost of the construction of such facility. All bonds issued pursurant to this section shall be issued, registered, sold, delivered and retired in accordance with the provisions of the general bond law. Bonds issued under the provisions of this section shall not be subject to or within any limitation of bonded indebtedness prescribed by any other law of this state and shall not be considered or included in applying any other law limiting bonded indebtedness.

(b) No contract shall be let for the construction of a regional jail or community correctional center or bonds issued for the payment of the costs thereof until a resolution is

adopted by the board of county commissioners of each county desiring to participate in the joint establishment of such facility stating: (1) The total amount determined necessary to pay for that county's share of the project; (2) the total amount of funds to be raised for such purpose by the tax levy authorized by subsection (c); (3) the number of years such tax levy shall be made; and (4) that it is necessary to issue and sell bonds for such purpose. Such resolution shall be published once each week for three (3) consecutive weeks in the official county newspaper. Thereafter, such bonds may be issued and the tax levy made unless a petition in opposition to the same, signed by not less than five percent (5%) of the registered voters of the county, is filed with the county election officer within thirty (30) days following the last publication of the resolution. In the event such petition is filed it shall be the duty of the board of county commissioners to submit the question of issuing said bonds and making such levy for such purpose at a special election called therefor or at the next regular countywide election. If a majority of those voting on such proposition shall vote in favor of issuing said bonds and making such tax levy, then the board of county commissioners may issue said bonds in the sum determined necessary to pay the county's share of the project and make the tax levy herein provided.

(c) Proceeds from the sale of bonds herein authorized shall be placed in the county's regional jail fund or community correctional center fund for the purpose of paying the county's share of the cost of the construction of the regional jail or community correctional center. Thereafter at the first tax levying period after such bonds are issued, the board of county commissioners of any such county is hereby authorized to levy an annual tax in accordance with K.S.A. 10-113 upon all of the taxable tangible property of such county to pay the principal and interest on said bonds. Such tax levy shall be made annually for a period of ten (10) years. The money received from such tax levy shall be placed in the county's regional jail fund or community correc-

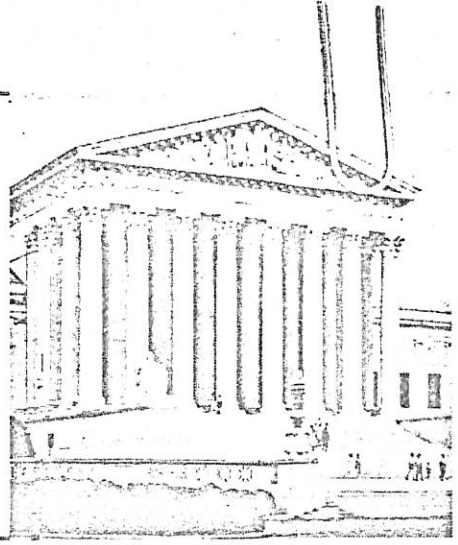
tional center fund for the purpose of paying the bonds issued and the interest thereon.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Attachment X

Supreme Court Report

by Rowland L. Young



THE DECISIONS ON capital punishment and abortion, handed down early in July, were major ones, based on the Court's highly controversial decisions in *Furman* v. *Georgia*, 408 U.S. 238 (1972), and *Roe* v. *Wade*, 410 U.S. 113 (1973). The new decisions seem to indicate that the justices, who are the same today as they were in 1972, with the exception of the substitution of Justice Stevens for Justice Douglas, have not changed their minds. The Court today is still split over capital punishment and a clear majority approves an expansion of the teachings of *Roe*. The Court was badly split over capital punishment in 1972, and it divided seven to two over abortion in 1973, just as it did this year.

