

## M I N U T E S

## SPECIAL COMMITTEE ON WAYS AND MEANS - B

June 28, 1977Morning Session

Chairman Fred Weaver convened the Special Interim Committee on Ways and Means - B at 9:00 a.m. The Chairman announced that the Committee would undertake consideration of Proposal No. 76 - Financing of Vocational Education and Proposal No. 80 - KBI Facility Study.

In addition to Chairman Weaver, the following members of the Committee were in attendance: Senator Paul Hess, Senator Arnold Berman, Senator Norman Gaar, Senator Frank Gains, Representative William Bunten, Representative Roy Garrett, Representative Richard Harper, Representative David Heinemann, Representative Loren Hohman, and Representative John Ivy. Staff members present were: Marlin Rein, Ben Barrett, Julie Mundy, Louis Chabira, Jim Wilson, and Dave Barclay. Others who were in attendance are listed in Attachment No. I at the end of these minutes.

Proposal No. 76 - Financing of Vocational Education

Consideration of the proposal began with a staff review of the current status of state funding for vocational education programs. The staff review included a presentation of statistical data which was intended to illustrate trends in enrollments, expenditures, and programs in vocational education. Also provided was an inventory of approved vocational programs offered by school districts, community junior colleges, and area schools. Senator Hess inquired about how the decision is made about which schools offer a particular program. In particular he expressed an interest in finding out to what extent the programs offered at the different types of schools are coordinated to achieve maximum benefit to all concerned.

Dean Prochaska, Director of Vocational Education, State Department of Education, explained the procedures that are followed in authorizing new vocational programs, such as an analysis of the manpower needs in the area. He also explained the appeal process, which is available when the State Department of Education staff rejects a proposed program. Chairman Weaver asked how many proposed vocational programs had been disapproved during the last year. Mr. Prochaska estimated this number to be 15 or 20 out of approximately 900 submissions.

In response to a question, Mr. Prochaska stated that coordination of vocational programs is essentially a voluntary activity among the schools. Senator Hess said the issue appeared to be a matter of "availability" vs. "overlapping" with respect to the current status of vocational programs offered and suggested that these two ways of viewing the matter may, in fact, be mutually exclusive. He suggested that the Department appeared to favor availability in its decisions to authorize new programs, rather than be concerned about overlapping.

Representative Garrett inquired if it was common practice for the Department to accept the recommendations of its staff in making the determination to authorize a new program. Mr. Prochaska replied that in his experience, staff recommendations were usually endorsed by the State Board of Education. In response to another question, Mr. Prochaska said that the State Department of Education discourages the creation of new programs in areas where similar programs already exist.

Senator Berman said it appeared to him that vocational education could be considered a logical extension of secondary education in which case it might be advantageous to restrict to school districts the responsibility for providing vocational programs. This would be in contrast to constructing separate facilities specifically for that purpose or make other existing institutions, such as the community junior colleges, responsible for providing such programs. Senator Berman questioned whether vocational education programs should be included in the curricula of community junior colleges.

Dale Dennis, Assistant Commissioner for Financial Service, State Department of Education, presented to the Committee an accounting of requests and plans for allocation of \$2,000,000 for equipment and various capital improvements for area schools, authorized by S.B. 127. Mr. Dennis said that if the Department recommended construction of buildings it would probably allot sufficient funds in a single year to cover the entire cost of construction. He said that to do otherwise might suggest an ongoing state commitment to this program, a matter about which there is debate.

In response to a question by Senator Berman regarding the purpose of escrow listed in one school's request, Mr. Dennis discussed the possibility of establishing a contingency fund of approximately \$50,000 which could be used, as needed, for completing projects the original funding for which proved to be inadequate. Senator Berman inquired if the Department discouraged the construction of "shells" of buildings which would ordinarily be completed at a later date, as funds were made available. Mr. Dennis assured the Committee that funding from local sources to complete such projects was available.

Senator Gaar questioned why the Department of Education made the assumption that funding for this program would be available on a multi-year basis. Mr. Dennis said the intent of the Department in asking for multi-year plans was to provide development of long-term planning for the construction and improvement of facilities, an activity which in the past has been somewhat neglected. The State Department of Education did not suggest any obligations on the part of the Legislature or the Governor for support of future appropriations. Senator Berman asked if, as a result of that statement, the Committee could be assured that no request would be made for additional funds to complete the projects. Mr. Dennis said he could not promise the Committee that the area schools would not be back for such funds next year. He assured the Committee that the Department would make clear to the schools that the commitment for the funds was for one year only.

