

M I N U T E S

SPECIAL COMMITTEE ON LOCAL GOVERNMENT

July 21 and 22, 1977

Members Present

Senator Jan Meyers, Chairperson  
Representative Clarence Love, Vice-Chairperson  
Senator John Chandler  
Senator Norman Gaar  
Senator Frank Gaines  
Senator Bill Mulich  
Representative William Beezley  
Representative Robert Caldwell  
Representative Gerald Caywood  
Representative Harold Dyck  
Representative Vic Kearns  
Representative Robin Leach

Staff Present

Mike Heim, Kansas Legislative Research Department  
Alan Alderson, Revisor of Statutes Office

Others Present

Ken Harrington, State Planning and Research Division  
Tomme Smith, State Treasurer's Office  
Ernie Mosher, League of Kansas Municipalities  
Don Bell, Attorney, Wichita  
Ed Bruske, Kansas Department of Economic Development  
Bud Grant, Kansas Association of Commerce and Industry  
Dick Dykes, Kansas Department of Economic Development  
Rob Hodges, Kansas Association of Commerce and Industry  
Ray Barmby, George K. Baum and Company  
Ken Britt, Zahner and Company  
Jack Ranson, Ranson and Company  
Bernice Crummett, Finance Officer, Overland Park  
Susan Schuley, Overland Park  
Phillip Schuley, Overland Park, Assistant City Attorney  
Jim Cobler, Division of Accounts and Reports  
Ed Rensmeyer, Municipal Audit Section, Division of Accounts and Reports  
Joan Finney, State Treasurer  
Charlot O'Brien, State Treasurer's Office  
Bill McKinney, Superintendent for Recreation, Topeka  
Don Jolley, Salina Recreation Commission Director  
Jack Brier, Assistant Secretary of State  
Al Jones, Shawnee County Clerk's Office

July 21, 1977

Proposal No. 55 - Municipal Bonds

The Committee was called to order by Representative Clarence Love, Vice-Chairperson, at 10:00 a.m. He explained that Senator Jan Meyers, Chairperson, would not be able to attend the meeting due to a court appearance.

Mr. Mike Heim of the Kansas Legislative Research Department reviewed a memorandum entitled "Municipal Bonds and the Kansas Bond Laws", a copy of which is in the Committee notebooks. In response to questions about arbitrage and advance refunding, Senator Gaar noted that the U.S. Treasury Department issues bonds with calculated interest rates specifically for purchase by municipal governments so these units may avoid arbitrage.

Mr. Don Bell, a Wichita bond attorney, presented a list of suggested amendments to Kansas municipal bond laws, a copy of which is attached to the minutes (Attachment I). Senator Gaar said he agreed with Mr. Bell's recommendations in regard to the advance refunding law and thought additional amendments should be made to allow advance refunding of revenue bonds issued both before and after the effective date of 1977 S.B. 446. Senator Gaar also suggested that the industrial revenue bond filing (with the Kansas Securities Commissioner) requirement be clarified in regard to what constitutes a private placement to conform with the provisions of the federal "blue sky" law.

Mr. Ernie Mosher, Secretary of the League of Kansas Municipalities, distributed copies of an Urban Information Report summarizing industrial revenue bond issues from 1961-1976, a copy of which is in the Committee notebooks. Mr. Mosher agreed with the changes suggested by Mr. Bell including the suggested amendments to the utility bond laws. He said that in his opinion there was no overwhelming need for a number of changes in the municipal bond laws. He suggested the bond election publication requirements be simplified to avoid situations such as that which recently occurred in Lawrence. A bond election in that city was invalidated because the election notice was published on the wrong day. In response to a question, Mr. Mosher said he did think that the property tax exemption allowed facilities built by industrial revenue bonds was a factor in attracting new industry into a community.

Mr. Bell noted there have been approximately 12 bond issues in default since 1961. Bondholders, however, lost money in only half of the cases. He said defaults were higher in other areas of finance such as corporate bonds and Small Business Administration loans.

#### Afternoon Session

The meeting was called to order at 1:30 p.m. by Representative Clarence Love, Vice-Chairperson.

Mr. Dick Dykes of the Kansas Department of Economic Development distributed a fact sheet on the use of economic development (industrial) revenue bonds, a copy of which is attached to the minutes (Attachment II). Mr. Dykes said that the only states which do not allow economic development bonds are California, Idaho, North Carolina and Texas. Mr. Al Alderson of the Revisor of Statutes Office noted that California and Idaho both have liberal tax increment financing laws which are used as economic development tools.

Mr. Ed Bruske, Secretary of the Kansas Department of Economic Development, explained that the function of the Industrial Round Table was to look at anything which will affect business and industry in Kansas. He noted that the Round Table made the suggestion that certain industrial revenue bond issues be registered with the Kansas Securities Commissioner. In response to a question, Mr. Bruske said that he was not sure exactly what the impact of eliminating the property tax exemption for facilities built by industrial revenue bonds would be. He estimated, however, that it might have affected the decisions of as many as 30 percent of the businesses which have located or expanded facilities in Kansas in recent years. He noted that the trend was to require a payment in lieu of taxes. Not all payments, however, equal 100 percent of the property taxes that would be due. In response to another question, Mr. Bruske said the tax increment financing legislation enacted in 1976 was a great idea.

Mr. Bud Grant of the Kansas Association of Commerce and Industry noted that the City of Topeka has filed a friendly suit with the Attorney General to test the constitutionality of the tax increment law.

Representative Kearns asked Mr. Bruske to provide the Committee with information regarding the size and the extent of which payments in lieu of taxes are made by businesses occupying facilities built by industrial revenue bonds. Representative Dyck asked Mr. Bruske and Mr. Grant to provide the Committee with information on the tax benefit effects of industrial revenue bonds and tax and other incentives of surrounding states.

Mr. Ray Barmby of George K. Baum and Company said more teeth was needed in legislation requiring the filing of information with the Kansas Securities Commissioner in regard to certain industrial revenue bond issues. A copy of Mr. Barmby's statement is attached (Attachment III). Senator Gaines asked Mr. Barmby to provide staff with a copy of his suggested changes to the industrial revenue bond filing requirement statutes.

Mr. Ken Britt of Zahner and Company said Kansas bond laws compare favorably with the laws of other states. He then discussed the function of the Municipal Securities Rule Making Board which was created by the 1975 Federal Securities Act. The Board has the task of formulating rules and regulations governing the operating procedures of brokers, investment bankers and bond underwriters. Mr. Britt is the municipal representative for the four-state district committee that provides input into this Municipal Securities Rule Making Board. Mr. Britt suggested that the statute providing for the public sale of bonds be clarified to specifically state the information required for a municipal bonded debt statement.

Mr. Jack Ranson of Ranson and Company said the municipal bond industry was in the state of future shock because of the accelerated rate of change in the area of federal regulations as well as in other areas. He said new trends requiring full disclosure of all facts relating to a bond issue may force bond underwriters to seek legal counsel. He said that nationally the tax exempt status of the interest on municipal bonds continues to be debated and that the proposal for a taxable bond option is also being debated. Mr. Ranson said Kansas bond laws are the best of any of the states in which his firm operates. He suggested: (1) that consideration be given to broadening the scope of 1977 S.B. 446 to allow advance refunding of bond issues of less than \$1 million and the advance refunding of general obligation bonds; (2) that authorization be given to issue revenue bonds for coal gasification purposes including a 40-year bond term, limited bond discounting and the creation of a temporary financing vehicle; and (3) banks should be allowed to pledge advance refunding bonds as security for public fund deposits. He said that statutorily set interest rates do not hold down interest costs but only restrict projects. In response to a question, Mr. Ranson said he would support longer maturity requirements for all revenue and general obligation bonds since the bond market actually controls bond maturity lengths.

Mr. Ranson noted that he was one of the underwriters that had signed a contract with the City of Wichita to help underwrite the coal gasification bond issue if that project is approved. In response to a question he said the Committee may want to wait until later in the fall to hold a public hearing on this issue in Wichita since more questions about the project could be answered at that time.

The Committee then discussed recent bond defaults involving the City of Haysville and Pittsburg. It was noted Kansas investors were not involved in the Haysville bond issue.

Mr. Britt noted that most Kansas municipal bond issues are not exempt from the Kansas income tax law. Mr. Ranson agreed to provide staff with a copy of a study involving advance refunding in Indiana. The meeting recessed at 4:30 p.m.

July 22, 1977

The Committee was called to order by Senator Meyers, Chairperson, at 9:00 a.m.

Mr. Al Jones of the Shawnee County Clerk's Office distributed copies of the general obligation bond and coupon register for Shawnee County, a copy of which is attached to the minutes (Attachment IV). Mr. Jones said there was a gray area concerning whose responsibility it was to notify the county assessor when property needed to be placed back on the tax rolls after a tax exemption due to an industrial revenue bond issue had expired.

Mrs. Bernice Crummett, Finance Officer for the City of Overland Park, outlined the duties of city clerks and finance officers in regard to bond issues. She said there had not been any problems with getting facilities financed by industrial revenue bonds back on the tax rolls in Overland Park.

Mr. Phil Schuley, Assistant City Attorney for Overland Park, said the federal government was becoming more involved with municipal bond issues in the area of financial disclosure.

Mr. Ed Rensmeyer of the Municipal Audit Section of the Division of Accounts and Reports reviewed problems his office had encountered regarding municipal bonds. A copy of his statement is attached (Attachment V).

Mr. Jim Cobler, Director of the Division of Accounts and Reports, said some third class cities have expenditures in excess of \$1 million and their financial recordkeeping is done out of a shoe box. He suggested more audit controls were needed in this area.

Mrs. Joan Finney, State Treasurer, discussed the duties of her office in regard to municipal bond registrations. A copy of her statement is attached (Attachment VI). Mrs. Finney suggested that the state establish a custodial account to help facilitate the payment of bonds by the Treasurer's Office when her office acts as fiscal agent for municipalities. In response to a question, Mrs. Finney said that the public purpose would be served if all municipal bonds were required to be registered by her office. The Chairperson asked Mrs. Finney to send the Committee a memorandum outlining her suggestions including her recommendation in regard to registration of Xerox copies of bonds.

#### Proposal No. 56 - Parks and Recreation

Mr. Don Jolley of the Salina Recreation Commission submitted two drafts of proposed legislation in regard to local recreation commissions and city-county park and recreation programs, copies of which are attached (Attachments VII and VIII). He also distributed a list of cities that operated recreation programs by class, by population and by the type of authority (Attachment IX). After some discussion the Committee adjourned for lunch.

#### Afternoon Session

#### Proposal No. 83 - Cemeteries

The meeting was called to order at 1:30 p.m. by Senator Jan Meyers. She noted that the Committee had been assigned a new study proposal dealing with the administration and regulation of permanent maintenance or perpetual care funds of certain cemetery corporations.

Mr. Jack Brier, Assistant Secretary of State, distributed copies of a map of Kansas showing the location of the 59 cemetery corporations that have registered, as required, with the Secretary of State. He said that there was no way of knowing how many more of these cemetery corporations should be registered. He also distributed copies of a letter written by the Secretary of State to Senator Doyen requesting the study. The letter outlines the various problems the Secretary of State is having administering the law requiring the registration of cemetery corporations and the auditing of their perpetual care funds. A copy of an Attorney General's opinion which addresses various aspects of this law was also distributed as well as a copy of the statutes (K.S.A. 17-1301 et seq.) Copies of all these materials are attached (Attachment X). Mr. Brier said the state would be better off with no law rather than have a law which is unenforceable.

The Committee decided to hold hearings on Proposal No. 83 on August 9. Staff was instructed to invite private cemetery corporation owners, officials familiar with public operated cemeteries, church cemetery groups, the League of Kansas Municipalities and the Kansas Association of Counties. The Committee also agreed to try and reach some conclusions and suggestions in regard to Proposal No. 55 and 56 at the August 9-10 meeting.

The Committee adjourned at 4:20 p.m.

Prepared by Mike Heim

Approved by Committee on:

8-9-77  
(Date)

CHANGES IN MUNICIPAL BOND LAWS SUGGESTED BY

DONALD A. BELL

TO THE SPECIAL COMMITTEE ON LOCAL GOVERNMENT

June 21, 1977

The following specific changes in the municipal bond laws of the State of Kansas are suggested for consideration by the Committee:

I. Amendment to exclude all sewer bonds of any kind from city debt limitations.

It is suggested all city debt limitations found in Article 3 of Chapter 10 be amended to specifically exclude from debt limitations all city bonds of any kind or character issued for sewer improvements. Most bonds for city improvements are issued under Article 6 of Chapter 12. Bonds issued for sewer plants, outfall lines, pumping stations and interceptor mains are generally specifically exempt from the debt limitations. Sewer lines for laterals and other lines to be assessed against the property owners are within debt limitations. Large Federal grants are available for new sewer systems and improvements to sewer systems, but some cities are finding it difficult to finance such systems or improvements under existing debt limitation laws. Very often certain lines are determined to be main interceptors and chargeable to the city at large in order to get that particular cost outside the debt limitation even though the particular line might be more properly chargeable, at least in part, to the property owners as special assessments; but such special assessment bonds would be within debt limitations. Cities should be allowed to develop sewer systems for the health and welfare of the city without the necessity of structuring the financing solely on the basis of bonded debt limitations.

II. Amendments to the Utility Revenue Statutes.

It is suggested that the utility revenue statutes, found in Article 12 of Chapter 10, be amended to allow more modern financing methods to be used. Substantially all of the suggested changes involve methods used in many other states to make the financing more attractive and thus provide a lower financing cost to the city. Consideration is suggested of each of the following:

A. To allow bond anticipation notes, payable from revenue bond proceeds, for the purpose of temporarily financing projects prior to the actual issuance of bonds.

B. Amendment of 10-1203 to specifically allow the city to determine whether the same utility service is being furnished by a private utility. The Kansas Corporation Commission seems to take the position that the city does not have the right to make that determination in the first instance.

C. Allow the pledging of revenues to a Trustee for the benefit of bondholders under a trust agreement. Also, possibly allow a mortgage of the facility.

D. Amend 10-1206 to allow such revenue bonds to be sold at public or private sale for not less than 98% of the principal amount plus accrued interest.

E. Amend 10-1207 to allow serial or term maturities up to 40 years instead of 30 years and issuance of bonds in coupon or registered form.

F. Consider a clarification or deletion of the requirement for an "adequate depreciation fund".

III. It is suggested that K.S.A. 15-709, which limits expenses on bond issues of third class cities to 20% of the contract price of the work, be repealed.

This statute only applies to third class cities; and, apparently, a city could pass a charter ordinance exempting itself from the statute. Most third class cities are not even aware of the problem; and unless it has been anticipated, the statute presents many problems in the financing of projects in smaller towns. Other statutes insure that assessments be made only for costs of a project and that bonds cannot be issued in excess of the cost of the project. The statute is of doubtful value and further poses serious problems of interpretation and application.

IV. It is suggested that the procedures relating to the making of improvements and imposition of special assessments for improvement districts set out in Article 27 of Chapter 19 be amended to conform more closely to such procedures in cities.

The improvement district assessment procedures are cumbersome and do not necessarily provide the best protection for land owners. In addition, all special assessments must be made 100% against the specific property benefited whereas many improvements made in improvement districts should perhaps more properly be chargeable at least in part to the city at large. It is suggested that the procedures set out in K.S.A. 12-6a01 et seq. might be more conducive to fairness and orderly procedures in improvement districts.

Atch. I

It is suggested that a study be made of all special assessment statutes with a view towards allowing all assessments to run as long as 20 years.

K.S.A. 10-103 allows all municipal bonds, including bonds payable from assessments, to be issued to mature in not more than 20 installments; but many special assessment statutes only allow assessments for 10 years. An example is K.S.A. 12-667 which limits special assessments to 10 annual installments.