There were five capital punishment cases, and the result of them is to approve new capital punishment legislation in Georgia, Texas, and Florida (the first two of which had statutes declared invalid in 1972), and to disapprove new death penalty statutes in North Carolina and Louisiana. Justices Stewart, Powell, and Stevens were in agreement in all five cases in opinions apparently written in collaboration, generally taking the position that, while capital punishment is not cruel and unusual under the Eighth Amendment, it must be subject to strict legislative limitations to be valid. Chief Justice Burger and Justices White and Rehnquist (the last two of whom dissented in 1972), took the view that capital punishment is a legislative prerogative, while Justices Brennan and Marshall feel that capital punishment violates the Eighth Amendment. Justice Blackmun, who dissented in *Furman* v. *Georgia*, contented himself in each of the new decisions with a statement citing his *Furman* dissent. His 1972 opinion expressed his personal feeling that capital punishment should be abolished, but that it was difficult to justify that position as "a matter of history, or law, or of constitutional pronouncement."

The Court's latest pronouncement on abortion reaffirms its 1973 position that the decision whether to have an abortion is a matter for the woman during the early stage of pregnancy, and it holds that a state may not require either parental consent or the consent of the husband—a question left open three years ago. The new decision does not make it entirely clear whether the right to abortion comes from the Ninth or the Fourteenth Amendment. The theory of the principal suit brought by a planned parenthood group and two physicians was based on a number of alleged constitutional rights, such as "the right to privacy in the physician-patient relationship," "the physicians' 'right to practice medicine according to the highest standards of medical practice,' " the "female patients' right to determine whether to bear children," and even "the patients' right under the Eighth Amendment to be free from cruel and unusual punishment 'by forcing and coercing them to bear each pregnancy they conceive' "—a "right" which the Court does not allude to except in passing.

The Court twice declares that the state may not prohibit abortion during early pregnancy "when the physician and his patient make that decision," although it seems unlikely that it means to imply that the consent of the physician is necessary.

Justices White and Rehnquist dissented, as they did in 1973. This time, they are joined by the chief justice, who concurred in 1973, expressing some reservations about the Court's use of medical data. Justice Stevens, the only member of the Court who did not participate in *Roe* v. *Wade*, dissented in this case from the Court's holding that parental consent could not be required. The case was accompanied by two other cases involving abortion laws.

This month's report also covers two discrimination cases, one holding that private schools may be liable under federal law for refusing to enroll black students, the other that white employees may bring suit against their employers in cases of "reverse discrimination." Both cases were filed under 42 U.S.C. § 1981, which is derived from the Civil Rights Act of 1866, and provides that " [a]ll persons. . . shall have the same right to make and enforce contracts. . . as is enjoyed by white citizens. . . ."

On June 21 the Court again considered the "constitutional boundary between church and state," upholding a Maryland statute that granted aid to four Roman Catholic colleges. The decision is a further elaboration of doctrine laid down in 1971 in *Lemon* v. *Kurtzman*, 403 U.S. 602, and its companion, *Tilton* v. *Richardson*, 403 U.S. 672. *Lemon* v. *Kurtzman* held invalid state statutes that provided state supplements to the salaries of teachers in religious schools and granted state reimbursement for salaries, textbooks, and other materials. *Tilton*, on the other hand, upheld a federal statute that provided for grants for the construction of academic facilities at religious schools, with the provision that the facilities not be used for sectarian purposes.

The latest decision shows that the Court is still badly split on the issue—there is no majority opinion, and four justices dissented.

Capital Punishment Is Not "Cruel and Unusual"

The first of the capital punishment cases was *Gregg* v. *Georgia*, ___ U.S. ___, 49 L.Ed. 2d 859, 96 S.Ct. 2909, 44 U.S.L.W. 5230, decided July 2. The case upheld Georgia's death penalty statute, which provides for a bifurcated trial on the issues of guilt and penalty, with the jury required to find the existence of at least one of ten specific "aggravating circumstances" before it can impose the death penalty.

The case involved the murders by a hitchhiker of two men who had given him a ride from Florida to Gwinnett County, Georgia. The jury found the petitioner, Gregg, guilty and then set the death penalty, finding specifically that the murders had been committed while the offender was engaged in the commission of another capital offense (armed robbery) and that the murders had been committed

fo. purpose of receiving money, two of the ten statutory "aggravating circumstances." The jury did not base its death sentence on the third possibly applicable "aggravating circumstance," that the crime was "outrageously and wantonly vile, horrible and inhuman."