Representative Hohman said the purpose of S.B. 127 as amended and enacted into law, was to enhance the level of control accorded the state in allocating the \$2,000,000 to the area schools. Originally, S.B. 127 was structured to allocate funds on a formula basis and would have permitted wide discretion in authorizing expenditures.

According to Mr. Dennis, one of the problems confronting the Department is the matter of funding a project whose initiation has been delayed. One possibility for resolving the problem would be to permit carryover of authorized funds into the succeeding fiscal year. Senator Gaar suggested that available funds could be allocated during the fiscal year without requiring the funds to be spent during that time period.

Representative Heinemann said that it was the responsibility of the Committee to assist the Department of Education by giving it some direction as to how the Committee would prefer to have the funding of these projects handled.

Representative Hohman inquired if the allocation of funds was based on need. Mr. Dennis replied in the affirmative but added that under the original formula some area schools would have received more and some less in capital outlay aid funds than under the law that was finally enacted.

Senator Gaines remarked he was under the impression that current expenditures for construction and equipment replacement projects were authorized on a one-time basis for the purpose of permitting the Department to establish an allocation policy based primarily on need. Representative Heinemann indicated it was his understanding that no restriction had been approved which limited funding for programs to one year. Senator Gaar stressed the importance of arriving at a policy now, which reflects the general consensus of the Committee, as to whether the funding of current projects is intended to be a one-time effort.

Mr. Dennis was asked how the State Department of Education evaluated the funding requests and how it determined whether or not the area school had the capacity on its own to fund such projects. Mr. Dennis replied that the Department gathered as much information as possible concerning each request, including a history of an agency's capital outlay and capital improvement expenditures, its unencumbered balances, and other data. In addition, he noted that the State Architect's Office assisted in determining what construction could be undertaken by virtue of its authority to approve new construction projects.

Chairman Weaver directed the Committee's attention to the matter of funding sources and the formula currently employed for the allocation of state and federal categorical vocational education aid funds. Mention was made of the fact that the formula is presently in the process of being revised, the completion of which is expected this August. The Committee discussed what components would be included in the new formula which is also expected to be based on the principles of "local effort" and "local ability." In response to a question from Chairman Weaver concerning the composition of the Committee making the revisions, Mr. Dennis indicated that it was comprised of two representatives each from the area vocational technical schools, the community junior colleges, and the unified school districts.

Some discussion was also devoted to the matter of community junior colleges and school district tax rates on vocational education. Senator Hess remarked on the disparity he observed between the levy rates of some districts.

The Committee recessed at 12:00 noon.

#### Afternoon Session

Chairman Weaver reconvened the Committee at 1:30 p.m.

The afternoon session began with a staff presentation explaining the contractual funding arrangements between certain junior colleges and area schools. Staff indicated that the junior colleges involved in such contracts benefited from the arrangement in terms of the total funds available for financing vocational programs. With respect to individual schools, it was noted that some benefit more from the arrangement than others. Staff presented a memo which explained in detail the various contractual arrangements that currently exist between certain junior colleges and area schools. Included in the memo was a table which showed in terms of percent of aid received, the advantage of such contracts for junior colleges.

Senator Hess expressed interest in learning how the situation began. Staff indicated that much flexibility had been granted by law to schools offering vocational programs in order to enhance program access and availability. It was noted that junior colleges receive less categorical aid than do area schools, and that the contractual arrangements made between some area schools and junior colleges originated in an effort by the junior colleges to receive more aid. Staff said that although legislative intent in permitting flexibility for vocational education did not provide for such contractual arrangements, the contracts were not prohibited by statute.

Senator Berman asked how the area school's benefited from the agreements. Staff said that other than an administrative fee, usually 10 percent or less, charged by the area school, no real benefit was apparent. Senator Berman commented that the agreements in effect were similar to a dummy corporation in that the area schools were really just passing through the funds to junior colleges.

Senator Gaines asked about the method by which the state insures the maintenance of quality vocational programs. Ed Walbourn, representing the Kansas Association of Community Junior Colleges said that quality could be evaluated on the basis of whether students graduating from vocational programs acquire jobs in line with their training and maintain such employment for a specified period of time.

