Approved Ivan Sand 3/19/85
Date

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by REPRESENTATIVE IVAN SAND, Chairperson, at 1:30 ~~a.m.~~/p.m. on MARCH 7, 1985 in room 521-S of the Capitol.

All members were present except: Rep. L. V. Roper, 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:

Mr. Bill Burns, Chm. of the Board, Wyandotte County -- HB 2506
Mr. Fred Allen, Kansas Assn. of Counties -- HB 2506 & 2478
Ms. Gayle Landall, Marshall County Clerk -- HB 2506
Mr. John Magnusun, Commissioner, McPherson County -- HB 2506
Ms. Winifred Kingman, Chm. of the Board, Shawnee County -- HB 2506
Ms. Gerry Ray, Johnson County Commission -- HB 2506
Mr. Kim Dewey, Sedgwick County Commission -- HB 2506
Mr. John Koepke, KASB -- HB 2506 & HB 2478
Mr. Jim Kaup, League of Kansas Municipalities -- HB 2506
Mr. John Moir, Budget Director, Kansas City, KS -- HB 2506 & 2425
Mr. Ernest Mosher, League of Kansas Municipalities -- HB 2506, 2425 & 2478
Mr. Dennis Shockley, City of Kansas City, KS -- HB 2425
Mr. Sam Haldiman, President, Kansas Consulting Engineers Assn. -- HB 2478
Mr. Bill Henry, Exec. Vice President, KS. Engineering Society -- HB 2478
Ms. Nan Datson, Kansas Assn. of Architects -- HB 2478

Chairman Ivan Sand called for hearings on the following bills:

HB 2506, concerning real and personal property taxes; relating to interest paid thereon.

An overview was provided by Staff. (See Attachment I.)

Mr. Bill Burns, Chairman of the Board of County Commissioners, Wyandotte County, appeared and testified in support of HB 2506. (See Attachment II.)

Mr. Fred Allen, representing Kansas Association of Counties, appeared to testify in support of HB 2506. Mr. Allen said the bill would clarify an order he believes was legislative intent.

Ms. Gayle Landall, Marshall County Clerk, urged the Committee to support HB 2506.

Mr. John Magnusun, Commissioner, McPherson County, urged the Committee to support HB 2506.

Ms. Winifred Kingman, Chairman of the Board of County Commissioners, urged the Committee to support HB 2506.

Ms. Gerry Ray, representing the Johnson County Commission, urged the Committee to support HB 2506.

Mr. Kim Dewey, representing the Sedgwick County Commission, urged the Committee to support HB 2506.

Mr. John Koepke, Kansas Association of School Boards, appeared to testify in opposition to HB 2506. (See Attachment III.)

Mr. Jim Kaup, representing the League of Kansas Municipalities appeared to testify in opposition to HB 2506 and stated he agrees with Mr. Koepke's statement. (See Attachment IV.) Mr. Kaup said the League believes the railroad monies are unique monies, not tax monies; that the Supreme Court

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.

is the appropriate party to be hearing this case.

Mr. John Moir, Budget Director, Kansas City, Kansas, said he concurs with the League in opposition to HB 2506.

The hearing on HB 2506 was closed.

HB 2508, relating to recreation systems in cities and school districts; concerning tax levies therefor.

Chairman Sand informed the Committee that Rep. Jerry Friedeman, who had requested the bill does not wish to proceed with the bill at this time.

No conferees were present in connection with HB 2508.

HB 2425, relating to cities; authorizing the issuance of revenue anticipation notes.

Mr. Mike Heim, Staff, gave an overview of HB 2425. (See Attachment V.) Mr. Heim said this applies to all cities and would not be subject to home rule.

Mr. Dennis Shockley, representing the City of Kansas City, explained that the city had requested HB 2425. Mr. Shockley introduced Mr. John Moir, City Budget Director, who testified in support of the bill. (See Attachment VI.)

Mr. Heim, Staff, asked if the possibility of cities acting under home rule regarding this matter had been explored.

Mr. Ernest Mosher, League of Kansas Municipalities, said he believes if it could be done as a matter of state policy, the League would support this kind of concept.

Mr. Dennis Shockley added that he believes revenue anticipation notes are a cash management tool and urged the Committee to support HB 2425.

The hearing on HB 2425 was closed.

HB 2478, enacting the design professional services procurement act.

Mr. Mike Heim, Staff, gave an overview of the bill.

Mr. John Koepke, representing Kansas Association of School Boards, testified he believes this is a decision which should be left up to local units; that there is a problem with Section 4 as to phraseology; that KASB would urge the Committee not to pass HB 2478.

Mr. Fred Allen, representing the Kansas Association of Counties, testified he believes local level units should be able to negotiate as they see fit.

Mr. Ernest Mosher, representing the League of Kansas Municipalities, testified that the League does not have a formal position regarding HB 2478; however, he would support leaving these matters to local decision making.

Mr. Sam Haldiman, President, Kansas Consulting Engineers Association, appeared to testify in support of HB 2478. (See Attachment VII)

Mr. Bill Henry, Exec. Vice Pres., Kansas Engineering Society, appeared in support of HB 2478. (See Attachment VIII)

Ms. Nan Datson, The Kansas Society of Architects, furnished the Committee with a written statement urging support of HB 2478. (See Attachment IX)

The hearing on HB 2478 was closed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT,

room 521-S, Statehouse, at 1:30 xxx./p.m. on MARCH 7, 1985

Chairman Sand directed the Committee's attention to HB 2275, concerning zoning; relating to group homes, which had been removed from the table on March 6, 1985, for action.

Rep. Robert D. Miller made a motion that HB 2275 be passed as amended. Rep. Elizabeth Baker seconded the motion. The motion carried, with Rep. Samuel Sifers and Rep. Clyde Graeber being recorded as voting "no."

Ms. Janet Stubbs extended an invitation to the Committee to attend a dinner hosted by The Home Builders Association of Kansas on March 17, 1985. Details to follow.

The meeting was adjourned.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

DATE 3-7-85

NAME	ADDRESS	REPRESENTING
JOHN KOEPKE	Topeka	KASB
DENNIS SHOCKLEY	K.C.	CITY OF KCK
Bill Burns	Wyandotte Co.	Wy. Co.
Fred Allen	Topeka	K.A.C.
JOHN MAGNUSON	LINDSBORG	McPHERSON COUNTY
Gayle Landoll	Marysville	Ks. Assoc. Counties
Winifred Kingman	Topeka	Shawnee County
Gerry Ray	Olathe	Bd of Co Comm, Jo.
Sam Haldiman	Kansas city	Ks. Consulting Engineers
Jean Barbee	Topeka	KS. CONSULTING ENGINEERS
[illegible] Davidson	Topeka	Kansas Society of Architects
Jacque Oakes	Topeka	KASB
[illegible]	Topeka	Sheltered Living, Inc. KARF
Ron [illegible]	Topeka	[illegible]

MEMORANDUM

(ATTACHMENT I)
3-7-85

March 5, 1985

TO: House Local Government Chairman

FROM: Kansas Legislative Research Department

RE: H.B. 2506

H.B. 2506 provides that from and after October 3, 1984, all moneys received in lieu of interest pursuant to judgements or settlements involving property tax disputes shall be credited to the county general fund. The bill is effective upon publication in the Kansas Register.

MH/pk

Attachment 1

(ATTACHMENT II)
3-7-85

To: LOCAL GOVERNMENT COMMITTEE

FROM: WILLIAM BURNS, JR. - WYANDOTTE COUNTY COMMISSIONER

RE: HOUSE BILL 2506

GOOD AFTERNOON. I'M COMMISSIONER BILL BURNS, CHAIRMAN OF THE BOARD IN WYANDOTTE COUNTY.

I AM HERE IN SUPPORT OF HOUSE BILL 2506 ON BEHALF OF WYANDOTTE COUNTY. I APPRECIATE THE OPPORTUNITY TO PRESENT TO YOU OUR VIEWS ON THIS BILL.

K.S.A. 79-2004 STATES "...ALL INTEREST HEREIN PROVIDED SHALL BE CREDITED TO THE COUNTY GENERAL FUND...". THE INTEREST REFERRED TO IN THIS STATUTE IS ASSESSED ON DELINQUENT REAL ESTATE TAXES. IN KEEPING WITH THIS STATUTE AND ITS INTENT, WE HAVE ALWAYS CREDITED ANY AND ALL INTEREST TO COUNTY GENERAL FUND.

WE HAVE FOLLOWED THE DIRECTION OF THE LEGISLATORS, WHO IN THEIR WISDOM PROVIDED THAT THE COUNTY GENERAL FUND SHALL RETAIN ALL ACCUMULATED INTEREST TO OFFSET THE EXPENDITURES INCURRED IN THE PREPARATION OF COLLECTION, THE COLLECTION AND DISTRIBUTION OF TAX DOLLARS. THIS COLLECTION AND DISTRIBUTION PROCESS IS THE BASIS FOR THE OPERATION OF THE MAJORITY OF COUNTY OFFICES INCLUDING BUT NOT LIMITED TO THE TREASURER, APPRAISER, CLERK, DATA PROCESSING, AUDITOR, SURVEYOR AND BASE MAPPING OFFICES. THE FINANCING OF THESE OFFICES IS A MAJOR PORTION OF THE ANNUAL COUNTY BUDGET. THE COLLECTION OF THE MANY DIFFERENT TAXES FOR NUMEROUS TAXING ENTITIES CREATES ADDITIONAL COST WHICH THE COUNTY MUST BEAR.

Attachment 2

IN RECENT YEARS MANY CONCESSIONS HAVE BEEN MADE IN FAVOR OF TAXING ENTITIES, SUCH THAT THEY NOW RECEIVE THEIR MONIES 50% FASTER. AS A RESULT, THE INTEREST PREVIOUSLY EARNED ON THE INVESTMENT OF IDLE FUNDS BY THE COUNTY HAS ALREADY BEEN REDUCED.

IN CONCLUSION, THE LOSS OF INTEREST TO COUNTY GENERAL WOULD RESULT IN A SUBSTANTIAL INCREASE IN THE COUNTY'S TOTAL OPERATING LEVY. WE FEEL ALL TAXPAYERS BENEFIT BEST UNDER THE CURRENT POLICY WHICH WOULD BE CHANGED IF THIS BILL IS NOT PASSED.

WE STRONGLY APPEAL TO YOU, THE LEGISLATORS, WHOM WE FEEL SHOULD RIGHTFULLY DECIDE THIS ISSUE, ON BEHALF OF ALL TAXPAYERS TO FAVORABLY PASS HOUSE BILL 2506.

JOHN KOEPKE
(ATTACHMENT III-A
3-7-85

No. 84-57633-S

IN THE SUPREME COURT OF THE
STATE OF KANSAS

UNIFIED SCHOOL DISTRICT 490, BUTLER COUNTY, KANSAS,
PLAINTIFF,

vs.

BOARD OF COUNTY COMMISSIONERS OF BUTLER COUNTY, KANSAS,
J.W. SIMMONS, ELDON PHILLIPS, AND TOM LINOT, AS MEMBERS
OF SAID COMMISSION, AND THEIR RESPECTIVE SUCCESSORS IN
OFFICE; AND BETTY ORR, AS COUNTY TREASURER OF BUTLER
COUNTY, KANSAS, RESPONDENTS.

BRIEF OF AMICUS CURIAE,
KANSAS ASSOCIATION OF SCHOOL BOARDS

PATRICIA E. BAKER, SENIOR LEGAL COUNSEL
AMICUS CURIAE, KANSAS ASSOCIATION OF SCHOOL BOARDS
5401 S.W. 7th Avenue
Topeka, Kansas 66606
(913) 273-3600

Attachment 3-A

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NATURE OF THE CASE

This property tax case concerns the entitlement, as a matter of law, of taxing subdivisions of the State of Kansas (i.e.: counties, school districts, municipalities) to a proportionate share of the interest of the proceeds of the settlement of certain railroad property tax litigation.

ISSUE

Whether there is authority for Kansas unified school districts to receive their proportionate share of the monies from the settlement of the railroad tax litigation.