The Supreme Court of Georgia affirmed the verdict and the imposition of the death penalty during the special expedited direct review that is required by the statute to consider the appropriateness of any death sentence. 210 S.E. 2d 659 (1974).

The Supreme Court affirmed the judgment in an opinion announced by Justice Stewart and concurred in by Justices Powell and Stevens. The opinion took the position that "the punishment of death does not invariably violate the Constitution," a question over which the Court was split in *Furman*, pointing out that the death penalty for murder "has a long history of acceptance both in the United States and in England. . . . It is apparent from the text of the Constitution that the existence of capital punishment was accepted by the Framers."

The opinion agreed that the Eighth Amendment is not a static concept and that it "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society," but it said that the "most marked indication of society's endorsement of the death penalty for murder is the legislative response to *Furman*. The legislatures of at least 35 states have enacted new statutes that provide for the death penalty for at least some crimes that result in the death of another person." Congress, the opinion went on, "in 1974, enacted a statute providing the death penalty for aircraft piracy that results in death."

The opinion noted that the new statutes have attempted to meet the concerns expressed in *Furman* either by specifying factors to be weighed and the procedures to be followed in deciding when to impose the death penalty or by making that penalty mandatory for specified crimes. The Georgia provision involved in this case, the Court noted, took the first course.

The opinion then considered the Georgia statute in detail, pointing out that, while the jury in the sentencing stage of its proceedings must find one of the ten aggravating circumstances before it can impose the death sentence, it is not required to find any mitigating circumstance in order to recommend mercy. Both recommendations of mercy and death are binding on the trial court. The opinion declared: "No longer can a Georgia jury do as Furman's jury did: reach a finding of the defendant's guilt and then, without guidance or direction, decide whether he should live or die. . . . As a result, while some jury discretion still exists, 'the discretion exercised is controlled by clear and objective standards so as to produce non-discriminatory application.'"

This provision, the opinion went on, is buttressed by the automatic appeal of all death sentences to the state supreme court, which is required by statute to review each death sentence and determine whether it was imposed under the influence of passion or prejudice, whether the evidence supports the jury's finding of a statutory aggravating circumstance, and whether the sentence is disproportionate compared to sentences imposed in similar cases.

Justice White's opinion concurring in the judgment, in which the chief justice and Justice Rehnquist joined, is similar to the reasoning of the plurality opinion. "The Georgia Legislature has made an effort to identify those aggravating factors which it considers necessary and relevant to the question whether a defendant convicted of capital murder should be sentenced to death," Justice White declared. "The jury which imposes sentence is instructed on all statutory aggravating factors which are supported by the evidence, and is told that it may not impose the death penalty unless it unanimously finds at least one of these factors to have been established beyond a reasonable doubt." Furthermore, Justice White said, the legislature "gave the Georgia Supreme Court the power and the obligation to perform precisely the task which three Justices of this Court, whose opinions were necessary to the result, performed in *Furman:* namely the task of deciding whether *in fact* the death penalty was being administered for any given class of crime in a discriminatory, standardless, or rare fashion."

The petitioner had failed to establish that the Georgia Supreme Court had failed to perform its task, Justice White said, or that it could not do so.

Justice Brennan, dissenting, argued that the Court has the duty "as the ultimate arbiter of the meaning of our Constitution, to say whether, when individuals condemned to death stand before our Bar, 'moral concepts' require us to hold that the law has progressed to the point where we should declare that the punishment of death, like punishments on the rack, the screw and the wheel, is no longer morally tolerable in our civilized society. My opinion in *Furman* v. *Georgia* concluded that our civilization and the law had progressed to this point and that therefore the punishment of death, for whatever crime and under all circumstances, is 'cruel and unusual' in violation of the Eighth and Fourteenth Amendments of the Constitution."

