

MINUTES OF THE House COMMITTEE ON Federal and State Affairs

The meeting was called to order by Rep. Neal D. Whitaker at
Chairperson

1:30 ~~xxx~~ a.m./p.m. on February 9, 1983 in room 526-S of the Capitol.

All members were present except:
Rep. Hensley, who was excused.

Committee staff present:
Russ Mills, Legislative Research
Nora Crouch, Committee Secretary

Conferees appearing before the committee:
Rep. Ken Francisco
Floyd Rogers, Adjutant, American Legion of Kansas
Nancy Freund, Counsel, Department of Revenue
Senator Merrill Werts
Art Griggs, Counsel, Department of Administration
Jim Cobler, Director of Accounts and Reports Division
John Hipp, Director of Architectural Services

Chairman Whitaker called the meeting to order and announced that HB 2146 and HB 2169 were on hearing status.

The Chairman advised the Committee that he had received a request from the Attorney General on the introduction of a bill. An Attorney General opinion released 2 weeks ago said that in the open meetings act that a city could establish what a quorum is for their meeting. A majority of a quorum for an elected body requires an open meeting and the City of Lawrence wanted to decide what their quorum was so that more than a majority of a quorum could get together and discuss matters. A bill has been drafted that would specify the size of a majority of a quorum. The Chairman anticipates that the bill would be referred back to the Committee.

AF 2/15/83

Rep. Peterson moved, Rep. Vancrum seconding, that the bill be introduced as a Committee bill. The motion carried.

Rep. Ken Francisco appeared to explain the provisions of HB 2146 stating he lived in a community of 1,400 people who wanted to have a bingo game last year for their festival. Everyone he approached to sponsor the bingo game was interested but didn't want to go through the hassle of the paper work. Rep. Francisco proposed that the new language in Sec. 2 (c), Page 5 would be beneficial and solve the problem. Rep. Ott questioned whether it should be tied down to not over X number of times per year. Rep. Francisco also suggested that the effective date should be by publication in the state paper.

Floyd Rogers, Adjutant, Department of Kansas American Legion, appeared in favor of HB 2146 stating they have many small posts over the state that could make good use of this bill over the year and any profits made would be returned to the community. He stated there may be a few wrinkles that have to be worked out but that the basic thought is good.

Nancy Freund, Counsel, Department of Revenue, appeared on HB 2146 stating the intent of the bill was to ease administrative burdens but basically the city would have to make a determination and there are not that many steps that would be alleviated. It would be better to go through proper channels and methods for making application to get a license. The license for the bingo act is geared to a fiscal year and there is no expiration date in the bill. Rep. Peterson asked if the Revenue Department would cooperate with Rep. Francisco in coming up with some acceptable language and she replied that they would.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Federal and State Affairs,

room 526-S, Statehouse, at 1:30 ~~xxx~~ p.m. on February 9, 1983.

Rev. Richard Taylor, Kansans for Life at Its Best, appeared in opposition to HB 2146 stating that the issue is not bingo, it is gambling. It is legal right now in any city to play bingo. If there is a need for more gambling operations in Kansas then maybe this bill is needed. He respectfully opposes the bill.

Senator Merrill Werts, appeared to explain the provisions of HB 2169, stating that when the Joint Committee on Rules and Regulations met they looked at the statutes to see whether or not there is authority to adopt regulations. They found in the Department of Administration that regulations were mandated but they did not have any. When questioned they said they did not need them. The Committee concluded that we should have room for a rule that these should be discretionary rather than mandatory.

Art Griggs, Counsel, Department of Administration, appeared on HB 2169 stating that the DOA has adopted building standards for all state building construction. Some of these are statutory and some are placed in the contracts themselves when the construction is let for bid. There are certain standards required in every project, however, they differ from project to project. Mr. Griggs then explained the Sections to the Committee.

Jim Cobler, Director, Division of Accounts and Reports, appeared on HB 2169 stating that the deduction of United Way contributions has caused a lot of discussion over the years. Legislation states that the organization will absorb the costs of deductions and the state does collect from them. It is not possible to deduct every little thing that people want deducted from their pay. The clerical time and machine time would be prohibitive. He listed a number of deductions from payroll checks for the Committee's information.

