

M I N U T E S

SPECIAL COMMITTEE ON LOCAL GOVERNMENT

August 9 and 10, 1976

Members Present

Senator Elwaine Pomeroy, Chairman  
Representative Vic Kearns, Vice-Chairman  
Senator Bill Mulich  
Senator Norman Gaar  
Senator Jim Parrish  
Representative Harold Beninga  
Representative Larry Erne  
Representative Francis Gordon  
Representative Max Mize  
Representative John Sutter  
Representative Joe Wicinski

Staff Present

Mike Heim, Kansas Legislative Research Department  
Roy Johnson, Kansas Legislative Research Department  
Richard Ryan, Kansas Legislative Research Department  
Robert Taylor, Kansas Legislative Research Department  
Alan Alderson, Revisor of Statutes Office

Others Present

Stan McAdoo, Kansas Department of Economic Development  
Fred Allen, Kansas Association of Counties  
Ernie Garcia, Division of Planning and Research  
Walt Plosila, Division of Planning and Research  
Jim Turner, Kansas Savings and Loan League  
Gary Stotts, Division of Budget  
Charles Campbell, Topeka City Commission  
Jack Alexander, Topeka City Commission  
Ken Elder, Topeka City Commission  
Mary Bogart, Shawnee County Commission  
Roland Hug, Shawnee County Commission  
Matt Dowd, Shawnee County Counselor  
Marjorie Selby, Shawnee County Auditor  
Darold Main, Shawnee County Intergovernmental Coordinator  
John Franke, Johnson County Commission  
Dorothy Cannady, Johnson County Health Department  
Bernice Sullivan, Johnson County Health Department  
Ron Paul, Johnson County Data Processing  
Virgil A. Holdridge, Johnson County Engineer  
E.A. Mosher, League of Kansas Municipalities  
H.D. Whetstine, Doniphan County Commission  
Maynard Scholz, Doniphan County Commission  
Everett Euler, Jr., Doniphan County Commission  
Raymond Neely, Doniphan County Road Supervisor  
Max Hayen, Marion County Assessor  
Ed Broz, Marion County Assessor  
Barbara G. Farley, Marion County Clerk  
Mary Wiersma, Kansas Farm Bureau  
Orville E. Schmidt, Harvey County Commission  
Preston Bacon, Harvey County Commission  
Howard Smith, Harvey County Commission  
John Hale, Sedgwick County Commission

Others Present (cont'd.)

Tom Scott, Sedgwick County Commission  
John Philbrick, Sedgwick County Auditor  
Denis Stewart, Home Builders' Association of Kansas  
Wallace Buck, Home Builders' Association of Kansas  
Mike Hrynewick, Kansas Savings and Loan League

August 9, 1976  
Morning Session

Proposal No. 37 - Local Revenue

The meeting was called to order at 10:00 a.m. by Senator Elwaine Pomeroy, Chairman.

The Chairman introduced Mr. Ken Elder, Topeka Finance Commissioner. Mr. Elder noted Topeka has several immediate financial problems including an unfunded police and fire pension liability of \$12 million. Another item of concern is the city's street lighting program which is requiring significant increases in funding.

In response to questions, Mr. Elder noted that both the city and county governing bodies have rejected the idea of eliminating or reducing their share of the intangibles tax; that 98.9 percent of all city money is invested and is receiving a good return; that the city's new assessed value on improvements grew only 1.12 percent this past year compared to a 4 percent increase the year before; that the city is two and one-half mills away from its tax lid limit; and that over \$15 million dollars in capital improvements are needed but are being delayed due to debt limitations and general tax burden problems.

Mr. Elder said that city departments that operate by enterprise funds (fee supported departments) make payments in lieu of taxes for various city services provided them equal to three-fourths of a mill each year. He said that if additional revenue sources are not found, the city will have to lay off approximately 30 employees including 12 nurses because of lack of funds. He said the city spent \$600,000 of revenue sharing money on social programs the first year it received this money, but now is able to spend only \$100,000 on social programs. The balance of revenue sharing is spent to cover city operating and capital expenses. Mr. Elder noted that as a cost savings device the city changed to a self-insured program for workers compensation. The city, under this new program, spent only \$5,000 during the first six months of 1976 compared to \$60,000 in insurance premiums the city would have owed under its former private insurance plan.

