

MINUTES OF THE House COMMITTEE ON Transportation

The meeting was called to order by Representative Rex Crowell at
Chairperson

1:30 ~~xxx~~/p.m. on January 24, 1985 in room 519-S of the Capitol.

All members were present ~~xxxx~~:

Committee staff present:

Fred Carman, Revisor of Statutes
Hank Avila, Legislative Research
Donna Mulligan, Committee Secretary

Conferees appearing before the committee:

Mr. Brian Moline, Kansas Corporation Commission
Mr. Phillip Harness, Johnson County

The meeting was called to order by Chairman Rex Crowell and the first order of business was a hearing on HB-2020.

Hank Avila of the Legislative Research Department briefed the Committee on HB-2020 and said this bill is a result of the interim study on Proposal No. 43. He stated HB-2020 clarifies that a county is not a municipality in terms of operating a gas or electric utility, and throughout the bill the words "municipally owned" are stricken and "city-owned" inserted.

Mr. Brian Moline of the Kansas Corporation Commission was introduced and testified favorably concerning HB-2020. Mr. Moline stated that public utilities are regulated by the State of Kansas through the Corporation Commission with two exceptions. He said the first exception is a city owned and operated utility, and they service all comers in their area. They are not regulated by the Kansas Corporation Commission, they are regulated by their city commissions. Mr. Moline further stated the other exception is one which provides that a non-city owned, in fact a privately owned utility, which only services one city and no other city, is exempt from Corporation Commission jurisdiction.

Representative Patrick asked if the Kansas Corporation Commission has the authority to prevent a municipal utility from building another power plant. Mr. Moline said he doesn't believe they do.

Representative Patrick asked if there is anything in the statutes giving the Kansas Corporation Commission the authority to prevent any city or any municipal utility from building another power plant. Mr. Moline replied he doesn't believe they have that authority.

Representative Patrick also asked if the statutes prohibit a group of cities from banding together and forming, in a sense, a four city electrical company and selling electricity in those four cities. Mr. Moline said "yes" there is, and explained that the Electrical Retail Suppliers Act in effect divided the state into delivery systems, taking into account investor-owned, municipals and cooperatives.

CONTINUATION SHEET

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room 519-S, Statehouse, at 1:30 ~~am~~/p.m. on January 24, 1985

Representative Ott asked if a private investor utility had the franchise for a particular city but the city decided to form a public utility, could the city provide their own service without the permission of the Kansas Corporation Commission. Mr. Moline said he thought they could.

Representative Snowbarger asked if a private landowner finds gas on his property and develops a well, can he sell the gas to lessors on his property. Mr. Moline answered there is a private use exception for the use of gas which allows the individual who owns the gas to use it for themselves, and the KCC takes the position that the sale of the commodity to someone else puts one in the utility business.

Chairman Crowell said it was his understanding from interim committee testimony that as long as the pipeline through which gas is gathered and sold does not exceed 15 miles in length, it is not under the jurisdiction of the KCC, and if one owner sells to one consumer it is not under the KCC. Mr. Moline replied that this is correct.

Mr. Phillip Harness, County Counselor of Johnson County, representing the Board of County Commissioners and the Airport Commission, was the next conferee. (See Attachment 1)

Mr. Harness appeared in opposition to HB-2020 as presently drafted, and stated there is an ambiguity to the statutes under KSA 12-825j having to do with municipal utilities. Mr. Harness said in KSA 12-825j the word "municipality" is defined as a city, county or township, and does not coincide with the definition as presently written in Chapter 66 which has to do with public utilities.

Mr. Harness stated that the Board of County Commissioners and the Airport Commission would support HB-2020 if all the references to "municipality", "municipally owned", and "municipal" were left in and were instead defined to include any city or any county owned and operated airport in an urban county in the state.

Chairman Crowell asked what all area was included when Union Gas initially made application to service that area. Mr. Moline replied everything they had.

Mr. Harness said there was a separate application for the airport.

Representative Adam asked if an investigation had been done concerning how long the gas owned by Johnson County is expected to last. Mr. Harness said the county has done several studies which show the reserves should last approximately eight years.

There being no further questions, the hearing on HB-2020 was ended.

The meeting was adjourned at 2:50 p.m.


Rex Crowell, Chairman

January 30, 1985

To: House Committee on Transportation & Utilities

From: Philip S. Harness, Johnson County Counselor, Attorney for Board of County Commissioners of Johnson County, Kansas, and the Johnson County Airport Commission

Re: H.B. 2020

I appeared before this Committee on Thursday, January 24, 1985, and gave testimony which I will attempt to recapitulate in this memorandum.