John Hipp, Director of Architectural Services, appeared on HB 2169 stating that it took almost 3 years to develop standards and governing documents that they felt met statutory intent. He showed the Committee a 800 page bid for a hall at Kansas University which includes all of the obligations that the contractor and the state are involved in. (See Attachment B)

Atch. C
Rep. Ott moved, Rep. Fuller seconding, that HCR 5003 be removed from the table. The motion passed. Rep. Ott moved, Rep. Rameriz seconding, that HCR 5003 be reported favorably for passage as amended. Rep. Fuller made a substitute motion that the number of representatives be reduced to 85. After Committee discussion, the motion failed. The original motion of Rep. Ott passed. A division was called for. 13 members voted yes. Reps. Hensley, Cobb, Smith, Eckert, Grotweiel, and Whitaker are recorded as voting "no."

The meeting adjourned.

GUEST LIST

FEDERAL & STATE AFFAIRS COMMITTEE

DATE 2-9-83

(PLEASE PRINT)

NAME	ADDRESS	WHO YOU REPRESENT
San Francisco	Legislator	
Lloyd Rogers	1314 Topoka Ave	Kans. Im. Legion
Richard Taylor	Topoka	Jeff or LB Best
John Mendoza	Topoka	Ks Adv. Comm. on Mex. Amer. Aff's
Virgil Basgall	1152 W S.O.B. Disc	DISC
Jim Collier	SOB	Dept of Adm
Nancy E. Freund	SOB	Ks Dept. of Rev.
Cleo Murphy	SOB	Ks Dept. of Rev.
John Hipp	625 POUK TPKA	Dept. of Admin
Art Briggs	Topoka	" " "

Attach A



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE (913) 296-2215
CONSUMER PROTECTION 296-3751

February 9, 1983

Honorable Neal Whitaker
Chairman, House Federal and
State Affairs Committee
Room 112-S, State Capitol
Topeka, Kansas 66612

Dear Neal:

Attached is our suggested draft of the bill I discussed with you. I appreciate your consideration of introducing this as a committee bill. I've also enclosed a copy of a letter which sets out each of our proposals for legislation.

If I can answer any questions regarding this bill or provide you with any other information, please feel free to call.

Very truly yours,

A handwritten signature in cursive script that reads "Robert T. Stephan".

Robert T. Stephan
Attorney General

RTS:pc
Enc.

Attach A

House Bill No. _____

By Committee on Federal and State Affairs

AN ACT relating to the Kansas open meetings act; defining the words "quorum" and "majority" as used in the act; amending K.S.A. 75-4317a, and repealing the existing section.

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

Section 1. K.S.A. 75-4317a is hereby amended to read as follows: 75-4317a. As used in this act: (1) "Meeting" means any perarranged gathering or assembly by a majority of a quorum of the membership of a body or agency subject to this act for the purpose of discussing the business or affairs of the body or agency.

(2) "Majority" means the smallest whole number greater than one half of a number.

(3) "Quorum" means the smallest number of members greater than one half of the total number of members of the entire body or agency subject to this act.

Sec. 2. K.S.A. 75-4317a is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.



DEPARTMENT OF ADMINISTRATION
Division of Architectural Services

JOHN CARLIN,
Governor
JOHN B. HIPPI,
Director

625 Polk
Topeka, Kansas 66603
(913) 233-9367

MEMORANDUM

TO: Joint Committee on Administrative Rules and Regulations

FROM: John B. Hipp, AIA, Director of Architectural Services JBH

RE: Capital Improvement Rules and Regulations

DATE: June 30, 1982

K.S.A. 75-3783 directs the Secretary of Administration, with the advice of the State Building Advisory Commission, to develop and adopt rules and regulations establishing standards for planning, design and construction of buildings and major repairs and improvements to buildings for state agencies, which standards shall include energy conservation standards.

Over the past three years the Division of Architectural Services has developed and adopted various standards and governing documents to apply to all diverse capital improvement projects. These documents have, however, been developed as legal instruments, binding architects, engineers and contractors alike to specific rules and regulations in the design and construction of state building projects.

The determination of such methodology is necessitated by many of the same reasons that exempt highway and bridge projects from formal rules and regulations. Each individual project is unique in both its construction method and its function: i.e., the standards for design of a high rise wet laboratory building at Kansas University may be totally different from those applied to a farrowing house at Kansas State. The broad application of design and construction standards is both too limited and beset with constant change to allow the development of finite regulations.

Nonetheless, it is necessary to apply sound principles of design, management and construction to all building projects to establish the quality levels, construction and safety practices, and conformance required by recognized standards for building projects.