Mr. Elder, in response to a question, indicated he would favor an earnings tax to provide additional revenue for the city.

Mrs. Marjorie Selby, Shawnee County Auditor, said the tax lid was causing the county financial problems. A copy of a handout she distributed showing comparative operational costs for Shawnee County for several fiscal years beginning with FY 1970 is attached (Attachment I). She listed several cost items that were putting increased financial pressure on the county including additional staff and related costs due to court unification, the need for additional court room and office space and added operational costs for the county youth center.

In response to a question, Commissioner Mary Bogart of Shawnee County said she would favor the elimination of the sales tax exemption on gasoline if this would provide additional money for the county. Shawnee County Commissioner Roland Hug, in response to a question, said the only additional tax that may be acceptable to people in Shawnee County was an earnings tax. Commissioner Hug said he was opposed to raising the sales tax.

Mr. John Franke, Johnson County Commissioner, noted that court unification was a costly program for his county. He suggested that various court fees could be raised to help offset the added costs. A copy of his remarks is attached (Attachment II). Mr. Franke, in response to a question, said Johnson County has considerable leeway (\$3 million) before the tax lid would present a problem.

Mr. Everett Euler, Jr., Doniphan County Commissioner, said his county was feeling a financial pinch due to court unification costs and increased costs for roads and bridges.

A motion was made and seconded to approve the Committee minutes. The motion carried. The Committee then recessed for lunch

#### Afternoon Session

The Committee was called to order shortly after 1:30 p.m. by Senator Pomeroy, Chairman.

Mrs. Barbara Farley, Marion County Clerk, reviewed the financial problems facing her county. She noted Marion County has been levying the maximum amount allowable under the tax lid law since 1971. She said the court budget for her county was increased by 16½ percent due to court unification. Most of the \$200,000 the county receives in revenue sharing funds is spent on operating costs. She noted the county has held elections on the question of an additional five mill levy for roads and bridges (in 1974 and in 1976) and both times the proposition has failed. An election was held on the question of raising sales taxes by one-half cent in 1975 and it failed also. She said people were hesitant to vote in favor of a sales tax increase without surrounding counties approving an increase also. She indicated she favored a statewide sales tax increase.

Mr. Max Hayen, Marion County Assessor, said his county has far more road miles than other counties of a similar size and this was causing the county problems. He noted the roads were built (and many blacktopped) during the oil boom in that county in the late 1950's and early 1960's. Since then, oil revenues have dried up and the county has been decreasing in population. He said over 100 bridges in the county need replacing.

Mr. Edward Broz, Marion County Commissioner, said he foresees a dark future ahead for county government if additional financial help is not provided counties. He suggested that the Legislature consider enacting a law to allow counties to operate limited access roads since present law requires a road either be open for full use or be closed. He said drug problems in his county were causing added law enforcement burdens also.

Mr. Orville Schmidt, Harvey County Commissioner, noted that an election was held on the question of exceeding the tax lid by three mills in August and the question was defeated by a three to one margin. He listed several areas where the county was feeling the financial pinch including rising costs for operating an ambulance service, rising medical insurance costs for county employees and rising courthouse maintenance costs.

Mr. Preston Bacon, Harvey County Commissioner, said that state standards, e.g., county jails and landfills, are causing counties financial problems. He noted that Harvey County has a county administrator who oversees the operation of county government. The administrator is paid \$25,000 per year and serves as both an administrator and county counselor. Mr. Bacon said that, in his opinion, the administrator has saved the county a great deal of money. As an example, Mr. Bacon said a central purchasing department was created and the county realized a savings of over \$4,000 in the purchase of office supplies alone. He suggested the state consider a revenue sharing program for local governments.