Senator Gaines inquired whether programs offered in AVTS's could be funded on an increased per-credit-hour basis. Mr. Walbourn indicated that it is possible with state funds but did not think it possible with federal funds. Staff pointed out that in the course of the Committee study such an alternative, differential funding, would be discussed.

#### Proposal No. 80 - KBI Facility

Discussion on the proposal began with a staff presentation on the history of the lease arrangements and ownership of the building currently housing the KBI. Discussion centered on the events and factors leading to "reopening" of the current lease agreements, all of which related to the possibility of increased costs to the state as a result of the negotiations which would follow. An alternative to the payment of increased rental costs was also discussed - that is, whether the state should purchase the building since its owners have expressed an interest in offering it for sale.

Representative Hohman addressed a question to Lou Krueger, the State Architect, who was available for answering inquiries by members of the Committee concerning the allocation of space for state agencies. Representative Hohman asked if space is available in the capitol building to accommodate any additional state agencies at the present time. Mr. Krueger said that no space is currently available nor would there be until the Supreme Court and the Attorney General move out.

Senator Berman queried Mr. Krueger with regard to the amount of space that would be available when construction of the new defense building is completed. Mr. Krueger estimated 15,000-18,000 square feet. Senator Berman indicated that the estimate did not correspond with other estimates he had obtained elsewhere.

Turning to the matter of the lease arrangement between the state and the Jibe Company, which owns the KBI facility, Senator Berman suggested that the Company, in accepting payment, demonstrated its satisfaction with the current agreement, a position contrary to its professed belief that it is entitled to payments from the state in excess of those called for in the lease. Discussion followed concerning the increased cost proposed in the new contract, estimated at approximately \$13,000, and to what factors the increase could be attributed (primarily utilities). Some suggestion was made that the Jibe Company had violated the agreement by failing to satisfy its maintenance obligations, all of which led to the question whether payment of the \$13,000 by the state to the Company was in fact justified.

Colonel William Albott, Director of the KBI, observed that both the Governor and the Legislature had approved funds to permit renegotiation of the lease. Senator Berman asked if the Legislature had voluntarily agreed to pay an additional amount over and above the prescribed in the lease agreement. Colonel Albott replied it did not.

Senator Gaines inquired of Mr. Krueger how much space the KBI needed. Mr. Krueger indicated the agency needed 23,004 square feet. He added that he believed no space was available for housing the KBI in any of the state-owned buildings at the present time. Colonel Albott, in response to a question from Senator Gaines concerning the desirability of locating the KBI in the area of the Capitol Complex, stated there were both advantages and disadvantages to such a suggestion and that he could conceive of no particular benefit to the agency from being located close to the Attorney General's Office.

Senator Berman inquired as to who was responsible for allocating space for state agencies. Mr. Krueger identified the State Architect's Office as the agency having that responsibility. Senator Berman inquired further about the guidelines used for determining the allocation of space and, more specifically, who wrote the building specifications needed for housing the KBI. Mr. Krueger indicated that specifications had been written by the agency. Some discussion was devoted to the matter of purchasing new equipment for the agency during which Colonel Albott indicated the need for a backup communications system on the same order as that currently maintained by civil defense for emergency situations.

A question was raised by Representative Heinemann whether there would be any advantage to moving the agency to a location west of Topeka, such as Salina. It was Colonel Albott's opinion that the agency should be located close to the major population centers of the state since the incidence of criminal activity is highest in these areas and lab testing of any evidence gathered in a criminal case would be facilitated.

Further discussion on the lease followed. Colonel Albott pointed out that the agency would be responsible for returning the building to the conditions which prevailed at the time the lease was signed should the agency vacate the building. Some expense could be expected as a result. Senator Berman remarked that the "asking" price of \$875,000 appeared to be rather low and wondered whether the state had the option to purchase at that price or if the owner could raise the price after the state announces its intention to buy.

Chairman Weaver asked Mr. Krueger if the estimated replacement construction costs of \$1,035,000, was for the same type of building as the KBI's. He said the KBI building was a steel building and the replacement estimate was a traditional building similar to the state office building.

Senator Gaar inquired of Mr. Krueger what the usual cost per square foot is for a steel building. Mr. Krueger estimated \$23-\$25 per square foot, indicating that this estimate is probably near the original construction cost. He added that these initial cost factors might also account for the apparently low asking price since construction costs were probably not as great as they might have been expected to be.