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With the assistance and approval of the State Building Advisory Commission, strict standards and procedures have been developed and promulgated which contain "rules and regulations" that provide unequivocal criteria for quality and performance. The promulgation process consisted primarily of meetings during the development phase with the following groups:

Associated General Contractors	(AGC)
National Electrical Contractors Association	(NECA)
Mechanical Contractors Association	(MCA)
Kansas Society of the American Institute of Architects	(AIA)
Board of Regents Long Range Planning Committee	(LRPC)
State Building Advisory Commission	(SBAC)

The following listing indicates the documents that form the "rules and regulations" governing the state capital improvement program. The initials following each document indicate the groups that participated in the development process. Additionally, it is to be noted again, that each of these documents, by executed contract, becomes a legal instrument binding the contractual parties to the conditions contained therein.

1. General Conditions of the Contract - Exhibit A
(AGC, NECA, MCA, AIA, LRPC, SBAC)
2. Supplemental General Conditions - Exhibit B
(AGC, NECA, MCA, AIA, LRPC, SBAC)
3. General Requirements - Exhibit C
(AGC, NECA, MCA, AIA, LRPC, SBAC)
4. Project Specification - Exhibit D
Note: Project specifications are prepared individually for each project and contain essentially all of the rules and regulations for a building project. Along with the drawings (blueprints) they form the Contract Documents.
5. Construction Contract - Exhibit E
(SBAC, Attorney General)
6. Architect/Engineer Policy and Procedure Manual - Exhibit F
(AIA, LRPC, SBAC)
Note: This Manual will become a part of the Contract between the State and the Architect/Engineer performing professional design services.

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- A. Within the Policy and Procedure Manual the following Governing Codes are standards for the design and construction process:
1. Uniform Building Code
 2. Uniform Mechanical Code
 3. Uniform Plumbing Code
 4. National Electric Code
 5. Kansas State Boiler Code
 6. ANSI A 117.1 - Handicapped Accessibility
 7. Kansas Maximum Lighting Standards
 8. Kansas Thermal Standards
 9. State Fire Marshal - Life Safety Code
 10. Department of Health and Environment - Protection Codes

- B. The manual has adopted the energy design criteria established by a national effort of three groups: American National Standards Institute, the American Society of Heating, Refrigeration and Air Conditioning Engineers, and the Illuminating Engineers Society. This effort provides prescriptive standards for energy conservation and is primarily known as ASHRAE 90. It is now an integral part of our "rules and regulations".

Additionally, by concurrent Senate Resolution, all major projects in the capital improvement program must undergo a Solar Feasibility investigation for analysis of the use of solar methodology for the building systems.

- C. Additional codes and standards which constitute good practice or establish minimum quality performance standards may be required by the Division of Architectural Services. These include:
1. Underwriters Laboratories
 2. National Board of Fire Underwriters
 3. Nation Fire Protection Association
 4. Institute of Electric and Electronic Engineers
 5. Nation Welding Society
 6. American Society of Mechanical Engineers
 7. American Institute of Steel Construction
 8. American Concrete Institute
 9. OSHA and EPA Guidance Manual for Asbestos

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7. Miscellaneous documents required both by statute and policy and procedure include:
 - A. Performance Bond
 - B. Public Works Bond
 - C. Proof of Insurance
 - D. Construction Contract Change Order
 - E. Partial Occupancy Certificate
 - F. Project Completion Certificate
 - G. Affidavit of Contractor - Lien Waiver

Essentially, the rules and regulations governing capital improvement projects are in two parts. One, the Policy and Procedure Manual for architects and engineers; and two, the Contract Documents comprising all elements outlined above. The application of the standards for design is the responsibility of the Project Architect. The application of the standards for construction is the responsibility of the project contractors. In both instances the Division of Architectural Services has oversight control in determining (or demanding) compliance.

All procedures are ultimately directed to the establishment of sound practice and performance, standards of quality and function, and the protection of the public life and safety.

JBH:db

PROPOSED AMENDMENT

Sec. 2. The following statement shall be printed on the ballot with the amendment as a whole:

"Explanatory statement. This proposed amendment would change the terms of state representatives from two years to four years and would alternate their terms so that half of the representatives would be elected one year and the other half would be elected two years later.

"A vote for the proposed amendment would increase state representatives' terms to four years and would stagger their terms so that only half of the representatives would be standing for election in the same year.

"A vote against the proposed amendment would continue the current two-year term for state representatives."