VI. It is suggested that the Committee consider recommending a statute which would allow for the formation of county water districts much in the same manner that county sewer districts are formed under Article 27 of Chapter 19.

The only statutes currently being used to any extent in this regard are the rural water district statutes which are ordinarily used in connection with certain Federal funding. These statutes are somewhat cumbersome and contain certain requirements which are not applicable to all cities, particularly suburban developments. Perhaps the Johnson County water district statutes could be amended to apply to other counties where feasible to do so.

VII. Consideration should be given to a general review, updating, elimination of duplications, and clarification of all the county sewer statutes contained in Chapter 19 of Article 27.

Many of these statutes are confusing and are not conducive to an orderly development of an overall sewer plan. The statutes were originally designed for special assessment procedures only. Current developments in area sewer planning envision certain sewer improvements chargeable to a wide area with other improvements more properly made on a special assessment basis. Perhaps this study and the preparation of resulting changes in the law would be more than the Committee would want to handle in an interim period. In that event, the Committee might want to suggest this as a study for a special committee in the next interim session.

VIII. Experience with Chapter 62 of the 1977 Session Laws (SB 434) relating to a notice to be filed with the Securities Commissioner with respect to industrial revenue bonds has not been sufficient to indicate all changes which might be desirable in the law.

The Securities Commissioner has requested certain opinions from the Attorney General's Office, which, when forthcoming, might suggest specific clarifications in the law. Preliminarily, we would suggest consideration be given to one amendment; and that is to insert in section 1, subsection (g), additional phraseology which would allow

an offering circular or prospectus to be submitted instead of an "Official Statement". The requirement of an "Official Statement" implies that such statement is issued by the city whereas in fact substantially all of such official statements are prepared by underwriters and their counsel, and approval and adoption by the city is sometimes requested under circumstances which allow no room for the city to verify material in the "Official Statement". Although many times we feel it is appropriate for the city to approve and adopt such official statements, for the most part we feel the primary obligation in this regard is on the underwriters of such industrial revenue bonds; and we do not feel that the law should specifically make a requirement which might impose an undue burden on a city in a particular situation. Perhaps the law was not intended to impose this burden on the city, but there appears to be an implication to that effect.

IX. Experience with Chapter 58 of the 1977 Session Laws (SB 446) relating to refunding of certain bonds has not been sufficient to suggest all of the problems which might arise.

Preliminarily, we would suggest that consideration be given to the following amendments:

A. That section 1 be amended to clarify specifically what the \$1,000,000 reference is to, i.e., does it refer to the original amount of the previous issue or issues or the outstanding amount; does it require each previous issue to be \$1,000,000 or is it sufficient that the total of the previous issues to be refunded is \$1,000,000.

B. It is suggested that section 1 be amended to indicate that the requirements of K.S.A. 10-116a insofar as they are restrictive in nature, such as the \$1,000,000 requirement and the requirement that the previous issue of bonds must have been issued prior to the effective date of the act, be made to apply only to advance refunding bonds. Preliminary interpretations of the bill would indicate that in amending other refunding statutes, such as K.S.A. 10-1211, simple refunding of outstanding bonds such as utility revenue bonds may be seriously curtailed by imposition of the restrictive requirements of K.S.A. 10-116a. This apparently was not the intent of the Legislature, but appears to have been the result of the amendments contained in SB 446.

If we can be of any further assistance in pursuing any of the above suggestions, we will be happy to do so. We would also be glad to assist in the drafting of any specific legislation with respect to any matter which the Committee considers would likely receive a favorable recommendation of the Committee.

DONALD A. BELL

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FACT SHEET

Use of Economic Development Revenue Bonds

1. Economic Development Revenue Bonds are used as a financing tool in all but 4 states.(California, Idaho, North Carolina, Texas)
2. Economic Development Revenue Bonds can be used in 13 states for retail purposes.(Colorado, Indiana, Kansas, Minnesota, Montana, New Jersey, New York, North Dakota, Oregon, Pennsylvania, Rhode Island, South Dakota, and Wyoming)
3. In Kansas, the use of Economic Development Revenue Bonds has been a very effective way to stimulate economic development activity and has provided a competitive economic development tool for us. From 1961 through 1976, 169 Kansas cities have issued 696 Economic Development Revenue Bonds. The value of these bonds totals \$782,000,000.
- 4.. Projects financed through revenue bonds through 1976 have aided in the creation of an estimated 28,000 new jobs for Kansans.
5. Since 1961, 60% of the total bonds issued were for manufacturing purposes, 5% of the total number of issues were for warehouse operations. The balance of the total number of issues were for a variety of purposes such as nursing homes, medical facilities, educational facilities, retail operations, etc.
6. Economic Development bonds issued in Kansas for commercial purposes since 1961 have included such projects as supermarkets, department stores, laundry-mats, restaurants, motels, office buildings, apartment complexes, and other miscellaneous retail operations.
7. During the period 1971 through 1975 there were 90 revenue bond issues for nursing homes and other medical facilities estimated at \$143,000,000, 10 issues were for office buildings at \$6,500,000, and 30 issues were for miscellaneous purposes at \$21,000,000.

A Presentation by  
Ray Barmby  
Vice President  
George K. Baum & Company  
Incorporated  
before the  
1977 Special Committee on  
Local Government  
July 21, 1977

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Ladies and Gentlemen I very much appreciate the opportunity of appearing before this special committee on local government and at a time when there are, I believe, serious challenges facing us on some aspects of municipal bond financing.

I am a Vice President and a Director of George K. Baum & Company Incorporated, an investment banking firm headquarter in Kansas City, Missouri. The firm has branches in the cities of Topeka, Emporia, and Manhattan and in the city of Denver, Colorado. I am a resident of Olathe, Kansas. George K. Baum & Company is engaged in the investment banking business which, very simply stated, is a firm engaged in the acquisition of money for businesses.

George K. Baum & Company, incorporated in 1928 was until about 1938 engaged solely in the underwriting and retail sale of municipal bonds. In 1938 the firm began engaging in the underwriting and sale of corporate securities and by that I mean stocks and corporate bonds. For about the last 13 or 14 years I have been quite actively connective with the underwriting of Industrial Revenue Bonds. I do not particularly care for the term Industrial Revenue Bond but we are unfortunately saddled with it.

The underwriting of economic development revenue bonds (a term which I prefer to use) began for George K. Baum & Company back in the early 1960's. As a member of the corporate underwriting department of George K. Baum & Company I was frequently asked by my colleagues in the municipal bond department for advice on the credit worthiness of a particular corporation and its need for land, building and equipment financing. As a result of that early involvement I saw that the economic development revenue bond possessed for the State of

*Atch. III*



ansas, a unique opportunity to accelerate overall economic development throughout the state.

Currently I spend perhaps 70% of my time assisting corporations, executives of Chambers of Commerce, elected officials, city managers and state officials in presenting the many advantages of economic development revenue bonds in their best possible light.

I spend 10% of my time as the compliance director of George K. Baum & Company and the remaining 20% as the head of the corporate syndicate department.

George K. Baum & Company, as an investment banker, is an underwriter of municipal bonds and has, I think, underwritten more of the economic development revenue bonds both in Kansas and throughout the middlewest than any other investment banker.

In late 1976 and throughout the 1977 session of the legislature I was privileged to be the chairman of a task force, formed mainly by the Kansas Association of Commerce and Industry and the Kansas Department of Economic Development, to spearhead a drive for legislation designed to regulate the issuance and sale of economic development revenue bonds by Kansas municipalities. After at least one meeting with Mr. Don Bell of Wichita and at least one meeting with Mr. Norman Gaar of Johnson County, Kansas, a suggested approach to regulation of the issuance and sale of the bonds was formulated and presented to Mr. Gaar for committee consideration in the hope that it would be passed in substantially the same form in 1977.

After numerous hearings, the bill, Senate Bill 434, was enacted and signed by Governor Bennett a few months ago. The bill differs considerably from that which the task force proposed in that while it is a requirement to

to file information with the securities commissioner our proposed bill also gave the securities commissioner certain powers to deny the issuance or sale of bonds for any one of several very important reasons and, of course, provided for appeal and review of such findings by the Commissioner via the Courts, Senate Bill 434, as enacted, requires the filing of information both in a proposed state and in its final state but it lacks, in my opinion, the teeth which are necessary for the full protection of municipal governments, as issuers of the bonds, and Kansas citizens as potential holders of the bonds.

As originally proposed by the task force the legislation would have been introduced as an amendment to the existing Kansas Securities Act, a piece of legislation which is most fair, most just and most equitable and yet which has within it the necessary mechanisms for the Securities Commissioner to issue stop orders and prevent the unlawful issuance and sale of securities in the state to Kansas residents. It can be appreciated that this first ever regulation and control of the issuance and sale of a municipal security by the State of Kansas was approached somewhat timidly and avoiding controversy as the legislature stepped into an entirely new area of securities regulation. Yet the bill does not do for Kansas that which those of us who have concerns wished it to do. It's my hope that, without any scandals having descended upon a single Kansas municipality or upon a lessee of a facility, during the next session of the legislature the necessary strength will be infused into Senate Bill 434 so that once and for all the potential perpetrators of crimes upon municipal elected officials and the citizens of Kansas are prevented. After all, isn't this type of legislation purely preventive? If we would be successful in 1978 in expanding the bill to include no more than standard guidelines for disclosure within the offering circular and few of the

ther basic documents then we would have accomplished a major step toward  
hther and yet fairer regulation of the issuance and sale of this type of  
security.

Our economic development revenue bond law is, as I have said on many  
occasions, probably the fairest, most equitable law of its type in the  
country. It entrusts to the local governing bodies the complete respon-  
sibility for the issuance and sale of their securities. The legislature,  
when it enacted the law in 1961, had then, and I think has today, full and  
complete confidence in the integrity and the common sense of local municipal  
governments and decided that the State and its Counties should not inter-  
fere in this rather basic right. Our economic development revenue bond law  
is an enabling statute which does not require an election for issuance of  
this type of security, does not require the filing of an application with a  
state agency seeking its permission for issuance of the bonds and does not,  
except in one instance, require any unusual amount of paperwork or fees to  
be paid for issuance of the bonds. Kansas, therefore, has placed itself in  
an extremely competitive position in that an issue of bonds can literally be  
completed from beginning to end in as few as 50 days even including the 30  
days required to file information with the Kansas Securities Commissioner.  
I hope that the law remains in the statute books in its present form free  
from amendments designed to weaken it in the future. In the 1978 session  
those of us who are concerned with the state's competitive job development  
position and the strength of this tool called Economic Development Revenue  
Bonds will have to address ourselves to the threat posed in Senate Bill 211  
as introduced by Senator Chaney. The Bill is designed to require that prior  
to the issuance of any bonds notices be published, by the taxing subdivisions

contained within the municipality issuing the bonds, requiring that public  
hearings be held. Such hearings by the taxing subdivision boards and  
bodies are called in order to obtain public comment by which they can  
determine whether property tax exemption afforded by law to the project  
financed with the bonds should be extended by the particular subdivision.  
The process, therefore, which the school district and county and the city,  
and the library board and various tax exempt divisions will be required to  
pursue involves a lengthy process of notice and scheduling of public hear-  
ings through which the project will have to suffer. The new tenant may  
well be open to criticism, to cross examination and I can visualize the pro-  
spective tenant having to defend himself in connection with the project.  
The major risks proposed by SB 211 are that the prospective employer could  
become totally disenchanted with the community and abandon the proposed  
project or, just as worse he will be stolen or drawn away from the community  
and from the state, perhaps, by a city which does not require the process of  
public hearings, the delivery of testimony, etc. The shock wave effect that  
will be felt throughout the country will most certainly result in a lessening  
of our job development abilities and, without question, the very enviable  
record of successes which the state has achieved will not again be repeated.  
We will witness other surrounding states develop life saving jobs which  
otherwise would be located in the State of Kansas. SB 211 is a major threat  
to the foundation of our economic development revenue bond statute.

Late in the session, SB 481 was introduced by the Committee on Federal  
and State Affairs as a result of activity in the State of Kansas on the  
part of major discount department store chain expanding its operations in  
Kansas. Our economic development revenue bond statute is extremely broad in

'ts application toward any business enterprise and in fact has been used  
ccessfully to establish hotel/convention type facilities, to build hospi-  
tals, to build nursing homes, to build research and development facilities  
and to build warehouse, manufacturing facilities and, in at least one case,  
downtown full-line department store. Now with SB 481 comes an attempt to  
restrict by, state statute, the right and ability of any community to de-  
cide for itself whether it wishes to use the revenue bond as a means of  
establishing, within its vicinity, a retail department store enterprise.  
As I said earlier, I think it was very evident that the legislature in 1961  
placed a great deal of confidence in the integrity of municipalities in the  
State of Kansas to do with the law that which they saw fit and proper in  
their respective communities. What is fit and proper in Pratt Kansas, or  
in Garden City or in Liberal or in Coffeyville or any where else may not be  
proper in Topeka, Wichita or in Kansas City, Kansas. It is that, of course,  
which makes the State of Kansas a great state, its divergence of attitudes  
and opinions throughout Kansas. And so the legislature is being asked to  
amend the economic development revenue bond statute to prohibit the use of  
bonds for "building buildings or facilities for commercial enterprises  
selling only at retail".

I suggest to you that the use of economic development revenue bonds for  
the establishment of a business enterprise in a community should be a local  
decision upon which a municipal government may solicit the opinions of its  
citizens and following such input make a determination accordingly. I do  
not think it is for the legislature to determine, for a city commission or a  
city council or for a citizenry, what type of business enterprise they may  
develop through the revenue bond tool and what type of business enterprise  
they may not develop and attract to its area. I believe that the elected

officials of our Kansas cities and towns have the ability to decide for  
themselves whether they will or will not by policy offer the revenue bond  
financing to a particular enterprise and can do so intelligently. I do not  
believe that any municipality wishes to begin passing the buck to the Kansas  
Legislature every time a somewhat controversial subject arises.

For years those actively involved in the State of Missouri with de-  
veloping jobs for their citizens have pointed to our economic development  
revenue bond law as the reason that Missouri is not succeeding at nearly  
the Kansas rate in job development. Whether there are other factors which  
may also be at the root of the problem in Missouri is not for us to discuss  
here, but suffice it to say, on two occasions attempts have been made to  
alter the requirements in Missouri that these bonds be voted by the local  
electorate prior to their issuance (and affirmatively so by a 4/7th's  
majority). In each case the attempt to change the law has failed. Now in  
1977 the legislature has determined a way around this particular handicap,  
and has enacted, and the governor has signed, legislation permitting the  
development at the local city or county level of an industrial development  
authority which has, by statute, the ability to issue tax-exempt revenue  
bonds for economic development purposes without a vote. The present law,  
which will stay on the books requires not only the filing of a lengthy  
application with a state agency asking for permission to call an election  
but the bonds may only be used for a manufacturing enterprise. The new bill  
will allow bonds, as I said, to be issued without a vote, without the  
necessity of a state agency's approval and for any business enterprise which  
would include warehouse and distribution, commercial, service industry, (such  
as hotel and laundry business) and if necessary the retail commercial business.

law will be effective in late September, will be no doubt tested by the Missouri Supreme Court in the fall of 1977, and undoubtedly placed into full force and effect around the end of the year. At that time Missouri will feel that they are on a par with the Kansas statute and will pursue the development of jobs through this new method of issuing revenue bonds.

