

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANSThe meeting was called to order by Senator Paul Hess at \_\_\_\_\_  
Chairperson5:00 a.m./p.m. on March 31, 1983, 19\_\_ in room 123-S of the Capitol.

All members were present except:

## Committee staff present:

Research Department: Marlin Rein, Sherry Brown, Mary Galligan, Julian Efird,  
Chris Stanfield

Revisor's Office: Norman Furse

Committee Office: Mark Skinner, Doris Fager

## Conferees appearing before the committee:

Arnold Berman, Department of Human Resources

Brian Moline, Kansas Corporation Commission

Terry Muchmore, Kansas Corporation Commission

Barbara Sabol, Secretary, Department of Health and Environment

John Peterson, Kansas Association of Professional Psychiatrists

Paul Klotz, Kansas Mental Health Centers

Patrick Hurley, Secretary, Department of Administration

Bill Kauffman, Board of Regents

Introduction of bills

Senator Harder noted that the subcommittee which had studied the Insurance Department in HB 2140 had pointed out that if certain bills were not passed, there would be need for an additional appropriation for that department from the State General Fund. He said that two bills which had been recommended by the House subcommittee (HB 2436 and HB 2462) had been killed in the House. In order to avoid expenditure of approximately \$200,000 from the State General Fund, two bills are needed.

Motion was made by Senator Harder and seconded by Senator Gaines that two bills be introduced: one, for administrative expenses to be derived from the Workers Compensation Fund; and the other, for administrative expenses from the Firemens Relief Fund; and that the request be made that the bills be referred to Committee of the Whole. The motion carried by roll call vote.

HB 2140 - Appropriations FY 1984, Department of Human Resources  
HB 2135 - Appropriations FY 1983, Department of Human Resources

Explanation of suggested amendments to the subcommittee reports for the Department of Human Resources were made by staff and by Senator Harder. (See Attachment A) Motion was made by Senator Harder and seconded by Senator McCray to adopt the suggested amendments. The motion carried by voice vote.

Request for Bill Introduction

Mr. Berman distributed copies of a proposed bill (Attachment B). He then explained the bill and the need for it. He said there would be a maximum of 8 or 9 people unclassified if the bill were passed. Committee members asked about the work the people would be doing. Senator Berman said one would be running a retraining program for displaced workers; one would be running programs under the new Job Training Partnership Act around the state. There were questions about providing for unclassified positions in various agencies of the state.

Motion was made by Senator Talkington and seconded by Senator Hein that the bill requested by Mr. Berman be introduced, and that the committee request to have it returned for hearing. The motion carried by voice vote.

HB 2434 - Establishing Kansas Office of Energy Conservation Management

Mr. Moline and Ms. Muchmore requested that definition sections of HB 2445 be drafted into HB 2434. They noted that the amendment is being requested so that there is no question about the fuels included in the bill.

Mr. Moline said he is concerned about the legislative intent in the subcommittee report of the Senate which suggests placing the energy office in the Kansas Corporation Commission. He said the Commission would assume that, along with the responsibility, there would be authority to look at the programs to check conflicts and duplications. Senator Hess said the committee would study the bill more carefully and make some recommendations.

SB 433 - State corporation funds abolished, etc.

Mr. Moline suggested the contents of SB 433 are not a good idea. He said the argument could be made that the true cost of regulation would be hidden if the funds were switched to the State General Fund. He reminded the committee that regulation is a necessary evil. He further reminded the committee that the Commission is endeavoring to make long-range plans concerning its work. He said if the argument for SB 433 is that this is going to make scrutiny of the KCC budget closer than it is now, he felt it cannot be scrutinized closer than at the present time. He commented that he had not had time to talk with Commission members about the proposal.

There was no action on SB 433.

HB 2140, Section 9 - Kansas Department of Economic Development

It was noted by Senator Harder that recommendations for both FY 1983 and FY 1984 are included in the subcommittee report on this section. There were questions concerning Items 4 and 5 of the Senate Subcommittee's recommendations.

Motion was made by Senator Doyen and seconded by Senator Gaines to reinstate \$108,000 of federal planning funds which were deleted by the House Committee. Following a short discussion, the motion carried by voice vote.

In connection with Senate Subcommittee Recommendation No. 5, Senator Doyen said he has been told that if the state appropriates half the money needed, the Ag Hall of Fame will contribute the other half.

