M I N U T E S

SPECIAL COMMITTEE ON ENERGY AND NATURAL RESOURCES

August 18 and 19, 1976

Members Present

Senator Leslie Droge, Chairman
Representative Bill Southern, Vice-Chairman
Senator Paul Burke
Representative Gus Bogina
Representative Ralph Bussman
Representative Arden Dierdorff
Representative Paul Feleciano
Representative Edgar Moore
Representative Anita Niles

Staff Present

Ramon Powers, Legislative Research Department
Don Hayward, Revisor of Statute's Office

Conferees and Participants

Timothy Fox, Attorney, Bureau of Outdoor Recreation, U.S. Department of Interior, Denver, Colorado
Allen O'Neil, Assistant Regional Director, Bureau of Outdoor Recreation, U.S. Department of Interior, Denver, Colorado
Lynn Burris, Director, Park and Resources Authority, Topeka, Kansas
Richard D. Pankratz, Director, Historic Sites Survey, State Historical Society, Topeka, Kansas
Herbert Wenger, President, Kansas Canoe Association
Constance Nunnally, League of Women Voters of Kansas
Tyson W. Whiteside, Attorney, Kansas City, Missouri
Warren Oblinger, Planning Consultant, Oblinger-Smith Corporation, Wichita, Kansas
Ralph Hedges, President of Board, Greater Kansas City Resources Foundation, Chairman of Historic Kansas City Foundation, Kansas City, Missouri
Bill Pitts, Chairman, Santa Fe Trail Foundation, Larned, Kansas
Kent F. Kalb, Secretary of Revenue, Topeka, Kansas
Bob Olsen, Attorney, State Department of Revenue
Charles Carey, Mechanical Contractors Association
Dr. George Pytlinski, Kansas State University, Manhattan, Kansas
Don Schnacke, K.I.O.G.A., Wichita, Kansas
Ross Martin, Kansas Chapter of the American Institute of Architects, Topeka, Kansas
Jan Johnson, Kansas Energy Office
Harold Shoaf, Kansas Rural Electrical Companies
Gary Waldron, State Geological Survey
Ron Hardy, State Geological Survey

August 18, 1976

Chairman Droge called the meeting to order and recognized Mr. Powers who presented background information to Proposal No. 16 -- Conservation Easements. He gave a definition of a conservation easement and an example of how such an easement operates. Mr. Powers was asked if there would be any limitation on the duration of an easement. He replied that any time limitations would be included in the easement document which would have to be agreed upon by all parties involved in drawing up the easement.

Mr. Fox, attorney with the Bureau of Outdoor Recreation, U.S. Department of Interior, made the first presentation on conservation easements; a copy of his presentation is attached to the minutes. (Attachment 1.) Mr. Fox explained the purpose of conservation easements as "developing an area of law for land conservation or historic preservation in a manner that is legally meaningful, without the outright change in ownership of land." Included in his presentation was an explanation of negative easements which are designed to prohibit certain activity.

Mr. Fox stated that statutory authority is needed in order to make the terms of an easement enforceable, and such statutory authority is also needed so that the diminished value of property on which there is an easement can be allowed as a deduction for income tax purposes. He closed his statement by stating that "it is intended to be a limited, but valuable tool for particular kinds of situations where existing methods are not adequate".

Mr. Fox was asked if the nature trail concept involved a negative type of easement; he replied that the concept primarily involved negative rights but also that appurtenant easement was also involved. An appurtenant easement grants the holder of the easement the right to use a particular piece of property because that property is appurtenant (i.e., accessory or necessary for access) to that individual's other property. He also stated that 16 states have legislation concerning conservation easements, and he believes that at least 25 other states have some type of legislation dealing in this matter. Mr. Fox explained that in order to deduct a conservation easement for tax purposes, the property would have to be appraised before and after the easement was drawn, and the difference would be the amount deductable. The full value of the property still is retained on the tax roles for property tax purposes.

Mr. Fox said that it is possible in urban and semi-urban areas where development rights are given up in the easement that the property tax base could change, but property enhancement of surrounding areas might result in no loss of property taxes. Mr. Fox suggested that any legislation that is drawn up contain a clause on who could receive a conservation easement in order to prevent every John Doe from giving his neighbor an easement to hold the property taxes down. He also suggested that legislation provide for approval of and release from these easements.

Mr. O'Neill, Assistant Regional Director of the Bureau of Outdoor Recreation, U.S. Department of Interior, gave the second presentation to the Committee. Mr. O'Neill explained how conservation easements were being used in Montana, especially on the Blackfoot River. The landowners and the Department of Interior felt the conservation easement was the most satisfactory way to provide for preservation of the area and also provide access to it by the public for recreational purposes. There was less cost to the government by using easements and easements were more palatable to the landowners. Fifteen million dollars was saved in this area alone by the use of easements rather than acquiring fee title to the land. Mr. Fox said that it has been his experience that an easement of this type was fairly simple to obtain and yet the land remains on tax rolls as part of the tax base.

It was explained that in the State of Kansas, conservation easements could be used for wildlife areas critical for some species. Farming is consistent with this use of land and could continue in most instances. Mr. Fox was asked if conservation easements would be classified by the type or nature of their restrictions. He replied that these easements are negotiable and flexible and this is their main value. Mr. Fox was also asked if a conservation easement would protect the land from the state's power of condemnation. It was answered that the state retains the power of condemnation but easements provide protection in the same manner as zoning, especially with respect to large parcels of land. In such a case a variance is secured.

Mr. Burris, Director, Kansas Park and Resources Authority, was next to address the Committee and support the need for conservation easement legislation. He explained that in the past 12 years his agency's work with communities and counties has grown each year. Mr. Burris said that approximately 80 communities are waiting for this type of tool to use in meeting their recreational needs. His department is helping organize a hiking train to Mushroom Rock near Kanopolis and, once the landowners become knowledgeable about a conservation easement, they will favor it as a means of providing access to the area without being forced to sell their land to the state.

A Committee member asked if a ten-year limitation on the duration of easements would be better than easements in perpetuity. It was answered that both parties could renegotiate the easement after ten years; however a law should allow easements for any period of time not excluding easements in perpetuity. Another member asked if state agencies or departments could be involved in litigation in conjunction with Sec. 7 of the bill draft in the Committee notebooks. It was pointed out that this is an enforcement provision for the holder of the easement. The donor is protected by the terms of the easement; if damage was done to the property subject to the easement there would be probable cause to void the easement.

Mr. Pankratz spoke on behalf of the State Historical Society. A copy of his presentation is attached to the minutes. (Attachment 2.) Mr. Pankratz explained how historic preservation easements are used to protect the historic qualities of structures. He then described what an easement document should contain. A Committee member asked if an easement was donated for historical or recreational use, who would be responsible for the maintenance and building of roads to this area. Mr. Pankratz replied that whoever received responsibility of the easement would be responsible for its development. Development would probably be minimal; perhaps providing parking space and upgrading existing county roads might be required.

Ms. Nunnally of the League of Women Voters pointed out that if the Committee set a limit of ten years on easements, it might make it difficult to get people in urban areas to donate easements because such easements are not eligible for tax deductions with the Internal Revenue Service. She urged the Committee to keep in mind the needs of urban areas when they make their recommendations on easements for historical landmarks and recreational facilities.

The last conferee of the morning session was Mr. Wenger, who was appearing for Jim Neiswanger and was representing the Kansas Canoe Association. This organization is one and one-half years old and represents 185 families with approximately 450 members. At the present time 34 states have legislation which allows scenic canoeing. Mr. Wenger stated that Kansas has those public waterways running through it: the Kansas, the Missouri, and the Arkansas rivers. Although these are public waterways, public access to these rivers is not allowed except where public highways intersect with those rivers. The State Park Authority and the Kansas Fish and Game Commission support providing greater access to the rivers of the state, he noted. At the present time the Canoe Association has a code of conduct requiring its members to contact all owners of land along waterways that they plan to use and to leave these waterways exactly as they found them.

The Committee recessed for lunch.

Afternoon Session
August 18, 1976

Chairman Droge called the meeting to order and recognized Mr. Powers who read a letter from Lawrence Sheppard, Attorney in Overland Park, Kansas, for the record. Mr. Sheppard's letter is attached to the minutes. (Attachment 3.)

Mr. Whiteside, a lawyer from Kansas City, then gave a presentation to the Committee supporting legislation authorizing conservation easements. A copy of this presentation is attached to the minutes. (Attachment 4.) He described the processes whereby the natural resources of the country are being diminished. The conservation easement is a new, imaginative, and flexible tool to use in the wise planning and allocation of resources and it allows for preserving land within the framework of the private property right, according to Mr. Whiteside. Mr. Whiteside was asked how conservation easements relate to the tax base and what the difference was between an outright donation and a conservation easement. He answered that an outright gift would include title transfer while a conservation easement only includes the transfer of certain agreed-upon rights to the land. Mr. Whiteside also explained that property tax deductions might vary between urban and other lands. It is just a matter of putting a proper value on the land before and after an easement is placed on the land and having it appraised correctly, he concluded.

