

MINUTES OF THE Senate COMMITTEE ON Elections

The meeting was called to order by Senator Ronald R. Hein at
Chairperson

1:30 am./p.m. on February 7, 1983 in room 522-S of the Capitol.

All members were present except:

Senator Leroy Hayden
Senator Edward F. Reilly, Jr.

Committee staff present:

Ramon Powers, Research Dept.
Sharon Green, Committee Secretary

Conferees appearing before the committee:

Representative Vic Miller
Mr. Frank Rice, Attorney for the MTAA
Mr. Terry Kimes, Chairman, Greater Topeka Chamber of Commerce
Mr. John Grame
Mr. Jim Burrell
Mr. Bill Crow

The Chairman called the meeting to order.

Representative Vic Miller testified before the committee, stating that HB 2024 was a corrective measure, to validate the election held in Shawnee County in 1982 regarding the Metropolitan Topeka Airport Authority bond issue for a new airport terminal.

Mr. Frank Rice testified in favor of the bill, and asked for expeditious action, stating that the average interest rate for selling of the bonds was 9½% and that was a favorable interest rate, in light of an increasingly bad bond market. He said this would constitute a savings to the voters of Shawnee County. (Attachment 1)

Questions were asked and a general discussion was held regarding Mr. Rice's testimony. Senator Gannon asked if the company who bought the bonds would bring suit if this legislation was not passed. Mr. Rice said that they probably would not bring suit.

Mr. Terry Kimes testified in favor of the bill, stating that if this legislation was passed, sooner construction of the airport terminal would result and that employment would present an opportunity for the people.

Mr. John Grame commented in opposition to HB 2024. (Attachment 2) He spoke of fairness and credibility of government. Mr. Grame said that Mary Hope, Shawnee County Election Commissioner had stated that the flaw in the number of days of publication requirements on this election was an oversight on her part.

Questions were asked and a general discussion was held. Senator Roitz asked if there was a court challenge. Mr. Grame replied that there was none yet, but there is one being planned.

Senator Johnston asked Mr. Grame if he thought that another vote would be the remedy. Mr. Grame replied yes.

Mr. Jim Burrell spoke in opposition to HB 2024. He said that the notice of the election on the bonds issue was one sided, and referred to numerous letters to the Editor in the Topeka newspapers.

Mr. Bill Crow spoke in opposition to the bill. Mr. Crow wants another election on the bonds issue.

Questions were asked and a general discussion was held.

The Chairman adjourned the meeting.

PURPOSE: HB 2024 will validate bonds to be issued for the construction of a new airport terminal at Forbes Field, Topeka. The issuance of these bonds was approved by the Shawnee County voters at the November 1982 election. Unfortunately, the first publication of the notice of the election was only 17 days prior to the election, whereas the Kansas law requires such notice to be not less than 21 days prior to the election.

HISTORY: The MTAA is a separate political subdivision created pursuant to Kansas Statute K.S.A. 27-327 et seq. The MTAA has the authority to issue general obligation bonds pursuant to K.S.A. 27-334.

On August 16, 1982, the MTAA Directors, by resolution, determined to submit to the voters the question of the issuance of up to five million dollars of general revenue bonds for the purpose of constructing and furnishing a commercial air terminal (see exhibit 1). K.S.A. 10-120 requires that the first publication notice of such an election shall be not less than 21 days prior thereto, and such notice must be signed by the County Election Officer. (See exhibit 2.)

By letter of September 3, 1982, the MTAA Attorney, forwarded to the Shawnee County Election Commissioner, a letter from the MTAA Bond Attorney, setting forth the above notice requirements and suggesting that the first notice be published 30 days prior to the election. (See exhibit 3.)

The notice was in fact first published 17 days prior to the election.

The voters of Shawnee County voted in favor of the bond issue, the vote being 30,850 in favor and 25,228 opposed.

As the result of the defective notice, MTAA has been advised that bonds issued pursuant to the election would be defective and may not be sold.