Motion was made by Senator Doyen and seconded by Senator McCray to insert \$250,000 into the KDED budget for the Ag Hall of Fame; this money to be released if and when that organization raises an equal amount of dollars; and that there be an interim study to pursue the possibility of including the Ag Hall of Fame with the State Historical Society.

Senator Hein questioned the reasoning for taking this money from the State General Fund. He noted that the Fund is hurting at this time, and that perhaps there should be an alternative, since this is basically for the farmers of the state. Senator Doyen promised that, after the bill goes to conference committee, he would do his best to work out funding to Senator Hein's satisfaction. The motion carried by voice vote.

Motion was made by Senator Harder and seconded by Senator McCray to adopt the subcommittee reports for KDED and Department of Human Resources, as amended by this committee. The motion carried by voice vote.

Motion was made by Senator McCray and seconded by Senator Harder to report HB 2140 as amended favorably for passage. The motion carried by roll call vote.

Motion was made by Senator Bogina and seconded by Senator Harder to report HB 2135 as amended favorably for passage. The motion carried by roll call vote.

SB 430 - Unclassified personnel in Department of Health and Environment

Ms. Sabol appeared in support of the concept of SB 430. She suggested some amendments, as follows: In Section 1, she noted that it is not necessary to have the registrar unclassified; In Section 2 (b), line 44, if the words "division or" were added after the word "any" and the rest of the words "section, office or other unit" deleted, it would take care of the policy making positions; In section 3, the administrative officer need not be in unclassified service.

Ms. Sabol said there are currently 18 bureaus in the Department of Health and Environment, and she feels that is too many. She would like to facilitate some consolidation, and would like to have a maximum of 15 unclassified positions. In consolidating, her goal would be to have no more than five bureaus in Health and five in Environment, and to have the bureau chiefs in the unclassified service.

Senator McCray expressed concern that, in declassifying more people, it would become more difficult to get minorities in management positions in the State. Ms. Sabol said she shares his concern.

No action was taken on SB 430.

Introduction of Governor's revenue producing proposals

Senator Talkington reminded the committee of the recommendations made by the Governor for producing needed revenue in the state. He said this committee had been requested to introduce some of these proposals.

Motion was made by Senator Talkington and seconded by Senator Steineger to introduce the following bills proposed by Governor Carlin: (1) the upper level income tax proposal (decoupling); (2) removal of exemption from sales tax on used farm machinery; (3) tax on liquor. The motion carried by voice vote.

HB 2092 - Illegal acquisition and disposition of welfare assistance

Since the proposal had been referred to Ways and Means in order to hold for further discussion on the floor of the Senate, motion was made by Senator Talkington and seconded by Senator Doyen to report HB 2092 without recommendation. The motion carried by roll call vote.

HCR 5015 - Reimbursement for community mental health centers, etc.

Senator Hess explained that he had talked to Mr. Peterson, Mr. Klotz, and Dr. Harder; and that they may not be particularly happy with the compromise, but he had a suggested compromise for the committee. His suggestions are as follow: Delete the language in lines 42 to 44 "except that the total number specified by the secretary shall be not less than 200 units"; include psychologists. Senator Hess said the Secretary is willing to have 200 units with the understanding these will be subject to appropriations and he can shift funds within his department. He added that he is aware Mr. Klotz does not like the change because they want the 200 units written into the rules and regulations.

Mr. Peterson said he is more than willing to accept the compromise. He reminded the committee that balloon amendments suggested previously would be necessary to carry out the committee's intent. Senator Hess agreed that this would be true.

In answer to questions from Mr. Klotz, Senator Hess said it is his understanding that Dr. Harder would react to the legislative directive to specify 200 units as he would have if it were in the rules and regulations, unless the fiscal situation is such that the units must be lowered; and that all providers--psychologists, etc.--would be lowered if revenues are not available to provide the 200 units.

HCR 5015 - Continued

Motion was made by Senator Talkington and seconded by Senator Harder to amend HCR 5015 as outlined by Senator Hess, including balloon amendments presented on March 28 at 11:00 a.m. The motion carried by voice vote.

Motion was made by Senator Hein and seconded by Senator Talkington to report HCR 5015 as amended favorably for passage. The motion carried by roll call vote.

