

Approved Ivan Sand 1/23/85
Date

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by REPRESENTATIVE IVAN SAND at
Chairperson

1:30 ~~xxx~~ a.m./p.m. on JANUARY 17, 1985 in room 521-S of the Capitol.

All members were present except: Representative Arthur Douville, Excused
Representative Kenneth Francisco, Excused

Committee staff present: Mike Heim, Legislative Research Department
Mary Hack, Revisor of Statutes Office
Gloria M. Leonhard, Committee Secretary

Conferees appearing before the committee: NONE

Chairman Ivan Sand called the meeting to order, welcomed the Committee, and made the following introductions:

- Senator Don Montgomery, Senate Local Government Committee Chairman
- Mr. Fred Allen, representing Kansas Association of Counties, who in turn introduced new staff member, Mrs. Beverly Bradley.
- Mr. Chris McKenzie, League of Kansas Municipalities, who in turn introduced Ms. Judith Anderson, representing the City of Wichita; Mr. Scott Lambers, Overland Park; Mr. Hannes Zacharias, Lawrence; Ms. Gerry Ray, representing Johnson County; and Mr. Kim Dewey, Sedgwick County.

The Chairman gave the following information to the Committee:

- that a permanent seating arrangement for committee members will be appreciated, so that committee books and materials may be distributed prior to meetings.
- that cooperation is requested among committee members regarding smoking at committee meetings.
- that the Kansas Association of Counties and the League of Kansas Municipalities will host a dinner for the committee; as soon as a date conflict is resolved, the place and time shall be announced.
- that the Committee should be aware of 1985 deadlines for introduction and consideration of bills.
- that the Committee will consider HB 2029 and HB 2016 on January 23 and 24, 1985.

Mr. Mike Heim, Staff, presented a review of material studied by the Local Government interim committee during the 1984 summer, related to antitrust liability of municipalities and the proposal of extending antitrust immunity to local governments. Mr. Heim referred to Report on Kansas Legislative Interim Studies to the 1985 Legislature, December, 1984, Pages 525 - 533. Mr. Heim also distributed handouts regarding the subject, as follow: "Statement By The President," October 24, 1984, and "FTC Suits Spur Congress to Protect Cities from Paying Antitrust Damages," National Journal, 8/18/84. (ATTACH. I)

Chairman Sand ruled that a simple majority shall remove issues from the table for committee meeting purposes and requested bi-partisan cooperation on legislation to be considered by the committee this session.

Meeting adjourned.

FTC Suits Spur Congress to Protect Cities from Paying Antitrust Damages

ATTACH. I
1-17-85

Congress won't grant cities antitrust immunity, but after the FTC said two cities' taxi regulations violated antitrust laws, it looks like some relief is on the way.

BY ANN COOPER

On top of their usual worries about potholes, sewers and crime, city officials in Philadelphia now face the case of the Harrowgate String Band, which typifies an increasingly popular legal tactic for fighting City Hall.

The band members, regulars in Philadelphia's gaudy Mummers Parade, think city officials have deliberately overlooked their talents when choosing entertainment for other municipal events. Philadelphia officials regard the complaint as little more than a nuisance—but a potentially costly one. This summer, the band filed an antitrust suit, charging that the city and two private groups of Mummers musicians conspired to keep the band from getting hired to play at city affairs. If the band prevails, Philadelphia taxpayers could end up paying the musicians \$150,000 in damages, plus their attorneys' fees.

The Harrowgate strummers' suit is one of 200-300 private antitrust actions filed against cities and counties since a 1982 Supreme Court decision expanded an earlier ruling that local governments—unlike their state and federal counterparts—are not automatically immune from federal antitrust laws. The decision sent local officials scurrying to Congress in search of a legislative umbrella to protect them from an expected shower of suits.

Two-and-a-half years later, it looks as if relief is on the way. The House and the Senate Judiciary Committee have approved bills that would let private parties sue to overturn a local government decision limiting competition, but bar them from collecting any money damages from the government, its officials or private parties acting under the government's direction. A court could decide to apply the ban on damages retroactively. Some ver-

sion of these proposals is expected to win final approval before Congress adjourns this year, despite objections from cable television companies and other businesses.

Municipal governments would have preferred a broad immunity from antitrust charges, similar to that enjoyed by states. Nearly every routine government decision, from property zoning to awarding a cable television franchise, limits someone's commercial opportunities and thus faces a potential challenge as anti-competitive, say municipal officials.

"Every type of city activity you could imagine has been the subject of [an antitrust] suit," said National League of Cities lobbyist Cynthia Pols.

Though disappointed that Congress will not consider an antitrust exemption this year, the league and other local government groups say the House and Senate bills would relieve their major worry—the threat of paying damages, which in private antitrust suits are automatically triple the amount awarded by a jury. A January judgment in favor of an Illinois developer called for \$28.5 million in damages, to be paid by the village of Grayslake, three village officials and surrounding Lake County. The decision is being challenged by the defendants, who were accused of violating the Sherman Act after the developer was denied a sewer connection for a proposed housing and commercial complex.

SURPRISE BENEFACTOR

Ironically, it wasn't the financial threat, or even the volume of pending private-sector suits, that finally ignited congressional action. Instead, municipal officials can thank a highly unlikely benefactor—the Federal Trade Commission (FTC), which, on May 10, brought the federal government's first antitrust charges against local governments.

The agency charged that New Orleans and Minneapolis violated antitrust provisions of the Federal Trade Commission Act by agreeing with local taxi companies to fix fares and bar new entrants. Billed as important steps in a nationwide campaign to end economic regulation of taxi service, the FTC suits attracted widespread attention and won editorial support from *The Wall Street Journal* and *The New York Times*. (See box, pp. 1570-71.)

But on Capitol Hill, where both House Members and Senators are acutely sensitive to complaints from home-state politicians, city officials found greater sympathy.

Although the FTC suits do not call for financial penalties, local officials all over the country see them as a potentially disruptive new form of federal meddling. The FTC, often the butt of antiregulatory criticism, has been under fire in recent months for its new theories of antitrust enforcement. Critics have denounced both the agency's approval of large corporate mergers and its antitrust investigations of novel targets such as public defenders and labor unions. When it added cities to the target list, the commission provoked a congressional backlash that the more onerous, but less publicized, private antitrust actions had not.

Three weeks after the Minneapolis and New Orleans suits were filed, the House voted overwhelmingly to short-circuit them by forbidding use of the agency's fiscal 1985 appropriations for municipal antitrust cases. The appropriations action, which does not affect private suits, prodded the House and Senate Judiciary Committees to speed ahead on long-delayed proposals to give local governments relief from private actions.

Before adjourning for the Republican National Convention, the House gave resounding approval to a bill to remove

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

October 24, 1984

STATEMENT BY THE PRESIDENT

Today I am signing into law H.R. 6027, the "Local Government Antitrust Act of 1984," which clarifies the application of the Federal antitrust laws to the official conduct of local governments. This bill provides much needed and timely relief for our cities, towns, school districts, sanitary districts, and other similar local governmental bodies from the threat of massive treble damages in the antitrust cases that are being brought with increasing frequency against them. While the antitrust laws serve very important purposes, they were never intended to threaten public treasuries and the taxpayers' pocketbooks, or to disrupt the good faith functioning of local units of governments. The Administration has been a strong supporter of this legislation, and I commend the efforts of the local officials and those in the Senate and House of Representatives who worked so hard for its enactment during the 98th Congress.

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