

Approved January 27, 1983
Date

MINUTES OF THE Senate COMMITTEE ON Governmental Organization

The meeting was called to order by Senator Vidricksen at
Chairperson

1:40 ~~xxx~~/p.m. on January 26, 1983 in room 531N of the Capitol.

All members were present except:

Senator Gaar

Committee staff present:

Norm Furse - Revisor
Julian Efird - Legislative
Research

Conferees appearing before the committee:

Senator Don Montgomery
Mark Levy - Legislative Post Audit
John B. Kemp - Secretary of Transportation

Senator Don Montgomery addressed the committee in support of Senate Bill 52 - relating to the allocation of the costs of maintaining the regional libraries. It was pointed out that these libraries would be funded by participating counties or townships in the proportion of their respective populations - half valuation, half population. This would require no additional money from the state. Senator Montgomery answered questions from the committee and Senator Francisco made the motion to recommend Senate Bill 52 favorably for passage. This was seconded by Senator Mulich. Motion carried.

The committee then turned its attention to Senate Bill 40-continuing the department of transportation and the office of secretary of transportation. The Post Audit Department had been directed to conduct a performance audit of two aspects of the Department's operation, that being collusive bidding and operation of the highway and freeway funds. The auditors identified ten procedures that can discourage collusion. (Sunset Audit Report-Department of Transportation, page 9). Other recommendations for improvements and changes were discussed and members of the committee raised several questions.

Mr. John Kemp spoke in response to the Legislative Post Audit. He reported that extensive measures had been taken to improve procedures against collusive bidding and elaborated on seven steps that the agency had taken to revise the financial management of the agency. (Exhibit A) Copies of the KDOT Committee Presentation were distributed to the members (Exhibit B) and it was requested that the agency and office be continued. Mr. Kemp then answered questions along with Dan Watkins, Chief Council of KDOT.

Additional time will be scheduled at a later date for further discussion of the Kansas Department of Transportation.

A motion was made by Senator Francisco to approve the minutes. Seconded by Senator Mulich. Motion carried.

The meeting was adjourned by the Chairman at 2:37 p.m.

GUEST LIST

COMMITTEE: Senate Governmental Organization DATE: January 26, 1983

<u>NAME</u>	<u>ADDRESS</u>	<u>COMPANY/ORGANIZATION</u>
John D M Neal	Topeka	
Tom Whitaker	Topeka	Ks Motor Carriers Association
Mark Levy	Topeka	Legislative Post Audit
Glenn Peck	"	"
Duane Johnson	Topeka	State Library
L.M. Cornish	"	Ks. Library Assn.
Dr. Lois R. Scheltz	"	Ks St Bd of Juvs
Elizabeth Carlson	"	Bd of Healing Arts

KANSAS DEPARTMENT OF TRANSPORTATION

STATE OFFICE BUILDING—TOPEKA, KANSAS 66612



JOHN B. KEMP, Secretary of Transportation

JOHN CARLIN, Governor

January 26, 1983

TO: SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

FROM: JOHN B. KEMP, P.E.
SECRETARY OF TRANSPORTATION *John B. Kemp*

RE: REQUEST FOR CONTINUATION OF THE KANSAS DEPARTMENT OF TRANSPORTATION
AND OFFICE OF THE SECRETARY

Request for Continuation of KDOT

K.S.A. 1981 Supp. 74-7257 provides that "...the Office of the Secretary of Transportation and the Department of Transportation...shall be and are hereby abolished on July 1, 1983." There is clearly a public need for the continued existence of the Agency.

Review of Specified Factors

K.S.A. 1981 Supp. 74-7248 lists seven factors that are to be considered, if applicable, by the Legislature in extending the Agency. The first factor is "whether the absence of the state agency or office or of any program, function or duty thereof would significantly harm or endanger the public health, safety or welfare." I believe that an adequate transportation system is necessary for the Kansas economy and for the safety of the public. I know of no disagreement on this issue. In order to enhance the overall efficiency and effectiveness of the Department, I directed in 1981 that an internal study be done. The result was reorganization of the Department and a program to eliminate approximately 480 positions by July 1, 1985, from the Fiscal Year 1982 position limitation. Staff reductions are currently on schedule and the Governor's recommendation for FY 1984 reflects the reduction of 439 positions.

The second and third factors relate to the exercise of police power and regulation. I do not believe that there are any concerns in this area.

The fourth and fifth factors relate to "whether the functions of the Agency increase the cost of any goods or services to the public and whether any such increase in cost to the public can be justified." It costs a lot of money to build and maintain good roads; however, it costs the public more not to have the roads. Not only do bad roads directly increase costs through vehicle damage and fuel usage, they also hinder economic development and can endanger the safety of the traveling public.

The sixth factor is "whether all facets of the...administrative process are designed solely for the purpose of the protection of public interests and have such protection as a primary effort." Again, I know of no concerns in this area.

The last factor is "whether the purposes of the state agency or office or any program, function or duty thereof can be accomplished in a more efficient, effective or economical manner. Any organization must recognize that it can improve; the "Sunset Audit" report demonstrates that self-evaluation and improvement is a continuing process in KDOT.

Ex. A

January 26, 1983

First, the Department has taken extensive measures to improve its procedures against collusive bidding on construction contracts. We are in the process of addressing the remaining items mentioned in the audit report. The Department has worked with the United States Attorney, the Kansas Attorney General, the Federal Highway Administration, the American Association of State Highway and Transportation Officials, and other states in both the ongoing investigation and in developing procedures and regulations which combat collusive bidding activity. Among other things, the Department has:

- (1) Revised our prequalification procedures.
- (2) Made our estimates and bidders' lists confidential.
- (3) Moved lettings to more public premises.
- (4) Purchased software to assist in the analysis of bidding patterns and improve our estimating process.
- (5) Disqualified companies involved in collusive bidding in Kansas and other states.