NOTE: Attached to these minutes are letters written by Mr. Paul Klotz and Dr. Robert Harder concerning the understanding of the Senate Ways and Means Committee regarding carrying out provisions of HCR 5015. It was requested by both Mr. Klotz and Dr. Harder that these letters be made part of these minutes.

National Direct Student Loan Funds

Secretary Hurley presented Attachment C and distributed copies to committee members. Following his presentation, he noted that there are two available options: (1) to place these funds in the future in non-interest bearing accounts; or (2) continue receiving interest, but create a mechanism of transferring interest to the proper accounts at various educational institutions.

Secretary Hurley concluded by stating that he has been trying for months to work something out, and he thinks he now has an agreement. He added that if nothing is done, funds may be taken away by the Federal Government. There were questions concerning the problem from committee members, and a concern that the Governor would amend his budget to provide funds if an agreement is reached for payment of funds to the Federal Government. Mr. Hurley said he would request an amendment if the Legislature concurs with the agreement reached. He added that he would like to discuss the problem with the House Committee.

Mr. Kauffman said the Federal contribution levels are being reduced. Consequently, the benefit of having interest on the NDSL funds is to increase the amounts available for lending purposes.

The Chairman appointed the following subcommittee to study this matter and report back to the full committee: Senator Werts, Senator Hein, and Senator Steineger.

Bill Introduction

Senator Doyen noted that the Post Audit Division had recommended there be a sunset to the sunset law. Motion was made by Senator Doyen and seconded by Senator Talkington that a bill be introduced to carry out that recommendation. The motion carried by voice vote.

SB 431 - State biologist in unclassified service

Motion was made by Senator Werts and seconded by Senator Talkington to report SB 431 favorably for passage. The motion carried by roll call vote.

SB 41 - State Board of Healing Arts continued in existence

Senator Gaines noted that the amendments proposed by the subcommittee have not been prepared, but that certain decisions have been reached. A conceptual motion was made by Senator Gaines and seconded by Senator Hein to provide for two-tier reporting; to sunset the Board of Healing Arts on July 1, 1984; and to provide for the insurance commissioner to send certain reports and claims to the Board of Healing Arts. The motion carried by voice vote.

SENATE COMMITTEE ON WAYS AND MEANS, March 31, 1983, 5:00 p.m. - 5

SB 41 - Continued

Motion was made by Senator Hein and seconded by Senator Harder to report SB 41 as amended favorably for passage. The motion carried by roll call vote.

The meeting was adjourned by the Chairman.

SUBCOMMITTEE ON DEPARTMENT OF HUMAN RESOURCES

Recommendations for Committee Amendments

FY 1983:

Restore \$6,161 for salaries in the Labor Relations program to correct an accounting error in the Department's figures upon which the Subcommittee based its estimate for reappropriation. The amount of turnover savings to be reappropriated would be \$31,161 instead of \$38,672 identified in the Subcommittee report.

FY 1984:

Add 13.75 F.T.E. positions for the CETA program and reflect the CETA F.T.E. limitation as a separate line item in the appropriations bill.

(Do not restore \$6,000 for travel by the Labor Relations program since the Subcommittee report provides for additional review next Session.)

ATA 3-31-83  
5:00 P.M.

DRAFT BILL NO. \_\_\_\_\_

For Consideration by Senate Committee on Ways and Means

AN ACT concerning the department of human resources; placing certain personnel in the unclassified service under the Kansas civil service act.

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

Section 1. The director of the job training partnership program and all employment security administrators within the department of human resources shall be in the unclassified service under the Kansas civil service act and shall receive an annual salary fixed by the secretary of human resources with the approval of the governor.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

ATB 2-31-83  
5:00 p.m.



STATE OF KANSAS

JOHN CARLIN, GOVERNOR

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

ROBERT C. HARDER, SECRETARY

April 8, 1983

STATE OFFICE BUILDING  
TOPEKA, KANSAS 66612

Paul Klotz, Executive Director  
Association of Community Mental  
Health Centers  
820 Quincy, Suite 416  
Topeka, Kansas 66612

Dear Paul:

This letter is in follow-up to the previous letter concerning the question of units of service related to the mental health center program.

In reviewing the previous letter I sent to you I find the letter lacked clarity on one point. I did not specify the commitment made by the Secretary was for FY-1984. I always operate on the basis of year-to-year decisions and it is implied in the letter, but perhaps not specifically. Consequently, I do want to indicate what we are talking about is the methodology for operation through FY-1984.

