

M I N U T E S

SPECIAL COMMITTEE ON WAYS AND MEANS - B

September 26-27, 1977September 26Morning Session

Chairman Fred Weaver convened the meeting of the Special Committee on Ways and Means - B at 9:00 a.m. The Chairman announced that the Committee would undertake consideration of Proposal No. 77 - Building Construction. In addition to Chairman Weaver, the following members were present: Senator Paul Hess, Senator Arnold Berman, Senator Norman Gaar, Senator Frank Gaines, 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, Julie Mundy, Louis Chabira, Robert Haley, John Rowe, Jim Wilson, and David Barclay. Others who were in attendance are listed in Attachment I at the end of these minutes.

Senator Frank Gaines moved that the minutes for the July meeting and the August 29 meeting be approved. The motion was seconded by Representative Ivy and approved by the full Committee.

Proposal No. 77 - Building Construction

Chairman Weaver turned to discussion of Proposal No. 77 by making a statement regarding the resignation of Louis Krueger as the State Architect. He said that the purpose of the Ways and Means Committee was not to "extract a pound of flesh" from the State Architect but to conduct a serious investigation of problems in the building construction process. He said that there were more problems the Committee needed to get to the bottom of. Mr. Weaver noted that before the Committee completed its investigation it may find that Mr. Krueger's worst mistake was being a poor administrator. He concluded by saying that Mr. Krueger was an honest and decent man.

Chairman Weaver then introduced Warren Corman of the Board of Regents who briefed the Committee of the situation at the University of Kansas Medical Center.

Mr. Corman's comments dealt with both the Basic Science Building and the Clinical Facility. He said the only things that the two had in common were that they were both built on the same campus, funded under the same statute, and designed under the supervision of the same architect.

Mr. Corman said that there were two problems with the Basic Science facility from the beginning. He said that the architect was under pressure to get the preliminary plans done within a nine-month period or federal funds for the project would be lost. The second problem was the associate architect firm hired (Sidorowicz, Miller, and Brown). He said the firm was newly associated and that it was very difficult for them to assemble and work within the tight timeframe that was required because of the federal funding deadline. As a result, the project went out for bid too fast.

Mr. Corman stated the first thing that he remembered in connection with the problem with the Basic Science Facility was noticing a lack of activity on the job. He said that when the forms were up for the main floor over the auditorium, they could not get the support beams (rebars) to fit. This was caused by design problems. He said that the process of replacing the rebars drug out over an extended period of time and the system had to be redesigned.

Senator Gaines asked who was responsible for the problem with the rebars. Mr. Corman said that he viewed it as being the associate architect's responsibility. Before that problem was settled, the contractor continued working on other portions of the building because of the pressure of the federal funds and the urgency of the project.

Senator Berman asked in terms of total dollars how much federal money was involved. Mr. Corman replied that \$1.2 million in state money was involved and \$4.8 million in federal money was involved. Senator Berman asked if the state actually knew the federal government would have cut the funds if construction was not complete or whether it was just an idle threat. Mr. Corman said that there were documented letters and that the threat was not an idle one. Senator Gaar asked what documentation existed. Mr. Russell Miller of the University of Kansas Medical Center said that the Medical Center had on file letters from HEW regarding the funding situation. He said that according to those letters the stipulation of the grant was that the building must be under construction within one year. He said that it was probable that the state could have lost the funds because there were hundreds of applications for such grants.

Senator Gaar asked who made the decision at the state level to continue with the construction project after problems were discovered and why the job was not shut down right away when the problems occurred. Mr. Miller said he did not know who was responsible for that decision. Mr. Corman said that he did not know either but that he thought that the ultimate responsibility would have been with the State Architect. Senator Gaar asked if anyone had informed the State Architect of the problems at that time. Mr. Miller said that at the beginning the responsibility for the conflicts was hard to determine. He said there was no clear authority as to who could shut down the job.

Senator Gaar noted that because of the faulty beam design, mechanical and engineering problems were caused later on. He said that at the point the rebar problem was discovered, it should have occurred to the people on the job that they were going to have problems with mechanical and electrical engineering. Mr. Corman said that this was correct and it was easy to say in looking back on the situation now. He said he thought it was a difficult decision for one man to make.

Chairman Weaver asked who was involved when the push to keep going because of the loss of federal funds occurred. Mr. Corman said that an inspector, Russell Sprague from the State Architect's Office, was involved. Staff pointed out that in addition to the potential problem of a loss of federal funds the University of Kansas was also under pressure to get the facility built because the Legislature had expanded classes from 125 to 200. Mr. Corman said that in retrospect if they had known about the problem in the design, they would not have let the bids. He said there was no connection between the rebars and the duct system problems except for who is going to ultimately pay for the problems that were corrected.

Senator Gaar asked if the final plans were received from the State Architect's Office and if the plans that went out for bid were in final form. Mr. Corman said that this was obviously the way that it should be; however, it did not happen that way in the case of the Basic Science Facility. He again stated that one of the main problems was that the firms had just associated with one another and did not have a prior history of working together on any jobs. He said that the plans were not checked closely enough.

Senator Gaar asked where in private practice the responsibility for plans resides. Mr. Corman said that it was with the architect who was agent for the owner.

Representative Garrett asked if the ultimate responsibility with the problems of the Basic Science Facility was with the associate architect. Mr. Corman said he thought this was true, if the conflicts were because of the drawings. Representative Garrett asked if the associate architect firm had ever admitted they were the cause of the problem. Mr. Corman said they had nothing in writing to that effect.

Chairman Weaver asked Carl Ossman, the Acting State Architect, Bernard Wanner, the Associate State Architect, and Mr. McFeeters, the Chief of Construction in the State Architect's Office, to comment about the rebar problem. Mr. McFeeters explained that Louis Krueger was the State Architect at the time the rebar problem was discovered and that Krueger asked for a liaison. At that point Mr. Wanner was selected to do liaison work. He said the incident came to the State Architect's attention through the inspector they had on the job. He said it was immediately referred to the construction engineer for revision. He said that they had the contract with another firm and that caused the delay. Senator Gaar asked who hired the construction engineer. Mr. McFeeters said that it was the associate architect's responsibility for hiring the construction engineer but that at the time the associate architect was already working on the drawings for the clinical building.

Senator Berman asked Mr. Corman if the Regents' institutions ever review the final plans. Mr. Corman said that his office had the right to review and that he personally looks at the drawings, primarily to see how they fit program needs. Occasionally, when reviewing such drawings, he will see something that will not work and will point that out but that very rarely does he do a detailed review of the plan. He said that such a review would take three to four weeks and that it was his understanding that his position was not to be that of State Architect.

Senator Berman asked Mr. Corman if the Regents had any choice in the selection of the associate architect for the clinical facility. Mr. Corman said they did not, that for both facilities the preliminary drawings were let without approval from the Board of Regents. Senator Berman asked if the Regents had total responsibility for construction at the time, if they would have handled the situation in the same way. Mr. Corman said that he did not think that they would but that he would certainly hate to speculate.

Senator Hess asked if anyone in the State Architect's Office had scrutinized the final plans. Mr. Wanner from the State Architect's Office said that it was very doubtful that anybody from that office scrutinized the plans due to the heavy workload at the time and the pressure to go ahead with the project because of the possible loss of federal funds. Senator Hess asked if that were a normal process. Mr. Wanner said it was not a usual occurrence but again it was because of the timeframe problem. Senator Hess asked who made the decision not to review the plan in detail. He asked if that was the decision of Mr. McClain who was the State Architect at the time. Mr. Wanner said that he did not know who made that decision. Mr. Corman commented that the Regents had qualms about the associate architect from the beginning since it was an unknown quantity but that they had no legal say as to the choice. He said that he did bring up the subject to Mr. McClain but he seemed to have great faith in their ability. Senator Hess asked if Mr. McClain was formerly associated with any of the personnel in the associate architect's firm. Mr. Corman said that Mr. McClain was.

Senator Gaines asked Mr. McFeeters to explain once again the problem with the rebars. Mr. McFeeters said that he first learned of the rebar problem by a telephone call from Mr. Sprague who was the inspector at the time. He said that he then contacted the architectural engineering firm and explained the problem. He said the architectural engineering firm had subcontracted with Inland Steel to design the system and that the firm had to get back to Inland Steel to overcome the problem. Mr. McFeeters said that he then asked them to redesign the system. He said the steel manufacturer agreed to revise the plans. Senator Gaines asked if the steel for the building was furnished by the firm who made the faulty design in the first place. Mr. McFeeters said that was true.

Chairman Weaver asked Mr. McFeeters about his educational background and his job classification. Mr. McFeeters said that he is classified as an Architect III. He said that he did not have a degree in architecture but he became an architect by passing a licensure exam. He said that he believed the program was still in operation whereby a person could be licensed without getting his degree in architecture.

