

M I N U T E S

SPECIAL COMMITTEE ON WAYS AND MEANS - B

July 26, 1977Morning Session

Chairman Weaver convened the Special Committee on Ways and Means - B at 9:00 a.m. at Morrison Hall, Wichita State University. In addition to Chairman Weaver, the following Committee members were in attendance: Senator Arnold Berman, Senator Paul Hess, Senator Frank Gaines, Representative William Buntin, Representative Roy Garrett, Representative Richard Harper, Representative David Heinemann, and Representative John Ivy. Staff members present included Marlin Rein, Julie Mundy, John Rowe, Jim Wilson, Ben Barrett, and David Barclay. Others who were in attendance are listed in Attachment I at the end of these minutes.

Proposal No. 77 - State Building Construction. Chairman Weaver introduced David Barclay, Administrative Assistant to Norman Gaar. Mr. Barclay made a presentation to the Committee of his memo on "Construction Projects Illustrating Possible Architectural and/or Construction Deficiencies - Wichita State University." The memo contained an explanation by building which included the associate architect for the project; the general contractor; selected subcontractors; a description of problems; and a case study of the building construction and related problems. He indicated that information for the memo was obtained from a review of available materials and interviews with representatives of Wichita State University (WSU) and the Division of Architectural Services.

Chairman Weaver then introduced Mr. Don Hoffman, Chief Assistant Attorney General, who made a presentation concerning the status of various court cases involving construction of state buildings. He said cases were referred to his office only after they were reviewed by the Chief Attorney for the Department of Administration. He said the Department of Administration attempts to seek settlement and negotiate, but if that was not possible it would be referred to the Attorney General's Office.

Mr. Hoffman then detailed to the Committee the facts involved in a court suit against the associate architect in the building of the McKnight Art Center. The Chief Attorney for the Department of Administration referred the case to the Attorney General's Office December 17, 1975. Mr. Hoffman said that he issued a letter of demand to the associate architect on December 19, 1975. The letter demanded \$30,000 settlement: \$24,000 for the sleeving unit through concrete beams and \$6,000 for the heating and cooling enclosure. He noted that the information referred to his office did not include the problem with the elevated crosswalk and leaks that were referred to by Mr. Barclay earlier in the morning. Mr. Hoffman said that the suit was filed in court on January 28, 1976, in Sedgwick County. The Sedgwick County District Court sustained the state and said that the statute of limitation in construction of buildings was applicable to the state since the state was engaged in a proprietary function. Mr. Hoffman said that his office was appealing that decision by the Sedgwick County Court. He said that case was the forerunner of several cases that are looming on the horizon. He said there was not a wide body of decision on statute of limitations in case law. He said he wanted to resolve that problem prior to taking on any of the bigger lawsuits.

In response to a question from Representative Heinemann, Mr. Hoffman said that his understanding of the statute of limitations was, if one did exist, it would be five years from the discovery of the defect. He said the judge in Sedgwick County was contending that the statute of limitations was five years from the date the construction contract was signed. Chairman Weaver asked Mr. Hoffman why he thought that the statute of limitations did not apply at all. Mr. Hoffman said that he considered construction of a state building at a university as government business and therefore the statute of limitations would not apply. He said he had picked the case of the McKnight Arts Center first since it was a small case and he wanted to get going and establish a track record prior to filing larger cases.

Senator Berman asked if the determination of the facts had been made yet in the McKnight case. Mr. Hoffman said that no determination had been made as of yet and that it would be spring before the case would get back to the trial court if the Court of Appeals ruled in the state's favor. He said that the threshold problem in most of the cases is the statute of limitation. Senator Berman asked if that is what Mr. Hoffman was waiting for by not filing the other suits. Mr. Hoffman said that there was no reason to delay the other cases. He said a demand to the associate architect in the Life Science Building was ready to go out. Mr. Hoffman said his office was only going to file suit on certain problems with the building and he was concerned since early in the morning he heard other problems mentioned, in particular the pre-cast columns. He noted that he had never been informed of those problems.

Representative Heinemann asked if the Court of Appeals upheld the district court in its rulings on the statute of limitations then would it not be profitable for the state to file immediately in those cases now being held back. Mr. Hoffman said that it would. The only thing that is holding up the filing of those cases is the need to determine what the bottom line was on recoverable damages. He noted in the case of the Life Science Building that the Attorney General's Office was first informed that the state should sue for \$200,000 damages. It was subsequently changed to \$500,000 damages. He said that did not include some of the problems he learned of during the morning meeting.

Chairman Weaver asked if the lack of information from the Division of Architectural Services and the Department of Administration caused problems for the Attorney General in the filing of these lawsuits. Mr. Hoffman said that his office felt it should be informed of all the damages and the problems with the building prior to filing suit and that he had learned of some new problems this morning at the meeting. Chairman Weaver asked who initiated these complaints to the Attorney General's Office. Mr. Hoffman replied that the Chief Attorney for the Department of Administration filed the claims with his office only after he had researched the case to the extent that it was in tryable status with a full listing of witnesses, briefs, etc. Senator Berman asked if the paucity of referrals to the Attorney General's Office was because the people in the State Architect's Office felt vulnerable. Mr. Hoffman said that he felt that was true in some cases. He cited the Medical Center case as one example and the Nebraska Boiler case as another example. Senator Berman requested more information on the Nebraska Boiler case from Mr. Hoffman.