PRECEDENT: The Revisor of Statutes Office advises that correction of similar technical errors by the Legislature has occurred on numerous occasions. Similar curative legislation has been approved regarding a bond issue by the Kansas Supreme Court in the City of Wichita v. Robb, 163 Kan. 121. That case held bonds issued after only a 20 day notice publication were indeed valid where the Kansas Legislature, by specific legislation, had validated such election.

JUSTIFICATION FOR PASSAGE: Passage will carry out the will of the Shawnee County voters. Early passage will allow taking advantage of the present low interest rates and thus save taxpayers additional dollars.

Atch. 1

ANSWERING THE CONCERNS OF SOME REGARDING HB-2024:

1. Did the defective notice prevent the public from knowing of the election? NO. Extensive media publicity preceded this election clearly allowing all voters timely and adequate knowledge of the bond issue.
2. Is the MTAA selling more bonds than authorized by the election? NO. The voters approved a bond issue of not more than five million dollars for a new terminal. Bonds totalling five million three hundred sixty-three thousand will be sold, but three hundred and sixty-three thousand dollars of these bonds were previously legally authorized pursuant to the former statute (see exhibit 4).
3. Will the bonds be legal if HB 2024 is passed? YES. Despite rumors to the contrary, to our best knowledge, the Kansas Attorney General's Office has not issued an opinion regarding the airport terminal bonds (except as to the defective notice problem). Based on the advice of the MTAA bond attorney, it is felt that passage of HB 2024 will indeed result in bonds which may be legally issued (see exhibit 5).

RESOLUTION NO. 82-46

BE IT RESOLVED by the Board of Directors of the Metropolitan Topeka Airport Authority (The "Board") that:

1. The Board believes that it would be in the public interest to construct, equip, and furnish a new commercial airport terminal to be located at Forbes Field, Shawnee County, Kansas, and hereby determines that the total cost of such a project will be in the amount not to exceed \$5,000,000.
2. The Board shall submit the proposed issuance of general obligation bonds in the amount not to exceed \$5,000,000 for the purpose of paying the costs of constructing, equipping, and furnishing a new commercial air terminal at Forbes Field, Shawnee County, Kansas, for approval by the qualified electors of Shawnee County, Kansas, at the time of the primary election to be held on November 2, 1982.
3. The County Election Officer of Shawnee County, Kansas is hereby authorized and directed to take all procedures and actions necessary to cause the election and submission of the proposed bond issue to be called and held, pursuant to law. Adopted and approved this 16th day of August, 1982.

ATTEST:

Charles E. [Signature]
Secretary and Clerk of the Board

[Signature]
Chairman of the Board of Directors
of the Metropolitan Topeka Airport
Authority

WARRANTS

...onds in excess of the principal amount permitted by law, or shall misappropriate or use, or aid or abet in misappropriating or using, any of the funds raised by taxation for the purpose of paying the principal or interest of such bonds for any purpose other than paying such principal or interest, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not less than one hundred nor more than one thousand dollars, and in addition thereto may be imprisoned in the county jail for not less than three months nor more than twelve months, and shall also be liable in a civil action to the municipality issuing the bonds for the amount so misappropriated or used. Any officer of any municipality who shall be convicted in a court of competent jurisdiction of a misdemeanor as herein set out shall, in addition to the penalty or penalties herein prescribed, forfeit his or her office.

History: K.S.A. 10-117; L. 1977, ch. 58, § 2; May 18.

10-119.

CASE ANNOTATIONS

8. Applied; joint recreation commission dissolved under 12-1912; city legal successor; substituted in litigation. *Flanigan v. Leavenworth Recreation Commission*, 219 K. 710, 716, 549 P.2d 1007.

10-120. Bond election; publication of notice. Whenever an election is required for the issuance of bonds for any purpose by any municipality other than a school district, drainage district or irrigation district, or where a different procedure for giving notice of the election is specifically provided by law, upon compliance with the legal requirements necessary and precedent to the call for such election, the proper municipal officers shall call an election. Such election shall be held within 45 days after compliance with the necessary requirements, or within 90 days, should such longer period include the date of a general election.