Senator Gaines asked who finally approved the change order on the rebar problem. Mr. McFeeters said that he could not remember whether he or Bernie Wanner approved that change. Mr. Corman commented that in addition to the State Architect's approval of change orders, the Division of Purchasing and the institution also had to approve the change order. Senator Gaines asked Mr. McFeeters if the state ever disapproved change orders. Mr. McFeeters said that they did. Senator Gaines also asked if anyone from the State Architect's Office had ever told the associate architect that the firm had made numerous mistakes that had cost the state a great deal of money. Mr. McFeeters said that the associate architect had been informed of that situation.

Senator Berman asked how long it was after the error was found before the change order was approved. Mr. McFeeters said that he thought it was approximately 90 days. Senator Berman asked if there was the same urgency on the clinical building. Mr. Corman said that there was.

Senator Gaar inquired if the heating and air conditioning system was now working satisfactorily. Mr. Corman said that it was not. He said the issue was complex and that he was not involved firsthand. He said that it appeared to him that there was not enough room in the structural space above the ceiling for all of the duct work and piping. He said changes were made on the job to change ceiling heights so that the duct work would fit. Specifications issued to the contractor required the contractor to furnish shop drawings from the architect's drawings. He said the shop drawings were never completed satisfactorily. Senator Gaar asked if that meant the process of design was incomplete. Mr. Corman said this was correct.

Senator Gaar and Senator Berman asked several questions relating to the change order process involved in the Basic Science Facility. Mr. McFeeters said that there were so many change orders that some were approved in writing and some were not. He said that his office delegated the responsibility to the associate engineer on the project to make those changes. He said that costs incurred in this process became a problem, which is when the State Architect's Office lost control of the job. He said that although the on-site construction superintendent was involved to some extent, his recommendations were overridden by the instructions of the associate engineer. Senator Berman commented that, in effect, the State Architect's Office only found out about the change orders after the fact and asked if that procedure was normal. Mr. McFeeters said that the procedure was not normal and that it was a very unusual project. Senator Berman asked if panic precipitated that procedure and why the State Architect had delegated the responsibility to the associate engineer. Mr. McFeeters said that Mr. Krueger had made the decision and he had nothing to say about that. Mr. Corman commented that the State Architect, in making that decision, was trying to put the responsibility of the error back on the shoulders of the contractor without a great deal of cost to the state.

Senator Berman noted that the associate engineer contracted with the associate architect. He asked who paid for the changes. Mr. Corman said he doubted the associate engineer was paid by anyone because the error was on his part. Mr. Corman commented that one thing that hurt Kansas with the arbitration board was a set of prints done by the associate architect to help clear up the problems that were occurring in the design process. He said that action was tantamount to admitting there were design problems.

Mr. Corman then began Committee briefing on the problems that occurred with the clinical facility. He said the Board of Regents asked him, Mr. Miller, Mr. Lucas, and Mr. Krueger to sit in and follow through on the clinical facility problems after the problems had occurred on the Basic Science Facility. He said one of the problems was the inability of the structural engineering firm, which was small, to prepare drawings for a massive building such as the clinical facility. He said that the Regents had relied on the associate architect's estimate for costs which were estimated originally at \$42,860,000. He said that at present costs are running about \$52 million. The first thing to hit hard in the building of the clinical facility was right after the preliminary drawings were done in October, 1972. At that time the associate architect said that final drawings would be ready by November, 1973. Because of that, the decision was made to bid the projects for "fast track." He said that in November, 1973, the drawings were not ready. He said that this cost the state approximately \$3 million because by the time the drawings were done the cost of steel had risen considerably.

At that point the Regents decided rather than to quit the project they would "cannibalize" their movable equipment budget by \$3 million and then cut \$3 million out of their own "hides" for a total of \$6 million to keep the costs for the facility within the budget. He said that on July 10, 1975, the bids were finally opened for the project. He said

that the mechanical and engineering low bids were good and within the budget. However, the general contracting bids were approximately \$8 million over the amount budgeted. As an example of the problems that occurred, Mr. Corman cited the fire proofing design by the associate architect as being untested and very expensive. He said that his office came back with another scheme for such fire proofing and ordered the architect to institute that system.

Mr. Corman said that in a Board of Regents meeting it was decided that the preliminary plans would be revised by December, 1975, and would be back out for bid. He said that the plans were not finished in December. He said that on January 9, 1976, in a memo to the Board of Regents, he expressed his concern over the drawings not being turned in. He said that he went to Kansas City, Kansas and found the associate architect's office locked up and abandoned. After several trips across town, he finally located Mr. Marshall and Mr. Brown's office at Crown Center. At that time, Marshall and Brown told him that the drawings were there for safekeeping; he said there was a junior associate working on them, who was the only person involved in revising the drawings at that time. He said he was disappointed so he just left.

Mr. Corman said he then went to Mr. Krueger. He said he got a letter from Mr. Krueger demanding that the drawings be given back and they went to Kansas City and personally got the drawings. At that point he said the decision to finalize them in the State Architect's Office was made. As an example of some of the problems, he said there were 3,000 doors and that there were errors on a large percentage of them. He said the state finally let it for bid and the bids were within the budget.

Chairman Weaver asked Mr. Corman at what point Mr. Krueger suggested that the whole thing be closed down. Mr. Corman said in July, 1975, when the first bids came in on the general contract portion, they were so extremely high that Mr. Krueger suggested that the project be abandoned and be re-designed. The Board made the decision that the state should go ahead. Chairman Weaver asked if the design by the associate architect on fireproofing was untried and unproven. Mr. Corman said that it was. He said that at the time that design was not tested and that they could not obtain an underwriter's label on it. He said that the design eventually did pass that test but that it was very expensive.

Senator Berman commented that the Board had cut out \$3 million for movable equipment and asked if the Board would becoming back to re-coup that loss. Mr. Corman said that they cut out some fixed and some movable items and other things in addition but that they would be coming back for \$2.5 million worth of equipment.

Senator Gaar asked several questions about the timeframe involved with letting bids and re-designing the project for the second bid for the general contractor. He asked specifically if the state paid the associate architect from July 10, 1975, when it was discovered that the bids were too high, to February, 1976, when the plans were finally taken away from the associate architect and completed by the State Architect. Mr. Corman said that to date the associate architect had been paid about \$1.7 million. He said that in all likelihood the payments were probably made on a monthly partial payment plan authorized by the State Architect and the University Medical Center. Mr. Corman further stated that the associate architect was not paid once the drawings were taken away from him. Senator Gaar asked if the architect was paid from July to December. Mr. Miller said that he did not think they were any payments made after July, 1975, but that he would check and send this information to the Committee. Mr. Lucas from the University Medical Center said that since the associate architect was not responsible for administration, in all likelihood 85 percent was paid when the drawings were delivered and that the state held back 15 percent at that time for final completion.

Afternoon Session

Chairman Weaver introduced Mr. John Harrelson and Mr. Milt Pollitt. Both men are with the Associated General Contractors of Kansas. A copy of Mr. Pollitt's statement and a copy of the booklet "The Single Contract," which was also presented to the Committee, are attached.

Representative Hohman asked if the single contract system is less expensive than the current practice of multiple contracts. Mr. Pollitt said that it is not possible to prove that it is; however, the contractor will choose subcontractors that he can work with. Representative Hohman noted that construction delays caused by lack of coordination increase the cost of the project.

Senator Hess asked if the increase in the duties of the associate architect would allow the reduction of the State Architect's Office. Mr. Pollitt contended that while the duties of the associate architect should be increased, the state needs a strong representative. Senator Hess asked what the problem was with the punchlist system. Mr. Pollitt indicated that the problem was lack of accountability.

Senator Gaar questioned Mr. Pollitt about the practice of contractors "bid shopping" with subcontractors. Mr. Pollitt said that while approximately 10 percent of the contractors would try to get the subcontractor to do the job for less than the subcontractor had bid, the practice was frowned upon. Senator Gaar also asked why most mechanical contractors want a multi-contract system. Mr. Pollitt replied that a multi-contract system tends to favor large firms.

Senator Gaines asked if most non-state change orders were for project adjustment or for errors. Mr. Pollitt said most general contractor errors are absorbed by the general contractor. Senator Gaines also asked if the role of the user agency should be increased. Mr. Pollitt said that if the user agency has the expertise, its role should be increased.

Senator Berman asked what the role of the State Architect's Office should be. Mr. Pollitt said that it should be advisory to the user agency.

Chairman Weaver called on Mr. Gene Bullinger of the Kansas Association of Architects. A copy of Mr. Bullinger's statement is attached. Representative Weaver and Senator Hess questioned the allocation of duties between the State Architect's Office and the associate architect. Mr. Bullinger noted that a major problem was that the State Architect's Office approves shop drawings. He contended that this should be done by the associate architect.

Senator Gaar asked if the associate architect fees allowed by statute are adequate. Mr. Bullinger contended that fees should be negotiated with a maximum rate set by law. He also contended that this maximum rate should be approximately one percent above the current limitation.

Senator Hess asked if the associate architect provided inspectors, did the state need to provide inspectors also. Mr. Bullinger stated that state personnel would need to make only periodic visits.

Representative Ivy noted that a contract with profit as a percentage of cost would provide an incentive to inflate costs. Mr. Bullinger stated that costs must be proved.