FACTS

The facts of this case are simple and straightforward. Commencing on June 30, 1980 certain railroads began filing lawsuits in the Federal Courts in Topeka and Wichita, Kansas alleging that the State of Kansas had illegally assessed and collected state property taxes on railroad property contained within the borders of the sovereign state of Kansas. On October 4, 1984 the Honorable Richard D. Rogers, United States District Court Judge for the District of Kansas, issued orders terminating the litigation. Negotiated settlements of the dollar amounts in question were reached by the parties and it was determined by Judge Rogers that the plaintiff railroads would provide to the defendant State of Kansas, and all intervening defendants "...a schedule which reflects the terms of the parties' settlement, including _inter alia_, the tax billed, the amount of tax previously paid, the amount of additional tax due under the settlement and

the amount of interest due."[1] By the time this mandamus action was filed by plaintiff Unified School District 490, all of the amounts due to be paid by all railroad plaintiffs to all county intervenors had been released to the counties affected. "Payment of the amount finally determined to be due by any plaintiff to any county...constitute(d) a full, final and complete payment of all ad valorem taxes in dispute, interest thereon, and any penalties due in regard thereto in the State of Kansas for the aforesaid tax year from that plaintiff to that county."[2]

On December 13, 1984 Mr. Andy Thompkins, Superintendent of Schools of USD 490, was notified that the County Commissioners of Butler County, Kansas refused to surrender a portion of the amount of these same settlement funds due and owing to USD 490 and to disburse same to the school district.[3]

Other Kansas unified school districts are similarly situated. The total dollar amounts are staggering. "(A) total of Twenty Three Million Four Hunderd Sixty Three Thousand Five Hundred Ninety Five Dollars and Thirty Three Cents ($23,465,595.33) of which Nineteen Million Four Hundred Twenty Seven Thousand Five Hundred Sixty One Dollars and Ten Cents ($19,427,561.10)...(is) principal and Four Million Thirty Six Thousand Thirty Four Dollars and Forty Three Cents

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1. "Settlement Order and Permanent Injunction," ATSF v. Duncan, Civ. No. 80-4172 et al. (D. Kan. October 4, 1984) p.3.

2. Id., p. 4.

3. Appendix A (Butler County Response Rejecting USD 490's Request For Its Proportionate Share Of The Settlement).

($4,036,034.43)...(is) interest thereon."[4] In the case of USD 490, the amounts in dispute have been termed "Interest Proceeds"[5] by the County Commissioners of Butler County. Some school districts have been denied their proportionate share of both the principal and interest of the settlement monies[6] while others have been denied only the interest portion of the settlement funds as in the case of USD 490.[7] Amicus' research indicates that principal and interest amounts still due and owing to various Kansas unified school districts range from $475.00 to $475,000.00.[8] Interest amounts still due and owing to school districts range from $60.00 to $103,000.00.[9]

Some unified school districts are not able to determine if the monies due are principle,[10] or interest,[11] or both.[12] In other situations, school districts have been unable to compel county officials to reveal any of the dollar amounts in dispute.[13]

ARGUMENTS AND AUTHORITIES

ISSUE 1: Whether There Is Authority For Kansas Unified School Districts To Receive The Monies In Question From Kansas Counties.

The Kansas State Constitution provides for the supervision, maintenance and operation of local public schools, for the state legislature to make suitable provisions for financing said

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4. Respondent's Brief in Opposition to Petition for Order in Mandamus, page 3, paragraph 1.

5. Appendix A.

6-13 Amicus Exhibit B (Distribution of Tax and Interest Money From Settlement of Railroad Tax Cases Due Unified School Districts).

schools and for the legislature, in general, to provide for rates of assessment and taxation. Kansas Constitution Article VI §§ 5, 6; Article XI § 1. (Appendix C).

Kansas school districts are empowered by the Constitution via the legislature to levy taxes. K.S.A. 72-8204a, and 72-7056. See also K.S.A. 72-1623 and 72-1623a. Under K.S.A. 72-8204a, Kansas school districts are considered "municipalities" within K.S.A. 79-2925 through K.S.A. 79-2968. As such, an interplay develops between various governmental offices and various Kansas statutes.

In terms of taxation, "Funds" are established and authorized by statute, and are intended to reference to the total of individual items in a budget. K.S.A. 79-2925(b). No part of these funds can be diverted at any time to any other fund whether before or after distribution of taxes, except as provided by law. K.S.A. 79-2934. Indeed, the county treasurer is mandated by statute to distribute those taxes levied by and due to the taxing subdivisions. K.S.A. 79-2934.

The Director of Property Valuation annually prescribes forms for a school district's budget and delivers same to the various clerks of the state's school districts. K.S.A. 79-2925(c) and 79-2926. The county clerk is mandated to make reductions in the ad valorem tax to be levied, compute the tax levy rates, attest to the various taxing subdivision budgets and file a copy of said budgets with the director. K.S.A. 79-2930(b). The county clerk places the tax to be levied upon the rolls and the tax monies are to be collected by the county treasurer. K.S.A. 79-1801.

In certain circumstances school districts are not included within the omnibus "municipality" provisions of the statute. However, when this is the case, school districts are specifically, exempted. K.S.A. 79-2961. Further duties of the county clerk and county treasurer are addressed by statute. K.S.A. 19-318, 19-506, and 72-7040. Monies collected are to be disbursed pursuant to K.S.A. 12-1678a. Finally, Kansas school districts are authorized to use or invest monies pursuant to K.S.A. 72-8804 (1984 Supp.).

While no Kansas cases are on all fours with the facts of the instant litigation, certain legal precedent has evolved. In School District No. 127, of Reno County, v. School District No. 45, of Reno County, 80 Kan. 641, 103 P. 126 (1909) the Supreme Court held in Syllabus #3:

> Extension of Tax on Tax-rolls - Ministerial Duty. The duty of the county clerk to extend the taxes so levied upon the assessment rolls of the county is purely a ministerial function, and, unless such levy has been made, the extension of an assessment upon a tax-roll affords no authority for the collection of the tax.

The fact that the county clerk made a mistake extending on the tax rolls a levy for School District No. 127 which should have gone to No. 45 carried no weight:

> "Neither his [the county clerk's] action in this respect nor the fact that a higher rate should have been extended and collected can deprive school district No. 45 of the money which was lawfully collected for it." at p. 643. [Brackets Added]

In a dispute between a railroad and two school districts the Supreme Court in Williams, infra, held a mandamus action to be

proper. The court, cited Justice Burch's opinion in School District No. 8 v. Board of Education, 115 Kan. 806, 224 P. 892 (1924) for authority that:

> "Each district as a public functionary has a right to receive taxes from the taxable property in its territory. In this respect districts stand toward each other very much as private proprietors, each of whom is entitled to revenue from his own domain. If a common overseer makes a mistake and place in the treasury of one, revenue produced by the property of the other, the estate of the one is benefited at the expense of the other, and the misplaced money is money had and received by one for the use and benefit of the other..."

The court went on to conclude that:

> "This being true, a common-law action lies for money had and received, whatever provision the legislature has made to correct mistakes of ministerial officers having to do with assessment and collection of taxes. State, ex rel., v. Williams, 139 Kan. 599, 32 P. 2d 481 (1934).

The above cited Kansas Constitutional Articles, Statutes, and cases show to this Court that:

1. Kansas unified school districts have the power to levy taxes, but not to assess or collect taxes. K.S.A. 72-8204a, 72-7056.

2. The State Director of Property Valuation has the power to assess all property within the borders of the State of Kansas. K.S.A. 79-2925(c), 79-2926, 72-7040.

3. Once property is assessed by the Director and a tax levied by a Kansas unifed school district's board of education it is the duty of the county treasurer to collect such tax money.

K.S.A. 72-2934, 79-1801, 19-506.

4. It is the duty of the county clerk to order the county treasurer to disburse such funds. K.S.A. 19-318.

5. Kansas unified school districts are independent political subdivisions (Kansas Constitution Article VI §§ 5, 6. K.S.A. 72-804a, 79-2925 through 2968. School District No. 8 v. Board of Education, 115 Kan. 806, 224 P. 892 (1924) and State, ex rel., v. Williams, 139 Kan. 599, 32 P. 2d 481 (1934).

6. It is the duty of the county treasurer to disburse such taxes in the manner provided for in K.S.A. 12-1678a and these duties are ministerial. K.S.A. 72-2934. School District No. 127, of Reno County, supra.

7. Diversion of funds not authorized is prohibited. K.S.A. 72-2934, 12-1678a.

8. Kansas school districts may invest monies which have been disbursed to them.

ISSUE 2: Whether A Case Or Controversy Existed Until The Settlement Funds Involved In The Federal Litigation Were Distributed To Kansas Counties And Then These Counties Refused To Disburse The Proportionate Share Of The Monies Due And Owing The Kansas Unified School Districts.

Respondent argues to this Court that "(n)either U.S.D. 490 nor any other taxing subdivision was a party...at any time nor in any way"[14] to the federal court action culminating in the railroad settlement with the Kansas counties. Further, respondent

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14. Respondent's Brief, page 2-3, paragraph 1.

argues that because there was a "...substantial, vigorous, expensive and risky role sustained...by Respondent and the counties of Kansas(,)"[15] that somehow Kansas unified school districts are not entitled to their rightful portion of the settlement funds. These arguments are spurious.

While it may be arguable that unified school districts may have had standing in the federal litigation referred to by respondent, [16] there is no question that intervention by any Kansas unified school district in federal court would have been premature.[17] No case or controversy existed between any Kansas unified school district and any board of county commissioners while the federal litigation was ongoing. A justiciable controversy only ripened when the Board of County Commissioners of Butler County, Kansas refused to distribute the funds mandated to be disbursed to Unified School District No. 490. K.S.A. 12-1678a, 19-318, 19-506, 79-1801, and 79-2934.

While the twenty-five page Appendix "A" of respondent's brief gives a very adequate history of the federal litigation leading up to this controversy, the federal litigation itself has nothing whatsoever to do with the case at hand, but for the facts

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15. Respondent's Brief, page 4, paragraph 1.

16. School districts are political and taxing subdivisions of the state. K.S.A. 79-2925.

17. In United Public Workers v. Mitchell, 330 U.S. 75, (1947) Justice Reed in delivering the opinion for the Supreme Court held *inter alia*:

> "...the general threat of possible interference with...[plaintiffs'] rights..., if specified things are done by appellants, does not make a justiciable case or controversy....
> ...

that: 1) tax monies were collected by the various counties; 2) these same monies are now held by these counties, and 3) these same counties have failed to disburse these funds to the various unified school districts pursuant to K.S.A. 12-1678a, K.S.A. 19-318, K.S.A. 19-506 and K.S.A. 79-1801. See Amicus Brief, Appendix B.

The role played by Butler County or any other Kansas county in the federal litigation was a duty imposed under Kansas law[18]. Whether or not the role played by the Kansas counties was substantial, vigorous, expensive or risky has nothing to do with the disposition of this case. The fact that in the present controversy, Kansas unified school districts are playing a substantial, vigorous, expensive and risky role also has no impact upon Judge Roger's decision in the federal court as to the assessment and collection of tax monies owed by railroads to

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> ...a hypothetical threat is not enough....at p. 89-91 [Brackets Added]

Further, advisory opinions by the Federal Court system are not ripe because of failure to satisfy Article III "case or controversy" requirements. See generally Muskrat v. United States, 219 U.S. 346 (1911). In the instant case there was no indication that a settlement would be reached between the counties and railroads in Federal court. There also was no indication that once a settlement was reached and a final order issued by the Honorable Judge Rogers that the monies would not be dispursed to the counties as directed by Kansas statute until the Butler County Reponse Rejecting USD 490's Request For Its Proportionate Share Of The Settlement (See Appendix A), was received by Superintendent Tompkins. The Federal litigation was an assessment and collection matter. The present state mandamus action involves disbursement of tax monies by county treasurers to various unified school districts. Denial of disbursement by the counties could not have occurred until there was finality in the Federal Court.

18. K.S.A. 72-7040 and 79-1801.

various Kansas counties. These two instances of litigation, one in the Federal District Court of Kansas and the other one in the Kansas Supreme Court are separate and distinct actions.

ISSUE 3: Whether A Unified School District Is A Subordinate Taxing District To A Kansas County, Or Whether Both Kansas Counties And Unified School Districts Are Taxing Subdivisions Of The State Of Kansas.

The respondent poses the question as to "whether a county or a subordinate taxing district thereof (i.e.: a school district) is entitled as a matter of law to retain the interest portion of proceeds of the settlement of certain railroad property tax litigation."[19] Indeed, respondent infers that this is the major issue in this matter, as it is the only issue they raise under the topic entitled "Issue."[20] Respondent's statement of the issue is seriously flawed and demonstrates the weakness of their argument in choosing not to disburse the proportionate interest portion of the settlement proceeds to school districts. School districts are not "subordinate taxing districts." The statutes do not refer to "taxing subordinates of counties", but to "taxing subdivisions or municipalities of the state."[21] A taxing subdivision has been defined in Kansas case law to mean "all divisions of the stated authorized by law to levy taxes and use the money

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19. Respondent's Brief, page 1, paragraph 3.

20. Respondent's Brief, page 1, paragraph 3.

21. K.S.A. 79-2925, supra.

collected for the lawful purposes of the subdivision."[22] Statutorily, both counties and school districts fit this definition.[23] It is clear, both by statute and case law, that counties are taxing subdivisions as are school districts, municipalities, and others. The Kansas Supreme Court has referred to the board of county commissioners as a taxing subdivision or municipality.[24] Nowhere in the statutes or case law are school districts referred to as being subordinate to counties, or any other taxing subdivision.