Senator Berman asked Colonel Albott if he would recommend purchase of the building to the Governor. Colonel Albott responded by saying he would attempt to point out the advantages and disadvantages in purchasing the facility as an option in the agency's FY 1979 budget request.

The Committee thereafter adjourned to tour the facility itself, which is located at 3420 Van Buren in Topeka.

June 29, 1977

Proposal No. 77 - State Building Construction

The Chairman called the meeting to order at 9:00 a.m. and directed staff to present a report on Proposal No. 77. Staff referred the Committee to a memo on state building construction procedures and briefly described its contents and various attachments. It was noted that the complexity factor applied to the associate architect fee by the negotiating committee is not statutory. In addition, staff said that in practice the negotiating committee has limited the building construction administration services fee to 10 percent of the maximum fee allowable instead of 20 percent since the State Architect still has the primary responsibility for supervision.

After the staff report the Chairman requested the testimony of conferees. Mr. James W. Bibb, Director of the Budget, was the first conferee. He explained that by statute he is chairman of the negotiating committee and that the other two members are agency or department employees. He said that for every new project those two committee members may likely be different persons. He viewed this as a problem with the process in that no continuity is established.

Mr. Bibb noted that in the new selection process the fees negotiated are actually less than the old procedure. He said that the complexity factor used is based on architectural industry guidelines. The complexity scale is based on the premise that a classroom building may be much less complex than a hospital building. He said that one of the present problems with fee structure is that it does not give an architect the incentive to hold down costs. He suggested that the architect be given an additional fee within the maximum limitation if the architect holds down costs. Mr. Bibb also discussed the problem of split percentages. He said that 15 percent for schematic design is lower than the architectural profession is using, while the construction administration percentage of 20 is too high based on the present duties of the State Architect as prescribed by law.

The Chairman thanked Mr. Bibb and opened the floor for questions. Senator Gaar questioned Mr. Bibb as to the negotiating committee's procedures in determining which of the three to five firms recommended by the State Architect are interviewed. Mr. Bibb explained that the negotiating committee first interviews all firms and looks at the firm's previous experience with the state and with private industry. Then each individual committee member independently ranks his choices in order of selection. He said that in most cases the committee member's recommendations are very close.

Senator Gaar asked what objective criteria are used in selecting the associate architect and what contact the negotiating committee has had with respect to pressure from individual firms, the Governor, or the Legislature. Mr. Bibb said the committee checks out previous work with the state as best it can but that objective criteria are difficult to establish. He said that to his knowledge the committee had not been approached by firms, the Governor or members of the Legislature, but that in one case after a firm had been chosen, a legislator questioned him as to whether the firm chosen was really a Kansas firm.

Senator Gaar questioned Mr. Bibb about the continuity problem with the negotiating committee. He asked if Mr. Bibb was satisfied with the committee structure and if not, what would he recommend. Mr. Bibb said he was not satisfied; however, he recognized that although the present structure lacks continuity, it provides an assurance against undue influence. Upon further questioning from Senator Gaar, Mr. Bibb said he would rather have a committee with the majority of members appointed on a permanent basis but he did not have recommendations as to who the permanent members should be.

Senator Berman asked several questions of Mr. Bibb related to the negotiating committee's basis for deciding which firm is selected. Mr. Bibb said that other than the selection of the four to five firms to be considered, the State Architect is not involved in the selection process. He said that there was only once instance where the committee and firm selected has not been able to negotiate a fee and it has to go with another firm. Senator Berman commented that it would appear with the absence of technical expertise on the selection committee, the committee could be subject to the salesmanship ability of the various firms. Mr. Bibb said he supposed that could happen.

Senator Berman asked if the state would be better off to negotiate a cost-plus arrangement since the fixed percentage fee, in the final analysis, is not based on the amount of work the associate architect has to do. Mr. Bibb noted that with a cost-plus type of fee that it is almost necessary to approve or disapprove every cost. Senator Berman said that would not be true if one applied it only to the associate architect and not to the contractors.

Several questions related to change orders were asked by Senator Berman. Mr. Lou Krueger, Director of Architectural Services, said that the associate architect does not get a fee for change orders. He explained that change orders are the responsibility of the State Architect and that most originate from the user agency. He said that his office approves most of the requests if they fit within the scope of the plan. Senator Berman asked if change orders cause cost overruns. Mr. Krueger said they did not and that the Legislative Budget Committee must be notified of any change order over \$25,000.