Chairman Weaver recognized Mr. Keith Weltmer, Secretary of Administration. Copies of the memorandum from Governor Bennett to Mr. Weltmer and the letter from Mr. McNeil to Mr. Weltmer that were distributed to the Committee are attached. Mr. Weltmer noted that some of the major problems with the construction process were:

1. The State Architect serves a fixed term and thus may not be responsive to the Secretary of Administration;
2. The penalty provisions are not enforced;
3. The final inspection process is not adequate;
4. The fee structure for architects is not adequate;
5. The user agencies often deal with the State Architect's Office at a low level of management; and
6. The internal communication in the Division of Architectural Services is not adequate.

Chairman Weaver questioned Secretary Weltmer about the apparent problems in the Office of Attorney for the Department of Administration. Secretary Weltmer stated that much of their action was not visible and the office is understaffed. Secretary Weltmer also contended that a single contract would help solve some of the legal problems.

Senator Berman expressed dismay that the memorandum from the Governor to Secretary Weltmer implied that the Governor had understood the problem and that the Committee had served no purpose. Secretary Weltmer said that while the executive branch knew of the problem, the Committee's study had provided additional insight.

Senator Gaines asked what percentage of the construction costs was related to the Board of Regents. Secretary Weltmer stated that approximately 70 percent of the construction costs were related to the Board of Regents.

Senator Hess asked if Secretary Weltmer believed that the employees in the State Architect's Office should be unclassified. Secretary Weltmer said they should be unclassified.

Chairman Weaver, Senator Berman and Senator Gaines questioned a recent change order in Wichita which allowed a contractor to use power-driven pilings and receive extra compensation. Mr. McFeeters, contended that the banks of the excavation were not stable. Mr. McFeeters indicated the state had provided inadequate information because only two test holes were drilled. Mr. Bullinger, the associate architect on the project, contended that the contractor had not protected the excavation. Mr. McFeeters replied that excavation had been finished on a Friday afternoon.

Chairman Weaver and Senator Berman questioned the distribution of mail in the State Architect's Office. Chairman Weaver presented several letters addressed to Mr. Krueger, which Mr. Krueger never received. Mr. McFeeters indicated that a clerical employee determined who would receive what mail. Mr. Carl Ossman, Acting State Architect, assured the Committee that this was no longer the case.

Representative Hohman asked what legal steps were being taken to recover damages. Secretary Weltmer said files had been turned over to the Attorney General some time ago.

Senator Berman asked for more information concerning the \$500 per day penalty on the law school. Mr. Max Lucas explained that 17 panels were unsatisfactory and the contractor agreed the problem was his. Senator Gaines asked why it was necessary to move into the law school before it was completed. Mr. Lucas replied that the move had been postponed.

Chairman Weaver recognized Mr. Dick Hart, Division of Purchasing. Mr. Hart gave a short description of the processes for letting contracts.

Representative Ivy questioned the use of brand names in specifications. Mr. Hart said that this was done to ensure quality and not to limit competition.

Chairman Weaver called on Mr. Corman to provide the information requested in the morning meeting. Mr. Corman informed the Committee that the last payment to the architect on the clinical building was December of 1974 (\$73,000) and the total paid to the architect was \$1,722,000. The architect still wants another \$300,000.

Senator Berman asked how the associate architect received payment. Mr. Corman replied that the project was divided into parts and as the State Architect approved each part, the associate architect was paid.

Mr. Corman presented several suggestions for changes in the State Architect's Office. A copy of his statement is attached. Mr. Russell Miller cautioned that the State Architect's Office should be involved in construction inspection even if the associate architect is given additional power. Senator Gaar replied that it was necessary to have one person who could be held accountable. Mr. Eudaley noted that while the associate architect should be responsible for inspection, the State Architect's Office should ensure that the inspections were being done.

Staff presented an organization chart of the Division of Architectural Services. A copy of that chart is attached. It was noted that the planning section, which reviews all associate architect's plans, was understaffed.

September 27

Morning Session

Acting Chairman Paul Hess called the meeting to order at 9:00 a.m. and announced that the Committee would undertake consideration of the interim proposal on vocational education.

Proposal No. 76 - Financing of Vocational Education

Discussion began with the review of a staff memorandum which summarized alternatives for the Committee to consider for possible action on the issues which have been raised in the course of Committee discussion throughout the interim. Possible alternatives were included first on the subject of area vocational schools — capital outlay funds.

Senator Berman commented that it was his understanding the authorization of funds for capital outlay was a one-time expenditure and that this constituted the prevailing view of a majority in the Senate during the past legislative session. He expressed the belief that approval of additional funds for capital outlay by the Committee would be action taken contrary to the will of the Senate. Senator Hess concurred with the view that the capital outlay expenditure was a one-time effort but felt that, in any event, this entire matter was a policy decision to which the Committee would still have to address itself.

Inquiring about the availability of slots in the area schools, Senator Berman asked if the demand at the present time was greater than the number of openings. Staff indicated that it was. Also in response to a question from Senator Berman, staff indicated that the schools maintain a waiting list for those applying for available slots and estimated that 90 percent of those who completed their educational programs find employment which was directly related to their areas of study.

Some discussion was devoted to the contractual arrangements that area schools enter into with the state's correctional institutions to provide training for inmates. Discussion centered on the level of CETA funds committed to these programs and the various levels of state matching funds which have been found acceptable by federal administrators.

The staff review continued with a summary of possible alternatives on the area vocational school budget process. Senator Hess asked if approval of the budget on August 25 of each year was retroactive to July 1. Staff

indicated that it was. Senator Hess remarked that, to a large extent, budgets submitted by the schools must be based on faith with respect to approval of their recommendations. Senator Berman asked if this method of approving budgets six weeks into the fiscal year was unusual and, further, if it constituted a "rubber stamp" of the budget proposals. Staff indicated there was no way to determine that. Senator Hess requested staff to explore the possibility of moving the deadline for submitting budgets forward in order to resolve this problem.

Staff reviewed a third set of possible alternatives on the subject of postsecondary aid which included an explanation of the relationship between postsecondary and other forms of aid, such as categorical aid. Senator Berman asked if it were possible to resolve these funding problems by establishing a "lid" much in the same manner as that used in the funding of elementary and secondary schools. Staff indicated that a "lid" could be used for funding postsecondary schools, with the possible exception of Type II schools which are not supported by local funds.

Some concern was expressed by Senator Berman over the impact on current CETA funding if modifications were made in the existing funding arrangements, that is, if a greater share of education costs were required of students. Staff indicated that it was uncertain whether federal requirements would be met should such a proposal be approved. Senator Berman commented that he wondered whether students eligible to receive CETA funds would be fully informed of all the possibilities that exist for assistance in financing their education.

Representative Hohman inquired if the schools actually have sufficient staff to conduct a sophisticated coordinating effort. Staff replied that it would depend on the type of program implemented.

A fourth set of alternatives for the Committee to consider for possible action dealt with the 1977 amendments to the Postsecondary State Aid Law (S.B. 318). Senator Hess remarked that the Committee was confronted with the decision whether to admit that the Legislature erred when it passed S.B. 318 and take whatever steps are necessary to correct it or attempt to discover other ways by which the federal regulations governing the distribution of CETA funds might be circumvented. Discussion centered on the second alternative, as presented in the staff memo, which would be for the Committee to endorse a recommendation to approve an FY 1978 supplemental appropriation of approximately \$600,000, which arose as a result of the refusal of federal administrators to accept the provisions of S.B. 318. Senator Berman expressed his opinion that the matter should be brought before the entire Legislature, rather than have the Committee make a recommendation.

The staff review continued with discussion of the overlapping state aid arrangements with certain vocational education programs offered in community junior colleges. Senator Berman asked whether any existing programs would be adversely affected if these "dummy" corporations were eliminated. Staff indicated that vocational programs in the state's correctional institutions, for example, would not be affected.

Representative Bunten asked what kind of vocational programs are offered at community junior colleges and why they are part of the curricula of junior colleges at all. Staff listed some of the programs offered and indicated that junior colleges had offered vocational programs prior to the advent of area schools. Also, there are students who pursue an associate arts degree at the same time they participate in vocational education programs. These programs are also offered along with academic education in the state universities. Representative Bunten made a motion that the Committee recommend elimination of the contractual agreements. The motion died for lack of a second.

It was agreed that the following instructions be carried out by staff for the October meeting:

1. Develop an alternative timetable for the budget process/approval system for area schools;
2. Develop alternatives for budget controls for area schools;
3. Determine what effects changing the student tuition ratio would have in terms of the amount students would pay;
4. Provide a summary of student aid programs available; and
5. Develop several options for financing area schools.

At this point in the meeting Senator Hess directed the Committee's attention to the court personnel study, indicating that staff review of the memorandum on financing vocational education would be completed at a later time.

Proposal No. 73 - District Courts' Personnel

Staff presented a brief report on the development of the personnel study and introduced Mr. Jack Higgins, a representative of the consultant firm conducting the study. He pointed out to the Committee that the preliminary draft, which would be considered at this time, is only one rather small portion of the overall study. In addition, he remarked that he considered this an opportunity to raise several of the issues that would be addressed in the study and that today's

meeting would afford members of the Committee the chance to comment on these issues and provide some measure of legislative input to those conducting the study. Mr. Higgins proceeded to give the Committee a brief overview of the current stage of development of the study.