Such election shall be published in a newspaper of general circulation in the municipality once each week for two consecutive weeks, the first publication to be not less than 21 days prior to such election. Such notice shall set forth the time and place of holding the election and the purpose for which the bonds are to be issued and shall be signed by the county election officer. Such election shall be held at the usual place

of holding elections and shall be conducted by the officers or persons provided by law for holding elections in such municipality.

At such elections all qualified electors shall be entitled to vote. The vote at such election shall be by ballot. Such ballot shall comply with K.S.A. 25-620. Such elections shall be in all respects governed and the results declared according to the rules and regulations provided by law for holding elections in any such municipality.

History: R.S. 1923, § 10-120; L. 1976, ch. 61, § 1; L. 1978, ch. 48, § 1; L. 1981, ch. 166, § 1; L. 1981, ch. 173, § 4; July 1.

Law Review and Bar Journal References:

Rules of statutory construction, Grant M. Glenn, 47 J.B.A.K. 29, 35 (1978).

CASE ANNOTATIONS

16. Referred to in construing 19-1878; section authorized additional construction and equipment financing only. *Thomas County Taxpayers Ass'n v. Finney*, 223 K. 434, 437, 573 P.2d 1073.

10-122. Investment of sinking fund. The officers of any municipality which has levied and collected a sinking fund for the payment of bonds not then due may invest the said sinking fund in investments authorized by K.S.A. 12-1675, and amendments thereto, in the manner prescribed therein or in any municipal bonds of this state which shall become due at or prior to the due date of the bonds for which such sinking fund was levied and collected except that no sinking fund shall be invested under this act in the bonds of any county, township, city or school district where the bonded indebtedness thereof shall exceed fifteen (15) percent of its total assessed valuation as shown by the last assessment preceding such investment.

History: K.S.A. 10-122; L. 1977, ch. 54, § 1; July 1.

10-123. Temporary notes for improvements; renewal, when. If a municipality shall have theretofore duly authorized the making of an improvement which is to be paid for in whole or in part by the issuance of bonds, then the governing body of such municipality may issue temporary notes, bearing interest at a rate not to exceed the maximum rate of interest prescribed by K.S.A. 10-1009, payable semiannually, maturing not later than the due date of the first installment of such bonds, or four (4) years from the date of said notes whichever is

sooner, not exceeding amount of bonds which are then unissued, as shall estimate on file (except bonds when the amount not exceed the total amount of bonds and the state and to said project), but shall issue renewal temporary notes as they improve notes will not be date of such municipality has commitments and the issuance prevented, hindered or delayed any court order or litigation.

Said temporary notes shall be usual for such bonds, evidencing the interest and the entire temporary notes shall be executed and recorded before or at the time of issuance in lieu thereof, said temporary notes and bonds standing shall not at an estimated cost and expense. Said temporary notes from time to time, as progress of said work, and shall constitute a general obligation of the municipality issuing temporary notes shall not countersigned, following clerk of the issuing municipality statement to that effect of all such temporary notes may be sold at private sale at net accrued interest.

History: K.S.A. 10-123; L. 1978, ch. 49, § 1.

CASE ANNOTATIONS

3. Where bearer notes or promissory notes issued by registrar, purchaser has no duty. *State Bank & Trust Co. v. Center*, 229 K. 330, 335, 337, 971.

4. Where no specific and payment of temporary improvement obligation of municipality. *Trust Co. of Hays v. City of Hays*, 335, 337, 339, 340, 343, 624 P.2d 1073.