The one aspect of this type of financing, a price which had to be paid if you will for this new law, is that the facilities financed with these bonds in Missouri will not be eligible for any amount of ad valorem tax exemption. This is, of course, unlike the present law in Missouri which does allow for total property tax exemption for the term of the lease. In Kansas, as you know, the statute provides that the property shall be exempt from taxation for a period of ten calendar years commencing the year after the bonds are issued. It will remain to be seen whether the new law in Missouri will begin to have any adverse effect upon our success ratio. I suggest, therefore, that this is not the time to weaken or place into shackles our revenue bond issuing capabilities.

As chairman of the Economic Development Council of the Kansas Association of Commerce and Industry and as a member of its Board of Directors I can state to you officially that the position, in effect the policy of KACI, toward the economic development revenue bond is a positive one. KACI has strived over the years to see that our law remained intact and remained strong. They recognized that with this tool we were winning the battle to develop jobs for the many thousands of young people coming on to the labor market each year in Kansas. KACI lent its full support to proposed regulation of the issuance and sale of bonds in the 1977 session and, as I said earlier, were part of the task force which can take some credit for SB 434. The board does not have a

position on SB 211 or on SB 481. Certainly in the case of 211 I think that the board would look upon its intent as having a weakening effect upon our ability to compete with our neighboring states and I would venture to guess that the board would oppose it. I have no way of knowing the sentiment consenting SB 481. I personally hope that they would agree with me that a decision whether to issue for a retail establishment or not should be left to the elected officials and citizens of the local community.

TK

# General Obligation BOND and COUPON REGISTER

ISSUED BY Shawnee County  
 PURPOSE Main + Federal Devel Dist #13  
1974-76 Federal Devel Dist #2  
 AMOUNT OF ISSUE \$ 95,104.00

DATE OF ISSUE September 1, 1974 NUMBER OF BONDS 15  
 DATE LAST BOND DUE September 1, 1990 RATE OF INTEREST 5 3/4, 5 1/2  
 INTEREST and PRINCIPAL PAYABLE TO AT

| AMOUNT | DATE OF MATURITY | NO OF COUPON     | 1      | 2      | 3      | 4      | 5      | 6      | 7      | 8      | 9      | 10     | 11     | 12     | 13     | 14     | 15     | 16     | 17     |
|--------|------------------|------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| 504.00 | 9/1/76           | DATE OF MATURITY | 3/1/76 | 9/1/76 | 3/1/77 | 9/1/77 | 3/1/78 | 9/1/78 | 3/1/79 | 9/1/79 | 3/1/80 | 9/1/80 | 3/1/81 | 9/1/81 | 3/1/82 | 9/1/82 | 3/1/83 | 9/1/83 | 3/1/84 |
|        |                  | AMOUNT           | 457.36 | 152.12 |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|        |                  | DATE CANCELED    | 4/76   | 10/76  |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| 500.00 | 9/1/77           | AMOUNT           | 540.00 | 150.00 | 150.00 | 150.00 |        |        |        |        |        |        |        |        |        |        |        |        |        |
|        |                  | DATE CANCELED    | 4/76   | 10/76  | 4/77   |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| 500.00 | 9/1/78           | AMOUNT           | 540.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 |        |        |        |        |        |        |        |        |        |        |
|        |                  | DATE CANCELED    | 4/76   | 10/76  | 4/77   |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| 500.00 | 9/1/79           | AMOUNT           | 540.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 |        |        |        |        |        |        |        |        |
|        |                  | DATE CANCELED    | 4/76   | 10/76  | 4/77   |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| 500.00 | 9/1/80           | AMOUNT           | 540.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 |        |        |        |        |        |        |
|        |                  | DATE CANCELED    | 4/76   | 10/76  | 4/77   |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| 500.00 | 9/1/81           | AMOUNT           | 540.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 |        |        |        |        |        |
|        |                  | DATE CANCELED    | 4/76   | 10/76  | 4/77   |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| 500.00 | 9/1/82           | AMOUNT           | 517.50 | 172.50 | 172.50 | 172.50 | 172.50 | 172.50 | 172.50 | 172.50 | 172.50 | 172.50 | 172.50 | 172.50 | 172.50 | 172.50 | 172.50 | 172.50 | 172.50 |
|        |                  | DATE CANCELED    | 4/76   | 10/76  | 4/77   |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| 500.00 | 9/1/83           | AMOUNT           | 505.75 | 176.25 | 176.25 | 176.25 | 176.25 | 176.25 | 176.25 | 176.25 | 176.25 | 176.25 | 176.25 | 176.25 | 176.25 | 176.25 | 176.25 | 176.25 | 176.25 |
|        |                  | DATE CANCELED    | 4/76   | 10/76  | 4/77   |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| 500.00 | 9/1/84           | AMOUNT           | 540.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 | 150.00 |
|        |                  | DATE CANCELED    | 4/76   | 10/76  | 4/77   |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| 500.00 | 9/1/85           | AMOUNT           | 630.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 |
|        |                  | DATE CANCELED    | 4/76   | 10/76  | 4/77   |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| 500.00 | 9/1/86           | AMOUNT           | 630.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 |
|        |                  | DATE CANCELED    | 4/76   | 10/76  | 4/77   |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| 700.00 | 9/1/87           | AMOUNT           | 630.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 |
|        |                  | DATE CANCELED    | 4/76   | 10/76  | 4/77   |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| 500.00 | 9/1/88           | AMOUNT           | 650.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 |
|        |                  | DATE CANCELED    | 4/76   | 10/76  | 4/77   |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| 700.00 | 9/1/89           | AMOUNT           | 650.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 |
|        |                  | DATE CANCELED    | 4/76   | 10/76  | 4/77   |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| 700.00 | 9/1/90           | AMOUNT           | 630.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 | 210.00 |
|        |                  | DATE CANCELED    | 4/76   | 10/76  | 4/77   |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|        |                  | AMOUNT           |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|        |                  | DATE CANCELED    |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|        |                  | AMOUNT           | 950.00 |        | 540.75 | 540.75 | 540.75 | 540.75 | 540.75 | 540.75 | 540.75 | 540.75 | 540.75 | 540.75 | 540.75 | 540.75 | 540.75 | 540.75 | 540.75 |
|        |                  | DATE CANCELED    | 9/1/84 |        | 10/85  | 10/85  | 10/85  | 10/85  | 10/85  | 10/85  | 10/85  | 10/85  | 10/85  | 10/85  | 10/85  | 10/85  | 10/85  | 10/85  | 10/85  |
|        |                  | AMOUNT           |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|        |                  | DATE CANCELED    |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|        |                  | AMOUNT           |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|        |                  | DATE CANCELED    |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|        |                  | AMOUNT           |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|        |                  | DATE CANCELED    |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|        |                  | AMOUNT           |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|        |                  | DATE CANCELED    |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|        |                  | AMOUNT           |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|        |                  | DATE CANCELED    |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|        |                  | AMOUNT           |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|        |                  | DATE CANCELED    |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|        |                  | AMOUNT           |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|        |                  | DATE CANCELED    |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|        |                  | AMOUNT           |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|        |                  | DATE CANCELED    |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|        |                  | AMOUNT           |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|        |                  | DATE CANCELED    |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |

Atch. IV



IMPORTANT: Before Preparing This Report Read Carefully Instructions on Back of This Sheet  
 DO NOT REMIT FOR STATE PERMANENT SCHOOL FUND BOND AND INTEREST ON THIS REPORT  
 USE A SEPARATE REPORT FOR EACH BOND ISSUE

ORIGINAL

REPORT OF BONDS AND COUPONS DUE

Nº 3200

Payable Through the Kansas Fiscal Agency

DATE OF REPORT \_\_\_\_\_ 19\_\_

State Treasurer, Topeka, Kansas:

DEAR SIR—This report covers Bonds and Coupons of the issue described below which are due and payable at the Kansas Fiscal Agency on \_\_\_\_\_ 19\_\_

BONDS ISSUED BY \_\_\_\_\_

PURPOSE OF ISSUE \_\_\_\_\_ SERIES \_\_\_\_\_

DATE ISSUED \_\_\_\_\_ DATE OF MATURITY \_\_\_\_\_ RATE \_\_\_\_\_ %

**SECTION No. 1**

| WE ARE REMITTING HEREWITH FOR THE FOLLOWING: |                         | COUPONS AND BONDS    |                       |       |
|--|-------------------------|----------------------|-----------------------|-------|
| COUPONS                                      |                         | Total No. of Coupons | Amount of Each Coupon | Total |
| Coupon No. ....                              | From Bond Numbers. .... |                      |                       |       |
|  |                         | @                    |                       |       |
|  |                         | @                    |                       |       |
|  |                         | @                    |                       |       |
|  |                         | @                    |                       |       |
|  |                         | @                    |                       |       |
|  |                         | @                    |                       |       |
|  |                         | @                    |                       |       |
|  |                         | @                    |                       |       |
|  |                         | @                    |                       |       |
|  |                         | @                    |                       |       |
|  |                         | @                    |                       |       |

| BONDS |                    | Total No. of Bonds | Amount of Each Bond | Total |
|-------|--------------------|--------------------|---------------------|-------|
|       | Bond Numbers. .... |                    |                     |       |
|       |                    | @                  |                     |       |
|       |                    | @                  |                     |       |
|       |                    | @                  |                     |       |
|       |                    | @                  |                     |       |

Total Remitted for Bonds and Coupons Due:

**SECTION No. 2**

| WE ARE NOT REMITTING AT THIS TIME FOR THE FOLLOWING BONDS AND COUPONS FOR THIS REASON: |                         |                       |       |
|--|-------------------------|-----------------------|-------|
| BONDS  |                         | Amount of Each Bond   | Total |
|  | Bond Numbers. ....      |                       |       |
|  |                         | @                     |       |
|  |                         | @                     |       |
| COUPONS  |                         | Amount of Each Coupon | Total |
| Coupon No. ....  | From Bond Numbers. .... |                       |       |
|  |                         | @                     |       |
|  |                         | @                     |       |

Yours very truly,

Treasurer of \_\_\_\_\_

Address: \_\_\_\_\_

Zip Code \_\_\_\_\_

## Instructions for Preparation of Report on Bonds and Coupons Due and Remittance Letter

### GENERAL REMARKS

- A. Prepare these forms in duplicate. Mail originals to the State Treasurer. Retain duplicates in your office for future reference.
- B. These reports must be completely and accurately filled out and must be mathematically correct. Verify the correctness of all extensions and totals. Remittances accompanied by incomplete or inaccurate reports will be returned for correction.
- C. K. S. A. 10-130 requires that remittances to the Fiscal Agency be made at least 20 days prior to the maturity date of bonds and coupons maturing.

### REPORT OF BONDS AND COUPONS DUE

- A. Prepare one of these reports in duplicate for each issue of bonds outstanding at least 20 days before each interest-paying date. In the event it is impossible to remit in full before the due date for all of the bonds and coupons maturing on any interest-paying date, an additional report (or reports) should be prepared to accompany each subsequent remittance to the Fiscal Agency for that issue. These subsequent reports will show:

In Section 1.—The items remitted for with that report.  
In Section 2.—The items not yet remitted for.

#### B. DESCRIPTION OF ISSUE:

- (a) BONDS ISSUED BY: Examples: *City of Abilene; Board of Education, Concordia; Sherman County; S. D. No. 4, Clay County; Jt. R. H. S. No. 5, Thomas and Logan Counties; Walnut Twp., Pawnee County; etc.*
- (b) PURPOSE OF ISSUE: *Electric Light; Waterworks; Internal Improvement; Building; Funding; Refunding; Road Improvement;* or whatever purpose is stated on both the bonds and coupons. In many instances the purpose of issue is dated on coupons "*Internal Improvement*" and on the bonds from which they were detached "*Paving*" or "*Sewer*," etc. In such cases please describe the purpose of issue as follows: "*Internal Improvement—Paving*" or "*Internal Improvement—Sewer*," etc.
- (c) DATE OF ISSUE: Please state the date that is printed on bonds and coupons, not the date on which the municipality received the proceeds from the sale of the bonds.
- (d) DATE OF MATURITY: In cases where the issue matures serially, state date as follows: Feb. 1, 1971 to 76.

#### C. SECTIONS 1 AND 2:

The information required here is indicated on the report. Be certain that it is complete and accurate. Bond numbers from No. 45 to No. 60, inc., and No. 63, and No. 65, should be entered as follows: Nos. 45-60, 63, 65. Be sure to indicate reason for non-remittance for items listed in Section 2. Examples: "*Insufficient Funds*"; "*Bonds being refunded by (name of company)*," etc.

### REMITTANCE LETTER

Enter in the proper spaces the number of the report and the total amount remitted as shown in Section 1. To the total remitted for all issues maturing on this date add Commission and Postage in the amounts indicated. Attach to the Remittance Letter the original copies of Reports of Bonds and Coupons Due together with your check or draft in the exact amount shown on the last line of the Remittance Letter and Mail to the STATE TREASURER, Topeka, Kansas.





Mr. Chairman, and Members of the Committee

My name is Ed Rensmeyer; and I am Chief of the Municipal Accounting Section of the Division of Accounts and Reports, Department of Administration.

Our area of responsibility includes the review of Audits, Budgets and reporting procedures for the municipalities of Kansas. As a result of our activities, Mr. Heim has suggested that I might be able to provide some insight into the problems our section faces in reviewing the various municipal bond issues and the accounting procedures necessary.

May I state at the onset that these illustrations are the exceptions--not the rule! However, the very fact these situations have occurred surely illustrates a need for some corrective legislation.

Within the past year our office has been asked to investigate certain defaulted special assessment bonds. The Attorney General's office was originally contacted by the attorney for the bond holders relative the default. Our investigation of the matter disclosed that a township had authorized the issuance of a number of bond issues for the purpose of installing sewers. The assessments levied were not adequately accounted for (along with other problems); with the net result that all the revenues have been exhausted, and we are confronted with the fact that certain residents, who have, in actuality, paid their assessments and stand current in every respect, are confronted with the possibility of a tax foreclosure action simply because those homeowners' assessments have been diverted and used for the payment of installments due on other

issues. The item to which it would appear this committee should address itself is the control of the issuance of bonds by townships; and ensuring that adequate and positive procedures are initiated to protect the property owners involved, particularly where the fault is not the homeowners.

Another area to which your committee might well address itself is a procedure to preclude a recurrence of a recent situation in which special assessments were not spread until virtually all the district had been developed and sold. When the developer had completed his work and sold the properties under the representation that no assessments were outstanding, the assessments were spread on the tax rolls and the homeowners notified that the residences acquired were each now, in fact, several thousand dollars more "in debt". What is needed in this situation is some statutory provision for recording and disclosing either temporary notes or bonds whose proceeds are to be used for any purpose which will culminate in the spreading of assessments of some future date.

In addition, some provision should be made to preclude the possibility of these assessments being "over-looked" for periods of several years. Recently our attention was called to a related situation in which special assessments were not spread and assessed for seven years. At the end of that time the property owners were billed for seven years' assessments - plus interest to date. Adequate auditing procedures should have revealed this situation, however, our staff was not adequate to check the independent auditors' workpapers; and that situation still exists. Our suggestion is probably best related to a penalty to be prescribed when municipal officials fail to carry out their prescribed duties.

Atch. V

This most surely must have been a situation of misfeasance--most certainly nonfeasance.

A third situation to which this group might address itself is the issuance of No-Fund Warrants in an illegal manner. Our office was made aware of this situation on one occasion. The situation has been rectified and the default of that particular illegal no-fund warrant cured; but we believe an aggressive deterrent to further action of this sort is indicated.

We might further suggest that this Committee address the problems of clarifying "ceilings" on municipal debt. There is considerable confusion among the various municipalities as to precisely their debt limitations and especially as it relates to overlapping debt. Clarification and coordination of existing statutes, in order to bring this matter into focus, would be a significant step forward in eliminating this uncertainty.

I would be happy to answer any questions the chairman or members of the committee might wish to ask.