Representative Hohman asked Mr. Bibb how the development of programs could be expedited. Mr. Bibb said that the new selection process was helping but that the state should determine what type of building it wants prior to the appropriation of planning funds. Representative Hohman asked if the state should divorce the user agency from the selection process. Mr. Bibb said he really did not know the answer since the present selection process was new and he has not yet seen the results of the committee's work. He did comment that the present system provides an element of compatibility between the associate architect and the user agency that is essential to a good working arrangement.

Representative Hohman asked if Mr. Bibb would recommend that the associate architect be able to receive a certain percentage of the amount of dollars saved on a project. Mr. Bibb said he would prefer to negotiate a flat fee with an anticipated savings fee clause. He said associate architects are provided an incentive to do a good job because they know their chances of getting another contract become greater. He said the State Architect's office is currently developing a track record type of rating for associate architect firms. Mr. Bibb also commented that the state was not the only one having problems with such things as leaky roofs and that it was an industry-wide problem.

Senator Gaines asked if the negotiating committee has any authority to follow-up on how the program is going after they have made the selection. Mr. Bibb said they did not have such authority. Senator Gaines then read several statements from the Trogg-Nichols case and asked what recourse the state had. Mr. Bibb said the case occurred before the new selection process was implemented and that under the new process the same types of problems would probably not occur since it allows the committee to split the design and working drawing phases.

Senator Berman asked if the negotiating committee had ever had occasion to be sufficiently suspect of a firm's qualifications to disqualify such a firm. Mr. Bibb explained that on one occasion the committee had rejected an entire list not because they were not qualified but because the committee could not agree and were concerned about the firms' size and abilities to complete the program within the proper time frame.

Senator Berman then asked who was responsible in state government for state construction. Mr. Bibb said that the responsibility was diffused. Senator Berman asked if that was by design and wanted to know who the Legislature was supposed to go to if it noticed a pattern of faulty design. Mr. Bibb said that it would depend on the specific program and the problem. He also said that it is difficult to track down responsibility and questioned whether construction funds should be appropriated to individual institutions or to a central state board which could be responsible for all buildings.

Senator Garr and Senator Berman questioned Mr. Bibb again as to who is ultimately responsible in the new process if there are problems. Senator Gaar asked Mr. Bibb to detail step-by-step who is responsible. Mr. Bibb said that the first step, which is schematic designs, is the negotiating committee's responsibility but only if it is informed of problems by the State Architect or the user agency; therefore, the State Architect is ultimately responsible. He said that the other phases — working drawings, construction supervision, and final inspection — are the responsibility of the State Architect.

Senator Gaar commented that essentially Mr. Bibb was saying the State Architect is ultimately responsible. Mr. Bibb said that was true; however, the statutes were vague about the State Architect's ability to overrule something the user agency wants. He said the statute appeared to be unclear.

The Chairman introduced Mr. Lou Krueger, Director of Architectural Services, and asked him to make a brief presentation. Mr. Krueger briefly explained the selection process again and said his only responsibility in that phase is to submit the listing of architects, answer questions, and take minutes. He said he was not as disenchanted with the selection process as Mr. Bibb was because he had worked under the old system. Mr. Krueger explained he was keeping a track record of firm performance since it was difficult to know a firm's capability until the state has experience with that firm.

Senator Hess asked if the state had problems with buildings whether it was the State Architect's responsibility to notify the Attorney General to begin legal action. Mr. Krueger said that it was his responsibility and that he has initiated some. He said that 90 percent of the problem buildings were constructed under the old selection process but that he has recommended to the Attorney General that the state bring action to recover on some of those buildings. In response to a question from Senator Hess, Mr. Krueger said that in most instances the Department of Administration attorney and the Attorney General have acted responsibly. Senator Hess asked Mr. Krueger if there were any cases where he thought action should have taken place and it did not. Mr. Krueger said the only difference of opinion with the attorney was when the action should take place. He said in one case he felt action should have taken place immediately but that the attorney said the state should wait until the actual cost was known.

Senator Hess asked Mr. Krueger why there has been a problem with the statute of limitations. Mr. Krueger said that until recently he was not aware that there was a statute of limitations on errors and omissions. Senator Berman asked if the Department of Administration attorney or the Attorney General had told him there was not a statute of limitations. Mr. Krueger said they had not; the opinion was his own. Senator Berman asked how many requests have been made to initiate action and how many have actually gone to court. Mr. Krueger said that four or five have been initiated and two have gone to court.