10-126. Printing of

2

LAW OFFICES
HIATT, HIATT & CARPENTER, CHARTERED
207 CARSON BUILDING
6TH & TOPEKA BLVD.
TOPEKA, KANSAS 66603-3224

EUGENE W. HIATT
ROGER L. HIATT
EDWIN P. CARPENTER
J. RANDALL CLINKSCALES
BARBARA J. CLINKSCALES

September 3, 1982

TELEPHONE
AREA CODE (913)
232-7263

Mrs. Mary Hope
Election Commissioner
Shawnee County Courthouse
Topeka, KS 66603

Re: Special Election Question Related to Metropolitan Topeka
Airport Authority Air Terminal
Our file no. 815.47

Dear Mrs. Hope:

Enclosed please find the original of a notice of bond election,
and the original of the proposed suggested form of the inside
ballot, which were prepared by Jim Waugh, who is bond counsel.
I am also enclosing a copy of Jim Waugh's letter to me concern-
ing that business, and should you have questions or concerns
related to those matters, please feel free to contact me or
to contact Jim directly.

Yours truly,

HIATT, HIATT & CARPENTER, CHARTERED

Original signed by
Edwin P. Carpenter
Edwin P. Carpenter

EPC:nt
Enclosures
cc: Jim Waugh
Jim Parrish
Carl Pritchett

COSGROVE, WEBB & OMAN

LAWYERS

100 F. H. NATIONAL BANK TOWER
334 KANSAS AVENUE
TOPEKA, KANSAS 66603

(913) 233-9511

September 1, 1982

JAMES D. WAUGH
JAMES L. GRIMES, JR.
CONRAD L. HORTON
EDWARD L. BAILEY
MICHAEL J. GRADY
CHRISTEL E. MARQUARDT
ELDON L. FORD
GRANT M. GLENN

ROBERT L. BAER
BRUCE L. WOTER
J. CRAIG ANDERSON

W. F. SHERROD, JR.
PHILIP E. BUCKER (970)
ROBERT L. WEBB (975)
WILLIAM S. McLENNAN (978)

RALPH W. OMAN
OF COUNSEL

Mr. Edwin P. Carpenter
Hiatt, Hiatt & Carpenter, Chartered
207 Casson Building
6th and Topeka
Topeka, Kansas 66603-3294

Re: Metropolitan Topeka Airport Authority

Dear Ed:

I enclose a Notice of Bond Election and a suggested form of the inside portion of the ballot for the upcoming special election on bonds for the MTAA air terminal. Mary Hope has advised me that she will be making one publication by a notice 30 days in advance of the election, but the enclosed Notice, as I understood her, would not take the place of this general notice. The enclosed Notice should be published twice, the first one to be more than 21 days before the election. I suggest a first notice about 30 days prior, so that a second notice can run later, and a third notice can also run, the last two would be published in order to pick up any mistake in the first printing. However, I will leave all of this up to her good judgment.

There is an error in the resolution of the Board of Directors, but it will not, in my opinion, have any effect upon the validity of the bonds. The Resolution No. 82-46 speaks of a primary election to be held on November 2, 1982. It is completely obvious that the word "general", was intended rather than "primary".

Very truly yours,

COSGROVE, WEBB & OMAN

By: James D. Waugh

RECEIVED

JDW/js
Enclosures

HIATT, HIATT & CARPENTER
CHARTERED

NOTICE OF BOND ELECTION

Notice is hereby given to the qualified electors of Shawnee County, State of Kansas, that a special election has been called and will be held on November 2, 1982, between the hours of _____ a.m. and _____ p.m., for the purpose of submitting to the electors of the County the following proposition:

A proposition to issue the general obligation bonds of Metropolitan Topeka Airport Authority, Shawnee County, Kansas, in an amount not to exceed \$5,000,000 for the purpose of providing funds to pay the cost of constructing, equipping and furnishing a new commercial air terminal at Forbes Field, Shawnee County, Kansas, pursuant to Chapter 162, Laws of Kansas 1982.

Said election will be held by ballot at the usual place of holding elections which are as follows:

By order of the Election Commissioner of Shawnee County,
Kansas, whose election headquarters are located at the Shawnee
County Courthouse, Topeka, Kansas, this _____ day of _____,
1982.

Mary Hope, County Election
Commissioner

To vote in favor of any question submitted upon this ballot, make a cross or check mark in the square to the right of the word "YES"; to vote against it, make a cross or check mark in the square to the right of the word "NO".

