

MINUTES OF THE HOUSE COMMITTEE ON ASSESSMENT AND TAXATION

The meeting was called to order by Representative Jim Braden at
Chairperson

9:00 a.m./~~p.m.~~ on February 11, 1983 in room 519-S of the Capitol.

All members were present ~~except~~

Committee staff present:

Wayne Morris, Research Department
Tom Severn, Research Department
Don Hayward, Revisor of Statutes' Office
Nancy Wolff, Secretary to the Committee

Conferees appearing before the committee:

L. M. Cornish, Legal Counsel, Kansas Library Association
Duane Johnson, State Librarian
Margaret Gates, North Central Kansas Library System
Edna Buschow, Kansas Federation of Women's Clubs
Warren H. Robinson, Friends of Kansas Libraries
Almeda Edwards, Governors Appointee, N.E. Kansas Library System
Mike Tacha, Legislative Chairman, Kansas Library Association
Carol Bonebrake, Department of Revenue
Rod Bieker, Attorney General's Office
Bob West, N.E.C.A.
Allen Alderson, Department of Revenue

The meeting was called to order by the Chairman.

Hearings were scheduled on HB 2166, which would allow an increase in the levy limit for regional libraries from 1/2 to 3/4 mill. L.M. "Bud" Cornish, legal counsel for the Kansas Library Association, appeared as a proponent to HB 2166 and introduced Duane Johnson, State Librarian. Mr. Johnson presented two publications, "Kansas Public Libraries from Abilene to Zenda" and "Kansas Public Library Statistics" along with the Kansas Library Book Cost Fact Sheet. (Attachment I) He also presented a brief listing of the reasons why he felt HB 2166 is necessary to sustain the Regional Library System in the State of Kansas. (Attachment II)

Margaret Gates, North Central Kansas Library System, appeared in support of HB 2166 and presented testimony outlining how the system is currently being funded along with a chart illustrating the reductions in services in the NCKL programs since 1975. (Attachment III)

Edna Buschow, Kansas Federation of Women's Clubs and a member of the Kansas State Library Advisory Commission, appeared in support of HB 2166.

Warren Robinson, President of Friends of Kansas Libraries, presented a written statement in support of HB 2166. (Attachment IV)

Almeda Edwards, Governor's appointed Representative to the Northeast Kansas Library System Board, appeared in support of HB 2166. (Attachment V)

Mike Tacha who is a librarian at Neosho County Community College and is also Legislative Chairman of the Kansas Library Association, appeared in support of HB 2166 and stated that he felt it is important to strengthen the library systems of Kansas as the libraries service is to and for the citizens of the State. (Attachment VI)

The Committee then held discussions on HB 2065 which would add "heat pumps" to the definition of a solar energy for the purpose of a solar energy credit. Representative Rolfs made a motion to table HB 2065 and Representative R. Frey seconded the motion.

Representative Wunsch made a substitute motion to report HB 2065 adversely and Representative Aylward seconded the motion.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ASSESSMENT AND TAXATION,

room 519 -S, Statehouse, at 9:00 a.m./~~p.m.~~ on February 11, 19 83

The Chairman stated that he felt it would be wrong to table HB 2065. He said he felt it was important that the Legislature make it clear what Legislative Intent is regarding whether or not heat pumps should qualify for the Solar Energy Tax Credit. When put to a vote, the substitute motion carried.

Carol Bonebrake, Revenue Department, appeared to clarify the Department's stand on HB 2019. HB 2019 would exempt custom cutters' equipment from property tax as a part of the farm machinery exemption. She cited In Re Wirt (Attachment VII) as an analogue and stated that the Department has taken the stand that if property has two uses, that of farming and of receiving monetary consideration for that service, the property would not be exempt.

Several of the Committee members expressed concern that this situation could possibly hurt the young farmers that the Legislature was trying to help when the farm exemption legislation was passed. Based on the Department's interpretation of the present law, the young farmer who is combining his neighbor's field to earn extra money, would be taxed on this farm machinery because he is not just using the equipment to maintain his own crops. The Special Committee on Assessment and Taxation introduced HB 2019 in an attempt to correct this situation.

Rod Bieker and Don Hayward of the Revisor's Staff, agreed that there is a question on whether machinery that is used for hire does qualify under the "exclusive use test" because of the Supreme Court decision In Re Wirt.

Representative King made a motion that HB 2019 be reported favorable for passage and Representative Schmidt seconded the motion.

Several of the members expressed the view that In Re Wirt is not on point regarding the farm machinery exemption and that the bill is not needed because the language in the present statutes should exempt machinery used in custom farming operations. When put to a vote, the motion failed.

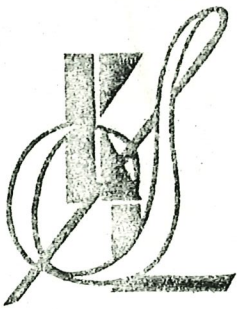
Bob West, Kansas (Topeka) Chapter of the National Electrical Contractors Association, appeared to request an amendment to HB 2154 which would permit contractors of large (\$10,000 per job) contracts to charge the local option sales tax on services based on the situs where the service is provided. (Attachment VIII)

Alan F. Alderson, General Counsel for the Department of Revenue, appeared to state the Department's opinion on the proposed amendment as offered by N.E.C.A. He stated that only a "dollar limit" concept is administratively feasible, but felt that a figure of \$25,000 rather than \$10,000 would be more workable for the Department. (Attachment IX)

Several of the Committee members felt that the "dollar limit" concept could be subject to abuse.