STATE OF KANSAS

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ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

February 4, 1983

The Honorable Ross Doyen, President
Kansas Senate
Capitol Building
Topeka, KS 66612

and

The Honorable Mike Hayden, Speaker
Kansas House of Representatives
Capitol Building
Topeka, KS 66612

Gentlemen:

As Attorney General I am involved with all facets of the law. Through my opinions, through enforcement, and in my role as the state's chief law enforcement officer, every year my staff and I identify areas of the law we believe should be changed. Some of those suggestions are brought before you by the various agencies. Others I will present directly to you. Following is a list of some of my areas of concern this legislative session.

Thank you for your consideration of each.

CRIMINAL JUSTICE ISSUES

Good faith exception to the exclusionary rule -- It has been the court-made rule that evidence procured through a search that was not technically proper was inadmissible in court, and stories are numerous of the guilty who have avoided conviction because of these technicalities. I am among those who believe the Constitution does not require such a strict interpretation. I ask that you consider adoption in Kansas of a good faith exception to the exclusionary rule. Such an exception would not allow for introduction of evidence seized by a law enforcement officer who, in acquiring it, knowingly exceeded the limits

of the law. It would, however, allow for introduction of evidence seized in good faith that proper procedures were being followed. Such a change in the law would assist in restoring the public's faith in our criminal justice system. I will provide a draft of such a law.

Victim impact statement -- Some judicial districts in Kansas now include a victim impact statement in the presentence report so the judge, at the time of sentencing, knows the harm suffered by the victim. I suggested use of this statement several months ago, and there were a few districts already using such a form at that time. This is a measure which I believe is extremely important in providing the victim with an opportunity for input in our criminal justice system. I hope you will consider legislation to require that the victim impact statement be used in presentence reports. This would go hand-in-hand with restitution provisions you enacted two years ago, in that the victim impact statement would include an estimate of monetary damages. It also would provide the judge at the time of sentencing with more information as to the full nature of an individual crime. This information often is lacking, particularly in cases where a defendant enters a plea of guilty. I will provide a draft of such legislation.

Notice to victims of parole hearings -- Parole also is a stage in the criminal justice process in which I believe the victim still should be afforded the opportunity of greater input. I hope you will consider legislation which would require the Kansas Adult Authority or Department of Corrections to give notice of parole hearings to the victim of the act for which an inmate was sentenced or to the victim's next of kin. Victims want to know when inmates are being considered for release, and I believe they should have the right to comment. I will provide you with a draft of this proposal.

Restitution in municipal courts -- In the past two years you have passed legislation calling for restitution when probation is given in district court, at the time of parole by the Kansas Adult Authority and in juvenile cases. It has recently come to my attention that only in municipal court do we not now require restitution. I see no reason not to extend restitution to municipal court as well. I will provide you with a draft of such a bill.

Other criminal justice issues -- I support many other criminal justice proposals which either have been before you in the past years or which have been introduced this session. Bills have been introduced calling for confiscation and forfeiture of drug profits and real estate associated with illegal drugs. I strongly support these bills. I endorse the concept of a dram shop act, already introduced this session. Should legislation be introduced, I would again support a district attorney plan

for Kansas, the verdict of guilty but mentally ill and a presumptive sentencing plan. I would support plans to deal with the racist calls for violence threatened by the posse comitatus. Finally, in regard to criminal justice issues, I urge the legislature to study means of separating nonviolent from violent inmates in our state penal facilities. I believe our current system is inhumane and hinders the rehabilitative opportunities nonviolent inmates should receive. The system also wastes money by housing nonviolent offenders at the high cost of maximum custody.

CONSUMER PROTECTION ISSUES

Three-day cancellation period -- In the Consumer Protection Act, the legislature has provided for a three-day cancellation period on door-to-door sales contracts. This was done because of the high-pressure sales tactics of many traveling salesmen who, uninvited, call on consumers in their homes. Today consumers regularly are being induced by too-good-to-be-true offers into two types of business establishments where they are sometimes accosted with high pressure sales tactics and are forced to sign long-term, high-cost contracts. These businesses are certain health spas and buying clubs. I believe the protection of a three-day cancellation period should be extended to consumers dealing with these types of businesses. This legislation would not harm reputable businesses, but would stop the ploys of some disreputable businessmen. I will be pleased to provide you with a draft of such a bill.

Implied warranties -- As a part of the uniform commercial code, Kansas does not allow businesses to, in any way, limit the implied warranty of merchantability and fitness on products sold or services provided. I also consider it a violation of the Consumer Protection Act to limit an implied warranty, but this is not specifically spelled out in the act and it would be helpful in enforcement if it were. This clarification of the law simply would make it clear that when a product is sold it will work for a reasonable length of time and will do what it is claimed it will do. If it does not, the seller must stand behind the product, or answer to the attorney general. I will provide a draft bill to clarify this aspect of the Consumer Protection Act.