ISSUE 4: Whether Equity Requires That Since Counties Vigorously and Substantially Participated In The Federal Railroad Tax Litigation That The Rights Of Unified School Districts To Their Proportionate Share Of The Tax Settlement Should Be Precluded.

Respondent contends that "the equities of this case support the entitlement of Butler County and of the counties of Kansas to retain the interest portion of the settlement of the 4-R Act cases."[25] The equities of this case (according to the respondents) are that since the counties undertook a substantial, vigorous, and expensive risk in federal district court, therefore other taxing subdivisions should not be entitled to share in the settlement, especially the interest. The respondents place considerable emphasis on the fact that the school districts did

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22. Ft. Scott Board of Library Directors v. Drake, 147 Kan. 157, 159, 75 p. 2d 275 (1938).

23. K.S.A. 79-1801.

24. Shouse v. Cherokee County Commissioners, 151 Kan. 458, 99 P.2d 779 (1940).

25. Respondent's Brief, page 11, paragraph 3.

not get involved in the federal district litigation. Finally, the respondents reemphasize that they should retain the interest portion of the settlement because they undertook the major portion of risks and burdens.[26]

Evidently respondent's make their equitable argument based on the notion that if it repeatedly contends that equity supports the counties' retention of the interest often enough, that it will be so. The respondents cite no case law whatsoever supporting their view of equity in this matter. The United States Supreme Court has held that just because intervening claimants are found to be entitled to a settlement, does not preclude third parties from proceeding to assert their claims to share in the fund.[27] The school districts are entitled to their proportionate share of the settlement principal and interest because: 1) the monies represent the proceeds of taxes levied by it as a taxing subdivision[28]; and, 2) the principal was deposited pursuant to federal law in an interest-bearing account[29], and those ultimately determined to be entitled to these funds are also entitled to the interest that has accumulated.[30] Commentaries, federal statutes and state statutes support the notion that the

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26. Respondent's Brief, page 12, paragraph 3.

27. In the Matters of Howard, 76 U.S. 175, 19 L. Ed. 634 (1869).

28. K.S.A. 79-2934.

29. Fed. R. Civ. P. 67.

30. 23 Am Jur. 2d Deposits in Court § 19, p. 747 (1983).

interest should follow the principal, and "equity follows the law and cannot be invoked in matters plainly and fully governed by statutes."[31]

The respondents readily admit that as to the counties' exclusive and substantial involvement in the federal district litigation that "this was as it should have been."[32] Indeed, as the body primarily charged with the administration of tax laws, no other body could have raised these issues except the county governing bodies.[33] It is preposterous to conclude that school districts cannot receive their proportionate share of the settlement on the basis of being unable because of lack of ripeness to intervene. "Equity does not insist on purposeless conduct and disregards mere formality."[34]

Finally, equity imputes an intention to fulfill an obligation[35] and requires that the conduct of the party in question be unconscionable, willful, or deceitful.[36] School districts were not obligated to intervene in the federal litigation. Indeed, their controversy had not ripened into a justiciable controversy. It is therefore impossible for the absence of

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31. Pownall v. Connell, 155 Kan. 128, 132, 122 P.2d 730 (1942).

32. Respondent's Brief, page 12, paragraph 1.

33. K.S.A. 79-1411a.

34. Carpenter v. Riley, 234 Kan. 758, 762, 675 P.2d 900 (1984).

35. In Re Werts' Estate, 165 Kan. 49, 193 P.2d 253 (1948).

36. Goben v. Barry, 234 Kan. 721, 676 P.2d 721 (1984).

conduct (that would have been improper if taken) to be construed as being willful, deceitful, or unconscionable.

Amicus agrees with the respondents that the county is the governmental unit charged with the administration of the tax laws.[37] However, it does not follow that the county is permitted to retain the principal and interest on taxes paid under protest. K.S.A. 79-1411a does not grant counties superior rights to tax monies, it merely charges them with the responsibility of administering the tax laws.

ISSUE 5: Whether The Taxes Involved In The Federal Railroad Settlement Are Undistributed Taxes Pursuant To K.S.A. 12-1678a, Are Delinquent Taxes Pursuant To K.S.A. 79-2004 And 49-2004a, Or Are Neither.

The respondent relies on K.S.A. 12-1678a to support its contention that the counties are entitled to the interest on the proceeds of the settlement of the 4-R cases.. That statute states that undistributed taxes may be invested by the board of county commissioners and retained by the county treasurer. However, the statute clearly implies that the undistributed taxes that can be invested are those taxes that remain undistributed after the county treasurer distributes the taxes collected for each taxing subdivision.. In this case, taxes from the railroad property due the school districts have never been distributed. Second, the statute implies that county commissioners cannot invest taxes that

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37. Respondent's Brief, page 12, paragraph 1. K.S.A. 79-1411a.

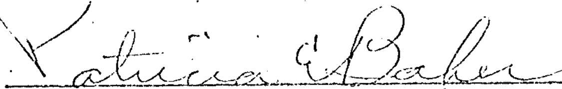
have been collected for other subdivisions. K.S.A. 12-1675. Third, K.S.A. 12-1675, 12-1676, and 12-1678a clearly envision that the act of investment of the taxes requires some kind of affirmative action on the part of the county commissioners. Since these monies were invested pursuant to Fed. R. Civ. P. 67, it is difficult to understand how the counties maintain that under state law these taxes were constructively invested by them.

The respondents then argue under K.S.A. 79-2004 and 79-2004a that these very same taxes were delinquent, and the interest on delinquent taxes should go to the county general fund. Black's Law Dictionary defines delinquent as "due and unpaid at the time appointed by law." Previously, the counties argued that the taxes were "constructively" in their possession. Now they are delinquent, not having been in their possession. They cannot have it both ways. These taxes were not delinquent: 1) the railroads sought relief from what they claimed, and eventually showed, was inequitable application of the taxing process in Kansas; 2) the railroads protested the assessment and collection procedure, they did not merely fail to pay taxes on time; 3) pursuant to Fed R. Civ. P. 67, the railroads paid an estimattion of the taxes due into an interest-bearing account through the procedures of the federal court. These taxes were neither undistributed (according to the meaning of KSA-1678a), nor were they delinquent. The monies including interest should be distributed to the school districts pursuant to K.S.A. 79-1801, 19-318, and 19-506.

CONCLUSION

The unified school districts of Kansas are entitled to their proportionate share of the tax principal and interest from the settlement of the federal railroad tax litigation. The Kansas Constitution, positive statutory provisions, and the case law support the school districts' position. Furthermore, as taxing subdivisions of the State of Kansas, equity demands that counties, school districts, and municipalities share the monies proportionately.

Respectfully Submitted,



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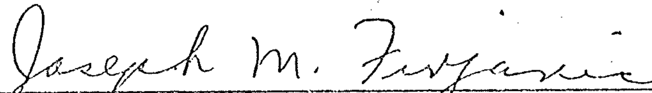

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APPENDIX B

DISTRIBUTION OF TAX AND INTEREST MONEY FROM SETTLEMENT OF RAILROAD TAX CASES DUE UNIFIED SCHOOL DISTRICTS *

#1 USD	#2 COUNTY	#5 PRINCIPAL DUE	#6 INTEREST DUE (* est.)	#3 MONEY DUE	#4 REQUEST FOR PAYMENT	#7 RECEIVED PAYMENT	#8 RECEIVED INTEREST	#9 DISTRIBUTION
101	Neosho	NA	$ 20,700.00*	Y	Y	Y	N	b
102	Gray	NA	$ 5,400.00*	Y	Y	Y	N	b
200	Greeley	$ 28,839.89	NA	Y	NA	Y	N	b
202	Wyandotte	NA	NA	Y	Y	N	N	d
204	Leavenworth	NA	NA	Y	N	Y	N	NA
	(Wyandotte)	NA	NA	N	N	N	N	C
206	Butler	NA	$ 4,500.00*	N	Y	Y	N	b
208	Trego	$ 52,094.07	$ 5,000.00*	Y	Y	Y	N	b
209	Stevens	NA	NA	Y	N	Y	Y	d
211	Norton	$ 7,639.30	$ 764.00*	Y	Y	Y	N	b
212	Norton	$ 5,803.08	$ 1,041.07*	Y	Y	Y	N	b
	Phillips	$ 6,408.50	$ 1,149.68*	Y	Y	Y	N	b
213	Norton	$ 17,611.00	NA	Y	N	Y	N	b
214	Grant	$ 5,770.00	$ 1,227.00*	Y	Y	Y	N	b
215	Kearny	$ 11,543.43	NA	NA	NA	Y	N	b
216	Kearny	$ 11,294.00	$ 600.00	Y	Y	Y	N	b
218	Morton	NA	NA	Y	Y	Y	Y	a
219	Clark	NONE	$ 60.00*	Y	NA	Y	N	NA
	Ford	NA	NA	Y	N	N	N	c
220	Clark	$ 7,072.72	$ 180.00*	N	Y	Y	N	b
221	Washington	$ 8,050.36	$ 1,600.00*	Y	Y	N	N	b
223	Washington	$ 67,160.13	$ 8,000.00*	N	Y	N	N	b
224	Washington	$ 31,379.00	$ 6,000.00*	Y	Y	Y	N	b
225	Meade	NA	NA	Y	N	N	N	b
226	Meade	$ 8,420.64	NA	Y	N	N	N	b
227	Hodgeman	NA	NA	Y	Y	N	N	b
228	Hodgeman	$ 6,000.00*	$ 1,000.00*	Y	N	N	N	b
232	Johnson	$ 66,658.39	$ 13,864.00*	Y	Y	Y	N	b
233	Johnson	$ 71,005.60	$ 16,330.00*	Y	Y	Y	N	b
234	Bourbon	$ 64,363.44	$ 12,420.00*	NA	Y	Y	N	b
235	Bourbon	$ 11,378.65	$ 2,000.00*	Y	Y	Y	N	b
237	Smith	$ 23,174.00	$ 4,296.00	Y	Y	N	N	a/b
238	Smith	NA	NA	Y	Y	N	N	b
239	Ottawa	$ 33,000.00	$ 3,500.00	N	N	Y	N	b
240	Ottawa/Saline	NONE	$ 8,980.00*	N	NA	Y	N	b

#9 DISTRIBUTION:
a) both the principal and interest
b) the principal only
c) neither
d) other

* This research was conducted and compiled by mailed survey forms to Unified School Districts.

#1 USD	#2 COUNTY	#5 PRINCIPAL DUE	#6 INTEREST DUE (* est.)	#3 MONEY DUE	#4 REQUEST FOR PAYMENT	#7 RECEIVED PAYMENT	#8 RECEIVED INTEREST	#9 DISTRI-BUTION
242	Wallace	$ 32,442.53	$ 6,497.60	Y	Y	Y	N	b
243	Coffey	$ 25,872.88	$ 3,300.00*	Y	Y	Y	N	b
247	Crawford	NA	$ 10,000.00*	Y	Y	Y	N	b
248	Crawford	$ 33,260.53	NA	Y	Y	Y	N	b
249	Crawford	$ 9,447.38	$ 944.00	Y	Y	Y	N	b
250	Crawford	$ 62,798.03	$ 21,000.00*	Y	Y	Y	N	b
251	Lyon	$ 75,815.02	NA	N	Y	Y	N	b
252	Lyon/Coffey	$ 35,172.19	$ 5,000.00*	Y	Y	Y	N	b
253	Lyon	$ 71,651.86	$ 15,000.00*	Y	Y	Y	N	b
255	Barber	NA	NA	Y	Y	N	N	a
256	Allen	$ 26,093.78	NA	Y	Y	N	N	b
257	Allen	$ 33,004.00	$ 6,000.00*	Y	Y	N	N	b
258	Allen	$ 18,271.80	$ 4,745.40*	Y	N	N	N	c
259	Sedgwick	$474,480.22	$103,000.00*	Y	Y	Y	N	b
260	Sedgwick	NA	NA	Y	Y	Y	N	b
262	Sedgwick	NA	NA	Y	N	Y	N	c
263	Sedgwick	NA	NA	Y	Y	N	N	NA
264	Sedgwick	NA	NA	NA	Y	NA	NA	NA
265	Sedgwick	$ 40,744.72	$ 7,061.68*	Y	Y	Y	N	b
266	Sedgwick	NA	NA	Y	Y	Y	N	NA
267	Sedgwick	NONE	$ 4,600.00	Y	Y	Y	N	b
268	Sedgwick/Kingman	NA	NA	Y	Y	Y	N	d
270	Rooks	NONE	$ 3,500.00*	Y	Y	Y	N	b
272	Mitchell	$ 51,216.62	$ 9,760.00*	Y	Y	Y	N	b
273	Mitchell/Cloud/Ottawa	NA	$ 8,000.00*	Y	NA	Y	N	b
274	Logan	$ 61,345.73	NA	Y	Y	Y	N	a
275	Logan	$ 45,256.82	NONE	Y	N	Y	N	b
280	Graham	$ 11,507.01	$ 1,200.00*	Y	Y	Y	N	b
282	Greenwood	$ 25,000.00	$ 8,000.00*	Y	Y	N	N	b
	Elk	$ 25,351.55	$ 8,250.00*	Y	Y	Y	N	b
283	Elk	$ 15,268.44	$ 1,520.00	Y	Y	Y	N	b
284	Chase	$182,745.36	$ 35,000.00*	Y	Y	Y	N	b
285	Chautauqua	NA	NA	Y	N	Y	N	b
286	Chautauqua	$ 8,874.80	$ 3,000.00*	Y	Y	Y	N	b
287	Franklin	$ 55,278.62	$ 9,860.29*	Y	Y	Y	N	b
288	Franklin	$ 38,594.00	NA	Y	Y	Y	N	b
289	Franklin/Miami	$ 47,392.21	$ 10,287.00*	Y	Y	Y	N	b
290	Franklin	NONE	$ 21,138.00*	Y	Y	Y	N	b