Representative Vic Miller made a motion that HB 2154 be reported favorable for passage and Representative Vancrum seconded the motion. Several committee members asked that if this motion passed that the Committee still try to work out a compromise in another bill to take care of the problem of the large contractor based in a local sales tax area being at a competitive disadvantage with those based in areas with no local sales tax. When the motion was put to a vote, the motion carried.

The meeting was adjourned.



State Library of Kansas

(913) 296-3296

Third Floor, State Capitol,

Topeka, Kansas 66612

February 10, 1983

Honorable James D. Braden, Chairperson
Committee on Assessment and Taxation
House of Representatives

Hearing: February 11, 1983

Reference: House Bill No. 2166

Outline of hearing statement, Duane F. Johnson, State Librarian

1. Brief comment on the history and objectives of Regional Systems of Cooperating Libraries as authorized by K.S.A. 75-2547, et seq.
2. Explanation of current method of governance and financing of the regional library systems.
3. Brief review of system services to member libraries and rural residents.
4. General objectives of H.B. 2166.

For distribution to the Committee:

1. Publication, "Statistics, Kansas Public Libraries, 1981"
2. Fact sheet on high book costs.

DFJ/bs

KANSAS LIBRARY BOOK COST FACT SHEET

THE AVERAGE NON-FICTION BOOK NOW COSTS \$23.57. THE AVERAGE COST INCREASED 23% from 1978-1980, THE LAST TWO-YEAR REPORTING PERIOD.

MAGAZINE SUBSCRIPTION PRICES HAVE INCREASED 54% IN THE PAST FOUR YEARS AND NOW AVERAGE \$34.54.

THE AVERAGE FICTION BOOK NOW COSTS \$12.31. FOR EACH OF THE PAST FIVE YEARS, FICTION BOOK PRICES HAVE INCREASED 10%.

Yet actual dollars spent on books and materials for use by citizens in Kansas Public Libraries have been relatively constant each year - with as much as 6% DECREASE in 1980.

Funds for Kansas Public Libraries have not allowed sufficient purchasing of books and library materials to continue at even minimal levels for the adequate provision of current information.

In 1975, the Kansas library community prepared the document, Standards for Public Libraries in Kansas, to establish minimum levels of service throughout the state. At the end of 1981, Kansas Public Libraries owned a total of 6,353,663 volumes---2,349,093 volumes LESS than the established standard. During the same year, only about half of the recommended standard of volumes were added to Kansas Public Library collections.

THE BOTTOM LINE?

KANSAS CITIZENS ARE FACED WITH A STEADILY DECREASING VOLUME OF MATERIALS IN THEIR LOCAL PUBLIC LIBRARIES, AND THOSE MATERIALS AVAILABLE ARE NOT BEING REPLACED WITH MORE RECENT, MORE TECHNICALLY ACCURATE, MATERIALS TO ASSIST CITIZENS IN THEIR INFORMATION NEEDS.

KANSAS LIBRARIES NEED YOUR SUPPORT!

House Bill No. 2166 can help with these library problems.

NORTH CENTRAL KANSAS LIBRARIES SYSTEM

North Central Kansas Libraries System is a service organization created and maintained by trustees of the local public library districts and Governor Appointees representing the rural system taxing district.

NCKL operates in the 11 counties of Clay, Dickinson, Geary, Lyon, Marion, Marshall, Morris, Pottawatomie, Riley, Wabaunsee and Washington serving 46 libraries and their users. Residents of this area number 201,585. The System is financed in part by a 1/2 mill tax on the areas not now being taxed by a city or county library district.

The ultimate goals of the library system are to help make excellent collections of books and other library materials conveniently available to all rural and city residents, to help provide the best reference and information service to these citizens, and to help local libraries provide these basic services in the most economical manner possible.

FINANCING THE NCKL SYSTEM

	<u>Population</u>	<u>Library Taxes</u>	<u>Per Capita</u>	<u>% Total System Support</u>
40 public library districts	144,000	\$1,069,808	\$7.43	80%
1/2 mill System tax	57,585	154,748	2.69	12%
State Aid to System & Libraries	<u>201,585</u>	<u>112,458</u>	<u>.56</u>	<u>8%</u>
Combined Income State-System-Local	201,585	\$1,337,014	\$6.63	100%

Local public library tax rates have increased by as much as 2.50 mills since the System was formed. Most libraries tax 2 or 3 mills while some tax as much as 4 and 5 mills.

* * * * *

The system tax authority has been fixed at 1/2 mill for the past fourteen years. Inflation has seriously restricted the services which the system has previously made available.

* * * * *

The proposed H. B. 2166 amendment would allow North Central Kansas Libraries System to keep operating without further reduction of services as listed on the accompanying charts.