Senator Gaar asked Mr. Krueger to explain when he was appointed and how long his term was. Mr. Krueger said he became assistant director in January, 1973. He was appointed Acting State Architect in May 1973, by Governor Robert Docking. In July 1974, pursuant to new legislation, he was appointed Director of Architectural Services by the Secretary of Administration. He said his term ends July 1, 1978.

Senator Gaar asked Mr. Krueger if an architect had significant cost overruns or if the state had a previous unsatisfactory relationship with a particular firm if he would put that firm on a list. Mr. Krueger said that in general he would not, although in some cases he would if the previous problems were because of personality conflicts. Senator Gaar asked Mr. Krueger to explain his process for selecting firms to submit to the negotiating committee. Mr. Krueger said that the first step is to survey and advertise for firms. He said all interested firms file forms with his office which list previous work, firm size, workload, and other information. He said he then makes up a preliminary list of about 15 firms who, in his opinion, could do the job. He selects these firms on the basis of size and location, and ranks them based on the resume as poor, fair, or good. He said he then narrows it down even further and contacts each firm to see if it is interested in the job.

Senator Gaar asked if that meant, except for past experience with the state, the decision is based on the firm's own information about experience and workload. Mr. Krueger said that until the state works with a firm, there is no other way of determining whether a firm is qualified. Senator Gaar asked if Mr. Krueger checked out the firms with people it has worked with in the past. Mr. Krueger said he did not. Senator Gaar said he thought that should be part of the criteria if the state had no previous experience with the firm. Mr. Krueger said it might be a good added criterion but that he felt the present resume-type system provides him a good basis for judgment.

Senator Gaar asked who, in the current system, has responsibility for taking affirmative action for construction problems. Mr. Krueger said that ultimately and reluctantly it was his responsibility in all phases. Senator Gaar asked what criteria were used at the design stage for monitoring and deciding whether things were proceeding smoothly. Mr. Krueger said that representatives from his office attend all meetings with the architect and the user agency and that his office also provides the associate architect with a procedure manual. He said his office has various checkpoints established where the associate architect submits materials. In addition, at the 90 percent stage, all drawings are checked by his office for errors and omissions and if they are not adequate, they are sent back for changes. He said that in every instance where this has happened the plans were changed to his satisfaction.

Senator Gaar asked Mr. Krueger if the institutions' complaints that plan approval takes too much time, for example one year, were true. Mr. Krueger said he did not think that was correct. Senator Gaar then asked about time delays and other problems in the inspection process. He asked if Mr. Krueger had every authorized final payment when the user agency said it was not satisfied. Senator Gaar asked how long it took to inspect a building, who determined when it was ready for inspection, and how quickly Mr. Krueger was able to respond when notified there was a problem. Mr. Krueger said weekly reports from his construction superintendents keep his office informed as to construction progress and when the building is ready for final inspection. He said that the final inspection is performed by mechanical engineers and the Chief of the Construction Section and usually takes four to five days. He said his office is able to respond to problems fairly quickly and that if there were a problem that was delaying construction, it would be handled within two to three days but if it were not urgent, it might take two or three weeks.

Senator Gaar asked Mr. Krueger if he was aware of some criticism about response to problems and if there had been any steps taken to correct the problem. Mr. Krueger said he was aware of the criticism and was trying to rectify the situation but was having great difficulty hiring qualified personnel on the existing salary level.

Chairman Weaver introduced Mr. R. R. "Dick" Radcliff, owner of the Topeka-based carpeting firm. Mr. Radcliff told the Committee that there were many problems with the present system of purchasing and procurement in the state. He said that at present, department heads specify the type of brand, name of brand color, and type of weave on the purchase order for carpeting. He said this many times narrows the process and in effect eliminates competitive bidding. Senator Gaar pointed out that a bill dealing with that problem was passed by the Senate and was currently still in the House Ways and Means Committee. Chairman Weaver thanked Mr. Radcliff for bringing the problem to light and announced that the Committee would reconvene at 1:30 p.m. to continue discussion with Mr. Krueger.

#### Afternoon Session

Chairman Weaver called the meeting to order at 1:30 p.m. Staff presented and reviewed a memorandum on the Trogg-Nichols case. Staff noted that there are no constitutional prohibitions on mandatory arbitration clauses. Senator Berman asked if the state intends to continue with compulsory arbitration clauses in future contracts. Mr. Bibb and Mr. Krueger said that would not happen in the type of process the state has at present. Mr. Bibb indicated that arbitration clauses might be necessary in fast-type type of construction processes.