OFFICIAL BALLOT FOR
BOND ELECTION
METROPOLITAN TOPEKA AIRPORT AUTHORITY
SHAWNEE COUNTY, KANSAS
QUESTION SUBMITTED NOVEMBER 2, 1982

SHALL THE FOLLOWING BE ADOPTED?

A proposition to issue the general obligation bonds of Metropolitan Topeka Airport Authority, Shawnee County, Kansas, in an amount not to exceed \$5,000,000 for the purpose of providing funds to pay the cost of constructing, equipping and furnishing a new commercial air terminal at Forbes Field, Shawnee County, Kansas, pursuant to Chapter 162, Laws of Kansas 1982.

YES []

NO []

COSGROVE, WEBB & OMAN

LAWYERS

1100 FIRST NATIONAL BANK TOWER
534 KANSAS AVENUE
TOPEKA, KANSAS 66603

(913) 235-2511

JAMES D. WAUGH
JAMES L. GRIMES, JR.
DONALD J. HORTTOR
EDWARD L. BAILEY
MICHAEL J. GRADY
CHRISTEL E. MARQUARDT
ELDON L. FORD
GRANT M. GLENN
ROBERT L. SAER

BRUCE J. WONER
J. CRAIG ANDERSON

M. F. COSGROVE (1961)
PHILIP E. BUZICK (1970)
ROBERT L. WEBB (1975)
WILLIAM B. MELKENNY (1978)
RALPH W. OMAN
OF COUNSEL

January 27, 1983

Mr. Frank Rice
Jones, Schroer, Rice, Bryan & Lykins
115 E. 7th Street
Topeka, Kansas 66603

Dear Frank:

Confirming our telephone conversation of this morning, you have advised that someone has raised a question concerning the issuance of bonds of MTAA in the amount of \$5,363,000. It apparently is someone's contention that since the election authorized bonds in only the amount of \$5,000,00, the entire bond issue is invalid. Anyone who makes such allegations is without knowledge of the facts.

In December of 1980, the Board of Directors of MTAA determined that it would be necessary to reconstruct the electrical service for the runways at Forbes Field. The landing lights and safety lights were not working correctly. The Board determined to repair those facilities, and ascertained that the total project would involve an expense of not more than \$100,000. A notice was published, pursuant to the then existing law, advising of the necessity of the improvement, of the total cost, and that bonds not exceeding \$100,000 would be issued, unless a petition in opposition of the issuance of the bonds signed by not less than 5% of the qualified electors of the county were filed with the appropriate official within a 30 day period. There was no protest petition. Temporary notes were issued to fund, in part, the project, which notes were approved by the Attorney General's office, registered by the Treasurer, and sold to a local bank.

In April of 1981, the Board determined that repairs to certain roofs on buildings were necessary, and determined that the total cost of its roofs would be \$341,684. A notice similar to that referred to above was published, this time advising the public that the bond issue would be in an amount not to exceed \$341,684. No protest was made to this notice, and the same steps were followed.

4

As you know, the construction of the terminal building and the issuance of bonds not to exceed \$5,000,000 therefor was approved by the voters at the recent election.

The temporary notes will mature soon. The funds from the proposed bond issue will be used to pay for the terminal and to finally pay for the roof repairs and electrical repairs which were authorized by statute. The total bonds which are now authorized as a result of following applicable statutory procedures on the three separate occasions is \$5,441,684, substantially in excess of the amount contemplated.

The practice of combining improvement projects into one bond issue is not unusual, and is obviously not forbidden by law. That practice is being followed here in order to reduce the costs to the taxpayer; it is absolutely proper. I have discussed this subject with Don Jensen, and he sees no problem.