REDUCTIONS IN NCKL SYSTEM PROGRAMS 1975-1983

	<u>ROTATING BOOKS</u>	<u>MAIL-A-BOOK</u>	<u>EXTENDED SERVICE GRANTS</u>	<u>INTERLIBRARY LOAN SERVICE</u>
Full Service 1969-1974	<p>Collection of books which rotate by book van through 45 libraries providing up to 500 books to each library every month.</p> <p>-----</p> <p>1975 - Reduced trips from 12/yr. to 6/yr.</p> <p>1980 - Reduced trips from 6/yr. to 4/yr.</p> <p>1982 - Large-type print books reduced by 25%.</p> <p>1983 - Number of new books reduced by 20%</p>	<p>A direct mail service to rural citizens and towns without libraries. Books are ordered from an annual catalog with three supplements containing 1,500 to 2,000 titles. Books are mailed to patron with return label and postage.</p> <p>-----</p> <p>1980 - Reduced catalog mass mailing from 11 counties to 3 each year.</p> <p>1981 - Cut new book stock from 4,000 to 3,750.</p> <p>1982 - Cut new book stock to 3,500. Asked patrons to send 25¢ with order.</p> <p>1983 - Cut new books to 2,500. Use charge to 35¢.</p>	<p>Each library district receives a resource grant to purchase books for their library. Size of the grant depends upon the size of library. For the small library this may be the entire book budget.</p> <p>-----</p> <p>1980 - Reduced core library grant from \$4,500 to \$4,100. Raised eligibility to receive grant to 85% of tax levy limit.</p> <p>1981 - 10% of grant withheld to meet year end deficits if needed.</p> <p>1982 - Continue withholding 10%</p> <p>1983 - Continue withholding 10%.</p>	<p>Books, documents, pamphlets, maps, cassettes, records, magazines, reference information.</p> <p>Access to 3,000,000 books listed in the COM catalog of Kansas libraries. Rural patrons can phone requests to the Resource Library and any library can recover nearly any book for patrons. Over 6,000 books were borrowed in NCKL alone in 1982.</p> <p>-----</p> <p>27% increase in book cost has reduced acquisition of resource books from 1,800 in 1976 to 900 in 1982. Postage to mail a book increased from 11¢ in 1977 to 35¢ in 1982.</p>
1983 Budget	\$41,750	\$31,933	\$42,500	\$25,498
Cost to restore to 1974 level	\$11,000	\$21,000	\$ 2,800	\$ 5,000

REDUCTIONS IN NCKL SYSTEM PROGRAMS 1975-1983

	CENTRAL PURCHASE AND PROCESSING	WORKSHOP & TRAVEL	ART & PRINTING
Full Service 1969-1974	<p>Volume purchase provides the smallest library with the same discount given to large accounts. Central Cataloging frees the librarian's time to help patrons, provides uniform cataloging, and lists the book in the State COM catalog for the Interlibrary Loan program.</p> <p>-----</p> <p>1980 - 35¢/book charged to local library.</p> <p>1982 - Fee raised to 50¢/book.</p> <p>1983 - Fee raised to 60¢/book.</p>	<p>Personnel training for all librarians and trustees by professional personnel. 9 or 10 workshops per year on all facets of library operation.</p> <p>-----</p> <p>1975 - Trustee Board Meeting cut from 12 to 6/yr.</p> <p>1979 - Workshops cut to 7/yr.</p> <p>1981 - Workshops cut from 7 to 3/yr.</p> <p>1982 - Consultant position eliminated.</p> <p>Mileage no longer paid for Trustees meetings or workshops. Cost to be passed on to local library or individual.</p>	<p>Book lists, special notices, signs, patron pamphlets, Summer Reading Program, furnished by System Printing Department.</p> <p>-----</p> <p>1980 - All special order materials to be at cost price to library.</p> <p>1981 - Cut monthly newsletter back to 6 times per year.</p> <p>1983 - Cut out newsletter.</p>
1983 Budget	\$58,856	-0-	\$11,566
Cost to restore to 1974 level	\$14,000	\$23,000	\$ 5,000

REDUCTIONS IN NCKL SYSTEM PROGRAMS 1975-1983

	BLIND & PHYSICALLY HANDICAPPED	AUDIO-VISUAL	SUPPORTIVE ADMINISTRA- TIVE SERVICE AND OPERATION	TOTAL PROGRAM COSTS	FULL-TIME EQUIVA- LENT STAFF REDUCTIONS
Full Service 1969-1974	<p>Talking book program for 1,200 blind or handicapped residents of NCKL. Large-print collections to 67 long term care and retirement homes. Personal recruitment of eligible users for this special population.</p> <p>-----</p> <p>1982 - Change in State funding distribution --loss to NCKL of \$5,100.</p> <p>1983 - Large-type print cut to 0. Handicapped bibliography cut to 0. Travel cut 50%. 12 county fair exhibits cut to 0.</p>	<p>Framed art reproductions, cassette recordings for small libraries. Access to 16mm projector for film use. Access to Wichita Film Program for all libraries.</p> <p>-----</p> <p>1975 - Reduced framed art reproductions to 0.</p> <p>1979 - Cassette tapes & records to 0.</p> <p>1980 - 1/2 cost of \$3.00 film rental charged to local library.</p> <p>1981 - Full cost \$5.00 rental charged.</p> <p>1982 - Full cost \$12.00 film rental charged. Film use dropped 75% 1979 to 1982. Defunct projectors not replaced.</p>	<p>Overall reduction in central communications, travel and supervisory staff.</p>		<p>Erosion of programs has resulted in gradual reduction of staff. In the last 4 years staff has been reduced by 2 and 3/4 persons.</p> <p>-----</p> <p>1979 - 11.80 F.T.E. 1982 - 10.90 F.T.E. 1983 - 9.07 F.T.E.</p>
1983 Budget	\$43,758	-0-	\$42,465	\$298,326	
Cost to restore 1974 level	\$ 6,500	\$21,000	\$20,000	\$129,300	