Mr. Oblinger, planning consultant of Wichita, told the Committee of his work in developing parks and recreational areas over the State of Kansas, especially the Lewis and Clark Trail. He also explained the possible uses of conservation easements in Kansas, including use in developing linear parks in urban areas, in developments along flood plains, and for historic landmarks. Mr. Oblinger closed his statement by pointing out that all of this is voluntary by the owners and the land remains on the tax rolls. The conservation easement is a tool to preserve and develop Kansas' resources, he added.

Mr. Hedges, President of the Board, Greater Kansas City Resources Foundation and Chairman of Historic Kansas City, was next to appear before the Committee. He explained that several businessmen had formed a holding company in order to receive matching federal funds for donations given to preserve historic sites and create recreational areas in Kansas City. Mr. Hedges spoke in favor of action by the legislature, and he argued that conservation easements could be very beneficial for Kansas.

Committee members inquired of Mr. Hedges as to how the Greater Kansas City Resources Foundation received matching funds. He replied that a gift of land is made for the purpose of a park in Kansas City. An appraisal is made based upon the before and after test, whereby the donor receives a tax benefit. His foundation held the land for several years until matching funds were available from the government.

In subsequent discussion, Mr. Fox stated that the original deductability for income tax purposes of the value lost from a conservation easement may be disallowed if there is no state law providing for conservation easements. There are limitations in the amount a donor may deduct from his or her taxes; it must be 30 percent less than the adjusted gross income and may only be carried over for five years.

The last conferee to appear was Mr. Pitts, of the Santa Fe Trail Foundation, who told the Committee of efforts by girl scouts and two historical societies to organize a hiking trail and an overnight camping area near Larned, Kansas. He said his organization was concerned that the historic aspects of the Santa Fe Trail be preserved for future generations and that the availability of a conservation easement would help.

The question arose as to how conservation easements related to the proposed Tallgrass Prairie National Park. Mr. Whiteside stated that he had no association with the Prairie National Park movement and that conservation easements should be on a purely voluntary basis. The property owner would grant to the holder of the easement only what he chose to grant under the terms of the easement.

After the appearance of the conferees, Committee members discussed the possibilities of recommending legislation. The majority of the members felt that a law providing for such easement would be a useful tool with merit as long as this would be a voluntary act. Certain Committee members expressed the desire to hear how people in other states are reacting to legislation of this nature. Mr. Fox suggested that Russell Brenneman of the Nature Conservancy be contacted to answer these questions. Several members of the Committee expressed concern about the length of time an easement should run.

The meeting was adjourned until the following morning.

August 19, 1976

Chairman Droge brought the meeting to order and called on Mr. Kalb, Kansas Secretary of Revenue, who introduced Mr. Olsen, an attorney with the Department of Revenue. Mr. Olsen gave Committee members a report on the Department's progress in drafting regulations to implement H.B. 2969, the solar tax credit law passed during the last session. (Attachment 5.) A copy of the report is attached to the minutes. He also stated that it was too early to even estimate the number of people who will take advantage of this tax credit, but merchants and builders have called the Department to make inquiries.

The Department of Revenue is working with the Attorney General's Office concerning certain advertisements which state that a particular unit is eligible for the tax credit. The Department of Revenue will make rulings about such units and send these to the Attorney General's Office to prevent false claims in advertising, he added. An example of false advertising is the copy of an advertisement attached to the Department of Revenue's report. Mr. Olsen also mentioned that the Department interprets H.B. 2969 to mean that a firm which installs a solar unit cannot claim both the tax credit and the accelerated amortization of that unit. Others do not interpret the law in that way, he stated.

Mr. Powers presented a review of solar energy in other states; a copy of this report is attached to the minutes. (Attachment 6.)

Dr. Pytlinski, Professor, Kansas State University, appeared and explained how the most efficiency could be delivered from different types of solar collectors. He submitted a sheet on "Economy of Solar Systems for Residential Heating and Cooling" which is attached. (Attachment 7.)

Mr. Carey appeared on behalf of the Mechanical Contractor's Association of Kansas; a copy of his report is attached to the minutes. (Attachment 8.) The report included

four recommendations: (1) Require that energy conserving buildings be built, (2) encourage a property tax deduction for solar systems, (3) monitor utility rates, and (4) adoption of a statewide building code.

The next conferee to appear was Mr. Martin, representing the Kansas Chapter of the American Institute of Architects. Mr. Martin stated that he was an advocate of performance standards in preference to prescriptive standards such as those established in A.S.H.R.A.E. 90-75. A.S.H.R.A.E. 90-75 sets minimum design standards including the level of insulation, he noted. A good performance standard would take time and effort to put into effect, Mr. Martin admitted, but he urged the Committee to leave room for setting performance standards in the future.

Following the appearance of the conferees, Committee members discussed whether to make any recommendations under Proposal No. 14. Several members favored legislation that would provide for a property tax incentive for those who install a solar energy system. Others were opposed to this type of legislation and felt that this area should be handled by the Assessment and Taxation Committee. It was also argued that there might be problems in administering this type of property tax incentive.

One member stated that there are now areas in the State of Kansas where new homes cannot get hooked-up to natural gas. He argued that the property tax incentive for solar units, in addition to the present income tax credit, should be adopted to encourage people to convert to the use of solar energy. It would lessen the burden on fossil fuel energy sources, he stated, and such an incentive on the property tax would also help in attacking the housing problem in the state.

Another member stated that, according to testimony given last interim before the Special Committee on Energy and Natural Resources, the greatest waste of energy is in single-family residences. He suggested that instead of providing incentives for adding solar units to homes, there should be legislation setting insulation standards. He supported the idea of tax relief for those who would insulate their older homes.

Another member stated that she favored the property tax incentive to encourage solar installations. She also favored putting money into solar energy research in the state. She then asked whether the state could get federal funds for solar research or for a demonstration project. Ms. Johnson, of the Kansas Energy Office, stated that, if a governmental unit puts up money, it might improve its chances of getting federal (ERDA) demonstration funds. It was pointed out that no legislation would be necessary for the state to receive federal funds; provision was made in the legislation creating the State Energy Office for that agency to accept such funds.

The question was then posed, "why don't the power companies and the state government cooperate in alternative energy sources research?" Mr. Shoaf, representing the Rural Electrical Companies in Kansas, stated that the power companies were presently involved in energy research and that he could foresee no problem in cooperating on energy research. Mr. Waldron of the State Geological Survey stated that ERDA funds for promoting use of solar energy by small businesses are available; he noted that there was a big push to encourage small businesses to seek solar demonstration grants. He suggested that there needs to be support from the universities in helping business make proposals for the securing of such grants.

Another member inquired as to the purpose of adopting solar energy units. If it is to save energy, then every energy conservation measure should be supported and incentives provided so that people would go out now and begin saving energy. He favored the property tax incentive and setting insulation standards.

Another member stated that he did not favor the property tax incentive proposal. He agreed with others who stated that the big waste in energy is in houses, and he supports better insulation standards, however, he stated, the Committee must move forward carefully.

One member expressed concern about adoption of a property tax incentive to encourage use of solar units. He asked what the cost of administering such an incentive system would be. He supports state participation in demonstration projects. He suggested that Lou Kruger, State Architect, be invited to the next meeting to explain how he thinks the state might provide for a demonstration project on a state-owned building or on a building scheduled for remodeling.

Senator Burke made a motion that the Committee recommend that energy consumption standards in all new construction and any reconstruction be incorporated into the state building code if a statewide code is recommended. It was agreed that this recommendation be directed to the Special Committee on Federal and State Affairs which presently has the proposal of a state building code assigned to it. The recommendation would also be part of the Committee Report. The motion was seconded and approved.

It was also moved by Senator Burke, and seconded by Representative Southern, to recommend that the state attempt to secure a demonstration grant for using solar energy in a new construction and in retrofitting a home owned by the state.

The Committee also agreed to request of staff that figures be presented on the amount of property taxes that would not be increased if a property tax incentive law for solar units were passed in Kansas.

The Committee recessed for lunch.