Mr. Hoffman then informed the Committee of the present status of the Truog-Nichols case. He said that on July 17 the arbitration award of \$261,000 was, upon the plaintiff's request, turned into a judicial judgment. He said that would cause the state problems in that the plaintiff would be awarded eight percent interest which would apply from August to the date of award. He said that at first his office had contended that there was no interest. He said the award is presently \$275,000 and since July 17, \$40 a day interest was being charged. He said that the original claim against the state in that case was for \$575,000 and \$261,000 was awarded. He said that another case had been filed by Evans Electrical Contractors for \$380,000 and that the arbitration award for the case has been made at \$24,000. He said that Thomas Construction is also filing a \$214,000 claim but that it has not gone to hearing yet. He said the plaintiffs in the Truog-Nichols case are going to attempt to execute through original motion in the Supreme Court a writ of mandamus to collect the arbitration award. He said that there are some alarming trends in the federal court in this type of case.

Mr. Hoffman then told the Committee about the heating pipe case at the University of Kansas. He said in that case the state had filed suit against the contractor, but that the state was going to amend the suit to file against the manufacturer of the product since the material that was used as specified in the plan was found to be deficient. He noted that the state still owes the contractor in that case \$15,000 and would hold that amount to be applied to the state's recovery.

Senator Hess said that if he understood Mr. Hoffman right there were two basic problems his office had in the present procedure: (1) the statute of limitations and (2) the need to have complete case files on all damages. He asked Mr. Hoffman to recommend to the Committee any changes that would help rectify the situation.

Mr. Hoffman said that in the case of the Medical Center building the flag should have gone up long before it did on problems of construction. He said that he had an exhibit used in the Truog-Nichols case that clearly showed the state should have picked up the problems at an earlier date. He said that he thought preventive legal counsel in the working stages on construction projects would be beneficial. He also said that the arbitration contract with the interest clause caused the state a great deal of problems. He said the state had agreed to arbitrate with everyone but the associate architect. He said that the state could not file a counter claim in the arbitration process against the associate architect and therefore, would have to sue him separately. He also said that the timing of the arbitration was all wrong.

Senator Berman asked if Mr. Hoffman had ever issued an opinion that said the executive branch could not enter into an arbitration contract. Mr. Hoffman said that he knew of no great constitutional issue but that he had never been requested to issue such an opinion. He said that perhaps in the broad liberal construction the executive has the authority but only within the limitations of appropriations.

Representative Garrett asked if the State Architect approved or overlooked something would it have a bearing on the cases that the Attorney General's Office could file. Mr. Hoffman said that it definitely did have a bearing on the cases. He said that in most cases the state has a united front, but that in one case there was a disparity within the Architect's Office. He said this was going to cause problems when the case came to court since the defense will probably call in the people from the State Architect's Office to testify against the state's own expert witness. Representative Heinemann asked the size of the staff in the Attorney General's Office that dealt with litigation. Mr. Hoffman said that he had five attorneys in the area. He said that so far the Attorney General's Office has been able to handle the cases but that once the statute of limitations problem is settled that there would be a great number of large cases being filed and that it was very possible that he would not have adequate staff to handle all of the cases. The Committee adjourned at 10:45 a.m. to take a tour of the buildings with problem construction at WSU.

Afternoon Session

The Committee reconvened at 1:45 p.m. after completing a tour of all of the buildings. Chairman Weaver asked Mr. Louis Krueger, Director of Architectural Services, to make a statement to the Committee. Mr. Krueger said that in each of the buildings the Committee had reviewed in the morning the associate architect was assigned prior to his coming on board as State Architect. He said that his office was concerned and was trying to prevent such problems from happening in the future.

Chairman Weaver asked if there had been any change in the selection of inspectors. Mr. Krueger said that the process has not been changed substantially. He said that his office tries to retain good people by assigning them to new jobs that come on line. He said that inspectors are in the unclassified service and are paid from the construction appropriation. Chairman Weaver asked how Mr. Krueger checked on inspectors. Mr. Krueger said that he could not follow them around; however, his office does examine the weekly reports required from the inspectors and that they were able to check on them through complaints from contractors or agencies.

Senator Berman referred to page 5 of Mr. Barclay's report and asked why it took approximately one and one-half years to respond to the mortar disintegration problem once it was brought to the State Architect's attention. Mr. McFeeters said that although his recollection of the dates was sketchy, the problem occurred over a period of time and that the deterioration was a progressive process and did not happen all at one time. He said the brickwork was laid in 1972 and the final inspection occurred in August of 1973. At that time he said his office did not know about the brick problem but that winter there were some problems with the mortar on the north beam. He said that his office thought it was due to a snow bank that was resting on the brick and therefore determined that it was normal deterioration that occurred because of weathering. The next winter it was discovered that flaking was happening on the other side and that it was not due to weathering.

Senator Hess questioned Mr. McFeeters about the problem with the walkway. He asked Mr. McFeeters if the statements made in Mr. Barclay's report about the drawings being unclear were true. Mr. McFeeters said that the drawings were unclear because there were two different elevations given. One elevation was geodesic and one was a Base 100. He said that caused confusion to arise over the proposed elevation. He said that he disagreed with the paragraph as stated in Mr. Barclay's report. He said that WSU was aware of the confusion of elevations from the beginning. Senator Hess then asked him about leaks in the building and in particular, how the punch list items could be approved but the work never be done. He asked if it was the fault of the inspector. Mr. McFeeters said that the inspectors make the check-offs. He said that his office did extensive work on the east building and had eliminated most of the leaks. It was agreed that the physical plant staff would try to solve the west building leaks. Senator Hess asked if that meant the State Architect's Office agreed that leaks would be more of a problem. Mr. McFeeters said that some primary leaks were due to design. The physical plant, it was agreed, would take care of those leaks.