#1 USD	#2 COUNTY	#5 PRINCIPAL DUE (* est.)	#6 INTEREST DUE (* est.)	#3 MONEY DUE	#4 REQUEST FOR PAYMENT	#7 RECEIVED PAYMENT	#8 RECEIVED INTEREST	#9 DISTRI-BUTION
291	Gove	$ 27,362.29	NA	Y	N	Y	N	b
292	Gove	$ 35,791.34	NA	Y	Y	Y	N	b
293	Gove	$ 21,858.39	$ 5,100.00*	Y	NA	Y	N	b
294	Decatur	$ 19,198.33	$ 4,032.00*	Y	Y	Y	N	b
295	Decatur	NA	NA	N	NA	Y	N	b
297	Cheyenne	NA	NA	N	NA	Y	N	b
298	Lincoln	$160,371.16	$ 30,000.00*	Y	Y	Y	N	b
299	Lincoln	$ 27,039.64	NA	Y	Y	N	N	b
300	Comanche	NONE	NONE	N	N	Y	Y	b
302	Ness	NA	NA	NA	NA	Y	N	b
303	Ness	$ 10,018.50	NA	Y	N	Y	N	b
305	Saline	$103,212.00	$ 21,555.00	Y	Y	Y	N	b
306	Saline	NONE	$ 17,000.00*	Y	Y	Y	N	d
307	Saline	NONE	NA	Y	Y	Y	N	a/b
309	Reno	$ 34,000.00	NA	Y	Y	Y	N	b
310	Reno	NA	NA	NA	NA	Y	N	b
311	Reno	$ 7,479.45	NA	Y	Y	N	N	b
312	Reno	$ 50,540.90	NA	Y	Y	Y	N	b
313	Reno	$ 35,628.00	NA	Y	Y	Y	N	b
315	Thomas	$ 49,294.35	$ 12,000.00*	Y	Y	Y	N	b
316	Thomas/Sheridan	$ 17,000.00	$ 2,040.00*	N	Y	Y	N	b
318	Rawlins	NONE	NA	Y	Y	Y	N	b
320	Pottawatomie	$ 44,910.96	NA	Y	Y	Y	N	b
321	Wabaunsee	$ 475.00*	$ 65.00*	Y	Y	N	N	b
	Shawnee	$ 17,718.33	$ 3,285.07	Y	Y	Y	Y	NA
	Jackson	$ 5,468.86	$ 800.00*	Y	Y	Y	N	b
	Pottawatomie	$ 20,054.55	$ 3,500.00*	Y	Y	Y	N	b
322	Pottawatomie	$ 37,590.62	$ 3,759.00*	Y	Y	Y	N	b
323	Pottawatomie	$ 16,941.72	$ 3,000.00*	Y	Y	Y	N	b
324	Phillips	$ 12,603.73	$ 2,256.57	Y	Y	Y	N	b
325	Phillips	$ 13,179.74	$ 2,300.00	Y	Y	Y	N	b
326	Phillips	NA	$ 2,590.00*	N	N	Y	N	b
327	Ellsworth	$ 77,587.38	$ 1,200.00*	Y	Y	Y	N	b
328	Ellsworth	$ 32,400.00*	$ 2,800.00*	Y	Y	Y	N	a/b/d
329	Wabaunsee	NONE	NA	Y	N	Y	N	b
330	Wabaunsee	NA	NA	N	NA	NA	NA	NA

#1 USD	#2 COUNTY	#5 PRINCIPAL DUE (* est.)	#6 INTEREST DUE (* est.)	#3 MONEY DUE	#4 REQUEST FOR PAYMENT	#7 RECEIVED PAYMENT	#8 RECEIVED INTEREST	#9 DISTRIBUTION
331	Kingman	NA	$ 11,917.00*	Y	Y	Y	N	a/b
332	Kingman	$ 7,642.86	$ 1,600.00*	Y	Y	Y	N	b
333	Cloud	$ 63,771.89	NA	Y	Y	Y	N	b
334	Cloud	$ 20,550.50	NA	NA	NA	Y	N	b
335	Jackson	NONE	NA	N	Y	Y	N	d
337	Jackson	$ 1,155.52	$ 225.59	Y	Y	Y	N	b
338	Jefferson	$ 5,915.87	$ 1,000.00	Y	Y	Y	N	b
339	Jefferson	$ 3,280.69	NA	Y	Y	Y	N	b
340	Jefferson	NONE	$ 1,289.15*	N	N	Y	N	b
342	Jefferson	NA	NA	NA	NA	NA	NA	NA
343	Jefferson/Douglas	NA	$ 11,000.00*	Y	NA	Y	N	b
344	Linn	$ 7,000.00	$ 1,000.00*	Y	Y	Y	N	b
345	Shawnee	NA	NA	N	Y	Y	Y	a
346	Linn	$ 17,298.00	$ 3,246.00*	Y	Y	Y	N	b
347	Edwards	NONE	$ 11,668.27*	Y	Y	Y	N	b
349	Stafford	$ 48,938.43	$ 10,250.00*	Y	Y	Y	N	b
350	Stafford	$ 21,193.02	$ 4,449.00*	Y	Y	Y	N	b
351	Stafford	NA	$ 12,000.00*	NA	NA	Y	N	b
353	Sumner	$108,000.00*	NA	Y	Y	N	N	b
354	Barton	NA	NA	Y	Y	N	N	b
355	Barton	$ 3,879.87	$ 1,970.00	Y	Y	N	N	b
356	Sumner	NA	NA	Y	Y	N	N	b
357	Sumner	$ 54,352.14	NA	Y	Y	Y	N	NA
358	Sumner	NA	NA	Y	Y	N	N	b
359	Sumner	$ 46,000.00*	$ 10,000.00*	Y	Y	N	N	a
360	Sumner	NA	NA	Y	Y	N	N	NA
361	Anthony-Harper	NA	$ 15,000.00*	N	Y	Y	N	b
362	Linn	$ 6,753.18	$ 1,252.89*	Y	Y	Y	N	b
364	Marshall	$136,842.00	$ 25,000.00*	Y	Y	Y	N	b
365	Anderson	$ 76,818.00	$ 35,000.00	Y	Y	Y	N	b
366	Woodson	$ 67,593.55	$ 10,000.00*	Y	Y	Y	N	d
367	Miami	NA	$ 4,500.00*	Y	Y	Y	N	d
369	Harvey	NONE	$ 4,500.00*	Y	Y	Y	N	b
373	Harvey	$108,983.00	$ 24,211.00*	Y	Y	Y	N	b
374	Haskell	$ 4,488.60	$ 1,800.00*	Y	Y	Y	N	b
375	Butler	$ 31,766.12	$ 8,100.00*	Y	Y	Y	N	b

#1	#2	#3	#4	#5	#6	#7	#8	#9 DISTRIBUTION
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	N	[illegible]
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[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	Y	N	b
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[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	N	b
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	N	b
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[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	Y	N	b
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	Y	N	b
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	Y	N	b
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[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	Y	N	NA

PAGE [illegible]

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#1 USD	#2 COUNTY	#5 PRINCIPAL DUE (* est.)	#6 INTEREST DUE (* est.)	#3 MONEY DUE	#4 REQUEST FOR PAYMENT	#7 RECEIVED PAYMENT	#8 RECEIVED INTEREST	#9 DISTRIBUTION
456	Osage	$ 52,021.00	$ 10,579.00*	Y	Y	N	N	b
457	Finney	$ 35,000.00*	$ 2,500.00*	Y	Y	N	N	a
458	Leavenworth	$ 84,017.86	$ 10,500.00*	Y	Y	Y	N	b
459	Ford	NA	NA	Y	Y	N	N	b
460	Harvey	$ 8,862.00	$ 1,950.00*	Y	Y	Y	N	b
461	Wilson	$ 19,000.00	$ 4,000.00	Y	Y	Y	N	b
462	Cowley	NA	NA	Y	Y	N	N	b
463	Cowley	$ 33,220.23	$ 9,301.64*	Y	NA	Y	N	NA
464	Leavenworth	$ 11,968.17	NA	Y	NA	Y	N	b
466	Scott	$ 61,808.50	$ 12,521.00	Y	N	N	N	c
467	Wichita	$ 42,400.00	$ 4,384.00*	Y	Y	Y	N	b
469	Leavenworth	NONE	NA	N	N	Y	N	b
470	Cowley	$ 59,715.43	NA	Y	Y	Y	N	b
473	Dickinson	$ 89,712.56	$ 15,000.00*	Y	Y	Y	N	b
474	Kiowa	$ 11,169.97	$ 600.00*	Y	Y	N	N	b
475	Geary	$ 16,363.92	$ 3,177.11	Y	Y	Y	N	b
476	Gray	$ 3,336.61	NA	Y	Y	Y	N	b
477	Gray	NA	NA	Y	Y	Y	N	b
479	Anderson	$ 20,895.00	$ 1,000.00*	Y	Y	Y	N	b
480	Seward	NA	NA	Y	NA	Y	N	NA
482	Lane	$ 28,932.81	$ 5,207.91*	Y	Y	Y	N	b
483	Seward	$ 9,673.53	$ 88.98*	Y	Y	Y	Y	a
484	Wilson	$ 71,111.68	$ 16,000.00*	Y	Y	Y	N	b
486	Doniphan	$ 2,644.00	$ 230.00*	Y	Y	Y	N	b
487	Dickinson	$ 24,145.41	$ 4,800.00*	Y	Y	Y	N	b
488	Marshall	$ 19,529.30	NA	NA	Y	NA	N	b
489	Ellis	$ 60,896.95	$ 4,200.00*	Y	Y	Y	N	d
490	Butler	NONE	$ 8,600.00*	N	Y	Y	N	b
491	Douglas	NA	$ 1,000.00*	Y	Y	Y	N	b
492	Butler	NONE	$ 17,000.00*	Y	Y	Y	N	d
493	Cherokee	$110,330.53	NA	N	Y	Y	N	b
496	Pawnee	$ 7,000.00*	$ 1,500.00*	Y	Y	N	N	b
497	Douglas	$ 67,583.42	$ 9,812.00*	Y	Y	Y	N	b
498	Marshall	NA	NA	Y	Y	Y	N	b
499	Cherokee	$ 7,565.95	NA	Y	Y	Y	N	b
501	Shawnee	NA	NA	NA	NA	Y	Y	NA
502	Edwards	NONE	$ 4,000.00*	N	Y	Y	N	b

#1 USD	#2 COUNTY	#5 PRINCIPAL DUE (* est.)	#6 INTEREST DUE (* est.)	#3 MONEY DUE	#4 REQUEST FOR PAYMENT	#7 RECEIVED PAYMENT	#8 RECEIVED INTEREST	#9 DISTRI- BUTION
503	Labette	NA	$ 6,700.00*	NA	NA	Y	N	d
504	Labette	$ 8,063.00	$ 750.00*	N	Y	Y	N	b
506	Labette	$ 74,950.12	$ 5,000.00*	Y	Y	Y	N	b/d
507	Haskell	$ 5,395.40	$ 650.00*	Y	Y	Y	N	b
508	Cherokee	$ 12,815.11	NA	Y	Y	Y	N	b
509	Sumner	NA	NA	Y	Y	N	N	a
511	Harper	NONE	NONE	Y	Y	Y	N	b
605	Pratt	NA	NA	NA	NA	NA	NA	NA
CCCC	Cowley	$ 57,923.84	NA	N	Y	Y	N	b
LCC	Labette	$ 49,067.78	NONE	Y	Y	Y	N	b
NCCC	Neosho	$ 49,925.80	$ 10,500.00	Y	Y	Y	N	b

APPENDIX A (ATTACHMENT III-B)
3-7-85

BUTLER COUNTY RESPONSE REJECTING USD 490's
REQUEST FOR ITS PROPORTIONATE SHARE OF THE SETTLEMENT

Davis, Hamm & Manley

Attorneys at Law
116 North Star
El Dorado, Kansas 67042
(316) 321-4920

Norman G. Manley
Wallace F. Davis

Of Counsel
Philip A. Hamm

December 13, 1984

Andy Thompkins
Superintendent
U.S.D. 490
1518 West Sixth
El Dorado, Kansas 67042

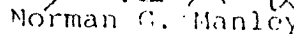
In re: 4-R Cases - Interest Proceeds

Dear Andy:

Per our meeting of December 11th with the County Commissioners, the purpose of this letter is to formally advise that Butler County will not surrender that portion of the settlement proceeds earmarked as interest until being provided with legal authority either in the form of an attorney general's opinion or in the form of a court decision. Our position in this instance is not necessarily representative of the personal opinions of any commissioner, but is instead the position taken based upon the gray area we find ourselves within. It is the collective opinion of the Board that it would be in this county's best interests as well as the best interests of every county similarly situated to secure some direction before disbursing such funds. In the interim, the County is preparing a resolution creating a special interest bearing account within which these funds will be deposited until a decision is reached. We will be happy to cooperate with the school district toward a rapid resolution of this matter, and will voluntarily enter an appearance in whatever litigation you intend to file. I am notifying the school board's attorney of our position by carbon copy of this letter.