JOAN FINNEY  
State Treasurer  
July 22, 1977

#### REGISTRATION

Responsibility for the registration of all general obligation bonds and most revenue bonds was assigned to this office effective January, 1975. In calendar year 1976, 47,000 issues were registered, amounting to \$234 million. The current bonded indebtedness for all municipal bonds <sup>reported</sup> registered by the state treasurer is \$1.8 billion. A transcript of proceedings is approved by the attorney general prior to registration. One refunding issue has been registered and one additional such issue is presently in preparation.

Kansas general obligation and revenue bonds are strong securities. There are no issues of such bonds, registered by this office, in default. There has occurred a delinquency in a sewer district issue but it is my understanding that this matter is being resolved and payment will be made. A delinquency may occur, in principal payments only, of one special obligation issue, \$44,425, on a nursing home in Logan, Kansas.

Sixteen industrial revenue <sup>bonds</sup> have been registered by this office since 1975. Two are in default, Mayfield, \$2½ million, and Kanapolis, delinquency amount, \$490 thousand.

#### NOTES

Probably the best protective device for notes has been provided by the legislature through the enactment of the requirement that they be returned to the clerk for co-signature. Occasionally we receive copies of notes: A legal prohibition to such copies would be helpful in providing protection; also the requirement that attestations be imprinted directly upon the issue, rather than attached.

#### PAYMENT

During FY 1977, fiscal payments by the office amounted to \$175 million, an increased dollar volume over the preceding year of \$57 million. The commissions received totaled \$109.7 thousand.

A provision for the establishment of a custodial account for the fiscal agency would expedite the payment process and would be beneficial to the reputation of Kansas bonds.

Atch. VII

VII

12-1901. Unchanged

12-1902. Recreation commission. Any city or school district may operate such system independently, or may co-operate in its conduct in any manner mutually agreed upon, or may delegate the operation of the system to a recreation commission created by either or both of them: Provided, however, That such recreation programs and services shall not be conducted by both the city and school district each acting independently of the other. In a city or school district where a recreation commission has been established, said commission shall have exclusive authority to conduct the system, programs and services described herein. (L. 1945, ch. 108, §2; April 6.)

12-1903. Property; gifts. Any city, <sup>city</sup> school district or commission given charge of the recreation system by this act is authorized to conduct the activities of the system on any property under its custody and management, or through appropriate request, without fee or charge any public owned property within the taxing district served by the recreation commission or department, provided that such recreation program, activity or event shall be open to the general public without an admission charge; on any other public property and upon private property with the consent of the owners, and may receive gifts from any source whatsoever. (L. 1945, ch. 108, §3; April 6.)

12-1904. Unchanged.

12-1905. Unchanged.

12-1906. Unchanged.

12-1907. Unchanged.

12-1908. Certification of budget; tax levy; election to revoke; budget increase; procedure; tax levies; protest petitions; election. (a) Except as otherwise provided in subsection (b) of this section, when the provisions of this act shall have been adopted by an election the commission shall annually, and not later than twenty (20) days prior to the date for the publishing of the budget of such city or school

district, certify its budget to such city or school district, which shall levy a tax sufficient to raise the amount required by such budget, but in no event more than one (1) mill or the amount set out in the petition provided for in section 12-1904 of the General Statutes of 1949, as amended: Provided, When said petition shall have been submitted to a city and school district jointly said budget shall be certified to the city or school district, whichever shall be the larger, and the tax levied by such city or school district: Provided further, That such levy shall not be deemed or considered a levy of such city or school district in determining the aggregate levy of such city or school district under any of the statutes of this state. That after three (3) years' operation the authority to levy the tax provided for in this section may be revoked by a majority of the electors voting at an election called in the same manner as the election authorizing the same. Upon such revocation all property and money belonging to such commission shall become the property of the city or school district levying the tax under this section.

(b) After any city or school district has begun to operate such a supervised recreation system, it appearing to the satisfaction of the recreation commission of a particular school district or city or of a city and school district jointly, that the budget should be increased so as to adequately meet the needs of the city or school district, such recreation commission may submit a proposed program with the budget for carrying out the same to the levying authority which may then levy a tax sufficient to raise the amount required by the expanded budget, but not to exceed two (2) mills, which levy shall be in addition to the one (1) mill authorized by section 1 of this act: Provided, Such additional two (2) mill levy shall not be deemed or considered a levy of such city or school district in determining the aggregate levy of such city or school district under any of the statutes of this state but shall be in addition to all other levies authorized by law and shall not be subject to limitations prescribed by law.

Before the tax levying authority shall make the additional levy authorized by this subsection, they shall cause the recreation commission to be reorganized as follows: There shall be nine (9) members of the recreation commission; five (5) who

Atch. VII

are appointed, two (2) who are duly elected members of the city commission and two (2) who are duly elected members of the Board of Education. The five (5) appointed members shall be selected and appointed as described in section 12-1907 and the four (4) elected members being designated by the governing bodies of the city and school district. These elected members shall serve without pay and shall serve for a like term to which they have been elected to either the school district or city governing body. Once this reorganization is accomplished and before the additional two (2) mill levy authorized under this subsection shall be made, the tax levying authority shall adopt a resolution authorizing the making of the levy. Such resolution shall state the purpose for which the levy is made and the same shall be published once in the official city newspaper. Whereupon, the tax levy may be made without an election, unless a petition in opposition thereto is signed by not less than five percent (5%) of the qualified electors of the city or school district, who voted at the last preceding regular city election, shall be filed with the city clerk within thirty (30) days after the publication of the resolution. If a valid petition is signed, it shall be the duty of the governing body of the city or school district to submit the question of levying the tax at the next regular city or school district election or at a special election called for the purpose. When an election is held and a majority shall vote in favor of levying the tax, such tax may thereafter be levied. If the majority shall vote against the tax levy, then such levy shall not be made. (L. 1945, ch. 108, & 8; L. 1963, ch. 88, & 2; June 30.)

(c) Provided further that in the event a city, the entire corporate limits of which are served by a recreation commission or a county in which one or more recreation commissions are functioning under the appropriate statutes, levies a sales tax, income tax or any other special levy for the purpose of financing the general fund of the political subdivision under applicable Kansas statutes, those recreation commissions shall receive a pro-rata share of such taxes annually, based upon the percentage comparison between the recreation commission ad valorem tax levy and the ad valorem tax levy of the taxing subdivision but not to exceed fifty percent (50%) of the recreation commission budget in any given budget year.

(d) All recreation commissions operating under the provisions of Chapter 12, Article 19 shall be authorized to certify a budget to their appropriate tax levying authority in an amount exceeding the statutory levy limits set out herein sufficient to finance all social security, workmen's compensation, K.P.E.R.S. and unemployment insurance requirements in a given budget year. Also, such recreation commissions shall be authorized to levy above their statutory limits any funds required to meet expenses incurred by the entering into of contracts or agreements with any other political subdivision for the use of facilities in which to conduct recreation programs and services.

12-1909. Unchanged.

12-1910. Unchanged.

12-1911. Repealed - 1974.

12-1912. Repeal.

12-1913. Unchanged.

12-1914. Same; notice; election, when; procedure; transfer of property to department; operation. (a) Whenever the governing body of any city operating a public recreation system under the provisions of this act shall deem it advisable to combine the operation and administration of its park system and its public recreation system, it shall publish a notice of its intention to combine the two systems and establish a single department. Such notice shall be published once each week for two (2) consecutive weeks in the official city newspaper and if within twenty (20) days after the last publication of said notice there shall be filed in the office of the city clerk not later than 5:00 P.M. on the last day a petition signed by qualified electors equal in number to not less than ten percent (10%) of the electors who voted at the last preceding regular election as shown by the poll books requesting an election upon such question, an election shall be called and held within ninety (90) days after the last publication of said notice or at the next regular city election if held within that time. Such election shall be called and held in the manner provided by law for bond elections. If no protest or no sufficient protest is filed or if an

election is held and the proposition carries by a majority of those voting thereon, the governing body may by ordinance provide for the combining of its park system with its public recreation system and the establishment of a combined park and recreation department. All property under the control or jurisdiction of either such systems shall upon the combination of the same be transferred to said department which shall thereafter administer the city's park and public recreation system. The governing body shall provide by ordinance for such officers and employees as may be necessary for the proper operation of said department who shall be appointed or employed in the manner provided for other officers and employees of the city. (L. 1965, ch. 121, §2; June 30.)

(b) Provided further, that whenever the governing body of a city in which a recreation system is being operated by a school district or by a school district and city acting jointly, wishes to combine the city park system with the public recreation system into a single city park and recreation department, the governing bodies of both shall jointly publish a notice of intention to combine the two systems into one single city department of parks and recreation. Such notice shall be published and procedures shall be followed as described in 12-1914 (a) above.

12-1915. Same; park and recreation advisory board; membership, appointment terms. The governing body of any city which exercises the provisions of 12-1914 (a) or the governing bodies of a city and school district which exercise the provisions of 12-1914 (b) shall, by appropriate ordinance or resolution, create a park and recreation advisory board which shall consist of seven (7) members to be appointed by the city governing body; provided however that two (2) of the seven (7) members shall be elected members of the participating school board, who shall serve terms concurrent with their elected office. Provided further that the members of the recreation commission at the time of such combination shall constitute the remainder of the park and recreation advisory board for the term for which they were appointed to the said recreation commission and upon the expiration of any term, an appointment shall be made to fill such position for a term of four (4) years.

12-1916. Same; reference of matters to board; reports and recommendations; action by city governing body. The governing body of any city having a park and recreation advisory board shall refer all major proposals and propositions for the construction, reconstruction and improvement of public parks and recreational facilities including the acquisition of land for park purposes, the acquisition of major recreational equipment and facilities and the institution of new programs in the recreational system to such board. Such board shall make reports and recommendations to the governing body on all matters referred to it and such further recommendations as deemed advisable. Such reports shall be made within a time fixed by the governing body at the time the proposal or proposition is submitted to the board and no action shall be taken thereafter by the governing body upon any such proposal or proposition until the reports and recommendations thereon have been received from the board. The governing body of the city shall take action upon the reports and recommendations received from the advisory board within thirty (30) days after their receipt: Provided, That the governing body may extend the time as it shall deem necessary to give the matter further attention before action is taken. (L. 1965, ch. 121, §4; June 30.)

12-1917. Same; transfer of funds to department; use; tax levies. Upon the establishment of a combined park and recreation department, the current operating fund of or budgeted for the two (2) systems shall be transferred to the credit of the combined park and recreation department but shall be maintained in two (2) individual funds which shall be used for the purpose for which levied. Thereafter, levies made for the purpose of financing the operation of the park and recreation department shall be made annually as follows:

(a) A recreation levy in an amount not to exceed three (3) mills against all tangible property in the same taxing district which was being taxed for recreation prior to the merger of departments. All revenue from this levy shall be used to finance recreation programs, services and activities or costs directly related to the provision of the same. Said recreation levy shall be in addition to all other levies authorized or limited by law and shall not be subject to or considered a part

of the aggregate tax levy of the existing subdivision making this levy in behalf of the  
park and recreation department.

(b) A park levy in an amount not to exceed three (3) mills against all tangible  
property in the corporate limits of the city involved in such merger. All revenue  
from this levy shall be used to acquire, construct, improve and maintain park and  
recreation grounds and facilities. Said park levy shall be in addition to all other  
levies authorized or limited by law and shall not be subject to or considered a part  
of the aggregate tax levy of the city. Separate levies and budgets for certain park  
and recreation functions may be made under authority in other applicable statutes.

(c) Under the provisions of this section, the city and school district shall  
jointly plan, acquire, develop, provide and maintain facilities to serve the needs  
of the program, activities and services of the combined park and recreation department.

12-1918. Repeal.

City-County Department; agreement; joint board established. Whenever it shall be determined that the recreation and park services, programs and facilities of any county and city or cities within that county may be best provided by the combining of all affected departments providing such services, programs and facilities into a single city-county department of parks and recreation under the administrative authority of a joint board of parks and recreation, the governing bodies of said county and city or cities shall so declare by resolution and may, by joint agreement establish such city-county board of parks and recreation with full powers and authority to provide services, programs and facilities and with such added duties and limitations as are now or may hereafter be provided by law for the creation and conduct of boards of parks and recreation to act severally in such municipalities. Upon the creation of such joint board of parks and recreation, all the jurisdiction, powers and duties now conferred by law upon any local, municipal or county park and/or recreation department or commission shall be withdrawn and conferred upon this joint board of parks and recreation.

Such joint board shall be appointed as follows:

There shall be nine (9) members of said joint board, to be selected in a manner mutually agreed upon by the governing bodies of the participating political subdivisions; provided however that there shall be at least one (1) elected official from each participating governing body. Elected officials shall serve terms concurrent with their terms to the governing body they represent. All appointed members shall serve staggered, four (4) year terms.

Budget and tax levies. Each participating political subdivision may levy taxes for park and recreation purposes provided that the amounts to be budgeted for such purposes by each contracting municipality shall be fixed by agreement after taking into consideration the population of each and any other factors which would necessarily increase or diminish the costs to be borne by it in the absence of agreement to establish such joint board of parks and recreation. In no case shall the approved budget in any given year be less than the combined mill levy total

of funds budgeted for park and recreation purposes by all contracting municipalities in the budget year immediately preceding the merger.

Treasurer; election; term; bond; moneys. It shall be the duty of the joint board of parks and recreation to elect a treasurer, who shall be a member of such board, for such term as may be agreed upon under the authority of section \_\_\_\_\_ of this act. The treasurer shall hold office for the term for which he is elected and until his successor is elected and qualified, and shall give bond to be approved by the governing bodies of the contracting municipalities for the safekeeping and due disbursement of all funds that may come into his hands. All money provided for park and recreation purposes by the contracting municipalities shall, when collected, be paid over to the treasurer of said board in an amount not exceeding that budgeted by the municipalities for such purposes. The joint board of parks and recreation shall have the exclusive control over the expenditure of all moneys paid to the credit of its treasurer for park and recreation purposes, and the treasurer shall receive and pay out all the moneys under the control of said board as ordered by it.

Reports to governing bodies. The joint board of parks and recreation, during the month of January of each year, shall file with the governing body of each contracting municipality a report of its activities and a statement of all receipts and expenditures during the preceding year.

Withdrawal; notice. If the governing body of any city or county which has entered into an agreement to establish a joint board of parks and recreation shall adopt a resolution declaring its intention to withdraw from such agreement and joint board of parks and recreation, and shall give written notice thereof on or before July 15, of any fiscal year to each municipality which is a party to the agreement, such city or county may withdraw from such joint board of parks and recreation and agreement at the end of such fiscal year.

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Same; moneys. Any money remaining in the hands of the treasurer of the joint board of parks and recreation, upon its dissolution by the contracting parties, shall be paid to the respective treasurers of the contracting municipalities in the proportion in which such municipalities contributed during the last fiscal year.