Senator Hess asked Mr. McFeeters why his office would sign a check list and state that the corrections had been made. Mr. McFeeters said he presumed that the inspector thought the work was done. He said it was very difficult unless the inspector was on the job the day they did the work to determine whether the work was done or not.

Senator Berman said that he felt the architects tend to regard construction of public buildings as artistry. He asked if the state had any system that looked at such plans for practicality and that established limits for esthetics. Mr. Krueger said that he thought his office did. He said that he had instituted procedures that emphasized safety and practicality. He said his position was the state did not want any designs of the type it had problems with in the past. Senator Berman asked Mr. Krueger if he had people on his staff who were well versed in building materials and construction techniques. Mr. Krueger said that regrettably he did not and he said that all they had to deal with was past experience. He said that his office needed some people with this type of experience and he said that he had tried to involve himself in the process as much as possible.

Senator Berman said that he realized that the Clinton Building was before Mr. Krueger came on board as Director of Architectural Services, but that he felt the building was a disaster and he would like to know what machinery Mr. Krueger had at this point to assure the Legislature that this type of thing would not happen again. Mr. Krueger said that he could not assure the Legislature 100 percent that there would not be any problems with buildings but that he was doing everything he could. He said he was still looking for construction-oriented architects for his office.

Senator Berman asked what was happening with the inspection system now to ensure that problem buildings will not happen again. Mr. Krueger said that his office now has closer liaison between field people and is now getting better feedback than the office had received in the past.

Senator Berman commented that many of the buildings came in late. He wanted to know what the State Architect's Office was doing to prevent that problem. Mr. Krueger said that last week he put one contractor into the penalty stage. He said some of the problem was having three separate contractors -- mechanical, electrical, and construction. He said a system of one general contractor is better but it would not solve the problem entirely either. Senator Berman asked if it was not the associate architect's responsibility to make sure that the job was done on time. Mr. Krueger said that recently the associate architects have been given more responsibility but that ultimately the responsibility is still shared by the associate architect and the State Architect's Office.

Representative Weaver said that the responsibility is so diversified that it was almost impossible to point to who is supposed to be responsible for late buildings. Mr. Krueger said that the general contractor lists calendar days for completion of contract and mechanical and electrical engineers usually agree and they start from there. He said that extensions may be given for circumstances beyond the contractors' control. For example, he noted strikes or the unavailability of material as was the case in the Supreme Court building. He said the extension decision rests with the State Architect's Office. Chairman Weaver asked if state agencies

were allowed to move into a building before it was completed if that would be comparable to signing off on the building. He said he thought this would be a bad policy to follow. Mr. Krueger pointed out that the contracts contain a clause relating to liquidated damages due to time over-runs. Chairman Weaver asked who estimated the amount of liquidated damages. Mr. Krueger said that the cost over-run estimates are included in the general provision portion of the specifications.

Representative Heinemann referred back to the discussion earlier on the elevated walkway at WSU. He asked if the road was too high or the building was too low. Mr. McFeeters said that the elevation given on the sidewalk was wrong and that the problem is that the sidewalk is too high. Mr. McFeeters said that if the road had been constructed at the same time as the building the problem would not have occurred.

In response to a question from Senator Hess, Dr. Clark Ahlberg, President of WSU, said that the road problem was discussed several times. He said that the original clearance was to have been 13 feet, 9 inches, but he was informed that this would cause too sharp a grade on the road. The State Architect and contractor agreed that 11 feet, 9 inches would be possible. He said his office knew the type of vehicles that would be able to clear the 11 feet, 9 inches would not include large trucks. He also said that the tree trimmer truck that ran into the crosswalk was clearly at fault. He said that he looked when the road was about half laid and informed the State Architect then that it was not 11 feet, 9 inches.

Senator Hess asked why Robert Cortelyou, who was inspector of two of the four buildings in question at Wichita State University, was no longer with the State Architect's Office. He asked what Mr. Cortelyou's qualifications were and why Mr. Cortelyou left. Mr. McFeeters said that Mr. Cortelyou was on staff when he started. He said that he did not know his background and did not know what Mr. Cortelyou was doing at present. Senator Hess asked what the hiring process for inspectors was. Mr. Krueger said that his office advertised in the media and tried to get the best that it could, but he said that someone with a lot of experience would not apply for the job because the pay was too low, approximately \$1,100 per month. He stated that the state was forced to taken the best of the bottom of the barrel. He qualified that by adding that the state currently has some very good inspectors.

Senator Hess asked why Mr. Cortelyou was let go from his assignment on the Clinton Building and then put on another building at WSU three to four years later. Mr. McFeeters said that the Clinton Building contractor would not pay attention to Mr. Cortelyou. Senator Hess asked if that meant that the inspector was not at fault. Mr. McFeeters said no, that it did not but that some of it was out of the inspectors' hands because the contractors were very tough people to deal with. Senator Hess asked if the State Architect's Office had ever fired anyone and how it knew if a good job was being done. Mr. McFeeters said that his office had fired people and that he got out into the field as much as possible. He said another check was provided by the mechanical engineers in his office. Senator Hess asked if it let Mr. Cortelyou go prior to his finishing the McKnight Building. Mr. McFeeters said that it did and that his work quality was affected by his personal problem.

