Approved February 16, 1984
Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES.

The meeting was called to order by SENATOR ROBERT V. TALKINGTON at
Chairperson

9:00 a.m. a.m./p.m. on Thursday, February 16, 1984 in room 254-E of the Capitol.

All members were present except:

all members present

Committee staff present:

Fred Carman, Hank Avila, Rosalie Black

Conferees appearing before the committee:

SB 663 - Senator Roy Ehrlich; Brad Smoot, Attorney General's Office

SB 543 - Senator Jack Steineger; Brian Moline, Corp. Comm.; Harriet Lange, KS Assoc. of Broadcasters; Karl Gaston, Publisher of Ellsworth Reporter; Ed Schaub, Southwestern Bell; Jeff Russell, United Telephone Co.; Louis Stroup, KS Municiple Utilities; Lon Stanton, Northern Natural Gas; Harold Shoaf, KS Electric Cooperatives; Bill Schultz, AT&T; William E. Brown, Electric Companies Assoc. of KS; KP&L and The Gas Service Company

The meeting was called to order by Senator Talkington, Chairman, who introduced Senator Roy Ehrlich to discuss Senate Bill No. 663.

SENATE BILL NO. 663 - HEARING

Senator Ehrlich explained that SB 663 repeals the 1983 law that closed records of speeding convictions in the 55-65 mph range. He added that constituents in his district requested the repeal. (See Attachment 1.)

Brad Smoot on behalf of the Attorney General's Office requested legislative reconsideration in opening records of speeding convictions since the law appears to be designed solely to prevent insurance companies from using conviction records in rate and coverage determinations. (See Attachment 2.)

SENATE BILL NO. 543 - HEARING

Emphasizing that stockholders should bear costs of lobbying, advertising, large salaries and luxury cars of utility personnel, Senator Jack Steineger spoke against current policy of allowing these items to be charged to ratepayers when the actual beneficiaries are employees or stockholders of utilities. (See Attachment 3.) He added that the bill answers ratepayer-stockholder questions by giving the KCC

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.

SENATE BILL NO. 543 (con't) - HEARING

clear guidance on which costs should not be paid by ratepayers.

Brian Moline asked the committee to continue to allow the KCC upon its own discretion to make its decisions of what should be included in rate bases on a case by case basis following a reasonableness concept. Mr. Moline stated the KCC does not support Senate Bill 543.

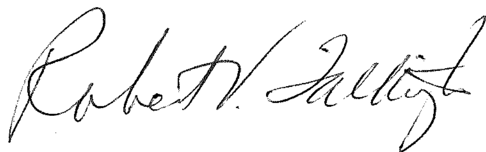
Harriet Lange, Karl Gaston, Ed Schaub, Jeff Russell, Louis Stroup, William Brown, Lon Stanton, Harold Shoaf and Bill Schultz objected to SB 543 because the bill would deny to public utilities the right to recover costs related to basic expenses normally recovered through charges to customers by other types of businesses; the prohibitions are not in the best interest of consumers; the KCC already has authority to consider the prudence of advertising necessary to provide customer information and to disallow any amount deemed not to be a legitimate operating expense to be paid by ratepayers; lobbying efforts in working with the legislature are directed toward consumer interest and should be allowed in rate bases; salaries must be competitive and sufficient to allow utilities to hire and retain qualified people; and passage would not result in savings to utility customers, but would compound problems of energy supply and communications between utilities and their customers. (See Attachments 4 - 8.) (4-8)

SENATE BILL NO. 633 - ACTION

Senator Hayden moved to amend SB 633 to allow a 30 day temporary registration permit instead of two 15 day periods; seconded by Senator Thiessen. The motion carried.

Senator Johnston moved that SB 633 be reported favorable for passage as amended; seconded by Senator Thiessen and passed.

The meeting adjourned at 9:55 a.m.



Please PRINT Name, Address, the organization you represent, and the Number of the Bill in which you are interested. Thank you.

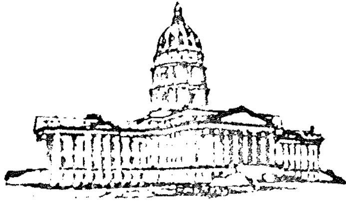
NAME	ADDRESS	ORGANIZATION	BILL NO.
W Schaub	Topeka	SWBT	SB 543
Rick Kready	"	KPL / Gas Service Co	"
William E. Brown	"	KPL / Gas Service Co.	SB 543
BILL PERDUE	"	" "	"
J M Russell	TOPEKA	UNITED Tel	SB 543
RICK EHEWOLD	"	AT&T	SB 543
Bill Schultz	"	AT+T	SB 543
Bill Schae	"	KEC	SB 543
K Shoaf	"	"	"
[illegible]	"	Ks. Assn Broadcasters	"
Jerry Cunningham	"	KG&E	"
Louis Stroup Jr.		KMU	SB 543
Floyd Shenkel		K.C.P&L Co.	SB 543
Jeanne Templar	"		SB 543
Wilbur G. Leonard	"	Ks. Tel. Assn	SB 543
Sen. Roy M. Ehrlich		Ks. Senate	
[illegible]		Ks. Press Assn	[illegible]
LON STANTON	TOPEKA	NORTHERN NATURAL GAS	SB. 543
KARL K GASTON	ELLSWORTH	ELLSWORTH Reporter	SB 543
Cathy Brumfalk	Hays	Midwest Energy	SB 543
Tom Hotto	Topeka	[illegible]	663
John W Smith	Topeka	Dep of Revenue	663
D. WAYNE ZIMMERMAN	TOPEKA	THE ELECTRIC COS ASSOC OF KS	543
TERRY L. OLIVER	COLUMBUS	E.D.E. Co.	543

Please PRINT Name, Address, the organization you represent, and the Number of the Bill in which you are interested. Thank you.