Afternoon Session

In the afternoon, Committee members first approved the minutes of the July meeting, and they agreed to hold their September meeting on the 28th and 29th. They then turned to the new proposal assigned to the Committee, Proposal No. 63 -- Intrastate Oil and Gas Production and Distribution. Mr. Schnacke of K.I.O.G.A. made a presentation to the Committee, a copy of which is attached. (Attachment 9.) In his presentation and the discussion that followed, Mr. Schnacke suggested that the study be limited to the question of whether intrastate gas pipelines should be made common carriers. In the discussion, Mr. Schnacke stated that the Legislature, by providing that cities could go out into the market place to secure sources of natural gas, opened the way to the proposition that intrastate pipelines should be required to carry the gas to those towns and cities. He suggested that cities could use industrial revenue bonds to build connecting links to the existing lines.

When asked about the difference between the intrastate system in Kansas and the intrastate systems in Oklahoma and Texas, Mr. Schnacke stated that the States of Oklahoma and Texas have pursued aggressive policies to encourage the development of an intrastate market for gas in order to stimulate industrial growth in those states. Oklahoma and Texas have done a remarkable job in getting gas to the market place for industries in those states. In Kansas, the grant to the cities (such as Wichita) to seek gas supplies created the atmosphere for development of industries in this state.

The question was then asked whether there was gas out there for the intrastate market which would warrant cities building connecting links to pipelines to secure it. It was stated that studies of gas reservoirs can be made to determine the amount of the gas reserves in the state.

According to Mr. Schnacke, the figures of the peak-actual load of most intrastate pipelines indicates that there is capacity for additional gas that could be put into most lines. He noted that the Conservation Division of the Kansas Corporation Commission has records on the peak capacity and peak-actual loads of all the intrastate pipelines. If the law required those pipelines which carried less than 75 percent peak-actual loads to provide common carrier services, then such pipelines might become more aggressive in their gas purchases in order to avoid becoming common carriers, according to Mr. Schnacke.

It was noted that out-of-state gas is coming into the state to fulfill contractural obligations. One Committee member argued that the state should not put too much emphasis on "Kansas gas for Kansans" because the Special Committee on Natural Gas last summer was told that Kansas will soon become an importer of natural gas. He added, "it could get cold early if we build a wall around the state." Mr. Schnacke's reply was to state that Kansas should provide for its natural gas supplies through better transportation rather than begin to wall itself off. A Committee member asked Mr. Schnacke if there is any legislation of this type in other states or any model legislation. The reply was that no such legislation existed.

Senator Burke moved that draft legislation along the lines presented by K.I.O.G.A. be prepared by staff and that hearings be set up and all interested parties be informed of them. The motion carried.

Mr. Schnacke commented that he looked on this issue from the view that we are dealing with a declining industry, and he has never heard the pipeline companies give reasons for their opposition to being made common carriers. All that may be needed is a modification of the common carrier laws as applied to oil and apply it to natural gas, he added. When asked whether pipelines can presently agree to carry gas for a producer, Mr. Schnacke stated that no common carrier authority for natural gas pipelines existed. It was pointed out that, by agreement, a pipeline can contract with a company to carry its gas on a voluntary contractural basis.

It was pointed out that the pipelines were not being asked to carry the gas for nothing; there would be a charge. In this way the pipelines would run a greater volume and this should help consumers, especially since it would help to pay for the cost of the pipelines which are amortized over a period of time.

The Geological Survey and the Energy Office have been studying this problem, according to Mr. Hardy of the State Geological Survey. He suggested that the small companies could produce more natural gas if they had the lines to get it to the market. He noted that the reason for the desire of companies to seek transportation is that they want to sell in the unregulated intrastate market where the price for natural gas is high.

It was agreed by the Committee that the issue be taken up at the October meeting; the date for that meeting was set for October 14 and 15. It was suggested that Jack Bird, General Counsel of the I.O.C.C., should be contacted.

Prepared by Ramon Powers

Approved by Committee on:

Sept. 28, 1976
Date

Attachment 1

Purpose

The topic of Conservation Easements is a discussion of a method of employing a "less-than-fee" title land saving or historic preservation technique. Traditionally an agency wishing to acquire the right to use, restrict, manage and control the future of land, thought entirely in terms of acquiring the whole title. However, it is not necessary for a protecting agency, whether governmental or private, to own the entire "fee" if it's objective is solely to preserve the property. An agency should acquire, pay for and manage only those rights which are necessary to accomplish its program. For example, if a government agency wishes to install a trail across private property, it does not need to own title to the land, it only has to have the right to use that trail. To provide a scenic vista it is not necessary to own the soil but only the right to prevent development. Conversely, "less-than-fee" controls are most consistent with a philosophical emphasis on the merit of private property if the owner retains all rights except those which are necessary to the agency's program.

We are talking about a developing area of law for land conservation or historic preservation, in a manner that is legally meaningful, without the outright change in ownership of land and perhaps with the willing contribution of land restrictions by private owners who wish to retain ownership.

Conservation Easments defined

The Conservation Easement (also known as scenic or preservation easements, and conservation or scenic restrictions) is a means well suited to the preservation of natural or undeveloped character or appearance of land. In essence, a Conservation Easement is a form of a negative easement. That is, we are speaking of the acquisition of rights by another party not that they may in turn be exercised by the acquirer, but that the holder may use these rights to preserve and control the property. It is a promise on the part of the owner of a piece of land to refrain from doing something on his land which he otherwise would have a right to do. The promise can be in perpetuity or for a limited time. Although legislation will set forth the overall setting, the particular rights and duties of the parties will be spelled out in the instrument creating the easement. There is no such thing as a "form" or "standard" easement. The easement instruments should respond to the specific needs of the owner and holder in light of the objectives for the particular property.

The easements can be applied in both a negative and an affirmative manner. In a negative sense, they may prohibit such activities as subdividing, cutting trees or destroying vegetation. Affirmative rights may be such activities as limited public access for fishing, hiking or hunting. What is important to note is that all rights not transferred to the easement holder are retained by the landowner who may use the land in any manner not inconsistent with the terms of the easement.

The Need for Legislation

Without statutory safeguards, considerable risk may be associated with the placement of negative controls on real property to achieve conservation objectives. The idea of conservation easements is that they remove from the property what can be called development rights so that those rights cannot be exercised by the present owner or any future owners either in perpetuity or at least for as long as the term stipulated in the easement instrument. Under common law rules, this result is doubtful unless the holding organization is the owner of some land benefitted by the easement, i.e., an easement appurtenant.

Also, it seems logical to say that the holder of the easement should be able to transfer or assign its rights to and through a preservation organization, a power which can be very valuable for securing an interest to be held until such time as it may be transferred to a public agency. However, again the assignibility of easements which are not appurtenant is doubtful under common law rules and any attempt to assign them may destroy them.

General common law rules would characterize a Conservation Easement as a negative easement in gross, one which is not an interest in land but a mere personal interest in the land of another and as such it is not transferable and not assignable. Therefore, ~~like~~ absent statutory authority, they lack enforceability and would be only a temporary restriction lasting only until the property changed hands. Obviously to be an effective tool it is crucial that the acquired interest be transferable.

Moreover, where an easement is unenforceable as a valuable interest in property in favor of and enforceable by the party in whose favor it has been created, a charitable contribution of such easement may be disallowed as a deduction for income tax purposes or disregarded when valuing the property for estate tax purposes. The issue is agrumentative, but few landowners may feel that they can afford to take the risk of disallowance. The landowner may also have doubts concerning the easement's effect on property valuation. A transfer of development rights will usually reduce the fair market value of the property which reduces the property's taxes. In theory this sounds appropriate but in reality it is less than reassuring. Legislation can help remove this uncertainty.

Advantages

Here are some of the advantages that I feel easements as a land conservation tool offer:

(1) This program allows the private landowner to participate in land use planning on a voluntary basis.

(2) Land subject to Conservation Easements continue to be privately owned and maintained, and continue to yield real property taxes. Conversely, if a government or charitable organization were to acquire fee title to the land the result may be a total loss of tax base.

(3) Easements can generally be acquired by purchase at a minimum or at least reduced cost.

(4) Acquisition can generally be negotiated without the red tape which often attends political and regulatory programs. Nor are changes in use subject to the future action of an agency's change in personnel or the pressure of special interest groups.

Conservation Easements are one way to control what happens to property. They are not intended to replace any existing land use tools. It is intended to be a limited, but valuable, tool for particular kinds of situations where existing methods are not adequate.

Attachment 2

ichard D. Pankratz
ansas State Historical Society

August 18, 1976

CONSERVATION EASEMENTS

The Kansas State Historical Society's basic interest in the topic under consideration is in the area of conservation easements to preserve the historic, architectural and archeological values of a property. This type of legal instrument has been given a variety of names: preservation agreement, preservation restriction, preservation easement, preservation covenant. But regardless of what it is called, its purpose is to prevent changes to the essential character of the affected property and by that token it is a negative easement.