I am satisfied that we have made substantial progress toward our goal at the beginning of the investigation--to get to the bottom of past illegal activity and to develop procedures which will discourage and, hopefully, prevent future abuses.

Second, the audit confirms that the Agency has taken steps to revise the financial management of the Agency.

I have already taken the following actions:

- (1) I directed that an explicit program of construction projects be established based on the need for improvement, the ability of the Agency to produce the projects, and the ability of the Agency to finance the contracts.
- (2) I directed that production efforts be based on the program.
- (3) I directed that the budget accurately and openly reflect the work that would be done.
- (4) I directed that regular cash projections are to be made.
- (5) I directed that contracts are to be let only when cash projections show that they can be funded.
- (6) I have directed that known deficiencies in the accounting and budgeting system be corrected.
- (7) I have directed that the total accounting system is to be revised.

Summary

I believe that KDOT should be continued because it provides a direct benefit to Kansas that would not be provided without it. We continue to improve our efficiency and effectiveness and are making progress. Therefore, I request that the Agency and the Office of the Secretary be continued.

KDOT COMMITTEE PRESENTATION

Mr. Chairman and Members of the Committee:

At the Legislative Post Audit Committee's direction, our audit of the Department of Transportation focused on two questions about the Department. First, were the Department's procedures adequate to discourage the collusive bidding unveiled by recent federal investigations, and have recent changes in those procedures been adequate to discourage future collusion? And second, have the freeway and highway funds been managed effectively and as prescribed by law?

First concerning collusion. Private contractors are required by law to bid competitively for State highway work. At the time our audit ended in August, it was estimated that as much as \$41.7 million of highway contracts from 1976 to 1980 were rigged--in that contractors determined the winning bid ahead of time. This collusion allows a contractor to set his bid at the highest level he thinks the State will accept, rather than the level needed to compete in a free market. Thus, collusion negates the State's advantage in requiring competitive bidding.

Collusion cannot be entirely stopped because contractors cannot be prevented from meeting and making agreements that constitute collusion. However, collusion can be discouraged by changing procedures to make being caught more likely. The auditors evaluated the

Department's procedures in ten areas that should be used to discourage collusion. These are summarized on page 9 of the report. In general, we found the Department has made many improvements in its procedures in the last year, but that further changes are necessary. For example, the Department needs to improve its procedures for estimating project costs to enable them to identify unreasonably high bids that may be rigged. The Department should improve its procedures for analyzing bids for suspicious patterns. The Department also should make clearer its warnings to contractors concerning the definition of and the penalties for collusion. Finally, the Department should have its internal audit office periodically review bidding procedures to identify unsound procedures.

The State has not prosecuted anyone under state statutes because each had already been prosecuted under federal laws. But when the State conducts its own investigations in the future and wishes to prosecute, the outdated anti-collusion laws will hamper that effort. Those laws have not been revised since 1897. As a result, the maximum dollar fine is too low at \$1,000, and at the same time the requirement that convicted companies never be allowed to do business in Kansas reduces the State's flexibility to allow these companies to operate when that is in the State's interests.

We recommended that:

The Legislature consider amending the law to make collusion a felony instead of a misdemeanor, and to give the State more flexibility to impose an appropriate penalty.

The second major area covered by the audit is the Department's management of its freeway and highway funds, which begins on page 29.

The first of two major findings in this area is that the repayment of a \$35 million transfer made in 1979 from the freeway fund to the highway fund is not being carried out as it appears the Legislature intended because of confusion over the law. The Department has recently asked the Attorney General to clarify the statutes.

We recommended that:

The Legislature clarify how the payback of the \$35 million transfer should be completed and what should be done with the payback revenues after the payback is complete.

Our second major finding in the financial area is that the Department does not have adequate fiscal information. Findings in several areas led us to that conclusion.

In the area of budgets, we found the Department's budget figures have at times been inaccurate. For example, we found projected 1982 revenues were originally underestimated by \$61 million, in part because of a \$48 million accounting error.

As another example, projected fiscal year 1982 capital expenditures from the highway fund in the budget had been overestimated by \$120 million. It is important to note that the auditors became aware of the budget errors primarily because the Department made an effort early in the year to correct those errors. The problems we found seem to be symptoms of an overall lack of attention in the past to the budget as a realistic plan for revenues and expenditures in the coming year. The Department has said it is working on this problem and we recommended that

The Department report to the Legislature on steps taken to improve the budget before the Legislature approves the fiscal year 1984 budget. We also made two procedural recommendations to help the Department prevent budget errors.

We found several other indications of inadequate fiscal information. In the area of financial forecasts, we found that until recently the Department did not regularly project highway fund cash balances for each month. These projections are now being done, but refinements are needed

to increase their accuracy. Also, recently revised estimates of long range freeway fund balances show that earlier projections did not consider revised estimates of project costs.

In another area, we found the Department did not keep updated records of expenditures from each freeway bond. These records are needed to demonstrate compliance with federal bond laws.

The problems we identified were those that became apparent as we examined the relationship between the highway and freeway funds. We made recommendations to correct each problem we identified. It is possible a more thorough review would reveal other problems that the solutions we have recommended may not solve. As a result, we recommend that:

The Department work with the Division of Accounts and Reports, the Division of Budget, and other agencies to redesign its financial management system to produce more complete, accurate and useful information.