NAME	ADDRESS	ORGANIZATION	BILL NO.
Dick Compton	Hays	Midwest Energy	SB 543

Attachment 1

STATE OF KANSAS



TOPEKA

SENATE CHAMBER

ROY M. EHRLICH
SENATOR, THIRTY-FIFTH DISTRICT
RICE, BARTON, RUSSELL COUNTIES
ROUTE 1, BOX 92
HOISINGTON, KANSAS 67544

COMMITTEE ASSIGNMENTS
VICE CHAIRMAN: PUBLIC HEALTH AND WELFARE
MEMBER: ASSESSMENT AND TAXATION
LABOR, INDUSTRY, AND TOURISM
LOCAL GOVERNMENT
SPECIAL SELECT STANDING COMMITTEE OF THE MENTAL HEALTH ASSOCIATION
ADVISORY COMMITTEE OF STATE DEPARTMENT ON AGING
COUNCIL OF STATE GOVERNMENTS ENERGY COMMITTEE

October 14, 1983

The Honorable Robert T. Stephan
Attorney General
Office of the Attorney General
Kansas Judicial Center
Topeka, Kansas 66612

Dear General Stephan:

In Attorney General Opinion No. 83-117 you answered several questions in regard to Senate Bill No. 310, which was enacted by the 1983 Kansas Legislature. I would appreciate receiving your opinion in regard to the constitutionality of this enactment. Specifically, does the statute violate any provision of the Constitution of the United States or the Kansas Constitution because it treats speeding convictions for traveling not more than 10 miles per hour in excess of the 55 mile per hour speed limit established by K.S.A. 8-1336 (a)(6) different from other speeding convictions.

Your consideration of this request will be greatly appreciated.

Sincerely,

Roy M. Ehrlich
Senator
Thirty-fifth District

RME:pk

Atch. 1

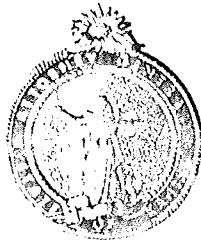
SENATE BILL No. 663

By Senator Ehrlich

2-7

0015 AN ACT repealing K.S.A. 1983 Supp. 8-1341a; certain motor
0016 vehicle speeding violation records.

0017 *Be it enacted by the Legislature of the State of Kansas:*
0018 Section 1. K.S.A. 1983 Supp. 8-1341a is hereby repealed.
0019 Sec. 2. This act shall take effect and be in force from and
0020 after its publication in the statute book.



FOR YOUR INFORMATION
SENT BY
ROY M. EHRLICH
STATE SENATE

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
ANTITRUST 296-5299

December 30, 1983

ATTORNEY GENERAL OPINION NO. 83-185

The Honorable Roy M. Ehrlich
State Senator, Thirty-Fifth District
Route 1, Box 92
Hoisington, Kansas 67544

Re: Laws, Journals and Public Information -- Records Open to Public -- Conviction Records of Certain Traffic Offenses; Closed to Public

Amendments to the United States Constitution -- Rights and Immunities of Citizens -- Fourteenth Amendment; Equal Protection

Constitution of the State of Kansas -- Bill of Rights -- Equal Rights

Synopsis: 1983 Senate Bill No. 310 (L. 1983, ch. 28) provides that speeding convictions for traveling not more than 10 miles per hour in excess of the 55 mile per hour speed limit established by K.S.A. 8-1336(a)(3) shall not be part of the public record and shall not be considered by any insurance company in establishing rates for an automobile liability insurance policy or cancelling such coverage. The classification of accessible records created by 1983 Senate Bill No. 310 bears a reasonable relationship to a legitimate legislative function and does not offend the guarantees of equal protection found in the United States and Kansas constitutions. Cited herein: 1983 Senate Bill No. 310 (L. 1983, ch. 28), Kan. Const., Bill of Rights §§1, 2, U.S. Const., Fourteenth Amendment.

* * *

Dear Senator Ehrlich:

You request our opinion on certain constitutional questions with regard to 1983 Senate Bill No. 310. Your specific question raises the issue of whether the bill violates constitutional equal protection guarantees because it "treats speeding

convictions for traveling not more than 10 miles per hour in excess of the maximum 55 mile per hour speed limit . . . different(ly) from other speeding convictions."

1983 Senate Bill No. 310 (L. 1983, ch. 28) provides that speeding convictions for traveling not more than 10 miles per hour in excess of the 55 mile per hour speed limit established by K.S.A. 8-1336(a)(3) shall not be part of the public record and shall not be considered by any insurance company in establishing rates for an automobile liability insurance policy or cancelling such coverage. As noted in Attorney General Opinion No. 83-117, 1983 Senate Bill No. 310 appears to be designed solely to prevent insurance companies from using certain conviction records in rate and coverage determinations. To accomplish that purpose the bill restricts access to the official records of such convictions at the state and local level. It does not appear to us that, in accomplishing this purpose, the bill offends the equal protection guarantee of the Fourteenth Amendment to the United States constitution.