Mr. John Philbrick, Sedgwick County Auditor, said inflation, the creation of four additional divisions of the district court in Sedgwick County, and a number of other things including increased postage costs are causing serious financial problems for his county. He noted county voters rejected a sales tax increase in 1975 and, in August of this year, rejected a .9 mill levy increase (outside the tax lid) for the sheriff and district attorney's offices. He said the county was also experiencing courthouse space problems due to the additional district court divisions. He noted that several county services would have to be reduced and employees laid off because of lack of funds.

#### Proposal No. 38 - Planning and Zoning

Mr. Bob Hrabak, Director of the Leavenworth Regional Planning Commission, outlined a number of suggestions for the improvement of the Kansas planning and zoning statutes. A copy of his statement is attached (Attachment III).

Mr. Wallace Buck, representing the Home Builders' Association of Kansas, Inc., introduced the Association's president, Mr. Denis Stewart. Mr. Stewart suggested that K.S.A. 12-705 be amended to strike the provision that requires the dedication of 10 percent of a development for park purposes prior to plat approval. A copy of his statement is attached (Attachment II). He indicated the Home Builders' Association would present a specific amendment for Committee consideration at its September meeting.

The meeting recessed shortly after 4:00 p.m.

Tuesday, August 10  
Morning Session

Proposal No. 37 - Local Revenue

The Committee was called to order at 9:15 a.m. by Senator Pomeroy, Chairman.

Staff presented several memoranda on the topics of city and county home rule and taxation authority; a review of tax law and related proposals, 1968-70; background on local income, earnings or payroll taxes and certain income tax statistics; and, estimates of potential revenue from local sales and motor vehicles taxes. Copies of these memoranda are in the Committee notebooks.

Staff then presented a review of the August primary election results on county sales tax increase questions. The results were:

<u>County</u>	<u>Yes</u>	<u>No</u>
Coffey (Burlington)	421 (222)	1,774 (546)
Miami	400	3,529
Sumner (Caldwell) (Wellington)	1,009 (117) (407)	2,276 (151) (550)

Staff also presented an updated report on state sales and use taxes. There was slightly more than \$300 million in sales and use tax receipts for FY 1976. It was estimated that a one cent statewide sales and use tax increase would produce approximately \$120 million in additional revenue in FY 1978. A one-half cent statewide sales and use tax increase would generate approximately \$60 million in additional revenue in FY 1978.

In response to a question, staff pointed out that federal, state and local taxes accounted for the following percentages of the total taxes collected in the following selected years:

<u>FY</u>	<u>Federal %</u>	<u>State %</u>	<u>Local %</u>
1961	60.6	17.2	22.2
1970	61.7	17.9	20.4
1975	58.5	23.4	18.1

Note: The percentages do not include Social Security tax money.

It was noted that while one level of government may collect taxes, these moneys may be spent by a different level of government. Staff also noted that according to the consumer price index (CPI) the purchasing power of the dollar in 1973 was 78 cents compared to 64 cents in 1975. In terms of constant dollars, in FY 1973 there was \$930 million in taxes raised in constant dollars in Kansas compared to \$1.19 billion in actual dollars. In FY 1975 there was only \$916 million in taxes raised in constant dollars compared to \$1.42 billion in actual dollars.

There was then some discussion of the issue of eliminating the sales tax exemption on gasoline. Staff noted that based on 1974 data, an estimated \$23.1 million would be generated by elimination of the sales tax exemption on gasoline. It was pointed out that \$23.1 million represented about 10 percent of what cities and counties raised through property taxes.

Mr. Ernie Mosher, director of the League of Kansas Municipalities, suggested the Committee give consideration to the idea of levying a 2 percent tax on insurance premiums related to law enforcement insurance costs. He noted about nine states have this type of tax including Colorado. After further discussion the Committee recessed for lunch.

Afternoon Session

The Committee was called to order by Senator Pomeroy, Chairman, at 1:30 p.m.