Senator Hess asked Mr. Krueger to explain the process for informing contractors of deficiencies. Mr. Krueger said that his office prepares a punchlist and does not give the firm the remaining 5 percent until all deficiencies are corrected. He said that punchlists were never negotiated and that all deficiencies must be corrected. Senator Hess also asked about procedures for signing off on a building. Mr. Krueger said that four signatures were needed -- his, the user agency, Accounts and Reports, and the Division of Purchasing. In response to a question, Mr. Krueger said he could not recall the specific instances but that there have been some cases where he signed off on a building and the user agency did not.

Chairman Weaver asked if the split in construction administration between Mr. Krueger's office and the associate architect's office satisfied Mr. Krueger. He also asked if the law was contradictory in respect to the associate architect's responsibility for change orders. Mr. Krueger said so far as he could determine he was ultimately responsible for construction administration and that the associate architect's responsibility provided necessary checks and balances. He said he thought the law relating to change orders was contradictory.

Chairman Weaver then asked Mr. Krueger if there are added headaches from allowing the user agency to be involved after a contract is let. Mr. Krueger said that although the agencies are generally prejudiced to the extent that they want the best, it is beneficial to involve them so that the sole responsibility is not with the State Architect. He qualified that by saying final decisions should not be in the hands of the user agency. Chairman Weaver asked why the user agency was not pleased with the University of Kansas law school building. Mr. Krueger said there have been several concrete panel problems with a subcontractor but that the contractor was still being held responsible. He then explained the various problems with the panels.

Senator Gaar asked what the salary level was for Architects I, II, and III. Mr. Krueger said he had no trouble hiring Architects I since all that was required was a degree. He said that the salary range of Architects II was \$13,000-\$15,000 and was too low considering five years' experience was necessary. He also said that he can only hire up to Step C in that classification. Senator Gaar asked if five years' experience was really necessary. Mr. Krueger said that the classification requires a license and in order to get a license, an individual must have three years of experience. He said he preferred at least two years of experience after a license is obtained.

Senator Gaar asked how many vacancies there were and whether Mr. Krueger had informed the Secretary of Administration and the Personnel Division of the problem. Mr. Krueger said that he has openings for four Engineers II and two Architects II and that he has informed the Personnel Division of the problem. He said he also has authority for 21 construction building inspector positions but has filled only 16 and did not need the other five. Senator Gaar commented that was odd considering the complaints about construction inspection delays. Mr. Krueger said that he has had some staff problems with some of the classified people that have been on board for several years. Senator Berman noted that the Legislature has granted virtually every personnel request and asked why there was a problem hiring staff. Mr. Krueger said the problem was with salary restrictions and civil service rules.

Senator Gaines said that state statutes provided that the State Architect report problems to the Governor and he asked Mr. Krueger if he had reported such incidents to the Governor. Mr. Krueger said he did not report directly to the Governor but reported to the Chief Attorney of the Department of Administration. Senator Gaines then asked if the state was suing the associate architect on the Medical Center job and if it were true that more claims totaling over \$500,000 were coming in. Mr. Krueger said the state is in the process of filing suit but cannot complete doing so for awhile until all of the losses are determined. He said several more claims are coming in that allege that poor drawings caused contractors extra delays in construction.

Senator Gaines asked what other suits had been filed. Mr. Krueger said suits were being filed for the Wichita State University building where it was determined that bricks were falling off because the mortar was bad and at the University of Kansas where a ground-laid stem line was defective. Senator Gaines asked to what extent the State Architect reviewed the associate architect's completed plans. Mr. Krueger said that he was admittedly naive when he first took the job in assuming that associate architects were professionals and did not require intensive review of their plan. He said that at present all plans are reviewed in detail which includes mechanical, electrical, and architectural reviews. If plans are not adequate, they are sent back and the final payment is withheld until they are corrected. Senator Gaines asked if firms were required to carry liability insurance. Mr. Krueger said it was not required but that in the case of large contracts, it perhaps should be.