A brief review of the general rules applicable to equal protection challenges to legislative enactments will illustrate this point. The Fourteenth Amendment to the federal constitution prevents the states of the union from denying to any person within their jurisdiction the equal protection of the laws. The Kansas Supreme Court has held that the provisions of the Kansas Constitution declaring that all men are possessed of equal and inalienable natural rights and that all free governments are instituted for the equal protection and benefit of the people are the Kansas counterparts to the equal protection guarantees found in the Fourteenth Amendment. Kan. Const., Bill of Rights §§1,2; Stephens v. Synder Clinic Association, 230 Kan. 115 (1981).

The equal protection guarantee found in the Kansas and Federal Constitutions does not prevent classification of persons and objects for the purpose of legislation. A state legislature does not violate equal protection simply by classifying persons so that some are affected by legislation or regulation differently than others. In State ex rel. Schneider v. Liggett, 223 Kan. 610, 616 (1978), the court discussed the tests to be utilized in equal protection analysis.

> "Traditionally, the yardstick for measuring equal protection arguments has been the 'reasonable basis' test. The standard was set forth in McGowan v. Maryland, 366 U.S. 420, 425-26, 6 L.Ed.2d 393, 81 S.Ct. 1101:

"'. . . The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it. . . .'

"In Dandridge v. Williams, 397 U.S. 471, 25 L.Ed.2d 491, 90 S.Ct. 1153, reh. denied 398 U.S. 914, 26 L.Ed.2d 80, 90 S.Ct. 1684, it was stated:

"'. . . If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality." Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78. . . .' (p. 485.)

. . . .

"A more stringent test has emerged, however, in cases involving 'suspect classifications' or 'fundamental interests.' Here the courts peel away the protective presumption of constitutionality and adopt an attitude of active and critical analysis, subjecting the classification to strict scrutiny. The burden of proof to justify the classification falls upon the state (See, Shapiro v. Thompson, 394 U.S. 618, 22 L.Ed.2d 600, 89 S.Ct. 1322.) This test has been used to strike down classifications based on race (Loving v. Virginia, 388 U.S. 1, 18 L.Ed.2d 1010, 87 S.Ct. 1817); sex (Reed v. Reed, 404 U.S. 71, 30 L.Ed.2d 225, 92 S.Ct. 251); ethnic background (Katzenbach v. Morgan, 384 U.S. 641, 16 L.Ed. 2d 828, 86 S.Ct. 1717); residency (Shapiro v. Thompson, supra); alienage (Sugarman v. Dougall, 413 U.S. 634, 37 L.Ed.2d 853, 93 S.Ct. 2842; Graham v. Richardson, 403 U.S. 365, 29 L.Ed. 2d 534, 91 S.Ct. 1848); and infringements of fundamental rights, such as the right to travel freely (Dunn v. Blumstein, 405 U.S. 330, 31 L.Ed.2d 274, 92 S.Ct. 995; Aptheker v. Secretary of State, 378 U.S. 500, 12 L.Ed. 2d 992, 84 S.Ct. 1659) or to practice one's

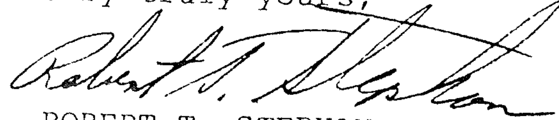
> religion (Sherbert v. Verner, 374 U.S. 398, 10 L.Ed.2d 965, 83 S.Ct. 1790)." See also Manhattan Buildings, Inc. v. Hurley, 231 Kan. 20, 30 (1982).

It is clear to us that Senate Bill No. 310 does not burden any recognized fundamental interests or produce a "suspect classification" by restricting access to records of certain speeding convictions. Under an equal protection analysis, the bill should be subject to the reasonable basis test discussed in the above quoted material. Legislative classifications which offend equal protecton under the test are those which are arbitary and which bear no reasonable relationship to the accomplishment of a legitimate state purpose. As recognized in Attorney General Opinion No. 83-117, the courts have acknowledged the legitimate power of the legislature to restrict access to official records and documents, including access to records of certain criminal convictions. See Stephens v. Van Arsdale, 227 Kan. 676 (1980). Senate Bill No. 310 restricts access official documents for the purpose of preventing insurance companies from using the documents in rate and coverage determinations. The bill does not create a class of individuals whom the state treats differently with regard to a speeding conviction. It does not discriminate with regard to the state imposed sanctions which are attendant to a speeding conviction. Senate Bill No. 310 creates a classification which affects only the records of speeding convictions. Thus the persons affected by the bill are those who may wish to have access to the records. The bill restricts access to all persons and thus does not discriminate in its effect upon those who would seek access to such records. As noted above, the legislature may restrict access to such records when it determines that such restrictions are prudent. For the purposes which the bill is obviously intended, it appears that the classification created by the legislation does not violate the equal protection guarantees of the United States and Kansas Constitutions.

In conclusion, we note that 1983 Senate Bill No. 310 (L. 1983, ch. 28) provides that speeding convictions for traveling not more than 10 miles per hour in excess of the 55 mile per hour speed limit established by K.S.A. 8-1336(a)(3) shall not be part of the public record and shall not be considered by any insurance company in establishing rates for an automobile liability insurance policy or cancelling such coverage. The classification of accessible records created by 1983 Senate Bill No. 310 bears a reasonable relationship to a legitimate legislative function and does not offend the

guarantees of equal protection found in the United States and Kansas constitutions.