FRIENDS OF KANSAS LIBRARIES

STATEMENT IN SUPPORT OF HB 2166 BY WARREN ROBINSON, PRESIDENT,
FRIENDS OF KANSAS LIBRARIES, 1515 W. 10TH, TOPEKA, KANSAS 66604

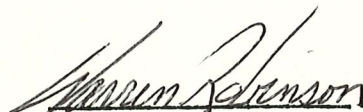
Mr. Chairman, my name is Warren Robinson. I am President of Friends of Kansas Libraries, a Kansas not-for-profit corporation.

Our organization was formed less than five months ago, but we have begun publishing a newsletter and are growing rapidly. Our membership includes groups and individuals from more than thirty towns and cities throughout the State. Our board of fourteen officers and trustees has representatives from every section of Kansas.

We believe our mission is a worthy one: helping Kansas libraries meet the needs and expectations of their communities. We extend that help primarily by providing advice and assistance to local library support groups, and to persons interested in forming such groups.

Our board is concerned that many Kansans are being adversely affected by the diminishing capability of regional library systems to assist their libraries adequately. We believe the assistance provided by the regional library systems is too important to too many libraries to be allowed to wither away for lack of sufficient funding. Surely no state committed to progress and public education can afford to let its libraries deteriorate.

The Board of Friends of Kansas Libraries wishes, therefore, to express its strong support for HB 2166.



Warren Robinson

February 11, 1983

House Assessment and Taxation Committee February 11, 1983.

Re: House Bill No 2166

I am Almeda Edwards from Ottawa. Since 1977, I have served as the governor's appointed representative from Franklin County, to the Northeast Kansas Library System Board. Three libraries in Franklin County receive tax support from their own cities' taxpayers, namely, Ottawa, Richmond, and Wellsville.

Ottawa residents pay, for example, a tax levy of \$5.92 per thousand valuation in 1982. All other areas of the county pay the library-system levy of one-half mill and I am their representative. I attend system meetings twice yearly and vote on such matters as the annual budget, grants, etc.

Usage of the libraries is not confined to those within a city's limits. At Ottawa, for example, one-third of the current library card holders are from outside the city. At Richmond, almost one-half reside outside town and Wellsville has 42% rural card holders.

Libraries and their patrons receive benefits from the system levy in several ways: Grants to system libraries are an important part of local budgets. Ottawa Library currently receives an annual grant of \$9,000. Richmond receives 1,100 and Wellsville receives \$2,500.

Member libraries also have use of a telephone credit card for certain inter-library business, etc. There are workshops for library personnel and also a co-ordinated summer reading program with a theme and materials provided and paid for by the system.

The system provides funding for certain Blind and Physically Handicapped programs and services. There are other aids that I am sure will be mentioned here today.

I think it is important that this levy be increased from 1/2 to 3/4 mill to help provide the funding necessary for local libraries to serve their entire, greater-community and not just the taxing district of their own city, on a free and equal basis.

My husband and I farm. We pay a substantial amount of property taxes but I feel this is a worthwhile reason to stand here before you asking for this small tax increase.



KANSAS LIBRARY ASSOCIATION

TO: James D. Braden, Chairperson
and
Members: Assessment and Taxation Committee

STATEMENT: Mike Tacha

DATE: February 11, 1983

I speak to you this morning on behalf of the Kansas Library Association. The Kansas Library Association a non-profit educational organization comprised of libraries, librarians and citizens dedicated to excellence in library service. Two of the purposes of Kansas Library Association are to promote library service in the state of Kansas, and to promote cooperation among all types of libraries and organizations concerned with library service.

The proposed legislation speaks directly to the purposes of Kansas Library Association, as such, KLA supports without reservation HB 2166. In strengthening the library systems of Kansas, which are a major foundation for interlibrary cooperation within our state, library service to and for citizens in all areas of Kansas would be influenced. We urge your most careful consideration of this legislation.

In re Board of Johnson County Comm'rs

No. 49,869

In the matter of the appeal of Clay L. Wirt, Robert C. Bacon, and John J. Franke, Jr., as the Board of County Commissioners of the County of Johnson, Kansas; Prather H. Brown, Jr., as the County Appraiser of said County; Edna C. Craig as the County Treasurer of said County; and Donald Curry, as County Clerk of said County, from a decision of the Board of Tax Appeals of the State of Kansas, *Appellees*.

(592 P.2d 875)

SYLLABUS BY THE COURT

1. TAXATION—*Ad Valorem Tax—Exemption Rules Discussed*. The principles of exemption of property from ad valorem taxation are reviewed and stated.
2. SAME—*Ad Valorem Tax—Property Leased for Profit to Tax-exempt Entity—Effect*. Property owned by a non-tax-exempt entity and leased for profit to a qualifying tax-exempt entity, is not being used exclusively for tax-exempt purposes and is subject to ad valorem and property taxes.

Appeal from Shawnee district court, division No. 3, E. NEWTON VICKERS, judge. Opinion filed March 31, 1979. Affirmed.