Senator Berman said that the deviation of one foot, two inches is a substantive one from the original specification. He said it appeared that the State Architect's inspector was allowed to grant the subcontractor a modification verbally without clearing with the Topeka office. He wanted to know if that process was still allowed. Mr. Krueger said that it was not anymore. He said substantial deviations were not allowed to be approved by the inspectors. Senator Berman asked who determined what is a substantial deviation, Mr. Krueger said that Mr. McFeeters and the inspectors determine what the substantial deviations are. Senator Berman asked if the same type of problem could happen again and if the State Architect's Office had specific instructions that clearly spelled out the limits of authority. Mr. Krueger said that his office did have such instructions.

Senator Berman asked Mr. Krueger if he had identified or suspected any situation where financial arrangements between the contractor and the state inspector existed. Mr. Krueger said that he had not found such situations but that if he did suspect such arrangements, he would investigate it.

Representative Garrett noted that two to three people were quasi-responsible on each particular job and that the Attorney General is not getting good information when a problem occurred. He asked if it would be better to make the associate architect entirely responsible via contracts and to make the State Architect's responsibility just advisory. Mr. Krueger said that would work but only if the associate architect was held responsible for mistakes clearly caused by him. Otherwise, the associate architect would horse trade too much with the contractors.

Representative Garrett asked Mr. Krueger if his office took responsibility for all of the problems with building construction at this time. He asked if so, why should the state pay a percentage to the associate architect for construction supervision. Mr. Krueger said that currently approximately one-half of the allowable construction fee percentage was being paid. He said that his office was responsible by law for most decisions and that he did not think it was a good idea to give the associate architect more responsibility. He said he would not like to rely too much on the associate architect's judgments.

Chairman Weaver asked if most of the jobs were done on schedule and if not, were penalties imposed and if Mr. Krueger agreed with such penalties. Mr. Krueger said that most of the buildings were completed on schedule and that very few penalties had been imposed, but that he thought the "screws should be tightened." Chairman Weaver asked if the state should test materials used in buildings. Mr. Krueger said that could be done and the state could review the contractors' track record. To his knowledge he thought this was the first mortar problem the state had had. He said the state routinely takes concrete tests but not mortar tests.

Chairman Weaver then asked how many federal dollars were involved in the Clinton Building and what federal requirements were placed on the construction of that building. Dr. Ahlberg said that the federal grant involved very different inspection techniques. He said that it did cause a delay in the McKnight Building. Chairman Weaver asked if there were portions of the federal requirements that the state should adopt. Mr. Krueger said that most of the requirements relate to anti-discrimination, minimum wage and those types of things. He said he did not know how in depth the federal government reviewed the plans, but that he knew there were considerable time delays.

Chairman Weaver said that according to Mr. McFeeters' earlier statement the problem with the mortar was determined in the beginning to be a normal deterioration. He said that to him that said that Mr. McFeeters did not approve of that type of construction because it could have weathering problems. Chairman Weaver asked Mr. McFeeters if he was essentially saying that the problem with the mortar was partially a design problem. Mr. McFeeters said that was true.

Mr. Warren Corman from the Board of Regents Office said that in 1972 the legislative interim committee changed the law to allow different things to be done in the construction process. He noted that he would not have designed a brick wall in that manner. He said clearly the mortar was bad. He said that if he sees something that he does not agree with now he can get some attention. He said this was due to the power of the negotiating committee and that the committee has made the associate architect redesign in some cases.

Chairman Weaver said that he was concerned about whether the state now had adequate safeguards for the future. Mr. Krueger said that with the volume of work his office has, new situations are constantly surfacing. He said his personal feeling was that if his office were adequately staffed with key people then the proper safeguards would be available. Chairman Weaver asked whether the problem was solely salary and noted that he did not remember any specific budget requests for salaries. Mr. Krueger said that while the inspector salaries were a problem, the principal concern was obtaining qualified and experienced architectural engineers. He stated that he hoped the current personnel study would provide relief. He added that he would like to see the classification of Architects I, II, and III be expanded to include Architects IV and V.

Senator Berman asked who was empowered to authorize change orders and what the latest construction estimate for the new Supreme Court building was. Mr. Krueger said that his office was authorized to approve change orders but that he did not know what the current estimate was for the new Supreme Court building. He

said that the second appropriation of the Supreme Court building did not relate to change orders, but was rather a desire of the Chief Justice to improve the quality of the building.

Senator Berman stated that he wanted to know why the Supreme Court building is going to cost \$4,000,000 more than the original estimate. Mr. Krueger said that the increase was caused in part by providing space for the Court of Appeals and incorporating an alternate for granite paving. He said that the Supreme Court went to the Legislature and requested the additional funds and the request was granted. He said that although his office was aware of the Supreme Court's request to the Legislature for additional appropriations that his office did not get involved with such requests or give opinions as to whether such work was necessary. Senator Berman asked Mr. Krueger if he felt that it was his responsibility and obligation to inform the Legislature as to his opinion of whether or not the appropriation for such changes were necessary. Mr. Krueger said that it generally was not his office's function to do so. He said the Supreme Court was an unusual project and that he would not want to explain or justify the track record for financing of that project.

Chairman Weaver questioned Mr. Corman about the Emporia building. He noted that the bids had come in almost \$1,000,000 under the amount appropriated. He asked if the state were going to live within that amount or if the \$1,000,000 was to be eaten up with many change orders. Mr. Corman said that his office would live within the bid. He said that there would be some change orders but not many. He said that the building plans are austere but adequate.