A preservation easement will protect specifically only those values spelled out in the instrument. The owner retains his right to use the property for any purpose that would not affect those protected historic qualities. Restrictions would obviously be placed on development of the property since that would not ordinarily be compatible with historic preservation. An easement to a public body, such as a state historical society, would not give the public the right to enter unless that was made part of the instrument. A preservation easement is generally drawn in perpetuity although some have been made for specific time periods. Future owners are bound by the terms of the easement.

Historic preservation easements have been employed across the country with generally good results. The State of Virginia in its Open Space Act of 1966 provided for three state agencies to accept historic or scenic easements (Historic Landmarks Commission, Commission on Outdoor Recreation and the Outdoors Foundation). The State of Maryland has provided for the Maryland Historical Trust and the Maryland Environmental Trust to accept historic and open-space easements. Many local programs are in operation: Historic Charleston holds 55 easements; Historic Savannah Foundation 75; Historic Annapolis 24; other organizations exist in Pittsburg, Denver, Alexandria, among others, and even in rural areas, such as Historic Green Springs, Inc., (Virginia). The Maine Coast Heritage Trust, which arranges easements, has handled almost 100 in five years.

A number of generalizations can be made about easements on the basis of others' experiences:

(1) Easement programs are more apt to be successful when the organization holding the easement is close to the owner and the property.

(2) Regular inspections must be made by the holder. (6 month intervals)

(3) There is widespread interest across the country in donating or selling preservation easements.

(4) Enforcement of easement terms becomes more difficult with the passing of time and with changes in property ownership.

(5) Easements are no longer an experimental item; many types have been tried across the country. Results have generally been good.

An easement instrument should contain a number of points:

(1) Preamble--set forth purposes, intent of the parties, and conditions under which easement is made.

(2) Specific description of the property to be covered.

(3) Standards of care and maintenance to be followed, either spelled out or by reference to a stipulated document setting forth standards.

(4) Responsibility for maintenance.

(5) Procedure for approval of alterations desired by owner with provision for arbitration of disputes.

(6) Right of holder to enter premises to inspect.

(7) Define specific parts of building's exterior to be covered by the easement. Example of easement used in Denver.

"Including within the definition of 'exterior' or facade but by no means intended to be a complete enumeration of the elements of the definition of 'exterior' or facade are the following architectural matters:

Outside walls, cornice; stained or cut glass windows; location, shape and size of windows; style, coloration of building materials, paint color; location, shape and size of dormers, portals, stairs, pediments, towers, fences and any other element of exterior or facade of any improvement or structure on the described real estate including trees and landscaping."

(8) If easement covers interior, it should specify what is to be covered, i.e., mantelpieces, doors, stairs, etc., or could simply require approval of holder for any interior alterations.

(9) Spell out what is to be done in event of destruction of part or all of the structure. An escape clause. In Calif. use has been suggested of a carefully worded clause that the easement is voided if the purposes for which it was acquired are defeated by intervening events.

(10) Assignability of easement--transfer from original holder.

(11) Right of first refusal to the holder.

(12) Length of time--perpetuity or specify lesser term.

There are a number of benefits to an easement program. The public (or state) cannot afford to purchase and maintain all historic properties worthy of preservation because of rising land values, tax loss and costs of continuing supervision and maintenance. By using easements the significant properties can be preserved and maintained at private expense. At the same time the public will benefit from their scenic and educational values.

The landowner can benefit in a number of ways. One, of course, is the assurance that his historic property will continue to be preserved. Some states have also provided for a form of tax relief for landowners. Assessment is based on fair market value, and if the development potential of a property is given up, the assessed value should decrease. No particular pattern has been followed. Some states have legislation telling the county assessors to take the preservation easements into consideration; others spell out specific tax reductions or tax credits.

The value of an easement can be determined by the decrease in the estimated fair market value of the property. The gift of an easement can qualify as a charitable deduction, under some circumstances, on federal income taxes and pre-

sumably the state income taxes. Section 170 (f)(3) of the Internal Revenue Code has been interpreted to permit owners to take charitable deductions for easement gifts to certain charitable entities as long as it is an easement for "open space" "in gross" and "in perpetuity." Some state laws do not permit "in gross" easements. A different type of preservation restriction can then be written but it is not sure that IRS would accept it. More rulings are needed.

Some states have Marketable Title Acts which terminate less than fee-simple interests after normal title search periods, unless a notice is recorded before then.

As far as we know, in Kansas the only easements related to historic preservation are held by the National Park Service which administers Fort Larned National Historic Site west of Larned. The federal government owns 358 acres at the fort site and the Park Service has a scenic easement on 270 acres surrounding the federally owned land.

The Kansas State Historical Society has made no use of preservation easements. It is not likely that any use will be made without specific legislative authorization even though the Society may be assumed to have such a power under K.S.A. 75-2701. It is considered by the agency as too vaguely worded for action to be taken. The Historical Society did seek this specific authority as part of a much broader act in the past two sessions of the legislature. Senate bill 538, a state historic preservation act, was introduced by the senate federal and state affairs committee. It was passed by the senate in 1976 but died without a hearing in the house federal and state affairs committee. That bill would have made historic preservation a public policy and facilitated current preservation activities in the state.

We think that any law dealing with conservation easements should not only provide for definitions, holders, uses and filing of easements but should also provide some tax relief for properties under conservation easements.

An easement program would offer a number of advantages to the historic preservation movement, to the Kansas State Historical Society and to the public. No massive tax expenditures would be required and there would be no maintenance costs, but yet the state agency as easement holder would have a control over the facade to guarantee its preservation for the public benefit. The public would benefit from the continued preservation of buildings and sites important to the Kansas heritage and from the preservation of buildings and structures reflecting different architectural styles and construction techniques.

We see it as a particularly useful tool for neighborhood conservation in such areas as Topeka's Potwin, Wichita's Mid-Town, Kansas City's Westheight Manor, Old West Lawrence and undoubtedly many others. An advantage of easements over zoning is that an easement can be perpetual while rising land values can influence political decisions on zoning.

Logical preservation easement holders already exist in a number of Kansas communities, such as the Historic Wichita Board in Wichita and a local landmarks commission in Dodge City. At the last count there were more than 140 regional, county and local historical societies in Kansas. Not all would have the resources or capability of administering preservation easements, but some of the larger, more permanent and more soundly financed groups certainly could.

We think that every easement should be cooperatively drawn up to fit each circumstance. No easement could ever be secured without the full cooperation and consent of the landowner. Most historic preservation easements are made at the initiative of the owner although some states have made easements a condition of historic preservation grants-in-aid.

Determination of the properties for which preservation easements would be accepted by a state agency would almost have to be on a case by case basis. Not everything could be accepted. An eligibility list could be established by including those places which have been designated as National Historic Landmarks, those places which have been listed on or declared eligible for the National

Register of Historic Places, and perhaps those included in a state historic register. Even so, each request would have to be carefully analyzed.

Since easements are generally perpetual, great care is needed in selecting the holder. Some provision should be made in any law and in each instrument for assignability in case of the holder's failure to enforce or termination of existence.

The principal problem that would affect the Kansas State Historical Society in implementing an easement program would be staffing. Periodic inspections would need to be made. Owners' requests for approval of changes would have to be checked out. A successful easement program would require frequent contact with owners and the time that would require would be a problem for our agency at its current staff level.

In conclusion, most preservation organizations which hold easements are enthusiastic about them. There is definitely a need for preservation easements in a well-rounded preservation program at both state and local levels. We think this is an area that merits action by the legislature.

Attachment 3

LAW OFFICES
LAWRENCE E. SHEPPARD
SUITE 302 - MARK I BUILDING
10100 SANTA FE DRIVE
OVERLAND PARK, KANSAS 66212

TELEPHONE
AREA CODE 913
381-5220

August 16, 1976

Mr. Ramon Powers, Research Assistant
Legislative Research Department
Room 551-N. Statehouse
Topeka, Kansas 66612

Dear Mr. Powers,

I will be unable to be in attendance at the August 18 meeting of the Senate Committee on Energy and Natural Resources when the subject of "conservation easements" will be discussed. Would you be kind enough to enter my letter of July 13, a copy of which is attached, and this letter into the record?

Since my July 13 letter was written the Senate Finance Committee (U.S.) and the House Ways and Means Committee (U.S.) have approved bills modifying the Federal estate and gift tax laws. One proposed change would be the valuing of farm lands at their present use rather than at their best use. Even if this provision survives the floor amendments in both houses, it likely will be fettered by regulations which will make it less than fully useful for many persons. It is therefore my feeling that there will be a very useful estate planning function for conservation easements to fulfill for farmers even if the federal estate and gift tax laws are, in fact, amended as proposed.