Mr. Mosher reported that three out of the five cities that voted at the August primary election on increasing their levies beyond the tax lid approved the increases. The cities that approved an increase were Quenemo (22 mills for five years for law enforcement); McCune (\$9,760 beyond the lid); and Scranton (ten mills for five years for streets). Osage City turned down a two mill levy increase for five years for park purposes and Melvern rejected a five mill increase for three years for street purposes.

Mr. Mosher noted the question of raising taxes beyond the tax lid was defeated in Harvey County (1,261 yes; 3,857 no) but approved in Hamilton County (465 yes; 133 no). The question in Hamilton County was presented as a levy increase for nursing home purposes. A five mill road and bridge levy increase was approved in Stafford County but rejected in Kingman and Jackson counties. Mr. Mosher noted that since counties have had the authority to call an election on a five mill levy increase for road and bridge purposes, 25 counties have approved the increase and 13 counties have rejected the increase.

Mr. Mosher also noted that six counties approved a levy outside the tax lid for services for the elderly and one county rejected this proposition at the August election. Three counties approved a levy outside the tax lid for mentally retarded purposes at the August election. He also noted that nine counties approved bond issues at this election and four counties defeated a bond issue question. Mr. Mosher said he would provide the Committee with a complete list of local tax and bond question results of the August election.

After some discussion the Committee, by consensus, agreed to direct staff to prepare two bill drafts amending the local sales tax law for review at the next meeting. One draft is to allow cities in counties where a sales tax question already has been defeated to call an election themselves. The second draft would allow any city to call for an election to raise sales taxes.

The Committee requested staff to prepare a memorandum outlining the various policy alternatives the Committee has in regard to Proposal No. 37 - Local Revenue. Staff also was requested to check with the interim legislative committee studying judicial salaries and report on any recommendations they may have related to court unification costs.

After further discussion the Committee adjourned at 3:30 p.m.

Prepared by Mike Heim

Approved by Committee on:

\_\_\_\_\_  
Date

SHAWNEE COUNTY - COMPARISON OF OPERATIONAL COSTS:

Attach A

<u>ITEM</u>	<u>FISCAL YEAR 1969-1970</u>	<u>FISCAL YEAR 1975</u>	<u>FISCAL YEAR 1976</u>	<u>PROPOSED FOR FISCAL YEAR 1977</u>	<u>MEMO</u>
COURTS & RELATED OFFICES	566,995	1,161,198	1,353,465	1,820,118	Supported by Gen. Fund under Tax Lid
LAW ENFORCEMENT ..... (Sheriff, Jail)	314,393	726,228	944,974	1,198,845	Supported by Gen. Fund under Tax Lid
SHAWNEE CO. YOUTH CENTER (Juvenile Detent. Facility)	169,367	389,630	471,442	526,104	This fund is under the tax lid.
<u>Examples of Expenditures by Category:</u>					
SALARIES AND WAGES	1,195,867	3,826,749	4,964,853	6,529,477	
GASOLINE .....	77,689	128,050	224,700	251,328	
UTILITIES, TELEPHONE, POSTAGE (Contractual Services)	132,746	203,488	271,680	479,965	

As you can see from the above comparative figures, Shawnee County's gravest problem is attempting to meet the inflated costs of government with a Tax Lid based on the 1969 levy. When you consider that our allowable increase in tax since that base year is limited to the assessed valuation for new improvements, our problem is amply explained.

In 1970 we operated the funds which now make up the Tax Lid Funds at a total dollar budget amount of \$4,248,325. To point out the problem which faces Shawnee County, the proposed budget for the General Fund, one of the 12 funds under the Tax Lid, is \$4,325,563. This is more than all the tax lid funds together in the 1969-70 budget.

While we recognize that the Tax Lid is a means of controlling expenditures and we are sure that all local governing bodies actively support reasonable controls, we feel that the current statutory requirements of using as a tax base either the 1968 tax levies for 1969 or the 1969 tax levied for 1970, with the only increase being new assessed valuation, has presented local governments with an insurmountable problem.