Subsequent to Mr. Higgins' presentation, some Committee discussion was devoted to the inequities which currently exist in the system, especially with respect to salaries and job qualifications. Included in the discussion was the problem of conflicting areas of authority in the organization so that many employees were not clear as to which supervisor's instructions they were expected to follow. Mr. Higgins remarked that this was especially true with those who had responsibility for hiring and firing.

Senator Berman asked Mr. Higgins if he was aware of the fact that in several instances district court employees had been compensated at a level below federal minimum wage standards. Mr. Higgins said he was. Senator Berman also inquired about reported instances of discrimination in which women employees of the court were paid less than men who were performing comparable tasks. Mr. Higgins responded by saying that no judge is above the Federal Civil Rights Act and all of them are obligated to abide by the law. Senator Berman asked if the appeals hearing, established in conjunction with the recommended implementation of a new court personnel system, satisfied due process requirements. He said it appeared to him that such requirements might not be satisfied because the study recommends that the appeals hearing be made discretionary, rather than mandatory. Mr. Higgins said he could see no problem in that regard and that the recommendation, as presently stated, discourages the filing of frivolous appeals. In any case, he added, employees dissatisfied with the outcome of a hearing, in which they feel their constitutional rights have been violated, would have recourse by filing suit in federal court. Senator Berman replied that it appeared to him that this method of solving problems might result in an increase in the number of cases filed in federal court, which is no more desirable than an increase in suits filed in state courts.

Senator Gaar broached the topic of wage differentials in which he said Johnson County can afford to pay its employees more now as a result of the newly-constituted unified court system. He expressed the opinion that he would rather pay court employees in other counties a higher salary in order that those in Johnson County may be fairly compensated. However, it may not be considered justifiable to pay other employees at those increased rates and problems can result. Johnson County court employees, in his opinion, are undercompensated. He added that the situation tends to discourage the hiring of qualified court employees in areas such as Johnson County because it is not allowed to pay sufficient salaries to attract the better qualified employees. One solution would be to reclassify certain employees at a higher range. Senator Gaar asked who had the authority to do this. Mr. Higgins said such authority was vested in the Supreme Court through the directives it issues to the judicial administrator.

Representative Hohman asked if there were any trends developing with respect to post-unification accomplishments. Mr. Higgins replied that there was a high level of dissatisfaction on the part of many court employees. He indicated that this is applicable more to urban areas of the state than to rural ones and has resulted in high rates of turnover.

Representative Bunten inquired if the study was making any estimate of the county funds that would be saved if the state assumed funding responsibility for much of what are now county expenditures. Mr. Higgins referred to estimates that are being made at the district level, not at the county level. Representative Bunten said he was concerned that changes of the kind recommended in the study would result in a "windfall" for the county, as it has in other instances in the past.

Representative Ivy asked what the difference in salaries was between the counties and court personnel (and other state employees under the Kansas Civil Service System). Mr. Higgins replied that in some cases state employees, especially those of the court, were paid as much as 50 percent more. Representative Ivy said he felt that this might be "demoralizing" to court personnel if, for example, the salaries of civil service employees were raised so as to be equal with theirs and their salaries were left the same as before. Representative Ivy remarked on the similarity between women employees in the court system and those who are teachers inasmuch as women in both cases are frequently willing to take jobs at lesser pay because they view their salaries as only secondary sources of family income.

In response to another question from Representative Ivy, Mr. Higgins indicated that turnover was highest not only in urban areas, but among non-supervisory personnel. Representative Ivy wanted to know how all these diverse elements of the existing system would be coordinated and made uniform in a new, revised system. He observed that it seemed to him that it would be difficult to avoid some aspects of the "spoils" system since each area can classify its own personnel as it deems appropriate. Mr. Higgins responded by saying that only the Supreme Court would have authority to create positions and classify them.

On another matter, Senator Hess commented on the suggestion that the operation and maintenance of detention centers in the state be removed from the courts' jurisdiction and placed in the executive branch. Mr. Higgins listed the counties which would be affected, including Sedgwick, McPherson, Johnson, Wyandotte, Crawford, and Lyons. He indicated that approximately 100 personnel in this area would remain under the jurisdiction of the counties.

Senator Hess also suggested that the position of secretary bailiff - probation officer, which occurs only in Sedgwick County, be eliminated. This might be accomplished, he added, by substituting an administrative officer but, in any case, it should not be a position with a dual function, as it is now. Some discussion followed on the probation services

provided by the court and other agencies for both juvenile and adult offenders. In addition, the possibility of establishing a statewide public defender system was discussed. Representative Buntin quoted an amount of \$864,000, currently in the budget of the Kansas Department of Corrections, for probation and parole services and wanted to know if this funding could be eliminated eventually. Senator Hess explained that this amount was primarily for parole services, whereas the study deals essentially with probation. As a consequence, this expenditure of state funds would probably not be eliminated.

Senator Berman asked if this personnel plan were amenable to phased implementation. Mr. Higgins said the plan calls for full implementation at the outset. Staff referred to a plan implemented by degrees by South Dakota which includes incentives for the counties to accept the new system. Immediate control of the new system, however, is vested in the Supreme Court of that state.

Senator Hess inquired of the role court reporters would have in the new system. Mr. Higgins gave a description of the role court reporters would have as well as the various stages of the court reporting process and sale of transcribed material. Representative Ivy asked if the sale of court transcripts was considered to be a lucrative business. Mr. Higgins said it was not fair to make the "blanket" statement that all of it was. For example, he said there was a higher demand for criminal records than for uncontested divorce suits.

The subject of cost-of-living increases for court employees was raised by Senator Hess. He expressed some reservations about the use of the term "certify" in the study, indicating that it appeared to make such salary increases automatic. Mr. Higgins stated that "recommendation" would have been a better word to use. Representative Ivy expressed the opinion that it was not fair to grant a different cost-of-living increase between court employees and those in the regular civil service system. Staff indicated, however, that the salary plan for court personnel would be separate from the plan for classified employees in the state.

Senator Hess remarked that he would recommend that the study include a management impact statement to facilitate administration of the plan by the Supreme Court. Representative Garrett suggested that the Supreme Court is overworked already and inquired whether there were alternate ways of administering the plan. He suggested further that the staff of the Division of Personnel might be increased to accomplish this, even though he was not entirely pleased with the operation of the current personnel system. He questioned whether it would be possible to merge court personnel with classified employees. Senator Hess noted that this might constitute a violation of the doctrine of separation of powers. Representative Ivy expressed his view that all state employees should be treated the same. Senator Hess disagreed, reiterating that the structure of state government specifically separates the main branches of government. Representative Garrett said that the powers of the Supreme Court would not be diminished by taking such action. Senator Hess said it would be removing from the courts the authority to control its own employees. Staff indicated that there might be some middle ground of a cooperative nature in which, for example, the Supreme Court might contract with the Division of Personnel to perform such administrative functions as administering exams.

Afternoon Session

Proposal No. 78 - Review of the Department of Transportation

Mr. Bill Ogan, State Transportation Engineer in the Department of Transportation (DOT), presented a report (which is attached) to the Committee comparing two projects — one in Kansas and one in Oklahoma. The report covered the road condition prior to improvement, the purpose of the improvement, the design criteria, and the summaries of costs. In response to a question from Senator Hess, Mr. Ogan told the Committee that the comparison of the two projects was difficult since they were different types of projects. He said that his office was presently making arrangements to meet with three neighboring states (Oklahoma, Nebraska, and Missouri) to compare similar construction projects. He said that his department would provide the Committee with more information on this when those meetings have been completed. In response to a question by Senator Hess, staff pointed out that selection of the two projects compared in the report was made by the Chairman of the Ways and Means Committee.

Senator Berman asked why Kansas had used a three-inch overlay on the project discussed by Mr. Ogan. Mr. Ogan said that the Kansas road was cracked badly and needed the extra strength of the three-inch overlay. Representative Garrett noted that it was a value judgment in how a roadway is improved. He said that it appeared a compromise should be reached rather than spending so much on the road. Mr. Ogan noted that the major cost difference was because of a three-inch overlay. He also said that the highway had to be widened to meet standards; however, the Oklahoma road was already 24 feet wide. In response to a question from Representative Garrett, Mr. Ogan said that the Department could have reduced the quality to a 1.5 inch overlay but according to the Department's tests, the three-inch strength was needed. He said that it had to be a value judgment.

Senator Berman asked how much of the total work done on the roads in Kansas was geared toward the 80,000 to 90,000 pound trucks. He asked if Kansas was building roads for trucks, not necessarily for the people of Kansas. Mr. Ogan said that the standards for roads were designed for trucks as they do much damage to the roads.

Representative Hohman asked if Kansas should go to a system for heavy trucks only on selected roads. Mr. Ogan said that in Kansas, with the particular agriculture economy and the lack of rail transportation, it would not be wise to do that. He said that the agricultural truckload weight was already close to the limit on roads and highways. Senator Gaar asked Mr. Ogan if trucks maintained their fair share of road costs. Mr. Ogan said that they were not.