In an urban area such as Johnson County where urban sprawl is the day-to-day reality, there are those who may happen to own a home or some other building with historic significance which stands squarely in the way of the community's growth patterns. The conservation easement would permit them to preserve the historic treasure while continuing to use it as a dwelling, if they wish, and without having it included in their estates at its value for some purpose such as a shopping center. Or the land owner may own 10 or 15 acres of woodsy land on which his home is built and upon which he has spent many years of loving preservation and improvement. If he feels strongly enough about saving his efforts for the future generations to forego the economic benefits that flow from owning the right land at the right time, he should not be taxed into seeing them destroyed.

Even if the gift and estate tax laws are modified as proposed,

the modification would have no effect on either of the above-mentioned situations.

In my opinion the conservation easement is a very valuable estate planning tool and one that the people of this state should have available to them.

Sincerely,

Lawrence E. Sheppard

LES:jr

LAW OFFICES
CULP & SHEPPARD
SUITE 118-MARK I BUILDING
10100 SANTA FE DRIVE
OVERLAND PARK, KANSAS 66212

DONALD A. CULP
LAWRENCE E. SHEPPARD

TELEPHONE
AREA CODE 913
381-5220

July 13, 1976

Senate Committee on Energy
and Natural Resources
Statehouse
Topeka, Kansas

Re: Conservation Easements

Gentlemen:

Part of my practice is estate planning, particularly in the area of minimization of federal estate taxes. A very useful device for owners of real property is the concept of the Conservation Easement. By means of this procedure an owner of farm land which is near enough to a town or city (or to a federal reservoir) to have increased in value because of its potential for development for residential or commercial use, can reduce its value back to that of farm ground. He does this by conveying to the county, or other political subdivision, a perpetual easement which will forever keep this piece of land as farm ground. Thus, his heirs will not be burdened with high federal estate taxes and he can pass the farm along to his family rather than having it sold to pay death taxes. There could also be substantial gift tax and income tax benefits available by means of this device.

A number of states have passed statutes which greatly simplify the creation of such an easement. (Without express statutory authority, I would not be willing to advise a client to create such an easement because it may create a severe title defect to do so.) I have examined the one adopted by the State of Maryland. It can be found at Sec. 2-118 of the Maryland Real Property Article (1974). It is clear in its meaning and concise.

It is my understanding that your Committee has considered hearings on the advisability of such legislation. I would like to be on record as being very much in favor of this legislation. There are many people in the State of Kansas who own farm property and want to see it kept as a farm but who face the spector of having it sold to pay estate taxes because a town has grown too close to it.

I will be pleased to be advised of the date of your hearing on this proposal.

Sincerely,

Lawrence E. Sheppard

LES:dal
bcc: Larry Wagner

Attachment 4

SPECIAL COMMITTEE ON ENERGY AND
NATURAL RESOURCES

August 18, 1976

My name is Tyson Whiteside, I am an attorney with the firm of Henzten, Haitbrink, & Moore in Kansas City, where I specialize in a wide range of issues involving our nation's natural resources. I am also Vice-President of the consulting firm of Begley-Whiteside, Associates, where one of our services is to assist clients in managing our country's natural resources. Prior to resigning June 1, I represented the Secretary of the Interior in the midwest including the State of Kansas, in that capacity I have dealt with the wide variety of issues that involve our nation's land and natural resources. I have also been an assistant to the Secretary in coordinating the country's mineral, energy and natural resources legislative program with the United States Congress.

I am here today to give my unqualified support and assistance to include conservation easements within the Kansas statutes. In that regard, I would like to share with you some observation. I believe we can all agree that one of the most pressing problems facing America and indeed the world is our ability to meet the challenge of living with limited resources while ensuring that all of our citizens, both in this generation and generations to come, can seek and achieve the highest quality of life. In this regard there are nothing like shortages for instance in food and energy fuels on a world wide basis to bring people back to a proper appreciation of the intrinsic value of our nation's land and the wealth and comfort which they provide for their American

citizens. For the past few years we have seen the necessity for America to adopt a policy of relying on our lands and resources to the maximum extent possible to meet our domestic needs whether it be for economic and urban growth, natural resource development in energy security, or for increasing agricultural expansion and meeting nutritional needs.

Jefferson had said, "This land permits us to support our people in prosperity, for the next hundred years". This prophecy until recentyl has accurately reflected American sentiments. But now with so many conflicting demands for the use of our lands this is no longer true in our modern high geared production oriented ecomony. We want and need to conserve areas that are of transending importance to our natural, historic, and cultural heritage. Yet, at the same time, we have to provide and allocate land for such uses as housing, recreation, transportation, energy generation, industry, argriculture and forestry, and all of the rest. My deepest belief is that prudence stuewardship over our land resources is absolutely vital if we are to fulfill all of these essential needs. There are tremendous demands upon our land resources and they are demanding. Let me cite you some examples of what has been happeing.

1. Urbanization was absorbing land at a rate of about 730,000 acres a year during the 1960's; in the 70's urban sprawl is consuming over a million acres a year.

2. Another 130,000 acres are being transferred to transportation usages from other uses. Every year 31,000 miles are added to our road network.

3. About a million acres a year have in part been transferred to some kind of recreational use during the last decade.

4. Up to now about a million and one-half acres of land has been disturbed by strip mining, all in all fifty thousand acres a year is taken for surface mining.

5. Every year more than a million acres of prime agricultrual land are converted to physical development.

6. Every year right of way land is needed for more than 11,000 miles of high voltage line added to our nation's electrical power system. By the end of this century in fact it is estimated that more than 3 1/2 million acres of additional land will be needed for new electrical generating plants and transmission lines.

But there is really no such thing as "additional lands" for any of these or other necessary uses. It is going to have to be land that has been used for other purposes--- open space, agricultural, forest land, or whatever and transformed into other uses.

A conservation easement is a new, imaginative and flexible tool for all of us to use in the wise planning and allocation of our resources. It's a tool that is free of any significant governmental intervention into private property rights. It allows for the fullest utilization of a land base as well as preserving the integrity of the land. It can give underutilized land new life and vitality for the greater public yet allowing that land to remain upon the tax rolls in its present productive form. It fully protects and serves that great American institution of the private property rights. The private property

owner only gives away that portion of his property rights he denies while the fee title remains vested within the private property owner. This is indeed an unique way with which to answer many of our land resources problems.

In no area are the land problems any greater than in our need to provide recreational opportunities to our citizens. With the great budgetary constraints upon all levels of government and tremendous tax burden upon the citizens there is indeed no way to answer our urban, or rural recreational or open space needs through dollar bills. Indeed, the figures demonstrate that there are not enough bucks in this country to indeed answer even the present day, much less the future needs, for recreation in this country. The chief recreational officials in each of the 50 states, including Lynn Burris, have estimated that state and local needs during the next 15 year for recreation are at the level of 45.6 billion dollars. To meet these needs at the current funding rates at the federal, state and local levels through 1990, we could only fund about 2.7 billion dollars or only 12% of the needs of this country.

If we don't have the money to get the job done then it appears to me that we need new and imaginative tools to get the job done. This, in my estimation, is the great magic of the conservation easement. It is a new tool that doesn't require any governmental entity to put up a dollar on its behalf for the betterment of the public good. It is the one tool with which the private property owner cannot be harrased by any level of government. For it is a tool to be solely used at the descretion of the private land owner. He too can receive a reward for the use of the conservaiton easement, since these easements are

recognized within the federal tax laws for the purposes of donations. The value of that donation can be taken as a tax deduction in a taxable year. This is quite important, I believe, since I think we can all note that many of our parks and recreational areas and open space opportunities have been given through philanthrophic gifts to various governmental entities. But let's not kid ourselves, a majority of these gifts are given with a keen eye honed toward the tax laws. There is a reason that at the turn of the century all of us can fairly accurately recite the great philanthrophic families of America. Yet today, the philanthrophic families, foundations, and funds in this country take up two volumes in very thick books. The reason is that giving in many cases makes wise fiscal sense.

What we need to ensure is that we have the proper tools available within the State of Kansas to take advantage of all opportunities for the public good within the land resource area.

I would like to briefly conclude my thoughts as to the tremendous advantages of having conservation easement statutes in the State of Kansas. I find myself in a tremendously comfortable place.

For I see myself with that great majority of Americans who addhor big government that many times wastefully spends their tax dollars. I believe that the free and independent spirit of the Kansas people combined with the great free enterprise system and the appropriate involvement of government that we can and should solve many of the problems in this country. Nowhere is this more true than with our nation's finite land resources.

Briefly described the land owner conveys a conservation easement to the recipient and agrees to prohibit certain activities on his land or to encourage activities or both. In some cases he may be insuring the integrity of the lands or buildings natural, scenic or historic value. In sum he retains the title to the land minus certain development rights while using the property in any manner consist with the conditions of his own easement.