Shawnee County requests your consideration of amending the Tax Lid requirements to a more realistic basis. If, in your judgment, this is not feasible, then we request some relief for the General Fund which supports some 33 departments and includes law enforcement and the operation of our judicial system, by removing either law enforcement or courts from the General Fund and from the Tax Lid and making either a separate fund outside of the lid. The Shawnee County Youth Center is also a special fund under the lid and with the increase in juvenile problems our current Youth Center which has a capacity of 30 has held 43 juveniles this past week. The Board of County Commissioners is loath to increase property taxes (the 1976 levy for 1977 is down 2.79 mills) but the

point has now been reached where county governing bodies have no answer to assuming the necessary budgets for the Tax Lid funds without some relief. For your information, the following funds are under the Tax Lid:

GENERAL FUND (33 departments)  
CONSOLIDATED ROAD AND BRIDGE FUND  
PARK MAINTENANCE FUND  
YOUTH CENTER MAINTENANCE FUND  
COUNTY WIDE ELECTION FUND  
HEALTH FUND (Shawnee Co. share of operation of City-County Health Dept.)  
INSURANCE CONTRIBUTION FUND  
LAKE MAINTENANCE FUND  
COUNTY FAIR FUND  
SOIL CONSERVATION FUND  
SHAWNEE COUNTY FAIR PREMIUM FUND  
SPECIAL BRIDGE FUND

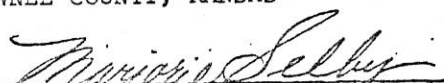
Without Revenue Sharing the problems faced by Shawnee County would be insolvable. The Board has used Revenue Sharing Funds for all capital expenditures (equipment needed by all county departments, remodelling costs, capital improvements). We have great hesitancy in using our Revenue Sharing for operation and maintenance, except when it is of vital importance, since the day will come when Revenue Sharing is no longer available. Therefore we hesitate to count on Revenue Sharing as a means of solving the costs of running the various county operations.

Shawnee County has made every effort to increase its revenue from all other sources. We analyze idle fund investments daily. We cannot influence the revenue received from such sources as mortgage registration tax, county officers' fees, etc. The amount that could be raised by a county sales tax would not solve the problem, even if it were passed by the voters, and, as you know, any issue submitted to the electorate to create new taxes is understandably most unpopular.

Therefore, in our opinion, the most practical solution would be the adjustment of the tax lid base or the removal of the court system or law enforcement from the General fund, taking one or the other outside the Tax Lid funds. Appreciating this opportunity to present to you the major problems facing county government, and in particular Shawnee County,

Respectfully submitted,

BOARD OF COUNTY COMMISSIONERS  
SHAWNEE COUNTY, KANSAS

By   
County Auditor-Financial Admin.

Aug. 3, 1976

*Attachment II*

SPECIAL COMMITTEE ON LOCAL GOVERNMENT

11:00 A. M.  
August 9, 1976  
Topeka, Kansas

Proposals to be discussed as recommended by Elected Officials and Department Heads.

Those present: Virgil Holdredge, Marguerite Brenner, Ron Paul, Frank Dixon, Dorothy Cannady, Donald Curry, Norm Engel, Milford Grassberger, Pat Brown, Debbie Sullivan, Don Steck, Sue Symon, Commissioner Springer and Commissioner Franke.

Court System

The entire Court system is expanding to the point where an ever increasing proportion of the County budget is being used to finance the Courts. In 1976 the budget was \$1,449,597 and in 1977 it is estimated to be \$1,873,274; this does not include construction costs and capitol for furnishings of the court rooms. Since, only a small proportion of the population use the Courts it may be appropriate for those who do use them to pay a more proportionate share. This could be accomplished by raising court fees. A case could be made for this action - recognizing that some part of the Court expenses should be paid by all citizens.

Sewer Department and Health Department

Legislature sets up standards of inspection and performance but does not provide adequate regulatory financial support to carry out the intent of the law.