Senator Hess asked Mr. Brandhorst and Mr. Corman if they thought there were proper safeguards in the present building construction process. Mr. Corman said that the present controls vested with the negotiating committee were a great improvement over the old process but that more needed to be appropriated to the State Architect's Office to bolster the salary of inspectors. He said that in his private business inspectors were more important than pretty drawings. He noted that the state had not really had an opportunity as yet to see whether the associate architect's involvement in the inspection process was working but that he felt that so far it has been a help.

Senator Hess asked if the user agency should have more or less say in the construction process. Mr. Brandhorst said that he thought the user agency was almost entirely left out of the process at the present. He added that his office did not have time to adequately review plans and he said that his only real involvement with the plan was change orders. He noted that shop drawings are not available to the user agency and that the user agency has no option to reject such drawings. Senator Hess said that Mr. Brandhorst seemed to be a little tougher than other user agencies and wanted to know why. Mr. Brandhorst said he thought the state should get what it was promised and that he would not hesitate to say no. Senator Hess commented that Mr. Brandhorst and officials from the State Architect's Office had had some disputes in the past and wanted to know why the State Architect was willing to sign off when Mr. Brandhorst was not. Mr. Brandhorst said they were trying to get the work done and that they were negotiating because litigation can cause long legal delays. He said that he took a harder line and he thought that the State Architect's Office should too. Senator Hess asked Mr. Brandhorst if he had any other recommendations. Mr. Brandhorst said that the user agency should have more input into the inspection of the construction process.

Senator Berman asked Mr. Brandhorst if he liked the turn-key approach or if he liked the present system. Mr. Brandhorst said that the low bid system saves the state money but that he felt there was a better quality with the turn-key system. Senator Berman noted that the role of State Architect would be greatly diminished with the turn-key system. He said under a turn-key system if Wichita State University got a poor contractor, it would be their responsibility. Mr. Brandhorst stated that he would accept the responsibility that rested with his institutions. Mr. Corman said that he had mixed emotions and that it was his experience that there will be a better building of one gets a good set of plans from architects and contractors. Senator Berman asked if the Regents would accept the responsibility instead of the State Architect, if they could do it any way they wished and not necessarily be tied to a turn-key approach. Mr. Corman said that the Regents would accept such responsibility but that the problem was not a lack of ability but a lack of responsibility and authority combined. Senator Berman asked if there were

any management, technical, or budgetary reasons to perpetuate the State Board of Regents continuing in the current system. Mr. Corman said that he thought the law giving the State Architect authority was a good one. He said he was not sure changing it would accomplish anything. He said it could perhaps cause more problems and that it might be more expensive. Senator Berman stated that he was concerned about the general unhappiness on the part of the Regents and the Legislature with problem buildings and he was looking for a way of solving this. Mr. Corman indicated that he was really not prepared at this time to give an answer as to whether the Board of Regents would want such a system.

Chairman Weaver said that Mr. Bibb had talked to the Committee about the continuity problem within the negotiating committee. He wanted to know how Mr. Krueger and how officials from WSU felt about the process and if they recommended any changes. Mr. Krueger said that he did not think there was a problem with continuity on the negotiating committee and that he did not think there needed to be any changes in the present structure. Dr. Ahlberg added that he was more pleased with the new system than the old. He noted in their case the Board of Regents provides additional continuity. He added that he thought the Board of Regents was large enough that it could handle, under supervision of the State Architect and associate architect, the responsibility of inspection and that it could save WSU a lot of problems.

Chairman Weaver asked several questions about the present process for initiating action when problems are discovered. Mr. Krueger responded that he thought the present process of dealing directly with the Department of Administration's Chief Attorney first was adequate. He said that obviously sometimes he would not agree with the way that the office handles things, but that adequate safeguards were there.

Proposal No. 80 - KBI Facilities Study

Chairman Weaver thanked Mr. Krueger and officials from WSU for appearing before the Committee. The Committee then took up Proposal No. 80 - KBI Facilities Study. Chairman Weaver informed the Committee that he checked the cost of building a building similar to the KBI facilities and that the cost was estimated at \$18 per square foot. He said that the contractor that he contracted said that if the State Architect would be involved, it would cost more. Chairman Weaver asked the Committee for staff direction for further development of Proposal No. 80.

Senator Berman stated that the Committee should determine whether it wanted to further consider purchase of the building. Senator Hess said that he was willing to vote against buying the building but felt the Committee ought to explore alternatives.

Senator Berman said that he would suggest that the Committee give serious consideration to: (1) Exploring moving the KBI into other state-owned space, in particular the State Defense Building; (2) building another building; or (3) continuing to rent the present space.

Representative Heinemann said that the purchase of the building was to him more desirable than continuation of the present policy of leasing the building. He said that he would prefer not to vote on whether or not the state should purchase the building at this time but to leave that as a possible alternative also.

Chairman Weaver instructed the staff to develop data on the present utilization of the State Defense Building, to investigate the possibility of locating the State Highway Patrol and the KBI in one facility and to determine what other options were available within existing space.

The Committee adjourned at 4:55 p.m.

July 27, 1977

Morning Session

Chairman Weaver reconvened the Committee at 9:00 a.m. General committee discussion was held on the minutes from the June meetings followed by approval of these minutes.

Mr. Dale Dennis, Assistant Commissioner, Division of Financial Services of the State Department of Education, presented material from a memo concerning the financing and budget review process of area vocational schools. The memo discussed and described special efforts undertaken by the State Department of Education in reviewing the budgets of area vocational schools, the budgetary constraints caused by closing of manpower centers, and the approval process for operating budgets by the State Board of Education.

In response to a question by Senator Hess, Mr. Dennis related that requested funding by the area vocational schools was reduced on the average of seven percent by the State Board of Education and that the requested expenditure levels were generally reasonable. He also indicated that a vigorous review was made of each request.