I would again point out that with the discretion as to the number of units left to the Secretary, there is the possibility the units can go up as well as down. We are committed to providing services in the community. I recognize the mental health centers are an important part of that total community operation. Consequently, if there is a windfall wherein we could make adjustments as far as the medical budget is concerned, I would not be adverse to making mid-year adjustments.

If I can be of further assistance, please let me hear from you.

Sincerely yours,

Robert C. Harder  
Secretary

RCH:mao

cc: Senator Hess  
Senator Werts  
Senator Doyen  
Representative Buntin  
Representative Duncan  
Mr. William Richards  
Ms. Katie Klassen  
Dr. Gerald Hannah

1038E





STATE OF KANSAS

JOHN CARLIN, GOVERNOR

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

April 1, 1983

STATE OFFICE BUILDING  
TOPEKA, KANSAS 66612

ROBERT C. HARDER, SECRETARY

Mr. Paul M. Klotz  
Executive Director  
Association of Community Mental  
Health Centers of Kansas  
820 Quincy, Suite 416  
Topeka, Kansas 66612

Dear Paul:

This letter is a follow-up to your letter of March 31st concerning units of service to be provided in the Medical Assistance Program. Your understanding of the 200 units is the same as mine. As I indicated on a number of occasions, when we changed the rule and regulation to the Secretary having the authority to set the number of units I was willing to negotiate a number which was reasonably acceptable to both parties. I have no interest in dropping to 120 units, especially after hearing the testimony presented from the Mental Health Association and from individual directors. I am willing to start the year at 200 units and to keep you and your Association posted as to SRS fiscal developments and to make changes only after there has been full discussion of issues and an awareness that other providers would also be affected in a similar way.

The Department is interested in sitting down and working through problems. We prefer to have administrative issues handled between ourselves rather than to have them presided over by a legislative committee. We are always interested in talking with provider groups about programmatic and fiscal concerns. However, we are not always able to accommodate all of the demands placed by your Association.

If I can be of further service, please let me hear from you.

Sincerely yours,

Robert C. Harder  
Secretary

RCH:cr

cc: Honorable Ross Doyen  
Honorable Paul Hess  
Pat McKinley, MHAK  
Gerald T. Hannah, Commissioner MH/MRS  
Clinton D. Willsie, President/Assoc. of CMHCs of KS  
E. W. Rakestraw, Past President/Assoc. of CMHCs of KS

1002E



# Association of Community Mental Health Centers of Kansas

820 Quincy, Suite 416/ Topeka, Kansas 66612/913 234-4773

*Paul M. Klotz, Executive Director*

March 31, 1983

Dr. Robert C. Harder  
Secretary  
Department of SRS  
State Office Bldg/6th Floor  
Topeka, Kansas 66612

STATE DEPT. OF  
SOC. REHAB. SERV.

APR 01 1983

RECEIVED  
SECRETARY'S OFF.

Dear Dr. Harder:

This is to formally inform you of this Association's agreement to the compromise worked out between you and Senator Paul Hess relative to H.C.R. 5015, as amended. This Association agreed to drop the 200 unit minimum provision in H.C.R. 5015. The pertinent language was found at lines 0042 and 0043 in the amended resolution.

My agreement rested entirely on your offer to Senator Hess to honor the 200 unit per quarter minimum for CMHC outpatients exactly in the same manner as if this Resolution had passed and been made a part of your current regulations found at K.A.R. 30-5-86, Section (4)b. Senator Hess stated that the 200 unit minimum will be met within the constraints of your total Medicaid budget. I asked Senator Hess, before the full Senate Ways and Means Committee, if such budgetary constraints pertained only to those defined by you for mental health centers or those set for all providers under the Medicaid Program. Senator Hess responded that the term "budgetary constraints" applied to all Medicaid provider groups. Therefore, this Association does not expect the 200 unit per quarter minimum to be altered unless budgetary constraints force you to make further comparable reductions to all Medicaid providers beyond those already made.

The Senate Ways and Means Committee agreed to the above outlined compromise as I did, acting for this Association. Senator Hess asked that the Senate Ways and Means Committee Minutes so state the agreement.

Dr. Harder, since I was not present at the negotiations held with Senator Hess; I felt I should state the agreement in writing.