Ronald E. Manka, of Lathrop, Koontz, Righter, Clagett, Parker & Norquist, of Kansas City, Missouri, argued the cause, and *James R. Hubbard*, of Breyfogle, Gardner, Martin, Davis & Kreamer, of Olathe, was with him on the brief for appellants.

Bruce F. Landeck, of Lowe, Terry & Roberts, of Olathe, argued the cause and *Lyndus A. Henry*, county counselor, was with him on the brief for appellees.

Wayne E. Hundley, of Topeka, filed a brief *amicus curiae* for Director of Division of Property Valuation, Department of Revenue.

Wayne T. Stratton, of Goodell, Cogswell, Stratton, Edmonds, Palmer & Wright, of Topeka, filed a brief *amicus curiae* for Kansas Hospital Association.

The opinion of the court was delivered by

HOLMES, J.: This appeal arises out of applications filed by Martin Psychiatric Research Foundation, Inc. (Martin Psychiatric) and Mid-Continent Hospitals, Inc. (Mid-Continent) with the Board of Tax Appeals seeking a determination that certain leased real and personal property in Johnson County is exempt from all ad valorem and property taxes levied under the laws of the State. The Board of Tax Appeals ruled the property was exempt from taxation. On appeal by the appropriate officials of Johnson County, the district court reversed the Board and held the property was not exempt from taxation as it was not used exclusively for an exempt purpose. Martin Psychiatric and Mid-Continent have appealed.

Martin Psychiatric is a Kansas nonprofit corporation formed in

ATTACHMENT VII

(2-11-83)

1965. Mid-Continent is a Kansas corporation formed for profit in July, 1971. Martin Psychiatric enjoys federally tax-exempt status under section 501(c)(3) of the Internal Revenue Code, as amended, and is licensed by the Department of Social and Rehabilitation Services to conduct a treatment facility designated as a psychiatric hospital with day care treatment and out-patient service. The property in question includes both real and personal property owned by Mid-Continent and leased to Martin Psychiatric under a written lease agreement originally entered into in June, 1972. Located on the real property are improvements operated as a private psychiatric hospital with day care treatment and out-patient services. The personal property included in the lease agreement is used by Martin Psychiatric in the operation of the hospital. All parties agree that the functions of Martin Psychiatric qualify all property used exclusively by it for tax-exempt status.

The original lease was for a period of fifteen years at an annual rental of \$84,000.00. The lease contains options which allow the lessee to extend the lease for successive five-year periods until the year 2071. Martin Psychiatric evidently was not as successful as originally anticipated and in December, 1975, the annual rental was reduced by agreement of the parties to \$46,645.32 until 1982 at which time it will increase to \$60,000.00 per year. The lessee is also obligated to pay all property taxes, real and personal, and in addition is responsible for all repairs, maintenance and replacement of the leased property.

The sole issue is whether real and personal property owned by a profit corporation and leased to a nonprofit corporation is "actually and regularly used exclusively" by the nonprofit corporation so as to be exempt from property and ad valorem taxation under K.S.A. 79-201b *First*.

At the outset we wish to thank the Kansas Hospital Association and the Director of Property Valuation, Department of Revenue, for the excellent *amicus* briefs filed with the court. Along with the briefs of the parties, they were of assistance to and carefully considered by the court.

K.S.A. 79-201b states in relevant part as follows:

"The following described property, to the extent herein specified, shall be and is hereby exempt from all property or ad valorem taxes levied under the laws of the State of Kansas:

"*First: All real property, and tangible personal property, actually and regularly*

used exclusively for hospital purposes by a hospital as the same is defined by K.S.A. 1977 Supp. 65-425, and amendments thereto, or a psychiatric hospital as the same is defined by K.S.A. 1977 Supp. 59-2902, and amendments thereto, which hospital or psychiatric hospital is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not for profit corporation; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such a corporation and used exclusively for hospital or psychiatric hospital purposes." (Emphasis added.)

The district court held that when property is leased for profit to an exempt organization, the property is not being used exclusively by the exempt organization and therefore is not exempt from taxation. The renting of the property by the owner for profit was held to be a use of the property.

Before addressing the express question before the court, we will iterate some of the basic tenets of property taxation. These principles have been summarized in *Lutheran Home, Inc. v. Board of County Commissioners*, 211 Kan. 270, 505 P.2d 1118 (1973), at page 275-276, as:

"(1) Constitutional and statutory provisions exempting property from taxation are to be strictly construed.

"(2) The burden of establishing exemption from taxation is on the one claiming it.

"(3) The exemption from taxation depends solely upon the exclusive use made of the property and not upon the ownership or the character, charitable or otherwise, of the owner.

"(4) The test of whether an enterprise is charitable for ad valorem tax purposes is whether its property is used exclusively to carry out a purpose recognized in law as charitable.

"(5) The question is not whether the property is used partly or even largely for the purposes stated in the exemption provisions, but whether it is used exclusively for those purposes. (*Clements v. Ljungdahl*, 161 Kan. 274, 278, 167 P.2d 603; *State, ex rel., v. Security Benefit Ass'n*, 149 Kan. 384, 87 P.2d 560.)

"(6) The phrase 'used exclusively' as contained in Section 1, Article 11, of the Kansas Constitution, was intended by the framers in the sense that the use made of property sought to be exempt from taxation, must be only, solely, and purely for the purposes stated in the Constitution, and without admission to participation in any other use. (*Sigma Alpha Epsilon Fraternal Ass'n v. Board of County Comm'rs*, supra [207 Kan. 514, 485 P.2d 1297].)"