Yours very truly,

DAVIS, HAMM & MANLEY



Norman G. Manley

NGM/dam
c: Mr. Ervin E. Grant

JAMES KAUP
(ATTACHMENT IV)
3-7-85

No. 84-57633-S

IN THE

SUPREME COURT OF THE

STATE OF KANSAS

UNIFIED SCHOOL DISTRICT 490,
BUTLER COUNTY, KANSAS,
PLAINTIFF,

vs.

BOARD OF COUNTY COMMISSIONERS OF BUTLER COUNTY, KANSAS, J. W. SIMMONS, ELDON PHILLIPS, AND TOM LINOT, AS MEMBERS OF SAID COMMISSION, AND THEIR RESPECTIVE SUCCESSORS IN OFFICE; AND BETTY ORR, AS COUNTY TREASURER OF BUTLER COUNTY, KANSAS, RESPONDENTS

BRIEF OF LEAGUE OF KANSAS MUNICIPALITIES AS AMICUS CURIAE IN SUPPORT OF PLAINTIFF'S PETITION FOR ORDER IN MANDAMUS

James M. Kaup
Attorney
LEAGUE OF KANSAS MUNICIPALITIES
112 West Seventh Street
Topeka, Kansas 66603

Attachment 4

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STATEMENT OF INTEREST

This Court is presented with the issue as to whether counties in Kansas have the legal authority to retain, undistributed to local governmental entities, in excess of four million dollars, which amount is the interest portion of a negotiated settlement approved by the United States District Court for the District of Kansas, between a number of railroads holding property in this State and the State of Kansas and certain Intervenors, including Respondents. This Court is further asked whether, in the absence of controlling statutory law on the above question, equitable considerations allow such retention by Respondents, or require distribution of the interest portion of the settlement to certain governmental units lying within Respondents' boundaries, in the same manner as the principal portion of such settlement is to be distributed.

Amicus, League of Kansas Municipalities, is the statutory instrumentality (K.S.A. 12-1610e) of its 514-member cities, most, if not all, of which have a direct financial interest in the resolution of this controversy.

ARGUMENTS AND AUTHORITIES

I. RESPONDENTS ERR IN STATING THAT KANSAS STATUTORY LAW CONTROLS THE ISSUE OF DISTRIBUTION OF THE INTEREST PORTION OF THE SETTLEMENT OF THE 4-R ACT CASES.

A. Because The Interest Money At Issue Is Not "Interest Earned" By Butler County On "Tax Collections" In The Possession Of The County Treasurer, K.S.A. 1984 Supp. 12-1678a Does Not Control The Distribution Of The Interest Money.

Amicus believes that Respondents' contention that K.S.A. 1984 Supp. 12-1678a provides statutory authority for their retention of the interest portion of the 4-R Act settlement is erroneous on two points: (1) K.S.A 1984 Supp. 12-1678a concerns retention by the county of interest *earned by the county* from investments the *county* makes on county-collected but undistributed taxes. The moneys at issue here were not under the control of Respondents, hence could not be considered moneys earned from *county investment*. (2) K.S.A. 1984 Supp. 12-1678a further is limited to the disposition of interest earned on

investment of "tax collections." The moneys at issue here are part of a court-approved settlement, not taxes collected by Respondents. Before dealing in detail with these two points, Amicus offers the Court some background on the legislative history of K.S.A. 1984 Supp. 12-1678a.

Moneys in the hands of the county treasurer are not moneys of the county government. The county is unique in our governmental system, as it is an agent of the state as well as being a unit of local government. Unlike cities, counties are created by state law, not by their constituents. Since its beginning, the State of Kansas has used the county as an administrative arm, and has assigned to counties some responsibilities not shared by other local governments, one of which is to serve as a convenient agency for the collection of state and local property taxes. This responsibility is placed on the county treasurer, not on the county government. Amicus suggests state law requires the county treasurer to act in the capacity of trustee for the agencies which levy property and certain other taxes, including the county government itself.

In order to prevent undistributed tax moneys from simply sitting idle in the bank, what is now K.S.A. 1984 Supp. 12-1678a was enacted. Prior to 1973 this statute specifically prohibited counties from investing money received for distribution to other taxing units. In 1973 the statute was amended to authorize only Shawnee County to invest such money (L. 1973, Ch. 64, Sec. 2), and in 1975, all counties were authorized to make such investments (L. 1975 Ch. 69, Sec. 1).

The 1981 Legislature amended K.S.A. 12-1678a in response to an opinion of then-Attorney General Schneider (A.G. No. 80-174). That opinion stated that "in the absence of statutory provision to the contrary," interest earned until the tax revenues are available for distribution must be apportioned among the taxing subdivisions. The Attorney General, in other words, was distinguishing between investment earnings during that period of time after moneys have been received, but before they have been apportioned to the various

taxing subdivisions, and that period of time between apportionment to individual taxing subdivisions and actual payment to them. The Attorney General concluded that there existed a gap in county investment authority, leaving a county with no authority to invest the collected taxes of other taxing subdivisions until the county had notified the subdivisions that its funds were available for distribution. Because the statute did not authorize investment during this period of time, if moneys were invested during this period, the interest followed the principal and the taxing subdivisions were entitled to it.

In response to Opinion No. 80-174, the 1981 Legislature amended K.S.A. 12-1678a to provide greater authority for county treasurers to retain interest earnings -- in the absence of an agreement to otherwise distribute the interest earnings to subdivisions, such moneys earned from investment of undistributed tax moneys were to be paid into the county general fund (L. 1981, Ch. 380).

In summary, K.S.A. 1984 Supp. 12-1678a provides for payment into the county general fund of interest moneys earned by the county treasurer from investments made by the county treasurer of undistributed tax moneys. This payment to the county is the incentive the legislature created for the county treasurer to invest such moneys. The general rule is that one who holds money for the benefit of another is under no obligation to invest the taxes which it collects on behalf of other taxing subdivisions so as to earn interest on those moneys. Under the common law and under Kansas statutory law the county is under no legal duty to invest the taxes which it collects on behalf of Plaintiff or other taxing subdivisions. K.S.A. 1984 Supp. 12-1678a only provides that the county may invest moneys which it collects. If the county were prevented by law from retaining any investment earnings on tax moneys being held for later distribution there would be no incentive for the county treasurer to manage those moneys in a profitable manner. Because the county treasurer is the public official in control of such moneys, and no other officer or entity has the ability to invest the money, public policy considerations favor the authority granted the county treasurer by K.S.A. 1984 Supp. 12-1678a.

Amicus has burdened this Court with the history of K.S.A. 1984 Supp. 12-1678a in order to demonstrate that the purpose of that statute is limited to providing specific authorization for payment into the county general fund of moneys the county treasurer earned on investments of tax moneys which the county treasurer has collected. A faithful application of K.S.A. 1984 Supp. 12-1678a to the facts of this case reveals the statute does not control the issue of distribution or retention of the interest moneys at issue here.

First, the principal moneys paid by the railroads ($19,427,561.10) and from which the interest moneys were generated ($4,036,034.43) were not "taxes collected" by the Respondents and other county treasurers. As is repeatedly emphasized by Respondents in their brief, the total settlement of $23,463,595.33 was a "court-approved negotiated settlement," the $19,427,561.10 "was a negotiated amount of additional taxes or principal," and the $4,036,034.43 "was a negotiated amount of interest thereon" (Respondents' brief, page 3).

Second, it is critical to consider the fact that because the principal was not under the control of the county treasurer, the interest portion of the settlement cannot be "interest earned on the investment" within the meaning of K.S.A 1984 Supp. 12-1678a.

The interest moneys and principal moneys materialized simultaneously on October 4, 1984, the date of Judge Rogers' approval of the settlement. On October 3, 1984 the Respondents and the other 104 Kansas counties had $0 in principal and $0 in interest. Until the United States District Court gave its approval to the settlement there simply was no control whatsoever by Respondents over any of the settlement moneys. Until the money was physically in the possession of the county treasurer following the October 4, 1984 order there could simply be no investment made by the county treasurer and consequently no "interest earned." Respondents had no more management of the principal upon which these interest moneys were derived than they did over the interest earned on the tax deposits

made by the railroads with the Clerk of the U.S. District Court during the pendency of the 4-R Act litigation. To follow this point to its logical conclusion, it is Amicus' position that the principal and interest portions of the settlement are indistinguishable as part of an indivisible negotiated settlement.

Further evidence of the inapplicability of K.S.A. 1984 Supp. 12-1678a to the present case is found in Plaintiff's argument that K.S.A. 1984 Supp. 12-1678a requires "interest earned" under K.S.A. 1984 Supp. 12-1678a(c)(1) to be interest earned from investments made "pursuant to K.S.A. 12-1678 and 12-1676, and amendments thereto" (K.S.A. 1984 Supp. 12-1678a(b)). Even the most cursory examination of K.S.A. 1984 Supp. 12-1675 and 12-1676 will reveal that a federal court-approved settlement of protested taxes is not a recognized mode of investment under those statutes. K.S.A. 1984 Supp. 12-1675 is an exclusive listing of authorized financial instruments in which governmental entities may invest public moneys. The statute lists temporary notes, time deposits, open accounts or certificates of deposits, time certificates of deposit, certain repurchase agreements, and U.S. treasury bills or notes. Obviously, Respondents did not utilize any such financial instrument in generating the interest settlement amount. In Respondents' own words the "interest was the equitable price which the State Defendents and the County Intervenors were able to exact in their negotiated settlement with the railroads" (Respondents' brief, page 7). Negotiations between the state's agent for tax collection and a protesting taxpayer hardly constitute an investment in keeping with K.S.A. 1984 Supp. 12-1675. Because K.S.A. 1984 Supp. 12-1678a(b) and 12-1678(c)(1) must be read in pari materia, the Respondent's assertion that its negotiated settlement constitutes a "constructive investment" which would somehow be within the scope of authorized investments under K.S.A. 1984 Supp. 12-1675 (as required by K.S.A. 1984 Supp. 12-1678a(b)) must be rejected by this Court.

Respondents supply ample evidence of their lack of control over the settlement moneys prior to the October 4, 1984 order. Respondents submit to this Court that ". . .the entire amount of the settlement in the 4-R Act cases was actively used by the railroads prior to their making the settlement payment" (Respondents' brief, page 15). They further note that ". . .the settlement funds were never 'held at interest,' but were retained and used by the railroads until they actually paid the settlement" (Respondents' brief, page 16), and that "[H]ere, no 'interest was earned on funds impounded until the judgment was rendered' " (Respondents' brief, page 17). Most importantly, Respondents admit ". . .<u>the interest amount here in issue was not actually derived from direct county investment</u>. . ." (Respondents' brief, page 10) (<u>Amicus'</u> emphasis).

B. <u>K.S.A. 79-2004 and 79-2004a Do Not Authorize Respondents' Retention Of The Interest Moneys As The Interest Portion Of The Settlement Order Is Not Interest On Delinquent Taxes.</u>

<u>Amicus</u> disagrees with Respondents' position that K.S.A. 79-2004 and 79-2004a provide authority for Respondents' retention of the interest portion of the 4-R Act litigation settlement. Those statutes, in part, provide for interest charges on due and unpaid (delinquent) real and personal property taxes. Both statutes specifically provide that any such interest shall be paid into the county general fund.