I am sure both sides to this compromise are not completely satisfied. The hope is that this arrangement will allow both your department and the mental health centers to continue to deliver quality services to the citizens of Kansas who require mental health care and treatment. Let us also hope that both sides will be able

Clinton D. Willsie  
President

Larry W. Nikkel  
President Elect

Dwight Young  
Vice President

E. W. "Dub" Rakestraw  
Past President

Michael L. Taylor  
Treasurer

Denny Clark  
Secretary

Harrict Griffith  
Bd. Mem. at Large

Dr. Robert C. Harder  
March 31, 1983  
Page 2

to reach an easier agreement on future issues.

Thank you for working with Senator Hess on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul M. Klotz", with a large, sweeping flourish extending to the right.

Paul M. Klotz  
Executive Director

PMK:bjp

cc: Honorable Ross Doyen  
Honorable Paul Hess  
Pat McKinley, MHAK  
Gerald T. Hannah, Commissioner MH/MRS  
Clinton D. Willsie, President/Assoc. of CMHCs of KS  
E.W. Rakestraw, Past President/Assoc. of CMHCs of KS

STATE OF KANSAS  
DEPARTMENT OF ADMINISTRATION  
JOHN CARLIN, Governor  
PATRICK J. HURLEY, Secretary of Administration  
Room 263-E, Capitol Building  
(913) 296-3011

MEMORANDUM

TO: The Honorable Paul Hess, Chairman  
Senate Ways and Means Committee

FROM: Patrick J. Hurley, Secretary of Administration *PH*

DATE: March 29, 1983

SUBJECT: Federal Audit of NDSL Funds at State Universities

In January of 1982, the U. S. Department of Education asked the Department of Administration to respond to a draft audit report prepared by that federal agency. The audit report related to National Direct Student Loan funds at seven state universities. Under the terms of the agreements between each of the universities and the U. S. Department of Education, as well as under the terms of applicable federal statutes and regulations, interest earnings attributable to money in the seven NDSL university accounts were required to be credited back to the various NDSL accounts at the universities. For over fifteen years, the NDSL fund balances have been accounted for separately, but have not been invested separately. For investment purposes, the NDSL funds are pooled with all other state funds which are not specifically required to be invested in a particular manner. Interest earnings on these pooled funds are credited to the State General Fund.

The draft audit report stated that for the period July 1, 1977 through November 30, 1981, \$715,759 of interest earnings should be transferred from the State General Fund to the seven NDSL funds. This would increase the money available for NDSL loans for students at the seven Regents' institutions. Additionally, the report stated that interest should be computed in a like manner, and should also be transferred for the time period from December 1, 1981 to present. The Division of Accounts and Reports estimates that this would represent an additional \$395,530 in interest through June 30, 1983.

Lastly, the audit report advised the State to put a mechanism in place so that in the future interest earnings attributable to NDSL funds would automatically be credited back to the NDSL funds.

*ATC 3-31-83  
5:02 p.m.*

Before responding to the January 1982 draft audit report, the Department of Administration discussed the audit report and proposed response with personnel in the Board of Regents' Office, the Attorney General's Office, Legislative Research Department and the two Ways and Means' Chairmen. The Department of Administration responded on February 16, 1982. As to the past interest earnings attributable to NDSL monies, the Department of Administration's response noted that neither the Governor nor the Department of Administration has the authority to transfer unappropriated funds in the State General Fund; further, because the NDSL funds were not invested separately it is not possible to identify any interest earnings attributable to the NDSL funds. Regarding future interest, the Department's response was that Secretary Hurley would request the Pooled Money Investment Board, pursuant to K.S.A. 75-4213, to ask the Attorney General whether the NDSL funds can be established as custodial accounts. By establishing custodial accounts, the interest earnings attributable to the NDSL funds could be clearly identified since the funds would be invested separately from other state funds.

In March of 1982 the U. S. Department of Education sent the Department of Administration their final audit report on the NDSL funds. The cover letter, dated March 23, 1982, indicated a response should be made within thirty-five days unless comments had been previously provided. Since the Department had previously submitted written comments, no further comments were submitted.

The U. S. Department of Education wrote the Department of Administration again September 22, 1982, noting they agreed with their earlier audit report conclusion that the \$715,759 must be repaid. They also stated that the amount must be credited by the next time the universities report to the U. S. Department of Education. In October, 1982, the Department of Administration again met with Board of Regents' personnel to discuss a response in resolution of the issues. The Regents' personnel noted that the U. S. Department of Education might terminate the NDSL programs in Kansas totally if the interest issue was not resolved. An Attorney General opinion request was submitted in November asking whether the NDSL funds could be established as custodial accounts and whether the past interest could be transferred from the State General Fund to the NDSL funds without further legislation.