Justice Marshall, in his dissent, reiterated his *Furman* stand that the death penalty is excessive and that it would be rejected by the American people "fully informed as to the purposes of the death penalty and its liabilities." Furthermore, he said, the enactment of new capital punishment statutes by thirty-five states has no bearing on the conclusion that the penalty is unconstitutional because it is excessive. "An excessive penalty is invalid under the Cruel and Unusual Punishments Clause 'even though popular sentiment may favor it.' . . . The inquiry . . . is simply whether the death penalty is necessary to accomplish the legitimate legislative purposes in punishment, or whether a less severe penalty—life imprisonment—would do as well."

Justice Marshall also repeated the arguments he made in *Furman* to demonstrate that the death penalty is not a deterrent to crime.

Justice Blackmun concurred in the result, citing his dissent in *Furman*.

Texas Death Penalty Is Constitutional

The second capital punishment case was *Jurek* v. *Texas*, ___ U.S. ___, 49 L.Ed. 2d 929, 96 S.Ct. 2950, 44 U.S.L.W. 5262. The decision upheld the validity of the Texas statute imposing the death penalty in certain cases.

The Texas statute, adopted after the *Furman* decision, limits capital punishment to five situations: murder of a peace officer or fireman; murder committed in the course of kidnaping, burglary, robbery, forcible rape, or arson; murder committed for remuneration; murder committed while escaping or attempting to escape from a penal institution; and murder committed by a prison inmate

when the victim is an employee of the prison.

The statute also provides that the death sentence may be imposed only if the jury, in a proceeding subsequent to the verdict, answers two (sometimes three) questions in the affirmative: "(1) whether the conduct of the defendant that caused the death of the deceased was committed deliberately and with the reasonable expectation that the death of the deceased or another would result; (2) whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to a society; and (3) if raised by the evidence, whether the conduct of the defendant in killing the deceased was unreasonable in response to the provocation, if any, by the deceased."

In this case the defendant was found guilty of strangling a ten-year-old girl after an attempt at forcible rape. The jury then answered the first two statutory questions affirmatively, and the defendant was sentenced to death. The Texas Court of Criminal Appeals affirmed. 522 S.W. 2d 934 (1975).

Justices Stewart, Powell, and Stevens joined in an opinion announced by Justice Stevens. The opinion pointed out that the Texas statute was similar to those in Georgia and Florida, in that it requires the jury to find the existence of a statutory aggravating circumstance before the death penalty may be imposed. The only difference, the opinion said, was that the Texas provision makes the death penalty an available sentence option for a smaller class of murders.

The opinion said that, under the Eighth and Fourteenth amendments, a death penalty may be imposed only if the sentencing authority is allowed to consider mitigating circumstances. The Texas statute met this requirement, the opinion said, because the Texas Supreme Court has so interpreted it.

Justice White, joined by the chief justice and Justice Rehnquist, concurring in the judgment, rejected the contention that the Eighth Amendment prohibits the death penalty in all circumstances. He also refused to accept the argument that, under the Texas system of criminal justice, the death penalty will be imposed "so seldom and so arbitrarily as to serve no useful penological function and hence fall within the reach of . . . *Furman* v. *Georgia*."

Justice Blackmun noted that he concurred in the judgment, citing his dissent in *Furman*.

Court Approves Florida Death Penalty

In the third capital punishment case, *Proffitt* v. *Florida*, ___ U.S. ___, 49 L.Ed. 2d 913, 96 S.Ct. 2960, 44 U.S.L.W. 5256, the Court upheld the new Florida death penalty statute, which is similar to the provisions in Georgia and Texas.

In the bifurcated trial, the jury found the defendant guilty of murder during the course of a burglary and then returned an advisory verdict recommending the death sentence. The judge imposed the death sentence, supporting it with written findings to the effect (1) that the murder was premeditated and occurred during the course of a felony; (2) that the petitioner had the propensity to commit murder; (3) that the murder was especially heinous, atrocious, and cruel; and (4) that the petitioner knowingly intended great risk of bodily harm and death to many persons. The Supreme Court of Florida affirmed. 315 So. 2d 461 (1975).