It is solely used at the discretion of the private property owner and he alone determines the extent and the use of the easement. It really doesn't cost us any public dollars to achieve yet its results can open up vast acreages of lands for public use, and it allows for community neighborhood parks in large urban area. They may be opportunities for use along rivers, highways or whatever. But nonetheless, the private property owner is allowing the public to use his land in a manner consistent to its present condition and use.

We are all striving to achieve a higher quality of life. In order to achieve this, we have to create greater outdoor and open space opportunities for our citizens. However, when we want to improve our quality of lives in our environment, in a broad sense

of the word, we usually turn to our seat of local government, to Topeka, or Washington. To some extent, however, we are all guilty to looking too far afield for possible solutions. The conservation of our resources and our heritage demands more than a wistful look to government or to the enactment of vast new laws creating new environmental preserves or standards. It does indeed demand the active and personal participation of each of us and all of our citizens. I think the use of conservation easement can and will in the State of Kansas help achieve this meritorious goal.

Attachment 5

Kansas

DEPARTMENT OF REVENUE

State Office Building
TOPEKA, KANSAS 66625

Senator Leslie A. Droge, Chairman
21st Senate District
Energy and Natural Resources Committee

Dear Senator Droge:

Upon the Committee's request, I have compiled this report on the Department's progress in drafting regulations to implement House Bill No. 2969. I have also delineated those areas in which problems exist or potentially exist.

Solar energy is a technical area requiring a prerequisite special knowledge and expertise. Therefore, the Department is proceeding cautiously so as to develop the necessary technical background and to insure that the purposes of the solar energy provisions are carried forth. In this effort the Department has sought and will continue to seek the advice of the Solar Energy Advisory Group and the public at large.

I anticipate filing rules and regulations by mid-October, with an effective date of January 1, 1977. The intention is to compile the regulations after meeting with the Solar Energy Advisory Group. Thereafter, public hearings would be conducted.

The limited inquiries received to date indicate two problem areas: (1) The definition of a solar energy system, and (2) The election provided in Section 3 of House Bill No. 2969. Both of these problem areas possess a potential for misrepresentation. Enterprising businessmen have already begun advertising devices as qualifying for the tax credit. In some cases the citizens of the State of Kansas are being encouraged to purchase devices which, in fact, may not qualify. The Department has been working with the

Consumer Protection Divison of the Attorney General's Office in an effort to prevent such misrepresentation.

The problem regarding a solar energy system is what constitutes such a system. Questions have been presented as to whether heat pumps, turbine vents and attic fans constitute solar energy systems. The Department has taken the position that a solar energy system includes only those systems which collect and transfer solar or wind-generated energy. Based upon this interpretation, we have determined that heat pumps, turbine vents and attic fans are not solar energy systems. If equipment is added to any of these devices which generates energy from solar radiation or the wind, only that supplemental equipment will constitute a solar energy system. The foundation for this interpretation is the interpretation submitted to the Department of Revenue by the Solar Energy Advisory Group.

The election problem was first brought to our attention by a national tax service. The Department of Revenue was telephoned to confirm the service's interpretation of Section 3. Their position was: If a solar energy system was installed or acquired on real property used in a trade or business or held for the production of income, the taxpayer would always qualify for the tax credit; the taxpayer also had an election regarding depreciation or amortization. The essence of the problem is a taxpayer could take his tax credit, and then avail himself of a further benefit by amortizing his costs through his election to add back federal depreciation. I advised them that the Department's position was contrary to this interpretation, and they agreed to publish the Department's position rather than their initial interpretation. The Department's interpretation is that the election is between the credit and amortization. The taxpayer cannot claim both benefits.

Both problem areas can be effectively resolved by the proper administration of House Bill No. 2969. To insure that this legislation is properly administered, the Department of Revenue will consult the Solar Energy Advisory Group and the private sector regarding problem areas.

Sincerely,

F. Kent Kalb

F. Kent Kalb
Secretary of Revenue

Enc.

LET THE WIND DO YOUR COOLING FREE!

(AND GET A TAX BREAK*)

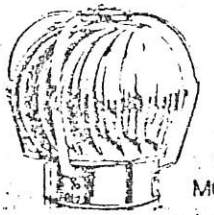
FACTS YOU SHOULD KNOW

- REMOVES ATTIC HEAT
- equals 1-ton cooling
- SAVES UP TO 25% A/C COSTS

SUMMER SALE
(While Quantities Last)

TURBINE VENTS
JB MODEL
JUST..... 69.88 PAIR INSTALLED
(FOR 1 STORY COMPOSITION ROOF)

OPTIONAL AUTOMATIC WINTER DAMPER



WB MODEL

WB WIND BRACED TURBINE VENTS WITH JEWEL BEARINGS. LIFE-TIME GUARANTEE.

TWO VENTS INSTALLED 79.88

***KANSAS RESIDENTS:**
KANSAS HAS PASSED A LAW ALLOWING YOU CREDIT FROM YOUR STATE INCOME TAXES UP TO $1,000 FOR WIND POWERED COOLING VENTS (K.C. STAR, MAY 2, 1976). WE WILL MAIL A COPY OF LAW & TAX CREDIT FORMS ALONG WITH THE LIFETIME GUARANTEE CERTIFICATE.

R. WILSON & Co. • 381-5635

Attachment 6

MEMORANDUM

TO: Special Committee on Energy and Natural Resources

August 11, 1976

FROM: Kansas Legislative Research Department

RE: Proposal No. 14 - Monitor Solar Energy Activity in Kansas

SOLAR ENERGY LEGISLATION IN OTHER STATES*

The introduction of solar energy technologies presents the problem of relating this new energy system with established systems and practices. The authors of the recent National Council of State Legislators (NCSL) publication Turning Toward the Sun, Volume One, argue that "state government must address. . . impediments to solar energy use, especially those ambiguities or disincentives which are part of existing governmental laws, regulations, or tax levies." They also suggest that state governments could assume an advocacy role by providing tax incentives and public information and demonstrations of uses of solar energy by the state.

The authors of Turning Toward the Sun provide a summary of solar legislation in various states. They categorize solar legislation into eight areas:

1. Property Tax Incentives.
2. Income Tax Incentives.
3. Sales Tax Incentives.
4. State-Financed Energy Research and Development of Solar Technologies.
5. Solar Energy Provisions in State Building Codes.
6. Access to Incident Solar Energy.

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* This summary of legislative activity and utility rate problems in other states relative to solar energy presents alternatives that could be considered by the Kansas Legislature in the future.

7. Solar Energy Informational and Promotional Activities.

8. State-Financed Buildings Using Solar Energy.

The legislation adopted in other states on each of these issues may be briefly reviewed as follows:

Tax Incentives and Other Inducements for Adoption of Solar Energy

By 1975, 12 states had taken action to reduce the tax burden associated with the high initial costs of solar energy systems. Subsequently, six states, including Kansas, passed legislation in 1976 which provide tax incentives. There are various types of tax incentives.

a. Property Tax Incentives - Property taxes penalize the owner of a solar energy system by taxing the property's increased assessed value after installation of the solar system. Some states passed laws which exempt the entire value of the solar equipment, while others exempt a portion of the solar equipment from property taxation. A few states provide that the exemption be in effect only for a limited number of years.

b. Sales Tax Incentives - State and local sales taxes on solar equipment add to an already substantial first cost of solar equipment. Texas and Michigan exempt the sale, lease, or rental of solar equipment from taxation.

c. Income Tax Incentives - Property or sales tax incentives have a marginal effect on the marketability of solar systems, according to a recent source. New Mexico, and now Kansas and California in 1976, have passed laws to affect solar's first-cost handicap. Any taxpayer who installs a solar heating or cooling system is granted a credit against his or her income tax liability for the lesser of 25 percent of the system's cost or $1,000. These states also apply a credit to persons who install solar energy systems on their business property.

d. State-Financed Energy Research and Development of Solar Technologies - Eleven states have established and financially support an energy research and development fund for indigenous renewable energy sources. In most of these states, the fund is administered by an institute or state agency which awards grants for specific research and development

projects. In Kansas, solar energy research is funded primarily by federal money through the budgets of the state universities. There is no special funding program in operation in Kansas.

e. Solar Energy Provisions in State Building Codes -- Two states have amended their state building codes to accommodate uses of solar energy. Florida now requires all new single-family residential construction to be adaptable to the future addition of a solar heating device to the hot water system. Minnesota has set stringent building and design construction standards for all new buildings and for remodeling of existing buildings. In 1976, Minnesota added a provision that solar energy performance standards be set. Some states have legislated life-cycle cost analysis for state construction which may be an inducement to install solar energy units.

f. Access to Incident Solar Energy - With the increased use of solar energy devices, the problem arises of assuring that solar collection devices have unobstructed access to direct sunlight. Oregon has enacted a law which permits local governments to enact zoning ordinances taking into account solar exposures, and Oregon and California have enacted laws providing formal procedures whereby property owners negotiate solar easements for the protection of access to sunlight.