Briefly, they may be summarized as: taxation is the rule, exemption is the exception.

While the precise question is one of first impression, this court has had occasion to consider the converse issue. In *Stahl v.*

Educational Assoc'n., 54 Kan. 542, 38 Pac. 796 (1895), property owned by the association was leased to a tenant and all of the rents and profits derived from the property were used by the association (a tax-exempt educational institution) exclusively for educational purposes. The court denied exempt status to the property and stated:

"When its real estate is rented to a tenant, or its funds invested in other property for profit, or loaned at interest, the property thus rented or invested or loaned will be liable to taxation, as much as any other property that is rented or invested or loaned, no matter in whose hands it might be." p. 549.

All parties agree ownership is not a controlling factor in determining if property is exempt and although appellants go to great lengths to distinguish between ownership and use, the parties recognize the "exclusive use" of the property is the test under the statute. Appellants take the position "use" means the physical use of the property and the intangible benefits of ownership, including renting of the property for profit, do not constitute using the property. Appellants urge that we look only to the physical use by the lessee, Martin Psychiatric, to determine the issue. Appellees, on the other hand, contend when property is rented or leased that, in and of itself, is a use by the owner and the lessee cannot be said to be using the property exclusively.

Appellants and the Kansas Hospital Association contend that to exempt from taxation leased property used by an exempt organization meets the intent of the Constitution and statutes by giving relief to the tax exempt institution and is in the public interest. They contend if such property is subjected to ad valorem and property taxes, it will merely work to the detriment of the tax-exempt entity as it, not the owners, will ultimately bear the burden of paying the tax. Under the literal terms of the lease in this case, this is undoubtedly true as the lessee is required to pay all property taxes. Several cases cited by appellants agree. Cases are cited from Wisconsin, Nebraska, Ohio, California and other states which hold the public interest is best served by granting the exemption. On the other hand, many other states reach the contrary conclusion. For an analysis of the decisions of the various states which have considered the problem see Annot., Tax Exemption—Leased Property, 55 A.L.R.3d 430. While numerous cases can be cited supporting either position, resort to other jurisdictions is not particularly helpful due to differences in

statutes and constitutional provisions. Some, however, are persuasive.

In an early Missouri case, the Supreme Court of that state held that a lot leased from a private owner by a school board at an annual rental and used exclusively for school purposes was not exempt from taxation. The Court said:

"[T]he real question in this case depends upon what is meant by the term 'used exclusively'"

"The ownership or title to the property is not the determining factor. For if the property is owned by a religious, charitable or school organization and is leased or rented for use for any other purpose than such as the Constitution contemplates, the land is not exempt. So, if the private owner of the land allows his land to be used for such purposes and charges no rent and derives no personal benefit from the land, the land is exempt from taxation, because the land is then devoted exclusively to such a use. This was the case in *City of Louisville v. Weme*, [Ky.], 80 S.W. 224, relied on by the defendants. For in such cases the owner contributes the use of his land to public or quasi-public use, or to such a use as the Constitution contemplates, and derives no gain or profit for himself, and therefore, the State does not exact a tax from his land with one hand while accepting a contribution of the use of his land with the other hand. But on the contrary, when the owner leases his land to the public for a public use, or to a quasi-public body for a charitable or religious use, and applies the rents derived from the land to his own personal advantage, he contributes nothing to the public or to charity, he loses nothing by the use, he is not a benefactor to any one, but he stands before the law in exactly the same light as any one else who leases his land for any other purpose, and uses the rents for his own advantage, and, therefore, he is not entitled to any special consideration at the hands of the law or the government, and his property is not exempt.

"There would be just exactly as much, and no more or less reason, for holding that the property of one who sold provisions or supplies to a charitable institution which were used to support the lives of the inmates thereof, was exempt from taxation. In both cases he would get and appropriate to his own use the proceeds or products of his property, just the same as if it had been rented or sold to a private citizen or to a business concern. . . ." *State ex rel. Hammer v. Macgum*, 187 Mo. 238, 242-243, 86 S.W. 138 (1905).

The Wyoming Supreme Court considered the issue in an action where a for-profit corporation leased real estate to a religious corporation for school purposes. In holding that the property was used for private profits, the Court denied exemption and stated:

"We cannot think that it was the intention of the framers of our state constitution and the legislators of this state which enacted the laws exempting property from taxation to intend that a person whose property would ordinarily be subject to taxation should be released from bearing his share of the expense of government by simply leasing his property for a substantial rental to an Association which, due to the purposes for which it was organized, is regarded as a public benefactor

and for that underlying reason is exempted from paying taxes when using property for those purposes. When a person derives income from property in such fashion it seems to us he is using it for his own personal advantage and we can see no valid reason why he should not, as all other citizens who rent their property do, pay the taxes regularly assessed to it." *Cambria Park v. Weston Co.*, 62 Wyo. 446, 466-467, 174 P.2d 402 (1946).