Very truly yours,



ROBERT T. STEPHAN
Attorney General

Mary F. Carson
Assistant Attorney General

RTS:BJS:MFC:hle

Journal — 1-11-84

Law closing speeding records unwise but legal, Stephan says

Attorney general Robert Stephan held in an opinion made public Tuesday that the 1983 law closing records of speeding convictions in the 55-65 mph range is constitutional.

Stephan said he disagrees with the Legislature's decision to prohibit release of those speeding convictions in the range of 10 miles above the speed limit, but said "the Legislature did not violate the Constitution in enacting the bill."

The opinion, requested by state Sen. Roy M. Ehrlich, R-Hoisington, was dated Dec. 30, but was not released by the attorney general's office until Tuesday. There was no explanation for the delay.

Stephan said the law "appears to be designed solely to prevent insurance companies from using certain conviction records in rate and coverage determinations."

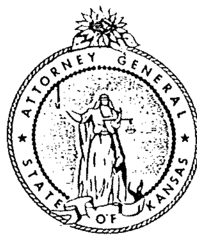
He added, "To accomplish that purpose, the bill restricts access to the official records of such convictions at the state and local level. It does not appear to us that, in accomplishing this purpose, the bill offends the equal protection guarantee of the 14th Amendment to the United States Constitution."

While upholding constitutionality of the year-old law, Stephan said he hopes the Legislature will change it this year to reopen the speed records affected.

"I believe many legislators believe as I do that this legislation was much broader than it needed to be," Stephan said in a statement accompanying release of his opinion.

Attachment 2

Insert



SB 563

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

FOR IMMEDIATE RELEASE
WEDNESDAY, AUGUST 3, 1983

CONTACT: Neil A. Woerman
Special Assistant

Attorney General Robert T. Stephan, in an opinion issued today, said a bill passed by the 1983 Legislature closes court records of speeding convictions in the 55 to 65 m.p.h. range.

Stephan issued his opinion to Rep. David Heinemann, R-Garden City.

In his opinion Stephan said, however, that the bill does not close records of convictions occurring before July 1, 1983, the effective date of the law. He said the bill does not require any changes in traditional open trial proceedings. And, Stephan said, the bill does not close records of citations, summons or warrants issued in regard to the violations nor does it close the financial records of money received for the payment of fines.

Stephan said the law requires the convictions to be deleted from otherwise open court records, and the duty to make such deletions is placed upon the custodian of those records.

"After researching this bill, its clear language, the procedures used in enacting it and constitutional questions, I believe there is little question that the Legislature has the power to close these records and has effectively done so by this act," Stephan said. "I disagree with what the Legislature has done.

Atch. 2

"This bill encourages disrespect for the law. Like it or not, the speed limit is 55 m.p.h. That is the law. This bill essentially says we are going to make it as painless as possible for people to violate this law.

"The closing of court records to protect those who violate the law is the antithesis of what courts and justice should represent.

"The bill also raises the question of whether non-speeders aren't subsidizing justifiably higher insurance rates of speeders.

"I hope the Legislature, in its next session, will reconsider this matter and reopen these records."

- 30 -

8/3/83/29

Attachment 3

STATE OF KANSAS

TOPEKA

SENATE CHAMBER

JACK STEINEGER
MINORITY LEADER
SENATOR, SIXTH DISTRICT
STATE CAPITOL BLDG.
TOPEKA, KANSAS 66612
(913) 296-3245

COMMITTEE ASSIGNMENTS

WAYS AND MEANS
JUDICIARY
LEGISLATIVE AND CONGRESSIONAL APPORTIONMENT
COORDINATING COUNCIL
INTERSTATE COOPERATION
LEGISLATIVE BUDGET
POST AUDIT

SENATE BILL 543
TRANSPORTATION & UTILITIES COMMITTEE
THURSDAY, FEB. 16, 1984

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I'M PLEASED TO BE WITH YOU AGAIN THIS MORNING TO PRESENT SENATE BILL 543---ANOTHER PART OF THE DEMOCRATIC CONSUMER FAIRNESS PACKAGE. IN A SENSE, THIS BILL PRESENTS THE SAME QUESTIONS THE LEGISLATURE NOW FACES ON THE WOLF CREEK PLANT: WHAT COSTS SHOULD RIGHTLY BE PAID BY RATEPAYERS? WHAT COSTS SHOULD RIGHTLY BE PAID BY STOCKHOLDERS?

SENATE BILL 543 ADDRESSES THESE QUESTIONS AS WELL AS THE PROBLEM MOST RATEPAYERS FACE IN PAYING THEIR UTILITY BILLS, WHETHER THEY ARE INDUSTRIAL, COMMERCIAL OR RESIDENTIAL CUSTOMERS.

— FIRST, THE BILL ANSWERS THE RATEPAYER-STOCKHOLDER QUESTION BY GIVING THE STATE CORPORATION COMMISSION CLEAR GUIDANCE ON WHICH COSTS SHOULD NOT BE PAID BY RATEPAYERS.

SECOND, IT PROTECTS RATEPAYERS---WHO HAVE SEEN THEIR RESOURCES HARSHLY SQUEEZED BY A DECADE OF RATE INCREASE PILED ON TOP OF RATE INCREASE---BY MAKING SURE THEIR BILLS AREN'T INFLATED WITH COSTS WHICH RIGHTLY BELONG TO STOCKHOLDERS.