Data Services

Motor Vehicle Registration - There is a duplication of effort at the State and County level to put this information on computer, (The State for Vehicle Registration, and the County for Taxes). In addition, the State Motor Vehicle files are not updated as to address and other changes that are made at the local level. With a large state wide volume, the computerized Motor Vehicle files are frequently months behind. It would not only be expeditious, but also, a cost savings if that data was captured at the County level and sent to Topeka on magnetic tape. Obviously, new procedures would need to be worked out, but this could apply to Sedgwick, Shawnee and Wyandotte Counties.



## County Engineer

### Ownership Transfer of State Highway

It is presently the policy of the Kansas Department of Transportation to transfer ownership of state highways to the County when a new highway is constructed replacing the old one. In Johnson County we have had 8 miles of U. S. Highway #69 (Metcalf Avenue) and 3 miles of K-10 (Midland Drive) given to us and undoubtedly 5 miles of old K-10 Highway will be given to us when new K-10 is completed. These 16 miles will be transferred with no transfer of highway maintenance monies. It is my suggestion that maintenance money be made available to the County, either as a direct payment of lane miles or authority to levy additional monies, for their maintenance. Based upon our present maintenance cost of \$800.00 per lane mile the additional mileage would cost \$25,600.00 per year for maintenance only.

### Establishment of New Departments

There are many statutes that provide for the establishment of new departments, such as Solid Waste and Public Works, within the County structure. However, these statutes do not provide the means for financing. As one example - several years ago all counties were given the responsibility to establish a Solid Waste plan, but were given no authority to increase the mill levy or provide in any way for the financing of the necessary research and ultimately the plan.

OFFICE OF COUNTY ASSESSOR  
JOHNSON COUNTY COURT HOUSE  
OLATHE, KANSAS 65061

Prather H. Brown, Jr., CKA  
County Assessor

August 6, 1976

TO: Board of County Commissioners

FROM: Office of County Assessor

SUBJECT: Local Government Revenue Sources & Needs

1. SCR 2005 will be on the November ballot for public consideration. The opinion of this office is that YES future implementation of statutes by the legislature, after the constitution has been amended, will have the effect of shifting ad valorem tax to the urban area, especially to the homeowners.
2. The Interim Study Committee on Assessment and Taxation is gathering information on the impact at local level, if the "Merchant & Manufacturing Inventory" were removed from ad valorem taxation. In Johnson County, the total tax dollar loss for all ad valorem taxing entities will exceed 2.5 million dollars.
3. This office is running into competitive wage situations on technically trained appraisal personnel, both clerical and field.

The state approved .13¢ per mile allowance for use of personal vehicles for county business is also becoming a problem. The increase in fuel, maintenance, insurance, etc. leave the .13¢ very inadequate. This is getting to be serious.

LEAVENWORTH REGIONAL PLANNING COMMISSION

COURT HOUSE LEAVENWORTH, KANSAS

TO: Senator Elwaine Pomeroy, Chairman  
and Members  
Special Committee on Local Government

FROM: Robert J. Hrabak, Planning Director  
Leavenworth Regional (County) Planning  
Commission  
Leavenworth, Kansas

SUBJECT: Proposal #38 - Planning and Zoning

DATE: August 9, 1976

Thank you for the opportunity to express my views regarding Kansas Enabling Legislation on Planning and Zoning.

I have reviewed the comments made by other planning directors, so I will attempt only to comment briefly on what they have already touched upon and then provide you with some additional comments of my own.

CLARIFICATION OF PORTIONS

I agree that there are certain areas of the law that are not explicit enough. The law does not need to be overhauled, but some portions need clarification.

REIMBURSED TRAVEL EXPENSE

The suggestion of the planning commission members being reimbursed for travel expense is a good one, but it should hold true for City, County or City-County planning members, not just City.

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COURT HOUSE LEAVENWORTH, KANSAS

20-DAY PUBLICATION CLARIFIED

The word "full" or "elapsd" would seem to be sufficient to clarify the "20 day" publication question, however, I would point out K.S.A. 12-708, wherein the word "elapse" is already used. Perhaps that wording could be used throughout both the City and County Statutes.