IX

I. ACCORDING TO CLASS OF CITY

First Class (17)

|             |       |
|-------------|-------|
| Atchison    | 1.450 |
| Coffeyville | 1.920 |
| Clifton     | 2.000 |
| Scott       | 1.000 |
| Garden City | 1.998 |
| Hutchinson  | 2.200 |

|             |             |
|-------------|-------------|
| Kansas City | (In Lieu)   |
| Lawrence    | 1.880 (c)   |
| Leavenworth | 1.578 (c)   |
| Manhattan   | 2.000       |
| Newton      | 1.990       |
| Olathe      | (Gen. Fund) |

|               |             |
|---------------|-------------|
| Overland Park | (Gen. Fund) |
| Parsons       | 2.080       |
| Pittsburg     | 1.879 (c)   |
| Salina        | 2.140       |
| Topeka        | 1.992       |

Second Class (59)

|                |             |
|----------------|-------------|
| Abilene        | 1.500       |
| Anthony        | 2.040       |
| Arkansas City  | 2.000       |
| Baxter Springs | 0.780       |
| Belleville     | 1.000       |
| Bonner Springs | 0.560       |
| Burlington     | 1.000       |
| Caldwell       | 0.720       |
| Caney          | 0.950       |
| Chanute        | 1.770 (c)   |
| Cherryvale     | 1.000       |
| Clay Center    | 1.000       |
| Colby          | 1.450       |
| Columbus       | 0.500       |
| Concordia      | 1.000       |
| Dodge City     |             |
| El Dorado      | (Gen. Fund) |
| Elkhart        | 1.000       |
| Ellis          | 0.840       |
| Eureka         | 1.000       |

|              |       |
|--------------|-------|
| Fredonia     | 1.920 |
| Frontenac    | 0.830 |
| Garnett      | 2.080 |
| Girard       | 0.970 |
| Goodland     | 0.940 |
| Great Bend   | 1.470 |
| Harper       | 1.460 |
| Hays         | 1.000 |
| Herington    | 2.000 |
| Hillsboro    | 1.000 |
| Hiawatha     | 1.000 |
| Humboldt     | 0.920 |
| Independence | 1.840 |
| Kingman      | 1.000 |
| Kinsley      | 1.000 |
| Larned       | 1.840 |
| Leewood      | 1.208 |
| Liberal      | 1.800 |
| Lindsborg    | 1.000 |
| Marysville   | 1.000 |

|               |       |
|---------------|-------|
| McPherson     | 1.780 |
| Minneapolis   | 1.390 |
| Neodesha      | 2.000 |
| Nickerson     | 2.020 |
| Osage City    | 0.550 |
| Osawatimie    | 0.890 |
| Osborne       | 2.000 |
| Oswego        | 2.000 |
| Ottawa        | 1.980 |
| Pratt         | 1.904 |
| Russell       | 0.740 |
| Sabetha       |       |
| Scott City    | 1.000 |
| Sterling      | 1.000 |
| Valley Center | 0.973 |
| Wamego        | 0.940 |
| Wellington    | 2.000 |
| Winfield      | 1.750 |
| Yates Center  | 1.770 |

Third Class (103)

|                       |       |
|-----------------------|-------|
| Alma                  | 1.000 |
| Altamont              | 1.000 |
| Altoona               | 1.000 |
| Argonia               | 1.000 |
| Ashland               | 0.370 |
| Atlanta               |       |
| Attica                | 1.000 |
| Atwood                | 0.500 |
| Baldwin               | 0.622 |
| Bennington            | 1.000 |
| Bird City             | 0.790 |
| Brewster              | 0.260 |
| Bucklin               | 1.000 |
| Buhler                | 0.990 |
| Cambridge             |       |
| Canton                | 1.000 |
| Chapman               | 1.000 |
| Cheney                | 0.490 |
| Claflin               | 1.000 |
| Clifton               | 1.800 |
| Coldwater             | 1.000 |
| Conway Springs        | 0.900 |
| Copeland              | 1.000 |
| Dearing (Coffeyville) |       |
| Deerfield             | 0.990 |
| Dexter                | 1.000 |

|                       |        |
|-----------------------|--------|
| Douglas               | 0.800  |
| Edwardsville          | 0.1141 |
| Ellsworth             | 1.620  |
| Englewood             |        |
| Enterprise            | 1.000  |
| Erie                  | 1.000  |
| Eudora                | 0.912  |
| Ford                  |        |
| Fowler                |        |
| Fulton                |        |
| Greensburg            | 0.680  |
| Halstead              | 1.980  |
| Havana                |        |
| Haviland              | 1.000  |
| Hepler                |        |
| Hesston               | 1.920  |
| Hugoton               | 0.590  |
| Inman                 | 0.250  |
| Jetmore               | 0.710  |
| Johnson City          | 0.170  |
| Kanopolis             | 0.860  |
| Kensington            |        |
| Kismet                | 0.490  |
| Lakin                 |        |
| Liberty (Coffeyville) |        |
| Lincolnville          |        |

|                     |       |
|---------------------|-------|
| Lost Springs        |       |
| Lucas               | 0.910 |
| Lyndon              | 0.900 |
| Lyons               | 1.000 |
| Madison             | 2.090 |
| Manter              |       |
| Mayfield (Winfield) |       |
| McDonald            |       |
| Medicine Lodge      | 0.990 |
| Mullinville         | 0.460 |
| Mulvane             | 1.000 |
| Mundon              | 0.990 |
| Natoma              | 0.950 |
| Ness City           | 1.000 |
| Nickerson           |       |
| Niotaze             |       |
| Norwich (Kingman)   |       |
| Oakley              | 1.000 |
| Ogden (Manhattan)   |       |
| Pamona              | 0.410 |
| Plainville          | .0450 |
| Protection          |       |
| Ramona              |       |
| Richfield           |       |
| Richmond            | 0.880 |
| Rolla               | 1.000 |

I. ACCORDING TO CLASS OF CITY

Third Class (cont'd) (103)

|                 |       |
|-----------------|-------|
| Rossville       | 0.480 |
| Russell Springs |       |
| St. John        | 1.000 |
| St. Marys       | 0.730 |
| Schoenchen      |       |
| Sedan           | 0.990 |
| Smith Center    | 0.930 |
| Solomon         | 2.000 |
| Spearville      | 1.190 |

|                  |       |
|------------------|-------|
| Spivey (Kingman) |       |
| Sublette         | 0.870 |
| Tampa            |       |
| Tonganoxie       | 0.790 |
| Toronto          | 0.500 |
| Turner           | 0.940 |
| Tyro             | 1.000 |
| Utica            | 0.500 |
| Viola            |       |

|                 |       |
|-----------------|-------|
| Wakeeney        | 0.630 |
| Walnut          |       |
| Walton (Newton) |       |
| Wathena         | 0.990 |
| Waverly         | 0.490 |
| Wellsville      | 0.880 |
| Wilmore         |       |
| Winona          | 0.300 |

(c) Combined park and recreation department

Atch. IX

II. ACCORDING TO POPULATION

|                |         |                |       |              |       |                 |     |
|----------------|---------|----------------|-------|--------------|-------|-----------------|-----|
| Abilene        | 263,201 | Garrett        | 3,149 | Douglas      | 1,167 | Englewood       | 144 |
| Arkansas City  | 168,779 | Malvane        | 3,110 | Coldwater    | 1,160 | Mayfield        | 124 |
| Atchison       | 138,964 | Belleville     | 3,103 | Madison      | 1,156 | Lost Springs    | 120 |
| Overland Park  | 81,364  | Eugoton        | 2,951 | Cheney       | 1,151 | Niotaze         | 112 |
| Lawrence       | 42,130  | Cherryvale     | 2,907 | Buhler       | 1,149 | Richfield       | 97  |
| Hutchinson     | 41,823  | Anthony        | 2,894 | Conway Spgs  | 1,126 | Russell Springs | 87  |
| Salina         | 36,609  | Girard         | 2,791 | Johnson City | 1,112 | Wilmore         | 87  |
| Leavenworth    | 30,006  | Caney          | 2,750 | Jetmore      | 1,009 | Spivey          | 85  |
| Manhattan      | 27,049  | Wamego         | 2,659 | Enterprise   | 976   |                 |     |
| Shawnee        | 22,893  | Coage City     | 2,650 | Altamont     | 932   |                 |     |
| Emporia        | 20,982  | Plainville     | 2,639 | Clafflin     | 915   |                 |     |
| Pittsburg      | 20,373  | Valley Center  | 2,634 | Canton       | 886   |                 |     |
| Olathe         | 19,306  | Medicine Lodge | 2,606 | Inman        | 818   |                 |     |
| Great Bend     | 18,497  | Sabetha        | 2,562 | Kanopolis    | 744   |                 |     |
| Coffeyville    | 17,374  | Wakeeny        | 2,527 | Spearville   | 742   |                 |     |
| Dodge City     | 16,722  | Hillsboro      | 2,515 | Protection   | 706   |                 |     |
| Garden City    | 16,305  | Ellsworth      | 2,442 | Attica       | 685   |                 |     |
| Newton         | 15,446  | Frontenac      | 2,412 | Bird City    | 669   |                 |     |
| Hays           | 15,270  | Eudora         | 2,393 | Kensington   | 636   |                 |     |
| Liberal        | 14,260  | Cakley         | 2,367 | Natoma       | 625   |                 |     |
| Arkansas City  | 13,508  | Humboldt       | 2,308 | Fowler       | 604   |                 |     |
| Parsons        | 12,031  | Burlington     | 2,297 | Argonia      | 579   |                 |     |
| Atchison       | 11,963  | Ogden          | 2,267 | Burden       | 556   |                 |     |
| El Corado      | 11,781  | Ellis          | 2,201 | Lucas        | 548   |                 |     |
| Independence   | 11,594  | Oswego         | 2,126 | Norwich      | 515   |                 |     |
| McPherson      | 10,378  | Elkhart        | 2,178 | Deerfield    | 500   |                 |     |
| Ottawa         | 10,554  | Yates Center   | 2,096 | Richmond     | 479   |                 |     |
| Chanute        | 10,182  | Minneapolis    | 2,086 | Dearing      | 413   |                 |     |
| Winfield       | 10,174  | Osborne        | 2,064 | Rolla        | 384   |                 |     |
| Fort Scott     | 8,767   | Lindsborg      | 2,051 | Walaut       | 373   |                 |     |
| Abilene        | 7,943   | Greensburg     | 2,037 | Hardtner     | 371   |                 |     |
| Wellington     | 7,757   | Tonganoxie     | 2,020 | Brewster     | 370   |                 |     |
| Concordia      | 7,519   | Sterling       | 1,964 | Mullinville  | 360   |                 |     |
| Pratt          | 6,717   | Halstead       | 1,835 | Dexter       | 308   |                 |     |
| Goodland       | 5,742   | Harper         | 1,809 | McDonald     | 296   |                 |     |
| Russell        | 5,516   | Lakin          | 1,789 | Winona       | 274   |                 |     |
| Clay Center    | 5,114   | Nesston        | 1,788 | Ford         | 261   |                 |     |
| Osawatomie     | 5,071   | Atwood         | 1,732 | Lincolnville | 261   |                 |     |
| Larned         | 4,330   | St. John       | 1,690 | Atlanta      | 246   |                 |     |
| Colby          | 4,810   | Sedau          | 1,612 | Tyro         | 243   |                 |     |
| Baxter Springs | 4,797   | St. Marys      | 1,537 | Fulton       | 242   |                 |     |
| Scott City     | 4,322   | Caldwell       | 1,509 | Manter       | 239   |                 |     |
| Bonner Springs | 4,122   | Chapman        | 1,484 | Schoenchen   | 219   |                 |     |
| Kingman        | 4,099   | Eric           | 1,469 | Walton       | 200   |                 |     |
| Herrington     | 3,892   | Edwardsville   | 1,415 | Liberty      | 195   |                 |     |
| Eureka         | 3,789   | Nickerson      | 1,356 | Tampa        | 195   |                 |     |
| Marysville     | 3,776   | Sublette       | 1,343 | Viola        | 177   |                 |     |
| Neodesha       | 3,657   | Hathena        | 1,260 | Havana       | 167   |                 |     |
| Fredonia       | 3,574   | Ashland        | 1,243 | Hepler       | 162   |                 |     |
| Columbus       | 3,531   | Solomon        | 1,192 | Ramona       | 159   |                 |     |

UNIFIED SCHOOL DISTRICT

|                    |                  |                  |                      |
|--------------------|------------------|------------------|----------------------|
| A 359              | Ford 443*        | Lincolnton 297*  | Rolla 217            |
| A 220              | Fort Scott 234 ✓ | Lost Springs 297 | Russell Springs 275* |
| Atwood 409 ✓       | Fowler 225       | Manter 452*      | Schoenchen 489*      |
| Brewster 314       | Frontenac 249    | McDonald 319     | Spearville 381       |
| Burden 462         | Fulton 234*      | Mayfield 353*    | Spivey 331*          |
| Burlington 244     | Girard 248       | Mullinville 424  | Tampa 397*           |
| Caldwell 360       | Havana 436*      | Niotaze 436*     | Turner 202           |
| Chaney 268         | Hepler 248*      | Norwich 331*     | Tyro 436*            |
| Coldwater 300      | Hesston 460      | Oakley 274       | Viola 356*           |
| Coaway Springs 356 | Humboldt 258     | Ogden 383*       | Walnut 248*          |
| Dearing 445*       | Hutchinson 308 ✓ | Osage City 420   | Walton 373*          |
| Deerfield 216      | Jetmore 227      | Oswego 504       | Wellington 353 ✓     |
| Dexter 471         | Kensington 238   | Protection 300*  | Wilmore 300*         |
| Douglas 396        | Lakin 215        | Ramona 397*      | Winfield 465 ✓       |
| Englewood 220*     | Liberty 445*     | Richfield 217*   | Winona 275           |

\*With Larger City

CITY

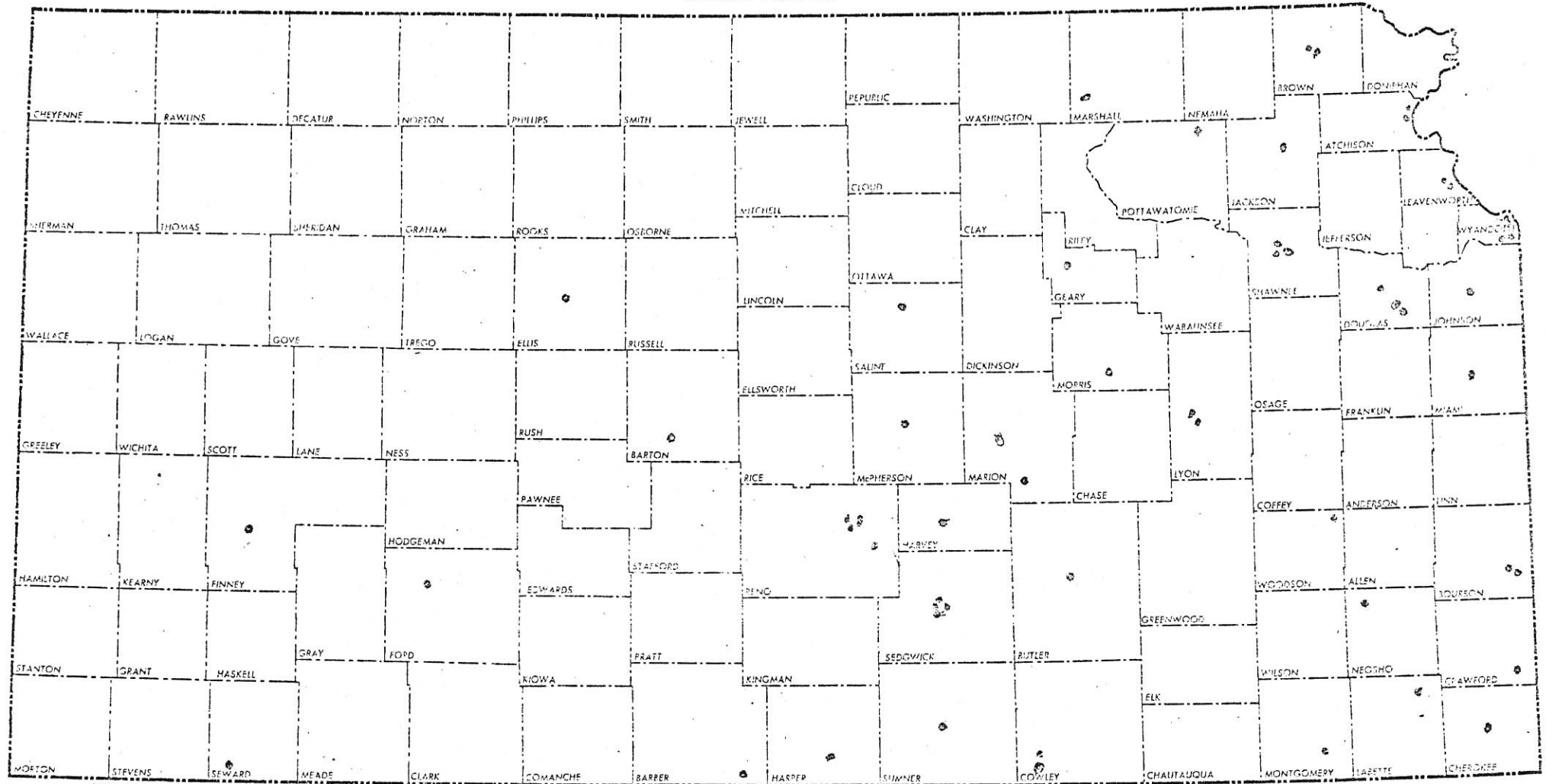
|                |                |                 |              |
|----------------|----------------|-----------------|--------------|
| Altamont       | El Dorado      | Larned          | Pittsburg ✓  |
| Anthony        | Ellsworth      | Lawrence ✓      | Pratt        |
| Atwood         | Enterprise     | Liberal         | Richmond     |
| Attica         | Erie           | Lindsborg       | Russell      |
| Baxter Springs | Eudora         | Madison         | Sabetha      |
| Belleville     | Fredonia       | Marysville      | Scott City   |
| Bonner Springs | Garden City ✓  | McPherson ✓     | Sedan        |
| Buhler         | Garnett        | Medicine Lodge  | Sterling     |
| Canton         | Greensburg     | Minneapolis     | Solomon      |
| Chapman        | Halstead       | Neodesha        | St. Marys    |
| Claffin        | Harper         | Nickerson       | WaKeeney     |
| Clay Center    | Hillsboro      | Olathe ✓        | Wamego       |
| Colby          | Independence ✓ | Osawatomie      | Wichita ✓    |
| Columbus       | Kansas City ✓  | Osborne         | Yates Center |
| Concordia      | Kanopolis      | Overland Park ✓ |              |