Senator Berman asked if Mr. Ogan would be adverse to the Legislature directing what remained of the freeway money into the 3-R program. Mr. Ogan said that they would not.

Senator Hess asked what the most critical needs of the system were. Mr. Ogan said that from their study and evaluation that a lot of miles needed to be improved on the present road system. He said the main priority was to get all of the roads up to tolerable condition and not build any new monuments. He noted that very few miles need four-lane highways but some need them badly, such as Wichita and Kansas City.

Representative Garrett asked if there were any plans to improve Highway 160 and Highway 166 to Wichita. Mr. Ogan said that DOT did have such plans for Highway 166 but at present nothing was planned for Route 160. He said approximately 60 miles of improvements were planned on 166. He said several projects west of 77 on 166 from South Haven to Arkansas City were also planned. Representative Garrett noted that there were some very bad curves on 166.

Senator Hess asked if the most critical need was to improve current roadways, how the Department could raise 3-R expenditures without raising taxes. Mr. Ogan said that DOT is shifting efforts from building new highways to rehabilitation of old highways. He said that a recent federal aid highway act changed the definition of eligible projects so that Kansas can now use federal money on a 70-30 match for rehabilitation of roads. Senator Hess asked how much money for the 3-R projects, including federal funds, would be available next year. Mr. Ogan said that probably twice as much money would be available, because of the federal law and the Department's change in philosophy.

In response to several questions from Senator Gaar, Mr. Ogan explained that the Department had planned next year to improve the bridges and widen Highway 69 by La Cygne. He said that in 1979 Highway 169 from Fort Scott north about 14 miles would be improved. He said that on Highway 169 the present program was to improve an area from Iola to south of Chanute. Senator Gaar noted that this leaves Kansas without an adequate direct route to Oklahoma. Mr. Ogan said that it left Kansas without a new route but that the projects they were currently working on were to make what now existed better. Senator Gaar asked if the Iola project was a new highway. Mr. Ogan said that it was.

Senator Gaar asked who authorized the building of a new stretch of highway when the old one was not in good shape. Mr. Ogan said this was made by the old Highway Commission. He said that Secretary Turner could drop that proposal but that there was already a considerable amount of money involved. He said that of the \$25 million allotted for that project, approximately \$1 million had been spent on plans.

Representative Garrett said that if twice as many dollars were available for the 3-R program next year, he wanted to know why 166 and 169 did not get some of the money to straighten out some of the serious problems on 166 and 169. Mr. Ogan said he recognized there were problems on the highway but that there were more serious problems in other parts of the state.

Representative Hohman asked if the increase or decrease of gasoline revenues would impact plans made by the Department. Mr. Ogan said that they expected a decrease in revenues within a few years. He noted that inflationary costs were about 6 percent per year. Representative Hohman asked what project Kansas was going to cut in road improvements if the revenues were decreased. Mr. Ogan said that a decrease in services would come first in the area of new construction, then rehabilitation. He said at that point the Department would have to concentrate on just maintenance. Representative Hohman asked if there was presently a moratorium on new construction. Mr. Ogan said that there was not. Representative Hohman asked if DOT had changed the highway priorities overall. Mr. Ogan said that the freeway system had its own priorities and that there was a general priority listing overall. Representative Hohman requested a copy of the priority listing for all highway segments. Mr. Ogan agreed to provide such a list.

Senator Gaar said that if 69 was made passable and improved a great deal, that the need to do extensive repairs to 169 would not be necessary. Mr. Ogan said that although those roads were in the same general area, they did serve separate traffic needs. Senator Gaar said that Kansas needed one decent road to Oklahoma and that if this could be done, then the other roads in that area could be improved in relation to safety. He said that it was important to get the major corridor completed first.

Senator Gaar asked what Mr. Ogan's views were on the proposal to change the present taxation system of X cents per gallon to a sales tax with a floor. Mr. Ogan said that was the only way he thought Kansas would survive. He said that the present system had no relationship to fluctuation in cost. He said that a tax was needed that was reflective of inflationary costs.

Mr. J. O. Adams, Director of the Division of Transportation Operations at DOT, presented a report to the Committee which broke down the major areas of the budget. Senator Berman noted that last month DOT had said the maintenance cost difference between Kansas and other states could be attributed to snow removal and according to Mr.

Adams' report, that was not true. Nebraska spent more in 1977 on snow removal than did Kansas. He noted that the maintenance cost difference per mile between the states was not related necessarily to ice and snow removal. Mr. Adams said that was true. He noted that Iowa invested a lot of the money in contractual services and it was difficult to break out the various programs within that category.

Senator Berman said that when the state was talking about improving its tourism program a letter appeared in the Topeka paper complaining about rest areas on the roads. He said that maybe Kansas should not schedule maintenance on rest areas in the height of tourism season. Mr. Adams said this was probably true but it was only a matter of 25-30 miles between rest areas. He said they did maintenance so that there would not be too many miles in between rest areas.

Representative Hohman asked if the Department had made any attempt to review the equipment needs in the various regions. Last session, a subcommittee review determined that there was no standardization among equipment of the various regions. Mr. Bill Wright, head of maintenance for DOT, said the Department was trying to set up a statewide equipment plant. He said that different areas needed some different types of equipment because of the terrain. Mr. Adams said that as money had become tighter, the Department extended the replacement schedule of equipment.

Representative Hohman said that during the last legislative session, the Legislature directed the Department of Revenue to coordinate the maintenance and upgrading of the motor carrier inspection stations. He asked if there had been any effort made by the Department of Revenue to coordinate the improvement of the motor carrier inspection stations with the Department of Transportation. Both Mr. Ogan and Mr. Adams said that as far as they knew, no major overtures had been made in the area of coordination and that they would check with the Traffic Safety section to see if any efforts had been made to coordinate the problem of overweight trucks.

Representative Garrett noted that over \$1.3 million had been spent for sign replacement. He asked if the Department reported stolen signs to the local law enforcement agencies. Mr. Adams said that the Department did report when a number of signs disappeared overnight but that it was very difficult to report when one or two signs were missing. Senator Berman noted that the Department had planned to buy several new passenger cars. He asked what size cars were to be bought and if the agency could buy cars smaller than what was authorized. Mr. Adams said that the Department bought medium-sized cars, not small compacts. He said there was nothing to prohibit them from buying smaller cars but that they had to buy cars that were geared to meet their needs.

Proposal No. 79 - Review of the Forestry, Fish and
Game Commission Farming Contracts

Staff presented a Committee report on the status of the Forestry, Fish and Game farming contract study proposal. It was noted that the most significant issue was the conflict of management practices held by contract holders as land transferred from the Corps of Engineers to the Forestry, Fish and Game Commission.

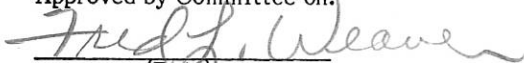
Senator Berman said that the more long-range question was whether it was really in the best interest of Kansas to license land from the Corps of Engineers. He suggested that Kansas study whether it is in the interest of the state to lease this land at all.

It was the consensus of the Committee that staff prepare the final report that includes the suggestion that the state seriously consider the policy question of whether or not Kansas should retain management rights to the land.

The next meeting of the Special Committee on Ways and Means - B was set for October 24-25, 1977, to begin at 9:00 a.m. Tentative plans were also made for a meeting on November 7-8.

Prepared by Julie Mundy, Louis Chabira, and Robert Haley

Approved by Committee on:


(Date)

OTHERS IN ATTENDANCE

September 26, 1977

Name	Representing
Joan Callan - Waywood	State Planning and Research, Topeka
Darrell McNeil	Department of Administration, Topeka
Marsha Timber	Department of Administration, Topeka
W. Max Lucas	University of Kansas, Lawrence
John Conard	Board of Regents, Topeka
Warren Corman	Board of Regents, Topeka
Russell H. Miller	University of Kansas Medical Center, Kansas City
Charles Nicolay	Association of General Contractors of Kansas, Topeka
Mark A. Miller	Visitor, Topeka
Charles D. Carey, Jr.	Mechanical Contractors' Associ- ation, Topeka
Barbara Marshal	National Electrical Contractors' Association, Topeka
Milt Pollitt	Associated General Contractors of Kansas, Wichita
J.P. Harrelson	Associated General Contractors of Kansas, Topeka
Ross Martin	Kansas Society of Architects, Topeka
E. Eugene Bullinger	Kansas Society of Architects, Wichita
Robert Douglas	Douglas Construction Company, Topeka
B.B. Anderson	B.B. Anderson Construction Co., Inc., Topeka
Robert McFeeters	Architectural Services
Bernard C. Wanner	Architectural Services, Topeka

September 27, 1977

Jack Higgins	Resource Planning Corporation, Washington D.C.
Randy Myers	Kansas City Star, Topeka
Alfred G. Schroeder	Supreme Court, Topeka
Lloyd W. Zook	Director of Court Services, Topeka
L.D. Strickland	Assistant Director of Court Services, Topeka
Richard A. Schultz	Court Administrator, Topeka
Lorene Wells	Chief Clerk, Topeka
Joyce D. Reeves	Chief Deputy Clerk, L.A. Dist., Topeka

<u>Name</u>	<u>Representing</u>
W.H. Wright	Kansas Department of Transportation, Topeka
J.O. Adams	Kansas Department of Transportation, Topeka
Ronald Shuberg	Kansas Department of Transportation, Topeka
W.H. Ogan	Kansas Department of Transportation, Topeka

TESTIMONY by
MILT POLLIT
PRESIDENT
ASSOCIATED GENERAL CONTRACTORS OF KANSAS
before the
KANSAS LEGISLATIVE SPECIAL COMMITTEE
on WAYS AND MEANS

September 26, 1977

Mr. Chairman and Members of the Committee:

We appreciate the opportunity to appear today and give input to your consideration on Proposal No. 77 - State Building Procedure. Copies of my remarks are available.