To characterize the over $19 million of tax principal, representing tax liability for the years 1980 through 1983, as delinquent taxes may come as a shock to the railroad taxpayers. It was the railroads which <u>commenced</u>, in 1980, in federal district courts in Topeka and Wichita, the lawsuits challenging their tax assessments. Given the fact the action was initiated by the railroads, that the railroads followed the orders of the U.S. District Court in placing tax deposits under the control of the Clerk of the District Court, and that the railroads agreed to pay, and did pay, a negotiated tax settlement approved by the U.S. District Court, it seems far-fetched to characterize the $19 million principal as "delinquent" taxes. The records of the 4-R Act litigation, as detailed by Respondents at Appendix A of

their brief, do not indicate that the railroads, at any time, were improperly failing to pay a recognized tax liability (i.e. a tax delinquency) but rather the railroads were challenging the amount of tax liability imposed against them (i.e. a tax protest).

Respondents' own words contradict their position that K.S.A. 79-2004 and 79-2004a are controlling. Respondents appear to advise this Court that the events culminating in the October 4, 1984 order lay outside the tax protest procedure found at K.S.A. 79-2004 and 79-2004a. At page 17 of their brief Respondents state: "Here, no judgment directed the parties to whom the interest portion of the settlement was to be paid, except as between the railroads and the counties; no direction was made that non-parties to that litigation were to share in the interest portion of the settlement, no consideration was given to non-party claimants such as U.S.D. 490, and legally no consideration could have been made to the claims of non-parties who were not before the court." The implication is, of course, that the judgment could have so provided for distribution of the interest portion of the settlement. Amicus believes this Court must decide whether the 4-R Act tax settlement was wholly subject to K.S.A. 79-2004 or wholly outside it. If Judge Rogers had legal authority to order distribution of the interest portion, or even legal authority to approve a settlement which specifically provided for distribution of the interest portion, such would necessarily mean that the entire line of the 4-R Act litigation, up to and including the October 4, 1984 settlement, must be outside the scope of K.S.A. 79-2004. As noted above, Respondents themselves indicate that actions taken by various parties to the 4-R Act litigation were inconsistent with the procedures laid out in K.S.A. 79-2004, thereby indicating that that statute was not controlling, and that in fact the 4-R Act settlement is correctly described as a court-approved settlement agreement, not a tax delinquency under K.S.A. 79-2004. The railroads did not follow the provisions of K.S.A. 79-2004 regarding the timing of payment of property taxes, instead making a single payment under the settlement agreement to cover tax years 1980 through 1983, inclusive (Respondents' brief, page 10).

Respondents also acknowledge the fact that the rate of interest agreed to under the settlement order was not the rate of interest set by K.S.A. 79-2004, by reference to K.S.A. 79-2968(b) for delinquent taxes (Respondents' brief, page 10). In fact, Respondents recount Judge Rogers' refusal to order payment of the statutory interest under K.S.A. 79-2968(b) (Respondents' brief, Appendix A, page 14) and note the decision of the U.S. Circuit Court of Appeals for the Tenth Circuit affirming that decision (Respondents' brief, Appendix A, page 16).

Clearly the parties in the 4-R Act litigation did not consider themselves to be subject to the provisions of K.S.A. 79-2004. The railroads, State of Kansas and the County Intervenors were involved in a federal district court action which culminated in a settlement agreement between the parties which was approved by a federal district court judge. Respondents now come before this Court and contend that the interest moneys of the settlement was "the equivalent of delinquency interest" under K.S.A. 79-2004 and 79-2004a (Respondents' brief, page 10). Respondents offer no authority for their apparent position that a county may consider itself to be operating subject to some of the provisions of K.S.A. 79-2004 (i.e. ". . .all interest herein provided shall be credited to the county general fund. . .") but not others (i.e., schedule of payment of property taxes and statutory rate of interest on due and unpaid taxes). Amicus respectfully submits that Respondents' own brief and the text of the statute clearly demonstrate the underlying tax dispute was not governed by the provisions of K.S.A. 79-2004 and 79-2004a.

C. In The Absence Of Statutory Authority To Retain The Moneys At Issue As Compensation For Collecting Railroad Property Taxes, No Such Right Exists And The Interest Portion Of The Settlement Should Be Distributed In The Same Manner As Is The Principal.

Respondents argue that K.S.A. 1984 Supp. 12-1678a, K.S.A. 79-2004 and 79-2004a authorize Butler County to retain the interest moneys at issue here. Amicus has endeavored to demonstrate that Respondents' reliance upon any of these statutes is erroneous. In the absence of any controlling statute, what is the duty of Respondents with respect to the interest moneys?

Amicus suggests to this Court that if it accepts Respondents' contention that Respondents obtained the interest moneys as the result of a "constructive investment," then the general rule applies that when one party does invest the money of another, and earns interest as a result, the interest follows principal. That is, title to the interest vests in the owner of the principal on which it was earned.

Amicus would further point out that Respondents' justification for retaining the interest moneys on the grounds that it represents equitable compensation for the expenses incurred in the 4-R Act litigation is not supported by legal authority. To the contrary, the majority rule is that in the absence of any statute authorizing one governmental unit to receive compensation for collecting taxes levied by and owing to another governmental unit, no such right to compensation exists. Drainage Comm'rs. of Mattamuskeet Dist. v. Davis, 182 N.C. 140, 108 S.E. 506 (1921) and Pomona City School Dist. v. Payne, 9 Cal. App.2d 510, 50 P.2d 822 (1935).

In Mineral School Dist. v. Pennington County, 19 S.D. 602, 104 N.W. 270 (1905) it was held that a county treasurer charged by statute with the collection of school district taxes was not entitled to deduct from the amount collected the school district's share of expenses incurred by the treasurer in defense of an injunction suit to enjoin collection of the taxes. The Court said that neither the board of county commissioners nor county treasurer was vested with any authority under state statute to make any deductions from the amount collected for the school district for any purpose whatever. The Court said:

> "The duties of the county treasurer are imposed by law, and in performing these duties he acts as an officer of the county, and not the agent of the school district. The law prescribes the duties of the county treasurer, and the manner in which he shall proceed to collect the delinquent taxes, and the expenses incurred in such collection are ordinarily to be collected of the taxpayer; and when taxes are collected, belonging to any school district, no authority is conferred by the statute upon him to make any deduction from the amount collected for the school district, or retain in his hands for any purpose any portion of the amount so collected. Neither is the board of county commissioners authorized by law to charge up to any school district any portion of the expenses for the collection of any taxes due such district. . . in the absence of such statutory authority, it is quite clear that the expenses of such

litigation must be borne by the county. The duty of the county treasurer to pay over the amount collected to the school district being imposed by law, he could not legally retain any portion thereof from such district in the absence of any statutory authority authorizing him so to do."

In a case involving delinquent taxes, the U.S. Supreme Court has held that in the absence of statutes to the contrary, interest on delinquent taxes follows the tax and goes to governmental subdivisions according as those subdivisions are entitled to the tax itself. New Orleans v. Fisher, 180 U.S. 185, 45 L.Ed. 485, 21 S.Ct. 347 (1901).

Judge Rogers' failure to give any specific direction as to how the interest moneys were to be handled by the county governments should be interpreted as an indication that the Judge assumed the interest money would be distributed just as the principal was. Nothing in Judge Rogers' October 4, 1984 order, nor anything in Respondents' exhaustive factual summation of the 4-R Act cases provides any evidence that the District Court, or the parties, intended the interest money to be kept by the County Intervenors. Given the size of the interest portion of the negotiated settlement (over $4 million, or 17% of the total settlement), it seems far-fetched to believe Judge Rogers' silence on this point means acquiesence in the Respondents' position that such a large percentage of the total settlement should be treated differently than the principal. Amicus believes it is far more reasonable to believe that Judge Rogers' silence on this issue means either that the question of subsequent distribution to governmental subdivisions never arose during the course of the litigation, or that the Judge assumed the total negotiated settlement was a homogeneous pool of money, to be distributed among all the units of government which receive property tax moneys under the laws of the State of Kansas.

In summary, the Court should recognize the majority rules set out earlier and order the Respondents to distribute the interest portion of the settlement in the same manner as the principal portion is distributed because: (1) there is no statutory authority for the county treasurer to be compensated from moneys collected on behalf of other governmental units in the performance of the treasurer's statutory duties as the state's agent for tax

administration; (2) there is no statutory authority to treat the interest portion of settlements arising from property tax liability lawsuits differently from the principal portion of such settlements; and (3) there is no provision in the October 4, 1984 order approving the settlement agreement which specifies that the interest moneys were to be treated differently than the principal moneys.

II. EQUITY CONSIDERATIONS FAVOR DISTRIBUTION OF THE INTEREST PORTION OF THE SETTLEMENT OF THE 4-R ACT CASES TO PLAINTIFF AND OTHER LOCAL UNITS OF GOVERNMENT.

While Amicus recognizes the extent and nature of the participation of the Respondents and other counties in the 4-R Act cases, Amicus believes that Respondents' argument that principles of equity compel retention of the interest portion of the settlement by Respondents not only (1) does not fairly reflect the duties of the Respondents with respect to property tax collection and distribution, it also (2) does not fairly reflect the facts of the actual burdens borne by the local governments in the 4-R Act cases.

A. Respondents, In Undertaking Their "Substantial, Vigorous, Expensive And Risky Role" In The 4-R Act Litigation Were Merely Fulfilling Their Statutory Duty As The State's Agent As Collector Of Property Taxes.

This Court need look no farther than Respondents' own brief for a clear understanding of the role played by counties in administering and enforcing the property tax laws of the State of Kansas. At page 12 of its brief, Respondents cite 1978 and 1967 decisions of this Court as authority for the following:

> "By statute and by case law, the county has been declared to be the governmental unit charged with the primary responsibility for the administration of all laws relating to the assessment, review, equalization, extension, collection and refund of taxes paid under protest of Kansas real and personal property taxes."

The Kansas statutes are also clear as to the responsibility of the county treasurer in this respect. K.S.A. 19-515 expressly provides:

> "The county treasurer of each county shall be, by virtue of his office, collector of taxes therein, and shall perform such duties in that regard as are prescribed by law" (Amicus' emphasis).

As collector of taxes, the county treasurer, along with the Kansas Department of Revenue, was the proper officer to represent the interest of all governmental units which had a stake in the tax liability of the railroads.

Respondent-county treasurer, as is true of all county treasurers, is the agent of the State of Kansas in administering the property tax laws. Respondents, at page 3 of Appendix A of their brief makes a declaration of this agency relationship when they say:

> "...Those railroads sought to enjoin the State Defendants and their agents, including the county treasurers of the 98 counties..." (Amicus' emphasis).

The relationship between county treasurer and the State of Kansas is also brought home by K.S.A. 19-501, the provisions concerning county treasurers' bonds. In Comm'rs of Pawnee Co. v. A.T. & S.F. Rld. Co., 21 Kan. 748 (1879) this Court held that statute provides that the treasurer's bond runs to the State, and in Comm'rs of Harvey Co. v. Munger, 24 Kan. 205 (1880) recognized that an action on such a bond is brought in the name of the state. In Cunningham v. Blythe, 155 Kan. 689, 127 P.2d 489 (1942) this Court stated:

> "...The legislature has adopted a complete scheme for property assessment, levy and collection of taxes... In this general scheme the tax collecting officer is the county treasurer." (emphasis in original) (155 Kan. at 694:695).

The duty of the counties to seek property tax payment from the railroads is not shared in any form whatsoever by Plaintiff or any other school district, city or other governmental subdivision. Respondents note that Plaintiff did not bear any of the "risk, effort and expense of the 4-R Act litigation" (Respondents' brief at page 11). In fact, Plaintiff has no legal standing to intervene in a tax protest under Kansas law. It would indeed be inequitable for this Court to punish Plaintiff for this lack of legal authority by declaring the interest moneys from this settlement to be the reward of the State's administrative agent for tax collection, and thereby unavailable to Plaintiff.

Repondents' equity argument also is diminished by the fact that the litigation expenses they incurred were not paid for by the county government, those costs were borne by all county taxpayers. Thus, persons who were also taxpayers to Plaintiff-school district and

taxpayers to the many other taxing subdivisions of Butler County were contributing to county tax collections which funded Butler County as an Intervenor in the 4-R Act cases. Any argument that equities favor one group of taxpayers over another, or one governmental entity over another, must be qualified by this simple fact.

B. Respondents Fail To Provide The Court With The Necessary Information To Show That Their Position For Interest Retention Is More Equitable Than Distribution Of The Interest As The Principal Is Distributed.

Respondents state that retention by the 105 counties of this State of the interest moneys totalling $4,036,034.43 is equitable compensation to the counties for their litigation efforts. To support this, at page 25 of Appendix A of their brief Respondents note that the legal costs incurred by the 80-county-member group of intervenors which included Respondents were "in excess of $500,000." No other litigation expense figures are provided by Respondents. Amicus would respectfully suggest that a dividing line does exist between handsome compensation and equitable compensation.