Massachusetts is considering a solar rights bill that would protect "the light necessary for a solar system to work," and would authorize new state zoning regulations and modified ordinances which would be required to include zoning provisions to prevent interference of the solar systems that will be built in future years. A proposed Colorado bill provides that a homeowner could not plant a tree that would shade, immediately or in the future, a neighbor's existing solar-energy collector or reflector.

g. Solar Energy Informational and Promotional Activities - Five states have legislated in this area, most with the hope of securing the site for the national solar energy research institute. Some legislation provides for creation of a state agency to also promote investment in solar energy research and applications in the state. Also, such agencies are to serve as clearing houses for general and technical information on solar energy.

h. State-Financed Buildings Using Solar Energy - Four states have appropriated funds for the demonstration of solar heating and cooling systems on state-owned or financed buildings.

Utility Regulation As Relates to Solar Energy

Finally, an issue that could possibly involve state legislation (but not mentioned by the authors of Turning Toward the Sun) relates to utility rates and their effect on solar units that require some degree of electric utility back-up. In February, 1976, the Colorado Public Utility Commission approved a new "demand/energy" rate to replace the traditional "declining block" rate on new residential electric heating customers. According to The Solar Journal:

> In some cases, the new rate could increase the cost of a solar heated home's electric back-up system by as much as $300 a year. The added cost could wipe out the energy-saving benefits now enjoyed by electric customers with solar heat.

The "declining block rate" provides that customers pay less per KWH as their usage increases (i.e., the more you use, the less per unit it costs). In contrast, the "demand/energy rate" is based on (1) total energy used (KWH), and (2) the demand (KW) determined by the quarter-hour period in which the maximum use was recorded during the month (i.e., you pay for what you use and for the capacity of the utility to supply your peak demand). Obviously, solar users want to see the rate charged for back-up electric heating kept as low as possible; the infant solar industry seeks any incentives it can get. On the other hand, utility companies facing higher fuel costs and inflation confront losses in revenue if solar units are installed while they still must provide back-up energy for the solar systems.

Two major conclusions of the recent report on Electric Utilities and Solar Energy by the National Council of State Legislators are:

> The failure of electric rate structures to accurately relate unit prices to unit costs is the source of the potential "load factor" conflict between solar thermal systems and electric utilities. This conflict applies equally well to conservation measures and renewable energy resource applications.

> The appropirate solution to the conflict between solar energy and electric utilities is to establishment of a valid relationship between energy price and electric energy cost. (Author's emphasis.)

An alternative "time-of-day" rate, which has been accepted by power companies in Wisconsin, Michigan, California, and New York, puts a premium on the time of consumption rather than volume of consumption. Such a rate structure encourages off-peak power consumption, thereby allowing greater efficiency of existing generating facilities. According to one authority, the time-of-day rate would be an excellent way to provide electrical back-up heat for solar homes. (Colorado's demand curve is relatively stable which is why its PUC rejected a time-of-day rate.)

Kansas has basically a declining block rate; however, there has been a leveling of rates approved by the KCC in an effort to encourage energy conservation. The usage pattern has flattened. The KCC has approved a demand/energy rate for all electric homes served by KPL. In addition, KPL and KCPL have requested approval of a summer/winter differential rate on total electric homes. The six heating months would be at a lower rate than the six cooling months in an effort to bring the summer peak in closer relation to the winter peak, and it would also represent an attempt to reflect incremental costs of summer peaking capacity which is required. (Those who place a high demand on the system in the summer would pay a higher price.)

Two states, Virginia and West Virginia, had bills proposed in 1976 calling for testing a time-of-usage pricing of electricity and an electric utility peak load pricing system.

Attachment 7

ECONOMICS OF SOLAR SYSTEMS FOR RESIDENTIAL HEATING AND COOLING

The cost of solar heating and cooling systems for residences includes material and installation costs of the collectors, storage unit, air conditioner and the association piping and controls which connect these components to make up a solar system. The house should be fully ready for occupancy without a solar system Therefore, costs for ducting, piping and venting for a conventional system should not be charged as cost to the solar system.

The installed cost of a solar collector is presently about $6 to $7 per square foot, and this cost can be expected to decline as designs are simplified, material quantity is reduced and manufacturing labor is decreased. The net installed cost of a solar collector should approach $4 per square foot in the near future. The other components in the system should cost about $1000 exclusive of the cooling system so that the total solar heating system would cost about $4000 to $5000. A typical solar heating system for a modern three-bedroom home can supply about 70 million Btu during the heating season. With a 10 percent annual charge for depreciation and interest, the cost of solar heat is about $6 to $7 per million Btu.

If a cheap fuel is available, such as natural gas, solar energy is not yet competitive. However, new natural gas connections are being curtailed in many locations and not available at all in many others. Trends in the prices of three other conventional energy sources are increasing. Fuel oil, presently available at about 40 cents per gallon, is rising. Heat can be supplied for about $4 per million Btu at oil costs of 40 cents per gallon, but increases to $6 per million Btu at 60 cents per gallon, a price which it may reach in the future. At present propane prices, heat costs are near $6 per million Btu, and with electricity at 3 cents per kilowatt-hour. the cost of heat is nearly $10 per million Btu. The trends in prices for propane and electricity are also upwards. Clearly, the cost of solar heat is competitive with propane, cheaper than electricity and may be competitive with oil in the future.

The approximate cost of a 3-ton solar operated air cooling unit is $2000. This cooling unit should be capable of removing approximately 250,000 Btu of heat from the building for seven hours a day at peak capacity using the same solar collector and storage system provided for heating. On a seasonal basis, 100 days of cooling would result in 2000 ton-hours of cooling provided by a solar unit. Amortizing the cost of the air conditioner in 20 years (expected life) at 8 percent, or $200 annually, the cost of one ton-hour of cooling is approximately 10 cents.

A conventional cooling unit of 3-ton capacity operated by electrical energy requires an investment of about $1000. The annual cooling load of 2000 ton-hours would require 3000 kilowatt-hours of electricity and, at 3 cents per kilowatt-hour, the electricity cost would be $90 per year. Adding $150 annualized cost to the equipment, approximately $240 per year would provide 2000 ton-hours of cooling. The cost per ton-hour is thus about 12 cents. The cost of cooling with solar energy is thus competitive with conventional cooling costs. Considered from an annual basis, for both heating and cooling, solar energy is competitive with energy obtained from propane and is cheaper than heating and cooling with electricity.

SPECIAL COMMITTE ON ENERGY AND
NATURAL RESOURCES

Attachm 8

at Hearing, August 19, 1976 for Proposal No. 14---Solar Energy.

The following considerations and recommendations were given by Charles D. Carey, Jr., Executive Director for The Mechanical Contractors Association of Kansas (MCAK)

I'm here today on behalf of the Mechanical Contracting Industry, the citizens of Kansas and the U.S., and for myself as a concerned citizen. I'm not here as a member of SEAG although later I want to make reference to two questions raised at the SEAG workshop July 20 and 21.

First, I would like to explain that MCAK'S presence here is not to make a "fast buck" because the Energy problem is a long term problem that will probably never be solved. It is something that we will work at henceforth and forever, and the longer we delay in doing something the more drastic the action that will be required to ease the problem if continue to wait for a crisis. Lead time is precious, normally it takes years to develope an entirely new industry and it will for Solar, so we need to get the ball rolling now.

True, MACK members will install energy savings systems in buildings, such as heat recovery loops to reduce the amount of heat now being wasted in exhaust air which has to be replaced by cold fresh air; to transfer with a closed piping loop and heat pumps, the heat build-up in the center of large buildings to the exterior where it is at the same time needed for heating, instead of cooling the interior and heating the exterior areas simultaneously; better zoning and temperature control; solar assisted heat pumps, and solar systems, true we install these systems but it is in the public and national interest that this is accomplished.

It should also be recognized that building energy conserving buildings is in opposition to the selfish interests of Mechanical Contractors because smaller heating and cooling equipment will be needed and this reduces the dollar sales volume, however we support ASHRAE 90-75 because it is "right" for all people in the long run and our industry wants to be identified with what is "right" and because we do have special knowledge about energy using systems in buildings and want to contribute this knowledge to help ease the energy problem.