I am a building contractor from Wichita, and current President of the Associated General Contractors of Kansas, trade association having 76 general contractor members and 111 associate members (sub-contractors and suppliers). In 1976 our general contractor members constructed in excess of \$ 200 million dollars worth of commercial, institutional and industrial building work in Kansas and in excess of \$ 300 million dollars worth of similar work across the United States and in foreign countries.

We have read the reports on "construction projects illustrating possible architectural and/or construction deficiencies" and "faulty roof systems" prepared by Senator Gaar's staff. We are aware of the provisions contained in "a guide for associates engaged in the development of capital improvements for the State of Kansas; January, 1975", and the statutes governing the award of construction contracts.

We appreciate the opportunity to present our views on ways to improve the quality and performance of state buildings and to reduce the quantity and severity of problems that occur. Essentially, we have but a single recommendation: That the current practice of divided responsibility in both the architectural services work and the construction

work be stopped. To explain our reasoning we will briefly discuss each area of activity separately.

The guide for associates defines the three divisions of architectural services as (1) preliminary design, (2) construction documents development, and (3) construction administration services. The guide provides that either the division of architectural services or the associate architect may perform any or all of the services for a given project. During recent years the practice has been generally for the associate architect to be awarded some or all of the preliminary design and construction documents development, then to turn his work over to the Director of the Division of Architectural Services for the contractor bidding period and construction administration services. This practice of divided responsibility causes a complete break in the communication between what is shown and described by the construction documents and what must be communicated orally to the contractor. There has never been prepared a set of construction documents that can alone fully convey all needed information to the contractor. In addition, the contractor submits shop drawings showing how his fabricators intend to meet the requirements of the documents. Such drawings are also communications, and should be checked for approval by the one preparing the construction documents. Thus, we recommend that all architectural services be provided by a single source; an Associate Architect, and that he has full and complete authority and responsibility for such services.

Regarding the actual construction, the current statutes permit the work to be awarded by a single contract for the complete construction or by separate contracts for general, mechanical and electrical construction. During recent years, the majority of state building projects have had the

work performed by separate contracts. The separate contract system divides the responsibility and authority among the several prime contractors, leading to the inevitable attempt of each to protect his individual interests. Modern buildings are very complex and require the services of many skilled trades, thus causing ever increasing problems of coordination. As with architectural services, we recommend that the construction work be an undivided responsibility as provided by a single contract. We will be the first to admit that our recommendations are not a cure-all. People will continue to make mistakes, but also people will respond more positively when responsibility is well defined.

Again, we appreciate the opportunity to present our views on the solutions to a serious problem. If we can be of further service or provide more details, we will be pleased to do so.

September 26, 1977

SUGGESTED CHANGES TO IMPROVE OFFICE OF STATE ARCHITECT

by

Warren Corman, Facilities Officer
Board of Regents, State of Kansas

I am well acquainted with the office of state architect. I was born in Kansas and have lived here about fifty years. My father was an architect in Kansas and was working in the state architect's office at the time of his death. I started working in the state architect's office in 1947, 30 years ago, and have worked with or for each of the eight state architects since then.

1947 -- Charles Marshall
John Brown
Dwight Brown
John Brink
James Canole
William Hale
Kenneth McLain
1977 -- Louis Krueger

During the thirties, forties and into the fifties all state buildings were done in-house. The staff was large and was run more like a private, professional practice. In the late fifties changes were made to make the office more of an administrative function. As this evolved, fewer and fewer major buildings were done in-house. Most all projects were "farmed out" to private offices. The projects remaining in-house were usually the messy jobs or the small, uninteresting repair and addition types.

The office became more civil service oriented. Positions became harder to fill with quality people. I remember when I graduated from the university the job offer in 1950 from the state architect's office was better than most. It is just the opposite now. A good, professional man with twenty years' experience is not interested in any of the civil service positions in the state architect's office. I believe I testified to this in 1972 to a special committee of the legislature that asked me what was wrong.

At that time I recommended taking political influence out of selecting architects and this was done. I believe that resulted in a great benefit to the State and to all of its citizens, and the legislature is to be commended for its efforts in accomplishing that.

Under the new selection system I believe we are getting as good a service, or perhaps even better, as that provided in the private sector to corporate clients. I believe that the design section of the state office, although understaffed and underpaid, is performing well and has good administrative control over each project.

It seems that we start to run into problems about the time we go out for bids and during the construction period. The part of the office handling this work should have more capable, better qualified and higher salaried professionals operating it. I remember one state architect making quite a point of this a few years back. The construction section is vastly understaffed. The Regents institutions alone have about \$100 million under construction and we are only seven out of forty institutions operated by the state. One man can't possibly supervise 175 jobs in this kind of a far-spread operation with expediency and accuracy.

I blame the civil service for part of the problem. A man loses his initiative, lets his responsibility and creativity wane and becomes bogged down in excessive paper work. In the private sector decisions on construction must be either made in the field or in the office but they must be made accurately and quickly, and those making the decisions must be held responsible. Too often on state work the easiest way out of a problem is to just add a change order to the contract for corrective work--or pass the buck to someone else, thus contributing to the delay.

The office of state architect should be a professional office, run in that manner and held accountable as a professional office. We would have more accountability if all of the key employees were unclassified and their jobs depended on their ability and their performance. This works in the private sector. I have seen almost every state architect leave the office in an unhappy situation, usually that he could not correct because his hands were tied by "the system." Most of the directors were excellent men who were successful in their private careers.

The job of state architect is probably the most important and at the same time the most difficult and responsible job for an architect in Kansas. At any one time several hundred million dollars' worth of projects are flowing through the office in various stages from initial program to final punch list. The salary is in the medium range, the director's hands are tied by all sorts of regulations,

red tape and bureaucracy. He is expected to perform miracles without enough help and he becomes frustrated, nervous and bewildered.

It takes too long to get contracts approved. It takes too long to get change orders approved. It takes too long for contractors to receive their partial pay each month and it takes too long to receive final payment. Surely this could be improved.

There are no prequalifications for contractors to bid on a state job. Anyone can bid. We have had some real "humdingers." Just try to keep a low bidder from getting the contract if he is not good. The liquidated damage section of the specification is laughed at by most contractors because the state rarely, if ever, enforces it.

Much has been said in recent weeks regarding inspection. Inspectors should be architects or have similar suitable qualifications and should have authority on the job to take necessary actions. There should be a traveling chief inspector-architect to keep them on their toes. More responsibility for inspection should be shared by the associate architect and by the institution. Not more divided responsibility but more inspection to assure the owner that the building is being erected according to the contract documents. I can recall two major additions in which the brickwork did not match and no one in direct authority would make the decision in time to correct the situation. If the inspector tells the brick mason that the bricks do not match and the contractor continues to lay them, something is wrong with the system.

I remember working for John Brink when he was state architect. John was a rugged individual and always came directly to the point. I had been in charge of designing the first science building at Emporia, now called Winston Cram Hall, and it was under construction. Our field inspector was a rather timid soul. John got word that the first concrete pour in the basement was bad. This building was designed to be exposed architectural concrete with a grout rub-down finish. The formwork and pouring technique had been very carefully specified and detailed.

John called me in his office and told me to get to Emporia and stay there until I corrected the situation. He said he would back me completely. I knew he meant it! I immediately drove to Emporia and arrived at the job before noon. The second large pour was about to be made. The job site was so cluttered I could hardly scramble over the debris and materials. The general contractor had received word that something was going on so he appeared at about the same time I did. We had

a very brief meeting in which I declared the job unsafe for workmen and that construction would cease for several hours while everyone cleaned up the site. I told them that I would return at 3:00 p.m. and check the concrete work. At 3:00 p.m. I crawled into the excavation and saw a terrible concrete job. I ordered the existing concrete and all of the erected formwork demolished and removed from the site immediately. After this was done we had some serious discussions and teaching situations in which the contractor learned how the forms, joints and ties would be put together and how the concrete would be placed. They did a beautiful job from then on for that project.

The point of this example is that the inspector had the authority and backing of the state architect and the contractor knew it. There was no misunderstanding.