We have had occasion to consider many times whether property was being "used exclusively" for exempt purposes as contemplated by the statutes. *Defenders of the Christian Faith v. Board of County Commissioners*, 219 Kan. 181, 547 P.2d 706 (1976); *Seventh Day Adventist v. Board of County Commissioners*, 211 Kan. 683, 508 P.2d 911 (1973); *Lutheran Home, Inc. v. Board of County Commissioners*, 211 Kan. 270, 505 P.2d 1118 (1973); *Topeka Presbyterian Manor v. Board of County Commissioners*, 195 Kan. 90, 402 P.2d 802 (1965); *Kansas State Teachers Ass'n v. Cushman*, 186 Kan. 489, 351 P.2d 19 (1960); *State, ex rel., v. Lawrence Woman's Club*, 178 Kan. 308, 285 P.2d 770 (1955); *Defenders of the Christian Faith, Inc. v. Horn*, 174 Kan. 40, 254 P.2d 830 (1953); *A.T. & S.F. Hospital Ass'n v. State Commission of Revenue & Taxation*, 173 Kan. 312, 246 P.2d 299 (1952); *Mason v. Zimmerman*, 81 Kan. 799, 106 Pac. 1005 (1910); *Stahl v. Educational Assoc'n.*, 54 Kan. 542, 38 Pac. 796 (1895); *St. Mary's College v. Crawl, Treasurer, &c.*, 10 Kan. 442 (1872); *Vail v. Brach*, 10 Kan. 214 (1872); *Washburn College v. Comm'rs. of Shawnee Co.*, 8 Kan. 344 (1871). However, none of these cases considered the problem of the intangible use of property by the owner as opposed to the physical use by the party in possession.

In the early case of *Washburn College v. Comm'rs. of Shawnee Co.*, 8 Kan. at 349, Brewer, J. stated:

"To bring this property within the terms of the section quoted it must be 'used exclusively for literary and educational purposes.' This involves three things, first, that the property is used; second, that it is used for educational purposes; and third, that it is used for no other purpose."

In *Seventh Day Adventist v. Board of County Commissioners*, 211 Kan. 683, Syl. ¶ 2, we defined the term in the following language:

"The phrase 'used exclusively' in the constitution and statute means that the use made of the property sought to be exempted from taxation, must be only, solely and purely for the purposes stated, and without participation in any other use."

To that an investor who owns valuable property, real or

personal, and leases it for profit is not using his property ignores the obvious fact that the owner-lessor is exercising his right to use the property just as surely as if he were utilizing it in a physical sense for his own objectives. In the instant case, Mid-Continent chose to lease its hospital facilities and equipment to Martin Psychiatric rather than operate its own hospital, or rent the property for some other purpose. Can one be said to be a use of the property and the other not? We do not think so. The renting by the lessor and the physical use by the lessee constitute simultaneous uses of the property and when an owner leases his property to another, the lessee cannot be said to be the only one using the property. The owner is using it as he sees fit to reap a profit from his investment just as surely as if he physically operated the property.

We hold that property owned by a non-tax-exempt entity and leased for profit to a qualifying tax-exempt entity, is not being used exclusively for tax-exempt purposes and is subject to ad valorem and property taxes.

The judgment is affirmed.

HERD, J., not participating.

ROBERT A. WEST
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(2-11-83)

ATTACHMENT VIII

0016 AN ACT relating to city and countywide retailers' sales taxes;
0017 providing authority for cities and counties relating thereto;
0018 establishing the tax situs for the sales of services; amending
0019 K.S.A. 12-189 and repealing the existing section.

and K.S.A. 1981 Supp. 12-191

sections.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. For the purpose of levying taxes pursuant to K.S.A.
0022 12-187 *et seq.* and amendments thereto, there is hereby specifi-
0023 cally conferred upon cities and counties of this state the power
0024 and authority to impose taxes upon services rendered without the
0025 boundaries of the taxing jurisdiction by retailers having a place of
0026 business located within such taxing jurisdiction.

0027 Sec. 2. For the purpose of determining the situs of installa-
0028 tion, maintenance, servicing and repair services taxable under the
0029 provisions of K.S.A. 12-187 *et seq.* and amendments thereto, the
0030 place of business of the retailer of such services shall be the office
0031 or other location from which such retailer does business. Such
0032 location may be established by determining the location where
0033 sales or service personnel report or at which mail is received,
0034 orders are taken, telephone service is listed or the consideration of
0035 any other relevant factors established by rules and regulations of
0036 the secretary of revenue. If the place of business of a retailer of
0037 services is located within the boundaries of a city or county
0038 imposing a local retailers' sales tax, services performed by such
0039 retailer are subject to the tax regardless of whether the service is
0040 performed within or without the boundaries of the taxing jurisdic-
0041 tion. If there is no fixed or determinable place of business for
0042 any retailer, other than a retailer having its only place or places of
0043 business in another state, the place of business of such retailer
0044 shall be deemed to be the place where the services are performed.