Following discussion of the presentation by Mr. Dennis, the Research staff presented material concerning postsecondary vocational aid. Noted was the possible need for a \$600,000 supplemental appropriation in FY 1978 to provide funds originally budgeted from federal CETA support in the current year. Staff also explained that the two major funding sources for the programs are through categorical and postsecondary aid and that vocational programs receive funding from both sources. When one source is increased or decreased, balancing adjustments are made in the other source. Generally postsecondary state aid provides 90 percent of student costs with 10 percent being paid either by the student, a local support program, or by federal funds. The CETA program pays the ten percent for students that meet CETA requirements. The need for a supplemental arises from an Attorney General decision on S.B. 318 which exempted the 90 percent state aid for CETA students and required CETA to pay 100 percent.

In response to questions from Senator Hess the staff explained that student costs were generally \$.15 per hour of class attendance. Also when postsecondary receipt estimates are inflated, shortfall amounts may be made up from other sources.

General discussion followed on when the Legislature became aware of the uncertainty of CETA funding for FY 1978. Senator Berman noted that he was not aware of any discussion of this point before the Ways and Means Committee. Staff noted that the information had been before Ways and Means subcommittees in both houses. It was known that the Human Resources Department was to provide an assessment of the situation, but no known assessment was made during the Session. Senator Berman suggested that such information should be available to each body in the appropriation process.

Mr. Dennis was questioned as to when action was taken on the situation by the State Department of Education. Mr. Dennis stated official notice that federal CETA funds would not be forthcoming arrived during June, 1977, and by that time students were already enrolled in classes. The opinion by the Attorney General states that when federal funds are not available, students qualified under CETA programs are eligible to receive postsecondary aid. Under this ruling, classes may be continued in the current year through supplemental appropriations or through the proration of costs. It was suggested that a proration of costs would result in some cutting of expenses and services.

Senator Berman raised a concern as to the level of confidence the Governor had that CETA funds would be forthcoming when his budget recommendation was submitted. Senator Hess commented that the security of funding should be an issue in Ways and Means Committee meetings of both houses to try and avoid the current situation which no alternative to a supplemental appears to be available.

Chairman Weaver requested that the Committee should review alternative means to fund the vocational classes due to the lack of CETA funds and to evaluate alternative ways to fund future programs. Mr. Dennis said that CETA pays 100 percent of student costs (ten percent of the total cost) and that the local CETA sponsors attempt to place as many students in programs as possible. As the number of students enrolled increases, the amount of state aid is also increased. Currently, CETA students amount to about ten percent of the student population.

Senator Hess asked if the current rate of 10 percent of cost was inappropriate and what would happen if the amount was raised to 15 percent or 20 percent. Mr. Dennis replied that the only students to be hurt financially would be those with low incomes but not qualified for CETA funds. Representative Garrett requested that the staff provide an explanation of the CETA programs.

Discussion continued on means to reduce the current need for a \$600,000 supplemental and to avoid future repetition of the problem. Staff noted that the programs have traditionally been fully funded and that students were currently enrolled in classes for which funding is in question.

An alternative suggestion by Representative Heinemann was offered to initiate a program that would require students to pay full cost of classes and to then offer a scholarship program for qualified students. The financial scholarship would exclude funding for students qualified for non-state support programs such as CETA.

Another alternative discussed was for a shifting of categorical aid to the postsecondary program. Concern was expressed for the curtailment of services that could result in schools which currently receive funding primarily through categorical aid. However, staff stated that the rationale for continuing both the categorical and postsecondary aid programs could be reviewed.

Staff presented an explanation of Table I of the July 28, 1977, memo on the postsecondary state aid program. The table showed estimated postsecondary aid entitlements of area vocational schools for FY 1976-1977.

Questions were asked concerning the variation in cost levels. Staff explained that costs varied from such things as the discontinuation of non-producing programs, the establishment of new programs, and the difference in equipment cost for heavy machinery.

Mr. Dennis presented a summary of the State Board of Education's allocation of capital improvement funds as prescribed by S.B. 127. In answer to questions from Senator Berman concerning capital outlay expenses for vocational schools, Mr. Dennis said that schools are restricted from spending money on unauthorized projects and that funds not spent are carried over to the next fiscal year for the original projects authorized. Carried over projects are reviewed by the Board.

The Committee recessed at 12:15 p.m. for lunch.

The Committee reconvened at 1:30 p.m. for purposes of conducting the public hearing on Proposal No. 79 - Forestry, Fish and Game Farming Contracts.

Staff presented a report summarizing the 1976 interim committee findings relative to the Forestry, Fish and Game land leasing practices. The Chairman recognized Mr. Jerry M. Conley, Director of the Kansas Forestry, Fish and Game Commission and invited him to make any comments he wished to share with the Committee.

Mr. Conley stated that he had only recently assumed his present position and was very pleased to be in Kansas. He introduced a couple of his staff members whom he had accompanying him, Mr. Darrell Montei and Mr. Don Dick. Mr. Dick made a brief presentation summarizing the land acreages held by the Commission. He stated that the lands which the Commission had leased from both the Bureau of Reclamation and the Corps of Engineers are dedicated to wildlife development. He stressed this dedication to wildlife development as the reason that the Fish and Game Commission had entered into leases for such lands. Mr. Dick noted that there are presently 370 farming contracts

presently in existence. Mr. Dick stressed that the Commission and federally licensed lands are managed as wildlife lands and in the event that agricultural and wildlife needs are not in conformance, the policy of the Commission is that the priority must be given to the needs for wildlife habitat.