Atch. 3

MOST OF THE PROVISIONS IN THIS BILL ARE SELF EXPLANATORY, BUT I WILL REVIEW THE MAIN PROVISIONS WITH YOU. THE FIRST PROVISION, WHICH CONCERNS ADVERTISING COSTS, RECOGNIZES THE FACT THAT MOST INSTITUTIONAL ADVERTISING IS DESIGNED TO BENEFIT STOCKHOLDERS BY MAKING THE UTILITY LOOK GOOD, HARDLY A RATEPAYER RESPONSIBILITY. AND WE'RE NOT TALKING ABOUT A SMALL AMOUNT OF MONEY.

IN 1981 AND 1982, FOR EXAMPLE, ONE UTILITY OPERATING IN KANSAS AND FOUR OTHER STATES SPENT NEARLY 100 MILLION DOLLARS ON ADVERTISING. WHILE SOME OF THIS ADVERTISING "MIGHT" HAVE SOMEHOW BENEFITED RATEPAYERS---AND I QUESTION THAT---THE MAIN BENEFICIARIES WERE STOCKHOLDERS.

I WOULD POINT OUT, ALSO, THAT OUR BILL MAKES AN EXCEPTION FOR ADVERTISING WHICH PROMOTES THE CONSERVATION OF NATURAL GAS AND ELECTRICITY. WE ALL KNOW THAT IF GROWTH IN PEAK DEMAND IS SLOWED, RATEPAYERS BENEFIT BECAUSE EXPENSIVE NEW POWER PLANTS OR EXPENSIVE NEW GAS SUPPLIES ARE EITHER DELAYED OR AVOIDED ALTOGETHER.

MUCH THE SAME PRINCIPLES THAT APPLY TO ADVERTISING APPLY EQUALLY WELL TO LOBBYING EXPENSES. WHILE RATEPAYERS "MIGHT" SOMEHOW BENEFIT FROM THE PRESENCE OF UTILITY LOBBYISTS IN THIS STATEHOUSE, IT'S PROBABLY ONLY BY ACCIDENT.

IN MY EXPERIENCE, I HAVE YET TO SEE UTILITY LOBBYISTS PUSHING LEGISLATION WHICH DIDN'T HAVE THE GOAL, FIRST AND FOREMOST, OF IMPROVING THE POSITION OF STOCKHOLDERS. C-WIP IS A CLASSIC EXAMPLE OF WHAT I'M TALKING ABOUT. IN THE C-WIP DEBATE, UTILITY LOBBYISTS PROMOTED CHANGING TRADITIONAL KANSAS POLICY TO SHIFT THE RISK OF BUILDING NEW PLANTS TO RATEPAYERS. THE LOBBYISTS WANTED TO TURN RATEPAYERS INTO CAPTIVE BANKERS FORCED TO FINANCE CONSTRUCTION PROJECTS PURELY UNDER THE CONTROL OF STOCKHOLDERS. AS IT ENDED UP, KANSAS HAS <u>BASICALLY</u> THE SAME C-WIP POLICY TODAY THAT ITS HAD FOR MANY YEARS. THE EFFORT TO CHANGE OUR POLICY FAILED, BUT NOT FOR LACK OF LOBBYING PAID FOR BY RATEPAYERS.

ANOTHER KEY PROVISION OF THIS BILL CONCERNS HOW MUCH RATEPAYERS SHOULD BE CHARGED FOR SALARIES AND OTHER COMPENSATION PAID UTILITY EXECUTIVES. IN THE RECORD 200-MILLION DOLLAR SOUTHWESTERN BELL RATE CASE, THERE WAS CONSIDERABLE TESTIMONY THAT BELL EXECUTIVES' SALARIES WERE OUT OF LINE WITH COMPARABLE SALARIES PAID IN OTHER COMPANIES.

THE TOP FIVE EXECUTIVES AT BELL, FOR EXAMPLE, DRAW SALARIES NEARLY THREE TIMES AS HIGH AS COMPARABLE EXECUTIVES AT KANSAS POWER AND LIGHT, KANSAS GAS AND ELECTRIC, AND THE GAS SERVICE COMPANY.

FROM ANOTHER POINT OF VIEW, THE $39,100 AVERAGE MANAGEMENT SALARY AT SOUTHWESTERN BELL EXCEEDS THE SAME AVERAGE SALARY AT SOUTHERN BELL BY $7,500; AT MOUNTAIN STATES BELL BY $3,900; AND AT NORTHWESTERN BELL BY $3,100.

IN ADDITION TO THE SALARY QUESTION, THE STATE CORPORATION COMMISSION ALSO FACES THE PROBLEM OF SO-CALLED "GOLDEN PARACHUTES." A GOLD PARACHUTE IS EXACTLY THAT. IT PROVIDES AN EXECUTIVE A "PARACHUTE" MADE OF "GOLD" FOR USE UNDER CERTAIN CIRCUMSTANCES, PRIMARILY WHEN A COMPANY IS TAKEN OVER. IN THE RECENT TAKEOVER OF NORTHWEST CENTRAL PIPELINE, FOR EXAMPLE, THE CHAIRMAN OF THE NORTHWEST CENTRAL BOARD OF DIRECTORS WAS GUARANTEED A LUMP SUM PAYMENT EQUALLING HIS $750,000 ANNUAL SALARY THROUGH AGE 65. WELL, THE CHAIRMAN WAS ONLY 56, SO HIS "GOLDEN PARACHUTE" WAS WORTH NEARLY SEVEN MILLION DOLLARS. IN TOTAL, IT APPEARS "GOLDEN PARACHUTES" AT NORTHWEST CENTRAL WILL BE WORTH SOMETHING AROUND TEN MILLION DOLLARS.