ONE PUBLICATION - COUNTY

It is, also, puzzling to me as to why the publications must be made twice for counties and only once for cities. I believe one publication would be adequate.

REDUCE PUBLICATION TIME

I, also, believe there might be some merit in reducing the amount of time, "20 days", between publication and hearing, so that the standard complaint of, "Why do I have to wait so long for a decision?", could be rectified. Time, in most cases is money, and it is understanding to me that human nature being what it is, we all decide to do things today that should have been done yesterday.

DIVISION OF LOTS - K.S.A 12-705b

Mr. Foster made reference to K.S.A. 12-705b regarding the issuance of building permits on lots divided into two (2) or more tracts. I would comment that this section of 12-705b, permitting the division of a lot into 2 tracts, should be clarified. I do not know what this added legislation was meant to provide. The term lot normally refers to land that has been subdivided. From my dealings

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COURT HOUSE LEAVENWORTH, KANSAS

with this section of the law, it is my opinion that the only land that should fit this procedure is a tract that has been under separate ownership, has never been subdivided and for all practical purposes has enough land to provide for an additional building site. It is recommended that the wording be changed from lot to tract, defining what a tract means and explaining the intent of the section on divided lots. Many interpretations have been made of this portion of the law by persons wanting to circumvent the subdivision process. Without a clear cut intent, it is difficult to administer.

With reference to a plat having to be filed when a lot is divided into two lots, it has been determined by the City Attorney of the City of Leavenworth that no plat is needed, because the request is tied to a building permit. The only requirement suggested is that it be of record or in other words a deed be recorded in the Register of Deeds on approval of the division. Perhaps this type of information could be added to the law for clarification. The County Assessor would have no problem in assessment of property if the law is tied to recording of deed on approval.

CONDITIONAL USE AND SPECIAL USE PERMITS

Besides the conditional use permit being included some reference should also be made for special use permits. Special use permits are, also, used by many cities and counties.

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COURT HOUSE LEAVENWORTH, KANSAS

The conditional use permit is used to attach conditions to certain uses within a zoning district. The condition depends upon the use. The special use permit provision is in the form of a floating zone to permit certain type uses, mostly public or semi-public uses, private recreational uses, eleemosynary uses, institutions, etc. whereby the land is zoned for other than these uses but for a particular reason the area is well suited for this use. This is a form of floating zone which does not rezone the land, but would permit the specific use requested with certain conditions being met for approval.

EX OFFICIO MEMBER - NO VOTE

For years there has been a question in my mind as to whether a county engineer as an ex officio member should be able to vote on matters before a city or county planning body. In 1969 the Leavenworth County Attorney first advised that an ex officio member did not have any voting authority and then a second opinion, based on a court case in Kentucky, indicated an ex officio member had full membership rights. It would be interesting to see if any county engineer other than the County Engineer of Leavenworth County has voting rights. I would recommend the K.S.A. 19-2915 be amended to read that the county engineer shall be an ex officio, non voting member. It should also, be noted that 12-702 makes no mention of the city engineer being an ex officio member. Perhaps removing the

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COURT HOUSE LEAVENWORTH, KANSAS

county engineer from being an ex officio, as Mr. Foster has implied, could be the appropriate amendment.

AMORTIZATION - NON CONFORMING USES

To my knowledge, the law is silent in both City and County statutes on the amortization of non-conforming uses. I believe, as Mr. Leanna does, that there should be general provisions cited in the law to handle this.

AGRICULTURE PURPOSES

As Mr. Schlegel has stated, something needs to be done to define the term "agriculture purposes" as is found in 19-2921. A previous attorney general had interpreted that a dwelling was considered a residence and was not considered part of the agricultural use of the land, therefore, the health department could require an adequate sewerage system to be installed. The regulations are much easier to administer when the enabling legislation defines specific terms so as not to require interpretations.