The inspection process should be reorganized so that the institution has direct input into the construction. Their appropriation is paying the bill and they should have input as well as responsibility. The associate architect and the institution should have an open communication line to the resident inspector and should expect, and demand if necessary, prompt action and decision on any problem that arises.

If problems result from errors or omissions in the contract documents the author of those documents should assume responsibility for them.

Another item I made a point of in my 1972 testimony was to improve the contract between the state and the associate architect. It should include more specifics on liability and responsibility. A simple form was all right thirty years ago but it will not work now. After my testimony in 1972, attorney Vincent Bogart of Wichita was hired to prepare a new contract. He prepared one but it never did emerge from the Department of Administration with everyone's approval and it was not used. A good contract should carefully spell out the responsibility of both parties.

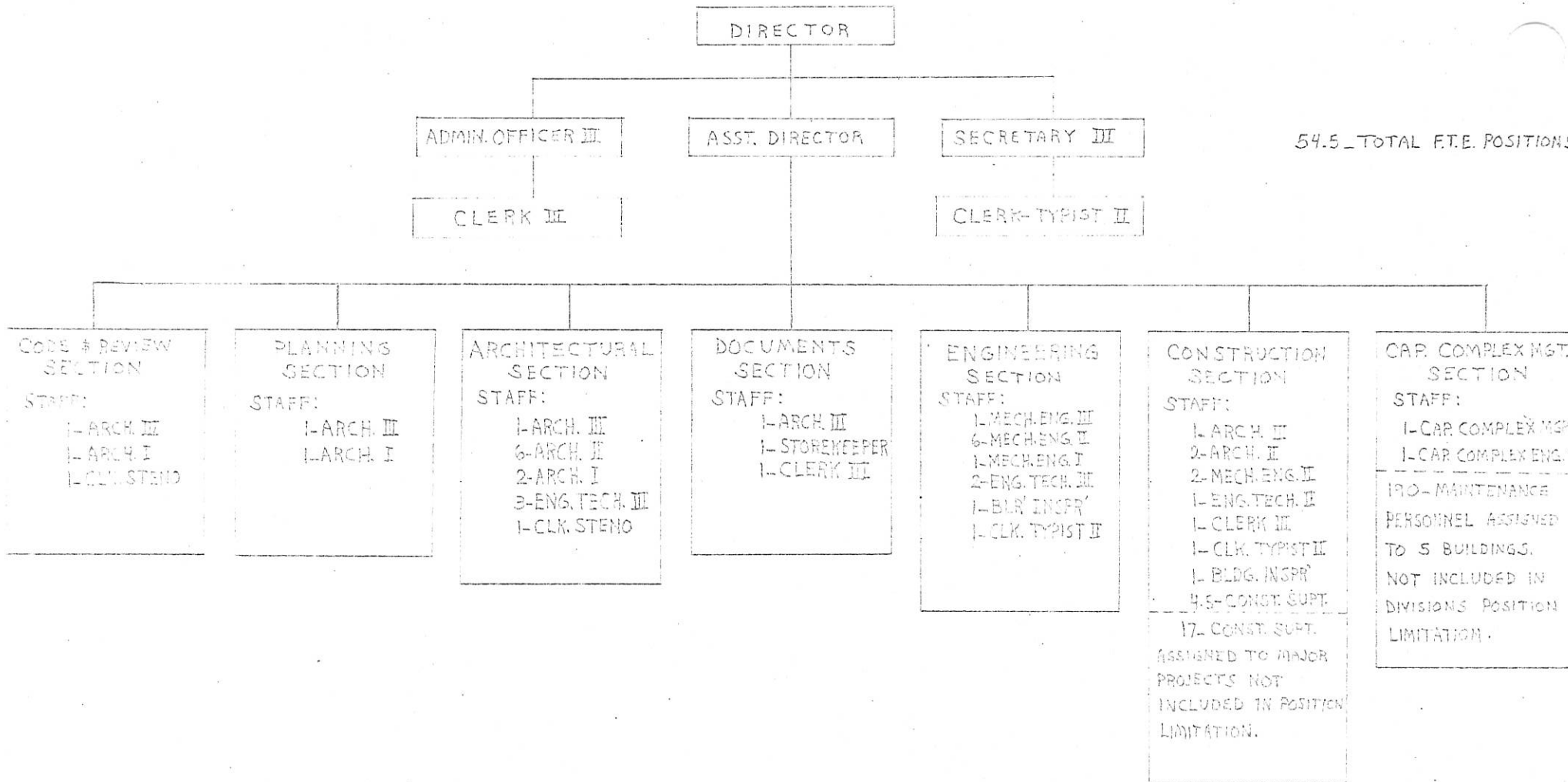
Another item that has consumed much professional time of the state architect is the managing of custodial services and lawn care for the capitol complex. Several state architects have reported that this has diluted their effectiveness considerably.

To summarize, the office of state architect needs to operate like a professional office and be responsible for its actions. It needs to be adequately staffed with experienced architects and engineers who take the job because they are proud of it. They need to be adequately paid. The construction and inspection section especially needs help and authority to act responsibly. Inspectors need to be accountable

for their actions. The institution needs to be involved with the inspection and have daily input. The standard form of contract between architect and owner needs improvement and clarification. Custodial care of buildings should not detract from professional time allocated to building projects.

I believe that the state office is necessary for administrative control, and I believe it can be improved. The improvements outlined above will require cooperation from many agencies, the governor and the legislature. I see no reason why it can't be done.

54.5 - TOTAL F.T.E. POSITIONS



SUMMARY OF MAJOR FUNCTIONS BY SECTION

- | | | | | | | |
|---|---|--|---|--|--|---|
| <ul style="list-style-type: none"> 1) Inspection of mobile homes and recreational vehicles. 2) Review of school building plans prior to bond sales and construction. 3) Review facilities to assure compliance with handicapped standards. | <ul style="list-style-type: none"> 1) Review of Assoc. Arch. plans at various stages - 30% - 50% - 90% - Final. 2) Review capital improvement requests from all agencies and submit recommendations to Div. of Budget | <ul style="list-style-type: none"> 1) Provide architectural services (blue-prints, cost estimate, etc.) to all user agencies on "in-house" projects. 2) Study and develop instructions to agencies on energy conservation. | <ul style="list-style-type: none"> 1) Review specs of Assoc. Architect's prior to bidding. 2) Review specs on all "in-house" projects. 3) Coordinate bidding of projects with Division of Purchases. | <ul style="list-style-type: none"> 1) Review mechanical and electrical plans of Asso. Architects and "in-house" projects. 2) Review mechanical and electrical portions of all change orders. | <ul style="list-style-type: none"> 1) Responsibility for projects turned over to this section after bidding. 2) Review all change orders and shop drawings. 3) Approve payments to contractors. 4) Inspection of roofs on all state buildings and new building projects. | <ul style="list-style-type: none"> 1) Responsibility for management of capitol Complex building maintenance. |
|---|---|--|---|--|--|---|



OFFICE OF THE CHIEF ATTORNEY

Telephone 296-3012

Statehouse

Topeka, Kansas 66612

September 23, 1977

W. Keith Weltmer
Secretary of Administration
2nd Floor, Statehouse
Topeka, Kansas 66612

Dear Secretary Weltmer:

I am writing to you in response to questions raised in Representative Fred L. Weaver's letter to you of September 2, 1977, as Chairman of the Special Committee on Ways and Means - B, concerning state building construction procedures. In his letter he expresses concern with respect to matters which have been brought to the attention of the Committee indicating difficulties or delays in bringing to litigation cases in which architects or contractors with state construction projects allegedly failed to meet adequately their contractual requirements. He questions whether delays in preparing cases for litigation have occurred within the Chief Attorney's office of this department and whether there is in fact any clearly articulated procedure for processing such matters.

The following is submitted as actions which have been taken by the department's legal staff:

- 1) University of Kansas
 - a. Medical Center Basic Science Building. Counsel for the department have participated with the Attorney General's office in the three arbitration actions which have resulted from this project.
 - b. Medical Center Clinical Facility. This office is aware of the problems which have arisen with the associate architect firm involved in this construction, and has advised appropriate personnel in the Attorney General's office. Recently I drafted a letter for your signature recommending denial by the Attorney General of a statement rendered by the associate architect for approximately \$300,000 for professional services rendered on this project.
 - c. Law School. This office approved the invocation by the Director of Architectural Services of the \$500 per day penalty

assessed against the general contractor, Casson Construction Company, for failure to complete the contract within the contract period. Additionally we have met with representatives of the Architectural Services' office, the contractor and their counsel with respect to repair and replacement of exterior concrete panels and the claim of the contractor for extra work done with respect to clean-up work on the interior.

2) Wichita State University

a. Life Science Building. We are familiar with the problem of mortar disintegration on the exterior walls of this building. This matter has been referred to the Attorney General and that office is currently actively working on this problem.

b. Liberal Arts Building. We are aware of the pending arbitration action regarding the Liberal Arts Building, have completed a file for litigation and have provided it to the Attorney General's Office.

3) Emporia State University. The Director of Architectural Services has requested our assistance and we are working with him and the Emporia State University people in an effort to get the contractor to correct faulty sundeck material at the Physical Education Facility.