Senator Gaines inquired as to who makes the determination for lands under lease as to when to fertilize and who bears the cost for such fertilizing. Mr. Dick indicated that the costs of fertilizer are taken into account when share rates are determined for individual contracts. The permittee is allowed to determine when to fertilize. Mr. Dick also noted that noxious weed control is also a decision left to the permittee except for lands which are not directly leased to the permittee such as ditches, etc.

Senator Gaines then inquired as to whether the Commission had any agreements with counties or townships for road maintenance. Mr. Dick responded that the Commission maintains all internal and access roads, although sometimes it may be necessary to contract with farmers for certain road maintenance. He noted that Russell County maintains all internal roads for the Commission without cost.

Senator Berman inquired as to what discretion was given to the permittee in the selection of crops. Mr. Dick stated that normally crop selection is worked out through mutual agreement on a yearly basis. Chairman Weaver inquired as to whether switching of crops causes problems with permittees. Mr. Dick responded by saying that crops required by the Commission for habitat development are crops which are typically planted in the area and thus generally do not cause a problem. Mr. Dick indicated, however, that some give and take is required inasmuch as the Commission's principal interest is wildlife development while the farmers' principal interest is purely economics.

Senator Gaines inquired as to whether the Commission had promulgated written guidelines which permittees could have access to. Mr. Dick indicated that normally guidelines were transmitted by the game managers in the individual areas on a word-of-mouth basis. In response to Mr. Dick's comments, Senator Gaines asked as to whether there would be any value in preparation of written guidelines. Mr. Dick responded that there possibly would be.

Senator Gaines then inquired as to how the Commission obtained new permittees. Mr. Dick indicated that this process is usually continued through the existing family. If no one in the family is interested in continuing the lease, then the Commission looks to adjoining landowners. He did indicate that oftentimes priority will be given to existing permit holders who have remained with the Commission and have previously had rather poor land to farm when better agricultural land becomes available. Senator Gaines inquired if any public notice was given to which Mr. Dick indicated there was not.

Senator Hess inquired who generally makes the decision to whom is given the lease. Mr. Dick responded that the decision was normally made by the area manager.

Senator Berman inquired as to whether the present practice of strip farming was a federal policy. Mr. Dick responded by saying that on state-owned lands it was strictly Forestry, Fish and Game policy. On Corps' lands, he indicated that the Commission wanted to do whatever was best for wildlife. He indicated also that the Commission had in some instances permitted the farmer to leave blocks of grain in the field. Senator Gaines inquired as to whether the Commission could prove that such farming practices enhanced wildlife development. Mr. Dick responded by saying that if the Commission had the money and staff that it could certainly be proved. He

referenced a quail propagation study performed by Dr. Robel at Fort Riley. He went on to say that a lot of professional judgment involved in such a determination is necessary in the absence of concentrated research. He cited the improved hunting conditions prevalent on public lands as contrasted to surrounding privately-owned lands as evidence that wildlife propagation is enhanced.

Chairman Weaver then invited any permit holders in the audience to provide any comments to the Committee. Mr. Virgil McComand identified himself as a farmer in the Fall River area. He indicated he has been with the Forestry, Fish and Game Commission for a number of years and expressed the opinion that since the Commission has taken over the land that the game population in that area had dropped 66 percent. He stated that by removing cattle from the area, which draws the quail population, that the quail population is reduced. He also stated that he did not feel that ducks would land on strip-farm plots. As a permit holder he felt he would be agreeable to conditions placed on him by the Commission if he thought that these farming practices resulted in better wildlife development.

Mr. Ray Ast indicated that he had contracted for some land in the Cheney Reservoir area located close to both Wichita and Hutchinson. He spoke of the problems resulting from the large number of persons hunting in the area and the fact that he cannot leave equipment in the field because of vandalism. Mr. Ast noted he had farmed land for approximately ten years in the area before the reservoir and no noxious weed problem existed at that time. He did not cite the existing problem as being the responsibility of the Fish and Game Commission but felt that it was brought into the area by the birds. He did not feel that the permit holders should have to spray the noxious weeds at their own cost. He also made reference to the fact that the farmer is unable to cut the grass for hay but that by the same token, in the spring it generally is burned off. He cited increasing costs of fertilizer as another factor which makes the current sharecropping arrangement on marginal land uneconomical. He also cited the crop rotation policies of the Commission as another factor which has reduced farmer income. He noted that on other lands he rents from private landowners, he made the decisions as to what the farming policies should be and felt there would be some value in allowing him to make similar judgments on state-owned lands. He also cited the crop rotation practices of the Commission as a factor enhancing weed problems.

Mr. Johnny Russell of Eureka then spoke briefly to the Committee. His principal concern was the burden on the township for road maintenance in the area. He noted that three-fourths of his township was taken over when the reservoir was constructed, leaving only one-fourth of the township to pay for the road upkeep. He cited the practice of the Corps of Engineers of making payments to the township for road maintenance.

Senator Gaines inquired if farmers were generally opposed to strip farming. Mr. McComand responded by saying that he felt it left too much grain in the field. He thought five to eight bushels per acre would pass through the combine anyway and that the strip farming resulted in too much seed being left in the field.