JOINT

|                   |                  |                    |                |
|-------------------|------------------|--------------------|----------------|
| Abilene 435       | Elkhart 218      | Inman 448          | Ottawa 290     |
| Arkansas 470      | Ellis 388        | Johnson City 452 ✓ | Parsons 503 ✓  |
| Bird City 296     | Emporia 253 ✓    | Kingman 331        | Plainville 270 |
| Caney 436         | Eureka 389       | Leavenworth 453 ✓  | Salina 305 ✓   |
| Chanute 413       | Great Bend 428 ✓ | Manhattan 383 ✓    | Sublette 374   |
| Cherryvale 447    | Hays 489         | Mulvane 263        | Tonganoxie 464 |
| Coffeyville 445 ✓ | Herington 487    | Newton 373 ✓       | Topeka 501 ✓   |
| Dodge City 443 ✓  | Hugoton 210      |                    | Wathena 406    |

GEOGRAPHICAL LOCATIONS OF REGISTERED CEMETERIES

KANSAS



STATE HIGHWAY COMMISSION OF KANSAS  
DEPARTMENT OF PLANNING AND DEVELOPMENT

Atch. X

X



OFFICE OF SECRETARY OF STATE

2ND FLOOR—THE STATEHOUSE

PHONE (913) 296-2226

TOPEKA, KANSAS 66612

June 6, 1977

Senator Ross O. Doyen, Chairman  
Legislative Coordinating Council  
Capitol  
Topeka, Kansas 66612

Dear Senator Doyen:

In 1968 the entire Kansas Legislature first addressed itself to certain problems relating to permanent maintenance (perpetual care) funds of certain corporations. You served as Chairman of the Committee on Labor and Industries of the Legislative Council, and as early as 1965-66 several recommendations in this area were made.

As noted above, it was not until 1968 legislation concerning the auditing of permanent maintenance funds was enacted. Among other things this legislation provided that, "...on July 1, 1969, all cemetery corporations shall register with the State Bank Commissioner...", and further that, "The State Bank Commissioner...shall visit each cemetery corporation at least once each year...for the purpose of making a full and careful examination and inquiry into the condition of its permanent maintenance fund or funds..." This law remained virtually intact until the 1974 Legislature at which time the filing and auditing responsibilities were transferred to this office.

Since that time numerous problems and ambiguities and obstacles in the administering of the law have arisen. Generally, it is our feeling that the current statutes lack the requisite specificity and guidance necessary for an efficient audit.

K.S.A. 17-1311 requires that cemetery corporations, "fix and set aside... a percentage of the purchase price of each burial lot hereafter sold by it... for the permanent maintenance of the cemetery..." The question has arisen as to the legislative intent of this statute. Must the corporation set the amount "aside" only for accounting purposes in the form of an accrued liability, or must the corporation deposit to the permanent maintenance fund in order to comply with the "set aside" statutory provision? Obviously then, the next question relates to the frequency of such deposits to the permanent maintenance fund. In State, ex. rel., v. Anderson, 195 K 649 the syllabus of the court stated in part, "...when burial lots are sold by a cemetery corporation upon installment contracts, such corporation is required to set aside at least ten percent of each installment payment for

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the permanent maintenance of the cemetery at the time such installment is made." (Emphasis added.) Thus, this court decision literally interpreted would require a daily "set aside" to the permanent maintenance fund. If, for example, a cemetery received only one payment for \$30.00 on a particular day, they would be required to set aside a permanent maintenance fund deposit of \$4.50---surely a burdensome requirement on the cemetery corporations.

Additionally, K.S.A. 17-1311 required that each cemetery corporation set aside, "15 percent...for the permanent maintenance of the cemetery...but the total amount so set aside shall not be less than \$15.00 for each burial lot..." There are some cemetery corporations in Kansas who do not charge \$15.00 for a burial space. Is the intent of this statute then to impose a minimum sales price of a burial lot in Kansas?

Regarding the investment of the permanent maintenance fund, K.S.A. 17-1311 states, "Moneys in such fund may be held and invested to the same extent as is provided in K.S.A. 17-5004 and any amendments thereto..." The question has arisen then as to whether K.S.A. 17-5004 permits the investment of the corpus in additional cemetery lands. Without going into great detail, there is substantial confusion in this area.

K.S.A. 17-1312 (d) provides that a cemetery corporation shall be placed in receivership if it "shall refuse or neglect to establish or maintain" the permanent maintenance fund. However, there is no statutory definition of "neglect" or "maintain." The question then arises as to the amount of latitude a corporation is allowed in order to be considered in compliance. The Legislature can outline specifically the discretionary and procedural powers of the trustee. To further compound the problem, only in the case of a refusal "to establish or maintain a permanent maintenance fund in accordance with the requirements of...(the)...act for each cemetery... for a period of 90 days after demand to do so is made upon it by the Secretary of State..." may the Secretary of State forfeit the cemetery corporation's charter.

K.S.A. 17-1312 (e) provides that, "All information which the Secretary of State shall gather or record in making an investigation and examination of any cemetery corporation shall be deemed to be confidential information, and shall not be disclosed...except to the Attorney General." The anomaly of this law is that while this office collects "\$50.00 for each day or part of a day required for such audit or examination..." (K.S.A. 17-1312 (b)), we cannot disclose any portion of the audit results to the cemetery corporations.

The problems cited above make the efficient administration of this act extremely difficult. The purpose of this letter is to request a study of

Senator Ross O. Doyen  
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these laws by an interim committee with a view toward revision before the  
1978 Legislature.

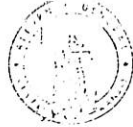
Your attention to this matter and continuing cooperation are appreciated.

Very sincerely yours,

  
ELWILL M. SHANAHAN  
Secretary of State

EMS:rmh

cc: Speaker John Carlin, Vice Chairman  
Legislative Coordinating Council



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER  
Attorney General

June 27, 1975

Opinion No. 75- 261

Mr. Sherman A. Parks, Attorney  
Office of Secretary of State  
The Statehouse - 2nd Floor  
Topeka, Kansas 66612

Dear Mr. Parks:

You inquire concerning certain aspects of K.S.A. 17-1301 et seq., as those provisions relate to cemetery corporations.

First, you inquire whether the verified statement required to be filed by cemetery corporations under the provisions of K.S.A. 17-1312a(a) constitutes a matter of public record thereby open to public inspection or is to be held confidential under the terms of K.S.A. 17-1312(e).

K.S.A. 17-1312a(a) provides in pertinent part:

" . . . Each cemetery corporation shall prepare and forward to the secretary of state at the time it is required to make an annual report under the Kansas general corporation code, or if no such report is required then on January 1 in each year, a statement verified by the treasurer of said corporation describing the corpus and any accumulated income on the preceding December 31, or on the last day of its fiscal year if it does not use the calendar year in its accounts, in each permanent maintenance fund established by said corporation, the cost and the market value on said date of each security then held in each such fund and the income of and disbursements from each such fund during the calendar or fiscal year then ended. . . "

Mr. Sherman Parks  
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Determination of whether a particular document is a record open to public inspection is governed by K.S.A. 45-201 which provides:

"All official public records of the state, counties, municipalities, townships, school districts, commissions, agencies and legislative bodies, which records by law are required to be kept and maintained, except those of the juvenile court which shall be open, unless specifically closed by the judge or by law, adoption records, records of the birth of illegitimate children, and records specifically closed by law or by directive authorized by law, shall at all times be open for a personal inspection by any citizen, and those in charge of such records shall not refuse this privilege to any citizen."

The question surrounding the confidentiality of the verified statement arises by virtue of K.S.A. 17-1312(e). That statute provides:

"All information which the secretary of state shall gather or record in making an investigation and examination of any cemetery corporation shall be deemed to be confidential information, ~~and shall not be disclosed~~ by the secretary of state, any assistant, examiner or employee thereof, except to the attorney general when in the opinion of the secretary of state the same should be disclosed."

Accordingly, the question becomes whether the verified statement required by K.S.A. 17-1312a(a) constitutes information gathered while making an investigation or examination of a cemetery corporation which is held confidential by K.S.A. 17-1312(e) and otherwise exempted from disclosure by the express terms of K.S.A. 45-201.

The terms of K.S.A. 17-1313a(b), K.S.A. 17-1312b, and K.S.A. 17-1312c specifically utilize the words "examination or audit" in articulating certain specific duties of Secretary of State relative to cemetery corporations. Nowhere in K.S.A. 17-1312a(a) are similar terms employed.

The clear inference of this deletion from K.S.A. 17- those records held confidential by K.S.A. 17-1312(e) and which are compiled in the course of an investigation refers solely to information or records derived from an audit or examination pursuant to K.S.A. 17-1312a(b) or 17-1312b. In other words, there is by virtue of the public records law, K.S.A. 45-201, a presumption of public disclosure which attaches to all records required by law to be kept



less within the purview of the listed exceptions or which are otherwise specifically held confidential. Since K.S.A. 17-1312a through K.S.A. 17-1312f were adopted by a single enactment by the Legislature, ch. 95, 1974 Session Laws, uniform definitions must be applied to those terms used throughout the Act. Accordingly, the privilege of confidentiality extended to the information gathered by the Secretary of State in the course of investigation, examination or audit is limited solely to that information gathered in an investigation or examination initiated by the Secretary of State pursuant to the powers granted by K.S.A. 17-1312(b). The verified statement required to be filed by K.S.A. 17-1312a(a) is not within the purview of K.S.A. 17-1312e and is therefore subject to the public inspection requirements of K.S.A. 45-201.

Next, you inquire as to the definition of the word "maintenance" in K.S.A. 17-1311. Specifically, you wish a categorization of the types of expenses which are permissible as "maintenance" for purposes of debiting those expenditures for the permanent maintenance fund. While the word "maintain" or "maintenance" has no precise legal significance in the construction of statutes, its meaning varies with the subject matter of the law and the purposes to be accomplished. Although the term is not specifically defined by this statute, nor anywhere in the remainder of Chapter 17, Article 13, of the Kansas Statutes, the conclusion holds that the Legislature intended the word "maintenance" to encompass those expenditures which relate directly to the upkeep of the cemetery. The apparent purpose of the permanent maintenance fund is to assure each purchaser that his plot or grave, whether it be for himself or family would be permanently preserved and maintained in a manner commensurate with public expectations. By necessity, the operation of a cemetery corporation involves corporate expenses apart from those which directly relate to the physical upkeep of the cemetery realty. It is unconceivable that the Legislature designed the permanent maintenance fund with the intent that all necessary corporate expenses would be derived from this fund. Theoretically, eighty-five percent (85%) of the purchase price of each plot is available to the cemetery corporation to meet non-maintenance related expenditures. For these reasons, it is the opinion of this office that the word "maintenance" includes only those expenditures which directly relate to the physical upkeep of cemetery grounds. Examples of these expenditures include, but are not limited to, the following: mowing, landscaping, repair, construction of avenues of ingress and egress, painting, tombstone repair and like expenses.

You also inquire as to various other aspects of K.S.A. 17-1311, and the requirement that fifteen percent (15%) of the sale price being placed in the permanent maintenance fund. Specifically, you pose the following:

"(a) May a cemetery place more than 15% in the permanent maintenance fund? (b) May the cemetery make a charge for permanent maintenance in addition to the 15% derived from the purchase price? (c) If

the proceeds from donations and sale of markers, etc., are permitted to be deposited into the fund, do these monies become a part of the principal, and hence, subject to the requirements of K.S.A. 17-1311?"

It is our belief that all three questions may be answered in the affirmative. First, the requirement imposed upon the corporation to place fifteen percent (15%) of the purchase price in the permanent maintenance fund should be construed as a minimum. In this regard, there is no statutory obligation upon the corporation other than to the extent the corporation must place at least fifteen percent (15%) of the purchase price in the fund. In fact, K.S.A. 17-1311 specifically provides:

"Such corporation shall fix and set aside, within the state of Kansas, a percentage of the purchase price of each burial lot hereafter sold by it, or any payment thereon, not less than fifteen percent (15%) thereof, for the permanent maintenance of the cemetery within which said burial lot lies, but the total amount so set aside shall not be less than fifteen dollars (\$15) for each burial lot at the time of conveyance of such lot: . . ." [Emphasis supplied.]

It is our opinion the emphasized portion of the statute gives the cemetery corporation discretion to establish the percentage, which may be more than, but not less than fifteen percent (15%), to be deposited in the permanent maintenance fund.

Similarly, there is no indication that the Legislature intended the permanent maintenance fund to be the exclusive source for the care of the cemetery grounds. The purpose implicit in the creation of the fund is to insure that there is a continued source of revenue for the care and maintenance irrespective of the number of times ownership of the business may change. Its effect is largely to assure that there always exists a source of revenue for the owner to provide for the physical upkeep although income potential may decline due to an exhaustion of salable plots and graves.

As to the final questions, K.S.A. 17-1311 provides in pertinent part:

". . . The treasurer of such corporation may receive, acquire, and hold donations or bequests for said fund and may retain property so acquired without limitation as to time and without regard to its suitability for original purchase."

By those express terms, the treasurer is authorized to accept donations on behalf of the fund. No statutory language differentiates

money in the permanent maintenance fund which is collected pursuant to the fifteen percent (15%) requirement from that acquired from voluntary contributions. Accordingly, monies accepted as or derived from contributions to the permanent maintenance fund become part of the principal of that fund and are thereby subject to the same investment limitations.