The U. S. Department of Education wrote the Department of Administration on November 4, 1982 seeking a response to their September request that the interest be credited. The Department of Administration's response of November 18, 1982 again questioned the method of computing interest earnings but noted that the

Attorney General's opinion had been requested as to the custodial account and authority to transfer issues. Administration's response also requested that Federal, Regents and Department of Administration personnel meet and attempt to agree on an acceptable method of computing past interest.

The U. S. Department of Education wrote again December 21, 1982. Previously the issue of interest earnings attributable to NDSL funds had been confined to interest earnings from FY 77 to the present. The December letter asked that the State go back and calculate interest earnings from FY 1968. Administration's response again requested a meeting with federal officials to see if a method of calculating interest could be agreed upon. No written response has been received, therefore, Regents and Administration personnel attempted by telephone to arrange a meeting to discuss the method of computing interest. U. S. Department of Education sent an auditor that participated in the original audit, but the individual had no authority to negotiate another method of computing interest, or negotiate an installment payment schedule for the past interest.

The Department of Education wrote the Department of Administration again in a letter dated March 17, 1983. It renewed the request for (1) immediate payment of the \$715,759 and (2) computation and repayment of interest from July 1, 1967 through June 30, 1976, and from December 1, 1981 through the present date. The letter did note that installment payments could be arranged.

Attorney General Opinion No. 83-34 was issued March 18, 1983, and concluded that any interest generated by NDSL funds should be credited back to the various NDSL funds, not the state general fund. No method of computing such interest was set forth in the opinion. It is the method of calculating this past interest that has been disputed; additionally, the Department of Administration objects to the recent request to go back and compute interest from FY 1968. The Department of Administration's position is basically that had the NDSL funds been invested separately, the amount of interest actually earned would have been substantially less than the amount demanded in the audit report. The Department of Education's position is that the NDSL funds were, in fact, a part of the State's pooled funds, therefore, the NDSL funds should be credited with its proportional share of the pooled funds interest earnings.

The first issue the audit presents is how to handle NDSL accounts in the future. The U. S. Department of Education does not require the NDSL funds to earn any specific level of interest. In fact, it does not require that interest even be earned. However, if

interest is earned, they require it to be credited to the NDSL funds. If the NDSL funds are not commingled with the State's pooled funds, but rather are placed in separate, interest or non-interest bearing accounts, this appears to be an acceptable option. Another option would be to continue the present investment procedure for NDSL funds, but enact a statutory provision for computing and transferring interest earnings attributable to NDSL fund balances.

The second issue that the audit presents is how to handle past interest earnings. The options available here include:

(1) complying with the U. S. Department of Education's request. This would entail paying \$1,111,289 for the July 1, 1976 through June 30, 1983 period plus an amount that would have to be computed for the period from July 1, 1967 through June 30, 1976. These payments could be paid in installments, with interest owed on the unpaid balances.

(2) refuse to make any payments for past interest earnings. This could result in administrative action to terminate the NDSL program and could preclude Kansas receiving further federal funds in this area.

(3) propose a settlement figure to the U. S. Department of Education. Attached is a proposed settlement agreement and cover letter that could be used to solicit a response from the U. S. Department of Education. It provides for the payment of back interest in the amount of \$373,886.00, over a three year period. If the U. S. Department of Education does not respond to the proposal prior to the end of the 1983 session, the Legislature could, nevertheless, transfer in FY 84, \$91,471.50 of past interest as a showing of good faith. This would permit continuing negotiations that could be brought to the Legislature next session for funding.

#### RECOMMENDATIONS

As to future handling of the NDSL accounts, it is recommended that either (1) the NDSL funds be placed in separate, non-interest bearing accounts, or (2) continue the present investment procedure, but enact a provision for crediting interest earnings back to the NDSL funds, unless the federal agency indicates this is not permissible. The attached letter to the United States Department of Education proposes either procedure and requests they advise us if this is not acceptable. Either approach will require legislation to accomplish the change.