The Court's judgment was announced by Justice Powell in an opinion in which Justices Stewart and Stevens joined. The opinion pointed out that the basic difference between the Florida statute and those in Georgia and Texas is that in Florida the sentence is determined by the trial judge rather than by the jury. ". . . [I]t would appear that judicial sentencing should lead, if anything, to even greater consistency in the imposition at the trial court level of capital punishment," the opinion declared, "since a trial judge is more experienced in sentencing than a jury, and therefore is better able to impose sentence similar to those imposed in analogous cases. The Florida capital-sentencing procedures thus seek to assure that the death penalty will not be imposed in an arbitrary or capricious manner." The opinion pointed out that, like Georgia and Texas, Florida also provides for automatic review of death sentences by the state's highest court.

Justice White, joined by the chief justice and Justice Rehnquist, concurred in the judgment, saying that he agreed that although the Florida statutory "aggravating and mitigating circumstances are not susceptible to mechanical application . . . they are by no means so vague and overbroad as to leave the discretion of the sentencing authority unfettered."

Justice Blackmun concurred in the judgment, citing his dissent in *Furman*.

Mandatory Death Sentence Violates Constitution

Roberts v. *Louisiana*, ___ U.S. ___, 49 L.Ed. 2d 974, 96 S.Ct. 3001 44 U.S.L.W. 5281, the fourth capital punishment case, held invalid a Louisiana death penalty statute enacted after the *Furman* decision. The statute provided for mandatory death penalty in first-degree murder cases, first-degree murder being defined as the killing of a human being when the offender has a specific intent to kill or to inflict great bodily harm and is engaged in the perpetration of aggravated ing, aggravated rape, or armed ery. Under the old statute, the jury had unfettered discretion to impose the death penalty.

The jury found the defendant guilty of first-degree murder after being instructed, as required by the statute, on first-degree murder, second-degree murder, and manslaughter. The state supreme court affirmed. 319 So. 2d 317 (1975).

Justice Stevens announced that the Supreme Court was reversing and remanding in an opinion in which Justices Stewart and Powell also joined. The opinion declared that the "history of mandatory death penalty statutes indicates a firm societal view that limiting the scope of capital murder is an inadequate response to the harshness and inflexibility of a mandatory death sentence statute." Society has rejected the view that "every offense in a like legal category calls for an identical punishment without regard to the past life and habits of a particular offender." "The constitutional vice of mandatory death sentence statutes—lack of focus on the circumstances of the particular offense and the character and propensities of the offender—is not resolved by Louisiana's limitation of first-degree murder to various categories of killings," the opinion declared. The statute also "fails to comply with *Furman's* requirement that standardless jury discretion be replaced by procedures that safeguard against the arbitrary and capricious imposition of death sentences," the opinion declared, adding that the Louisiana provision "invites the jurors to disregard their oaths and choose a verdict for a lesser offense whenever they feel the death penalty is inappropriate."

Justices Brennan and Marshall announced that they concurred in the judgment for the reasons stated in their dissenting opinions in *Gregg* v. *Georgia*, while the chief justice noted that he dissented for the reasons set forth in his dissent in *Furman* v. *Georgia*.

Justice White, joined by Chief Justice Burger and Justice Rehnquist, dissented, arguing that the Court, having decided in *Furman* that the unfettered discretion of a jury to save a defendant from the death sentence was unconstitutional, was in no position to rule that the new Louisiana statute that eliminates unfettered jury discretion was unconstitutional. "It is true," Justice White said, "that the jury in this case . . . may violate its instructions and convict of a lesser included offense despite the evidence. But for constitutional purposes I am quite unwilling to equate the raw power of nullification with the unlimited discretion extended jurors under prior Louisiana statutes."

ided that, in view of the reenactment of the death penalty by thirty-five states since the announcement of the *Furman* decision, "I cannot say that capital punishment has been rejected by or is offensive to the prevailing attitudes and moral presuppositions in the United States or that it is always an excessively cruel or severe punishment or always a disproportionate punishment for any crime for which it might be imposed."