You also inquire as to whether a municipality is exempted by K.S.A. 17-1312f from the requirements imposed upon corporations by K.S.A. 17-1311. K.S.A. 17-1312f exempts municipalities from the operation of K.S.A. 17-1311a through K.S.A. 17-1311f as well as certain other statutes. The term is one which, in legal parlance, has acquired a definition of nearly uniform application throughout the Kansas statutes. The most preferable definition of a municipality is found at K.S.A. 10-101 which provides.

"Municipality," as used in this chapter and all acts amendatory thereto, unless otherwise expressed in such amendment, shall mean and include every corporation and quasi corporation empowered to issue bonds in payment of which taxes may be levied."

This substantially comports with your citation to K.S.A. 12-105a(a) which also undertakes to define the term. It is clear from a reading of K.S.A. 17-1312f that the definition of corporation applies to K.S.A. 17-1303 since both statutes were most recently adopted as part of the same act by the Legislature at Chapter 330 of the 1968 Session Laws. Accordingly, municipalities are exempted from the definition of corporation and the operation of K.S.A. 17-1303 by the proviso to K.S.A. 17-1312f.

The proviso to K.S.A. 17-1312f which exempts certain cemetery corporations from the operation of Sections 2 through 9 of Chapter 330 of the 1968 Session Laws breaks down into the following categories: (1) municipalities of this State; (2) non-profit organizations formed primarily for religious purposes and constituting an established church and which sells lots solely to members; and (3) to a cemetery existing on March 1, 1968, located in a county designated as urban, and owned and operated on said date by a non-profit organization. To be exempt from the registration requirements of K.S.A. 17-1312a, the cemetery corporation must possess all the characteristics enumerated in any one of the above categories.

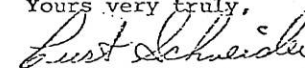
The Ursuline Academy, Inc., seems the only corporation entitled to the exemption among those inquiries you have transmitted to this office.

As to your last question, only cemetery corporations are subject to the examination and auditing requirements of K.S.A. 17-1312a.

Under K.S.A. 17-1312f, every individual, firm or other organization "selling or conveying land for cemetery purposes" is subject to the act. An individual, firm, or other organization engaged solely in the operation of a mausoleum, and which does not sell land for cemetery purposes, appears to be exempt from the act.

If further questions arise, please feel free to contact us.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS/HTW/ksn

## Article 13.—CEMETERY CORPORATIONS

### Cross References to Related Sections:

Cities, townships and corporations, see ch. 12, art. 14.  
Townships may acquire property, see 80-915.  
Applicability of general corporation code, see 17-4001.  
Corporate filings, reports, fees and franchise taxes, see ch. 17, art. 75.

**17-1301.** [C. S. 1868, ch. 23, § 124; L. 1915, ch. 93, § 1; R. S. 1923, 17-1301; L. 1927, ch. 151, § 1; Repealed, L. 1951, ch. 198, § 1; June 30.]

Source or prior law: L. 1861, ch. 3, § 4; L. 1866, ch. 57, § 45.

### CASE ANNOTATIONS

1. Cemetery corporation held a public, and not a private corporation. *Davis v. Coventry*, 65 K. 557, 561, 70 P. 583.
2. Public cemeteries are not authorized to issue and sell stock. *Davis v. Coventry*, 65 K. 557, 561, 70 P. 583.
3. Owners of lots are entitled to vote as stockholders. *Davis v. Coventry*, 65 K. 557, 561, 70 P. 583.
4. Cemetery owned by lodge not amenable to this act. *Dunlap v. Union Lodge*, 129 K. 287, 294, 282 P. 715.
5. Failure to comply with certain provisions of act as affecting compliance with other provisions. *American Cemetery Co. v. United States*, 28 F. 2d 918.

**17-1301a.** [L. 1927, ch. 152, § 1; Repealed, L. 1951, ch. 198, § 1; June 30.]

**17-1301b.** [L. 1929, ch. 142, § 1; Repealed, L. 1951, ch. 198, § 1; June 30.]

**17-1302.** Cemetery lots; disposition. Such corporations shall have power to convey, by deed or otherwise, any lot or lots of the cemetery for purposes of sepulture. When such lots shall have been surveyed and platted, the survey and plat shall be recorded in the office of the register of deeds of the county wherein the same are situated. No lots shall be sold or disposed of until such plat shall have been recorded.

Every lot sold and conveyed in such cemetery shall be held by the proprietor, for the purpose of sepulture only, and shall not be subject to attachment or execution: *Provided*, That where such corporation has agreed to convey a certain lot or lots to a purchaser, and such purchaser has failed for a period of one year following the date of such agreement to pay the purchase price therefor, such agreement, at the option and election of the cemetery corporation, shall be and remain canceled, void, and of no effect: *Provided further*, That if within the said period of one year the purchaser shall cause any dead person to be buried upon said lot, or lots, so agreed to be sold, that portion of said lot or lots actually occupied by the said grave of such dead person so buried shall not be sold by such cemetery corporation to any other person, or persons; but, if the purchaser shall voluntarily remove or cause to be removed the dead person so buried in such grave, such corporation may convey, sell and dispose of such grave described to any other person or persons. [C. S. 1868, ch. 23, § 125; L. 1913, ch. 143, § 1; R. S. 1923, 17-1302; L. 1970, ch. 84, § 1; July 1.]

Source or prior law: L. 1861, ch. 3, § 5; L. 1866, ch. 57, § 45.

### Cross References to Related Sections:

The exemption, see, also, 79-201. Funeral homes and cemeteries prohibited in certain cemeteries, see 79-202.

### Research and Practice Aids

Cemeteries—79-15.

C. I. S. Characteristics § 23 et seq.

### Law Review and Bar Journal References:

Not exempted from special assessments, 1961-62 survey of *Law & Lib.*, Albert B. Martin, 12 K. L. R. 297, 299 (1963).

Disenfranchised in 1861-63 survey of taxation, Leslie T. Topik, 12 K. L. R. 329 (1963).

### CASE ANNOTATIONS

1. Owner of lot is member of corporation, entitled to vote. *Davis v. Coventry*, 65 K. 557, 561, 70 P. 583.
2. Lots purchased for cemetery can only be used for burial purposes. *Hubert v. Holbert*, 116 K. 487, 237 P. 351.
3. Cemetery corporation liable for special assessment for paving street; section discussed and construed. *Mount Hope Cemetery Co. v. City of Topeka*, 129 K. 793, 794, 796, 797, 769, 375 P. 2d 30.
4. Applied in holding subsection 2 of 79-201 (1969) unconstitutional. *Topeka Cemetery Ass'n v. Schnellbacher*, 218 K. 89, 44, 512 P. 2d 878.

**17-1302a.** Replatting of areas of certain cemeteries established by religious corporations. Whenever a religious organization has, prior to the effective date of this act established a cemetery and provided for the operation thereof by a board of directors, and the lots have been surveyed and platted and the plat recorded in the office of the register of deeds of the county in which the cemetery is situated prior to 1919, and where there are some areas of these platted lands containing a number of lots which have not been sold or otherwise disposed of, and the board of directors of the cemetery shall determine that there is a real necessity to widen driveways and change the size of the lots in such unsold or undisposed of platted areas, then, the board of directors may replat such areas that are to be used for cemetery purposes in such a manner as to widen the driveways and change the size of the unsold lots, so that they may be utilized in the best possible way. Such replat shall be recorded in the office of the register of deeds in the same manner as the original plat was recorded. [L. 1969, ch. 123, § 1; July 1.]

**17-1303.** Owners of lots as members of corporation. All owners of lots, purchased of any such corporation, shall become members thereof, and be entitled to vote in the election of its officers, and upon any other matters, to the same extent as stockholders in other corporations. [C. S. 1868, ch. 23, § 126; Oct. 31; R. S. 1923, 17-1303.]

Source or prior law: L. 1861, ch. 3, § 6; L. 1866, ch. 57, § 45.

### CASE ANNOTATIONS

1. Quo warranto only proper method to test right to office. *Hunt v. Cemetery Association*, 27 K. 734, 758.
2. Cemetery corporation, public corporation; lit owners members of corporation. *Davis v. Coventry*, 65 K. 557, 561, 70 P. 583.
3. Owners of lots entitled to vote in election of officers. *Davis v. Coventry*, 65 K. 557, 561, 70 P. 583.

**17-1304.** Replatting cemetery previously chartered. Laws 1919, chapter 104 included by reference. [Relates to cemeteries which are public corporations organized under the provisions of General Statutes of 1868, article 14 [see, 17-1701, 17-1702], chapter 23, and to the vacation of streets, avenues or ways and to platting the vacated portions of lots and blocks, vacating, resurveying and replatting where the cemetery corporation was duly chartered more than forty-two years previous to the passage of the act; also interpreting the expression "and/or" as used in the act.] [R. S. 1923, 17-1304.]

**17-1305.** Private burying grounds; control by judge of the district court; action for damages. Hereafter all private burying grounds not otherwise expressly provided for by will, deed, or in the actual possession of the owner in life, shall be under the exclusive control of the judge of the district court of the county in which said burying ground may be situated; and it is hereby made the duty of said judge of the district court to commence and conduct a civil suit or suits for any damages that any other person may do or cause to be done to said burying ground, or to the fence, gates or bars enclosing the same, or any of the graves or monuments therein. The style of any such suit shall be, "\_\_\_\_\_ as judge of the district court of \_\_\_\_\_ county, against \_\_\_\_\_, defendant." [K. S. A. 17-1305; L. 1976, ch. 143, § 41, Jan. 10, 1977.]

17-1306. Same; repair of damage. All such damages collected by said suit or suits shall be by said district judge applied to the repairing of said burying grounds, and said district judge shall recover, in addition to the said damages against the defendant in any such suit, the sum of two dollars (\$2) per day for all time by him or her actually and necessarily expended, as well also as an attorney fee not exceeding thirty dollars (\$30), in behalf of said prosecution. [K. S. A. 17-1306; L. 1976, ch. 145, § 42; Jan. 10, 1977.]

17-1307. Cemeteries in or near cities; capital stock; directors; powers. Every corporation hereafter formed or organized or that has been organized subsequent to March 1, 1914, for the purpose of the establishment and maintenance of cemeteries in, or within two miles of any city of the third class, four miles of any city of the second class having a population of less than twelve thousand, or within eight miles of any city of the first class or of any city of the second class having a population of twelve thousand or more, shall have a capital stock and board of directors elected by the stockholders with the same duties and powers as the board of directors of other corporations for profit, and is empowered to acquire and hold lands for cemetery purposes only, within such distances of such cities, not to exceed two hundred acres, and is hereby authorized to enclose, lay out, or ornament and improve such lands held by such corporation for such purposes, and to divide said lands into burial lots; and that all of the acts of any board of directors heretofore legally elected by stockholders in any such company, which would be legal if done by any other private corporation, are hereby recognized, confirmed and made valid: *Provided*, That no owner of any lot in any such cemetery shall be a stockholder or member of any such corporation by reason of his being such owner. [L. 1901, ch. 102, § 1; L. 1903, ch. 119, § 1; L. 1915, ch. 93, § 1; L. 1919, ch. 106, § 1; R. S. 1923, 17-1307; L. 1949, ch. 155, § 1; April 2.]

17-1308. Same; plat of lots and deposits in permanent maintenance fund prerequisite to conveyance of lots. Before such corporation shall have the power to sell or in any manner convey, for burial purposes, any of the lands held by it, it shall cause such lands to be surveyed and platted into burial lots and said plat to be filed in the office of the register of deeds in the county wherein such lands are situated; and all conveyances of said lots shall be by reference to said recorded plat: *Provided*, That before any such corporation shall have power to sell or convey lands, acquired from and after the effective date of this act for the purpose of establishing or making an addition to any cemetery, it shall place and maintain ten thousand dollars (\$10,000) in the permanent maintenance fund established under the provisions of this act and an additional five hundred dollars (\$500) for each acre of land, or fraction thereof, in excess of twenty (20) acres acquired for such purposes; said deposits, prerequisite to selling or conveying lands, shall not be required to exceed thirty five thousand dollars (\$35,000), but nothing herein shall be construed as affecting the requirements imposed on the permanent maintenance fund in K. S. A. 17-1311 and any amendments thereto: *Provided further*, That from and after July 1, 1969, no such corporation shall have power to sell or convey lands, acquired prior to the effective date of this act for the purpose of establishing or making an addition to any cemetery, until it shall comply with the requirements hereinbefore imposed on the permanent maintenance fund for lands acquired from and after the effective date of this act, but such compliance shall be required only as to such lands used to establish or make an addition to a cemetery and shall not be required as to land previously set aside for cemetery purposes if such corporation is maintaining a permanent maintenance fund and such fund at that time contains not less than ten thousand dollars (\$10,000). [L. 1901, ch. 102, § 2; R. S. 1923, 17-1308; L. 1964, ch. 339, § 2; July 1.]

17-1309. Same; plat of lots and deposits in permanent maintenance fund prerequisite to conveyance of lots. Before such corporation shall have the power to sell or in any manner convey, for burial purposes, any of the lands held by it, it shall cause such lands to be surveyed and platted into burial lots and said plat to be filed in the office of the register of deeds in the county wherein such lands are situated; and all conveyances of said lots shall be by reference to said recorded plat: *Provided*, That before any such corporation shall have power to sell or convey lands, acquired from and after the effective date of this act for the purpose of establishing or making an addition to any cemetery, it shall place and maintain ten thousand dollars (\$10,000) in the permanent maintenance fund established under the provisions of this act and an additional five hundred dollars (\$500) for each acre of land, or fraction thereof, in excess of twenty (20) acres acquired for such purposes; said deposits, prerequisite to selling or conveying lands, shall not be required to exceed thirty five thousand dollars (\$35,000), but nothing herein shall be construed as affecting the requirements imposed on the permanent maintenance fund in K. S. A. 17-1311 and any amendments thereto: *Provided further*, That from and after July 1, 1969, no such corporation shall have power to sell or convey lands, acquired prior to the effective date of this act for the purpose of establishing or making an addition to any cemetery, until it shall comply with the requirements hereinbefore imposed on the permanent maintenance fund for lands acquired from and after the effective date of this act, but such compliance shall be required only as to such lands used to establish or make an addition to a cemetery and shall not be required as to land previously set aside for cemetery purposes if such corporation is maintaining a permanent maintenance fund and such fund at that time contains not less than ten thousand dollars (\$10,000). [L. 1901, ch. 102, § 2; R. S. 1923, 17-1309; L. 1964, ch. 339, § 2; July 1.]

17-1309. Same; conveyance of lots. That upon complying with the requirements of the preceding section, such corporation shall have the power to convey, by deed or otherwise, the burial lots as shown on said recorded plats for burial purposes only, in accordance with such regulations and bylaws as may be established and adopted by said corporation. [L. 1901, ch. 102, § 3, March 22, R. S. 1923, 17-1309.]

17-1310. Same; control of lands; replating. That such corporation shall have complete management and control of all lands held, laid out and sold by it for cemetery purposes until such time as all the burial lots shall have been sold or until such time as said corporation shall be dissolved in the manner hereinafter set forth: *Provided*, That such corporation may replat any areas used for cemetery purposes in such a manner as to eliminate roads that have been platted but have not been actually constructed. [L. 1901, ch. 102, § 4; R. S. 1923, 17-1310; L. 1909, ch. 136, § 1; June 30.]