The Honorable Paul Hess, Chairman  
Senate Ways and Means Committee  
March 29, 1983  
Page 5

Regarding past interest, it is recommended that the Legislature provide \$91,471.50 in FY 84 following option three above. One point which should be made is that it is our understanding from the federal agency staff that any payments for back interest would be credited in the NDSL program toward the required state match in the year in which the payment is credited to the NDSL fund.

I would appreciate your letting us know what actions you think most appropriate as soon as possible as much remains to be done before the end of the session.



DRAFTDEPARTMENT OF ADMINISTRATION  
Office of the SecretaryJOHN CARLIN,  
Governor  
PATRICK J. HURLEY,  
Secretary of Administration

March 29, 1983

Room 263-E  
State Capitol Building  
Topeka, Kansas 66612  
(913) 296-3011

William H. Hassler  
Chief, Audit Review Branch  
Division of Certification and  
Program Review  
United States Department of Education  
400 Maryland Ave., S.W.  
Washington, D.C. 2002

Dear Mr. Hassler:

James Cobler, Director of Accounts and Reports of my Department has reported to me the discussions concerning the NDSL audit #07-21200 which he had with you at the March 24, 1983 meeting held at your office. Attached to this letter is a proposed settlement agreement that the State proposes for the Department's signature.

Initially, the State of Kansas takes the position that no interest moneys are due the NDSL fund account as alleged by the Inspector General's audit report for the reason that pursuant to the Intergovernmental Cooperation Act, 42 USCS 4201 et seq., states shall not be held accountable for interest earned on grant-in-aid funds. Additionally, in regard to a demand for interest earned on NDSL funds from July 1, 1967 through March, 1978, the State denies that any moneys are due and owing because of the five-year statute of limitations for actions arising out of contract. It is additionally noted that the contracts between the Department and the State of Kansas were for from one to three years in length since the inception of the program. Most of these contracts have been audited and accepted by the federal officials involved. The Department failed to raise the interest issue at the times the audits were performed and the programs were accepted as conducted for that period of time, and to raise the issue now would be improper.

Notwithstanding the above-stated position, the State of Kansas is desirous of settling this matter as expeditiously as possible without the necessity of litigating the matter and in that light proposes the attached settlement agreement based upon the following rationale.

The NDSL monies maintained by the State of Kansas were kept in seven different accounts, one for each of the seven universities in Kansas. Mr. Cobler reported that in the meeting you agreed that it is not logical to assume that if a separate checking account were maintained for these monies, that 97% of the balance could be invested at all times. The audit report made such an assumption. Other states that have kept the monies separate have shown 50% is all that is available for investment on the average. In computing the settlement figure, we have reduced the balances on which interest is figured to 50% in accordance with this finding. In the future we can maintain these monies in a separate account so the investments may be clearly seen.

The interest rate utilized in the audit report has also been adjusted in computing the settlement figures. Small amounts of money kept in separate accounts would not earn interest at the same rate as the significant sums of money maintained in our pool for long periods of time. For example, regulation Q requires that any balance less than \$100,000 be paid interest at a rate greatly below that contained in the audit report. Your office has agreed with this principle in the past by agreeing with the State of Nebraska to require interest to be paid at the rate of 7% for the same monies invested over the same period of time. Therefore, in computing the settlement figure we have reduced the interest rate in the calculations to 7%, which is a more realistic number.

As you know, the audit covers the period from July 1, 1976 through November 30, 1981. In your letter of March 17, 1983, you have requested that we determine the interest earned from December 1, 1981 to the present time as well as from July 1, 1967 through June 30, 1976. When my staff asked the auditor involved why the audit report was prepared for the period of time beginning July 1, 1976, she pointed out that her office felt that that was the maximum period of time that could be covered due to the statute of limitations. The State of Kansas has a five-year statute of limitations on

contracts and a three-year statute of limitations on liabilities created by statute. In addition, the contracts between the federal department and the State of Kansas were from one to three years in length since the inception of the program. Most of these contracts have been audited and accepted by the federal officials involved. Therefore, I believe they should not be reopened because the federal government failed to raise the interest issue at the time the audit was performed and the program was accepted for that period of time. Once again, your office has sanctioned this logic by not requiring the other universities that have been audited to pay interest back to 1967. The federal government should treat all universities fairly with uniform application of regulations and procedures. Therefore, in computing the settlement figures, the period prior to July 1, 1976 was not included.