At the solar workshop July 20 and 21, one question was asked that caused me to think I might have contributed to a misunderstanding about the output from a collector in cold weather in winter. Justification for solar has to be based on energy provided during a season or during an entire year. Although we get occasional warm days in winter a collector's output is less on cold days due to "thermal losses" but they usually produce something. Generally, collector efficiency or output reaches an unacceptable level when we try to elevate the temperature of a fluid, air or water, with a flat plate collector more than 100 degrees above ambient or the outdoor air temperature surrounding the collector. Translated into figure's this means at an outdoor temperature of 0 degrees the upper practical limit of fluid temperature would be 100 degrees or if 50 degrees ambient, fluid temperature would be 150 degrees.

The other question was asked by Senator Droge as to what the State of Kansas or the Legislature could do to help Solar. I thought this question was not adquately answered because SEAG had not oriented their thinking in that direction for the workshop.

In answer to this question I'd like to submit the following for your consideration.

1. Require that energy conserving buildings be built, so that the initial or first cost of solar systems can be kept smaller when it is desired to add Solar. ASHRAE 90-75 offers a practical, reasonable approach toward this proposed state requirement.

2. Protect the persons who invest in workable, practical Solar systems from "property taxes" which could destroy the benefits and incentives of HB 2969.

3. Keep a watchful eye on utility electrical rate structures to see that discrimination against solar doesn't occur incidentally or deliberately. Increased reliance on electrical energy for "backup" to Solar will be the future likelihood and could be used to put Solar at a disadvantage. Understandably, power companies must be paid for their capital investment but the object of the game is to save fossil fuel and even coal and nuclear have depletion dates.

It is believed that responsible utility companies will take a long term view and not oppose Solar, in fact they may want to provide the "billing system" and financial underwriting for individuals who would lease such systems from utility companies.

4. Adopt a Statewide Building Code which includes energy conserving construction standards such as ASHRAE 90-75. Inspection for compliance with the Statewide Building Code could also be utilized to require that efficient thermal buildings be built.

No doubt other legislative recommendations could be made but these are the only ones I have to offer at this time.

Since I have mentioned ASHRAE 90-75 in connection with Solar, I would like to make a few comments about the objections to 90-75. 1. It is a "prescriptive standard" and not a "performance standard". This to me is an argument for doing nothing instead of something.

Haven't those who believe in a "performance standard" come up with one? The answer I believe is because it would require sophisticated and complicated formula that is too much for now. Perhaps down the road when the energy problem is more urgent in the minds of the people, they will then be ready to accept shutting off gas and electric service to those who have used more than their quota or demand that two persons cannot occupy a 10,000 square foot floor area house.

So, even though theoretically a performance standard may seem more perfect than 90-75, to pursue it at this time will result in doing nothing. On the other hand 90-75 proposes to do something now, it is not an unreasonably demanding standard, in fact it is a minimum standard which can be exceeded. In a sense it is a prescription standard like an architect's specifications but it is much more flexible because it allows freedom of design. Section 10 allows an alternate to the envelope design sections 4 through 9. Section 10 permits a designer to meet the equivalent energy consumption of sections 4 through 9 any way he or she chooses by a "Systems Analysis".

Mechanical engineers who design heating and cooling systems for buildings are not trying to deny others in building design their rightful areas of responsibility and to support this I quote from page 16 of the June 1976 ASHRAE Journal the article Energy Conversation and the Law "it is wise to shift some of the burden for building comfort away from mechanical systems and onto natural systems".

In closing I'd like to mention an interesting ordinance that passed in Davis, California requiring shading of windows, windows not facing northerly must be shaded to protect "from direct solar radiations for the hours of 8:00 A.M., 12:00 noon and 4:00 P.M. (P.S.T.) August 21. Southeast and southwest windows must be shaded, "S.E. at 10:00 A.M. S.W. at 2:00 P.M. in addition to the time above of 8, 12, and 4.

Interior shutters may be used in lieu of shading if their sunward side has a Munsell color rating of 9.0 or greater, if tight fitting, opaque and have an R value of at least 1. I think this shows that legal steps are being taken to conserve energy.

The opportunities are great for this Committee to help ease the energy problem. MCAK is available to assist to the extent of their expertise. Thank you.

Charles D. Carey
Executive Director

Attachment 9

STATEMENT

Don Schnacke, Executive Vice President
Kansas Independent Oil & Gas Association
Proposal No. 63
August 19, 1976

Our Association requested this study in hopes that we could develop positive legislative authority to solve an important phase of the energy problem developing in Kansas -- the distribution of intra-state natural gas to Kansas markets.

KIOGA initiated the legislative study last year involving the encouragement of producing tertiary recovered oil, heavy oil and tar sands. The Special Committee developed positive legislation and it was finally passed and signed by Governor Bennett. We see this subject in the same light.

Hearings last year before the Special Committee on Natural gas developed a huge record of the many problems in Kansas. Current hearings before the KCC are developing a similar record. During all these hearings we have mentioned the problem of getting natural gas to the existing intra-state market - and we advocated a study of the use of existing intra-state pipelines for this prupose.

The Kansas legislature authorized two years ago all Kansas communities to get into the gas business. Many are doing it. Wichita is a prime example, but we hear of Larned, Johnson, Dodge City, Winfield, Pratt, and Lyons who want gas as well as several industrial plants who either want to expand or locate in Kansas that are looking for natural gas. A good example is the MBPXL plant at Dodge City who apparently thought they might have to move to Oklahoma until recently because of this problem.

the issue is to solve a problem of producers, who have the ability to explore, drill and produce more gas in Kansas, but because of remote locations cannot get it to the market place.

We just completed a new History of the Oil and Gas Industry in Kansas. The first legislation regulating our industry was in 1889 requiring "inspection of petroleum, oil or oil fluid, before being sold for illuminating purposes".

(a) 1889 - City of Paola authorized to drill gas wells to provide for municipal gas supply.

(b) 1891 - The beginning of conservation laws - the cassing of wells, plugging and abandement procedures.

(c) 1901 & 1905 - The development of laws pertaining to waste and the begining of rate controls.

(d) 1904 - The cry of keeping "Kansas gas in Kansas" arose when someone wanted to pipe Kansas gas to Missouri.

(e) 1907 - The beginning of safety legislation.

(f) 1913 - Inspection of tanks

(g) 1917 Moving of oil equipment and derricks.

So you can see, we are accustomed to state legislation and regulation, and what we are suggesting today, merely adjusts existing practices of transporting natural gas in a declining industry. And we are representing a declining industry. We are being warned once again, in loud and strong language, that there will be nationwide shortages this winter. It could fall as much as 60% in some areas, effecting plants, jobs, business and some homes.

Already in Kansas, we reflect this decline in sales as furnished to us by the KCC. In 1975 through June we sold 447,107,166 cu. ft. of gas as compared to 422,177,834 cu ft in 1976 - or a decrease of 24,929,332 this year.

And yet, we are rated to be the 5th largest gas producing state in the nation. We have 8980 gas wells in about 320 fields found in 39 counties.

e KGS has made quite a study in 1972 of natural gas production, distribution and sales in Kansas. This report describes companies, customers, purchases, and supply county by county, including good maps.

The KCC lists 60 natural gas purchasing companies in Kansas, of which we think 18 are intra-state lines. (See Exhibit). There are presently 15 intra-state pipelines regulated by the KCC transporting crude oil and finished products.

What we are advocating is being considered in Congress in a slightly different way. The Pearson-Bentsen natural gas bill, included an ammendment by Senator Dole of Kansas to permit intra-state gas to utilize inter-state pipelines, without subjecting it to regulations of the FPC. This passed the Senate.

Our proposal is to explore the feasibility of authorizing what we like to call a "limited common carrier authority" of existing intra-state natural gas lines. We envision this authority to fully protect the private ownership rights and bestow regulatory authority on them only where the lines fall below 75% of design capacity, with space available to transport gas owner by others to Kansas markets.

We would limit this authority to transmission lines only, and not to small connecting links of 10 miles or less in length. We think appropriate safeguards for the pipelines should be provided regarding existing equipment, procedures, pressures, etc. so that the pipeline serves merely as a means of accomodation to Kansas gas producers and the consumer.

The benefits of such a procedure would be as follows:

(a) Caters to the needs of Kansas municipalities, expanding and growing Kansas industries - creating jobs for Kansans.

(b) Caters to the long time demand of keeping "Kansas gas in Kansas" by providing a better market and distribution system.

(c) Would stimulate purchasers to keep their lines full and increase purchasing activity in Kansas.

(d) Provide transportation for some remote drilling areas, not normally served, broadening domestic gas production.

(e) Help defray fixed pipeline costs to the consumers, who pay for these costs, whether the lines are full or not.

We think there is merit to this proposal and we stand ready to assist the Committee in developing meaningful legislative authority to implement a plan that would be in the public interest throughout Kansas.

Thank you for your consideration.