Mr. Bill Simmons identified himself as a permit holder in the Elk City reservoir area. He noted that the Commission has not always held him to a strict strip-farming arrangement and that in some cases it had adjusted to accommodate his needs and for that, he was appreciative. He shared with the Committee some costs that he had calculated which indicated that the permit holder spends approximately \$25 per acre on fertilizer. He noted that the Commission's original plan was that by not having to fertilize all crops or not having to harvest all grain, fertilizer costs would be offset. He felt with the increasing cost of fertilizer that the sharecropping arrangement should be examined. His principal concern appeared to be only current sharecropping arrangements. He felt different sharing arrangements should be developed for different crops.

Mr. McComand added that it would be helpful if the local managers were given greater flexibility. He cited the need to have some degree of give and take. Mr. Conley then noted a suggestion the Commission had received which it was reluctant to implement was to put up land for bid on a sharecrop basis. He cited the problem of persons who farm the land for a length of time possibly being out-bid and that this was not in the best interests of meeting the public need. However, he implied that is sufficient dissatisfaction existed, in some instances such a practice may be necessary.

Senator Berman inquired how much cash income the Commission received for crops. Mr. Dick responded that he was uncertain.

Chairman Weaver inquired of the Director as to whether the Commission expected more hunting pressures on public lands to present more problems. Mr. Conley responded by saying that as more land formerly used to produce wildlife is broken into crop lands that greater pressure will occur on public lands. This heavier pressure will obviously result in more problems.

Mr. Conley went on to say that the SASNAK program of putting a biologist on every reservoir was a mistake and that the SASNAK program should have been a more balanced program. The comprehensive plan currently being conducted by the Commission should have preceded implementation of SASNAK.

Senator Berman cited House Concurrent Resolution No. 5001 which passed the 1977 Legislature and required the Corps of Engineers to prepare guidelines on land use policies. Mr. Jack Shields of the Corps of Engineers Tulsa district office responded to the inquiry. He noted that the Corps had a recent meeting with the Fish and Game Commission which was also attended by Representative Arbuthnot. He stated that the Corps attempted to find out the basis of the complaint and that it appeared to the Corps that landowners did not know what was happening when the Corps acquired the land. He went on to say that at the time land was acquired final game management plans were not finalized, as the land was originally acquired only for the purpose of construction of the project. In future new projects, the Corps will show to the public the lands it feels will be turned over to the Forestry, Fish and Game Commission eventually and the policies that will govern the use of those lands. Representative Weaver inquired how much land the Corps had turned over to the Fish and Game Commission. Mr. Dick responded that the Commission had acquired through lease arrangement with the Corps something in excess of 90,000 acres.

Chairman Weaver inquired then as to why the Corps was concerned with game management and wildlife development on the lands since the Corps did not purchase the lands for such purposes. Mr. Shields responded by saying that the Corps was charged to manage the land to protect natural resources, including wildlife.

Representative Weaver inquired as to the incentives to the state to license lands from the Corps of Engineers. Mr. Shields cited one incentive was that the state was better able to manage the lands for wildlife development. Senator Berman inquired what would happen if the State of Kansas no longer wanted to license the lands. Mr. Shields responded by saying that the Corps would probably attempt to manage the lands in the same manner as the Fish and Game Commission had. Chairman Weaver inquired of Mr. Shields whether the Corps had received any complaints on lands that it had under lease. Mr. Shields responded by saying that very definitely the Corps did.

Senator Hess inquired of Mr. Conley, Director of the Fish and Game Commission, as to whether he would oppose returning of the lands to the Corps. Mr. Conley replied that he would be opposed to such a policy. He went on to say that the purpose of the Commission is to produce wildlife and that he feels his agency is better able to do that than is the Corps of Engineers. Secondly, he cited the fact that he felt the Commission had greater flexibility in working with the farmers than did the Corps.

Chairman Weaver requested Mr. Conley to furnish materials on the public meetings that are being conducted by the Commission in conjunction with its master planning effort which the Committee could consider in making recommendations to the full Legislature. Representative Ivy suggested the Commission furnish written instructions and explanations to permit holders.

Prepared by Marlin Rein, Julie Mundy,
and John Rowe

Approved by the Committee on:


(Date)

ATTACHMENT I

OTHERS IN ATTENDANCE

Name	Representing
Howard De Shazo	Royal Equipment Company - Kansas City, Missouri
Donald R. Hoffman	Attorney General's Office - Topeka, Kansas
Louis J. Krueger	State Architect
Al Polczynski	<u>Wichita Eagle-Beacon</u>
Clark D. Ahlberg	Wichita State University
Roger D. Lowe	Wichita State University
Warren Corman	Board of Regents Office
Robert West	National Electrical Contractors Association
Charles D. Carey, Jr.	Mechanical Contractors Association of Kansas
Craig Swann	Senator Gaar's Staff
Robert McFeeters	Division of Architectural Services
Armin L. Brandhorst	Wichita State University
George M. Platt	Wichita State University
John Breazeale	Wichita State University
George Dickerson	National Electrical Contractors Association
Dale Dennis	State Department of Education

Public Hearing

Jerry Conley	Kansas Forestry, Fish and Game Commission
Don Dick	Kansas Forestry, Fish and Game Commission
Darrell Montei	Kansas Forestry, Fish and Game Commission
William J. Simmons	Farmer - Permit Holder
A.B. McMillan	Farmer - Permit Holder
John Walter Russell	Farmer - Renter
Dale Mast	Farmer - Renter
Lyman Newton	Farmer - Renter
John Stroble	Farmer - Renter
Jack E. Shields	Corps of Engineers - Eureka District
B.E. Upschulte	Corps of Engineers - Kansas City District
Virgil McComand	Farmer - Renter
Ray L. Ast	Farmer - Haven, Kansas