Not only is this Court not provided with precise information as to the financial burden borne by the County Intervenors as a group in the 4-R Act litigation, it is not provided with any information as to the burden borne by each individual county relative to the amount of interest money each would receive as compensation for discharging its statutory tax collection duties. Amicus notes that only 86 of the 105 Kansas counties intervened in the 4-R Act litigation (Respondents' brief, page 2), but that all 105 counties were paid interest moneys under the negotiated settlement (Respondents' brief, page 3). Do equity principles compel this Court to award a windfall to the 19 counties who bore no cost? Amicus also notes the immense range in interest moneys received by the 105 counties. According to figures supplied by the Kansas Department of Revenue, these extremes ran from $571.13 for Sherman County to $345,306.94 for Wyandotte County. Yet Respondents, without offering this Court any indication as to the relationship between any county's litigation cost and the amount of interest money received by that county, tell the Court that Respondents' position is an equitable one.

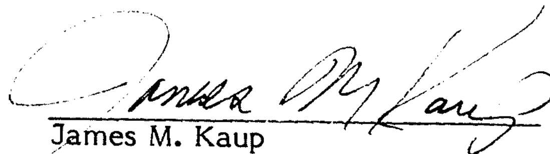
Finally, Amicus would emphasize that the issue of retention or distribution of the $4 million in interest does make a difference to Kansas taxpayers. Assuming, for sake of argument, that all $4 million of interest moneys would be used for property tax relief regardless of whether it was retained by the county or was distributed among all local taxing subdivisions in the same way the principal moneys are, the benefit of the $4 million would be applied more equitably among taxpayers if it were distributed. This is because of variations in tax burden due to geographic location of taxpayers within any given county. If we assume all the interest portion of the tax settlement which Butler County seeks to retain would be "spent" in the form of property tax relief upon county-levied property taxes, then all property taxpayers in Butler County would benefit by the same mill levy reduction in their county taxes. However, a taxpayer in Butler County who also pays property taxes levied by a city, a sewer district, and perhaps other local taxing subdivisions, has a heavier tax burden, justifying greater tax relief - relief in the form of distribution of the interest moneys to all taxing subdivisions having a legal right to receive distribution of the principal portion of the tax settlement.

CONCLUSION

Amicus respectfully suggests that Respondents' arguments that statutory law and principles of equity justify their retention of the interest moneys from the settlement of the 4-R Act cases are fundamentally flawed. As has been discussed by Amicus, the statutory authority cited by Respondents, specifically K.S.A. 12-1678a, 79-2004, and 79-2004a cannot properly be applied to the settlement agreement out of which arose this case. As no statutes control the question of distribution of the interest moneys, this Court should apply principles of equity. Amicus suggests that equity demands a distribution of the interest moneys to governmental subdivisions within Butler county, including the Plaintiff, because (1) Respondents were merely performing their statutory duties as property tax administrator and collector by joining the 4-R Act litigation, (2) no evidence is offered of any relationship

between the litigation "burden" carried by Respondents and the "benefit" it would receive by retaining the interest moneys, and (3) in the absence of controlling statutory law to the contrary, the general rule of law is that interest follows principal.

Respectfully submitted,



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CERTIFICATE OF MAILING

I hereby certify that on this 25th day of February, 1985, copies of the foregoing brief Amicus Curiae in support of Plaintiff's petition for order in mandamus were mailed postage prepaid to:

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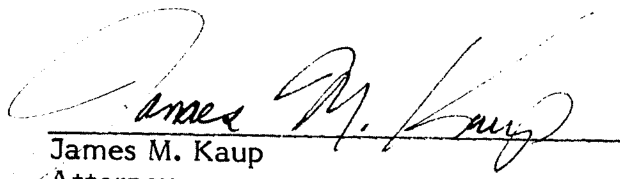

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MEMORANDUM

(ATTACHMENT V)
3-7-85
March 5, 1985

TO: House Local Government Chairman

FROM: Kansas Legislative Research Department

RE: H.B. 2425

H.B. 2425 authorizes cities to issue revenue anticipation notes in any fiscal year in which it is entitled to receive or credit anticipated revenues the notes shall be limited to 75 percent of the revenue actually credited.

The notes are payable not later than January 31 next following the date of issue; are payable solely from revenues pledged thereto; are not a general obligation of the city; are exempt from any debt limits; and the income derived is exempt from all state and local taxation except inheritance taxes. The bill is effective upon publication in the Kansas Register.

MH/pk

Attachment 5

CITY OF KANSAS CITY, KANSAS

MEMORANDUM

(ATTACHMENT VI)
3-7-85

TO: House Local Government Committee

FROM: John Moir, City Budget Director John Moir

DATE: March 7, 1985

SUBJ: REVENUE ANTICIPATION NOTES

Revenue anticipation notes (RANs) are a major financial management tool for municipalities to deal effectively with situations arising during the budget year where budgeted expenditures exceed budgeted revenues. This situation is caused by revenue collection patterns being out of synchronization with expenditure patterns during the budget year. Revenue anticipation notes would permit Kansas municipalities to administer their respective jurisdictions in a timely and orderly way within annual budget constraints. Some Kansas municipalities facing cashflow problems during the budget year retain year-end cash balances to deal with this problem during the next budget year. Other Kansas municipalities defer entering contracts until the revenues are collected. In cases where year-end cash balances are used, this means that the general property tax levy is higher than necessary to finance the annual budget. Therefore, the use of RANs would have a favorable impact on local property tax levies by eliminating the need to retain unnecessary year-end cash balances. In cases where contracts are deferred, municipalities are ignoring favorable opportunities to obtain low bids on public improvement projects and the need to make orderly procurement of goods or services and, thereby, assist orderly administration of city business. As Kansas municipalities become less dependent on general property taxes, cashflow management tools become more important and essential. Table I illustrates the different collection patterns associated with several major revenue sources. The Committee should consider extending the authority to issue RANs to all types of taxing districts (school districts, community colleges, counties, drainage districts, and any other district authorized to levy a general property tax).

Table II lists a sampling of 29 various states that authorize municipalities to issue revenue anticipation notes. The Table identifies the statutory reference, limitation on amounts to be issued, and the term of the revenue anticipation notes. The revenue anticipation note is not a new concept in financial administration. The private sector uses a similar financial tool called "commercial paper."

Attachment 6

Section 1 of House Bill No. 2425 limits the amount of RANs to be issued to 75% of previous budget year's revenues. This provision protects municipalities from unanticipated revenue shortfalls. Also, Section 1 directs that the notes be retired by January 31 next following the date of issuance. In other words, RANs issued during one calendar year must be retired not later than January 31 of the following calendar year. This provision allows municipalities to use revenues collected by the County Treasurer in December, credited to the budget year in which the RANs are issued, but not distributed to the municipalities until January 20. Table III depicts the pro forma year-end financial statement of the municipality using hypothetical current assets and current liabilities. The Table compares the effect on net working capital of the municipality by retiring RANs before year-end versus retiring the RANs by January 31. As illustrated in Table III net working capital would be the same using either method for retiring RANs. Therefore, the municipality would have no adverse affect by retiring the RANs by January 31.

During my more than 11 years in public administration in Kansas (seven years with the State Division of the Budget and four and one half years as Kansas City Budget Director), I have adhered to the philosophy to " run government like a business." This can occur only to the extent that government has the same tools as private business. The private sector uses commercial paper and governments use revenue anticipation notes. Both tools are necessary for orderly and efficient financial administration.

Thankyou for the opportunity to submit this testimony.

TABLE I

COLLECTION PATTERNS FOR MAJOR REVENUE SOURCES

MONTH	GENERAL PROPERTY TAX % COLLECTED BY MONTH	GENERAL PROPERTY TAX % COLLECTED YEAR TO DATE	MOTOR FUEL TAX % COLLECTED BY MONTH	MOTOR FUEL TAX % COLLECTED YEAR TO DATE	CITY SALES TAX % COLLECTED BY MONTH	CITY SALES TAX % COLLECTED YEAR TO DAT
JAN	37.4	37.4	0	0	7.8	7.8
FEB	0	37.4	16.2	16.2	6.2	14.0
MAR	27.4	64.8	11.3	27.5	12.7	26.7
APRIL	0	64.8	11.8	39.3	6.6	33.3
MAY	1.7	66.5	8.2	47.5	8.2	41.5
JUNE	0	66.5	3.0	50.5	6.0	47.5
JULY	26.5	93.0	15.3	50.5	10.0	57.5
AUGUST	0	93.0	11.0	65.8	8.2	65.7
SEPT	6.7	99.7	13.5	76.8	7.2	72.9
OCT	.3	100.0	9.7	90.3	8.7	81.6
NOV	0	100.0	0	100.0	8.3	89.9
DEC	0	100.0	0	100.0	10.1	100.0

TABLE II

SAMPLE OF STATES AUTHORIZING REVENUE ANTICIPATION NOTES (RANS)

STATE	STATUTE	LIMITATION/TERMS OF INDEBTEDNESS
Alabama	11-47-2	Cities and towns. 100% anticipated revenues 12 month term; renewable
Alaska	29.58.010	Revenue Anticipation Notes; Unlimited Retired before the end of the next fiscal year
Arizona	35-465	50% of anticipated revenues; Retired before end of current fiscal year
Arkansas	19-4406	50% of tax collections; Indefinite term, tax lien
California	Gov53820	Temporary Borrowing; 50% Retired before December 31st end of fiscal year
Connecticut	7-405a	Limited to total tax levy for current fiscal year; Retired prior to current fiscal year-end
Georgia	9-5-5	State constitution temporary loans; 75% taxes next preceding year; Retired by December 31 not in excess of total current year budgeted revenue
Idaho	63-3101	75% of current year revenues; Retired by year-end
Indiana	36-4-6-20	Paid by current year revenues
Louisiana	39-745	Limited to estimated income; Retired March 1
Maine	30-5151	Limited to total tax levy in next preceding year; Retired in same fiscal year
Maryland	23B61	50% of current tax levies; Retired no later than first six months of fiscal year
Massachusetts	44-4	100% of next preceding year tax revenues; Retired no later than one year from issuance
Michigan	5-3188(13)	50% of next preceding fiscal year revenues; Retired consistent with cash flow
Mississippi	3598-13	50% of anticipated revenues; March 15th of current year
Nevada	354.430	Short-term financing
New Hampshire	33-7	Tax levy preceding year or current year; Retired one year from date of issuance

SAMPLE OF STATES AUTHORIZING REVENUE ANTICIPATION NOTES (RANS)

STATE	STATUTE	LIMITATION/TERMS OF INDEBTEDNESS
New Jersey	40A:4-64	30% of next preceding tax levy plus 30% of miscellaneous revenues; Due no later than following March 31 of succeeding year
New York	21A25	Formula is budgeted revenue or next preceding year revenue, whichever is less; less amount actually collected year to date; Term, one year; renewable
North Carolina	159-168	50% of uncollected taxes; 80 of miscellaneous revenues budgeted; Term no later than 30 days after close of fiscal year
North Dakota	21.02.02	Taxes receivable; No more than 24 months
Pennsylvania	53-1255	10% of estimated receipts; Repaid within same fiscal year
Rhode Island	45-12-4	Current year tax levy; One year from date of issue
South Carolina	5-7-30	Unlimited
South Dakota	9-25-12 and 13	95% of receivable and uncollected taxes; Unspecified term
Vermont	24-1786	90% of anticipated taxes; One year from date of issue
Virginia	15.1-843	Unlimited
Washington	35.22.280	(39.36 debt limit)
Wisconsin	67.12(13)	75% of taxes receivable; No more than six months
Wyoming	15-1-103	None

TABLE III

PRO FORMAL YEAR-END FINANCIAL STATEMENT

I. RANs of $1,800,000 retired by year-end

Current Assets		Current Liabilities	
Cash & Investments.....	$ 5,000,000	Accounts Payable.....	$ 3,400,000
Accounts Receivale.....	1,800,000	Notes Payble.........	0
Total Current Assets	$ 6,800,000	Total Current Liabilities	$ 3,500,000

II. RANs of $1,800,000 retired by January 31

Current Assets		Current Liabilities	
Cash & Investments.....	$ 6,800,000	Accounts Payable.....	$ 3,400,000
Accounts Receivable....	1,800,000	Notes Payable.......	1,800,000
Total Current Assets	$ 8,600,000	Total Current Liabilities	$ 5,200,000

III. Calculation of Net Working Capital

	Plan I RANs Retired by Year-End	Plan II RANs Retired by Jan. 31
Current Assets	6,800,000	8,600,000
Less: Current Liabilities	3,400,000	5,200,000
Net Working Capital	3,400,000	3,400,000

(ATTACHMENT VII)
3-7-85

ENGINEERING IS AN INGENIOUS INGREDIENT

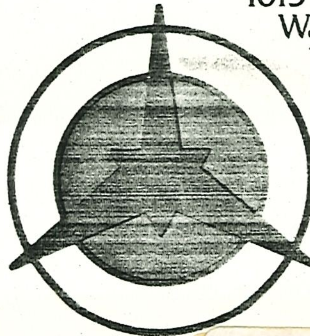
Yet it represents less than one per cent of the life-cycle cost of the average project.