SUBDIVISION REGULATIONS - ENFORCEMENT

Perhaps the biggest problem I see with the present law is the means by which the subdivision regulations can be enforced. A case in point, is where the County Planning Board had received a preliminary plat on an 80 acre tract. There were extreme subsurface conditions with rock near the surface in some parts of the 80 acres. There

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COURT HOUSE LEAVENWORTH, KANSAS

was a rural water district within the boundaries, but the property had never been annexed to the district.

The health department indicated septic systems were not adequate, because of bedrock near the surface, and the rural water district said they would provide water to the area, but the developer had to agree to certain things.

The final plat was approved subject to solving the water and sewer problems. This was done in January 1973. Since then, the developer has sold all the proposed lots, had deeds stating the tracts would be called Lot number such-and-such in such a subdivision and the property owners found that they could not get a construction permit since the final plat had never been approved and recorded in the Register of Deeds.

The water and sewer problems have not been solved, to my knowledge, to this day.

In other words, the enforcement of the subdivision requirements comes at the time an individual desires to build on the property. If it does not meet local regulations, the buyer is penalized and the developer walks away from the problem.



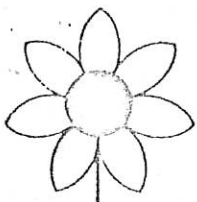
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It is recommended that the enforcement clause be strengthened putting the responsibility on the developer to ensure the subdivision is in fact recorded prior to the sale of said lots.

What complicates the problem even further, is that the proposed lots were sold as tracts having a metes and bounds description and each deed recorded had referenced, in parenthesis, that the tract would be called Lot #\_\_\_ in the subdivision on ratification of the plat. In this case we have to assume that the buyer was assuming the subdivision would be approved. If the plat had been required to be filed before sale of property within it, the owners would not have the problem they have today.

I hope these items I have brought to your attention will be meaningful and will help you in determining the need for changes in the present law. The comments I have made are strictly my own, but I feel that if I had the opportunity to pass these to my Commission, first, my comments would have been endorsed.

Thank you for your time in allowing me to present my views.



HOME BUILDERS ASSOCIATION  
OF KANSAS, INC.

*Attach #11*

OBJECTIONS TO THE KANSAS PARK LAND DEDICATION STATUTE — *K.S.A. 12-705*

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Warren Schmidt 1966  
Mel Clingan 1967  
Ken Murrow 1968  
Roger Hartner 1969  
Dick Mika 1971-72  
Terry Messing 1973-74

1. All other means of acquiring park land, including but not limited to tax funds, bond proceeds, revenue sharing, federal or state programs should be exhausted by the municipality.
2. The city must find by written report that a need exists for park lands upon a determination that no existing land then owned by the municipality can be developed into parks and that the existing developable park land is insufficient to meet the needs of the city.
3. The statute as written applies only to residential development. This is unfair. The ordinance should apply to commercial and industrial developments:
  - A. Commercial and industrial development draws employment, jobs, and, therefore, new residents to Kansas, thus causing the "need" for parks.
  - B. Commercial and industrial development takes a substantial amount of land, otherwise available for residential use and/or park use.
4. Parks should be placed in flood prone areas by this statute. Flood prone property (i.e.) the types of land the city, state and federal government dissuade from residential use is best used as park and recreational areas. In such areas, floods cannot cause devastation and, in fact, cannot permanently injure those types of structures customarily placed in parks, (i.e.) swings, tennis courts, pools, etc.
5. The statute should allow the developer the option of choosing where the land used for parks shall be situated and what land will be used. Otherwise, he cannot plan the development and certain land-parks selection sites could destroy a well planned subdivision.
6. The mandatory dedication of park land as a condition precedent to plat approval violates the United States Constitution requirements of Due Process. Land can be taken from private individuals only upon the payment of "just compensation" which is not found in the proposed ordinance.
  - A. Parks that benefit the public are a general obligation and should be paid for as such.
  - B. Cash in lieu of land is merely a substitute for the same unconstitutional acts.
  - C. The whole scheme smacks of blackmail.
7. 10% of the land, as now appears in the statute, is entirely too much. Even 3% is excessive.