UNDER OUR BILL, ANY QUESTION ABOUT WHETHER SUCH EXPENSES SHOULD BE PASSED TO RATEPAYERS WOULD BE RESOLVED--IN FAVOR OF RATEPAYERS. WE WOULD DO THAT BY DRAWING A LINE, AND ANYTHING OVER THE LINE WOULD BE THE STOCKHOLDERS' RESPONSIBILITY. THE LINE WE PICKED WAS 150 PERCENT OF THE GOVERNOR'S SALARY--ABOUT $78,000 A

YEAR. YOU MIGHT WANT TO PICK A DIFFERENT LINE. IT'S THE PRINCIPLE THAT IS IMPORTANT.

FINALLY, THERE ARE SEVERAL MORE PROVISIONS IN THE BILL CONCERNING LEGAL COSTS, APPEAL COSTS, AND SO FORTH. WE SIMPLY DON'T BELIEVE RATEPAYERS SHOULD BE CHARGED FOR EXPENSES INCURRED BY UTILITIES IN RAISING RATES. NOR DO WE BELIEVE RATEPAYERS SHOULD BE RESPONSIBLE FOR EXECUTIVE PERQUISITES, SUCH AS LUXURY AUTOMOBILES AND SO FORTH.

IN SUMMARY, I STRONGLY RECOMMEND THIS BILL TO YOU. IT WOULD PROVIDE A GUARANTEE FOR KANSAS RATEPAYERS TO KNOW THAT THEY ARE BEING REQUIRED TO PAY ONLY THE ESSENTIAL, REASONABLE COSTS NEEDED FOR UTILITIES TO OPERATE. IF THE UTILITIES WANT TO SPEND MORE, THEY ARE CERTAINLY FREE TO DO SO. RESPONSIBILITY FOR SUCH SPENDING, HOWEVER, WOULD BE LEFT WITH STOCKHOLDERS, WHERE IT RIGHTLY BELONGS.

THANK YOU VERY MUCH.

cannot reproduce atchs. as shown in minutes 4-8

Senate Bill 543
February 16, 1984
Senate Transportation & Utilities Committee

Mr. Chairman, members of the committee. I am Louis Stroup, Jr., executive director of Kansas Municipal Utilities, Inc., a state-wide assocation of municipally-owned water, gas and electric cities.

Senate Bill 543 directly affects a number of municipally-owned electric and gas systems which have jurisdictional customers outside the 3-mile limit and the Kansas Municipal Energy Agency, a joint action group of cities created under statute law by the 1977 legislature.

We strongly oppose the bill as it relates to cities and municipal energy agencies since neither of these entities are equity holders. There are no stockholders in cities and municipal energy agencies -- just ratepayers who own the utilities themselves. Cities have no equity position and these same cities wholly own the Kansas Municipal Energy Agency which is just an extension of the cities and provides for joint action financing for interconnections and power supplies.

Senate Bill 543 lists a number of cost items which can not be considered as valid operating expenses for computing a rate of return.

First of all, municipals do not have "rates of return" and secondly, if a city incurred costs for preparing for a hearing before the Kansas Corporation Commission, those costs must be passed through to the customers -- there are no stockholders to charge them to.

In conclusion, we do oppose the measure as being unworkable for municipal electric and gas systems and municipal energy agencies and suggest amemdents to the measure exempting these two entities.

SENATE BILL No. 543

By Senators Steineger, Chaney, Daniels, Feleciano, Francisco, Gannon, Karr, McCray, Mulich, Norvell, Parrish and Warren

1-20

0017 AN ACT concerning public utilities; relating to the rates and
0018 charges thereof. ——— , and providing for certain exemptions from the Act

0019 *Be it enacted by the Legislature of the State of Kansas:*
0020 Section 1. (a) When used in this act:
0021 (1) "Utility" means any public utility defined by K.S.A. 66-
0022 104, and amendments thereto. ——— ;provided that every municipally owned or operated electric or gas utility, and every municipal energy agency shall be exempted from the provisions of this act.
0023 (2) "Commission" means the state corporation commission.
0024 (b) When determining the rates or charges which a utility
0025 may impose, the commission shall not allow the following ex-
0026 penses to be included therein: (1) The costs of any newspaper,
0027 magazine, outdoor sign, radio, television or other advertising,
0028 except advertising which promotes the conservation of natural
0029 gas or electricity; (2) the cost of any entertainment or lobbying
0030 provided by the utility including, but not limited to, dues to any
0031 private club, costs of meals or beverages for any individual other
0032 than an employee of the utility or costs of any gifts given to
0033 persons not employed by the utility; (3) that portion of any
0034 officer's or employee's annual salary, including benefits, per-
0035 formance bonuses and severance pay from the utility, which
0036 exceeds in the aggregate an amount equal to 150% of the statu-
0037 tory salary of the governor of this state; (4) the costs of preparing
0038 an application for a change in its rates or other charges including
0039 the costs of any hearing or rehearing thereon and any appeals
0040 taken from any decision or order of the commission; (5) the
0041 payment of assessments against the utility for the amount of
0042 expenses incurred by the commission in connection with inves-
0043 tigations, appraisals or hearings required of the commission by
0044 law; and (6) the payment of executive perquisites, including but
0045 not limited to, the use of luxury automobiles, travel for spouse
0046 and company borne share of the costs of stock options or other
0047 methods whereby company employees are provided preferential
0048 treatment in the purchase of stock or the sharing in profits.
0049 (c) None of the expenses designated in subsection (b) shall
0050 be considered valid operating expenses in computing a reason-
0051 able rate of return for the utility.
0052 Sec. 2. This act shall take effect and be in force from and
0053 after its publication in the Kansas register.