Justice Blackmun dissented, citing his dissent in *Furman*.

North Carolina Death Penalty Violates Constitution

The last capital punishment case, *Woodson* v. *North Carolina*, ___ U.S. ___, 49 L.Ed. 2d 944, 96 S.Ct. 2978, 44 U.S.L.W. 5267, held unconstitutional a new North Carolina death penalty statute which provided for an automatic death penalty in all first-degree murder cases, which are defined as cases of murder perpetrated "by means of poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate and premeditated killing, or which shall be committed in the perpetration of attempt to perpetrate any arson, rape, robbery, kidnapping, burglary or other felony. . . ."

The defendants were sentenced to death after being convicted of first-degree murder in the course of an armed robbery that resulted in the death of a cashier in a food market. The state supreme court affirmed. 215 S.E. 2d 607 (1975).

The Supreme Court's judgment reversing and remanding was announced by Justice Stewart along with an opinion in which he was joined by Justices Powell and Stevens. The opinion began by noting that in 1791, when the Eighth Amendment was adopted, the states all imposed mandatory death sentences for certain offenses. This was changed, the opinion said, because jurors reacted unfavorably to the harshness of the mandatory death provisions, and the states first responded to this by limiting the classes of capital offenses. The problem remained of jurors refusing to convict murderers rather than subjecting them to automatic death sentences, the opinion went on, and this led to statutes allowing the jurors discretion as to the imposition of capital punishment. "The history of mandatory death penalty statutes in the United States thus reveals that the practice of sentencing to death all persons convicted of a particular offense has been rejected as unduly harsh and unworkably rigid," the opinion stated. "It is now well established," the opinion went on, "that the Eighth Amendment draws much of its meaning from 'the evolving standards of decency that mark the progress of a maturing society,'" and North Carolina's mandatory death penalty statute departs "markedly from contemporary standards."

The statute was also deficient in granting the jury "unbridled discretion" to impose capital punishment, the opinion declared, and it failed "to allow the particularized consideration of relevant aspects of character and record of each convicted defendant before the imposition upon him of a sentence of death."

Justices Brennan and Marshall announced their concurrences in the judgment for the reasons stated in their dissenting opinions in *Gregg* v. *Georgia*.

Justice White, joined by the chief justice and Justice Rehnquist, dissented for the reasons stated in his dissent in *Roberts* v. *Louisiana*.

Justice Blackmun dissented for the reasons in his dissent in *Furman*.

Justice Rehnquist wrote a dissenting opinion that took the position that it was not at all clear that the Eighth Amendment was not limited to punishment deemed cruel and unusual at the time of its adoption, and that the plurality opinion was wrong historically in asserting that the "history of mandatory death penalty statutes . . . reveals that the practice of sentencing to death all persons convicted of a particular offense has been rejected as unduly harsh and unworkably rigid." Justice Rehnquist also argued that there was little difference between the Texas statute and the North Carolina statute in operation, or for that matter between the Georgia and North Carolina statutes.

Abortion Decision Expands Doctrine of *Roe* v. *Wade*

The principal abortion decision was *Planned Parenthood of Central Missouri* v. *Danforth*, ___ U.S. ___, 49 L.Ed. 2d 788, 96 S.Ct. 2831, 44 U.S.L.W. 5197, decided July 1. The decision held unconstitutional parts of a Missouri statute that required the consent of the husband or, in the case of minors, the parents, before a woman could obtain an abortion. The decision also invalidated a provision outlawing the use of saline amniocentesis to produce an abortion and a provision requiring a physician to preserve the life and health of the fetus at every stage of pregnancy.