0045 Sec. 3. K.S.A. 12-189 is hereby amended to read as follows:
0046 12-189. The rate of any city retailers' sales tax shall be fixed in the
0047 amount of .5% or 1% which amount shall be determined by the
0048 governing body of the city. The rate of any countywide retailers'
0049 sales tax shall be fixed in an amount of either .5% or 1% which
0050 amount shall be determined by the board of county commission-
0051 ers. Any county or city levying a retailers' sales tax is hereby
0052 prohibited from administering or collecting such tax locally, but
0053 shall utilize the services of the state department of revenue to
0054 administer, enforce and collect such tax. Except as otherwise
0055 specifically provided in K.S.A. 12-189a and 12-190, *and amend-*
0056 *ments thereto*, such tax shall be identical in its application, and
0057 exemptions therefrom, to the Kansas retailers' sales tax act and all
0058 laws and administrative rules and regulations of the state depart-
0059 ment of revenue relating to the *Kansas* retailers' sales tax shall
0060 apply to such local sales tax insofar as such laws and *rules and*
0061 *regulations* may be made applicable. The state ~~secretary of reve-~~
0062 ~~ue~~ *director of taxation* is hereby authorized to administer, en-
0063 force and collect such local sales taxes and to adopt such rules
0064 and regulations as may be necessary for the efficient and effective
0065 administration and enforcement thereof. Upon receipt of a cer-
0066 tified copy of an ordinance or resolution authorizing the levy of a
0067 local retailers' sales tax, the state director of taxation shall cause
0068 such taxes to be collected within *or without* the boundaries of
0069 such taxing subdivision at the same time and in the same manne,
0070 provided for the collection of the state retailers' sales tax. All
0071 moneys collected by the director of taxation under the provision^s
0072 of this section shall be credited to a "county and city retailers'
0073 sales tax fund" which fund is hereby established in the state
0074 treasury. Any refund due on any county or city retailers' sales^s tax
0075 collected pursuant to this act shall be paid out of the sales^{es} tax
0076 refund fund and reimbursed by the director of taxatioⁿ from
0077 collections of local retailers' sales tax revenue. All local retailers'
0078 sales tax revenue collected within any county or city pursuant to
0079 this act shall be remitted at least quarterly by the state treasurer,
0080 on instruction from the director of taxation, to the treasurer of
0081 such county or city.

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← Sec. 4. - K.S.A. 12-189 is hereby repealed. ←

Sec. 5. - This act shall take effect and be in force from and after its publication in the Kansas register.

Sec. 4. K.S.A. 1981 Supp. 12-191 is hereby amended to read as follows: 12-191. All retail transactions consummated within a county or city having a retail sales tax, which transactions are subject to the Kansas retailers' sales tax, shall also be subject to such county or city retail sales tax, except as otherwise expressly provided in K.S.A. 1978 Supp. 12-190. *Except as hereinafter provided*, all retail sales, for the purpose of this act, shall be considered to have been consummated at the place of business of the retailer. In the event the place of business of a retailer is doubtful the place or places at which the retail sales are consummated for the purposes of this act shall be determined under rules and regulations adopted by the secretary of revenue which rules and regulations shall be considered with state and federal law insofar as applicable. Retail sales involving the use, consumption, or furnishing of gas, water, electricity and heat, for the purposes of this act, shall be considered to have been consummated at the situs of the user or recipient thereof, and retail sales involving the use or furnishing of telephone service, shall be considered to have been consummated at the situs of the subscriber billed therefor. *Retail sales involving the furnishing of services the cost of which exceeds \$10,000.00 per project shall be considered to have been consummated at the site where such services are performed.* The director of taxation is hereby authorized to request and receive from any retailer or from any city or county levying the tax such information as may be reasonably necessary to determine the liability of retailers for any county or city sales tax. In all cases the collection of any county sales tax or sales tax levied by a class B city shall commence on the first day of the month, except in no case shall collection thereof begin prior to the first day of the month next following the sixtieth day after the date of the election authorizing the levy of such tax.

Whenever any sales tax, imposed by any class B city or county under the provisions of this act, shall become effective, at any time prior to the time that revenue derived therefrom may be budgeted for expenditure in such year, such revenue shall be credited to the funds of the taxing subdivision or subdivisions and shall be carried forward to the credit of such funds for the ensuing budget year in the manner provided for carrying forward balances remaining in such funds at the end of a budget year.

Sec. 5. K.S.A. 12-189 and K.S.A. 1981 Supp. 12-191 are hereby repealed.

Sec. 6.

M E M O R A N D U M

To: Members of the House
Assessment and Taxation Committee

Date: February 11, 1983

From: Alan F. Alderson
General Counsel
Department of Revenue

Re: Proposed Amendment
to H.B. 2154

This memorandum is presented in response to the proposed amendment of the Associated General Contractors.

The Department of Revenue cannot assure this Committee that the proposed amendment will not render the bill unconstitutional and we have advised the various representatives of the contractor's association that we will only speak to whether the proposed amendment is administratively feasible to the Department as well as the numerous retailers involved.

It is our belief that only a "dollar limit" concept is feasible in order to classify the large contractors separately for situs purposes. The dollar amount at which the rule changes should be a large enough figure to exclude all but those contracts on which a one-half or one percent price difference would be critical to a bid. We recommend \$25,000 per contract per contractor as minimum figure. If the amount was set at \$10,000, many small home remodeling jobs with only a \$50 difference in contract price would be involved.

The lower the figure, the more retailers will be involved and the more administrative problems will occur. These problems will include such things as contract splitting and change orders. Regardless of the amount, the Department will need the flexibility to define "contract price" by regulation to address these types of problems. An appropriate amendment should be added to provide that flexibility.

Although the \$25,000 is arbitrary, we believe that any bid on a job for a lesser amount does not risk being lost because of local retailer's sales tax.



Alan F. Alderson
General Counsel

AFA:rab