17-1311. Permanent maintenance fund; requirements; use. Such corporation shall fix and set aside, within the state of Kansas, a percentage of the purchase price of each burial lot hereafter sold by it, or any payment thereon, not less than fifteen percent (15%) thereof, for the permanent maintenance of the cemetery within which said burial lot lies, but the total amount so set aside shall not be less than fifteen dollars (\$15) for each burial lot at the time of conveyance of such lot: *Provided*, Moneys placed in such fund under the provisions of K. S. A. 1970 Supp. 17-1308 shall be credited for the purpose of fulfilling such requirement. Moneys in such fund may be held and invested to the same extent as is provided in K. S. A. 17-5004 and any amendments thereto: *Provided*, The total amount of money invested in any mortgage upon real property shall not exceed an amount equal to seventy-five percent (75%) of the market value of such property at the time of such investment. The income of the said permanent maintenance fund shall be used exclusively for the maintenance of said cemetery. No part of the principal of said fund shall ever be used for any purpose except for such investment. In no event shall any part of said funds be made to any stockholder of such corporation. The treasurer of such corporation may receive, acquire and hold donations or bequests for said fund and may retain property so acquired without limitation as to time and without regard to its suitability for original purchase. [L. 1901, ch. 102, § 5; R. S. 1923, 17-1311; L. 1901, ch. 147, § 1; L. 1908, ch. 138, § 1; L. 1908, ch. 330, § 3; L. 1971, ch. 71, § 1; July 1.]

Research and Practice Aids:

Constitutions 17.

C. J. S. Cemeteries § 20 et seq.

Law Review and Bar Journal References:

Cited in survey of Kansas insurance law, Charles H. Oldfather, 15 K. L. R. 605 (1933).

#### CASE ANNOTATIONS

1. Money paid into irrevocable trust for maintenance not taxable as income. *American Cemetery Co. v. United States*, 23 F. 2d 918.

2. Section construed; state policy, application to installment contracts; single purchase price custom; *plated*. *State ex rel. v. Anderson*, 195 K. 619, 131, 652, 653, 395 P. 2d 594.

17-1311a. Same; penalties for misuse. (a) Misuse of the permanent maintenance fund for any money belonging thereto is a misdemeanor or prohibiting another to use, moneys in the fund in a manner not authorized by law, by a custodian or other person having charge or control of such fund or moneys by virtue of his position.

(b) Misuse of the permanent maintenance fund is a class D felony. [L. 1971, ch. 71, § 2; July 1.]

"set aside"

"purchase price of each burial lot"

"invested to the same extent as in provided in K.S.A. 17-5004"

"exclusively for the maintenance"

"loan of said funds be made to any stockholder"

"Misuse"

"not authorized by law"

17-1311. Same; custody; requirements. That said permanent maintenance fund shall at all times be in the custody of the treasurer of said corporation, who shall give a surety-company bond in a sum not less than the amount of funds in his hands, conditioned for the safekeeping of such funds and to account for and turn over the same whenever called upon so to do by said corporation. *Provided, however,* That in lieu of such custody by the treasurer the directors of said cemetery corporation may entrust the custody of the permanent maintenance fund and may delegate their responsibilities and powers to invest, reinvest, exchange, retain, sell and manage the permanent maintenance fund to any trust company or bank having general trust powers within the state of Kansas. Such trust company or bank may serve without bond and may be reasonably compensated for its services out of the income of said fund. [L. 1901, ch. 102, § 6; R. S. 1923, 17-1312; L. 1953, ch. 330, § 4; July 1.]

"That said permanent maintenance fund shall at all times be in the custody of the treasurer of said corporation"

17-1312a. Registration of corporation with secretary of state; annual statement; maintenance fund; audit or examination of accounts; law. (a) On July 1, 1974, all cemetery corporations shall register with the secretary of state. Each cemetery corporation thereafter formed under the laws of the state of Kansas and each foreign corporation granted a certificate of authority to own or operate a cemetery within the state of Kansas shall register with the secretary of state before commencing business in Kansas. Each cemetery corporation shall prepare and forward to the secretary of state at the time it is required to make an annual report under the Kansas general corporation code, or if no such report is required then on January 1 in each year, a statement verified by the treasurer of said corporation describing the corpus and any accumulated income on the preceding December 31, or on the last day of its fiscal year if it does not use the calendar year in its accounts, in each permanent maintenance fund established by said corporation, the cost and the market value on said date of each security then held in each such fund, and the income of and disbursements from each such fund during the calendar or fiscal year then ended. This statement shall otherwise be in such form as the secretary of state shall prescribe.

"all cemetery corporations shall register with the secretary of state."

(b) Whenever and as often as he deems it necessary, the secretary of state, or an employee designated by the secretary of state, may audit or otherwise examine any cemetery corporation books and accounts. Whenever such an audit or examination is so made, the cemetery corporation shall pay to the secretary of state a fee of fifty dollars (\$50) for each day or part of a day required for such audit or examination. [L. 1958, ch. 330, § 5; L. 1974, ch. 95, § 1; July 1.]

"may audit or otherwise examine any cemetery corporation books and accounts."

17-1312b. Audit or examination of books and accounts; examination of officers, employees and agents. The secretary of state, or his assistants or examiners, may make examinations or audits as provided in K. S. A. 1973 Supp. 17-1312a, as amended. For such purpose the secretary of state, his assistants and examiners, are authorized to administer oaths and to examine under oath the directors, officers, employees and agents of any cemetery corporation. Such examination may be reduced to writing by the person making it and may contain a statement of the condition of each permanent maintenance fund examined.

"may"

"may"

[L. 1963, ch. 330, § 6; L. 1974, ch. 95, § 2; July 1.]

17-1311c. Same; interference with or refusal to submit to examination; appointment of receiver. Whenever any officer of any cemetery corporation shall refuse to submit the books, records, papers and instruments of such cemetery corporation to the examination and inspection of the secretary of state, or any of his assistants or examiners, or in any manner obstruct or interfere with the examination or audit of its permanent maintenance funds, or refuse to be examined on oath concerning any of the affairs of its permanent maintenance funds, the secretary of state, with the concurrence of the attorney general, may institute proceedings for the appointment of a receiver for such cemetery corporation. [L. 1968, ch. 330, § 7; L. 1974, ch. 93, § 3; July 1.]

17-1311d. Maintenance fund; failure to establish or maintain; forfeiture of franchise. Any cemetery corporation which shall refuse or neglect to establish or maintain a permanent maintenance fund in accordance with the requirements of this act for each cemetery owned by it for a period of ninety (90) days after demand to do so is made upon it by the secretary of state shall be deemed to have forfeited its franchise. The attorney general, upon the request of the secretary of state, shall then begin action for the appointment of a receiver for such cemetery corporation and to dissolve the same. [L. 1968, ch. 330, § 8; L. 1974, ch. 93, § 4; July 1.]

17-1312a. Information and records of examination confidential. All information which the secretary of state shall gather or record in making an investigation and examination of any cemetery corporation shall be deemed to be confidential information, and shall not be disclosed by the secretary of state, any assistant, examiner or employee thereof, except to the attorney general when in the opinion of the secretary of state the same should be disclosed. [L. 1968, ch. 330, § 9; L. 1974, ch. 93, § 5; July 1.]

17-1312b. "Corporation" defined; application of act; exceptions. The provisions of K.S.A. 17-1308, 17-1311, 17-1312, and 17-1312a to 17-1312c, inclusive, and amendments thereto, shall apply to and be controlling upon every individual, firm, partnership or other organization hereafter selling or conveying land for cemetery purposes, and for this purpose the term "corporation" except where the context clearly indicates a different meaning shall mean and include such individuals, firms, partnerships or organizations. The provisions of this act shall not apply to: (a) Any municipality, corporation or quasi-corporation within the state of Kansas which is empowered to issue bonds in payment of which taxes may be levied; or

(b) any nonprofit organization formed primarily for religious purposes and constituting an established church and which sells or conveys cemetery lots solely to the members of its own church or to persons related by consanguinity, either kind or collateral, by adoption, or by marriage to any such member; or

(c) any cemetery existing on March 1, 1965, located in a county designated as urban, and owned and operated on said date by a nonprofit organization. [K.S.A. 17-1312; L. 1976, ch. 162, § 1; July 1.]

"neglect to establish or maintain"

"individual, firm, partnership or other organization"

17-1312. Cemeteries in or near cities; dissolution. That upon the sale of all of the burial lots in the cemetery of said corporation, or upon a vote of two-thirds majority of the stockholders of said corporation, said corporation may be dissolved, and thereupon a permanent maintenance fund, together with all investments then outstanding, and all books, records and papers of such corporation, shall be turned over to the city treasurer of the city in which or adjacent to which said cemetery is situated, who shall give a bond similar to the bond heretofore required of the treasurer of said corporation; and thereupon the governing body of said city is hereby authorized and required to provide for the investment of such funds in the same kind of securities as heretofore provided, and to care for and maintain the said cemetery; the proceeds of said fund to be used exclusively for such purpose. [L. 1901, ch. 102, § 7; March 22; R. S. 1923, 17-1313.]

17-1314. [L. 1901, ch. 102, § 8; R. S. 1923, 17-1314; L. 1931, ch. 143, § 1; Repealed, L. 1935, ch. 130, § 1; March 19.]

#### CASE ANNOTATIONS

I. Act denies equal protection of law; is discriminatory and unconstitutional. *Mount Hope Cemetery Co. v. Pleasant*, 139 K. 417, 420, 421, 32 P.2d 599.

17-1315. Eminent domain. Any cemetery corporation or other association of individuals owning or in possession of, or controlling a burial ground, not in a city of the first class, shall have power of eminent domain to condemn and appropriate land necessary to enlarge such cemetery as provided by law. [R. S. 1923, 17-1315; Dec. 27.]

Source or prior law: L. 1905, ch. 135, 1.

Revision note, 1923: Revised to provide procedure for condemnation. [See ch. 26, art. 1.]

#### Cross References to Related Sections:

Procedural provisions, see 23-501 to 26-516.

#### Research and Practice Aids:

Eminent domain<sup>2-12</sup>.

C. J. S. Eminent Domain § 61.

17-1316. Cemetery corporations in or adjacent to cities of more than 40,000. All cemetery companies organized prior to March, 1901, owning or controlling a cemetery of fifty or more acres in or adjacent to a city of the first class having a population of 40,000 or more, the land of which was conveyed to said company in payment of capital stock issued therefor, shall be under the management and control of directors elected by the stockholders thereof, and that all of the acts of any board of directors heretofore regularly elected by stockholders in any such company which would be legal if done by any other private corporation are hereby recognized, confirmed and made valid: *Provided*, That from and after this date no dividends shall be issued in excess of six percent on the original capital stock of such corporation: *And provided further*, That all net earnings in excess of six percent shall be set apart for a permanent care fund for such cemetery. [L. 1909, ch. 72, § 1; May 29; R. S. 1923, 17-1316.]

#### Research and Practice Aids:

Cemeteries<sup>2-5</sup>.

C. J. S. Cemeteries § 5 et seq.

17-1317. Same; permanent care fund. Such permanent care fund shall be perpetually held, preserved and maintained for the same purposes and upon the same terms and conditions as provided for in Laws of 1901, chapter 102, sections 5 [17-1311], 6 [17-1312], 7 [17-1313]. [L. 1909, ch. 72, § 2; May 29; R. S. 1923, 17-1317.]

17-1318. [L. 1909, ch. 72, § 3; R. S. 1923, 17-1318; Repealed, L. 1931, ch. 143, § 3; March 19.]

17-1319. City or association; donations for and use of permanent fund. That any city owning a cemetery and any cemetery association incorporated under the laws of this state may receive, acquire and hold donations or bequests for a permanent fund to be loaned at the prevailing rate of interest at the time of investment, to be secured by first mortgages on real estate of at least twice the value of the amount of such loan, or to be invested in bonds of the United States or of the state of Kansas, or any municipality thereof, or may invest such permanent fund in certificates of deposit issued by banks whose accounts are insured with the federal deposit insurance corporation to the extent of such insurance or may invest such funds in certificate of deposits or savings accounts of savings and loan associations which are insured by the federal savings and loan insurance corporation to the extent of the available insurance. The interest on such investments shall be used by such city or association in defraying the expense incurred in keeping the lots and grounds of such cemetery in proper and suitable condition. Such permanent fund shall never be used for any other purpose than as above stated. [L. 1911, ch. 77, § 1; R. S. 1923, 17-1319; L. 1933, ch. 151, § 1; L. 1945, ch. 154, § 1; L. 1973, ch. 83, § 1; July 1.]

#### Cross References to Related Sections:

Trust funds in cities of second and third classes, see 12-1437 to 12-1439.

17-1320. [L. 1911, ch. 77, § 2; R. S. 1923, 17-1320; Repealed, L. 1973, ch. 83, § 2; July 1.]

17-1321. Same; control; custodian; bond. The authorities of such city or cemetery association shall have entire control of raising such permanent fund, the loaning of same, and collecting and disbursing the interest thereon, and the custodian of such fund shall give a good and sufficient bond, with three or more sureties, who shall under oath, justify in double the amount of such funds in his hands. [L. 1911, ch. 77, § 3; March 11; R. S. 1923, 17-1321.]

17-1322. Sale by one association of all unsold real property to another owning land adjoining or in close proximity; purchase of assets. Where two cemetery associations have been organized, and the lands owned and platted and dedicated by each of said associations adjoin or are in such close proximity that the whole can be efficiently managed by one of the organizations and under one uniform plating and scheme, either one of said associations, by its president and secretary, and by the consent and direction of a majority of all the individual lot owners in said association secured by vote to be taken at a meeting to be called by the said president thereof for that purpose, may sell and convey to such other association, for general burial purposes, and in bulk, all the land and property of said association not already sold and conveyed to individual lot owners, and said property shall thereafter be held, managed and disposed of by the purchasing association as if now by law provided: *Provided, however*, That notwithstanding any other statutes to the contrary, any cemetery corporation, either private or public, or cemetery association, whether for profit or non-profit, may purchase the assets, real or personal of any other such cemetery organization, except for those burial lots already sold for burial purposes. [L. 1903, ch. 74, § 1; R. S. 1923, 17-1322; L. 1971, ch. 72, § 1; July 1.]



17-1219. Certain charitable purpose corporations; joint custody of assets. Any cemetery corporation now organized or existing, or which may be hereafter organized, for the purpose of establishing and maintaining a cemetery or cemeteries for charitable purposes and having or acquiring a perpetual care or permanent maintenance fund containing assets of at least one hundred thousand dollars (\$100,000), may by action of its governing board enter into an agreement with a bank or trust company, having its principal office in this state, for the joint custody of such assets, which assets are to be deposited for safekeeping with such bank or trust company and such joint custody to be between the treasurer and governing body of said corporation and the bank or trust company. Whenever such assets are so deposited with a bank or trust company, the treasurer of said corporation may be relieved from furnishing any surety bond relative thereto otherwise required by law. [L. 1951, ch. 215, § 1; June 30.]

Research and Practice Aids:

Charities C-15.

C. J. S. Charities § 14.

17-1220. Same; investment standards; acquisition of property. In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of any cemetery corporation now or hereafter organized as provided in section 1 [17-1219] of this act, the governing board shall exercise such judgment and care under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of its capital.

Within the limitations of the foregoing, the governing board of the cemetery corporation is authorized to acquire and retain every kind of property, real, personal or mixed, and every kind of investment, specifically but not by way of limitation, bonds, debentures and other corporate obligations, or loans secured by real estate mortgages, and stocks, preferred or common, which men of prudence, discretion and intelligence acquire or retain for their own account, and within the limitations of the foregoing, the governing board of the cemetery corporation may retain property properly acquired, without limitation as to time and without regard to its suitability for original purchase; *Provided*, That it may be permissible for such governing body of such a cemetery to invest its funds for perpetual care or permanent maintenance in the erection of a mausoleum upon its grounds or for the partial expense for the erection thereof. [L. 1951, ch. 215, § 2; June 30.]

Case References to Related Sections:

Prudent-man rule for fiduciaries, see 17-5604.