Senator Hess asked Mr. Krueger to describe what the problem with the Medical Center Basic Science Building was. Mr. Krueger said that it was not realized the architect drawings were poor until the building was already under construction. He said most of the problems have been in the realm of mechanical systems but did not know why. He explained that most architectural firms contracted out mechanical work. Senator Hess asked if the negotiating committee has control over the associate architect's choice of mechanical engineering firms. Mr. Bibb said that the committee has been taking a close look at consultants to be used by associate architects and said that in many cases the mechanical engineer's qualifications are more pertinent than those of the architect. He said that the State Architect has final approval over what consulting firms can be used by the associate architect. Senator Hess asked Mr. Krueger why his office missed the mechanical problem on the Medical Center. Mr. Krueger said he did not know since he accepted the job at the end of that phase.

Senator Berman asked if any of the firms involved in the four to five cases where Mr. Krueger recommended legal action were currently doing any work for the state. Mr. Krueger said they were not. Senator Berman asked if the State Architect has control over subcontractors and if any of the firms who put in problem roofs were currently working for the state. Mr. Krueger said that the State Architect does have control over subcontractors and that he did not know if any firms which had done poor roof work were working for the state at the present time. He explained that the roofing industry in general has had many problems and some of the present problems were not necessarily the fault of a specific contractor. He said that in the mid to late 1960's the roofing industry convinced the public that two-ply roofs were acceptable and that as a result both private industries and the public have had problems. In addition, he said that the roofing industry has been plagued with a high employee turnover rate.

Senator Berman asked if the state had its roofs covered by warranty and if the state had ever collected on any of the problem roofs. Mr. Krueger said that the roofs were bonded but the general feeling in the industry was that a bonded roof was not worth the paper it was written on since it was only bonded for a certain amount and does not include replacement. He said the state has collected on some roofs. Senator Berman asked Mr. Krueger if he was saying that the state was doing about as well with roofing contracts as private industry was. Mr. Krueger said that was true.

Senator Berman asked Mr. Krueger if turn-key contracting would be a better system and if it would establish a central point of authority. Mr. Krueger said it was a good approach but it was not a panacea for all problems. He said the State Architect's responsibility in a turn-key system would be limited to small projects and contracts.

Representative Ivy asked why the State Architect could not act as prime architect and the system of contracting associate architects be eliminated. Mr. Krueger said it could probably be done to a certain extent but that staffing problems could occur if one year there were a huge amount of work and the next there was quite a bit less. Representative Ivy asked Mr. Krueger what he had done to meet the legislative request to investigate new roofing techniques. Mr. Krueger said he was requiring slope roofs and insulation vents and was currently experimenting with a new technique which involves inverted insulation.

Senator Gaines asked why the state should not require the associate architect to carry liability insurance. Mr. Krueger said that the state would still have to go to court. Senator Gaines commented that at least if the state were to win it would be able to collect. Senator Berman said he would like to see either performance bonds or liability insurance to provide the state with adequate assurance that judgment might be paid. Senator Gaines asked Mr. Krueger to check with architect associations as to what kind of liability insurance was available and which firms were covered.

Senator Hess asked several specific questions about the physical education building at Emporia. He asked Mr. Krueger if he was aware of building defects at the time he signed off on the project. Mr. Krueger said the defects were not apparent at the time but that since two defects had been brought to his attention.

Senator Gaar told Mr. Krueger that the Committee and staff were investigating alleged defects and would like him there when the Committee discusses various specific problems. Mr. Krueger said he would give 100 percent cooperation. Chairman Weaver told Mr. Krueger that all staff information pertaining to defects would be made available to him prior to the next meeting.



Proposal No. 73 - Court Personnel Study

Chairman Weaver informed the Committee that three bids on the court personnel study had been received. Staff explained the specifications and summarized the three proposals. Senator Hess moved that the Committee accept the low bid and award the contract to Resource Planning Corporation. Representative Heinemann seconded the motion and it passed.

Chairman Weaver adjourned the meeting at 4:00 p.m.

Prepared by Julie Mundy and Louis Chabira

Approved by Committee on:

*Frank H. Weaver*  
(Date)

ATTACHMENT NO. I

Others Present

Dale Dennis, State Department of Education  
Dean Prochaska, State Department of Education  
Lou Krueger, Director of Architectural Services  
Henry Knouft, Division of Purchasing  
William Albott, Director, KBI  
Gary Clarke, KBI  
Duane Sackman, KBI  
R. R. "Dick" Radcliffe, Topeka Merchant  
John Moir, Division of Budget  
Terri Scully, Legislative Post Audit  
Ed Walbourn, Kansas Association of Community Junior Colleges  
Anne Heberger