Testimony Before

SENATE TRANSPORTATION AND UTILITIES COMMITTEE

Senate Bill 543

By William E. Brown
Senior Vice President, Finance and Administration

THE KANSAS POWER AND LIGHT COMPANY

February 16, 1984

Mr. Chairman and Members of the Committee:

My name is William E. Brown. I am senior vice president, finance and administration for The Kansas Power and Light Company.

I am here today to speak for members of the Electric Companies Association of Kansas, for The Kansas Power and Light Company and for the Gas Service Company, who unanimously oppose SB 543.

This bill would deny to public utilities the right to recover costs related to basic expenses normally recovered through charges to customers by other types of business. I ask you to consider whether any of these prohibitions really are in the best interest of consumers.

The first item -- advertising -- has been held by the courts to be a valid business expense. We believe media advertising often is the most effective and least expensive way to convey messages of importance to our customers.

The Kansas Corporation Commission already has the authority to consider the prudence of advertising necessary to provide customer information, and to disallow any amount deemed not to be a legitimate operating expense to be paid by ratepayers. We believe that this regulatory discretion is proper and should not be prohibited by law.

Expenses for lobbying represent another area most businesses consider normal operating expenses. The greater part of our efforts in working with the Legislature is directed toward consumer interest. Testimony before this and other committees is presented to advise members of the Legislature of the effect of proposed legislation that could increase the cost of energy to consumers in Kansas. Even so, utilities generally do not claim lobbying expenses should be reimbursed by ratepayers. Again, the KCC has established policies for review -- and generally would disallow such expenses if claimed by a utility.

We believe it would not be in the public interest to restrict that portion of any utility officer's or employee's compensation which exceeds 150 percent of the statutory salary of the Governor, or to set any other limits by law. The Legislature has recognized the need for competitive salaries in the process of recruiting and employing competent people as educators and for management positions in State government, some of whose compensation may exceed the statutory salary of the Governor.

The public utilities of Kansas today are serving more customers with more energy than at any time in the past. We are providing this service with a high degree of reliability and with fewer employees per customer than in many previous years.

The high efficiency of our operations has been made possible because utilities have been able to recruit, employ and retain qualified people in management and supervisory levels. This is possible only when salaries are competitive and sufficient to allow us to hire and retain such qualified people. These results can be measured by rates Kansans pay for energy. Generally, our rates are below national average.

Both items (3) and (6), dealing with executive compensation and benefits

are subject to regulatory review, and already can be disallowed if determined to be excessive or unreasonable.

Finally, I hope this committee will not seriously consider items (4) and (5) which deal with the costs of regulation.

It is generally accepted that the objectives of regulation, as we know it, is to assure the public adequate and reliable service at reasonable cost.

Thus, the full cost of KCC operations related to utilities now is assessed against those regulated.

To the extent it is required, regulation should be in the public interest, and the cost should be borne by the public. If utilities are not to be allowed to include these costs in rates customers pay, then perhaps the costs should not be assessed to the utilities at all, but be paid directly from the State's general fund revenues derived from taxpayers.

In conclusion, we find nothing in this bill which serves the public interest. Passage will not result in savings to utility customers, but will compound problems of energy supply and communications between utilities and their customers. We respectfully request that SB 543 be reported adversely.

Attachments 4-8

STATEMENT ON SB 543

TO THE SENATE TRANSPORTATION AND UTILITIES COMMITTEE
FEBRUARY 16, 1984

LON STANTON
NORTHERN NATURAL GAS COMPANY

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, MY NAME IS LON STANTON. I AM REGIONAL GOVERNMENT AFFAIRS MANAGER FOR NORTHERN NATURAL GAS COMPANY, A DIVISION OF INTERNORTH, INC. I APPEAR HERE TODAY ON BEHALF OF ANOTHER INTERNORTH COMPANY, PEOPLES NATURAL GAS COMPANY, IN OPPOSITION TO SB 543.

I THINK THE PARTS OF THE BILL WE FIND MOST OBJECTIONABLE ARE ITEMS (4) AND (5) EXCLUDING HEARING COSTS AND ASSESSMENTS FOR INVESTIGATION EXPENSES. WE FEEL SINCE THESE ARE A COST OF BUSINESS PLACED ON US BY LAW, WE SHOULD BE ALLOWED TO RECOVER THEM.

BEYOND THAT, IT SEEMS TO US THE COMMISSION ALREADY HAS THE POWER TO DISALLOW ANY OPERATING EXPENSES IT FINDS ARE UNREASONABLE AND TO PUT IN STATUTE WHAT THE COMMISSION CAN OR CANNOT ALLOW WOULD TAKE AWAY SOME OF THE FLEXIBILITY THE COMMISSION MAY NEED IN DEALING WITH THE CHANGING NATURE OF THE UTILITY BUSINESS.

THANK YOU, MR. CHAIRMAN, I WILL BE HAPPY TO TRY TO ANSWER ANY QUESTIONS.