In order to understand the ambiguity in the statutes and the present posture of my clients, the Committee must read the public utility provisions of Chapter 66 of the Kansas Statutes and the municipal utility provisions located in Article 8 of Chapter 12 together. Essentially, and highly summarizing, K.S.A. 66-104 speaks of municipal utilities and public utilities; K.S.A. 12-825j defines municipality (within the municipal utility law) to include cities, townships and counties. To clarify the ambiguity, Senate Bill 818 was introduced in the 1984 Kansas Legislature, reviewed last summer in interim studies, and has no doubt led up to the events of today.

The Industrial Airport, located near the cities of Olathe and Gardner, has been successful in bringing companies from out of state into Kansas by virtue of its ability to offer airport revenue bonds and the obvious proximity to airport facilities. There are twenty (20) companies presently located and doing business at the airport. Approximately seventy-five percent (75%) of those companies have come from out of state, some from even out of the country. In order to continue to be able to draw this industry into Kansas, the Airport wants to be able to offer inexpensive natural gas to its present and prospective tenants. The Airport is able to supply natural gas because of a gift by a donor to the County of nine (9) natural gas leases which presently contain fourteen (14) wells with more to be drilled. The County has studies which indicate sufficient reserves to last many years.

Almost immediately after receipt of the wells, and after being told by the Kansas Corporation Commission that the County could not be a municipal utility, the County entered into a contractual agreement with Grindsted Products, Inc., a Danish firm, which manufactures food emulsifiers to sell that entity natural gas under the private use exception to K.S.A. 66-104. That company currently pays Two Dollars and

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Attach. 1

Seventy-Five Cents (\$2.75) per MCF (thousand cubic feet) as contrasted with the present rate of Three Dollars and Ninety-Two Cents (\$3.92) per MCF presently charged by Union Gas System, Inc., the public gas utility presently operating at the Airport under a Certificate of Convenience and Necessity issued in 1970. Being such a large user of natural gas, the contract was lucrative enough that Grindsted Products, Inc., laid its own pipeline to the County wells (approximately one and one-half miles).

The Airport would like to offer that same opportunity to other companies presently located at the Airport and those desiring to come from out of state. Since the County was given the Airport by the United States, the County owns the main transmission lines on the Airport. Union Gas System, Inc. has occupied that line for several years without paying anything to the County, but expecting the County to pay for repairs, maintenance and insurance.

Presently, besides the Grindsted Products, Inc., contract, the rest of the Airport has a fairly small gas usage. Allowing the County to have this authority to operate a municipal gas utility would have only minimal impact upon Union Gas System, Inc. which you may already know was sold last year to a group of investors from New York. The impact on the rest of the state is virtually nonexistent, its impact on the rest of the area presently served by Union Gas System, Inc. is small due to the small numbers. This must also be viewed with the understanding that it will attract out of state companies to locate here which will provide corporate income tax to the state and individual income tax by the employees to the state, not to mention the employment opportunities for Kansas residents.

H.B. 2020 effectively precludes these efforts until the next change in the law. By allowing only cities the opportunity to have a natural gas utility, Kansas will set a rigid and unyielding standard that other states, more flexible in nature, will take advantage of to draw industry, both present and prospective, away from Kansas. When large industrial companies seek to locate in Kansas, one of the threshold questions concerns the availability and price of natural gas.

There has been some concern voiced regarding whether or not this amounts to "cream skimming" and whether or not the County will, in fact, supply residential users at the airport as well as industrial users. That concern is effectively nonexistent since there is only one residence at the airport, that occupied by the caretaker and owned by the County.

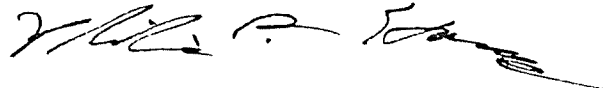
Another concern voiced was whether or not expanding the definition of municipality to include "county-owned airports in urban area counties" may create a precedent for a blossoming effect in which other airports would desire to do the same. A cursory review of airports throughout the state show that most are operated by cities; as such, under present law,

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under 1985 H.B. 2020 and 1984 S.B. 818 city-owned airports may set up their own municipal gas utility.

We oppose H.B. 2020 in its present form and would urge this Committee to instead reconsider 1984 S.B. 818, or in the alternative, to amend H.B. 2020 to leave in the references to municipal, municipality, and municipally-owned and instead to define municipality as any city in the state or any county-owned and operated airport in an urban area county, rather than the present form which attempts to change all references to "city" and adding a special definition section for "city".

Very truly yours,



Philip S. Harness
County Counselor
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PSH/csn