Very truly yours,

COSGROVE, WEBB & OMAN



By: James D. Waugh

JDW/js

COSGROVE, WEBB & OMAN

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PHILIP S. BUZICK (1970)
ROBERT L. WEBB (1975)
WILLIAM B. MELHENNY (1976)

RALPH W. OMAN
OF COUNSEL

January 27, 1983

Mr. Frank Rice
Jones, Schroer, Rice, Bryan & Lykins
115 E. 7th Street
Topeka, Kansas 66603

Dear Frank:

Confirming our telephone conversation of last week, I discussed the matter of the Metropolitan Topeka Airport Authority bond issue in the amount of \$5,363,000, which is now the subject of curative legislation, with Don Jensen in the Attorney General's office. As you know, Don handles all municipal bond questions in that office. He advised me that he has not given any opinion, verbal or written, concerning any of the proceedings or documents occurring or prepared prior to this date, with respect to the bond issue (except, of course, his concurrence that the notice of bond issue was not published in the times technically required by law).

Obviously, I am satisfied that everything that has been done to date, leading up to the issuance of the bonds, with the exception of the technical publication error, has been done properly and in accordance with law, and that, if the proposed legislation is enacted into law, the bonds can be validly and legally issued.

Very truly yours,

COSGROVE, WEBB & OMAN



By: James D. Waugh

JDW/js

Senate Election Committee HB 2024 2/7/83
 Ron Hein Chairman 1:30
 Room 522 South

I General Obligation Bond Law RSA-10-120

Two sections to law: Declaratory and Mandatory. Under the mandatory section of the GOB law is a 21 day advance notification by publication. This law was as amended or recodified in 1923. The purpose of this 21 day requirement was to allow the electorate adequate time to properly prepare himself to vote on a bond issue. I'm not here to quarrel with the infinite wisdom of our fore fathers in writing such a law. ~~With~~ With only a 17 day notification the electorate could not have properly informed or prepared himself as mandated by law. Four days seems like an insignificant time but in this issue it is of essence. 4/21st is a little over 19% of the required time of notification. To illustrate my point that the people did not have adequate time to consider the issue:

A computer print out on the election by precinct reveals 30,838 voted yes & 25,138 voted no. Altering just 2,851 yes votes to no votes, a mere 5% of the total 55,976 votes cast, would have defeated this issue. In contrast consider the total votes cast for:

U.S. HOUSE REP.	DEM 36,492	REP 22,770	= 59,262	3286
GOVERNOR	DEM 34,341	REP 24,096	MIN 1381 = 59,818	3842
STATE TREASURER	DEM 39,992	REP 16,975	MIN 1268 = 58,235	2259
ATTORNEY GENL.	REP 43,079	DEM 14,824	57,903	1927

I think by comparison you can see several thousand voters did not feel they were properly informed or mentally prepared to vote on this issue.

SEE NEXT PAGE

IV The next issue is of fairness and creditability in government.

Two years ago several taxpayers through out Shawnee County worked very hard circulating petitions to force the New Air Terminal issue on the ballot. Many of those petitions were in the hands of persons around the county on the last day of filing. We asked Mrs. Hope for a day of grace to collect and submit those petitions to her office. She stated "If you can't comply with the letter of the law your petitions will have to be invalidated." If the letter of the law applied to us then, then the letter of the law should prevail here today.

To start restoring the electorates confidence in government, you should take one giant step here today by tabling this ill conceived legislation. This would send the right signal or message to your constituents that government must abide by the laws just as the governed must.

II

Mary Hope, Shawnee County Election Commissioner since June 1972, has publically stated the notification error was simply an oversight on her part. In her 10 years as election commissioner she has had to comply with notification publication requirements on General Obligation Bonds many times. Pleading simple oversight, negligence or ignorance is simply not a valid argument.

III

The ballot stated:

Shall the following be adopted?

A proposition to issue the General Obligation Bonds of Metropolitan Topeka Airport Authority, Shawnee County, Ks, in an amount not to exceed \$5,000,000 for the purpose of providing funds to pay the cost of Constructing, Equipping and furnishing a new commercial air terminal at Forbes Field, Shawnee County, Ks, pursuant to Chapter 162, laws of Kansas 1982.

\$ 5,363,000 in General Obligation Bonds.