America's matchless life-style rides on the ingenious talent of engineering. Only by the application of technology to problem solving can plants and buildings withstand the forces of nature, can energy be conserved, environment be protected, and man and his machines span our rivers, mountains, and the plains.

Engineering is the ingredient that binds the creativity of design with the power of performance. Yet it represents less than 1% of the total lifetime cost of constructing, maintaining and operating the average project.

Fortunately, there are available highly qualified engineering firms in every region of the United States. For a list of those firms serving industry, government and related professions write to

American Consulting Engineers Council
1015 Fifteenth Street, N.W.
Washington, D.C. 20005
Telephone (202) 347-7474



America's Consulting Engineers

Attachment 7

Microwave Tower – Iola, Kansas.

As advertised in *The Wall Street Journal, Time, Industry Week, Engineering News-Record,* and Other Leading Publications.

GEORGE BARBEE, EXECUTIVE DIRECTOR
1100 MERCHANTS NATIONAL BANK
8TH & JACKSON
TOPEKA, KANSAS 66612
PHONE (913) 357-1824

STATEMENT

DATE: March 7, 1985

TO: HOUSE COMMITTEE ON LOCAL GOVERNMENT

FROM: Sam Haldiman, P.E., Chairman
Kansas Consulting Engineers

RE: HB-2478

I am Sam Haldiman and I am the current Chairman of Kansas Consulting Engineers, which is an organization that is made up of 57 engineering firms of various sizes that perform professional design services for clients in the state of Kansas. Many of those firms serve the cities, municipalities and counties of Kansas on a variety of public works projects. Some of our firms do mostly bridge and road work, others sewer and water projects, still others power plants.

We consulting engineers are in favor of HB-2478 because we are concerned about any selection procedure that requires an engineering firm to submit a price prior to negotiation of contracts.

One of the essential ingredients in drawing up a contract is a meeting of the minds. Both parties must know what is required of each other to produce an end product that satisfies the owner and the user. This meeting of the minds is particularly essential for something as complex as engineering projects for local units of government.

When price is required in a written proposal for engineering services, I assume that price would be a factor in the selection procedure. We believe that when price becomes a factor it becomes **The** Factor, thus obligating selection based on the low price. Or else the contracting officials are subject to attack for not doing so and are placed in the position of defending their decision of having selected a firm at a higher price. Even because the firm was selected due to its superior qualifications. HB-2478 would alleviate this problem by making requests for priced proposals illegal and causing selection to be made based on competence and qualification without rigid monetary limitations.

If a design professional is forced to submit a price before final negotiation of the contract, he is guessing. The results of quoting fees by this pig-in-a-poke method lead to overdesign or underdesign for projects. In either case, the end result is inadequate. The engineering firm is not selling a product or materials like rock salt or paper clips. It is selling education, judgement and experience to determine the best solution for the problem at hand. In short, the firm is selling time to solve your problem and if one firm thinks they can do it cheaper than the other, they are simply doing it for less time. That has to affect the quality of the design plans and specifications with no consideration for value engineering.

Value engineering is a common term in our industry today. It is the process of emphasizing cost as an essential design parameter while retaining the value of the project and freedom of design expression. The design community is in favor of value engineering because it is a means to improve cost effectiveness and life-cycle costs of the project.

Value engineering and competitive bidding for professional services are not compatible. Benefits such as improved life-cycle cost, better cost effectiveness, and innovative design can only be obtained when the design professional has the latitude to use the judgement that was obtained by years of experience and education. It is difficult at the front of a project, without knowing the complete scope of services and the effect of value engineering, to put a price on judgement.

Some local units of government baffle us by continuing to ask for priced proposals. I say baffle because the standard for selection of design professionals has been established long ago.

For federal projects, where the contract is with the agency, selection must follow the Brooks Bill enacted by Congress in 1972. It says,

"The Congress hereby declares it to be the policy of the federal government to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional service required and at fair and reasonable prices."

For State of Kansas contracts the state agencies must follow statute K.S.A. 75-5801 which begins by saying, "The legislature hereby declares it to be the policy of this state to publicly announce all requirements for engineering services and to negotiate contracts for engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable fees."

These policies reflect the recommendations made later by the American Bar Association when a Model Procurement Code for state and local governments was established.

The code says, "It is the policy of this state or local unit of government to publicly announce all requirements for architect, engineer and land surveying services and to negotiate contracts for architect, engineer and land surveying services on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices." Some Kansas cities and counties that have adopted procurement procedures that reflect this policy are Shawnee County, Topeka, Wichita, Kansas City, Kansas, and Hays, to name a few.

The procedures established to meet these policies are time proven to be the best way to select engineers for design services, yet, some say that to save money they will request priced proposals.

We understand that you have to know what the price for the engineering is before you sign a contract. This procedure allows you to negotiate for that price and if you cannot come to an agreement with the engineering firm that you have selected to negotiate with, terminate with that firm and go to the second firm on your ranking list. If you cannot agree on a price with the second firm, terminate and to to the third firm on your list of three. If you cannot agree with the third firm, then obviously you are asking for too much for the budget that you have allowed, and you need to go back to the drawing board and redefine the project and start over.

In so doing, you have gained a most important piece of information, and that is, you can't get the job done for the budget that you have allowed. The point is, we do not advocate that a firm be selected and then you're stuck with the price. You select the firm to negotiate with and if you can't establish the price, you are under no obligation to that firm.

The cost of engineering is usually about 7-10% of the cost of construction. The cost of construction is usually about 10% of the life-cycle cost of a project. That is, the cost of operation and maintenance over approximately 40 years. You can look at just about any city or county public works project and see that the cost of engineering is about 1% of the total cost of the construction plus operation and maintenance costs.

It seems obvious that a good, well-thought-out value-engineered design can save incredible amounts of money when there is some investment up front for good, practical engineering judgement that allows an engineer to consider life-cycle cost and cost-effectiveness of the project.

We can give low cost engineering, we can ignore the benefits of value engineering, and there might be a small savings in the cost of engineering. It may even look great to the tax payer until the facility is built and it leaks, or it settles, or it costs too much to cool, or it is on someone else's property, or any of a thousand possible problems. While such things can happen on any job -- even by the best firms -- experience has clearly shown that the engineer who cuts corners runs the greatest risk of problems on his job, both during and after its construction.

We can design it cheap and we can design it "hell for stout". If there's a retaining wall required we can make it two foot thick and solid concrete. We can ignore questions about should there be a culvert, timber pilings, concrete pilings, or no pilings? Should there be two lanes or four lanes, a sidewalk to allow fishing or a bike trail or both?

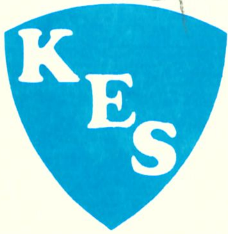
We can design it with lots of pilings and lots of concrete and we can charge less for doing that because we're not so concerned about the construction cost. But the construction cost can certainly be astronomical when we do this. Or, we can sit down and discuss these things as we arrive at an agreed upon scope of services and fee.

All we are asking for in HB-2478 is that engineering firms be given the opportunity to use their education, experience and judgement to provide quality service.

We do have a preferred procedure for requests for proposals, negotiation and selection of engineering firms. We are not, however, asking you to include that procedure in this bill because we realize that there are some small projects for which it would simply not be feasible to go through the procedure. But we did want you to know that there is a tried and true method that is relatively simple that could be used by even the smallest municipality. Our organization would be happy to work with any of the local units of government by providing information to them on optional procurement procedures -- just as long as those procedures do not include requests for priced proposals!

I respectfully request that you pass HB-2478 out of committee favorably.

Mr. Chairman I would be happy to answer any question the committee may have.



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(ATTACHMENT VIII)
3-7-85

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Executive Vice President

Kansas Engineering Society
Testimony for the
House Committee on Local Government
March 7, 1985

Mr. Chairman, members of the committee I am Bill Henry, the Executive Vice President of the Kansas Engineering Society. I appear today before you on behalf of the 1200 member engineering society as proponent of H.B. 2478.

H.B. 2478 enacts a concept for local units of government that has existed in state law since 1977.

We have a similar federal law which enacts the philosophy as H.B. 2478 and which establishes the methods by which the federal government chooses professional services.

Unlike the state and federal acts now in effect H.B. 2478 does not require a set procedure which every city, county or local school board would have to adopt. It gives leeway to each local unit of government to choose a design professional or contract for design professional services in any form they wish as long as the contract awarded is based upon demonstrated competency and qualifications and does not involve competitive bidding.

Those members of this committee who have served on their local school board, city council or their county commission have had experience with competitive bidding. In many cases and for certain products competitive bidding works well. However, in the area of selection of professional services members of our organization would suggest that competitive bidding is clearly not the route to adopt in selecting professional design services.

Many of you have had the experience I am sure whereby you were required by state law in certain cases to take the best and lowest bid. You probably can think of situations whereby the so called low bid was definitely not the "best" bid. The reason is that when price as the sole criteria is introduced in the procurement of professional services, the law limits you when you go on a price basis to simply dollar amounts, not quality or expertise, or competence.

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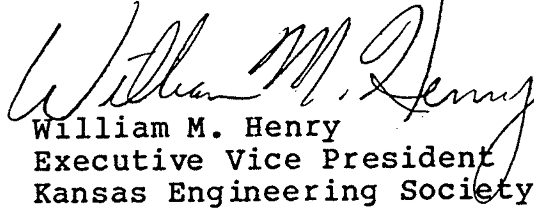
Our government members, who must look at competitive bids when they are offered for professional services, unanimously decry this process. Although they were unable to attend today I contacted several county engineers, who are also members of our engineering society, and without exception they stated that competitive bidding for professional services could do more damage to a local unit of government's public works program than just about any other mandate.

We might add that most Kansas cities and certainly our larger urban counties already have in force resolutions and ordinances which would comply with this act if it were passed. If H.B. 2478 would be enacted into law we do not foresee problems for our local units of government in following the statute.

Respectfully submitted,



William M. Henry
Executive Vice President
Kansas Engineering Society

THE KANSAS SOCIETY OF ARCHITECTS/AIA

(ATTACHMENT 7)
3-7-85

POSITION STATEMENT - RE: HB 2478

MARCH 6, 1985

The Kansas Society of Architects is interested in the maintenance of public policy regarding the selection of Architectural and Engineering professionals to be chosen by all elements of government. A uniform policy is desired based on years of evaluation and experience by governmental units and the consultants who are commissioned to design and manage public works construction.

Public entities have two primary objectives when selecting design professionals:

1) The primary responsibility is to provide that the taxpayers obtain the best available design services for the funds to be expended, and 2) The selection process must be carried out fairly. All interested and qualified professional firms will receive consideration for public agency work.

Fees commissioned for professional consultation reflect the quality, quantity and delivery of services. Less than adequate performance may be expected to have a detrimental effect on both the costs of construction and the ultimate life cycle maintenance of public projects.

Fair and reasonable fees negotiated with regard to the project complexity and recognized standards of service are part of sound management, allowing the public entity to proceed with confidence in the adequacy of performance of it's consultants.

The bidding of consultant's fees has been attempted and proven unsuccessful for several reasons:

1) The governmental agency participation is substantially increased. Pre-consultant bid activities require professional expertise generally not found on in-house staffs. An appropriate definition of the project scope and detail is impossible to prepare without professional assistance. Where it has been attempted, the agency staff costs have risen substantially to more than offset potential savings attempted through bidding.

2) Inexperienced (many times relatively small) governmental units have conducted an informal bidding process without observance of the normal public bid procedures. This approach is in violation of public policy standards and is one of the targets of this proposed legislation. Where there is available an adequate resource of experts, a formal process to evaluate and select services is the only fair and reasonable approach to

Attachment 9

maintain a positive relationship with both the consultants and the public.

3) The selection of consulting services is primarily based on the consideration of individual experts, who offer a variety of talents, experience and abilities. There is no way to adequately prepare specifications for anticipated performance.

4) Concurrently, initial design costs are not an accurate basis to be used in determining the ultimate value which may be derived from services and consultation. For example, appropriate energy studies and analysis of a building project may return many times their cost, but might not otherwise be considered as essential to a minimum building design program.

HB 2478 is similar to legislation adopted or pending in more than two dozen states including neighbors, Nebraska and Oklahoma. One state, Maryland, became the only state to adopt a competitive bidding law in 1974. An AIA detailed study describing the expansion of the state agency required to support these activities in Maryland clearly illustrates the difficulties in attempting to bid services.

The Kansas Society of Architects supports the proposed bill because it establishes a tested procedure as a guide for a fair and openly competitive uniform system for all who have the responsibility of administering public funds.