4) Social and Rehabilitation Services. From comments made to this office by you and the Director of Architectural Services, we are aware of the problems that have existed with the air conditioning system at the Kansas Neurological Institute here in Topeka. Upon request we gave an opinion that the state had no rights to pursue against the manufacturer of this equipment based on any express warranty on its part with respect to the equipment.

This office is not aware of the roof failure problems as reported to the committee on this subject, i.e. several leaky roofs at KSU and on SRS facilities.

Generally we are aware of problems which arise as contracts are processed through the Division of Purchases and construction is accomplished under the supervision of the Division of Architectural Services. Once a project is completed and the building turned over to the agency-owner, our office has not been involved in subsequent troubles or defects which may arise. The Chief Attorney's Office has participated in many conferences between contractors and personnel of the Division of Architectural Services. To my knowledge, we have always proceeded to perform the indicated and agreed upon legal work.

W. Keith Weltmer
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September 23, 1977

My own personal comments on this matter are that the Department's efforts in the past have been focused on getting the construction completed and that contractors have, without complaint, completed the indicated punch list items necessary to complete their project and to obtain a certificate of completion. My impression is at the present time contractors are much more prone to ask for additional money than in the past, i. e. for delays in start up time or additional work, and that it may be appropriate for the state to have a more rigid policy of assessing penalty time for late contractors, proceeding upon the bond of non-performers and suing for damages as appropriate.

Sincerely,

Darrell O. McNeil
Darrell O. McNeil, Attorney
Department of Administration

DOM:fe

OFFICE OF THE GOVERNOR

Attachment IV

MEMORANDUM

Date: September 20, 1977TO: General W. Keith WeltmerFROM: Robert F. BennettRE: Construction Projects

As you know, I have been concerned for sometime with the capital construction program of this state and have, from time to time, issued instructions with reference to specific projects when the difficulties encountered in those projects have come to my attention. The recent hearings of the legislative interim committee bring an even higher profile and sense of urgency to this particular matter. In an effort to collate some of the instructions previously given and to expand on those instructions, as it relates to projects still in the process of completion or projects to be implemented in the future I most strongly suggest that a directive be issued by you to the Director of Architectural Services and to any others involved along the following lines.

1. The Director of Architectural Services, hereinafter referred to as "Director," should be immediately instructed to examine and investigate all of the various complaints referred to in the reports given to the legislative interim committee. To the extent that there is or may be culpability on the part of any associate architect or contractor, the nature of the complaint and the facts relating thereto should be immediately transmitted to the Office of the Attorney General with a request that appropriate action be taken. To the extent that no culpability is found to exist, a full report should be submitted to me and to the legislative interim committee.
2. An opinion should be immediately sought from the Office of the Attorney General as to the application of the statutes of limitation to state claims against associate architects, contractors and subcontractors, as well as a request for information from the Office of the Attorney General as to what procedure he would recommend in the practical processing of these complaints in order to assure that in no event will a complaint be allowed to expire as a result of the passage of the period of limitations.

3. In the future, in the selection of associate architects, due consideration should be given to their past performance with the state both by the Director in submitting their names and by the selection committee in making its determination.
4. In the selection of associate architects the selection committee should be instructed to discuss with each associate architect interviewed the high degree of responsibility which will be assigned to his professional work.
5. In the granting of construction bids due consideration, to the extent authorized by law, should be given to the past performance of the contractor and each contractor should be advised of the high level of responsibility which will be assigned by the state to the completion of his task.
6. In the completion of any work now in progress or any work to be initiated in the future, should it come to the attention of the Director that any breach of contract has occurred or is about to occur he shall immediately notify in writing:
 - a. The contractor,
 - b. The associate architect,
 - c. The chief attorney for the Department of Administration,
 - d. The Office of the Attorney General,setting forth the full nature of the actual or impending breach and a request that action be immediately taken to remedy the same. Thereafter, the parties referred to above should be kept regularly informed as to the nature and extent of the breach until such time as it is remedied or until such time as it is apparent that because of a failure to remedy, legal action should be commenced.
7. In all events where legal action is necessary, the parties above referred to should be notified in sufficient time to allow for the institution of suit well in advance of the expiration of any applicable statute of limitations. All risk in this regard should be resolved in favor of the earliest application of the statute of limitations.

General W. Keith Weltmer
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8. If the contract involved contains an arbitration clause and if a suit develops the matter should go to arbitration expeditiously.
9. If the contract contains liquidated damages they should be enforced, and not waived, where fault lies with the contractor. Immediately upon the determination that liquidated damages should be claimed, all parties referred to above should be notified of that fact.
10. It goes without saying that an adequate and well documented file should be maintained with reference to any occurrence which may result in loss to the state so that the state's interests may be fully protected should the institution of suit be required.
11. Any acceptance of work performed, for and on behalf of the state, should be given only after the work has been fully examined, and if question exists as to any specific segment of the work, then the right of the state as to that segment should be carefully preserved.

I realize that nearly all of the projects referred to in the interim committee's report arise out of construction in most instances commenced and completed before the tenure of this administration. At the same time, this administration has sought and obtained approval for a significant amount of new construction which is now in process or soon will be commenced. These projects must be completed in accordance with the terms of their respective contracts and in a fashion which is in the best interests of the people of this state. I am convinced that we can and must learn from the mistakes which others have made and to do less would be the height of irresponsibility and folly.

I would also urge you to continue with your investigation of the single general contract and the reorganization of the mission of the Division of Architectural Services. Hopefully we can have recommendations in this regard by the time of commencement of the next legislative session.

RFB:pc

THE KANSAS SOCIETY OF ARCHITECTS, AIA

911 Merchants Tower Topeka, Kansas 66612 913•357•5308 A Chapter of the American Institute of Architects

STATEMENT

By: KANSAS SOCIETY OF ARCHITECTS, A CHAPTER OF THE AMERICAN INSTITUTE
OF ARCHITECTS

TO: INTERIM WAYS AND MEANS COMMITTEE

DATE: September 26, 1977

Mr. Chairman, Vice-chairman, and members of the committee; I am E. Eugene Bullinger, an architect practicing in Wichita, Kansas. I am a native son educated and registered in the state of Kansas. I am here today at your invitation, as president of the Kansas Society of Architects --- a statewide professional organization affiliated with the American Institute of Architects. The architectural firm in which I am a partner is a small firm of continuing partnerships with 30 years of experience. We have enjoyed doing several projects for the state of Kansas in the past, and are presently under contract for complete architectural services on the Jardine Hall remodeling at Wichita State University. The Kansas Society of Architects organization represents approximately 80% of the architects practicing in the State of Kansas. I am glad to have this opportunity to convey our members' views and concerns about the construction deficiencies your committee is studying.

We are not prepared to comment on the issue of the cost effectiveness of the Division of Architectural Services; if indeed that might be an issue. We believe that from the standpoint of a clearing house for the administration of all capital improvements for the state of Kansas, it is vitally necessary to have such a division.

In fact, the current statute dealing with the selection of associate architects and the published "Guide For Associates" does, in our opinion, provide an adequate framework to achieve the results desired. We recommend modifications be made to substantially reduce the problems the state is experiencing.

Architectural projects are complex things incorporating many activities and responsibilities, as is apparent by the state publication "Guide For Associates". All that we are suggesting is in plain terms that the state should consider allowing the associate architect to exercise more responsibility by asking him to offer complete basic architectural services. County and local governing bodies, as well as the private sector, adhere to this policy. We wonder, could not the state do the same?

In our industry we use The American Institute of Architects' contract document No. B141, which spells out basic services used for other owners. These basic services consist of five (5) phases:

SCHEMATIC DESIGN PHASE

DESIGN DEVELOPMENT PHASE

CONSTRUCTION DOCUMENTS PHASE

BIDDING PHASE

CONSTRUCTION ADMINISTRATION PHASE

In the private sector, we are held to one-point responsibility for design, construction documents and on-site periodic visits through completion and acceptance by the owner.

Kansas statutes presently provide for the same type of complete services, but the associate architect is prevented from offering them, because his fee amounts are established by law. There should be a way for the state to establish fees on a project-by project basis, so that fees comensurate with the services required can be realistically established.

If full-time inspection of the job site were the associate's responsibility, and state personnel made only periodic visits, it would substantially improve project continuity and coordination. Full-time inspection is not a basic service, but is an additional service the associate should provide.

The bonus in this for the taxpayer is that certain functions now being performed by the Division might not be required. This would be a means to allow sufficient time for Division personnel to accomplish other important responsibilities, such as state building maintenance and project review processes, including the final inspection and acceptance of the building on behalf of the state of Kansas.

From the construction standpoint, which is another question, we believe through experience in other public and private construction that a single contract method of construction does centralize responsibility. It centralizes responsibility for the construction completion of the entire project and for every phase of the project construction.

I thank you for this time today to appear and offer you our comments. The Kansas Society of Architects is genuinely concerned with the problems your committee is studying. We would like at this time to offer you our services in an advisory capacity as you work toward the development of a solution.

I would be glad to try and answer any questions you might have.