The case involved a Missouri statute enacted after the Court's decisions in *Roe* v. *Wade*, 410 U.S. 113 (1973), and *Doe* v. *Bolton*, 410 U.S. 179 (1973). The portions of the statutes at issue required a woman seeking an abortion to certify in writing that she consents to the procedure, required the consent in writing of her husband unless the abortion was necessary to preserve her life, required the written consent of the parents in the case of an unmarried woman under eighteen unless the abortion was necessary to preserve her life, required the physician to exercise professional care "to preserve the life and health of the fetus," under penalty of manslaughter, prohibited the use of the saline amniocentesis method of procuring abortions after the first twelve weeks of pregnancy, and imposed recordkeeping requirements on physicians who perform abortions.

A three-judge district court upheld the provisions except for the requirement that the physician use professional care "to preserve the life and health of the fetus." 392 F.Supp. 1362 (1975).

Justice Blackmun delivered the opinion of the Supreme Court affirming in part, reversing in part, and remanding. The Court recalled its holding in *Roe* that, while a pregnant woman has a right, either under the Ninth or Fourteenth amendments to determine whether or not to terminate the pregnancy, it was "reasonable and appropriate for a State to decide that at some point in time another interest, that of health of the mother or that of potential human life, becomes significantly involved. The woman's privacy is no longer sole and any right of privacy she possesses must be measured accordingly."

The Court upheld the statutory definition of *viability* as "that stage of fetal development when the life of the unborn child may be continued indefinitely outside the womb by natural or artificial supportive systems. . . ," saying that this did not conflict with what was said in *Roe*. "We thus do not accept appellants' contention that a specified number of weeks in pregnancy must be fixed by statute as the point of viability," the Court declared.

The Court saw nothing wrong with the requirement of written consent by the woman. She "is the one primarily concerned," the Court declared, "and her awareness of the decision and its significance may be assured constitutionally, by the State to the extent of requiring her prior written consent."

The Court reasoned that the consent of the husband could not be required. "Clearly, since the State cannot regulate or proscribe abortion during the first stage [of pregnancy], when the physician and his patient make that decision, the State cannot delegate authority to any particular person, even the spouse, to prevent abortion during that same period," the Court said. It added, "The obvious fact is that when the wife and the husband disagree on this decision, the view of only one of the two marriage partners can prevail. Since it is the woman who physically bears the child and who is the more directly and immediately affected by the pregnancy, as between the two, the balance weighs in her favor."

As for the parental consent provision,

Attachment X

14 September, 1976
921 W. 28th Street Terr.
Lawrence, KS. 66044

Governor Robert Bennett
Kansas State House
Topeka, Kansas

Dear Governor Bennett:

My wife and I have lived in Kansas all our lives. We are Lawrence school teachers and have two children.

Our concern, in writing this letter, is the brutal atrocities which are increasing in Kansas. The sixteen year old rangerette and the five year old girl from Parsons are two of the most recent. In both of the deaths, the State of Kansas had evidence that the charged persons were dangerous to society. In is indeed a horrible situation when someone suddenly decays into insanity and unpredictably kills another human being; however, when the State has determined that a person is potentially lethal, there is absolutely no excuse or justice for the State to foster additional deaths against innocent victims.

Yes, we are advocating life sentences for violent crimes without any chance for probation and in cases of first degree murder, the death penality. Before the Clutter's massacre, we did not support the death penality.

In cases where persons are mentally incapable of determing whether murder is right or wrong, as in cases of insanity and mental retardation, we support lifetime confinement. Would Professor Gatts, University of Kansas, be alive today if the State of Kansas had supported the Gatts' repeated requests to protect society from their insane son?

We realize that we will not be in your office when the prison psychologists, parole officers, politicians, bondsmen, and sociologists are presenting their opposing views. Certainly, we agree our society is largely responsible for criminal behavior. But until we can develop a Utopia, innocent victims in the State of Kansas are sacrificing their ultimate constitutional rights for the benefit of criminals. Why should mercy be extended to a human being who has murdered or attempted to murder an innocent victim?

In the protection of criminals in Kansas and elsewhere in the United States, we are merely promoting a vigilante society.

Sincerely,

Kenneth Highfill Kay Highfill

Kenneth and Kay Highfill

cc Senator Arden Booth