As Mr. Cobler explained in the meeting, any state monies available to satisfy this claim are currently in the state general fund. As a result, a legislative appropriation will be required to transfer monies from the state general fund to the NDSL funds as you have requested. This matter is further complicated by the fact that the general fund balance is running very near zero. As a result, our legislative body will find it difficult to transfer the money. Therefore, the settlement agreement provides for a three-year payout at the 3% rate of interest that was applied to the State of Nebraska, with interest on the installments commencing July 1, 1983.

The Kansas Legislature adjourns approximately April 8, and if we do not obtain an appropriation by that period of time, we will have to wait until next January 12. We would therefore respectfully request that you expedite your approval of the proposed settlement so that we may obtain legislative approval and appropriation to resolve this issue. It is my hope that we can receive your response within a week, in order to permit sufficient time for consideration and action on this matter by the Kansas Legislature.

Regarding the future handling of NDSL funds, we are prepared to recommend legislation that:

(1) would separate the NDSL account funds from the pool of other invested state funds and establish separate, non-interest bearing custodial accounts for each of the seven NDSL funds, or

William H. Hassler  
March 29, 1983  
Page 4

DRAFT

(2) continues the present investment procedure for NDSL funds, but also would provide for the monthly crediting of interest to NDSL funds, based upon the average balance in the NDSL funds and the interest rate the State received on repurchase agreements. If either alternative is not satisfactory with your Department, please advise.

Should you have any questions, please contact my chief attorney, Arthur Griggs, at (913)296-3011 as soon as possible.

Sincerely,

Patrick J. Hurley  
Secretary of Administration

PJH:gk

cc: The Honorable Robert Dole  
United States Senator  
Hart Senate O.B.  
Washington, D.C. 20510

AGREEMENT

WHEREAS, on September 22, 1982 the office of the Assistant Secretary of postsecondary education of the Department of Education ("the Department") notified the State of Kansas, Department of Administration that according to the Inspector General's audit report, the amount of \$715,759 is due the seven Kansas universities' NDSL Fund accounts for interest earned on NDSL funds between July 1, 1976 and November 30, 1981; and

WHEREAS, on December 21, 1982 an additional undetermined amount was alleged due the NDSL Fund account for the Award years 1967-68 through the present because of the State's failure to credit to the NDSL Fund earnings from the investment of excess cash from the NDSL Fund; and

WHEREAS, the State has challenged the finding of the Inspector General's audit report and denies that any amounts are due for the Award years 1967-68 through the present for the reasons that the past practice of the State in the investment of idle NDSL funds has been approved by the audits by the Department; that amounts alleged due and owing for the award years 1967-68 through March, 1978 are barred by the Statute of Limitations; and that pursuant to the Intergovernmental Cooperation Act, states shall not be held accountable for interest earned on grant-in-aid funds; and

WHEREAS, it now appears that settlement of this dispute by restoration of an amount hereinafter set forth would be in the best interest of the parties and of students at universities of the State of Kansas and would avoid the time and expense of further administration procedures or litigation;

NOW THEREFORE, IT IS HEREBY AGREED by and between the State of Kansas and the Department that:

1. The State shall pay into the NDSL Fund at the seven State universities their share of the sum of \$373,886.00, with the first installment of \$93,471.50 being payable on or before July 1, 1983 with interest accruing thereafter at an annual rate of 3%, and with the balance payable in three equal annual installments within three years. The balance may be prepaid in whole or in part at any time by the State without penalty.

2. It is understood and agreed by the parties that if sufficient funds are not appropriated by the legislature this agreement shall be terminated. The State reasonably believes that funds can be obtained sufficient to make all payments as set forth and hereby covenants that it will do all things lawfully within its power to obtain and properly request appropriations from which the payments may be made.

3. The Department releases the State of Kansas from any and all claims and causes of action which it now has or might otherwise assert arising out of the State's alleged failure to credit investment income earned by the NDSL Fund to the Fund during the Award years 1967-68 to the present.

4. The Department reserves the right, in its discretion, to audit the State's NDSL Fund and investment records to verify the accuracy of the State's computations.

IN WITNESS WHEREOF, the parties hereto have set their hand this \_\_\_\_\_ day of April, 1983.

U. S. DEPARTMENT OF EDUCATION

By: \_\_\_\_\_

STATE OF KANSAS  
DEPARTMENT OF ADMINISTRATION

By: \_\_\_\_\_