

Approved Ivan Sand 2/7/85
Date

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT

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

1:30 ~~xx~~ p.m. on JANUARY 31, 1985 in room 521-S of the Capitol.

All members were present except: Representative Arthur Douville (Excused)

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

Conferees appearing before the committee: None

Chairman, Ivan Sand, called for discussion and possible action on the following bills:

HB 2029, concerning improvement districts; relating to the powers thereof; amending K.S.A. 1984 Supp. 19-2765 and repealing the existing section. - By Rep. Sprague

Representative LeRoy F. Fry made a motion that HB 2029 be passed. Representative Clinton C. Acheson seconded the motion. Motion carried.

HB 2016, concerning municipalities; relating to antitrust liability; providing immunity therefrom. - By Special Committee on Local Government

Mary Hack, Staff, provided copies of balloon bill to Committee members and reviewed the conceptual amendments contained therein. (See Attachment I.)

Discussion followed. It was questioned whether or not attorneys' fees should be covered if a municipality is proved wrong. The general concensus was that if the municipality is proved wrong, then attorneys' fees should be covered.

Representative Kenneth D. Francisco made a motion to include attorneys' fees. Representative Mary Jane Johnson seconded the motion. The motion carried.

Representative George R. Dean made a motion that HB 2016 be passed as amended. Representative Robert D. Miller seconded the motion. The motion carried.

The meeting was adjourned.

HOUSE BILL No. 2016

By Special Committee on Local Government

Re Proposal No. 36

12-19

0018 AN ACT concerning municipalities; relating to antitrust liability;
0019 providing immunity therefrom.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. (a) When used in this act "municipality" means
0022 any city, county, township or other political or taxing subdivision
0023 of the state.

0024 (b) The legislature of the state of Kansas recognizes the
0025 importance and the necessity of providing and regulating certain _____ and activities
0026 services by municipalities in order to serve and protect the
0027 public's general health, safety and welfare. Municipalities which
0028 are authorized specifically by statute or through the exercise of
0029 the municipalities' home rule power are urged to continue to _____ and activities
0030 provide and regulate such services; and in doing so, all immunity

0031 of the state of Kansas from the provisions of the federal antitrust
0032 laws shall be extended to the governing bodies of such municipi- Except as provided in section 2,
0033 palities and the officers and employees thereof. Such municipi-
0034 palities and the officers and employees thereof also shall be
0035 exempt from civil liability under the antitrust laws of the state of
0036 Kansas in article 1 of chapter 50 of the Kansas Statutes Anno-
0037 tated.

0038 (c) Municipalities shall be immune and exempt from anti-
0039 trust liability as provided by subsection (b) when: one of more

0040 (1) Franchising and supervising the operations and activities the
0041 of public utilities;

0042 (2) operating municipal water, gas and electric utilities; one or more

0043 (3) franchising and supervising operations and activities of
0044 cable television businesses;

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Attachment 1

0015 (4) providing and supervising ambulance and emergency one or more

0016 medical services;

0017 (5) formulating comprehensive plans for the development of and implementing by contract or otherwise

0018 municipalities and regulating land use through the adoption and

0019 administration of zoning and subdivision regulations;

0050 (6) operating sanitary sewerage and storm drainage systems;

0051 [or]

0052 (7) operating municipal airports and enforcing airport zoning

0053 regulations; (8) operating and supervising the operation of solid waste systems

0054 (d) The antitrust immunity and exemption provided by sub-

0055 section (b) shall be in addition to any municipal exemption or

0056 immunity from antitrust liability which might otherwise exist

0057 and shall neither increase nor decrease the authority of municipi-

0058 palities specifically granted by statute or through the exercise of

0059 the municipalities' home rule power to provide or regulate the

0060 services listed in subsection (c). Paragraph (5) of subsection (c)

0061 shall not authorize municipalities to regulate the occupancy or

0062 location of dwelling units in such a way as to affect an arbitrary

0063 exclusion of manufactured housing.

0064 (e) [The provisions of this act shall apply retroactively.]

0065 Sec. [2.] [3] This act shall take effect and be in force from and

0066 after its publication in the Kansas register.

; or

It shall not be presumed that by listing the municipal services and activities in subsection (c) that the legislature intended to repeal any antitrust immunity or exemption otherwise available for any municipal service or regulatory activity.

(e) The provisions of this act shall not apply to cases commenced before the effective date of this act unless the defendant establishes and the court determines, in light of all the circumstances, including the stage of litigation, that it would be inequitable not to apply this act to a pending case. In consideration of this section, existence of a jury verdict, district court judgment, or any stage of litigation subsequent thereto, shall be deemed to be prima facie evidence that this act shall not apply.

Sec.2.(a) Nothing contained in this act shall preclude the attorney general from bringing an action against a municipality for a violation of the antitrust laws or any other laws of the state.

(b) Nothing contained in this act shall preclude any person, firm, company or corporation from bringing an action against a municipality for a violation of the antitrust laws of this state. In any suit seeking such injunctive relief, the court may require the party seeking the injunction to give an undertaking with one or more sufficient sureties in an amount fixed by the judge and approved by the clerk of the court, securing to the municipality the damages such municipality may sustain including attorney fees if it be finally determined that the injunction should not be granted.

injunctive relief for

50-108. Recovery of damages and attorney fee by person injured. Any person, firm, company or corporation that may be damaged by any such agreement, trusts or combinations described in K.S.A. 50-101 and 50-102, may sue for and recover in any court of competent jurisdiction in this state, of any person, company or corporation operating such trust or combination, such damages as they have sustained, together with a reasonable attorney fee.

History: L. 1897, ch. 265, § 8; March 12; R.S. 1923, 50-108.

Except as provided in section 1,

50-115. Recovery of damages by person injured by combination. Any person or corporation injured or damaged by any such arrangement, contract, agreement, trust or combination, described in K.S.A. 50-112 and 50-113, may sue for and recover in any court of competent jurisdiction in this state, of any person or corporation, the full consideration or sum paid by such person for any goods, wares, merchandise and articles included in or advanced or controlled in price by said combination, or the full amount of money so borrowed.

History: L. 1889, ch. 257, § 4; March 9; R.S. 1923, 50-115.

Except as provided in section 1,

50-301. Treble damages for restraints of trade; injunctions; attorneys' fees and costs. (a) As used in this act, the term "person" means any individual, corporation, partnership, firm, company or other association of persons, and such term shall include the state of Kansas and any of its political subdivisions.

(b) Any person who may be damaged or injured by any agreement, monopoly, trust, conspiracy or combination which is declared unlawful by any of the acts contained in chapter 50 of the Kansas Statutes Annotated, relating to unlawful acts, agreements, monopolies, trusts, conspiracies or combinations in restraint of trade, shall have a cause of action against any person causing such damage or injury. The plaintiff in any action commenced hereunder in the district court of the county wherein such plaintiff resides, or the district court of the county where the defendant has his or her principal place of business, may sue for and recover treble the damages he or she has sustained. In addition, any person who is threatened with injury or additional injury by reason of any person's violation of said acts may commence an action in such district court to enjoin any such violation, and any damages suffered may be sued for and recovered in the same action in addition to injunctive relief.

(c) In any action commenced under this section, the plaintiff may be allowed reasonable attorneys' fees and costs. The remedies provided herein shall be alternative and in addition to any other remedies now provided by law.

History: L. 1973, ch. 216, § 1; July 1.

Except as provided in section 1,

Any suit for injunctive relief against a municipality shall be subject to the provisions of subsection (b) of section 2.

Attorney's fees shall not be recoverable against a municipality in a suit brought for injunctive relief.