SENATE TRANSPORTATION AND UTILITIES COMMITTEE
HEARINGS ON SENATE BILL 543
TESTIMONY SUBMITTED BY HAROLD SHOAF
FOR KANSAS ELECTRIC COOPERATIVES, INC.
FEBRUARY 16, 1984

Mr. Chairman and members of the Committee, my name is Harold Shoaf and I serve as Legislative Coordinator for Kansas Electric Cooperatives, Inc. (KEC) which is the statewide association representing thirty-six electric cooperatives in Kansas serving electricity to more than 333,000 consumer-members.

The provisions of SB 543 are certainly not new to this Committee, having been previously discussed in 1978 and 1979 Committee hearings. Five years ago to the date we appeared before this Committee in opposition to a nearly identical bill. We are still opposed to the concept of this legislation and the specific provisions in the bill.

As consumer-owned and operated, non-profit membership corporations, we believe we are responsible for the management of our business affairs, including the expenses, for the benefit of our consumers. The utility operating expense items enumerated in this bill should be subject to the same regulatory jurisdiction and supervision as any other category of expense incurred by a public utility.

This bill is particularly inappropriate for electric cooperatives because it has an underlying premise that several categories and types of expenses should be borne by "stockholders" and not the "consumers". But the consumers of an electric cooperative are the owners and the stockholders. If certain expenses were declared invalid for rate-making purposes, the cooperative could only offset the expense with its "margins" or non-utility operating revenues, which in most cases is only the interest income on cash or certificates of deposit. This would be unacceptable because most cooperatives are allowed rates

which produce little more than the necessary margins to satisfy a minimum financial criteria established in the Rural Electrification Administration mortgage covenants. A reduction in margins could cause a cooperative to default on its debt obligations.

By statute, at an annual membership meeting, the consumer-members of an electric cooperative elect the board of trustees to manage the business affairs of the cooperative. This board has both a personal, consumer interest in the cooperative and a fiduciary responsibility to the other members. The board is responsible and accountable for all expenses of operating the cooperative including the advertising, public relations, entertainment, lobbying, transportation, salaries, and perquisites. Further, the State Corporation Commission must give final approval to the reasonableness of all these items before they are allowed for ratemaking consideration.

We note with interest that this bill would disallow the cooperative's costs which are incurred in preparing a rate application and the costs of any hearing, rehearing, or appeal. The bill would also preclude the cooperative from charging its consumers for the Commission's expense to investigate and conduct hearings affecting the cooperative. Yet, in Senate Bill 542, which will be heard tomorrow by this Committee, some of the same sponsors would change the law to require public utilities, including cooperatives, to pay the costs of intervenors who would like to participate in utility rate proceedings but cannot personally afford the expense.

Mr. Chairman and Committee members we oppose the concept and the content of this legislation which is particularly inappropriate for member-owned and operated, non-profit, electric cooperatives.

Thank you for the opportunity to appear before you today.

February 16, 1984

TO: Senate Committee on Transportation and Utilities

RE: Senate Bill 543

Under this bill, the state corporation commission would be prohibited from allowing the following expenses in rate cases:

(1) Costs of any newspaper, magazine, outdoor sign, radio, television or other advertising;

(2) The cost of any entertainment or lobbying provided by the utility, including dues to private clubs, costs of meals or beverages for any person not a utility employee or gifts to persons not employed by the utility;

(3) Any officer or employee's salary in excess of 150% of the statutory salary of the Governor;

(4) The costs of preparing, hearing and appealing any rate case;

(5) Assessments made against the utility for expenses incurred by the commission in connection with investigations, appraisals or hearings as required by law; and

(6) Payment of executive perquisites, including luxury automobiles, spouse travel, stock options or other items wherein company employees are provided preferential treatment in stock or profit-sharing plans.

On behalf of the independent telephone companies which I represented before this committee yesterday with respect to Senate Bill 544, I submit the following comments in opposition to this bill:

The commission, under the statutory authority conferred by KSA 66-110, et seq., has ample authority to inquire into the reasonableness of any of the foregoing items and to disallow all or part of such expenditures which appear to be unreasonable. The mandatory disallowance of these items as the cost of doing business makes a mockery of the commission's authority to regulate and places the Legislature in the position of making management decisions.

Some advertising is not promotional but constitutes information of value to telephone customers, such as informing them with respect to the services being offered or discontinued, changes in billing procedures, office locations, available personnel, etc.. Outdoor signs, which identify the company involved, may very well be for safety purposes or the benefit of the public at large, examples being "Don't Dig" or "Public Telephone."

This bill would bar a manager from taking an irate customer to lunch at company expense, hosting a local chamber of commerce coffee or serving refreshments to consumers' groups, stockholders or senior citizens. There have been occasions when telephone lobbyists have worked with the KCC and various civic groups in support of legislation, such as 911, obscene telephone calls and emergency calls on party lines.

While the salary limitation affects few, if any, positions among the companies with which I am associated, it should be noted that chief executives of large telephone companies do not receive salaries which are commensurate with similar officials in nonregulated fields.

The law requires that we seek rate relief before the commission, and this bill would prohibit the payment of the expenses incurred thereby as a part of our costs of doing business. In a family-owned business, unless such items are recoverable, eventually our capital would be depleted.

KCC assessments constitute a substantial charge against telephone companies, and it is as illogical to disallow those assessments as legitimate business expenses as it is to disallow the payment of our property taxes.

In general, we support and endorse the positions taken by the other telephone companies which are appearing in opposition to this bill.

Respectfully submitted,

John G. Foster, President
Twin Valley Telephone, Inc.
Miltonvale, Kansas 67466