

Approved Juan Sand
Date

MINUTES OF THE House COMMITTEE ON Local Government

The meeting was called to order by Representative Ivan Sand at
Chairperson

1:30 ~~am~~/p.m. on March 2, 1983 in room 521-S of the Capitol.

All members were present except:

Committee staff present:

Theresa Kiernan, Revisor of Statutes Office
Mike Heim, Legislative Research Department
Jeanne Mills, Secretary to the Committee

Conferees appearing before the committee:

Representative Betty Charlton
John Weatherwax, Lawrence
Chris McKenzie, League of Kansas Municipalities

Chairman Sand called the meeting to order.

HB 2315 - AN ACT concerning cities; relating to petitions
for proposed ordinances; amending K.S.A. 12-3013
and repealing the existing section.

Theresa Kiernan of the staff gave a brief overview (See Attachment I).

Representative Charlton, sponsor, gave background and intent of this
legislation (See Attachment II for copy of her testimony).
Discussion followed.

John Weatherwax, Lawrence, former mayor, appeared in support of HB 2315.
He stated that this legislation attempts to give the courts guidelines
between administrative and legislative duties.

Chris McKenzie, League of Kansas Municipalities, appeared in opposition.
The League's position on this bill was adopted last Friday by their
legislative committee. They favor the court decisions that have been
made in the past.

The subcommittee for HB 2334 gave their report. Representative Baker
explained they change the entire section 1. to reflect single ownership
or corrections within the boundaries of the plat and to require
an affidavit with the original plat. This would have statewide application
with the purpose to change without the replatting process.
Representative Francisco made the motion, seconded by Representative Webb,
to conceptually amend HB 2334 as provided by the subcommittee. Motion carried.

Representative Wunsch made the motion, seconded by Representative Dean,
to report HB 2334 favorably as amended. Motion carried.

Representative Schweiker made the motion, seconded by Representative Johnson,
to approve the minutes of the March 1, 1983, meeting as printed. Motion
carried.

Meeting adjourned.

ATTACHMENT I

TO: House Local Government Committee

FROM: Theresa

RE: HB 2315

This bill amends K.S.A. 12-3013 which concerns initiative and referendum of city ordinances. Administrative ordinances are not subject to initiative and referendum. The intent of the bill is to define an administrative ordinance as an ordinance which is adopted by the governing body of a city to implement or execute a policy which the governing body has previously adopted.

Atch. I

Mr. Chairman and Members of the Committee:

House Bill 2315 amends the statute providing initiative and referendum for cities. The statute provides that an ordinance can be proposed by petitions signed by 25% for first class cities and 40% for second and third class cities of the number of electors voting in the preceding city election. The statute states "the governing body shall either (a) pass the ordinance without alteration within 20 days or (b) call a special election, unless a regular city election is to be held within 90 days, and submit the ordinance, without alteration, to the vote of the electors of the city." The governing body may submit the ordinance for repeal at any succeeding general election.

Initiative and referendum for cities has not been used very often. When attempts have been made to use it, city governing bodies have taken the proposed ordinances to court for declaratory judgments. The courts have interpreted the statute in such ways that the city councils or city commissions have not had to enact the ordinances or put them to a vote. The grounds usually used by the courts for such judgments have been that the subject matter of the petitions is administrative rather than legislative. Administrative ordinances are exempted in the statute. The exceptions to the initiative and referendum are on page 3 of the bill. Under (e) (1), the old language is "The provisions shall not apply to Administrative Ordinances."

Before home rule, almost all acts of cities were administrative. Strict construction of the initiative and referendum statute was in order; in fact, interpretation was not difficult. Since the institution of home rule for cities, a great deal of action taken by city governing bodies is legislative. Under the commission - manager form of city government, most of the actions of the commission are legislative, and administrative duties belong to the city manager.

Since the initiative and referendum statute, enacted before home rule, does not define "administrative" and "legislative" ordinances, the courts have had to try to distinguish between the two. The courts are still following dicta from pre-home rule cases to construe the statute strictly on the side of "administrative." The courts have long needed guidelines from the legislature for ruling on petition ordinances. That is what this bill does; it defines (in Sec. 1 (f)) "administrative ordinance" as as ordinance "implementing a policy previously established by the city." In other words, if the ordinance establishes a new policy, it is not administrative and is not exempt from the Act. If an ordinance implements policy already adopted by the city, it is administrative, and is exempt.

Lacking any directives other than the construction by pre-home rule cases, the courts need this directive from the legislature: that many city ordinances can no longer be construed as "administrative".

Atch. II