Consumer transactions involving securities -- Many times consumers complain to my office of matters which are clearly under the jurisdiction of the securities commissioner. In those cases we forward the complaints. Other times the distinctions between security violations and consumer violations are far from clear. In those cases, consumers can fall into a no-man's land, where neither office can assist. This recently occurred in a case that went to the Kansas Court of Appeals. It is my request that

the Consumer Protection Act be amended to eliminate its securities exemption and prevent this situation from again arising, and I will provide a draft of such an amendment.

OTHER ISSUES

Open meetings -- I recently issued an opinion to the City of Lawrence indicating that under the city's home rule powers it could enact a charter ordinance changing the quorum requirement for its five-member commission from three to four. This change had been proposed by some commissioners to allow two members of the body to meet in secret without violating the open meetings law. That would be possible because the open meetings law applies to a majority of a quorum. While the majority of a quorum of three is two, the majority of a quorum of four would be three. I believe such action by any city evades the spirit of openness in government and I hope the legislature will take action to prevent such moves toward secrecy. I would propose for your consideration a simple uniform statute calling for the quorum of all city and county governing bodies to be the majority of their authorized positions. This would eliminate the possibility of a change in quorum for the purpose of secrecy. I will provide a draft of such a bill.

Common law liens -- A favorite tactic of some who refuse to accept U.S. currency as legal tender, is to file what they term common law liens against public officials' property. A current statute provides that such a statement is inoperative 30 days after it is filed, unless the person recording the instrument files a lawsuit within that period. I propose an amendment to this statute which would require the register of deeds to note on any such instrument that it is inoperative when no lawsuit is filed. I will provide a draft proposal.

Local campaign finance -- Current law calling for the reporting of receipts and expenditures in local elections is woefully inadequate. There are few requirements, gaping holes in the law and inadequate means of enforcement. I would hope the legislature would use the state campaign finance reporting requirements as guides and enact a law which would provide for more complete local election reporting. I will draft a proposal as a starting point in the study of such a change.

Civil rights defense -- The state now provides one means of defense for state officers and employees sued for torts and another for those sued for alleged civil rights violations. The attorney general often is required or requested to provide or arrange for the defense in both cases. I would like to see the law changed so that a similar procedure is provided for civil rights defense as is in effect for tort claims defense. I believe such a change would provide for a less cumbersome procedure and could be more cost effective for the state. I would be pleased to provide a draft of such legislation.

Election laws regarding minor parties -- Various state laws should be changed in accordance with recent court decisions to establish a new procedure for the admission of minor political parties. The current procedure was found last year by the federal courts to deny the Libertarian Party equal protection. I would be happy to have my staff assist the legislature in this matter.

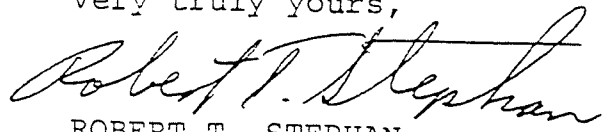
INTERIM STUDY

Local government bid laws -- Finally, there are two items that I believe would be appropriate topics for interim study. The first is competitive bidding requirements on local units of government. County bid laws are particularly in need of review. Current competitive bidding requirements on counties are so narrow as to not require competitive bidding for most county contracts. This is a constant source of inquiries and complaints to my office. I believe any review of this area of the law should examine other local units of government as well as counties. It is my suggestion that the legislature use the state's competitive bidding requirements as a model for a new statutory scheme for local units of government.

Environmental protection enforcement division -- I would propose that the legislature study creation of an environmental protection enforcement division in my office and believe this, too, would be an appropriate topic for interim study. Protection of the environment is critical to the health and welfare of all Kansans, and it is my belief that splitting the legal responsibilities for enforcement from the administrative responsibility of regulation would ensure Kansans of better protection. It also would clarify the situation which now exists in which the Secretary of Health and Environment is authorized by some environmental statutes to utilize the attorney general for enforcement, and is not called upon to do so by others. I hope you will consider both of these matters for interim study.

I'm sure there will be many other issues which arise this session in which I will have an interest and will provide testimony where I believe it will be helpful. Additionally, I hope you will feel free to call upon my office for whatever assistance you believe we can provide.

Very truly yours,



ROBERT T. STEPHAN
Attorney General